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federal register

Wednesday
November 10, 1993

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Wednesday
November 10, 1993

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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3. The important elements of typical Federal Register documents.
4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: November 23, 9:00 am—12:00 pm

WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY

RESERVATIONS: 1–800–347–1997

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(two briefings)

WHEN: November 30 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Rules and Regulations

Federal Register
Vol. 58, No. 216
Wednesday, November 10, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 532

RIN 3206–AF61

Prevailing Rate Systems; Champaign, Illinois, NAF Wage Area

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management is issuing an interim regulation to abolish the Champaign, Illinois, Federal Wage System Nonappropriated Fund (NAF) wage area for pay-setting purposes. With the scheduled closing of Chanute Air Force Base (AFB) in August 1993, the only NAF employees remaining in the Champaign wage area will be those located in Vermilion County, Illinois. This regulation assigns Vermilion County, Illinois, to the Marion, Indiana, NAF wage area.

DATES: This interim rule becomes effective on October 1, 1993. Comments must be received by December 10, 1993.

ADDRESSES: Send or deliver comments to Barbara L. Fiss, Assistant Director for Compensation Policy, Personnel Systems and Oversight Group, U.S. Office of Personnel Management, room 6H31, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Paul Shields, (202) 606–2848.

SUPPLEMENTARY INFORMATION: The Champaign NAF wage area is composed of three Illinois counties. Champaign County is the sole survey area county; Ford and Vermilion Counties comprise the area of application. With the closing of the host activity, Chanute AFB, in August 1993, there are no NAF employees in Champaign County. The Department of Defense (DOD) has also reported that there are no longer any active NAF facilities in Ford County. There will remain in the wage area only the eight NAF employees in Vermilion County (at the Department of Veterans Affairs Danville, Illinois, Medical Center). Because this does not meet the minimum of 26 NAF employees required to establish a wage area, Vermilion County must be defined as an area of application to an existing wage area.

The provisions of 5 CFR 532.219 list the following criteria for consideration when two or more counties are to be combined to constitute a single wage area:

(1) Proximity of largest activity in each county;

(2) Transportation facilities and commuting patterns; and

(3) Similarities of the counties in:

(i) Overall population;

(ii) Private employment in major industry categories; and

(iii) Kinds and sizes of private industrial establishments.

These criteria are discussed below.

The Department of Veterans Affairs Medical Center in Danville, Vermilion County, Illinois, is closest (129 km (80 miles)) to Fort Benjamin Harrison in Marion County, Indiana, the survey area for the Marion, Indiana, NAF wage area. Distances from Danville, Illinois, to the survey host activities of the other surrounding wage areas are Glenview Naval Air Station, Cook County, 212 km (132 miles); Scott Air Force Base, St. Clair County, 258 km (160 miles); and Rock Island Arsenal, Rock Island County, 287 km (178 miles).

Transportation facilities consist of Interstate highways providing access from Danville to each of the nearby wage areas. However, the most direct route is Interstate 74 from Danville to Indianapolis, Indiana, in Marion County, the location of Fort Benjamin Harrison.

An analysis of commuting patterns indicates that 31,548 workers live and work within Vermilion County. No residents of the wage areas under consideration commute to work in Vermilion County. Less than 1 percent of Vermilion County residents (56) commute to work in only one of the four closest NAF wage areas, Cook County.

In overall population, Vermilion County, population 88,257, is most similar to Rock Island County, population 148,723, and least similar to Cook County, population 5,105,067. In terms of private industry employment in major industry categories, Vermilion County (16,039 employees) much more closely resembles Rock Island County (37,242 employees) and St. Clair County (43,684) and least resembles the much larger Cook County (1,381,552 employees). Vermilion County, is also more similar to the smaller Rock Island and St. Clair Counties and least similar to the much larger Cook County in terms of kinds and sizes of private industry establishments. In summary, both proximity and transportation facilities favor assigning Vermilion County to the Marion, Indiana, wage area. Commuting patterns reflect no significant commuting between Vermilion County and the surrounding wage areas. Vermilion County more closely resembles the population and industry in the two smaller counties, Rock Island and St. Clair, and has little in common with the much larger Cook County. On balance, the criteria favor definition of Vermilion County to the Marion, Indiana, wage area.

In addition to the criteria required by regulations, attention must also be given to the effects of planned DOD base closures in surrounding areas. The most recent information available indicates that the Rock Island Arsenal will be realigned in 1995, and Glenview Naval Air Station, Cook County, Illinois, will be closed at a date yet to be determined. Two bases in the Marion, Indiana, wage area are scheduled to be closed—Fort Benjamin Harrison in September 1996, and Grissom Air Force Base in 1994. Fort Benjamin Harrison, with 574 FWS NAF employees, is located in Marion County, the survey area, and Grissom Air Force Base, with 135 FWS NAF employees, is located in the area of application, Miami County. While Fort Benjamin Harrison, the host activity for the Marion wage area, is on the list of planned base closures, an action listed for planning purposes more than 3 years in the future is not sufficient reason to rule out the Marion wage area in the current process of assigning Vermilion County to an area of application.

The Federal Prevailing Rate Advisory Committee reviewed this request and recommended approval by consensus.

Pursuant to 5 U.S.C. 553(b)(3)(B), I find that good cause exists for waiving the general notice of proposed

rulemaking. Also, pursuant to section 553(d)(3) of title 5, United States Code, I find that good cause exists for making this rule effective in less than 30 days. The notice is being waived and the regulation is being made effective in less than 30 days to avoid the expenditure of resources needed to prepare for the required October 1993 survey of the Champaign, Illinois, NAF wage area.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they will affect only Federal agencies and employees.

List of Subjects in 5 CFR Part 532

Administrative practice and procedure, Government employees, Wages.

Office of Personnel Management.

Lorraine A. Green,

Deputy Director.

Accordingly, OPM is amending 5 CFR part 532 as follows:

PART 532—PREVAILING RATE SYSTEMS

1. The authority citation for part 532 continues to read as follows:

Authority: 5 U.S.C. 5343, 5346; § 532.707 also issued under 5 U.S.C. 552.

Appendix B to Subpart B of Part 532—[Amended]

2. In appendix B to subpart B, the listing for the state of Illinois is amended by removing the entry for Champaign.

3. Appendix D to subpart B is amended by (1) removing the wage area list for Champaign, Illinois, and (2) revising the list for Marion, Indiana, to read as follows:

Appendix D to Subpart B of Part 532—Nonappropriated Fund Wage and Survey Areas

* * * * *

Indiana

Marion

Survey area

Indiana:
Marion
Area of application: Survey area plus:

Illinois

Vermilion [1]

Indiana

Allen
Grant
Martin
Miami

* * * * *

[1] Effective date March 4, 1994.

[FR Doc. 93-27644 Filed 11-9-93; 8:45 am]

BILLING CODE 6325-01-M

FEDERAL ELECTION COMMISSION

11 CFR Chapter I

[Notice 1993-27]

Federal Elections

AGENCY: Federal Election Commission.

ACTION: Ratification of regulations.

SUMMARY: The Commission is ratifying its regulations at 11 CFR Chapter I. These regulations implement the Federal Election Campaign Act of 1971, as amended (the Act or FECA), the Presidential Election Campaign Fund Act, the Presidential Primary Matching Payment Account Act, and other statutes pertaining to the Commission's proceedings. This action is in response to an opinion in the court case, *FEC* v. *NRA Political Victory Fund, et al.*

DATES: The ratification of 11 CFR Chapter I relates back to the effective dates previously announced for each of the rules in 11 CFR Chapter I. This action is effective November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219-3690 or (800) 424-9530.

SUPPLEMENTARY INFORMATION: On October 22, 1993, the Court of Appeals for the DC Circuit issued an opinion in *FEC* v. *NRA Political Victory Fund, et al.*, No. 91-5360, slip op. at 2 (D.C. Cir. Oct. 22, 1993), in which it held that the composition of the Commission, which included the Clerk of the House of Representatives and the Secretary of the Senate as *ex officio* members, violates the Constitution's requirement of separation of powers. On October 26, 1993, the Commission reconstituted itself as a body of six voting members subject to further judicial action.

In light of these events, the Commission is issuing this notice to alert the regulated community that the Commission is expressly ratifying its regulations and forms. The NRA decision concerned an enforcement action, and did not specifically address previous rulemakings or forms. Thus, ratification of 11 CFR Chapter I may not be legally required or necessary. Nevertheless, the Commission is ratifying the current regulations to notify candidates, political committees and the general public that they should expect to operate under the same regulations that were in effect before the NRA decision was issued. Similarly, an explicit ratification of the forms will let those who have reporting obligations under the FECA know that they should continue to use the same forms and follow the same procedures and time frames for filing reports.

Ratification does not change any of the provisions of the regulations or the forms. Instead, it adopts and confirms the Commission's previous decisions promulgating the forms and regulations, and relates back to the time when those previous decisions became effective. Please note, however, that the rulemakings in progress will continue. Several rules implementing the Sunshine Act, the Freedom of Information Act, and the FECA disclosure provisions contain references to the *ex officio* members of the Commission. During such time as there are no *ex officio* members, those references have no effect.

The Commission's ratification of its regulations and forms is consistent with the procedural requirements set forth in the FECA, the Administrative Procedure Act (the APA), 5 U.S.C. 552 *et seq.*, and the Regulatory Flexibility Act, 5 U.S.C. 605(b). Section 438(d) of title 2, United States Code, and 26 U.S.C. 9009(c) and 9039(c) require that any rule or regulation prescribed by the Commission to carry out the provisions of titles 2 and 26 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate 30 legislative days before they are finally promulgated, together with a detailed explanation and justification. Similarly, 2 U.S.C. 438(d) requires the Commission to transmit forms and a detailed explanation and justification of them to Congress for 10 legislative days prior to prescribing them. Inasmuch as the title 2 and title 26 rules and FEC forms that the Commission would ratify have already undergone the requisite legislative periods, it is not necessary for them to be retransmitted to Congress for another 30 or 10 legislative days, respectively.

Similarly, ratification of 11 CFR chapter I is consistent with the APA provisions regarding notice and comment, and a delay in the effective date. The Commission has already followed these procedural requirements when the rules were initially promulgated. In addition, this is a

situation which qualifies for the good cause exemption to these requirements, given that these procedures are "impracticable, unnecessary, or contrary to the public interest." 5 U.S.C. 553(b)(B). Ratification of the Commission's regulations falls within the APA's good cause exception for several reasons. Notice, comment, and a delayed effective date are impracticable and contrary to the public interest as these procedures would inevitably result in a lengthy period of uncertainty during which time candidates, political committees, contributors and others would have insufficient guidance, and many of the FEC's programs would be significantly disrupted. Thus, there is a need to clarify the status of the regulations as promptly as possible. It is certainly true that such ratification responds to a circumstance beyond the Commission's control, namely the NRA decision. The effect of ratification may be limited in duration to the time necessary to resolve the NRA decision. Moreover, notice, comment and a delayed effective date are unnecessary because the Commission has already provided notice, received public comment and published identical final rules in the **Federal Register** and the Code of Federal Regulations. Given that there would be no changes in the Commission's rules or forms at this point, affected parties do not need time to get ready to operate under the ratified rules.

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires agencies to consider the potential impact of regulations on small businesses and small entities. It requires either the preparation of initial and final regulatory flexibility analyses or a certification of no significant economic impact on a substantial number of small entities. *Id.* The Commission has complied with these requirements in promulgating its regulations. Accordingly, nothing further is required if 11 CFR Chapter I is ratified.

Additional information regarding the ratification of 11 CFR Chapter I may be found in Agenda Document #93–94.

Dated: November 5, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–27673 Filed 11–9–93; 8:45 am]

BILLING CODE 6715–01–M

[Notice 1993–28]

11 CFR Parts 100 and 114

Definition of "Member" of a Membership Association

AGENCY: Federal Election Commission.

ACTION: Final rule; Announcement of effective date.

SUMMARY: On August 30, 1993 (58 FR 45770), the Commission published the text of revised regulations defining who is a "member" of a membership association. These regulations implement provisions of the Federal Election Campaign Act of 1971, as amended. The Commission announces that these rules are effective as of November 10, 1993.

EFFECTIVE DATE: November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR Parts 100 and 114 were transmitted to Congress on August 25, 1993. Thirty legislative days expired in the Senate on October 26, 1993, and in the House of Representatives on November 2, 1993.

Announcement of Effective Date: 11 CFR 100.8(b)(4)(iv), 114.1(e), and 114.7(k), as published at 58 FR 45770, are effective as of November 10, 1993.

Dated: November 5, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–27672 Filed 11–9–93; 8:45 am]

BILLING CODE 6715–01–M

[Notice 1993–29]

11 CFR Parts 102 and 110

Multicandidate Political Committees

AGENCY: Federal Election Commission.

ACTION: Final rule; announcement of effective date.

SUMMARY: On August 16, 1993 (58 FR 42172), the Commission published the text of revised regulations governing multicandidate political committees. These regulations implement provisions of the Federal Election Campaign Act of 1971, as amended. The Commission announces that these rules are effective as of January 1, 1994. The Commission's new forms implementing the reporting provisions of these regulations will also take effect on January 1, 1994.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or toll free (800) 424–9530.

SUPPLEMENTARY INFORMATION: Section 438(d) of title 2, United States Code, requires that any rule or regulation prescribed by the Commission to implement title 2 of the United States Code be transmitted to the Speaker of the House of Representatives and the President of the Senate thirty legislative days prior to final promulgation. The revisions to 11 CFR parts 102 and 110 were transmitted to Congress on August 3, 1993. Thirty legislative days expired in the Senate on October 20, 1993, and in the House of Representatives on October 27, 1993.

Section 438(d) also requires that any form prescribed by the Commission be transmitted to the Speaker of the House of Representatives and the President of the Senate ten legislative days before final promulgation. New FEC Form 1M and revisions to FEC Form 3X, implementing the reporting provisions of these regulations, were transmitted to Congress on August 3, 1993. The ten day legislative review period for the forms expired in the Senate on September 15, 1993, and in the House on September 22, 1993. Therefore, the Commission may now prescribe these new forms.

Prior to the promulgation of these rules, a committee informed the Commission that it had qualified as a multicandidate committee by checking the appropriate box on the first regularly-scheduled Report of Receipts and Disbursements (FEC Form 3X) due after this status was achieved. Any committee that so notified the Commission prior to the effective date of these rules need not file a Form 1M.

Announcement of Effective Date

11 CFR 102.2(a)(3) and 110.2(a)(2), as published at 58 FR 42172, are effective as of January 1, 1994. New and revised forms implementing the reporting provisions of these regulations are also effective as of January 1, 1994.

Dated: November 5, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–27671 Filed 11–9–93; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Part 112

[Notice 1993–30]

Federal Elections

AGENCY: Fedral Election Commission.

ACTION: Policy statement on advisory opinion precedent.

SUMMARY: The Commission will give its past advisory opinions, issued under 11 CFR part 112, the same precedential effect as existed before the decision of the D.C. Circuit Court of Appeals on October 22, 1993. Further information on this statement is provided in the supplementary information which follows.

DATES: The policy statement covers all advisory opinions whether issued before or after October 22, 1993.

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, 999 E Street NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On October 22, 1993, the Court of Appeals for the D.C. Circuit issued an opinion in *FEC* v. *NRA Political Victory Fund, et al.*, No. 91–5360, slip op. at 2 (D.C. Cir. Oct. 22, 1993), in which it held that the composition of the Commission, which included the Clerk of the House of Representatives and the Secretary of the Senate as *ex officio* members, violates the Constitution's requirement of separation of powers. On October 26, 1993, the Commission reconstituted itself as a body of six voting members subject to further judicial action.

In light of these events, the Commission issues this Policy Statement to alert the regulated community that the Commission will give its advisory opinions the same effect as precedent that would have been given before the NRA decision. The Statement was adopted by the Commission on November 4, 1993, by a vote of 5–0. The statement, FEC Policy Statement: Continuing Effect of Advisory Opinions, provides as follows:

Having recently reconstituted itself as a 6 member body, the Federal Election Commission continues to regard previously issued advisory opinions as reflecting its duly authorized interpretation and application of the Federal Election Campaign Act of 1971, as amended; chapters 95 and 96 of title 26, United States Code; and of regulations prescribed under those statutes, to the specific transactions and activities set forth in those advisory opinions. The Commission will give its advisory opinions the same precedential effect as would be accorded to them prior to the recent decision of the D.C. Circuit Court of Appeals in *FEC* v. *National Rifle Association Political Victory Fund, et al.*

Additional information regarding the Policy Statement may be found in Agenda Document #93–95, dated November 3, 1993.

Dated: November 5, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–27670 Filed 11–9–93; 8:45 am]

BILLING CODE 6715–01–M

11 CFR Part 201

[Notice 1993–26]

Ex Parte Communications

AGENCY: Federal Election Commission.

ACTION: Revised interim rules.

SUMMARY: The Federal Election Commission is revising its interim rules for handling outside communications made to Commissioner offices in connection with public funding, Commission audits, litigation, rulemaking proceedings and advisory opinions. In general, these communications are prohibited, in the case of public funding, audits and litigation; and are to be made part of the public record, in the case of rulemaking proceedings and advisory opinions.

DATES: Effective Date: These rules are effective on November 10, 1993.

Comments: The Commission will accept comments on these rules received on or before December 10, 1993, and may re-evaluate them in light of these comments.

ADDRESSES: Comments must be in writing and addressed to: Ms. Susan E. Propper, 999 E Street, NW., Washington, DC 02463.

FOR FURTHER INFORMATION CONTACT: Ms. Susan E. Propper, Assistant General Counsel, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: The Federal Election Commission is revising its interim rules for handling ex parte communications made in connection with public funding, Commission audits, litigation, rulemaking proceedings and the advisory opinion process. The revised rules complement those found at 11 CFR 7.15 and 111.22, which prohibit these communications in connection with Commission enforcement actions.

On December 9, 1992, the Commission issued interim rules on this topic. 57 FR 58133. The rules are codified at 11 CFR part 201.

While these rules became effective on the date of publication, the Commission provided a 30-day comment period and announced that the rules might be revised to reflect comments received during this time. Five comments were received in response to this publication.

In addition, the Commission held a public hearing on the interim rules on April 1, 1993. Three witnesses testified at this hearing.

The revised rules reflect these comments and testimony, as well as the Commission's further consideration of its practices and experience. The Commission is still considering these rules and therefore is publishing this revised version as a second set of interim rules. However, while operating under the current interim rules, the Commission realized that certain aspects of those rules were having some unintended consequences in areas such as litigation.

The revised interim rules prohibit substantive communications made by persons outside the agency to any Commissioner or member of a Commissioner's staff in connection with public funding, ongoing Commission audits, and litigation. Ex parte communications may be made to Commissioners in connection with rulemaking proceedings and advisory opinions, but they are to be made part of the public record. Finally statements made in public forums and inquiries as to the status of open proceedings are explicitly exempted from the definition of ex parte communications.

The Commission believes that these rules are necessary to avoid the possibility of prejudice, real or apparent, to the public interest. To maintain public confidence in agency proceedings, it is important that efforts to influence official actions be regulated in this manner.

The revised rules apply to communications made to Commissioners and all individuals serving under their personal supervision. The Commission also plans to consider recommendations for internal guidelines in this area for communications by Commissioners and Commission employees. References in the interim rules to ex officio Commissioners and their Special Deputies have been deleted following the D.C. Circuit's opinion in *FEC* v. *NRA Political Victory Fund*, No. 91–5360 (D.C. Cir., October 22, 1993). Should this decision be reversed, the Commission will consider what further action is necessary.

Discussion of Revised Interim Rules

Section 201.1. Purpose and Scope

This section summarizes the contents of this revised part.

Section 201.2. Definitions

This section defines the various terms used in this part.

Paragraph (a)(1) of the former rules defined "ex parte communication" for purposes of Commission audits and litigation, while paragraph (a)(2) defined the term in the context of agency rulemakings and advisory opinions. These definitions have been combined into paragraph (a) of the revised rules, which defines an "ex parte communication" as any written or oral communication made to a Commissioner or a member of a Commissioner's staff by any person outside the agency, concerning substantive Commission action in the public funding process, or any ongoing Commission audit, litigation matter, rulemaking, or pending advisory opinion request.

Paragraph (a) of the former rules further defined ex parte communications to include any written or oral substantive communication made *by* any Commissioner or any member of a Commissioner's staff to any person outside the agency. On reflection, the Commission has decided that these classes of communications should be handled differently, and that the rules themselves should be limited to incoming communications seeking to influence Commission action. Accordingly, references to outgoing communications found in the interim rules have been deleted. However, the Commission will be considering an internal agency directive that will govern outgoing communications by Commissioners and members of Commissioner's staffs.

Paragraph (b) is new, and for the first time provides a definition of what is not an ex parte communication.

One commenter suggested that, since the purpose of these rules is to regulate private, off-the-record contacts, the interim rules be amended to exclude statements made in a public forum. The Commission agrees, and therefore in paragraph (b)(1) has excluded public statements made at public conferences and similar events by any person from the definition of ex parte communication.

Paragraph (b)(2) excludes procedural status discussions of open proceedings that are intended to influence and do not have the effect of influencing Commission consideration under all circumstances covered by these rules. The former rules had required that such inquiries be referred to the appropriate staff person.

Paragraph (c) defines "Commissioner" as an individual appointed by the President to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

Paragraph (d) defines "Commissioner's staff" to include all individuals working under the personal supervision of a Commissioner, including executive assistants and executive secretaries.

Section 201.3. Public Financing, Audits and Litigation

Ex parte communications made in connection with public financing, audits, and litigation are generally prohibited. However, the prohibition regarding litigation has been narrowed to cover only those communications that relate to a pending Commission decision on a particular case, such as whether to settle or appeal. This change will permit Commissioners to respond to inquiries regarding court decisions, apart from matters requiring further Commission deliberations. Since this is discussed in the section's introductory matter, paragraph (b)(3), which formerly dealt with this topic, has been deleted.

The former rules prohibited ex parte communications in connection with Commission audits. In addition, the Commission specifically invited comments on whether broader rules should be adopted that would apply from the time a candidate or committee sought eligibility to receive federal matching funds.

While none of the commenters or witnesses specifically addressed this point, the Commission has decided that the same circumstances that justify the imposition of a total ban on ex parte communications in connection with Commission audits are also present throughout the matching fund process. Questions that arise in connection with eligibility for funding are potentially as sensitive as those that arise in the subsequent audit. The fact that committees applying for public funds know in advance that their records will be audited increases the possibility that contacts made during the eligibility process will impact on the subsequent audit.

Paragraph (b)(1) states that this ban applies from the time a candidate or committee initiates proceedings to participate in the matching fund process. In the case of presidential candidates and committees, this occurs when a primary election candidate submits to the Commission the letter required by 11 CFR 9033.1(a), or presidential and vice presidential candidates submit the letter required by 11 CFR 9003.1(a)(1). The ban applies to committees seeking convention funding from the date on which a committee registers with the Commission as required by 11 CFR 9008.12(a)(1) or 9008.12(b)(1). In each instance the ban remains in effect until the start of the audit process, which is subject to its own ban.

The Commission is required to audit the records of any presidential campaign that receives payments from the Presidential Election Campaign Fund. 26 U.S.C. 9007(a), 9009(b), 9038(a), 9039(b). If a party receives funding for its presidential nominating convention, the Commission is required to audit the records of the party's convention committee. The Commission is also required to audit the records of all convention host committees. 26 U.S.C. 9008 (g) and (h), 11 CFR 9008.9.

Paragraph (b)(2)(i) states that, for all public financing audits, the prohibition on ex parte communications begins when the Commission sends a letter to the committee asking that it make a pre-inventory check of its records prior to the commencement of audit fieldwork by the Commission. Commissioners' offices will be provided with contemporaneous copies of these letters.

The prohibition on audits of all publicly funded committees extends until the end of the audit process. This occurs when the Commission issues a final audit report ["FAR"], if the report does not contain a repayment determination. If the FAR contains a repayment determination, the process ends when the United States Treasury receives the final repayment check from the committee, or when the Commission authorizes suit to pursue the repayment.

The Commission is also authorized under its general administrative authority, 2 U.S.C. 438(b), to conduct audits for cause of any political committee that is required to file campaign finance reports under the Federal Election Campaign Act's general reporting requirement, 2 U.S.C. 434.

Under paragraph (b)(2)(ii), when an audit is conducted pursuant to 2 U.S.C. 438(b), the prohibition on ex parte communications takes effect when the Commission's staff circulates a document for Commission approval containing a proposed referral to undertake an audit, and extends until the Commission publicly issues the final audit report. If the matter is referred to the Office of General Counsel and there is reason to believe that a violation has occurred, the prohibition on ex parte communications made in connection with an enforcement matter,

found at 11 CFR 111.22, becomes applicable.

Paragraph (c)(1) states that a Commissioner or member of a Commissioner's staff who receives a prohibited communication shall attempt to prevent the communication. If the Commissioner or staff member is unsuccessful in this effort, he or she shall advise the person making the communication that it will not be considered.

Under paragraph (c)(2), if the Commissioner or staff member is unable to prevent the communication, he or she shall prepare a statement setting forth the substance and circumstances of the communication as soon after the communication as is reasonably possible, but no later than three business days after its receipt, unless special circumstances make this impracticable, or prior to the next Commission discussion of the matter, whichever is earlier. The term "special circumstances" includes such situations as illness and travel that can prevent more timely filing.

The statement must be delivered to the Designated Agency Ethics Official for placement in the file of the public finance matter, litigation case or audit. A copy of written comments must be filed with the Designated Agency Ethics Official within the same time period. This is similar to the Commission's existing rules regarding enforcement matters.

The new and former rules interrelate so that, if an audit or enforcement matter leads to litigation, the ban on ex parte communications extends from the start of the audit or enforcement action through the conclusion of any related litigation. The ban applies to both written and oral communications.

Paragraph (c) of the former rules required a Commissioner or member of a Commissioner's staff who received a request for the procedural status of an audit or litigation case to refer the inquiry to the appropriate Commission staff. This paragraph has been deleted, and its subject matter addressed in paragraph (b)(3) of section 201.2, *supra*. As already noted, that paragraph allows responses to such inquiries in ongoing proceedings.

Section 201.4. Rulemaking Proceedings and Advisory Opinion Requests

The Commission encourages members of the public to state their views on rulemakings and advisory opinion requests in writing, during the public comment period on each such matter. Communications prior to the start of a rulemaking proceeding or the receipt of an advisory opinion request are also welcome.

All comments received ruing the public comment period for a rulemaking or advisory opinion request are made part of the public record. The Commission believes that this approach should also be taken with regard to ex parte communications received during or after a public comment period, so that all persons will have equal notice of the information before the Commission.

Paragraph (a) provides that a Commissioner or member of a Commissioner's staff who receives written comments on a rulemaking or advisory opinion once the rulemaking or advisory opinion process has started shall transmit the communication to the Commission Secretary as soon after the communication as is reasonably possible, but no later than three business days after receipt unless special circumstances make this impracticable; or prior to the next Commission discussion of the matter, whichever is earlier. If a Commissioner or member of a Commissioner's staff has a discussion that would qualify as an ex parte communication regarding a rulemaking proceeding or advisory opinion during the pertinent time period, he or she shall, within the same time frame, summarize the conversation in writing and transmit this summary to the Commission Secretary.

All such communications and/or summaries become part of the public record. The term "special circumstances" will be applied under this section in the same manner as under section 201.3(c)(2), *supra*.

As previously noted, the former rules governed all ex parte communications both made and received by Commissioners and members of their staffs. However, some commenters discussing advisory opinions and the rulemaking process argued that ex parte communications with the potential to influence Commission action are generally those communications made *to* decision-makers, and not *by* them. Further, some argued that Commission officials should be encouraged to solicit outside comments on these matters, so as to become as well informed as possible regarding the merits of different positions. The Commission believes this point is well taken, and will consider addressing it as part of the agency directive governing ex parte communications by Commissioners and members of Commissioners' staffs.

The Commission notes, however, that substantive responses to communications by Commissioners are covered by these rules under all circumstances. For example, if a Commissioner contacts a person to request that that person provide views on a pending rulemaking, that contract would not be considered an ex parte communication nor would a statement by a Commissioner indicating his or her own views on the matter. However, any substantive response by the other party would trigger application of the rules; and any written response would have to be included on the public record (either from the commenter or the Commissioner).

One commenter suggested that the Commission shift the responsibility for summarizing an oral communication covered by this section to the outside party. However, the Commission believes that handling this internally will help insure timely summaries.

Some commenters suggested that those making oral ex parte communications be given an opportunity to review the summary of their comments before this is placed on the public record. The Commission believes that this would unnecessarily slow the disclosure process. The fact that the summaries are made part of the public record means that they will be readily available to any interested party.

Under paragraph (b)(1), the applicable period for rulemaking proceedings begins on the date a petition for rulemaking is circulated to Commissioners' offices, or the date on which a proposed rulemaking document is first placed on an agenda of a Commission public meeting. It extends through the conclusion of the rulemaking. This can occur at different times, depending on the course of a particular rulemaking: e.g., when a rulemaking petition is denied; when the reconsideration process regarding a petition is concluded; when final rules are promulgated after transmittal to Congress; or when the Commission concludes its consideration of any congressional action relating to a pending rule.

Under paragraph (b)(2), the rules apply in the case of advisory opinions from the time a request for an advisory opinion is circulated to Commissioners' offices, through the date the opinion is issued. The disclosure requirements also apply during any reconsideration of an advisory opinion, and any discussion of reconsideration.

Section 201.5 Sanctions

Some commenters suggested that the Commission add language on possible actions against those who violate these provisions. The Commission agrees that this is appropriate, and has therefore created a new section, 11 CFR 201.5, for

this purpose. The new section provides that a person who becomes aware of a possible violation shall notify the Designated Agency Ethics Official in writing of the facts and circumstances of the alleged violation. The Designated Agency Ethics Official shall recommend to the Commission the appropriate action to be taken, and the Commission shall determine the appropriate action by at least four votes.

Certification of No Effect Pursuant to 5 U.S.C. 605(b) (Regulatory Flexibility Act)

The attached interim regulations will not have a significant economic impact on a substantial number of small entities. The basis for this certification is that no small entities are impacted under these rules.

List of Subjects in 11 CFR Part 201

Administrative practice and procedure.

For the reasons set out in the preamble, part 201 of subchapter B, chapter I of title 11 of the Code of Federal Regulations is revised to read as follows:

PART 201—EX PARTE COMMUNICATIONS

Sec.
201.1 Purpose and Scope
201.2 Definitions
201.3 Public Funding, Audits and Litigation
201.4 Rulemaking Proceedings and Advisory Opinions
201.5 Sanctions

Authority: 2 U.S.C. 437d(a)(8), 437f, 438(a)(8), 438(b); 26 U.S.C. 9007, 9008, 9009(b), 9038, 9039(b).

§ 201.1 Purpose and scope.

This part prescribes procedures for handling ex parte communications made in connection with public funding, Commission audits, litigation, rulemaking proceedings and the advisory opinion process. Rules governing such communications made in connection with Commission enforcement actions are found at 11 CFR 111.22, while provisions setting forth employee responsibilities under the Commission's Standards of Conduct rules are found at 11 CFR 7.15.

§ 201.2 Definitions.

As used in this part:

(a) *Ex parte communication* means any written or oral communication by any person outside the agency to any Commissioner or any member of a Commissioner's staff which imparts information or argument regarding prospective Commission action or potential action concerning:

(1) Any candidate or committee applying for or participating in the public funding process, or
(2) Any ongoing audit, or
(3) Any pending litigation matter, or
(4) Any pending rulemaking, or
(5) Any pending advisory opinion request.

(b) Ex parte communications does not include the following communications.

(1) Statements by any person publicly made in a public forum; or

(2) Statements or inquiries by any person limited to the procedural status of an open proceeding involving an application for public funding, a rulemaking, an advisory opinion request, an audit being conducted pursuant to 26 U.S.C. 9007 (a) and (b), 9008 (g) and (h), or 9038 (a) and (b), or a litigation matter.

(c) *Commissioner* means an individual appointed by the President to the Federal Election Commission pursuant to 2 U.S.C. 437c(a).

(d) *Commissioner's staff* means all individuals working under the personal supervision of a Commissioner including executive assistants and executive secretaries.

§ 201.3 Public funding, audits and litigation: Ex parte contacts prohibited.

(a) In order to avoid the possibility of prejudice, real or apparent, to the public interest in Commission decisionmaking during the public funding process, in audits undertaken by the Commission, and in any litigation to which the Commission is a party, no person outside the agency shall make or cause to be made to any Commissioner or any member of any Commissioner's staff any ex parte communication regarding any candidate or committee's eligibility for or entitlement to public funding; any audit; or any pending or prospective Commission decision regarding litigation, including whether to initiate, settle, appeal, or seek certiorari, or any other decision concerning a litigation matter; nor shall any Commissioner or member of any Commissioner's staff entertain any such ex parte communications.

(b) The requirements of this section apply:

(1) In the case of public funding, from the time a primary election candidate submits to the Commission the letter required by 11 CFR 9033.1(a), Presidential and Vice Presidential candidates submit to the Commission the letter required by 11 CFR 9003.1, or a committee seeking convention funding registers with the Commission as required by 11 CFR 9008.12(a)(1) or 9008.12(b)(1), until the start of the audit process.

(2) (i) In the case of an audit undertaken pursuant to 26 U.S.C. 9007 (a) and (b), 9008 (g) and (h), or 9036 (a) and (b), from the date of the Commission's letter to a presidential campaign committee, a convention committee, or a host committee asking that it make a pre-inventory check of its records, prior to the commencement of audit fieldwork by the Commission, through the end of the audit process; and

(ii) In the case of an audit undertaken pursuant to 2 U.S.C. 438(b), from the date the Commission's staff circulates a document for Commission approval containing a proposed referral to undertake an audit, until the Commission publicly issues the final audit report.

(c)(1) A Commissioner or member of a Commissioner's staff who receives an oral ex parte communication concerning any matters addressed in paragraph (a) or (b) of this section shall attempt to prevent the communication. If unsuccessful in preventing the communication, the Commissioner or staff member shall advise the person making the communication that he or she will not consider the communication and shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, unless special circumstances make this impracticable; or prior to the next Commission discussion of the matter, whichever is earlier, prepare a statement setting forth the substance and circumstances of the communication, and deliver the statement to the Designated Agency Ethics Official for placement in the file of the matching fund request, audit or litigation case.

(2) A Commissioner or member of a Commissioner's staff who receives a written ex parte communication concerning any Commission action or potential action concerning any candidate or committee's eligibility for or entitlement to public funding, or any audit, or any prospective Commission decision or action concerning any pending litigation case, during the period described in paragraph (b) of this section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication, unless special circumstances make this impracticable; or prior to the next Commission discussion of the matter, whichever is earlier, deliver a copy of the communication to the Designated Agency Ethics Official for placement in the file of the audit or litigation case.

§ 201.4 Rulemaking Proceedings and Advisory Opinions: Ex Parte Contacts Reported.

(a) A Commissioner or member of a Commissioner's staff who receives an ex parte communication concerning any rulemaking or advisory opinion during the period described in paragraph (b) of this section shall, as soon after the communication as is reasonably possible but no later than three business days after the communication unless special circumstances make this impracticable, or prior to the next Commission discussion of the matter, whichever is earlier, provide a copy of a written communication or a written summary of an oral communication to the Commission Secretary for placement in the public file of the rulemaking or advisory opinion. The Commissioner or staff member shall advise any person making an oral communication that a written summary of the conversation will be made part of the public record.

(b) The requirements of paragraph (a) of this section apply:

(1) In the case of a rulemaking proceeding, from the date a petition for rulemaking is circulated to Commissioners' offices, or the date on which a proposed rulemaking document is first circulated to the Commission or placed on an agenda of a Commission public meeting, through final Commission action on that rulemaking.

(2) In the case of an advisory opinion, from the date a request for an advisory opinion is circulated to Commissioner's offices through the date on which the advisory opinion is issued, and during any period of reconsideration pursuant to 11 CFR 112.6.

§ 201.5 Sanctions.

Any person who becomes aware of a possible violation of this part shall notify the Designated Agency Ethics Official in writing of the facts and circumstances of the alleged violation. The Designated Agency Ethics Official shall recommend to the Commission the appropriate action to be taken. The Commission shall determine the appropriate action by at least four votes.

Dated: November 1, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–27252 Filed 11–9–93; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–79, Special Conditions No. 25–ANM–78]

Special Conditions: Boeing Model 777 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Boeing Model 777 airplane. This airplane will have novel and/or unusual design features when compared to the state of technology envisioned in the airworthiness standards of part 25 of the Federal Aviation Regulations (FAR). These special conditions contain the additional safety standards which the Administrator considers necessary to establish a level of safety equivalent to that provided by the airworthiness standards of part 25.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Bob McCracken, FAA, Flight Test and Systems Branch, ANM–111, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2118.

SUPPLEMENTARY INFORMATION:

Background

On June 18, 1990, the Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207, applied for a type certificate for the new Model 777 airplane. The Model 777 is a long range, transport category airplane powered by two Pratt & Whitney 4073A, Rolls-Royce RB211–Trent 870, or General Electric GE90–B3 engines with 73,500, 71,200, and 74,500 lb. thrust ratings, respectively. The overall length of the Model 777 is 209 feet, the height is 61 feet, and the wingspan is 198 feet. The airplane has a seating capacity in a typical three class configuration of 305 to 328 passengers, or 375 to 400 passengers in a two configuration. The Model 777 has a maximum takeoff weight of 535,000 lbs., a maximum landing weight of 445,000 lbs., a maximum operating altitude of 43,100 ft., and a range of 4,200 nautical miles in a two class configuration or 6,600 nautical miles in a three class configuration.

Type Certification Basis

Under the provisions of § 21.17, Boeing must show that the Model 777 airplane meets the applicable provisions of part 25, as amended by Amendments 25–1 through 25–71. Boeing has also elected to comply with most of part 25 as amended by Amendment 25–77. The type certification basis for the Model 777 is, therefore: Part 25 through Amendment 25–77, except for § 25.571(e)(1), which remains at Amendment 25–71 level; parts 34 and 36, each as amended at the time of certification. Boeing may also elect to comply with subsequent part 25 requirements to facilitate operators' compliance with corresponding part 121 requirements. The certification basis may also include other special conditions that are not relevant to these special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25 as amended) do not contain adequate or appropriate safety standards for the Model 777 airplane because of novel and/or unusual design features, special conditions are prescribed under the provisions of § 21.16.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and become part of the type certification basis in accordance with § 21.17(a)(2).

Model 777 Design Features

The structure of the Model 777 is generally of conventional design and construction, but with considerable use of composite materials. Elements of the primary structure (the fin and horizontal tail) are constructed of composites, as are some elements of secondary structure, including the elevators, rudders, flaps, spoilers, ailerons, engine cowls, and main deck floor beams.

The Model 777 utilizes a combination of multiple computer channels and redundant sensors which channel command signals to various control surface actuators in response to programmed control laws. This control architecture, referred to as fly-by-wire (FBW), provides closed loop command to move servo-actuators for the elevators, ailerons, rudder, spoilers, horizontal stabilizer, slats and flaps, and engine power levers. In the unlikely event of simultaneous failure of all digital computers or signalling, a direct control path from the pilot's controllers to the surface actuators is provided through simple analog circuitry.

Hydraulic power for the flight control system is provided by three independent hydraulic systems. Functions are shared among these systems to ensure airplane control in the event of loss of one or two systems. The three systems are pressurized by

variable displacement pumps driven from the engine accessory gearboxes. In addition, the left and right systems have one electrically driven demand pump. The center system can be pressurized by two electrically driven hydraulic pumps. This system also has two air driven demand pumps which use air from the airplane pneumatic system. A ram air turbine (RAT) is also available to provide hydraulic power for the primary flight controls served by the center system.

Normal electrical power is supplied by two integrated drive generators, one on each engine. An electrical generator powered by an auxiliary power unit (APU) is also available. Backup electrical power is available to selected airplane alternating current (AC) busses from two variable speed constant frequency generators, one of which is mounted on each engine. The main direct current (DC) system can also receive power from the backup generators. Primary power for the FBW system is provided by dedicated permanent magnet generators in each of the two backup generator units. The FBW system can alternately receive power from the main DC system or the standby DC system. The standby DC system is powered by a RAT-driven AC generator, which can provide a source of standby electrical power that is not time limited. The RAT is deployed automatically upon loss of all normal and backup AC power sources. A manual deploy feature is available to the flightcrew should the RAT fail to deploy automatically.

The engine control system consists of dual channel, full authority, digital engine controls (FADEC) mounted on the fan case of each engine. The FADEC's are interfaced with the various airplane systems to provide redundant control of the engines through a "hard-wired" throttle angle resolver system. In addition, the throttles move in proportion to commanded changes in engine power, and in the event of a total failure of the engine indicating and crew alerting system (EICAS), analog rotor speeds are available to determine engine power levels. Each FADEC provides gas generator control, engine limit protection, power management, input to the thrust reverser system, and engine parameter inputs for the flight deck displays.

Control inputs are made through conventional flight deck control wheels, columns, and rudder pedals. The flight instruments are displayed on six liquid crystal flat panel displays. Two flat panel displays are mounted directly in front of both the pilot and copilot and display primary flight instruments and navigational information. The other two flat panel displays are located in the center of the instrument panel and display engine parameters, warnings, and system diagnostics.

The type design of the Model 777 contains novel and/or unusual design features not envisioned by the applicable Part 25 airworthiness standards and therefore special conditions are considered necessary.

Discussion of Comments

Notice of Proposed Special Conditions No. SC–93–2–NM for the Boeing Model 777 series airplanes was published in the **Federal Register** on March 10, 1993 (58 FR 13216).

Some of the comments received were of an editorial or clarifying nature and have been incorporated where appropriate. A discussion of the remainder of the comments follows, corresponding to the special conditions as proposed in Notice SC–93–2–NM.

General Comments

One commenter recommends the addition of a special condition that requires physical separation of control/hydraulics and other essential systems to prevent multi-system losses. Another commenter states that there have been concerns regarding an electrical fire disabling the flight control computers on a fly-by-wire airplane, and favors placing redundant computers in different electronic bays. In addition, it is suggested that special fire detection and protection systems be required for the electronic bays. This second commenter suggests adding a special condition that requires physical separation of redundant flight control computers and fire detection/protection in each flight control computer electronic bay. The FAA concurs with the commenters in that these concerns need to be addressed, but does not concur that a special condition is needed. Compliance with the requirements of § 25.1309 of the FAR must be demonstrated, and issues such as those addressed by these commenters are considered under this rule.

One commenter recommends that a backup flight control system be required to provide control capability in the event of a total electrical power loss. The FAA acknowledges that loss of all electrical power systems may be catastrophic in an aircraft utilizing an electronic flight control system. For this reason, Special Condition No. 1, "Operation without normal Electrical Power", is adopted as part of this rulemaking action. Compliance with the requirements of this special condition requires a demonstration that the airplane can continue safe flight and landing with inoperative normal and auxiliary power unit generated power (which excludes the battery and any other standby electrical source). The FAA does not concur that a special condition requiring a backup flight control system is appropriate when compliance with the requirements of Special Condition No. 1 will ensure that power to the primary control system is available.

Special Condition No. 1, "Operation Without Normal Electrical Power"

Other than the comments noted in the above section addressing *General Comments*, there were no comments received on this proposed special condition and it is adopted as proposed.

Special Condition No. 2, "Command Signal Integrity"

One commenter suggests that there should be an indication of how much signal corruption can be tolerated while still being able to maintain desired gain and phase margins. The same commenter notes that the last statement in paragraph (b) of the proposed special condition does not specify a frequency range for "minor instabilities," and states that this contradicts the previous statement that no sustained oscillations must occur over the operating frequency range. In summary, the commenter requests that "The 'minor instabilities' or 'small amplitude undamped oscillations' terms should be better defined to explain where oscillations can exist and not affect system performance (i.e., they are tolerable), versus where they are intolerable." The FAA would find it difficult to define the pass/fail limit of signal corruption that may be tolerated. An ultimate design would be no residual oscillations at any frequency. Clearly, there is an amplitude level below which the instabilities or oscillations have an insignificant effect on the aerodynamic loop or any component in that loop. The special condition has been written to define the design goal rather than the design detail. Failures resulting from signal corruption that have an effect on system performance will be addressed during the certification process through review of the applicant's proposed certification plan. Any such failures that could result in a hazardous condition will be addressed by the FAA through review of system description and failure analysis documents, ground tests, flight tests, and piloted simulation. This special condition is adopted as proposed.

Special Condition No. 3, "Protection From Lightning and Unwanted Effects of High Intensity Radiated Fields (HIRF)"

One commenter states that paragraph (a) of this special condition should address the unique design considerations of extensive composite materials and the "internal" lightning environment that can be created when a lightning strike burns through the composite and arcs into aircraft wiring. The FAA does not concur. A definition of the lightning environment is provided in the preamble to the special condition on lightning. It is the responsibility of the airplane designer to ensure that the systems and equipment installed in the airplane are adequately protected against the lightning environment regardless of the materials used to construct the airplane.

The same commenter states that the criticality relating to HIRF should be discussed as lightning criticality is and recommends the addition of a paragraph (b)(2) in parallel with (a)(2) in this regard. The commenter also states that the loss of an essential function due to HIRF could have the same impact on the safety level of the airplane as the loss of an essential function due to lightning. For this reason, the commenter believes that electrical and electronic systems that perform essential functions should be HIRF-protected and lightning-protected to an equivalent extent. The FAA is continuing to study this issue and may consider regulatory action in this regard in the future. Until this issue is decided, the FAA has determined that protection requirements for HIRF for systems that perform critical functions should be required; incorporation of HIRF protection requirements for systems performing essential functions will not be considered at this time. Influencing this decision is the determination by the FAA that the likelihood of encountering a lightning strike is greater than that of encountering HIRF.

This commenter also notes that the action integral value of the multiple stroke is different than the one specified in Advisory Circular (AC) 20–136. The FAA concurs. This is a typographical error, and the value for the action integral should be 0.062, as specified in the AC. The value for the action integral has been changed accordingly.

The commenter also notes that the general discussion following the wave form chart concerning HIRF protection is limited to digital avionics systems only and recommends that the wording be revised to address all critical electrical/electronic systems, such as FADEC. The FAA concurs that HIRF protection should be applicable to all electrical/electronic systems that perform critical functions, and has revised the discussion of this special condition accordingly. The proposed special condition related to HIRF is applicable to "each electrical and electronic system that performs critical functions * * *".

The commenter also requests that in the second paragraph following the wave form chart, the requirements for the pass/fail criteria and the operational mode of the system under test should be clearly identified, i.e., whether the system under test is allowed to be upset. The commenter believes that the mode of system operation during HIRF testing should be specified, as well as the basis of test procedures (i.e., Section 20, Radio Technical Commission for Aeronautics RTCA/DO160C, and/or Society of Automotive Engineers (SAE) Subcommittee AE4R documents). While the FAA does not concur that this level of detail is needed in the actual special condition, the acceptability of the test procedures identified in the RTCA and SAE documents referenced by the commenter has been added in the discussion following the special condition. In addition, it should be noted that pass/fail criteria, system operating modes during testing, and the test procedures will be contained in the certification test plan and approved by the FAA prior to the tests being conducted.

This special condition is adopted with the changes noted above.

Special Condition No. 4, "Effect of Flight Control Systems on Structures"

One commenter recommends that subparagraph (c)(1)(iii) of this special condition be revised to read, "Nothwithstanding subparagraph (1) of this paragraph, failures of the system that result in forced structural vibrations (oscillatory failures) where the system cannot be alleviated or turned off must not produce peak loads * * *." The commenter believes that this change harmonizes the content of the special condition with similar Joint Airworthiness Requirements (JAR). The FAA does not concur. The change proposed by the commenter does not meet the harmonization goal because it does not consider the peak loads that produce detrimental deformation of primary structure before the system can be turned off. It is important that the oscillatory loads do not damage primary structure either before or after the system is turned off. The FAA is working to resolve this issue as part of an ongoing effort to achieve harmonization of the FAR/JAR.

The commenter also proposes eliminating subparagraph (d)(3) of this special condition since, according to the commenter, the requirements of this paragraph are more than adequately defined in subparagraph (d)(2). The FAA does not concur. Subparagraph (d)(2) applies to all structural considerations, including aeroelasticity and loads, while subparagraph (d)(3) addresses only structural loads and provides specific minimum design criteria.

The special condition is adopted as proposed.

Special Condition No. 5, "Design Maneuver Requirements"

One commenter notes that proposed subparagraph (c)(1) of this special condition specifies that, in computing tail loads for yaw maneuvers, the yaw rate may be assumed to be zero. The commenter questions whether zero yawing velocity will give the worst case loads for the type of inputs described (maximum pedal input as a step-time function). If not, the commenter believes the yaw rate should be considered along with other dynamics, as appropriate. The FAA does not concur. The assumption that the initial yaw rate is zero does not represent a change from the current requirements of the FAR. There is nothing novel or unusual in the design of the Model 777 that would require special consideration in this regard. This special condition is therefore adopted as proposed.

Special Condition No. 6, "Limit Engine Torque Loads for Sudden Engine Stoppage"

One commenter states that the wording in paragraph (b)(3) of this special condition is confusing relative to the actual ultimate load, and recommends that the last sentence of that subparagraph be revised to read, "The loads specified above must be multiplied by a factor of 1.25 to determine the required strength of the adjacent wing and fuselage structure." The FAA agrees that this paragraph may be confusing to some and has revised the wording slightly for clarity. The 1.25 factor alone does not indicate whether this is a limit condition or an ultimate load condition when applied to the wing and fuselage. There are several places in the regulations where factors are applied to a given load to define a limit load condition. The limit load thus defined will require a safety factor of 1.5 to obtain ultimate loads. Where an ultimate load is specified, no other factor is required.

One commenter expresses concern regarding the deformation that may

occur in the support structure following an engine seizure, and requests that the FAA specify that either the resulting deformation will not result in an aerodynamic drag increase, or that the adverse aerodynamic effects are accounted for. The FAA does not concur. There is not expected to be a significant drag increase associated with the amount of deformation allowed in the support structure resulting from the seizure event. Yielding in the wing or fuselage local structure would not be permitted for either loading condition.

Boeing, the applicant, comments that the 777 engine installations are larger, but not significantly different, than those on previously certified transports, and the current regulations are sufficient and appropriate for the 777 design. Therefore, they contend that there is no need for a special condition. The FAA does not agree. The regulatory requirement that addresses design criteria to deal with engine torque effects resulting from sudden engine stoppage was developed in CAR 4b.216(a)(4) in 1957 (Amendment 4b–6) and was promulgated into § 25.361. Those criteria were developed for turbojet and low by-pass ratio turbofan engine installations. The new generation of large high-bypass turbofan engines being developed for the Model 777 have very large fans that produce failure modes and torque loads that were not envisioned when the regulatory criteria was developed in 1957. Compliance with the current standards for "engine torque" may be difficult and even then may not result in an acceptable level of safety. The FAA has determined that the new generation of large turbofan engines provides a design challenge sufficiently different from that envisioned in 1957 to justify issuance of a special condition to establish appropriate design standards.

Instead of commenting on the specific provisions of the proposed special condition, Boeing offers its interpretation of the applicable regulatory requirement. Boeing proposes to comply with certain aspects of the limit load conditions defined in § 25.361(b), by considering only certain types of engine failures such as a compressor jam or an engine surge at maximum continuous thrust, or maximum acceleration of the engine. Boeing states that "it is expected that these events will occur often enough to warrant the application of a 1.5 safety factor." Boeing proposes not to include engine seizure caused by fan blade failures in this category because these are "rare events." However, notwithstanding the requirement to include engine seizure under the limit load provisions (1.5 factor of safety) of § 25.361, Boeing proposes to treat the load produced by an engine seizure (fan blade failure) condition as an ultimate load that "will be defined to comply with § 25.571(e)," Damage-tolerance (discrete source) evaluation." It adds that "these would be rare or worst case failure conditions such as fan blade failure at the engine maximum rotational operating speed (redline rpm)." Boeing believes this is consistent with the requirements of part 33 which treat all failure conditions as ultimate load events. Boeing contends that the separation and treatment of engine malfunction and failure events into two categories as described above is "conservative."

The FAA neither concurs with Boeing's interpretation of the current airworthiness requirements nor agrees that its proposed criteria are conservative. The airworthiness regulations do not permit compliance in the manner proposed by Boeing. The provisions of § 25.361(b) require that malfunctions and structural failures such as compressor jamming be treated as limit load conditions. Fan blade failures, which may produce engine rotor seizure, are structural failures as well and have always been treated as limit road events under the current rule. A multiplying factor of 1.5 to obtain ultimate loads for this condition for the engine mount and supporting structure is required by the provisions of § 25.303.

In regard to subparagraph (b)(3) of the proposed special condition that addressed the structural design criteria for the engine strut-to-wing interface, Boeing comments further that additional protection may also be provided to the adjacent wing and fuselage structure by incorporation of additional design features such as structural fuses in the strut-to-wing interface. Boeing states that "these fuses prevent the failure of wing and fuselage primary structure in the event of an overload." The FAA does not agree with the principle that structural fuses could be used in lieu of adequate structural strength to carry the expected load. Structural fuses, however, may play a useful role in protecting critical structures from loads that are outside the design envelope of the airplane. The engine seizure event is considered within the design envelope of the airplane. It has been demonstrated in service that fuse pins that are designed to fail under a predicted load in a certain direction will not always fail as predicted when subjected to a load acting in a different direction.

The FAA has determined that the current regulation does not permit compliance in the manner proposed by Boeing since Boeing proposes to use reduced factors of safety for certain engine failure modes. However, this special condition provides a reduction in the safety factor required by the current airworthiness regulations for the engine mounts and supporting structure. The level of safety is maintained by allowing for energy absorption through deformation in the engine mounts and supporting structure and by providing additional structural design criteria for primary wing and fuselage support structure.

In addition, the FAA has made some nonsubstantive clarifying changes to the wording of this special condition to more accurately reflect the intent.

Special Condition No. 6 is adopted with the changes noted above.

Special condition No. 7, "Flight Characteristics Compliance via Handling Qualities Rating Method"

One commenter notes that if the control laws provide neutral longitudinal stability, this special condition must address §§ 25.173 and 25.175. The FAA does not concur. The proposed Model 777 control laws do not provide "neutral static stability" as suggested by the commenter. The manufacturer's goal is for the handling qualities of this airplane to be similar to current generation Boeing airplanes, including the current positive longitudinal stability characteristics. Because Boeing intends to comply with §§ 25.173 and 25.175 of the FAR, special conditions are not required in this area.

The commenter also states that "This Special Condition lacks a matrix of flight conditions/atmospheric conditions/flight envelopes to be evaluated by means of flight testing and/or simulation, a definition of "performance criteria," and a definition of the Model 777 control laws. The FAA does not concur that these elements need to be added to the special condition. At the level of a rule, this special condition does provide the primary matrix elements required to be considered for compliance, i.e., airplane state, atmospheric disturbance level, and flight envelope. For advisory material to assist Boeing in demonstrating compliance with this special condition, the FAA has prepared more detailed interpretations of the matrix elements, including handling qualities tasks. For the purposes of this special condition, the term "performance criteria" refers to a level of handling qualities characteristics, for common scenarios and failure conditions, comparable to airplanes already certified to current part 25 standards. As noted above, more

detailed guidance has been prepared by the FAA to assist the applicant in understanding appropriate performance criteria for demonstrating compliance with this special condition. The intent of this special condition is not to define the control laws of the Model 777, or any other airplane. This special condition defines the minimum flight characteristics requirements for an airplane equipped with an electronic flight control system, as generally described in the "Model 777 Design Features" section of the notice. Unlike some other fly-by-wire airplanes, special conditions are not required for the Model 777 in the areas of static-longitudinal/lateral-directional stability, hard flight envelope limiting, or on the use of side stick controllers, because this airplane does not have such design features. Consequently, discussions of the Model 777 design are limited to the area and scope necessary to address the portions of the current part 25 requirements that are not adequate for this particular airplane design.

Special Condition No. 7 is adopted as proposed.

Special Condition No. 8, "Electronic Flight Control System: Control Surface Awareness"

One commenter believes that this special conditions is in the response to concerns following the A–320 flight control degradation caused by damaged control surfaces that occurred in France. The FAA disagrees. This special condition was applied to the Airbus Model A–320 series airplanes prior to certification and has been applied to all "fly-by-wire" (FBW) part 25 certification programs since that time. This special condition was not generated as the result of any specific air transport incident/accident; rather, it was written as a general requirement to prevent the flight controls from becoming adversely "saturated" (near fully authority without flightcrew awareness).

The commenter goes on to state that, "In past generation aircraft using either mechanical or hydraulic control, a lack of aircraft response was readily apparent to the pilot. Pilots had learned through experience what would be the aircraft response following a given input * * *. The basic philosophy is that technological improvements should result in greater capabilities but never a decrease in capability. In the case of degraded control effectiveness, the pilot is probably not aware of the deflection the computer is calling for in order to get a desired response. This is in essence a decrease in capability and calls for compensating factors." The FAA does not occur. The Model 777 flight control system in the roll and yaw axes comprises a surface position command system rather than a rate command system. Like current generation airplanes with hydraulic flight controls, any degradation in the flight control system would be immediately seen in terms of decreased aircraft response to a given control input. Because pilot familiarity with expected roll/yaw response will remain as it is today, there is no decrease in capability and no compensating factors are required. In the pitch axis, the Model 777 has a command augmentation control law using only pitch rate feedback. If the commanded pitch control deflection does not achieve the scheduled pitch rate, the FBW control will continue to increase elevator deflection until it has, or until the elevator reaches its maximum deflection. Therefore, the pilot will achieve the desired (normal) reaction to the control input unless the elevator reaches a limit. If the probability of this condition occurring is greater than extremely improbable, the required control surface awareness warning would indicate to the pilot that an adverse control surface saturation is about to occur. In other words, the airplane response is not "normal." It should be emphasized that through the use of this special condition, the FAA has asked for control surface awareness only where it is needed. If the need for this capability cannot be shown for any likely operating condition, then the lack of such capability should not be seen as a decrease in capability. Fly-by-wire does allow other types of advances, such as envelope limiting, the lack of which are not seen as "decreased capability" in conventional control airplanes certified in the FBW era.

The commenter further states, "We think that the modern flight control computers are smart enough to know what aircraft response should occur following a given input. Hence, we would like to see a SC which requires a continuous comparison of expected versus actual response. In addition an annunciation should be given to the pilot whenever the input/response is not as expected." The FAA does not concur. Although flight control computers may be "smart enough" to be self-monitoring in terms of aircraft response versus control input in a controlled environment, this would be an extremely difficult task in the flight environment. To operate properly in the flight environment, the flight control computer must be able to predict an expected response to a given control input, anywhere in the flight envelope, with any combination of the following variables: Speed, altitude, center of gravity, power setting, landing gear/flap/spoiler configuration, and potential degraded system status (hydraulic system failure, one engine inoperative, etc.). The effects of environmental conditions (gust upset, turbulence etc.) must also be accounted for in determining a "proper response." All of the above would need to be accomplished while keeping nuisance warnings to an absolute minimum, including the case of control surface saturation due to the flightcrew commanding full control input.

The commenter also recommends that the FAA "Change the SC to require the flight control computer to continuously monitor the aircraft response versus the pilot input and annunciate any discrepancy." The FAA does not concur. To require such a capability would introduce a significant increase in system complexity, cost, and exposure to additional potential failure modes. This capability is not necessary due to the system architecture of the Model 777. The added complexity would not add significantly to the attainment of the intent of this special condition, and the FAA has determined that this change in the special condition is inappropriate for this airplane.

Special Condition No. 8 is adopted as proposed.

Conclusion

This action affects only certain unusual or novel design features on one model series of airplanes. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Special Conditions

Accordingly, the following special conditions are issued as part of the type certification basis for the Boeing Model 777 series airplanes.

1. *Operation Without Normal Electrical Power.* In lieu of compliance with § 25.1351(d), it must be demonstrated by test, or combination of test and analysis, that the airplane can continue safe flight and landing with

inoperative normal engine and APU generator electrical power (electrical power sources excluding the battery and any other standby electrical sources). The airplane operation should be considered at the critical phase of flight and include the ability to restart the engines and maintain flight for the maximum diversion time capability being certified.

The emergency electrical power system must be designed to supply:

1. Electrical power required for immediate safety, which must continue to operate without the need for crew action following the loss of the normal engine (which includes APU power) generator electrical power system.

2. Electrical power required for continued safe flight and landing.

3. Electrical power required to restart the engines.

2. *Command Signal Integrity.* In addition to compliance with § 25.671 of the FAR:

(a) It must be shown that the Primary Flight Control System (PFCS) signals cannot be altered unintentionally, or that the altered signal characteristics are such that:

(1) Stable gain and phase margins must be maintained for all aerodynamically closed loop systems, excluding pilot in the loop control.

(2) Sufficient pitch, roll, and yaw control power must be available to provide control for continued safe flight and landing, considering all the malfunctions that are not extremely improbable.

(3) The effect of spurious signals on the systems which are included in the aerodynamic loop must not result in unacceptable transients or degradation of the airplane's performance. Specifically, signals that would cause a significant uncommanded motion of a control surface actuator must be readily detected and deactivated or the surface motion must be arrested by other means in a satisfactory manner. Small amplitude residual system oscillations may be acceptable.

(4) The change of mode in one of the flight critical control systems must not be greater than 10^{-5}/flt. hr. This applies to the primary flight control systems. A change of mode can be caused by an automatic switching from the normal (i.e., full-up system) to the secondary mode. The effects of latent failures must be considered in demonstrating compliance with this special condition.

(b) It must be demonstrated that uncommanded sustained oscillations, the result of coupling between electronic or electrical command signals, and the motion of the mechanical actuator drive system together with the interfacing structural components, do not occur over the spectrum of operating frequencies. The effects of minor instabilities may be acceptable provided they are thoroughly investigated, documented, and understood.

3. *Protection From Lightning and Unwanted Effects of High Intensity Radiated Fields (HIRF).*

a. *Lightning Protection.* (1) Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(2) Each essential function of electrical or electronics systems or installations must be protected to ensure that the function can be recovered in a timely manner after the airplane has been exposed to lightning.

(b) *Protection From Unwanted Effects of High-Intensity Radiated Fields (HIRF).* Each electrical and electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

(c) The following definitions apply with respect to these special conditions:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Discussion

Lightning: To provide a means of compliance with these special conditions, clarification of the threat definition for lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition.

The lightning current waveforms (Components A, D, and H) defined below, along with the voltage waveforms in Advisory Circular (AC) 20–53A, will provide a consistent and reasonable standard which is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depend upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronics systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Sever Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level.

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) The minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low

amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses which represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists of 24 random sets of 20 strokes each, distributed over a period of 2 seconds. Each set of 20 strokes is made up of 20 repetitive Component H waveforms distributed within a period of one millisecond. The minimum time between individual Component H pulses within a burst is 10μs, the maximum is 50μs. The 24 bursts are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10 ms, and (2) the maximum time between subsequent strokes is 200 ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A) "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst" (Component H).

These components are defined by the following double exponential

equation: $i(t)=I_o (e^{-at}-e^{-bt})$

where:

t=time in seconds,

i=current in amperes, and

		Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp	=	218,810	109,405	54,703	10,572
a, sec^{-1}	=	11,354	22,708	22,708	187,191
b, sec^{-1}	=	647,265	1,294,530	1,294,530	19,105,100

This equation produces the following characteristics;

I_{peak}	=	200 KA	100 KA	50 KA	10 KA
and,					
$(di/dt)_{max}$ (amp/sec)	=	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec)	=	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec)	=	2.0×10^6	0.25×10^6	0.0625×10^6	

HIRF: With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communication, coupled with electronic command and control of the airplane, the immunity of critical electrical/electonic systems (such as the EFIS, ADC, and AHRS) to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling of high-intensity radiated fields to cockpit installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis. (Bench tests conducted in accordance with Section 20, Radio Technical Commission for Aeronautics RTCA/D0160C, and Society of Automotive Engineers (SAE) Subcommittee AE4R documents have been found to be acceptable.)

2. A threat external to the airframe of the following field strengths for the frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10–100 KHz	50	50
100–500	60	60
500–2000	70	70
2–30 MHz	200	200
30–70	30	30
70–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GHz	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S. It will also be adopted by the European Joint Aviation Authorities.

4. *Effect of Flight Control Systems on Structures.*

(a) *General.* For airplanes equipped with flight control systems, autopilots, stability augmentation systems, and load alleviation systems that directly, or as a result of a failure, affect its structural performance, the influence of these systems and their failure conditions shall be taken into account in showing compliance with Subparts C and D of part 25 of the Federal Aviation Regulations (FAR).

(b) *System fully operative.* With the system fully operative, the following apply:

(1) Limit loads must be derived for all normal operating configurations of the systems from all the deterministic limit conditions specified in subpart C of part 25, taking into account any special behavior of such systems, associated functions or any effect on the structural performance of the airplane that may

occur up to the limit loads. In particular, any significant non-linearity (rate of displacement of control surface, thresholds, or any other system non-linearities) must be accounted for in a realistic and conservative way when deriving limit loads from limit conditions.

(2) The airplane must meet the strength requirements of Part 25 (Static strength, residual strength), using the specified factors to derive ultimate loads from the limit loads defined above. The effect of non-linearities must be investigated beyond limit conditions to ensure that the behavior of the systems present no anomalies compared to the system behavior below limit conditions.

(3) The airplane must meet the aeroelastic stability requirements of § 25.629.

(c) *System in a failure condition.* For any system failure condition not shown to be extremely improbable, the following apply:

(1) *At the time of occurrence.* Starting from 1g level flight conditions, a realistic scenario, including pilot corrective actions, must be established to determine the loads occurring at the time of failure, and immediately after failure, until the airplane is stabilized. The airplane must be able to withstand these loads, multiplied by an appropriate factor of safety, related to the probability of occurrence of the failure. These loads should be considered ultimate loads for this evaluation. The factor of safety is defined as follows:

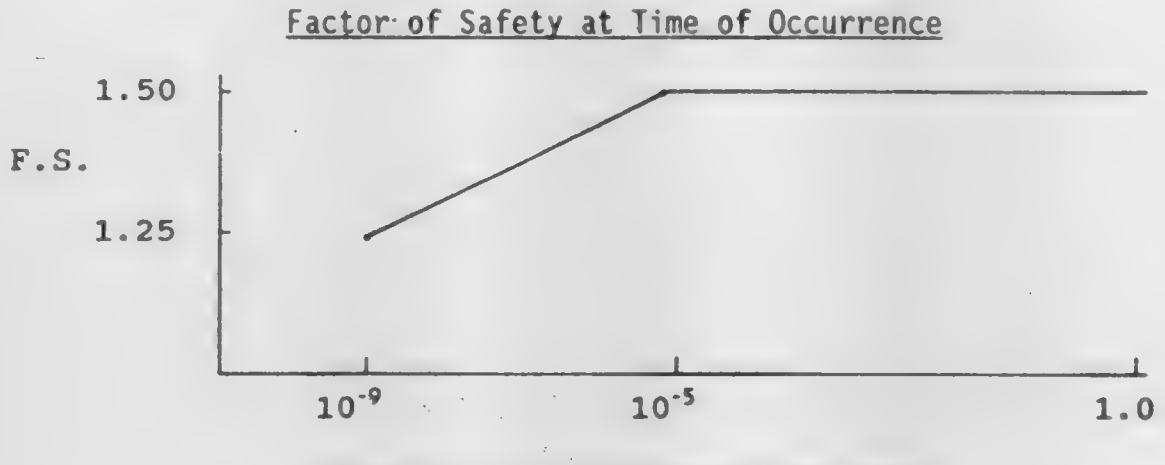

(i) The loads must also be used in the damage tolerance evaluation required by § 25.571(b), if the failure condition is probable. The loads should be considered as ultimate loads for the damage tolerant evaluation.

(ii) Freedom from flutter and divergence must be shown at speeds up to V_D or 1.15 V_C, whichever is greater. However, at altitudes where the speed is limited by Mach number, compliance need be shown only up to M_D, as defined by § 25.335(b). For failure conditions that result in speed increases beyond V_C/M_C, freedom from flutter and divergence must be shown to increased speeds so that the above margins are maintained.

(iii) Notwithstanding subparagraphs (1) of this paragraph, failures of the system that result in forced structural vibrations (oscillatory failures) must not produce peak loads that could result in permanent deformation of primary structure.

(2) *For the continuation of the flight.* For the airplane in the failed configuration and considering any appropriate flight limitations, the following apply:

(i) Static and residual strength must be determined for loads induced by the failure condition if the loads could continue to the end of the flight. These loads must be combined with the deterministic limit load conditions specified in Subpart C of Part 25.

(ii) For static strength substantiation, each part of the structure must be able to withstand the loads in subparagraph (2)(i) of this paragraph multiplied by a factor of safety depending on the probability of being in this failure state. The factor of safety (F.S.) is defined as follows:

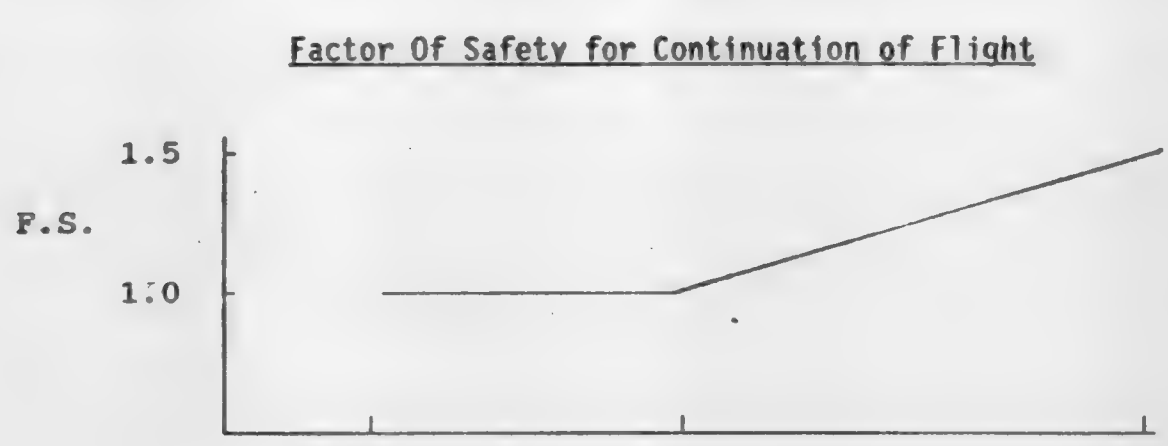

$Q_j=T_j*P_j$ where:

T_j=Average time spent in failure condition

P_j=Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3} per flight hours, then a safety factor of 1.5 must be used.

(iii) For residual strength substantiation as defined in § 25.571(b), structures affected by failure of the system, and with damage in combination with the system failure, a reduction factor may be applied to the residual strength loads of § 25.571(b). However, the residual strength level must not be less than the 1–g flight load combined with the loads introduced by the failure condition, plus two-thirds of the load increments of the conditions specified in § 25.571(b) applied in both positive and negative directions (if appropriate). The reduction factor (R.F.) is defined as follows:

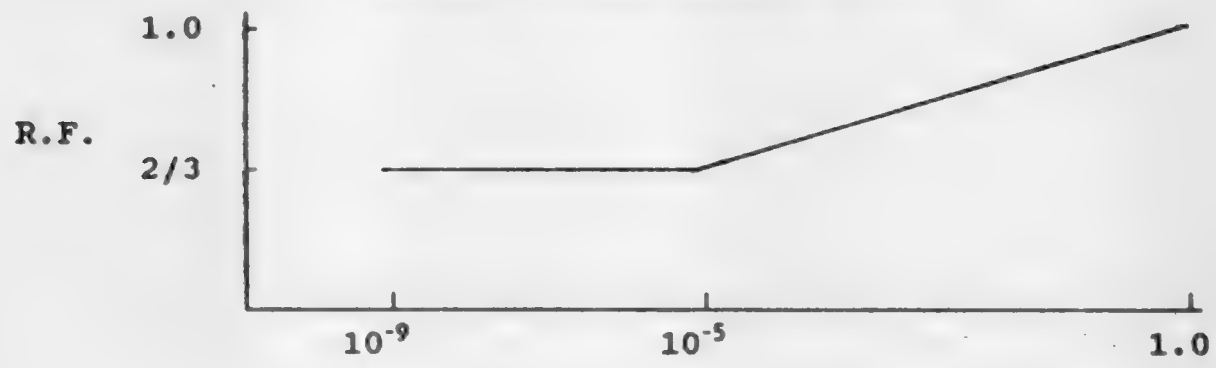

$Q_j=T_j*P_j$ where:

T_j=Average time spent in failure condition

P_j=Probability of occurrence of failure mode

Note: If P is greater than 10^{-3} per flight hour, then a safety factor of 1.0 must be used.

(iv) Freedom from flutter and divergence must be shown up to a speed determined by the following figure:

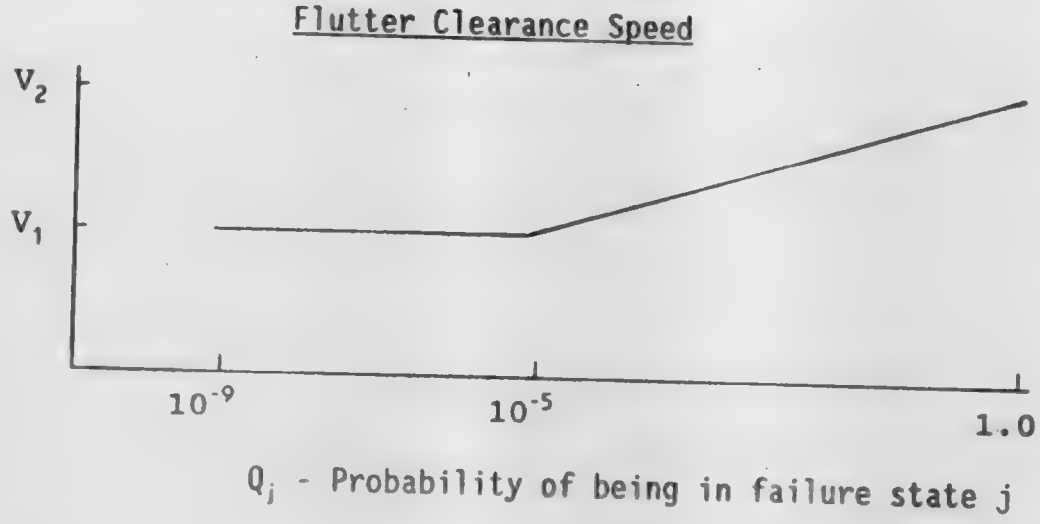

V_1=V_D or 1.15V_C whichever is greater.
V_2=Flutter clearance speed required for normal (unfailed) conditions by § 25.629.
Q_j=T_j*P_j where:
T_j=Average time spent in failure condition
P_j=Probability of occurrence of failure mode

Note: If P_j is greater than 10^{-3}, then the flutter clearance speed must not be less than V_2.

(v) Freedom from flutter and divergence must also be shown up to V_1, as depicted in the above figure, for any probable system failure condition, combined with any damage required or selected for investigation by § 25.571(b).

(vi) If the time likely to be spent in the failure condition is not small compared to the damage propagation period, or if the loads induced by the failure condition may have a significant influence on the damage propagation, then the effects of the particular failure condition must be addressed and the corresponding inspection intervals adjusted to adequately cover this situation.

(vii) If the mission analysis method is used to account for continuous turbulence, all the systems failure conditions associated with their probability must be accounted for in a rational or conservative manner in order to ensure that the probability of exceeding the limit load is not higher than the prescribed value of the current requirement.

(d) *Warning considerations.* For system failure detection and warning, the following apply:

(1) Before flight, the system must be checked for failure conditions, not shown to be extremely improbable, that would degrade the structural capability below the level specified in paragraph (b) of this special condition. The crew must be made aware of these failures, if they exist, before flight.

(2) The existence of any failure condition during flight that could significantly affect the structural capability of the airplane, and for which the associated reduction in airworthiness can be minimized by suitable flight limitations, must be signaled to the crew in accordance with § 25.1322.

(3) During flight, any failure condition not shown to be extremely improbable, in which the safety factor existing between the airplane strength capability and loads induced by the deterministic limit conditions of subpart C of part 25 is reduced to 1.3 or less, must be signaled to the crew if appropriate procedures and limitations can be provided so that the crew can take action to minimize the associated reduction in airworthiness during the remainder of the flight.

(e) *Dispatch with failure conditions.* If the airplane is to be dispatched with a failed system that would reduce the structural performance, then operational limitations must be provided whose effects combined with those of the failure condition allow the airplane to meet the structural requirements as described in paragraph (b) of this special condition. Subsequent system failures must also be considered.

The following definitions are applicable to this special condition.

Structural performance: Capability of the airplane to meet the requirements of part 25.

Flight limitations: Limitations that can be applied to the airplane flight conditions following an in flight failure and that are included in the flight manual (e.g., speed limitations, avoidance of severe weather conditions, etc.).

Operational limitations: Limitations, including flight limitations, that can be applied to the airplane operating conditions before dispatch (e.g., payload limitations).

Probabilistic terms: The probabilistic terms (probable, improbable, extremely improbable) used in this special condition should be understood as defined in AC 25.1309–1A.

Failure condition: The term failure condition is defined in AC 25.1309–1A; however, this special condition applies only to system failure conditions that have a direct impact on the structural performance of the airplane (e.g., failure conditions that induce loads or change the response of the airplane to inputs such as gusts or pilot actions).

5. *Design Maneuver Requirements.*

(a) *Pitch maneuvering loads.* In addition to the requirements of § 25.331(c), it must be established that pitch maneuver loads induced by the system itself (e.g., abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(b) *Roll maneuver loads.* In lieu of compliance with § 25.349(a), the following conditions, speeds, spoiler and aileron deflections (except as the deflections may be limited by pilot effort) must be considered in combination with an airplane load factor of zero, and two-thirds of the positive maneuvering factor used in design. In determining the required aileron and spoiler deflections, the torsional flexibility of the wing must be considered in accordance with § 25.301(b).

(1) Conditions corresponding to steady rolling velocities must be

investigated. In addition, conditions corresponding to maximum angular acceleration must be investigated. The investigation must include the maximum possible aileron and spoiler deflections commanded by the electronic flight control system, using the most adverse system tolerances. For the angular acceleration conditions, zero rolling velocity may be assumed in the absence of a rational time history investigation of the maneuver.

(2) At V_A, sudden full deflection of a cockpit roll control up to the limit is assumed. The position of the cockpit roll control must be maintained until a steady roll rate is achieved and then must be returned suddenly to the neutral position.

(3) At V_C, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than that obtained in paragraph (2), above.

(4) At V_D, the cockpit roll control must be moved suddenly and maintained so as to achieve a rate of roll not less than one-third of that obtained in paragraph (2), above.

(5) It must be established that roll maneuver loads induced by the system itself (e.g., abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

(c) *Yaw maneuver loads.* In lieu of compliance with § 25.351(a), the airplane must be designed for loads resulting from the conditions specified in subparagraphs (a) and (b) of this paragraph. Unbalanced aerodynamic moments about the center of gravity must be reacted in a rational and conservative manner considering the principal masses furnishing the reacting inertial forces. Physical limitations of the aircraft from the cockpit yaw control device to the control surface deflection, such as control stop position, maximum power and displacement rate of the servo controls, or control law limiters, may be taken into account.

(1) Maneuvering. At speeds from V_{MC} to V_D, the following maneuvers must be considered. In computing the tail loads, the yawing velocity may be assumed to be zero.

(i) With the airplane in unaccelerated flight at zero yaw, it is assumed that the cockpit yaw control device (pedal) is suddenly displaced to the maximum deflection, up to the limit, or by a 300 pound rudder pedal force, whichever is less.

(ii) With the cockpit yaw control device (pedal) deflected as specified in subparagraph (i) of this paragraph, it is assumed that the airplane yaws to the resulting side slip angle (beyond the static side slip angle).

(iii) With the airplane yawed to the static sideslip angle with the cockpit yaw control deflected as in subparagraph (i) of this paragraph, it is assumed that the cockpit yaw control device is returned to neutral.

(iv) It must be established that yaw maneuver loads induced by the system itself (e.g., abrupt changes in orders made possible by electrical rather than mechanical combination of different inputs) are acceptably accounted for.

6. *Engine Torque Loads.* In lieu of compliance with § 25.361(b), compliance with the following must be shown:

(a) The engine mounts and local supporting structure must be designed to withstand each of the following:

(1) The maximum torque load imposed by—

(i) Sudden deceleration of the engine due to a malfunction that could result in a temporary loss of power or thrust capability, and that could cause a shutdown due to vibrations; and

(ii) The maximum acceleration of the engine.

(2) The maximum torque load imposed by sudden engine stoppage due to a structural failure, including fan blade failure.

(b) The load derived from the condition defined in paragraph (a)(2) of this special condition is considered an ultimate load when applied to engine mounts. The load is multiplied by a factor of 1.25 to obtain ultimate loads when applied to the adjacent wing and fuselage supporting structure.

7. *Flight Characteristics Compliance via Handling Qualities Rating Method.* In lieu of compliance with § 25.672(c), a handling qualities rating system will be used for evaluation of electronic flight control system (EFCS) configurations resulting from single and multiple failures not shown to be extremely improbable. The handling qualities ratings are:

Satisfactory: Full performance criteria can be met with routine pilot effort and attention.

Adequate: Adequate for continued safe flight and landing; full or specified reduced performance can be met, but with heightened pilot effort and attention.

Controllable: Inadequate for continued safe flight and landing, but controllable for return to a safe flight condition, safe flight envelope and/or reconfiguration so that the handling qualities are at least Adequate.

Handling qualities will be allowed to progressively degrade with failure state, atmospheric disturbance level, and flight envelope. Specifically within the normal flight envelope, the pilot-rated handling qualities must be satisfactory/adequate in moderate atmospheric disturbance for probable failures, and must not be less than adequate in light atmospheric disturbance for improbable failures.

8. *Electronic Flight Control System: Control Surface Awareness.* In addition to compliance with §§ 25.143, 25.671, and 25.672, when a flight condition exists where, without being commanded by the crew, control surfaces are coming so close to their limits that return to the normal flight envelope and (or) continuation of safe flight requires a specific crew action, a suitable flight control position annunciation shall be provided to the crew, unless other existing indications are found adequate or sufficient to prompt that action.

Note: The term suitable also indicates an appropriate balance between nuisance and necessary operation.

Issued in Renton, Washington, on October 29, 1993.

Darrell M. Pederson,

Assistant Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27687 Filed 11–9–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–AAL–6]

Revocation of Jet Routes J–237 and J–238 and VOR Federal Airways V–500 and V–525; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes two Jet Routes, J–237 and J–238, and two Federal Airways, V–500 and V–525, in the State of Alaska. The Department of the Navy has decommissioned the Amchitka Very High Frequency Omnidirectional Range/Tactical Air Navigation (VORTAC) facility and terminated all activities at Amchitka Island. This action revokes these airways and jet routes that were predicated on the Amchitka VORTAC.

EFFECTIVE DATE: 0901 u.t.c. January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes two Jet Routes, J–237 and J–238, and two Federal Airways, V–500 and V–525. The Department of the Navy has decommissioned the Amchitka VORTAC and terminated all activities at Amchitka Island. This action revokes these airways and jet routes that were predicated on the Amchitka VORTAC. Since this action: (1) Reduces the need for continuous issuance of Notices to Airmen concerning the usability of the routes, (2) reduces chart clutter by removing the unused routes from the charts, and (3) simplifies flight plan filing by pilots by only depicting usable routes on the charts, I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public would not be particularly interested. Jet routes are published in Paragraph 2004 and Alaskan VOR Federal airways are published in Paragraph 6010(b) of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Jet routes and Alaskan VOR Federal airways listed in this document will be removed subsequently from the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 2004—Jet Routes

* * * * *

J–237 [Removed]

J–238 [Removed]

* * * * *

Paragraph 6010(b)—Alaskan VOR Federal Airways

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V–500 [Removed]

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V–525 [Removed]

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Issued in Washington, DC, on November 2, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–27685 Filed 11–9–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 101

[Docket Nos. 85N–0061, 91N–0098, 91N–0099, and 91N–0100]

RIN 0905–AB67, 0905–AD08

Food Labeling; Health Claims: General Requirements; Fiber-Containing Fruits, Vegetables, and Grain Products and Cancer and Coronary Heart Disease; Fruits and Vegetables and Cancer; and Folic Acid and Neural Tube Defects; Technical Amendment; Correction

AGENCY: Food And Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the Federal Register of August 18, 1993 (58 FR 44036). The document responded to technical comments that the agency received and corrected inconsistencies and unintended technical consequences of the regulations for use of health claims in food. The document was published with an error. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Joyce J. Saltsman, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5916.

In FR Doc. 93–19447 appearing on page 44036 in the Federal Register of Wednesday, August 18, 1993, the following correction is made:

On page 44038, in the second column, in the fourth line from the bottom, "8 milligrams" is corrected to read "0.8 milligrams".

Dated: November 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27625 Filed 11–9–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8482]

RIN 1545–AQ90

Method Changes for Capitalization and Inclusion in Inventory of Certain Costs; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Rescheduling of public hearing on a revenue procedure; change of date to submit requests to speak and outlines of oral comments.

SUMMARY: This document reschedules the date of a public hearing on a revenue procedure, and changes the date to submit requests to speak and outlines of oral comments for the public hearing relating to required method changes for capitalization and inclusion in inventory of certain costs. Taxpayers were invited to comment regarding the approach for implementing required method changes in Treasury Decision 8482.

DATES: The public hearing will be held on Tuesday, November 30, 1993, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Tuesday, November 16, 1993.

ADDRESSES: Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station,

Attn: CC:DOM:CORP:T:R, (IA–64–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** for Friday, October 29, 1993 (58 FR 58101), announced that a public hearing on a revenue procedure would be held on Monday, December 6, 1993, at 1 p.m. in the Internal Revenue Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC, and that requests to speak and outlines of oral comments be received by Monday, November 22, 1993. The notice of public hearing for the related proposed regulations (IA–64–91) was published simultaneously at 58 FR 58145. The requests for comments regarding the approach for implementing required method changes (TD 8482) and the proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale (IA–64–91) were published on Monday, August 9, 1993 (58 FR 42198) and (58 FR 42263), respectively. See rescheduling of the public hearing for IA–64–91 elsewhere in this issue of the **Federal Register**.

The date for the public hearing is rescheduled for Tuesday, November 30, 1993, beginning at 1 p.m. The requests to speak and outlines of oral comments must be received by Tuesday, November 16, 1993.

All other details with respect to the previously published documents remain the same.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–27654 Filed 11–9–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 311

[Administrative Instruction 81]

OSD Privacy Program

AGENCY: Office of the Secretary of Defense, DOD.

ACTION: Final rule.

SUMMARY: This is an administrative change. On October 13, 1993, at 58 FR 52948, the Office of the Secretary of Defense deleted an exempt system of records, DWHS P26, Protective Service File. Therefore, the exemption rule is being removed from 32 CFR part 311.

EFFECTIVE DATE: November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Dan Cragg at (703) 697–2501.

SUPPLEMENTARY INFORMATION: **Executive Order 12866.** The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

This is an administrative change. On October 13, 1993, at 58 FR 52948, the Office of the Secretary of Defense deleted an exempt system of records. Therefore, the exemption rule is being removed from 32 CFR part 311.

List of subjects in 32 CFR part 311

Privacy.

Accordingly, the Office of the Secretary of the Defense amends 32 CFR part 311 as follows:

1. The authority citation for 32 CFR part 311 continues to reads as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 311.7 is amended by removing and reserving paragraph (c)(1).

§311.7 Procedures for exemptions.

* * * * *

(c) * * *

(1)[Reserved.]

* * * * *

Dated: November 3, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27495 Filed 11–9–93; 8:45 am]

BILLING CODE 5000–04–F

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Parts 301 and 311

[Docket No. 92–3–DART]

Digital Audio Recording Technology Act; Implementation; Correction

AGENCY: Copyright Royalty Tribunal.

ACTION: Correction to final regulations.

SUMMARY: This document contains corrections to the final regulations (rule document 93–25499) which were published Monday, October 18, 1993 (58 FR 53822). The regulations were to implement the Digital Audio Recording Technology Act (Audio Home Recording Act).

EFFECTIVE DATE: November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Ray, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009, (202) 606–4400.

SUPPLEMENTARY INFORMATION: In rule document 93–25499 beginning on page 53822 in the issue of Monday, October 18, 1993, make the following correction:

1. On page 53826, in the first column, in the fifth full paragraph, "5. Part 311 is added to read as follows:" should read "5. Part 311 is revised as follows:"

Dated: November 4, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–27612 Filed 11–9–93; 8:45 am]

BILLING CODE 7410–08–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 36

RIN 2900–AG19

Loan Guaranty: Direct Loans to Native American Veterans on Trust Lands

AGENCY: Department of Veterans Affairs.

ACTION: Interim final regulations.

SUMMARY: The Department of Veterans Affairs (VA) is amending its regulations

for VA direct loans to implement the requirements of section 8 of the Veterans Home Loan Program Amendments of 1992, Public Law 102–547, which established a pilot program to make direct housing loans to qualified Native American veterans.

DATES: These regulatory amendments are effective November 10, 1993. Comments must be received on or before January 10, 1994.

ADDRESSES: Interested persons are invited to submit written comments, suggestions or objections regarding this proposal to the Secretary of Veterans Affairs (271A), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420. All written comments received will be available for public inspection in room 170, Veterans Services Unit, at the above address between the hours of 8 a.m. and 4:30 p.m., Monday through Friday (except holidays), until January 20, 1994.

FOR FURTHER INFORMATION CONTACT: Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: VA is amending its Loan Guaranty regulations for VA direct loans to implement the requirements of section 8 of the Veterans Home Loan Program Amendments of 1992, Public Law 102–547, which established a pilot program to make direct housing loans to Native American veterans. The purpose of this pilot program is to permit qualifying veterans to purchase, construct, or improve dwellings on trust lands. Because of the short authorization period established for this pilot program, these regulations are being published as interim final regulations, effective upon publication. Public comments are invited. Changes will be considered based upon the comments received and on practical experience running this program.

Native American trust lands and reservations present a unique set of problems with regard to financing the purchase of a home because mortgage lenders typically require that the home buyer obtain an ownership interest in the land being purchased. However, since trust lands are generally held by Native American tribes or on behalf of Native Americans by the United States Government, it is not possible for an individual homeowner residing on trust land to "own" the land on which his or her residence is located. Private lenders are thus often reluctant to lend money to potential homebuyers who cannot convey a clear ownership interest in the land as security for the loan.

For this reason, Public Law 102–547 established a pilot program through September 30, 1997, for VA direct loans to Native American veterans residing on trust lands. Under the terms of this program, Native American veterans eligible for VA loan guaranty benefits may use their eligibility to qualify for a loan made by VA to purchase, construct, or improve a home on trust land. Native American veterans may qualify for loans of up to $80,000, provided their tribal organization has entered into a Memorandum of Understanding (MOU) with VA setting forth provisions regarding conveyance of a meaningful interest in the property to the veteran and to VA, providing access to the property by VA and/or its designated servicers, to provide for the disposition of the property in the event of foreclosure, and such other matters as may be necessary to implement this program.

In accordance with the requirements of Public Law 102–547, VA is amending 38 CFR 36.4500 and 26.4501 and is creating a new § 36.4527, setting forth the requirements of the VA Native American Direct Loan Program.

38 CFR 36.4500 is being amended to add a new reference to 38 U.S.C. sections 36.3731 through 36.3764, inclusive. These statutes authorize the establishment of the Native American Veteran Direct Loan Program.

38 CFR 36.4501 is being amended to add new definitions of "Meaningful Interest", "Native American", "Native American Veteran", "Tribal Organization", and "Trust Land". Additional changes are made to this section to amend the authorization citations in the definitions of "Loan" and of "Period of more than 180 days".

The new section, 38 CFR 36.4527, sets forth, in regulatory form, the requirements of this new program. These include the requirement that VA and the tribal organization execute and have in place a Memorandum of Understanding (MOU) before VA may make a direct loan to any Native American veteran under the jurisdiction of the tribal organization. This new section also requires that the MOU provide for the acquisition by the veteran of a meaningful interest in the lot and/or dwelling located on trust land and that the Native American veteran obtaining a direct loan conveys to VA his or her meaningful interest as security for the loan. In addition, the tribal organization and veteran must permit VA or its representatives access to the trust land in order to evaluate the advisability of the loan, to monitor any purchase or construction made with the proceeds of the loan, to protect the property from vandalism and the elements, and to otherwise service the loan.

Under the terms of this new program, VA is charged with the responsibility of establishing minimum requirements for planning, construction and/or improvement of any home acquired through a direct loan. VA is also authorized to establish the rate of interest for these loans.

The Native American veteran-borrower will be responsible for paying loan closing expenses, including a loan fee, which may be included in the loan amount, a processing fee to any party who processes the loan on behalf of VA, and other costs or expenses normally paid by a purchaser incident to loan closing.

The tribal organization will be responsible for establishing property foreclosure and disposition requirements in event of default, by which the Native American veteran who obtained the loan will have his or her interest in the land and the improvements terminated. These requirements must be included in the MOU.

These regulations will only affect Native American veterans who reside or who wish to reside on trust lands. They will not affect the majority of veterans who are ineligible for obtaining a loan to acquire property on trust lands. Similarly, these regulations will have no impact on program participants because they are not involved at any stage of the direct loan process. Since VA will make direct loans to qualified veterans no lenders, brokers, or other participants in the VA Loan Guaranty Program will be affected by these regulations. For these reasons, the Secretary hereby certifies that these regulations will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, sections 601–612. Pursuant to U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The Catalog of Federal Domestic Assistance Program numbers are 64.114, 64.118, and 64.119.

List of Subjects in 38 CFR Part 36

Condominiums, Handicapped, Housing loan programs—housing and community development, Manufactured homes, Veterans.

Approved: September 10, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 36 is amended as set forth below:

PART 36—LOAN GUARANTY

1. The authority citation for part 36 §§ 36.4500 through 36.4600 continues to read as follows:

Authority: Sections 36.4500 to 36.4600 issued under 38 U.S.C. 501.

2. In § 36.4500, paragraph (b) is redesignated as paragraph (c) and a new paragraph (b) is added to read as follows:

§ 36.4500 Applicability.

* * * * *

(b) Sections 36.4501 and 36.4527, which concern direct loans to Native American veterans shall be applicable to loans made by the Department of Veterans Affairs pursuant to 38 U.S.C. sections 3761 through 3764.

* * * * *

3. In § 36.4501, the introductory paragraph, add ", 3762" after 3711; in paragraph (j), after 3711, add "or 3762"; paragraph (o) is removed; remove all paragraph designations and place the definitions in alphabetical order; and add new definitions of "Meaningful interest", "Native American", "Native American veteran", "Period of more than 180 days", "Tribal Organization", and "Trust Land", and the authority citation is revised to read as follows:

§ 36.4501 Definitions.

* * * * *

Meaningful interest means a leasehold estate or other interest in trust land and any improvements thereon which permits the use, occupancy and enjoyment of that land and any improvements by the grantee. This interest must be capable of being conveyed (1) as security for a loan made under 38 CFR 36.4527, (2) by the grantee to a third party subject to the approval of the tribal organization and the Secretary or designee, and (3) by the Secretary or other foreclosing mortgagee, subject to the provisions of a memorandum of understanding entered into by the Secretary or designee, the tribal organization, and the Bureau of Indian Affairs.

Native American means:

(1) An Indian, as defined in section 4(d) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(d));

(2) A native Hawaiian, as defined in section 201(a)(7) of the Hawaiian Homes Commission Act of 1920, (Public Law 67–34, 42 Stat. 108);

(3) An Alaska Native within the meaning provided for the term 'Native' in section 3(b) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(b)); and

(4) A Pacific Islander, within the meaning of the Native American Programs Act of 1974 (42 U.S.C. 2991 *et seq.*)

Native American veteran means any veteran who is a Native American.

Period of more than 180 days means 181 or more calendar days of continuous active duty.

* * * * *

Tribal organization has the same meaning given in section 4(l) of the Indian Self-Determination and Education Assistance Act (25 U.S.C. 450b(l)) and includes the Department of Hawaiian Homelands, in the case of native Hawaiians, and such other organizations as the Secretary may prescribe.

Trust land means any land that:

(1) Is held in trust by the United States for Native Americans;

(2) Is subject to restrictions on alienation imposed by the United States on Indian lands (including native Hawaiian homelands);

(3) Is owned by a Regional Corporation or a Village Corporation, as such terms are defined in section 3(g) and 3(j) of the Alaska Native Claims Settlement Act, respectively (43 U.S.C. 1602(g), (j)); or

(4) Is on any island in the Pacific Ocean if such land is, by cultural tradition, communally-owned land, as determined by the Secretary.

(Authority: 38 U.S.C. 3761–3764)

4. Add a new § 36.4527, as follows:

§ 36.4527 Direct housing loans to Native American veterans on trust lands.

(a) The Secretary may make a direct housing loan to a Native American veteran if:

(1) The Secretary has entered into a memorandum of understanding with respect to such loans with the tribal organization that has jurisdiction over the veteran; and

(2) The memorandum is in effect when the loan is made and will remain in effect until the maturity of the subject loan.

(b) (1) Subject to paragraph (b)(2) of this section, each memorandum of understanding entered into by the Secretary with a tribal organization shall provide for the following:

(i) That each Native American veteran who is under the jurisdiction of the tribal organization and to whom the Secretary makes a direct loan under this section

(A) Holds, possesses, or acquires using the proceeds of the loan a meaningful interest in a lot and/or dwelling that is located on trust land; and

(B) Will purchase, construct, or improve a dwelling on the lot using the proceeds of the loan.

(ii) That each Native American veteran obtaining a direct loan under this section will convey to the Secretary by an appropriate instrument the interest referred to in paragraph (A) as security for the direct loan or, if the laws of the tribal organization do not allow the veteran to convey the meaningful interest to the Secretary, the memorandum of understanding may authorize the tribe to serve as Trustee for the Secretary for purposes of protecting the interest of the Secretary as lender.

(iii) That the tribal organization and each Native American veteran obtaining a direct loan under this section will permit the Secretary or his or her designee to enter upon the trust land of that organization or veteran for the purposes of carrying out such actions as the Secretary or his or her designee determines may be necessary:

(A) To evaluate the advisability of the loan; and

(B) To monitor any purchase, construction, or improvements carried out using the proceeds of the loan.

(C) To protect the improvements from vandalism and the elements,

(D) To make property inspections in conjunction with loan servicing, financial counseling, foreclosure, acquisition, management, repair, and resale of the secured interest.

(iv) That the tribal organization has established standards and procedures that authorize the grantee to legally establish the interest conveyed by a Native American veteran pursuant to subsection (B) and terminate all interest of the veteran in the land and improvements, including:

(A) Procedures for foreclosing the loan in the event of a default;

(B) Procedures for acquiring possession of the veteran's interest in the property; and

(C) Procedures for the resale of the property interest and/or the dwelling purchased, constructed, or improved using the proceeds of the loan.

(v) That the tribal organization agrees to such other terms and conditions with respect to the making of direct loans to Native American veterans under the jurisdiction of the tribal organization as the Secretary and the tribal organization may negotiate in order to ensure that

direct loans made under this section are made in a responsible and prudent manner.

(2) The Secretary, or his or her designee, may only enter into a memorandum of understanding with a tribal organization under this section if the Secretary, or designee, determines that the memorandum provides for standards and procedures necessary to reasonably protect the financial interests of the United States.

(c)(1) Except as otherwise provided in this paragraph, and notwithstanding the provisions of section 36.4503 of this title, the principal amount of any loan made under this section may not exceed $80,000. The original principal amount of any loan made under this section shall not exceed an amount which bears the same ratio to $80,000 as the amount of the guaranty to which the veteran would be entitled under 38 U.S.C. 3710 at the time the loan is made bears to $36,000.

(2) The Secretary may make loans which exceed the amount specified in paragraph (c)(1) of this section in geographic areas in which the Secretary has determined that housing costs are significantly higher than average housing costs nationwide. The Secretary shall determine the maximum loan amounts in such areas. The original principal amount of any such loan shall not exceed an amount which bears the same ratio to the maximum loan amount established by the Secretary as the amount of the guaranty to which the veteran would be entitled under 38 U.S.C. 3710 at the time the loan is made bears to $36,000.

(3) Loans made under this section shall bear interest at a rate determined by the Secretary after considering yields on comparable mortgages in the secondary market, including bid and ask prices on mortgage-backed securities guaranteed by the Government National Mortgage Association (GNMA).

(4) The minimum requirements for planning, construction, improvement, and general acceptability relating to any direct loan made under this section shall be consistent with the administrative property standards established for loans made or guaranteed under title 38, U.S.C., chapter 37.

(d) Notwithstanding the provisions of § 36.4504(b), for loans made under this section, the Native American veteran-borrower shall pay the following loan closing costs to the parties indicated:

(1) A loan fee of 1.25 percent of the total loan amount (2 percent for Reservists who qualify under the provisions of 38 U.S.C. 3701(b)(5)) to the Department of Veterans Affairs. All or part of such fee may be paid in cash at loan closing or all or part of the fee may be included in the loan without regard to the reasonable value of the property or the maximum loan amount. In computing the fee, the Department of Veterans Affairs will disregard any amount included in the loan to enable the borrower to pay such fee.

(2) The fee described in paragraph (d)(1) of this section shall not be collected from a veteran who is receiving compensation (or who but for the receipt of retirement pay would be entitled to receive compensation) or from a surviving spouse described in § 3701(b)(2) of title 38 U.S.C.

(3) If the Secretary designates a third party to process the loan package on VA's behalf, a processing fee to that third party not to exceed $300 plus the actual cost of any credit report required.

(4) Costs or expenses normally paid by a purchaser or mortgagee incident to loan closing including but not limited to the following:

(i) Fees of the Department of Veterans Affairs designated appraisers and compliance inspectors;

(ii) Recording fees or other charges incident to recordation;

(iii) That portion of assessments and other similar items for the current year chargeable to the borrower; and

(iv) Hazard insurance premiums, if such insurance is available.

(5) Charges or costs payable by the Native American veteran-borrower, except for the loan fee described in paragraph (d)(1) of this section, shall be paid in cash and may not be paid out of the proceeds of the loan. No service or brokerage fee shall be charged against the Native American veteran-borrower by any third party for procuring a direct loan.

(e) (1) The credit underwriting standards of 38 CFR 36.4337 shall apply to loans made under this section except to the extent the Secretary determines that they should be modified on account of the purpose of the program to make available housing to Native American veterans living on trust lands.

(2) The Secretary shall determine the reasonable value of the leasehold or other property interest that will serve as security for a loan made under this section in accordance with § 37.4519, of this chapter, unless the Secretary determines that such requirements are impractical to implement in a geographic area, on particular trust lands, or under circumstances specified by the Secretary.

(f) In connection with the origination of any loan under this section, the Secretary may make advances in cash to provide for repairs, alterations, and improvements and to meet incidental expenses of the loan transaction.

(g) Loans made under this section shall be amortized under a generally recognized plan which provides for equal monthly installments consisting of principal and interest, except for the final installment, which may not be in excess of two times the regular monthly installment. The limitation on the amount of the final installment shall not apply in the case of any loan extended, ballooned and/or reamortized.

(h) The Secretary may:

(1) Take any action that the Secretary determines to be necessary for the custody, management, and protection of properties and the realization or sale of investments under the VA Native American Direct Loan Program;

(2) Determine any necessary expenses and expenditures and the manner in which such expenses and expenditures shall be incurred, allowed, and paid;

(3) Employ, utilize, and compensate persons, organizations, or departments or agencies (including departments and agencies of the United States) designated by the Secretary to carry out necessary functions, including but not limited to loan processing and servicing activities, appraisals, and property inspections.

(i) Notwithstanding any requirement, condition, or limitation stated in or imposed by any provision of this regulation, the Under Secretary for Benefits, or the Director, Loan Guaranty Service, within the limitations and conditions prescribed by the Secretary, may execute memoranda of understanding, make determinations concerning the maximum direct loan amount as provided in paragraph (c) of this section, and take such supplementary administrative action as may be necessary or appropriate to relieve any undue prejudice to a debtor, or other person, which might otherwise result, provided such action shall not impair the vested rights of any person affected thereby. If such a requirement, condition, or limitation is of an administrative or procedural nature, such action may be taken by any employee authorized to act under paragraph (j) of this section.

(j) (1) Except as hereinafter provided, each employee of the Department of Veterans Affairs appointed to, or otherwise lawfully filling, any position designated in paragraph (j)(2) of this section is hereby delegated authority, within the limitations and conditions prescribed by law, to exercise the powers and functions of the Secretary with respect to the making of loans and the rights and liabilities arising therefrom, including, but not limited to

the collection or compromise of amounts due, in money or other property, the extension, rearrangement, or sale of loans, and the management and disposition of secured or unsecured notes and other property. In connection with direct loans made and held by the Department of Veterans Affairs, such designated employees may take any action which they are authorized to consent to or approve in respect to guaranteed loans under § 36.4342. Incidental to the exercise and performance of the powers and functions hereby delegated, each such employee is authorized to execute and deliver (with or without acknowledgment) for, and on behalf of, the Secretary such certificates, forms, conveyances, and other instruments as may be appropriate in connection with the acquisition, ownership, management, sale, transfer, assignment, encumbrance, rental, or other disposition of real or personal property or of any right, title, or interest therein, including, but not limited to, contracts of sale, installment contracts, deeds, leases, bills of sale, assignments, and releases; and to approve disbursements to be made for any purpose authorized by 38 U.S.C. chapter 37.

(2) Designated positions:

Under Secretary for Benefits
Deputy Under Secretary for Benefits
Director, Loan Guaranty Service
Director, Medical and Regional Office Center
Director, VA Regional Office and Insurance Center
Director, Regional Office
Loan Guaranty Officer
Assistant Loan Guaranty Officer

The authority hereby delegated to employees of the positions designated in this paragraph may, with the approval of the Under Secretary for Benefits, be redelegated.

(3) Nothing in this section shall be construed to authorize any such employee to exercise the authority vested in the Secretary under 38 U.S.C. 501(a) or 3703(a)(2) or to sue or enter appearance for and on behalf of the Secretary or confess judgment against the Secretary in any court without the Secretary's prior authorization.

(4) Each Regional Office, Regional Office and Insurance Center, and Medical and Regional Office Center shall maintain and keep current a cumulative list of all employees of that Office or Center who, since May 1, 1980, have occupied the positions of Director, Loan Guaranty Officer, and Assistant Loan Guaranty Officer. This list will include each employee's name, title, date the employee assumed the position, and the termination date, if applicable, of the employee's tenure in such position. The list shall be available for public inspection and copying at the Regional Office, or Center, during normal business hours.

(Authority: 38 U.S.C. 3761–3764)

[FR Doc. 93–27461 Filed 11–8–93; 8:45 am]
BILLING CODE 8320–01–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300305; FRL–4649–2]

RIN No. 2070–AC18

2-Methyl-4-Isothiazolin-3-One and 5-Chloro-2-Methyl-4-Isothiazolin-3-One; Tolerance Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document modifies 40 CFR 180.1001(d) by changing entries for 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one to clarify the term "final solution." The Rohm & Haas Co. requested this change.

EFFECTIVE DATE: Effective on November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Connie Welch, Registration Support Branch, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 703/308-8320

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 7, 1988 (53 FR 34511), EPA granted an exemption from the requirement of a tolerance under § 180.1001(d) for 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one. This exemption included at limit of "0.00022% (or 2.25 ppm) in the formulation." The Agency's calculated maximum expected residue was based upon a concentration of 2-methyl-4-isothiazolin-3-one and 5-chloro-2-methyl-4-isothiazolin-3-one of 2.25 ppm in the final solution applied to growing crops.

Because of confusion concerning what the term "formulation" means, Rohm & Haas Co., Independence Mall West, Philadelphia, PA 19105, filed a petition (PP 3E4189) with EPA requesting an amendment to the exemption entry under § 180.1001(d) to change the limit to "not more than 0.0022% (22.5 ppm) in the formulation; not more than 0.00022% (2.25 ppm) in the final solution applied to growing crops." In the **Federal Register** of July 28, 1993 (58 FR 40426), EPA issued a notice of receipt of the petition. No comments were received in response to the notice. Therefore, the corrected tolerance exemption is established as set forth below.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 22, 1993.

Douglas D. Campt,
Director, Office of Pesticide Programs.

Therefore, part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by revising the entries for 5-chloro-2-methyl-4-isothiazolin-3-one (in combination with 2-methyl-4-isothiazolin-3-one) and 2-methyl-4-isothiazolin-3-one (in combination with 5-chloro-2-methyl-4-isothiazolin-3-one), to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
5-Chloro-2-methyl-4-isothiazolin-3-one (in combination with 2-methyl-4-isothiazolin-3-one).	Not more than 0.0022% (22.5 ppm) in the formulation; 0.00022% (or 2.25 ppm) in the final solution applied to growing crops.	Preservative

Inert ingredients	Limits	Uses
* *	* * *	* *
2-Methyl-4-isothiazolin-3-one (in combination with 5-chloro-2-methyl-4-isothiazolin-3-one).	Not more than 0.0022% (22.5 ppm) in the formulation; 0.00022% (or 2.25 ppm) in the final solution applied to growing crops..	Preservative
* *	* * *	* *

* * * * *

[FR Doc. 93–27273 Filed 11–9–93; 8:45 am]
BILLING CODE 6560–60–F

40 CFR Part 185

[OPP–300237A; FRL–4188–7]

RIN No. 2070–AC18

Dichlorvos; Revocation of Food Additive Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document revokes the food additive regulation for residues of the pesticide dichlorvos (2,2-dichlorovinyl dimethyl phosphate), also known as DDVP, in or on packaged or bagged nonperishable processed food 120 days after the publication of this document. This action is being taken because the Agency has determined that this food additive regulation is inconsistent with the Delaney Clause in section 409 of the Federal Food, Drug, and Cosmetic Act.

EFFECTIVE DATE: This regulation becomes effective March 10, 1994.

ADDRESSES: Written objections, requests for a hearing, and/or requests of stays identified by document control number, [OPP-300237A], must be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460. A copy of any objections, hearing requests, or other related documents filed with the Hearing Clerk should be submitted to: OPP Docket, Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, 22202

FOR FURTHER INFORMATION CONTACT: By mail: Niloufar Nazmi, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, Rm. WF31L1, 2800 Jefferson Davis Hwy., Arlington, VA, (703)-308-8028.

SUPPLEMENTARY INFORMATION:

I. Introduction

Dichlorvos (DDVP) is an insecticide registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) for use on a number of sites, including a variety of food crops, stored and processed foods, as well as for domestic use in and around homes and in commercial, institutional, and industrial buildings.

A food additive regulation of 0.5 part per million (ppm) for residues of dichlorvos in or on packaged or bagged nonperishable processed food has been established under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA) and is codified in 40 CFR 185.1900.

A petition submitted to the Agency in May 1989 by the State of California, Natural Resource Defense Council, Public Citizen, AFL-CIO, and several individuals requested that EPA revoke food additive regulations for a number of chemicals, one of which was dichlorvos. The petitioners claimed that these regulations violated the Delaney Clause in section 409 of the FFDCA. The Delaney Clause provides that a food additive regulation may not be approved for a food additive if it "is found to induce cancer when ingested by man or animal, or if it is found, after tests which are appropriate for the evaluation of the safety of food additives, to induce cancer in man or animal, * * *." (21 U.S.C. 348(c)).

In responding to the petition, EPA interpreted the Delaney Clause as subject to an exception for pesticide uses which posed no greater than a *de minimis* cancer risk (56 FR 7750, Feb. 25, 1991). Although EPA concluded that several of the challenged regulations met this *de minimis* standard, EPA found that the dichlorvos food additive regulation did not. Therefore, in the **Federal Register** of October 3, 1991 (56 FR 50190), EPA proposed to revoke the food additive for packaged or bagged nonperishable processed food. Several comments were received in response to the notice of proposed revocation. These comments are presented in this document along with EPA's responses.

Subsequent to the issuance of the proposal to revoke the dichlorvos food additive regulation, the Court of Appeals for the Ninth Circuit rejected EPA's *de minimis* interpretation. *Les v. Reilly*, 968 F.2d 985 (9th Cir. 1992), cert. denied, 113 S. Ct. (1993). That decision became effective in March 1993.

II. Responses to Comments

A. AMVAC Chemical Corp.

EPA received extensive comments from AMVAC Chemical Corp., the holder of the FIFRA registration for the manufacturing product dichlorvos. Each of AMVAC's comments, however, concerns the magnitude of the risk posed by dichlorvos and its attendant benefits. Because the Court's holding in *Les v. Reilly* renders such issues irrelevant in determining whether a section 409 regulation is permissible under the Delaney Clause, EPA believes no response is necessary. Nonetheless, for the completeness of the record, EPA's responses to comments are provided below.

1. *Comment.* AMVAC claims that EPA's change in position between its initial response to the California petition and its Final Order regarding the level of risk posed by dichlorvos was insufficiently justified. AMVAC also believes that EPA inappropriately relied on a reexamination of data and instead should have waited for submission of new data. AMVAC cited two judicial decisions requiring administrative agencies to provide an explanation of the basis for any change in existing regulations or policies. (See *Motor Vehicles Manufacturers' Association v. State Farm Mutual Automobile Insurance Co.*, 463 U.S. 29 (1983) (recision of rule held arbitrary and capricious where Agency did not present an adequate basis and explanation); *Pacific Legal Foundation v. Department of Transportation*, 593 F.2d 1338 (D.C. Cir. 1979), cert. denied, 444 U.S. 830 (1979) (revision of rule upheld where sufficient explanation provided by Agency)).

Response. EPA agrees that when an administrative agency adopts a change in course by revoking a rule it must supply a "reasoned analysis." (See *Rust v. Sullivan*, 111 S. Ct. 1759, 1769 (1991); *Chevron USA, Inc. v. NRDC*, 467 U.S. 837, 862-864 (1984)). However, in the present situation EPA did not change a position which had the status of a final rule, but merely changed a preliminary decision in an ongoing administrative process. EPA's initial decision that the risk posed by dichlorvos might be *de minimis* was in an order to which objections were filed pursuant to procedures in the FFDCA, 21 U.S.C. 348(f). EPA changed its decision regarding the level of risk posed by dichlorvos based on a reexamination of the relevant data in response to the objections filed.

In any event, EPA's change in position was adequately explained in the proposed rule to revoke dichlorvos. EPA's original position was that new residue data were likely to show that the risk posed by dichlorvos was *de minimis*. The basis for this position was that the existing risk estimate was made using tolerance levels as the measure of residue levels in foods and that "tolerance residue levels generally overestimate likely dietary exposure." (55 FR 17568, April 25, 1990). EPA changed its position following a reexamination of the residue data used to establish the tolerance. (56 FR 7775, Feb. 25, 1991). That reexamination showed that dichlorvos residues may exceed the tolerance, and thus the tolerance may have been established at too low a level. Accordingly, EPA concluded that "the current risk estimate may be understated." *Id.* Thus, EPA changed its position because an examination of the data on dichlorvos residues showed that EPA's initial general assumption concerning the relationship between tolerance levels and actual residues was not necessarily accurate for dichlorvos.

2. *Comment.* AMVAC stated that because EPA has "no conclusive evidence" showing that the risks of dichlorvos are greater than *de minimis*, there is not sufficient evidence in the record to support EPA's decision.

Response. First, the burden of showing the safety of a food additive regulation lies with the proponent of the regulation to allow the additive in food (40 CFR 179.91; *Environmental Defense Fund v. Department of Health, Education, and Welfare*, 428 F.29 1083, 1092 n.27 (D.C. Cir. 1970)). Second, the risk posed by dichlorvos when assessed at the tolerance level (the legal level) exceeds a *de minimis risk*. Data for the aerosol application indicate the potential for over-tolerance residues, and this has been substantiated by over-tolerance dichlorvos residues found in two treated samples in a recent market basket study conducted by AMVAC in late 1992. Thus, the record in this case adequately supports EPA's decision.

3. *Comment.* AMVAC stated that because EPA examined the benefits involved in pesticide usage in adopting a *de minimis* exception to the Delaney Clause, EPA is required to consider the benefits of an individual pesticide in applying the *de minimis* exception.

Response. On several occasions, courts have expressly rejected the argument that application of a *de minimis* exception allows the balancing of risks and benefits. *Public Citizen v. Federal Trade Commission*, 869 F.29 1541, 1557 (D.C. Cir. 1989); *Alabama Power Co. v. Costle*, 636 F.29 323, 361 (D.C. Cir. 1979). EPA's consideration of benefits in the context of deciding whether or not to interpret the Delaney Clause as containing a *de minimis* exception was not inconsistent with those decisions. EPA considered the benefits of pesticides and Congressional views of those benefits in evaluating whether a *de minimis* exception was consistent with the legislative design for the regulation of pesticides. Legislative design is one of several factors relevant to whether a statute allows for a *de minimis* exception. *Alabama Power*, 636 F.2d at 360.

EPA has not considered the benefits of a pesticide in determining whether the risks posed by a particular use falls within the *de minimis* exception to the Delaney Clause.

4. *Comment.* AMVAC states that EPA should consider less burdensome alternatives including lowering the permissible tolerance level and changing dichlorvos use patterns prior to revoking the dichlorvos food additive regulation. As authority for this proposition, AMVAC cites *Corrosion Proof Fittings v. EPA*, 947 F.2d 1201 (5th Cir. 1991).

Response. The cited case involved the Toxic Substances Control Act, which contains explicit statutory language relating to least burdensome alternatives. *Id.* at 1214-1215. This matter involves the application of a *de minimis* exception to an otherwise zero-risk provision. There is no statutory requirement in the Delaney Clause to consider less burdensome alternatives. Moreover, as noted above, interpreting a statute as containing a *de minimis* risk exception does not give EPA the authority to consider cost factors in applying such a *de minimis* exception to determine if there is a less burdensome alternative. To the extent EPA is under an obligation to consider whether different use patterns would present a *de minimis* risk, the lack of data on residue levels at different use rates precludes such consideration.

5. *Comment.* AMVAC believes that residue levels of dichlorvos are significantly lower than those assumed by EPA in its risk assessment. AMVAC states that the residue data that the Agency relied on are "outdated" because the aerosol application used does not reflect current methods of application. AMVAC cited two reasons why over-tolerance residues occurred: (1) the inefficient (old) method of atomization and (2) the nonvolatility of the solvents used in the (old) formulation compared to the volatile solvents currently used.

Response. The level of dichlorvos used in the risk assessment for estimating exposure due to dietary intake of treated processed commodities, packaged and bagged, may overestimate the actual residues in these food items. However, when the dietary risk was estimated, the only residue data available to the Agency were those purportedly "outdated" data to which AMVAC alluded. As noted below, the additional residue data submitted to the Agency in late 1991 are limited in size and scope and therefore were not used. The Agency can only base its decisions on the data at hand.

6. *Comment.* To support its contention that residue levels of dichlorvos are significantly lower, AMVAC submitted the results of a market basket survey. Food products were exposed to dichlorvos from as few as one treatment to as many as 11 treatments (average of 2.5 treatments per commodity). Treatment frequency varied from once per week to once every 5 or 6 weeks (average treatment internal of 3.45 weeks). AMVAC asserted that the residue levels observed should represent the maximum levels that could be found in commercial facilities and that the average values would be at least an order of magnitude lower.

Response. Currently, the product labels permit an unspecified number of aerosol treatments. It also specifies no waiting period for treated commodities to be shipped and sold after treatment. Market basket samples were collected days after treatment. Thus, the residue levels observed in the treated processed commodities do not necessarily reflect the maximum label use conditions. In addition, AMVAC's submission contained adequate analytical data only for a few types of processed commodities permitted on the product label. The Agency is not convinced that the dietary exposure estimates should

be revised based upon this weak data base.

7. *Comment.* AMVAC contends that the Agency incorporated dichlorvos residue reduction factors only for rice, wheat, barley, rye, and possibly oats containing foods in its dietary exposure assessment, but allowance for residue reduction was not made for any of the several dried fruits, sugar products, or soybean products. AMVAC believes that, based on the hydrolytic instability of dichlorvos, the Agency should allow for residue reduction in packaged and bagged processed agricultural commodities that are cooked before consumption.

Response. The Agency agrees that some reduction in residues occurs with cooking and, as the registrant points out, some reduction factors were used for cooked rice and other small grains. However, no further adjustments in the exposure assessment will be made until data on processing/cooking factors are submitted, reviewed, and found valid.

8. *Comment.* AMVAC estimated the percent of site treated (bagged or packaged, nonperishable processed food) to be about 0.7 percent, an order of magnitude below EPA's estimate. It used two assumptions that account for its lower estimate: (1) the percent of processed food packaged in materials susceptible to dichlorvos residues, and (2) the percent of foodstuffs present on the day of treatment. In referring to "materials susceptible to dichlorvos residues," AMVAC appears to mean packaging material which allows dichlorvos to penetrate the package, resulting in residues. AMVAC contends that glass and metal containers would not result in residues.

Response. EPA's estimate of site treated was 7.5 percent. That figure was based on a survey of food processors which showed that, on average, 7.5 percent of food processors used dichlorvos. Significantly, the greatest use was by processors of grains and sugars (20 percent), the two commodities which represent the majority of the estimated risk of dichlorvos.

EPA has serious reservations about whether the 7.5-percent figure is adequately supported by the above-noted survey. The food additive regulation for dichlorvos in question covers bagged and packaged nonperishable processed food. Such food could be exposed to dichlorvos in several locations—in a food-processing plant, in a dry grocery warehouse, or in a food-handling establishment such as a supermarket. The survey of food processors purports to measure only usage in food-processing plants.

Based on figures submitted by AMVAC concerning the pounds of dichlorvos applied and the total cubic feet of warehouses and processing plants nationwide, the percent of site treated would be in the range of 5 to 10 percent. AMVAC, however, has contended that the percent of site treated should be reduced by the percentage of foods in dry grocery warehouses which are in metal or glass containers and by the percent of food likely to be in the warehouse on the day of treatment.

AMVAC contends that glass and metal containers would protect foods from exposure to dichlorvos. Even assuming that is true, EPA finds AMVAC's analysis to be flawed. Although admitting that the percentage of foods in glass and metal "is difficult to determine" and that it could obtain little or no data on the issue, AMVAC estimated that 90 percent of the food in warehouses is packaged in glass or metal containers. AMVAC reached this conclusion through use of a U.S. Department of Commerce survey of manufacturers that reports the dollar value of products by industry. AMVAC appears to have divided the dollar value of products for industries which produce food which could be in flexible packaging, as opposed to glass or metal, by the dollar value of products for industries which could have products in food warehouses to compute a percentage of food in warehouses which could be in flexible packaging. According to AMVAC, this calculation showed 20 percent of the food in warehouses could be in flexible packaging. AMVAC further reduced this percentage by half because AMVAC reasoned that not all of this food would be in flexible packaging. AMVAC's basis for this latter reduction is not clear.

AMVAC's proposed reduction of the percent of site treated to reflect AMVAC's estimate of the percent of food in warehouses which is in flexible packaging fails to take into account that EPA, in deriving a risk estimate for dichlorvos, only included those commodities in its exposure assessment which EPA judged to be likely to be packaged in bags and packages. Certainly, some of the commodities selected by EPA are packaged in glass or metal containers as well as in more flexible materials. However, EPA has no data to make a computation of the percentage breakdown between the various container types, and AMVAC's information is certainly not commodity specific. Moreover, as mentioned above, the two commodities which account for the bulk of the risk in the dichlorvos risk estimate are sugar and processed grains, two commodities which EPA believes are generally packaged in flexible materials.

EPA finds AMVAC's proposed reduction of the percent of site treated by the likelihood of a food being in the warehouse on the day the warehouse is treated with dichlorvos to be similarly unsubstantiated. AMVAC calculated that only 4.8 percent of the food in warehouses is present on the day of treatment. Whether or not that figure is correct, AMVAC has not adequately documented its assumption that only food present on the day of treatment is susceptible to dichlorvos residues. AMVAC suggests that residues from past treatments of dichlorvos dissipate and do not contaminate food introduced after the treatments. This maybe true, but the data to substantiate that assumption have not been submitted to EPA. For all of the above reasons, EPA concludes there is no reason to lower its estimate of the percent of crop treated by dichlorvos.

B. Other Comments

1. *Comment.* Three commenters (Millers' National Federation, Grocery Manufacturers' Association (GMA), and National Food Processors Association) stated that it was not good policy to take an action which would render foods which are legally treated with pesticides as adulterated. GMA argued that EPA's action would hurt consumer confidence in the safety of the food supply and EPA should withdraw the proposed revocation or bar the use of dichlorvos entirely.

Response. EPA agrees the best policy is to act consistently under the various regulatory provisions. This policy concern, however, does not justify leaving the DDVP regulation in place. In any event, EPA plans, under FIFRA, to cancel products containing dichlorvos on packaged and bagged nonperishable processed foods.

2. *Comment.* Two commenters (Millers' National Federation and American Spice Trade Association) objected to the revocation of this dichlorvos food additive regulation on the grounds that it would disrupt Integrated Pest Management (IPM) programs causing greater quantities of less effective pesticides to be used at the expense of the environment and the user.

Response. EPA supports the use of IPM programs, but does not believe the effect of this revocation on such programs is an appropriate consideration under the Delaney Clause.

III. Order

EPA has concluded that this food additive regulation must be revoked because DDVP induces cancer in animals and the Delaney Clause bars the establishment of regulations for such pesticides. DDVP has been shown in a 2-year bioassay in Fischer 344 rats to cause statistically significant increases, with a positive dose-related trend, in leukemia in males at 2 dose levels. (Ref. 1) The results of this study show that DDVP induces cancer in animals. In its weight of the evidence evaluation, EPA considered the historical evidence on leukemia in Fischer 344 rats (Ref. 2), other tumors reported in the study involving Fischer 344 rats, several additional cancer studies in mice and rats (Ref. 3), results of the transplantable rat mononuclear cell leukemia model (Ref. 4), mutagenicity data (Ref. 5), and structure activity information (Ref. 6). Much of this information supports EPA's conclusion that results of the Fischer 344 rat study are significant and, to the extent any of the information did not confirm the results of that rat study, none of that information is of such weight that it affects EPA's determination that the increased incidence of leukemia in male rats was the result of exposure to the test compound.

IV. Timing of Order

EPA proposed to make this revocation take effect 120 days after the revocation decision is final and published in the **Federal Register**. This proposal took into consideration that dichlorvos may still be legally used on packaged and bagged nonperishable processed foods under FIFRA. Processed foods treated with dichlorvos will necessarily become adulterated as a result of the revocation of the dichlorvos food additive regulation, even though the use of dichlorvos when it was applied was consistent with both the FIFRA registration and the FFDCA regulation. The 120-day period was chosen because EPA had preliminary data indicating that dichlorvos residues would be nondetectable after 60 days.

Two commenters (Millers' National Federation and American Spice Trade Association) urged EPA to delay the revocation for 2 years—the period of time necessary for all food treated prior to the revocation decision to clear the market. They argued that EPA should not rely on preliminary data on degradation in establishing the effective date. EPA shares the concerns of these commenters, but believes that the 120-day period is reasonable given that it is twice the length of time that the preliminary data suggest is needed for the degradation of residues. Accordingly, this order contains as an effective date for the revocation 120 days from the publication of this rule.

V. Procedural Matters

A. Filing of Objections and Requests for Hearings

Any person adversely affected by this final rule may file written objections to the final rule, and may include with any such objection a written request for an evidentiary hearing on the objection. Such objections must be submitted to the Hearing Clerk on or before December 10, 1993. Regulations applicable to objections and requests for hearings are set out at 40 CFR parts 178 and 179. Those regulations require, among other things, that objections specify with particularity the provisions of the final rule objected to, the basis for the objections, and the relief sought. Additional requirements as to the form and manner of the submission of objections are set out at 40 CFR 178.25. The Administrator will respond as set forth in 40 CFR 178.30, 178.35 and/or 178.37 to objections that are not accompanied by a request for evidentiary hearing. A person may include with any objection a written request for an evidentiary hearing on the objection. A hearing request must include a statement of the factual issues on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. Additional requirements as to the form and manner of submission of requests for an evidentiary hearing are set out at 40 CFR 178.27. Under 40 CFR 178.32(c), the Administrator, where appropriate, will make rulings on any issues raised by an objection if such issues must be resolved prior to determining whether a request for an evidentiary hearing should be granted. The Administrator will respond to requests for evidentiary hearings as set forth in 40 CFR 178.30, 178.32, 178.35, 178.37, and/or 179.20. Under 40 CFR 178.32(b), a request for an evidentiary hearing on an objection will be granted if the objection and request have been properly submitted and if the Administrator determines that the material submitted show: (1) There is a genuine and substantial issue of fact for resolution at a hearing; (2) there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor; and (3) resolution of one or more of the factual issues in the manner sought by the person requesting the hearing would be adequate to justify the action requested. Any person wishing to comment on any objections or requests for a hearing may submit such comments to the Hearing Clerk on or before December 27, 1993.

B. Effective Date and Stays of Effective Date

This final rule shall become effective March 10, 1993. A person filing objections to this final rule may submit with the objections a petition to stay the effective date of this final rule. Such stay petitions must be submitted to the Hearing Clerk on or before December 10, 1993. A copy of the stay request filed with the Hearing Clerk shall be submitted to the Office of Pesticide Programs Docket room. A stay may be requested for a specific time period or for an indefinite time period. The stay petition must include a citation to this final rule and the specific food additive regulation(s) as to which the stay is sought, the length of time for which the stay is requested, and a full statement of the factual and legal grounds upon which the petitioner relies for the stay. If a petition for a stay is submitted, EPA will automatically stay the effective date of the final rule as to the particular regulation(s) for which the stay is sought for such time as is required to review the stay petition, if necessary. In determining whether to grant a stay, EPA will consider the criteria set out in the Food and Drug Administration's regulations regarding stays of administrative proceedings at 21 CFR 10.35. Under those rules, a stay will be granted if it is determined that: (1) The petitioner will otherwise suffer irreparable injury; (2) the petitioner's case is not frivolous and is being pursued in good faith; (3) the petitioner has demonstrated sound public policy grounds supporting the stay; and (4) the delay resulting from the stay is not outweighed by public health or other public interests. Under FDA's criteria, EPA may also grant a stay if EPA finds such action is in the public interest and in the interest of justice. If a stay petition is submitted, EPA will publish a notice of receipt in the **Federal Register**, stating that the effective date of this final rule is stayed as to the regulation(s) to which the stay is requested pending EPA consideration of the stay request. Any affected person may submit objections to a stay request to the Hearing Clerk on or before 15 days from the publication in the **Federal Register** of the notice of receipt of a stay request. Any decision lifting the stay will be published in the **Federal Register**.

VI. Other Regulatory Requirements

A. Executive Order 12291

As explained in the proposal published in the **Federal Register** of October 3, 1991 (56 FR 50190), EPA determined, pursuant to the requirements of E.O. 12291, that the revocation of the food additive tolerance is not a major regulatory action, i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U.S. enterprises to compete with foreign enterprises. The Agency's best judgment is that the total impact of this rule may be as high as $50 million per year.

This rule has been reviewed by the Office of Management and Budget (OMB) as required under section 3 of E.O. 12291.

B. Regulatory Flexibility Act

This rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354; 94 Stat. 1164, 5 U.S.C. 601 et seq.), and EPA has determined that it will have a minor economic impact on a small number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the October 3, 1991, proposal.

The Delaney Clause does not give EPA the authority to consider economic impact. Accordingly, I certify that this rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

C. Paperwork Reduction Act

This regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

VII. References for DDVP

All references cited in section VII of this preamble are available for viewing in the Office of Pesticide Program's Public Docket under control number 260053C. The docket is located in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA, telephone: 703-305-5805. The docket is open from 8 a.m. to 4:30 p.m., Monday through Friday, except legal holidays.

Copies of the references without an associated Master Record Identification (MRID) number are available to any person, regardless of affiliation. Disclosure of the references identified by an MRID number are subject to the limitations imposed by section 10 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Visitors are required to sign an "Affirmation of Non-multinational Status" form prior to viewing any references identified by an MRID number.

Copies of the references also are available by writing to: Freedom of Information Office (A101), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Disclosure of the references under the Freedom of Information Act are subject to the same limitations as outlined above.

References

1. Two-year Gavage Study of Dichlorvos in F344 Rats (Southern Research Institute, Study No. 05049, May 23, 1983, sponsored by the National Toxicology Program), PWG Report, May 30, 1986. MRID 006019.

2. Haseman et al., JNCI 75:975-984, 1985.

3. See EPA, Office of Pesticide Programs, "4th Peer Review of Dichlorvos" (9/18/89). PWG Dichlorvos Two Year B6C3F1 Mouse Corn Oil Gavage Study. (Southern Research Institute; Study Numbers: 05049 Test 02. NTP C# 00113B, May 23, 1983; sponsored by National Toxicology Program) PWG May 14, 1986. NTP Technical Report No. 342, "A Review of the Interpretation of the NTP Toxicology and Carcinogenesis Studies of Dichlorvos," June 30, 1988, by John H. Mennear, Ph.D., Professor of Toxicology, Campbell University, Buies Creek, North Carolina.

4. The transcript of the NTP panel of experts meeting of July 14, 1987.

5. See Memorandum, from Judith Hauswirth to George La Rocca, EPA, Office of Pesticide Programs, "First Peer Review of Dichlorvos (DDVP)" (Sept. 25, 1987).

6. Same as item 5 of these references.

List of Subjects in 40 CFR Part 185

Environmental protection, Administrative practice and procedure, Agricultural commodities, Food additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 22, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 185 is amended as follows:

PART 185—[AMENDED]

1. The authority citation for part 185 continues to read as follows:

Authority: 21 U.S.C. 346a and 348.

2. By revising § 185.1900 to read as follows:

§ 185.1900 2,2-Dichlorovinyl dimethyl phosphate.

A tolerance that expires on March 10, 1994, is established as follows: The food additive 2,2-dichlorovinyl dimethyl phosphate may be present as a residue from application as an insecticide on packaged or bagged nonperishable processed food (see: 21 CFR 170.3(j)) in an amount in such food not in excess of 0.5 part per million (ppm). To assure safe use of the insecticide, its label and labeling shall conform to the label and labeling registered by the U.S.Environmental Protection Agency, and the usage employed shall conform to such label and labeling.

[FR Doc. 93-27607 Filed 11-9-93; 8:45 am]

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40 CFR Part 799

[OPPTS-42111C; FRL 4047-2]

RIN 2070-AB94

Office of Water Chemicals; Final Test Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Rule.

SUMMARY: EPA is issuing a final rule, under section 4 of the Toxic Substances Control Act (TSCA), requiring manufacturers and processors to test four chemical substances for certain health effects. Oral 14-day repeated dose and oral 90-day subchronic toxicity studies are required for each of the following substances: Chloroethane (CAS No. 75-00-3); 1,1-dichloroethane (CAS No. 75-34-3); 1,1,2,2-tetrachloroethane (CAS No. 79-34-5); and 1,3,5-trimethylbenzene (CAS No. 108-67-8). This rule also supports EPA's effort to develop Health Advisories (HAs) for unregulated drinking water contaminants that are monitored under section 1445 of the Safe Drinking Water Act (SDWA). The proposed rule which was published on May 24, 1990 was referred to as the Office of Drinking Water Chemicals proposed test rule.

DATES: This rule shall become effective on December 27, 1993. In accordance with 40 CFR 23.5, this rule shall be promulgated for purposes of judicial review at 1 p.m. eastern daylight time on November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (MFT-7408), Office of Pollution

Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 544–0551.

SUPPLEMENTARY INFORMATION: EPA is issuing a final test rule under section 4(a) of TSCA to require health effects testing of four chemical substances that have been identified as drinking water contaminants by the Office of Water. EPA is not requiring testing under section 4(a)(1)(B) for health effects testing of *n*-propylbenzene (CAS No. 103–65–1) because production is not substantial at this time. The required subacute and subchronic test guidelines were proposed under parts 795 and 798, respectively. EPA, however, has decided to require the same subacute testing according to a guideline under part 798 with modifications.

I. Introduction

A. Test Rule Development Under TSCA

This final rule is part of the overall implementation of section 4 of TSCA, 15 U.S.C. 2601 et seq., which contains authority for EPA to require the development of data relevant to assessing the risk to health and the environment posed by exposure to particular chemical substances or mixtures (chemicals).

Under section 4(a) of TSCA, EPA must require testing of a chemical to develop health or environmental data if the Administrator makes certain findings as described in TSCA under section 4(a)(1)(A) or (B). Detailed discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules, which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300). Additional discussion of the TSCA section 4(a)(1)(B) finding can be found in the final statement of policy which articulates the criteria for making that finding (58 FR 28736, May 14, 1993).

B. Background

On May 24, 1990 (55 FR 21393), EPA proposed oral subacute and subchronic health effects testing under TSCA section 4(a)(1)(B) for the following chemicals:

Chemical name	CAS No.	Docket No.
chloroethane	75–00–3	42111C/42162
1,1-dichloroethane	75–34–3	42111C/42163
1,1,2,2-tetrachloroethane	79–34–5	42111C/42164
n-propylbenzene	103–65–1	42111C/42161
1,3,5-trimethylbenzene	108–67–8	42111C/42165

In evaluating the testing needs for these five substances, EPA considered available published and unpublished information on the production volume, exposure, and toxicity of these substances. The proposed testing was intended to support the efforts of EPA's Office of Water (OW) in developing Health Advisories (HAs) for these substances. The subacute and subchronic tests were proposed to be conducted according to TSCA guidelines under 40 CFR 795.257 and 798.2650; however, EPA has decided that because the provisions of the subacute and subchronic test guidelines are essentially identical except for the exposure period, EPA is requiring both tests to be conducted according to § 798.2650 except for modifications for the subacute test which will specify a shorter exposure period and in other ways make it comparable to the proposed 14–day guideline. EPA has decided not to issue the 14–day subacute test guideline, proposed under § 795.257, as a separate guideline. This decision was an outgrowth of EPA's effort to harmonize its testing guidelines with those of the Organization of Economic Cooperation and Development (OECD) and EPA's decision to eliminate the annual publication of testing guidelines in the Code of Federal Regulations. For ease of discussing the comments received on the proposed 14–day guideline, this guideline will be referenced using the same section number under which it was proposed, i.e. § 795.257.

The Safe Drinking Water Act (SDWA) of 1974, as amended in 1986, provides for the regulation of substances that may cause adverse human health effects and that are known or anticipated to occur in drinking water. Under section 1445 of the SDWA, public water systems are to monitor for a list of unregulated drinking water contaminants, including the substances in this rule. Recently, EPA announced the availability of monitoring data for these substances from nine states (AL, FL, IN, MA, MI, NE, PA, RI and WV). These data showed that chloroethane was present in drinking water in four of the nine states; 1,1-dichloroethane in six of the nine states; 1,1,2,2,-tetrachloroethane in five of the nine; *n*-propylbenzene in two of the nine; and 1,3,5-trimethylbenzene in three of the nine (Ref. 31). These data confirm that these chemicals are present in drinking water. EPA made the data available for public comment on April 20, 1992 (57 FR 14371) and is using these data to further support its exposure finding in this action. Other monitoring data also showed the presence in drinking water of the five substances in this rule (Ref. 10). These data had not been available when the proposed rule was being developed and were presented in a later notice for public comment on July 15, 1991 (56 FR 32292).

In addition to the monitoring requirements in the SDWA for unregulated contaminants, EPA develops HAs for some of them, as well as for some regulated contaminants. HA levels provide guidance to Federal, State, and local officials responsible for protecting health after chemical spills. HA levels suggest acceptable concentrations of the chemical in drinking water; levels that would not be expected to result in an adverse health effect for 1–day, 10–day, longer-term, or lifetime human exposures based on data describing noncarcinogenic endpoints of toxicity, and, where available, data on carcinogenicity. In developing a HA, oral studies in one or more species are used in which the exposure duration is comparable to the HA exposure duration. HAs are intended to inform public health officials of the potential health effects associated with a chemical, as well as the concentration of the chemical that is not expected to cause an adverse effect after exposure of various durations.

II. Public Comment

Comments in response to the proposed test rule for the Office of Drinking Water chemicals were received from the Chemical Manufacturers Association (CMA)(Ref. 1), Dow Chemical Company (Refs. 2 and 3), Eastman Kodak Company (Ref. 4), Halogenated Solvents Industry Alliance (HSIA)(Ref. 5), Monsanto Company (Ref. 6), Shell Oil Company (Ref. 7), Vista Chemical Company (Ref. 8), and Vulcan Chemicals (Ref. 9). No comments were received in response to the notice presenting drinking water monitoring data on July 15, 1991 (56 FR 32292). Comments in response to the notice

announcing the availability of drinking water data on April 20, 1992 (57 FR 14371), were received from Koch Chemical Company (Koch) (Ref. 32), the American Water Works Association (AWWA) (Ref. 33), and the Association of Metropolitan Water Agencies (AMWA) (Ref. 34). These comments and EPA's responses to them are summarized below.

1. *Testing advocated.* The AWWA (Ref. 33) commended EPA in its use of TSCA and data from the SDWA to protect drinking water supplies by requiring testing for development of HAs. The AWWA believes this information is critical for the protection of human health. The AMWA (Ref. 34) commented that it strongly supports the development of national drinking water standards for contaminants which pose a threat to public health and occur in drinking water. AMWA also commented that the drinking water data support the section 4 findings and that it is appropriate to require testing for acute, subacute, and chronic health effects including neurotoxicity and developmental toxicity. The AMWA stated that it strongly supports such testing to help insure the protection of drinking water supplies and public health.

2. *Justification for short-term HAs.* Monsanto Company (Ref. 6) commented that EPA has not provided sufficient justification or rationale for the establishment of HAs, particularly 1–day, 10–day, and Longer-term HAs, in the proposed test rule or in the reference on drinking water health advisories (Ref. 40).

EPA disagrees. In the introduction to the proposed test rule, EPA stated that the HAs are needed to provide guidance to Federal, State, and local officials who are responsible for protecting health after chemical spills or contaminations have occurred. Moreover, this rule does not establish any HAs. HA levels suggest concentrations of a chemical in drinking water that would not be expected to result in an adverse health effect for 1–day, 10–day, longer-term, or lifetime human exposures (55 FR 21393, May 24, 1990). Although described as an unlikely scenario by Monsanto, EPA knows chemical spills may result in transient contamination of drinking water supplies for which short-term exposure criteria are more appropriate than are the usually more stringent chronic-exposure criteria. In fact, there have been numerous instances of drinking water supplies (both ground and surface water) being contaminated as a result of chemical spills and accidents and also some cases where the inlet to drinking water supplies has been shut off because of chemical spills in rivers, e.g., Potomac River (Refs. 41–44) and Ohio River (Refs. 45 and 46). In such instances EPA has provided guidance on the hazards of substances detected in drinking water (Ref. 38), and drinking water professionals have commented on how important this guidance is to them (Ref. 33 and 34). Therefore, EPA believes that the establishment of HAs, including the shorter-term HAs, is justified in general and specifically for the substances in this rule, all of which have been found in drinking water. As stated previously, however, this rule does not itself establish any HAs but rather only requires testing to develop data which EPA may use to develop HAs.

3. *Exposure findings*—a. *Substantial production.* CMA (Ref. 1) commented that EPA did not define substantial production and, along with Monsanto (Ref. 6), commented that EPA did not disclose production volumes because they were Confidential Business Information (CBI). CMA, therefore, suggested EPA use general production ranges to justify its finding for "substantial production." Since these comments were received, EPA has defined what it considers substantial production in the final statement of policy for TSCA section 4(a)(1)(B)(i) findings (58 FR 28736, May 14, 1993). This policy states that aggregate annual production (including imports) in excess of 1 million pounds is considered substantial. By using a 1-million- pound threshold, only the top 11 percent of the chemicals reported on the TSCA inventory are defined as being produced in substantial quantities. Thus, EPA believes it to be a reasonable interpretation of TSCA section 4(a)(1)(B) to consider aggregate annual production in excess of 1 million pounds to constitute "substantial production."

Monsanto (Ref. 6) commented that EPA relied on "obsolete TSCA inventory production information" to support its exposure finding. EPA did not rely only on 1977 TSCA inventory data, but also on the 1986 and 1990 updates of these data and found that chloroethane and 1,1-dichloroethane are produced in volumes over 100 million pounds, and 1,1,2,2-tetrachloroethane and 1,3,5-trimethylbenzene are produced in volumes over 1 million pounds. Because of these production volumes and the reasons set forth in the final statement of policy for TSCA section 4(a)(1)(B)(i) findings, a substantial production finding is made for these four substances. EPA is deferring action on the proposed testing of *n*-propylbenzene under TSCA section 4(a)(1)(B)(i) because production is not substantial at this time. However, because this chemical has been found in drinking water, EPA will monitor future updates of the TSCA inventory data base and will reconsider the need for testing of *n*-propylbenzene at that time. Alternatively, EPA may initiate rulemaking pursuant to sections 8(a) and/or 5(a)(2) of TSCA to monitor for such changes by requiring the notification of the Agency prior to any future manufacture, importation or processing of *n*-propylbenzene.

b. *Substantial release.* Several comments from industry challenged the finding that there is or may be substantial releases of all the subject chemicals. HSIA (Ref. 5) indicated that EPA could not support a finding of potential substantial release for 1,1,2,2-tetrachloroethane since it is a byproduct of the closed system production of methyl chloroform. HSIA concluded that the presence of 1,1,2,2-tetrachloroethane in some ground and surface waters may be due to past land disposal of this chemical which is no longer practiced, and that current environmental contamination should not be used to support a finding of "substantial" environmental release. Vista Chemical Company (Ref. 8) indicated that it is an inadvertent producer of chloroethane, 1,1-dichloroethane, and 1,1,2,2-tetrachloroethane, but that these substances are incinerated and "the potential for environmental releases or public exposure is insignificant." Monsanto (Ref. 6) commented that "in order for EPA to make a finding under the 'enter(s) the environment in substantial quantities' test, there must be a reasonable determination that such is the case."

In the final statement of policy explaining how EPA interprets its legal authority to make TSCA section 4(a)(1)(B)(i) findings, EPA defined substantial release for the majority of chemicals in production as 1 million pounds per year or 10 percent of production, whichever is less (58 FR 28736, May 14, 1993). As stated in the policy, the 1 million pounds per year threshold is based on the existing information EPA has about the releases of existing chemicals. The major source of information EPA has about chemical release is the Toxics Release Inventory (TRI) required under section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) and the Pollution Prevention Act of 1990. Section 313 of EPCRA requires that persons who manufacture or process certain listed chemical substances in excess of 25,000 pounds per year or otherwise use chemical substances in

excess of 10,000 pounds per year report releases of listed chemicals to EPA. Because the TRI encompasses only a limited number of chemical substances and categories, and because companies only report once they meet an applicable threshold, TRI does not represent the entire universe of chemicals or releases of chemicals. Nevertheless, EPA has found that only 37 percent of chemicals reported on TRI have releases in excess of 1 million pounds per year. Thus, EPA believes it to be a reasonable interpretation of TSCA section 4(a)(1)(B)(i) to consider releases in excess of 1 million pounds per year to constitute "substantial environmental release." Applying these criteria, a finding of substantial release can be made for chloroethane. According to the TRI, 4.86 million pounds of chloroethane were released to the environment in 1989 (Ref. 11). The quantity of 1,1,2,2-tetrachloroethane released to the environment in 1989 according to TRI was only 41,131 pounds (Ref. 11). There were no TRI data available on 1,1-dichloroethane, n-propylbenzene, or 1,3,5-trimethylbenzene, and additional information on the extent of their release to the environment was not submitted.

CMA (Ref. 1) commented that EPA cannot rely on TRI data alone to support a finding for substantial environmental release, but must combine these data with monitoring and environmental fate data. EPA disagrees with CMA that monitoring and chemical fate data must be considered to make the substantial release finding, and this position was supported by the cumene ruling in *CMA et al. vs. EPA*, 899 F.2d 344 (5th Cir. 1990) (Ref. 39). The TRI data are estimates provided by industry about chemical release and therefore, EPA believes it is reasonable to rely on them. Furthermore, EPA does not interpret the term "enters the environment" to require it to demonstrate persistence or exposure.

Monsanto (Ref. 6) commented that the proposed test rule reported that over 4 million pounds of chloroethane were released to air, but that there was no information on the release to surface waters which, Monsanto believes, should be the primary information considered since surface waters are a source of drinking water. In 1989 4.86 million pounds of chloroethane were released to the environment; of which 71,749 pounds were discharged directly to water. Although a much greater quantity is released to air than is discharged to water, there is, nevertheless, widespread contamination of drinking water by chloroethane. EPA believes that knowledge of how a chemical enters the environment does not in itself predict the ultimate distribution of that chemical in the various environmental media (air, water, land) because a substance may migrate between environmental media. Therefore, EPA believes the total amount of a chemical released to the environment should be the primary consideration in making a finding for substantial release.

c. *Significant or substantial human exposure.* The Association of Metropolitan Water Agencies (AMWA) (Ref. 34) commented that the drinking water data are clearly sufficient to support a finding that there is substantial exposure to the five chemical substances. EPA agrees with this comment, as discussed below in this unit.

CMA (Ref. 1) commented that EPA has not complied with the cumene court ruling which requires EPA to articulate its definition of "substantial exposure" and that the proposed test rule for the OW chemicals did not cite the standards or criteria by which EPA defines the concept of 'substantial or significant' human exposure in section 4(a)(1)(B) of TSCA.

CMA submitted this comment before EPA proposed and finalized its policy statement which articulated its criteria for determining potential substantial exposure under section 4(a)(1)(B) of TSCA. In the final statement of policy published on May 14, 1993 (58 FR 28736), EPA established the criteria for substantial human exposure as 100,000 persons in the general population, 10,000 consumers, or 1,000 workers. EPA believes that the different numerical thresholds for workers, consumers, and the general population are necessary to reflect the inherent differences in each probable exposure scenario (e.g., workers generally are exposed on a more routine or direct basis than consumers, and consumers are generally exposed on a more direct basis than the general public).

Comments on the application of the policy to chloroethane and 1,1,2,2-tetrachloroethane were received from HSIA (Ref. 30). HSIA stated that the application of the proposed policy to these chemicals was generic, based upon total production volume and survey data of disposal sites, and that an attempt should have been made to identify and analyze source, production method, intensity, duration, and/or frequency of exposure. EPA agrees that knowledge of these factors is desirable; however, such knowledge is not required to make the substantial human exposure finding under TSCA section 4(a)(1)(B)(i). These types of data are not usually available and testing should not be rejected simply because these data are nonexistent. Even if detailed exposure data were available, in the absence of reliable health or environmental effects data, it is impossible to determine what exposures are acceptable. Indeed, if adequate health effects data were available, testing would not be necessary.

CMA (Ref. 1) commented that EPA did not cite any data which demonstrated that the OW chemicals have been found in drinking water, but instead relied on groundwater, soil, and surface water monitoring data. CMA indicated that the data presented did not provide the "substantial evidence" required by TSCA to support exposure findings because (1) EPA possesses an extensive database regarding the levels at which various contaminants have been detected in drinking water sources around the country and these have been reviewed in other exposure-based test rules, and (2) EPA should obtain the available monitoring data on these chemicals before it reaches any conclusions about the magnitude of human exposure.

EPA under TSCA must provide "substantial evidence" in the rulemaking record that there is or may be significant or substantial human exposure. The drinking water data which were not available when this test rule was proposed, have since been provided for comment (56 FR 32294, July 15, 1991 and 57 FR 14371, April 20, 1992). The data provided on July 15, 1991, show that all five of these chemicals have been found in drinking water in the United States. This includes community drinking water systems of America's large cities (e.g., Miami, Philadelphia, Cincinnati, Seattle, New Orleans, and Washington, DC), private drinking water wells, and finished drinking water from ground water. The presence of these chemicals in these water supplies alone will result in the exposure of millions of persons and supports the finding of substantial human exposure. The data provided on April 20, 1992, further demonstrated contamination of drinking water by the five chemicals in this rule.

HSIA (Ref. 30) commented that 1,1,2,2-tetrachloroethane is not a commercial product, but an intermediate to which there is no potential for human exposure. Also, HSIA commented that chloroethane is a gas at room temperature and that human exposure would likely be only by inhalation.

The information EPA provided for the two supplemental comment periods, on

which HSIA did not comment, showed that 1,1,2,2-tetrachloroethane and chloroethane have been found in drinking water in many cities and states in the United States (56 FR 32292, July 15, 1991 and 57 FR 14371, April 20, 1992).

CMA (Ref. 1) and Monsanto (Ref. 6) also commented that if EPA examined data concerning physical/chemical properties and environmental fate of these chemicals and evaluated such characteristics as volatility, mobility, and biodegradation, that EPA would conclude that the migration of the OW chemicals to public water supplies as a result of groundwater contamination or surface water spills is an unlikely exposure scenario.

Although EPA agrees with CMA that surface water spills (and other releases) will result in some volatilization of the chemicals, these chemicals have similar Henry's Law constants and volatilization half-lives, and chloroethane has been detected in drinking water taken from surface waters (Ref. 10). Therefore, it is reasonable to assume that all of them could contaminate drinking water if a surface spill or other release occurred. Furthermore, groundwater contamination or releases from hazardous waste or landfill sites also have potential for contaminating drinking water. These chemicals are stable, transportable in groundwater, and have been detected in drinking water obtained from surface and groundwaters (Ref. 10). Therefore, it is EPA's opinion that the physical/chemical properties and environmental fate of these chemicals would suggest that groundwater contamination and surface water spills or other releases could lead to exposure via drinking water.

CMA (Ref. 1) commented that EPA made no effort to link the presence of the OW chemicals in groundwater and surface water to activities conducted at manufacturing and processing sites, a shortcoming they concluded was similar to that which the Fifth Circuit identified in the cumene case. Thus, CMA commented, EPA cannot sustain its exposure finding for the OW chemicals without some evidence linking the activities of their manufacturers and processors with the groundwater and surface water samples on which the Agency relies.

EPA's exposure finding does not depend solely on the presence of these chemicals in ground and surface waters, but also on the positive drinking water monitoring data which EPA made available (56 FR 32229, July 15, 1991 and 57 FR 14371, April 20, 1992). In addition, an exposure finding based on distribution in commerce, use, or disposal, requires both manufacturers and processors to conduct testing under TSCA section 4(b)(3)(B)(iii). It is, therefore, not necessary to specify linkage to one group or another.

Nevertheless, EPA believes that there is little doubt that the presence of the three chlorinated OW chemicals (chloroethane, 1,1-dichloroethane, 1,1,2,2-tetrachloroethane) is a result of industrial activities. These chemicals are not naturally formed. It is well known, as mentioned by many of the commenters, that these chemicals were landfilled before RCRA requirements prevented such activities. The detection of these three chemicals at hazardous waste sites may certainly be due to these past disposal practices; but while the TRI data would suggest that small amounts are still being released to or injected in the ground (Ref. 11), these past and present disposal practices can nonetheless contribute to current and future exposures.

Concerning the other OW chemical, 1,3,5-trimethylbenzene, there is evidence that it is released from non-petroleum manufacturing and processing plants; 1,3,5-trimethylbenzene has been found in effluents from the manufacture of textiles and plastics (Ref. 10). EPA also considers 1,3,5-trimethylbenzene to be released to the environment from the manufacturing, use, and disposal of gasoline (Ref. 10) because it is present in the C9 hydrocarbon fraction in gasoline (50 FR 20662, May 17, 1985). In addition, all four chemicals may be accidentally spilled while in transit.

The Koch Chemical Company (Ref. 32) commented that EPA did not support a finding for substantial human exposure to 1,3,5-trimethylbenzene because the total population exposed to 1,3,5-trimethylbenzene in drinking water in three states (Alabama, Massachusetts, and Rhode Island) did not exceed 200,000 persons.

The drinking water data from these three states indicated that 199,000 persons in the general population were exposed to 1,3,5-trimethylbenzene in drinking water (Ref. 31). EPA's guiding criterion for finding general population exposure substantial under TSCA is 100,000 persons. EPA, therefore, has supported a finding for substantial exposure to 1,3,5-trimethylbenzene.

The Koch Chemical Company (Ref. 32) commented that it and its customers for 1,3,5-trimethylbenzene are in the states of Texas, Kansas, and South Carolina and that there were no drinking water data from these states demonstrating contamination by 1,3,5-trimethylbenzene. Koch, therefore, believes that it should not be required to share in the testing costs of 1,3,5-trimethylbenzene.

EPA did not present data from these three states because they were not available. EPA has made the necessary findings under TSCA section 4(a)(1)(B) to support testing of 1,3,5-trimethylbenzene. Koch, as the largest manufacturer of pure 1,3,5-trimethylbenzene, is subject to this test rule under TSCA section 4(b)(3)(B), and is therefore responsible for its share of the testing costs.

4. *Derive HAs from existing data—a. Use of other methods to derive HAs.* CMA (Ref. 1) and the Monsanto Company (Ref.6) recommended that, rather than requiring further data development, EPA consider other methods to derive HAs from existing data, e.g., oral LD50 values and subacute and subchronic inhalation toxicity studies. CMA and the Monsanto Company cited Weil and McCollister (Ref. 12), Weil et al. (Ref. 13), and McNamara (Ref. 14) as authorities for extrapolation of short-term data to long term no-effect levels. CMA and the Monsanto Company proposed the calculation of 1–day HAs using the LD50 divided by 10 as an estimated 1–day No-Observed-Effect-Level (NOEL) and 10–day HAs using the LD50 divided by 20 as an estimated 10–day NOEL. According to CMA and Monsanto, Weil et al. (Ref. 13) found that the LD50 divided by 20 would encompass the No-Observed-Adverse-Effect-Level (NOAEL) or NOEL for a 7–day dosing regimen for 95 percent of the chemicals they evaluated, and Weil et al. (Ref. 13) and McNamara (Ref. 14) found that the LD50 divided by 100 would encompass the NOAEL or NOEL from a 90–day study for 95 percent of the chemicals they evaluated.

While this statement is partially correct, it does not reflect the conclusions of the cited authors as to the usefulness of these relationships in predicting longer-term no-effect levels from LD50 data. In addition, it should be noted that neither Weil and McCollister (Ref. 12), nor Weil et al. (Ref. 13) nor McNamara (Ref. 14) presented any analysis of potential extrapolations from LD50 values to 1–day or 10–day NOELs. Weil et al. (Ref. 13), concluded from data obtained in their laboratory that the relationship between the oral LD50 values and the 90–day minimum effective values (MiEs) was poor and that the relationship between LD50 values and the 7–day MiEs was only somewhat better. Weil et al. (Ref. 13) did not recommend extrapolation from the

LD50 to either the 7 or the 90–day MiE because of the wide spread of LD50/MiE ratios (from 0.2 to >512 for LD50/7–day MiE and from <0.4 to >1,939 for LD50/90–day MiE). McNamara (Ref. 14), analyzing literature data on a greater number of chemicals, found an even greater variability in the relationship between LD50 values and 90–day no-effect levels and also did not recommend extrapolating from LD50 values to a 90–day no-effect level. Furthermore, neither the EPA, nor the National Academy of Science (NAS), has adopted such a method of extrapolation. Guidelines for derivation of EPA drinking water health advisories specifically state that lethality data are not to be used as a basis for these advisories (Ref. 37, page 14). Similarly, the NAS (Ref. 22) stated that it did not use LD50s as a basis for short-term (24–hour or 7–day) drinking water advisories. There may be a huge cost to society either to human health or from requiring expensive and unnecessary treatment or providing alternative drinking water sources if HAs are based on poor methodology.

Vulcan Chemicals (Ref. 9) commented that regulatory agencies have often used data from single-dose 14–day studies, primarily LD50 or LC50 values, but also "some estimate of a no-effect-level," to estimate NOAELs. While adequate dose-effect data from oral single-dose 14–day studies could be appropriate as the basis for a 1–day HA, EPA is not aware of any use of LD50 data to estimate NOAELs by regulatory agencies.

CMA (Ref. 1) and Monsanto (Ref. 6) presented a table of HAs calculated by the EPA as compared with "theoretical HAs" calculated from the LD50 by extrapolating to a NOEL using the above method, and then applying an uncertainty factor of 100. Of the 13 chemicals with 1–day HAs calculated by EPA, the LD50-based HA was lower for 11, and was higher by a factor less than 2 for the remaining two chemicals. Hence, the LD50-based value was usually as protective as the EPA value for the 1–day HA. Of the seven chemicals with 10–day HAs calculated by EPA, however, the LD50-based HA was higher than the EPA HA for four chemicals. For two of these chemicals, the LD50-based HA was higher by a factor of about 2 and for the other two chemicals, the LD50-based HA was higher by a factor of about 10. Hence, this method of estimation is not as protective for the 10–day HA as the EPA value.

CMA (Ref. 1) proposed that EPA establish theoretical HAs based on LD50s and allow manufacturers and processors the option of conducting short-term studies if they found the proposed HA levels unacceptable. In view of the diminished protectiveness of 10–day HAs by the LD50 method, as noted above, EPA concludes that this approach is not acceptable. CMA also suggested that EPA compare the NOAELs identified in 90–day studies to values based on LD50s. The work by Weil et al. (Ref. 13) and McNamara (Ref. 14) addressed this issue, as discussed previously, and concluded that the relationship between LD50 values and 90–day no-effect or minimal effect levels was too poor for the LD50 to be used as a basis for extrapolation to 90–day exposure. Hence, there would appear to be no justification for EPA to adopt this approach. CMA also noted that EPA has established shorter-term HAs based on NOAELs identified in 90–day and lifetime studies, and that EPA should consider doing so for these chemicals, and remove the requirement for the separate 14–day studies from the test rule. While EPA has used this suggested approach as a conservative measure in the absence of short-term exposure data, these HAs may be revised as new data become available.

b. *Chloroethane data.* CMA (Ref. 1), HSIA (Ref. 5) and the Dow Chemical Company (Ref. 2) commented that EPA should use the available short-term and subchronic inhalation toxicity studies (Refs. 15-17) on chloroethane to derive drinking water HAs or should support its apparent conclusion that these data are insufficient as the basis for HAs. To use these data EPA would have to extrapolate from inhalation to oral exposure, which can usually only be justified when adequate pharmacokinetic data for both routes are available and indicate that the fate of the chemical is not strongly route-specific, or when the available toxicity data indicate that toxicity by both routes is similar. For chloroethane, however, pharmacokinetic data for both routes are inadequate and toxicity data for oral exposure are lacking. In addition, the available short-term and subchronic studies do not fully conform to the 14–day repeated-dose and 90–day toxicity test guidelines.

The Dow Chemical Company (Refs. 2 and 3) and HSIA (Ref. 5) commented, based on calculations of theoretical retained inhaled dose and oral dose, that tissue concentrations of chloroethane and its metabolites attained at the high-dose in the inhalation studies would exceed those resulting from drinking water administration at the solubility limit of chloroethane. Because data regarding absorption, distribution, and elimination of chloroethane are not available, such theoretical calculations may have little validity in terms of actual tissue concentrations. EPA agrees with the statement by the Dow Chemical Company (Ref. 2) that "data obtained by routes other than the most relevant should be used with caution and on a case-by-case basis."

Both the Dow Chemical Company (Ref. 3) and HSIA (Ref. 5) mention that a single-exposure inhalation disposition study is being initiated at the Dow Chemical Company to clarify assumptions used in calculating the retained inhalation dose. EPA believes that this objective may be met by the study, but because this study looks only at disposition from inhalation exposure, it cannot be used to predict disposition from the oral route of exposure.

c. *1,1-dichloroethane data.* The Dow Chemical Company (Ref. 2) commented that an NCI gavage study (Ref. 18) and a drinking water study of 1,1-dichloroethene by Klaunig et al. (Ref. 19) were not mentioned in the proposed test rule and should be considered. EPA did evaluate and cite the NCI study (Ref. 18) in the proposed test rule (55 FR 21393 at 21395-6 and 21399, May 24, 1990). This study was considered inadequate for the derivation of 10–day, Longer-Term and Lifetime HAs because the subchronic portion of the study was only 6 weeks in duration and did not include histopathological examinations and because of the high, compound-related mortality in both low-dose and high-dose male rats in the chronic portion of the study. The study by Klaunig et al. (Ref. 19) provides limited information on the toxicity to male mice following 24– and 52–week exposures to 1,1-dichloroethane in drinking water. The protocol falls far short of the proposed subchronic oral toxicity guidelines or the chronic oral toxicity guidelines because only one species and sex were used, only two dose levels were administered, and a limited number of toxicological endpoints were evaluated.

d. *1,1,2,2-tetrachloroethane data.* The Dow Chemical Company (Ref. 2) commented that the two studies of tetrachloroethane by NCI (Ref. 20) and Gohlke et al., (Ref. 21) were rejected by EPA with no explanation of why they were considered inadequate, leaving the reader to infer that they were rejected because of apparent disagreement between the results. EPA pointed out in the proposed test rule that the NCI study (Ref. 20) was considered inadequate for estimating 10–day, Longer-term, and Lifetime HAs because the subchronic range-finding study was only 6 weeks long and did not include histopathological examinations and

because in the chronic study, high compound-related mortality that may have been associated with pneumonia occurred in the female rats at both treatment levels. The Gohlke et al. study (Ref. 21), conducted by gavage in male rats for 2, 4, or 10 days, 6 weeks, and 27 weeks is not consistent with the proposed 14–day oral toxicity test guideline or the subchronic test guideline in terms of number of species and sexes, dose levels, and toxicological endpoints. Furthermore, the reporting of methods and results was inadequate to support evaluation of dose-effect-duration relationships or meaningful comparison with the NCI study (Ref. 20).

e. 1,3,5-trimethylbenzene data. The Dow Chemical Company (Ref. 2) and the Koch Chemical Company (Ref. 32) commented that EPA did not explain why the prior toxicity studies on commercial C9 solvents, conducted under a section 4 test rule, are inadequate for evaluating the toxicity of 1,3,5-trimethylbenzene. In the proposed test rule for the OW chemicals, EPA indicated that inhalation data on a mixture that may contain as little as 15 percent trimethylbenzenes (actual amount is 8 percent) is not appropriate for evaluating the oral toxicity of pure 1,3,5-trimethylbenzene. Evidence of toxicity from exposure to such a mixture could be due to components of the mixture other than 1,3,5-trimethylbenzene, or to additive or interactive effects of the various mixture components making it unlikely that effects could be attributed to 1,3,5-trimethylbenzene alone. Even if that were the case, extrapolation from inhalation to oral exposure would usually require additional supporting evidence as previously discussed for chloroethane.

5. *Coordination of testing needs with other branches and agencies.* CMA (Ref. 1) and Monsanto Company (Ref. 6) commented that three of the compounds included in the proposed test rule are also the subjects of the Agency for Toxic Substances and Disease Registry (ATSDR) toxicological profiles. These three compounds are chloroethane, 1,1-dichloroethane, and 1,1,2,2-tetrachloroethane. Both CMA and the Monsanto Company recommended that EPA coordinate its testing proposal with ATSDR's data needs. The Monsanto Company further suggested that testing needs and priorities be coordinated through the Interagency Testing Committee (ITC). While the ITC provides one mechanism for coordination of testing, the Office of Pollution Prevention and Toxics (OPPT) can and does take testing recommendations from other branches of EPA or from other agencies and initiates action on these recommendations.

CMA further recommended that EPA defer further rulemaking under section 4 of TSCA until ATSDR completes its identification of priority data needs for the above three chemicals. EPA notes that ATSDR has issued a Toxicological Profile for each of these 3 chemicals in which data needs are identified (Refs. 25, 26, and 27). In addition, in October 1991, ATSDR identified priority data needs for chloroethane (56 FR 52178, October 17, 1991) to be oral toxicity studies with acute (14 days or less) and intermediate (15–365 days) duration exposure. Subsequent communication with ATSDR confirmed that these priority data needs for chloroethane will be satisfied by the testing required in this rule (Ref. 29). ATSDR has not identified priority data needs for 1,1-dichloroethane and 1,1,2,2-tetrachloroethane (Ref. 29), but the ATSDR Toxicological Profiles (Refs. 26 and 27) indicated that oral toxicity studies of intermediate duration are needed. The testing required by this final test rule should satisfy the data needs identified thus far by ATSDR for both these chemicals. ATSDR also lists testing needs in addition to what OW has requested, but it is uncertain when these testing programs will be initiated by ATSDR, NTP, or EPA. Because of this, EPA will not defer rulemaking to require testing which it needs now to develop HAs. Also, ATSDR is required to coordinate with EPA to avoid the conduct of duplicative research (55 FR 11566, March 28, 1990), and therefore, will be aware of EPA's action and will take it into consideration.

CMA (Ref. 1) commented that although the same set of concerns underlies OW's and ATSDR's research agendas with regard to the above three chemicals (i.e., contamination of drinking water from chemicals at hazardous waste sites), there is no indication that OW and ATSDR consulted with each other about the testing that would best meet their common needs. EPA and ATSDR are required to take note of each other's activities. In this case, both agencies simultaneously and independently proposed the same priority testing needs for chloroethane including oral toxicity studies in drinking water for short-term exposure and for subchronic/intermediate exposure (EPA: 55 FR 21393, May 24, 1990 and ATSDR: 56 FR 52178, October 17, 1991). EPA believes the agreement of ATSDR on the needed testing further supports EPA's decision to require these tests. EPA also believes that any duplication of effort which may have occurred will be minimized in the future by relying on the recently developed Master Testing List (Ref. 28) to coordinate testing with ATSDR. It should be noted, however, that the testing needs identified by ATSDR were not an exact duplication of the testing proposed by EPA. ATSDR's concerns extend beyond drinking water exposure to other pathways of oral exposure and to inhalation and dermal exposure, whereas OW's concerns are focused on the effects of these substances as a result of consuming contaminated drinking water.

6. *Proposed testing and test standards.* CMA (Ref. 1), Eastman Kodak (Ref. 4), HSIA (Ref. 5), and Vulcan (Ref. 9) commented that a separate 14–day study should not be conducted to determine a NOAEL or LOAEL that could be extrapolated from a 90–day study. The CMA (Ref. 1), the Monsanto Company (Ref. 6), Vulcan (Ref. 9), and Shell Oil Company (Ref. 7) also commented that 14–day studies are generally used only as range-finding studies for longer term studies and, along with Kodak (Ref. 4), commented that they have little value for regulatory use because of their short duration. In contrast, the Dow Chemical Company (Ref. 2) urged EPA to use results from a routine 2–week probe study to estimate the 10–day HA, and validate the value using data from the 90–day study. Dow further suggested that EPA give manufacturers or processors who find such a 10–day HA unacceptable the option of conducting a 14–day study using a protocol that they would submit for EPA approval.

EPA has attempted to base estimated 10–day HAs on routine probe studies, but uncertainties associated with the results from the usual probe study, even when interpreted in light of findings in an associated 90–day study, diminish the confidence that can be placed in the 10–day HA. Further, uncertainties in the studies would compel EPA to apply higher uncertainty factors, possibly resulting in lower HA values. NOAELs and LOAELs identified from studies suitable for use in determining a Longerterm or Lifetime HA are often lower than those determined in the 14–day study. Extrapolating the NOAEL and/or LOAEL from a 90–day study would likely result in a lower 10–day HA. Low HA values lead to higher clean-up costs and in some cases the use of alternative drinking water sources with additional costs and hardships to the consumer. These uncertainties would not be addressed in a consistent manner by giving the manufacturers/processors the option to perform a 14–

day test when they find an HA "unacceptable" (i.e., too low). Therefore, EPA believes the NOAEL and/or LOAEL from the 14–day study should be used to estimate 1– and 10–day HAs whenever possible.

CMA (Ref. 1) and the Monsanto Chemical Company (Ref. 6) suggested that if a 14–day study is believed necessary, the test animals should be subject only to gross necropsy. EPA believes that for the purposes contemplated by this rule, a 14–day study should be as comprehensive in its examination of endpoints as a 90–day study and should, therefore, histologically examine the same organs and tissues as required in the 90–day study. To do less might result in an important endpoint of toxicity being overlooked. EPA, however, has reconsidered the requirement to do histological analysis of the lungs, kidney and liver of all animals in both the 14–day and 90–day tests. This provision has been modified in this final rule at § 799.5075(c)(1)(i)(B)(*14*) and (2)(i)(B)(*2*) to require that only the lungs be examined in all animals, while the liver and kidney need to be examined in only the high dose animals, and in the lower dose animals only if effects are seen in those organs in the high dose group.

Vulcan Chemicals (Ref. 9) apparently believes that full histopathological examinations were proposed for the satellite group in the 14–day study, but both the proposed 14–day guideline (under § 795.257(e)(11)(vi)) and the final 14–day guideline (under § 798.2650(e)(11)(vi)) specify that only tissue or organs identified as showing effects in the treated groups would have to be examined histopathologically in the satellite groups. The same requirement exists for the 90–day test.

The Shell Chemical Company (Ref. 7) stated that measurements of clinical chemistry and hematology do not appear justified. EPA believes that such measurements are necessary for a complete assessment of potential toxicity. EPA has, however, deleted the requirement to analyze for ornithine decarboxylase and total bilirubin in the 14–day study at § 799.5075(c)(1)(i)(B)(*13*). EPA has also revised its requirement for clinical biochemistry determinations on blood in the 14–day study; these measurements are now recommended, instead of required, to be done twice in the 14–day study, thus making the requirement consistent with the 90–day test guideline.

The Dow Chemical Company (Ref. 2) believed that clarification of both the 14–day and the 90–day test guidelines is needed concerning the clinical chemistry and hematologic parameters to be evaluated in the satellite group. EPA believes that the guideline for the 14–day and 90–day studies is quite clear under § 798.2650(e)(9)(i) where it states that "examinations shall be made on all animals of each sex in each group for rodents [including the satellite groups required by the modifications under § 799.5075(c)(1)(i)(B)(*4*) and (2)(i)(B)(*1*)], and all animals when non-rodents are used as test animals" (i.e., there is no satellite group when non-rodents are used). In other words, clinical chemistry and hematological evaluations must be made on all animals in the studies including, when rodents are used, animals in the satellite groups.

Vulcan Chemicals (Ref. 9) suggested that EPA use the recent NTP protocol for 14–day studies, apparently to show that it is less extensive than the proposed test guideline. EPA observes that the purpose of the NTP 14–day study is limited to range finding, whereas the purpose of the test required by this rule is not only range finding, but also to provide data suitable as the basis for short-term HAs.

CMA (Ref. 1), Eastman Kodak (Ref. 4), and the Shell Oil Company (Ref. 7) objected to the proposed use of five dose levels (instead of three or four) in the 14–day test. CMA and Monsanto (Ref. 6) also objected to the proposed modification of the 90–day test guideline which would require five dose levels be used. Eastman Kodak, apparently unaware of the proposed modification which would require five dose levels in the 90–day study, argued that the 14–day study should have three dose levels to be consistent with the 90–day study. EPA has considered these comments and has decided to require that three dose levels be used in both the 14–day and 90–day tests.

CMA (Ref. 1), HSIA (Ref. 5), the Monsanto Company (Ref. 6), and the Eastman Kodak Company (Ref. 4) commented that if the 14–day repeated-dose oral toxicity guideline cannot be eliminated it should be modified so that it is identical to OECD's 14–day test (Ref. 23), or at a minimum, "consistent" with it. EPA notes that the 14–day guideline is similar to the OECD guideline, with the following exceptions: the TSCA 14–day repeated-dose oral toxicity guideline specifies a greater number of animals per dose level and an ophthalmological examination. EPA is requiring the ophthalmological examination as an additional means to observe the systemic effects of the test chemical and to make the 14–day test consistent with the 90–day test. EPA is also requiring that 20 animals instead of 10 be used at each dose level. The OECD guideline states that "at least 10 animals (5 female and 5 male) should be used at each dose level." Obviously this OECD requirement does not preclude using larger numbers of animals. Other than additional animals and the ophthalmological exam, the protocols, including endpoints of toxicity, are virtually the same.

Vulcan Chemicals (Ref. 9), the Eastman Kodak Company (Ref. 4) and the Dow Chemical Company (Ref. 2) expressed concern about the "excessive" number of animals required by the proposed 14–day guideline. CMA (Ref. 1) stated that EPA must justify the increase in the number of animals in the proposed 14–day guideline. EPA is requiring the 14–day test to satisfy the need for health effects data on which to base short-term HAs. EPA believes the additional animals are necessary to assure that short-term HAs can be based on test results whose statistical validity won't be compromised by a loss of animals during the test. EPA believes the number of animals per dose level is the lowest possible to achieve adequate and reliable results.

The Eastman Kodak Company (Ref. 4) stated that the exposure conditions should be consistent with the subchronic guideline which allows dosing 5 days/week even though the subchronic guideline states a preference for dosing on 7 days/week. Eastman Kodak recommended consistency in the dosing schedule so that the 14–day study can be used to set subchronic dose levels. EPA believes that daily dosing, because it is uninterrupted exposure, is more relevant to drinking water exposure. EPA also believes that dosing for 14 days is useful in setting dose levels for longer duration studies, including studies with a 5 day/week dosing regimen. If Eastman Kodak believes that consistency in dosing is vital to the integrity of these two studies, then the option is available and preferable that dose administration in the subchronic study be conducted 7 days/week instead of 5 days/week.

Vulcan Chemicals (Ref. 9) claimed that when the highest dose in the 14–day protocol is sufficiently high to cause observable toxicity, the lower doses may be too high to allow the determination of a NOAEL. EPA believes that this will not be a problem because the test rule requires that the doses be spaced appropriately so that the lowest dose level produces no evidence of toxicity.

The Eastman Kodak Company (Ref. 4) commented that the age and weight requirements for non-rodent species in the proposed 14–day guideline may be too rigid because of limitations on the

availability of these species and greater variability in their ages and weights. EPA believes that animals will be available and points out that these age and weight requirements are consistent with those already established for the 90–day and chronic oral toxicity studies.

The Eastman Kodak Company (Ref. 4) expressed concern that the specification of drinking water as the preferred route of exposure may not be appropriate for a general 14–day study guideline. EPA notes that the proposed 14–day guideline provided for gavage, dietary or capsule administration in the event that drinking water administration is not feasible.

CMA (Ref. 1) and the Monsanto Company (Ref. 6) claimed that to attain the limit value of 1,000 mg/kg/day as specified for the limit tests in the 90–day and the 14–day test guidelines, a 400–g rat will have to consume 40 ml/day of drinking water containing 10 mg/ml (10,000 mg/L) of the test material. This concentration is above the limits of solubility in water for the selected chemicals.

EPA points out that the 14–day and 90–day test guidelines require that ideally the rats be almost 6 weeks of age or, in any case, no more than 8 weeks of age at the start of the test. Hence, the rats will be smaller than 400 g and will be consuming proportionately larger amounts of water. Nevertheless, the drinking water concentration required to deliver a dose of 1,000 mg/kg/day in the subchronic study would be somewhat higher than the limits of solubility for the most soluble chemicals (chloroethane and 1,1-dichloroethane), about twice as high for 1,1,2,2-tetrachloroethane, and orders of magnitude higher for the least soluble chemical, 1,3,5-trimethylbenzene. Therefore, the limit tests for all four compounds would likely have to be carried out by gavage, which is an alternative offered by the guidelines.

CMA (Ref. 1) and the Monsanto Company (Ref. 6) questioned the relevance of gavage testing to drinking water exposure scenarios. While EPA believes that gavage administration is less desirable, it also believes that results of gavage administration have relevance to assessment of human risk from drinking water exposure, based on considerable experience analyzing results from such studies. Depending on toxic potency, it may be possible to conduct the full three-dose 14–day and 90–day studies for the three more soluble compounds via drinking water. The test guidelines specify only that the highest dose should produce toxic effects, and do not specify the highest dose in mg/kg/day.

Eastman Kodak (Ref. 4) commented that the proposed 14–day guideline should not state a preference for one rodent and one non-rodent species, but rather should be consistent with the subchronic guideline, which allows a choice between a rodent and non-rodent species and does not require two species. EPA notes that the proposed 14–day guideline was consistent with the proposed 90–day subchronic guideline in that both specified testing in two species, preferably (but not required to be) a rodent and non-rodent.

CMA (Ref. 1), the Eastman Kodak Company (Ref. 4), and the Monsanto Company (Ref. 6) objected to the requirement for the use of two species in the 14–day test; Monsanto also objected to the requirement of two species in the 90–day test. CMA and Monsanto argued that the requirement for two species is not necessary to determine the most sensitive species because the most sensitive species can be determined by comparing LD50 values. EPA has reconsidered its proposal to conduct both tests in two species and has decided to require that both tests be conducted in one mammalian species, preferably a rodent, but a non-rodent may be used. EPA believes this decision brings these tests into conformity with similar tests required under TSCA. EPA has also clarified that the same species and strain of animal should be used in both tests. Concerning the most sensitive species, EPA is not aware of any validation of the use of a single-dose LD50 study as a predictor of species sensitivity for longer-term exposure.

The Eastman Kodak Company (Ref. 4) stated that a satellite group should not be required if the 14–day study is being conducted as a range-finding study, but rather should be optional as it is in the subchronic guideline. EPA points out that the 14–day study is not only intended to furnish range-finding information but also to provide a basis for short–term criteria for the protection of human health. Also, if rodents are selected as the test animal, the satellite group is required for the 90–day study (at § 799.5075(c)(2)(i)(B)(*1*)) as well as for the 14–day study to assess reversibility of effects.

CMA (Ref. 1) and the Shell Oil Company (Ref. 7) questioned how data on reversibility, persistence, and delayed occurrence of toxic effects from the satellite groups can be used to calculate HAs and CMA recommended that the requirements for the satellite groups be removed from the test guidelines. EPA uses this information, when available, to aid in deciding whether a given dose level constitutes a NOAEL, LOAEL, or Frank Effect Level (FEL). For example, a mild effect, which was not clearly adverse and which disappeared during the recovery period, would be judged evidence that the dose level was a NOAEL. Conversely, a mild effect, which was not clearly adverse as seen at the end of dosing but which progressed to a slight degenerative change during the post-exposure period, would be judged evidence that the dose level constituted a LOAEL.

CMA (Ref. 1) also suggested that for delayed toxic effects, information that a structurally related chemical produces such effects should be considered to justify a satellite group on a case-by-case basis. EPA believes that this approach would prevent detection of delayed toxicity for some chemicals and that it does not answer the need for information on reversibility and persistence of effects.

7. *Reporting requirements.* The Dow Chemical Company (Ref. 2) stated that EPA should clarify that submission of study plans may occur any time (rather than 45 days or more) prior to initiation of testing, consistent with changes to 40 CFR part 790 (55 FR 18881, May 7, 1990) that became effective June 21, 1990. EPA agrees and has provided clarification in Unit III.E. of this preamble.

8. *Keep the record open for additional data.* The Dow Chemical Company (Ref. 2) believes that additional data may be available now or under development now or in the future. Dow urged EPA to keep the record open for submission of studies that may become available before issuance of the final rule. EPA requested such additional data in the proposed test rule published on May 24, 1990. All additional studies that were submitted or cited were evaluated. The only study cited as in progress (Refs. 3 and 5) is an inhalation pharmacokinetic study of chloroethane, performed by Dow. Even when this study is complete, however, it will not obviate the need for the testing required by this rule because it will not predict or assist in evaluating the toxicity of chloroethane by the oral route.

9. *Economic analysis of proposed rule.* The Monsanto Company (Ref. 6) and CMA (Ref. 1) estimated that the 14–day repeated dose testing proposed by EPA will cost $250,000 for two rodent species or $300,000 for a rodent and a non-rodent species. They did not specify whether this estimate is the cost of the 14–day study for each chemical or for all the chemicals, but did comment that it considered the cost burdensome. In the proposed test rule,

EPA estimated the total testing cost per chemical for the 14– and 90–day studies at $396,130 to $579,590. The probability that this cost would cause an adverse economic impact was considered low (Ref. 35). Also, the cost of the testing program required by this final rule ($219,000 to $328,000) is considerably less than that of the proposed testing, mostly due to reducing the number of species to be tested from two to one, and reducing the number of doses from five to three.

The Koch Chemical Company (Ref. 32) commented that the proposed testing program for 1,3,5-trimethylbenzene would cause a substantial economic impact for its company which would most likely force it to discontinue sales of this chemical in the United States. EPA believes that the economic impact due to the testing of 1,3,5-trimethylbenzene will not be as great as Koch anticipates. First, the cost of the testing program required by this final rule is considerably less than that of the proposed testing as explained above. Second, Koch is mistaken in thinking it is the only manufacturer of 1,3,5-trimethylbenzene. There is another manufacturer of pure 1,3,5-trimethylbenzene and several manufacturers of C9 aromatic hydrocarbons, which contain 1,3,5-trimethylbenzene. The cost of testing 1,3,5-trimethylbenzene would be shared with these manufacturers.

III. Final Testing Requirements

A. Findings

EPA is basing the final health effects testing requirements for chloroethane, 1,1-dichloroethane, 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene on the authority of section 4(a)(1)(B) of TSCA. EPA finds that: All four of the substances are produced in substantial quantities; chloroethane may enter the environment in substantial quantities; there may be substantial human exposure to all of these substances due to their presence in drinking water; there are insufficient data and experience to reasonably determine or predict the effects on human health from disposal and migration to drinking water resources of all of these substances; and testing is necessary to develop these data.

1. *The substances are produced in substantial quantities.* Production volumes submitted by manufacturers for all of the substances subject to this final test rule are listed on the TSCA section 8(b) Inventory. Manufacturers have submitted information on recent production volumes of these substances but have claimed this information as Confidential Business Information (CBI). EPA has reviewed these data and has found that the current reported production volumes of the four substances are substantial according to the guidance of 1 million pounds per year established in the policy on 4(a)(1)(B) findings (58 FR 28736, May 14, 1993). These substances are chloroethane, 1,1-dichloroethane, 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene.

2. *Chloroethane may enter the environment in substantial quantities.* EPA finds that chloroethane may enter the environment in substantial quantities. The Toxic Release Inventory (TRI) compiled under section 313 of the Emergency Planning and Community Right-to-Know Act (Ref. 11) lists releases of chloroethane during manufacturing, processing and use. The TRI reports that in 1989, 4.86 million pounds of chloroethane were released to the environment. The TRI data demonstrate that there is substantial release of chloroethane to the environment during manufacture, processing, use, and disposal.

3. *There may be substantial human exposure to the substances.* EPA believes there may be substantial human exposure to these chemical substances due to their presence in drinking water. All four substances have been found in drinking water in the United States (56 FR 32292, July 15, 1991). This includes community drinking water systems of America's large cities (e.g., Miami, Philadelphia, Cincinnati, Seattle, New Orleans, and Washington, DC), private drinking water wells, and finished drinking water from ground water. For the reasons articulated in the "B" policy, EPA has established criteria as guidance for finding human exposure substantial. For the general population, the criterion is a threshold of 100,000 persons who may be exposed to the chemical in question. The population of each of the cities whose drinking water contains the subject chemicals well exceeds 100,000. EPA, therefore, finds that there may be substantial human exposure to these chemicals. Further supporting this finding is monitoring data of public water systems from nine states (AL, FL, IN, MA, MI, NE, PA, RI, and WV) which EPA added to the docket for this rule and solicited comment on (57 FR 14371, April 20, 1992). These data showed that chloroethane was present in drinking water in four of the nine states; 1,1-dichloroethane in six of the nine states; 1,1,2,2-tetrachloroethane in five of the nine states; and 1,3,5-trimethylbenzene in three of the nine states (Ref. 31).

Further supporting this finding is the presence of these chemicals in ground and surface waters in or near hazardous waste disposal sites. Although monitoring data is available for only a portion of the hazardous waste sites in America, chloroethane has been found in or near hazardous waste sites in 17 states; 1,1-dichloroethane in 24 states; 1,1,2,2-tetrachloroethane in 25 states; and 1,3,5-trimethylbenzene in 7 states (Ref. 24). Many of the hazardous waste disposal sites in or near which these chemicals have been found have qualified for inclusion in the National Priorities List (NPL). As explained in the proposed rule, the NPL is a ranking of facilities nationally for remedial action based primarily on the migration score from the Hazardous Ranking System. A migration score is calculated for ground water, surface water and air by ranking the following factors: the population potentially affected, water use, distance to well or water intake, route characteristics that affect contaminant migration, and contaminant characteristics such as quantity, toxicity and persistence. EPA finds that potential for substantial human exposure exists since the subject chemicals are found at NPL and other hazardous waste sites and because many of these sites were chosen out of concern for the potential for contamination of water sources used for drinking water. In addition, many hazardous waste sites are located in highly populated areas and could be the source of the documented drinking water contamination to which millions of people may be exposed.

4. *Insufficient data to determine or predict.* One substance, 1,3,5-trimethylbenzene, has been the subject of a previous TSCA section 4 rule requiring health effects testing. EPA published a final rule on May 17, 1985 (50 FR 20662), requiring mutagenicity, developmental toxicity, neurotoxicity, reproductive effects, and oncogenicity (if triggered) testing of a mixture of five commercial C9 solvents containing only 8 percent 1,3,5-trimethylbenzene. These tests provided sufficient data on the subchronic effects of C9 solvent mixtures. However, the subchronic tests were done by inhalation and did not use pure 1,3,5-trimethylbenzene. EPA has determined that these inhalation data on the mixture are not adequate to determine reliable HAs for drinking water exposures to this substance; subchronic data on the pure substance from an oral route of exposure are needed.

EPA has performed a search of the published literature and health effects data bases for the four substances in this

final rule. The search focused on locating any oral subacute and subchronic toxicity data.

EPA did not locate any oral 14–day subacute or 90–day subchronic toxicity test data for chloroethane. Although 2–year carcinogenicity bioassays in rats and mice via gavage have been performed with 1,1-dichloroethane, and 1,1,2,2-tetrachloroethane (Refs. 18 and 20), EPA has determined that the resulting data are inadequate for estimating reliable 10–Day, Longer-Term, and Lifetime HAs. The subchronic range-finding studies for these bioassays were only 6 weeks long and did not include histopathology. In the rat bioassays, there were also dose-related mortalities that may have been a result of chronic pneumonia, making these test results questionable.

While Gohlke et al. (Ref. 21) observed degeneration in several organs of rats at doses of 3.2 and 8 mg/kg/day 1,1,2,2-tetrachloroethane for 120 days, NCI (Ref. 20) observed no "treatment related" histopathology in rats at doses ranging from 43 to 108 mg/kg/day for 78 weeks. The results of the Gohlke and the NCI studies are not in agreement and, as discussed earlier, neither is considered adequate for risk assessment.

Therefore, under section 4(a)(1)(B)(ii) of TSCA, EPA has determined that there are insufficient data to reasonably predict or determine the effects on human health from the consumption of drinking water contaminated with each substance examined.

5. *Testing is necessary and relevant:* EPA believes that oral, repeated-dose subacute and subchronic testing of chloroethane, 1,1-dichloroethane, 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene is necessary to determine or predict the effects these substances may have on human health as a result of drinking water exposures. Testing for other endpoints (e.g., mutagenicity, neurotoxicity, reproductive effects, developmental toxicity, and oncogenicity) might also be necessary, but to expedite this rulemaking and obtain the minimal data for establishing HAs, EPA has decided to defer consideration of these endpoints until receipt of data from these tests and monitoring data under section 1445 of the SDWA, or until ATSDR refers these chemicals to EPA for test rules and identifies additional testing needs.

EPA finds under section 4(a)(1)(B)(iii) of TSCA that the data generated from this testing will be relevant in determining whether the disposal and migration to drinking water resources of these substances does or does not present an unreasonable risk of injury to human health. EPA needs these subacute and subchronic data to develop HAs for each of the substances. EPA further believes that the testing of the substances included in this rule will develop the necessary information.

B. Test Standards

On the basis of the findings given in Unit III.A. of this preamble, EPA is requiring health effects testing for chloroethane; 1,1-dichloroethane; 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene. A 14–day oral subacute and a 90–day oral subchronic study are required for each substance. The studies are to be conducted in accordance with EPA's TSCA Good Laboratory Practice Standards (GLPs) in 40 CFR part 792 and the specific TSCA test guideline in 40 CFR part 798.

EPA is requiring that these four substances undergo subacute and subchronic oral testing according to the TSCA test guideline at 40 CFR 798.2650, as modified by this rule. The studies shall be performed using drinking water as the route of exposure. If this route is not feasible, the substances may be administrated by gavage, in the diet, or in capsules. The tests will be performed with one mammalian species, preferably a rodent, but a non-rodent may be used. A variety of rodent species may be used, but the rat is preferred. The species and strain of animals used in the subacute and subchronic tests should be the same.

EPA is requiring that the above-referenced health effects test guideline, and any modifications to this guideline, be the test standards for testing these substances. Data generated from these tests will assist EPA in setting health standards, specifically Health Advisories. EPA believes that these test methods reflect the current state of the science for testing substances such as these for the specified endpoints.

C. Test Substance

EPA is requiring that each of the four substances tested be at least 99 percent pure. EPA has specified relatively pure substances for testing because it is interested in evaluating the effects attributable to the chemicals themselves. This requirement lessens the likelihood that any effects seen are due to impurities or additives.

D. Persons Required to Test

Section 4(b)(3)(B) of TSCA specifies that the activities for which EPA makes section 4(a) findings (manufacture, processing, distribution in commerce, use, and/or disposal) determine who bears the responsibility for testing. Manufacturers are required to test if the findings are based on manufacturing, which includes importing and production of these substances as a byproduct ("manufacture" is defined in section 3(7) of TSCA to include "import"). Processors are required to test if the findings are based on processing. Both manufacturers and processors are required to test if the exposures causing the potential risk occur during use, distribution in commerce, or disposal.

Because EPA has found that there are insufficient data and experience upon which the health risks from the disposal and migration to drinking water resources of the substances subject to this test rule can reasonably be determined or predicted, EPA is requiring that persons who manufacture, import, and/or process (including inadvertent, byproduct manufacture as defined in 40 CFR 791.3), or who intend to manufacture or process these substances at any time from the effective date of the final test rule to the end of the reimbursement period, be subject to the testing requirements for the particular substance as required by this rule. The end of the reimbursement period will be 5 years after the last final report is submitted, or an amount of time equal to that which was required to develop the data, whichever is longer.

Because TSCA contains provisions to avoid duplicative testing, not every person subject to this rule must individually conduct testing. Section 4(b)(3)(A) of TSCA provides that EPA may permit two or more manufacturers or processors who are subject to this rule to designate one such person or a qualified third person to conduct the tests and submit data on their behalf. Section 4(c) provides that any person required to test may apply to EPA for an exemption from the requirement. EPA promulgated procedures for applying for TSCA section 4(c) exemptions in 40 CFR part 790.

Manufacturers (including importers) subject to this rule are required to submit either a letter of intent to perform testing or an exemption application within 30 days after the effective date of the final test rule. The required procedures for submitting such letters and applications are described in 40 CFR 790.45.

Processors subject to this rule, unless they are also manufacturers, are not required to submit letters of intent or exemption applications, or to conduct testing, unless manufacturers fail to submit notices of intent to test or later fail to sponsor the required tests. EPA expects that the manufacturers will pass an appropriate portion of the costs of

testing on to processors through the pricing of their products or reimbursement mechanisms. If manufacturers agree to perform all the required tests, processors will be granted conditional exemptions automatically. If manufacturers fail to submit notices of intent to test or fail to sponsor all the required tests, EPA will publish a separate notice in the **Federal Register** to notify processors to respond; this procedure is described in 40 CFR 790.48.

EPA is not requiring the submission of equivalence data as a condition for exemption from the required testing for the substances subject to this test rule. As noted in Unit III.C. of this preamble, EPA is interested in evaluating the effects attributable to each of the substances themselves and has specified almost pure substances for testing.

Manufacturers and processors subject to this test rule must comply with the test rule development and exemption procedures in 40 CFR part 790 for single-phase rulemaking.

E. Reporting Requirements

EPA is requiring that all data developed under this rule be reported in accordance with its TSCA GLPs, which appear in 40 CFR part 792.

In accordance with 40 CFR part 790 under single-phase rulemaking procedures, test sponsors are required to submit individual study plans prior to the initiation of each study.

EPA is required by TSCA section 4(b)(1)(C) to specify the time period during which persons subject to a test rule must submit test data. EPA's reporting requirements for each of the test standards are specified as follows:

1. The 14–day, repeated-dose, subacute toxicity study on each substance shall be completed and the final report submitted to EPA within 12 months of the effective date of the final test rule. A progress report on each test shall be submitted 6 months after the effective date of the final test rule, and every 6 months thereafter until the final report is submitted to EPA.

2. The 90–day subchronic toxicity study on each substance shall be completed and the final report submitted to EPA within 15 months of the effective date of the final test rule. A progress report on each test shall be submitted 9 months from the effective date of the final test rule and every 6 months thereafter until the final report is submitted to EPA.

TSCA section 14(b) governs EPA disclosure of all test data submitted pursuant to section 4 of TSCA. Upon receipt of data required by this rule, EPA will publish a notice of receipt in the **Federal Register** as required by section 4(d).

Persons who export a chemical substance or mixture subject to a section 4 test rule are subject to the export reporting requirements of TSCA section 12(b). Final regulations interpreting the requirement of section 12(b) are in 40 CFR part 707. In brief, as of the effective date of this test rule, an exporter of any of the substances listed in this rule must make a one-time report to EPA upon the first export of the compound to any one country. EPA will notify the foreign country about the test rule for the substance.

F. Enforcement Provisions

EPA considers failure to comply with any aspect of a TSCA section 4 rule to be a violation of section 15 of TSCA. Section 15 of TSCA makes it unlawful for any person to fail or refuse to comply with any rule or order issued under section 4. Section 15(3) of TSCA makes it unlawful for any person to fail or refuse to: (1) Establish or maintain records, (2) submit reports, notices, or other information, or (3) permit access to or copying of records required by TSCA or any regulation or rule issued under TSCA.

Additionally, TSCA section 15(4) makes it unlawful for any person to fail or refuse to permit entry or inspection as required by section 11. Section 11 applies to any "establishment, facility, or premises in which chemical substances or mixtures are manufactured, processed, stored, or held before or after their distribution in commerce ..." EPA considers a testing facility to be a place where the chemical is held or stored, and therefore, subject to inspection. Laboratory inspections and data audits will be conducted periodically in accordance with the authority and procedures outlined in TSCA section 11 by duly designated representatives of the EPA for the purpose of determining compliance with this final test rule. These inspections may be conducted for purposes which include verification that testing has begun, that schedules are being met, that reports accurately reflect the underlying raw data, interpretations and evaluations, and to determine compliance with TSCA GLPs and the test standards established in the rule.

EPA's authority to inspect a testing facility also derives from section 4(b)(1) of TSCA, which directs EPA to promulgate standards for the development of test data. These standards are defined in section 3(12)(B) of TSCA to include those requirements necessary to assure that data developed under testing rules are reliable and adequate, and such other requirements as are necessary to provide such assurance. EPA maintains that laboratory inspections are necessary to provide this assurance.

Violators of TSCA are subject to criminal and civil liability. Persons who submit materially misleading or false information in connection with the requirement of any provision of this rule may be subject to penalties which may be calculated as if they never submitted their data. Under the penalty provision of section 16 of TSCA, any person who violates section 15 could be subject to a civil penalty of up to $25,000 for each violation with each day of operation in violation constituting a separate violation. This provision would be applicable primarily to manufacturers or processors that fail to submit a letter of intent or an exemption request and that continue manufacturing or processing after the deadlines for such submissions.

This provision would also apply to processors that fail to submit a letter of intent or an exemption application and continue processing after EPA has notified them of their obligation to submit such documents (see 40 CFR 790.28(b)).

Knowing or willful violations could lead to the imposition of criminal penalties of up to $25,000 for each day of violation, imprisonment for up to 1 year, or both. In determining the amount of penalty, EPA will take into account the seriousness of the violation and the degree of culpability of the violator as well as all the other factors listed in TSCA section 16. Other remedies are available to EPA under section 17 of TSCA, such as seeking an injunction to restrain violations of TSCA section 4.

Individuals as well as corporations could be subject to enforcement actions. Section 15 and 16 of TSCA apply to "any person" who violates various provisions of TSCA. EPA may, at its discretion, proceed against individuals as well as companies themselves. In particular, this includes individuals who report false information or who cause it to be reported. In addition, the submission of false, fictitious, or fraudulent statements is a violation under 18 U.S.C. 1001.

IV. Economic Analysis of Rule

To assess the potential economic impact of this rule, EPA has prepared an economic impact analysis that evaluates the potential for significant economic impact of this testing on industry. The economic analysis estimates the costs of conducting the required testing for each of the four substances and evaluates the

potential for significant adverse economic impact as a result of those costs. The analysis incorporates an impact measure based upon unit test cost as a percent of price.

The total testing cost for each of the four substances is estimated to range from $219,000 to $328,000. To predict the financial decision making practices of manufacturing firms, these costs have been annualized. Annualized costs are compared with annual revenue as an indication of potential impact. The annualized costs represent equivalent constant costs which would have to be recouped each year of the payback period in order to finance the testing expenditure in the first year.

The annualized test costs, using a 7 percent cost of capital over 15 years, range from $24,000 to $36,000. Given that these costs are less than one-tenth of one percent of the annual revenues from sales for each of these four substances, EPA believes that the potential for adverse economic impact resulting from the costs of testing is low.

Refer to the economic analysis contained in the public record for this rulemaking for a complete discussion of test cost estimation and potential for economic impact resulting from these costs (Ref. 36).

V. Availability of Test Facilities and Personnel

Section 4(b)(1) of TSCA requires EPA to consider "the reasonably foreseeable availability of the facilities and personnel needed to perform the testing required under the rule." Therefore, EPA conducted a study to assess the availability of test facilities and personnel to handle the additional demand for testing services created by section 4 test rules. Copies of the study, "Chemical Testing Industry: Profile of Toxicological Testing" PB–82–140773, can be obtained for a fee through the National Technical Information Service, 5285 Port Royal Road, Springfield, VA, 22161. A microfiche copy of this study is also included in the docket for this rule. On the basis of this study, EPA believes that there will be available test facilities and personnel to perform the testing specified in this rule.

VI. Rulemaking Record

EPA has established a public record for this rulemaking proceeding (docket number OPPTS–42111C). This record includes:

A. Supporting Documentation

(1) **Federal Register** notices pertaining to this rule consisting of:

(a) Notice of proposed rule on Office of Drinking Water chemicals (55 FR 21393, May 24, 1990).

(b) Notice of TSCA section 4(a)(1)(B) final statement of policy (58 FR 28736, May 14, 1993).

(c) Reopening of comment period for ODW chemicals. (56 FR 32292, July 15, 1991).

(d) Additional information supporting TSCA test rule on Office of Water chemicals. (57 FR 14371, April 20, 1992).

(e) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034, August 17, 1989).

(f) Notice of interim final rule on consent agreement and test rule development and exemption procedures (51 ER 23706, June 30, 1986).

(g) Notice of final rule on testing consent agreements and test rules (55 FR 18881, May 7, 1990).

(h) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(i) Notice of priority data needs for 38 Priority Hazardous Substances (56 FR 52178, October 17, 1991).

(j) Notice of final test rule on ethyltoluenes, trimethylbenzenes, and the C9 aromatic hydrocarbon fraction (50 FR 20662, May 17, 1985).

(2) Support Documents: consisting of:

(a) Safe Drinking Water Act, as amended in 1986 (42 U.S.C. 300f).

(b) TSCA test guideline § 798.2650, Oral Toxicity.

(3) Communications before proposal consisting of:

(a) Written public and intra-agency or interagency memoranda and comments.

(b) Records of telephone conversations.

(c) Records or minutes of informal meetings.

(d) Reports—published and unpublished factual materials including "Chemical Testing Industry: Profile of Toxicological Testing."

B. References

(1) Chemical Manufacturers Association (CMA), Washington, DC. Comments on proposed test rule for the Office of Drinking Water chemicals. Submitted to the Office of Pesticides and Toxic Substances (OPTS), U.S. Environmental Protection Agency (USEPA), Washington, DC 20460. (July 23, 1990).

(2) Dow Chemical Company, Midland, Michigan. Comments on proposed test rule for the Office of Drinking Water chemicals. Submitted to OPTS, USEPA, Washington, DC. (July 23, 1990).

(3) Dow Chemical Company, Midland, Michigan. Comments of the Dow ChemicalCompany on Priority Data Needs for Chloroethane, Docket No. ATSDR–18. Submitted to OPTS, USEPA, Washington, DC. (July 23, 1990).

(4) Eastman Kodak Company, Rochester, New York. Comments on proposed test rule for the Office of Drinking Water chemicals. Submitted to OPTS, USEPA, Washington, DC. (July 12, 1990).

(5) Halogenated Solvents Industry Alliance (HSIA), Washington, DC. Comments on proposed test rule for the Office of Drinking Water chemicals. Submitted to OPTS, USEPA, Washington, DC. (July 23, 1990).

(6) Monsanto Company, St. Louis, Missouri. Comments on proposed test ruie for the Office of Drinking Water chemicals. Submitted to OPTS, USEPA, Washington, DC. (July 20, 1990).

(7) Shell Oil Company. Comments on proposed test rule for the Office of Drinking Water chemicals. Submitted to OPTS, USEPA, Washington, DC. (July 13, 1990).

(8) Vista Chemical Company, Houston, Texas. Comments on proposed test rule for the Office of Drinking Water chemicals. Submitted to OPTS, USEPA, Washington, DC. (July 20, 1990).

(9) Vulcan Chemicals, Birmingham, AL. Comments on proposed test rule for the Office of Drinking Water chemicals. Submitted to OPTS, USEPA, Washington, DC. (July 20, 1990).

(10) Syracuse Research Corporation, Syracuse, NY. Response to public comments, drinking water chemicals. (September 30, 1990).

(11) USEPA. 1989 Toxic Release Inventory. Printout for 1,1,2,2-tetrachloroethane and chloroethane. (April 22, 1991).

(12) Weil, C.S., and McCollister, D.D. Safety evaluation of chemicals: Relationship between short- and long-term feeding studies in designing an effective toxicity test. *Agricultural and Food Chemistry*. 11(6):486–491. (1963).

(13) Weil, D.S., Woodside, M.D., Bernard, J.R., and Carpenter, C.P. Relationship between single-peroral, one-week, and ninety-day rat feeding studies. *Toxicology and Applied Pharmacology*. 14:426–431. (1969).

(14) McNamara, B.P. Concepts in health evaluation of commercial and industrial chemicals. In: Mehlmon, M.A., ed. *New Concepts in Safety Evaluation: Advances in Modern Toxicology*. Vol. 1. Part 1. Hemisphere Publishers, Washington, DC. pp. 61–115. (1976).

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(16) Landry, T.D., Johnson K.A., Phillips J.E., and Weiss, S.K. Ethyl chloride: 11–Day continuous exposure inhalation study in B6C3F1 mice. *Fundamental and Applied Toxicology*. 13:516–522. (1989).

(17) NTP (National Toxicology Program) Toxicology and carcinogenesis studies of chloroethane in F344/N rats and B6C3F1 mice. NTP Technical Report 346. U.S. Department of Health and Human Services, Public Health Service, National Institutes of Health. (1989).

(18) National Cancer Institute (NCI). Bioassay of 1,1-dichloroethane for possible carcinogenicity. NCI/National Toxicology

Program (NTP) TR066. Department of Health Education and Welfare (DHEW) Pub. No. National Institutes of Health (NIH) 78–1316. (1978).

(19) Klaunig, J.E., Ruch, R.J., and Pereira, M.A. Carcinogenicity of chlorinated methane and ethane compounds administered in drinking water to mice. *Environmental Health Perspectives*. 69:89–95. (1986).

(20) NCI. Bioassay of 1,1,2,2-tetrachloroethane for possible carcinogenicity. NCI-CG-TR-27. DHEW Pub. No. (NIH) 78–827. (1978).

(21) Gohlke, R., Schmidt P., and Bahmann, H. 1,1,2,2-Tetrachloroethane and heat stress in animal experiment. Morphological results. *Z Gesamte Hyg Ihre Grenzgeb*. 23(5):278–282. (1977). (In German with English translation).

(22) NAS (National Academy of Sciences). Drinking Water and Health. Volume 3. National Research Council. National Academy Press, Washington, DC. pp. 49–50, 68–69. (1980).

(23) Organization for Economic Cooperation and Development (OECD), Paris, France. OECD Guidelines for testing of chemicals. No 407. "Repeated dose oral toxicity—rodent: 28–day or 14–day study." (May 12, 1981).

(24) Eckel, W. Contract Laboratory Program Sample Management Office, USEPA, Alexandria, VA. 22313. Computer printouts and letter to J. Fisk, Analytical Operations Branch, USEPA, Washington, DC 20460. (June 21, 1988).

(25) Agency for Toxic Substances and Disease Registry (ATSDR). Toxicological Profile for chloroethane. ATSDR/TP–89/07. ATSDR, Atlanta, GA. (December, 1989).

(26) ATSDR. Toxicological Profile for 1,1-dichloroethane. pp. 40–46. ATSDR/TP 90/12. ATSDR, Atlanta, GA. (December 1990).

(27) ATSDR. Toxicological Profile for 1,1,2,2-tetrachloroethane. pp. 34–39. ATSDR/TP–89/22. ATSDR, Atlanta, GA. (December 1989).

(28) USEPA. Master Testing List. Office of Pollution Prevention and Toxics, USEPA, Washington, DC. (December 1, 1992).

(29) ATSDR. Letter from William Cibulas, Research Implementation Branch, to Gary Timm, Chemical Testing Branch, OPPT, USEPA. (January 31, 1992).

(30) HSIA, Washington, DC. Comments on TSCA Section 4(a)(1)(B) proposed statement of policy and reopening of comment period for ODW Chemicals. Submitted to OPTS, USEPA, Washington, DC. (September 13, 1991).

(31) USEPA. Memorandum from James Walasak, Water Supply Technology Branch, to Catherine Roman, Chemical Testing Branch. "Unregulated Contaminant Data." (August 26, 1991).

(32) Koch Chemical Company, Corpus Christi, Texas. Comments on the notice of data availability entitled "Additional information supporting TSCA test rule on Office of Water chemicals." Submitted to the Office of Pollution Prevention and Toxics (OPPT), USEPA, Washington, DC. (May 14, 1992).

(33) American Water Works Association, Washington, DC. Comments on the notice of data availability entitled "Additional information supporting TSCA test rule on Office of Water chemicals." Submitted to the Office of Pollution Prevention and Toxics (OPPT), USEPA, Washington, DC. (May 14, 1992).

(34) Association of Metropolitan Water Agencies, Washington, DC. Comments on the notice of data availability entitled "Additional information supporting TSCA test rule on Office of Water chemicals." Submitted to the Office of Pollution Prevention and Toxics (OPPT), USEPA, Washington, DC. (May 19, 1992).

(35) USEPA. Memorandum from Eileen Neely, Regulatory Impacts Branch, to Steve Ells, Test Rules Development Branch, (April 27, 1989), transmitting economic impact analysis of ODW chemicals proposed test rule. (April 26, 1989).

(36) USEPA. Economic impact analysis of OW chemicals final test rule. (June 10, 1992).

(37) USEPA. "Guidelines for authors of EPA Office of Water Health Advisories for drinking water contaminants." Office of Water. (March 1989).

(38) USEPA. "Ensuring safe drinking water." EPA Journal. pp. 11–13. (September 1985).

(39) CMA (Chemical Manufacturers Association) et al. vs. EPA. 899 F.2d 344(5th Cir. 1990).

(40) USEPA. Office of Drinking Water Health Advisories. "Reviews of Environmental Contamination and Toxicology." ed. G.W. Ware. Vol. 104, pp. 1–8 (1988).

(41) Cohn, D. and Davis, P. "Damage by equipment may have weakened pipeline." The Washington Post, March 30, 1993, pp. A1 and A8.

(42) Cohn, D. "Safeguards faulted in spills." The Washington Post, March 30, 1993, pp. A1 and A9.

(43) Fehr, S.C. and Miller, B. "Spill upsets routine in N.Va." The Washington Post, March 30, 1993, pg. A9.

(44) Cohn, D. and Davis, P. "Firm says less oil recovered." The Washington Post, March 31, 1993, pp. A1 and A16.

(45) The Ohio River Valley Water Sanitation Commission (ORSANCO). "Chronology of ORSANCO Response to a spill." (1990).

(46) ORSANCO. "Assessment of Ohio River water quality conditions, Water years 1988–1989." Ohio River 305(b) Report. 1990.

Confidential Business Information (CBI), while part of the record, is not available for public review. A public version of the record, from which CBI has been deleted, is available for inspection in the TSCA Nonconfidential Information Center (also known as the TSCA Public Docket Office), Rm. G–102, 401 M St. SW., Washington, DC, from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

VII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a regulation is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this test rule is not major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it will not have an annual effect on the economy of at least $100 million, will not cause a major increase in prices, and will not have a significant adverse effect on competition or the ability of U. S. enterprises to compete with foreign enterprises.

This rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 15 U.S.C. 601 et seq., EPA is certifying that this test rule will not have significant impact on a substantial number of small businesses because: (1) They are not likely to perform testing themselves, or to participate in the organization of the testing effort; (2) they will experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this final rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 1,083 hours per respondent. The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Laboratories, Recordkeeping and reporting requirements, Testing.

Dated: October 22, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I, Part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. By adding § 799.5075 to subpart D to read as follows:

§ 799.5075 Drinking water contaminants subject to testing.

(a) *Identification of test substance.* (1) Chloroethane (CAS No. 75–00–3), 1,1-dichloroethane (CAS No. 75–34–3), 1,1,2,2-tetrachloroethane (CAS No. 79–34–5), and 1,3,5-trimethylbenzene (CAS No. 108–67–8) shall be tested in accordance with this section.

(2) Chloroethane, 1,1-dichloroethane, 1,1,2,2-tetrachloroethane, and 1,3,5-trimethylbenzene of at least 99 percent purity shall be used as the test substances.

(b) *Persons required to submit study plans, conduct tests, and submit data.* All persons who manufacture (including import and by-product manufacture) or process, or who intend to manufacture or process, the substances listed in paragraph (a) of this section after the effective date of this section to the end of the reimbursement period shall submit letters of intent to test, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in this section, subpart A of this part, and parts 790 and 792 of this chapter for single-phase rulemaking, for the substances they manufacture subject to exclusions contained in § 790.42(a)(2), (a)(4) and (a)(5). These sections provide that processors, persons who manufacture less than 500 kg (1,100 lbs) annually, or persons who manufacture small quantities of the chemical solely for research and development as defined in § 790.42(a)(5) shall not be required to submit study plans, conduct tests and submit data, or submit exemption applications as specified in this section unless directed to do so in a subsequent notice as set forth in § 790.48(b).

(c) *Health effects testing*—(1) *Subacute toxicity*— (i) *Required testing.* (A) An oral 14–day repeated dose toxicity test shall be conducted with each of the substances designated in paragraph (a) of this section in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650(a); (b)(1); (c); (e)(3), (4)(i), (5), (6), (7)(i), (iv), (v), (8)(vii), (9)(i)(A), (B), (11)(v); and (f)(2)(i). Each substance shall be tested in one mammalian species, preferably a rodent, but a non-rodent may be used. The species and strain of the animals used in this test should be the same as those used in the 90–day subchronic test required in paragraph (c)(2)(i) of this section. The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered by either oral gavage, in the diet, or in capsules.

(B) For the purpose of this section, the following provisions also apply:

(*1*) *Purpose.* To assess and evaluate the toxic characteristics of a substance, the determination of subacute toxicity should be carried out after initial information on toxicity has been obtained by acute testing. The 14–day repeated dose oral study provides information on the health hazard likely to arise from repeated short-term exposure by the oral route over a very limited period of time. It has been designed to permit the determination of the no-observed-adverse-effect level and toxic effects associated with continuous or repeated exposure to a test substance for 14 days and to evaluate reversibility, persistence, and delayed occurrence of toxic effects during a 14–day follow-up recovery period. The test is not capable of determining those effects that have a long latency period for development (e.g., carcinogenicity and life shortening). It will provide information on target organs and the possibility of accumulation, and can be used in selecting dose levels for subchronic studies and for establishing safety criteria for short-term human exposure.

(*2*) *Definitions.* Subacute oral toxicity is the manifestation of adverse effect(s) occurring as a result of the repeated daily exposure of experimental animals to a substance by the oral route for 14 days.

(*3*) *Principle of the test method.* The test substance is administered orally in graduated daily doses to several groups of experimental animals, one dose level per group, for a period of 14 days. During the period of administration the animals are observed daily to detect signs of toxicity. Animals which die during the period of administration are necropsied. At the conclusion of the test, all animals, except the satellite group, are necropsied and histopathological examinations are carried out. The satellite group is necropsied after the 14–day recovery period.

(*4*) *Satellite group (Rodent only).* A satellite group of 20 animals (10 animals per sex) shall be treated with the high dose level for 14 days and observed for reversibility, persistence, and delayed occurrence of toxic effects for a post-treatment recovery period of at least 14 days.

(*5*) *Dose levels and dose selection.* In subacute toxicity tests, it is desirable to have a dose response relationship as well as a NOAEL. Therefore, at least 3 dose levels with a control and, where appropriate, a vehicle control (corresponding to the concentration of vehicle at the highest exposure level) shall be used. Doses shall be spaced appropriately to produce test groups with a range of toxic effects. The data should be sufficient to produce a dose-response curve.

(*6*) *Exposure conditions.* The animals are dosed with the test substance every day for 14 days.

(*7*) *Observation period.* All animals shall be observed daily during the 14–day exposure period.

(*8*) *Observation period of satellite group.* Animals in the satellite group scheduled for follow-up observations shall be kept for at least 14 days further without treatment to detect recovery from, or persistence of, and delayed onset of toxic effects and shall be observed daily.

(*9*) *Administration of test substance.* For substances of low toxicity, it is important to ensure that when administered in the drinking water, by gavage, in the diet, or in capsules, the quantities of the test substance involved do not interfere with normal nutrition. When the test substance is administered in the diet, either a constant dietary concentration (ppm) or a constant dose level in terms of the animals' body weight shall be used; the alternative used shall be specified in the final test report.

(*10*) *Time of administration of test substance.* For a substance administered by gavage or capsule, the dose shall be given at approximately the same time each day, and adjusted on day 7 to maintain a constant dose level in terms of animal body weight.

(*11*) *Observation of animals.* At the end of the 14–day exposure period, all survivors, except those in the satellite group, shall be necropsied. All survivors in the satellite group shall be necropsied after a recovery period of at least 14 days.

(*12*) *Hematology determinations.* Certain hematology determinations shall be carried out at least two times during the test period: Just prior to initiation of dosing if adequate historical baseline data are not available (baseline data)

and just prior to terminal sacrifice at the end of the test period. Hematology determinations which are appropriate to all studies are: Hematocrit, hemoglobin concentration, erythrocyte count, total and differential leukocyte count, and a measure of clotting potential such as clotting time, prothrombin time, thromboplastin time, or platelet count.

(13) *Clinical biochemical determinations.* Certain clinical biochemistry determinations on blood should be carried out at least two times: Just prior to initiation of dosing (if adequate historical baseline data are not available) and just prior to terminal sacrifice at the end of the test period. Test areas which are considered appropriate to all studies are: Electrolyte balance, carbohydrate metabolism, and liver and kidney function. The selection of specific tests will be influenced by observations on the mode of action of the substance. Suggested determinations are: Calcium, phosphorus, chloride, sodium, potassium, fasting glucose (with the period of fasting appropriate to the species), serum alanine aminotransferase, serum aspartate aminotransferase, gamma glutamyl transpeptidase, urea nitrogen, albumin, blood creatinine, and total serum protein measurements. Other determinations which may be necessary for an adequate toxicological evaluation include: analyses of lipids, hormones, acid/base balance, methemoglobin, and cholinesterase activity. Additional clinical biochemistry may be employed, where necessary, to extend the investigation of observed effects.

(14) *Histopathology.* Histopathology of the lungs of all animals shall be performed. Special attention to examination of the lungs of rodents shall be made for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(15) *Evaluation of the study results.* The findings of a subacute oral toxicity study should be evaluated in conjunction with the findings of preceding studies and considered in terms of the toxic effects and the necropsy and histopathological findings. The evaluation will include the relationship between the dose of the test substance and the presence or absence, the incidence and severity, of abnormalities, including behavioral and clinical abnormalities, gross lesions, identified target organs, body weight changes, effects on mortality and any other general or specific toxic effects. A properly conducted subacute test should provide a satisfactory estimation of a NOAEL.

(ii) *Reporting requirements.* (A) Each subacute test shall be completed and the final report submitted to EPA within 12 months of the date specified in paragraph (d)(1) of this section.

(B) For each test, a progress report shall be submitted to EPA beginning 6 months after the date specified in paragraph (d)(1) of this section and at 6-month intervals thereafter until the final report is submitted to EPA.

(2) *Subchronic toxicity*—(i) *Required testing.* (A) An oral 90-day subchronic toxicity test shall be conducted with each of the substances designated in paragraph (a) of this section in accordance with § 798.2650 of this chapter except for the provisions in § 798.2650(e)(3), (7)(i), and (11)(v). The tests shall be performed using drinking water. However, if, due to poor stability or palatability, a drinking water test is not feasible for a given substance, that substance shall be administered either by oral gavage, in the diet, or in capsules.

(B) For the purpose of this section, the following provisions also apply:

(1) *Satellite group (Rodent only).* A satellite group of 20 animals (10 animals per sex) shall be treated with the high dose level for 90 days and observed for reversibility, persistence, and delayed occurrence of toxic effects for a post-treatment period of appropriate length, normally not less than 28 days.

(2) *Histopathology.* Histopathology of the lungs of all animals shall be performed. Special attention to examination of the lungs of rodents shall be made for evidence of infection since this provides a convenient assessment of the state of health of the animals.

(ii) *Reporting requirements.* (A) Each subchronic test shall be completed and the final report submitted to EPA within 15 months of the date specified in paragraph (d)(1) of this section.

(B) For each test, a progress report shall be submitted to EPA beginning 9 months after the date specified in paragraph (d)(1) of this section and at 6-month intervals thereafter until the final report is submitted to EPA.

(d) *Effective date.* (1) This section is effective on December 24, 1993.

(2) The guidelines and other test methods cited in this section are referenced as they exist on the effective date of this section.

[FR Doc. 93-27610 Filed 11-9-93; 8:45 am]
BILLING CODE 6560-50-F

DEPARTMENT OF ENERGY

48 CFR Parts 904, 925, 952, and 970

RIN 1991-AB06

Acquisition Regulation; Restrictions on Awards to Foreign Controlled Contractors

AGENCY: Department of Energy (DOE).

ACTION: Interim final rule.

SUMMARY: The Department is amending the Department of Energy Acquisition Regulation (DEAR) to implement section 836 of the Fiscal Year 1993, Defense Authorization Act. That section prohibits award of a contract under a national security program to a company owned by an entity controlled by a foreign government if that company requires access to a proscribed category of information to perform the contract.

DATES: *Effective Date:* This rule will be effective January 10, 1994.

Comments: Written comments must be received by January 10, 1994.

ADDRESSES:

Richard B. Langston, Office of Procurement and Assistance Management (PR-121), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-8247.

Judith A. Sukol, Office of the Assistant General Counsel for Procurement and Finance (GC-34), Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-1526.

FOR FURTHER INFORMATION CONTACT: Richard B. Langston at the address above.

SUPPLEMENTARY INFORMATION:

I. Background
II. Public Comments
III. Detailed Changes
IV. Procedural Requirements
A. Regulatory Review
B. Review Under Executive Order 12778
C. Review Under the Regulatory Flexibility Act
D. Review Under the Paperwork Reduction Act
E. Review Under Executive Order 12612
F. National Environmental Policy Act

I. Background

Section 836 of Public Law 102-484 prohibits the award of any DOE contract under a national security program to a company owned by an entity controlled by a foreign government if it is necessary for that company to have access to proscribed information in order to perform the contract.

II. Public Comments

The Department has decided to issue this interpretative rule as an interim

final rule with an opportunity for public comment. Since the rule is an interpretative one in that it merely interprets an existing statute, (specifically, section 836 of the Defense Authorization Act of 1993), DOE is publishing it as an interim final rule, rather than as a proposed rule. However, since it is an "interim" final rule, DOE is allowing for consideration of public comments. Interested persons are invited to participate by submitting data, views, or arguments with respect to the DEAR amendments set forth in this rule. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received on or before the date specified in the beginning of this notice and all other relevant information will be considered by DOE before taking final action. Comments received after that date will be considered to the extent that time allows. Any person submitting information which that person believes to be confidential and which may be exempt from public disclosure should submit one complete copy, as well as an additional copy from which the information claimed to be confidential has been deleted. DOE reserves the right to determine the confidential status of the information or data and to treat it according to its determination. The Department's generally applicable procedures for handling information, which have been submitted in a document and may be exempt from public disclosure, are set forth in 10 CFR 1004.11.

The Department has concluded that this interim rule does not involve a substantial issue of fact or law and that the rule should not have a substantial impact on the nation's economy or large numbers of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this rule.

III. Detailed Changes

A new subpart 904.71 is added to describe a prohibition on contracting with any company owned by an entity controlled by a foreign government if the company will require access to proscribed information to perform the contract. This subpart contains definitions and describes grounds under which the prohibition may be waived by the Secretary of Energy. A new subpart 925.7 is added to provide a notice of this requirement. Part 952 is amended to provide a solicitation provision to be used in solicitations that will require access to proscribed information by the contractor. Part 970 is also amended to apply these changes to management and operating contracts if they require access to proscribed information.

IV. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review, under the Executive Order, by the Office of Information and Regulatory Affairs.

B. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and 2(b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation: specifies clearly any preemptive effect, any effect on existing Federal law or regulation, and any retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposal meets the requirements of sections 2(a) and 2(b) of Executive Order 12778.

C. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule which is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences, such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

D. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501, *et seq.*).

E. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will not affect States.

F. National Environmental Policy Act

DOE has concluded that this rule will not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

List of Subjects in 48 CFR Parts 904, 925, 952, and 970

Government procurement.

Issued in Washington, DC, on November 3, 1993.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

For the reasons set out in the preamble, Chapter 9 of Title 48 of the Code of Federal Regulations is amended as set forth below.

PART 904—ADMINISTRATIVE MATTERS

1. The authority citation for part 904 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

2. A new subpart 904.71, Prohibition on Contracting (National Security Program Contracts), is added as follows:

Subpart 904.71—Prohibition on Contracting (National Security Program Contracts)

904.7100 Scope of subpart.
904.7101 Definitions.
904.7102 Waiver by the Secretary.
904.7103 Solicitation provision and contract clause.

904.7100 *Scope of subpart.*

This subpart implements section 836 of the Fiscal Year 1993 Defense Authorization Act (Pub. L. 102–484) which prohibits the award of a Department of Energy contract under the national security program to a company owned by an entity controlled by a foreign government if it is necessary for that company to be given access to information in a proscribed category of information in order to perform the contract.

904.7101 Definitions.

Effectively owned or controlled means that a foreign government or an entity controlled by a foreign government has the power, either directly or indirectly, whether exercised or exercisable, to control or influence the election or appointment of the Offeror's officers, directors, partners, regents, trustees, or a majority of the Offeror's board of directors by any means, e.g., ownership, contract, or operation of law.

Entity controlled by a foreign government means any domestic or foreign organization or corporation that is effectively owned or controlled by a foreign government or any individual acting on behalf of a foreign government. See 925.7 for a statement of the prohibition.

Foreign government means any governing body organized and existing under the laws of any country other than the United States and its possessions and trust territories and any agent or instrumentality of that government.

Proscribed information means—

(1) Top Secret information;

(2) Communications Security (COMSEC) information, except classified keys used to operate secure telephone units (STU IIIs);

(3) Restricted Data, as defined in the Atomic Energy Act of 1954, as amended;

(4) Special Access Program (SAP) information; or,

(5) Sensitive Compartmented Information (SCI).

904.7102 Waiver by the Secretary.

(a) The Secretary of Energy may waive this prohibition, pursuant to 10 U.S.C. 2536(b), if the Secretary determines that waiver is essential to the national security interests of the United States. Any request for such a waiver shall address:

(1) Identification of the proposed awardee and description of the foreign ownership;

(2) Description of the procurement and performance requirements;

(3) Description of the national security interests involved and the ways award of the contract would promote those interests;

(4) The availability of other entities to perform the work; and,

(5) A description of alternate means available to satisfy the requirement.

(b) Any request for such a waiver shall be forwarded by the Head of the Contracting Activity to the Office of Clearance and Support, within the Headquarters procurement organization. That office will coordinate such requests with the Program Assistant Secretary, the Office of Intelligence and National Security, the Office of General Counsel, and the Procurement Executive prior to seeking approval of the Secretary.

904.7103 Solicitation provision and contract clause.

(a) Any solicitation, including those under small purchase or other simplified purchase procedures, for a contract under the national security program which will require access to proscribed information shall include the representation at 952.204–73 with its Alternate I.

(b) Any contract, including those awarded under small purchase or other simplified purchase procedures, under the national security program which require access to proscribed information to enable performance, shall include the clause at 952.204–74.

PART 925—FOREIGN ACQUISITION

3. The authority citation for part 925 of chapter 9 continues to read as follows:

Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c).

4. Part 925 is amended by the addition of a new subpart 925.7 and a new section 925.702 to read as follows:

925.7—Restrictions on Certain Foreign Purchases

925.702 Restrictions.

No contract may be awarded to a company owned by an entity controlled by a foreign government if performance of the contract will require access to proscribed information. See 904.71 for additional guidance.

PART 952—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

5. The authority citation for part 952 of Chapter 9 continues to read as follows:

(Authority: 42 U.S.C. 7254; 40 U.S.C. 486(c)).

6. Section 952.204–73 is amended by adding "Alternate I" following paragraph (f) to read as follows:

952.204–73 Foreign ownership, control, or influence over contractor (Representation).

* * * * *

Alternate I December 10, 1993.

If the solicitation is part of the national security program and will require access to proscribed information to enable performance, add the following notice.

Notice

Statute prohibits the award of a contract under a national security program to a company owned by an entity controlled by a foreign government unless a waiver is granted by the Secretary of Energy.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

7. The authority citation for part 970 of Chapter 9 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954.

(42 U.S.C. 2201), sec. 644 of the Department of Energy Organization Act, Pub. L. 95–91 (42 U.S.C. 7254), sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420) and sec. 1534 of the Department of Defense Authorization Act, 1986, Pub. L. 99–145 (42 U.S.C. 7256a), as amended.

8. Section 970.0404–4 is amended by adding paragraph (d) to read as follows:

970.0404–4 Contract clauses.

* * * * *

(d) See 904.71 for guidance concerning the prohibition on award of a DOE contract under a national security program to a company owned by an entity controlled by a foreign government when access to proscribed information is required to perform the contract.

[FR Doc. 93–27597 Filed 11–9–93; 8:45 am]

BILLING CODE 6450–01–P

Proposed Rules

Federal Register
Vol. 58, No. 216
Wednesday, November 10, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 837

RIN 3206–AD60

Recomputation of Congressional Annuities After Reemployment

AGENCY: Office of Personnel Management.

ACTION: Proposed rule.

SUMMARY: The Office of Personnel Management (OPM) is proposing regulations to establish the method used to add cost-of-living adjustments (COLA's) to recomputed annuities of former Members of Congress who perform additional service after retirement as Members and the method for determining the cap on COLA's as it affects these former Members under the Civil Service Retirement System. These regulations interpret the law on Civil Service retirement as it affects these computations.

DATES: Comments must be received on or before December 10,1993.

ADDRESSES: Send comments to Reginald M. Jones, Jr., Assistant Director for Retirement and Insurance Policy; Retirement and Insurance Group; Office of Personnel Management; P.O. Box 57; Washington, DC 20044; or deliver to OPM, room 4351, 1900 E Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Harold L. Siegelman, (202) 606–0299.

SUPPLEMENTARY INFORMATION: Under section 8344(d)(1) of title 5, United States Code, a Member of Congress who is employed in an appointive position subject to Civil Service Retirement System (CSRS) coverage after having retired as a Member or having left Congress with title to a deferred Member annuity is generally eligible for a special annuity computation. The regular provisions for retirees whose annuities continue during reemployment—which allow for a supplemental annuity after a year of reemployment or a fully redetermined annuity after 5 years of reemployment—do not apply to retired Members of Congress. Instead, the provisions for retired Members require any annuity being paid to stop during the reemployment and then allow the existing annuity entitlement to be recomputed after the reemployment ends, with a new high-3 average salary and the additional service credit. By law, the recomputed benefit becomes payable upon separation from the reemployment, or, in the case of a deferred Member annuity entitlement, when the deferred annuity begins.

Section 8340 of title 5, United States Code, allows a COLA on annuities that are "payable" at the time a COLA becomes effective. The newly payable recomputed benefit receives the COLA's that occur after the recomputed annuity becomes payable. Accordingly, these regulations provide that only the COLA's occurring after a section 8344(d)(1) benefit begins will be applied to adjust the annuity rate. These regulations will apply to any section 8344(d)(1) annuities of former Members of Congress who becomes reemployed after publication of final regulations.

A related point involves section 8340(g) of title 5, United States Code, which provides a "cap" on the amount an annuity may be increased by COLA's. For individuals whose pay exceeds the maximum under the General Schedule, OPM is prohibited from adding a COLA if the resulting annuity would exceed the retiree's rate of pay at retirement "increased by the overall annual average percentage adjustments (compounded) it rates of pay of the General Schedule under subchapter I of chapter 53" of title 5, United States Code. Consistent with our policy on applying COLA's to 8344(d)(1) benefits, these regulations state that, in computing the COLA cap on these recomputed Member annuities, we will add salary adjustments after the separation from the appointive position to the final salary of that position to determine the cap. This method of determining the COLA cap will be applied in the same cases to which the bar to retroactive COLA's on annuities will apply.

E.O. 12291, Federal Regulation

I have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that this regulation will not have a significant economic impact on a substantial number of small entities because the regulation will only affect former Members of Congress who are reemployed by the Government and their survivors.

List of Subjects in 5 CFR Part 837

Administrative practice and procedure, Claims, Disability benefits, Government employees, Intergovernmental relations, Pensions, Reporting and recordkeeping requirements, Retirement.

U.S. Office of Personnel Management.

James B. King,

Director.

Accordingly, OPM Proposes to amend 5 CFR part 837 as follows:

PART 837—REEMPLOYMENT OF ANNUITANTS

Subpart E—Retirement Benefits on Separation

1. The authority citation for part 837 continues to read as follows:

Authority: 5 U.S.C. 8337, 8344, 8347, 8455, 8456, 8461, and 8468.

2. Section 837.505 is added to read as follows:

§ 837.505 Cost-of-living adjustments on Member annuities.

(a) *Applying cost-of-living adjustments to recomputed Member annuities under CSRS.* A Member annuity benefit that is recomputed under section 8344(d)(1) of title 5, United States Code, which applies to certain former Members who become employed in an appointive position subject to CSRS, will include the cost-of-living adjustments under section 8340 of title 5, United States Code, that are effective after the commencing date of the benefit computed under section 8344(d)(1).

(b) *Limitations on cost-of-living adjustments on recomputed Member annuities under CSRS.* For purposes of determining limitations on cost-of-living adjustments under section 8340(g) of title 5, United States Code, the final (or average) salary of a Member whose benefit has been recomputed under section 8344(d)(1) of title 5, United States Code, which applies to certain former Members who become employed

in an appointive position subject to CSRS, will be increased by adjustments in the rates of the General Schedule under subpart I of chapter 53 of title 5, United States Code, that are effective after the commencing date of the benefit computed under section 8344(d)(1).

[FR Doc. 93-27638 Filed 11-9-93; 8:45 am]
BILLING CODE 6325-01-M

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 4

[Docket No. 93-18]

RIN 1557-AA92

Description of Office, Procedures, Public Information; Minority, Women and Individuals With Disabilities-Owned Business Contracting Outreach Program

AGENCY: Office of the Comptroller of the Currency, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of the Comptroller of the Currency (OCC) proposes to amend its regulations regarding the description of its office, procedures, and policies regarding public information to adopt a Minority-, Women- and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). This proposed rule is intended to ensure that business concerns owned and controlled by members of minority groups, women and individuals with disabilities are provided the opportunity to participate in the OCC's contracting processes. It also designates the official responsible for implementing the program and its oversight. This action, with respect to minority and women owned businesses, is required by the Financial Institutions Reform, Recovery, and Enforcement Act of 1989 (FIRREA), and is necessary to promote participation of minority groups and women in contracting programs. The inclusion of individuals with disabilities is consistent with the intent of the Rehabilitation Act of 1973 as amended.

DATES: Comments must be received by January 10, 1994.

ADDRESSES: Comments should be directed to: Communications Division, Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 93-18. Comments will be available for inspection and photocopying at the same location.

FOR FURTHER INFORMATION CONTACT: Mary Ellen Dorsey, Outreach Program Specialist, Acquisitions Branch, (202) 874-5040; Patricia S. Grady, Attorney, Legislative, Regulatory, and International Activities Division, (202) 874-5090, Office of the Comptroller of the Currency.

SUPPLEMENTARY INFORMATION:

Background

The OCC, as the Federal financial regulatory agency responsible for the supervision of the national banking industry, has, since its inception, engaged in the procurement of goods and services necessary for the accomplishment of its duties. Historically, the OCC has awarded a significant number of contracts to Minority and Women Owned Businesses. The OCC Minority-, Women- and Individuals with Disabilities-Owned Business Contracting Outreach Program promotes the participation of these groups in the contracting activities of the OCC.

Section 1216(c) of FIRREA (12 U.S.C. 1833e(c); Pub. L. 101-73), is intended to further the participation of certain designated groups in the OCC's contracting processes. FIRREA requires the OCC and the other Federal financial institutions regulatory agencies (e.g., the Office of Thrift Supervision, the Federal Deposit Insurance Corporation, the Resolution Trust Corporation, and the Federal Housing Finance Board) to prescribe regulations to establish and oversee a minority outreach program within each agency. The purpose of the outreach program is to ensure inclusion, to the maximum extent possible, of minorities and women, and entities owned by minorities and women, in all contracts entered into by the agency with such persons or entities, public and private, in order to perform functions authorized under any law applicable to such agency.

To ensure that the benefits of the Outreach Program accrue to entities owned by minorities, women and individuals with disabilities, the participants in the Outreach Program must be minorities, women or individuals with disabilities and unconditionally own the business entities participating in the Outreach Program.

The OCC is not required by FIRREA to include individuals with disabilities in its Outreach Program. However, the OCC believes that its proposed inclusion of individuals with disabilities is consistent with the intent of the Rehabilitation Act of 1973 (29 U.S.C. 701 *et seq.*; Pub. L. 93-112) as amended by the Rehabilitation, Comprehensive Service, and Developmental Disabilities Amendments of 1978 (Pub. L. 95-602), and the Rehabilitation Act Amendments of 1986, (Pub. L. 99-506). The OCC believes that by encouraging outreach to individuals with disabilities, it will further the intent of the Rehabilitation Act of 1973 as amended. The definition of the term individual with disabilities is derived from the definition of the term individual with handicaps in the Rehabilitation Act of 1973 as amended.

Comment

Public comment is invited on any aspect of this proposal, particularly the OCC's inclusion of individuals with disabilities in its contracting outreach program.

Executive Order 12866

The OCC has determined that this document is not a significant regulatory action. This rule concerns participation in an Outreach Program for OCC's procurement of goods and services. This regulation is intended to promote participation of minority-, women- and individuals with disabilities-owned businesses in the OCC contracting program. The Outreach Program does not alter the OCC's established procurement process for goods and services and this rule should have no material effects.

Regulatory Flexibility Act

It is hereby certified that this regulation will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required. This regulation is intended to promote participation of minority-, women- and individuals with disabilities-owned businesses, regardless of size, in the OCC contracting program. The Outreach Program does not alter the OCC's established procurement process for goods and services, and this rule should have a beneficial, although not significant, impact on small entities.

List of Subjects in 12 CFR Part 4

Freedom of information, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Women and minority businesses.

Authority and Issuance

For the reasons set forth in the preamble, part 4 of chapter I of title 12 of the Code of Federal Regulations is proposed to be amended as set out below:

PART 4—DESCRIPTION OF OFFICE, PROCEDURES, PUBLIC INFORMATION, CONTRACTING OUTREACH PROGRAMS

1. The part heading for part 4 is revised to read as set forth above.

1a. The authority citation for part 4 is revised to read as follows:

Authority: 5 U.S.C. 552; 12 U.S.C. 1 *et seq.*, 93a and 1833e.

2. Part 4 is amended by designating §§ 4.1 through 4.19 as subpart A and adding a subpart A heading to read as follows:

Subpart A—Office, Procedures, Public Information

3. Part 4 is amended by adding a new subpart B to read as follows:

Subpart B—Minority- Women- and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

Sec.
4.31 Purpose.
4.32 Definitions.
4.33 Policy.
4.38 Promotion.
4.42 Certification.
4.44 Oversight and monitoring.

Subpart B—Minority- Women- and Individuals With Disabilities-Owned Business Contracting Outreach Program; Contracting for Goods and Services

§ 4.31 Purpose.

Pursuant to the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, sec. 1216(c), Pub. L. 101–73, 103 Stat. 183, 529 (12 U.S.C. 1833e(c)) and consistent with the Rehabilitation Act of 1973 as amended (29 U.S.C. 701 *et seq.*), this part establishes the OCC Minority- Women- and Individuals with Disabilities-Owned Business Contracting Outreach Program (Outreach Program). The Outreach Program is intended to ensure that firms owned and operated by minorities, women, and individuals with disabilities are given the opportunity to participate, to the maximum extent possible, in all contracting activities of the OCC.

§ 4.32 Definitions.

(a) *Minority- and/or women-owned (small and large) businesses and entities owned by minorities and women (MWOB or MWOB firm)* means firms at least 51 percent unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members of a minority group or by one or more women who are citizens of the United States. Additionally, for the foregoing cases, the management and daily business operations must be controlled by one or more such individuals.

(b) *Minority* means any Black American, Native American (means American Indian, Eskimo, Aleut and Native Hawaiian), Hispanic American, Asian-Pacific American, or Subcontinent-Asian American.

(c) *Individual with disabilities-owned (small and large) businesses and entities owned by individuals with disabilities (IDOB or IDOB firm)* means firms at least 51 percent unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. In the case of publicly-owned companies, at least 51 percent of each class of voting stock must be unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. In the case of a partnership, at least 51 percent of the partnership interest must be unconditionally-owned by one or more members who are individuals with disabilities and citizens of the United States. Additionally, for the foregoing three cases, the management and daily business operations must be controlled by one or more such individuals.

(d) *Individual with disabilities* means any person who has a physical or mental impairment which substantially limits one or more of such person's major life activities, has a record of such an impairment, or is regarded as having such an impairment. It does not include an individual who is currently engaging in the illegal use of drugs nor an individual who has a currently contagious disease or infection and who, by reason of such disease or infection, would constitute a direct threat to the health or safety of other individuals or who, by reason of the currently contagious disease or infection, is unable to perform the duties of the job.

(e) *Unconditional ownership* means ownership that is not subject to conditions or similar arrangements which cause the benefits of the Outreach Program to accrue to persons other than the participating MWOB or IDOB.

§ 4.33 Policy.

The OCC policy is to ensure that MWOB and IDOB firms have the opportunity to participate, to the maximum extent possible, in contracts awarded by the OCC. The OCC awards contracts consistent with the principles of full and open competition and best value acquisition, and with the concept of contracting for agency needs at the lowest practicable cost. The OCC ensures that MWOB and IDOB firms have the opportunity to participate fully in all contracting activities that the OCC enters into for goods and services, whether generated by the headquarters office in Washington, DC, or any other office of the OCC. Contracting opportunities may include small purchase awards, contracts above the small purchase threshold, and delivery orders issued against other governmental agency contracts.

§ 4.38 Promotion.

(a) *Scope.* The OCC, under the direction of the Deputy Comptroller for Resource Management, engages in promotion and outreach activities designed to identify MWOB and IDOB firms capable of providing goods and services needed by the OCC, to facilitate interaction between the OCC and the MWOB and IDOB community, and to indicate the OCC's commitment to doing business with this community. The Outreach Program is designed to facilitate OCC's work with other government agencies to include participation in business promotion events sponsored and attended by minorities, women and individuals with disabilities. Once the OCC has identified prospective participants, it will assist them in understanding the OCC's needs and contracting process.

(b) *Outreach activities.* OCC's Outreach Program includes the following:

(1) Obtaining various lists and directories of MWOB and IDOB firms maintained by government agencies;

(2) Targeting appropriate firms for participation in the OCC's Outreach Program;

(3) Participating in business promotion events comprised of or attended by MWOB and IDOB firms to explain OCC contracting opportunities and obtain names of potential MWOB and IDOB firms;

(4) Ensuring that the OCC contracting staff understands and actively promotes this program; and

(5) Registering MWOB and IDOB firms in the OCC's database to facilitate their participation in the competitive procurement process for OCC contracts. This database is used by OCC

procurement staff to identify firms to be solicited for OCC procurements.

§ 4.42 Certification.

(a) *Objective.* To preserve the integrity and foster the program's objectives, each prospective MWOB or IDOB firm must demonstrate that it meets the ownership and control requirements for participation in the Outreach Program.

(b) *Process-MWOB or MWOB firm.* A prospective MWOB firm may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid MWOB certification received from another government agency whose definition of MWOB is substantially similar to that specified in § 4.32(a);

(2) Self-certifying MWOB ownership status by filing with the OCC a completed and signed certification form as prescribed by the Federal Acquisition Regulation, 48 CFR 53.301–129; or

(3) Submitting a valid MWOB certification received from the Small Business Administration.

(c) *Process-IDOB or IDOB firm.* A prospective IDOB firm may demonstrate its eligibility for participation in the Outreach Program by:

(1) Submitting a valid IDOB certification received from another government agency whose definition of IDOB is substantially similar to that specified in § 4.32(c); or

(2) Self-certifying IDOB ownership status by filing with the OCC a completed and signed certification as prescribed in the Federal Acquisition Regulation, 48 CFR 53.301–129, and adding an additional certifying statement to read as follows:

I certify that I am an individual with disabilities as defined in 12 CFR 4.32(d), and that my firm, _____qualifies as an individual with disabilities-owned business or as an individual with disabilities-owned firm as defined in 12 CFR 4.32(c).

§ 4.44 Oversight and monitoring.

The Deputy Comptroller for Resource Management shall appoint an Outreach Program Manager, who shall appoint an Outreach Program Specialist. The Outreach Program Manager is primarily responsible for program advocacy, oversight and monitoring.

Dated: July 2, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

[FR Doc. 93–27620 Filed 11–9–93; 8:45 am]

BILLING CODE 4810–33–P

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 34

[Docket No. 93–10]

RIN 1557–AB34

FEDERAL RESERVE SYSTEM

12 CFR Part 225

[Regulation Y; Docket No. R–0803]

RIN 7100–AB20

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 323

RIN 3064–AB05

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Parts 545, 563, 564

[Docket No. 93–214]

RIN 1550–AA54

Real Estate Appraisals

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Proposed rule; availability of supplemental information.

SUMMARY: On June 4, 1993, the Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively the agencies) published a proposed rule that would amend the agencies' regulations regarding appraisals of real estate pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. One of the proposed amendments was to increase from $100,000 to $250,000 the threshold level at or below which an appraisal is not required pursuant to Title XI.

The agencies are placing supplemental information into the rulemaking record primarily relating to the proposed increase in the threshold level and requesting written comment on those materials as well as on public comments previously received.

DATES: Written comments must be received by December 10, 1993.

ADDRESSES: Please direct comments as indicated below. Documents identified in this notice will be available at the locations for inspection and copying of comments.

Office of the Comptroller of the Currency

Communications Division, Comptroller of the Currency, 9th Floor, 250 E Street, SW., Washington, DC 20219, Attention: Docket No. 93–10. Comments will be available for public inspection and photocopying at the same location.

Board of Governors of the Federal Reserve System

Comments, which should refer to Docket No. R–0803, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of these hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 [(202) 452–3684] between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

Federal Deposit Insurance Corporation

Send comments to Hoyle L. Robinson, Executive Secretary, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand delivered to room F–402, 1776 F Street, NW., Washington, DC on business days between 8:30 a.m. and 5 p.m. [FAX number (202) 898–3838] Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington DC between 9 a.m. and 4:30 p.m. on business days.

Office of Thrift Supervision

Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 93–214. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW, from 1 p.m. until 4 p.m. on business days. Visitors will be escorted

to and from the public reading room at established intervals.

FOR FURTHER INFORMATION CONTACT:

Office of the Comptroller of the Currency

Thomas E. Watson, National Bank Examiner, Office of the Chief National Bank Examiner, (202) 874–5170; or Horace G. Sneed, Senior Attorney, or Stephen Freeland, Attorney, (202) 874–4460, Bank Operations and Assets Division.

Board of Governors of the Federal Reserve System

Rhoger H Pugh, Assistant Director, (202) 728–5883, Stanley B. Rediger, Supervisory Financial Analyst (202) 452–2629, or Virginia M. Gibbs, Supervisory Financial Analyst, (202) 452–2521, Division of Banking Supervision and Regulation; or Gregory A. Baer, Senior Attorney (202) 452–3236 or Christopher Bellini, Attorney (202) 452–3269, Legal Division.

Federal Deposit Insurance Corporation

Robert F. Miailovich, Associate Director, (202) 898–6918, James D. Leitner, Examination Specialist, (202) 898–6790, Division of Supervision; or Walter P. Doyle, Counsel, (202) 898–3682, Legal Division.

Office of Thrift Supervision

Robert Fishman, Senior Program Manager, Credit Risk, Supervision Policy, (202) 906–5672; Deirdre G. Kvartunas, Policy Analyst, Supervision Policy, (202) 906–7933; Ellen J. Sazzman, Counsel (Banking and Finance), Regulations and Legislation Division, Chief Counsel's Office, (202) 906–7133.

SUPPLEMENTARY INFORMATION: On June 4, 1993, the agencies published a proposed rule that would amend the agencies' regulations regarding appraisals of real estate pursuant to Title XI of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989. Real Estate Appraisals, 58 FR 31878 (June 4, 1993). The notice of proposed rulemaking requested that comments be provided by July 19, 1993.

The agencies believe the public interest will be served by allowing interested parties to comment on supplemental information relating primarily to the proposed increase in the threshold level from $100,000 to $250,000. Therefore, the agencies invite written comments on: (i) 1992 and 1993 surveys by the Board of its examination staff with respect to the staff's experience with the $100,000 threshold; (ii) comments received by the Board from the Federal Reserve Banks that were not previously included in the public file; (iii) a 1993 survey by the OCC of supervisory examination staff regarding the potential effects of the proposed amendments; (iv) a 1993 survey by the OTS of its senior examination staff regarding the threshold level; (v) a 1993 survey by the FDIC of its senior supervisory staff regarding the proposed amendments; (vi) Thrift Failures: Costly Failures Resulted from Regulatory Violations and Unsafe Practices, General Accounting Office (June 1989); (vii) Bank Regulation: Regulatory Impediments to Small Business Lending Should Be Removed, General Accounting Office (Sept. 1993); (viii) statistics on the size and distribution of small business loans obtained from depository institutions, Federal Reserve 1993, based on the National Survey of Small Business Finances, co-sponsored by the Federal Reserve Board and Small Business Administration (1987); (ix) summary of data obtained from the Consolidated Reports of Condition and Income (Call Reports) for commercial banks, Thrift Financial Reports (TFR), and other industry and government sources; (x) FDIC Quarterly Banking Profiles (1987–1992); and (xi) other material incorporated into the administrative records available for inspection at the agencies. A summary prepared by OCC and OTS staff of the surveys of supervisory examination staff, Call Report and TFR data, and other material is also included in the OCC, OTS, and FDIC records.

The agencies invite written comment on these materials and on the public comments already received on the proposal. Comments should focus on the implications of these materials and public comments for the proposed increase in the appraisal threshold to $250,000, or a different level. The agencies also encourage comments on the applicability of thrift data to commercial bank experience and of commercial bank data to thrift experience. Comments already received in response to the June 4, 1993 notice of proposed rulemaking will be considered in conjunction with comments received in response to this notice.

Dated: October 12, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

Dated: November 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board, Federal Reserve System.

Dated: October 29, 1993.

Hoyle L. Robinson,

Executive Secretary, Federal Deposit Insurance Corporation.

Dated: November 3, 1993.

Jonathan L. Fiechter,

Acting Director, Office of Thrift Supervision.

[FR Doc. 93–27724 Filed 11–9–93; 8:45 am]

BILLING CODES 4810–33–P; 6210–01–P; 6714–01–P; 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–89; Notice No. SC–93–5–NM]

Special Conditions: Cessna Aircraft Company, Model 750 (Citation X) Airplane, High Altitude Operation

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company (Cessna), Model 750 (Citation X) airplane. This new airplane will have a novel and unusual design feature associated with an unusually high operating altitude (51,000 feet), for which the applicable airworthiness regulations do not contain adequate or appropriate safety standards. These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received by December 27, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–89, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked "Docket No. NM–89." Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certificate Service, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested person are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–89." The postcard will be date stamped and returned to the commenter.

Background

On October 15, 1991, Cessna Aircraft Company (Cessna), 6030 Cessna Blvd., P.O. Box 7704, Wichita, KS 67277–7704, applied for a new type certificate in the transport airplane category for the Model 750 (Citation X) airplane. The Cessna Model 750 is a T-tail, low swept wing, medium sized business jet powered by two GMA–3007C turbofan engines mounted on pylons extending from the aft fuselage. Each engine will be capable of delivering 6,000 pounds thrust. The flight controls will be powered and capable of manual reversion. The type design of the Cessna Model 750 series airplanes contains a number of novel and unusual design features for an airplane type certificated under the applicable provisions of part 25 of the FAR. Those features include the relatively small passenger cabin volume and a high operating altitude. The applicable airworthiness requirements do not contain adequate or appropriate safety standards for the Cessna 750 series airplanes; therefore, special conditions are necessary to establish a level of safety equivalent to that established in the regulations.

Type Certification Basis

Under the provisions of § 217.17 of the FAR, Cessna must show, except as provided in § 25.2, that the Model 750 (Citation X) meets the applicable provisions of part 25, effective February 1, 1965, as amended by Amendments 25–1 through 25–74. In addition, the proposed certification basis for the Model 750 includes part 34, effective September 10, 1990, plus any amendments in effect at the time of certification; and part 36, effective December 1, 1969, as amended by Amendments 36–1 through the amendment in effect at the time of certification. No exemptions are anticipated. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis. In addition, the certification basis may include other special conditions that are not relevant to these proposed special conditions.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 750 because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by § § 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Feature

The Cessna Model 750 will incorporate an unusual design feature in that it will be certified to operate up to an altitude of 51,000 feet.

The FAA considers certification of transport category airplanes for operation at altitudes greater than 41,000 feet to be a novel or unusual feature because current part 25 does not contain standards to ensure the same level of safety as that provided during operation at lower altitudes. Special conditions have therefore been adopted to provide adequate standards for transport category airplanes previously approved for operation at these high altitudes, including certain Learjet models, the Boeing Model 747, Dassault-Breguet Falcon 900, Canadair Model 600, Cessna Model 650, Israel Aircraft Industries Model 1125, and Cessna Model 560. The special conditions for the Cessna Model 650 are considered the most applicable to the Model 750 and its proposed operation and are therefore used as the basis for the special conditions described below.

Damage tolerance methods are proposed to be used to assure pressure vessel integrity while operating at the higher altitudes, in lieu of the ½-bay crack criterion used in some previous special conditions. Crack growth data are used to prescribe an inspection program that should detect cracks before an opening in the pressure vessel would allow rapid depressurization. Initial crack sizes for detection are determination under § 25.571, as amended by Amendment 25–72. The cabin altitude after failure must not exceed the cabin altitude/time curve limits shown in Figures 3 and 4.

Continuous flow passenger oxygen equipment is certificated for use up to 40,000 feet; however, for rapid decompressions above 34,000 feet, reverse diffusion leads to low oxygen partial pressures in the lungs, to the extent that a small percentage of passengers may lose useful consciousness at 35,000 feet. The percentage increases to an estimated 60 percent at 40,000 feet, even with the use of the continuous flow system. To prevent permanent physiological damage, the cabin altitude must not exceed 25,000 feet for more than 2 minutes. The maximum peak cabin altitude of 40,000 feet is consistent with the standards established for previous certification programs. In addition, at high altitudes the other aspects of decompression sickness have a significant, detrimental effect on pilot performance (for example, a pilot can be incapacitated by internal expanding gases).

Decompression above the 37,000-foot limit depicted in Figure 4 approaches the physiological limits of the average person; therefore, every effort must be made to provide the pilots with adequate oxygen equipment to withstand these severe decompressions. Reducing the time interval between pressurization failure and the time the pilots receive oxygen will provide a safety margin against being incapacitated and can be accomplished by the use of mask-mounted regulators. The proposed special condition, therefore, would require pressure demand masks with mask-mounted regulators for the flightcrew. This combination of equipment will provide the best practical protection for the failures covered by the special conditions and for improbable failures

not covered by the special conditions, provided the cabin altitude is limited.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Aircraft, Aviation safety, Federal Aviation Administration, Reporting and recordkeeping requirements.

The authority citation for these special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Model 750 (Citation X) series airplanes: Operation to 51,000 feet:

1. Pressure Vessel Integrity

(a) The maximum extent of failure and pressure vessel opening that can be demonstrated to comply with paragraph 4 (Pressurization) of this special condition must be determined. It must be demonstrated by crack propagation and damage tolerance analysis supported by testing that a larger opening or a more severe failure than demonstrated will not occur in normal operations.

(b) Inspection schedules and procedures must be established to assure that cracks and normal fuselage leak rates will not deteriorate to the extent that an unsafe condition could exist during normal operation.

(c) With regard to the fuselage structural design for cabin pressure capability above 45,000 feet altitude, the pressure vessel structure, including doors and windows, must comply with § 25.365(d), using a factor of 1.67 instead of the 1.33 factor prescribed.

2. Ventilation

In lieu of the requirements of § 25.831(a), the ventilation system must be designed to provide a sufficient amount of uncontaminated air to enable the crewmembers to perform their duties without undue discomfort or fatigue, and to provide reasonable passenger comfort during normal operating conditions and also in the event of any probable failure of any system that could adversely affect the cabin ventilating air. For normal operations, crewmembers and passengers must be provided with at least 10 cubic feet of fresh air per minute per person, or the equivalent in filtered, recirculated air based on the volume and composition at the corresponding cabin pressure altitude of not more than 8,000 feet.

3. Air Conditioning

In addition to the requirements of § 25.831, paragraphs (b) through (e), the cabin cooling system must be designed to meet the following conditions during flight above 15,000 feet mean sea level (MSL):

(a) After any probable failure, the cabin temperature-time history may not exceed the values shown in Figure 1.

(b) After any improbable failure, the cabin temperature-time history may not exceed the values shown in Figure 2.

4. Pressurization

In addition to the requirements of § 25.841, the following apply:

(a) The pressurization system, which includes for this purpose bleed air, air conditioning, and pressure control systems, must prevent the cabin altitude from exceeding the cabin altitude-time history shown in Figure 3 after each of the following:

(1) Any probable malfunction or failure of the pressurization system. The existence of undetected, latent malfunctions or failures in conjunction with probable failures must be considered.

(2) Any single failure in the pressurization system, combined with the occurrence of a leak produced by a complete loss of a door seal element, or a fuselage leak through an opening having an effective area 2.0 times the effective area that produces the maximum permissible fuselage leak rate approved for normal operation, whichever produces a more severe leak.

(b) The cabin altitude-time history may not exceed that shown in Figure 4 after each of the following:

(1) The maximum pressure vessel opening resulting from an initially detectable crack propagating for a period encompassing four normal inspection intervals. Mid-panel cracks and cracks through skin-stringer and skin-frame combinations must be considered.

(2) The pressure vessel opening or duct failure resulting from probable damage (failure effect) while under maximum operating cabin pressure differential due to a tire burst, engine rotor burst, loss of antennas or stall warning vanes, or any probable equipment failure (bleed air, pressure control, air conditioning, electrical source(s), etc.) that affects pressurization.

(3) Complete loss of thrust from all engines.

(c) In showing compliance with paragraphs 4(a) and 4(b) of these special conditions (Pressurization), it may be assumed that an emergency descent is made by approved emergency procedure. A 17-second crew recognition and reaction time must be applied between cabin altitude warning and the initiation of an emergency descent.

Note: For the flight evaluation of the rapid descent, the test article must have the cabin volume representative of what is expected to be normal, such that Cessna must reduce the total cabin volume by that which would be occupied by the furnishings and total number of people.

5. Oxygen Equipment and Supply

(a) A continuous flow oxygen system must be provided for the passengers.

(b) A quick-donning pressure demand mask with mask-mounted regulator must be provided for each pilot. Quick-donning from the stowed position must be demonstrated to show that the mask can be withdrawn from stowage and donned within 5 seconds.

BILLING CODE 4910–13–M

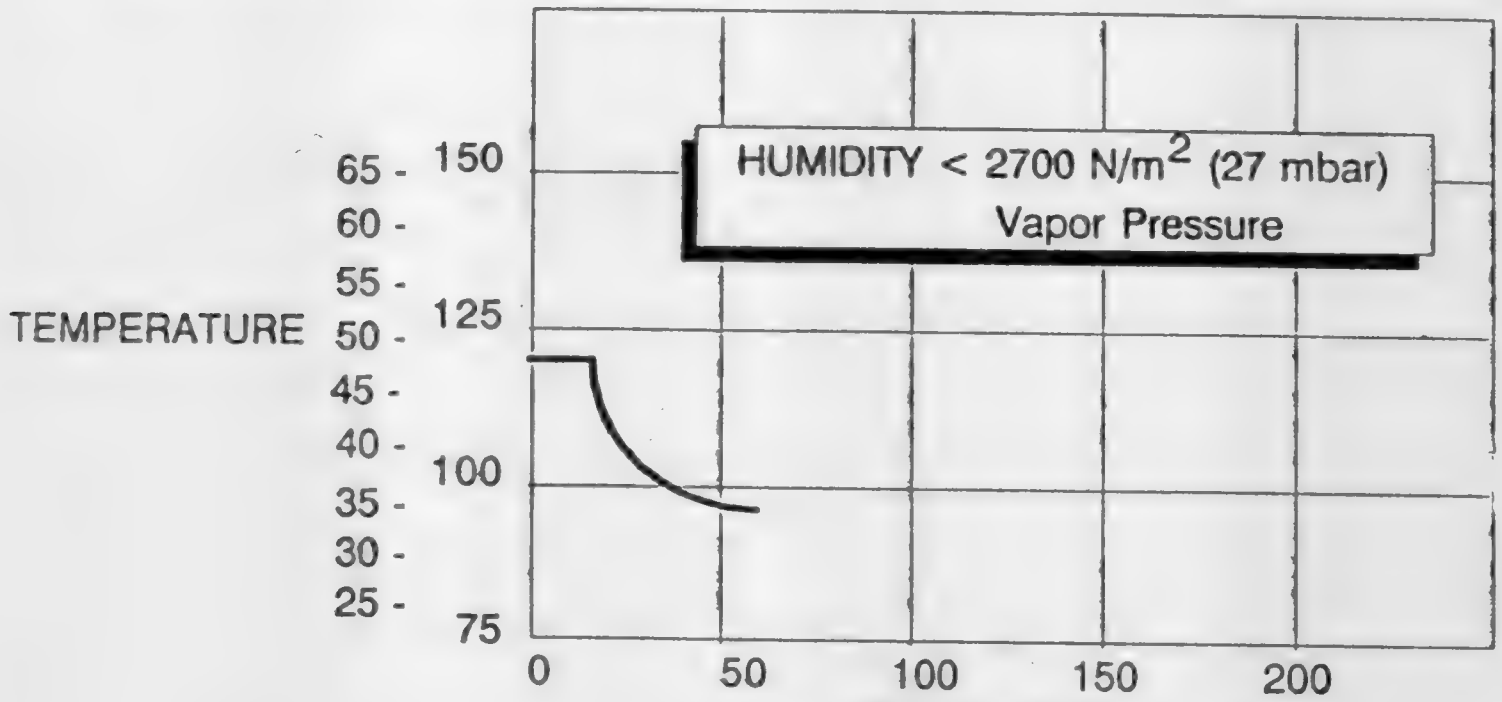

TIME - TEMPERATURE RELATIONSHIP

FIGURE 1

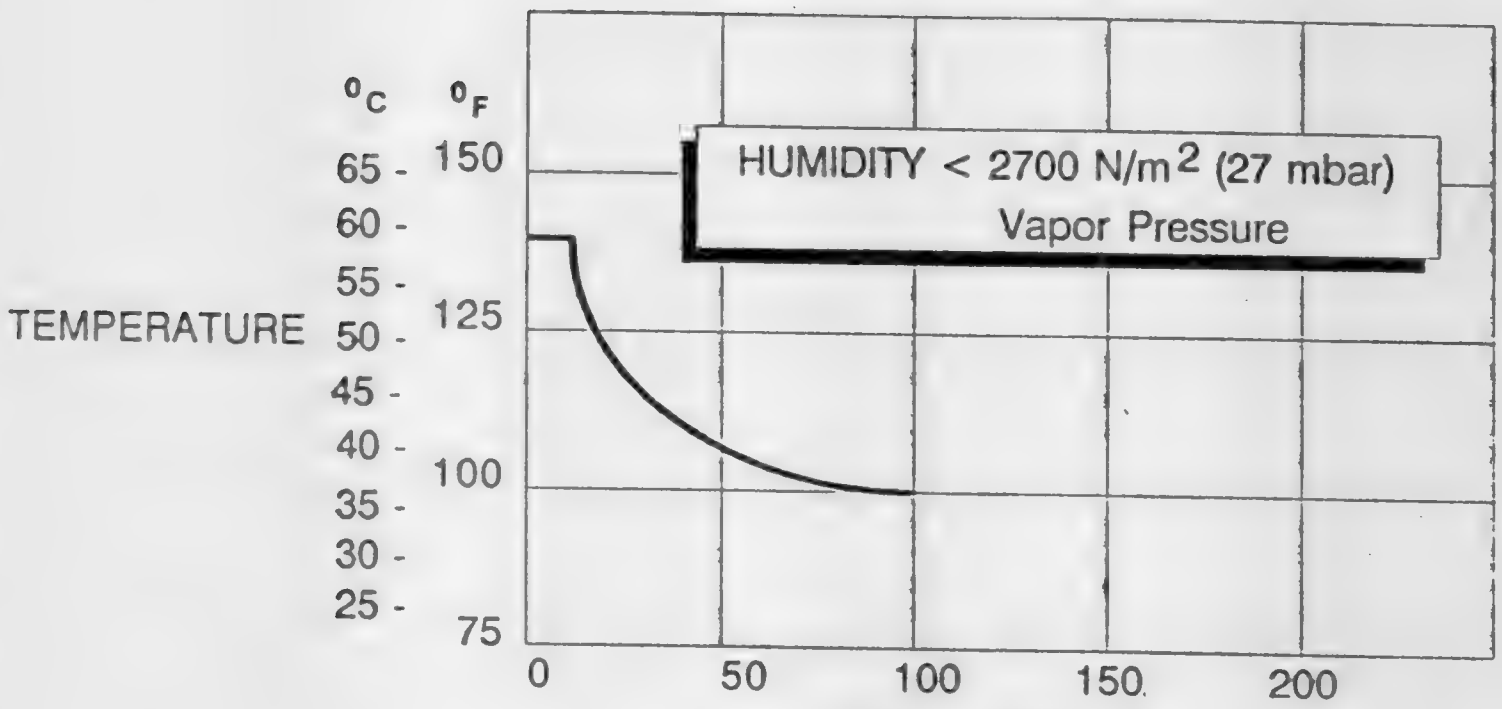

TIME - TEMPERATURE RELATIONSHIP

FIGURE 2

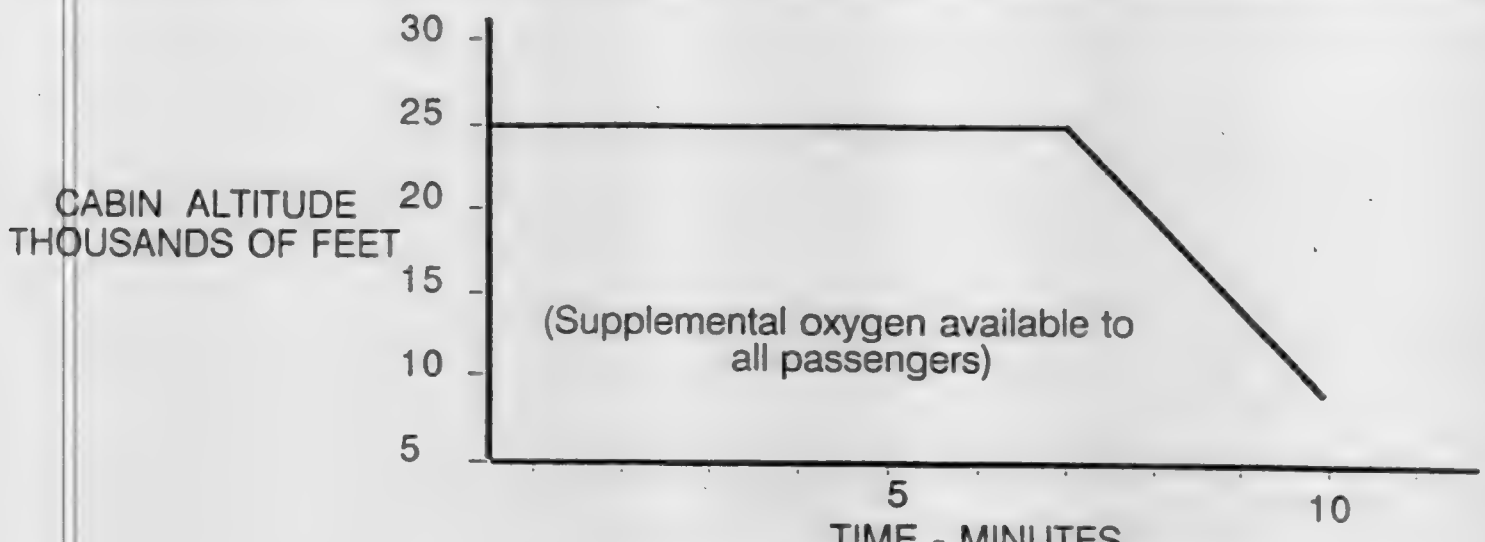

CABIN ALTITUDE - TIME HISTORY
FIGURE 3

NOTE: For figure 3, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 30,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

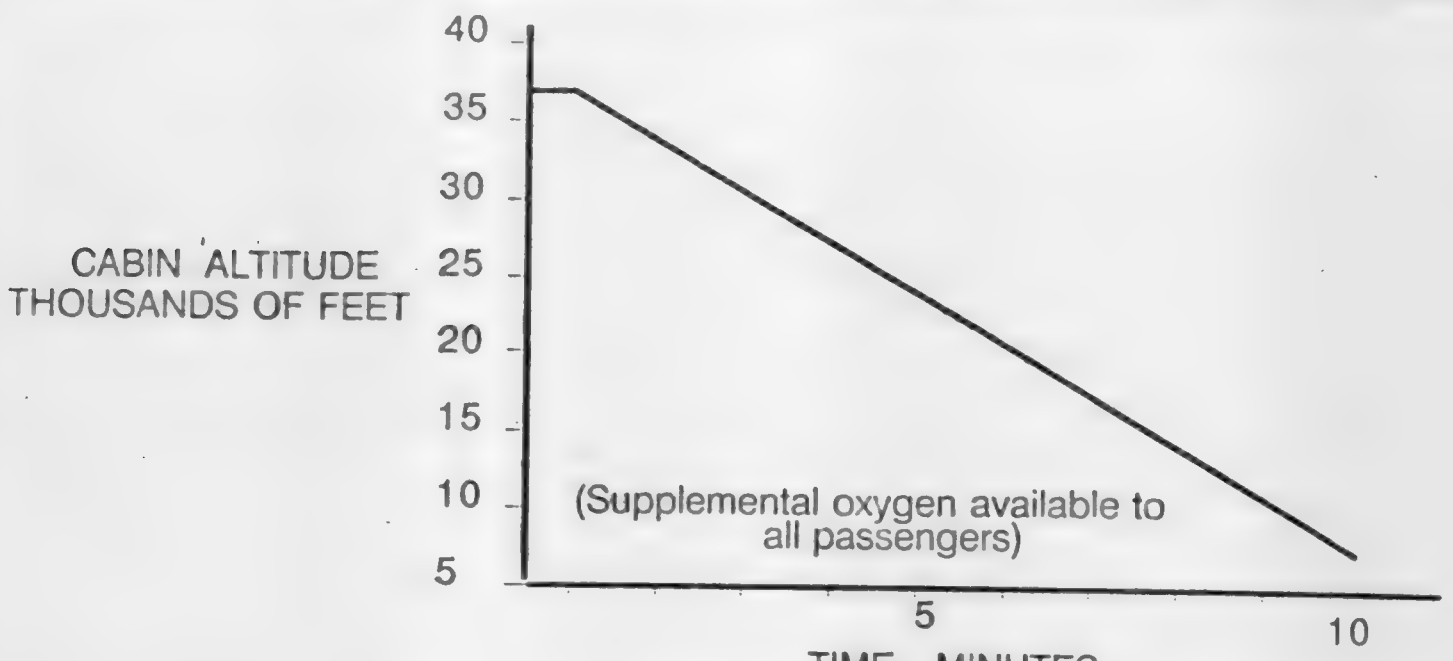

CABIN ALTITUDE - TIME HISTORY

FIGURE 4

NOTE: For figure 4, time starts at the moment cabin altitude exceeds 8,000 feet during depressurization. If depressurization analysis shows that the cabin altitude limit of this curve is exceeded, the following alternate limitations apply: After depressurization, the maximum cabin altitude exceedence is limited to 40,000 feet. The maximum time the cabin altitude may exceed 25,000 feet is 2 minutes; time starting when the cabin altitude exceeds 25,000 feet and ending when it returns to 25,000 feet.

BILLING CODE 4910-13-C

Issued in Penton, Washington, on October 27, 1993.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 93-27686 Filed 11-9-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Ch. I

[Docket No. 93N-0372]

Medical Devices; Hearing Aid Requirements; Request for Comments and Information

AGENCY: Food and Drug Administration, HHS.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Food and Drug Administration (FDA) is announcing its intention to review and, potentially to amend, the Federal hearing aid regulations. The agency is taking this action because it believes that a reevaluation of the current regulations is warranted in order to improve patient care. FDA is soliciting comments and information on revising the Federal hearing aid regulations, and it will consider the administrative record of hearing along with comments and other information received when proposing revised regulations. Elsewhere in this issue of the **Federal Register**, FDA is announcing a public hearing on this advance notice of proposed rulemaking (ANPRM).

DATES: Written comments by January 10, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Joseph M. Sheehan, Center for Devices and Radiological Health (HFZ-84), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301-594-4765.

SUPPLEMENTARY INFORMATION:

I. Background

In the **Federal Register** of February 15, 1977 (42 FR 9286), FDA promulgated regulations which established provisions for the sale and distribution of hearing aids. The regulations on hearing aid devices (21 CFR 801.420 and 801.421) prescribe the types of information that must be included in the labeling in order to provide health professionals and patients with adequate directions for the safe and effective use of a hearing aid; specify the technical performance data that must be included in the labeling to ensure that health professionals have adequate information to select, fit, and repair a hearing aid for a patient; and restrict the sale of a hearing aid to patients who have undergone a medical evaluation within the past 6 months. The regulations also allow any informed adult, 18 years of age or older, to waive the medical evaluation requirement by signing a written statement.

During the past year, several events occurred which have caused FDA to reevaluate the regulatory framework governing the sale and distribution of hearing aids. Earlier this year, FDA reviewed the advertising, promotional material, and labeling of commercially available hearing aids. For numerous products examined, FDA found that the manufacturer was making unsubstantiated performance claims. These claims were misleading the public by creating unrealistic expectations about the performance of the devices. For example, several companies claimed that their products would significantly improve speech recognition in noisy environments and simultaneously filter out background noise. FDA is not aware of any data establishing the fact that noise reduction hearing aids can significantly differentiate speech from unwanted extraneous noise. In reviewing the promotional materials for hearing aids, FDA also found that, in nearly all cases examined, the labeling, promotional literature and advertising failed to disclose material information and did not accurately disclose the device's potential risks and benefits.

Based on this review, FDA sent letters to eight major hearing aid manufacturers directing them to immediately remove all misleading promotional literature and advertising (Ref. 1). FDA also ordered the firms to correct the misconceptions about their products that had been created by their misleading promotional literature and advertising. The agency also issued letters to all other hearing aid manufacturers indicating that FDA believes this is an industry wide problem and directing them to review and correct their promotional literature and advertising as needed (Ref. 2).

FDA will continue to monitor promotional materials and advertising and will take appropriate action. Manufacturers who want to make claims of user benefit, beyond the general claim of improved hearing, such as the ability to differentiate background noise from speech, will be required to substantiate those claims by submitting valid scientific evidence from clinical trials. Claims that FDA clears for product labeling through the premarket notification (510(k)) or premarket approval (PMA) processes form the basis for acceptable advertising claims. FDA will develop a guidance document that sets forth the criteria necessary for clinical protocols that will be required to substantiate claims beyond the general claim of improved hearing.

FDA is now considering whether the prepurchase medical evaluation to determine hearing aid candidacy should be replaced by, or supplemented with, a more comprehensive prepurchase hearing assessment. FDA believes that a comprehensive diagnostic hearing assessment can be directed towards identifying any medically or surgically treatable disease, determining hearing aid candidacy, and providing the proper hearing equipment needed by the individual. FDA believes that a comprehensive diagnostic hearing assessment need not necessarily be performed by a physician, but rather could be performed by a competent, trained, and educated health professional who is licensed by the State to perform such testing.

FDA has also come to question whether the Federal waiver provision is consistent with the Federal policy that each hearing aid purchaser receive a clinically appropriate prepurchase hearing evaluation. In a 1991 survey of 11 hearing aid dispensers in Vermont, FDA found that more than 70 percent of hearing aid purchasers did not have a medical examination prior to purchasing a hearing aid (Ref. 3); this means that many hearing aid purchasers are not being properly evaluated prior to buying and using hearing aids and, consequently, the result is that the hearing aids do not work or fit properly. FDA requests any information that documents the percentage of consumers who are opting to use the waiver provision.

The pervasive use of the waiver provision is contrary to the expectations and intent of the agency when promulgating the current Federal hearing aid regulation. As noted in the preamble to the February 15, 1977, regulation, the waiver was intended to be used in very limited circumstances. "Although the Commissioner strongly recommends that all prospective hearing aid users obtain a medical evaluation of hearing loss before purchasing a hearing aid, he recognizes

that a waiver should be allowed for those who have religious or personal beliefs against a medical evaluation and for the rare circumstance where an individual would have great difficulty in obtaining a medical evaluation due to the lack of a physician in the area." (42 FR 9286 at 9293). Dispensers are prohibited from encouraging a prospective user to waive the medical evaluation, and they must inform the prospective user that the exercise of the waiver is not in the user's best health interest.

Public attention was called to many of the issues involving hearing aid devices at a September 15, 1993, congressional hearing before the Senate Special Committee on Aging. The committee chairman, David Pryor, stated that the purpose of the hearing was "not to condemn one group of hearing health care providers in favor of another. Instead, we want to learn where each member of the hearing health care team fits. The hearing specialist, audiologist, and otolaryngologist all have a role to play in providing hearing health care." (Ref. 4). Senator William Cohen added that, "the Minority staff investigation [into allegations of misleading advertising and deceptive sales practices by hearing aid manufacturers and dealers] has revealed that far too many elderly consumers are being sold expensive hearing aids that they either cannot use or do not need because of the aggressive sales tactics of incompetent, abusive and fraudulent dealers." (Ref. 5). The Commissioner, of Food and Drugs testified, following a panel of elderly consumers who had negative experiences with hearing aid dealers and manufacturers (Ref. 6). The Commissioner outlined the actions FDA is taking to improve the framework under which hearing aids are regulated, including: (1) Requiring manufacturers to remove misleading promotional material and advertising, (2) requiring better clinical testing of hearing aids and substantiation of claims, and (3) reevaluating the Federal regulation with an eye toward revising it.

The American Association of Retired Persons (AARP) released a report at the September 15, 1993, congressional hearing which further substantiated the relatively low level of satisfaction among long-time, regular users of hearing aids. AARP urged Federal and State regulators to expand their oversight of the hearing aid marketplace. "Because of the nature of hearing aid purchases, the vulnerability of older consumers, and the troublesome sales practices associated with this industry, there is a continuing need for proactive oversight at both the Federal and State levels." (Ref. 7). AARP recommended, among other things, that States enact licensing laws with minimum standards of practice for hearing evaluations; that the State licensing laws raise competency standards for practitioners conducting hearing evaluations and fitting the hearing aids; that FDA continue in its course of requiring clinical data to substantiate manufacturers' claims; and that FDA take proactive steps to ensure that prospective users are properly evaluated prior to purchasing a hearing aid.

II. Revisions Under Consideration

The agency is considering a new framework governing the sale and distribution of hearing aid devices. The major principles of the new framework that are currently envisioned are establishment of the following: (1) A clear requirement for a diagnostic hearing assessment prior to the purchase and use of a hearing aid; (2) a requirement that the hearing assessment be conducted by a qualified health professional with demonstrated competence to conduct the necessary battery of tests and to assess, evaluate and interpret the results of those tests; and (3) a requirement that the health professionals who administer the tests be licensed by the States. The principles of this framework were discussed with representatives of health professional and industry organizations on July 2, 1993 (Ref. 8).

FDA is soliciting comments on all aspects of the current regulation, specifically on the following issues:

1. Prior to the sale of a hearing aid, what should be the minimum components of a comprehensive hearing assessment? What battery of tests should be routinely conducted? How long should the results of the assessment remain valid before another assessment is required?

2. What are the minimum qualifications that health professionals should possess in order to perform a comprehensive hearing assessment (i.e., administer the necessary battery of tests and assess, evaluate and interpret the results)? If the assessment is performed by a health professional other than a licensed physician, will the health professional be able to identify medical conditions that necessitate referral to a physician?

3. Under what conditions, if any, should a consumer be allowed to waive the prepurchase evaluation? Should repeat buyers have to be reexamined each time they buy a replacement device?

4. Should mail order purchase of hearing aids be permitted? If so, under what conditions?

5. Should the person performing a prepurchase evaluation be prohibited from selling a hearing aid to the person being evaluated? 6. Should States license health professionals before they are allowed to perform hearing assessments? Could the same objective be adequately achieved through accreditation by professional organizations? If yes to either question, please discuss the ability of States or professional organizations to perform these functions and state how soon such systems could be operational.

7. How many health professionals, including physicians, are there currently in the U.S. who would likely be qualified to perform prepurchase hearing examinations, and how are those health professionals distributed geographically around the country?

8. How would consumer access to hearing aid distributors be affected by the types of changes to the existing regulation of hearing aid devices discussed in this notice?

III. Comments

The agency will consider any comments submitted in response to this ANPRM in its reevaluation of the Federal hearing aid regulations. FDA advises that, under 21 CFR 10.30(d), any comments submitted in response to this notice will be included under the docket number found in brackets in the heading of this document. Elsewhere in this issue of the **Federal Register**, FDA is announcing a public hearing in order to solicit comments on revising the Federal hearing aid regulations. FDA will consider the administrative record of hearing, along with comments and other information received, when deciding whether to revise the existing regulations.

Interested persons may, on or before January 10, 1994, submit to the Dockets Management Branch (address above) written comments regarding this ANPRM. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of the document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. Due to the significant public interest in this issue, FDA does not anticipate granting requests for extension to this 60-day comment period.

IV. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Warning letters from FDA to eight major hearing aid manufacturers, including: Dahlberg, Inc., April 16, 1993; Beltone Electronics Corp., April 16,1993; Omni Hearing Systems, April 16, 1993; Starkey Laboratories, Inc., April 16, 1993; Electone, Inc., April 16, 1993; Siemens Hearing Instruments, April 16, 1993; Personal Sound Technologies, Inc., July 14, 1993; Resound Corp., September 14, 1993.
2. Form letter from FDA to 68 registered hearing aid manufacturers/ dispensers, 1993.
3. Testimony of Michael Kravchuk, Acting Director of the Investigations Branch at FDA's Boston District Office, presented on April 9, 1991, at an open public hearing convened by FDA to hear comments on a request submitted by the State of Vermont for exemption from Federal preemption.
4. Testimony of Senator David Pryor, Chairman of the Senate Special Committee on Aging, September 15, 1993.
5. Testimony of Senator William Cohen, September 15, 1993.
6. Testimony of David Kessler, Commissioner of Food and Drugs, September 15, 1993.
7. AARP, "A Report on Hearing Aids," 1993.
8. Minutes of a meeting between FDA and health professional and industry organizations, July 2, 1993.

This document is being issued under sections 201, 301, 501, 502, 507, 519, 520, 701, 704 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 357, 360l, 360j, 371, 374).

Dated: November 3, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27732 Filed 11–5–93; 3:27 pm]

BILLING CODE 4160–01–F

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21 CFR Ch. 1

[Docket No. 93N–0369]

Medical Devices; Hearing Aid Requirements; Public Hearing

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice of public hearing.

SUMMARY: The Food and Drug Administration (FDA) is announcing a public hearing on an advance notice of proposed rulemaking (ANPRM) that announces the agency's intention to revise the Federal regulation on the sale and distribution of hearing aids. The purpose of the public hearing is to assist the agency in preparing proposed rule on Federal hearing aid requirements; the agency will consider the administrative record of hearing, along with comments and other information received. The ANPRM is published elsewhere in this issue of the **Federal Register**.

DATES: The public hearing will be held on December 6, 1993, from 9 a.m. to 5 p.m.; if necessary, the meeting will continue on December 7, 1993, in order to accommodate all who wish to participate. Written notices of participation should be filed by November 26, 1993. Submit written comments by December 22, 1993.

ADDRESSES: The public hearing will be held at the Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD 20852. Submit written notices of participation and written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Hotel rooms have been reserved at the Holiday Inn Crowne Plaza from December 6 through December 7, 1993. Attendees are responsible for making their own room reservations. In order to receive the appropriate rate, attendees should refer to the FDA hearing.

FOR FURTHER INFORMATION CONTACT: Carol Lee, Center for Devices and Radiological Health (HFZ–210), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2436.

SUPPLEMENTARY INFORMATION: Elsewhere in this issue of the **Federal Register**, FDA is publishing an ANPRM announcing the agency's intention to revise the Federal regulations on hearing aid requirements. FDA has determined that a public hearing on the matters raised in the ANPRM is warranted. The hearing will be directed by Joseph A. Levitt, Deputy Director for Regulations and Policy, Center for Devices and Radiological Health, FDA. To the extent possible, oral testimony should address the questions contained in the ANPRM. The procedures governing the hearing are those applicable to a public hearing before the Commissioner of Food and Drugs under part 15 (21 CFR part 15).

Interested persons who wish to participate may, on or before November 26, 1993, submit a notice of participation to the Dockets Management Branch (address above). All notices submitted should be identified with the docket number found in brackets in the heading of this document and should contain the name, address, telephone number, business affiliation of the person requesting to make a presentation, a brief summary of the presentation, and the approximate time requested for the presentation.

Individuals or groups having similar interests are requested to consolidate their comments and present them through a single representative. FDA may require joint presentations by persons with common interests. FDA will allocate the time available for the hearing among the persons who properly file a notice of appearance.

After reviewing the notices of participation and accompanying information, FDA will schedule each appearance and notify each participant by mail or telephone of the time allotted to the person and the approximate time the person's presentation is scheduled to begin. The schedule of the public hearing will be available at the hearing, and later it will be placed on file in the Dockets Management Branch under docket number 93N–0369.

The administrative record of the proposed regulation will be open for 15 days after the hearing to allow comments on matters raised at the hearing. Persons who wish to provide additional materials for consideration are to file these materials with the Dockets Management Branch (address above).

The hearing is informal, and the rules of evidence do not apply. No participant may interrupt the presentation of another participant. Only the presiding officers and panel members may question any person during or at the conclusion of their presentation.

Dated: October 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27731 Filed 11–5–93; 3:27 pm]

BILLING CODE 4160–01–F

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21 CFR Parts 182 and 184

[Docket No. 77N–0232]

Gelatin: Tentative Affirmation of GRAS Status as a Direct Human Food Ingredient; Reopening of Comment Period

AGENCY: Food and Drug Administration, HHS.

ACTION: Tentative final rule; reopening of comment period.

SUMMARY: The Food and Drug Administration (FDA) is reopening for 180 days the comment period for the tentative affirmation that gelatin is generally recognized as safe (GRAS) for use as a direct human food ingredient. FDA is taking this action in response to requests to allow additional time for public comment.

DATES: Written comments by May 9, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Hortense S. Macon, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St., SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 1993 (58 FR 27959), FDA published a tentative final rule with respect to the affirmation of GRAS status of gelatin as a direct human food ingredient. Interested persons were given until July 12, 1993, to comment on the tentative final rule. The agency has received requests from Croda Colloids Ltd., the Gelatin Manufacturers Institute of America, Inc., and Kraft General Foods, Inc., to reopen the comment period to permit an additional 180 days for public comment. The additional comment period was requested to evaluate issues relating to pentachlorophenol and to collect information regarding levels of chromium in gelatin derived from chromium treated hides. After careful consideration, the agency has concluded that it is in the public interest to allow additional time for interested persons to submit comments on the tentative final rule. Accordingly, the comment period is reopened until May 9, 1994.

Interested persons may, on or before May 9, 1994, submit to the Dockets Managements Branch (address above) written comments regarding the tentative final rule. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in the brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 1, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–27624 Filed 11–10–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–64–91]

RIN 1545–AQ68

Capitalization and Inclusion in Inventory of Certain Costs; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Rescheduling of public hearing on proposed regulations; change of date to submit requests to speak and outlines of oral comments.

SUMMARY: This document reschedules the date of a public hearing on proposed regulations and changes the date to submit requests to speak and outlines of oral comments for the public hearing relating to accounting for costs incurred in producing property and acquiring property for resale.

DATES: The public hearing will be held on Tuesday, November 30, 1993, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Tuesday, November 16, 1993.

ADDRESSES: Requests to speak and outlines of oral comments should be submitted to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:DOM:CORP:T:R, (IA–64–91), room 5228, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: A notice of public hearing appearing in the **Federal Register** for Friday, October 29, 1993 (58 FR 58145), announced that a public hearing on proposed regulations would be held on Monday, December 6, 1993, at 1 p.m. in the Internal Revenue Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC and that requests to speak and outlines of oral comments must be received by Monday, November 22, 1993. The notice of public hearing on the related revenue procedure (TD 8482) was published simultaneously at 58 FR 58101. The proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale (IA–64–91) and the requests for comments regarding the approach for implementing required method changes (TD 8482) were published on Monday, August 9, 1993 (58 FR 42198) and (58 FR 42263), respectively. See rescheduling of the public hearing for TD 8482 elsewhere in this issue of the **Federal Register**.

The date for the public hearing is rescheduled for Tuesday, November 30, 1993, beginning at 1 p.m. The requests to speak and outlines of oral comments must be received by Tuesday, November 16, 1993.

All other details with respect to the previously published documents remain the same.

Dale D. Goode,

Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–27655 Filed 11–9–93; 8:45 am]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH38–1–5780; FRL–4799–5]

Ohio; Approval and Promulgation of a Commitment To Adopt Rules for Reasonably Available Control Technology for Nitrogen Oxides: Correction.

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Proposed rule; correction.

SUMMARY: This document contains a correction to the regulation identifier number (RIN) stated in the proposed rule which was published Wednesday, September 21, 1993 (57 FR 33663). The RIN stated in the proposed rule was as follows: [OH38–1–5783; FRL–4731–5]. This RIN was stated incorrectly, and should be replaced with the following RIN: [OH38–1–5780; FRL–4731–5].

FOR FURTHER INFORMATION CONTACT: Richard J. Schleyer, Air Enforcement Branch (AE–17J), U.S. Environmental Protection Agency, Region 5, 77 W. Jackson Boulevard, Chicago, Illinois 60604–3590, (312) 353–5089.

SUPPLEMENTARY INFORMATION: This action has been classified as a Table Three action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Tables Two and Three SIP revisions (54 FR 2222) from the requirements of Section 3 of Executive Order 12291 for a period of 2 years. USEPA has submitted a request for a permanent waiver for Tables Two and Three SIP revisions. OMB has agreed to continue the temporary waiver until such time as it rules on USEPA's request.

Authority: 42 U.S.C. 7401–7671q.

Date: October 20, 1993.

David Kee,

Director, Air and Radiation Division.

[FR Doc. 93–27708 Filed 11–9–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 180

[OPP–300304; FRL–4649–1]

RIN No. 2070–AC18

N,N-Bis 2-(Omega-Hydroxypolyoxyethylene/ Polyoxypropylene) Ethyl Alkylamine; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to amend the current exemption from the requirement of a tolerance for residues of *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine by expanding its use as an inert ingredient (to read "surfactants and related adjuvants of surfactants") and removing the limit on the amount used in pesticide formulations applied to growing crops only. This proposed regulation was requested by Akzo Chemicals, Inc.

DATES: Comments, identified by the document control number [OPP-300304], must be received on or before December 10, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (H7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall, Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Akzo Chemicals, Inc., 300 South Riverside Plaza, Chicago, IL 60606, has submitted pesticide petition (PP) 2E4159 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by amending the current exemption from the requirement of a tolerance for residues of *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine by expanding its use as an inert ingredient (to read "surfactants and related adjuvants of surfactants") and removing the limit on the amount used in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

The Agency has decided that the data normally required to support a proposed tolerance exemption for *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine will not need to be submitted. The rationale for this decision is described below.

1. *N,N-bis* 2-(*omega*-hydroxypolyoxyethlene) ethyl alkylamine was exempted primarily because it is structurally similar to the following chemicals that are already exempted from the requirement of a tolerance when used in accordance with good agricultural practices as inert (or occasionally active) ingredients in pesticide formulations applied to growing crops only under 40 CFR 180.1001(d). These chemicals were reviewed by the Agency and were found to be of no risk to human health or the environment when used in accordance with good agricultural practices.

a. *N,N-bis* 2-(*omega*-hydroxypolyoxyethlene) ethyl alkylamine; the reaction product of 1 mole of *N,N-bis*(2-hydroxyethyl) alkylamine and 3 to 60 moles of ethylene oxide, where the alkyl group (C8-C18) is derived from coconut, cottonseed, soya, or tallow acids.

b. Alpha-alkyl (C12-C18)-*omega*-hydroxypoly(oxyethylene) copolymers with poly(oxypropylene); polyoxyethylene content averagés 3 to 12 moles and polyoxypropylene content averages 2 to 9 moles.

c. Primary *n*-alkylamines, where the alkyl group (C8-C18) is derived from coconut, cottonseed, soya, or tallow acids.

2. The above-mentioned chemicals were cleared based on a review of 90-day feeding studies in rats and dogs using *N,N-bis* (2-hydroxyethyl) alkylamine which showed a no-observed-effect-level (NOEL) of 500 ppm.

3. The above-mentioned chemicals do not have limits placed on the amount used in a pesticide formulation.

4. The above-mentioned chemicals are used in pesticide formulations as surfactants and related adjuvants of surfactants.

5. No nitrosamines are present in *N,N-bis* 2-(omega-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine at the analytical detection limit of 10 parts per billion.

6. The residual content of the monomers ethylene oxide and propylene oxide in *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine is less than 1 part per million.

7. No additional ethylene oxide is formed upon degradation of *N,N-bis* 2-(*omega*-hydroxypolyoxyethylene/ polyoxypropylene) ethyl alkylamine.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this

ingredient does not pose a risk to human health or the environment. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300304]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 14, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient entry, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
N,N-bis 2-(*omega*-hydroxypolyoxyethylene/polyoxypropylene ethyl alkylamine; the reaction product of 1 mole of *N,N-bis*(2-hydroxyethyl alkylamine and 360 moles of ethylene oxide and propylene oxide, where the akyl group (C8-C18) is derived from coconut, cottonseed, soya, or tallow acids..	.....	Surfactant, related adjuvants of surfactants
* *	* * *	* *

* * * * *

[FR Doc. 93-27275 Filed 11-9-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300307; FRL-4649-5]

RIN No. 2070-AC

Acetyl Tributyl Citrate; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposal.

SUMMARY: This document proposes that acetyl tributyl citrate (CAS Reg. No. 77-90-7) be exempted from the requirement of a tolerance when used as an inert ingredient (plasticizer) in pesticide formulations applied to animals. This proposed regulation was requested by Alpha Chemical and Plastics Corp.

DATES: Written comments, identified by the document control number [OPP-300307], must be received on or before December 10, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall, Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Alpha Chemical and Plastics Corp., 1 Jabez St., Newark NJ 07105, has submitted a pesticide petition to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(e) by establishing an exemption from the requirement of a tolerance for acetyl tributyl citrate when used as a component of plastic animal tags in pesticide formulations applied to animals. In the **Federal Register** of August 3, 1988 (53 FR 29244), EPA proposed such an exemption. No

comments have been received in response to the proposal. However, because of the length of time that has elapsed since the originial proposal, EPA is reproposing the exemption. The basis for this proposed exemption is contained in the previous proposal (53 FR 29244).

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300307]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: October 23, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(e) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(e) * * *

Inert ingredients	Limits	Uses
* *	* * *	* *
Acetyl tributyl citrate (CAS Reg. No. 77-90-7)		Component of plastic animal tags.
* *	* * *	* *

[FR Doc. 93-27274 Filed 11-9-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 97

[PR Docket No. 93-267; FCC 93-480]

Temporary Operating Authority for New Amateur Operators

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This action proposes to grant immediate temporary operating authority to persons who pass the examinations for a new amateur operator license. The proposed rule changes are necessary so that successful examinees can begin to operate their stations immediately and will not have to wait while the license application is being processed. This proposal would give better service to the public. It will also reduce the number of inquiries that the Commission receives concerning the status of applications.

DATES: Comments are due on or before January 10, 1994. Reply comments are due on or before February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Maurice J. DePont, Federal Communications Commission, Private Radio Bureau, Washington, DC 20554, (202) 632-4964.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, adopted October 21, 1993, and released November 4, 1993. The complete text of this Commission action, including the proposed rule amendments, is available for inspection and copying during normal business hours in the FCC Reference Center (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this Notice of Proposed Rule Making, including the proposed rule amendments, may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (ITS, Inc.), 2100 M Street, NW., suite 140, Washington, DC 20037.

Summary of Notice of Proposed Rule Making

1. The proposed rule changes respond to a petition (RM-8288) filed by the Western Carolina Radio Society/VEC (Wescars) requesting rules that would grant immediate temporary operating authority to persons who pass the examinations for new amateur operator license. The proposed rules would provide such temporary operating authority.

2. Currently, after passing the examinations, a new amateur operator must wait several weeks for his/her license application to be processed. During that time, operation of the station is not permitted. The proposed rules provide for temporary operating authority and frequency privileges, pending receipt of the full-term license or 120 days, whichever comes first. Certain restrictions would apply to the temporary operating authority. It would not, for example, authorize any amateur station operation that may have a significant environmental effect as defined in the Commission's Rules.

3. The proposed rules also provide for a unique call sign to be used by stations operating under temporary authority. The prefix for such call sign would be WZ. Additional components of the call sign are set forth in the proposed rules.

4. Comments are invited on the proposal.

5. The proposed rules are set forth at the end of this document.

6. This is a non-restricted notice and comment rule making proceeding. *Ex parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as specified in the Commission's rules. See generally 47 CFR 1.1202, 1.1203, and 1.1206(a).

7. In accordance with section 605(b) of the Regulatory Flexibility Act of 1980, 5 U.S.C. 605(b), the Commission certifies that the proposed rules would not, if promulgated, have a significant economic impact on a substantial number of small business entities

because the amateur stations that are the subject of this proceeding would not be authorized to transmit any communications where the station licensee or control operator has a pecuniary interest. See § 97.113(a)(3).

8. The proposal contained herein has been analyzed with respect to the Paperwork Reduction Act of 1980, 44 U.S.C. 3501–3520, and found to contain no new or modified form, information collection and/or record retention requirements, and will not increase or decrease burden hours imposed on the public.

9. This Notice of Proposed Rule Making and the proposed rule amendments are issued under the authority of sections 4(i), 303(r), 307(a), and 308(a) of the Communications Act of 1934, as amended, 47 USC 154(i), 303(r), 307(a), and 308(a).

10. A copy of this Notice of Proposed Rule Making will be forwarded to the Chief Counsel for Advocacy of the Small Business Administration.

List of Subjects in 47 CFR Part 97

License privileges, Radio, Temporary operating authority.

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

Proposed Rules

Part 97 of chapter I of title 47 of the Code of Federal Regulations is proposed to be amended as follows:

PART 97—AMATEUR RADIO SERVICE

1. The authority citation for part 97 continues to read as follows:

Authority: 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303. Interpret or apply 48 Stat. 1064–1068, 1081–1105, as amended; 47 U.S.C. 151–155, 301–609, unless otherwise noted.

2. § 97.5, paragraphs (a), (b), and (c) are revised and a new paragraph (d)(7) is added to read as follows:

§ 97.5 Station license required.

(a) When a station is transmitting on any amateur service frequency from a geographic location within 50 km of the Earth's surface where the amateur service is regulated by the FCC, the person having physical control of the apparatus must have a written authorization recognized by the FCC for an amateur station.

(b) When a station is transmitting on any amateur service frequency from a location within 50 km of the Earth's surface and aboard any vessel or craft that is documented or registered in the United States, the person having physical control of the apparatus must have a written authorization recognized by the FCC for an amateur station.

(c) When a station is transmitting on any amateur-satellite service frequency from a location more than 50 km above the Earth's surface aboard any craft that is documented or registered in the United States, the person having physical control of the apparatus must have a written authorization recognized by the FCC for an amateur station.

(d) * * *

(7) A CSCE indicating that the person has passed the necessary examinations for a new amateur operator license within the previous 120 days, *provided that:*

(i) The person has properly filed with the administering VEs an application, received on behalf of the FCC, for a new operator/primary station license that the FCC has not yet acted upon;

(ii) The person is not a prior amateur service licensee whose license was revoked, suspended for less than the balance of the license term and the suspension is still in effect, suspended for the balance of the license term and relicensing has not taken place, or surrendered for cancellation following notice of revocation, suspension, or monetary forfeiture proceedings;

(iii) The person is not the subject of a cease and desist order that relates to amateur service operation and which is still in effect;

(iv) The temporary authority ceases immediately, if the application is returned without action;

(v) No temporary authority is authorized if the operation of the station may have a significant environmental effect, as defined by § 1.1307 of this chapter; and

(vi) The temporary authority is accepted with the express understanding that such authority may be modified or cancelled at any time without hearing if, in the FCC's discretion, the need for such action arises.

* * * * *

3. Section 97.7 is amended by adding a new paragraph (d) to read as follows:

§ 97.7 Control operator required.

* * * * *

(d) A CSCE indicating that the person has passed the necessary examinations for a new amateur operator license within the previous 120 days, *provided that:*

(1) The person has properly filed with the administering VEs an application, received on behalf of the FCC, for a new operator/primary station license that the FCC has not yet acted upon;

(2) The person is not a prior amateur service licensee whose license was revoked, suspended for less than the balance of the license term and the suspension is still in effect, suspended for the balance of the license term and relicensing has not taken place, or surrendered for cancellation following notice of revocation, suspension, or monetary forfeiture proceedings;

(3) The person is not the subject of a cease and desist order that relates to amateur service operation and which is still in effect;

(4) The temporary authority ceases immediately, if the application is returned without action; and

(5) No temporary authority is authorized if the operation of the station may have a significant environmental effect, as defined in § 1.1307 of this chapter; and

(6) The temporary authority is accepted with the express understanding that such authority may be modified or cancelled at any time without hearing if, in the FCC's discretion, the need for such action arises.

4. Section 97.9 is amended by adding a new paragraph (c) to read as follows:

§ 97.9 Operator license.

* * * * *

(c) A person not holding a valid amateur operator license who has properly filed with the administering VEs an application, received on behalf of the FCC, for a new operator/primary station license that the FCC has not yet acted upon, and who holds a CSCE indicating that the person has passed the necessary examinations within the previous 120 days, is authorized the frequency privileges specified in § 97.301 for the operator class for which application was made, *provided that:*

(1) The person is not a prior amateur service licensee whose license was revoked, suspended for less than the balance of the license term and the suspension is still in effect, suspended for the balance of the license term and relicensing has not taken place, or surrendered for cancellation following notice of revocation, suspension, or monetary forfeiture proceedings;

(2) The person is not the subject of a cease and desist order that relates to amateur service operation and which is still in effect;

(3) The temporary authority ceases immediately, if the application is returned without action; and

(4) No temporary authority is authorized if the operation of the station may have a significant environmental effect, as defined in § 1.1307 of this chapter; and

(5) The temporary authority is accepted with the express

understanding that such authority may be modified or cancelled at any time without hearing if, in the FCC's discretion, the need for such action arises.

5. Section 97.119 is amended by revising paragraph (e) and adding a new paragraph (g) to read as follows:

§ 97.119 Station identification.

* * * * *

(e) When the control operator is a person who is exercising the rights and privileges authorized by § 97.9 (b) or (c), an indicator must be included after the call sign as follows:

(1) For a control operator who has requested a new Novice Class license: No indicator;

(2) For a control operator who has requested a new Technician Class license or a license modification from Novice Class operator to Technician Class: KT;

(3) For a control operator who has requested a new General Class license or a license modification from Novice Class or Technician Class operator to General Class: AG;

(4) For a control operator who has requested a new Advanced Class license or a license modification from Novice, Technician, or General Class operator to Advanced Class: AA; or

(5) For a control operator who has requested a new Amateur Extra Class license or a license modification from Novice, Technician, General, or Advanced Class operator to Amateur Extra Class: AE.

* * * * *

(g) When the station is transmitting under the authority of § 97.5(d)(7), the call sign must consist of the following in sequential order:

(1) The prefix WZ;

(2) The numeral for the VEC Region for the mailing address given in the license application filed by the person;

(3) The initial of the person's first name;

(4) The initial of the person's first middle name, or the letter Z, if the person has no middle name;

(5) The initial of the person's last name; and

(6) The indicator required by paragraph (e) of this section.

[FR Doc. 93–27629 Filed 11–9–93; 8:45 am]
BILLING CODE 6712–01–M

Notices

Federal Register

Vol. 58, No. 216

Wednesday, November 10, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Lolo Trail: Clearwater National Forest; Idaho County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice of cancellation of an environmental impact statement.

SUMMARY: The original Notice of Intent was published in the **Federal Register** Volume 58, page 32903 on June 14, 1993. This Notice serves to inform you of our plans to suspend further work on the Final Environmental Impact Statement for the Lolo Trail which was to be published in July 1994. The primary reasons for suspending further work are cited below.

The Clearwater National Forest will begin work on revising the Forest Plan. The allocation issues on the Lolo Trail System will be resolved in this forest wide planning effort rather than in a separate project.

Information needed to resolve some of the identified issues will take several years to collect and will not be available within the current time-table for this project.

FOR FURTHER INFORMATION CONTACT: George Harbaugh, Lolo Trail Interdisciplinary Team Leader, Lochsa Ranger District, Clearwater National Forest, (208) 926–4275.

The responsible official is the Forest Supervisor of the Clearwater National Forest.

Dated: October 21, 1993.

James L. Caswell,

Forest Supervisor, Clearwater National Forest.

[FR Doc. 93–27637 Filed 11–9–93; 8:45 am]

BILLING CODE 3410–11–M

Rural Electrification Administration

Wright-Hennepin Cooperative Electric Association Finding of No Significant Impact

AGENCY: Rural Electrification Administration, USDA.

ACTION: Notice of Finding of No Significant Impact.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969, as amended, the Council on Environmental Quality Regulations (40 CFR Parts 1500–1508), and REA Environmental Policies and Procedures (7 CFR Part 1794), has made a Finding of No Significant Impact (FONSI) with respect to a project proposed by Wright-Hennepin Cooperative Electric Association (Wright-Hennepin) of Maple Lake, Minnesota. The proposed project consists of constructing a new headquarters/warehouse facility in Wright County in Minnesota.

REA has concluded that the impacts from the proposed project would not be significant and that the proposed action is not a major Federal action significantly affecting the quality of the human environment. Therefore, the preparation of an environmental impact statement is not necessary.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, REA, Agriculture South Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720–1784.

SUPPLEMENTARY INFORMATION: REA, in accordance with its environmental policies and procedures, required that Wright-Hennepin prepare a Borrower's Environmental Report (BER) reflecting the potential impacts of the proposed facility. The BER, which includes input from the Federal, State, and local agencies, has been adopted as REA's Environmental Assessment for the project in accordance with 7 CFR 1794.84. REA has concluded that the BER represents an accurate assessment of the environmental impacts of the project. The proposed project should have no impact on cultural resources, important farmland, floodplains, wetlands, water quality and federally listed or proposed for listing threatened or endangered species or their critical habitat. The proposed headquarters/warehouse facility will be located on a 32-acre site. The site is located in the southwest quarter, of the southwest quarter, of Section 20 Township 119N, Range 24W, Wright County, Minnesota.

Alternatives considered to the project as proposed were no action and alternative sites. REA has considered these alternatives and concluded that the project as proposed meets the needs of Wright-Hennepin.

Copies of the BER and FONSI are available for review at REA at the aforementioned address, or may be reviewed at or obtained from the offices of Wright-Hennepin, 110 Birch Avenue, South, Maple Lake, Minnesota 55358–0330, telephone (612) 963–3131.

Dated: November 11, 1993.

Robert Peters,

Acting Administrator.

[FR Doc. 93–27688 Filed 11–9–93; 8:45 am]

BILLING CODE 3410–15–M

Soil Conservation Service

Kagman Watershed, Saipan, Commonwealth of the Northern Mariana Islands

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of availability of record of decision.

SUMMARY: Joan B. Perry, responsible Federal Official for projects administered under the provisions of Public Law 83–566, 16 U.S.C. 1001–1008, in the Commonwealth of the Northern Mariana Islands, is hereby providing notification that a record of decision to proceed with the installation of the Kagman Watershed project is available. Single copies of this record of decision may be obtained from Joan B. Perry at the address below.

FOR FURTHER INFORMATION CONTACT: Joan B. Perry, Director, Pacific Basin Area, Soil Conservation Service, GCIC Building, suite 602, 414 W. Soledad Avenue, Agana, Guam 96910, telephone 671–472–7260.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: November 1, 1993.

Joan B. Perry,

Director, Pacific Basin Area.

[FR Doc. 93–27636 Filed 11–9–93; 8:45 am]

BILLING CODE 3410–16–M

Public Meeting for Shaping the Third Soil and Water Resources Conservation Act of 1977 (RCA) Appraisal and National Conservation Program

In accordance with Public Law 95–192, the Soil and Water Resources Conservation Act of 1977, the U.S. Department of Agriculture is holding a public meeting for Shaping the Third RCA Appraisal and National Conservation Program.

Date and Time: Tuesday, November 16, 1993, 8 a.m. to 4:30 p.m.

Place: Jefferson Auditorium, USDA South Building, 14th & Independence Blvd., Washington, DC.

Type of Meeting: Open to the public.

Contact Person: James A. Maetzold at (202) 720–0132, FAX (202) 720–9030, mail: P.O. Box 2890, Washington, DC 20013.

Purpose of Meeting: To facilitate public input in the RCA planning process.

Agenda: The role of the RCA and the challenges for resource management in a changing environment.

Gary A. Maryheim,

Acting Chief, Soil Conservation Service.

[FR Doc. 93–27664 Filed 11–9–93; 8:45 am]

BILLING CODE 3410–16–M

Upper Piscataquis River Watershed, Piscataquis, Somerset and Penobscot Counties, Maine

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Upper Piscataquis River Watershed, Piscataquis County, Maine.

FOR FURTHER INFORMATION CONTACT: David L. Mussulman, State Conservationist, Soil Conservation Service, 5 Godfrey Drive, Orono, Maine 04473, Telephone (207) 866–7241.

SUPPLEMENTARY INFORMATION: The environmental assessment of this Federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, David L. Mussulman, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

The project purpose is flood protection. The planned works of improvement include an automated flood warning and response system and two nonstructural floodproofing measures.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting David L. Mussulman.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention)

David L. Mussulman,

State Conservationist.

[FR Doc. 93–27634 Filed 11–9–93; 8:45 am]

BILLING CODE 3415–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Opportunity To Apply To Serve on Binational Review Panels and Extraordinary Challenge Committees

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of opportunity to apply for inclusion on lists of candidates eligible to serve on binational panels and Extraordinary Challenge Committees convened pursuant to Chapter 19 of the United States-Canada Free Trade Agreement (CFTA or Agreement).

SUMMARY: The CFTA provides for the establishment of binational panels to review final determinations in U.S. and Canadian antidumping and countervailing duty proceedings involving merchandise from Canada or the United States. The CFTA also provides for review of binational panel decisions, in limited circumstances, by Extraordinary Challenge Committees. Pursuant to the CFTA and its implementing legislation, USTR maintains lists of candidates eligible to serve on Chapter 19 panels and Extraordinary Challenge Committees. USTR and the interagency group established pursuant to section 405 of the United States-Canada Free-Trade Agreement Implementation Act of 1988, Public Law 100–449 (the Act), invite eligible citizens of the United States to apply for inclusion on these candidate lists.

DATES: Eligible citizens are encouraged to supply a resume to the office indicated below by November 24, 1993 in order to be considered for the 1994 candidate lists.

ADDRESSES: Section 405 Group, Room 223, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Dorothy Balaban, Legal Assistant, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3432.

SUPPLEMENTARY INFORMATION: Chapter 19 of the CFTA substituted binational panel review for judicial review by national courts of final determinations in antidumping and countervailing duty proceedings. Chapter 19 panels review determinations to decide whether the competent investigating authority complied with the relevant national laws, applying the standard of review that would otherwise have been applied by a national court in comparable circumstances.

Since the implementation of the CFTA, 46 binational panel proceedings have been convened pursuant to Chapter 19. Thirty of these panel proceedings have involved determinations by U.S. investigating authorities; 16 have involved Canadian determinations. Six of these panels have reviewed countervailing duty determinations; 23 proceedings have involved antidumping duty determinations; 14 have involved injury determinations; and three have involved scope determinations. Twenty-one panel proceedings are currently pending.

Binational panels convened pursuant to Chapter 19 consist of five independent experts. A separate panel is formed for each challenged determination. The panelists are nominated by the United States and Canada from lists of eligible candidates

developed in advance pursuant to the requirements of the CFTA and the Act. The majority of individuals on each panel must be attorneys.

Panel decisions are not subject to appeal, but may be reviewed in limited circumstances by a binational Extraordinary Challenge Committee. Extraordinary Challenge Committees are composed of current and former Federal judges. To date, two panel decisions has been considered by Extraordinary Challenge Committees.

Section 405 of the Act establishes an interagency group, chaired by USTR, to propose lists of candidates eligible to serve on Chapter 19 panels and Extraordinary Challenge Committees. After consulting with the Senate Committee on Finance and the House Committee on Ways and Means, USTR approves a final candidate list. Pursuant to section 405, the candidate list may be modified twice each year.

The current U.S. list of candidates eligible to serve on Chapter 19 binational panels is set forth in Annex A to this notice. The current U.S. list of candidates eligible to serve on Extraordinary Challenge Committees is set forth in Annex B.

Criteria for Eligibility

Chapter 19 establishes specific criteria for panel selection. First, candidates must be U.S. or Canadian citizens and not affiliated with either government. They also must be of good character, high standing and repute, and must be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Although the Act precludes active judges from serving on Chapter 19 panels, former judges are encouraged to apply.

Section 405 of the Act establishes further requirements for the selection of eligible U.S. candidates to serve on Chapter 19 binational panels. Candidates are to be selected without regard to political affiliation. Individuals who would be prevented by conflicts of interest from serving on many panels convened pursuant to Chapter 19 may be excluded from the final candidate list. Not all individuals included on the final candidate list necessarily will be selected for panels.

Remuneration

The two governments share equally in compensating panel members. The amount of remuneration varies according to the exchange rate and is currently $320 per day, plus reasonable expenses. Although panelists will receive remuneration from the United States, section 405(b) of the Act specifies that panelists are not considered employees of the Government.

Procedures for Application

Interested parties are encouraged to supply one copy of their resumes to Section 405 Group, room 223, Office of the United States Trade Representative, 600 17th Street, NW., Washington, DC 20506. Upon receipt of resumes, the Section 405 Group may send a letter requesting further information in order to allow a thorough evaluation of the application.

The applicant's resume and any supplementary information provided by an applicant will be used by USTR for the purpose of selecting candidates for the final lists and for nominating candidates for particular panels or committees. Further information concerning potential conflicts may be requested, on an as needed basis, from individuals prior to final selection or appointment to particular panels or committees. This information will be provided to the Government of Canada upon the nomination of candidates to particular panels or committees.

Current Members

Current members of the candidate lists need not reapply in response to this notice. Current members who are no longer interested in serving on panels or committees should notify USTR so that they can be removed from the list. In the absence of such notice, USTR will assume that the individual wishes to remain on the list. Individuals who have previously applied but have not been selected for a final candidate list may reapply.

False Statements

Pursuant to section 405(a)(2)(C) of the Act, false statements by an applicant to USTR regarding the applicant's personal or professional qualifications, or financial or other relevant interests, that bear upon the applicant's suitability for placement on a list of eligible candidates or appointment to panels or committees are subject to criminal sanctions under 18 U.S.C. 1001.

Dated: November 5, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-27725 Filed 11-9-93; 8:45 am]

BILLING CODE 3510-GT-M

International Trade Administration

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews: Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review.

SUMMARY: The Panel Review of the final determination made by the U.S. Department of Commerce, International Trade Administration, Import Administration, of an antidumping determination respecting Pure and Alloy Magnesium from Canada is completed and the panelists discharged from their duties effective November 8, 1993 (Secretariat File No. USA-92-1904-04).

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, Suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Binational Panel issued a decision which affirmed the investigating authority's determination on remand which was filed with the Binational Secretariat on May 27, 1993.

No request for an extraordinary challenge committee has been filed with the responsible Secretary. Therefore, pursuant to Rule 80(d) of the Article 1904 Binational Panel Rules, this Notice of Completion of Panel Review is effective on November 8, 1993.

Dated: November 4, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-27726 Filed 11-9-93; 8:45 am]

BILLING CODE 3510-GT-M

Minority Business Development Agency

[Project I.D. No. 06-10-94004-01]

Business Development Center Applications: Little Rock MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY; The above solicitation was previously advertised on Monday, August 9, 1993. This solicitation has been cancelled.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: November 4, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–27667 Filed 11–9–93; 8:45 am]

BILLING CODE 3510–21–M

[Project I.D. No. 06–10–94001–01]

Business Development Center Applications: Shreveport MBDC

AGENCY: Minority Business Development Agency, Commerce.

ACTION: Cancellation.

SUMMARY: The above solicitation was previously advertised on Monday, August 9, 1993. This solicitation has been cancelled.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 4, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–27666 Filed 11–9–93; 8:45 am]

BILLING CODE 3510–21–M

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94–C0005]

Dial Manufacturing, Inc., a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Consumer Product Safety Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Consumer Product Safety Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20 (e)–(h). Published below is a provisionally-accepted Settlement Agreement with Dial Manufacturing, Inc., a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 26, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0005, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Melvin I. Kramer, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (Attached).

Dated: November 2, 1993.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. This Settlement Agreement and Order, entered into between Dial Manufacturing, Inc., a corporation (hereinafter, "Dial"), and the staff of the Consumer Product Safety Commission (hereinafter, "staff"), is a compromise resolution of the matter described herein, without a hearing or determination of issues of law and fact.

I. The Parties

2. Dial is a corporation organized and existing under the laws of the State of Arizona with its principal corporate offices located at 25 South 51st Avenue, Phoenix, Arizona 85043.

3. The "Staff" is the staff of the Consumer Product Safety Commission (hereinafter, "Commission"), an independent federal regulatory agency established by Congress pursuant to section 4 of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2053.

II. Jurisdiction

4. Dial manufactured certain evaporative cooler pumps, identified further in paragraphs 6 and 7 below (hereinafter, "pumps"), (a) for sale to a consumer for use in or around a permanent or temporary household or residence, or (b) for the personal use, consumption or enjoyment of a consumer in or around a permanent or temporary household or residence. These pumps are "consumer products" within the meaning of section 3(a)(1) of the CPSA, 15 U.S.C. 2052(a)(1).

5. Dial imported and sold approximately 150.000 of these pumps between 1990 and 1991 at major home supply and building material centers primarily located in the southwest area of the United States. Dial, therefore, is a "manufacturer" of a "consumer product" which is "distributed on commerce," as those terms are defined in sections 3(a) (4) and (11) of the CPSA, 15 U.S.C. 2052(a) (4) and (11).

III. The Product

6. Evaporative coolers, commonly known as swamp coolers, are designed to blow moist cool air through ducts into a residence. They are generally found in the drier climates of the western and southwestern United States. The box shaped evaporative cooler cabinets are constructed of plastic or metal and are often installed on top of house roofs.

7. A water cooler pump such as the Dial D5500 model is located inside the cooler cabinet. The pump functions to draw supplied water from the reservoir at the bottom of the cabinet to the distribution system at the top. Water then saturates the cooling pads located vertically inside the vented cabinet. Outside air is cooled and humidified as it is pulled through the pads by the cabinet blower. The blower then forces the moist cool air into the house.

IV. Staff Allegations Concerning the Pumps and of a Failure by Dial to Comply With the Reporting Requirements of Section 15(b) of the CPSA

8. Upon learning of several incidents of roof fires reportedly caused by a pump contained within an evaporative cooler, the staff undertook an investigation. The investigation resulted in the staff's preliminary determination that the pump motors described in paragraphs 6 and 7 above, were a substantial product hazard because they were neither impedance nor thermally protected and, if one should become stalled it could overheat and ignite the plastic pump housing thereby creating a fire hazard to the roof on which it is installed.

9. Following contact by the Commission on June 3, 1991, Dial reported in its letter of August 12, 1991, that it was aware of 17 incidents of pump failure dating back to June of 1990.

10. Additionally, the report revealed that as early as February 2, 1990, when Dial obtained the results of "Test no. 95" on one of these pumps (which showed that one sample "heated up very rapidly, made a lot of noise and started to melt on the top"), but certainly no later than July 27, 1990, at which time Dial had results of five more tests which showed samples stalling, overheating or igniting, Dial knew or should have known that this model pump had a defect which could create a substantial product hazard.

11. Section 15(b) of the CPSA, 15 U.S.C. 2064(b), requires a manufacturer of consumer products who, *inter alia*, obtains information that reasonably supports the conclusion that its product contains a defect which could create a substantial product hazard, or creates an unreasonable risk of serious injury or death, immediately to inform the Commission of the defect, or of such risk.

12. Notwithstanding the facts alleged in paragraphs 8 through 11 above, Dial did not report to the Commission until August 12, 1991.

V. Response of Dial

13. Dial denies that its D5500 pumps, sold in 1990 and 1991, contained a defect which created or could have created a substantial product hazard within the meaning of section 15(a) of the CPSA, 15 U.S.C. 2064(a) or that its pumps created a risk of serious injury or death as no serious injuries or death occurred with the use of its pumps from 1990 through 1993. Dial further contends that the results of its research and development testing of its pumps referenced in paragraph 10 above are not indicative of actual field test performance and should not, therefore, have been used by the Commission's staff as a basis for contending that Dial should have known its "pump had a defect which could create a substantial product hazard." Further, Dial contends that the use of pumps without impedance or thermal overload protection has been standard practice in the cooler parts industry for 40 years. This practice has not resulted in serious injury or death. Dial contends, therefore, that they were under no obligation to report to the Commission under section 15(b) of the CPSA, 15 U.S.C. 2064(b), as the facts as they view them do not support the Commission's position that their pump represented a "substantial product hazard".

VI. Agreement of the Parties

14. Dial and the staff agree that the Commission has jurisdiction in this matter for purposes of entry and enforcement of this Settlement Agreement and Order.

15. Dial agrees to pay the Commission a civil penalty in the amount of twenty-five thousand dollars ($25,000) payable within twenty (20) days after service of the Final Order of the Commission accepting this Settlement Agreement. This payment is made in settlement of allegations by the staff that Dial violated the reporting requirements of section 15(b) of the CPSA, 15 U.S.C. 2064(b), with regard to the pumps described above. In agreeing to this settlement, Dial affirms that it does not accept the Commission staff's allegations as factual, nor does Dial admit to any liability in this matter; but, Dial is willing to settle at this time to avoid further legal expense in defending against these allegations.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedure set forth in 16 CFR 1118.20(e). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**, in accordance with 16 CFR 1118.20(f).

18. Upon final acceptance of this Settlement Agreement and Order by the Commission, Dial knowingly, voluntarily and completely waives any rights it may have: (1) To an administrative or judicial hearing with respect to the Commission's claim for a civil penalty, (2) to judicial review or other challenge or contest of the validity of the Commission's action with regard to its claim for a civil penalty, (3) to a determination by the Commission as to whether a violation of Section 15(b) of the CPSA, 15 U.S.C. 2064(b), has occurred, and (4) to a statement of findings of fact and conclusions of law with regard to the Commission's claim for a civil penalty.

19. Although the pumps in question are no longer manufactured by Dial in the 1990 configuration, i.e. without impedance protection, thermal overload or flame retardant plastic, Dial agrees to inform the Commission if it learns of any additional pump related incidents or any other relevant information affecting the safety of these pups.

20. The parties further agree that the incorporated Order be issued under the CPSA, 15 U.S.C. 2051 *et seq.*, and that a violation of the Order will subject Dial to appropriate legal action.

21. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

Dated: September 2, 1993.

Dial Manufacturing, Inc.

Duane K. Johnston,

President, Dial Manufacturing, Inc.

Dated: September 10, 1993.

The Consumer Product Safety Commission

David Schmeltzer,

Associate Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Melvin I. Kramer,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Dial Manufacturing, Inc., a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Dial Manufacturing, Inc.; and it appearing the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted, as indicated below; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Dial Manufacturing, Inc. shall pay to the order of the Consumer Product Safety Commission a civil penalty in the amount of twenty-five thousand dollars ($25,000), within twenty (20) days after receipt of the Final Order and Decision in this matter.

Provisionally accepted and Provisional Order issued on the 2nd day of November, 1993.

By Order of the Commission:

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–27613 Filed 11–9–93; 8:45 am]

BILLING CODE 6355–01–M

[CPSC Docket No. 94–C0004]

Winston Toy Corporation, a Corporation; Provisional Acceptance of a Settlement Agreement and Order

AGENCY: Consumer Product Safety Commission.

ACTION: Provisional acceptance of a settlement agreement under the Federal Hazardous Substances Act.

SUMMARY: It is the policy of the Commission to publish settlements which it provisionally accepts under the Federal Hazardous Substances Act in the **Federal Register** in accordance with the terms of 16 CFR 1118.20(e)–(h). Published below is a provisionally-accepted Settlement Agreement with, Winston Toy Corporation, a corporation.

DATES: Any interested person may ask the Commission not to accept this agreement or otherwise comment on its contents by filing a written request with the Office of the Secretary by November 26, 1993.

ADDRESSES: Persons wishing to comment on this Settlement Agreement should send written comments to the Comment 94–C0004, Office of the Secretary, Consumer Product Safety Commission, Washington, DC 20207.

FOR FURTHER INFORMATION CONTACT: Earl A. Gershenow, Trial Attorney, Office of Compliance and Enforcement, Consumer Product Safety Commission, Washington, DC 20207; telephone (301) 504–0626.

SUPPLEMENTARY INFORMATION: (attached).

Dated: November 1993.

Sheldon D. Butts,

Deputy Secretary.

Settlement Agreement and Order

1. Winston Toy Corporation (hereinafter, "Winston"), a corporation, enters into this Settlement Agreement (hereinafter, "Agreement") with the staff of the Consumer Product Safety Commission, and agrees to the entry of the Order described herein. The purpose of the Agreement and Order is to settle the staff's allegations that Winston Toy Corporation knowingly caused the introduction into interstate commerce of certain banned hazardous toys, in violation of section 4(a) of the Federal Hazardous Substances Act, 15 U.S.C. 1263(a).

I. Jurisdiction

2. The Commission has jurisdiction over Winston and the subject matter of this Settlement Agreement pursuant to section 30(a) of the Consumer Product Safety Act (hereinafter, "CPSA"), 15 U.S.C. 2079(a), and sections 2(f)(1)(D), 4(a), and 5(c) of the Federal Hazardous Substances Act (hereinafter, "FHSA"), 15 U.S.C. 1261(f)(1)(D), 1263(a), and 1264(c).

II. The Parties

3. The "staff" is the staff of the Consumer Product Safety Commission, an independent regulatory commission of the United States established pursuant to section 4 of the CPSA, 15 U.S.C. § 2053.

4. Winston is a corporation organized and existing under the laws of the State of California, with its principal corporate offices located at 331 E. Winston Street, Los Angeles, CA 90013. Winston is engaged in the import and wholesale business. Approximately 90 percent of its business is from the purchase and sale of toys.

III. Allegations of the Staff

5. Between February 1991, and April 1992, Winston caused the introduction into interstate commerce of approximately 23,016 toys intended for use by children under three years of age, which are identified and described below:

CPSC sample No.	Description	Entry date	Quantity
M–867–2433	Playhouse Phone Bank Tai Yick Toy Factory	02/08/91	5,960
M–867–2434	Robot Playhouse Bank Tai Yick Toy Factory	02/08/91	3,792
M–867–2435	Funny Doggy Tai Yick Toy Factory	02/08/91	1,320
M–867–2436	Portable Playphone Bank Tai Yick Toy Factory	02/08/91	3,960
M–867–3538	Choo Choo Fun Train Toy Forward Novelties Co	08/19/91	3,648
P–867–7835	5½" Plastic Doll Gift Set Brightly Trading Co	04/22/92	5,336

6. The toys identified in paragraph five above are subject to, but failed to comply with, the Commission's Small Parts Regulation, 16 CFR part 1501, in that when tested under the "use and abuse" test methods specified in 16 CFR 1500.51 and 1500.52, (a) one or more parts of each tested toy separated and (b) one or more of the separated parts from each of the tested toys fit completely within the test cylinder, as set forth in 16 CFR 1501.4.

7. Because separated parts fit completely within the test cylinder as described in paragraph six above, each of the toys identified in paragraph five presents a "mechanical hazard" within the meaning of section 2(s) of the FHSA, 15 U.S.C. 1261(s) (choking, aspiration and/or ingestion of small parts).

8. Each of the toys identified in paragraph five above is a "hazardous substance" pursuant to section 2(f)(1)(D) of the FHSA, 15 U.S.C. 1261(f)(1)(D).

9. Each of the toys identified in paragraph five above is a "banned hazardous substance" pursuant to (a) section 2(q)(1)(A) of the FHSA, 15 U.S.C. 1261(q)(1)(A) (any toy or other article intended for use by children which bears or contains a hazardous substance); and (b) 16 CFR 1500.18(a)(9).

10. Winston knowingly introduced or caused the introduction into interstate commerce of the aforesaid banned hazardous toys, in violation of section 4(a) of the FHSA, 15 U.S.C. 1263(a), for which a civil penalty may be imposed pursuant to section 5(c) of the FHSA, 15 U.S.C. 1264(c).

IV. Response of Winston

11. Winston denies the allegations of the staff set forth in paragraphs five through ten above that it has knowingly introduced or caused the introduction into commerce of the aforesaid banned hazardous toys, or that it has violated the FHSA as alleged by the staff.

V. Agreement of the Parties

12. The Consumer Product Safety Commission has jurisdiction over Winston and the subject matter of this Settlement Agreement and Order under the following acts: Consumer Product Safety Act, 15 U.S.C. 2051 *et seq.*, and the Federal Hazardous Substances Act, 15 U.S.C. 1261 *et seq.*

13. Upon final acceptance by the Commission of this Settlement Agreement, Winston agrees to pay to the Commission a civil penalty in the amount of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00) in two (2) installment payments of TWELVE-THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($12,500.00) each. The first installment payment of TWELVE-THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($12,500.00) shall be due (20) days after service of the Final Order of the Commission accepting the Settlement Agreement. The second and final installment payment of TWELVE-THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($12,500.00) is due and payable within 365 days after service of the Final Order. For any payment that is overdue less than thirty (30) days, Winston shall be charged interest, payable to the Commission, in accordance with the rate and method of calculation set forth in 28 U.S.C. 1961(a) and (b), during the period that payment is overdue. Any payment that is thirty (30) days or more overdue shall cause the entire outstanding balance to become due immediately and with interest in accordance with 28 U.S.C. 1961(a) and (b) as set forth above, during the period that the outstanding balance is overdue.

Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs five through ten above that Winston violated the FHSA.

14. The Commission does not make any determination that Winston knowingly violated the FHSA. The Commission and Winston agree that this Agreement is entered into for the purposes of settlement only.

15. Upon final acceptance of this Settlement Agreement by the Commission and issuance of the Final Order, Winston knowingly, voluntarily and completely, waives any rights it may have in this matter (1) to an administrative or judicial hearing, (2) to judicial review or other challenge or contest of the validity of the Commission's actions, (3) to a determination by the Commission as to whether Winston failed to comply with the FHSA and aforesaid, and (4) to a statement of findings of fact and conclusions of law.

16. For purposes of section 6(b) of the CPSA, 15 U.S.C. 2055(b), this matter shall be treated as if a complaint had issued; and, the Commission may publicize the terms of the Settlement Agreement and Order.

17. Upon provisional acceptance of this Settlement Agreement and Order by the Commission, this Settlement Agreement and Order shall be placed on the public record and shall be published in the **Federal Register** in accordance with the procedures set forth in 16 CFR 1118.20 (e)–(h). If the Commission does not receive any written request not to accept the Settlement Agreement and Order within 15 days, the Settlement Agreement and Order will be deemed finally accepted on the 16th day after the date it is published in the **Federal Register**.

18. The parties further agree that the Commission shall issue the attached Order incorporated herein by reference; and that a violation of the Order shall subject Winston to appropriate legal action.

19. No agreement, understanding, representation, or interpretation not contained in this Settlement Agreement and Order may be used to vary or to contradict its terms.

20. The provisions of the Settlement Agreement and Order shall apply to Winston and each of its successors and assigns.

Dated: September 13, 1993.

Respondent Winston Toy Corporation

Wintson S. Jeong,

President, Winston Toy Corporation, 331 E. Winston Street, Los Angeles, CA 90013.

Commission Staff

David Schmeltzer,

Assistant Executive Director, Office of Compliance and Enforcement.

Alan H. Schoem,

Director, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: September 28, 1993.

Earl A. Gershenow,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Dated: September 28, 1993.

Dennis C. Kacoyanis,

Trial Attorney, Division of Administrative Litigation, Office of Compliance and Enforcement.

Order

Upon consideration of the Settlement Agreement entered into between respondent Winston Toy Corporation, a corporation, and the staff of the Consumer Product Safety Commission; and the Commission having jurisdiction over the subject matter and Winston Toy Corporation; and it appearing that the Settlement Agreement is in the public interest, it is

Ordered, that the Settlement Agreement be and hereby is accepted; and it is

Further Ordered, that upon final acceptance of the Settlement Agreement, Winston Toy Corporation shall pay to the Commission a civil penalty in the amount of TWENTY-FIVE THOUSAND AND 00/100 DOLLARS ($25,000.00), in two (2) installment payments of TWELVE-THOUSAND FIVE HUNDRED AND 00/100 ($12,500.00) each. The first installment payment of TWELVE-THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($12,500.00) shall be due (20) days after service of the Final Order of the Commission accepting the Settlement Agreement. The second installment payment of TWELVE-THOUSAND FIVE HUNDRED AND 00/100 DOLLARS ($12,500.00) is due and payable within 365 days after service of the Final Order. For any payment that is overdue less than thirty (30) days, Winston Toy Corporation shall be charged interest, payable to the Commission, in accordance with the rate and method of calculation set forth in 28 U.S.C. 1961 (a) and (b), during the period that the payment is overdue. Any payment that is thirty (30) days or more overdue shall cause the entire outstanding balance to be due immediately and payable with interest in accordance with 28 U.S.C. 1961(a) and (b) as set forth above, during the period the outstanding balance is overdue. Payment of the full amount of the civil penalty shall settle fully the staff's allegations set forth in paragraphs five through ten in the Settlement Agreement that Winston Toy Corporation violated the FHSA.

Provisionally accepted and Provisional Order issued on the 2nd day of November 1993.

By Order of the Commission.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93–27614 Filed 11–9–93; 8:45 am]

BILLING CODE 6355–01–M

DEPARTMENT OF DEFENSE

Department of the Navy

Privacy Act of 1974; Amend Record Systems

AGENCY: Department of the Navy, DOD.

ACTION: Amend record systems.

SUMMARY: The Department of the Navy proposes to amend four systems of records to its inventory of record systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on December 10, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Head, PA/FOIA Branch, Office of the Chief of Naval Operations (N09B30), 2000 Navy Pentagon, Washington, DC 20350–2000.

FOR FURTHER INFORMATION CONTACT: Mrs. Gwendolyn Aitken at (703) 614–2004 or DSN 224–2004.

SUPPLEMENTARY INFORMATION: The Department of the Navy record system notices for records systems subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

The specific changes to the systems of records are set forth below followed by the systems of records notices published in their entirety, as amended. The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of new or altered systems reports.

Dated: November 1, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

N01640–1

SYSTEM NAME:

Individual Correctional Records *(February 22, 1993, 58 FR 10720).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Military members confined in a naval facility as a result of or pending trial by courts-martial; military members sentenced to three days bread and water or diminished rations; and military members awarded correctional custody to be served in a correctional custody unit.'

CATEGORIES OF RECORDS IN THE SYSTEM:

In line one, delete 'File contains' and capitalize 'Documents'.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry, add 'and E.O. 9397.'

PURPOSE(S):

Delete entry and replace with 'To determine initial custody classification; to determine when custody grade change is appropriate; to gauge member's adjustment to confinement or correctional custody; to identify areas of particular concern to prisoners and personnel in correctional custody; to determine work assignment; to determine educational needs; serves as the basis for correctional treatment; serves as a basis for recommendations for clemency, restoration, and parole.'

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete first paragraph.

STORAGE:

Delete entry and replace with 'Paper records and computerized data base.'

RETRIEVABILITY:

Delete entry and replace with 'Name and Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Computer data base is password protected.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Two years after prisoner is released, records are transferred to the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100 for retention. Records of prisoners accompany their transfer to other facilities.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Officials: Chief of Naval Personnel (Pers 84), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5084, and Commandant of the Marine Corps (Code MHC), HQ USMC, Washington, DC 20380–0001.

Record Holders: United States Navy Brigs and United States Marine Corps Brigs. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084. Requests should include full name and social security number and must be signed by the requesting individual.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084. Requests should include full name and social security number and must be signed by the requesting individual.'

* * * * *

N01640–1

SYSTEM NAME:

Individual Correctional Records.

SYSTEM LOCATION:

United States Navy Brigs and United States Marine Corps Correctional Facilities. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military members confined in a naval facility as a result of or pending trial by courts-martial; military members sentenced to three days bread and water or diminished rations; and military members awarded correctional custody to be served in a correctional custody unit.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents related to the administration of individual prisoners in the Department of the Navy confinement and correctional custody facilities - courts martial orders; release orders; confinement orders; medical examiners' reports; requests and receipts for health and comfort supplies; reports and recommendations relative to disciplinary actions; clothing and equipment records; mail and visiting lists and records; personal history records; individual prisoner utilization records; requests for interview; initial interview; spot reports; prisoner identification records; parolee agreements; inspection record of prisoner in segregation; personal funds records; valuables and property record; daily report of prisoners received and released; admission classification summary; social history; clemency recommendations and actions; parole recommendations and actions; restoration recommendations and actions; psychiatric, psychological, and sociological reports; certificate of parole; certificate of release from parole; requests to transfer prisoners; disciplinary action data cards showing name, grade, Social Security Number, sex, education, sentence, offense(s), sentence computation, organization, ethnic group, discharge awarded, length

of unauthorized absence, number and type of prior punishments, length of service, and type release; weekly status report (each member's legal status, offense charged, length of time confined). On tape, the same data as the disciplinary action data card, except name, computation of sentence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 951 and E.O. 9397.

PURPOSE(S):

To determine initial custody classification; to determine when custody grade change is appropriate; to gauge member's adjustment to confinement or correctional custody; to identify areas of particular concern to prisoners and personnel in correctional custody; to determine work assignment; to determine educational needs; serves as the basis for correctional treatment; serves as a basis for recommendations for clemency, restoration, and parole.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

To Federal, state, and local law enforcement and investigative agencies for investigation and possible criminal prosecution, civil court actions or regulatory order.

To confinement/correctional system agencies for use in the administration of correctional programs to include custody classification; employment, training and educational assignments; treatment programs; clemency, restoration to duty, and parole actions; verifications concerning military offenders or military criminal records, employment records and social histories.

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices also apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and computerized data base.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

Records are maintained in areas accessible only to authorized personnel who are properly screened, cleared, and trained. Computer data base is password protected.

RETENTION AND DISPOSAL:

Two years after prisoner is released, records are transferred to the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100 for retention. Records of prisoners accompany their transfer to other facilities.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Officials: Chief of Naval Personnel (Pers 84), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5084, and Commandant of the Marine Corps (Code MHC), HQ USMC, Washington, DC 20380–0001.

Record Holders: United States Navy Brigs and United States Marine Corps Brigs. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

Requests should include full name and social security number and must be signed by the requesting individual.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the United States Navy Brig or United States Marine Corps Brigs where incarcerated. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices, and/or may be obtained from the Bureau of Naval Personnel (Pers 84), 2 Navy Annex, Washington, DC 20370–5084.

Requests should include full name and Social Security Number and must be signed by the requesting individual.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Military personnel records; military financial and medical records; military and civilian investigative and law enforcement agencies; courts-martial proceedings; records of non-judicial administrative proceedings; United States military commanders; staff members and cadre supply information relative to service member's conduct or duty performance; and other individuals or organizations which may supply information relevant to the purpose for which this system was designed.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(j)(2), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N01500–2

SYSTEM NAME:

Navy Individual Service Review Board Proceedings (ISRB) *(February 22, 1993, 58 FR 10729).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Navy Individual Service Review Board (ISRB) Proceedings Application File.'

SYSTEM LOCATION:

Delete entry and replace with 'Bureau of Naval Personnel (Pers 324), 2 Navy Annex, Washington, DC 20370–3240.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals who have applied for military status and subsequent discharge from the United States Navy because they claim membership in a group which has been determined to have performed active military service with the United States Navy.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Application for discharge, supporting documentation, copies of correspondence between the individual and the Navy ISRB and other correspondence concerning the case.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry, add 'and E.O. 9397.'

PURPOSE(S):

Delete entry and replace with 'To consider the individual's application for military status and discharge.'

* * * * *

STORAGE:

Delete entry and replace with 'Paper records and microfiche.'

RETRIEVABILITY:

Delete entry and replace with 'Name and Social Security Number.'

SAFEGUARDS:

Delete entry and replace with 'The files are kept within the Bureau of Naval Personnel offices. Access during business hours is controlled by Command personnel. Records not in use are maintained in a room which is locked during non-duty hours. The Command is secured at the close of business and the building in which the command is located has limited access controlled by security guards.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Approved application (paper) is destroyed two years after individual separates from the Navy and documents generated as a result of the approved application (i.e., DD Form 214, etc.) are transferred onto microfiche and placed in the individual's military personnel file which is transferred to the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100, for retention. Disapproved applications are retained for two years and then destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Naval Personnel (Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.'

* * * * *

N01900–2

SYSTEM NAME:

Navy Individual Service Review Board (ISRB) Proceedings Application File.

SYSTEM LOCATION:

Bureau of Naval Personnel (Pers 324), 2 Navy Annex, Washington, DC 20370–3240.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals who have applied for military status and subsequent discharge from the United States Navy because they claim membership in a group which has been determined to have performed active military service with the United States Navy.

CATEGORIES OF RECORDS IN THE SYSTEM:

Application for discharge, supporting documentation, copies of correspondence between the individual and the Navy ISRB and other correspondence concerning the case.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Pub.L. 95–202 and E.O. 9397.

PURPOSE(S):

To consider the individual's application for military status and discharge.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records and microfiche.

RETRIEVABILITY:

Name and Social Security Number.

SAFEGUARDS:

The files are kept within the Bureau of Naval Personnel offices. Access during business hours is controlled by Command personnel. Records not in use are maintained in a room which is locked during non-duty hours. The Command is secured at the close of business and the building in which the command is located has limited access controlled by security guards.

RETENTION AND DISPOSAL:

Approved application (paper) is destroyed two years after individual separates from the Navy and documents generated as a result of the approved application (i.e., DD Form 214, etc.) are transferred onto microfiche and placed in the individual's military personnel file which is transferred to the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–5100, for retention. Disapproved applications are retained for two years and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Personnel (Code Pers 324), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–3240.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information contained in the files is obtained from the individual or those acting on the individual's behalf, from other military records and from the Department of Defense Civilian/Military Service Review Board.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

N05520–1

SYSTEM NAME:

Personnel Security Eligibility Information System *(February 22, 1993, 58 FR 10760).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Reports of correspondence and information pertinent to an individual's eligibility for personnel security clearance, assignment to the Nuclear Weapons Personnel Reliability Program, or other 'high risk' program requiring personnel quality control.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

At end of entry add 'and E.O. 9397.'

PURPOSE(S):

Delete entry and replace with 'To determine service member's eligibility for assignment to duties requiring personnel security clearances, assignment to the Nuclear Weapons Personnel Reliability Program, or other 'high risk' programs requiring quality control.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Paper records are filed alphabetically by last name of individual. Automated files are filed by Social Security Number.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files are destroyed two years after individual separates from the Navy.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Naval Personnel (Pers 81), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Personnel (Pers 811), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.

The letter should contain full name, Social Security Number, rank/rate/civilian status, and address of the requester.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Personnel (Pers 811), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.

The letter should contain full name, Social Security Number, rank/rate/civilian status, and address of the requester.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Department of the Navy Central Adjudication Facility and other officials and employees of the Department of the Navy and military investigative reports.'

* * * * *

N05520–1

SYSTEM NAME:

Personnel Security Eligibility Information System.

SYSTEM LOCATION:

Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Members of the U.S. Navy and Naval Reserve, former members, and applicants for enlistment or commissioning.

CATEGORIES OF RECORDS IN THE SYSTEM:

Reports of correspondence and information pertinent to an individual's eligibility for personnel security clearance, assignment to the Nuclear Weapons Personnel Reliability Program, or other 'high risk' program requiring personnel quality control.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301; Departmental Regulations; and E.O. 9397.

PURPOSE(S):

To determine service member's eligibility for assignment to duties requiring personnel security clearances, assignment to the Nuclear Weapons Personnel Reliability Program, or other 'high risk' programs requiring quality control.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Paper records in file folders and index cards. Some information from the paper records is contained in an automated file.

RETRIEVABILITY:

Paper records are filed alphabetically by last name of individual. Automated files are filed by Social Security Number.

SAFEGUARDS:

Stored in locked safes and cabinets. File areas are accessible only to authorized persons who are properly screened, cleared, and trained.

RETENTION AND DISPOSAL:

Files are destroyed two years after individual separates from the Navy.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Naval Personnel (Pers 81), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to the Chief of Naval Personnel (Pers 811), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.

The letter should contain full name, Social Security Number, rank/rate/civilian status, and address of the requester.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to the Chief of Naval Personnel (Pers 811), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–8110.

The letter should contain full name, Social Security Number, rank/rate/civilian status, and address of the requester.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Department of the Navy Central Adjudication Facility and other officials and employees of the Department of the Navy and military investigative reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Parts of this system may be exempt under 5 U.S.C. 552a(k)(1), (k)(2), (k)(5), and (k)(7), as applicable.

An exemption rule for this system has been promulgated in accordance with requirements of 5 U.S.C. 553(b) (1), (2), and (3), (c) and (e) and published in 32 CFR part 701, subpart G. For additional information contact the system manager.

N11101–1

SYSTEM NAME:

Family Housing Assignment Application System *(February 22, 1993, 58 FR 10816).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete entry and replace with 'Family Housing File.'

SYSTEM LOCATION:

Delete entry and replace with 'Housing offices at naval stations/bases that have family housing assets. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Military/civilian personnel eligible for/ interested in occupying Navy family housing and those occupying family housing.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'DD Form 1746, Application for Assignment to Housing (application contains information such as name, address, rank/rate, Social Security Number, length of service, time remaining on active duty, date of rank, etc.; dependency data, e.g., total number in family, spouse, age and sex of dependents, etc.; and other pertinent housing information, e.g., last assignment, months involuntarily separated, special health problems, etc.); orders; emergency data form; detaching endorsement from prior duty station.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To determine individual's eligibility for family housing and notification for subsequent assignment to family housing or granting a waiver to allow occupancy of private housing.

To determine and list individual's name on appropriate housing waiting list.

To oversee housing occupancy once assigned.'

* * * * *

STORAGE:

At end of entry add 'and computerized data base.'

RETRIEVABILITY:

Delete entry and replace with 'Name of applicant or name and house number of resident.'

SAFEGUARDS:

Delete entry and replace with 'Access to files is limited to personnel requiring access in the performance of their official duties. Records are secured within a locked office in a locked building on a military installation when not actually in use. Computerized data base is password protected.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Files are retained for up to three years after termination of housing occupancy and then destroyed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Policy Official: Navy Housing Division (Pers–67), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5067.

Record Holder: Naval stations with housing assets. Official mailing addresses of naval stations/bases are published as an appendix to the Navy's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of record contains information about themselves should address written inquiries to the Housing Office at the naval station/base where they applied for housing.

Requests should include full name of applicant or name and house number of resident.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves should address written inquiries to the housing office at the naval station/base where they applied for housing.

Requests should include full name of applicant or name and house number of resident.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Individual; DD Form 1746; Orders; Emergency Data Form; detaching endorsement from prior duty station.'

* * * * *

N11101–1

SYSTEM NAME:

Family Housing File.

SYSTEM LOCATION:

Housing offices at naval stations/bases that have family housing assets. Official mailing addresses are published as an appendix to the Navy's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Military/civilian personnel eligible for/interested in occupying Navy family housing and those occupying family housing.

CATEGORIES OF RECORDS IN THE SYSTEM:

DD Form 1746, Application for Assignment to Housing (application contains information such as name, address, rank/rate, Social Security Number, length of service, time remaining on active duty, date of rank, etc.; dependency data, e.g., total number in family, spouse, age and sex of dependents, etc.; and other pertinent housing information, e.g., last assignment, months involuntarily separated, special health problems, etc.); orders; emergency data form; detaching endorsement from prior duty station.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, Departmental Regulations and E.O. 9397.

PURPOSE(S):

To determine individual's eligibility for family housing and notification for subsequent assignment to family housing or granting a waiver to allow occupancy of private housing.

To determine and list individual's name on appropriate housing waiting list.

To oversee housing occupancy once assigned.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' that appear at the beginning of the Navy's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

File folders and computerized data base.

RETRIEVABILITY:

Name of applicant or name and house number of resident.

SAFEGUARDS:

Access to files is limited to personnel requiring access in the performance of their official duties. Records are secured within a locked office in a locked building on a military installation when not actually in use. Computerized data base is password protected.

RETENTION AND DISPOSAL:

Files are retained for up to three years after termination of housing occupancy and then destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Policy Official: Navy Housing Division (Pers–67), Bureau of Naval Personnel, 2 Navy Annex, Washington, DC 20370–5067.

Record Holder: Naval stations with housing assets. Official mailing addresses of naval stations/bases are published as an appendix to the Navy's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of record contains information about themselves should address written inquiries to the Housing Office at the naval station/base where they applied for housing. Requests should include full name of applicant or name and house number of resident.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves should address written inquiries to the housing office at the naval station/base where they applied for housing. Requests should include full name of applicant or name and house number of resident.

CONTESTING RECORD PROCEDURES:

The Navy's rules for accessing records and contesting contents and appealing initial agency determinations are published in Secretary of the Navy Instruction 5211.5; 32 CFR part 701; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual; DD Form 1746; Orders; Emergency Data Form; detaching endorsement from prior duty station.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93–27496 Filed 11–9–93; 8:45 am]

BILLING CODE 3000–04–F

Department of the Navy; Marine Corps

Intent To Prepare an Environmental Impact Statement for Solid Waste Management Alternatives at Marine Corps Base Quantico, VA

Pursuant to the National Environmental Policy Act as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the U.S. Marine Corps intends to prepare an Environmental Impact Statement (EIS) to evaluate solid waste management alternatives at Marine Corps Base (MCB) Quantico, Virginia.

The existing sanitary landfill at MCB Quantico, installed in 1983–1984, is nearing capacity and is scheduled to close in late 1995. Accordingly, a comprehensive feasibility study was undertaken to address engineering feasibility, liability/risk analyses, and environmental constraints applied to solid waste management alternatives, including: no action; construction and operation of a new landfill at MCB Quantico; construction and operation of a trash-to-steam incinerator at MCB Quantico; solid waste disposal in a nearby municipal landfill; and solid waste disposal at a nearby municipal incinerator or trash-to-steam facility. MCB Quantico will continue to implement programs to promote waste stream reduction through recycling.

Major environmental issues that will be addressed in the EIS include, but are not limited to, wetlands, endangered species, cultural resources, water and air quality, public health and safety, and land use.

The Marine Corps will initiate a scoping process for the purpose of determining the extent of issues to be addressed and identifying the significant issues related to this action. Agencies and the public are invited and encouraged to provide written comment on scoping issues. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than December 10, 1993 to Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511–2699 (Attn: Mr. Ron Dudley, Code 2032).

Dated: November 4, 1993.

Andrew Recachinas,

Acting Head, Land Use and Military Construction Branch Facilities and Services Division, Installations and Logistics Department, by Direction of the Commandant of the Marine Corps.

Dated: November 4, 1993.

Michael P. Rummel,

LCDR, JAGC, USN Federal Register Liaison Officer.

[FR Doc. 93–27653 Filed 11–9–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF ENERGY

Office of the Secretary

Amendment to Delegation Order for Approval of Power Marketing Administration Power and Transmission Rates

AGENCY: Department of Energy.

ACTION: Notice of amendment to Delegation Order.

SUMMARY: Notice is hereby given of Amendment No. 3 to Delegation Order No. 0204–108. Amendment No. 3 revises the delegation of authority to confirm, approve, and place into effect on an interim basis power and transmission rates of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations by delegating such authority to the Deputy Secretary of Energy rather than to the Assistant Secretary for Energy Efficiency and Renewable Energy [1] of the Department of Energy. The amendment also makes minor conforming changes to reflect the fact of that revision in delegation of authority and adds a provision that such revision is to have no effect upon rates which have been previously placed into effect by the Assistant Secretary for Energy Efficiency and Renewable Energy.

EFFECTIVE DATE: November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Gollomp, Assistant General Counsel, GC–33, U.S. Department of Energy, Washington, DC 20585, (202) 586–6958.

SUPPLEMENTARY INFORMATION: Delegation Order No. 0204–108, 48 FR 55664, which became effective December 14, 1983, delegated to the Deputy Secretary of Energy on a nonexclusive basis,

[1] On March 3, 1993, the title of the Assistant Secretary for Conservation and Renewable Energy was changed to the Assistant Secretary for Energy Efficiency and Renewable Energy. Rates approved by the Assistant Secretary for Energy Efficiency and Renewable Energy are to be treated in the same manner as rates approved by the Assistant Secretary for Conservation and Renewable Energy.

among other things, the authority to confirm, approve, and place into effect on an interim basis, power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations. The Delegation Order was amended on May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, and amended again on August 23, 1991 (56 FR 41835). The Secretary of the Department of Energy has determined that revisions in that Delegation Order are desirable at this time, in order to delegate to the Deputy Secretary the authority which had been previously delegated to the Assistant Secretary for Energy Efficiency and Renewable Energy. The reason for these revisions is to reflect revised organizational relationships within the Department.

Issued in Washington, DC., November 4, 1993.

William H. White,

Deputy Secretary.

Department of Energy, Amendment No. 3 to Delegation Order No. 0204–108, Delegation Order For Approval of Power Marketing Administration Power and Transmission Rates

Pursuant to the authority vested in me as Secretary of Energy and by sections 203(a), 301(b), 302(a), 402(e), 641, 642, 643, and 644, of the Department of Energy Organization Act (Pub. L. 95–91), there is hereby delegated to the Deputy Secretary of Energy all authority which was previously delegated to the Assistant Secretary for Conservation and Renewable Energy in Department of Energy Delegation Order No. 0204–108, as published in the **Federal Register**, December 14, 1983 (48 FR 55664), as amended on May 30, 1986 (51 FR 19744), reassigned by DOE Notice 1110.29 dated October 27, 1988, and clarified by Secretary of Energy Notice SEN–10–89 dated August 3, 1989, and subsequent revisions, and as amended on August 23, 1991 (56 FR 41835). Department of Energy Delegation Order No. 0204–108 is hereby amended to reflect such revision to that delegation of authority and to reflect related changes so as to read and provide in its amended form as follows:

1. There is hereby delegated to the respective Administrators of the Alaska, Southeastern, Southwestern, and Western Area Power Administrations on a nonexclusive basis the authority to develop power and transmission rates for their respective power marketing administrations (PMA). A rate developed by an Administrator shall not become effective on a final basis unless and until such rate is confirmed and approved by the Federal Energy Regulatory Commission (Commission) acting under section 3 below. In submitting a rate the Administrator shall certify that the rate is consistent with applicable law and that it is the lowest possible rate to customers consistent with sound business principles.

2. There is hereby delegated to the Deputy Secretary of Energy on a nonexclusive basis the authority to confirm, approve, and place into effect on an interim basis power and transmission rates for the Alaska, Southeastern, Southwestern, and Western Area Power Administrations for such periods as the Deputy Secretary may provide.

3. There is hereby delegated to the Commission on an exclusive basis the authority to confirm, approve, and place into effect on a final basis, to remand, or to disapprove, rates developed by each Administrator under section 1. The Commission review will be limited to: (a) Whether the rates are the lowest possible to customers consistent with sound business principles, (b) whether the revenue levels generated by the rates are sufficient to recover the costs of producing and transmitting electric energy including the repayment, within the period of cost recovery permitted by law, of the capital investment allocated to power and costs assigned by Acts of Congress to power for repayment; and (c) the assumptions and projections used in developing the rate components that are subject to Commission review. The Commission may require the Administrator to provide any information relevant to the Commission's confirmation and review function.

The Commission shall not review policy judgments and interpretations of laws and regulations made by the non-PMA power generating agencies (i.e., the Bureau of Reclamation, the Corps of Engineers, and the International Boundary and Water Commission). The Commission shall reject decisions of the PMA Administrators only if the Commission finds them to be arbitrary, capricious, or in violation of the law. *Provided,* That the Commission may reject decisions that are not in accord with: (a) The standards set forth in RA6120.2, or any revisions or modifications to such standards, adopted pursuant to the Administrative Procedure Act (5 U.S.C. 551 *et seq.*) and the Department of Energy Organization Act (42 U.S.C. 7191), and (b) the standards set forth in any interagency agreement between the Administrator and the power generating agency that is applicable. Should the Commission reject such decisions, the PMA Administrator will have 30 days in which to seek rehearing.

4. In the event a rate developed by an Administrator is disapproved by the Commission, the Administrator shall, within 120 days or such additional time periods as the Commission may provide, submit to the Commission a substitute rate for action by the Commission under section 3 hereof.

A rate confirmed, approved, and placed in effect by the Deputy Secretary on an interim basis that is disapproved by the Commission shall remain in effect, as provided by the Deputy Secretary, until a substitute rate is confirmed and approved on a final basis by the Commission, unless the original interim rate has been superseded by a subsequent rate placed in effect on an interim basis. *Provided,* That if the Administrator does not file a substitute rate within 120 days or such greater time as the Commission may provide, and if the rate has been disapproved because the Commission determined that it would result in total revenues in excess of those required by law, the rate last previously confirmed and approved on a final basis will become effective on a date and for a period determined by the Commission, and revenues collected in excess of those generated by such rate during the interim period will be refunded with interest to the extent determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is lower than the rate in effect on an interim basis, any overpayment shall be refunded with interest as determined by the Commission. If a substitute rate confirmed and approved on a final basis by the Commission is higher than the rate in effect on an interim basis, such rate, if no subsequent and higher rate has been put into effect by the Deputy Secretary, shall become effective on a subsequent date set by the Commission. If at any time it is determined by the Commission that the administrative cost of a refund would exceed the amount to be refunded, no refund will be required.

5. Notwithstanding any other provisions of this delegation order, there is hereby delegated to each Administrator the authority to develop and place into effect on a final basis rates for short-term sales of capacity, energy, or transmission service. Short-term sales are those sales that last no longer than one year.

6. For the Alaska Power Administration, the Southeastern Power Administration, the Southwestern

Power Administration, and the Western Area Power Administration:

A. All rates placed into effect on a final basis pursuant to any authority delegated prior to this order shall remain in full force and effect.

B. Rates filed on or before the effective date of this order, and for which the Commission has issued any substantive orders, will be governed by the terms of Amendment No. 2 to Delegation Order No. 0204–108 until placed in effect the Commission on a final basis.

C. Rates filed under previous delegation orders for which the Commission has not issued any substantive orders on or before the effective date of this order will be governed by the terms of this delegation order.

7. In exercising the authority delegated by this order, the delegates shall be governed by the rules and regulations of the Department of Energy and the policies and procedures prescribed by the Secretary or the Secretary's delegates.

8. Nothing in this order shall preclude the Secretary from exercising any of the authority delegated to the Deputy Secretary and the Administrators whenever in the Secretary's judgment the exercise of such authority is necessary or appropriate to administer the functions vested in the Secretary.

9. For the Alaska Power Administration, the Southeastern Power Administration, the Southern Power Administration, and the Western Area Power Administration:

A. All rates place into effect on a final basis pursuant to any authority delegated pursuant to Delegation Order No. 0204–108 as such order existed prior to the effective date of Amendment No. 3 thereto shall remain tin full force and effect.

B. All rates filed before the effective date of Amendment No. 3 to Delegation Order No. 0204–108 which rates, as of the effective date of said Amendment No. 3, are in effect but which have not been placed in effect on a final basis, shall continue in effect subject to the provisions of this amended Delegation Order. In no event shall any rates which have been filed on or before the effective date of Amendment No. 3 of Delegation Order No. 0204–108 be invalidated solely by virtue of the change in the delegation of authority from the Assistant Secretary of Conservation and Renewable Energy to the Deputy Secretary, provided for in said Amendment. All actions heretofore taken by the Assistant Secretary for Conservation and Renewable Energy pursuant to Delegation Order No. 0204–108 with respect to such rates are hereby confirmed, and such rates shall not be subject to challenge on the ground that any such actions were taken by the Assistant Secretary for Conservation and Renewable Energy rather than by the Deputy Secretary.

C. All rates filed on and after the effective date of Amendment No. 3 to Delegation Order No. 0204–108 shall be governed by that order as thus amended.

10. This amended order becomes effective upon publication in the **Federal Register**.

Issued in Washington, DC, November 4, 1993.

Hazel R. O'Leary,

Secretary of Energy.

[FR Doc. 93–27718 Filed 11–9–93; 8:45 am]

BILLING CODE 6450–01–M

Record of Decision For Remedial Action at the Chemical Plant Area of the Weldon Spring Site Remedial Action Project, St. Charles County, MO

AGENCY: Department of Energy.

ACTION: Notice of Record of Decision.

SUMMARY: Today's notice publishes the Declaration statement of the Record of Decision signed by the Department of Energy (DOE) on September 13, 1993. DOE's decision was approved by the U.S. Environmental Protection Agency on September 28, 1993, and as the lead agency for the State of Missouri, the Missouri Department of Natural Resources concurred on the preferred remedy for the chemical plant area of the Weldon Spring site. This decision was made under the authority of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. For remedial actions, it is DOE's policy to integrate the values of the National Environmental Policy Act (NEPA) into the procedural and documentation requirements of CERCLA, wherever practical. To support the cleanup decisions for contaminated material at the chemical plant area, the DOE prepared an integrated remedial investigation/feasibility study-environmental impact statement (DOE/EIS–0185) in accordance with DOE policy. Subsequent to the public involvement opportunities on the draft and final remedial investigation/feasibility study-environmental impact statement documents, and having considered all comments received, the DOE has selected a remedy that was documented in the joint CERCLA/NEPA Record of Decision. DOE is publishing this Declaration statement of the joint CERCLA/NEPA Record of Decision, as originally signed in September 1993, for NEPA purposes as specified in the DOE NEPA regulations [10 CFR 1021.315(c)].

FOR FURTHER INFORMATION CONTACT: For further information on remedial actions at the Weldon Spring site, contact: Mr. Stephen H. McCracken, Project Manager, Weldon Spring Site Remedial Action Project, U.S. Department of Energy, 7295 Highway 94 South, St. Charles, Missouri 63304, (314) 441–8978.

For further information on the DOE NEPA process, contact: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Ave, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

Issued in Washington, DC this 5th day of November, 1993.

Clyde W. Frank,

Acting Deputy Assistant Secretary for Environmental Restoration and Waste Management.

Record of Decision for Remedial Action at the Chemical Plant Area of the Weldon Spring Site Remedial Action Project, St. Charles County, MO

The following is the Declaration statement of the joint CERCLA/NEPA Record of Decision for the chemical plant area of the Weldon Spring site signed by DOE on September 13, 1993.

Declaration

Site Name and Location

Weldon Spring Site, St. Charles County, Missouri 63304

Statement of Basis and Purpose

This decision document presents the selected remedial action for the chemical plant area of the Weldon Spring site in St. Charles County, Missouri. This remedial action was selected in accordance with the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended, and to the extent practicable, the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), 40 CFR part 300.

In making this decision, it is the U.S. Department of Energy's (DOE's) policy to integrate National Environmental Policy Act (NEPA) values into the CERCLA remedial action process; however, it is not the intent of the DOE to make a statement on the legal applicability of the NEPA to CERCLA actions. This single document is intended to serve as the DOE's Record of Decision (ROD) under both the CERCLA and the NEPA.

The decision presented herein is based on the information available in the Administrative Record maintained in accordance with the CERCLA. The decision is also based on the issuance of the Proposed Plan for Remedial Action at the Chemical Plant Area of the Weldon Spring Site (DOE 1992a), holding a public meeting to receive comments on the Proposed Plan, and completion of the Remedial Investigation/Feasibility Study-Final Environmental Impact Statement (RI/FS-Final EIS). In addition, the DOE has considered all comments received on the Proposed Plan and the RI/FS-Final EIS documents in the preparation of the ROD.

As the lead agency for the State of Missouri regarding the Weldon Spring Site Remedial Action Project, the Missouri Department of Natural Resources concurs that Alternative 6a: Removal, Chemical Stabilization/ Solidification and Disposal On Site is the preferred remedy for the chemical plant area of the Weldon Spring site, and also concurs with applicable and/or relevant and appropriate requirements (ARARs) and waivers.

Assessment of the Site

Actual or threatened releases of hazardous substances from this site, if not addressed by implementing the response action selected in the ROD, may present a threat to human health and the environment.

Description of the Remedy

The chemical plant operable unit remedial action is the third of five major response actions planned for the chemical plant area. Previous response actions included a removal action involving the decontamination and dismantlement of site structures with short-term storage of the material on site until selection of a disposal option in this ROD and a removal action to treat impounded surface water. In addition, bulk waste material from the Weldon Spring Quarry is being placed in temporary storage on site until the selection of a disposal option.

This operable unit addresses the various sources of contamination at the chemical plant area including soils, sludge, sediment, and materials placed in short-term storage as a result of previous response actions.

This remedial action uses treatment to address the principal threat remaining at the site, (e.g., raffinate pit sludges and certain soil from the quarry). The major components of this remedy are:

- Dredge sludge from the raffinate pits, excavate sediment from Frog Pond and Ash Pond and three off-site lakes, and excavate soil from specific locations (including two former dump areas, locations adjacent to the chemical plant buildings on site, and 10 vicinity properties off site) using standard construction equipment and procedures.
- Remove material stored at the temporary facilities on site (including bulk waste excavated from the quarry, treatment residuals from the water treatment plants at the quarry and the chemical plant area, and building material from the chemical plant area) using standard construction equipment and procedures.
- Certain contaminated materials such as the raffinate pit sludges and portions of quarry soil will be treated on site by chemical stabilization/ solidification. Treated and untreated materials will be disposed of on site in a facility designed and constructed specifically for the Weldon Spring site wastes.
- Continued evaluation of vitrification as a contingency treatment option.

In reaching the decision to implement this remedial alternative, DOE evaluated three other alternatives in addition to no action. The other alternatives are: (1) Removal, Vitrification, and Disposal On-site; (2) Removal, Vitrification, and Disposal at the Envirocare Facility; and (3) Removal Vitrification, and Disposal at the Hanford Reservation Facility. A description of the alternatives is provided in the Decision Summary of the ROD (attached) and is available in the *Administrative Record*. CERCLA's nine criteria (two threshold, five primary balancing, and two modifying criteria) set out in the NCP were used to evaluate the alternatives. The selected remedy and the contingency treatment option represent the best balance of key factors with respect to these criteria and are the environmentally preferable alternatives.

Short-term effectiveness, implementability, and cost are the key factors for selection of the preferred alternative. The short-term effectiveness of the selected remedy is greater than for the two alternatives that involve transportation of the waste to off-site locations. The selected remedial action is the most implementable of all the alternatives evaluated in detail because the chemical stabilization/solidification technology has been utilized at other sites and would use readily available resources. Finally, the selected remedy is the most cost effective of those alternatives evaluated.

Statutory Determinations

The selected remedy is protective of human health and the environment; it complies with Federal and State of Missouri requirements that are legally applicable or relevant and appropriate to the remedial action, except as specifically waived pursuant to CERCLA, as set forth below, and is cost effective. This remedy utilizes permanent solutions and alternative treatment (or resource recovery) technologies to the maximum extent practicable, and satisfies the CERCLA statutory preference for remedies that employ treatment that reduces toxicity, mobility, or volume as a principal element.

The following Federal and State of Missouri requirements are waived under this Record of Decision:

- *19 CSR 20–10.040*—State Rn–222 limit of 1 pCi/l above background in uncontrolled areas. CERCLA provision for waiver: Section 121(d)(4)(C).
- *40 CFR part 268, subpart E*—Land Disposal Restrictions (LDR) storage limitations. CERCLA provision for waiver: Section 121(d)(4)(C).
- *40 CFR part 268, subpart C*—LDR placement restrictions. CERCLA provision for waiver: Section 121(d)(4)(A).
- *10 CSR 25.5–262(2)(C)1*—packaging, marking, and labeling requirements. CERCLA provision for waiver: Section 121(d)(4)(A) and section 121(d)(4)(B).
- *40 CFR 761.75(b)(3)*—Toxic Substance Control Act (TSCA) requirements for bottom landfill liner. CERCLA provision for waiver: Section 121(d)(4)(D).
- *40 CFR 264.314(f)*—restrictions regarding free liquids in CSS grout placed in the disposal facility for purposes of disposing of CSS treated wastes and to fill voids of dismantlement debris. CERCLA provisions for waiver: Section 121(d)(4)(B) and Section 121(d)(4)(D).
- *40 CFR part 268.42, subpart D*—LDR treatment standards based upon use of a specified technology. CERCLA provision for waiver: Section 121(d)(4)(D).
- *40 CFR 61, subpart M*—National Emission Standards for Hazardous Air Pollutants (NESHAPs) requirements for asbestos storage. CERCLA provision for waiver: Section 121(d)(4)(B).
- *40 CFR 761.65(a)*—TSCA requirement for PCB storage and disposal. CERCLA provision for waiver: Section 121(d)(4)(A).

Because both the selected and contingency remedies would result in hazardous substances remaining on site above health-based levels (within the engineered disposal facility), a review

will be conducted within five years after this remedial action is complete in accordance with CERCLA to ensure that the remedy continues to provide adequate protection of human health and the environment.

All practicable means to avoid or minimize environmental harm from implementation of the selected remedy have been adopted. Excavation of contaminated soil in an area extending into the Schote Creek 100-year floodplain will be conducted using sediment controls to minimize off-site transport of contaminated materials and no net change in flood potential is expected due to these actions. A mitigation action plan will be prepared for dredging and excavation activities in areas considered to be wetlands to minimize adverse impacts. Final site layout and design will include all practicable means (e.g., sound engineering practices and proper construction practices) to minimize environmental impacts.

[FR Doc. 93–27716 Filed 11–9–93; 8:45 am]
BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. QF92–171–001]

Northern Electric Power Co., L.P.; Application for Commission Certification of Qualifying Status of a Small Power Production Facility

November 4, 1993.

On October 26, 1993, Northern Electric Power Co., L.P. of Civic Center Plaza, suite 100, 5 Warren Street, Glens Falls, New York, 12801 submitted for filing an application for certification of a facility as a qualifying small power production facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the small power production facility will be located on the Hudson River in the Town of Moreau County, New York, and The Village of Hudson Falls, Washington County, New York. The Hydroelectric facility will consist of two turbine generators with a total installed capacity of 36.1 MW and appurtenant facilities.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27648 Filed 11–9–93; 8:45 am]
BILLING CODE 6717–01–M

[Project Nos. 2448–011, 2447–008, 2449–007, 2453–003, 2450–005, and 2436–007 Michigan]

Consumers Power Co.; Availability of Draft Multiple Project Environmental Assessment

November 4, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the six applications for major license for the existing Mio, Alcona, Loud, Five Channels, Cooke, and Foote Hydroelectric Projects, located on the Au Sable River in Oscoda, Alcona, and Iosco Counties, in east-central Michigan, and has prepared a Draft Multiple Project Environmental Assessment (MPEA) for the projects in cooperation with the U.S. Department of Agriculture, Forest Service, Huron-Manistee National Forests. In the draft MPEA, the Commission and Forest Service staffs analyzed the site-specific and cumulative environmental effects of the existing projects, as proposed in a Settlement Agreement reached between Consumers Power Company and the state and Federal resource agencies. The Commission staff has concluded that approval of the applications for new license, with appropriate enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the draft MPEA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Please submit any comments within 45 days from the date of this notice and address to Lois D. Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Please affix Project Nos. 2448, 2447, 2449, 2453, 2450, and 2436 to all comments. For further information, please contact Frank Karwoski, Environmental Coordinator, at (202) 219–2782.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27647 Filed 11–9–93; 8:45 am]
BILLING CODE 6717–01–M

[Project No. 2146–063]

Alabama Power Co.; Application

October 22, 1993.

Take notice that the following hydroelectric application has been filed with the Commission and is available for public inspection:

a. *Type of Application:* To Construct a Commercial Boat Pier.

b. *Project No:* 2146–063.

c. *Date Filed:* September 27, 1993.

d. *Applicant:* Alabama Power Company.

e. *Name of Project:* Coosa River Project.

f. *Location:* St. Clair County, Alabama.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. R. M. Akridge, Alabama Power Company, 600 North 18th Street, Post Office Box 2641, Birmingham, AL 35291–0364, (205) 250–1380.

i. *FERC Contact:* Dan Hayes, (202) 219–2660.

j. *Comment Date:* December 10, 1993.

k. *Description of Project:* Alabama Power Company, licensee for the Coosa River Project, filed an application to permit the use of project lands for a commercial boat pier. The pier is to be located on lot 63 of the cooperative known as Coosa Island. The pier will be used to dock houseboats. The application states that the pier will be located on the site of a previously constructed 32-slip pier, which has been partially destroyed by a storm (four slips remain). The pier will be reconstructed to its original 299′ length.

1. This notice also consists of the following standard paragraphs: B, C2, and D2.

Standard Paragraphs

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice

and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

C2. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS," "RECOMMENDATIONS FOR TERMS AND CONDITIONS," "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "PROTEST," or "MOTION TO INTERVENE," as applicable, and the Project Number of the particular application to which the filing refers. Any of these documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of a notice also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27668 Filed 11–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–191–001]

Algonquin Gas Transmission Company; Proposed Changes in FERC Gas Tariff

November 4, 1993.

Take notice that on November 1, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheet, with a proposed effective date of October 1, 1993:

Sub First Revised Sheet No. 97

Algonquin states that this tariff sheet is being filed in accordance with Commission's October 1, 1993 Letter Order in Docket No. RP93–191–000 and pursuant to section 37 of the General Terms and Conditions of Algonquin's FERC Gas Tariff. Algonquin states that the sole purpose of this filing is to allocate gas supply realignment costs approved for recovery in the October 1 Letter Order on the basis of customers MDTQs effective as of October 1, 1993.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions shown on Algonquin's system.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 12, 1993. Protest will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27650 Filed 11–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–88–004 and RP93–3–007]

Arkla Energy Resources Company; Proposed Changes in FERC Gas Tariff

November 4, 1993.

Take notice that on November 1, 1993, Arkla Energy Resources Company (AER) tendered for filing as part of its FERC Gas Tariff, the following revised tariff sheets, effective June 1, 1993:

Second Revised Volume No. 1,
2nd Sub Nineteenth Revised Sheet No. 11
Second Revised Volume No. 1,
2nd Sub Nineteenth Revised Sheet No. 16
First Revised Volume No. 1–A,
Substitute Seventh Revised Sheet No. 5,
and the following revised tariff sheets to be effective July 1, 1993:
Second Revised Volume No. 1,
Substitute Twentieth Revised Sheet No. 11
Second Revised Volume No. 1,
Substitute Twentieth Revised Sheet No. 16

AER states that these revised tariff sheets are filed to reconcile AER's rates in Docket Nos. RP93–88 and TQ93–3–31 with the Stipulation and Agreement (Stipulation) approved by Commission order in Docket No. RP93–3–004 on September 23, 1993.

AER states that copies of the filing has been mailed to each of AER's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rule of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27649 Filed 11–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–42–000]

Gulf States Transmission Corporation; Petition for Waiver of Certificate Condition

November 4, 1993.

Take notice that on November 1, 1993, Gulf States Transmission Corporation (GSTC), pursuant to section 385.207 of the Commission's rules of practice and procedure, 18 CFR 385.207, and the Commission's Order Issuing Certificates issued July 26, 1990,[1] filed a petition for waiver of certificate condition.

GSTC states that Ordering Paragraph 4(a) of the GSTC certificate order provides that GSTC must make a section 4 rate filing at the end of the first 3 years of operation to justify its rates and, in particular, to determine the appropriateness of seasonally-differentiated and mileage-based rates. The GSTC system was officially placed in service on November 1, 1990, and, therefore, GSTC is required to make a rate filing on or before November 1, 1993.

GSTC states that the requests waiver of the July 26, order is twofold:

(i) due to the underutilization of the system, GSTC's operations have been relatively unchanged since the issuance of its certificate such that an exhaustive rate review is not warranted at this time. Further, the system has just undergone a detailed FERC review pursuant to Order No. 636;

(ii) the system's underutilization has left the company financially strapped, such that the expense of presenting a section 4 full rate case would exhaust scarce funds which

[1] 52 FERC ¶ 61,088.

should be used to maintain system operations.

GSTC states that in light of the financial condition of the company, imposition of a full rate justification proceeding would impose a heavy financial burden on an already underutilized and financially strapped pipeline, requests that the Commission grant its petition and waive the certificate order's rate filing requirement.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27651 Filed 11–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER92–850–003]

Louis Dreyfus Electric Power Inc.; Informational Filing

November 4, 1993.

Take notice that on August 25, 1993, Louis Dreyfus Electric Power Inc. filed certain information as required by the Commission's December 2, 1992 order in Docket No. ER92–850–000, 61 FERC ¶ 61,303.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27645 Filed 11–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. MT90–8–007]

Mississippi River Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 4, 1993.

Take notice that on October 29, 1993, Mississippi River Transmission Corporation (MRT) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, First Revised Sheet No. 249, with a proposed effective date of November 1, 1993.

MRT states that this filing is being made to revise its tariff to report organizational changes that are necessary to reflect the restructuring of MRT's sales and transportation services in accordance with Order Nos. 636, *et seq.* and Order No. 497, *et seq.* MRT's filing indicates that it has activated its subsidiary, MRT Energy Marketing Company, to offer unbundled sales and sales-related services beginning November 1, 1993.

MRT states that copies of its filing are available for inspection at its St. Louis Offices and have been mailed to all affected customers.

Any person desiring to protest the subject filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 12, 1993. Protests will be considered by the Commission in determining the appropriate action to taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27646 Filed 11–9–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–44–000]

National Fuel Gas Supply Corporation; Proposed Changes in FERC Gas Tariff

November 4, 1993.

Take notice that on October 29, 1993, National Fuel Gas Supply Corporation (National Fuel) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets, with a proposed effective date of November 1, 1993:

First Revised Sheet No. 5
First Revised Sheet No. 17
First Revised Sheet No. 18

National Fuel states that the purpose of the tariff sheets is to establish a surcharge applicable to FT services resulting from the conversion of the firm transportation service provided by National Fuel under Rate Schedule X–58 from part 157 to part 284 service.

National Fuel states that copies of the filing were served upon the affected customers of Transcontinental Gas Pipe Line Corporation, all parties to Docket No. RS92–21, and the regulatory commissions of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 12, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27652 Filed 11–9–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Fossil Energy

[Docket No. FE C&E 93–24—Certification Notice—124]

Filing Certification of Compliance: Coal Capability of New Electric Powerplant Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Yuma Cogeneration Associates has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary

energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Yuma Cogeneration Associates
Operator: California Energy Company, Inc.
Location: Yuma, AZ
Plant Configuration: Combined cycle cogeneration
Capacity: 52.89 megawatts
Fuel: Natural gas
Purchasing Utilities: San Diego Gas and Electric Company
Expected In-Service Date: July 1, 1994

Issued in Washington, DC, November 4, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93-27717 Filed 11-9-93; 8:45 am]

BILLING CODE 6450-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4799-7]

Notice of Establishment of the National Environmental Justice Advisory Council and Request for Suggestions of Candidates for Membership

SUMMARY: The U.S. Environmental Protection Agency (EPA) hereby announces the establishment of the National Environmental Justice Advisory Council and requests suggestions of candidates for membership. The Advisory Council provides advice and information to the Administrator on broad, cross-cutting domestic environmental justice policies and issues. The membership of the Advisory Council is comprised of senior officials drawn from community based groups; industry and business; Federal, State, Tribal and, local government organizations; academic and educational institutions; and non-governmental and environmental groups.

DATE: Submit suggestions of candidates no later than December 10, 1993. Any interested person or organization may submit the names of qualified persons. Suggested candidates should be identified by name, occupation, position, organization, address and telephone number. Candidates must submit a resume of their background, experience and other relevant information.

ADDRESSES: Submit suggested candidates to:

Office of Environmental Equity, Mail Code (3103), U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Attn: Clarice E. Gaylord, Director, Office of Environmental Equity.

FOR FURTHER INFORMATION CONTACT: Mustafa Ali at the above address or call 202-260-6357. The Agency will not formally acknowledge or respond to suggestions.

SUPPLEMENTARY INFORMATION: Copies of the Advisory Council Charter are available upon request. The Advisory Council provides advice, consultations and makes recommendations on a continuing basis to the Administrator. The Council is also focusing on creating mutually supportive partnerships and increasing communication among all levels of government, the business community and academic institutions to improve the effectiveness of federal and non-federal resources directed at solving environmental equity problems. The Advisory Council meets at least twice a year. Most members are appointed as representatives of non-federal interests. No honoraria or salaries are provided for members of the Advisory Council. Compensation for travel and per diem expenses while attending meetings may be provided. Members serve initial terms of one year.

Suggestion for the list of candidates should be submitted no later than December 10, 1993.

Dated: November 4, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93-27709 Filed 11-9-93; 8:45 am]

BILLING CODE 6560-50-P

[OPP-50771; FRL-4639-6]

Receipt of Notification to Conduct Small-Scale Testing of a Nonindigenous Microbial Pesticide

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received an application (NMP No. 60219-NMP-REU) from the United States Department of Agriculture of intent to conduct small-scale field testing of a nonindigenous microbial pesticide (NMP) microsporidian, microbial pesticide (*Edhazardia aedis*). The Agency has determined that the application may be of regional and national significance. Therefore, in accordance with 40 CFR 172.11(a), the Agency is soliciting public comments on this application.

DATES: Written comments must be received on or before December 10, 1993.

ADDRESSES: Comments in triplicate must bear the docket control number OPP-50771 and be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person bring comments to: Rm. 246, CM #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment(s) concerning this notice may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked, will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and all written comments will be available for public inspection in Rm. 246 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Phillip Hutton, Product Manager (PM) 18, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 213, CM #2, 1921 Jefferson Davis Highway, Arlington, VA (703-305-7690).

SUPPLEMENTARY INFORMATION: An application for an NMP has been received from the United States Department of Agriculture. This NMP application EPA file symbol is 55947-NMP-REU. The proposed small-scale field trial will involve the introduction of *Edhazardia aedis* (*Microspora: Culicosporidae*), a microsporidian pathogen of *Aedes aegypti* from Thailand, as an introduced microbial control agent for container-inhabiting mosquitoes in Florida and Puerto Rico. In addition, the testing will take place in Gainesville, Florida, and at

unspecified locations in southern Florida and Champaign, Illinois. *Edhazardia aedis* spores will be inoculated into 10 to 25 percent of the water containers at each test site. Test sites will be isolated from other potential mosquito breeding areas to minimize *Edhazardia aedis* spread from the test areas. Larvae, pupae and adult mosquitoes (target and nontarget species) will be examined for prevalence and spread of infection. Following the 6–month test period, the container (golf cart tires) will be cleansed with sodium hypochlorite to kill the *Edhazardia aedis*.

Dated: September 20, 1993.

Lawrence E. Culleen,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–27706 Filed 11–9–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180906; FRL 4742–3]

Receipt of Application for Emergency Exemption to use Hymexazol; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Wyoming Department of Agriculture (hereafter referred to as the "Applicant") for use of the fungicide Tachigaren 70 WP Hymexazol as a seed treatment to control sugarbeet seedling disease caused by *Aphanomyces cochlioides*. If approved, application of hymexazol would occur in Wyoming and the treated sugarbeet seed would be planted in Minnesota and North Dakota. In accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before November 26, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP–180906," should be submitted by mail to: Public Response and Human Resource Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. In person, bring comments to: Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA. Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Larry Fried, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, D.C. 20460. Office location and telephone number: 6th Floor, Crystal Station I, 2800 Jefferson Davis Highway, Arlington, VA 22202, (703–308–8328).

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a State agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of the fungicide hymexazol, available as Tachigaren 70 WP Fungicide from Sankyo Company, Ltd., to control seedling disease, caused by *Aphanomyces cochlioides* on up to 60,000 units of seed. Information in accordance with 40 CFR part 166 was submitted as part of this request. According to the Applicant, seedling disease has become a serious problem in the sugarbeet growing areas of Minnesota and North Dakota during the past few years due to abnormally wet spring growing conditions which facilitated the transmission of *Aphanomyces cochlioides*. According to the Applicant, there are no economically or environmentally feasible alternative practices that could adequately address this situation. No seed treatment fungicides are registered for control of this disease on sugarbeet.

If approved, all seed would be treated in commercial seed treatment plants designed for processing of pelleted sugarbeet seed. Tachigaren 70 WP would be applied at a rate of 45 grams per unit of pelleted sugarbeet seed. A maximum of one application per seed lot would be allowed. A planting rate of approximately one unit of seed per acre would equal approximately 60,000 units of seed treated. Approximately 4,167 pounds of active ingredient (a.i.) would be utilized. The applicant intends to use Tachigaren 70 WP for 1-year if this section 18 is approved.

This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require that the Agency publish a notice of receipt in the **Federal Register** and solicit public comment on an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide) [40 CFR 166.24(a)(1)]. Hymexazol is a new chemical. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above. The Agency will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Wyoming Department of Agriculture.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: October 27, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–27102 Filed 11–9–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4798–3]

State of Maryland's Submission of a Substantial Program Revision to its Authorized National Pollutant Discharge Elimination System (NPDES) Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of revision, public comment period, and opportunity to request a public hearing.

SUMMARY: The State of Maryland has submitted amendments to its Code of Maryland Regulations (COMAR) (adopted by the Secretary of the Environment on May 6, 1993) (hereinafter the Maryland Regulation Revisions) to EPA for review as a revision to the State's authorized National Pollutant Discharge Elimination System (NPDES) program. Under COMAR 26.08.03 Discharge Limitations, the State is adopting section .07, and under COMAR 26.08.04 Permits the State is adopting section .02–1. EPA has determined that the Maryland Regulation Revision constitutes a substantial revision to Maryland's authorized NPDES program.

Accordingly, EPA requests public comment and is providing notice of an opportunity to request a public hearing on the submitted regulation pursuant to 40 CFR 123.62(b) and part 25. EPA seeks public comments on whether to approve or disapprove the revisions to Maryland's authorized NPDES program, and a public hearing will be held if there is significant public interest based on the requests received. Copies of the Maryland Regulation Revisions are available for public inspection as indicated below.

DATES: Comments and/or requests for public hearing must be received before December 5, 1993.

ADDRESSEES: Comments should be addressed to Denise Hakowski, U.S. EPA, Region III, 3WM55, 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Denise Hakowski, (215) 597–8242, at the above address.

SUPPLEMENTARY INFORMATION: Section 402 of the Federal Clean Water Act (CWA) created the NPDES program under which the Administrator of EPA may issue permits for the discharge of pollutants into the water of the United States under conditions required by the CWA. Section 402(b) allows states to assume NPDES program responsibilities upon approval by EPA. On September 5, 1974, Maryland received approval from EPA to assume the NPDES program; the State then received the authority to administer the following NPDES programs 6789on the dates indicated: the Pretreatment Program on September 30, 1985; the Federal Facilities Program on November 11, 1987; and the General Permits program on September 30, 1991.

EPA has issued regulation in 40 CFR part 123 that establishes the requirements for NPDES State Programs. Section 123.62 establishes procedures for revision of authorized NPDES State Programs. Under § 123.62(a), a state may initiate a program revision and must keep EPA informed of proposed modifications to its regulatory authority. In June 1993, the State of Maryland submitted its regulation revisions for formal review by EPA. Under § 123.62(b)(1), a state program submittal is complete whenever the State submits such documents as EPA determine are necessary under the circumstances. In this instance, EPA has determined that the state submission is complete. Section 123.62(b)(2) requires EPA to issue public notice by publication in the **Federal Register** and in newspapers having Statewide coverage, and to provide a period of public comment of at least 30 days whenever the Agency determines that a program revision is substantial. EPA has determined that the Maryland Regulation Revision, which is described below, constitutes a substantial revision to Maryland's NPDES program. Section 123.62(b)(2) also requires EPA to hold a public hearing regarding the proposed revision "if there is significant public interest based on requests received."

The Maryland Regulation Revision includes amendments to Regulation .07 under COMAR 26.08.03 that adopt requirements for technology-based whole effluent toxicity testing. The revision also adopts Regulation .02–1 under COMAR 26.08.04. This revision allows for the following: (1) A discharge permit limits can, under limited circumstances, be based on the concentration in the intake water for non-contact cooling water; and, (2) a one time allowance to address increased pollutant discharge in excess of applicable water quality standards due to corrosion and erosion in noncontact cooling water condenser tubes. In most cases, the discharger must commit to replacing the condenser tubes with tubes made from noncorrosive materials within one five year discharge permit cycle. At the close of the public comment period (including, if necessary, the public hearing), the EPA Regional Administrator, with the concurrence of the Associate General Counsel for Water and the Director of the Office of Wastewater Enforcement and Compliance, will decide whether to approve or disapprove the Maryland Regulation Revision as a revision to the Maryland NPDES program. The decision to approve or disapprove will be based upon the requirements of the CWA and 40 CFR part 123. The Maryland Regulation Revision may be reviewed by the public from 8 a.m. to 4 p.m. at the EPA office in Philadelphia, Monday to Friday (excluding holidays), at the address appearing earlier in this notice. Copies of the submittal may be obtained for a fee by contacting Denise Hakowski at the above telephone number or address.

All comments or objections received by December 5, 1993, as discussed above, will be considered by EPA before taking final action on the program revision.

Please bring the foregoing to the attention of persons whom you know are interested in this matter. All written comments and questions on this matter should be addressed to Denise Hakowski at the above address or telephone number.

Dated: October 29, 1993.

Alvin R. Morris,

Acting Regional Administrator, Environmental Protection Agency, Region III.

[FR Doc. 93–27602 Filed 11–9–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

[DA 93–1334; CC Docket No. 80–286]

Federal-State Joint Board to Convene an Open Meeting Tuesday, November 16, 1993

Released: November 5, 1993.

The Federal-State Joint Board in CC Docket No. 80–286 will convene an open public meeting on Tuesday, November 16, 1993, at 11 a.m. at the New York Marriott Marquis Hotel, Juilliard Complex, 5th Floor, 1535 Broadway, New York, New York. The meeting will be held to consider a Joint Board Recommended Decision addressing Interim Rules for the Universal Service Fund under part 36, subpart F, of the Commission's Rules. Interested persons may attend the meeting.

Additional information concerning this meeting may be obtained from Deborah Dupont, Common Carrier Bureau, FCC, at (202) 632–7500, or Gary Seigel, Common Carrier Bureau, FCC, at (202) 634–1861.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–27804 Filed 11–9–93; 8:45 am]

BILLING CODE 6712–01–M

[Report No. 1984]

Petitions for Reconsideration of Actions in Rulemaking Proceedings

November 5, 1993.

Petitions for reconsideration have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to these petitions must be filed on November 26, 1993. See Section 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject; Implementation of Sections of the Cable Television Consumer

Protection and Competition Act of 1992 (MM Docket No. 92–266). Petition for Reconsideration: Number of Petitions Filed: 1

Subject: Amendment of Parts 1 and 90 of the Communication's Rules Concerning the Construction, Licensing and Operation of Private Land Mobile Radio Systems (PR Docket No. 90–481). Petition for Reconsideration: Number of Petitions Filed: 1

Subject; Policies and Rules Concerning Local Exchange Carrier Validation and Billing Information for Joint Use Calling Cards (CC Docket No. 91–115). Petition for Reconsideration: Number of Petitions Filed: 1

Federal Communications Commission.

LaVera F. Marshall,

Acting Secretary.

[FR Doc. 93–27628 Filed 11–9–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Notice of Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of Section 3, Public Law 89–777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Gold Star Cruises of Galveston, L.C., 2428 Avenue A, Pier 25, Galveston, Texas 77550.

Vessel: Star of Texas.

Dated: November 4, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–27626 Filed 11–9–93; 8:45 am]

BILLING CODE 6730–01–M

Trans-Pacific Policing Discussion; Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011434.

Title: Trans-Pacific Policing Discussion Agreement.

Parties:

American President Lines, Ltd.
A.P. Moller-Maersk Line
Cho Yang Line
China Ocean Shipping Company
DSR–Senator Joint Service
Evergreen Marine Corp.
Hanjin Shipping Co., Ltd.
Hyundai Merchant Marine Co., Ltd.
Kawasaki Kisen Kaisha, Ltd.
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Lines, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.
Transportacion Maritima Mexicana S.A. de C.V.
Wilhelmsen Lines AS
Yang Ming Marine Transport Corp.

Snyposis: The proposed Agreement authorizes the parties to discuss, agree, and exchange information on matters relating to self-policing and/or the terms and conditions for neutral body policing of the parties' obligations in the trans-pacific trades between ports and points in all countries in Asia (Japan/Myanmar range, inclusive) and ports and points in the United States (including Alaska, Hawaii, Puerto Rico and the U.S. Virgin Islands).

The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Ronald D. Murphy,

Assistant Secretary.

[FR Doc. 93–27627 Filed 11–9–93; 8:45 am]

BILLING CODE 6730–01–M

Security for the Protection of the Public; Financial Responsibility To Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages; Issuance of Certificate (Casualty)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility to Meet Liability Incurred for Death or Injury to Passengers or Other Persons on Voyages pursuant to the provisions of section 2, Public Law 89–777 (46 U.S.C. 817(d)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Gold Star Cruises of Galveston, L.C. and Sea Ways Maritime Company, 2428 Avenue A. Pier 25, Galveston, Texas 77550.

Vessel: Star of Texas.

Dated: November 5, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93–27693 Filed 11–9–93; 8:45 am]

BILLING CODE 6730–01–M

Availability of List of Non-Vessel-Operating Common Carriers in Compliance With the Bonding Requirements

November 5, 1995.

Notice is given that a revised list of non-vessel-operating common carriers in compliance with the bonding requirements of 46 CFR part 583 is available. This list is effective five days after publication of this notice in the **Federal Register**. For copies of this list please contact: Office of Tariffs, Bureau of Tariffs, Certification and Licensing, 800 North Capitol Street, NW., Washington, DC 20573, (202) 523–5818.

Joseph C. Polking,

Secretary.

[FR Doc. 93–27684 Filed 11–9–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Proposed Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs, November 1993

AGENCY: Centers for Disease Control and Prevention (CDC), Public Health Service, Department of Health and Human Services.

ACTION: Request for comments.

SUMMARY: CDC requested comments in a December 18, 1992, **Federal Register** notice [57 FR 60209] regarding the experience of individuals and organizations with the "Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions." In response to those comments CDC is proposing new "Requirements for Content of AIDS-Related Written Materials,

Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs." CDC is now soliciting written comments with respect to this proposal.

DATES: Comments must be received by December 10, 1993.

ADDRESSES: Comments should be addressed to Mr. David Brownell, Office of the Associate Director for HIV/AIDS, Mail Stop E–40, Centers for Disease Control and Prevention (CDC), Atlanta, Georgia 30333.

FOR FURTHER INFORMATION CONTACT: Mr. David Brownell at (404) 639–2918.

SUPPLEMENTARY INFORMATION: For the past few years, the content guideline issue and the requirement that HIV prevention materials undergo a local review process have been associated with controversy. Several groups have called for changes in CDC's approach to the approval of HIV prevention and educational materials.

On December 18, 1992, CDC requested comments regarding the experience of individuals and organizations with the 1992 "Interim Revision of Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs." A total of 62 comments were received. Based on those comments and program experience, CDC developed a draft proposal to replace the 1992 interim revision.

In mid-July 1993, the draft proposal was sent to those who responded to the December 1992 request for comments and to CDC HIV prevention/education grantees for review and comment. Based on comments received, CDC is proposing new requirements for grantees using CDC funds to produce and/or distribute new HIV prevention and education materials after January 1, 1994. These proposed requirements are not intended to be applied to materials produced or distributed before this date or previously approved materials.

The proposed requirements are as follows:

Proposed Requirements for Content of AIDS-Related Written Materials, Pictorials, Audiovisuals, Questionnaires, Survey Instruments, and Educational Sessions in Centers for Disease Control and Prevention Assistance Programs, November 1993

Basic Principles

Controlling the spread of HIV infection and AIDS requires the promotion of individual behaviors that eliminate or reduce the risk of acquiring and spreading the virus. Messages must be provided to the public that emphasize the ways by which individuals can fully protect themselves from acquiring the virus. These methods include abstinence from the illegal use of IV drugs and from sexual intercourse except in a mutually monogamous relationship with an uninfected partner. For those individuals who do not cease risky behavior, methods of reducing their risk of acquiring or spreading the virus must also be communicated. Such messages can be controversial.

State health and education agencies have primary responsibility for facilitating collaboration and coordination of their respective HIV prevention efforts, minimizing duplication by nongovernmental organizations and health/education agencies, and providing technical expertise for HIV prevention materials developed within their States. All parties are strongly encouraged to work collaboratively from the outset of material development to permit the thoughtful planning for implementation/dissemination of completed materials. Collaboration with appropriate representatives of the target communities will increase the effectiveness of HIV prevention materials.

Requirements

a. State and Directly-Funded Local Health and Education Agencies

State and directly-funded local health and education agencies are required to assure in their funding applications that, prior to their dissemination, all new materials produced and/or distributed after January 1, 1994, by these agencies or their contractors, using CDC funds, will be technically accurate and responsive to the HIV prevention needs of the target audience. State health/education agencies may delegate review authority to appropriate local health/education agencies. State health/education agencies are also required to assure in their funding applications that new materials submitted to them by community-based nongovernmental organizations will be reviewed in a timely manner to determine if the materials are technically accurate before their dissemination. State health/education agencies may delegate review authority to appropriate local health/education agencies.

b. Directly-Funded Community-Based Nongovernmental Organizations

Community-based nongovernmental organizations directly funded by CDC are required to assure in their funding applications that all new materials produced and/or distributed after January 1, 1994, using CDC funds, will be responsive to the HIV prevention needs of the target audience and will be submitted, before their dissemination, to the appropriate State health/education agency to determine if the materials are technically accurate. State health/education agencies may delegate review authority to appropriate local health/education agencies.

c. National Nongovernmental Organizations

National nongovernmental organizations are required to assure in their funding applications that all new materials produced and/or distributed after January 1, 1994, using CDC funds, will be technically accurate and responsive to the HIV prevention needs of the target audience. To promote coordination of HIV prevention efforts within States, national nongovernmental organizations must provide copies of materials produced and/or distributed with CDC funds to the appropriate State health/education agency for information purposes at least 4 weeks before the distribution of the materials in that State.

Dated: November 5, 1993.

Walter R. Dowdle,

Acting Director, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–27783 Filed 11–9–93; 8:45 am]

BILLING CODE 4160–18–P

Food and Drug Administration

[Docket No. 93M–0381]

Cabot Medical Corp.; Premarket Approval of Falope-Ring® Band and Applicator Systems

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Cabot Medical Corp., Langhorne, PA, for premarket approval, under section 515

of the Federal Food, Drug, and Cosmetic Act (the act), of Falope-Ring® Band and Applicator Systems. After reviewing the recommendation of the Obstetrics-Gynecology Devices Panel, FDA's Center for Devices and Radiological Health (CDRH) notified the applicant, by letter of September 29, 1993, of the approval of the application.

DATES: Petitions for administrative review by December 10, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Collin M. Pollard, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1180.

SUPPLEMENTARY INFORMATION: On December 7, 1987, Cabot Medical Corp., Langhorne, PA, 19047, submitted to CDRH an application for premarket approval of Falope-Ring® Band and Applicator Systems. The device is a contraceptive tubal occlusion device and introducer and is indicated for use for female sterilization (permanent contraception).

On March 29, 1988, the Obstetrics-Gynecology Devices Panel of the Medical Devices Advisory Committee, an FDA advisory committee, reviewed and recommended approval of the application. On September 29, 1993, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 10, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 29, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–27622 Filed 11–9–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93M–0382]

Alcon Laboratories, Inc.; Premarket Approval of PD 1343 Disinfecting Tablet With Unisol® Saline

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing its approval of the application by Alcon Laboratories, Inc., Fort Worth, TX, for premarket approval, under section 515 of the Federal Food, Drug, and Cosmetic Act (the act), of the PD 1343 Disinfecting Tablet with Unisol® Saline. FDA's Center for Devices and Radiological Health (CDRH) notified the applicant by letter of September 30, 1993, of the approval of the application

DATES: Petitions for administrative review by December 10, 1993.

ADDRESSES: Written requests for copies of the summary of safety and effectiveness data and petitions for administrative review to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: James F. Saviola, Center for Devices and Radiological Health (HFZ–460), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–427–2080.

SUPPLEMENTARY INFORMATION: On October 6, 1989, Alcon Laboratories, Inc., Fort Worth, TX 76134–2099, submitted to CDRH an application for premarket approval of the PD 1343 Disinfecting Tablet with Unisol® Saline. The PD 1343 Disinfecting Tablet is to be used with the Unisol® sterile saline solution provided with these tablets to chemically disinfect and store clear (untinted) daily and clear (untinted) extended wear soft (hydrophilic) contact lenses. In accordance with the provisions of section 515(c)(2) of the act as amended by the Safe Medical Devices Act of 1990, this premarket approval application (PMA) was not referred to the Ophthalmic Devices Panel, an FDA advisory panel, for review and recommendation because the information in the PMA substantially duplicates information previously reviewed by this panel. On September 30, 1993, CDRH approved the application by a letter to the applicant from the Acting Director of the Office of Device Evaluation, CDRH.

A summary of the safety and effectiveness data on which CDRH based its approval is on file in the Dockets Management Branch (address above) and is available from that office upon written request. Requests should be identified with the name of the device and the docket number found in brackets in the heading of this document.

Opportunity for Administrative Review

Section 515(d)(3) of the act (21 U.S.C. 360e(d)(3)) authorizes any interested person to petition, under section 515(g) of the act (21 U.S.C. 360e(g)), for administrative review of CDRH's decision to approve this application. A petitioner may request either a formal hearing under part 12 (21 CFR part 12) of FDA's administrative practices and procedures regulations or a review of the application and CDRH's action by an

independent advisory committee of experts. A petition is to be in the form of a petition for reconsideration under § 10.33(b) (21 CFR 10.33(b)). A petitioner shall identify the form of review requested (hearing or independent advisory committee) and shall submit with the petition supporting data and information showing that there is a genuine and substantial issue of material fact for resolution through administrative review. After reviewing the petition, FDA will decide whether to grant or deny the petition and will publish a notice of its decision in the **Federal Register**. If FDA grants the petition, the notice will state the issue to be reviewed, the form of review to be used, the persons who may participate in the review, the time and place where the review will occur, and other details.

Petitioners may, at any time on or before December 10, 1993, file with the Dockets Management Branch (address above) two copies of each petition and supporting data and information, identified with the name of the device and the docket number found in brackets in the heading of this document. Received petitions may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (secs. 515(d), 520(h) (21 U.S.C. 360e(d), 360j(h))) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Devices and Radiological Health (21 CFR 5.53).

Dated: October 29, 1993.

Joseph A. Levitt,

Deputy Director for Regulations Policy, Center for Devices and Radiological Health.

[FR Doc. 93–27623 Filed 11–9–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

Maternal and Child Health Research Grants Review Committee Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Gontran Lamberty, Dr. P.H., Executive Secretary, Maternal and Child Health Research Grants Review Committee, room 18–A55, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–2190.

Dated: November 4, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–27674 Filed 11–9–93; 8:45 am]

BILLING CODE 4160–15–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO–050–4210–04; COC–53601]

Realty Action; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of legal description.

SUMMARY: In notice document **Federal Register** 93–18273, on page 41101 in the **Federal Register** issue of Monday, August 2, 1993, the legal description of public lands to be exchanged should read as follows:

New Mexico principal Meridian, Colorado

T.34N., R.6E.
Sec. 21: SW¼NE¼, NW¼, NW¼SE¼;
Sec. 22: S½SW¼;
Sec. 26: Lots 1 and 2, W½W½;
Sec. 27: E½, E½W½.

The legal description for State of Colorado land to be acquired should be:

Sixth Principal Meridian, Colorado

T.28S., R.73W.
Sec. 16: All except M.S.16694.

Dated: October 29, 1993.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 93–27633 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–57581]

Notice of Proposed Conveyance of Public Land for Airport Purposes; Nevada

November 1, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Lyon County, Nevada has been found suitable for conveyance to Lyon County for airport purposes under section 516 of the Airport and Airway Improvement Act of 1982 (49 U.S.C. 2215):

Mount Diablo Meridian

T. 18 N., R. 24 E.,
Sec. 23, SE¼SE¼SE¼ (within), (unsurveyed);
Sec. 24, S½SW¼;
Sec. 25, N½NW¼ (within), (unsurveyed);
Sec. 26, N½NE¼, SW¼NE¼.

Containing approximately 343.48 acres.

Conveyance of the land is consistent with applicable Federal and county land use plans and will help meet the needs of Lyon County. The land is not required for any Federal purpose.

The unsurveyed lands will be surveyed prior to conveyance.

The land will be conveyed subject to:

1. Reservation to the United States of a right-of-way for ditches or canals.
2. Reservation of all minerals to the United States.
3. The provisions of the Federal Aviation Administration regulations found in 14 CFR 154.13 (a) through (i).
4. All valid existing rights.
5. The condition that the property shall revert to the United States in the event that the lands are not developed for airport or airway purposes or are used in a manner inconsistent with the terms of the conveyance.

The airport is currently under lease (N–38849) to the Lahontan Airport Development Association. The lease will be terminated prior to the proposed conveyance.

The land is segregated by virtue of the existing airport lease. This notice continues the segregation of the above described public land from operation of the public land laws, including the mining laws. The segregative effect will end upon issuance of the conveyance.

DATES: December 27, 1993, interested parties may submit comments to the BLM State Director, P.O. Box 12000, Reno, Nevada 89520. Any adverse comments will be evaluated by the State Director who may sustain, vacate, or modify this realty action. In the absence of any objections, this realty action will become final.

FOR FURTHER INFORMATION CONTACT: Jo Hufnagle, Realty Specialist, BLM Carson City District, 702–885–6144.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–27639 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–HC–M

[OR 49638; OR–060–04–4212–05: GP4–019]

Realty Action; Proposed Direct Sale

November 1, 1993.

The following described public land has been examined and determined to be suitable for transfer out of Federal ownership by direct sale under the

authority of sections 203 and 209 of the Federal Land Policy and Management Act of 1976, as amended (90 Stat. 2750; 43 U.S.C. 1713 and 90 Stat. 2757; 43 U.S.C. 1719), at not less than the appraised fair market value:

Willamette Meridian, Oregon

T. 11 S., R. 3 W.,
Sec. 1, Lot 11.

The above-described parcel contains 0.15 acre in Linn County.

The parcel will not be offered for sale until at least 60 days after publication of this notice in the **Federal Register**. The fair market value of the parcel has not yet been determined. Anyone interested in knowing the value may request this information from the address shown below.

The above-described land is hereby segregated from appropriation under the public land laws, including the mining laws; but not from sale under the above-cited statute, for 270 days or until title transfer is completed or the segregation is terminated by publication in the **Federal Register**, whichever occurs first.

The parcel is difficult and uneconomic to manage as part of the public lands and is not suitable for management by another Federal department or agency. No significant resource values will be affected by this transfer. Because of the parcel's relatively small size, its best use is to merge it with the surrounding ownership. The sale is consistent with the Eastside Management Framework Plan and the public interest will be served by offering this parcel for sale.

The parcel is being offered only to Joseph Jacob, an undivided ⅓ interest, Reed Jacob, an undivided ⅓ interest, and Fred C. Koos and Sue A. Koos, Trustees under the Fred C. Koos Revocable Living Trust dated April 24, 1993, and undivided ⅓ interest. Use of the direct sale procedures authorized under 43 CFR 2711.3–3, will avoid an inappropriate land ownership pattern.

The terms, conditions, and reservations applicable to the sale are as follows:

1. Fred C. Koos et al., will be required to submit a deposit of either cash, bank draft, money order, or any combination thereof for not less than the appraised value.

2. The mineral interests being offered for conveyance have no known mineral value. A bid will also constitute an application for conveyance of the mineral estate, in accordance with section 209 of the Federal Land Policy and Management Act. Fred C. Koos et al., must include with their bid a nonrefundable $50.00 filing fee for the conveyance of the mineral estate.

3. The patent will be subject to:

a. Rights-of-way for ditches or canals will be reserved to the United States under 43 U.S.C. 945.

b. All valid existing rights and reservations of record.

Detailed information concerning the sale is available for review at the Salem District Office, 1717 Fabry Road SE, Salem, Oregon 97306.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the Santiam Area Manager, Salem District Office, at the above address. Any adverse comments will be reviewed by the Salem District Manager, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of the Interior.

Paul Jeske,

Santiam Area Manager.

[FR Doc. 93–27635 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–33–M

Fish and Wildlife Service

Availability of Finding of No Significant Impact and Environmental Assessment and Receipt of an Application for an Incidental Take Permit for a Residential Development in Baldwin County, AL

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: Sea Mist, Incorporated (Applicant), has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a)(1)(B) of the Endangered Species Act (Act). The proposed permit would authorize for a period of 30 years the incidental take of an endangered species, the Alabama beach mouse (*Peromyscus polionotus ammobates*), known to occupy lands owned by the applicant in Gulf Shores, Baldwin County, Alabama.

The Service also announces the availability of an environmental assessment (EA) and habitat conservation plan (HCP) for the incidental take application. Copies of the EA or HCP may be obtained by making requests to the addresses below. The Service is soliciting data on *Peromyscus polionotus ammobates* in order to assist in the requirement of the intra-Service consultation. This notice also advises the public that the Service has made a preliminary determination that issuing the incidental take permit is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969, as amended. The Finding of No Significant Impact is based on information contained in the EA and HCP. The final determination will be made no sooner than 30 days from the date of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act Regulations (40 CFR 1506.6).

DATES: Written comments on the permit application, EA, and HCP should be received on or before December 10, 1993.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing the Service's Southeast Regional Office, Atlanta, Georgia. Persons wishing to review the EA of HCP may obtain a copy by writing the Regional Office or the Jackson, Mississippi, Field Office. Documents will also be available for public inspection, by appointment, during normal business hours at the Regional Office, or the Field Office. Written data or comments concerning the application, EA, or HCP should be submitted to the Regional Office. Please reference permit under PRT 784126 in such comments.

Assistant Regional Director (ES), U.S. Fish and Wildlife Service, Suite 1276, 75 Spring Street, SW., Atlanta, GA 30303, (telephone 404/331–3580, FAX 404/730–3419).

Field Supervisor, U.S. Fish and Wildlife Service, 6578 Dogwood View Parkway, Suite A, Jackson, Mississippi 39213 (telephone 601/965–4900, FAX 601/965–4340).

FOR FURTHER INFORMATION CONTACT: Wendell Neal at the above Jackson, Mississippi, Field Office.

SUPPLEMENTARY INFORMATION: *Peromyscus polionotus ammobates* is a subspecies of the common oldfield mouse *Peromyscus polionotus* and is restricted to the dune systems of the Gulf Coast of Alabama. The known current range of *Peromyscus polionotus ammobates* extends from Fort Morgan eastward to the western terminus of Alabama Highway 182, including the Perdue Unit on the Bon Secour National Wildlife Refuge. The sand dune systems inhabited by this species are not uniform; several habitat types are distinguishable. The depth of the habitat from the beach inland varies depending on the configuration of the sand dune system and the vegetation. Generally, these habitat zones are considered as primary dune (dunes immediately fronting the beach) supporting sea oats and other widely scattered grasses, an

interdune area consisting of other grasses, and sedges, and a secondary dune zone supporting small trees and shrubs. Sea Mist, Incorporated (Applicant) proposes to construct a 64 unit Planned Unit Development, called Laguna Key (project), on ±46 acres of land located at the western end of Alabama Highway 182, section 29, Township 9 South, Range 3 East, Gulf Shores, Baldwin County, Alabama. The Applicant's property contains *Peromyscus polionotus ammobates* habitat, and recent trapping efforts have confirmed its presence in the primary dune zone and interdune zone in different densities and patterns of utilization. Initial construction of roads and utilities and subsequent development of individual homesites and community use facilities (tennis court and swimming pools) may result in death of or injury to beach mouse incidental to the carrying out of these otherwise lawful activities. Habitat alternation associated with property development may reduce the availability of feeding, shelter, and nesting habitat.

The EA considers the environmental consequences of three alternatives. The no action alternative may result in some loss of suboptimal habitat for *Peromyscus polionotus ammobates* and exposure of the applicant under section 9 of the Endangered Species Act. This action is inconsistent with the purposes and intent of section 10 of the Act. The delisting of the *Peromyscus polionotus ammobates* as an alternative was rejected as biological unjustifiable. Modification of the HCP as an alternative was in part accommodated during the pre-application phase through negotiations between the applicant and the Service. The HCP attached with the permit is modified to the maximum extent practicable. The proposed action alternative is issuance of the incidental take permit. This provides for restrictions of construction activity, placement of walkover structures across sand dunes, continued monitoring of *Peromyscus polionotus ammobates*, controls on residential outdoor lighting, storage and maintenance of trash and garbage in scavenger proof containers, and distribution of educational materials to construction personnel and residents. The HCP also provides a funding mechanism for these mitigation measures.

Dated: October 28, 1993.

John M. Hefner,

Acting Assistant Regional Director, Ecological Services.

[FR Doc. 93–27754 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Boundary Revision; Great Smoky Mountains National Park

AGENCY: National Park Service, DOI.

ACTION: Notice of boundary revision, Great Smoky Mountains National Park.

SUMMARY: Section 1 of the Act of May 22, 1926, provided that the Great Smoky Mountains National Park was established upon the acquisition of 704,000 acres of lands for the park. The Act of June 15, 1934, modified this Act and established the park as a completed park for administration, protection, and development by the United States upon the acquisition of a minimum of 400,000 acres by the United States. The United States acquired the minimum 400,000 acres in 1934 and continues to acquire additional property for the park up to the maximum of 704,000 acres. The United States has acquired, or will acquire by donation in the near future, approximately 800 acres of land, for the park.

Notice is given that the boundary of Great Smoky Mountains National Park has been revised pursuant to the above Act, to include the lands depicted on boundary maps (two sheets) numbered 133/80,014 dated August 1993, prepared by the Land Resources Division of the Southeast Region of the National Park Service.

This map is on file and available for inspection in the administrative office of the Great Smoky Mountains National Park, 107 Park Headquarters Road, Gatlinburg, Tennessee 37738, and in the offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Dated: October 22, 1993.

James W. Coleman, Jr.,

Regional Director, Southeast Region, National Park Service.

[FR Doc. 93–27617 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–70–P

White-Tailed Deer Management Program, Gettysburg National Military Park, PA; Intent To Prepare an Environmental Impact Statement, and Public Information and Scoping Meetings; Correction

AGENCY: National Park Service, USDI.

ACTION: Correction.

SUMMARY: In notice document 92–20053, page 38061 in the issue of Friday, August 21, 1992, and document 93–2094, page 6419 in the issue of Thursday, January 28, 1993 the following correction should be made:

The title should include Eisenhower National Historic Site. Inadvertently reference to the Eisenhower National Historic Site was left off of both register document titles; however, all precedures for the development of the EIS have included both sites. All briefings statements, news releases, TV features, public information and scopings meetings etc. have been all inclusive with respect to the white-tailed deer management program at Gettysburg National Military Park/ Eisenhower National Historic Site.

Robert F. Gift,

Regional Environmental Coordinator, Mid-Atlantic Region.

[FR Doc. 93–27615 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–70–M

Agenda for the November 17, 1993, Meeting of the San Francisco Maritime National Historical Park Advisory Commission

Public Meeting Fort Mason Building F (Firehouse) 9 am–12 pm

9 am Welcome—Superintendent William G. Thomas

Opening remarks—Chairman Patrick J. Flanagan

9:15 am Discussion—Government Bureaucracy

A. Discussion on Civil Service

B. Volunteers in Parks—Benefits Under Worker's Compensation

10 am Trip Reports—

RADM Russell W. Gorman's visit to Washington, DC

Mr. Patrick J. Flanagan's visit to Washington, DC

10:30 am Discussion of Response to Correspondence

Regional Director

Secretary of Interior

11 am General Management Plan Update

11:15 am Public Comment and Questions

11:30 am Election of Officers for 1994

12 pm Lunch

1 pm Depart for San Francisco Drydock to review restoration of the Ferryboat EUREKA

1:45 pm Tour Shipyard

3 pm Depart Shipyard

4 pm Arrive Fort Mason Building F

Dated: November 3, 1993.

Phil H. Ward,

Acting Associate Regional Director for Operations.

[FR Doc. 93-27618 Filed 11-9-93; 8:45 am]

BILLING CODE 4310-70-P

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before October 30, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by November 26, 1993.

Carol D. Shull,

Chief of Registration, National Register.

ARIZONA

Mohave County

Black, Arthur F., House, 707 Carbat Ave., Kingman, 93001324

ARKANSAS

Searcy County

Aday—Stephenson House (Searcy County MPS), Pine St., Marshall, 93001365
American Legion Post No. 131 (Searcy County MPS), Center St. W of jct. with Walnut St., Leslie, 93001369
Bartley, Guy, House (Searcy County MPS), Jct. of Elm and Fifth Sts., NE corner, Leslie, 93001372
Campbell Post Office—Kuykendall General Store (Searcy County MPS), Co. Rd. 73 NW of Oxley, Oxley vicinity, 93001364
Clay, Dr., House (Searcy County MPS), Jct. of Walnut and Center Sts., Leslie, 93001368
Cotton, Dr. J. O., House (Searcy County MPS), Jct. of AR 66 and High St., SE corner, Leslie, 93001366
Hollabaugh, Dr. Cleveland, House (Searcy County MPS), Oak St., Leslie, 93001371
Miller, J.C., House (Searcy County MPS), Jct. of Oak and High Sts., NW corner, Leslie, 93001370
Robinson, Dr., House (Searcy County MPS), Walnut St. E of jct. with Center St., Leslie, 93001367

CALIFORNIA

Del Norte County

St. George Reef Light Station (Light Stations of California MPS), NW Seal Rock, approximately 6 nautical mi. off coast from Point St. George, Crescent City vicinity, 93001373

COLORADO

Larimer County

Waycott, Ernest, House, 1501 W. Mountain Ave., Fort Collins, 93001363

CONNECTICUT

Hartford County

Bulkeley Bridge, I-84 over the Connecticut R., Hartford, 93001347
Marlborough Congregational Church, 35 S. Main St., Marlborough, 93001346

Litchfield County

Brooks, Hervey, Pottery Shop and Kiln Site, Address Restricted, Goshen vicinity, 93001362

Middlesex County

Starr Mill Road Bridge, Starr Mill Rd. across the Coechinaug R., Middletown, 93001344

New Haven County

Red Bridge, Near Oregon Rd. over the Quinnipiac R., Meriden, 93001345

Windham County

Putnam High School, 126 Church St., Putnam, 93001343

FLORIDA

Citrus County

Floral City Historic District, Roughly, Orange Ave. from S. Old Floral City Rd. to S. Annie Terr. and S. Aroostook Way from Orange to Lake Tsala Apopka, Floral City, 93001357

Volusia County

Kling, Amos, House, 220-222 Magnolia Ave., Daytona Beach, 93001353

IDAHO

Latah County

Sigma Alpha Epsilon Fraternity House, 920 Deakin St., Moscow, 93001335

IOWA

Winneskiek County

Clarksville Diner, 504 Heivly St., Decorah, 93001356

MICHIGAN

Berrien County

Ninth District Lighthouse Depot, 128 N. Pier, St. Joseph, 93001348

Calhoun County

Stow—Hasbrouck House, 18600 16 Mile Rd., Convis Township, Marshall vicinity, 93001361

Cass County

Michigan Central Railroad Dowagiac Depot, 200 Depot Dr., Dowagiac, 93001349

Jackson County

Richard, Hugh H., House, 505 Wildwood Ave., Jackson, 93001352

Wayne County

Curtiss, Charles G., Sr., House, 168 S. Union St., Plymouth, 93001350
Grosse Pointe Memorial Church, 16 Lake Shore Dr., Grosse Pointe Farms, 93001351

NEW JERSEY

Hunterdon County

Mountainville Historic District, Guinea Hollw Rd., Saw Mill Rd., Main St., Rockaway Creek Rd. and Philhower Rd., Tewksbury Township, Mountainville, 93001350

OHIO

Cuyahoga County

Franklin Boulevard—West Clinton Avenue Historic District, 5207-7625 Franklin Blvd., 5802-7325 W. Clinton Ave., Cleveland, 93001334

OKLAHOMA

Oklahoma County

American Legion Hut, Jct. of Fifth and Little Sts., SW corner, Edmond, 93001336

OREGON

Tillamook County

US Coast Guard Station—Tillamook Bay, US 101, Garibaldi, 93001337

SOUTH DAKOTA

Beadle County

South Dakota Dept. of Transportation Bridge No. 03-020-008 (Historic Bridges in South Dakota MPS), Lock rd. over unnamed cr., Wessington vicinity, 93001260
South Dakota Dept. of Transportation Bridge No. 03-327-230 (Historic Bridges in South Dakota MPS), Local rd. over Pearl Cr., Cavour vicinity, 93001261
South Dakota Dept. of Transportation Bridge No. 03-338-100 (Historic Bridges in South Dakota MPS), Local rd. over Shue Cr., Cavour vicinity, 93001269

Bon Homme County

South Dakota Dept. of Transportation Bridge No. 05-028-200 (Historic Bridges in South Dakota MPS), Local rd. over Choteau Cr., Perkins vicinity, 93001270
South Dakota Dept. of Transportation Bridge No. 05-032-170 (Historic Bridges in South Dakota MPS), Local rd. over Choteau Cr., Avon vicinity, 93001271
South Dakota Dept. of Transportation Bridge No. 05-138-080 (Historic Bridges in South Dakota MPS), Local rd. over Emanuel Cr., Tyndall vicinity, 93001272
South Dakota Dept. of Transportation Bridge No. 05-255-130 (Historic Bridges in South Dakota MPS), Local rd. over Beaver Cr., Tabor vicinity, 93001273

Butte County

Hay Creek Bridge (Historic Bridges in South Dakota MPS), Eight Ave. over Hay Cr., Belle Fourche, 93001274
Minnesela Bridge (Historic Bridges in South Dakota MPS), Local rd. over Redwater Cr., Belle Fourche vicinity, 93001277
South Dakota Dept. of Transportation Bridge No. 10-109-360 (Historic Bridges in South Dakota MPS), Local rd. over the Diversion Dam Inlet Canal, Belle Fourche Irrigation District, Belle Fourche vicinity, 93001275
South Dakota Dept. of Transportation Bridge No. 10-112-355 (Historic Bridges in South Dakota MPS), Diversion Dam rd. over Crow Cr., Belle Fourche vicinity, 93001276

Charles Mix County

South Dakota Dept. of Transportation Bridge No. 12-503-230 (Historic Bridges in South

Dakota MPS), Local rd. over Choteau Cr., Wagner vicinity, 93001278

Codington County

Kemp Avenue Bridge (Historic Bridges in South Dakota MPS), Kemp Ave. over the Sioux R., Watertown, 93001264
Larson Bridge (Historic Bridges in South Dakota MPS), Local rd. over Willow Cr., Watertown vicinity, 93001266
South Dakota Dept. of Transportation Bridge No. 15–210–136 (Historic Bridges in South Dakota MPS), Local rd. over unnamed cr., Watertown vicinity, 93001265

Corson County

South Dakota Dept. of Transportation Bridge No. 16–570–054 (Historic Bridges in South Dakota MPS), Local rd. over Oak Cr., McLaughlin vicinity, 93001279

Custer County

Red Shirt Bridge (Historic Bridges in South Dakota MPS), SD 40 over the Cheyenne R., Red Shirt vicinity, 93001281
South Dakota Dept. of Transportation Bridge No. 17–289–107 (Historic Bridges in South Dakota MPS), SD 87 over French Cr., Custer State Park, Custer vicinity, 93001280
Tubbs, Newton Seymour, House, 35 Centennial Dr., Custer, 93001341

Davison County

South Dakota Dept. of Transportation Bridge No. 18–040–137 (Historic Bridges in South Dakota MPS), Local rd. over Enemy Cr., Mitchell vicinity, 93001282
South Dakota Dept. of Transportation Bridge No. 18–060–202 (Historic Bridges in South Dakota MPS), Local rd. over Twelve Mile Cr., Mitchell vicinity, 93001283
South Dakota Dept. of Transportation Bridge No. 18–100–052 (Historic Bridges in South Dakota MPS), Local rd. over Firesteel Cr., Loomis vicinity, 93001284
South Dakota Dept. of Transportation Bridge No. 18–142–150 (Historic Bridges in South Dakota MPS), Local rd. over Enemy Cr., Mitchell vicinity, 93001285

Deuel County

Old Cochrane Road Bridge (Historic Bridges in South Dakota MPS), Abandoned local rd. over the inlet to Lake Cochrane, Brandt vicinity, 93001268
South Dakota Dept. of Transportation Bridge No. 20–153–210 (Historic Bridges in South Dakota MPS), Local rd. over Cobb Cr., Brandt vicinity, 93001286

Fall River County

Chilson Bridge (Historic Bridges in South Dakota MPS), Local rd. over Burlington Northern RR tracks, Edgemont vicinity, 93001287

Faulk County

South Dakota Dept. of Transportation Bridge No. 25–380–142 (Historic Bridges in South Dakota MPS), Local rd. over the S. fork of Snake Cr., Zell vicinity, 93001262
South Dakota Dept. of Transportation Bridge No. 25–218–141 (Historic Bridges in South Dakota MPS), 10th Ave. over the S. Fork of Snake Cr., Faulkton, 93001288

Gregory County

South Dakota Dept. of Transportation Bridge No. 27–000–201 (Historic Bridges in South Dakota MPS), Local rd. over unnamed cr., Dallas vicinity, 93001289
South Dakota Dept. of Transportation Bridge No. 27–060–298 (Historic Bridges in South Dakota MPS), Local rd. over unnamed cr., Gregory vicinity, 93001290

Hamlin County

South Dakota Dept. of Transportation Bridge No. 29–221–060 (Historic Bridges in South Dakota MPS), Local rd. over the Big Sioux R., Castlewood vicinity, 93001291
South Dakota Dept. of Transportation Bridge No. 29–279–010 (Historic Bridges in South Dakota MPS), Local rd. over Stray Horse Cr., Castlewood vicinity, 93001292

Hand County

South Dakota Dept. of Transportation Bridge No. 30–257–400 (Historic Bridges in South Dakota MPS), Local rd. over Sand Cr., Miller vicinity, 93001293

Hanson County

South Dakota Dept. of Transportation Bridge No. 31–115–110 (Historic Bridges in South Dakota MPS), Local rd. over Pierre Cr., Fulton vicinity, 93001294

Jones County

Capa Bridge (Historic Bridges in South Dakota MPS), Local rd. over the Bad R., Murdo vicinity, 93001295
Van Metre Bridge (Historic Bridges in South Dakota MPS), Local rd. over the Bad R., Murdo vicinity, 93001296

Kingsbury County

Esmond Bridge (Historic Bridges in South Dakota MPS), Local rd. over Redstone Cr., De Smet vicinity, 93001298
South Dakota Dept. of Transportation Bridge No. 39–006–070 (Historic Bridges in South Dakota MPS), Local rd. over Pearl Cr., Iroquois vicinity, 93001297
South Dakota Dept. of Transportation Bridge No. 39–176–100 (Historic Bridges in South Dakota MPS), Local rd. over unnamed cr., De Smet vicinity, 93001299

Lawrence County

Redwater Bridge, Old (Historic Bridges in South Dakota MPS), Local rd. over the Redwater R., Spearfish vicinity, 93001300

McCook County

South Dakota Dept. of Transportation Bridge No. 44–028–220 (Historic Bridges in South Dakota MPS), Local rd. over Wolf Cr., Bridgewater vicinity, 93001301
South Dakota Dept. of Transportation Bridge No. 44–212–090 (Historic Bridges in South Dakota MPS), Local rd. over the E. fork of the Vermillion R., Montrose vicinity, 93001302

Meade County

South Dakota Dept. of Transportation Bridge No. 47–151–389 (Historic Bridges in South Dakota MPS), Local rd. over Bear Butte Cr., Sturgis vicinity, 93001263
South Dakota Dept. of Transportation Bridge No. 47–215–363 (Historic Bridges in South Dakota MPS), SD 34 over the Belle Fourche R., Sturgis vicinity, 93001303

Mellette County

South Dakota Dept. of Transportation Bridge No. 48–244–204 (Historic Bridges in South Dakota MPS), Local rd. over the Little White R., White River vicinity, 93001305
Stamford Bridge (Historic Bridges in South Dakota MPS), Local rd. over the White R., Cedar Butte vicinity, 93001304

Miner County

South Dakota Dept. of Transportation Bridge No. 49–095–190 (Historic Bridges in South Dakota MPS), Local rd. over Rock Cr., Howard vicinity, 93001306

Minnehaha County

Eighth Street Bridge (Historic Bridges in South Dakota MPS), S. Eighth St. over the Big Sioux R., Sioux Falls, 93001308
South Dakota Dept. of Transportation Bridge No. 50–200–035 (Historic Bridges in South Dakota MPS), Co. Rd. over the Big Sioux R., Dell Rapids vicinity, 93001267
Split Rock Park Bridge (Historic Bridges in South Dakota MPS), Split Rock Park Rd. over Devils Cr. Gulch, Garretson vicinity, 93001309
Summit Avenue Viaduct (Historic Bridges in South Dakota MPS), Summit Ave. over the Chicago and North Western RR tracks, Sioux Falls, 93001307

Pennington County

Rapid City Fruit Company, 320 7th St., Rapid City, 93001340

Sanborn County

South Dakota Dept. of Transportation Bridge No. 56–090–096 (Historic Bridges in South Dakota MPS), Local rd. over Sand Cr., Forestburg vicinity, 93001310
South Dakota Dept. of Transportation Bridge No. 56–117–123 (Historic Bridges in South Dakota MPS), Local rd. over the James R., Forestburg vicinity, 93001311
South Dakota Dept. of Transportation Bridge No. 56–174–090 (Historic Bridges in South Dakota MPS), Local rd. over Redstone Cr., Artesian vicinity, 93001312

Spink County

Hall Bridge (Historic Bridges in South Dakota MPS), Local rd. over Snake Cr., Ashton vicinity, 93001317
South Dakota Dept. of Transportation Bridge No. 58–010–376 (Historic Bridges in South Dakota MPS), Local rd. over Wolf Cr., Tulare vicinity, 93001313
South Dakota Dept. of Transportation Bridge No. 58–021–400 (Historic Bridges in South Dakota MPS), Local rd. over Turtle Cr., Tulare vicinity, 93001314
South Dakota Dept. of Transportation Bridge No. 58–025–370 (Historic Bridges in South Dakota MPS), Local rd. over Turtle Cr., Tulare vicinity, 93001315
South Dakota Dept. of Transportation Bridge No. 58–062–270 (Historic Bridges in South Dakota MPS), Local rd. over Turtle Cr., Redfield vicinity, 93001316
South Dakota Dept. of Transportation Bridge No. 58–120–231 (Historic Bridges in South Dakota MPS), Local rd. over the James R., Redfield vicinity, 93001318

South Dakota Dept. of Transportation Bridge No. 58–140–224 (Historic Bridges in South Dakota MPS), Local rd. over the James R., Redfield vicinity, 93001319
South Dakota Dept. of Transportation Bridge No. 58–218–360 (Historic Bridges in South Dakota MPS), Local rd. over the James R., Frankfort vicinity, 93001320

Tripp County

South Dakota Dept. of Transportation Bridge No. 62–220–512 (Historic Bridges in South Dakota MPS), Local rd. over the Keya Paha R., Hewela vicinity, 93001321

Union County

South Dakota Dept. of Transportation Bridge No. 64–061–199 (Historic Bridges in South Dakota MPS), Local rd. over Brule Cr., Elk Point vicinity, 93001322

TENNESSEE

Marshall County

Adams, Joe Chase, House., 327 E. Church St., Lewisburg, 93001354

Polk County

Wiggins, William, House, Jct. of Main and Ward Sts., NE corner, Benton, 93001355

WASHINGTON

Clallam County

New Dungeness Light Station, Dungeness Spit, Sequim vicinity, 93001338

Thurston County

Dofflemyer Point Light (Maritime-Related Resources of Budd Inlet MPS), 211 NE. 73rd, Olympia vicinity, 93001339

WEST VIRGINIA

Monroe County

Byrnside—Beirne—Johnson House, Address Restricted, Union vicinity, 93001358

WISCONSIN

Brown County

De Pere Lock and Dam Historic District (Waterway Resources of the Lower Fox River MPS), Fox R. at James St., De Pere, 93001331
Little Kaukauna Lock and Dam Historic District (Waterway Resources of the lower Fox River MPS), Fox R. at Mill Rd. De Pere vicinity, 93001332

Columbia County

Kurth, John H. and Company Office Building, 729–733 Park Ave., Columbus, 93001359

Outagamie County

Appleton Lock 4 Historic District (Waterway Resources of the Lower Fox River MPS), Fox R. at John St., Appleton, 93001329
Appleton Locks 1–3 Historic District (Waterway Resources of the Lower Fox River MPS), Roughly, along the Fox R. from Memorial Dr. to Lowe St., Appleton, 93001333
Cedars Lock and Dam Historic District (Waterway Resources of the Lower Fox River MPS), 4527 E. Wisconsin Rd., Little Chute, 93001328
Kaukauna Locks Historic District (Waterway Resources of the Lower Fox River MPS), Roughly, along the Fox R. running E past Canal St., Kaukauna, 93001327
Little Chute Locks and Canal Historic District (Waterway Resources of the Lower Fox River MPS), Roughly, along the Fox R. from Mill St. to Sanitorium Rd., Little Chute, 93001325
Rapide Croche Lock and Dam Historic District (Waterway Resources of the Lower Fox River MPS), Fox R. at the Outagamie—Brown County line, Wrightstown, 93001326

Winnebago County

Menasha Dam (Waterway Resources of the Lower Fox River MPS), Fox R. at Mill St., Menasha, 93001330
Mensha Lock Site, Address restricted, Menasha vicinity, 93001323

In order to assist in the preservation of the following property, the commenting period has been shortened to three days:

NORTH CAROLINA

Randolph County

Central School, 414 Watkins St., Asheboro, 93001342

[FR Doc. 93–27619 Filed 11–9–93; 8:45 am]
BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–348]

Certain In-Line Roller Skates With Ventilated Boots and In-Line Roller Skates With Axle Aperture Plugs and Component Parts Thereof; Commission Determination Not To Review Four Initial Determinations Terminating the Investigation as to all Remaining Respondents

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determinations (IDs) in the above-captioned investigation granting motions to terminate the investigation with respect to two respondents on the basis of consent orders; with respect to ten respondents on the basis of patent licensing agreements; and with respect to the remaining 15 respondents on the basis of complainant Rollerblade Inc.'s withdrawal of the complaint.

ADDRESSES: Copies of the IDs and all other nonconfidential documents filed in connection with this investigation are available for public inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000.

FOR FURTHER INFORMATION CONTACT: Anjali K. Singh, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3117. Hearing-impaired individuals are advised that information about this matter can be obtained by contacting the Commission's TDD terminal, 202–205–1810.

SUPPLEMENTARY INFORMATION: On February 18, 1993, Rollerblade, Inc. filed a complaint with the Commission alleging unfair acts in violation of section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). The unfair acts alleged in the complaint are the unauthorized importation into the United States, the sale for importation, and the sale within the United States after importation of certain in-line roller skates with ventilated boots, and in-line roller skates with axle aperture plugs and component parts thereof, that allegedly infringe claim 1, 2, 3, 4, 5, 6, 7 or 8 of U.S. Letters Patent 5,171,033, and/or claim 5 of U.S. Letters Patent 5,048,848. On March 18, 1993, the Commission voted to institute an investigation of the complaint and published notice of its investigation in the **Federal Register** (58 FR 16204 (March 25, 1993)).

On September 30, 1993, the ALJ issued three IDs. The first ID (Order No. 42) granted joint motions to terminate the investigation with respect to respondents European Sports Enterprise Co., Ltd. and Far Great Plastics Industrial Co., Ltd. based on two separate proposed consent orders and consent order agreements. The second ID (Order No. 43) granted joint motions to terminate the investigation with respect to respondents Risport International Corp., Meran SRL, and Koflach Sport G.m.b.H. based on three separate licensing agreements. The third ID (Order No. 44) granted joint motions to terminate the investigation with respect to seven other respondents based on licensing agreements. On October 4, 1993, the ALJ issued a fourth ID granting Rollerblade Inc.'s motion for termination of the investigation as to the remaining 15 respondents through withdrawal of the complaint. On September 17, 1993, the Commission investigative attorney (IA) filed a response in support of the joint motions to terminate the investigation on the basis of the consent order agreements. On September 20, 1993, the IA filed a response in support of the joint motions to terminate the investigation on the basis of the licensing agreements. Also

on September 20, 1993, the IA filed a response in support of complainant's motion to terminate through withdrawal of the complaint. On October 12, 1993, the IA filed a petition for review of Order No. 42. No agency or public comments were received.

This action is taken pursuant to section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and Commission interim rule § 210.53(h) (19 CFR 210.53(h)).

Issued: November 3, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–27715 Filed 11–9–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–353]

Certain Lens Panels for Lighting Fixtures, Kits Containing Same, and Fixtures Containing Same; Commission Determination Not To Review an Initial Determination Terminating The Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (ID) (Order No. 5) in the above-captioned investigation terminating the investigation without prejudice.

FOR FURTHER INFORMATION CONTACT: Shara L. Aranoff, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, D.C. 20436, telephone (202) 205–3090.

SUPPLEMENTARY INFORMATION: On June 3, 1993, Alan Tracy, Inc. ("Alan Tracy") filed a complaint with the Commission alleging violations of section 337 in the importation and sale of certain lens panels for lighting fixtures, kits containing same, and fixtures containing same that are allegedly covered by the sole claim of U.S. Letters Patent Des. 312,511 ("the '511 patent"). An amended complaint was filed on June 25, 1993. The Commission's notice of investigation instituting an investigation based on the amended complaint was published in the **Federal Register** on July 9, 1993, naming Trans Globe Imports, Inc., Bel Air Lighting, Inc., Punder Enterprises Co., Ltd., and Snehao Co., Ltd. as respondents. 58 Fed. Reg. 36,992 (1993).

On October 7, 1993, the presiding administrative law judge issued an ID granting Alan Tracy's motion to terminate the investigation without prejudice on the basis of withdrawal of the complaint. No petitions for review or government agency comments were received.

Copies of the nonconfidential version of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC. 20436, telephone (202) 205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337), and § 210.53(h) of the Commission's Interim Rules of Practice and Procedure (19 CFR 210.53(h)).

Issued: November 3, 1993

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–27714 Filed 11–8–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–354]

Notice of Decision Not To Review an Initial Determination Granting Motion To Amend Notice of Investigation To Add Three Respondents and To Terminate One Respondent

In the Matter of: Certain Tape Dispensers.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting complainant Minnesota Mining and Manufacturing, Inc.'s ("3M") motion to amend the notice of investigation to add three respondents and to delete Fancy International (HK) Ltd. from the list of respondents.

FOR FURTHER INFORMATION CONTACT: James M. Lyons, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436. Telephone: (202) 205–3094.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of violations of section 337 of the Tariff Act of 1930 in the importation and sale of certain tape dispensers, on July 15, 1993. Complainant 3M alleges infringement of U.S. Letters Patent Des. 289,180.

On September 15, 1993, complainant filed a motion to amend the notice of investigation to add the following respondents to the investigation: Safrina Office Products, Hoi Fung Industrial Co., and Shiang Shin Trading Co. Complainant also moved to delete one respondent, Fancy International (HK) Ltd., from the investigation. In requesting this action, 3M stated that discovery had revealed that the three additional proposed respondents were involved in the sale and exportation of the subject tape dispensers and that respondent Fancy International Ltd. was not a supplier of tape dispensers in issue. The Commission investigative attorney supported the motion. On October 6, 1993, the ALJ issued an ID (Order No. 2) granting complainant's motion.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR § 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal at (202) 205–1810.

Issued: November 3, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–27713 Filed 11–8–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–33 (Sub-No. 80X)]

Union Pacific Railroad Company—Abandonment Exemption—in Orange County, CA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval and offer of financial assistance requirements of 49

U.S.C. 10903–05 the abandonment by Union Pacific Railroad Company of 3.77 miles of rail line extending between milepost 15.51 near Fullerton to the end of the line at milepost 19.28 near Anaheim, in Orange County, CA, subject to standard labor protective conditions and an historic condition.

DATES: The exemption will be effective on November 25, 1993. Petitions to stay must be filed by November 22, 1993; and petitions to reopen must be filed by December 6, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–33 (Sub- No. 80X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Joseph D. Anthofer, 1416 Dodge Street #830, Omaha, NE 68179.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610.[TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: November 1, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–277669 Filed 11–9–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Network Management Forum

Notice is hereby given that, on September 15, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. Section 4301 *et seq.* ("the Act"), the Network Management Forum ("the Forum") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing additions to its membership. The additional notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the new members to the venture are: GEC Marconi Communications, Ltd., Chelmsford, Essex, England is a Corporate Member. Comdisco Systems, Inc., Foster City, CA; and Scottish Power, Glasgow, Scotland are Associate Members. Booz Allen & Hamilton, Vienna, VA; I-Net, Inc., Bethesda, MD; Novadyne, Reston, VA; and Reed Exhibition Companies, Bleinheim Court, Solihull, England are Affiliate Members.

No other changes have been made, since the last notification filed with the Department, in either the membership or planned activity of the group research project. Membership in this group research project remains open, and the Forum intends to file additional written notifications disclosing all changes in membership.

On October 21, 1988, the Forum filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 8, 1988 (53 FR 49615).

The last notification was filed with the Department on April 8, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1993 (58 FR 31416).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–27641 Filed 11–9–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Climatology and Simulation of Eddies Joint Industry Project

Notice is hereby given that, on October 13, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. section 4301, et seq. ("the Act"), the Climatology and Simulation of Eddies Joint Industry Project ("CASE") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notification were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional party has become a new member of the project: EP Operating Limited Partnership, Houston, TX.

No other changes have been made in either the membership or planned activity of CASE. On August 14, 1990, CASE filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 18, 1990, 55 FR 38418.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–27642 Filed 11–9–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The SQL Access Group, Inc. and X/Open Co. Ltd.

Notice is hereby given that, on August 27, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The SQL Access Group, Inc. ("the Group") and X/Open Company Limited ("X/Open") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances.

Specifically, the changes are as follows: (1) Liant Software; Quadratron Systems, UK, Ltd; and the U.S. National Security Agency are no longer members of X/Open; (2) Credit Suisse, Zurich, Switzerland; Lloyd's Bank, PLC, London, England; Price Waterhouse, Washington, DC; and Openvision Technologies, Inc., Pleasanton, CA have become members of X/Open; and (3) Motorola Computer Group, Tempe, AZ, who was inadvertently listed as no longer being a member of X/Open in the April 19, 1993 filing, is still a member of X/Open.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SQL and X/Open intend to file additional written notifications disclosing all changes in membership.

On July 16, 1992, the Group and X/Open filed their original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on December 14, 1992 (57 FR 59128).

The last notification was filed with the Department on April 19, 1993. A notice was published in the **Federal**

Register pursuant to section 6(b) of the Act on July 9, 1993 (58 FR 37026).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–27640 Filed 11–9–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—X Consortium, Inc.

Notice is hereby given that, on September 15, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. section 4301 *et seq.* ("the Act"), X Consortium, Inc. (the "Corporation") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties, and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Adobe Systems, Inc., Mountain View, CA; AGE Logic, Inc., San Diego, CA; Apple Computer, Inc., Cupertino, CA; Diagnostic/Retrieval Systems, Inc., Oakland, NJ; Digital Equipment Corporation, Nashua, NH; Fujitsu Network Transmission Systems, Inc., San Jose, CA; Hewlett-Packard Company, Corvallis, OR; Hummingbird Communications, Markham, Ontario, Canada; IBM Corporation, Austin, TX; Institute for Information Industry, Taipei, Taiwan, Republic of China; Integrated Computer Solutions, Inc., Cambridge, MA; IXI Limited, Cambridge, United Kingdom; Kabota Pacific Computer, Santa Clara, CA; Nippon Telegraph and Telephone Corporation, Tokyo, Japan; O'Reilly and Associates, Inc., Cambridge, MA; Open Software Foundation, Cambridge, MA; Petrotechnical Open Software Corporation, Houston, TX; Quarterdeck Office Systems, Santa Monica, CA; Silicon Graphics Computer Systems, Mountain View, CA; Sony Corporation, Tokyo, Japan; SunSoft, Inc., Mountain View, CA; Tektronix, Inc., Wilsonville, OR; Unix Systems Laboratories, Summit, NJ; and Walker Richer & Quinn, Inc., Seattle, WA.

The objectives of the venture are to engage in cooperative research, experimentation and development activities in order to develop, evolve and maintain the "X Window System", a vendor neutral, system-architecture neutral, network-transparent windowing and user interface standard. In addition, the venture will perform other related research and experimentation in, and the implementation of, open systems standards and technology.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–27643 Filed 11–9–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–77]

Thrift Incentive Stock Ownership Plan of The Dime Savings Bank of New York, FSB (the Plan)

AGENCY: Pension and Welfare Benefits Administration, Department of Labor.

ACTION: Notice of technical correction.

On October 27, 1993, the Department of Labor (the Department) published in the **Federal Register** (58 FR 57841) an individual exemption which applies to (1) the past acquisition by the Plan of certain stock rights (the Rights) pursuant to a stock rights offering (the Offering) by the Dime Savings Bank of New York, FSB; (2) the past holding of the Rights by the Plan during the subscription period of the Offering; and (3) the disposition or exercise of the Rights by the Plan.

The "**EFFECTIVE DATE**" of the exemption should read as follows:

EFFECTIVE DATE: This exemption is effective as of April 15, 1993.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881.

Signed at Washington, DC, this 4th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–27721 Filed 11–9–93; 8:45 am]

BILLING CODE 4510–29–M

[Application No. D–9498, et al.]

Proposed Exemptions; Goodman-Gable-Gould Company Profit Sharing Plan, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of Proposed Exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, Room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC. 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, Room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section

102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Goodman-Gable-Gould Company Profit Sharing Plan (the Plan), Located in Baltimore, Maryland,

[Application No. D-9498]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) a proposed Loan of up to $250,000 (the Loan) by the Plan to the Office Property Joint Venture (OPJV), a party in interest with respect to the Plan; and (2) the proposed personal guarantees of the OPJV's obligations under the Loan by William A Goodman, Harvey M. Goodman, Lawrence H. Goodman, and Myron Schwartz, each of whom is a party in interest with respect to the Plan; provided the following conditions are satisfied:

(A) All terms of the Loan are at least as favorable to the Plan as those which the Plan could obtain in an arm's-length transaction with an unrelated party;

(B) For the duration of the Loan, the principal balance of the Loan does not exceed twenty-five percent of the net assets of the Plan at any time;

(C) For the duration of the Loan, the Plan's interests with respect to the Loan are represented by Barry C. Greenberg, an independent fiduciary who will monitor and enforce the OPJV's compliance with the Loan terms and the conditions of this exemption; and

(D) Upon the making of the Loan and for its duration, the Loan is secured by a perfected lien on real property having a fair market value of no less than 150% of the outstanding principal balance of the Loan.

Summary of Facts and Representations

1. The Plan is a defined contribution employee benefit plan with 36 participants and total assets of approximately $900,000 as of December 31, 1992. The Plan is sponsored by the Goodman-Gable-Gould Company (the Employer), a Maryland private corporation engaged as an insurance adjuster, with principal places of business in Baltimore and Rockville, Maryland. The trustees of the Plan are William A Goodman, Harvey M. Goodman, and Lawrence H. Goodman (the Trustees), each of whom is a director, shareholder and employee of the Employer and a participant in the Plan.

2. The Employer's place of business in Rockville, Maryland is a five-unit commercial office condominium building (the Building) located in the Rollins Office Park at 133 Rollins Avenue in Rockville. The Employer occupies all five units in the Building, which is leased to the Employer by the OPJV, a Maryland joint venture which owns the Building. Each of the Trustees is a 25 percent joint venturer in OPJV, and the fourth 25 percent joint venturer in OPJV is Myron Schwartz, who is also a director of the Employer. In order to retire an outstanding mortgage on the Building, which resulted from the financing obtained by OPJV in its past acquisition of part of the Building, the joint venturers of OPJV (the Joint Venturers) are proposing the Loan to OPJV from the Plan. An exemption is requested to permit the Loan, and the personal guarantees of the Loan by the Joint Venturers, under the terms and conditions described herein.

3. All terms of the Loan will be embodied in a promissory note and security agreement (together, the Contract) between OPJV and the Plan, under which the interests of the Plan are represented by Barry C. Greenberg, Esq. (the Fiduciary), an independent fiduciary who will represent the interests of the Plan for all purposes with respect to the proposed Loan. The Fiduciary represents that he is knowledgeable of fiduciary responsibilities under the Act, and that he is independent of and unrelated to the Employer and OPJV, although he has represented them on past unrelated real estate matters.[1] The Fiduciary will monitor OPJV's compliance with all terms of the Contract and the conditions of this proposed exemption, and will pursue appropriate remedies on behalf of the Plan in the event of any default or noncompliance.

4. The Loan is proposed in the principal amount of the lesser of (a) $250,000, or (b) 25 percent of the total assets of the Plan as of the date of the Loan. The Loan principal will bear interest at an annual rate equal to the prime rate announced by NationsBank, N.A., plus 1 percent, adjusted every six months commencing January 1, 1994. Under the Agreement, the Loan will be repaid over fifteen years in monthly installments of principal and interest, pursuant to a schedule in the Contract. The Contract provides that upon any default of any provisions of the Contract not cured after 10 days of written notice, the entire outstanding principal balance and unpaid interest may become immediately due and payable, at the Fiduciary's option. The Contract requires the OPJV to pay all reasonable costs of enforcement and collection, including attorneys' fees, incurred by the Fiduciary in the event of any default of any Contract provisions by OPJV.

5. The Loan will be secured by a duly filed and perfected first-lien security interest in the Building. In an appraisal as of April 23, 1993, Peter A. Moholt, MAI, a professional real estate appraiser in Gaithersburg, Maryland, determined that the Building had a fair market value of $710,000. Under the Contract, OPJV will be required to maintain loss and hazard insurance on the Building in the amount of no less than the Building's fair market value for the duration of the Loan. Repayment of the Loan will also be secured by the personal guaranty of each Joint Venturer pursuant to a written guaranty agreement under which the Joint Venturers jointly and severally guaranty all amounts due the Plan under the Contract, including any attorneys' fees and costs of collection in the event of default. The Joint Venturers represent that they each have a personal net worth in excess of $250,000.

6. As a condition of the proposed exemption, the terms and conditions of the Loan must be at least as favorable to the Plan as those which the Plan could obtain in dealing at arm's length with an unrelated party. In this regard, a representative of Maryland National Bank in Baltimore (the Bank) has stated in a letter dated July 26, 1990 that the Bank would make a loan of $550,000 to OPJV with interest at the Bank's prime lending rate, if secured by a first lien on the Building and the personal guarantees of the Joint Venturers. The Fiduciary states that the interest rate of the proposed Loan represents a fair market rate of interest for such

[1] The Fiduciary represents that the total legal fees paid by the OPJV and the Employer for such services represent less than one percent of the revenues of the law firm of which the Fiduciary is a member in Baltimore, Maryland.

commercial loans which are secured by wholly-leased real property.

7. The Fiduciary represents that after a review and evaluation of the proposed Loan, he has determined that it constitutes an attractive investment opportunity for the Plan, with sufficient security to afford a significant level of safety, and that the proposed rate of return is significantly higher than alternative investment opportunities which have been available to the Plan in the past with the same amount of security. Execution of the Contract and disbursement of the Loan will occur under the Fiduciary's oversight, and the Fiduciary will oversee and monitor OPJV's compliance with the Loan terms and conditions for the duration of the Loan. The Fiduciary will ensure that the Building is maintained adequately to preserve its value as collateral for the Loan, and will ascertain that OPJV maintains insurance policies on the Building as required under the Contract. The Fiduciary represents that in the event of any default on the Loan, he will take appropriate action to enforce OPJV's obligations and protect the Plan's rights under the Contract.

8. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons: (1) No more than twenty five percent of the assets of the Plan will be involved in the Loan; (2) The Loan will be secured by a first lien on the Building, the value of which is in excess of 150 percent of the proposed Loan; (3) OPJV's obligations with respect to the Loan will be guaranteed by the Joint Venturers, each of whom represents a net worth in excess of $250,000; (4) The interests of the Plan with respect to the Loan are represented by the Fiduciary, who will oversee and monitor OPJV's compliance with the Loan terms for the duration of the Loan; and (6) The Fiduciary has determined that the Loan constitutes a favorable, adequately-secured investment for the Plan, and that the Loan's interest rate represents a fair market rate for loans of this type.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

Profit Sharing Plan of A. H. Williams & Co., Inc. (the Plan), Located in Philadelphia, Pennsylvania

[Application No. D–9518]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the May 25, 1993 sale to the individually-directed accounts (the Accounts) of six participants in the Plan by A. H. Williams & Co., Inc. (Williams) of certain bonds issued by the Montgomery County Industrial Development Authority (the Authority), provided the following conditions have been satisfied: (a) The bonds represented no more than 25% of the assets of any of the Accounts at the time of their acquisition; (b) Williams did not receive any fees or commissions in connection with the sale of the bonds to the Accounts; and (c) the purchase of the bonds by the Accounts was on terms at least as favorable to the Accounts as otherwise made available by Williams to unrelated purchasers.

EFFECTIVE DATE: If the proposed exemption is granted, the exemption will be effective May 25, 1993.

Summary of Facts and Representations

1. Williams is a dealer in municipal securities and is registered as such under the Securities Exchange Act of 1934. The Plan is a profit sharing plan which permits participants to direct their own investments. The Plan currently has 35 participants and approximately $6 million in assets.

2. Williams served as the underwriter of certain bonds issued on May 1, 1993 by the Authority, which is a public instrumentality of the Commonwealth of Pennsylvania. The bonds that were issued by the Authority consisted of $7,560,000 of Series A Bonds (the Series A Bonds) and $400,000 of Series B Bonds (the Series B Bonds). Williams, as the underwriter of the bonds, purchased the Series A Bonds and the Series B Bonds from the Authority at the aggregate discount of $146,300 from the initial offering price of the bonds.

3. The proceeds of the Series A Bonds will be applied by the Authority for the purpose of undertaking a project primarily consisting of the acquisition of a 104-unit assisted living facility by the Authority. The proceeds of the Series B Bonds will be applied by the Authority to pay the remaining costs incurred in connection with the issuance of the Series A and Series B Bonds. The applicant represents that, for this reason, the Series B Bonds are taxable bonds. The Series A Bonds are tax-free.

4. The Series B Bonds bear interest at the annual rate of 10.5%, payable semi-annually, commencing November 1, 1993.[2] The Series B Bonds are subject to mandatory redemption in part, pro rata among the holders of the Series B Bonds, at a redemption price equal to the principal amount thereof plus accrued interest to the redemption dates and in the respective principal amounts as follows: May 1, 1995, $50,000; May 1, 1996, $55,000; May 1, 1997, $65,000; May 1, 1998, $70,000; and May 1, 1999, $75,000. The remaining $85,000 of the Series B Bonds mature on May 1, 2000.

5. Mr. Vincent J. Stafford (Mr. Stafford), the president of Williams, is the Plan administrator and a trustee of the Plan. Based on Mr. Stafford's knowledge of the municipal bond industry, he believed that the Series B Bonds would be a prudent investment alternative for the self-directed investments of Plan participants because the Bonds provide a high rate of interest, relative to other current investment alternatives, and provide an even higher yield to Plan participants than to other purchasers of the Bonds because Williams would not charge the Plan the "mark-up" price that it would charge to other purchasers. Based upon his knowledge of the municipal bond industry, Mr. Stafford believed that the Series B Bonds had a relatively low risk of default as compared to other municipal securities.

6. Mr. Stafford determined to make the Series B Bonds available for self-directed investments of Plan participants in advance of securing a prohibited transaction exemption from the Department because he believed the Series B Bonds would be unavailable for purchase at such time as an exemption would be granted. Mr. Stafford believed that the Series B Bonds would be quickly sold by Williams to other investors after the initial offering of the Bonds on May 27, 1993 by Williams.

7. Accordingly, a memorandum was sent on April 20, 1993, to all participants of the Plan notifying them that the Series B Bonds were available for purchase. The memorandum advised participants that if they were interested in purchasing the Bonds for their Accounts, a preliminary official statement for the Bonds would be made available for their review, and they should contact Mr. Stafford.

8. On May 25, 1993, the Plan purchased the entire $400,000 issue of Series B Bonds from Williams at a discounted price of $397,000, pursuant

[2] The Series A Bonds, which are not subject to Federal income tax, bear interest at the annual rate of 8.25%.

to the investment instructions of six of the 35 participants of the Plan. Specifically, the Plan purchased 120 Bonds each at $992.50 per Bond for the Accounts of William Widerman, Edward Trexler III, and Mr. Stafford; 20 Bonds at $992.50 per Bond for the Account of Paul McCorristin; 15 Bonds at $992.50 per Bond for the Account of Denis Carlson, and 5 Bonds at $992.50 per Bond for the Account of Kenneth Assiran. The price that the Plan paid for the Bonds was the identical discounted price that Williams paid to purchase the Bonds from the Authority. Williams did not earn any commissions or fees in connection with the sale of the Bonds to the Accounts.

9. All participants of the Plan were provided with the opportunity to purchase the Series B Bonds, and no participant who expressed an interest in purchasing Bonds for his or her Account was turned down. The principals of Williams, Mr. Stafford, Mr. Widerman and Mr. Trexler, determined that they would purchase in equal amounts for their Accounts the Series B Bonds that remained after purchases were made by the Plan for the benefit of the other participants' Accounts. On May 25, 1993, the fair market value of the Series B Bonds purchased by the Plan comprised less than 25 % of the value of the Accounts of the six participants who purchased the Bonds, both individually and in the aggregate. The applicant represents that the Bonds represented approximately 5% of the assets in Mr. Stafford's Account, approximately 9.5% of the assets in the Accounts of Messrs. Widerman and Trexler, approximately 3% of the assets in Mr. Carlson's Account, approximately 7% of the assets in Mr. McCorristin's Account and approximately 18% of the assets in Mr. Assiran's Account.

10. In summary, the applicant represents that the subject transaction satisfied the criteria contained in section 408(a) of the Act because: (a) The transaction involved less than 25% of the value of the assets of the Accounts of the six participants who purchased the Bonds; (b) the transaction was a one-time sale for cash, and Williams received no commissions or fees in connection with the transaction; (c) the Plan acquired the Bonds on the same terms and for the same discount at which Williams had purchased the Bonds from the Authority; and (d) all participants in the Plan were given the opportunity to invest their Accounts' assets in the Series B Bonds, and the six participants who did so all determined that the subject transaction was appropriate for and in the best interest of their Accounts.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 5th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–27722 Filed 11–9–93; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 93–78; Exemption Application No. D–8983, et al.]

Grant of Individual Exemptions; Goldman Sachs Group, L.P., et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of Individual Exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29

CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Goldman Sachs Group, L.P., Located in New York, New York

[Prohibited Transaction Exemption 93–78; Exemption App. No. D–8983]

Exemption

Part I

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the acquisition and holding by employee benefit plans (the Plans) of fixed-rate and variable-rate debt instruments (the Instruments) issued by Goldman Sachs Group, L.P. or its affiliates (collectively, Goldman Sachs), provided the following conditions are satisfied:

(A) Goldman Sachs does not have any discretionary authority or control or provide any investment advice, within the meaning of 29 CFR 2510.3–21(c), with respect to Plan assets involved in the transactions;

(B) The Plans pay no fees or commissions to Goldman Sachs in connection with the transactions covered by the requested exemption;

(C) The decision to invest in the Instruments is made by a Plan fiduciary who is independent of Goldman Sachs;

(D) Prior to a Plan's acquisition of any Instrument, Goldman Sachs fully discloses in writing to the independent Plan fiduciary all terms and conditions of the Instrument, including (but not limited to) the following:

(1) The currency in which the return is calculated;

(2) The date and conditions of maturity;

(3) Whether the Instrument is subject to a fixed or variable rate of return;

(4) All details of the basis of the rate of return of the Instrument;

(5) If the Instrument is calculated in reference to a specified index, information relating to calculation of principal and interest payments;

(6) If the Instrument includes any participation feature, all details of the methodology of measuring performance; and

(7) The terms, if any, under which the Instrument may be redeemed;

(E) All terms of the transactions are at least as favorable to the Plans as the terms available to unrelated investors at the time of acquisition of the Instruments;

(F) Each Plan (1) has assets in excess of $500 million; or (2) has assets in excess of $25 million and the fiduciary responsible for making the investment decision on behalf of the Plan with respect to the Instrument(s) has investment responsibility for Plans, maintained by members of a controlled group [as defined in section 1563 of the Code], which, in the aggregate, hold at least $500 million in assets; or (3) participates in a master trust with assets in excess of $500 million maintained on behalf of Plans sponsored by members of a controlled group [as defined in section 1563 of the Code], and the fiduciary responsible for making the investment decision on behalf of the master trust with respect to the Instrument(s) has investment responsibility for all Plans in the master trust;

(G) After the acquisition of an Instrument, no more than 10 percent of any Plan's assets shall be invested in all Instruments;

(H) The Instruments are rated in one of the three highest generic rating categories by at least one nationally recognized statistical rating service at the time of acquisition by a Plan;

(I) With respect to variable-rate Instruments (described in the Notice of Proposed Exemption), the interest rate of each Instrument is objectively determined, and, following the issuance of each Instrument, Goldman Sachs retains no authority to affect the determination of such interest rate;

(J) With respect to participation-feature Instruments (described in the Notice of Proposed Exemption), the method of determining the rate of return is fixed permanently upon the issuance of each Instrument, in accordance with generally-accepted accounting principles, and, following the Instrument's issuance, Goldman Sachs retains no authority to affect the determination of such method;

(K) The Instruments covered by this exemption are made available by Goldman Sachs in the ordinary course of its business to investors which are not employee benefit plans covered by Title I of the Act; and

(L) For transactions occurring after the date of publication of this exemption, Goldman Sachs will obtain a written agreement from each initial-issuance purchaser of any of the Instruments, that the Instruments will be sold to subsequent Plan investors only if the purchasing Plan investor satisfies the requirements of condition (F) of this exemption.

Part II

The restrictions of sections 406(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (D) of the Code, shall not apply to the holding of the Instruments by Plans which acquire the Instruments in secondary-market transactions to which Goldman-Sachs is not a party; provided that such transactions satisfy the conditions of sections (A) through (C) and (F) through (K) of Part I of this exemption, except that the conditions described in sections (H) [1] and (K) of Part I shall be deemed to be satisfied if such conditions were met at the time of the initial acquisition of the Instrument(s) from Goldman Sachs.[2]

EFFECTIVE DATE: This exemption is effective February 14, 1992.

TEMPORARY NATURE OF THE EXEMPTION: This exemption is temporary in nature and will expire seven years from the date on which it is published in the **Federal Register**, with respect to a Plan's acquisition of the Instruments. Instruments acquired prior to the expiration date of the exemption may be held by a Plan beyond the seven year period. If the applicant wishes to continue selling the Instruments to Plans after the exemption expires, the applicant should apply for an extension of the exemption prior to the end of the seven year period. The application for extension should describe the following: (1) Whether and how compliance with the exemption has been achieved; (2) the number of transactions engaged in under the exemption; and (3) the particular decisions made by the Plans' fiduciaries regarding investments in the Instruments.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on June 29, 1993 at 58 FR 34827.

WRITTEN COMMENTS: The Department received one written comment and no

[1] The Department wishes to emphasize that the individual Plans' fiduciaries remain responsible under the general fiduciary responsibility provisions of the Act for decisions involving Plan investments in the Instruments.

[2] In this exemption, with respect to secondary market transactions, the Department is providing exemptive relief only for the extension of credit to Goldman Sachs by Plans resulting from the Plans' holding of Instruments acquired in secondary market transactions to which Goldman Sachs is not a party. No exemptive relief is provided for any other prohibited transactions which may arise in connection with Plans' acquisition of the Instruments on the secondary market.

requests for a hearing. The comment was submitted on behalf of the applicant, Goldman Sachs. The issues addressed in the comment, and the Department's responses, are summarized as follows:

1. Condition (F) of the proposed exemption would restrict the exemption to transactions involving Plans with assets in excess of $500 million. The applicant states that the intent underlying this condition, which was proposed by the applicant, was to ensure that Plan investors would have the investment sophistication necessary to evaluate the debt instruments covered by the requested exemption. The applicant represents, however, that it has been noted that the condition would preclude in-house managers of Plans with assets in excess of $500 million from acquiring the Instruments on behalf of other Plans, with assets of less than $500 million, which are maintained by the same Plan sponsor. Additionally, the applicant states that the condition would also appear to prevent acquisition of the Instruments by a Plan which does not satisfy the asset size requirement even though that Plan's assets are held for collective investment with the assets of other Plans maintained by an employer or a controlled group in a master trust holding assets in excess of $500 million. The applicant maintains that the goal of requiring an appropriate level of investment expertise on behalf of investing Plans could be achieved more logically by applying the minimum-asset condition on an aggregated basis to all Plans for which an in-house fiduciary has investment responsibility. In the final exemption, the Department has revised the condition by adding language which addresses the applicant's concern in this regard. The applicant has also agreed that it will obtain a written agreement from investors who invest in the initial issuance of any of the Instruments that the Instruments will not be sold subsequently to any Plan which does not meet these minimum-asset requirements.

2. Condition (H) of the proposed exemption would require the Instruments to be rated in one of the three highest generic rating categories by at least one nationally recognized statistical rating service at the time of acquisition by a Plan. In its exemption application, the applicant had represented that the Instruments covered by the requested exemption would be so rated, and the applicant had agreed to the inclusion of the rating condition. However, in its comment the applicant requested the removal of the rating condition, maintaining that it would interfere with the ability of Plan investors to select the optimum level of risk and return for the Plan's investment portfolio. The Department is not persuaded that deletion of the rating condition from the exemption would be in the best interests or protective of the participants and beneficiaries of the Plans. However, as described below, the rating condition will be deemed to be satisfied, with respect to the holding by the Plans of Instruments acquired on the secondary market, if the condition was satisfied at the time of the initial acquisition of the Instrument from Goldman Sachs. In this regard, the Department notes that the individual Plans' fiduciaries remain responsible under the general fiduciary responsibility provisions of the Act for decisions involving investments in the Instruments.

3. The exemption application did not request, and the proposed exemption does not contain, any specific language directly addressing acquisition of the Instruments on the secondary market, whereby a Plan purchases an Instrument from a party unrelated to Goldman Sachs. The applicant maintains that participation by Plans in a secondary market for the Instruments would contribute to enhanced liquidity of the Instruments without any possibility of influence by Goldman Sachs over the Plans' investment decisions, since Goldman Sachs would not be a party to such transactions. Accordingly, in its comment the applicant proposed that the exemption be clarified to specify that the exemptive relief is available for secondary market transactions. In accordance with the applicant's request, in the final exemption the Department has added Part II, which sets forth the conditions for the holding of Instruments by Plans which acquire them in secondary market transactions to which Goldman Sachs is not a party. The Department has also added condition (L) to Part I of the exemption, to require Goldman Sachs to obtain from investors in the initial issuance of any of the Instruments a written agreement that the Instruments will not be sold in the secondary market to any Plan which does not meet condition (F) of this exemption, relating to minimum asset size.

The Department wishes to emphasize that with respect to secondary market transactions, the final exemption provides exemptive relief only for the extension of credit to Goldman Sachs by Plans resulting from the Plans' holding of Instruments acquired in secondary market transactions with parties unrelated to Goldman Sachs, and no exemptive relief is being provided for any other prohibited transactions which may arise in connection with the Plans' acquisition and holding of the Instruments.

4. The proposed exemption provided that, if granted, it would expire seven years from the date on which the final exemption was published in the **Federal Register**. In its comment the applicant requested (a) that the Department verify that an application for extension of the exemption could be submitted in time to permit the processing of the extension request prior to the expiration of the exemption, and (b) that secondary-market transactions be exempted from the seven-year limit. In response to the first request, the Department is unable to offer the applicant any specific assurance with respect to the timing or disposition of any future exemption request. However, in the event the applicant wishes to apply for an extension of the exemption, the Department invites the applicant to submit such application one year in advance of the expiration of the exemption. With respect to the second request, the Department is unable to conclude, on the basis of the exemption application and the applicant's comment, that it would be in the best interests and protective of the Plans to exempt the secondary transactions from the seven-year time limit.

5. The applicant notes that its exemption application included a request that the exemption be effective as of February 14, 1992, the date on which the application was filed with the Department, and that the proposed exemption did not indicate a specific effective date. In accordance with the applicant's initial application, the Department has published the exemption with an effective date of February 14, 1992.

After consideration of the entire record, including the comment, the Department has determined to grant the exemption as amended in the manner described above.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary

responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 5th day of November 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–27723 Filed 11–9–93; 8:45 am]

BILLING CODE 4510–29–P

NUCLEAR REGULATORY COMMISSION

Documents Containing Reporting or Recordkeeping Requirements; Office of Management and Budget (OMB) Review

AGENCY: Nuclear Regulatory Commission (NRC).

ACTION: Notice of the OMB review of information collection.

SUMMARY: The NRC has recently submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35).

1. Type of submission, new, revision, or extension: Revision.

2. The title of the information collection: Billing Instructions for NRC Cost-Type Contracts.

3. The form number if applicable: N/A.

4. How often the collection is required: Monthly.

5. Who will be required or asked to report: NRC Contractors.

6. As estimate of the number of responses: 2,808—Billing Instructions; 480—License Fee Recovery Cost Summary Attachment.

7. As estimate of the total number of hours needed to complete the requirement or request: 1,404—Billing Instructions (.50 hrs. per response); 82—License Fee Recovery Cost Summary Attachment (.17 hrs. per response).

8. An indication of whether section 3504(h), Public Law 96–511 applies: Not applicable.

9. Abstract: The NRC Division of Contracts and Property Management, in administering its contracts provides billing instructions for its contractors to follow in preparation of invoices. These instructions stipulate the level of detail in which supporting cost data must be submitted for NRC review. The review of this information ensures that all payments made by NRC are for valid and reasonable costs in accordance with the contract terms and conditions. The billing instructions have been revised to include a section delineating the billing information required for license fee recovery costs which was previously contained in the Monthly Progress Report but will now be submitted as part of the invoice.

Copies of the submittal may be inspected or obtained for a fee from the NRC Public Document Room, 2120 L Street, NW., Washington, DC.

Comments and questions can be directed by mail to the OMB reviewer: Tim Hunt, Office of Information and Regulatory Affairs (3150–0109), NEOB–3019, Office of Management and Budget, Washington, DC 20503.

Comments can also be submitted by telephone at (202) 395–3084.

The NRC Clearance Officer is Brenda Jo Shelton, (301) 492–8132.

Dated at Bethesda, Maryland this 29th day of October 1993.

For the Nuclear Regulatory Commission.

Gerald F. Cranford,

Designated Senior Official for Information Resources Management.

[FR Doc. 93–27719 Filed 11–9–93; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Public Law 97-415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Public Law 97-415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from October 18, 1993, through October 29, 1993. The last biweekly notice was published on October 27, 1993.

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that

failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 10, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) the nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's

Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Carolina Power & Light Company, et al., Docket Nos. 50-325 and 50-324, Brunswick Steam Electric Plant, Units 1 and 2, Brunswick County, North Carolina

Date of amendments request: October 19, 1993

Description of amendments request: The proposed amendment adds a footnote to Technical Specification 4.6.1.2.b that allows a one-time exemption from the accelerated testing requirements to return the units to a normal Type A testing frequency.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The surveillance requirement for testing of primary containment leakage rates ensures that the total containment leakage volume will not exceed the value assumed in the accident analyses at the peak accident pressure of 49 psig. The primary containment is a steel-lined, reinforced concrete pressure vessel which provides a barrier to fission project release. The safety objective of the primary containment system, in conjunction with ESF, is to contain the energy released during the design basis LOCA and to limit the release of fission products associated with this accident. As such, the primary containment leakage rates or testing frequency have no impact on the accident initiators. A one-time exemption from the Technical Specification required accelerated testing frequency will not impact the accident evaluations discussed in Chapter 15 of the Brunswick UFSAR. Therefore, the probability of an accident previously evaluated is not increased.

The purpose of 10 CFR 50, Appendix J Type A testing is to measure and ensure that the leakage through the primary containment does not exceed the maximum allowable leakage assumed in the accident analyses. The satisfactory completion of a Type A test ensures that the as-left leakage rates do not exceed 75 percent of those rates assumed in the safety analyses to determine the offsite radiological consequences of an accident. The as-left limit of 0.75 La was specified in Appendix J in order to provide a margin of 0.25 La for possible deterioration of the containment leak-tightness during the interval between Type A tests. This margin for deterioration is no longer needed when the as-found Type A test is performed. It is technically acceptable to use La as the as-found Type A test acceptance criterion. As such, the maximum allowable leakage rate of La is the correct value to use for the as-found limit for Type A leak rate testing.

The testing history of Units 1 and 2 demonstrates that, if an as-found limit of La is applied, neither Unit would now be in an accelerated testing frequency. As such, continuing the accelerated testing as required by Technical Specification 4.6.1.2.b is not necessary to achieve the underlying purpose of the Type A testing requirements of Appendix J.

Based on the above reasoning, the proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. Allowing a one-time exemption from the accelerated testing requirement of Technical Specification 4.6.1.2.b will not modify any safety-related equipment or safety functions nor will it alter plant operation. The assumptions and consequences of the accident analyses remain bounded, therefore, possibility of a new or different kind of accident is not created by this change.

The proposed amendment does not involve a significant reduction in the margin of safety. The basis of Technical Specification 3/4.6.1.2, Primary Containment Leakage, is to impose limitations on primary containment leakage rates to ensure that the total containment leakage volume will not exceed the value assumed in the accident analyses at peak accident pressure of 49 psig. As an added conservatism, the as-left leakage rate is limited to .75 La to account for possible degradation of the containment leakage barriers between tests. Accelerated testing is required if two consecutive tests fail. Accelerated testing ensures that the causes of the test failures have been appropriately identified and corrected, assuring that the assumptions in the accident analyses remain bounded. Limiting the as-found leakage limit to La and performing repairs necessary to lower the as-left leakage limit to less than 0.75 La preserves the 0.25 La margin required by the original specification. Since neither Brunswick Unit would be in an accelerated testing condition based on an as-found leakage limit of La, the proposed change does not involve a significant reduction in the margin of safety as defined in the bases of the Technical Specification. In addition, the proposed amendment does not alter any plant design margins. Allowing the one-time exemption from the accelerated testing requirement of Technical Specification 4.6.1.2.b eliminate[s] the need for subjecting the containment to unnecessary structural stress and burdens of additional Type A testing. Therefore, the proposed amendment will not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards.

Local Public Document Room location: University of North Carolina at Wilmington, William Madison Randall Library, 601 S. College Road, Wilmington, North Carolina 28403-3297.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Carolina Power & Light Company, Docket No. 50-261, H. B. Robinson Steam Electric Plant, Unit No. 2, Darlington County, South Carolina

Date of amendment request: October 14, 1993

Description of amendment request: The proposed amendment revises Technical Specification 4.2.2 to remove the schedule for the withdrawal of reactor vessel material surveillance specimens in accordance with guidance provided in Generic Letter 91-01.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated because the accident conditions and assumptions are not affected by the proposed Technical Specification change. The Reactor Vessel Material Surveillance Program ensures the availability of data to update the in-service operating temperature and pressure limits. The schedule identifying the withdrawal of the surveillance specimens will be removed; however, the proposed TS 4.2.2 will continue to require that specimens be removed and examined to determine changes in their material properties, as required by Appendix H to 10 CFR 50. No changes to the design of the facility have been made. No new equipment has been added or removed and no operational setpoints have been altered. Therefore, there is no increase in the probability or consequences of an accident previously evaluated.

The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed changes do not add or modify any equipment nor do the proposed changes involve any operational changes to any plant system or Limiting Condition for Operation (LCO). Proposed TS 4.2.2 will continue to require the specimens be removed and examined to determine changes in their material properties, as required by Appendix H to 10 CFR 50. The absence of a hardware change, or a change to the requirement for the time to withdraw capsules for re-evaluation, ensures that the accident initiators are unaffected, so no unique accident probability is created. No new accident or malfunction mechanism is

introduced by this amendment and no physical plant changes will result from this amendment. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed amendment does not involve a significant reduction in the margin of safety. Removal of the schedule from TS 4.2.2 is an administrative change and will have no impact on margin of safety. The removal of the schedule from the Technical Specifications for the withdrawal of reactor vessel material surveillance specimens will not result in any loss of regulatory control since changes to this schedule are controlled by the requirements of Appendix H to 10 CFR Part 50. In addition, to ensure that the surveillance specimens are withdrawn at a proper time, the surveillance requirement section, i.e., TS 4.2.2, will continue to indicate that the specimens be removed and examined to determine changes in their material properties, as required by Appendix H. Therefore, the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Hartsville Memorial Library, Home and Fifth Avenues, Hartsville, South Carolina 29550

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: October 5, 1993

Description of amendment request: The proposed change to the Technical Specifications would revise the wording of liquid release rate limit and its associated bases, and relocate the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 to be consistent with the revised terminology of 10 CFR Part 20. The new wording will retain the same overall level of effluent control required to meet the design objectives of Appendix I to 10 CFR Part 50.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed revisions to the liquid release rate limit and the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 have no impact on the plant systems, plant operations or accident precursors. The changes are administrative in nature, in that they will allow the continued operation of the facility with the same release rate limits as are currently implemented by the Technical Specifications and incorporate revised 10 CFR Section references.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed revisions to the liquid release rate limit and the relocation of the old 10 CFR 20.106 requirements to the new 10 CFR 20.1302 have no impact on plant systems, plant operations or accident precursors. The changes are administrative in nature, in that they will allow the continued operation of the facility with the same release rate limits as are currently implemented by the Technical Specifications and incorporate revised 10 CFR Section references.

3. The proposed amendment does not involve a significant reduction in the margin of safety. The proposed revisions will maintain the release rate limits for liquid effluents at the same level as that required by 10 CFR 20.106. Therefore, there will be no change in the types and amounts of effluents that will be released, nor will there be an increase in individual or cumulative radiation exposures to any member of the public.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602NRC Acting Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. 50-373 and 50-374, LaSalle County Station, Units 1 and 2, LaSalle County, Illinois

Date of amendment request: August 20, 1993

Description of amendment request: The proposed amendment would delete Technical Specification Section 3/4.6.1.5, Primary Containment Structural Integrity, which includes the Surveillance Requirements for the Primary Containment Tendons. In place of this specification, Technical Specification Administrative Controls, Section 6.2.F.6 is being added to require a program to be established, implemented, and maintained. The program is titled, "Inservice Inspection Program for Post Tensioning Tendons." The program will be based on Regulatory Guide 1.35, Revision 3, which will allow the Unit 1 and 2 primary containments to be tested as one containment, alternating the tests between the two containments.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The Inservice Inspection of the Primary Containment Tendons will be performed in accordance with the Inservice Inspection Program for Post Tensioning Tendons, which will be a program required by Technical Specification Administrative Controls section 6.2, Plant Operating Procedures and Programs. This program in conjunction with specification 3/4.6.1.1 will assure that the primary containment integrity will be maintained throughout the life of the plant for both LaSalle County Station (LaSalle) Unit 1 and Unit 2. The design of the primary containment is not affected by this change and therefore the probability of an accident occurring is not increased; because, neither accident initiators nor accident assumptions are affected by this change.

The consequences of analyzed accidents are not increased, because the integrity of the Primary Containment is maintained through specification 3.6.1.1 and the tendon program required by proposed specification 6.2.F.6.

2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

The Primary Containment Integrity is assured through continued surveillance and test of the Primary Containment Tendons in accordance with the Inservice Inspection Program for Post Tensioning Tendons, which will be a program required by Technical Specification Administrative Controls section 6.2, Plant Operating Procedures and Programs. Technical Specification 3/4.6.1.1, Primary Containment Integrity, provides appropriate controls and actions related to loss of containment integrity.

3) Involve a significant reduction in the margin of safety because:

The Deletion of Technical Specification 3/4.6.1.5 does not reduce the margin of safety, because Primary Containment Integrity is required to be maintained per specification 3.6.1.1, Primary Containment Integrity and proposed addition of Administrative Control 6.2.F.6, Inservice Inspection Program for Post Tensioning Tendons.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the

amendment request involves no significant hazards consideration.

Local Public Document Room location: Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Commonwealth Edison Company, Docket Nos. 50-254 and 50-265, Quad Cities Nuclear Power Station, Units 1 and 2, Rock Island County, Illinois

Date of amendment request: October 21, 1993

Description of amendment request: The proposed amendment would delete the requirements for demonstrating the operability of redundant equipment when emergency core cooling system equipment is found to be inoperable, or made inoperable for maintenance. The proposed changes are similar to one previously approved for the High Pressure Coolant Injection and Reactor Core Isolation Cooling systems at Quad Cities.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated because:

The proposed changes involve deletion of the redundant testing of the ECCS pumps and valves when part or all of the RHR system or Core Spray system is inoperable. The present testing methods represent requirements beyond those necessary to adequately assure that remaining core cooling systems are operable and capable of performing their design intent. The proposed deletion of this multiple system testing requirement will bring Quad Cities station in line with the testing requirements of current BWR plants, as well as the BWR Standard Technical Specifications and BWR Improved Technical Specifications (NUREG 1433).

The proposed changes do not affect any accident precursors and, therefore, do not increase the probability of an accident previously evaluated.

The proposed changes do not increase the possibility of a new or different kind of accident from any accident previously evaluated because:

The proposed changes do not modify RHR system or Core Spray system design, or reduce the capability of these systems to perform their design intent. The plant will not be placed in an operational condition which has not been previously evaluated, nor does this change introduce any new operating modes or new equipment. Therefore, the possibility of a new or different kind of accident has not been created.

The proposed changes do not involve a significant reduction in a margin of safety because:

The proposed amendment will not significantly reduce the availability of RHR system or Core Spray system when required to mitigate accident conditions. Excessive testing of systems and components can reduce rather than increase reliability. An acceptable level of testing to demonstrate operability currently being used at later BWR plants does not include multiple testing of redundant equipment when the RHR system or Core Spray system is inoperable. Therefore, these changes do not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Dixon Public Library, 221 Hennepin Avenue, Dixon, Illinois 61021

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Duke Power Company, et al., Docket Nos. 50-413 and 50-414, Catawba Nuclear Station, Units 1 and 2, York County, South Carolina

Date of amendment request: October 25, 1993

Description of amendment request: Degraded steam generator tubes have been plugged or sleeved, resulting in a reduction of reactor coolant system (RCS) flow in Unit 1. In addition to this, the hot leg streaming phenomenon affects the accurate measurement of flow. As a result of these effects, it will become difficult to ensure meeting the minimum flow requirement of Technical Specification (TS) Table 2.2-1, Item 12, to maintain 100% power operation. The proposed reduction in minimum measured flow is applicable to Catawba Unit 1. To alleviate this concern, analyses have been performed to justify reduction in the minimum RCS flow to 382,000 gallons per minute (gpm). These analyses show that the reduced flow rate will not have a significant impact on any accident analyses presented in Chapters 3, 4, 6, or 15 of the Final Safety Analysis Report (FSAR). The overtemperature delta-T and overpower delta-T setpoint equation constants have been revised to support the reduction in minimum measured flow. Departure from Nucleate Boiling Ratio (DNBR) and centerline fuel temperature (CFT) limits have been added to TS 2.1.1 as Limiting Conditions for Operation (LCO), replacing a reference to Figure 2.1-1.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. This amendment will not significantly increase the probability or consequence of any accident previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could affect the probability of any accident or transient. The reduction in flow will not change the probability of actuation of any Engineered Safeguard Feature or other device. The consequences of previously-analyzed accidents have been found to be insignificantly different when the reduced flow rate is assumed. The system transient response is not affected by the initial RCS flow assumption, unless the initial assumption is so low as to impair the steady-state core cooling capability or the steam generator heat transfer capability. This is clearly not the case with a <1% reduction in RCS flow.

The change to Technical Specification 2.1.1 to refer to DNB and CFT limits rather than Figure 2.1-1 will not cause the consequences of a previously analyzed accident to increase. No new mechanisms are introduced which could exacerbate a previously analyzed accident.

2. This amendment will not create the possibility of any new or different accidents not previously evaluated.

No component modification, system realignment, or change in operating procedure will occur which could create the possibility of a new event not previously considered. The reduction in flow will not initiate any new events.

The change to Specification 2.1.1 will not initiate any new events. The introduced T_{avg} and thermal power limits define a more restrictive operating range than could be inferred from the existing figure. There are no new mechanisms introduced which could create the possibility of a different accident not previously analyzed.

3. This amendment will not involve a significant reduction in a margin of safety.

As described in [the licensee's application], the decrease in RCS flow has been analyzed and found to have an insignificant effect on the applicable transient analyses found in the FSAR. In order to support the reduced flow rate, the OT[delta]T and OP[delta]T setpoint equation constants have been revised. There is no significant reduction in a margin of safety.

The change to Technical Specification 2.1.1 will not reduce a margin of safety. The limits on T_{avg} and thermal power will provide the reactor operator with meaningful and identifiable indications in the event that normal operating conditions are exceeded.

The NRC staff has reviewed the licensee's analysis and, based on this

review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: York County Library, 138 East Black Street, Rock Hill, South Carolina 29730

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242Acting

NRC Project Director: Robert A. Hermann

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 21, 1991

Description of amendment request: The proposed amendments were submitted as a result of NRC recommendations pertaining to Generic Letter 90-06 for the power-operated relief valves (PORVs) and block valves and low-temperature overpressure protection (LTOP) systems.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The amendment would not involve a significant increase in the probability or consequences of an accident previously evaluated.

From an accident and transient mitigation standpoint, the PORVs can be utilized to perform safety-related functions. For McGuire, these include mitigation of a steam generator tube rupture accident and low-temperature overpressure protection of the reactor vessel. In addition, the PORVs can be an accident initiator in the case where a failed-open PORV results in a small break loss of coolant accident (SBLOCA).

The proposed changes will increase the likelihood that the PORVs and block valves will be available for performing the above safety-related functions. They will also reduce the probability of accident sequences which may result from PORV and block valve failures. For the case where the PORVs are utilized as a means of LTOP, the proposed changes (specifically, the reduced allowable outage time while in Modes 5 and 6) will ensure that both channels of overpressure protection equipment maintain a high availability in the event that they are called upon to mitigate a low-temperature overpressurization transient.

Based on the above, the proposed technical specifications changes will not involve a significant increase in the probability or consequences of an accident that has been previously evaluated.

The amendment would not create the possibility of a new or different kind of accident from any kind of accident previously evaluated.

With the exception of a failed-open PORV resulting in a SBLOCA as indicated above the PORVs and block valves cannot initiate accident sequences. The proposed changes will not result in the PORVs and block valves being operated or utilized in a deleterious manner; therefore, the possibility of a new or different kind of accident is not created.

The amendment would not involve a significant reduction in a margin of safety.

Overall plant safety would be enhanced as a result of the additional restrictions placed on the PORVs and block valves (and LTOP channels when the PORVs are used for LTOP). In addition, for GI-70 and GI-94, the NRC has made the determination that there will be a substantial increase in overall protection of the public health and safety as a result of the implementation of actions recommended by Generic Letter 90-06, including the recommended technical specifications changes.

Based on the above and the supporting technical justification, Duke Power Company has concluded that there is no significant hazard consideration involved in this amendment request.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242

NRC Project Director: David B. Matthews

Florida Power and Light Company, Docket Nos. 50-250 and 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of amendment request: October 4, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications (TS) for Turkey Point Units 3 and 4 relating to the surveillance requirement for the performance of Type A Tests which determine the overall integrated containment leakage rate. Specifically, the surveillance test schedule in TS 4.6.1.2a and the associated TS Bases would be revised to accommodate the longer fuel cycle lengths and longer refueling outages in which major plant modifications are generally implemented. The proposed TS wording would be consistent with the standard TS for Westinghouse Plants (NUREG-1431) which allow for changes in test frequencies by means of an NRC-approved exemption request to 10 CFR 50 Appendix J.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Operation of the facility in accordance with the proposed amendments would not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed license change is administrative in nature in that the proposed change will adopt the guidance and wording provided in NUREG 1431, Standard Technical Specifications, Westinghouse Plants, dated September, 1992, for the performance of Type A tests in accordance with 10 CFR 50 Appendix J. This guidance was approved and issued by the NRC Office of Nuclear Reactor Regulation. NUREG 1431 was developed based on the criteria in the interim Commission Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated February 6, 1987. Specifically, the proposed change removes the schedular requirements of 40 [plus or minus] 10 months for the performance interval for Type A test from the surveillance requirement and would require the test interval to be in accordance with 10 CFR 50 Appendix J and any approved exemptions. The proposed Technical Specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident, nor do they affect any assumptions or conditions in any of the accident analysis. Therefore, the probability or consequences of an accident previously evaluated are not affected.

(2) Operation of the facility in accordance with the proposed amendments would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed license change is administrative in nature in that the proposed change will adopt the guidance and wording provided in NUREG 1431, Standard Technical Specifications, Westinghouse Plants, dated September, 1992, for the performance of Type A tests in accordance with 10 CFR 50 Appendix J. This guidance and wording was approved and issued by the NRC Office of Nuclear Reactor Regulation. NUREG 1431 was developed based on the criteria in the interim Commission Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated February 6, 1987. Specifically, the proposed change removes the schedular requirements of 40 [plus or minus] 10 months for the performance interval for Type A test from the surveillance requirement and would require the test interval to be in accordance with 10 CFR 50 Appendix J and any approved exemptions. The proposed

Technical Specification change does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident. Therefore, the possibility of a new or different kind of an accident previously evaluated would not be created.

(3) Operation of the facility in accordance with the proposed amendments would not involve a significant reduction in a margin of safety.

The proposed license change is administrative in nature in that the proposed change will adopt the guidance and wording provided in NUREG 1431, Standard Technical Specifications, Westinghouse Plants, dated September, 1992, for the performance of Type A tests in accordance with 10 CFR 50 Appendix J. This guidance and wording was approved and issued by the NRC Office of Nuclear Reactor Regulation. NUREG 1431 was developed based on the criteria in the interim Commission Policy Statement on Technical Specifications Improvements for Nuclear Power Reactors, dated February 6, 1987. Specifically, the proposed change removes the schedular requirements of 40 [plus or minus] 10 months for the performance interval for Type A test from the surveillance requirement and would require the test interval to be in accordance with 10 CFR 50 Appendix J and any approved exemptions. Therefore, a significant reduction in a margin of safety would not be involved.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199

Attorney for licensee: Harold F. Reis, Esquire, Newman and Holtzer, P.C., 1615 L Street, NW., Washington, DC 20036

NRC Project Director: Herbert N. Berkow

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 8, 1993

Description of amendment request: The proposed changes relocate the Radiological Effluent Technical Specifications (RETS) and the Radioactive Effluent Monitoring Program (REMP) to the Offsite Dose Calculation Manual (ODCM) in accordance with Generic Letter (GL) 89-01. The sampling frequencies and locations are site based. Relocation of the procedural details of RETS to the Process Control Program (PCP), pursuant to GL 89-01, allows for concurrent implementation with the proposed TSCR.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPUN has determined that this Technical Specification Change Request involves no significant hazards consideration as defined by NRC in 10 CFR 50.92.

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed amendment allows relocation of the Oyster Creek RETS to either the ODCM or PCP according to the guidance contained in GL 89-01, and conforms the Technical Specification to 10 CFR 50.36(a)(2). This proposal simplifies the RETS, meets the regulatory requirements for radioactive effluent and radiological environmental monitoring, and is provided as a line-item improvement of the Tech. Specs. Thus, this change does not increase the probability of occurrence or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposal relocates procedural details, currently included in the Tech. Spec. Amendment, on radioactive effluent, solid radioactive wastes, environmental monitoring, and associated reporting requirements to the ODCM or PCP, as appropriate. Future changes to these procedural details in the ODCM and the PCP will be handled under the administrative controls for changes to these documents. Therefore, this change has no effect on the possibility of creating a new or different kind of accident from any accident previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The procedural details being relocated to the ODCM or the PCP are consistent with the guidance provided in GL 89-01 and NUREG-0473. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-219, Oyster Creek Nuclear Generating Station, Ocean County, New Jersey

Date of amendment request: October 18, 1993

Description of amendment request: For the systems identified below, GPU Nuclear Corporation requests that the Technical Specifications (TS) be changed which would give the option of verifying operability during a Limiting Condition of Operation (LCO) by the examination of surveillance records. This change does not preclude testing as the means of determining operability. The systems which are affected are as follows:

TS Section
3.2C Standby Liquid Control System
3.4A Core Spray System
3.4B Automatic Depressurization System
3.4C Containment Spray System and Emergency Service Water System
3.5B Secondary Containment
3.8 Isolation Condenser
3.17 Control Room Heating, Ventilating, and Air-conditioning system Conforming changes are made to Definitions, TS 1.1 "Operable-Operability."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

GPU Nuclear has determined that operation of the Oyster Creek Nuclear Generating Station in accordance with the proposed Technical Specifications does not involve a significant hazard. The changes do not:

1. Involve a significant increase in the probability or the consequence of an accident previously evaluated.

The change provides an alternate means of determining system (component) operability without testing. Since a recent surveillance will provide the evidence for determining operability, the verification will be equivalent to the demonstration or testing of the redundant system (component). Since the redundant system (component) can perform its design function, this change will not increase the probability or consequence of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

Operation of the facility in accordance with this proposed change will not create the

possibility for an accident or malfunction of a different type from any accident previously evaluated. The proposed amendment does not modify any system (component) operation or maintenance activity. The facility will continue to be operated within the limits of existing accident analysis and margins of safety.

3. Involve a significant reduction in a margin of safety.

This change permits an administrative check (verify) in place of daily testing (demonstrating) to determine operability during a LCO. Since the proposed change does not alter any system hardware or design basis, the margin of safety is not reduced.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Ocean County Library, Reference Department, 101 Washington Street, Toms River, New Jersey 08753

Attorney for licensee: Ernest L. Blake, Jr., Esquire. Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 17, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications (TS) to revise the required action in the event of an inoperable loss-of-voltage relay or degraded grid voltage relay. The actions are being slightly relaxed to be consistent with actions required for similar safety-related components.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment permits time to restore the relays to operable status that is consistent with times allowed for outage of other safety related equipment affecting one train. The proposed amendment maintains a high degree of equipment availability without requiring unnecessary initiation of a plant shutdown for partial equipment outages.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. With offsite power available, load shedding to limit loading on the safety related bus is initiated by the ES signal; therefore, the undervoltage relays perform no function unless offsite voltage becomes unacceptably low. If an accident occurred while the relays were inoperable, the redundant train would complete the safety function. The proposed time allowed for the relays to be out of service is bounded by the allowable time for the diesel to be out of service and is consistent with allowable outage times for other ES components. Therefore, the proposed amendment does not create the possibility of a new or different accident.

3. Operation of the facility in accordance with the proposed amendment does involve a significant reduction in a margin of safety. As noted in the basis for the specification, every reasonable effort is and will continue to be made to maintain all safety instrumentation operable. If relays are found to be inoperable or require maintenance to assure their reliability, the proposed amendment will allow the performance of maintenance in a reasonable time period.

Allowing the relays to be out of service creates a vulnerability to incomplete safety function actuation or initiation if a failure occurs in the alternate train. The concern applies only for events accompanied by degraded offsite power. This change does not result in a significant reduction in the margin of safety because the extension in outage time allows only one train to be affected.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: May 26, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications (TS) to correct the definition of flood stage. The present TS still reference the Nagle Street Bridge in Harrisburg. Because this bridge was underwater during the 1972 flooding, the reference datum point location will be specified as the Susquehanna River Gage at Harrisburg.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment is administrative in nature: the USGS [United States Geological Survey] designation and gage location for measuring mean sea level datum at Harrisburg was changed. Therefore, the revised TS no longer identifies specifically the Nagle Street Bridge Gage as the reference for river level. The gage of reference is the Susquehanna River Gage at Harrisburg. The mean sea level elevations previously identified as the action initiation levels for the emergency and surveillance procedures remain the same.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. The change has no impact on plant operation as described above. Reaction to increasing river level will be in accordance with controlling procedures. They will not be changed, except for correctly identifying the USGS designation and location for the Harrisburg Gage as a result of this revision to the TS. Therefore, the proposed amendment does not create the possibility of a new or different accident.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. This change does not result in a reduction in the margin of safety since there is no margin of safety associated with the mean sea level elevation of the Susquehanna River for TMI-1. If a margin of safety were presumed to exist, no reduction would result because of the proposed amendment: no physical modification to the plant, its flood protection dikes or equipment, or procedurally prescribed actions resulted from the proposed amendment.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 9, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications to support compliance with the new requirements of the revised 10 CFR Part 20. These changes are predominantly administrative.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated.

The proposed revisions to the liquid release rate limits and bases and gaseous effluent bases will not result in a change in the types or amounts of effluents released nor will there be an increase in individual or cumulative radiation exposures. In addition, these changes do not impact the operation or design of any plant structures, systems or components. These changes ensure compliance with 10 CFR 50.36a and 10 CFR 50 Appendix I and result in levels of radioactive materials in effluents being maintained [as low as is reasonably achievable] (ALARA). The revision to the high radiation area controls and dose measurement distance will ensure areas are conservatively posted as high radiation areas in compliance with 10 CFR 20.1601(a)(1) and provide controls to ensure individuals are not overexposed. Other proposed changes consist of revisions to 10 CFR 20 references to recognize the new section numbers, and administrative controls for record keeping to maintain compliance with the new Part 20.

These changes will not result in a change to plant design or operation. Therefore, it can be concluded that the proposed changes do not involve an increase in the probability or consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not affect the plant design or operation nor do they result in a change to the configuration of any equipment. There will be no change in types or increase in the amount of effluents released offsite.

Therefore, this proposed change cannot create the possibility of a new or different kind of accident from any previously evaluated.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety.

The proposed revisions do not involve any change in the types or increase in the amount of effluents released offsite. The proposed changes do not involve any actual change in the methodology used in the control of radioactive wastes or radiological environmental monitoring. The methodology that will be used in the control of radioactive effluents and calculation of effluent monitor setpoints will result in the same effluent release rate as the current methodology now being used. The operational flexibility needed for effluent releases allows the use of limits as proposed. In addition, the changes in measurement distances for determination of high radiation areas will not result in an increase in individual or cumulative occupational radiation exposures since it will result in a more conservative identification of high radiation areas. Compliance with the limits of the new 10 CFR 20.1301 will be demonstrated by operating within the limits of 10 CFR 50 Appendix I and 40 CFR 190. Thus, operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 24, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications to adopt the Standard Technical Specification provision that allows a period of 24 hours to complete a surveillance requirement upon the discovery that the surveillance has been missed. NRC Generic Letter No. 87-09 encouraged nuclear power plant licensees to adopt this provision.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or consequences of an accident previously evaluated. The proposed changes only affect administrative requirements regarding the performance of surveillances. This change will allow a 24 hour delay period for the performance of a surveillance when it is discovered that the surveillance has not been performed within the required frequency. There is minimal safety significance associated with a delay of 24 hours in completing the required surveillance, particularly due to the fact that the most probable result of any particular surveillance performed is the successful verification of conformance with the requirements.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any previously evaluated. The proposed changes only affect administrative requirements regarding the performance of surveillances to allow a 24 hour delay period when it is discovered that a surveillance has been missed. No changes to plant equipment or operation are affected.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in the margin of safety since the change contained in the proposed amendment does not change any existing safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

GPU Nuclear Corporation, et al., Docket No. 50-289, Three Mile Island Nuclear Station, Unit No. 1, Dauphin County, Pennsylvania

Date of amendment request: August 26, 1993

Description of amendment request: The purpose of the request is to change the plant Technical Specifications to allow limited fuel reconstitution consistent with NRC Generic Letter 90-02, Supplement 1. Such reconstitution may be appropriate in the event of a leaking fuel rod, in which case the fuel rod would be replaced with a stainless steel or zirconium alloy filler rod.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Operation of the facility in accordance with the proposed amendment would not involve a significant increase in the probability of occurrence or the consequences of an accident previously evaluated. The proposed amendment only permits the limited substitution of filler rods for fuel rods in fuel assemblies in accordance with the NRC-approved Babcock & Wilcox Fuel Company (BWFC) fuel assembly reconstitution methodology described in BAW-2149. Allowing this substitution for fuel rods that are found to be leaking during a refueling or are possible sources of future leakage will result in reductions in future occupational radiation exposure and plant radiological releases. Therefore, this change does not increase the probability of occurrence or the consequences of an accident previously evaluated.

2. Operation of the facility in accordance with the proposed amendment would not create the possibility of a new or different kind of accident from any accident previously evaluated. Substitution of filler rods is permitted in accordance with NRC-approved BWFC fuel assembly reconstitution methodology described in BAW-2149.

3. Operation of the facility in accordance with the proposed amendment would not involve a significant reduction in a margin of safety. Substitution of filler rods is permitted in accordance with NRC-approved BWFC fuel assembly reconstitution methodology described in BAW-2149. This methodology preserves existing fuel design and safety limits. Therefore, it is concluded that operation of the facility in accordance with the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Attorney for licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts & Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: John F. Stolz

Houston Lighting & Power Company, City Public Service Board of San Antonio, Central Power and Light Company, City of Austin, Texas, Docket Nos. 50-498 and 50-499, South Texas Project, Units 1 and 2, Matagorda County, Texas

Date of amendment request: October 21, 1993

Description of amendment request: The licensee has requested to modify Technical Specification 6.5.2.8, "Audits", to remove the prescriptive frequency of the required audits. The licensee proposes that the frequency be removed in order to allow performance based inspection frequencies. This is consistent with NUREG-1431, "Standard Technical Specifications - Westinghouse Plant" (September 1992).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of a previously evaluated accident.

The proposed amendment does not increase the probability of an accident previously evaluated because it does not impact the abnormal operational transients or the design basis accidents analyzed to demonstrate that the plant can be operated without undue risk as identified in UFSAR Chapter 15, in Environmental Report Chapter 7, and in Probabilistic Safety Assessment Section 5.0.

The proposed amendment does not increase the consequences of an accident previously evaluated because it does not degrade or prevent actions assumed to be taken during an accident described in the UFSAR. It does not alter any assumptions made or conclusions reached in evaluating the consequences of an accident in the UFSAR. It does not play a direct role in mitigating the radiological consequences of an accident dose nor does it result in any increase in accident dose as described in the UFSAR.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed amendment does not create the possibility of a new or different type of accident from any previously evaluated because it does not impact the abnormal operational transients or design basis accidents analyzed to demonstrate that the plant can be operated without undue risk as identified in UFSAR Chapter 15, in Environmental Report Chapter 7, and in Probabilistic Risk Safety Assessment Section 5.0.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed amendment does not reduce the margin of safety as defined in the basis for any Technical Specification because the change only affects the Technical Specifications Administrative Controls.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the request for amendments involves no significant hazards consideration.

Local Public Document Room location: Wharton County Junior College, J. M. Hodges Learning Center, 911 Boling Highway, Wharton Texas 77488

Attorney for licensee: Jack R. Newman, Esq., Newman & Holtzinger, P.C., 1615 L Street, NW, Washington, DC 20036

NRC Project Director: Suzanne C. Black

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 24, 1993

Description of amendment request: The proposed amendment would remove the listing of "Enclosure Building Bypass Leakage Paths" from the Technical Specifications, and would make a number of editorial changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve an SHC [significant hazards consideration] because the changes would not:

1. Involve a significant increase in the probability of occurrence or consequences of an accident previously analyzed.

The proposed changes to allow Table 3.6-1 to be removed from the Technical Specifications and added to OP-3273 will not affect existing technical specification requirements or those components to which they apply. Operability and surveillance requirements are still retained in the Technical Specifications. The revisions to the Bases Section for tables removed by Amendment 28 allow these lists to be added to [Operating Procedures] OP-3273. Revisions to these lists will be evaluated in accordance with 10CFR50.59 and are also reviewed and approved by the PORC [Plant Operations Review Committee]. The balance of the proposed changes also make various editorial corrections to the Millstone Unit No. 3 Technical Specifications. These changes are designed to improve overall clarity and quality within the Millstone Unit No. 3 Technical Specifications. The nature of these changes is such that no adverse effects on safety can result. Therefore, the proposed changes will not increase the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from any previously evaluated.

There are no new failure modes associated with the proposed changes. Since the plant will continue to operate as designed, the proposed changes will not modify the plant response to the point where a new accident can be considered.

3. Involve a significant reduction in margin of safety.

The proposed changes do not have any adverse impact on the protective boundaries, nor do they affect the consequences of any accident previously analyzed. The proposed changes to remove Table 3.6-1 from the Technical Specifications will not affect existing technical specification requirements or those components to which they apply. Operability and surveillance requirements are retained in the Technical Specifications.

The revision to the Bases Sections for the lists removed by Amendment 28 allow incorporation into OP-3273. This will allow for the ability to revise these lists more frequently than currently afforded by the FSAR. Revisions to these lists will be reviewed in accordance with 10CFR50.59. Additionally, a PORC review of the proposed changes is also performed. Therefore, the proposed changes will not impact the margin of safety as defined in any Technical Specification.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of amendment request: September 30, 1993

Description of amendment request: The proposed amendment would revise the Technical Specifications by increasing the minimum volume of fuel oil required to be stored in the emergency diesel generator (EDG) day tank from 205 gallons to 278 gallons, and would clarify the bases for the EDG fuel oil storage tank and day tank minimum fuel oil volume requirements.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to revise Technical Specifications 3.8.1.1.b.1 and 3.8.1.2.b.1 by increasing the minimum fuel oil volume stored in the EDG day tank will extend the length of time that the corresponding EDG may run, without replenishing the fuel oil. The EDG run-time will be extended from 23 minutes to approximately 27 minutes. The EDG run-time calculation considered usable volume, vortexing, and instrument accuracy. The proposed changes have no effect on EDG operation and reliability; therefore, there is no effect on the probability or consequences of an accident previously evaluated.

* * *

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The EDGs are required to operate in response to a loss of offsite power. Therefore, the proposed changes to do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed changes to revise Technical Specifications 3.8.1.1.b.1 and 3.8.1.2.b.1 will increase the minimum volume of fuel oil required to be stored in the EDG day tank from 205 gallons to 278 gallons. When usable volume is considered, the EDG run-time will be extended from 23 minutes to approximately 27 minutes. Thus, these proposed changes do not involve a significant reduction in a margin of safety.

* * *

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Attorney for licensee: Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103-3499.

NRC Project Director: John F. Stolz

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: September 15, 1993

Description of amendment request: The proposed amendment to the Technical Specifications (TS) would implement Generic Letters (GLs) 86-10 and 88-12. This would remove some of the fire protection TS and place these parts in the Updated Safety Analysis Report (USAR). The licensee's amendment is in response to these GLs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve significant hazards considerations because operation of Fort Calhoun Station Unit No. 1 in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature, in that it moves the requirements of the Fire Protection Program from the TS to the USAR and implementing procedures, following guidance contained in Generic Letter (GL) 88-12. The proposed change will not revise the requirements for fire protection equipment operability, testing or inspections but merely transfers them to the USAR in accordance with GL 88-12. Minor editorial changes(such as changing "penetration fire barriers" to "fire barriers") are being proposed to the technical specifications when they are moved to the USAR. In addition, a requirement to establish a continuous fire watch within one hour will be added to compensatory measures for inoperable halon systems. The current specifications only contain the requirement for a continuous fire watch with no time limit for implementation. These changes are for clarification and do no change the intent of the specifications.

The special reporting requirements associated with limiting conditions for operations [sic] for fire protection systems (Specification 5.9.3.h) will not be incorporated into the USAR. However, a new paragraph has been added to the Technical Specifications which requires reporting of deficiencies in the Fire Protection Program which would meet the reportability criteria of 10 CFR 50.73. In addition, paragraphs are proposed which require written procedures for the implementation of Fire Protection Program requirements and review of these procedures by the Plant Review Committee and Safety Audit and Review Committee.

As fire protection requirements are only being relocated and clarified following the guidance of Generic Letters 86-10 and 88-12, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

(2) Create the possibility of a new or different kind of accident from any previously analyzed.

The proposed change does not involve any physical alteration of plant configurations, changes to setpoints, or operating parameters. It is an administrative change that retains the existing fire protection requirements and relocates these requirements from the Technical Specifications to the USAR;

therefore, it does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety.

The proposed change follows guidance contained in Generic Letters 86-10 and 88-12 for incorporating the Fire Protection Program into the USAR. A license condition will be implemented that will require that no changes can be made to the Fire Protection Program that will adversely affect the ability to achieve or maintain safe shutdown in the event of a fire without prior NRC approval. Therefore, the proposed change does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Attorney for licensee: LeBoeuf, Lamb, Leiby, and MacRae, 1875 Connecticut Avenue, N.W., Washington, D.C. 20009-5728

NRC Project Director: William D. Beckner

Pennsylvania Power and Light Company, Docket Nos. 50-387 and 50-388 Susquehanna Steam Electric Station, Units 1 and 2, Luzerne County, Pennsylvania

Date of amendment request: October 8, 1993

Description of amendment request: The amendments would revise the existing definition of CHANNEL CALIBRATION in Technical Specification 1.4 to allow in-place qualitative methods to be used to verify resistance temperature detector (RTD) or thermo-couple sensor behavior.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is administrative in nature and does not involve any change to the configuration or method of operation of any plant equipment that is used to mitigate the consequences of an accident nor alter the conditions or assumptions in any of the Final Safety Analysis (FSAR) accident analyses. The revised definition eliminates unnecessary and potentially damaging removal of RTD or thermocouple sensors in order to perform calibrations that are not, as outlined above [See application dated October 8, 1993], technically possible.

Therefore, it can be concluded that the proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

No new failure modes have been defined for any plant system or component important to safety nor has any new limiting failure been identified as a result of the proposed changes. There will be no change in the requirement to assess the entire RTD or thermocouple channel behavior including the sensor, alarm, display, and/or trip function. Therefore, it can be concluded that the proposed change does not create the possibility of a new or different kind of accident from those previously evaluated.

3. Involve a significant reduction in a margin of safety.

The proposed change is administrative in nature. Assessment of channel behavior will continue to be required. The additions to the CHANNEL CALIBRATION definition will provide greater flexibility in the use of the provision for surveillance testing, and have no adverse effect on safety. Also, the in-place qualitative assessment obviates the need to remove the RTD's or thermocouples, thereby eliminating the possibility of damaging them during removal. Therefore, it can be concluded that the proposed changes do not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Larry E. Nicholson

Pennsylvania Power and Light Company, Docket No. 50-388, Susquehanna Steam Electric Station, Unit 2, Luzerne County, Pennsylvania

Date of amendment request: September 14, 1993

Description of amendment request: The amendment would revise the requirements in Technical Specification Sections 3.6.1.8 and 4.6.1.8 to allow continued operation during the current fuel cycle or until the next unit shutdown with inboard suppression chamber purge valve HV-25703 inoperable.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Compensatory actions are delineated and discussed above, and have been included in the attached proposed Technical Specifications. These actions, coupled with the expected reliability of the HV25704 valve since it 1) will not be cycled, 2) will undergo accelerated leak rate testing with a more stringent acceptance criterion, and 3) has a good leak rate test history, will combine to ensure the containment isolation function is dependable for the penetration of concern.

The dependability of the containment isolation function will also serve to ensure that the integrity of the SGTS is not threatened due to a postulated event which would pressurize this penetration.

Based on the above, neither the probability nor the consequences of an accident previously evaluated is significantly increased by the proposed change.

2. Create the possibility of a new or different type of accident from any accident previously evaluated.

All efforts associated with this proposal are aimed at ensuring containment isolation dependability. These compensatory actions will be performed under strict administrative controlled [controls] for a temporary period of time in order to ensure that the penetration of concern will be isolated when necessary.

Failure of these actions will not create any different type of event from failure of the normal isolation function.

3. Involve a significant reduction in a margin of safety.

As described in 1. above, the compensatory actions to ensure the dependability of the containment boundary are sufficient to ensure that a significant reduction in a margin of safety will not occur.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701

Attorney for licensee: Jay Silberg, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street NW., Washington, DC 20037

NRC Project Director: Larry E. Nicholson, Acting

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of amendment request: October 19, 1993

Description of amendment request: The licensee has requested an amendment to the Technical Specifications (TS) to revise Section 6.0 (Administrative Controls). Specifically, the Safety Review Committee (SRC) membership requirement (specified in TS 6.5.2.2) would be revised to reflect the recent organizational change at the licensee's corporate office which eliminated the position of Vice President - Nuclear Support. In addition, the SRC records preparation and distribution requirements.(specified in TS 6.5.2.10) would be revised to be consistent with NUREG-1431, "Westinghouse Standard Technical Specifications."

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Consistent with the criteria of 10 CFR 50.92, the enclosed application is judged to involve no significant hazards based on the following information:

(1) Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously analyzed?

Response:

The proposed changes do not involve a significant increase in the probability or consequences of a previously analyzed accident. The proposed changes of the SRC membership represent minor adjustments that do not alter the SRC function or the responsibilities of individual SRC members. The specific responsibilities of the SRC as stated in Technical Specification 6.5.2.7 are not affected. The proposed changes to the reporting requirements provide a more appropriate time frame for issuing records of SRC activities and are consistent with the WSTS [NUREG-1431, "Westinghouse Standard Technical Specifications']. Therefore, the role of the SRC as an independent reviewer of safety and regulatory aspects of plant operations remains unchanged and SRC activities continue to be conducted in accordance with the provisions of ANSI N18.7 [American National Standard (ANSI) N18.7-1972, "Administrative Controls for Nuclear Power Plants']. This insures that the proposed amendment does not involve a significant increase in the probability or consequences of a previously analyzed accident.

(2) Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Response:

The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated because they do not affect plant equipment or operation. The proposed changes are administrative in nature and do not alter the SRC function or the responsibilities of its members. SRC activities will continue to be conducted in accordance with the provisions of ANSI N18.7 and the role of the SRC as an independent reviewer of safety and regulatory aspects of plant operations will remain unchanged. Therefore, the proposed changes do not affect current plant configuration or current operating practices and will not create the possibility of a new or different kind of accident from any accident previously analyzed.

(3) Does the proposed amendment involve a significant reduction in a margin of safety?

Response:

The proposed changes do not involve a significant reduction in a margin of safety. The proposed changes to the SRC membership represent minor adjustment that do not alter the SRC function or the responsibilities of individual SRC members. The specific responsibilities of the SRC as stated in Technical Specification 6.5.2.7 are not affected. The proposed changes to the reporting requirements provide a more appropriate time frame for issuing records of SRC activities and are consistent with the WSTS. Therefore, the role of the SRC as an independent reviewer of safety and regulatory aspects of plant operations remains unchanged and SRC activities will continue to be conducted in accordance with the provisions of ANSI N18.7. This insures that the proposed amendment does not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10601.

Attorney for licensee: Mr. Charles M. Pratt, 10 Columbus Circle, New York, New York 10019.

NRC Project Director: Robert A. Capra

Saxton Nuclear Experimental Corporation, Docket No. 50-146, Saxton Nuclear Facility, Bedford County, Pennsylvania

Date of amendment request: June 23, 1993

Description of amendment request: This proposed amendment would revise the technical specifications to allow characterization activities associated with the decommissioning of the Saxton Nuclear Facility to occur.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed changes do not involve a significant hazards consideration because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Power generation at the Saxton Nuclear Experimental Corporation (SNEC) facility was terminated in May 1972. The reactor has been defueled and the reactor coolant system drained. Since activities associated with characterization of the facility are not operational in nature and the equipment remaining at the facility is non-functional, there will be no significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

For the reasons provided in 1 above, the possibility of a new or different type of accident from those previously evaluated in the Final Safety Analysis Report (FSAR) will not be created by the implementation of activities permitted by the approval of this amendment request.

3. Involve a significant reduction in a margin of safety.

No margins of safety exist that are relevant to the equipment remaining at the facility. As a result, activities involved in characterization will not involve a significant reduction in a margin of safety.

The NRC staff has reviewed the analysis of the licensee and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Saxton Community Library, 911 Church Street, Saxton, Pennsylvania 16678

Attorney for the Licensee: Ernest L. Blake, Jr., Esquire, Shaw, Pittman, Potts, and Trowbridge, 2300 N Street, N.W., Washington, D.C. 20037

NRC Project Director: Seymour H. Weiss

Southern California Edison Company, et al., Docket Nos. 50-361 and 50-362, San Onofre Nuclear Generating Station, Unit Nos. 2 and 3, San Diego County, California

Date of amendment requests: September 30, 1993

Description of amendment requests: The licensee proposes to revise Technical Specification (TS) 3/4.3.2, "Engineered Safety Features Actuation Systems." This proposed change reflects the planned enhancement to the degraded voltage protection scheme to

protect against the recently recognized possibility of sustained degraded grid voltage conditions.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Will operation of the facility in accordance with this proposed change involve a significant increase in the probability or consequences of an accident previously evaluated?

Response: No

This proposed change reflects separation of the loss of voltage and degraded voltage function into separate Emergency Safety Features Actuation Systems (ESFAS) schemes. This configuration meets the intent of Standard Review Plan, Section 8.3, PSB-1. Instrumentation, trip setting, response time, and surveillance requirements are added for the new schemes. The new configuration accomplishes both the existing loss of voltage and degraded voltage trip functions.

In addition, for loss of voltage and degraded voltage conditions following a Safety Injection Actuation Signal (SIAS), the affected unit is connected to the standby power source without first attempting to connect to the alternate preferred power source through the cross-tie to the companion unit, thus ensuring that power is available within 10 seconds following the SIAS. This is accomplished by the new trip functions Loss of Voltage Signal (LOVS) with SIAS and Degraded Grid Voltage with SIAS Signal (DGVSS).

While automatic transfer to the alternate preferred power source is normally desirable during undervoltage conditions, the proposed configuration is necessary because following the SIAS there is the possibility of the alternate preferred power source being in a degraded condition, resulting in a delay before power becomes available to safety-related equipment. The proposed configuration assures that this delay will not occur and power is available to safety-related equipment within the time allowed by the safety analyses. Therefore, there is no significant increase in the probability or consequences of any accident previously evaluated.

2. Will operation of the facility in accordance with this proposed change create the possibility of a new or different type of accident from any previously evaluated?

Response: No

This proposed change reflects separation of the loss of voltage and degraded voltage function into separate ESFAS relays. The proposed TSs for the new configuration maintain the same instrumentation and surveillance requirements as the existing TS with the exception of the applicability of the [Sustained Degraded Voltage Signal] SDVS OPERABILITY requirements. SDVS is not required to be OPERABLE when the emergency diesel generator (EDG) is parallel to the offsite source or is supplying the 4.16 kV Class 1E bus because an undervoltage trip for a degraded condition is not desirable when the standby power source is already in use. The LOVS and DGVSS will remain OPERABLE. Control room annunciation of bus low voltage is provided to cause operator action to separate the EDG and the offsite power source.

The proposed voltage setting of 3675 V for the loss of voltage trip is identical to the bounding value of the range of voltage settings in the existing Figure 3.3-1. The proposed allowable value range of 3554 V to 3796 V for the loss of voltage trip is based on the existing trip setting plus or minus a 3.3% tolerance. The proposed trip value of 4228 V for the degraded voltage signal provides assurance that adequate voltage is seen at the terminals of all safety-related equipment. The allowable value range of 4181 V to 4275 V for the degraded voltage trip is based on the 4228 V trip value plus or minus a 47 V tolerance.

The proposed response time for the loss of voltage signal is a bounding value to replace the time voltage curve of Figure 3.3-1, which is being deleted by this proposed change. For a complete loss of voltage (0.0 V), a loss of voltage signal will be generated within 1.05 seconds. The proposed response time requirement for degraded voltage of 135 seconds ensures that permanently connected Class 1E equipment will not be damaged. The response time of 6.14 seconds for the DGVSS will also ensure that if a degraded voltage condition exists with SIAS, the 4.16 kV Class 1E bus will transfer directly to the standby power mode within 10 seconds. The proposed Notes 9 and 10 to Table 3.3-5 are clarifications only.

The two-out-of-four actuation logic provides protection against spurious actuation. The additional functions of DGVSS, LOVS with SIAS and Sustained Degraded Voltage Signal (SDVS) with SIAS provide a faster transfer to standby power under SIAS conditions. The new configuration meets the requirement of General Design Criterion 17 in that one offsite circuit will be immediately available following a Loss of Coolant Accident. Therefore, there is no possibility of a new or different type of accident than any previously evaluated.

3. Will operation of the facility according to this proposed change involve a significant reduction in a margin of safety?

Response: No

The DGVSS, LOVS with SIAS and SDVS with SIAS will provide a faster and more reliable transfer to standby power than the existing configuration. The proposed TS changes provide instrumentation,trip setting, response time, and surveillance requirements consistent with the existing design and the appropriate regulatory documents.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment requestsinvolve no significant hazards consideration.

Local Public Document Room location: Main Library, University of California, P. O. Box 19557, Irvine, California 92713

Attorney for licensee: James A. Beoletto, Esquire, Southern California Edison Company, P. O. Box 800, Rosemead, California 91770

NRC Project Director: Theodore R. Quay

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of amendment request: July 19, 1993 (TS 334)

Description of amendment request: The proposed amendment revises technical specification 3.6.B/4.6.B, "Coolant Chemistry," and the associated bases to relocate the reactor coolant chemistry limits and associated sampling requirements from the Browns Ferry Nuclear (BFN) technical specifications to the BFN chemistry program when the reactor vessel is defueled. For conditions in which fuel is in the reactor, the proposed amendment (1) revises Specification 3.6.B/4.6.B and the associated bases for Unit 3 to make it consistent with the Units 1 and 2 Specification 3.6.B/4.6.B and (2) clarifies some of the requirements for Units 1 and 2 to ensure consistency throughout the technical specifications.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes revise Unit 3 Specification 3.6.B/4.6.B and the associated bases to make it consistent with the Units 1 and 2 Specification 3.6.B/4.6.B. The changes include 1) a reduction of the conductivity limit and the maximum time allowed to exceed the conductivity and chloride limits; 2) a requirement to control and measure the pH; and 3) clarification of the requirements for the various operating modes.

The proposed changes revise Units 1 and 2 Specification 3.6.B/4.6.B and the associated bases to ensure consistent requirements throughout the specifications. The changes include: 1) clarifying sampling frequency for pH, 2) clarifying the sampling requirements when the continuous monitor is inoperable and, 3) adding a requirement for an isotopic analysis for all samples taken to track elevated iodine levels.

The proposed change for Units 1, 2, and 3, eliminates from the BFN technical specifications the reactor coolant chemistry limits and associated sampling when there is no fuel in the reactor vessel. During the defueled condition, the reactor coolant

chemistry limits and monitoring frequency are controlled by the "Chemistry Program" which is under the BFN 10 CFR 50.59 process program.

On a programmatic basis, the reactor coolant quality and monitoring frequency are controlled for all conditions including the defueled reactor vessel condition. The removal from technical specifications of the requirements on reactor coolant quality and monitoring for the defueled condition will not eliminate the requirement from the chemistry program. Thus, the chemistry program will maintain the reactor coolant within the appropriate limits to ensure that reactor pressure vessel/internals are not affected.

These changes do not affect any of the design bases accidents. They do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes revise Unit 3 Specification 3.6.B/4.6.B and its associated bases to make it consistent with the Units 1 and 2 Specification 3.6.B/4.6.B. The proposed changes revise Units 1 and 2 Specification 3.6.B/4.6.B and the associated Bases to ensure consistent requirements throughout the specifications. The changes include: 1) clarifying the sampling frequency for pH, 2) clarifying the sampling requirements when the continuous monitor is inoperable and, 3) adding a requirement for an isotopic analysis for samples taken to track elevated iodine levels. These proposed change [sic] reduces the potential for human factor related errors that could result from the subtle differences in the existing specifications.

The proposed change for Units 1, 2, and 3, eliminates from the BFN technical specifications the reactor coolant chemistry limits and associated sampling when there is no fuel in the reactor vessel. During the defueled condition, the reactor coolant chemistry limits and monitoring frequency are controlled by the "Chemistry Program" which is under the BFN 10 CFR 50.59 process program.

No modifications to any plant equipment are involved. There are no effects on system interactions made by these changes. They do not create the possibility of a new or different kind of accident from an accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The proposed changes revise Unit 3 Specification 3.6.B/4.6.B and its associated bases to make it consistent with the Units 1 and 2 Specification 3.6.B/4.6.B. The changes include 1) a reduction of the conductivity limit and the maximum time allowed to exceed the conductivity and chloride limits; 2) a requirement to control and measure the pH; and 3) clarification of the requirements to address the various operating modes.

The proposed changes revise Units 1 and 2 Specification 3.6.B/4.6.B to ensure consistent requirements throughout the specifications. The changes include: 1) clarifying the sample frequency for pH, 2) clarifying the sampling requirements when the continuous monitor is inoperable and, 3) adding a requirement for an isotopic analysis for all samples taken to track elevated iodine levels.

The proposed change for Units 1, 2, and 3, eliminates the reactor coolant chemistry limits and associated sampling when there is no fuel in the reactor vessel. During the defueled condition, the reactor coolant chemistry limits and monitoring frequency are controlled by the "Chemistry Program" which is under the BFN 10 CFR 50.59 process program.

The coolant chemistry technical specification does not provide requirements related to: 1) installed instrumentation used to detect, and indicate in the control room, a significant abnormal degradation of the RCPB [Reactor Coolant Pressure Boundary], or 2) a process variable that is an initial condition of a DBA [Design Basis Accident] or transient analyses that either assume the failure of or present a challenge to the integrity of a FP [Fission Product] barrier, or 3) a structure, system, or component that is part of the primary success path and which functions or actuates to mitigate a DBA or transient that either assumes the failure of or presents a challenge to the integrity of a FP barrier. Therefore, its requirements can be relocated to the BFN Chemistry Program.

On a programmatic basis, the reactor coolant quality and monitoring frequency are controlled for all conditions including the defueled reactor vessel condition. The removal from technical specifications of the requirements on reactor coolant quality and monitoring for the defueled condition will not eliminate the requirement from the chemistry program. Thus, the chemistry program will maintain the reactor coolant within the appropriate limits to ensure that reactor pressure vessel/internals are not affected.

Therefore, the changes do not involve a significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of amendment request: September 28, 1993 TS 93-10

Description of amendment request: The proposed change would incorporate three changes to the Technical Specifications (TS) related to the Fire Protection System. The first change would revise Specification 3.7.11.1.b that governs the operability requirements for the required flow path by substituting general wording with more specific wording to clarify the system location of sectionalizing control or isolation valves that must be operable. In addition, an exemption to TS 3.0.4 would be added to Action Statement (b) of Specification 3.7.11.1 that would allow mode changes while the flow path is inoperable.

The second proposed change would modify Action Statement (a) of TS 3.7.11.2 to address conditions when the spray and sprinkler systems in the containment are inoperable. The proposed change would specify that a continuous or hourly fire watch is not needed in the containment when complying with the action requirements of TS 3.3.3.8. TS 3.3.3.8 already requires monitoring of the containment air temperature hourly if a fire detection instrument is inoperable.

The third proposed change would delete the reporting requirements associated with the fire protection system from TS 3.7.11.1, 3.7.11.2, 3.7.11.3, 3.7.11.4, 3.7.12, 3.3.3.8, and the Bases for TS 3/4.7.11.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

TVA has evaluated the proposed technical specification (TS) change and has determined that it does not represent a significant hazards consideration based on criteria established in 10 CFR 50.92(c). Operation of Sequoyah Nuclear Plant (SQN) in accordance with the proposed amendment will not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

TVA's proposed TS change is a three-part change. The first part provides a clarification to the requirements of the existing fire suppression system flow path operability (Limiting Condition for Operation [LCO] 3.7.11.1.b). The current LCO wording leads to misinterpretations and misapplication of the LCO requirements associated with flow path when isolating portions of SQN's fire protection system for preplanned maintenance or testing. This has resulted in unnecessary entries into multiple fire protection LCOs and multiple action requirements. TVA's proposed amendment modifies LCO 3.7.11.1.b to establish clear boundaries for maintaining flow-path operability and provides a more appropriate application of the LCO requirements.

The second part of TVA's proposed amendment involves a change to Action Statement (a) of LCO 3.7.11.2 for spray and/or sprinkler systems. The proposed change provides additional guidance within the action that obviates the requirement for maintaining continuous or hourly fire watch inside containment (i.e., reactor building - reactor coolant [RC] pump area). The activation of the spray and/or sprinkler system in the RC pump area (inside containment) is dependent upon operable fire detection instrumentation in this area. The TS that governs operability requirements for the fire detection instrumentation is governed by Specification 3.3.3.8. The action requirements of Specification 3.3.3.8 are based on the location of the inoperable fire detection instrumentation (outside containment versus inside containment). TVA's proposed change applies the "location-based" action requirements of Specification 3.3.3.8 to the action requirements of Specification 3.7.11.2 when a spray and/or sprinkler system inside containment becomes inoperable solely because of inoperable fire detection instrumentation.

The third part of TVA's proposed change is the elimination of special reporting requirements from SQN's fire protection TSs. SQN TSs currently contain special reporting requirements in the action statement of the following LCOs:

1. LCO 3.7.11.1, Fire Suppression Water System
2. LCO 3.7.11.2, Spray and/or Sprinkler Systems
3. LCO 3.7.11.3, CO_2 Systems
4. LCO 3.7.11.4, Fire Hose Stations
5. LCO 3.7.12, Fire Barrier Penetrations
6. LCO 3.3.3.8, Fire Detection Instrumentation

The elimination of the special reporting requirements reduces an unnecessary regulatory burden and is consistent with the guidance provided in NRC Generic Letter 86-10, "Implementation of Fire Protection Requirements" (reference Item E), and Generic Letter 88-12, "Removal of Fire Protection Requirements from Technical Specifications."

TVA's proposed amendment, as described above, is administrative in nature and does not affect SQN's ability to maintain fire protection at the site or achieve and maintain safe shutdown in the event of a fire. Consequently, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Create the possibility of a new or different kind of accident from any previously analyzed.

TVA's proposed TS change to the fire suppression system flow-path boundaries in LCO 3.7.11.1.b does not alter the protective functions or reduce the level of fire protection required by TSs. The proposed change to Action (a) of LCO 3.7.11.2 for spray and/or sprinkler systems provides consistency with a related action for fire detection instrumentation (Action [a] of LCO 3.3.3.8). The proposed change to remove the special reporting requirements from SQN TSs is an administrative change that reduces the regulatory burden for TS compliance.

TVA's proposed change does not result in any new scenarios that would affect SQN's fire protection program. Consequently, the change does not create the possibility of a new or different kind of accident from any previously analyzed.

3. Involve a significant reduction in a margin of safety.

TVA's proposed TS amendment continues to maintain TS operability requirements for SQN's fire detection instrumentation, the fire suppression water system, the spray and/or sprinkler systems, the CO_2 systems, the fire hose stations, the yard fire hydrants, and the fire barrier penetrations. The performance of surveillance requirements to ensure operability of these systems is retained in TSs. The ability to achieve and maintain safe shutdown in the event of fire has not been affected by the proposed TS change. Accordingly, the proposed change will not involve a reduction in the margin of safety.

The NRC has reviewed the licensee's analysis and, based on thisreview, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

Attorney for licensee: General Counsel, Tennessee Valley Authority, 400 West Summit Hill Drive, ET 11H, Knoxville, Tennessee 37902

NRC Project Director: Frederick J. Hebdon

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Arizona Public Service Company, Docket No. STN 50-528, Palo Verde Nuclear Generating Station, Unit 1, Maricopa County, Arizona

Date of amendment request: September 8, 1993

Brief description of amendment: The proposed amendment would add a methodlogy supplement entitled, "System 80™ Inlet Flow Distribution," to the list of methods used to determine the core operating limits.

Date of publication of individual notice in **Federal Register:** October 15, 1993 (58 FR 53585)

Expiration date of individual notice: November 15, 1993

Local Public Document Room location: Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Notice of Issuance of Amendments to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Commonwealth Edison Company, Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois

Date of application for amendments: July 27, 1992

Brief description of amendments: The amendments revise the Technical Specifications relative to ventilation flow rates, a heater dissipation rate, a testing method, and a footnote reference that is no longer applicable.

Date of issuance: October 22, 1993

Effective date: October 22, 1993

Amendment Nos.: 56 and 56

Facility Operating License Nos. NPF-37 and NPF-66: The amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 28, 1992 (57 FR 48815)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 22, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 18, 1993

Brief description of amendment: The amendment modifies the Haddam Neck Technical Specifications by permanently removing the ability for Haddam Neck Plant to operate with three loops while in Modes 1 or 2.

Date of issuance: October 27, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 168

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48381) The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated October 27, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: July 29, 1993

Brief description of amendment: The amendment revises the Technical Specification definitions and radiation protection limits and associated Bases in order to implement the revised 10 CFR Part 20.

Date of issuance: October 18, 1993

Effective date: October 18, 1993, with full implementation within 30 days.

Amendment No.: 93

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48382)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 23, 1993

Brief description of amendment: The amendment revises Facility Operating License NPF-43 to delete a portion of License Condition 2.C.(10), which required bearing gap check inspections be performed on the Emergency Diesel Generator following each automatic, unprelubricated start or every 6 months whichever occurred first.

Date of issuance: October 26, 1993

Effective date: October 26, 1993, with full implementation within 30 days.

Amendment No.: 94

Facility Operating License No. NPF-43. Amendment revises the Facility Operating License.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28054)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Detroit Edison Company, Docket No. 50-341, Fermi-2, Monroe County, Michigan

Date of application for amendment: March 23, 1993

Brief description of amendment: The amendment revises the Technical Specifications to eliminate the qualification that some 18-month surveillances be performed "during shutdown".

Date of issuance: October 29, 1993

Effective date: October 29, 1993, will full implementation within 30 days.

Amendment No.: 95

Facility Operating License No. NPF-43. Amendment revises the Technical Specifications

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28055)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Monroe County Library System, 3700 South Custer Road, Monroe, Michigan 48161.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: September 24, 1993

Brief description of amendment: The amendment reduced the minimum number of required incore detectors and detector locations from 75 percent to 50 percent for the remainder of the current operating cycle.

Date of issuance: October 20, 1993

Effective date: October 20, 1993

Amendment No.: 151

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 4, 1993 Public comments requested as to proposed no significant hazards consideration: Yes (58 FR 51655). The notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination within 15 days. No comments have been received. The notice also provided an opportunity to request a hearing by November 3, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment and final no significant hazards consideration determination is contained in a Safety Evaluation dated October 20, 1993.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: January 22, 1993

Brief description of amendments: These amendments relocate the Radiological Effluent Technical Specifications to the Offsite Dose Calculation Manual or Process Control System as appropriate per the Administrative Controls section of the Technical Specifications.

Date of issuance: October 27, 1993

Effective date: October 27, 1993

Amendment Nos.: 123 and 61

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** March 25, 1993 (58 FR 16225)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1993.

No significant hazards consideration comments received: No. I11*Local Public Document Room location:* Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-321 and 50-366, Edwin I. Hatch Nuclear Plant, Units 1 and 2, Appling County, Georgia

Date of applications for amendments: September 21, 1992; October 14, 1992, as supplemented January 15, March 26, and July 30 1993; and May 3, 1993, as supplemented October 5, 1993. The supplemental letters provided additional information in support and within the scope of the amendment applications. The information did not change the NRC staff's proposed no significant hazards consideration determinations.

Brief description of amendments: The amendments (1) relocate the procedural details contained in the Radiological Effluent TS, (2) incorporate the new Part 20 requirements, and (3) revise the frequency of reporting radiological effluent releases.

Date of issuance: October 21, 1993

Effective date: No later than January 1, 1994

Amendment Nos.: 190 and 129

Facility Operating License Nos. DPR-57 and NPF-5. Amendments revised the Technical Specifications.

Date of initial notices in **Federal Register:** April 14, 1993 (58 FR 19481) two Notices and September 15, 1993 (58 FR 48384)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 21, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket Nos. 50-424 and 50-425, Vogtle Electric Generating Plant, Units 1 and 2, Burke County, Georgia

Date of application for amendments: September 30, 1993

Brief description of amendments: The amendment is a one-time only revision to Technical Specification 4.6.1.2d, adding a footnote that extends the 10 CFR Part 50, Appendix J, Section III.D.3, Type C test interval, for the Unit 1 auxiliary component cooling water (ACCW) supply and return containment isolation valves, from 24 months to prior to entry into Mode 4 following the next scheduled refueling (or the next forced outage requiring entry into Mode 5), but no later than November 1, 1994.

Date of issuance: October 27, 1993

Effective date: To be implemented within 30 days from the date of issuance.

Amendment No.: 70 and 49

Facility Operating License Nos. NPF-68 and NPF-81: Amendments revised the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes (58 FR 52796 dated October 12, 1993). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an oportunity to request a hearing by November 12, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendments, finding of exigent circumstances, and final no significant hazards consideration determination are contained in a Safety Evaluation dated October 27, 1993.

Local Public Document Room location: Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 30, 1993, as superseded August 27, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) 4.8.1.1.2.e and adds a new TS 4.8.1.1.2.f to replace the requirement to perform a hot Loss of Off-Site Power test following the 24-hour full-power emergency diesel generator (EDG) run during shutdown with a requirement to perform a hot EDG restart test following a full-load EDG run of greater than 2 hours in any operational condition. The amendment also reletters previous TSs 4.8.1.1.2.f and g to accommodate the addition of the new TS 4.8.1.1.2.f. These changes are consistent with NUREG-1434, "Standard Technical Specifications - General Electric Plants, BWR/6."

Date of issuance: October 18, 1993

Effective date: As of the date of issuance to be implemented prior to startup from the third refueling outage.

Amendment No.: 50

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (50 FR 25860) and renoticed (58 FR 48385)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: July 26, 1993

Brief description of amendment: The amendment increases the maximum stroke time for reactor water cleanup system isolation valves CU-2, 3, 5, and 28 from 18 seconds to 20 seconds in Technical Specification Table 3.7.1.

Date of issuance: October 27, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 66

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46238)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 27, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: July 31, 1992

Brief description of amendment: The amendment removes requirements from the License and Technical Specifications pertaining to the Fire Protection Program, and places these same requirements in operating procedures.

Date of issuance: October 25, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 84

Facility Operating License No. NPF-49. Amendment revised the License and Technical Specifications.

Date of initial notice in **Federal Register:** September 2, 1992 (57 FR 40217)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, et al., Docket No. 50-423, Millstone Nuclear Power Station, Unit No. 3, New London County, Connecticut

Date of application for amendment: September 14, 1993

Brief description of amendment: The amendment revises the trip setpoints associated with the reactor trip system interlock P-10.

Date of issuance: October 25, 1993

Effective date: October 25, 1993

Amendment No.: 85

Facility Operating License No. NPF-49. Amendment revised the Technical Specifications.

Public comment requested as to proposed no significant hazards consideration: Yes (58 FR 49333, September 22, 1993, corrected 58 FR 51657 October 4, 1993). That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request a hearing by October 22, 1993, but indicated that if the Commission makes a final no significant hazards consideration determination any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances, and final determination of no significant hazards consideration are contained in a Safety Evaluation dated October 25, 1993.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Pennsylvania Power and Light Company, Docket No. 50-387, Susquehanna Steam Electric Station, Unit 1, Luzerne County, Pennsylvania

Date of application for amendment: May 17, 1993 and supplemented by letter dated October 7, 1993

Brief description of amendment: The amendment changed the Technical Specifications to revise the logic which controls the automatic transfer of the High Pressure Coolant Injection pump suction source on high suppression pool level.

Date of issuance: October 19, 1993

Effective date: October 19, 1993

Amendment No.: 130

Facility Operating License No. NPF-14: This amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34085) The October 7, 1993, submittal provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 19, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Osterhout Free Library, Reference Department, 71 South Franklin Street, Wilkes-Barre, Pennsylvania 18701.

Power Authority of The State of New York, Docket No. 50-286, Indian Point Nuclear Generating Unit No. 3, Westchester County, New York

Date of application for amendment: May 4, 1993, as supplemented September 29, 1993.

Brief description of amendment: The Technical Specifications (TS) amendment revised TS Sections 3.2 (Chemical and Volume Control System), 3.3 (Engineered Safety Features), and 4.1 (Operational Safety Review) to eliminate the requirement to maintain a Boron Injection Tank (BIT) and the related heat tracing. In addition, the amendment also revised TS Section 4.4 (Containment Tests) and the associated Bases to remove the containment temperature reference in the containment leak test acceptance criteria.

Date of issuance: October 15, 1993

Effective date: This license amendment is effective as of the date of its issuance to be implemented prior to restart from the current outage.

Amendment No.: 139

Facility Operating License No. DPR-64: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34089)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 15, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Public Service Electric & Gas Company, Docket Nos. 50-272 and 50-311, Salem Nuclear Generating Station, Unit Nos. 1 and 2, Salem County, New Jersey

Date of application for amendments: August 6, 1993

Brief description of amendments: These amendments modify Appendix B, Section 4.2.1, "Aquatic Monitoring," of the Environmental Protection Plan by incorporating the requirements of a revised Biological Opinion, issued by National Marine Fisheries Service on May 14, 1993.

Date of issuance: October 26, 1993

Effective date: October 26, 1993Amendment Nos. 146 and 124

Facility Operating License Nos. DPR-70 and DPR-75. These amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48388)

The Commission's related evaluation of the amendments is contained in a

Safety Evaluation dated October 26, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Salem Free Public Library, 112 West Broadway, Salem, New Jersey 08079

Rochester Gas and Electric Corporation, Docket No. 50-244, R. E. Ginna Nuclear Power Plant, Wayne County, New York

Date of application for amendment: June 1, 1990

Brief description of amendment: The amendment changes the technical specifications requirements similar to the standard technical specifications for Westinghouse Pressurized Water Reactors in specifying time limits when required to reduce power and shut down the plant due to quadrant to average power tilt ratio (QPTR) exceeding 1.12.

Date of issuance: October 20, 1993

Effective date: October 20, 1993

Amendment No.: 56

Facility Operating License No. DPR-18: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** October 3, 1990 (55 FR 40474)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 20, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Rochester Public Library, 115 South Avenue, Rochester, New York 14610.

Southern Nuclear Operating Company, Inc., Joseph M. Farley Nuclear Plant, Unit 2, Houston County, Alabama.

Date of amendment request: May 28, 1993, as supplemented on July 29, 1993, September 14, 1993, and September 22, 1993

Brief description of amendment: The amendment changes Technical Specifications 4.4.6.4 and 3.4.7.2, and Bases 3/4.4.6, to allow the implementation of interim steam generator tube plugging criteria for the tube support plate elevations. The amendment reduces the Farley TS limit for specific activity of dose equivalent Iodine 131 as specified in TS 3/4.4.9. In addition, the amendment reduces the allowed primary-to-secondary operational leakage from any one steam generator from 500 gallons per day to 150 gallons per day. The total allowed primary-to-secondary operational leakage through all steam generators is reduced from one gallon per minute (1440 gallons per day) to 450 gallons per day. This amendment is only applicable for the tenth Farley Unit 2 operating cycle.

Date of issuance: October 20, 1993

Effective date: October 20, 1993

Amendment No.: 94

Facility Operating License No. NPF-8: Amendment revises the Technical Specifications.

Public comments requested as to proposed no significant hazards consideration: Yes. (58 FR 51889 dated October 5, 1993) That notice provided an opportunity to submit comments on the Commission's proposed no significant hazards consideration determination. No comments have been received. The notice also provided for an opportunity to request for a hearing by November 4, 1993, but indicated that if the Commission makes a final no significant hazards determination, any such hearing would take place after issuance of the amendment.

The Commission's related evaluation of the amendment, finding of exigent circumstances and final determination of no significant hazards consideration are contained in the Safety Evaluation dated October 20, 1993.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, P. O. Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendment: October 5, 1992, supplemented September 15, 1993 (TS 303)

Brief description of amendment: The amendment changes the Technical Specifications, increasing the flow-biased Rod Block Monitor (RBM) upscale setpoint, revises the RBM subsystem limiting condition for operation and surveillance requirement, and adds new definitions supporting the revised specifications.

Date of issuance: October 21, 1993

Effective date: October 21, 1993

Amendment No: 217

Facility Operating License No. DPR-52: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55593)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 21, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket Nos. 50-327 and 50-328, Sequoyah Nuclear Plant, Units 1 and 2, Hamilton County, Tennessee

Date of application for amendments: June 21, 1993 (TS 93-07)

Brief description of amendments: The amendments revise the method of determining the most negative moderator temperature coefficient specified for end of cycle and the associated 300 ppm surveillance requirement limit specified in the Core Operating Limits Report. TS 6.9.1.14.a is also revised to include another reference for an NRC-approved methodology for determining cycle-specific parameters.

Date of issuance: October 26, 1993

Effective date: October 26, 1993

Amendment Nos.: 171 - Unit 1 and 161 - Unit 2

Facility Operating License Nos. DPR-77 and DPR-79: Amendments revise the technical specifications.

Date of initial notice in **Federal Register:**

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 26, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library,1101 Broad Street, Chattanooga, Tennessee 37402

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: January 20, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) Table 3.5-4, Table 4.1-1, and the TS Section 3.5 basis. The revision to Table 3.5-4 and Table 4.1-1 incorporates feedwater isolation specifications for the Kewaunee Nuclear Power Plant (KNPP). The basis for TS Section 3.5 has been revised to provide background information on the Main Feedwater Isolation system. In addition, administrative changes have been made to convert TS Section 3.5 and its basis along with Tables TS 3.5-4 and TS 4.1-1 to the WordPerfect software. The administrative changes also correct minor typographical errors and format inconsistences.

Date of issuance: October 18, 1993

Effective date: October 18, 1993

Amendment No.: 102

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36448)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 18, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Wisconsin Electric Power Company, Docket Nos. 50-266 and 50-301, Point Beach Nuclear Plant, Unit Nos. 1 and 2, Town of Two Creeks, Manitowoc County, Wisconsin

Date of application for amendments: June 11, 1993, as supplemented on October 19, 1993.

Brief description of amendments: The amendments modify Technical Specification Section 15.3.1.6, "Operator Limitations," Specification 3, to reduce the reactor coolant system raw measured total flow rate limit by 2,600 gallons per minute (gpm), change the overtemperature and overpower setpoints, and change the Reactor Core Safety Limits for Unit 2.

Date of issuance: October 27, 1993

Effective date: October 27, 1993

Amendment Nos.: 142 and 146

Facility Operating License Nos. DPR-24 and DPR-27. Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43940) The October 19, 1993, letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 27, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Joseph P. Mann Library, 1516 Sixteenth Street, Two Rivers, Wisconsin.

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: June 1, 1993

Brief description of amendment: The amendment changes Technical Specification 3.8.3.1, Onsite Power Distribution, related to the allowable outage time for two motor control centers associated with the essential service water system. The revision makes the allowable outage time for the motor control centers consistent with the limiting conditions of Technical Specification 3.7.4, Essential Service Water System.

Date of issuance: October 29, 1993

Effective date: October 29, 1993, to be implemented within 30 days of issuance.

Amendment No.: Amendment No. 168

Facility Operating License No. NPF-42. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34098)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Dated at Rockville, Maryland, this 3rd day of November 1993.

For the Nuclear Regulatory Commission.

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation.

[Doc. 93-27504 Filed 11-9-93; 8:45 am]

BILLING CODE 7590-01-F

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-33155; File No. SR-CBOE-93-44]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to the Issuance of a Regulatory Circular Concerning Floor Brokerage Practices

November 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to issue a Regulatory Circular (as set forth in Appendix A) relating to certain floor brokerage practices.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The CBOE proposes to issue to its membership a Regulatory Circular ("1993 Circular") relating to certain floor brokerage practices in order to assist floor brokers in understanding their responsibilities under CBOE Rules, the Act, and Commission regulations. The purpose of the proposed rule change is to provide for publication of the 1993 Circular.

On June 19, 1986, the CBOE issued a Regulatory Circular ("1986 Circular") that provides guidance to members of the CBOE regarding their obligations under certain Rules of the Exchange. Specifically, the 1986 Circular describes steps that should be taken when a floor broker proposes to "leg in" a multi-part order or to cross customer orders pursuant to CBOE Rule 6.74. The 1986 Circular also sets forth procedures to be followed when there has been a "print-through" [1] on a limit order or an order is not otherwise executed due to a floor broker's error.

The 1993 Circular restates and expands upon many of these subjects. For example, the 1986 Circular specifies procedures to be followed when there has been a print-through. The 1993 Circular restates these procedures, but additionally makes clear that, except as otherwise specified, a floor broker is not permitted to fill the customer order out

[1] A "print-through" occurs when a trade is effected in the crowd at a price that is better than the price at which a customer order should have been represented by a floor broker in the trading crowd.

of his error account if doing so would reduce or liquidate a position in the broker's error account.

In like fashion, the 1986 Circular explains that CBOE Rules do not prohibit the "legging" of multi-part orders as long as the executing floor broker remains in compliance with CBOE Rules concerning the use of due diligence in the execution of customer orders and relating to the separation of market-maker and floor broker functions. The 1993 Circular expands upon the treatment of this subject by setting forth specific procedures that are to be followed in the event that a floor broker discovers that he is unable to complete the execution of a multi-part order.

The 1993 Circular also provides guidance to floor brokers with respect to subjects that were not covered in the 1986 Circular. These subjects include the priority of customer orders in a floor broker's "deck," the "stopping" of customer orders, trading in securities underlying options traded by a floor broker, and recordkeeping requirements.

The 1993 Circular expected to be issued by the CBOE is intended to provide guidance to floor brokers regarding the Exchange's interpretation of applicable CBOE Rules, the Act, and Commission regulations. It is not intended to be a comprehensive discussion of the named subjects. Rather, the 1993 Circular is to be a supplement to existing rules of the Exchange and Interpretations and Policies relating thereto, for the purpose of providing CBOE members with authoritative guidance regarding the Exchange's interpretation of its Rules, the Act, and Commission regulations in certain specific contexts.

The CBOE believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) of the Act, in particular, in that it will provide guidance to the membership of the Exchange regarding the obligations of floor brokers under CBOE Rules, the Act, and Commission regulations, and is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade.

B. Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to the file number in the caption above and should be submitted by December 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Jonathan G. Katz,

Secretary.

Appendix A

[2] 17 CFR 200.30–3 (a)(12) (1993).

RG 93–

Date:

To: Members and Member Firms
From: Regulatory Services Division
Re: Floor Brokerage Practices

Preface

The Chicago Board Options Exchange ("CBOE") Regulatory Services Division, in conjunction with the Equity, OEX and SPX Floor Procedure Committees, has prepared this Regulatory Circular ("Circular") summarizing CBOE policy with respect to certain floor brokerage practices relating to option activity. This Circular is being issued to assist floor brokers in understanding their responsibilities under CBOE Rules and Securities and Exchange Commission ("SEC") Rules. This document is not all inclusive and does not supplant existing CBOE Rules and Interpretations and Policies as published in the CBOE Rule Book. Members are expected to be familiar with CBOE and SEC Rules governing floor brokerage practices and related recordkeeping requirements. These Rules are located primarily in Chapters VI, VII and XV of the CBOE Rule Book and in SEC Rules 17a–3 and 17a–4.

This Circular supersedes the June 19, 1986 Circular "Handling Agency Orders."

Representation of Orders

Floor brokers and firms representing customer orders have a fiduciary obligation to their clients to execute orders on the CBOE floor at the best available prices, in accordance with the Rules. The general obligations of floor broker or a firm representing a customer order are addressed in CBOE Rule 6.73 ("Responsibilities of Floor Brokers") and include the following:

Representation of Bids & Offers: (See RG91–24)

Rule 6.73.04 states in part, that "a Floor Broker's use of due diligence in handling an order shall include the immediate and continuous representation of market or marketable limit orders at the trading station where the option class represented by the order is traded." This means that a floor broker must insure that all market or marketable limit orders are constantly represented in the crowd either by himself or by another floor broker for as long as that order is active.

Floor Broker Responsibilities Under the Firm Disseminated Market Quote Rule:

CBOE's Rule relating to firm disseminated quotes (Rule 8.51) requires disseminated markets to be good for at least ten contracts in designated series. Pursuant to Rule 6.73.03, a floor broker must take the necessary measures to ensure the proper execution of an order by holding the crowd to its disseminated market quote.

Priority of Orders in a Floor Broker's Deck:

Pursuant to the due diligence provisions of Rule 6.73, a floor broker's agency business always takes priority over trades for his error account. The priority of like agency orders entered simultaneously with a floor broker may be determined by that individual floor broker, but, nonetheless, the floor broker is required to use due diligence to execute

those orders at the best available price or prices.

Separation of the Market-Maker and Floor Broker Functions

CBOE Rules generally prohibit a member from trading as a market-maker with respect to option contracts traded at a particular station on the same day that the member is acting as a floor broker at that station. (The word "station" is synonymous with the term "trading crowd".) This restriction is set forth in CBOE Rule 8.8 ("Restriction on Acting as a Market-Maker and Floor Broker"). CBOE Rules concerning the separation of the market-maker and floor broker functions with respect to warrants and other securities are set forth in Chapter 30 of the CBOE's Rules. A floor broker may only effect transactions for his own account at a station where he is acting as floor broker when he has a bona fide error.

In order to ensure this separation of the market-maker and floor broker functions, the following practices must be adhered to:

Legging Orders:

CBOE Rules do not prohibit legging of multi-part orders, provided that the legged trade is effected in accordance with CBOE Rules concerning use of due diligence and separation of the market-marker and floor broker functions. Multi-part orders include option to option orders, as well as stock and option and futures and option orders. The separation of the market-maker and floor broker functions has been interpreted by the CBOE's Regulatory Services Division and the Floor Procedure Committees to require that at the time a floor broker executes a leg of an option to option order, the price of the remaining leg of the order must be within the current disseminated market (*e.g.*, when a floor broker executes the buy side, the price of the sell side of the order must be at the disseminated offer price or lower). If a floor broker determines that he is unable to complete an order he has legged he must either:

(1) Offer the executed leg to the customer;

(2) Liquidate the leg in open outcry and then offer the trade, regardless of whether it's a profit or loss, to the customer; or

(3) Execute the remaining leg(s) of the order at the available market in open outcry and give the customer a difference check.

A floor broker may not provide an execution on the unexecuted portion of the order from his error account; by doing so, he is acting as a market-maker.

The floor broker must document the time and to whom the offer noted in (1) and (2) above was made and retain this record.

Stopping Orders:

It is improper for a floor broker to "STOP" or guarantee an execution to a customer order he is holding from his error account or deck. By doing so, a floor broker is acting as a market-maker and is in violation of CBOE Rule 8.8. Please note, however, that it is not a violation of Rule 8.8 for a floor broker to cross a public customer order with a facilitation order in accordance with the provisions of Rule 6.7(b) ("Crossing Orders").

Trading the Underlying Securities for Your Own Account:

CBOE Rules do not prohibit a floor broker from entering into transactions on other exchanges for his personal account in financial instruments underlying or related to the classes at the station where he acts as a floor broker. A related financial instrument would include index futures if you are an OEX or SPX floor broker, OEX options if you are an SPX floor broker, and SPX options if you are an OEX floor broker. Because trading in the underlying financial instrument could be perceived as a conflict of interest, the Equity and Index Floor Procedure Committees strongly advise against it. It would be a violation of CBOE Rules 4.1 ("Just and Equitable Principles of Trade") and 6.73 ("Responsibilities of Floor Brokers") and Regulatory Circular RG92–29 ("Frontrunning of Blocks") for a floor broker to enter into transactions in an underlying or related financial instrument based on information concerning a customer option order which he holds. Regulatory staff will monitor all such activity by floor brokers for possible violative activity. Floor broker transactions in underlying or related financial instruments are not entitled to good faith credit under Regulation T and must be margined as customer transactions.

Resolution of Errors and Out Trades

In order to ensure that customers receive the best available price pursuant to CBOE Rule 6.73 ("Responsibilities of Floor Brokers") and in addition, in order to ensure that a floor broker clearly separates his market-maker and floor broker functions as set forth in CBOE Rule 8.8 ("Restriction on Acting as Market-Maker and Floor Broker") the following policies are to be adhered to:

Print-Throughs:

A print-through on a limit order occurs when a trade is effected at a better price than the order's limit during the time that the order should have been represented in the crowd. The customer is entitled to the number of contracts which trade through the order's limit up to the number of contracts specified in his order. The price to which the customer is entitled is described below. Generally, the customer should be given a better price if it is available at the time the error is discovered. However, under certain circumstances, such as a systems failure, where a large number of orders were not received or receipt was delayed, it would not be improper for a firm to fill the customer's order at the original limit price rather than the better price. A floor broker should generally proceed as follows when a print-through has occurred:

(1) If a floor broker discovers a print-through during trading hours and a better price is available at that time, the customer should be filled at the better price. If a better price is no longer available, then the floor broker is responsible at the original limit price and the floor broker may either execute the order at the available market and give the customer a "difference check" or fill the order out of his error account, provided it does not reduce or liquidate a position in the error account. (See section on Liquidation of Error Account Positions for correct procedure.)

(2) If a print-through is discovered outside trading hours and the customer requires a fill as of that trade date, the floor broker may fill the customer at the limit price out of his error account. If the customer does not require a fill as of that trade date, the floor broker must wait until the following trade date and proceed as described in paragraph one. If the customer is filled out of the error account outside trading hours and this results in the reduction or liquidation of a position in the error account, this must be reported in writing to the Department of Market Regulation before 10 a.m. CT the following morning, and such report must be accompanied by supporting documentation.

(3) If a print-through occurs on the opening, the customer is generally entitled to the number of contracts which print through at the opening price. If a better price than the opening price is available at the time the error is discovered, the customer should be filled at the better price; if a better price is not available, the floor broker may either fill the order at the opening price out of his error account, provided it does not reduce or liquidate a position in the error account, or execute the order at the available market and give the customer a "different check."

Lost Or Misplaced Market Orders:

If a floor broker fails to execute a market order, the customer is entitled to an execution on up to ten contracts at the disseminated bid or offer at the time the order was received in the crowd or at a better price if it is available at the time the error is discovered. If a better price or the price the customer is entitled to is not available at the time the error is discovered, the floor broker should provide a fill in the manner described in the above section on Print-Throughs. If the unexecuted market order is in excess of ten contracts, the execution price on the additional contracts should be negotiated between the floor broker and customer.

Orders Executed Erroneously:

If a floor broker incorrectly executes an order (for example, he executes a call order as a put or a buy order as a sell order) the erroneous trade must clear in the floor broker's error account. As described in CBOE Rule 6.61.04 ("Reconciliation and Resolution of Unmatched Trades") it is inconsistent with CBOE Rule 4.1 ("Just and Equitable Principles of Trade") for a member to accept a transaction in which the accepting party was not involved. This means, among other things, that a floor broker may not give a trade acquired through an error to another member. If the customer's order was entitled to a fill, it should be provided in the manner described in the above sections titled Print-Throughs or Lost Or Misplaced Market Orders.

In all of the situations described above, if the floor broker effects a trade for his error account as a result of a bona fide error, thereby establishing a position in his error account (resulting in a risk position), any profit/loss from liquidating this error account position belongs to the floor broker. (See the sections on *Document of Errors* and *Record Keeping Requirements*.)

Liquidation of Error Account Positions:

Except as provided above in the paragraph concerning print-throughs discovered outside trading hours, a floor broker may not reduce or liquidate an error account position by crossing his error account with an order he

is holding. If a floor broker needs to reduce or liquidate a position in his error account and the best bid or offer is an order he is holding, the floor broker (the "liquidating floor broker") must give his order to liquidate the error account position to an unassociated floor broker, or, where there is no unassociated floor broker, he must give the customer order to the Order Book Official or DPM. In any event, the customer bid or offer must be either displayed on the book or announced in open outcry and other members must be given a reasonable opportunity to participate in the trade. (An unassociated floor broker, for purposes of this Circular, is any floor broker who is not directly or indirectly controlling, controlled by, or under common control with the liquidating floor broker.)

Resolution of Out-Trades:

As previously noted, CBOE Rule 6.61 ("Reconciliation and Resolution of Unmatched Trades") states that it is inconsistent with just and equitable principles of trade for any member, or person associated with a member, to accept a transaction in which he was not involved. A floor broker who has an out-trade is prohibited from giving the out-trade to or clearing the trade with a member who was not involved in the transaction which resulted in the out-trade. Further, it is improper to add a trade that was not the result of a bona fide error or to decline to accept any transaction in which the declining party or its principal was involved. (See section on *Record keeping requirements* for information on documentation.)

Documentation of Errors

All transactions executed for a floor broker error account must be recorded on an order ticket. A brief description of the error which necessitated the trade, the time the error was discovered and the initials of the individual creating this record must also be written on the order. These records must be retained for a minimum of three years, the first two years in an easily accessible place. (See *Record Keeping Requirements.*) In addition, the Independent Floor Broker Task Force has recommended that floor brokers also keep out-trade sheets relating to all errors.

Record Keeping Requirements

Rules adopted by the SEC under the Securities Exchange Act of 1934 (the "Act") require that a floor broker keep a copy of every order he receives, including orders received via hand signals or phone, and all cancels and nothing dones. A floor broker may arrange to have these records kept on his behalf; however, it is still the responsibility of the floor broker to produce such documents upon request. These records must be retained for a minimum of three years, the first two years in an easily accessible place. Failure to do so is a violation of the Act, SEC Rules 17a–3 and 17a–4, and CBOE Rules 4.2 ("Adherence to Law") and 15.1 ("Maintenance, Retention and Furnishing of Books, Records and Other Information").

As previously announced, the Regulatory Services Division will be conducting audits of floor brokers. At a minimum, the following records *will be requested when an audit is initiated:* copies of all orders executed by the floor broker, copies of all orders the floor broker received but were canceled or returned "nothing done", and all order tickets representing trades for an error account.

Conclusion

This Circular describes the CBOE's policies with respect to the floor brokerage practices described herein. Failure to adhere to SEC or CBOE Rules as described in this Circular will subject a member to possible disciplinary action.

If you have any questions concerning these matters contact Barbara J. Casey at (312) 786–7712 or Margaret E. Williams at (312) 786–7834 in the Exchange's Department of Market Regulation.

[FR Doc. 93–27678 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Chicago Stock Exchange, Incorporated

November 4, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to Section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

ACM Managed Dollar Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11474)
Aquila Gas Pipeline
Common Stock, $.01 Par Value (File No. 7–11475)
Corpus Christi Bancshares, Inc.
Common Stock, $5.00 Par Value (File No. 7–11476)
Global Partners Income Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11477)
Lexington Corporate Properties, Inc.
Common Stock, $.001 Par Value (File No. 7–11478)
Morrison Restaurants, Inc.
Common Stock, $.01 Par Value (File No. 7–11479)
Hanover Direct, Inc.
Common Stock, $.66⅔ Par Value (File No. 7–11480)
Top Source, Inc.
Common Stock, $.001 Par Value (File No. 7–11481)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 26, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27657 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33145; File Nos. SR–DTC–93–08 and SR–NSCC–93–07]

Self-Regulatory Organizations; the Depository Trust Co. and the National Securities Clearing Corp.; Filing of Proposed Rule Changes Relating to a Netting Contract and Limited Guaranty Agreement

November 3, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on June 2, 1993, and July 8, 1993, the National Securities Clearing Corporation ("NSCC") and The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule changes (File Nos. SR–NSCC–93–07 and SR–DTC–93–08) as described in Items I, II, and III below, which Items have been prepared primarily by NSCC and DTC. On September 13, 1993, NSCC filed an amendment to File No. SR–NSCC–93–07 to change all references to Rule 21 to Rule 25.[2] On September 16, 1993, NSCC filed a second amendment to File No. SR–NSCC–93–07 to change all references to Rule 25 to Rule 31.[3] The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes consist of a Netting Contract and Limited Cross-

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Letter from Karen L. Saperstein, Vice President, NSCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation ("Division"), Commission (September 10, 1993).

[3] Letter from Karen L. Saperstein, Vice President, NSCC, to Jerry W. Carpenter, Branch Chief, Division, Commission (September 15, 1993).

Guaranty agreement between DTC and NSCC ("DTC/NSCC Agreement")[4] and related changes to DTC's Rules 1, 2, 4, and 9, and NSCC Rules 1, 4, 12, and 31.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In its filing with the Commission, DTC and NSCC included statements concerning the purpose of and basis for the proposed rule changes and discussed any comments they received on the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. DTC and NSCC have prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

(1) Netting

Many participants of DTC are also members of NSCC ("common members"), and NSCC itself is a DTC participant. For many years, DTC and NSCC have provided for a consenting common member's credit balance in DTC's Next-Day Funds Settlement ("NDFS") system or a credit balance at NSCC to be applied to its debit balance at the other clearing agency. In practice, a common member's daily settlement credit at one of the clearing agencies serves to reduce or eliminate any daily settlement debit of that common member at the other organization.[5]

The Federal Deposit Insurance Corporation Improvement Act of 1991 ("FDICIA") validates netting contracts that provide for the netting of payment obligations and payment entitlements between and among clearing organizations and their members.[6] Under FDICIA, a payment under a netting contract is not subject to disaffirmance by the receiver or trustee in a subsequent insolvency proceeding. The netting provisions of FDICIA were designed to reduce systemic risk to the financial markets.

The purpose of the netting provision of the DTC/NSCC Agreement is to establish a netting contract that meets the standards for FDICIA protection. The netting provision provides that on each common business day that any common member has a credit balance at one clearing agency and a debit balance at the other, the two balances will be netted and the following payments will be made: (1) Each common member with a net debit amount will pay that amount to the clearing agency with the net debit amount; (2) a clearing agency with a net credit amount with respect to a common member shall pay that amount to the common member; and (3) for each common member with a credit balance that equals its debit balance, the clearing agency with the credit balance shall pay that amount to the clearing agency with the debit balance.

The balances covered under the netting provision that will be available to NSCC will be only those in DTC's NDFS system. DTC will have the right, however, to use a NDFS credit balance to offset an open debit balance in DTC's Same-Day Funds Settlement ("SDFS") system before applying the remainder, if any, to a debit balance at NSCC.

The proposed changes to DTC Rules 1, 2, and 9 and to NSCC Rules 1, 4, 12, and 31 will incorporate the netting provision and all its terms into the rules and, thereby, will bind DTC participants and NSCC members, respectively. The proposed changes also will conform the rules to the netting provision so that DTC's participants and NSCC's members become parties to the netting provision of the DTC/NSCC Agreement. These changes are discussed more fully below.

The rule changes will not substantially change current practice. Unlike the existing cross-endorsement program, the proposed rule changes will be binding on all common members. All DTC participants and NSCC members will gain protection from the netting provisions. If for example, a common member has a debit balance in DTC's NDFS system, some or all of that common member's NSCC credit balance, if any, will be paid by NSCC to DTC instead of to that common member. By reducing or eliminating that common member's outstanding debit balance at DTC by netting, the amount of risk to which all other DTC participants are exposed if that common member fails to settle with DTC is reduced. The same benefits will be realized by NSCC members if the common member has a net debit balance at NSCC and credit balance at DTC.

(2) Limited Guaranty

The DTC/NSCC Agreement also contains a provision limiting the guaranty from each clearing agency to the other clearing agency that will be invoked when a common member fails. Any resources remaining after a failed common member's obligations to the guaranteeing clearing agency have been satisfied, including at DTC that common member's SDFS obligations, will be made available to the other clearing agency. The guaranty will not be absolute but rather will be limited to the extent of the resources relative to the failed member remaining at the guaranteeing clearing agency. The principle resources will be settlement net credit balances, including in certain cases a common member's SDFS net credit balance at DTC, and the failed member's deposits to the clearing agencies' clearing funds.

For example, if a common member has a DTC NDFS net debit balance that exceeds its credit balance at NSCC, the operation of the netting provision will reduce that net debit balance by the amount of the NSCC credit. If that common member than fails, DTC will apply the member's DTC participants fund deposit to the remaining net debit balance and to any SDFS net debit balance. If that deposit is insufficient to satisfy completely all DTC net debit balances, the limited guaranty provision will enable DTC to look to NSCC to pay any deficiency but only if and to the extent that NSCC resources attributable to the common member exceed the common member's obligations to NSCC. Similarly, NSCC will be able to look to DTC if the common member has a NSCC net debit balance.

There can be situations where a failed common member still owes money either to DTC or to NSCC after netting and after payment of the guaranty. However, the exposure to DTC's or NSCC's other participants or members will be reduced by the operation of the DTC/NSCC Agreement.

The incorporation of the limited guaranty provision and other changes to DTC Rules 1, 2, 4, and 9 and to NSCC Rules 1, 4, 12, and 31 are designed to obligate a failed common member to DTC to the extent that DTC is obligated to NSCC under the limited guaranty provision and similarly to obligate a failed common member to NSCC to the extent that NSCC is obligated to DTC under the limited guaranty provision.

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[4] NSCC's Rules refer to the agreement as the Clearing Agency Cross-Guaranty Agreement.

[5] This procedure is commonly referred to as cross-endorsement because originally the first clearing agency's check or draft payable to the common member was endorsed to the second clearing agency. Over 90% of common members have consented to this procedure. Under the procedure, which is now automated, computer programs determine which consenting members have a credit balance at one clearing agency and a debit balance at the other. The programs then aggregate for each clearing agency the applicable portions of all the credit balances of common members with debit balances at the other clearing agency. These aggregate amounts are then paid by each clearing agency to the other with corresponding payment entries being reflected in each common member's DTC and NSCC settlement statements.

[6] 12 U.S.C. 4401–4407 (1991).

(3) DTC Rules 1, 2, 4, and 9

The proposed change to Rule 1 defines that the term DTC/NSCC Agreement to establish as short form for use in DTC's Rules.

The proposed change to Rule 2 incorporates the DTC/NSCC Agreement into the rules of DTC and makes it binding on all DTC participants.

The proposed change to Rule 4, Section 2 states that the participants fund and components thereof may be used as provided in the DTC/NSCC Agreement. The purpose of the proposed change is to broaden the purposes for which deposits to the participants fund may be used and to overcome any objection by a failed participant and its bankruptcy estate to DTC's payment to NSCC of part or all of the failed participant's deposit to DTC's participants fund. The proposed change to Rule 4, Section 3 makes the amount of DTC's limited guaranty to NSCC an obligation that the participant owes to DTC. After these changes, Rule 4 as a whole will operate so that any amount guaranteed by DTC to NSCC is supported by a secured obligation of the participant to DTC.

The proposed changes to Rule 9(A), Section 2 and Rule 9(C), Section 2 concern DTC's right to net all of a participant's accounts within a system together. The sentence to be deleted from Rule 9(C), Section 2 permits DTC to net all of a participant's accounts in the SDFS system. The sentence to be added to Rule 9(A), Section 2 permits DTC to net all of a participant's accounts in either the NDFS system or the SDFS system and preempts any prior agreement between DTC and a participant to the contrary. Currently, DTC's Rules contain no explicit permission for netting in the NDFS system.

Proposed new paragraphs (G) and (H) to Rule 9 provide that DTC's obligation to pay any participant the full amount of its net credit balance is a qualified obligation. In the case of a participant that has not failed, DTC will be obligated to the participant only for the portion of the NDFS net credit balance remaining after application to any NSCC debit balance. In the case of a participant that has failed, DTC's obligation will be: (1) the net after application of any NDFS net credit balance to any SDFS net debit balance, to any NSCC debit balance, and to any guaranty payment from DTC to NSCC and (2) the portion remaining after application of any SDFS net credit balance to any NDFS net debit balance and to any guaranty.

(4) NSCC Rules 1, 4, 12, and 31

The proposed changes to Rule 1 define the terms Clearing Agency Cross-Guaranty Agreement, Cross-Guaranty Party and Cross-Guaranty Obligation to more easily reference these terms throughout NSCC's Rules.

The proposed changes to Rule 4, Section 3 make it clear that the clearing fund deposits may be used to cover cross-guaranty obligations.

The proposed changes to Rule 12 clarify NSCC's settlement obligations to its members. The changes to Section 1 together with new Section 6 will give NSCC the right to net internally any and all credit balances of a member against the member's debit balances before any payments are made to DTC or to the member. Section 5 will make it clear that in the case of a member that has not failed and that is also a participant at DTC, NSCC is obligated to the member only for the portion of its net credit balance remaining after application of the net credit balance to any DTC debit balance. Section 6 will give NSCC the right to net all credits against all debits owning to and from a member with more than one account at NSCC.

The purpose of proposed new Rule 31 is to make the amount of NSCC's limited guaranty to DTC an obligation that the member owes to NSCC. As a result, Rule 31 will operate so that any amount guaranteed by NSCC to DTC will be supported by a secured obligation of a member to NSCC.

The proposed rule changes are consistent with the requirements of section 17A of the Act[7] and the rules and regulations thereunder because they increase the protection of investors and persons facilitating transactions by and acting on behalf of investors by reducing the exposure to risk of solvent DTC participants and solvent NSCC members from the failure of a common member.

(B) Self-Regulatory Organizations' Statement on Burden on Competition

DTC and NSCC do not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

DTC and NSCC have not solicited or received comments on the proposed rule changes.

[7] 15 U.S.C. 78q–1 (1988).

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organizations consent, the Commission will:

(A) By order approve such proposed rule changes or

(B) Institute proceedings to determine whether the proposed rule changes should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of DTC and NSCC. All submissions should refer to the File Nos. SR–DTC–93–08 and SR–NSCC–93–07 and should be submitted by December 1, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27660 Filed 11–9–93; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12) (1992).

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

November 4, 1993.

The above-named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Morrison Restaurants, Inc.
Common Stock, $.01 Par Value (File No. 7–11482)
Texas Utilities Electric Company
Depositary Shares Series B 7.22 Cum. Pfd. Stock, No Par Value (File No. 7–11483)
New Age Media Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11484)
Lexington Corporate Properties, Inc.
Common Stock, $.001 Par Value (File No. 7–11485)
Boyd Gaming Corporation
Common Stock, $.01 Par Value (File No. 7–11486)
PSI Resources, Inc.
6¾% Cum. Pfd. Stock (File No. 7–11487)
Aquila Gas Pipeline Corporation
Common Stock, $.01 Par Value (File No. 7–11488)
Regency Realty Corporation
Common Stock, $.01 Par Value (File No. 7–11489)
Tejas Gas Corporation
Depositary Shares each representing 1/15 of a share of Cv. Pfd. Stock (File No. 7–11490)
CBL & Associates Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11491)
Mississippi Power Company
Dep. Shares 6.65 Pc. Series Pfd. Stock, $100 Par Value (File No. 7–11492)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before November 26, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27658 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33142; File No. SR–PHLX–93–43]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Floor Procedure Advice F–15, Minor Infractions of Position/Exercise Limits and Hedge Exemptions

November 3, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 13, 1993, the Philadelphia Stock Exchange, Inc. ("PHLX" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Paragraph (b) of Floor Procedure Advice ("Advice") F–15, "Minor Infractions of Position/Exercise Limits and Hedge Exemptions," exempts from the position and exercise limit aggregation count each option of a stock option position that is hedged by 100 shares of the underlying stock or securities convertible into the stock. The exemption, which applies only to certain hedged positions and is limited to an amount of option contracts no greater than twice the standard limit of the option, is available only as long as the hedge is maintained. Accordingly, paragraph (b)(ii) of Advice F–15 provides that the failure to appropriately reduce a hedged option position following a decrease in the stock position such that the option position does not exceed the limit by more than 5% may result in a fine specified in the Advice. Instances where the resulting option position exceeds established limits by 5% or more are subject to review by the Exchange's Business Conduct Committee ("BCC"). Thus, under the current version of Advice F–15, it is not clear whether a position limit violation of 5% over the applicable limit will be subject to the fine schedule provided in Advice F–15 or referred to the BCC. Accordingly, the PHLX proposes to amend paragraph (b)(ii) to provide that a fine specified in Advice F–15 applies if the remaining option position does not exceed the position limit by more than 5% (*i.e.*, the position limit violation is 5% or less of the applicable limit), and the BCC review applies if the resulting option position exceeds established limits by more than 5%.

The text of the proposed rule change is available at the Office of the Secretary, PHLX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The PHLX proposes to amend the text of Advice F–15 to correct the threshold above which a hedge exemption position exceeding the Exchange's position limits is referred to the BCC. Specifically, the PHLX proposes to amend paragraph (b) of Advice F–15 to provide that hedge exemption position limit violations of more than 5% will be referred to the Exchange's BCC pursuant to the Exchange's disciplinary rules. Violations below the threshold (5% or less) will be considered minor violations of the requirement to maintain a hedged position, and will be administered pursuant to the PHLX's minor rule enforcement and reporting plan ("minor rule plan").

The PHLX believes that the proposal is consistent with Section 6(b) of the Act, in general, and, in particular, with Section 6(b)(5), in that it is designed to promote just and equitable principles of trade and to prevent fraudulent and manipulative acts and practices, as well as to protect investors and the public interest by streamlining the procedure for enforcing compliance with the Exchange's position and exercise limits.

In addition, the Exchange believes that violations of 5% or less of the Exchange's position and exercise limits and the hedge exemption are objective in nature and thus appropriate for inclusion in the Exchange's minor rule plan, which is consistent with the requirement of section 6(b)(6) of the Act that the rules of an exchange provide that its members be appropriately disciplined for violations of the Act, the rules and regulations thereunder, and the Exchange's rules.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The PHLX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes a stated policy, practice or interpretation with respect to the administration of an existing PHLX rule. Specifically, the proposal clarifies Advice F–15(b)(ii) by stating that a failure to maintain a hedged option position which results in a position limit violation of more than 5% of the applicable limit will be referred to the BCC, while a position limit violation of 5% or less of the applicable limit will be subject to the fine schedule provided in Advice F–15 and administered under the PHLX's minor rule plan. Accordingly, the proposal has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[1]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27661 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33144; File No. SR–Phlx–91–08]

Self-Regulatory Organizations; Philadelphia Stock Exchange Inc.; Order Approving Proposed Rule Change Relating to Block Transactions in Foreign Currency Options

November 3, 1993.

On April 28, 1992,[1] the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder,[3] a proposed rule change to permit foreign currency options orders of 1,000 contracts or more to trade utilizing special procedures applicable to block transactions.

The proposed rule change was published in Securities Exchange Act Release No. 31120 (August 28, 1992), 57 FR 40930. No comments were received on the proposed rule change. This order approves the proposal.

The Exchange proposes to add Phlx Rule 1016—Block Transactions in Foreign Currency Options—which would provide executions at a single price for orders of over 1,000 contracts.[4] Specifically, the block execution procedure would allow a floor broker with a block order to quote the market in a particular foreign currency option, announce that a block quotation for a specified number of contracts over 1,000 is sought, and ascertain from the trading crowd the best price at which the entire order can be executed.[5] Contrary to the existing permitted practice, the proposed block trade rule would permit the execution of trades outside the best bid and offer ("BBO").[6]

The proposed block order execution procedures additionally provide for priority among categories of those contra-side interests competing in the trading crowd for participation in the block trade.[7] From the responses received by the trading crowd, the floor broker is required to derive the block quote (BBO at which the block order can be entirely satisfied) and determine the priority of eligible interests within the clean-up range.

Priority among eligible interests within the clean-up range will be determined under proposed Rule 1016(c) in the following manner. First, customer orders[8] of less than 100 contracts have precedence at any price

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[1] 17 CFR 200.30–3(a)(12)(1992).

[1] The Phlx originally submitted its proposal on May 9, 1991. On April 21, 1992, the Phlx amended its proposal to clarify that any bid/offer for the account of a member which relies on the exemption under Section 11(a)(1)(G) of the Act must yield priority to any bid/offer for the account of a customer. See letter from Gerald D. O'Connell, Vice President, Market Surveillance, Phlx, to Thomas Gira, Branch Chief, Options Regulation, Division of Market Regulation, SEC, dated April 21, 1992 ("Amendment No. 1").

[2] 15 U.S.C. section 78s(b)(1) (1993).

[3] 17 CFR 240.19b–4 (1993).

[4] A "block order" is defined as any Exchange foreign currency options order of 1,000 contracts or more.

[5] The "clean-up price" is the price at which the block order is executed, and the "clean-up range" includes those bids or offers as the case may be of eligible interests at the clean-up price or better.

[6] Large orders in foreign currency options are presently executed in the same manner as all other foreign currency options. In particular, a member requests the trading crowd to give an indication as to where a large-sized order may be executed. A response from the crowd to any such request may include large-sized indications of interest at prices outside the existing bid and offer, however, no trade may be consummated at the outside price until the previously established superior bids or offers are either satisfied or withdrawn and a new market established within which the large sized order may trade. See Phlx Rules 1014(h) and 119.

[7] An "Eligible interest" is defined in the proposal as: (1) orders placed on the book or held by a broker in the crowd at any price within the clean-up range; (2) bids/offers within the clean-up range which constitute markets in the crowd in response to the floor broker's request for the current market and prior to his request for a block quote; and (3) bids/offers within the clean-up range made in response to the request for a block quote.

[8] Rule 1014(g) defines account types as either a controlled account or customer account. A controlled account includes any account controlled by or under common control with a member broker-dealer. Specialist accounts of Phlx Options Specialists, however, are not subject to yielding requirements placed upon controlled accounts by this Rule. Customer accounts are all other accounts.

within the clean-up range. Second, all eligible interests constituting the best market in the crowd in response to the floor broker's request for the current market and prior to the floor broker's request for a block quote. Third, all interests of 1,000 contracts or more at any price better than the clean-up price made in response to the request for a block quote. Fourth, all eligible interests of 200 contracts or more at any price within the clean-up range made in response to the request for a block quote. Lastly, if any eligible interests are remaining then such priority that may still exist will apply.[9] In those instances where the question of priority arises in connection with orders within the same category as described above, priority is established in accordance with existing Exchange Rules 1014(g) and 119.

The proposed priorities described above can best be understood by the following example. The market first quoted is 16 bid and 20 ask ("16–20"), and in response to a request for a block quote for 3,000 contracts, the market given was 12–23, 3,000 contracts on each side; the floor broker executes a block order to buy 3,000 at 23. First, priority goes to customer orders of less than 100 contracts offering from 20 to 23. Second, thereafter priority is afforded to the interest that constituted the best offer when the floor broker first quoted the market, but prior to the announcement of the block order. Thus, any offer at 20 is executed next. Third, interests of 1,000 contracts or more at prices better than the block price receive priority. For example, offers of 21 and 22, of at least 1,000 contracts fall into this category. Fourth, any eligible interest of at least 200 contracts at the block price or better, such as offers of 21, 22 or 23, receive next priority. Finally, any remaining portion of a block order can be executed against any remaining eligible interests, such as offers of 21 through 23, for less than 200 contracts. Under this example, all of the executions occur at a price of 23, the clean-up price, despite the offer being for a lower price, such as 21 or 22.

The Exchange believes that there are two reasons for arranging foreign currency block executions in the proposed manner. First, the Phlx believes that enduring customer orders of under 100 contracts top priority to participate in the block price is consistent with the Exchange's commitment to the retail investor. Second, the Phlx believes that providing the opportunity for a trader in the crowd or an off-floor interest to increase his participation (over that of pro-rata parity split) by voicing a market quicker and larger than others, will foster competition in the crowd resulting in better and faster executions of block-sized orders. Accordingly, the Phlx believes that providing this limited block execution exception to the existing priority and parity rules will enable the Exchange to more effectively compete with the over-the-counter ("OTC") foreign currency options market for block orders.

With respect to priority among orders of the same category, the Phlx notes that within each of the specified categories priority is determined in accordance with the Exchange's rules regarding the priority and parity of foreign currency options orders in Rules 1014(h) and 119. For example, within the third category in the example above (offers of 1,000 contracts or more at prices better than the block price) priority is given to the 21 offer, the best price. If a portion of the block order remains after all offers of 1,000 at 21 are satisfied, priority is next given to the offers at 22.[10]

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6[11] and the rules and regulations thereunder. The Commission believes that the block trading procedure proposed by the Phlx will remove impediments to and perfect the mechanism of a free and open options market by efficiently executing large-size foreign currency options orders consistent with the protection of investors. In particular, the Commission believes that the Phlx proposal is an appropriate attempt to attract large-sized foreign currency options orders that may be transacted in the OTC market.[12]

The Commission also finds that the Phlx's block execution procedure strikes a reasonable balance between the Exchange's desire to execute large foreign currency options orders in an efficient manner and its obligation to prevent fraudulent and manipulative practices. Specifically, the block trading procedure will enable market participants to execute large-size foreign currency options orders in an orderly fashion at a price that may not be the BBO for that particular foreign currency option, but is the best price available for executing a block trade in such foreign currency options. The block trading procedure for foreign currency options will permit this limited exception to the existing priority and precedence rules of the Exchange while continuing to protect smaller customer orders and orders that constitute the "best market" or best bid or offer.[13]

IT IS THEREFORE ORDERED, pursuant to section 19(b)(2) of the Act,[14] that the proposed rule change (SR–Phlx–91–08) is approved.

For the Commission, by the Division of Market Regulations, pursuant to delegated authority.[15]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27662 Filed 11–9–93; 8:45 am]

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[9] Notwithstanding the priorities of eligible interests noted above, any bid or offer for the account of a member relying on the exemption under Section 11(a)(1)(G) of the Act must yield time priority to any bid or offer for the account of a customer. See Amendment No. 1, *supra* note 1.

[10] According to the proposal, any bid or offer, regardless of which category of contra-side interest it is in, for the account of an Exchange member which relies on the exemption under section 11(a)(1)(G) of the Act must yield priority to any bid or offer for the account of a customer. See Amendment No. 1, *supra* note 1.

[11] 15 U.S.C. section 78f (1993).

[12] The Commission notes that block trades executed at the Phlx are subject to the protections afforded by a regulated exchange options market. Furthermore, the Phlx proposal contains safeguards to ensure that the Rule is not used for impermissible purposes. Specifically, a floor broker must quote the market before announcing the existence of a block order, and, must actually hold an order ticket for a block order. In addition, any bid or offer for the account of a member relying on the section 11(a)(1)(G) exemption must yield priority to any bid or offer of a customer.

[13] Presently, Exchange Rule 1067 requires that the highest bid and lowest offer shall have precedence in all cases. In addition, Rule 1014(h) states that bids or offers in foreign currency options, regardless of account type or size of the bid or offer, or whether opening or closing, all are treated the same for purposes of determining time priority pursuant to Rule 119. The Rule contains the following two exceptions: (1) all bids or offers of customer accounts for under 100 contracts have time priority over all other bids or offers; and (2) any bid or offer for the account of a member which relies on the exemption under Section 11(a)(1)(G) of the Act must yield time priority to any bid or offer for the account of a customer. However as stated in Rule 119 (b) and (c), if a bid does not have precedence in time or if it is impossible to determine time priority, all bids have parity subject to precedence based on the size of the bid at that particular price. Accordingly, the Phlx's block trading proposal will allow trades to be executed outside a previous quoted market while reserving priority and precedence protections for customer orders and those orders constituting the "best market" within the quoted block trading price range.

[14] 15 U.S.C. section 78s(b)(2) (1993).

[15] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34-33129; File No. SR-NSCC-93-10]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Certain Legal Consequences of Continuous Net Settlement Processing

November 1, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 3, 1993, National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. The Commission is publishing this notice to solicit comments on the proposal from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change makes explicit certain legal consequences of Continuous Net Settlement ("CNS") processing as described below in Item II(A).

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and statutory basis for the proposed change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC's current Rules and Procedures, including formal interpretations thereof and statements of policy pertaining thereto (collectively, the "Rules"), provide that NSCC becomes the contra-party to CNS transactions so that rights of receiving members to receive securities are against NSCC and the obligations of delivering members to deliver securities run the NSCC.[2] Thus, CNS deliveries are processed by having securities transferred from the accounts of the delivering members at the Depository Trust Company ("DTC") to an NSCC account at DTC, and CNS receives are processed by having securities transferred from the NSCC account to the receiving members' DTC accounts. NSCC has always taken the view that a legal consequence of its Rules is that securities transferred to NSCC's account and not retransferred to a receiving member because NSCC has ceased to act for the receiving member and needs to close-out its long positions become NSCC's property and, as such, may be pledged by NSCC to finance the close-out of the positions of the receiving member for whom NSCC has ceased to act.

In addition, NSCC's Rules provide that NSCC will guarantee the completion of most CNS transactions as of midnight of the day the trades are reported to members as compared, which is usually midnight of T+1.[3] NSCC has always taken the view that a legal consequence of this guarantee is to cause the delivering members' obligations to deliver securities to NSCC, and the receiving members' rights to receive securities from NSCC, to arise at the time the guarantee becomes effective. Thus, the guarantee operates by creating these rights and obligations. Once a receiving member has a right to receive from NSCC rather than from another member, NSCC has, in effect, guaranteed delivery to the member. What stands behind NSCC's obligation to deliver to the receiving members is a corresponding obligation on the part of the delivering members, arising at the same time, to make delivery to NSCC.

The proposed rule change makes explicit the aforementioned legal consequences of NSCC's Rules relating to both CNS receive and deliver obligations and NSCC's guarantee thereof. NSCC is amending its Rules to provide the degree of legal assurance required by its primary lender in connection with an amendment to NSCC's line of credit provided by that lender which raises the amount of the line of credit from $200 million to $300 million and which permits NSCC to pledge under the line of credit securities delivered to NSCC as part of CNS processing.

By increasing its committed line of credit from $200 million to $300 million and obtaining the ability to pledge under the line of credit securities delivered to NSCC as part of CNS processing, NSCC is providing additional assurances to its members and the investing public that trades to be settled through the CNS system will settle in a timely manner. The proposed rule change is required in connection with these changes to the line of credit.

Therefore, NSCC believes that the proposal is consistent with the requirements of the Act, in particular section 17A(b)(3)(F) thereof, because it facilitates the prompt and accurate clearance and settlement of securities transactions as required by that section.

(B) Self-Regulatory Organization's Statement on Burden on Competition

NSCC does not believe that the proposed rule change will impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A)(i) of the Act and Rule 19b-4(e)(1) thereunder because it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within sixty days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Those wishing to make a written submission should file six copies of the submission with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, subsequent amendments, written statements with respect to the proposed change that are filed with the Commission, and written communications relating to the proposal between the Commission and any persons, other than those that may be withheld from the public in accordance with 5 U.S.C. section 552, will be available for inspection and copying in

[1] 15 U.S.C. section 78s(b)(1) (1988).

[2] NSCC's Rules and Procedures, Rule 11, Section 1.

[3] NSCC's Rules and Procedures, Addendum M.

the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of NSCC. All submissions should refer to File No. SR–NSCC–93–10 and should be submitted by December 1, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27659 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33143; File No. SR–NASD–93–62]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to a Waiver of SOES and SelectNet Fees for November and December 1993

November 3, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 2, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), the National Association of Securities Dealers, Inc. ("NASD" or "Association") is proposing to waive member fees associated with the operation of the Small Order Execution System ("SOES") and SelectNet for November and December 1993. Specifically, the NASD proposes to waive the SelectNet fees imposed by Section A.13. of Part VIII to Schedule D of the NASD's By-Laws [1] and the SOES fees imposed by Section f) of the SOES Rules.[2]

[4] 17 CFR 200.30–3(a)(12) (1992).

[1] NASD Manual, Schedules to the By-Laws, Schedule D, Part VIII, Sec. A, (CCH) ¶ 1850.

[2] NASD Manual, SOES Rules, Sec. f), (CCH) ¶ 2463.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

This rule change reflects the Corporation's determination to temporarily waive the collection of SOES and SelectNet fees for November and December 1993. Such action is the result of positive developments in The Nasdaq Stock Market ("Nasdaq") for 1993, including members' increased usage of Nasdaq's Small Order Execution System ("SOES") and SelectNet system. The waiver of SOES and SelectNet fees for the remainder of 1993 will maintain total revenue from these systems at levels believed to be reasonable in relation to recovery of the development and ongoing operational costs associated with these systems.

The NASD believes that the proposed rule change is consistent with and in furtherance of section 15A(b)(5) of the Act. Section 15A(b)(5) requires that the rules of a national securities association provide for the equitable allocation of reasonable dues, fees and other charges among members and issuers and other persons using any facility or system which the association operates or controls. By waiving SOES and SelectNet fees for a limited two-month period, the NASD believes that the total fees assessed for SOES and SelectNet usage by members will remain at levels sufficient to ensure satisfaction of the statutory mandate that these fees be reasonable and equitably allocated.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NASD believes that the proposed rule change will not result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder because the proposal establishes or changes a due, fee, or other charge imposed by the NASD. At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 1, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27663 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

[3] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–19636; 812–8340]

Emerald Funds et al.; Application

November 4, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("the Act").

APPLICANTS: Emerald Funds (the "Trust"), Emerald Asset Management, Inc. ("EAM"), Concord Holding Corporation ("Concord"), Barnett Banks Trust Company, N.A. ("Barnett"), BNY Hamilton Funds, Inc., (the "Fund"), BNY Hamilton Distributors, Inc. ("BDI"), and The Bank of New York ("BNY"). Applicants request that any relief granted pursuant to the application also apply to any investment company for which Barnett, BNY, or any subsidiary of Concord acts now or in the future as investment adviser or distributor and which elects to adhere to the representations and conditions set forth in the application (together with the Trust and the Fund, the "Companies").[1]

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an amendment to a prior order (the "Prior Order") to permit the Companies to offer an unlimited number of classes or series of shares in the same portfolio.[2] In addition, the amendment would permit the imposition and waiver of a contingent deferred sales charge ("CDSC") on redemptions of shares of the Companies' non-money market portfolios, and the implementation of certain conversion features.

FILING DATE: The application was filed on March 31, 1993, and amended on July 30, 1993. By supplemental letter dated November 2, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m., on November 29, 1993 and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants: the Trust, EAM, Concord, the Fund, and BDI, 125 W. 55th St., 11th Floor, New York, NY 10019. Barnett, 9000 Southside Boulevard, Building 100, 6th Floor, Jacksonville, FL 32203. BNY, 1 Wall Street, 7th Floor, New York, NY 10286.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3922 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is a Massachusetts business trust registered under the Act as an open-end management investment company of the series type. As of the date of the application, the Trust offered fourteen classes of shares representing eight separate investment portfolios. Three of the portfolios, the Prime Fund, Treasury Fund, and Tax-Exempt Fund, are money market portfolios operating under rule 2a–7 under the Act. Each of these portfolios currently offers three classes of shares (known as Emerald Shares, Emerald Service Shares, and Investor Shares) to both institutional and individual investors pursuant to the Prior Order. Two other of the portfolios, the Prime Trust Fund and Treasury Trust Fund, also are money market portfolios, each of which currently offers a single class of shares solely to specified fiduciary accounts. Each of the three other portfolios, the Equity fund, U.S. Government Securities Fund, and Florida Tax-Exempt Fund, currently offers a single class of shares, subject to a front-end sales load, to institutional and individual investors.

2. The Fund is a Maryland corporation registered under the Act as an open-end management investment company of the series type. As of the date of the application, the fund offered four classes representing interests in four separate investment portfolios. The fund offers the Money Fund, a money market portfolio operating under rule 2a–7 under the Act, and the Equity Income Fund, Intermediate Government Fund, and Intermediate New York Tax-Exempt Fund. Shares in each of these four investment portfolios are currently offered to investors without a sales load.

3. The investment portfolios offered by the Trust and the Fund, together with all investment portfolios that may be offered by a Company in the future, are referred to herein as the "Portfolios."

4. Barnett serves as the Trust's investment adviser, and EAM serves as the Trust's distributor. BNY serves as the Fund's investment adviser, and DBI serves as the Fund's distributor.

5. Under the current distribution arrangement, shares of each of the Trust's Portfolios are offered by EAM to Barnett, its affiliates, and other institutional and individual investors at net asset value per share plus, for the non-money market Portfolios, a front-end sales load. Under the current distribution arrangement, shares of each of the Fund's Portfolios are offered by BDI at net asset value per share.

6. The Prior Order permits the Trust to issue separate classes of shares representing interests in the Treasury Fund, Prime Fund, and Tax-Exempt Fund investment portfolios. Applicants propose that each Company be permitted to offer an unlimited number of classes of shares in its existing and future Portfolios. These classes might be offered (a) in connection with a plan or plans adopted pursuant to rule 12b–1 under the Act (a "Distribution Plan"); and/or (b) in connection with a non-rule 12b–1 administrative plan or plans (an "Administrative Plan"); and/or (c) in connection with the allocation of certain expenses ("Class Expenses") that are directly attributable only to certain of such classes; and/or (d) subject to the imposition of varying front-end sales charges; and/or (e) subject to the imposition of varying CDSCs; and/or (f) subject to certain conversion features.

7. Applicants intend that any order issued by the Commission pursuant to the application will supersede the Prior Order, such that applicants would thereafter adhere only to the representations and conditions set forth

[1] Barnett does not act as investment adviser to any investment company other than the Trust, and BNY does not act as investment adviser to any investment company other than the Fund. Although subsidiaries of Concord currently act as distributors of other investment companies, such other investment companies do not presently intend to rely on the requested order. Applicants request, however, that any such investment company may rely on the order in the future if such company determines to issue multiple classes of shares in accordance with the representations and conditions of the order.

[2] Investment Company Act Release Nos. 17361 (Mar. 1, 1990) (notice) and 17408 (Apr. 4, 1990) (order).

in the application. Any classes of shares that have been created pursuant to the Prior Order will conform to the representations and conditions of the current application and will continue to be offered and sold under any new order issued by the Commission.

8. With respect to each class, a Company could adopt a Distribution Plan and/or an Administrative Plan (collectively, the "Plans") concerning the financing of marketing programs intended to result in the sale of shares and the provision of various distribution and administrative services. Such services might be provided directly by a Company's distributor and/or administrator, or by groups, organizations or institutions ("Organizations") which have entered into agreements with the Company or its distributor or administrator concerning the provision of services to the clients, members, or customers of such Organizations who from time to time beneficially own shares of a particular class.

9. When a class is subject to a Distribution Plan and an Administrative Plan, the provision of services under one plan would augment (and not be duplicative of) the services provided under the other plan.

10. In all cases, the Companies shall comply with Article III, Section 26 of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. as it relates to the maximum amount of asset-based sales charges and service fees that may be imposed by an investment company.

11. Each class will bear payments under the Plans relating to such class ("Plan Payments"). In addition, a company will identify other Class Expenses that are directly attributable to a particular class and should be allocated to that class exclusively, consisting of the following: (a) Transfer agent fees identified by the transfer agent as being attributable to a specific class of shares; (b) fees and expenses of the administrator that are identified and approved by the Company's board as being attributable to a specific class of shares; (c) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders of a class; (d) blue sky registration fees incurred by a class of shares; (e) SEC registration fees incurred by a class of shares; (f) the expense of administration personnel and services as required to support the shareholders of a specific class; (g) litigation or other legal expenses or audit or other accounting expenses relating solely to one class of shares; and (h) directors' or trustees' ("trustees") fees incurred as a result of issues relating to one class of shares. Any additional Class Expenses not specifically identified above which are subsequently identified and determined to be properly allocated to one class of shares shall not be so allocated until approved by the Commission pursuant to an amended order.

12. Expenses of a Company that can not be attributed directly to any one Portfolio will be allocated to each Portfolio based on the relative net assets of such Portfolio or as otherwise determined under the supervision of its trustees. Certain expenses may be attributable to a Portfolio but not to a particular class. These expenses will be allocated to each class on the basis of relative net asset value of the respective classes in the Portfolio.

13. A Company's investment adviser or other service contractor may choose to reimburse or waive Class Expenses on certain classes on a voluntary, temporary basis. The amount of Class Expenses waived or reimbursed by the investment adviser or other service contractor may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same portfolio.

14. In addition, the investment adviser or other service contractor may waive or reimburse Company Expenses and/or Portfolio Expenses (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amount of Company Expenses and/or Portfolio Expenses are waived or reimbursed for each class. Thus, any Company Expenses that are waived or reimbursed would be credited to each class of a portfolio based on the relative net assets of the classes. Similarly, any Portfolio Expenses that are waived or reimbursed would be credited to each class of that portfolio according to the relative net assets of the classes. Company Expenses and Portfolio Expenses apply equally to all classes of a given portfolio. Accordingly, it may not be appropriate to waive or reimburse Company Expenses or Portfolio Expenses at different levels for different classes of the same portfolio.

15. Because of the Plan Payments and Class Expenses that may be borne by each class of shares, the per share net income of, and dividends to, each class may be different from the per share net income of, and dividends to, the other classes of shares of the Portfolio. Dividends paid to each class of shares in a Portfolio would, however, be declared and paid on the same days and at the same times, and, except as noted with respect to the expenses of Plan Payments and Class Expenses, would be determined in the same manner and paid in the same amounts.

16. In addition, except for those Portfolios that seek to maintain a stable net asset value per share, or that declare dividends of net investment income daily, the net asset value attributable to each class of a Portfolio's shares may diverge over time due to the payment of Plan Payments or Class Expenses, if any. The extent of such divergence would be affected by the accrued per share net income to which the holders of a class are entitled, but which has not yet been declared as a dividend.

17. Shares of classes of the non-money market portfolios may be subject to a CDSC if such shares are redeemed within a prescribed period of time after their purchase. The amount of the CDSC would be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the shares at the time of purchase, or the amount that represents the same or lesser percentage of the net asset value of the shares at the time of redemption.

18. No CDSC would be imposed with respect to: (a) The portion of redemption proceeds attributable to increases in the value of the shares due to capital appreciation; (b) shares acquired through the reinvestment of income dividends or capital gain distributions; or (c) shares held for more than a certain period of time after their purchase. Shareholders might also be credited with any CDSC paid if a reinvestment occurs within a certain period after a redemption. Any such credit would be paid by the distributor. In determining whether a CDSC would be payable, it would be assumed that shares, or amounts representing shares, that are not subject to a CDSC would be redeemed first and other shares or amounts would be redeemed in the order purchased.

19. The amount of the CDSC and the timing of its imposition for a class of a Portfolio may vary among the Portfolios. Any changes in the specified terms of a CDSC arrangement with respect to its implementation by a Portfolio will be reflected in the Portfolio's prospectus. In addition, any such change will not affect shares that have already been issued unless such change would result in terms more favorable to the holders of such shares, such as by reducing the amount of the CDSC or reducing the period during which a redemption

would be subject to a CDSC. No CDSC would be imposed on any shares purchased prior to the effective date of the requested order or prior to the amendment of the affected Portfolio's prospectus disclosing the CDSC arrangement.

20. Applicants propose to vary or waive the CDSC for the following redemptions: (a) Redemptions in connection with required (or, in some cases, discretionary) distributions to participants or beneficiaries of an employee pension, profit-sharing, or other trust or qualified retirement or Keogh plan, individual retirement account, or custodial account maintained pursuant to section 403(b)(7) of the Internal Revenue Code;[3] (b) redemptions in connection with required (or, in some cases, discretionary) distributions to participants in qualified retirement or Keogh plans, individual retirement accounts, or custodial accounts maintained pursuant to section 403(b)(7) of the Internal Revenue Code due to death, disability, or the attainment of a specified age; (c) redemptions effected pursuant to a Portfolio's right to liquidate a shareholder's account if the aggregate net asset value of shares held in the account is less than the minimum account size; (d) redemptions in connection with the combination of the Portfolios with any other investment company registered under the Act by merger, acquisition of assets, or by any other transaction; (e) redemptions in connection with the death or disability of a shareholder; (f) redemptions of shares that qualify for rights of accumulation, privileges under a letter of intent, or quantity discount; (g) redemptions resulting from a tax-free return of an excess contribution pursuant to section 408(d) (4) or (5) of the Internal Revenue Code; (h) redemptions made in connection with a systematic withdrawal plan; (i) redemptions of shares held by current and/or former board members, officers, and employees (and their families) of the applicants and current and/or former registered representatives or employees (and their families) of banks or broker/dealers that have entered into selling agreements with respect to the applicants' shares; (j) redemptions by a state, county, or city, or any instrumentality thereof, and/or by trust companies and bank trust departments; (k) redemptions effected by advisory accounts managed by Barnett, BNY, or other firms registered (or exempt from registration) under the Investment Advisers Act of 1940; (l) redemptions pursuant to a qualified domestic affairs order, as defined in section 414(p) of the Internal Revenue Code; or (m) redemptions of shares purchased with dividends or distributions earned in other Portfolios. If a Portfolio waives or reduces a CDSC, such action will be applied uniformly to all offerees in the specified class.

21. Exchange privileges may be available to shareholders to permit the exchange of shares of one Portfolio (including shares subject to a CDSC) for shares of another Portfolio having similar characteristics; the exchange of shares of an equity Portfolio or a fixed income Portfolio for shares of a money market portfolio (or vice versa); and/or the exchange of shares of one class of a Portfolio for shares of another class of the same Portfolio. Any exchange of shares will comply with rule 11a-3 under the Act.

22. Shares of certain CDSC classes ("Convertible CDSC Shares") could automatically convert into shares of non-CDSC classes ("Non-CDSC Shares") after a prescribed period following the purchase of the Convertible CDSC Shares. Shares acquired through the reinvestment of dividends and other distributions paid with respect to Convertible CDSC Shares will also be Convertible CDSC Shares. However, such Convertible CDSC Shares will convert to Non-CDSC Shares on the earlier of a prescribed period following the date of such reinvestment or the conversion date of the most recently purchased Convertible CDSC Shares which were not acquired through the reinvestment of dividends or other distributions.

23. Non-CDSC Shares into which Convertible CDSC Shares may be converted will in all cases be subject to lower aggregate distribution and administrative support services fees and other ongoing Class Expenses than Convertible CDSC Shares.

Applicants' Legal Analysis

1. Applicants request an amendment to the Prior Order to the extent that the proposed issuance and sale of shares representing interests in a Company's existing and future Portfolios might be deemed: (a) To result in a "senior security" within the meaning of section 18(g) of the Act and to be prohibited by section 18(f)(1) of the Act; and (b) to violate the equal voting provisions of section 18(i) of the Act. In addition, applicants request an amendment to the Prior Order under sections 2(a)(32), 2(a)(35), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the imposition and waiver of a CDSC on redemption of shares of the non-money market Portfolios and the conversion of some or all of the classes affected by a CDSC into a non-CDSC class after a prescribed period following the purchase of the original shares.

2. Applicants assert that by offering shares as described, the Companies will be able to address more precisely the needs of particular investors and to cause the associated expenses to be borne by such investors. Applicants state that the proposed allocation of expenses and voting rights relating to the Plans in the manner described is equitable and would not discriminate against any group of shareholders. Activities financed by Plan Payments or Class Expenses would be intended for the investors that purchase the shares bearing these Payments and Expenses.

3. Applicants state that the proposed arrangement would not involve borrowings and would not affect the Companies' existing assets or reserves. The proposed arrangement will not increase the speculative character of the shares in a Portfolio, since all shares will participate pro rata in all of the Portfolio's income and all of the Portfolio's expenses (with the exception of the proposed Plan Payments and Class Expenses).

4. Applicants assert that the requested exemptions are appropriate in the public interest and are consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in one Portfolio of a Company, and will be identical in all respects, except as set forth below. The only differences among the classes of shares of the same Portfolio will relate solely to: (a) The impact of (i) expenses assessed to a class pursuant to a Plan, (ii) other Class Expenses which would be limited to (A) transfer agency fees identified by the transfer agent as being attributable to a specific class of shares; (B) fees and expenses of a Company's administrator that are identified and approved by the Company's board as being attributable to a specific class of shares; (C) printing and postage expenses related to preparing and distributing materials such as

[3] The distributions referenced in clauses (a) and (b) refer solely to distributions that are either required under the Internal Revenue Code or other applicable law or are made at the discretion of a participant, beneficiary, or fiduciary of a listed plan or account.

shareholder reports, prospectuses, and proxies to current shareholders of a class; (D) blue sky registration fees incurred by a class of shares; (E) SEC registration fees incurred by a class of shares; (F) the expense of administrative personnel and services as required to support the shareholders of a specific class; (G) litigation or other legal expenses or audit or other accounting expenses relating solely to one class of shares; and (H) trustees' fees incurred as a result of issues relating to one class of shares; and (iii) any other incremental expenses subsequently identified that should be properly allocated to one class and which are approved by the Commission pursuant to an amended order; (b) the fact that the classes will vote separately with respect to a Portfolio's Plans and any other matter submitted to shareholders relating to Class Expenses, except as provided in condition 17 below; (c) the different exchange privileges of the classes of shares; (d) the designation of each class of shares; and (e) certain conversion features offered by some of the classes.

2. The board of trustees of a Company, including a majority of the independent trustees, will approve the offering of different classes of shares under the multi-class distribution system. The minutes of the meetings of the trustees regarding the deliberations of the trustees with respect to the approvals necessary to implement a multi-class system will reflect in detail the reasons for the trustees' determination that the proposed multi-class system is in the best interests of both the Company involved and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of a Company, including a majority of the trustees who are not interested persons of the Company. Any person authorized to direct the allocation and disposition of monies paid or payable by a Company to meet Class Expenses shall provide to the board of trustees, and the trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees of a Company, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Portfolio having a multi-class system for the existence of any material conflicts among the interests of the various classes of each Portfolio. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. A Portfolio's investment adviser and distributor will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, a Portfolio's investment adviser and/or distributor at their own cost will remedy such conflict up to and including establishing a new registered management investment company.

5. Any Administrative Plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders need not enjoy the voting rights specified in rule 12b–1.

6. The trustees of a Company will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing expenditure charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees in the exercise of their fiduciary duties.

7. Dividends paid by a Portfolio with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that Plan Payments relating to each respective class of shares will be borne exclusively by that class.

8. The methodology and procedures for calculating the net asset value and dividends and distributions of various classes in any Portfolio having a multi-class distribution system and the proper allocation of expenses among the various classes in each such Portfolio have been reviewed by an expert (the "Expert") who has rendered a report to the Company involved, which report has been provided to the staff of the Commission, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Company involved that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Company involved (which the Company agrees to provide), will be available for inspection by the Commission's staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, and Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper allocation of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 8 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 8 above. Applicant will take immediate corrective measures if this representation is not concurred in by the Expert or appropriate substitute Expert.

10. The prospectuses of each Portfolio having a multi-class system will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing shares of a Portfolio may receive different compensation with respect to one particular class of shares over another in the same Portfolio.

11. The distributor for a Company having a multi-class system will adopt compliance standards for any Portfolio which has a multi-class system, which standards will relate to when each class of shares may appropriately be sold to

particular investors. Applicants will require all persons selling shares of a Portfolio having a multi-class system to agree to conform to such applicable standards.

12. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees with respect to the multi-class system will be set forth in guidelines which will be furnished to the trustees of a Company having a multi-class system.

13. Each Portfolio having a multi-class system will disclose the respective expenses, performance data, distribution arrangements, services, fees, front-end sales loads, conversion features, CDSCs, and exchange privileges applicable to each class of shares in a Portfolio in every prospectus relating to such Portfolio, regardless of whether all classes of shares are offered through each prospectus. Each such Portfolio will disclose the respective expenses and performance data applicable to all classes of shares in a Portfolio in every shareholder report relating to such Portfolio. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Portfolio. To the extent any advertisement of sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of any Portfolio's net asset value and public offering price will present each class of shares separately.

14. Applicants acknowledge that the grant of the amended order requested by the application will not imply Commission approval, authorization or acquiescence in any particular level of payments that the Portfolios may make pursuant to a Plan in reliance on the exemptive order.

15. If a CDSC arrangement is implemented with respect to shares of a Portfolio, applicants agree to comply with the provisions for proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

16. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sale charge and/or service fee (as those terms defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service to which they were subject prior to the conversion.

17. If a Company implements any amendment to its Distribution Plan(s) (or, if presented to shareholders, adopts or implements any amendment to an Administrative Plan or Plans) that would increase materially the amount that may be borne by the Non-CDSC Shares under the Plan, existing Convertible CDSC Shares will stop converting into the Non-CDSC Shares unless the Convertible CDSC Shares, voting separately as a class, approve the proposal. The trustees will take such action as is necessary to ensure that Convertible CDSC Shares are exchanged or converted into a new class of shares ("New Non-CDSC Shares"), identical in all material respect to the Non-CDSC Shares as they existed prior to the implementation of the proposal, no later than the date such Shares previously were scheduled to convert into Non-CDSC Shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Convertible CDSC Shares for a new class ("New Convertible CDSC Shares"), identical to the existing Convertible CDSC Shares in all material respects excepts that the New Convertible CDSC Shares will convert into New Non-CDSC Shares. New Non-CDSC Shares or New Convertible CDSC Shares may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be affected in a manner that the trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4, any additional cost associated with the creation, exchange, or conversion of New Non-CDSC Shares or New Convertible CDSC Shares shall be borne solely by the adviser and the distributor. Convertible CDSC Shares sold after implementation of the proposal may convert into Non-CDSC Shares subject to the higher maximum payment, provided that the material features of the Non-CDSC Share Plan and the relationship such plan to the Convertible CDSC Shares are disclosed in an effective registration statement.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27680 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19834; 812–8562]

Weitz Partners, Inc., et al.; Notice of Application

November 4, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Weitz partners, Inc. (the "Company"), Weitz Partners–II Limited Partnership (the "Partnership"), Wallace R. Weitz & Company (the "Adviser"), and Mr. Wallace R. Weitz ("Weitz").

RELEVANT ACT SECTIONS: Order requested under section 17(b) of the Act for an exemption from the provisions of section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would permit the exchange of shares of Partners Value Fund for portfolio securities of the Partnership, after which the Partnership will dissolve and distribute the shares it received in the exchange *pro rata* to its partners.

FILING DATE: The application was filed on August 26, 1993, and amended on October 29, 1993. By supplemental letter dated November 3, 1993, counsel to applicants agreed to file an amendment during the notice period to make certain changes to its application. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549.

Applicants, Suite 405, 9290 West Dodge Road, Omaha, Nebraska 68114–3349.

FOR FURTHER INFORMATION CONTACT: James J. Dwyer, Staff Attorney, at (202) 504–2920, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was organized in 1983 as a limited partnership under Nebraska law. The Partnership has not been registered under the Act in reliance upon section 3(c)(1) of the Act, and the Partnership interests have not been registered under the Securities Act of 1933 (the "Securities Act") in reliance upon section 4(2) thereof. Weitz is the sole general partner of the Partnership and has exclusive control over the management of its business. Weitz has maintained an investment (contributed in the form of cash and/or securities, not "services rendered") in the Partnership not less than 1% of the net assets of the Partnership, and is allocated net income, gains, and losses of the Partnership in accordance with his investment. In addition, Weitz currently is the portfolio manager of the Partnership. The Adviser is the sole adviser to the Partnership.

2. The Company is an open-end non-diversified investment company of the series type organized under Nebraska law. The Company currently is comprised of one portfolio, Partners Value Fund ("Value Fund"). The Company's registration under the Securities Act is currently pending, and no offering of the shares of Value Fund has commenced. The Adviser acts as investment adviser to the Company, and will act as investment adviser to Value Fund. The principal underwriter for the shares of Value Fund will be Weitz Securities, Inc. ("Weitz Securities"). Weitz is the chief executive officer and sole stockholder of the Adviser and Weitz Securities.

3. Applicants propose that the Partnership exchange its portfolio securities for shares of Value Fund, after which the Partnership would dissolve and distribute the shares of Value Fund *pro rata*, based on the net asset value of the Partnership, to the partners of the Partnership, including Weitz as general partner, along with cash received, if any, from the sale of the portfolio securities of the Partnership not acquired by Value Fund. After the exchange, partners of the Partnership will constitute all of the holders of shares of Value Fund. The exchange was proposed to permit the limited partners of the Partnership to invest in a larger fund, and to eliminate administrative burdens, filing requirements, and complicated allocation calculations currently faced by the Partnership.

4. Value Fund will be sold without any load or sales charge, will not pay rule 12b–1 distribution fees, and will not enlist the assistance of an outside broker-dealer to market its shares. It is anticipated that, at least for the foreseeable future, shares of Value Fund will be marketed to essentially the same classes of persons and in the same manner as the interests in the Partnership have been to date.

5. Value Fund has been designed as a successor investment vehicle to the Partnership, with investment objectives and policies substantially the same as those of the Partnership. The same person, Weitz, who selected the investments for the Partnership will select them for Value Fund.

6. The proposed exchange will be effected pursuant to an agreement and plan of exchange (the "Plan") to be approved by the limited partners of the Partnership, in accordance with Nebraska law and the Partnership's agreement of limited partnership. Under the Plan, the portfolio securities of the Partnership will be acquired at their independent "current market price," as defined in rule 17a–7 under the Act. Value Fund will not acquire securities that, in the opinion of the Adviser, would result in a violation of Value Fund's investment objectives, policies, or restrictions.

7. The Company's board of directors has considered the desirability of the exchange from the point of view of the Company and the Partnership, and a majority of the board, including a majority of the non-interested members, has concluded that (a) the exchange is in the best interest of Value Fund, the Partnership, and the limited partners of the Partnership, (b) the exchange will not dilute the interests of the partners of the Partnership when their interests are converted into shares of Value Fund, and (c) the terms of the exchange as reflected in the Plan have been designed to meet the criteria set forth in section 17(b) of the Act that the exchange be reasonable and fair, not involve overreaching, and be consistent with the policies of Value Fund and the Partnership. The board considered each aspect of the exchange, including (a) the method of valuing the portfolio securities to be acquired from the Partnership, (b) the net asset value of the shares to be delivered to the Partnership, (c) the procedure for selecting among the portfolio securities of the Partnership, (d) the possibility of incurring excessive brokerage costs, (e) the allocation of the costs of the exchange, (f) the possibility of adverse tax consequences to future shareholders of Value Fund, and (g) the benefits from the exchange accruing to Weitz and the Adviser.

8. The exchange will not be effected unless the following conditions are satisfied: (9a) the registration statements of Value Fund under the Act and the Securities Act have been declared effective, (b) the Plan has been approved by the limited partners of the Partnership, (c) the requested order has been granted, and (d) the limited partners have received an opinion of counsel that (i) the distribution of Value Fund shares from the Partnership to its limited partners; which will be in liquidation of the Partnership interests in the Partnership, will not cause taxable gain or loss to be recognized by the limited partners, (ii) the basis to the limited partners for the Value Fund shares will be equal to the adjusted basis of the limited partners' interests in the Partnership, and (iii) the limited partners' holding periods with respect to the Value Fund shares will include the Partnership's holding period with respect to such shares.

9. The Adviser will assume the costs of the exchange, except for registration and filing fees of the shares of Value Fund, and will assume the legal fees and expenses relating to the requested order and the obtaining of the opinion of counsel on certain tax matters. Value Fund may pay proceeds of a redemption of its shares of a former partner of the Partnership in-kind, rather than in cash, in order to avoid the issuance of excessive brokerage costs by Value Fund after the exchange. No brokerage commission, fee, or other remuneration will be paid in connection with the exchange.

10. After the exchange is accomplished, the Adviser intends for the foreseeable future to manage the assets of Value Fund in substantially the same manner as it did for the Partnership, except as may be necessary or desirable (a) to qualify Value Fund as a regulated investment company under the Internal Revenue Code of 1986, as amended, (b) to comply with the investment restrictions adopted by Value Fund in accordance with the requirements of the Act or securities laws of states where Value Fund shares will be offered, or (c) in light of changed market conditions.

Applicants' Legal Conclusions

1. Section 17(a) of the Act, in relevant part, prohibits an affiliated person of a registered investment company, or affiliate thereof, from selling to or purchasing from such investment company any security or other property. Applicants contend that the Company and the Partnership may be deemed to be affiliated persons of each other, or affiliates thereof, by, among other reasons, being under the common control of the Adviser and Weitz. Thus, applicants submit, the proposed exchange may be prohibited by section 17(a). Section 17(b) authorizes the SEC to exempt a proposed transaction from section 17(a) if evidence establishes that the terms of the transaction, including the consideration to be paid or received, are reasonable and fair and do not involve overreaching on the part of any person concerned, the transaction is consistent with the policies of the registered investment company, and the transaction is consistent with the general purposes of the Act.

2. Applicants assert that the proposed transaction satisfies the criteria of section 17(b). They contend that, given that Value Fund and the Partnership have similar investment objectives and policies, Value Fund will attempt to assemble a portfolio of securities substantially similar to that held by the Partnership. Applicants assert that Value Fund will acquire the Partnership securities at their independent "current market price." Applicants assert that this price will be as advantageous to Value Fund as open-market purchases. In addition, by acquiring suitable securities from the Partnership, Value Fund will avoid incurring brokerage and other transaction costs. Applicants further assert that neither the limited partners nor the Adviser nor Weitz will be in a position to influence the valuation of the securities acquired by Value Fund.

3. Applicants submit that the exchange is consistent with the general purposes of the Act because it does not give rise to the abuses that section 17(a) was designed to prevent, and, in fact, is consistent with the purposes underlying rule 17a–7. They contend that the exchange can be viewed as a change in the form in which the assets are held, rather than as a disposition giving rise to section 17(a) concerns.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27681 Filed 11–9–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–82; Notice 1]

Rover Group Ltd.; Receipt of Petition for Determination of Inconsequential Noncompliance

Rover Group Ltd. (Rover) of Lanham, Maryland has determined that some of its spare wheels fail to comply with 49 CFR 571.120, "Tire Selection and Rims for Motor Vehicles Other Than Passenger Cars," (Federal Motor Vehicle Safety Standard (FMVSS) No. 120), and has filed an appropriate report pursuant to 49 CFR part 573. Rover has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.2 of FMVSS No. 120 requires that each rim shall be marked with the following:

(a) A designation which indicates the source of the rim's published nominal dimensions * * *. (b) The rim size designation * * *. (c) The symbol DOT, constituting a certification by the manufacturer of the rim that the rim complies with all applicable motor vehicle safety standards. (d) A designation that identifies the manufacturer of the rim by name, trademark, or symbol. (e) The month, day, and year, or the month and year, of manufacture, expressed in numerals.

Between March 8, 1993 and July 8, 1993, Rover produced 1,703 model year 1993 Range Rover County and County LWB vehicles with spare wheels that do not comply with Paragraph S5.2 of FMVSS No. 120. In addition, approximately 39 noncompliant replacement wheels were manufactured that may have entered the U.S. parts distribution system with the same noncompliance.

The rims on the subject wheels may be lacking the designation that indicates the source of the rim's published nominal dimensions (S5.2(a)), the "DOT" certification (S5.2(c)), and a wholly numerical date code (S5.2(e)).

Rover cites the following reasons for requesting an exemption from the notification and remedy requirements:

A. The tire and rim of the affected spare wheels are properly matched, and are appropriate for the load-carrying characteristics of these vehicles. The lack of complete rim marking has no effect on the performance of the tire/rim combination.

B. The alloy wheels attached to the vehicles contain all of the FMVSS No. 120 required information. As these alloy wheels are the same size as the spare wheel, they should provide an adequate reference for any required information required by the owner/operator/mechanic.

C. The persons who change tires rely primarily on the information marked on the sidewalls of the tires being removed. Under this circumstance, the most likely source of information to be consulted on the wheel is the wheel size, which is included on the subject steel wheels.

D. The vehicle owner's manual references the proper wheel and tire size, and wheel/tire information appears on the certification label fitted to the edge of the driver's door. (Certain of these vehicles built before May 22, 1993 are also the subject of a July 2, 1993 Part 573 Report, and subsequent recall campaign.)

E. The subject spare wheels include a date code that can be decoded by Rover Group and the wheel manufacturer, Dunlop, which companies, in accordance with 49 CFR 571.120 S5.2(d), may be contacted should there by any confusion about the source of the published nominal dimensions of the wheel or its certification status.

F. NHTSA has long maintained the policy that the omission of the certification (DOT) symbol is not the type of noncompliance requiring notification and remedy.

Rover believes that the safety goals of FMVSS 120 have been achieved by means of the wheel size (the information most often referenced by service personnel) being marked on the steel spare wheel and all required information being provided to the vehicle operator or service personnel (1) on the four alloy wheels installed on the vehicle axles, (2) the vehicle owner's manual and (3) the certification label fitted to the edge of the driver's door. Therefore, we submit that the failure to provide a wholly numerical date code, "DOT" certification mark and the source of the rim's published nominal dimensions on the subject spare wheels is inconsequential as it relates to motor vehicle safety.

Interested persons are invited to submit written data, views, and arguments on the petition of Rover, described above. Comments should refer to the Docket Number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room

5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 10, 1993.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on: November 4, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–27682 Filed 11–9–93; 8:45 am]

BILLING CODE 4910–62–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 4, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Departmental Offices/Office of Foreign Assets Control

OMB Number: 1505–0130.

Form Number: None.

Type of Review: Extension.

Title: Iraqi Sanctions Regulations.

Description: This submission will provide the U.S. Government with information to be used in administering and enforcing sanctions against Iraq.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents: 1,000.

Estimated Burden Hours Per Response: 1 hour, 54 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 1,900 hours.

Clearance Officer: Lois K. Holland (202) 622–1563, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–27692 Filed 11–9–93; 8:45 am]

BILLING CODE 4810–25–P

Public Information Collection Requirements Submitted to OMB for Review

November 4, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1191.

Regulation ID Number: INTL–0868–89 Final.

Type of Review: Extension.

Title: Information With Respect to Certain Foreign-Owned Corporations.

Description: The regulations required record maintenance, annual information filing, and the authorization of the U.S. corporation to act as an agent for IRS summons purposes. These requirements will allow IRS international examiners to better audit the tax returns of U.S. corporations engaged in crossborder transactions with a related party.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Recordkeepers: 63,000.

Estimated Burden Hours Per Recordkeeper: 10 hours.

Frequency of Response: Annually.

Estimated Total Recordkeeping Burden: 630,000 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–27691 Filed 11–9–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

November 4, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service.

OMB Number: 1510–0008.

Form Number: None.

Type of Review: Extension.

Title: Pools and Associations—Annual Letter.

Description: The information is collected for the determination of an acceptable percentage for each pool and association to allow Treasury certified companies credit on their schedule F for authorized ceded reinsurance in determining the companies' underwriting limitations.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 97.

Estimated Burden Hours Per Response: 1 hour, 30 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 146 hours.

Clearance Officer: Jacqueline R. Perry, (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–27690 Filed 11–9–93; 8:45 am]

BILLING CODE 4810–35–P

Public Information Collection Requirements Submitted to OMB for Review

November 3, 1993.

The Department of the Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0032.

Form Number: CF 5125.

Type of Review: Extension.

Title: Application for Withdrawal of Bonded Stores for Fishing Vessel and Certification of Use.

Description: Customs Forms 5125 are used for the withdrawal of bonded merchandise (especially alcoholic beverages) for use on board U.S. fishing vessels and foreign or domestic vessels involved in international trade. CF 5125's are also for certification of use: total consumption or partial consumption with secured storage for use on next voyage.

Respondents: Businesses or other for-profit, Small businesses or organizations.

Estimated Number of Respondents: 500.

Estimated Burden Hours Per Respondent: 5 minutes.

Frequency of Response: On occasion.

Estimated Total Reporting Burden: 42 hours.

Clearance Officer: Ralph Meyer, (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–27689 Filed 11–9–93; 8:45 am]

BILLING CODE 4820–02–P

Fiscal Service

1994 Fee Schedule for the Transfer of U.S. Treasury Book-Entry Securities Held at Federal Reserve Banks

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Notice.

SUMMARY: The Department of the Treasury is announcing the schedule of fees to be charged in 1994 on the transfer of book-entry Treasury securities between depository institution accounts maintained at Federal Reserve Banks and Branches.

EFFECTIVE DATE: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Carl M. Locken, Jr., Assistant Commissioner (Financing), Bureau of the Public Debt, room 534, E St. Building, Washington, DC 20239–0001, telephone (202) 219–3350; Diane M. Polowczuk, Government Securities Specialist, Bureau of the Public Debt, room 534, E St. Building, Washington, DC 20239–0001, telephone (202) 219–3350.

SUPPLEMENTARY INFORMATION: On October 1, 1985, the Department of the Treasury established a fee schedule for the transfer of Treasury book-entry securities between one book-entry subaccount to another book-entry subaccount of the same depository institution, and between the subaccounts of one depository institution and the subaccounts of another depository institution that maintain their accounts at Federal Reserve Banks and Branches.

Based on the latest review of book-entry costs and volumes, the Treasury has decided to raise the off-line transfer fee from $7.90 to $9.40 for off-line transfers originated, off-line transfers received, and off-line reversal transfers received. This fee will more accurately reflect the costs of processing off-line transfers. Fees for on-line transfers will not change in 1994.

The fees described in this notice apply only to the transfer of Treasury book-entry securities. The Federal Reserve System assesses the fees to recover the costs associated with the processing of the funds component of Treasury book-entry transfer messages, as well as the costs of providing book-entry services for Government agencies. Information concerning book-entry transfers of government agency securities, which are priced by the Federal Reserve System, is set out in a separate notice published by the Board of Governors of the Federal Reserve System.

The following is the Treasury fee schedule that will be effective January 3, 1994, for the Treasury book-entry transfer service:

1994 Fee Schedule

	Cost per transfer
On-line transfers originated	$1.65
On-line reversal transfers received	1.65
Off-line transfers originated	9.40
Off-line transfers received	9.40
Off-line reversal transfers received	9.40

Dated: November 4, 1993.

Gerald Murphy,

Fiscal Assistant Secretary.

[FR Doc. 93–27676 Filed 11–8–93; 9:10 am]

BILLING CODE 4810–35–P

Office of Thrift Supervision

[AC–56; OTS No. 05233]

First Home Savings Bank, Mountain Grove, MO; Approval of Conversion Application

Notice is hereby given that on October 29, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Home Savings Bank, Mountain Grove, Missouri to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27702 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–57; OTS No. 05593]

Capital Savings Bank, FSB, Jefferson City, MO; Approval of Conversion Application

Notice is hereby given that on October 29, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Capital Savings Bank, FSB, Jefferson City,

Missouri to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27701 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–61; OTS No. 04219]

First Federal Savings and Loan Association of Kane, Kane, PA; Approval of Conversion Application

Notice is hereby given that on October 27, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Kane, Kane, Pennsylvania to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Northeast Regional Office, Office of Thrift Supervision, 10 Exchange Plaza, 18th Floor, Jersey City, New Jersey 07302.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27697 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–54; OTS No. 02499]

First Federal Savings and Loan Association of Lake County, Leesburg, FL; Approval of Conversion Application

Notice is hereby given that on November 1, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Lake County, Leesburg, Florida to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Southeast Regional Office, Office of Thrift Supervision, 1475 Peachtree Street, NE., Atlanta, GA 30309.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27704 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–60; OTS No. 036271]

North Federal Savings Bank, Chicago, IL; Approval of Conversion Application

Notice is hereby given that on October 29, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of North Federal Savings Bank, Chicago, Illinois to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27698 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–63; OTS No. 01857]

Northwestern Savings Bank, F.S.B., Fargo, ND; Approval of Conversion Application

Notice is hereby given that on October 26, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Northwestern Savings Bank, F.S.B., Fargo, North Carolina to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White.

Corporate Technician.

[FR Doc. 93–27695 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–58; OTS No. 01275]

Quaker City Federal Savings and Loan Association, Whittier, CA; Approval of Conversion Application

Notice is hereby given that on October 29, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Quaker City Federal Savings and Loan Association, Whittier, California to convert to the stock form of organization. Copies of the application are available for inspection at the Information Service Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Drive, Suite 400, San Francisco, California 94120.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27700 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–59; OTS No. 02198]

St. Francois County Savings and Loan Association, Farmington, MO; Approval of Conversion Application

Notice is hereby given that on October 29, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of St. Francois County Savings and Loan Association, Farmington, Missouri to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27699 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–55; OTS No. 02020]

Sentinel Federal Savings and Loan Association of Kansas City, Kansas City, MO; Approval of Conversion Application

Notice is hereby given that on November 1, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Sentinel Federal Savings and Loan Association of Kansas City, Kansas City, Missouri to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, Suite 600, Irving, Texas 75039.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93-27703 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–64; OTS No. 01193]

Seven Hills Savings Association, Cincinnati, OH; Approval of Conversion Application

Notice is hereby given that on October 22, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Seven Hills Savings Association, Cincinnati, Ohio to covert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, suite 800, Chicago, Illinois 60601–4360.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27694 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–62; OTS No. 07416]

Washington Savings Bank, Washington, MO; Approval of Conversion Application

Notice is hereby given that on October 26, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Washington Savings Bank, Washington, Missouri to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Freeway, suite 600, Irving, Texas 75039.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–27696 Filed 11–9–93; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 216
Wednesday, November 10, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, November 19, 1993, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW., room 540, Washington, DC 20425.

STATUS: Open to the Public.

Agenda for November 19, 1993

I. Approval of Agenda
II. Approval of Minutes of October 22, 1993 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Appointments to the Iowa Advisory Committee
VI. Hate Crimes in Indiana: A Monitoring of the Level, Victims, Locations, and Motivations
VII. New York Hearing Update
VIII. Commissioner Task Force Reports
Reauthorization
SAC Member Processes
IX. Staff Director's Report
X. Future Agenda Items
XI. Commissioner Briefing on Census

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION:
Barbara Brooks, Press and Communications (202) 376–8312.

Dated: November 8, 1993.

Emma Monroig,

Solicitor.

[FR Doc. 93–27833 Filed 11–8–93; 1:03 pm]

BILLING CODE 6335–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 2:30 p.m., Friday, November 12, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of revision of Regulation M (Consumer Leasing).

Discussion Agenda

2. Proposed amendments to Regulation B (Equal Credit Opportunity) regarding availability of appraisal reports. (Proposed earlier for public comment; Docket No. R–0782)

3. Proposed amendments to Regulation E (Electronic Fund Transfers) to cover Electronic Benefit Transfer (EBT) programs established by federal, state, or local agencies. (Proposed earlier for public comment; Docket No. R–0796)

4. Publication for comment of revision of Regulation E (Electronic Fund Transfers).

5. Proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) regarding (A) increasing the aggregate lending limit for certain small banks (proposed earlier for public comment; Docket No. R–0800); and (B) (i) exceptions to the aggregate insider lending limit; (ii) the definition of "extension of credit"; and (iii) modifications to the recordkeeping requirements (proposed earlier for public comment; Docket No. R–0809).

6. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, D.C. 20551.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–27758 Filed 11–8–93; 8:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 4:30 p.m., Friday, November 12, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–27759 Filed 11–8–93; 8:45 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 12 noon, Monday, November 15, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed delegation of authority.
2. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
3. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION:
Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 8, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-27832 Filed 11-8-93; 11:52 am]

BILLING CODE 6210-01-P

UNITED STATES INSTITUTE OF PEACE

DATE/TIME: Thursday, November 18, 1993, 9 a.m. to 5:30 p.m.

LOCATION: First Floor Conference Room, 1550 M Street, NW., Washington, DC.

STATUS: *(Open Session)*—Portions may be closed pursuant to Subsection (c) of Section 552(b) of Title 5, United States Code, as provided in subsection 1706(h)(3) of the United States Institute of Peace Act, Public Law 98–525.

AGENDA: Approval of Minutes of the Sixty-first Meeting of the Board of Directors; Chairman's Report; President's Report; General Issues; Discussion of Past Progress, Present Possibilities, and Future Opportunities; and Consideration of Grants.

CONTACT: Mr. Gregory McCarthy, Director, Public Affairs and Information, Telephone: (202) 457–1700.

Dated: November 8, 1993.

Bernice J. Carney,

Director, Office of Administration, United States Institute of Peace.

[FR Doc. 93–27855 Filed 11–8–93; 1:04 pm]

BILLING CODE 6820–AR–M

Corrections

Federal Register

Vol. 58, No. 216

Wednesday, November 10, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 362

RIN 3064–AA29

Activities and Investments of Insured State Banks

Correction

In rule document 92-26696 beginning on page 53213 in the issue of Monday, November 9, 1992, make the following correction:

§ 362.3 [Corrected]

On page 53237, in the first column, in § 362.3(d)(5)(ii), in the eighth line, "December 19, 1966," should read "December 19, 1996,".

BILLING CODE 1505-01-D

FEDERAL RESERVE SYSTEM

Pikeville National Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

Correction

In notice document 93-27219 beginning on page 59038 in the issue of Friday, November 5, 1993, make the following correction:

On page 59039, in the first column, under **B. Federal Reserve Bank of St. Louis**, under paragraph 1, in the seventh line insert after "§ 225.25(b)(1)" the words "and acting as principal, agent, or broker in the sale of credit life, disability, involuntary unemployment and property insurance pursuant to § § 225.25(b)(8)(i) and (b)(8)(ii)".

BILLING CODE 1505-01-D

federal register

Wednesday
November 10, 1993

Part II

Environmental Protection Agency

Federal Agency Hazardous Waste Compliance Docket; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4787–7]

Federal Agency Hazardous Waste Compliance Docket

AGENCY: Environmental Protection Agency.

ACTION: Notice of eighth update of the Federal Agency Hazardous Waste Compliance Docket, pursuant to CERCLA section 120(c).

SUMMARY: Section 120(c) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended by the Superfund Amendments and Reauthorization Act of 1986 (SARA), requires the Environmental Protection Agency (EPA) to establish a Federal Agency Hazardous Waste Compliance Docket. The docket is to contain certain information regarding Federal facilities that manage hazardous waste or from which hazardous substances may be or have been released. (As defined by CERCLA section 101(22), a release is any spilling, leaking, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, or disposing into the environment.) CERCLA requires that the docket be updated every six months, as new facilities are reported to EPA by Federal agencies. The following list identifies the Federal facilities to be included in the eighth update of the docket (that is, facilities not previously listed on the docket and reported to EPA since the last update to the docket, 58 FR 7298, February 5, 1993, which was current as of December 7, 1992). EPA policy specifies that, for each Federal facility that is included on the docket during an update, the responsible Federal agency must complete a preliminary assessment (PA) and, if warranted, a site inspection (SI) within 18 months of publication of the notice. Such remedial site evaluation activities will help determine whether the facility should be included on the National Priorities List (NPL) and will provide EPA and the public with valuable information about the facility. In addition to the list of additions to the docket, this notice includes a section comprising revisions (that is, corrections and deletions) of the previous docket list and a list of the facilities on the docket that have been evaluated and determined to be not appropriate for listing on the NPL at this time (the site evaluation accomplished [SEA] list). At the time of publication of this notice, the new total number of Federal facilities listed on the docket is 1,946.

DATES: This list is current as of July 16, 1993.

FOR FURTHER INFORMATION CONTACT: Federal Facilities Docket Hotline, Telephone: (800) 548–1016 (toll free) or (703) 883–8577.

SUPPLEMENTARY INFORMATION:

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I. Introduction

Section 120(c) of CERCLA, 42 U.S.C. 9620(c), as amended by SARA, required the establishment of the Federal Agency Hazardous Waste Compliance Docket ("docket"). The docket contains information on Federal facilities that is submitted by Federal agencies to the U.S. Environmental Protection Agency ("EPA" or "the Agency") under sections 3005, 3010, and 3016 of the Resource Conservation and Recovery Act (RCRA), 42 U.S.C. 6925, 6930, and 6937 and under section 103 of CERCLA, 42 U.S.C. 9603. Specifically, RCRA section 3005 establishes a permitting system for certain hazardous waste treatment, storage, and disposal (TSD) facilities; RCRA section 3010 requires waste generators, transporters, and TSD facilities to notify EPA of their hazardous waste activities; and RCRA section 3016 requires Federal agencies to submit biennially to EPA an inventory of hazardous waste sites that the Federal agencies own or operate. CERCLA section 103(a) requires notification of the National Response Center (NRC) of a release. CERCLA section 103(c) requires reporting to EPA the existence of a facility at which hazardous substances are or have been stored, treated, or disposed of and the existence of known or suspected releases of hazardous substances at such facilities.

The docket serves, among others, three major purposes: (1) To identify all Federal facilities that must be evaluated to determine whether they pose a risk to human health and the environment sufficient to warrant inclusion on the NPL; (2) to compile and maintain the information submitted to EPA on such facilities under the provisions listed in section 120(c) of CERCLA; and (3) to provide a mechanism to make the information available to the public.

The initial list of Federal facilities to be included on the docket was published on February 12, 1988 (53 FR 4280). Updates to the docket have been published on November 16, 1988 (54 FR 46364); December 15, 1989 (54 FR 51472); August 22, 1990 (55 FR 34492); September 27, 1991 (56 FR 49328); December 12, 1991 (56 FR 64898); July 17, 1992 (57 FR 31758); and February 5, 1993 (58 FR 7298). This notice constitutes the eighth update of the docket.

Today's notice is divided into four major sections: (1) Corrections, (2) deletions, (3) additions, and (4) the SEA list. The docket corrections section lists changes in information about facilities already listed on the docket. The deletions section lists facilities that EPA is deleting from the docket. The additions section lists newly identified facilities that have been reported to EPA since the last update and that now are being included on the docket. The SEA list is the list of all docket facilities to which EPA has assigned a status of site evaluation accomplished.

The information submitted to EPA on each Federal facility is contained in the docket repository located in the EPA Regional Office of the Region in which the facility is located (see 53 FR 4280 [February 12, 1988] for a description of the information required under those provisions). Each repository contains the documents submitted to EPA under the reporting provisions and correspondence relevant to the reporting provisions for each facility. A complete national index of the information found in the Regional docket repositories is maintained at EPA's Office of Federal Facilities Enforcement in Washington, DC, and is available to the public. The index for each Region is available for public review at each Regional repository. Contact the Federal Facilities Docket Hotline (800–548–1016) for information on Regional repository locations and on making arrangements for obtaining specific documents.

II. Revisions in the Previous Docket

Following is a discussion of the inclusion of revisions made in the previous docket, including corrections, deletions, and additions.

1. Corrections

Changes necessary to correct the previous docket were identified by both EPA and Federal agencies. The changes needed varied from simple address and spelling changes to corrections of the recorded name and ownership of a facility. In addition, some changes in facility names were made to establish consistency in the docket. Many new entries are simply corrections of typographical errors. For each facility for which a correction has been entered, the original entry (designated by an

"O"), as it appeared in the February 12, 1988 notice or subsequent updates, is shown directly below the corrected entry (designated by a "C"), for easy comparison.

2. Deletions

Today, 98 facilities are being deleted from the docket for various reasons, such as incorrect reporting of hazardous waste activity, change in ownership, and exemption as a small quantity generator (SQG) under RCRA (40 CFR 262.44). Facilities being deleted no longer will be subject to the requirements of CERCLA section 120(d).

3. Additions

Today, 113 facilities are being added to the docket primarily because of new information obtained by EPA (for example, recent reporting of a facility pursuant to RCRA sections 3005, 3010, or 3016 or CERCLA section 103). For all facilities being added to the docket, it is EPA's policy that the responsible agency must complete the required PA, and, if warranted, an SI within 18 months from the date of this publication.

Of the 113 facilities being added to the docket, 10 are facilities that have reported to the NRC the release of a reportable quantity (RQ) of a hazardous substance. Under section 103(a) of CERCLA, a facility is required to report to the NRC the release of a hazardous substance in a quantity that equals or exceeds the established RQ. Release reports received by the NRC, the U.S. Coast Guard, and EPA are electronically transmitted to the Transportation Systems Center at the U.S. Department of Transportation (DOT), where they become part of the Emergency Response Notification System (ERNS) data base. ERNS is a national computer data base and retrieval system that stores information on releases of oil and hazardous substances. Facilities being added to the docket and facilities already listed on the docket for which an ERNS report has been filed are identified by the notation of "103(a)" in the "Reporting Mechanism" column.

It is EPA's policy generally not to list on the docket facilities that are SQGs and that have never generated more than 1,000 kilograms (kg) of hazardous waste in any single month. If a facility has generated more than 1,000 kg of hazardous waste in any single month (that is, if the facility is an episodic generator), it will be added to the docket. In addition, facilities that are SQGs, but that have reported releases under CERCLA section 103 or hazardous waste activities pursuant to another reporting mechanism, will be listed on the docket and will undergo remedial site evaluation activities, such as a PA and, when appropriate, an SI. All such facilities will be listed on the docket, whether or not they are SQGs pursuant to RCRA. As a result, some of the facilities that EPA is adding today to the docket are SQGs that had not been listed on the docket but that have reported releases or hazardous waste activities to EPA under another reporting provision.

In the process of compiling the documents for the Regional repositories, EPA identified a number of facilities that had previously submitted a PA report, an SI report, a Department of Defense Installation Restoration Program report, or another Federal agency environmental restoration program report, but had not submitted a CERCLA section 103 notification form. Section 120(c)(3) of CERCLA requires that EPA include information submitted under section 103 on the docket. In general, section 103 requires certain persons to provide notice of certain releases of hazardous substances. The aforementioned Federal agency environmental restoration program reports contain information similar to information provided pursuant to CERCLA section 103 and are considered equivalent forms of notification for the docket. Thus, the Agency believes that facilities that have provided information equivalent to a CERCLA section 103 notification, such as a Federal agency environmental restoration program report, should be included on the docket, regardless of the absence of formal section 103 notification. Therefore, some of the facilities that EPA is adding today are being placed on the docket because of the above-mentioned reports.

EPA also includes privately owned, government-operated facilities (POGO) on the docket. CERCLA section 120(c) requires that the docket contain information submitted under RCRA sections 3005, 3010, and 3016, and CERCLA section 103, all of which impose duties on operators as well as owners of facilities. In addition, other subsections of CERCLA section 120 refer to facilities "owned or operated" by an agency or other instrumentality of the Federal government. This terminology clearly includes facilities that are operated by the Federal government, even if they are not owned by it. Specifically, CERCLA section 120(e), which sets forth the duties of the Federal agencies after a facility has been listed on the NPL, refers to the agency that "owns or operates" the facility. In addition, the primary basis for assigning responsibility for conducting PAs and SIs, as required when a facility is listed on the docket, is Executive Order 12580, which assigns this responsibility to the agency having "jurisdiction, custody, or control" over a facility. An operator may be deemed to have jurisdiction, custody, or control over a facility.

III. Process for Compiling the Updated Docket

In compiling the newly reported facilities for the update being published today, EPA extracted the names, addresses, and identification numbers of facilities from four EPA data bases—ERNS, the Biennial Inventory of Federal Agency Hazardous Waste Activities, the Resource Conservation and Recovery Information System (RCRIS), and the Comprehensive Environmental Response, Compensation, and Liability Information System (CERCLIS)—that contain information about Federal facilities submitted under the four provisions listed in CERCLA section 120(c).

Extensive computer checks compared the current docket list with the information obtained from the above data bases to determine which facilities were, in fact, newly reported and qualified for inclusion on the update. In spite of the quality assurance efforts EPA has undertaken, it is possible that State-owned or privately owned facilities that are not operated by the Federal government may have been included. Such problems are the result of procedures historically used to report and track data on Federal facilities; the Agency is working to resolve such problems. Representatives of Federal agencies are requested to write to EPA's Docket Coordinator at the following address if revisions in this update information are necessary: Federal Facilities Docket Coordinator, Office of Federal Facilities Enforcement (OE–2261), U.S. EPA, 401 M Street SW., Washington, DC 20460.

IV. Facilities Not Included

As explained in the preamble to the original docket (53 FR 4280), the docket does not include the following categories of facilities (note, however, that any of these types of facilities may, when appropriate, be listed on the NPL):

1. Facilities formerly owned by a Federal agency and now privately owned. However, facilities that are now owned by another Federal agency will remain on the docket and the responsibility for conducting PAs and SIs will rest with the current owner.

2. SQGs that have never produced more than 1,000 kg in any single month and that have not reported releases under CERCLA section 103 or other hazardous waste activities under RCRA

section 3016 will not be listed on the docket.

3. Facilities that are solely transporters as reported under RCRA section 3010, will not be listed on the docket.

V. Information Contained on Docket Listing

As discussed above, the update information below is divided into three separate sections. The first section is a list of new facilities that are being added to the docket. The second section is a list of facilities that are being deleted from the docket. The third section comprises corrections of the docket. Each facility listed as part of the update has been assigned a code that indicates a more specific reason(s) for the addition, deletion, or correction. The code key precedes the lists.

It is EPA's policy that all facilities on the additions list to this eighth docket update must submit a PA and, if warranted, an SI to EPA within 18 months of the date of this publication. The PA must include existing information about a site and its surrounding environment, including a thorough examination of human, food-chain, and environmental targets, potential waste sources, and migration pathways. From information in the PA or other information coming to EPA's attention, EPA will determine whether a followup SI is required. An SI augments the data collected in a PA. An SI may reflect sampling and other field data that are used to determine whether further action or investigation is appropriate. This policy includes any facility for which there is a change in the identity of the responsible agency. These reports should be submitted to the Federal facilities coordinator in the appropriate EPA Regional Office.

The facilities listed in each section are organized by State and then grouped alphabetically within each State by the Federal agency responsible for the facility. Under each State heading is listed the facility name and address, the statutory provision(s) under which the facility was reported to EPA, the EPA Region in which the facility is located, and the correction codes.

The statutory provisions under which a facility reported are listed in a column titled "Reporting Mechanisms." Applicable mechanisms are listed for each facility: for example 3010, 3016, and 103c.

The complete list of Federal facilities that now makes up the docket is not being published today. However, the list is available to interested parties and can be obtained by calling the Federal Facilities Docket Hotline (800–548–1016 or 703–883–8577). As of today, the total number of Federal facilities that appear on the docket is 1,946.

VI. Facility Status Reporting

In response to numerous requests from Federal agencies, EPA has expanded the docket data base to include information on the SEA status of facilities listed. A prevalent concern has been the inability to identify facilities that, after submitting all necessary site assessment information, were found to warrant no further EPA involvement at the time. Accordingly, EPA has expanded the docket data base to include a column indicating the facility's status.

The status codes are as follows:

U=Undetermined
N=Site evaluation accomplished (SEA)
P=Currently proposed for the NPL
F=Currently final on the NPL
R=Removed from the proposed NPL and no longer considered for the final NPL
D=Deleted from the final NPL

EPA changed the site assessment recommendation no further remedial action planned (NFRAP) to SEA to denote a more positive attitude and to emphasize that the determination involves an affirmative effort on EPA's part to evaluate sites.

SEA is a term used in the Superfund site assessment program to identify facilities for which EPA has found that currently available information indicates that listing on the NPL is not likely and further assessment is not appropriate at the time. SEA status does not represent an EPA determination that there are no environmental threats present at the facility or that no further environmental response action of any kind is necessary. As stated, SEA status means only that the facility does not appear, from the information available to EPA at this time, to warrant listing on the NPL, and that, therefore, no further involvement by EPA in site assessment or cleanup at the facility is anticipated. However, additional CERCLA response actions by the agency that owns or operates the facility, whether remedial or removal actions, may be necessary at a facility with SEA status.

The status information contained in the docket data base is the result of Regional evaluation of information taken directly from CERCLIS. (CERCLIS is a data base that helps EPA Headquarters and Regional personnel with site, program, and project management. It contains the official inventory of all CERCLA [NPL and non-NPL] sites and supports all site planning and tracking functions. It also integrates financial data from preremedial, remedial, removal, and enforcement programs.) The status information was taken from CERCLIS and sent to the Regional Docket Coordinators for review. The results of their reviews were incorporated into the status field in the docket data base. Subsequently, a list of all facilities having SEA status (those for which an "N" appears in the status field) was generated; this list is being published today.

Important limitations apply to this SEA status list. First, the information is accurate only as of July 16, 1993. Second, a facility's status may change at any time because of any number of factors, including new site information or changing EPA policies. Finally, the SEA status list is based on Regional review of CERCLIS data, is provided for information purposes only, and should not be considered binding upon either the agency responsible for the facility or on EPA.

The status information in the docket data base will be reviewed, and a new list of SEA facilities will be published at each docket update.

Dated: September 30, 1993.

Steven A. Herman,

Assistant Administrator for Enforcement.

I. Docket Revisions

Categories of Revisions for Docket Update by Correction Code.

Categories for Deletion of Facilities

(1) Small Quantity Generator
(2) Not Federally Owned
(3) Formerly Federally Owned
(4) No Hazardous Waste Generated
(5) (This correction code is no longer used.)
(6) Redundant Listing/Site on Facility
(7) Combining Sites Into One Facility/ Entries Combined
(8) Does Not Fit Facility Definition (All Are Vessels)
(9) No Hazardous Waste (Responsible Agency Changed)
(10) Small Quantity Generator (Responsible Agency Changed)
(11) No Hazardous Waste (Temporary Storage Only)
(12) Not Federally Owned (Small Quantity Generator)
(13) Redundant Listing/Site on Facility (Agencies Will Coordinate)
(14) Small Quantity Generator (Never Actually Built) Categories for Facility Addition
(15) Small Quantity Generator With Either a RCRA 3016 or CERCLA 103 Reporting Mechanism
(16) One Entry Being Split Into Two/ Agency Responsibility Being Split
(17) New Information Obtained

Showing That Facility Should Be Included
(18) Facility Was a Site on a Facility That Was Disbanded; Now a Separate Facility
(19) Sites Were Combined Into One Facility
(19A) New Facility

Categories for Corrections of Facility Information
(20) Reporting Provisions Change
(20A) Typo Correction/Name Change/Address Change
(21) Changing Responsible Agencies (New Responsible Agency Has 18 Months To Submit PA)
(22) Changing Responsible Agencies and Title (New Responsible Agency Has 18 Months To Submit PA)
(23) New Reporting Mechanism Added at Update
(24) Reporting Mechanism Determined To Be Not Applicable After Review of Regional Files

Note: Further information on definitions of categories can be obtained by calling the Docket Hotline.

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction code
North River Radio Relay	North River	Unalakleet	AK	99684	Air Force	3016	19A
FWS-Kenai Wildlife Rfg Swan Lk, Moose Research Sta.		Soldotna	AK	99619	Interior	103c	19A
FAA-Annette Island	Annette Airport Nav Aids	Annette	AK	99926	Transportation	103c	19A
FAA-Barrow Air Navigation	Barrow Airport Area	Barrow	AK	99723	Transportation	103c	19A
FAA-Bethel Station	T8N R72W S13 Seward Meridian.	Bethel	AK	99559	Transportation	103c	19A
FAA-Big Lake Vortac Site	Big Lake	Big Lake	AK	99687	Transportation	103c	19A
FAA-Cold Bay			AK		Transportation	103c	19A
FAA-Cordova			AK		Transportation	103c	19A
FAA-Deadhorse			AK		Transportation	103c	19A
FAA-Duncan Canal			AK		Transportation	103c	19A
FAA-Dutch Harbor		Dutch Harbor	AK		Transportation	103c	19A
FAA-Fairbanks Station	5640 Airport Way	Fairbanks	AK		Transportation	103c	19A
FAA-Gulkana ANS	Gulkana Airport	Gulkana	AK	99586	Transportation	103c	19A
FAA-Gustavus	Gustavus Airport Nav Aids	Gustavus	AK	99826	Transportation	103c	19A
FAA-Juneau			AK		Transportation	103c	19A
FAA-King Salmon Station	Airport S of Cy Nav Aids	King Salmon	AK	99613	Transportation	103c	19A
FAA-Lake Hood Facility	T13N R4W S34 NE	Anchorage	AK	99518	Transportation	103c	19A
FAA-Level Island	Level Island Nav Aids	Petersburg	AK	99833	Transportation	103c	19A
FAA-Nome Airport Station	Nome Airport Municipal Airport.	Nome	AK	99762	Transportation	103c 3010	19A
FAA-Point Woronzot Rtr Facility	Anchorage International Airport Area.	Anchorage	AK	99502	Transportation	103c	19A
FAA-Sand Point			AK		Transportation	103c	19A
FAA-Sisters Island	Sisters Island Nav Aids	Juneau	AK	99803	Transportation	103c	19A
FAA-Sitka	Japonski Island Naval Air Station.	Sitka	AK	99835	Transportation	103c	19A
FAA-St. Mary's Air Navigation	Yukon Delta National Wildlife Refuge.	St. Mary's	AK		Transportation	103c	19A
FAA-Strawberry Point	Point Bentinck Nav Aids	Cordova	AK	99574	Transportation	103c	19A
FAA-Tanana Air Field	Tanana Airport	Tanana	AK	99777	Transportation	103c	19A
FAA-Yakutat Airport	Yakutat Airport	Yakutat	AK	99689	Transportation	103c	19A
Huxtable Pumping	Highway 79 8M N	Marianna	AR	72360	Corps of Engineers, Civil.	3010	19A
Prescott NF: Golden Belt Mine		Prescott	AZ	86303	Agriculture	103c 3016	16
Prescott NF: Upper Hassayampa Creek Mines.		Prescott	AZ	86303	Agriculture	103c 3016	16
Gila River Site #2	T3S R63 Sec 3	Gila River Indian Resv.	AZ	85247	Interior	103c	19A
NPS-Grand Canyon National Park.	P.O. Box 129	Grand Canyon	AZ	86023	Interior	103c	19A
Aerospace Corporation	2400 E El Segundo Blvd	El Segundo	CA	90245		3010	19A
San Francisco Federal Reserve Bank.	101 Market Street	San Francisco	CA	94105		3010	19A
Jerry L. Pettis Veterans Hospital	11201 Benton Street	Loma Linda	CA	92357	Army	3010	19A
Casmalia Resources	NTU Road, P.O. Box 208	Casmalia	CA		EPA	103a	19A
Campbell Postal Service	1587 Dell Avenue	Campbell	CA	95008	Postal Service	103c	19A
San Francisco Postal Service	151 Mendell Street	San Francisco	CA	94124	Postal Service	103a	19A
Bennett Army National Guard Facility.	15 Miles SW of Bennett	Bennett	CO	80102	Army	103c	19A
NPS-Weir Farm National Historic Site.	Nod Hill Road	Wilton	CT		Interior	103c	19A
NPS-Anacostia Park Sections E and F.	1900 Anacostia Drive, SE	Washington	DC	20020	Interior	103c	19A
NPS-Washington Gas and Light Site.	1900 Anacostia Drive, SE	Washington	DC	20020	Interior	103c	19A
NPS-Big Cypress National Preserve.	Star Route 11	Ochopee	FL	33943	Interior	3010 103c	17

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction code
Atlanta Naval Air Station	Halsey Street	Marietta	GA	30060	Navy	103a	19A
FAA-Regional Office	340 Norman Berry Drive	East Point	GA	30320	Transportation	103a	19A
Fort Derussy Military Reserve	Kalia Road at intersection	Honolulu	HI	96815	Army	3010	19A
Des Moines Air National Guard	3100 McKinley Ave	Des Moines	IA	50321	Air Force	103c 3010	17
Sioux City Air National Guard	6301 MacArthur Air Force Base.	Sergeant Bluff	IA	51110	Air Force	103c 3010	17
BLM-Clover Hollow Illegal Airstrip	T5S R7E SEC7 SESW 8 Mi S of Cy.	Mountain Home	ID	83647	Interior	103c	19A
BLM-Liberty	T3S, R33E, SEC 19E, 20N, 21SWNW; NWNW 30N.	Liberty	ID		Interior	103c	19A
BLM-Mud Lake Airport	T6N R34E Sect 18 NE of NE.	Mud Lake	ID	83450	Interior	3010	19A
BLM-Pine Creek	T47,48,49N R2E	Near Pinhurst	ID		Interior	103c	19A
BLM-Wiregrass Reservoir Site	TIIS R36E Sect 13 NW of NE.	Downey	ID	83234	Interior	3010	19A
Michigan City East PHD Light	Washington Park Site B Pier.	Michigan City	IN	46360		3010	19A
Jeffersonville Federal Center	1201 E. 10th Street	Jeffersonville	IN	47130	Commerce	3010 3016 103c	17
Dean D. Mitchell Farm	Rt 1	Liberty	KS	67351		3016	19A
Kansas City Natl Guard Armory and Parking Lot.	100 South 20th Street	Kansas City	KS	66012	Army	103c	19A
Shreveport Medical Center	510 East Stoner Ave	Shreveport	LA	71130	Veterans Administration.	103a	19A
Westfield Air National Guard (104TFG).	Barnes Municipal Airport	Westfield	MA	01085	Air Force	103c 3010	19A
Royalston Town Dump	Birch Hill Dam	Royalston	MA		Corps of Engineers, Civil.	103c	19A
NPS-Minute Man National Historical Park.	P.O. Box 160	Concord	MA	01742	Interior	103c	19A
Jachman Army Reserve Center	12100 Greenspring Ave	Owings Mills	MD	21117	Army	3010	19A
NIH-NCI-Biomakers and Prevention.	9610 Medical Center Dr Keywest.	Rockville	MD	20850	Health and Human Services.	3010	19A
Ritchie Rubbleville	2001 Ritchie Marlboro Highway.	Upper Marlboro	MD		Navy	103a	19A
Brainerd Foundry	801 South 10th Street	Brainerd	MN	56401	Commerce	3010 3016 103c	17
Fond Du Lac Casino	105 University Rd	Cloquet	MN	55720	Interior	3010	19A
Lambert St. Louis International Airport (ANG).	Natural Bridge & Woodson Rds.	St Louis	MO	63134	Air Force	103c 3010	17
St. Joseph Air National Guard	Rosecrans Memorial Airport.	St Joseph	MO		Air Force	103c	17
BATFA-Kansas City	811 Grand Ave Rm 106	Kansas City	MO	64106	General Services Administration.	3010	19A
River Operations Dry Dock (CELMK–OD–R).	COE Supply Base—Vicksburg Harbor.	Vicksburg	MS	39180	Corps of Engineers, Civil.	3016	19A
Cape Hatteras National Seashore	Dare County	Rodanthe	NC	27968	Transportation	103c	19A
Flying J Petroleums Inc Williston Refine.	1 Mi E. of Williston Hwy 1804.	Williston	ND	58801		3005 3010	19A
Lynn Keller Property	Sec 6 T16N R8E	Cedar Bluffs	NE	68015	Agriculture	3016	19A
Manchester Housing and Development Authority.	83 Trahan Street	Manchester	NH	03103		3010	19A
NPS-Morristown National Historical Park.	Washington Place	Morristown	NJ	07960	Interior	103c	19A
Santa Fe NF: Terero Mine Tailings.		Santa Fe	NM	87504	Agriculture	3016	16
Sage Complex	510 Stewart Dr W	North Syracuse	NY	13212		3010	19A
Malone Army Reserve Center	111 Finney Blvd	Malone	NY	12953	Army	3010	19A
IRS Center	1040 Waverly Ave	Holtsville	NY	11742	General Services Administration.	3010	19A
NPS-Federal Hall NM	26 Wall Street	New York	NY	10005	Interior	3010	19A
NPS-Saratoga National Historical Park.	RD #2, P.O. Box 33	Stillwater	NY	12170	Interior	103c	19A
NPS-Statue of Liberty Natl Monument: Ellis Island.		Liberty Island	NY	10004	Interior	3010	19A
NPS-Theodore	28 E 20th Street	New York	NY	10003	Interior	3010	19A

FEDERAL FACILITIES DOCKET, DOCKET ADDITIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction code
Vacant Building	74 E Main St	Trumansburg	NY	14886	Small Business Administration.	3010	19A
Ponca City Army Reserve Center	805 W Hartford Ave	Ponca City	OK	74601	Army	3010	19A
Ochoco NF: Crooked River Grasslands.	T12S R14E S34	Madras	OR	99741	Agriculture	3010	19A
Keno Air Force Station	Haymaker Mt Rd Peak End of Rd.	Keno	OR	97627	Air Force	3010	19A
Lake Region Medical Inc	620 Alpha Dr RIDC East	Pittsburgh	PA	15238		3010	19A
Mill Creek Site		Erie	PA			103a	19A
Cannonsburg Field		Cannonsburg	PA		Army	103a	19A
Philadelphia Site	Collins and Ontario Streets.	Philadelphia	PA		EPA	103a	19A
Smithfield Army Reserve Maintenance Facility.	Albion Road	Smithfield	RI	02917	Army	103c	19A
FWS-Trustom Pond Natl Wildlife Refuge Disp Areas.	990 Schoolhouse Road	South Kingstown	RI	02879	Interior	103c	19A
Donaldson Air Industrial Center		Greenville	SC		Air Force	103c	17
McEntire Air National Guard Base.		Columbia	SC		Air Force	103c	17
Monks Corner Army Air Force Depot.		Monks Corner	SC		Defense	103c	17
Lackland Training Center	Ray Ellison Dr & Hwy 90	San Antonio	TX	78236	Air Force	3005 3010	19A
NALF Orange Grove	Dirt Rd 3M E H–281	Orange Grove	TX	78383	Navy	3010	19A
Manti-Lasal NF: Bears NARS–REX Group.		Old La Sal	UT	84530	Agriculture	3016 103c	16
Manti-Lasal NF: Brushy Basin #31.		Old La Sal	UT	84530	Agriculture	3016 103c	16
Manti-Lasal NF: Firefly-Pygmy Mine.		Old La Sal	UT	84530	Agriculture	3016 103c	16
Manti-Lasal NF: Mt. Linnaeus #1 Laura.		Old La Sal	UT	84530	Agriculture	3016 103c	16
Manti-Lasal NF: Mt. Linnaeus Horseshoe.		Old La Sal	UT	84530	Agriculture	3016 103c	16
Manti-Lasal NF: Yellow Circle Group.		Old La Sal	UT	84530	Agriculture	3016 103c	16
Springfield Proving Ground	7500 Backdick Road	Springfield	VA	22150	Army	3005 3010	19A
NPS-George Washington Memorial Parkway.	Turkey Run Park	McLean	VA	22102	Interior	103c	19A
Yorktown Reserve Training Center.	Route 238 SE Corner of York Co.	Yorktown	VA	23690	Transportation	3010	19A
St. Thomas	St. Thomas Beach	St. Thomas	VI	00801		103c	19A
FWS-New Richmond	1618 220th Ave Rural Area.	New Richmond	WI	54017	Interior	3010	19A
La Crosse Naval Reserve Center	2226 Green Bay St	La Crosse	WI	54601	Navy	3010	19A
Gallapolis Lock and Dam	Rt 2	Apple Grove	WV		Navy	103a	19A
Cheyenne Air National Guard	Cheyenne Municipal Airport.	Cheyenne	WY	82003	Air Force	103c 3010	19A
BLM-Old Saratoga Landfill	Sec 7, T17N, R83W	Saratoga	WY	82331	Interior	103c	19A

FEDERAL FACILITIES DOCKET, DOCKET DELETIONS

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction code
Canyon Creek RRS	T 7 S, R 6 E, Sec 15	Big Delta	AK	99737		3016	6
Canyon Creek RRS	T7S R6E Sec 15	Big Delta	AK	99737	Air Force	3010 103c	3
Duncan Canal	12 MI SW of Cy	Petersburg	AK	99883	Air Force	103c	3
Wildwood Air Force Station	Wildwood Village off Kenai SPU.	Kenai	AK	99611	Air Force	3010	3
BLM-Biorka Island Facility	Biorka Island	Biorka Island	AK	99835	Interior	103c	6
BLM-Farewell Air Navigation Site.	Farewell Lake	Farewell	AK	99695	Interior	103c 3016	6
BLM-Fire Island Housing Area	FAA Housing Area	Fire Island	AK	99506	Interior	103c	6
BLM-Galena Airbase	Galena Airport	Galena	AK	99741	Interior	3016 103c	6
NPS-Katmai National Park and Preserve.	Box 7	King Salmon	AK	99613	Interior	103c	4
NPS-Lake Clark National Park and Preserve.	Box 61; 701 C. Street	Anchorage	AK	99513	Interior	103c	4
NPS-Noatak National Preserve	Desperation Lake/T34N, R29–30W.	Kotzebue	AK	99752	Interior	103c	4

FEDERAL FACILITIES DOCKET, DOCKET DELETIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction code
North East Cape St. Lawrence Island.	St. Lawrence Island 70 Mi E of Savoonea.	Northeast Cape	AK	99769	Navy	103c	6
St. Lawrence Island-Cargo Beach Site.	Cargo Beach	North East Cape	AK		Navy	103c	6
Rogersville Corp of Engineers	Route 4 Box 305	Rogersville	AL	35652	Army	3010	4
Mt. Lemon Air Force Station	Mt Lemon	Mt Lemon	AZ		Air Force	103c	3
Br-Yuma Projects Office	3800 Avenue SE	Yuma	AZ	85365	Interior	3010	6
DEA-Phoenix	10809 N. 40th Street	Phoenix	AZ		Justice	103a	6
Phoenix General Mail Facility	4949 E Van Buren St	Phoenix	AZ	85026	Postal Service	3010	1
Philip Burton Federal Building	450 Golden Gate Avenue	San Francisco	CA	94102	General Services Admin	3010	1
Oakland City Housing	1180 25th Avenue	Oakland	CA	94601	Housing and Urban Development.	3010	6
Chollas Heights Radio Transmitter.	6410 Zero Rd	San Diego	CA	92115	Navy	3010	1
Coronado Naval Aviation Depot	Building 65	Coronado	CA		Navy	103a	6
San Diego Aviation Depot	Building 379	San Diego	CA	92135	Navy	103a	6
Silver Strand Navy Housing	1202 Laytey Rd	Coronado	CA	92118	Navy	3010	1
Cathedral City Postal Service	36–660 Bankside Unit E	Cathedral City	CA	92234	Postal Service	3010	1
Los Angeles General Mail Facility.	7001 S Central Ave	Los Angeles	CA	90052	Postal Service	3010	1
Los Angeles Postal Service	900 N Alameda St	Los Angeles	CA	90052	Postal Service	3010	1
San Francisco Bulk Mail Center	2501 Rydin Rd	Richmond	CA	94804	Postal Service	3010	1
Santa Ana Postal Service	3101 W Sunflower	Santa Ana	CA	92799	Postal Service	3010	1
Stockton Postal Service Vehicle Maintenance Facil..	3131 E Arch Road	Stockton	CA	95213	Postal Service	3010	1
Van Nuys Postal Service	15701 Sherman Way	Van Nuys	CA	91409	Postal Service	3010	1
Sterling Department of Military Affairs.	1400 S. 3rd Ave	Sterling	CO		Air Force	103c 3010	2
BLM-Boise District-Reeder Airstrip.	T8S R13E Sec 6 NESW	Hagerman	ID	83332	Interior	3010	6
BLM-Glenns Ferry Landfill	T.5.S. R. 10E BM NW ¼ SW¼ Sec 21.	Glenns Ferry	ID		Interior	103c	2
Fort Rodman	Fort Rodman	New Bedford	MA		Army	103c	2
DEA-Hamilton Residence	Lakeshore Drive	Hamilton	MA		Justice	103a	2
DEA-Video Corner	68 Humphrey Street	Swampscott	MA		Justice	103a	2
South Boston Naval Annex	Marine Industrial Park Drydock Ave.	Boston	MA		Navy	103c	3
Lowell Postal Service	Post Office Square	Lowell	MA	01853	Postal Service	103c 3010	2
Marshfield Coast Guard Communications Center.	900 Ferry Street	Marshfield	MA	02050	Transportation	103a	4
Bedford Hospital Wells 76 & 77	Westview Street	Lexington	MA	02173	Veterans Administration.	3010 103c	2
Granite Control	2845 Hernwood Road	Woodstock	MD	21163	Defense	103c	6
Kincheloe Air Force Base	Tone Rd	Kincheloe	MI	49785	Air Force	3010	3
Camp Grayling	I–75	Grayling	MI	49738	Army	103c	2
Detroit	231 W Lafayette St	Detroit	MI	48226	General Services Admin.	3010	1
NPS-Isle Royale National Park	87 N Ripley St	Houghton	MI	49931	Interior	3010	1
Mt. Clemens Naval Air Facility		Mt Clemens	MI	48043	Transportation	103c 3010	6
Glasgow Air Force Base	19 Miles N.W. of Glasgow	Glasgow	MT		Air Force	103c	3
Precious Metals Plating	Star Route Box 85	Bonner	MT		Housing and Urban Development.	103c	6
Atlantic City Naval Reserve Center.	Foot of Huron Ave	Atlantic City	NJ	08401	Navy	3010	1
Hightstown Postal Service	150 Mercer Street	Hightstown	NJ	08520	Postal Service	3010	1
New Brunswick Postal Service	21 Kilmer Rd & Truman Dr.	New Brunswick	NJ	08917	Postal Service	3010	1
BLM-Eddy Potash	3071 Potash Mine Road	Carlsbad	NM	88220	Interior	3016	6
CAL West	West Frontage Road	Lemitar	NM	87801	Small Business Admin.	3005 3010 103c	2
BLM-Nevada Hapth Corporation	Unavailable From Site Office.		NV		Interior	103c	6
Alex Rogowski Property	RFD 2 Box 334	Goshen	NY	10924		3016	2
Dresden Naval Underwater Systems Center.	Seneca Lake Field Station.	Dresden	NY	14441		3010	1
General Electric-Johnson City	600 Main St	Johnson City	NY	13790		3010	6
Soiltech Inc Wide Beach Site	10849 Lake Shore Road	Irving	NY	14081		3010	2

FEDERAL FACILITIES DOCKET, DOCKET DELETIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction code
Bronx Organizational Maintenance Shop #30 & #31.	29 West Kingsbridge Road.	Bronx	NY	10468	Air Force	3010	2
Bronx Organizational Maintenance Shop #31.	29 W. Kingsbridge Road .	Bronx	NY	10468	Air Force	3010	6
Brooklyn Organizational Maintenance Shop #23.	355 Marcy Avenue	Brooklyn	NY	11206	Air Force	3010	2
Brooklyn Organizational Maintenance Shop #24.	14 Street 8th Avenue	Brooklyn	NY	11215	Air Force	3010	2
Brooklyn Organizational Maintenance Shop #40.	1579 Bedford Avenue	Brooklyn	NY	11225	Air Force	3010	2
Carthage Organizational Maintenance Shop #14.	1 Park Drive	Carthage	NY	13619	Air Force	3010	2
Peekskill Organizational Maintenance Shop #21 NYAR.	955 Washington Street	Peekskill	NY	10566	Air Force	3010	2
Peekskill Organizational Maintenance Shop #29.	Camp Smith	Peekskill	NY	10566	Air Force	3010	2
Staten Island Organizational Maintenance Shop #36.	321 Manor Road	Staten Island	NY	10314	Air Force	3010	2
Syracuse Organizational Maintenance Shop #5.	1055 E. Genesee Street .	Syracuse	NY	13210	Air Force	3010	2
USPFO–SNY OMS #3	158 Willow St.	Lockport	NY	14094	Air Force	3010	1
Valhalla Organizational Maintenance Shop #22 HHC10.	Dana Road	Valhalla	NY	10595	Air Force	3010	2
Whitehall Organizational Maintenance Shop #15.	62 Poultney St	Whitehall	NY	12887	Air Force	3010	2
Glens Falls Naval Reserve Center.	2 Parker Street	Glens Falls	NY	12801	Navy	3010	1
Scotia Naval Administrative Unit	Bldg 606, GSA Depot	Scotia	NY	12302	Navy	3010	1
Hicksville Post Office	260 Engineers Drive	Hicksville	NY	11802	Postal Service ..	3010	2
Woodside Postal Service	54–20 Broadway	Woodside	NY	11377	Postal Service ..	3010	1
General Electric Company Aircraft Engine.	1 Neumann Way	Evendale	OH	45215	Air Force	3005 3010	2
Perry Nuclear Power Plant		Perry	OH		Energy	103a	2
Westinghouse Plant	P.O. Box 398704	Cincinnati	OH		Energy	103a	6
Atlantic Fleet Weapons Training Fac. Inner Range.		Vieques	PR	00765	Defense	3005 3010 3016	6
Beavertail Point Radar Station	Off Beavertail Rd	Jamestown	RI	02835	Defense	3016	3
Portsmouth Abandoned Mine	Betwn W Shore Rd & RR Tracks.	Portsmouth	RI		Defense	103c	3
South Dakota Air National Guard-CSMSI Mitch.	Municipal Airport	Mitchell	SD	57301	Army	3010	1
WAPA-Pierre Hydroelectric Plant	I–90	Pierre	SD	57501	Corps of Engineers, Civil.	103a	6
Fort Randall Project-Corps of Engineers.	Fort Randall Power Plant	Pickstown	SD	57367	Corps of Engineers-Civil Works.	3010	6
Fort Meade Medical Center	Engineering Service 138 .	Fort Meade	SD	57741	Veterans Administration.	3010	1
Capital Wire & Cable	910 10th St	Plano	TX	75086		3010	2
Federal Grain Union Equity	2631 Tidal Rd	Deer Park	TX	77536	Agriculture	3010	2
El Paso Border Patrol	8901 Montana St	El Paso	TX	79925	Justice	3010	1
Norfolk Naval Air Station	Building V82	Norfolk	VA	23511	Navy	3005 3010 3016 103c 103a	6
Norfolk Naval Aviation Depot		Norfolk	VA	23511	Navy	103a	6
Norfolk Naval Aviation Depot		Norfolk	VA		Navy	103a	6
Norfolk Navy Public Work Center.	640Z140	Norfolk	VA		Navy	103a	6
Southeastern Public Service		Portsmouth	VA		Navy	103a 3010	6
Centralia Army National Guard	309 Byrd Street	Centralia	WA	98531	Army	3010	2
Montesano Army National Guard	298 Clemons Road	Montesano	WA	98430	Army	3010	2
Lynnwood Vehicle Maintenance Facility.	6817 208th St SW	Lynnwood	WA	98036	Postal Service ..	3010	1
Martinsburg Hospital	Route 9	Martinsburg	WV	25401	Veterans Administration.	103c	6

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Chugach NF: Kenai Lake Work Center.	Mi 23.5 Seward Highway	Seward	AK	99664	Agriculture	103c 3010 3016	23, 20A
O Chugach National Forest	Mi 23.5 Seward Highway	Seward	AK	99664	Agriculture	103c 3010	
C Duncan Canal Level Island Vortac Site.	Level Island—North End	Level Island (Petersburg).	AK	99833	Agriculture	3016 103c	20A
O Duncan Canal Level Island Vortac Site.	Level Island—North End	Level Island (Petersburg).	AK		Agriculture	3016 103c	
C Tongass NF: Thorne Bay Dump.		Thorne Bay	AK	99919	Agriculture	103c	20A
O Tongass National Forest: Thorne Bay Dump.		Thorne Bay	AK	99919	Agriculture	103c	
C Dewline Site Bar-Main	Barter Isl., ½ Mi E of NE Shr.	Kaktovik	AK	99747	Air Force	103c 3016	23
O Dewline Site Bar-Main	Barter Isl., ½ Mi E of NE Shr.	Kaktovik	AK	99747	Air Force	103c	
C Dewline Site Pow-1	Lonely, Pitt Point, E of Smith Bay.	Lonely	AK	99999	Air Force	3010 103c 3016	23
O Dewline Site Pow-1	Lonely, Pitt Point, E of Smith Bay.	Lonely	AK	99999	Air Force	3010 103c	
C Dewline Site Pow-2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599	Air Force	3010 103c 3016	23
O Dewline Site Pow-2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599	Air Force	3010 103c	
C Dewline Site Pow-3	E of Flaxman Island	Bullen Point	AK	99723	Air Force	3010 103c 3016	23
O Dewline Site Pow-3	E of Flaxman Island	Bullen Point	AK	99723	Air Force	3010 103c	
C Dewline Site Pow-Main	Point Barrow Between N Salt Lagoon & Imikpuk.	Point Barrow Station.	AK	99723	Air Force	3010 103c 3016	23
O Dewline Site Pow-Main	Point Barrow Between N Salt Lagoon & Imikpuk.	Point Barrow Station.	AK	99723	Air Force	3010 103c	
C Elmendorf Air Force Base	21 CSG/CC 21	Elmendorf AFB	AK	99506–5000	Air Force	3005 3010 3016 103c 103a	23
O Elmendorf Air Force Base	21 CSG/CC 21	Elmendorf AFB	AK	99506–5000	Air Force	3005 3010 3016 103c	
C Noatak National Guard Bureau.	(Unspecified)	Noatak	AK	99761	Army	103c	20A
O Noatak National Guard Bureau.	(Unspecified)	Noatak	AK		Army	103c	
C NOAA-National Marine Fisheries Service.	Pribilof Island	St Paul Islands	AK	99660	Commerce	103c	20A
O NOAA-St. Paul Island	171′ 30′ 30″ Long W and 57′ 5′.	St. Paul Village	AK		Commerce	103c	
C Whittier Tank Farm	¾ Mi N of Town	Whittier	AK	99693	Defense	103c 3016	23
O Whittier Tank Farm	¾ Mi N of Town	Whittier	AK	99693	Defense	103c	
C BLM-Chandalar Dump	T16S, R11E, Sec 9 UM 155 Mi SE Cy.	Barrow	AK	99723	Interior	103c	20A
O BLM-Chandalar Dump	T16S, R11E, Sec 9	Umiat Meridian	AK	99723	Interior	103c	
C BLM-Old Man Camp Site	T19N, R14W, Sec 19 and T19N, R15W, Sec 24.	Fairbanks Meridian.	AK	99720	Interior	103c	20A
O BLM-Old Man Camp Site	T19N, R14W, Sec 19 & T19N, R15W, Sec 24.	Fairbanks Meridian.	AK		Interior	103c	
C BLM-Paxson Dump	T22S, R12E, Sec 31	Fairbanks Meridian.	AK	99737	Interior	103c	20A
O BLM-Paxson Dump	T22S, R12E, Sec 31	Fairbanks Meridian.	AK		Interior	103c	
C BLM-Pump Station 12 Dump Site NWSW.	T4S, R1E, Sec 26	Copper Center	AK	99573	Interior	103c	20A
O BLM-Pump Station 12 Dump Site.	T.4.S., R.1.E., Sec 26	Copper Center	AK		Interior	103c	
C BLM-Red Devil Mine Waste Ponds.	L61–10–12 L149–56–48	Bethel	AK	99656	Interior	3016 103c	20A
O BLM-Red Devil Mine Waste Ponds.	L61–10–12 L149–56–48		AK		Interior	3016 103c	
C BLM-Sag River Dump	T8S, R14E, Sec 8	Umiat Meridian	AK	99740	Interior	103c	20A
O BLM-Sag River Dump	T8S, R14E, Sec 8	Umiat Meridian	AK		Interior	103c	
C BLM-Slana Dump Site	Mile 67 of Denali Hwy		AK	99729	Interior	103c	20A
O BLM-Slana Dump Site	Mile 67 of Denali Hwy		AK		Interior	103c	
C BLM-Tangle Lakes Dump Site	Mile 22 Denali Hwy	Paxson	AK	99737	Interior	103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O BLM-Tangle Lakes Dump Site	Mile 22 Denali Hwy	Paxson	AK		Interior	103c	
C FWS-Skilak Guard Station		Soldotna	AK	99669	Interior	103c 3016	20A
O FWS-Skilak Guard Station		Soldotna	AK		Interior	103c 3016	
C NPS-Bering Land Bridge National Preserve.	P.O. Box 220	Nome	AK	99762	Interior	103c 3016	23
O NPS-Bering Land Bridge National Preserve.	P.O. Box 220	Nome	AK	99762	Interior	103c	
C NPS-Denali National Park and Preserve.	P.O. Box 9	Denali Park	AK	99755	Interior	3016 103c	20A
O NPS-Denali National Park and Preserve.	P.O. Box 9	Denali Park	AK		Interior	3016 103c	
C NPS-Yukon-Charley Rivers National Park.	T5N, R21E, Sec 3 & 4	Eagle	AK	99738	Interior	103c 3016	23
O NPS-Yukon-Charley Rivers National Park.	T5N, R21E, Sec 3 & 4	Eagle	AK	99738	Interior	103c	
C Cape Sabine Dew Line Site	Point Hope, 65 MI SE	Point Hope	AK	99766	Navy	103c	22
O BLM-Cape Sabine Dew Line Site.	Point Hope, 65 MI SE	Point Hope	AK	99766	Interior	103c	
C Northeast Cape St. Lawrence Island.	70 MI E of Savoonga St. Lawrence.	Northeast Cape	AK	99769	Navy	3010 3016 103c	23, 20A
O Northeast Cape St. Lawrence Island.	70 MI E of Savoonga St Lawrence.	Northeast Cape	AK	99769	Navy	3010	
C FAA-Air Route Traffic Center	5400 Davis Highway	Anchorage	AK	99506	Transportation	103c 3010	20A
O FAA-Air Route Traffic Center	5400 Davis Highway	Anchorage	AK		Transportation	103c 3010	
C FAA-Aniak Airport	61' 34N 159' 31'W	Aniak	AK	99557	Transportation	103c 3016	22
O BLM-Aniak Airport	61' 34N 159' 31'W	Aniak	AK	99557	Interior	103c 3016	
C FAA-Cape Yakataga Facility	Cape Yakataga	Cape Yakataga	AK	99574	Transportation	3010 3016	20A
O FAA-Capa Yakataga Facility	Cape Yakataga	Cape Yakataga	AK	99574	Transportation	3010 3016	
C FAA-Dillingham Airport	Dillingham	Dillingham	AK	99576	Transportation	3016 103c	22
O BLM-Dillingham Airport	Dillingham	Dillingham	AK	99576	Interior	3016 103c	
C FAA-Farewell Facilities	Farewell Airport Area	Farewell	AK	99695	Transportation	3010 103c 3016	23
O FAA-Farewell Facilities	Farewell Airport Area	Farewell	AK	99695	Transportation	3010	
C FAA-Fort Yukon Airport	Fort Yukon Airport	Fort Yukon	AK	99740	Transportation	3016 103c	22
O BLM-Fort Yukon Airport	Fort Yukon Airport	Fort Yukon	AK	99740	Interior	3016 103c	
C FAA-Haines Air Navigation Site.	Haines-FAA Road	Haines	AK	99827	Transportation	103c	22
O BLM-Haines Air Navigation Site.	Haines-FAA Road	Haines	AK	99827	Interior	103c	
C FAA-Homer Airport	Homer	Homer	AK	99603	Transportation	3016 103c	22
O BLM-Homer Airport	Homer	Homer	AK	99603	Interior	3016 103c	
C FAA-Johnstone Point Air Naval Station.	Johnstone Point Nav Aids	Cordova	AK	99574	Transportation	3016 103c	20A, 23
O Hinchinbrook Island-Johnstone Point.	Johnstone Point VOR/		AK		Transportation	3016	
C FAA-Kotzebue Airport	Kotzebue Airport	Kotzebue	AK	99752	Transportation	3016 103c	22
O BLM-Kotzebue Airport	Kotzebue Airport	Kotzebue	AK	99752	Interior	3016 103c	
C FAA-Moses Point Facility	Moses Point Airfield Nav Aids.	Moses Point	AK	99762	Transportation	3010 3016	20A
O FAA-Moses Point Facility	Moses Point Airfield Nav Aids.	Moses Point	AK	99825	Transportation	3010 3016	
C FAA-North Nenana Vortac Site.	Nenana	Nenana	AK	99760	Transportation	3016 103c	22
O BLM-North Nenana Vortac Site.	Nenana	Nenana	AK	99760	Interior	3016 103c	
C FAA-Puntilla Air Navigation Site.	Puntilla Lake	Puntilla Lake	AK	99999	Transportation	3016 103c	22
O BLM-Puntilla Air Navigation Site.	Puntilla Lake	Puntilla Lake	AK	99999	Interior	3016 103c	
C FAA-Skwentna Airfield	Skwentna Airfield	Skwentna	AK	99667	Transportation	103c 3016	22
O BLM-Skwentna Airfield	Skwentna Airfield	Skwentna	AK	99667	Interior	103c 3016	
C FAA-Talkeetna Airport	Talkeetna Airport	Talkeetna	AK	99676	Transportation	3016 103c	22
O BLM-Talkeetna Airport	Talkeetna Airport	Talkeetna	AK	99676	Interior	3016 103c	
C FAA-Unalakeet Airport	Unalakeet	Unalakeet	AK	99684	Transportation	3016 103c	22
O BLM-Unalakeet Airport	Unalakeet	Unalakeet	AK	99684	Interior	3016 103c	
C FAA-Woody Island Navigation Site.	Woody Island	Kodiak	AK	99615	Transportation	3016 103c	22
O BLM-Woody Island Navigation Site.	Woody Island	Kodiak	AK	99615	Interior	3016 103c	
C Percy Roy Farm	County Rd. 40	Pine Level	AL	36065	Agriculture	3016	21
O Percy Roy Farm	County Rd. 40	Pine Level	AL	36065		3016	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C Gunter Air Force Station	US 231 & Dalride Road	Montgomery	AL	36112	Air Force	103c 3016	23
O Gunter Air Force Station	US 231 & Dalride Road	Montgomery	AL	36112	Air Force	103c	
C Martin-Gadsden Air National Guard Station.	Gadsden Municipal Airport.	Gadsden	AL		Air Force	103c 3010	20A
O Martin-Gasden Air National Guard Station.	Gadsden Municipal Airport.	Gadsden	AL		Air Force	103c 3010	
C Fort McClellan Chemical and MP Centers.	Off AL Hwy 202A and US Hwy 21.	Fort McClellan, Calhoun City.	AL	36205	Army	3005 3010 3016 103c	20A
O Chemical and MP Centers and Fort McClellan.	Off AL Hwy 202 US Hywy 21.	Fort McClellan, Calhoun City.	AL	36205	Army	3005 3010 3016 103c	
C Guntersville Hydro Plant	Off US Hwy 431, 11 MI NW of Guntersville.	Guntersville	AL	35976	Tennessee Valley Authority.	3010	20A
O Guntersville Hydropower Plant	Off US Hwy 431, 11 Mi. NW of Guntersville.	Guntersville	AL	35976	Tennessee Valley Authority.	3010	
C Wheeler Hydro Plant	Rt 2	Town Creek	AL	35672	Tennessee Valley Authority.	3010 103a	20A
O Wheeler Hydropower Plant	Rt 2	Town Creek	AL	35672	Tennessee Valley Authority.	3010 103a	
C Wilson Hydro Plant	AL Hwy 133	Florence	AL	35660	Tennessee Valley Authority.	3010	20A
O Wilson Hydropower Plant	AL Hwy 133	Florence	AL	35660	Tennessee Valley Authority.	3010	
C Millwood Resident Engineers Office.	Route 1	Ashdown	AR		Corps of Engineers, Civil.	103c	20A
O Millwood Reservation	Route 1	Ashdown	AR		Corps of Engineers, Civil.	103c	
C Apache/Sitgreaves NF: Middle Mtn Silvex Site.	P.O. Box 640	Springerville	AZ	85938	Agriculture	103c 3016	23, 20A
O Apache/Sitgreaves NF-Middle Mtn Silvex Site.	P.O. Box 640	Springerville	AZ	85938	Agriculture	103c	
C Prescott NF: Upper Lynx Creek Mines.	344 South Cortez	Prescott	AZ	86303	Agriculture	103c 3016	23, 20A
O Prescott National Forest	344 South Cortez	Prescott	AZ	86303	Agriculture	103c	
C Plant #44 (Hughes Aircraft Co.).	Old Nogales Road	Tucson	AZ	85734	Air Force	3005 3016 103a	23
C Plant #44 (Hughes Aircraft Co.).	Old Nogales Road	Tucson	AZ	85734	Air Force	3005 3016	
C Yuma Proving Ground	US Army Yuma Proving Ground.	Yuma	AZ	85364	Army	3005 3010 3016 103c 103a	23
O Yuma Proving Ground	US Army Yuma Proving Ground.	Yuma	AZ	85364	Army	3005 3010 3016 103c	
C BIA-San Carlos Irrigation Project.	Cm Hwy 287 and Coolidge Blvd.	Coolidge	AZ	85228	Interior	3010	20A
O BR-San Carlos Irrigation Project.	Cm Hwy 287 & Coolidge Blvd.	Coolidge	AZ	85228	Interior	3010	
C BIA-Somerton Landfill	S of AZ 95 at 16th St and Ave B.	Somerton	AZ		Interior	103c	20A
O BR-Somerton Landfill	S of AZ 95 at 16th St & Ave B.	Somerton	AZ		Interior	103c	
C DEA-Phoenix	3020 N 2nd Street	Phoenix	AZ	85002	Justice	103a	20A
O DEA-Phoenix	3010 N 2nd Street	Phoenix	AZ	85002	Justice	103a	
C Angeles NF: Dillon Divide Midnight Dump.	Dillon Divide off Little Tujunga Road.	San Fernando	CA		Agriculture	103a	20A
O Angeles Nat'l Forest: Dillon Divide Midnight Dump.	Dillon Divide off Little Tujunga Road.	San Fernando	CA		Agriculture	103a	
C Los Padres NF: Black Bob Mine Tailings.	Aprx 5 Mi SW of Lebec, Sec 110 T9N R20W.	Lebec	CA		Agriculture	103c	20A
O Los Padres National Forest (Black Bob Mine Tail.).	Aprx 5 M. S.W of Lebec, Sec 10T. 9N–R.20W.	Lebec	CA		Agriculture	103c	
C Los Padres NF: Gibraltar Mining Company.	6144 Calle Real	Goleta	CA		Agriculture	103c	20A
O Los Padres National Forest (Gibraltar Mining Co.).	6144 Calle Real	Goleta	CA		Agriculture	103c	
C Plumas NF: Walker Mine Tailings.	159 Lawrence St, Box 11500.	Quincy	CA	95971–6025	Agriculture	103c 3016 3010	20A, 23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Plumas National Forest	159 Lawrence St. Box 11500.	Quincy	CA	95971-5025	Agriculture	103c 3016	
C Beale Air Force Base	9 CSG/CC	Beale AFB	CA	95903	Air Force	3005 3010 3016 103c 103a	23
O Beale Air Force Base	9 CSG/CC	Beale AFB	CA	95903	Air Force	3005 3010 3016 103c	
C Jet Propulsion Laboratory	North Base Rd, Edwards AFB.	Edwards	CA	93523	Air Force	3010 3016	23
O Jet Propulsion Laboratory	North Base Rd, Edwards AFB.	Edwards	CA	93523	Air Force	3010	
C Travis Air Force Base	60 ABG/CC Air Base Parkway Fairfield 6 Mi E of Address.	Travis AFB	CA	94535	Air Force	3005 3010 3016 103c 103a	23
O Travis Air Force Base	60 ABG/CC Air Base Parkway Fairfield 6 Mi E of Address.	Travis AFB	CA	94535	Air Force	3005 3010 3016 103c	
C Laboratory for Energy-Health Research (LEHR).	Old Davis Road	Davis	CA	95616	Energy	3016 103c	23
O Laboratory for Energy-Health Research (LEHR).	Old Davis Road	Davis	CA	95616	Energy	3016	
C WAPA-Tracy Pump & Substation.	Mountainhouse and Kelsa Roads.	Tracy	CA	95376	Energy	103c 3010 3016	23
O WAPA-Tracy Pump & Substation.	Mountainhouse and Kelsa Roads.	Tracy	CA	95376	Energy	103c 3010	
C BLM-Aurora Canyon Millsite	Nearest City Bridgeport	Bridgeport	CA	93517	Interior	103c 3016	23
O BLM-Aurora Canyon Millsite	Nearest City Bridgeport	Bridgeport	CA	93517	Interior	103c	
C Ames Research Center	Environmental Health & Safety.	Moffett Field	CA	94035	NASA	3010 3016	23
O Ames Research Center	Environmental Health & Safety.	Moffett Field	CA	94035	NASA	3010	
C Bridgeport Marine Corps, Mountain Warfare Training.	Pickle Meadows	Bridgeport	CA	93517	Navy	3010 103c 3016	23
O Bridgeport Marine Corps, Mountain Warfare Training.	Pickle Meadows	Bridgeport	CA	93517	Navy	3010 103c	
C Camp Pendleton Marine Corps Base.	Bldg 2631	Camp Pendleton	CA	92055	Navy	3005 3010 3016 103c 103a	23
O Camp Pendleton Marine Corps Base.	Bldg 2631	Camp Pendleton	CA	92055	Navy	3005 3010 3016 103c	
C Chocolate Mtn Aerial Gunnery Range-Seal Camp Area.	Niland Nearest Town	Imperial County	CA	92557	Navy	103c	20A
O Chocolate Mountain Seal Camp Area.	Niland Nearest Town	Imperial County	CA		Navy	103c	
C Dixon Naval Radio Transmitting Facility.	Radio Station Road	Dixon	CA	95620	Navy	103c 3016	23
O Dixon Naval Radio Transmitting Facility.	Radio Station Road	Dixon	CA	95620	Navy	103c	
O Long Beach Naval Station	Seaside Ave	Long Beach	CA	90822	Navy	3010 103c 103a	23
C Long Beach Naval Station	Seaside Ave	Long Beach	CA	90822	Navy	3010 103c	
C Moffett Field Naval Air Station		Moffett Field	CA	94035	Navy	3005 3010 3016 103c 103a	23
O Moffett Field Naval Air Station		Moffett Field	CA	94035	Navy	3005 3010 3016 103c	
C Port Hueneme Naval Construction Battalion Center.	Ventura Road and Channel Island Boulevard.	Port Hueneme	CA	93043	Navy	103a	20A
O Port Hueneme Construction Battalion Center.	Building 1360 NEESA	Port Hueneme	CA	93043	Navy	103a	
C San Clemente Island	Building 60130 San Clemente Island.	San Clemente	CA	92136	Navy	103c 103a	23
O San Clemente Island	Building 60130 San Clemente Island.	San Clemente	CA	92136	Navy	103c	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C San Diego Public Works Center.	San Diego Naval Station .	San Diego	CA	92145	Navy	3010 103c 103a	23
O San Diego Public Works Center.	San Diego Naval Station .	San Diego	CA	92145	Navy	3010 103c	
C Rio Grande NF: Bonanza Mining Area.	1803 West Highway 160 .	Monte Vista	CO	81144	Agriculture	103c 3016	23, 20A
O Rio Grande National Forest—Bonanza Mining Area.	1803 West Highway 160 .	Monte Vista	CO	81144	Agriculture	103c	
C BLM—Oak Creek Landfill (Routt County).	T4N, R86W, Sec 24 W½ SE¼ SW¼.	Routt County	CO	.....	Interior	103c	20A
O BLM—Oak Creek Landfill	.....	Routt County	CO	.....	Interior	103c	
C BLM—Town of Mesa Landfill .	T10S, R96W, Sec22	Molina	CO	.....	Interior	103c	20A
O BLM—Town of Mesa Landfill .	T19SR96WSec22	Molina	CO	.....	Interior	103c	
C GS—Denver, NWQL	5293 Ward Rd.	Denver	CO	80225	Interior	3010 3016	23
O GS—Denver, NWQL	5293 Ward Rd.	Denver	CO	80225	Interior	3010	
C Central Direct Fed. Division Materials—FHWA.	6th St., Bldg. 52, DFC	Denver	CO	80225	Transportation ..	3005 3010 103c 3016	23
O Central Direct Fed. Division Materials—FHWA.	6th St., Bldg. 52, DFC	Denver	CO	80225	Transportation ..	3005 3010 103c	
C Connecticut Air National Guard, Bradley Base.	Bradley ANG Base	East Granby	CT	06026	Air Force	3010	20A
O Connecticut Army National Guard, Bradley Base.	Bradley ANG Base	East Granby	CT	06026	Air Force	3010	
C U.S. Government Printing Office.	N Capitol & H Sts NW, ...	Washington	DC	20401	General Services Administration.	3010 3005	23, 21
O U.S. Government Printing Office.	N Capitol & H Sts NW	Washington	DC	20401	.....	3010	
C Osceola National Forest Site 1.	Highway 100	Lake City	FL	32055	Agriculture	3016 103c	20A
O Osceola National Forest: Site 1.	Highway 100	Lake City	FL	32055	Agriculture	3016 103c	
C Hurlburt Field	1 SOCES/CEV	Hurlburt Field	FL	32544	Air Force	3005 3010 103c 103a	23, 20A
O Hurlburt Field	834 CSG/CC	Hurlburt Field	FL	32544	Air Force	3005 3010 103c	
C Key West Naval Air Station—Boca Chica.	Naval Air Station	Key West	FL	33042	Navy	3005 3010 3016 103c 103a	20A, 23
O Key West Naval Air Station ...	Naval Air Station	Key West	FL	33042	Navy	3005 3010 3016 103c	
C Orlando Naval Training Center	8 Street/NTC	Orlando	FL	30213	Navy	103c 3010 103a	23
O Orlando Naval Training Center.	8 Street/NTC	Orlando	FL	30213	Navy	103c 3010	
C Orlando Naval Training Center	Bennett and Maguire	Orlando	FL	32813	Navy	3010	20A
O Orlando Naval Training Center.	Main Base Bennett & Maguire.	Orlando	FL	32813	Navy	3010	
C Saufley Field NETPMSA	6490 Saufley Field Road .	Pensacola	FL	32509–5000	Navy	103c 3010	20A
O Saufley Field NAS	.....	.....	FL	.....	Navy	103c 3010	
C Garden City Air National Guard Training Site.	Savannah International Airport.	Garden City	GA	31408	Air Force	3010	21
O Garden City Air National Guard Training Site.	Savannah International Airport.	Garden City	GA	31408	Army	3010	
C Guam Fleet and Industrial Supply Center.	Marine Drive	Piti	GU	96630	Navy	3010 3016	20A
O Guam Naval Supply Depot	Sumay Drive Supply Depot.	Naval Station	GU	96630	Navy	3010 3016	
C Johnston Atoll National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI	96850	Army	3010 3016 103a	23
O Johnston Atoll National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI	96850	Army	3010 3016	
C FWS-Baker Island National Wildlife Refuge.	300 Ala Moana Blvd	Honolulu	HI	96813	Interior	3016 103c	23, 20A
O FWS-Baker National Wildlife Refuge.	P.O. Box 50167	Honolulu	HI	96850	Interior	3016	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C FWS-Howland Island National Wildlife Refuge.	300 Ala Moana Blvd	Honolulu	HI	96813	Interior	3016	20A
O FWS-Howland Island National Wildlife Refuge.	Lat 1 N, Long 170 W	1 N, 170 W	HQ		Interior	3016 103c	
C Barbers Point Naval Air Station.		Barbers Point	HI	96862	Navy	3010 3016 103c 103a	23
O Barbers Point Naval Air Station.		Barbers Point	HI	96862	Navy	3010 3016 103c	
C Pearl Harbor Naval Station	US Naval Sta	Pearl Harbor	HI	96860	Navy	3010 3016 103c 103a	23
O Pearl Harbor Naval Station	US Naval Sta	Pearl Harbor	HI	96850	Navy	3010 3016 103c	
C Urbandale Bulk Mail Center	4000 NW 109th Street	Urbandale	IA	50395	Postal Service	3016	20A
O Des Moines Bulk Mail Center	4000 NW 109th Street	Urbandale	IA	50395	Postal Service	3016	
C Boise NF: Kirby Dam Monarch Stamp Mill Site.	750 Front Street	Boise	ID	83702	Agriculture	103c 3016	23, 20A
O Boise National Forest	750 Front Street	Boise	ID	83702	Agriculture	103c	
C Boise NF: Missouri Mine	Idaho City District	Idaho City	ID	83631	Agriculture	3016	20A
O Boise National Forest: Missouri Mine.	Idaho City Dist		ID		Agriculture	3016	
C Payette NF: Cinnabar Mine	Krassel District		ID		Agriculture	3016	20A
O Payette National Forest: Cinnabar Mine.	Krassel Dist		ID		Agriculture	3016	
C Payette NF: Stibnite Mine	P.O. Box 1026	McCall	ID	83638	Agriculture	103c 3016	23, 20A
O Payette National Forest	P.O. Box 1026	McCall	ID	83638	Agriculture	103c	
C Salmon NF: Blackbird Mine	P.O. Box 729	Salmon	ID	83467	Agriculture	103c 3016	20A, 23
O Salmon National Forest	P.O. Box 729	Salmon	ID	83467	Agriculture	103c	
C BLM-Black Mesa Dump	T6S, R10E, Sec. 13	Glenns Ferry	ID	83623	Interior	103c	20A
O BLM-Black Mesa Dump	T.6.S.R.10.E.Sec. 13		ID		Interior	103c	
C BLM-Browns Gulch	T6S, R7E, Sec. 10 W½	Bruneau	ID	83604	Interior	103c	20A
O BLM-Browns Gulch	T6S R7E Sec. 10 W½	Bruneau	ID		Interior	103c	
C BLM-Butte North Isolated Tract Hazardous Site.	T12S, R21E, Sec 5	Burley	ID	83318	Interior	103c	20A
O BLM-Butte North Isolated Tract Hazardous Site.	T12S, R21E, Sec 5		ID		Interior	103c	
C BLM-Castleford Butte	T10S, R12E, Sec 23	Castleford	ID	83321	Interior	103c	20A
O BLM-Castleford Butte	T10S R12E Sec 23	Castleford	ID		Interior	103c	
C BLM-Central Cove Landfill	T3N, R4W, Sec 8 and 9	Caldwell	ID	83605	Interior	3016 103c	20A
O BLM-Central Cove Landfill	T3NR4W Sec 8,9	Caldwell	ID		Interior	3016 103c	
C BLM-Clarks Air Service Airstrip-Jarbridge Ra.	T6S, R9E, Sec 27	Glenns Ferry	ID	83623	Interior	103c	20A
O BLM-Clark's Air Service Airstrip-Jarbridge Ra.	T6S R9E, Sec 27		ID		Interior	103c	
C BLM-Delamar Silver Mine	T15S, R35E	Owyhee	ID	83650	Interior	103c	20A
O BLM-Delamar Silver Mine	T.15.S.R.35.E	Owyhee	ID		Interior	103c	
C BLM-Dry Lakes Air Service Airstrip-Cascade Ra.	T1N, R3W, Sec 26	Canyon	ID	83650	Interior	103c	20A
O BLM-Dry Lakes Air Service Airstrip-Cascade Ra.	T1N, R3W, Sec 26	Canyon	ID		Interior	103c	
C BLM-Gem County Landfill	Dewey Lane, 10M East of Emmett.	Emmett	ID	83617	Interior	103c	20A
O BLM-Gem County Landfill	Dewey Lane, 10M East of Emmett.	Emmett	ID		Interior	103c	
C BLM-Idaho Air National Guard-Gowen Field.	43 33 N, 116 13W	Boise	ID	83705	Interior	3005 3010 103c	20A
O BLM-Idaho Air National Guard-Gowen Field.	43 33 N, 116 13 W	Boise	ID		Interior	3005 3010 103c	
C BLM-Jerome County Landfill		Jerome County	ID	83338	Interior	103c	20A
O BLM-Jerome County Landfill		Jerome County	ID		Interior	103c	
C BLM-Menan Unauthorized Dump.	T6N, R38E, Sec 26 and 27.	Madison	ID	83440	Interior	103c	20A
O BLM-Menan Unauthorized Dump.	T6NR38E Sec 26 & 27	Madison	ID		Interior	103c	
C BLM-Montview	T8N, R34E, Sec 22 NWNW E of City.	Montview	ID	83435	Interior	103c	20A
O BLM-Montview	T8N R34ES EC22 NWNW E of City.	Montview	ID		Interior	103c	
C BLM-Reeder Flying Service Airstrip #3.	T8S, R13E, Sec 6	Glenns Ferry	ID	83623	Interior	103c 3010	23, 20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O BLM-Reeder Flying Service Airstrip #3.	T8SR13E Sec 6	Glenns Ferry	ID	83623	Interior	103c	
C BLM-Warrior Road	T35N, R1W, Sec 11 Nearest City Kona.	Kona	ID	83634	Interior	103c	20A
O BLM-Warrior Road	T35N, R1W, Sec 11 Nearest City Kona.	Kona	ID		Interior	103c	
C Peoria Army Maintenance Support Activity 48G.	3523 W Farmington Rd	Peoria	IL	61604	Army	3010	20A
O AMSA 48 G	3523 W Farmington Rd	Peoria	IL	61604	Army	3010	
C Wayne-Hoosier NF: Branchville Site.		Bedford	IN	47421	Agriculture	103c 3016	23, 20A
O Wayne/Hoosier National Forest: Branchville Site.		Bedford	IN	47421	Agriculture	103c	
C Armor School and Center at Fort Knox.	Hwy 31 W	Fort Knox	KY	40121	Army	3005 3010 3016 103a	23
O Armor School and Center at Fort Knox.	Hwy 31 W	Fort Knox	KY	40121	Army	3005 3010 3016	
C Lexington Bluegrass Depot Activity.	US Hwy 421	Richmond	KY	40475	Army	3005 103c	20A
O Lexington Blue Grass Depot Activity.	US Hwy 421	Richmond	KY	40475	Army	3005 103c	
C Kentucky Hydro Plant	Hwy 62 and 641	Gilbertsville	KY	42044	Tennessee Valley Authority.	3010	20A
O Kentucky Hydropower Plant	Hwy 62 & 641	Gilbertsville	KY	42044	Tennessee Valley Authority.	3010	
C England Air Force Base	23 CSG/DE	England AFB	LA	71311	Air Force	3005 3010 3016 103c	20A
O England Air Force Base SE	23 CSG/DE	England AFB	LA	71311	Air Force	3005 3010 3016 103c	
C New Orleans Military Ocean Terminal.	4400 Dauphine St	New Orleans	LA	70145	Army	103c	20A
O New Orleans Military Terminal	4400 Dauphine St.	New Orleans	LA	70145	Army	103c	
C SPR-West Hackberry	3.8 Mi W of Hackberry, Hwy 390.	Hackberry	LA		Energy	103c	20A
O SPR-West Hackberry Site	3.8 Mi W of Hackberry, Hwy 390.	Hackberry	LA		Energy	103c	
C New Orleans Naval Support Activity.	2600 Gen Meyer Ave Bldg 101.	New Orleans	LA		Navy	103c	20A
O New Orleans Naval Support Action.	2600 Gen Meyer Ave Bldg 101.	New Orleans	LA		Navy	103c	
C Bedford Naval Weapons Industrial Reserve Plant.	Hartwell Road	Bedford	MA	01730	Navy	3016 103c	20A
O Bedford Navpro	Hartwell Road	Bedford	MA	01730	Navy	3016 103c	
C Glenndale Plant Germplasm Quarantine Fac.	11601 Old Pond Road	Glenn Dale	MD	20769	Agriculture	103c 3010	23
O Glenndale Plant Germplasm Quarantine Fac.	11601 Old Pond Road	Glenn Dale	MD	20769	Agriculture	103c	
C Kaiser Aluminum & Chemical Corporation.	2000 Halethorpe Ave	Baltimore	MD	21227	Air Force	3010	21
O Kaiser Aluminum & Chemical Corporation.	2000 Halethorpe Ave	Baltimore	MD	21227		3010	
C Martin's Airport Air National Guard.	2701 Eastern Boulevard	Baltimore	MD	21220–2899	Air Force	103c 3016	20A
O Martin's Airport Air National Guard.	Eastern Ave and Wilson Point Rd.	Baltimore	MD	21220–2899	Air Force	103c 3016	
C Brunswick Naval Air Station	Bounded by Routes 24 & 123.	Brunswick	ME	04011	Navy	3005 3010 3016 103c 103a	23
O Brunswick Naval Air Station	Bounded by Routes 24 & 123.	Brunswick	ME	04011	Navy	3005 3010 3016 103c	
C Cutler Naval Communications Unit.		Cutler	ME	04626	Navy	3010 3016	23
O Cutler Naval Communications Unit.		Cutler	ME	04626	Navy	3010	
C Fort Snelling National Cemetery, Minneapolis.	7601 34th Avenue South	Minneapolis	MN	55450	Veterans Administration.	3016 103c	23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Fort Snelling National Cemetery, Minneapolis.	7601 34th Avenue South	Minneapolis	MN	55450	Veterans Administration.	3016	
C Atkins Farm	1.5 MI W on Hwy 16 Then S 3/4 MI.	Canton	MO	63435	Agriculture	103c 3016	23
O Atkins Farm	1.5 MI W on Hwy 16 Then S 3/4 MI.	Canton	MO	63435	Agriculture	103c	
C Hanley Area	E Natural Bridge Goodfellow Rd.	St Louis	MO	63120	Army	103c	20A
O Goodfellow Army Reserve Center Area #2.	E Natural Bridge Goodfellow Rd.	St Louis	MO	63120	Army	103c	
C Pascagoula Naval Station	Singing River Island	Pascagoula	MS	39561	Navy	3010 103a	23
O Pascagoula Naval Station	Singing River Island	Pascagoula	MS	39561	Navy	3010	
C Kootenai NF: Libby Airport Wood Trea.	Libby Airport	Libby	MT	59923	Agriculture	3016	20A
O Kootenai National Forest: Libby Airport Wood Trea.	Libby Airport	Libby	MT	59923	Agriculture	3016	
C Nantahala NF: Graham County Landfill.	North of Snowbird Mountain.	Robbinsville	NC		Agriculture	3016 103c	20A
O Nantahala National Forest-Graham County Landfill.	North of Snowbird Mountain.	Robbinsville	NC		Agriculture	3016 103c	
C Nantahala NF: Swain County Landfill.	SR 1311	Bryson City	NC	28713	Agriculture	103c 3016	23, 20A
O Nantahala National Forest-Swain County Landfill.	SR 1311	Bryson City	NC	28713	Agriculture	103c	
C Omaha Naval and Marine Corps Reserve Center.	Fort Omaha	Omaha	NE	68102	Navy	103c 103a	23
O Omaha Naval and Marine Corps Reserve Center.	Fort Omaha	Omaha	NE	68102	Navy	103c	
C Fort Monmouth	Tinton & Pinebrook	Tinton Falls	NJ	07724	Army	3010 3016 103c 103a	23
O Fort Monmouth	Tinton & Pinebrook	Tinton Falls	NJ	07724	Army	3010 3016 103c	
C Princeton Plasma Physics Laboratory.	Forrestal Campus	Princeton	NJ		Energy	103c 3010 3016	23
O Princeton Plasma Physics Laboratory.	Forrestal Campus	Princeton	NJ		Energy	103c 3010	
C Belle Mead Supply Depot	Belle Mead #1 Route 206	Belle Mead	NJ	08502	General Services Admin.	3010 103c 103a	23
O Belle Mead Supply Depot	Belle Mead #1 Route 206	Belle Mead	NJ	08502	General Services Admin.	3010 103c	
C Trenton Naval Air Propulsion Center.	Parkway Avenue PO Box 7176.	Trenton	NJ	08628–0176	Navy	3005 3010 3016 103c 103a	23
O Trenton Naval Air Propulsion Center.	Parkway Avenue PO Box 7176.	Trenton	NJ	08628–0716	Navy	3005 3010 3016 103c	
C FAA–NAFEC	Routes 563 and 575	Pomona	NJ	08405	Transportation	3016 103c 103a	23
O FAA–NAFEC	Routes 563 and 575	Pomona	NJ	08405	Transportation	3016 103c	
C Hillsborough Supply Depot	Route 206	Hillsborough Twp.	NJ	08853	Veterans Administration.	103c 3010	23
O Hillsborough Supply Depot	Route 206	Hillsborough Twp.	NJ	08853	Veterans Administration.	103c	
C Cibola NF: Cobb Resources Corporation.	Cibola National Forest	Magdalena	NM	87825	Agriculture	103c 3016	20A, 23
O Cibola National Forest	Cibola National Forest	Magdalena	NM	87825	Agriculture	103c	
C Cibola NF: Unc San Mateo Mine.	T13N, R8E, Sec 30, NE¾.	San Mateo	NM	87050	Agriculture	103c 3016	23, 20A
O Unc San Mateo Mine	T13N R8E, Sec 30 NE¾	San Mateo	NM	87050	Agriculture	103c	
C Lincoln NF: High Rolls Mining District.	3.3 M S of Inter. of W US 82.	High Rolls	NM	88325	Agriculture	103c 3016	20A, 23
O FS-High Rolls Mining District	3.3 M S of Inter. of W US 82.	High Rolls	NM	88325	Agriculture	103c	
C Santa Fe NF: La Bajada Mine	1.25 MI Upstream From La Bajada.	La Bajada	NM		Agriculture	103c	20A
O La Bajada Mine	1.25 MI Upstream From La Bajada.	La Bajada	NM		Agriculture	103c	
C Santa Fe NF: Pecos Campground.	1220 St. Francis Drive	Santa Fe	NM	87504	Agriculture	103c 3016	23, 20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Santa Fe National Forest	1220 St. Francis Drive	Santa Fe	NM	87504	Agriculture	103c	
C Fort Bliss Air Defense Center	McGregor Range FAW 10	McGregor Range.	NM	88003	Army	3010	20A
O Air Defense Center & Fort Bliss.	McGregor Range FAW 10	McGregor Range.	NM	88003	Army	3010	
C Whitesands Missile Range	Stews-Fe	White Sands	NM	88002–5076	Army	3005 3010 3016 103c 103a	20A
O White Sands Missile Range	Stews-Fe	White Sands	NM	88002–5076	Army	3005 3010 3016 103c 103a	
C BLM-Amax Chemical Company.	Eddy County	Artesia	NM	88201	Interior	103c 3016	20A
O BLM-Amax Chemical	Eddy County	Artesia	NM	88201	Interior	103c 3016	
C BLM-Bloomfield Landfill	T29N, R11W, Sec 34	Bloomfield	NM	87413	Interior	3016 103c	20A
O BLM-Bloomfield City Landfill	T29N, R11W, Sec 34	Bloomfield	NM	87413	Interior	3016 103c	
C BLM–Duval Corporation	20 Miles East of Carlsbad	Carlsbad	NM	88220	Interior	103c 3016	20A
O BLM–Duval Company	20 Miles East of Carlsbad	Carlsbad	NM	88220	Interior	103c 3016	
C BLM–Eddy Potash Company	3071 Potash Mine Road	Carlsbad	NM	88220	Interior	103c 3016,	20A
O BLM–Potash Company of America (PCA).	Eddy County	Carlsbad	NM	88220	Interior	103c 3016	
C BLM–Hatch Landfill	T19S, R3W, Sec 4, Lot 1	Hatch	NM	87937	Interior	103c 3016	20A
O BLM–Hatch Landfill	T14S, R3W, Sec 4, Lot 1	Hatch	NM	87937	Interior	103c 3016	
C BLM–I&W Hot Oil Service	T17S, R31E, Sec 21	Loco Hills	NM	87415	Interior	103c 3016	20A
O BLM–I&W Oil Service Roswell	T20S, R31E, Sec 17, 18	Loving	NM	87415	Interior	103c 3016	
C BLM–Kerr McGee Laguna Toston.	Lee County	Hobbs	NM	88240	Interior	103c 3016	20A, 23
O BLM–Kerr-McGee Laguna Toston.	Lee County	Hobbs	NM	88240	Interior	103c	
C BLM–Kerr McGee Potash Company.	Lee County	Hobbs	NM	88240	Interior	103c	20A
O BLM–Kerr-McGee Chem Corp Hobbs Potash.	Lee County	Hobbs	NM	88240	Interior	103c	
C BLM–La Mesa Landfill	T25S, R2E, Sec 34	La Mesa	NM	88044	Interior	103c 3016	20A
O BLM–La Mesa	T25S, R2E, Sec 34	La Mesa	NM	88044	Interior	103c 3016	
C BLM–Mesilla Dam Landfill	T24W, R1E, Sec 14	Mesilla	NM	88046	Interior	103c 3016	20A
O BLM–Mesilla Landfill	T24W, R1E, Sec 14	Mesilla	NM	88046	Interior	103c 3016	
C BLM–South Farmington Landfill.	T29N, R13W, Sec 20	Farmington	NM	87401	Interior	3016 103c	20A
O BLM–South Farmington Sanitary Landfill.	T29N, R13W, Sec 20	Farmington	NM	87401	Interior	3016 103c	
C BLM–Standard Transpipe Corp.	T17S, R9E, Sec 18 and 19.	Alamogordo	NM	88310	Interior	103c 3016	20A
O BLM–Standard Transpipe Corp.	T17S, R9E, Sec 18, 19	Alamogardo	NM	88310	Interior	103c 3016	
C BLM–UNM Hazardous Waste Storage Facility.	T23S, R2E, Sec 23	Las Cruces	NM	88001	Interior	3005 3010 3016 103c	20A
O BLM–University of NM Hazardous Waste Storage Facil.	T23S, R2E, Sec 23	Las Cruces	NM	88001	Interior	3005 3010 3016 103c	
C White Sands Test Facility	14 MI E and 6 MI N of Las Cruces.	Las Cruces	NM	88004	NASA	3005 3010 3016 103c 103a	20A
O JSC Whitesands Test Facility	14 MI E and 6 MI N of Las Cruces.	Las Cruces	NM	88004	NASA	3005 3010 3016 103c 103a	
C Las Vegas Postal Service Main Office.	1001 Circus Dr	Las Vegas	NV	89114	Postal Service	3010 103a	23
O Las Vegas Postal Service Main Office.	1001 Circus Dr	Las Vegas	NV	89114	Postal Service	3010	
C Plant #59	600 Main Street	Johnson City	NY	13790	Air Force	3016 103c 3010	23
O Plant #59	600 Main Street	Johnson City	NY	13790	Air Force	3016 103c	
C Brookhaven National Laboratory.	53 Bell Ave	Upton	NY	11973	Energy	3005 3010 3016 103a	23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

	Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O	Brookhaven National Laboratory.	53 Bell Ave	Upton	NY	11973	Energy	3005 3010 3016	
C	West Valley Demonstration Project.	10300 Rock Springs Road.	West Valley	NY	14171	Energy	3005 3010 3016	20A
O	West Valley Demonstration Project.	Rock Springs Road	West Valley	NY	14171	Energy	3005 3010 3016	
C	Emmanuel Cellard Federal Building.	225 Cadman Plaza	Brooklyn	NY	11201	General Services Admin.	3010	20A
O	Emmanuel Cellard Federal Bldg. 225CA.	225 Cadman Plaza	Brooklyn	NY	11201	General Services Admin.	3010	
C	NPS-United Nuclear	Old Rte. 55	Pawling	NY	12564	Interior	103c 3010	23
O	NPS-United Nuclear	Old Rte. 55	Pawling	NY	12564	Interior	103c	
C	Manhattan General Mail Facility.	West 29th St and 9th Ave	New York	NY	10001	Postal Service	3010 103c	20A, 23
O	New York Postal MGMF	W 29th St & 9th Ave	New York	NY	10001	Postal Service	3010	
C	Wayne-Hoosier NF: Webb Site.	T4N, R16W, Sec. 18	Ironton	OH		Agriculture	103c 3016	20A
O	Wayne-Hoosier National Forest Webb Site.	T4N, R16W, Sec. 18	Ironton	OH		Agriculture	103c 3016	
C	NPS-Cuyahoga Valley National Recreational Area.	15610 Vaughn Road	Brecksville	OH	44141	Interior	3010 3016	20A
O	NPS-Cuyahoga Valley National Recovery Area.	15610 Vaughn Road	Brecksville	OH	44141	Interior	3010 3016	
C	Grazinglands Research	P.O. Box 1199	El Reno	OK	73036	Agriculture	3016 103c	20A, 23
O	Forage and Livestock Research Laboratory.	P.O. Box 1199	El Reno	OK	73036	Agriculture	3016	
C	Range and Pasture Research	2000 18th Street	Woodward	OK	73801	Agriculture	103c 3016	20A
O	Southern Plains Range Research Laboratory.	2000 18th Street	Woodward	OK	73801	Agriculture	103c 3016	
C	Atlas Missile Site #10		Mangum	OK	73554	Air Force	103c	20A
O	Atlas Missile Site #10		Mangum	OK	73554	Air Force	103c	
C	Atlas Missile Site #3		Snyder	OK	73566	Air Force	103c	20A
O	Atlas Missile Site #3		Snyder	OK	73566	Air Force	103c	
C	Atlas Missile Site #4		Cache	OK	73527	Air Force	103c	20A
O	Atlas Missile Site #4		Cache	OK	73527	Air Force	103c	
C	Atlas Missile Site #5		Manitou	OK	73555	Air Force	103c	20A
O	Atlas Missile Site #5		Manitou	OK	73555	Air Force	103c	
C	Atlas Missile Site #6		Manitou	OK	73555	Air Force	103c	20A
O	Atlas Missile Site #6		Manitou	OK	73555	Air Force	103c	
C	Atlas Missile Site #8		Olustee	OK	73560	Air Force	103c	20A
O	Atlas Missile Site #8		Olustee	OK	73560	Air Force	103c	
C	Atlas Missile Site #9		Hollis	OK	73550	Air Force	103c	20A
O	Atlas Missile Site #9		Hollis	OK	73550	Air Force	103c	
C	Fremont National Forest	524 North G Street	Lakeview	OR	97630	Agriculture	103c 3016	20A
O	Fremont National Forest	524 North G Street	Lakeview	OR		Agriculture	103c 3016	
C	Ochoco NF: Motherlode Mine	Highway 26 12 Mi E of Cy.	Prineville	OR	97754	Agriculture	103c 3016 3010	23, 20A
O	Ochoco National Forest	Highway 26 12 Mi E of Cy.	Prineville	OR	97754	Agriculture	103c	
C	Willamette National Forest	Highway 126 35 Mi E of Cy.	Eugene	OR	97440	Agriculture	3016 103c	20A
O	FS-Willamette National Forest	Highway 126 35 Mi E of Cy.	Eugene	OR	97440	Agriculture	3016 103c	
C	PETC	PO Box 10940	Pittsburgh	PA	15236	Energy	3010 103c 3016	23
O	PETC	PO Box 10940	Pittsburgh	PA	15236	Energy	3010 103c	
C	BM-Bruceton	626 Cochrans Mill	Bruceton	PA	15025	Interior	3010 103c 3016	23
O	BM-Bruceton	626 Cochrans Mill	Bruceton	PA	15025	Interior	3010 103c	
C	Allenwood Federal Prison Camp.	Route 15	Montgomery	PA	17752	Justice	3016 103c 3010	23
O	Allenwood Federal Prison Camp.	Route 15	Montgomery	PA	17752	Justice	3016 103c	
C	Eastern Vieques	Vieques	Vieques	PR	00765	Navy	103c 3005 3010 3016	20A, 23
O	Camp Garcia #1	Vieques	Vieques	PR	00765	Navy	103c	
C	Sabana Seca Naval Security Group Activity.	Route 856	Sabana Seca	PR	00952	Navy	3010 3016	20A
O	Sabana Seca Naval Security Group Activity.	Sabana Seca	Sabana Seca	PR	00749	Navy	3010 3016	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C North Smithfield Nike Control Area.	Old Oxford Road	North Smithfield	RI	02876	Air Force	103c	20A
O Rhode Island Air National Guard 102nd.	Old Oxford Rd./North Smithfield.	Slatersville	RI	02876	Air Force	103c	
C North Smithfield Nike Launcher Area.	Poundhill Road	North Smithfield	RI	02857	Army	103c	20A
O North Smithfield Nike Site	Poundhill Road	North Smithfield	RI	02876	Army	103c	
C FWS-Ninigret Natl Wildlife Refuge Disposal Areas.	P.O. Box 307	Charlestown	RI	02813	Interior	3016 103c	20A
O FWS-Charlestown Naval Air Station.	PO Box 307	Charlestown	RI	02813	Interior	3016 103c	
C FWS-Sachuest Point Dump National Wildlife Refuge.	Sachuest Point Road	Middletown	RI	02840	Interior	103c	20A
O FWS-Sachuset Point Dump	Sachuset Point Road	Middletown	RI	02840	Interior	103c	
C Davisville Naval Construction Battalion Center.	Off Sanford Road	North Kingstown	RI	02871	Navy	3016 103c 103a	20A
O Davisville Naval Construction Battalion Center.	Off Quonessett Rd	North Kingstown	RI	02871	Navy	3016 103c 103a	
C Newport Naval Education and Training Center.	Defence Highway (Burma Road).	Middletown	RI	02841	Navy	3005 3010 3016 103c 103a	20A, 23
O Newport Naval Education and Training Center.	Public Works Dept. Code 42.	Newport	RI	02841	Navy	3005 3010 3016 103c	
C Fort Jackson and Training Center.	Jackson Blvd	Fort Jackson	SC	29207	Army	3005 3010 3016 103a	20A
O Training Center and Fort Jackson.	Jackson Blvd	Fort Jackson	SC	29207	Army	3005 3010 3016 103a	
C Charleston Naval Shipyard	Viaduct Road	Charleston	SC	29408	Navy	3005 3010 3016	20A
O Charleston Naval Shipyard	Viaduct Road	Charleston	SC	29408	Navy	3005 3010 3016	
C Black Hills NF: Custer Ranger District.	647 North 3rd St	Custer	SD	57730	Agriculture	3010 3016	23, 20A
O Custer Ranger District BH National Forest.	647 North 3rd St	Custer	SD	57730	Agriculture	3010	
C Black Hills NF: Spokane Munitions.	R6E, T25, SW¼, Sec 26	Spokane	SD		Agriculture	103c 3016	23, 20A
O Spokane Munitions	R6E, T25, SW¼, Sec 26	Spokane	SD		Agriculture	103c	
C Mississippi River Division	Cold Brook Dam	Hot Springs	SD	57747	Corps of Engineers, Civil.	103a 103c	20A, 23
O Mississippi River Division	Cold Brook Dam	Hot Springs	SD		Corps of Engineers, Civil.	103a	
C Pierre Hydroelectric Plant	I–90	Pierre	SD	57501	Corps of Engineers, Civil.	103a	21
O Pierre Hydroelectric Plant	I–90	Pierre	SD	57501	Energy	103a	
C Milan Army Ammunition Plant	Hwy 104	Milan	TN	38358–5000	Army	3005 3010 3016 103c 103a	23
O Milan Army Ammunition Plant	Hwy 104	Milan	TN	38358–5000	Army	3005 3010 3016 103c	
C Ensley Engineer Yard	1726 Mithchell Rd	Memphis	TN	38109	Corps of Engineers, Civil.	3010	22
O Ensley Engineer Yard-Corps of Engineers.	1726 Mithchell Rd	Memphis	TN	38109	Corps of Engineers-Civil Works.	3010	
C Boone Hydro Plant	TN Hwy 75/8 Mi SE of	Kingsport	TN	37662	Tennessee Valley Authority.	103a	20A
O Boone Hydropower Plant	TN Hwy 75/8 Mi SE of	Kingsport	TN	37662	Tennessee Valley Authority.	103a	
C Johnsonville Fossil Plant	US Hwy 70E	New Johnsonville.	TN	37134	Tennessee Valley Authority.	103c 3010 103a 3005	20A
O Johnsonville Steam Plant	US Hwy 70 E	New Johnsonville.	TN	37134	Tennessee Valley Authority.	103c 3010 103a 3005	

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

	Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
C	Ripley Substation	Webb Road	Ripley	TN		Tennessee Valley Authority.	103a	20A
O	Ripley	Webb Road	Ripley	TN		Tennessee Valley Authority.	103a	
C	Watauga Hydro Plant	Wilbur Dam Rd 5 Mi E of	Elizabethton	TN	37643	Tennessee Valley Authority.	3010	20A
O	Watauga Hydropower Plant	Wilbur Dam Rd 5 Mi E of	Elizabethton	TN	37643	Tennessee Valley Authority.	3010	
C	147th Wing at Ellington Field	Clothier Avenue	Houston	TX	77209	Air Force	103c 3016	20A
O	147th Wing at Ellington Field	Clothier Avenue	Houston	TX	77209	Air Force	103c 3016	
C	Atlas Missile Site #7		Odell	TX	79247	Air Force	103c	20A
O	Atlas Missile Site #7		Odell	TX	79247	Air Force	103c	
C	Camp Bullis	East of NIH10 on Camp Bullis Road.	San Antonio	TX	78255	Army	103c 3005 3010	20A, 23
O	Camp Bullis		San Antonio	TX	78255	Army	103c	
C	Corpus Christi Army Maintenance Support Activity.	2022 Saratoga	Corpus Christi	TX	78415	Army	3005 3010 103c 103a	23
O	Corpus Christi Army Maintenance Support Activity.	2022 Saratoga	Corpus Christi	TX	78415	Army	3005 3010 103c	
C	Fort Bliss Air Defense Center	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c 103a	20A
O	Air Defense Center & Fort Bliss.	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c 103a	
C	Houston Army Maintenance Support Activity #4.	6903 Perimeter Park	Houston	TX	77041	Army	3010	20A
O	AMSA #4	6903 Perimeter Park	Houston	TX	77041	Army	3010	
C	SPR-Big Hill	23 Mi SW of Pt. Arthur	Port Arthur	TX	77641	Energy	103c	20A
O	SPR-Big Hill Site	23 Mi SW of Pt. Arthur	Port Arthur	TX	77641	Energy	103c	
C	Manti-Lasal NF: Black Hat Mine.	559 West Price River Drive.	Price	UT		Agriculture	3016 103c	20A, 23
O	Manti-Lasal National Forest, Lasal #1, Black Hat.	559 West Price River Drive.	Price	UT		Agriculture	3016	
C	BLM-Mercur Canyon Outwash	Highway 73, East of Tooele Army Depot.	Tooele	UT	84074	Interior	3016 103c	20A, 23
O	BLM-Mercur Canyon Outwash			UT		Interior	3016	
C	BLM-Snowville Landfill	T14N, R9W, Sec32	Snowville	UT	84336	Interior	103c	20A
O	BLM-Snowville Landfill	T14NR9WSec32SLM	Snowville	UT		Interior	103c	
C	BLM-Wendover Landfill	T1S, R19W, Sec3, Lots 1 and 2, 3 Mi E of Wendover.	Wendover	UT	84083	Interior	103c 3016	23, 20A
O	BLM-Wendover Landfill	T1SR19WSec3, Lots 1 & 2, 3 Mi E of Wendover.	Wendover	UT	84083	Interior	103c	
C	Fort A.P. Hill	US Rte 301	Bowling Green	VA	22427–5000	Army	3005 3010 3016 103c 103a	23
O	Fort A.P. Hill	US Rte 301	Bowling Green	VA	22427–5000	Army	3005 3010 3016 103c	
C	Defence Communication Agency.	South Courthouse Road	Arlington	VA	22204	Defense	103c 3010	21
O	Defense Communication Agency.	South Courthouse Road	Arlington	VA	22204	Navy	103c 3010	
C	Wallops Flight Center	Rte 175	Wallops Island	VA	23337	NASA	3010 103a 103c 3016	23
O	Wallops Flight Center	Rte 175	Wallops Island	VA	23337	NASA	3010 103a 103c	
C	Chesapeake Auxiliary Landing Field F.	3–4 Mi S Princess Ann Cth.	Chesapeake	VA	23322	Navy	103c 3016	23
O	Chesapeake Auxiliary Landing Field F.	3–4 Mi S Princess Ann Cth.	Chesapeake	VA	23322	Navy	103c	
C	Norfolk Naval Shipyard	N/A Code 411, Bldg M–32.	Portsmouth	VA	23709	Navy	3005 3010 3016 103c 103a	23

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O Norfolk Naval Shipyard	N/A Code 411, Bldg M–32.	Portsmouth	VA	23709	Navy	3005 3010 3016 103c	
C Portsmouth Naval Hospital	Effingham Street	Portsmouth	VA	23708–5000	Navy	3010 3016 103c	20A
O Portsmouth Naval Hospital	US Navy	Portsmouth	VA	23708	Navy	3010 3016 103c	
C Saint Helena Annex	South Main St	Norfolk	VA	23523	Navy	3010	22
O FWS-Saint Helena Annex	South Main St	Norfolk	VA	23523	Interior	3010	
C Sewells Point Naval Complex	US 64 at VA 564	Norfolk	VA	23511	Navy	3005 3010 3016 103c 103a	20A
O Norfolk Naval Base	Gilbert St Bldg N–26	Norfolk	VA	23511–6002	Navy	3005 3010 3016 103c 103a	
C Virginia Beach Fleet Combat Training Center.	FCTC Atlantic Dam Neck	Virginia Beach	VA	23461	Navy	3010 3016 103c 103a	23
O Virginia Beach Fleet Combat Training Center.	FCTC Atlantic Dam Neck	Virginia Beach	VA	23461	Navy	3010 3016 103c	
C Ethan Allen Firing Range	Lee River Road	Jericho	VT	05465	Army	3010 103c	20A, 23
O General Electric Company	Ethan Allen Firing Range	Jericho	VT	05465	Army	3010	
C Okanagan NF: Alder Creek		Twisp	WA	98856	Agriculture	103c	20A
O Okanagan National Forest: Alder Crk.		Twisp	WA	98856	Agriculture	103c	
C Okanagan NF: Bonaparte		Chesaw	WA	98844	Agriculture	103c	20A
O Okanagan National Forest: Bonaparte.		Chesaw	WA	98844	Agriculture	103c	
C Okanagan NF: Eight Mile Ranch.		Winthrop	WA	98862	Agriculture	103c	20A
O Okanagan National Forest: Eight Mile Ranch.		Winthrop	WA	98862	Agriculture	103c	
C Okanagan NF: Kerr		Conconully	WA	98819	Agriculture	103c	20A
O Okanagan National Forest: Kerr.		Conconully	WA	98819	Agriculture	103c	
C Okanagan NF: Lost Lake		Chesaw	WA	98844	Agriculture	103c	20A
O Okanagan National Forest: Lost Lake.		Chesaw	WA	98844	Agriculture	103c	
C Okanagan NF: Minnie Mine	T32N, R22E, S23	Twisp	WA	98856	Agriculture	3016 103c	20A, 23
O Okanagan National Forest: Minnie Mine.			WA		Agriculture	3016	
C Okanagan NF: Twisp		Twisp	WA	98856	Agriculture	103c	20A
O Okanagan National Forest: Twisp.		Twisp	WA	98856	Agriculture	103c	
C Wenatchee NF: Stellko		Ardenvoir	WA	98811	Agriculture	103c	20A
O Wenatchee National Forest: Stellko.		Ardenvoir	WA	98811	Agriculture	103c	
C Yakima Agricultural Research Laboratory.	3706 W Nob Hill Blvd	Yakima	WA	98902	Agriculture	3010 3016 103c	20A
O Yakima Agricultural Research Laboratory-U.	3706 W Nob Hill Blvd	Yakima	WA	98902	Agriculture	3010 3016 103c	
C Columbia Gardens		Pasco	WA		Commerce	103c 3016	23
O Columbia Gardens		Pasco	WA		Commerce	103c	
C BPA–Bake Oven Substation	Bake Oven Road	Maupin	WA		Energy	103c 103a	23
O BPA–Bake Oven Substation	Bake Oven Road	Maupin	WA		Energy	103c	
C BPA–Covington Substation	28401 Covington Way SE	Kent	WA	98031	Energy	3010 3016 103c 103a	23
O BPA–Covington Substation	28401 Covington Way SE	Kent	WA	98031	Energy	3010 3016 103c	
C Region 10, Environmental Services Division Lab.	7411 Beach Dr E	Manchester	WA	98353	EPA	3010 3016	23
O Region 10, Environmental Services Division Lab.	7411 Beach Dr E	Manchester	WA	98353	EPA	3010	
C Jackson Park Housing	Austin Drive at Shore Drive.	Bremerton	WA	98312	Navy	3010 3016	20A
O Jackson Park Housing	Boone Rd	Bremerton	WA	98312	Navy	3010 3016	
C Jim Creek Naval Radio Station T.	4 Miles East of State Highway 530 at Oso.	Oso	WA	98223	Navy	103c	20A

FEDERAL FACILITIES DOCKET, DOCKET CORRECTIONS—Continued

	Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism	Correction codes
O	Jim Creek Naval Radio Station T.	4 Miles East of State Highway 530 at Oso.	Oso	WA		Navy	103c	
C	FAA–Mica Peak	T24N, R45E, S14	Mica	WA	99023	Transportation	103c 3016	23, 20A
O	FAA–Mica Peak	T24N R45 E S14	Mica	WA	99023	Transportation	103c	
C	Chequamegon National Forest.	157 N. 5th Avenue	Park Falls	WI	54552	Agriculture	3010 3016	20A
O	FS–Chequamegon National Forest.	157 N. 5th Avenue	Park Falls	WI	54552	Agriculture	3010 3016	
C	Forest Products Laboratory	One Gifford Pinchot Drive	Madison	WI	53705	Agriculture	3005 3010 3016	23, 20A
O	FS–Forest Production Laboratory.	502 Walnut Street	Madison	WI	53705	Agriculture	3005 3010	
C	Nicolet NF: Laona & Lakewood SLF.	68 South Stevens	Rhinelander	WI	54501	Agriculture	3016	20A
O	Nicolet National Forest-Laona & Lake SLF.	68 South Stevens	Rhinelander	WI	54501	Agriculture	3016	
C	West Virginia Air National Guard.	Yeager Airport	Charleston	WV	25311	Defense	103c 3010	21
O	West Virginia Air National Guard.	Yeager Airport	Charleston	WV	25311	Transportation	103c 3010	
C	Sugar Grove Naval Security Group Activity, LF #1.	10 Mi off Rte 33	Sugar Grove	WV	26815–0001	Navy	3010 3016 103c	20A
O	Sugar Grove Naval Radio Station LF #1.	10 Mi off Rte 33	Sugar Grove	WV	26815	Navy	3010 3016 103c	

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Dewline Site Bar-Main	Barter Isl., ½ Mi E of NE Shr.	Kaktovik	AK	99747	Air Force	103c 3016
Dewline Site LIZ–2	Kasegalik Lagoon-Chukchi Sea.	Point Lay	AK	99766	Air Force	3010 103c 3016
Dewline Site LIZ–3	Kuk River & Chukchi Sea	Wainwright	AK	99782	Air Force	3010 103c 3016
Dewline Site POW–1	Lonely, Pitt Point, E of Smith Bay.	Lonely	AK	99999	Air Force	3010 103c 3016
Dewline Site POW–2	Simpson Lagoon-Beaufort Bay.	Oliktok	AK	99599	Air Force	3010 103c 3016
Dewline Site POW–Main	Point Barrow Between N Salt Lagoon & Imikpuk.	Point Barrow Station.	AK	99723	Air Force	3010 103c 3016
BLM-Loran Station on Sitkinak	Sitkinak Island	Sitkinak Island	AK	99615	Interior	103c
BLM-Red Devil Mine Waste Ponds	L61–10–12 L149–56–48	Bethel	AK	99656	Interior	3016 103c
BLM-Sagwon Airstrip	T5R4ESEC10–11	Sagwon	AK	99513	Interior	3016 103c
FWS–Brownlow Point Dewline Site	Barrow, 265 Mi SE	Barrow	AK	99723	Interior	103c 3016
FWS–Demarcation Point Dewline	Barrow, 380 Mi SE	Barrow	AK	99723	Interior	103c 3016
NPS-Bering Land Bridge National Preserve.	P.O. Box 220	Nome	AK	99762	Interior	103c 3016
Northeast Cape St. Lawrence Island.	70 Mi E of Savoonga St. Lawrence.	Northeast Cape	AK	99769	Navy	3010 3016 103c
FAA-Woody Island Navigation Site	Woody Island	Kodiak	AK	99615	Transportation	3016 103c
St. Paul Island Coast Guard Loran Station.	USDOT–CG St Paul Is Loran Stat.	St Paul Island	AK	99660	Transportation	3010
Maxwell Air Force Base	3800 Air Base Group Dee	Maxwell AFB	AL	36112	Air Force	3010 103c 3016
Bellefonte Nuclear Plant	Off US Hwy 72	Hollywood	AL	35401	Tennessee Valley Authority.	3005 3010 103c
Browns Ferry Nuclear Plant	US Hwy 72	Athens	AL	35611	Tennessee Valley Authority.	3010
Colbert Fossil Plant	Off US Hwy 72 W	Tuscumbia	AL	35674	Tennessee Valley Authority.	3005 3010 103c
Guntersville Hydro Plant	Off US Hwy 431, 11 Mi NW of Guntersville.	Guntersville	AL	35976	Tennessee Valley Authority.	3010
Muscle Shoals Power Stores	AL Hwy 133	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103a
National Fertilizer and Environmental Research Ctr.	Wilson Dam Road	Muscle Shoals	AL	35660	Tennessee Valley Authority.	3005 3010 3016 103c
Widows Creek Fossil Plant	Off US Hwy 72 W	Stevenson	AL	25772	Tennessee Valley Authority.	3005 3010 103c
Wilson Hydro Plant	AL Hwy 133	Florence	AL	35660	Tennessee Valley Authority.	3010

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Guam Naval Magazine	Apra Hbr Hts Area by Fena Resv.	Apra Harbor	AQ	96910	Navy	103c
South Central Family Farm Research Center.	Rt. 2, Box 144A Hwy 23 South.	Booneville	AR		Agriculture	3016
Fort Chaffee	Building 239	Fort Chaffee	AR	72905	Army	3005 3010 3016 103c
Millwood Resident Engineers Office	Route 1	Ashdown	AR		Corps of Engineers, Civil.	103c
Combustion Research Facility	NCTR Bldg. 45	Jefferson #72070.	AR	72079	EPA	3005 3010 3016
Sky Harbor International Airport	2001 S. 32nd St	Phoenix	AZ	85034	Air Force	3010
Fort Huachuca	RCRA Units	Fort Huachuca	AZ	85613	Army	3010 3016 103c 103a
Sierra National Forest	1130 O St. Room 3017	Fresno	CA	93721	Agriculture	103c 3016
Plant #19	4297 Pacific Coast Hwy	San Diego	CA	92101–5001	Air Force	103c 3016 3010
Norwalk Defense Fuel Supply Center.	15306 Norwalk Blvd	Norwalk	CA	90650	Defense Logistics Agency.	3010 3016 103c
Lawrence Berkeley Laboratory	1 Cyclotron Rd	Berkeley	CA	94720	Energy	3005 3010 3016
Stanford Linear Accelerator Center	2575 Sandhill Rd	Menlo Park	CA	94305	Energy	3010 3016 103c 103a
Civil Engineering Laboratory	NCBC	Port Hueneme	CA	93043	Navy	3010 103a
Crows Landing Naval Air Logistics Force.	NALF Crows Landing	Crows Landing	CA	95313	Navy	3010 3016
Fallbrook Naval Weapons Station Annex.	Seal Beach	Fallbrook	CA	92028	Navy	103c
Imperial Beach Naval Communications Station.	Outlying Landing Field Bldg 162 Rt 75 & Palm Ave.	Imperial Beach	CA	92032	Navy	3005 3010 103c 103a
Oakland Naval Regional Medical Center.	8750 Mountain Blvd	Oakland	CA	94627	Navy	3010 103c
Point Sur Naval Facility	Naval Facility Point Sur	Big Sur	CA	93920	Navy	3010
San Diego Naval Facilities Engineering Command.	Western Division	San Diego	CA	92136	Navy	103c
Skaggs Island Naval Security Group Activity.	Skaggs Island	Sonoma	CA	95476	Navy	3010 3016
Colorado Springs Academy	AFA/DE	Colorado Springs.	CO	80840	Air Force	3010 103c
Peterson Air Force Base	1003 SSG/CC	Peterson AFB	CO	80914	Air Force	3005 3010 103c
Fort Carson	DFAE Bldg. 304, AFZC–FE–EQ.	Ft. Carson	CO	80913	Army	3005 3010 3016 103c
Grand Junction Projects Office	3597 B–3/4 RD PO2567	Grand Junction	CO	81502–5504	Energy	3016 103c
Solar Energy Research Institute	1617 Cole Blvd	Golden	CO	80401	Energy	3005 3010 3016 103c
WAPA-Power Operations	1800 S. Rio Grande Ave	Montrose	CO	81401	Energy	103c
National Enforcement Investigation Center.	DFC	Denver	CO	80225	EPA	3010
BLM-Fremont	T48NR12ESEC19	Cata Paxd	CO		Interior	103c
BLM-Montrose County Dump	T48NR19WSEC22	Montrose	CO		Interior	103c
BLM-Placerville Tram Site	T44NR11WSEC35 HWY 62	Placerville	CO	81430	Interior	103c
BLM-San Miguel Landfill #1	T44NR15WSEC26	Naturita	CO		Interior	103c
BLM-San Miguel Landfill #2	T44NR17WSEC18	Slick Rock	CO		Interior	103c
BLM-Sawpit Tram Site (Ore Storage).	T43NR10WSEC18	Saw Pit	CO	81435	Interior	103c
BLM-Town of Mesa Landfill	T10S, R96W, SEC22	Molina	CO		Interior	103c
BR-Loveland	910 Van Buren	Loveland	CO	80537	Interior	3010 103c.
GS-Denver, NWQL	5293 Ward Rd	Denver	CO	80225	Interior	3010 3016
NPS-Denver Service Center	755 Parfet St., Box 25287	Denver	CO	80225	Interior	3016 103c
Denver Bulk Mail Center	7755 E. 56th Ave	Denver	CO	80238	Postal Service	3016 103c
Central Direct Fed. Division Materials-FHWA.	6th St., Bldg. 52, DFC	Denver	CO	80225	Transportation	3005 3010 103c 3016
Transportation Test Center	21 Miles NE Pueblo Mem Airport.	DOT Test Track Rd.	CO	81001	Transportation	3005 3010 3016
Stratford Engine Plant	550 South Main Street	Stratford	CT	06497	Army	3005 3010 3016
Knolls Atomic Power Laboratory-Windsor Site.	Prospect Hill Road	Windsor	CT	06095	Energy	3005 3010 3016 103c 103a
East Lyme Naval Underwater Systems Center.	Dodge Pond Field Station	East Lyme	CT	06357	Navy	3010 3016
New London Naval Underwater Systems Center.	New London Laboratory	New London	CT	06320	Navy	3010 103c
Fort McNair	350 P Street, S.W.	Washington	DC	20319	Army	3010 103c

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
U.S. Soldiers and Airmens Home	Michigan Ave. N.E	Washington	DC	20317	Defense	3010 3016 103c
Customs Field Office	1200 Pennsylvania Avenue	Washington	DC	20004	General Services Administration.	3010 103c
Washington Naval Research Laboratory.	4555 Overlook Ave	Washington	DC	20375	Navy	3005 3010 3016 103c 103a
Bureau of Engraving & Printing	14th & C Sts SW	Washington	DC	20228	Treasury	3005 3010 103c 103a
Canal Site	Main St, North St Georges	Newcastle	DE	19733	Corps of Engineers, Civil.	3016 103c
Wildlife Research Field Station	2820 E University Ave	Gainesville	FL	32601	Agriculture	103c
Avon Park Air Force Base	56 Combat Support Group/DE.	MacDill AFB	FL	33608	Air Force	3005 3010 3016
Cape Canaveral Air Force Base	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a
Eglin Air Force Base	3200 SPTW/DEV	Eglin AFB	FL	32542	Air Force	3005 3010 3016 103c 103a
Hurlburt Field	1 SOCES/CEV	Hurlburt Field	FL	32544	Air Force	3005 3010 103c 103a
MacDill Air Force Base	56 Combat Support Group/DE.	MacDill AFB	FL	33608	Air Force	3005 3010 3016 103c
Patrick Air Force Base	6550 ABG/DEEV	Patrick AFB	FL	32925	Air Force	3005 3010 3016 103c 103a
Tyndall Air Force Base	4756 CSG/DE	Tyndall AFB	FL	32403	Air Force	3005 3010 3016 103c
AFA 49–A Orlando	8601 Ave B McCoy NTC Annex.	Orlando	FL	32812	Army	3005 3010
Colonel Frank M. Williams Army Reserve Center.	11700 NW 27th Ave	Miami	FL	33167	Army	3005 3010
Lt. Clarence Lovejoy Army Reserve Center.	4823 N Hubert Ave	Tampa	FL	33614	Army	3005 3010
Lynn Haven Defense Fuel Support Point.	W End of 10th Street	Lynn Haven	FL	32444	Defense Logistics Agency.	3010 3016 103c
Tampa Defense Fuel Support Point	Box 13736	Tampa	FL	33611	Defense Logistics Agency.	3010 3016 103c
NPS-Gulf Islands National Seashore.	Fort Pickens Rd	Gulf Breeze	FL	32561	Interior	103c
Kennedy Space Center	NASA Mail Code DF–EMS	Kennedy Space Center.	FL	32899	NASA	3005 3010 3016 103c 103a
Key West Naval Air Station-Boca Chica.	Naval Air Station	Key West	FL	33042	Navy	3005 3010 3016 103c 103a
Mayport Naval Air Station	PO Box 265 Naval Station	Mayport	FL	32228	Navy	3005 3010 3016 103c 103a
Panama City Coastal Systems Station.	Hwy 98 Code 6310MC	Panama City	FL	32407	Navy	3005 3010 3016
Key West Coast Guard Station		Key West	FL	33040	Transportation	3010
Mayport Coast Guard Base	PO Box 385	Mayport	FL	32267	Transportation	3010 103c
Miami Beach Coast Guard Base	100 MacArthur Cswy	Miami Beach	FL	33139	Transportation	3005 3010
St. Petersburg Coast Guard Station	600 8th Ave SE	St Petersburg	FL	33701	Transportation	3010
Dobbins Air Force Base	94 CSG/DE	Marietta	GA	30069	Air Force	3016 103c
Moody Air Force Base	347 CSG/DE	Moody AFB	GA	31669	Air Force	3005 3010 3016 103c
Plant #6 (Lockheed)	86 S Cobb Drive Zone 54	Marietta	GA	30063	Air Force	3005 3010 3016
Fort Benning	GA Hwy 1 & US 27	Fort Benning	GA	31905	Army	3005 3010 3016 103c
Fort Gillem	Attn AFZK–EH–C	Forest Park	GA	30330	Army	3005 3010 3016 103c
Fort Gordon and National Signal Center.	ATZHFE EC	Fort Gordon	GA	30905	Army	3005 3010 3016 103c 103a
Fort Stewart	24th Infantry Div AFZP–DEN–E.	Fort Stewart	GA	31314	Army	3005 3010 3016 103c
Hunter Army Airfield	24th Infantry Div AFZP–DEN–E.	Fort Stewart	GA	31314	Army	3005 3010 3016 103c
Kings Bay Naval Submarine Base	GA State Hwy Spur	Kings Bay	GA	31547	Navy	3005 3010 3016 103c 103a
Atlanta Medical Center	1670 Clairmont Road	Decatur	GA	30333	Veterans Administration.	3005 3010 3016
Guam Naval Hospital	Naval Hosp Guam	Naval Hosp Guam.	GU	96638	Navy	103c
Pearl Harbor Naval Submarine Base.		Pearl Harbor	HI	96850	Navy	3010 103a

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Pearl Harbor Naval Supply Center .	Naval Base	Pearl Harbor	HI	96860	Navy	3005 3010 103c 3016
Pearl Harbor Navy Public Works Center.	Naval Station Area	Pearl Harbor	HI	96860	Navy	3005 3010 3016 103c 103a
WAPA-Hinton	PO Box 1012	Hinton	IA	51024	Energy	3005 3010 3016
Urbandale Bulk Mail Center	4000 NW 109th Street	Urbandale	IA	50395	Postal Service	3016
Idaho Panhandle National Forests .	1201 Ironwood Dr	Coeur D'Alene	ID	83814	Agriculture	3016 3010 103c
Sheep Experiment Station	HC 62, Box 2010	Dubois	ID	83423	Agriculture	3016 103c
BLM-Blue Dome Unauthorized Dump.	T10, NR30E, Sec 30	Blue Dome	ID	83464	Interior	103c
BLM-Central Cove Landfill	T3N, R4W, Sec 8 and 9	Caldwell	ID	83605	Interior	3016 103c
BLM-Champaigne Creek Mine	T3N, R24E, Sec 15	Grouse	ID	83242	Interior	3016 103c
BLM-Delamar Silver Mine	T15S, R35E	Owyhee	ID	83650	Interior	103c
BLM-Elk City	T29, NR8E, Sec 23	Elk City	ID	83525	Interior	3016 103c
BLM-Howe Dumpsite	T6, NR29E, Sec 31	Howe	ID	83244	Interior	103c
BLM-Menan Unauthorized Dump	T6N, R38E, Sec 26 and 27	Madison	ID	83440	Interior	103c
BLM-Morgan's Pasture	T1N, R35E, Sec 33 & 34	Shelly	ID	83274	Interior	3010 103c
BLM-Owyhee Co. Grandview Landfill.	T6, SR4E, Sec 14	Bruneau	ID	83604	Interior	103c
BLM-Owyhee Co. Marsing/ Homedale Landfill.	Johnson Rd. T4N, R5W, S32 SW¼.	Marsing-Homedale.	ID	83639	Interior	103c
BLM-Owyhee Co. Wilson Creek Landfill.	T1, SR34E, Sec 13	Marsing	ID	83639	Interior	103c
BLM-Pesticide Dump Site, Reynolds.	T2, SR3W, Sec 31	Reynolds	ID	83650	Interior	103c
BLM-Pesticide Dumpsite Sec. 5,	Boise Dist Sec. 5	Murphy	ID	83650	Interior	103c
BLM-Pullman Mine	T29N, R4W, S14	Cottonwood	ID	83522	Interior	103c
BLM-Springfield Dumpsite	T3SR32ESec 12	Springfield	ID	83277	Interior	103c
BLM-Springfield Unauthorized Dumpsite.	T35N, R32E, Sec 15	Springfield	ID	83277	Interior	103c
BR-Minidoka Dam	Rt. 4, Box 292	Rupert	ID	83350	Interior	3010 3016
Fermi National Accelerator Laboratory.	Route 16 & 59 Kane County	Batavia	ID	60510	Energy	3005 3010 3016 103c
Danville Medical Center Hospital	1900 E Main St	Danville	ID		Veterans Administration.	103c
Former Jeffersonville Quartermaster Depot.	Located on Segrams Property Clark County.	Jeffersonville	IN	47130	Army	3016 103c
New Haven Defense Logistics Agency Depot.	State Rt. 14	New Haven	IN	46774	Defense Logistics Agency.	3010
Atchison Defense Industrial Plant Equipment Facil.	Old Rte 1	Atchison	KS	66002	Army	103c
Region 7, Environmental Services Division Lab.	25 Funston Road	Kansas City	KS	66115	EPA	3005 3010 3016 103c
Armor School and Center at Fort Knox.	Hwy 31 W	Fort Knox	KY	40121	Army	3005 3010 3016 103a
Fort Campbell	AFZB–FE–ECE	Fort Campbell	KY	42223	Army	3005 3010 3016 103c
Lexington Bluegrass Depot Activity	US Hwy 421	Richmond	KY	40475	Army	3005 103c
Lexington-Bluegrass Army Depot	Haley Rd	Lexington	KY	40511	Army	3005 3010 3016 103c 103a
Louisville Naval Ordance Station	Southside Dr. MDS 42	Louisville	KY	40214	Navy	3005 3010 3016
Southern Regional Research Center.	1100 Robert E. Lee Blvd	New Orleans	LA	70124	Agriculture	3010 3016 103c
SPR-Weeks Island	2 Mi NW of Cypremont	Cypremont	LA	70560	Energy	103c
SPR-West Hackberry	3.8 Mi W of Hackberry, Hwy 390.	Hackberry	LA		Energy	103c
FWS-Lacassine National Wildlife Refuge.	Route 1	Lake Arthur	LA	70549	Interior	103c
Martin Marietta Aerospace	13800 Old Gentilly Road	New Orleans	LA	70129	NASA	3005 3010 3016 103c
New Orleans Medical Center	1601 Perdido Street	New Orleans	LA	70112	Veterans Administration.	3010
Boston Postal Service	135 A Street	Boston	MA	02210	Postal Service	3010
Woods Hole Coast Guard Base	Little Harbor Road	Falmouth	MA	02543	Transportation	3010
Adelphi Laboratory Center	2800 Powder Mill Rd	Adelphi	MD	20783	Army	3005 3010 3016 103c
National Institute of Standards and Technology.	Quince Orchard Rd	Gaithersburg	MD	20760	Commerce	3005 3010 103c
National Marine Fisheries Service	South Morris Street Ext.	Oxford	MD	21654	Commerce	103c 3010
Defense National Stockpile Center .	710 Ordnance Road	Baltimore	MD	21226	Defense Logistics Agency.	3005 3010 3016 103c

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
NIH-Bethesda	9000 Rockville Pike	Bethesda	MD	20892	Health and Human Services.	3005 3010 3016 103c 103a
Goddard Space Flight Center	Greenbelt Road	Greenbelt	MD	20771	NASA	3010 103c
Annapolis Naval Academy	Annapolis Naval Complex	Annapolis	MD	21402	Navy	3005 3010 3016 103c
National Naval Medical Center	8901 Wisconsin Ave	Bethesda	MD	20814	Navy	3005 3010 3016 103c
Seal Island	C/O Seal Island National Wildlife Refuge.	Milbridge	ME	04658	Defense	103c
Casco Bay Defense Fuel Support Point.	Rt 123	South Harpswell Neck.	ME	04079	Defense Logistics Agency.	3010 3016 103c
Searsport Defense Fuel Support Point.	Trundy Road Box 112	Searsport	ME	04974	Defense Logistics Agency.	3010 3016 103c
Gouldsboro Naval Security Group Activity.	Bldg 41 (Operations Site)	Gouldsboro	ME	04624	Navy	103c
Winterharbor Naval Security Group Activity.	Route 186	Winterharbor	ME	04693	Navy	3010 103c
Tank Automotive Command	6501 E. 11 Mile Rd Macomb County.	Warren	MI	48090	Army	3005 3010 3016 103c
Harrisville Defense Fuel Support Point.	US Hwy 23	Harrisville	MI	48740	Defense	103c
Ann Arbor Motor Vehicle Emission Laboratory.	2565 Plymouth Road	Ann Arbor	MI	48105	EPA	3010
Minneapolis St. Paul Bulk Mail Center.	3165 S. Lexington Ave	St. Paul	MN	55121	Postal Service	3010
Schuster Farm	SEC58 S17 T55N R33W	Gower	MO		Agriculture	103c
MO Aviation Classification & Repair Activity Depot.	2501 Lester Jones Ave	Springfield	MO	65803	Army	103c 3010.
Defense Mapping Agency-Fee	3200 S. Second Street	St. Louis	MO	63118	Defense Mapping Agency.	3010
Defense Mapping Agency-Fee	8900 S. Broadway	St. Louis	MO	63118	Defense Mapping Agency.	3010
Mobile Incinerator	SE¼ NW¼ NW¼ Sec 20	McDowell	MO	65769	EPA	3010 103c
St. Louis	1222 Spruce	St. Louis	MO	63103	General Services Admin.	3005 3010
BM–Rolla Research Center	1300 Bishop Ave	Rolla	MO	65401	Interior	103c
Columbus Air Force Base	14 ABG/DE	Columbus AFB	MS	39701	Air Force	3005 3010 3016 103c
Keesler Air Force Base	3380 CES/DE	Keesler AFB	MS	39534	Air Force	3005 3010 3016 103c
Engineering Environmental Waterway Laboratory.	PO Box 631	Vicksburg	MS	39180	Army	3005 3010 3016 103c
Gulfport Naval Construction Battalion Center.	33rd Ave	Gulfport	MS	39501	Navy	3010 103c
Malmstrom Air Force Base	Facility 1501 Perimeter Rd	Great Falls	MT	59402	Air Force	3005 3010 3016 103c 103a
BLM–Jet Fuel Refinery Site	T14NR31E 4 Mi E of Mosby	Mosby	MT		Interior	103c
BLM–Roundup Landfill	1.5 Miles Northwest of Roundup.	Roundup	MT		Interior	103c
BLM–Sluice Gulch Leaking Adit	T6SR15WSEC5		MT		Interior	103c
BLM–Thorium City Waste Dump	T105R15WSEC21,22,27,28	Grant	MT	59734–3016	Interior	3016 103c
BLM–Tungsten Mill Tailings	T45W9WSEC4,5,9	Glen	MT	59732	Interior	103c
FWS–Charles M. Russell Refuge	T21N, R2E, Sec. 15	Turkey Joe Landing.	MT	59457	Interior	3010 103c
Pope Air Force Base	317 CSG/CC	Pope AFB	NC	28308	Air Force	3005 3010 103c 3016
Albemarle Army Reserve Center	1816 E Main St	Albemarle	NC	28001	Army	3010 103c
Asheville Army Reserve Center	224 Louisiana	Asheville	NC	28806	Army	3010 103c
Brevard Army Reserve Center	E French Broad St	Brevard	NC	28712	Army	3010 103c
Charlotte #1 Army Reserve Center	1300 Westover Dr	Charlotte	NC	28205	Army	3010 103c
Durham #1 Army Reserve Center	1228 Carrol St	Durham	NC	27701	Army	3010 103c
Durham #2 Army Reserve Center	724 Foster St	Durham	NC	27701	Army	3010 103c
Garner Army Reserve Center	2017 Garner St	Garner	NC	27529	Army	3010 103c
Greensboro Army Reserve Center	1120 Church St	Greensboro	NC	27405	Army	3010 103c
Greenville Army Reserve Center	1391 N Mem Dr	Greenville	NC	27834	Army	3010 103c
Hickory Army Reserve Center	1500 12th Street NW	Hickory	NC	28601	Army	3010 103c
High Point Army Reserve Center	156 Parris Ave	High Point	NC	28307	Army	3010 103c
Lumberton Army Reserve Center	1400 Carthage Rd	Lumberton	NC	28358	Army	3010 103c

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Morehead City Army Reserve Center.	405 Fisher St	Morehead City	NC	28557	Army	3010 103c
Raleigh Army Reserve Center	3115 Western Blvd	Raleigh	NC	27606	Army	3005 3010 103c
Rocky Mount Army Reserve Center	804 Fairview Rd	Rocky Mount	NC	28701	Army	3010 103c
Salisbury Army Reserve Center	1825 Woodleaf Rd, PO Box 1927.	Salisbury	NC	28114	Army	3010 103c
Wilmington Army Reserve Center	2144 Lakeshore Dr	Wilmington	NC	28401	Army	3010 103c
National Marine Fisheries Service	Pivers Island off US Hwy 70 West.	Beaufort	NC	28512	Commerce	3010 3016
National Institute of Environmental Health Science.	S on Alexander Dr	Research Triangle Park.	NC	27709	Health and Human Services.	3005 3010 103c
Bogue Burn Pit Marine Corps Auxilary Landing Bogu.	MCALF Bogue	Morehead City	NC	28557	Navy	3016 103c
Cherry Point Marine Corps Air Station.	NC Hwy 101	Cherry Point	NC	28533	Navy	3005 3010 3016 103c
Fort Macon Coast Guard Station	PO Box 237	Atlantic Beach	NC	28512	Transportation	3010 103c
North Dakota Agricultural Experiment Station.	1605 W. College St	Fargo	ND	58105	Agriculture	3010 3016 103c
Minot Air Force Base	41 CSG/CC	Minot AFB	ND	58705	Air Force	3005 3010 3016 103c
Concrete Missile Early Warning Station.	DET 1 57 AD/DE	Concrete	ND	58221	Army	103c 3010 3005
Grand Forks Defense Fuel Support Point.	Grand Forks AFB 42nd Street.	Grand Forks	ND	58210	Defense Logistics Agency.	3010 3016 103c
Section 5 Impoundment	SW¼NW¼SE¼ of Sec 5	Glenvil Township.	NE		Agriculture	103c
Lincoln Naval Reserve Center	1625 N 10th St	Lincoln	NE	68508	Navy	103c
Omaha Naval and Marine Corps Reserve Center.	Fort Omaha	Omaha	NE	68102	Navy	103c 103a
Newington Defense Fuel Support Point.	Patterson Lane	Newington	NH	03801	Defense Logistics Agency.	3010 3016 103c
Bayonne Military Ocean Terminal	Foot of 32nd Street	Bayonne	NJ	07002	Army	3005 3010 3016 103c 103a
Fort Monmouth	Tinton & Pinebrook	Tinton Falls	NJ	07724	Army	3010 3016 103c 103a
SFC NV Brittan Army Reserve Center.	39th and Federal Street	Camden	NJ	08105	Army	3010
Storck Army Reserve Center	Shore Road	Northfield	NJ	08225	Army	3010
Stryker Reserve Center	2150 Nottingham Way	Trenton	NJ	08619	Army	3010
NOAA/NMFS/NEFC	Sandy Hook Laboratory	Highlands	NJ	07732	Commerce	3005 3010
Somerville Depot	Route 206	Somerville	NJ	08876	General Services Admin.	103c
FWS—Great Swamp National Wildlife Refuge.	Rd 1, Box 152	Basking Ridge	NJ	07920	Interior	3016 103c
NPS—Gateway National Recreational Area.	Fort Hancock	Sandy Hook-Brooklyn.	NJ	07732	Interior	3010 3016 103c
East Orange Medical Center	Tremont Ave	East Orange	NJ	07019	Veterans Administration.	3010
Hillsborough Supply Depot	Route 206	Hillsborough Twp.	NJ	08853	Veterans Administration.	103c 3010
Lyons Medical Center	Knollcraft Road	Lyons	NJ	07939	Veterans Administration.	3010 103c.
Cibola NF: Cobb Resources Corporation.	Cibola National Forest	Magdalena	NM	87825	Argiculture	103c 3016
Jornada Experimental Range	1700 Jornada Road	Las Cruces	NM	88001	Agriculture	3016
Lincoln NF: High Rolls Mining District.	3.3 M S of Inter. of W US 82.	High Rolls	NM	88325	Agriculture	103c 3016
Santa Fe NF: La Bajada Mine	1.25 Mi Upstream From LA Bajada.	La Bajada	NM		Agriculture	103c
Melrose Range	25 Mi W of Cannon AFB	Melrose	NM	88124	Air Force	3005 3010 3016
Gasbuggy	T29N, R4W S36; 55 M E. of Farmington.	Dulce (Near)	NM		Energy	103c
Lovelace Inhalation Toxicology Research Institute.	Bldg. 9200, Kirtland AFB East.	Albuquerque	NM	87185	Energy	103c 3016
BLM-Anthony Landfill	T26S R4E SEC30 NW¼ + E½ of Lot 2.	Anthony	NM	88021	Interior	103c 3016
BLM-Blanco Landfill	T29NR10WSEC13	Blanco	NM	87412	Interior	103c 3016
BLM-Bloomfield Landfill	T29N, R11W, SEC34	Bloomfield	NM	87413	Interior	3016 103c
BLM-Blue Canyon Allotment	T20SR5WSEC8	Hatch	NM	87937	Interior	103c 3016
BLM-Chaparral Landfill	T26SR5ESEC14	Chaparral	NM		Interior	103c 3016

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
BLM-Espanola Landfill	T20N R9E SEC 6N MPH	Espanola	NM	87532	Interior	103c 3016
BLM-Hatch Landfill	T19S, R3W, SEC4, Lot 1	Hatch	NM	87937	Interior	103c 3016
BLM-Hill Landfill	T22SR1ESECS3&4NMPH	Hill	NM		Interior	103c 3016
BLM-Hyde Mine	35/32/46 & 108/41/26	Gallup	NM	87301	Interior	103c 3016
BLM-International Mineral and Chemical.	P.O. Box 71	Carlsbad	NM	88220	Interior	103c 3016
BLM-Kerr McGee Laguna Toston	Lee County	Hobbs	NM	88240	Interior	103c 3016
BLM-Kerr McGee Potash Company	Lee County	Hobbs	NM	88240	Interior	103c
BLM-La Union Landfill	T27SR3ESEC18 Dona Ana Co.	La Union	NM	88021	Interior	3016 103c
BLM-Las Cruces Landfill	T23SR2ESEC11	Las Cruces	NM	88001	Interior	3016 103c
BLM-Mesquite Landfill	T24SR3ESEC29NMPH	Mesquite	NM		Interior	103c 3016
BLM-National Potash Company	Eddy & Lee Countys	Carlsbad	NM	88220	Interior	103c 3016
BLM-Orogrande Landfill	T22SR8ESEC14SWSESW	Orogrande	NM		Interior	103c 3016
BLM-San Antonio Landfill	T5SR1ESEC6NMPH	San Antonia	NM		Interior	103c 3016
BLM-Standard Transpipe Corp	T17S, R9E, SEC 18 and 19	Alamogordo	NM	88310	Interior	103c 3016
BLM-Thoreau Landfill	T14NR13WSEC20NMPH	Thoreau	NM		Interior	103c 3016
BLM-UNM Hazardous Waste Storage Facility.	T23S, R2E, SEC23	Las Cruces	NM	88001	Interior	3005 3010 3016 103c
BLM-Velarde Landfill	T22NR9ESEC20NMPH	Velarde	NM	87582	Interior	103c 3016
BLM-Waste Elec. Transformer Site No. 1.	T4SR1WSEC17,20	Socorro	NM	87801	Interior	103c
BLM-Waterflow Landfill	T30 NR 16W SEC35	Waterflow	NM	87421	Interior	103c 3016
Tonopah Test Range (Sandia National Laboratory).	PO Box 10359	Tonopah	NV	89049	Energy	3005 3010 103c 103a 3016
BLM-Henderson Landfill	T21S R63E Section 28, 29	Henderson	NV		Interior	103c
BLM-Rio Tinto Copper Mine	Sec 10 & 11 T45N R53E MDM.	Mountain City	NV	89831	Interior	103c
Plum Island Animal Disease Center	Plum Island	Orient Point	NY	11957	Agriculture	3016 103c
Hancock Field	Taft and Thompson Roads	North Syracuse	NY	13212	Air Force	3010 3016 103c
Niagara Falls Air Force Reserve Facility.	914 TAG/DE PO Box F La-Salle Station.	Niagara Falls IAP.	NY	14304	Air Force	3005 3010 3016 103c
Plant #38	Porter & Balmer Rds	Porter Twp	NY	14131	Air Force	3005 3010 3016 103c
Bellmore Maintenance Facility	2755 Maple Ave	Bellmore	NY	11710	Army	3010
Fort Hamilton	Ft Hamilton	Brooklyn	NY	11252	Army	3010 103c
Fort Totten	Bayside	Queens	NY	11359	Army	3010 103c
Roosevelt Army Reserve Center	101 Oak St	Hempstead	NY	11550	Army	3010
Watervliet Arsenal	Broadway	Watervliet	NY	12189	Army	3005 3010 3016 103a
West Point Military Academy	Steward Army Subpost	West Point	NY	10996	Army	3016
West Point Military Academy	RT 9W—Bldg 733	West Point	NY	10996	Army	3005 3010 3016 103c
Verona Defense Fuel Support Point	Main St	Verona	NY	13478	Defense Logistics Agency.	3010 3016 103c
Colonie Interim Storage Site	1130 Central Ave	Colonie	NY	12205	Energy	3005 3010 3016
Brooklyn Information Agency	29th & 3rd Ave, Door 15	Brooklyn	NY	11232	General Services Admin.	3010
Emmanuel Cellard Federal Building	225 Cadman Plaza	Brooklyn	NY	11201	General Services Admin.	3010
Federal Building	252 7th Ave	New York	NY	10001	General Services Admin.	3010
Merchandise Control Sales Section	6 World Trade Center	New York	NY	10048	General Services Admin.	3010
New York	201 Varick St	New York	NY	10014	General Services Admin.	3010
BLM-Pennsylvania Ave/Fountain Ave Landfills.	Pennsylvania Ave, Shore Pkwy.	Brooklyn	NY	11207	Interior	3010
FWS-Iroquois National Wildlife Refuge.	Casey Rd	Alabama	NY	14003	Interior	3016 103c
FWS-Montezuma National Wildlife Refuge.	3395 Route 5 & 20 East	Seneca Falls	NY	13148	Interior	3010 3016 103c
NPS-Gateway National Recreational Area.	Floyd Bennett Field	Brooklyn	NY	11234	Interior	103c
Brooklyn Naval and Marine Corps Reserve Center	Floyd Bennett Field	Brooklyn	NY	11234	Navy	103c
Mitchel Field Housing Facility	Navsta New York Housing Office, Bldg. 19, West Road, Mitchel Field.	Garden City	NY	11530	Navy	103c

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
Mitchel Manor Housing Facility	Navsta New York Housing Office, 85 A Mitchel Avenue.	East Meadow	NY	11554	Navy	103c
New York Naval Station	207 Flushing Ave	Brooklyn	NY	11251	Navy	3010 103c
Aids to Navigation Team	7063 Lighthouse Drive	Saugerties	NY	12477	Transportation	3010
Support Center Governor's Island	C/O US Coast Guard Group	Governor's Island.	NY	10004	Transportation	3010 103c
Columbus Defense Construction Supply Center.	3990 E. Broad St. Franklin County.	Columbus	OH	43215	Army	3005 3010 3016 103c
Lima Defense Plant Representative Office.	Defense Logistics Agency, DPRO General Dynamics—Lima, 1155 Buckeye Rd.	Lima	OH	45804–1898	Army	3010 3016 103c
Electronic Supply Center	1507 Wilmington Pike Montgomery County.	Dayton	OH	45444	Defense	3010 3016 103c
Cincinnati Defense Fuel Support Plant.	4820 River Rd Hamilton County.	Cincinnati	OH	45233	Defense Logistics Agency.	3010 3016 103c
Andrew W. Breidenbach Environmental Research Ctr.	26 W. St. Clair Street	Cincinnati	OH	45268	EPA	3005 3010 3016
Center Hill Hazardous Waste Engrg Research Lab.	5595 Center Hill Road	Cincinnati	OH	45268	EPA	3005 3010 3016
Testing and Evaluation Facility	1600 Gest Street	Cincinnati	OH	45203	EPA	3005 3010 3016
Plant Sciences and Water Conservation Laboratory.	1301 N. Western Rd	Stillwater	OK	74076	Agriculture	3016 103c
BIA-Caddo County Landfill #1	SE/4 SEC7 T5N R11W SW/4 SEC8.	Apache	OK		Interior	103c
FWS-Wichita Mountains National Wildlife Refuge.	Comanche County		OK		Interior	3016 103c
Willamette Falls Locks	West Linn	West Linn	OR	97068	Corps of Engineers, Civil.	103c 3016
BLM-Minexco Millsite	T9SR42ESec8	Baker	OR	97814	Interior	3016 103c
BLM-Slides Dump Site	T15SR46ESec35,Lots1,2	Ontario	OR	97914	Interior	3016 103c
Greater Pittsburgh International Airport.	911 TAG/DE	Pittsburgh	PA	15231	Air Force	3016 103c
Chas Kelly Support Center	US Army	Oakdale	PA	15071	Army	3010 103c
Philadelphia Defense Personnel Support Center.	2800 S 20th St	Philadelphia	PA	19101	Army	3005 3010 3016
Bettis Atomic Power Laboratory	PO Box 109 Bettis Rd	West Mifflin Borough.	PA	15122–0109	Energy	3005 3010 3016 103c
NPS-Gettysburg National Military Park.	RD 1	Gettysburg	PA	17325	Interior	103c
NPS-Valley Forge National Historic Park.	Rte 23	Valley Forge	PA	19481	Interior	103c 3010
Fort Allen	Route 1	Juana Diaz	PR	00665	Army	103c
Ceiba Naval Station	Roosevelt Roads	Ceiba	PR	00635	Navy	3005 3010 3016 103c
Eastern Vieques	Vieques	Vieques	PR	00765	Navy	103c 3005 3010 3018
Roosevelt Roads Naval Station	Villa Verde Street Drydock & Repair Facility.	Miramar	PR	00903	Navy	3005 3010 3016
Borinquen Coast Guard Air Station	Ramey Air Force Base	Aquadilla	PR	00604	Transportation	3010 103c
Beaufort Marine Corps Air Station	Lafrene Road	Beaufort	SC	29904	Navy	3005 3010 3016 103c 103a
Beaufort Naval Hospital	SC Highway 280	Beaufort	SC	29902	Navy	3010
Charleston Naval Shipyard	Viaduct Road	Charleston	SC	29408	Navy	3005 3010 3016
Charleston Naval Weapons Station South Annex.	Remount Road	North Charleston	SC	29406	Navy	103c
Silver King Mines Inc	US Hwy. 18	Edgemont	SD	57735	Tennessee Valley Authority.	3010 103c
Holston Army Ammunition Plant	West Stone Drive	Kingsport	TN	37660	Army	3005 3010 3016 103c
Memphis Naval Air Station	Millington-Arlington Road	Millington	TN	38054	Navy	3005 3010 3016 103c
Allen Fossil Plant	2574 Plant Rd	Memphis	TN	38109	Tennessee Valley Authority.	3005 3010 3016 103c 103a
Bull Run Fossil Plant	Edgemoor Rd., 6 Mi SE of Oak Ridge.	Oak Ridge	TN	37930	Tennessee Valley Authority.	3010
Cumberland Fossil Plant	TN Highway 149 South	Cumberland City	TN	37050	Tennessee Valley Authority.	3010
Hartsville Site	TN Hwy 25	Hartsville	TN	37050	Tennessee Valley Authority.	3010

FEDERAL FACILITIES DOCKET, SEA STATUS FACILITIES—Continued

Facility name	Facility address	City	State	ZIP code	Agency	Reporting mechanism
John Sevier Fossil Plant	TN Hwy 70E	Rogersville	TN	37134	Tennessee Valley Authority.	3005 3010 103c
Kingston Fossil Plant	Off I-40 East	Kingston	TN	37763	Tennessee Valley Authority.	3005 3010 103c
Sequoyah Nuclear Plant	Hixson Pike Rd	Daisys	TN	37319	Tennessee Valley Authority.	3005 3010 103c
Watts Bar Nuclear Plant	TN Hwy 68	Spring City	TN	37381	Tennessee Valley Authority.	3005 3010 103c
Conservation and Production Research Laboratory.	½ Mile W., T-40 S.	Bushland	TX	79012	Agriculture	3016 103c
Honey Bee Research Laboratory		Weslaco	TX	78520	Agriculture	103c
Knipling-Bushland Livestock Insects Laboratory.	Intersection SH 16 and IH 10.	Kerrville	TX	78028	Agriculture	3016
Subtropical Agriculture Research Laboratory.	FM 1015, South Expressway 83.	Weslaco	TX	76115	Agriculture	3010 3016
Bergstrom Air Force Base	67 CSG/DE	Bergstrom AFB	TX	78743	Air Force	3005 3010 3016 103c 103a
Dyess Air Force Base	96 CSG/CC	Abilene	TX	79607	Air Force	3005 3010 3016 103c 103a
Nederland Air National Guard	Highway 69	Nederland	TX	77627	Air Force	103c
Sheppard Air Force Base	3750 ABG/DE	Wichita Falls	TX	76311	Air Force	3005 3010 3016 103c
Canyon Lake Recreation Area	North Side of Canyon Lake (By Dam).	San Antonio	TX	78234	Army	103c
Corpus Christi Army Maintenance Support Activity.	2022 Saratoga	Corpus Christi	TX	78415	Army	3005 3010 103c 103a
Fort Bliss Air Defense Center	Pershing Drive	Fort Bliss	TX	79916	Army	3005 3010 3016 103c 103a
Fuels & Lubricant Research Laboratory.	6220 Cuevra	San Antonio	TX	78284	Army	103c
Saginaw Aircraft Plant	Blue Mound Road Highway 156.	Saginaw	TX	76131	Army	3010 103c
Terrell Nike Missile Site	½ Mi E. of Hwy 205	Terrell	TX	75160	Army	103c
Lake Lavon-North Gully Site 1	Highway 380	Wylie	TX	75077	Corps of Engineers, Civil.	3015
Lake Lavon-St Paul Site 2	S End Rolling Meadows St	Wylie	TX	75098	Corps of Engineers, Civil.	103c
Houston Laboratory	6608 Hornwood Dr	Houston	TX	77074	EPA	3010 103c
NPS-Padre Island National Seashore Bone Yard.	Park Road 22	Corpus Christi	TX	78418	Interior	3010 3016 103c
Kingsville Naval Air Station	Military Highway	Kingsville	TX	78363	Navy	3010 103c 103a
BLM-Chevron Red Wash Unit	T7SR7ESec22	Vernal	UT	84078	Interior	3016 103c
BLM-Desert Mound Mine	T35NR13WSec35	Cedar City	UT	84720	Interior	3016 103c
BLM-Frye Canyon Tailing	T36SR16ESec34	Hite	UT	84511	Interior	3016 103c
BLM-Ore Buying Station-Moab	T26SR22ESec6PARCLABC	Moab	UT	84532	Interior	3016 103c
Oyster Point Development Corp.	610 Thimble Shoals Blvd	Newport News	VA	23601	Air Force	103c
Arlington Hall Station	US Army	Warrenton	VA	22186	Army	3010 103c
Arlington Marine Corps Battalion Headquarters Arl.	Henderson Hall	Arlington	VA	22214	Navy	103c
Roanoke Navy and Marine Corps Reserve.	5301 Barnes Ave	Roanoke	VA	24019	Navy	3010 103c
BLM-Enlo Powerhouse Aka Similkameen.	T40NR27ESec13	Oroville	WA	98844	Interior	103c
BR-Grand Coulee Dam Project	PO Box 620	Grand Coulee	WA	99133	Interior	3010 3016
Forest Products Laboratory	One Gifford Pinchot Drive	Madison	WI	53705	Agriculture	3005 3010 3016
WAPA-Casper Field Br	W of Mt View on Spider Rd	Mills	WY	82644	Energy	103c

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Part III

Department of Agriculture

Rural Electrification Administration

7 CFR Part 1767

Accounting Requirements for REA Electric Borrowers; Final Rule

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1767

RIN 0572-AA23

Accounting Requirements for REA Electric Borrowers

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) is adding a new regulation to implement provisions of the standard form of REA security instrument between REA and its electric borrowers and to revise and codify the current REA policy set forth in REA Bulletin 181–1, Uniform System of Accounts Prescribed for Electric Borrowers of the Rural Electrification Administration, and REA Bulletin 181–3, Accounting Interpretations for REA Electric Borrowers. REA is establishing a Uniform System of Accounts (USoA) and is prescribing specific accounting procedures to be followed by electric borrowers in certain circumstances. The establishment of these accounts and procedures ensures uniformity and consistency in the manner in which borrowers account for financial transactions. By prescribing standard, uniform accounting procedures, REA may evaluate borrowers' financial performance, determine whether current loans are at risk, and determine the credit worthiness of future loans. Bulletins 181–1 and 181–3 are rescinded as of the effective date of this final rule.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Roberta E. Detwiler, Chief, Technical Accounting and Auditing Staff, Borrower Accounting Division, Rural Electrification Administration, Room 2222, South Building, U.S. Department of Agriculture, Washington, DC 20250, telephone number (202) 720–5227.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) does not apply to this final rule.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR Part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, the new information collection and recordkeeping requirements have been approved by the Office of Management and Budget (OMB) under control number 0572–0002. Comments regarding these requirements may be sent to the United States Department of Agriculture, Clearance Office, OIRM, Room 404–W, Washington, DC 20250 or to the Office of Management and Budget, Office of Information and Regulatory Affairs, Room 3201, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator, REA, has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance Programs under numbers 10.850—Rural Electrification Loans and Loan Guarantees. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation. A Notice of Final rule entitled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and Rural Telephone Bank (RTB) loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final rule: (1) will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule; (2) will not have any retroactive effect; and (3) will not require administrative proceeding before parties may file suit challenging the provisions of this rule.

Background

In order to facilitate the effective and economical operation of a business enterprise, adequate and reliable financial records must be maintained. Accounting records must provide a clear and accurate picture of current economic conditions from which management can make informed decisions in charting the company's future. The rate regulated environment of an electric utility causes an even greater need for financial information that is accurate, complete, and comparable with that generated by other electric utilities.

REA, as a Federal lender and mortgagee, and in furthering the objectives of the Rural Electrification Act, has a legitimate programmatic interest and a substantial financial interest in requiring adequate records to be maintained. In order to provide REA with financial information that can be analyzed and compared with the operations of other borrowers in the REA program, all REA borrowers must maintain financial records that utilize uniform accounts and uniform accounting policies and procedures. The standard REA security instrument requires borrowers to maintain their books, records, and accounts in accordance with methods and principles of accounting prescribed by REA in the USoA for its electric borrowers. This covenant is one of many terms and conditions prescribed by the Administrator of REA with respect to loans and loan guarantees as authorized by the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) This final rule implements those requirements by requiring borrowers to maintain their accounts in accordance with the USoA.

REA is prescribing a USoA that must be maintained and is establishing specific accounting procedures to be followed for certain circumstances that either the USoA does not specifically address or for which REA has specific accounting procedures that it requires because of the corporate structure of REA borrowers and REA's programmatic interest in assuring that it has current financial information concerning its borrowers' financial condition. The USoA and required accounting procedures will provide the financial information necessary to operate a rural electric cooperative. The uniformity of the accounts and accounting procedures prescribed will enable REA to make determinations concerning the current financial condition of REA borrowers.

In accordance with this Part 1767, REA borrowers are required to account for all transactions as prescribed herein. REA borrowers must receive REA's prior written approval before departing from this Part 1767. All submissions to a state regulatory commission or the Tennessee Valley Authority must be based upon accounting prescribed in this final rule. However, this final rule does not prohibit a borrower from maintaining additional accounting books and records to satisfy the needs of management or the requirements of other regulatory bodies.

Subsequent to the publication, by REA, of the proposed rule, Accounting Requirements for REA Electric Borrowers, published September 7, 1990, 55 FR 36936, the Federal Energy Regulatory Commission (FERC), after responding to comments, published a final rule in the **Federal Register** on April 7, 1993, 58 FR 17982, amending the FERC USoA. The rule adopts accounting requirements for allowances for emission of sulfur dioxide under Title IV of the Clean Air Act Amendments of 1990, Pub. L. No. 101–549, 104 Stat. 2399, 2584, and for assets and liabilities created through the ratemaking actions of regulatory agencies. The final rule was effective January 1, 1993. As further discussed in the comment section of this final rule, after reviewing the appropriateness and applicability of each amendment to the FERC USoA, REA will propose revisions, as necessary, to the REA USoA. REA has reviewed and analyzed the accounting requirements, comments to the FERC proposal, changes to the FERC USoA as published in this final rule, and has decided to include and implement the FERC ruling without modification.

This rule prescribes the accounting requirements for utilities, for financial accounting purposes only, for allowances for the emission of sulfur dioxide under the Clean Air Act Amendments of 1990. With regard to allowances for the emission of sulfur dioxide, this rule is not intended to modify or change the provision of a utility's mortgage and security agreement with REA. Any sale or disposal of allowances for the emission of sulfur dioxide under the Clean Air Act Amendments of 1990 must be made in accordance with the provisions of the Rural Electrification Act of 1936, as amended (7 U.S.C. 901 *et seq.*) and the utility's mortgage and loan contract agreement with REA.

The section numbers in this final rule have been renumbered to subdivide the chart of accounts into major classifications of accounts to permit easier access and use.

The information set forth in this final rule is currently contained in REA Bulletins 181–1 and 181–3. Upon the effective date of this rule, REA Bulletins 181–1 and 181–3 are rescinded.

Comments

A proposed rule entitled Accounting Requirements for REA Electric Borrowers, published September 7, 1990, at 55 FR 46936, invited interested parties to submit comments on or before November 6, 1990. Comments were received from electric borrowers, certified public accountants (CPAs), statewide organizations, industry representatives, and state commissions. The following paragraphs address various topics that are discussed by the commenters.

1767.13, Departures from the Prescribed REA USoA

Comment. Many commenters questioned REA's authority to require REA approval for departures from the prescribed REA USoA prior to seeking state commission approval. The commenters stated that REA was attempting to preempt the jurisdiction of the state commissions to regulate rates and services. The commenters stated that REA had no legal authority to preempt state law in accounting procedures.

Response. REA's intent in requiring approval of departures from the prescribed REA USoA before such departures are submitted to a state commission was to implement the provisions of Article II, Section 12 of the standard form of REA security instrument which requires REA borrowers to at all times keep, and safely preserve, proper books, records, and accounts in which full and true entries will be made of all of the dealings, business and affairs of the Mortgagor, in accordance with the methods and principles of accounting prescribed in the Uniform System of Accounts. This covenant and requirement is in each and every standard form of REA security instrument and has been a requirement for numerous years. Pursuant to Section 4 of the Rural Electrification Act of 1936, as amended (7 U.S.C. 904), this covenant is one of many terms and conditions prescribed by the Administrator of REA relating to the expenditure of the moneys loaned and the security therefore with respect to loans and loan guarantees.

This rule is not intended to preempt a state commission's authority in setting rates and prescribing service. It is intended to insure that similar transactions are accounted for in a consistent manner in accordance with the USoA. Consistency in the application of accounting methodologies is critical if REA is to properly evaluate a borrower's financial condition, programmatic performance, and ultimately its creditworthiness. REA has, therefore, amended the final rule in § 1767.13 to more clearly reflect this intent.

It should be noted that this final rule does not prohibit a borrower from maintaining additional accounting books and records to satisfy the needs of management or the requirements of regulatory bodies. Maintaining additional accounting books and records to reflect the differences between financial accounting, the requirements of the Internal Revenue Service, and the requirements of state or Federal regulatory bodies is a common business practice and, as such, should not impose unreasonable recordkeeping burdens upon REA borrowers. Any and all submissions to REA, however, must comply with the USoA as set forth in this final rule.

While REA has no objection to borrowers' maintaining two sets of financial records, the standard form of REA security instrument requires REA borrowers to keep their accounting records in accordance with the REA USoA. The REA USoA parallels the USoA prescribed by the FERC and, as such, is consistent with the standards of financial accounting for the electric utility industry as a whole. It seems inconsistent to REA, therefore, to require borrowers to adhere to the REA USoA and permit the same borrowers to submit rate filings to their individual state commissions that include accounting methodologies or procedures that will not provide rates adequate to achieve the Times Interest Earned Ratio (TIER) and Debt Service Coverage (DSC) requirements established in their REA security instruments. For example, REA borrowers are required to use straight line depreciation for reporting on the REA Forms 7 or 12, Financial and Statistical Reports. If, however, this borrower requests rates that are based upon a much lower sinking fund depreciation expense component, the revenues generated will not be sufficient to meet the financial ratio requirements in that borrower's REA security instrument, and the commission has not been given the opportunity to set rates that recover costs in a manner consistent with financial accounting.

Conversely, if the commission orders sinking fund depreciation when a borrower has requested straight line, the

commission is impairing the borrower's ability to meet the financial requirements of its REA security instrument. These situations are examples of problems currently facing REA and its borrowers and, it is for the reasons set forth above, that REA believes that rate filings and financial reporting must be based upon the consistent application of accounting principles as prescribed by the REA USoA.

Generally Accepted Accounting Principles (GAAP)

Comment. Several commenters stated that REA should incorporate a general policy statement incorporating GAAP into the USoA. These commenters stressed the importance of consistency between GAAP and USoA requirements and argued that lack of consistency may require a borrower to maintain duplicate sets of financial records. One commenter provided detailed comments regarding technical accounting practices contained in the USoA.

Response. The preamble of the proposed rule stated that there are benefits in not having inconsistencies between GAAP and REA USoA requirements, to the extent practicable. Many of the accounting procedures proposed in Section 1767.21 are adoptions or implementations of recent pronouncements of the Financial Accounting Standards Board (FASB). As with all directives, however, these pronouncements are open to professional interpretation and application. It has been REA's experience that different accountants often interpret these accounting pronouncements in different ways, therefore, leading to inconsistencies in the methods of accounting for similar transactions. Consistency in the application of accounting methodologies is critical if REA is to properly evaluate a borrower's financial condition, financial performance, and creditworthiness for comparison to the financial results of other borrowers in the REA program.

REA believes that the REA USoA should parallel the FERC USoA in order to ensure consistent financial reporting among all electric utilities. FERC has not incorporated such a policy statement in its USoA; rather it reviews the applicability of each pronouncement to the utility industry and amends its USoA accordingly. This process provides FERC the flexibility needed to properly prescribe accounting requirements appropriate for the utility industry. Similar flexibility is necessary in order for REA to consider and evaluate the impact of accounting pronouncements on cooperative entities and the REA program as a whole.

For these reasons, a general policy statement incorporating GAAP into the final rule has not be adopted. This does not, however, preclude REA borrowers from requesting and receiving REA approval of applications of GAAP for specific transactions that do not comply with the USoA.

Section 1767.15(o)

Comment. One commenter stated that this section referred to an annual report and questioned whether this information should be reported in the audited financial statements or on the REA Form 7, Financial and Statistical Report, or REA Form 12, Operating Report—Financial.

Response. It is REA's intention that this information be reported in the footnotes to both the audited financial statements and the REA Financial and Statistical Reports (REA Forms 7 and 12). Section 1767.15 (o) has been revised accordingly.

Section 1767.15(p)

Comment. One commenter questioned the term "licensed project" in this section and asked if REA licenses projects.

Response. REA does not license projects. However, all generating plants are licensed by FERC and for that reason, the term "licensed project" is used in the USoAs of both REA and FERC. This term has also been consistently applied since REA Bulletin 181–1 was last issued in 1978. For this reason, REA believes that there is no need to change this terminology.

Sections 1767.15(q)(6) and 1767.15 (r)(2)

Comment. One commenter stated that these sections and Accounts 190 and 281 are inconsistent with the provisions of Statement of Financial Accounting Standards No. 96, Accounting for Income Taxes. To ensure consistency with GAAP, the respondent suggested that these areas be amended accordingly.

Response. To ensure consistency in reporting for all electric utilities, REA will consider amending its USoA after the FERC USoA is amended. After reviewing the appropriateness and applicability of such FERC amendments to cooperative entities and the REA program, REA will, if necessary, propose revisions to the REA USoA. FERC is currently reviewing the impact of Statement No. 96 and will revise its USoA accordingly. At that time, REA will review the amendment to the FERC USoA and propose, if necessary, any revisions to the REA USoA.

Section 1767.16(c)(17)

Comment. One commenter suggested that the formula for computing Allowance for Funds Used During Construction (AFUDC) proposed in this section should not include a component for common equity because REA borrowers do not issue common stock.

Response. REA agrees with the comment. In practice, REA has permitted its borrowers to incorporate a component for patronage capital assigned in lieu of common equity in AFUDC. REA has, therefore, revised the formula in Section 1767.16(c)(17) to specifically include patronage capital assigned in lieu of common equity.

Section 1767.21, No. 118, Load Control Equipment

Comment. One commenter suggested that Load Control Receivers are moved, on a continual basis, from one consumer's premise to another and, therefore, have characteristics similar to items of special equipment. As such, the commenter suggested that Load Control Receivers be accounted for in accordance with the procedures detailed in Section 1767.21, No. 119, Special Equipment.

Response. REA's engineering staff reviewed this issue and determined that Load Control Receivers do, in fact, have characteristics similar to other items of special equipment and should be accounted for accordingly. Section 1767.41, Nos. 118 and 119, have, therefore, been revised to include Load Control Receivers as items of special equipment.

Account 123, Investment in Associated Companies

Comment. One commenter suggested that REA amend the language in Account 123 to be consistent with GAAP requirements for investments in associated organizations. The commenter suggested that the equity method be used when the GAAP conditions for applying the equity method had been met and that wholly owned subsidiaries should be consolidated when appropriate.

Response. The USoA prescribed for an REA borrower must provide accounting guidance for investments in entities that are organized as either a cooperative or a subsidiary. Through the prescribed subaccounts, Account 123 provides this flexibility. Due to the cooperative organizational structure of a generation and transmission (G&T) borrower, the net margins of the G&T must be allocated, at year's end, to its

member distribution cooperatives. The allocated earnings of the G&T are income to the distribution cooperatives at that time. If REA were to impose the equity method of accounting, very few of the distribution borrowers would have a sufficient ownership interest (at least 20%) to account for its investment in its G&T on the equity method. Therefore, in only a few rare instances, would the annual earnings of the G&T accrue to its member distribution cooperatives. Similarly, the subaccounts of Account 123 provide for the equity method of accounting for subsidiary companies. The accounting for subsidiary companies prescribed in REA's USoA parallels that of the FERC USoA and for these reasons, the language in Account 123 is not revised.

Account 434, Extraordinary Income

Comment. One commenter pointed out that Account 434, Extraordinary Income, dealt with infrequent, nonrecurring losses rather than gains.

Response. Account 434 was incorrectly cited in the proposed rule and has been appropriately corrected.

Materiality

Comment. Two commenters recommended that REA require approval for only material departures from the REA USoA.

Response. Materiality is acknowledged by auditors as a means of determining relative importance of a financial transaction to the financial statements. A uniform method of applying the concept of materiality has not been devised. Rather, the application of materiality has been left to the auditor's professional judgement. Because there is no recognized standard of materiality, professional judgement comes into play. Materiality may be based upon the financial statements taken as a whole, the balance sheet, the income statement, or individual amounts reported in each. Therefore, an accounting methodology that results in a departure from the prescribed REA USoA may be viewed as material for one REA borrower and immaterial for another. If REA borrowers are accounting for the same transaction differently, consistency and comparability of financial information is impaired and REA's ability to make prudent lending decisions could be hampered. It is for these reasons that REA will not modify the proposed rule to include a materiality provision.

It should be noted, however, that if a transaction is truly immaterial, the departure from GAAP to comply with the REA USoA should not impact the auditor's opinion on the financial statements. Experience has shown that auditors do not qualify their opinions for immaterial departures from GAAP.

Non-rate-regulated enterprises

Comment. One commenter pointed out the inconsistencies between the USoA and the accounting for REA borrowers no longer subject to the provisions of Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation (Statement No. 71). That commenter suggested that REA direct those borrowers that are no longer subject to the provisions of Statement No. 71 to follow GAAP in instances in which the USoA prescribes accounting which is inconsistent with GAAP for non-rate-regulated enterprises.

Response. An entity is not considered to be rate-regulated when, due to actions of competition or its regulator, it can no longer set its rates to recover its prudently incurred costs. If rates are not sufficient to cover current period expenses, the entity typically operates at a loss. Financially troubled borrowers that fall into this category create special programmatic concerns for REA and for the security of REA loans and loan guarantees. For these borrowers, it is critical that REA is aware of the accounting methodologies that form the basis for the financial data submitted. This data is utilized by REA to properly evaluate the borrower's current financial condition, financial performance, the security of its loans or loan guarantees, and to determine whether there is a need for restructuring. REA has a legitimate and substantial interest here. These borrowers may request REA approval to adopt accounting treatments that comply with GAAP but differ with the USoA. However, REA must have the ability to review these requests and to analyze the ultimate impact on the borrowers' financial statements.

Approval Time Frames

Comment. Several commenters suggested that a time period be imposed for REA to approve requests for departures from the prescribed REA USoA. One cooperative further suggested that REA borrowers could assume the departures were approved if REA did not respond within the agreed upon time frame.

Response. REA agrees with the commenters that a timely response is essential if our borrowers are to operate efficiently. REA believes that, by imposing a time frame, REA is working cooperatively with the borrowers to ensure adherence to the USoA. Because it is impossible to project the nature and difficulty of all requests and the resulting time requirements needed for REA to review such requests and for REA to respond, the final rule, in § 1767.13 (f) incorporates a 90-day time period for REA to respond to requests for departures from the prescribed REA USoA. The 90-day response period will begin to run when all the information necessary for REA to begin its review and to make a decision has been received by REA. If, due to extenuating circumstances, REA is unable to reach a decision within the required time period, the REA borrower will be notified of the delay and will be provided a projected decision date. Because of the necessity for borrowers to account for similar transactions and situations in a consistent manner and because this consistency is essential when REA reviews financial information, borrowers cannot be permitted to assume that a lack of response should be interpreted as REA approval. Until such time as a response is provided by REA, therefore, the borrower must not implement any accounting methodology that constitutes a departure from the REA USoA.

List of Subjects in 7 CFR Part 1767

Accounting.

For the reasons set out in the preamble, REA hereby adds a new Part 1767, Accounting Requirements for REA Electric Borrowers, to Title 7 of the Code of Federal Regulations to read as follows:

PART 1767—ACCOUNTING REQUIREMENTS FOR REA ELECTRIC BORROWERS

Subpart A—General [Reserved]

Sec.

1767.1–1767.9 [Reserved]

Subpart B—Uniform System of Accounts

1767.10 Definitions.
1767.11 Purpose.
1767.12 Accounting system requirements.
1767.13 Departures from the prescribed REA Uniform System of Accounts.
1767.14 Interpretations of the REA Uniform System of Accounts.
1767.15 General instructions.
1767.16 Electric plant instructions.
1767.17 Operating expense instructions
1767.18 Assets and other debits.
1767.19 Liabilities and other credits.
1767.20 Plant accounts.
1767.21 Operating income.
1767.22 Other income and deductions.
1767.23 Interest charges.
1767.24 Extraordinary items.
1767.25 Retained earnings.
1767.26 Operating revenue.
1767.27 Operation and maintenance expenses.
1767.28 Customer accounts expenses.
1767.29 Customer service and informational expenses.

1767.30 Sales expenses.
1767.31 Administrative and general expenses.
1767.32–1767.40 [Reserved]
1767.41 Accounting methods and procedures required of all REA borrowers.
1767.42–1767.45 [Reserved]

Subpart C—Depreciation Rates and Procedures [Reserved]

1767.46–1767.65 [Reserved]

Subpart D—Preservation of Records [Reserved]

1767.66–1767.85 [Reserved]

Authority: 7 U.S.C. 901 *et seq.*

Subpart A—General [Reserved]

§§ 1767.1–1767.9 [Reserved]

Subpart B—Uniform System of Accounts

§ 1767.10 Definitions.

As used in this part:

Accounting borrower is an REA borrower.

Accounts are the accounts prescribed in this system of accounts.

Actually issued as applied to securities issued or assumed by the utility, are those which have been sold to bona fide purchasers for a valuable consideration, those issued as dividends on stock, and those which have been issued in accordance with contractual requirements direct to trustees of sinking funds.

Actually outstanding as applied to securities issued or assumed by the utility, are those which have been actually issued and are neither retired nor held by or for the utility; provided, however, that securities held by trustees shall be considered as actually outstanding.

Amortization is the gradual extinguishment of an amount in an account by distributing such amount over a fixed period, over the life of the asset or liability to which it applies, or over the period during which it is anticipated the benefit will be realized.

Associated (affiliated) companies are companies or persons that directly, or indirectly through one or more intermediaries, control, or are controlled by, or under common control with, the accounting company.

Book Cost means the amount at which property is recorded in these accounts without deduction of related provisions for accrued depreciation, amortization, or for other purposes.

Capital lease is a lease of property used in utility or nonutility operations, which meets one or more of the criteria stated in § 1767.15 (s).

CFC is the National Rural Utilities Cooperative Finance Corporation.

Continuing Property Records are company plant records for retirement units and mass property that provide, as either a single record, or in separate records readily obtainable by references made in a single record, the following information:

(1) For each retirement unit:

(i) The name or description of the unit, or both;

(ii) The location of the unit;

(iii) The date the unit was placed in service;

(iv) The cost of the unit as set forth in § 1767.16 (b) and (c); and

(v) The plant control account to which the cost of the unit is charged.

(2) For each category of mass property:

(i) A general description of the property and quantity;

(ii) The quantity placed in service by vintage year;

(iii) The average cost as set forth in § 1767.16 (b) and (c); and

(iv) The plant control account to which the costs are charged.

Control (including the terms *controlling, controlled by,* and *under common control with*) is the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of a company, whether such power is exercised through one or more intermediary companies, or alone, or in conjunction with, or pursuant to an agreement, and whether such power is established through a majority or minority ownership or through voting of securities; common directors, officers, or stockholders; voting trusts; holding trusts; associated companies; contracts; or any other direct or indirect means.

Cost is the amount of money actually paid for property or services. When the consideration given is other than cash in a purchase and sale transaction, as distinguished from a transaction involving the issuance of common stock in a merger or a pooling of interest, the value of such consideration shall be determined on a cash basis.

Cost of removal is the cost of demolishing, dismantling, tearing down or otherwise removing electric plant, including the cost of transportation and handling incidental thereto.

Customer is a consumer or patron.

Debt expense includes all expenses incurred in connection with the issuance and initial sale of evidence of debt, such as fees for drafting mortgages and trust deeds; fees and taxes for issuing or recording evidences of debt; costs of engraving and printing bonds and certificates of indebtedness; fees paid to trustees; specific costs of obtaining governmental authority; fees for legal services; fees and commissions paid underwriters, brokers, and salesmen for marketing such evidences of debt; fees and expenses of listing on exchanges; and other like costs.

Depreciation, as applied to depreciable electric plant, is the loss in service value, not restored by current maintenance, incurred in connection with the consumption or prospective retirement of electric plant in the course of service from causes which are known to be in current operation and against which the utility is not protected by insurance. Among the causes to be given consideration are wear and tear, decay, action of the elements, inadequacy, obsolescence, changes in the art, changes in demand and requirements of public authorities.

Discount, as applied to the securities issued or assumed by the utility, is the excess of the par (stated value of no-par stocks) or face value of the securities plus interest or dividends accrued at the date of the sale over the cash value of the consideration received from their sale.

FASB is the Financial Accounting Standards Board.

G&T is a generation and transmission cooperative.

Investment advances are advances, represented by notes or by book accounts only, with respect to which it is mutually agreed or intended between the creditor and debtor that they shall be settled by the issuance of securities or shall not be subject to current settlement.

Minor items of property are the associated parts or items of which retirement units are composed.

Net salvage value is the salvage value of property retired less the cost of removal.

Nominally issued, as applied to securities issued or assumed by the utility, are those which have been signed, certified, or otherwise executed, and placed with the proper officer for sale and delivery, or pledged, or otherwise placed in some special funds of the utility, but which have not been sold, or issued direct to trustees of sinking funds in accordance with contractual requirements.

Nominally outstanding, as applied to securities issued or assumed by the utility, are those which, after being actually issued, have been reacquired by or for the utility under circumstances which require them to be considered as held alive and not retired, provided, however, that securities held by trustees shall be considered as actually outstanding.

NRECA is the National Rural Electric Cooperative Association.

Operating lease is a lease of property used in utility or nonutility operations, which does not meet any of the criteria stated in § 1767.15 (s).

Original cost, as applied to electric plant, is the cost of such property to the person first devoting it to public service.

Person is an individual, a corporation, a partnership, an association, a joint stock company, a business trust, or any organized group of persons, whether incorporated or not, or any receiver or trustee.

Premium, as applied to securities issued or assumed by the utility, is the excess of the cash value of the consideration received from their sale over the sum of their par (stated value of no-par stocks) or face value and interest or dividends accrued at the date of sale.

Project is a complete unit of improvement or development, consisting of a power house, all water conduits, all dams and appurtenant works and structures (including navigation structures) which are a part of said unit, and all storage, diverting, or forebay reservoirs directly connected therewith, the primary line or lines transmitting power therefrom to the point of junction with the distribution system or with the interconnected primary transmission system, all miscellaneous structures used and useful in connection with said unit or any part thereof, and all water rights, rights of way, ditches, dams, reservoirs, lands, or interest in lands the use and occupancy of which are necessary or appropriate in the maintenance and operation of such unit.

Property retired, as applied to electric plant, is property which has been removed, sold, abandoned, destroyed, or which for any cause has been withdrawn from service.

REA is the Rural Electrification Administration, an agency of the United States Department of Agriculture, or its successor.

REA Form 7 is the August 1988 revision (or the revision of any other date which may be specified) of such REA Form 7, Financial and Statistical Report, or any later revision which shall have been at the time prescribed for use by REA.

REA Form 12 is the November 1979 revision (or the revision of any other date which may be specified) of such REA Form 12, Operating Report—Financial, or any later revision which shall have been at the time prescribed for use by REA.

REA USoA is the USoA prescribed in this subpart.

Regulatory Assets and Liabilities are assets and liabilities that result from rate actions of regulatory agencies. Regulatory assets and liabilities arise from specific revenues, expenses, gains, or losses that would have been included in net income determinations in one period under the general requirements of the Uniform System of Accounts but for it being probable:

(1) That such items will be included in a different period(s) for purposes of developing the rates the utility is authorized to charge for its utility services; or

(2) In the case of regulatory liabilities, that refunds to customers, not provided for in the other accounts, will be required.

Replacing (including replacement) when not otherwise indicated in the context, is the construction or installation of electric plant in place of property retired, together with the removal of the property retired.

Research, Development, and Demonstration (RD&D) includes all expenditures incurred by borrowers either directly or through another person or organization (such as a research institute, industry association, foundation, university, engineering company or similar contractor) in pursuing research, development, and demonstration activities including experiment, design, installation, construction, or operation. This definition includes expenditures for the implementation or development of new and/or existing concepts until technically feasible and commercially feasible operations are verified. Such research, development, and demonstration costs should be reasonably related to the existing or future utility business, broadly defined, of the borrower or in the environment in which it operates or expects to operate. The term includes, but is not limited to, all such costs incidental to the design, development or implementation of an experimental facility, a plant process, a product, a formula, an invention, a system or similar items, and the improvement of already existing items of a like nature; amounts expended in connection with the proposed development and/or proposed delivery of alternate sources of electricity; and the costs of obtaining its own patent, such as attorney's fees expended in making and perfecting a patent application. The term includes preliminary investigations and detailed planning of specific projects for securing for customers non-conventional electric power supplies that rely on technology that has not been verified previously to be feasible. The term does not include expenditures for efficiency surveys; studies of management, management techniques, and organization; or consumer surveys, advertising, promotions, or items of a like nature.

Retirement units are those items of electric plant which, when retired with or without replacement, are accounted for by crediting the book cost thereof to the electric plant accounts in which included.

Salvage value is the amount received for property retired, less any expenses incurred in connection with the sale or in preparing the property for sale; or, if retained, the amount at which the material recovered is chargeable to materials and supplies, or other appropriate accounts.

Service life is the time between the date electric plant is includible in electric plant in service, or electric plant leased to others, and the date of its retirement. If depreciation is accounted for on a production basis rather than on a time basis, service life should be measured in terms of the appropriate unit of production.

Service value is the difference between original cost and net salvage value of electric plant.

State is a State admitted to the Union, the District of Columbia, and any organized Territory of the United States.

Subsidiary company is a company which is controlled by the utility through ownership of voting stock. (See the definition of control in § 1767.10.) A corporate joint venture in which a corporation is owned by a small group of businesses as a separate and specific business or project for the mutual benefit of the members of the group is a subsidiary company for the purposes of this system of accounts.

Utility is an REA borrower.

Work order is an order authorizing the construction of utility plant. It serves as the basis for the accounts or subaccounts in which costs are recorded.

§ 1767.11 Purpose.

(a) The standard form of REA loan documents for electric borrowers requires that the borrower keep books, records, and accounts in which full and true entries will be made of all of the dealings, business and affairs of the borrower in accordance with the methods and principles of accounting of this part.

(b) This subpart implements these provisions of the REA loan documents by prescribing the REA USoA for electric borrowers and by providing accounting methodologies and procedures which are applicable to particular situations.

§ 1767.12 Accounting system requirements.

(a) Each REA electric borrower must maintain and keep its books of accounts and all other books and records that support the entries in such books of accounts in accordance with §§ 1767.18–1767.31.

(b) Each REA electric borrower shall maintain and keep its books of accounts and all other books and records which support the entries in such books of accounts in accordance with § 1767.41, Accounting Methods and Procedures Required of All REA Borrowers, herein, which prescribes accounting principles to be applied to specific factual circumstances.

§ 1767.13 Departures from the prescribed REA Uniform System of Accounts.

(a) No departures are to be made to the prescribed REA USoA without the prior written approval of REA.

(b) REA borrowers subject to the jurisdiction of a state regulatory authority with jurisdiction over rates and/or accounting for electric utilities will not:

(1) Request approval of such authority to use accounting methodologies and principles that depart from the provisions herein; or

(2) File with such authority, any documents or information, including without limitation, any filings associated with the borrower's rates, based upon accounting methods and principles inconsistent with the provisions of this part.

(c) If any state regulatory authority with jurisdiction over an REA borrower prescribes accounting methods or principles for the borrower that are inconsistent with the provisions of this part, the borrower must immediately notify REA and provide such documents, information, and reports as REA may request to evaluate the impact that such accounting methods or principles may have on the interests of REA.

(1) If REA determines that the accounting methods and principles do not adversely impact REA interests, REA will permit the borrower to use the accounting methods and principles as prescribed by the state regulatory authority to comply with the provisions of the REA loan documents.

(2) If REA determines that the accounting methods and principles may adversely impact REA's interests, REA may require that, for the purposes of complying with provisions of REA loan documents, including, without limitation, those provisions relating to financial coverage standards (e.g. "TIER"), the borrower continue to maintain books, records, and accounts in accordance with this subpart.

(i) REA may, however, approve requests by the borrower to maintain such additional books, records, and accounts as necessary to comply with the requirements of the state regulatory authority.

(ii) Such approval will not waive, modify or amend the requirements of the REA loan documents or of this subpart.

(d) REA borrowers will not implement the provisions of Statement of Financial Accounting Standards (SFAS) No. 71, Accounting for the Effects of Certain Types of Regulation, SFAS No. 90, Regulated Enterprises—Accounting for Abandonments and Disallowances of Plant Costs, SFAS No. 92, Regulated Enterprises—Accounting for Phase-in Plans, without the prior written approval of REA.

(e) REA will consider approval of specific departures from this part upon submission of:

(1) A detailed description of the proposed departure;

(2) The specific accounting journal entries that will be used including the account number and title, and the dollar amounts where appropriate;

(3) The total dollar amount of the departure and the impact on margins during the time period of the departure; and

(4) Any additional information REA may deem necessary to adequately evaluate the borrower's request.

(f) REA will, within 90 days of final receipt of this information, render a decision on the borrower's request for a departure from the prescribed REA USoA.

(1) If, due to extenuating circumstances, REA is unable to reach a decision within the required time period, REA will notify the borrower of the delay within this same 90-day period, and provide a projected decision date.

(2) The requested departure from the prescribed REA USoA must not be implemented until final approval is granted by REA.

§ 1767.14 Interpretations of the REA Uniform System of Accounts.

To maintain uniformity in accounting, borrowers must submit questions concerning interpretations of the REA USoA to REA for consideration and decision.

(Approved by the Office of Management and Budget under control number 0572–0002.)

§ 1767.15 General instructions.

(a) *Records.* (1) Each utility shall keep its books of account, and all other books, records, and memoranda which support the entries in such books of account so as to be able to furnish readily full information as to any item included in any account.

(2) Each entry shall be supported by such detailed information as will permit ready identification, analysis, and verification of all facts relevant thereto.

(3) The books and records referred to herein include not only accounting records in a limited technical sense, but all other records, such as minute books, stock books, reports, correspondence, memoranda, etc., which may be useful in developing the history of or facts regarding any transaction.

(4) No utility shall destroy any such books or records unless the destruction thereof is permitted by the rules and regulations of REA in 7 CFR chapter XVII.

(5) In addition to the prescribed accounts, clearing accounts, temporary or experimental accounts, and subdivisions of any accounts, may be kept, provided the integrity of the prescribed accounts is not impaired.

(6) All amounts included in the accounts prescribed herein for electric plant and operating expenses shall be just and reasonable and any payments or accruals by the utility in excess of just and reasonable charges shall be included in Account 426.5, Other Deductions.

(7) The arrangement or sequence of the accounts prescribed herein shall not be controlling as to the arrangement or sequence in report forms which may be prescribed by REA.

(b) *Numbering system.* (1) The account numbering plan used herein consists of a system of three-digit whole numbers as follows:

100–199	Assets and other debits.
200–299	Liabilities and other credits.
300–399	Plant accounts.
400–432, 434–435	Income accounts.
433, 436–439	Retained earnings accounts.
440–459	Revenue accounts.
500–599	Production, transmission, and distribution expenses.
900–949	Customer accounts, customer service and informational, sales, and general and administrative expenses.

(2) In certain instances, numbers have been skipped in order to allow for possible later expansion or to permit better coordination with the numbering system for other utility departments.

(3) The numbers prefixed to account titles are to be considered as parts of the titles.

(i) Each utility, however, may adopt, for its own purposes, a different system of account numbers provided that the numbers herein prescribed shall appear in the descriptive headings of the ledger

accounts and in the various sources of original entry.

(ii) If a utility uses a different group of account numbers and it is not practicable to show the prescribed account numbers in the various sources of original entry, such reference to the prescribed account numbers may be omitted from the various sources of original entry.

(iii) Each utility using different account numbers for its own purposes shall keep readily available, a list of such account numbers which it uses and a reconciliation of such account numbers with the account numbers provided herein.

(iv) The utility's records shall be so kept as to permit ready analysis by prescribed accounts (by direct reference to sources of original entry to the extent practicable) and to permit preparation of financial and operating statements directly from such records at the end of each accounting period according to the prescribed accounts.

(c) *Accounting period.* (1) Each utility shall keep its books on a monthly basis so that for each month, all transactions applicable thereto, as nearly as may be ascertained, shall be entered in the books of the utility.

(2) Amounts applicable or assignable to specific utility departments shall be so segregated monthly.

(3) Each utility shall close its books at the end of each fiscal year unless otherwise authorized by REA.

(d) *Submission of questions.* To maintain uniformity of accounting, utilities shall submit questions of doubtful interpretation to REA for consideration and decision.

(e) *Item lists.* (1) Lists of "items" appearing in the texts of the accounts or elsewhere herein are for the purpose of more clearly indicating the application of the prescribed accounting.

(2) The lists are intended to be representative, but not exhaustive.

(3) The appearance of an item in a list warrants the inclusion of the item in the account mentioned only when the text of the account also indicates inclusion inasmuch as the same item frequently appears in more than one list.

(4) The proper entry in each instance must be determined by the texts of the accounts.

(f) *Extraordinary items.* (1) Net income shall reflect all items of profit and loss during the period with the exception of prior period adjustments as described in § 1767.15 (g) and long-term debt as described in § 1767.15 (q).

(2) Those items related to the effects of events and transactions which have occurred during the current period and which are not typical or customary business activities of the company shall be considered extraordinary items.

(3) They will be events and transactions of significant effect which would not be expected to recur frequently and which would not be considered as recurring factors in any evaluation of the ordinary operating processes of business.

(i) In determining significance, items of a similar nature should be considered in the aggregate.

(ii) Dissimilar items should be considered individually; however, if they are few in number, they may be considered in the aggregate.

(iii) To be considered as extraordinary under the above guidelines, an item should be more than approximately 5 percent of income, computed before extraordinary items.

(iv) REA approval must be obtained to treat an item of less than 5 percent, as extraordinary. (See Accounts 434 and 435.)

(g) *Prior period items.* (1) Items of profit and loss related to the following shall be accounted for as prior period adjustments and excluded from the determination of net income for the current year:

(i) Correction of an error in the financial statements of a prior year.

(ii) Adjustments that result from realization of income tax benefits of preacquisition operating loss carryforwards of purchased subsidiaries.

(2) All other items of profit and loss recognized during the year shall be included in the determination of net income for that year.

(h) *Unaudited items.* (1) Whenever a financial statement is required by REA, if it is known that a transaction has occurred which affects the accounts but the amount involved in the transaction and its effect upon the accounts cannot be determined with absolute accuracy, the amount shall be estimated and such estimated amount included in the proper accounts.

(2) The utility is not required to anticipate minor items which would not appreciably affect the accounts.

(i) *Distribution of pay and expenses of employees.* Charges to electric plant, operating expense, and other accounts for services and expenses of employees engaged in activities chargeable to various accounts, such as construction, maintenance, and operations, shall be based upon the actual time engaged in the respective classes of work, or in case that method is impracticable, upon the basis of a study of the time actually engaged during a representative period.

(j) *Payroll distribution.* (1) Underlying accounting data shall be maintained so that the distribution of the cost of labor charged direct to the various accounts will be readily available.

(2) Such underlying data shall permit a reasonably accurate distribution to be made of the cost of labor charged initially to clearing accounts so that the total labor cost may be classified among construction, cost of removal, electric operating functions (steam generation, nuclear generation, hydraulic generation, transmission, distribution, etc.) and nonutility operations.

(k) *Accounting on an accrual basis.* (1) The utility is required to keep its accounts on the accrual basis.

(i) This requires the inclusion, in its accounts, of all known transactions of appreciable amount which affect the accounts.

(ii) If bills covering such transactions have not been received or rendered, the amounts shall be estimated and appropriate adjustments made when the bills are received.

(2) When payments are made in advance for items such as insurance, rents, taxes, or interest, the amount applicable to future periods shall be charged to Account 165, Prepayments, and spread over the periods to which applicable, by credits to Account 165, and charges to the accounts appropriate for the expenditure.

(l) *Records for each plant.* (1) Separate records shall be maintained by electric plant accounts of the book cost of each plant owned, including additions by the utility to plant leased from others, and of the cost of operating and maintaining each plant owned or operated.

(2) The term "plant" as used herein includes each generating station and each transmission line or appropriate group of transmission lines.

(m) *Accounting for other departments.* (1) If the utility also operates other utility departments, such as gas or water, it shall keep such accounts for the other departments as may be prescribed by proper authority and in the absence of prescribed accounts, it shall keep such accounts as are proper or necessary to reflect the results of operating each such department.

(2) It is not intended that proprietary and similar accounts which apply to the utility as a whole shall be departmentalized.

(n) *Transactions with associated companies.* (1) Each utility shall keep its accounts and records so as to be able to furnish accurately and expeditiously statements of all transactions with associated companies.

(2) The statements may be required to show the general nature of the transactions, the amounts involved therein and the amounts included in each account prescribed herein with

respect to such transactions. Transactions with associated companies shall be recorded in the appropriate accounts for transactions of the same nature. Nothing herein contained, however, shall be construed as restraining the utility from subdividing accounts for the purpose of recording separately transactions with associated companies.

(o) *Contingent assets and liabilities.* (1) Contingent assets represent a possible source of value to the utility contingent upon the fulfillment of conditions regarded as uncertain.

(2) Contingent liabilities include items which may, under certain conditions, become obligations of the utility but which are neither direct nor assumed liabilities at the date of the balance sheet. The utility shall be prepared to give a complete statement of significant contingent assets and liabilities (including cumulative dividends on preference stock) in its audited financial statements; its REA Form 7, Financial and Statistical Report, or its REA Form 12, Operating Report—Financial; and at such other times as may be requested by REA.

(p) *Separate accounts or records for each licensed project.* The accounts or records of each borrower shall be so kept as to show for each project (including pumped storage) under license:

(1) The actual legitimate original cost of the project, including the original cost of the original project, the original cost of additions thereto and betterments thereof, and credits for property retired from service, as determined under REA's regulations in 7 CFR chapter XVII;

(2) The charges for operation and maintenance of the project property directly assignable to the project;

(3) The credits and debits to the depreciation and amortization accounts, and the balances in such accounts; and

(4) The credits and debits to the operating revenue, income, and retained earnings accounts that can be identified with and directly assigned to the project.

Note: The purpose of this instruction is to insure that accounts or records are currently maintained by each borrower from which reports may be made to REA for use in determining the net investment in each licensed project. The instruction covers only the debit and credit items appearing in the borrower's accounts which may be identified with and assigned directly to any project. In the determination of the net investment, allocations of items affecting the net investment may be required where direct assignment is not practicable.

(q) *Long-term debt: premium, discount and expense, and gain or loss on reacquisition*—(1) *Premium, discount and expense.* (i) A separate premium, discount and expense account shall be maintained for each class and series of long-term debt (including receivers' certificates) issued or assumed by the utility.

(ii) The premium will be recorded in Account 225, Unamortized Premium on Long-Term Debt, the discount will be recorded in Account 226, Unamortized Discount on Long-Term Debt—Debit, and the expense of issuance shall be recorded in Account 181, Unamortized Debt Expense.

(iii) The premium, discount and expense shall be amortized over the life of the respective issues under a plan which will distribute the amounts equitably over the life of the securities.

(A) The amortization shall be charged or credited on a monthly basis with the amounts relating to discount and expense charged to Account 428, Amortization of Debt Discount and Expense.

(B) The amounts relating to premium shall be credited to Account 429, Amortization of Premium on Debt—Credit.

(2) *Reacquisition, without refunding.* (i) When long-term debt is reacquired or redeemed without being converted into another form of long-term debt and when the transaction is not in connection with a refunding operation (primarily redemptions for sinking fund purposes), the difference between the amount paid upon reacquisition and the face value; plus any unamortized premium less any related unamortized debt expense and reacquisition costs; or less any unamortized discount, related debt expense and reacquisition costs applicable to the debt redeemed, retired and cancelled, shall be included in Account 189, Unamortized Loss on Reacquired Debt, or Account 257, Unamortized Gain on Reacquired Debt, as appropriate.

(ii) The utility shall amortize the recorded amounts equally on a monthly basis over the remaining life of the respective security issues (old original debt).

(iii) The amount so amortized shall be charged to Account 428.1, Amortization of Loss on Reacquired Debt, or credited to Account 429.1, Amortization of Gain on Reacquired Debt—Credit, as appropriate.

(3) *Reacquisition, with refunding.* (i) When the redemption of one issue or series of bonds or other long-term obligations is financed by another issue or series before the maturity date of the first issue, the difference between the amount paid upon refunding and the face value; plus any unamortized premium less related debt expense or less any unamortized discount and related debt expense, applicable to the debt refunded, shall be included in Account 189, Unamortized Loss on Reacquired Debt, or Account 257, Unamortized Gain on Reacquired Debt, as appropriate.

(ii) The utility may elect to account for such amounts as follows:

(A) Write them off immediately when the amounts are insignificant;

(B) Amortize them by equal monthly amounts over the remainder of the original life of the issue retired; or

(C) Amortize them by equal monthly amounts over the life of the new issue.

(iii) Once an election is made, it shall be applied on a consistent basis.

(iv) The amounts in paragraphs (q)(3)(ii)(A), (B), or (C) of this section shall be charged to Account 428.1, Amortization of Loss on Reacquired Debt, or credited to Account 429.1, Amortization of Gain on Reacquired Debt—Credit, as appropriate.

(4) Under methods in paragraphs (q)(3)(ii)(B) and (C) of this section, the increase or reduction in current income taxes resulting from the reacquisition should be apportioned over the remainder of the original life of the issued retired or over the life of the new issue, as appropriate, as directed more specifically in paragraphs (q)(5) and (6) of this section.

(5) When the utility recognizes the loss in the year of reacquisition as a tax deduction, Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, shall be debited and Account 283, Accumulated Deferred Income Taxes—Other, shall be credited with the amount of the related tax effect, such amount to be allocated to the periods affected in accordance with the provisions of Account 283.

(6) When the utility chooses to recognize the gain in the year of reacquisition as a taxable gain, Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, shall be debited with the amount of the related tax effect, such amount to be allocated to the periods affected in accordance with the provisions of Account 190, Accumulated Deferred Income Taxes.

(7) When the utility chooses to use the optional privilege of deferring the tax on the gain attributable to the reacquisition of debt by reducing the depreciable basis of utility property for tax purposes, pursuant to Section 108 of the Internal Revenue Code (26 U.S.C. 108), the related tax effects shall be deferred as the income is recognized for accounting purposes, and the deferred amounts shall be amortized over the life

of the associated property on a vintage year basis.

(i) Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, shall be debited, and Account 282, Accumulated Deferred Income Taxes—Other Property, shall be credited with an amount equal to the estimated income tax effect applicable to the portion of the income, attributable to reacquired debt, recognized for accounting purposes during the period.

(ii) Account 282 shall be debited and Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, shall be credited with an amount equal to the estimated income tax effects, during the life of the property, attributable to the reduction in the depreciable basis for tax purposes.

(8) The tax effects relating to gain or loss shall be allocated as above to utility operations except in cases where a portion of the debt reacquired is directly applicable to nonutility operations.

(i) In that event, the related portion of the tax effects shall be allocated to nonutility operations.

(ii) Where it can be established that reacquired debt is generally applicable to both utility and nonutility operations, the tax effects shall be allocated between utility and nonutility operations based on the ratio of net investment in utility plant to net investment in nonutility plant.

(9) Premium, discount, or expense on debt shall not be included as an element in the cost of construction or acquisition of property (tangible or intangible), except under the provisions of Account 432, Allowance for Borrowed Funds Used During Construction—Credit.

(10) *Alternate method.* Where a regulatory authority or a group of regulatory authorities having prime rate jurisdiction over the utility specifically disallows the rate principle of amortizing gains or losses on reacquisition of long-term debt without refunding, and does not apply the gain or loss to reduce interest charges in computing the allowed rate of return for rate purposes, the following alternate method may be used to account for gains or losses relating to reacquisition of long-term debt, with or without refunding:

(i) The difference between the amount paid upon reacquisition of any long-term debt and the face value, adjusted for unamortized discount, expenses or premium, as the case may be, applicable to the debt redeemed shall be recognized currently in income and recorded in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions.

(ii) When this alternate method of accounting is used, the utility shall include a footnote to each financial statement, prepared for public use, explaining why this method is being used along with the treatment given for ratemaking purposes.

(r) *Comprehensive interperiod income tax allocation.* (1) Where there are timing differences between the periods in which transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income, the income tax effects of such transactions are to be recognized in the periods in which the differences between book accounting income and taxable income arise and in the periods in which the differences reverse using the deferred tax method.

(2) Comprehensive interperiod tax allocation should be followed whenever transactions enter into the determination of pretax accounting income for the period even though some transactions may affect the determination of taxes payable in a different period.

(3) Utilities are not required to utilize comprehensive interperiod income tax allocation until the deferred income taxes are included as an expense in the rate level by the regulatory authority having rate jurisdiction over the utility.

(4) Where comprehensive interperiod tax allocation accounting is not practiced the utility shall include as a note to each financial statement, prepared for public use, a footnote explanation setting forth the utility's accounting policies with respect to interperiod tax allocation and describing the treatment for rate making purposes of the tax timing differences by regulatory authorities having rate jurisdiction.

(5) Should the utility be subject to more than one agency having rate jurisdiction, its accounts shall appropriately reflect the ratemaking treatment (deferral or flow through) of each jurisdiction.

(6) Once comprehensive interperiod tax allocation has been initiated either in whole or in part it shall be practiced on a consistent basis and shall not be changed or discontinued without prior REA approval.

(7) Tax effects deferred currently will be recorded as deferred debits or deferred credits in Accounts 190, Accumulated Deferred Income Taxes; 281, Accumulated Deferred Income Taxes—Accelerated Amortization Property; 282, Accumulated Deferred Income Taxes—Other Property, and 283, Accumulated Deferred Taxes—Other, as appropriate.

(8) The resulting amounts recorded in these accounts shall be disposed of as prescribed in this system of accounts or as otherwise authorized by REA.

(s) *Criteria for classifying leases.* (1) If, at its inception, a lease meets one or more of the following criteria, the lease shall be classified as a capital lease:

(i) The lease transfers ownership of the property to the lessee by the end of the lease term.

(ii) The lease contains a bargain purchase option.

(iii) The lease term is equal to 75 percent or more of the estimated economic life of the leased property. However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(iv) The present value at the beginning of the lease term of the minimum lease payments, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, including any profit thereon, equals or exceed 90 percent of the excess of the fair value of the leased property to the lessor at the inception of the lease over any related investment tax credit retained by the lessor and expected to be realized by lessor.

(A) However, if the beginning of the lease term falls within the last 25 percent of the total estimated economic life of the leased property, including earlier years of use, this criterion shall not be used for purposes of classifying the lease.

(B) The lessee utility shall compute the present value of the minimum lease payments using its incremental borrowing rate, unless it is practicable for the utility to learn the implicit rate computed by the lessor, and the implicit rate computed by the lessor is less than the lessee's incremental borrowing rate. If both of those conditions are met, the lessee shall use the implicit rate.

(2) If, at any time, the lessee and lessor agree to change the provisions of the lease, other than by renewing the lease or extending its term, in a manner that would have resulted in a different classification of the lease under the criteria in paragraph (s)(1) of this section had the changed terms been in effect at the inception of the lease, the revised agreement shall be considered as a new agreement over its term, and the criteria in paragraph (s)(1) of this section shall be applied for purposes of the expiration of the existing lease term, such as the exercise of a lease renewal option other than those already included in the lease term, shall be

considered as a new agreement and shall be classified according to the above provision. Changes in estimates (for example, changes in estimates of the economic life or of the residual value of the leased property) or changes in circumstances (for example, default by the lessee) shall not give rise to a new classification of a lease for accounting purposes.

(t) *Accounting for leases.* (1) All leases shall be classified as either capital or operating leases.

(2) The utility shall record a capital lease as an asset in Account 101.1, Property Under Capital Leases, and Account 120.6, Nuclear Fuel Under Capital Leases; as appropriate, and an obligation in Account 227, Obligations Under Capital Leases—Noncurrent, or Account 243, Obligations Under Capital Leases—Current, at an amount equal to the present value at the beginning of the lease term of minimum lease payments during the lease term, excluding that portion of the payments representing executory costs such as insurance, maintenance, and taxes to be paid by the lessor, together with any profit thereon. However, if the amount so determined exceeds the fair value of the leased property at the inception of the lease, the amount recorded as the asset and obligation shall be the fair value.

(3) Rental payments on all leases shall be charged to rent expense, fuel expense, construction work in progress, or other appropriate accounts as they become payable.

(4) For a capital lease, for each period during the lease term, the amounts recorded for the asset and obligation shall be reduced by an amount equal to the portion of each lease payment that would have been allocated to the reduction of the obligation, if the payment had been treated as a payment on an installment obligation (liability) and allocated between interest expense and a reduction of the obligation so as to produce a constant periodic rate of interest on the remaining balance.

(u) *Allowances.* (1) Title IV of the Clean Air Act Amendments of 1990, Pub. L. 101–549, 104 Stat. 2399, 2584 (42 U.S.C. 7407 and 42 U.S.C. 7651), provides for the issuance of allowances as a means to limit the emissions of certain airborne pollutants by various entities, including utilities. Utilities owning allowances, other than those acquired for speculative purposes, shall account for such allowances at cost in Account 158.1, Allowance Inventory, or Account 158.2, Allowances Withheld, as appropriate. Allowances acquired for speculative purposes and identified as such in contemporaneous records at the time of purchase shall be accounted for in Account 124, Other Investments.

(2) When purchased, allowances become eligible for use in different years, and the allocation of the purchase cost cannot be determined by fair value, the purchase cost allocated to allowances of each vintage shall be determined through use of a present-value based measurement. The interest rate used in the present-value measurement shall be the utility's incremental borrowing rate, in the month in which the allowances are acquired, for a loan with a term similar to the period that it will hold the allowances and in an amount equal to the purchase price.

(3) The underlying records supporting Account 158.1 and Account 158.2 shall be maintained in sufficient detail so as to provide the number of allowances and the related cost by vintage year.

(4) Issuances from inventory included in Account 158.1 and Account 158.2 shall be accounted for on a vintage basis using a monthly weighted-average method of cost determination. The cost of eligible allowances not used in the current year shall be transferred to the vintage for the immediately following year.

(5) Account 158.1 shall be credited and Account 509, Allowances, debited so that the cost of the allowances to be remitted for the year is charged to expense monthly based on each month's emissions. This may, in certain circumstances, require allocation of the cost of an allowance between months on a fractional basis.

(6) In any period in which actual emissions exceed the amount allowable based on eligible allowances owned, the utility shall estimate the cost to acquire the additional allowances needed and charge Account 158.1 with the estimated cost. This estimated cost of future allowance acquisitions shall be credited to Account 158.1 and charged to Account 509 in the same accounting period as the related charge to Account 158.1. Should the actual cost of these allowances differ from the estimated cost, the differences shall be recognized in the then-current period's inventory issuance cost.

(7) Any penalties assessed by the Environmental Protection Agency for the emission of excess pollutants shall be charged to Account 426.3, Penalties.

(8) Gains on dispositions of allowances, other than allowances held for speculative purposes, shall be accounted for as follows. First, if there is uncertainty as to the regulatory treatment, the gain shall be deferred in Account 254, Other Regulatory Liabilities, pending resolution of the uncertainty. Second, if there is certainty as to the existence of a regulatory liability, the gain will be credited to Account 254, with subsequent recognition in income when reductions in charges to customers occur or the liability is otherwise satisfied. Third, all other gains will be credited to Account 411.8, Gains from Disposition of Allowances. Losses on disposition of allowances, other than allowances held for speculative purposes, shall be accounted for as follows. Losses that qualify as regulatory assets shall be charged directly to Account 182.3, Other Regulatory Assets. All other losses shall be charged to Account 411.9, Losses from Disposition of Allowances. (See the definition of regulatory assets and liabilities.) Gains or losses on disposition of allowances held for speculative purposes shall be recognized in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate.

(9) The costs and benefits of exchange-traded allowance futures contracts used to protect the utility from the risk of unfavorable price changes ("hedging transactions") shall be deferred in Account 186, Miscellaneous Deferred Debits, or Account 253, Other Deferred Credits, as appropriate. Such deferred amounts shall be included in Account 158.1, Allowance Inventory, in the month in which the related allowances are acquired, sold or otherwise disposed of. Where the costs or benefits of hedging transactions are not identifiable with specific allowances, the amounts shall be included in Account 158.1 when the futures contract is closed. The costs and benefits of exchange-traded allowance futures contracts entered into as a speculating activity shall be charged or credited to Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as appropriate.

§ 1767.18 Electric plant instructions.

(a) *Classification of electric plant at effective date of system of accounts.* (1) The electric plant accounts provided herein are the same as those contained in the prior system of accounts except for inclusion of accounts for nuclear production plant and some changes in classification in the general equipment accounts. Except for these changes, the balances in the various plant accounts, as determined under the prior system of accounts, should be carried forward. Any remaining balance of plant which has not yet been classified, pursuant to the requirements of the prior system, shall be classified in accordance with the following instructions.

(2) The cost to the utility of its unclassified plant shall be ascertained by analysis of the utility's records. Adjustments shall not be made to record in utility plant accounts amounts previously charged to operating expenses or to income deductions in accordance with the USoA in effect at the time or in accordance with the discretion of management as exercised under a USoA, or under accounting practices previously followed.

(3) The detailed electric plant accounts (301 to 399, inclusive) shall be stated on the basis of cost to the utility of plant constructed by it and the original cost, estimated if not known, of plant acquired as an operating unit or system. The difference between the original cost, as above, and the cost to the utility of electric plant after giving effect to any accumulated provision for depreciation or amortization shall be recorded in Account 114, Electric Plant Acquisition Adjustments. The original cost of electric plant shall be determined by analysis of the utility's records or those of the predecessor or vendor companies with respect to electric plant previously acquired as operating units or systems and the difference between the original cost so determined, less accumulated provisions for depreciation and amortization and the cost to the utility with necessary adjustments for retirements from date of acquisition, shall be entered in Account 114, Electric Plant Acquisition Adjustments. Any difference between the cost of electric plant and its book cost, when not properly includible in other accounts, shall be recorded in Account 116, Other Electric Plant Adjustments.

(b) *Electric plant to be recorded at cost.* (1) All amounts included in the accounts for electric plant acquired as an operating unit or system, except as otherwise provided in the texts of the intangible plant accounts, shall be stated at the cost incurred by the person who first devoted the property to utility service. All other electric plant shall be included in the accounts at the cost incurred by the utility except for property acquired by lease which qualifies as capital lease property under § 1767.15 (s), Criteria for Classifying Leases, and is recorded in Account 101.1, Property Under Capital Lease, or Account 120.6, Nuclear Fuel Under Capital Leases. Where the term "cost" is used in the detailed plant accounts, it shall have the meaning stated in this paragraph (b).

(2) When the consideration given for property is other than cash, the value of such consideration shall be determined on a cash basis (see, however, the definition of cost in § 1767.10). In the entry recording such transition, the actual consideration shall be described with sufficient particularity to identify it. The utility shall be prepared to furnish REA the particulars of its determination of the cash value of the consideration if other than cash.

(3) When property is purchased under a plan involving deferred payments, no charge shall be made to the electric plant accounts for interest, insurance, or other expenditures occasioned solely by such form of payment.

(4) The electric plant accounts shall not include the cost or other value of electric plant contributed to the company. Contributions in the form of money or its equivalent toward the construction of electric plant shall be credited to accounts charged with the cost of such construction. Plant constructed from contributions of cash or its equivalent shall be shown as a reduction to gross plant constructed when assembling cost data in work orders for posting to plant ledgers of accounts. The accumulated gross costs of plant accumulated in the work order shall be recorded as a debit in the plant ledger of accounts along with the related amount of contributions concurrently be recorded as a credit.

(c) *Components of construction cost.* The cost of construction properly includible in the electric plant accounts shall include, where applicable, the direct and overhead costs as listed and defined hereunder:

(1) *Contract work* includes amounts paid for work performed under contract by other companies, firms, or individuals, costs incident to the award of such contracts, and the inspection of such work.

(2) *Labor* includes the pay and expenses of employees of the utility engaged on construction work, and related workmen's compensation insurance, payroll taxes, and similar items of expense. It does not include the pay and expenses of employees which are distributed to construction through clearing accounts nor the pay and expenses included in other items hereunder.

(3) *Materials and supplies* includes the purchase price at the point of free delivery plus customs duties, excise taxes, the cost of inspection, loading and transportation, the related stores expenses, and the cost of fabricated materials from the utility's shop. In determining the cost of materials and supplies used for construction, proper allowance shall be made for unused materials and supplies, for materials recovered from temporary structures used in performing the work involved, and for discounts allowed and realized in the purchase of materials and supplies.

Note: The cost of individual items of equipment of small value (for example, $500 or less) or of short life, including small portable tools and implements, shall not be charged to utility plant accounts unless the correctness of the accounting therefor is verified by current inventories. The cost shall be charged to the appropriate operating expense or clearing accounts, according to the use of such items, or, if such items are consumed directly in construction work, the cost shall be included as part of the cost of the construction.

(4) *Transportation* includes the cost of transporting employees, materials and supplies, tools, purchased equipment, and other work equipment (when not under own power) to and from points of construction. It includes amounts paid to others as well as the cost of operating the utility's own transportation equipment. (See Item in paragraph (c)(5) of this section.)

(5) *Special machine service* includes the cost of labor (optional), materials and supplies, depreciation, and other expenses incurred in the maintenance, operation and use of special machines, such as steam shovels, pile drivers, derricks, ditchers, scrapers, material unloaders, and other labor saving machines; also expenditures for rental, maintenance and operation of machines of others. It does not include the cost of small tools and other individual items of small value or short life which are included in the cost of materials and supplies. (See Item in paragraph (c)(3) of this section.) When a particular construction job requires the use for an extended period of time of special machines, transportation or other equipment, the net book cost thereof, less the appraised or salvage value at time of release from the job, shall be include in the cost of construction.

(6) *Shop service* includes the proportion of the expense of the utility's shop department assignable to construction work except that the cost of fabricated materials from the utility's shop shall be included in "materials and supplies."

(7) *Protection* includes the cost of protecting the utility's property from fire or other casualties and the cost of preventing damages to others, or to the property of others, including payments for discovery or extinguishment of fires, cost of apprehending and prosecuting incendiaries, witness fees in relation thereto, amounts paid to municipalities and others for fire protection, and other analogous items of expenditures in connection with construction work.

(8) *Injuries and damages* includes expenditures or losses in connection

with construction work on account of injuries to persons and damages to the property of others; also the cost of investigation of and defense against actions for such injuries and damages. Insurance recovered or recoverable on account of compensation paid for injuries to persons incident to construction shall be credited to the account or accounts to which such compensation is charged. Insurance recovered or recoverable on account of property damages incident to construction shall be credited to the account or accounts charged with the cost of the damages.

(9) *Privileges and permits* includes payments for and expenses incurred in securing temporary privileges, permits or rights in connection with construction work, such as for the use of private or public property, streets, or highways, but it does not include rents, or amounts chargeable as franchises and consents for which see Account 302, Franchises and Consents.

(10) *Rents* includes amounts paid for the use of construction quarters and office space occupied by construction forces and amounts properly includible in construction costs for such facilities jointly used.

(11) *Engineers and supervision* includes the portion of the pay and expenses of engineers, surveyors, draftsmen, inspectors, superintendents and their assistants applicable to construction work.

(12) *General administration capitalized* includes the portion of the pay and expenses of the general officers and administrative and general expenses applicable to construction work.

(13) *Engineering services* includes amounts paid to other companies, firms, or individuals engaged by the utility to plan, design, prepare estimates, supervise, inspect, or give general advice and assistance in connection with construction work.

(14) *Insurance* includes premiums paid or amounts provided or reserved as self-insurance for the protection against loss and damages in connection with construction, by fire or other casualty, injuries or deaths of persons other than employees, damages to property of others, defalcation of employees and agents, and the nonperformance of contractual obligations of others. It does not include workmen's compensation or similar insurance on employees included as "labor" in Item in paragraph (c)(2) of this section.

(15) *Law expenditures* includes the general law expenditures incurred in connection with construction and the court and legal costs directly related thereto, other than law expenses included in "Protection," Item in paragraph (c)(7) of this section, and in Injuries and damages, Item in paragraph (c)(8) of this section.

(16) *Taxes* includes taxes on physical property (including land) during the period of construction and other taxes properly includible in construction costs before the facilities become available for service.

(17) *Allowance for funds used during construction* includes the net cost for the period of construction of borrowed funds used for construction purposes and a reasonable rate on other funds when so used, not to exceed, without prior approval of REA, allowances computed in accordance with the formula prescribed in Item in paragraph (c)(17)(i) of this section. No allowance for funds used during construction charges shall be included in these accounts upon expenditures for construction projects which have been abandoned.

(i) The formula and elements for the computation of the allowance for funds used during construction shall be:

$$A_i = s\left(\frac{S}{W}\right) + d\left(\frac{D}{D+P+C}\right)\left(1 - \frac{S}{W}\right)$$

$$A_c = \left[1 - \frac{S}{W}\right]\left[P\left(\frac{P}{D+P+C}\right) + c\left(\frac{C}{D+P+C}\right)\right]$$

Where:

A_i = Gross allowance for borrowed funds used during construction rate.
A_c = Allowance for other funds used during construction rate.
S = Average short-term debt.
s = Short-term debt interest rate.
D = Long-term debt.
d = Long-term debt interest rate.
P = Preferred stock.
p = Preferred stock cost rate.
C = Patronage capital assigned.
c = Entity's incremental borrowing rate.
W = Average balance in construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment, and fabrication.

(ii) The rate shall be determined annually.

(A) The balance for long-term debt, preferred stock, and patronage capital assigned shall be the actual book balances as of the end of the prior year.

(B) The cost rate for long-term debt and preferred stock shall be the weighted average cost.

(C) The cost rate for patronage capital assigned shall be the entity's incremental borrowing rate.

(D) The short-term debt balances and related cost and the average balance for construction work in progress plus nuclear fuel in process of refinement, conversion, enrichment, and fabrication shall be estimated for the current year with appropriate adjustments as actual data becomes available.

Note: When only a portion of a plant or project is placed in operation or is completed and ready for service but the construction work as a whole is incomplete, that part of the cost of the property placed in operation or ready for service shall be treated as "Electric Plant in Service," and an allowance for funds used during construction thereon as a charge to construction shall cease. Allowance for funds used during construction on that part of the cost of the plant which is incomplete may continue to be charged to construction until such time as it is placed in operation or is ready for service, except as limited in Item in paragraph (c)(17) of this section.

(18) *Earnings and expenses during construction.* The earnings and expenses during construction shall constitute a component of construction costs.

(i) The earnings shall include revenues received or earned for power produced by generating plants during the construction period and sold or used by the utility.

(A) Where such power is sold to an independent purchaser before intermingling with power generated by

other plants, the credit shall consist of the selling price of the energy.

(B) Where the power generated by a plant under construction is delivered to the utility's electric system for distribution and sale, or is delivered to an associated company, or is delivered to and used by the utility for purposes other than distribution and sale (for manufacturing or industrial use, for example), the credit shall be the fair value of the energy so delivered.

(C) Revenue shall also include rentals for lands, buildings, and other property, and miscellaneous receipts not properly includible in other accounts.

(ii) Expenses shall consist of the cost of operating the power plant, and other costs incident to the production and delivery of the power for which construction is credited under paragraph (c)(18)(i) of this section, including the cost of repairs and other expenses of operating and maintaining lands, buildings, and other property, and other miscellaneous and like expenses not properly includible in other accounts.

(19) *Training costs.* (i) When it is necessary that employees be trained to operate or maintain plant facilities that are being constructed and such facilities are not conventional in nature, or are new to the company's operations, these costs may be capitalized as a component of construction cost.

(ii) Once plant is placed in service, the capitalization of training costs shall cease and subsequent training costs shall be expensed. (See § 1767.17 (d).)

(20) *Studies.* (i) Studies include the costs of studies such as nuclear operational, safety, or seismic studies, or environmental studies mandated by regulatory bodies relative to plant under construction.

(ii) Studies relative to facilities in service shall be charged to Account 183, Preliminary Survey and Investigation Charges.

(d) *Overhead construction costs.* (1) All overhead construction costs, such as engineering, supervision, general office salaries and expenses, construction engineering and supervision performed by others than the accounting utility, law expenses, insurance, injuries and damages, relief and pensions, taxes and interest, shall be charged to particular jobs or units on the basis of the amounts of such overheads reasonably applicable thereto, to the end that each job or unit shall bear its equitable proportion of such costs and that the entire cost of the unit, both direct and overhead, shall be deducted from the plant accounts as the time the property is retired.

(2) As far as practicable, the determination of payroll charges includible in construction overheads shall be based on time card distributions thereof.

(i) Where this procedure is impractical, special studies shall be made periodically of the time of supervisory employees devoted to construction activities to the end that only such overhead costs as have a definite relation to construction shall be capitalized.

(ii) The addition to direct construction cost of arbitrary percentages or amounts to cover assumed overhead costs is not permitted.

(3) The records supporting the entries for overhead constructions costs shall be so kept as to show:

(i) The total amount of each overhead for each year;

(ii) The nature and amount of each overhead expenditure charged to each construction work order and to each electric plant account; and

(iii) The bases of distribution of such costs.

(e) *Electric plant purchased or sold.* (1) When electric plant constituting an operating unit or system is acquired by purchase, merger, consolidation, liquidation, or otherwise, after the effective date of this system of accounts, the costs of acquisition, including expenses incidental thereto properly includible in electric plant, shall be charged to Account 102, Electric Plant Purchased or Sold.

(2) The accounting for the acquisition shall then be completed as follows:

(i) The original cost of plant, estimated if not known, shall be credited to Account 102, Electric Plant Purchased or Sold, and concurrently charged to the appropriate electric plant in service accounts and to Account 104, Electric Plant Leased to Others; Account 105, Electric Plant Held for Future Use; and Account 107, Construction Work in Progress—Electric, as appropriate.

(ii) The depreciation and amortization applicable to the original cost of the properties purchased shall be charged to Account 102, Electric Plant Purchased or Sold, and concurrently credited to the appropriate account for accumulated provision for depreciation or amortization.

(iii) The cost to the utility of any property includible in Account 121, Nonutility Property, shall be transferred thereto.

(iv) The amount remaining in Account 102, Electric Plant Purchased or Sold, shall then be closed to Account 114, Electric Plant Acquisition Adjustments.

(3) If property acquired in the purchase of an operating unit or system is in such physical condition when acquired that it is necessary to substantially rehabilitate it in order to bring the property up to the standards of the utility, the cost of such work, except replacements, shall be accounted for as a part of the purchase price of the property.

(4) When any property acquired as an operating unit or system includes duplicate or other plant which will be retired by the accounting utility in the reconstruction of the acquired property or its consolidation with previously owned property, the proposed accounting for such property shall be presented to REA.

(5) In connection with the acquisition of electric plant constituting an operating unit or system, the utility shall procure, if possible, all existing records relating to the property acquired or certified copies thereof, and shall preserve such records in conformity with regulations or practices governing the preservation of records of its own construction.

(6) When electric plant constituting an operating unit or system is sold, conveyed, or transferred to another by sale, merger, consolidation, or otherwise, the book cost of the property sold or transferred to another shall be credited to the appropriate utility plant accounts, including amounts carried in Account 114, Electric Plant Acquisition Adjustments, and the amounts (estimated if not known) carried with respect thereto in the accounts for accumulated provision for depreciation and amortization and in Account 252, Customer Advances for Construction, shall be charged to such accounts and contra entries made to Account 102, Electric Plant Purchased or Sold. Unless otherwise ordered by REA, the difference, if any, between:

(i) The net amount of debits and credits, and

(ii) The consideration received for the property (less commissions and other expenses of making the sale) shall be included in Account 421.1, Gain on Disposition of Property, or Account 421.2, Loss on Disposition of Property. (See Account 102, Electric Plant Purchased or Sold.)

Note: In cases where existing utilities merge or consolidate because of financial or operating reasons or statutory requirements rather than as a means of transferring title of purchased properties to a new owner, the accounts of the constituent utilities, with the approval of REA, may be combined. In the event original cost has not been determined, the resulting utility shall proceed to determine such cost as outlined herein.

(f) *Expenditures on leased property.* (1) The cost of substantial initial

improvements (including repairs, rearrangements, additions, and betterments) made in the course of preparing for utility service property leased for a period of more than one year, and the cost of subsequent substantial additions, replacements, or betterments to such property, shall be charged to the electric plant account appropriate for the class of property leased.

(i) If the service life of the improvements is terminable by action of the lease, the cost, less net salvage, of the improvements shall be spread over the life of the lease by charges to Account 404, Amortization of Limited-Term Electric Plant.

(ii) If the service life is not terminated by action of the lease but by depreciation proper, the cost of the improvements, less net salvage, shall be accounted for as depreciable plant. The provisions of (1) are applicable to property leased under either capital leases or operating leases.

(2) If improvements made to property leased for a period of more than one year are of relatively minor cost, or if the lease is for a period of not more than one year, the cost of the improvements shall be charged to the account in which the rent is included, either directly or by amortization thereof.

(g) *Land and land rights.* (1) The accounts for land and land rights shall include the cost of land owned in fee by the utility and rights, interests, and privileges held by the utility in land owned by others, such as leaseholds, easements, water and water power rights, diversion rights, submersion rights, rights-of-way, and other like interests in land.

(i) Do not include in the accounts for land and land rights and rights-of-way costs incurred in connection with first clearing and grading of land and rights-of-way and the damage costs associated with the construction and installation of plant.

(ii) Such costs shall be included in the appropriate plant accounts directly benefited.

(2) Where special assessments for public improvements provide for deferred payments, the full amount of the assessments shall be charged to the appropriate land account and the unpaid balance shall be carried in an appropriate liability account.

(i) Interest on unpaid balances shall be charged to the appropriate interest account.

(ii) If any part of the cost of public improvements is included in the general tax levy, the amount thereof shall be charged to the appropriate tax account.

(3) The net profit from the sale of timber, cord wood, sand, gravel, other resources or other property acquired with the rights-of-way or other lands shall be credited to the appropriate plant accounts to which related. Where land is held for a considerable period of time and timber and other natural resources on the land at the time of purchase increase in value, the net profit (after giving effect to the cost of the natural resources) from the sale of timber or its products or other natural resources shall be credited to the appropriate utility operating income account when such land has been recorded in Account 105, Electric Plant Held for Future Use, or classified as plant in service, otherwise to Account 421, Miscellaneous Nonoperating Income.

(4) Separate entries shall be made for the acquisition, transfer, or retirement of each parcel of land, and each land right (except rights-of-way for distribution lines), or water right, having a life of more than one year.

(i) A record shall be maintained showing the nature of ownership, full legal description, area, map reference, purpose for which used, city, county, and tax district on which situated, from whom purchased or to whom sold, payment given or received, other costs, contract date and number, date of recording of deed, and book and page of record.

(ii) Entries transferring or retiring land or land rights shall refer to the original entry recording its acquisition.

(5) Any difference between the amount received from the sale of land or land rights, less agents' commissions and other costs incident to the sale, and the book cost of such land or rights, shall be included in Account 411.6, Gains from Disposition of Utility Plant, or 411.7, Losses from Disposition of Utility Plant, when such property has been recorded in Account 105, Electric Plant Held for Future Use, otherwise to Account 421.1, Gain on Disposition of Property, or 421.2, Loss on Disposition of Property, as appropriate, unless a reserve therefor has been authorized and provided. Appropriate adjustments of the accounts shall be made with respect to any structures or improvements located on land sold.

(6) The cost of buildings and other improvements (other than public improvements) shall not be included in the land accounts. If, at the time of acquisition of an interest in land, such interest extends to buildings or other improvements (other than public improvements) which are then devoted to utility operations, the land and improvements shall be separately appraised and a cost allocated to land and buildings or improvements on the basis of the appraisals. If the improvements are removed or wrecked without being used in operations, the cost of removing or wrecking shall be charged and the salvage credited to the account in which the cost of land is recorded.

(7) When the purchase of land for electric operations requires the purchase of more land than needed for such purposes, the charge to the specific land account shall be based upon the cost of the land purchased, less the fair market value of that portion of the land which is not to be used in utility operations. The portion of the cost measured by the fair market value of the land not to be used shall be included in Account 105, Electric Plant Held for Future Use, or Account 121, Nonutility Property, as appropriate.

(8) Provisions shall be made for amortizing amounts carried in the accounts for limited-term interest in land so as to apportion equitably the cost of each interest over the life thereof. (See Account 111, Accumulated Provision for Amortization of Electric Utility Plant, and Account 404, Amortization of Limited-Term Electric Plant.)

(9) The items of cost to be included in the accounts for land and land rights are as follows:

(i) Bulkheads, buried, not requiring maintenance or replacement;

(ii) First cost of acquisition including mortgages and other liens assumed (but not subsequent interest thereon);

(iii) Condemnation proceedings, including court and counsel costs;

(iv) Consents and abutting damages;

(v) Conveyancers' and notaries' fees;

(vi) Fees, commissions, and salaries to brokers, agents, and other in connection with the acquisition of the land or land rights;

(vii) Leases, cost of voiding upon purchase to secure possession of land;

(viii) Removing, relocating, or reconstructing property of others, such as buildings, highways, railroads, bridges, cemeteries, churches, telephone and power lines, etc., in order to acquire quiet possession;

(ix) Retaining walls unless identified with structures;

(x) Special assessments levied by public authorities for public improvements on the basis of benefits for new roads, new bridges, new sewers, new curbing, new pavements, and other public improvements, but not taxes levied to provide for the maintenance of such improvements;

(xi) Surveys in connection with the acquisition, but not amounts paid for

topographical surveys and maps where such costs are attributable to structures or plant equipment erected or to be erected or installed on such land;

(xii) Taxes assumed, accrued to date of transfer of title;

(xiii) Title, examining, clearing, insuring, and registering in connection with the acquisition and defending against claims relating to the period prior to the acquisition;

(xiv) Appraisals prior to closing title;

(xv) Cost of dealing with distributees or legatees residing outside of the state or county, such as recording power of attorney, recording will or exemplification of will, recording satisfaction of state tax;

(xvi) Filing satisfaction of mortgage;

(xvii) Documentary stamps;

(xviii) Photographs of property at acquisition;

(xix) Fees and expenses incurred in the acquisition of water rights and grants;

(xx) Cost of fill to extend bulkhead line over land under water, where riparian rights are held, which is not occasioned by the erection of a structure;

(xxi) Sidewalks and curbs constructed by the utility on public property; and

(xxii) Labor and expenses in connection with securing rights of way, where performed by company employees and company agents.

(h) *Structures and improvements.* (1) The accounts for structures and improvements shall include the cost of all buildings and facilities to house, support, or safeguard property or persons, including all fixtures permanently attached to and made a part of buildings and which cannot be removed therefrom without cutting into the walls, ceilings, or floors, or without in some way impairing the buildings, and improvements of a permanent character on or to land.

(2) Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

(3) The cost of specially provided foundations not intended to outlast the machinery or apparatus for which provided, and the cost of angle irons, and castings installed at the base of an item of equipment, shall be charged to the same account as the cost of the machinery, apparatus, or equipment.

(4) Minor buildings and structures, such as valve towers, patrolmen's towers, telephone stations, fish and wildlife, and recreation facilities which are used directly in connection with or form a part of a reservoir, dam or waterway shall be considered a part of the facility in connection with which constructed or operated and the cost thereof accounted for accordingly.

(5) Where furnaces and boilers are used primarily for furnishing steam for some particular department and only incidentally for furnishing steam for heating a building and operating the equipment therein, the entire cost of such furnaces and boilers shall be charged to the appropriate plant account, and no part to the building account.

(6) Where the structure of a dam forms also the foundation of the power plant building, such foundation shall be considered a part of the dam.

(7) The cost of disposing of materials excavated in connection with construction of structures shall be considered as a part of the cost of such work, except when such material is used for filling, the cost of loading, hauling, and dumping shall be equitably apportioned between the work in connection with which the removal occurs and the work in connection with which the material is used; and when such material is sold, the net amount realized from such sales shall be credited to the work in connection with which the removal occurs. If the amount realized from the sale of excavated materials exceeds the removal costs and the costs in connection with the sale, the excess shall be credited to the land account in which the site is carried.

(8) Lighting or other fixtures temporarily attached to building for purposes of display or demonstration shall not be included in the cost of the building but in the appropriate equipment account.

(9) The items of cost to be included in the accounts for structures and improvements are as follows:

(i) Architects' plans and specifications including supervision;

(ii) Ash pits (when located within the building);

(iii) Athletic field structures and improvements;.

(iv) Boilers, furnaces, piping, wiring, fixtures, and machinery for heating, lighting, signaling, ventilating, and air conditioning systems, plumbing, vacuum cleaning systems, incinerator and smoke pipe, flues, etc;

(v) Bulkheads, including dredging, riprap fill, piling, decking, concrete, fenders, etc., when exposed and subject to maintenance and replacement;

(vi) Chimneys;

(vii) Coal bins and bunkers;

(viii) Commissions and fees to brokers, agents, architects and others;

(ix) Conduit (not to be removed) with its contents;

(x) Damages to abutting property during construction;

(xi) Docks;

(xii) Door checks and door stops;

(xiii) Drainage and sewerage systems;

(xiv) Elevators, cranes, hoists, etc., and the machinery for operating them;

(xv) Excavation, including shoring, bracing, bridging, refill and disposal of excess excavated material, cofferdams around foundation, pumping water from cofferdams during construction and test borings;

(xvi) Fences and fence curbs (not including protective fences isolating items of equipment, which shall be charged to the appropriate equipment accounts);

(xvii) Fire protection systems when forming a part of a structure;

(xviii) Flagpole;

(xix) Floor covering (permanently attached);

(xx) Foundations and piers for machinery, constructed as a permanent part of a building or other item listed herein;

(xxi) Grading and clearing when directly occasioned by the building of a structure;

(xxii) Intrasite communication system, poles, pole fixtures, wires, and cable;

(xxiii) Landscaping, lawns, shrubbery, etc.;

(xxiv) Leases, voiding upon purchase to secure possession of structures;

(xxv) Leased property, expenditures on;

(xxvi) Lighting fixtures and outside lighting system;

(xxvii) Mailchutes when part of a building;

(xxviii) Marquee, permanently attached to the building;

(xxix) Painting, first cost;

(xxx) Permanent paving, concrete, brick, flagstone, asphalt, etc., within the property lines;

(xxxi) Partitions, including movable;

(xxxii) Permits and privileges;

(xxxiii) Platforms, railings and gratings when constructed as a part of a structure;

(xxxiv) Power boards for services to a building;

(xxxv) Refrigerating systems for general use;

(xxxvi) Retaining walls except when identified with land;

(xxxvii) Roadways, railroads, bridges, and trestles intrasite except railroads provided for in equipment accounts;

(xxxviii) Roofs;

(xxxix) Scales, connected to and forming a part of a structure;

(xl) Screens;

(xli) Sewer systems, for general use;

(xlii) Sidewalks, culverts, curbs and streets constructed by the utility on its property;

(xliii) Sprinkling systems;
(xliv) Sump pumps and pits;
(xlv) Stacks—brick, steel, or concrete, when set on foundation forming part of general foundation and steelwork of a building;
(xlvi) Steel inspection during construction;
(xlvii) Storage facilities constituting a part of a building;
(xlviii) Storm doors and windows;
(xlix) Subways, areaways, and tunnels, directly connected to and forming part of a structure;
(l) Tanks, constructed as part of a building or as a distinct structural unit;
(li) Temporary heating during construction (net cost);
(lii) Temporary water connection during construction (net cost);
(liii) Temporary shanties and other facilities used during construction (net cost);
(liv) Topographical maps;
(lv) Tunnels, intake and discharge, when constructed as part of a structure, including sluice gates, and those constructed to house mains;
(lvi) Vaults constructed as part of a building;
(lvii) Watchmen's sheds and clock systems (net cost when used during construction only);
(lviii) Water basins or reservoirs;
(lix) Water front improvements;
(lx) Water meters and supply system for a building or for general company purposes;
(lxi) Water supply piping, hydrants, and wells;
(lxii) Wharves;
(lxiii) Window shades and ventilators;
(lxiv) Yard drainage system;
(lxv) Yard lighting system; and
(lxvi) Yard surfacing, gravel, concrete, or oil (First cost only).

Note: Structures and improvements accounts shall be credited with the cost of coal bunkers, stacks, foundations, subways, and tunnels, the use of which has terminated with the removal of the equipment with which they are associated even though they have not been physically removed.

(i) *Equipment.* (1) The cost of equipment chargeable to the electric plant accounts, unless otherwise indicated in the text of an equipment account, includes the net purchase price thereof, sales taxes, investigation and inspection expenses necessary to such purchase, expenses of transportation when borne by the utility, labor employed, materials, and supplies consumed, and expenses incurred by the utility in unloading and placing the equipment in readiness to operate.

(2) Also include those costs incurred in connection with the first clearing and grading of land and rights-of-way and the damage costs associated with construction and installation of plant.

(3) Exclude from equipment accounts hand and other portable tools, which are likely to be lost or stolen or which have relatively small value (for example, $500 or less) or short life, unless the correctness of the accounting therefor as electric plant is verified by current inventories.

(i) Special tools acquired and included in the purchase price of equipment shall be included in the appropriate plant accounts.

(ii) Portable drills and similar tool equipment when used in connection with the operation and maintenance of a particular plan or department, such as production, transmission, or distribution or in "stores", shall be charged to the plant accounts appropriate for their use.

(4) The equipment accounts shall include angle irons and similar items which are installed at the base of an item of equipment, but piers and foundations which are designed to be as permanent as the buildings which house the equipment, or which are constructed as a part of the building and which cannot be removed without cutting into the walls, ceilings, or floors or, without in some way impairing the building, shall be included in the building accounts.

(5) The equipment accounts shall include the necessary costs of testing or running a plant or parts thereof during an experimental or test period prior to such plant becoming ready for or placed in service.

(i) The utility shall furnish REA with full particulars of and justification for any test or experimental run extending beyond a period of 120 days for nuclear plant, and a period of 90 days for all other plant.

(ii) Such particulars shall include a detailed operational and downtime log showing days of production, gross kilowatts generated by hourly increments, types, and periods of outages by hours with explanation thereof, beginning with the first date the equipment was either tested or synchronized on the line to the end of the test period.

(6) The cost of efficiency or other tests made subsequent to the date equipment becomes available for service shall be charged to the appropriate expense accounts, except that tests to determine whether equipment meets the specifications and requirements as to efficiency, or performance guaranteed by manufacturers, made after operations have commenced and within the period specified in the agreement or contract of purchase, may be charged to the appropriate electric plant accounts.

(j) *Additions and retirements of electric plant.* (1) For the purpose of avoiding undue refinement in accounting for additions to and retirements and replacements of electric plant, all property shall be considered as consisting of retirement units and minor items of property.

(2) The addition and retirement of retirement units shall be accounted for as follows:

(i) When a retirement unit is added to electric plant, the cost thereof shall be added to the appropriate electric plant account, except that when units are acquired in the acquisition of any electric plant constituting an operating system, they shall be accounted for as provided in paragraph (e) of this section.

(ii) When a retirement unit is retired from electric plant, with or without replacement, the book cost thereof shall be credited to the electric plant account in which it is included, determined in the manner set forth in Item in paragraph (j)(4) of this section. If the retirement unit is of a depreciable class, the book cost of the unit retired and credited to electric plant shall be charged to the accumulated provision for depreciation applicable to such property. The cost of removal and the salvage shall be charged or credited, as appropriate, to such depreciation account.

(3) The addition and retirement of minor items of property shall be accounted for as follows:

(i) When a minor item of property which did not previously exist is added to plant, the cost thereof shall be accounted for in the same manner as for the addition of a retirement unit, as set forth in Item in paragraph (j)(2)(i) of this section, if a substantial addition results, otherwise the charge shall be to the appropriate maintenance expense account.

(ii) When a minor item of property is retired and not replaced, the book cost thereof shall be credited to the electric plant account in which it is included; and, in the event the minor item is a part of depreciable plant, the account for accumulated provision for depreciation shall be charged with the book cost and cost of removal and credited with the salvage. If, however, the book cost of the minor item retired and not replaced has been or will be accounted for by its inclusion in the retirement unit of which it is a part when such unit is retired, no separate credit to the property account is required when such minor item is retired.

(iii) When a minor item of depreciable property is replaced independently of the retirement unit of which it is a part, the cost of replacement shall be charged to the maintenance account appropriate for the item, except that if the replacement effects a substantial betterment (the primary aim of which is to make the property affected more useful, more efficient, of greater durability, or of greater capacity), the excess cost of the replacement over the estimated cost at current prices of replacing without betterment shall be charged to the appropriate electric plant accounts.

(4) The book cost of electric plant retired shall be the amount at which such property is included in the electric plant accounts, including all components of construction costs. The book cost shall be determined from the utility's records and if this cannot be done, it shall be estimated. When it is impracticable to determine the book cost of each unit, due to the relatively large number or small cost thereof, an appropriate average book cost of the units with due allowance for any differences in size and character, shall be used as the book cost of the units retired.

(5) The book cost of land retired shall be credited to the appropriate land accounts. If the land is sold, the difference between the book cost (less any accumulated provision for depreciation or amortization therefore which has been authorized and provided) and the sale price of the land (less commissions and other expenses of making the sale) shall be recorded in Account 411.6, Gains from Disposition of Utility Plant, or Account 411.7, Losses from Disposition of Utility Plant, when the property has been recorded in Account 105, Electric Plant Held for Future Use, otherwise to Accounts 421.1, Gain on Disposition of Property, or 421.2, Loss on Disposition of Property, as appropriate. If the land is not used in utility service but is retained by the utility, the book cost shall be charged to Account 105, Electric Plant Held for Future Use, or Account 121, Nonutility Property, as appropriate.

(6) The book cost less net salvage of depreciable electric plant retired shall be charged in its entirety to Account 108, Accumulated Provision for Depreciation of Electric Utility Plant in Service. Any amounts which, by approval or order of REA, are charged to Account 182.1, Extraordinary Property Losses, shall be credited to Account 108.

(7) The accounting for the retirement of amounts included in Account 302, Franchises and Consents, and Account 303, Miscellaneous Intangible Plant, and the items of limited-term interest in land included in the accounts for land and land rights, shall be as provided for in the text of Account 111, Accumulated Provision for Amortization of Electric Utility Plant in Service; Account 404, Amortization of Limited-Term Electric Plant; and Account 405, Amortization of Other Electric Plant.

(k) *Work order and property record system required.* (1) Each utility shall record all construction and retirements of electric plant by means of work orders or job orders. Separate work orders may be opened for additions to and retirements of electric plant or the retirements may be included with the construction work order, provided, however, that all items relating to the retirements shall be kept separate from those relating to construction and provided, further, that any maintenance costs involved in the work shall likewise be segregated.

(2) Each utility shall keep its work order system so as to show the nature of each addition to or retirement of electric plant, the total cost thereof, the source or sources of costs, and the electric plant account or accounts to which charged or credited. Work orders covering jobs of short duration may be cleared monthly.

(3) Each utility shall maintain records in which, for each plant account, the amounts of the annual additions and retirements are classified so as to show the number and cost of the various record units or retirement units.

(l) *Transfers of property.* When property is transferred from one electric plant account to another, from one utility department to another, such as from electric to gas, from one operating division or area to another, to or from Account 101, Electric Plant in Service; Account 104, Electric Plant Leased to Others; Account 105, Electric Plant Held for Future Use, and Account 121, Nonutility Property, the transfer shall be recorded by transferring the original cost thereof from the one account, department, or location to the other. Any related amounts carried in the accounts for accumulated provision for depreciation or amortization shall be transferred in accordance with the segregation of such accounts.

(m) *Common utility plant.* (1) If the utility is engaged in more than one utility service, such as electric, gas, and water, and any of its utility plant is used in common for several utility services or for other purposes to such an extent and in such manner that it is impracticable to segregate it by utility services currently in the accounts, such property, with the approval of REA, may be designated and classified as "common utility plant."

(2) The book amount of utility plant designated as common plant shall be included in Account 118, Other Utility Plant, and if applicable in part to the electric department, shall be segregated and accounted for in subaccounts as electric plant is accounted for in Accounts 101 to 107, inclusive, and electric plant adjustments in Account 116, Other Electric Plant Adjustments; any amounts classifiable as common plant acquisition adjustments or common plant adjustments shall be subject to disposition as provided in Paragraphs C and B of Accounts 114 and 116, respectively, for amounts classified in those accounts. The original cost of common utility plant in service shall be classified according to the detailed utility plant accounts appropriate for the property.

(3) The utility shall be prepared to show, at any time, and to report to REA annually, or more frequently, if required, and by utility plant accounts (301 to 399) the book cost of common utility plant, the allocation of such cost to the respective departments using the common utility plant, and the basis of the allocation.

(4) The accumulated provision for depreciation and amortization of the utility shall be segregated so as to show the amount applicable to the property classified as common utility plant.

(5) The expenses of operation, maintenance, rents, depreciation and amortization of common utility plant shall be recorded in the accounts prescribed herein, but designated as common expenses, and the allocation of such expenses to the departments using the common utility plant shall be supported in such manner as to reflect readily the basis of allocation used.

(n) *Transmission and distribution plant.* For the purpose of this system of accounts:

(1) *Transmission system* is all land, conversion structures, and equipment employed at a primary source of supply (i.e. generating station, or point of receipt in the case of purchased power) to change the voltage or frequency of electricity for the purpose of its more efficient or convenient transmission; all land, structures, lines, switching and conversion stations, high tension apparatus, and their control and protective equipment between a generating or receiving point and the entrance to a distribution center or wholesale point; and all lines and equipment whose primary purpose is to augment, integrate or tie together the sources of power supply.

(2) *Distribution system* is all land, structures, conversion equipment, lines, line transformers, and other facilities employed between the primary source of supply (i.e. generating station, or point of receipt in the case of purchased power) and of delivery to customers, which are not includible in transmission system, as defined in Item in paragraph (n)(1) of this section, whether or not such land, structures, and facilities are operated as part of a transmission system or as part of a distribution system.

Note: Stations which change electricity from transmission to distribution voltage shall be classified as distribution stations.

(3) Where poles or towers support both transmission and distribution conductors, the poles, towers, anchors, guys, and rights-of-way shall be classified as transmission system. The conductors, cross-arms, braces, grounds, tiewire, and insulators shall be classified as transmission or distribution facilities, according to the purpose for which used.

(4) Where underground conduit contains both transmission and distribution conductors, the underground conduit and right-of-way shall be classified as distribution system. The conductors shall be classified as transmission or distribution facilities according to the purpose for which used.

(5) Land (other than rights-of-way) and structures used jointly for transmission and distribution purposes shall be classified as transmission or distribution according to the major use thereof.

(o) *Hydraulic production plant.* For purpose of this system of accounts hydraulic production plant is all land and land rights, structures and improvements used in connection with hydraulic power generation, reservoirs, dams and waterways, water wheels, turbines, generators, accessory electric equipment, roads, railroads, and bridges and structures and improvements used in connection with fish and wildlife, and recreation.

(p) *Nuclear fuel records required.* Each utility shall keep all the necessary records to support the entries to the various nuclear fuel plant accounts classified under "Assets and Other Debits," Utility Plant Accounts 120.1 through 120.5, inclusive; Account 518, Nuclear Fuel Expense; and Account 157, Nuclear Materials Held for Sale. These records shall be so kept as to readily furnish the basis of the computation of the net nuclear fuel costs.

§ 1767.17 Operating expense instructions.

(a) *Supervision and engineering.* The supervision and engineering includible in the operating expense accounts shall consist of the pay and expenses of superintendents, engineers, clerks, other employees, and consultants engaged in supervising and directing the operation and maintenance of each utility function. Whenever allocations are necessary in order to arrive at the amount to be included in any account, the method and basis of allocation shall be reflected by underlying records.

(1) Labor items:

(i) Special tests to determine efficiency of equipment operation;

(ii) Preparing or reviewing budgets, estimates, and drawings relating to operation or maintenance for departmental approval;

(iii) Preparing instructions for operations and maintenance activities;

(iv) Reviewing and analyzing operating results;

(v) Establishing organizational setup of departments and executing changes therein;

(vi) Formulating and reviewing routines of departments and executing changes therein;

(vii) General training and instruction of employees by supervisors whose pay is chargeable hereto. Specific instructions and training in a particular type of work is chargeable to the appropriate functional account (See § 1767.16 (c) (19));

(viii) Secretarial work for supervisory personnel, but not general clerical and stenographic work chargeable to other accounts.

(2) Expense items:

(i) Consultants' fees and expenses;

(ii) Meals, traveling and incidental expenses.

(b) *Maintenance.* (1) The cost of maintenance chargeable to the various operating expense and clearing accounts includes labor, materials, overheads and other expenses incurred in maintenance work. A list of work operations applicable generally to utility plant is included hereunder. Other work operations applicable to specific classes of plant are listed in functional maintenance expense accounts.

(2) Materials recovered in connection with the maintenance of property shall be credited to the same account to which the maintenance cost was charged.

(3) If the book cost of any property is carried in Account 102, Electric Plant Purchased or Sold, the cost of maintaining such property shall be charged to the accounts for maintenance of property of the same class and use, the book cost of which is carried in other electric plant in service accounts. Maintenance of property leased from others shall be treated as provided in paragraph (c) of this section.

(4) Items:

(i) Direct field supervision of maintenance;

(ii) Inspecting, testing, and reporting on condition of plant specifically to determine the need for repairs, replacements, rearrangements and changes and inspecting and testing the adequacy of repairs which have been made;

(iii) Work performed specifically for the purpose of preventing failure, restoring serviceability or maintaining life of plant;

(iv) Rearranging and changing the location of plant not retired;

(v) Repairing for reuse materials recovered from plant;

(vi) Testing for, locating, and clearing trouble;

(vii) Net cost of installing, maintaining, and removing temporary facilities to prevent interruptions in service; and

(viii) Replacing or adding minor items of plant which do not constitute a retirement unit.

(c) *Rents.* (1) The rent expense accounts provided under the several functional groups of expense accounts shall include all rents, including taxes paid by the lessee on leased property, for property used in utility operations, except minor amounts paid for occasional or infrequent use of any property or equipment and all amounts paid for use of equipment that, if owned, would be includible in plant Accounts 391 to 398 inclusive, which shall be treated as an expense item and included in the appropriate function account and rents which are chargeable to clearing accounts, and distributed therefrom to the appropriate account.

(2) If rents cover property used for more than one function such as production and transmission, or by more than one department, the rents shall be apportioned to the appropriate rent expense or clearing accounts of each department on an actual, or if necessary, an estimated basis.

(3) When a portion of property or equipment rented from others for use in connection with utility operations is subleased, the revenue derived from such subleasing shall be credited to the rent revenue account in operating revenues; provided, however, that in case the rent was charged to a clearing account, amounts received from subleasing the property shall be credited to such clearing account.

(4) The cost, when incurred by the lessee, of operating and maintaining

leased property, shall be charged to the accounts appropriate for the expense if the property were owned.

(5) The cost incurred by the lessee of additions and replacements to electric plant leased from others shall be account for as provided in § 1767.16 (f).

(d) *Training costs.* (1) When it is necessary that employees be trained to specifically operate or maintain plant facilities that are being constructed, the related costs shall be accounted for as a current operating and maintenance expense.

(2) These expenses shall be charged to the appropriate functional accounts currently as they are incurred.

(3) When the training costs involved relate to facilities which are not conventional in nature, or are new to the company's operations, see § 1767.16 (c) (19), for the accounting.

§ 1767.18 Assets and other debits.

The asset and other debits accounts identified in this section shall be used by all REA borrowers.

Assets and Other Debits

Utility Plant

101 Electric Plant in Service
101.1 Property Under Capital Leases
102 Electric Plant Purchased or Sold
103 Experimental Electric Plant Unclassified
104 Electric Plant Leased to Others
105 Electric Plant Held for Future Use
106 Completed Construction not Classified—Electric
107 Construction Work in Progress—Electric
107.1 Construction Work in Progress—Contract
107.2 Construction Work in Progress—Force Account
107.3 Construction Work in Progress—Special Equipment
108 Accumulated Provision for Depreciation of Electric Utility Plant
108.1 Accumulated Provision for Depreciation of Steam Production Plant
108.2 Accumulated Provision for Depreciation of Nuclear Production Plant
108.3 Accumulated Provision for Depreciation of Hydraulic Production Plant
108.4 Accumulated Provision for Depreciation of Other Production Plant
108.5 Accumulated Provision for Depreciation of Transmission Plant
108.6 Accumulated Provision for Depreciation of Distribution Plant
108.7 Accumulated Provision for Depreciation of General Plant
108.8 Retirement Work in Progress
109 [Reserved]
110 [Reserved]
111 Accumulated Provision for Amortization of Electric Utility Plant
112 [Reserved]
113 [Reserved]
114 Electric Plant Acquisition Adjustments
115 Accumulated Provision for Amortization of Electric Plant Acquisition Adjustments
116 Other Electric Plant Adjustments
118 Other Utility Plant
119 Accumulated Provision for Depreciation and Amortization of Other Utility Plant
120.1 Nuclear Fuel in Process of Refinement, Conversion, Enrichment, and Fabrication
120.2 Nuclear Fuel Materials and Assemblies—Stock Account
120.3 Nuclear Fuel Assemblies in Reactor
120.4 Spent Nuclear Fuel
120.5 Accumulated Provision for Amortization of Nuclear Fuel Assemblies
120.6 Nuclear Fuel Under Capital Leases

Other Property and Investments

121 Nonutility Property
122 Accumulated Provision for Depreciation and Amortization of Nonutility Property
123 Investment in Associated Companies
123.1 Patronage Capital from Associated Cooperatives
123.11 Investment in Subsidiary Companies
123.21 Subscriptions to Capital Term Certificates—Supplemental Financing
123.22 Investments in Capital Term Certificates—Supplemental Financing
123.23 Other Investments in Associated Organizations
124 Other Investments
125 Sinking Funds
126 Depreciation Fund
128 Other Special Funds

Current and Accrued Assets

131 Cash
131.1 Cash—General
131.12 Cash—General—Economic Development Funds
131.2 Cash—Construction Fund—Trustee
131.3 Cash—Installation Loan and Collection Fund
131.4 Transfer of Cash
132 Interest Special Deposits
133 Dividend Special Deposits
134 Other Special Deposits
135 Working Funds
136 Temporary Cash Investments
141 Notes Receivable
141.1 Accumulated Provision for Uncollectible Notes—Credit
142 Customer Accounts Receivable
142.1 Customer Accounts Receivable—Electric
142.2 Customer Accounts Receivable—Other
143 Other Accounts Receivable
144 Accumulated Provision for Uncollectible Accounts—Credit
144.1 Accumulated Provision for Uncollectible Customer Accounts—Credit
144.2 Accumulated Provision for Uncollectible Merchandising Accounts—Credit
144.3 Accumulated Provision for Uncollectible Accounts, Officers and Employees—Credit
144.4 Accumulated Provision for Other Uncollectible Accounts—Credit 145 Notes Receivable from Associated Companies
146 Accounts Receivable from Associated Companies
151 Fuel Stock
152 Fuel Stock Expenses Undistributed
153 Residuals
154 Plant Materials and Operating Supplies
155 Merchandise
156 Other Materials and Supplies
157 Nuclear Materials Held for Sale
158.1 Allowance Inventory
158.2 Allowances Withheld
163 Stores Expense Undistributed
165 Prepayments
165.1 Prepayments—Insurance
165.2 Other Prepayments
171 Interest and Dividends Receivable
172 Rents Receivable
173 Accrued Utility Revenues
174 Miscellaneous Current and Accrued Assets

Deferred Debits

181 Unamortized Debt Expense
182.1 Extraordinary Property Losses
182.2 Unrecovered Plant and Regulatory Study Costs
182.3 Other Regulatory Assets
183 Preliminary Survey and Investigation Charges
184 Clearing Accounts
184.1 Transportation Expense—Clearing
184.2 Clearing Accounts—Other
185 Temporary Facilities
186 Miscellaneous Deferred Debits
187 Deferred Losses from Disposition of Utility Plant
188 Research, Development, and Demonstration Expenditures
189 Unamortized Loss on Reacquired Debt
190 Accumulated Deferred Income Taxes

Assets and Other Debits

Utility Plant

101 Electric Plant in Service

A. This account shall include the original cost of electric plant, included in Accounts 301 to 399, prescribed herein, owned and used by the utility in its electric utility operations, and having an expectation of life in service of more than one year from date of installation, including such property owned by the utility but held by nominees.

B. (See also Account 106 for unclassified construction costs of completed plant actually in service.)

C. The cost of additions to and betterments of property leased from others, which are includible in this account, shall be recorded in subdivisions separate and distinct from those relating to owned property. (See § 1767.16 (f).)

101.1 Property Under Capital Leases

A. This account shall include the amount recorded under capital leases for plant leased from others and used by the utility in its utility operations.

B. The electric property included in this account shall be classified separately according to the detailed

accounts (301 to 399) prescribed for electric plant in service.

C. Records shall be maintained with respect to each capital lease reflection: (1) name of lessor, (2) basic details of lease, (3) terminal date, (4) original cost or fair market value of property leased, (5) future minimum lease payments, (6) executory costs, (7) present value of minimum lease payments, (8) the amount representing interest and the interest rate used, and (9) expenses paid.

102 Electric Plant Purchased or Sold

A. This account shall be charged with the cost of electric plant acquired as an operating unit or system by purchase, merger, consolidation liquidation, or otherwise, and shall be credited with the selling price of like property transferred to others pending the distribution to appropriate accounts in accordance with § 1767.16 (e).

B. Within 6 months from the date of acquisition or sale of property recorded herein, the borrower shall file with REA the proposed journal entries to clear from this account the amounts recorded herein.

103 Experimental Electric Plant Unclassified

A. This account shall include the cost of electric plant which was constructed as a research, development, and demonstration plant under the provisions of Paragraph C, Account 107, Construction Work in Progress—Electric, and due to the nature of the plant, it is desirous to operate it for a period of time in an experimental status.

B. Amounts in this account shall be transferred to Account 101, Electric Plant in Service, or Account 121, Nonutility Property, as appropriate when the project is no longer considered as experimental.

C. The depreciation on property in this account shall be charged to Account 403, Depreciation Expense, and credited to Account 108, Accumulated Provision for Depreciation of Electric Utility Plant. The amounts herein shall be depreciated over a period which would correspond to the estimated useful life of the relevant project considering the characteristics involved. However, when projects are transferred to Account 101, Electric Plant in Service, a new depreciation rate based upon the remaining service life and undepreciated amounts, will be established.

D. Records shall be maintained with respect to each unit of experiment so that full details may be obtained as to the cost, depreciation, and the experimental status.

E. Should it be determined that experimental plant recorded in this account will fail to satisfactorily perform its function, the costs thereof shall be accounted for as directed or authorized by REA.

104 Electric Plant Leased to Others

A. This account shall include the original cost of electric plant owned by the utility, but leased to others as operating units or systems, where the lessee has exclusive possession.

B. The property included in this account shall be classified according to the detailed accounts (301 to 399) prescribed for electric plant in service and this account shall be maintained in such detail as though the property were used by the owner in its utility operations.

105 Electric Plant Held for Future Use

A. This account shall include the original cost of electric plant (except land and land rights) owned and held for future use in electric service under a definite plan for such use, to include: (1) Property acquired (except land and land rights) but never used by the utility in electric service, but held for such service in the future under a definite plan, and (2) property (except land and land rights) previously used by the utility in service but retired from such service and held pending its reuse in the future, under a definite plan, in electric service.

B. This account shall also include the original cost of land and land rights owned and held for future use in electric service under a plan for such use, to include land and land rights: (1) Acquired but never used by the utility in electric service, but held for such service in the future under a plan, and (2) previously held by the utility in service, but retired from such service and held pending its reuse in the future under a plan, in electric service. (See § 1767.16 (g).)

C. In the event that property recorded in this account shall no longer be needed or appropriate for future utility operations, the borrower shall notify REA of such condition and request approval of journal entries to remove such property from this account.

D. Gains or losses from the sale of land and land rights or other disposition of such property previously recorded in this account and not placed in utility service shall be recorded directly in Accounts 411.6 or 411.7, as appropriate, except when determined to be significant by REA. Upon such a determination, the amounts shall be transferred to Account 256, Deferred Gains from Disposition of Utility Plant, or Account 187, Deferred Losses from Disposition of Utility Plant, and amortized to Account 411.6, Gains from Disposition of Utility Plant, or Account 411.7, Losses from Disposition of Utility Plant, as appropriate.

E. The property included in this account shall be classified according to the detail accounts (301 to 399) prescribed for electric plant in service and the account shall be maintained in such detail as though the property were in service.

Note: Materials and supplies, meters and transformers held in reserve, and normal spare capacity of plant in service shall not be included in this account.

106 Completed Construction not Classified—Electric

At the end of the year or such other date as a balance sheet may be required by REA, this account shall include the total of the balances of work orders for electric plant which has been completed and placed in service but which work orders have not been classified for transfer to the detailed electric plant accounts.

Note: For the purpose of reporting to REA, the classification of electric plant in service by accounts is required, the utility shall also report the balance in this account tentatively classified as accurately as practicable according to prescribed account classifications. The purpose of this provision is to avoid any significant omissions in reported amounts of electric plant in service.

107 Construction Work in Progress—Electric

A. This account shall include the total of the balances of work orders for electric plant in process of construction.

B. Work orders shall be cleared from this account as soon as practicable, after completion of the job. Further, if a project, such as a hydroelectric project, a steam station, or a transmission line, is designed to consist of two or more units or circuits which may be placed in service at different dates, any expenditures which are common to and which will be used in the operation of the project as a whole shall be included in electric plant in service upon the completion and the readiness for service of the first unit. Any expenditures which are identified exclusively with units of property not yet in service shall be included in this account.

C. Expenditures on research, development, and demonstration projects for construction of utility facilities are to be included in a separate subdivision in this account. Records must be maintained to show separately each project along with complete detail of the nature and purpose of the research, development, and

demonstration project together with the related costs.

D. Account 107 shall be subaccounted as follows:

107.1 Construction Work in Progress—Contract
107.2 Construction Work in Progress—Force Account
107.3 Construction Work in Progress—Special Equipment

108 Accumulated Provision for Depreciation of Electric Utility Plant

A. This account shall be credited with the following:

1. Amounts charged to Account 403, Depreciation Expense, or to clearing accounts for current depreciation expense for electric plant in service.

2. Amounts charged to Account 421, Miscellaneous Nonoperating Income, for depreciation expense on property included in Account 105, Electric Plant Held for Future Use. Include, also, the balance of accumulated provision for depreciation on property when transferred to Account 105, Electric Plant Held for Future Use, from other property accounts. Normally, Account 108 will not be used for current depreciation provision because, as provided herein, the service life during which depreciation is computed commences with the date property is includible in electric plant in service; however, if special circumstances indicate the propriety of current accruals for depreciation, such charges shall be made to Account 421, Miscellaneous Nonoperating Income.

3. Amounts charged to Account 413, Expenses of Electric Plant Leased to Others, for electric plant included in Account 104, Electric Plant Leased to Others.

4. Amounts charged to Account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work, or to clearing accounts for current depreciation expense.

5. Amounts of depreciation applicable to electric properties acquired as operating units or systems. (See § 1767.16 (e).)

6. Amounts charged to Account 182.1, Extraordinary Property Losses, when authorized by REA.

7. Amounts of depreciation applicable to electric plant donated to the utility.

The utility shall maintain separate subaccounts for depreciation applicable to electric plant in service, electric plant leased to others, and electric plant held for future use.)

B. At the time of retirement of depreciable electric utility plant, this account shall be charged with the book cost of the property retired and the cost of removal and shall be credited with the salvage value and any other amounts recovered, such as insurance. When retirement, costs of removal and salvage are entered originally in retirement work orders, the net total of such work orders may be included in a separate subaccount hereunder. Upon completion of the work order, the proper distribution to subdivisions of this account shall be made as provided in the following paragraph.

C. Account 108 shall be subaccounted as follows:

108.1 Accumulated Provision for Depreciation of Steam Production Plant
108.2 Accumulated Provision for Depreciation of Nuclear Production Plant
108.3 Accumulated Provision for Depreciation of Hydraulic Production Plant
108.4 Accumulated Provision for Depreciation of Other Production Plant
108.5 Accumulated Provision for Depreciation of Transmission Plant
108.6 Accumulated Provision for Depreciation of Distribution Plant
108.7 Accumulated Provision for Depreciation of General Plant
108.8 Retirement Work in Progress

These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification: (1) the amount of accrual for depreciation, (2) the book cost of property retired, (3) cost of removal, (4) salvage, and (5) other items, including recoveries from insurance.

D. When transfers of plant are made from one electric plant account to another, or from or to another utility department, of from or to nonutility property accounts, the accounting for depreciation shall be as provided in § 1767.16 (l).

E. The utility is restricted in its use of the accumulated provision for depreciation to the purposes set forth above. It shall not transfer any portion of this account to retained earnings or make any other use thereof without authorization by REA.

109 [Reserved]

110 [Reserved]

111 Accumulated Provision for Amortization of Electric Utility Plant

A. This account shall be credited with the following:

1. Amounts charged to Account 404, Amortization of Limited-Term Electric Plant, for the current amortization of limited-term electric plant investments.

2. Amounts charged to Account 421, Miscellaneous Nonoperating Income, for amortization expense on property included in Account 105, Electric Plant Held for Future Use. Include also the balance of accumulated provision for amortization on property when transferred to Account 105, Electric Plant Held for Future Use, from other property accounts. See also Paragraph A(2), Account 108, Accumulated Provision for Depreciation of Electric Utility Plant.

3. Amounts charged to Account 405, Amortization of Other Electric Plant.

4. Amounts charged to Account 413, Expenses of Electric Plant Leased to Others, for the current amortization of limited-term or other investments subject to amortization included in Account 104, Electric Plant Leased to Others.

5. Amounts charged to Account 425, Miscellaneous Amortization, for the amortization of intangible or other electric plant which does not have a definite or terminable life and is not subject to charges for depreciation expense, with REA approval.

(The utility shall maintain subaccounts of this account for the amortization applicable to electric plant in service, electric plant leased to others and electric plant held for future use.)

B. When any property to which this account applies is sold, relinquished, or otherwise retired from service, this account shall be charged with the amount previously credited in respect to such property. The book cost of the property so retired less the amount chargeable to this account and less the net proceeds realized at retirement shall be included in Account 421.1, Gain on Disposition of Property, or Account 421.2, Loss on Disposition of Property, as appropriate.

C. For general ledger and balance sheet purposes, this account shall be regarded and treated as a single composite provision for amortization. For purposes of analysis, however, each utility shall maintain subsidiary records in which this account is segregated according to the following functional classification for electric plant: (1) Steam production, (2) Nuclear production, (3) Hydraulic production, (4) Other production, (5) Transmission, (6) Distribution, and (7) General. These subsidiary records shall reflect the current credits and debits to this account in sufficient detail to show separately for each such functional classification: (1) the amount of accrual for amortization, (2) the book cost of property retired, (3) cost of removal, (4) salvage, and (5) other items, including recoveries from insurance.

D. The utility is restricted in its use of the accumulated provision for amortization to the purposes set forth above. It shall not transfer any portion of this account to retained earnings or

make any other use thereof without authorization by REA.

112 [Reserved]

113 [Reserved]

114 Electric Plant Acquisition Adjustments

A. This account shall include the difference between the cost to the accounting utility of electric plant acquired as an operating unit or system by purchase, merger, consolidation, liquidation, or otherwise, and the original cost, estimated, if not known, of such property, less the amount or amounts credited by the accounting utility at the time of acquisition to accumulated provisions for depreciation and amortization and contributions in aid of construction with respect to such property.

B. With respect to acquisitions after the effective date of this system of accounts, this account shall be subdivided so as to show the amounts included herein for each property acquisition and to electric plant in service, electric plant held for future use, and electric plant leased to others. (See § 1767.16 (e).)

C. Debit amounts recorded in this account related to plant and land acquisition may be amortized to Account 425, Miscellaneous Amortization, over a period not longer than the estimated remaining life of the properties to which such amounts relate. Amounts related to the acquisition of land only may be amortized to Account 425 over a period of not more than 15 years. Should a utility wish to account for debit amounts in this account in any other manner, it shall petition REA for authority to do so. Credit amounts recorded in this account shall be accounted for as directed by REA.

115 Accumulated Provision for Amortization of Electric Plant Acquisition Adjustments

This account shall be credited or debited with amounts which are includible in Account 406, Amortization of Electric Plant Acquisition Adjustments, or Account 425, Miscellaneous Amortization, for the purpose of providing for the extinguishment of amounts in Account 114, Electric Plant Acquisition Adjustments, in instances where the amortization of Account 114 is not being made by direct write-off of the account.

116 Other Electric Plant Adjustments

A. This account shall include the difference between the original cost, estimated if not known, and the book cost of electric plant to the extent that such difference is not properly includible in Account 114, Electric Plant Acquisition Adjustments. (See § 1767.16 (a) (3))

B. Amounts included in this account shall be classified in such manner as to show the origin of each amount and shall be disposed of as REA may approve or direct.

Note: The provisions of this account shall not be construed as approving or authorizing the recording of appreciation of electric plant.

118 Other Utility Plant

This account shall include the balances in accounts for utility plant, other than electric plant, such as gas, or railway.

119 Accumulated Provision for Depreciation and Amortization of Other Utility Plant

This account shall include the accumulated provision for depreciation and amortization applicable to utility property other than electric plant.

120.1 Nuclear Fuel in Process of Refinement, Conversion, Enrichment, and Fabrication

A. This account shall include the original cost to the utility of nuclear fuel materials while in process of refinement, conversion, enrichment, and fabrication into nuclear fuel assemblies and components, including processing, fabrication, and necessary shipping costs. This account shall also include the salvage value of nuclear materials which are actually being reprocessed for use and were transferred from Account 120.5, Accumulated Provision for Amortization of Nuclear Fuel Assemblies. (See § 1767.10 (a) (27).)

B. This account shall be credited and Account 120.2, Nuclear Fuel Materials and Assemblies—Stock Account, shall be debited for the cost of completed fuel assemblies delivered for use in refueling or to be held as spares. In the case of the initial core loading, the transfer shall be made directly to Account 120.3, Nuclear Fuel Assemblies in Reactor, upon the conclusion of the experimental or test period of the plant prior to its becoming available for service.

Items

1. Cost of natural uranium, uranium ores concentrates or other nuclear fuel sources, such as thorium, plutonium, and U–233.
2. Value of recovered nuclear materials being reprocessed for use.
3. Milling process costs.
4. Sampling and weighing, and assaying costs.
5. Purification and conversion process costs.
6. Costs of enrichment by gaseous diffusion or other methods.
7. Costs of fabrication into fuel forms suitable for insertion in the reactor.
8. All shipping costs of materials and components, including shipping of fabricated fuel assemblies to the reactor site.
9. Use charges on leased nuclear materials while in process of refinement, conversion, enrichment, and fabrication.

120.2 Nuclear Fuel Materials and Assemblies—Stock Account

A. This account shall be debited and Account 120.1, Nuclear Fuel in Process of Refinement, Conversion, Enrichment and Fabrication, shall be credited with the cost of fabricated fuel assemblies delivered for use in refueling or to be carried in stock as spares. It shall also include the original cost of fabricated fuel assemblies purchased in completed form. This account shall also include the original cost of partially irradiated fuel assemblies being held in stock for reinsertion in a reactor which had been transferred from Account 120.3, Nuclear Fuel Assemblies in Reactor.

B. When fuel assemblies included in this account are inserted in a reactor, this account shall be credited and Account 120.3, Nuclear Fuel Assemblies in Reactor, debited for the cost of such assemblies.

C. This account shall also include the cost of nuclear materials and byproduct materials being held for future use and not actually in process in Account 120.1, Nuclear Fuel in Process of Refinement, Conversion, Enrichment and Fabrication.

120.3 Nuclear Fuel Assemblies in Reactor

A. This account shall include the cost of nuclear fuel assemblies when inserted in a reactor for the production of electricity. The amounts included herein shall be transferred from Account 120.2, Nuclear Fuel Materials and Assemblies—Stock Account, except for the initial core loading which will be transferred directly from Account 120.1, Nuclear Fuel in Process of Refinement, Conversion, Enrichment and Fabrication.

B. Upon removal of fuel assemblies from a reactor, the original cost of the assemblies removed shall be transferred to Account 120.4, Spent Nuclear Fuel, or Account 120.2, Nuclear Fuel Materials and Assemblies—Stock Account, as appropriate.

120.4 Spent Nuclear Fuel

A. This account shall include the original cost of nuclear fuel assemblies, in the process of cooling, transferred from Account 120.3, Nuclear Fuel Assemblies in Reactor, upon removal from a reactor pending reprocessing.

B. This account shall be credited and Account 120.5, Accumulated Provision for Amortization of Nuclear Fuel Assemblies, debited for fuel assemblies, after the cooling period is over, at the cost recorded in this account.

120.5 Accumulated Provision for Amortization of Nuclear Fuel Assemblies

A. This account shall be credited and Account 518, Nuclear Fuel Expense, shall be debited for the amortization of the net cost of nuclear fuel assemblies used in the production of energy. The net cost of nuclear fuel assemblies subject to amortization shall be the original cost of nuclear fuel assemblies, plus or less the expected net salvage value of uranium, plutonium, and other by-products.

B. This account shall be credited with the net salvage value of uranium, plutonium, and other nuclear by-products when such items are sold, transferred or otherwise disposed. Account 120.1, Nuclear Fuel in Process of Refinement, Conversion, Enrichment and Fabrication, shall be debited with the net salvage value of nuclear materials to be reprocessed. Account 157, Nuclear Materials Held for Sale, shall be debited for the net salvage value of nuclear materials not to be reprocessed but to be sold or otherwise disposed of and Account 120.2, Nuclear Fuel Materials and Assemblies—Stock Account, will be debited with the net salvage value of nuclear materials that will be held for future use and not actually in process, in Account 120.1, Nuclear Fuel in Process of Refinement, Conversion, Enrichment, and Fabrication.

C. This account shall be debited and Account 120.4, Spent Nuclear Fuel, shall be credited with the cost of fuel assemblies at the end of the cooling period.

120.6 Nuclear Fuel Under Capital Leases

A. This account shall include the amount recorded under capital leases for nuclear fuel leased from others for use by the utility in its utility operations.

B. Records shall be maintained with respect to each capital lease reflecting: (1) name of lessor, (2) basic details of lease, (3) terminal date, (4) original cost or fair market value of nuclear fuel leased, (5) future minimum lease payments, (6) the amount representing interest and the interest rate used, and (7) expenses paid.

Other Property and Investments

121 Nonutility Property

A. This account shall include the book cost of land, structures, equipment, or other tangible or intangible property owned by the utility, but not used in utility service and not properly includible in Account 105, Electric Plant Held for Future Use.

B. This account shall also include the amount recorded under capital leases for property leased from others and used by the utility in its nonutility operations. Records shall be maintained with respect to each lease reflecting: (1) name of lessor, (2) basic details of lease, (3) terminal date, (4) original cost or fair market value of property leased, (5) future minimum lease payments, (6) executory costs, (7) present value of minimum lessee payments, (8) the amount representing interest and the interest rate used, and (9) expenses paid.

C. This account shall be subdivided so as to show the amount of property used in operations which are nonutility in character but nevertheless constitute a distinct operating activity of the company (such as operation of an ice department where such activity is not classed as a utility) and the amount of miscellaneous property not used in operations. The records in support of each subaccount shall be maintained so as to show an appropriate classification of the property.

Note: The gain from the sale or other disposition of property included in this account which had been previously recorded in Account 105, Electric Plant Held for Future Use, shall be accounted for in accordance with Paragraph C of Account 105.

122 Accumulated Provision for Depreciation and Amortization of Nonutility Property

This account shall include the accumulated provision for depreciation and amortization applicable to nonutility property.

123 Investment in Associated Companies

A. This account shall include the book cost of investments in securities issued or assumed by associated companies and investment advances to such companies, including interest accrued thereon when such interest is not subject to current settlement, provided that the investment does not relate to a subsidiary company. (If the investment relates to a subsidiary company, it shall be included in Account 123.11, Investment in Subsidiary Companies.) Include herein the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See Account 419, Interest and Dividend Income.)

B. This account shall be maintained in such manner as to show the investment in securities of, and advances to, each associated company together with full particulars regarding any of such investments that are pledged.

Note A: Securities and advances of associated companies owned and pledged shall be included in this account, but such securities, if held in special deposits or in special funds, shall be included in the appropriate deposit or fund account. A complete record of securities pledged shall be maintained.

Note B: Securities of associated companies held as temporary cash investments are includible in Account 136, Temporary Cash Investments.

Note C: Balances in open accounts with associated companies, which are subject to current settlement, are includible in Account 146, Accounts Receivable from Associated Companies.

Note D: The utility may write down the cost of any security in recognition of a decline in the value thereof. Securities shall be written off or written down to a nominal value if there is no reasonable prospect of substantial value. Fluctuations in market value shall not be recorded but a permanent impairment in the value of securities shall be recognized in the accounts. When securities are written off or written down, the amount of the adjustment shall be charged to Account 426.5, Other Deductions, or to an appropriate account for accumulated provisions for loss in value established as a separate subdivision of this account.

C. Account 123 shall be subaccounted as follows:

123.1 Patronage Capital from Associated Cooperatives
123.11 Investment in Subsidiary Companies
123.21 Subscriptions to Capital Term Certificates—Supplemental Financing
123.22 Investments in Capital Term Certificates—Supplemental Financing
123.23 Other Investments in Associated Organizations

123.1 Patronage Capital from Associated Cooperatives

This account shall include patronage capital credits allocated to the accounting borrower by G&T cooperatives. It shall also include capital credits, deferred patronage refunds, or like items from other associated cooperatives. The account shall be maintained so as to reflect separately, the allocations of patronage

capital and patronage refunds from each organization that makes such allocations to the borrower.

123.11 Investment in Subsidiary Companies

A. This account shall include the cost of investments in securities issued or assumed by subsidiary companies and investment advances to such companies, including interest accrued thereon when such interest is not subject to current settlement, plus the equity in undistributed earnings or losses of such subsidiary companies since acquisition. This account shall be credited with any dividends declared by such subsidiaries.

B. This account shall be maintained in such a manner as to show separately for each subsidiary: the cost of such investments in the securities of the subsidiary at the time of acquisition; the amount of equity in the subsidiary's undistributed net earnings or net losses since acquisition; advances or loans to such subsidiary; and full particulars regarding any such investments that are pledged.

123.21 Subscriptions to Capital Term Certificates—Supplemental Financing

This account shall include the total subscriptions to capital term certificates of CFC. When subscriptions are paid, this account shall be credited and Account 123.22, Investments in Capital Term Certificates—Supplemental Financing, debited.

123.22 Investments in Capital Term Certificates—Supplemental Financing

This account shall include paid subscriptions in capital term certificates of CFC or other supplemental lenders.

123.23 Other Investments in Associated Organizations

This account shall include investments in capital stock, securities, membership fees, and investment advances to associated organizations other than provided for elsewhere. This account shall be maintained in such a manner as to show the investment in stock and securities of and advances to each associated organization.

Items

1. Investments in capital stock of associated organizations.
2. Investments in securities issued by associated organizations.
3. Membership fees in associated organizations, including NRECA, and Statewide associations of REA-financed borrowers.
4. Investment advances to associated organizations.

124 Other Investments

A. This account shall include the book cost of investments in securities issued or assumed by nonassociated companies, investment advances to such companies, and any investments not accounted for elsewhere. Include also the offsetting entry to the recording of amortization of discount or premium on interest bearing investments. (See Account 419, Interest and Dividend Income.)

B. The records shall be maintained in such manner as to show the amount of each investment and the investment advances to each person.

Note A: Securities owned and pledged shall be included in this account, but securities held in special deposits or in special funds shall be included in appropriate deposit or fund accounts. A complete record of securities pledged shall be maintained.

Note B: Securities held as temporary cash investments shall not be included in this account.

Note C: See Note D of Account 123.

125 Sinking Funds

This account shall include the amount of cash and book cost of investments held in sinking funds. A separate account, with appropriate title, shall be kept for each sinking fund. Transfers from this account to special deposit accounts, may be made as necessary for the purpose of paying matured sinking fund obligations, or obligations called for redemption but not presented, or the interest thereon.

126 Depreciation Fund

This account shall include the amount of cash and the book cost of investments which have been segregated in a special fund for the purpose of identifying such assets with the accumulated provisions for depreciation.

128 Other Special Funds

This account shall include the amount of cash and book cost of investments which have been segregated in special funds for insurance, employee pensions, savings, relief, hospital, and other purposes not provided for elsewhere. A separate account, with appropriate title, shall be kept for each fund.

Note: Amounts deposited with a trustee under the terms of an irrevocable trust agreement for pensions or other employee benefits shall not be included in this account.

Current and Accrued Assets

Current and accrued assets are cash, those assets which are readily convertible into cash or are held for current use in operations or construction, current claims against others, payment of which is reasonably assured, and amounts accruing to the utility which are subject to current settlement, except such items for which accounts other than those designated as current and accrued assets are provided. There shall not be included in the category of accounts designated as current and accrued assets any item, the amount or collectibility of which is not reasonably assured, unless an adequate provision for possible loss has been made therefor. Items of current character but of doubtful value may be written down, and for record purposes carried in these accounts at nominal value.

131 Cash

A. This account shall include the amount of current cash funds except working funds.

B. Account 131 shall be subaccounted as follows:

131.1 Cash—General
131.12 Cash—General—Economic Development Funds
131.2 Cash—Construction Fund—Trustee
131.3 Cash—Installation Loan and Collection Fund
131.4 Transfer of Cash

131.1 Cash—General

This account shall include all cash of the organization not provided for elsewhere. Separate subaccounts may be maintained for each bank account in which general cash is maintained. Funds held by others for current obligations shall be recorded in Account 134, Other Special Deposits.

131.12 Cash—General—Economic Development Funds

This account shall include the cash received from the Rural Electrification Administration for Rural Economic Development Loans. Economic development loan advances shall be charged to this account and credited to Account 224.17, REA Notes Executed—Economic Development—Debit.

131.2 Cash—Construction Fund—Trustee

This account shall include the cash received from the Rural Electrification Administration, CFC, and any other source of supplemental financing for financing the construction, purchase, and operation of electric facilities. REA construction loan fund advances shall be charged to this account and credited to Account 224.4, REA Notes Executed—Construction—Debit. CFC and other supplemental lender construction loan fund advances shall be charged to this account and credited

to Account 224.13, Supplemental Financing Notes Executed—Debit.

131.3 Cash—Installation Loan and Collection Fund

A. This account shall include the cash advanced on installation loans made subsequent to September 13, 1957. Such advances shall be debited to this account as received and credited to Account 224.10, REA Notes Executed—Installation—Debit. This account shall also include interest and principal collections received on consumers' loans financed from REA loans made subsequent to September 13, 1957.

B. Payments shall be made from this account solely for financing consumers' loans for the purpose of wiring of consumers' premises, and the acquisition and installation of electrical and plumbing appliances and equipment by consumers. The cash in this account is also used for the payment of principal and interest on installation loans made by REA, subsequent to September 13, 1957, in accordance with the terms of the loan agreement.

131.4 Transfer of Cash

This account shall be used in transferring funds from one bank account to another. This account is charged when the check is drawn for the transfer and entered in the check register, and credited when the amount transferred is entered in the cash receipts book. This account is to be used as a clearing account and should not have a balance at the end of an accounting period.

132 Interest Special Deposits

This account shall include special deposits with fiscal agents or others for the payment of interest.

133 Dividend Special Deposits

This account shall include special deposits with fiscal agents or others for the payment of dividends.

134 Other Special Deposits

This account shall include deposits with fiscal agents or others for special purposes other than the payment of interest and dividends. Such special deposits may include cash deposited with Federal, state, or municipal authorities as a guaranty for the fulfillment of obligations; cash deposited with trustees to be held until mortgaged property sold, destroyed, or otherwise disposed of is replaced; and cash realized from the sale of the accounting utility's securities and deposited with trustees to be held until invested in property of the utility. Entries to this account shall specify the purpose for which the deposit is made.

Note: Assets available for general corporate purposes shall not be included in this account. Further, deposits for more than one year, which are not offset by current liabilities, shall not be charged to this account but to Account 128, Other Special Funds.

135 Working Funds

This account shall include cash advanced to officers, agents, employees, and others as petty cash or working funds.

136 Temporary Cash Investments

A. This account shall include the book cost of investments, such as demand and time loans, bankers' acceptances, United States Treasury certificates, marketable securities, and other similar investments, acquired for the purpose of temporarily investing cash.

B. This account shall be so maintained as to show separately temporary cash investments in securities of associated companies and of others. Records shall be kept of any pledged investments.

141 Notes Receivable

A. This account shall include the book cost, not includible elsewhere, of all collectible obligations in the form of notes receivable and similar evidences (except interest coupons) of money due on demand or within one year from the date of issue, except, however, notes receivable from associated companies. (See Account 136, Temporary Cash Investments, and Account 145, Notes Receivable from Associated Companies.)

Note: The face amount of notes receivable discounted, sold, or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in the financial statements of any contingent liability arising from such transactions.

B. Account 141 shall be subaccounted as follows:

141.1 Accumulated Provision for Uncollectible Notes—Credit

141.1 Accumulated Provision for Uncollectible Notes—Credit

This account shall be credited with amounts provided for losses on notes receivable which may become uncollectible, and also with collections on notes previously charged hereto. Concurrent charges shall be made to Account 904, Uncollectible Accounts.

142 Customer Accounts Receivable

A. This account shall include amounts due from customers for utility service and for merchandising, jobbing, and contract work. This account shall not include amounts due from associated companies.

B. This account shall be maintained so as to permit ready segregation of the amounts due for merchandising, jobbing, and contract work.

C. Account 142 shall be subaccounted as follows:

142.1 Customer Accounts Receivable—Electric

142.2 Customer Accounts Receivable—Other

142.1 Customer Accounts Receivable—Electric

This account shall include amounts due from customers for utility service.

142.2 Customer Accounts Receivable—Other

This account shall include amounts due from customers for merchandising, jobbing, and contract work.

143 Other Accounts Receivable

A. This account shall include amounts due the utility upon open accounts, other than amounts due from associated companies and from customers for utility services and merchandising, jobbing and contract work.

B. This account shall be maintained so as to show separately amounts due on subscriptions to capital stock and from officers and employees. The account shall not include amounts advanced to officers or others as working funds. (See Account 135, Working Funds.)

144 Accumulated Provision for Uncollectible Accounts—Credit

A. This account shall include amounts provided for losses on accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. Concurrent charges shall be made to Account 904, Uncollectible Accounts, for amounts applicable to utility operations, and to corresponding accounts for other operations. Records shall be maintained so as to show the write-offs of accounts receivable for each utility department.

B. Account 144 shall be subaccounted as follows:

144.1 Accumulated Provision for Uncollectible Customer Accounts—Credit

144.2 Accumulated Provision for Uncollectible Merchandising Accounts—Credit

144.3 Accumulated Provision for Uncollectible Accounts, Officers and Employees—Credit
144.4 Accumulated Provision for Other Uncollectible Accounts—Credit

144.1 Accumulated Provision for Uncollectible Customer Accounts—Credit

This account shall be credited with amounts provided for losses on accounts receivable which may become uncollectible, and also with collections on accounts previously charged hereto. Concurrent charges shall be made to Account 904, Uncollectible Accounts.

144.2 Accumulated Provision for Uncollectible Merchandising Accounts—Credit

This account shall be credited with amounts provided for losses on merchandising, jobbing, and contract work which may become uncollectible, and also with collections on accounts previously charged hereto. Concurrent charges shall be made to Account 904, Uncollectible Accounts, for amounts applicable to utility operations, and to corresponding accounts for other operations.

144.3 Accumulated Provision for Uncollectible Accounts, Officers and Employees—Credit

This account shall be credited with amounts provided for losses on accounts receivable from officers and employees which may become uncollectible and also with collections on accounts previously charged hereto. Concurrent charges shall be made to Account 904, Uncollectible Accounts.

144.4 Accumulated Provision for Other Uncollectible Accounts—Credit

This account shall be credited with amounts provided for losses on accounts receivable which may become uncollectible and for which the recording of this credit has not been provided for elsewhere. This account shall also be credited with collections on accounts previously charged hereto. Concurrent charges shall be made to Account 904, Uncollectible Accounts, for amounts applicable to utility operations and to corresponding accounts for other operations.

145 Notes Receivable from Associated Companies

This account shall include notes upon which associated companies are liable, and which mature and are expected to be paid in full not later than one year from the date of issue, together with any interest thereon, and debit balances subject to current settlement in open accounts with associated companies. Items which do not bear a specified due date but which have been carried for more than twelve months and items which are not paid within twelve months from due date shall be transferred to Account 123, Investment in Associated Companies.

Note: The face amount of notes receivable discounted, sold or transferred without releasing the utility from liability as endorser thereon, shall be credited to a separate subdivision of this account and appropriate disclosure shall be made in the financial statements of any contingent liability arising from such transactions.

146 Accounts Receivable from Associated Companies

This account shall include drafts upon which associated companies are liable, and which mature and are expected to be paid in full not later than one year from the date of issue, together with any interest thereon, and debit balances subject to current settlement in open accounts with associated companies. Items which do not bear a specified due date but which have been carried for more than twelve months and items which are not paid within twelve months from due date shall be transferred to Account 123, Investment in Associated Companies.

Note: On the balance sheet, accounts receivable from an associated company may be offset against accounts payable to the same company.

151 Fuel Stock

This account shall include the book cost of fuel on hand.

Items

1. Invoice price of fuel less any cash or other discounts.
2. Freight, switching, demurrage, and other transportation charges, not including, however, any charges for unloading from the shipping medium.
3. Excise taxes, purchasing agents' commissions, insurance, and other expenses directly assignable to cost of fuel.
4. Operating, maintenance and depreciation expenses, and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point.
5. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition to the unloading point.

152 Fuel Stock Expenses Undistributed

A. This account may include the cost of labor and of supplies used and expenses incurred in unloading fuel from the shipping medium and in the handling thereof prior to its use, if such expenses are sufficiently significant in amount to warrant being treated as a part of the cost of fuel inventory rather than being charged direct to expense as incurred.

B. Amounts included herein shall be charged to expense as the fuel is used to the end that the balance herein shall not exceed the expenses attributable to the inventory of fuel on hand.

Items

Labor:
1. Procuring and handling of fuel.
2. All routine fuel analyses.
3. Unloading from shipping facility and placing in storage.
4. Moving of fuel in storage and transferring from one station to another.
5. Handling from storage or shipping facility to first bunker, hopper, bucket, tank, or holder of boiler house structure.
6. Operation of mechanical equipment such as locomotives, trucks, cars, boats, barges, and cranes.

Supplies and Expenses:
1. Tools, lubricants and other supplies.
2. Operating supplies for mechanical equipment.
3. Transportation and other expenses in moving fuel.
4. Stores expenses applicable to fuel.

153 Residuals

This account shall include the book cost of any residuals produced in the production or manufacturing processes.

154 Plant Materials and Operating Supplies

A. This account shall include the cost of materials purchased primarily for use in the utility business for construction, operation and maintenance purposes. It shall also include the book cost of materials recovered in connection with construction, maintenance, or the retirement of property, such materials being credited to construction, maintenance, or accumulated depreciation provision, respectively, and included herein as follows:

1. Reusable materials consisting of large individual items shall be included in this account at original cost, estimated if not known. The cost of repairing such items shall be charged to the maintenance account appropriate for the previous use.

2. Reusable materials consisting of relatively small items, the identity of which (from the date of original installation to the final abandonment or sale thereof) cannot be ascertained without undue refinement in accounting, shall be included in this account at current prices new for such

items. The cost of repairing such items shall be charged to the appropriate expense account as indicated by previous use.

3. Scrap and nonusable materials included in this account shall be carried at the estimated net amount realizable therefrom. The difference between the amounts realized for scrap and nonusable materials sold and the net amount at which the materials were carried in this account, as far as practicable, shall be adjusted to the accounts credited when the materials were charged to this account.

B. Materials and supplies issued shall be credited hereto and charged to the appropriate construction, operating expense, or other account on the basis of a unit price determined by the use of cumulative average, first-in-first-out, or such other method of inventory accounting as conforms with accepted accounting standards consistently applied.

Items

1. Invoice price of materials less cash or other discounts.

2. Freight, switching, or other transportation charges when practicable to include as part of the cost of particular materials to which they relate.

3. Customs duties and excise taxes.

4. Costs of inspection and special tests prior to acceptance.

5. Insurance and other directly assignable charges.

Note: Where expenses applicable to materials purchased cannot be directly assigned to particular purchases, they shall be charged to Account 163, Stores Expense Undistributed.

155 Merchandise

This account shall include the book cost of materials and supplies and appliances and equipment held primarily for merchandising, jobbing, and contract work. The principles prescribed in accounting for utility materials and supplies shall be observed with respect to items carried in this account.

156 Other Materials and Supplies

This account shall include the book cost of materials and supplies held primarily for nonutility purposes. The principles prescribed in accounting for utility materials and supplies shall be observed with respect to items carried in this account.

157 Nuclear Materials Held for Sale

This account shall include the net salvage value of uranium, plutonium, and other nuclear materials held by the company for sale or other disposition that are not to be reused by the company in its electric utility operations. This account shall be debited and Account 120.5, Accumulated Provision for Amortization of Nuclear Fuel Assemblies, credited for such net salvage value. Any difference between the amount recorded in this account and the actual amount realized from the sale of materials shall be debited or credited, as appropriate, to Account 518, Nuclear Fuel Expense, at the time of such sale.

158.1 Allowance Inventory

A. This account shall include the cost of allowances owned by the utility and not withheld by the Environmental Protection Agency. See § 1767.15 (u) and Account 158.2, Allowances Withheld.

B. This account shall be credited and Account 509, Allowances, shall be debited concurrent with the monthly emission of sulfur dioxide.

C. Separate subdivisions of this account shall be maintained so as to separately account for those allowances usable in the current year and in each subsequent year. The underlying records of these subdivisions shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the acquisition cost, if any, of the allowance.

158.2 Allowances Withheld

A. This account shall include the cost of allowances owned by the utility but withheld by the Environmental Protection Agency. (See § 1767.15 (u).)

B. The inventory cost of the allowances released by the Environmental Protection Agency for use by the utility shall be transferred to Account 158.1, Allowance Inventory.

C. The underlying records of this account shall be maintained in sufficient detail so as to identify each allowance included; the origin of each allowance; and the acquisition cost, if any, of the allowances.

163 Stores Expense Undistributed

A. This account shall include the cost of supervision, labor, and expenses incurred in the operation of general storerooms, including purchasing, storage, handling, and distribution of materials and supplies.

B. This account shall be cleared by adding to the cost of materials and supplies issued, a suitable loading charge which will distribute the expense equitably over stores issues. The balance in the account at the close of the year shall not exceed the amount of stores expenses reasonably attributable to the inventory of materials and supplies, exclusive of fuel, as any amount applicable to fuel costs should be included in Account 152, Fuel Stock Expenses Undistributed.

Items

Labor:

1. Inspecting and testing materials and supplies when not assignable to specific items.

2. Unloading from shipping facility and placing in storage.

3. Supervision of purchasing and stores department to extent assignable to materials handled through stores.

4. Getting materials from stock and in readiness to go out.

5. Inventorying stock received or stock on hand by stores employees but not including inventories by general department employees as part of internal or general audits.

6. Purchasing department activities in checking material needs, investigating sources of supply, analyzing prices, preparing and placing orders, and related activities to extent applicable to materials handled through stores. (Optional: Purchasing department expenses may be included in administrative and general expenses.)

7. Maintaining stores equipment.

8. Cleaning and tidying storerooms and stores offices.

9. Keeping stock records, including the recording and posting of material receipts and issues and maintaining inventory records of stock.

10. Collecting and handling scrap materials in stores.

Supplies and Expenses:

1. Adjustments of inventories of materials and supplies but not including large differences which can readily be assigned to important classes of materials and equitably distributed among the accounts to which such classes of materials have been charged since the previous inventory.

2. Cash and other discounts not practically assignable to specific materials.

3. Freight and express charges when not assignable to specific items.

4. Heat, light, and power for storerooms and store offices.

5. Brooms, brushes, sweeping compounds and other supplies used in cleaning and tidying storerooms and stores offices.

6. Injuries and damages.

7. Insurance on materials and supplies and on stores equipment.

8. Losses due to breakage, leakage, evaporation, fire or other causes, less credits for amounts received from insurance, transportation companies, or others in compensation of such losses.

9. Postage, printing, stationery, and office supplies.
10. Rent of storage space and facilities.
11. Communication service.
12. Excise and other similar taxes not assignable to specific materials.
13. Transportation expense on inward movement of stores and on transfer between storerooms but not including charges on materials recovered from retirements which shall be accounted for as part of the cost of removal.

Note: A physical inventory of each class of materials and supplies shall be made at least every two years.

165 Prepayments

A. This account shall include amounts representing prepayments of insurance, rents, taxes, interest, and miscellaneous items, and shall be kept or supported in such manner as to disclose the amount of each class of prepayment.

B. Account 165 shall be subaccounted as follows:

165.1 Prepayments—Insurance
165.2 Other Prepayments

171 Interest and Dividends Receivable

This account shall include the amount of interest on bonds, mortgages, notes, commercial paper, loans, open accounts, and deposits, the payment of which is reasonably assured, and the amount of dividends declared or guaranteed on stocks owned.

Note A: Interest which is not subject to current settlement shall not be included herein but in the account in which the associated principle is recorded.

Note B: Interest and dividends receivable from associated companies shall be included in Account 146, Accounts Receivable from Associated Companies.

172 Rents Receivable

This account shall include rents receivable or accrued on property rented or leased by the utility to others.

Note: Rents receivable from associated companies shall be included in Account 146, Accounts Receivable from Associated Companies.

173 Accrued Utility Revenues

At the option of the utility, the estimated amount accrued for service rendered, but not billed at the end of any accounting period, may be included herein. If accruals are made for unbilled revenues, accruals shall also be made for unbilled expenses, such as the purchase of energy.

174 Miscellaneous Current and Accrued Assets

This account shall include the book cost of all other current and accrued assets, appropriately designated and supported so as to show the nature of each asset included herein.

Deferred Debits

181 Unamortized Debt Expense

This account shall include expenses related to the issuance or assumption of debt securities. Amounts recorded in this account shall be amortized over the life of each respective issue under a plan which will distribute the amount equitably over the life of the security. The amortization shall be on a monthly basis, and the amounts thereof shall be charged to Account 428, Amortization of Debt Discount and Expense. Any unamortized amounts outstanding at the time that the related debt is prematurely reacquired shall be accounted for as indicated in § 1767.15 (q).

182.1 Extraordinary Property Losses

A. When authorized or directed by REA, this account shall include extraordinary losses which could not reasonably have been anticipated and which are not covered by insurance or other provisions, such as unforeseen damages to property.

B. Application to REA for permission to use this account shall be accompanied by a statement giving a complete explanation with respect to the items which it is proposed to include herein, the period over which, and the accounts to which it is proposed to write off the charges, and other pertinent information.

182.2 Unrecovered Plant and Regulatory Study Costs

A. This account shall include: (1) nonrecurring costs of studies and analyses mandated by regulatory bodies related to plants in service, transferred from Account 183, Preliminary Survey and Investigations Charges, and not resulting in construction; and (2) when authorized by REA, significant unrecovered costs of plant facilities where construction has been cancelled or which have been prematurely retired.

B. This account shall be credited and Account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs, shall be debited over the period specified by REA.

C. Any additional costs incurred, relative to the cancellation or premature retirement, may be included in this account and amortized over the remaining period of the original amortization period. Should any gains or recoveries be realized relative to the cancelled or prematurely retired plant, such amounts shall be used to reduce the unamortized amount of the costs recorded herein.

D. In the event that the recovery of costs included herein is disallowed in the rate proceedings, the disallowed costs shall be charged to Account 426.5, Other Deductions, in the year of such disallowance.

182.3 Other Regulatory Assets

A. This account shall include the amounts of regulatory-created assets, not includable in other accounts, resulting from the ratemaking actions of regulatory agencies. (See the definition of regulatory assets and liabilities.)

B. The amounts included in this account are to be established by those charges which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services. When specific identification of the particular source of a regulatory asset cannot be made, such as in plant phase-ins, rate moderation plans, or rate levelization plans, Account 407.4, Regulatory Credits, shall be credited. The amounts recorded in this account are generally to be charged, concurrently with the recovery of the amounts in rates, to the same account that would have been charged if included in income when incurred, except all regulatory assets established through the use of Account 407.4 shall be charged to Account 407.3, Regulatory Debits, concurrent with the recovery of the amounts in rates.

C. If rate recovery of all or part of an amount included in this account is disallowed, the disallowed amount shall be charged to Account 426.5, Other Deductions, or Account 435, Extraordinary Deductions, in the year of the disallowance.

D. The records supporting the entries to this account shall be kept so that the utility can furnish full information as to the nature and amount of each regulatory asset included in this account, including justification for inclusion of such amounts in this account.

183 Preliminary Survey and Investigation Charges

A. This account shall be charged with all expenditures for preliminary surveys, plans, and investigations made for the purpose of determining the feasibility of utility projects under contemplation. If construction results, this account shall be credited and the appropriate utility plant account charged. If the work is abandoned, the

charge shall be made to Account 426.5, Other Deductions, or to the appropriate operating expense account.

B. This account shall also include costs of studies and analyses mandated by regulatory bodies related to plant in service. If construction results from such studies, this account shall be credited and the appropriate utility plant account charged with an equitable portion of such study costs directly attributable to new construction. The portion of such study costs not attributable to new construction or the entire cost if construction does not result shall be charged to Account 182.2, Unrecovered Plant and Regulatory Study Costs, or the appropriate operating expense account. The costs of such studies relative to plant under construction shall be included directly inAccount 107, Construction Work in Progress—Electric.

C. The records supporting the entries to this account shall be so kept that the utility can furnish complete information as to the nature and the purpose of the survey, plans, or investigations, and the nature and amounts of the several charges.

Note: The amount of preliminary survey and investigation charges transferred to utility plant shall not exceed the expenditures which may reasonably be determined to contribute directly and immediately and without duplication to utility plant.

184 Clearing Accounts

A. This caption shall include undistributed balances in clearing accounts at the date of the balance sheet. Balances in clearing account shall be substantially cleared not later than the end of the calendar year unless items held therein relate to a future period.

B. Account 184 shall be subaccounted as follows:

184.1 Transportation Expense—Clearing
184.2 Clearing Accounts—Other

185 Temporary Facilities

This account shall include amounts shown by work orders for plant installed for temporary use in utility service for periods of less than one year. Such work orders shall be charged with the cost of temporary facilities and credited with payments received from customers and net salvage realized on removal of the temporary facilities. Any net credit or debit resulting shall be cleared to Account 451, Miscellaneous Service Revenues.

186 Miscellaneous Deferred Debits

This account shall include all debits not elsewhere provided for, such as miscellaneous work in progress, and unusual or extraordinary expenses, not included in other accounts, which are in process of amortization and items the proper final disposition of which is uncertain.

187 Deferred Losses from Disposition of Utility Plant

This account shall include losses from the sale or other disposition of property previously recorded in Account 105, Electric Plant Held for Future Use, under the provisions of Paragraphs B, C, and D thereof, where such losses are significant and are to be amortized over a period of 5 years, unless otherwise authorized by REA. The amortization of the amounts in this account shall be made by debits to Account 411.7, Losses from Disposition of Utility Plant. (See Account 105, Electric Plant Held for Future Use.)

188 Research, Development, and Demonstration Expenditures

A. This account shall be charged with the cost of all expenditures coming within the meaning of Research, Development, and Demonstration (RD&D) of this USoA (See § 1767.10 (a) (34)) except those expenditures properly chargeable to Account 107, Construction Work in Progress—Electric.

B. Costs that are minor or of a general or recurring nature shall be transferred from this account to the appropriate operating expense function or if such costs are common to the overall operations or cannot be feasibly allocated to the various operating accounts, such costs shall be recorded in Account 930.2, Miscellaneous General Expenses.

C. In certain instances, a company may incur large and significant research, development, and demonstration expenditures which are nonrecurring and which would distort the annual research, development, and demonstration charges for the period. In such a case, the portion of such amounts that cause the distortion may be amortized to the appropriate operating expense account over a period not to exceed 5 years unless otherwise authorized by REA.

D. The entries in this account must be so maintained as to show separately each project along with complete detail of the nature and purpose of the research, development, and demonstration project together with the related costs.

189 Unamortized Loss on Reacquired Debt

This account shall include the losses on long-term debt reacquired or redeemed. The amounts in this account shall be amortized in accordance with § 1767.15 (q).

190 Accumulated Deferred Income Taxes

A. This account shall be debited and Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, or Account 411.2, Provision for Deferred Income Taxes—Credit, Other Income and Deductions, as appropriate, shall be credited with an amount equal to that by which income taxes payable for the year are higher because of the inclusion of certain items in income for tax purposes, which items for general accounting purposes will not be fully reflected in the utility's determination of annual net income until subsequent years.

B. This account shall be credited and Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, or Account 410.2, Provision for Deferred Income Taxes, Other Income and Deductions, as appropriate, shall be debited with an amount equal to that by which income taxes payable for the year are lower because of prior payment of taxes as provided by Paragraph A above, because of difference in timing for tax purposes of particular items of income or income deductions from that recognized by the utility for general accounting purposes. Such credit to this account and debit to Account 410.1 or Account 410.2 shall, in general, represent the effect on taxes payable in the current year of the smaller amount of book income recognized for tax purposes as compared to the amount recognized in the utility's current accounts with respect to the item or class of items for which deferred tax accounting by the utility was authorized by REA.

C. Vintage year records with respect to entries to this account, as described above, and the account balance, shall be so maintained as to show the factor of calculation with respect to each annual amount of the item or class of items for which deferred tax accounting by the utility is utilized.

D. The utility is restricted in its use of this account to the purpose set forth above. It shall not make use of the balance in this account or any portion thereof except as provided in the text of this account, without prior approval of REA. Any remaining deferred tax account balance with respect to an amount for any prior year's tax deferral, the amortization of which or other recognition in the utility's income accounts has been completed, or other disposition made, shall be debited to Account 410.1, Provision for Deferred

Income Taxes, Utility Operating Income, or Account 410.2, Provision for Deferred Income Taxes, Other Income and Deductions, as appropriate, or otherwise disposed of as REA may authorize or direct. (See § 1767.15 (t).)

§ 1767.19 Liabilities and other credits.

The liabilities and other credit accounts identified in this section below shall be used by all REA borrowers.

Liabilities and Other Credits

Margins and Equities

200 Memberships
200.1 Memberships Issued
200.2 Memberships Subscribed But Unissued
201 Patronage Capital
201.1 Patronage Capital Credits
201.2 Patronage Capital Assignable
202 [Reserved]
203 [Reserved]
204 [Reserved]
205 [Reserved]
206 [Reserved]
207 [Reserved]
208 Donated Capital
209 [Reserved]
210 [Reserved]
211 Consumers' Contributions for Debt Service
212 [Reserved]
213 [Reserved]
214 [Reserved]
215 Appropriated Margins
216 [Reserved]
216.1 Unappropriated Undistributed Subsidiary Earnings
217 Retired Capital Credits—Gain
218 Capital Gains and Losses
219 Other Margins and Equities
219.1 Operating Margins
219.2 Nonoperating Margins
219.3 Other Margins
219.4 Other Margins and Equities—Prior Periods

Long-Term Debt

221 Bonds
222 Reacquired Bonds
223 Advances from Associated Companies
224 Other Long-Term Debt
224.1 Long-Term Debt—REA Construction Loan Contract
224.2 REA Loan Contract—Construction—Debit
224.3 Long-Term Debt—REA Construction Notes Executed
224.4 REA Notes Executed—Construction—Debit
224.5 Interest Accrued—Deferred—REA Construction
224.6 Advance Payments Unapplied—REA Long-Term Debt—Debit
224.7 Long-Term Debt—Installation Loan Contract
224.8 REA Loan Contract—Installation—Debit
224.9 Long-Term Debt—Installation Notes Executed
224.10 REA Notes Executed—Installation—Debit
224.11 Other Long-Term Debt—Subscriptions
224.12 Other Long-Term Debt—Supplemental Financing
224.13 Supplemental Financing Notes Executed—Debit
224.14 Other Long-Term Debt—Miscellaneous
224.15 Notes Executed—Other—Debit
224.16 Long-Term Debt—REA Economic Development Notes Executed
224.17 REA Notes Executed—Economic Development—Debit
225 Unamortized Premium on Long-Term Debt
226 Unamortized Discount on Long-Term Debt—Debit

Other Noncurrent Liabilities

227 Obligations Under Capital Leases—Noncurrent
228.1 Accumulated Provision for Property Insurance
228.2 Accumulated Provision for Injuries and Damages
228.3 Accumulated Provision for Pensions and Benefits
228.4 Accumulated Miscellaneous Operating Provisions
229 Accumulated Provision for Rate Refunds

Current and Accrued Liabilities

231 Notes Payable
232 Accounts Payable
232.1 Accounts Payable—General
232.2 Accounts Payable—REA Construction
232.3 Accounts Payable—Other
233 Notes Payable to Associated Companies
234 Accounts Payable to Associated Companies
235 Customer Deposits
236 Taxes Accrued
236.1 Accrued Property Taxes
236.2 Accrued U.S. Social Security Tax—Unemployment
236.3 Accrued U.S. Social Security Tax—F.I.C.A.
236.4 Accrued State Social Security Tax—Unemployment
236.5 Accrued State Sales Tax—Consumers
236.6 Accrued Gross Revenue or Gross Receipts Tax
236.7 Accrued Taxes—Other
237 Interest Accrued
238 Patronage Capital and Patronage Refunds Payable
238.1 Patronage Capital Payable
238.2 Patronage Refunds Payable
239 Matured Long-Term Debt
240 Matured Interest
241 Tax Collections Payable
242 Miscellaneous Current and Accrued Liabilities
242.1 Accrued Rentals
242.2 Accrued Payroll
242.3 Accrued Employees' Vacations and Holidays
242.4 Accrued Insurance
242.5 Other Current and Accrued Liabilities
243 Obligations Under Capital Leases—Current

Deferred Credits

251 [Reserved]
252 Customer Advances for Construction
253 Other Deferred Credits
253.1 Other Deferred Credits—Consumers' Energy Prepayments
254 Other Regulatory Liabilities
255 Accumulated Deferred Investment Tax Credits
256 Deferred Gains from Disposition of Utility Plant
257 Unamortized Gain on Reacquired Debt
281 Accumulated Deferred Income Taxes—Accelerated Amortization Property
282 Accumulated Deferred Income Taxes—Other Property
283 Accumulated Deferred Income Taxes—Other

Liabilities and Other Credits

Margins and Equities

200 Memberships

A. This account shall include the total amount of memberships issued and subscribed.

B. Account 200 shall be subaccounted as follows:

200.1 Memberships Issued
200.2 Memberships Subscribed But Unissued

200.1 Memberships Issued

A. This account shall include the face value of membership certificates outstanding. A detailed record shall be maintained to show for each member, the name, address, date of payment, amount paid, and certificate number.

B. If membership fees are applied against energy bills, this account shall be debited for the full amount of the membership with the offsetting credit to the appropriate accounts receivable, and to accounts payable for any refundable amounts. Any balances that cannot be refunded, due to inability to locate the member or because of bylaw restrictions, shall be credited to Account 208, Donated Capital. If determination of the ultimate disposition of the fees cannot be made immediately, the amount involved should be transferred to Account 253, Other Deferred Credits, until the determination is made.

C. When a transfer fee is collected, the transaction shall be recorded by debiting Account 131.1, Cash—General, and crediting Account 451, Miscellaneous Service Revenues, with the fee collected.

200.2 Memberships Subscribed But Unissued

This account shall include the face value of memberships subscribed for but not issued. When certificates are issued, the amount of the memberships shall be transferred to Account 200.1, Memberships Issued.

201 Patronage Capital

A. This account shall include the total amount of patronage capital assignable and assigned.

B. Account 201 shall be subaccounted as follows:

201.1 Patronage Capital Credits
201.2 Patronage Capital Assignable

201.1 Patronage Capital Credits

A. This account shall include the amounts of patronage capital which have been assigned to individual patrons. A subsidiary record, "patronage capital ledger," shall be maintained, containing an account for each patron who has furnished capital under a capital credits plan.

B. When the return of patrons' capital to individual patrons has been authorized by the board of directors (or trustees), the amounts authorized shall be transferred to Account 238.1, Patronage Capital Payable. (See also Account 217, Retired Capital Credits-Gain.)

201.2 Patronage Capital Assignable

A. This account shall include all amounts transferred from Account 219.1, Operating Margins; Account 219.2, Nonoperating Margins; Account 219.3, Other Margins; and Account 219.4, Other Margins and Equities—Prior Periods, which are assignable to individual patrons' capital accounts.

B. Entries to this account shall be made so as to clearly disclose the nature and source of each transaction. Amounts so assigned shall be transferred to Account 201.1, Patronage Capital Credits.

202 [Reserved]

203 [Reserved]

204 [Reserved]

205 [Reserved]

206 [Reserved]

207 [Reserved]

208 Donated Capital

This account shall include credits arising from forfeiture of membership fees and from donations of capital not otherwise provided for. Entries to this account shall be made so as to clearly disclose the nature and source of each transaction.

209 [Reserved]

210 [Reserved]

211 Consumers' Contributions for Debt Service

This account shall include the amounts billed to consumers as "amortization charges" for the purpose of servicing long-term debt.

212 [Reserved]

213 [Reserved]

214 [Reserved]

215 Appropriated Margins

This account shall include all amounts appropriated as reserves from margins. The account shall be so maintained as to show the amount of each separate reserve and the nature and amounts of the debits and credits thereto.

216 [Reserved]

216.1 Unappropriated Undistributed Subsidiary Earnings

This account shall include the balances, either debit or credit, of undistributed retained earnings of subsidiary companies since their acquisition. When dividends are received from subsidiary companies relating to amounts included in this account, this account shall be debited and Account 219.2, Nonoperating Margins.

217 Retired Capital Credits—Gain

A. This account shall include credits resulting from the retirement of patronage capital through settlement of individual patrons' capital credits at less than 100 percent of the capital assigned to the patron. The portion of patronage capital not returned to the patrons, under such settlements, shall be debited to Account 201.1, Patronage Capital Credits, and credited to this account.

B. This account shall also include amounts representing patronage capital authorized to be retired to patrons who cannot be located. Returned checks issued for retirements of patronage capital, after an appropriate waiting period, shall be credited to this account, and a record maintained adequate to enable the cooperative to make payment to the patron if and when a claim has been established by the consumer.

218 Capital Gains and Losses

No entries shall be made to this account without the prior approval of REA unless it is to distribute past capital gains and losses as capital credits or to eliminate accumulated capital losses in conformance with the bylaws of the cooperative.

219 Other Margins and Equities

A. This account shall include total amount of margins and equities from all sources.

B. Account 219 shall be subaccounted as follows:

219.1 Operating Margins
219.2 Nonoperating Margins
219.3 Other Margins
219.4 Other Margins and Equities—Prior Periods

219.1 Operating Margins

This account shall be debited or credited with the balances arising from transactions, the details of which have been recorded in Accounts 400, 401, 402, 403, 404, 405, 406, 407, 408, 412, 413, 414, 423, 424, 425, 426, 427, 428, and 431. Accounts 400, 401, and 402 are control accounts and, at the option of the borrower may or may not be used. If they are not used, the detailed revenue and expense accounts shall be closed directly to this account.

219.2 Nonoperating Margins

This account shall be debited or credited with the balances arising from transactions, the details of which have been recorded in Accounts 415, 416, 417, 417.1, 418, 419, 419.1, 421, 421.1, 421.2, 422, 434, and 435.

219.3 Other Margins

No entries shall be made to this account unless it is to distribute or eliminate prior balances in conformance with the bylaws of the cooperative.

219.4 Other Margins and Equities—Prior Periods

A. This account shall include significant nonrecurring transactions relating to prior periods. To be significant, the transaction must be of sufficient magnitude to justify redistribution of patronage capital credits already allocated for such prior periods.

B. All entries to this account must receive REA prior approval.

C. These transactions are limited to items to (1) correct an error in the financial statements of a prior year, and (2) make adjustments that result from realization of income tax benefits of preacquisition operating loss carryforwards. This account shall also include the related income taxes (state and Federal) on items included herein.

D. Amounts in this account shall be transferred at the end of the year to Account 219.1, Operating Margins, or Account 219.2, Nonoperating Margins, as appropriate. Also, at the end of the year, these amounts should be transferred from Account 219.1, or Account 219.2 to Account 201.2, Patronage Capital Assignable, when appropriate.

Long-Term Debt

221 Bonds

This account shall include, in a separate subdivision for each class and series of bonds, the face value of the

actually issued and unmatured bonds which have not been retired or cancelled; also the face value of such bonds issued by others, the payment of which has been assumed by the utility.

222 Reacquired Bonds

A. This account shall include the face value of bonds actually issued or assumed by the utility and reacquired by it and not retired or cancelled. The account for reacquired debt shall not include securities which are held by trustees in sinking or other funds.

B. When bonds are reacquired, the difference between face value, adjusted for unamortized discount, expenses or premium, and the amount paid upon reacquisition, shall be included in Account 189, Unamortized Loss on Reacquired Debt, or Account 257, Unamortized Gain on Reacquired Debt, as appropriate. (See § 1767.15 (q).)

223 Advances from Associated Companies

A. This account shall include the face value of notes payable to associated companies and the amount of open book accounts representing advances from associated companies. It does not include notes and open accounts representing indebtedness subject to current settlement which are includible in Account 233, Notes Payable to Associated Companies, or Account 234, Accounts Payable to Associated Companies.

B. The records supporting the entries to this account shall be so kept that the utility can furnish complete information concerning each note and open account.

224 Other Long-Term Debt

A. This account shall include, until maturity, all long-term debt not otherwise provided for. This covers such items as receivers' certificates, real estate mortgages executed or assumed, assessments for public improvements, notes and unsecured certificates of indebtedness not owned by associated companies, receipts outstanding for long-term debt, and other obligations maturing more than one year from the date of issue or assumption.

B. Account 224 shall be subaccounted as follows:

224.1 Long-Term Debt—REA Construction Loan Contract
224.2 REA Loan Contract—Construction—Debit
224.3 Long-Term Debt—REA Construction Notes Executed
224.4 REA Notes Executed—Construction—Debit
224.5 Interest Accrued—Deferred—REA Construction
224.6 Advance Payments Unapplied—REA Long-Term Debt—Debit
224.7 Long-Term Debt—Installation Loan Contract
224.8 REA Loan Contract—Installation—Debit
224.9 Long-Term Debt—Installation Notes Executed
224.10 REA Notes Executed—Installation—Debit
224.11 Other Long-Term Debt—Subscriptions
224.12 Other Long-Term Debt—Supplemental Financing
224.13 Supplemental Lender Notes Executed—Debit
224.14 Other Long-Term Debt—Miscellaneous
224.15 Notes Executed—Other—Debit
224.16 Long-Term Debt—REA Economic Development Notes Executed
224.17 REA Notes Executed—Economic Development—Debit

224.1 Long-Term Debt—REA Construction Loan Contract

A. This account shall include the contractual obligation to REA on construction loans covered by loan contract but not by executed notes.

B. This account is to be used at the option of the borrower.

224.2 REA Loan Contract—Construction—Debit

A. This account shall include the total loans (for construction purposes) which are covered by loan contract but not by executed notes.

B. This account is to be used at the option of the borrower.

224.3 Long-Term Debt—REA Construction Notes Executed

This account shall include the contractual liability to REA on construction notes executed. Records shall be maintained to show separately for each class of obligation all details as to the date of obligation, date of maturity, interest date and rate, and securities for the obligation.

224.4 REA Notes Executed—Construction—Debit

This account shall include the total amount of the unadvanced REA loans for construction purposes, which are covered by executed notes. When advances are received from the REA for construction, this account shall be credited and Account 131.2, Cash—Construction Fund—Trustee, debited with the amount of cash advanced.

224.5 Interest Accrued—Deferred—REA Construction

This account shall include interest on REA construction obligations deferred by the terms of mortgage notes or extension agreements.

224.6 Advance Payments Unapplied—REA Long-Term Debt—Debit

A. This account shall include principal payments on mortgage notes paid in advance of the date due and not applied to a specific note. Also, include in this account interest savings which are accrued and added to the advance payment unapplied.

B. At such time as these payments are applied to a specific note or loan balances, this account shall be credited and the long-term debt account debited with the amount so applied.

224.7 Long-Term Debt—Installation Loan Contract

A. This account shall include the contractual obligation to REA on installation loans covered by loan contract but not covered by executed notes.

B. This account is to be used at the option of the borrower.

224.8 REA Loan Contract—Installation—Debit

A. This account shall include the total loans for installation purposes which are covered by loan contract but not by executed notes.

B. This account is to be used at the option of the borrower.

224.9 Long-Term Debt—Installation Notes Executed

This account shall include the contractual liability to REA on installation notes executed.

224.10 REA Notes Executed—Installation—Debit

This account shall include the total amount of unadvanced loans for installation purposes, which are covered by executed note. When advances are received from REA, this account shall be credited and Account 131.3, Cash—Installation Loan and Collection Fund, debited with the amount of cash advanced.

224.11 Other Long-Term Debt—Subscriptions

This account shall include the contractual obligation to purchase CFC Capital Term Certificates and any other similar obligation relating to supplemental financing.

224.12 Other Long-Term Debt—Supplemental Financing

This account shall include the contractual liability to CFC or other supplemental lenders for that portion of funds borrowed which mature in more than one year.

224.13 Supplemental Financing Notes Executed—Debit

This account shall include the total amount of the unadvanced loans for construction purposes, which are covered by executed notes to CFC or other supplemental lender. This account shall be debited with the face amount of notes executed. When advances are received from a supplemental lender for construction, this account shall be credited and Account 131.2, Cash—Construction Fund—Trustee, debited with the amount of cash advanced.

224.14 Other Long-Term Debt—Miscellaneous

This account shall include the amount of other long-term debt not provided for elsewhere.

224.15 Notes Executed—Other—Debit

This account shall include the total amount of the unadvanced loans for construction purposes, which are covered by executed notes to others not included in the foregoing accounts. When advances are received from such supplemental lender, this account shall be credited and Account 131.2, Cash—Construction Fund—Trustee, debited with the amount of cash so advanced.

224.16 Long-Term Debt—REA Economic Development Notes Executed

This account shall include the contractual liability to REA on rural economic development notes executed. Records shall be maintained to show separately for each class of obligation all details as to the date of obligation, date of maturity, interest date and rate, and securities for the obligation.

224.17 REA Notes Executed—Economic Development—Debit

This account shall include the total amount of the unadvanced REA loans for rural economic development purposes, which are covered by executed notes. When advances are received from the REA for rural economic development projects, this account shall be credited and Account 131.12, Cash—General—Economic Development Funds, debited with the amount of cash advanced.

225 Unamortized Premium on Long-Term Debt

A. This account shall include the excess of the cash value of consideration received over the face value upon the issuance or assumption of long-term debt securities.

B. Amounts recorded in this account shall be amortized over the life of each respective issue under a plan which will distribute the amount equitably over the life of the security. The amortization shall be on a monthly basis, with the amounts thereof to be credited to Account 429, Amortization of Premium on Debt—Credit. (See § 1767.15 (q).)

226 Unamortized Discount on Long-Term Debt—Debit

A. This account shall include the excess of the face value of long-term debt securities over the cash value of consideration received therefor, related to the issue or assumption of all types and classes of debt.

B. Amounts recorded in this account shall be amortized over the life of the respective issues under a plan which will distribute the amount equitably over the life of the securities. The amortization shall be on a monthly basis, wit the amounts thereof charged to Account 428, Amortization of Debt Discount and Expense. (See § 1767.15 (q).)

Other Noncurrent Liabilities

227 Obligations Under Capital Leases—Noncurrent

This account shall include the portion not due within one year, of the obligations recorded for the amounts applicable to leased property recorded as assets in Account 101.1, Property Under Capital Leases; Account 120.6, Nuclear Fuel Under Capital Leases; or Account 121, Nonutility Property.

Special Instructions

No amounts shall be credited to Accounts 228.1 through 228.4 unless authorized by a regulatory authority or authorities to be collected in the utility's rates.

228.1 Accumulated Provision for Property Insurance

A. This account shall include amounts reserved by the utility for losses through accident, fire, flood, or other hazards to its own property or property leased from others, not covered by insurance. The amounts charged to Account 924, Property Insurance, or other appropriate accounts to cover such risks shall be credited to this account. A schedule of risks covered shall be maintained, giving a description of the property involved, the character of the risks covered and the rates used.

B. Charges shall be made to this account for losses covered, not to exceed the account balance. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

228.2 Accumulated Provision for Injuries and Damages

A. This account shall be credited with amounts charged to Account 925, Injuries and Damages, or other appropriate accounts, to meet the probable liability, not covered by insurance, for deaths or injuries to employees and others and for damages to property neither owned nor held under lease by the utility.

B. When liability for any injury or damage is admitted by the utility either voluntarily or because of the decision of a court or other lawful authority, such as a workmen's compensation board, the admitted liability shall be charged to this account and credited to the appropriate current liability account. Details of these charges shall be maintained according to the year the casualty occurred which gave rise to the loss.

Note: Recoveries or reimbursements for losses charged to this account shall be credited hereto; the cost of repairs to property of others, if provided for herein, shall be charged to this account.

228.3 Accumulated Provision for Pensions and Benefits

A. This account shall include provisions made by the utility and amounts contributed by employees for pensions, accident and death benefits, savings, relief, hospital, and other provident purposes, where the funds are included in the assets of the utility either in general or in segregated fund accounts.

B. Amounts paid by the utility for the purpose for which this liability is established shall be charged hereto.

C. A separate account shall be kept for each kind of provision included herein.

Note: If employee pension or benefit plan funds are not included among the assets of the utility but are held by outside trustees, payments into such funds, or accruals therefor, shall not be included in this account.

228.4 Accumulated Miscellaneous Operating Provisions

A. This account shall include all operating provisions which are not provided for elsewhere.

B. This account shall be maintained in such a manner as to show the amount of each separate provision and the nature and amounts of the debits and credits thereto.

Note: This account includes only provisions as may be created for operating purposes and does not include any reservations of income, the credits for which should be recorded in Account 215, Appropriated Margins.

229 Accumulated Provision for Rate Refunds

A. This account shall be credited with amounts charged to Account 449.1, Provision for Rate Refunds, to provide for estimated refunds where the utility is collecting amounts in rates subject to refund.

B. When a refund of any amount recorded in this account is ordered by a regulatory authority, such amount shall be charged hereto and credited to Account 242, Miscellaneous Current and Accrued Liabilities.

C. Records supporting the entries to this account shall be kept so as to identify each amount recorded by the respective rate filing docket number.

Current and Accrued Liabilities

Current and accrued liabilities are those obligations which have either matured or which become due within 1 year from the date thereof; except however, bonds, receivers' certificates, and similar obligations which shall be classified as long-term debt until date of maturity; accrued taxes, such as income taxes, which shall be classified as accrued liabilities even though payable more than one year from date; compensation awards, which shall be classified as current liabilities regardless of date due; and minor amounts payable in installments which may be classified as current liabilities. If a liability is due more than 1 year from the date of issuance or assumption by the utility, it shall be credited to a long-term debt account appropriate for the transaction; except however, the current liabilities previously mentioned.

231 Notes Payable

This account shall include the face value of all notes, drafts, acceptances, or other similar evidences of indebtedness, payable on demand or within a time not exceeding 1 year from the date of issue, to other than associated companies.

232 Accounts Payable

A. This account shall include all amounts payable by the utility within 1 year, which are not provided for in other accounts.

B. Account 232 shall be subaccounted as follows:

232.1 Accounts Payable—General
232.2 Accounts Payable—REA Construction
232.3 Accounts Payable—Other

233 Notes Payable to Associated Companies

This account shall include amounts owing to associated companies on notes, drafts, acceptances, or other similar evidences of indebtedness payable on demand or not more than 1 year from the date of issue or creation.

Note: Notes which are includible in Account 223, Advances from Associated Companies, shall be excluded from this account.

234 Accounts Payable to Associated Companies

This account shall include amounts owing to associated companies on open accounts payable on demand.

Note: Accounts which are includible in Account 223, Advances from Associated Companies, shall be excluded from this account.

235 Customer Deposits

This account shall include all amounts deposited with the utility by its customers as security for the payment of bills.

236 Taxes Accrued

A. This account shall be credited with the amount of taxes accrued during the accounting period, corresponding debits being made to the appropriate accounts for tax charges. Such credits may be based upon estimates, but from time to time during the year as the facts become known, the amount of the periodic credits shall be adjusted so as to include, as nearly as can be determined in each year, the taxes applicable thereto. Any amount representing a prepayment of taxes applicable to the period subsequent to the date of the balance sheet, shall be shown under Account 165, Prepayments.

B. If accruals for taxes are found to be insufficient or excessive, correction therefor shall be made through current tax accruals.

C. Accruals for taxes shall be based upon the net amounts payable after credit for any discounts, and shall not include any amounts for interest on tax deficiencies or refunds. Interest received on refunds shall be credited to Account 419, Interest and Dividend Income, and interest paid on deficiencies shall be charged to Account 431, Other Interest Expense.

D. Account 236 shall be subaccounted as follows:

236.1 Accrued Property Taxes
236.2 Accrued U.S. Social Security Tax—Unemployment
236.3 Accrued U.S. Social Security Tax—F.I.C.A.
236.4 Accrued State Social Security Tax—Unemployment
236.5 Accrued State Sales Tax—Consumers
236.6 Accrued Gross Revenue or Gross Receipts Tax
236.7 Accrued Taxes—Other

237 Interest Accrued

This account shall include the amount of interest accrued but not matured on all liabilities of the utility not including, however, interest which is added to the principal of the debt on which incurred. Supporting records shall be maintained so as to show the amount of interest accrued on each obligation.

238 Patronage Capital and Patronage Refunds Payable

A. This account shall include the total amount of patronage capital authorized to be returned and paid to patrons.

B. Account 238 shall be subaccounted as follows:

238.1 Patronage Capital Payable
238.2 Patronage Refunds Payable

238.1 Patronage Capital Payable

This account shall include the amount of patronage capital which has been authorized to be returned to the patron.

238.2 Patronage Refunds Payable

This account shall include the amount of patronage refunds which have been authorized to be paid to patrons.

239 Matured Long-Term Debt

This account shall include the amount of long-term debt (including any obligation for premiums) matured and unpaid, without specific agreement for extension of the time of payment and bonds called for redemption but not presented.

240 Matured Interest

This account shall include the amount of matured interest on long-term debt or other obligations of the utility at the date of the balance sheet unless such interest is added to the principal of the debt on which incurred.

241 Tax Collections Payable

This account shall include the amount of taxes collected by the utility through payroll deductions or otherwise, pending transmittal of such taxes to the proper taxing authority.

Note: Do not include liabilities for taxes assessed directly against the utility which are accounted for as part of the utility's own tax expense.

242 Miscellaneous Current and Accrued Liabilities

A. This account shall include the amount of all other current and accrued liabilities not provided for elsewhere appropriately designated and supported so as to show the nature of each liability.

B. Account 242 shall be subaccounted as follows:

242.1 Accrued Rentals
242.2 Accrued Payroll

242.3 Accrued Employees' Vacations and Holidays
242.4 Accrued Insurance
242.5 Other Current and Accrued Liabilities

242.1 Accrued Rentals

This account shall include unpaid joint use pole rentals and other rentals. The records supporting the entries to this account shall be maintained so as to show for each class of rental, the amount accrued, the basis for the accrual, the accounts to which charged, and the amount of rentals paid.

242.2 Accrued Payroll

This account shall include the accrued liability for salaries and wages at the end of an accounting period for which the appropriate expense or other accounts have been charged. This account is to be used whether salaries and wages are paid on a weekly, semimonthly, or monthly basis.

242.3 Accrued Employees' Vacations and Holidays

This account shall include the liability for accrued wages for employees' vacation, holidays, and sick leave.

242.4 Accrued Insurance

A. This account shall most commonly be used in case of workmen's compensation and public liability insurance for recording the excess amounts of earned premium over the advance premiums. Earned premiums are computed each month by applying the insurance rates to the actual payrolls.

B. Until the amount of the advance premiums is exhausted, the earned premium is credited to Account 165, Prepayments. Earned premiums in excess of the advance premiums are credited to this account.

242.5 Other Current and Accrued Liabilities

This account shall include current and accrued liabilities not provided for elsewhere.

243 Obligations Under Capital Leases—Current

This account shall include the portion, due within 1 year, of the obligations recorded for the amounts applicable to leased property recorded as assets in Account 101.1, Property Under Capital Leases; Account 120.6, Nuclear Fuel Under Capital Leases; or Account 121, Nonutility Property.

Deferred Credits

251 [Reserved]

252 Customer Advances for Construction

This account shall include consumer advances for construction which are to be refunded either wholly or in part. When a customer is refunded the entire amount to which he is entitled, according to the agreement or rule under which the advance was made, the balance, if any, remaining in this account shall be credited to the respective plant accounts.

253 Other Deferred Credits

This account shall include advance billings and receipts and other deferred credit items, not provided for elsewhere, including amounts which cannot be entirely cleared or disposed of until additional information has been received.

253.1 Other Deferred Credits—Consumers' Energy Prepayments

This account shall include the amount of advance payments made by consumers in connection with electric service.

254 Other Regulatory Liabilities

A. This account shall include the amounts of regulatory liabilities, not includible in other accounts, imposed on the utility by the ratemaking actions of regulatory agencies.

B. The amounts included in this account are to be established by those credits which would have been included in net income determinations in the current period under the general requirements of the Uniform System of Accounts but for it being probable that: (1) such items will be included in a different period(s) for purposes of developing the rates that the utility is authorized to charge for its utility services; or (2) refunds to customers, not provided for in other accounts, will be required. When specific identification of the particular source of the regulatory liability cannot be made or when the liability arises from revenues collected pursuant to tariffs on file at a regulatory agency, Account 407.3, Regulatory Debits, shall be debited. The amounts recorded in this account generally are to be credited to the same account that would have been credited if included in income when earned except: (1) all regulatory liabilities established through the use of Account 407.3 shall be credited to Account 407.4, Regulatory Credits; and (2) in the case of refunds, a cash account or other appropriate account should be credited when the obligation is satisfied.

C. If it is later determined that the amounts recorded in this account will not be returned to customers through rates or refunds, such amounts shall be credited to Account 421, Miscellaneous Nonoperating Income, or Account 434, Extraordinary Income, as appropriate, in the year such determination is made.

D. The records supporting the entries to this account shall be kept in such a manner that the utility can furnish full information as to the nature and amount of each regulatory liability included in this account, including justification for inclusion of such amounts in this account.

255 Accumulated Deferred Investment Tax Credits

A. This account shall be credited with all investment tax credits deferred by companies which have elected to follow deferral accounting, partial or full, rather than recognizing, in the income statement, the total benefits of the tax credit as realized. After such election, a company may not transfer amounts from this account, except as authorized herein and in Account 411.4, Investment Tax Credit Adjustments, Utility Operations; Account 411.5, Investment Tax Credit Adjustments, Nonutility Operations; and Account 420, Investment Tax Credits, or with approval of REA.

B. Where the company's accounting provides that investment tax credits are to be passed on to customers, this account shall be debited and Account 411.4 credited with a proportionate amount determined in relation to the average useful life of electric utility property to which the tax credits relate or such lesser period of time as allowed by a regulatory agency having rate jurisdiction. If, however, the deferral procedure provides that investment tax credits are not to be passed on to customers, the proportionate restorations to income shall be credited to Account 420.

C. Subdivisions of this account, by department, shall be maintained for deferred investment tax credits that are related to nonelectric utility or other operations. Contra entries affecting such account subdivisions shall be appropriately recorded in Account 413, Expenses of Electric Plant Leased to Others; or Account 414, Other Utility Operating Income. Use of deferral or nondeferral accounting procedures adopted for nonelectric utility or other operations are to be followed on a consistent basis.

D. Separate records for electric and nonelectric utility or other operations shall be maintained identifying the properties giving rise to the investment

tax credits for each year with the weighted-average service life of such properties and any unused balances of such credits. Such records are not necessary unless the tax credits are deferred.

256 Deferred Gains from Disposition of Utility Plant

This account shall include gains from the sale or other disposition of property previously recorded in Account 105, Electric Plant Held for Future Use, under the provisions of Paragraphs B, C, and D thereof, where such gains are significant and are to be amortized over a period of 5 years, unless otherwise authorized by REA. The amortization of the amounts in this account shall be made by credits to Account 411.6, Gains from Disposition of Utility Plant. (See Account 105, Electric Plant Held for Future Use.)

257 Unamortized Gain on Reacquired Debt

This account shall include the amounts of discount realized upon reacquisition or redemption of long-term debt. The amounts in this account shall be amortized in accordance with § 1767.15 (q).

Special Instructions

Accumulated Deferred Income Taxes

Before using the deferred tax accounts provided below, refer to § 1767.15 (r), Comprehensive Interperiod Income Tax Allocation. The text of these accounts are designed primarily to cover deferrals of Federal income taxes. However, they are also to be used when making deferrals of state and local income taxes. Utilities and licensees which, in addition to an electric utility department, have another utility department, gas or water and nonutility property, and which have deferred taxes on income with respect thereto shall separately classify such deferrals in the accounts provided below so as to allow ready identification of items relating to each utility deductions.

281 Accumulated Deferred Income Taxes—Accelerated Amortization Property

A. This account shall include tax deferrals resulting from adoption of the principles of comprehensive interperiod tax allocation described in § 1767.15 (s) that relate to property for which the utility has availed itself of the use of accelerated (5-year) amortization of (1) certified defense facilities as permitted by Section 168 of the Internal Revenue Code, and (2) certified pollution control facilities as permitted by Section 169 of the Internal Revenue Code.

B. This account shall be credited and Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, or Account 410.2, Provision for Deferred Income Taxes, Other Income and Deductions, as appropriate, shall be debited with tax effects related to property described in Paragraph A above where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

C. This account shall be debited and Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, or Account 411.2, Provision for Deferred Income Taxes-Credit, Other Income and Deductions, as appropriate, shall be credited with taxes related to property described in Paragraph A above where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

D. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in this account or any portion thereof to retained earnings or make any use thereof except as provided in the text of this account without prior approval of REA. Upon the disposition by sale, exchange, transfer, abandonment, or premature retirement of plant on which there is a related balance therein, this account shall be charged with an amount equal to the related income tax expense, if any, arising from such disposition and Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, or Account 411.2, Provision for Deferred Income Taxes—Credit, Other Income and Deductions, as appropriate, shall be credited. When the remaining balance, after consideration of any related income tax expense, is less than $25,000, this account shall be charged and Account 411.1 or Account 411.2, as appropriate, credited with such balance. If after consideration of any related income tax expense, there is a remaining amount of $25,000 or more, REA shall authorize or direct how such amount shall be accounted for at the time approval for the disposition of accounting is granted. When plant is disposed of by transfer to a wholly owned subsidiary, the related balance in this account shall also be transferred. When the disposition relates to retirement of an item or items under a group method of depreciation where there is no tax effect in the year of retirement, no entries are required in this account if it can be determined that the related balances would be necessary to be retained to offset future group item tax deficiencies.

282 Accumulated Deferred Income Taxes—Other Property

A. This account shall include the tax deferrals resulting from adoption of the principle of comprehensive interperiod income tax allocation described in § 1767.15 (r) which are related to all property other than accelerated amortization property.

B. This account shall be credited and Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, or Account 410.2, Provision for Deferred Income Taxes, Other Income and Deductions, as appropriate, shall be debited with tax effects related to property described in Paragraph A above where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

C. This account shall be debited and Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, or Account 411.2, Provision for Deferred Income Taxes—Credit, Other Income and Deductions, as appropriate, shall be credited with tax effects related to property described in Paragraph A above where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

D. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in this account or any portion thereof to retained earnings or make any use thereof except as provided in the text of this account without prior approval of REA. Upon the disposition by sale, exchange, transfer, abandonment, or premature retirement of plant on which there is a related balance herein, this account shall be charged with an amount equal to the related income tax expense, if any, arising from such disposition and Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, or Account 411.2, Provision for Deferred Income Taxes—Credit, Other Income and Deductions, shall be credited. When the remaining balance after consideration of any related tax expenses, is less than $25,000, this

account shall be charged and Account 411.1 or Account 411.2, as appropriate, credited with such balance. If after consideration any related income tax expense, there a remaining amount of $25,00 or more, REA shall authorize or direct how such amount shall be accounted for at the time approval for the disposition of accounting is granted. When plant is disposed of by transfer to a wholly owned subsidiary, the related balance in this account shall also be transferred. When the disposition relates to retirement of an item or items under a group method of depreciation where there is no tax effect in the year of retirement, no entries are required in this account if it can be determined that the related balance would be necessary to be retained to offset future group item tax deficiencies.

283 Accumulated Deferred Income Taxes—Other

A. This account shall include all credit tax deferrals resulting from the adoption of the principles of comprehensive interperiod income tax allocation described in § 1767.15 (r) other than those deferrals which are includible in Account 281, Accumulated Deferred Income Taxes—Accelerated Amortization Property, and Account 282, Accumulated Deferred Income Taxes—Other Property.

B. This account shall be credited and Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, or Account 410.2, Provision for Deferred Income Taxes, Other Income and Deductions, as appropriate, shall be debited with tax effects related to items described in Paragraph A above where taxable income is lower than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

C. This account shall be debited and Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income or Account 411.2, Provision for Deferred Income Taxes—Credit, Other Income and Deductions, as appropriate, shall be credited with tax effects related to items described in Paragraph A above where taxable income is higher than pretax accounting income due to differences between the periods in which revenue and expense transactions affect taxable income and the periods in which they enter into the determination of pretax accounting income.

D. Records with respect to entries to this account, as described above, and the account balance, shall be so maintained as to show the factors of calculation with respect to each annual amount of the item or class of items.

E. The utility is restricted in its use of this account to the purposes set forth above. It shall not transfer the balance in the account or any portion thereof to retained earnings or to any other account or make any use thereof except as provided in the text of this account, without prior approval of REA. Upon the disposition by sale, exchange, transfer, abandonment, or premature retirement of items on which there is a related balance herein, this account shall be charged with an amount equal to the related income tax effect, if any, arising from such disposition and Account 411.1, Provision For Deferred Income Taxes—Credit, Utility Operating Income, or Account 411.2, Provision For Deferred Income Taxes-Credit, Other Income and Deductions, as appropriate, shall be credited. When the remaining balance, after consideration of any related tax expenses, is less than $25,000, this account shall be charged and Account 411.1 or Account 411.2, as appropriate, credited with such balance. If after consideration of any related income tax expense, there is a remaining amount of $25,000 or more, REA shall authorize or direct how such amount shall be accounted for at the time approval for the disposition of accounting is granted.

When plant is disposed of by transfer to a wholly owned subsidiary, the related balance in this account shall also be transferred. When the disposition relates to retirement of an item or items under a group method of depreciation where there is no tax effect in the year of retirement, no entries are required in this account if it can be determined that the related balance would be necessary to be retained to offset future group item tax deficiencies.

§ 1767.20 Plant accounts.

The plant accounts identified in this section shall be used by all REA borrowers.

Intangible Plant

301 Organization
302 Franchises and Consents
303 Miscellaneous Intangible Plant

Production Plant

Steam Production

310 Land and Land Rights
311 Structures and Improvements
312 Boiler Plant Equipment
313 Engines and Engine Driven Generators
314 Turbogenerator Units
315 Accessory Electric Equipment
316 Miscellaneous Power Plant Equipment

Nuclear Production

320 Land and Land Rights
321 Structures and Improvements
322 Reactor Plant Equipment
323 Turbogenerator Units
324 Accessory Electric Equipment
325 Miscellaneous Power Plant Equipment

Hydraulic Production

330 Land and Land Rights
331 Structures and Improvements
332 Reservoirs, Dams and Waterways
333 Water Wheels, Turbines and Generators
334 Accessory Electric Equipment
335 Miscellaneous Power Plant Equipment
336 Roads, Railroads and Bridges

Other Production

340 Land and Land Rights
341 Structures and Improvements
342 Fuel Holders, Producers and Accessories
343 Prime Movers
344 Generators
345 Accessory Electric Equipment
346 Miscellaneous Power Plant Equipment

Transmission Plant

350 Land and Land Rights
351 [Reserved]
352 Structures and Improvements
353 Station Equipment
354 Tower and Fixtures
355 Poles and Fixtures
356 Overhead Conductors and Devices
357 Underground Conduit
358 Underground Conductors and Devices
359 Roads and Trails

Distribution Plant

360 Land and Land Rights
361 Structures and Improvements
362 Station Equipment
363 Storage Battery Equipment
364 Poles, Towers and Fixtures
365 Overhead Conductors and Devices
366 Underground Conduit
367 Underground Conductors and Devices
368 Line Transformers
369 Services
370 Meters
371 Installations on Customers' Premises
372 Leased Property on Customers' Premises
373 Street Lighting and Signal Systems

General Plant

389 Land and Land Rights
390 Structures and Improvements
391 Office Furniture and Equipment
392 Transportation Equipment
393 Stores Equipment
394 Tools, Shop and Garage Equipment
395 Laboratory Equipment
396 Power Operated Equipment
397 Communication Equipment
398 Miscellaneous Equipment
399 Other Tangible Property

Intangible Plant

301 Organization

This account shall include all fees paid to Federal or state governments for the privilege of incorporation and expenditures incident to organizing the corporation, partnership, or other enterprise and putting it into readiness to do business.

Items

1. Cost of obtaining certificates authorizing an enterprise to engage in the public-utility business.
2. Fees and expenses for incorporation.
3. Fees and expenses for mergers or consolidations.
4. Office expenses incident to organizing the utility.
5. Stock and minute books and corporate seal.

Note A: This account shall not include any discounts upon securities issued or assumed; nor shall it include any costs incident to negotiating loans, selling bonds or other evidences of debt or expenses in connection with the authorization, issuance, or sale of capital stock.

Note B: Exclude from this account and include in the appropriate expense account the cost of preparing and filing papers in connection with the extension of the term of incorporation unless the first organization costs have been written off. When charges are made to this account for expenses incurred in mergers, consolidations, or reorganizations, amounts previously included herein or in similar accounts in the books of the companies concerned shall be excluded from this account.

302 Franchises and Consents

A. This account shall include amounts paid to the Federal Government, to a state or to a political subdivision thereof in consideration for franchises, consents, water power licenses, or certificates, running in perpetuity or for a specified term of more than one year, together with necessary and reasonable expenses incident to procuring such franchises, consents, water power licenses, or certificates of permission and approval, including expenses of organizing and merging separate corporations, where statutes require, solely for the purpose of acquiring franchises.

B. If a franchise, consent, water power license, or certificate is acquired by assignment, the charge to this account in respect thereof shall not exceed the amount paid therefor by the utility to the assignor, nor shall it exceed the amount paid by the original grantee, plus the expense of acquisition to such grantee. Any excess of the amount actually paid by the utility over the amount above specified shall be charged to Account 426.5, Other Deductions.

C. When any franchise has expired, the book cost thereof shall be credited hereto and charged to Account 426.5, Other Deductions, or to Account 111, Accumulated Provision for Amortization of Electric Utility Plant, as appropriate.

D. Records supporting this account shall be kept so as to show separately the book cost of each franchise or consent.

Note: Annual or other periodic payments under franchises shall not be included herein but in the appropriate operating expense account.

303 Miscellaneous Intangible Plant

A. This account shall include the cost of patent rights, licenses, privileges, and other intangible property necessary or valuable in the conduct of utility operations and not specifically chargeable to any other account.

B. When any item included in this account is retired or expires, the book cost thereof shall be credited hereto and charged to Account 426.5, Other Deductions, or Account 111, Accumulated Provision for Amortization of Electric Utility Plant, as appropriate.

C. This account shall be maintained in such a manner that the utility can furnish full information with respect to the amounts included herein.

Production Plant

Steam Production

310 Land and Land Rights

This account shall include the cost of land and land rights used in connection with steam-power generation. (See § 1767.16 (g).)

311 Structures and Improvements

This account shall include the cost, in place, of structures and improvements used in connection with steam-power generation. (See § 1767.16 (h).)

Note: Include steam production roads and railroads in this account.

312 Boiler Plant Equipment

This account shall include the cost installed of furnaces, boilers, coal and ash handling and coal preparing equipment, steam and feed water piping, boiler apparatus, and accessories used in the production of steam, mercury, or other vapor, to be used primarily for generating electricity.

Items

1. Ash handling equipment, including hoppers, gates, cars, conveyors, hoists, sluicing equipment, including pumps and motors, sluicing water pipe and fittings, sluicing trenches and accessories, except sluices which are a part of a building.
2. Boiler feed system, including feed water heaters, evaporator condensers, heater drain pumps, heater drainers, deaerators, and vent condensers, boiler feed pumps, surge tanks, feed water regulators, feed water measuring equipment, and all associated drives.
3. Boiler plant cranes and hoists and associated drives.
4. Boilers and equipment, including boilers and baffles, economizers, superheaters, soot blowers, foundations and settings, water walls, arches, grates, insulation, blowdown system, drying out of new boilers, also associated motors or other power equipment.
5. Breeching and accessories, including breeching, dampers, soot spouts, hoppers and gates, cinder eliminators, breeching insulation, soot blowers and associated motors.
6. Coal handling and storage equipment, including coal towers, coal lorries, coal cars, locomotives and tracks when devoted principally to the transportation of coal, hoppers, downtakes, unloading and hoisting equipment, skip hoists and conveyors, weighing equipment, magnetic separators, cable ways, and housings and supports for coal handling equipment.
7. Draft equipment, including air preheaters and accessories, induced and forced draft fans, air ducts, combustion control mechanisms, and associated motors or other power equipment.
8. Gas-burning equipment, including holders, burner equipment and piping, and control equipment.
9. Instruments and devices, including all measuring, indicating, and recording equipment for boiler plant service together with mountings and supports.
10. Lighting systems.
11. Oil-burning equipment, including tanks, heaters, pumps with drive, burner equipment and piping, and control equipment.
12. Pulverized fuel equipment, including pulverizers, accessory motors, primary air fans, cyclones and ducts, dryers, pulverized fuel bins, pulverized fuel conveyors and equipment, burners, burner piping, priming equipment, air compressors, and motors.
13. Stacks, including foundations and supports, stack steel and ladders, stack brickwork, stack concrete, stack lining, stack painting (first), when set on separate foundations, independent of substructures or superstructures of building.
14. Station piping, including pipe, valves, fittings, separators, traps, desuperheaters, hangers, excavation, and covering for station piping system, including all steam, condensate, boiler feed and water supply piping, but not condensing water, plumbing, building heating, oil, gas, air piping or piping specifically provided for in Account 313.
15. Stoker or equivalent feeding equipment, including stokers and

accessory motors, clinker grinders, fans and motors.

16. Ventilating equipment.

17. Water purification equipment, including softeners and accessories, evaporators and accessories, heat exchanges, filters, tanks for filtered or softened water, pumps, and motors.

18. Water-supply systems, including pumps, motors, strainers, raw-water storage tanks, boiler wash pumps, intake and discharge pipes, and tunnels not a part of a building.

19. Wood fuel equipment, including hoppers, fuel hogs and accessories, elevators and conveyors, bins and gates, spouts, measuring equipment and associated drives.

Note: When the system for supplying boiler or condenser water is elaborate, and when it includes a dam, reservoir, canal, pipe line, cooling ponds, or where gas or oil is used as a fuel for producing steam and is supplied through a pipe line system owned by the utility, the cost of such special facilities shall be charged to a subdivision of Account 311, Structures and Improvements.

313 Engines and Engine Driven Generators

This account shall include the cost installed of steam engines, reciprocating or rotary, and their associated auxiliaries; and engine-driven main generators, except turbogenerator units.

Items

1. Air cleaning and cooling apparatus, including blowers, drive equipment, air ducts, not a part of building, louvers, pumps, and hoods.

2. Belting, shafting, pulleys, and reduction gearing.

3. Circulating pumps, including connections between condensers and intake and discharge tunnels.

4. Cooling system, including towers, pumps, tank, and piping.

5. Condensers, including condensate pumps, air and vacuum pumps, ejector unloading valves and vacuum breakers, expansion devices, and screens.

6. Cranes and hoists, including items wholly identified with items listed herein.

7. Engines, reciprocating or rotary.

8. Fire-extinguishing systems.

9. Foundations and settings, especially constructed for and not expected to outlast the apparatus for which provided.

10. Generators-Main, a.c. or d.c., including field rheostats and connections for self-excited units, and excitation systems when identified with the generating unit.

11. Governors.

12. Lighting systems.

13. Lubricating systems, including gauges, filters, tanks, pumps, piping, and motors.

14. Mechanical meters, including gauges, recording instruments, sampling and testing equipment.

15. Piping-main exhaust, including connections between generator and condenser and between condenser and hotwell.

16. Piping-main stream, including connections from main throttle valve to turbine inlet.

17. Platforms, railings, steps, and gratings appurtenant to apparatus listed herein.

18. Pressure oil system, including accumulators, pumps, piping, and motors.

19. Throttle and inlet valve.

20. Tunnels, intake and discharge, for condenser system, when not a part of a structure.

21. Water screens and motors.

314 Turbogenerator Units

This account shall include the cost installed of main turbine-driven units and accessory equipment used in generating electricity by steam.

Items

1. Air leaning and cooling apparatus, including blowers, drive equipment, air ducts not a part of building, louvers, pumps, and hoods.

2. Circulating pumps, including connections between condensers and intake and discharge tunnels.

3. Condensers, including condensate pumps, air and vacuum pumps, ejectors, unloading valves and vacuum breakers, expansion devices, and screens.

4. Generator hydrogen, gas piping, and detrainment equipment.

5. Cooling system, including towers, pumps, tanks, and piping.

6. Cranes and hoists, including items wholly identified with items listed herein.

7. Excitation system, when identified with main generating units.

8. Fire-extinguishing systems.

9. Foundations and settings, especially constructed for and not expected to outlast the apparatus for which provided.

10. Governors.

11. Lighting systems.

12. Lubricating systems, including gauges, filters, water separators, tanks, pumps, piping, and motors.

13. Mechanical meters, including gauges, recording instruments, sampling and testing equipment.

14. Piping-main exhaust, including connections between turbogenerator and condenser and between condenser and hotwell.

15. Piping-main steam, including connections from main throttle valve to turbine inlet.

16. Platforms, railings, steps, and gratings appurtenant to apparatus listed herein.

17. Pressure oil systems, including accumulators, pumps, and piping motors.

18. Steelwork, specially constructed for apparatus listed herein.

19. Throttle and inlet valve.

20. Tunnels, intake and discharge, for condenser system, when not a part of structure, and water screens.

21. Turbogenerators-main, including turbine and generator, field rheostats and electric connections for self-excited units.

22. Water screens and motors.

23. Moisture separator for turbine steam.

24. Turbine lubricating oil (initial charge).

315 Accessory Electric Equipment

This account shall include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced by steam power, and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts. Such motors shall be included in the account in which the equipment with which they are associated is included.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.

2. Excitation system, including motor, turbine and dual-drive exciter sets and rheostats, storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats and special housing and protective screens.

3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, and special housings and protective screens.

4. Station buses including main, auxiliary, transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnecting

switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, starting transformers, current transformers, potential transformers, protective relays, storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station grounding system, special fire-extinguishing system, and test equipment.

5. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, truck-type boards complete, cubicles, station supervisory control boards, generator and exciter signal stands, temperature recording devices, frequency-control equipment, master clocks, watt-hour meters and synchronoscope in the turbine room, station totalizing wattmeter, boiler-room load indicator equipment, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housing for batteries, protective screens, and doors.

Note A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electricity for the purposes of transmission or distribution.

Note B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

316 Miscellaneous Power Plant Equipment

This account shall include the cost installed of miscellaneous equipment in and about the steam generating plant devoted to general station use, and which is not properly includible in any of the foregoing steam-power production accounts.

Items

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, and piping.
2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, and hoists with electric and mechanical connections.
3. Fire-extinguishing equipment for general station use.
4. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.
5. Locomotive cranes not includible elsewhere.
6. Locomotives not includible elsewhere.
7. Marine equipment, including boats and barges.
8. Miscellaneous belts, pulleys, and countershafts.
9. Miscellaneous equipment, including atmospheric and weather indicating devices, intrasite communication equipment, laboratory equipment, signal systems, callophones, emergency whistles and sirens, fire alarms, insect-control equipment, and other similar equipment.
10. Railway cars not includible elsewhere.
11. Refrigerating systems, including compressors, pumps, and cooling coils.
12. Station maintenance equipment, including lathes, shapers, planers, drill presses, hydraulic presses, and grinders with motors, shafting, hangers, and pulleys.
13. Ventilating equipment, including items wholly identified with apparatus listed herein.

Note: When any item of equipment listed herein is wholly used in connection with equipment included in another account, its cost shall be included in such other account.

Nuclear Production

320 Land and Land Rights

This account shall include the cost of land and land rights used in connection with nuclear power generation. (See § 1767.16(g).)

321 Structures and Improvements

This account shall include the cost, in place, of structures and improvements used and useful in connection with nuclear power generation. (See § 1767.16 (h).)

Note: Include vapor containers and nuclear production roads and railroads in this account.

322 Reactor Plant Equipment

This account shall include the installed cost of reactors, reactor fuel handling and storage equipment, pressurizing equipment, coolant charging equipment, purification and discharging equipment, radioactive waste treatment and disposal equipment, boilers, steam and feed water piping, reactor and boiler apparatus and accessories and other reactor plant equipment used in the production of steam to be used primarily for generating electricity, including auxiliary superheat boilers and associated equipment in systems which change temperatures or pressure of steam from the reactor system.

Items

1. Auxiliary superheat boilers and associated fuel storage handling preparation and burning equipment. (See Account 312, Boiler Plant Equipment, for items, but exclude water supply, water flow lines, and steam lines, as well as other equipment not strictly within the superheat function.)
2. Boiler feed system, including feed water heaters, evaporator condensers, heater drain pumps, heater drainers, deaerators, and vent condensers, boiler feed pumps, surge tanks, feed water regulators, feed water measuring equipment, and all associated drivers.
3. Boilers and heat exchangers.
4. Instruments and devices, including all measuring, indicating, and recording equipment for reactor and boiler plant service together with mountings and supports.
5. Lighting systems.
6. Moderators, such as heavy water, and graphite, initial charge.
7. Reactor coolant; primary and secondary systems, initial charge.
8. Radioactive waste treatment and disposal equipment, including tanks, ion exchangers, incinerators, condensers, chimneys, and diluting fans and pumps.
9. Foundations and settings, especially constructed for and not expected to outlast the apparatus for which provided.
10. Reactor including shielding, control rods and mechanisms.
11. Reactor fuel handling equipment, including manipulating and extraction tools, underwater viewing equipment, seal cutting and welding equipment, fuel transfer equipment, and fuel disassembly machinery.
12. Reactor fuel element failure detection system.
13. Reactor emergency poison container and injection system.
14. Reactor pressuring and pressure relief equipment, including pressurizing tanks and immersion heaters.
15. Reactor coolant or moderator circulation charging, purification, and discharging equipment, including tanks, pumps, heat exchangers, demineralizers, and storage.
16. Station piping, including pipes, valves, fittings, separators, traps, desuperheaters, hangers, excavation, and covering for station piping system, including all-reactor coolant, steam, condensate, boiler feed and water supply piping, but not condensing water, plumbing, building heating, oil, gas, or air piping.
17. Ventilating equipment.
18. Water purification equipment, including softeners, demineralizers and

accessories, evaporators and accessories, heat exchangers, filters, tanks for filtered or softened water, pumps, and motors.

19. Water supply systems, including pumps, motors, strainers, raw-water storage tanks, boiler wash pumps, intake and discharge pipes and tunnels not a part of a building.

20. Reactor plant cranes and hoists, and associated drives.

Note: When the system for supplying boiler or condenser water is elaborate, as when it includes a dam, reservoir, canal, pipe lines, or cooling ponds, the cost of such special facilities shall be charged to a subdivision of Account 321, Structures and Improvements.

323 Turbogenerator Units

This account shall include the cost installed of main turbine-driven units and accessory equipment used in generating electricity by steam.

Items

1. Air cleaning and cooling apparatus, including blowers, drive equipment, air ducts, not a part of building, louvers, pumps, and hoods.

2. Circulating pumps, including connections between condensers, and intake and discharge tunnels.

3. Condensers, including condensate pumps, air and vacuum pumps, ejectors, unloading valves and vacuum breakers, expansion devices, and screens.

4. Generator hydrogen gas piping system and hydrogen detrainment equipment, and bulk hydrogen gas storage equipment.

5. Cooling system, including towers, pumps, tanks, and piping.

6. Cranes and hoists, including items wholly identified with items listed herein.

7. Excitation system, when identified with main generating units.

8. Fire extinguishing systems.

9. Foundations and settings, especially constructed for and not expected to outlast the apparatus for which provided.

10. Governors.

11. Lighting systems.

12. Lubricating systems, including gauges, filters, water separators, tanks, pumps, piping, and motors.

13. Mechanical meters, including gauges, recording instruments, sampling and testing equipment.

14. Piping-main steam, including connections between turbogenerator and condenser and between condenser and hotwell.

15. Piping-main steam, including connections from main throttle valve to turbine inlet.

16. Platforms, railings, steps, and gratings appurtenant to apparatus listed herein.

17. Pressure oil systems, including accumulators, pumps, piping, and motors.

18. Steelwork, specially constructed for apparatus listed herein.

19. Throttle and inlet valve.

20. Tunnels, intake and discharge, for condenser system, when not a part of structure, and water screens.

21. Turbogenerators-main, including turbine and generator, field rheostats and electric connections for self-excited units.

22. Water screens and motors.

23. Moisture separators for turbine steam.

24. Turbine lubricating oil, initial charge.

324 Accessory Electric Equipment

This account shall include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced by nuclear power, and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts. Such motors shall be included in the account in which the equipment with which they are associated is included.

Note: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.

2. Excitation system, including motor, turbine and dual-drive exciter sets and rheostats, storage batteries, and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats and special housing and protective screens.

3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, special housings and protective screens.

4. Station buses, including main, auxiliary, transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, starting transformers, current transformers, potential transformers, protective relays, storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station grounding system, fire-extinguishing system, and test equipment.

5. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, truck-type boards complete, cubicles, station supervisory control boards, generator and exciter signal stands, temperature recording devices, frequency-control equipment, master clocks, watt-hour meters and synchronoscope in the turbine room, station totalizing wattmeter, boiler-room load indicator equipment, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housing for batteries, protective screens, and doors.

Note: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

325 Miscellaneous Power Plant Equipment

This account shall include the cost installed of miscellaneous equipment in and about the nuclear generating plant devoted to general station use, which is not properly includible in any of the foregoing nuclear-power production accounts.

Items

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, and piping.

2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, and hoists with electric and mechanical connections.

3. Fire-extinguishing equipment for general station and site use.

4. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.

5. Locomotive cranes not includible elsewhere.

6. Locomotives not included elsewhere.

7. Marine equipment, including boats and barges.

8. Miscellaneous belts, pulleys, and countershafts.

9. Miscellaneous equipment, including atmospheric and weather recording devices, intrasite communication equipment, laboratory equipment, signal systems, callophones, emergency whistles and sirens, fire alarms, insect-control equipment, and other similar equipment.

10. Railway cars or special shipping containers not includible elsewhere.

11. Refrigerating systems, including compressors, pumps, and cooling coils.

12. Station maintenance equipment, including lathes, shapers, planers, drill presses, hydraulic presses, and grinders with motors, shafting, hangers, and pulleys.

13. Ventilating equipment, including items wholly identified with apparatus listed herein.

14. Station and area radiation monitoring equipment.

Note: When any item of equipment listed herein is wholly used in connection with equipment included in another account, its cost shall be included in such other account.

Hydraulic Production

330 Land and Land Rights

This account shall include the cost of land and land rights used in connection with hydraulic power generation. (See § 1767.16 (g).) It shall also include the cost of land and land rights used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above.

331 Structures and Improvements

This account shall include the cost, in place, of structures and improvements used in connection with hydraulic power generation. (See § 1767.16 (h).) It shall also include the cost, in place, of structures and improvements used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above.

332 Reservoirs, Dams, and Waterways

This account shall include the cost in place of facilities used for impounding, collecting, storage, diversion, regulation, and delivery of water used primarily for generating electricity. It shall also include the cost in place of facilities used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above. (See § 1767.16 (h)(3).)

Items

1. Bridges and culverts, when not a part of roads or railroads.

2. Clearing and preparing land.

3. Dams, including wasteways, spillways, flash boards, spillway gates with operating and control mechanisms, tunnels, gate houses, and fish ladders.

4. Dikes and embankments.

5. Electric system, including conductors, control system, transformers, and lighting fixtures.

6. Excavation, including shoring, bracing, bridging, refill, and disposal of excess excavated material.

7. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.

8. Intakes, including trash racks, rack cleaners, control gates and valves with operating mechanisms, and intake house when not a part of station structure.

9. Platforms, railings, steps, and gratings appurtenant to structures listed herein.

10. Power line wholly identified with items included herein.

11. Retaining walls.

12. Water conductors and accessories, including canals, tunnels, flumes, penstocks, pipe conductors, forebays, tailraces, navigation locks and operating mechanisms, water-hammer and surge tanks, and supporting trestles and structures.

13. Water storage reservoirs, including dams, flashboards, spillway gates and operating mechanisms, inlet and outlet tunnels, regulating valves and valve towers, silt and mud sluicing tunnels with valve or gate towers, and all other structures wholly identified with any of the foregoing items.

333 Water Wheels, Turbines and Generators

This account shall include the cost installed of water wheels and hydraulic turbines (from connection with penstock or flume to tailrace) and generators driven thereby devoted to the production of electricity by water power or for the production of power for industrial or other purposes, if the equipment used for such purposes is a part of the hydraulic power plant works.

Items

1. Exciter water wheels and turbines, including runners, gates, governors, pressure regulators, oil pumps, operating mechanisms, scroll cases, draft tubes, and draft-tube supports.

2. Fire-extinguishing equipment.

3. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.

4. Generator cooling system, including air cooling and washing apparatus, air fans and accessories, and air ducts.

5. Generators-main, a.c. or d.c., including field rheostats and connections for self-excited units and excitation system when identified with the generating unit.

6. Lighting systems.

7. Lubricating systems, including gauges, filters, tanks, pumps, and piping.

8. Main penstock valves and appurtenances, including main valves, control equipment, bypass valves and fittings, and other accessories.

9. Main turbines and water wheels, including runners, gates, governors, pressure regulators, oil pumps, operating mechanisms, scroll cases, draft tubes, and draft-tube supports.

10. Mechanical meters and recording instruments.

11. Miscellaneous water-wheel equipment, including gauges, thermometers, meters, and other instruments.

12. Platforms, railings, steps, and gratings appurtenant to apparatus listed herein.

13. Scroll case filling and drain system, including gates, pipe, valves, and fittings.

14. Water-actuated pressure-regulator system, including tanks and housings, pipes, valves, fittings and insulators, piers and anchorage, and excavation and backfill.

334 Accessory Electric Equipment

This account shall include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced by hydraulic power and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts, such motors being included in the account in which the equipment with which they are associated is included.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.

2. Excitation system, including motor, turbine, and dual-drive exciter sets and rheostats, storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special

supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats and special housings and protective screens.

3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, and special housings and protective screens.

4. Station buses, including main, auxiliary, transfer, synchronizing, and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors starting transformers, current transformers, potential transformers, protective relays, storage batteries, and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special fire-extinguishing system, and test equipment.

5. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted for mechanically connected, truck-type boards complete, cubicles, station supervisory control devices, frequency control equipment, master clocks, watt-hour meter, station totalizing watt-meter, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housings for batteries, protective screens, and doors.

Note A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electricity for the purpose of transmission or distribution.

Note B: When any item of equipment listed herein is used wholly to furnish power to equipment, it shall be included in such equipment account.

335 Miscellaneous Power Plant Equipment

This account shall include the cost installed of miscellaneous equipment in and about the hydroelectric generating plant which is devoted to general station use and is not properly includible in other hydraulic production accounts. It shall also include the cost of equipment used in connection with (1) the conservation of fish and wildlife, and (2) recreation. Separate subaccounts shall be maintained for each of the above.

Items

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, and piping.

2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, and hoists with electric and mechanical connections.

3. Fire-extinguishing equipment for general station use.

4. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.

5. Locomotive cranes not includible elsewhere.

6. Locomotives not includible elsewhere.

7. Marine equipment, including boats and barges.

8. Miscellaneous belts, pulleys, and countershafts.

9. Miscellaneous equipment, including atmospheric and weather indicating devices. Intrasite communication equipment, laboratory equipment, insect control equipment, signal systems, callophones, emergency whistles and sirens, fire alarms, and other similar equipment.

10. Railway cars, not includible elsewhere.

11. Refrigerating system, including compressors, pumps, and cooling coils.

12. Station maintenance equipment, including lathes, shapers, planers, drill presses, hydraulic presses, and grinders with motors, shafting, hangers, and pulleys.

13. Ventilating equipment, including items wholly identified with apparatus listed herein.

Note: When any item of equipment, listed herein, is used wholly in connection with equipment included in another account, its cost shall be included in such other account.

336 Roads, Railroads, and Bridges

This account shall include the cost of roads, railroads, trails, bridges, and trestles used primarily as production facilities. It also includes those roads necessary to connect the plant with highway transportation systems, except when such roads are dedicated to public use and maintained by public authorities.

Items

1. Bridges, including foundations, piers, girders, trusses, and flooring.

2. Clearing land.

3. Railroads, including grading, ballast, ties, rails, culverts, and hoists.

4. Roads, including grading, surfacing, and culverts.

5. Structures, constructed and maintained in connection with items listed herein.

6. Trails, including grading, surfacing, and culverts.

7. Trestles, including foundations, piers, girders, trusses, and flooring.

Note A: Roads intended primarily for connecting employees' houses with the power plant, and roads used primarily in connection with fish and wildlife, and recreation activities, shall not be included herein but in Account 331, Structures and Improvements.

Note B: The cost of temporary roads and bridges necessary during the period of construction but abandoned or dedicated to public use upon completion of the plant, shall not be included herein but shall be charged to the accounts appropriate for the construction.

Other Production

340 Land and Land Rights

This account shall include the cost of land and land rights used in connection with other power generation. (See § 1767.16 (g).)

341 Structures and Improvements

This account shall include the cost in place of structures and improvements used in connection with other power generation. (See § 1767.16 (h).)

342 Fuel Holders, Producers, and Accessories

This account shall include the cost installed of fuel handling and storage equipment used between the point of fuel delivery to the station and the intake pipe through which fuel is directly drawn to the engine, also the cost of gas producers and accessories devoted to the production of gas for use in prime movers driving main electric generators.

Items

1. Blower and fans.
2. Boilers and pumps.
3. Economizers
4. Exhauster outfits.
5. Flues and piping.
6. Pipe system.
7. Producers.
8. Regenerators.
9. Scrubbers.
10. Steam injectors.
11. Tanks for storage of oil and gasoline.
12. Vaporizers.

343 Prime Movers

This account shall include the cost installed of Diesel or other prime movers devoted to the generation of electric energy, together with their auxiliaries.

Items

1. Air-filtering system.
2. Belting, shafting, pulleys, and reduction gearing.
3. Cooling system, including towers, pumps, tanks, and piping.
4. Cranes and hoists, including items wholly identified with apparatus listed herein.
5. Engines, Diesel, gasoline, gas, or other internal combustion.
6. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.
7. Governors.
8. Ignition system.
9. Inlet valve.
10. Lighting systems.
11. Lubricating systems, including filters, tanks, pumps, and piping.
12. Mechanical meters, including gauges, recording instruments, sampling, and testing equipment.
13. Mufflers.
14. Piping.
15. Starting systems, compressed air, or other, including compressors and drives, tanks, piping, motors, boards and connections, and storage tanks.
16. Steelwork, specially constructed for apparatus listed herein.
17. Waste heat boilers and antifluctuators.

344 Generators

This account shall include the cost installed of Diesel or other power driven main generators.

Items

1. Cranes and hoists, including items wholly identified with such apparatus.
2. Fire-extinguishing equipment.
3. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
4. Generator cooling system, including air cooling and washing apparatus, air fans and accessories, and air ducts.
5. Generators-main, a.c. or d.c., including field rheostats and connections for self-excited units and excitation system when identified with the generating unit.
6. Lighting systems.
7. Lubricating system, including tanks, filters, strainers, pumps, piping, and coolers.
8. Mechanical meters and recording instruments.
9. Platforms, railings, steps, and gratings appurtenant to apparatus listed herein.

Note: If prime movers and generators are so integrated that it is not practical to classify them separately, the entire unit may be included in Account 344, Generators.

345 Accessory Electric Equipment

This account shall include the cost installed of auxiliary generating apparatus, conversion equipment, and equipment used primarily in connection with the control and switching of electric energy produced in other power generating stations, and the protection of electric circuits and equipment, except electric motors used to drive equipment included in other accounts. Such motors shall be included in the account in which the equipment with which it is associated is included.

Items

1. Auxiliary generators, including boards, compartments, switching equipment, control equipment, and connections to auxiliary power bus.
2. Excitation system, including motor, turbine and dual-drive exciter sets and rheostats, storage batteries and charging equipment, circuit breakers, panels and accessories, knife switches and accessories, surge arresters, instrument shunts, conductors and conduit, special supports for conduit, generator field and exciter switch panels, exciter bus tie panels, generator and exciter rheostats and special housings and protective screens.
3. Generator main connections, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, current transformers, potential transformers, protective relays, isolated panels and equipment, conductors and conduit, special supports for generator main leads, grounding switch, and special housing and protective screens.
4. Station control system, including station switchboards with panel wiring, panels with instruments and control equipment only, panels with switching equipment mounted or mechanically connected, trunk-type boards complete, cubicles, station supervisory control boards, generator and exciter signal stands, temperature-recording devices, frequency control equipment, master clocks, watt-hour meter, station totalizing wattmeter, storage batteries, panels and charging sets, instrument transformers for supervisory metering, conductors and conduit, special supports for conduit, switchboards, batteries, special housing for batteries, protective screens, and doors.
5. Station buses, including main, auxiliary, transfer, synchronizing and fault ground buses, including oil circuit breakers and accessories, disconnecting switches and accessories, operating mechanisms and interlocks, reactors and accessories, voltage regulators and accessories, compensators, resistors, starting transformers, current transformers, potential transformers, protective relays, storage batteries and charging equipment, isolated panels and equipment, conductors and conduit, special supports, special housings, concrete pads, general station ground system, special fire-extinguishing system, and test equipment.

Note A: Do not include in this account transformers and other equipment used for changing the voltage or frequency of electric energy for the purpose of transmission or distribution.

Note B: When any item of equipment listed herein is used wholly to furnish power to equipment included in another account, its cost shall be included in such other account.

346 Miscellaneous Power Plant Equipment

This account shall include the cost installed of miscellaneous equipment in and about the other power generating plant, devoted to general station use, and not properly includible in any of the foregoing other power production accounts.

Items

1. Compressed air and vacuum cleaning systems, including tanks, compressors, exhausters, air filters, and piping.
2. Cranes and hoisting equipment, including cranes, cars, crane rails, monorails, and hoists with electric and mechanical connections.
3. Fire-extinguishing equipment for general station use.
4. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
5. Miscellaneous equipment, including atmospheric and weather indicating devices, intrasite communication equipment, laboratory equipment, signal systems, callophones, emergency whistles and sirens, fire alarms, and other similar equipment.
6. Miscellaneous belts, pulleys, and countershafts.
7. Refrigerating systems including compressors, pumps, and cooling coils.
8. Station maintenance equipment, including lathes, shapers, planters, drill presses, hydraulic presses, and grinders with motors, shafting, hangers, or pulleys.
9. Ventilating equipment, including items wholly identified with apparatus listed herein.

Note: When any item of equipment, listed herein is used wholly in connection with equipment included in another account, its cost shall be included in such other account.

Transmission Plant

350 Land and Land Rights

This account shall include the cost of land and land rights used in connection with transmission operations. (See § 1767.16 (g).)

351 [Reserved]

352 Structures and Improvements

This account shall include the cost, in place, of structures and improvements used in connection with transmission operations. (See § 1767.16 (h).)

353 Station Equipment

This account shall include the cost installed of transforming, conversion, and switching equipment used for the purpose of changing the characteristics of electricity in connection with its transmission or for controlling transmission circuits.

Items

1. Bus compartments, concrete, brick, and sectional steel, including items permanently attached thereto.
2. Conduit, including concrete and iron duct runs not a part of a building.
3. Control equipment, including batteries, battery charging equipment, transformers, remote relay boards, and connections.
4. Conversion equipment, including transformers, indoor and outdoor, frequency changers, motor generator sets, rectifiers, synchronous converters, motors, cooling equipment, and associated connections.
5. Fences.
6. Fixed and synchronous condensers, including transformers, switching equipment, blowers, motors and connections.
7. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
8. General station equipment, including air compressors, motors, hoists, cranes, test equipment, and ventilating equipment.
9. Platforms, railings, steps, and gratings appurtenant to apparatus listed herein.
10. Primary and secondary voltage connections, including bus runs and supports, insulators, potheads, lightning arresters, cable and wire runs from and to outdoor connections or to manholes and the associated regulators, reactors, resistors, surge arresters, and accessory equipment.
11. Switchboards, including meters, relays, and control wiring.
12. Switching equipment, indoor and outdoor, including oil circuit breakers and operating mechanisms, truck switches, and disconnect switches.
13. Tools and appliances.

354 Towers and Fixtures

This account shall include the cost installed of towers and appurtenant fixtures used for supporting overhead transmission conductors.

Items

1. Anchors, guys, and braces.
2. Brackets.
3. Crossarms, including braces.
4. Excavation, backfill, and disposal of excess excavated material.
5. Foundations.
6. Guards.
7. Insulator pins and suspension bolts.
8. Ladder and steps.
9. Railings.
10. Towers.

355 Poles and Fixtures

This account shall include the cost installed of transmission line poles, wood, steel, concrete, or other material, together with appurtenant fixtures used for supporting overhead transmission conductors.

Items

1. Anchors, head arm and other guys, including guy guards, guy clamps, strain insulators, and pole plates.
2. Brackets.
3. Crossarms and braces.
4. Excavation and backfill, including disposal of excess excavated material.
5. Extension arms.
6. Gaining, roofing, stenciling, and tagging.
7. Insulator pins and suspension belts.
8. Paving.
9. Pole steps.
10. Poles, wood, steel, concrete, or other material.
11. Racks complete with insulators.
12. Reinforcing and stubbing.
13. Settings.
14. Shaving and painting.

356 Overhead Conductors and Devices

This account shall include the cost installed of overhead conductors and devices used for transmission purposes.

Items

1. Circuit breakers.
2. Conductors, including insulated and bare wires and cables.
3. Ground wires and ground clamps.
4. Insulators, including pin, suspension, and other types.
5. Lightning arresters.
6. Switches.
7. Other line devices.

357 Underground Conduit

This account shall include the cost installed of underground conduit and tunnels used for housing transmission cables or wires. (See § 1767.16 (n).)

Items

1. Conduit, concrete, brick or tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
2. Excavation, including shoring, bracing, bridging, backfill, and disposal of excess excavated material.
3. Foundations and settings specially constructed for and not expected to outlast the apparatus for which provided.
4. Lighting systems.
5. Manholes, concrete or brick, including iron or steel, frames and covers, hatchways, gratings, ladders, cable racks and hangers, permanently attached to manholes.
6. Municipal inspection.
7. Pavement disturbed, including cutting and replacing pavement, pavement base and sidewalks.
8. Permits.
9. Protection of street openings.
10. Removal and relocation of subsurface obstructions.
11. Sewer connections, including drains, traps, tide valves, and check valves.
12. Sumps, including pumps.
13. Ventilating equipment.

358 Underground Conductors and Devices

This account shall include the cost installed of underground conductors and devices used for transmission purposes.

Items

1. Armored conductors, buried, including insulators, insulating materials, splices, potheads, and trenching.
2. Armored conductors, submarine, including insulators, insulating materials, splices in terminal chambers, and potheads.
3. Cables in standpipe, including pothead and connection from terminal chamber of manhole to insulators on pole.
4. Circuit breakers.
5. Fireproofing, in connection with any items listed herein.
6. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections, and ventilating equipment.
7. Lead and fabric covered conductors, including insulators, compound filled, oil filled, or vacuum splices, and potheads.
8. Lightning arresters.
9. Municipal inspection.
10. Permits.

11. Protection of street openings.
12. Racking of cables.
13. Switches.
14. Other line devices.

359 Roads and Trails

This account shall include the cost of roads, trails, and bridges used primarily as transmission facilities.

Items

1. Bridges, including foundation piers, girders, trusses, and flooring.
2. Clearing land.
3. Roads, including grading, surfacing, and culverts.
4. Structures, constructed and maintained in connection with items included herein.
5. Trails, including grading, surfacing, and culverts.

Note: The cost of temporary roads, and bridges necessary during the period of construction but abandoned or dedicated to public use upon completion of the plant, shall be charged to the accounts appropriate for the construction.

Distribution Plant

360 Land and Land Rights

This account shall include the cost of land and land rights used in connection with distribution operations. (See § 1767.16 (g).)

Note: Do not include the cost of permits to erect poles, or towers or to trim trees in this account. (See Account 364, Poles, Towers and Fixtures, and Account 365, Overhead Conductors and Devices.)

361 Structures and Improvements

This account shall include the cost, in place, of structures and improvements used in connection with distribution operations. (See § 1767.16 (h).)

362 Station Equipment

This account shall include the cost installed of station equipment, including transformer banks, which are used for the purpose of changing the characteristics of electricity in connection with its distribution.

Items

1. Bus compartments, concrete, brick and sectional steel, including items permanently attached thereto.
2. Conduit, including concrete and iron duct runs not part of building.
3. Control equipment, including batteries, battery charging equipment, transformers, remote relay boards, and connections.
4. Conversion equipment, indoor and outdoor, frequency-changers, motor generator sets, rectifiers, synchronous converters, motors, cooling equipment, and associated connections.
5. Fences.
6. Fixed and synchronous condensers, including transformers, switching equipment, blowers, motors, and connections.
7. Foundations and settings, specially constructed for and not expected to outlast the apparatus for which provided.
8. General station equipment, including air compressors, motors, hoists, cranes, test equipment, and ventilating equipment.
9. Platforms, railings, steps, and gratings appurtenant to apparatus listed herein.
10. Primary and secondary voltage connections, including bus runs and supports, insulators, potheads, lightning arresters, cable and wire runs from and to outdoor connections or to manholes and the associated regulators, reactors, resistors, surge arresters, and accessory equipment.
11. Switchboards, including meters, relays, and control wiring.
12. Switching equipment, indoor and outdoor, including oil circuit breakers and operating mechanisms, truck switches, disconnect switches.

Note: The cost of rectifiers, series transformers, and other special station equipment devoted exclusively to street lighting service shall not be included in this account, but in Account 373, Street Lighting and Signal Systems.

363 Storage Battery Equipment

This account shall include the cost installed of storage battery equipment used for the purpose of supplying electricity to meet emergency or peak demands.

Items

1. Batteries, including elements, tanks, and tank insulators.
2. Battery room connections, including cable or bus runs and connections.
3. Battery room flooring, when specially laid for supporting batteries.
4. Charging equipment, including motor generator sets and other charging equipment and connections, and cable runs from generator or station bus to battery room connections.
5. Miscellaneous equipment, including instruments, and water stills.
6. Switching equipment, including endcell switches and connections, boards and panels, used exclusively for battery control, not part of general station switchboard.
7. Ventilating equipment, including fans and motors, louvers, and ducts not part of building.

Note: Storage batteries used for control and general station purposes shall not be included in this account but in the account appropriate for their use.

364 Poles, Towers and Fixtures

This account shall include the cost installed of poles, towers, and appurtenant fixtures used for supporting overhead distribution conductors and service wires.

Items

1. Anchors, head arm, and other guys, including guy guards, guy clamps, strain insulators, and pole plates.
2. Brackets.
3. Crossarms and braces.
4. Excavation and backfill, including disposal of excess excavated material.
5. Extension arms.
6. Foundations.
7. Guards.
8. Insulator pins and suspension bolts.
9. Paving.
10. Permits for construction.
11. Pole steps and ladders.
12. Poles, wood, steel, concrete, or other material.
13. Racks complete with insulators.
14. Railings.
15. Reinforcing and stubbing.
16. Settings.
17. Shaving, painting, gaining, roofing, stenciling, and tagging.
18. Towers.
19. Transformer racks and platforms.

365 Overhead Conductors and Devices

This account shall include the cost installed of overhead conductors and devices used for distribution purposes.

Items

1. Circuit breakers.
2. Conductors, including insulated and bare wires and cables.
3. Ground wires and clamps.
4. Insulators, including pin, suspension, and other types, and tie wire or clamps.
5. Lightning arresters.
6. Railroad and highway crossing guards.
7. Splices.
8. Switches.
9. Tree trimming, initial cost including the cost of permits therefor.
10. Other line devices.
11. Oil circuit reclosers (OCR).
12. Sectionalizers.
13. Labor costs for installation of OCRs and Sectionalizers, first only.

Note: The cost of conductors used solely for street lighting or signal systems shall not be included in this account but in Account 373, Street Lighting and Signal Systems.

366 Underground Conduit

This account shall include the cost installed of underground conduit and

tunnels used for housing distribution cables or wires.

Items

1. Conduit, concrete, brick and tile, including iron pipe, fiber pipe, Murray duct, and standpipe on pole or tower.
2. Excavation, including shoring, bracing, bridging, backfill, and disposal of excess excavated material.
3. Foundations and settings specially constructed for and not expected to outlast the apparatus for which constructed.
4. Lighting systems.
5. Manholes, concrete or brick, including iron or steel frames and covers, hatchways, gratings, ladders, cable racks, and hangers permanently attached to manholes.
6. Municipal inspection.
7. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
8. Permits.
9. Protection of street openings.
10. Removal and relocation of subsurface obstructions.
11. Sewer connections, including drains, traps, tide valves, and check valves.
12. Sumps, including pumps.
13. Ventilating equipment.

Note: The cost of underground conduit used solely for street lighting or signal systems shall be included in Account 373, Street Lighting and Signal Systems.

367 Underground Conductors and Devices

This account shall include the cost installed of underground conductors and devices used for distribution purposes.

Items

1. Armored conductors, buried, including insulators, insulating materials, splices, potheads, and trenching.
2. Armored conductors, submarine, including insulators, insulating materials, splices in terminal chamber, and potheads.
3. Cables in standpipe, including pothead and connection from terminal chamber or manhole to insulators on pole.
4. Circuit breakers.
5. Fireproofing, in connection with any items listed herein.
6. Hollow-core oil-filled cable, including straight or stop joints, pressure tanks, auxiliary air tanks, feeding tanks, terminals, potheads and connections.
7. Lead and fabric covered conductors, including insulators, compound-filled, oil-filled or vacuum splices, and potheads.
8. Lightning arresters.
9. Municipal inspection.
10. Permits.
11. Protection of street openings.
12. Racking of cables.
13. Switches.
14. Other line devices.

Note: The cost of underground conductors and devices used solely for street lighting or signal systems shall be included in Account 373, Street Lighting and Signal Systems.

368 Line Transformers

A. This account shall include the cost installed of overhead and underground distribution line transformers and pole-type and underground voltage regulators owned by the utility, for use in transforming electricity to the voltage at which it is to be used by the customer, whether actually in service or held in reserve.

B. When a transformer is permanently retired from service, the original installed cost thereof shall be credited to this account.

C. The records covering line transformers shall be so kept that the utility can furnish the number of transformers of various capacities in service and those in reserve, and the location and the use of each transfer.

Items

1. Installation, labor of (first installation only).
2. Transformer cut-out boxes.
3. Transformer lightning arresters.
4. Transformers, line and network.
5. Capacitors.
6. Network protectors.
7. Voltage regulators.

Note: The cost of removing and resetting line transformers shall not be charged to this account but to Account 583, Overhead Line Expenses, or Account 584, Underground Line Expenses, as appropriate. The cost of line transformers used solely for street lighting or signal systems shall be included in Account 373, Street Lighting and Signal Systems.

369 Services

This account shall include the cost installed of overhead and underground conductors leading from a point where wires leave the last pole of the overhead system or the distribution box or manhole, or the top of the pole of the distribution line, to the point of connection with the customer's outlet or wiring. Conduit used for underground service conductors shall be included herein.

Items

1. Brackets.
2. Cables and wires.
3. Conduit.
4. Insulators.
5. Municipal inspection.
6. Overhead to underground, including conduit or standpipe and conductor from last splice on pole to connection with customer's wiring.
7. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
8. Permits.
9. Protection of street openings.
10. Service switch.
11. Suspension wire.

370 Meters

A. This account shall include the cost installed of meters or devices and appurtenances thereto, for use in measuring the electricity delivered to its users, whether actually in service or held in reserve.

B. When a meter is permanently retired from service, the installed cost included herein shall be credited to this account.

C. The records covering meters shall be so kept that the utility can furnish information as to the number of meters of various capacities in service and in reserve as well as the location of each meter owned.

Items

1. Alternate current, watt-hour meters.
2. Current limiting devices.
3. Demand indicators.
4. Demand meters.
5. Direct current watt-hour meters.
6. Graphic demand meters.
7. Installation, labor of (first installation only).
8. Instrument transformers.
9. Maximum demand meters.
10. Meter badges and their attachments.
11. Meter boards and boxes.
12. Meter fittings, connections, and shelves (first set).
13. Meter switches and cut-outs.
14. Prepayment meters.
15. Protective devices.
16. Testing new meters.

Note A: This account shall not include meters for recording output of a generating station, or substation meters. It includes only those meters used to record energy delivered to customers.

Note B: The cost of removing and resetting meters shall be charged to Account 586, Meter Expenses.

371 Installations on Customers' Premises

This account shall include the cost installed of equipment on the customer's side of a meter when the utility incurs such cost and when the utility retains title to and assumes full responsibility for maintenance and replacement of such property. This account shall not include leased

equipment. (See Account 372, Leased Property on Customers' Premises.)

Items

1. Cable vaults.
2. Commercial lamp equipment.
3. Foundations and settings specially provided for equipment included herein.
4. Frequency changer sets.
5. Motor generator sets.
6. Motors.
7. Switchboard panels, high or low tension.
8. Wire and cable connections to incoming cables.

Note: Do not include in this account any costs incurred in connection with merchandising, jobbing, or contract work activities.

372 Leased Property on Customers' Premises

This account shall include the cost of electric motors, transformers, and other equipment on customers' premises (including municipal corporations), leased or loaned to customers, but not including property held for sale.

Note A: The cost of setting and connecting such appliances or equipment on the premises of customers and the cost of resetting or removal shall not be charged to this account but to operating expenses, Account 587, Customer Installations Expenses.

Note B: Do not include in this account any costs incurred in connection with merchandising, jobbing, or contract work activities.

373 Street Lighting and Signal Systems

This account shall include the cost installed of equipment used wholly for public street and highway lighting or traffic, fire alarm, police, and other signal systems.

Items

1. Armored conductors, buried or submarine, including insulators, insulating materials, splices, and trenching.
2. Automatic control equipment.
3. Conductors, overhead or underground, including lead or fabric covered, parkway cables, including splices, and insulators.
4. Lamps, arc, incandescent, or other types, including glassware, suspension fixtures, and brackets.
5. Municipal inspection.
6. Ornamental lamp posts.
7. Pavement disturbed, including cutting and replacing pavement, pavement base, and sidewalks.
8. Permits.
9. Posts and standards.
10. Protection of street openings.
11. Relays or time clocks.
12. Series contactors.
13. Switches.
14. Transformers, pole or underground.

General Plant

389 Land and Land Rights

This account shall include the cost of land and land rights used for utility purposes, the cost of which is not properly includible in other land and land rights accounts. (See § 1767.16 (g).)

390 Structures and Improvements

This account shall include the cost, in place, of structures and improvements used for utility purposes, the cost of which is not properly includible in other structures and improvements accounts. (See § 1767.16 (h).)

391 Office Furniture and Equipment

This account shall include the cost of office furniture and equipment owned by the utility and devoted to utility service, and not permanently attached to buildings, except the cost of such furniture and equipment which the utility elects to assign to other plant accounts on a functional basis.

Items

1. Bookcases and shelves.
2. Desks, chairs, and desk equipment.
3. Drafting-room equipment.
4. Filing, storage, and other cabinets.
5. Floor covering.
6. Library and library equipment.
7. Mechanical office equipment, such as accounting machines, and typewriters.
8. Safes.
9. Tables.

392 Transportation Equipment

This account shall include the cost of transportation vehicles used for utility purposes.

Items

1. Airplanes.
2. Automobiles.
3. Bicycles.
4. Electrical vehicles.
5. Motor trucks.
6. Motorcycles.
7. Repair cars or trucks.
8. Tractors and trailers.
9. Other transportation vehicles.

393 Stores Equipment

This account shall include the cost of equipment used for the receiving, shipping, handling, and storage of materials and supplies.

Items

1. Chain falls.
2. Counters.
3. Cranes (portable).
4. Elevating and stacking equipment (portable).
5. Hoists.
6. Lockers.
7. Scales.
8. Shelving.
9. Storage bins.
10. Trucks, hand and power driven.
11. Wheelbarrows.

394 Tools, Shop and Garage Equipment

This account shall include the cost of tools, implements, and equipment used in construction, repair work, general shops and garages and not specifically provided for or includible in other accounts.

Items

1. Air compressors.
2. Anvils.
3. Automobile repair shop equipment.
4. Battery charging equipment.
5. Belts, shafts and countershafts.
6. Boilers.
7. Cable pulling equipment.
8. Concrete mixers.
9. Drill presses.
10. Derricks.
11. Electric equipment.
12. Engines.
13. Forges.
14. Furnaces.
15. Foundations and settings specially constructed for and not expected to outlast the equipment for which provided.
16. Gas producers.
17. Gasoline pumps, oil pumps, and storage tanks.
18. Greasing tools and equipment.
19. Hoists.
20. Ladders.
21. Lathes.
22. Machine tools.
23. Motor-driven tools.
24. Motors.
25. Pipe threading and cutting tools.
26. Pneumatic tools.
27. Pumps.
28. Riveters.
29. Smithing equipment.
30. Tool racks.
31. Vises.
32. Welding apparatus.
33. Work benches.

395 Laboratory Equipment

This account shall include the cost installed of laboratory equipment used for general laboratory purposes and not specifically provided for or includible in other departmental or functional plant accounts.

Items

1. Ammeters.

2. Current batteries.
3. Frequency changers.
4. Galvanometers.
5. Inductometers.
6. Laboratory standard millivolt meters.
7. Laboratory standard volt meters.
8. Meter-testing equipment.
9. Millivolt meters.
10. Motor generator sets.
11. Panels.
12. Phantom loads.
13. Portable graphic ammeters, voltmeters, and wattmeters.
14. Portable loading devices.
15. Potential batteries.
16. Potentiometers.
17. Rotating standards.
18. Standard cell, reactance, resistor, and shunt.
19. Switchboards.
20. Synchronous timers.
21. Testing panels.
22. Testing resistors.
23. Transformers.
24. Voltmeters.
25. Other testing, laboratory, or research equipment not provided for elsewhere.

396 Power Operated Equipment

This account shall include the cost of power operated equipment used in construction or repair work exclusive of equipment includible in other accounts. Include, also, the tools and accessories acquired for use with such equipment and the vehicle on which such equipment is mounted.

Items

1. Air compressors, including driving unit and vehicle.
2. Back filling machines.
3. Boring machines.
4. Bulldozers.
5. Cranes and hoists.
6. Diggers.
7. Engines.
8. Pile drivers.
9. Pipe cleaning machines.
10. Pipe coating or wrapping machines.
11. Tractors-Crawler type.
12. Trenchers.
13. Other power operated equipment.

Note: It is intended that this account include only such large units as are generally self-propelled or mounted on movable equipment.

397 Communication Equipment

This account shall include the cost installed of telephone, telegraph, and wireless equipment for general use in connection with utility operations.

Items

1. Antennae.
2. Booths.
3. Cables.
4. Distributing boards.
5. Extension cords.
6. Gongs.
7. Hand sets, manual and dial.
8. Insulators.
9. Intercommunicating sets.
10. Loading coils.
11. Operators' desks.
12. Poles and fixtures used wholly for telephone or telegraph wire.
13. Radio transmitting and receiving sets.
14. Remote control equipment and lines.
15. Sending keys.
16. Storage batteries.
17. Switchboards.
18. Telautograph circuit connections.
19. Telegraph receiving sets.
20. Telephone and telegraph circuits.
21. Testing instruments.
22. Towers.
23. Underground conduit used wholly for telephone or telegraph wires and cable wires.

398 Miscellaneous Equipment

This account shall include the cost of equipment, and apparatus used in the utility operations, which is not includible in other accounts.

Items

1. Hospital and infirmary equipment.
2. Kitchen equipment.
3. Employees' recreation equipment.
4. Radios.
5. Restaurant equipment.
6. Soda fountains.
7. Operators' cottage furnishings.
8. Other miscellaneous equipment.

Note: Miscellaneous equipment of the nature indicated above wherever practicable, shall be included in the utility plant accounts on a functional basis.

399 Other Tangible Property

This account shall include the cost of tangible utility plant not provided for elsewhere.

§ 1767.21 Operating income.

The operating income accounts identified in this section shall be used by all REA borrowers.

Utility Operating Income

400 Operating Revenues
401 Operation Expense
402 Maintenance Expense
403 Depreciation Expense
403.1 Depreciation Expense—Steam Production Plant
403.2 Depreciation Expense—Nuclear Production Plant
403.3 Depreciation Expense—Hydraulic Production Plant
403.4 Depreciation Expense—Other Production Plant
403.5 Depreciation Expense—Transmission Plant
403.6 Depreciation Expense—Distribution Plant
403.7 Depreciation Expense—General Plant
404 Amortization of Limited-Term Electric Plant
405 Amortization of Other Electric Plant
406 Amortization of Electric Plant Acquisition Adjustments
407 Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs
407.3 Regulatory Debits
407.4 Regulatory Credits
408 Taxes Other than Income Taxes
408.1 Taxes—Property
408.2 Taxes—U.S. Social Security—Unemployment
408.3 Taxes—U.S. Social Security—F.I.C.A.
408.4 Taxes—State Social Security—Unemployment
408.5 Taxes—State Sales—Consumers
408.6 Taxes—Gross Revenue or Gross Receipts Tax
408.7 Taxes—Other
409 [Reserved]
409.1 Income Taxes, Utility Operating Income
409.2 Income Taxes, Other Income and Deductions
409.3 Income Taxes, Extraordinary Items
410 [Reserved]
410.1 Provision for Deferred Income Taxes, Utility Operating Income
410.2 Provision for Deferred Income Taxes, Other Income and Deductions
411 [Reserved]
411.1 Provision for Deferred Income Taxes—Credit, Utility Operating Income
411.2 Provision for Deferred Income Taxes—Credit, Other Income and Deductions
411.3 [Reserved]
411.4 Investment Tax Credit Adjustments, Utility Operations
411.5 Investment Tax Credit Adjustments, Nonutility Operations
411.6 Gains from Disposition of Utility Plant
411.7 Losses from Disposition of Utility Plant
411.8 Gains from Disposition of Allowances
411.9 Losses from Disposition of Allowances
412 Revenues from Electric Plant Leased to Others
413 Expenses of Electric Plant Leased to Others
414 Other Utility Operating Income

Utility Operating Income

400 Operating Revenues

There shall be shown under this caption the total amount included in the electric operating revenue accounts provided herein.

401 Operation Expense

There shall be shown under this caption the total amount included in the electric operation expense accounts provided herein. (See note to § 1767.17 (c).)

402 Maintenance Expense

There shall be shown under this caption the total amount included in the electric maintenance expense accounts provided herein.

403 Depreciation Expense

A. This account shall include the amount of depreciation expense for all classes of depreciable electric plant in service except such depreciation expense as is chargeable to clearing accounts or to Account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

B. The utility shall keep such records of property and property retirements as will reflect the service life of property which has been retired and aid in estimating probable service life by mortality, turnover, or other appropriate methods; and also such records as will reflect the percentage of salvage and costs of removal for property retired from each account, or subdivision thereof, for depreciable electric plant.

Note A: Depreciation expense applicable to property included in Account 104, Electric Plant Leased to Others, shall be charged to Account 413, Expenses of Electric Plant Leased to Others.

Note B: Depreciation expenses applicable to transportation equipment, shop equipment, tools, work equipment, power operated equipment, and other general equipment may be charged to clearing accounts as necessary in order to obtain a proper distribution of expenses between construction and operation.

Note C: Depreciation expense applicable to transportation equipment used for transportation of fuel from the point of acquisition to the unloading point shall be charged to Account 151, Fuel Stock.

C. Account 403 shall be subaccounted as follows:

403.1 Depreciation Expense—Steam Production Plant
403.2 Depreciation Expense—Nuclear Production Plant
403.3 Depreciation Expense—Hydraulic Production Plant
403.4 Depreciation Expense—Other Production Plant
403.5 Depreciation Expense—Transmission Plant
403.6 Depreciation Expense—Distribution Plant
403.7 Depreciation Expense—General Plant

404 Amortization of Limited-Term Electric Plant

This account shall include amortization charges applicable to amounts included in the electric plant accounts for limited-term franchises, licenses, patent rights, limited-term interests in land, and expenditures on leased property where the service life of the improvements is terminable by action of the lease. The charges to this account shall be such as to distribute the book cost of each investment as evenly as may be over the period of its benefit to the utility. (See Account 111, Accumulated Provision for Amortization of Electric Utility Plant.)

405 Amortization of Other Electric Plant

A. When authorized by REA, this account shall include charges for amortization of intangible or other electric utility plant which does not have a definite or terminable life and which is not subject to charges for depreciation expense.

B. This account shall be supported in such detail as to show the amortization applicable to each investment being amortized, together with the book cost of the investment and the period over which it is being written off.

406 Amortization of Electric Plant Acquisition Adjustments

This account shall be debited or credited, as appropriate, with amounts includible in operating expenses, pursuant to approval or order of REA, for the purpose of providing for the extinguishment of the amount in Account 114, Electric Plant Acquisition Adjustments.

407 Amortization of Property Losses, Unrecovered Plant and Recovery Study Costs

This account shall be charged with amounts credited to Account 182.1, Extraordinary Property Losses, when REA has authorized the amount in the latter account to be amortized by charges to electric operations.

407.3 Regulatory Debits

This account shall be debited, when appropriate, with the amounts credited to Account 254, Other Regulatory Liabilities, to record regulatory liabilities imposed on the utility by the ratemaking actions of regulatory agencies. This account shall also be debited, when appropriate, with the amounts credited to Account 182.3, Other Regulatory Assets, concurrent with the recovery of such amounts in rates.

407.4 Regulatory Credits

This account shall be credited, when appropriate, with the amounts debited to Account 182.3, Other Regulatory Assets, to establish regulatory assets. This account shall also be credited, when appropriate, with the amounts debited to Account 254, Other Regulatory Liabilities, concurrent with the return of such amounts to customers through rates.

408 Taxes Other Than Income Taxes

A. This account shall include the amounts of ad valorem, gross revenue, or gross receipts taxes, state unemployment insurance, franchise taxes, Federal excise taxes, social security taxes, and all other taxes assessed by Federal, state, county, municipal, or other local governmental authorities, except income taxes.

B. These accounts shall be charged in each accounting period with the amounts of taxes which are applicable thereto, with concurrent credits to Account 236, Taxes Accrued, or Account 165, Prepayments, as appropriate. When it is not possible to determine the exact amounts of taxes, the amounts shall be estimated and adjustments made in current accruals as the actual tax levies become known.

C. The charges to these accounts shall be made or supported so as to show the amount of each tax and the basis upon which each charge is made. In the case of a utility rendering more than one utility service, taxes of the kind includible in these accounts shall be assigned directly to the utility department the operation of which gave rise to the tax, in so far as practicable. Where the tax is not attributable to a specific utility department, it shall be distributed among the utility departments or nonutility operations on an equitable basis after appropriate study to determine such basis.

Note A: Special assessments for street and similar improvements shall be included in the appropriate utility plant or nonutility property account.

Note B: Taxes specifically applicable to construction shall be included in the cost of construction.

Note C: Gasoline and other sales taxes shall be charged as far as practicable to the same account as the materials on which the tax is levied.

Note D: Social security and other forms of payroll taxes shall be distributed to utility departments and to nonutility functions on a basis related to payroll. Amounts applicable to construction shall be charged to the appropriate plant account.

Note E: Interest on tax refunds or deficiencies shall not be included in these accounts but in Account 419, Interest and Dividend Income, or Account 431, Other Interest Expense, as appropriate.

D. Account 408 shall be subaccounted as follows:

408.1 Taxes—Property
408.2 Taxes—U.S. Social Security—Unemployment
408.3 Taxes—U.S. Social Security—F.I.C.A.
408.4 Taxes—State Social Security—Unemployment

408.5 Taxes—State Sales—Consumers
408.6 Taxes—Gross Revenue or Gross Receipts Tax
408.7 Taxes—Other

409 [Reserved]

Special Instructions

Accounts 409.1, 409.2, and 409.3

A. These accounts shall include the amount of local, state, and Federal income taxes on income properly accruable during the period covered by the income statement to meet the actual liability for such taxes. Concurrent credits for the tax accruals shall be made to Account 236, Taxes Accrued, and as the exact amounts of taxes become known, the current tax accruals shall be adjusted by charges or credits to these accounts.

B. The accruals for income taxes shall be apportioned among utility departments and to Other Income and Deductions so that, as nearly as practicable, each tax shall be included in the expenses of the utility department or Other Income and Deductions, the income from which gave rise to the tax. The tax effects relating to interest charges shall be allocated between utility and nonutility operations. The basis for this allocation shall be the ratio of net investment in utility plant to net investment in nonutility plant.

Note A: Taxes assumed by the utility on interest shall be charged to Account 431, Other Interest Expense.

Note B: Interest on tax refunds or deficiencies shall not be included in these accounts but in Account 419, Interest and Dividend Income, or Account 431, Other Interest Expense, as appropriate.

409.1 Income Taxes, Utility Operating Income

This account shall include the amount of those local, state, and Federal income taxes which relate to utility operating income. This account shall be maintained so as to allow ready identification of tax effects (both positive and negative) relating to Utility Operating Income (by department), Utility Plant Leased to Others, and Other Utility Operating Income.

409.2 Income Taxes, Other Income and Deductions

This account shall include the amount of those local, state, and Federal income taxes (both positive and negative), which relate to Other Income and Deductions.

409.3 Income Taxes, Extraordinary Items

This account shall include the amount of those local, state, and Federal income taxes (both positive and negative), which relate to Extraordinary Items.

410 [Reserved]

Special Instructions

Accounts 410.1, 410.2, 411.1, and 411.2

A. Accounts 410.1 and 410.2 shall be debited, and Accumulated Deferred Income Taxes, shall be credited, with amounts equal to any current deferrals of taxes on income or any allocations of deferred taxes originating in prior periods, as provided by the texts of Accounts 190, 281, 282, and 283. There shall not be netted against entries required to be made to these accounts any credit amounts appropriately includible in Account 411.1 or Account 411.2.

B. Accounts 411.1 or 411.2 shall be credited, and Accumulated Deferred Income Taxes, shall be debited, with amounts equal to any allocations of deferred taxes originating in prior periods or any current deferrals of taxes on income, as provided by the texts of Accounts 190, 281, 282, and 283. There shall not be netted against entries required to be made to these accounts any debit amounts appropriately includible in Account 410.1 or Account 410.2.

410.1 Provision for Deferred Income Taxes, Utility Operating Income

This account shall include the amounts of those deferrals of taxes and allocations of deferred taxes which relate to Utility Operating Income (by department).

410.2 Provision for Deferred Income Taxes, Other Income and Deductions

This account shall include the amounts of those deferrals of taxes and allocations of deferred taxes which relate to Other Income and Deductions.

411 [Reserved]

411.1 Provision for Deferred Income Taxes—Credit, Utility Operating Income

This account shall include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, which relate to Utility Operating Income (by department).

411.2 Provision for Deferred Income Taxes—Credit, Other Income and Deductions

This account shall include the amounts of those allocations of deferred taxes and deferrals of taxes, credit, which relate to Other Income and Deductions.

411.3 [Reserved]

Special Instructions

Accounts 411.4 and 411.5

A. Account 411.4 shall be debited with the amounts of investment tax credits related to electric utility property that are credited to Account 255, Accumulated Deferred Investment Tax Credits, by companies which do not apply the entire amount of the benefits of the investment credit as a reduction of the overall income tax expense in the year in which such credit is realized. (See Account 255).

B. Account 411.4 shall be credited with the amounts debited to Account 255 for proportionate amounts of tax credit deferrals allocated over the average useful life of electric utility property to which the tax credits relate or such lesser period of time as may be adopted and consistently followed by the company.

C. Account 411.5 shall be debited and credited as directed in paragraphs A and B, for investment tax credits related to nonutility property.

411.4 Investment Tax Credit Adjustments, Utility Operations

This account shall include the amount of those investment tax credit adjustments related to property used in Utility Operations (by department).

411.5 Investment Tax Credit Adjustments, Nonutility Operations

This account shall include the amount of those investment tax credit adjustments related to property used in Nonutility Operations.

411.6 Gains from Disposition of Utility Plant

This account shall include, as approved by REA, amounts relating to gains from the disposition of future use utility plant including amounts which were previously recorded in and transferred from Account 105, Electric Plant Held for Future Use, under the Provisions of Paragraphs B, C, and D thereof. Income taxes relating to gains recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

411.7 Losses from Disposition of Utility Plant

This account shall include, as approved by REA, amounts relating to losses from the disposition of future use utility plant including amounts which were previously recorded in and transferred from Account 105, Electric Plant Held for Future Use, under the provisions of Paragraphs B, C, and D thereof. Income taxes relating to losses

recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

411.8 Gains from Disposition of Allowances

This account shall be credited with the gain on the sale, exchange, or other disposition of allowances in accordance with § 1767.15 (u)(8). Income taxes relating to gains recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

411.9 Losses from Disposition of Allowances

This account shall be debited with the loss on the sale, exchange, or other disposition of allowances in accordance with § 1767.15 (u)(8). Income taxes relating to losses recorded in this account shall be recorded in Account 409.1, Income Taxes, Utility Operating Income.

412 Revenues from Electric Plant Leased to Others

This account shall include revenues from electric property constituting a distinct operating unit or system leased by the utility to others, and which property is properly includible in Account 104, Electric Plant Leased to Others.

Note: Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.1, Income Taxes, Utility Operating Income, as appropriate.

413 Expenses of Electric Plant Leased to Others

A. This account shall include expenses from electric property constituting a distinct operating unit or system leased by the utility to others, and which property is properly includible in Account 104, Electric Plant Leased to Others.

B. The detail of expenses shall be kept or supported so as to show separately the following:

1. Operation.
2. Maintenance.
3. Depreciation.
4. Amortization.

Note: Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.1, Income Taxes, Utility Operating Income, as appropriate.

414 Other Utility Operating Income

A. This account shall include the revenues received and expenses incurred in connection with the operations of utility plant, the book cost of which is included in Account 118, Other Utility Plant.

B. The expenses shall include every element of cost incurred in such operations, including depreciation, rents, and insurance.

Note: Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.1, Income Taxes, Utility Operating Income, as appropriate.

§ 1767.22 Other income and deductions.

The other income and deductions accounts identified in this section shall be used by all REA borrowers.

Other Income and Deductions

415 Revenues from Merchandising, Jobbing, and Contract Work
416 Costs and Expenses of Merchandising, Jobbing, and Contract Work
417 Revenues from Nonutility Operations
417.1 Expenses of Nonutility Operations
418 Nonoperating Rental Income
418.1 Equity in Earnings of Subsidiary Companies
419 Interest and Dividend Income
419.1 Allowance for Funds Used During Construction
420 Investment Tax Credits
421 Miscellaneous Nonoperating Income
421.1 Gain on Disposition of Property
421.2 Loss on Disposition of Property
422 Nonoperating Taxes
423 Generation and Transmission Cooperative Capital Credits
424 Other Capital Credits and Patronage Capital Allocations
425 Miscellaneous Amortization
426 [Reserved]
426.1 Donations
426.2 Life Insurance
426.3 Penalties
426.4 Expenditures for Certain Civic, Political, and Related Activities
426.5 Other Deductions

Other Income and Deductions

415 Revenues from Merchandising, Jobbing and Contract Work

A. This account shall include all revenues derived from the sale of merchandise and jobbing or contract work, including any profit or commission accruing to the utility on jobbing work performed by it as agent under contracts whereby it does jobbing work for another for a stipulated profit or commission. Interest related income from installment sales shall be recorded in Account 419, Interest and Dividend Income.

B. Records in support of this account shall be so kept as to permit ready summarization of revenues by such major items as are feasible.

Note: The classification of revenues of merchandising, jobbing, and contract work as nonoperating, and thus included in this account, is for accounting purposes. It does not preclude consideration of justification to the contrary for ratemaking or other purposes.

Items

1. Revenues from sale of merchandise and from jobbing and contract work.
2. Discounts and allowances made in settlement of bills for merchandise and jobbing work.

416 Costs and Expenses of Merchandising, Jobbing and Contract Work

A. This account shall include all expenses derived from the sale of merchandise and jobbing or contract work.

B. Records in support of this account shall be so kept as to permit ready summarization of costs and expenses by such major items as are feasible.

Note: The classification of costs and expenses of merchandising, jobbing, and contract work as nonoperating, and thus included in this account, is for accounting purposes. It does not preclude consideration of justification to the contrary for ratemaking or other purposes.

Items

Labor:

1. Canvassing and demonstrating appliances in homes and other places for the purpose of selling appliances.
2. Demonstrating and selling activities in sales rooms.
3. Installing appliances on customer premises where such work is done only for purchasers of appliances from the utility.
4. Installing wire, piping, or other property work, on a jobbing or contract basis.
5. Preparing advertising materials for appliance sales purposes.
6. Receiving and handling customer orders for merchandise or for jobbing services.
7. Cleaning and tidying sales rooms.
8. Maintaining display counters and other equipment used in merchandising.
9. Arranging merchandise in sales rooms and decorating display windows.
10. Reconditioning repossessed appliances.
11. Bookkeeping and other clerical work in connection with merchandise and jobbing activities.
12. Supervising merchandise and jobbing operations.
13. Advertising in newspapers, periodicals, radio, and television.
14. Cost of merchandise sold and of materials used in jobbing work.
15. Stores expenses on merchandise and jobbing stocks.
16. Fees and expenses of advertising and commercial artists' agencies.
17. Printing booklets, dodgers, and other advertising data.
18. Premiums given as inducement to buy appliances.
19. Light, heat, and power.
20. Depreciation on equipment used primarily for merchandise and jobbing operations.

21. Rent of sales rooms or of equipment.
22. Transportation expense in delivery and pick-up of appliances by utility's facilities or by others.
23. Stationery and office supplies and expenses.
24. Losses from uncollectible merchandise and jobbing accounts.

417 Revenues from Nonutility Operations

This account shall include revenues applicable to operations which are nonutility in character but nevertheless constitute a distinct operating activity of the enterprise as a whole, such as the operation of an ice department where applicable statutes do not define such operation as a utility, or the operation of a servicing organization for furnishing supervision, management, engineering, and similar services to others.

Note: Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.2, Income Taxes, Other Income and Deductions, as appropriate.

417.1 Expenses of Nonutility Operations

A. This account shall include expenses applicable to operations which are nonutility in character but nevertheless constitute a distinct operating activity of the enterprise as a whole, such as the operation of an ice department where applicable statutes do not define such operation as a utility, or the operation of a servicing organization for furnishing supervision, management, engineering, and similar services to others.

B. The expenses shall include all elements of costs incurred in such operations, and the accounts shall be maintained so as to permit ready summarization as follows:

1. Operation.
2. Maintenance.
3. Rents.
4. Depreciation.
5. Amortization.

Note: Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.2, Income Taxes, Other Income and Deductions, as appropriate.

418 Nonoperating Rental Income

A. This account shall include all rent revenues and related expenses of land, buildings, or other property included in Account 121, Nonutility Property, which is not used in operations covered by Account 417 or Account 417.1.

B. The expenses shall include all elements of costs incurred in the ownership and rental of property and the accounts shall be maintained so as to permit ready summarization as follows:

1. Operation.
2. Maintenance.
3. Rents.
4. Depreciation.
5. Amortization.

Note: Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.2, Income Taxes, Other Income and Deductions, as appropriate.

418.1 Equity in Earnings of Subsidiary Companies

This account shall include the utility's equity in the earnings or losses of subsidiary companies for the year.

419 Interest and Dividend Income

A. This account shall include interest revenues on securities, loans, notes, advances, special deposits, tax refunds, and all other interest-bearing assets, and dividends on stocks of other companies, whether the securities on which the interest and dividends are received are carried as investments or included in sinking or other special fund accounts.

Note A: Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.2, Income Taxes, Other Income and Deductions, as appropriate.

Note B: Interest accrued, the payment of which is not reasonably assured, dividends receivable which have not been declared or guaranteed, and interest or dividends upon reacquired securities issued or assumed by the utility shall not be credited to this account.

419.1 Allowance for Funds Used During Construction

This account shall include concurrent credits for allowance for funds other than borrowed funds used for construction purposes during the period of construction, based upon a reasonable rate. (See § 1767.16 (c)(17).)

420 Investment Tax Credits

This account shall be credited as follows with investment tax credit amounts not passed on to customers:

1. By amounts equal to debits to Account 411.4, Investment Tax Credit Adjustments, Utility Operations, and Account 411.5, Investment Tax Credit Adjustments, Nonutility Operations, for investment tax credits used in calculating income taxes for the year when the company's accounting provides for non-deferral of all or a portion of such credits.

2. By amounts equal to debits to Account 255, Accumulated Deferred Investment Tax Credits, for proportionate amounts of tax credit deferrals allocated over the average useful life of the property to which the tax credits relate, or such lesser period of time as may be adopted and consistently used by the company.

421 Miscellaneous Nonoperating Income

This account shall include all revenue and expense items, except taxes properly includible in the income account, not provided for elsewhere. Related taxes shall be recorded in Account 408, Taxes Other Than Income Taxes, or Account 409.2, Income Taxes, Other Income and Deductions, as appropriate.

Items

1. Profit on sale of timber. (See § 1767.16 (g)(3).)
2. Profits from operations of others realized by the utility under contracts.
3. Gains on disposition of investments. Also, gains on reacquisition and resale or retirement of the utility's debt securities when the gain is not amortized or used by a jurisdictional regulatory agency to reduce embedded debt cost in establishing rates. (See § 1767.15 (q).)

421.1 Gain on Disposition of Property

This account shall be credited with the gain on the sale, conveyance, exchange, or transfer of utility or other property to another. Amounts relating to gains on land and land rights held for future use recorded in Account 105, Electric Plant Held for Future Use, will be accounted for as prescribed in Paragraphs B, C, and D thereof. (See § 1767.16 (e)(6), (g)(5), and (j)(5).) Income taxes on gains recorded in this account shall be recorded in Account 409.2, Income Taxes, Other Income and Deductions.

421.2 Loss on Disposition of Property

This account shall be charged with the loss on the sale, conveyance, exchange, or transfer of utility or other property to another. Amounts relating to losses on land and land rights held for future use recorded in Account 105, Electric Plant Held for Future Use, will be accounted for as prescribed in Paragraphs B, C, and D thereof. (See § 1767.16 (e)(6), (g)(5), and (j)(5).) The reduction in income taxes relating to losses recorded in this account shall be recorded in Account 409.2, Income Taxes, Other Income and Deductions.

422 Nonoperating Taxes

This account shall be charged with taxes relating to nonoperating income.

423 Generation and Transmission Cooperative Capital Credits

This account shall be credited with the annual capital furnished the power supply cooperative through payment of power bills. The amount of capital furnished the power supply cooperative should be recorded in the applicable year even though, in most cases, the power supplier's notice of the allocation will not have been received until after the close of the year to which it relates.

424 Other Capital Credits and Patronage Capital Allocations

This account shall be credited with the capital furnished in connection with patronage of cooperative or mutual-type service organization such as CFC and other financing cooperatives, and insurance, oil product, telephone, and data processing cooperatives. This account should be credited in the year in which the notice of the capital credit or patronage capital allocation is received.

425 Miscellaneous Amortization

This account shall include amortization charges not includible in other accounts which are properly deductible in determining the income of the utility before interest charges. Charges includible herein, if significant in amount, must be in accordance with an orderly and systematic amortization program.

Items

1. Amortization of utility plant acquisition adjustments, or of intangibles included in utility plant in service when not authorized to be included in utility operating expenses by REA.

2. Other miscellaneous amortization charges allowed to be included in this account by REA.

426 [Reserved]

Special Instructions

Accounts 426.1, 426.2, 426.3, 426.4, and 426.5

These accounts shall include miscellaneous expense items which are nonoperating in nature but which are properly deductible before determining total income before interest charges.

Note: The classification of expenses as nonoperating and their inclusion in these accounts is for accounting purposes. It does not preclude REA consideration of proof to the contrary for ratemaking or other purposes.

426.1 Donations

This account shall include all payments or donations for charitable, social, or community welfare purposes.

426.2 Life Insurance

This account shall include all payments for life insurance of officers and employees where the company is the beneficiary (net premiums less the increase in the cash surrender value of policies.)

426.3 Penalties

This account shall include payments by the company for penalties or fines for violation of any regulatory statutes by the company or its officials.

426.4 Expenditures for Certain Civic, Political, and Related Activities

This account shall include expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances) or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials, but shall not include such expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the reporting utility's existing or proposed operations.

426.5 Other Deductions

This account shall include other miscellaneous expenses which are nonoperating in nature, but which are properly deductible before determining total income before interest charges.

Items

1. Loss relating to investments in securities written-off or written-down.
2. Loss on sale of investments.
3. Loss on reacquisition, resale, or retirement of the utility's debt securities, when the loss is not amortized and used by a jurisdictional regulatory agency to increase embedded debt cost in establishing rates. (See § 1767.15 (q).)
4. Preliminary survey and investigation expenses related to abandoned projects, when not written-off to the appropriate operating expense account.
5. Costs of preliminary abandonment costs recorded in Account 182.1, Extraordinary Property Losses, and Account 182.2, Unrecovered Plant and Regulatory Study Costs, not allowed to be amortized to Account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs.

§ 1767.23 Interest charges.

The interest charges accounts identified in this section shall be used by all REA borrowers.

Interest Charges

427 Interest on Long-Term Debt
427.3 Interest Charged to Construction—Credit
428 Amortization of Debt Discount and Expense
428.1 Amortization of Loss on Reacquired Debt
429 Amortization of Premium on Debt—Credit
429.1 Amortization of Gain on Reacquired Debt—Credit
430 Interest on Debt to Associated Companies
431 Other Interest Expense
432 Allowance for Borrowed Funds Used During Construction—Credit

Interest Charges

427 Interest on Long-Term Debt

A. This account shall include the amount of interest on outstanding long-term debt issued or assumed by the utility, the liability for which included in Account 221, Bonds, or Account 224, Other Long-Term Debt.

B. This account shall be so kept or supported as to show the interest accruals on each class and series of long-term debt.

Note: This account shall not include interest on nominally issued or nominally outstanding long-term debt, including securities assumed.

427.3 Interest Charged to Construction—Credit

This account shall include concurrent credits for interest charged to construction based upon the net cost for the period of construction of borrowed funds used for construction purposes.

428 Amortization of Debt Discount and Expense

A. This account shall include the amortization of unamortized debt discount and expense on outstanding long-term debt. Amounts charged to this account shall be credited concurrently to Account 181, Unamortized Debt Expense, and Account 226, Unamortized Discount on Long-Term Debt—Debit.

B. This account shall be so kept or supported as to show the debt discount and expense on each class and series of long-term debt.

428.1 Amortization of Loss on Reacquired Debt

A. This account shall include the amortization of the losses on reacquisition of debt. Amounts charged to this account shall be credited concurrently to Account 189, Unamortized Loss on Reacquired Debt.

B. This account shall be maintained so as to allow ready identification of the loss amortized applicable to each class and series of long-term debt reacquired. (See § 1767.15 (q).)

429 Amortization of Premium on Debt—Credit

A. This account shall include the amortization of unamortized net premium on outstanding long-term debt. Amounts credited to this account shall be charged concurrently to Account 225, Unamortized Premium on Long-Term Debt.

B. This account shall be so kept or supported as to show the premium on each class and series of long-term debt.

429.1 Amortization of Gain on Reacquired Debt—Credit

A. This account shall include the amortization of the gains realized from reacquisition of debt. Amounts credited to this account shall be charged concurrently to Account 257, Unamortized Gain on Reacquired Debt.

B. This account shall be maintained so as to allow ready identification of the amortized gains applicable to each class and series of long-term debt reacquired. (See § 1767.15 (q).)

430 Interest on Debt to Associated Companies

A. This account shall include the interest accrued on amounts included in Account 223, Advances from Associated Companies, and on all other obligations to associated companies.

B. The records supporting the entries to this account shall be so kept as to show to whom the interest is to be paid, the period covered by the accrual, the rate of interest, and the principal amount of the advances or other obligations on which the interest is accrued.

431 Other Interest Expense

This account shall include all interest charges not provided for elsewhere.

Items

1. Interest on notes payable on demand or maturing one year or less from date and on open accounts, except notes and accounts with associated companies.

2. Interest on customers' deposits.

3. Interest on claims and judgments, tax assessments, and assessments for public improvements past due.

4. Income and other taxes levied upon bondholders of the utility and assumed by it.

432 Allowance for Borrowed Funds Used During Construction—Credit

This account shall include concurrent credits for allowance for borrowed funds used during construction, not to exceed amounts computed in accordance with the formula prescribed in § 1767.16 (c)(17).

§ 1767.24 Extraordinary items.

The extraordinary items accounts identified in this section shall be used by all REA borrowers.

Extraordinary Items

434 Extraordinary Income
435 Extraordinary Deductions
435.1 Cumulative Effect on Prior Years of a Change in Accounting Principle

Extraordinary Items

434 Extraordinary Income

This account shall be credited with nontypical, noncustomary, infrequently recurring gains which would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 409.3, Income Taxes, Extraordinary Items. (See § 1767.15 (g).)

435 Extraordinary Deductions

This account shall be debited with nontypical, noncustomary, infrequently recurring losses which would significantly distort the current year's income computed before extraordinary items, if reported other than as extraordinary items. Income tax relating to the amounts recorded in this account shall be recorded in Account 409.3, Income Taxes, Extraordinary Items. (See § 1767.15 (f).)

435.1 Cumulative Effect on Prior Years of a Change in Accounting Principle

This account shall include the cumulative effect on margins of prior periods as a result of a change in accounting principle from one that is no longer generally accepted to one that is generally accepted.

§ 1767.25 Retained earnings.

The retained earnings accounts identified in this section shall be used by all REA borrowers.

Retained Earnings

433 [Reserved]
436 [Reserved]
437 [Reserved]
438 [Reserved]
439 [Reserved]

Retained Earnings

433 [Reserved]

436 [Reserved]

437 [Reserved]

438 [Reserved]

439 [Reserved]

§ 1767.26 Operating revenue.

The operating revenue accounts identified in this section shall be used by all REA borrowers.

Operating Revenue

Sales of Electricity

440 Residential Sales
440.1 Residential Sales—Excluding Seasonal
440.2 Residential Sales—Seasonal
441 Irrigation Sales
442 Commercial and Industrial Sales
442.1 Commercial and Industrial Sales—1000 kVA or Less
442.2 Commercial and Industrial Sales—Over 1000 kVA
444 Public Street and Highway Lighting
445 Other Sales to Public Authorities
446 Sales to Railroads and Railways
447 Sales for Resale
447.1 Sales for Resale—REA Borrowers
447.2 Sales for Resale—Other
448 Interdepartmental Sales
449.1 Provision for Rate Refunds

Other Operating Revenues

450 Forfeited Discounts
451 Miscellaneous Service Revenues
453 Sales of Water and Water Power
454 Rent from Electric Property
455 Interdepartmental Rents
456 Other Electric Revenues

Operating Revenue

Sales of Electricity

440 Residential Sales

A. This account shall include the net billing for electricity supplied for residential or domestic purposes.

Note: When electricity supplied through a single meter is used for both residential and commercial purposes, the total revenue shall be included in this account, or Account 442, Commercial and Industrial Sales, according to the rate schedule that is applied. If the same rate schedules apply to residential and commercial and industrial service, classification shall be made according to principal use.

B. Account 440 shall be subaccounted as follows:

440.1 Residential Sales—Excluding Seasonal
440.2 Residential Sales—Seasonal

440.1 Residential Sales—Excluding Seasonal

A. This account shall include the net billing for electricity supplied for residential and domestic purposes.

B. This account shall also include net billings for single phase service to schools, churches, lodges, and other public buildings.

C. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available.

Note: Net billings for multiphase service to schools, churches, lodges, and other public buildings shall be included in the appropriate subaccount of Account 442, Commercial and Industrial Sales.

440.2 Residential Sales—Seasonal

This account shall include the net billings for electricity supplied for residential and domestic purposes to seasonal consumers.

441 Irrigation Sales

This account shall include the net billings for electricity supplied for irrigation pumping. It need not be used unless such service is provided under a special irrigation rate.

442 Commercial and Industrial Sales

A. This account shall include the net billing for electricity supplied to customers for commercial and industrial purposes.

Note A: If the utility classifies large commercial and industrial customers and related revenues on a lesser basis than 1000 kilowatts of demand, or segregates industrial customers and related revenues according to a recognized definition of an industrial customer, such classifications are acceptable in lieu of those otherwise required by the text of this account on the basis of 1000 kilowatts of demand.

Note B: When electricity supplied through a single meter is used for both commercial and residential purposes, the total revenue shall be included in this account, or Account 440, Residential Sales, according to the rate schedule that is applied. If the same rate schedules apply to residential and commercial and industrial service, classification shall be made according to principal use.

B. Account 442 shall be subaccounted as follows:

442.1 Commercial and Industrial Sales—1000 kVA or Less
442.2 Commercial and Industrial Sales—Over 1000 kVA

442.1 Commercial and Industrial Sales—1000 kVA or Less

A. This account shall include the net billing for electricity supplied to consumers for commercial and industrial purposes requiring transformer capacity of 1000 kVA or less.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available.

Note: When electricity supplied through a single meter is used for both commercial and residential purposes, the total revenue shall be included in this account or in Account 440, Residential Sales, based upon primary use.

442.2 Commercial and Industrial Sales—Over 1000 kVA

A. This account shall include the net billing for electricity supplied to consumers for commercial and industrial purposes requiring transformer capacity in excess of 1000 kVA.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received under each rate schedule shall be readily available.

444 Public Street and Highway Lighting

A. This account shall include the net billing for electricity supplied and services rendered for the purposes of lighting streets, highways, parks, and other public places or for traffic or signal system service, for municipalities or other divisions or agencies of state of Federal Governments.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received from each customer shall be readily available. In addition, the records shall be maintained so as to show the revenues from (1) contracts which include both electricity and services, and (2) contracts which include sales of electricity only.

445 Other Sales to Public Authorities

A. This account shall include the net billing for electricity supplied to municipalities or divisions or agencies of Federal or state governments, under special contracts or agreements or service classifications applicable only to public authorities, except such revenues as are includible in Account 444 and Account 447.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenues received from each customer.

446 Sales to Railroads and Railways

A. This account shall include the net billing for electricity supplied to railroads and interurban and street railways, for general railroad use, including the propulsion of cars or locomotives, where such electricity is supplied under separate and distinct rate schedules.

B. Records shall be maintained so that the quantity of electricity sold and the revenue received from each customer shall be readily available.

Note: Revenues from incidental use of electricity furnished under a contract for propulsion of cars or locomotives shall be included herein.

447 Sales for Resale

A. This account shall include the net billing for electricity supplied to other electric utilities or to public authorities for resale purposes.

Note: Revenues from electricity supplied to other utilities for use by them and not for distribution, shall be included in Account 442, Commercial and Industrial Sales, unless supplied under the same contracts as and not readily separable from revenues includible in this account.

B. Account 447 shall be subaccounted as follows:

447.1 Sales for Resale—REA Borrowers
447.2 Sales for Resale—Other

447.1 Sales for Resale—REA Borrowers

A. This account shall include the net billing for electricity supplied to REA borrowers for resale.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenue received from each customer.

Note: Revenues from electricity supplied to other utilities for use by them and not for distribution, shall be included in Account 442, Commercial and Industrial Sales, unless supplied under the same contract as and not readily separable from revenues includible in this account.

447.2 Sales for Resale—Other

A. This account shall include the net billing for electricity supplied for resale to utilities not financed by REA.

B. Records shall be maintained so as to show the quantity of electricity sold and the revenue received from each customer.

Note: Revenues from electricity supplied to other utilities for use by them and not for distribution, shall be included in Account 442, Commercial and Industrial Sales, unless supplied under the same contract as and not readily separable from revenues includible in this account.

448 Interdepartmental Sales

A. This account shall include amounts charged by the electric department at tariff or other specified rates for electricity supplied by it to other utility departments.

B. Records shall be maintained so that the quantity of electricity supplied each other department and the charges therefor shall be readily available.

449.1 Provision for Rate Refunds

A. This account shall be charged with provisions for the estimated pretax effects on net income of the portions of amounts being collected subject to refund which are estimated to be required to be refunded. Such provisions shall be credited to Account 229, Accumulated Provision for Rate Refunds.

B. This account shall also be charged with amounts refunded when such amounts had not been previously accrued.

C. Income tax effects relating to the amounts recorded in this account shall be recorded in Account 410.1, Provision for Deferred Income Taxes, Utility Operating Income, or Account 411.1, Provision for Deferred Income Taxes—Credit, Utility Operating Income, as appropriate.

Other Operating Revenues

450 Forfeited Discounts

This account shall include the amount of discounts forfeited or additional charges imposed because of the failure of customers to pay their electric bills on or before a specified date.

451 Miscellaneous Service Revenues

This account shall include revenues for all miscellaneous services and charges billed to customers which are not specifically provided for in other accounts.

Items

1. Fees for changing, connecting, or disconnecting service.
2. Profit on maintenance of appliances, wiring, piping, or other installations on customers' premises.
3. Net credit or debit (cost less net salvage and less payment from customers) on closing of work orders for plant installed for temporary service of less than one year. (See Account 185, Temporary Facilities.)
4. Recovery of expenses in connection with current diversion cases (billing for the electricity consumed shall be included in the appropriate electric revenue account).

453 Sales of Water and Water Power

A. This account shall include revenues derived from the sale of water for irrigation, domestic, industrial, or other uses or for the development by others of water power or for headwater benefits; also, revenues derived from furnishing water power for mechanical purposes when the investment in the property used in supplying such water or water power is carried as electric plant in service.

B. The records for this account shall be kept in such manner as to permit an analysis of the rates charged and the purposes for which the water was used.

454 Rent from Electric Property

A. This account shall include rents received for the use by others of land, buildings, and other property devoted to electric operations by the utility.

B. When property owned by the utility is operated jointly with others under a definite arrangement for apportioning the actual expenses among the parties to the arrangement, any amount received by the utility for interest or return or in reimbursement of taxes or depreciation on the property shall be credited to this account.

Note: Do not include in this account rents from property constituting an operating unit or system. (See Account 412, Revenues from Electric Plant Leased to Others.)

455 Interdepartmental Rents

This account shall include rents credited to the electric department on account of rental charges made against other departments (gas, water, etc.) of the utility. In the case of property operated under a definite arrangement to allocate the costs among the departments using the property, any reimbursement to the electric department for interest or return and depreciation and taxes shall be credited to this account.

456 Other Electric Revenues

This account shall include revenues derived from electric operations not includible in any of the foregoing accounts. It shall also include, in a separate subaccount, revenues received from operation of fish and wildlife and recreation facilities whether operated by the company or by contract concessionaires, such as revenues from leases or rentals of land for cottages, homes, or campsites.

Items

1. Commission on sale or distribution of electricity of others when sold under rates filed by such others.
2. Compensation for minor or incidental services provided for others such as customer billing, and engineering.
3. Profit or loss on the sale of material and supplies not ordinarily purchased for resale and not handled through merchandising and jobbing accounts.
4. Sale of steam, but not including sales made by a steamheating department or transfers of steam under joint facility operations.
5. Revenues from transmission of electricity of others over transmission facilities of the utility.
6. Include in a separate subaccount, revenues in payment for rights and/or benefits received from others which are realized through research, development, and demonstration ventures. In the event the amounts received are so large as to distort revenues for the year in which received (5 percent of net income before application of the benefit), the amounts shall be credited to Account 253, Other Deferred Credits, and amortized by credits to this account over a period not to exceed 5 years.

§ 1767.27 Operation and maintenance expense.

The operation and maintenance expense accounts identified in this section shall be used by all REA borrowers.

Operation and Maintenance Expense Accounts

Power Production Expenses

Steam Power Generation

(Operation)

500 Operation Supervision and Engineering
501 Fuel
502 Steam Expenses
503 Steam from Other Sources
504 Steam Transferred—Credit
505 Electric Expenses
506 Miscellaneous Steam Power Expenses
507 Rents
509 Allowances

(Maintenance)

510 Maintenance Supervision and Engineering
511 Maintenance of Structures
512 Maintenance of Boiler Plant
513 Maintenance of Electric Plant
514 Maintenance of Miscellaneous Steam Plant

Nuclear Power Generation

(Operation)

517 Operation Supervision and Engineering
518 Nuclear Fuel Expense
519 Coolants and Water
520 Steam Expenses
521 Steam from Other Sources
522 Steam Transferred—Credit
523 Electric Expenses
524 Miscellaneous Nuclear Power Expenses
525 Rents

(Maintenance)

528 Maintenance Supervision and Engineering
529 Maintenance of Structures
530 Maintenance of Reactor Plant Equipment
531 Maintenance of Electric Plant
532 Maintenance of Miscellaneous Nuclear Plant

Hydraulic Power Generation

(Operation)

535 Operation Supervision and Engineering
536 Water for Power
537 Hydraulic Expenses
538 Electric Expenses

539 Miscellaneous Hydraulic Power Generation Expenses
540 Rents

(Maintenance)

541 Maintenance Supervision and Engineering
542 Maintenance of Structures
543 Maintenance of Reservoirs, Dams, and Waterways
544 Maintenance of Electric Plant
545 Maintenance of Miscellaneous Hydraulic Plant

Other Power Generation

(Operation)

546 Operation Supervision and Engineering
547 Fuel
548 Generation Expenses
549 Miscellaneous Other Power Generation Expenses
550 Rents

(Maintenance)

551 Maintenance Supervision and Engineering
552 Maintenance of Structures
553 Maintenance of Generating and Electric Equipment
554 Maintenance of Miscellaneous Other Power Generation Plant

Other Power Supply Expenses

555 Purchased Power
556 System Control and Load Dispatching
557 Other Expenses

Transmission Expenses

(Operation)

560 Operation Supervision and Engineering
561 Load Dispatching
562 Station Expenses
563 Overhead Line Expenses
564 Underground Line Expenses
565 Transmission of Electricity by Others
566 Miscellaneous Transmission Expenses
567 Rents

(Maintenance)

568 Maintenance Supervision and Engineering
569 Maintenance of Structures
570 Maintenance of Station Equipment
571 Maintenance of Overhead Lines
572 Maintenance of Underground Lines
573 Maintenance of Miscellaneous Transmission Plant

Distribution Expenses

(Operation)

580 Operation Supervision and Engineering
581 Load Dispatching
582 Station Expenses
583 Overhead Line Expenses
584 Underground Line Expenses
585 Street Lighting and Signal System Expenses
586 Meter Expenses
587 Customer Installations Expenses
588 Miscellaneous Distribution Expenses
589 Rents

(Maintenance)

590 Maintenance Supervision and Engineering
591 Maintenance of Structures
592 Maintenance of Station Equipment
593 Maintenance of Overhead Lines
594 Maintenance of Underground Lines
595 Maintenance of Line Transformers
596 Maintenance of Street Lighting and Signal Systems
597 Maintenance of Meters
598 Maintenance of Miscellaneous Distribution Plant

Operation and Maintenance Expense Accounts

Power Production Expenses

Steam Power Generation

(Operation)

500 Operation Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of steam power generating stations. Direct supervision of specific activities, such as fuel handling, boiler-room operations, and generator operations shall be charged to the appropriate account. (See § 1767.17 (a).)

501 Fuel

A. This account shall include the cost of fuel used in the production of steam for the generation of electricity, including expenses in unloading fuel from the shipping media and handling thereof up to the point where the fuel enters the first boiler plant bunker, hopper, bucket, tank, or holder of the boiler-house structure. Records shall be maintained to show the quantity, B.t.u. content and cost of each type of fuel used.

B. The cost of fuel shall be charged initially to Account 151, Fuel Stock, and cleared to this account on the basis of the fuel used. Fuel handling expenses may be charged to this account as incurred or charged initially to Account 152, Fuel Stock Expenses Undistributed. In the latter event, they shall be cleared to this account on the basis of the fuel used. Respective amounts of fuel stock and fuel stock expenses shall be readily available.

Items

Labor:

1. Supervising, purchasing, and handling of fuel.
2. All routine fuel analyses.
3. Unloading from shipping facility and placing in storage.
4. Moving of fuel in storage and transferring fuel from one station to another.
5. Handling from storage or shipping facility to first bunker, hopper, bucket, tank, or holder of boiler-house structure.
6. Operation of mechanical equipment, such as locomotives, trucks, cars, boats, barges, and cranes.

Materials and Expenses:

1. Operating, maintenance, and depreciation expenses and ad valorem taxes on utility-owned transportation equipment used to transport fuel from the point of acquisition to the unloading point.
2. Lease or rental costs of transportation equipment used to transport fuel from the point of acquisition to the unloading point.
3. Cost of fuel including freight, switching, demurrage, and other transportation charges.
4. Excise taxes, insurance, purchasing commissions, and similar items.
5. Stores expenses to extent applicable to fuel.
6. Transportation and other expenses in moving fuel in storage.
7. Tools, lubricants, and other supplies.
8. Operating supplies for mechanical equipment.
9. Residual disposal expenses less any proceeds from sale of residuals.

Note: Abnormal fuel handling expenses occasioned by emergency conditions shall be charged to expense as incurred.

502 Steam Expenses

This account shall include the cost of labor, materials used, and expenses incurred in production of steam for electric generation. This includes all expenses of handling and preparing fuel beginning at the point where the fuel enters the first boiler plant bunker, hopper, tank, or holder of the boiler-house structure.

Items

Labor:

1. Supervising steam production.
2. Operating fuel conveying, storage, weighing, and processing equipment within boiler plant.
3. Operating boiler and boiler auxiliary equipment.
4. Operating boiler feed water purification and treatment equipment.
5. Operating ash-collecting and disposal equipment located inside the plant.
6. Operating boiler plant electrical equipment.
7. Keeping boiler plant log and records and preparing reports on boiler plant operations.
8. Testing boiler water.
9. Testing, checking, and adjusting meters, gauges, and other instruments and equipment in boiler plant.
10. Cleaning boiler plant equipment when not incidental to maintenance work.
11. Repacking glands and replacing gauge glasses where the work involved is of a minor nature and is performed by

regular operating crews. Where the work is of a major character, such as that performed on high-pressure boilers, the item should be considered as maintenance.

Materials and Expenses:

1. Chemicals and boiler inspection fees.
2. Lubricants.
3. Boiler feed water purchased and pumping supplies.

503 Steam from Other Sources

This account shall include the cost of steam purchased or transferred from another department of the utility or from others under a joint facility operating arrangement for use in prime movers devoted to the production of electricity.

Note: The records shall be so kept as to show separately for each company from which stem is purchased, the point of delivery, the quantity, the price, and the total charge. When steam is transferred from another department or from others under a joint operating arrangement, the utility shall be prepared to show full details of the cost of producing such steam, the basis of the charge to electric generation, and the extent and manner of use by each department or party involved.

504 Steam Transferred—Credit

A. This account shall include credits for expenses of producing steam which are charged to others or to other utility departments under a joint operating arrangement. Include also credits for steam expenses chargeable to other electric accounts outside of the steam generation group. Full details of the basis of determination of the cost of steam transferred shall be maintained.

B. If the charges to others or to other departments of the utility include an amount for depreciation, taxes, and return on the joint steam facilities, such portion of the charge shall be credited, in the case of others, to Account 454, Rent from Electric Property, and in the case of other departments of the utility, to Account 455, Interdepartmental Rents.

505 Electric Expenses

This account shall include the cost of labor and materials used, and expenses incurred in operating prime movers, generators, and their auxiliary apparatus, switch gear, and other electric equipment to the points where electricity leaves for conversion for transmission or distribution.

Items

Labor:

1. Supervising electric production.
2. Operating turbines, engines, generators, and exciters.
3. Operating condensers, circulating water systems, and other auxiliary apparatus.
4. Operating generator cooling system.
5. Operating lubrication and oil control system, including oil purification.
6. Operating switchboards, switch gear and electric control, and protective equipment.
7. Keeping electric plant log and records and preparing reports on electric plant operations.
8. Testing, checking, and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in the electric plant.
9. Cleaning electric plant equipment when not incidental to maintenance work.
10. Repacking glands and replacing gauge glasses.

Materials and Expenses:

1. Lubricants and control system oils.
2. Generator cooling gases.
3. Circulating water purification supplies.
4. Cooling water purchased.
5. Motor and generator brushes.

506 Miscellaneous Steam Power Expenses

This account shall include the cost of labor and materials used and expenses incurred which are not specifically provided for or not readily assignable to other steam generation operation expense accounts.

Items

Labor:

1. General clerical an stenographic work.
2. Guarding and patrolling plant and yard.
3. Building service.
4. Care of grounds including snow removal, and grass cutting.
5. Miscellaneous labor.

Materials and Expenses:

1. General operating supplies, such as tools, gaskets, packing waste, gauge glasses, hose, indicating lamps, record and report forms.
2. First-aid supplies and safety equipment.
3. Employees' service facilities expenses.
4. Building service supplies.
5. Communication service.
6. Miscellaneous office supplies and expenses, printing, and stationery.
7. Transportation expenses.
8. Meals, traveling, and incidental expenses.
9. Research, development, and demonstration expenses.

507 Rents

This account shall include all rents of property of others used, occupied or operated in connection with steam power generation. (See § 1767.17 (c).)

509 Allowances

This account shall include the cost of allowances expensed concurrent with the monthly emission of sulfur dioxide. (See § 1767.15 (u).)

(Maintenance)

510 Maintenance Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of steam generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17 (a).)

511 Maintenance of Structures

This account shall include the cost of labor and materials used and expenses incurred in the maintenance of steam structures, the book cost of which is includible in Account 311, Structures and Improvements. (See § 1767.17 (b).)

512 Maintenance of Boiler Plant

A. This account shall include the cost of labor and materials used and expenses incurred in the maintenance of steam plant, the book cost of which is includible in Account 312, Boiler Plant Equipment. (See § 1767.17 (b).)

B. For the purpose of making charges hereto and to Account 513, Maintenance of Electric Plant, the point at which steam plant is distinguished from electric plant is defined as follows:

1. Inlet flange of throttle valve on prime mover.
2. Flange of all steam extraction lines on prime mover.
3. Hotwell pump outlet on condensate lines.
4. Inlet flange of all turbine-room auxiliaries.
5. Connection to line side of motor starter for all boiler-plant equipment.

513 Maintenance of Electric Plant

This account shall include the cost of labor and materials used and expenses incurred in the maintenance of electric plant, the book of which is includible in Account 313, Engines and Engine-Driven Generators; Account 314, Turbogenerator Units; and Account 315, Accessory Electric Equipment. (See § 1767.17 (b) and Paragraph B of Account 512.)

514 Maintenance of Miscellaneous Steam Plant

This account shall include the cost of labor and materials used and expenses incurred in maintenance of miscellaneous steam generation plant, the book cost of which is includible in Account 316, Miscellaneous Power Plant Equipment. (See § 1767.17 (b).)

Nuclear Power Generation

(Operation)

517 Operation Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of nuclear power generating stations. Direct supervision of specific activities, such as fuel handling, reactor operations, and generator operations shall be charged to the appropriate account. (See § 1767.17 (a).)

518 Nuclear Fuel Expense

A. This account shall be debited and Account 120.5, Accumulated Provision for Amortization of Nuclear Fuel Assemblies, credited for the amortization of the net cost of nuclear fuel assemblies used in the production of energy. The net cost of nuclear fuel assemblies subject to amortization shall be the cost of nuclear fuel assemblies plus or less the expected net salvage of uranium, plutonium, and other byproducts and unburned fuel. The utility shall adopt the necessary procedures to assure that charges to this account are distributed according to the thermal energy produced in such periods.

B. This account shall also include the costs involved when fuel is leased.

C. This account shall also include the cost of other fuels, used for ancillary steam facilities, including superheat.

D. This account shall be debited or credited as appropriate for significant changes in the amounts estimated as the net salvage value of uranium, plutonium, and other byproducts contained in Account 157, Nuclear Materials Held for Sale, and the amount realized upon the final disposition of the materials. Significant declines in the estimated realizable value of items carried in Account 157 may be recognized at the time of market price declines by charging this account and crediting Account 157. When the declining change occurs while the fuel is recorded in Account 120.3, Nuclear Fuel Assemblies in Reactor, the effect shall be amortized over the remaining life of the fuel.

519 Coolants and Water

This account shall include the cost of labor and materials used and expenses incurred for heat transfer materials and water used for steam and cooling purposes.

Items

Labor:

1. Operation of water supply facilities.
2. Handling of coolants and heat transfer materials.

Materials and Expenses:

1. Chemicals.
2. Additions to or refining of, fluids used in reactor systems.
3. Lubricants.
4. Pumping supplies and expenses.
5. Miscellaneous supplies and expenses.
6. Purchased Water.

Note: Do not include in this account water for general station use or the initial charge for coolants, heat transfer, or moderator fluids, chemicals, or other supplies capitalized.

520 Steam Expenses

This account shall include the cost of labor and materials used and expenses incurred in production of steam through nuclear processes, and similar expenses for operation of any auxiliary superheat facilities.

Items

Labor:

1. Supervising steam production.
2. Fuel handling including removal, insertion, disassembly, and preparation for cooling operations and shipment.
3. Testing instruments and gauges.
4. Health, safety, monitoring, and decontamination activities.
5. Waste disposal.
6. Operating steam boilers and auxiliary steam, superheat facilities.

Materials and Expenses:

1. Chemical supplies.
2. Charts, and logs.
3. Health, safety, monitoring, and decontamination supplies.
4. Boiler inspection fees.
5. Lubricants.

521 Steam from Other Sources

This account shall include the cost of steam purchased or transferred from another department of the utility or from others under a joint facility operating arrangement for use in prime movers devoted to the production of electricity.

Note: The records shall be so kept as to show separately for each company from which steam is purchased, the point of delivery, the quantity, the price, and the total charge. When steam is transferred from another operating department, the utility shall be prepared to show full details of the cost of producing such steam, the basis of the charges to electric generation, and the extent and manner of use by each department involved.

522 Steam Transferred—Credit

A. This account shall include credits for expenses of producing steam which are charged to others or to other utility departments under a joint operating arrangement. Include also credits for steam expenses chargeable to other electric accounts outside of the steam generation group. Full details of the basis of determination of the cost of steam transferred shall be maintained.

B. If the charges to others or to other departments of the utility include an amount for depreciation, taxes, and return on the joint steam facilities, such portion of the charge shall be credited in the case of others, to Account 454, Rent from Electric Property, and in the case of other departments of the utility, to Account 455, Interdepartmental Rents.

523 Electric Expenses

This account shall include the cost of labor, materials used, and expenses incurred in operating turbogenerators, steam turbines and their auxiliary apparatus, switch gear, and other electric equipment to the points where electricity leaves for conversion for transmission or distribution.

Items

Labor:

1. Supervising electric production.
2. Operating turbines, engines, generators, and exciters.
3. Operating condensers, circulating water systems, and other auxiliary apparatus.
4. Operating generator cooling system.
5. Operating lubrication and oil control system, including oil purification.
6. Operating switchboards, switch gear, and electric control and protective equipment.
7. Keeping plant log and records and preparing reports on electric plant operations.
8. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in the electric plant.
9. Cleaning electric plant equipment when not incidental to maintenance.
10. Repacking glands and replacing gauge glasses.

Materials and Expenses:

1. Lubricants and control system oils.
2. Generator cooling gases.
3. Log sheets and charts.
4. Motor and generator brushes.

524 Miscellaneous Nuclear Power Expenses

This account shall include the cost of labor, materials used, and expenses incurred which are not specifically provided for or are not readily assignable to other nuclear generation operation accounts.

Items

Labor:

1. General clerical and stenographic work.
2. Plant security.
3. Building service.
4. Care of grounds, including snow removal, and grass cutting
5. Miscellaneous labor.

Materials and Expenses:

1. General operating supplies, such as tools, gaskets, hose, indicating lamps, records and reports forms.
2. First-aid supplies and safety equipment.
3. Employees' service facilities expenses.
4. Building service supplies.
5. Communication service.
6. Miscellaneous office supplies and expenses, printing and stationery.
7. Transportation expenses.
8. Meals, traveling, and incidental expenses.
9. Research, development, and demonstration expenses.

525 Rents

This account shall include all rents of property of others used, occupied, or operated in connection with nuclear generation. (See § 1767.17 (c).)

(Maintenance)

528 Maintenance Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of nuclear generation facilities. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17 (a).)

529 Maintenance of Structures

This account shall include the cost of labor, materials used, and expenses incurred in the maintenance of structures, the book cost of which is includible in Account 321, Structures and Improvements. (See § 1767.17 (b).)

530 Maintenance of Reactor Plant Equipment

This account shall include the cost of labor, materials used, and expenses incurred in the maintenance of reactor plant, the book cost of which is includible in Account 322, Reactor Plant Equipment. (See § 1767.17 (b).)

531 Maintenance of Electric Plant

This account shall include the cost of labor, materials used, and expenses incurred in the maintenance of electric plant, the book cost of which is includible in Account 323, Turbogenerator Units, and Account 324, Accessory Electric Equipment. (See § 1767.17 (b).)

532 Maintenance of Miscellaneous Nuclear Plant

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of miscellaneous nuclear generating plant, the book cost of which is includible in Account 325, Miscellaneous Power Plant Equipment. (See § 1767.17 (b).)

Hydraulic Power Generation

(Operation)

535 Operation Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of hydraulic power generating stations. Direct supervision of specific activities, such as hydraulic operation, and generator operation shall be charged to the appropriate account. (See § 1767.17 (a).)

536 Water for Power

This account shall include the cost of water used for hydraulic power generation.

Items

1. Cost of water purchased from others, including water tolls paid reservoir companies.
2. Periodic payments for licenses or permits from any governmental agency for water rights, or payments based on the use of the water.
3. Periodic payments for riparian rights.
4. Periodic payments for headwater benefits or for detriments to others.
5. Cloud seeding.

537 Hydraulic Expenses

This account shall include the cost of labor, materials used, and expenses incurred in operating hydraulic works including reservoirs, dams, and waterways, and in activities directly relating to the hydroelectric development outside the generating station. It shall also include the cost of labor, materials used, and other expenses incurred in connection with the operation of (1) fish and wildlife, and (2) recreation facilities. Separate subaccounts shall be maintained for each of the above.

Items

Labor:

1. Supervising hydraulic operation.
2. Removing debris and ice from trash racks, reservoirs, and waterways.
3. Patrolling reservoirs and waterways.
4. Operating intakes, spillways, sluiceways, and outlet works.
5. Operating bubbler, heater, or other deicing systems.
6. Ice and log jam work.
7. Operating navigation facilities.
8. Operations relating to conservation of game, fish, and forests.
9. Insect control activities.

Materials and Expenses:

1. Insect control materials.
2. Lubricants, packing, and other supplies used in the operation of hydraulic equipment.
3. Transportation expense.

538 Electric Expenses

This account shall include the cost of labor, materials used, and expenses incurred in operating prime movers, generators, and their auxiliary apparatus, switchgear, and other electric equipment, to the point where electricity leaves for conversion for transmission or distribution.

Items

Labor:

1. Supervising electric production.
2. Operating prime movers, generators, and auxiliary equipment.
3. Operating generator cooling system.
4. Operating lubrication and oil control systems, including oil purification.
5. Operating switchboards, switchgear, and electric control and protection equipment.
6. Keeping plant log and records and preparing reports on plant operations.
7. Testing, checking and adjusting meters, gauges, and other instruments, relays, controls, and other equipment in the plant.
8. Cleaning plant equipment when not incidental to maintenance work.
9. Repacking glands.

Materials and Expenses:

1. Lubricants and control system oils.
2. Motor and generator brushes.

539 Miscellaneous Hydraulic Power Generation Expenses

This account shall include the cost of labor, materials used, and expenses incurred which are not specifically provided for or are not readily

assignable to other hydraulic generation operation expense accounts.

Items

Labor:

1. General clerical and stenographic work.
2. Guarding and patrolling plant and yard.
3. Building service.
4. Care of grounds including snow removal, and grass cutting.
5. Snow removal from roads and bridges.
6. Miscellaneous labor.

Materials and Expenses:

1. General operating supplies, such as tools, gaskets, packing, waste, hose, indicating lamps, record and report forms.
2. First-aid supplies and safety equipment.
3. Employees' service facilities expenses.
4. Building service supplies.
5. Communication service.
6. Office supplies, printing and stationery.
7. Transportation expenses.
8. Fuel.
9. Meals, traveling, and incidental expenses.
10. Research, development, and demonstration expenses.

540 Rents

This account shall include all rents of property of others used, occupied, or operated in connection with hydraulic power generation, including amounts payable to the United States for the occupancy of public lands and reservations for reservoirs, dams, flumes, forebays, penstocks, and power houses but not including transmission right-of-way. (See § 1767.17 (c).)

(Maintenance)

541 Maintenance Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the maintenance of hydraulic power generating stations. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17 (a).)

542 Maintenance of Structures

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of hydraulic structures, the book cost of which is includible in Account 331, Structures and Improvements. (See § 1767.17 (b).) However, the cost of labor, materials used, and expenses incurred in the maintenance of fish and wildlife and recreation facilities, the book cost of which is includible in Account 331, Structures and Improvements, shall be charged to Account 545, Maintenance of Miscellaneous Hydraulic Plant.

543 Maintenance of Reservoirs, Dams, and Waterways

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of plant includible in Account 332, Reservoirs, Dams, and Waterways. (See § 1767.17 (b).) However, the cost of labor, materials used, and expenses incurred in the maintenance of fish and wildlife and recreation facilities, the book cost of which is includible in Account 332, Reservoirs, Dams, and Waterways, shall be charged to Account 545, Maintenance of Miscellaneous Hydraulic Plant.

544 Maintenance of Electric Plant

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of plant includible in Account 333, Water Wheels, Turbines and Generators, and Account 334, Accessory Electric Equipment, (See § 1767.17 (b).)

545 Maintenance of Miscellaneous Hydraulic Plant

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of plant, the book cost of which is includible in Account 335, Miscellaneous Power Plant Equipment, and Account 336, Roads Railroads and Bridges. (See § 1767.17 (b).) It shall also include the cost of labor, materials used, and other expenses incurred in the maintenance of (1) fish and wildlife, and (2) recreation facilities. Separate subaccounts shall be maintained for each of the above.

Other Power Generation

(Operation)

546 Operation Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of other power generating stations. Direct supervision of specific activities, such as fuel handling and engine and generator operation shall be charged to the appropriate account. (See § 1767.17 (a).)

547 Fuel

This account shall include the cost delivered at the station (See Account 151, Fuel Stock) of all fuel, such as gas, oil, kerosene, and gasoline used in other power generation.

548 Generation Expenses

This account shall include the cost of labor, materials used, and expenses incurred in operating prime movers, generators, and electric equipment in other power generating stations, to the point where electricity leaves for conversion for transmission or distribution.

Items

Labor:

1. Supervising other power generation operation.
2. Operating prime movers, generators, and auxiliary apparatus and switching and other electric equipment.
3. Keeping plant log and records and preparing reports on plant operations.
4. Testing, checking, cleaning, oiling, and adjusting equipment.

Materials and Expenses:

1. Dynamo, motor, and generator brushes.
2. Lubricants and control system oils.
3. Water for cooling engines and generators.

549 Miscellaneous Other Power Generation Expenses

This account shall include the cost of labor, materials used, and expenses incurred in the operation of other power generating stations which are not specifically provided for or are not readily assignable to other generation expense accounts.

Items

Labor:

1. General clerical and stenographic work.
2. Guarding and patrolling plant and yard.
3. Building service.
4. Care of grounds, including snow removal, and grass cutting.
5. Miscellaneous labor.

Materials and Expenses:

1. Building service supplies.
2. First-aid supplies and safety equipment.
3. Communication service.
4. Employees' service facilities expenses.
5. Office supplies, printing and stationery.
6. Transportation expense.
7. Meals, traveling, and incidental expenses.
8. Fuel for heating.
9. Water for fire protection or general use.
10. Miscellaneous supplies, such as hand tools, drills, saw blades, and files.

11. Research, development, and demonstration expenses.

550 Rents

This account shall include all rents of property of others used, occupied, or operated in connection with other power generation. (See § 1767.17 (c).)

(Maintenance)

551 Maintenance Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the maintenance of other power generating stations. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17 (a).)

552 Maintenance of Structures

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of facilities used and expenses incurred in maintenance of facilities used in other power generation, the book cost of which is includible in Account 341, Structures and Improvements, and Account 342, Fuel Holders, Producers and Accessories. (See § 1767.17 (b).)

553 Maintenance of Generating and Electric Equipment

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of plant, the book cost of which is includible in Account 343, Prime Movers; Account 344, Generators; and Account 345, Accessory Electric Equipment. (See § 1767.17 (b).)

554 Maintenance of Miscellaneous Other Power Generation Plant

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of other power generation plant, the book cost of which is includible in Account 346, Miscellaneous Power Plant Equipment. (See § 1767.17 (b).)

Other Power Supply Expenses

555 Purchased Power

A. This account shall include the cost at point of receipt by the utility of electricity purchased for resale. It shall also include, net settlements for exchange of electricity or power, such as economy energy, off-peak energy for on-peak energy, and spinning reserve capacity. In addition, the account shall include the net settlements for transactions under pooling or interconnection agreements wherein there is a balancing of debits and credits for energy, or capacity. Distinct purchases and sales shall not be recorded as exchanges and net amounts only recorded merely because debit and credit amounts are combined in the voucher settlement.

B. The records supporting this account shall show, by months, the demands and demand charges, kilowatt-hours and prices thereof under each purchase contract and the charges and credits under each exchange or power pooling contract.

556 System Control and Load Dispatching

This account shall include the cost of labor and expenses incurred in load dispatching activities for system control. Utilities having an interconnected electric system or operating under a central authority which controls the production and dispatching of electricity may apportion these costs to this account and Account 561, Load Dispatching, and Account 581, Load Dispatching.

Items

Labor:

1. Allocating loads to plants and interconnections with others.
2. Directing switching.
3. Arranging and controlling clearances for construction, maintenance, test, and emergency purposes.
4. Controlling system voltages.
5. Recording loadings, and water conditions.
6. Preparing operating reports and data for billing and budget purposes.
7. Obtaining reports on the weather and special events.

Expenses:

1. Communication service provided for system control purposes.
2. System record and report forms.
3. Meals, traveling, and incidental expenses.
4. Obtaining weather and special events reports.

557 Other Expenses

A. This account shall be charged with any production expenses including expenses incurred directly in connection with the purchase of electricity, which are not specifically provided for in other production expense accounts. Charges to this account shall be supported so that a description of each type of charge will be readily available.

B. Recoveries from insurance companies, under use and occupancy provisions of policies, of amounts in reimbursement of excessive or added productions costs for which the insurance company is liable under the terms of the policy shall be credited to this account.

Transmission Expenses

(Operation)

560 Operation Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of the transmission system as a whole. Direct supervision of specific activities, such as station operation and line operation shall be charged to the appropriate account. (See § 1767.17 (a).)

561 Load Dispatching

This account shall include the cost of labor, materials used, and expenses incurred in load dispatching operations pertaining to the transmission of electricity.

Items

Labor:

1. Direct switching.
2. Arranging and controlling clearances for construction, maintenance, test, and emergency purposes.
3. Controlling system voltages.
4. Obtaining reports on the weather and special events.
5. Preparing operating reports and data for billing and budget purposes.

Expenses:

1. Communication service provided for system control purposes.
2. System record and report forms.
3. Meals, traveling, and incidental expenses.
4. Obtaining weather and special events reports.

562 Station Expenses

This account shall include the cost of labor, materials used, and expenses incurred in operating transmission substations and switching stations. If transmission station equipment is located in or adjacent to a generating station, the expenses applicable to transmission station operations shall nevertheless be charged to this account.

Items

Labor:

1. Supervising station operation.
2. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine or changing voltage of regulators, changing station transformer taps.

3. Inspecting, testing, and calibrating station equipment for the purpose of checking its performance.
4. Keeping station log and records and preparing records on station operation.
5. Operating switching and other station equipment.
6. Standing watch, guarding, and patrolling station and station yard.
7. Sweeping, mopping, and tidying station.
8. Care of grounds, including snow removal, and grass cutting.

Materials and Expenses:

1. Building service expenses.
2. Operating supplies, such as lubricants, commutator brushes, water, and rubber goods.
3. Station meter and instrument supplies, such as ink and charts.
4. Station record and report forms.
5. Tool expense.
6. Transportation expenses.
7. Meals, traveling, and incidental expenses.

563 Overhead Line Expenses

564 Underground Line Expenses

A. These accounts shall include the cost of labor, materials used, and expenses incurred in the operation of transmission lines.

B. If the expenses are not substantial for both overhead and underground lines, these accounts may be combined.

Items

Labor:

1. Supervising line operation.
2. Inspecting and testing lightning arresters, circuit breakers. switches, and grounds.
3. Load tests of circuits.
4. Routine line patrolling.
5. Routine voltage surveys made to determine the condition or efficiency of transmission system.
6. Transferring loads, switching and reconnecting circuits and equipment for operating purposes. (Switching for construction or maintenance purposes is not includible in this account.)
7. Routine inspection and cleaning of manholes, conduit, network, and transformer vaults.
8. Electrolysis surveys.
9. Inspecting and adjusting line-testing equipment, such as voltmeters, ammeters, and wattmeters.
10. Regulation and addition of oil or gas in high-voltage cable systems.

Materials and Expenses:

1. Transportation expenses.
2. Meals, traveling, and incidental expenses.
3. Tool expenses.
4. Operating supplies, such as instrument charts, and rubber goods.

565 Transmission of Electricity by Others

This account shall include amounts payable to others for the transmission of the utility's electricity over transmission facilities owned by others.

566 Miscellaneous Transmission Expenses

This account shall include the cost of labor, materials used, and expenses incurred in transmission map and record work, transmission office expenses, and other transmission expenses not provided for elsewhere.

Items

Labor:

1. General records of physical characteristics of lines and stations, such as capacities.
2. Ground resistance records.
3. Janitor work at transmission office buildings, including care of grounds, snow removal, and grass cutting.
4. Joint pole maps and records.
5. Line load and voltage records.
6. Preparing maps and prints.
7. General clerical and stenographic work.
8. Miscellaneous labor.

Materials and Expenses:

1. Communication service.
2. Building service supplies.
3. Map and record supplies.
4. Transmission office supplies and expenses, printing and stationery.
5. First-aid supplies.
6. Research, development, and demonstration expenses.

567 Rents

This account shall include rents of property of others used, occupied, or operated in connection with the transmission system, including payments to the United States and others for use of public or private lands and reservations for transmission line rights-of-way. (See § 1767.17 (c).)

(Maintenance)

568 Maintenance Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of the transmission system. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17 (a).)

569 Maintenance of Structures

This account shall include the cost of labor, materials used, and expenses incurred in the maintenance of structures, the book cost of which is includible in Account 352, Structures and Improvements. (See § 1767.17 (b).)

570 Maintenance of Station Equipment

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of station equipment, the book cost of which is includible in Account 353, Station Equipment. (See § 1767.17 (b).)

571 Maintenance of Overhead Lines

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of transmission plant, the book cost of which is includible in Accounts 354, Towers and Fixtures; 355, Poles and Fixtures; 356, Overhead Conductors and Devices; and 359, Roads and Trails. (See § 1767.17 (b).)

Items

1. Work of the following character on poles, towers, and fixtures:

a. Installing or removing additional clamps or strain insulators on guys in place.
b. Moving line or guy pole in relocation of the same pole or section of line.
c. Painting poles, towers, crossarms, or pole extensions.
d. Readjusting and changing position of guys or braces.
e. Realigning and straightening poles, crossarms braces, and other pole fixtures.
f. Reconditioning reclaimed pole fixtures.
g. Relocating crossarms, racks, brackets, and other fixtures on poles.
h. Repairing or realigning pins, racks, or brackets.
i. Repairing pole supported platform.
j. Repairs by others to jointly owned poles.
k. Shaving, cutting rot, or testing poles or crossarms in use or salvaged for reuse.
l. Stubbing poles already in service.
m. Supporting fixtures and conductors and transferring them to new poles during pole replacements.
n. Maintenance of pole signs, stencils, and tags.

2. Work of the following character on overhead conductors and devices:

a. Overhauling and repairing line cutouts, line switches, and line breakers.
b. Cleaning insulators and bushings.
c. Refusing cutouts.
d. Repairing line oil circuit breakers and associated relays and control wiring.
e. Repairing grounds.
f. Resagging, retyping, or rearranging position or spacing of conductors.

g. Standing by phones, going to calls, cutting faulty lines clear, or similar activities at times of emergencies.

h. Sampling, testing, changing, purifying, and replenishing insulating oil.

i. Repairing line testing equipment.

j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.

k. Trimming trees and clearing brush.

l. Chemical treatment of right of way areas when occurring subsequent to construction of line.

3. Work of the following character on roads and trails:

a. Repairing roadways and bridges.

b. Trimming trees and brush to maintain previous roadway clearance.

c. Snow removal from roads and trails.

d. Maintenance work on publicly owned roads and trails when done by utility at its expense.

572 Maintenance of Underground Lines

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of transmission plant, the book cost of which is includible in Accounts 357, Underground Conduit, and Account 358, Underground Conductors and Devices. (See § 1767.17 (b).)

Items

1. Work of the following character on underground conduit:

a. Cleaning ducts, manholes, and sewer connections.

b. Minor alterations of handholes, manholes, or vaults.

c. Refastening, repairing, or moving racks, ladders, hangers in manholes, or vaults.

d. Plugging and shelving or replugging ducts.

e. Repairs to sewers and drains, walls and floors, rings and covers.

2. Work of the following character on underground conductors and devices:

a. Repairing oil circuit breakers, switches, cutouts, and control wiring.

b. Repairing grounds.

c. Retraining and reconnecting cables in manholes, including transfer of cables from one duct to another.

d. Repairing conductors and splices.

e. Repairing or moving junction boxes and potheads.

f. Refireproofing of cables and repairing supports.

g. Repairing electrolysis preventive devices for cables.

h. Repairing cable bonding systems.

i. Sampling, testing, changing, purifying, and replenishing insulating oil.

j. Transferring loads, switching and reconnecting circuits, and equipment for maintenance purposes.

k. Repairing line testing equipment.

l. Repairs to oil or gas equipment in high-voltage cable system and replacement of oil or gas.

573 Maintenance of Miscellaneous Transmission Plant

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of owned or leased plant which is assignable to transmission operations and is not provided for elsewhere. (See § 1767.17 (b).)

Distribution Expenses

(Operation)

580 Operation Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of the operation of the distribution system. Direct supervision of specific activities, such as station operation, line operation, and meter department operation shall be charged to the appropriate account. (See § 1767.17 (a).)

581 Load Dispatching

This account (the keeping of which is optional with the utility) shall include the cost of labor, materials used, and expenses incurred in load dispatching operations pertaining to the distribution of electricity.

Items

Labor:

1. Direct switching.

2. Arranging and controlling clearances for construction, maintenance, test, and emergency purposes.

3. Controlling system voltages.

4. Preparing operating reports.

5. Obtaining reports on the weather and special events.

Expenses:

1. Communication service provided for system control purposes.

2. System record and report forms.

3. Meals, traveling, and incidental expenses.

582 Station Expenses

This account shall include the cost of labor, materials used, and expenses incurred in the operation of distribution substations.

Items

Labor:

1. Supervising station operation.

2. Adjusting station equipment where such adjustment primarily affects performance, such as regulating the flow of cooling water, adjusting current in fields of a machine, changing voltage of regulators, or changing station transformer taps.

3. Keeping station log and records and preparing reports on station operation.

4. Inspecting, testing, and calibrating station equipment for the purpose of checking its performance.

5. Operating switching and other station equipment.

6. Standing watch, guarding, and patrolling station and station yard.

7. Sweeping, mopping, and tidying station.

8. Care of grounds, including snow removal, and grass cutting.

Materials and Expenses:

1. Building service expenses.

2. Operating, supplies, such as lubricants, commutator brushes, water, and rubber goods.

3. Station meter and instrument supplies, such as ink and charts.

4. Station record and report forms.

5. Tool expense.

6. Transportation expense.

7. Meals, traveling, and incidental expenses.

Note: If the utility owns storage battery equipment used for supplying electricity to customers in periods of emergency, the cost of operating labor and of supplies, such as acid, gloves, hydrometers, thermometers, soda, automatic cell fillers, and acid proof shoes shall be included in this account. If significant in amount, a separate subdivision shall be maintained for such expenses.

583 Overhead Line Expenses

584 Underground Line Expenses

These accounts shall include, respectively, the cost of labor materials used, and expenses incurred in the operation of overhead and underground distribution lines.

Items

Labor:

1. Supervising line operation.

2. Changing line transformer taps.

3. Inspecting and testing lightning arresters, line circuit breakers, switches, and grounds.

4. Inspecting and testing line transformers for the purpose of determining load, temperature, or operation performance.

5. Patrolling lines.

6. Load tests and voltage surveys of feeders, circuits, and line transformers.

7. Removing line transformers and voltage regulators with or without replacement.

8. Installing line transformers or voltage regulators with or without change in capacity provided that the cost of first installation of these items is

included in Account 368, Line Transformers.

9. Voltage surveys, either routine or upon request of customers, including voltage tests at customer's main switch.

10. Transferring loads, switching and reconnecting circuits and equipment for operation purposes.

11. Electrolysis surveys.

12. Inspecting and adjusting line testing equipment.

Materials and Expenses:

1. Tool expense.

2. Transportation expense.

3. Meals, traveling, and incidental expenses.

4. Operating supplies, such as instrument charts, and rubber goods.

585 Street Lighting and Signal System Expenses

This account shall include the cost of labor, materials used, and expenses incurred in: (1) The operation of street lighting and signal system plant which is owned or leased by the utility; and (2) the operation and maintenance of such plant owned by customers where such work is done regularly as a part of the street lighting and signal system service.

Items

Labor:

1. Supervising street lighting and signal systems operation.

2. Replacing lamps and incidental cleaning of glassware and fixtures in connection therewith.

3. Routine patrolling for lamp outages, extraneous nuisances, or encroachments.

4. Testing lines and equipment including voltage and current measurement.

5. Winding and inspection of time switch and other controls.

Materials and Expenses:

1. Street lamp renewals.

2. Transportation and tool expense.

3. Meals, traveling, and incidental expenses.

586 Meter Expenses

This account shall include the cost of labor, materials used, and expenses incurred in the operation of customer meters and associated equipment.

Items

Labor:

1. Supervising meter operation.

2. Clerical work on meter history and associated equipment record cards, test cards, and reports.

3. Disconnecting and reconnecting, removing and reinstalling, sealing and unsealing meters and other metering equipment in connection with initiating or terminating services including the cost of obtaining meter readings, if incidental to such operation.

4. Consolidating meter installations due to elimination of separate meters for different rates of service.

5. Changing or relocating meters, instrument transformers, time switches, and other metering equipment.

6. Resetting time controls, checking operation of demand meters and other metering equipment, when done as an independent operation.

7. Inspecting and adjusting meter testing equipment.

8. Inspecting and testing meters, instrument transformers, time switches, and other metering equipment on premises or in shops excluding inspecting and testing incidental to maintenance.

Materials and Expenses:

1. Meter seals and miscellaneous meter supplies.

2. Transportation expenses.

3. Meals, traveling, and incidental expenses.

4. Tool expenses.

Note: The cost of the first setting and testing of a meter is chargeable to utility plant, Account 370, Meters.

587 Customer Installations Expenses

This account shall include the cost of labor, materials used, and expenses incurred in work on customer installations in inspecting premises and in rendering services to customers of the nature of those indicated by the list of items hereunder.

Items

Labor:

1. Supervising customer installations work.

2. Inspecting premises, including the check of wiring for code compliance.

3. Investigating, locating, and clearing grounds on customers' wiring.

4. Investigating service complaints, including load tests of motors and lighting and power circuits on customers' premises; field investigations of complaints on bills or of voltage.

5. Installing, removing, renewing, and changing lamps and fuses.

6. Radio, television, and similar interference work including erection of new aerials on customers' premises and patrolling of lines, testing of lightning arresters, inspection of pole hardware, and examination on or off premises of customers' appliances, wiring, or equipment to locate cause of interference.

7. Installing, connecting, reinstalling, or removing leased property on customers' premises.

8. Testing, adjusting, and repairing customers' fixtures and appliances in the shop or on premises.

9. Cost of changing customers' equipment due to changes in service characteristics.

10. Investigation of current diversion including setting and removal of check meters and securing special readings thereon; special calls by employees in connection with discovery and settlement of current diversion; changes in customer wiring; and any other labor cost identifiable as caused by current diversion.

Materials and Expenses:

1. Lamp and fuse renewals.

2. Materials used in servicing customers' fixtures, appliances, and equipment.

3. Power, light, heat, telephone, and other expenses of the appliance repair department.

4. Tool expense.

5. Transportation expense, including pickup and delivery charges.

6. Meals, traveling, and incidental expenses.

7. Rewards paid for discovery of current diversion.

Note A: Amounts billed customers for any work, the cost of which is charged to this account, shall be credited to this account. Any excess over costs resulting therefrom, shall be transferred to Account 451, Miscellaneous Service Revenues.

Note B: Do not include in this account expenses incurred in connection with merchandising, jobbing, and contract work.

588 Miscellaneous Distribution Expenses

This account shall include the cost of labor, materials used, and expenses incurred in distribution system operation not provided for elsewhere.

Items

Labor:

1. General records of physical characteristics of lines and substations, such as capacities.

2. Ground resistance records.

3. Joint pole maps and records.

4. Distribution system voltage and load records.

5. Preparing maps and prints.

6. Service interruption and trouble records.

7. General clerical and stenographic work except that chargeable to Account 586, Meter Expenses.

Expenses:

1. Operating records covering poles, transformers, manholes, cables, and other distribution facilities. Exclude meter records chargeable to Account 586, Meter Expenses, and station

records chargeable to Account 582, Station Expenses, and stores records chargeable to Account 163, Stores Expense Undistributed.

2. Janitor work at distribution office buildings including snow removal and grass cutting.

3. Communication service.

4. Building service expenses.

5. Miscellaneous office supplies and expenses, printing and stationery, maps and records, and first-aid supplies.

6. Research, development, and demonstration expenses.

589 Rents

This account shall include rents of property of others used, occupied, or operated in connection with the distribution system, including payments to the United States and others for the use and occupancy of public lands and reservations for distribution line rights of way. (See § 1767.17 (c).)

(Maintenance)

590 Maintenance Supervision and Engineering

This account shall include the cost of labor and expenses incurred in the general supervision and direction of maintenance of the distribution system. Direct field supervision of specific jobs shall be charged to the appropriate maintenance account. (See § 1767.17 (a).)

591 Maintenance of Structures

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of structures, the book cost of which is includible in Account 361, Structures and Improvements. (See § 1767.17 (b).)

592 Maintenance of Station Equipment

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of plant, the book cost of which is includible in Account 362, Station Equipment, and Account 363, Storage Battery Equipment. (See § 1767.17 (b).)

593 Maintenance of Overhead Lines

This account shall include the cost of labor, materials used, and expenses incurred in the maintenance of overhead distribution line facilities, the book cost of which is includible in Account 364, Poles, Towers and Fixtures; Account 365, Overhead Conductors and Devices; and Account 369, Services. (See § 1767.17 (b).)

Items

1. Work of the following character on poles, towers, and fixtures:

a. Installing additional clamps or removing clamps or strain insulators on guys in place.

b. Moving line or guy pole in relocation of pole or section of line.

c. Painting poles, towers, crossarms, or pole extensions.

d. Readjusting and changing position of guys or braces.

e. Realigning and straightening poles, crossarms, braces, pins, racks, brackets, and other pole fixtures.

f. Reconditioning reclaimed pole fixtures.

g. Relocating crossarms, racks, brackets, and other fixtures on poles.

h. Repairing pole supported platform.

i. Repairs by others to jointly owned poles.

j. Shaving, cutting rot, or treating poles or crossarms in use or salvaged for reuse.

k. Stubbing poles already in service.

l. Supporting conductors, transformers, and other fixtures and transferring them to new poles during pole replacements.

m. Maintaining pole signs, stencils, and tags.

2. Work of the following character on overhead conductors and devices:

a. Overhauling and repairing line cutouts, line switches, line breakers, and capacitor installations.

b. Cleaning insulators and bushings.

c. Refusing line cutouts.

d. Repairing line oil circuit breakers and associated relays and control wiring.

e. Repairing grounds.

f. Resagging, retying, or rearranging position or spacing of conductors.

g. Standing by phones, going to calls, cutting faulty lines clear, or similar activities at times of emergency.

h. Sampling, testing, changing, purifying, and replenishing insulating oil.

i. Transferring loads, switching, and reconnecting circuits and equipment for maintenance purposes.

j. Repairing line testing equipment.

k. Trimming trees and clearing brush.

l. Chemical treatment of right-of-way area when occurring subsequent to construction of line.

3. Work of the following character on overhead services:

a. Moving position of service either on pole or on customers' premises.

b. Pulling slack in service wire.

c. Retying service wire.

d. Refastening or tightening service bracket.

594 Maintenance of Underground Lines

This account shall include the cost of labor, materials used, and expenses incurred in the maintenance of underground distribution line facilities, the book cost of which is includible in Account 366, Underground Conduit; Account 367, Underground Conductors and Devices; and Account 369, Services. (See § 1767.17 (b).)

Items

1. Work of the following character on underground conduit:

a. Cleaning ducts, manholes, and sewer connections.

b. Moving or changing position of conduit or pipe.

c. Minor alterations of handholes, manholes, or vaults.

d. Refastening, repairing, or moving racks, ladders, or hangers in manholes or vaults.

e. Plugging and shelving ducts.

f. Repairs to sewers, drains, walls, and floors, rings, and covers.

2. Work of the following character on underground conductors and devices:

a. Repairing circuit breakers, switches, cutouts, network protectors, and associated relays and control wiring.

b. Repairing grounds.

c. Retraining and reconnecting cables in manholes including transfer of cables from one duct to another.

d. Repairing conductors and splices.

e. Repairing or moving junction boxes and potheads.

f. Refireproofing cables and repairing supports.

g. Repairing electrolysis preventive devices for cables.

h. Repairing cable bonding systems.

i. Sampling, testing, changing, purifying, and replenishing insulating oil.

j. Transferring loads, switching and reconnecting circuits and equipment for maintenance purposes.

k. Repairing line testing equipment.

l. Repairing oil or gas equipment in high voltage cable systems and replacement of oil or gas.

3. Work of the following character on underground services:

a. Cleaning ducts.

b. Repairing any underground service plant.

595 Maintenance of Line Transformers

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of distribution line transformers, the book cost of which is includible in Account 368, Line Transformers. (See § 1767.17 (b).)

596 Maintenance of Street Lighting and Signal Systems

This account shall include the cost of labor, materials used, and expenses

incurred in maintenance of plant, the book cost of which is includible in Account 373, Street Lighting and Signal Systems. (See § 1767.17 (b).)

597 Maintenance of Meters

This account shall include the cost of labor, materials used, and expenses incurred in the maintenance of meters and meter testing equipment, the book cost of which is includible in Account 370, Meters, and Account 395, Laboratory Equipment, respectively. (See § 1767.17 (b).)

598 Maintenance of Miscellaneous Distribution Plant

This account shall include the cost of labor, materials used, and expenses incurred in maintenance of plant, the book cost of which is includible in Accounts 371, Installations on Customers' Premises, and Account 372, Leased Property on Customers' Premises, and any other plant the maintenance of which is assignable to the distribution function and is not provided for elsewhere. (See § 1767.17 (b).)

Items

1. Work of similar nature to that listed in other distribution maintenance accounts.

2. Maintenance of office furniture and equipment used by distribution system department.

§ 1767.28 Customer accounts expenses.

The customer accounts expense accounts identified in this section shall be used by all REA borrowers.

Customer Accounts Expenses

(Operation)

901 Supervision
902 Meter Reading Expenses
903 Customer Records and Collection Expenses
904 Uncollectible Accounts
905 Miscellaneous Customer Accounts Expenses

Customer Accounts Expenses

(Operation)

901 Supervision

This account shall include the cost of labor and expenses incurred in the general direction and supervision of customer accounting and collecting activities. Direct supervision of a specific activity shall be charged to Account 902, Meter Reading Expenses, or Account 903, Customer Records and Collection Expenses, as appropriate. (See 1767.17 (a).)

902 Meter Reading Expenses

This account shall include the cost of labor, materials used, and expenses incurred in reading customer meters, and determining consumption when performed by employees engaged in reading meters.

Items

Labor:

1. Addressing forms for obtaining meter readings by mail.

2. Changing and collecting meter charts used for billing purposes.

3. Inspecting time clocks and checking seals when performed by meter readers and the work represents a minor activity incidental to regular meter reading routine.

4. Reading meters, including demand meters, and obtaining load information for billing purposes. Exclude and charge to Account 586, Meter Expenses, or to Account 903, Customer Records and Collection Expenses, as applicable, the cost of obtaining meter readings, first and final, if incidental to the operation of removing or resetting, sealing or locking, and disconnecting or reconnecting meters.

5. Computing consumption from meter reader's book or from reports by mail when done by employees engaged in reading meters.

6. Collecting from prepayment meters when incidental to meter reading.

7. Maintaining record of customers' keys.

8. Computing estimated or average consumption when performed by employees engaged in reading meters.

Materials and Expenses:

1. Badges, lamps, and uniforms.

2. Demand charts, meter books and binders and forms for recording readings, but not the cost of preparation.

3. Postage and supplies used in obtaining meter readings my mail.

4. Transportation, meals, and incidental expenses.

903 Customer Records and Collection Expenses

This account shall include the cost of labor, materials used, and expenses incurred in work on customer applications, contracts, orders, credit investigations, billing and accounting, collections and complaints.

Items

Labor:

1. Receiving, preparing, recording, and handling routine orders for service, disconnections, transfers or meter tests initiated by the customer, excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by such orders.

2. Investigations of customers' credit and keeping of records pertaining thereto, including records of uncollectible accounts written off.

3. Receiving, refunding, or applying customer deposits and maintaining customer deposit, line extension, and other miscellaneous records.

4. Checking consumption shown by meter readers' reports where incidental to preparation of billing date.

5. Preparing address plates and addressing bills and delinquent notices.

6. Preparing billing data.

7. Operating billing and bookkeeping machines.

8. Verifying billing records with contracts or rate schedules.

9. Preparing bills for delivery and mailing or delivering bills.

10. Collecting revenues, including collection from prepayment meters, unless incidental to meter-reading operations.

11. Balancing collections, preparing collections for deposit, and preparing cash reports.

12. Posting collections and other credits or charges to customer accounts and extending unpaid balances.

13. Balancing customer accounts and controls.

14. Preparing, mailing, or delivering delinquent notices and preparing reports of delinquent accounts.

15. Final meter reading of delinquent accounts when done by collectors incidental to regular activities.

16. Disconnecting and reconnecting service because of nonpayment bills.

17. Receiving, recording, and handling of inquiries, complaints, and requests for investigations from customers, including preparation of necessary orders, but excluding the cost of carrying out such orders, which is chargeable to the account appropriate for the work called for by such orders.

18. Statistical and tabulating work on customer accounts and revenues, but not including special analyses for sales department, rate department, or other general purposes, unless incidental to regular customer accounting routines.

19. Preparing and periodically rewriting meter reading sheets.

20. Determining consumption and computing estimated or average consumption when performed by employees other than those engaged in reading meters.

Materials and Expenses:

1. Address plates and supplies.

2. Cash overages and shortages.

3. Commissions or fees to others for collecting.

4. Payments to credit organizations for investigations and reports.

5. Postage.

6. Transportation expenses, including transportation of customer bills and

meter books under centralized billing procedures.

7. Transportation, meals, and incidental expenses.

8. Bank charges, exchange, and other fees for cashing and depositing customers' checks.

9. Forms for recording orders for services, or removals.

10. Rent of mechanical equipment.

Note: The cost of work on meter history and meter location records is chargeable to Account 586, Meter Expenses.

904 Uncollectible Accounts

This amount shall be charged with amounts sufficient to provide for losses from uncollectible utility revenues. Concurrent credits shall be made to Account 144, Accumulated Provision for Uncollectible Accounts—Credit. Losses from uncollectible accounts shall be charged to Account 144.

905 Miscellaneous Customer Accounts Expenses

This account shall include the cost of labor, materials used, and expenses incurred not provided for in other accounts.

Items

Labor:

1. General clerical and stenographic work.

2. Miscellaneous labor.

Materials and Expenses:

1. Communication service.

2. Miscellaneous office supplies and expenses and stationery and printing other than those specifically provided for in Account 902 and Account 903.

§ 1767.29 Customer service and informational expenses.

The customer service and informational expense accounts identified in this section shall be used by all REA borrowers.

Customer Service and Informational Expenses

(Operation)

907 Supervision
908 Customer Assistance Expenses
909 Informational and Instructional Advertising Expenses
910 Miscellaneous Customer Service and Informational Expenses

Customer Service and Informational Expenses

(Operation)

907 Supervision

This account shall include the cost of labor and expenses incurred in the general direction and supervision of customer service activities, the object of which is to encourage safe, efficient, and economical use of the utility's service. Direct supervision of a specific activity within customer service and informational expense classification shall be charged to the account wherein the costs of such activity are included. (See § 1767.17 (a).)

908 Customer Assistance Expenses

This account shall include the cost of labor, materials used, and expenses incurred in providing instructions or assistance to customers, the object of which is to encourage safe, efficient, and economical use of the utility's service.

Items

Labor:

1. Direct supervision of department.

2. Processing customer inquiries relating to the proper use of electric equipment, the replacement of such equipment, and information related to such equipment.

3. Advice directed to customers as to how they may achieve the most efficient and safest use of electric equipment.

4. Demonstrations, exhibits, lectures, and other programs designed to instruct customers in the safe, economical, or efficient use of electric service, and/or oriented toward conservation of energy.

5. Engineering and technical advice to customers, the object of which is to promote safe, efficient, and economical use of the utility's service.

Materials and Expenses:

1. Supplies and expenses pertaining to demonstrations, exhibits, lectures, and other programs.

2. Loss in value on equipment and appliances used for customer assistance programs.

3. Office supplies and expenses.

4. Transportation, meals, and incidental expenses.

Note: Do not include in this account expenses that are provided for elsewhere, such as Accounts 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work; 587, Customer Installations Expenses; and 912, Demonstrating and Selling Expenses.

909 Informational and Instructional Advertising Expenses

This account shall include the cost of labor, materials used, and expenses incurred in activities which primarily convey information as to what the utility urges or suggests customers should do in utilizing electric service to protect health and safety, to encourage environmental protection, to utilize their electric equipment safely and economically, or to conserve electric energy.

Items

Labor:

1. Direct supervision of information activities.

2. Preparing informational materials for newspapers, periodicals, and billboards and preparing and conducting informational motion pictures, radio and television programs.

3. Preparing informational booklets and bulletins used in direct mailings.

4. Preparing informational window and other displays.

5. Employing agencies, selecting media, and conducting negotiations in connection with the placement and subject matter of information programs.

Materials and Expenses:

1. Use of newspapers, periodicals, billboards, and radio for informational purposes.

2. Postage on direct mailings to customers exclusive of postage related to billings.

3. Printing of informational booklets, dodgers, and bulletins.

4. Supplies and expenses in preparing informational materials by the utility.

5. Office supplies and expenses.

Note A: Exclude from this account and charge to Account 930.2, Miscellaneous General Expenses, the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Also exclude all expenses of a promotional, institutional, goodwill, or political nature, which are includible in such accounts as 913, Advertising Expenses; 930.1, General Advertising Expenses; and 426.4, Expenditures for Certain Civic, Political and Related Activities.

Note B: Entries relating to informational advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of the advertising message shall be readily available.

910 Miscellaneous Customer Service and Informational Expenses

This account shall include the cost of labor, materials used, and expenses incurred in connection with customer service and informational activities which are not includible in other customer information expense accounts.

Items

Labor:

1. General clerical and stenographic work not assigned to specific customer service and informational programs.

2. Miscellaneous labor.

Materials and Expenses:

1. Communication service.

2. Printing, postage, and office supplies expenses.

§ 1767.30 Sales expenses.

The sales expense accounts identified in this section shall be used by all REA borrowers.

Sales Expenses

(Operation)

911 Supervision
912 Demonstrating and Selling Expenses
913 Advertising Expenses
916 Miscellaneous Sales Expenses

Sales Expenses

(Operation)

911 Supervision

This account shall include the cost of labor and expenses incurred in the general direction and supervision of sales activities, except merchandising. Direct supervision of a specific activity, such as demonstrating, selling, or advertising shall be charged to the account wherein the costs of such activity are included. (See § 1767.17 (a).)

912 Demonstrating and Selling Expenses

This account shall include the cost of labor, materials used, and expenses incurred in promotional, demonstrating, and selling activities, except by merchandising, the object of which is to promote or retain the use of utility services by present and prospective customers.

Items

Labor:

1. Demonstrating uses of utility services.
2. Conducting cooking schools, preparing recipes, and related home service activities.
3. Exhibitions, displays, lectures, and other programs designed to promote use of utility services.
4. Experimental and development work in connection with new and improved appliances and equipment, prior to general public acceptance.
5. Solicitation of new customers or of additional business from old customers, including commissions paid employees.
6. Engineering and technical advice to present or prospective customers in connection with promoting or retaining the use of utility services.
7. Special customer canvasses when their primary purpose is the retention of business or the promotion of new business.

Materials and Expenses:

1. Supplies and expenses pertaining to demonstration, experimental, and development activities.
2. Booth and temporary space rental.
3. Loss in value on equipment and appliances used for demonstration purposes.
4. Transportation, meals, and incidental expenses.

913 Advertising Expenses

This account shall include the cost of labor, materials used, and expenses incurred in advertising designed to promote or retain the use of utility service, except advertising the sale of merchandise by the utility.

Items

Labor:

1. Direct supervision of department.
2. Preparing advertising material for newspapers, periodicals, and billboards, and preparing and conducting motion pictures, radio, and television programs.
3. Preparing booklets and bulletins used in direct mail advertising.
4. Preparing window and other displays.
5. Clerical and stenographic work.
6. Investigating advertising agencies and media and conducting negotiations in connection with the placement and subject matter of sales advertising.

Materials and Expenses:

1. Advertising in newspapers, periodicals, billboards, and radio for sales promotion purposes, but not including institutional or goodwill advertising includible in Account 930.1, General Advertising Expenses.
2. Materials and services given as prizes or otherwise in connection with civic lighting contests, canning, or cooking contests, and bazaars in order to publicize and promote the use of utility services.
3. Fees and expenses of advertising agencies and commercial artists.
4. Novelties for general distribution.
5. Postage on direct mail advertising.
6. Premiums distributed generally, such as recipe books when not offered as inducement to purchase appliances.
7. Printing booklets, dodgers, and bulletins.
8. Supplies and expenses in preparing advertising material.
9. Office supplies and expenses.

Note A: The cost of advertisements which set forth the value or advantages of utility service without reference to specific appliances, or, if reference is made to appliances, invites the reader to purchase appliances from his dealer or refer to appliances not carried for sale by the utility, shall be considered sales promotion advertising and charged to this account. However, advertisements which are limited to specific makes of appliances sold by the utility and price and terms, thereof, without referring to the value or advantages of utility service, shall be considered as merchandise advertising and the cost shall be charged to Costs and Expenses of Merchandising, Jobbing and Contract Work, Account 416.

Note B: Advertisements which substantially mention or refer to the value or advantages of utility service, together with specific reference to makes of appliance sold by the utility and the price, and terms, thereof, and designed for the joint purpose of increasing the use of utility service and the sales of appliances, shall be considered as a combination advertisement and the costs shall be distributed between this account and Account 416 on the basis of space, time, or other proportional factors.

Note C: Exclude from this account and charge to Account 930.2, Miscellaneous General Expenses, the cost of publication of stockholder reports, dividend notices, bond redemption notices, financial statements, and other notices of a general corporate character. Also exclude all institutional or goodwill advertising. (See Account 930.1, General Advertising Expenses.)

916 Miscellaneous Sales Expenses

This account shall include the cost of labor, materials used, and expenses incurred in connection with sales activities, except merchandising, which are not includible in other sales expense accounts.

Items

Labor:

1. General clerical and stenographic work not assigned to specific functions.
2. Special analysis of customer accounts and other statistical work for sales purposes not a part of the regular customer accounting and billing routine.
3. Miscellaneous labor.

Materials and Expenses:

1. Communication service.
2. Printing, postage, office supplies, and expenses applicable to sales activities, except those chargeable to Account 913, Advertising Expenses.

§ 1767.31 Administrative and general expenses.

The administrative and general expense accounts identified in this section shall be used by all REA borrowers.

Administrative and General

(Operation)

920 Administrative and General Salaries
921 Office Supplies and Expenses
922 Administrative Expenses Transferred—Credit
923 Outside Services Employed
924 Property Insurance
925 Injuries and Damages
926 Employee Pensions and Benefits
927 Franchise Requirements
928 Regulatory Commission Expenses
929 Duplicate Charges—Credit
930.1 General Advertising Expenses
930.2 Miscellaneous General Expenses
931 Rents

(Maintenance)

935 Maintenance of General Plant

Administrative and General

(Operation)

920 Administrative and General Salaries

A. This account shall include the compensation (salaries, bonuses, and other consideration for services, but not including directors' fees) of officers, executives, and other employees of the utility properly chargeable to utility operations and not chargeable directly to a particular operating function.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

921 Office Supplies and Expenses

A. This account shall include office supplies and expenses incurred in connection with the general administration of the utility's operations which are assignable to specific administrative or general departments and are not specifically provided for in other accounts. This includes the expenses of the various administrative and general departments, the salaries and wages of which are includible in Account 920.

B. This account may be subdivided in accordance with a classification appropriate to the departmental or other functional organization of the utility.

Note: Office expenses which are clearly applicable to any category of operating expenses other than the administrative and general category shall be included in the appropriate account in such category. Further, general expenses which apply to the utility as a whole rather than to a particular administrative function, shall be included in Account 930.2, Miscellaneous General Expenses.

Items

1. Automobile service, including charges through clearing account.
2. Bank messenger and service charges.
3. Books, periodicals, bulletins, and subscriptions to newspapers, newsletters, and tax services.
4. Building service expenses for customer accounts, sales, and administrative and general purposes.
5. Communication service expenses.
6. Cost of individual items of office equipment used by general departments which are of small value or short life.
7. Membership fees and dues in trade, technical, and professional associations paid by a utility for employees. (Company memberships are includible in Account 930.2.)
8. Office supplies and expenses.
9. Payment of court costs, witness fees, and other expenses of legal department.
10. Postage, printing, and stationery.
11. Meals, traveling, and incidental expenses.

922 Administrative Expenses Transferred—Credit

This account shall be credited with administrative expenses recorded in Account 920 and Account 921 which are transferred to construction costs or to nonutility accounts. (See § 1767.16 (d).)

923 Outside Services Employed

A. This account shall include the fees and expenses of professional consultants and others for general services which are not applicable to a particular operating function or other accounts. It shall include also the pay and expenses of persons engaged for a special or temporary administrative or general purpose in circumstances where the person so engaged is not considered as an employee of the utility.

B. This account shall be so maintained as to permit ready summarization according to the nature of service and the person furnishing the same.

Items

1. Fees, pay, and expenses of accountants and auditors, actuaries, appraisers, attorneys, engineering consultants, management consultants, negotiators, public relations counsel, and tax consultants.
2. Supervision fees and expenses paid under contracts for general management services.

Note: Do not include inspection and brokerage fees and commissions chargeable to other accounts or fees and expenses in connection with security issues which are includible in the expenses of issuing securities.

924 Property Insurance

A. This account shall include the cost of insurance or reserve accruals to protect the utility against losses and damages to owned or leased property used in its utility operations. It shall also include the cost of labor and related supplies and expenses incurred in property insurance activities.

B. Recoveries from insurance companies or others for property damages shall be credited to the account charged with the cost of the damage. If the damaged property has been retired, the credit shall be to the appropriate account for accumulated provision for depreciation.

C. Records shall be kept so as to show the amount of coverage for each class of insurance carried, the property covered, and the applicable premiums. Any dividends distributed by mutual insurance companies shall be credited to the accounts to which the insurance premiums were charged.

Items

1. Premiums payable to insurance companies for fire, storm, burglary, boiler explosion, lightning, fidelity, riot, and similar insurance.
2. Amounts credited to Account 228.1, Accumulated Provision for Property Insurance, for similar protection.
3. Special costs incurred in procuring insurance.
4. Insurance inspection service.
5. Insurance counsel, brokerage fees, and expenses.

Note A: The cost of insurance or reserve accruals capitalized, shall be charged to construction either directly or by transfer to construction work orders from this account.

Note B: The cost of insurance or reserve accruals for the following classes of property shall be charged as indicated.

1. Materials, supplies, and stores equipment to Account 163, Stores Expense Undistributed, or appropriate materials account.
2. Transportation and other general equipment to appropriate clearing accounts that may be maintained.
3. Electric plant leased to others to Account 413, Expenses of Electric Plant Leased to Others.
4. Nonutility property to the appropriate nonutility income account.
5. Merchandise and jobbing property to Account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

Note C: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in property insurance work may be included in Account 920 and Account 921, as appropriate.

925 Injuries and Damages

A. This account shall include the cost of insurance or reserve accruals to protect the utility against injuries and damages claims of employees or others, losses of such character not covered by insurance, and expenses incurred in settlement of injuries and damages claims. It shall also include the cost of labor, related supplies, and expenses incurred in injuries and damages activities.

B. Reimbursements from insurance companies or others for expenses charged hereto on account of injuries, damages, and insurance dividends or refunds shall be credited to this account.

Items

1. Premiums payable to insurance companies for protection against claims from injuries and damages by

employees or others, such as public liability, property damages, casualty, employee liability, etc., and amounts credited to Account 228.2, Accumulated Provision for Injuries and Damage, for similar protection.

2. Losses not covered by insurance or reserve accruals on account of injuries or deaths to employees or others and damages to the property of others.

3. Fees and expenses of claim investigators.

4. Payment of awards to claimants for court costs and attorneys' services.

5. Medical and hospital service and expenses for employees as the result of occupational injuries or resulting from claims of others.

6. Compensation payments under workmen's compensation laws.

7. Compensation paid while incapacitated as the result of occupational injuries. (See Note A.)

8. Cost of safety, accident prevention, and similar educational activities.

Note A: Payments to or in behalf of employees for accident or death benefits, hospital expenses, medical expenses, or for salaries while incapacitated for service or on leave of absence beyond periods normally allowed, when not the result of occupational injuries, shall be charged to Account 926, Employee Pensions and Benefits. (See also Note B of Account 926.)

Note B: The cost of injuries and damages or reserve accruals capitalized shall be charged to construction directly or by transfer to construction work orders from this account.

Note C: Exclude herefrom the time and expenses of employees (except those engaged in injuries and damages activities) spent in attendance at safety and accident prevention educational meetings, if occurring during the regular work period.

Note D: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in injuries and damages activities, may be included in Account 920 and Account 921, as appropriate.

926 Employee Pensions and Benefits

A. This account shall include pensions paid to or on behalf of retired employees or accruals to provide for pensions or payments for the purchase of annuities for this purpose, when the utility has definitely, by contract, committed itself to a pension plan under which the pension funds are irrevocably devoted to pension purposes and payments for employee accident, sickness, hospital, and death benefits, or insurance therefor. Include, also, expenses incurred in medical, educational, or recreational activities for the benefit of employees and administrative expenses in connection with employee pensions and benefits.

B. The utility shall maintain a complete record of accruals or payments for pensions and be prepared to furnish full information to REA of the plan under which it has created or proposes to create a pension fund and a copy of the declaration of trust or resolution under which the pension plan is established.

C. There shall be credited to this account the portion of pensions and benefits expenses which is applicable to nonutility operations or which is charged to construction unless such amounts are distributed directly to the accounts involved and are not included herein in the first instance.

D. Records in support of this account shall be so kept that the total pensions expense, the total benefits expense, the administrative expenses included herein, and the amounts of pensions and benefits expenses transferred to construction or other accounts will be readily available.

Items

1. Payment of pensions under a nonaccrual or nonfunded basis.

2. Accruals for or payments to pension funds or to insurance companies for pension purposes.

3. Group and life insurance premiums (credit dividends received).

4. Payments for medical and hospital services and expenses of employees when not the result of occupational injuries.

5. Payments for accident, sickness, hospital, and death benefits or insurance.

6. Payments to employees incapacitated for service or on leave of absence beyond periods normally allowed when not the result of occupational injuries or in excess of statutory awards.

7. Expenses in connection with educational and recreational activities for the benefit of employees.

Note A: The cost of labor and related supplies and expenses of administrative and general employees who are only incidentally engaged in employee pension and benefit activities may be included in Account 920 and Account 921, as appropriate.

Note B: Salaries paid to employees during periods of nonoccupational sickness may be charged to the appropriate labor account rather than to employee benefits.

927 Franchise Requirements

A. This account shall include payments to municipal or other governmental authorities and the cost of materials, supplies, and services furnished such authorities without reimbursement in compliance with franchise, ordinance, or similar requirements; provided, however, that the utility may charge to this account at regular tariff rates, instead of cost, utility service furnished without charge under provisions of franchises.

B. When no direct outlay is involved, concurrent credit for such charges shall be made to Account 929, Duplicate Charges—Credit.

C. The account shall be maintained so as to readily reflect the amounts of cash outlays, utility service supplied without charge, and other items furnished without charge.

Note A: Franchise taxes shall not be charged to this account, but to Account 408.1, Taxes Other Than Income Taxes, Utility Operating Income.

Note B: Any amount paid as initial consideration for a franchise running for more than one year shall be charged to Account 302, Franchises and Consents.

928 Regulatory Commission Expenses

A. This account shall include all expense (except pay of regular employees only incidentally engaged in such work) properly includible in utility operating expenses, incurred by the utility in connection with formal cases before regulatory commissions or other regulatory bodies or cases in which such a body is a party, including payments made to a regulatory commission for fees assessed against the utility for pay and expenses of such commission, its officers, agents, and employees, and also including payments made to the United States for the administration of the Federal Power Act.

B. Amounts of regulatory commission expenses which, by approval or direction of REA, are to be spread over future periods shall be charged to Account 182.3, Other Regulatory Assets, and amortized by charges to this account.

C. The utility shall be prepared to show the cost of each formal case.

Items

1. Salaries, fees, retainers, and expenses of counsel, solicitors, attorneys, accountants, engineers, clerks, attendants, witnesses, and others engaged in the prosecution of or defence against petitions or complaints presented to regulatory bodies or in the valuation of property owned or used by the utility in connection with such cases.

2. Office supplies and expenses, payments to public service or other regulatory commissions, stationery and printing, traveling expenses, and other expenses incurred directly in connection with formal cases before regulatory commissions.

Note A: Exclude from this account and include in other appropriate operating expense accounts, expenses incurred in the improvement of service, additional inspection, or rendering reports which are made necessary by the rules and regulations, or orders, of regulatory bodies.

Note B: Do not include in this account amounts includible in Account 302, Franchises and Consents; Account 181, Unamortized Debt Expense; or Account 214, Capital Stock Expense.

929 Duplicate Charges—Credit

This account shall include concurrent credits for charges which may be made to operating expenses or to other accounts for the use of utility service from its own supply. Include, also, offsetting credits for any other charges made to operating expenses for which there is no direct money outlay.

930.1 General Advertising Expenses

This account shall include the cost of labor, materials used, and expenses incurred in advertising and related activities, the cost of which by their content and purpose are not provided for elsewhere.

Items

Labor:

1. Supervision.
2. Preparing advertising material for newspapers, periodicals, and billboards and preparing or conducting motion pictures, radio, and television programs.
3. Preparing booklets and bulletins used in direct mail advertising.
4. Preparing window and other displays.
5. Clerical and stenographic work.
6. Investigating and employing advertising agencies, selecting media, and conducting negotiations in connection with the placement and subject matter of advertising.

Materials and Expenses:

1. Advertising in newspapers, periodicals, billboards, and radios.
2. Advertising matter such as posters, bulletins, booklets, and related items.
3. Fees and expenses of advertising agencies and commercial artists.
4. Postage and direct mail advertising.
5. Printing of booklets, dodgers, and bulletins.
6. Supplies and expenses in preparing advertising materials.
7. Office supplies and expenses.

Note A: Properly includible in this account is the cost of advertising activities on a local or national basis of a goodwill or institutional nature, which is primarily designed to improve the image of the utility or the industry, including advertisements which inform the public concerning matters affecting the company's operations, such as, the cost of providing service, the company's efforts to improve the quality of service, and the company's efforts to improve and protect the environment. Entries relating to advertising included in this account shall contain or refer to supporting documents which identify the specific advertising message. If references are used, copies of the advertising message shall be readily available.

Note B: Exclude from this account and include in Account 426.4, Expenditures for Certain Civic, Political and Related Activities, expenses for advertising activities, which are designed to solicit public support or the support of public officials in matters of a political nature.

930.2 Miscellaneous General Expenses

This account shall include the cost of labor and expenses incurred in connection with the general management of the utility not provided for elsewhere.

Items

Labor:

1. Miscellaneous labor not elsewhere provided for.

Expenses:

1. Industry association dues for company memberships.
2. Contributions for conventions and meetings of the industry.
3. Research, development, and demonstration expenses not charged to other operation and maintenance expense accounts on a functional basis.
4. Communication service not chargeable to other accounts.
5. Trustee, registrar, and transfer agent fees and expenses.
6. Stockholders meeting expenses.
7. Dividend and other financial notices.
8. Printing and mailing dividend checks.
9. Directors' fees and expenses.
10. Publishing and distributing annual reports to stockholders.
11. Public notices of financial, operating, and other data required by regulatory statutes, not including, however, notices required in connection with security issues or acquisitions of property.

931 Rents

This account shall include rents properly includible in utility operating expenses for the property of others used, occupied, or operated in connection with the customer accounts, customer service and informational, sales, general, and administrative functions of the utility. (See § 1767.17 (c).)

(Maintenance)

935 Maintenance of General Plant

A. This account shall include the cost assignable to customer accounts, sales, administrative, and general functions of labor, materials used, and expenses incurred in the maintenance of property, the book cost of which is includible in Account 390, Structures and Improvements; Account 391, Office Furniture and Equipment; Account 397, Communication Equipment; and Account 398, Miscellaneous Equipment. (See § 1767.17 (b).)

B. Maintenance expenses on office furniture and equipment used elsewhere than in general, commercial, and sales offices shall be charged to the following accounts:

1. Steam Power Generation, Account 514
2. Nuclear Power Generation, Account 532
3. Hydraulic Power Generation, Account 545
4. Other Power Generation, Account 554
5. Transmission, Account 573
6. Distribution, Account 598
7. Merchandise and Jobbing, Account 416
8. Garages, Shops, etc., Appropriate clearing account, if used.

Note: Maintenance of plant included in other general equipment accounts shall be included herein unless charged to clearing accounts or to the particular functional maintenance expense account indicated by the use of the equipment.

§§ 1767.32—1767.40 [Reserved]

§ 1767.41 Accounting methods and procedures required of all REA borrowers.

All REA borrowers shall maintain and keep their books of accounts and all other books and records which support the entries in such books of accounts in accordance with the accounting principles prescribed in this section.

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101 Work Order Procedures

When a minor item of property is removed from service and not replaced, a retirement work order is not required except in the case of a conductor. The cost of the minor item shall remain in the appropriate plant account until the retirement unit, of which it is a part, is retired. However, as conductor is recorded in feet and is not part of any specific retirement unit, conductor shall be retired even though the amount taken down and not replaced is less than a retirement unit (two spans).

When minor items of plant are removed and not replaced, material salvaged shall be recorded on a material salvage ticket. Items of material recorded on this ticket shall be charged to the materials and supplies account and credited in the miscellaneous columns of the Materials Register to the Accumulated Provision for Depreciation. In this example, it is assumed that the cost of removal is nil. If, however, costs are incurred during the removal of minor items of plant, these costs shall reduce the credit to the Accumulated Provision for Depreciation.

When a staking sheet supporting a single work order reflects a combination of new construction and replacements, or system improvements, the predominant cost shall be the governing factor in determining the amount of cost REA will finance. To illustrate, assume that a service is to be run to a new home near the end of an existing line. On inspection, the pole from which the service is to be run is found to be in very poor physical condition and must be replaced. In addition, a single span of wire and a service are presently connected to this pole which serve no purpose. The home originally served has been demolished and the existing span, pole, and service were retired. In other words, what started out to be simply the installation of a new service now includes the retirement of a span of wire, a pole, and a service; the replacement of a pole; and the running of a new service. Assuming the replacement of the pole is the costliest part of this project, the construction and retirement activity shall be classified as an ordinary replacement even though the work includes new construction and retirements without replacement.

102 Line Conversion

If it is necessary to move a conductor from one location to another on a pole assembly during the conversion of a line from one phase to another phase, the cost of moving the conductor is capitalizable as a system improvement.

103 Sacrificial Anodes and the Replacement of a Neutral

Many utilities conduct studies to determine whether sacrificial anodes are needed to protect underground cable against corrosion. The following procedures shall be followed to account for sacrificial anodes and the replacement of a neutral:

1. If the study results in the installation of sacrificial anodes, the cost of the study shall be capitalized to Account 367, Underground Conductors and Devices. If the study does not result in the installation of anodes, the cost shall be charged to Account 594, Maintenance of Underground Lines.

2. Costs incurred in the first installation are capitalizable even though anodes are considered minor items of property. However, only the first costs of installation shall be capitalized. All subsequent replacements of anodes shall be expensed.

3. Sacrificial anodes do not constitute a record unit; therefore, the cost of anodes shall be added to the cost of the underground cable unit.

4. Because a neutral is part of an underground cable record unit, and is not, in and of itself, a record unit, the cost to replace a corroded neutral shall be charged to Account 594, Maintenance of Underground Lines.

104 Terminal Facilities

Borrowers are sometimes required to construct terminal facilities in the transmission line of another utility in order to receive power from their power supplier. The document executed between the borrower and the utility is normally referred to as a "License Agreement". The license agreement may stipulate that certain items of the terminal facilities are to be transferred to, and become the property of, the other utility upon completion of the construction. The accounting for this type of transaction shall be as follows:

1. All construction costs incurred shall be charged to a work order. Upon completion of the construction and accumulation of all costs, the cost of the facilities that become the property of another utility shall be transferred from construction work-in-progress to Account 186, Miscellaneous Deferred Debits. The cost of the plant for which the borrower retains title shall be charged to the appropriate plant accounts.

2. The cost of the facilities recorded in Account 186, Miscellaneous Deferred Debits, shall be amortized to Account 557, Other Expenses, over the estimated useful service life of the plant. If the

related contract or contracts for this power supply are terminated, the unamortized balance shall be expensed, in the current period, in Account 557.

105 Pole Top Disconnect Switch

The installation of pole top service disconnect switches, where title is retained by the utility, shall be capitalized in Account 371, Installations on Customers' Premises. If a switch cabinet is purchased with a current transformer included as an integral part of the cabinet, the entire cost of the switch shall be charged to Account 371. If the current transformer is installed outside of the switch cabinet, the transformer, meter, and meter base, together with the first installation costs, shall be capitalized, upon purchase, in Account 370, Meters.

Payments received from the customer toward construction costs shall be credited to Account 371, Installations on Customers' Premises. Such payments, together with any amount not financed by REA, shall be entered in column 9 of the REA Form 219, Inventory of Work Orders. The associated maintenance costs shall be charged to Account 587, Customer Installations Expenses, or to Account 597, Maintenance of Meters, as appropriate.

When pole top disconnect switches are installed and title is held by the customer, the cost of the material shall be charged to Account 456, Other Electric Revenues and the receipts from the sale of line material shall be credited to Account 456. The portion of the receipts for resale material as well as that for installation shall be credited to Account 415, Revenues from Merchandising, Jobbing, and Contract Work. The cost of resale material sold and the cost of installation shall be charged to Account 416, Costs and Expenses of Merchandising, Jobbing and Contract Work.

Future maintenance costs incurred by the cooperative that are not billed to the customer shall be charged to Account 587, Customer Installations Expenses.

106 Steel Pole Reinforcers

The cost associated with the purchase and installation of steel pole reinforcers shall be charged to Account 593, Maintenance of Overhead Lines.

107 Mobile Substations

Mobile substations shall be accounted for in a manner similar to that for a spare and are, therefore, included as part of transmission or distribution station equipment, depending upon the use of the mobile substation. The mobile substation, together with the trailer on which it is permanently mounted, shall be capitalized upon purchase. A general purpose truck or tractor used to relocate a mobile substation and trailer shall be classified as transportation equipment.

The composite depreciation rate used for transmission plant or distribution plant, as appropriate, shall be applied to the mobile substation.

108 Security Lights

Where a pole supports both a secondary wire and a security light, the cost of the pole shall be charged to Account 364, Poles, Towers, and Fixtures, even though the plant investment in security lights is recorded in Account 371, Installations on Customers' Premises.

109 Joint Use

There are many cases in which an electric utility and a communications utility enter into an agreement that provides for joint use of poles. Under the terms of these agreements, either utility may occupy the poles of the other upon payment of a stipulated annual rental. If such joint occupancy necessitates the use of a higher than standard pole, the new pole shall be provided at the expense of the utility having the need for the higher pole.

When an electric utility replaces, at its own expense, a standard pole belonging to the communications utility with a higher pole, the cost of the higher pole, less net salvage (if any) of the pole replaced, shall be charged to the account in which the pole rental is included.

Contributions made to an electric utility by a communications utility for the costs incurred in stubbing joint use electric poles shall be credited to Account 593, Maintenance of Overhead Lines. The cost of pole stubbing on electric plant distribution facilities shall be charged to Account 593.

An investment in outside plant that is held in joint ownership shall be recorded in the appropriate plant accounts at its cost to the utility. For continuing property record purposes, jointly owned property units shall be priced at their cost to the utility and shall be appropriately segregated in the CPRs to indicate joint ownership.

110 First Clearing and Grading of Land and Rights of Way

Utility accounting practice requires the costs associated with the first clearing and grading of land and rights of way and any resulting damage thereto, to be included in the accounts for structures and improvements or equipment to which such costs relate. Since the first clearing, as well as clearing which is "directly occasioned by the building of a structure," is done, not for the purpose of enhancing the value of the land or the rights of way, but for the purpose of constructing plant, these costs are more directly related to the construction of plant than to the purchase of land or rights of way. The accounts shall be charged as follows:

1. For overhead transmission pole lines, Account 356, Overhead Conductors and Devices;
2. For overhead distribution lines, Account 365, Overhead Conductors and Devices; and
3. For underground distribution lines, Account 366, Underground Conduit, for a conduit installation; or Account 367, Underground Conductors and Devices, for a direct burial installation.

111 Engineering Contracts for System Planning

Engineering costs for long-range system plans shall be charged to Account 183, Preliminary Survey and Investigation Charges, as incurred. The cost of engineering services incurred in preparing a long-range system plan represents a legitimate component of the total cost of construction of all system improvements detailed in the plan. The amount of engineering costs to be associated with any specific system improvement is the annual costs incurred up to the time of the allocation (not previously allocated), plus that portion of the initial cost which relates to the particular construction in question. If any major system improvement included in the engineering plan is not constructed, or if the study is superseded by another complete study, the cost of that portion of the original study not resulting in construction shall be charged to Account 182.2, Unrecovered Plant and Regulatory Study Costs, if the costs are to be recovered through future rates. Costs recorded in Account 182.2 shall be amortized to Account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs, as the costs are recovered through the rates. Any costs included in Account 182.2 that are disallowed for rate-making purposes shall be charged to Account 426.5, Other Deductions.

The allocation of engineering services to the various construction projects requires the exercise of judgment. In some cases, system improvements are continuous over a period of months or years, thus permitting the engineering cost to be spread monthly as overhead in relation to the direct costs incurred in construction. (If a substantial amount of retirement work is performed in

connection with system improvements, a proportionate share of the engineering cost shall be allocated on the basis of direct retirement labor.) If the system improvements detailed in the plan are not performed in a continuous manner, the engineering cost shall be allocated on the basis of the estimated costs of the various larger system improvement projects which result from the long-range plan.

If construction is performed by contract, the engineering cost applicable thereto shall be transferred from Account 183 to Account 107, Construction Work-in-Progress—Electric, and thereby spread to the appropriate plant accounts on the basis of contract costs.

In the case of system improvement construction performed on the basis of work orders, engineering costs shall be transferred to Account 107, Construction Work-in-Progress—Electric, and included in total work order costs as either overhead or special services. If engineering services are not readily identifiable with individual work orders, they shall be capitalized as overhead. If engineering costs for each work order are readily separable from the engineering costs for all other work orders, they shall be capitalized as special services.

In summarizing system improvement work orders on the REA Form 219, Inventory of Work Orders, the amount of engineering costs previously approved for advance on the long range plan, if any, shall be deducted to determine the balance of loan funds subject to advance by REA.

112 Determination of Availability of Service

Costs relating to the determination of availability of service, rates, and similar items for individual applicants shall be charged to Account 912, Demonstrating and Selling Expenses. If it is expected that construction will result, the costs incurred to provide service, including staking, shall be charged to Account 107, Construction Work-in-Progress—Electric. If construction does not result, Account 107 shall be credited and Account 426.5, Other Deductions, shall be charged.

113 Temporary Facilities (Services)

Plant installed for temporary use, a period of less than 1.ar, shall be recorded in Account 185, Temporary Facilities, net of any payments received from customers. Upon retirement, this net cost plus cost of removal, less any salvage value, shall be cleared to Account 451, Miscellaneous Service Revenues.

When a temporary service is installed at the site of a building under construction, the location of the permanent service entrance and the load and its characteristics are usually known. The temporary service is of the proper capacity and is so located or has sufficient slack, that it can be relocated to serve the new building as a permanent service. Under these conditions, the service shall be charged to Account 369, Services, when first installed. The cost of moving and attaching the service to the permanent service entrance shall be charged to Account 593, Maintenance of Overhead Lines or Account 594, Maintenance of Underground Lines, as appropriate.

114 Construction Work-in-Progress Damaged or Destroyed by Storm

When installed plant, not yet completed or completed but not yet placed in service, has been damaged or destroyed by storm, the cost of the repair and restoration shall be added to the cost of construction and capitalized if the plant was constructed under force account or work order construction, and the utility paid for the cost of the repairs. If the plant was constructed under contract, the contractor is required to deliver the plant in new condition. Therefore, any repairs required prior to the completion of construction and acceptance by the utility, are ordinarily borne by the contractor.

115 Liquidated Damages

Liquidated damages are amounts paid by or assessed against contractors for the completion of construction after an agreed upon date. Liquidated damages shall be credited to Account 107, Construction Work-in-Progress—Electric. Since these damages accrue during the construction period, they become one of the components of construction cost. Even though a portion of these damages may compensate the utility for costs which are not "identifiable," no portion of the damages shall be credited to revenue or expense.

When a contractor has been paid in full from loan funds or from funds to be reimbursed by loan funds without a deduction for liquidated damages, the amount of liquidated damages received shall be deposited in the Construction Fund. This amount shall be reflected by a decrease in column 5, "Total Expenditures to Date," of the REA Form 595, Financial Requirement and Expenditure Statement, and as an increase in column 6, "Cash Balance." If liquidated damages are obtained by withholding an equivalent amount from the contractor's payment, the net result will be the same.

116 Nonrefundable Payments for Construction

Nonrefundable payments (contributions) from customers and developers for underground construction shall first be credited to Account 107.2, Construction Work-in-Progress—Force Account. When the constructed plant is unitized and distributed to the individual plant accounts, the contributions shall be credited to those plant accounts which gave rise to the contribution.

When a customer or developer furnishes a trench or other service in connection with buried plant, the cooperative shall debit Account 107.2 with the actual or estimated cost of the service performed, and account for the credit as set forth above.

117 Refunds of Overpayments for Materials and Equipment

Refunds of overpayments for materials and equipment previously purchased are occasionally received as the result of legal action brought against electrical suppliers for price fixing in violation of antitrust laws. Such refunds shall be accounted for as follows:

1. The refund shall first be applied to any litigation costs that were incurred.

2. Refunds for special equipment items shall be accounted for, in detail, on the Summary of Special Equipment Costs and credited against the appropriate plant accounts.

3. Other material or equipment items that were installed through work orders or a materials furnished contract shall be adjusted on an amended work order. The amended work order shall include full details of the refund.

4. Continuing property records shall be adjusted to reflect the above transactions.

5. Amounts approved for advance on the REA Form 595, Financial Requirement and Expenditure Statement, and on the loan budget records, shall be adjusted. For special equipment items, the adjustment shall be requested in a letter to REA. For materials installed by work order or contract, the adjustments shall be made through credits shown on the REA Form 219, Inventory of Work Orders.

6. Refunds for material currently in stock shall be credited to Account 154, Plant Materials and Operating Supplies.

7. If the material was used in maintenance activities or operations, the refund shall be credited to the appropriate maintenance or operations expense account.

8. Refunds for materials or equipment financed from loan funds shall be deposited in the Construction Fund—Trustee Account or remitted to REA as a special payment on a note. Other refunds shall be deposited in the general funds.

118 Load Control Equipment

The primary purpose of a Load Management System is to optimize load dispatch and to reduce or minimize system peaks in order to reduce purchases of power or to delay or eliminate the need for construction of new plant. A Load Management System may be used on integrated systems, or on generation, transmission, or distribution systems separately. The telemetry equipment used for data acquisition and interpretation may be included at various points on a system, such as generation, transmission, or distribution substation, switchyards or on consumers' premises.

An effective load control program should be coordinated with the G&T and requires full participation of all member distribution systems. The G&T monitors the power load of the total member distribution system to predict the time of the system's peak load. An optimal load control strategy is developed by the G&T and is passed on from the G&T computer system to the load control computer systems of the member distribution cooperatives.

The equipment at the member distribution system level is the type actually being used by an integrated power system to operate a load control program. The equipment used may vary from one integrated power system to another. The selection of equipment used is determined by the information needs of the integrated power system, and the method selected to operate the load control system.

Some equipment performs only SCADA-type functions. This equipment is included with the equipment that performs only load control functions because SCADA-type equipment is an integral part of a load control program. An effective load control strategy requires current information on loads so that member distribution systems can determine the actual loads to be shed and the duration of the load control.

The function and location of the load control equipment are the primary factors in determining the account in which the equipment shall be recorded. The following example depicts a common load control system and the associated accounting. Equipment type may vary, thereby necessitating the use of accounts not prescribed below. In all instances, however, the function and location of the equipment shall dictate the appropriate account classification.

G&T Borrower

1. *Coordinating System Equipment*

Coordinating System Equipment is the data acquisition, processing and control hardware and software used to coordinate the load control efforts of the member distribution system. Generally, this equipment is dedicated to load control use and is not shared with other electric utility activities.

The purpose of the G&T load control computer system is to reduce or minimize the peak power requirements of the entire member distribution system. This involves load dispatching to control transmission circuits and breakers. The computer system for load control shall, therefore, be recorded in Account 353, Station Equipment, with the associated operating expenses recorded in Account 561, Load Dispatching, and maintenance expenses recorded in Account 570, Maintenance of Station Equipment.

2. *Coordinating System Communications Link*

The G&T load control computer system is usually linked to the load control computer system for each member distribution system by a radio or telephone link that is dedicated to that purpose and is not shared with other communication activities. Under such circumstances, communications equipment shall be classified in Account 353, Station Equipment. If the communications equipment is shared with general use or voice communications equipment, however, the equipment shall be classified in Account 397, Communication Equipment.

3. *Depreciation*

Load control equipment shall be recorded in separate subaccounts of the primary plant accounts detailed above and shall be depreciated based upon the owner's estimate of the equipment's useful service life.

Distribution Borrower

1. *Member System Equipment*

Member system equipment is the data acquisition, processing and control hardware and software used as a subset to the overall load control efforts by the integrated power system.

The member system computer for each distribution member system accepts the control strategy from the G&T coordinating system and develops the tables that determine the control loads that are to be shed and the duration of the load control. The member system computer for each distribution system monitors the usage at each of its delivery points. This usage data is then transmitted to the G&T coordinating system for use in developing load projects and evaluating control strategies for the integrated power system. The member system computer is generally dedicated to load control use and is not shared with other electric utility operations.

The member computer system shall be recorded in Account 362, Station Equipment. The associated operating expenses shall be recorded in Account 581, Load Dispatching, and maintenance expenses shall be recorded in Account 592, Maintenance of Station Equipment.

2. *Substation Remote Controllers*

Substation Remote Controllers are located at the distribution substation. They accept control signals from the member system computer and couple the signal to the portion of the distribution system to which it is connected. Substation Remote Controllers also serve as a receiver of inbound signals from transponders located in the distribution system. They also send data back to the member system computer.

Substation Remote Controllers shall be recorded in Account 362, Station Equipment. The associated operating expenses shall be recorded in Account 582, Station Expenses, and maintenance expenses shall be recorded in Account 592, Maintenance of Station Equipment.

3. *Substation Injection Units*

Substation Injection Units are used only in power line based systems and are located in distribution substations. A major function of the Substation Injection Unit is to receive load control signals from the member system computer and inject them into the power line based system to be transmitted to the Load Control Receivers. Substation Injection Units can also perform control and SCADA functions similar to those performed by Substation Remote Controllers.

Substation Injection Units shall be recorded in Account 362, Station Equipment. The associated operating expenses shall be recorded in Account 582, Station Expenses, and maintenance expenses shall be recorded in Account 592, Maintenance of Station Equipment.

4. *Remote Terminal Units*

Remote Terminal Units perform electric utility SCADA functions in a distribution substation or delivery point. These functions include monitoring equipment for abnormal operating conditions, monitoring analog quantities such as conductor voltage or

substation load, and controlling of certain equipment within the substation.

Remote Terminal Units shall be recorded in Account 362, Station Equipment. The associated operating expenses shall be recorded in Account 582, Station Expenses, and maintenance expenses shall be recorded in Account 592, Maintenance of Station Equipment.

5. *Line Device Transponder*

A Line Device Transponder directly controls a piece of distribution apparatus, such as a voltage regulator or a power factor correction capacitor, located on a distribution feeder and not accessible to a Remote Terminal Unit. The Line Device Transponder actuates the control functions and reports back to the member system computer upon completion of the requested action. This transponder is located at the site of the distribution apparatus being controlled.

Line Device Transponders shall be recorded in Account 368, Line Transformers. The associated operating expense shall be recorded in Account 583, Overhead Line Expenses, or Account 584, Underground Line Expenses, as appropriate, and maintenance expenses shall be recorded in Account 595, Maintenance of Line Transformers.

6. *Communications Verification Transponders*

Communication Verification Transponders are used to respond to inquiries from Substation Remote Controllers. In power line based systems, these transponders are used to verify the performance of the communications system. They are also used during adverse system operations to isolate sections of the distribution system that are experiencing an outage.

Communication Verification Transponders shall be recorded in Account 362, Station Equipment. The associated operating expenses shall be recorded in Account 582, Station Expenses, and maintenance expenses shall be recorded inAccount 592, Maintenance of Station Equipment.

7. *Load Control Receivers*

The Load Control Receiver, also known as a load control switch, is located at the site of the consumer's load. These receivers directly control the electric supply to an end-use appliance, such as an electric water heater, central air conditioning compressor, or irrigation pump. The amount of time that an appliance will be turned off by the load control receiver is preset. When the member system computer determines that load shedding is necessary, it sends a signal to the communication link which then sends signals directly to the Load Control Receivers. In a power line based system, the signal from the communications link is sent by radio or telephone line to the Substation Injection Units, which then signals the Load Control Receivers to shut down the appliances for the present time. In nonpower line based systems, the signal from the communications link is sent by radio directly to the Load Control Receivers.

Load Control Receivers are located on the consumer's side of the meter. When the member distribution system retains title to the Load Control Receivers and assumes full responsibility for maintenance and replacement of the equipment, it shall be classified in Account 371, Installations on Customer's Premises. Load Control Receivers that are donated or given to consumers shall be charged to Account 908, Customer Assistance Expenses.

Operating and maintenance expenses applicable to Load Control Receivers recorded in Account 371 shall be charged to Account 587, Customer Installations Expenses, and Account 598, Maintenance of Miscellaneous Distribution Plant, respectively. Expenses applicable to Load Control Receivers donated or given to consumers shall be recorded in Account 908, Customer Assistance Expenses.

Load Control Receivers may be moved on a continual basis from one customer location to another and are, therefore, considered to be special equipment items. When ownership is maintained by the member distribution cooperative, Load Control Receivers shall be accounted for in accordance with the special equipment procedures outlined in Accounting Interpretation No. 119 of this section.

8. Communication Links

The communication link in the member distribution systems between the Member System Computer, the Substation Remote Controllers or Substation Injection Units, Remote Terminal Units, Line Device Transponders, Communication Verification Transponders, and Load Control Receivers is usually accomplished by radio, telephone line, or power line based system. The communication links are normally dedicated to the SCADA and load control functions being served. Under such circumstances, communications equipment shall be recorded in Account 362, Station Equipment. If, however, the communication equipment used is shared with general use or voice communications equipment, the equipment shall be charged to Account 397, Communication Equipment.

9. *Depreciation*

Load control equipment shall be recorded in separate subaccounts of the primary plant accounts detailed above and shall be depreciated based upon the manufacturer's estimate of the equipment's useful service life.

119 Special Equipment

Special Equipment items are classified as such because they are continually being moved from one location to another due to load changes and maintenance practices. The USoA provides accounting that differs from that used for other types of materials. The cost, new, of special equipment items shall be capitalized at the time of purchase; it shall not be charged to Account 154 as is the case with other materials. The first installation cost, as well as all incidental costs necessary to prepare the equipment for use, shall be capitalized with the material upon purchase. All subsequent costs of removing, resetting, changing, renewing oil, and repairing constitute operations and maintenance expenses. The capitalized cost of special equipment items, including the first installation, shall be removed from the electric plant accounts only when the items are abandoned or retired from the system.

Meters, line-type transformers, oil circuit reclosers, sectionalizers, current and potential transformers, meter sockets, and other metering equipment listed in Account 370, Meters, as well as pole-type and underground voltage regulators in Account 368, Line Transformers, are considered to be special equipment items. Similarly, load control receivers (load control switches) recorded in Account 371, Installations on Customers' Premises, are considered to be items of special equipment. (See Interpretation No. 118.) Transformers, voltage regulators, metering equipment, and current and potential transformers for substations are not.

Special equipment items which are classified as nonusable shall be segregated in the warehouse and retired from service. The Summary of Special Equipment Costs shall be retitled Summary of Special Equipment Costs Retired and used for this purpose. A journal entry reflecting this information shall be prepared and posted to the books. Since loan funds for special equipment, including first installation costs, are approved for advance by REA upon receipt of the borrower's written estimate of funds required, and not on the basis of an Inventory of Work Orders, it is improper to take a credit for

any salvage involved in the retirement of special equipment on the Inventory of Work Orders.

120 Meter Sockets and Meters

When a utility furnishes meter sockets, ownership by the utility of the meter socket or base, as well as the meter itself, is established by virtue of them being furnished without cost to the consumer by the cooperative. While no agreement as to ownership between the cooperative and the property owner exists, cooperative ownership is implied by long standing practice and tradition in the electric utility industry.

121 Minimum—Maximum Voltmeters

A minimum—maximum voltmeter is used to record the minimum and maximum voltages at a specific line location over a period of time. It is normally installed on a pole in connection with a 1½ kVA transformer, a meter base and connecting wires, and other small items of materials. Meter bases are ordinarily set for these voltmeters throughout the system, and a lesser number of voltmeters are rotated among them periodically to obtain voltage readings. An average system may have one voltmeter to two installations, with a maximum of 20 or 25 voltmeters for the whole system.

Minimum—maximum voltmeters shall be recorded, through work orders, in Account 370, Meters, when installed. The cost of the transformers shall remain in Account 368, Line Transformers, with the cost of the meter bases remaining in Account 370, Meters. The miscellaneous material used in installing the transformer and the meter base shall be charged to Account 370, Meters.

Maintenance expense shall be charged to either Account 595, Maintenance of Line Transformers, or Account 597, Maintenance of Meters, as appropriate. Costs associated with reading the voltmeters shall be charged to Account 583, Overhead Line Expenses, and the cost of relocating or changing the complete installation or any part thereof, other than retirement of the meter base, shall be charged to Account 583, Overhead Line Expenses, or Account 586, Meter Expenses.

122 Retrofitting Demand Meters

A demand meter measures the amount of electricity used over a period of time in kilowatt-hours (kWh) and indicates the maximum kilowatts (kW) required at any one time by means of a pointer.

Electronic or solid state demand meters have a direct readout which reads kilowatt demand to two decimal places. The use of a direct readout demand meter may result in increased revenues as pointer readings tend to register lower than actual usages.

The process of retrofitting a demand meter replaces the pointer with a direct readout. The cost of such a replacement is usually expensed as a minor item of property; however, since the use of a direct readout results in a substantial betterment, the excess cost of the replacement over the estimated cost, at current prices, of replacing the pointer without the betterment is capitalized.

123 Transformer Conversions

The conversion of an overhead transformer to an underground transformer constitutes a betterment and shall, therefore, be capitalized.

124 Transclosures

Transclosures are enclosures or cabinets in which line transformers are mounted. The cost of transclosures that are purchased separately from the transformer shall be charged to Account 154, Plant Materials and Operating Supplies, when received, and capitalized, upon installation, to Account 368, Line Transformers, as a separate unit of property. If the case and the transformer are inseparable, the unit is considered a transformer and shall be capitalized upon purchase.

125 Retirement Units

Services

A retirement unit shall consist of a complete service rather than the individual wires comprising that service. If each separate wire of a service were treated as a retirement unit, the retirement unit would represent a comparatively small cost. Such a small unit of property would substantially increase the number of retirement work orders. The complete service shall, therefore, be considered a retirement unit.

Minor Items

When minor items of property are added separately from complete retirement units, the costs of these items shall be included in work orders, and by unitizing all costs of completed construction for a month, these minor items shall be spread to the retirement units of which they normally form a part. For example, to convert a two-phase line to a three-phase line requires the addition of a conductor, an insulator and a pole-top pin. A pole-top pin is typically capitalized as a component of the cost of the pole to which it is attached. Assuming this is the only work order for the month, the cost of this pin shall be charged to the conductor, so that its cost is included in the total cost of the project. In actual practice, however, this does not happen as it is normal to have a number of work orders for a given month, which include the setting of poles. In allocating the cost of all construction projects for the month, part of the cost of pole-top pins shall be allocated to poles even though the work orders on which they were capitalized did not include poles.

The retirement and replacement of isolated single retirement units cannot be charged to maintenance; a retirement and construction work order shall be used.

126 Establishment of Continuing Property Records

The costs of installing a system of continuing property records shall be charged to Account 930.2, Miscellaneous General Expenses, and may include:

1. Labor and expenses incurred in developing an inventory of property;
2. Labor and material costs incurred in connection with developing pole records including map preparation and pole cards; and
3. Labor and material costs (ledger sheets, etc.) incurred in connection with the installation of the record system.

127 Continuing Property Records for Buildings

When establishing continuing property records for a building where there is no detailed breakdown of contract costs, it is necessary to estimate the cost of the each component part. It should be noted that the establishment of continuing property records is not required for buildings; however, if CPRs are not maintained, all repairs including the replacement of major component parts shall be expensed in the period incurred.

128 Sale of Property

All proceeds deposited in the Construction Fund account from the sale of property, regardless of materiality, shall be reflected on the REA Form 595, Financial Requirement and Expenditure Statement. Proceeds from the sale of property shall be reported on the Form 595, by budget purpose, as a reduction in total expenditures to date, column 5; and an increase in the cash balance, column 6.

Proceeds from the sale of property shall not be used to maintain an "Employee Fund." A utility may, pursuant to board policy, use general funds for employee welfare equivalent in amount to proceeds received from the sale of scrap property. If general funds, in an amount equivalent to proceeds

received from the sale of scrap property, are used for employee welfare, Account 926, Employee Pensions and Benefits, shall be charged.

129 Gain or Loss on the Sale of an Office Building

A gain on the sale of an office building shall be recorded in Account 421.1, Gain on the Disposition of Property, with a loss recorded in Account 421.2, Loss on the Disposition of Property. If the gain or loss will materially distort current year's net margins, such gain or loss is reportable as an extraordinary item in Account 434, Extraordinary Income, or Account 435, Extraordinary Deductions.

130 Salvage and Obsolete Material

The value of material salvaged from the retirement of units of property reduces the loss on the retirement and shall be so applied. The value assigned to salvage shall be credited to Account 108.8, Retirement Work-in-Progress, which results in reducing net charges to the provision for depreciation when the work order is completed and cleared.

If salvage is sold, any difference between the realized value and the estimated value of the salvaged material shall be charged or credited to the appropriate provision for depreciation.

Salvage resulting from maintenance where no retirement units are involved shall be debited to the materials and supplies account, and credited to the appropriate maintenance account.

Occasionally a utility will have a loss due to obsolescence of materials on hand. If the loss is due to obsolescence of new material, the loss shall be charged to Account 426.5, Other Deductions. If the loss is due to obsolescence of used material, the loss shall be charged to the appropriate subaccount of Account 108, Accumulated Provision for Depreciation.

131 Plant Acquisition Adjustments

Plant acquisition adjustments shall be amortized to the operating expense accounts. These adjustments are recorded in Account 114, Electric Plant Acquisition Adjustments, and amortized to Account 406, Amortization of Electric Plant Acquisition Adjustments, or Account 425, Miscellaneous Amortization, as required by the regulatory commission having jurisdiction. Accounts 406 and 425 shall be closed to operating margins.

132 General Plant

When the unit method of depreciation is used for general plant items, gains and losses on sales, trades or disposals of equipment shall be recorded as such. If the composite method of depreciation is used, gains or losses on the disposal of general plant items shall be recorded in the appropriate depreciation reserve account.

A truck which is used only for transporting power operated equipment mounted thereon shall be charged, together with the installed equipment, to Account 396, Power Operated Equipment. If the same type of truck is used for transporting materials and supplies, tools and work equipment, personnel, or other items, the cost of the truck shall be charged to Account 392, Transportation Equipment.

Depreciation and other expenses relating to power operated equipment shall be accumulated in a subaccount of Account 184, Clearing Accounts, and distributed monthly on an equitable basis to the accounts properly chargeable.

Depreciation expense on vehicles and other work equipment, furniture and office equipment, and other such plant used in the construction of utility plant, is a proper component of construction cost. To avoid a duplicate advance of funds, however, the amount of depreciation on such items that has previously been financed from loan funds shall be deducted from Inventories of Work Orders submitted to REA. This amount shall be specifically identified, and shown either monthly or annually as a single item in column 9 on the REA Form 219, Inventory of Work Orders.

133 Plant Abandonments and Disallowances of Plant Costs

In December 1986, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 90, Regulated Enterprises—Accounting for Abandonments (Statement No. 90) and Disallowances of Plant Costs. This section provides an overview of the requirements outlined in Statement No. 90 together with the specific accounts that shall be used to record a plant abandonment or a disallowance of plant costs.

Plant Abandonments

When an abandonment becomes probable, the cost of the abandoned asset shall be removed from Construction Work-in-Progress or Plant-in-Service, as applicable. Before making this transfer, however, a determination must be made as to whether recovery of the allowed cost is likely to be provided with a full return on the investment during the period from the time the abandonment becomes probable, to the time when recovery is completed, or with a partial or no return on the investment. This determination shall be made based upon the facts and circumstances of the specific abandonment, and past practices and current policies of regulatory jurisdiction.

If a full return on the investment is likely to be provided, any disallowance of all or part of the cost of abandoned plant that is both probable and reasonably estimated shall be recognized as a loss in the current year with the carrying basis of the asset reduced by an equal amount. The remaining cost of abandoned plant shall be recorded as a separate new asset.

If partial or no return on the investment is likely to be provided, any disallowance of abandoned plant costs that is both probable and reasonably estimated shall be recognized as a loss. The present value of the future revenues expected to be provided to recover the allowable cost of the abandoned plant and return on the investment, if any, shall be reported as a separate new asset. The discount rate used to compute the present value shall be the borrower's incremental borrowing rate, which is the rate that the borrower would have to pay to borrow an equivalent amount for a period equal to the expected recovery period. In determining the value of expected future revenues, the borrower shall consider the probable time period before the recovery is expected to begin and the probable time period over which recovery is expected to be provided.

The amount of the new asset shall be adjusted from time to time, as necessary, if new information indicates that the estimates used to record the new asset have changed. The carrying value of the new asset, however, shall not be adjusted for changes in the incremental borrowing rate. The amount of any adjustments shall be recorded as a gain or loss.

During the period between the date on which a new asset is recognized and the date on which recovery begins, the carrying amount shall be increased by accruing a carrying charge. The rate used to accrue the carrying charge shall be:

1. If a full return on the investment is likely, a rate equal to the allowed overall cost of capital in the jurisdiction in which recovery is expected to be provided shall be used.

2. If partial or no return is likely, the asset shall be amortized in a manner that will produce a constant return on the unamortized investment in the new asset equal to the rate at which the expected revenues were discounted.

Due to the nonprofit environment in which electric cooperatives operate, full recovery of interest expense on plant related long-term debt equates to full recovery of the rate of return for an investor-owned utility. Therefore, if a cooperative is permitted full recovery of the interest expense incurred on the long-term debt borrowed to finance construction of an abandoned plant, no discounting of the asset is required nor is accrual of the carrying charge permitted.

If, at the time the provisions of Statement No. 90 are first applied, the borrower elects to restate the financial statements, the financial statements for all periods presented shall be restated and the financial statements shall disclose the nature of the restatement and its effect on margins before extraordinary items, net margins, and patronage capital at the beginning of the earliest period presented. If the borrower elects not to restate the financial statements, the effect of applying Statement No. 90 shall be reported as a change in accounting principle and the financial statements shall disclose the nature of the change and the effect of applying Statement No. 90 on margins before extraordinary items and net margins.

The specific accounts that shall be used to record transactions involving plant abandonments are as follows:

1. In the year of the abandonment, the unrecoverable portion of the cost of abandoned plant included in construction work-in-progress shall be recognized as a loss by a charge to Account 426.5, Other Deductions, and a credit to Account 107, Construction Work-in-Progress.

2. The balance of the cost remaining in the construction work-in-progress account shall be credited to Account 107 and charged to Account 182.2, Unrecovered Plant and Regulatory Study Costs.

3. The difference between the charge to Account 182.2 and the present value of expected future revenues for recovery of the new asset, shall be recorded as a credit to Account 182.2 and a debit to Account 426.5. The credit to Account 182.2 shall be segregated from the amount charged to Account 182.2 by the use of a separate subaccount. Statement No. 90 does not require this segregation; however, it is necessary under the USoA to provide for the appropriate segregation of operating and nonoperating income.

4. During the waiting period for recovery of the new asset to begin, carrying charges shall be accrued by a debit toAccount 182.2 with a concurrent credit to Account 421, Miscellaneous Nonoperating Income. Debits to Account 182.2 shall be treated as reductions to the credit subaccount of Account 182.2.

5. The borrower shall amortize the amount debited to Account 182.2 by charges to operating income, consistent with the way the amortized amounts are recovered through rates. These charges to income shall be recorded in Account 407, Amortization of Property Losses, Unrecovered Plant and Regulatory Study Costs.

6. As the recoverable amount recorded in Account 182.2 is recovered through rates, the borrower shall accrue income by charges to Account 182.2 and credits to Account 421, Miscellaneous Nonoperating Income. Accruals shall be computed by applying the same rate used to derive the present value of the asset established in Account 182.2, to the unamortized balance in that account. Accrued amounts charged to Account 182.2 shall be treated as reductions to the credit subaccount withinAccount 182.2.

Prior to implementing the accounting prescribed above, the borrower shall submit the details of each plant abandonment to REA for approval.

Disallowances of Costs of Recently Completed Plant

When it becomes probable that a portion of the cost of recently completed plant will be disallowed for rate making purposes and a reasonable estimate of the amount of the disallowance can be made, the estimated amount of the probable disallowance shall be deducted from the reported cost of the plant and recognized as a loss. If a portion of the costs is explicitly, but indirectly disallowed, the equivalent amount of the cost shall be deducted from the reported cost of the plant and recognized as a loss.The specific accounts that shall be used to record transactions involving the disallowance of plant costs are as follows:

1. Estimated disallowed plant costs which the borrower records as a credit to Account 101, Electric Plant-in-Service, shall be charged to Account 426.5, Other Deductions.

2. If the loss qualifies as an extraordinary item under the criteria set forth in General Instruction No. 7 of the USoA, the borrower shall record the loss in Account 435, Extraordinary Deductions. To be considered extraordinary, an item shall be more than five percent of income computed before extraordinary items. If a borrower believes that a loss of less than five percent should be treated as an extraordinary item; the borrower shall, with commission approval, record the loss in Account 435 and report the loss as an extraordinary item. If the borrower is not subject to state commission jurisdiction, REA approval is required.

134 Utility Plant Phase-in Plans

In August 1987, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 92, Regulated Enterprises—Accounting for Phase-in Plans (Statement No. 92). This section provides an overview of the requirements outlined in Statement No. 92.

The term phase-in plan is used to refer to any method of recognition of allowable costs in rates that meets all of the following criteria:

1. The method was adopted by the regulator in connection with a major, newly completed plant of the regulated enterprise or one of its suppliers or a major plant scheduled for completion in the near future.

2. The method defers the rates intended to recover allowable costs beyond the period in which those allowable costs would be charged to expense under generally accepted accounting principles applicable to enterprises in general.

3. The method defers the rates intended to recover allowable costs beyond the period in which those rates would have been ordered under the rate-making methods routinely used prior to 1982 by that regulator for similar allowable costs of that regulated enterprise.

If a phase-in plan is ordered by a regulator in connection with a plant on which no substantial physical construction had been performed before January 1, 1988, none of the allowable costs that are deferred for future recovery by the regulator under the plan for rate-making purposes, shall be capitalized for general-purpose financial reporting purposes (financial reporting).

If a phase-in plan is ordered by a regulator in connection with a plant completed before January 1, 1988, or a plant on which substantial physical construction had been performed before January 1, 1988, the criteria specified below shall be applied to that plan. If the phase-in plan meets all of those criteria, all allowable costs that are deferred for future recovery by the regulator under the plan shall be capitalized for financial reporting purposes as a separate asset (a deferred charge). If any one of those criteria is not met, none of the allowable costs that are deferred for future recovery by the regulator under the plan shall be

capitalized for financial reporting. The criteria for determining whether capitalization is appropriate are:

1. The allowable costs in question are deferred pursuant to a formal plan that has been agreed to by the regulator;

2. The plan specifies the timing of recovery of all allowable costs that will be deferred under the plan;

3. All allowable costs deferred under the plan are scheduled for recovery within 10 years of the date when the deferral began; and

4. The percentage increase in rates scheduled under the plan for each future year is no greater than the percentage increase in rates scheduled under the plan for each immediately preceding year. That is, the scheduled percentage increase in year two is no greater than the percentage increase granted in year one, the scheduled percentage increase in year three is no greater than the percentage increase in year two, etc.

By definition, a phase-in plan approved prior to 1982 that contains provisions contrary to those detailed above is not subject to the provisions of Statement No. 92. This exemption, however, only relates to a specific utility and a specific regulator. For example, a utility cannot use a phase-in plan approved by its regulator for a different utility as justification for its phase-in plan exceeding the 10-year limit imposed by Statement No. 92.

A phase-in plan is a method of rate making intended to moderate a sudden increase in rates while providing the regulated enterprise with recovery of its investment and a return on that investment during the recovery period. A disallowance is a rate-making action that prevents the regulated enterprise from recovering either some amount of its investment or some amount of return on its investment. Statement No. 90 specifies the accounting for disallowances of plant costs (see item 133 of this regulation). If a method of rate making that meets the criteria for a phase-in plan includes an indirect disallowance of plant costs, that disallowance shall be accounted for in accordance with Statement No. 90. Cumulative amounts capitalized under phase-in plans shall be reported as a separate asset in the balance sheet. The net amount capitalized in each period or the net amount of previously capitalized allowable costs recovered during each period shall be reported as a separate item of other income or expense in the income statement. Allowable costs capitalized shall not be reported as reductions of other expenses.

The terms of any phase-in plan in effect during the year or ordered for future years shall be disclosed in the financial statements. Statement No. 92 does not permit capitalization for financial reporting of allowable costs deferred for future recovery by the regulator pursuant to a phase-in plan that does not meet the criteria or a phase-in plan related to plant on which substantial physical construction was not completed before January 1, 1988. Nevertheless, the financial statements shall include disclosures of the net amount deferred at the balance sheet date for rate-making purposes, and the net change in deferrals for rate-making purposes during the year for those plans.

If the provisions of Statement No. 92 are applied retroactively, the financial statements of all periods presented shall be restated. In addition, the restated financial statements shall, in the year that Statement No. 92 is first applied, disclose the nature of any restatement and its effect on margins before extraordinary items, net margins, and on patronage capital at the beginning of the earliest period presented. If the financial statements for prior years are not restated, the effects of applying Statement No. 92 to existing phase-in plans shall be reported as a change in accounting principle and the financial statements shall disclose the effect of adopting Statement No. 92 on margins before extraordinary items and net margins.

The application of Statement No. 92 to an existing phase-in plan shall be delayed if both of the following conditions are met:

1. The enterprise has filed a rate application to have the plan amended to meet the criteria of Statement No. 92 or intends to do so as soon as practicable; and

2. It is reasonably possible that the regulator will change the terms of the phase-in plan so that it will meet the criteria of Statement No. 92.

If the above conditions are met, the provisions of Statement No. 92 shall be applied to the existing phase-in plan on the earlier of the date when one of the conditions ceases to be met or the date when the final rate order is received, amending or refusing to amend the phase-in plan. However, if the enterprise delays filing its application for the amendment or the regulator does not process the application in the normal period of time, the application of Statement No. 92 shall not be further delayed.

In applying the criteria of Statement No. 92 to a plan that was in existence prior to the first fiscal year beginning after December 15, 1987, and that was revised to meet that criteria, the 10-year criterion and the requirement concerning the percentage increase shall be measured from the date of the amendment rather than from the date of the first scheduled deferrals under the original plan. All phase-in plans must receive REA approval prior to implementation.

135 Accounting for Removal or Relocation of Electric Facilities Resulting from the Action of Others

Under arrangements with another party, a borrower agrees, or is obliged, to remove, relocate, rearrange, or otherwise make changes in utility property, other than for the purpose of rendering utility service to the other party, for which the utility is reimbursed for all or a portion of the costs incurred.

Plant Accounting

The relocation of the line shall be accounted for as follows:

1. If all of the assemblies in the line are retired or completely removed and later reinstalled or if the line is constructed in a new location before the old line is removed, construction and retirement work orders shall be prepared except for the costs relating to special equipment items (transformers, oil circuit reclosers, etc.) which shall be charged to operations expense.

2. If a line is moved in its entirety to a new location except for isolated retirement units (such as at the end of the line) or poles not suitable for resetting, the cost of moving the portion of line that is moved intact shall be charged to maintenance expense while the cost related to the change in isolated retirement units or the replacement of poles not suitable for resetting shall be accounted for through use of construction and retirement work orders.

3. If a line is moved intact without any change in assemblies, the cost shall be charged to maintenance expense.

Reimbursement

If the borrower receives reimbursement for the costs related to the relocation of the line, the reimbursement shall be accounted for by crediting operation and maintenance expenses to the extent of actual expenses occasioned by the plant changes and crediting the remainder to the accumulated provision for depreciation, unless contractual terms definitely characterize residual or specific amounts as applicable to the cost of replacement. In the latter event,

appropriate credits shall be entered in the plant accounts.

Reimbursement received from a telephone company for adding a pole or replacing a present pole with a taller pole under joint use contracts falls within this latter category. In this instance, appropriate credits are charged against the plant accounts.

Financing

The total reimbursement, less any portion for operations and maintenance costs, shall be entered in the "Contributions in Aid of Construction" section at the bottom of the Construction Work Order. When the Inventory of Work Orders (REA Form 219) is prepared, enter only enough of the contribution in column 9 to reduce to zero the amount in column 10, "Loan Funds Subject to Advance by REA." This entry is made although none of the reimbursement received is recorded in the accounting records as a contribution in aid of construction.

201 Supplemental Financing

Many borrowers secure additional financing from sources other than REA. CFC was established to provide a source of supplemental financing. Although the accounting provided in this section refers to CFC, it is applicable to other sources of supplemental financing as well.

1. *Membership Fees*

When a membership fee is paid to CFC, the payment shall be recorded as a debit to Account 123.23, Other Investments in Associated Organizations.

2. *Subscriptions*

The subscription agreement to purchase Capital Term Certificates (CTCs) is a binding obligation to pay an initial subscription in equal annual payments over the first three years and an additional annual subscription payable in the fourth through fifteenth years.

The annual subscriptions to CFC for the fourth through fifteenth years is 2.0 percent of total operating revenues after deducting the cost of power. Using the best data available, each borrower shall estimate the amount of CTCs that are required to be purchased. Estimates are not expected to be precise and adjustments shall be made when future projections indicate a change is needed. When the agreement to purchase CTCs is made, an entry shall be recorded debiting Account 123.21, Subscriptions to Capital Term Certificates—Supplemental Financing, and crediting Account 224.11, Other Long-Term Debit—Subscriptions. When the CTCs are actually purchased, the following entries shall be recorded:

Dr. 224.11, Other Long-Term Debt—Subscriptions
  Cr. 131.1, Cash—General
Dr. 123.22, Investments in Capital Term Certificates—Supplemental Financing
  Cr. 123.21, Subscriptions to Capital Term Certificates—Supplemental Financing

3. *Interest Receipts*

Interest accrues monthly to the holder of CTCs at a rate in accordance with the terms of the CFC Invitation to Subscribe. The accrual of interest and the receipt of interest proceeds shall be recorded as follows:

Dr. 171, Interest and Dividends Receivable
  Cr. 419, Interest and Dividend Income
To record the monthly accrual of interest.
Dr. 131.1, Cash—General
  Cr. 171, Interest and Dividends Receivable
To record the receipt of interest proceeds from the investment in CTCs.

Note: Any amounts received in excess of the previous accruals shall be credited to Account 419.

Interest penalties may be charged by CFC for late payments on any subscription from the date that the payment was due to the date that the payment was actually received. Such charges shall be expensed to Account 431, Other Interest Expense.

4. *Notes*

If a note is due more than one year after the date of the note, the appropriate subaccount of Account 224, Other Long-Term Debt, shall be credited. If the note is due less than one year from the date of the note, Account 231, Notes Payable, shall be credited.

When a loan from CFC has been consummated and a note is executed, Account 224.13, Supplemental Financing Notes Executed—Debit, shall be debited; and Account 224.12, Other Long-Term Debt—Supplemental Financing, credited. When a loan from another source has been consummated, Account 224.15, Notes Executed—Other—Debit, shall be debited; and Account 224.14, Other Long-Term Debt—Miscellaneous, credited.

5. *Loan Proceeds*

Cash proceeds from unsecured short-term loans shall be deposited into the General Fund Account. Cash proceeds from all secured loans shall be deposited into the Construction Fund Trustee Account.

From two to seven percent, depending upon the class of borrower and its debt-equity ratio, of each CFC loan is applied to the purchase of Capital Term Certificates. At the time of a borrower's first requisition under the CFC loan, the following entry shall be recorded:

Dr. 131.2, Cash—Construction Fund—Trustee
Dr. 123.22, Investments in Capital Term Certificates—Supplemental Financing
  Cr. 224.13, Supplemental Financing Notes Executed—Debit
To record the requisition of funds from CFC.

6. *Capital Credits*

As a result of borrowing from CFC or other lenders organized on a cooperative basis, a borrower may receive capital credit allocations. These allocations are usually based upon the borrower's participation in the lending program with participation measured by the amount of interest expense and conversion costs incurred.

To account for patronage capital allocations from cooperative lenders, the following journal entries shall be recorded:

Dr. 123.1, Patronage Capital from Associated Cooperatives
  Cr. 424, Other Capital Credits and Patronage Capital Allocations
To record the allocation of capital credits from a cooperative lender.

Note: If any portion of the interest expense was capitalized as a component of construction cost, a similar portion of the capital credit allocation shall be credited to construction rather than to Account 424. The portion credited to construction shall be determined by applying the percentage of interest expense charged to construction for that particular lender to the interest expense incurred for that lender.

Dr. 131.1, Cash—General
  Cr. 123.1, Patronage Capital from Associated Cooperatives
To record the cash receipt of patronage capital credits from cooperative lenders.

301 Forfeited Customers' Deposits

Customers may be required to make deposits to guarantee payment of amounts billed for electric service. When a customer discontinues service, the customer's deposit shall first be applied to unpaid energy bills, with the balance remitted by check to the customer. If the check is returned, it shall be voided and the original entry that was made when the check was issued shall be reversed.

Unclaimed balances of customer deposits shall remain in Account 235, Customer Deposits, until the legal liability of the cooperative to make such a refund has elapsed. When there is no further legal liability to refund the deposit and if it does not escheat to the state, it shall be transferred to Account 144, Accumulated Provision for Uncollectible Customer Accounts—Credit, retaining full information of all particulars.

401 Computer Software Costs

Computer software consists of programs and routines (sets of computer instructions) which direct the operation of the computer. Software may refer to generalized routines useful in computer operations or to programs for specific applications such as payroll.

The distinction between generalized software and application software is important. Generalized software provides operating support for individual applications. This would include programs for such tasks as making printouts of machine-readable records, sorting records, organizing and maintaining files, translating programs written in a symbolic language into machine-language instructions, and scheduling jobs through the computer. These programs are generally furnished by the manufacturer.

Application software consists of a set of instructions for performing a particular data processing task. Application programs are generally written by the user installation, but are frequently obtained as prewritten packages from software vendors. Application software includes programs such as payroll, billing, general ledger, as well as engineering or managerial applications.

Costs incurred with the purchase and/or development of computer software shall be accounted for as follows:

1. Capitalize in a subaccount of Account 391, Office Furniture and Equipment, all costs for generalized software. Depreciate the cost over the service life (or remaining life) of the main hardware (i.e., containing central processor). If the purchase invoice does not break out or assign a cost to the "generalized software," it is appropriate to include the full amount in hardware costs. Defer in Account 186, Miscellaneous Deferred Debits, the cost of all applications software determined to have a service life of over one year. Amortize this cost over the estimated useful life of the program. This amortization period shall not exceed five (5) years. We realize, however, that there may be circumstances that justify a useful life longer than 5 years. When this is the case and it is management's intent to utilize these programs over an extended period, written justification shall be submitted to REA for approval.

2. Expense, in the period incurred, all costs associated with the maintenance, updating, and conversion of files or revision of all software, and all costs for software with a useful life of less than 1 year. Also, expense the unamortized cost of all software determined, during year, to be no longer used by or useful to the cooperative.

In determining the total cost of purchased or internally developed software, the following items shall be included:

a. Costs incurred for feasibility studies if they result in the purchase or development of software;

b. All costs related to the actual purchase or development of the software. These costs must be specifically identifiable with the software and properly supported by time cards, invoices, or other documents; and

c. All costs incurred in "testing and debugging" the software.

Computer software costs are properly chargeable to Account 107, Construction Work-in-Progress, provided that the following criteria are met:

1. The computer program is specifically dedicated to performing a construction related activity, and

2. The cost of the software is itemized separate and apart from other hardware and software costs.

The cost of software programs meeting the above requirements and having an estimated useful service life in excess of 1.ar shall be recorded in Account 186, Miscellaneous Deferred Debits, and amortized to Account 107, Construction Work-in-Progress, over the estimated service life of the program not to exceed 5 years.

All costs related to training personnel in the use of software shall be expensed as incurred.

The accounting in this section is not intended to apply to immaterial amounts. When it is deemed that the costs of the recordkeeping necessary to amortize these costs outweigh the benefits to the patrons, software costs shall be expensed in the year incurred.

For computer costs relating to load control equipment, refer to Item 118 of this section.

402 Legal Expenses

Utilities may incur legal expenses which pertain to construction activities, loan activities, or general services. The proper accounting treatment for legal expenses is as follows:

1. Legal fees incurred in connection with a construction project, including the court costs directly related thereto, which can be identified and supported as such, shall be capitalized in Account 107, Construction Work-in-Progress, as a cost of construction.

2. Legal fees specifically identified and properly supported as resulting from activities designed to obtain long-term debt, shall be deferred in Account 181, Unamortized Debt Expense.

3. Legal fees for all other services and fees which cannot be properly identified will require expensing to either Account 417.1, Expenses of Nonutility Operations, or Account 923, Outside Services Employed, as appropriate.

To properly support the capitalization or deferral of legal fees, the attorney shall provide an itemization of services performed and the corresponding costs. Only those costs specifically identified by the attorney as being related to construction or loan activities shall be capitalized or deferred as described above.

403 Leases

Lease transactions shall be accounted for as either a capital lease or an operating lease depending upon whether or not the lease meets the criteria for classification as a capital lease. The definitions for capital and operating leases and the criteria used to determine which method shall be used are as follows:

Definitions

1. *Capital Lease:* A lease that transfers substantially all of the benefits and risks inherent in the ownership of the property to the lessee, who accounts for the lease as an acquisition of an asset and the incurrence of a liability.

2. *Operating Lease:* An operating lease is a simple rental agreement which does not meet the criteria for a capital lease. Under the terms of an operating lease, the lessee records the rental payments due over the term of the lease as rent expense.

Criteria

A lease agreement shall be classified as a capital lease if one or more of the following criteria is met:

1. Ownership of the property is transferred to the lessee by the end of the lease term;

2. The lease contains a bargain purchase option;

3. The lease term is equal to 75 percent or more of the estimated useful life of the leased property; or

4. The present value of the lease payments at the inception of the lease equals or exceeds 90 percent of the fair market value of the leased property.

A lease agreement qualifying as a capital lease shall be recorded in either Account 101.1, Property Under Capital Leases;Account 120.6, Nuclear Fuel Under Capital Leases; or Account 121, Nonutility Property, as appropriate, at the present value (at the beginning of the lease term) of the minimum lease payments. If, however, this amount exceeds the fair value of the leased

property at the inception of the lease, the asset shall be recorded at its fair market value. An offsetting credit shall be recorded in Account 227, Obligations Under Capital Leases—Noncurrent, with the current portion recorded in Account 243, Obligations Under Capital Leases—Current. Assets recorded in Account 101.1 shall be classified separately according to the detailed accounts (301–399) provided for electric plant in service.

Monthly payments made under the lease obligation shall be charged to rent expense, fuel expense, or construction work-in-progress as they become payable. Similarly, the leased asset and the associated obligation shall be reduced by the current amount due.

The following journal entries shall be used by the lessee to record capital lease transactions:

Dr. 101.1, Property Under Capital Leases
  Cr. 243, Obligations Under Capital Leases—Current
  Cr. 227, Obligations Under Capital Leases—Noncurrent
To record the capital lease agreement.
Dr. 550, Rents
  Cr. 232, Accounts Payable
Dr. 243, Obligations Under Capital Leases—Current
  Cr. 101.1, Property Under Capital Leases
To record the monthly rental payment due.
Dr. 232, Accounts Payable
  Cr. 131.1, Cash—General
To record the monthly lease payment.

Operating leases which are simple rental agreements do not require the recording of an asset or a liability. The entries that are required to record an operating lease by the lessee are as follows:

Dr. 550, Rents
  Cr. 232, Accounts Payable
To record the monthly rental payment due.
Dr. 232, Accounts Payable
  Cr. 131.1, Cash—General
To record the monthly lease payment.

For purposes of illustration, the journal entries presented in this interpretation debit Account 550, Rents. However, Account 507, Rents (steam power generation); Account 525, Rents (nuclear power generation); Account 540, Rents (hydraulic power generation); Account 550, Rents (other power production); Account 567, Rents (transmission expense); Account 589, Rents (distribution expense); and Account 931, Rents (general and administrative), should be charged, as appropriate, depending upon the function of the equipment being leased.

404 Consolidated Financial Statements

In October 1987, the Financial Accounting Standards Board issued Statement of Financial Accounting Standards No. 94, Consolidation of All Majority-Owned Subsidiaries (Statement No. 94). For purposes of reporting to REA, Statement No. 94 shall be applied as follows:

1. An REA borrower that is a subsidiary of another entity shall prepare and submit to REA separate financial statements even though this financial information is presented in the parent's consolidated statements.

2. In those cases in which an REA borrower has a majority-ownership in a subsidiary, the borrower must prepare consolidated financial statements in accordance with the requirements of Statement No. 94. These consolidated statements must also include supplementary schedules presenting a Balance Sheet and Income Statement for each majority-owned subsidiary included in the consolidated statements.

Although Statement No. 94 requires the consolidation of majority-owned subsidiaries, REA Forms 7 and 12 must be prepared on an unconsolidated basis.

501 Patronage Capital Assignments

Accounting for patronage capital and margins may vary depending upon the individual cooperative's bylaws. The comments contained in this section relate to the application of the standard bylaw provisions.

The entries required, at year's end, to record patronage capital transactions where there is no major merchandising program are as follows:

Dr. 219.1, Operating Margins
Dr. 219.2, Nonoperating margins
  Cr. 201.2, Patronage Capital Assignable
To record the amount of patronage capital assignable.
Dr. 201.2, Patronage Capital Assignable
  Cr. 201.1, Patronage Capital Credits
To record the allocation of patronage capital to the patrons' accounts.

The procedure for determining the amount of patronage capital assignable to the individual patron on a total dollar basis is as follows:

1. Determine the total amount to be assigned for the year (Account 201.2).

2. Determine patronage from electric service, the total of consumers' billings (Accounts 440–447).

3. Determine the percentage factor to be used in calculating patronage capital to be credited to each consumer account. Divide "1" by "2".

4. Determine the amount of capital to be credited to each consumer. Multiply the individual consumer's billings for the year by the percentage factor obtained in "3" above.

The procedure for determining the amount of patronage capital assignable to the individual patron on a dollar basis, less the cost of power, is as follows:

1. Determine the total amount to be assigned for the year.

2. Determine the total amount of revenue received from each classification of customers.

3. Determine the total cost of power for each classification of customers. (For example, use cost per kWh sold).

4. For each classification of customers subtract the amount obtained in "3" from the amount obtained in "2," to obtain the total amount received, less cost of power, by classification of customers.

5. Add the amounts obtained in "4" to obtain the total amount of revenue, less cost of power.

6. Divide the total amount received, less cost of power for each classification of customers (amounts obtained in "4"), by the total amount received, less cost of power for all customers (amount obtained in "5") to obtain the prorata percentage for each classification of customers.

7. Multiply the total amount to be allocated (amount obtained in "1") by the prorata percentage for each classification of customers (obtained in "6") to obtain the amount to be assigned each classification of customers.

8. Divide the amount to be assigned each classification of customers (amount obtained in "7") by the total amount received from the classification of customers (amount obtain in "2") to obtain the percentage factor for each classification of customers.

9. Determine the total amount received from each individual customer.

10. Multiply the total amount received from each individual customer (amount obtained in "9") by the percentage factor for his classification (amount obtained in "8") to obtain the amount of capital to be assigned each individual customer.

After calculating the patronage capital to be credited to each customer, there is usually a small balance remaining. This small balance shall remain in Account 201.2, Patronage Capital Assignable, and shall be added to the amount to be assigned in the following year.

Proper records shall be maintained to support all capital credit transactions. As a minimum, these records shall show, for each patron, the amount of capital credited for each year as well as the amount and date retired for each year.

The process of transferring capital credits from the Patronage Capital Assignable accounts to the Patrons' Capital Credits Assigned accounts or to the Patrons' Capital Credits accounts and the making of entries to individual patron's records constitutes an

assignment of capital credits. This holds true for recordkeeping purposes as well as from a legal point of view. This assignment shall be followed by formal notification to patrons within a reasonable period of time.

In the event that a distribution cooperative incurs a net loss, that loss shall not be allocated to its members (patrons). The loss shall be accumulated and offset by future nonoperating margins.

502 Patronage Capital Retirements

As the board of directors has the responsibility for determining whether the financial condition of the cooperative will permit retirement of capital credits and whether the proposed retirement complies with mortgage and bylaw provisions, the authorization for the retirement shall be set forth in the board minutes. The entries to record the general retirement of capital credits shall be as follows:

Dr. 201.1, Patronage Capital Credits
  Cr. 238.1, Patronage Capital Payable
To record the board of directors' authorization to make payments of capital credits.

Dr. 238.1, Patronage Capital Payable
  Cr. 131.1, Cash—General.
To record actual cash payments of capital credits.

Note: To provide better control over the payment of patronage capital credits, a special checking account should be established in an amount equal to the authorized general retirement. Special prenumbered checks shall be used for each general retirement of patronage capital.

To strengthen internal control and to facilitate the settlement of estates, the board should adopt a policy specifying exactly how payments of capital credits shall be made to the estates of deceased patrons. Payments made to estates shall be recorded as follows:

Dr. 201.1, Patronage Capital Credits
  Cr. 131.1, Cash—General
To record the payment of capital credits when an estate is settled by refunding 100 cents on the dollar.

Dr. 201.1, Patronage Capital Credits
  Cr. 131.1, Cash—General
  Cr. 217, Retired Capital Credits—Gain
To record the payment of capital credits when an estate is settled for less than the full amount of capital credited to the deceased customer's account.

Dr. 217, Retired Capital Credits—Gain
  Cr. 201.2, Patronage Capital Assignable
To record the reallocation to current patrons of the amount of the discount, if provided for in the bylaws.

If a capital credit check is returned due to an inability to locate the patron, it shall be held pending a recheck of available records to ascertain the correct address of the patron. If it is determined that the patron cannot be located, the check shall be cancelled and the amount of the check debited to Account 131.1, Cash—General, and credited to Account 217, Retired Capital Credits—Gain. If the state, however, has unclaimed property laws to which the amount is subject, the amount shall be credited to Account 253, Other Deferred Credits, until final disposition has been made. A notation shall be made in the records of the former patron to facilitate payment if his or her whereabouts is subsequently determined.

If the records show that a number of former patrons have moved and left no forwarding address, it is not necessary to prepare a capital credit retirement check for these patrons when a general retirement of capital credits is made. When setting funds aside to make a general retirement, however, appropriate amounts shall be included to cover payments due these patrons. The cooperative shall then make a reasonable effort to locate these patrons through publication of their names in the newsletter or local newspaper. If the patrons are not located, the amounts set aside and the credits to their accounts shall be handled in a manner similar to those for whom payment checks are returned.

Under the standard bylaw provisions recommended by REA, it is not proper to use capital credits that were assigned to former patrons to liquidate their delinquent bills. When the standard bylaws are in effect and collection efforts have failed, the balance of an uncollectible bill, after application of customers deposits and membership fees, shall be charged against the accumulated provision for uncollectible accounts. If the patron has capital credits assigned to him or her, these remain untouched except for a notation to indicate the amount of the unpaid bill. When a general retirement of capital credits is made at some future date, amounts which would otherwise be due the patron may be applied to satisfy the unpaid bill with the balance refunded to him or her.

503 Operating and Nonoperating Margins

Occasionally questions arise concerning the accounting for the balances in Accounts 218, Capital Gains and Losses; 219.3, Other Margins; 219.4, Other Margins and Equities-Prior Periods; 434, Extraordinary Income; and 435, Extraordinary Deductions. The balance in these accounts shall be accounted for as follows:

1. The balance in Account 219.4, Other Margins and Equities—Prior Periods, shall be transferred, at year's end, to Account 219.1 or 219.2, as appropriate. Accounts 219.1 and 219.2 are then closed to Account 201.2, Patronage Capital Assignable, unless otherwise provided for in the bylaws.

2. The balances in Account 434, Extraordinary Income, and Account 435, Extraordinary Deductions, shall be cleared to Account 219.2 at year's end.

3. The balances in Account 219.3, Other Margins, and Account 218, Capital Gains and Losses, shall remain in these accounts unless they are allocated to patrons or used to absorb future losses as provided for in the bylaws of the cooperative.

When a cooperative is engaged in a major merchandising activity, all costs properly chargeable to the merchandising activity shall be allocated as such to offset the associated revenue. Nonoperating margins generated from this source shall be prorated annually on a patronage basis and credited to those patrons accounts from whom such amounts were obtained. Merchandising activities of this nature may require a bylaw provision allowing for the allocation of margins generated by a major merchandising activity separate from other operating or nonoperating margins.

If, at the time of the adoption of the bylaw provisions for the allocation of nonoperating margins, there are prior years' losses resulting in debit balances in Accounts 218, Capital Gains and Losses; 219.1, Operating Margins; 219.2, Nonoperating Margins; or 219.3, Other Margins; the credit balances in Accounts 218, 219.2, or 219.3 resulting from prior years' operations shall be transferred, to the extent necessary, to offset such deficits. If the board determines that amounts shall be allocated to prior years' patrons, the credit balances remaining in these accounts shall be transferred to Account 201.2, Patronage Capital Assignable.

If there are current year's losses resulting in debit balances in either Account 219.1 or 219.2, credit balances in Accounts 219.2, 219.3, and 218 shall be transferred, to the extent necessary, to offset such deficits. Remaining credit balances allocable to patrons shall be transferred to Account 1.2.

504 Patronage Capital from G&T Cooperatives

When a cooperative receives capital credits from a G&T cooperative, the transaction shall be recorded by a debit to Account 123.1, Patronage Capital from Associated Cooperatives, and a credit to Account 423, Generation and Transmission Cooperative Capital Credits. This entry shall be made prior to the closing of the cooperative's books

even though, in most cases, the notice of the G&T allocation is not received until after the close of the year to which it relates. If precise information cannot be obtained from the G&T within a reasonable time, capital credits shall be recorded on an estimated basis. The difference between the estimated amount and the actual shall be recognized in the following year unless the difference is material.

A distribution cooperative shall not recognize its proportionate share of losses incurred by the G&T. G&T losses shall be accumulated and offset as provided for in the bylaws. Unlike distribution cooperatives, a G&T has the option to offset accumulated losses with future operating and/or nonoperating margins.

505 Patronage Capital Furnished by Other Cooperative Service Organizations

Utilities may obtain long-term and short-term loans, telephone or data processing services, or may purchase oil, gasoline, materials, insurance, and various items from cooperative or mutual enterprises. These enterprises often make patronage refunds or provide evidence that an amount equal to such a refund has been credited to the utility as an investment of capital. The refund may be in the form of cash in the year following the purchase or it may be deducted from the next invoice. The notice of patronage credited to the borrower's account may indicate that such capital may be retired at some future date upon certain conditions having been met. The following provides the accounting journal entries for these types of transactions:

1. Insurance policy refunds from mutual companies, in cash or as credits against subsequent purchases, shall be credited to the appropriate expense account. If sufficient information is not available to credit the refunds to the appropriate expense accounts, they shall be credited to Account 165, Prepayments, and reduce premiums for the current year.

2. Patronage capital allocations from cooperatives, other than mutual insurance companies, shall be credited, in the year that the allocation notice is received, to Account 424, Other Capital Credits and Patronage Allocations, or to construction work-in-progress, as appropriate. The allocation of patronage capital credits between Account 424 and construction work-in-progress shall be made on an equitable basis. For example, patronage capital allocations received from a cooperative money lender are allocated between Account 424 and construction work-in-progress based upon the ratio of interest charged to construction for that particular lender to total interest expense incurred for that lender. Patronage capital allocations received from a material supplier are allocated based upon the ratio of materials charged to construction to total materials purchased.

3. The face amount of patronage capital certificates received by the cooperative from the purchase of goods or services from cooperative money lenders (CFC), oil dealers, material suppliers, pole treating plants, communications services, and others shall be charged to either Account 123.1, Patronage Capital from Associated Cooperatives, or Account 124, Other Investments, as appropriate. Account 123.1 shall include investments in only those cooperatives, or enterprises, that are directly related to the electric utility industry and controlled by the electric cooperatives. These include statewide cooperatives, power cooperatives, and NRECA. Other investments in oil cooperatives and insurance companies shall be charged to Account 124.

506 Forfeited Membership Fees

The bylaws of each cooperative prescribe certain rules and regulations concerning membership in the cooperative. Among these are provisions for forfeiture of membership fees. Some bylaws provide for application of membership fees against any unpaid accounts at the time of termination of service. Any remaining balance may be refunded to the member. Balances that cannot be refunded to the member due to an inability to locate the member or due to bylaw restriction, shall be credited to Account 208, Donated Capital, provided they do not escheat to the state. If disposition of the fees cannot be determined immediately, the amount involved shall be transferred to Account 253, Other Deferred Credits, until the determination is made.

601 Employee Benefits

The costs of employees' fringe benefits (hospitalization, retirement, holiday, sick and vacation pay, etc.) shall be accumulated in an appropriate clearing account and allocated monthly on the basis of payroll. Vacation costs shall be accrued monthly by appropriate credits to an accrual account. These monthly accruals shall be allocated on the basis of direct payroll costs to construction and retirement with the expense portion being charged to Account 926, Employee Pensions and Benefits.

Sick leave costs are not normally accrued unless the employee is entitled to be paid for accumulated sick leave at the termination of employment. Salary payments to an employee who is actually sick shall be charged to the same account or accounts to which his or her salary is normally charged.

602 Compensated Absences

Statement of Financial Accounting Standards No. 43, Accounting for Compensated Absences (Statement No. 43), requires employers to accrue a liability as an employee earns the right to be paid for future absences. Four criteria were established for this accrual:

1. The employer's obligation for payment for future absences is attributable to employees' services already performed.

2. The obligation relates to employee rights which vest or accumulate. Vested rights are considered those for which the employer is obligated to make payment even if the employee terminates. Rights which accumulate are those earned, but unused rights to compensated absences which may be carried forward to one or more periods subsequent to the period in which they are earned.

3. Payment of the compensation is probable.

4. The amount can be reasonably estimated.

A company's liability shall be estimated based upon payments it expects to make as a result of employees' work already performed. If a reasonable estimate cannot be made, the company shall disclose that fact in the financial statements.

Statement No. 43 does not apply to severance or termination pay, postretirement benefits, deferred compensation, stock or stock options, group insurance, or other long-term fringe benefits.

The entries required to account for the accrual of compensated absences are as follows:

Dr. 435.1, Cumulative Effect on Prior Years of a Change in Accounting Principle
  Cr. 242.3, Accrued Employees' Vacation and Holidays
To record the liability for benefits earned in prior years.
Dr. 107, Construction Work in Progress
Dr. 108.8, Retirement Work in Progress
Dr. 926, Employee Pensions and Benefits
  Cr. 242.3, Accrued Employees Vacation and Holidays
To record the liability for benefits earned in the current period.

603 Employee Retirement and Group Insurance

Some borrowers have group insurance or retirement plans or both for their

employees. As a general rule the cost of these programs is borne partially by the cooperative and partially by its employees. The cooperative may pay the full cost in advance and recover the employee's share through payroll deductions. The accounting for these transactions is as follows:

1. The cooperative's advanced payment of premiums on insurance and retirement agreements shall be charged to Account 165, Prepayments, for the employers portion, and Account 143, Other Accounts Receivable, for the employee's portion.

2. The cost of the employer's portion of a retirement and group insurance program shall be charged as follows:

a. If the participating employees work entirely on operations and maintenance, the debit shall be to Account 926, Employees Pensions and Benefits.

b. If the employees' time is charged to construction or retirement activities, the charge shall be prorated between construction, retirement, and Account 926, Employee Pensions and Benefits, in the ratio in which the employees' wages have been distributed.

604 Deferred Compensation

Many utilities participate in the NRECA Deferred Compensation Program. Based upon the provisions of the program, the following accounting entries shall be made:

Dr. 186.XX, Miscellaneous Deferred Debits—Deferred Compensation
  Cr. 131.1, Cash—General
To record the annual deposit to NRECA's Deferred Compensation Fund.

Dr. 128, Other Special Funds—Deferred Compensation
  Cr. 128.XX, Special Funds Reserve—Deferred Compensation
To increase the deferred compensation reserve by the amount of the annual deposit to NRECA's Deferred Compensation Fund.

Dr. Construction Work-in-Progress, Retirement Work-in-Progress or Account 926, Employee Pensions and Benefits, as appropriate.
  Cr. 186.XX, Miscellaneous Deferred Debits—Deferred Compensation
To record monthly accrual of deferred compensation.

Note: If an employee joins the deferred compensation program during the year, use entry #1 to record the additional deposit to the NRECA Deferred Compensation Fund and increase the monthly accrual in entry #2 to reflect this deposit.

NRECA provides an annual statement showing activity in the employee's accounts, units owned and value of units at statement date. Therefore, individual employee records do not have to be maintained.

However, an entry shall be made to show the aggregate change in fund value during the year. This entry can be made by summarizing changes on the individual Statement of Accounts sent by NRECA for distribution to participating employees, as shown:

Value of Units Held in Each Fund
  – *Total Deposits through December 31, 19xx*
  = Change in Fund Value

Dr. 128, Other Special Funds—Deferred Compensation
  Cr. 128.XX, Special Funds Reserve—Deferred Compensation
To record an increase in fund value as of December 31, 19xx.

or

Dr. 128.XX, Special Funds Reserve—Deferred Compensation
  Cr. 128, Other Special Funds—Deferred Compensation
To record a decrease in fund value as of December 31, 19xx.

Payments made to participating employees because of retirement or separation for other reasons shall be recorded using the following entries:

Dr. 131.1, Cash—General
  Cr. 128, Other Special Funds—Deferred Compensation
To record the receipt of funds from NRECA.

or

Dr. 128.XX, Special Funds Reserve—Deferred Compensation
  Cr. 131.1, Cash—General
To record payment to employee for deferred compensation.

If the borrower has elected to bear the market risk of the funds which guarantee that the amount of money an employee receives will not be less than the amount of salary deferred, the following entry shall be recorded if total payment(s) from NRECA are less than the amount of salary deferred:

Dr. 926, Employee Pensions and Benefits
  Cr. 131.1, Cash—General
To record payment to employee for deferred compensation. Payment was made because amount returned did not equal salary deferred.

The amounts included in Account 128, Other Special Funds, are offset by the amounts in Account 128.XX, Special Funds Reserve. The balance sheet presentation shall not, therefore, include the amount held for the NRECA Deferred Compensation Program. Appropriate disclosure of the terms of the program shall be made in the notes to the financial statements.

605 Life Insurance Premium on Life of a Borrower Employee

Some borrowers insure the life of the manager and/or key employees with the borrower being named as the beneficiary. Such arrangements shall be accounted for as follows:

1. Charge Account 426.2, Life Insurance, for the net amount of the premium paid each year on the insurance policy.

2. At the anniversary date of the policy each year, charge Account 124, Other Investments, and credit Account 426.2, Life Insurance, with the amount of the annual increase in the cash surrender value of the policy; provided such increase is less than the net premium paid for that year. If the annual increase in the surrender value exceeds the net premium paid for the same year, only that portion of the surrender value increase equal to the net premium paid shall be credited to Account 426.2. The remainder is to be credited to Account 419, Interest and Dividend Income.

3. Upon retirement of the insured employee and surrender of the insurance policy, charge Account 131.1, Cash—General, and credit Account 124, Other Investments, for the amount received from the insurance company. If it is decided to grant to the retiring insured employee all, or any portion, of the cash received upon surrender of the policy, Account 926, Employee Pensions and Benefits, shall be charged and Account 131.1 credited for the amount paid to the retiring employee.

4. If the insured employee dies within his term of service, charge Account 131.1, Cash—General, for the face amount of the policy paid by the insurance company. Credit Account 124, Other Investments, for the cash surrender value previously charged thereto, and credit the remainder to Account 421, Miscellaneous Nonoperating Income.

606 Pension Costs

With the issuance of Statement of Financial Accounting Standards No. 87, Employers' Accounting for Pension (Statement No. 87), there have been significant changes in the accounting and reporting requirements relating to pension costs. This section will highlight the accounting and reporting requirements for the major types of pension plans. It should be noted, however, that the definitions and accounting procedures outlined in this section relate to financial accounting and they may differ from those used for tax accounting.

Defined Benefit Pension Plans

A defined benefit pension plan is a plan that defines an amount of pension benefit to be provided, usually as a function of one or more factors such as age, years of service, or compensation. In a defined benefit plan, the employer promises to provide, in addition to

current wages, retirement income payments in future years after the employee retires or terminates service. Generally, the amount of benefit to be paid depends upon a number of future events that are incorporated into the plan's benefit formula, after including how long the employee and any survivors live, how many years of service the employee renders, and the employee's compensation in the years immediately before retirement or termination.

Under a defined benefit plan, the determination of pension costs, assets, liabilities, and the disclosures in the financial statements require many calculations and assumptions to be made. This section provides a general overview of the accounting and reporting requirements associated with a defined benefit pension plan. Consult Statement No. 87 for guidance in making the necessary calculations and assumption.

The accounting and reporting requirements related to a defined benefit pension plan are as follows:

1. The following components shall be included in the periodic recognition of net pension cost by an employer sponsoring a defined benefit pension plan:

a. The service cost component recognized in a period shall be determined as the actuarial present value of benefits attributed by the pension plan formula to employee service during that period. The measurement of the service cost component requires use of an attribution method and assumptions.

b. The interest cost component recognized in a period shall be determined as the increase in the projected benefit obligation due to the passage of time. Measuring the projected benefit obligation as a present value requires accrual of an interest cost at rates equal to the assumed discount rates.

c. For a funded plan, the actual return on plan assets, if any, shall be determined based upon the fair value of plan assets at the beginning and the end of the period, adjusted for contributions and benefit payments.

d. Plan amendments (including initiation of a plan) often include provisions that grant increased benefits based upon services rendered in prior period. Because plan amendments are granted with the expectation that the employer will realize economic benefits in future period, Statement No. 87 does not require the cost of providing such retroactive benefits (prior service cost) to be included in net periodic pension cost entirely in the year of the amendment but provides for recognition during the future service periods of those employees active at the date of the amendment who are expected to receive benefits under the plan.

The cost of retroactive benefits (including benefits that are granted to retirees) is the increase in the projected benefit obligation at the date of the amendment. Except as noted below, prior service cost shall be amortized by assigning an equal amount to each future period of service of each employee active at the date of the amendments who is expected to receive benefits under the plan. If all or almost all of the plan's participants are inactive, the cost of retroactive plan amendments affecting benefits of inactive participants shall be amortized based upon the remaining life expectancy of those participants rather than the remaining service period.

To reduce the complexity and detail of the computations require, consistent use of an alternative amortization approach that more rapidly reduces the unrecognized cost of retroactive amendments is acceptable. For example, a straight-line amortization of the cost over the average remaining service period of employees expected to receive benefits under the plan is acceptable. The alternative method used shall be disclosed.

In some situations, a history of regular plan amendments and other evidence may indicate that the period during which the employee expects to realize economic benefits from an amendment granting retroactive benefits is shorter than the entire remaining service period of the active employees. Identification of such situations requires an assessment of the individual circumstances and the substance of the particular plan situation. In those circumstances, the amortization of prior service cost shall be accelerated to reflect the more rapid expiration of the employer's economic benefits and to recognize the cost in the periods benefited.

A plan amendment can reduce rather than increase the projected benefit obligation. Such a reduction shall be used to reduce an existing unrecognized prior service cost, and the excess, if any, shall be amortized on the same basis as the cost of benefit increases.

e. Gains and losses are changes in the amount of either the projected benefit obligation or plan assets resulting from experience different from that assumed and changes in assumptions. Gains and losses include amounts that have been realized. Because gains and losses may reflect refinements in estimates as well as real changes in economic values and because some gains in one period may be offset by losses in another or vice versa, the recognition of gains and losses as components of net pension cost of the period in which they arise, is not required.

The expected return on plan assets shall be determined based upon the expected long-term rate of return on plan assets and the market-related value of plan assets. The market-related value of plan assets shall be either fair value or a calculated value that recognizes changes in fair value in a systematic and rational manner over not more than 5 years. Different ways of calculating market-related value may be used for different classes of assets but the manner of determining market-related value shall be applied consistently from year to year for each asset class.

Asset gains and losses are the differences between the actual return on assets during a period and the expected return on assets for that period. Assets gains and losses include both changes reflected in the market-related value of assets and changes not yet reflected in the market-related value (that is, the difference between the fair value of assets and the market-related value). Asset gains and losses not yet reflected in market-related values are not required to be amortized.

As a minimum, amortization of an unrecognized gain or loss (excluding asset gains and losses not yet reflected in market-related value) shall be included as a component of net pension cost for a year if, as of the beginning of the year, that unrecognized net gain or loss exceeds 10 percent of the greater of the projected benefit obligation or the market-related value of plan assets. If amortization is required, the minimum amortization shall be that excess divided by the average remaining service period of active employees expected to receive benefits under the plan. If all or almost all of a plan's participants are inactive, the average remaining life expectancy of the inactive participants shall be used instead of average remaining service life.

Any systematic method of amortization of gains and losses may be used in lieu of the minimum specified in the previous paragraph provided that the minimum is used in any period in which the minimum is greater (reduces the net balance by more), the method is applied consistently, the method is applied similarly to both gains and losses, and the method is disclosed.

The gain or loss component of net periodic pension cost shall consist of the difference between the actual return

on plan assets and the expected return on plan assets and amortization of the unrecognized net gain or loss from previous periods.

2. A liability (unfunded accrued pension cost) shall be recognized if net periodic pension cost recognized pursuant to Statement No. 87 exceeds amounts the employer has contributed to the plan. An asset (prepaid pension cost) shall be recognized if net periodic pension cost is less than amounts the employer has contributed to the plan.

If the accumulated benefit obligation exceeds the fair value of plan assets, the employer shall recognize a liability (including unfunded accrued pension cost) that is at least equal to the unfunded accumulated benefit obligation. Recognition of an additional minimum liability is required if an unfunded accumulated benefit obligation exists and an asset has been recognized as a prepaid pension cost, the liability already recognized as unfunded accrued pension cost is less than the unfunded accumulated benefit obligation, or no accrued or prepaid pension cost has been recognized.

If an additional minimum liability is recognized, an equal amount shall be recognized as an intangible asset, provided that the asset does not exceed the amount of unrecognized prior service cost. If an additional liability required to be recognized exceeds unrecognized prior service cost, the excess (which represents a net loss not yet recognized as a net periodic pension cost) shall be reported as a separate component (reduction) of equity.

When a new determination of the amount of additional liability is made to prepare a balance sheet, the related intangible asset and separate component of equity shall be eliminated or adjusted, as necessary.

3. An employer sponsoring a defined benefit pension plan shall disclose the following information:

a. A description of the plan including employee groups covered, type of benefit formula, funding policy, types of assets held and significant nonbenefit liabilities, if any, and the nature and effect of significant matters affecting comparability of information for all period presented.

b. The amount of net periodic pension cost for the period showing separately the service cost component, the interest cost component, the actual return on assets for the period, and the net total of other components.

c. A schedule reconciling the funded status of the plan with amounts reported in the employer's balance sheet, showing separately, the fair value of plan assets, the projected benefit obligation identifying the accumulated benefit obligation and the vested benefit obligation, the amount of unrecognized prior service cost, the amount of unrecognized net gain or loss including asset gains and losses not yet reflected in market-related value), the amount of any remaining unrecognized net obligation or net asset existing at the date of initial application of Statement No. 87, the amount of any additional liability recognized, and the amount of net pension asset or liability recognized in the balance sheet (which is the net result of combining the previous six items).

d. The weighted-average assumed discount rate and rate of compensation increase (if applicable) used to measure the projected benefit obligation and the weighted-average expected long-term rate of return on plan assets.

e. If applicable, the amount and type of securities of the employer and related parties included in plan assets, and the approximate amount of annual benefits of employees and retirees covered by annuity contracts issued by the employer and related parties. Also, if applicable, the alternative amortization periods used.

f. An employer that sponsors two or more separate defined benefit pension plans shall determine net periodic pension cost, liabilities, and assets by separately applying the provisions of Statement No. 87 to each plan. In particular, unless an employer clearly has a right to use the assets of one plan to pay benefits of another, a liability required to be recognized for one plan shall not be reduced or eliminated because another plan has assets in excess of its accumulated benefit obligation or because the employer has prepaid pension cost related to another plan.

The required disclosures may be aggregated for all of an employer's single-employer defined benefit plans, or plans may be disaggregated into groups so as to provide the most useful information. Plans with assets in excess of the accumulated benefit obligation, however, shall not be aggregated with plans that have accumulated benefit obligations that exceed plan assets.

Annuity Contracts

An annuity contract is a contract in which an insurance company unconditionally undertakes a legal obligation to provide specified benefits to specific individuals in return for a fixed consideration or premium. An annuity contract is irrevocable and involves the transfer of significant risk from the employer to the insurance company. Some annuity contracts (participating annuity contracts) provide that the purchaser (either the plan or the employer) may participate in the experience of the insurance company. Under these contracts, the insurance company ordinarily pays dividends to the purchaser. If the substance of a participating contract is such that the employer remains subject to all or most of the risks and rewards associated with the benefit obligation covered and the assets transferred to the insurance company, that contract is not an annuity contract for purposes of Statement No. 87.

To the extent that benefits currently earned are covered by annuity contracts, the cost of these benefits shall be the cost of purchasing the contracts, except as noted below. That is, if all benefits attributed by the plan's benefits formula to service in the current period are covered by nonparticipating annuity contracts, the cost of the contracts determines the service cost component of net pension cost for that period.

Benefits provided by the pension benefit formula beyond benefits provided by annuity contracts (for example, benefits related to future compensation levels) shall be accounted for according to the provisions applicable to plans not involving insurance contracts.

Benefits covered by annuity contracts shall be excluded from the projected benefit obligation and the accumulated benefit obligation. Except as noted below, annuity contracts shall be excluded from plan assets.

Some annuity contracts provide that the purchaser (either the plan or the employer) may participate in the experience of the insurance company. Under these contracts, the insurance company ordinarily pays dividends to the purchaser, the effect of which is to reduce the cost of the plan. The purchase price of a participating annuity contract ordinarily is higher than the price of an equivalent contract without participation rights. The cost of the participation right shall be recognized, at the date of purchase, as an asset. In subsequent periods, the participation right shall be measured at its fair value if the contract is such that the fair value is reasonably estimable. Otherwise, the participation right shall be measured at its amortized cost (not in excess of its net realizable value), and the cost shall be amortized systematically over the expected dividend period under the contract.

Other Contracts with Insurance Companies

Insurance contracts that are, in substance, equivalent to the purchase of annuities shall be accounted for as such. Other contracts with insurance companies shall be accounted for as investments and measured at fair value. For some contracts, the best available evidence of fair value may be contract value. If a contract has a determinable cash surrender value or conversion value, that is presumed to be its fair value.

Defined Contribution Plans

A defined contribution pension plan is a plan that provides pension benefits in return for services rendered, provides an individual account for each participant, and has terms that specify how contributions to the individual's accounts are to be determined rather than the amount of pension benefits the individual is to receive. Under a defined contribution plan, the pension benefits a participant will receive depend only upon the amount contributed to the participant's account, the returns earned on investments of those contributions, and forfeitures of other participants' benefits that may be allocated to the participant's account.

To the extent that a plan's defined contributions to an individual's account are to be made for periods in which that individual renders services, the net pension cost for a period shall be the contribution called for in that period. If a plan calls for contributions for periods after an individual retires or terminates, the estimated cost shall be accrued during the employee's service period.

An employer that sponsors one or more defined contribution plans shall disclose the following separately from its defined benefit plan disclosures:

1. A description of the plan(s) including employee groups covered, the basis for determining contributions, and the nature and effect of significant matters affecting comparability of information for all periods presented.

2. The amount of cost recognized during the period.

A pension plan having characteristics of both a defined benefit plan and a defined contribution plan requires careful analysis. If the substance of the plan is to provide a defined benefit, as may be the case with some "target benefit" plans, the accounting and disclosure requirements shall be determined in accordance with the provisions applicable to a defined benefit plan.

Multiemployer Plans

A multiemployer plan is a pension plan to which two or more unrelated employers contribute, usually pursuant to one or more collective-bargaining agreements. A characteristic of multiemployer plans is that assets contributed by one participating employer may be used to provide benefits to employees of other participating employers since assets contributed by an employer are not segregated in a separate account or restricted to provide benefits only to employees of that employer.

An employer participating in a multiemployer plan shall recognize as net pension cost, the required contribution for the period and shall recognize as a liability, any contributions due and unpaid. The required contribution includes both current costs and prior service costs. If an employer elects to fund prior service cost in full at the inception of the plan, the total payment becomes the employer's required contribution, and accordingly, its pension cost for the period.

The following provisions are applicable to REA borrowers participating in a multiemployer pension plan:

1. An electric utility participating in a multiemployer plan may defer current period pension expenses if the provisions of Statement of Financial Accounting Standards No. 71 (Statement No. 71), Accounting for the Effects of Certain Types of Regulation, are applied.

Under the provisions of Statement No. 71, pension costs may be deferred provided such costs are recovered through future rates.

2. An electric utility instituting an amendment to the NRECA Retirement and Security plan enters into a contractual agreement to pay the costs incurred (prior service pension costs) for the amendment. In such cases, the agreement is noncancelable and payable regardless of continued participation in the plan.

Since the utility is unconditionally committed to making these payments and such payments are not contingent upon the utility's continued participation in the plan, the recognition of that liability is appropriate. The costs associated with this liability shall be expensed, in their entirety, when the liability is recognized.

The accounting journal entries required to record the transactions associated with a multiemployer pension plan are as follows:

Sample 1—Current Pension Expense

The journal entry required to record the normal costs associated with the NRECA Retirement and Security Program is as follows:

Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
  Cr. 131.1, Cash—General
To record the payment of pension costs to NRECA.

Note: This entry shall not be recorded during the moratorium.

Sample 2—Prior Service Pension Expense

The journal entries required to record the prior service costs associated with the NRECA Retirement and Security Program are as follows:

1. If the REA borrower elects to pay the prior service pension costs in full, and there is no deferral of costs under the provision of Statement No. 71, the following entry shall be recorded:

Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
  Cr. 131.1, Cash—General
To record the payment of prior service pension costs to NRECA.

2. If the REA borrower elects to finance prior service pension costs over a period of years and there is no deferral of costs under the provisions of Statement No. 71, the following entries shall be recorded:

Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
  Cr. 224, Other Long-Term Debt
To record the liability to NRECA for prior service pension costs.
Dr. 224, Other Long-Term Debt
Dr. 427, Interest on Long-Term Debt
  Cr. 131.1, Cash—General
To record the annual payment to NRECA for prior service pension costs.

3. If the REA borrower elects to finance prior service pension costs over a period of years and such costs are being deferred and amortized in accordance with the provisions of Statement No. 71, the following entries shall be recorded:

Dr. 182.3, Other Regulatory Assets
  Cr. 224, Other Long-Term Debt
To record the liability to NRECA for prior service pension costs.
Dr. 926, Employee Pension and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
  Cr. 182.3, Other Regulatory Assets
To record the amortization of deferred prior service pension costs.
Dr. 224, Other Long-Term Debt
Dr. 427, Interest on Long-Term Debt
  Cr. 131.1, Cash—General
To record the annual payment to NRECA for prior service pension costs.

4. If the REA borrower elects to pay the prior service pension costs in full and such costs are being deferred and amortized in accordance with the provisions of Statement No. 71, the following entries shall be recorded:

Dr. 182.3, Other Regulatory Assets

Cr. 131.1, Cash—General
To record the payment to NRECA for prior service pension costs.
Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 182.3, Other Regulatory Assets
To record the amortization of deferred prior service pension costs.

It should be noted that although the above entries relate specifically to the NRECA Retirement and Security Program, they are applicable to all multiemployer pension plans.

An employer that participates in one or more multiemployer plans shall disclose the following separately from disclosures for a single-employer plan:

1. A description of the multiemployer plan(s) including the employee groups covered, the type of benefits provided (defined benefit or defined contribution), and the nature and effect of significant matters affecting comparability of information for all periods presented.

2. The amount of cost recognized during the period.

Multiple-Employer Plans

A multiple-employer plan is, in substance, aggregations of single-employer plans combined to pool their assets for investment purposes to reduce the cost of plan administration. Under a multiple-employer plan, assets are segregated and specifically identified to an employer. In addition, such plans may have features that allow participating employers to have different benefit formulas. Such plans shall be considered single-employer plans for financial accounting purposes and each employer's accounting shall be based upon its respective interest in the plan.

607 Unproductive Time

Lost time relating to construction, operations and maintenance shall be allocated on the basis of direct payroll costs to the appropriate construction, operations or maintenance accounts in the month incurred. Lost time is defined as time on duty during which productive work is not performed due to inclement weather conditions, material shortages, machine repairs, or other reasons.

If lost time attributable to construction has a material effect on the construction accounts in any one month, these costs shall be deferred and distributed over a reasonable period of time by means of a predetermined percentage based upon direct labor.

608 Training Costs, Attendance at Meetings, etc.

Utilities engage in many types of training programs. Seminars are conducted for directors, managers, office managers, attorneys, engineers, and others. Bookkeepers and office managers attend accountants' meetings. Safety engineers attend safety schools and subsequently conduct regular safety meetings at the cooperative. Costs incurred for the various types of training activities shall be accounted for as follows:

1. Managers' and directors' expenses to attend the NRECA national and state conventions shall be charged to Account 930.2, Miscellaneous General Expenses.

2. Management or engineering seminar fees, salary time attending such seminars, and the related per diem and expenses shall be charged to Account 926, Employee Pensions and Benefits, if the meeting is primarily for the benefit of the employee. If the meeting is primarily for the benefit of the employer, the functional expense accounts shall be charged for fees and expenses. Salaries paid to employees shall be charged to the appropriate labor expense accounts rather than to Account 926. Fees and expenses for directors' attendance shall be charged to Account 930.2, Miscellaneous General Expenses.

3. When the office manager, bookkeeper, or work order clerk attends a state or regional accounting meeting, their salary time shall be charged to the account to which the employees' time is ordinarily charged.

4. Employees' salary time spent attending regular safety meetings conducted by the cooperative shall be charged to the account to which the employees' time is ordinarily charged.

5. A safety engineer's salary time spent attending a statewide safety school shall be charged to Account 925, Injuries and Damages.

6. The salary time spent by a manager or line foreman conducting weekly safety meetings shall be charged to the appropriate functional expense accounts including Account 590, Maintenance, Supervision and Engineering, and Account 920, Administrative and General Services.

609 Maintenance and Operations

"Operations" is the general term used to describe activities involved in the delivery of electric service, by means of a distribution system, to the end user. It pertains to the use of the utility's electric plant facilities and does not include activities intended to prevent or remedy an impending or actual breakdown of those facilities. These activities are classified as maintenance.

"Maintenance" is the general term used to describe the activities involved in the upkeep and repair, but not the enlargement or improvement, of property owned or leased and operated by the company. It does not include the replacement of retirement units.

610 Financial Forecast

Costs incurred and salaries paid to perform a 10-year financial forecast shall be charged to Account 920, Administrative and General Salaries. Related office supplies and expenses shall be charged to Account 921, Office Supplies and Expenses. When a forecast is performed by an outside consultant, the cost shall be charged to Account 923, Outside Services Employed.

611 Advertising Expense

The cost of advertising and the cost of informing the public about the electric cooperative's activities shall be charged to Account 930.2, Miscellaneous General Expenses.

Most of a cooperative's advertising is instructional in nature and relates the cooperative's history and current activities. This type of advertising activity should not be confused with that directed towards the enactment of a specific law or laws directed toward obtaining a specific decision from a regulatory body. Political advertising of the type defined above shall be charged to Account 426.4, Expenditures for Certain Civic, Political, and Related Activities.

612 Special Power Cost Study

A special power cost study is defined as a study to determine whether sufficient power will be available in the future. If additional power or power sources are needed, the study determines whether generation or purchase will supply the lesser cost. The study also indicates when additional power will be needed. As costs are incurred, they shall be charged to a subaccount of Account 186, Miscellaneous Deferred Debits. Upon completion of the study, the costs shall be charged to Account 557, Other Expenses, or amortized to Account 557 over a period of time not to exceed 5 years.

613 Mapping Costs

The purpose of posting completed work orders to system maps is to improve the operation of the system. These costs shall, therefore, be charged to Account 588, Miscellaneous Distribution Expenses. However, the cost of system mapping in the planning

stage of construction is an acceptable overhead cost of the resulting construction.

614 Member Relations Costs

Many electric cooperatives hire employees whose duties concern a mixture of power use and member relations activities. The salaries for these employees shall be charged to Account 930.2, Miscellaneous General Expenses, except as provided below:

1. Account 912, Demonstrating and Selling Expenses, shall be charged with all labor, material, advertising, and other expenses incurred in promotional, demonstrating, and selling activities; the objective of which is to promote or retain the use of utility services by present or prospective customers.

2. Account 930.1, General Advertising Expenses, shall be charged with labor, material, and other expenses incurred in advertising and related activities, the cost of which by their content and purpose, are not provided for elsewhere.

3. Account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work, shall be charged with all costs specifically related to merchandising activities when the utility is engaged in a major merchandising program.

4. Account 426.4, Expenditures for Certain Civic, Political, and Related Activities, shall be charged with expenditures for the purpose of influencing public opinion with respect to the election or appointment of public officials, referenda, legislation, or ordinances (either with respect to the possible adoption of new referenda, legislation or ordinances or repeal or modification of existing referenda, legislation or ordinances); or approval, modification, or revocation of franchises; or for the purpose of influencing the decisions of public officials. Account 426.4 shall not include expenditures which are directly related to appearances before regulatory or other governmental bodies in connection with the borrower's existing or proposed operations.

615 Statewide Fees

Additional fees collected by a statewide association from its members for construction of a statewide building shall be charged to Account 930.2, Miscellaneous General Expenses. Any amounts that are to be repaid by the state association shall be charged to Account 143, Other Accounts Receivable, or Account 123.23, Other Investments in Associated Organizations, depending upon the terms of the repayment.

616 Power Supply/Distribution Cooperative Borrowings

When a power supply cooperative borrows money from a distribution cooperative as the result of a long-term loan agreement, the money shall be recorded on the books of the power supply cooperative as general funds unless restricted to a specific purpose. If restricted, the funds shall be recorded in Account 128, Other Special Funds. The resulting liability shall be recorded in Account 224, Other Long-Term Debt.

The transaction shall be charged to Account 123.23, Other Investments in Associated Organizations, on the books of the distribution cooperative.

617 Rate Discount Allowed by the Power Cooperative to Distribution Cooperatives Owning Connecting Transmission Lines

A distribution cooperative purchases power from a power cooperative. The distribution cooperative owns and operates the transmission line between the power cooperative's facilities and the distribution facilities. Because of this, power is sold at the standard rate at which the power cooperative sells to other distribution cooperatives who do not own their transmission lines, less a discount. The discount or reduction in rate is based upon the distribution cooperative's expense in operating and maintaining its transmission facilities. The contract between the power cooperative and the distribution cooperative must specifically state that the member shall receive a reduced rate or discount from the seller's rate to other member cooperatives.

Under this type of arrangement, the distribution cooperative shall record the cost of purchased power by charging the net amount to Account 555, Purchased Power.

618 Theft Losses not Covered by Insurance

Utilities may suffer losses as a result of thefts of cash, materials and supplies, equipment, or electric plant-in-service that is not covered by insurance. The charges for nominal uninsured losses shall be recorded in the following accounts:

1. Cash—Account 924, Property Insurance, shall be charged.

2. Plant materials and operating supplies—Account 163, Stores Expense Undistributed, shall be charged.

3. Equipment—Account 163, Stores Expense Undistributed, shall be charged for stores equipment; Account 184, Transportation Expense—Clearing, for transportation and garage equipment; and Account 924, Property Insurance, for all other equipment.

4. Electric Plant-in-Service—A retirement work order shall be prepared for electric plant constituting a unit of property. The loss due to retirement shall be charged to Account 108.6, Accumulated Provision for Depreciation of Distribution Plant. If the plant does not constitute a retirement unit, the loss shall be charged to the appropriate maintenance expense account.

619 Self Billing

To maintain the books of accounts on an accrual basis, bills for customers who self bill and have not sent in a reading or remittance, shall be estimated. A journal entry shall be made to record the estimated revenue and kWh sold by debiting accounts receivable and crediting the appropriate revenue accounts. The estimated bill shall be posted to the customer's account and identified by an appropriate symbol indicating that it is an estimate. Reconciliation with the general ledger control is made in the usual manner.

620 Purchase Rebates

Some vendors from which electric cooperatives purchase plant materials and supplies and merchandise for resale are making purchase rebates based upon the quantity or dollar volume of purchases. These "quantity discounts" may be in the form of cash or credit memoranda, in the form of prepaid package travel arrangements, or a combination of such methods. The rebate shall be accounted for as a reduction in the cost of the material or appliances upon which it was based.

In some instances, the rebate may be for material or appliances that are no longer in stock or cannot be identified. If the rebate is based upon the purchase of plant materials and operating supplies that are normally charged to Account 154, Plant Materials and Operating Supplies, a credit shall be made to Account 163, Stores Expense Undistributed. If the rebate is based upon appliances and equipment held for merchandising or contract work, the credit shall be spread over the items in Account 155, Merchandise. To avoid materially distorting the cost of the remaining appliances, if a portion of the items upon which the rebate was based are no longer in stock, a portion of the credit shall be prorated to Account 416, Cost and Expenses of Merchandising, Jobbing, and Contract Work, on the basis of the number of items sold to the quantity remaining in stock.

If the rebate is in the form of a travel package or travel arrangements, the value of the rebate shall be estimated and recorded as a reduction of the cost of the material or appliances upon

which it was based in a manner similar to that of the cash rebates discussed above. The beneficiary of the travel or travel allowance shall be designated by or in accordance with policy established by the board of directors. The contra charge to the reduction in cost shall be to an appropriate account depending upon the relationship of the recipient to the cooperative. For employees, this shall be Account 926, Employee Pensions and Benefits; for directors or patrons, Account 930.2, Miscellaneous General Expenses.

621 Integrity Fund

The CFC Integrity Fund was established to assist borrowers in their attempts to stop takeover bids by investor-owned utilities. A borrower makes a contribution to the Integrity Fund in the form of cash or patronage capital refunds. CFC retains the contribution for a 5-year period during which time the borrower earns interest on the balance in its account. Each year, the borrower receives a statement indicating (both for the total fund and the individual borrower's share) the amount contributed, interest earned, disbursements made, and the ending balance. The disbursements from the fund are allocated to each contributing borrower's account based upon their individual account balances. At the end of the 5-year period, the balance in the account, if any, is refunded to the contributing borrower.

Since the contributing borrower will receive a refund only if its funds are not totally disbursed, the contribution shall be charged to expense in Account 426.1, Donations. If any part of the contribution is returned at the end of the 5-year period, the refund shall be credited to Account 421, Miscellaneous Nonoperating Income.

622 In-Substance Defeasance

An in-substance defeasance has been defined as the process whereby a debtor irrevocably places cash or other assets in a trust to be used solely for the purpose of satisfying scheduled payments of both principal and interest related to a specific debt obligation. Under the structural arrangements of an in-substance defeasance, the probability that the debtor will be required to make additional future debt payments is remote. In these specific circumstances, debt has been determined to be extinguished even though the debtor has not been legally released from his obligations under the debt instrument.

The trust established in a defeasance transaction is restricted as to the nature of the assets held. The trust must be funded with monetary assets that are essentially risk free as to the amount, timing, and collection of interest and principal. For debt denominated in United States dollars, "risk free" assets are limited to:

1. Direct obligations of the United States government;

2. Obligations guaranteed by the United States government; and

3. Securities that are backed by United States government obligations as collateral under an arrangement by which the interest and principal payments on the collateral, flow immediately through to the holder of the security.

The monetary assets of the trust must provide cash flows sufficient to coincide with the scheduled interest and principal payments on the defeased debt. If the trust is expected to pay the costs associated with the defeasance, such as trustee fees, these costs must be considered in determining the amount of funds required by the trust.

The principles of in-substance defeasance apply only to debt with specific maturities and fixed payment schedules and, as such, do not apply to debt with variable terms in which advance determination of debt service requirements is not possible.

Generally accepted accounting principles (GAAP) address the extinguishment of debt in Accounting Principles Board Opinion No. 26, and Statement of Financial Accounting Standard No. 76, Extinguishment of Debt. In accordance with these two statements, debt which has been defeased remains recorded in the regulated books of account as do the assets placed in the irrevocable trust. They are not, however, recognized as an asset and liability for financial reporting purposes. The transaction, including the total amount of debt outstanding and the total amount of debt that is considered extinguished at the end of the period, must be disclosed in the footnotes to the financial statements as long as the debt remains outstanding.

Debt is frequently extinguished before its scheduled maturity. Debt may be extinguished by the use of the borrower's general funds, or by the reacquisition of another debt issue at a different interest rate or varying terms. As these assets are expected to be revenue producing during those years, both the assets and the revenue they generate may be utilized to meet maturing debt payments. Therefore, in most instances, the dollar value of the assets initially placed in the trust do not equal the dollar value of the outstanding principal balance. The difference represents an "economic" gain or loss to the borrower.

To provide consistency in reporting among all REA borrowers, any gain or loss that is recognized for financial statement purposes should be reported in accordance with the provisions of General Instruction No. 17 of this part. Therefore, the gain or loss should be amortized (for reporting purposes) in equal monthly amounts over the remaining life of the original debt issue or the remaining life of the new issue. The gain or loss may be reported in the current period only in those instances in which it is immaterial to the financial statements.

The REA Form 7, Financial and Statistical Report, and the REA Form 12, Operating Report—Financial, must, however, reflect the actual amounts recorded in the books and records of the borrower.

623 Satellite or Cable Television Services

Many electric borrowers have become involved in either providing satellite or cable television services or obtaining satellite or cable television services for their own use. This section outlines the accounting to be followed when recording transactions involving satellite or cable television services.

1. *Separate Subsidiary*

If a borrower provides satellite or cable television services through a separate subsidiary, the investment in the subsidiary shall be recorded in Account 123.11, Investment in Subsidiary Companies. The net income or loss of the subsidiary shall be debited or credited to Account 123.11, as appropriate, with an offsetting entry to Account 418.1, Equity in Earnings of Subsidiary Companies.

2. *Segment of Current Operations*

If a borrower provides satellite or cable television services as part of its normal operations, the investment in satellite or cable television equipment shall be recorded in Account 121, Nonutility Property. All income associated with these services shall be recorded in Account 417, Revenues from Nonutility Operations, and the associated expenses shall be charged to Account 417.1, Expenses of Nonutility Operations.

3. *Sale and Installation of Satellite or Cable Television Equipment*

If a borrower sells or installs satellite or cable television equipment, the equipment purchased for resale shall be recorded in Account 156, Other Materials and Supplies, until sold. The revenues generated from such sales or installations shall be recorded in

Account 415, Revenues from Merchandising, Jobbing, and Contract Work, and the associated expenses shall be charged to Account 416, Costs and Expenses of Merchandising, Jobbing, and Contract Work.

4. *Equipment Purchased for Own Use*

If a borrower purchases satellite or cable television equipment for its own use, the investment in the equipment shall be recorded in Account 397, Communication Equipment.

624 Pollution Control Bonds

The construction and installation of pollution control facilities are often financed by issuing tax exempt municipal securities. The funds generated from the sale of these securities are deposited into an account that is controlled by a designated trustee. The funds under the control of the trustee are usually invested, earning interest, until they are needed.

Interest expense accrued on the pollution control bonds during the construction period shall be capitalized in Account 107, Construction Work-in-Progress. After construction is complete, all subsequent accruals of interest expense shall be charged to Account 427, Interest on Long-Term Debt.

Interest income earned during the construction period shall be recorded as a debit to Account 171, Interest and Dividends Receivable, and a credit to Account 107, Construction Work-in-Progress. Upon notification of receipt of the interest in the trustee account, Account 221.XX, Long-Term Debt—Pollution Control Bonds, shall be debited and Account 171, Interest and Dividends Receivable shall be credited. Upon completion of construction, Account 419, Interest and Dividend Income, shall be credited for the amount of interest income earned during the period.

The entries required to account for the transactions associated with the issuance of pollution control bonds are as follows:

Dr. 221.XX, Long-Term Debt—Pollution Control Bonds—Trustee
  Cr. Account 221.X1, Long-Term Debt—Pollution Control Bonds
To record the sale of pollution control bonds.
Dr. 107, Construction Work-in-Progress
  Cr. 232, Accounts Payable
To record costs incurred in construction of pollution control facilities.
Dr. 131.1, Cash—General Funds
  Cr. 221.XX, Long-Term Debt—Pollution Control Bonds—Trustee
To record the transfer of funds from the trustee.
Dr. 107, Construction Work-in-Progress
  Cr. 221.XX, Long-Term Debt—Pollution Control Bonds—Trustee
To record interest expense on pollution control bonds.
Dr. 171, Interest and Dividends Receivable
  Cr. 107, Construction Work-in-Progress
To record earnings from investments made by the trustee.
Dr. 221.XX, Long-Term Debt—Pollution Control Bonds—Trustee
  Cr. 171, Interest and Dividends Receivable
To record receipt of interest income by the trustee account.
Dr. XXX, Various Plant Accounts
  Cr. 107, Construction Work-in-Progress
To close completed construction to the primary plant accounts.

625 Prepayment of Debt

Many REA borrowers have decided to redeem (prepay) their issues of long-term debt. As a result of this redemption, the borrower may incur a gain (discount) or a loss (penalty) on the early extinguishment of debt. The accounting for this gain or loss is highlighted in this section.

If debt is redeemed without refunding (paid with general funds), the gain or loss incurred shall be recorded in Account 189, Unamortized Loss on Reacquired Debt, or Account 257, Unamortized Gain on Reacquired Debt, as appropriate. The borrower shall amortize the recorded deferral on a monthly basis over the remaining life of the old debt issue. Amounts so amortized shall be charged to Account 428.1, Amortization of Loss on Reacquired Debt, or credited to Account 429.1, Amortization of Gain on Reacquired Debt—Credit, as appropriate.

If the debt is redeemed with refunding (refinanced), the gain or loss incurred shall be recorded in Account 189 or Account 257, as appropriate. The borrower may elect to account for the deferrals as follows:

1. Write them off immediately when the amounts are insignificant;
2. Amortize them by equal monthly amounts over the remaining life of the old debt issue; or
3. Amortize them by equal monthly amounts over the life of the new debt issue.

Once an election has been made, it shall be applied on a consistent basis. Regardless of the option selected, the amortization shall be charged to either Account 428.1 or 429.1, as appropriate.

Where a regulatory authority having jurisdiction over the borrower specifically disallows the rate principle of amortizing gains or losses on the redemption of long-term debt without refunding, and does not apply the gain or loss to interest charges in computing the borrower's rates, the alternative method may be used to account for gains or losses relating to the redemption of long-term debt with or without refunding. The alternative method requires that gains or losses be recorded in Account 421, Miscellaneous Nonoperating Income, or Account 426.5, Other Deductions, as incurred. When the alternative method is used, the borrower shall include a footnote to the financial statements stating the reason for using this method and its treatment for rate making purposes.

626 Rural Economic Development Loan and Grant Program

On December 21, 1987, Section 313, Cushion of Credits Payments Program, was added to the Rural Electrification Act. Section 313 establishes a Rural Economic Development Subaccount and authorizes the Administrator of the Rural Electrification Administration to provide zero interest loans or grants to RE Act borrowers for the purpose of promoting rural economic development and job creation projects.

On February 15, 1989, REA published its final rule, 7 CFR Part 1703, Subpart B, Rural Economic Development Loan and Grant Program. This rule outlines the policies and procedures relating to the zero interest loan and grant program.

The accounting journal entries required to record the transactions associated with a Rural Economic Development Loan are as follows:

Dr. 224.17, REA Notes Executed—Economic Development—Debit
  Cr. 224.16, Long-Term Debt—REA Economic Development Notes Executed
To record the contractual obligation to REA for the Economic Development Notes.
Dr. 131.12, Cash—General—Economic Development Funds
  Cr. 224.17, REA Notes Executed—Economic Development—Debit
To record the receipt of the economic development loan funds.
Dr. 123, Investment in Associated Organizations
  or
Dr. 124, Other Investments
  Cr. 131.12, Cash—General—Economic Development Funds
To record the disbursement of economic development loan funds to the project.
Dr. 131.1, Cash—General Funds
  Cr. 421, Miscellaneous Nonoperating Income
To record payment received from the project for loan servicing charges.
Dr. 171, Interest and Dividends Receivable
  Cr. 419, Interest and Dividend Income
To record the interest earned on the investment of rural economic development loan funds.]
Dr. 426.1, Donations
  or
Dr. 426.5, Other Deductions

Cr. 131.1, Cash—General Funds
To record the payment of interest earned in excess of $500.00 on the investment of rural economic development loan funds.

Note: Interest earned in excess of $500.00 must be used for the rural economic development project for which the loan funds were received or returned to REA.

Dr. 131.12, Cash—General—Economic Development Funds
Cr. 123, Investment in Associated Organizations
or
Cr. 124, Other Investments
To record receipt of the repayment, by the project, of economic development loan funds.

Dr. 224.16, Long-Term Debt—REA Economic Development Notes Executed
Cr. 131.12, Cash—General—Economic Development Funds
To record the repayment, to REA, of the economic development loan funds.

627 Postretirement Benefits

Statement of Financial Accounting Standards No. 106, Employers' Accounting for Postretirement Benefits Other than Pensions (Statement No. 106), requires entities to accrue the expected cost of postretirement benefits during the years the employee provides service to the entity. Prior to the issuance of Statement No. 106, most entities accounted for postretirement benefit costs on a "pay-as-you-go" basis; that is, costs were recognized when paid, not when the employee provided service to the entity in exchange for the benefits.

As defined in Statement No. 106, a postretirement benefit plan is a deferred compensation arrangement in which an employer promises to exchange future benefits for an employee's current services. Postretirement benefits include, but are not limited to, health care, life insurance, tuition assistance, day care, legal services, and housing subsidies provided outside of a pension plan.

This statement applies to both written plans and to plans whose existence is implied from a practice of paying postretirement benefits. An employer's practice of providing postretirement benefits to selected employees under individual contracts with specific terms determined on an employee-by-employee basis does not constitute a postretirement benefit plan under the provisions of this statement.

Postretirement benefit plans generally fall into three categories: single-employer defined benefit plans, multi-employer plans, and multiple-employer plans. A postretirement benefit plan may be either funded or unfunded.

The accounting requirements set forth in this interpretation focus on single- and multiple-employer plans. The accounting requirements set forth in Statement No. 106 for multiemployer plans or defined contribution plans shall be adopted for borrowers electing those types of plans.

Under the provisions of Statement No. 106, there are two components of the postretirement benefit cost: the current period cost and the transition obligation. The transition obligation is a one-time accrual of the costs resulting from services already provided. Statement No. 106 allows the transition obligation to be deferred and amortized on a straight-line basis over the average remaining service period of the active employees. If the average remaining service life of the employees is less than 20 years, a 20-year amortization period may be used.

Accounting Requirements

All REA borrowers must adopt the accrual accounting provisions and reporting requirements set forth in Statement No. 106. The transition obligation and accrual of the current period cost must be based upon an actuarial study. This study must be updated to allow the borrower to comply with the measurement date requirements of Statement No. 106; however, the study must, at a minimum, be updated every five years. The difference between the amount accrued during the year and the amount paid on a "pay-as-you-go" basis must be placed in an external, irrevocable trust to be used solely for postretirement benefits. REA will not allow electric borrowers to account for postretirement benefits on a "pay-as-you-go" basis.

The deferral and amortization of the transition obligation does not require REA approval provided that it complies with the provisions of Statement No. 106. If, however, a borrower elects to expense the transition obligation in the current period and subsequently defer this expense in accordance with Statement of Financial Accounting Standards No. 71, Accounting for the Effects of Certain Types of Regulation, the deferral must be approved by REA. In those states in which the commission will not allow the recovery of the transition obligation through future rates, the transition obligation must be expensed, in its entirety, in the year in which Statement No. 106 is adopted. A portion of the transition obligation may be charged to construction and retirement activities provided such charges are properly supported.

Effective Date and Implementation

For plans outside the United States and for defined benefit plans of employers that (a) are nonpublic enterprises and (b) sponsor defined benefit postretirement plans with no more than 500 plan participants in the aggregate, Statement No. 106 is effective for fiscal years beginning after December 15, 1994. For all other plans, Statement No. 106 is effective for fiscal years beginning after December 15, 1992.

REA borrowers must comply with the implementation dates set forth in Statement No. 106. At the time of the adoption of Statement No. 106, rates must be in place sufficient to recover the current period expense and any amortization of the transition obligation. A copy of a board resolution or commission order, as appropriate, indicating that the transition obligation and current period expense have been included in the borrower's rates must be submitted to REA.

Accounting Journal Entries—Transition Obligation

The journal entries required to record the transition obligation are as follows:

1. If the borrower elects to expense the transition obligation in the current period and there is no deferral of costs, the following entry shall be recorded:

Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record the current period recognition of the transition obligation for postretirement benefits.

Note: A portion of the transition obligation may be charged to construction and retirement activities provided such charges are properly supported.

If the borrower elects to fund the transaction obligation, the following entry shall be recorded:

Dr. 228.3X, Accumulated Provision for Pensions and Benefits—Funded
Cr. 131.1, Cash—General
To record the funding of the transition obligation in an irrevocable external trust.

Note: If the transition obligation is expensed, in its entirety, at the time of the adoption of Statement No. 106, it is assumed that no portion of the transition obligation was recovered through rates; therefore, no portion is required to be funded.

This entry should be made only if the borrower elects to voluntarily fund this obligation.

2. If the borrower elects to defer and amortize the transition obligation in accordance with the provisions of Statement No. 71, the following entry shall be recorded:

Dr. 182.3, Other Regulatory Assets

Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record the deferral of the transition obligation under the provisions of Statement No. 71.
Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 182.3, Other Regulatory Assets
Cr. 186, Miscellaneous Deferred Debits
To record the amortization of postretirement benefits expenses as they are recovered through rates in accordance with Statement No. 71.

3. The deferral and amortization of the transition obligation under the provisions of Statement No. 106 is considered to be an off balance sheet item. If, therefore, the borrower elects to defer and amortize the transition obligation on a straight-line basis over the average remaining service period of the active employees or 20 years in accordance with Statement No. 106, no entry is required. Instead, the transition obligation is recognized as a component of postretirement benefit cost as it is amortized. It should be noted, however, that the amount of the unamortized transition obligation must be disclosed in the notes to the financial statements.

Accounting Journal Entries—Current Period Expense

1. The current period postretirement expense should be recorded by the following entry:
Dr. 926, Employee Pensions and Benefits
Dr. 107, Construction Work-in-Progress
Dr. 108.8, Retirement Work-in-Progress
Cr. 228.3, Accumulated Provision for Pensions and Benefits
To record current period postretirement benefit expense.
Dr. 228.3X, Accumulated Provision for Pensions and Benefits—Funded
Cr. 131.1, Cash—General
To record cash payments on a "pay-as-you-go" basis for postretirement benefits.
Dr. 228.3X, Accumulated Provision for Pensions and Benefits—Funded
Cr. 131.1, Cash—General
To record the funding of the difference between the amount accrued for current period postretirement benefit expense and the amount paid on a "pay-as-you-go" basis.

§§ 1767.42—1767.45 [Reserved]

Subpart C—Depreciation Rates and Procedures [Reserved]

§§ 1767.46—1767.65 [Reserved]

Subpart D—Preseration of Records [Reserved]

§§ 1767.66—1767.85 [Reserved]

Dated: October 1, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–26827 Filed 11–9–93; 8:45 am]
BILLING CODE 3410–15–F

federal register

Wednesday
November 10, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Fort Mojave Indian Tribe and State of Arizona Gaming Compact; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Fort Mojave Indian Tribe and State of Arizona

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved Fort Mojave Indian Tribe and State of Arizona Gaming Compact of 1993, which was enacted on August 26, 1993.

DATES: This action is effective upon date of publication.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240; (202) 219–4066.

Dated: October 22, 1993.

Ada E. Deer,

Assistant Secretary-Indian Affairs.

[FR Doc. 93–27782 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
November 10, 1993

Part V

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; San Carlos Apache Tribe and State of Arizona Gaming Compact; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; San Carlos Apache Tribe and State of Arizona Gaming Compact

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the San Carlos Apache Tribe and the State of Arizona Gaming Compact of 1993, which was enacted on August 11, 1993.

DATES: This action is effective November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 25, 1993.

W.W. Babby,

Acting Assistant Secretary-Indian Affairs.

[FR Doc. 93–27781 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Wednesday
November 10, 1993

Part VI

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Kootenai Tribe of Idaho and State of Idaho Gaming Compact; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming; Kootenai Tribe of Idaho and State of Idaho Gaming Compact

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gambling on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Kootenai Tribe of Idaho and the State of Idaho Gaming Compact of 1993, which was executed on September 8, 1993.

DATES: This action is effective November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: October 29, 1993.

W.W. Babby,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–27675 Filed 11–9–93; 8:45 am]

BILLING CODE 4310–02–P

Federal Register

Wednesday
November 10, 1993

Part VII

The President

Executive Order 12879—Order of Succession of Officers To Act as Secretary of the Navy

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Federal Register
Vol. 58, No. 216
Wednesday, November 10, 1993

Presidential Documents

Title 3—

The President

Executive Order 12879 of November 8, 1993

Order of Succession of Officers To Act as Secretary of the Navy

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 3347 of title 5, United States Code, it is hereby ordered as follows:

Section 1. *Succession to the Authority of the Secretary of the Navy.* (a) In the event of the death, permanent disability, or resignation of the Secretary of the Navy, the incumbents holding the positions designated below, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy:

(1) The Under Secretary of the Navy.

(2) The Assistant Secretaries and General Counsel of the Navy, in the order fixed by their length of services as permanent appointees in such positions.

(3) The Chief of Naval Operations.

(4) The Commandant of the Marine Corps.

(b) In the event of the temporary absence or temporary disability of the Secretary of the Navy, the incumbents holding the Department of the Navy positions designated in paragraph (a) of this section, in the order indicated, shall act for and exercise the powers of the Secretary of the Navy.

(1) In these instances, the designation of an Acting Secretary of the Navy applies only for the duration of the Secretary's absence or disability, and does not affect the authority of the Secretary to resume the powers of his office upon his return.

(2) In the event that the Secretary of the Navy is merely absent from this position, the Secretary of the Navy may continue to exercise the powers and fulfill the duties of his office during his absence, notwithstanding the provisions of this order.

(c) Precedence among those officers designated in paragraph (a) of this section who have the same date of appointment shall be determined by the Secretary of the Navy at the time that such appointments are made.

(d) Notwithstanding paragraph (a) and (b) of this section, an officer shall not act for or exercise the powers of the Secretary of the Navy under this order if that officer serves only in an acting capacity in the position that would otherwise entitle him to do so.

Sec. 2. *Temporary Nature of Succession.* Succession to act for and exercise the powers of the Secretary of the Navy pursuant to this order shall be on a temporary or interim basis and shall not have the effect of vacating the statutory appointment held by the successor.

THE WHITE HOUSE,
November 8, 1993.

[FR Doc. 93-27935
Filed 11-8-93; 4:59 pm]
Billing code 3195-01-P

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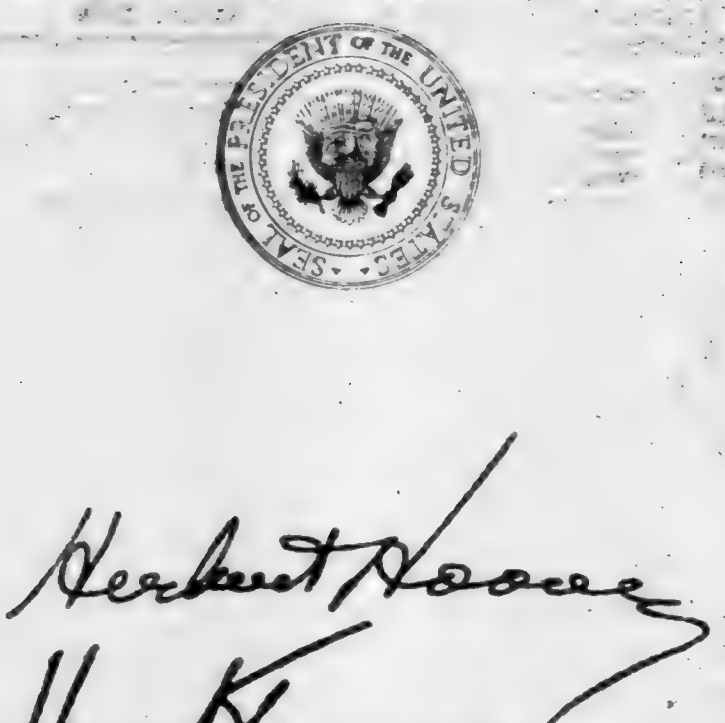

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Friday
November 12, 1993

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WHO: The Office of the Federal Register.

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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

NEW YORK, NY

WHEN: November 23, 9:00 am—12:00 pm

WHERE: National Archives—Northeast Region, 201 Varick Street, 12th Floor, New York, NY

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WASHINGTON, DC

(two briefings)

WHEN: November 30 at 9:00 am and 1:30 pm

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Vol. 58, No. 217
Friday, November 12, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 905

[Docket No. FV93-905-3-IFR]

Oranges, Grapefruit, Tangerines, and Tangelos Grown in Florida; Relaxation of the Minimum Size Requirement for Red Seedless Grapefruit

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This action relaxes the minimum size requirement for domestic shipments of Florida red seedless grapefruit to 3–5/16 inches in diameter (size 56) through November 6, 1994. Unless relaxed, the minimum size would increase under current requirements to 3–9/16 inches in diameter (size 48) on November 8, 1993. This action will enable handlers to continue to ship size 56 red seedless grapefruit for the entire 1993–94 season. This action is based on this season's current and prospective crop and market conditions, and the maturity and flavor levels of red seedless grapefruit.

DATES: This interim final rule becomes effective November 8, 1993. Comments which are received by December 13, 1993, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under Marketing Agreement and Marketing Order No. 905 (7 CFR part 905) regulating the handling of oranges, grapefruit, tangerines, and tangelos grown in Florida, hereinafter referred to as the order. This order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C 601–674), hereinafter referred to as the Act.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action".

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This interim final rule is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are about 100 Florida citrus handlers subject to regulation under the marketing order covering oranges, grapefruit, tangerines, and tangelos grown in Florida, and about 11,000 producers of these citrus fruits in Florida. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. A minority of these handlers and a majority of the producers may be classified as small entities.

The Citrus Administrative Committee (committee) met September 28, 1993, and unanimously recommended that the minimum size requirement for domestic shipments of fresh red seedless grapefruit be relaxed. The committee meets prior to and during each season to review the handling regulations effective on a continuous basis for each citrus fruit regulated under the order. Committee meetings are open to the public, and interested persons may express their views at these meetings. The Department reviews committee recommendations and information, as well as information from other sources, and determines whether modification, suspension, or termination of the handling regulations would tend to effectuate the declared policy of the Act.

Section 905.306 (7 CFR 905.306) specifies minimum grade and size requirements for different varieties of fresh Florida grapefruit. Such requirements for domestic shipments are specified in § 905.306 in Table I of paragraph (a), and for export shipments in Table II of paragraph (b). Export

requirements are not changed by this rule.

This action relaxes the minimum size requirement for domestic shipments of Florida red seedless grapefruit to 3 5/16 inches in diameter (size 56) through November 6, 1994. Unless relaxed, the minimum size would increase under current requirements to 3 9/16 inches in diameter (size 48) on November 8, 1993. This action will enable handlers to continue to ship size 56 red seedless grapefruit for the entire 1993–94 season.

The committee reports that it expects that the fresh market demand will be sufficient to permit the shipment of size 56 red seedless grapefruit grown in Florida during the entire 1993–94 season. The committee also expects that the overall external quality of the fruit will be good. The committee also expects that more Florida red seedless grapefruit will be shipped fresh this season than last season.

This action is designed to enable Florida grapefruit shippers to continue shipping size 56 red seedless grapefruit to the domestic market consistent with current and anticipated strong demand in those markets during the entire 1993–94 season, and to maximize shipments to fresh market channels. This action is based on the committee's assessment of the maturity, flavor level, and size composition of this season's Florida red seedless grapefruit crop. The Florida seedless grapefruit shipping season normally begins in September and continues until the following July.

Minimum size requirements are designed to provide fresh markets with fruit of acceptable size and maturity, thereby maintaining consumer confidence in fresh Florida grapefruit. This helps create buyer confidence and contributes to stable marketing conditions. This is in the interest of producers, packers, and consumers, and is expected to increase returns to Florida grapefruit growers.

Under the order for Florida citrus, handlers may ship up to 15 standard packed cartons (12 bushels) of fruit per day, and up to 2 standard packed cartons of fruit per day in gift packages which are individually addressed and not for resale, under exemption provisions. Fruit shipped for animal feed is also exempt under specific conditions. In addition, fruit shipped to commercial processors for conversion into canned or frozen products or into a beverage base are not subject to the handling requirements.

This action reflects the committee's and the Department's appraisal of the need to relax the minimum size requirement for red seedless grapefruit as specified. The Department's view is that this action will have a beneficial impact on producers and handlers, since it will permit Florida grapefruit handlers to make available those sizes of fruit needed to meet consumer needs consistent with this season's crop and market conditions.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that the relaxation set forth below will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) This action relaxes the minimum size requirement currently in effect for red seedless grapefruit grown in Florida; (2) Florida grapefruit handlers are aware of this action which was unanimously recommended by the committee at a public meeting and they will need no additional time to comply with the relaxed size requirement; (3) shipment of the 1993–94 season Florida red seedless grapefruit crop is expected to be well underway by November 8, 1993; and (4) the rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 905

Grapefruit, Marketing agreements, Oranges, Reporting and recordkeeping requirements, Tangelos, Tangerines.

For the reasons set forth in the preamble, 7 CFR part 905 is amended as follows:

PART 905—ORANGES, GRAPEFRUIT, TANGERINES, AND TANGELOS GROWN IN FLORIDA

1. The authority citation for 7 CFR part 905 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 905.306 is amended by revising the entries in Table 1 of paragraph (a) for "seedless, red grapefruit" to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 905.306 Orange, Grapefruit, Tangerine, and Tangelo Regulation.

(a) * * *

TABLE I

Variety	Regulation period	Minimum Grade	Minimum diameter (inches)
(1)	(2)	(3)	(4)
•	•	•	•
Grapefruit			
•	•	•	•
Seedless, red	11/08/93–11/06/94	Improved No. 2 External U.S. No. 1 Internal	3 5/16
	On and after 11/07/94	Improved No. 2 External U.S. No. 1 Internal	3 9/16
•	•	•	•

* * * * *

Dated: November 4, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–27573 Filed 11–10–93; 8:45 am]

BILLING CODE 3410–02–P

7 CFR Part 944

[Docket No. FV93–944–2–IFR]

Fruits; Import Regulations (Grapefruit); Relaxation of Grapefruit Import Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Interim final rule with request for comments.

SUMMARY: This interim final rule relaxes minimum size requirements for red seedless grapefruit imported into the United States to 3 5/16 inches in diameter (size 56). This action is needed so that imported red seedless grapefruit meet the same minimum size requirements as those being made effective for red seedless grapefruit grown in Florida, consistent with section 8e of the amended Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: This interim final rule becomes effective November 8, 1993. Comments which are received by December 13, 1993, will be considered prior to issuance of any final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this rule to: Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; or by facsimile at 202–720–5698. Three copies of all written material shall be submitted, and they will be made available for public inspection at the office of the Docket Clerk during regular business hours. All comments should reference the docket number, date, and page number of this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Gary D. Rasmussen, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456; telephone: 202–720–5331; or William G. Pimental, Southeast Marketing Field Office, USDA/AMS, P.O. Box 2276, Winter Haven, Florida 33883; telephone: 813–299–4770.

SUPPLEMENTARY INFORMATION: This interim final rule is issued under section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

Section 8e of the Act provides that whenever specified commodities, including grapefruit, are regulated under a Federal marketing order, imports of these commodities into the United States are prohibited unless they meet the same or comparable grade, size, quality, or maturity requirements as those in effect for the domestically produced commodities. Section 8e also provides that whenever two or more marketing orders regulate the same commodity produced in different areas of the United States, the Secretary shall determine which area the imported commodity is in most direct competition with and apply regulations based on that area to the imported commodity. The Secretary has determined that grapefruit imported into the United States are in most direct competition with grapefruit grown in Florida regulated under Marketing Order No. 905, and has found that the minimum grade and size requirements for imported grapefruit should be the same as those established for grapefruit under Marketing Order No. 905.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action".

This interim final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This interim final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, this action should also have small entity orientation, and impact on both small and large business entities in a manner comparable to rules issued under such marketing orders. There are about 25 importers of grapefruit. Small agricultural service firms, which includes importers, have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000. A majority of these importers may be classified as small entities.

Minimum grade and size requirements for grapefruit imported into the United States are currently in effect under § 944.106 (7 CFR 944.106), as reinstated on July 26, 1993 (58 FR 39428, July 23, 1993). This action relaxes the minimum size requirements for imported red seedless grapefruit to 3 5/16 inches in diameter (size 56) for the period November 8, 1993, through November 6, 1994, to reflect the same relaxation being made under a separate rulemaking action for grapefruit grown in Florida. The minimum grade and size requirements for Florida grapefruit are specified in § 905.306 (7 CFR 905.306) under Marketing Order No. 905.

In accordance with section 8e of the Act, the USTR has concurred with the issuance of this interim final rule.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

This interim final rule reflects the Department's appraisal of the need to relax the grapefruit import requirements, as hereinafter set forth, to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined, upon good cause, that it is impracticable, unnecessary and contrary to the public interest to give preliminary notice prior to putting this rule into effect, and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because: (1) The grapefruit import requirements should be relaxed as soon as possible, so that imported grapefruit meet the same minimum size requirements as are being applied to domestic shipments of Florida grapefruit, as provided under section 8e of the Act; and (2) this interim final rule provides a 30-day comment period, and any comments received will be considered prior to any finalization of this interim final rule.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 944.106 is amended by revising paragraph (a) to read as follows:

Note: This section will appear in the annual Code of Federal Regulations.

§ 944.106 Grapefruit import regulation.

(a) Pursuant to section 8e (7 U.S.C. 608e–1) of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and Part 944—Fruits; Import Regulations, the importation into the United States of any grapefruit is prohibited unless such grapefruit meet the following minimum grade and size requirements for each specified grapefruit classification:

Grapefruit classification	Regulation period	Minimum grade	Minimum diameter (inches)
Seeded	On and after 07/26/93	U.S. No. 1	3 12/16
Seedless, red	11/08/93–11/06/94	Improved No. 2 External U.S. No. 1 Internal	3 5/16
	On and after 11/07/94	Improved No. 2 External U.S. No. 1 Internal	3 5/16
Seedless, except red	On and after 07/26/93	Improved No. 2 External U.S. No. 1 Internal	3 5/16

* * * * *

Dated: November 4, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–27757 Filed 11–10–93; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Part 318

[Docket No. 88–016F]

RIN 0583–AA76

Increased Level of Sodium Citrate as an Anticoagulant in Fresh Blood of Livestock

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the chart of approved substances in its regulations to increase the maximum use level of sodium citrate as an anticoagulant in fresh blood of livestock from 0.2 percent to 0.5 percent. Additionally, the permitted level of sodium citrate is clarified to indicate that it is a percent based on the ingoing weight of the product. This rule is in response to a petition submitted by American Meat Protein Corporation.

EFFECTIVE DATE: December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254–2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Administrator, FSIS, has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) from imposing any marking, labeling, packaging or ingredient requirements on federally inspected meat products that are in addition to, or different than, those imposed under the FMIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat products that are outside official establishments for the purpose of preventing the distribution of meat products that are misbranded or adulterated under the FMIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA, States that maintain meat inspection programs must impose requirements on State inspected products and establishments that are at least equal to those required under the FMIA. These States may, however, impose more stringent requirements on such State inspected products and establishments.

This rule is not intended to have retroactive effect. There are no applicable administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule. However, the administrative procedures specified in 9 CFR 306.5 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601–612). This final rule permits an increased use level of sodium citrate as an anticoagulant in fresh blood of livestock. The addition of sodium citrate at the 0.5 percent level facilitates the cleaning and sanitizing of equipment, and more efficient separation of red blood cells from plasma. The use of sodium citrate in this manner is optional to manufacturers, both large and small. This final rule imposes no new requirements on industry. Decisions by individual manufacturers on whether to use sodium citrate as an anticoagulant in fresh blood of livestock at the 0.5 percent level will be based on their conclusions that the benefits would outweigh any implementation costs.

Background

American Meat Protein Corporation Petition

FSIS was petitioned by American Meat Protein Corporation, Ames, Iowa, to increase the maximum use level of sodium citrate as an anticoagulant in fresh blood to 0.5 percent. The Federal meat inspection regulations currently permit the use of sodium citrate for this purpose at a level of 0.2 percent (9 CFR 318.7(c)(4)).

At the 0.2 percent level, according to the petitioner, whole blood still has a tendency to coagulate in the holding tank and in the collection buckets. In addition, the blood component

separator becomes clogged due to the coagulation of fresh blood.

Data submitted by the petitioner showed that these problems were resolved when the level of sodium citrate was increased to 0.5 percent. Such data also indicated that use of the higher level of sodium citrate at 0.5 percent resulted in the blood plasma being separated from the red blood cells more efficiently.

Current Regulations

Sodium citrate is listed in 21 CFR 182.1751 as a substance generally recognized as safe (GRAS) when used in accordance with good manufacturing practices. Sodium citrate, along with citric acid, is listed in 9 CFR 318.7(c)(4) as an anticoagulant to prevent clotting of fresh blood of livestock at 0.2 percent with or without water. The Food and Drug Administration (FDA) determined, in an October 1988 letter, that the increase in the level of use for sodium citrate as an anticoagulant in fresh blood of livestock to 0.5 percent is consistent with its regulations.[1] When water is used to make a solution of sodium citrate added to blood, not more than 2 parts water to 1 part sodium citrate may be used. However, the regulations do not specify whether the 0.2 percent level is based on weight or on volume.

Proposed Rule

On October 18, 1991, FSIS published a proposed rule in the **Federal Register** (56 FR 52218) to increase the use of sodium citrate as an anticoagulant in fresh blood of livestock from 0.2 percent to 0.5 percent. Also, in order to reflect FSIS policy and industry practice, the Agency proposed to clarify that the use level of sodium citrate was based on the ingoing weight of the product.

FSIS also proposed to revise the manner in which the entry for citric acid is presented in the chart of substances in 9 CFR 318.7(c)(4). In the chart, under the Class of substance "Anticoagulants," citric acid is listed with sodium citrate. Due to the increased use level of sodium citrate, citric acid will no longer be listed with sodium citrate, but will be listed as a separate entry.

In addition, the proposed rule requested comments on how many manufacturers might choose to use sodium citrate as an anticoagulant in fresh blood of livestock, as well as data on the economic impact of the proposed change.

Discussion of Comments

FSIS received only one comment in response to the proposed rule. The comment from the American Veterinary Medical Association, representing more than 52,000 veterinarians, expressed support for the proposed rule. The commenter stated that sodium citrate will not affect the wholesomeness of the product and will enable more efficient cleaning of the production equipment. The commenter also believes that more efficient cleaning will reduce the possibility of contamination of product and reduce production costs.

List of Subjects in 9 CFR Part 318

Food additives, Meat inspection.

Final Rule

For the reasons discussed in the preamble, FSIS is adopting the proposed rule as published. Accordingly, FSIS is amending 9 CFR part 318 of the Federal meat inspection regulations to read as follows:

PART 318—ENTRY INTO OFFICIAL ESTABLISHMENTS: REINSPECTION AND PREPARATION OF PRODUCTS

1. The authority citation for part 318 continues to read as follows:

Authority: 7 U.S.C. 450, 1901–1906; 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. In the chart in § 318.7(c)(4), the Class of substance "Anticoagulants" is revised to read as follows:

§ 318.7 Approval of substances for use in the preparation of products.

* * * * *

(c) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
•	•	•	•	•
Anti-coagulants	Citric acid	To prevent clotting.	Fresh blood of livestock.	0.2 percent with or without water. When Water is used to make a solution of citric acid added to blood of livestock, not more than 2 parts of water to 1 part of citric acid shall be used.
	Sodium citrate	do	do	Not to exceed 0.5 percent based on the ingoing weight of the product. When water is used to make a solution of sodium citrate added to blood of livestock, not more than 2 parts of water to 1 part of sodium citrate shall be used.

* * * * *

Done at Washington, DC, on: November 4, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–27764 Filed 11–10–93; 8:45 am]

BILLING CODE 3410-DM-M

[1] A copy of FDA's letter is available, without charge, from the FSIS Hearing Clerk.

FEDERAL HOUSING FINANCE BOARD

12 CFR Part 943

[No. 93–81]

Pricing of Services

AGENCY: Federal Housing Finance Board.

ACTION: Final rule.

SUMMARY: The Federal Housing Finance Board ("Finance Board") is amending a regulation transferred to it by the former Federal Home Loan Bank Board ("Bank Board") regarding the pricing of item processing services by the Federal Home Loan Banks ("Banks") by deleting an unnecessary provision and changing the name of an office to more accurately reflect the structure of the Finance Board.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Edwin J. Avila, Financial Analyst, (202) 408–2871; Thomas D. Sheehan, Assistant Director, (202) 408–2870, District Banks Directorate; or Bruce W. McDougal, Attorney-Advisor, (202) 408–2505, Office of Legal and External Affairs—Legal Division; Federal

Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. General

The Financial Institutions Reform, Recovery and Enforcement Act of 1989, Public Law 101–73, 103 Stat. 183 (August 9, 1989) ("FIRREA") abolished the Bank Board and established the Finance Board as the agency responsible for overseeing the Banks. Regulations issued by the Bank Board concerning the Bank System were contained in title 12 CFR parts 521–35. Regulations governing the pricing of item processing services were found at 12 CFR part 534. Section 402(h) of FIRREA preserves Bank Board regulations concerning the Bank System unless terminated or superseded by regulations adopted by the Finance Board.

On September 5, 1989, the Finance Board established 12 CFR chapter IX and redesignated its regulations into this chapter. 54 FR 36,757 (September 5, 1989). At that time the Finance Board merely redesignated part 534 as part 943 and noted that nomenclature and other technical amendments would be made at a later date. The Finance Board is hereby today deleting a provision of § 943.6 that no longer has any effect, and amending § 943.6 to change references therein from a Bank Board office to the appropriate Finance Board office.

When the Bank Board first established regulations for the pricing of item processing services in part 534 on September 18, 1980, the Bank Board included an initial requirement that the Banks were to recover the capitalized start-up costs for these services within five years. 45 FR 64161 (1980). This requirement, currently in § 943.6(b)(3) of the Board's regulations, states that "[a]ll costs must be fully recovered within a period not exceeding five years. The prices charged for collection, processing, and settlement services must yield at least a competitive rate or [sic] return within a period not exceeding five years after offering such services."

For those Banks that have chosen to provide item processing services to their customers, the operations are now a mature business with start up costs absorbed and normal income flows established. Consequently, with regard to those Banks, § 943.6(b)(3) is of no effect. If any other Banks were to choose to enter, or re-enter, the business of providing item processing services, the Finance Board would prefer to consider such requests on a case-by-case basis, and establish the terms and conditions under which such a venture would be authorized, including the amount of time that would be allowed for recapture of capitalization costs. Therefore, § 943.6(b)(3) is hereby deleted.

Section 943.6(c) currently provides that "[t]he Director of the Office of District Banks or his/her designee, with the concurrence of the Director of the Office of Policy and Economic Research or his/her designee, shall * * * on behalf of the Board, (i) review the cost of capital adjustment factor and (ii) review and approve prices for services authorized in this part * * *" With the enactment of FIRREA, the District Banks Directorate of the Finance Board replaced the Office of District Banks of the Bank Board as the office with the responsibility for overseeing the Banks' compliance with part 943. In addition, the Finance Board believes that the concurrence of the Director of the Office of Policy and Economic Research, now the Office of Policy and Research, is no longer required. Therefore, the first clause of § 943.6(c) is hereby amended to reflect these changes.

B. Administrative Procedure Act

This rulemaking simply deletes an existing provision of § 943.6 of the Finance Board regulations that is unnecessary, and changes the titles of certain persons in order to reflect the current structure of the Finance Board. As a result, the Finance Board hereby finds that notice and public comment is unnecessary for the public interest. Therefore, for good cause shown under 5 U.S.C. 553(b)(B), this rule is exempt from the notice and comment requirements of the Administrative Procedure Act, as well as from the 30-day delay in the effective date pursuant to 5 U.S.C. 553(d)(3).

C. Regulatory Flexibility Act

Because no notice of proposed rulemaking is required for this regulation, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, et. seq.) do not apply.

List of Subjects in 12 CFR Part 943

Federal home loan banks.

Accordingly, the Federal Housing Finance Board hereby amends chapter IX, title 12, Code of Federal Regulations, as set forth below.

PART 943—COLLECTION, SETTLEMENT, AND PROCESSING OF PAYMENT INSTRUMENTS

1. The authority citation for part 943 continues to read as follows:

Authority: Sec. 10, 47 Stat. 733, as amended (12 U.S.C. 1430); Sec. 11, 47 Stat. 732, as amended (12 U.S.C. 1431).

2. In § 943.6, paragraph (b)(3) is removed and paragraph (c) is amended by revising the first sentence to read as follows:

§ 943.6 Pricing of services.

* * * * *

(c) *Review and publication.* The Director of the District Banks Directorate or his/her designee shall from time to time and at least annually, on behalf of the Board, review the cost of capital adjustment factor and review and approve prices for services authorized in this part, in accordance with the principles set forth in paragraphs (a) and (b) of this section. * * *

By the Federal Housing Finance Board.

Dated: October 27, 1993.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–27422 Filed 11–10–93; 8:45 am]

BILLING CODE 6725–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–54–AD; Amendment 39–8719; AD 93–21–05]

Airworthiness Directives; Aerospatiale Model ATR42–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Aerospatiale Model ATR42–200 and –300 series airplanes, that requires modification of the autopilot disengagement wiring. This amendment is prompted by reports that flight crews attempted to use the pitch trim control while the autopilot was engaged, which caused the autopilot to move the elevator control in the opposite direction of trim movement. The actions specified by this AD are intended to prevent a severe out-of-trim condition, which could lead to reduced controllability of the airplane.

DATES: Effective December 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained

from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR42–200 and –300 series airplanes was published in the **Federal Register** on June 23, 1993 (58 FR 34009). That action proposed to require modification of the autopilot disengagement wiring.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 126 airplanes of U.S. registry will be affected by this AD. The FAA has been advised that all 126 affected airplanes have been modified in accordance with the requirements of this AD. Therefore, currently, this AD action imposes no additional economic burden on any U.S. operator.

However, should an unmodified airplane be imported and placed on the U.S. Register in the future, it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be supplied by the manufacturer to the operators at no cost. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $220 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES**."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–21–05 Aerospatiale: Amendment 39–8719. Docket 93–NM–54–AD.

Applicability: Model ATR42–200 and –300 series airplanes, serial numbers 3 through 179 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a severe out-of-trim condition, which could lead to reduced controllability of the airplane, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the autopilot disengagement wiring located at shelf 82VU, in accordance with Aerospatiale Service Bulletin ATR42–22–0012, dated April 2, 1990; or Revision 1, dated October 12, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Aerospatiale Service Bulletin ATR42–22–0012, dated April 2, 1990; or Aerospatiale Service Bulletin ATR42–22–0012, Revision 1, dated October 12, 1992. Revision 1 of Aerospatiale Service Bulletin ATR42–22–0012 contains the following list of effective pages:

Page number	Revision level shown on page	Date shown on page
1–4, 7–8	1	Oct. 12, 1992.
5–6	Original	Apr. 2, 1990.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 13, 1993.

Issued in Renton, Washington, on October 20, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–26252 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–11–AD; Amendment 39–8721; AD 93–21–07]

Airworthiness Directives; British Aerospace Model BAe 146 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain British Aerospace Model BAe 146 series airplanes, that requires a functional test to ensure

proper operation of the "LIFT SPOILER UNLOCKED" indication system, and replacement of any lift spoiler jack spindle that fails the functional test. This amendment is prompted by a report that lift spoiler jack spindles were manufactured with excess cadmium plating, which may cause the spindles to stick. The actions specified by this AD are intended to prevent failure of the "LIFT SPOILER UNLOCKED" indication system.

DATES: Effective December 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from AVRO International Aerospace, Incorporated, 22111 Pacific Boulevard, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain British Aerospace Model BAe 146 series airplanes was published in the **Federal Register** on July 8, 1993 (58 FR 36627). That action proposed to require a functional test to ensure proper operation of the "LIFT SPOILER UNLOCKED" indication system, and replacement of any lift spoiler jack spindle that fails the functional test.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 45 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $12,375, or $275 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–21–07 British Aerospace: Amendment 39–8721. Docket 93–NM–11–AD.

Applicability: Model BAe 146 series airplanes equipped with a lift spoiler jack, part number P308–45–0002 or P308–45–0102; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the "LIFT SPOILER UNLOCKED" indication system, accomplish the following:

(a) At the next scheduled maintenance inspection of the lift spoiler configuration warning microswitches, but no later than 15 months after the effective date of this AD, perform a functional test of the lift spoiler configuration warning microswitches in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B.27–137, dated November 17, 1992.

(1) If all of the configuration microswitches operate properly, prior to further flight, no further action is required by this AD. However, entries in the airplane maintenance records that are to be transferred with the airplane must indicate the serial number of each affected lift spoiler jack.

(2) If any configuration microswitch fails to operate properly, prior to further flight, replace the lift spoiler jack spindle with a jack on which the actions described in the service bulletin have been accomplished. Entries in the airplane maintenance records that are to be transferred with the airplane must indicate the serial number of each affected lift spoiler jack.

(b) As of the effective date of this AD, no person shall install on any airplane a lift spoiler jack on which the actions described in British Aerospace BAe 146 Inspection Service Bulletin S.B.27–137, dated November 17, 1992, have not been accomplished.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The test shall be done in accordance with British Aerospace BAe 146 Inspection Service Bulletin S.B.27–137, dated November 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from AVRO International Aerospace, Incorporated, 22111 Pacific Boulevard, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 13, 1993.

Issued in Renton, Washington, on October 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–26648 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–66–AD; Amendment 39–8722; AD 93–21–08]

Airworthiness Directives; McDonnell Douglas Model DC–8–70 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC–8–70 series airplanes, that requires inspections to detect cracking in the front spar pylon support attach fittings on the number 2 and number 3 engines, and repair, if necessary. This amendment is prompted by reports of cracking in the pylon support fittings of the front spar on the number 2 and number 3 engines. The actions specified by this AD are intended to prevent reduced structural integrity of the pylon-to-wing main load path.

DATES: Effective December 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mike Lee, Aerospace Engineer, Airframe Branch, ANM–122L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5325; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–8–70 series airplanes was published in the **Federal Register** on August 9, 1993 (58 FR 42261). That action proposed to require inspections to detect cracking in the front spar pylon support attach fittings on the number 2 and number 3 engines, and repair, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 57 Model DC–8–70 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 37 airplanes of U.S. registry will be affected by this AD.

If the wing leading edge of an affected airplane must be removed in order to perform the required inspections, it will take approximately 252 work hours per airplane to accomplish each inspection, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. is operators who need to remove the wing leading edge on an airplane is estimated to be $13,860 per airplane per inspection cycle.

If lower access doors have been installed on the wing leading edge of an affected airplane, thereby eliminating the need to remove the wing leading edge in order to perform the required inspections, it will take approximately 6 work hours per airplane to accomplish each inspection, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators who do not need to remove the wing leading edge on an airplane is estimated to be $330 per airplane per inspection cycle.

The number of required work hours for each requirement of this AD, as indicated above, is presented as if the accomplishment of those actions were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling will be minimal.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–21–08 McDonnell Douglas: Amendment 39–8722. Docket 93–NM–66–AD.

Applicability: Model DC–8–72, –72F, –73, and –73F series airplanes, as listed in McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the pylon-to-wing main load path, accomplish the following:

(a) Perform an eddy current inspection of the front spar pylon support fittings (part numbers 5753054–501 and -502) on the number 2 and number 3 engines, in accordance with McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992, and at the time specified in paragraph (a)(1) or (a)(2) of this AD, as applicable. Thereafter, repeat this inspection at intervals not to exceed 720 landings.

(1) For the number 2 engine: Prior to the accumulation of 4,000 landings since installation of that engine, or within 6 months after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 720 landings prior to the effective date of this AD.

(2) For the number 3 engine: Prior to the accumulation of 4,000 landings since installation of that engine, or within 6 months after the effective date of this AD, whichever occurs later, unless accomplished previously within the last 720 landings prior to the effective date of this AD.

(b) If any crack is found, prior to further flight, repair it in accordance with a method approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. After repair, continue to repeat the inspection at intervals not to exceed 720 landings, in accordance with McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles ACO, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspections shall be done in accordance with McDonnell Douglas DC–8–70 Alert Service Bulletin A57–99, dated December 10, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Corporation, P.O. Box 1771, Long Beach, California 90846–1771, Attention: Business Unit Manager, Technical Publications—Technical Administrative Support, C1–L5B. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 13, 1993.

Issued in Renton, Washington, on October 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–26647 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–62–AD; Amendment 39–8723; AD 93–21–09]

Airworthiness Directives; Airbus Model A320–111 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A320–111 series airplanes, that requires repetitive inspections to detect breakage of the rivet heads at a certain skin-to-frame junction of the fuselage and replacement of discrepant rivets. This amendment also requires a terminating replacement of the currently installed rivets with high-strength bolts that eliminates the need for the repetitive inspections. This amendment is prompted by test reports of fatigue-related damage found on the rivet heads at a certain skin-to-frame junction of the fuselage. The actions specified by this AD are intended to prevent loss of structural integrity of the fuselage.

DATES: Effective December 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Model A320–111 series airplanes was published in the **Federal Register** on July 2, 1993 (58 FR 35899). That action proposed to require repetitive external detailed visual inspections to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7. The action also proposed to require eventual replacement of the currently installed rivets with high-strength bolts; when accomplished, this replacement would terminate the need for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

Currently, there are no Airbus Industrie Model A320–111 series airplanes on the U.S. Register that are affected by this rule. However, should an affected airplane be imported and placed on the U.S. Register in the future, it will take approximately 17 work hours per airplane to accomplish the required actions, at an average labor rate of $55 per work hour. Required parts will cost approximately $1,404 per airplane. Based on these figures, the total cost impact of this AD is estimated to be $2,339 per airplane.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy

of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–21–09 Airbus Industrie: Amendment 39–8723. Docket 93–NM–62–AD.

Applicability: Model A320–111 series airplanes, serial numbers 005 through 012 inclusive, on which Modification 20774, as described in Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of structural integrity of the fuselage, accomplish the following:

(a) Prior to the accumulation of 10,000 total landings, or within the next 60 days after the effective date of this AD, whichever occurs later, and thereafter at intervals not to exceed 6,000 landings, perform an external detailed visual inspection to detect breakage of the rivet heads at the junction between frame 15 and the skin on the left and right side, between stops 3 and 7, in accordance with Airbus Industrie Service Bulletin A320–53–1069, dated August 17, 1991.

(1) If no breakage is detected on any rivet head: Prior to the accumulation of 22,000 total landings, or within 180 days after the effective date of this AD, whichever occurs later, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(2) If breakage is detected on fewer than 2 rivet heads on each side: Within the next 100 landings after discovery of breakage, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(3) If breakage is detected on 2 or more rivet heads on either side: Prior to further flight, replace all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992.

(b) Replacement of all of the currently installed rivets with new or serviceable high-strength titanium Hilite bolts in accordance with Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992, as revised by Change Notice 1.A., dated October 12, 1992, constitutes terminating action for the repetitive inspection requirements of this AD.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Airbus Industrie Service Bulletin A320–53–1069, dated August 17, 1991; Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992; and Service Bulletin Change Notice 1.A., dated October 12, 1992, for Airbus Industrie Service Bulletin A320–53–1004, Revision 1, dated July 30, 1992. Revision 1 of Airbus Industrie Service Bulletin A320–53–1004 contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1–4, 6–8	1	July 30, 1992.
5, 9–11	Original	April 5, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 13, 1993.

Issued in Renton, Washington, on October 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–26649 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–83–AD; Amendment 39–8725; AD 93–21–11]

Airworthiness Directives; Fokker Model F27 Series Airplanes, Excluding Model F27 Mk 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 series airplanes, that requires the replacement of the brake control valve actuating levers with improved units. This amendment is prompted by reports of levers that fractured during operation of the brake system. The actions specified by this AD are intended to prevent failure of the brake control valve actuating levers, which could lead to loss of the primary brakes, differential braking, and anti-skid.

DATES: Effective December 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 series airplanes was published in the

Federal Register on July 23, 1993 (58 FR 39474). That action proposed to require replacement of the brake control valve actuating levers with improved units.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 55 airplanes of U.S. registry will be affected by this AD, that it will take approximately 32 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $800 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $140,800, or $2,560 per airplane.

This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-21-11 Fokker: Amendment 39-8725. Docket 93-NM-83-AD.

Applicability: Model F27 series airplanes, excluding Model F27 Mark 050 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent failure of the brake control valve actuating levers, accomplish the following:

(a) Within 12 months after the effective date of this AD, or prior to the accumulation of 2,000 flight hours after the effective date of this AD, whichever occurs first, replace the brake control valve actuating levers in accordance with Fokker Service Bulletin F27/32-161, Revision 1, dated June 14, 1991.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The replacement shall be done in accordance with Fokker Service Bulletin F27/32-161, Revision 1, dated June 14, 1991, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1-2	1	June 14, 1991.
3-7	Original	June 5, 1989.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 13, 1993.

Issued in Renton, Washington, on October 26, 1993.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-26753 Filed 11-10-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-96-AD; Amendment 39-8720; AD 93-21-06]

Airworthiness Directives; Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to certain IAI, Ltd., Model 1125 Westwind Astra series airplanes, that currently requires repetitive visual inspections to detect cracks in the outer lugs of the horizontal stabilizer hinge fittings, and replacement of any cracked fittings. This amendment requires shortening the interval for the required repetitive inspections and requires the installation of a terminating modification. This amendment is prompted by reports of broken outer lugs found in the horizontal stabilizer hinge splice fitting. The actions specified by this AD are intended to detect cracking in the outer lugs in a timely manner in order to prevent reduced structural integrity of the horizontal stabilizer assembly.

DATES: Effective December 13, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 13, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, suite 11, New Castle, Delaware 19720. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2792; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 92–12–07, Amendment 39–8268 (57 FR 28603, June 26, 1992), which is applicable to certain Israel Aircraft Industries (IAI), Ltd., Model 1125 Westwind Astra series airplanes, was published in the **Federal Register** on July 21, 1993 (58 FR 38985). The action proposed to supersede AD 92–12–07 to reduce the interval required for repetitive visual inspections of the outer lugs of the horizontal stabilizer hinge fittings from the currently required 200 hours time-in-service to 100 hours time-in-service.

Additionally, the action proposed to require the replacement of aluminum horizontal stabilizer aft spar splice fittings with titanium splice fittings within one year after the effective date of the final rule.

Interested persons have been afforded an opportunity to participate in the making of this amendment. No comments were submitted in response to the proposal or the FAA's determination of the cost to the public. The FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 36 airplanes of U.S. registry will be affected by this AD, that it will take approximately 200 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $20,000 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $1,116,000, or $31,000 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–8268 (57 FR 28603, June 26, 1992), and by adding a new airworthiness directive (AD), amendment 39–8720, to read as follows:

93–21–06 Israel Aircraft Industries, Ltd.: Amendment 39–8720. Docket 93–NM–96–AD. Supersedes AD 92–12–07, Amendment 39–8268.

Applicability: Model 1125 Westwind Astra series airplanes on which horizontal stabilizer aft spar splice fitting, part number 453005–509, has not been installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced structural integrity of the horizontal stabilizer assembly, accomplish the following:

(a) Within the next 50 hours time-in-service after July 31, 1992 (the effective date of AD 92–12–07, amendment 39–8268), unless previously accomplished within the last 150 hours time-in-service prior to July 31, 1992, perform a visual inspection of the horizontal stabilizer hinge fitting to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs, in accordance with Astra Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991.

(1) If no cracks are found during this inspection, repeat the inspection at intervals not to exceed 200 hours time-in-service until the inspection required by paragraph (b) is accomplished.

(2) If any crack is found during this inspection, prior to further flight, replace the hinge fitting in accordance with Astra Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991. After replacement, repeat the visual inspection required by this paragraph at intervals not to exceed 200 hours time-in-service until the inspection required by paragraph (b) is accomplished.

(b) Within 25 hours time-in-service after the effective date of this AD, unless previously accomplished within the last 75 hours time-in-service, perform a visual inspection of the horizontal stabilizer hinge fitting, including the horizontal stabilizer aft spar splice fitting, part number 453005–503 (aluminum), to detect cracks in the outer lug root radius and fore and aft surfaces, and around the hinge pin head and nut of the lugs, in accordance with the Accomplishment Instructions of IAI Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991. Accomplishment of this inspection terminates the requirements of paragraph (a) of this AD.

(1) If no crack is found during this inspection, repeat the inspection at intervals not to exceed 100 hours time-in-service.

(2) If any crack is found during this inspection, prior to further flight, replace the splice fitting, part number 453005–503 (aluminum), with an improved splice fitting, part number 453005–509 (titanium), in accordance with procedures in the IAI Model 1125 Westwind Astra maintenance manual. Such replacement constitutes terminating action for the inspection requirements of this AD.

(c) Within one year after the effective date of this AD, replace the splice fitting, part number 453005–503 (aluminum), with an improved splice fitting, part number 453005–509 (titanium), in accordance with the IAI Model 1125 Westwind Astra maintenance manual. Such replacement constitutes terminating action for the inspection requirements of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections and replacements shall be done in accordance with Astra Service Bulletin 1125–55–017, Revision 1, dated April 24, 1991. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C.

552(a) and 1 CFR part 51. Copies may be obtained from Astra Jet Corporation, Technical Publications, 77 McCullough Drive, suite 11, New Castle, Delaware 19720. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 13, 1993.

Issued in Renton, Washington, on October 25, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-26646 Filed 11-10-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 91-ASW-11; Amendment 39-8718; AD 93-21-03]

Airworthiness Directives; Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A-1, 269B, and TH-55A Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Model 269A, 269A-1, 269B, and TH-55A series helicopters, that currently requires a one-time dye penetrant inspection and repetitive visual inspections of the magnesium tailboom center attachment (saddle) fitting (fitting) for cracks, corrosion, fretting, or looseness. This amendment retains the present initial and repetitive visual inspections and adopts a new repetitive dye penetrant inspection of the magnesium fitting as well as requires a new aluminum fitting as a terminating action. This amendment is prompted by reports of cracks in the magnesium fitting. The actions specified by this AD are intended to prevent fatigue failure of the magnesium fitting that could result in loss of the tailboom and subsequent loss of control of the helicopter.

EFFECTIVE DATE: December 17, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Schweizer Aircraft Corporation, P.O. Box 147, Elmira, New York 14902. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas.

FOR FURTHER INFORMATION CONTACT: Mr. Anthony Socias, Aerospace Engineer, FAA, New York Aircraft Certification Office, Airframe Branch, ANE-172, New England Region, 181 S. Franklin Avenue, Valley Stream, New York 11581, telephone (516) 791-6220, fax (516) 791-9024.

SUPPLEMENTARY INFORMATION: Proposals to amend part 39 of the Federal Aviation Regulations by superseding airworthiness directive (AD) 80-05-05, Amendment 39-3707 (45 FR 14540, March 6, 1980), which are applicable to Schweizer Aircraft Corporation and Hughes Helicopters, Inc. Model 269A, 269A-1, 269B, and TH-55A helicopters, were published in the **Federal Register** on June 26, 1991 (56 FR 29199) and March 23, 1993 (58 FR 15448). These actions proposed to require a new repetitive dye penetrant inspection of the magnesium tailboom center attachment (saddle) fitting (fitting) and replacement of the magnesium fitting with a new aluminum fitting as a required terminating action.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

Only one comment was received in response to the Notice of Proposed Rulemaking (NPRM) and the Supplemental Notice of Proposed Rulemaking (SNPRM). Schweizer Aircraft Corporation, the one commenter, states that additional information has been gained from an accident involving a Model TH-55A helicopter. The investigation report states that the magnesium fitting on the accident helicopter contained several cracks that resulted in complete separation of the left and right lugs of the magnesium fitting. Some of the cracks may have been undetected for a significant period of time prior to separation of the magnesium fitting. Additionally, extensive evidence of fretting and corrosion have been reported previously on Models 269A, 269A-1, 269B, and TH-55A magnesium fittings.

Schweizer Aircraft Corporation has since issued Service Bulletin B-238.1, dated November 7, 1991, which describes procedures for an initial dye penetrant inspection, repetitive visual and dye penetrant inspections for cracks, and a terminating action for the inspections. The bulletin also describes procedures for the replacement of the magnesium fitting, P/N 269A2324 (BSC) or 269A2324-7, with new aluminum fittings, P/N 269A2324-13 (undrilled), for these model helicopters.

Because of the extensive fretting and corrosion that were found on the accident helicopter, the FAA determined that all magnesium fittings need repetitive inspections using a 10-power magnifying glass. The FAA has also determined that a repetitive dye penetrant inspection of these fittings is needed until they are removed from service. Additionally, the FAA has determined that it is necessary to require a terminating modification, which was proposed in the SNPRM.

After careful review of the available data, including the one comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed except for editorial changes.

The FAA estimates that 512 helicopters of U.S. registry will be affected by this AD, that it will take approximately 18 work hours per helicopter to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $852 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $943,104.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–3707 (45 FR 14540, March 6, 1980) and by adding a new airworthiness directive (AD). Amendment 39–8718, to read as follows:

AD 93–21–03 Schweizer Aircraft Corporation And Hughes Helicopters, Inc.: Amendment 39–8718. Docket Number 91–ASW–11. Supersedes AD 80–05–05, Amendment 39–3707. Docket Number 80–WE–3–AD.

Applicability: Model 269A, 269A–1, 269B, and TH–55A series helicopters, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the magnesium tailboom center attachment (saddle) fitting (fitting) that could result in loss of the tailboom and subsequent loss of control of the helicopter, accomplish the following:

(a) For each helicopter with a magnesium fitting, part number (P/N) 269A2324 (BSC) or 269A2324–7, with 4,000 or less hours' time-in-service on the effective date of this AD, perform the following in accordance with the 269 Series Basic Handbook of Maintenance Information, as revised by Temporary Revision No. R–42, dated October 8, 1990 (HMI):

(1) Prior to further flight and thereafter at intervals not to exceed 50 hours' time-in-service from the last inspection, visually inspect the magnesium fitting and tailboom assembly for fretting, corrosion, and cracks using a 10-power or higher magnifying glass.

(2) Within the next 25 hours' time-in-service after the effective date of this AD and thereafter at intervals not to exceed 100 hours' time-in-service from the last inspection, inspect the magnesium fitting for cracks using a dye penetrant inspection.

(3) If the magnesium fitting, P/N 269A2324 (BSC) or 269A2324–7, is found unairworthy by the inspections required by this paragraph, before further flight, remove and replace it with an airworthy aluminum fitting, P/N 269A2324–13 (undrilled).

(4) Prior to accumulating 4,100 hours' time-in-service, replace the magnesium fitting, P/N 269A2324 (BSC) or P/N 269A2324–7, with an airworthy aluminum fitting, P/N 269A2324–13 (undrilled).

(b) For each helicopter with a magnesium fitting, P/N 269A2324 (BSC) or P/N 269A2324–7, with more than 4,000 hours' time-in-service on the effective date of the AD, perform the following in accordance with the HMI:

(1) Before the first flight of each day, visually inspect the magnesium fitting and tailboom assembly for fretting, corrosion and cracks using a 10-power or higher magnifying glass.

(2) Prior to further flight after the effective date of this AD and thereafter at an interval not to exceed 50 hours' time-in-service from the last inspection, inspect the magnesium fitting for cracks using a dye penetrant inspection.

(3) If the magnesium fitting, P/N 269A2324 (BSC) or 269A2324–7, is found unairworthy by the inspections required by this paragraph, before further flight, remove and replace it with an airworthy aluminum fitting, P/N 269A2324–13 (undrilled).

(4) Within the next 100 hours' time-in-service, replace the magnesium fitting, P/N 269A2324 (BSC) or 269A2324–7, with an airworthy aluminum fitting, P/N 269A2324–13 (undrilled).

(c) Installation of an aluminum fitting, P/N 269A2324–13 (undrilled), constitutes terminating action for the requirements of this AD.

Note: Schweizer Aircraft Corporation Service Bulletin B–238.1, dated November 7, 1991, pertains to this AD.

(d) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, New York Aircraft Certification Office, 181 S. Franklin Avenue, room 202, Valley Stream, New York 11581–1145. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, New York Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Manager, New York Aircraft Certification Office.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(f) This amendment becomes effective on December 17, 1993.

Issued in Fort Worth, Texas, on October 18, 1993.

Henry A. Armstrong,

Acting Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–27801 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 93–ANM–18]

Amendment to Time of Designation for Restricted Areas R–5701 and R–5706; Boardman, OR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action amends the time of designation for Restricted Areas R–5701 and R–5706 Boardman, OR. This action reduces the hours of operation from 0700–0200 local time Monday–Friday, Saturday and Sunday 0800–1800 local time, other times by a Notice to Airmen (NOTAM) 6 hours in advance, to 0730–2359 Monday–Friday other times by NOTAM 6 hours in advance. This action will enhance real-time joint utilization of special use airspace.

EFFECTIVE DATE: 0901 u.t.c., January 6, 1994.

FOR FURTHER INFORMATION CONTACT:

Ken McElroy, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–7686.

SUPPLEMENTARY INFORMATION:

The Rule

This amendment to part 73 of the Federal Aviation Regulations changes the time of designation for Restricted Areas R–5701 and R–5706 Boardman, OR. This action reduces the hours of operation from 0700–0200 local time Monday–Friday, Saturday and Sunday 0800–1800 local time, other times by NOTAM 6 hours in advance to enhance real-time joint utilization of special use airspace. This action was initiated by the Department of the Navy based on an internal review of actual operations in the restricted areas by the using agency. I find that notice and public procedure under 5 U.S.C. 553(b) are unnecessary because this action is a minor technical amendment in which the public is not particularly interested. Section 73.57 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

This action does not alter the dimensions of restricted airspace, nor change the mission conducted within the airspace. It enhances the efficient management of airspace by increasing public availability of the airspace. Accordingly, this action will have no effect on current air traffic procedures or on routing or altitude of civil aircraft operations in the area. The FAA, therefore, finds that there will be no significant impact on the environment as a result of this action.

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854; 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.57 [Amended]

2. 73.57 is amended as follows:

R–5701 Boardman, OR [Amended]

By removing "Time of designation. 0700–0200 Monday–Friday; 0800–1800 Saturday and Sunday; other times by NOTAM 6 hours in advance," and substituting the following:

"Time of designation. 0730–2359 Monday–Friday; other times by NOTAM 6 hours in advance."

R–5706 Boardman, OR [Amended]

By removing "Time of designation. 0700–0200 Monday–Friday; 0800–1800 Saturday and Sunday; other times by NOTAM 6 hours in advance," and substituting the following:

"Time of designation. 0730–2359 Monday–Friday; other times by NOTAM 6 hours in advance."

Issued in Washington, DC, on November 4, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–27796 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF COMMERCE

15 CFR Part 19

[Docket No. 930489–3281]

RIN 0690–AA20

Referral of Debts to the Internal Revenue Service for Tax Refund Offset

AGENCY: Department of Commerce.

ACTION: Affirmation of interim rule.

SUMMARY: This rule adopts as final the Department of Commerce's (DOC) interim rule at 15 CFR part 19, concerning regulations governing the referral of delinquent debts to the Internal Revenue Service (IRS) for offset against the income tax refunds of persons owing money to the DOC. These regulations are authorized by the Deficit Reduction Act of 1984 (the Act). Section 2653 of the Act allows the DOC to collect debts by means of offset from the income tax refunds of persons owing money to the DOC provided certain conditions are met. This rule adds regulations to establish procedures to be followed by DOC in requesting the IRS to offset tax refunds due to taxpayers who have past-due legally enforceable debt obligations to the DOC.

EFFECTIVE DATE: July 26, 1993.

FOR FURTHER INFORMATION CONTACT: Charles J. Yaple, Office of Financial Management, U.S. Department of Commerce, Herbert C. Hoover Building, room 6818, 14th Street & Constitution Avenue, NW., Washington, DC 20230, (202) 482–0754.

SUPPLEMENTARY INFORMATION: On July 26, 1993, DOC published an interim rule on referral of debts to the IRS for tax refund offset (58 FR 39652), and allowed interested persons 60 days to comment. No public comments were received. DOC is adopting as a final rule 15 CFR Part 19 "Referral of Debts to the Internal Revenue Service for Tax Refund Offset."

This rule is exempt from notice, opportunity to comment, and delayed effective date requirements of 5 U.S.C. 553 because it is primarily procedural and, to the extent it is not, merely restates existing provisions of statutory law.

Since notice and opportunity for comment are not required to be given for the rule under section 553 of the APA (5 U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a), 604(a)), no initial or final Regulatory Flexibility Analysis has to be, or will be, prepared.

This rule does not contain a collection of information for purposes of the Paper Work Reduction Act (Pub. L. 96–511). This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 15 CFR Part 19

Administrative practice and procedure, Claims.

Under authority of 31 U.S.C. 3720A; Public Law 98–369; 98 Stat. 1153, the interim regulation at 15 CFR part 19 which was published July 26, 1993, (58 FR 39652), is adopted as final without changes.

Dated: November 4, 1993.

Clyde G. McShan, II,

Deputy Chief Financial Officer.

[FR Doc. 93–27875 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–17–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Parts 510 and 522

Animal Drugs, Feeds, and Related Products; Sterile Sometribove Zinc Suspension

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by the Animal Sciences Division of Monsanto Co. The NADA provides for the subcutaneous use of Posilac® (sterile sometribove zinc suspension) in lactating dairy cows to increase the production of marketable milk.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Richard P. Lehmann, Center for Veterinary Medicine (HFV–120), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1600.

SUPPLEMENTARY INFORMATION: The Animal Sciences Division of Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63167, filed NADA 140–872 which provides for the subcutaneous use of Posilac® (sterile sometribove zinc suspension) in lactating dairy cows to increase the production of marketable milk. The product consists of a single-dose syringe containing 500 milligrams of sometribove zinc (prolonged-release formulation) which is initially administered during the ninth week after calving. Thereafter, it is administered every 14 days until the end of lactation. The NADA is approved as of November 5, 1993. The regulations are amended by adding new § 522.2112 (21 CFR 522.2112) to reflect the approval. The basis of approval is discussed in the freedom of information summary.

The regulations are also amended in § 510.600(c)(1) and (c)(2) (21 CFR 510.600(c)(1) and (c)(2)) to add entries for the firm.

Posilac® is a recombinant deoxyribonucleic acid (DNA)-derived (i.e., biotechnology-derived) new animal drug and, as such, is not eligible for generic copying under section 512(b)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360b(b)(2)); section 106 of the Generic Animal Drug and Patent Term Restoration Act of 1988 (Pub. L. 100–670) provides that FDA may not approve an abbreviated application under section 512(b)(2) of the act for a new animal drug which is primarily manufactured using, inter alia, recombinant DNA. Posilac® may be included in the list of FDA Approved Animal Drug Products (Green Book), however, and the Center for Veterinary Medicine plans to identify this approval in the Green Book as not eligible for generic copying.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects

21 CFR Part 510

Administrative practice and procedure, Animal drugs, Labeling, Reporting and recordkeeping requirements.

21 CFR Part 522

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR parts 510 and 522 are amended as follows:

PART 510—NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 510 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 512, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353, 360b, 371, 379e).

2. Section 510.600 is amended in the table in paragraph (c)(1) by alphabetically adding a new entry for "Animal Sciences Division of Monsanto Co." and in the table in paragraph (c)(2) by numerically adding a new entry for "059945" to read as follows:

§ 510.600 Names, addresses, and drug labeler codes of sponsors of approved applications.

* * * * *

(c) * * *

(1) * * *

Firm name and address	Drug labeler code
• • • • •	
Animal Sciences Division of Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63167	059945
• • • • •	

(2) * * *

Drug labeler code	Firm name and address
• • • • •	
059945	Animal Sciences Division of Monsanto Co., 800 North Lindbergh Blvd., St. Louis, MO 63167
• • • • •	

PART 522—IMPLANTATION OR INJECTABLE DOSAGE FORM NEW ANIMAL DRUGS

3. The authority citation for 21 CFR part 522 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

4. New § 522.2112 is added to read as follows:

§ 522.2112 Sterile sometribove zinc suspension.

(a) *Specifications.* The drug product consists of a single-dose syringe containing 500 milligrams of sometribove zinc in a sterile, prolonged-release suspension.

(b) *Sponsor.* See No. 059945 in § 510.600(c) of this chapter.

(c) *Special considerations.* Use may result in reduced pregnancy rates and, in first calf heifers, an increase in days open. Use of the product has also been associated with increases in cystic ovaries and disorders of the uterus during the treatment period. Also, the incidence of retained placenta may be higher following subsequent calving. Treated cows are at an increased risk for clinical mastitis and subclinical mastitis. In some herds, use has been associated with increases in somatic cell counts in milk. Care should be taken to differentiate increased body temperature due to use of this product from an increased body temperature that may occur due to illness. Use may result in an increase in digestive disorders such as indigestion, bloat, and diarrhea. There may be an increase in the number of cows experiencing periods of "off-feed" (reduced feed intake) during treatment. Cows treated with this product may have increased numbers of enlarged hocks and lesions of the knee (carpal region), and second lactation or older cows may have more disorders of the foot region. Use has been associated with reductions in hemoglobin and hematocrit values during treatment. Human warning: Avoid prolonged or repeated contact with eyes and skin.

(d) *Conditions of use—(1) Amount.* 500 milligrams of sometribove zinc every 14 days beginning during the ninth week after calving and continuing until the end of lactation.

(2) *Indications for use.* For use in healthy lactating dairy cows to increase the production of marketable milk.

(3) *Limitations.* For use in lactating dairy cows only. Administer subcutaneously. Safety to replacement bulls born to treated dairy cows has not been established. To minimize injection site blemishes on carcass at time of slaughter, avoid injections within 2 weeks of expected slaughter. No milk discard or preslaughter withdrawal period is required.

Dated: November 5, 1993.

Richard H. Teske,

Acting Director, Center for Veterinary Medicine.

[FR Doc. 93–27876 Filed 11–8–93; 2:55 pm]

BILLING CODE 4160–01–F

DEPARTMENT OF JUSTICE

28 CFR Part 44

[AG Order No. 1807–93]

Office of Special Counsel for Immigration-Related Unfair Employment Practices; Unfair Immigration-Related Employment Practices

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This rule makes technical amendments to 28 CFR part 44, which

implements the prohibitions against unfair immigration-related employment practices contained in section 274B of the Immigration and Nationality Act. These amendments are necessary to reflect the new address of the Office of Special Counsel for Immigration-Related Unfair Employment Practices (Office of Special Counsel), correct citation forms, and make the definition section consistent with the unfair immigration-related employment practices section.

EFFECTIVE DATE: This rule is effective October 28, 1993.

FOR FURTHER INFORMATION CONTACT: William Ho-Gonzalez, Special Counsel, Office of Special Counsel for Immigration-Related Unfair Employment Practices, U.S. Department of Justice, P.O. Box 27728, Washington, DC 20038–7728; 1–800–255–7688 (toll free voice) or 1–800–237–2515 (toll free TDD number) or 202–616–5594 (Voice) or 202–616–5525 (TDD number); or Andrew M. Strojny, Senior Trial Attorney, Office of Special Counsel, 1–800–255–7688 (toll free) or 1–800–237–2515 (toll free TDD) or 202–616–5594 (Voice) or 202–616–5525 (TDD).

SUPPLEMENTARY INFORMATION: Effective January 8, 1993 the Office of Special Counsel moved to a new address. As a result, the address found at 28 CFR 44.300(c) is obsolete. Although mail will continue to be picked up at the old address until December 31, 1993, the regulation needs to reflect the Office of Special Counsel's current address. In addition, the citations at 28 CFR 44.200 (a)(2) and (a)(3) incorrectly reference the Immigration Reform and Control Act after the appropriate United States Code citations. Those citations are corrected to reflect uniform practice by eliminating "Immigration Reform and Control Act of 1986" after the respective U.S.C. citations. Finally, the definition contained at 28 CFR 44.101(a)(5) is amended to reflect that retaliation and documentation abuse are also unfair immigration-related employment practices as already codified in 28 CFR 44.200(a) (2) & (3).

Justification for a Final Rule

Good cause exists under 5 U.S.C. 553(b)(B) and 5 U.S.C. 553(d) for implementing this rule as a final rule effective immediately without provision for public comment. The changes are technical in nature and do not affect any substantive provision of the regulation. They either correct citation forms, amend the regulation to reflect the Office of Special Counsel's current address, or conform the definition section listing possible violations to reflect violations already codified. Comments cannot affect these changes.

List of Subjects in 28 CFR Part 44

Administrative practice and procedures, Aliens, Asylum, Citizenship and naturalization, Civil rights, Discrimination in employment, Employment, Equal employment opportunity, Immigration, Investigations, Minority groups, Nationality, Naturalization, Nondiscrimination, Refugees.

For the reasons set forth in the preamble, 28 CFR part 44 is amended as follows:

PART 44—[AMENDED]

1. The authority citation for part 44 continues to read as follows:

Authority: 8 U.S.C. 1324b; 8 U.S.C. 1103(a).

2. Section 44.101 paragraph (a)(5) is revised to read as follows:

§ 44.101 Definitions.

* * * * *

(a) * * *

(5) Indicates whether the basis of the alleged unfair immigration-related employment practice is discrimination based on national origin, citizenship status, or both; or intimidation or retaliation, or documentation abuses;

* * * * *

3. Section 44.200 paragraphs (a)(2) and (a)(3) are revised to read as follows:

§ 44.200 Unfair immigration-related employment practices.

* * * * *

(a) * * *

(2) *Intimidation or retaliation.* It is an unfair immigration-related employment practice for a person or other entity to intimidate, threaten, coerce, or retaliate against any individual for the purpose of interfering with any right or privilege secured under 8 U.S.C. 1324b or because the individual intends to file or has filed a charge or a complaint, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under that section.

(3) *Documentation abuses.* A person's or other entity's request, for purposes of satisfying the requirements of 8 U.S.C. 1324a(b), for more or different documents than are required under such section or refusing to honor documents tendered that on their face reasonably appear to be genuine and to relate to the individual shall be treated as an unfair immigration-related employment practice relating to the hiring of individuals.

* * * * *

3. Section 44.300 paragraph (c) is revised to read as follows:

§ 44.300 Filing a charge.

* * * * *

(c) *How to file.* Charges may be:

(1) Mailed to: Office of Special Counsel for Immigration-Related Unfair Employment Practices, P.O. Box 27728, Washington, DC 20038–7728 or

(2) Delivered to the Office of Special Counsel at 1425 New York Avenue NW., suite 9000, Washington, DC 20005.

* * * * *

Dated: October 28, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–27768 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 100 and 165

[CGD 93–075]

Safety, Security Zones, and Special Local Regulations

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary rules issued.

SUMMARY: This document provides required notice of substantive rules adopted by the Coast Guard and temporarily effective between July 1, 1993 and September 30, 1993, which were not published in the **Federal Register**. This quarterly notice lists temporary local regulations, security zones, and safety zones, which were of limited duration and for which timely publication in the **Federal Register** was not possible.

DATES: This notice lists temporary Coast Guard district regulations that were established and terminated between July 1, 1993 and September 30, 1993, as well as several regulations which were not included in the previous quarterly list.

ADDRESSES: The complete text of these temporary regulations may be examined at, and is available on request, from Executive Secretary, Marine Safety Council (G–LRA), U.S. Coast Guard Headquarters, 2100 Second Street, SW., Washington, DC 20593–0001.

FOR FURTHER INFORMATION CONTACT: Sheri deGrom, Executive Secretary, Marine Safety Council at (202) 267–1477 between the hours of 8 a.m. and 3:30 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: District Commanders and Captains of the Port (COTP) must be immediately responsive

to the safety needs of the waters within their jurisdiction; therefore, District Commanders and COTPs have been delegated the authority to issue certain local regulations. Safety zones may be established for safety or environmental purposes. A safety zone may be stationary and described by fixed limits or it may be described as a zone around a vessel in motion. Security zones limit access to vessels, ports, or waterfront facilities to prevent injury or damage. Special local regulations are issued to assure the safety of participants and spectators at regattas and other marine events. Timely publication of these regulations in the **Federal Register** is often precluded when a regulation responds to an emergency, or when an event occurs without advance notice. However, the affected public is informed of these regulations through Local Notices to Mariners, press releases, and other means. Moreover, actual notification is frequently provided by Coast Guard patrol vessels enforcing the restrictions imposed by the regulation.

Because mariners are notified by Coast Guard officials on-scene prior to enforcement action, **Federal Register** notice is not required to place the special local regulation, security zone, or safety zone in effect. However, the Coast Guard, by law, must publish the **Federal Register** notice of substantive rules adopted. To discharge this legal obligation without imposing undue expense on the public, the Coast Guard periodically publishes a list of these temporary special local regulations, security zones, and safety zones. Permanent regulations are not included in this list because they are published in their entirety in the **Federal Register**. Temporary regulations may also be published in their entirety if sufficient time is available to do so before they are placed in effect or terminated. These safety zones, special local regulations and security zones have been exempted from review under E.O. 12866 (because of their emergency nature, or limited scope and temporary effectiveness).

The following regulations were placed in effect temporarily during the period July 1, 1993 and September 30, 1993, unless otherwise indicated.

QUARTERLY REPORT

Docket No.	Location	Type	Effective date
Baltimore 93–05–009	Annapolis, MD	Safety Zone	7/4/93
Baltimore 93–05–014	Patuxent River, MD	Safety Zone	7/3/93
Baltimore 93–05–015	Solomons Island, MD	Safety Zone	7/4/93
Baltimore 93–05–016	Baltimore, MD	Safety Zone	7/4/93
Baltimore 93–05–017	Galesville, MD	Safety Zone	7/4/93
Baltimore 93–05–018	Baltimore, MD	Safety Zone	6/12/93
Baltimore 93–05–019	Baltimore, MD	Safety Zone	7/13/93
Baltimore 93–05–020	Chester River, MD	Safety Zone	7/31/93
Baltimore 93–05–024	Annapolis, MD	Safety Zone	9/7/93
Baltimore 93–05–025	Long Beach, MD	Safety Zone	9/15/93
Charleston 93–083	Charleston, SC	Safety Zone	7/19/93
Charleston 93–089	Charleston, SC	Safety Zone	8/11/93
Charleston 93–091	Cooper River, SC	Safety Zone	9/7/93
Jacksonville 93–062	Jacksonville, FL	Safety Zone	7/4/93
Jacksonville 93–063	Cocoa Beach, FL	Safety Zone	7/4/93
Jacksonville 93–064	Cocoa, FL	Safety Zone	7/4/93
Jacksonville 93–065	St. Augustine, FL	Safety Zone	7/4/93
Jacksonville 93–066	Ormond Beach, FL	Safety Zone	7/4/93
Jacksonville 93–067	Edgewater, FL	Safety Zone	7/4/93
Jacksonville 93–068	Jacksonville, FL	Safety Zone	7/4/93
Jacksonville 93–069	Mayport, FL	Safety Zone	7/4/93
Jacksonville 93–070	Amelia Island, FL	Safety Zone	7/4/93
Jacksonville 93–082	Jacksonville, FL	Safety Zone	7/14/93
Jacksonville 93–101	Jacksonville, FL	Safety Zone	9/25/93
LA/LB 93–008	Los Angeles/Long Beach, CA	Safety Zone	9/4/93
Louisville 93–007	Ohio River	Safety Zone	7/4/93
Louisville 93–008	Ohio River	Safety Zone	7/4/93
Louisville 93–011	Ohio River	Safety Zone	7/4/93
Louisville 93–012	Ohio River	Safety Zone	7/4/93
Louisville 93–013	Ohio River	Safety Zone	7/13/93
Louisville 93–014	Cincinnati, OH	Safety Zone	8/6/93
Louisville 93–015	Ohio River	Safety Zone	9/3/93
Memphis 93–003	Arkansas River	Safety Zone	7/3/93
Miami 93–084	Miami, FL	Safety Zone	7/29/93
Miami 93–085	Boca Raton, FL	Safety Zone	7/31/93
Miami 93–090	Miami River	Safety Zone	8/25/93
Miami 93–094	Miami, FL	Safety Zone	9/1/93
Miami 93–095	Hollywood, FL	Safety Zone	9/2/93
Miami 93–096	Hollywood, FL	Safety Zone	9/7/93
P.W. Sound, AK 93–001	Prince William Sound, AK	Safety Zone	8/20/93
P.W. Sound, AK 93–002	Prince William Sound, AK	Safety Zone	8/20/93
P.W. Sound, AK 93–003	Prince William Sound, AK	Safety Zone	8/21/93
P.W. Sound, AK 93–004	Prince William Sound and Port Valdez, AK	Safety Zone	.....
P.W. Sound, AK 93–005	Prince William Sound and Port Valdez, AK	Safety Zone	.....
P.W. Sound, AK 93–006	Prince William Sound, AK	Safety Zone	8/22/93
P.W. Sound, AK 93–007	Prince William Sound, AK	Safety Zone	8/22/93
Paducah 93–009	Ohio River	Safety Zone	7/3/93
Paducah 93–013	Tennessee River	Safety Zone	9/15/93

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
Pittsburgh 93–006	Monongahela River	Safety Zone	7/16/93
San Diego 93–004	San Diego Bay, CA	Safety Zone	7/17/93
San Diego 93–005	San Diego Bay, CA	Safety Zone	7/20/93
San Diego 93–006	San Diego Bay, CA	Safety Zone	7/22/93
San Diego 93–007	San Diego Bay, CA	Safety Zone	8/14/93
San Francisco 93–005	San Francisco Bay	Safety Zone	7/4/93
San Francisco 93–006	San Francisco Bay	Safety Zone	8/2/93
San Francisco 93–007	San Francisco Bay	Safety Zone	7/26/93
San Francisco 93–008	San Francisco Bay	Safety Zone	8/16/93
San Francisco 93–009	San Francisco Bay	Security Zone	8/13/93
San Francisco 93–010	San Francisco Bay	Safety Zone	8/17/93
San Francisco 93–011	San Francisco Bay	Safety Zone	8/20/93
San Juan 93–079	San Juan Harbor, San Juan, PR	Safety Zone	7/4/93
San Juan 93–080	San Juan Harbor, San Juan, PR	Safety Zone	8/15/93
San Juan 93–088	St. Thomas, U.S. Virgin Islands	Safety Zone	8/17/93
Savannah 93–073	Hilton Head Island, SC	Safety Zone	7/4/93
Savannah 93–077	Savannah, GA	Safety Zone	7/4/93
Savannah 93–078	Hilton Head Island, SC	Safety Zone	7/4/93
Southeast Alaska 93–003	Juneau, AK	Safety Zone	7/3/93
Southeast Alaska 93–004	Sitka, AK	Safety Zone	7/3/93
Southeast Alaska 93–005	Ketchikan, AK	Safety Zone	7/4/93
Wilmington 93–003	Southport, NC	Safety Zone	7/5/93
01–93–003	East Passage, RI	Safety Zone	8/14/93
01–93–010	New York, New Jersey	Safety Zone	7/4/93
01–93–011	Fairfield, CT	Safety Zone	7/5/93
01–93–012	Stratford, CT	Safety Zone	7/3/93
01–93–013	Westport, CT	Safety Zone	7/1/93
01–93–023	Troy, NY	Safety Zone	7/3/93
01–93–025	East Hampton, NY	Safety Zone	7/17/93
01–93–034	New York	Safety Zone	9/28/93
01–93–039	Port Jefferson, NY	Safety Zone	
01–93–046	Bridgeport, CT	Safety Zone	7/3/93
01–93–047	Middletown, CT	Safety Zone	7/4/93
01–93–050	Champlain, VT	Safety Zone	7/4/93
01–93–051	Red Bank, NJ	Safety Zone	7/3/93
01–93–052	Hempstead Harbor, NY	Safety Zone	9/12/93
01–93–055	Raritan Bay, NJ	Safety Zone	7/4/93
01–93–056	Bayhead, NJ	Safety Zone	8/22/93
01–93–056	Bayhead, NJ	Safety Zone	8/21/93
01–93–058	Manasquan River, NJ	Safety Zone	7/4/93
01–93–061	Northport, NY	Safety Zone	7/11/93
01–93–065	Norwich, CT	Safety Zone	7/2/93
01–93–067	Burlington Harbor, VT	Safety Zone	7/3/93
01–93–068	Stamford, CT	Safety Zone	7/3/93
01–93–069	Groton, CT	Safety Zone	7/4/93
01–93–070	Sippican Harbor, MA	Safety Zone	7/4/93
01–93–071	Falmouth, MA	Safety Zone	7/4/93
01–93–077	Norwalk, CT	Safety Zone	7/3/93
01–93–078	Hartford, CT	Safety Zone	7/3/93
01–93–079	Edgartown, MA	Safety Zone	7/3/93
01–93–080	Providence River, RI	Safety Zone	7/4/93
01–93–084	Onset, MA	Safety Zone	7/4/93
01–93–091	Vineyard Haven, MA	Safety Zone	7/10/93
01–93–096	Bath, ME	Safety Zone	7/24/93
01–93–098	Norwich, CT	Safety Zone	8/29/93
01–93–099	New York, New Jersey	Safety Zone	9/11/93
01–93–100	Port Jefferson, NY	Safety Zone	7/26/93
01–93–101	Bristol Harbor, RI	Safety Zone	8/9/93
01–93–103	Old Lyme, CT	Safety Zone	8/28/93
01–93–104	Shennecock Bay, NY	Safety Zone	8/7/93
01–93–105	Manhattan, New York	Safety Zone	9/5/93
01–93–106	Hartford, CT	Safety Zone	8/21/93
01–93–108	Providence, RI	Safety Zone	8/14/93
01–93–110	Narragansett Bay, RI	Safety Zone	8/27/93
01–93–112	Liberty Island, NY, NJ	Safety Zone	9/14/93
01–93–113	Waterford, CT	Safety Zone	8/21/93
01–93–114	Bayville, NY	Safety Zone	9/5/93
01–93–117	Martha's Vineyard, MA	Safety Zone	8/19/93
01–93–118	Martha's Vineyard, MA	Safety Zone	8/19/93
01–93–121	Providence River, RI	Safety Zone	9/5/93
01–93–123	Norwich, CT	Safety Zone	9/11/93

QUARTERLY REPORT—Continued

Docket No.	Location	Type	Effective date
01–93–125	Belfast, ME	Safety Zone	7/24/93
01–93–126	Hudson River, NJ	Safety Zone	9/11/93
01–93–127	Upper New York Bay	Safety Zone	9/20/93
01–93–131	Bellport, NY	Safety Zone	9/18/93
01–93–132	Rensselaer, NY	Safety Zone	9/25/93
01–93–125	East Boston, MA	Safety Zone	9/23/93
01–93–136	East River, New York	Security Zone	9/27/93
02–93–017	Minneapolis, MN	Special Local	7/4/93
02–93–018	Gallipolis, OH	Special Local	7/4/93
02–93–019	Geneseo, IL	Special Local	7/10/93
02–93–021	Peoria, IL	Special Local	7/3/93
02–93–022	Allegheny River, mile 54.0 to 55.0	Special Local	7/17/93
02–93–024	Mississippi River, mile 790.0 to 792.0	Special Local	8/7/93
02–93–025	Allegheny River, mile 44.0 to 45.0	Special Local	8/21/93
02–93–026	Monongahela River, mile 32.0 to 33.0	Special Local	8/14/93
02–93–027	Mississippi River, mile 496.5 to 497.6	Special Local	8/6/93
02–93–028	Ohio River, mile 448.0 to 451.0	Special Local	8/21/93
02–93–029	Winona, MN	Special Local	8/28/93
05–93–021	Hog Island, MD	Safety Zone	8/7/93
05–93–039	Portsmouth, VA	Special Local	7/4/93
07–93–023	Key West, FL	Special Local	7/17/93
07–93–059	Sarasota, FL	Special Local	7/2/93
07–93–060	Sarasota, FL	Special Local	7/3/93
07–93–071	Sarasota, FL	Special Local	7/4/93
08–93–025	Galveston, Texas	Special Local	9/25/93
09–93–019	Port Huron, MI	Safety Zone	7/24/93
09–93–019	Port Huron, MI. Correction	Safety Zone	7/13/93
09–93–027	Cleveland, OH	Safety Zone	6/16/93
09–93–030	Oswego, NY	Safety Zone	7/24/93
13–93–023	Grays Harbor, WA	Safety Zone	9/1/93
13–93–026	Port of Benton, WA	Safety Zone	9/22/93
13–93–100	Columbia River Entrance, Disdemona Sands	Safety Zone	8/14/93
13–93–300	Willamette River, OR	Safety Zone	9/4/93

Dated: November 8, 1993.

Sheri deGrom,

Executive Secretary, Marine Safety Council.

[FR Doc. 93–27841 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD02–93–001]

Regulated Navigation Area; Monongahela River, Mile 81.0 to 83.0

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: This document amends an existing regulated navigation area (RNA). It removes the requirement for vessels to maintain a 100 foot clearance from construction hazards because recent construction has eliminated the need to maintain the clearance. The change will allow vessels to more safely navigate through the construction area.

EFFECTIVE DATES: This regulation is effective November 12, 1993.

FOR FURTHER INFORMATION CONTACT: LT John Meehan, Chief of Port Operations, c/o Commanding Officer, U.S. Coast Guard Marine Safety Office, suite 700, Kossman Building, Forbes Avenue and Stanwix Street, Pittsburgh, Pennsylvania 15222. The telephone number if (412) 644–5808.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this regulation are LT John Meehan, Project Officer, Marine Safety Office, Pittsburgh, Pennsylvania and LCDR A.O. Denny, Project Attorney, Second Coast Guard District Legal Office.

Regulatory History

In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for this regulation and good cause exists for making it effective in less than 30 days from the date of publication. Following normal rulemaking procedures would have been impracticable. Specifically, recent construction required to complete the building of a new lock and dam has already narrowed the channel in the regulated navigation area to the point where vessels transiting the area cannot safely maintain the presently required 100 foot clearance from a cofferdam and upper guard wall cell when transiting the area. The Coast Guard deems it to be in the public's best interest to amend the existing regulation without waiting for a comment period since delaying the removal of the requirement presents an immediate hazard to navigation.

Background and Purpose

The U.S. Army Corps of Engineers, Pittsburgh District, is constructing a new look and dam at Grays Landing, mile 82.0 on the Monongahela River. The estimated completion date for the project is on or about December 1994.

The regulated navigation area originally included a requirement that vessels transiting through it remain at least 100 feet from a temporary cofferdam on the right descending bank. The cofferdam was used to construct the Grays Landing Dock. This cofferdam is in the process of being removed and a new cofferdam is being constructed on the left descending bank for the dam portion of the construction project. The new construction will narrow the width of the river to approximately 150 feet. Requiring a minimum distance from the cofferdam on the right descending bank is no longer appropriate. Accordingly, this clearance requirement is being removed.

The requirement for one way traffic in the area remains in effect.

Regulatory Evaluation

This regulation is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation Regulatory Policies and Procedures (44 FR 11040, February 26, 1979). The Waterways Association of Pittsburgh, a local waterborne commerce organization, has advised the Coast Guard that the change in the regulation will have no impact on commerce or safety. Thus, the Coast Guard believes that it will not have a significant economic impact on a substantial number of small entities. A full regulatory analysis is unnecessary because the Coast Guard expects the impact of this regulation, which contains no collection of information requirements, to be minimal.

Federalism Assessment

Under the principles and criteria of Executive Order 12612, this regulation does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

The Coast Guard considered the environmental impact of this proposal and concluded that it is categorically excluded from further environmental documentation under paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A Categorical Exclusion Determination has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, 33 CFR part 165 is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. In § 165.204, paragraph (b)(4) is removed.

Dated: September 8, 1993.

Paul M. Blayney,

Rear Admiral, U. S. Coast Guard, Commander, Second Coast Guard District.

[FR Doc. 93–27842 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–14–M

Proposed Rules

Federal Register
Vol. 58, No. 217
Friday, November 12, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 319

[Docket No. 93–121–1]

Importation of Fruits and Vegetables

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: We are considering amending the regulations to allow the cold treatment of imported fruits and vegetables at ports in the southern United States and California. We are soliciting comments from the public on the current regulations and any suggested amendments.

DATES: Consideration will be given only to comments received on or before December 27, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–121–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Victor Harabin, Head, Permit Unit, Port Operations, Plant Protection and Quarantine, APHIS, USDA, room 631, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; (301) 436–8645.

SUPPLEMENTARY INFORMATION:

Background

The Fruits and Vegetables regulations in 7 CFR 319.56 *et seq.* (referred to below as "the regulations") prohibit or restrict the importation of fruits and vegetables to prevent the introduction and dissemination of injurious insects, including fruit flies, that are new to or not widely distributed in the United States. The Animal and Plant Health Inspection Service (APHIS) of the United States Department of Agriculture administers these regulations.

Under the regulations, APHIS allows certain fruits and vegetables to be imported into the United States if they undergo sustained refrigeration sufficient to eliminate certain insect pest infestations (cold treatment). Cold treatment temperature and refrigeration period requirements vary according to the type of fruits and vegetables and the pests involved. APHIS enforces these requirements through the inspection and certification of cold treatment facilities and equipment.

Most fruit and vegetable imports undergo cold treatment in transit to the United States. However, APHIS does allow fruit and vegetable imports to undergo cold treatment after arrival in the United States, but only at certain ports designated by APHIS.

Cold treatment is limited to ports in the northern United States because APHIS has determined that insect pests escaping from shipments of imported fruit after arrival in the United States would be unable to survive winter weather conditions in the north. The following ports are currently authorized by APHIS to conduct cold treatment on certain imported fruits and vegetables: Atlantic ports north of and including Baltimore, MD; ports on the Great Lakes and St. Lawrence Seaway; Canadian border ports on the North Dakota border and east of North Dakota; and, for air shipments, Washington DC, including Baltimore-Washington International and Dulles International airports.

Recently, we received petitions from individuals at the ports of Wilmington, NC, and Gulfport, MS, requesting that we amend the regulations to allow cold treatment to be conducted at these ports. Cold treatment facilities already exist at Wilmington and Gulfport, as well as in many other warm climate areas of the United States. We anticipate many similar petitions in the future.

We therefore consider it appropriate to review our current regulations allowing only northern ports to conduct cold treatment of fruit and vegetable imports after arrival. As part of our review we are requesting comments on the feasibility of allowing cold treatment to be conducted in the southern United States and California. Commenters may wish to address the following questions:

1. What would be the risk of exotic insect pests, especially fruit flies, escaping from fruit and vegetable import shipments before cold treatment and becoming established in warm climate areas of the United States?

2. What special safeguards should cold treatment facilities in the southern United States and California undertake to prevent the introduction of exotic insect pests into the United States?

3. What additional restrictions, if any, should we consider placing on fruit and vegetable imports into the southern United States and California in order to prevent the introduction of exotic insect pests?

APHIS officials will carefully review all comments received by the close of the comment period. If we decide to propose amendments to the regulations, we will publish a proposal in the **Federal Register**.

Authority: 7 U.S.C. 150dd, 150ee, 150ff, 151–167; 21 U.S.C. 136a; 7 CFR 2.17, 2.51, and 371.2(c), unless otherwise noted.

Done in Washington, DC, this 5th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–27895 Filed 11–10–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF JUSTICE

8 CFR Part 3

[AG Order No. 1808–93]

Executive Office for Immigration Review; Rules Concerning Conditional Permanent Residence for Alien Entrepreneurs in Deportation Proceedings

AGENCY: Department of Justice.

ACTION: Proposed rule with request for comments.

SUMMARY: The Immigration Act of 1990 provides that an alien entrepreneur and his or her family may obtain lawful permanent residence on a conditional basis, subject to the requirements of a timely petition and interview for

removal of the condition two years after obtaining such status. Termination of such status is made reviewable in deportation proceedings before an Immigration Judge. This proposed rule sets forth the procedures that an Immigration Judge will follow in reviewing the termination by the Immigration and Naturalization Service of conditional permanent resident status of alien entrepreneurs and their families.

DATES: Written comments must be received on or before: December 13, 1993.

ADDRESSES: Please submit written comments to: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041.

FOR FURTHER INFORMATION CONTACT: Gerald S. Hurwitz, Counsel to the Director, Executive Office for Immigration Review, suite 2400, 5107 Leesburg Pike, Falls Church, Virginia 22041, (703) 305–0470.

SUPPLEMENTARY INFORMATION: Section 121 of the Immigration Act of 1991 ("IMMACT"), Public Law 101–649, amends section 203 of the Immigration and Nationality Act ("the Act") to provide permanent resident status to alien entrepreneurs who enter the United States for the purpose of engaging in a new commercial enterprise and who meet certain criteria for investment. Section 121 also adds a new section 216A of the Act which makes the grant of permanent residence to alien investors and their spouses and children conditional for a period of two years in an effort to deter immigration-related fraud among entrepreneurs. Section 216A requires that, prior to the end of the two-year period, the alien petition the Immigration and Naturalization Service ("INS") to remove the conditional basis of such status. Failure to file the petition will result in termination of the alien's status and that of his or her family members.

At any time within the two-year period, section 216A directs INS to terminate the permanent resident status of an alien investor and his or her family if it is determined that (1) the enterprise was intended solely as a means to evade the United States immigration laws, (2) that the enterprise was not established by the alien, or (3) that the alien did not invest in or sustain the enterprise as required by the statute.

Section 216A permits an alien entrepreneur and his or her family members who have had their conditional permanent resident status terminated to request a review of such termination in deportation proceedings. In these proceedings, INS will be required to establish by a preponderance of the evidence that a condition for termination under section 216A of the Act has been met. If INS meets its burden, the request to restore permanent resident status shall be denied, and the alien shall be found deportable pursuant to section 241(a)(1)(D) of the Act.

Under the proposed rule, in the case of an alien entrepreneur who has failed to file a petition for removal of the conditional status in a timely manner, he or she may request a stay of deportation proceedings to allow for late filing of such petition. Under section 216A(d)(2)(C), the alien will have to establish to the satisfaction of the Immigration Judge good cause and extenuating circumstances for failure to file in a timely manner.

If termination of status of cause occurs at the end of the two-year period, under section 216A the INS will be required to establish by a preponderance of the evidence that the facts and information described in section 216A(d)(1) of the Act and alleged in the petition for removal are not true with respect to the qualifying commercial enterprise.

If the alien fails to attend the interview under section 216A(c)(2)(A) of the Act, the burden of proof will be on the alien to establish that the petition was filed and that the alien did appear, or that there was good cause for any failure to do so. Under the proposed rule, if the alien meets this burden, the proceedings will be continued to allow INS to adjudicate the petition.

This rule is promulgated as a proposed regulation to allow for comments prior to implementation.

In accordance with 5 U.S.C. 605(b), the Attorney General certifies that the rules does not have a substantial adverse economic impact on a substantial number of small entities. This rule is not a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612. The rule meets the applicable standards provided in section 2(a) and 2(b)(2) of E.O. 12778.

List of Subjects in 8 CFR Part 3

Administrative practice and procedure, Immigration, Organization and functions (Government agencies).

Accordingly, part 3 of chapter I, title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 3—EXECUTIVE OFFICE FOR IMMIGRATION REVIEW

1. The authority citation for part 3 continues to read as follows:

Authority: 5 U.S.C. 301; 8 U.S.C. 1103, 1252 note, 1252b, 1362; 28 U.S.C. 509, 510, 1746; sec. 2, Reorg. Plan No. 2 of 1950, 3 CFR, 1949–1953 Comp., p. 1002.

2. Section 3.31 is amended by adding paragraph (d) to read as follows:

§ 3.31 Filing documents and applications.

* * * * *

(d) For guidance in requesting a review of the termination of lawful permanent residence on a conditional basis pursuant to section 216A, please see § 3.85.

§§ 3.41–3.84 [Reserved]

3. Sections 3.41–3.84 [Reserved].

4. Section 3.85 is added as follows:

§ 3.85 Review of termination of conditional permanent resident status based on entrepreneurship.

(a) *Review before the Immigration Judge.* An alien entrepreneur (to include alien spouse and alien child) who has had his/her conditional permanent resident status terminated pursuant to section 216A of the Act may request a review of such termination in deportation proceedings. No fee is required for the review.

(b) *Termination for cause within two years.*

(1) If the request is to review a termination for cause occurring within two years from the date the alien obtained lawful permanent residence on a conditional basis, the Immigration and Naturalization Service must establish by a preponderance of the evidence that a condition for termination described in section 216A(b)(1) of the Act has been met.

(2)(i) If the Immigration and Naturalization Service fails to establish by a preponderance of the evidence that a condition for termination described in section 216A(b)(1) of the Act has been met, the Immigration Judge shall order that the alien's permanent resident status on a conditional basis be restored; and that the proceedings be terminated if section 241(a)(1)(D) of the Act is the only charge of deportability pending.

(ii) Nothing in clause (i) shall exempt the alien from fulfilling the requirements of section 216A(c)(1) and (d) of the Act in order to have the conditional basis of the permanent resident status removed at the end of the two-year period from which that status was acquired.

(iii) If the Immigration Judge finds that the Immigration and Naturalization

Service has met its burden of proof, the request to restore permanent resident status on a conditional basis shall be denied, and the alien shall be found to be deportable pursuant to section 241(a)(1)(D). If statutorily eligible, the alien may apply for relief from deportation pursuant to the appropriate section or sections of the Act.

(c) *Termination for cause at the end of two years.*

(1) If the request is to review a termination for causing occurring at the end of two years from the date the alien obtained lawful permanent residence on a conditional basis, the Immigration and Naturalization Service must establish by a preponderance of the evidence that the facts and information described in section 216A(d)(1) of the Act, and alleged in the petition for removal of conditional status, are not true with respect to the qualifying commercial enterprise.

(2) If the Immigration and Naturalization Service does not establish by a preponderance of the evidence that the facts and information described in section 216A(d)(1) of the Act, and alleged in the petition for removal of conditional status, are not true with respect to the qualifying commercial enterprise, the Immigration Judge shall order that the alien's permanent resident status be restored and that the conditional basis of that status be removed as of the second anniversary of the lawful admission.

(3) If the Immigration Judge finds that the Immigration and Naturalization Service has met its burden of proof, the request to restore permanent resident status on a conditional basis shall be denied, and the alien shall be found to be deportable pursuant to section 241(a)(1)(D) of the Act. If statutorily eligible, the alien may apply for relief from deportation pursuant to the appropriate section or sections of the Act.

(d) *Termination for failure to file petition.*

(1) An alien entrepreneur who is charged as being deportable pursuant to section 241(a)(1)(D) of the Act, and who has not filed a petition for removal of the conditional basis of the status in a timely manner, may request a stay of deportation proceedings to allow for the filing of the petition for removal of the conditional basis. The Immigration Judge may continue the proceedings to allow for the filing of the petition only if the alien establishes good cause and extenuating circumstances for the failure to file the petition in a timely manner.

(2) Either party may move to recalendar the proceedings if:

(i) The alien fails to file the petition within 30 days; or

(ii) The adjudication of the petition for removal of the conditional basis of the status is adverse to the alien, at which time the alien may request a review of the termination pursuant to (c) above.

(iii) The adjudication of the petition for removal of the conditional basis of the status is favorable to the alien, at which time either party may move for a termination of proceedings if section 241(a)(1)(D) of the Act is the only charge of deportability pending.

(e) *Termination for failure to attend interview.*

(1) If the request is to review a termination pursuant to section 216A(c)(2)(A)(ii) of the Act, the burden of proof is on the alien to establish:

(i) That the petition for removal of the conditional basis was timely filed; and

(ii) That the alien did appear at the personal interview scheduled before an officer of the Immigration and Naturalization Service as required in section 216A(c)(1)(B) of the Act, or that there was good cause shown for his/her failure to appear.

(2) If the Immigration Judge determines that the alien has met the burden of proof in establishing compliance with both of the requirements stated in subsection (1), the Immigration Judge shall continue the proceedings to allow the Immigration and Naturalization Service to schedule an interview and adjudicate the petition on the issue of whether the facts and information described in section 216A(d)(1) of the Act, and alleged in the petition for removal of the conditional basis of the status, are true.

(3)(i) If the adjudication of the petition for removal of the conditional basis of the status is adverse to the alien, either party may move to recalendar the proceedings, at which time the alien may request a review of the termination for cause pursuant to (c) above.

(ii) If the adjudication of the petition for removal of the conditional basis of the status is favorable to the alien, either party may move to recalendar the matter, and then move for termination of proceedings if section 241(a)(1)(D) is the only charge of deportability pending.

Dated: October 28, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–27767 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Parts 54 and 79

[Docket No. 93–050–1]

Scrapie: Sheep and Goats Less Than 1 Year of Age Moved to Slaughter

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to allow sheep and goats less than 1 year of age from scrapie-infected or source flocks to move interstate to slaughter, without being permanently identified with an indelible "S" mark, if they are accompanied by a permit and moved in a sealed means of conveyance. We are also proposing to provide that the diagnosis of scrapie necessary to categorize a flock as an infected flock, source flock, or trace flock must have been made after March 31, 1989, and are proposing to provide that flank tattoos and ear tattoos are acceptable forms of identification for certain sheep and goats moved interstate. We believe these changes would provide safeguards necessary to guard against the interstate spread of scrapie, while eliminating unnecessarily restrictive marking and identification requirements.

DATES: Consideration will be given only to comments received on or before January 11, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–050–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Dan Harpster, Senior Staff Veterinarian, Miscellaneous Diseases Staff, VS, APHIS, USDA, room 701, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20872, (301) 436–6954.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 79 (referred to below as the regulations)

contain provisions restricting the interstate movement of sheep and goats because of scrapie. Scrapie is a progressive degenerative disease of the central nervous system of sheep and goats. The disease develops slowly, with an incubation period lasting from months to years. The regulations are designed to prevent the interstate transmission of scrapie.

In order to help protect against the interstate transmission of scrapie, certain sheep and goats that pose a significant risk of being affected with scrapie may not be moved interstate unless they are permanently identified with an indelible mark in the form of the letter "S," which must be at least 1" by 1" and applied on the left jaw. This mark identifies sheep and goats that may pose a risk of transmitting scrapie.

Except as described in the following paragraph, the following sheep and goats being moved interstate must be "S" marked: (1) Scrapie-positive animals, (2) animals from infected flocks, and (3) animals from source flocks. A *source flock* is defined as a flock in which a Veterinary Services representative has determined that at least two animals were born that were diagnosed as scrapie-positive at an age of 54 months or less, provided the second scrapie-positive diagnosis was made within 60 months of the first scrapie-positive diagnosis.

Currently, the regulations exempt certain sheep and goats from an infected or source flock from the "S" mark requirements only if they come from a flock for which the owner agrees to and meets reporting, identification, recordkeeping, inspection, and testing requirements, specified in § 79.2(a)(1) through (a)(7). The exempted sheep and goats are (1) those other than high-risk animals; and (2) high-risk animals less than 1 year of age moving in slaughter channels. In general, animals are classified as "high-risk animals" if they are the progeny of a scrapie-positive dam, if they were born during the same lambing season as the progeny of a scrapie-positive dam, or if they were born during the same lambing season as a scrapie-positive ewe or ram.

Need for Change

As noted above, the purpose of "S" marking is to identify sheep and goats that may pose a significant risk of transmitting scrapie. If, however, an animal is being moved to slaughter, and is commingled only with other animals being moved to slaughter, it poses little risk of spreading scrapie beyond the animals going to slaughter. In such cases, "S" marking the animals moved, the vast majority of which are less than 1 year of age, appears to be an unnecessary burden to persons moving the animals interstate to slaughter.

We are therefore proposing to allow sheep and goats less than 1 year of age to be moved interstate to slaughter from an infected flock or source flock that does not meet the requirements in § 79.2(a)(1) through (a)(7), without being permanently identified with an indelible "S" mark, provided the animals are moved to slaughter in a means of conveyance sealed by an APHIS representative and are accompanied by a permit issued by an APHIS representative. The permit would identify the shipment, and its origin and destination, and would help ensure that there is no diversion of the animals before their arrival for slaughter. We would define *permit* in § 79.1 as an official document (VS Form 1–27) listing specified information regarding the shipment of animals.

Identification of Animals

As noted above, certain sheep and goats from infected or source flocks are exempted from "S-mark" requirements if they come from a flock from which the owner agrees to meet reporting, identification, recordkeeping, inspection, and testing requirements, as set forth in § 79.2(a)(1) through (a)(7) of the regulations. Among these requirements, § 79.2(a)(3) requires that the form of identification used be an electronic implant providing a unique identification number. When this requirement was added to the regulations, it was anticipated that electronic implant identification devices for sheep and goats would be widely available. At present, however, this is not the case.

Because of the unavailability of electronic implant devices, we are proposing to amend the regulations to require that the means of identification used be either an electronic implant, a flank tattoo, or an ear tattoo, providing a unique identification number. A flank tattoo or ear tattoo with a unique identification number would provide an adequate means of identifying a sheep or goat.

Changes in Definitions

The regulations in 9 CFR part 54 include provisions for the payment of Federal indemnification to the owners of sheep and goats destroyed due to scrapie, and include provisions regarding a voluntary scrapie sheep and goat flock identification program. Both § 79.1 and § 54.1 include definitions of *infected flock*, *source flock*, and *trace flock*. These definitions were added to the regulations in 1992 and were made effective October 1 of that year, as part of the establishment of a voluntary scrapie sheep and goat flock certification program. Prior to that date, the regulations provided for quarantines of areas due to the presence of scrapie, with the interstate movement of certain sheep from those areas allowed under certain conditions.

An *infected flock* is defined as any flock in which a Veterinary Services representative or State representative has determined an animal to be a scrapie-positive animal. A *source flock* is defined as a flock in which a Veterinary Services representative has determined that at least two animals that were diagnosed as scrapie-positive animals were born, provided the animals were so diagnosed at an age of 54 months or less and the second scrapie-positive diagnosis was made within 60 months of the first. Both the definitions of *infected flock* and *source flock* provide that a flock will no longer be so considered after the flock has completed the requirements of a flock plan. A *trace flock* is defined as a flock in which a Veterinary Services representative has determined that one animal that was diagnosed as a scrapie-positive animal at an age of 54 months or less was born.

Under the three definitions as currently set forth, the flocks in question retain their status, no matter how long ago the scrapie-positive animals were so diagnosed, unless, in the case of infected flocks and source flocks, they are released from that status by completing a flock plan. Before October 1, 1992, however, flocks that were identified as having a scrapie-positive animal, or a potentially scrapie-positive animal, were considered to be free of scrapie once they completed 42-month surveillance by APHIS inspectors without further identification of scrapie in the flock. Under the current regulations, certain flocks that were kept under surveillance for 42 months prior to October 1, 1992, and that were considered to be scrapie-free upon being released from that surveillance, are now by definition considered to be infected flocks, source flocks, or trace flocks. However, it was not our intent when the regulations were established to consider such flocks as infected, source, or trace flocks.

In this proposed rule, we are proposing to clarify our intent by providing in the definitions of *infected flock*, *source flock*, and *trace flock*, in §§ 54.1 and 79.1, that the diagnosis of scrapie necessary to categorize a flock as an infected flock, source flock, or trace flock must have occurred after March 31, 1989. April 1, 1989, is 42 months

prior to October 1, 1992, the effective date of the current regulations. Any flock in which a diagnosis of scrapie was last made prior to April 1, 1989, and which was placed under surveillance for 42 months, would have been released from surveillance and considered free of scrapie before October 1, 1992.

In this proposed rule, we are also proposing to amend the definitions of *source flock* and *trace flock* in §§ 54.1 and 79.1 to provide that the diagnosis of scrapie resulting in such flock status may be made either by a State representative or by an APHIS representative (to be changed from "Veterinary Services representative," as explained below under "Nonsubstantive Changes to part 54 and part 79"). Currently, the regulations provide that such a diagnosis may be made only by a Veterinary Services representative. However, the definition of *infected flock* allows the diagnosis of a scrapie-positive animal to be made by either a Veterinary Services representative or a State representative. State representatives work in conjunction with Federal representatives, and there is no reason that diagnoses made with regard to source flocks and trace flocks should differ from those made for infected flocks.

We are also proposing to amend the definition of *trace flock* in §§ 54.1 and 79.1 to clarify that flocks will be released from trace flock status after they have completed the requirements of a flock plan. As noted above, provision for such release already exists with regard to infected flocks and source flocks, and the current definition of *flock plan* refers to plans for trace flocks as well as for infected flocks and source flocks. It has been our intent that trace flocks should be treated the same as infected flocks and source flocks in this regard.

Nonsubstantive Changes to Part 54 and Part 79

To reflect internal agency management, we are proposing to replace all references to "Veterinary Services representative" in part 54 and part 79 with references to "APHIS representative." Additionally, we are proposing to amend § 54.1 by deleting the definitions of *Veterinary Services* and *Veterinary Services representative.* We are also proposing to add to § 79.1 a definition of *Animal and Plant Health Inspection Service (APHIS),* and are proposing to delete the definition in § 79.1 of *Veterinary Services representative.*

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

The changes we are proposing include allowing the interstate movement to slaughter of sheep and goats less than 1 year of age from scrapie-infected flocks or source flocks that do not meet the requirements of § 79.2(a)(1) through (a)(7) of the regulations, if the animals are moved in a sealed means of conveyance and accompanied by a permit. This approach would be less restrictive and more efficient than the current rule that provides that these animals may be moved interstate only if the animals have been identified with an "S" mark to the left jaw.

Although the proposed change would apply to both sheep and goats, at present no goats are being moved interstate with an "S" mark.

There are approximately 92,500 sheep farms in the United States, with approximately 11 million sheep. The large majority of these are small entities. Ninety-nine percent of the sheep farms in this country each have annual sales totalling less than $500,000, and approximately 77,000 have fewer than 100 sheep.

The number of farms and animals that would be affected by this proposed change would be relatively small. There are approximately 86 infected or source flocks in this country, with only about 4,300 animals. All of these flocks are on what are considered small farms. The total number of farms affected would be less than .1 percent of the total number of sheep farms in the United States.

It costs approximately $0.50 to brand a lamb. This amount would be saved by those farms that choose to ship animals according to the proposed regulations. This compares to the average market value for a finished market lamb of $65.

We are also proposing to provide that the diagnosis of scrapie necessary to categorize a flock as an infected flock, source flock, or trace flock must have been made after March 31, 1989. This change would exclude from such categorizations flocks that completed a 42-month surveillance period prior to October 1, 1992, and in which scrapie has not been diagnosed since. This change would clarify our intent as to the definitions in question and would have no economic effect.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this rule would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782; and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects

9 CFR Part 54

Animal diseases, Goats, Indemnity payments, Sheep.

9 CFR Part 79

Animal diseases, Quarantine, Sheep, Transportation.

Accordingly, 9 CFR parts 54 and 79 would be amended as follows:

PART 54—CONTROL OF SCRAPIE

1. The authority citation for part 54 would continue to read as follows:

Authority: 21 U.S.C. 111, 114, 114a, 134a–134h; 7 CFR 2.17, 2.51, and 371.2(d).

2. Section 54.1 would be amended as follows:

a. The definitions of *infected flock*, *source flock*, and *trace flock* would be revised to read as set forth below.

b. The definitions of *Veterinary Services* and *Veterinary Services representative* would be removed.

c. The words "a Veterinary Services" would be removed and "an APHIS" would be added in their place in the following places:

i. The definition of *affected animal*;

ii. The definition of *flock plan*, first sentence; and

iii. The definition of *scrapie-exposed animals*.

d. The definition of *Area Veterinarian in Charge* would be amended by removing the words "Veterinary Services" and "the Animal and Plant Health Inspection Service" and adding "APHIS" in their place.

e. In the definition of *flock plan*, the second sentence would be amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

§ 54.1 Definitions.

* * * * *

Infected flock. Any flock in which an APHIS representative or a State representative has determined an animal to be a scrapie-positive animal after March 31, 1989. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

* * * * *

Source flock. A flock in which an APHIS representative or a State representative has determined that at least two animals were born that were diagnosed as scrapie-positive animals at an age of 54 months or less. In order for the flock to be a source flock, the second scrapie-positive diagnosis must have been made within 60 months of the first scrapie-positive diagnosis and after March 31, 1989. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

* * * * *

Trace flock. A flock in which an APHIS representative or a State representative has determined that one animal was born that was diagnosed as a scrapie-positive animal at an age of 54 months or less. In order for the flock to be a trace flock, the scrapie-positive diagnosis must have been made after March 31, 1989. A flock will no longer be a trace flock after it has completed the requirements of a flock plan.

* * * * *

PART 79—SCRAPIE IN SHEEP AND GOATS

3. The authority citation for part 79 would be revised to read as follows:

Authority: 21 U.S.C. 111–114, 115, 117, 120, 121, 123–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 79.1 [Amended]

4. In § 79.1, definition of *flock plan*, the second sentence would be amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

5. Section 79.1 would be amended by removing the definition of *Veterinary Services representative*; by revising the definitions of *infected flock*, *source flock*, and *trace flock*; and by adding *Animal and Plant Health Inspection Service*, *APHIS representative*, and *permit* in alphabetical order to read as follows:

§ 79.1 Definitions.

* * * * *

Animal and Plant Health Inspection Service (APHIS). The Animal and Plant Health Inspection Service of the United States Department of Agriculture.

APHIS representative. An individual employed by APHIS who is authorized to perform the function involved.

* * * * *

Infected flock. Any flock in which an APHIS representative or a State representative has determined an animal to be a scrapie-positive animal after March 31, 1989. A flock will no longer be an infected flock after it has completed the requirements of a flock plan.

Permit. An official document (VS Form 1–27) issued by an APHIS representative that indicates the following: the shipper's or consignor's name and address; the consignee's name and address; the State where the permit was issued; points of origin and destination of the animals being moved interstate; purpose of the movement; number and species of animals covered by the permit; whether the animals are from an infected flock or a source flock; transportation vehicle license number or other identification number; and seal number.

* * * * *

Source flock. A flock in which an APHIS representative or a State representative has determined that at least two animals were born that were diagnosed as scrapie-positive animals at an age of 54 months or less. In order for the flock to be a source flock, the second scrapie-positive diagnosis must have been made within 60 months of the first scrapie-positive diagnosis and after March 31, 1989. A flock will no longer be a source flock after it has completed the requirements of a flock plan.

* * * * *

Trace flock. A flock in which an APHIS representative or a State representative has determined that one animal was born that was diagnosed as a scrapie-positive animal at an age of 54 months or less. In order for the flock to be a trace flock, the scrapie-positive diagnosis must have been made after March 31, 1989. A flock will no longer be a trace flock after it has completed the requirements of a flock plan.

* * * * *

6. Section 79.2 would be amended as follows:

a. Paragraphs (a)(1) through (a)(7) would be redesignated as paragraphs (a)(2)(i) through (a)(2)(vii), respectively.

b. Paragraph (a) would be revised to read as set forth below.

c. In newly redesignated paragraph (a)(2)(ii), the first sentence would be amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

d. In newly redesignated paragraph (a)(2)(iii), the third sentence would be revised to read as set forth below.

e. Newly redesignated paragraph (a)(2)(iv) would be revised to read as set forth below.

f. Newly redesignated paragraph (a)(2)(v) would be amended by removing the words "Veterinary Services" and adding "APHIS" in their place.

g. Newly redesignated paragraph (a)(2)(vi) would be amended by removing the reference to "paragraph (a)(4)" and adding "paragraph (a)(2)(iv)" in its place; and by removing the words "Veterinary Services" and adding "APHIS" in their place.

h. Newly redesignated paragraph (a)(2)(vii) would be amended by removing the reference to "paragraph (a)(2)" and adding "paragraph (a)(2)(ii)" in its place.

§ 79.2 General restrictions.

(a) Except as provided in paragraphs (a)(1) and (a)(2) of this section, no scrapie-positive animal, animal from an infected flock, or animal from a source flock may be moved interstate, unless the animal has been permanently identified with an indelible mark in the form of the letter "S," at least 1" by 1", applied on the left jaw.

(1) Animals less than 1 year of age may be moved interstate to slaughter

from an infected flock or a source flock if the animals are moved in a means of conveyance sealed by an APHIS representative and are accompanied by a permit.

(2) High-risk animals less than 1 year of age moving in slaughter channels and animals other than high-risk animals may be moved interstate if the animals are from infected flocks or source flocks meeting the following conditions: [1]

* * * * *

(iii) * * * The form of identification shall be an electronic implant, flank tattoo, or ear tattoo, providing a unique identification number that may be applied by the owner of the flock or his or her agent in accordance with instructions by an APHIS representative, State representative, or an accredited veterinarian.

(iv) The owner of the flock or his or her agent shall maintain, and keep for a minimum of 5 years after an animal dies or is otherwise removed from a flock, the following records for each animal in the flock: the animal's individual identification number from its electronic implant, flank tattoo, or ear tattoo, and any secondary form of identification the owner of the flock may choose to maintain; sex; breed; date of acquisition and source (previous flock), if the animal was not born in the flock; and disposition, including the date and cause of death, if known, or date of removal from the flock.

* * * * *

§§ 79.2 and 79.3 [Amended]

7. In addition to the amendments set forth above, 9 CFR part 79 would be amended by removing the words "a Veterinary Services" and adding, in their place, the words "an APHIS" in the following places:

a. Section 79.2, newly redesignated § 79.2(a)(2)(ii), last sentence; and newly designated (a)(2)(vii), both places they appear; and

b. Section 79.3(b).

§ 79.3 [Amended]

8. In § 79.3, paragraph (a) would be amended by removing the words "A Veterinary Services" and replacing them with the words "An APHIS" the three times they appear.

Done in Washington, DC, this 5th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–27891 Filed 11–10–93; 8:45 am]

BILLING CODE 3410–34–P

[1] Owners of flocks participating in the Voluntary Scrapie Flock Certification Program described in 9 CFR part 54 agree to follow the "Uniform Methods and Rules—Voluntary Scrapie Flock Certification" (the UM&R), which include, among other requirements, the conditions in this section. Individual copies of the UM&R may be obtained from the Administrator, c/o Sheep, Goat, Equine, and Poultry Diseases Staff, Animal and Plant Health Inspection Service, United States Department of Agriculture, 6505 Belcrest Road, Hyattsville, MD 20782; or from the American Sheep Industry Association, Producer Services, 6911 S. Yosemite Street, Englewood, CO 80112–1414; telephone (303) 771–3500.

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9 CFR Part 71

[Docket No. 93–084–1]

Interstate Movement of Mexican-Origin Cattle; Certification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to require that all Mexican-origin cattle moved in interstate commerce be accompanied by a certificate on which each animal is individually identified. This action appears to be necessary in light of the increasing numbers of tuberculosis-infected animals disclosed at slaughter among cattle imported into the United States from Mexico. The proposed requirement would allow us to trace the movements of individual Mexican-origin cattle being moved in interstate commerce following their importation into the United States. This would facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

DATES: Consideration will be given only to comments received on or before December 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–084–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. James P. Davis, Senior Staff Veterinarian, Cattle Diseases and Surveillance Staff, Veterinary Services, APHIS, USDA, room 729, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–4923.

SUPPLEMENTARY INFORMATION:

Background

Each year, an average of 1 million cattle are imported into the United States from Mexico. The majority of those cattle—about 99 percent—are young steers that are consigned to pastures and feedlots for finishing prior to slaughter. The remaining 1 percent consists of spayed heifers, which are most often consigned to pastures and feedlots with the steers for finishing prior to slaughter, and bulls and female cattle that are, with few exceptions, integrated into domestic cattle herds for breeding purposes.

The importation of ruminants into the United States, including cattle from Mexico, is regulated by the Animal and Plant Health Inspection Service (APHIS) under 9 CFR part 92, subpart D (§§ 92.400 through 92.435). Sections 92.424 through 92.429 of the regulations in part 92 contain specific provisions regarding the importation of ruminants from Mexico. Once they have entered the United States, the movement of Mexican-origin cattle falls under the interstate movement regulations in 9 CFR subchapter C (parts 70 through 89). There are, however, no provisions in the regulations in subchapter C that apply specifically to Mexican-origin cattle.

One of the animal health concerns addressed in APHIS' importation and interstate movement regulations is bovine tuberculosis, a contagious, infectious, and communicable disease of cattle, bison, and other species. In recent years, the number of tuberculosis-compatible cases found among samples submitted from Mexican-origin cattle at slaughter has risen dramatically, from 78 in 1982 to 613 in 1992. The percentage of all tuberculosis slaughter investigations involving Mexican-origin cattle also rose during that time, moving from 33 percent in 1982 to 81 percent in 1992. Because cattle imported from Mexico have been involved to such a large extent in the increase in tuberculous animals disclosed at slaughter, we feel that it is necessary to place additional restrictions on the interstate movement of cattle from Mexico.

We are proposing to amend 9 CFR part 71 to require all Mexican-origin cattle moved in interstate commerce to be accompanied by a certificate issued by an APHIS representative, State representative, or accredited veterinarian in the State from which the cattle are to be moved. A certificate, as defined in the tuberculosis regulations in 9 CFR part 77, is an official document that shows the identification tag, tattoo, or registration number or similar

identification of each animal to be moved; the number, breed, sex, and approximate age of the animals covered by the document; the purpose for which the animals are to be moved; the date and place of issuance; the points of origin and destination; the consignor and the consignee; and which states that the animal or animals identified on the certificate meet the requirements of the part. We would refer to that definition in our proposed regulations.

The proposed regulations would require that the number on each animal's official Mexican Government blue eartag be recorded on the certificate to provide for the individual identification of each animal. We would allow the number from an APHIS-approved eartag to be used if the official Mexican Government blue eartag is missing.

We would further require that a copy of the certificate be sent to the State animal health official in the State of destination, which would serve to notify State animal health officials, who need to be aware of any potential animal health concerns affecting their respective States, when Mexican-origin cattle are to be moved into a particular State. The certificate also would be another means of tracking the movement of individual Mexican-origin cattle in the United States, which would facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

We would add these proposed requirements for the movement in interstate commerce of Mexican-origin cattle to the regulations in § 71.18. Paragraph (a) of § 71.18 contains provisions related to the individual identification of certain cattle 2 years of age or older that are to be moved in interstate commerce. There are several categories of cattle that are exempted from the requirements of § 71.18(a), however, that would have to be individually identified under our proposed regulations. We would, therefore, add our proposed regulations in a new § 71.18(b) that would apply only to Mexican-origin cattle.

As part of this proposed amendment, we would need to make changes to the existing text of § 71.18. First, the section heading refers to "certain cattle 2 years of age or over," which applies to the requirements of paragraph (a) of the section. The provisions we are proposing to add, however, make no distinction as to the age of the Mexican-origin cattle, so we would remove the "2 years of age or over" qualification from the section heading.

Second, we would add a proviso to the end of the first sentence of the introductory text of paragraph (a), which explains the applicability of the requirements in § 71.18. The proviso would make it clear that the movement in interstate commerce of any cattle imported into the United States from Mexico must be in accordance with the requirements of paragraph (b) of the section.

Third, there are two places in the text of § 71.18—in the introductory text of paragraph (a) and the introductory text of paragraph (a)(1)—where the words "this section" are used to refer to § 71.18(a). If we add a new paragraph (b) as proposed, the words "this section" would be too general and could blur the distinction between the provisions of paragraph (a) and proposed paragraph (b). We would change "this section" to "this paragraph" to avoid the potential confusion.

Finally, we would move paragraphs (a)(3) and (a)(4) of § 71.18 into a new paragraph (c) because each of those paragraphs contains provisions that we would have apply to our proposed requirements concerning the movement in interstate commerce of Mexican-origin cattle. Paragraph (a)(3) states that the person shipping, transporting, or otherwise causing the movement in interstate commerce of the cattle is responsible for their identification as required by § 71.18. Paragraph (a)(4) prohibits the unauthorized tampering with or removal of any backtag, eartag, brand, or other identification device required to be on the cattle under § 71.18 while the cattle are moved in interstate commerce. By removing those two paragraphs from § 71.18(a) and placing them in a new § 71.18(c), we would make it clear that their provisions would apply to both paragraph (a) and proposed paragraph (b) of § 71.18. As part of this proposed change, we would need to redesignate paragraph (a)(5) as paragraph (a)(3) and change three references in the text of § 71.18(a) accordingly.

Related Rulemaking

In this same issue of the **Federal Register**, we are separately proposing amendments to the regulations ("Importation of Certain Cattle from Mexico; Identification Requirements," Docket No. 93–006–1) which would require all cattle, other than those imported for immediate slaughter or in bond for temporary entry, imported into the United States from Mexico to be M-branded prior to arrival at a U.S. port of entry. This would ensure that even where the official Mexican government blue eartag is missing, these cattle could be identified as being of Mexican origin.

In addition, on September 7, 1993, we published in the **Federal Register** a document titled "Importation of Cattle from Mexico; Identification Requirements" (58 FR 47084–47085, Docket No. 93–063–1). In that document, we proposed to amend the regulations in 9 CFR part 92 to require that all cattle from Mexico be individually identified with an official Mexican Government blue eartag. The Mexican Government's blue eartag is similar to official APHIS eartags and provides unique identification. Based on that proposal, we have included provisions for the use of an official Mexican Government blue eartag in the requirements proposed in this document. If the September 7, 1993, proposal is withdrawn or its provisions are modified when the proposal is finalized, we will adjust the requirements proposed in this document accordingly.

Miscellaneous

In addition to the proposed amendment discussed above, we would also make several nonsubstantive changes for the sake of clarity and accuracy. First, the definition of *designated dipping station* in § 71.1 reads, in part, "A point mutually agreed upon by the Division * * *", which is a reference to the Animal Health Division of the Agricultural Research Service. When the regulatory responsibilities of the Animal Health Division shifted to the Animal and Plant Health Inspection Service (APHIS) in 1972, that reference should have been changed, but it was overlooked. We would remove the word "Division" and replace it with the word "Administrator" so that the definition accurately reflects APHIS' responsibility for this regulatory program.

Second, there is a reference in § 71.3(c)(2) to provisions in § 77.8 concerning the interstate movement of tuberculin reactors, but § 77.8 does not exist. The interstate movement provisions referred to in § 71.3 are actually contained in § 77.5. We would change the reference to read § 77.5.

Third, we would rectify two incorrect paragraph references in the introductory text of § 71.18(a). The first reference is to § 78.9(a)(3)(iv), but there is no such paragraph in § 78.9. We would correct the reference to read § 78.9(a)(3)(ii), which is the proper reference. The second reference is to § 78.9(d)(3)(vii), which was removed by a final rule published in the **Federal Register** on January 18, 1989 (54 FR 1923–1926, Docket No. 88–171). When the

paragraph was removed in that final rule, all references to the paragraph should have been removed as well, but this one was not. We would remove the reference.

Fourth, also in § 71.18, we would correct the paragraph designations used in paragraphs (a)(1)(i), (a)(1)(ii), and (a)(1)(ii). In each of the three paragraphs, italicized lowercase letters are used where normal uppercase letters are needed.

Finally, footnote 1 to § 71.18(a)(1)(i) states, in part, that approved backtags are available from a Veterinary Services representative and that the term *Veterinary Services representative* is defined in § 78.1. However, that definition was removed, and a definition of *APHIS representative* added in its stead, by a final rule published in the **Federal Register** on October 22, 1991 (56 FR 54532–54534, Docket No. 89–150). We would, therefore, correct the footnote to use the current term in both instances.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

We are proposing to require that all Mexican-origin cattle moved in interstate commerce be accompanied by, and individually identified on, a certificate issued by an APHIS representative, State representative, or accredited veterinarian.

Cattle imported from Mexico account for about 1 percent of the total U.S. cattle population, which in 1991 stood at 99.4 million head. The average price per head for cattle from Mexico in 1991 was approximately $350, with the total value of imported Mexican cattle exceeding $361 million for the year. During 1991, approximately 1 million live cattle were imported into the United States from Mexico. Of those cattle, approximately 30 to 40 percent are believed to have been moved in interstate commerce from the border State in which they entered the United States from Mexico. We estimate that the proposed certificate requirement would add about 3 minutes to the time spent preparing each animal for movement and would cost the owner of the cattle approximately $1 per head. which is less than 1 percent of the average per-head cost of $350. The total cost to the industry would be between $310,000 and $410,000, less than 1 percent of the total value of imported Mexican cattle that move in interstate commerce.

We anticipate, therefore, that this proposed rule would have only a minimal economic impact on any U.S. entity.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are in conflict with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule will be submitted for approval to the Office of Management and Budget. Please send written comments to the Office of Information and Regulatory Affairs, OMB, Attention: Desk Officer for APHIS, Washington, DC 20503. Please send a copy of your comments to: (1) Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, and (2) Clearance Officer, OIRM, USDA, room 404–W, 14th Street and Independence Avenue SW., Washington, DC 20250.

List of Subjects in 9 CFR Part 71

Animal diseases, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 9 CFR part 71 would be amended as follows:

PART 71—GENERAL PROVISIONS

1. The authority citation for part 71 would continue to read as follows:

Authority: 21 U.S.C. 111–113, 114a, 114a-1, 115–117, 120–126, 134b, 134f; 7 CFR 2.17, 2.51, and 371.2(d).

§ 71.1 [Amended]

2. In § 71.1, in the definition *Designated dipping station*, the word "Division" would be removed and the word "Administrator" added in its place.

§ 71.3 [Amended]

3. In § 71.3, paragraph (c)(2), the reference "§ 77.8" would be removed and the reference "§ 77.5" would be added in its place.

4. Section 71.18 would be amended as follows:

a. The section heading would be amended by removing the words "2 years of age or over".

b. In the introductory text of paragraph (a), the first sentence would be amended as follows:

i. The reference "78.9(a)(3)(iv)" would be removed and the reference "78.9(a)(3)(ii)" would be added in its place.

ii. The word "and" would be added immediately before the reference "78.9(c)(3)(iv)".

iii. The words ", and 78.9(d)(3)(vii)" would be removed.

iv. The words "this section." would be removed and the words "this paragraph: *Provided*, That the movement in interstate commerce of any cattle that have been imported into the United States from Mexico shall be in accordance with the requirements of paragraph (b) of this section." added in their place.

c. In the introductory text of paragraph (a)(1), the words "this section" would be removed and the words "this paragraph" added in their place.

d. In paragraph (a)(1)(i), footnote 1, the words "Veterinary Services" would be removed both times they appear and the word "APHIS" added in their place.

e. In paragraph (a)(1)(i), the words "(a)(5) of this section" would be removed and the words "(a)(3) of this section" added in their place.

f. Paragraphs (a)(1)(i)(*a*) through (a)(1)(i)(g) would be redesignated as paragraphs (a)(1)(i)(A) through (a)(1)(i)(G).

g. In paragraph (a)(1)(ii), the words "(a)(5) of this section" would be removed and the words "(a)(3) of this section" added in their place.

h. Paragraphs (a)(1)(ii)(*a*) through (a)(1)(ii)(*f*) would be redesignated as paragraphs (a)(1)(ii)(A) through (a)(1)(ii)(F).

i. In paragraph (a)(1)(iii), the words "(a)(5) of this section" would be removed and the words "(a)(3) of this section" added in their place.

j. Paragraphs (a)(1)(iii)(*a*) through (a)(1)(iii)(*g*) would be redesignated as paragraphs (a)(1)(iii)(A) through (a)(1)(iii)(G).

k. Paragraphs (a)(3) and (a)(4) would be redesignated as paragraphs (c)(1) and (c)(2), respectively, and paragraph (a)(5) would be redesignated as paragraph (a)(3).

l. A new paragraph (b) would be added to read as set forth below.

§ 71.18 Individual identification of certain cattle for movement in interstate commerce.

* * * * *

(b) *Identification of Mexican-origin cattle.* (1) Any cattle that have been imported into the United States from Mexico may be moved in interstate commerce from any point to any destination only if:

(i) Each animal is individually identified with an official Mexican Government blue eartag as required by § 92.427(d) of this chapter, or, if the official Mexican Government blue eartag is not present, an official eartag as defined in § 71.1;

(ii) The cattle are accompanied by a certificate, as defined in § 77.1 of this subchapter, issued by an APHIS representative, State representative, or accredited veterinarian in the State of origin; and

(iii) The number on each animal's official Mexican Government blue eartag, or, if the official Mexican government blue eartag is not present, the number on the animal's official eartag, is recorded on the certificate.

(2) The APHIS representative, State representative, or accredited veterinarian who issued the certificate required by paragraph (a)(1) of this section shall, upon completion of the certificate, forward a copy of the certificate to the State animal health official in the State of destination.

(3) Any movement in interstate commerce of any cattle that have been imported into the United States from Mexico shall also comply with the other applicable provisions in this part and other parts of this subchapter.

* * * * *

Done in Washington, DC, this 5th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93-27893 Filed 11-10-93; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 91

[Docket No. 93-106-1]

Ports Designated for the Exportation of Animals

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the "Inspection and Handling of Livestock for Exportation" regulations by adding Dallas/Fort Worth International Airport in Texas to the list of ports designated as ports of embarkation and by designating DFW Quarantine as the export inspection facility, for horses only, for that port. The Dallas/Fort Worth International Airport and DFW Quarantine appear to meet the requirements of the regulations for designation as a port of embarkation and an animal export inspection facility, respectively. We are also proposing to revise the listing for a port of embarkation in Los Angeles, CA, that has changed its name and telephone number. These actions would add a port and an inspection facility through which horses may be processed for export and would update the regulations.

DATES: Consideration will be given only to comments received on or before December 13, 1993.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93-106-1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690-2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: For information concerning the Texas port, contact Dr. Lisa Ferguson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 760, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7511.

For information concerning the California port, contact Dr. Michael David, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 761, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436-7511.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 91, "Inspection and Handling of Livestock for Exportation" (referred to below as the regulations), prescribe conditions for exporting animals from the United States. The regulations state, among other things, that all animals, except animals being exported to Canada or Mexico, must be exported through designated ports of embarkation.

To receive designation as a port of embarkation, a port must have export inspection facilities available for the inspection, holding, feeding, and watering of animals prior to exportation to ensure that the animals meet certain requirements specified in the regulations. To receive approval as an export inspection facility, the regulations provide that a facility must meet specified standards in § 91.14(c) concerning materials, size, inspection implements, cleaning and disinfection, feed and water, access, testing and treatment, location, disposal of animal wastes, lighting, and office and rest room facilities.

It appears that DFW Quarantine, 1010 A Chinn Chapel Road, Lewisville, TX, (214) 317-6861, meets the requirements of § 94.14(c). Lewisville is located approximately 15 miles north of the Dallas/Fort Worth International Airport, so the facility is available to exporters using the airport to export horses. Therefore, we propose to add the Dallas/Fort Worth International Airport to the regulations as a port of embarkation for horses, to be serviced by the DFW Quarantine export facility.

Miscellaneous

The export inspection facility called Steifel Bros. Livestock in Los Angeles, CA, has undergone a name and telephone number change. We propose to change the facility's entry on the list of export inspection facilities to reflect these changes.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled

by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

In 1992, there were over 73,000 horses exported out of the United States. Approximately 60,000 horses (82 percent) were exported to Canada, mostly through northern land border ports, while about 6,000 horses (8 percent) were exported to Western Europe by way of John F. Kennedy Airport in New York. The remaining exports included about 3,700 horses to Latin America, about 3,500 horses to Asia, and a small number of horses to Australia, New Zealand, and Africa. Horses exported to Latin America generally were shipped through Miami, while exports to Asia generally were shipped through Los Angeles.

Although we do not know how many horses might be exported out of the United States through the Dallas/Fort Worth International Airport, we do not expect the number to exceed 5,000 horses annually. Further, we believe that only a few entities would engage in the export of horses from Dallas/Fort Worth and that they all would be small entities, having 100 or fewer employees.

We believe, therefore, that this proposal would have no significant impact on horse exports from the United States. Moreover, we expect any impact to be beneficial, since the proposal would establish an additional, possibly less expensive, port for the export of horses from the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 91

Animal diseases, Animal welfare, Exports, Livestock, Reporting and recordkeeping requirements, Transportation.

Accordingly, we propose to amend 9 CFR part 91 as follows:

PART 91—INSPECTION AND HANDLING OF LIVESTOCK FOR EXPORTATION

1. The authority citation for part 91 would continue to read as follows:

Authority: 21 U.S.C. 105, 112, 113, 114a, 120, 121, 134b, 134f, 612, 613, 614, 618; 46 U.S.C. 466a, 466b; 49 U.S.C. 1509(d); 7 CFR 2.17, 2.51, and 371.2(d).

§ 91.14 [Amended]

2. Section 91.14 would be amended as follows:

a. Paragraph (a)(1)(i)(B) would be revised as set forth below.

b. Paragraphs (a)(14)(ii) through (a)(14)(vi) would be redesignated as (a)(14)(iii) through (a)(14)(vii) and a new paragraph (a)(14)(ii) would be added to read as follows.

§ 91.14 Ports of embarkation and export inspection facilities.

(a) * * *

(1) * * *

(i) * * *

(B) Valley Livestock, 14380 South Euclid Avenue, Chino, CA 91710, (909) 597–1756.

* * * * *

(14) Texas.

* * * * *

(ii) Dallas/Fort Worth International Airport.

(A) DFW Quarantine (horses only), 1010 A Chinn Chapel Road, Lewisville, TX 75067, (214) 317–6861.

* * * * *

Done in Washington, DC, this 5th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–27894 Filed 11–10–93; 8:45 am]

BILLING CODE 3410-34-P

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9 CFR Part 92

[Docket No. 93–006–1]

Importation of Certain Cattle From Mexico; Identification Requirements

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the animal importation regulations to require that spayed heifers and intact cattle imported into the United States from Mexico meet the same M-branding requirements currently applied to certain steers imported from Mexico. This action appears to be necessary in light of the increasing numbers of tuberculosis-infected animals disclosed at slaughter among cattle imported into the United States from Mexico. The proposed M-branding requirement would ensure that, except for limited exceptions, all Mexican-origin cattle are clearly and permanently identified as being of Mexican origin. This proposed requirement would facilitate the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

DATES: Consideration will be given only to comments received on or before January 11, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–006–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. Samuel Richeson, Senior Staff Veterinarian, Import-Export Animals Staff, National Center for Import-Export, VS, APHIS, USDA, room 764, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8170.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 92 (referred to below as the regulations) prohibit or restrict the importation of certain animals into the United States to prevent the introduction of communicable diseases of livestock and poultry. Subpart D—Ruminants, §§ 92.400 through 92.435 of 9 CFR part 92, pertains to the importation of ruminants into the United States. Sections 92.424 through 92.429 of the regulations contain specific provisions regarding the importation of ruminants from Mexico.

Currently, the regulations in § 92.427(c)(2) require that all steers imported into the United States from Mexico, except steers imported for immediate slaughter or imported in bond for feeding and return to Mexico, be branded with the letter "M" prior to arrival at a U.S. port of entry. We are proposing to require that intact cattle (i.e., calves, bulls, and non-spayed female cattle) and spayed heifers also be M-branded in Mexico prior to their importation into the United States.

Each year, an average of 1 million cattle are imported into the United States from Mexico. The vast majority of those cattle—about 99 percent—are young steers, while the remaining 1 percent consists of spayed heifers and intact cattle. The steers and spayed heifers are, with few exceptions, consigned to pastures or feedlots for finishing prior to slaughter, while the intact cattle are mostly integrated into domestic cattle herds for breeding purposes.

In recent years, the number of tuberculosis-compatible cases found among samples submitted from Mexican-origin cattle at slaughter has risen dramatically, from 78 in 1982 to 613 in 1992. The percentage of all tuberculosis slaughter investigations involving Mexican-origin cattle also rose during that time, from 33 percent in 1982 to 81 percent in 1992. Because such a large percentage of the tuberculous animals disclosed at slaughter in 1992 were of Mexican origin, it has become increasingly important that we be able to positively identify all cattle that have been imported from Mexico.

Since 1987, we have required that all steers imported from Mexico, except steers imported for immediate slaughter or imported in bond for feeding and return to Mexico, be branded on the right jaw with the letter "M". Because the M-brand provides a distinct and permanent means of identifying an animal as having originated in Mexico, that requirement has facilitated the disease surveillance and traceback activities that are carried out under the National Cooperative State-Federal Bovine Tuberculosis Eradication Program.

Based on the increase in the number of tuberculosis investigations involving Mexican-origin cattle, we have determined that it is necessary to have a permanent means of identifying spayed heifers and intact cattle for tuberculosis surveillance and traceback purposes. The average amount of time spayed heifers and intact cattle spend in the United States following their importation from Mexico—12 to 24 months for spayed heifers, longer for intact cattle—increases the chances that other means of identification such as eartags could be lost or removed. Therefore, we propose to amend the regulations in § 92.427(c)(2) to require that all cattle imported into the United States from Mexico, except cattle imported for immediate slaughter or imported in bond for feeding and return to Mexico, be branded with the letter "M" prior to arrival at a U.S. port of entry.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule: (1) Would have an effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Cattle imported from Mexico account for about 1 percent of the total U.S. cattle population, which in 1991 stood at 99.4 million head. The average price per head for cattle from Mexico in 1991 was $350, with the total value of imported Mexican cattle exceeding $361 million for the year. During 1991, approximately 1 million live cattle were imported into the United States from Mexico.

We are proposing to require that all spayed heifers and intact cattle imported into the United States from Mexico meet the same M-branding requirements currently applied to steers imported into the United States from Mexico. This would mean that all cattle imported into the United States from Mexico, except cattle imported for immediate slaughter or imported in bond for feeding and return to Mexico, would be branded with the letter "M" prior to arrival at a U.S. port of entry. This proposed requirement is not expected to have an economic impact on any U.S. entities, large or small, because spayed heifers and intact cattle account for less than 1 percent of all cattle imported into the United States from Mexico and because the cost of the brand, which is negligible, would be borne by the Mexican exporter of the cattle.

Therefore, we expect this proposed rule to have no significant economic impact on any large or small entities because its provisions would not significantly increase or decrease their cost of doing business.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

This proposed rule contains no information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 9 CFR Part 92

Animal diseases, Imports, Livestock, Poultry and poultry products, Quarantine, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 92 would be amended as follows:

PART 92—IMPORTATION OF CERTAIN ANIMALS AND POULTRY AND CERTAIN ANIMAL AND POULTRY PRODUCTS; INSPECTION AND OTHER REQUIREMENTS FOR CERTAIN MEANS OF CONVEYANCE AND SHIPPING CONTAINERS THEREON

1. The authority citation for part 92 would continue to read as follows:

Authority: 7 U.S.C. 1622; 19 U.S.C. 1306; 21 U.S.C. 102–105, 111, 114a, 134a, 134b, 134c, 134d, 134f, 135, 136, and 136a; 31 U.S.C. 9701; 7 CFR 2.17, 2.51, and 371.2(d).

§ 92.427 [Amended]

2. In § 92.427, paragraph (c)(2), the first sentence would be amended by removing the words "Each steer" and adding the words "All cattle" in their place and by removing the words "the steer" and adding the words "the animal" in their place, and the second sentence would be amended by removing the words "each steer's" and adding the words "each animal's" in their place.

Done in Washington, DC, this 5th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–27892 Filed 11–10–93; 8:45 am]

BILLING CODE 3410–34–P

NUCLEAR REGULATORY COMMISSION

10 CFR Part 73

RIN 3150–AE81

Protection Against Malevolent Use of Vehicles at Nuclear Power Plants; Correction

AGENCY: Nuclear Regulatory Commission.

ACTION: Proposed rule: Correction.

SUMMARY: This document corrects a proposed rule appearing in the **Federal Register** on November 4, 1993 (58 FR 58804), that would modify the design basis threat for radiological sabotage to include use of a land vehicle by adversaries for transporting personnel, hand-carried equipment, and/or explosives. The action is necessary to correct the reference to the public comment date on page 58805.

FOR FURTHER INFORMATION CONTACT: Priscilla A. Dwyer, Office of Nuclear Material Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC, telephone (301) 504–2478.

On page 58805, under the heading "Public Comment," in the second column, the term "30-day" should read "60-day."

Dated at Rockville, Maryland, this 5th day of November, 1993.

For the Nuclear Regulatory Commission.

John C. Hoyle,

Assistant Secretary of the Commission.

[FR Doc. 93–27803 Filed 11–10–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–125–AD]

Airworthiness Directives; Airbus Industrie Model A310–222 and –324 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Industrie Model A310–222 and –324 series airplanes. This proposal would require inspections and tests to detect missing or damaged 'vespel' bushes on the left- and right-hand wings of the slat system universal joint assemblies; and replacement of the universal joints with new joints, if necessary. This proposal is prompted by a report of loose and migrated 'vespel' bushes and partial cracking within unsupported bush areas found on the slat system universal joint assemblies. The actions specified by the proposed AD are intended to prevent rupture of the universal joints, which could result in a runaway of the affected part of the slat system and, subsequently, could adversely affect the controllability of the airplane.

DATES: Comments must be received by January 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac, Cedex France. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–125–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–125–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Industrie Model A310–222 and –324 series airplanes. The DGAC advises that, during an investigation of sampled in-service airplanes, loose and migrated 'vespel' bushes in forkends and partial

cracking within unsupported bush areas were found on the slat system universal joint assemblies. The cause of these discrepancies is unknown at this time. Damaged 'vespel' bushes can cause worn universal joints to rupture. The rupture of one worn universal joint can induce locking of the wing tip brake, which could result in the rupture of another worn universal joint. If a second worn universal joint ruptures, a runaway of the affected part of the slat system could occur, which could adversely affect the controllability of the airplane.

Airbus Industrie has issued Service Bulletin A310–27–2061, dated November 4, 1992, that describes procedures for repetitive visual inspections and electrical continuity tests to detect missing or damaged 'vespel' bushes on the left- and right-hand wings of the slat system universal joint assemblies. This service bulletin also describes procedures for replacement of the universal joints with new joints. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 92–275–139(B), dated December 23, 1992, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive visual inspections and electrical continuity tests to detect missing or damaged 'vespel' bushes on the left- and right-hand wings of the slat system universal joint assemblies; and replacement of the universal joints with new joints, if necessary. The inspections and tests would be required to continue after replacement of the universal joints. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This is considered to be an interim action until final action is identified, at which time the FAA may consider further rulemaking.

The FAA estimates that 22 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 23 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $27,830, or $1,265 per airplane, per inspection cycle. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours would be minimal in many instances. Additionally, any costs associated with special airplane scheduling would be expected to be minimal.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–125–AD.

Applicability: All Model A310–222 and –324 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent rupture of the universal joints, which could result in a runaway of the affected part of the slat system and, subsequently, could adversely affect the controllability of the airplane, accomplish the following:

(a) Prior to the accumulation of 15,000 total landings, or within 400 flight hours after the effective date of this AD, whichever occurs later, perform a visual inspection and an electrical continuity test to detect missing or damaged 'vespel' bushes on the left- and right-hand wings of the slat system universal joint assemblies, in accordance with Airbus Industrie Service Bulletin A310–27–2061, dated November 4, 1993. Repeat this inspection thereafter at intervals not to exceed 15,000 landings.

(b) If any 'vespel' bushes are missing or damaged, prior to further flight, replace the universal joint with a new joint in accordance with Airbus Industrie Service Bulletin A310–27–2061, dated November 4, 1993. After replacement, continue to repeat the inspection and test required by paragraph (a) of this AD at intervals not to exceed 15,000 landings.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27787 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–SW–19–AD]

Airworthiness Directives; Bell Helicopter Textron, Inc. Model 214ST Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214ST helicopters. This proposal would require creation of a component history record and would establish an alternate retirement life of 50,000 high-power events for the main rotor mast (mast). This proposal is prompted by fatigue analysis and retesting that showed that the mast is sensitive to both high-power events and time-in-service. The actions specified by the proposed AD are intended to prevent fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter.

DATES: Comments must be received by December 27, 1993.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–19–AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Mr. Scott Horn, Aerospace Engineer, Rotorcraft Certification Office, FAA, Southwest Region, Rotorcraft Directorate, Fort Worth, Texas 76193–0170, telephone (817) 624–5177, fax (817) 740–3394.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–SW–19–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–SW–19–AD, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas 76106.

Discussion

This notice proposes the adoption of a new airworthiness directive (AD) that is applicable to Bell Helicopter Textron, Inc. (BHTI) Model 214ST helicopters. This proposal would require creation of a component historical service record and would establish an alternate retirement life of 50,000 high-power events for the main rotor mast (mast), part number (P/N) 214–040–090–109. Currently, the mast has a retirement life of 10,000 hours' time-in-service. Fatigue analysis and retesting by the manufacturer has shown that the mast is sensitive to both high-power events and time-in-service. High-power events are takeoffs and external load lifts. The high-power events may lead to premature initiation of fatigue cracks in the mast. This condition, if not corrected, could result in fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require creation of a component historical service record and would establish a retirement life of 50,000 high-power events or 10,000 hours' time-in-service for the mast, part number (P/N) 214–040–090–109. The proposed AD would require removal and replacement of the mast on or before reaching 50,000 high-power events or 10,000 hours' time-in-service, whichever occurs first.

The FAA estimates that 14 helicopters of U.S. registry would be affected by this proposed AD, that it would take approximately 24 work hours per helicopter to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $21,810 per helicopter. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $323,820 if the mast were replaced on all 14 helicopters.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Bell Helicopter Textron, Inc.: Docket No. 93–SW–19–AD.

Applicability: Model 214ST helicopters, with main rotor mast (mast), part number (P/N) 214–040–090–109 installed, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fatigue failure of the mast, loss of the main rotor system, and subsequent loss of control of the helicopter, accomplish the following:

(a) Within 10 calendar days after the effective date of this airworthiness directive (AD), accomplish the following:

(1) Create a historical service record or component history card for the mast.

(2) Determine and record the total time-in-service accumulated for each mast as follows:

(i) If the time-in-service of the mast is unknown, use a time-in-service of 900 hours per year. Prorate the hours for a partial year.

(ii) If the time-in-service is known, use that total time-in-service.

(3) Determine and record the accumulated takeoffs and external load lifts high-power events for the mast as follows:

(i) If the number of high-power events is unknown, assign 11 high-power events for each hour time-in-service obtained in accordance with paragraph (a)(2).

(ii) If the number of high-power events is known, record that number as total accumulated high-power events.

(b) After compliance with paragraph (a) of this AD, continue to record the time-in-service and high-power events and add the high-power events to the previously recorded sum.

(c) Remove the mast and replace it with an airworthy mast in accordance with the following:

(1) For each mast with 9,900 hours or more total time-in-service on the effective date of this AD, remove and replace the mast within the next 100 hours time-in-service.

(2) For each mast with less than 9,900 hours total time-in-service on the effective date of this AD, remove and replace the mast before it attains 10,000 hours time-in-service.

(3) For each mast with 48,900 or more high-power events on the effective date of this AD, remove and replace the mast on or before the accumulation of an additional 1,100 high-power events.

(4) For each mast with less than 48,900 high-power events on the effective date of this AD, remove and replace the mast before it attains 50,000 high-power events.

(d) This AD revises the Airworthiness Limitations Section of the maintenance manual by establishing an additional retirement life for the mast.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Rotorcraft Certification Office, FAA, Rotorcraft Directorate, Fort Worth, Texas 76193–0170. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Rotorcraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Rotorcraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

Issued in Fort Worth, Texas, on October 5, 1993.

Henry A. Armstrong,

Assistant Directorate Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–27799 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–165–AD]

Airworthiness Directives; Fokker Model F–28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F–28 Mark 0100 series airplanes. This proposal would require the installation of modified Flight Warning Computers and Flight Augmentation Computers. This proposal is prompted by reports of nuisance yaw-damper fault warnings and undetected horizontal trim motion, and the development of improved computers that eliminate these problems. The actions specified by the proposed AD are intended to prevent nuisance warnings in the cockpit and undetected trim motion, both of which could compromise the safe takeoff of the airplane.

DATES: Comments must be received by January 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–165–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–165–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for The Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F–28 Mark 0100 series airplanes. The RLD advises that there have been numerous reports of nuisance yaw-damper fault warnings that have occurred during takeoff. Such fault warnings, under normal circumstances, would serve to alert the flightcrew that the airplane is not in a proper configuration with regard to the yaw-damper for safe flight or takeoff. However, during the takeoff process, the number and frequency of warnings that may sound as the airplane is maneuvered during taxi are such that the flight crew may consider them as "nuisance warnings." Under these circumstances, the flight crew may routinely disregard these warnings, which essentially negates the warning system's purpose. Nuisance warnings can also distract the flight crew from its regular duties during takeoff procedures, and thus serve to compromise the safe takeoff of the airplane.

Additionally, the RLD advises that, during recent ground testing of these airplanes, problems were identified in the stabilizer trim system. The testing revealed that trim motion in the horizontal stabilizer may go undetected by the flight crew. If this were to happen just prior to or during flight, it could compromise the controllability and continuing safe flight of the airplane.

Fokker has developed new modified Fight Warning Computers and Flight Augmentation Computers that have improved monitoring capabilities of the relevant systems, and has issued several service bulletins recommending their installation:

1. Service Bulletin SBF100–31–020, Revision 1, dated June 12, 1993, describes procedures for replacing the Flight Warning Computer (FWC) on certain airplanes with an improved FWC. The replacement FWC provides a trim-in-motion tone, an optional adaptive audio, a new version coding, and modification to include various alerts. The RLD classified the original issue of this service bulletin as mandatory, and issued Netherlands Airworthiness Directive (BLA) 91–057, Issue 3, dated September 13, 1991, in order to assure the continued airworthiness of these airplanes in The Netherlands.

2. Service Bulletin SBF100–22–032, dated September 2, 1991, and Service Bulletin SBF100–22–037, dated May 31, 1993, describe procedures for replacing Flight Augmentation Computers (FAC) on various airplanes with two different improved FAC's. The replacement FAC's provide improved fault isolation, which is attained by the addition of circuitry to allow cross-comparison of more signals than was previously possible. The replacement FAC's also provide improved yaw damper centering, improved stabilizer trim motion ground testing, and trim-in-motion outputs. The RLD classified Service Bulletin SBF100–22–032 as mandatory, and included reference to it in Netherlands Airworthiness Directive (BLA) 91–057, Issue 3, described above. The RLD approved the technical content of Fokker Service Bulletin SBF100–22–037, but has not classified it as mandatory.

The improved FWC and FAC's described in these service bulletins have been installed during production on Model F–28 Mark 0100 series airplanes beginning with serial number 11349.

This airplane model is manufactured in The Netherlands and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacing the FWC and the FAC with improved versions. The actions would be required to be accomplished in accordance with the service bulletins described previously.

The FAA estimates that a total of 27 airplanes of U.S. registry would be affected by the proposed AD.

Installation of the new FWC would require approximately 46 work hours to accomplish, at an average labor charge of $55 per work hour. Required parts would cost approximately $450 per airplane. Based on these figures, the total cost impact of the proposed FWC installation on U.S. operators is estimated to be $2,980 per airplane.

The proposed requirement to replace the FAC would vary, depending upon the configuration of the FAC installed. Additionally, operators would have a choice of two different FAC's to use as replacement installations:

Should an operator elect to install an FAC having part number 622–7478–401MOD11, it would require approximately 1 work hour to accomplish, at an average labor charge of $55 per work hour. Required parts would be provided at no cost to the operator. Based on these figures, the total cost impact of this specific proposed installation requirement on U.S. operators would be $55 per airplane.

Should an operator elect to install an FAC having part number 622–7478–411, it would require approximately 52 work hours to accomplish, at an average labor charge of $55 per work hour. Required parts would cost approximately $2,515 per airplane. Based on these figures, the total cost impact of this specific proposed FAC installation requirement on U.S. operators is estimated to be $5,375 per airplane.

Based on the figures discussed above, the total cost impact of this proposed AD on U.S. operators would be between $3,005 and $8,355 per airplane, or between $81,135 and $225,585 for the entire U.S. fleet. These total cost figures assume that no operator has yet accomplished any of the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–165–AD.

Applicability: Model F–28 Mark 0100 series airplanes; serial numbers 11244 through 11348, inclusive; equipped with Flight Warning Computer, P/N 80–0610–2–( ); or equipped with Flight Augmentation Computer, part number (P/N) 622–7478–321 or P/N 622–7478–401; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent nuisance yaw-damper fault warnings and undetected trim motion, accomplish the following:

(a) For airplanes having serial numbers 11244 through 11321 inclusive, 11323 through 11329 inclusive, 11331, and 11333; and equipped with Flight Warning Computer (FWC) P/N 80–0610–2–( ): Within one year after the effective date of this AD, remove the currently installed FWC, modify the airplane, and install FWC P/N 80–0610–3–30, in accordance with Fokker Service Bulletin SBF100–31–020, Revision 1, dated June 12, 1993.

Note 1: Installation accomplished prior to the effective date of this AD in accordance with Fokker Service Bulletin SBF100–31–020, dated May 24, 1991, is considered to be in compliance with this paragraph.

(b) For airplanes having serial numbers 11244 through 11339 inclusive, 11341, and 11342; and equipped with Flight Augmentation Computer (FAC) P/N 622–7478–321: At the same time as, or prior to further flight after, accomplishing the requirements of paragraph (a) of this AD, remove the currently installed FAC and replace it with either of the following:

(1) FAC P/N 622–7478–401MOD11, in accordance with Fokker Service Bulletin SBF100–22–032, dated September 2, 1991; or

(2) FAC P/N 622–7478–411, in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993. Equipment combinations listed in that service bulletin must be adhered to.

(c) For airplanes having serial numbers 11244 through 11348 inclusive, and equipped with FAC P/N 622–7478–401: Within one year after the effective date of this AD, remove the currently installed FAC and replace it with either of the following:

(1) FAC P/N 622–7478–401MOD11, in accordance with Fokker Service Bulletin SBF100–22–032, dated September 2, 1991; or

(2) FAC P/N 622–7478–411, in accordance with Fokker Service Bulletin SBF100–22–037, dated May 31, 1993. Equipment combinations listed in that service bulletin must be adhered to.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27785 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–147–AD]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes. This proposal would require replacement of the flight control computers (FCC) with new, improved FCC's; and removal of certain limitations from the Airplane Flight Manual (AFM), if necessary. This proposal is prompted by reports that, during a level change descent with auto throttles engaged and manual flight, airplanes inadvertently have approached near minimum speeds. The actions specified by the proposed AD are intended to prevent inadvertent loss of airspeed during a level change descent.

DATES: Comments must be received by January 13, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–147–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the

FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–147–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, recently notified the FAA that an unsafe condition may exist on certain Fokker Model F28 Mark 0100 series airplanes. The RLD advises that reports have been received from operators of these airplanes indicating that, during a level change descent and manual flight, the airplanes inadvertently have approached near minimum speeds. A subsequent design review, conducted by Fokker and Collins [the manufacturer of the flight control computers (FCC) installed on these airplanes], indicated that, during a level change descent with auto throttles engaged and when the flight crew elected not to follow the flight director guidance, the autoflight FCC caused the engine thrust to remain at idle, although a higher thrust level was actually needed to maintain a safe aircraft speed. This condition, if not corrected, could result in inadvertent loss of airspeed during a level change descent.

Fokker has issued Service Bulletin SBF100–22–029, dated January 6, 1992, that describes procedures for replacement of the FCC's with new, improved FCC's that are not subject to the addressed problems. The RLD classified this service bulletin as mandatory and issued Netherlands Airworthiness Directive BLA 92–016, dated January 24, 1992, in order to assure the continued airworthiness of these airplanes in the Netherlands. The Netherlands Airworthiness Directive also includes procedures for removing two limitations from the Limitations Section of the Airplane Flight Manual (AFM) once the new FCC is installed; these limitations relate to restrictions on the use of the FCC and the flight director.

This airplane model is manufactured in the Netherlands and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the RLD has kept the FAA informed of the situation described above. The FAA has examined the findings of the RLD, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the FCC's with new, improved FCC's. The replacement would be required to be accomplished in accordance with the service bulletin described previously.

This proposed AD would also require, upon replacement of the FCC's, the removal of two limitations from the Limitations Section of the FAA-approved AFM, if those limitations are currently present in the AFM.

The FAA estimates that 39 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 16 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $460 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $52,260, or $1,340 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Fokker: Docket 93–NM–147–AD.

Applicability: Model F28 Mark 0100 series airplanes, serial numbers 11244 through 11364 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent inadvertent loss of airspeed during a level change descent, accomplish the following:

(a) Within 60 days after the effective date of this AD, replace any flight control computer (FCC) having part number (P/N) 622–7476–321, P/N 622–7476–331, or P/N 622–7476–401, with a new, improved FCC having P/N 622–7476–402, in accordance with Fokker Service Bulletin SBF100–22–029, dated January 6, 1992.

(b) Prior to further flight after accomplishment of paragraph (a) of this AD, the following limitations, if present, must be removed from the Limitations Section of the FAA-approved Airplane Flight Manual (AFM), section 2.08.01.

(1) "Flight Director

Manual Flight with Flight Director ON.

For accurate speed control and adequate speed protection the FD pitch commands must be followed when flying manually. In case the FD commands are not followed, switch both FD's to FPV or OFF."

(2) "*Non-precision Approach*

Do not use LVLCH descent mode below 2000 ft AGL. With PROF engaged, do not lower the FMP altitude below the initial approach or missed approach altitude."

(c) As of the effective date of this AD, no person shall install any FCC having P/N 622–7476–321, P/N 622–7476–331, or P/N 622–7476–401 on any airplane.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 5, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27786 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

November 5, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Notice of change of informal conference date.

SUMMARY: The Federal Energy Regulatory Commission informal conference scheduled for Tuesday, November 16, 1993, (58 FR 58817, Nov. 4, 1993) has been rescheduled to Wednesday, November 17, 1993. The purpose of the conference is to review the progress of the industry Working Groups on Electronic Bulletin Boards since the Commission's Notice of Proposed Rule Making in this docket and to discuss the revised capacity release data sets filed by Working Groups 1 and 2.

DATES: Wednesday, November 17, 1993, beginning at 10 a.m.

ADDRESSES: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200 or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

Change of Informal Conference Date

November 5, 1993.

Take notice that the informal conference previously scheduled for Tuesday, November 16, 1993, has been rescheduled for Wednesday, November 17, 1993, due to scheduling conflicts . The purpose of the conference is to review the progress of the Electronic Bulletin Board Working Groups since the Commission's Notice of Proposed Rule Making in this docket and to discuss the revised capacity release data sets filed by Working Groups 1 and 2.

The conference will begin at 10 a.m. on November 17, 1993. It will be held at: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street, NE., Washington, DC 20426.

All interested persons are invited to attend. For additional information contact Marvin Rosenberg at (202) 208–1283 or Brooks Carter at (202) 208–0666.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27837 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–M

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Part 357

[Department of the Treasury Circular, Public Debt Series, No. 2–86]

Regulations Governing Book-Entry Treasury Bonds, Notes, and Bills

AGENCY: Fiscal Service, Treasury.

ACTION: Proposed rule; withdrawal.

SUMMARY: This notice withdraws Treasury's request for comments on the proposed rule to govern Treasury bonds, notes and bills ("securities") held in the commercial book-entry system, also known as the Treasury/Reserve Automated Debt Entry System, or TRADES, last published in the **Federal Register** on April 2, 1992 (57 FR 12244). Treasury has determined that it is no longer appropriate to solicit comments on the rule as currently proposed, given the progress that has occurred in the project to revise Article 8 of the Uniform Commercial Code ("U.C.C.").

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, or Cynthia Reese, Deputy Chief Counsel, on (202) 219–3320.

SUPPLEMENTARY INFORMATION: Treasury has published for comment proposed rules to govern Treasury marketable securities held in the commercial book-entry system, or "TRADES" (see 51 FR 8846; 51 FR 43027; 57 FR 12244).

The comment period on the last proposed version of the rule expires on November 30, 1993 (see 58 FR 9134). It had been twice extended, in response to requests from various groups and market participants, to allow for consideration of issues being examined by the National Conference of Commissioners on Uniform State Laws ("NCCUSL") Drafting Committee to Revise Uniform Commercial Code, Article 8. The granting of these extensions was consistent with Treasury's view that it would be desirable to permit commenters to take into account the rules being developed for Article 8 in providing comments on TRADES.

While the effort to revise U.C.C. Article 8 has not yet reached finality, at this time it appears likely that when completed, the revision will represent a fundamental change from the existing Article 8 rules. Since the proposed TRADES regulations are based to a great extent on the principles of the existing Article 8 rules, it does not appear beneficial to request comments on the TRADES regulations currently proposed for comment. Rather, it would be more productive for interested parties, and of greater benefit to Treasury, for potential commenters to concentrate on completing an acceptable Article 8 revision.

Treasury remains committed to promulgating revised book-entry regulations that will result, to the extent possible, in having the same law apply to United States securities as applies to other book-entry securities. It is anticipated that a new proposed rule

will be issued for public comment at a reasonably early date, one that will take into account the product produced by the Article 8 revision process.

Dated: November 5, 1993.

Donald V. Hammond,

Acting Commissioner of the Public Debt.

[FR Doc. 93–27789 Filed 11–10–93; 8:45 am]

BILLING CODE 4160–35–M

Bureau of Engraving and Printing

31 CFR Part 601

[Notice No. 1]

Distinctive Paper for United States Currency and Other Securities

AGENCY: Bureau of Engraving and Printing (BEP), Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: Bureau of Engraving and Printing is proposing to amend the provisions of Distinctive Paper for United States Currency and Other Securities regulations, to reflect the adoption of a new distinctive paper adopted for use by the Secretary of the Treasury to deter counterfeiting.

DATES: Written comments must be received on or before December 13, 1993.

ADDRESSES: Send written comments to: Manager, Management Advisory Services Division, Office of Management Services, Bureau of Engraving and Printing, room 321–11A, 14th and C Streets, SW., Washington, DC 20228, ATTN: Notice No. 2. Comments may also be submitted by facsimile transmission to (202) 874–3529.

FOR FURTHER INFORMATION CONTACT: Rodolfo Roberts, Office of Management Services, Bureau of Engraving and Printing, room 321–9A, 14th and C Streets, SW., Washington, DC 20228, (202) 874–3551.

SUPPLEMENTARY INFORMATION: 80 Stat. 379, 39 Stat. 277, as amended; and Title 5 U.S.C. 301, 31 U.S.C. 5114 give the Secretary of the Treasury the authority of law to adopt a new distinctive paper for use in printing United States currency and other interest-bearing securities of the United States. The proposed changes would:

(1) Amend § 601.1 to reflect the existence of two kinds (threaded and non-threaded) of distinctive papers for printing United States currency and the use of the non-threaded one for printing interest-bearing securities of the United States.

(2) Amend § 601.2 to reflect a description of the new threaded distinctive paper.

(3) Amend § 601.3 to indicate that the distinctive paper currently in use will continue to be used.

(4) Amend § 601.4 to provide that the existing distinctive paper will continue to be used for printing interest-bearing securities of the United States.

(5) Section 601.5 remains the same.

(6) Delete § 601.6 in its entirety.

Public Participation—Written Comments

BEP requests comments from all interested persons. Comments received on or before the closing date will be carefully considered. Comments received after that date will be given the same consideration if it is practical to do so. However, assurance of consideration can only be given to comments received on or before the closing date.

Comments may be submitted by facsimile transmission to (202) 874–3529, provided the comments: (1) Are legible; (2) are on 8½" × 11" paper; (3) contain a written signature, and (4) are less than three pages in length. Receipt of facsimile transmissions will not be acknowledged. Facsimile transmitted documents will be treated as originals.

Regulatory Flexibility Act

It is hereby certified that this document will not have a significant economic impact on a substantial number of small entities. Accordingly, a regulatory flexibility analysis is not required because the proposal, if promulgated as a final rule, is not expected (1) to have secondary, or incidental effects on a substantial number of small entities; or (2) to impose, or otherwise cause a significant increase in the reporting, recordkeeping or other compliance burdens on a substantial number of small entities.

Executive Order 12291

It has been determined that this document is not a major regulation as defined in E.O. 12291 and regulatory impact analysis is not required because it will not have an annual effect on the economy of $100 million or more; it will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies or geographical regions; and it will not have significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

The provisions of the Paperwork Reduction Act of 1980, Public Law 96–511, 44 U.S.C. chapter 35, and its implementing regulations, 5 CFR part 1320, do not apply to this notice because no requirement to collect information is proposed.

Disclosure

Copies of this notice and any written comments will be available upon request from the Disclosure Officer, Bureau of Engraving and Printing, Room 321–12A, 14th and C Streets, SW., Washington, DC 20228.

Drafting Information

The principal author of this document is Rodolfo Roberts, Office of Management Services, Bureau of Engraving and Printing.

List of Subjects in 31 CFR Part 601

Currency, Securities, Printing.

Authority and Issuance

31 CFR part 601 is revised to read as follows:

PART 601—DISTINCTIVE PAPER FOR UNITED STATES CURRENCY AND OTHER SECURITIES

Sec.

601.1 Notice to the public.
601.2 Description of paper.
601.3 Use of paper.
601.4 Use of paper; interest-bearing securities of the United States.
601.5 Penalty for unauthorized control or possession.

Authority: 5 U.S.C. 301; 31 U.S.C. 418; 18 U.S.C. 474.

§ 601.1 Notice to the public.

Notice is hereby given that the Secretary of the Treasury, by authority of law has adopted a new distinctive paper for use in printing United States currency in addition to the existing distinctive paper for use in printing United States currency and other securities.

601.2 Description of paper.

The paper utilized in the printing of United States currency and public debt issues is cream-white bank note paper which must contain security features prescribed by the Secretary of the Treasury. All currency paper shall contain distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout. In addition to distinctive red and blue fibers, currency paper shall contain, for denominations prescribed by the Secretary of the Treasury,

security threads embedded beneath the surface of the paper during the manufacturing process. Security threads shall contain graphics consisting of the designation "USA" and the denomination of the currency, expressed in alphabetic or numeric characters.

§ 601.3 Use of paper.

The new distinctive paper shall be used for printing Federal Reserve Notes of the denominations prescribed by the Secretary of the Treasury. The use of the existing distinctive paper, the distinctive feature of which consists of distinctive fibers, colored red and blue, incorporated in the body of the paper while in the process of manufacture and evenly distributed throughout, will be continued for printing of any currency denomination prescribed by the Secretary of the Treasury.

601.4 Use of paper; interest-bearing securities of the United States.

The existing distinctive paper shall be used for the printing of interest-bearing securities of the United States, and for any other printing where the use of distinctive paper is indicated.

§ 601.5 Penalty for unauthorized control or possession.

The Secretary of the Treasury hereby gives notice that the new distinctive paper, together with any other distinctive paper heretofore adopted for the printing of paper currency or other obligations or securities of the United States is and will be subject to the provisions of section 18 U.S.C. 474 which provides, in part, that it is against the law to possess any paper, or facsimile thereof, designated by the Secretary of the Treasury for the printing of U.S. currency or any other security of the United States, except with the permission of the Secretary or other authorized official. This crime is punishable by a fine not to exceed five thousand dollars or imprisonment for not more than fifteen years, or both.

Peter H. Daly,

Director.

George Muñoz,

Assistant Secretary-Designate Management.

[FR Doc. 93-27836 Filed 11-10-93; 8:45 am]

BILLING CODE 4846-01-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 165

[CGD07-93-011]

Regulated Navigation Area; Hillsborough Channel Cut D, Hillsborough Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a one way traffic pattern in the Hillsborough Channel, Cut D, Hillsborough Bay. This regulated navigation area is needed to protect vessels with a draft of greater than 39 feet from a safety hazard associated with shoaling within the marked channel.

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office, 155 Columbia Drive, Tampa, FL 33606. The comments and other materials referenced in this notice will be available for inspection and copying at 155 Columbia Drive, Tampa, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.E. Hurst, Coast Guard Marine Safety Office, Tampa, FL at (813) 228-2189.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (07-93-011) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Chief Marine Science Technician W.L. Morse, project officer, Marine Safety Office Tampa, and Lieutenant J.M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

This regulation is proposed to protect vessels that are restricted to the channel because of their draft, specifically those vessels with a draft of 39 feet or greater. Due to the shoaling within this marked channel, the Coast Guard is proposing that, whenever a vessel with a draft of 39 feet or greater is transiting this regulated area, only one way traffic will be permitted in the channel.

Economic Assessment and Certification

These proposed regulations are considered to be not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the fact that the instances requiring one-way traffic are infrequent in nature and of brief duration.

Since the impact of this action is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The U.S. Coast Guard, the lead Federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a Categorical Exclusion in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations.

A "Categorical Exclusion" is prepared when neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterway .

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.0711 is added to read as follows:

§ 165.0711 Hillsborough Cut D Channel, Tampa Bay, FL—regulated navigation area.

(a) The following is a regulated navigation area: waters within the boundaries of a line beginning at 27–55′–02″ N, 082–26′–38″ W; thence to 27–55′–00″ N, 082–26′–42″ W; thence to 27–54′–42″ N, 082–26′–31″ W; thence to 27–54′–43″ N, 082–26′–26″ W; and, thence to the beginning point.

(b) A vessel which requires use of the channel due to its draft shall not meet or overtake a vessel with a draft of 39 feet or greater within the regulated area.

(c) A vessel with a draft of 39 feet or greater must make a security broadcast ½ hour prior to entering the regulated area.

Dated: September 30, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–27843 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD07–93–010]

Regulated Navigation Area; Mullet Key Channel, Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a proposal to establish a one way traffic pattern in the Mullet Key Channel, Tampa Bay, around an area ½ mile east of Mullet Key Channel lighted buoy 19 and lighted bell buoy 20. This regulated navigation area is needed to protect vessels with a draft of greater than 38 feet from a safety hazard associated with shoaling within the marked channel.

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office, 155 Columbia Drive, Tampa, FL 33606. The comments and other materials referenced in this notice will be available for inspection and copying at 155 Columbia Drive, Tampa, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.E. Hurst, Coast Guard Marine Safety Office, Tampa, FL at (813) 228–2189.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD07–93–010) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Chief Marine Science Technician W.L. Morse, project officer, Marine Safety Office Tampa, and Lieutenant J.M. Losego, project attorney, Coast Guard District Legal Office.

Discussion of Proposed Regulations

This regulation is proposed to protect vessels that are restricted to the channel because of their draft, specifically those vessels with a draft of 38 feet or greater. Due to the shoaling within this marked channel, the Coast Guard is proposing that, whenever a vessel with a draft of 38 feet or greater is transiting this regulated area, only one way traffic will be permitted in the channel.

Economic Assessment and Certification

These proposed regulations are considered to be not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the fact that the instances requiring one-way traffic are infrequent in nature and of brief duration.

Since the impact of this action is expected to be minimal, the Coast guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The U.S. Coast Guard, the lead Federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a Categorical Exclusion in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a federal agency in implementing NEPA regulations.

A "Categorical Exclusion" is prepared when neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.0710 is added to read as follows:

§ 165.0710 Mullet Key Channel, Tampa Bay, FL—regulated navigation area.

(a) The following is a regulated navigation area: waters within the boundaries of a line beginning at 27–36–24N, 082–43–33W; thence to 27–36–20N, 082–44–00W; thence to 27–36–15N, 082–43–59W; thence to 27–36–18N, 082–43–32W; and, thence to the beginning point.

(b) A vessel which requires use of the channel due to its draft shall not meet or overtake a vessel with a draft of 38 feet or greater within the regulated area.

(c) A vessel with a draft of 38 feet or greater must make a security broadcast ½ hour prior to entering the regulated area.

Dated: September 30, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–27844 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD07–93–009]

Regulated Navigation Area; Egmont Channel, Tampa Bay, FL

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rule making.

SUMMARY: The Coast Guard is considering a proposal to establish a one way traffic pattern in the Egmont Channel, Tampa Bay, from Egmont Channel lighted whistle buoy 9 and lighted buoy 10 through Egmont Channel lighted whistle buoy 13 and lighted buoy 14. This regulated navigation area is needed to protect vessels with a draft of greater than 36 feet from a safety hazard associated with shoaling within the marked channel.

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments should be mailed to U.S. Coast Guard Marine Safety Office, 155 Columbia Drive, Tampa, FL 33606. The comments and other materials referenced in this notice will be available for inspection and copying at 155 Columbia Drive, Tampa, FL. Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT: Lieutenant J.E. Hurst, Coast Guard Marine Safety Office, Tampa, FL at (813) 228–2189.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this rulemaking by submitting written views, data or arguments. Persons submitting comments should include their names and addresses, identify this notice (CGD07–93–009) and the specific section of the proposal to which their comments apply, and give reasons for each comment.

The regulations may be changed in light of comments received. All comments received before the expiration of the comment period will be considered before final action is taken on this proposal. No public hearing is planned; however, one may be held if written requests for a hearing are received, and it is determined that the opportunity to make oral presentations will aid the rulemaking process.

Drafting Information

The drafters of this notice are Chief Marine Science Technician W.L. Morse, project officer, Marine Safety Office Tampa, and Lieutenant J.M. Losego, project attorney, Seventh Coast Guard District Legal Office.

Discussion of Proposed Regulations

This regulation is proposed to protect vessels that are restricted to the Channel because of their draft, specifically those vessels with a draft of 36 feet or greater. Due to shoaling within this marked channel, the Coast Guard is proposing that, whenever a vessel with a draft of 36 feet or greater is transiting this regulated area, only one-way traffic will be permitted in the channel.

Economic Assessment and Certification

These proposed regulations are considered to be not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. This is based on the fact that the instances requiring one-way traffic are infrequent in nature and of brief duration.

Since the impact of this action is expected to be minimal, the Coast Guard certifies that, if adopted, it will not have a significant economic impact on a substantial number of small entities.

Environmental Impact

The U.S. Coast Guard, the lead federal agency for purposes of the National Environmental Policy Act (NEPA), intends to prepare a Categorical Exclusion in accordance with its own NEPA implementing procedures. "Categorical Exclusion" means a category of actions which do not individually or cumulatively have a significant effect on the human environment and which have been found to have no such effect in procedures adopted by a Federal agency in implementing NEPA regulations.

A "Categorical Exclusion" is prepared when neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 33 CFR Part 165

Harbors, Marine safety, Navigation (water) Reporting and recordkeeping requirements, Security measures, Waterways.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 165 of title 33, Code of Federal Regulations as follows:

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. Section 165.0709 is added to read as follows:

§ 165.0709 Egmont Channel, Tampa Bay, FL—regulated navigation area.

(a) The following is a regulated navigation area: Waters within the boundaries of a line beginning at 27–36–37N, 082–48–43W; thence to 27–36–15N, 082–52–10W; thence to 27–36–07N, 082–52–10W; thence to 27–36–30N, 082–48–42W; and, thence to the beginning point.

(b) A vessel which requires use of the channel due to its draft shall not meet or overtake a vessel with a draft of 36 feet or greater within the regulated area.

(c) A vessel with a draft of 36 feet or greater must make a security broadcast ½ hour prior to entering the regulated area.

Dated: September 30, 1993.

William P. Leahy,

Rear Admiral, U.S. Coast Guard, Commander, Seventh Coast Guard District.

[FR Doc. 93–27845 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 268

[FRL–4800–6]

Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soil

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice to extend comment period.

SUMMARY: On September 14, 1993, EPA published a proposed rulemaking entitled "Land Disposal Restrictions for Newly Identified and Listed Hazardous Wastes and Hazardous Soil" (58 FR 48092). The comment period for the proposal is scheduled to end on November 15, 1993. Since the publication of the proposal, EPA has received requests to extend the comment period. The commenters expressed certain concerns and questions regarding the relationship of these proposed regulations with another Resource Conservation and Recovery Act (RCRA) rulemaking initiative, known as the Hazardous Waste Identification Rule (HWIR) for contaminated media.

Upon consideration of these comments and requests, EPA has decided to extend the comment period for those provisions of the September 14, 1993 proposal that relate to HWIR for contaminated media. This notice therefore extends to March 15, 1994 the comment period for the proposed hazardous soil standards and the contained-in provisions. The close of the comment period for the other parts of the rulemaking remains November 15, 1993.

DATES: Comments and data for the proposed hazardous soil standards and

the contained-in provisions must be submitted on or before March 15, 1994.

ADDRESSES: The public must send an original and two copies of their written comments to EPA RCRA Docket (mail code 5305), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Place the Docket Number F–92–CS2P-FFFFF on your comments. The RCRA Docket is located in room 2616 at the above address, and is open from 9 am to 4 pm Monday through Friday, except for Federal holidays. The public must make an appointment to review docket materials by calling (202) 260–9327. The public may copy a maximum of 100 pages from any regulatory document at no cost. Additional copies cost $.15 per page.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA Hotline at (800) 424–9346 (toll-free) or (703) 412–9810 locally. For information on this comment period extension, contact Sherri Stevens in the Waste Treatment Branch, Office of Solid Waste (mail code 5302–W), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (703) 308–8467. For technical information on soil treatment standards, contact the Waste Treatment Branch at the address above, (703) 308–8434. For technical information on the soil capacity analyses, contact the Capacity Programs Branch at the address above, (703) 308–8440. For technical information regarding the Hazardous Waste Identification Rule for contaminated media, contact Carolyn Loomis at (703) 308–8626.

SUPPLEMENTARY INFORMATION:

I. The Phase II Proposed Rule

On September 14, 1993, EPA proposed treatment standards under the Land Disposal Restrictions (LDR) program for certain newly listed wastes, as well as to modify some existing treatment standards. EPA proposed treatment standards for the newly identified organic toxicity characteristic wastes (except those managed in Clean Water Act (CWA) systems, CWA-equivalent zero discharge systems, or Class I Safe Drinking Water Act (SDWA) injection wells), as well as treatment standards for coke by-product and chlorotoluene production wastes. In addition, in order to comply with a proposed consent decree with the Environmental Defense Fund, and a settlement agreement with the Hazardous Waste Treatment Council and the Natural Resource Defense Council, EPA proposed to require ignitable characteristic wastes with high total organic carbon (TOC) content, and toxicity characteristic pesticide wastes, that are being disposed in Class I injection wells, to either be injected into a well that is subject to a no-migration determination, or be treated to meet the LDR treatment standards prior to injection. Furthermore, EPA proposed several revisions to previously promulgated treatment standards and requirements in order to simplify land disposal restriction rules, including setting "universal treatment standards." Finally, EPA proposed alternative treatment standards for soil contaminated with prohibited hazardous wastes that would encourage use of noncombustion treatment technologies in treating such hazardous soil, and proposed to codify the RCRA "contained-in" policy as it applies to soils and other contaminated media. These alternative soil treatment standards and the "contained-in" provisions are the subject of today's extension of the comment period.

II. Today's Action

EPA has received several requests to extend the comment period for portions of the September 14 proposal. The commenters, in particular, were concerned about the relationship between the LDR proposal and approaches being developed as part of the HWIR discussions. Those discussions are intended ultimately to lead to amended rules for contaminated media.

EPA has been developing HWIR regulations through a public dialogue involving EPA, the States, industry, public interest groups and other potentially affected persons. This dialogue has led to a potential conceptual framework for regulating the management of contaminated media (e.g., hazardous soils) generated during cleanup.

In commenting to the Agency on the September 14, 1993 LDR proposal, several parties that have participated in the HWIR initiative observed that the LDR hazardous soil and contained-in approaches address a number of issues under discussion as part of the HWIR dialogue. The commenters further suggested that, because there are a number of related issues that remain unresolved in the HWIR contaminated media discussions, the Agency should extend the comment period for the proposed LDR hazardous soils and contained-in approaches to allow for the most full and open discussion of these issues. Some commenters also maintained that they could not both prepare timely comments on the issues related to contaminated soils in the LDR proposal and participate in HWIR discussions.

EPA agrees with these commenters that an extension of the comment period is warranted, and accordingly in today's notice extends the comment period by four months for those portions of the September 14, 1993 proposal pertaining to the alternative treatment standards for hazardous soils and to the codification of the contained-in policy (see Section VII of the September 14, 1993 proposed rule, 58 FR 48122). Such an extension should simplify discussion of the HWIR rule during the extended comment period. Furthermore, the comments received during the extended comment period are expected to provide better information for the Agency and others to consider in making decisions as to how the HWIR rule for contaminated media should be drafted, and how LDR standards for soils and the proposed approach to the contained-in policy relate to HWIR contaminated media requirements. In the event that an alternative framework for regulating the management of hazardous soils has not been developed by the Phase II settlement agreement date, (i.e., July 31, 1994), then the LDR treatment standards developed for the Phase II wastes will also apply to soils that contain these wastes, as has been the case in previous LDR rulemakings.

Dated: November 8, 1993.

Elliott P. Laws,

Assistant Administrator for Solid Waste and Emergency Response.

[FR Doc. 93–27994 Filed 11–10–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 15 and 90

[ET Docket No. 93–235; DA 93–1318]

Cordless Telephones

AGENCY: Federal Communications Commission.

ACTION: Order extending time for comments and reply comments.

SUMMARY: The order grants a request by the American Petroleum Institute (API) for an extension of time to filing comments in the above-captioned proceeding (58 FR 51299, October 1, 1993). The Commission is taking this action to provide API additional opportunity to reach a consensus on the proposals set forth by the Commission.

DATES: Comments must be submitted on or before December 8, 1993, and reply

comments on or before December 23, 1993.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: George Harenberg, Office of Engineering and Technology, (202) 653–7314.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Comments and Reply Comments

In the matter of: Amendment of Parts 15 and 90 of the Commission's Rules to Provide Additional Frequencies for Cordless Telephones.

Adopted: November 3, 1993.

Released: November 5, 1993.

Comment Date: December 8, 1993.

Reply Comment Date: December 23, 1993.

By the Office of Engineering and Technology:

1. On October 18, 1993, the American Petroleum Institute (API) requested that the time for filing comments to the Notice of Proposed Rule Making (NPRM) in the above-captioned proceeding be extended from November 8, 1993 to December 8, 1993 and that the reply comment date be extended from November 23, 1993 to December 23, 1993.

2. In its request, API indicates that a 30 day extension of the comment periods would facilitate a full discussion of the issues at API's Telecommunications Committee meeting on November 17–19, 1993, and would allow finalization of API's comments, which it believes are essential for the development of a full record in this proceeding.

3. The Commission does not routinely grant extensions of time.[1] In this instance, however, we believe that extending the comment deadline by 30 days will serve the public interest by providing the petroleum and natural gas industry additional opportunity to reach a consensus on the proposals set forth in the NPRM and would result in an improved record being submitted to the Commission. We also believe it is in the public interest to extend the reply comment deadline correspondingly. Accordingly, it is ordered that, The deadline for filing comments is extended to December 8, 1993, and the deadline for filing reply comments is extended to December 23, 1993.

4. This action is taken pursuant to authority found in sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to §§ 0.31, 0.241, and 1.46. For further information, contact George Harenberg, Office of Engineering and Technology, (202) 653–7314.

Federal Communications Commission.

Bruce A. Franca,

Acting Chief Engineer.

[FR Doc. 93–27802 Filed 11–10–93; 8:45 am]

BILLING CODE 6712–01–M

[1] 47 CFR 1.46 (1991).

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 14

RIN 1018–AC07

Conferring Designated Port Status on Boston, Massachusetts, for Importation/Exportation of Fish and Wildlife

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service proposes to confer designated port status on Boston, Massachusetts pursuant to section 9(f) of the Endangered Species Act of 1973. Designated port status would allow the direct importation and exportation of fish and wildlife, including parts and products, through Boston, Massachusetts, a growing international port. Under this proposed rule, Boston, Massachusetts would be added to the list of Customs ports of entry designated for the importation and exportation of wildlife.

DATES: Comments must be submitted on or before January 11, 1994.

A public hearing on this proposal will be held on December 8, 1993, from 9 a.m. to 12 noon.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington, VA 22203–3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, room 500, Arlington, VA between the hours of 8 a.m. and 4 p.m., Monday through Friday.

The public hearing on this proposal will be held in the Massachusetts Port Authority, Maritime Department, Fish Pier East II, Northern Avenue, Boston, MA 02210.

FOR FURTHER INFORMATION CONTACT: Special Agent Frank S. Shoemaker, Jr., at the second address in the ADDRESSES, (703) 358–1949, or Special Agent Albert Eugene Hester, Assistant Regional Director, U.S. Fish and Wildlife Service, P.O. Box 779, Hadley, MA 01035–0779, (413) 253–8340.

SUPPLEMENTARY INFORMATION:

Background

Designated ports are the cornerstones of the process by which the U.S. Fish and Wildlife Service regulates the importation and exportation of wildlife in the United States. With limited exceptions, all fish and wildlife must be imported and exported through such ports as required by section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f). The Secretary of the Interior is responsible for designating these ports by regulation, with the approval of the Secretary of the Treasury after notice and the opportunity for public hearing.

On January 4, 1974, the Service promulgated final rules designating eight Customs ports of entry for the importation and exportation of wildlife (39 FR 1158). A ninth port was added on September 1, 1981, when final rules were published naming Dallas/Fort Worth, Texas a designated port (46 FR 43834). A tenth port was added on March 15, 1990, when final rules were published naming Portland, Oregon a designated port (55 FR 9730). An eleventh port was added on May 20, 1992, when final rules were published naming Baltimore, Maryland as a designated port (57 FR 21355).

Need for Proposed Rulemaking

Containerized air and ocean cargo has become the paramount means by which both live wildlife and wildlife products are transported into and out of the United States. The use of containerized cargo by the airline and shipping industries has compounded the problems encounted by the Service and by wildlife importers and exporters in the Boston area. In many instances, foreign suppliers will containerize entire shipments and route them directly to Boston. If, upon arrival, the shipment contains any wildlife, those items must be shipped under Customs bond to a designated port for clearance. In most cases, this has involved shipping wildlife products to New York, New York, the nearest designated port, but reshipment has been both time consuming and expensive.

Boston area importers and exporters have attempted in an effort to alleviate such problems to direct entire shipments, even though they may contain only a small number of wildlife items, to a designated port prior to their arrival at Boston. This method of shipment meets the current regulatory

requirements of the Service; however, it is again time consuming and entails additional expense. It is also contrary to the increasing tendency of foreign suppliers to ship consignments directly to regional ports such as Boston. In addition, time is a key element when transporting live wildlife and perishable wildlife products. Without designated port status, businesses in Boston cannot import and export wildlife products directly, and consequently they are unable to compete economically with merchants in other international trading centers located in designated ports.

With airborne and maritime shipments into and out of Boston steadily increasing, the Service has concluded that the port should be designated for wildlife imports and exports. Conferring this status on Boston would serve not only the interests of businesses in the region, but would also facilitate the mission of the Service.

Notice of Public Hearing

Section 9(f) of the Endangered Species Act of 1973, 16 U.S.C. 1538(f)(1), requires that the public be given an opportunity to comment at a public hearing prior to the Secretary of the Interior conferring designated port status on any port.

Accordingly, the Service has scheduled a public hearing for December 8, 1993, from 9 a.m. to 12 Noon. The hearing will be held in the Massachusetts Port Authority, Maritime Department, Fish Pier East II, Northern Avenue, Boston, Massachusetts 02210, (617) 973–5354. All interested persons wishing to present oral or written testimony at this *hearing must advise the Service in writing by* December 1, 1993. All such requests must be submitted in writing to: Assistant Regional Director, U.S. Fish and Wildlife Service, P.O. Box 779, Hadley, Massachusetts 01035–0779, (413) 253–8340). Two (2) copies of the testimony should be submitted with each request.

Required Determinations

Note: This rule has been reviewed under Executive Order 12866. The Department of the Interior has determined that this proposed rule will not have a significant effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*). It has no potential takings implications for private property as defined in the Executive Order 12630. The only effect of this rule will be to make it easier for businesses to import and export wildlife directly through Boston, Massachusetts. This proposed rules does not contain any information collection requirements which require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3501 *et. seq.* These proposed changes in the regulations in Part 14 are regulatory and enforcement actions which are covered by a categorical exclusion from National Environmental Policy Act procedures under 516 DM 2, Appendix 1, sections 1.4 and 1.5.

Author

The originator of this proposed rule is Paul McGowan, Law Enforcement Specialist, Division of Law Enforcement, U.S. Fish and Wildlife Service, Washington, DC.

List of Subjects in 50 CFR Part 14

Exports, Fish, Imports, Labeling, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

For the reasons set out in the preamble, title 50, chapter I, subchapter B of the Code of Federal Regulations is proposed to be amended as set forth below.

PART 14—IMPORTATION, EXPORTATION, AND TRANSPORTATION OF WILDLIFE

1. The authority citation for part 14 is revised to read as follows:

Authority: 16 U.S.C. 704, 712, 1382, 1538 (d)-(f), 1540 (f), 3371–3378, 4223–4244, and 4901–4916; 18 U.S.C. 42; 31 U.S.C. 483(a).

2. Section 14.12 is amended by removing the word "and" at the end of paragraph (j), by removing the period at the end of paragraph (k) and adding in its place "; and ", and by adding new paragraph (1) to read as follows:

§ 14.12 Designated ports.

* * * * *

(1) Boston, Massachusetts.

Dated: September 15, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–27410 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–55–M

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50 CFR Part 17

RIN: 1018–AB91

Endangered and Threatened Wildlife and Plants; Determining Critical Habitat for the Colorado River Endangered Fishes—Razorback Sucker, Colorado Squawfish, Humpback Chub, and Bonytail Chub; Document Availability, Notice of Public Hearings, and Notice of Public Comment Period

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability, notice of public hearings, and notice of public comment period.

SUMMARY: The Fish and Wildlife Service (Service) published a proposed rule on January 29, 1993 (58 FR 6578), to designate critical habitat for four species of endangered fishes—razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). The Service has completed biological and economic analyses of this proposed critical habitat designation and announces the availability of the Biological Support, Economic Analysis, and Overview Documents. These three documents summarize major components and issues associated with the critical habitat designation for the four fishes. The Service is holding eight public hearings from November 29, 1993, to December 3, 1993, to receive comments on the contents of these documents and any other aspect of critical habitat designation for the fishes. These public hearings will be held in Arizona, California, Colorado, Nevada, New Mexico, Utah, and Wyoming. In addition, a public comment period that has been in effect since September 15, 1993, will extend to January 11, 1994 to allow the Service time to complete its determinations and to issue a final rule.

DATES: The original comment period was January 29 through April 15, 1993. The comment period was extended until further notice on September 15, 1993. The comment period will remain open until January 11, 1994. Eight public hearings are scheduled November 29 to December 3, 1993.

ADDRESSES: Comments and materials concerning the Service's proposal to designate critical habitat for the four species of fishes should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104–5110. Comments and material received will be available for public inspection, by appointment during normal business hours, at the above address.

FOR FURTHER INFORMATION CONTACT: Robert D. Williams, Assistant Field Supervisor, at the above address, telephone 801/975–3630.

SUPPLEMENTARY INFORMATION:

Background

On January 29, 1993, the Fish and Wildlife Service (Service) published a proposed rule (58 FR 6578) to designate critical habitat for four Colorado River

fishes that are currently listed as endangered species under the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*)—razorback sucker (*Xyrauchen texanus*), Colorado squawfish (*Ptychocheilus lucius*), humpback chub (*Gila cypha*), and bonytail chub (*Gila elegans*). The rule proposed amendment of 50 CFR 17.95, the section of the regulations that delineates critical habitat, and included maps and descriptions of the areas proposed as critical habitat for each of the four species. As part of the critical habitat designation process, the Service has held public hearings, received written and verbal comments on the proposed designation, and now has completed biological and economic analyses. The Service also has prepared three documents—a Biological Support Document, an Economic Analysis, and an Overview Document.

The Service announces the availability of these documents, notifying the public that it will furnish the Overview Document to all persons on its list of interested parties. The Overview Document reiterates the proposed critical habitat designation and provides additional information as follows:

1. A summary of the Biological Support Document;
2. A summary of the Economic Analysis;
3. Discussion about the relationship of critical habitat designation to other provisions of the Act;
4. The exclusion process overview; and
5. A summary of public comments and Service response.

The Service continues the public comment period on the critical habitat designation for an additional 60-day time period in order to receive comments pertaining to the above documents. Any comments that have not already been provided should be provided during the comment period. Comments and other materials, as appropriate, may be sent to the above address, but they must be received no later than January 11, 1994.

The Service also announces that public hearings will be held in every State located in the Colorado River basin to provide interested parties an opportunity to make their views known on these documents and on any other aspect of the critical habitat designation. Eight public hearings will be held from 4 p.m. to 8 p.m. as follows—(1) November 29, 1993, in the Hilton Hotel, 150 West 500 South, Salt Lake City, Utah; (2) November 29, 1993, in the Clark County Commission Chambers, 225 Bridger Avenue, Las Vegas, Nevada; (3) November 30, 1993, in the Holiday Inn, 204 West Fox Farm Road, Cheyenne, Wyoming; (4) November 30, 1993, in the Cobra Valley Country Club, State Road 88, Apache Trail, Globe, Arizona; (5) December 1, 1993, in the Hilton Hotel, 743 Horizon Drive, Grand Junction, Colorado; (6) in the Sinagua High School Auditorium, 3950 East Butler, Flagstaff, Arizona; (7) December 2, 1993, in the Best Western Inn, 700 Scott Avenue, Farmington, New Mexico; and (8) December 3, 1993, in the Feldheym Library, 555 West 6th Street, San Bernardino, California. Verbal comments will be accepted at the hearings, but the Service requests that interested parties that are unable to attend the hearings or that wish to provide additional information may submit written comments to the above address during the open public comment period. Written and verbal comments will receive equal consideration.

Pursuant to § 4(b)(2) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*), economic and other relevant impacts that result from critical habitat designation must be evaluated. After this evaluation, an area may be excluded if it is determined that the economic or other benefits of exclusion outweigh the conservation benefits of specifying such an area as part of the critical habitat, unless the failure to designate such an area as critical habitat will result in the extinction of the species concerned. The Service has done biological and economic analyses of the critical habitat designation, and areas proposed for designation will be evaluated to determine whether an area or areas may be excluded. A summary of the exclusion process has been provided in the Overview Document. This exclusion process will review the areas that have been proposed as critical habitat and determine whether any area or areas, if any, should be excluded from the critical habitat designation. The Service solicits public comments on the criteria for exclusion determinations, the benefits of exclusion or inclusion of any area, and information related to whether the exclusion of a particular area would result in the extinction of any of the four species of fishes. Information and recommendations also are requested on economic criteria for use in the exclusion determination, benefits associated excluding areas as critical habitat, and benefits of including proposed areas as critical habitat.

Author

The author of this notice is Harold M. Tyus, U.S. Fish and Wildlife Service, Denver Regional Office, P.O. Box 25486, Denver Federal Center, Denver, Colorado 80225.

Authority

Authority for this action is the Endangered Species Act of 1973 (16 U.S.C. 1531 *et seq.*).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Dated: November 1, 1993

John L. Spinks, Jr.

Acting Regional Director.

[FR Doc. 93–27911 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–65–F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 672 and 675

[Docket No. 930955–3255; I.D. 092493C]

Groundfish of the Gulf of Alaska; Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments.

SUMMARY: NMFS proposes regulations that would prohibit the retention of groundfish caught with nontraditional gear types in the exclusive economic zone off Alaska. The intended effect of this action is to prevent fishing with non-traditional gear from causing fishing ground preemption and gear conflicts, undermining prohibited species bycatch measures while amounts of groundfish total allowable catch (TAC) are available, and affecting prohibited species bycatch mortality.

DATES: Comments must be received by 4:30 p.m., Alaska local time, December 13, 1993.

ADDRESSES: Comments may be sent to Ronald Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (Attn: Lori Gravel). Copies of the environmental assessment/regulatory impact review (EA/RIR) may be obtained from the same address.

FOR FURTHER INFORMATION CONTACT:

Ellen R. Varosi, Fisheries Management Division, Alaska Region, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION:

Background

Fishing for groundfish by U.S. vessels in the exclusive economic zone of the Gulf of Alaska (GOA) and the Bering Sea and Aleutian Islands (BSAI) is managed by the Secretary of Commerce according to the Fishery Management Plan (FMP) for Groundfish of the GOA and the FMP for the Groundfish Fishery of the BSAI. The FMPs were prepared by the North Pacific Fishery Management Council (Council) under the Magnuson Fishery Conservation and Management Act (16 U.S.C. 1801, *et seq.*) (Magnuson Act), and are implemented by regulations governing the U.S. groundfish fisheries at 50 CFR parts 672 and 675. General regulations that also pertain to U.S. fisheries are codified at 50 CFR part 620.

This action proposes to amend §§ 672.7 and 675.7 of the regulations to prohibit the retention of groundfish caught with other than authorized fishing gear types. Authorized fishing gear would be defined at §§ 672.2 and 675.2 as all currently defined traditional fishing gear types listed under §§ 672.2 and 675.2.

The harvest of groundfish using fishing gear types not currently defined in the regulations has recently generated interest due to: (1) Strong groundfish markets; (2) shortened seasons for other groundfish gear types; and (3) economic or stock declines in traditional crab and salmon fisheries. This interest has led to a Council recommendation to prohibit the retention of groundfish caught with unauthorized fishing gear types and an Alaska State Board of Fisheries decision to prohibit the use of sunken gill net gear for groundfish in waters of the State of Alaska.

Traditional gear types used to fish for groundfish are defined in regulations at §§ 672.2 and 675.2. These definitions describe fishing gear types currently used in the groundfish fisheries off Alaska. These traditional gear types are hook-and-line, jig, longline, longline pot, non-pelagic, non-trawl, pelagic trawl, pot-and-line, and trawl gear. However, the definition of Trawl is inconsistent between §§ 672.2 and 675.2. NMFS proposes to revise the BSAI regulations by adopting the definition published in the GOA regulations. NMFS also proposes to add the § 675.2 definition of Non-trawl to the GOA regulations. NMFS proposes to add a definition for Authorized fishing gear. That definition would list all traditional fishing gear types currently defined in the regulations as authorized fishing gear. The revised and added definitions are proposed to provide consistency between the GOA and BSAI regulations.

Small amounts of groundfish are harvested off Alaska with fishing gear types that are undefined in §§ 672.2 and 675.2 (non-traditional fishing gear). The reported amount of groundfish harvested during 1992 with non-traditional fishing gear was 320 metric tons (mt). This amount is minimal compared to the total 1992 groundfish harvest off Alaska, which totaled 2,214,206 mt. The potential exists for increased use of non-traditional fishing gear types, as indicated by recent industry interest. This has raised conservation and management concerns among NMFS and the Alaska Board of Fisheries. At its September 22–28, 1992, meeting, the Council requested that an analysis be prepared on alternatives developed to address these concerns. A draft EA/RIR was reviewed by the Council at its April 21–23, 1993, meeting. After considering public comment and testimony on the analysis, the Council recommended that a regulatory amendment be implemented that would prohibit the retention of groundfish taken with non-traditional fishing gear types. Similar concerns were addressed by the Alaska Board of Fisheries, which took action to prohibit the use of sunken gillnet gear for groundfish in all areas of the State of Alaska during its November 8–10, 1992, meeting.

Fishing with non-traditional fishing gear types poses several conservation and management concerns: (1) Additional fishing effort using non-traditional fishing gear types in the overcapitalized groundfish fisheries could aggravate fishing grounds preemption and gear conflicts; (2) prohibited species bycatch management measures imposing gear-specific closures when specific bycatch limits are reached would be undermined to the extent that non-traditional gear may be used to continue to fish for groundfish while amounts of groundfish TAC are available; and (3) fishing with non-traditional gear types has unknown effects on prohibited species bycatch mortality and on the biological and physical environment.

Competition has steadily increased for groundfish quotas and associated prohibited species bycatch limits, resulting in prohibited species bycatch allowances being reached more quickly, and in earlier closures for specified gear types. Interest in fishing groundfish with nontraditional fishing gear types has increased accordingly. Concerns exist that additional fishing effort using non-traditional fishing gear types in the overcapitalized groundfish fisheries would aggravate grounds preemption and gear conflict problems within the groundfish fisheries and undermine the intent of defined gear type closures to limit bycatch mortality of prohibited species.

Prohibited species bycatch management measures have been developed specifically for traditional fishing gear types that close gear-specific fisheries when specified bycatch limits are reached. These measures are intended to limit further bycatch amounts of prohibited species after established bycatch limits have been reached. However, they are undermined to the extent that non-traditional gear types may be used to continue to fish for groundfish while amounts of TAC specified for groundfish remaining available. This activity results in additional bycatch mortality of prohibited species and a consequent thwarting of the existing bycatch management measures. One exception to the prohibition of retention is proposed by this action. That exception is for groundfish incidentally taken by pot gear by vessels participating in an open crab season governed by the State of Alaska. Incidental take of groundfish by vessels participating in the crab fisheries generally is unavoidable and the groundfish taken are often used as a source of bait on board these vessels. This use of groundfish reduces waste of groundfish unavoidably taken in the crab fisheries and should be allowed to continue. Under the proposed exception, groundfish may only be retained by vessels using crab pots if the groundfish are used as unprocessed bait on board the vessel.

Additional issues include concerns about the unknown effects that non-traditional fishing gear types may have on prohibited species bycatch mortality and on the biological and physical environment. These concerns were not assessed under current management regimes. Under this proposed rule, new gear types for fishing for groundfish could be developed under experimental fishing permits as provided in §§ 672.6 and 675.6. Under an experimental fishing permit, fishing efficiency, bycatch mortality rates, and the effects on the biological and physical environment could be assessed. Fishing gear types assessed under this process could be subsequently authorized to fish for groundfish under future regulatory amendments.

Classification

The Assistant Administrator for Fisheries, NOAA (AA), has initially determined that this rule is necessary for the conservation and management of the groundfish fisheries off Alaska and is consistent with the Magnuson Act and other applicable laws.

The Alaska Region, NMFS, prepared an EA for this rule that describes the impact on the environment as a result of this rule. A copy of the EA may be obtained (see **ADDRESSES**).

The proposed rule, if adopted, is not likely to result in an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities. The socioeconomic impacts of this rule are discussed in the EA/RIR prepared by the Alaska Region (see **ADDRESSES**).

The General Counsel of the Department of Commerce certified to the Small Business Administration that this proposed rule, if adopted, would not have a significant economic effect on a substantial number of small entities. In 1992, approximately 2,000 catcher vessels landed groundfish from the GOA and BSAI. Fewer than 20 vessel used undefined gear types to harvest groundfish. This represents less than 1 percent of the catcher vessel fleet. Therefore, this proposed regulation would not impact a substantial number of small entities. As a result, a regulatory flexibility analysis was not prepared.

This rule does not include a collection-of-information requirement subject to the Paperwork Reduction Act.

NMFS has determined that this rule, if adopted, will be implemented in a manner that is consistent to the maximum extent practicable with the approved coastal management program of the State of Alaska. This determination has been submitted for review by the responsible State agency under section 307 of the Coastal Zone Management Act.

The Regional Director determined that fishing activities conducted under this rule would not affect endangered and threatened species under the Endangered Species Act (ESA). Specifically, the Regional Director determined that fishing activities conducted under this action would not affect Steller sea lions in a way that was not already considered in the informal section 7 consultation on the final 1993 initial groundfish specifications that was concluded on January 27, 1993. The Regional Director also determined that fishing activities conducted under this action would not affect listed, proposed, and candidate seabirds under the ESA in a way that was not already considered in the informal section 7 consultation for the final 1993 initial groundfish specifications dated February 1, 1993, and clarified on February 12, 1993. Finally, the Regional Director determined that fishing activities conducted under this action would not affect listed species of Pacific salmon in a way that was not already considered in the informal section 7 consultation on the final 1993 initial groundfish specifications that was concluded on April 21, 1993. NMFS has determined that no further consultation, pursuant to section 7 of the ESA, is required for adoption of this rule.

The Regional Director determined that fishing activities conducted under this rule would adversely impact marine mammals.

This proposed rule does not contain policies with federalism implications sufficient to warrant preparation of the federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Parts 672 and 675

Fisheries, Reporting and recordkeeping requirements.

Dated: November 5, 1993.

Nancy Foster,

Deputy Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR parts 672 and 675 are proposed to be amended as follows:

PART 672—GROUNDFISH OF THE GULF OF ALASKA

1. The authority citation for 50 CFR part 672 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

2. In § 672.2, the definition for *Trawl* is revised and definitions for *Authorized fishing gear* and *Non-trawl* are added in alphabetical order to read as follows:

§ 672.2 Definitions.

* * * * *

Authorized fishing gear means hook-and-line, jig, longline, longline pot, non-pelagic trawl, non-trawl, pelagic trawl, pot-and-line, and trawl gear.

* * * * *

Non-trawl means hook-and-line, jig, longline and pot-and-line gear.

* * * * *

Trawl means a conical-shaped net that is towed through the water for catching fish. This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

* * * * *

3. In § 672.7, paragraph (n) is added to read as follows:

§ 672.7 General prohibitions.

* * * * *

(n) Retain groundfish taken with other than *Authorized fishing gear* as defined at § 672.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab season governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

PART 675—GROUNDFISH FISHERY OF THE BERING SEA AND ALEUTIAN ISLANDS AREA

4. The authority citation for 50 CFR part 675 continues to read as follows:

Authority: 16 U.S.C. 1801, *et seq.*

5. In § 675.2, the definition for *Trawl* is revised and the definition for *Authorized fishing gear* is added, in alphabetical order, as follows:

§ 675.2 Definitions.

* * * * *

Authorized fishing gear means hook-and-line, jig, longline, longline pot, non-pelagic trawl, non-trawl, pelagic trawl, pot-and-line, and trawl gear.

* * * * *

Trawl means a conical-shaped net that is towed through the water for catching fish. This definition includes, but is not limited to, Danish and Scottish seines and otter trawls.

* * * * *

6. In § 675.7, paragraph (o) is added to read as follows:

§ 675.7 General prohibitions.

* * * * *

(o) Retain groundfish taken with other than *Authorized fishing gear* defined at § 675.2, except that groundfish incidentally taken by pot gear by a vessel while participating in an open crab governed by the State of Alaska may be retained for use as unprocessed bait on board that vessel.

[FR Doc. 93–27744 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 217
Friday, November 12, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 5, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Administration Building, Washington, DC 20250, (202) 690–2118.

Extension

- Agricultural Cooperative Service

Agricultural Cooperative Service Questionnaire: Market Potential for New cooperatives (Buyer Survey for New Cooperative Activity)
On occasion
Businesses or other for-profit; Small businesses or organizations; 105 responses; 53 hours
Gerald E. Ely, (202) 720–3350

- Federal Crop Insurance Corporation

Application for Assignment of Indemnity—Transfer of Right to An Indemnity—Claim for Cotton Indemnity
FCI–20, FCI–21, and FCI–74–B
On occasion
Individuals or households; Farms; 60,000 responses; 30,000 hours
Bonnie L. Hart, (202) 254–8393

New Collection

- Animal and Plant Health Inspection Service

Federal Plant Pest and Noxious Weed Regulations—Addendum 1 PPQ Form 519
On occasion
Individuals or households; State or local governments; Businesses or other for-profit; Federal agencies or employees; 3,746 responses; 312 hours
Dr. Ronald B. Caffey, (301) 436–7633

- Food Safety and Inspection Service

Application and Permit for Importation of Undernatured Inedible Meat Product
FSIS Form 9540–4
Recordkeeping; On occasion
Businesses or other for-profit; 60 responses; 3 hours
Lee Purcelli, (202) 720–7163

Larry K. Roberson,
Deputy Department Clearance Officer.

[FR Doc. 93–27888 Filed 11–10–93; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Red Lodge Mountain Ski Area Master Plan; Custer National Forest, Carbon County, MT

AGENCY: Forest Service, USDA.
ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The USDA, Forest Service, will prepare an environmental impact statement (EIS) to disclose the environmental effects of further ski area development at Red Lodge Mountain, west of Red Lodge, Montana. The lands involved include portions of the Beartooth Ranger District, Custer National Forest.

DATE: Written comments concerning the scope of the analysis must be received by December 27, 1993, or as listed in information mailed to the public.

ADDRESSES: Written comments concerning the analysis should be sent to District Ranger, Custer National Forest, Beartooth Ranger District, Rt. 2 Box 3420, Red Lodge, Montana 59068.

FOR FURTHER INFORMATION CONTACT: Questions about the proposed action and EIS should be directed to Linda Ward-Williams, District Ranger, Beartooth Ranger District. Phone (406) 446–2103.

SUPPLEMENTARY INFORMATION: The Custer National Forest received a master plan proposal from Red Lodge Mountain Inc. that details six phases of ski area development spanning a ten year period. Following a completeness review conducted by the Forest Service, the proposal was accepted. The Custer National Forest now intends to develop an EIS for the Red Lodge Mountain ski area master development plan and associated permit.

The proposed 200 page master development plan can be read, by appointment, at the Beartooth District Office, Rt. 2 Box 3420, Red Lodge, Montana and the Custer National Forest Supervisor's Office, 2602 First Avenue North, Billings, Montana.

Over the last decade, regional, end-destination, ski resort complexes have experienced growth in visitation and market share while local ski areas have experienced declines. During this same period, Red Lodge Mountain has experienced flat visitation growth and a declining market share. The proposed action is intended to transition Red Lodge Mountain into a regional, end-destination ski area resort. Achieving this objective will help meet current and future demand for alpine and nordic skiing on the Beartooth Ranger District of the Custer National Forest.

Improvements will be oriented toward enhancing the quality and safety of skiing experiences for all public users, diversifying the local tourism based economy while introducing summer recreation opportunities, and enhancing Red Lodge Mountain's market position.

The proposed master development plan is composed of numerous individual projects, all designed to achieve the objectives stated above. The Forest Service proposed action includes:

1. All projects and scheduling in the master development plan. The plan is conceptual, which refers to the general philosophy or ability of the plan to meet the purpose and need objectives. The plan details the need for, and reasoning behind, the type and location of components such as snowmaking, trails, and lifts; the relative order actions are scheduled to begin and end

construction; and an assessment on the effects of these activities on the comfortable carrying capacity.

2. Individual site specific actions in phases 1, 2, and 3. These are the actions that can be reasonably constructed within five years and are ripe for a site specific decision. Actions in phases 4, 5, and 6 are not proposed for site specific analysis at this time, because they can not reasonably be constructed in the first five years and, therefore, are not ripe for a site-specific decision.

3. Reissuance of a permit to Red Lodge Mountain Inc which would authorize the occupancy and use of National Forest System lands. The permit would supersede the existing permit, span 40 years, and apply terms and conditions for occupancy and use.

The decisions to be made are:

1. Approve or deny, in part or whole, a ski area master development plan.

2. Approve or deny, in part or whole, for implementation, individual development actions. Authorization by permit would allow Red Lodge Mountain Inc. to begin approved actions. Denial could either preclude implementation of these actions and/or defer the decision and project implementation to a later date.

3. Re-Issue or deny a term permit to Red Lodge Mountain Inc. Permit issuance would authorize Red Lodge Mountain Inc. to occupy and use National Forest System lands for a term of 40 years and would specify the terms and conditions for such occupancy and use. The permit would assure that development is implemented and monitored according to the schedule outlined in the approved master development plan. Denial would maintain Red Lodge Mountain's existing permit terms and conditions.

Lands in the area of the analysis include portions of the following Townships and Ranges: T7S, R18E; T7S, R19E; and T7S, R20E. The analysis area boundary will vary depending on the geographic scope of the environmental issues. Currently, there are approximately 2,088 acres of land within the ski area development boundary, including about 800 acres private property owned by Red Lodge Mountain. The area of decision will include National Forest System Lands only.

This analysis will tier to the Custer National Forest Land and Resources Management Plan, EIS, and Record of Decision (1987), as amended. The scope of the analysis will be confined to issues associated with the proposed action. Aspects of the proposed action or alternatives to be developed may require amendments to Forest Plan direction or standards. This analysis will consider potential amendments and their effects.

Federal, state, and local agencies, potential developers, and other individuals or organizations interested in or affected by the decision are invited to participate in the scoping process. Input to identify issues and alternatives to be addressed in this analysis will be gathered from the public through mailing of scoping information to all known interested publics.

Based on comments made by the public on past proposals the following list of preliminary environmental issues has been identified. This list will be confirmed or modified based on further input from the public. What will be the effects of ski area development on:

1. Water Quality in Willow and Coal Creek watersheds including riparian areas?

2. Water Quantity in Willow and Coal Creek watersheds including water yield and minimum flow?

3. Wildlife and Fish habitats including threatened, endangered, or sensitive wildlife and plant species; Management Indicator Species; and Game species?

4. The community of Red Lodge and surrounding Carbon County including effects to the sense of place, traffic (safety, smell, and noise) and housing?

5. The economy of Red Lodge and surrounding Carbon County?

6. Visual resources as seen from Red Lodge, Luther area, Highway 212, and Billings?

7. Heritage resources?

8. Air Quality including the Absaroka-Beartooth Wilderness and the city of Red Lodge and surrounding area?

9. Roadless areas (Burnt Mountain)?

10. Absaroka-Beartooth Wilderness (Management Area I)?

11. Recommended wilderness (Management Area H) and congressionally proposed wilderness?

12. The ability of the Forest Service to manage wildfire and prescribed fire surrounding the ski area?

Alternatives to be considered in this analysis depend on the final list of environmental issues. The following is a list of preliminary alternatives:

1. Maintain operations under existing development plan signed in 1973 and existing permit signed in 1975 with no additional site-specific project development approved (NO ACTION).

2. Conceptually approve master development plan. Issue 40-year term permit. Approve for immediate implementation site-specific projects in phases 1–3 (PROPOSED ACTION).

3. Conceptually approve a master development plan that modifies the types, locations, and scheduling of development actions. Issue 40-year term permit. Approve, with differing site locations or project mitigation, selected projects for immediate site-specific implementation.

RELEASE OF DRAFT AND FINAL EIS: The draft environmental impact statement (DEIS) is expected to be filed with the Environmental Protection Agency (EPA) and available for public review on March 1, 1994. At that time, the EPA will publish a Notice of Availability of the Draft EIS in the **Federal Register**. The comment period on the Draft EIS will be 45 days from the date the EPA's notice of availability appears in the **Federal Register**. It is very important that those interested in management of the Red Lodge Mountain participate at this time. To be most helpful, comments on the draft EIS should be as site-specific as possible. The final EIS is scheduled to be completed by June 1, 1994.

The Forest Services believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 553 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering tentative issues and proposed alternatives it is helpful if comments are as specific as possible. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

I am the responsible official for this decision and EIS. My address is Custer National Forest, 2602 First Avenue

North, P.O. Box 2556, Billings, Montana 59103.

Dated: October 29, 1993.

Stephen J. Solem,

Acting Forest Supervisor.

[FR Doc. 93–27777 Filed 11–10–93; 8:45 am]

BILLING CODE 3410–11–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 2116–01]

Decision and Order

In the Matter of: Andrew Pietkiewicz ul. Choragwii Pancernej 15 PL 02–951 Warsaw, Poland, Respondent.

On June 19, 1992, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), issued a Charging Letter against Andrew Pietkiewicz (Pietkiewicz) [1] alleging that Pietkiewicz violated the provisions of § 787.1(b) of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations), issued pursuant to the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401–2420 (1991, Supp. 1993, and Public Law 103–10, March 27, 1993)) (the Act), in that Pietkiewicz failed to pay any portion of the $25,000 civil penalty imposed against him by an August 17, 1990 Order entered by then-Under Secretary for Export Administration Dennis Kloske in settlement of an administrative proceeding initiated against Pietkiewicz for violations of the Act and the Regulations.

Pietkiewicz filed an answer to the Charging Letter. After the answer was filed, the Department and Pietkiewicz entered into a Consent Agreement pursuant to § 788.17(a) of the Regulations, whereby they agreed to settle the matter (1) by amending the August 17, 1990 Order to provide for a modified payment schedule for payment of the $25,000 civil penalty due under the provisions of that Order and (2) by denying Pietkiewicz's export privileges for five years, with the denial period being suspended in its entirety.

The Administrative Law Judge has recommended that I approve the terms of the Consent Agreement and I approve those terms.

Therefore, it is ordered:

1. The Order of August 17, 1990 is amended to provide for the following modified payment schedule: payment of the civil penalty due under the terms of the August 17, 1990 Order, $25,000, shall be made in 50 equal monthly payments of $500 each, with the first such monthly payment being due on November 1, 1993. Each succeeding monthly payment shall be due on the first day of the following 49 months. Payment shall be made in the manner specified in the attached instructions.

2. Pietkiewicz and all of his successors, assigns, officers, representatives, agents, and employees, are, for a period of five years from the date of entry of this Order, hereby denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (1) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization, or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

(a) Pursuant to § 788.17(b) of the Regulations, the denial period is hereby suspended, in its entirety, for a period of five years from the date of entry of this Order and shall thereafter be waived, provided that, during the period of suspension, Pietkiewicz commits no violation of the Act or any regulation, order or license issued under the Act.

(b) The suspension of the denial period is specifically contingent upon, *inter alia*, the timely payment of the civil penalty due under the August 17, 1990 Order in accordance with the modified payment schedule as set forth in paragraph 1. above. If Pietkiewicz fails or refuses to make, in a timely manner, any of the monthly payments set forth herein, I will immediately issue an order reinstating the denial period.

3. The Charging Letter and the Consent Agreement shall be made available to the public. A copy of this Order shall be served upon Pietkiewicz and published in the **Federal Register**.

This constitutes the final agency action in this matter.

Dated: November 4, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

[FR Doc. 93–27872 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–DT–M

[1] The original action against Pietkiewicz was brought against him individually, and doing business as American Advanced Technologies, International Advanced Technologies, and Aero Space Technologies, Inc. Pietkiewicz has informed the Department that all of his former businesses have been dissolved. Accordingly, the names of those businesses have been deleted from the caption in this matter.

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Tagged Groundish Research Program.

Agency Form Number: None.

OMB Approval Number: None.

Type of Request: Collection in use without OMB approval.

Burden: 299 hours.

Number of Respondents: 1,000 (several responses per respondent).

Avg Hours Per Response: 5 minutes.

Needs and Uses: Tagging groundfish for subsequent tracking and recovery is an important tool for managing fishery resources. Persons that recover tags are asked to provide basic information, which is compared to the original tagging information. Scientists from Japan, Canada, and Alaska then use the information to determine the population size and rates of migration.

Affected Public: Individuals, state or local governments, Federal agencies or employees, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to

Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 5, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–27874 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–CW–F

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1994 Annual Demographic Survey – Supplement to the Current Population Survey.

Form Number(s): CPS–580, CPS–580(SP), CPS–676, CPS–676(SP), CPS–676(A), CPS–665, CPS–1.

Agency Approval Number: 0607–0354.

Type of Request: Reinstatement of a previously approved collection for which approval has been expired.

Burden: 24,250 hours.

Number of Respondents: 60,000.

Avg Hours Per Response: 24 minutes.

Needs and Uses: The Bureau of the Census conducts the Annual Demographic Survey (ADS) every year in March as a supplement to the Current Population Survey (CPS). The Bureau of the Census, the Bureau of Labor Statistics, and the Department of Health and Human Services sponsor this supplement. In the ADS, we collect information in the areas of work experience, migration, personal income and noncash benefits, household noncash benefits, and race. The Bureau of Labor Statistics and the Department of Health and Human Services use data gathered in the ADS to determine the official Government poverty statistics.

Affected Public: Individuals or households.

Frequency: Annually.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW, Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 8, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–27870 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–07–F

Bureau of Export Administration

[Docket No. 2114–01]

ASB Traders, Inc., 2825 Wilcrest, Suite 520, Houston, Texas 77042; Decision and Order

On July 17, 1992, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (Department), pursuant to section 13(c) of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. sections 2401–2420 (1991, Supp. 1993, and Public Law No. 103–10, March 27, 1993)) (the Act), issued a Charging Letter against ASB Traders, Inc. (ASB), alleging that ASB violated the provisions of Section 787.13 of the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) (the Regulations) issued pursuant to the Act, in that ASB failed to keep records of its participation in 74 exports of commodities from the United States to Kuwait and Saudi Arabia between on or about July 19, 1987 and on or about July 19, 1989.

The Department and ASB have now entered into a Consent Agreement whereby the Department and ASB have agreed to settle this matter in accordance with the terms and conditions set forth therein.

The Administrative Law Judge has recommended that I approve the terms of the Consent Agreement and I approve those terms.

It is therefore ordered,

First, that a civil penalty of $40,000 is assessed against ASB. ASB shall pay the civil penalty to the Department as follows: (1) The first installment of $5,000 shall be paid within 30 days from the date of entry of this Order; and (2) the second installment of $5,000 shall be paid within 60 days from the date of entry of this Order. Payment shall be made in the manner specified in the attached instructions. Payment of the remaining $30,000 shall be suspended for a period of two years from the date of entry of this Order and shall be thereafter be waived, provided that, during the two-year period ASB commits no violation of the Act or any regulation, order or license issued under the Act;

Second, that, as authorized by Section 11(d) of the Act, the timely payment of each installment of the civil penalty is hereby made a condition to the granting, restoration, or continuing validity of any export license, permission, or privilege granted, or to be granted, to ASB. Accordingly, if ASB should fail to pay in a timely manner any installment of the civil penalty set forth above, the undersigned will enter an Order under the authority of Section 11(d) of the Act denying all of ASB's U.S. export privileges for a period of one year from the date of entry of this Order.

Third, that the Charging Letter, the Consent Agreement, and this Order shall be made available to the public. A copy of this Order shall be served upon ASB and published in the **Federal Register**. This Order is effective immediately.

Dated: November 4, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

[FR Doc. 93–27871 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–DT–M

Computer Systems Technical Advisory Committee; Partially Closed Meeting

A meeting of the Computer Systems Technical Advisory Committee will be held December 2 & 3, 1993, in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue NW., Washington DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to computer systems/peripherals or technology.

Agenda

Executive Session December 2 9 a.m.–12 p.m.

1. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

General Session December 2 1 p.m.–4 p.m.

2. Opening remarks by the Chairmen.
3. Presentation of papers or comments by the public.
4. Discussion on Composite Theoretical Performance (CTP) formula changes.
5. Discussion on telecommunication controls on computers.
6. Update on computer export controls.

Executive Session December 3 9 p.m.–1 p.m.

7. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter TAC Unit/OAS/EA room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 8, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–27879 Filed 11–10–93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

[A–588–032]

Large Power Transformers From France; Termination of Antidumping Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of termination of antidumping duty administrative review.

SUMMARY: On July 21, 1993, the Department of Commerce (the Department) initiated an administrative review of the antidumping finding on large power transformers from France. The Department is now terminating that review.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph Hanley or Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION: On July 21, 1993, the Department published in the **Federal Register** (58 FR 39007) a notice of initiation of administrative review of the antidumping finding on large power transformers from France at the request of the petitioner, ABB Power T&D Company, Inc. This notice stated that we would review one manufacturer/exporter, Jeumont Schneider Transformateurs, for the period June 1, 1992 through May 31, 1993. The petitioner subsequently withdrew its request for review on September 16, 1993. Under § 353.22(a)(5) of the Department's regulations, a party requesting a review may withdraw that request not later than 90 days after the date of publication of the notice of initiation. Because the withdrawal occurred within the time frame specified, the Department is now terminating this review.

Absent a review, entries during this period are subject to the automatic assessment provisions of § 353.22(e) of the Department's regulations. We shall instruct the Customs Service accordingly.

This notice serves as a reminder to parties subject to administrative protective orders (APOs) of their responsibility concerning disposition of proprietary information disclosed under APO in accordance with 19 CFR 353.34(d). Timely written notification of the return/destruction of APO materials or conversion to judicial protective order is hereby requested. Failure to comply with the regulations and the terms of an APO is a sanctionable violation.

This notice is in accordance with § 353.22(a)(5) of the Department's regulations (19 CFR 353.22(a)(5)).

Dated: November 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27866 Filed 11–10–93; 8:45 am]

BILLING CODE 3510-DS-M

[A–580–806, A–582–802, A–583–808]

Sweaters Wholly or in Chief Weight of Man-Made Fiber From Korea, Hong Kong, and Taiwan; Court Decision and Suspension of Liquidation

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of court decision.

SUMMARY: On August 11, 1993, the United States Court of International Trade affirmed the International Trade Commission's amended determination on remand that there is no material injury to the U.S. industry. The case has been appealed; if it is affirmed on appeal, then the antidumping duty orders will be revoked.

In accordance with the decision of the Court of Appeals for the Federal Circuit in *Timken Co.* v. *United States*, 893 F. 2d. 337 (Fed. Cir. 1990), Commerce will continue to order the suspension of liquidation of the subject merchandise.

EFFECTIVE DATE: August 21, 1993.

FOR FURTHER INFORMATION CONTACT: Donald Little or Maureen Flannery, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On September 19, 1990, the International Trade Commission (ITC) determined that a U.S. industry was being materially injured by reason of imports of sweaters wholly or in chief weight of man-made fiber (MMF sweaters) from the Republic of Korea (Korea), Hong Kong, and Taiwan. The Department of Commerce (the Department) determined that sales of MMF sweaters from Korea, Hong Kong, and Taiwan were being sold in the United States at less than fair value (LTFV) and published antidumping duty orders on September 24, 1990.

The ITC decision was appealed, and the Court of International Trade (CIT) remanded the determination to the ITC. On November 23, 1992, the ITC determined on remand there was no material injury to a U.S. industry. This remand was affirmed by the CIT on August 11, 1993, *Chung Ling Co., Ltd.*,

et. al v. *United States*, Slip Op. 93–153 (CIT August 11, 1993). The petitioner, the National Knitwear & Sportswear Association (NKSA), appealed the CIT's decision on October 6, 1993.

Accordingly, upon a final decision by the Court of Appeals for the Federal Circuit (CAFC), affirming the CIT, the antidumping duty orders will be revoked. Because plaintiffs in the proceedings obtained an injunction from the CIT, the revocation of these orders would be effective as of April 27, 1990, the date of the preliminary determination of sales at LTFV in these cases, for all unliquidated entries.

SUSPENSION OF LIQUIDATION: In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990), the CAFC held that the Department must publish notice of a decision of the CIT or the CAFC which is not in harmony with the Department's or the ITC's respective determinations. Publication of this notice fulfills that obligation. The CAFC also held that in such a case, the Department must suspend liquidation until there is a final decision in the action. Therefore, the Department is continuing to suspend liquidation at the cash deposit rates set in the investigation of sales at LTFV or the most recent review, as applicable, pending a final decision of the CAFC.

Dated: November 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27867 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–791–001]

Ferrochrome From South Africa; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty administrative review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on ferrochrome from South Africa for the period January 1, 1991 through December 31, 1991. We preliminarily determine the bounty or grant to be 2.80 percent *ad valorem* for all companies. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Dana S. Mermelstein or Maria P. MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–0984 and (202) 482–2786, respectively.

SUPPLEMENTAL INFORMATION:

Background

On March 5, 1992, the Department of Commerce (the Department) published a notice of "Opportunity to Request Administrative Review" (57 FR 7910) of the countervailing duty order on ferrochrome from South Africa (46 FR 21155, April 9, 1981). On March 31, 1992, Chromecorp Technology (Pty) Ltd., Consolidated Metallurgical Industries Ltd., Ferralloys Limited, Middleburg Steel and Alloys (Pty) Ltd., and Samancor, all South African exporters of ferrochrome, requested an administrative review of the order covering the period January 1, 1991 through December 31, 1991. We published a notice of initiation of review on April 13, 1992 (57 FR 12797). The Department is now conducting this review in accordance with the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imported products covered by this review are South African ferrochrome, which is currently classifiable under items 7202.41.00, 7202.49.10 and 7202.49.50 of the Harmonized Tariff Schedule. The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive. The review covers the period January 1, 1991 through December 31, 1991, five companies, and seven programs.

Analysis of Programs

I. Industrial Development Corporation Loans

The Industrial Development Corporation (IDC) is a South African government corporation which makes financing available in several specific areas: (1) For small and medium-sized firms; (2) for projects aimed at import replacement and increasing export capacity, especially where local raw materials are upgraded and refined to maximize foreign exchange earnings; (3) for projects with a high technology and capital content; (4) for the development of agro-industries which create large-scale employment in rural areas; and (5) for projects aimed at increasing eco-tourism.

During the review period, one company had outstanding an IDC loan for increasing export capacity. Because the availability of this type of IDC loan is limited to exporters, the Department previously determined that they constitute bounties or grants to the extent that their terms are preferential. See Preliminary Results of Countervailing Duty Administrative Review; Ferrochrome from South Africa (56 FR 12170; March 22, 1991) (Ferrochrome Preliminary Results); Final Results of Countervailing Duty Administrative Review; Ferrochrome from South Africa (56 FR 33254 July 19, 1991) (Ferrochrome Final Results). In this review, neither the Government of South Africa nor the respondents have provided new information which would warrant reconsideration of this determination.

The loan was granted in October 1988, in two tranches (portions) of equal amounts. One tranche had a variable interest rate until October 1990, when the interest rate became fixed at a rate established at the time of the loan agreement; the other has a variable rate throughout the life of the loan. Because the terms of the two tranches differ, we have considered them as separate loans.

We have treated the fixed-rate tranche as a long-term fixed-rate loan because the interest rate was fixed at the time of the loan agreement; to calculate the benefit, we used our standard long-term loan methodology as described in section 355.49(c) of the Department's Proposed Rules. See Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, 23384; May 31, 1989 (Proposed Rules). As a benchmark for this portion of the loan, we used the company loan securities rate, published in the Quarterly Bulletin of the South Africa Reserve Bank. We used the annual average rate for 1988, the year in which the interest rate in effect during and subsequent to the review period was established.

We calculated the benefit from the portion of the loan which remained at a variable interest rate in accordance with our practice as set forth in § 355.49(d)(1) of the Proposed Rules. We selected the benchmark in accordance with our practice and the order of preference described in § 355.44(b)(5) of the Proposed Rules, and used the bankers acceptance rate, published in the Quarterly Bulletin of the South Africa Reserve Bank. To calculate the benefit resulting from this portion of the IDC loan, we compared the amount of interest which was actually paid during the review period with the interest which would have been paid at the benchmark rate.

To determine the total benefit resulting from the IDC loan, we added the benefits from both the fixed- and variable-rate portions of the loan and

divided the resulting sum by the company's total exports to all markets. We then weight-averaged the result by the company's share of exports of the subject merchandise to the United States during the review period. On this basis, we preliminarily determine the bounty or grant from this program to be 0.10 percent *ad valorem* for all exporters.

There was a change in ownership in September 1991 which affected the ferrochrome exporter which had this loan outstanding during the review period; we verified that by the end of the review period this company no longer has an outstanding IDC loan. Therefore, we are not including this amount in the calculation of the rate of cash deposit of estimated countervailing duties which will be required from the date of the final results of this administrative review.

II. Export Incentive Program

The Export Incentive Program provides assistance to exporters through a number of different subprograms. Because the availability of this program is limited to exporters, the Department previously determined that the benefits available under this program constitute bounties or grants within the meaning of the Act. See Ferrochrome Preliminary Results; Ferrochrome Final Results. In this review, neither the Government of South Africa nor the respondents provided new information which would warrant reconsideration of this determination.

Category A allowed exporters to claim a rebate of 50 percent of the import duties applicable to inputs used in the production of goods for export. Exporters could claim this rebate regardless of whether the inputs were actually imported or obtained domestically. Category B, the Value-Added Incentive, allowed exporters to receive a benefit credit equal to 10 percent of the value added in South Africa to exported products. In calculating the Category B benefit claim, the Category A benefit was deemed a component of the value-added, and benefits from these two programs were claimed and paid together. Eligibility for Category B benefits was further limited to exported products for which the competing imports were subject to import duties as protection for the domestic industry.

Although we verified that the Category A and B programs were terminated on March 30, 1990, we found that two companies had received residual benefits during the review period. These benefits resulted from the practice of the Department of Trade and Industry of using promissory notes to pay claims. These two companies had received promissory notes pursuant to claims filed in an earlier period, but the notes matured during the review period. Therefore, consistent with the Department's practice of recognizing the occurrence of the benefit at the time that the benefit has a cash-flow effect on the recipient (see, § 355.48(a) of the Proposed Rules, 54 FR 23366, 23384, May 31, 1989), we determine that promissory notes which matured during the review period constitute a bounty or grant within the meaning of the Act. To calculate the benefit resulting from these promissory notes, we divided the total amount of the promissory notes by the recipient companies' total exports of all products to all markets during the review period. We then weight-averaged the resulting rate by each company's share of exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the benefits from Categories A and B promissory notes to be 0.44 percent *ad valorem* for all companies. However, we verified that no ferrochrome exporters had outstanding promissory notes received in lieu of payment of Category A and B benefits, due to mature after the review period. Therefore, we have determined that no further residual benefits are available under this program. We consider this to be a program-wide change under § 355.50 of the Proposed Rules, and therefore we are not including this amount in the calculation of the rate of cash deposit of estimated countervailing duties which will be required from the date of the final results of this administrative review.

Category C provided cash grants to exporters under a number of subprograms, including a program of financial assistance to exporters for warehousing goods abroad. Most provisions of Category C were terminated by March 31, 1990; some provisions were included in the General Export Incentive Scheme which replaced the Export Incentive Program (see below). However, we verified that no residual benefits were available of provided to exporters under Category C after the termination date.

Category D provided exporters an additional tax deduction for marketing expenses related to export sales. Based on export performance, an exporter could deduct from taxable income an additional 75 or 100 percent of export marketing expenses, in addition to the deductions normally allowed. All five ferrochrome exporters under review received Category D benefits during the review period. The benefit is based on the amount of the deduction claimed by the company on the tax return filed during the review period under the line item "Export Marketing Allowance." To calculate the benefit resulting from this program, we multiplied the Export Marketing Allowance by the nominal tax rate applicable during the review period. We then divided the result by each company's total exports of all products to all markets during the review period. We weight-averaged the results by each company's share of exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the bounty or grant from this program to be 2.23 percent *ad valorem* for all companies.

Although the Category D program was terminated on March 31, 1992, residual benefits are available to exporters for export marketing expenses incurred until that date. Therefore, benefits will continue to be granted to users of this program filing tax returns for fiscal years which include that date. Because residual benefits may continue to be available, and in accordance with § 355.50(d) of the Proposed Rules, we will not adjust the rate of cash deposit of estimated countervailing duties which will be required from the date of publication of the final results of this administrative review.

III. Regional Industrial Development Incentives

The Government of South Africa offered several incentives to companies located in geographically remote areas, designated as Industrial Development Points. We determined in our previous review of this order that, as regional subsidies, these incentives constitute bounties or grants within the meaning of the Act. See Ferrochrome Preliminary Results; Ferrochrome Final Results. In this review, neither the Government of South Africa nor the respondents have provided new information which would warrant reconsideration of this determination.

(a) Labor Incentive

This incentive is offered as an annual cash grant for seven years to approved regional development industries. The incentive is calculated on the basis of the number of employees directly involved in the manufacturing process at the regional development point, and is granted as a percentage of the average salary/wage per employee.

One ferrochrome exporter received an incentive under this program. Because this incentive is an annually recurring grant, we expense the benefit in the year of receipt, consistent with our practice

as described in § 355.48(a) of the Proposed Rules (54 FR 23366, 23384, May 31, 1989). To calculate the benefit resulting from this program, we divided the amount of the grant received during the review period by the company's total sales during the review period. We then weight-averaged the result by the company's share of exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the bounty or grant from this program to be 0.01 percent *ad valorem* for all companies.

(b) Interest Concession

An interest concession is paid quarterly as a cash grant to approved industries at regional development points, for a period of ten years, on 100 percent of the company's investment on land and buildings (excluding residential accommodations), and on 50 percent of their investment in other assets. The value of the grant is based on the interest cost as reflected in the company's financial statements. The grant is calculated on the basis of a pre-determined market-related interest rate.

One company received benefits under this program. To calculate the benefit attributable to this program, we divided the amount of the grant received during the review period by the company's total sales during the review period. We then weight-averaged the result by the company's total exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the rate from this program to be 0.01 percent *ad valorem* for all companies.

(c) Subsidy on Housing for Key Personnel

The Regional Industrial Development Authorities subsidize housing for key personnel at regional development points for a maximum of 20 years on new mortgage loans and the outstanding principal of existing loans. The government subsidizes the interest paid based on the interest rate charged by the largest building society, with the proviso that the recipient company must pay interest at the rate of at least six percent; the Regional Industrial Development Authorities pay the interest differential monthly.

One company reported having worker housing loans with the Industrial Development Corporation which were subsidized by the Regional Industrial Development Authorities, and reported the amount of the interest differential paid by the government during the review period. At verification, we discovered that another company had outstanding loans which were granted under this program. For the company which reported this benefit, we calculate the benefit by dividing the amount of the government's payments toward the interest accrued on the housing loans during the review period by the recipient company's total sales during this period. For the company which failed to report these benefits, we assign a rate based on best information available, 0.002 percent *ad valorem*, which is the country-wide rate determined in the last administrative review of this order, the only review in which a rate was calculated for this program. See Ferrochrome Preliminary Results; Ferrochrome Final Results. We then weight-averaged the result by each company's share of exports of subject merchandise to the United States during the review period. On this basis, we preliminarily determine the bounty or grant from this program to be 0.01 percent *ad valorem* for all companies.

IV. Other Programs

We also examined the following four programs and preliminarily determine that producers/exporters of ferrochrome to the United States did not use them during the review period:

A. Preferential Rail Rates
B. Government Loan Guarantees
C. Beneficiation Allowances—Electric Power Cost Aid Scheme
D. General Export Incentive Scheme
E. Rail Transport Rebate on Outgoing Goods (subprogram of the Regional Industrial Development Incentives).

Preliminary Results of Review

As a result of our review, we preliminarily determine the total bounty or grant to be 2.80 percent *ad valorem* for all companies for the period January 1, 1991 through December 31, 1991.

Upon completion of this review, the Department intends to instruct the Customs Service to assess countervailing duties of 2.80 percent of the f.o.b. invoice price on shipments of this merchandise from all companies exported on or after January 1, 1991 and on or before December 31, 1991.

Further, the Department intends to instruct Customs to collect cash deposits of estimated countervailing duties of 2.26 percent of the f.o.b. invoice price on shipments of this merchandise from all companies, entered or withdrawn from warehouse for consumption on or after the date of publication of the final results of review.

Parties to this proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than ten days after the date of publication of this notice. Interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication of this notice. Rebuttal briefs, limited to arguments raised in case briefs, may be submitted seven days after the time limit for filing the case briefs. Any hearing, if requested, will be held seven days after the scheduled date for submission of rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e).

Representatives of parties to the proceeding may request disclosure of proprietary information under administrative protective order no later than 10 days after the representative's client or employer becomes a party to the proceeding, but in no event later than the date the case briefs are due under 19 CFR 355.38(c).

The Department will publish the final results of this administrative review including the results of its analysis of issues raised in any case or rebuttal brief or at a hearing. This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 4, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27868 Filed 11–10–93; 8:45 am]
BILLING CODE 3510–DS–P

[C–475–812]

Postponement of Preliminary Determination: Grain-Oriented Electrical Steel From Italy

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie Hager, Annika O'Hara, or David Boyland, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5055, (202) 482–4198, and (202) 482–0588, respectively.

POSTPONEMENT: On September 21, 1993, the Department published in the **Federal Register** the initiation of a countervailing duty investigation of grain-oriented electrical steel from Italy (58 FR 49018). Our preliminary determination was originally scheduled for November 19, 1993.

On October 28, 1993, we decided to investigate two subsidy allegations

which were not included in our September 21, 1993 notice of initiation. These two programs (*i.e.*, Law 464/72 financing received by Terni and subsidies allegedly provided to Terni by the Government of Italy in connection with Terni's 1990 asset contribution to Ilva) were part of a revised subsidy allegation submitted by petitioners on October 7, 1993.

Including these two new subsidy allegations, the Department is now examining 21 programs in this investigation. Therefore, in accordance with section 703(c)(1)(B) of the Tariff Act of 1930, as amended ("the Act"), and 19 CFR 355.15(b), we determine this investigation to be extraordinarily complicated due to the number and complexity of the subsidy programs alleged. We further determine that the Government of Italy and other parties are cooperating and that additional time is necessary to make the preliminary determination. Therefore, in accordance with section 703(c)(1)(B) of the Act and 19 CFR 355.15(b), we are postponing the preliminary determination for this investigation to no later than January 24, 1994.

This notice is published pursuant to section 703(c)(2) of the Act and 19 CFR 355.15(e).

Dated: November 3, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–27869 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–DS–P

Scope Rulings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of scope rulings and anticircumvention inquiries.

SUMMARY: The Department of Commerce (the Department) hereby publishes a list of scope rulings and anticircumvention inquiries completed between July 1, and September 30, 1993. In conjunction with this list, the Department is also publishing a list of pending requests for scope clarifications and anticircumvention inquiries. The Department intends to publish future lists within 30 days of the end of each quarter.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Wendy Frankel or David Guglielmi, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–2704.

Background

Sections 353.29(d)(8) and 355.29(d)(8) of the Commerce Department's regulations (19 CFR 353.29(d)(8) and 355.29(d)(8) (1993)) provide that on a quarterly basis the Secretary will publish in the **Federal Register** a list of scope rulings completed within the last three months.

This notice lists scope rulings and anticircumvention inquiries completed between July 1, and September 30, 1993, and pending scope clarification and anticircumvention inquiry requests. The Department intends to publish in January 1994 a notice of scope rulings and anticircumvention inquiries completed between October 1, 1993, and December 31, 1993, as well as pending scope clarification and anticircumvention inquiry requests.

The following lists provide the country, case reference number, requester(s), and a brief description of either the ruling or product subject to the request.

Scope Rulings Completed Between July 1, 1993 and September 30, 1993

Country: Japan

A–588–405: Cellular Mobile Telephones
Murata Erie North America Inc. and Murata Manufacturing Co.,—Certain Cellular Mobile Telephone "boosters" are within the scope of the order—09/01/93.

A–588–405: Cellular Mobile Telephones
Fujitsu Ltd., Fujitsu America, Inc., and Fujitsu Network Transmission Systems Inc.—The F80P–172 Portable Cellular Telephone and certain accessories are outside the scope of the order—09/30/93.

A–588–087: Portable Electric Typewriters
Swintec Corporation—typewriter models 4000, 4040, 7000, 7001, 7003, and 7040 are outside the scope of the order—09/17/93.

A–588–807: Industrial Belts and Components
Nitta Industries Corp. and Nitta International Inc.—"Conveyor belts," of five series comprised of 30 models, are outside the scope of the order—08/16/93.

Country: People's Republic of China

A–570–504: Petroleum Wax Candles
Hallmark Cards Inc.—The Hallmark WCD3013, WCD3093, and WCD4000 ("Unity candles") candles are outside the scope of the order and Hallmark 149PCL9345 (Party candles) are within the scope of the order—09/30/93.
Cherrydale Farms Confections—The Currier & Ives holiday candles are outside the scope of the order—09/30/93.

A–570–803: Heavy Forged Hand Tools
Forrest Tool Company—The Max Multipurpose Tool is within the scope of the order—08/16/93.

Anticircumvention Rulings Completed Between July 1, 1993 and September 30, 1993

None

Scope Inquiries Terminated Between July 1, 1993 and September 30, 1993

None

Anticircumvention Inquiries Terminated Between July 1, 1993 and September 30, 1993

None

Pending Scope Clarification Requests as of September 30, 1993

Country: Mexico

A–201–805: Circular Welded Non-Alloy Steel Pipe
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order.

Country: Brazil

A–351–809: Circular Welded Non-Alloy Steel Pipe
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co,, Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order.

Country: People's Republic of China

A–570–501: Paint Brushes
Stanley Works—Clarification to

determine whether paint brushes with a blend of 60% synthetic and 40% natural fibers are within the scope of the order.

A–570–003: Cotton Shop Towels
Win-Tex Products, Inc. (original applicant)—Clarification to determine whether certain cotton shop towels are within the scope of the order. This scope ruling was remanded to the Department by the Court of International Trade for further analysis.

Country: Korea

A–580–809: Circular Welded Non-Alloy Steel Pipe
Allied Tube & Conduit Corp., American Tube Co., Century Tube Corp., CSI Tubular Productions, Inc., Laclede Steel Co., LTV Tubular Productions Co., Sawhill Tubular Division, Sharon Tube Co., Tex-Tube Division, Western Tube & Conduit Corp., Wheatland Tube Co.—Clarification to determine whether pipe produced to API 5L line pipe specifications or to both ASTM A–53 standard pipe specification and the API 5L line pipe specification (dual-certified pipe), when intended for use as standard pipe or when actually used as standard pipe, is within the scope of the order.

Country: Japan

A–588–014: Tuners
Alpine Electronics—Clarification to determine whether certain car radio/stereo and/or replacement parts, comprised of four subassemblies and their components, are within the scope of the order.
Fujitsu Ten Corporation of America—Clarification to determine whether certain "front end" components of car tuners are within the scope of the order.

A–588–015: Televisions
AGIV (USA) Inc.—Clarification to determine whether AIWA Model VX–T1000MK3KEI color TV–VCR combination is within the scope of the order.

A–588–055: Acrylic Sheet
Sekisui America Corp.—Clarification to determine whether ESLON DC PLATE manufactured by Sekisui Chemical Co., Ltd., is within the scope of the order.

A–588–405: Cellular Mobile Telephones and Subassemblies
Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether certain portable cellular telephones, Panasonic models EB–3530 and EB–3531, comprised of eight kits and numerous accessories, subassemblies and/or components thereof, are within the scope of the order.

A–588–405: Matsushita Communication Industrial Co., Ltd., and its related entities—Clarification to determine whether three models of hand-held portable cellular telephones and their subassemblies and/or components thereof, are within the scope of the order.

A–588–405: Toyocom U.S.A. Inc.—Clarification to determine whether temperature compensated crystal oscillators (TCXOs) and High Frequency Crystal Mechanical filters (HCM filters) are within the scope of the order.

A–588–810: Mechanical Transfer Presses
Aida Engineering, Ltd.—Clarification to determine whether the FMX cold forging press is within the scope of the order.

A–588–817: Flat Panel Displays
International Digital Electronics—Clarification to determine whether certain electroluminescent FPDs used in the Graphic Control Panels, models GP–410 and GP–430, are within the scope of the order; models GP–511T, GP–530T and GP–530VM terminated due to the revocation of the active-matrix FPD order.

Country: Sweden

A–401–040: Stainless Steel Plate
Petitioner—Clarification to determine whether three steel products are within the scope of the order.

Country: Italy

A–475–801: Antifriction Bearings
Fiber Services—Clarification to determine whether certain textile machinery components are within the scope of the order.

Country: Germany

A–428–801: Antifriction Bearings
SKF—Clarification to determine whether certain textile machinery components are within the scope of the order.

Pending Anticircumvention Inquiry Requests as of September 30, 1993

Country: Mexico

A–201–806: Steel Wire Rope
Committee of Domestic Steel Wire Rope and Specialty Cable Manufacturers—Anticircumvention inquiry to determine whether a producer of steel wire rope in Mexico is circumventing the antidumping order by importing steel wire strand into the United States where it is wound into steel wire rope.

Country: Japan

A–588–807: Industrial Belts and Components
BRECOFLEX Corp.—
Anticircumvention inquiry to determine whether the order is being circumvented by the processing of belting into belts in Mexico before importation into the United States.

Country: Japan

A–588–818: Personal Word Processors
Smith Corona Corporation—
Anticircumvention inquiry to determine whether the order is being circumvented by the importation, completion and assembly of personal word processor parts and components by Brother Industries (USA), Inc. in the United States.

Country: People's Republic of China

A–570–814: Butt-Weld Pipe Fittings
U.S. Fittings Group—
Anticircumvention inquiry to determine whether the order is being circumvented by adding value in Thailand (modifying pipe fittings to "finished" from "unfinished" status) after importation from the PRC.

Interested parties are invited to comment on the accuracy of the list of pending scope clarification requests. Any comments should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230.

Dated: October 29, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–27865 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–DS–P

Minority Business Development Agency

Business Development Center Applications: Charlotte, NC

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from April 1, 1994 to March 31, 1995 is estimated at $169,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. The Federal

amount includes $4,125 for an annual audit fee. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Charlotte, North Carolina geographic service area.

The award number for this MBDC will be 04–10–94004–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC Program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firms' estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest points score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for application is December 17, 1993. Applications must be postmarked on or before December 17, 1993.

ADDRESSES: Atlanta Regional Office, U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., Suite 1715, Atlanta, Georgia 30308–3516, (404) 730–3300.

FOR FURTHER INFORMATION CONTACT: Robert M. Henderson, Acting Regional Director, Atlanta Regional Office, telephone (404) 730–3300.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-application conference to assist all interested applicants will be held on December 1, 1993, 9 a.m. at the following address: U.S. Department of Commerce, Minority Business Development Agency, 401 West Peachtree Street, NW., room 1715, Atlanta, Georgia 30308–3516.

Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs.

Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honestly or financial integrity.

Award Termination—The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug-Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, Appendix B.

Lower Tier Certifications—Recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 5, 1993.

Robert M. Henderson,

Acting Regional Director, Atlanta Regional Office.

[FR Doc. 93–27881 Filed 11–10–93; 8:45 am]

BILLING CODE 3510–21–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment of Import Limits and Restraint Periods for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Oman

November 5, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending import limits and restraint periods.

EFFECTIVE DATE: November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated October 6, 1993 between the Governments of the United States and the Sultanate of Oman, agreement was reached to establish a bilateral agreement for certain cotton and man-made fiber textile products, produced or manufactured in Oman.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the limits and restraint periods for Categories 340/640, 341/641 and 347/348. As a result, the limit for Categories 340/640, which is currently filled, will re-open.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 39672, published on September 1, 1992; 57 FR 56329, published on November 27, 1992; 58 FR 30027, published on May 18, 1993; and 58 FR 48039, published on September 8, 1993.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 5, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on November 20, 1992, May 18, 1993 and September 8, 1993, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the twelve-month periods May 31, 1993 through May 30, 1994 (Categories 347/348); June 29, 1993 through June 28, 1994 (Categories 341/641), and September 21, 1992 through September 20, 1993 and September 21, 1993 through September 20, 1994 (Categories 340/640).

Effective on November 16, 1993, you are directed, pursuant to a Memorandum of Understanding (MOU) dated October 6, 1993 between the Governments of the United States and the Sultanate of Oman, to combine the restraint periods for Categories 340/640 for a fifteen-month period beginning on October 1, 1992 and extending through December 31, 1993; and amend the restraint periods for Categories 341/641 and 347/348 for a twelve-month period beginning on January 1, 1993 and extending through December 31, 1993. The levels shall be amended as follows:

Category	Amended limit [1]
340/640	235,849 dozen.
341/641	141,509 dozen.
347/348	674,528 dozen.

[1] The limits have not been adjusted to account for any imports exported after September 30, 1992 (Categories 340/640) and December 31, 1992 (Categories 341/641 and 347/348).

Also, you are directed to amend, but not cancel, the directive dated August 26, 1992 for cotton and man-made fiber textile products, produced or manufactured in Oman and exported during the periods May 31, 1992 through May 30, 1993 for Categories 347/348 and June 29, 1992 through June 28, 1993 for Categories 341/641.

Effective on November 16, 1993, you are directed to amend the restraint periods to begin on June 1, 1992 (Categories 347/348) and July 1, 1992 (Categories 341/641) and extend through December 31, 1992 at the limits listed below. Goods exported in excess of these amended limits shall be charged to the corresponding categories for the restraint period January 1, 1993 through December 31, 1993.

Category	Amended limit [1]
341/641	66,750 dozen.
347/348	371,203 dozen.

[1] The limits have not been adjusted to account for any imports exported after May 31, 1992 (Categories 347/348) and June 30, 1992 (Categories 341/641).

All import charges already made to the foregoing categories shall be retained. Of these charges the following amounts shall be deducted for goods exported on May 31, 1992 for Categories 347/348 and during the periods June 29, 1992 through June 30, 1992 for Categories 341/641, and September 21, 1992 through September 30, 1992 for Categories 340/640:

Category	Amount to be deducted
340	20,927 dozen.
341	–0–
347	3,789 dozen.
348	12,683 dozen.

Category	Amount to be deducted
640	8,892 dozen.
641	1,155 dozen.

The levels set forth above are subject to adjustment in the future according to the provisions of the MOU dated October 6, 1993 between the Governments of the United States and the Sultanate of Oman.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Donald R. Foote,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-27877 Filed 11-10-93; 8:45 am]

BILLING CODE 3510-DR-F

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

Action: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title, Applicable Forms, and OMB Control Number: DoD FAR Supplement, part 245, Government Property, and Related Clauses at 252.245; DD Forms 1149, 1149C, 1342, 1419, 1637, 1639, 1640, and 1662; OMB Control Number 0704-0246.

Type of Request: Expedited Processing—Approval Date Requested: 30 days following publication in the **Federal Register**.

Number of Respondents: 14,896.

Responses per Respondent: 2.94.

Annual Responses: 43,932.

Average Burden per Response: 1.21 hours.

Annual Burden Hours: 53,185.

Needs and Uses: DoD FAR Supplement, part 245, prescribes policies and procedures for providing government property to contractors, contractors' use and management of government property and reporting, and redistributing and disposing of contractor inventory. The information collected hereby is used by contractors, property administrators, and contracting officers to maintain government furnished property records.

Affected Public: Businesses of other for-profit, Non-profit institutions, and Small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Required to obtain or retain a benefit.

OMB Desk Officer: Mr. Peter N. Weiss.

Written comments and recommendations on the proposed information collection should be sent to Mr. Weiss at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.

DOD Clearance Officer: Mr. William P. Pearce.

Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202-4302.

Dated: November 5, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

BILLING CODE 5000-04-M

SHIPPING CONTAINER TALLY → 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50

REQUISITION AND INVOICE / SHIPPING DOCUMENT

Form Approved
OMB No. 0704-0246
Expires XXXXX

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO THE ADDRESS IN ITEM 2

1. FROM: *(Include ZIP Code)*	SHEET NO.	NO. OF SHEETS	5. REQUISITION DATE	6. REQUISITION NUMBER
	7. DATE MATERIAL REQUIRED *(YYMMDD)*			8. PRIORITY
2. TO. *(Include ZIP Code)*	9. AUTHORITY OR PURPOSE			
	10. SIGNATURE			11a. VOUCHER NUMBER & DATE *(YYMMDD)*
3. SHIP TO - MARK FOR	12. DATE SHIPPED *(YYMMDD)*			b.
	13. MODE OF SHIPMENT			14. BILL OF LADING NUMBER
	15. AIR MOVEMENT DESIGNATOR OR PORT REFERENCE NO			

4. APPROPRIATIONS SYMBOL AND SUBHEAD	OBJECT CLASS	EXPENDITURE ACCOUNT (From) (To)	CHARGEABLE ACTIVITY	BUREAU CONTROL ACTIVITY NO.	BUREAU CONTROL NO.	AMOUNT

ITEM NO. (a)	FEDERAL STOCK NUMBER, DESCRIPTION, AND CODING OF MATERIEL AND / OR SERVICES (b)	UNIT OF ISSUE (c)	QUANTITY REQUESTED (d)	SUPPLY ACTION (e)	TYPE CONTAINER (f)	CONTAINER NOS. (g)	UNIT PRICE (h)	TOTAL COST (i)

16. TRANSPORTATION VIA MATS OR MSTS CHARGEABLE TO

17. SPECIAL HANDLING

18. RECAPITULATION OF SHIPMENT

ISSUED BY	TOTAL CONTAINERS	TYPE CONTAINER	DESCRIPTION	TOTAL WEIGHT	TOTAL CUBE
CHECKED BY					
PACKED BY					
			← TOTAL →		

19. RECEIPT

CONTAINERS RECEIVED EXCEPT AS NOTED	DATE *(YYMMDD)*	BY	SHEET TOTAL
QUANTITIES RECEIVED EXCEPT AS NOTED	DATE *(YYMMDD)*	BY	GRAND TOTAL
POSTED	DATE *(YYMMDD)*	BY	20. RECEIVERS VOUCHER NO.

DD Form 1149, 931101 Draft

51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

PREVIOUS EDITION MAY BE USED.

SHIPPING CONTAINER TALLY → 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50

SHIPPING CONTAINER TALLY 1 2 3 4 5 6 7 8 9 10 11 12 13 14 15 16 17 18 19 20 21 22 23 24 25 26 27 28 29 30 31 32 33 34 35 36 37 38 39 40 41 42 43 44 45 46 47 48 49 50

REQUISITION AND INVOICE / SHIPPING DOCUMENT *(Continuation Sheet)*

Form Approved
OMB No. 0704-0246
Expires xxxxx

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS IN ITEM 2 OF DD FORM 1149

SHEET NO	NO OF SHEETS	6. REQUISITION NUMBER	11.a. VOUCHER NUMBER AND DATE	b. VOUCHER NUMBER AND DATE

ITEM NO (a)	FEDERAL STOCK NUMBER, DESCRIPTION, AND CODING OF MATERIEL AND/OR SERVICES	UNIT OF ISSUE (c)	QUANTITY REQUESTED (d)	SUPPLY ACTION (e)	TYPE CONTAINER (f)	CONTAINER NOS. (g)	UNIT PRICE (h)	TOTAL COST (i)

SHEET TOTAL

DD Form 1149C, 931101 Draft 51 52 53 54 55 56 57 58 59 60 61 62 63 64 65 66 67 68 69 70 71 72 73 74 75 76 77 78 79 80 81 82 83 84 85 86 87 88 89 90 91 92 93 94 95 96 97 98 99 100

PREVIOUS EDITION MAY BE USED

DOD PROPERTY RECORD

Form Approved
OMB No. 0704-0246
Expires xxxxx

Public reporting burden for this collection of information is estimated to average 2.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO THE CONTRACT ADMINISTRATION OFFICE

1	a. ACTIVE	b. INITIAL	c. IDLE	d. CHANGE	2. JULIAN DATE	3. I.D./GOVERNMENT TAG NO.

SECTION I - INVENTORY RECORD

4. COMMODITY CODE	5. STOCK NUMBER	6. ACQUISITION COST	7. TYPE CODE	8. YR OF MFG.	9. POWER CODE	10. STATUS CODE	11. SVC CODE	12. COMMAND CODE	13. ADAI OFFICE CODE

14. NAME OF MANUFACTURER	15. MFR'S CODE	16. MANUFACTURER'S MODEL NO.	17. MANUFACTURER'S SERIAL NO.

18. LENGTH	19. WIDTH	20. HEIGHT	21. WEIGHT	22. CERTIFICATE OF NON-AVAILABILITY NUMBER	23. PEP NO.	24. ARD	25. CONTRACT NUMBER

26. DESCRIPTION AND CAPACITY

CONTINUED ON BACK OF FORM ☐ YES ☐ NO

27. ELECTRICAL CHARACTERISTICS

a. QTY	b. HORSEPOWER	c. VOLTS	d. PHASE	e. CYCLE	f. AC	g. DC	h. SPEED	i. TYPE AND FRAME NUMBER

28a. PRESENT LOCATION	28b. DIPEC CONTROL NO.
	29. POSSESSOR CODE

SECTION II - INSPECTION RECORD (If explanation is required, respond in Remarks)

	YES	NO
30. Can items be stored and maintained on site for at least 12 months?		
31. Has item been rebuilt/overhauled? If so, when? Date		
32. Has item been modified from original configuration? If so, explain.		
33. Was item inspected under power? If no, explain.		
34. Are maintenance costs normal? If no, explain.		
35. Are safety devices adequate and satisfactory? If no, explain.		
36. Are installation instructions available for transfer?		
37. Are operating instructions available for transfer?		
38. Was item last used on a finishing operation?		
39. Will adjustments or calibration correct deficiencies?		
40. Is item severable without damage to components If not, give their replacement cost. $		
41. Is item in operable condition?		

	YES	NO
42. Must item be repaired/rebuilt/overhauled to perform all functions? $		
43. Do QC records indicate satisfactory performance? If no, explain.		
44. Are manually operated mechanisms in working order? If no, describe.		
45. Are scales, dials, and gauges working and readable? If no, describe.		
46. Are hydraulic pumps, valves/fittings operating properly? If no, describe.		
47. Are electronic systems and controls operating properly? If no, explain.		
48. How many hours was item used by current possessor?		
49. Explain last use of equipment described in item 26 above.		
50. Estimated cost for packing, crating, handling. $		
51. Indicate date item will be available for redistribution.		
52. Condition code.		
53. Operating test code.		

SECTION III - REMARKS

54. REMARKS

CONTINUED ON BACK OF FORM ☐ YES ☐ NO

SECTION IV - VALIDATION RECORD

55. VALIDATION (Typed name(s) and signature(s))

DD Form 1342, 931101 Draft PREVIOUS EDITION MAY BE USED

1.	a. ACTIVE	b. INITIAL	c. IDLE	d. CHANGE	2. JULIAN DATE	3. I.D./GOVERNMENT TAG NO.

SECTION V - NUMERICALLY CONTROLLED MACHINE DATA

56. CONTROL MFR	57. MODEL	58. SERIAL NO.	59. MFG. DATE

60. CONTROL DESIGN

a. NC	b. CNC	c. STORED PROG.	d. EDIT	e. SOLID STATE	f. VACUUM TUBE	g. OTHER (List)

61. TYPE NUMERICAL CONTROL SYSTEM			62. DIRECT NC				63. AXES NAMED PER RS-267 FIGURE
a. POSITIONING	b. CONTOURING	c. CONTOURING/ POSITIONING	a. NO	b. YES (If yes, X (1), (2) and/or (3))			
			(1) READER BY-PASS	(2) MGT. DATA	(3) DEDICATED COMPUTER		

64. EIA FORMAT DETAIL

65. EIA FORMAT CLASSIFICATION WIDTHMAND	66. ROTARY MOTIONS UNDER NC (Name and identify)	67. SPECIFY AXES UNDER POSITIONING CONTROL	68. SPECIFY AXES UNDER CONTOURING CONTROL

69. AXES MAXIMUM TRAVEL (Enter axes: X, Y, Z, etc., and specify inches or mm)	70. POSITIONING RATE, MAX		
	71. FEED RANGE		
	a. ROTARY, RPM	b. LINEAR, XY	c. LINEAR, Z

72. SPINDLE DATA	a. NO. OF SPINDLES	b. NO. OF SPDL MOTORS	c. HP/SPDL MOTOR	d. TAPER	e. SPEED RANGE	f. NO. OF INCREMENTS	g. TAPE CONTROL
							(1) YES
							(2) NO

73. EIA ASSIGNED "G" FUNCTION CODES (Identify functions in Remarks that are not EIA assigned)

74. EIA ASSIGNED "M" FUNCTION CODES (Identify functions in Remarks that are not EIA assigned)

75. INPUT DATA	a. STANDARD		b. FORMAT		c. CODE		d. DIMENSIONAL INPUT	
	(1) RS-273	(2) RS-274	(1) WORD ADD	(2) TAB SEQ	(1) RS-244as	(2) RS-358	(1) Inch	(2) METRIC
	(3) RS-326		(3) FIXED SEQ	(4) CL DATA	(3) BINARY		(3) BOTH	

76. TOOL CHANGE DATA	a. NO. OF TURRETS	b. NO. STATIONS	c. AUTO. CHANGER	d. NO. OF TOOLS	e. SELECTION	f. MAX. TOOL DIA	g. TOOL LENGTH	h. MAX. TOOL WT.	i. TOOL CODING METHOD
			YES		(1) SEQUENTIAL Z				
			NO		(2) RANDOM				

77. ROTABLE TABLE DATA	a. INDEXING	b. NO. OF STOPS	c. POSITIONING, NC	d. NO. OF POSITIONS	e. CONTOURING, NC	f. FEED RANGE: RPM
	(1) MANUAL		(1) YES		(1) YES	
	(2) NC		(2) NO		(2) NO	

78. NO. OF READERS	79. READER TYPE (X one)		80. READER SPEED	81. INTERPOLATION		82. BUFFER STORAGE		83. THREAD-CUTTING MAX. LEAD.
	a. MECH	b. PHOTO		a. PARABOLIC	b. LINEAR	a. YES	b. NO	
	c. OTHER (List)			c. CIRCULAR	d. NONE			

84. CUTTER DIA. COMPENSATIONS		85. TOOL OFFSETS		86. READOUTS		
a. NUMBER OF	b. MAX. AMOUNT	a. NO. TOOL OFFSETS	b. MAX. AMOUNT	a. SEQ. NO.	b. POSITION	
				c. COMMAND DATA	d. OTHER (List)	

87. FEEDBACK DEVICE		88. MIN. PROGRAMMABLE INCREMENT	89. MOTOR DRIVE		90. POST PROCESSOR (Name)
a. ANALOG	b. NONE		a. STEPPING	b. DC	
c. DIGITAL			c. HYDRAULIC		

91. DEVELOPED BY (Name)	92. COMPUTER LANGUAGE USED	93. PART PROGRAM LANGUAGE	94. APPLICABLE COMPUTER (Name, Model and Min Core Storage)

95. REQUIRED MANUALS (Title and Manual Edition)

96. REMARKS (Features not covered above, functions not EIA assigned, etc.)

CONTINUED ON REVERSE SIDE ☐ YES ☐ NO

DD Form 1342, 931101 Draft (BACK)

DOD INDUSTRIAL PLANT EQUIPMENT REQUISITION

REQUISITION NUMBER

Form Approved
OMB No. 0704-0246
Expires xxxxx

Public reporting burden for this collection of information is estimated to average 1.5 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO DEFENSE INDUSTRIAL PLANT EQUIPMENT CENTER, MEMPHIS, TENNESSEE 38114

SECTION I - ITEM DESCRIPTION

1. COMMODITY CODE	2. MANUFACTURER			3. MODEL NUMBER
4. STOCK NUMBER	5. POWER CODE	6. ESTIMATED COST	7. PHYSICAL INSPECTION REQUIRED (X one) ☐ YES ☐ NO	8. PROCUREMENT SPECIFICATION ATTACHED (X one) ☐ YES ☐ NO

9. DESCRIPTION

CONTINUED UNDER REMARKS SECTION ☐ YES ☐ NO

SECTION II - REQUIRING AGENCY / FACILITY / CONTRACTOR

10. NAME AND ADDRESS (Include ZIP Code)	11. CONTRACT NUMBER (X one)	12. DATE (YYMMDD)	13. COMMAND CODE
	14. PROGRAM (X one) ☐ MILITARY ☐ CONTRACTOR		

15. INTENDED USE	16. DATE ITEM REQUIRED AT DESTINATION (YYMMDD)	17. DATE CERT. N/A REQUIRED (YYMMDD)	18. PRIORITY
19. BASIC FOR AUTHORIZATION (X one) ☐ PRODUCTION ☐ REPLACEMENT ☐ MOBILIZATION	20. PROCUREMENT PLANNED (X one) ☐ YES ☐ NO (If "YES," cite Appropriation)		21. REBUILD/ OVERHAUL CANDIDATE ☐ YES
22. TYPED NAME AND TITLE OF REQUESTING OFFICIAL	23. SIGNATURE OF REQUESTING OFFICIAL		24. DATE (YYMMDD)
25. CERTIFICATION OF NEED BY ADMINISTERING ACTIVITY		a. ADMINISTERING OFFICE CODE	
b. NAME AND ADDRESS (Include ZIP Code)	c. TYPED NAME AND SIGNATURE OF PRODUCTION REPRESENTATIVE		d. DATE (YYMMDD)
	e. SIGNATURE OF ADMIN. CONTRACTING OFFICER		f. DATE (YYMMDD)

SECTION III - APPROVAL AUTHORITY

26. NAME AND ADDRESS (Include ZIP Code)	27. TITLE, SYMBOL AND TELEPHONE NO. OF APPROVING OFFICIAL	
	28. TYPED NAME & SIGNATURE OF APPROVING OFFICIAL	29. DATE (YYMMDD)

SECTION IV - ALLOCATION AND AUTHORITY TO INSPECT (To be completed by DIPEC)

30. COMMODITY CODE	31. CD GOVERNMENT TAG NUMBER	32. DESCRIPTION (See attached copy of DD Form 1342, dated)
33. PRESENT LOCATION (Name, address and ZIP Code)		34. SHIPPED TO (Name, address and ZIP Code)

35. ESTIMATED TIME REQUIRED FOR SHIPMENT FROM DATE OF ACCEPTANCE (Enter number of days)

a. AS IS CONDITION	b. TEST REQUIRED	c. REPAIR REQUIRED	d. REPAIR/OVERHAUL REQUIRED	e. STANDARD ATTACHMENTS REQUIRED

36. TYPED NAME AND SIGNATURE OF ALLOCATING OFFICIAL	37. DATE (YYMMDD)	38. DATE OFFER EXPIRES (YYMMDD)

SECTION V - NON-AVAILABILITY CERTIFICATE (To be completed by DIPEC)

39. The item described in Section I of this form has been screened by DIPEC against the idle inventory of the Department of Defense and it is hereby certified as not available or cannot be delivered on or before the date specified in Section II (Item 14). Procurement action resulting from this Certification of Non-Availability must be initiated within 45 calendar days of the date included in this Section (Item 40) or complete rescreening is required. Equipment offered by DIPEC in Section IV must be considered if the supplier cannot deliver new equipment before expiration of the period specified in Section IV (Item 33).

40. TYPED NAME AND SIGNATURE OF CERTIFYING OFFICIAL	41. DATE CERTIFICATE ISSUED (YYMMDD)	42. DATE CERTIFICATE EXPIRES (YYMMDD)	43. CERTIFICATE NUMBER

DD Form 1419, 931101

PREVIOUS EDITION MAY BE USED

SECTION VI - CERTIFICATION OF ACCEPTANCE

44. THE ITEM ALLOCATED IN SECTION IV OF THIS FORM *(X as applicable)*

- a. HAS BEEN PHYSICALLY INSPECTED AND IS ACCEPTABLE
- b. IS ACCEPTABLE WITHOUT PHYSICAL INSPECTION
- c. ITEM IS ACCEPTED UNDER ONE OF THESE CONDITIONS:
  - (1) AS IS CONDITION
  - (2) REPAIR REQUIRED
  - (3) TEST REQUIRED
  - (4) REBUILD OVERHAUL REQUIRED
  - (5) OTHER
- d. IS NOT ACCEPTABLE *(A complete description of conditions making item unacceptable must be stated under REMARKS below)*

45. TYPED NAME AND TITLE OF CERTIFYING OFFICIAL	46. SIGNATURE OF CERTIFYING OFFICIAL	47. DATE *(YYMMDD)*

SECTION VII - SPECIAL SHIPPING INSTRUCTIONS

48. SHIP TO *(Include ZIP Code)*	49. FOR TRANSSHIPMENT TO *(Include ZIP Code)*

50. MARK FOR

51. APPROPRIATION CHARGEABLE FOR		d. PAYING OFFICE/ ACTIVITY NAME AND ADDRESS *(Include ZIP Code)*
a. PACKING/ CRATING/ HANDLING		
b. TRANSPORTATION		
c. OTHER		

52. SPECIAL DISTRIBUTION OF SHIPPING DOCUMENTS AND OTHER INSTRUCTIONS

SECTION VIII - REMARKS

53. REMARKS

DD Form 1419, 931101 Draft (BACK)

NOTICE OF ACCEPTANCE OF INVENTORY SCHEDULES	1. PLANT CLEARANCE CASE NUMBER	Form Approved OMB No. 0704-0246 Expires xxxxx

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.
RETURN COMPLETED FORM TO ADDRESS IN BLOCK 2

ALL FUTURE DOCUMENTS CONCERNING THIS CASE MUST BEAR THE PLANT CLEARANCE CASE NUMBER SHOWN ABOVE

2. TO *(Include ZIP Code)*	3. FROM *(Include ZIP Code)*

NOTE TO CONTRACTOR

This office accepts the inventory schedules listed below as being satisfactory in form for storage or removal purposes. Acceptance of the inventory schedules as satisfactory in form will not affect the Government's right to require additional information on any listed item, nor to prejudice the Government's right to contest the cost, quantities, and allocability of any item or items. Within a few days a Government representative will visit your plant to verify the inventory submitted, review your bill of material, and to confirm allocability of the inventory submitted.

4. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER	5. SUBCONTRACT OR PURCHASE ORDER NUMBER	6. CHANGE ORDER NUMBER	7. TERMINATION DOCKET NUMBER

8. CONTRACTOR'S REFERENCE NUMBER	9. TYPE OF CONTRACT *(X one)*					
		a. FIXED PRICE		b. COST TYPE		c. FACILITY
		d. LEASE		e. BAILMENT		f. STORAGE
10. TYPE OF INVENTORY *(X one)*		a. TERMINATION		b. RESIDUAL TO CONTRACT		
	c. CHANGE ORDER	d. EXCESS GFP		e. PRODUCTION EQUIPMENT		

11. COST OF INVENTORY SCHEDULES		12. LOCATION OF PROPERTY
a. STANDARD FORM 1426 *(Schedule A)*	$	
b. STANDARD FORM 1428 *(Schedule B)*	$	
c. STANDARD FORM 1430 *(Schedule C)*	$	
d. STANDARD FORM 1432 *(Schedule D)*	$	13. CONTRACTOR OR SUBCONTRACTOR
e. DD FORM 1342	$	a. NAME *(Identify as Prime Contractor or Subcontractor)*
f. STANDARD FORM 1434	$	b. ADDRESS OF CONTRACTOR OR SUBCONTRACTOR *(Include ZIP Code)*
g. TOTAL	$	

14. COMMENTS *(Continue on reverse if necessary.)*

15. PLANT CLEARANCE OFFICER		
a. TYPED NAME	b. SIGNATURE	c. DATE

DD Form 1637, 931101 Draft

SCRAP WARRANTY

Form Approved
OMB No. 0704-0246
Expires xxxxx

Public reporting burden for this collection of information is estimated to average 30 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.
RETURN COMPLETED FORM TO THE CONTRACT ADMINISTRATION OFFICE

1. PLANT CLEARANCE CASE NUMBER	2. CONTRACT NUMBER
3. CONTRACTOR	4. INVENTORY REFERENCE

5. WARRANTY

a. This scrap warranty covers materials listed below at indicated procurement cost and selling prices as approved by the _____ Plant Clearance Officer and as sold by _____

PAGE (1)	ITEM (2)	DESCRIPTION (3)	WEIGHT (4)	ACQUISITION COST (5)	SELLING COST (6)

b. In consideration of the transfer to the undersigned of the property covered by this agreement at a value based upon its being used as scrap, the undersigned represents and warrants to the United States as follows:

(1) The property covered by this agreement will be used only as scrap, either in its existing condition or after further preparation, unless and until the undersigned is released from this warranty.

(2) In the event the undersigned is released from this warranty, any payment agreed on as consideration for such release shall be made to the United States regardless of whether this warranty shall have been executed at the request of the United States.

(3) In the event the undersigned sells the property covered by this agreement prior to release of this warranty, the undersigned will obtain from the purchaser and tender to the United States a warranty identical to this executed by the purchaser, and upon receipt of such other warranty this warranty will be released by the United States.

(4) All obligations of the undersigned under this warranty shall expire five years from the date hereof.

6. PURCHASER

a. TYPED NAME (Last, First, Middle Initial)	b. ADDRESS (Street, City, State, and Zip Code)
c. SIGNATURE	d. DATE SIGNED (YYMMDD)

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REQUEST FOR PLANT CLEARANCE	1. DATE PREPARED (YYMMDD)	Form Approved OMB No. 0704-0246 Expires xxxxx

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES. RETURN COMPLETED FORM TO ADDRESS IN ITEM 2

2. TO (Include ZIP Code)	3. FROM (Include ZIP Code)

It is requested that plant clearance, including prescribed screening and disposal actions, be accomplished with respect to the contractor inventory described in the enclosed schedules. Plant clearance authority is hereby delegated for the purpose of this referral.

4. GROSS VALUE OF INVENTORY SCHEDULES ($)	5. SCHEDULE PARTIAL NUMBER	6. PROCUREMENT INSTRUMENT IDENTIFICATION NUMBER

7. PRIME CONTRACT END ITEM	8. SUBCONTRACT NUMBER

9. NAME AND ADDRESS OF PRIME CONTRACTOR (Include ZIP Code)	10. NAME AND ADDRESS OF SUBCONTRACTOR (Include ZIP Code)

11. LOCATION OF PROPERTY	12. TYPE OF CONTRACT (X one)					
		a. FIXED PRICE		b. COST TYPE		c. FACILITY
		d. LEASE AGREEMENT		e. FORMAL STORAGE AGREEMENT		f. BAILMENT

13. TYPE OF INVENTORY (X one)

	a. TERMINATION		b. RESIDUAL TO COMPLETED CONTRACT		c. CHANGE ORDER
	d. EXCESS TO ACTIVE CONTRACT		e. PRODUCTION EQUIPMENT		

14. REMARKS

15. ENCLOSURE(S) (Include Prime Contractor's Certificate of Allocability and Statement of No Further Requirements for the Property)

16. REQUESTING OFFICIAL

a. TYPED NAME (Last, First, Middle Initial)	c. SIGNATURE	d. DATE SIGNED (YYMMDD)
b. TITLE		

FIRST ENDORSEMENT

17. TO (Include ZIP Code)	18. FROM (Include ZIP Code)	19. DATE (YYMMDD)

(1) Disposition will be accomplished under case number _____.

(2) It is requested that all correspondence with this office pertaining to enclosure(s) make reference to the assigned case number.

20. PLANT CLEARANCE OFFICER

a. TYPED NAME (Last, First, Middle Initial)	c. SIGNATURE	d. DATE SIGNED (YYMMDD)
b. TITLE		

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DOD PROPERTY IN THE CUSTODY OF CONTRACTORS

(DFARS 245.505-14)

(See instructions on back before completing this form.)

REPORT AS OF 30 SEP 19____ OR _____

Form Approved
OMB No. 0704-0246
Expires xxxxx

REPORT CONTROL SYMBOL

Public reporting burden for this collection of information is estimated to average 1 hour per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Washington Headquarters Services, Directorate for Information Operations and Reports, 1215 Jefferson Davis Highway, Suite 1204, Arlington, VA 22202-4302, and to the Office of Management and Budget, Paperwork Reduction Project (0704-0246), Washington, DC 20503.

PLEASE DO NOT RETURN YOUR COMPLETED FORM TO EITHER OF THESE ADDRESSES.
RETURN COMPLETED FORM TO THE ADDRESS IN ITEM 1

1. TO *(Enter name and address of property administrator)*	2. FROM *(Enter full name, address and CAGE code of contractor)*

3. IF GOVERNMENT-OWNED, CONTRACTOR-OPERATED PLANT, ENTER GOVERNMENT NAME OF PLANT

4. CONTRACT NO. *(PIIN)*	5. CONTRACT PURPOSE	6. BUSINESS TYPE *(L, S, or N)*	7. OFFICIAL NAME OF PARENT COMPANY

8. PROPERTY LOCATION(S)	9. PLANT EQUIPMENT PACKAGE *(PEP No. and use)*

	a. PROPERTY *(Type or Account)*	b. BALANCE START OF PERIOD (1) ACQUISITION COST *(in dollars)*	b. BALANCE START OF PERIOD (2) QUANTITY *(in units or acres)*	c. ADDITIONS *(in dollars)*	d. DELETIONS *(in dollars)*	e. BALANCE END OF PERIOD (1) ACQUISITION COST *(in dollars)*	e. BALANCE END OF PERIOD (2) QUANTITY *(in units or acres)*
10.	LAND						
11.	OTHER REAL PROPERTY						
12.	OTHER PLANT EQUIPMENT						
13.	INDUSTRIAL PLANT EQUIPMENT						
14.	SPECIAL TEST EQUIPMENT						
15.	SPECIAL TOOLING *(Government Title Only)*						
16.	MILITARY PROPERTY *(Agency-Peculiar)*						
17.	GOVERNMENT MATERIAL *(Government-Furnished)*						
18.	GOVERNMENT MATERIAL *(Contractor-Acquired)*						

19. CONTRACTOR REPRESENTATIVE

a. TYPED NAME *(Last, First, Middle Initial)*	b. SIGNATURE	c. DATE SIGNED *(YYMMDD)*

20. DOD PROPERTY REPRESENTATIVE

a. TYPED NAME (Last, First, Middle Initial)	c. SIGNATURE	d. DATE SIGNED *(YYMMDD)*
b. TELEPHONE NUMBERS *(Commercial and DSN)*		

DD Form 1662, 931101 Draft PREVIOUS EDITION MAY BE USED

REPORTING INSTRUCTIONS

GENERAL. The prime contractor shall report all DoD property *(as indicated)* in its custody or in that of its subcontractors as of September 30 to the Government Property Representative by October 31 of each year. Also report zero end of period balances when no DoD property remains accountable to the contract. Report data from records maintained in accordance with FAR Subpart 45.5 and DFARS Subpart 245.5.

REPORT AS OF 30 SEP 19___. Fill in the appropriate year *(or other date)*.

ITEM 1 - TO. Enter the name of the Government Property Representative, the Contract Administration Office or other office the Government Property Representative works for, and the full mailing address *(including City, State, and Zip + 4)*.

ITEM 2 - FROM. Enter the full name and address of the reporting contractor with the Division name stated after the Corporate name. Use the name as it appears on the contract but omit articles and insert spaces between company names that are made up of letters like XYZ Inc., for example. Also enter the Commercial and Government Entity (CAGE) Code.

ITEM 3 - IF GOVERNMENT-OWNED CONTRACTOR-OPERATED PLANT, ENTER GOVERNMENT NAME OF PLANT. Enter the Government name of the plant if the plant is Government - owned and Contractor - operated. Leave blank if it is a contractor - owned plant.

ITEM 4 - CONTRACT NO. *(PIIN).* Enter the 13-digit contract number or Procurement Instrument Identification Number *(PIIN)* under which the Government property is accountable. Use format XXXXXX - XX - X - XXXX.

ITEM 5 - CONTRACT PURPOSE. Enter one of the following 1-character alphabetic codes to identify the general purposes of the contract:

A. RDT&E

B. Supplies and Equipment *(deliverable end items)*

C. Facilities Contract

D. Lease of facilities by the contractor

E. Maintenance, Repair, Modification, or Rebuilding of Equipment

F. Operation of a Government - Owned Plant or Facilities including test sites, ranges, installations

G. Service contract performed primarily on Military Installations, test facilities, ranges or sites

H. Contract for storage of Government Property

I. Others

ITEM 6 - BUSINESS TYPE. Enter a 1-character alphabetic code indicating the type of business concern:

L = Large S = Small N = Non-profit

(See FAR Part 19 for definition of Small Business and FAR 31.701 for definition of Non-profit Organizations.)

ITEM 7 - OFFICIAL NAME OF PARENT COMPANY. Enter the name of the Parent Corporation of the Reporting Contractor. The Parent Corporation is one in which common stock has been issued whether or not the stock is publicly traded and which is not a subsidiary of another corporation.

ITEM 8 - PROPERTY LOCATION(S). Enter the primary location(s) of the property if it is located at site(s) other than that of the Reporting Contractor, e.g., location of subcontract property or property at alternate sites of the prime contractor. Location is the City, State and Zip or the Military Installation or the Foreign site. Limit input to 69 characters. NOTE: Can be used as a "REMARKS" field.

ITEM 9 - PLANT EQUIPMENT PACKAGE. Enter the Number and Use of a Plant Equipment Package *(PEP)* if one exists on this contract. Leave blank otherwise. Example: ARMY PEP #570 - 81 mm Shells.

ITEMS 10 - 18.b.(1) - ACQUISITION COST (BALANCE AT THE BEGINNING OF THE FISCAL YEAR). Enter the acquisition cost for each type of property as defined in FAR 45.5 or DFARS 245.5. The amounts reported must agree with the amounts reported in the previous year for BALANCE AT END OF PERIOD.

ITEMS 10, 12 - 16.b.(2) - QUANTITY (BALANCE AT BEGINNING OF THE FISCAL YEAR). Enter the quantity for all categories of Government property except for Other Real Property and Material on hand at the beginning of the fiscal year. The amounts reported must agree with the amounts reported in the previous year for BALANCE AT END OF PERIOD.

ITEMS 10 - 15.c. - ADDITIONS *(in dollars).* For the property categories indicated, enter the acquisition cost for the total additions to the contract from any source during the fiscal year. Do not enter for Government Material or Military Property.

ITEMS 10 - 15.d. - DELETIONS *(in dollars).* For the property categories indicated, enter the acquisition cost for the total deletions from the contract during the fiscal year. Do not enter for Government Material or Military Property.

ITEMS 10 - 18.e.(1) - ACQUISITION COST (BALANCE AT THE END OF THE FISCAL YEAR). Enter the acquisition cost for each type of property as defined in FAR 45.5 or DFARS 245.5.

ITEMS 10, 12 - 16.e.(2) - QUANTITY (BALANCE AT END OF FISCAL YEAR). Enter the quantity for all categories of Government Property except for Other Real Property and Material on hand at the end of the fiscal year. These will be carried forward to reflect the balance at the beginning of the following year.

ITEMS 17 and 18 - GOVERNMENT MATERIAL. Report material as reflected on inventory records in accordance with FAR 45.505-3.

ITEM 19 - CONTRACTOR REPRESENTATIVE. Type the name of the contractor representative authorized by the property control system to sign this report.

ITEM 20 - DOD PROPERTY REPRESENTATIVE. Type the name of the DoD Property Administrator or other Authorized Property Representative, plus that individual's commercial area code and telephone number and DSN number *(if one exists)*. Signature and date.

NOTE TO CONTRACTOR: When reporting more than one contract from the same location and the same contractor, you may elect to fill out Data Elements 1, 3, 6, 7, and 19 only once as long as each form can be readily identified if any form becomes separated from the others.

DD Form 1662, 931101 Draft (BACK)

[FR Doc. 93–27745 Filed 11–10–93; 8:45 am]

BILLING CODE 5000–04–C

Office of the Secretary

Establishment of the Advisory Board on the Investigative Capability of the Department of Defense

ACTION: Notice.

SUMMARY: Under the provisions of Public Law 92–463, the "Federal Advisory Committee Act," notice is hereby given that the Advisory Board on the Investigative Capability of the DoD is being established by the Secretary of Defense. This Advisory Board was recommended to be established by the Congress in the Conference Report to accompany H.R. 5006, (pp. 742–745), on the National Defense Authorization Act of Fiscal Year 1993.

The Advisory Board will assess both the criminal and administrative investigative capability of the DoD, including the Military Departments. It will study the organization, personnel, procedures, and effectiveness of the various investigative components, and provide advice and recommendations to the Secretary of Defense based on its findings. A final report is scheduled to be issued by December, 1994.

The Advisory Board will consist of approximately seven members selected from various segments of the legal profession with a diversity of experience in different fields of law, investigation, prosecution, and civilian and government management, to enable them to evaluate the investigative capability of the DoD with an objective and balanced viewpoint. To that end, careful efforts will be made to ensure that the membership will be diverse and well-balanced in terms of the functions to be performed and the interest groups represented.

For additional information regarding the Advisory Board, please contact Ms. E. Vaughn Dunnigan, telephone: 703–697–7228.

Dated: November 5, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27746 Filed 11–10–93; 8:45 am]

BILLING CODE 6000–04–M

Department of the Army

Patents Available for Licensing

AGENCY: U.S. Army Aviation and Troop Support Command, DOD.

ACTION: Notice.

SUMMARY: The Department of the Army announces the general availability of exclusive, partially exclusive, or nonexclusive licenses under the following patents. Any licenses granted shall comply with 35 U.S.C. 209 and 37 CFR 404.7.

Patent No.	Title	Issue date
5,254,474	Method of assessing thermal processing of food using intrinsically-created compounds.	10/19/93
5,254,406	Facepaint material	10/19/93

FOR FURTHER INFORMATION CONTACT: For further information or copies of the above listed patents, contact either Mr. Richard J. Donahue, Patent Counsel or Ms. Jessica M. Niro, Paralegal Specialist at (508) 651–4510.

ADDRESSES: Commander, U.S. Army Natick Research Development and Engineering Center, Office of Chief Counsel, ATTN: Patents, Natick, MA 01760–5035.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–27755 Filed 11–10–93; 8:45 am]

BILLING CODE 5000–03–M

DEPARTMENT OF EDUCATION

Dwight D. Eisenhower National Program for Mathematics and Science Education—Model Professional Development in Use of Technology for Mathematics and Science Instruction

AGENCY: Education.

ACTION: Notice of proposed priority for fiscal year 1994.

SUMMARY: The Secretary proposes a priority for fiscal year 1994 under the Dwight D. Eisenhower National Program for Mathematics and Science Education to support model projects that help teachers respond to National Education Goal Four—U.S. students will be first in the world in mathematics and science achievement—through the effective use of technology in the classroom. The Secretary takes this action to learn from these projects as well as demonstrate effective use of technology. Accordingly, projects will be expected to evaluate their activities in order to disseminate information about effective professional development in this area to other teachers and schools throughout the nation.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: All comments concerning this proposed priority should be addressed to Mr. Charles Stalford, U.S. Department of Education, 555 New Jersey Avenue, NW., room 500F, Washington, DC 20208–5643.

FOR FURTHER INFORMATION CONTACT: Ms. Kathy Fuller or Ms. Annora Dorsey, U.S. Department of Education, 555 New Jersey Avenue, NW., room 522, Washington, DC 20208–5524. Telephone: (202) 219–1496. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The goal of the Eisenhower National Program is to support projects of national significance in elementary and secondary schools in mathematics and science education designed to improve the skills of teachers and the quality of instruction in these areas and to increase the access of students to that instruction. The program is authorized under title II, subpart 1, section 2012 of the Elementary and Secondary Education Act of 1965, as amended.

The proposed priority in this notice supports National Education Goal Four, which calls for U.S. students to be first in the world in mathematics and science achievement by the year 2000. The Secretary supports the development of voluntary national standards for student achievement in the core academic subjects, and encourages the development of challenging state content and performance standards with improved assessments tied to those standards. The Secretary believes that technology can be used to improve instruction in mathematics and science and provide all students with greater opportunity to learn in accordance with the standards.

In addition, the Committee on Education and Training (CET) of the Federal Coordinating Council for Science, Engineering, and Technology (FCCSET) has identified teacher preparation and enhancement as a priority for educational improvement in mathematics and science at the precollege level. The proposed priority in this notice is consistent with the objectives of a larger CET strategic plan to achieve greater excellence in science, mathematics, engineering, and technology education and training.

The Secretary believes that developments in technology have great promise for helping to attain National Education Goal Four; however, he sees ample evidence that many teachers are not confident about using these resources in the classroom. The purpose of this proposed priority is to support, and learn from, projects that serve as

models of teacher professional development in the use of technology to improve mathematics and science education.

Research shows that sustained, intensive, high-quality professional development focused on discipline-based knowledge and effective pedagogical skills can have a positive impact on the opportunities of all students to achieve to higher standards. The Secretary believes that projects that recognize teachers as an important source of knowledge for helping to shape professional development, and that involve teams and professional networks of teachers and administrators interacting and collaborating on the professional development, can motivate teachers to build on their experiences, help them to learn by doing, become incorporated into the everyday life of the school, and dramatically improve classroom instruction and learning.

The Secretary is interested in supporting professional development projects that each year include at least one intensive (at least 10 days) summer institute; several shorter workshops; in-classroom assistance with technology on a continuing basis (including on-call telecommunications support as well as at least monthly on-site visits by project personnel); and one or more of the following: mentoring, practicums, field trips, internships with employers intensively using technology, and individual self-study programs on the cognitive and pedagogical demands of the use of technology in mathematics and science education.

Forms of technology that may be used in the projects include, but are not limited to: Interactive electronic learning, CD–ROM, and multimedia and/or hypermedia systems; applications of electronic networks of computers, including electronic mail and bulletin boards; local area networks (LANs); and information retrieval systems, such as GOPHER and Wide Area Information Servers (WAIS) that are accessible via Internet. Telecommunications technology merits special attention in these projects because of its potential to provide interactive forums for teachers, and because of the many developments in remote, electronic information search and retrieval that can be applied to instruction. However, the Secretary will not fund applications under this announcement that are primarily distance learning projects. These projects may be eligible for assistance under other announcements.

The Secretary recognizes that school districts and schools have widely varying capabilities to use technology at present and to provide professional development to teachers. While wishing to advance state-of-the-art development in the use of technology in mathematics and science education, he especially proposes to further model professional development projects in school districts and schools that have relatively few resources for the purchase of technology in order to demonstrate the effect of using technology in the classrooms of these school districts and schools. Applicants may request a portion of the Federal funding for the project to be used for the purchase of technology, and they may budget appropriate substitute help for participating teachers.

The Secretary is interested in the effects of the use of technology on student learning in mathematics and science, and may subsequently conduct an external study of lessons learned from projects funded under this program for nationwide dissemination. If so, projects will be required to cooperate with the conduct of the study, by sharing their experiences, project evaluations, and data.

The Secretary will announce the final priority in a notice in the **Federal Register**. The final priority will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priority, and the quality of the applications received. The publication of this proposed priority does not preclude the Secretary from proposing additional priorities; nor does it limit the Secretary to funding only this priority, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priority does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrently with or following publication of the notice of final priority.

Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Teacher Professional Development in the Use of Technology for Mathematics and Science Education

The Secretary will support model projects that demonstrate effective ways of strengthening teachers' abilities to use technology in the classroom for the improvement of teaching and learning in mathematics and science education at the elementary or secondary school levels, or both.

Required Activities

Each project must:

(a) Form a partnership to develop and implement project activities. Partnerships must include one or more of each of the following parties: Local educational agency or private school(s), State educational agency, institution of higher education, and private sector party with expertise in technology. Partners must contribute resources to the operation of the project. Programming must be designed in consultation with professionals who are experts in the applicable subject matter, educational levels, and technologies to be used in the project. Projects must be coordinated with other professional development efforts in mathematics and science, particularly with the Eisenhower State Grant Program.

(b) Establish an advisory committee to guide the project. The advisory committee must include representation from each of the partners to the application, plus principals of project site schools and classroom teachers participating in the project.

(c) Involve two or more schools serving underachieving students in the project, and involve the majority of, if not all, teachers of mathematics and science in the participating schools in project activities. Participating teachers must implement the use of technology in their teaching of mathematics and science.

(d) Provide participating teachers with sustained, intensive, high-quality professional development activities that focus on the use of technology to improve classroom instruction in mathematics and science. Project activities must reflect relevant research on teaching and learning, as well as the experiences of the partners and participating teachers. Activities must integrate academic content and pedagogical components, and be delivered largely on-site (i.e., in schools or districts) for groups of teachers working cooperatively.

(e) Provide participating teachers with forums for interaction and with access to sources of technical assistance outside their schools. Projects must require that participating teachers collaborate with each other and that they participate in electronic networking with other teachers, including teachers participating in other projects funded under this program, to share experiences and knowledge about how to improve student learning through the use of technology in instruction.

Projects may use up to 20% of the total Federal portion of the project budget to purchase or lease appropriate hardware, software, and communications services or tariffs for use in these projects. In addition, projects must provide, using non-Federal funds, some of the hardware, software, and other requirements of the technology to be used in these projects.

(f) Evaluate lessons learned about effective teacher professional development in the use of technology to improve mathematics and science teaching and learning, and use the information to improve the project on a continuing basis. Evaluations must address the characteristics of participating teachers and students, the technologies used and their relative effectiveness, and the effects on teaching and learning of the use of technology in instruction in mathematics and science. Evaluations must include a mid-course, on-site review by an outside panel, including experts in the use of technology in instruction and classroom teachers with successful experience in using technology to improve instruction.

(g) Disseminate lessons learned to other schools participating in the program, and to others such as schools with similar needs in the project site State, institutions and organizations providing pre-service and in-service teacher development programs in the project site State, and other interested parties that could benefit from this information. Dissemination must begin while the project is in progress and use electronic as well as other forms of communication. Applicants may request Federal funding to support dissemination activities, including travel for dissemination, in amounts not to exceed 20% of the total Federal portion of the project budget. Projects must participate in meetings of the Eisenhower Program held annually in Washington, DC.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding this proposed priority.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC, between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

34 CFR part 755.

Program Authority: 20 U.S.C. 2992.

(Catalog of Federal Domestic Assistance Number 84.168, Dwight D. Eisenhower National Program for Mathematics and Science Education)

Dated: November 1, 1993.

Dick W. Hays,

Acting Assistant Secretary, Office of Educational Research and Improvement.

[FR Doc. 93-27743 Filed 11-10-93; 8:45 am]

BILLING CODE 4000-01-P

Fund for Innovation in Education (FIE): Technology Education Program—Teacher Networking Project

AGENCY: Education.

ACTION: Notice of proposed priorities for Fiscal Year 1994.

SUMMARY: The Secretary proposes an absolute priority for Fiscal Year 1994 under the Fund for Innovation in Education Program for teacher networking projects. The Secretary takes this action to focus Federal financial assistance on model projects that demonstrate compelling applications of electronic networks in support of teacher professional development. The priority is intended to increase teacher participation in learning communities of colleagues to enhance teachers' access to resources for self improvement and provide more information about how teachers can use electronic networks as an effective means of professional development. The Secretary also proposes a competitive priority for projects that propose particularly effective ways of providing professional development networks for teachers in schools with concentrations of students from poor families.

DATES: Comments must be received on or before December 13, 1993.

ADDRESSES: All comments concerning these proposed priorities should be addressed to Cheryl P. Garnette, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502, Washington, DC 20208–5644.

FOR FURTHER INFORMATION CONTACT: Cheryl P. Garnette, U.S. Department of Education, 555 New Jersey Avenue, NW., room 502, Washington, DC 20208–5644. Telephone: (202) 219–2116. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: The proposed absolute priority in this notice supports the National Education Goals, and in particular Goal Three, which calls for American students by the year 2000 to demonstrate competency over challenging subject matter and for all students to learn to use their minds well, so they are prepared for responsible citizenship, further learning and productive employment. State and local reform efforts to make challenging State content standards a reality in every classroom would include strengthened and improved teacher training, technologies, and innovative student performance assessments to gauge progress.

One promising approach to meeting the instructional challenges that rise from implementing standards-based reform is to provide teachers with immediate access to information and help. This is possible when teachers, linked through a computer-based electronic network, form a learning community that allows participants to draw upon the combined knowledge and resources of all participants in the network and bring those resources to bear on questions they face in their own classrooms.

Electronic networks designed to enhance teacher professional growth are becoming increasingly available to teachers. For example, at least 25 States now have state-wide electronic networks. Yet there is little understanding of what it takes for a network to be successful in meeting user needs, to be cost effective, and to maintain continuing user interest and garner long-term financial support.

Through this proposed absolute priority, the Secretary intends to support projects that model compelling applications of electronic networking in support of teacher professional development. By providing support for the demonstration of model networking projects, the Secretary intends to stimulate and promote the practice of teacher networking, and to learn more about what it takes for teacher networks to be effective.

The implementation of standards-based reform presents particularly

severe challenges to schools located in areas plagued by poverty and economic distress. Teachers in schools that serve large numbers of low-income students frequently lack access to professional development resources and opportunities. The Secretary intends to address this problem by proposing a competitive preference priority for projects that offer particularly effective professional development opportunities by means of electronic networks to teachers in schools with high concentrations of students from low-income families.

The Secretary will announce the final priorities in a notice in the **Federal Register**. The final priorities will be determined by responses to this notice, available funds, and other considerations of the Department. Funding of particular projects depends on the availability of funds, the nature of the final priorities, and the quality of the applications received. The publication of these proposed priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Note: This notice of proposed priorities does not solicit applications. A notice inviting applications under this competition will be published in the **Federal Register** concurrent with or following publication of the notice of final priority.

Priorities

Proposed Absolute Priority

Under 34 CFR 75.105(c)(3) the Secretary proposes to give an absolute preference to applications that meet the following priority. The Secretary proposes to fund under this competition only applications that meet this absolute priority:

Model Projects That Demonstrate Applications of Electronic Networks for Teacher Professional Development

The Secretary is seeking teacher networking projects that are designed to achieve the following purposes: (a) Increase teacher access to and participation with their colleagues in electronic networks that provide resources for professional development; and (b) improve student instruction in the core subjects of English, science, mathematics, history, geography, civics, foreign languages and the arts.

Each proposed teacher networking project must include the following:

(1) A unifying focus for the professional development activities of the network on some aspect of standards-based reform. For example, a network might focus its activities on helping teachers make the adjustments needed within their classrooms to meet challenging State content standards in one of the core subjects; expanding learning opportunities for students in inner city urban or isolated rural schools; or changing classroom instructional practices to incorporate hands-on learning, motivate students to meet more demanding expectations, or improve the quality and use of student assessments.

(2) Computer-based electronic communication among individuals and groups of individuals; exchange of textual information, including transfer of documents; and provision of access to education data bases and other sources of information, including access to Internet.

(3) Professional development activities that include creating a learning community of professional colleagues with a clearly defined common interest; linking participating teachers with one another and with researchers and other sources of research and practical knowledge about the defined area of interest; facilitating and providing structure for focused electronic discussions by network participants; and providing direct and timely responses to teachers' questions.

(4) Documentation activities that describe critical events in planning, implementing, and operating the network; that archive and analyze the results of network use; and that summarize data about user needs, cost effectiveness, and long-term network maintenance that have been compiled from the project experiences.

Proposed Competitive Priority

Within the absolute priority specified in this notice, the Secretary, under 34 CFR 75.105(c)(2)(i), proposes to give preference to applications that meet the following competitive priority. The Secretary proposes to award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points are in addition to any points the application earns under the selection criteria for the program: Projects that use electronic networks to provide professional development opportunities for teachers in schools and classrooms with high concentrations of students from low-income families.

Intergovernmental Review

This program is subject to the requirements of Executive Order 12372 and the regulations in 34 CFR part 79. The objective of the Executive Order is to foster an intergovernmental partnership and a strengthened federalism by relying on processes developed by State and local governments for coordination and review of proposed Federal financial assistance.

In accordance with the order, this document is intended to provide early notification of the Department's specific plans and actions for this program.

Invitation to Comment

Interested persons are invited to submit comments and recommendations regarding these proposed priorities.

All comments submitted in response to this notice will be available for public inspection, during and after the comment period, in room 522, 555 New Jersey Avenue, NW., Washington, DC., between the hours of 8:30 a.m. and 4 p.m., Monday through Friday of each week except Federal holidays.

Applicable Program Regulations

The Education Department General Administrative Regulations (EDGAR) in 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, and 86.

Program Authority: 20 U.S.C. 3151, 3153.

(Catalog of Federal Domestic Assistance Number: 84:215C Secretary's Fund for Innovation in Education: Technology Education Program)

Dated: November 4, 1993.

Sharon Porter Robinson,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 93–27741 Filed 11–10–93; 8:45 am]

BILLING CODE 4000–01–P

[CFDA No. 84.200]

Graduate Assistance in Areas of National Need Program

AGENCY: Education.

ACTION: Notice of technical assistance workshops.

SUMMARY: The Department of Education will conduct technical assistance workshops to assist prospective applicants in developing applications for the Graduate Assistance in Areas of National Need Program for fiscal year 1994. Reservations are not required for attendance at these workshops, which will be conducted from 9 a.m.–3 p.m. at each site. The workshops dates and locations are as follows:

November 15, 1993

Location: Indiana University—Purdue University, 850 West Michigan Street (Conference Center), Indianapolis, IN 46202.

Contact: David Malik, Chairperson, Department of Chemistry, Telephone: (317) 274–6875.

November 17, 1993

Location: University of Oregon, Klamath Hall, room 331, Eugene, OR 97403–1253.

Contact: David Johnson, Department of Chemistry, Telephone: (503) 346–4612.

November 19, 1993

Location: Georgia Institute of Technology, room 319, Student Center, Atlanta, GA.

Contact: Glenna Thomas, Graduate Studies and Research, Telephone: (404) 894–3090.

December 3, 1993

Location: Regional Office Building 3, General Services Administration Auditorium, 7th and D Streets, SW. (D Street entrance), Washington, DC 20202.

Contact: Tanyelle Hawkins, U.S. Department of Education, Telephone: (202) 708–6578.

FOR FURTHER INFORMATION CONTACT: Celeste B. Felious, U.S. Department of Education, 400 Maryland Avenue, SW., ROB–3, room 3022, Washington, DC 20202–5251, Telephone: (202) 708–9419. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C., 1134l–1134q.

Dated: November 5, 1993.

Maureen A. McLaughlin,

Acting Assistant for Postsecondary Education.

[FR Doc. 93–27740 Filed 11–10–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Proposed Upgrades/Installation of Monitoring Stations at Waste Area Grouping 6, Oak Ridge, TN

AGENCY: Department of Energy (DOE).

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for proposed upgrades/installation of monitoring stations at Waste Area Grouping (WAG) 6. Prepared in accordance with 10 CFR part 1022. DOE proposes to upgrade/install monitoring stations on intermittent streams draining WAG 6. DOE prepared a Floodplain and Wetlands Assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain and wetlands. DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings before implementing the proposed action.

FOR FURTHER INFORMATION CONTACT: Mr. Robert C. Sleeman, Director, Environmental Restoration Division, Oak Ridge Operations Office, U.S. Department of Energy, Post Office Box 2001, Oak Ridge, Tennessee 37831–8541

FAX comments to: (615) 576–6074.

FOR FURTHER INFORMATION ON GENERAL DOE FLOODPLAIN/WETLANDS ENVIRONMENTAL REVIEW REQUIREMENTS, CONTACT: Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756.

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for Proposed Upgrades/Installation of Monitoring Stations at WAG 6 on DOE's Oak Ridge Reservation prepared in accordance with 10 CFR part 1022. A Notice of Floodplain Involvement was published in the **Federal Register** on March 26, 1992, (57 FR 10473) and a Floodplain and Wetlands Assessment was prepared.

To facilitate future remedial actions at WAG 6 under the Comprehensive Environmental Response, Compensation, and Reliability Act (CERCLA), DOE proposes a preliminary action—upgrading/installing monitoring stations on intermittent streams draining WAG 6, which would take place within the floodplain.

Approximately 2.5 acres of WAG 6 lie within the 100-year floodplain of White Oak Lake. There are three floodplain areas near the mouths of four unnamed intermittent streams that drain the WAG. Monitoring stations 1, 2, and 3, near the points where the streams leave WAG 6, will be upgraded before environmental restoration activities begin and a fourth monitoring station, number 4, will be installed just below the discharge from the intermittent stream located northeast of monitoring stations 1 and 2. The monitoring station upgrades/installation will involve installing sampling equipment, H-flumes to accurately measure flow rates, and box culverts for road crossings. Where current road crossings would be subject to flooding after future remedial actions are completed, DOE would include elevating and repositioning such crossings as part of this monitoring station upgrade/installation action. In accordance with DOE Order 6430.1A, the monitoring station upgrades/installation will be designed to accommodate the peak flow from a 25-year, 6-hour storm.

The upgrade of monitoring stations 1, 2, and 3 and installation of monitoring station 4 will require excavating and transporting earth in several hundred square feet of land within the floodplain. Based on the small area to be affected, the activities taking place in the floodplain are not expected to have an adverse impact on White Oak Lake floodplain. Measures to be taken to minimize potential harm to or within the affected floodplain would include the preparation of a sediment control plan identifying the Best Management Practices to be employed during construction to reduce any minor sedimentation and/or erosion. These may include installing sediment control fences, scheduling construction during dry periods when little or no stream flow occurs, and constructing a diversion channel for any stream flow that occurs during construction.

On the basis of the Floodplain Assessment, DOE has determined that there are no practical alternatives to the proposed action and that the action has been designed to avoid or minimize potential impacts to or within the 100-year floodplain associated with White Oak Lake and WAG 6. The no-action alternative of leaving the existing weirs in place would result in DOE being unable to accurately measure possible contaminant releases into the intermittent streams flowing from WAG 6 and would impede the process of analyzing future remedial actions executed under CERCLA. The proposed action does conform to applicable State or local floodplain protection standards.

The proposed action is necessary to ensure proper management of WAG 6 and enable DOE to pursue future remedial actions at WAG 6 and meet the requirements of CERCLA. The proposed action has been designed to avoid or minimize impacts to the floodplain and would have no adverse impact on the 100-year floodplain of White Oak Lake and WAG 6. DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Issued in Washington, DC, on November 5, 1993.

Clyde W. Frank,

Acting Principal Deputy Assistant Secretary for Environmental Restoration, and Waste Management.

[FR Doc. 93–27852 Filed 11–10–93; 8:45 am]

BILLING CODE 6450–01–M

Inventions Available for Licensing

AGENCY: Department of Energy, Morgantown Energy Technology Center, Technology Transfer Program Division.

ACTION: Notice of inventions available for licensing.

SUMMARY: The United States Department of Energy, Morgantown Energy Technology Center hereby announces that the inventions listed below are available for licensing in accordance with 35 U.S.C. 207–209 to achieve expeditious commercialization of results of federally funded research and development. Foreign patents rights have been retained on selected inventions to extend market coverage for U.S. companies and may also be available for licensing. A copy of issued patents may be obtained, for a modest fee, from the U.S. Patent and Trademark Office, Washington, DC 20231.

FOR FURTHER INFORMATION CONTACT: Lisa A. Jarr, Technology Transfer Program Division, U.S. Department of Energy, Morgantown Energy Technology Center, P.O. Box 880, 3610 Collins Ferry Road, Morgantown, WV 26505, Telephone: (304) 291–4555.

SUPPLEMENTARY INFORMATION: 35 U.S.C. 207 authorizes licensing of Government-owned inventions. Implementing regulations are contained in 37 CFR part 404. 37 CFR 404.7(a)(1) authorizes exclusive licensing of Government-owned inventions under certain circumstances, provided that notice of the invention's availability for licensing has been announced in the **Federal Register**.

Issued Patents

Number and Title

4,447,297 Combined Fluidized Bed Retort and Combustor
4,451,826 Single Transmission Line Data Acquisition System
4,453,948 Air-Flow Regulation System for a Coal Gasifier
4,453,949 Ash Bed Level Control System for a Fixed-Bed Coal Gasifier
4,453,950 Coal Gasification System with a Modulated On/Off Control System
4,465,135 Fire Flood Method for Recovering Petroleum From Oil Reservoirs of Low Permeability and Temperature
4,466,360 Loop-Bed Combustion Apparatus
4,466,757 Ash Level Meter for a Fixed-Bed Coal Gasifier
4,475,884 Reversed Flow Fluidized-Bed Combustion Apparatus
4,523,465 Wireless Remote Liquid Level Detector and Indicator for Well Testing
4,524,796 Sliding-Gate Valve for Use With Abrasive Materials
4,616,137 Optical Emission Line Monitor with Background Observation and Cancellation
4,667,097 Compensated Vibrating Optical Fiber Pressure Measuring Device
4,680,585 Pulse-Excited, Auto-Zeroing Multiple Channel Data Transmission System
4,696,680 Method and Apparatus for the Selective Separation of Gaseous Coal Gasification Products by Pressure Swing Adsorption
4,747,938 Low Temperature Pyrolysis of Coal or Oil Shale in the Presence of Calcium Compounds
4,769,045 Method for the Desulfurization of Hot Product Gases From Coal Gasifier
4,786,291 Method for Increasing Steam Decomposition in a Coal Gasification Process
4,832,704 Method for Enhancing the Desulfurization of Hot coal Gas in a Fluid-Bed Gasifer
4,840,931 Method of Inducing Surface Ensembles on a Metal Catalyst
4,867,079 Combustor with Multistage Internal Vortices
4,876,080 Hydrogen Production with Coal Using a Pulverization Device
4,880,528 Method and Apparatus for Hydrocarbon Recovery from Tar Sands
4,886,521 Decaking of Coal or Oil Shale During Pyrolysis in the Presence of Iron Oxides
4,896,965 Real-Time Alkali Monitoring System
4,921,765 Combined Coal Gasifier and Fuel Cell System and Method
4,926,112 3–D Capacitance Density Imaging System
4,939,376 Light Collection Device for Flame Emission Detectors
4,955,942 An In-Bed Tube Bank for a Fluidized-Bed Combustor
4,976,549 Apparatus and Method for Direct Measurement of Coal Ash Sintering and Fusion Properties at Elevated Temperatures and Pressures
4,976,940 Method of Producing H2 Using a Rotating Drum Reactor With a Pulse Jet Heat Source
4,996,483 Spinning Angle Optical Calibration Apparatus
5,008,005 Integrated Coke, Asphalt and Jet Fuel Production Process and Apparatus
5,052,426 System for Pressure Letdown of Abrasive Slurries
5,067,317 Process for Generating Electricity in a Pressurized Fluidized-Bed Combustor System
5,069,685 Two-Stage Coal Gasification and Desulfurization Apparatus
5,123,835 Pulse Combustor With Controllable Oscillations
5,126,676 Gas Amplified Ionization Detector for Gas Chromatography
5,130,097 Method and Apparatus for Hot-Gas Desulfurization of Fuel Gases
5,139,535 Two-Stage Fixed-Bed Gasifier With Selectable Middle Gas Off-Take Point
5,144,251 Three-Axis Particle Impact Probe
5,163,385 Coal-Water Slurry Fuel Internal Combustion Engine and Method for Operating Same
5,163,754 Isolated Thermocouple Amplifier System for Stirred Fixed-Bed Gasifier
5,165,239 Water Augmented Indirectly-Fired Gas Turbine Systems and Method
5,167,676 Apparatus and Method for Removing Particulate Deposits From High Temperature Filters
5,170,670 Three Axis Velocity Probe System
5,177,294 Catalysts for Conversion of Methane to Higher Hydrocarbons
5,198,002 Gas Stream Clean-Up Filter and Method for Forming Same
5,217,510 Apparatus for Preventing Particle Deposition From Process Streams on Optical Access Windows
5,227,351 Sorbent for Use in Hot Gas Desulfurization
5,230,716 Grate Assembly for Fixed-Bed Coal Gasifier
5,232,673 Shielded Fluid Stream Injector for Particle Bed Reactor

Patent Applications Filed

Serial Number and Title

07/967,496 Coal Distribution Apparatus for Fixed-Bed Coal Gasifiers
08/076,060 Method for Reducing Sulfate Formation During Regeneration of Hot-Gas Desulfurization Sorbents
08/089,920 Coal-Fired Prime Mover Means With Fuel Supply System and Method
08/092,107 Phased-Array Ultrasonic Surface Contour Mapping System and Method for Solids Hoppers and the Like
08/108,501 A Staged Fluidized-Bed Combustion and Filter System
NA*—Apparatus and Method for Desulfurizing Hot Sulfur-Containing Gases and Sorbent Regeneration

*Serial number is not available.

NA*—An Improved System and Method for Networking Electrochemical Devices
NA*—Indirect-Fired Gas Turbine Bottomed With Fuel Cell

Issued: November 4, 1993.

Thomas F. Bechtel,

Director, METC.

[FR Doc. 93–27853 Filed 11–10–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. ER94–69–000, et al.]

New England Power Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 4, 1993.

Take notice that the following filing have been made with the Commission:

1. New England Power Company

[Docket No. ER94–69–000]

Take notice that New England Power Company (NEP), on October 29, 1993, tendered for filing a service agreement for additional transmission service to the Vermont Public Power Supply Authority. Said service will be provided according to the rates, terms and conditions of NEP's FERC Electric Tariff, Original Volume No. 3 on file with the Commission.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Pennsylvania Electric Company

[Docket No. ER94–64–000]

Take notice that on October 29, 1993, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed Wheeling and Supplemental Power Agreement with the Borough of Madison, New Jersey. Under such Agreement, Penelec proposes to provide supplemental power service to Madison through a delivery point in New Jersey which is now being provided with supplemental power service by Penelec's affiliate, Jersey Central Power & Light Company (JCP&L).

The rates proposed to be charged by Penelec for such supplemental power service to such delivery point for Madison will be essentially similar to the rates charged by Penelec to Allegheny Electric Cooperative, Inc. (Allehgeny) for supplemental power service to the approximately 158 delivery points of Allegheny's member cooperatives now served by Penelec, after excluding from such Penelec rates the transmission component thereof. These rates are also essentially similar to those employed by Penelec, beginning July 29, 1993, for service to Allegheny's member cooperatives through 16 additional delivery points in Pennsylvania and one additional delivery point in New Jersey in accordance with a rate schedule that became effective July 29, 1993 (FERC Letter Order, dated July 23, 1993, Docket No. ER93–669–000).

The transmission service to deliver such Penelec supplemental power to Madison will be provided by JCP&L. The rate charged by JCP&L to deliver such supplemental power to Madison will be comparable to the rate now charged by JCP&L to deliver Penelec supplemental power service to Allegheny's New Jersey member, Sussex Rural Electric Cooperative, Inc.

Copies of the filing have been served on Madison.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Pennsylvania Electric Company

[Docket No. ER94–65–000]

Take notice that on October 29, 1993, Pennsylvania Electric Company (Penelec) tendered for filing pursuant to Rule 205 of the Commission's Rules of Practice and Procedure (18 CFR 385.205) a proposed Wheeling and Supplemental Power Agreement with the Borough of Lavallette, New Jersey. Under such Agreement, Penelec proposes to provide supplemental power service to Lavallette through a delivery point in New Jersey which is now being provided with supplemental power service by Penelec's affiliate, Jersey Central Power & Light Company (JCP&L).

The rates proposed to be charged by Penelec for suc supplemental power service to such delivery point for Lavallette will be essentially similar to the rates charged by Penelec to Allegheny Electric Cooperative, Inc. (Allegheny) for supplemental power service to the approximately 158 delivery points of Allegheny's member cooperatives now served by Penelec, after excluding from such Penelec rates the transmission component thereof. These rates are also essentially similar to those employed by Penelec, beginning July 29, 1993, for service to Allegheny's member cooperatives through 16 additional delivery points in Pennsylvania and one additional delivery point in New Jersey in accordance with a rate schedule that became effective July 29, 1993 (FERC Letter Order, dated July 23, 1993, Docket No. ER93–669–000).

The transmission service to deliver such Penelec supplemental power to Lavallette will be provided by JCP&L. The rate charged by JCP&L to deliver such supplemental power to Lavallette will be comparable to the rate now charged by JCP&L to deliver Penelec supplemental power service to Allegheny's New Jersey member, Sussex Rural Electric Cooperative, Inc. (after adjustment for the difference between delivery at primary distribution voltage as opposed to delivery at transmission voltage.)

Copies of the filing have been served on Lavallette.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Madison Gas and Electric Company

[Docket No. ER94–66–000]

Take notice that on October 29, 1993, Madison Gas and Electric Company (MGE) tendered for filing with the Federal Energy Regulatory Commission three Agreements between it and Heartland Energy Services, Inc. (HES). MGE and HES request waiver of the notice requirements to permit the Agreements to become effective November 1, 1993.

MGE states that a copy of the filing has been provided to HES and also to the Public Service Commission of Wisconsin.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Fitchburg Gas and Electric Light Company

[Docket No. ER94–71–000]

Take notice that on October 29, 1993, Fitchburg Gas and Electric Light Company (Fitchburg) filed with the Commission a service agreement between Fitchburg and Central Vermont Public Service Corporation (Central Vermont) for the sale of up to 14 MW (winter maximum) of capacity and associated energy from Fitchburg #7. This is a service agreement under Fitchburg's FERC Electric Tariff. Original Volume No. 2, which was accepted for filing by the Commission in Docket No. ER92–88–000 on September 30, 1992. The capacity rate to be charged Central Vermont is below the maximum capacity charges set forth in the Tariff, and the energy rate is that established in the Tariff. Fitchburg requests that service commence as of November 1, 1993. A notice of cancellation was also filed.

Fitchburg states that copies of the filing were served on Central Vermont

and the Massachusetts Department of Public Utilities.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

[Docket No. ER94–70–000]

Take notice that on October 29, 1993, New England Power Company (NEP), and Boston Edison Company (BECO) filed a Unit Power Exchange Contract (the Contract). BECO will purchase from NEP a portion of the capacity from NEP's Bear Swamp Unit Nos. 1 and 2 (Bear Swamp). NEP will purchase from BECO a portion of the capacity from Mystic Unit No. 7, an oil/gas-fired steam generating unit and from Pilgrim Unit No. 1 (Pilgrim), a nuclear unit. NEP furthermore has an option to purchase Peaking Capacity from BECO under the terms of the Contract. The amount of capacity involved in the exchange varies during the term of the Contract. The applicants request that the proposed contract be made effective November 1, 1993.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Company

[Docket No. ER94–68–000]

Take notice that New England Power Company (NEP), on October 29, 1993, tendered for filing a service agreement executed by the Vermong Electric Generation and Transmission Cooperative, Inc. for service under NEP's FERC Electric Tariff No. 6. Said tariff permits unit sales and exchanges.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Commonwealth Edison Company

[Docket No. ER94–67–000]

Take notice that on October 29, 1993, Commonwealth Edison Company (Edison) submitted a Letter Agreement, dated September 7, 1993, between Commonwealth Edison Company (Edison) and the Illinois Municipal Electric Agency (IMEA). IMEA, acting as Scheduling Agent for the Village of Winnetka (Village), pursuant to the Scheduling Agent Agreement between Edison, IMEA, and the Village dated December 31, 1988, requested a one-year extension of the transmission service currently provided by Edison to Village under the terms and conditions of Service Schedule G to the Electric Coordination Agreement (ECA) between Edison and Village. In the Letter Agreement Edison agrees to a one-year extension to the termination date of service provided in Schedule G thereby extending the term of Schedule G to May 31, 1997.

Edison requests an effective date of June 1, 1996 to coincide with the proposed extension of service and therefore requests waiver of the Commission's notice requirements which bar the tendering for filing of a rate schedule "more than one hundred-twenty days prior to the date on which the electric service is to commence and become effective * * *" 18 CFR 35.3. Edison states that good cause exists for the requested waiver for the parties must know for planning purposes that the extension will be permitted to take effect as agreed.

Copies of this filing were served upon IMEA, the Village, and the Illinois Commerce Commission.

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Donald G. Raymer

[Docket No. ID–1688–001]

Take notice that on October 6, 1993, Donald G. Raymer (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Central Illinois Public Service Company
Director, Bank One, Springfield

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. James M. Rosser

[Docket No. ID–2805–000]

Take notice that on October 27, 1993, James M. Rosser (Applicant) tendered for filing an application under section 305(b) of the Federal Power Act to hold the following positions:

Director, Southern California Edison Company
Director, Sanwa Bank California

Comment date: November 18, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27838 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2456–009–NH]

Public Service Co. of New Hampshire Intention To Prepare an Environmental Impact Statement, Conduct Project Site Visit, and Hold Public Scoping Meetings

November 5, 1993.

Public Service Company of New Hampshire (applicant) filed on December 26, 1991, a new license application to continue to operate and maintain its Ayers Island Hydroelectric Project, located on the Pemigewasset River in Belknap and Grafton Counties, New Hampshire.

The Ayers Island Hydroelectric Project as presently licensed consists of the following: (1) A reinforced concrete Ambursen dam, totaling about 699 feet long, which consists of: (a) A 267-foot-long spillway section, with a maximum height of 72 feet at a crest elevation of 437.33 feet (USGS), topped with 8-foot-high steel flashboards for 87 feet long; 16-foot-high steel flashboards for 88 feet long; and 16-foot-high wooden flashboards for 88 feet long; (b) an Ambursen gate structure, located on the west end of the spillway section, having one steel Broome-type gate, 16 feet high by 28 feet wide, with a sill elevation of 437.33 feet (USGS), and (c) a sluiceway structure, located on the east end of the spillway section, having three 5-foot by 5-foot sluice gates, with a sill elevation of 379.8 feet (USGS); (2) an intergral powerhouse, located on the east end of the spillway section, measuring about 96 feet long by 31 feet wide by 37 feet high, equipped with three 2,800 kilowatt (kW) generating units producing (a) a total capacity of 8,400 kW, (b) a range of hydraulic capacity of 140 to 1,539 cubic feet per second (cfs), and (c) an operating head of 80 feet; (3) an impoundment having (a) a surface area of 600 acres; (b) a gross storage capacity of 10,000 acre-feet (AF); (c) a useable storage capacity of 1,200 AF; and (d) a normal headwater elevation of 453.53 feet (USGS); (4) a 262-foot-long, 2.4 kilovolt, 3-phase overhead transmission line; and (5) appurtenant facilities.

The applicant is not proposing any new development. However, it is proposing to modify the peaking operating between May 15th to August 31st and to implement new ramping rate schedules. The applicant estimates the average annual generation for this project would be 44.228 gigawatthours. The dam and existing project facilities are owned by the applicant. Project power would be utilized by the applicant for sale to its customers.

Notice of Intention to Prepare an Environmental Impact Statement

The Commission staff has determined that licensing the existing project could potentially effect a regionally important Class II and III Whitewater boating area known as the Bristol Section of the Pemigewasset River, as well as important regional salmon restoration and fishery resources. These affects would constitute a major Federal action significantly affecting the quality of the human environment. Therefore, the staff intends to prepare an environmental impact statement (EIS) for Ayers Island Project in accordance with the National Environmental Policy Act.

The staff's EIS will consider both site specific and cumulative environmental impacts of the proposed project and reasonable alternatives, and will include an economic, financial and engineering analysis.

A draft EIS will be issued and circulated for review by all interested parties. All comments filed on the draft EIS will be analyzed by the Commission staff and considered in a final EIS.

Project Site Visit

The applicant and Commission staff will conduct a project site visit of the Ayers Island Project. The site meeting will be held starting at 8 a.m. on Tuesday, December 14, 1993 at the project location in Bristol, New Hampshire. All interested individuals, organizations, and agencies are invited to attend. All participants are responsible for their own transportation to and from the project site. For more details, interested parties should contact James Kearns, NE Utilities Company, at (203) 665–5936, prior to the site visit date.

Scoping Meetings

The Commission staff will conduct one evening scoping meeting and one morning scoping meeting. All interested individuals, organizations, and agencies are invited to attend and assist the staff in identifying the scope of environmental issues that should be analyzed in the EIS.

To help focus discussions, a preliminary EIS scoping document outlining subject areas to be addressed at the scoping meetings will be distributed by mail to persons and entities on the FERC mailing list. Copies of the preliminary scoping document will also be made available at the meetings.

The evening meeting will be held on Tuesday, December 14, 1993, from 7 p.m. to 10 p.m. (or later) at the Newfound Regional High School, Newfound Road, Bristol, New Hampshire.

The morning meeting will be held on Wednesday, December 15, 1993, from 9 a.m. to 12 p.m. at the New Hampshire Legislative Office Building, 33 North State Street, room 103, Concord, New Hampshire.

Objectives

At the scoping meetings, the Commission staff will: (1) Summarize the environmental issues tentatively identified for analysis in the planned EIS; (2) solicit from the meeting participants all available information, especially qualified data, on the resources at issue, and (3) encourage statements from experts and the public on issues that should be analyzed in the EIS.

Individuals, organizations, and agencies with environmental expertise and concerns are encouraged to attend the meetings and to assist the staff in defining and clarifying the issues to be addressed in the EIS.

Meeting Procedures

The meetings will be recorded by a stenographer and, thereby, will become a part of the formal record of the Commission proceeding on the Ayers Island Project. Individuals presenting statements at the meetings will be asked to identify themselves for the record.

Concerned parties are encouraged to offer us verbal guidance during public meetings. Speaking time allowed for individuals will be determined before each meeting, based on the number of persons wishing to speak and the approximate amount of time available for the session, but all speakers will be provided at least five minutes to present their views.

Persons choosing not to speak but wishing to express an opinion, as well as speakers unable to summarize their positions within their allotted time, may submit written statements for inclusion in the public record.

Written scoping comments may also be filed with the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, until December 31, 1993. All filings should contain an original and 8 copies. Failure to file an original and 8 copies may result in appropriate staff not receiving the benefit of your comments in a timely manner. See 18 CFR 4.34(h).

All correspondence should clearly show the following caption on the first page: Scoping Comments, Ayers Island Project, FERC No. 2456–009, New Hampshire.

All those attending the meeting are urged to refrain from making any communications concerning the merits of the application to any member of the Commission staff outside of the established process for developing the record as stated into the record of the proceeding.

Further, interested persons are reminded of the Commission's Rules of Practice and Procedures, requiring parties or interceders (as defined in 18 CFR 385.2010) to file documents on each person whose name is on the official service list for this proceeding. See 18 CFR 4.34(b).

For further information, please contact Ed Lee at (202) 219–2809.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27763 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–44–000, et al.]

ANR Pipeline Company, et al.; Natural Gas Certificate Filings

November 4, 1993.

Take notice that the following filings have been made with the Commission:

1. ANR Pipeline Company

[Docket No. CP94–44–000]

Take notice that on October 27, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–44–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an emergency exchange service between ANR and Consumers Power Company (CPC), which was authorized in Docket No. CP84–94–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

ANR proposes to abandon its exchange of natural gas with CPC in Allegan County, Michigan, carried out under an agreement dated November 15, 1983, on file with the Commission as ANR's Rate Schedule X–145. It is stated that ANR and CPC have agreed that neither party requires the exchange, and

that CPC has confirmed this in a letter dated March 20, 1990. It is asserted that no facilities are proposed for abandonment.

Comment date: November 26, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. ANR Pipeline Company and Transcontinental Gas Pipe Line Corporation

[Docket No. CP94–47–000]

Take notice that on October 28, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243 and Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94–47–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service between ANR and TGPL, all as more fully set forth in the joint application on file with the Commission and open to public inspection.

It is stated that in an order issued June 21, 1963, in Docket No. CP63–279, the Commission authorized the emergency exchange of gas between American Louisiana Pipe Line Company (American Louisiana) and TGPL pursuant to a Letter Agreement dated February 20, 1963. American Louisiana was merged into Michigan Wisconsin Pipe Line Company, which later became ANR. The service between ANR and TGPL is designated as Rate Schedule X–4 under Original Volume No. 2 of ANR's FERC Gas Tariff and Rate Schedule X–19 under Original Volume No. 2 of TGPL's FERC Gas Tariff, it is stated.

The Letter Agreement provides that it will remain in effect until terminated by either party, upon thirty days' written notice to the other. In a letter dated July 27, 1993, ANR notified TGPL of the termination of the Agreement effective September 1, 1993. Accordingly, ANR and TGPL request permission to abandon Rate Schedules X–4 and X–19. The applicants state that no facilities are proposed to be abandoned herein.

Comment date: November 26, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Ouachita River Gas Storage Company, L.L.C.

[Docket No. CP94–38–000]

Take notice that on October 21, 1993, Ouachita River Gas Storage Company, L.L.C. (Ouachita River), 9801 Westheimer, Suite 310, Houston, Texas 77042, filed in Docket No. CP94–38–000 pursuant to section 7(c) of the Natural Gas Act, an application for a certificate of public convenience and necessity authorizing Ouachita River to construct and operate a storage field and related hub facilities, and blanket authority to render storage and hub services, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Ouachita River proposes to construct and operate a gas storage field; to drill 11 injection/withdrawal wells and two observation wells; four miles of field gathering lines; a 12,500 horsepower compressor station at the storage field; 24 miles of 24-inch pipeline, a 6,260 horsepower compressor station at the header station; and nine miles of header pipeline and meter stations to connect the storage facility to nine interstate and intrastate pipelines near Monroe, Louisiana. Ouachita River states that it would use the depleted South Downsville natural gas field located in Union and Lincoln Parishes, Louisiana to develop the proposed South Downsville Storage Facility.

Ouachita River states that the South Downsville Storage Facility would have 27 Bcf of working gas capacity with an estimated peak withdrawal capacity of 550 MMcf per day and an estimated peak injection capacity of 250 MMcf per day. Ouachita River also states that the proposed hub facilities would have sufficient capacity to accommodate 250 MMcf per day of gas receipts for delivery to the storage facility for injection on a firm basis and accommodate 550 MMcf per day of deliveries from the storage field on a firm basis. Ouachita River states that interruptible capacity through the hub would be substantially greater than the firm capacity.

Ouachita River requests blanket authorization to offer flexible storage and hub services in connection with the South Downsville Storage Facility under three rate schedules—Firm Storage Service under Rate Schedule FSS, Interruptible Storage Service under Rate Schedule ISS and Interruptible Hub Service under Rate Schedule IHS. Ouachita River states that it would not offer firm hub service at this time. Ouachita River further states that it would hold an open season during which time all requests for service would be treated as if received at the same time. Ouachita River states that requests for service received after the open season would be treated on a first-come first-served basis.

Ouachita River proposes to charge market-based rates for its storage and hub services. Ouachita River states that it has no market power. Ouachita River requests that the Commission approve the proposed market-based rates as initial rates under the Natural Gas Act.

Comment date: November 26, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Columbia Gulf Transmission Company and Natural Gas Pipeline Company of America

[Docket No. CP94–53–000]

Take notice that on November 1, 1993, Columbia Gulf Transmission Company (Columbia Gulf), P.O. Box 1273, Charleston, West Virginia 25325 and Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, filed in Docket No. CP94–53–000, a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service between Columbia Gulf and Natural under Columbia Gulf's Rate Schedule X–45 and Natural's Rate Schedule X–92, all as more fully set forth in the joint application on file with the Commission and open to public inspection.

Columbia Gulf and Natural state that pursuant to a gas exchange agreement between Columbia Gulf and Natural dated September 12, 1977 (Agreement), which became Columbia Gulf's Rate Schedule X–45 and Natural's Rate Schedule X–92 authorized in Docket No. CP77–643, as amended, Columbia Gulf made available to Natural for exchange up to 750 Mcf of natural gas per day which Columbia Gas Transmission Corporation (Columbia Gas) purchased from the Gamble-Daniel Cameron Meadows Land Company No. 16 Well located in Cameron Parish, Louisiana and Natural delivered thermally equivalent volumes of natural gas to Columbia Gulf at the tailgate of Amoco Production Company's South Thornwell Processing Plant located in Cameron Parish, Louisiana and at the Texaco Henry Plant located in Vermilion Parish, Louisiana for subsequent delivery by Columbia Gulf to Columbia Gas.

Therefore, Natural and Columbia Gulf requested authority in the present joint application to abandon their exchange service performed under the Agreement, as amended, and Natural's Rate Schedule X–92 and Columbia Gulf's Rate Schedule X–45 authorized in Docket No. CP77–643, as amended.

Comment date: November 26, 1993, in accordance with Standard Paragraph F At the end of this notice.

5. Arkla Energy Resources Company

[Docket No. CP94–54–000]

Take notice that on November 1, 1993, Arkla Energy Resources Company

(AER), P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–54–000, a request pursuant to §§ 157.205, 157.211 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate certain facilities in Arkansas under the blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

AER states that it proposes to convert an existing domestic tap to a town border delivery point to be used to deliver gas to Arkansas Louisiana Gas Company's (ALG) Hot Springs Distribution rural extension to serve customers in Garland County, Arkansas. The volume of gas that will be delivered through this tap is approximately 1,000 Mcf annually and 11 Mcf on a peak day. The facilities will be constructed at an estimated cost of $5,709.00, and ALG will reimburse AER for all construction costs.

Comment date: December 20, 1993, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27751 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP94–45–000]

National Fuel Gas Supply Corp.; Proposed Changes in FERC Gas Tariff

November 5, 1993.

Take notice that on October 29, 1993, National Fuel Gas Supply Corporation (National) tendered for filing in accordance with the Commission's Letter Order issued October 19, 1993, Original Sheet Nos. 237A and 237B which provide for refunds and direct bills associated with its Account Nos. 191 and 186 Balances, prior to August 1, 1993.

National further states that copies of this filing were served upon the National's jurisdictional customers and the Regulatory Commission's of the States of New York, Ohio, Pennsylvania, Delaware, Massachusetts, and New Jersey.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27750 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–27–001]

Transcontinental Gas Pipe Line Corp.; Tariff Filing

November 5, 1993.

Take notice that on November 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), tendered for filing as part of its FERC Gas Tariff, Substitute Second Revised Sheet No. 40A to Third Revised Volume No. 1, with a proposed effective date of November 1, 1993.

TGPL states that the purpose of the instant filing is to supplement TGPL's Account No. 858 Transportation By Others (TBO) filing of October 20, 1993, in Docket No. RP94–27–000 in order to delete footnote #1 set forth on Second Revised Sheet No. 40A. TGPL states that although the rates set forth on Sheet No. 40A are correct, footnote #1 incorrectly states that referenced reservation rate surcharge includes the TBO unit. Therefore, it is appropriate to delete footnote #1.

TGPL states that copies of the instant filing are being mailed to customers, state commissions and other interested parties.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protest should be filed on or before November 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27749 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–1–000, RP94–1–001, and RP93–161–000]

Columbia Gas Transmission Corp.; Technical Conference

November 5, 1993.

In the Commission's order issued on October 29, 1993, the Commission ordered that a technical conference be convened to resolve issues raised by the filings. The conference to address the issues has been scheduled for December 14, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27747 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–004]

Equitrans, Inc.; Compliance Filing

November 5, 1993.

Take notice that on November 1, 1993, Equitrans, Inc. (Equitrans) tendered for filing the following proposed tariff sheets in compliance with the Commission's September 30, 1993, "Order Accepting and Suspending Tariff Sheets Subject to Refund and Conditions, Rejecting Other Tariff Sheets, Consolidating Proceedings and Establishing Hearing":

Substitute Second Revised Sheet No. 5
Substitute Second Revised Sheet No. 6
Substitute First Revised Sheet No. 7
Substitute Second Revised Sheet No. 8
Substitute First Revised Sheet No. 40
Substitute First Revised Sheet No. 45
Substitute First Revised Sheet No. 51

Equitrans proposes an effective date for these tariff sheets of March 1, 1993.

Equitrans states that the purpose of this filing is to (1) revise rates to reflect the elimination of certain proposed stranded costs relating to gathering, products extraction, and the plugging of unproductive wells, as required by the Commission's September 30, 1993 order, and (2) to eliminate tariff language providing for the ratcheting of storage withdrawals on Equitrans' peaking storage service. Equitrans states that it is including workpapers with this filing fully supporting its proposed rate adjustments.

Equitrans states that copies of this filing were served on all of Equitrans' customers, interested state commissions and parties to this proceeding.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 15, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–27748 Filed 11–10–93; 8:45 am]

BILLING CODE 6717–01–M

U.S. Department of Energy

Office of Hearings and Appeals

Determination of Excess Petroleum Violation Escrow Funds for Fiscal Year 1994

AGENCY: Office of Hearings and Appeals, DOE.

ACTION: Notice of determination of excess monies pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986.

SUMMARY: The Petroleum Overcharge Distribution and Restitution Act of 1986 requires the Secretary of Energy to determine annually the amount of oil overcharge funds held in escrow that is in excess of the amount needed to make restitution to injured parties. Notice is hereby given that $17,531,775 of the amounts currently in escrow is determined to be excess funds for fiscal year 1994. Pursuant to the statutory directive, these funds will be made available to state governments for use in specified energy conservation programs.

FOR FURTHER INFORMATION CONTACT: Thomas O. Mann, Deputy Director; Roger Klurfeld, Assistant Director, Office of Hearings and Appeals, U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–2094 (Mann); (202) 586–2383 (Klurfeld).

SUPPLEMENTARY INFORMATION: The Petroleum Overcharge Distribution and Restitution Act of 1986 (hereinafter PODRA), contained in title III of the Omnibus Budget Reconciliation Act of 1986, Public Law 99–509, establishes certain procedures for the disbursement of funds collected by the Department of Energy (hereinafter DOE) pursuant to the Emergency Petroleum Allocation Act of 1973 (hereinafter EPAA) or the Economic Stabilization Act of 1970 (hereinafter ESA). These funds, commonly referred to as oil overcharge funds, are monies obtained through enforcement actions instituted to remedy actual or alleged violations of those Acts.

PODRA requires the DOE, through the Office of Hearings and Appeals (hereinafter OHA), to conduct proceedings under 10 CFR part 205, subpart V, to accept claims for restitution from the public and to refund oil overcharge monies to persons injured by violations of the EPAA or the ESA. In addition, PODRA requires the Secretary of Energy to determine annually the amount of oil overcharge funds that will not be required for restitution to injured parties in these refund proceedings and to make this excess available to state governments for use in four energy conservation programs. This determination must be published in the **Federal Register** within 45 days after the beginning of each fiscal year. The Secretary has delegated this responsibility to the OHA Director.

Notice is hereby given that based on the best currently available information, $17,531,775 is in excess of the amount that is needed to make restitution to injured parties.

To arrive at that figure, the OHA has reviewed all accounts in which monies covered by PODRA are deposited. PODRA generally covers all funds now in DOE escrow which are derived from alleged violations of the EPAA or the ESA, with certain exclusions. Excluded are funds which (1) Have been identified for indirect restitution in orders issued prior to enactment of PODRA; (2) have been identified for direct restitution in a judicial or administrative order; or (3) are attributable to alleged violations of regulations governing the pricing of crude oil and subject to the settlement agreement in *In re The Department of Energy Stripper Well Exemption Litigation*, M.D.L. No. 378 (D. Kan., July 7, 1986). As of September 30, 1993, the total in escrow subject to the PODRA procedures was $185,727,448.

The OHA has employed the following methodology to determine the amount of excess funds. We took special account of the provision of PODRA which directs that "primary consideration [be given] to assuring that at all times sufficient funds (including a reasonable reserve) are set aside for

making [direct] restitution." Thus, in proceedings in which refund claims are pending, we have on a claim-by-claim basis examined pending claims and established reserves sufficient to pay the entire amount of these claims. The reserves also include all refunds ordered by the OHA since the end of the last fiscal year on September 30, 1993, but not yet paid. For proceedings in which all claims have been considered or in which no claims have been filed, and the deadline for filing claims has passed, all funds remaining are excess. Small amounts of interest accrued, until transfer, on funds in accounts that were closed (with a zero balance) in the fiscal year 1993 PODRA determination (57 FR 53499 [1992]) are included as part of the "excess" for fiscal year 1994. Finally, a relatively small amount of oil overcharge funds is currently subject to the control of the Department's Economic Regulatory Administration, which finds in its accompanying determination, as it has found in the past, that none of those funds are currently excess. No "other commitments" are reflected in the reserves.

As indicated above, the total escrow account equity subject to PODRA is $185,727,448. The total amount needed as reserves for direct restitution in those cases is $168,195,673. When this figure is subtracted from the former, the remainder—$17,531,775—is the amount in fiscal year 1994 that is "in excess" of the amount that will be needed to make restitution to injured persons. Appendix A sets forth for each refund case within the OHA's jurisdiction the total amount eligible for distribution under PODRA and the "excess" amount. Appendix B reflects information supplied by the Economic Regulatory Administration regarding cases subject to PODRA under its jurisdiction.

Accordingly, $17,531,775 will be transferred to a separate account within the United States Treasury and made available to the States for use in the four designated energy conservation programs in the manner prescribed by PODRA.

Dated: November 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

APPENDIX A.—FUNDS AVAILABLE UNDER PODRA IN FISCAL YEAR 1994

Name of case	Case No.	Consent order No.	Equity as of September 30, 1993	Excess funds available under PODRA
Murphy Oil Corporation	KEF–0095	RMUH01983Z	$3,774,959.06	$3,750,847
Enron Corporation	HEF–0116	730V00221Z	34,889,426.87	3,000,000
Beacon Oil Co	HEF–0203	910S00008Z	3,121,076.20	2,000,000
Indian Wells Oil Company	KEF–0103	710V02002Z	1,640,940.60	1,640,941
Good Hope Refineries Inc	HEF–0211	150S00154Z	6,956,468.49	1,573,357
AOC Acquisition Corporation	LEF–0003	RCKH016A1Z	9,877,981.14	1,419,167
Atlantic Richfield Co. (ARCO)	HEF–0591	RARH00001Z	19,878,754.55	1,000,000
Empire Gas Corporation	KEF–0048	720T00521Z	1,471,872.95	1,000,000
Metropolitan Petroleum Co, Inc	LEF–0032	412H00171Z	496,482.18	361,263
Mobil Oil Corporation	HEF–0508	RMOA00001Z	353,382.12	353,382
Exxon Corporation	KEF–0087	REXL00201Z	286,333.56	260,000
Edgington Oil Company	KEF–0003	930S00173Z	256,652.23	256,652
Agway, Inc	KEF–0102	RTYA00001Z	494,360.64	200,000
Quintana Energy Corp. et al	KEF–0131	650X00356Z	1,178,914.31	200,000
Aminoil U.S.A., Inc	HEF–0007	740V01259Y	188,446.82	188,447
Crescent Oil Company	LEF–0044	930H00094Z	188,517.77	150,000
Sauvage Gas Service Co, Inc	KEF–0024	710H06008Z	54,430.18	32,118
Quantum Chemical Corporation	LEF–0011	720V01245Z	105,675.71	30,000
Starks Shell Service	LEF–0034	999K90065Z	26,898.81	26,899
Fuel Oil Supply & Terminaling	LEF–0037	650X00284Z	23,388.35	23,388
United Refining Company	KEF–0132	340S00445Z	14,297.50	14,298
Thomas P. Reidy, Inc	KEF–0137	720H06015Z	6,751.74	6,752
John R. Adams	LEF–0020	660H00060Z	6,026.88	6,027
South Hampton Refining	HEF–0222	5E0S00002Z	5,796.65	5,797
Meadows Realty Company	KEF–0133	910S00001Z	4,221.61	4,222
Product Tracking—PODRA	N/A	999DOE005W	1,690.41	1,690
Diamond Industries, Inc	KEF–0130	320H00097Z	1,649.68	1,650
Gulf Oil Corporation	DFF–0001	NOOR00007Y	1,478.46	1,478
True Oil Company	HEF–0557	733V02019Z	1,228.65	1,229
Fletcher Oil & Refining Comp	LEF–0010	960S00100Z	798.91	799
Pester Marketing Company	KEF–0134	730S01236Z	407.37	407
Paul Invests & A.B. Holding Co	LEF–0006	400H00231Z	315.30	315
Northeast Petrol Industry Corp	HEF–0580	6C0X00241Z	217.06	217
Crown Central Petroleum Corp	KEF–0044	RCWA00000Z	182.12	182
Elias Oil Company	KEF–0022	412H00105Z	166.69	167
West Coast Oil Company	KEF–0142	961S00028Z	73.49	73
Wallace & Wallace	HEF–0190	240H00399Z	11.71	11
A–1 Exxon	HEF–0509	999K90080T	3,006.84	0
Alameda Chevron	LEF–0093	999K90081T	1,469.97	0
Alameda Chevron	LEF–0093	900Z06251T	805.95	0
Anchor Gasoline Corporation	KEF–0120	740S01247Z	4,535,686.46	0
Aptos Shell	LEF–0092	999K90083T	4,599.01	0
Automatic Comfort Corp	LEF–0005	110H00519A	11,423.62	0
Beacon Bay Enterprises, Inc	LEF–0074	999K90120T	100,931.31	0
Bell Fuels Inc	LEF–0061	570H00195T	34,051.83	0
Ben's Exxon Service	HEF–0512	999K90085T	3,063.43	0
Berryesse Chevron	LEF–0095	999K90086T	2,940.06	0
Bill Wren's Shell	LEF–0096	999K90087T	4,376.45	0

APPENDIX A.—FUNDS AVAILABLE UNDER PODRA IN FISCAL YEAR 1994—Continued

Name of case	Case No.	Consent order No.	Equity as of September 30, 1993	Excess funds available under PODRA
Bob Hutchinson, Inc	LEF–0080	900Z02252T	275.59	0
Bob's Broadway	LEF–0075	900Z40056T	2,104.85	0
Buchanan Shell Inc	LEF–0081.	900Z10250T	565.86	0
CJ King Chevron	LEF–0109	999K90089T	4,797.42	0
Capitol 66 Oil Company	LEF–0067	422H00238T	15,802.92	0
Clearview Gulf	LEF–0076	640Z00670T	596.19	0
Crude Oil Purchasing Inc	LEF–0058	6A0X00269T	93,967.40	0
Cumberland Farms Dairy Inc	LEF–0068	120K00497T	183,618.57	0
Cutting Shell Service	LEF–0097	999K90091T	4,826.96	0
Doma Corp/Don Martin	LEF–0049	6A0X00111Z	7,676.08	0
E–Z Service Inc	LEF–0077	400H0022OT	369,405.25	0
Eason Oil Company	LEF–0040	740S01314Z	7,636,900.37	0
Ed Gularte Chevron	LEF–0098	999K90095T	6,250.10	0
Ed's Exxon	LEF–0078	999K90097T	2,505.71	0
Elwood Chevron Service	LEF–0085	999K90098T	2,755.26	0
Este Oil Company	LEF–0062	533H00163T	63,180.03	0
G&G Oil Company	LEF–0063	550H00332T	49,210.91	0
General Petroleum	LEF–0064	550H00075T	23,113.94	0
Getty Oil Company	HEF–0209	RGEA00001Z	5,352,711.87	0
Gulf Oil Corporation	HEF–0590	RGFA00001Z	15,567,357.95	0
Gulf States Oil & Refining	LEF–0073	6E0S00057T	501,159.57	0
Half Moon Bay Exxon	LEF–0087	999k90099T	2,505.71	0
Hughes Burlingame Shell	LEF–0110	999K90100T	7,300.84	0
Intercoastal Oil Co	LEF–0057	940X00076T	29,008.71	0
Jaguar Petroleum Inc	LEF–0059	640X00444T	64,649.51	0
Jim Campbell Shell	LEF–0082	900Z03255T	196.98	0
Joe Berube Services	LEF–0099	999K90101T	8,313.17	0
Kickapoo Oil	LEF–0069	570H00214T	40,907.12	0
Lampton-Love Inc	LEF–0070	422T00013T	13,013.94	0
MacMillan Oil Company, Inc	LEF–0046	730T00031Z	708,013.48	0
Marathon Petroleum Co	KEF–0021	RMNA00001Z	8,266,712.30	0
Maxwell Oil Co	HEF–0125	000H00425W	15,495.42	0
McDowell Exxon	LEF–0100	999K90104T	7,014.56	0
Milbrae Shell	LEF–0079	900Z06293T	1,766.11	0
Miles Union Service	LEF–0083	900Z03258T	1,213.07	0
NC Ginther Company	LEF–0060	710V03022T	145,200.75	0
Oasis Petroleum Corp	LEF–0007	940X00217Z	1,723,837.23	0
Permian Corporation	LEF–0035	550X00246T	1,321,044.91	0
Petaluma Standard Service	LEF–0101	999K90106T	3,996.44	0
Pete Alijian Chevron	LEF–0089	999K90062T	8,209.44	0
Reco Petroleum Inc	LEF–0065	320H00304T	26,533.72	0
Redhill Mobil and Towing	LEF–0088	999K90109T	4,599.75	0
Regalia's Chevron Service	LEF–0102	999K90110T	8,908.42	0
Reinauer Petroleum Company, Inc	KEF–0110	240H00492Z	330,589.87	0
Ron's Shell	LEF–0084	900Z10251T	1,160.37	0
Sandusky's Union Service	LEF–0111	999K90068T	2,862.23	0
Shaw & 99 Chevron	LEF–0090	999K90061T	6,737.55	0
Shell Oil Company	KEF–0093	RSHA00001Z	4,825,834.02	0
Skinney's Inc	LEF–0071	400H00227T	16,037.03	0
Skycrest Shell	LEF–0112	999K90112T	2,255.14	0
SOS Monarch Oil Corp	LEF–0066	240H00498T	5,914.61	0
Starr Union Service	LEF–0103	999K90067T	6,789.16	0
Strasburger Enterprises, Inc	LEF–0014	400H00219Z	531,626.03	0
Sunset Blvd Car Wash	LEF–0091	999K90113T	52,213.45	0
Telum, Inc	LEF–0114	820H00020W	64,144.94	0
Tenth Street Chevron	LEF–0104	999K90115T	7,114.35	0
Tesoro Petroleum Corp	KEF–0128	BUBBBBBBBB	5,790,809.01	0
Texaco Inc	KEF–0119	RTXE006A1Z	40,076,947.88	0
Tom's Coffee Tree Chevron	LEF–0105	999K90116T	4,510.32	0
Vermont Morgan Corp	LEF–0072	110H00514T	20,321.96	0
Wallace Arco Service	LEF–0106	999K90117T	2,071.76	0
Walt's Shell	LEF–0107	999K90118T	3,570.95	0
Weber's Chevron Service	LEF–0108	999K90119T	8,018.44	0
Western Asphalt Service Corp	LEF–0047	940X00182Z	577,926.59	0
Whitaker Oil Company	LEF–0052	410H00109Z	330,578.18	0
Witco Chemical Corp	HEF–0227	240S00054Z	749,558.10	0
Totals	.....	.....	185,727,448.02	17,531,775

Appendix B

October 26, 1993.

Memorandum for: George B. Breznay, Director, Office of Hearings and Appeals.

From: Jay F. Thompson, Acting Administrator, Economic Regulatory Administration.

Subject: ERA Input for the PODRA Section 3003(c) Report.

ERA has reviewed the funds held in escrow as of September 30, 1993, which have not been petitioned under subpart V. The purpose of the review was to identify funds held in escrow in excess of the amounts required to effect restitution to persons or classes of persons in accordance with section 3003(b)(1) of the Petroleum Overcharge Distribution and Restitution Act of 1986 (PODRA). Since the amount of funds which will be available and the extent of claims which will be filed are not known, the funds currently on deposit in the escrow accounts we reviewed are not excess funds for the purposes of PODRA.

[FR Doc. 9327854 Filed 111093; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[AD-FRL-4800-3]

Listing of Marine Vessel Loading Operations Under Section 112(c) of the Clean Air Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of marine vessel loading category listing.

SUMMARY: This notice adds marine vessel loading and unloading operations to the list of categories of major sources of hazardous air pollutants (HAP's), as required under section 112(c)(5) of the Clean Air Act (CAA).

The Agency considers the listing of categories of sources under section 112(c) to be an ongoing process. Under section 112(c), the Agency is obligated to revise the list if appropriate, in response to public comment or new information, from "time to time, but no less often than every 8 years" and section 112(c)(5) provides that additional categories shall be listed according to the same criteria as those initially listed. In the case of source categories and subcategories listed after publication of the initial list, emission standards are to be promulgated with 10 years of enactment of the 1990 Clean Air Act Amendments or 2 years after listing, whichever is later.

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Contact Mr. David Markwordt, Chemicals and Petroleum Branch, Emission Standards Division (MD-13), Office of Air Quality Planning and Standards, U.S. Environmental Protection Agency, Research Triangle Park, NC 27711, telephone number (919) 541-0837.

SUPPLEMENTARY INFORMATION:

I. Legislative Background Relating to the Marine Vessel Loading and Unloading Source Category

In the Agency's initial list of categories of sources under section 112(c)(1) of the Clean Air Act Amendments of 1990, the marine vessel loading and unloading source category was not listed because the Agency intended to regulate the emissions of hazardous air pollutants (HAP's) as well as volatile organic compounds (VOC's) under the authority of section 183(f) of the CAA (57 FR 31566).

Since publication of the initial list of source categories the Agency has decided to regulate HAP emissions from major sources of marine vessel loading and unloading facilities under authority of section 112 of the CAA.

Consistent with that decision, on July 22, 1993, the parties to *Sierra Club* v. *Browner*, Case No. 93-0124 (and consolidated cases) lodged a proposed consent decree with the United States District Court for the District of Columbia which provided a schedule for the regulation of marine vessel loading and unloading facilities under section 112.

In accordance with section 113(g) of the CAA, that consent decree has undergone public comment, and the EPA is now evaluating those comments preparatory to filing a final consent decree with the court.

Section 112(e)(4) states that, notwithstanding section 307 of the Act, no action of the Administrator listing a source category or subcategory under subsection (c) shall be a final Agency action subject to judicial review, except that any such action may be reviewed under section 307 when the Administrator issues emission standards for such pollutant or category. Therefore, today's list is not a final Agency action and is not subject to judicial review.

Prior to issuance of the initial source category list under section 112(c)(1), the EPA published a draft initial list for public comment, see 56 FR 28548 (June 21, 1991). Although EPA was not required to take public comment on the initial source category list, it believed it was useful to solicit input on a number of issues related to the list. Indeed, in most instances, even where there is no statutory requirement to take comment, EPA solicits public comment on actions it is contemplating. The EPA has, however, decided that it is unnecessary to solicit additional public comment on its decision to list marine vessel loading and unloading operations. First, the primary purpose of soliciting comment on the draft list was to obtain information about particular source categories, whether they emitted HAPs, and whether they were major sources of HAP emissions. For marine vessel loading and unloading operations, EPA already has that information. Second, the issues related to the decision on whether to list marine loading vessel operations under section 112 were addressed when EPA issued the initial section 112(c) list. See 57 FR 31576, 31586 (July 16, 1992). Therefore, interested parties have already had the opportunity to address that issue. Third, as this action is not a final agency action (see section 112(e)(4)), parties who have additional interest in this listing decision will have the opportunity to comment on the appropriateness of the listing decision in the context of the rulemaking to issue section 112(d) standards, and will have the opportunity to seek judicial review when the standards for the source category are promulgated. See section 112(e)(4). Finally, interested parties have also had the opportunity to provide comments on the listing of the marine vessel source category in the context of providing comments pursuant to the section 113(g) notice on a draft partial consent decree in *Sierra Club* v. *Browner*, 93-0124 (D.D.C.) described above. See 58 FR 41474 (August 4, 1993).

II. Description of Source Category

The category of major sources for marine vessel loading and unloading operations includes marine terminals which emit chemicals listed under Section 112 from the direct loading and unloading of bulk liquids from marine vessels at marine terminals.

This category does not include emissions from offshore vessel-to-vessel bulk liquid transfer operations (i.e., lightering operations). Lightering operations do not take place at onshore terminals. The Agency may consider addressing lightering operations in a separate source category.

III. Administrative Requirements

A. Docket

Address: Docket. Docket No. A-90-49, containing supporting information used in developing the notice, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the

Agency's Air Docket, room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

B. Executive Order 12866 Review

EPA has determined that this action is not "significant" under the terms of the Executive Order 12866 and is therefore not subject to OMB review.

C. Paperwork Reduction Act

This action does not contain any information collection requirements subject to OMB review under the Paperwork Reduction Act, 55 U.S.C. 3501 *et seq.*

D. Regulatory Flexibility Act Compliance

Pursuant to 5 U.S.C. 605(6), I hereby certify that this action will not have a significant economic impact on a substantial number of small entities because it imposes no new requirements.

Dated: November 4, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–27710 Filed 11–10–93; 8:45 am]

BILLING CODE 6560–50–M

[ER–FRL–4705–5]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared October 25, 1993 through October 29, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–E61068–FL Rating LO, Sopchoppy River Corridor, Wild and Scenic River Study, National Wild and Scenic Rivers System, Suitability or Nonsuitability, Walkulla Ranger District, Apalachicola National Forest, Wakulla County, FL.

Summary: EPA expressed no objections to the preferred alternative.

ERP No. D–AFS–K60025–CA Rating EO2, Mount Baldy Land Exchange Project, Implementation and Special-Use-Permit, Angeles National Forest, San Antonio Canyon, Los Angeles and San Bernardino Counties, CA.

Summary: EPA expressed environmental objections because of potential impacts to water quality and biological resources. The potential affect of management activities to resources in San Antonio Canyon and on the California Spotted Owl should be discussed in the final EIS.

ERP No. D–COE–K67020–CA Rating EO2, Syar Mining Operation and Reclamation Plan, Six Sites Selected along the Russian River, Construction, Mining-Use-Permit and COE Section 404 Permit, City of Healsburg, Sononma County, CA.

Summary: EPA expressed environmental objections due to potential direct and cumulative adverse impacts to wetlands and waters of the U.S., fisheries, riparian habitat, groundwater and air quality. The DEIS did not provide the necessary information to show that the proposed project is the least environmentally damaging practicable alternative. EPA requested that final EIS include additional information on these issues.

Final EISs

ERP No. F–FHW–L40178–WA. First Avenue South Bridge Improvement, from WA–509 at South Cloverdale Street to WA–99/East Marginal Way South crossing the Duwamish River, Funding, Section 10 and 404 Permits, King County, WA.

Summary: EPA expressed environmental concerns regarding wetland mitigation, storm water runoff collection and containment, spill control structures for hazardous materials, spills and air conformity. EPA recommends that the Record of Decision contain commitments to complete these more detailed information needs.

ERP No. F–SCS–K36109–00. Kagman Watershed Plan, Flood Prevention and Watershed Protection, Funding and COE Section 404 Permit, Saipan, Commonwealth of the Northern Mariana Islands.

Summary: Review of this final EIS was not deemed necessary. No formal comments were sent to the agency.

Dated: November 8, 1993.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 93–27882 Filed 11–10–93; 8:45 am]

BILLING CODE 6560–60–U

[ER–FRL–4705–4]

Environmental Impact Statements; Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed November 1, 1993 through November 5, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930387, Draft EIS, HHS, MD, National Institutes of Health Bethesda Main Campus Comprehensive Master Plan, Implementation, Montgomery County, MD, Due: December 31, 1993, Contact: Thomas Flavin (301) 496–5787.

EIS No. 930388, Draft EIS, FHW, AZ, Red Mountain Freeway (Loop 202) Transportation Facility, Construction from Salt River between the Price Freeway on the west and AZ–87 on the east, COE Section 404 and NPDES Permits, Phoenix Metropolitan Area, Maricopa County, AZ, Due: December 27, 1993, Contact: Ken Davis (602) 379–3646.

EIS No. 930389, Draft EIS, FHW, MD, Canal Parkway-Development Study, Improvement from MD–51 to the Wiley Ford Bridge in Cumberland, Funding, Right-of-Way Grant and COE Section 404 Permit, Allegany County, MD, Due: January 14, 1994, Contact: David Lawton (410) 962–4010.

EIS No. 930390, Final EIS, FRC, NH, Upper Androscoggin River Basin Hydroelectric Projects, Issuance of New Licenses/Relicensing for Operation of Seven Hydroelectric Projects, Coos County, NH, Due: December 13, 1993, Contact: R. Feller (202) 219–2796.

EIS No. 930391, Draft EIS, FHW, OR, Port of the Dalles (Chenoweth) Columbia River Highway, Construction of New Interchange North of Hostetler Street near Second and Division Streets; Funding and COE Section 404 Permit, Wasco County, OR, Due: January 6, 1994, Contact: Alan R. Steger (503) 399–5749.

EIS No. 930392, Final EIS, BOP, WA, King County Federal Detention Center, Site Selection, Operation and Construction, City of Seattle or the City of SeaTac, King County, WA, Due: December 13, 1993, Contact: Patricia K. Sledge (202) 514–6470.

EIS No. 930393, Draft EIS, DOE, NY, Tonawanda Site, (Formerly Utilized Sites Remedial Action Program) Remedial Investigation and Feasibility Study for Residual Radioactive Contamination, Funding, City of Tonawanda, NY, Due: January 11,

1994, Contact: Ron Kirk (315) 576–7477.

EIS No. 930394, Draft EIS, USA, ID, Idaho Training Range, Air-to-Ground Aircraft Tactical Training Facilities within the Idaho Air National Guard at Gowen Field and the Composite Wing Mountain Home Air Force Base, ID, Due: December 27, 1993, Contact: Butch Peugh (208) 384–3076.

EIS No. 930395, Draft EIS, TVA, KY, TN, Land between the Lakes (LBL) Natural Resource Management Plan, Implementation, KY and TN, Due: December 27, 1993, Contact: Dale K. Fowler (615) 632–4223.

Dated: November 8, 1993.

Marshall Cain,

Senior Legal Advisor, Office of Federal Activities.

[FR Doc. 93–27883 Filed 11–10–93; 8:45 am]

BILLING CODE 6560–50–U

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

Agency Report Forms Under OMB Review

AGENCY: Equal Employment Opportunity Commission.

ACTION: Request for comments.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed information collection requests to OMB for review and approval, and to publish a notice in the **Federal Register** notifying the public that the agency has made such a submission. The proposed report form under review is listed below.

DATES: Comments must be received on or before December 27, 1993. If you anticipate commenting on a report form but find that time to prepare will prevent you from submitting comments promptly, you should advise the OMB Reviewer and Agency Clearance Officer of your intent as early as possible.

ADDRESSES: Copies of the proposed report form, the request for clearance (Standard Form 83), supporting statement, instructions, transmittal letters, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Comments on the item listed should be submitted to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT: EEOC Agency Clearance Officer: Margaret P. Ulmer, Office of Management, room 2204, 1801 L Street NW., Washington, DC 20507; Telephone (202) 663–4279.

OMB Reviewer: Joseph Lackey, Office of Information and Regulatory Affairs, Human Resources and Housing Branch, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503; Telephone (202) 395–7316.

Type of Request: Extension (No change)
Title: Local Union Report EEO–3
Form Number: EEOC FORM 274
Frequency of Report: Biennial
Type of Respondent: Business/other institutions
Standard Industrial Classification (SIC) Code: 863
Description of Affected Public: Referral Unions with 100 or more members.
Responses: 3,000
Reporting Hours: 4,500
Federal Cost: $43,500
Applicable under section 3504(h) of Public Law 96–511: Not applicable
Number of Forms: 1
Abstract-Needs/Uses: Data are used to investigate charges of employment discrimination against local unions and apprenticeship programs. Data are shared with 38 State and 102 local Fair Employment Practice Commission agencies, and other Federal agencies.

Dated: November 5, 1993.

For the Commission.

Kassie A. Billingsley,

Acting Management Director, Equal Employment Opportunity Commission.

[FR Doc. 93–27886 Filed 11–10–93; 8:45 am]

BILLING CODE 6570–06–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 3, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: None.
Title: Section 76.503, National subscriber limits.
Action: New collection.
Respondents: Businesses or other for-profit.
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 25 responses; 1 hour average burden per response; 25 hours total annual burden.
Needs and Uses: Section 613 of the Communications Act of 1934, as amended by the Cable Television Consumer Protection and Competition Act of 1992, requires that the Commission adopt regulations within one year of enactment of the 1992 Cable Act to prescribe reasonable limits on the number of cable subscribers a person can reach through cable systems owned by such person and to prescribe reasonable limits on the number of cable channels that can be occupied by a video programmer in which a cable operator has an ownership interest. On 9/23/93, the Commission adopted a Second Report and Order, MM Docket No. 92–264, Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits. This Second R&O added § 76.503 to require cable operators reaching 20% or more of cable homes passed nationwide must certify to the Commission prior to the acquisition of an additional cable system that such acquisition will not result in a violation of the horizontal ownership limits. The data will be used by FCC staff to ensure that any one cable system cannot exert undue market power on the diversity of programming services available through cable television. If this information were not collected, the FCC would be unable to insure that the larger multiple system operators are in compliance with section 613 of the Communications Act of 1934, as amended by the Cable Act of 1992.

OMB Number: None.
Title: Section 76.504, Limits on carriage of vertically integrated programming.
Action: New collection.
Respondents: State or local governments and businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 31,000 recordkeepers; 15 hours average burden per recordkeeper; 465,000 hours total annual burden.

Needs and Uses: On 9/23/93, the Commission adopted a Second Report and Order, MM Docket No. 92–264, Implementation of Sections 11 and 13 of the Cable Television Consumer Protection and Competition Act of 1992, Horizontal and Vertical Ownership Limits. This Second R&O added § 76.504 which requires cable operators to maintain records regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. The records will be used by local franchising authorities and FCC to monitor compliance with channel occupancy limits in the local franchise area. If these records were not kept, the FCC and local franchising authorities would be unable to verify complaints that systems are not in compliance.

OMB Number: None.
Title: Section 76.1302, Adjudicatory proceedings.
Action: New collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 100 responses; 20 hours average burden per response; 2,000 hours total annual burden.
Needs and Uses: Section 12 of the Cable Television Consumer Protection and Competition Act of 1992 added new Section 616 to the Communications Act of 1934, as amended. Section 616 of the Act proscribes a multichannel distributor vendor from requiring a programming vendor to provide it with a financial interest in the programming service or to provide exclusive rights as a condition of carrying the program service on its system. In addition, Section 616 directs the Commission to, among other things, prescribe regulations to provide for an expedited review of complaints made by a video programming vendor under this section. Accordingly, the Commission adopted a Second Report and Order, MM Docket No. 92–265, on 9/23/93, which added § 76.1302 to its Rules. Section 76.1302 provides that any aggrieved video programming vendor intending to file a carriage agreement complaint must first notify the potential defendant multichannel video programming distributor that it intends to file such a complaint with the Commission. If the parties cannot resolve the dispute, the complainant may file a complaint with the Commission. The information will be used by FCC staff to resolve disputes alleging a violation of our carriage agreement regulations. These regulations will prevent multichannel programming distributors from entering into carriage agreements with video programming vendors that are conditioned on concessions of various rights, including financial interests or exclusivity.

Federal Communications Commission.
LaVera F. Marshall,
Acting Secretary.
[FR Doc. 93–27735 Filed 11–10–93; 8:45 am]
BILLING CODE 6712–01–M

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 2, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0309.
Title: Section 74.1281, Station records.
Action: Extension of a currently approved collection.
Respondents: State or local governments, non-profit institutions and businesses or other for-profit (including small businesses).
Frequency of Response: Recordkeeping requirement.
Estimated Annual Burden: 2,140 recordkeepers; 1 hour average burden per recordkeeper; 2,140 hours total annual burden.
Needs and Uses: Section 74.1281 requires that licensees of FM translator/booster stations maintain adequate records. These records include the current instrument of authorization, official correspondence with FCC, maintenance records, contracts, permission for rebroadcasts and other pertinent documents. They also include entries concerning any extinguishment or improper operation of tower lights. The data is used by FCC staff in investigations to assure that the licensee is operating in accordance with the technical requirements as specified in the FCC rules and with the station authorization, and is taking reasonable measures to preclude interference to other stations.

OMB Number: 3060–0311.
Title: Section 76.54, Significantly viewed signals; method to be followed for special showings.
Action: Extension of a currently approved collection.
Respondents: Businesses or other for-profit (including small businesses).
Frequency of Response: On occasion reporting requirement.
Estimated Annual Burden: 100 responses; 2 hours average burden per response; 200 hours total annual burden.
Needs and Uses: Section 76.54(c) requires that notification be made to all licensees and permittees of television broadcast stations, system community units, franchisees and franchise applicants in the survey area whenever an audience survey is conducted by an organization for significantly viewed signal purposes. This section also requires notification to the franchising authority when an audience survey is taken to determine television signal availability. This notification shall be made at least 30 days prior to the initial survey period and shall include the name of the survey organization and a description of the procedures to be used. On 6/13/91, the Commission adopted a Report and Order, MM Docket No. 90–4, Reexamination of the Effective Competition Standard for the Regulation of Cable Television Basic Service Rates. The only change to this information collection requirement is a reference citation to rule section 76.33.

Federal Communications Commission.
LaVera F. Marshall,
Acting Secretary.
[FR Doc. 93–27734 Filed 11–10–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL RESERVE SYSTEM

BanPonce Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding

Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 6, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. BanPonce Corporation, Hato Rey, Puerto Rico; Popular International Bank, Hato Rey, Puerto Rico; and BanPonce Financial Corp., Mount Laurel, New Jersey; to acquire 100 percent of the voting shares of Pioneer Bancorp, Chicago, Illinois, and River Associates Bancorp, Chicago, Illinois, and thereby indirectly acquire Pioneer Bank & Trust Company, Chicago, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. City National Bancshares, Inc., Guymon, Oklahoma; to become a bank holding company by acquiring 100 percent of the voting shares of City National Bank, Guymon, Oklahoma.

Board of Governors of the Federal Reserve System, November 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–27790 Filed 11–10–93; 8:45 am]

BILLING CODE 6210–01–F

Edgemark Financial Corp.; Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Edgemark Financial Corporation, Chicago, Illinois; to engage *de novo* through its subsidiary, Edgemark Financial Services, Inc., Countryside, Illinois, in providing securities brokerage services in connection with investment advisory services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–27791 Filed 11–10–93; 8:45 am]

BILLING CODE 6210–01–F

George A. Mylander, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 2, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. George A. Mylander, Sandusky, Ohio; to retain 0.16 percent, and to acquire an additional 0.26 percent of the voting shares of First Citizens Banc Corp., Sandusky, Ohio, for a total of 10.40 percent.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Adams Bancshares, Inc. Employee Stock Ownership Plan, Adams, Minnesota; to acquire an additional 21.66 percent of the voting shares of Adams Bancshares, Inc., Adams, Minnesota, for a total of 24.99 percent, and thereby indirectly acquire Farmers State Bank of Adams, Adams, Minnesota.

Board of Governors of the Federal Reserve System, November 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–27792 Filed 11–10–93; 8:45 am]

BILLING CODE 6210–01–F

Norwest Corp.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities

of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of Bank of Montana System, Great Falls, Montana, and thereby indirectly acquire Bank of Montana, Great Falls, Montana; Montana Bancsystem, Inc., Billings, Montana, and thereby indirectly acquire Montana Bank, Billings, Montana.

In connection with this application, Applicant also proposes to acquire BMS Computer Corporation, Great Falls, Montana, through its acquisition of Bank of Montana System, and thereby engage in providing data processing services pursuant to § 225.25(b)(7); and Montana Agencies, Great Falls, Montana, and thereby engage in insurance agency activities, including the sale of fixed and variable annuities, pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 5, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–27793 Filed 11–10–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

[Dkt. 9226]

Textron Inc.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed Consent Agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, a Rhode Island-based manufacturer of blind rivets to grant to a Commission-approved entity a license to the rights, technology and know-how to manufacture, use and sell blind rivets in the United States and Canada; and divest the Monobolt-manufacturing assets, owned either by Textron or Avdel, sufficient to support the highest level of Monobolt production over the past five years. Textron would also be prohibited, for 10 years, from acquiring, without prior Commission approval, any interest in any entity that manufactures for sale, or sells Monobolt/MagnaLok-type structural blind rivets.

DATES: Comments must be received on or before January 11, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Steve Newborn, FTC/H–374, Washington, DC 20580. (202) 326–3523.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 3.25(f) of the Commission's Rules of Practice (16 CFR 3.25(f)), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

The agreement herein, by and between the signatory respondent hereto, hereinafter sometimes referred to as "Respondent", by its respective duly authorized officers, and its respective attorneys, and counsel for the Federal Trade Commission, is entered into in accordance with the Commission's Rule governing consent order procedures. In accordance therewith, the parties hereby agree that:

1. Respondent Textron Inc. ("Textron") is a corporation organized under the laws of the State of Delaware with its principal place of business at 40 Westminster Street, Providence, Rhode Island 02903.

2. Textron has been served with a copy of the complaint issued by the Federal Trade Commission charging it with violating Section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act, and has filed an answer to said complaint denying said charge.

3. Textron admits all jurisdictional facts alleged in the complaint.

4. Textron waives:

a. Any further procedural steps;

b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

c. All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may ether withdraw its acceptance of this agreement and so notify Textron, in which event it will take such action as it may consider appropriate, or issue and serve its decision in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by Textron that the law

has been violated as alleged in the complaint issued by the Commission, or that the facts as alleged in the complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 3.25(f) of the Commission's Rules, the Commission may, without further notice to Textron, (1) issue its decision containing the following Order in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to Order to Textron's address as stated in this agreement shall constitute service. Textron waives any right it may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or in the agreement may be used to vary or contradict the terms of the Order.

8. Textron has read the complaint and Order contemplated hereby. It understands that once the Order becomes final, it will be required to file one or more compliance reports showing that it has fully complied with the Order. Textron further understands that it may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

It is ordered that, as used in this Order, the following definitions will apply:

A. "Textron" means Textron Inc., its predecessors, successors and assigns, subsidiaries, divisions, groups and affiliates controlled by Textron, and their respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

B. "Avdel" means Avdel plc, its predecessors, successors and assigns, subsidiaries, divisions, groups and affiliates controlled by Avdel, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

C. "Cherry-Textron" means the Cherry Division of Textron.

D. "Avdel (US)" means Avdel Inc., a wholly-owned subsidiary of Avdel.

E. "Monobolt/MagnaLok Type Structural Blind Rivet" means a multi-grip, flush break, positive lock, pull mandrel, self-plugging blind rivet suitable for use in joining the component parts of assemblies of varying grip range where structural integrity is a design requirement, used in non-aerospace applications.

F. "Monobolt" means all Monobolt/MagnaLok Type Structural Blind Rivets manufactured by Avdel, and, pursuant to license from Avdel, by Cherry-Textron and by Avdel (US), under the "Monobolt" trademark.

G. "Monobolt License" means an agreement that grants the perpetual non-exclusive right, without the right to transfer or to sublicense (except to a wholly owned subsidiary), under all Monobolt related patents, including but not limited to United States Letters Patent No. 4,046,053 and 4,365,495, and under Avdel's and Textron's proprietary rights to technology, know how and associated information related to manufacture, qualification and general sales applications (including all innovations since the original Monobolt patent), to manufacture, use and sell the Monobolt and associated systems in the United States and Canada, and that grants the non-exclusive right to use the "MONOBOLT" trademark, in the U.S. and Canada for five (5) years.

H. "Monobolt Assets" means such quantity and quality of machinery, fixtures, equipment, tooling, tools, gauges, and test plates as are necessary for the manufacture of Monobolts in order to maintain approximately 80 million units or $4.5 million sales annually, if the Monobolt Assets of Cherry-Textron are divested, and 44 million units or $3.3 million sales annually, if such Monobolts Assets of Avdel (US) are divested (including but not limited to the assets listed with respect to each of Cherry-Textron and Avdel (US) in Appendix A to this Order), but not including equipment or machinery that is contained in Appendix B to this Order. Monobolt Assets also include manuals, drawings, blueprints (including blueprints for customer owned tooling), technology, know-how, specifications, and other tangible document or documents sufficient to manufacture and sell Monobolts, and include customer and distributor lists of the firm whose Monobolt Assets are divested.

II

It is further ordered That, within six (6) months of the date this Order becomes final, Textron shall:

A. Cause Avdel to enter into a Monobolt License, absolutely and in good faith, at no minimum price, without any obligation to pay royalties, with a licensee that receives the prior approval of the Commission and only in a manner that receives the prior approval of the Commission. *Provided*, however, that Huck Manufacturing Company shall not be eligible to be the licensee so long as it manufactures a Monobolt/MagnaLok Type Structural Blind Rivet, and; *provided* further that nothing in this Paragraph shall preclude Textron from seeking payment for the license consistent with its absolute obligation to grant a license without royalties and at no minimum price; and

B. Cause the divestiture to such licensee, absolutely and in good faith, at no minimum price, of the Monobolt Assets of either Cherry Textron or of Avdel (US). The divestiture of the Monobolt Assets shall be made only in a manner that receives the prior approval of the Commission. In the event that the licensee chooses not to acquire the Monobolt Assets, or any part thereof, because the licensee does not need such assets in order to manufacture and sell Monobolts, Textron shall not be required to divest such assets.

The purpose of the license and divestiture required by paragraph II of this Order is to enable the licensee to manufacture and sell Monobolt/MagnaLok Type Structural Blind Rivets and to remedy the lessening of competition in the Monobolt/MagnaLok Type Structural Blind Rivet market resulting from the acquisition of Avdel by Textron as alleged in the Commission's complaint.

III

It is further ordered That:

A. If Textron has not fully complied, absolutely and in good faith, with paragraph II of this Order within the time period provided in such paragraph, Textron shall consent to the appointment of a trustee to enter the license and to divest the assets pursuant to paragraph II of this Order. In the event the Commission or the Attorney General brings an action pursuant to Section 5(*l*) of the Federal Trade Commission Act, 15 U.S.C. 45(*l*), or any other statute enforced by the Commission, for any failure by Textron to comply with paragraphs II or III of this Order, Textron shall consent to the appointment of a trustee in such action.

Neither the appointment of a trustee nor a decision not to appoint a trustee under this paragraph shall preclude the Commission or the Attorney General from seeking civil penalties and any other available relief, including a court-appointed trustee, pursuant to section 5(*l*), or any other statute enforced by the Commission, for any failure by Textron to comply with this Order.

B. If a trustee is appointed by the Commission or a court pursuant to paragraph III.A of this Order, Textron shall consent to the following terms and conditions regarding the trustee's powers, authority, duties, and responsibilities:

(1) The Commission shall select the trustee, subject to the consent of Textron, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in licensing technology. If Textron has not opposed the selection of a proposed trustee, in writing, within fifteen (15) days after notice by the Commission's staff to Textron of the identity of the proposed trustee, Textron shall be deemed to have consented to the selection of the proposed trustee.

(2) The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to effect the requirements of paragraph II of this Order.

(3) The trustee shall have eighteen (18) months from the date of appointment to effect the requirements of paragraph II of this Order. If, however, at the end of the 18-month period, the trustee has submitted a plan for effecting the requirements of paragraph II of this Order or believes that such requirements can be accomplished within a reasonable time, the trustee's period for effecting such requirements may be extended by the Commission or, in the case of a court-appointed trustee, by the court.

(4) The trustee shall have full and complete access to the personnel, books, records and facilities of Textron and Avdel, or any other relevant information to effect the requirements of paragraph II of this Order. Textron shall develop such financial or other information as the trustee may reasonably request. Textron shall cooperate with the trustee and shall take no action to interfere with or impede the trustee's accomplishment of the requirements of paragraph II of this Order. Any delays caused by Textron in meeting the reasonable requests of the trustee shall extend the time for the trustee to accomplish such requirements in an amount equal to the delay, as determined by the Commission or, for a court-appointed trustee, by the court.

(5) Subject to Textron's absolute and unconditional obligations under paragraph II of this Order, the trustee shall use his or her best efforts to negotiate the most favorable price and terms available in effecting the requirements of paragraph II of this Order.

(6) The trustee shall serve, without bond or other security, at the cost and expense of Textron on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Textron, such consultants, attorneys, investment bankers, business brokers, accountants, appraisers, and other representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from effecting the requirements of paragraph II of this Order and for all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid to Textron, and the trustee's power shall be terminated. The trustee's compensation shall be based at least in significant part on a commission arrangement contingent on the trustee's effecting the requirements of paragraph II of this Order.

(7) Except in the case of reckless disregard of his or her duties or intentional wrongdoing, Textron shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, or liabilities arising in any manner out of, or in connection with, the trustee's duties under this Order.

(8) Within thirty (30) days after appointment of the trustee and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Textron shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the requirements of Paragraph II of this Order.

(9) If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

(10) The Commission and, in the case of a court-appointed trustee, the court, may on its own initiative, or at the request of the trustee, issue such additional orders or directions as may be necessary or appropriate to effect the requirements of this Order.

(11) The trustee shall report in writing to Textron and to the Commission every sixty (60) days concerning the trustee's efforts to effect the requirements of Paragraph II of this Order.

IV

It is further ordered that Textron shall comply with all the terms of the Agreement to Hold Separate (Agreement) executed on September 8, 1993, and attached hereto as appendix C and made a part of this Order. The Agreement shall continue in effect until such time as Textron or the trustee has accomplished the licensing and the divestiture required by Paragraph II of this Order or until such time as the Agreement provides.

V

It is further ordered that, pending Textron's or the Trustee's full compliance with Paragraphs II or III of this Order, Textron shall not, without prior Commission approval, transfer, sell, assign or otherwise divert Monobolt Assets from or to any divisions, subsidiaries or otherwise related entities of Textron or to any other person. Textron shall preserve the value of the Monobolt Assets of Cherry-Textron and to the extent permitted by the Agreement, Textron shall also cause Avdel to preserve the value of the Monobolt Assets of Avdel until the obligations of paragraphs II or III of this Order have been fully complied with.

VI

It is further ordered that, upon the Commission's approval of the licensee under Paragraph II of this Order, and for a period of five (5) years from the date the licensee is approved by the Commission, and on reasonable notice from the licensee to Textron, Textron shall provide reasonable technical assistance to the licensee with respect to the design, manufacture, qualification and general sales applications of the licensed products. Such technical assistance shall include reasonable consultation with knowledgeable Textron employees and training at the licensee's manufacturing facility. Textron shall charge the licensee at a rate no more than its own direct costs for providing such technical assistance.

VII

It is further ordered that, for a period of ten (10) years from the date on which this Order becomes final, Textron shall not, without the prior approval of the Commission, directly or indirectly through subsidiaries, partnerships, or otherwise:

A. Acquire any stock, share capital, equity or other interest in any concern, corporate or non-corporate, engaged in

the manufacturer or sale of Monobolt/MagnaLok Type Structural Blind Rivets; *provided,* however, Textron may acquire up to one percent of the stock of any entity for any Textron employee benefit plan or Textron insurance company investment in accordance with normal investment practices; or

B. Acquire any assets used for, or previously used for (and still suitable for use for) the production of Monobolt/MagnaLok Type Structural Blind Rivets from any concern, corporate (other than Avdel) or non-corporate, engaged in or having engaged, at any time during the two years prior to such acquisition, in the manufacture or sale of Monobolt/MagnaLok Type Structural Blind Rivets; *provided,* however, Textron may acquire, without the prior approval of the Commission but with thirty (30) days prior notice to the Commission, machinery or equipment provided by or at the direction of Textron to the licensee pursuant to Paragraph II of this Order, and which machinery or equipment is available to Textron pursuant to a provision of the license agreement whereby Textron has the right of first refusal with respect to the sale of such machinery or equipment, if such right of first refusal is approved by the Commission in the license agreement pursuant to Paragraph II of this Order.

VIII

It is further ordered that:

A. Within thirty (30) days after the date this Order becomes final and every sixty (60) days thereafter until Textron has fully complied with the provisions of paragraph II or the Trustee has fully complied with Paragraph III of this Order, Textron shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with those provisions.

B. Within thirty (30) days after the divestiture pursuant to paragraph II or III of this Order and on the next five anniversary dates of the date this Order becomes final, Textron shall submit to the Commission a verified written report setting forth in detail the manner and form in which it intends to comply, is complying or has complied with the provisions of Paragraph VI of this Order.

C. On the anniversary of the date on which this Order becomes final, and on every anniversary thereafter for the following nine (9) years, Textron shall file with the Commission a verified written report of its compliance with Paragraph VII of this Order.

IX

It is further ordered that, for the purpose of determining or securing compliance with this Order and subject to any legally recognized privilege, upon written request and on reasonable notice to Textron made to its principal office, Textron shall permit any duly authorized representatives of the Commission access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts correspondence, memoranda and other records and documents in the possession or under the control of Textron and to interview officers or employees of Textron relating to any matter contained in this order.

X

It is further ordered that, Textron shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation that may affect compliance obligations arising out of this Order such as dissolution, assignment or sale resulting in the emergence of a successor corporation, the creation or dissolution of subsidiaries or any other change.

Appendix A

Avdel Corporation Monobolt Assets

Manufacturing Equipment

A. *Headers.*

Name	Model	Machine No.
1. Malmedie	QPB 41	16
2. SACMA	250	39
3. SACMA	250	40
4. Tooling for Headers		

B. *Threadroll Machines.*

Name	Asset No.	Machine No.
1. Hartford	200	60
2. Hartford	10–400	62
3. Tooling for Threadroll Machines		

C. *Assembly Machines.*

Name	Machine No.
1. ¼" Assembly Machine	2
2. 5/16" Assembly Machine	3

D. *Accessory Equipment.*

1. Avtect Tool Protection Device for Malmedie Header
2. Avtect Tool Protection Devices (2) for SACMA Headers
3. Dynapure AS–5 Oil Mist Collector for Malmedie Header
4. PHC Parts Feeder EB–142 for Hartford
5. Dynapure AS–5 Oil Mist Collector for Hartford
6. Rame Hart Feed Wheel for ¼" Assembly Machine
7. FMC Parts Feeder for ¼" Assembly Machine

Cherry Division of Textron Inc. Monobolt Assets

I. Manufacturing Equipment

A. *Headers.*

Name	Size	Asset No.	Number of dies
1. SACMA	5/16	2559	4
2. SACMA	5/16	2541	5
3. SACMA	5/16	2927	4
4. SACMA	5/16	1879	5
5. National	3/8	4312	4
6. Tooling for Headers			

B. *Threadroll Machines.*

Name	Asset No.
1. ROY	2519
2. ROY	4140
3. ROY	4359
4. Tooling for Threadroll Machines	

C. *Final Assembly Machines.*

Name	Type	Asset No.
1. Warren	wra 2000	4661
2. Warren	wra 2000	4662

D. *Wire Draw Machines.*

Name	Serial No.
1. Fastener Eng	790/6561
2. Fastener Eng	387/6224
3. Fastener Eng	857/6249

II. *Monobolt Inspection Equipment*

Equipment	Quantity
1. 80286 computers with monitors	4
2. Calipers	2
3. Micrometers	2
4. Concentricity gauges	2
5. Head pop gauges	2
6. Go/No go gauges	1
7. Installation tools	4
8. Test plates	[1] 3

[1] Per order.

Appendix B

Avdel Corporation Excluded Monobolt Assets

1. SACMA Header Modifications For Machine 40 on Exhibit A.
2. SACMA 5 Die Header

3. Ranshoff Parts Washing Machine
4. Lindberg 850 Belt Conveyor Furnace
5. Barret 402WD Centrifugal Dryer
6. SPC Retention Tester
7. SPC Equipment, consisting of:
   a. Booth
   b. PCW/Monitor
   c. Micrometer
   d. Gagetalker
   e. Sylvac
   f. Diatest
   g. Probes, set rings
   h. Miscellaneous SPC equipment

Cherry Division of Textron Inc.
Excluded Monobolt Assets

Item	Asset No.
1. Bellows Albair Arbor Press.	12672.
2. Ronci Speed Dip Spinner	2760.
3. Break Load Tester	2297.
4. Steel Washer	SP29.
5. Globe Tumbler	None.
6. New Holland Spinner Dryer.	None.
7. McKenzie Chip Separator	2741.
8. Turnkey Furnace	1197 and 1242.
9. American Gas Rotary Furnace.	2658.
10. Automatic Ipsen Heat Treat Unit.	1261 and 1249.
11. Dispatch Furnace	4257.
12. Customer-owned special tooling.	

Agreement to Hold Separate

This Agreement to Hold Separate (the "Agreement") is by and between Textron Inc. (Textron), a corporation organized and existing under the laws of the State of Delaware, with its principal office and place of business located at 40 Westminster Street, Providence, Rhode Island 02903, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, *et seq.* (collectively, the "Parties").

Premises

Whereas, Textron has acquired the capital stock of Avdel plc ("Avdel") (hereinafter the "Acquisition"); and

Whereas, United States District Judge John H. Pratt for the District of Columbia entered a Preliminary Injunction Order in Civil Action No. 89–0484 on March 2, 1989, as modified by the further Order of the Court on March 20, 1989, appointing an independent trustee for Avdel and enjoining Textron from assuming or exercising any form of direction or control over Avdel except as provided by that Order; and

Whereas, Textron and Avdel have been operating pursuant to the United States District Court Orders entered on March 2, and March 20, 1989, in Civil Action No. 89–0484; and

Whereas, the Bureau of Competition of the Federal Trade Commission and Textron intend to execute an Agreement Containing Consent Order ("Consent Agreement") as to which this Agreement constitutes appendix C, which, if finally accepted by the Commission, would settle the Commission's Complaint issued in Docket No. 9226; and

Whereas, if the Commission accepts the Consent Agreement to which this Agreement is attached (the acceptance for comment), the Commission must place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Parties intend that within seven (7) business days after the Commission's acceptance for comment of the Consent Agreement, they will jointly petition the Court to lift the United States District Court Orders entered on March 2, 1989, as modified by Order dated March 20, 1989, in Civil Action No. 89–0484 and to terminate the Voting Trust Agreement ordered thereunder; and

Whereas, a purpose of this Agreement is to maintain Avdel as an independent business pending the granting of the Monobolt license and the divestiture of the Monobolt Assets identified in the Consent Agreement; and

Whereas, a purpose of the Consent Agreement is to remedy the lessening of competition in the Monobolt/MagnaLok Type Structural Blind Rivet market resulting from the acquisition of Avdel by Textron as alleged in the Commission's complaint; and

Whereas, Textron entering into this Agreement shall in no way be construed as an admission by Textron that the Acquisition is illegal; and

Whereas, Textron understands that no act or transaction, other than those contemplated by this Agreement or the Consent Agreement, shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Agreement.

Now, therefore, upon understanding that the Commission has determined that it has reason to believe the acquisition may substantially lessen competition, and in consideration of the Commission's agreement that, unless the Commission determines to reject the Consent Agreement, it will not seek further relief from Textron with respect to the effects of the Acquisition, except that the Commission may exercise any and all rights, and other relief, to enforce this Agreement and the Consent Agreement to which it is annexed and made a part thereof, the Parties agree as follows:

1. Textron agrees to execute and, after acceptance by the Commission for comment, to be bound by the Consent Agreement to which this Agreement is attached.

2. Paragraph 4 of this Agreement shall become effect immediately upon the lifting of the United States District Court Order entered on March 2, 1989, as modified by Order dated March 20, 1989, in Civil Action No. 89–0484.

3. Textron agrees that from the date of the lifting of the United States District Court Order entered on March 2, 1989, as modified by Order dated March 20, 1989, in Civil Action No. 89–0484, until the first of the dates listed in subparagraphs 3.a and 3.b, it will comply with the provisions of Paragraph 4 of this Agreement:

a. if the Complaint in Docket No 9226 is dismissed, either pursuant to action by the Commission or appeal of any Commission Decision and Order, the day following dismissal of the Complaint; or

b. if a final order to divest and or license is issued by the Commission, either pursuant to the Consent Agreement or pursuant to further adjudication, the day after all licensing and divestitures required by such final order have been completed.

4. Textron will hold Avdel as it is presently constituted separate and apart on the following terms and conditions; *provided*, however, that nothing contained in Paragraph 4 shall prohibit Textron from taking those actions that are necessary to comply with the Consent Agreement:

a. As used in this Agreement, the following terms shall have the prescribed meanings:

(1) "Textron" means Textron Inc., its predecessors, successors and assigns, subsidiaries, divisions, groups ad affiliates controlled by Textron, and their respective directors, officers, employees, agents and respective directors, officers, employees, agents and representatives, and their respective successors and assigns.

(2) "Avdel" means Avdel plc, its predecessors, successors and assigns, subsidiaries, divisions, groups and affiliates controlled by Avdel, and their respective directors, officers, employees, agents, and representatives, and their respective successors and assigns.

(3) "Assets" means all assets, tangible and intangible, including, without limitation, manufacturing and production facilities and plants,

inventory, finished goods, brand names, technology, together with all associated titles, properties, interests, rights and privileges, all buildings, machinery, equipment, customer lists, patents, rights to use any patents, know-how, trade secrets, intellectual property, trade names, trademarks, and other property of whatever description, together with all additions and improvements thereto.

b. Textron and Avdel shall continue to compete, exercising their respective best business judgments without regard to the Acquisition or any agreement or understanding between Textron and Avdel, as if Textron and Avdel were in all respects separate and independent business entities.

c. For the term of this Agreement Textron shall not exercise any voting power, influence, or control, directly or indirectly, with respect to the conduct of Avdel or the shares of Avdel held by it. All rights to exercise voting power with respect to the Avdel shares acquired by Textron shall be vested in Patricia P. Bailey, as trustee, who shall act in accordance with the Voting Trust Agreement that is part of the Preliminary Injunction Order entered in Civil Action No. 89–0484 and which is made a part of this Agreement. The Trustee shall not be liable for her execution of this trust except for conduct as specified in Paragraph 7(d) of the Voting Trust Agreement and the Consent Order. The Trustee shall use the Trustee's best business judgment in exercising such voting trust power during the term of this Agreement in a manner consistent with the purpose and requirements of this Agreement and the Consent Agreement. The Trustee shall remain independent of and unrelated to any current or prospective participant in the manufacture and sale of aerospace blind rivets or blind bolts or non-aerospace structural blind rivets in the United States or abroad, throughout the term of this Agreement. Provided, however, the Trustee may remain a member of Avdel's Board of Directors in execution of this trust. The Trustee shall be entitled to reasonable compensation and reimbursement of actual expenses. Textron shall pay for all compensation and reimbursement of actual expenses to which the Trustee is entitled.

d. Textron shall not exercise or attempt to exercise direction or control over, or influence or attempt to influence directly or indirectly, the conduct of Avdel's business during the term of this Agreement. Avdel shall be maintained as a separate corporate entity with an independent Board of Directors. In no event shall any director officer, employee agent or representative of Textron become or remain a member of Avdel's Board of Directors or become or remain an officer of Avdel. Nor may any director, officer, employee agent or representative of Avdel become or remain a member of Textron's Board of Directors or become or remain an officer of Textron. The independent Avdel Board of Directors shall maintain separate corporate books and records for Avdel. Textron and Avdel shall not transfer assets between them, except for the purchase and sale of commercial products at arms' length in the ordinary course of business, nor engage in any joint activity, during the term of this Agreement except with the prior approval of the Commission. Textron and Avdel shall not extend any existing contract or agreement between them, or change the terms of such agreements in any way, during the term of this Agreement except with the prior approval of the Commission; *provided*, however, that Textron may take those actions necessary with respect to Avdel (after approval by the Trustee) that will enable Textron to carry out its obligations under the Consent Agreement. The Trustee shall provide the Commission with prior written notice of the Trustee's intention to approve an action by Textron, including a complete description of the proposed action and copies of all documents related thereto. If staff of the Commission notifies, in writing, the Trustee of its objection to the proposed action within three (3) business days of receipt of such prior notice from the Trustee, the Trustee may approve the proposed action, only upon obtaining the prior approval of the Commission. In the event the Trustee fails to approve an action with respect to Avdel requested by Textron, Textron may request the Commission to approve such action denied by the Trustee, and the Commission's decision will be final and binding on Textron and the Trustee. The Commission shall also be promptly provided with copies of Avdel's separate quarterly and annual financial statements and capital spending reports and other financial information upon request, during the term of this Agreement.

e. Textron shall not seek or obtain, directly or indirectly, any of Avdel's customer lists, trade secrets, unpublished price lists, non-public financial and accounting books and records, or other confidential competitively sensitive information including, without limitation, information, data, prototype or other experimental devices from Avdel concerning the operation or design of Avdel's fastener equipment, systems, controls or other components, other than that in the public domain, nor shall Textron obtain the rights to use any patents, trade secrets, know-how or other technical information concerning the operation or design of Avdel's fastener equipment, systems, controls or other components, other than those in the public domain or that which was in the possession of Textron prior to the purchase of any shares of Avdel by Textron; *provided*, however, that up to ten (10) Textron executives who have no direct decision making responsibility in Textron's Monobolt production or sales operations, who are approved by the Trustee, may receive such information, approved by the Trustee, as is necessary to enable Textron to carry out its obligations under the Consent Agreement. Textron may also obtain from Avdel, after the approval of the Trustee, such other information as Textron shall demonstrate it needs to acquire; *provided*, further, that such information shall only be disclosed to individuals approved by the Trustee. Any request for information with respect to Avdel by Textron shall be made to the Trustee (and approved by the Trustee) and shall be carried out under the supervision of the Trustee. The Trustee shall provide the Commission with prior written notice of the Trustee's intention to approve a request for information by Textron, including a complete description of the requested information and the information to be provided in response thereto. If staff of the Commission notifies, in writing, the Trustee of its objection to the request, within three (3) business days of receipt of such prior notice from the Trustee, the Trustee may approve the request for information, and Textron may obtain the information, only upon obtaining the prior approval of the Commission. In the event the Trustee fails to provide the information requested, Textron may request the Commission to approve the request for information denied by the Trustee and the Commission's decision will be final and binding on Textron and the Trustee.

f. Textron may seek and obtain, upon application to the Trustee and 30 days notice to the Commission with a copy of the application, and the Trustee shall provide Textron with, such financial information from Avdel as is necessary for Textron to prepare and file financial and tax reports to the extent required by law, provided that (i) Textron's application shall specify in detail the need for the information requested; (ii) for purposes of tax reports Textron shall not seek or obtain information at a level of detail greater than necessary to

prepare and file tax reports required by law, and shall certify to the Trustee that its request for information is so limited; and for purposes of financial reports (i.e., SEC reports and quarterly and annual reports to shareholders), Textron shall seek and obtain only the following items on an aggregated company-wide basis: revenues; cost of goods sold; general and administrative expenses; income before interest; interest expense; income before taxes; tax expense; and net income; (iii) the Textron shall provide only such information that it determines is necessary for the preparation of such financial and tax reports; (iv) information required for tax reports shall be provided or disclosed only to designated individuals within Textron's tax department who are responsible for the analysis of the information and preparation of the required tax reports; and information required for financial reports shall be provided or disclosed only to designated individuals within Textron's controller department; (v) each designated individual in the tax department and controller department shall submit to the Trustee an affidavit in the form appended as Attachment B or Attachment C to the Preliminary Injunction Order entered in Civil Action No. 89–0484, whichever is applicable; and (vi) Textron shall use such information only for the preparation and filing of such required financial and tax reports and not for any other purpose whatsoever.

g. Textron shall not make available to Avdel, directly or indirectly, any of Textron's customer lists, trade secrets, unpublished price lists, non-public financial and accounting books and records, or other confidential competitively sensitive information including, without limitation, information, data, prototype or other experimental devices from Avdel concerning the operation or design of Avdel's fastener equipment, systems, controls or other components, other than that in the public domain, nor shall Textron make available to Avdel, directly or indirectly, the rights to use patents, trade secrets, know-how or other technical information concerning the operation or design of Textron's fastener equipment, systems, controls or other components, other than those in the public domain.

h. Neither outside counsel for Textron nor any in-house counsel of Textron may have an attorney-client relationship with Avdel or Avdel personnel for purposes of ensuring compliance with this Agreement or the Consent Agreement.

i. During the term of this Agreement, the Trustee and the independent Board of Directors shall use their best efforts to maintain the value of Avdel's assets and shall not sell, transfer, encumber, or otherwise impair their marketability, other than in the normal course of business, without the prior approval of the Commission and upon reasonable notice to Textron. Nothing in this Agreement shall preclude Avdel from redeeming its 10 percent Cumulative Preference Shares or Textron from purchasing from the employees of Avdel their rights under options to purchase shares in Avdel. The Textron and the independent Board of Directors shall also use their best efforts to protect and preserve the confidential, competitively sensitive information of Avdel. Textron shall not seek or accept, directly or indirectly, any part of the earnings and profits of Avdel, except such sums as the Trustee may authorize from cash dividends. Nor shall Textron seek or accept, directly or indirectly, the proceeds of any debt incurred by Avdel, except in connection with Avdel redeeming its 10 percent Cumulative Preference Shares. Textron shall not hire any person who is currently an employee of Avdel or who was an employee of Avdel at the time Textron began purchasing stock of Avdel or transfer any employees between Textron and Avdel.

5. For purposes of ensuring compliance with this Agreement, and subject to any legally recognized privilege, any authorized representatives of the Commission shall be permitted (subject to the statutes and rules and regulations that restrict access to classified information) on reasonable notice to Textron or Avdel, as the case may be, (a) access, during office hours of Textron or Avdel, to inspect and copy all ledgers, books, accounts, correspondence, memoranda and other documents in the possession or under the control of Textron or Avdel relating to any matters contained in this Agreement and reasonably related to Textron's compliance with this Agreement, and (b) depose or interview at the option of the Federal Trade Commission appropriate officers and employees of Textron or Avdel at their place of employment, or at another mutually agreeable site, regarding matters that are reasonably related to compliance with this Agreement. If, at any time, information or documents are furnished by Textron or Avdel and are identified as "Confidential," such documents or information shall be handled pursuant section 21 of the Federal Trade Commission Act.

6. This Agreement shall not be binding until approved by the Commission.

Analysis of Proposed Consent Order to Aid Public Comment

The Federal Trade Commission (Commission) has accepted, subject to final approval, an Agreement Containing Consent Order from Textron Inc. (Textron) in the Matter of Textron Inc., Docket No. 9226.

The proposed Consent Order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the Consent Agreement and the comments received and will decide whether it should withdraw from the Consent Agreement or make final the Consent Agreement's proposed Order.

In February 1989, the Commission filed an action under section 13(b) of the Federal Trade Commission Act in the United States District Court for the District of Columbia for preliminary injunctive relief against Textron's acquisition of Avdel plc, a foreign maker of aerospace and nonaerospace structural blind rivets. At the time the Commission filed its Federal Court action, Textron had acquired over ninety (90) percent of Avdel's stock. On March 2, 1989, United States District Judge John H. Pratt entered a stipulated order preliminary enjoining Textron from acquiring any additional shares of Avdel's stock and from exercising any form of direction or control over Avdel pending a Commission administrative proceeding. That Order was modified by Order of the Court on March 20, 1989, to allow Textron to acquire the remaining shares of Avdel's stock. The Orders required Avdel to be held separate and apart from Textron as an independent competitive entity, barred Textron employees or representatives from serving on Avdel's board of directors, and ordered the appointment of an independent trustee to exercise Textron's voting rights in trust and to elect an independent Avdel board of directors.

The Commission issued an administrative complaint against Textron on February 28, 1989. That complaint alleged that the acquisition of Avdel would substantially lessen competition in the aerospace blind rivet market and in the nonaerospace structural blind rivet market, in violation of Section 7 of the Clayton Act, as amended, 15 U.S.C. 18, and Section 5 of the Federal Trade

Commission Act, as amended, 15 U.S.C. 45. An administrative trial was held between October 29, 1990, and June 4, 1991. In an Initial Decision filed on October 4, 1991, the Administrative Law Judge dismissed the complaint. Complaint Counsel filed an appeal; oral argument was held on April 28, 1992, and the appeal was pending before the Commission on April 14, 1993, when the case was withdrawn from adjudication for the purpose of considering a proposed consent agreement. That consent agreement would have required Textron to license certain of its aerospace blind riverts and the Monobolt, its nonaerospace structural blind rivet.

After consideration of the proposed consent, the Commission directed staff on August 6, 1993, to negotiate with Textron a revised consent agreement in resolution of the complaint allegations in Docket No. 9226. The proposed Consent Agreement, which the Commission has now accepted for public comment, requires Textron, among other things, to (1) cause Avdel to grant a Monobolt license; (2) divest Monobolt assets that will support the highest production level during the past five years of either Textron's or Avdel plc's (Avdel) Monobolt sales; (3) hold Avdel separate pending the divestiture and preserve the value of Textron's and Avdel's Monobolt assets that may be divested; and (4) provide technical assistance to the new licensee for a five-year period. The proposed Consent Agreement prescribes no relief with respect to the aerospace blind rivet market.

Under the terms of the proposed Consent Order, Textron would require Avdel to enter into a Monobolt license with a Commission-approved licensee. Textron would license to the Commission-approved licensee rights, technology, and know-how required to manufacture Monobolts. Textron would also be required to divest to the Commission-approved licensee the assets used either by Textron or by Avdel in the manufacture of Monobolts. Such assets include machinery, fixtures, equipment, tooling, and gauges as well as blueprints, product specifications, and distributor and customer lists. Appendix A to the proposed Consent Order is a list of equipment and machinery that Textron represented to the Commission is required to make Monobolts in the volume necessary to replace the sales of either Avdel or Textron. Appendix B is a list of equipment and machinery also used to make Monobolts but which Textron has represented is readily and economically obtainable from alternative sources. Because the equipment and machinery listed on appendix B is either readily and economically obtainable from alternative sources or not owned by Textron, Textron is not required to divest it. The Commission seeks public comment if potential licensees believe any of the equipment and machinery listed in Appendix B is not readily and economically obtainable from alternative sources or is owned by Textron.

The Commission believes that the granting of a Monobolt license and the divestiture of Monobolt assets will enable a licensee to quickly begin manufacturing Monobolts while avoiding significant barriers to entry into this market, such as the time-consuming effort associated with the development of a structural blind rivet product comparable to the Monobolt and MagnaLok that does not infringe other firms' patents.

Textron would have six (6) months from the date the proposed Order becomes final to license the above technology and accomplish the required divestiture. If Textron fails to perform its obligations under the proposed Consent within that time, the Commission would appoint a trustee to grant the license and accomplish the divestiture.

The proposed Consent Order would also prohibit Textron, for a period of ten (10) years from the date the proposed Order becomes final, from either: (A) acquiring, without the prior approval of the Commission, any interest in any concern engaged in the manufacture or sale of Monobolt/MagnaLok type structural blind rivets (although Textron may acquire up to one (1) percent of the stock of any such entity for any Textron employee benefit plan or Textron insurance company investment in accordance with normal investment practices); or (B) acquiring, without the prior approval of the Commission, assets used or previously used (and still suitable for use) in the production of Monobolt/MagnaLok type structural blind rivets from any concern that makes such rivets or made them at any time during the two (2) years prior to the acquisition. Textron, however, need not obtain prior Commission approval to acquire machinery or equipment provided by or at the direction of Textron to the licensee pursuant to Paragraph II of the Order (if a right of first refusal is approved by the Commission in the license agreement), so long as Textron provides thirty (30) days' prior notice to the Commission.

The Commission and Textron have also entered into a Hold Separate Agreement, which requires Textron to continue to operate Avdel as an independent company under the supervision of a trustee until Textron has completed its licensing and divestiture obligations under the Consent Agreement. The Hold Separate, which replaces the Federal Court injunction, contemplates that Commission Counsel and Textron, within seven (7) business days after the Commission's acceptance of the Consent Agreement for public comment, will jointly petition the United States District Court to dissolve the injunction entered on March 2, 1989, and modified on March 20, 1989. In the event that the Commission decides, after public comment, to reject the Consent Agreement and return the matter to administrative adjudication for a final resolution, the Hold Separate Agreement would continue until the day after the complaint is dismissed by a court or the Commission or the day after all licensing and divestitures required by a final order have been completed.

It is anticipated that the proposed Consent Order would resolve all of the competitive problems alleged in the complaint and that no further relief will be sought from Textron with respect to its acquisition of Avdel. The purpose of this analysis is to facilitate public comment on the proposed Order, and it is not intended to constitute an official interpretation of the agreement and proposed Order or to modify in any way their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga in Textron Inc., Docket 9226

To resolve concerns about the anticompetitive effects of the acquisition by Textron Inc. of Avdel plc, the Commission today issues for public comment a proposed consent order that imposes a licensing requirement in one of the two markets at issue in this case and no relief in the second market. The proposed order, in my view, is inadequate in both markets. Textron and Avdel are significant competitors in the design, manufacture and sale of two products, aerospace blind rivets and a specialized non-aerospace blind rivet,[1] each of which is a market under Section 7 of the Clayton Act. Anticompetitive effects from the acquisition are likely in both markets and a Commission order

[1] Blind rivets are fasteners that join two or more sheets of material with access to only one side of the join. Aerospace blind rivets are used in aircraft; Monobolt/Magna-Lok (non-aerospace) blind rivets are used in heavy duty land transportation vehicles.

should provide an effective remedy in both markets. Full divestiture is the appropriate remedy, and nothing impedes the Commission from imposing that remedy immediately.

Since all that remains to be done in the final adjudication of this case is the issuance of a Commission opinion and decision,[2] the decision to accept a weak settlement is incomprehensible. A negotiated consent order offers advantages (*e.g.*, certainty and reduced expenditure of resources) at the pre-trail stage of a case, when the record is incomplete and when uncertainty about the likelihood of obtaining a remedy provides a sound basis for compromise.[3] After the trail, as here, the completed record in the case enables us to resolve the issue of liability. Because a negotiated consent order offers few, if any, advantages at this stage, there is no reason for the Commission to agree to any major concessions (assuming liability).[4] Presumably, then, the limited relief provided in the proposed consent order is close to optimal, from the majority's point of view. To the extent this is true, the selection of this remedy represents either a troubling change in long-established and well-founded practice or an unexplained and troubling aberration from that practice.

On the merits, the licensing remedy the Commission has chosen is unlikely to cure the competitive problem in the Monobolt/Magna-Lok market. The evidence in support of liability seems to me even stronger in the aerospace blind rivet market, in which the Commission imposes no remedy at all.

Monobolt/Magna-Lok Market

The proposed consent order requires Textron to grant a license to manufacture the Monobolt (a non-aerospace structural blind rivet). The proposed license may provide some price competition in the Monobolt/Magna-Lok (non-aerospace) blind rivet market,[5] depending on the capabilities and experience of the licensee. Indeed, Textron itself began production of the Monobolt under a license from Avdel. Whether the licensee will be able to compete with Textron and Huck, the two remaining firms in the market, remains unknown. The only firms that have succeeded in the Monobolt/Magna-Lok market—Avdel, Textron and Huck—have been aerospace blind rivet firms. These are the firms that have the technological expertise to participate in the Monobolt/Magna-Lok market as low cost, innovative competitors. The history of failed attempts to enter the Monobolt/Magna-Lok market by firms that lack aerospace rivet experience is evidence of the need for technological expertise.

After Textron's acquisition of Avdel, two of the three remaining aerospace blind rivet firms, Textron and Huck, will be the only firms in the Monobolt/Magna-Lok market. Huck is excluded under the proposed order from obtaining the Monobolt license from Textron. The remaining aerospace blind rivet firm (Allfast[6]) may lack the ability as well as the interest to compete in the Monobolt/Magna-Lok market. Based on information in the record after a full trial of the case, it seems unlikely that a licensee under the proposed consent order will have the design and technological capabilities to provide effective, low cost, long term competition in the Monobolt/Magna-Lok market.

Aerospace Blind Rivet Market

The decision of the majority not to order relief in the aerospace blind rivet market is perhaps even more perplexing, because anticompetitive effects from the acquisition appear to be even more likely in this than in the Monobolt/Magna-Lok market. Textron is the dominant firm in the industry in the United States and the world (based on sales). Only three firms, including Avdel, compete with Textron, and with this acquisition, Textron reduces the number of its aerospace blind rivet competitors from three to two.

Aerospace blind rivets are complex, specialized fasteners used to join aircraft components when access for installation is limited to one side of the join. Aerospace blind rivets differ in their materials, dimensions, installation tooling and performance characteristics, such as shear strength, fatigue resistance and spindle retention, and they must be produced to very narrow tolerances in order to meet military or industrial performance and design specifications and qualification tests. Aerospace design engineers specify or "call out" particular aerospace blind rivets, depending on the performance and design requirements that the aircraft demands.

Competition in the aerospace blind rivet market occurs principally at the design stage of aircraft that use aerospace blind rivets. Firms in the blind rivet industry compete to have their blind rivets, with their particular performance characteristics, specified for an aircraft design.[7] Once a particular blind rivet has been designed into an aircraft, the possibilities for substitution to other blind rivets (with different design and performance characteristics) are limited, and competition for sales of blind rivets at the procurement stage (when an aircraft manufacturer is buying the parts that have been specified for the aircraft) is similarly limited.

Design stage competition also is important to constrain prices at the procurement level. A firm that seeks to exploit its success in winning an aircraft design competition by, for example, raising the price of its blind rivets after the design has been completed, may find a less favorable reception for its future bids. Its customers, the aerospace manufacturers, will have incentives in the next design competition to avoid doing repeat business with a price gouger.

Avdel's aerospace blind rivet is a relative newcomer to design stage competition in the United States, having obtained the necessary national industry specification only in 1987.[8] In the United States, in the relatively brief period reflected in the record of this case, Avdel demonstrated that its product could compete successfully with Textron's at the design stage, by participating in and winning aircraft

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[2] The complaint issued in February 1989. In March 1989, Textron assented to entry in federal district court of an order requiring that Avdel be maintained under separate management pending the outcome of the Commission's proceeding.

[3] In March 1990, almost 8 months before the commencement of the trail in this case, Textron offered to settle the case in the Monobolt/Magna-Lok market on terms substantially similar to those contained in the proposed consent order. See Joint Motion of Complaint Counsel and Respondent Textron Inc. To Withdraw this Matter from Adjudication (Mar. 9, 1990). The Commission rejected the proposal. See Order Denying Joint Motion To Withdraw Matter from Adjudication (May 23, 1990).

[4] At this stage of the proceeding, the Commission should not impose any remedy unless it first finds liability based on a preponderance of the evidence in the record. See my statement dissenting from Order Withdrawing Matter from Adjudication in Textron Inc. (April 14, 1993).

[5] Monobolt/Magna-Lok rivets are similar to aerospace blind rivets but differ in strength and other characteristics from other commercial rivets and from their aerospace counterparts. There is no dispute that Monobolt/Magna-Lok rivets constitute a relevant product market. I.D.F. 324. Avdel developed the Monobolt in England in 1975 and licensed it to Textron in 1977; Huck developed the Magna-Lok in 1983.

[6] Allfast entered the aerospace blind rivet market by substantially copying Textron's product, see I.D.F. 128–30, and subsequently acquired the aerospace blind rivet business of another firm. I.D.F. 148 & 175. Insofar as the record discloses, Allfast has not attempted to enter the Monobolt/Magna-Lok market.

[7] See *FTC* v. *PPG Industries, Inc.*, 628 F. Supp. 881, 884 (D.D.C.), *aff'd*, 798 F.2d 1500, 1505 (D.C. Cir. 1986) (design stage competition).

[8] Industry specifications document the performance characteristics of the various aerospace blind rivets and are used by aerospace design engineers to identify and select rivets. Obtaining certification is a critical first step to overcoming reputational barriers with aircraft manufacturers.

design competitions.[9] The record shows that Avdel has been second only to Textron in design competition wins since the late 1980's in the United States and the world. Avdel's success in aerospace design competitions is not yet reflected in its sales in the United States, because of the significant time lapse, often years, between the design and the building of an aircraft. As a result, Avdel's share of sales in the United States understates its competitive significance. Focusing narrowly on Avdel's sales in the United States exalts market share over market realities as a predictor of competitive effects, places unwarranted emphasis on competition at the procurement stage and ignores the more significant competition that occurs when blind rivets are incorporated in aircraft designs.

Even before referring to these limitations, however, the market share and concentration data, properly assessed, preliminarily indicate that Textron's acquisition of Avdel is likely to affect competition adversely in the aerospace blind rivet market. Textron is the dominant firm in the industry, with approximately 64% of sales in the United States and a lesser but still dominant share in the world.[10] Avdel, one of only three firms that compete with Textron in these markets, obtained 0.5% of U.S. sales within two years after obtaining certification.[11] Even if Avdel's competitive significance is measured solely by its sales in the United States, the acquisition "raise[s] significant competitive concerns" in a highly concentrated market.[12] From the perspective of Avdel's share of sales in world markets, where Avdel has competed with Textron for a longer period of time,[13] the increase in concentration from the acquisition is in the range "presumed * * * likely to create or enhance market power."[14] A third approach would acknowledge the importance in this industry of competition at the design stage of aircraft by assigning equal shares to the market participants.[15] Using this approach, Textron, Huck and Avdel each would have one-third of the market, and the acquisition would increase the HHI from 333 points to 5000 points.[16] None of these approaches can be regarded as exclusive in this case,[17] but, in the aggregate, they reflect the serious potential of this acquisition to have anticompetitive effects and demonstrate the need for careful analysis of other characteristics of the market.

Textron's arguments in defense of the acquisition rest almost entirely on the alleged lack of competition between Textron and Avdel at the procurement stage and the size of Avdel's sales in the United States. As we have seen, however, design competition, not procurement competition, is the appropriate focus. Competition at the design stage is reduced by the elimination of Avdel as an independent firm.[18] As we also have seen, the sales that Avdel achieved within the first two years after having obtained certification in the United States do not reflect its significance in the market. Indeed, the record shows that Textron projected a similar level of sales in the years following the introduction of its own, new-generation product. New products, even Textron products, take time to win acceptance from aircraft manufacturers and to be included in aircraft designs before they can achieve substantial sales.

Other characteristics of the market support the need for a remedy in the aerospace blind rivet market. The record shows that entry is difficult and time consuming. Designing a product takes several years, production is demanding and difficult, and obtaining industry specification and acceptance from aerospace engineers who design aircraft can take additional years. Achieving sales takes additional time, because of the lag between the design and the building of an aircraft. With the acquisition of Avdel, three firms will have exited the market since 1988.[19] After the acquisition, with only two firms competing to be included in new aircraft designs, the likelihood of collusion is enhanced. New aerospace blind rivet product design also is likely to be affected adversely. The impetus that competition provides for innovation is diminished by this acquisition. Divestiture is the only effective remedy to prevent these anticompetitive effects.

Textron's acquisition of Avdel is likely substantially to reduce competition in both the aerospace and the non-aerospace blind rivet markets. The proposed consent order is inadequate to remedy the likely anticompetitive effects of the acquisition. The Commission should instead require full divestiture by Textron of Avdel.

I dissent.

[FR Doc. 93-27862 Filed 11-10-93; 8:45 am]

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[9] A firm need not win the design stage competition to affect competition in the market. See *e.g., FTC v. Elders Grain, Inc.*, 868 F.2d 901, 907 (7th Cir. 1989) ("The possibility of such [competing] offers keeps the existing relationships from becoming exploitative."); Grumman Corp. v. LTV Corp., 665 F.2d 10, 13 (2d Cir. 1981) ("Unsuccessful bidders are no less competitors than the successful one.").

[10] The market share and concentration data cited in the text are derived from the Initial Decision, I.D.F. 169-77.

[11] Huck and Allfast are the other firms in the aerospace blind rivet market.

[12] Using the sales figures cited in the Initial Decision, the pre-acquisition HHI is 4617, and the acquisition would increase the HHI by 64 points. See 1992 Horizontal Merger Guidelines section 1.51(b). The Guidelines define markets in which the Herfindahl-Hirschman Index ("HHI") is above 1800 as highly concentrated and mergers that produce an increase in the HHI of more than 50 points in such markets "potentially raise significant competitive concerns," depending on other relevant factors. The other relevant considerations, such as the ability to exercise market power and conditions of entry, counsel that anticompetitive effects are likely as a result of this acquisition.

[13] Textron claims that Avdel's success in Europe reflects some difference in demand, but the argument is undermined by the fact that Textron is the dominant firm in Europe, as it is in the United States. In 1987, Textron/Europe acknowledged that Avdel's product "is steadily progressing to become an established blind rivet in the aerospace industry." CX407W.

[14] The world aerospace blind rivet market is highly concentrated, and the acquisition would increase the HHI by more than 100 points. In this range, mergers are "presumed * * * likely to create or enhance market power or facilitate its exercise." 1992 Horizontal Merger Guidelines section 1.51(c).

[15] See 1992 Horizontal Merger Guidelines section 1.4 n.15.

[16] If we include Allfast at the design stage, Textron's acquisition of Avdel would increase the HHI from 2500 points to 3333 points. Only Textron, Avdel and Huck have developed blind rivet designs and competed in aircraft design competitions. Allfast substantially copied Textron's blind rivets and participates primarily at the procurement stage of aircraft construction, not the design stage. See note 17 below.

[17] None of these approaches, for example, reflects the ability to design aerospace blind rivets, a process that can take several years. Textron, Huck and Avdel appear to be the only firms that compete in designing blind rivets. Firms that do not design blind rivets (e.g., Allfast) tend to be second sources for the procurement of blind rivets, not participants in the competition to be included in aircraft designs.

[18] The availability of a different, independently produced rivet at the design stage of aircraft also constrains prices at the procurement stage.

[19] Voi-Shan, a former Textron licensee, and Olympic exited the market in 1988 and 1989, respectively.

[File No. 912 3253]

Redmond Products, Inc., et al.; Proposed Consent Agreement With Analysis To Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would prohibit, among other things, a Minnesota-based

manufacturer of hair care products and its officer from making unsubstantiated representations regarding the environmental benefits of any cosmetic product in the future.

DATES: Comments must be received on or before January 11, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th Street and Pennsylvania Avenue NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Michael Dershowitz or Kevin Bank, FTC/S–4002, Washington, DC 20580. (202) 326–3158 or 326–2675.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order To Cease and Desist

The Federal Trade Commission having initiated an investigation of certain acts and practices of Redmond Products, Inc., a corporation, and Thomas M. Redmond, individually and as an officer of said corporation ("proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to cease and desist from the acts and practices being investigated,

It is hereby agreed by and between Redmond Products, Inc., by its duly authorized officer, and Thomas M. Redmond, individually and as an officer of said corporation, and their attorney, and counsel for the Federal Trade Commission that:

1. Proposed respondent Redmond Products, Inc., is a corporation organized, existing and doing business under and by virtue of the laws of the State of Minnesota, with its office and principal place of business at 18930 West 78th Street, Chanhassen, Minnesota 55317.

Proposed respondent Thomas M. Redmond is an officer of said corporation. He formulates, directs and controls the acts and practices of said corporation, and his address is the same as that of said corporation.

2. Proposed respondents admit all the jurisdictional facts set forth in the attached draft complaint.

3. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the order entered pursuant to this agreement; and

(d) All claims under the Equal Access to Justice Act.

4. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission, it, together with the attached draft complaint, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

5. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents that the law has been violated as alleged in the attached draft complaint, or that the facts as alleged in the attached draft complaint, other than the jurisdictional facts, are true.

6. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may without further notice to proposed respondents, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following order to cease and desist in disposition of the proceeding, and (2) make information public in respect thereto. When so entered, the order to cease and desist shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The order shall become final upon service. Delivery by the U.S. Postal Service of the decision containing the agreed-to order to proposed respondents address as stated in this agreement shall constitute service. Proposed respondents waive any right they might have to any other manner of service. The complaint may be used in construing the terms of the order, and no agreement, understanding, representation, or interpretation not contained in the order or in the agreement may be used to vary or contradict the terms of the order.

7. Proposed respondents have read the complaint and the order contemplated hereby. They understand that once the order has been issued, they will be required to file one or more compliance reports showing they have fully complied with the order. Proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the order after it becomes final.

Order

Definitions

For purposes of this Order, the following definitions shall apply:

The term "Volatile Organic Compound" ("VOC") means any compound of carbon which participates in atmospheric photochemical reactions as defined by the U.S. Environmental Protection Agency at 40 CFR 51.100 (s), and as subsequently amended. When the final rule was promulgated, 57 FR 3941 (February 3, 1992), the EPA definition excluded carbon monoxide, carbon dioxide, carbonic acid, metallic carbides or carbonates, ammonium carbonate and certain listed compounds that the EPA has determined are of negligible photochemical reactivity.

"Competent and reliable scientific evidence" shall mean tests, analyses, research, studies or other evidence based on the expertise of professionals in the relevant area, that has been conducted and evaluated in an objective manner by persons qualified to do so, using procedures generally accepted in the profession to yield accurate and reliable results.

I

It is ordered That respondents Redmond Products, Inc., a corporation, its successors and assigns, and its officers, and Thomas M. Redmond, individually and as an officer of said corporation, and respondents' agents, representatives and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the advertising, labeling, offering for sale, sale, or distribution of any Redmond hair care product containing any volatile organic compound, in or

affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, through the use of such terms as "Environmentally Formulated," "Environmental Formula Contains Natural Propellants and No Fluorocarbons," or any other term or expression, that any such product will not harm the atmosphere or the environment, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

II

It is further ordered That respondents, Redmond Products Inc., a corporation, its successors and assigns, and its officers, and Thomas M. Redmond, individually and as an officer of said corporation, and respondents' agents, representatives, and employees, directly or through any corporation, subsidiary, division, or other device, in connection with the manufacturing, labeling, advertising, promotion, offering for sale, sale, or distribution of any cosmetic product, in or affecting commerce, as "commerce" is defined in the Federal Trade Commission Act, do forthwith cease and desist from representing, in any manner, directly or by implication, that any product offers any environmental benefit, unless at the time of making such representation, respondents possess and rely upon competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates such representation.

III

Nothing in this Order shall prevent respondents from using any of the terms cited in Part I, or similar terms or expressions, if necessary to comply with any Federal rule, regulation, or law governing the use of such terms in advertising and labeling.

IV

It is further ordered That for five (5) years after the last date of dissemination of any representation covered by this Order, respondents, or their successors and assigns, shall maintain and upon request make available to the Federal Trade Commission for inspection and copying:

1. All materials that were relied upon disseminating such representation; and

2. All tests, reports, studies, surveys demonstrations or other evidence in their possession or control that contradict, qualify, or call into question such representation, or the basis relied upon for such representation, including complaints from consumers.

V

It is further ordered That the corporate respondent shall distribute a copy of this order to each of its operating divisions and to each of its officers, agents, representatives, or employees engaged in the preparation and placement of advertisements, promotional materials, product labels or other such sales materials covered by this order.

VI

It it further ordered That respondents shall notify the Commission at least thirty (30) days prior to any proposed change in the corporation such as a dissolution, assignment, or sale resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries, or any other change in the corporation which may affect compliance obligations under this Order.

VII

It is further ordered That the individual respondent shall notify the Commission in the event of the discontinuance of his present business or employment and of each affiliation with a new business or employment. In addition, for a period of five (5) years from the date of service of this Order, he shall promptly notify the Commission of each affiliation with a new business or employment whose activities include the sale, distribution, and/or manufacturing of cosmetic products or of his affiliation with a new business or employment in which his own duties and responsibilities involve the sale, distribution, and/or manufacturing of cosmetic products. Each such notice shall include the individual respondent's new business address and a statement of the nature of the business or employment in which such respondent is newly engaged, as well as a description of such respondent's duties and responsibilities in connection with the business or employment. The expiration of the notice provision of this paragraph shall not affect any other obligation arising under this order.

VIII

It is further ordered That respondents shall, within sixty (60) days after the service of this Order upon them, and at such other times as the Commission may require, file with the Commission a report, in writing setting forth in detail the manner and form in which they have complied with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Redmond Products, Inc., a Minnesota corporation and Thomas M. Redmond, individually and as an officer of the corporation.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and comments received and will decide whether it should withdraw from the agreement and take other appropriate action, or make final the agreement's proposed order.

This matter concerns the labeling and advertising of two of respondents' aerosol hair spray products—"Aussie Mega Styling Spray" and "New Zealand Hair Paradise Zapset Hair Spray." The Commission's complaint in this matter charges that respondents made advertising claims that these products are "environmentally formulated" and labeling claims that the products have an "environmental formula" that "contains natural propellants and no fluorocarbons." The complaint alleges that through such claims, respondents made unsubstantiated representations that there are no ingredients in the hair sprays which are damaging to the environment and that because the hair sprays contain natural propellants and no fluorocarbons, they do not harm the environment. In fact, Redmond's hair spray products contain the volatile organic compounds propane, butane and SD alcohol 40, chemicals that under many atmospheric conditions contribute to the formation of ground level ozone, a major component of smog.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts and practices in the future.

The term "volatile organic compound" (VOC) is defined in the consent order in accordance with the definition adopted by the Environmental Protection Agency ("EPA") in a February 3, 1992, rulemaking. To assist the public and the industry in understanding the coverage of the order, those compounds that the EPA expressly excluded from the definition of VOC at the time the definition was promulgated are listed in the order. Because EPA could in the

future modify its definition based on evolving scientific evidence, the term VOC as used in the order will vary depending upon EPA's definition of the term. Those compounds that EPA may decide should be excluded from the definition of VOC because negligible photochemical reactivity will thus be excluded under the consent order. Likewise any compounds that EPA may decide should be defined as VOCs will be covered by the order.

Part I of the proposed order requires respondents to cease and desist from representing that any product containing volatile organic compounds is "environmentally formulated" or has an "environmental formula" containing "natural propellants and no fluorocarbons," or through the use of any other term or expression, that any such product will not harm the atmosphere or the environment, unless respondents possess competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

Part II of the proposed order provides that if the respondents represent in advertising or labeling that any cosmetic product offers any environmental benefit, they must have competent and reliable evidence, which when appropriate must be competent and reliable scientific evidence, that substantiates the representation.

The proposed order also requires respondents to maintain materials relied upon to substantiate claims covered by the order, to distribute copies of the order to certain company officials and employees, to notify the Commission of any changes in corporate structure that might affect compliance with the order, to notify the Commission of any changes in the business or employment of the named individual respondent, and to file one or more reports detailing compliance with the order.

The purpose of the analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Donald S. Clark,

Secretary.

[FR Doc. 93-27861 Filed 11-10-93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

[CDC-404]

Evaluation of a Community Intervention in China of the Use of Periconceptional Folic Acid Supplements To Prevent Spina Bifida and Anencephaly

Summary

The Centers for Disease Control and Prevention (CDC) announces the availability of fiscal year (FY) 1994 funds to continue a cooperative agreement with the Beijing Medical University (BMU) of the People's Republic of China (PRC) for the conduct of a program to evaluate a community intervention in China of the use of periconceptional folic acid supplements to prevent spina bifida and anencephaly (SBA). It is anticipated that up to $2,000,000 will be available in FY 1994 to fund the cooperative agreement beginning approximately December 1993. The cooperative agreement will have a project period of up to three years that will be divided into twelve-month budget periods.

The purpose of this cooperative agreement is to support a project to be undertaken by BMU to evaluate a community intervention program promoting the use of periconceptional folic acid supplements to prevent spina bifida and anencephaly.

In conjunction with the Chinese Ministry of Public Health (MOPH) recommendation that women of childbearing age should consume 0.4 mg of folic acid, four provinces have been selected to be model intervention sites: Hebei & Shanxi in Northern China, and Jiangsu & Zhejiang in southern China. The intervention will educate and encourage women to consume 0.4 mg of folic acid supplements per day which will be made available for purchase in the community. The evaluation of the intervention will take three to four years to complete.

The CDC will (1) assign a medical epidemiologist to the project; (2) provide technical and scientific consultation and assistance for the implementation of all epidemiologic and surveillance activities; (3) provide epidemiologic training and on-site consultation; (4) provide guidance on project management and administration matters related to the conduct of the scientific aspects; (5) collaborate in the development of scientific protocols; (6) collaborate in developing methods and procedures for collecting, processing and analyzing study data; (7) collaborate in the general design and conduct of the intervention evaluation; (8) collaborate in the definition and preparation of reports that may result from the project; and (9) collaborate with the Cooperative Oversight Group and the Project Operating Group.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity to reduce morbidity and mortality and improve the quality of life. This announcement is related to the Healthy People 2000 Priority Area directed toward improving Maternal and Infant Health by the year 2000. (For ordering a copy of "Healthy People 2000," see the section WHERE TO OBTAIN ADDITIONAL INFORMATION.)

Authority

This program is authorized under sections 301 and 307 of the Public Health Service Act, as amended, 42 U.S.C. 241 and 242*l*, section 5 of the International Health Research Act of 1960, 22 U.S.C. 2101-2104, and section 104 of the Foreign Assistance Act of 1961, 22 U.S.C. 2151b.

Eligible Applicant

Assistance will be provided only to the Beijing Medical University of the People's Republic of China for this program. No other applications are solicited. The Program Announcement and application kit have been sent to BMU.

The People's Republic of China is the most appropriate country and the Beijing Medical University is the most appropriate organization to conduct the work under this cooperative agreement because:

1. Northern China has the highest known rate of SBA in the world. In rural areas, the rate is about 6 per 1,000 total births, or almost 10 times the U.S. rate.
2. SBA are major causes of stillbirth and infant mortality in northern China. Improving birth outcomes is a high priority at all levels of government and within most Chinese public health and medical organizations.
3. China has a large stable population with virtually no routine access to multivitamin or folic acid supplements in most rural and many urban areas.
4. Women can be identified early when they register for marriage; premarital pregnancy is uncommon; and 80% of those married become pregnant within one year.
5. Well trained and qualified Chinese scientists at the National Center for Maternal and Infant Health, Beijing

Medical University, have collaborated with CDC for 10 years on a World Health Organization risk approach project in Beijing Municipality, Shunyi County. This project established a surveillance system—the Perinatal Health Care Delivery System—which monitors all pregnancies in the county and their outcomes. To help plan this community intervention effort, a special birth defects surveillance system has provided accurate and timely current estimates of births and birth-defect rates.

During the first two years of the CDC cooperative agreement with BMU, the Perinatal Health Care Delivery System has been extended to additional counties and will be used to monitor pregnancy outcomes during the intervention.

6. In March 1993, the Chinese Ministry of Public Health issued a recommendation that all women of childbearing age, whether or not they have had a previous neural tube defect (NTD)-affected pregnancy, should consume 0.4 mg of folic acid. This recommendation, based on recently published research, has shown that if women take folic acid shortly before they become pregnant and in the early weeks of pregnancy, they may reduce their chances of having a baby with SBA by 50%. Based on the available research results, the PHS issued a public health recommendation in September 1992. The PHS recommended that all women of childbearing age who are capable of becoming pregnant should consume 0.4 mg of folic acid per day for the purpose of reducing their risk of having a pregnancy affected with spina bifida or other neural tube defects.

7. The proposed project activities involving epidemiology, surveillance and prevention efforts are strongly and directly related to the achievement of the United States CDC National Center for Environmental Health research and development programs in Birth Defects and Developmental Disabilities. The project activities are based on 10 years of experience with the World Health Organization risk approach project in Beijing Municipality mentioned previously in this document, as well as the past two years of experience with the cooperative agreement between CDC and BMU.

Executive Order 12372 Review

This program is not subject to the Executive Order 12372 Review.

Public Health System Reporting Requirements

This program is not subject to the Public Health System Reporting Requirements.

Catalog of Federal Domestic Assistance Number

The Catalog of Federal Assistance number is 93.283.

Where To Obtain Additional Information

If you are interested in obtaining additional information regarding this project, please reference Program Announcement Number 404, entitled "Evaluation of a Community Intervention in China of the Use of Periconceptional Folic Acid Supplements to Prevent Spina Bifida and Anencephaly," and contact Ms. Carolyn J. Russell, Chief, Grants Management Branch, Procurement and Grants Office, Centers for Disease Control and Prevention (CDC), 255 East Paces Ferry Road, NE., Mailstop E–09, Atlanta, Georgia 30305, telephone (404) 842–6655.

A copy of "Healthy People 2000" (Full Report, Stock No. 017–001–00474–0) or "Healthy People 2000" (Summary Report Stock No. 017–001–00473–1) referenced in the "Summary" may be obtained through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325, telephone (202) 783–3238.

Dated: November 5, 1993.

Robert L. Foster,

Acting Associate Director for Management and Operations, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–27784 Filed 11–10–93; 8:45 am]

BILLING CODE 4160–18–P

Health Care Financing Administration

Notice of Hearing: Reconsideration of Disapproval of Pennsylvania State Plan Amendment (SPA)

AGENCY: Health Care Financing Administration, HHS.

ACTION: Notice of hearing.

SUMMARY: This notice announces an administrative hearing on December 16, 1993, in room 3020; 3535 Market Street, Philadelphia, Pennsylvania, to reconsider our decision to disapprove Pennsylvania SPA 91–42.

CLOSING DATE: Requests to participate in the hearing as a party must be received by the Docket Clerk by November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Docket Clerk, HCFA Hearing Staff, Groundfloor, Meadowwood East Building, 1849 Gwynn Oak Avenue, Baltimore, Maryland 21207, Telephone: (410) 597–3013.

SUPPLEMENTARY INFORMATION: This notice announces an administrative hearing to reconsider our decision to disapprove Pennsylvania State plan amendment (SPA) number 91–42.

Section 1116 of the Social Security Act (the Act) and 42 CFR part 430 establish Department procedures that provide an administrative hearing for reconsideration of a disapproval of a State plan or plan amendment. The Health Care Financing Administration (HCFA) is required to publish a copy of the notice to a State Medicaid agency that informs the agency of the time and place of the hearing and the issues to be considered. If we subsequently notify the agency of additional issues that will be considered at the hearing, we will also publish that notice.

Any individual or group that wants to participate in the hearing as a party must petition the Hearing Officer within 15 days after publication of this notice, in accordance with the requirements contained at 42 CFR 430.76(b)(2). Any interested person or organization that wants to participate as amicus curiae must petition the Hearing Officer before the hearing begins in accordance with the requirements contained at 42 CFR 430.76(c).

The amendment was submitted by the Commonwealth of Pennsylvania on May 6, 1993. It requested an exception to the payment process to assist the State in placing limited high-tech residents, such as ventilator dependent and head and spinal cord injured individuals, into nursing facilities. The Commonwealth requested an effective date of March 29, 1992.

Federal regulations at 42 CFR 447.253(h) require that the Medicaid agency must comply with the public notice requirements in § 447.205 when it is proposing significant changes to its methods and standards for setting payment rates for inpatient hospital and long-term care facility services. Section 447.205(d)(1) requires that the notice be published before the proposed effective date of the change. Section 447.205(c)(2) requires that the notice include an estimate of any expected increase or decrease in annual expenditures.

The issue in this matter is whether the Commonwealth complied with public notice requirements at 42 CFR 447.205(c)(2). Section 447.205(c)(2) requires that the notice include an estimate of any expected increase or decrease in annual expenditures.

The Commonwealth submitted the plan amendment on April 3, 1992, and

included a copy of its March 28, 1992, public notice. This notice, however, did not comply with the requirements of 42 CFR 447.205(c)(2) since it did not include an estimate of the expected increase or decrease in aggregate annual expenditures. The Commonwealth subsequently published public notice which amended the March 28, 1992, notice to meet the requirements of 42 CFR 447.205(c)(2). This notice was published on February 27, 1993.

The Commonwealth believes the requested March 29, 1992, effective date is approvable because any interested individual could have been provided the expenditure information by writing to the contact person listed in the March 28, 1992, notice.

HCFA believes the effective date for the amendment cannot be March 29, 1992, because the Commonwealth did not publish the required public notice until February 27, 1993. Therefore, in accordance with 42 CFR 447.205(d)(1), HCFA can approve the amendment with an effective date of February 28, 1993, the day following the publication of the Commonwealth's notice.

Based on the above, and after consultation with the Secretary as required by 42 CFR 430.15(c)(2), the proposed effective date of March 29, 1992, was disapproved.

The notice to the Commonwealth announcing an administrative hearing to reconsider the disapproval of its SPA reads as follows:

Ms. Karen F. Snider,
Secretary, Department of Public Welfare, Health and Welfare Building, Room 333, Harrisburg, Pennsylvania 17120-2675.

Dear Ms. Snider: I am responding to your request for reconsideration of the decision to disapprove Pennsylvania State Plan Amendment (SPA) 91-42.

The amendment was submitted by the Commonwealth of Pennsylvania on May 6, 1993. It requested an exception to the payment process to assist the State in placing limited high-tech residents, such as ventilator dependent and head and spinal cord injured individuals, into nursing facilities. The Commonwealth requested an effective date of March 29, 1992.

The issue in this matter is whether the Commonwealth complied with public notice requirements at 42 CFR 447.205(c)(2). Section 447.205(c)(2) requires that the notice include an estimate of any expected increase or decrease in annual expenditures.

I am scheduling a hearing on your request for reconsideration to be held on December 16, 1993, at 10 a.m., room 3020, 3535 Market Street, Philadelphia, Pennsylvania. If this date is not acceptable, we would be glad to set another date that is mutually agreeable to the parties. The hearing will be governed by the procedures prescribed at 42 CFR, part 430.

I am designating Mr. Stanley Katz as the presiding officer. If these arrangements present any problems, please contact the Docket Clerk. In order to facilitate any communication which may be necessary between the parties to the hearing, please notify the Docket Clerk of the names of the individuals who will represent the State at the hearing. The Docket Clerk can be reached at (410) 597-3013.

Sincerely,

Bruce C. Vladeck,
Administrator.

(Section 1116 of the Social Security Act (42 U.S.C. section 1316); 42 CFR section 430.18) (Catalog of Federal Domestic Assistance Program No. 13.714, Medicaid Assistance Program)

Dated: November 5, 1993.

Bruce C. Vladeck,
Administrator, Health Care Financing Administration.

[FR Doc. 93-27830 Filed 11-10-93; 8:45 am]
BILLING CODE 4120-01-P

Health Resources and Services Administration

Special Project Grants; Maternal and Child Health Services; Federal Set-Aside Program; State Systems Development Initiative

AGENCY: Health Resources and Services Administration (HRSA).
ACTION: Notice of availability of funds.

SUMMARY: The Health Resources and Services Administration is announcing the availability of fiscal year 1994 funds for a limited competition for State Systems Development Initiative (SSDI) grants. The purpose of the SSDI is to assist State Maternal and Child Health (MCH) and Children with Special Health Care Needs (CSHCN) programs in developing and implementing an infrastructure to establish community-based service systems to meet the health and health-related needs of all children and their families. Competition is limited to State MCH and CSHCN agencies because our intent is to directly support their infrastructure development efforts. In FY 1993, 57 of the 59 States and jurisdictions applied for SSDI grants and 50 were funded. This competition is limited to the nine States and jurisdictions which do not have SSDI grants. Awards will be made under the program authority of section 502(a) of the Social Security Act, the MCH Federal Set-Aside Program.

Grants/Amounts: Up to $900,000 will be available to support up to nine new projects in an amount up to $100,000 per award for 1 year. Project periods are up to 3 years.

Eligibility: The nine States and jurisdictions not already receiving funds under the SSDI grant program: New York, Puerto Rico, Mississippi, Arkansas, Louisiana, Texas, Nebraska, Pennsylvania, and Republic of the Marshall Islands. Either the State agency MCH or CSHCN program is eligible. However, the application must be jointly developed and the project must be jointly implemented by both programs.

ADDRESSES: Grant applications must be submitted to: Chief, Grants Management Branch, Office of Program Support, Maternal and Child Health Bureau, Health Resources and Services Administration, room 18-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443-1440. Applicants for these projects will use application Form PHS 5161-1 with revised factsheet DHHS Form 424, approved by OMB under control number 0937-0189.

DATES: The application deadline date is November 30, 1993. Eligible applicants have been notified by letter of October 28, 1993.

Competing applications will be considered to be on time if they are either:

(1) Received on or before the deadline date, or

(2) Postmarked on or before the deadline date and received in time for orderly processing. (Applicants should request a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.

Late competing applications not accepted for processing or those sent to an address other than indicated in the **ADDRESSES** section will be returned to the applicant.

FOR FURTHER INFORMATION CONTACT: For programmatic or technical information on MCH issues, contact David E. Heppel, M.D., 5600 Fishers Lane, room 18A-30, telephone: 301 443-2250; on CSHCN issues, contact John C. Shwab, 5600 Fishers Lane, room 18A-18, telephone: 301 443-2370. For information concerning business management issues, contact Mrs. Maxine Toense, Grants Management Branch, Maternal and Child Health Bureau, room 18-12, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland, telephone: 301 443-1440. The OMB Catalog of Federal Domestic Assistance number is 93.110.

Dated: November 5, 1993.

William A. Robinson,
Acting Administrator.

[FR Doc. 93-27798 Filed 11-10-93; 8:45 am]
BILLING CODE 4160-15-P

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on October 29, 1993.

(Call PHS Reports Clearance Officer on (202) 690–7100 for copies of requests).

1. Services Research Outcomes Study (Pilot Study and Abstracting)—(New)—The Services Research Outcomes Study employs the National DRS client sample to gather information required in the formulation of National drug policy. A sample of 3000 treatment clients will be followed up through records and personal interview to obtain information on drug use, criminal activity, and treatment utilization patters. *Respondents:* Individuals or households; State or local governments; businesses or other for-profit; Federal agencies or employees; non-profit institutions; small businesses or organizations; *Number of Respondents:* 165; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* 3.93 hours; *Estimated Annual Burden hours:* 648 hours.

2. List of Ingredients Added to Tobacco in the Manufacture of Smokeless Tobacco Products—New—Public Law 99–252 (15 U.S.C. 4403(a) requires manufacturers, packagers, and importers of smokeless tobacco products to provide the Secretary of HHS annually with a list of all ingredients added to tobacco in the manufacture of smokeless tobacco products. Each ingredient should be reported by chemical name and Chemical Abstract Service number. *Respondents:* Businesses or other for-profit; small businesses or organizations; *Number of Respondents:* 11; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* 15 hours; *Estimated Annual Burden:* 165 hours.

3. School Health Policies and Programs Study—New—This is a national study of policies and programs related to school health at the State, district, and school levels. This study will gather baseline data on what school health programs are doing to achieve national health objectives and national educational goals. *Respondents:* Individuals or households, State or local governments; *Number of Respondents:* 7,931; *Number of Responses Per Respondent:* 1; *Average Burden Per Response:* 0.783 hours; *Estimated Annual Burden:* 6,214 hours.

4. Hanford Thyroid Disease Study—0920–0296 (Revision)—An epidemiologic study will be conducted to determine whether thyroid disease is increased among persons exposed as young children to radioactive iodine released from the Hanford Nuclear site. A pilot is being conducted to test procedures and determine actual levels of exposure. A full epidemiologic study will follow the pilot phase. *Respondents:* Individuals or households; *Number of Respondents:* 1,863; *Number of Responses Per Respondent:* 3.48; *Average Burden Per Response:* 0.544 hours; *Estimated Annual Burden:* 3,532 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive office Building, room 3002, Washington, DC 20503.

Dated: November 5, 1992.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–27817 Filed 11–10–93; 8:45 am]

BILLING CODE 4160–17–M

Social Security Administration

Agency Forms Submitted to the Office of Management and Budget for Clearance

Normally on Fridays, the Social Security Administration publishes a list of information collection packages that have been submitted to the Office of Management and Budget (OMB) for clearance in compliance with Public Law 96–511, The Paperwork Reduction Act. The following clearance packages have been submitted to OMB since the last list was published in the **Federal Register** on Friday, October 15, 1993.

(Call Reports Clearance Officer on (410) 965–4142 for copies of package.)

1. Federal Assistance Application Form—0960–0184. The information on form SSA–96 is used by the Social Security Administration (SSA) to evaluate proposed Federal grants to eligible applicants. The affected public consists of various organizations, educational institutions, small businesses and State and local government agencies which apply for grants from SSA.

Number of Respondents: 400.

Frequency of Response: 1.

Average Burden Per Response: 14 hours.

Estimated Annual Burden: 5,600 hours.

2. Report of New Information in Disability Cases—0960–0071. The information on form SSA–612 is used by the Social Security Administration to determine (based on a reported change) whether or not a disability insurance beneficiary should continue receiving benefits and, if so, the amount of such benefits. The affected public consists of such beneficiaries who report changes.

Number of Respondents: 200,000.

Frequency of Response: On occasion.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 16,667 hours.

3. Statement of Funds You Received and Statement of Funds You Provided—0960–0481. The information on forms SSA–2854 and SSA–2855 is used by the Social Security Administration to verify allegations of informal loans to recipients of Supplemental Security Income. The respondents are lenders and recipients of such loans.

Number of Respondents: 40,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 6,667 hours.

4. Physical Residual Functional Capacity Assessment and Mental Residual Functional Capacity Assessment—0960–0431. The information on forms SSA–4734 and 4734–SUP is used by the Social Security Administration (SSA) to provide State and Federal disability determination services (DDSs) with information needed to properly assess a claimant's ability to perform work-related physical or mental activities on a sustained basis in competitive employment. The respondents are State and Federal DDSs.

Number of Respondents: 54.

Frequency of Response: 25,605.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 460,890 hours.

5. Statement of Employer—0960–0030. The information on form SSA–7011 is used by the Social Security Administration (SSA) to substantiate alleged wages which are not shown in SSA's records and for which the worker does not have proof. The affected public consists of employers for whom wages are alleged but not posted.

Number of Respondents: 925,000.

Frequency of Response: 1.

Average Burden Per Response: 20 minutes.

Estimated Annual Burden: 308,333 hours.

6. Statement of Living Arrangements, In-Kind Support and Maintenance—0960–0174. The information on form SSA–8006 is used by the Social Security Administration to determine if an applicant or recipient meets the income criteria for eligibility to Supplemental Security Income (SSI) benefits. The respondents are individuals who apply for or are receiving SSI payments.

Number of Respondents: 775,000.

Frequency of Response: 1.

Average Burden Per Response: 7 minutes.

Estimated Annual Burden: 90,417 hours.

7. Supplemental Security Income Claim Information—0960–0324. The information on form SSA–L8050 is used to obtain the benefit status of applicants for, or recipients of, Supplemental Security Income (SSI) benefits who are potentially eligible for benefits from other agencies. The respondents are agencies and organizations which pay benefits.

Number of Respondents: 10,000.

Frequency of Response: 1.

Average Burden Per Response: 10 minutes.

Estimated Annual Burden: 1,667 hours.

8. Reporting Events—SSI—0960–0128. Form SSA–8150 is used by applicants or recipients of Supplemental Security Income (SSI) to report specified changes to the Social Security Administration. The information contained on this form is used to determine if the reported change affects the individual's eligibility to SSI. The respondents are applicants or recipients of SSI.

Number of Respondents: 43,600.

Frequency of Response: 1.

Average Burden Per Response: 5 minutes.

Estimated Annual Burden: 3,633 hours.

OMB Desk Officer: Laura Oliven.

Written comments and recommendations regarding these information collections should be sent directly to the appropriate OMB Desk Officer designated above at the following address: OMB Reports Management Branch, New Executive Office Building, room 3208, Washington, DC 20503.

Dated: November 8, 1993.

Charlotte Whitenight,

Reports Clearance Officer, Social Security Administration.

[FR Doc. 93–27819 Filed 11–10–93; 8:45 am]

BILLING CODE 4190–29–F

Rescission of Ruling; Schisler v. Sullivan

In the matter of Rescission of *Schisler* Ruling Dated March 9, 1989, Based on Second Circuit Decision in *Schisler* v. *Sullivan*, Nos. 92–6232, 92–6234, 92–6233, and 92–6243 (Aug. 23, 1993).

AGENCY: Social Security Administration, HHS.

ACTION: Notice of rescission of ruling.

SUMMARY: The Commissioner of Social Security hereby gives notice of Rescission of the *Schisler* Ruling dated March 9, 1989—

Subject: *Schisler* v. *Sullivan*

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Marg Handel, Litigation Staff, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, 3–K–26 Operations, (410) 965–4639.

SUPPLEMENTARY INFORMATION: On March 9, 1989, pursuant to a decision of the U.S. Court of Appeals for the Second Circuit, the Commissioner of Social Security issued a ruling (*Schisler* Ruling) in a memorandum to all adjudicators of disability claims arising in states within the Second Circuit (New York, Vermont, and Connecticut) to reflect the holding in *Schisler* v. *Bowen*, 851 F.2d 43 (1988) on the weight to be given medical evidence provided by treating sources.

On August 1, 1991, the Department of Health and Human Services published a final rule in the **Federal Register** establishing standards for consultative examinations and medical evidence when determining claims of disability under the Social Security Act. See 56 FR 36,932 (1991) (codified at 20 CFR part 404, subpart P, and part 416, subpart I). These regulations contain standards for evaluating and developing treating source opinion on the subject of medical disability. The regulations were effective upon publication on a national basis except in those states where court orders delayed implementation, such as states within the Second Circuit (which were evaluating disability claims under the *Schisler* (New York) order and *Aldrich* (Vermont) order). As explained below, these regulations now apply throughout the nation at all decision-making levels, and they render obsolete prior instructions on matters addressed by the regulations, such as the *Schisler* Ruling.

On August 23, 1993, the U.S. Court of Appeals for the Second Circuit resolved the only pending litigation about applying the regulations, i.e., to claims of individuals residing in the Second Circuit, fully in favor of the Department of Health and Human Services. In *Schisler* v. *Sullivan*, which addressed litigation in the *Schisler* class action and in the consolidated *Aldrich* v. *Sullivan* class action, the Second Circuit approved use of the Department's regulations to decide claims of individuals residing in the Second Circuit. The Second Circuit held that the Department's regulations for evaluating treating physician opinions or "treating physician opinion evidence" are valid in that circuit because they are "reasonable" and not "arbitrary, capricious, or manifestly contrary to the Statute." Therefore, since the *Schisler* Ruling, which stated prior Second Circuit case law, no longer expresses the law of the circuit, it may be rescinded. Accordingly, the *Schisler* Ruling dated March 9, 1989, is hereby rescinded.

Dated: November 3, 1993.

Shirley S. Chater,

Commissioner of Social Security.

[FR Doc. 93–27835 Filed 11–10–93; 8:45 am]

BILLING CODE 4190–25–F

Privacy Act of 1974; Computer Matching Programs: SSA and Treasury Department, Bureau of the Public Debt

AGENCY: Social Security Administration, HHS.

ACTION: Publication of notice of computer matching programs to comply with Public Law (Pub. L.) 100–503, the Computer Matching and Privacy Protection Act of 1988.

SUMMARY: We are publishing a notice of a computer matching program that SSA conducts that is subject to the requirements of Public Law 100–503. The purpose of this publication is to meet the reporting and publication requirements of Public Law 100–503.

DATES: Upon publication of this notice in the **Federal Register**, we will file a report of the subject SSA matching program with the Committee on Governmental Affairs of the Senate and the Committee on Government Operations of the House of Representatives and Office of Information and Regulatory Affairs, Office of Management and Budget. The matching program is effective as indicated below.

ADDRESSES: Interested parties may comment on this notice by writing to the Associate Commissioner for Program

and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235. All comments received will be available for public inspection at this address.

FOR FURTHER INFORMATION CONTACT: The Associate Commissioner for Program and Integrity Reviews at the address above.

SUPPLEMENTARY INFORMATION:

A. General

Public Law 100–503, the Computer Matching and Privacy Protection Act of 1988, amended the Privacy Act (5 U.S.C. 552a) by adding certain protections for individuals applying for and receiving Federal benefits. Section 7201 of Public Law 101–508, the Computer Matching and Privacy Protection Amendments of 1990, further amended the Privacy Act regarding protections for such individuals. The Privacy Act regulates the use of computer matching by Federal agencies when records in a system of records are matched with other Federal, State, and local government records. The amendments require Federal agencies involved in computer matching programs to:

(1) Negotiate written agreements with source agencies;

(2) Provide notification to applicants and beneficiaries that their records are subject to matching;

(3) Verify match findings before reducing, suspending or terminating an individual's benefits or payments;

(4) Furnish detailed reports to Congress and the Office of Management and Budget; and

(5) Establish a Data Integrity Board that must approve match agreements.

B. SSA Computer Matches Subject to Public Law 100–503

We have taken action to ensure that all of SSA's computer matching programs comply with the requirements of Public Law 100–503. Below is a brief description followed by a detailed notice of a match that SSA will be conducting as of October 1993 or later.

C. SSA Matching With Department of the Treasury, Bureau of the Public Debt (BPD)

Purpose: SSA will match its supplemental security income (SSI) records against savings bond registration records to identify recipients who did not report or incorrectly reported ownership of savings bonds and to determine the effect of bond ownership on SSI eligibility.

Dated: November 3, 1993.

Shirley S. Chater,

Commissioner of Social Security.

Notice of Computer Matching Program, Social Security Administration (SSA) Supplemental Security Income Record (SSR) Matching With the Bureau of the Public Debt (BPD)

A. Participating Agencies

SSA and BPD.

B. Purpose of the Matching Program

Section 1631(e)(1)(B) of the Social Security Act (the Act) requires SSA to verify the allegations of applicants and recipients for SSI payments before making a determination of eligibility or payment amount. Section 1631(f) of the Act requires Federal agencies to furnish SSA with information necessary to verify SSI eligibility.

The purpose of this matching program is obtain data from the BPD to identify individuals who did not report or incorrectly reported ownership of savings bonds and to determine the effect of bond ownership on SSI eligibility.

C. Authority for Conducting the Matching Program

Sections 1631(e)(1)(B) and 1631(f) of the Act (42 U.S.C. 1383(e)(1)(B) and 1383(f)).

D. Categories of Records and Individuals Covered by the Match

SSA will match savings bond information received from the BPD's records with data in the SSR (last published November 24, 1992 (57 FR 55265)). The SSA SSR contains identifying and payment information about recipients under the title XVI program. The BPD's records contain information about the ownership and redemption values of savings bonds.

E. Inclusive Dates of the Match

The matching program shall become effective 40 days after a copy of the agreement, as approved by the HHS Data Integrity Board, is sent to Congress and the Office of Management and Budget, or 40 days after publication of this notice in the **Federal Register** (December 22, 1993), whichever date is later. The matching program will continue for 18 months from the effective date and may be extended for an additional 12 months thereafter, if certain conditions are met.

F. Address for Receipt of Public Comments or Inquiries

Individuals wishing to comment on this matching program should submit comments to the Associate Commissioner for Program and Integrity Reviews, 860 Altmeyer Building, 6401 Security Boulevard, Baltimore, Maryland 21235.

[FR Doc. 93–27736 Filed 11–10–93; 8:45 am]

BILLING CODE 4190–29–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3681; FR–3612–N–01]

The Performance Review Board

AGENCY: Office of the Secretary, Housing and Urban Development.

ACTION: Notice of appointments.

SUMMARY: The Department of Housing and Urban Development announces the appointments of Terrence R. Duvernay as Chairperson, Marilynn A. Davis as Vice Chairperson, Frank D. Wing, Jr., Sandra J. Webb, Sylvester C. Angel, David R. Williamson, Donna M. Abbenante, Choco G. Meza as members, and Frank M. Malone, Madeline Hastings, as alternates to the Departmental Performance Review Board. Their address is: Department of Housing and Urban Development, Washington, DC 20410.

FOR FURTHER INFORMATION CONTACT: Persons desiring any further information about the Performance Review Board and its members may contact Norm Phelps, Director, Office of Personnel, Department of Housing and Urban Development, Washington, DC 20410, telephone (202) 708–2000. (This is not a toll free number.)

Dated: November 5, 1993.

Henry G. Cisneros,

Secretary, Department of Housing and Urban Development.

[FR Doc. 93–27816 Filed 11–10–93; 8:45 am]

BILLING CODE 4210–32–M

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–57]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (i.e., acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: *Corps of Engineers:* Bob Swieconek, Headquarters, Army Corps of Engineers, Attn: CERE-MC, Room 4224, 20 Massachusetts Ave. NW, Washington, DC 20314–1000; (202) 272–1750; *Dept. of Interior:* Lola D. Knight, Property Management Specialist, Dept. of Interior, 1849 C St. NW, Mailstop 5512–MIB, Washington, DC 20240; (202) 208–4080; *U.S. Army:* Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; (These are not toll-free numbers).

Dated: November 5, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/12/93

Suitable/Available Properties

Buildings (by State)

Florida

Bldg. SF–97
Port Mayaca Lock & Spillway
9 miles north of Canal Point
Port Mayaca Co: Martin FL 33438-
Landholding Agency: COE
Property Number: 319340001
Status: Unutilized
Comment: 1700 sq. ft., 1-story concrete block/stucco, most recent use—laboratory, off-site use only

Iowa

Bldg.—Prairie Ridge
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544-
Landholding Agency: COE
Property Number: 319340002
Status: Unutilized
Comment: water storage tower, off-site use only

Bldg.—Bridgeview
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544-
Landholding Agency: COE
Property Number: 319340003
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only

Bldg.—Island View
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544-
Landholding Agency: COE
Property Number: 319340004
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only

Bldg.—Rolling Cove
Rathbun Lake Project, R.R. #3
Centerville Co: Appanoose IA 52544-
Landholding Agency: COE
Property Number: 319340005
Status: Unutilized
Comment: 416 sq. ft., 1-story, most recent use—storage, needs major rehab, off-site use only

Ohio

William H. Harsha Lake Bldg.
3782 Williamsburg-Bantam Road
Batavia Co: Clermont OH 45106-
Landholding Agency: COE
Property Number: 319240011
Status: Unutilized
Comment: 1568 sq. ft., wood frame residence, needs major repairs, off-site use only

Suitable/To Be Excessed

Buildings (by State)

Washington

Quarters No. 1204
604 S. Maple
Warden Co: Grant WA 98857-
Landholding Agency: Interior
Property Number: 619330001
Status: Excess
Comment: 850 sq. ft., one story frame residence, asbestos siding

Quarters No. 1208
608 S. Maple
Warden Co: Grant WA 98857-
Landholding Agency: Interior
Property Number: 619330002
Status: Excess
Comment: 709 sq. ft., one story frame residence, asbestos siding

Quarters No. 1301
3 SE and N Warden Road
Warden Co: Grant WA 98857-
Landholding Agency: Interior
Property Number: 619330003
Status: Excess
Comment: 709 sq. ft., one story frame residence on 4.9 acres, asbestos siding

Unsuitable Properties

Buildings (by State)

California

Bldg. 647
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219340008
Status: Unutilized
Reason: Secured Area

Bldg. 648
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219340009
Status: Unutilized
Reason: Other; Secured Area
Comment: Extensive deterioration

Bldg. 834A
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219340010
Status: Unutilized
Reason: Other; Secured Area
Comment: Extensive deterioration

Bldg. 905
Oakland Army Base
Oakland Co: Alameda CA 94626–5000
Landholding Agency: Army
Property Number: 219340011
Status: Unutilized
Reason: Other; Secured Area
Comment: Extensive deterioration

Kansas

Bldgs. A2506, B2506
Sunflower Army Ammunition Plant
Desoto Co: Johnson KS 66018-
Landholding Agency: Army
Property Number: 219340001
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldgs. A2508–1, B2508–1
Sunflower Army Ammunition Plant
Desoto Co: Johnson KS 66018-
Landholding Agency: Army
Property Number: 219340002
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldg. A5817–1
Sunflower Army Ammunition Plant
Desoto Co: Johnson KS 66018
Landholding Agency: Army
Property Number: 219340003
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldgs. A7812–1, A7812–2, A7812–4 thru A7812–6
Sunflower Army Ammunition Plant
Desoto Co: Johnson KS 66018-
Landholding Agency: Army
Property Number: 219340004
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldgs. A6807–1 thru A6807–21
Sunflower Army Ammunition Plant
Desoto Co: Johnson KS 66018-
Landholding Agency: Army
Property Number: 219340005
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldgs. A6808–1, B6801–1, A6808–7, B6808–7
Sunflower Army Ammunition Plant
Desoto Co: Johnson KS 66018-
Landholding Agency: Army
Property Number: 219340006
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldg. A7871–2
Sunflower Army Ammunition Plant
Desoto Co: Johnson KS 66018-
Landholding Agency: Army
Property Number: 219340007
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Maryland

Bldg. T–116, Fort Detrick
Frederick Co: Frederick MD 21762–5000
Landholding Agency: Army
Property Number: 219340012
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. 2416
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 21061-
Landholding Agency: Army
Property Number: 219340013
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Bldg. T–2844
Fort George G. Meade
Ft. Meade Co: Anne Arundel MD 21061-
Landholding Agency: Army
Property Number: 219340014
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

Minnesota

Bldg. 585
Twin Cities Army Ammunition Plant
New Brighton Co: Ramsey MN 55112-
Landholding Agency: Army
Property Number: 219340015
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration

Nevada

Bldg. 00167
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415-
Landholding Agency: Army
Property Number: 219340016
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldg. 00302
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415-
Landholding Agency: Army
Property Number: 219340017
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldg. 00329
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415-
Landholding Agency: Army
Property Number: 219340018
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldg. 00359
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415-
Landholding Agency: Army
Property Number: 219340019
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldg. 106–20
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415-
Landholding Agency: Army
Property Number: 219340020
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Bldg. 106–40
Hawthorne Army Ammunition Plant
Hawthorne Co: Mineral NV 89415-
Landholding Agency: Army
Property Number: 219340021
Status: Unutilized
Reason: Within 2000 ft. of flammable or explosive material; Other; Secured Area
Comment: Extensive deterioration

Texas

Bldg. 3948, Fort Hood
Ft. Hood Co: Coryell TX 76544-
Landholding Agency: Army
Property Number: 219340022
Status: Unutilized
Reason: Other
Comment: Extensive deterioration

[FR Doc. 93–27762 Filed 11–10–93, 8:45 am]

BILLING CODE 4210–29–F

Office of Administration

[Docket No. N–93–3680]

Submission of Proposed Information Collections to OMB

AGENCY: Office of Administration, HUD.

ACTION: Notices.

SUMMARY: The proposed information collection requirements described below have been submitted to the Office of Management and Budget (OMB) for review, as required by the Paperwork Reduction Act. The Department is soliciting public comment on the subject proposals.

ADDRESSES: Interested persons are invited to submit comment regarding these proposals. Comments should refer to the proposal by name and should be sent to: Angela Antonelli, OMB Desk Officer, Office of Management and Budget, New Executive Office Building, Washington, DC 20503.

FOR FURTHER INFORMATION CONTACT:

Kay F. Weaver, Reports Management Officer, Department of Housing and Urban Development, 451 7th Street, Southwest, Washington, DC 20410, telephone (202) 708–0050. This is not a toll-free number. Copies of the proposed forms and other available documents submitted to OMB may be obtained from Ms. Weaver.

SUPPLEMENTARY INFORMATION: The Department has submitted the proposals for the collections of information, as described below, to OMB for review, as required by the Paperwork Reduction Act (44 U.S.C. chapter 35).

The Notices list the following information: (1) The title of the information collection proposal; (2) the office of the agency to collect the information; (3) the description of the need for the information and its proposed use; (4) the agency form number, if applicable; (5) what members of the public will be affected by the proposal; (6) how frequently information submissions will be required; (7) an estimate of the total number of hours needed to prepare the information submission including number of respondents, frequency of response, and hours of response; (8) whether the proposal is new or an extension, reinstatement, or revision of an information collection requirement; and (9) the names and telephone numbers of an agency official familiar with the proposal and of the OMB Desk Officer for the Department.

Authority: Section 3507 of the Paperwork Reduction Act, 44 U.S.C. 3507; section 7(d) of the Department of Housing and Urban Development Act, 42 U.S.C. 3535(d).

Dated: October 28, 1993.

John T. Murphy,

Director, IRM Policy and Management Division.

Proposal: Request for Occupied Conveyance
Office: Housing
Description of the need for the information and its proposed use: Tenants will provide information on the form that will determine if the occupant is financially able to pay the fair market rent and/or whether a member of the immediate family suffers from a temporary illness or injury which would prevent a physical move from the property.
Form number: HUD–9539
Respondents: Individuals or Households
Frequency of submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Mortgagees	10,250		6.83		.25		17,500
Mortgagors	10,500		1.00		.50		5,250

Total estimated burden hours: 22,750
Status: Extension
Contact: Art Orton, HUD, (202) 708–4767; Angela Antonelli, OMB, (202) 395–6880.

Dated: October 28, 1993.

Proposal: Request Voucher for Grant Payment—Request Voucher for Homeless Grant Payment—LOCCS Voice Response Access Authorization
Office: Chief Financial Officer
Description of the need for the information and its proposed use: These forms will be used by recipients to request payments of grant funds or to designate the appropriate officials who can have access to the Department's voice activated payment system. The information on these forms will be used as an internal control mechanism to safeguard Federal funds and to improve the payment process for recipients.
Form number: HUD–27053, 27053–A, and 27054
Respondents: State or Local Governments and Non-Profit Institutions
Frequency of submission: On Occasion
Reporting Burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–27053	1,200		180		.16		36,000
HUD–27053–A	800		24		.25		4,800
HUD–27054	2,000		1		.16		333

Total estimated burden hours: 41,133
Status: Extension
Contact: Sandra Jackson, HUD, (202) 708–0143; Angela Antonelli, OMB, (202) 395–6880.

Dated: October 28, 1993.

Proposal: Civil Rights Tenant Characteristics/Occupancy Report
Office: Fair Housing and Equal Opportunity
Description of the need for the information and its proposed use: Participants in HUD housing programs will be required to furnish information concerning race/ethnicity and gender characteristics to assist the Department in carrying out the responsibility for assuring that Federal statutes that prohibit discrimination and provide for fair housing are met.
Form number: HUD–949
Respondents: Businesses or Other For-Profit
Frequency of submission: Annually
Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
HUD–949	4,000		2.3		.50		4,600
Recordkeeping	4,000		1.0		.08		338

Total estimated burden hours: 4,938
Status: Extension
Contact: Hughes S. Hobson, HUD, (202) 708–0142, Angela Antonelli, OMB, (202) 395–6880

Dated: October 28, 1993.

Proposal: Competitive Bidding for Section 202 Direct Loan Program for Elderly or Handicapped

Office: Housing

Description of the need for the information and its proposed use: Owners of Section 202 projects have the option of choosing a construction contractor by using either competitive bidding or a negotiated noncompetitive method of contract award. The information provided will be used in obtaining competitive bids in accordance with 24 CFR 885.415.

Form number: HUD–92328, HUD–92442–A–EH, HUD–92450–EH, HUD–92452–EH, HUD–2554, HUD–2530, and HUD–92443

Respondents: Businesses or Other For-Profit

Frequency of submission: On Occasion

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collections	20		1		24		480

Total estimated burden hours: 480
Status: Revision
Contact: Evelyn F. Berry, HUD, (202) 708–2866, Angela Antonelli, OMB, (202) 395–6880

Dated: October 26, 1993.

Proposal: Supplemental Assistance for Facilities to Assist the Homeless (SAFAH) Program—Annual Progress Report

Office: Conmmunity Planning and Development

Description of the need for the information and its proposed use: This report provides information necessary for program monitoring and program evaluation.

Form number: HUD–40077

Respondents: State or Local Governments and Non-Profit Institutions

Frequency of submission: Annually and Recordkeeping

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Annual Progress Report (APR)	14		1		45		630
Recordkeeping for APR	14		1		10		140

Total estimated burden hours: 770
Status: Revision
Contact: Mark Johnston, HUD, (202) 708–4300, Angela Antonelli, OMB, (202) 395–6880

Dated: October 6, 1993.

Proposal: Evaluation of Environmental Interventions Conducted Under the HUD Lead-Based Paint Hazard Reduction Grant Program

Office: Lead-Based Paint Abatement and Poisioning Prevention

Description of the need for the information and its proposed use: Public and private organizations concerned with both environmental health and the provision of affordable housing need information on how to control lead-based paint hazards in housing in the most cost-effective manner. Data from the evaluation study will be used by HUD and other Federal agencies to determine the cost and efficacy of various strategies for controlling lead-based paint hazards and reducing childhood lead exposure. Results will affect Federal regulations and guidelines required under law, and the actions of State, local and private-sector organizations will be affected as well.

Form number: None

Respondents: Individuals or Households and State or Local Governments

Frequency of submission: On occasion

Reporting burden:

	Number of respondents	×	Frequency of response	×	Hours per response	=	Burden hours
Information Collection	10		8,240		0.48		39,550

Total estimated burden hours: 39,550
Status: New
Contact: Steve Weitz, HUD, (202) 755–1805, Angela Antonelli, OMB, (202) 395–6880

Dated: October 6, 1993.

[FR Doc. 93–27761 Filed 11–10–93; 8:45 am]

BILLING CODE 4210–01–M

[Docket No. D–93–1040; FR–3600–D–01]

Office of the Manager, New Orleans Field Office, Region VI (Fort Worth); Designation

AGENCY: Department of Housing and Urban Development.

ACTION: Designation of order of succession.

SUMMARY: The Manager is designating officials who may serve as acting manager during the absence, disability, or vacancy in the position of the manager.

EFFECTIVE DATE: This designation is effective September 20, 1993.

FOR FURTHER INFORMATION CONTACT:

Rita Vinson, Director, Management and Budget Division, Office of Administration, Fort Worth Regional Office, Department of Housing and Urban Development, 1600 Throckmorton, P.O. Box 2905, Fort Worth, TX 76113–2905, Telephone (817) 885–5451 (this is not a toll free number).

DESIGNATION: Each of the officials appointed to the following positions is designated to serve as Acting Manager during the absence, disability, or vacancy in the position of the Manager, with all the powers, functions, and duties redelegated or assigned to the Manager: Provided that no official is authorized to serve as Acting Manager unless all preceding listed officials in this designation are unavailable to act by reason of absence, disability, or vacancy in the position:

1. Manager
2. Deputy Manager
3. Special Assistant to the Manager
4. Director of Community Planning and Development
5. Director of Public Housing
6. Director of Housing Management
7. Director of Housing Development
8. Chief Counsel.

This designation supersedes the designation effective March 10, 1986, published in the **Federal Register** issue of February 6, 1987 (52 FR 3869).

Authority: Delegation of Authority by the Secretary of Housing and Urban Development, effective October 1, 1970; 36 FR 3389, February 23, 1971.

Dated: October 12, 1993.

Robert J. Vasquez,

Manager, New Orleans Office.

Frank L. Davis,

Acting Regional Administrator—Regional Housing Commissioner, Region VI (Fort Worth).

[FR Doc. 93–27760 Filed 11–10–93; 8:45 am]

BILLING CODE 4210–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ–020–04–4140–05; LEAS]

Intent To Prepare an Environmental Impact Statement; Cyprus Casa Grande Mine, Papago Indian Reservation, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Intent to Prepare an Environmental Impact Statement; Cyprus Casa Grande Mine; Tohono O'odham Nation, Papago Indian Reservation, Arizona.

SUMMARY: The Bureau of Land Management, Phoenix District Office, is preparing an Environmental Impact Statement for a proposed large scale open pit copper mine at the Cyprus Casa Grande Mine. The mine is currently being operated as a modified in situ copper leaching operation. The mine is located within the Tohono O'odham Nation, Papago Indian Reservation, Pinal County, Arizona, Cyprus Casa Grande Corporation has submitted a proposed large scale open pit mining plan to the Bureau of Land Management as required under subpart 3590, title 43, and subpart 216, title 25, Code of Federal Regulations. The Bureau of Land Management has responsibility for analysis, review, and approval of the mining plan. Preparation of the Environmental Impact Statement will follow the Code of Federal Regulations, title 40, subpart 1500.

The mine plan proposes to expand an existing open pit copper mine, to create a new overburden storage site, and add new copper oxide ore heap leach pads. The mine plan proposes production of appropriately one billion pounds of copper during the thirteen year life of the proposal. The public is invited to participate in the NEPA process beginning with the scoping and identification of issues in November 1993.

DATES: Comments relating to the identification of issues will be accepted until December 30, 1993.

ADDRESSES: Send comments to: Bureau of Land Management, Phoenix District Office, Attn: Paul J. Buff, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

FOR FURTHER INFORMATION CONTACT: Moon Hom, Mining Engineer, Bureau of Land Management, Phoenix District Office 2015 West Deer Valley Road, Phoenix, Arizona, (602) 780–8090.

SUPPLEMENTARY INFORMATION: The Cyprus Casa Grande Mine is located on the west flank of the Slate Mountains, Tohono O'odham Nation, Papago Indian Reservation, Pinal County, Arizona. The mine is located approximately 2.5 miles northeast of the Village of Gu Komelik and approximately 30 miles southwest of Casa Grande, Arizona.

Cyprus Casa Grande Corporation proposes to mine copper oxide ore by conventional open pit mining methods. Prior to placement on the heap leach pad, the copper oxide ore will be crushed, sized, and sulfuric acid agglomerated.

After placement on the leach pad, a weak sulfuric acid solution will be sprayed on the ore to chemically place the copper metal into solution. The solution is then recovered and processed through an existing Solvent Extraction/Electrowinning plant located at the mine site.

The total new disturbance from the proposed operation will be approximately 1,139 acres, consisting of 176 acres for the pit enlargement, 550 acres for the new overburden storage site, and 413 acres for the new heap leach pad.

Potential issues are air quality, groundwater quality, cultural resources, visual resources, and mine reclamation and revegetation.

The Environmental Impact Statement will be developed by a third party contractor who has been approved by the Bureau of Land Management. The contractor will use an interdisciplinary team to develop the document. The Bureau of Land Management, the Bureau of Indian Affairs, and the Tohono O'odham Nation will have responsibility for the review of the Impact Statement. There will be five public scoping meetings to obtain input on issues. These meetings will be held at the following times and locations:

November 30, 1993, 1 p.m., Casa Grande, Arizona, Holiday Inn
December 1, 1993, 5:30 p.m., Sells, Arizona, Health Complex
December 2, 1993, 9 a.m., Chuichu, Arizona, Elderly Center
December 3, 1993, 9 a.m., Santa Rosa, Arizona, District Center
December 4, 1993, 6 p.m., Gu Komelik, Arizona, Community Center

Complete records of all phases of the environmental documentation process will be available for public review at the Bureau of Land Management, Phoenix District Office, 2015 W. Deer Valley Road, Phoenix, Arizona 85027.

The proposed mining plan and environmental documentation will also be available at the Bureau of Indian Affairs, Sells, Arizona, and the Tohono O'odham Nation Headquarters, Sells, Arizona.

Dated: November 5, 1993.

John R. Christensen,

Acting District Manager.

[FR Doc. 93–27788 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–32–M

[NM–060–04–4760–01–(602)]

Closure Notice of Public Lands

AGENCY: Bureau of Land Management, Interior.

ACTION: Closure notice of public lands.

SUMMARY: Notice is hereby given that effective immediately the following public lands within the Roswell District, acquired in the Rio Bonito land

exchange, are closed to all public uses until legal boundaries are clearly established, marked and activity plans are developed. In addition, all lands acquired in future exchanges along the Rio Bonito will be closed to all public uses. The purpose of this closure is to prevent adverse environmental impacts from unplanned use and to ensure the safety of nearby residents.

New Mexico Principal Meridian

T. 9 S., R. 15 E.,
Secs. 13, 14, 15, 23, 24, 25.
T. 9 S., R 16 E.,
Secs. 19, 20, 29, 30.
T. 10 S., R 16 E.,
Secs. 1, 2, 3, 10, 11, 12, 13,.

EFFECTIVE DATE: On November 12, 1993.

ADDRESSES: The areas which are closed are identified on maps available upon request from the following Bureau of Land Management Offices: Roswell District Office, 1717 W. Second Street, Roswell, NM 88201–2019; Roswell Resource Area Office, 5th and Richardson St. (Federal Building), P.O. Drawer 1857, Roswell, NM 88202–1857.

FOR FURTHER INFORMATION CONTACT: Howard Parman (505) 627–0212.

SUPPLEMENTARY INFORMATION: The authority for this closure is 43 CFR 8364.1. Penalties for any person failing to comply with this closure are a fine not to exceed $100,000 and/or imprisonment not to exceed 12 months (43 CFR 8341.0–7 Penalties).

Dated: November 2, 1993.

Armando A. Lopez,

Acting District Manager.

[FR Doc. 93–27776 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–FB–M

[OR–100–6321–01; G–4–018; Case File #OR–49268]

Notice of Availability, Proposed Decision Management Framework Plan Amendment, Exchange of Public Lands, Designation of Area of Critical Environmental Concern (ACEC)

SUMMARY: The Bureau of Land Management (BLM) in the State of Oregon, Douglas County, Roseburg District, has completed a proposed land use plan amendment to the Drain and North Umpqua Resource Area Management Framework Plans (MFPs). The MFP amendments will allow the completion of a land exchange involving 360 acres of Federal land managed by the BLM for approximately 6,600 acres of private ranch land. The majority of the private parcel acquired through exchange (approximately 6,200 acres) will be designated an ACEC. The MFP amendments also identify 3 additional Federal parcels for potential disposal through exchange. The proposed MFP amendment is available for a thirty (30) day protest period.

DATES: The thirty-day public protest period for this proposed MFP amendment will begin on November 12, 1993 and close on December 13, 1993. Protests must be postmarked no later than the closing date.

ADDRESSES: Protests must be sent to the following address: Bureau of Land Management, Division of Planning and Environmental Coordination (WO–760), 1849 C Street NW. (406 L St.), Washington, DC 20240. Protests must meet the requirements of 43 CFR 1610.5–2.

FOR FURTHER INFORMATION CONTACT: Eileen Cotnam, BLM Realty Specialist, BLM Roseburg District (503) 440–4930. Copies of the proposed plan amendment are available from the Roseburg District BLM at 777 NW., Garden Valley Blvd., Roseburg, OR 97470.

SUPPLEMENTARY INFORMATION: On September 1, 1993, BLM Roseburg District began a 60-day public comment period on the proposed MFP amendments and the Dunning Ranch Land Exchange Proposal. The comment period was advertised with publication of a Notice of Availability in both the **Federal Register** and the local newspaper. The public comment period ended October 30, 1993, with the receipt of nine written comments.

The proposed plan amendment identified five (5) Federal parcels, located in Douglas County, Oregon, as being available for disposal through exchange. The Dunning Ranch exchange proposal analyzed the impacts of trading up to 360 acres of revested Oregon and California (O & C) timber land for an approximately 6,600-acre ranch. Interim management guidelines for the ranch, if acquired, were also analyzed.

Under the proposed decision, the Federal Government will: (1) Designate the 5 parcels of Federal land as being available for disposal through exchange; (2) of the five parcels designated, exchange two parcels totaling 360 acres of Federal land for the 6,581-acre Dunning Ranch; (3) designate all but 400 acres of the acquired ranch as an Area of Critical Environmental Concern; and (4) manage the site under the "Interim Management Plans for the Offered Parcel (Proposed Action)" as identified in the Environmental Assessment prepared for the MFP amendment and proposed land exchange.

In addition to publishing this Notice of Availability in the **Federal Register**, the Roseburg District has: (1) Mailed copies of the proposed decision to all parties on the MFP amendment mailing list; (2) provided the Office of the Governor of the State of Oregon with a copy of the Environmental Analysis and Proposed Decision; and (3) published a similar Notice of Availability in the local newspaper.

Dated: November 3, 1993.

James Moorhouse,

District Manager.

[FR Doc. 93–27549 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–33–M

[WY–040–04–4210–03; WYW–105817]

Realty Action, Recreation and Public Purposes Classification and Application for Lease in Lincoln County; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Clarification of comment period.

SUMMARY: In the issue of Thursday, October 21, 1993, notice document 93–25818 on page 54371 in the second and third columns under supplementary information, replace the third and fourth paragraphs of the notice with the following paragraphs:

For a period ending on December 6, 1993, interested persons may submit comments regarding the proposed lease or classification of the lands to the District Manager, Rock Springs District Office, P.O. Box 1869, Rock Springs, Wyoming 82902–1869.

CLASSIFICATION COMMENTS: Interested parties may submit comments involving the suitability of the land for a short-term camping area. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

APPLICATION COMMENTS: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a short-term camping area.

Any adverse comments will be reviewed by the State Director. In the absence of any comments, the classification will become effective on December 20, 1993.

Dated: October 29, 1993.

Lynn Harrell,

Acting Area Manager.

[FR Doc. 93-27775 Filed 11-10-93; 8:45 am]

BILLING CODE 4310-23-M

[CA-010-02-4212-13; CACA-31356]

Realty Action; Correction to Proposed Land Exchange in Merced, Monterey, Fresno, and San Benito Counties, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction of notice of reality action; exchange of public and private lands in Merced, Monterey, Fresno, and San Benito Counties, California (CACA-31356).

SUMMARY: This document corrects and supplements the Notice of Realty Action (CACA-31356) published in 58 FR 40671-40673, July 29, 1993. Listed below are additional lands being considered in the exchange, and corrections to several typographical errors.

The above referenced notice should have included the following Selected Public Lands being considered for exchange of the surface estate only:

Mount Diablo Meridian, California

T. 12 S., R. 8 E.,
  Sec. 7, Lot 2
T. 15 S., R. 9 E.,
  Sec. 1, NE¼SE¼, E½NW¼SE¼
T. 16 S., R. 10 E.,
  Sec. 3, W½SW¼
  Sec. 4, Lot 3, SE¼NW¼, E½SW¼, SE¼
  Sec. 9, N½SE¼
  Sec. 15, NW¼NE¼, N½NW¼, SW¼NW¼

The above referenced notice should have included the following non-Federal lands to be considered for federal acquisition of the surface estate only:

Mount Diablo Meridian, California

T. 17 S., R. 13 E.,
  Sec. 21, E½SE¼, SW¼SE¼, SW¼
  Sec. 22, SW¼SE¼, SE½SWE¼
  Sec. 23, SE¼NE¼, NW¼
  Sec. 24, E½SE¼
  Sec. 28, E½NE¼
  Sec. 31, Lots 2, 3, & 4, SE¼NE¼, NE¼SE¼
  Sec. 34, W½E½
  Sec. 36, SE¼
T. 17 S., R. 14 E.,
  Sec. 19, Lots 1, 2, 3, & 4, E½, E½W½
T. 19 S., R. 14 E.,
  Sec. 23, All
T. 20 S., R. 14 E.,
  Sec. 30, N½ of Lot 7

SUPPLEMENTARY INFORMATION: The primary purpose of this exchange is (1) to acquire habitat for several threatened or endangered species including the San Joaquin woollythreads (*Lembertia congdonii*), San Benito evening primrose (*Camissonia benitensis*), giant kangaroo rat (*Dipodomys ignens*), blunt-nosed leopard lizard (*Gambelia silus*), and San Joaquin kit fox (*Vulpus macrotis mitica*), (2) to acquire habitat for several rare species that could become threatened or endangered including the San Joaquin antelope squirrel (*Ammospermophilus nelsoni*), the southwestern pond turtle (*Clemmys marmorata pallida*), the foothill yellow-legged frog (*Rana boylei*), and the San Benito fritillary (*Fritillaria viridea*), (3) to enhance regional biodiversity objectives by acquiring a cross-section of Diablo Range ecosystems ranging from Jeffrey/Coulter/Digger pine forests to alkali desert shrub communities, (4) to acquire eight miles of riparian habitat, and (5) to enhance public recreation opportunities by acquiring key parcels that improve public access to existing public lands.

Federal lands identified for disposal are generally small isolated parcels without public access and with low public resource values. The exchange is consistent with the Bureau's land use plans for the lands involved. The public interest will be well served by making the exchange.

Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

(1) A reservation to the United States for a right-of-way for ditches and canals constructed under the authority of the Act of August 20, 1890 (43 U.S.C. 945).

(2) Authorized pipelines, power lines, roads, highways, telephone lines, minerals leases, and any other authorized land uses will be identified as prior existing rights.

(3) All necessary clearances for archaeology, rare plants and animals shall be completed prior to conveyance of title.

(4) Grazing operations that will have their allotments affected by this exchange are entitled to a 2-year adjustment period. However, a lessee may waive this 2-year notice.

This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands that are being considered for this exchange.

By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, or upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first. This action is necessary while eliminating conflicting encumbrances on the public lands during exchange processing.

Detailed information concerning the exchange, including the environmental assessment, is available at the Hollister Resource Area Office, 20 Hamilton Court, Hollister, CA 95023.

For a period of 45 days from publication of this notice in the **Federal Register**, interested parties may submit comments to the Area Manager, Hollister Resource Area at the above address. Comments should specify the specific parcel affected by the comment. Any adverse comments will be evaluated by the District Manager, who may vacate or modify this realty action and issue a final determination. In the absence of any action by the District Manager, this action will become the final determination.

FOR FURTHER INFORMATION CONTACT: Steve Addington, Hollister Resource Area Office, (408) 637-8183 or at the address above.

Robert E. Beehler,

Hollister Area Manager.

[FR Doc. 93-27772 Filed 11-10-93; 8:45 am]

BILLING CODE 4310-41-M

Fish and Wildlife Service

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT-782494

Applicant: Zoological Society of San Diego, San Diego, CA

Applicant requests a permit to import and re-export one wild-born female giant panda (*Ailuropoda melanoleuca*) from the People's Republic of China. The panda will be imported for medical treatment at San Diego Zoo and will be re-exported upon recovery.

PRT-784215

Applicant: NYZS/The Wildlife Conservation Society, Bronx, NY

The applicant requests a permit to import one male captive-born proboscis monkey (*Nasalis larvatus*) from the Wilhelma Zoo, Stuttgart, Germany, to enhance the propagation and survival of the species.

PRT–783782

Applicant: Rare Feline Breeding Center, Center Hill, FL

The applicant requests a permit to export one captive born male Siberian tiger (*Panthera tigris altaica*) to Lionel Taesch, Maubeuge, France, to enhance the propagation and survival of the species.

PRT–781922

Applicant: University of California, San Diego, San Diego, CA

The applicant requests a permit to import hair samples taken from 9 different *Gazella* species from both wild and captive-born sources in Saudi Arabia for DNA analysis to enhance the propagation and survival of the species.

PRT–781925

Applicant: University of California, San Diego, San Diego, CA

The applicant requests a permit to import hair samples taken from wild and captive-born Eld's brow-antlered deer (*Cervus eldi*) from Thailand for DNA analysis to enhance the propagation and survival of the species.

PRT–781926

Applicant: University of California, San Diego, San Diego, CA

The applicant requests a permit to import hair samples taken from wild and captive-born White-eared marmosets (*Callithrix jacchus aurita*) and Buff-headed marmosets (*Callithrix jacchus flaviceps*) from Brazil for DNA analysis to enhance the propagation and survival of the species.

PRT–783610

Applicant: California Dept. of Water Resources, Fresno, CA

The applicant requests a permit to take Tipton (*Dipodomys nitratoides nitratoides*), Giant (*Dipodomys ingens*) and Stephens' (*Dipodomys stephensi*) kangaroo rats and blunt-nosed leopard lizard (*Gambelia silus*) to determine the species' presence or absence on permittee's land to enhance the propagation and survival of the species.

PRT–783938

Applicant: Duke University Primate Center, Durham, NC

The applicant requests a permit to export tissue samples from wild caught and captive-born Verreaux's sifakas (*Propithecus verreauxi*), Diademed sifakas (*Propithecus diadema*), grey gentle lemur (*Hapalemur griseus*), greater dwarf lemur (*Cheirogaleus major*) and flat-tailed dwarf lemur (*Cheirogaleus medius*) for DNA analysis to enhance the propagation and survival of the species.

PRT–784225

Applicant: Phoenix Zoo, Phoenix, AZ

The applicant requests a permit to import one female captive-born ocelot (*Felis pardalis mitis*) from Fundacao Parque Zoologico de Sao Paulo, Sao Paulo, Brazil, to enhance the propagation and survival of the species.

PRT–784091

Applicant: Louis J. Bougie, DePere, WI

The applicant requests a permit to import a pair of captive-hatched Cabot's tragopan (*Tragopan caboti*) from Glen Howe, Aylmer, Ontario, Canada, to enhance the propagation and survival of the species.

PRT–784092

Applicant: Jack W. Donaldson, Findlay, OH

The applicant requests a permit to import a pair of captive-hatched Cabot's tragopan (*Tragopan caboti*) from William Ming, London, Ontario, Canada, to enhance the propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 5, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–27742 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–55–M

Aquatic Nuisance Species Task Force Risk Identification and Management Committee; Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announce a meeting of the Risk Identification and Management Committee (Committee), a committee of the Aquatic Nuisance Species Task Force. A number of subject will be discussed during the Committee meeting including: Overall objective of the Committee, criteria to assist in identifying and prioritizing potential pathways of nonindigenous species introduction, and review of proposed risk analysis process.

DATES: The Risk Identification and Management Committee will meet from 9 a.m. to 3 p.m. on Tuesday, November 30, 1993.

ADDRESSES: The Risk Identification and Monitoring Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 200A, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Sharon Gross, ANS Task Force Coordinator, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 820, Arlington, Va. 22203 (703) 358–1718.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. app. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Risk Identification and Management Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Risk Identification and Management Committee Chairman, U.S. Dept. of Agriculture, Animal and Plant Health Inspection Service, 6505 Belcrest Rd., room 810, Hyattsville, MD 20782 and will be available for public inspection during regular business hours, Monday through Friday within 30 may following the meeting.

Dated: November 5, 1993.

Gary Edwards,

Co-Chair, Aquatic Nuisance Species Task Force, Assistant Director—Fisheries.

[FR Doc. 93–27839 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–55–M

Geological Survey

National Water-Quality Assessment Advisory Council; Meeting

AGENCY: U.S. Geological Survey, Interior.

ACTION: Notice of an open meeting of the National Water-Quality Assessment (NAWQA) Advisory Council.

SUMMARY: Notice is hereby given of a meeting of the NAWQA Advisory

Council. The proposed agenda for the meeting includes presentations by Federal officials on the U.S. Geological Survey (USGS) NAWQA Program followed by questions and answers and an open discussion of the program. On Wednesday, December 8, 1993, representatives of the NAWQA Advisory Council will be given an orientation briefing followed by a tour of the USGS National Water Quality Laboratory.

The NAWQA Advisory Council is a subcommittee of the Advisory Committee on Water Data for Public Use and consists of representatives of water-resources-oriented groups, including Federal agencies, national, State, and regional organizations; Native Americans; professional and technical societies; public interest groups; private industry; and the academic community. Its principal responsibility is to advise the USGS, through the Advisory Committee on Water Data for Public Use, on activities and plans related to the USGS NAWQA Program and the effectiveness of that program in assessing the Nation's water quality. The Council will help assure that information from the NAWQA Program will support environmental decisionmaking at all levels of government and in the private sector. Also, the Council will serve as a forum for the exchange of information about complementary activities conducted by other organizations and will identify opportunities to collaborate, transfer technology, and share information. The Chief Hydrologist of the USGS chairs the NAWQA Advisory Council.

DATES: The meeting will convene at 8:30 a.m. on Tuesday, December 7, 1993, and will adjourn at noon on Wednesday, December 8, 1993.

ADDRESSES: Holiday Inn West, 14707 West Colfax Avenue, Golden, Colorado 80401.

FOR FURTHER INFORMATION CONTACT: P. Patrick Leahy, Chief, NAWQA Program; 413 National Center; Reston, Virginia 22092 Telephone: (703) 648–5012; Fax: (703) 648–5722.

SUPPLEMENTARY INFORMATION: This meeting is open to the public. Time has been set aside for public comment at 4 p.m., Tuesday, December 7, 1993. Persons wishing to make a brief presentation (up to 5 minutes) must provide a written request with a description of the general subject area to P. Patrick Leahy no later than noon, December 1, 1993, to reserve space on the agenda. It is requested that 30 copies of a written statement for the record be submitted to P. Patrick Leahy at the time of the meeting for distribution to the members of the NAWQA Advisory Council and for the official file. Any member of the public may submit written information and/or comments to P. Patrick Leahy for distribution to the NAWQA Advisory Council.

Philip Cohen,

Chief Hydrologist.

[FR Doc. 93–27779 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–31–M

National Park Service

Concession Contract; Gateway National Recreation Area, New York and New Jersey

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession contract authorizing continued snack bar and beach supply shops, facilities, and services for the public at the Sandy Hook Unit, Gateway National Recreation Area, New York—New Jersey for a period of ten (10) years from January 1, 1994, through December 31, 2003.

EFFECTIVE DATE: February 10, 1994.

ADDRESSES: Interested parties should contact the Regional Director, National Park Service, North Atlantic Region, Attention: Division of Concessions Program Management, 15 State Street, Boston, MA 02109–3572, Telephone (617) 223–5209, to obtain a copy of the prospectus describing the requirements of the proposed contract.

SUPPLEMENTARY INFORMATION: This proposed contract bears upon a Government construction and improvement program, which is applicable to the National Environmental Policy Act. An Amendment to the General Management Plan for Gateway National Recreation Area, Sandy Hook Unit dealt with the development concepts for these Beach Centers. Some of the development areas have required further environmental compliance documentation. An environmental assessment has been prepared for the North Area beaches and environmental compliance proceedings are to be completed in conjunction with contract award.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing contract which expired by limitation of time on September 30, 1987, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the contract and in the negotiation of a new contract, providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the contract will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the contract will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the contract will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Regional Director not later than the ninetieth (90th day following publication of this notice to be considered and evaluated.

Dated: November 8, 1993.

John C. Reed,

Acting Regional Director.

[FR Doc. 93–27685 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–70–M

Mazama, Munson Valley, and Panhandle Development Concept Plan/ Environmental Impact Statement for Crater Lake National Park, OR

AGENCY: National Park Service, DOI.

ACTION: Notice of Intent to prepare an environmental impact statement for the Mazama, Munson Valley, and Panhandle Development Concept Plan for Crater Lake National Park.

SUMMARY: The National Park Service will prepare a Development Concept Plan/Environmental Impact Statement (DCP/EIS) for Mazama, Munson Valley, and Panhandle areas within Crater Lake National Park. In the DCP/EIS and its accompany public review process, the National Park Service will formulate and evaluate the environmental impacts of a range of alternatives to address development and use of these three areas. Development in these areas will support or complement the long-term improvements taking place in Rim Village, which is being renovated to improve year-round visitor facilities, reduce vehicles, better protect Crater Lake, and create a safer and more pleasant environment for the visitor.

Persons who may be interested in or affected by the proposed DCP/EIS are invited to participate in the scoping process by responding to this Notice with written comments. The scoping process will help define issues, concerns, and potential impacts related to the plan. Public scoping meetings are expected to be held in early December 1993. The time and location of these meetings will be announced prior to that time through the local media and the park's mailing list.

The draft plan and environmental impact statement are expected to be completed and available for public review by August 1994. The final plan, environmental impact statement, and Record of Decision are expected to be completed in May 1995.

The responsible official is Charles H. Odegaard, Regional Director, Pacific Northwest Region, National Park Service.

DATES: Written comments about the scope of issues and impact topics to be analyzed in the DCP/EIS should be received on or before January 11, 1994.

ADDRESSES: Written comments concerning the DCP/EIS should be sent to the Superintendent, Crater Lake National Park, P.O. Box 7, Crater Lake, Oregon 97604–0007.

FOR FURTHER INFORMATION CONTACT: Superintendent, Crater Lake National Park, at the above address or at telephone number (503) 594–2211.

Dated: October 29, 1993.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 93–27887 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Reclamation

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information reproduced below has been submitted to the Office of Management and Budget for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). An expedited review has been requested in accordance with the Act, since allowing for the review period would adversely affect the public interest for the reasons given below. Approval has been requested by December 30, 1993. Comments and suggestions on the proposal should be made directly to the bureau clearance officer listed below and to the Office of Management and Budget, Paperwork Reduction Project (1006–XXXX), Washington, DC 20503; Telephone 202–395–7340.

Title: Glen Canyon Environmental Studies Passive-Use Values Study.

OMB Approval Number: 1006–XXXX.

Abstract: Individuals who may not physically use certain unique or significant resources may hold some value for their existence and preservation. Passive-use or non-use economic value is a monetary measure of this value. Studies completed under the Glen Canyon Environmental Studies Program have shown that the operation of Glen Canyon Dam affects downstream natural and cultural resources in Glen Canyon National Recreation Area and Grand Canyon National Park. If individuals hold passive-use value for resources affected by the timing and amount of the releases from the dam, the magnitude of these values could be influenced by changes in the way the dam is operated. Information will be collected from a random sample of the U.S. population in an effort to quantify passive-use value for a range of dam operation strategies. This information may be used by decision makers to help assess the trade-offs between recreation benefits, power production benefits, and passive-use benefits associated with different strategies for operating Glen Canyon Dam.

Reason for Expedited Review: Implementation of this information collection is required for completion of the draft Glen Canyon Dam Environmental Impact Statement. The Grand Canyon Protection Act of 1992 stipulates the completion of the final Glen Canyon Dam EIS by October 30, 1994. In order to meet this schedule, it will be necessary to begin survey administration not later than January 15, 1994.

Frequency: Once.

Description of Respondents: Residents of the U.S., aged 18 or more.

Estimated Completion Time: ½ hour.

Responses: 8,000.

Burden Hours: 4,000.

Bureau Clearance Officer: Robert A. Lopez, 303–236–6769.

Dated: October 5, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 93–27771 Filed 11–10–93; 8:45 am]

BILLING CODE 4310–04–M

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245. Comments on the following assessment are due 15 days after the date of availability:

AB–12 (Sub-No. 162X), Southern Pacific Transportation Company—Abandonment Exemption—In Jackson, Victoria and Wharton Counties, Texas. Ea available 11/5/93.

Comments on the following assessment are due 30 days after the date of availability:

AB–307 (Sub-No. 2X), Wyoming and Colorado Railroad Company, Inc.—Abandonment Exemption—In Jackson County, Colorado. Ea available 11/4/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27863 Filed 11–10–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32350]

The Indiana and Ohio Railroad Company, Inc.—Trackage Rights Exemption—The Central Railroad Company of Indiana

The Central Railroad Company of Indiana (CIND) has entered into two agreements with The Indiana and Ohio Railroad Company, Inc. (INOH).[1], granting INOH joint trackage rights. Under the first agreement, INOH obtains joint trackage rights: (a) for the purpose of handling car load freight in overhead movement between the tracks of INOH at milepost 17.7 at Valley Junction, OH. (a point of connection between the INOH and CIND) and the end of ownership of CIND at milepost 0.0 in Cincinnati, OH; (b) for the purpose of handling commodities with the

[1] The verified notice of exemption was filed September 27, 1993. Commission staff contacted INOH and requested clarification of its verified notice. INOH supplemented the record by letters dated October 8, 1993 and October 21, 1993. Commission staff also contacted INOH after the filing of the October 8 and October 21, 1993 letters

Standard Transportation Commodity Codes beginning with the digits 14- (principally sand) originating on the tracks of INOH and terminating at any point on CIND between milepost 1.6 and milepost 0.0; and (c) for the purpose of handling grain or soybeans originating at any point served by INOH or any of its subsidiaries[2] as of April 1, 1993, and terminating at milepost 3.5 at the Consolidated Grain Sedamsville Elevator or at milepost 14.5 at its North Bend Terminal. INOH may not use any portion of the joint trackage rights to originate, terminate or in any fashion handle commodities included in the Standard Transportation Commodity Codes commencing with 24-, 29-, 32-, and 33-, covering lumber, roofing shingles, fiberglass mat, and slag, respectively.

Under the second agreement, CIND has agreed to grant joint trackage rights to INOH: (a) For the handling of car load freight in overhead movement between the tracks of INOH at milepost 17.7 at Valley Junction, OH and the jointly-owned trackage of CIND and CSX Transportation, Inc. at milepost 1.6 at C.P. Oklahoma in Cincinnati, OH; (b) for the handling of commodities with Standard Transportation Commodity Codes beginning with the digits 14- (principally sand) originating on the tracks of INOH and terminating at any point on CIND between milepost 17.7 and milepost 1.6; and (c) for the handling of grain or soybeans originating at any point served by INOH or any of its subsidiaries (see footnote 2) as of April 1, 1993, and terminating at milepost 3.5 at the Consolidated Grain Sedamsville Elevator or at milepost 14.5 at its North Bend Terminal. INOH may not use any portion of the second joint trackage rights to originate, terminate, or in any fashion handle commodities included in the Standard Transportation Commodity Codes commencing with 24-, 29-, 32-, and 33-, covering lumber, roofing shingles, fiberglass mat, and slag, respectively.

INOH operations over these rights would connect with CSX Transportation at CIND's milepost 1.6. The trackage rights were to become effective on or after October 3, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Robert L. Calhoun, Sullivan & Worcester, Suite 1000, 1025 Connecticut Avenue, NW., Washington, DC 20036.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27864 Filed 11–10–93; 8:45 am]

BILLING CODE 7035–01–P

[2] Includes the Indiana & Ohio Railway Company, Inc.; The Indiana & Ohio Eastern Railroad Company, Inc.; and The Indiana & Ohio Central Railroad Company, Inc.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; United States v. Alderman Dow Iron & Metal Co., Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Alderman Dow Iron & Metal Co., Inc., et al.*, Civil Action No. 3:93–CIV1676 was lodged on October 28, 1993 with the United States District Court for the Middle District of Pennsylvania. The defendants in the action are alleged to be persons who arranged for the disposal or treatment, or arranged with a transporter for transport for disposal or treatment, of hazardous substances at the Tonolli Corporation Superfund Site, in Nesquehoning Borough, Carbon County, Pennsylvania. The proposed consent decree requires the defendants to conduct certain cleanup activities at the Site under the oversight of the United States Environmental Protection Agency. The proposed consent decree also obtains certain other relief.

The Department of Justice will receive, for a period ending thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should specifically refer to *United States* v. *Alderman Dow Iron & Metal Co., Inc. et al.*, D.J. reference #90–7–2–174B.

The proposed consent decree may be examined at the Office of the United States Attorney for the Middle District of Pennsylvania, suite 1162, Federal Building, 228 Walnut Street, Harrisburg, Pennsylvania 17108; the Region III Office of the Environmental Protection Agency, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy of the proposed consent decree, please enclose a check in the amount of $60.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–27770 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act; United States v. Crown Cork & Seal Co., Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on September 30, 1993, a proposed Consent Decree in *United States* v. *Crown Cork & Seal Company, Inc.*, Civil Action No. 2:93 CV 146–SO, was lodged with the United States District Court for the Northern District of Mississippi. This consent decree represents a settlement of claims against Crown Cork & Seal for violations of the Clean Air Act.

Under this settlement between the United States and Crown Cork & Seal, Crown Cork & Seal will pay the United States a civil penalty of $343,000. In addition, the Consent Decree requires Crown Cork & Seal to comply with the Clean Air Act and, in particular, with the Prevention of Significant Deterioration ("PSD") requirements and regulations, and the New Source Performance Standards ("NSPS"), and the terms of permit no. 2100–0004, issued by the Mississippi Office of Pollution Control on November 11, 1991. The Consent Decree further requires Crown Cork & Seal to conduct a pilot project with respect to the installation and operation of a biofilter bed at its Cheraw, South Carolina can facility, for the control of VOC emissions and to replace the existing control units at its Batesville, Mississippi facility with regenerative incinerators and to improve control efficiency in accordance with the schedule set forth in the Consent

Decree. Crown Cork & Seal is also required under the Consent Decree to conduct internal environmental management training in accordance with the schedule set forth in the Consent Decree. Stipulated penalties may be imposed in the event Crown Cork & Seal does not comply with the requirements of the Consent Decree.

The Department of Justice will receive for a period of thirty (30) days from the date of this publication comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Crown Cork & Seal Company, Inc.*, D.J. Ref. 90–5–2–1–1383.

The proposed Consent Decree may be examined at the Office of the United States Attorney, Northern District of Mississippi, 911 West Jackson Avenue, Oxford, Mississippi, and at Region IV, Office of the Environmental Protection Agency, 345 Courtland Street NE., Atlanta, Georgia 30365 and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $3.75 (25 cents per page reproduction cost) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–27766 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Western Mobile New Mexico, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Western Mobile New Mexico, Inc.*, Civil Action No. 93–1228 LH, was lodged on October 20, 1993 with the United States District Court for the District of New Mexico. Western Mobile New Mexico, Inc. operates a rock crushing facility on the Sandia Pueblo Indian Lands near the City of Albuquerque, New Mexico. A civil complaint filed simultaneously with the lodging of this proposed consent decree alleges that Western Mobile violated New Source Performance Standards by failing to give notice to the Administrator of the United States Environmental Protection Agency of its intent to modify its facility, failed to notify the Administrator of the intended and actual startup dates of the facility and failed to conduct performance testing of its facility to ensure compliance with applicable emission standards found in 40 CFR part 60, subpart 000.

The proposed consent decree requires Western Mobile to pay a civil penalty of $30,000 and to conduct the required performance testing.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Western Mobile New Mexico, Inc.*, DOJ Ref. #90–5–2–1–1435.

The proposed consent decree may be examined at the Office of the United States Attorney, 625 Silver SW., 4th Floor, Albuquerque, New Mexico; the Region 6 Office of the Environmental Protection Agency, 1445 Ross Avenue, Dallas, Texas; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–27769 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–01–M

[AAG/A Order No. 80–93]

Privacy Act of 1974; Modified Systems

On February 13, 1989 (54 FR 6622 and 6623), the Department published notice of two new Privacy Act systems of records which would assist in its efforts to collect overdue debts owed to the United States. The new systems, published pursuant to the requirements of the Privacy Act of 1974 (5 U.S.C. 552a), were entitled "Debt Collection Enforcement System, JUSTICE/USA–015, and "Debt Collection Management System, JUSTICE/JMD–006." The enforcement system was established to cover Privacy Act records used in debt collection efforts by contract private counsel and United States Attorneys (USAs) in ten selected judicial districts on a pilot project basis.[1] The management system was established to provide litigation/administrative support to the pilot districts by (1) serving as an automated database for debt collection litigation, (2) performing such administrative functions as reconciling Department and client agency records, maintaining account data and managing the contract private counsel portfolios, etc., and (3) creating an automated inventory of debt cases received from client Federal agencies and assigned to contract private counsel and to USAs in the ten pilot districts.

The Department has modified both systems of records. Modifications include additional clarity regarding the purpose of the systems and the categories or records covered there. Modifications also reflect (1) that the pilot program will now cover 15 judicial districts and (2) that an automated data base has been added which will enable the Justice Management Division's Central Intake Facility to (a) assign cases to the USAs in the remaining 79 non-pilot districts, (b) provide an automated inventory of debt collection cases in the non-pilot districts, similar to that provided for the pilot districts, and (c) provide "summary level" data to the non-pilot districts while continuing to provide full administrative and litigation support to the pilot districts—until such support is provided, seriatim, to all 94 judicial districts.

Further, in addition to making a number of changes to clarify and better describe these systems, we are adding to the management system two routine use disclosures, identified as (j)(2), and (k) together with notice of disclosure pursuant to subsection (b)(12). Finally, we have edited the enforcement system to clarify existing routine use (j) as well as the language which permits disclosure under subsection (b)(12). Accordingly, as required by 5 U.S.C. 552a(e) (4) and (11) and 31 U.S.C. 3711(f)(1)(A), a 30-day comment period is provided. Any comments may be addressed to Patricia E. Neely, Staff Assistant, Systems Policy Staff, Justice Management Division, room 850, Washington Center Building, Department of Justice, Washington, DC 20530 by December 13, 1993.

As required by 5 U.S.C. 552a(r) and Office of Management and Budget (OMB) implementing regulations, the Department of Justice has provided a report on the proposed changes to OMB and the Congress.

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[1] On November 10, 1992, Public Law No. 102–58 expanded the pilot program to 15 judicial districts and extended the period covered by the program to September 30, 1996.

Modified system descriptions are set forth below. Changes have been italicized for public convenience.

Dated: November 2, 1993.

Stephen R. Colgate,

Assistant Attorney General for Administration.

JUSTICE/USA–015

SYSTEM NAME:

Debt Collection Enforcement System, JUSTICE/USA–015.

SYSTEM LOCATIONS:

Executive Office for United States Attorneys, U.S. Department of Justice, 10th and Constitution Avenue NW., Washington, DC 20530; and 94 United States Attorney (USA) Offices (see Appendix of USA office locations, JUSTICE/USA–999). In addition, not to exceed 15 of the 94 Federal judicial districts, are pilot districts from which contract private counsel are/have been employed to assist USAs in debt collection litigation. Ten of the judicial districts are named below; the remaining five have not been identified.

SYSTEM LOCATIONS:

Southern District of Texas, P.O. Box 61129, Houston, TX 77208
Southern District of Florida, *Federal Justice Building, 99 NE 4th Street,* Miami, FL *33132*
Eastern District of Michigan, Room *817,* Federal Building, 231 W. Lafayette, Detroit, MI 48226–2784
Northern District of California, 10th Floor, Claims &Judgment Unit; 450 Golden Gate Avenue, P.O. Box 36055, San Francisco, CA 94102
Middle District of Florida, room 400, Robert Timberlake Building, 500 Zack Street, Tampa, FL 33602
Eastern District of New York, U.S. Courthouse, *225 Cadman Plaza East,* Brooklyn, NY 11201
Central District of California, 312 N. Spring Street, room 446D, Los Angeles, CA 90012–4701
District of New Jersey, room 502, Federal Building, 970 Broad Street, Newark, NJ 07102–2506
Western District of Louisiana, *Suite 2100, Louisiana Tower, 401 Edwards Street,* Shreveport, LA 71101–6133
District of Columbia, Judiciary Center Building, 555 Fourth Street NW., Washington, DC 20001

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States (1) who have allowed their debts to become delinquent and whose delinquent debts have been assigned by the Department's Justice Management Division (JMD) to a U.S. Attorney (USA) or contract private counsel for settlement or enforced collection through litigation, *and/or (2) who have incurred debts assessed by the court, e.g., fines or penalties, as a result of a criminal proceeding.*

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records contains records relating to the negotiation, compromise, settlement, and litigation of *debts* owed the United States. Records consist of a case file and automated *and/or hard copy* support data.

The case file includes such documents as: the Claims Collection Litigation Report; Certificate of Indebtedness; Satisfaction of Judgment or Certificate of Discharge; court and related legal documents such as judgments, orders, briefs, pleadings and settlement agreements; status reports, and correspondence, and any other documentation developed during the negotiation, compromise, settlement and/or litigation of the *debts.*

The automated *and/or hard copy support* data contains *information* extracted from the case file and any data generated or developed to support the administrative operations of the debt collection program. Information may include personal data, e.g., name, social security number, date of birth, and locator information; claim information e.g., type of claim such as benefit overpayment, loan default, bankruptcy, etc.: payment demand information, compromise offered, etc.: account information, e.g., debtor payments including principal, penalties, interests, and balances, etc.; information regarding debtor's employment, ability to pay, property liens, etc.; value of claim, name of source agency which provided the loan or benefit; information on the status and disposition of cases at various intervals of time; and any other information related to the negotiation, compromise, settlement, or litigation of *debts* owed the United States, or to the administrative management of the debt collection program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3711 and 3718, and *28 U.S.C. 3201.*

PURPOSE(S):

Title 31 U.S.C. 3711 authorizes the Attorney General to conduct litigation to collect delinquent debts due the United States; 31 U.S.C. 3718(b) authorizes the Attorney General to contract with private counsel to assist the Department (specifically, the USAs) in collecting consumer and commercial debts owed the United States on a pilot basis; Chapter 176 of Title 28, United States Code ("Federal Debt Collection Procedure"), authorizes the Attorney General to obtain both prejudgment and postjudgment remedies against delinquent debtors, and Section 3201(e) of that Chapter states that a judgment against such a debtor creates a lien on all real property of the debtor and renders that debtor "ineligible" for any grant or loan made, insured, financed, or guaranteed by the Federal Government. Accordingly, this system of records is maintained by the Executive Office for U.S. Attorneys to cover records which are used by the 94 USAs, and/or private counsel in selected pilot districts where the Department has contracted with private counsel, to perform legal services such as the negotiation, settlement, litigation and enforcement of debts owned the United States.[1]

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the course of its collection and enforcement activities, the Department *may* release client Federal agency case files and any related records or information created by the Department to contract private counsel to negotiate, settle, and litigate *debts* owed the United States.

In the course of its collection and enforcement activities, or during the course of a trial or hearing or preparation for a trial or hearing, the Department through contract private counsel in the *pilot* judicial districts, or through its own USAs in *all 94 judicial* districts, may disclose *relevant* records or information from this system as follows:

(a) In any case in which there is an indication of a violation or potential violation of law, civil or regulatory in nature—to the appropriate Federal, State, local or foreign agency charged with the responsibility of investigating, defending or pursuing such violation, civil claim or remedy, or charged with

[1] *A separate but ancillary system of records entitled "Debt Collection Management System, Justice/JMD–006" is maintained by JMD to furnish automated litigation/administrative support to USAs and to private counsel in pilot districts (and ultimately to provide, seriatim, such support to all USAs), and to create an inventory of debtor files in all 94 judicial districts. The inventory consists of all debtor files referred by USAs and by client Federal agencies to the Department (and subsequently referred/assigned by JMD to such private counsel, and to USAs in the 94 judicial districts) for enforced collection via litigation. The inventory enables the Department to provide statistical data to the Congress and to the Office of Management and Budget on debt collection as required by 31 U.S.C. 3718(c).*

enforcing, defending or implementing such law.

(b) To a Federal, State, local, or foreign agency or to an individual or organization; if there is reason to believe that such agency, individual, or organization possesses information relating to the debt, the debtor's ability to pay, or relating to any other matter which is relevant and necessary to the settlement, effective litigation and enforced collection of the debt, or relating to the civil action trial or hearing, and the disclosure is reasonably necessary to elicit such information or to obtain the cooperation of a witness or an agency.

(c) To an actual or potential party, or to his or her attorney, for the purpose of negotiation or discussion on such matters as settlement of the case or matter, or informal discovery proceedings.

(d) To client agencies who have referred debt collection cases to the Department for settlement or litigation and enforced collection to notify such agencies of the status of the case or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case.

(e) To a Federal agency in response to its request and in connection with hiring or retention of an employee, the issuance of the required security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license, grant, or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

(f) To volunteer student workers and students working under a college work-study program as is necessary to enable them to perform their duties.

(g) To employees or to contract personnel to access the records for Privacy Act training purposes.

(h) In a proceeding before a court or adjudicative body before which the Department or contract private counsel is authorized to appear when any of the following is a party to litigation or has an interest in litigation and such records are determined by the Department or contract private counsel to be arguably relevant to the litigation: (1) The Department, or any subdivision thereof, or contract private counsel, or (2) any employee of the Department or contract private counsel in his or her official capacity or (3) any employee of the Department or contract private counsel in his or her individual capacity where the Department has agreed to represent the employee, or (4) the United States, where the Department or contract private counsel determines that the litigation is likely to affect the Department or any of its subdivisions.

(i) In a proceeding before a court or adjudicative body before which the Department or contract private counsel is authorized to appear, when the United States, or any agency or subdivision thereof, is a party to litigation or has an interest in litigation and such records are determined by the Department or contract private counsel to be arguably relevant to the litigation.

(j) *To (1) any Federal agency which employs and/or pays pension, annuity and/or other benefits to an individual who has been identified as a delinquent debtor for the purpose of offsetting the individual's salary, and/or pension, annuity or other benefit payment received from that agency, when the Justice Department is responsible for the enforced collection of a judgment or claim on behalf of the United States against that person; and* (2) a Federal, State, local or foreign agency, an organization, or individual to elicit information to assist the Department in the settlement or effective litigation and enforced collection of the overdue debt.

(k) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(l) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(m) To the National Archives and Records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act:

Disclosure to consumer reporting agencies in accordance with section 3711(f) of Title 31 (as authorized under subsection (b)(12) of the Privacy Act): Relevant records may be disclosed to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) where such information is directly related to the identity of debtors and the history of claims contained in this system of records and for the purpose of encouraging repayment of overdue debts. Such disclosure may be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt. Addresses of taxpayers obtained from the Department of the Treasury may be disclosed to consumer reporting agencies only for the purpose of allowing such agencies to prepare a commercial credit report on the taxpayer for use by the Department. Prior to such disclosure, satisfactory assurances will be obtained from such consumer reporting agency concerning compliance by that agency with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and any other Federal law governing the provision of consumer credit information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case files *and hard copy support data, i.e., index cards, are stored in locked rooms; automated data is stored on magnetic tape.*

RETRIEVABILITY:

Data is retrieved by name of debtor.

SAFEGUARDS:

Access to records is restricted to those Department and contract employees who must have access to perform their settlement or litigation and enforced collection activities, and/or administrative responsibilities. Case files are maintained separately in locked rooms during non-duty hours. Access to automated data requires the use of the proper password and user identification code. Access by contract private counsel is restricted to those cases assigned.

RETENTION AND DISPOSAL:

Case files which were assigned to private counsel during the pilot program will remain in the physical custody of such counsel until the debtor has paid his/her debt in full, the pilot program has expired, or the debtor has ceased making payments. At such time, the case file will be returned to the USA. Case files, together with any data which has been extracted therefrom and included in the automated data base, will be erased 10 years after close of litigation. Administrative records in both hard copy and automated format will be destroyed six years after the close of the Fiscal Year in which the records were compiled.

SYSTEM MANAGER AND ADDRESS:

System Manager is the Administrative Officer/Assistant for the *USA* in each of

the *94* judicial districts *identified in the Appendix of USA office locations, JUSTICE/USA–999.*

NOTIFICATION PROCEDURE:

Address inquiries to the System Manager of the judicial district in which collection efforts have been initiated. (See "System Locations.")

RECORDS ACCESS PROCEDURES:

Address requests for access to the System Manager of the judicial district in which collection efforts have been initiated. (See "System Locations.") Clearly mark the envelope "Privacy Access Request." Include in the request the debtor's name, date of birth, address, and any other identifying information which may be of assistance in locating the record, e.g., name of the case or Federal agency to whom the debtor is indebted. In addition, include notarized signature of the debtor as well as the name and address of the individual to receive the information if other than the debtor.

CONTESTING RECORD PROCEDURES:

Address requests to the System Manager of the judicial district in which collection efforts have been initiated. (See "System Locations.") State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

The individuals covered by the system; client agencies of the Department to whom the individual is indebted; an attorney or other representative for the debtor and/or payor; any Federal, State, local, foreign, private organization or individual who may have information relating to the debt, the debtor's ability to pay or any other information relevant and necessary to assist in settlement or effective litigation and enforced collection of the debt.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

JUSTICE/JMD–006

SYSTEM NAME:

Debt Collection Management System, JUSTICE/JMD–006

SYSTEM LOCATION:

Department of Justice, Justice Management Division (JMD), Central Intake Facility (CIF), 1110 Bonifant Street, Suite 220, Silver Spring, Maryland.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Persons indebted to the United States who have allowed their debts to become delinquent and whose debts have been sent by client Federal agencies to the Department of Justice for settlement or enforced collection through litigation.

CATEGORIES OF RECORDS IN THE SYSTEM:

This system of records *contains records for all 94 judicial districts of the United States. It contains* records relating to the negotiation, compromise, settlement, and litigation of *debts* owed the United States. Records will consist of an automated support data base and temporary custody of case files. Case files are assigned promptly to a U.S. Attorney (USA) or, *where the Department has contracted for their services, to* private counsel to undertake enforced debt collection action.[1] This system describes case files during the period *when* they are in the possession of the JMD, CIF. Upon assignment of a case file to *a* USA or contract private counsel, the case is covered by the Debt Collection Enforcement System, JUSTICE/USA–015.

The client agency case file includes such documents as the Claims Collection Litigation Report; Certificate of Indebtedness; any partial payment records, status reports, correspondence, and any other documentation developed during the negotiation of the *debts.*

An automated data base *provides litigation/administrative support to private counsel and USAs in the pilot districts[2] and creates an inventory of cases assigned to the 94 judicial districts. The data base contains* data extracted from the case file and any data generated or developed to support the administrative operations of the debt collection program. Information may include personal data, e.g., name, social security number, date of birth, and locator information; claim information, e.g., type of claim such as benefit overpayment, loan default, bankruptcy, etc.; payment demand information, compromise offered, etc.; account information, e.g., debtor payments including principal, penalties, interests, and balances, etc.; information regarding debtor's employment, ability to pay, property liens, etc.; value of claim, name of source agency which provided the loan or benefit; information on the status and disposition of cases at various intervals of time; and any other information related to the negotiation; compromise, settlement, or litigation of *debts* owed the United States, or to the administrative management of the debt collection program.

(When a case is closed or a judgment is obtained, the USAs in both pilot and non-pilot districts notify the CIF as to the final disposition of the case on a monthly basis.)

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

31 U.S.C. 3711 and 3718, and *28 U.S.C. 3201*

PURPOSE(S):

Title 31 U.S.C. 3711 authorizes the Attorney General to conduct litigation to collect delinquent debts due the United States; 31 U.S.C. 3718(b) authorizes the Attorney General to contract with private counsel to assist the Department (specifically, the USAs) in collecting consumer and commercial debts owed the United States on a pilot project basis; and Chapter 176 of Title 28, United States Code ("Federal Debt Collection Procedure"), authorizes the Attorney General to obtain both prejudgment and postjudgment remedies against delinquent debtors, and section 3201(e) of that Chapter states that a judgment against such a debtor creates a lien on all real property of the debtor and renders that debtor "ineligible" for any grant or loan made, insured, financed or guaranteed by the Federal Government. Accordingly, this system of records is maintained by JMD under contract by means of the CIF to assist the Attorney General in conducting this debt litigation through the USAs in all 94 judicial districts (for an indefinite period) and, where appropriate, through contract private counsel under a pilot program (for periods specified by legislation). The CIF receives debt collection files from client Federal agencies for assignment to private counsel in any selected pilot judicial districts where the Department has contracted for their services and/or to the USAs in all 94 judicial districts.[3]

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[1] *Private counsel are employed under a statutorily-authorized pilot program in specific judicial districts. Pub. L. No. 102–58 (November 10, 1992) authorized a four-year extension of the pilot program through September 30, 1996, and expanded the number of judicial districts from 10 to 15. Ten of these districts have been identified as: Central District of CA; Northern District of CA; Eastern District of NY; Southern District of FL; Eastern District of MI; Southern District of TX; District of Columbia; Middle District of FL; Western District of LA; and the District of NJ.*

[2] The ultimate goal is to provide fully automated debt collection litigation support to all 94 USAs. While moving toward this goal, the Department envisions a system that will maintain summary level data for all 94 USA's until all districts can be provided, seriatim, full administrative and litigation support.

[3] A separate system of records entitled "Debt Collection Enforcement System, Justice/USA–015," covers the records as maintained by the USAs and

The CIF furnishes automated litigation/administrative support to such counsel and to USAs in the pilot districts,[4] and creates an inventory of all debts referred by USAs and by client Federal agencies to the Department (and subsequently referred/assigned by the CIF to such counsel, and to USAs in all 94 judicial districts) for enforced collection via litigation. The inventory enables the Department to provide statistical data to the Congress and the Office of Management and Budget on debt collection activities as required by 31 U.S.C. 3718(c).

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In the course of its collection and enforcement activities, the Department *may* release client Federal agency case files to the CIF to conduct the administrative operations of the debt collection program. Through the administrative operations of the CIF, the Department will release the case files and any related records or information created by the CIF to the contract private counsel to negotiate, settle, and litigate *debts* owned the United States.

The Department may also disclose *relevant* records or information from this system as follows:

(a) To client agencies who have referred debt collection cases to the Department for settlement or litigation and enforced collection to notify such agencies of the status of the case or of any decision or determination that has been made, or to make such other inquiries and reports as are necessary during the processing of the case.

(b) To a Federal agency in response to its request and in connection with hiring or retention of an employee, the issuance of the required security clearance, the reporting of an investigation of an employee, the letting of a contract, or the issuance of a license grant or other benefit by the requesting agency, to the extent that the information relates to the requesting agency's decision on the matter.

(c) In a proceeding before a court or adjudicative body before which the Department or contract private counsel who are authorized to appear when any of the following is a party to litigation or has an interest in ligation and such records are determined by the Department or contract private counsel to be arguably relevant to the litigation: (1) The Department, or any subdivision thereof, or contract private counsel, or (2) any employee of the Department or contract private counsel in his or her official capacity or (3) any employee of the Department or contract private counsel in his or her individual capacity where the Department of Justice has agreed to represent the employee, or (4) the United States, where the Department or contract private counsel determines that the litigation is likely to affect the Department or any of its subdivisions.

(d) To volunteer student workers and students working under a college work-study program as is necessary to enable them to perform their function;

(e) To employees or to contract personnel to access the records for Privacy Act training purposes.

(f) To (1) a Federal, state, local or foreign agency, an organization or individual to elicit information to assist the Department in the settlement or effective litigation and enforced collection of the overdue debt; and *(2) the Internal Revenue Service to obtain the mailing address of a taxpayer to collect or to compromise a debt owed by the taxpayer to the United States.*

(g) To the news media and the public pursuant to 28 CFR 50.2 unless it is determined that release of the specific information in the context of a particular case would constitute an unwarranted invasion of personal privacy.

(h) To a Member of Congress or staff acting upon the Member's behalf when the Member or staff requests the information on behalf of and at the request of the individual who is the subject of the record.

(i) To the National Archives and records Administration and to the General Services Administration in records management inspections conducted under the authority of 44 U.S.C. 2904 and 2906.

(k) To the Department of Housing and Urban Development (HUD) for its use in evaluating the credit worthiness of Federal loan applicants. Ultimately, this information may be accessed by other entities to determine credit worthiness; that is, HUD may permit access to its data base (possibly through a computer matching program) by authorized employees of Federal agencies and private lenders (i.e., private lenders of Federally insured or guaranteed loans) to determine the credit worthiness of Federal loan applicants. Specifically, HUD operates an automated telephonic prescreening system (the Credit Alert Interactive Voice Response System) through which relevant information may be provided to assist such lenders and agencies in identifying whether there are any outstanding judgments against the applicant for other Federal debts, the amount of the debt, the status thereof, and any other information that may assist the lender/agency in making a decision on whether to approve or not approve an application for a loan. (See 28 U.S.C. 3201(e).)

DISCLOSURE TO CONSUMER REPORTING AGENCIES:

Disclosure to consumer reporting agencies under subsection (b)(12) of the Privacy Act:

Disclosure to consumer reporting agencies in accordance with section 3711(f) of Title 31 (as authorized under subsection (b)(12) of the Privacy Act): Relevant records may be disclosed to a consumer reporting agency as defined in the Fair Credit Reporting Act (15 U.S.C. 1681a(f)) or the Federal Claims Collection Act of 1966 (31 U.S.C. 3701(a)(3)) where such information is directly related to the identity of debtors and the history of claims contained in this system of records and for the purpose of encouraging repayment of overdue debts. Such disclosure may be made only when a claim is overdue and only after due process steps have been taken to notify the debtor and give him or her a chance to meet the terms of the debt. Addresses of taxpayers obtained from the Department of the Treasury may be disclosed to consumer reporting agencies only for the purpose of allowing such agencies to prepare a commercial credit report on the taxpayer for use by the Department. Prior to such disclosure, satisfactory assurances will be obtained from such consumer reporting agency concerning compliance by that agency with the Fair Credit Reporting Act (15 U.S.C. 1681 et seq.) and any other Federal law governing the provision of consumer credit information.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISCLOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case files are stored in locked rooms; automated data is stored on magnetic tape.

RETRIEVABILITY:

Data is retrieved by name of debtor.

SAFEGUARDS:

Access to records is restricted to those personnel who must have access to perform their duties and is limited to those cases assigned. Case files are maintained separately in locked rooms during non-duty hours. Access to automated data requires the use of the proper password and user identification code.

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such counsel, and identifies the relevant judicial districts.

[4] See note 2, *supra*.

RETENTION AND DISPOSAL:

Paper records in this system will be returned to client Federal agencies for disposition; automated information will be erased ten years after the related case files reported in the Debt Collection Enforcement System, JUSTICE/USA-015 have been closed.

SYSTEM MANAGER AND ADDRESS:

Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, DC 20530.

NOTIFICATION PROCEDURE:

Address inquiries to Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, DC 20530.

RECORDS ACCESS PROCEDURES:

Address requests for access to Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, DC 20530. Clearly mark the envelope "Privacy Access Request." Include in the request the debtor's name, date of birth, address, and any other identifying information which may be of assistance in locating the record, e.g.; name of the case or Federal agency to whom the debtor is indebted. In addition, include notarized signature of the debtor as well as the name and address of the individual to receive the information if other than the debtor.

CONTESTING RECORDS PROCEDURES:

Address requests to Deputy Assistant Attorney General, Debt Collection Management, Justice Management Division, Department of Justice, Washington, DC 20530. State clearly and concisely the information being contested, the reasons for contesting it, and the proposed amendment to the information.

RECORDS SOURCE CATEGORIES:

The individuals covered by the system; client agencies of the Department to whom the individual is indebted; an attorney or other representative for the debtor and/or payor; any Federal, State, local, foreign, private organization or individual who may have information relating to the debt, the debtor's ability to pay or any other information relevant and necessary to assist in the settlement or effective litigation and enforced collection of the debt.

SYSTEMS EXEMPTED FROM CERTAIN PROVISIONS OF THE ACT:

None.

[FR Doc. 93-27471 Filed 11-10-93; 8:45 am]

BILLING CODE 4410-01-M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—1993 Horizontal Well Gravel Pack Program

Notice is hereby given that, on September 24, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in a project titled the "1993 Horizontal Well Gravel Pack Program" filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Chevron Petroleum Technology Co., Houston, TX; Otis Engineering Corporation, Carrolton, TX; Dowell Schlumberger, Maurice, LA; Marathon Oil Company, Lafayette, LA; Petrobras, Rio de Janeiro, RJ Brasil; Shell Development Co., Houston, TX; and Nagaoka USA Corp., Houston, TX. The objective of the project is to collect, compile and distribute information and data regarding procedures and methods of gravel packing horizontal oil wells using Marathon Oil Company's proprietary 100-ft., full-scale, high pressure wellbore model.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-27765 Filed 11-10-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Great Lakes Composites Consortium, Inc.

Notice is hereby given that, on October 13, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Great Lakes Composites Consortium, Inc. (GLCC) filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have been added as members of GLCC: Airtech International Inc., Carson, CA; Atlantic Research, Gainsville, VA; Aztec Plastic Company, Chicago, IL; Bell Helicoptor—Textron Inc., Fort Worth, TX; Blackhawk Technical College, Janesville, WI; Buehler Ltd., Lake Bluff, IL; Cerritos College, Norwalk, CA; Computing Devices International, Bloomington, MN; Consulier Automotive, Riviera Beach, FL; Courtaulds Aerospace, Bennington, VT; D&Z Mid Atlantic, Newark, DE; DuPont Composites, Wilmington, DE; ICI Fiberite, Tempe, AZ; Ingalls Shipbuilding Inc., Pascagoula, MS; Intermarine USA, Savannah, GA; Kaman Aerospace Corporation, Bloomfield, CT; Lockheed Corporation, Marietta, GA; M.C. Gill Corporation, El Monte, CA; Michigan State University, East Lansing, MI; Ocenco Incorporated, Kenosha, WI; Sunstrand, Rockford, IL; Structural Composites Inc., West Melbourne, FL; Texas Instruments, McKinney, TX; Textron Lycoming, Stratford, CT; University of Kansas, Lawrence, KS; University of Kentucky, Lexington, KY; and Wayne State University, Detroit, MI.

Additionally, the following companies have resigned as members of GLCC: Cooper Composites and Versa Technologies.

GLCC is pursuing projects involving the following areas: Resin Transfer Molding, Composites Repair Definition, Composites Prepreg Scrap Reclamation, Teaching Factory, Fit-Up of Composite Structures During Manufacturing Assembly, Automated Design for Manufacturing of Polymer Composites Parts, Thermoplastic Powder-Coated Towpreg, Advanced Fiber Placement, Intelligent Spectroscopy, Shipbuilding Composites Manufacturing Technology Plan, Technology Transfer, Composite Electronics Housing, High Thermal Conductivity Fibers, Low-Observable Core Manufacturing Process Improvements, Enhanced Production Techniques of Low Observable Structures and Materials, Non-Destructive Inspection for Heat Damage and Repair Bond Integrity and DRA Metal Matrix Composites.

No other changes have been made in either the membership or planned activity of the group research project. Membership in GLCC remains open, and the parties intend to file additional written notification disclosing all changes in membership.

On February 25, 1991, GLCC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on March 15, 1991 (56 FR 11274). The last notification was filed with the Department on December 23, 1992. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on January 22, 1993 (58 FR 5758).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–27756 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–01–M

Drug Enforcement Administration

Importation of Controlled Substances; Application

Pursuant to section 1008 of the Controlled Substances Import and Export Act (21 U.S.C. 958(i)), the Attorney General shall, prior to issuing a registration under this Section to a bulk manufacturer of a controlled substance in Schedule I or II and prior to issuing a regulation under section 1002(a) authorizing the importation of such a substance, provide manufacturers holding registrations for the bulk manufacture of the substance an opportunity for a hearing.

Therefore, in accordance with § 1311.42 of title 21, Code of Federal Regulations (CFR), notice is hereby given that on October 20, 1993, Penick Corporation, 158 Mount Olivet Avenue, Newark, New Jersey 07114, made application to the Drug Enforcement Administration to be registered as an importer of the basic classes of controlled substances listed below:

Drug	Schedule
Coca Leaves (9040)	II
Opium, raw (9600)	II
Opium poppy (9650)	II
Poppy Straw Concentrate (9670)	II

Any manufacturer holding, or applying for, registration as a bulk manufacturer of this basic class of controlled substance may file written comments on or objections to the application described above and may, at the same time, file a written request for a hearing on such application in accordance with 21 CFR 1301.54 in such form as prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 13, 1993.

This procedure is to be conducted simultaneously with and independent of the procedures described in 21 CFR 1311.42 (b), (c), (d), (e), and (f). As noted in a previous notice at 40 FR 43745–46 (September 23, 1975), all applicants for registration to import a basic class of any controlled substance in Schedule I or II are and will continue to be required to demonstrate to the Director, Office of Diversion Control, Drug Enforcement Administration that the requirements for such registration pursuant to 21 U.S.C. 958(a), 21 U.S.C. 823(a), and 21 CFR 1311.42 (a), (b), (c), (d), (e), and (f) are satisfied.

Dated: November 4, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–27753 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–09–M

Manufacturer of Controlled Substances; Application

Pursuant to § 1301.43(a) of title 21 of the Code of Federal Regulations (CFR), this is notice that on September 18, 1993, Schumacher, Michael, General Television, 2706 E. California, Urbana, Illinois 61801, made application to the Drug Enforcement Administration (DEA) for registration as a bulk manufacturer of the basic classes of controlled substances listed below:

Drug	Schedule
Marihuana (7360)	I
Tetrahydrocannabinols (7370)	I
Phenylacetone (8501)	II
Cocaine (9041)	II
Codeine (9050)	II
Morphine (9300)	II
Opium, raw (9600)	II
Opium powdered (9639)	II

The firm will manufacture small quantities of the above listed controlled substances specifically for the dairy industry.

Any other such applicant and any person who is presently registered with DEA to manufacture such substances may file comments or objections to the above application and may also file a written request for a hearing thereon in accordance with 21 CFR 1301.54 and in the form prescribed by 21 CFR 1316.47.

Any such comments, objections, or requests for a hearing may be addressed to the Director, Office of Diversion Control, Drug Enforcement Administration, United States Department of Justice, Washington, DC 20537, Attention: DEA Federal Register Representative (CCR), and must be filed no later than December 13, 1993.

Dated: November 4, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–27752 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large

volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

Withdrawn General Wage Determination Decision

This is to advise all interested parties that the Department of Labor is withdrawing, from the date of this notice, General Wage Determination No. TN930021, dated Feb. 19, 1993.

Agencies with construction pending projects, to which this wage decision would have been applicable, should utilize the project determination procedure by submitting a SF–308. (See Regulations, 29 CFR part 1, section 1.5.) Contracts for which bids have been opened shall not be affected by this notice. Also, consistent with 29 CFR 1.6(c)(2)(i)(A), when the opening of bids is within ten (10) days of this notice, the contract specifications need not be affected.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Connecticut
CT930008 (Nov. 12, 1993)
CT930009 (Nov. 12, 1993)
CT930010 (Nov. 12, 1993)
CT930011 (Nov. 12, 1993)
CT930012 (Nov. 12, 1993)
Delaware
DE930008 (Nov. 12, 1993)
DE930009 (Nov. 12, 1993)
Florida
FL930093 (Nov. 12, 1993)
Massachusetts
MA930016 (Nov. 12, 1993)
Maryland
MD930045 (Nov. 12, 1993)
Maine
ME930025 (Nov. 12, 1993)
New Hampshire
NH930025 (Nov. 12, 1993)
New Jersey
NJ930009 (Nov. 12, 1993)
Pennsylvania
PA930050 (Nov. 12, 1993)
Rhode Island
RI930006 (Nov. 12, 1993)
Virginia
VA930087 (Nov. 12, 1993)
VA930088 (Nov. 12, 1993)
VA930089 (Nov. 12, 1993)

Volume II

Oklahoma
OK930023 (Nov. 12, 1993)
Texas
TX930085 (Nov. 12, 1993)
TX930086 (Nov. 12, 1993)
TX930087 (Nov. 12, 1993)
Wisconsin
WI930026 (Nov. 12, 1993)
WI930027 (Nov. 12, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Delaware
DE930002 (Feb. 19, 1993)
DE930004 (Feb. 19, 1993)
Florida
FL930086 (Oct. 08, 1993)
Maryland
MD930016 (Feb. 19, 1993)
New York
NY930001 (Feb. 19, 1993)
NY930007 (Feb. 19, 1993)
NY930011 (Feb. 19, 1993)
NY930012 (Feb. 19, 1993)
NY930013 (Feb. 19, 1993)
NY930019 (Feb. 19, 1993)
NY930021 (Feb. 19, 1993)
NY930031 (July 30, 1993)
NY930032 (July 30, 1993)
NY930034 (July 30, 1993)
NY930036 (Sept. 3, 1993)
NY930037 (Sept. 3, 1993)
NY930044 (Oct. 1, 1993)
NY930045 (Oct. 1, 1993)
Puerto Rico
PR930001 (Feb. 19, 1993)
PR930003 (Feb. 19, 1993)
Tennessee
TN930001 (Feb. 19, 1993)
TN930002 (Feb. 19, 1993)
TN930005 (Feb. 19, 1993)
TN930019 (Feb. 19, 1993)
TN930029 (Feb. 19, 1993)
TN930038 (Feb. 19, 1993)
TN930039 (Feb. 19, 1993)
TN930040 (Feb. 19, 1993)
TN930041 (Feb. 19, 1993)
TN930042 (July 16, 1993)
TN930043 (July 16, 1993)
TN930044 (July 16, 1993)
TN930046 (Sept. 10, 1993)
Virginia
VA930023 (Feb. 19, 1993)
VA930024 (Feb. 19, 1993)
VA930052 (Feb. 19, 1993)
VA930055 (Feb. 19, 1993)
VA930060 (Feb. 19, 1993)
VA930063 (Feb. 19, 1993)
VA930065 (Feb. 19, 1993)
VA930067 (Feb. 19, 1993)
VA930073 (Feb. 19, 1993)
VA930079 (Feb. 19, 1993)
VA930085 (July 9, 1993)
VA930086 (July 9, 1993)
West Virginia
WV930002 (Feb. 19, 1993)
WV930003 (Feb. 19, 1993)
WV930006 (Feb. 19, 1993)

Volume II

Indiana
IN930002 (Feb. 19, 1993)
IN930006 (Feb. 19, 1993)
Oklahoma
OK930001 (Feb. 19, 1993)
OK930002 (Feb. 19, 1993)
OK930004 (Feb. 19, 1993)
OK930013 (Feb. 19, 1993)
OK930014 (Feb. 19, 1993)
OK930015 (Feb. 19, 1993)
OK930016 (Feb. 19, 1993)
OK930017 (Feb. 19, 1993)
OK930018 (Feb. 19, 1993)
OK930019 (Feb. 19, 1993)
OK930020 (Feb. 19, 1993)
Texas
TX930001 (Feb. 19, 1993)
TX930002 (Feb. 19, 1993)
TX930003 (Feb. 19, 1993)
TX930004 (Feb. 19, 1993)
TX930008 (Feb. 19, 1993)
TX930009 (Feb. 19, 1993)
TX930011 (Feb. 19, 1993)
TX930013 (Feb. 19, 1993)
TX930018 (Feb. 19, 1993)
TX930019 (Feb. 19, 1993)
TX930063 (Feb. 19, 1993)
TX930069 (Feb. 19, 1993)

TX930081 (July 09, 1993)
TX930083 (Aug. 20, 1993)
Wisconsin
WI930016 (Feb. 19, 1993)
WI930018 (Feb. 19, 1993)

Volume III

Idaho
ID930002 (Feb. 19, 1993)
ID930004 (Feb. 19, 1993)
North Dakota
ND930002 (Feb. 19, 1993)
Oregon
OR930004 (Feb. 19, 1993)
Washington
WA930001 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from:

Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 5th day of November 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–27720 Filed 11–10–93; 8:45 am]

BILLING CODE 4510–27–M

Office of the Secretary

Agency Recordkeeping/Reporting Requirements Under Review by the Office of Management and Budget (OMB)

BACKGROUND: The Department of Labor, in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. Chapter 35), considers comments on the reporting/recordkeeping requirements that will affect the public.

LIST OF RECORDKEEPING/REPORTING REQUIREMENTS UNDER REVIEW: As necessary, the Department of Labor will publish a list of the Agency recordkeeping/reporting requirements under review by the Office of Management and Budget (OMB) since the last list was published. The list will have all entries grouped into new collections, revisions, extensions, or reinstatements. The Departmental Clearance Officer will, upon request, be able to advise members of the public of the nature of the particular submission they are interested in.

Each entry may contain the following information:

The Agency of the Department issuing this recordkeeping/ reporting requirement.

The title of the recordkeeping/ reporting requirement.

The OMB and/or Agency identification numbers, if applicable.

How often the recordkeeping/ reporting requirement is needed.

Whether small businesses or organizations are affected.

An estimate of the total number of hours needed to comply with the recordkeeping/reporting requirements and the average hours per respondent.

The number of forms in the request for approval, if applicable.

An abstract describing the need for and uses of the information collection.

COMMENTS AND QUESTIONS: Copies of the recordkeeping/reporting requirements may be obtained by calling the Departmental Clearance Officer, Kenneth A. Mills (202) 219–5095). Comments and questions about the items on this list should be directed to Mr. Mills, Office of Information Resources Management Policy, U.S. Department of Labor, 200 Constitution Avenue NW., Room N–1301, Washington, DC 20210. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for (BLS/DM/ESA/ETA/OLMS/MSHA/OSHA/PWBA/VETS), Office of Management and Budget, room 3001, Washington, DC 20503 (202) 395–6880).

Any member of the public who wants to comment on recordkeeping/reporting requirements which have been submitted to OMB should advise Mr. Mills of this intent at the earliest possible date.

Revision

Bureau of Labor Statistics
Current Employment Statistics
1220–0011; BLS–790

Form No.	Affected Public	Respondents	Frequency	Average time per response
790/BM	Businesses or other for-profit; Small businesses or organizations	400	Monthly	15 minutes.
790/G, G-S,J-FD	Businesses or other for-profit; Small businesses or organizations	31,400	Monthly	5 minutes.
790/CU	Businesses or other for-profit; Small businesses or organizations	45,000	Annually	2 minutes.
790	Businesses or other for-profit; Small businesses or organizations	346,200	Monthly	7 minutes.

518,780 total hours

The Current Employment Statistics Survey is a Federal/state survey of employment, hours and earnings in non-farm establishments. The survey produces monthly estimates for the nation, states and selected metropolitan areas.

Revision

Bureau of Labor Statistics
Survey of Employer-Provided Training
1220–0148; BLS 9200
One-time collection
Businesses or other for-profit
8,575 respondents; 23.4 minutes per response; 3,344 burden hours; 1 form

The lack of nationally representative information on the provision of training in establishments is a serious handicap to the implementation of effective public policy. This survey will collect such information and report on the provision of training by industry and size of establishment.

Revision

Employment and Training Administration
Experience Rating Report
1205–0164; ETA 204
Annually
State or local governments
53 respondents; 15 minutes per response; 14 total hours; 1 form

The ETA 204, Experience Rating Report, provides the Employment and Training Administration with data to measure the variations in assigned

contribution rates which result from different experience rating systems.

Signed at Washington, D.C. this 29th day of October, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93-27847 Filed 11-10-93; 8:45 am]

BILLING CODE 4510-24-P

Employment and Training Administration

Notice of Attestations Filed by Facilities Using Nonimmigrant Aliens as Registered Nurses

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor (DOL) is publishing, for public information, a list of the following health care facilities which plan on employing nonimmigrant alien nurses. These organizations have attestations on file with DOL for that purpose.

ADDRESSES: Anyone interested in inspecting or reviewing the employer's attestation may do so at the employer's place of business.

Attestations and short supporting explanatory statements are also available for inspection in the Immigration Nursing Relief Act Public Disclosure Room, U.S. Employment Service, Employment and Training Administration, Department of Labor, room N4456, 200 Constitution Avenue, NW., Washington, DC 20210.

Any complaints regarding a particular attestation or a facility's activities under that attestation, shall be filed with a local office of the Wage and Hour Division of the Employment Standards Administration, U.S. Department of Labor. The address of such offices are found in many local telephone directories, or may be obtained by writing to the Wage and Hour Division, Employment Standards Administration, Department of Labor, roomS3502, 200 Constitution Avenue NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT:

Regarding the Attestation Process:

Chief, Division of Foreign Labor Certifications, U.S. Employment Service. Telephone: 202-219-5263 (this is not a toll-free number).

Regarding the Complaint Process:

Questions regarding the complaint process for the H-1A nurse attestation program shall be made to the Chief, Farm Labor Program, Wage and Hour Division. Telephone: 202-219-7605 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: The Immigration and Nationality Act requires that a health care facility seeking to use nonimmigrant aliens as registered nurses first attest to the Department of Labor (DOL) that it is taking significant steps to develop, recruit and retain United States (U.S.) workers in the nursing profession. The law also requires that these foreign nurses will not adversely affect U.S. nurses and that the foreign nurses will be treated fairly. The facility's attestation must be on file with DOL before the Immigration and Naturalization Service will consider the facility's H-1A visa petitions for bringing nonimmigrant registered nurses to the United States. 26 U.S.C. 1101(a)(15)(H)(i)(a) and 1181(m). The regulations implementing the nursing attestation program are at 20 CFR part 655 and 29 CFR part 504, 55 FR 50500 (December 6, 1990). The Employment and Training Administration, pursuant to 20 CFR 655.310(c), is publishing the following list of facilities which have submitted attestations which have been accepted for filing.

The list of facilities is published so that U.S. registered nurses, and other persons and organizations can be aware of health care facilities that have requested foreign nurses for their staffs. If U.S. registered nurses or other persons wish to examine the attestation (on Form ETA 9029) and the supporting documentation, the facility is required to make the attestation and documentation available. Telephone numbers of the facilities' chief executive officers also are listed, to aid public inquiries. In addition, attestations and supporting short explanatory statements (but not the full supporting documentation) are available for inspection at the address for the Employment and Training Administration set forth in the **ADDRESSES** section of this notice.

If a person wishes to file a complaint regarding a particular attestation or a facility's activities under that attestation, such complaint must be filed at the address for the Wage and Hour Division of the Employment Standards Administration set forth in the **ADDRESSES** section of this notice.

Signed at Washington, DC, this 3rd day of November 1993.

Robert A. Schaerfl,

Director, United States Employment Service.

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS

[10/01/93 to 10/31/93]

CEO-name/facility name/address	State	Approval date
Mr. Ross Hooper, Crittenden Memorial Hospital, 200 Tyler Avenue, West Memphis, 72301, 501-735-1500	AR	10/05/93
Mr. Robert C. Benjamin, Southeast Arizona Medical Ctr., Route 1, Box 30, Douglas, 85607, 602-364-7931	AZ	10/01/93
Mr. William G. Coe, Parker Community Hospital, P.O. Box 1149, Parker, 85344, 602-669-9201	AZ	10/08/93
Mr. Gordon L. Ritter, Mohave Valley Hospital, Inc., 1225 East Hancock Road, Bullhead City, 86442, 602-758-0143	AZ	10/14/93
Mr. John Hoopes, Cobee Valley Community Hospital, P.O. Box 3261, Claypool, 85532, 602-425-3261	AZ	10/27/93
Mr. Gerald L. Price, Royal Care Skilled Nursing Facility, Long Beach, 90806, 310-417-7493	CA	10/01/93
Mr. Harry S. Young, Nurse Providers, 3550 Wilshire Blvd., Ste. 225, Los Angeles, 90010, 213-385-8559	CA	10/06/93
Ms. Patti Cook, Culver West Conval. Hospital, 4035 Grand View Blvd., Los Angeles, 90066, 310-390-9506	CA	10/14/93
Mr. Sidney R. Hewitt, S&V Health Care Recruiting Agency, Ltd., San Diego, 92114, 619-267-4603	CA	10/18/93
Mr. John P. Devine, Pleasant Valley Rehab. and Conval. Hosp., Oxnard, 93033, 805-488-3696	CA	10/20/93
Mr. Jess T. Villaluna, U.S. Medical Manpower Int'l., 9921 Carmew Mountain Road, San Diego, 92129, 619-672-8757	CA	10/20/93
Ms. Cynthia Jansen, Community Dialysis Center, 14020 San Pablo Avenue, San Pablo, 94806, 510-234-0835	CA	10/20/93
Mr. Anselma O. Zeno, Miracare Medical Management, 900 S. Westmoreland Ave., Los Angeles, 90006, 213-252-9364	CA	10/20/93
Mr. Andres N. Embuido, US Lifeline Nursing Services, 8033 Los Sabalos Street, San Diego, 92126, 619-549-3505	CA	10/20/93
Ms. Victoria Thompson, Edgewater Convalescent Hosp., 2625 East Fourth Street, Long Beach, 90814, 310-434-0974	CA	10/21/93
Ms. Pearl Scully, Gems Professional Services US, 3325 Wilshire Boulevard, Los Angeles, 90010, 213-389-9359	CA	10/27/93
Mr. Amparo Ragudo, Greenhills Manor, 238 Virginia Avenue, Campbell, 95008, 408-379-8114	CA	10/27/93
Mr. Td Yokoyama, South Bay Keiro Nursing Home, Gardena, 90247, 310-532-0700	CA	10/27/93
Ms. Cristina Desuasido, Staffing specialists, Inc., 347-D Gellert Blvd., Daly City, 94015, 415-997-3387	CA	10/28/93
Ms. Lois Allen, Scripps Nursing Home, 2212 N. El Molino, Alta Dena, 91001, 818-798-0934	CA	10/28/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued
[10/01/93 to 10/31/93]

CEO-name/facility name/address	State	Approval date
Mr. Carlos Milanes, Palm Springs General Hosp., I, 1475 West 49th Street, Hialeah, 33012, 305–558–2500	FL	10/06/93
Mr. Victor J. Maya, Kendall Regional Center, 11750 Bird Road, Miami, 33175, 305–223–3000	FL	10/06/93
Mr. Michael J. Stenger, Spring Hill Reg'l Hosp., 10461 Quality Drive, Spring Hill, 34609, 904–544–6150	FL	10/21/93
Mr. Robert B. Hill, Bethesda Memorial Hospital, 2815 S. Seacrest Blvd., Boynton Beach, 33435, 407–737–7733	FL	10/27/93
Mr. William M. Patterson, Palms of Pasadena Hospital, 1501 Pasadena Avenue South, St. Petersburg, 33707, 813–341–7774.	FL	10/27/93
Mr. Gemwee W. Wong, Shore Acres Rehab. Nursing Ct., Shore Renaissance—Shores Acres, Inc., St. Petersburg, 33703, 813–527–5801.	FL	10/27/93
Mr. Walter Gassner, Parkway Reg'l. Med. Ctr., North Miami Med. Ctr., Ltd., North Miami Beach, 33169, 305–654–5064	FL	10/28/93
Mr. John E. Ives, Memorial Medical Ctr., Inc., 4700 Waters Avenue, Savannah, 31403, 912–350–8000	GA	10/01/93
Ms. Jamie H. Crawford, Brian Center Health, P.O. Box 188, Lumber City, 31549, 912–363–4356	GA	10/13/93
Ms. Minam Duncan, Scenic View Health Care Ctr., Peach Orchard Road, Baldwin, 30511, 706–778–8377	GA	10/13/93
Mr. Alan Hutchins, Fort Oglethorpe Nursing Ctr., 528 Battlefield Parkway, Fort Oglethorpe, 30742, 706–861–5154	GA	10/21/93
Mr. Henry Roberts, Brian Center, 2130 Anderson Mill Road, Austell, 30073, 404–941–8813	GA	10/27/93
Mr. Kevin Metz, Lilburn Geriatric Center, 788 Indian Trail Road, Lilburn, 30247, 404–923–2020	GA	10/27/93
Mr. Marvin Mermelstein, Balmoral Nursing Centre, Inc., 2055 West Balmoral Avenue, Chicago, 60625, 312–561–8661	IL	10/01/93
Ms. Sheila Ilagan, Active Home Health Care, Inc., 1701 South First Avenue Maywood, 60153, 708–786–6700	IL	10/01/93
Ms. Jacqueline L. Mason, Oak Brook Healthcare Centre, 2013 Midwest Road, Oak Brook, 60521, 708–495–0220	IL	10/14 /93
Mr. Jay Lewkowitz, Oakton Pavillion Healthcare Facility, Inc., Des Plaines, 60018, 708–299–5588	IL	10/15 /93
Sister Paulette O'Connell, Misericordia North, 6300 N. Ridge, Chicago, 60660, 312–973–6300	IL	10/18/93
Mr. J. Rex Pippin, Lifelink Corporation, 331 South York Road, Bensenville, 60106, 708–766–3570	IL	10/20/93
Mr. John Samatas, Lexington Health Care Ctr. of Chicago Ridge, Inc., Chicago Ridge, 60415, 708–495–1700	IL	10/20/93
Mr. John Samatas, Lexington Health Care Ctr. of Streamwood, Streamwood, 60107, 708–495–1700	IL	10/20/93
Mr. Robert Jafari, Meadowbrook Manor, Butterfield Health Care, Inc., Bolingbrook, 60440, 708–759–1112	IL	10/20/93
Mr. Richard Haskell, Belhaven Health Care Retirement, Chicago, 60643, 312–233–6311	IL	10/25/93
Ms. Sylvia Y. Mostello, Heritage Health Care Ctr., 5888 N. Ridge, Chicago, 60660, 312–769–2626	IL	10/27/93
Mr. Eddie Gardner, Baton Rouge Heritage House II, Baton Rouge Heritage II Partnership; Baton Rouge, 70806, 504–924–2950.	LA	10/01/93
Mr. Kevin Butler, Heritage Manor of Napoleonville, 252 Highway 402, Napoleonville, 70390, 504–369–6011	LA	10/13/93
Mr. Frank A. Riddick, Jr., Alton Ochsner Med. Foundation, 1516 Jefferson Highway, New Orleans, 70121, 504–842–3604.	LA	10/21/93
Mr. Stewart Seitz, Charlotte Hall Veterans Home, Charlotte Hall, 20622, 301–884–8171	MD	10/27/93
Mr. Timothy Spiro, West Bloomfield Nursing and Conval. Ctr., West Bloomfield, 48322, 313–661–1600	MI	10/13/93
Mr. Robert Hawley, Bolivar County Hospital, Highway 8 East, Cleveland, 38732, 601–846–0061	MS	10/08/93
Mr. W. E. Steiger, MDOC Medical/Dental Facility, P.O. Box E, Hwy. 49–W, Parchman, 38738, 601–745–6611	MS	10/14/93
Ms. Eva Williams, Vicksburg Trace Haven, Southmark CRCA Fund, Vicksburg, 39180, 601–638–9211	MS	10/20/93
Mr. Hugo Hutto, Tishomingo Manor Nursing Home, 230 Kaki Street, Iuka, 38852, 601–423–9112	MS	10/21/93
Ms. Mena Duthu, Heritage Manor of Rolling Fork, 506 West Race Street, Rolling Fork, 39159, 601–873–6218	MS	10/25/93
Mr. Wesley P. Smith, Cross Creek Health Care, Rt. 1 Box 49–C, Swan Quarter, 27885, 919–926–2143	NC	10/01/93
Mr. Paul Babinski, Brian Center Health, 5939 Reddman Road, Charlotte, 28212, 704–563–6862	NC	10/05/93
Mr. Dennis Redmond, Brian Center Nursing Care, 2300 Diary Road, Clayton, 27520, 919–553–8232	NC	10/13/93
Mr. Carl S. Burkhalter, Brian Center Health, 629 South East Railroad St., Wallace, 28466, 919–285–6646	NC	10/13/93
Ms. Sharon Stiles, Brian Ctr. Nursing Care/Gastonia, 969 Cox Road, Gastonia, 28054, 704–866–8396	NC	10/19/83
Mr. Walter Cross, Brian Center Nursing Care, 230 E. Presnell Street, Asheboro, 27203, 919–629–1449	NC	10/19/93
Ms. Mary Ann Thompson, Brian Center Health & Retir., 816 South Aspen Street, Lincolnton, 28093, 704–735–8065	NC	10/20/93
Ms. Vickie L. Carroll, Maple Leaf Health Care, 2640 Davie Avenue, Statesville, 28677, 704–871–0701	NC	10/27/93
Mr. Dan R. Cotten, Brian Center Nursing Care, Box 3566, Wilson, 27895, 919–237–6300	NC	10/27/93
Mr. Richard Thompson, Emerald Health Care, 539 Third Street SW, Taylorsville, 28681, 704–632–8146	NC	10/27/93
Mr. O. Wade Avant, Jr., Shoreland Health Care, Route 7, Box 98–M, Whiteville, 28472, 919–642–4300	NC	10/27/93
Mrs. Juliana Cooper-Goldenburg, Brian Center Nursing Care, 1870 Pisgah Drive, Hendersonville, 28739, 704–693–9796	NC	10/27/93
Mr. Michael E. Gilstrap, Halifax Memorial Hospital, P.O. Box 1089, Roanoke Rapids, 27870, 919–535–8011	NC	10/27/93
Mr. Richard G. Bennett, The Graybrier Nursing and Retirement Ctr., Trinity, 27370, 919–431–8888	NC	10/27/93
Mr. Wade Avant, Jr., Century Care, 316 W. Burkhead Street, Whiteville, 28472, 919–642–7139	NC	10/27/93
Ms. Risa Grace, Brian Center Health and Retirement, Windsor, 27983, 919–794–5146	NC	10/27/93
Ms. Connie Disbrow, Oak Grove Manor, 4809 Redman Avenue, Omaha, 68104, 402–455–5025	NE	10/01/93
Mr. Nolan Pidor, Emma's Nurses, Inc., 246 Monroe Avenue, Paramus, 07652, 201–986–1605	NJ	10/08/93
Mr. Samuel Paneth, Newark Extended Care Facility, Inc., Newark, 07103, 201–483–6800	NJ	10/27/93
Mr. Edward M. Rudow, Eastern Pines Conval. Ctr., 29 N. Vermont Avenue, Atlantic City, 08401, 609–344–8900	NJ	10/27/93
Mr. W.J. Van Ry, Saint Mary's Reg'l. Med. Ctr., 235 West Sixth Street, Reno, 89520, 702–323–2041	NV	10/27/93
Mr. Norman J. Sokolow, Medical Arts Center Hosp., 57 West 57 Street, New York, 10019, 212–755–0200	NY	10/05/93
Ms. Consuelo Vaca, Nurse Care Registry, Inc., 25–31 30th Road, Astoria, 11102, 718–204–8585	NY	10/06/93
Mr. W. Richard Zacher, Williamsville View Manor, 165 South Union Road, Williamsville, 14221, 716–633–9610	NY	10/20/93
Mr. Donald Cromisch, Nassau County Medical Ctr., 2201 Hempstead Tpke., E. Meadow, 11554, 516–542–2301	NY	10/20/93
Ms. Michele B. Anderson, Aro Community Services, Inc., 164 Court Street, Brooklyn, 11201, 718–237–2307	NY	10/26/93
Ms. Filomena Acevedo, NYDNS, Inc., 82–72 Broadway Street, Elmhurst, 11373, 718–205–1131	NY	10/27/93
Mr. Benjamin Santos, United Staffing Agency, Inc., 421 7th Avenue, Rm. 501, New York, 10001, 212–465–8995	NY	10/27/93
Mr. Ernest Dicker, Manhattanville Nursing Care Ctr., Inc., Bronx, 10463, 718–601–8400	NY	10/28/93
Mr. Steven Raichilson, Menorah Park Ctr. for the Aging, Beachwood, 44122, 216–831–6500	OH	10/20/93
Ms. Judy Feuquay, Perry Memorial Hospital, 501 14th Street, Perry, 73077, 405–336–3541	OK	10/21/93

DIVISION OF FOREIGN LABOR CERTIFICATIONS APPROVED ATTESTATIONS—Continued
[10/01/93 to 10/31/93]

CEO-name/facility name/address	State	Approval date
Mr. George Munchow, Brandywood Nursing Home, 555 East Bledsoe Street, Gallatin, 37066, 615–452–7132	TN	10/21/93
Ms. Bobbie Higgins, Hamilton County Nursing Home, 2626 Walker Road, Chattanooga, 37421, 615–855–6118	TN	10/21/93
Mr. Johnny Rae, Reelfoot Manor Nursing Home, 1034 Reelfoot Drive, Tiptonville, 38079, 901–253–6681	TN	10/27/93
Ms. Merlita A. Velasquez, Nursing Resource, Inc., 10927 Mayfield Road, Houston, 77043, 713–468–7374	TX	10/06/93
Mr. David Cottey, Silsbee Doctors Hospital, P.O. Box 1208, Silsbee, 77656, 409–385–1531	TX	10/07/93
Mr. John A. Guest, Bexter County Hospital District, San Antonio, 78229, 210–616–2055	TX	10/15/93
Mr. Ben M. Durr, Uvalde Memorial Hospital, 1025 Garner Field Road, Uvalde, 78801, 210–278–6251	TX	10/20/93
Mr. W. Taft Martin, Retirement Care Ctr. of Hempstead, Retr. Care Corp. of America, Hempstead, 77445, 409–826–3382.	TX	10/21/93
Ms. Terri Ruble, Southern Manor, 4320 West 19th Street, Lubbock, 79407, 806–795–7147	TX	10/27/93
Mr. James P. Courtney, University Medical Ctr., 602 Indiana Avenue, Lubbock, 79415, 806–743–3515	TX	10/27/93
Mr. Ed L. Lopez, Medicus MG's Rehab. Health Ca, The Ed L. Lopez, Corp., Dallas, 75243, 214–342–1003	TX	10/27/93
Mr. William A. Mathies, Highland Terrace Nursing Ctr., Bev. Enterprises-Washington, Inc., Camas, 98607, 206–834–5055.	WA	10/01/93
Mr. Bruce Rampage, St. Catherine's Hospital, 3556 Seventh Avenue, Kenosha, 53140, 414–656–3011	WI	10/28/93
Total Attestations—102		

[FR Doc. 93–27848 Filed 11–10–93; 8:45 am]
BILLING CODE 4510–30–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Grant Application Availability for Fiscal Year 1994

AGENCY: Institute of Museum Services, NFAH.

ACTION: Grant application availability notice for fiscal year 1994.

SUMMARY: This grant application announcement applies to the General Operating Support (GOS), Conservation Project Support (CP), Conservation Assessment Program (CAP), Museum Assessment Program (MAP I), Museum Assessment Program (MAP II), Museum Assessment Program III (MAP III) Professional Services Program (PSP) and Technical Assistance Grants (TAG) awards under 45 CFR part 1180 for Fiscal Year 1994.

ADDRESSES: Institute of Museum Services, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Mamie Bittner, IMS Public Information Office (202) 606–8536. Deaf and hearing impaired individuals may call TDD Line, (202) 606–8636.

SUPPLEMENTARY INFORMATION: The purpose of these awards is to ease the financial burden borne by museums as a result of their increased use by the public and to help them carry out their educational role, as well as other functions.

Eligibility

Museums meeting the definitions in 45 CFR 1180.3 may apply for these programs. The definition of "museum" includes (but is not limited to) the following institutions if they satisfy the other provisions of this section: Aquariums and zoological parks; botanical gardens and arboretums; nature centers; museums relating to art; history (including historic buildings); natural history; science and technology; and planetariums.

To be eligible for support from IMS a museum must:

Be organized as a public or private nonprofit institution and exist on a permanent basis for essentially educational or aesthetic purposes; and

Exhibit tangible objects through facilities it owns or operates; and

Have at least one professional staff member or the full-time equivalent whose primary responsibility is the care, or exhibition to the public of objects owned or used by the museum; and

Be open and have provided museum services to the general public on a regular basis for at least two full years * prior to the date of application to IMS; and

Be located in one of the fifty States of the Union, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Virgin Islands, the Northern Mariana Islands, or the Trust Territory of the Pacific Islands.

Program Categories

General Operating Support (GOS)

IMS makes awards under the GOS program to museums to maintain, increase, or improve museum services through support for basic general operating expenses.

Conservation Project Support Program (CP)

Awards are made through the CP program to assist with the conservation of museum collections, both living and non-living.

Conservation Assessment Program (CAP)

Awards are made through CAP to provide an overall assessment of the condition of a museum's environment and collections to identify conservation needs and priorities. CAP is a non-competitive, one-time funding opportunity, offered on a first-come, first-served basis. It is administered in cooperation with the National Institute for Conservation. See 45 CFR part 1180, subpart D.

Museum Assessment Program (MAP)

The MAP I funds an overall assessment of a museum's operations. The MAP II funds an assessment of the museum's collection-related policies. The MAP III provides an assessment of the public dimension of museum operations. All of the Museum Assessment Programs are non-competitive, one-time funding opportunities, offered on a first-come, first-served basis. The Museum Assessment Programs are administered in cooperation with the American Association of Museums through a memorandum of understanding. See 45 CFR part 1180, subpart D.

Professional Services Program (PSP)

This program provides matching funds to professional museum

* Applicants to the Museum Assessment Program, Technical Assistance Grants and the Conservation Assessment Program need not be open for two years.

associations for projects that serve the museum community.

Museums Leadership Initiatives—

Supports museums leadership projects. In 1993 funds were available to support mentoring projects between larger and smaller museums, minority and rural museums.

Technical Assistance Grants

Provides grants to address the needs of small, emerging, minority and rural museums.

Section 206 of the Museums Service Act, title II of Public Law 94–462, as amended, contains authority for these programs. (20 U.S.C. 965)

Deadline Date for the Transmittal of Applications

Applications must be mailed or hand-delivered by the deadline date:

Program	Deadline
GOS	January 21, 1994.
CP	October 1, 1993 and April 1, 1994.
PSP	March 18, 1994.
CAP	December 3, 1994.
MAP I	October 29, 1993 and April 29, 1994.
MAP II	January 28, 1994.
MAP III	February 25, 1994.
MLI	TBA.
TAG	TBA.

For GOS, CP, PSP, MLI and TAG. Applications that are sent by mail must be addressed to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506.

An applicant must be prepared to show one of the following as proof of timely mailing:

(1) A legibly dated U.S. Postal Service postmark.

(2) A legible mail receipt with the date of mailing stamped by the U.S. Postal Service.

(3) A dated shipping label, invoice, or receipt from a commercial carrier.

(4) Any other dated proof of mailing acceptable to the Director of IMS.

If any application is mailed through the U.S. Postal Service, the Director does not accept either of the following as proof of mailing: (1) A private metered postmark; or (2) a mail receipt that is not date-canceled by the U.S. Postal Service.

Applications that are hand-delivered must be taken to the Institute of Museum Services, 1100 Pennsylvania Avenue NW., room 609, Washington, DC 20506. Hand-delivered applications will be accepted between 9 a.m. and 4:30 p.m. (Washington DC time) daily, except Saturdays, Sundays, and Federal holidays. An application that is hand-delivered will not be accepted after 4:30 p.m. on the deadline date.

For MAP I, MAP II, and MAP III Applicants must apply to IMS through the American Association of Museums (AAM). IMS supplies the AAM with application forms and instructions. These are forwarded by AAM to applicant museums. The Director of IMS approves applications meeting the MAP I, MAP II, and MAP III requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. If a museum's MAP I, MAP II or MAP III application is received on or before the indicated dates, it will be processed together with other MAP I, MAP II, or MAP III applications received during that period. Applications received after the indicated dates will be processed during the subsequent MAP I, MAP II or MAP III periods. In no event will MAP applications received after April 29, 1994, MAP II applications received after January 28, 1994, or MAP III application received after February 25, 1994 be processed for Fiscal Year 1994 awards. Applicants should contact the American Association of Museums, 1225 Eye Street NW., Washington, DC 20005, for application packets.

For CAP Applicants must apply to IMS through the National Institute for Conservation (NIC). IMS supplies the NIC with application forms and instructions. These are forwarded by NIC to applicant museums. The Director of IMS approves applications meeting the CAP requirements on a first-come, first-served basis (i.e., in the order in which an application is received and has been determined to have met applicable requirements). Applications will be approved for awards, subject to the availability of funds. Applicants must be received by December 3, 1993. Applications for FY 1994 awards which cannot be funded will not be carried over to the next fiscal year. All unfunded applicants who wish to receive an award in the subsequent year, must reapply. Interested parties should contact the National Institute for Conservation, 3299 K Street, NW, Suite 403, Washington, DC 20007 for applications.

Program Information

GOS program regulations are contained in 45 CFR XI 1180.7 (1988) and related provisions.

CP program regulations are contained in 45 CFR 1180.20 (1988) and related provisions.

CAP and MAP program regulations are contained in 45 CFR 1180, subpart D (1988).

PSP program regulations are contained in 45 CFR 1180, subpart E (1988).

TAG program regulations are proposed in the **Federal Register** on September 17, 1993.

Further program information may be found in the Application forms and accompanying instructions in the Application. See paragraph on Application Forms.

Available Funds

As of publication time, funds for fiscal year 1994 have not been appropriated. Figures given in this section pertain to available funds for the 1993 fiscal year.

GOS For FY 1993, $22,103,000 was available for this program. The GOS program award is equal to 15% of the museum's operating budget to a maximum of $112,500 to be spent over a two year period. The grant amount is determined annually by the National Museum Services Board. A museum that receives an award in one fiscal year may not apply for the following year's competition. (See 45 CFR 1190.16(b)).

CP For FY 1993, $3,064,000 was available for this program. Normally, IMS makes matching conservation grants of no more than $25,000 in Federal funds. Unless otherwise provided by law, if the Director determines that exceptional circumstances warrant, the Director, with the advice of the Board, may award a Conservation Project Support grant which obligates in excess of $25,000 in Federal funds to a maximum of $75,000. The Director may make such a determination with respect to a category of Conservation grants by notice published in the **Federal Register**. IMS awards Conservation Project Support grants only on a matching bases. At least 50% of the costs of a project must be met with non-federal funds. (See 45 CFR 1180.20(f)).

CAP For FY 1993, $966,000 was available for this program.

MAP, MAP II, MAP III For FY 1993, $565,000 was available for this program.

PSP For FY 1923, $248,000 was available for this program. This program provides matching funds for cooperative agreements that generally do not exceed $50,000.

MLI For FY 1993, 248,000 was available for this program.

Funding Priorities for Conservation Project Support Program

The National Museum Services Board, by notice published in the **Federal**

Register, may establish funding priorities among the types of projects. IMS Conservation Project Support guidelines identify four broad categories of museum collections: Non-living; systematics/natural history collections; living collections/animals; and living collections/plants.

For each of the categories, with the exception of living collections/animals, the funding priority is a general conservation survey of collections and environmental conditions including development of institutional long-range conservation plans. For living collections/animals the funding priority is research for improved conservation techniques.

Application Forms

IMS mails application forms and program information in General Operating Support, Conservation Project Support, Museum Leadership Initiatives, Technical Assistance Grants and Professional Services Program application packets to museums and other institutions on its mailing list. Applicants may obtain application packets by writing or telephoning the Institute of Museum Services, 1100 Pennsylvania Avenue NW. room 609, Washington, DC 20506, (202) 606–8536. Deaf and hearing impaired individuals may call the TDD Line (202) 606–8636.

To receive an application for the Conservation Assessment Program contact the National Institute for Conservation, 3299 K Street, NW., suite 402, Washington, DC 20007 (202) 625–1495.

To receive an application for the Museum Assessment Programs contact the American Association of Museums, 1225 Eye Street NW., Washington, DC 20005 (202) 289–1818.

(Catalogue of Federal Domestic Assistance No. 45.301 Institute of Museum Services)

Dated: November 2, 1993.

Linda Bell,

Acting Director, Institute of Museum Services.

[FR Doc. 93–27778 Filed 11–10–93; 8:45 am]

BILLING CODE 7036–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Biological Sciences (BIO); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Advisory Committee for Biological Sciences.

Date and Time:

December 1, 1993, 9:00 a.m.–5:00 p.m.
December 2, 1993, 9:00 a.m.–5:00 p.m.
December 3, 1993, 9:00 a.m.–1:00 p.m.

Place: National Science Foundation, 1800 G Street, NW., room 540, Washington, DC 20550.

Type of Meeting: Open.

Contact Person: Dr. Mary E. Clutter, Assistant Director, Biological Sciences, room 506, National Science Foundation, 1800 G Street, NW., Wash., DC 20550. Tel No.: (202) 357–9854.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: The Advisory Committee for BIO provides advice, recommendations, and oversight concerning major program emphases, directions, and goals for the research-related activities of the divisions that make up BIO.

Agenda: Science opportunities, assessment, and priority setting.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27805 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Electrical and Communications Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Electrical and Communications Systems.

Date and Time: December 13, 1993; 8:30 a.m. to 5 p.m.

Place: Room 680, 4201 Wilson Blvd, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: George Lea, Program Director, ECS, Room 675, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1339.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate the regular proposals for the Computational Engineering Program as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under (5) U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27807 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neuroscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Panel for Neuroscience (1158).

Date and Time: December 2 & 3, 1993; 9 a.m.–5 p.m.

Place: National Science Foundation, room 380, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Dr. Christopher Platt, Acting Program Director, Developmental Neuroscience, Division of Integrative Biology and Neuroscience, suite 685, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1423.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Developmental Neuroscience proposals as part of the selection process for awards.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. #552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27806 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Division of Undergraduate Education.

Date and Time:

January 19, 1994; 7:30 p.m. to 9 p.m.
January 20, 1994; 8:30 a.m. to 5 p.m.
January 21, 1994; 8:30 a.m. to 5 p.m.
January 22, 1994; 8:30 a.m. to 5 p.m.
January 26, 1994; 7:30 a.m. to 9 p.m.
January 27, 1994; 8:30 a.m. to 5 p.m.
January 28, 1994; 8:30 a.m. to 5 p.m.
January 29, 1994; 8:30 a.m. to 5 p.m.

Place: Doubletree National Airport Hotel, 300 Army/Navy Drive, Arlington, VA 22202.

Type of Meeting: Closed.

Contact Persons: Dr. Duncan McBride, Section Head, Dr. Norman Fortenberry, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, telephone: (703) 306–1667.

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Instrumentation and Laboratory Improvement/Leadership Improvement Panel Meeting.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27831 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Membership of National Science Foundation's Senior Executive Service Performance Review Board

AGENCY: National Science Foundation.

ACTION: Announcement of Membership of the National Science Foundation's Senior Executive Service Performance Review Board.

SUMMARY: This announcement of the membership of the National Science Foundation's Senior Executive Service Performance Review Board is made in compliance with 5 U.S.C. 4314(c)(4).

ADDRESSES: Comments should be addressed to Director, Division of Human Resource Management, National Science Foundation, room 315, 4201 Wilson Boulevard, Arlington, VA 22230.

FOR FURTHER INFORMATION CONTACT: Mr. Kenneth Bransford at the above address or (703) 306–1184.

SUPPLEMENTARY INFORMATION: The membership of the National Science Foundation's Senior Executive Service Performance Review Board is as follows:

Frederick M. Bernthal, Deputy Director, Chairperson

Constance K. McLindon, Director, Office of Information Resource Management, Executive Secretary

Judith S. Sunley, Executive Officer, Directorate for Mathematical and Physical Sciences

Nathaniel G. Pitts, Director, Office of Science and Technology Infrastructure

Luther S. Williams, Assistant Director for Education and Human Resources

Joseph Bordogna, Assistant Director for Engineering

Dated: November 3, 1993.

John F. Wilkinson, Jr.,

Acting Director, Division of Human Resource Management.

[FR Doc. 93–27808 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Biological Sciences.

Date and time: December 13 & 14, 1993; 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Scott W. Collins Program Director, Ecology Program, Division of Environmental Biology, rm. 635, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1479.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Conservation and Restoration Biology proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27813 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Cross Disciplinary Activities; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Cross-Disciplinary Activities.

Date and Time: December 9, 1993; 8:30 a.m. to 5 p.m.

Place: Hyatt Arlington at Key Bridge, 1325 Wilson Boulevard, Arlington, VA 22209.

Type of meeting: Closed.

Contact persons(s): Forbes Lewis, Program Director CISE/CDA, room 436, National Science Foundation, 1800 G Street NW., Washington, DC 20550. Telephone: (202) 357–7349.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate REU proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27823 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design & Manufacturing System.

Date and time: December 9, 1993—8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, rm 330, Arlington, VA 22230.

Type of meeting: Closed

Contact Person: Dr. F. Stan Settles, Program Director, Design & Integration Engineering, rm 550, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1330.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Design & Intergration Engineering proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27825 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design & Manufacturing Systems.

Date and time: December 7, 1993–8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, rm 375–3, Arlington, VA 22230.

Type of meeting: Closed

Contact person: Dr. Cheena Srinivasan, Program Director, Manufacturing Machines & Equipment, Rm. 550, National Science Foundation 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1330.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Manufacturing Machines & Equipment proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27826 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design & Manufacturing Systems.

Date and time: December 9, 1993–8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, rm 320, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. F. Hank Grant, Program Director, Operations Research & Production systems, rm 550, National Science Foundation, 4201 Wilson Blvd, Arlington, VA 22230, Telephone: (703) 306–1330.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Operations Research & Production Systems proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries, and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27827 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Design & Manufacturing Systems; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Design & Manufacturing Systems.

Date and time: December 7, 1993–8:30 a.m. to 5:30 p.m.

Place: National Science Foundation, 4201 Wilson Blvd, rm 375–1, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. B. Kramer, Program Director, Materials Processing, Rm. 550, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230 Telephone: (703) 306–1330.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Materials Processing & Manufacturing proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. The matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27828 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and time: December 3, 1993; 8 a.m.–5 p.m.

Place: Conference Room #3602, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA, 22230. Telephone: (703) 306–1557.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate REU-Site Panel proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27809 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and time: December 8th, 1993; 9 a.m. to 5 p.m.

Place: Room 310, NSF, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Richard West, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1579.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Shipboard Scientific Support Equipment proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such, as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–2780 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geoscience; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and time: December 10th, 1993; 8:30 a.m. to 5 p.m.

Place: Lombard Hotel, 1015 Geary St., San Francisco, CA.

Type of meeting: Closed.

Contact person: Ms. Lisa Rom, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1578.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Shipboard Technical Support proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27822 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and time: December 6–7, 1993; 8:30 a.m.–5 p.m.

Place: McClintock Rm. (#365), National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Linda Duguay, National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–9600.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Marine Biotechnology proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27824 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Special Emphasis Panel in Geosciences.

Date and time: January 10, 1994; 8 a.m.—5 p.m.

Place: Conference Room # 310, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed.

Contact person: Dr. Marvin E. Kauffman, Program Director, Education and Human Resources Program, Division of Earth Sciences, room 785, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1557.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Postdoctoral Panel proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27829 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Panel for Neurosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L.92–463, as amended), the National Science Foundation (NSF) announces the following meeting.

Name: Advisory Panel for Neuroscience (1158).

Date and time: December 13 and 14, 1993, 9 a.m.–5 p.m.

Place: Room 320, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Felix Strumwasser, Program Director, Neuronal and Glial Mechanisms, Division of Integrative Biology and Neuroscience, room 685, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1424.

Purpose of meeting: To providing advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Neuronal and Glial Mechanisms proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27815 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Polar Programs; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name of meeting: Special Emphasis Panel in Polar Programs.

Date and time: December 16–17, 1993; 8:30 a.m. to 5 p.m.

Place: 7th Floor Conference Room, 4201, Wilson Blvd., Arlington, VA 22230.

Type of meeting: Closed.

Contact person: Dr. Julie Palais, Program Manager for Polar Glaciology, OPP, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Telephone: (202) 357–7894 until November 11, 1993.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Polar Glaciology and Arctic System Science/GISP2 proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27814 Filed 11–10–93 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Social, Behavioral and Economic Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Date and time: November 29, 1993; 9 a.m.—5 p.m.; November 30, 1993; 9 a.m.—3 p.m.

Place: National Science Foundation, suite 340, 4201 Wilson Blvd., Arlington, VA 22230.

Type of meeting: Open.

Contact person: John E. Jankowski, Jr., Division of Science Resources Studies, suite 965, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1777.

Minutes: May be obtained from the contact person listed above.

Purpose of meeting: To provide advice, recommendations, and counsel on major goals and policies pertaining to SBE programs and activities.

Agenda: Discussions on issues, opportunities and future directions for the SBE Directorate; discussion of SBE Directorate budget situation as well as other items. Special focus on planning for the Director's International Division and the Division of Science Resources Studies.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27810 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and time: December 2, 1993; 8:30 a.m. to 5 p.m.; December 3, 1993; 8:30 a.m. to 5 p.m.

Place: Holiday Inn Arlington at Ballston, 4610 North Fairfax Drive, Arlington, VA 22203.

Type of meeting: Closed.

Contact person: Dr. Elizabeth Teles, Program Director, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1667.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Advanced Technological Education Program.

Reason for closing: The proposal being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27811 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Undergraduate Education; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Undergraduate Education.

Date and time: December 2, 1993; 7:30 p.m. to 9 p.m.; December 3, 1993; 8 a.m. to 5 p.m.; December 4, 1993; 8 a.m. to 5 p.m.

Place: Pullman Highland Hotel, 1914 Connecticut Avenue NW., Washington, DC 20009–5719.

Type of meeting: Closed.

Contact person: Dr. James Lightbourne, Program Director, National Science Foundation; 4201 Wilson Boulevard, Arlington, VA 22230, Telephone: (703) 306–1666.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate unsolicited proposals submitted to the Curriculum Development in Mathematics: Calculus and the Bridge to Calculus Program.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b.(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 8, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–27812 Filed 11–10–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket Nos. 50–424 and 50–425]

Georgia Power Company, et al., Vogtle Electric Generating Plant, Units 1 and 2; Notice of Withdrawal of Application for Amendments to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has granted the request of Georgia Power Company, et al. (the licensee) to withdraw both its May 13, 1991, and its September 14, 1992, applications for proposed amendments to Facility Operating License Nos. NPF–68 and NPF–81 for the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia.

The May 13, 1991, proposal would have changed Technical Specification (TS) 3/4.5.3.2, revising the operability requirements for the safety injection pumps in Modes 4, 5, and 6 with the reactor vessel head on. The September 14, 1992, proposal would have changed TS 4.6.1.6.1, revising the surveillance requirements for the containment tendon sheathing filler grease.

The Commission had previously issued a Notice of Consideration of Issuance of Amendments for the May 13, 1991, application, published in the Federal Register on August 7, 1991 (56 FR 37583). The Commission has not issued a Notice of Consideration of Issuance of Amendments for the September 14, 1992, application. However, by letter dated October 25, 1993, the licensee withdrew both of the proposed changes.

For further details with respect to this action, see the application for amendments dated May 13, 1991, and the application for amendments dated September 14, 1992, and the licensee's letter dated October 25, 1993, which withdrew the applications for license amendments. The above documents are available for public inspection at the Commission's Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Burke County Library, 412 Fourth Street, Waynesboro, Georgia 30830

Dated at Rockville, Maryland, this 3rd day of November 1993.

For the Nuclear Regulatory Commission.

C.E. Carpenter, Jr.,

Acting Project Manager, Project Directorate II–3, Division of Reactor Projects–I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–27818 Filed 11–10–93; 8:45 am]

BILLING CODE 7590–01–M

Northeast Nuclear Energy Co.; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

[Docket No. 50–423]

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–49, issued to Northeast Nuclear Energy Company (NNECO/the licensee), for operation of the Millstone Nuclear Power Station, Unit No. 3, located in New London County, Connecticut.

The proposed amendment would increase the required supplementary leak collection and release system (SLCRS) drawdown time from 60 seconds to 120 seconds and increase the required vacuum to 0.4 inches, based on compensating reductions in containment leak rate.

Because the present Technical Specifications are impractical for plant

operation, the Technical Specifications must be changed before plant operation resumes. The plant is presently shutdown for an extended maintenance and refueling outage and resumption of operations is expected in early November. In order to process the proposed license amendment without unduly impacting scheduled resumption of operation exigent approval is required. The licensee has stated that the exigent situation could not have been avoided because of a recently-revealed lack of understanding of the SLCRS characteristics.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration (SHC), which is presented below:

The proposed changes do not involve an SHC because the changes would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The ability of the SLCRS and ABFS [auxiliary building filtration system] to meet the proposed Technical Specification to draw a negative pressure of 0.4 inches water gauge in the auxiliary building at the 24'–6" elevation within 120 seconds after a start signal [this time includes the diesel generator start and load time of approximately 10 seconds) is established through the evaluation of modification-related operating time changes and the use of prior test data. The test results confirmed that the SLCRS/ABFS will achieve drawdown to a negative pressure of 0.4 inches water gauge as measured at the 24'–6" elevation in the auxiliary building within 120 seconds following an accident signal. NNECO is confident that the pertinent set of tests comprising the integrated test program are all-encompassing and that the system, when subjected to a comprehensive test series, has responded appropriately. This was a probing test series which established a detailed understanding of how the combined systems operate and respond to any credible accident scenario.

These tests show that the SLCRS and ABFS equipment are capable of developing a negative pressure in excess of 0.4 inches water gauge within the auxiliary building at the 24'–6" elevation. There is reasonable assurance that this can be accomplished within 120 seconds (this time includes the diesel generator start and load times). Furthermore, testing recently completed following implementation of previously identified modifications validated the system's ability to perform its intended function in the requisite time frame.

Extension of the time allowed to achieve drawdown of secondary containment from 60 seconds to 120 seconds (these times include the diesel generator start and load time of approximately 10 seconds) will have a negligible impact on heating and cooling. Plant experience has shown that heatup and cooldown of thick-walled concrete structures, such as the Millstone Unit No. 3 auxiliary building, is a relatively slow process. Also, natural convection within the auxiliary building tends to stabilize temperatures. Following an accident signal, ventilation equipment is restarted promptly. Therefore, heatup or cooldown, during short periods while ventilation fans and/or heaters are inactive, is insignificant and can be neglected.

The proposed change to decrease the containment integrated leakage rate at the design basis pressure from 0.65 wt.%/day to 0.3 wt.%/day has been evaluated to determine the impact of the proposed lower leakage criteria on the Millstone Unit No. 3 containment test program. It was determined that the leakage results from the type "A," "B," "C" tests for the current refueling outage provide assurance of containment integrity even under the proposed leakage criteria. Also, the results of the bypass leakage are within the proposed limit. The proposed upper bound for the overall integrated leakage of 0.30 wt.%/day is more restrictive than the current upper bound of 0.65 wt.%/day.

NNECO has determined that the overall effect of increasing the time to draw a negative pressure of 0.4 inches water gauge as measured at the 24'6" elevation of the auxiliary building from 60 seconds to 120 seconds and reducing the containment integrated leakage rates at the design basis pressure of 0.65 wt.%/day to 0.30 wt.%/day was to reduce the calculated doses. Previously, the EAB [exclusion area boundary] thyroid and whole body doses as documented in the Millstone Unit No. 3 FSAR [Final Safety Analysis Report] were calculated to be 150 rem and 19.5 rem, respectively, while the previously docketed LPZ [low population zone] doses to the thyroid and whole body were calculated to be 3.16 rem and 3.5 rem, respectively. Utilizing the proposed revisions and the revised application of containment recirculation spray DF [decontamination factor], the EAB thyroid and whole body doses were calculated to be 141 rem and 9.4 rem, respectively, and the LPZ thyroid and whole body doses were calculated to be 29.8 rem and 1.7 rem, respectively. It was also concluded that the totalcuries of each iodine and noble gas isotope is less over each time period for this analysis than for the current analysis of record. This indicates that the control room and technical support center doses will be lower.

The proposed change to delineate the equipment required to comprise an operable SLCRS in the LCO [limiting condition for operation] for Technical Specification 3.6.6.1 would impose an additional restriction on the operation of Millstone Unit No. 3.

The proposed change to delineate the equipment necessary to comprise an operable ABFS in the LCO for Technical Specification 3.7.9, and the proposed change to require compliance with the action statements of Technical Specification 3.6.6.1 when an ABFS is declared inoperable in the action statements for Technical Specification 3.7.9, will impose additional restrictions on the operation of Millstone Unit No. 3. The proposed revision to Bases Section 3/4.7.9 will ensure that the basis and the LCO for Technical Specification 3.7.9, are consistent with each other.

The proposal to replace the phrase "a halogenated hydrocarbon refrigerant" denoted in Technical Specification Surveillances 4.6.6.1.f, 4.7.7.g, and 4.7.9.f with the phrase "an acceptable" will not change any of the acceptance criteria for the charcoal filter leak rate test. The changes are being proposed to permit Millstone Unit No. 3 to cope with the future ban of certain halogenated hydrocarbons. Because the changes will not impact the assumed efficiency of the charcoal filters, the calculated dose consequences of any postulated accident will not be affected.

The proposal to rename definition section 1.12 as "SECONDARY CONTAINMENT BOUNDARY," and the resultant changes to Technical Specifications 3.6.1.2.c, 3.6.6.2, 3.6.6.3, and 4.6.6.3, Table 3.6–1, and Bases Section 3/4.6.6.2, and 3/4.6.6.3 are editorial in nature. They do not have any safety impact. At this time removal of the SLCRS operability requirement from definition 1.12 will be denied, and will be reviewed in a future licensing action.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes do not compromise the ability of the SLCRS and ABFS to mitigate the consequences of an accident. A FEMA [failure modes and effects analysis/analyses] confirmed that the design changes implemented do not introduce any new single failure vulnerabilities. The proposes changes do not introduce any new or unique operational modes or accident precursors. Therefore, the proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

3. Involve a significant reduction in a margin of safety.

NNECO has determined that the overall effect of increasing the time to draw a negative pressure of 0.4 inches water gauge as measured at the 24'–6" elevation of the auxiliary building from 60 seconds to 120 seconds and reducing the containment integrated leakage rates at the design basis

pressure of 0.65 wt.%/day to 0.3 wt.%/day was to reduce the calculated doses. Previously the EAB thyroid and whole body doses were calculated to be 150 rem and 19.5 rem, respectively, while the previously docketed LPZ doses to the thyroid and whole body were calculated to be 31.6 rem and 3.5 rem, respectively. Utilizing the proposed revisions and the revised application of containment recirculation spray DF, the EAB thyroid and whole body doses were calculated to be 141 rem and 9.4 rem, respectively. The LPZ thyroid and whole body doses were calculated to be 29.8 rem and 1.7 rem, respectively. Therefore, the proposed changes do not involve a significant reduction in a margin of safety. On the contrary, the proposed changes would slightly increase the margin of safety as gauged by the reduction in the calculated EAB and LPZ thyroid and whole body doses and the reduction of the total curies of each iodine and noble gas isotope for the subject time frames. Further, there is no other parameter affected by this proposed amendment for which it can be concluded that the proposed changes result in a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this notice, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written coments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 13, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic License Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intents to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final termination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz, Director, Project Directorate I–4: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 4, 1993, as supplemented November 4, 1993, which are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Dated at Rockville, Maryland, this 5th day of November 1993.

For the Nuclear Regulatory Commission.

Vernon L. Rooney,

Senior Project Manager, Project Directorate I–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–27834 Filed 11–10–93; 8:45 am]

BILLING CODE 7590–01–M

RAILROAD RETIREMENT BOARD

Agency Forms Submitted for OMB Review

SUMMARY: In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the Railroad Retirement Board has submitted the following proposal(s) for the collection of information to the Office of Management and Budget for review and approval.

Summary of Proposal(s)

(1) *Collection title:* Gross Earnings Report.

(2) *Form(s) submitted:* BA–11.

(3) *OMB Number:* 3220–0132.

(4) *Expiration date of current OMB clearance:* Three years from date of OMB approval.

(5) *Type of request:* Extension of the expiration date of a currently approved collection without any change in the substance or in the method of collection.

(6) *Frequency of response:* Monthly, Quarterly, Annually.

(7) *Respondents:* Businesses or other for-profit.

(8) *Estimated annual number of respondents:* 471.

(9) *Total annual responses:* 482.

(10) *Average time per response:* .684647 hours.

(11) *Total annual reporting hours:* 330.

(12) *Collection description:* Section 7(c)(2) of the RR Act requires a financial interchange between the OASDHI trust funds and the railroad retirement account. The collection obtains gross earnings of railway employees on a 1% basis. The information will be used for determining the amount which would place the OASDHI trust funds in the position they would have been if railroad service had been covered by the Social Security and FIC Acts.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the form and supporting documents can be obtained from Dennis Eagan, the agency clearance officer (312–751–4693). Comments regarding the information collection should be addressed to Ronald J. Hodapp, Railroad Retirement Board, 844 North Rush Street, Chicago, Illinois 60611–2092 and the OMB reviewer, Laura Oliven (202–395–7316), Office of Management and Budget, room 3002, New Executive Office Building, Washington, DC 20503.

Dennis Eagan,

Clearance Officer.

[FR Doc. 93–27773 Filed 11–10–93; 8:45 am]

BILLING CODE 7905–01–M

RESOLUTION TRUST CORPORATION

Coastal Barrier Improvement Act; Property Availability; Wyemoor/Harbor Point, Wicomico County, MD, Buckeystown/Dudrow, Frederick County, MD

AGENCY: Resolution Trust Corporation.

ACTION: Notice.

SUMMARY: Notice is hereby given that the properties known as Wyemoor/Harbor Point, located in Wicomico County, and Buckeystown/Dudrow, located in Frederick County, Maryland, are affected by Section 10 of the Coastal Barrier Improvement Act of 1990 as specified below.

DATES: Written notices of serious interest to purchase or effect other transfer of the properties may be mailed or faxed to the RTC until February 10, 1994.

ADDRESSES: Copies of detailed descriptions of the properties, including maps, can be obtained from or are available for inspection by contacting the following person: Mr. Daniel H. Hummer, Resolution Trust Corporation, Atlanta Field Office, 245 Peachtree Center Avenue NE., Suite 1100, Atlanta, GA 30303, (404) 230–6594; Fax (404) 225–5092.

SUPPLEMENTARY INFORMATION: The Wyemoor/Harbor Point property is located off Pemberton Road in the southeast quadrant of Salisbury, Maryland. The property fronts the Wicomico River, contains an undeveloped floodplain, wetlands, and is adjacent to Pemberton Historical Park which is managed by the County of Wicomico. The Wyemoor/Harbor Point property consists of approximately 140 acres of undeveloped land and primarily unfinished residential lots. The property is within the Chesapeake Bay Critical Area and nesting habitat for the federally-listed endangered bald eagle is also adjacent to the site.

The Buckeystown/Dudrow property is located on Buckeystown Pike in Frederick, Maryland, within an ox bow of the Monocacy River. The property contains an undeveloped floodplain, wetlands, and is adjacent to lands managed by the National Park Service. The Buckeystown/Dudrow property

consists of approximately 180 acres of undeveloped land with habitat for several endemic species of wildlife. The properties are covered properties within the meaning of section 10 of the Coastal Barrier Improvement Act of 1990, Public Law 101–591 (12 U.S.C. 1441a–3).

Written notice of serious interest in the purchase or other transfer of property must be received on or before February 10, 1994 by the Resolution Trust Corporation at the appropriate address stated above.

Those entities eligible to submit written notices of serious interest are:

1. Agencies or entities of the Federal government;

2. Agencies or entities of State or local government; and

3. "Qualified organizations" pursuant to section 170(h)(3) of the Internal Revenue Code of 1986 (26 U.S.C. 170(h)(3)).

Written notices of serious interest must be submitted in the following form.

Notice of Serious Interest

Re: [insert name of property] **Federal Register** Publication Date: November 12, 1993.

1. Entity name.

2. Declaration of eligibility to submit Notice under criteria set forth in Coastal Barrier Improvement Act of 1990, Public Law 101–591, section 10(b)(2), (12 U.S.C. 1441a–3(b)(2)), including, for qualified organizations, a determination letter from the Internal Revenue Service regarding the organization's status under section 501(c)(3) of the Internal Revenue Code (26 U.S.C. 170(h)(3)).

3. Brief description of proposed terms of purchase or other offer (e.g., price and method of financing).

4. Declaration of entity that it intends to use the property primarily for wildlife refuge, sanctuary, open space, recreational, historical, cultural, or natural resource conservation purposes.

5. Authorized Representative (Name/Address/Telephone/Fax).

List of Subjects

Environmental protection.

Dated: November 8, 1993.

Resolution Trust Corporation.

William J. Tricarico,

Assistant Secretary.

[FR Doc. 93–27878 Filed 11–10–93; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33156; File No. SR–MCC–93–06]

Self-Regulatory Organizations; Midwest Clearing Corporation; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change To Waive Certain Fees

November 4, 1993.

Pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("Act"),[1] notice is hereby given that on October 12, 1993, the Midwest Clearing Corporation ("MCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR–MCC–93–06) as described in Items I, II, and III below, which Items have been prepared primarily by MCC. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The purpose of the proposed rule change is to waive through December 31, 1993, (1) trade recording fees for trades in the Chicago Stock Exchange's ("CHX") Chicago Basket ("CXM") product[2] and (2) secondary account maintenance fees for market-maker accounts opened for trading in the CXM.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, MCC included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. MCC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

MCC proposes to amend a portion of its Services and Schedule of Charges by waiving certain fees associated with trades in the CXM through December 31, 1993. The text of the proposed rule change is italicized:

ACCOUNT MAINTENANCE

	Charge/month
Participant account maintenance fee:	
(Local and Out of Town Accounts)	$170
(Specialist, Trading and Market Maker Accounts)	160
Secondary account (specialist, trading and market maker accounts)	125
MCC only settlement fee	200

Secondary Account Maintenance Fees for market maker accounts opened for trading in the Chicago Basket ("CXM") shall be waived through December 31, 1993.

Trade Recording

In addition, a discount of $0.15 per trade side recorded will be applied to the trade recording fees for trades of 1,000 shares and larger when a participant exceeds 10,000 recorded trade sides each month (excluding inbound RIO trades).

All trade recording fees shall be waived for trades in the Chicago Basket ("CXM") through December 31, 1993.

The proposed rule change is consistent with section 17A of the Act[3] in that it provides for the equitable allocation of a reasonable fee among MCC's clearing members as required by section 17A(b)(3)(D) of the Act.[4]

(B) Self-Regulatory Organization's Statement on Burden on Competition

MCC does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

(C) Self-Regulatory Organization's Statement of Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule has become effective on filing pursuant to section 19(b)(3)(A)(ii)[5] of the Act and pursuant to Rule 19b–4(e)(2)[6] promulgated

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 4610 [File No. SR–CHX–93–18] (order approving proposed rule change) and 33054 (October 15, 1993), 58 FR 54620 [File No. SR–MCC–93–03] (order approving proposed rule change).

[3] 15 U.S.C. 78q–1 (1988).

[4] 15 U.S.C. 78q–1(b)(3)(D) (1988).

[5] 15 U.S.C. 78s(b)(3)(A)(ii) (1988).

[6] 17 CFR 240.19b–4(e)(2) (1992).

thereunder because the proposed rule change establishes or changes a due, fee, or other charge imposed by MCC. At any time within sixty days of the filing of this proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submissions, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filings will also be available for inspection and copying at the principal offices of MCC. All submissions should refer to File No. SR–MCC–93–06 and should be submitted by December 3, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[7]

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27849 Filed 11–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33157; File No. SR–NSCC–93–11]

Self-Regulatory Organizations; National Securities Clearing Corporation; Notice of Filing of a Proposed Rule Change Relating to Capital and Clearing Fund Requirements for Users of Mutual Fund Services

November 4, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] notice is hereby given that on August 20, 1993, the National Securities Clearing Corporation ("NSCC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared primarily by NSCC. On August 23, 1993, NSCC filed an amendment to the proposed rule change.[2] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The primary purpose of the proposed rule change is to permit NSCC to revise its membership capital standards and its clearing fund requirements for broker-dealers, banks, and other entities that will use only NSCC's mutual fund services.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, NSCC included statements concerning the purpose of and basis for the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. NSCC has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

NSCC is revising its capital standards for broker-dealers and banks that desire to join NSCC to use only NSCC's mutual fund services[3] and for entities that desire to join NSCC to become Fund Members.[4] NSCC also is revising its clearing fund requirements for mutual fund services only users. The revisions are to better reflect the risks and nature of NSCC's mutual fund services, which are not guaranteed by NSCC.

Broker-dealer applicants for NSCC membership that wish to restrict their NSCC activities to the mutual fund services will be required to have $25,000 in excess net capital over the minimum requirement imposed by the Commission or their designated examining authority, whichever is greater. Bank or trust company applicants will be required to have $100,000 in excess capital over the requirement imposed by their state or federal regulatory authority.[5] Members who are accepted under these proposed alternative standards will be required, depending on their level of settlement debits with NSCC, to make deposits to the clearing fund for their mutual fund services activities of $10,000, $20,000 or $40,000 instead of the current $5,000, $10,000, or $20,000, respectively.[6]

Broker-dealer applicants for Fund Member status who distribute shares for an investment company with assets under management of $500,000 or more will be required, among other things, to have $25,000 in excess net capital over the requirement imposed by the Commission or their designated examining authority, whichever is greater. Applicants that distribute shares for an investment company with assets under management of less than $500,000 will be required to have $50,000 in excess net capital. Investment company applicants will be permitted to become Fund Members provided that they have a minimum of $100,000 in assets under management.

NSCC believes that the proposed rule change is consistent with the requirements of section 17A of the Act and the rules and regulations thereunder. The proposed rule change will promote the efficient clearance and settlement of mutual fund transactions by expanding the number of members eligible to clear and settle their mutual fund transactions through NSCC.

B. Self-Regulatory Organization's Statement on the Burden on Competition

NSCC does not believe that the proposed rule change will impose any burden on competition.

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[7] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s (1988).

[2] The amendment corrected typographical errors in the original filing.

[3] NSCC's mutual fund services are set forth in NSCC Rule 52, "Mutual Fund Service."

[4] Entities qualifying as Fund Members are governed primarily by NSCC Rule 51, "Fund Member," and Addendum I, "Standards of Financial Responsibility and Operational Capacity for Fund Members" of NSCC Rules and Procedures.

[5] The proposed rule change also will change the definition of the term "Mutual Fund Services Broker-Dealer" to "Mutual Fund Services Member" in order to include broker-dealers, banks, trust companies, and other entities as members whose activities are limited to the mutual fund services at NSCC.

[6] NSCC's clearing fund formula is set forth in Part XV of NSCC's Procedures. Pursuant to proposed Section A.I. (b)(ii) of Part XV, a member accepted for membership under the proposed mutual fund services only standards will have a clearing fund requirement of $10,000 if its daily settlement debits are no more than $100,000, $20,000 if its daily settlement debits are no more than $500,000, and $40,000 if its daily settlement debits are more than $500,000.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

NSCC has met with the Investment Company Institute ("ICI") regarding the proposed membership changes. NSCC has been advised that the ICI is supportive of this endeavor. NSCC has received no written comment on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within thirty-five days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to ninety days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-referenced self-regulatory organization.

All submissions should refer to File No. SR–NSCC–93–11 and should be submitted by December 3, 1993.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27850 Filed 11–10–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33161; File No. SR–NYSE–93–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to Additions to the "List of Exchange Rule Violations and Fines Applicable Thereto Pursuant to Rule 476A"

November 5, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 7, 1993, the New York Stock Exchange, Inc. ("NYSE or "Exchange") filed with the securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

This proposal would revise the Rule 476A Violations List for imposition of fines for minor violations of rules and/or policies by adding to the list Exchange procedures with respect to entry and cancellation of market-at-the-close ("MOC") orders on expiration days (*i.e.*, expiration Fridays or the day on which Quarterly Index options expire).[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Rule 476A[2] provides that the Exchange may impose a fine, not to exceed $5,000, on any member, member organization, allied member, approved person, or registered or non-registered employee of a member or member organization for a minor violation of certain specified Exchange rules.

The purpose of the Rule 476A procedure is to provide for a response to a rule violation when a meaningful sanction is appropriate but when initiation of a disciplinary proceeding under Rule 476 is not suitable because such a proceeding would be more costly and time-consuming than would be warranted given the minor nature of the violation. Rule 476A provides for an appropriate response to minor violations of certain exchange rules while preserving the due process rights of the party accused through specified, required procedures. The list of rules which are eligible for 476A procedures specifies those rule violations which may be the subject of fines under the rule and also includes a schedule of fines.

In SR–NYSE–84–27, which initially set forth the provisions and procedures of Rule 476A, the Exchange indicated it would amend the list of rules from time to time, as it considered appropriate, in order to phase in the implementation of

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[1] The NYSE also has requested approval, under Rule 19d–1(c)(2), to amend its Rule 19d–1 Minor Rule Violation Enforcement and Reporting Plan to include the MOC policy. See letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Sharon Lawson, Assistant Director, Exchange and Options Regulation, Division of Market Regulation, Commission, dated October 5, 1993.

[2] Rule 476A was approved by the Commission on January 25, 1985 in Securities Exchange Act Release No. 21688, 50 FR 5025 (February 5, 1985). Subsequent additions of rules to the Rule 476A Violations List were made in: Securities Exchange Act Release No. 22037 (May 14, 1985), 50 FR 21008 (May 21, 1985); Securities Exchange Act Release No. 22415 (September 17, 1985, 50 FR 38600 (September 23, 1985); Securities Exchange Act Release No. 22490 (October 2, 1985), 50 FR 41084 (October 8, 1985); Securities Exchange Act Release No. 23104 (April 11, 1986), 51 FR 13307 (April 18, 1986); Securities Exchange Act Release No. 24985 (October 5, 1987), 52 FR 41643 (October 29, 1987); Securities Exchange Act Release No. 25763 (May 27, 1988), 53 FR 20925 (June 7, 1988); Securities Exchange Act Release No. 27878 (April 4, 1990), 55 FR 13345 (April 10, 1990); Securities Exchange Act Release No. 28003 (May 8, 1990), 55 FR 20004 (May 14, 1990); Securities Exchange Act Release No. 28505 (October 2, 1990), 55 FR 41288 (October 10, 1990); Securities Exchange Act Release No. 28995 (March 21, 1991), 56 FR 12967 (March 28, 1991); Securities Exchange Act Release No. 30280 (January 22, 1992), 57 FR 3452 (January 29, 1992); Securities Exchange Act Release No. 30536 (March 31, 1992), 57 FR 12357 (April 9, 1992); Securities Exchange Act Release No. 32421 (June 7, 1993), 58 FR 32973 (June 14, 1993).

Rule 476A as experience with it was gained.

The Exchange is presently seeking approval to add to the List of Rules subject to possible imposition of fines under Rule 476A procedures failure by members or member organizations to adhere to the procedures for entry and cancellation of MOC orders on expiration days. These procedures, which have been filed with and approved by the Commission,[3] require that MOC orders must be entered pursuant to certain time frames and only under certain conditions. For example, MOC orders must be entered on the Exchange by 3:40 p.m. on expiration days if they are related to a strategy including any stock index future, stock index option or option on stock index future in expiring contracts. Under the procedures MOC orders in so-called pilot stocks (the 50 most highly capitalized S&P 500 stocks and any component stocks of the Major Market Index that are not included in this group of 50) may only be entered after 3:40 p.m. if they offset a previously published MOC order imbalance of 50,000 shares or more. Similarly, expiration day procedures require that no MOC orders in any stocks may be cancelled after 3:40 p.m. Violations of these policies could include late entry of MOC orders, entry of MOC orders which do not offset a published imbalance of 50,000 shares or more in a pilot stock or an improper cancellation of a MOC order

The MOC order entry and cancellation procedures are announced to members and member organizations through an Information Memo issued approximately one week before such expiration day.

The purpose for the proposed change to Rule 476A is to facilitate the Exchange's ability to induce compliance with all aspects of the above-cited procedures.

The Exchange believes failure to comply with the requirements of these procedures should be addressed with an appropriate sanction and seeks Commission approval to add violations of these requirements to the Rule 476A List.

2. Statutory Basis

The proposed rule change will advance the objectives of section 6(b)(6) of the Act in that it will provide a procedure whereby member organizations can be "appropriately disciplined" in those instances when a rule violation is minor in nature, but a sanction more serious than a warning or cautionary letter is appropriate. The proposed rule change provides a fair procedure for imposing such sanctions, in accordance with the requirements of sections 6(b)(7) and 6(d)(1) of the Act.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

The Exchange has neither solicited nor received written comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–35 and should be submitted by December 3, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27851 Filed 11–10–93; 8:45 am]

BILLING CODE 8010–01–M

[3] See, for example, Securities Exchange Act Release No. 32868 (September 10, 1993), 58 FR 48687 (September 17, 1993).

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2690]

California; Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on October 28, 1993 and an amendment thereto on the same date, I find that the Counties of Los Angeles, Orange, Riverside, San Bernardino, San Diego, and Ventura in the State of California constitute a disaster area as a result of damages caused by wildland fires beginning on October 26, 1993 and continuing. Applications for loans for physical damage may be filed until the close of business on December 27, 1993, and for loans for economic injury until the close of business on July 28, 1994, at the address listed below: U.S. Small Business Administration, Disaster Area 4 Office, P.O. Box 13795, Sacramento, CA 95853–4795, or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the following contiguous counties may be filed until the specified date at the above location: Imperial, Inyo, Kern, and Santa Barbara Counties in California; La Paz and Mohave Counties in Arizona; and Clark County in Nevada.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.00
Businesses and non-profit organizations without credit available elsewhere	4.00
Others (including Non-profit organizations) with credit available elsewhere	7.125
For economic injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 269005. For economic injury the numbers are 809600 for California; 809700 for Arizona; and 809800 for Nevada.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: November 3, 1993.

Bernard Kulik,

Assistant Administrator for Disaster Assistance.

[FR Doc. 93–27794 Filed 11–10–93; 8:45 am]

BILLING CODE 6025–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

[CGD 93–057]

Amendment of Oil Discharge Criteria to Annex I of the Protocol of 1978 Relating to the International Convention for the Pollution of Prevention From Ships, 1973 (MARPOL 73/78)

AGENCY: Coast Guard, DOT.

ACTION: Notice.

SUMMARY: On March 6, 1992, the 32nd session of the International Maritime Organization's (IMO) Marine Environment Protection Committee (MEPC 32) adopted a resolution which established more stringent criteria for controlling the discharge of oil or oil-water from a ship's machinery bilges or discharge of an oily residue from a ship's cargo tanks. The resolution was accepted by IMO and became effective on July 6, 1993. However, IMO has recognized that some existing vessels will not be able to achieve compliance by that time. This notice provides information on the amended requirements and the enforcement policies to be applied to vessels making good faith efforts to have the necessary equipment installed.

FOR FURTHER INFORMATION CONTACT: Mr. Robert M. Gauvin, Project Manager, Merchant Vessel Inspection and Documentation Division (G–MVI–2), U.S. Coast Guard Headquarters, 2100 Second Street SW., Washington, DC 20593–0001, telephone (202) 267–1181.

SUPPLEMENTARY INFORMATION: More stringent oil discharge criteria for ship's oil discharge monitors and oily-water separating systems were adopted by IMO in March 1992. The revised amendments of Annex I to the International Convention for the Prevention of Pollution from Ships (MARPOL 76/78), were published as Resolution MEPC.51(32) (hereafter referred to as "the resolution") and became effective July 6, 1993. The resolution, as adopted at MEPC 32, appears as an appendix to this notice for the convenience of the reader.

For the purpose of these amendments, an "existing ship" is one delivered before July 6, 1993. Ships delivered after July 6, 1993, are required to meet all of the resolution's upgraded discharge criteria immediately upon delivery. Existing ships are not required to meet the upgraded discharge criteria until July 6, 1998, with exception of the instantaneous discharge rates for tankers. Under the resolution, existing oil tankers must upgrade the equipment that controls their instantaneous discharge rate of oil residue or oily-water to achieve a discharge rate not exceeding 30 liters per nautical mile, by July 6, 1993.

The deadline for existing tankers to meet the upgraded criteria for the rate of discharge has been one of major concern for most tanker owners and operators. Even though the owners and operators of existing tankers have attempted to meet the new standards, the equipment manufacturers and servicing representatives have not been able to keep up with the demand to upgrade systems or service them by the IMO deadline.

This concern was expressed at IMO during the MEPC's 34th session, July 5–9, 1993. While many countries supported accepting a one to three year period of grace for installing equipment needed to meet the 30 liters per mile discharge, others noted that a period of grace provision was rejected by MEPC at the time of adoption of the resolution and that the amendments had been promulgated in their national regulations without allowing an exemption. MEPC 34 concluded, after discussions, that no grace period could be granted unless such period of grace was provided for in an amendment to MARPOL 73/78 with entry into force before July 6, 1993. The final report stated: "Recalling its earlier actions taken on ships which are not fitted with the oil discharge monitoring and control equipment complying with regulation 15 because of the non-availability of such equipment on the market, MEPC 34 agreed on the following understanding:

1. No relaxation of the discharge standards should be allowed because of non-fitting of the required equipment;

2. The Administration should urge shipowners to fit the required equipment as soon as possible but not later than:

2.1 6 July 1994 for oil discharge monitoring and control systems for 30 liters per mile discharge;

2.2 6 July 1998 for 15 parts per million (ppm) oil filtering equipment to be fitted on ships which have been hereto been exempted under old regulation 16(3)(a); provided that it is satisfied that such equipment or component is not readily available and the shipowner has taken steps to the installation of the necessary equipment, e.g. by the presentation of the purchase order;

3. Where appropriate and so approved by the Administration, the ship's Record of Equipment should indicate that the Administration has accepted non-fitting of the equipment which may be accepted for the purpose of the port State control; and

4. When undertaking proceedings against the illegal discharges under article 4, States may take account of the fact that the discharge in excess of the Convention requirements may have resulted from the absence of the required equipment."

The U.S. implements Annex I of MARPOL 73/78 by regulations published in title 33, Code of Federal Regulations (CFR), parts 151, 155, 157, and 158. These regulations were not amended while awaiting IMO's action concerning possible delayed implementation of the changes made by the resolution. A regulatory project to conform these regulations to the existing provisions of Annex I is underway. Until these regulations are promulgated, the Coast Guard has instructed its field offices to give effect to the understanding reached by MEPC at its July 1993 meeting. Owners and operators of existing U.S. flag tankers that are unable to fully comply with the 30 liter per mile discharge rate should contact the Coast Guard Officer-In-Charge, Marine Inspection, who issued the vessel's International Oil Pollution Prevention (IOPP) Certification, to establish the status of the vessel under this understanding.

Appendix—Amendments to the Discharge Criteria of Annex I of MARPOL 73/78

Resolution MEPC.51(32) was adopted by IMO Marine Environment Protection Committee on March 6, 1992.

The regulations of annex I are amended as follows:

1. Regulation 9

1 The existing text of paragraph (1)(a)(iv) is replaced by the following:

(iv) The instantaneous rate of discharge of oil content does not exceed 30 liters per nautical mile;.

.2 The existing text of paragraph (1)(b) is replaced by the following:

(b) From a ship of 400 tons gross tonnage and above other than an oil tanker and from machinery space bilges excluding cargo pump-room bilges of an oil tanker unless mixed with oil cargo residue:

(i) The ship is not within a special area;

(ii) The ship is proceeding en route;

(iii) The oil content of the effluent without dilution does not exceed 15 parts per million; and

(iv) The ship has in operation equipment as required by resolution 16 of this annex.

.3 Paragraph (4) is amended by deleting the entire second sentence, including subitems (a)—(d).

.4 A new paragraph (7) is added as follows:

(7) In the case of a ship, referred to in regulation 16(6) of this annex, not fitted with equipment as required by regulation 16(1) or 16(2) of this annex, the provisions of paragraph 1(b) of this regulation will not apply until 6 July 1998 or the date on which the ship is fitted with such equipment, whichever is the earlier. Until this date any discharge from machinery space bilges into the sea of oil or oily mixtures from such a ship shall be prohibited except when all the following conditions are satisfied:

(a) The oily mixture does not originate from the cargo pump-room bilges;

(b) The oily mixture is not mixed with oil cargo residues;

(c) The ship is not within a special area;

(d) The ship is more than 12 nautical miles from the nearest land;

(e) The ship is proceeding en route;

(f) The oil content of the effluent is less than 100 parts per million; and

(g) The ship has in operation oily-water separating equipment of a design approved by the Administration, taking into account the specification recommended by the Organization.*

A footnote should be added to paragraph (7)(g) as follows:

* Refer to the Recommendation on International Performance and Test Specifications for Oily Water Separating Equipment and Oil Content Meters adopted by the Organization by resolution A.393(X).

2. Regulation 10

.1 Paragraph (2)(b) is amended to read:

(b) Any discharge into the sea of oil or oily mixture from a ship of less than 400 tons gross tonnage, other than an oil tanker, shall be prohibited while in a special area, except when the oil content of the effluent without dilution does not exceed 15 parts per million.

.2 Paragraph (3)(b)(v) is amended by changing the cross-reference therein from 16(7) to 16(5).

3. Regulation 16

The existing text of this regulation is replaced by the following:

Regulation 16

Oil discharge monitoring and control system and oil filtering equipment

(1) Any ship of 400 tons gross tonnage and above but less than 10,000 tons gross tonnage shall be fitted with oil filtering equipment complying with paragraph (4) of this regulation. Any such ship which carries large quantities of oil fuel shall comply with paragraph (2) of this regulation or paragraph (1) of regulation 14.

(2) Any ship of 10,000 tons gross tonnage and above shall be provided with oil filtering equipment, and with arrangements for an alarm and for automatically stopping any discharge of oily mixture when the oil content in the effluent exceeds 15 parts per million.

(3) (a) The Administration may waive the requirements of paragraphs (1) and (2) of this regulation for any ship engaged exclusively on voyages within special areas provided that all of the following conditions are complied with:

(i) The ship is fitted with a holding tank having a volume adequate, to the satisfaction of the Administration, for the total retention on board of the oily bilge water;

(ii) All oily bilge water is retained on board for subsequent discharge to reception facilities;

(iii) The Administration has determined that adequate reception facilities are available to receive such oily bilge water in a sufficient number of ports or terminals the ship calls at;

(iv) The International Oil Pollution Prevention Certificate, when required, is endorsed to the effect that the ship is exclusively engaged on the voyages within special areas; and

(v) The quantity, time, and port of the discharge are recorded in the Oil Record Book.

(b) The Administration shall ensure that ships of less than 400 tons gross tonnage are equipped, as far as practicable, to retain on board oil or oily mixtures or discharge them in accordance with the requirements of regulation 9(1)(b) of this annex.

(4) Oil filtering equipment referred to in paragraph (1) of this regulation shall be of a design approval by the Administration and shall be such as will ensure that any oily mixture discharged into the sea after passing through the system has an oil content not exceeding 15 parts per million. In considering the design of such equipment, the Administration shall have regard to the specification recommended by the Organization.*

(5) Oil filtering equipment referred to in paragraph (2) of this regulation shall be of a design approved by the Administration and shall be such as will ensure that any oily mixture discharged into the sea after passing though the system or systems has an oil content not exceeding 15 parts per million. It shall be provided with alarm arrangements to indicate when this level cannot be maintained. The system shall also be provided with arrangements such as will ensure that any discharge of oily mixtures is automatically stopped when the oil content of the effluent exceeds 15 parts per million. In considering the design of such equipment and arrangements, the Administration shall have regard to the specification recommended by the Organization.*

(6) For ships delivered before 6 July 1993 the requirements of this regulation shall apply by 6 July 1998, provided that these ships can operate with oily-water separating equipment (100 ppm equipment).

A footnote should be added to paragraphs (4) and (5) as follows:

* Refer to the Recommendation on International Performance and Test Specifications for Oily-Water Separating Equipment and Oil Content Meters adopted by the Organization by resolution A.393(X).

4. Regulation 21

.1 Subparagraph (c) is amended by deleting the first five words, i.e. "in any special area and".

.2 Subparagraph (d) is deleted.

Dated: November 4, 1993.

R.C. North,

Captain, U.S. Coast Guard Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93-27846 Filed 11-10-93; 8:45 am]

BILLING CODE 4910-14-M

Federal Aviation Administration

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues.

DATES: The meeting will be held on November 30, 1993, at 9 a.m. Arrange for oral presentations by November 19, 1993.

ADDRESSES: The meeting will be held at the Regional Airline Association (RAA), 1101 Connecticut Avenue, NW., third floor conference room, Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Nininger, Small Airplane Directorate (ACE-112), 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426-5688.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463; 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be held on November 30, 1993, at the Regional Airline Association (RAA), 1101 Connecticut Avenue, NW., Washington, DC 20036. The agenda for the meeting will include:

- Opening Remarks.
- Status Reports From The Accelerated Stalls, Fuel Indicators, and FAR/JAR Harmonization Working Groups.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by November 19, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the Assistant Executive Director or by bringing the copies to him at the meeting. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on October 28, 1993.

Michael K. Dahl,

Acting Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–27800 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–M

Proposed Modification of the Dallas-Fort Worth, TX, Class B Airspace Area; Public Meetings

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meetings; correction.

SUMMARY: This document corrects the time of two informal airspace meetings in Mesquite, TX, and North Richland Hills, TX, published in the **Federal Register** on October 20, 1993, (58 FR 54073).

FOR FURTHER INFORMATION CONTACT: Alvin DeVane, Southwest Regional Office, ASW–530, telephone: (817) 624–5535.

SUPPLEMENTARY INFORMATION: In **Federal Register** Document 93–25717 published on October 20, 1993, (58 FR 54073), the time previously published for the meetings to be held on Wednesday, December 8, 1993, in mesquite, TX, and Monday, December 13, 1993, in North Richland Hills, TX, was "9:00 p.m." this should be changed to "7:30 p.m."

Issued in Washington, DC, on November 3, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–27797 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Townships of Manns Harbor and Manteo, Dare County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed highway project within the townships of Manns Harbor and Manteo and a new crossing of Croatan Sound, Dare County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Mr. Roy C. Shelton, Operations Engineer, Federal Highway Administration, 310 New Bern Avenue, Suite 410, Raleigh, North Carolina 27601, Telephone 919/856–4350.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperative with the North Carolina Department of Transportation (NCDOT), will prepare an environmental impact statement (EIS) on proposed improvements to US 64–264. The proposed action will be the improvement of US 64–264 from the intersection of US 64 and US 264 west of Manns Harbor to the intersection of US 64–264 and NC 345 south of Manteo. This facility is a part of the planned improvements to US 64 from the piedmont to the coast to ease traffic congestion during peak tourist season.

Alternatives under consideration include: (1) The "no-build"; (2) improving existing US 64–264 through Manns Harbor and Manteo, (3) improvements of existing US 64–264 through Manns Harbor with a partial bypass of Manteo on Roanoke Island, and (4) improvements of existing US 64–264 through Manns Harbor with a new crossing of the Croatan Sound south of the existing crossing.

Letters describing the proposed action and soliciting comments are being sent to appropriate Federal, State and local agencies. Citizens Informational Workshops and meetings with local officials and neighborhood groups will be held in the study area. Public hearings will also be held. Information on the time and place of the public hearings will be provided in the local news media. The draft EIS will be available for public and agency review and comments at the time of the hearing. No formal scoping meeting is planned at this time.

To ensure the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments and questions concerning the proposed action should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Issued on: November 2, 1993.

Roy C. Shelton,

Operations Engineer, Raleigh, North Carolina.

[FR Doc. 93–27774 Filed 11–10–93; 8:45 am]

BILLING CODE 4910–22–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 5, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Financial Management Service

OMB Number: 1510–0013
Form Number: TFS 2208
Type of Review: Extension
Title: States Where Licensed for Surety
Description: Information is collected to report, in Treasury Circular 570, Surety Licenses of Treasury Certified companies.
Respondents: Businesses or other for-profit, Small businesses or organizations
Estimated Number of Respondents: 300
Estimated Burden Hours Per Response: 1 hour
Frequency of Response: Annually
Estimated Total Reporting Burden: 300 hours
Clearance Officer: Jacqueline R. Perry (301) 344–8577, Financial Management Service, 3361–L 75th Avenue, Landover, MD 20785.
OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive

Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93-27856 Filed 11-10-93; 8:45 am]

BILLING CODE 4810-35-P

Public Information Collection Requirements Submitted to OMB for Review

November 5, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, Room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545-1146

Regulation ID Number: PS-54-89 Final

Type of Review: Extension

Title: Applicable Conventions Under the Accelerated Cost Recovery System

Description: The regulations describe the time and manner of making the notation required to be made on Form 4562 under certain circumstances when the taxpayer transfers property in certain non-recognition transactions. The information is necessary to monitor compliance with the section 168 rules.

Respondents: Farms, Businesses or other for-profit, Small businesses or organizations

Estimated Number of Respondents: 700

Estimated Burden Hours Per Respondent: 6 minutes

Frequency of Response: Annually

Estimated Total Reporting Burden: 70 hours

Clearance Officer: Garrick Shear (202) 622-3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.

OMB Reviewer: Milo Sunderhauf (202) 395-6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93-27857 Filed 11-10-93; 8:45 am]

BILLING CODE 4830-01-P

Customs Service

[T.D. 93-91]

Revocation of Customs Broker License

AGENCY: U.S. Customs Service, Department of the Treasury.

ACTION: General notice.

SUMMARY: Notice is hereby given that on September 30, 1993, the Secretary of the Treasury, pursuant to section 641, Tariff Act of 1930, as amended, (19 U.S.C. 1641), and § 111.45(a) of the Customs Regulations, as amended (19 CFR 111.45(a)), ordered the revocation of the license (No. 3203) issued to Richard Hanebrink in the St. Louis Customs District to conduct Customs business.

Dated: November 8, 1993.

Jerry Laderberg,

Director, Office of Trade Operations.

[FR Doc. 93-27684 Filed 11-10-93; 8:45 am]

BILLING CODE 4820-02-M

Federal Law Enforcement Training Center

Rechartering of the Advisory Committee to the National Center for State and Local Law Enforcement Training

AGENCY: Federal Law Enforcement Training Center, Department of the Treasury.

ACTION: Notice of determination of necessity for renewal of the advisory Committee to the National Center for State and Local Law Enforcement Training.

SUMMARY: It is in the public interest to continue the existence of the Advisory Committee to the National Center for State and Local Law Enforcement Training.

The Federal Law Enforcement Training Center (FLETC), Department of the Treasury, pursuant to the Federal Advisory Committee Act of October 6, 1972, Public Law 92-463, as amended, and with the approval of the Secretary of the Treasury, announces the renewal of the charter of the Advisory Committee to the National Center for State and Local Law Enforcement Training. This determination follows consultation with the Committee Management Secretary, General Services Administration.

PURPOSE: The primary purpose of the committee is to provide to a forum for discussion and interchange between a broad cross-section of representatives for the law enforcement community and related training institutions on training issues and needs. Considering that there are over 40,000 individual police departments throughout the country, the advice emanating from this exchange is very important to the Director of the Federal Law Enforcement Training Center and the Director of the National Center for State and Local Law Enforcement Training (National Center). The Committee's advice is critical to ensuring that programs developed and offered by the National Center are meeting the unique and specialized needs of the State and local law enforcement community and enhancing the networking between Federal, State and local agencies. This networking is essential to an efficient and effective overall system.

Although FLETC representatives participate in the training committee activities of the major police membership associations, no forum exists which provides the broad representation required to meet the needs of the National Center. The uniqueness of the program requires an appropriately selected and specifically dedicated group.

The committee advises the Director of FLETC and the Director of the National Center for State and Local Law Enforcement Training on policy formulation, training needs, curriculum and course content, student admission and evaluation. There is no question that the committee's input has been very instrumental in the successes enjoyed to this point. Resources have been committed only to those programs which meet unique needs of the State and local law enforcement community. All programs are well attended, and critiques and evaluations are quite positive. In addition, State and local agencies have actively participated in the development and delivery of the programs by providing personnel as subject matter experts, course developers and instructors. The programs offered have been developed only after a thorough screening process to ensure that the limited resources available are being committed most productively.

TERMINATION DATE: The services of the committee are expected to be needed for an indefinite period of time. No termination date has been established which is less than two years from the date the charter is filed.

Accordingly, I hereby determine, pursuant to the provisions of the Federal Advisory Committee Act, Public Law 92–463, as amended, that continuation of the Advisory Committee to the National Center for Local Law Enforcement Training for a two-year period, is in the public interest.

Dated: November 4, 1993.

George Muñoz,

Assistant Secretary (Management).

[FR Doc. 93–27858 Filed 11–10–93; 8:45 am]

BILLING CODE 4810–37–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 217
Friday, November 12, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL ELECTION COMMISSION

DATE AND TIME: Tuesday, November 16, 1993 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC.

STATUS: This meeting will be closed to the public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.

DATE AND TIME: Thursday, November 18, 1993 at 10 a.m.

PLACE: 999 E Street, NW., Washington, DC (Ninth floor.)

STATUS: This meeting will be open to the public.

ITEMS TO BE DISCUSSED:

Future Meetings.
Implementing Directives for the Interim Ex Parte Communications Regulations.
FY 1994 Management Plan (continued from meeting of November 4, 1993).
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–28026 Filed 11–9–93; 3:12 pm]

BILLING CODE 6715–01–M

FEDERAL MINE SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10 a.m., Thursday, November 18, 1993.

PLACE: Room 600, 1730 K Street, NW., Washington, DC.

STATUS: Open.

MATTERS TO BE CONSIDERED: The Commission will consider and act upon the following:

1. *Mullins & Sons Coal Co., Inc.*, Docket No. KENT 92–669. (Issues include whether the judge erred in finding that Mullins' violations of safety standards at 30 CFR 75.400 and 75.402 were not the result of its unwarrantable failure to comply with the standards.)

Any person attending this meeting who requires special accessibility features and/or auxiliary aids, such as sign language interpreters, must inform the Commission in advance of those needs. Subject to 29 CFR 2706.150(a)(3) and 2796.160(e).

CONTACT PERSON FOR MORE INFO: Jean Ellen (202) 653–5629/(202) 708–9300 for TDD Relay/1–800–877–8339 for toll free.

Dated: November 8, 1993.

Jean H. Ellen,

Agenda Clerk.

[FR Doc. 93–28012 Filed 11–9–93; 2:22 pm]

BILLING CODE 6735–01–M

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 3:00 p.m., Tuesday, November 16, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551

STATUS: Open.

MATTERS TO BE CONSIDERED:

1. Review of the 1994 budget for the Office of Employee Benefits.
2. Changes to the discount rate for Financial Accounting Standards No. 87 (Retirement Plan) and No. 106 (Post Retirement Welfare Benefits).
3. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC. 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 9, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–27978 Filed 11–9–93; 12:21 pm]

BILLING CODE 6210–01–P

COMMITTEE ON EMPLOYEE BENEFITS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 3:30 p.m., Tuesday, November 16, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed

MATTERS TO BE CONSIDERED:

1. The Committee's agenda will consist of matters relating to (a) The general administrative policies and procedures of the Retirement Plan, Thrift Plan, Long-Term Disability Income Plan, and Insurance Plan for Employees of the Federal Reserve System; (b) general supervision of the operations of the Plans; (c) the maintenance of proper accounts and accounting procedures in respect to the Plans; (d) the preparation and submission of an annual report on the operations of each of such Plans; and (e) the maintenance and staffing of the Office of the Federal Reserve Employee Benefits System; and (f) the arrangement for such legal, actuarial, accounting, administrative, and other services as the Committee deems necessary to carry out the provisions of the Plans. Specific items include: (A) A proposed strategic benefits plan for 1994–1995; (B) 1994 Federal Reserve Bank early retirement proposals; (C) Technical and administrative changes to the System Thrift Plan; and (D) Staff appointment in the Office of Employee Benefits.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 9, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–27979 Filed 00–00–93; 12:21 pm]

BILLING CODE 6210–01–P

NATIONAL SCIENCE FOUNDATION

National Science Board

DATE AND TIME:

November 19, 1993, 9:30 a.m., Closed Session
November 19, 1993, 10:15 a.m., Open Session

PLACE: National Science Foundation, 1800 G Street, NW., Room 540, Washington DC 20550.

STATUS:

Part of this meeting will be open to the public
Part of this meeting will be closed to the public

MATTERS TO BE CONSIDERED:

Friday, November 19, 1993

Closed Session (9:30 a.m.–10:15 a.m.)

—Minutes from October Meeting
—Grants and Contracts

Open Session (10:15 a.m.–11:45 a.m.)

—Minutes from October Meeting
—Chairman's Report
—Director's Report
—Program Approval
—Reports from Committees
—Science & Engineering Indicators Report
—Briefing on S&T in Southeast Asia
—Other Business/Adjourn

Marta Cehelsky,

Executive Officer.

[FR Doc. 93–27945 Filed 11–9–93; 9:30 am]

BILLING CODE 7555–01–M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94–409, that the Securities and Exchange Commission will hold the following meetings during the week of November 8, 1993.

Closed meetings will be held on Tuesday, November 9, 1993, at 2:30 p.m. and on Wednesday, November 10, 1993, at 2:30 p.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(4), (8), (9)(A) and (10) and 17 CFR 200.402(a)(4), (8), (9)(i) and (10), permit consideration of the scheduled matters at closed meetings.

Commissioner Schapiro, as duty officer, voted to consider the items listed for the closed meetings in closed session.

The subject matter of the closed meeting scheduled for Tuesday, November 9, 1993, at 2:30 p.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Opinion.
Regulatory matter regarding financial institution.

The subject matter of the closed meeting scheduled for Wednesday, November 10, 1993, at 2:30 p.m., will be:

Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Karrie McMillian at (202) 272–2400.

Dated: November 9, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27967 Filed 11–9–93; 12:20 pm]

BILLING CODE 8010–01–M

federal register

Friday
November 12, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grant Sanctions; Proposed Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

[Docket No. R-93-1668; FR-3298-P-01]

RIN 2506-AB43

Community Development Block Grant (CDBG) Sanctions

AGENCY: Office of Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule proposes to revise existing regulations governing the imposition of administrative sanctions in the Community Development Block Grant (CDBG) program for entitlement grantees. Its purpose is to establish clear standards for determining what constitutes substantial noncompliance entitling grantees to a hearing before an Administrative Law Judge, and to provide grantees with an informal due process hearing procedure for all other noncompliance cases. In addition, this proposed rule would clarify certain existing regulatory provisions on CDBG performance standards and the Department's review procedures.

DATES: Comment due date: January 11, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410. Comments should refer to the above docket number and title. Facsimile (FAX) comments are not acceptable. A copy of each communication submitted will be available for public inspection and copying between 7:30 a.m. and 5:30 p.m. weekdays at the above address.

FOR FURTHER INFORMATION CONTACT: James R. Broughman, Director, Entitlement Communities Division, room 7282, Department of Housing and Urban Development, 451 Seventh Street, SW, Washington, DC 20410-8000, telephone, (202) 708-1577. The TDD number is (202) 708-2565; (These are not toll-free telephone numbers).

SUPPLEMENTARY INFORMATION: The information collection requirements contained in this proposed rule have been approved by the Office of Management and Budget (OMB), under section 3504(h) of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), and assigned OMB control number 2506-0077.

Background

Title I of the Housing and Community Development Act of 1974, as amended, (42 U.S.C. 5301 *et. seq.*) ("the Act") provides two authorities for addressing performance deficiencies found by HUD under the CDBG program. Section 104(e)(42 U.S.C. 5304(e)) provides that HUD may adjust the amount of annual grants by an appropriate amount based on its determinations concerning a grantee's performance under the program. Under this authority, the HUD regulations now in effect authorize grant conditions based on the grantee taking corrective or remedial actions satisfactory to HUD in cases where it found non-compliance with requirements of the program. Pursuant to 24 CFR 570.910(b)(8), where the grantee did not satisfy the terms of the condition, the Department reserved the right to reduce the grant by an appropriate amount. While section 104(e) of the Act does not provide grantees with a process to contest a grant adjustment, 24 CFR 570.911(a) of the regulations provides that the grantee be given an opportunity for an informal consultation prior to HUD making a grant reduction.

Section 111 of the Act (42 U.S.C. 5311) provides that when the Secretary finds that a grantee has failed substantially to comply with applicable requirements the Secretary shall take one of the following actions until satisfied that there is no longer any such failure to comply:

(1) Terminate payments to the grantee;
(2) Reduce payments to the grantee by an amount equal to the amount that was not expended in accordance with applicable requirements; or
(3) Limit the availability of payments to activities not affected by the failure to comply.

The section further provides that HUD may refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted. Unlike section 104(e), section 111 specifically provides that a grantee must be given opportunity for hearing and establishes the right for a petition for review of the Secretary's action before the United States Court of Appeals. Section 111 of the Act is implemented at 24 CFR 570.913 of the program regulations. The regulation sets forth full formal hearing procedures before an Administrative Law Judge.

In *Kansas City* v. *HUD*, 861 F.2d 739 (D.C. Cir. 1988), 669 F.Supp. 525 (D.D.C. 1982), the City challenged HUD's authority to condition its CDBG grant to redress an alleged violation of a regulatory provision precluding the imposition of special assessments to recover capital costs of a public improvement provided by CDBG funds. The court held that HUD could not condition or reduce the grant in that case without offering a hearing under the provisions of section 111 of the Act. In discussing the decision, the court cited as a consideration that it was clear that the City was no longer imposing such assessments and that the section 104 grant adjustment authority did not extend to the recovery of misspent grant funds for past violations since that was one of the remedies expressly noted under section 111. The Court also noted that the distinction between "substantial" and lesser noncompliance, while not a factor in its decision, could be of significance. HUD has subsequently limited its use of grant conditions to protecting future expenditures against the continuation of detected non-compliance.

In order to make a clear and objective distinction between cases where noncompliance is deemed "substantial," the proposed rule establishes a monetary threshold based on the amount of CDBG dollars involved. The Department considered distinctions based on other factors, such as the magnitude (non-monetary) of the effect on a grantee's program, the intent of the provision violated, the intent of the grantee, or the extent to which intended beneficiaries are affected. It was clearly evident that a monetary threshold provided the only objective measure of substantiality. The proposed rule also establishes the specific procedures HUD will use for the conduct of informal due process hearings where the noncompliance is not substantial and thus not subject to the formal hearing procedure under section 111.

Defining Substantial Noncompliance

Where noncompliance exists, the definition of what is substantial noncompliance can be determinative as to whether section 104(e) (nonsubstantial) or section 111 (substantial non-compliance) will apply. HUD has decided that the factor that should be considered in defining substantial is the dollar amount or percentage of the grantee's annual grant involved. That is, the greater the impact on the grantee's program, the higher the level of protection that should be accorded the grantee. HUD has therefore, defined "substantial" on the basis of the amount of CDBG funds that are or may be affected by the

noncompliance (and thus the amount of CDBG funds that could be lost to the grantee through the imposition of a monetary sanction under the regulations).

For purposes of determining the type of hearing to offer, HUD has therefore decided to equate substantial with a substantial amount of CDBG funds affected by the noncompliance. The Department proposes to establish the lesser of $300,000 or one-fourth of the recipient's grant amount as the threshold for determining whether the noncompliance involves a substantial amount of CDBG funds. HUD reasons that whenever the amount of funds that a grantee may lose through a funding sanction would constitute at least one-fourth of its CDBG grant, it would have an impact on the grantee's CDBG program of a substantial nature. It is also clear that the amount of fund loss can be substantial independent of the proportion of the total grant amount. Accordingly, the Department has established the level of $300,000 as the point at which, regardless of the relationship of the amount of funds at stake to the total grant amount, a loss of funds would have a substantial impact on the grantee's program. Based on HUD's analysis, $300,000 represents slightly more than one-fourth of the median grant under the entitlement CDBG program. This proposed rule incorporates these threshold levels in a revised § 570.913(a) that defines what will constitute substantial noncompliance for purposes of determining which of the hearing procedures outlined elsewhere in the proposed rule will apply in a particular case.

The Department also recognizes that special consideration needs to be given to how such a threshold would be applied for grantees in the entitlement program. Entitlement grantees receive funds each year and have considerable flexibility and discretion as to how they use the funds. There is no front end review by HUD, and grantees are not required to keep records of expenditures by the source year of funds spent. Moreover, with entitlement grantees often carrying out several activities in any given year, there can be more than one type of activity where HUD finds an element of noncompliance. Also, since HUD's authority extends to limiting the availability of funds, there can be cases where the entitlement funds that may be affected by a proposed HUD action will include unexpended funds from one or more grants. Because of these factors, HUD's identification of disallowed costs for entitlement grants will not attempt to associate those costs with a particular year's grant. The proposed rule provides that in applying the threshold for an entitlement grantee, HUD will aggregate the disallowed expenditures from all identified instances of noncompliance occurring within a single program year plus, where applicable, HUD's best estimate of the amount of funds that would be affected for the succeeding year.

An example may help to illustrate how this would work. Consider a case where HUD finds that a grantee's subrecipients have expended a total of $100,000 within a single program year that did not comply with eligibility requirements. Upon review, HUD concludes that the deficiency has resulted because of a failure of the grantee to manage subrecipients in compliance with the regulations. In such a situation, HUD might decide to pursue recovery of the $100,000 in disallowed cost through a grant reduction and issue a notice limiting the availability of future funds so that they may be expended only for activities not involving subrecipients until HUD is satisfied that the grantee will manage subrecipients in compliance with the rules. In determining the hearing process to which such a grantee would be entitled with respect to HUD's proposed action, under the proposed rule the Department would need to identify the estimated amount of funds that may be affected within the next year and add them to the amount of costs disallowed in order to determine whether the aggregate amount meets the threshold for constituting a "substantial amount" of the grantee's funds that would be affected. If the grantee's final statement for the coming year indicates that it plans to provide another $225,000 to subrecipients, HUD would add that amount to the $100,000 for threshold determination purposes. Under the terms of the proposed rule, the resultant $325,000 would be deemed to constitute a substantial amount of funds, entitling the grantee to a hearing before an administrative law judge. (If the aggregate amount had been less than $300,000, it would have been necessary to compare the amount with the grantee's average entitlement grant amount over the past three years in order to determine if the 25 percent threshold were met.)

It should be noted that, under the proposed formulation, any action by HUD that would hold up the award of the grant, such as HUD's decision to challenge a certification that is a prerequisite to receiving a CDBG grant, would automatically be considered to affect a substantial amount of funds. Similarly, in a case where a grantee has failed to submit one or more performance reports as required under the regulations, and as a consequence HUD decides not to award a grant until the grantee resolves the deficiency, the amount of funds affected would be considered to be substantial.

Procedures for Hearings

The Department has made several changes to the rules governing the hearings provided under section 111, particularly in relation to the scope and methods of discovery. The changes are intended to reflect the Department's objective to expedite the hearing process conducted under Section 111 of the Housing and Community Development Act of 1974, as amended (42 U.S.C. 5301 *et. seq*). These changes reflect the Department's commitment to reach prompt and mutual resolutions of CDBG issues by focusing the section 111 hearings on relevant and contested matters. This narrowing of issues is intended to conserve resources for both the Department and CDBG grantees while providing a full and fair opportunity to resolve disputes. Consistent with these objectives is the Department's goal of ensuring that these changes will provide improved program operation and ensure that the administration of the CDBG program reflects the national priorities and objectives as provided by Congress that are set forth in the Act.

The procedures for a hearing before an Administrative Law Judge in the case where HUD determines that there has been substantial noncompliance have been well established in the regulations since the early years of the program. However, the program regulations have not specified procedures for a hearing for HUD actions involving lesser offenses. The proposed rule identifies the nature of, and procedures for, such a hearing at § 570.913(d). The proposed rule also permits a grantee that is entitled to a formal hearing to select an informal due process hearing at its option. HUD has provided for this option because it believes there may be instances where the nature of the issue or the amount of funds at stake is such that the grantee would be reluctant to expend the amount of time, money and effort that would be required to defend itself through the formal hearing process. The proposed rule would provide that a grantee electing an informal due process hearing would have to voluntarily give up its right to a formal hearing on the same issue(s). It should be noted that the agency's decision rendered under the informal hearing procedure is final and non-reviewable.

In addition, to further promote efficiency and economy in the hearing process, the rule provides that the Secretary may require that a section 104(e) informal due process hearing precede a section 111 hearing.

Other Related Changes

In adopting the approach outlined in this rule, the Department also intends to discontinue its use of grant conditions unless these are required by statute. Since HUD would not be able to reduce a grant without offering an opportunity for a hearing, the purpose of a grant condition will now be achieved by a letter advising the grantee of HUD's intention to reduce the grant in the event the grantee fails to correct a deficiency noted in the letter. The use of such a letter in lieu of a grant condition has the advantage that it may be issued at any time, not just at the beginning of the next grant year. Accordingly, this proposed rule would delete § 570.304(d).

The proposed rule would also make other changes to clarify how HUD will consider and carry out its review responsibilities. Amendments for these purposes would thus be made at § 570.900(b)(3), (5), and (6); and § 570.902 (a). A new § 570.907 would be added describing the statutory authorities for enforcing compliance. Section 570.910 would be extensively revised to more clearly identify the corrective and remedial actions HUD may take to settle issues of noncompliance on a voluntary basis, and to more clearly indicate HUD's objectives in selecting particular courses of action under that provision. Section 570.911 would be revised by deleting the authority to reduce an entitlement grant that had been conditioned and by providing more specificity concerning the informal hearing process referenced in that section.

Finally, § 570.913 would be amended in several parts to include details concerning the informal hearing process and to describe the basis upon which HUD would determine which type of hearing a grantee would be entitled to receive. The description of the informal hearing may be found at paragraph § 570.913(d) of the proposed rule.

Other Matters

Executive Order 12866

This proposed rule does not constitute a "significant regulatory action" as that term is defined in section 3(f) of Executive Order 12866, issued by the President on October 4, 1993. Analysis of the proposed rule indicates that it does not (1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (2) create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or (4) raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive order.

Regulatory Flexibility Act Analysis

In accordance with the Regulatory Flexibility Act, 5 U.S.C. 605(b), the undersigned hereby certifies that this proposed rule does not have a significant economic impact on a substantial number of small entities. The economic impact of this proposed rule should be minimal, and would affect small and large entities equally.

HUD's Semiannual Agenda

This proposed rule was listed as item 1576 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56436), under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

Environment

Under HUD regulations (24 CFR 50.20(k)) this proposed rule is exempt from the requirements of the National Environmental Policy Act as set forth in 24 CFR part 50. The proposed rule relates to internal administrative procedures whose content does not involve development decisions nor effect the physical condition of project areas or building sites but only relates to the performance of accounting, auditing and fiscal functions.

Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this proposed rule do not have federalism-related implications and for that reason the proposed rule is not subject to review under the Order. No programmatic or policy changes will result from this document's promulgation which would affect existing relationship between the federal government and state and local governments.

Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. No significant change in existing HUD policies or programs, as those policies relate to family concerns, will result from promulgation of this proposed rule.

List of Subjects in 24 CFR Part 570

Administrative practice and procedure, American Samoa, Community development block grants, Grant programs—education, Grant programs—housing and community development, Guam, Indians, Lead poisoning, Loan programs—housing and community development, Low and moderate income housing, New communities, Northern Mariana Islands, Pacific Islands Trust Territory, Pockets of poverty, Puerto Rico, Reporting and recordkeeping requirements, Small cities, Student aid, Virgin Islands.

Accordingly, the Department proposes to amend 24 CFR part 570 to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 would continue to read as follows:

Authority: 42 U.S.C. 3535(d) and 5300–5320.

§ 570.304 [Amended]

2. Section 570.304 would be amended by removing paragraph (d).

3. Paragraphs (b)(3), (b)(5) and (b)(6) of § 570.900 would be revised to read as follows:

§ 570.900 General.

* * * * *

(b) *Performance review procedures.*

* * * * *

(3) In conducting performance reviews, HUD will primarily rely on information obtained from the recipient's performance report, records maintained, findings from on-site monitoring, grantee and subgrantee audits, audits and surveys conducted by the HUD Inspector General and the amount of funds remaining in the line

of credit. HUD may also consider relevant information pertaining to a recipient's performance gained from other sources, including litigation, citizen comments and other information provided by or concerning the recipient. A recipient's failure to maintain records in the prescribed manner may result in a finding that the recipient has failed to meet the applicable requirement to which the record pertains.

* * * * *

(5) If HUD finds that a recipient has failed to comply with a program requirement or has failed to meet a performance criterion in § 570.902 or § 570.903, the recipient will be given an opportunity to provide additional information concerning the finding.

(6) If, after considering any additional information submitted by a recipient, HUD determines to uphold the finding, HUD may advise the recipient to undertake appropriate corrective or remedial actions as specified in § 570.910. HUD will consider the recipient's capacity as described in § 570.905 prior to selecting the corrective or remedial actions.

* * * * *

4. In § 570.902, introductory text would be revised and paragraph (a) would be revised to read as follows:

§ 570.902 Review to determine if CDBG funded activities are being carried out in a timely manner.

HUD will review the performance of each entitlement and HUD-administered small cities recipient to determine whether each recipient is carrying out its CDBG assisted activities in a timely manner.

(a) *Entitlement recipients.* (1) Before the funding of the next annual grant and absent contrary evidence satisfactory to HUD, the Department will consider an entitlement recipient to be failing to carry out its CDBG activities in a timely manner if, 60 days prior to the end of its current program year, the amount of entitlement grant funds available to the recipient under grant agreements but undisbursed by the U.S. Treasury is more than 1.5 times the entitlement grant amount for its current program year, and the grantee fails to demonstrate to HUD's satisfaction that the lack of timeliness has resulted from factors beyond the grantee's reasonable control.

(2) Notwithstanding that the amount of funds in the line of credit indicates that the recipient is carrying out its activities in a timely manner pursuant to paragraph (a)(1) of this section, the Department may determine that the recipient is not carrying out its activities in a timely manner if the amount of CDBG program income the recipient has on hand 60 days prior to the end of its current program year, together with the amount of funds in its CDBG line of credit, exceeds 1.5 times the entitlement grant amount for its current program year.

(3) In determining the appropriate corrective action to take with respect to a Departmental determination that a recipient is not carrying out its activities in a timely manner pursuant to paragraphs (a)(1) or (2) of this section, the Department will consider the likelihood that the recipient will expend a sufficient amount of funds over the next program year to reduce the amount of unexpended funds to a level that will fall within the standard described in paragraph (a)(1) of this section when HUD next measures the grantee's timeliness performance. For these purposes, HUD will take into account the extent to which funds on hand have been obligated by the recipient and its subrecipients for specific activities at the time the finding is made.

* * * * *

5. A new § 570.907 would be added to read as follows:

§ 570.907 Authorities for enforcing compliance.

Section 104(e) of the Act authorizes the Secretary to make appropriate adjustments in the amount of annual grants in accordance with findings made in the course of reviewing the grantee's performance. Section 111 of the Act authorizes the Secretary, whenever he finds that a grantee has failed to comply substantially with any applicable provisions of the program, to take the following actions until he is satisfied that there is no longer any such failure to comply: Terminate payments to the recipient under the program; reduce payments to the recipient by an amount equal to the amount of such payments which were not expended in accordance with the requirements; or, limit the availability of payments under the program to activities not affected by such failure to comply.

6. Section 570.910 would be revised to read as follows:

§ 570.910 Corrective and remedial actions.

(a) *General.* If HUD finds that a recipient has failed to comply with the program requirements or failed to meet performance criteria under § 570.902 or § 570.903, the Secretary will take one or more of the actions described in paragraph (b) of this section.

(b) *Actions authorized.* If HUD finds a deficiency in a recipient's performance, it may take one or more of the following actions in addition to actions authorized by §§ 570.911, 570.912, and 570.913.

(1) Where HUD determines in its sole discretion that the deficiency was beyond the reasonable control of the recipient, no corrective action need be taken;

(2) Issue a letter advising the recipient of HUD's finding of the deficiency, advising the recipient to notify HUD whether there are any ongoing or planned activities that are or will be affected by the deficiency, and putting the recipient on notice that additional action may be taken if the deficiency is not corrected in the time frame specified by HUD or is repeated. Where HUD has determined the deficiency is affecting one or more ongoing activities, it may advise the recipient to suspend disbursement of funds for the affected activities until corrective actions have been taken.

(3) Where HUD has determined the deficiency is likely to affect future activities, advise the recipient to take corrective action prior to undertaking any activities that would be so affected in order to prevent a recurrence of the deficiency. HUD may specify the corrective action or offer the recipient the opportunity to identify actions it believes will correct the deficiency. HUD may also advise the recipient that the deficiency calls into question a certification necessary to receive future funds, in which case HUD will identify any specific additional assurances it determines to be necessary to make the certification satisfactory;

(4) Where HUD has determined that the recipient is not taking appropriate action to suspend disbursements or prevent the deficiency from affecting ongoing or future performance, change the method of payment to the recipient for some or all of the activities from a line of credit basis to a reimbursement basis;

(5) Where HUD has determined it is appropriate to mitigate adverse effects or consequences, advise the recipient to reimburse its line of credit for any portion of the amounts improperly expended and reprogram the use of the funds in accordance with applicable requirements. HUD in its sole discretion may advise that some or all of the reimbursed funds be reprogrammed to be used to redress adverse effects.

(6) Where HUD has determined that the recipient has failed to carry out its activities in a timely manner, advise the recipient to review its planned and ongoing activities together with its administrative and management systems within 30 days or such time limit specified by HUD in order to identify the causes for delays, to change the

systems and activities as necessary to bring its expenditures into compliance, and to develop a detailed schedule with interim milestones for use in tracking the recipient's management of its expenditures; and

(7) In the case of claims payable to HUD or the U.S. Treasury, institute collection procedures pursuant to subpart B of 24 CFR part 17.

8. Paragraphs (a) and (c) of § 570.913 would be revised and a new paragraph (d) added to read as follows:

§ 570.913 Other remedies for noncompliance.

(a)(1) Whenever the Secretary finds, after reasonable notice and opportunity for hearing, that a recipient has failed to comply with the requirements of this part or applicable laws, or that the recipient has failed to comply with its certifications, the Secretary, until he/she is satisfied that there is no longer such failure to comply, shall:

(i) Limit the availability of funds to the recipient under the CDBG program to programs, projects or activities not affected by such failure to comply. Provided, however, that the Secretary may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (c) of this section, pending such hearing and a final decision, to the extent the Secretary determines such action necessary to preclude the further expenditure of funds for activities affected by such failure to comply;

(ii) Reduce payments to the recipient under the CDBG program by the amount of funds that were not expended in accordance with the requirements of the regulations or applicable laws; or,

(iii) Terminate the recipient's CDBG grant. Provided, however, for HUD Administered Small Cities Grants, funds already expended on eligible approved activities shall not be recaptured or deducted from future grants made to the recipient.

(2) The grantee will be entitled to a hearing under either paragraph (c)(3) of this section or paragraph (d) of this section, dependent upon whether the noncompliance involves a failure by the grantee to comply substantially with the requirements of the Act and these regulations. For these purposes, a grantee's non-compliance shall be considered to be substantial when it involves an amount that equals or exceeds either of the following: $300,000; or one-fourth of the recipient's most recent three year average annual entitlement grant. In determining whether the amount constitutes a substantial amount of funds for a community receiving funds on an annual basis under the authority of section 106(b) of the Act, the Department shall consider the total amount of funds expended on activities for which any noncompliance has been identified over a period of not less than an entire program year (as the term program year is used at § 570.302(b)(2), together with the Department's best estimate of the amount of CDBG funds the availability of which is likely to be limited during the period one year following the date of HUD's notice to the grantee under paragraph (c)(1) of this section or paragraph (d)(1) of this section. In determining whether the amount constitutes one-fourth of the grant for a community receiving funds under section 106(b), the Department shall use the average grant amount received by the grantee over the most recent three year period. A determination by HUD that a certification submitted by a community entitled to receive funds under section 106(b) is not satisfactory shall be considered substantial non-compliance by HUD and the grant for the current year shall be withheld pending receipt of additional assurances from the recipient.

(3) Nothing herein shall preclude the Secretary from requiring that a section 104(e) informal due process hearing precede a section 111 hearing.

* * * * *

(c) *Proceedings under section 111 of the Act.* When the Secretary proposes to take action based on substantial noncompliance pursuant to paragraph (a) of this section, the following procedures are to be followed:

(1) *Notice of opportunity for hearing.* The Secretary shall notify the unit of general local government receiving assistance under this part (the respondent) in writing of the proposed action and of the opportunity for a hearing. The notice shall:

(i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply with a provision of this part;

(ii) State that the hearing procedures are governed by § 570.913(c)(3) unless the respondent waives such procedures by electing in writing to proceed instead by informal due process hearing pursuant to § 570.913(d);

(iii) State that the respondent may submit a request for a hearing, in writing, which must be received by HUD within 10 days from the recipient's receipt of the notice;

(iv) Provide the name, address and telephone number of the person to whom any request for hearing is to be addressed;

(v) Specify the action which the Secretary proposes to take and that the authority for this action is section 111 of the Act;

(vi) State that if the respondent fails to request a hearing within the time specified, HUD may take the proposed action specified in the notice; and

(vii) Be sent to the respondent by certified mail, return receipt requested.

(2) *Initiation of hearing.* The respondent shall be allowed at least 10 days from receipt of the notice within which to notify HUD of its request for a hearing. If no request is received within the time specified, the Secretary may proceed to make a finding on the issue of compliance with this part and to take the proposed action.

(3) *Hearings*—(i) *Administrative Law Judge.* Proceedings conducted under this subparagraph shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedures Act (5 U.S.C. 3105). The case shall be referred to the ALJ by the Secretary at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power to:

(A) Administer oaths and affirmations;

(B) Issue subpoenas as authorized by law;

(C) Rule upon offers of proof and receive relevant evidence;

(D) Rule upon discovery requests; establish discovery schedules; and, whenever the ends of justice would be served, rule upon depositions or interrogatories to be taken, and issue protective orders where appropriate. In addition, the Judge may limit the scope, subject matter, method, time, or place of discovery.

(E) Regulate the course of the hearing and the conduct of the parties and their counsel;

(F) Hold conferences for the settlement or simplification of the issues by consent of the parties;

(G) Consider and rule upon all procedural and other motions appropriate in adjudicate proceedings; and

(H) Make and file initial determinations.

(4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the

merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *Prehearing Conferences.* (i) Prior to any hearing, the Judge may, upon his or her own initiative, or upon the application of any party, arrange a telephone conference and, where appropriate, record such telephone conference, or direct the parties to appear for a conference to consider:

(A) Simplification or clarification of the issues or settlement of the case by consent;

(B) The possibility of obtaining stipulations, admissions, agreements, and rulings on admissibility of documents, understandings on matters already of record, or similar agreements that will avoid unnecessary proof;

(C) Agreements and rulings to facilitate the discovery process;

(D) Limitation of the number of expert witnesses or other avoidance of cumulative evidence;

(E) The procedure, course, and conduct of the hearing;

(F) The distribution to the parties and the Judge prior to the hearing of written testimony and exhibits in order to expedite the hearing;

(G) Such other matters as may aid in the disposition of the proceeding.

(ii) The Judge in his or her discretion may issue an order showing the matters disposed of in such conference.

(6) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. The Department has the burden of proof in showing by a preponderance of the evidence that the respondent failed to comply substantially with a provision of this part. In cases where HUD has requested that the respondent produce relevant evidence within its control and the respondent fails to produce such evidence, an inference arises that the evidence is unfavorable to the respondent. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(7) *Discovery generally*—(i) *Preliminary position on issues and procedures.* Within a reasonable time after the complaint is filed, the Judge will ordinarily require from the parties a written submission stating their preliminary positions on legal and factual issues and procedures, listing potential witnesses and summarizing their testimony, and listing exhibits. This document, which must be served on all other parties, will normally obviate the need for further discovery. Failure to provide the requested information may result in the exclusion of witnesses and/or exhibits at the hearing. A party has the affirmative obligation to supplement the submission as new information becomes known to the party.

(ii) *Additional discovery.* Upon written motion by a party, the Judge may allow additional discovery only upon a showing of relevance, need, and reasonable scope of the evidence. The Judge may allow additional discovery by one or more of the following methods: Deposition upon oral examination or written questions, written interrogatories, production of documents or things for inspection and other purposes, and requests for admissions.

(iii) *Scope of additional discovery.* As allowed under paragraph (b) of this section, parties may obtain discovery of any matter, not privileged, that is relevant to the allegations of the complaint, to the proposed relief, or to the defenses of any respondent. The information sought need not be admissible at the hearing if the information sought appears reasonably calculated to lead to the discovery of inadmissible evidence.

(iv) *Discovery of Agency officials.* Agency officials shall not be subject to discovery unless the respondent upon written motion can show that:

(A) The official has personal knowledge of matters relevant to the case;

(B) The official's testimony is likely to lead to the discovery of admissible evidence or is pertinent to material issues in the case; and

(C) Such evidence is not available through some other less burdensome or obtrusive sources.

(v) *Time limits.* Motions for depositions, interrogatories, admissions, or production of documents or other items may not be filed within 20 days of hearing except on order of the Judge for good cause shown. Opposition to a discovery motion must be filed within 10 days of service unless otherwise provided in these rules or by the Judge.

(vi) *Opposition.* Opposition to any discovery motion or portion thereof must state with particularity the grounds relied upon. Failure to object in a timely fashion constitutes waiver of the objection.

(8) *Transcripts.* The hearing shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(9) *The ALJ's decision.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(10) *The record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his/her initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(11) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of the Secretary unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community

Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the basis of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(12) *Judicial review.* The respondent may seek judicial review of the Secretary's decision pursuant to section 111(c) of the Act.

(d) *Informal due process hearings pursuant to section 104(e) of the Act*—(1) *Informal due process hearing.* In cases where the Secretary proposes to take action based upon noncompliance which is not substantial, or where the recipient or the Secretary elects to have a hearing under these provisions, proceedings for an informal due process hearing shall be conducted as described in this paragraph (d) and shall be presided over by a Hearing Officer selected by the Secretary.

(2) *Notice of opportunity for hearing.* The Secretary shall notify the unit of general local government receiving assistance under this part (the respondent) in writing of the opportunity for an informal due process hearing. The notice shall:

(i) Specify, in a manner which is adequate to allow the respondent to prepare its response, allegations with respect to a failure to comply with a provision of this part;

(ii) State that the hearing procedures are governed by § 570.913(d);

(iii) State that respondent may request in writing a hearing and/or state its intent to submit additional information, which written response must be received by HUD within 10 days from the respondent's receipt of the notice.

(iv) Provide the name, address, and telephone number of the person to whom any request for a hearing is to be addressed.

(v) State that any submissions of additional information which demonstrates why HUD should not take the proposed action must be sent to the above address, in duplicate, within 21 days of the date of receipt of the notice and, where necessary, be supported with sworn affidavits from appropriate parties.

(vi) Specify the action which the Secretary proposes to take and that the authority for this action is section 104(e) of the Act;

(vii) State, when appropriate, that the Secretary has determined that a section 104(e) informal due process hearing will precede a section 111 hearing.

(viii) State that if the respondent fails to request a hearing or make a written submission to HUD within the time specified, HUD may take the proposed action specified in the notice;

(ix) Be sent to the respondent by certified mail, return receipt requested.

(3) *Purpose and Procedures.* (i) The Office of General Counsel shall promptly notify the parties of the time and place at which the informal due process hearing will be held.

(ii) The purpose of the hearing will be to provide the respondent an opportunity to demonstrate why HUD should not take the proposed action.

(iii) Although the meeting will be informal and no official transcript will be made, the respondent may bring an attorney and other persons who have knowledge of the facts to the hearing. This procedure will not be subject to discovery and there will be no opportunity for examination of HUD officials.

(iv) The administrative record shall be limited to the activity or activities or deficiencies at issue.

(v) After a review of the evidence submitted by the recipient for and during the hearing and the record, the Hearing Officer within a reasonable period of time will provide the respondent with a written decision and the rationale for determination stating the reasons for his/her determination. The decision will be a non-reviewable, final agency decision.

(Approved by the Office of Management and Budget under control number 2506–0077)

Dated: October 4, 1993.

Andrew Cuomo,

Assistant Secretary for Community Planning and Development.

[FR Doc. 93–27656 Filed 11–10–93; 8:45 am]

BILLING CODE 4210–29–P

federal register

Friday
November 12, 1993

Part III

Department of Education

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research; Notice

DEPARTMENT OF EDUCATION

National Institute on Disability and Rehabilitation Research

AGENCY: Department of Education.

ACTION: Notice of a final funding priority for fiscal years 1994–1995 for a Rehabilitation Engineering Research Center for Accessibility and Universal Design in Housing.

SUMMARY: The Secretary announces a final funding priority for a new Rehabilitation Engineering Research Center (RERC) under the National Institute on Disability and Rehabilitation Research (NIDRR) for fiscal years 1994–1995. The Secretary takes this action to focus research attention on areas of national need consistent with NIDRR's long-range planning process. This priority is intended to improve rehabilitation services and independent living outcomes for individuals with disabilities.

EFFECTIVE DATE: This priority takes effect either 45 days after publication in the **Federal Register** or later if Congress takes certain adjournments. If you want to know the effective date of this priority, call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: David Esquith, U.S. Department of Education, 400 Maryland Avenue, SW., Switzer Building, Room 3424, Washington, DC 20202–2601. Telephone: (202) 205–8801. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–5516.

SUPPLEMENTARY INFORMATION: This notice contains a final priority under the RERC program for research on accessibility and universal design in housing for individuals with disabilities.

Authority for the RERC program of NIDRR is contained in section 204(b)(3) of the Rehabilitation Act of 1973, as amended (29 U.S.C. 760–762). Under this program the Secretary makes awards to public and private organizations, including institutions of higher education, Indian tribes, and tribal organizations, to conduct research, demonstration, and training activities regarding rehabilitation technology in order to enhance opportunities for meeting the needs of, and addressing the barriers confronted by, individuals with disabilities in all aspects of their lives. RERCs must be operated by or in collaboration with an institution of higher education or a nonprofit organization.

This final priority supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Under the regulations for this program (see 34 CFR 351.32) the Secretary may establish research priorities by reserving funds to support particular research activities.

NIDRR is in the process of developing a revised long-range plan. The priority proposed in this notice is consistent with the long-range planning process.

On July 30, 1993, the Secretary published a notice of proposed priorities in the **Federal Register** (58 FR 41010). The Department of Education received 19 letters commenting on the proposed priority. A number of modifications were made to the priority as a result of those comments. The comments, and the Secretary's responses to them, are discussed in an appendix to this notice.

Note: This notice of final priority does not solicit applications. A notice inviting applications under this competition is published in a separate notice in this issue of the **Federal Register**.

Description of the Rehabilitation Engineering Research Center Program

RERCs develop and disseminate innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers; study new or emerging technologies, products, or environments; demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation technology services; and conduct other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities. RERCs facilitate service delivery systems change through the development of consumer-responsive models for the delivery of rehabilitation technology services.

The statute requires that each applicant for a grant, including an RERC, demonstrate how its proposed activities address the needs of individuals from minority backgrounds who have disabilities. NIDRR encourages the RERC to involve individuals with disabilities and minorities as recipients in research training, as well as in clinical training.

Each RERC provides training in the applications of new technology to service providers and to individuals with disabilities and their families.

Any Center funded under this priority must coordinate activities and share information with other NIDRR-funded Centers and will be required to work closely with the RERC on Technology Evaluation and Transfer that was established by NIDRR at the State University of New York at Buffalo in fiscal year 1993 in response to a priority announced in the **Federal Register** on December 4, 1992 (57 FR 57482).

General

The following requirements apply to the RERC pursuant to this absolute priority:

The RERC must have the capability to design and test prototype devices and assist in the transfer of successful solutions to the marketplace. The RERC must evaluate the efficacy and safety of its new products, instrumentation, or assistive devices.

The RERC must conduct coordinated programs of research and development that will contribute to the desired outcomes specified in the priority. Applicants have considerable latitude in proposing specific research approaches. However, the selection criteria in the regulations (34 CFR 353.31) require applicants to justify their choice of projects in terms of relevance to the priority and to the needs of individuals with disabilities. The regulations also require applicants to present a scientific methodology that includes reasonable hypotheses, methods of data collection and analysis, and a plan to evaluate the extent to which project objectives have been achieved.

The RERC must provide graduate-level research training to build capacity for engineering research in the rehabilitation field and to provide training in the applications of new technology to service providers and to individuals with disabilities and their families.

The RERC must develop all training materials in formats that will be accessible to individuals with various types of disabilities and communication modes, and widely disseminate findings and products to individuals with disabilities and their families and representatives, service providers, manufacturers and distributors, and other appropriate target populations.

The RERC must involve individuals with disabilities and, if appropriate, their family members in planning and implementing the research, development, and training programs, in interpreting and disseminating the research findings, and in evaluating the Center.

Priority

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priority. The Secretary will fund under this competition only applications that meet this absolute priority:

Priority—Accessibility and Universal Design in Housing

Background

Approximately 9.5 million persons experience difficulty in performing basic life activities such as walking, self-care (including feeding, bathing, dressing, and toileting), and community and home management activities, due to physical or mental health problems (LaPlante, "National Medical Expenditure Survey," National Center for Health Statistics, 1987). In 1990, more than 13.1 million Americans, or about 5.3 percent of the population, used assistive technology devices to accommodate physical impairments. In 1990, 7.1 million persons, or nearly 3 percent of all Americans, lived in homes that were specially adapted to accommodate impairments (Adams and Benson, "National Health Interview Survey," National Center for Health Statistics, 1991). Maintaining an appropriate home environment for the lifetime of a person with disabilities is, in many cases, a major undertaking, involving accommodating to various combinations of physical, sensory, and mental impairments.

There have been several efforts to develop accessible housing models. For example, a Universal Home Series was developed as a joint venture between Excel Homes, Inc. and the Center for Accessible Housing at North Carolina State University, a Rehabilitation Research and Training Center (RRTC) supported by NIDRR. These homes incorporate Universal Design principles, resulting in a living space that can be readily adapted for long-term comfort, safety, and ease of use (Mace, "Quarterly Report," Center for Accessible Housing, North Carolina State University, Raleigh, NC, October, 1992). The Electronics Industry Association has established a home automation standard known as the Consumer Electronic Bus Standard (CEBus) that addresses communication between persons with disabilities and their home environments.

Contemporary technology is already making it possible for persons to communicate interactively with information sources, business establishments and work centers, learning environments, health support centers, security services, and entertainment centers from their own homes. Other forms of technology are making the activities of daily living, including personal care, food preparation, and waste disposal, more and more accessible to persons with disabilities, while improvements in security systems, furniture, plumbing and electrical fixtures, and home hardware design are also increasing accessibility. Much of this new technology is designed for the general population, with ancillary benefits accruing to persons with disabilities, while other applications, designed to improve accessibility to persons with disabilities, are found useful by all people. The application of new technology in these ways and for these purposes may be termed "universal design" because it enhances the lives of all people and can be used both by individuals with disabilities and the able-bodied persons with whom they may share a home.

An RERC on accessible and universal design in housing will have two purposes. Its primary purpose will be to develop a variety of affordable housing options and innovative approaches to designing, financing, and managing models of adaptive housing. The second purpose of the Center will be to investigate applications of universal design in the home environment. Both of these purposes will require a convergence of knowledge from the fields of architecture, engineering (including cost engineering), construction, computer sciences, gerontology, rehabilitation, independent living, ecology, telecommunications, and energy conservation in order to develop appropriate home environments in which persons with disabilities can live independently or with families and other household members.

A Center to be funded in response to this priority is expected to maintain liaison with the Architectural and Transportation Barriers Compliance Board, the Department of Housing and Urban Development, and NIDRR-supported research projects and Centers in such areas as technology transfer, independent living, aging, families and community integration. The Center is expected to address the needs of all persons with disabilities, including elderly persons.

Priority

An RERC on accessibility and universal design in housing shall—

- Evaluate the adequacy of existing universal design for persons with disabilities for affordable home management appliances and systems, such as those for food preparation, laundry, home maintenance, waste disposal, cleaning, communications, entertainment, security, and information, and, based on that evaluation, identify needs for modifications and additional designs;
- Develop and disseminate information about validated, low-cost universal designs for persons with disabilities for home environments, including the home management appliances and systems to be used in those environments;
- Evaluate the potential for advances in computer, communications, integrated electronics, and other automation technologies to address issues of safety, security, and personal independence for persons with disabilities in their own homes;
- Identify or develop and evaluate low-cost, access-oriented designs that are likely to increase the capacity of parents with disabilities to provide home-based child care;
- Analyze the effects of relevant laws and business and financial policies and practices on the development of suitable living environments for individuals with disabilities and develop strategies to address problems in these areas;
- Develop, acquire, maintain, and disseminate both graphic and text databases on standards, design criteria, plans, building products, costs, funding sources, and performance evaluations of accessible housing, and serve as a national information resource;
- Design training materials to increase awareness of the housing needs of persons with disabilities, concepts of accessibility and universal design, and techniques to increase the availability of accessible housing and related technology advances;
- Conduct training for a range of involved populations, including persons with disabilities and their families, architects, builders, engineers, industrial designers, service providers, educators, designers, manufacturers, housing managers, city planners, and other appropriate audiences; and
- Disseminate research results, and, if appropriate, be prepared to disseminate technical documentation and user instructions to manufacturers, providers, distributors, information centers and to the persons with disabilities and their families for whom the devices and systems are intended, ensuring that materials are provided in a variety of accessible formats and media.

Applicable Program Regulations: 34 CFR parts 350 and 353.

Program Authority: 29 U.S.C. 760–762.

(Catalog of Federal Domestic Assistance Number 84.133E, Rehabilitation Engineering Research Centers)

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

Appendix—Analysis of Comments and Changes

By the deadline date, the Department received 19 comments in response to the proposed priority. Three additional comments were received after the deadline date and were not considered in this response. Most of the commenters were generally supportive of the proposed priority, but many made suggestions for modifications. This Appendix contains an analysis of the comments and the changes in the priority since the publication of the notice of proposed priority. Technical and other minor changes—and suggestions the Secretary is not legally authorized to make under applicable statutory authority—are not addressed.

Comment: One commenter recommended that the RERC operate within a regional structure in order to address the unique needs of different regions of the country.

Discussion: The Secretary does not believe it appropriate to specify the operational structure of the RERC. Applicants may organize the RERC regionally but are not required to do so.

Changes: None.

Comment: Several commenters recommended reducing the emphasis on home automation technology in the priority. These commenters stated that home automation technology can be very expensive and that any contribution that the RERC could make in this area would be insignificant compared to the research and development that is being undertaken in the private sector. These commenters stated that more persons with disabilities would benefit if the RERC focused to a greater extent on developing low-cost, universally designed housing features and strategies to increase the accessibility of current and future housing stock. These commenters stated that one of the primary housing needs of persons with disabilities is the need to upgrade existing housing so that it is accessible, because few persons with disabilities can afford to purchase new housing. One of these commenters suggested consolidating the second, fourth, fifth, and sixth activities of the priority into one activity in order to reduce the emphasis on home automation technology.

Discussion: The Secretary agrees that the emphasis on home automation and high technology should be reduced in the priority. The Secretary also agrees that the issue of improving accessibility among existing housing and investigating low-cost universal designs for the home environment are of paramount importance to persons with disabilities and their families.

Changes: The emphasis on home automation in the proposed priority has been reduced in the background statement as well as in the list of activities. The second activity of the proposed priority regarding the development of integrated architectural and electronic designs has been eliminated and the fifth activity of the proposed priority has been revised to include integrated electronics. The fourth and fifth activities of the proposed priority have been revised and combined, and the reference to "robotics technologies" in the fifth activity has been eliminated.

Comment: One commenter suggested that the name of the RERC should be "Center for Universal Design in Housing" or "Center for Accessible Housing."

Discussion: The Secretary believes that the name of the RERC should reflect the final priority's increased emphasis on accessible housing and universal design.

Changes: The name of the RERC has been changed to the "Center for Accessibility and Universal Design in Housing."

Comment: One commenter suggested placing greater emphasis "on developing strategies to address problems with relevant laws and policies" rather than analyzing the "effects of relevant laws and business and financial policies and practices on the development of suitable living environments * * *." as required by the proposed priority.

Discussion: Because of recent developments in the field of disability policy, such as those resulting from the enactment of the Americans with Disabilities Act, the Secretary believes that there is still substantial work to be done in analyzing the effects of relevant laws and business and financial policies and practices. Applicants may choose to emphasize one issue over another in an RERC activity, but the Secretary declines to do so.

Changes: None.

Comment: A number of commenters suggested that the priority be revised to clarify that the RERC should address the needs of persons with disabilities who are elderly as well as persons with developmental disabilities.

Discussion: The Secretary agrees that the needs of persons with disabilities who are elderly as well as those with developmental disabilities should be addressed by the RERC. Unless otherwise specified, all RERCs are expected to address the needs of all persons with disabilities. The Secretary agrees that clarification should be provided in the priority to ensure that the RERC addresses problems of persons with disabilities who are elderly as well as persons with developmental disabilities.

Changes: A statement has been added to the background statement which clarifies that the RERC is expected to address the needs of all persons with disabilities, including elderly persons with disabilities. In addition, "gerontologists" have been added to that section of the background statement that addresses the convergence of knowledge that will be required in order for the RERC to operate successfully.

Comment: One commenter indicated that the priority placed too much emphasis on home-based work and home learning. The commenter indicated that home-based work and home learning were inconsistent with the "mainstreaming goals" of the Office of Special Education and Rehabilitative Services as well as the Americans with Disabilities Act.

Discussion: The Secretary believes that the references to home-based work and home learning which appeared in the "Background" to the priority are no longer needed as a result of the reduced emphasis on home automation (see above).

Changes: The references to home-based work and home learning have been eliminated.

Comment: One commenter suggested that the required activities of the priority be rank ordered.

Discussion: All activities must be adequately addressed by a successful applicant. It is up to the applicant to propose the allocation of time and resources to each activity, and these factors are evaluated according to the evaluation criteria for the RERC program.

Changes: None.

Comment: One commenter suggested that the RERC develop a taxonomy and definitions to support a language of universal design. This commenter also suggested that the RERC document the feasibility and impact of universal design.

Discussion: The Secretary believes that developing a taxonomy and definitions to support a language of universal design, and documenting the feasibility and impact of universal design are considerable undertakings that are beyond the scope of the

resources that will be made available to this RERC.

Changes: None.

Comment: One commenter suggested that the priority be revised to specifically mention fixed elements of the home such as plumbing fixtures, windows, and doors.

Discussion: The Secretary believes that the selection of elements of the home environment should be left to the discretion of the applicant.

Changes: None.

Comment: One commenter suggested that the RERC investigate the interfaces between highly specialized assistive technology and general consumer systems so that people with the most serious disabilities will not be cut off from access to the new technologies.

Discussion: In light of the reduced emphasis in the priority on home automation, the Secretary believes that investigating the interfaces between highly specialized assistive technology and general consumer systems is a considerable undertaking that is beyond the scope of the resources that will be made available to this RERC.

Changes: None.

Comment: One commenter suggested that the RERC investigate strategies for improving accessibility, safety, and security for persons with disabilities through home modification services.

Discussion: The issues of accessibility, safety, and security were addressed in the proposed priority and have been retained in the final priority. The Secretary does not believe that further requirements are necessary.

Changes: None.

Comment: One commenter suggested that the priority emphasize the development of mechanisms to deliver information to the hands of people at the community level at a low cost with a high degree of accessibility.

Discussion: RERCs have broad dissemination requirements. The final priority of the RERC addresses the dissemination of research results and requires the RERC to "disseminate research results * * * to the persons with disabilities and their families for whom the devices and systems are intended, ensuring that materials are provided in a variety of accessible formats and media." The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter suggested that the RERC investigate the effectiveness of existing design standards such as the Fair Housing Accessibility Guidelines issued by the Department of Housing and Urban Development.

Discussion: The Secretary agrees that research on existing design standards is important. The Secretary believes, however, that this research will be undertaken by the RERC in response to the requirement to "Analyze the effects of relevant laws and business and financial policies and practices on the development of suitable living environments for individuals with disabilities * * *." The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter suggested that the RERC undertake cost analyses of accessible housing features and universal housing designs.

Discussion: The Secretary believes that all research on accessible housing and universal design must take into account affordability and emphasize low-cost design. References to low-cost solutions and affordability appear throughout the priority. The Secretary does not believe that any further requirements are necessary.

Changes: None.

Comment: One commenter suggested that the priority be revised to specifically mention "industrial designers" among the list of populations receiving training from the RERC.

Discussion: The Secretary agrees that industrial designers are an appropriate training audience for the RERC.

Changes: The priority has been changed to include industrial designers as one of the training target audiences.

Comment: One commenter suggested that the priority be revised to emphasize the integration of expertise across disciplines.

Discussion: The Secretary agrees that the RERC will have to draw from various disciplines in order to successfully undertake its research and training activities. The Secretary does not believe that any further requirements are necessary in order to ensure that this integration of expertise occurs within the RERC.

Changes: None.

Comment: One commenter suggested that the priority be revised to require the RERC to provide training on the Americans with Disabilities Act Accessibility Guidelines (ADAAG) to persons who serve as advisors to public accommodations.

Discussion: The Secretary agrees that this training is needed. However, the Secretary does not believe that this training is within the scope of the RERC.

Changes: None.

[FR Doc. 93–27738 Filed 11–10–93; 8:45 am]

BILLING CODE 4000–01–P.

DEPARTMENT OF EDUCATION

[CFDA No.: 84.133E]

Office of Special Education and Rehabilitative Services

National Institute on Disability and Rehabilitation Research Notice Inviting Applications for a New Award Under the Rehabilitation Engineering Research Centers (RERC) for Fiscal Year (FY) 1994

Purpose of Program: Rehabilitation Engineering Research Centers develop and disseminate innovative methods of applying advanced technology, scientific achievement, and psychological and social knowledge to solve rehabilitation problems and remove environmental barriers; study new or emerging technologies, products, or environments; demonstrate and disseminate innovative models for the delivery of cost-effective rehabilitation technology services; and conduct other scientific research to assist in meeting the employment and independent living needs of individuals with severe disabilities. RERCs facilitate service delivery system changes through the development of consumer-responsive models for the delivery of rehabilitation technology services. The final priority for this award is published in this issue of the **Federal Register**. Potential applicants should consult the statement of the final priority published in this issue to ascertain the substantive requirements for their applications.

This notice supports the National Education Goals. National Education Goal 5 calls for all Americans to possess the knowledge and skills necessary to compete in a global economy and exercise the rights and responsibilities of citizenship.

Eligible Applicants: Public or private entities, including Indian tribes and tribal organizations, are eligible to receive awards under this program provided they ensure that the Center is operated in collaboration with an institution of higher education or a nonprofit organization.

Deadline for Transmittal of Applications: March 4, 1994.

Applications Available: November 19, 1993.

Available Funds: $500,000.

Estimated Number of Awards: 1.

Note: The estimates of funding levels and awards in this notice do not bind the Department of Education to a specific level of funding or number of grants, unless the amount is otherwise specified by statute or regulation.

Project Period: Up to 60 months.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR), 34 CFR Parts 74, 75, 77, 78, 80, 81, 82, 85, 86; (b) the regulations for this program in 34 CFR Parts 350 and 353; and (c) the notice of final priority published elsewhere in this issue of the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Dianne Villines, U.S. Department of Education, room 3417 Switzer Building, 400 Maryland Avenue, SW., Washington, DC 20202–2704. Telephone: (202) 205–9141. Individuals who use a telecommunications device for the deaf (TDD) may call the TDD number at (202) 205–8887.

Program Authority: 29 U.S.C. 760–762.

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–27739 Filed 11–10–93; 8:45 am]

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Friday, November 12, 1993

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H.R. 927/P.L. 103–134

To designate the Pittsburgh Aviary in Pittsburgh, Pennsylvania as the National Aviary in Pittsburgh. (Nov. 8, 1993; 107 Stat. 1374; 1 page)

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Designating the week beginning October 31, 1993, as "National Health Information Management Week". (Nov. 8, 1993; 107 Stat. 1376; 1 page)

S.J. Res. 115/P.L. 103–137

Designating November 22, 1993, as "National Military Families Recognition Day". (Nov. 8, 1993; 107 Stat. 1377; 2 pages)

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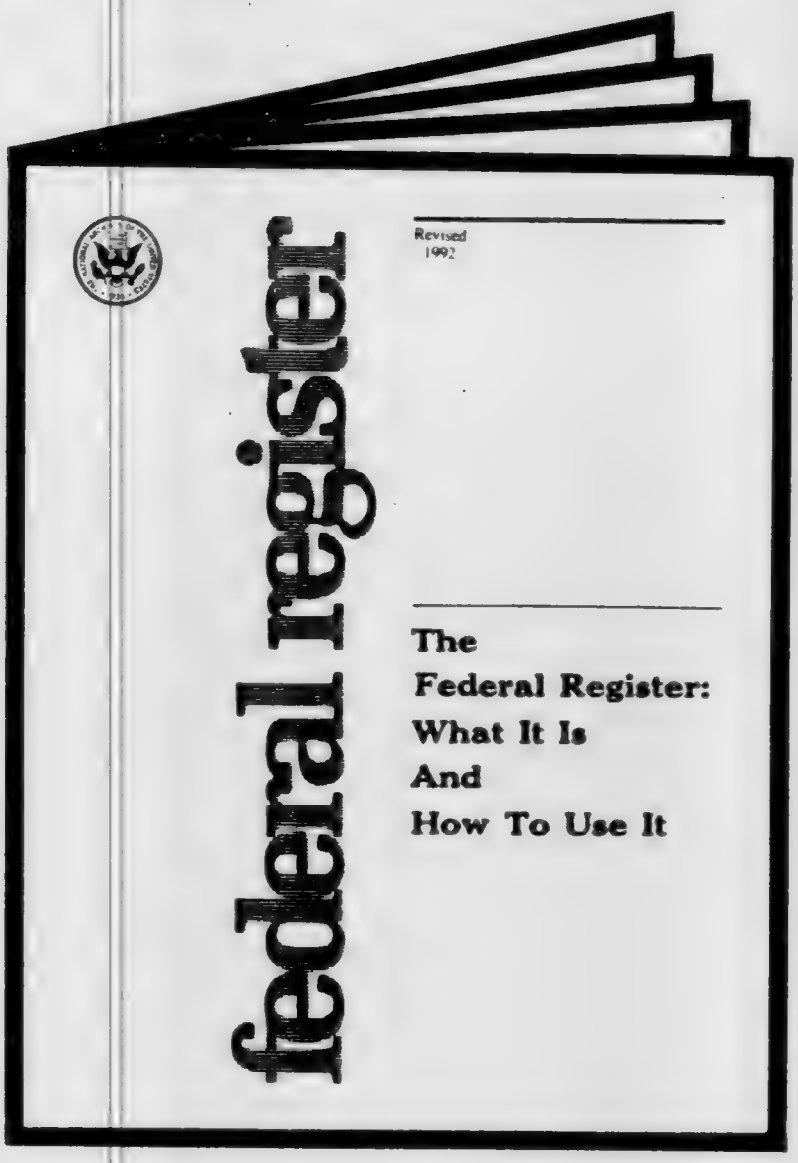

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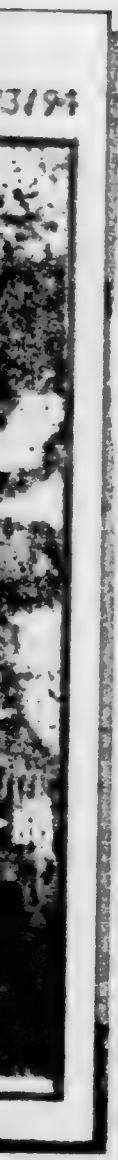

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Vol. 58 No. 218

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Monday
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WHEN: November 23, 9:00 am—12:00 pm

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RESERVATIONS: 1–800–347–1997

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RESERVATIONS: 202–523–4538

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Rules and Regulations

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 354

[Docket No. 93–123–1]

Commuted Traveltime Periods

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: We are amending the regulations concerning overtime services provided by employees of Plant Protection and Quarantine (PPQ) by adding commuted traveltime allowances for travel between various locations in Colorado and New Mexico. Commuted traveltime allowances are the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty. The Government charges a fee for certain overtime services provided by PPQ employees and, under certain circumstances, the fee may include the cost of commuted traveltime. This action is necessary to inform the public of commuted traveltime between these locations.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Paul R. Eggert, Assistant to the Deputy Administrator, Resource Management Support, PPQ, APHIS, USDA, room 458, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7764.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 7 CFR, chapter III, and 9 CFR, chapter I, subchapter D, require inspection, laboratory testing, certification, or quarantine of certain plants, plant products, animals and animal byproducts, or other commodities intended for importation into, or exportation from, the United States. When these services must be provided by an employee of PPQ on a Sunday or holiday, or at any other time outside the PPQ employee's regular duty hours, the Government charges a fee for the services in accordance with 7 CFR part 354. Under circumstances described in § 354.1(a)(2), this fee may include the cost of commuted traveltime. Section 354.2 contains administrative instructions prescribing commuted traveltime allowances, which reflect, as nearly as practicable, the periods of time required for PPQ employees to travel from their dispatch points and return there from the places where they perform Sunday, holiday, or other overtime duty.

We are amending § 354.2 of the regulations by adding commuted traveltime allowances for travel between various locations in Colorado and New Mexico. The amendments are set forth in the rule portion of this document. This action is necessary to inform the public of the commuted traveltime between the dispatch and service locations.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

The number of requests for overtime services of a PPQ employee at the locations affected by our rule represents an insignificant portion of the total number of requests for these services in the United States.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Effective Date

The commuted traveltime allowances appropriate for employees performing services at ports of entry, and the features of the reimbursement plan for recovering the cost of furnishing port of entry services, depend upon facts within the knowledge of the Department of Agriculture. It does not appear that public participation in this rulemaking proceeding would make additional relevant information available to the Department.

Accordingly, pursuant to the administrative procedure provisions in 5 U.S.C. 553, we find upon good cause that prior notice and other public procedure with respect to this rule are impracticable and unnecessary; we also find good cause for making this rule effective less than 30 days after publication of this document in the Federal Register.

Executive Order 12372

This program/activity is listed on the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule is intended to have preemptive effect with respect to any State or local laws, regulations, or policies that conflict with its provisions or that would otherwise impede its full implementation. This rule is not intended to have retroactive effect. There are no administrative procedures that must be exhausted prior to any judicial challenge to the provisions of this rule or the application of its provisions.

Paperwork Reduction Act

This rule contains no new information collection or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

List of Subjects in 7 CFR Part 354

Exports, Government employees, Imports, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Travel and transportation expenses.

Accordingly, 7 CFR part 354 is amended as follows:

PART 354—OVERTIME SERVICES RELATING TO IMPORTS AND EXPORTS; AND USER FEES

1. The authority citation for part 354 continues to read as follows:

Authority: 7 U.S.C. 2260, 21 U.S.C. 136 and 136a; 49 U.S.C. 1741; 7 CFR 2.17, 2.51, and 371.2(c).

2. Section 354.2 is amended by adding in the table, in alphabetical order, the information as shown below:

§ 354.2 Administrative instructions prescribing commuted traveltime.

* * * * *

COMMUTED TRAVELTIME ALLOWANCES

[In hours]

Location covered	Served from Metropolitan area	
	Within	Outside
Add:		
. . . . .		
Colorado:		
. . . . .		
Stapleton International Airport.	Ft. Collins	4
. . . . .		
New Mexico:		
. . . . .		
Santa Teresa	El Paso, TX .	1½
Santa Teresa	Las Cruces ..	1½
. . . . .		

Done in Washington, DC, this 8th day of November, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–28003 Filed 11–12–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

10 CFR Part 1046

RIN 1992–AA16

Security Skills Training and Qualifications Standards for Protective Force Personnel; Correction

AGENCY: Office of Security Affairs, Department of Energy.

ACTION: Correction to final rule.

SUMMARY: This document contains corrections to the final rule which was published on August 31, 1993. 10 CFR part 1046 was originally published on March 3, 1986, to be effective on April 2, 1986 to established medical and physical fitness requirement for Department of Energy protective force personnel. The August 31, 1993 publication is a revision to add new requirements regarding access authorization and security skills. The revision was not intended to modify the requirements placed upon members of the protective force by the original rule. In the reprinting of the revision the implementation date for physical fitness standards was erroneously published as September 30, 1994. The actual implementation date for those requirements, which were not changed by this revision, was April 2, 1987.

EFFECTIVE DATE: The final rule was effective on September 30, 1993.

FOR FURTHER INFORMATION CONTACT: William J. Desmond, Chief, Physical Security Branch, U.S. Department of Energy, Office of Security Affairs, SA–121, Washington, DC 20585, (301) 903–4244.

SUPPLEMENTARY INFORMATION:

Background

Part 1046.11 (b)(1) was originally published on March 3, 1986 and included the following notation: "(insert date 12 months from effective date of regulation)". This notation resulted in the date of April 2, 1987 (which was one year from the effective date) being inserted into the sentence. When the current revision was reprinted, this section was not affected and therefore was erroneously reprinted with the original notation from 1986, i.e. "(insert date 12 months from effective date of regulation)". Upon publication of the revision on August 31, 1993, the date of September 30, 1994 was inserted due to the notation.

Correction of Publication

Need for correction

As published part 1046.11(b)(1) contains an error which indicates an implementation date of one year from the effective date of the revision. The proper implementation date for this section was one year from the initial effective date of April 2, 1986. This change will reflect longstanding requirements and will not result in a field impact.

The publication on August 31, 1993 of the final regulations, which were the subject of FR Doc. 93–20985 is corrected as follows:

§ 1046.11 [Corrected]

On page 45792 in the second column in § 1046.11, paragraph (b)(1), the words "have until September 30, 1994 to" are removed and the word "shall" is added in their place.

Issued in Washington, DC, this 4th day of November 1993.

Robert J. Walsh,

Deputy Director, Office of Security Affairs.

[FR Doc. 93–27998 Filed 11–12–93; 8:45 am]

BILLING CODE 6450–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Part 325

Capital Maintenance

AGENCY: Federal Deposit Insurance Corporation (FDIC).

ACTION: Final rule; technical amendments.

SUMMARY: The FDIC is amending its regulations governing capital maintenance to correct typographical omissions and to redesignate the appendixes to subpart A of the part as appendixes to the part.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Jenetha M. Hickson, Alternate Liaison Officer, (202) 898–3807.

SUPPLEMENTARY INFORMATION: This document amends part 325: (1) By revising a footnote to include text that was inadvertently omitted from the final rule on leverage capital that was published in the March 11, 1991 issue of the **Federal Register** (56 FR 10154); and (2) by redesignating appendix A and appendix B to subpart A as appendixes to the part.

List of Subjects in 12 CFR Part 325

Bank deposit insurance, Banks, Banking, Capital adequacy, Reporting and recordkeeping requirements, Savings associations, State nonmember banks.

In accordance with the foregoing, part 325 of chapter III of title 12 of the Code of Federal Regulations is amended as follows:

PART 325—CAPITAL MAINTENANCE

1. The authority citation for part 325 continues to read as follows:

Authority: 12 U.S.C. 1815(a), 1815(b), 1816, 1818(a), 1818(b), 1818(c), 1818(t), 1819(Tenth), 1828(c), 1828(d), 1828(i), 1828(n), 1828(o), 1831o, 3907, 3909; Pub. L.

102-233, 105 Stat. 1761, 1789, 1790 (12 U.S.C. 1831n note); Pub. L. 102-242, 105 Stat. 2236, 2386 (12 U.S.C. 1828 note).

2. Part 325 is amended by redesignating appendix A to subpart A of part 325 as appendix A to part 325 and appendix B to subpart A of part 325 as appendix B to part 325, and by revising the heading for newly designated appendix A to read as follows:

Appendix A to Part 325—Statement of Policy on Risk-Based Capital

3. In newly designated appendix B to part 325, the heading is revised and the first sentence of the first paragraph of section IV.A. is amended by adding the word "such" after the words "value of", and footnote 2 in the last sentence of the third paragraph of section IV.A. is revised to read as follows:

Appendix B to Part 325—Statement of Policy on Capital Adequacy

* * * * *

IV. * * *

A. * * *[2] * * *

[2] This specific approval must be received in accordance with § 325.5(b). In evaluating whether other types of intangibles should be recognized for regulatory capital purposes, the FDIC will accord special attention to the general characteristics of the intangibles, including: (1) The separability of the intangible asset and the ability to sell it separate and apart from the bank or the bulk of the bank's assets, (2) the certainty that a readily identifiable stream of cash flows associated with the intangible asset can hold its value notwithstanding the future prospects of the bank, and (3) the existence of a market of sufficient depth to provide liquidity for the intangible asset. However, pursuant to section 18(n) of the Federal Deposit Insurance Act (12 U.S.C. 1828(n)), specific approval cannot be given for an unidentifiable intangible asset, such as goodwill, if acquired after April 12, 1989.

* * * * *

§ 325.2 [Amended]

4. In § 325.2, paragraphs (q), (s), (u), and (w) are amended by revising the reference "(appendix A to subpart A of part 325)" to read "(appendix A to part 325)".

Dated: November 3, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93-27445 Filed 11-12-93; 8:45 am]

BILLING CODE 6714-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 416

[Reg. No. 16]

RIN 0960-AD48

Time Limits for Disposition of Resources in the Supplemental Security Income Program

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: If an individual filing for supplemental security income (SSI) benefits has excess resources, payment of SSI benefits is permitted on the condition that the individual dispose of the excess resources within a time period specified by the Secretary. The prior regulations were not clear, however, as to when the time period for disposal of the property begins. We are issuing these rules to change the regulations to clarify that the time period for disposal of property begins on the date we accept the individual's signed written agreement to dispose of the property.

EFFECTIVE DATE: These rules are effective November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Henry D. Lerner, Legal Assistant, Office of Regulations, Social Security Administration, 6401 Security Blvd., Baltimore, MD 21235, (410) 965-1762.

SUPPLEMENTARY INFORMATION: We published proposed rules in a Notice of Proposed Rulemaking (NPRM) in the **Federal Register** on July 1, 1992 (57 FR 29244). We received one letter from an organization in which several issues were raised. After carefully considering the organization's comments, we are adopting the rule as proposed. We explain later in this preamble our reasons for not adopting the commenter's suggested changes.

Section 1613(b) of the Social Security Act (the Act) requires the Secretary to prescribe the period of time and the manner in which resources must be disposed of to be excluded in determining SSI eligibility. The Act permits payment of SSI benefits during this period on the condition that the individual dispose of the resources. Any benefits so paid are considered overpayments which must be paid back. They are recouped from the net proceeds of the disposition.

Regulations at § 416.1240(a) provide that when an individual has excess nonliquid resources, such individual "shall not be eligible for payment except under the conditions provided in this section." One of those conditions, set out at § 416.1240(a)(2)(i), is that the individual must agree in writing to dispose of the excess nonliquid resources within the time period specified in § 416.1242 in order to receive "conditional benefits." Under § 416.1242(a), the individual must agree in writing to dispose of nonliquid resources which would otherwise result in SSI ineligibility within 9 months for real property and 3 months for personal property. The time limit for disposing of personal property may be extended 3 months for "good cause."

Further, § 416.1242(a) provided that the disposition period would begin on the date the written agreement was signed by the individual and submitted to the Social Security Administration (SSA). In the case of an individual who is disabled, the regulations provided that the disposition period would begin "with the date the individual is determined to be disabled." In § 416.1002, we define the term "disability" to mean disability or blindness as defined in sections 1614(a)(2) and (3) of the Act. Therefore, in an SSI claim based on blindness the disposition period in the regulations began with the date we determined the individual to be blind.

The regulations at § 416.1242(a) were ambiguous as to the beginning of the resources disposal time limit. As written, the regulations did not preclude the commencement of a conditional benefits period prior to the month in which we determined that all nonresource requirements were met, nor did the regulations define the point at which we determine an individual to be disabled or blind.

The regulations at § 416.1242(a) could have been interpreted to mean that an individual may sign a conditional benefits agreement, and thus trigger the disposition period, before we determined whether all SSI eligibility requirements were met, other than resource requirements. Such an interpretation could create a situation where the individual might sell his or her property in anticipation of receipt of SSI benefits and later be determined not to be eligible for SSI for reasons other than resources, and, therefore, ineligible for any SSI benefits, including conditional benefits.

In addition, in an SSI disability or blindness case, the regulations also could have been interpreted to mean that the time limit for disposition of property began on the actual date we determined the individual to be disabled or blind. This interpretation

would place an illogical burden on the individual by requiring him or her to begin efforts to sell property before the individual received notice of the disability/blindness determination and before we determined that the individual meets all other factors of eligibility, for example, the income requirements.

To address these ambiguities, we have revised § 416.1242(a) to indicate that the time period for disposal of property begins on the date we accept the individual's signed written agreement. If we receive a signed agreement on or after the date we have determined that the individual meets the eligibility requirements described in § 416.202, with the exception of the resource requirements, our acceptance of the written agreement will occur on the date the individual receives our written notice that the agreement is in effect. The rule further states that if we receive a signed agreement prior to the date we determine that all nonresource requirements are met, our acceptance of the written agreement will not occur until the date the individual receives our written notice that all nonresource requirements are met and the agreement is in effect. When the written notice is mailed to the individual, we assume that the notice was received 5 days after the date shown on the notice unless the individual shows us that he or she did not receive it within the 5-day period.

Public Comments

Comment: The commenter suggested extending the time period for disposal of personal property to 6 months and real property to 12–18 months to allow more time for an individual to make decisions about the disposal of his or her property.

Response: We did not adopt these recommended changes. Regulations at § 416.1242(b) provide that the 3-month time period for disposition of personal property will be extended an additional 3 months if it is found that the individual has "good cause" for failing to dispose of the property within the original time period. A finding of "good cause" for failing to dispose of a resource will be made pursuant to § 416.1242(c) if, despite reasonable and diligent efforts, an individual is prevented by circumstances beyond his control from disposing of a resource. As explained in SSI operating procedures, good cause for extending the 3-month period may be found if, for example, the individual has made good faith efforts to sell the personal property but has received no offer to buy it. Therefore, under current regulations at § 416.1242 (b) and (c), an individual who continues to make reasonable, but unsuccessful, attempts to sell excess personal property can receive conditional SSI benefits for up to 6 months.

Further, regulations at § 416.1245(b) provide that excess real property will not be included in an individual's countable resources for so long as the individual's reasonable efforts to sell it have been unsuccessful. The basis for determining whether the individual's efforts to sell are reasonable, as well as unsuccessful, is the 9-month conditional benefits period described in § 416.1242.

After receiving 9 months of conditional benefits, an individual who continues to make reasonable, but unsuccessful, attempts to sell excess real property can, under current regulations, continue to receive SSI benefits for so long as reasonable efforts to sell continue. In such a case, only the 9 months of conditional benefits in the original disposal period are subject to recovery upon the disposition of the property. If the 9-month conditional benefits period were extended to 12–18 months, more benefits would become subject to recovery upon disposition of the property. Therefore, the policy change suggested by the commenter could disadvantage some individuals who receive SSI benefits while attempting to dispose of excess real property.

Comment: The commenter also suggested that written information be made available to individuals to help them understand the conditional benefits provision and that SSA personnel ensure that the conditional benefits provision is adequately explained to all individuals.

Response: We did not adopt this suggested change because we believe we already provide individuals adequate explanation of our conditional benefits policies and procedures in several ways. We include an explanation of conditional benefits in our general information pamphlets explaining the SSI program which are widely available in English and Spanish. Further, to ensure that people understand the SSI conditional benefits provision, SSA has created a fact sheet entitled "SSI Spotlight on Getting SSI While You Try to Sell Excess Resources." The fact sheet, which is available from all SSA field offices in English and Spanish, is written in easy-to-understand language and provides more information on conditional benefits than is contained in SSA's general information pamphlets.

SSA has additional procedures already in place which are designed to ensure that the conditional benefits provision is explained to individuals when appropriate. Current operating procedures require SSA personnel to explain the conditional benefits provision to all individuals who could benefit from its application in their cases. This includes individuals who inquire about SSI eligibility but have not yet filed an application, claimants whose SSI eligibility is likely to be denied because of excess nonliquid resources, and SSI recipients whose benefits are about to be suspended or terminated for the same reason. If an SSI claimant or recipient declines to qualify for the payment of conditional benefits, SSA personnel must document the claims file of his or her declination.

Comment: The commenter suggested, for individuals requiring other languages and/or means of communication, SSA staff must have documentation that the explanation of the time limits for the disposal of resources has been adequately communicated. The commenter also stated "adequate communication" for some individuals may mean contacting case managers and/or guardians, or the use of sign language interpreters.

Response: We did not adopt these suggested changes. SSA personnel are required to explain the conditional benefits provision to all individuals who could benefit from its application in their cases. We attempt to staff our field offices and teleservice centers with personnel having the language skills appropriate for their service areas. Our offices also assist individuals in obtaining interpreter services, when needed, to ensure the individuals understand their rights and responsibilities under the SSI program.

With regard to adequately communicating requirements to children or individuals with a reduced capacity to understand our policy, a proper applicant for a child claimant would be a parent or adult responsible for the child's care (including the manager or principal officer of an institution). An individual with reduced mental capacity may appoint an authorized representative to assist in pursuing his or her claim. If we determine that the individual is incapable of managing funds, we may appoint a representative payee for the claimant. In addition to providing an oral explanation of the conditional benefits requirements, we send notices of eligibility or changes in benefit amount to competent adult applicants or recipients and to legal guardians, authorized representatives and representative payees, as appropriate. If an individual is denied because of excess resources, the written denial

notice contains an explanation of conditional benefits.

For the reasons discussed above, we are not making the commenter's suggested changes to the proposed rules. These rules, as proposed, are adopted.

Regulatory Procedures

Executive Order 12291

The Secretary has determined that these are not major rules under Executive Order 12291 since the costs are expected to be less than $100 million, and the threshold criteria for major rules are not otherwise met. Therefore, a regulatory impact analysis is not required.

Paperwork Reduction Act of 1980

These regulations contain a reporting requirement in § 416.1242. The Social Security Administration would normally request clearance of this requirement (under the Paperwork Reduction Act) by the Office of Management and Budget (OMB). However, we are not doing so in this situation because we have already obtained OMB clearance to collect this information using Form SSA–8060, Agreement to Sell Property, under OMB control number 0960–0127.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect eligibility for SSI benefits of individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96–354, the Regulatory Flexibility Act, is not required.

(Catalog of Federal Domestic Assistance Program No. 93.807, Supplemental Security Income)

List of Subjects in 20 CFR Part 416

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

Dated: July 23, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: August 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

Part 416 of chapter III of title 20 of the Code of Federal Regulations is amended as follows:

PART 416—[AMENDED]

1. The authority citation for subpart L of part 416 continues to read as follows:

Authority: Secs. 1102, 1602, 1611, 1612, 1613, 1614(f), 1621, and 1631 of the Social Security Act; 42 U.S.C. 1302, 1381a, 1382, 1382a, 1382b, 1382c(f), 1382j, and 1383; sec. 211 of Pub. L. 93–66, 87 Stat. 154.

2. Section 416.1242 is amended by revising paragraph (a) to read as follows:

§ 416.1242 Time limits for disposing of resources.

(a) In order for payment conditioned on the disposition of nonliquid resources to be made, the individual must agree in writing to dispose of real property within 9 months and personal property within 3 months. The time period for disposal of property begins on the date we accept the individual's signed written agreement to dispose of the property. If we receive a signed agreement on or after the date we have determined that the individual meets the eligibility requirements described in § 416.202 of this part, with the exception of the resource requirements described in this subpart, our acceptance of the written agreement will occur on the date the individual receives our written notice that the agreement is in effect. If we receive a signed agreement prior to the date we determine that all nonresource requirements are met, our acceptance of the written agreement will not occur until the date the individual receives our written notice that all nonresource requirements are met and that the agreement is in effect. When the written notice is mailed to the individual, we assume that the notice was received 5 days after the date shown on the notice unless the individual shows us that he or she did not receive it within the 5-day period.

* * * * *

[FR Doc. 93–27915 Filed 11–12–93; 8:45 am]

BILLING CODE 4190–29–P

Food and Drug Administration

21 CFR Parts 5 and 101

[Docket Nos. 91N–0384, 84N–0153 and 91N–0317 et al.]

RIN 0905–AD08 and 0905–AB68

Food Labeling: Nutrient Content Claims, General Principles, Petitions, Definition of Terms; Definitions of Nutrient Content Claims for the Fat, Fatty Acid, and Cholesterol Content of Food; Food Standards: Requirements for Foods Named by Use of a Nutrient Content Claim and a Standardized Term; Technical Amendment; Correction

AGENCY: Food And Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 18, 1993 (58 FR 44020). The document responded to technical comments that the agency received and corrected inconsistencies and unintended technical consequences of the regulations for nutrient content claims and nutrient content claims used with a standardized term. The document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Constance B. Henry, Center for Food Safety and Applied Nutrition (HFS–156), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–205–5229.

In FR Doc. 93–19610, appearing on page 44020 in the **Federal Register** of Wednesday, August 18, 1993, the following corrections are made:

1. On page 44022, in the second column, in the first full paragraph, beginning in line 20, the phrase "information therefore, for these products. The" is corrected to read "information. Therefore, for these products, the".

2. On page 44025, in the first column, in the second paragraph, in line 6, the word "present" is corrected to read "prevent".

3. On page 44029, in the second column, in the third full paragraph, in line 4, "§ 130.1(d)(4)" is corrected to read "§ 130.10(d)(4)".

§ 101.62 [Corrected]

4. On page 44032, in the first column, in § 101.62 *Nutrient content claims for fat, fatty acid, and cholesterol content of foods*, in paragraphs (b)(2)(i)(B),

(d)(1)(i), (d)(1)(ii), (d)(2)(ii), (d)(2)(ii)(A), (d)(2)(iv), (d)(2)(iv)(A), (d)(4)(i), and (d)(4)(ii), the phrase "§ 101.9(f), per reference amount customarily consumed of all nutrients, the per 50-g criterion refers to the as prepared form" is corrected to read "§ 101.9(f)(1), of all nutrients per reference amount customarily consumed, the per 50-g criterion refers to the 'as prepared' form" wherever it appears.

Dated: November 5, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93-27919 Filed 11-12-93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 74

[Docket No. 91C-0432]

Listing of Color Additives for Coloring Sutures; D&C Violet No. 2

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the color additive regulations to provide for the safe use of D&C Violet No. 2 to color poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures for general surgery. This action responds to a petition filed by Ethicon, Inc.

DATES: Effective December 16, 1993, except as to any provisions that may be stayed by the filing of proper objections; written objections by December 15, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION:

I. Introduction

In a notice published in the **Federal Register** of December 2, 1991 (56 FR 61253), FDA announced that a color additive petition (CAP 1C0236) had been filed by Ethicon, Inc., P.O. Box 151, Somerville, NJ 08876-0151, proposing that the color additive regulations be amended in § 74.3602 *D&C Violet No. 2* (21 CFR 74.3602) to provide for the safe use of D&C Violet No. 2 as a color additive in polyglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures for general surgery. Since the publication of the filing notice, the petitioner has advised FDA that the correct spelling of the name of the suture material is poliglecaprone 25. The petition was filed under section 706 (currently section 721)of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 376) (currently 21 U.S.C. 379e).

II. Regulatory History

The regulatory history of D&C Violet No. 2 is summarized in a final rule published in the **Federal Register** of May 7, 1990 (55 FR 18865). In the May 1990 final rule, FDA permanently listed D&C Violet No. 2 for use in coloring polymethylmethacrylate intraocular lens haptics (§ 74.3602) in response to a color additive petition (CAP 9C0216). In that final rule, FDA also transferred the listings for the use of the color additive in sutures from § 74.1602 (21 CFR 74.1602) under subpart B—Drugs, to § 74.3602 under subpart D—Medical Devices.

III. Applicability of the Act

With the passage of the Medical Device Amendments of 1976 (Pub. L. 94-295), Congress mandated the listing of color additives for use in medical devices when the color additive comes into direct contact with the body for a significant period of time (21 U.S.C. 379e(a)). D&C Violet No. 2 is added to the poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures in such a way that at least some of the color additive will come into contact with the body when the sutures are in place. In addition, the sutures are intended to be absorbed by the body and during absorption, the color additive will be deposited in body tissue. Thus, the color additive will be in direct contact with the body for a significant period of time. Consequently, the use of the color additive currently before the agency is subject to the statutory listing requirement.

IV. The Color Additive

D&C Violet No. 2 is principally 1-hydroxy-4-[(4-methylphenyl)amino]-9,10-anthracenedione (CAS Reg. No. 81-48-1). It is manufactured by either condensation of quinizarin with *p*-toluidine or by condensation of 1-hydroxy-halogenoanthroquinone with *p*-toluidine. Because no chemical reaction consumes all the starting materials and yields only the desired product, both the resulting reaction mixture and commercial product will contain residual amounts of the starting materials, including *p*-toluidine. This fact is significant because Weisburger et al. have demonstrated that *p*-toluidine is a carcinogen in mice (Ref. 1).

Residual amounts of reactants such as *p*-toluidine and other manufacturing aids are commonly found among the impurities of many color additives. The presence of such impurities is not unique to color additives; numerous minor impurities are present in all chemical products, even in highly purified reagent grade chemicals.

V. Analysis of Data

A. Safety of the Color Additive

1. Legal Standard

Under section 721(b)(4) of the act, the so-called "general safety clause" for color additives, a color additive cannot be listed for a particular use unless a fair evaluation of the data and information available to FDA establish that the color additive is safe for that use. Under FDA regulations (21 CFR 70.3(i)), a color additive is safe if there is convincing evidence that establishes with reasonable certainty that no harm will result from its intended use. In addition, the anticancer or Delaney clause of the Color Additive Amendments (section 721(b)(5)(B) of the act) provides that a noningested color additive shall be deemed unsafe and shall not be listed if, after tests that are appropriate for evaluating the safety of the additive for such use, it is found to induce cancer in man or animal.

2. Exposure to the Color Additive

FDA concludes from the data submitted and other relevant information that the upper limit of total lifetime exposure to D&C Violet No. 2 from its use in coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures is 3 milligrams (mg). The agency calculated this upper limit of total lifetime exposure based on several factors. First, the color additive will be used at levels of 0.25 percent by weight of the poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures. Second, the agency made the following worst-case assumptions: (1) Five meters is the maximum total length of suture likely to be used in a single surgical operation, and 10 meters of suture would be used in multiple operations over a person's lifetime; (2) a lifespan of 70 years follows initial suture implantation; (3) a size 2/0 suture is used for general surgery; and (4) 100 percent of the color additive migrates from the suture into the body. Because these are conservative assumptions, the total lifetime exposure to D&C Violet No. 2 from its use in

coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures is likely to be far less than 3 mg.

3. Toxicology

FDA's safety evaluation of this use of D&C Violet No. 2 included a review of the available toxicity studies in the agency's files that were used previously to support the current listings for the use of D&C Violet No. 2 in externally applied drugs and cosmetics (§ 74.1602 and 21 CFR 74.2602, respectively), in sutures (§ 74.3602), and in contact lenses (§ 74.3602).

When presented with a substance whose use will result in extremely low levels of exposure, as from the proposed use of D&C Violet No. 2 in absorbable sutures, FDA does not ordinarily consider chronic toxicity testing to be necessary to determine the safety of the additive's use (Ref. 2). Although the agency does not normally require such testing, chronic studies supporting current listings for the use of D&C Violet No. 2 are available in the agency's files, and FDA's safety evaluation of the proposed use of the color additive in absorbable sutures included a consideration of these studies. Two-year carcinogenicity studies of dyed sutures implanted in rats and a lifetime skin-painting study in mice showed no indication of carcinogenicity. Additionally, teratology studies of sutures implanted in rats and rabbits exhibited no evidence of teratogenic effects.

In its evaluation of the safety of the proposed use of the subject additive, FDA has also considered the other safety data submitted previously to support current listings for the use of D&C Violet No. 2. These toxicity studies of D&C Violet No. 2 include acute oral toxicity studies in rats and dogs, acute toxicity studies of dyed sutures and suture components in rats and mice, an evaluation of the tissue response to dyed sutures implanted intramuscularly in rats, a biological evaluation of dyed sutures implanted in rabbit's eyes, a study of the tissue reaction to the color additive injected into rabbit muscle, in vitro cytotoxicity studies, a pyrogenicity study of sutures, and 7-month toxicity studies of implanted sutures in rats and mice.

In addition, FDA evaluated the toxicity studies that the petitioner provided to support the proposed use of D&C Violet No. 2 in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures for general surgery. These studies include a 120-day evaluation of dyed sutures implanted intramuscularly in rats and six mutagenicity studies, including one *Salmonella*/reverse mutation test (Ames test) using extracts of dyed sutures, one study of chromosomal aberrations and dyed suture in Chinese hamster ovary cells, one study of in vitro transformation and dyed suture in Balb/c-3T3 cells, two mouse lymphoma forward mutation assays using dyed suture, and one mouse lymphoma toxicity assay of dyed suture. Based on its review of these studies, in conjunction with previously submitted studies, the agency has concluded that the proposed use of D&C Violet No. 2 as a color additive in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) sutures is safe.

B. Carcinogenic Impurity

Although D&C Violet No. 2 has itself not been shown to cause cancer, it does contain minor amounts of a carcinogenic impurity, *p*-toluidine. The carcinogenicity of *p*-toluidine was discussed in the final rule, published in the **Federal Register** of April 2, 1982 (47 FR 14138), permanently listing D&C Green No. 6 for use in externally applied drugs and cosmetics. As stated in that document, data reported by the National Cancer Institute (NCI) demonstrates that *p*-toluidine was carcinogenic for male and female Charles River CD–1 (HaM/ICR derived) mice, causing an increased incidence of hepatomas (liver tumors) (Ref. 1).

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (CAC) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on *p*-toluidine (Ref. 3). The CAC further concluded that an estimate of the upper-bound level of human risk from potential exposure to *p*-toluidine, from the proposed use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures, could be calculated from the bioassay.

1. Prior Action

Prior to 1982, FDA refused to list a color additive that contained or was expected to contain minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that scientific developments and experience with risk assessment procedures make it possible for FDA to establish the safety of an additive that contains a carcinogenic chemical but that has not itself been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6 (47 FR 14138), FDA explained the basis for approving the use of a color additive that had not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives on the same basis.

The agency now considers the Delaney anticancer clause to be applicable only when the color additive as a whole is found to induce cancer. An additive that has not been shown to induce cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute, using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to list D&C Green No. 5, which contains a carcinogenic impurity but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

2. Risk Assessment

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives. The risk evaluation of the carcinogenic impurity *p*-toluidine has two aspects: (1) Assessment of the upper-bound lifetime exposure to the impurity from the proposed use of the color additive; and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

C. Exposure to the Impurity

As explained above, FDA estimates that the maximum total lifetime exposure to D&C Violet No. 2 from its use in coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures is 3 mg. Under the current specifications for D&C Violet No. 2, the level of *p*-toluidine in the color additive is not to exceed 0.2 percent. Thus, the estimated maximum total lifetime exposure to *p*-toluidine that will result from the use of poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures colored with D&C Violet No. 2 that comply with the

applicable specifications is 0.24 nanograms (ng) per person per day.

D. Risk Extrapolation

FDA has estimated the upper-bound level of human risk from potential exposure to *p*-toluidine from use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures by extrapolating from the risk observed at the level of exposure in the NCI-sponsored animal studies to the very low level of estimated exposure for humans. The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiments to the very low doses encountered under the proposed conditions of use. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate the actual risk because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine to a reasonable certainty whether any harm will result from the proposed conditions and levels of use of the color additive.

Based on the estimated maximum total lifetime exposure of 0.24 ng per person per day, the upper-bound limit of individual lifetime risk from the potential exposure to *p*-toluidine from this proposed use of D&C Violet No. 2 is estimated to be 1.6×10^{-11}, or 1.6 in 100 billion (Ref. 4). Because of the numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to *p*-toluidine is expected to be substantially less than the worst-case estimated daily exposure. Therefore, the actual risk would be less than 1.6×10^{-11}. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to *p*-toluidine that results from the proposed use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

E. Specifications

D&C Violet No. 2 is currently produced as a certifiable color additive for use in externally applied drugs and cosmetics, in sutures, and in contact lenses in accordance with 21 CFR part 80. Based upon the low level of exposure to *p*-toluidine that results under the current specifications for D&C Violet No. 2 in § 74.1602, the agency concludes that the specifications listed in § 74.1602 are adequate to ensure the safe use of this color additive and to control the amount of *p*-toluidine that may exist as an impurity in the color additive when used in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

VI. Conclusions

Based upon the available toxicity data and the other relevant considerations discussed above, FDA concludes that there is a reasonable certainty that no harm will result from the petitioned use of D&C Violet No. 2 for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures when it is used at a level not to exceed 0.25 percent by weight of the suture material. The agency also concludes on the basis of available data that the color additive will perform its intended coloring effect in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures and, thus, is suitable for this use. The agency, therefore, is amending § 74.3602 of the color additive regulations to provide for use of the color additive at a maximum level of 0.25 percent by weight in poliglecaprone 25 (ε-caprolactone/glycolide copolymer) absorbable sutures.

VII. Inspection of Documents

In accordance with § 71.15 (21 CFR 71.15), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition (address above) by appointment with the information contact person listed above. As provided in § 71.15, the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

VIII. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Weisburger, E. K. et al., "Testing of Twenty-one Environmental Aromatic Amines or Derivatives for Long-Term Toxicology or Carcinogenicity," *Journal of Environmental Pathology and Toxicology*, 2:325–356, 1978.

2. Kokoski, C. J., "Regulatory Food Additive Toxicology" in "Chemical Safety Regulation and Compliance," Eds., F. Homburger, J. K. Marquis, S. Karger, New York, pp. 24–33, 1985.

3. Memorandum of Conference of the Cancer Assessment Committee, "Para-Toluidine," February 24, 1981.

4. Report of the Quantitative Risk Assessment Committee, "Upper Bound Lifetime Risk for *p*-Toluidine in D&C Violet No. 2 Used as a Color Additive for epsilon-Caprolactone/Glycolide Synthetic Absorbable Sutures CAP 1C0236 (Ethicon, Inc.)," December 9, 1992.

X. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 15, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday. FDA will publish notice of the objections that the agency has received or lack thereof in the **Federal Register**.

List of Subjects in 21 CFR Part 74

Color additives, Cosmetics, Drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 74 is amended as follows:

PART 74—LISTING OF COLOR ADDITIVES SUBJECT TO CERTIFICATION

1. The authority citation for 21 CFR part 74 continues to read as follows:

Authority: Secs. 201, 401, 402, 403, 409, 501, 502, 505, 601, 602, 701, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 341, 342, 343, 348, 351, 352, 355, 361, 362, 371, 379e).

2. Section 74.3602 is amended by adding new paragraph (b)(2)(iii) to read as follows:

§ 74.3602 D&C Violet No. 2.

* * * * *

(b) * * *

(2) * * *

(iii) At a level not to exceed 0.25 percent by weight of the suture material for coloring poliglecaprone 25 (ε-caprolactone/glycolide copolymer) synthetic absorbable sutures for use in general surgery.

* * * * *

Dated: November 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27920 Filed 11–12–93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 101

[Docket No. 90N–0165]

RIN 0905–AD08

Food Labeling; Serving Size; Technical Amendments; Correction

AGENCY: Food And Drug Administration, HHS.

ACTION: Final rule; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a final rule that appeared in the **Federal Register** of August 18, 1993 (58 FR 44039). The document made technical amendments to the regulations that established the general rules for declaring serving sizes as part of the nutrition label. The document responded to technical comments that the agency received in response to that document and corrected inconsistencies and unintended technical consequences of those regulations. The August 18, 1993, document was published with some errors. This document corrects those errors.

EFFECTIVE DATE: May 8, 1994.

FOR FURTHER INFORMATION CONTACT: Ellen M. Anderson, Center for Food Safety and Applied Nutrition (HFS–165), Food and Drug Administration, 200 C St. SW., Washington, DC 202–205–5662.

In FR Doc. 93–19471, appearing on page 44039, in the **Federal Register** of Wednesday, August 18, 1993, the following corrections are made:

1. On page 44039, in the 2d column, in line 3, the phrase "or 100 milliliters (mL)" is corrected to read "100 milliliters (mL), 1 ounce (oz), or 1 fluid oz (fl oz)".

2. On page 44040, in the 3d column, in the 1st full paragraph, in line 12, the word "unpopped" is added before the word "popcorn".

3. On page 44044, in Table 2, under the product category "Dessert Toppings and Fillings:" in the "Label statement (new)" column, "(60 mL)" is corrected to read "(30 mL)".

4. On page 44045, in Table 2, under the product category "Sauces, Dips, Gravies, and Condiments" in the first entry in the "Label statement (new)" column, "(60 mL)" is corrected to read "(30 mL)"; and in the 3d entry, "(120 mL)" is corrected to read "(60 mL)".

5. On page 44046, in the 1st column, in the 1st full paragraph, beginning in line 8, the phrase "refrigerated or frozen pasta" is corrected to read "dry pasta"; and in line 11, "comment 21" is corrected to read "comment 20".

6. On page 44047, in the 2d column, in the 2d full paragraph, in line 12, the phrase "dry, fresh or frozen pasta" is corrected to read "fresh or frozen pasta".

§ 101.9 [Corrected]

7. On page 44049, in § 101.9 *Nutrition labeling of food*, in paragraph (b)(2)(G), in the 2d column, in line 5, "(b)(5)" is corrected to read "(b)(5)(vi)".

§ 101.12 [Corrected]

8. On page 44054, in § 101.12 *Reference amounts customarily consumed per eating occasion*, in paragraph (b), Table 2, under the product category "Dessert Toppings and Fillings:"in the "Label statement" column "(60 mL)" is corrected to read "(30 mL)".

9. On page 44055, in Table 2, under the product category "Miscellaneous Category:" in the "Label statement" column, in the 2d entry "1/4 tsp" is corrected to read "1 tsp"; and under the product category "Sauces, Dips, Gravies and Condiments:" in the "Label statement" column, "(60 mL)" is corrected to read "(30 mL)".

10. On page 44056, under the product category "Sauces, Dips, Gravies and Condiments" in Table 2, in the "Label statement" column, "(120 mL)" is corrected to read "(60 mL)".

11. On page 44057, in Table 2 in footnote 2, the phrase "dry, fresh, and frozen pasta" is corrected to read "fresh and frozen pasta".

Dated: November 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27918 Filed 11–12–93; 8:45 am]

BILLING CODE 4160-01-F

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21 CFR Part 176

[Docket No. 91F–0479]

Indirect Food Additives: Paper and Paperboard Components

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations to provide for the safe use of polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1, 2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1, 2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food. This action responds to a food additive petition filed by BASF Corp.

DATES: Effective November 15, 1993; written objections and requests for a hearing by December 15, 1993.

ADDRESSES: Written objections may be sent to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Daniel N. Harrison, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of January 14, 1992 (57 FR 1484), FDA announced that a food additive petition (FAP 0B4193) had been filed by BASF Corp., Eight Campus Dr., Parsippany, NJ 07054. The petition proposed to amend the food additive regulations to provide for the safe use of a polyamide-ethyleneimine-epichlorohydrin resin prepared by reacting adipic acid and *N*-(2-aminoethyl)-1, 2-ethanediamine, to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-

α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl). The resin is intended for use as a retention aid in the manufacture of paper and paperboard intended to contact dry food.

In its evaluation of the safety of the additive, FDA also considered the impurities that might be present in the additive. The additive itself has not been shown to cause cancer. However, epichlorohydrin, ethylene oxide, 1,4-dioxane, and ethyleneimine, all of which could be present as impurities in the additive, have been shown to cause cancer in test animals. Residual amounts of reactants and manufacturing aids, such as the four above-mentioned impurities, are commonly found as contaminants in chemical products, including food additives.

I. Determination of Safety

Under section 409(c)(3)(A) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348(c)(3)(A)), the so-called "general safety clause" of the statute, a food additive cannot be approved for a particular use unless a fair evaluation of the data establishes that the additive is safe for that use. The concept of safety embodied in the Food Additives Amendment of 1958 is explained in the legislative history of the provision: "Safety requires proof of a reasonable certainty that no harm will result from the proposed use of an additive. It does not—and cannot—require proof beyond any possible doubt that no harm will result under any conceivable circumstance" (H. Rept. 2284, 85th Cong., 2d sess. 4 (1958)). This definition of safety has been incorporated into FDA's food additive regulations (21 CFR 170.3(i)). The anticancer, or Delaney, clause (section 409(c)(3)(A) of the act) provides further that no food additive shall be deemed to be safe if it is found to induce cancer when ingested by man or animal.

In the past, FDA has refused to approve the use of an additive that contained or was suspected of containing even minor amounts of a carcinogenic chemical, even though the additive as a whole had not been shown to cause cancer. The agency now believes, however, that developments in scientific technology and experience with risk assessment procedures make it possible for FDA to establish the safety of additives that contain carcinogenic chemicals but that have not themselves been shown to cause cancer.

In the preamble to the final rule permanently listing D&C Green No. 6, published in the **Federal Register** of April 2, 1982 (47 FR 14138), FDA explained the basis for approving the use of a color additive that has not been shown to cause cancer, even though it contains a carcinogenic impurity. Since that decision, FDA has approved the use of other color additives and food additives on the same basis.

An additive that has not been shown to cause cancer, but that contains a carcinogenic impurity, may properly be evaluated under the general safety clause of the statute using risk assessment procedures to determine whether there is a reasonable certainty that no harm will result from the proposed use of the additive.

The agency's position is supported by *Scott* v. *FDA*, 728 F. 2d 322 (6th Cir. 1984). That case involved a challenge to FDA's decision to approve the use of D&C Green No. 5, which contains a carcinogenic chemical but has itself not been shown to cause cancer. Relying heavily on the reasoning in the agency's decision to list this color additive, the U.S. Court of Appeals for the Sixth Circuit rejected the challenge to FDA's action and affirmed the listing regulation.

II. Safety of the Petitioned Use

FDA estimates that the petitioned use of the polyamide-ethyleneimine-epichlorohydrin resin will result in extremely low levels of exposure to this additive. FDA does not ordinarily consider chronic testing to be necessary to determine the safety of an additive whose use will result in such low exposure levels (Refs. 1 and 2), and the agency has not required such testing here. On the basis of available acute toxicity data and the low level of exposure to the additive, the agency concludes that there is an adequate margin of safety for the proposed use of the additive.

FDA has evaluated the safety of this additive under the general safety clause, considering all available data and using risk assessment procedures to estimate the upper-bound limits of risk presented by the carcinogenic chemicals that may be present as impurities in this additive, epichlorohydrin, ethylene oxide, 1,4-dioxane, and ethyleneimine. Based on this evaluation, the agency has concluded that the additive is safe under the proposed conditions of use.

The risk assessment procedures that FDA used in this evaluation are similar to the methods that the agency has used to examine the risk associated with the presence of minor carcinogenic impurities in various other food and color additives that contain carcinogenic impurities (see e.g., 49 FR 13018 at 13019, April 2, 1984). This risk evaluation of the carcinogenic impurities has two aspects: (1) Assessment of the worst-case exposure to the impurities from the proposed use of the additive, and (2) extrapolation of the risk observed in the animal bioassays to the conditions of probable exposure to humans.

A. Epichlorohydrin

The agency used data in a carcinogenesis bioassay (Ref. 4) to estimate the upper-bound level of lifetime human risk from the possible presence of the impurity, epichlorolydrin, in the proposed use of this resin. The results of the bioassay demonstrated that epichlorohydrin was carcinogenic to rats under the conditions of the study, in that the test material caused significantly increased incidence of stomach papillomas and carcinomas in the test animals.

The Center for Food Safety and Applied Nutrition's Cancer Assessment Committee (CAC) reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on epichlorohydrin. The Center's Quantitative Risk Assessment Committee (QRAC) concluded that an estimate of the upper-bound limit of lifetime human risk from potential exposure to epichlorohydrin stemming from the proposed use of the additive could be calculated from the bioassay.

The agency used a quantitative risk assessment procedure (linear proportional model) to extrapolate from the dose used in the animal experiment to the very low doses encountered under the proposed conditions of use of the additive. This procedure is not likely to underestimate the actual risk from very low doses and may, in fact, exaggerate it because the extrapolation models used are designed to estimate the maximum risk consistent with the data. For this reason, the estimate can be used with confidence to determine with reasonable certainty whether any harm will result from the proposed conditions and levels of use of the food additive.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and on the level of epichlorohydrin that may be present in the additive, FDA estimated the hypothetical worst-case exposure to epichlorohydrin from the use of the additive to be no greater than 39 picograms (pg) per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from potential exposure to epichlorohydrin from the use of this polyamide-ethyleneimine-epichlorohydrin resin is 1.8×10^{-12}, or 1.8 in 1 trillion (Ref. 10). Because of numerous conservatisms in the

exposure estimate, actual lifetime-averaged individual exposure to epichlorohydrin is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to epichlorohydrin that might result from the proposed use of the additive.

B. Ethylene Oxide

The agency used data from a carcinogenesis bioassay on ethylene oxide performed by the Institute of Hygiene, University of Mainz, Germany (Ref. 6) to estimate the upper-bound level of lifetime human risk from the possible presence of the impurity, ethylene oxide, in the proposed use of the additive. The results of the bioassay on ethylene oxide demonstrated that the material was carcinogenic for female rats under the conditions of the study, in that the test material caused significantly increased incidence of squamous cell carcinomas in situ of the forestomach and carcinoma in situ of the glandular stomach.

The CAC reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethylene oxide. The QRAC concluded that the ethylene oxide bioassay provided an appropriate basis with which to calculate an estimate of the upper-bound limit of lifetime human risk from potential exposure to ethylene oxide from the proposed use of the additive.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that ethylene oxide is present at the limit of detection, FDA estimated the hypothetical worst-case exposure to ethylene oxide from the use of the additive to be no greater than 21 pg per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from the potential exposure to ethylene oxide from the use of the subject additive is 3.9×10^{-11} or 3.9 in 100 billion (Ref. 7). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to ethylene oxide is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethylene oxide that might result from the proposed use of the additive.

C. 1,4-Dioxane

The agency used data from a carcinogenesis bioassay conducted by the National Cancer Institute (Ref. 8) to estimate the upper-bound level of lifetime human risk from the possible presence of the impurity 1,4-dioxane in the proposed use of this resin. The results of the bioassay demonstrated that 1,4-dioxane was carcinogenic for female rats under the conditions of the study, in that the test material caused significantly increased incidence of squamous cell carcinomas and hepatocellular tumors in female rats.

The CAC reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on 1,4-dioxane. The QRAC concluded that an estimate of the upper-bound limit of lifetime human risk from potential exposure to 1,4-dioxane stemming from the proposed use of the resin could be calculated from the bioassay.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and on the level of 1,4-dioxane that may be present in the additive, FDA estimated the hypothetical worst-case exposure to 1,4-dioxane from the use of the additive to be no greater than 3 nanograms (ng) per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from potential exposure to 1,4-dioxane from the use of this polyamide-ethyleneimine-epichlorohydrin resin is 1.1×10^{-10}, or 1.1 in 10 billion (Ref. 7). Because of numerous conservatisms in the exposure estimate, actual lifetime-averaged individual exposure to 1,4-dioxane is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from exposure to 1,4-dioxane that might result from the proposed use of the additive.

D. Ethyleneimine

The agency used data in a carcinogenesis bioassay on ethyleneimine conducted for the National Cancer Institute (Ref. 9) to estimate the upper-bound level of lifetime human risk from the potential presence of the impurity ethleneimine in the proposed use of the additive. The results of the bioassay on ethyleneimine establish that the material was carcinogenic for male and female mice under the conditions of the study in that the test material caused significantly increased incidence of lung and liver neoplasia in both male and female mice.

CAC reviewed this bioassay and other relevant data available in the literature and concluded that the findings of carcinogenicity were supported by this information on ethyleneimine. QRAC concluded that the ethyleneimine bioassay provided an appropriate basis with which to calculate an estimate of the upper-bound level of lifetime risk from potential exposure to ethyleneimine stemming from the proposed use of the additive.

Based on the fraction of the daily diet that may be in contact with surfaces containing the additive and assuming that ethyleneimine is present at the limit of detection, FDA estimated the hypothetical worst-case exposure to ethyleneimine from the use of the additive to be no greater than 1 pg per person per day (Ref. 3). FDA then estimated that the upper-bound limit of individual lifetime risk from the potential exposure to ethyleneimine from the use of the subject additive is 3.4×10^{-10} or 3.4 in 10 billion (Ref. 5). Because of numerous conservatisms in the exposure estimate, actual lifetime averaged individual daily exposure to ethyleneimine is expected to be substantially less than the estimated daily intake, and therefore the calculated upper-bound limit of risk would be less. Thus, the agency concludes that there is a reasonable certainty of no harm from the exposure to ethyleneimine that might result from the proposed use of the additive.

E. Need For Specifications

The agency has also considered whether specifications are necessary to control the amounts of epichlorohydrin, ethylene oxide, 1,4-dioxane, and ethyleneimine in the food additive. The agency finds that specifications are not necessary for the following reasons: (1) The trace amounts of the four impurities that might be present in the additive would be expected to be virtually eliminated from the paper during subsequent paper processing operations and by the heat during drying steps, and, therefore, these impurities would not become components of food at other than extremely small amounts; and (2) the upper-bound limit of lifetime risk from exposure to the impurities, even under worst-case assumptions, is very low (epichlorohydrin—1.8 in 1 trillion, ethylene oxide—3.9 in 100 billion, 1,4-dioxane—1.1 in 10 billion, and ethyleneimine—3.4 in 10 billion).

F. Conclusions on Safety

FDA has evaluated the data in the petition and other relevant material. The

agency concludes that the proposed food additive use is safe, and that § 176.180 (21 CFR 176.180) should be amended as set forth below.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

III. Environmental Impact

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

IV. Objections

Any person who will be adversely affected by this regulation may at any time on or before December 15, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

V. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. Carr, G. M., "Carcinogen Testing Programs," in "Food Safety: Where Are We?," Committee on Agriculture, Nutrition, and Forestry, U.S. Senate, p. 59, July 1979.
2. Kokoski, C. J., "Regulatory Food Additive Toxicology," in "Chemical Safety Regulation and Compliance," edited by Homburger, F., J. K. Marquis, and S. Karger, New York, NY, pp. 24–33, 1985.
3. Memorandum from the Food and Color Additives Review Section to the Indirect Additives Branch, dated July 16, 1990.
4. Konishi, Y. et al., "Forestomach Tumors Induced by Orally Administered Epichlorohydrin in Male Wistar Rats," *Gann*, 71·922–923, 1980.
5. Report of the Quantitative Risk Assessment Committee, "Ethylene amine and Epichlorohydrin as Contaminants in Polyamide-ethyleneimine-epichlorohydrin Resins for Use in the Manufacture of Paper and Paperboard in FAP OB4193 (BASF Corp.), dated March 5, 1993."
6. Dunkelberg, H., "Carcinogenicity of Ethylene Oxide and 1, 2-Propylene Oxide upon Intragastric Administration to Rats," *British Journal of Cancer*, 46:924, 1982.
7. Report of the Quantitative Risk Assessment Committee, "Upper Bound Lifetime Risk for Ethylene Oxide and 1, 4-dioxane in Polyamide-ethyleneimine-epichlorohydrin Resins for Use in the Manufacture of Paper and Paperboard, FAP OB4193 (BASF Corp.), dated April 10, 1991."
8. "Bioassay of 1, 4-dioxane for Possible Carcinogenicity," National Cancer Institute, NCI-CG-TR-80, 1978.
9. Innes, J. R. M. et al., "Bioassay of Pesticides and Industrial Chemicals for Tumorigenicity in Mice: A Preliminary Note," *Journal of the National Cancer Institute*, 42:1101, 1969.
10. Report of the Quantitative Risk Assessment Committee—Update—Subject: Ethylene Amine and Epichlorohydrin as Contaminants in Polyamide-ethyleneimine-epichlorohydrin Resins for use in the Manufacture of Paper and Paperboard in FAP OB4193 (BASF Corp.), dated May 13, 1993."

List of Subjects in 21 CFR Part 176

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 176 is amended as follows:

PART 176—INDIRECT FOOD ADDITIVES: PAPER AND PAPERBOARD COMPONENTS

1. The authority citation for 21 CFR part 176 continues to read as follows:

Authority: Secs. 201, 402, 406, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 346, 348, 379e).

2. Section 176.180 is amended in the table in paragraph (b)(2) by alphabetically adding a new entry under the heading "List of substances" to read as follows:

§ 176.180 Components of paper and paperboard in contact with dry food.

* * * * *

(b) * * *
(2) * * *

List of substances	Limitations
• • • • •	
Polyamide-ethyleneimine-epichlorohydrin resin (CAS Reg. No. 115340–77–7), prepared by reacting equimolar amounts of adipic acid and *N*-(2-aminoethyl)-1,2-ethanediamine to form a basic polyamidoamine which is modified by reaction with ethyleneimine, and further reacted with formic acid and (chloromethyl)oxirane-α-hydro-ω-hydroxypoly(oxy-1,2-ethanediyl).	
• • • • •	

Dated: November 4, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27921 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF STATE

Bureau of Politico—Military Affairs

22 CFR Part 121

[Public Notice 1896]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the regulations implementing section 38 of the Arms Export Control Act which governs the export of defense articles and defense services. It revises Category V of the U.S. Munitions List (USML) which covers explosives to be more consistent with multilateral export controls of the COCOM International Munitions List (IML). In addition, this final rule enumerates some commodities which are not controlled under the USML when not compounded with items controlled by the USML. This rule change is intended to reduce the burden

on exporters of defense articles by removing certain items and achieving consistency between the unilateral export controls of the USML and multilateral export controls of the COCOM IML.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Terry L. Davis, Office of Defense Trade Controls, Department of State 703 875–5662 or fax 703 875–6647.

SUPPLEMENTARY INFORMATION: On April 27, 1992, a final rule change was published which revised Category V of the USML to coincide with coverage contained under COCOM IML#8. Upon completion of the COCOM negotiations in June, 1992, IML# 8 was further revised. This final rule reflects the final outcome of the 1992 COCOM negotiations for IML#8. In addition, it clarifies coverage of certain substances and confirms coverage under Category V of boron carbide fuels of 85% purity or higher; butadienenitrileoxide (BNO); 3-nitraza-1,5 pentane diisocyanate; polynitrocarbonates; Bis (2-methyl aziridinyl) methylamino phosphine oxide (methyl BAPO); guanidine nitrate; military aircraft fuels and military fuel thickeners. It also removes from the USML and transfers control to the Commerce Department's CCL the following commodities: Nitroglycerin; Trinitrotoluene (TNT) Trinitrophenylmethylnitramine (TETRYL); Pentaerylthritol Tetranitrate (PETN) and Protech. Finally, it specifies which substances are not subject to USML control when they are not compounded with controlled items.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. This rule affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters by clarifying USML coverage of explosives. The relevant information collection is to be reviewed by the Office of Management and Budget under control no. 1404–0013.

List of Subjects in 22 CFR Part 1218

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations, is amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Public Law 90–629, Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); Executive Order 11958, 42 FR 4311; 22 U.S.C. 2658.

2. Section 121.12 is revised to read as follows:

§ 121.12 Military explosives and propellants.

(a) Military Explosives in Category V are military explosives or energetic materials consisting of high explosives, propellants or low explosives, pyrotechnics and high energy solid or liquid fuels, including aircraft fuels specially formulated for military purposes. Military explosives are solid, liquid or gaseous substances or mixtures of substances which, in their application as primary, booster or main charges in warheads, demolition and other military applications, are required to detonate.

Military explosives, military propellants and military pyrotechnics in Category V include substances or mixtures containing any of the following:

(1) Spherical aluminum powder of particle size 60 micrometres or less manufactured from material with an aluminum content of 99% or more;

(2) Metal fuels in particle sizes less than 60 micrometres whether spherical, atomized, spheroidal, flaked or ground, manufactured from material consisting of 99% or more of any of the following: Zirconium, magnesium and alloys of these; beryllium; fine iron powder with average particle size of 3 micrometres or less produced by reduction of iron oxide with hydrogen; boron or boron carbide fuels of 85% purity or higher and average particle size of 60 micrometers or less;

(3) Any of the foregoing metals or alloys of paragraphs (a) (1) and (2) of this section, whether or not encapsulated in aluminum, magnesium, zirconium or beryllium;

(4) Perchlorates, chlorates and chromates composited with powered metal or other high energy fuel components;

(5) Nitroganidine (NQ);

(6) With the exception of chlorinetrifluoride, compounds composed of fluorine and one or more of the following: Other halogens, oxygen, nitrogen;

(7) Carboranes; decaborane; pentaborane and derivatives;

(8) Cyclotetramethylenetetranitramine (HMX); octahydro-1,3,5,7-tetranitro-1,3,5,7-tetrazine; 1,3,5,7-tetranitro-1,3,5,7-tetraza-cyclooctane; (octogen, octogene);

(9) Hexanitrostilbene (HNS);

(10) Diaminotrinitrobenzene (DATB);

(11) Triaminotrinitrobenzene (TATB);

(12) Triaminoguanidinenitrate (TAGN);

(13) Titanium subhydride of stiochiometry TiH 0.65–168;

(14) Dinitroglycoluril (DNGU, DNGU); tetranitroglycoluril (TNGU, SORGUYL);

(15) Tetranitrobenzotriazolobenzotriazole (TACOT);

(16) Diaminohexanitrobiphenyl (DIPAM);

(17) Picrylaminodinitropyridine (PYX);

(18) 3-nitro-1,2,4-triazol-5-one (NTO or ONTA);

(19) Hydrazine in concentrations of 70% or more; hydrazine nitrate; hydrazine perchlorates; unsymmetrical dimethyl hydrazine; monomethyl hydrazine; symmetrical dimethyl hydrazine;

(20) Ammonium perchlorate;

(21) 2-(5-cyanotetrozolato) penta amminecobalt (III) perchlorate (CP);

(22) cis-bis (5-nitrotetrazolato) penta amminechobalt (III) perchlorate (or BNCP);

(23) 7-amino 4,6-dinitrobenzofurazane-1-oxide (ADNBF); amino dinitrobenzofuroxan;

(24) 5,7-diamino-4,6-dinitrobenzofurazane-1-oxide, (CL–14 or diaminodinitrobenzofurozan);

(25) 2,4,6-trinitro-2,4,6-triaza-cyclo-hexanone (K–6 or keto-RDX);

(26) 2,4,6,8-tetranitro-2,4,6,8-tetraaza-bicyclo (3,3,0)-octanone-3(tetranitrosemiglycouril, K–55, or keto-bicyclic HMX);

(27) 1,1,3-trinitroazetidine (TNAZ);

(28) 1,4,5,8-tetranitro-1,4,5,8-tetraazadecalin (TNAD);

(29) Hexanitrohexaazaisowurtzitane (CL-20 or NNIW; and chlathrates of CL-20);

(30) Polynitrocubanes with more than four nitro groups;

(31) Ammonium dinitramide (ADN or SR–12);

(32) Cyclotrimethylentrinitramine (RDX); cyclonite; T4; hexahydro-1,3,5-trinitro-1,3,5-triazine; 1,3,5-trinitro-1,3,5-triaza-cyclohexane; hexogen, hexogene;

(33) Hydroxylammonium nitrate (HAN); hydroxylammonium perchlorate (HAP);

(34) Hydroxy terminated Polybutadiene (HTPB) with a hydroxyl functionality of less than 2.28, a hydroxyl value of less than 0.77 meq/g, and a viscosity at 30 degrees C of less than 47 poise;

(b) "Additives" include the following:
(1) Glycidylazide Polymer (GAP) and its derivatives;
(2) Polycyanodifluoroamino-ethyleneoxide (PCDE);
(3) Butanetrioltrinitrate (BTTN);
(4) Bis-2-Fluoro-2,2-dinitroethylformal (FEFO);
(5) Butadienenitrileoxide (BNO);
(6) Catocene, N-butyl-ferrocene and other ferrocene derivatives;
(7) 3-nitraza-1,5 pentane diisocyanate;
(8) Bis(2,2-dinitropropyl) formal and acetal;
(9) Energetic monomers, plasticisers and polymers containing nitro, azido, nitrate, nitraza or difluoramino groups;
(10) 1,2,3-Tris [1,2-bis(difluoroamino)ethoxy] propane; Tris vinoxy propane adduct, (TVOPA);
(11) Bisazidomethyloxetane and its polymers;
(12) Nitratomethylmethyloxetane or poly (3-nitratomethyl, 3-methyl oxetane); (Poly-NIMMO); (NMMO);
(13) Azidomethylmethyloxetane (AMMO) and its polymers;
(14) Tetraethylenepentamine-acrylonitrile (TEPAN); cyanoethylated polyamine and its salts;
(15) Polynitroorthocarbonates;
(16) Tetraethylenepentamine-acrylonitrileglycidol (TEPANOL); cyanoethylated polyamine adducted with glycidol and its salts;
(17) Polyfunctional aziridine amides with isophthalic, trimesic BITA or butylene imine trimesamide isoyanuric, or trimethyladipic backbone structures and 2-methyl or 2-ethyl substitutions on the aziridine ring;
(18) Basic copper salicylate; lead salicylate;
(19) Lead beta resorcylate;
(20) Lead stannate, lead maleate, lead citrate;
(21) Tris-1-(2-methyl)aziridinyl phosphine oxide (MAPO), bis(2-methyl aziridinyl) 2-(2-hydroxypropanoxy) propylamino phosphine oxide (BOBBA 8), and other MAPO derivatives;
(22) Bis(2-methyl aziridinyl) methylamino phosphine oxide (methyl BAPO);
(23) Organo-metallic coupling agents, specifically:
(i) Neopentyl (diallyl) oxy, tri [dioctyl] phosphato titanate or titanium IV, 2,2[bis 2-propenolatomethyl, butanolato or tris [dioctyl] phosphato-O], or LICA 12;
(ii) Titanium IV, [(2-propenolato-1)methyl, N-propanolatemethyl] butanolato-1 or tris(dioctyl)pyrophosphato, or KR3538;
(iii) Titanium IV, [2-propenolato-1)methyl, N-propanolatomethyl] butanolato-1; or tris(dioctyl) phosphate;
(24) FPF–1 poly-2,2,3,3,4,4-hexafluoro pentane-1,5-diolformal;
(25) FPF–3 poly-2,4,4,5,5,6,6-heptafluoro-2-trifluoromethyl-3-oxaheptane-1,7-diolformal;
(26) Polyglycidylnitrate (PGN) or poly(nitratomethyl oxirane); (poly-GLYN) (PGN);
(27) Lead-copper chelates of beta-resorcylate and/or salicylates;
(28) Triphenyl bismuth (TPB);
(29) bis-2-hydroxyethylglycolamide (BHEGA);
(30) Superfine iron oxide (Fe_2O_3 hematite) with a specific surface area greater than 250 m^2/g and an average particle size of 0.003 micrometres or less;
(31) N-methyl-p-nitroaniline;
(c) "Precursors" include the following:
(1) 1,2,4-trihydroxybutane (1,2,4-butanetriol);
(2) Guanidine nitrate;
(3) 1,3,5-trichlorobenzene;
(4) Bischloromethyloxetane (BCMO);
(5) Low (less than 10,000) molecular weight, alcohol-functionalised, poly(ephichlorohydrin); poly(ephichlorhydrindiol); and triol;
(6) Propyleneimide, 2-methylaziridine;
(7) 1,3,5,7,-tetraacetyl-1,3,5,7-tetraaza-cyclooctane (TAT);
(8) Dinitroazetidine-t-butyl salt;
(9) Hexabenzylhexaazaisowurtzitane (HBIW);
(10) Tetraacetyldibenzylhexa-azaisowurtzitane (TAIW);
(11) 1,4,5,8-tetraazadecaline.
(d) Military high energy solid or liquid fuels specially formulated for military purposes: (1) Aircraft fuels controlled by § 121.12(a) are finished products not their independent constituents. (2) military materials containing thickeners for hydrocarbon fuels specially formulated for use in flamethrowers or incendiary munitions; metal stearates or palmates (also known as octol); and M1, M2 and M3 thickeners;
(e) Any substance, or mixture meeting the following performance requirements:
(1) Any explosive with a detonation velocity greater than 8,700 m/s or a detonation pressure greater than 340 kilobars;
(2) Other organic high explosives yielding detonation pressures of 250 kilobars or greater that will remain stable at temperatures of 523 K (250 degrees C) or higher for periods of 5 minutes or longer;
(3) Any other UN Class 1.1 solid propellant with a theoretical specific impulse (under standard conditions) greater than 250 seconds for non-metallized, or greater than 270 seconds for aluminized compositions;
(4) Any UN Class 1.3 solid propellant with a theoretical specific impulse greater than 230 seconds for non-halogenized, 250 seconds for non-metallized and 266 seconds for metallized compositions;
(5) Any other explosive, propellant or pyrotechnic that can sustain a steady-state burning rate greater than 38mm (1.5 in) per second under standard conditions of 68.9 bar (1,000 PSI) pressure and 294K (21 degrees C);
(6) Any other gun propellants having a force constant greater than 1,200 kJ/kg;
(7) Elastomer modified cast double based propellants (EMCDB) with extensibility at maximum stress greater than 5% at 233 K (−40 degrees C).
(f) Liquid oxidizers comprised of or containing the following:
(1) Inhibited red fuming nitric acid (IRFNA));
(2) Oxygen difluoride.

Note: Category V includes the following substances when compounded or mixed with military explosives, fuels or propellants controlled under this category:

—Ammonium picrate
—Black powder
—Hexanitrodiphenylamine
—Difluoroamine (HNF2)
—Nitrostarch
—Potassium nitrate
—Tetranitronaphthalene
—Trinitroanisol
—Trinitronaphthalene
—Trinitroxylene
—Fuming nitric acid non-inhibited and non-enriched
—Acetylene
—Propane
—Liquid oxygen
—Hydrogen peroxide in concentrations less than 85%
—Misch metal
—N-pyrrolidinone and l-methyl-2-pyrrolidinone
—Dioctylmaleate
—Ethylhexylacrylate
—Triethylaluminum (TEA), trimethylaluminum (TMA) and other pyrophoric metal alkyls and aryls of lithium, sodium, magnesium, zinc or boron
—Nitrocellulose
—Nitroglycerin (or glyceroltrinitrate, trinitroglycerine (NG)
—2,4,6 trinitrotoluene (TNT)
—Pentaerythritol tetranitrate (PETN)
—Trinitrophenylmethylnitramine (Tetryl)
—Ethylenediaminedinitrate (EDDN)
—Lead azide, normal and basic lead styphnate, and primary explosives or priming composition containing azides or azide complexes
—Triethyleneglycoldinitrate (TEGDN)
—2,4,6-trinitroresorcinol (styphnic acid)
—Diethyldiphenyl urea, dimethyldiphenyl urea and methylethyldiphenyl urea (Centralites)
—N,N-diphenylurea (unsymmetrical diphenylurea)
—Methyl-N,N-diphenylurea (methyl unsymmetrical diphenylurea)

—Ethyl-N,N-diphenylurea (ethyl unsymmetrical diphenylurea)
—2-nitrodiphenylamine (2–NDPA)
—4-nitrodiphenylamine (4–NDPA)
—2,2-dinitropropanol
—Chlorinetrifluoride.

§ 121.14 [Reserved]

3. Section 121.14 is removed and reserved.

Dated: September 21, 1993.

Dr. Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 93–27907 Filed 11–12–93; 8:45 am]
BILLING CODE 4710–25–M

22 CFR Part 121

[Public Notice 1897]

Amendments to the International Traffic in Arms Regulations (ITAR)

AGENCY: Department of State.

ACTION: Final rule.

SUMMARY: This rule amends the regulations implementing section 38 of the Arms Export Control Act, which governs the export of defense articles and defense services.

It reduces the burden on munitions exporters by eliminating the more stringent restrictions on the export of these vessels, components, and parts when designated as Significant Military Equipment (SME). This rule also removes certain craft and vessels that are not inherently military from State Department control and distinguishes between combatant vessels and non-combatant vessels.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Rose Marie H. Biancaniello, Chief, Arms Licensing Division, Office of Defense Trade Controls, Department of State (703–875–6644).

SUPPLEMENTARY INFORMATION: This rule amends § 121.1, Category VI of the ITAR which defines vessels of war and special naval equipment. It establishes certain patrol craft, auxiliary vessels and special naval equipment, components and parts residing on the USML as non-SME. In addition, this rule amends § 121.15 of the ITAR which lists the types of naval vessels subject to State Department control under Category VI. The revised list distinguishes between combatant vessels and non-combatant vessels. After consultation with the Department of Defense, the Department of State has determined that certain patrol craft, auxiliary vessels and special naval equipment components and parts described in Category VI should not be designated as SME since they do not meet the guidelines established in § 120.19(a) and that § 121.15 should be amended accordingly.

This amendment involves a foreign affairs function of the United States and thus is excluded from the major rule procedures of Executive Order 12291 (46 FR 13193) and the procedures of 5 U.S.C. 553 and 554. In addition, this amendment affects collection of information subject to the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), and will serve to reduce the burden on exporters in that respect. The relevant information collection is to be reviewed by the Office of Management and Budget under control No. 1405–0013.

List of Subjects in 22 CFR Part 121

Arms and munitions, Exports.

Accordingly, for the reasons set forth in the preamble, title 22, chapter I, subchapter M (consisting of parts 120 through 130) of the Code of Federal Regulations is amended as set forth below:

PART 121—THE UNITED STATES MUNITIONS LIST

1. The authority citation for part 121 is revised to read as follows:

Authority: Secs. 2, 38, and 71, Pub. L. 90–629 Arms Export Control Act, 90 Stat. 744 (22 U.S.C. 2752, 2778, 2797); E.O. 11958, 42 FR 4311; 22 U.S.C. 2658.

2. In § 121.1, Category VI is revised to read as follows:

§ 121.1 General. The United States Munitions List.

* * * * *

Category VI—Vessels of War and Special Naval Equipment.

*(a) Warships, amphibious warfare vessels, landing craft, mine warfare vessels, patrol vessels and any vessels specifically designed or modified for military purposes. (See § 121.15.)

(b) Patrol craft without armor, armament or mounting surfaces for weapon systems more significant than .50 caliber machine guns or equivalent and auxiliary vessels. (See § 121.15.)

* (c) Turrets and gun mounts, arresting gear, special weapons systems, protective systems, submarine storage batteries, catapults, mine sweeping equipment (including mine countermeasures equipment deployed by aircraft) and other significant naval systems specifically designed or modified for combatant vessels.

(d) Harbor entrance detection devices (magnetic, pressure, and acoustic) and controls therefor.

* (e) Naval nuclear propulsion plants, their land prototypes, and special facilities for their construction, support, and maintenance. This includes any machinery, device, component, or equipment specifically developed, designed or modified for use in such plants or facilities. (See § 123.20)

(f) All specifically designed or modified components, parts, accessories, attachments, and associated equipment for the articles in paragraphs (a) through (e) of this category.

(g) Technical data (as defined in § 120.10) and defense services (as defined in § 120.9) directly related to the defense articles enumerated in paragraphs (a) through (f) of this category. (See § 125.4 for exemptions.) Technical data directly related to the manufacture or production of any defense articles enumerated elsewhere in this category that are designated as Significant Military Equipment (SME) shall itself be designated SME.

* * * * *

3. Section 121.15 is revised to read as follows:

§ 121.15 Vessels of war and special naval equipment.

Vessels of war means vessels, waterborne or submersible, designed, modified or equipped for military purposes, including vessels described as developmental, "demilitarized" or decommissioned. Vessels of war in Category VI, whether developmental, "demilitarized" and/or decommissioned or not, include, but are not limited to, the following:

(a) Combatant vessels: (1) Warships (including nuclear-powered versions):
(i) Aircraft carriers.
(ii) Battleships.
(iii) Cruisers.
(iv) Destroyers.
(v) Frigates.
(vi) Submarines.
(2) Other Combatants:
(i) Patrol Combatants (e.g., including but not limited to PHM).
(ii) Amphibious Aircraft/Landing Craft Carriers.
(iii) Amphibious Materiel/Landing Craft Carriers.
(iv) Amphibious Command Ships.
(v) Mine Warfare Ships.
(vi) Coast Guard Cutters (e.g., including but not limited to: WHEC, WMEC).

(b) Combatant Craft: (1) Patrol Craft (patrol craft described in § 121.1, Category VI, paragraph (b) are considered non-combatant):
(i) Coastal Patrol Combatants.
(ii) River, Roadstead Craft (including swimmer delivery craft).
(iii) Coast Guard Patrol Craft (e.g., including but not limited to WPB).
(2) Amphibious Warfare Craft:
(i) Landing Craft (e.g., including but not limited to LCAC).
(ii) Special Warfare Craft (e.g., including but not limited to: LSSC, MSSC, SDV, SWCL, SWCM).

(3) Mine Warfare Craft and Mine Countermeasures Craft (e.g., including but not limited to: MCT, MSB).

(c) Non-Combatant Auxiliary Vessels and Support Ships:

(1) Combat Logistics Support:

(i) Underway Replenishment Ships.

(ii) Surface Vessel and Submarine Tender/Repair Ships.

(2) Support Ships:

(i) Submarine Rescue Ships.

(ii) Other Auxiliaries (e.g., including but not limited to: AGDS, AGF, AGM, AGOR, AGOS, AH, AP, ARL, AVB, AVM, AVT).

(d) Non-Combatant Support, Service and Miscellaneous Vessels (e.g., including but not limited to: DSRV, DSV, NR, YRR).

Dated: September 21, 1993.

Dr. Lynn E. Davis,

Under Secretary of State for International Security Affairs.

[FR Doc. 93–27908 Filed 11–12–93; 8:45 am]

BILLING CODE 4710–25–M

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2619 and 2676

Valuation of Plan Benefits in Single-Employer Plans; Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal; Amendments Adopting Additional PBGC Rates

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: This final rule amends the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619) and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676). Part 2619 contains the interest assumptions that the PBGC uses to value benefits under terminating single-employer plans. Part 2676 contains the interest assumptions for valuations of multiemployer plans that have undergone mass withdrawal. The amendments set out in this final rule adopt the interest assumptions applicable to single-employer plans with termination dates in December 1993, and to multiemployer plans with valuation dates in December 1993.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22000), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006, 202–778–8850 (202–778–8859 for TTY and TDD only). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION: This rule adopts the December 1993 interest assumptions to be used under the Pension Benefit Guaranty Corporation's ("PBGC's") regulations on Valuation of Plan Benefits in Single-Employer Plans (29 CFR part 2619, the "single-employer regulation") and Valuation of Plan Benefits and Plan Assets Following Mass Withdrawal (29 CFR part 2676, the "multiemployer regulation").

Part 2619 sets forth the methods for valuing plan benefits of terminating single-employer plans covered under title IV of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). Under ERISA section 4041(c), all single-employer plans wishing to terminate in a distress termination must value guaranteed benefits and "benefit liabilities", *i.e.*, all benefits provided under the plan as of the plan termination date, using the formulas set forth in part 2619, subpart C. (Plans terminating in a standard termination may, for purposes of the Standard Termination Notice filed with PBGC, use these formulas to value benefit liabilities, although this is not required.) In addition, when the PBGC terminates an underfunded plan involuntarily pursuant to ERISA section 4042(a), it uses the subpart C formulas to determine the amount of the plan's underfunding. Part 2676 prescribes rules for valuing benefits and certain assets of multiemployer plans under sections 4219(c)(1)(D) and 4281(b) of ERISA.

Appendix B to part 2619 sets forth the interest rates and factors under the single-employer regulation. Appendix B to part 2676 sets forth the interest rates and factors under the multiemployer regulation. Because these rates and factors are intended to reflect current conditions in the financial and annuity markets, it is necessary to update the rates and factors periodically.

The PBGC issues two sets of interest rates and factors, one set to be used for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. The same assumptions apply to terminating single-employer plans and to multiemployer plans that have undergone a mass withdrawal. This amendment adds to appendix B to parts 2619 and 2676 sets of interest rates and factors for valuing benefits in single-employer plans that have termination dates during December 1993 and multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1993.

For annuity benefits, the interest rates will be 5.60% for the first 25 years following the valuation date and 5.25% thereafter. For benefits to be paid as lump sums, the interest assumptions to be used by the PBGC will be 4.25% for the period during which benefits are in pay status and 4.0% during the period preceding the benefit's placement in pay status. (ERISA section 205(g) and Internal Revenue Code section 417(e) provide that private sector plans valuing lump sums under $25,000 must use interest assumptions at least as generous as those used by the PBGC for valuing lump sums (and for lump sums exceeding $25,000 are restricted to 120% of the PBGC interest assumptions).) These annuity and lump sum interest assumptions are unchanged from the November 1993 interest assumptions.

Generally, the interest rates and factors under these regulations are in effect for at least one month. However, the PBGC publishes its interest assumptions each month regardless of whether they represent a change from the previous month's assumptions. The assumptions normally will be published in the **Federal Register** by the 15th of the preceding month or as close to that date as circumstances permit.

The PBGC has determined that notice and public comment on these amendments are impracticable and contrary to the public interest. This finding is based on the need to determine and issue new interest rates and factors promptly so that the rates and factors can reflect, as accurately as possible, current market conditions.

Because of the need to provide immediate guidance for the valuation of benefits in single-employer plans whose termination dates fall during December 1993, and in multiemployer plans that have undergone mass withdrawal and have valuation dates during December 1993, the PBGC finds that good cause exists for making the rates and factors set forth in this amendment effective less than 30 days after publication.

The PBGC has determined that the promulgation of this rule is not a "significant regulatory action" under the criteria set forth in Executive Order 12866, because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or

planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations or recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

Because no general notice of proposed rulemaking is required for this amendment, the Regulatory Flexibility Act of 1980 does not apply. See 5 U.S.C. 601(2).

List of Subjects

29 CFR Part 2619

Employee benefit plans, Pension insurance, and Pensions.

29 CFR Part 2676

Employee benefit plans and Pensions.

In consideration of the foregoing, parts 2619 and 2676 of chapter XXVI, title 29, Code of Federal Regulations, are hereby amended as follows:

PART 2619—[AMENDED]

1. The authority citation for part 2619 continues to read as follows:

Authority: 29 U.S.C. 1301(a), 1302(b)(3), 1341, 1344, and 1362.

2. In appendix B, Rate Set 2 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2619—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.43(b)(1)) for purposes of applying the formulas set forth in § 2619.43 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums (including the return of accumulated employee contributions upon death), the PBGC shall employ the values of i^j set out in Table I hereof as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $1<y\leq n^1$), interest rate i^1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n^1<y\leq n^1+n^2$), interest rate i^2 shall apply from the valuation date for a period of $y-n^1$ years, interest rate i^1 shall apply for the following n^1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y>n^1+n^2$), interest rate i^3 shall apply from the valuation date for a period of $y-n^1-n^2$ years, interest rate i^2 shall apply for the following n^2 years, interest rate i^1 shall apply for the following n^1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i^1	i^2	i^3	n^1	n^2
.	.	.	.	.	.	.	.	.
2	12–1–93	1–1–94	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2619.49(b)(1)) for purposes of applying the formulas set forth in § 2619.49 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i^j prescribed in Table II hereof.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by i^1, i^2, . . . , and referred to generally as i^j) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_j are:					
	i_1	for $t=$	i_2	for $t=$	i_3	for $t=$
.	.	.	.	.	.	.
December 1993	.0560	1–25	.0525	>25	N/A	N/A

PART 2676—[AMENDED]

3. The authority citation for part 2676 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1399(c)(1)(D), and 1441(b)(1).

4. In appendix B, Rate Set 2 is added to Table I, and a new entry is added to Table II, as set forth below. The introductory text of both tables is republished for the convenience of the reader and remains unchanged.

Appendix B to Part 2676—Interest Rates Used To Value Lump Sums and Annuities

Lump Sum Valuations

In determining the value of interest factors of the form $V^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing benefits under this subpart to be paid as lump sums, the PBGC shall use the values of i_j prescribed in Table I hereof. The interest rates set forth in Table I shall be used by the PBGC to calculate benefits payable as lump sum benefits as follows:

(1) For benefits for which the participant or beneficiary is entitled to be in pay status

on the valuation date, the immediate annuity rate shall apply.

(2) For benefits for which the deferral period is y years (y is an integer and $0 < y \leq n_1$), interest rate i_1 shall apply from the valuation date for a period of y years; thereafter the immediate annuity rate shall apply.

(3) For benefits for which the deferral period is y years (y is an integer and $n_1 < y \leq n_1 + n_2$), interest rate i_2 shall apply from the valuation date for a period of $y - n_1$ years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

(4) For benefits for which the deferral period is y years (y is an integer and $y > n_1 + n_2$), interest rate i_3 shall apply from the valuation date for a period of $y - n_1 - n_2$ years, interest rate i_2 shall apply for the following n_2 years, interest rate i_1 shall apply for the following n_1 years; thereafter the immediate annuity rate shall apply.

TABLE I

[Lump sum valuations]

Rate set	For plans with a valuation date		Immediate annuity rate (percent)	Deferred annuities (percent)				
	On or after	Before		i_1	i_2	i_3	n_1	n_2
•	•	•	•	•	•	•	•	•
2	12–1–93	1–1–94	4.25	4.00	4.00	4.00	7	8

Annuity Valuations

In determining the value of interest factors of the form $v^{0:n}$ (as defined in § 2676.13(b)(1)) for purposes of applying the formulas set forth in § 2676.13 (b) through (i) and in determining the value of any interest factor used in valuing annuity benefits under this subpart, the plan administrator shall use the values of i_t prescribed in table below.

The following table tabulates, for each calendar month of valuation ending after the effective date of this part, the interest rates (denoted by $i_1, i_2, \ldots$, and referred to generally as i_t) assumed to be in effect between specified anniversaries of a valuation date that occurs within that calendar month; those anniversaries are specified in the columns adjacent to the rates. The last listed rate is assumed to be in effect after the last listed anniversary date.

TABLE II

[Annuity valuations]

For valuation dates occurring in the month—	The values of i_t are:					
	i_1	for t=	i_t	for t=	i_t	for t=
•	•	•	•	•	•	•
December 1993	.0560	1–25	.0525	>25	N/A	N/A

Issued in Washington, DC, on this 9th day of November 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–28000 Filed 11–14–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

RIN 0970–AB06

Social Services Block Grant Program; New Reporting Requirements

AGENCY: Administration for children and Families, HHS.

ACTION: Final rule.

SUMMARY: The Department is issuing this final rule to implement new annual reporting requirements for the Social Services Block Grant program. Also, as required by statute, we are publishing uniform definitions of services which states must use in submitting certain information required in their annual reports.

DATES: The effective date of this regulation is December 15, 1993. However, the reporting requirements in the statute became effective upon their enhancement on October 13, 1988.

FOR FURTHER INFORMATION CONTACT: Bryant Tudor (202) 401–5535 or Frank Burns (202) 401–5536, Administration for Children and Families, Office of Community Services, Fourth Floor—East Wing, 370 L'Enfant Promenade, SW., Washington, DC 20447.

SUPPLEMENTARY INFORMATION:

I. Program Description

The Omnibus Budget Reconciliation Act of 1981 (Pub. L. 97–35) amended title XX of the Social Security Act (the Act), 42 U.S.C. 1397, to establish the Social Services Block Grant (SSBG) program. Under this program, grants are made to the 50 states, the District of Columbia, and other eligible jurisdictions (Puerto Rico, Guam, the Virgin Islands, American Samoa, and the Commonwealth of the Northern Mariana Islands) for use in funding a variety of social services directed towards the needs of individuals and families residing within each state.

Social services are directed at five goals in the Social Services Block Grant statute to: Prevent, reduce or eliminate dependency; achieve or maintain self-sufficiency; prevent neglect, abuse or exploitation of children and adults; prevent or reduce inappropriate care; and secure admission or referral for institutional care when other forms of care are not appropriate.

In fiscal year 1991, $2.8 billion was allotted to states based on the statutory formula. Within the specific limitations in the law (42 U.S.C. 1397d), each state has the flexibility to determine what services will be provided, who is eligible to receive services, and how funds are distributed among the various services within the state. State or local SSBG agencies may provide these services directly or purchase them from other public or private agencies and/or individuals.

II. New Statutory Requirements

Prior to the enactment of the Family Support Act of 1988, section 2006 of the Social Security Act (42 U.S.C. 1397e) required each state to report biennially on activities carried out under the SSBG. The report was required to include an accurate description of such activities, a complete record of the purposes for which funds were spent, and the extent to which funds were spent consistent with the state's pre-expenditure report required by section 2004 (42 U.S.C. 1397c).

Section 607 of the Family Support Act of 1988, Public Law 100–485, amended section 2006 to require that reports be submitted annually rather than biennially. In addition, a new subsection 2006(c) was added to require that the following specific information be submitted as a part of each state's annual report:

(1) The number of individuals who received services paid for in whole or in part with funds made available under this title, showing separately the number of children and the number of adults who received such services, and broken down in each case to reflect the types of services and circumstances involved;

(2) The amount spent in providing each type of service, showing separately for each type of service the amount spent per child recipient and the amount spent per adult recipient;

(3) The criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs);

(4) The methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies, and broken down in each case to reflect the types of services and circumstances involved.

Section 2006(c) also directs the Secretary to establish uniform definitions of services for use by the states in preparing the above information and "to make such other provision as may be necessary to assure that compliance with these requirements will not be unduly burdensome on the States."

III. Background

The SSBG was enacted in fiscal year 1981 to replace the previous title XX program that had been in effect since 1975. Reporting requirements implementing the prior title XX program included the Social Services Reporting Requirements (SSRR)—a system of quarterly and annual reports from states of unduplicated counts of recipients, by service, by eligibility category, by expenditure of funds, by method of provision, and by title XX goal, as well as special reports on child day care.

When the SSBG was enacted, the Department decided not to go beyond the language of the statute in implementing the biennial reporting requirements. However, beginning in 1983, the Office of Human Development Services, the office which previously administered the SSBG, funded the American Public Welfare Association to operate a Voluntary Cooperative Information System to collect data on state SSBG services, expenditures and numbers of individuals served. States have supported the concept of a voluntary information collection system, but not all states have participated or submitted complete data on their use of SSBG funds.

IV. Notice of Proposed Rulemaking

On April 5, 1990, the Department published a Notice of Proposed Rulemaking (NPRM) to implement the new reporting requirements enacted in the Family Support Act of 1988 (55 FR 12678).

The proposed rule contained, but did not go beyond, the reporting requirements contained in the statute. The NPRM also proposed uniform definitions of 26 services that states would be required to use in preparing the information required by section 2006(c), and a one-page reporting form for the numerical data required by section 2006(c).

We received comments from 32 state agencies in 29 states, two local service provider organizations, and three national organizations, including one national organization representing state SSBG agencies. In addition, we met with representatives of state SSBG agencies responsible for complying with the new reporting requirements.

V. Summary of Changes in the Final Rule

In developing the final rule, the Department maintained its commitment to the principles stated in the NPRM:

1. All requirements or procedures were evaluated to assure that compliance with and implementation of the requirement would not be unduly burdensome on the states.

2. The uniform service definitions the Department developed did not affect state flexibility in the selection of the services a state chose to provide, in the state definition of these services, or in the state's use of its SSBG funds.

3. No additional federal funds are being requested for state implementation of the new statutory requirements.

4. While no monetary penalties are assessed for noncompliance, a state would be subject to an audit finding for failure to submit an annual report containing the information specified in section 2006 of the Act.

In general, the majority of the comments supported the Department's proposed approach and the specific provisions of the NPRM. However, after full consideration of all of the comments, we have made the following changes or retained the following provisions:

(1) We have amended § 96.74(a)(3) to add a requirement that states report a total amount of federal, state and local funds for each service. The language of the law is clear in requiring reports of the number of persons served in whole or in part with SSBG funds; the law is not explicit about whether SSBG funds or total social services funding should be reported. We received many comments pointing out that SSBG funding in many states represents only a fraction of the total state expenditures for most services. Many comments suggested that average costs, limited to SSBG funds, per adult recipient and child recipient would be meaningless. This additional information will provide a context for understanding the recipient and expenditure figures reported by states.

(2) Section 96.74(b)(3) continues to require states to report actual numbers of recipients and actual expenditures when this information is available, but allows states to use data based on sampling and/or estimates when actual figures are unavailable.

(3) The determination, stated in the NPRM, that no federal purpose would be served by requiring states to report an unduplicated count of recipients has been retained in the final rule. Many states commented that unduplicated counts would be unduly burdensome and would require costly systems development to implement.

(4) We have attempted to increase the reliability and uniformity of data by clarifying how states should count recipients of services to determine the total number of recipients of each service. Section 96.74(b)(3) directs states to consider a service provided to a recipient for the length of the reporting period (one year) or any fraction thereof as a single service.

(5) Section 96.74(b)(3) also directs states to count only a single recipient for each service. We have suggested that the states consider the recipient to be the

individual who directly interacts with the service provider. We have made this change in response to questions about which individuals states should count when services are delivered on behalf of families.

(6) Section 96.17(a)(2) clarifies that states may use either the federal or the state fiscal year as the reporting period for the annual report.

(7) We have accepted almost all of the specific editorial and technical comments we received regarding changes in the Uniform Definitions of Services. The definitions remain descriptive and broadly inclusive, with illustrative examples of component services and activities.

(8) We have added two new services definitions in the Uniform Definitions of Services. Employment Services are now defined as a discrete service category; they formerly had been considered a component of Employment, Education and Training Services. A new services definition, Independent and Transitional Living Services, has also been added.

(9) To permit greater specificity in reporting expenditure data, we have revised § 96.74(b)(4), and the reporting form, to add several sub-categories to item 30, non-service expenditures. This section now requires reporting of funds transferred to or from the SSBG, balances carried over by a state from the previous fiscal year, balances carried forward to the next fiscal year, and other administrative costs and activities.

(10) We have deleted the requirement in § 96.74(b)(4) that the total in the Expenditure column of the reporting form (services plus other expenditures) must equal the state's allotment for that fiscal year.

VI. Summary of Comments and the Departmental Response

We appreciate the thoughtful comments and recommendations and, in some cases, detailed analysis we received on the NPRM. All written comments were analyzed and form the basis for changes we have made in these final rules. The discussion which follows includes a summary of the major comments, our responses to those comments, and the changes that have been made in the final rule as a result of the comments.

1. General Comments

Most states and organizations were supportive of the approach taken in the NPRM, especially of the Department's efforts to implement the new statutory requirements with minimum burden on the states.

Comments:

- The regulations accomplish the dual task of obtaining information on the uses of Social Services Block Grant funds and minimizing the burden placed on states. They accomplish the goal of adequate accountability without the redirection of an undue amount of resources from service provision to administrative activity.

However, several comments objected to the implementation of any additional requirements under the SSBG.

Comments:

- We recognize that the new reporting requirements are imposed by statute. Even so, we believe that they are inherently inconsistent with the block grant concept, which was implemented with the understanding that reporting requirements would be minimized.
- When the SSBG was implemented states were granted flexibility and were relieved of many burdensome requirements in exchange for block grant funding. We are now still under block grant funding but are returning the onerous reporting requirements of pre-block grant years.

Department's response:

No changes are required by these comments.

2. SSBG Funds Only Part of the Total State Social Service Program

A serious concern affecting the consistency, reliability and interpretation of the data raised by several states is that, in most states, services are only partially funded with SSBG funds. This means that, as proposed in the NPRM, states would report the number of people served in whole or part with SSBG funds but report on services expenditures based on SSBG dollars alone. This could lead to erroneous conclusions about the costs of services because average expenditures would be understated. Generally, states seemed to recognize a need for accountability, but wanted the data they report to be accurate and useful.

Comments:

- Since SSBG funds might pay a portion of the total cost of a service, reports of average costs per service recipient will be incomplete and virtually meaningless.
- It is recommended that more consideration be given to providing guidance to states which will minimize the potential for greatly overstating the numbers of recipients of SSBG funded services. One method, of course, is that if SSBG funds 5 percent of a service, then 5 percent of the recipients would be reported. Without some specific guidance to states the data on per recipient costs will almost certainly contain very large variations and will have very little value to planners or policy makers.
- As an example, in FY 1990, the state projects $208 million in social services expenditures, but the state's SSBG allotment is $129.3 million. If Congress is interested in the social services delivered to needy citizens, it would be necessary to report as we do now the entire picture of services that fall within SSBG.
- The proposed requirement describes services which are funded in whole or in part by SSBG. In many cases, in our state, SSBG funds only a fractional portion of the total service provided and, as a result, this will not be reflected accurately in the total cost per client figure.
- The expenditures per child and the expenditures per adult may be very misleading because the SSBG funds cover only a portion of the actual services cost.

Department's response:

After much consideration, we agreed that a change was needed and have added a new requirement in § 96.74(a)(3). For each of the service categories, states should report (or estimate, or determine the amount through sampling) the amount of federal, state and local funds that support the service.

We recognize that there is wide variation among states in their use of and coordination with other sources of funding for social services programs. Some states include within their services programs only SSBG and state funds, while others include funds from other federal programs, e.g., the Community Services Block Grant, the Job Opportunities and Basic Skills (JOBS) program, Child Welfare Services, the Older Americans Act, and Medicaid, as well as state and local funding. We are requesting that the states provide, as part of their annual report, a listing of the programs and amounts of funding which constitute their overall services programs. We have made a corresponding change in the reporting form (see appendix B).

3. Estimation and Sampling of Data

Out of concern for the accuracy and reliability of data, one comment suggested that estimation and sampling not be allowed under the final rule.

Comment:

- In the rules, it is proposed that if accurate data was not available then sampling or estimating would be

allowed. Even a small amount of sampling or estimating may invalidate the data or raise questions about the reliability of the information. It has been the experience of this agency that when estimations are used, the budgeting process becomes questionable in the eyes of the public or lawmakers.

However, most of the comments endorsed the use of estimation and sampling as a way of relieving undue burdens on state data collection efforts, and, in some cases, as the only way such information could become readily available.

Comments:

• Major systems development, at great cost to this state, would be necessary if 'actual' statistics were required. We ask that the option of providing 'estimates' be sustained in the final regulation.

• SSBG dollars are widely spread over salaries and services and may be mixed with other funds. It is therefore difficult to collect data that represent discrete SSBG services. In some programs, we will have to rely heavily on estimated data.

• Our ability to meet the new requirements is dependent on retaining the assurance that estimates can be reported when actual recipient or expenditure data is not available.

• In the past, the block grant client counts and expenditures have been estimated, based on the assumption that all clients of Departments of Social Services and Human Service Departments in target groups other than Developmental Disability, Mental Health and Alcohol or other Drug Abuse are funded by SSBG funds. We could continue to use this estimation method.

Department's response:

We continue to be favorably impressed with the sense of responsibility displayed by state agencies in their desire that the information collected be as accurate as possible. While we agree that actual counts of recipients and expenditure data provide more reliable information, we are charged by law to minimize the burden on states, and believe that such a requirement would be too burdensome. Therefore, we have made no changes in this section of the rule as proposed. Section 96.74(b)(3) requires that states use sampling and estimation techniques only where actual figures are unavailable; that data be identified as actual figures, or figures based on sampling or estimation; and that the sampling and/or estimation process(es) be described. We believe that the availability of this information is sufficient to inform researchers and policymakers of the limitations of the data. The reporting form has been revised to indicate whether data are actual, estimated or based on sampling.

4. Duplicated Counts of Services Recipients

In the preamble to the notice of proposed rulemaking, we noted that "no federal purpose would be served by requiring states to report an unduplicated count of recipients." We are aware that only a few states have the capability of producing an unduplicated count. The comments we received reflect this.

Two states suggested that unduplicated counts be required.

Comments:

• The NPRM states that "no federal purpose would be served by requiring states to report an unduplicated count of recipients." In discussions this position was restated by federal representatives. We are convinced that if states provide duplicated counts, then information on costs per recipient will have little meaning. Since the amount of duplication would be unknown either within an individual state's report or from state to state, little use could be made of the information.

• The biggest problem we see here is the counting of clients. If states are allowed to provide duplicated counts of clients, the data become almost meaningless. We recommend that states be asked to provide an unduplicated count of clients within each Service Category. States which cannot provide an unduplicated count should be allowed to estimate. "Not Available" is more meaningful than a duplicated number.

Most states, however, favor the position taken in the NPRM.

Comments:

• Given the current variability in states' SSBG data collection capabilities, the reports of individuals receiving services will range from carefully screened unduplicated counts to grossly duplicated totals.

• Although the **Federal Register** background section states that "no federal purpose would be served by requiring states to report an unduplicated count of recipients," we believe they probably mean across service categories. The public law itself uses the term "individual" in reference to the count of service recipients. Unless the rule can allow that clients not be unduplicated within each service as well as across services, we will have problems reporting. The only method to prevent duplication, even within services, is to have a statewide automated system based on a single client identifier. We have a number of service areas not using our Client Information System (CIS) (e.g., prevention, homemaker/housekeeper) or where our most valid, reliable data come from a source other than CIS (e.g., emergency shelter, foster care).

• True unduplicated counts both within and across services cannot be provided at present. In most cases, client data and expenditures are derived separately. Combining the two databases will always result in estimation of per-client expenditures, particularly where unduplicated client data are not available.

• A question arises with reference to the statement under the NPRM Background section that "no federal purpose would be served by requiring states to report an unduplicated count of recipients." We initially assumed that this meant that there was no requirement for a state to report an unduplicated count for the entire aggregate population of recipients for all services funded in whole or in part with SSBG funding, and that data on individuals served per service category would need to be reported as an unduplicated count. However, from information provided at a recent workshop, we understand that duplicated counts per service category are to be permitted. We recommend that this information be set forth in the final rule and/or the instructions for the finalized SSBG reporting form.

• This state, except for a limited number of counties, is unable at this time to provide an unduplicated count. Therefore, the total column on the example form in appendix B would be a duplicated count. The expenditure total would be an accurate count.

• Our ability to meet the new requirements is dependent on retaining the policy criterion that there will be no requirement that states report an unduplicated count of recipients within or among uniform service categories.

Department's response:

We continue to believe that these new requirements of law should be implemented without placing undue burdens on states. Because many states are unable to produce an unduplicated count of recipients without major changes in their data collection procedures, or without setting up a new data collection system at considerable cost, we are not making changes in this section of the regulation. However, states are required, under § 96.74(b)(3), to provide actual numbers of recipients when this information is available, and to identify and describe estimation and/

or sampling procedures when these procedures are used. We have also changed § 96.74(b)(3) to require that duplicated counts be identified. Similar changes have been made in the reporting form and instructions in appendix B.

5. Data Collection Issues

A number of comments related to basic reporting issues concerned the methods states should use to count the recipients of social services.

Comments:

• Lack of consistency in reporting would result in misleading information. For example, a child in foster care for 12 months could be counted 12 times if counted each month, four times if counted quarterly, and once if counted annually. Additionally, if the same child receives other services such as transportation, is he to also be counted for transportation as well as foster care? What should take precedence?

• It is not clear as to what constitutes a client being served. For example, would a client who received homemaker services once a week for ten weeks be considered as "one" client or would the service be reported as "ten" since it had been provided ten times to the client?

Department's response:

We have clarified in § 96.74(b)(3) that states should consider a service provided for the annual reporting period—or any fraction thereof—to be a single service provided to a single recipient. For example, a child in foster care, who received a foster care service funded in whole or part under the SSBG for twelve months, should be counted as one child receiving one service. If a child was in foster care for three months, returned home for three months, and returned to foster care for six months, that child should also, if possible, be counted as one child receiving one service. We believe this change will contribute to the consistency, accuracy and reliability of the data.

A related issue concerns the difficulty in determining the individual to whom services are provided, especially in cases where the services are designed to benefit a family.

Comments:

• The proposed rules do not state whether reported services should be associated with a single client or whether a service should be associated with all family members who benefit from it. For example, counseling to a parent which serves to protect a child could be reported as having been provided to both. Child day care provided to allow a parent to receive employment training could be similarly reported.

• For uniformity, simplicity, and consistency in data reporting, we recommend that the requisite recipient data for certain service categories be limited to one type of recipient only. Thus, for Foster Care for Children, the appropriate recipient number would be restricted to the count of foster children, or that number of individuals deemed to be in foster care placement, state custody, and/or under foster care casework supervision, and the state's definition of child for this category would include those individuals remaining in foster care placement after reaching the age of majority.

• The definition of "children/adults" is left to the discretion of the states. Our current data base captures services to specific target populations, such as adolescents, adults, children, and families. However, certain services are not provided exclusively to "children" or "adults," but to "families." Thus, we recommend that an attempt be made to clarify how services to "families" are to be reported, since we believe this has both philosophical, as well as practical implications for our clients.

Department's response:

In § 96.74(b)(3), we have clarified how states should count recipients, i.e., one recipient per service. We suggest, but do not mandate, that the individual who interacts directly with the provider of services should be considered the recipient of services. Therefore, a child would be considered the recipient of child day care services, even if those services are provided primarily to enable a parent to receive employment or training. Similarly, an adult receiving counseling services would be considered the services recipient, even if those services are provided, in part, for the protection of a child. However, within a family, several family members could each be receiving different services, or the same service, and be counted separately. For example, if each member of a family is receiving counseling, each family member should be counted separately.

While we appreciate that states are increasingly focusing on providing services to families, and support this philosophically, the statute requires states to report data by adults and by children.

In a related comment, one state asked about different definitions for "adult" and "child" under different services.

Comment:

• A similar issue is the adult and child distinction. Each state will be using their own definition of "adult" and "child," and will include the definition in their annual report. Within this state, the definitions of "adult" and "child" will differ by service category and by eligibility.

Department's response:

Since this does not conflict with the statute, it is an area where state discretion should take precedence. There is no requirement that each state's definition of "adult" and "child" remain consistent for every service.

Comment:

• One national organization suggested that each state be required to report on services delivered to children and to various categories of adults by age. The suggestion was four categories: Children (birth to 17); young adults (18–39); midlife adults (40–59); and older adults (60+).

Department's response:

Because it was our intent to not go beyond the requirements of the statute, to minimize reporting burdens, and to preserve state flexibility where possible, we are not accepting this suggestion.

6. Reporting Period

One state suggested that the reporting period be the same for all states.

Comment:

• We recommend that all states be required to use the federal fiscal year when reporting SSBG expenditures. Very little is consistent from state to state; a uniform reporting period would facilitate comparability and timely compilation of data. Since estimation is allowed, state fiscal year adjustment should be feasible and not unduly burdensome.

However, other states commenting on the language in § 96.17(a)(2) expressed concern that the regulations should accommodate a reporting period that gives the states the flexibility to use the same program year they use for planning purposes.

Comments:

• A major concern of this state relates to language in the proposed rule which implies that the annual report would require service information to be reported according to the federal fiscal year of funds allotment rather than the state fiscal year of funds expenditure. Our fiscal and programmatic data related to SSBG funded services is presently maintained according to the period of budget expenditure by state fiscal year (July 1 through June 30).

Tracking SSBG funded services by federal fiscal year would entail implementing special data collection systems.

• The state completes its report for the period covered by the state fiscal year which runs July 1 through June 30. It is our interpretation that the report will be due six months after the end of the state fiscal year, which would be December 31, or subsequently when the state submits its application for the federal fiscal year, which would be by June 30 of the following year.

Department's response:

It was our intention in the proposed rule to minimize reporting burdens on states. The program year used by each state is the appropriate period for that state to use in reporting, as these generally coincide with state planning, budget and legislative cycles. We have modified the language in § 96.17(a)(2) to clarify that either the state or federal fiscal year may be used.

7. Effective Date

Several states expressed concern about the timing of the implementation of the new reporting requirements.

Comments:

• We would require a six-month lead time for intra-agency coordination and the implementation of methodological change.

• We would recommend at least a two-year phase-in of the requirements, in order to give states enough time to make the needed system changes, programmatic changes, and reporting changes to enable us to comply with the new federal statute.

• States need adequate time to establish a system to obtain the requested information and train staff. We support establishing an implementation date at least six months from the approval date of the regulations.

• The state will require a minimum of six months to one year lead time from the promulgation of the final regulations in order to make the system changes to comply with the reporting requirements and disseminate these requirements to the county departments of human services and service providers.

• There is a possibility that some of the requirements, as well as the services definitions might change in the final rule. State data collection should not be required until after the final regulations are published.

Department's response:

These regulations implement requirements of law that have been in effect since the enactment of the Family Support Act of 1988 (Public Law 100–485) on October 13, 1988. The Department provided each state agency administering the SSBG with a copy of the new statutory requirements in an Information Memorandum (HDS–IM–89–1) issued February 2, 1989. A Program Instruction (HDS–PI–89–14), issued November 24, 1989, required states to submit annual reports based on the new requirements. The NPRM was published on April 5, 1990.

The Program Instruction directed states to prepare annual reports, and gave states the option to base those reports on state definitions of services, and the recipient and expenditure data available. This report could be submitted in any format of the state's choice, although a number of states have been using the reporting form which appeared in the NPRM. States are reminded that this requirement for an annual report remains in effect.

Because these reporting requirements are minimal, have been in effect for more than four years, and because the Department has not imposed requirements that would be unduly burdensome, states must submit an annual report which meets the requirements of this final rule, using the specified reporting form, beginning with the state or federal fiscal year following the year in which the final rule is published. That report must be submitted within six months of the end of the period covered by the report, or at the time the state submits its application for funding for the fiscal year which begins at the expiration of that six-month period, as stated in § 96.17(a). Each state is encouraged to begin using the reporting form and uniform services definitions immediately.

The Department will be collecting, analyzing and publishing these data as a resource for Congress, the states, researchers and others beginning with the fiscal year in which this regulation is published.

8. Non-Service Expenditures

Several states commented about reporting non-service expenditures, with one state suggesting that specific additional information be reported.

Comment:

• We would suggest the addition of cells to the reporting form for the following entries:

1. Monies transferred into SSBG.
2. Monies transferred out of SSBG.
3. Monies carried over from the previous fiscal year.
4. Monies representing certified match.

Department's response:

The SSBG statute gives states the flexibility to transfer funds among certain block grants. States also have two years to expend SSBG funds. To reflect this, we have revised § 96.74(b)(4) to require states to report, under category 30—non-services expenditures—sub-categories for transfers from or to the SSBG, carry over balances (i.e., the amount of funds reserved from the previous fiscal year), and carry forward balances (i.e., the amount the state intends to expend in the following fiscal year). Also, recognizing that state expenditures need not equal the state's allotment each year, we have removed the requirement in § 96.74(b)(4) that the total in the expenditure column of the reporting form must equal the state's allotment for that fiscal year. Since state matching is not required under the SSBG, we did not accept the recommendation that we add a sub-category to show "certified match." The amount of such funds or other local of donated funds will be reported in the new category of services funding as state or local funds (see § 96.74(a)(3).

9. Services Definitions: General

A few states misunderstood the NPRM to require the use of the uniform services definitions in the design of their state programs. In addition, many states expressed concern about the reliability of data because of the variation among state service programs and the amount of overlap among the services definitions.

Comments:

• Policy criterion number 2, "The uniform service definitions the Department is required to issue will not affect state flexibility in the selection of the services a state chooses to provide, in the state definition of these services, or in the state's use of SSBG funds," appears to negate the intent of the reporting requirements.

• The Uniform Definition of Services appears to be the first transformation of the block grant into a specific grant system. State discretion is restricted and the federal government is put in the position of determining the state's needs, rather than relying on the judgment of the state and its local entities.

• Because the service categories have been defined broadly (and even overlap) to encompass different service delivery patterns, there will be great variation from state to state in the services reported within each category.

• Given the flexibility in reporting afforded to states by the new rules, the resulting information will be of limited

analytical value. It would seem desirable to establish consistency in reporting by the states so that the information can be interpreted similarly for all states and in aggregate.

• We applaud your efforts to standardize reporting practices and appreciate the diversity of data collection and reporting practices among the states. In general, we believe that there is considerable overlap in the definitions of the 26 services, and that the overlap may complicate their interpretation and limit the confidence which can be placed in aggregate data.

• Definitions, as given, are in many areas inconsistent and open to interpretation by the reporting person. For example, case management—which occurs in multiple service areas—could be reported as case management rather than a more specific service area. As a result, uniform/consistent reporting would not be achieved.

Department's response:

First, we agree that, given our approach to allow as much flexibility as possible, consistency of data among states will not be easily achieved. However, we believe that the overall purpose of these data is to serve as general indicators of trends in state-administered social services programs, rather than as definitive reports. We do not, for example, intend that the data would be subject to rigorous analysis, evaluation efforts, or to the same standard of verification that would apply to a fiscal audit. We believe this approach will provide useful data without the need to divert funds for social services into expensive systems development at the state level.

Second, the uniform service definitions in the NPRM represented the Department's effort to produce a framework, for reporting purposes only, that would encompass most of the activities currently described and funded by states under the SSBG. We want to emphasize that the uniform services definitions are not meant to direct how states define or deliver services; all of the flexibility under the block grant statute is retained. We do not expect the uniform services definitions to be identical to those used in any state. However, we do believe they offer a reasonable framework for reporting. States are asked to review their own services and if at all possible use the uniform services definitions for services which correspond. If this is not possible, states can use the "other services" category.

The Department has made minor editorial and technical changes in specific definitions, and added two new services definitions, as described below.

10. Changes in Services Definitions

We specifically raised three reporting issues in the NPRM—asking for recommendations of services that may have inadvertently been omitted; whether case management, counseling and transportation should be reported discretely or as components of other services; and whether the definition of home based services was appropriate.

a. New Services Definitions:

Comment:

• A comment from a national organization representing 37 state SSBG agencies suggested adding a definition for "Independent and Transitional Living Services." These are services designed to help older youth in foster care or homeless youth make the transition to independent living, or to help adults make the transition from an institution, or from homelessness, to independent living.

Department's response:

We have accepted this suggestion and added a new definition.

Comment:

• Another comment suggested that we examine the definition of "Employment, Education and Training Services," and break out employment as a separate service.

Department's response:

Based on this comment, and on a growing pattern by states of providing education and training services that are not necessarily related to employment, we have developed separate definitions for "Education and Training Services" and "Employment Services."

Comment:

• Another comment suggested that we add "money management/protective payee" as a new services definition.

Department's response:

We agree that this is an important activity which some states may provide, typically as a part of another service. Under the uniform definitions, states could report this activity as a component of case management, adult protective services or adult foster care; they could also report as a separate service under "other services," item 29. However, we have not defined this activity as a separate service because no state currently includes this as a separate service in their pre-expenditure reports.

b. Case Management, Counseling and Transportation

We invited comment on the issue of whether case management, counseling and transportation should be reported as separate services or included only as components of the services, or both. Most states commented that a high degree of flexibility was necessary in this area.

Comments:

• We agree with the recommendation that states should have the option to report counseling, case management and transportation as separate services. The state provides these services for the most part as separate services, although they may also be provided as components of other services. We would prefer to be unable to report them in either category.

• Although consistency in reporting procedures should be a goal of the new requirements, we agree that states should not be required to separately report the number of services recipients and the costs of counseling, case management and transportation when these services are component parts of other services.

Several states, however, expressed concern that the reporting requirement constituted an "either/or" situation.

Comments:

• We agree with the proposal to allow reporting separately or within other services. However, it is not clear whether a state is expected to do all one or the other. We suggest the requirements specifically allow states to mix methods as appropriate. An example might be transportation. If the state has a contract which can be accessed by multiple services, it would be reported under the category of transportation; but if they also have another service, it would be reported within that service.

• In our present service program structure transportation is considered a subordinate and integral activity (and not a separate service program area) for our direct delivered child protection and child welfare program services. However, in our purchase of services programs, transportation services are treated as a separate and distinct service category. We have historically annotated the SSBG reporting to indicate this qualification and would recommend that such a practice could still be allowed and would not be anomalous under the new reporting requirements.

Department's response:

We have accepted the comments that request maximum state flexibility. We emphasize that states need not choose between methods of reporting. Case management, counseling and transportation (and other services) may be reported as discrete services or as components of other services. States that offer these services both discretely

and as components of other services may report both ways.

c. Home Based Services

We also invited comment on the definition of home based services. At issue was whether home health services should be reported as part of home based services or separately, as we proposed. Another issue was whether the component activities we had included under the definition of home based services—including homemaker services, chore services, and home management services—should be reported separately. One state recommended that home health services be reported as a component of home based services. However most of the comments we received agreed with the NPRM.

Comments:

- The state will be able to separately report home health services under Health Related Services. However, we see no need to separately report the components of home based services.

- Home health services should not be reported under the definition "Home Based Services," as home health services by their definition require trained health care providers to provide services and should be tracked under the definition "Health Related and Home Health Services." Home based services by definition are services provided, in general, by untrained providers (i.e., homemakers, choreworkers, etc.) and therefore should be reported under the definition "home based services."

- For the purposes of program monitoring and planning, the state tracks the services collectively listed by the proposed rules under "home based services" separately. Various in-home services may be provided as part of a service plan related to protection, disability or other reason. There should be no need to break out the separate services, however, under "home based services" unless this is done for all service categories.

Department response:

Based on the comments we have decided to retain the approach we proposed—that is, home health services should be reported under the category "Health Related Services," or under "other services," category 29, and such other activities as homemaker services, chore services, home management services and home maintenance services, should be reported under the category "Home Based Services."

Comment:

- A related comment suggested that the prevention of abuse of adults be added to the definition of home based services.

Department's response:

We agree and have changed the phrase "to prevent child abuse and neglect" to "to prevent the abuse or neglect of a child or adult."

d. Day Care Services

Comment:

- One comment suggested that "plan development" be included as a component activity in the definition of both child and adult day care.

Department's response:

We have accepted this suggestion.

Another comment mentioned the difficulty in defining the term "recipient" in relation to activities that are incidental to the provision of a service.

Comment:

- Child care licensing is currently defined as a program expenditure in the State. It will be very difficult to develop a reliable estimate of "service recipients" for this activity.

Department's response:

The final regulation retains state flexibility to report such administrative activities either as part of a service (where that activity is covered in the uniform service description in appendix A, as is the case here), or as an "other expenditure" on the reporting form, i.e., an administrative cost. This is an issue for other services as well—recruitment and home certification are included as possible activities in adoption and foster care services, for example. We suggest that if such administrative activities are a part of the state's definition of the service, no recipient count should be attempted. Alternatively, if a state wishes to report day care licensing as an "other service" and indicate the number of individuals, agencies or organizations with which the state has worked, the state should do so, adding an explanation of the data elsewhere in the annual report.

e. Special Services for Persons With Disabilities

Comments:

- We received several comments suggesting a change in the title of the service definition "Special Services for the Developmentally Disabled, the Blind, and the Physically Disabled."

Department's response:

In response, we have changed the title of this definition to "Special Services for Persons with Developmental or Physical Disabilities, or Persons with Visual or Auditory Impairments." We also added language to show that such services may be provided to "maximize the potential of persons with disabilities," and added family support, transportation, respite care and recreation as possible component activities.

f. Prevention and Intervention Services

Comment:

- One comment suggested that prevention and intervention services should more explicitly include preventing the removal of a child or adult from the home.

Department's response:

A statement to that effect now appears in the definition.

Comments:

- Several comments questioned the need for two services—prevention and intervention services and protective services—that appear similar in content. Other comments asked how such activities as family violence services or child abuse investigation could be reported.

Department's response:

We agree that there is some overlap between the services definitions, because they describe similar activities. In general, we have defined the services categories broadly so that states may choose the category which is closest to their own service definition. As noted in the NPRM, we tried to develop definitions that are descriptive and inclusive rather than detailed and limiting. Many states offer the component activities described under one definition or the other, and a significant number of states (12) offer both "protective" and "preventive" or "intervention" services for adults or children.

We have therefore decided to retain both services in the uniform services definition. In addition, we have added the term "family violence services" to both definitions. Similarly, child abuse investigations may be reported under either category.

Comment:

- Another comment suggested that the service definition of "prevention and intervention" place greater emphasis on prevention, and note that alternate placements or living arrangements are a possible consequence of abuse or neglect.

Department's response:

We have accepted this comment, but have retained language to show that activities designed to ameliorate the

consequences of abuse or neglect may also be reported under this definition.

g. Residential Treatment Services

Comments:

• We received several comments regarding residential treatment services appearing both as a separate services definition, and as a component activity of other services, including: Special services for persons with developmental or physical disabilities, or persons with visual or auditory impairments; special services for youth involved in or at risk of involvement in criminal activities; and substance abuse services. One comment suggested that we delete the definition for residential treatment services because of this overlap.

Department's response:

Section 2005 of the SSBG statute limits the use of SSBG funding for residential treatment services. Section 2005(a)(3) prohibits the use of SSBG funds for payment of room and board except for the cost of subsistence during rehabilitation, temporary shelter provided as a protective service, or room and board provided for a short term as an integral but subordinate part of a social service. Similarly, section 2005(a)(4) prohibits the use of SSBG funding for the provision of medicare care, other than family planning services, rehabilitation services, or initial detoxification of an alcoholic or drug dependent individual, unless it is an integral but subordinate part of a social service. Section 2005(a)(5) prohibits federal funding for social services provided to individuals in hospitals, skilled nursing facilities, or prisons except services provided to an alcoholic or drug dependent individual, or rehabilitation services.

Each state defines services within these statutory restrictions. Residential treatment services are intensive, often short-term, and relatively expensive. As a result, many states maintain separate recordkeeping for residential treatment as a separate service, even when it is provided as an integral but subordinate part of another social service, e.g., short term residential care of an emotionally disturbed child. For this reason we have decided to maintain residential treatment services as a separate services definition, while maintaining the flexibility for states which separately define residential treatment as a component of another service to report under a different category.

h. Case Management Services

Comment:

• One comment focused on case management services, directing our attention to the definition of case management services under the Medicaid program, which allows payment for case management services, but prohibits duplicate payment when case management is funded under another program. This comment pointed out that, with the limited availability of funding for services, one funding source should not jeopardize the delivery of services through another funding source.

Department's Response:

We agree that similar or identical services may be provided through various federal programs and our purpose is not to jeopardize funding. We believe this is a matter of cost allocation at the state level to avoid duplicate claims for the same service to the same client. The phrase "duplicative payment" does not prohibit a state from using SSBG funds for case management of social services and Medical funds for case management of medical services.

i. Foster Care Services

Comment:

• One state suggested that the service definitions be coordinated with the Foster Care, Adoption and Child Welfare programs under titles IV–B and IV–E of the Social Security Act, to assure that the definitions would not jeopardize funding under those titles.

Department's response:

There is no definition of foster care services, only of foster care (i.e., maintenance payments) under these titles. However, in response to the comment, we have included in the definition of foster care services all of the allowable settings for foster care under titles IV–B and IV–E.

Comment:

• Regarding coordination with title IV–E, another comment asked why activities may be defined as services under the SSBG but as administrative costs under title IV–E.

Department's response:

The title IV–E statute provides that activities other than maintenance costs, e.g., case management, which support the provision of foster care may be reimbursed as administrative costs. It is the state's choice whether to provide such activities, for children who are eligible under titles IV–B or IV–E, as administrative expenses under those programs, or as services under the SSBG.

11. Eligibility Criteria and Sliding Fee Scales

The statute requires states to report the criteria applied in determining eligibility for each service. In this regard one state inquired about the use of sliding fee scales as a criterion for eligibility.

Comment:

• Section 94.74(a)(4) states that, among other possible criteria applied in determining eligibility for each service, information on sliding fee scales must be included. The state uses or allows sliding fee scales in a small number of service categories. However, client eligibility is not affected by client payment or non-payment of the fee, therefore, our interpretation of the proposed regulation is that the state does not have fee scales which are a criterion for determining client eligibility.

Department's response:

We understand that payment of the fee, in this case, is not a criterion for receipt of the service. However, in this and in all instances where sliding fee scales are used to determine eligibility, the state should report that information. The SSBG statute, in section 2006(c)(3) is clear that states must report:

> "the criteria applied in determining eligibility for services (such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs)."

We believe such data are of interest to the citizens of the state as well as to the Department, Congress and others. We also believe such data, in many instances, are readily available, e.g., as part of the state's pre-expenditure report, or in state agency reports to the Governor or to the legislature, or easy to estimate.

Comment:

Another comment inquired about the specific information required under § 96.74(a)(4):

• For example, in many states eligibility guidelines vary from service to service and provider to provider. Are states required to submit income eligibility guidelines or sliding fee scales for every service and provider or a sample or guidelines or fee scales used within the state?

Department's response:

The statute requires states to submit information about "the criteria applied in determining eligibility for each service." If eligibility differs by services, or by providers, the state should describe all the eligibility requirements for each service.

12. Definition of "Public" and "Private" Means of Service Provision

The statute requires states to report on the methods by which each service is

provided, showing separately the services provided by public agencies, private agencies, or both. One state mentioned that the distinction between "direct delivered" and "purchased" services is not always the same as the distinction between "public" and "private" means of service provision:

• A potential difficulty for adapting to the proposed rule could be encountered in how the terms "public" and "private" are defined as distinct methods of service provision. The state's SSBG plan makes a distinction in delivery method between "direct delivered" and "purchased" services. Included among our purchase of services contractors are community action agencies which are subdivisions of local public governing bodies. A strict interpretation of the "private" method of service provision might exclude provision by entities affiliated with local public governing bodies.

Department's response:

Given the language in section 2006(c)(4) of the law that requires states to report "the methods by which services were provided, showing separately the services provided by public agencies and those provided by private agencies," we are not making a change in the regulation. We understand that some states may need to identify which "purchased services" are obtained from public agencies and which from private agencies in order to respond to this requirement. For those service categories where services are provided both by public agencies and also by private organizations (either non-profit or for-profit), the state should simply indicate both methods of service provision on the reporting form.

13. Services Provided by Indian Tribes

One national organization recommended reporting in relation to Indian tribes.

Comment:

• We believe that it is important for the reporting requirements to mandate that states separately report the amount of money distributed to Indian tribes and the services provided by those tribes.

Department's response: We are reluctant go beyond the statute and have, therefore, decided not to accept this suggestion. States may, if they wish, include specific information about services provided by Indian tribes as part of their annual report. Four states currently report this information.

14. Reporting Race and Ethnic Background

One state suggested reporting racial and ethnic data.

Comment:

• Since services provided under the Social Services Block Grant must comply with the Civil Rights Act, it would seem prudent to collect data on the racial and ethnic characteristics of the population being served.

Department's response:

Similarly, because we are reluctant to impose burdens beyond what the law requires, we have not accepted this suggestion, although states may include such information in their annual reports.

15. Coordination With Other Reporting Systems

Comment:

• Several states specifically mentioned other reporting systems that are being or will be implemented in the near future, especially the Adoption and Foster Care Analysis and Reporting System (AFCARS), and the summary data component of the National Child Abuse and Neglect Data System (NCANDS).

Department's response:

We have coordinated our efforts with officials responsible for those systems and have been assured that the Uniform Definitions of Services in appendix A are compatible with the provision of federally-funded adoption, foster care and child welfare services under titles IV–B and IV–E of the Social Security Act and the Child Abuse Prevention and Treatment Act.

However, AFCARS and NCANDS are different from the reports required by this final regulation. We expect the proposed AFCARS system to require detailed information about individual cases. The recently-implemented summary data component of NCANDS is a voluntary system that asks states to compile relatively detailed aggregate data about reports of child abuse and neglect; a second component of NCANDS, the detailed case data component, will be phased in during 1993 and 1994 and will ask states to maintain and report individual case data.

This regulation, by contrast, does not require the development of an extensive data collection system. Rather, it requires only annual aggregate information about statewide expenditures and relies, in many cases, on data that is either readily available to states, or easy to estimate.

16. No Additional Funds Requested

Several states commented that additional funding would be required to implement these requirements.

Comments:

• We request a reconsideration of the decision to provide no new federal support for systems development or enhancements mandated by stronger federal reporting requirements.

• Like other states, we are attempting to update and integrate our information systems and comply with new federal reporting mandates with limited resources. Any effort to make the reporting requirements more comprehensive would require additional federal funding.

• Little thought appears to have been given to costs involved in implementing the new reporting requirements. The title XX Social Services reporting systems in place prior to 1982 were not maintained. To implement a new reporting system will require substantial funds.

• Our state will need to implement a major change to its data base to capture the required new information. Further, many of the small non-profit agencies which contract with the Department for these needed social services do not have the sophisticated electronic equipment or the staff to implement them. This will require a costly Department investment in equipment revision and update, as well as technical assistance and training for our provider agencies, if it is to be successful.

• Initiation and maintenance of a new system will be costly at all levels of administration, when demands for direct services are continuing to grow.

• The proposed data collection will have a significant impact on the state. There will be a need to modify our current data collection mechanisms. The biggest cost will be to the agencies who have to supply the data.

• States are now operating on reduced staffs and budgets. Some may be partially computerized, while others have not had the money to enter into the electronic data processing arena. The additional reporting requirements will impose requirements that are a throwback to the pre-SSBG era. The information requested was gathered by the state prior to 1981, using the estimation process, and dropped after the implementation of the SSBG.

Department's response:

We do not believe these new reporting requirements will necessitate the kind of extensive systems development some of the comments envision. The extensive and rigorous data that were

required under the former Social Services Reporting Requirements (SSRR) are not required here. Based on our informal discussions with states, we believe the flexibility afforded the states by permitting estimation and sampling also should prevent the need for extensive systems development.

We also believe that much of the information required is already gathered by many states for their pre- and post-expenditure reports, or for their own planning, budgetary and legislative purposes. For example, data on estimated numbers of recipients and expenditures may also be available from purchasing or contracting offices, without requiring additional reporting from sub-grantees. For these reasons, along with budgetary constraints at the federal level, we maintain our previous position not to request additional funding for the implementation of these requirements.

17. Federal Central Office Administration

One state inquired about the administration of the new requirements.

Comment:

• We recommend that there be one designated contact person to provide clarification and interpretation to the states regarding the uniform definitions and reporting instructions, rather than various Regional Office staff having responsibility for such clearances.

Department's response:

Final rules for these new reporting requirements were being prepared during the time the Department was being reorganized. As part of this reorganization, which created the Administration for Children and Families (ACF), it was determined that the SSBG will be administered by the Office of Community Services within ACF, which also has responsibility for two other block grant programs. The headquarters office was also given responsibility for all matters concerning the administration of the SSBG program. Therefore, all pre-expenditures and annual reports should be submitted directly to the headquarters office of the Administration for Children and Families, to the attention of the contact person(s) listed above.

18. Audits

One state raised the question of the relationship between these reporting requirements and audits.

Comment:

• Will the auditors under the Single Audit Act need to verify the report? If an ineligible client was found in an audit would the proportionate share of her SSBG funding be disallowed?

Department's response:

Because the new requirements allow estimation and sampling where actual figures are unavailable, the data should not be subject to the same standard that applies to a fiscal audit. We would expect auditors to review the state's annual report, just as they would review other documents pertaining to the program. An auditor may recommend a disallowance during the course of an audit but the annual report would not be the basis.

Failure by a state to submit an annual report would be the basis for an audit exception.

VII. Impact Analysis

Executive Order 12291

Executive Order 12291 requires that a regulatory analysis be prepared for major rules, which are defined to include any rule that has an annual effect on the economy of $100 million or more, or certain other specified effects. The proposed regulatory changes would add new requirements to pre-existing state reporting duties and are thus unlikely to have an effect on the economy of $100 million, or any of the other effects specified in the Executive Order. Therefore, the Secretary concludes that this regulation is not a major rule under Executive Order 12291 and a regulatory impact analysis is not required.

Regulatory Flexibility Act of 1980

The Regulatory Flexibility Act (5 U.S.C., Ch. 6) requires the federal government to anticipate and reduce the impact of rules and paperwork requirements on small businesses. For each rule with a "significant economic impact on a substantial number of small entities," an analysis must be prepared describing the rule's impact on small entities. Small entities are defined in the Act to include small businesses, small non-profit organizations, and small governmental entities. This regulation, if promulgated, will affect only state governments. For this reason, the Secretary certifies that these rules will not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

Public reporting burden for the collection of information requirements in 45 CFR 96.74 is estimated to average 5,906 hours per response.

This estimate includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

These information collection requirements are subject to review by the Office of Management and Budget (OMB) under section 3504(h) of the Paperwork Reduction Act of 1980 (Pub. L. 96–511). A notice will be published in the **Federal Register** when OMB approves the information collection requirements.

List of Subjects in 45 CFR Part 96

Administrative practice and procedure, Aged, Alcoholism, Child welfare, Community action programs, Drug abuse, Energy, Grant programs-energy, Grant programs-health, Grant programs-Indians, Grant programs-social programs, Health, Indians, Investigations, Low and moderate income housing, Maternal and child health, Mental health program, Public health, Reporting and recordkeeping requirements, Social Security.

(Catalog of Federal Domestic Assistance Number 93.667, Social Services Block Grant)

Dated: July 1, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: August 30, 1993.

Donna E. Shalala,

Secretary.

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is amended as follows:

1. The authority citation for part 96 of title 45 is revised to read as follows:

Authority: 42 U.S.C. 300w et seq.; 42 U.S.C. 300x et seq.; 42 U.S.C. 300y et seq.; 42 U.S.C. 701 et seq.; 42 U.S.C. 8621 et seq.; 42 U.S.C. 9901 et seq.; 42 U.S.C. 1397 et seq.; 31 U.S.C. 1243 note.

2. Section 96.1 is amended by revising paragraph (f) to read as follows:

§ 96.1 Scope.

* * * * *

(f) Social Services (Pub. L. 97–35, sections 2351–55, 42 U.S.C. 1397–1397(e)) as amended.

* * * * *

3. Section 96.17 is revised to read as follows:

§ 96.17 Annual reporting requirements.

(a) Except for the low-income home energy assistance program activity reports, a state must make public and submit to the Department each annual report required by statute:

(1) Within six months of the end of the period covered by the report; or

(2) At the time the state submits its application for funding for the federal or

state fiscal year, as appropriate, which begins subsequent to the expiration of that six-month period.

(b) These reports are required annually for preventive health and health services (42 U.S.C. 300w–5(a)(1)), community mental health services (42 U.S.C. 300x *et. seq.*), the prevention and treatment of substance abuse block grant (42 U.S.C. 300x–21 *et. seq.*), maternal and child health services (42 U.S.C. 706(a)(1)), and the social services block grant (42 U.S.C. 1397e(a)). See § 96.82 for requirements governing the submission of activity reports for the low-income home energy assistance program.

4. A new § 96.74 is added to read as follows:

§ 96.74 Annual reporting requirements.

(a) *Annual report.* In accordance with 42 U.S.C. 1397e, each state must submit an annual report to the Secretary by the due dates specified in § 96.17 of this part. The annual report must cover the most recently completed fiscal year and, except for the data in paragraphs (a) (1) through (4) of this section, may be submitted in the format of the state's choice. The annual report must address the requirements in section 2006(a) of the Act, include the specific data required by section 2006(c), and include other information as follows:

(1) The number of individuals who receive services paid for in whole or in part with federal funds under the Social Services Block Grant, showing separately the number of children and the number of adults who received such services (section 2006(c)(1));

(2) The amount of Social Services Block Grant funds spent in providing each service, showing separately for each service the average amount spent per child recipient and per adult recipient (section 2006(c)(2));

(3) The total amount of federal, state and local funds spent in providing each service, including Social Services Block Grant funds;

(4) The method(s) by which each service is provided, showing separately the services provided by public agencies, private agencies, or both (section 2006(c)(4)); and

(5) The criteria applied in determining eligibility for each service such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs (section 2006(c)(3)).

(b) *Reporting requirement.* (1) Each state must use the uniform definitions of services in appendix A of this part, categories 1–28, in submitting the data required in paragraph (a) of this section. Where a state cannot use the uniform definitions, it should report the data under category 29, "Other Services." The state's definitions of each of the services listed in category 29 must be included in the annual report.

(2) Each state must use the reporting form issued by the Department to report the data required in paragraphs (a) (1) through (4) of this section.

(3) In reporting recipient and expenditure data, each state must report actual numbers of recipients and actual expenditures when this information is available. For purposes of this report, each state should, if possible, count only a single recipient for each service. States should also consider a service provided to a recipient for the length of the reporting period (one year) or any fraction thereof as a single service. Data based on sampling and/or estimates will be accepted when actual figures are unavailable. Each state must indicate for each service whether the data are based on actual figures, sampling, or estimates and must describe the sampling and/or estimation process(es) it used to obtain these data in the annual report. Each state must also indicate, in reporting recipient data, whether the data reflects an unduplicated count of recipients.

(4) Each state must use category 30, "Other Expenditures," to report non-service expenditures. Only total dollar amounts in this category are required, i.e., they need not be reported by recipient count or cost per adult/child. This will include carry over balances, carry forward balances, funds transferred to or from the SSBG program, and administrative costs as defined by the state.

(5) Each state must use its own definition of the terms "child" and "adult" in reporting the data required in paragraphs (a) (1) through (5) of this section.

(6) Each state's definition of "child" and "adult" must be reported as a part of the eligibility criteria for each service required in paragraph (a)(5) of this section. The data on eligibility criteria may be submitted in whatever format the state chooses as a part of its annual report.

(c) *Transfer of computer data.* In addition to making the annual report available to the public and to the Department, a state may submit the information specified in paragraphs (a) (1) through (4) of this section using electronic equipment. A full description of procedures for electronic transmission of data, and of the availability of computer diskettes, is included in Appendix B to this part.

5. Appendices A and B are added to part 96 as follows:

Appendix A to Part 96—Uniform Definitions of Services

1. Adoption Services
2. Case Management Services
3. Congregate Meals
4. Counseling Services
5. Day Care Services—Adults
6. Day Care Services—Children
7. Education and Training Services
8. Employment Services
9. Family Planning Services
10. Foster Care Services for Adults
11. Foster Care Services for Children
12. Health Related and Home Health Services
13. Home Based Services
14. Home Delivered Meals
15. Housing Services
16. Independent and Transitional Living Services
17. Information and Referral Services
18. Legal Services
19. Pregnancy and Parenting Services for Young Parents
20. Prevention and Intervention Services
21. Protective Services for Adults
22. Protective Services for Children
23. Recreational Services
24. Residential Treatment Services
25. Special Services for Persons with Developmental or Physical Disabilities, or Persons with Visual or Auditory Impairments
26. Special Services for Youth Involved in or At Risk of Involvement in Criminal Activity
27. Substance Abuse Services
28. Transportation Services
29. Other Services

Uniform Definitions of Services

1. Adoption Services

Adoption services are those services or activities provided to assist in bringing about the adoption of a child. Component services and activities may include, but are not limited to, counseling the biological parent(s), recruitment of adoptive homes, and pre- and post-placement training and/or counseling.

2. Case Management Services

Case management services are services or activities for the arrangement, coordination, and monitoring of services to meet the needs of individuals and families. Component services and activities may include individual service plan development; counseling; monitoring, developing, securing, and coordinating services; monitoring and evaluating client progress; and assuring that clients' rights are protected.

3. Congregate Meals

Congregate meals are those services or activities designed to prepare and serve one or more meals a day to individuals in central dining areas in order to prevent institutionalization, malnutrition, and feelings of isolation. Component services or activities may include the cost of personnel, equipment, and food; assessment of nutritional and dietary needs; nutritional education and counseling; socialization; and other services such as transportation and information and referral.

4. Counseling Services

Counseling services are those services or activities that apply therapeutic processes to personal, family, situational, or occupational problems in order to bring about a positive resolution of the problem or improved individual or family functioning or circumstances. Problem areas may include family and marital relationships, parent-child problems, or drug abuse.

5. Day Care Services—Adults

Day care services for adults are those services or activities provided to adults who require care and supervision in a protective setting for a portion of a 24-hour day. Component services or activities may include opportunity for social interaction, companionship and self-education; health support or assistance in obtaining health services; counseling; recreation and general leisure time activities; meals; personal care services; plan development; and transportation.

6. Day Care Services—Children

Day care services for children (including infants, pre-schoolers, and school age children) are services or activities provided in a setting that meets applicable standards of state and local law, in a center or in a home, for a portion of a 24-hour day. Component services or activities may include a comprehensive and coordinated set of appropriate developmental activities for children, recreation, meals and snacks, transportation, health support services, social service counseling for parents, plan development, and licensing and monitoring of child care homes and facilities.

7. Education and Training Services

Education and training services are those services provided to improve knowledge or daily living skills and to enhance cultural opportunities. Services may include instruction or training in, but are not limited to, such issues as consumer education, health education, community protection and safety education, literacy education, English as a second language, and General Educational Development (G.E.D.). Component services or activities may include screening, assessment and testing; individual or group instruction; tutoring; provision of books, supplies and instructional material; counseling; transportation; and referral to community resources.

8. Employment Services

Employment services are those services or activities provided to assist individuals in securing employment or acquiring or learning skills that promote opportunities for employment. Component services or activities may include employment screening, assessment, or testing; structured job skills and job seeking skills; specialized therapy (occupational, speech, physical); special training and tutoring, including literacy training and pre-vocational training; provision of books, supplies and instructional material; counseling, transportation; and referral to community resources.

9. Family Planning Services

Family planning services are those educational, comprehensive medical or social services or activities which enable individuals, including minors, to determine freely the number and spacing of their children and to select the means by which this may be achieved. These services and activities include a broad range of acceptable and effective methods and services to limit or enhance fertility, including contraceptive methods (including natural family planning and abstinence), and the management of infertility (including referral to adoption). Specific component services and activities may include preconceptional counseling, education, and general reproductive health care, including diagnosis and treatment of infections which threaten reproductive capability. Family planning services do not include pregnancy care (including obstetric or prenatal care).

10. Foster Care Services for Adults

Foster care services for adults are those services or activities that assess the need and arrange for the substitute care and alternate living situation of adults in a setting suitable to the individual's needs. Individuals may need such services because of social, physical or mental disabilities, or as a consequence of abuse or neglect. Care may be provided in a community-based setting, or such services may arrange for institutionalization when necessary. Component services or activities include assessment of the individual's needs; case planning and case management to assure that the individual receives proper care in the placement; counseling to help with personal problems and adjusting to new situations; assistance in obtaining other necessary supportive services; determining, through periodic reviews, the continued appropriateness of and need for placement; and recruitment and licensing of foster care homes and facilities.

11. Foster Care Services for Children

Foster care services for children are those services or activities associated with the provision of an alternative family life experience for abused, neglected or dependent children, between birth and the age of majority, on the basis of a court commitment or a voluntary placement agreement signed by the parent or guardian. Services may be provided to children in foster family homes, foster homes of relatives, group homes, emergency shelters, residential facilities, child care institutions, pre-adoptive homes or supervised independent living situation. Component services or activities may include assessment of the child's needs; case planning and case management to assure that the child receives proper care in the placement; medical care as an integral but subordinate part of the service; counseling of the child, the child's parents, and the foster parents; referral and assistance in obtaining other necessary supportive services; periodical reviews to determine the continued appropriateness and need for placement; and recruitment and licensing of foster homes and child care institutions.

12. Health Related and Home Health Services

Health related and home health services are those in-home or out-of-home services or activities designed to assist individuals and families to attain and maintain a favorable condition of health. Component services and activities may include providing an analysis or assessment of an individual's health problems and the development of a treatment plan; assisting individuals to identify and understand their health needs; assisting individuals to locate, provide or secure, and utilize appropriate medical treatment, preventive medical care, and health maintenance services, including in-home health services and emergency medical services; and providing follow-up services as needed.

13. Home Based Services

Home based services are those in-home services or activities provided to individuals or families to assist with household or personal care activities that improve or maintain adequate family well-being. These services may be provided for reasons of illness, incapacity, frailty, absence of a caretaker relative, or to prevent abuse and neglect of a child or adult. Major service components include homemaker services, chore services, home maintenance services, and household management services. Component services or activities may include protective supervision of adults and/or children to help prevent abuse, temporary non-medical personal care, house-cleaning, essential shopping, simple household repairs, yard maintenance, teaching of homemaking skills, training in self-help and self-care skills, assistance with meal planning and preparation, sanitation, budgeting, and general household management.

14. Home Delivered Meals

Home-delivered meals are those services or activities designed to prepare and deliver one or more meals a day to an individual's residence in order to prevent institutionalization, malnutrition, and feelings of isolation. Component services or activities may include the cost of personnel, equipment, and food; assessment of nutritional and dietary needs; nutritional education and counseling; socialization services; and information and referral.

15. Housing Services

Housing services are those services or activities designed to assist individuals or families in locating, obtaining, or retaining suitable housing. Component services or activities may include tenant counseling; helping individuals and families to identify and correct substandard housing conditions on behalf of individuals and families who are unable to protect their own interests; and assisting individuals and families to understand leases, secure utilities, make moving arrangements and minor renovations.

16. Independent and Transitional Living Services

Independent and transitional living services are those services and activities designed to help older youth in foster care or homeless youth make the transition to

independent living, or to help adults make the transition from an institution, or from homelessness, to independent living. Component services or activities may include educational and employment assistance, training in daily living skills, and housing assistance. Specific component services and activities may include supervised practice living and post-foster care services.

17. Information and Referral Services

Information and referral services are those services or activities designed to provide information about services provided by public and private service providers and a brief assessment of client needs (but not diagnosis and evaluation) to facilitate appropriate referral to these community resources.

18. Legal Services

Legal services are those services or activities provided by a lawyer or other person(s) under the supervision of a lawyer to assist individuals in seeking or obtaining legal help in civil matters such as housing, divorce, child support, guardianship, paternity, and legal separation. Component services or activities may include receiving and preparing cases for trial, provision of legal advice, representation at hearings, and counseling.

19. Pregnancy and Parenting Services for Young Parents

Pregnancy and parenting services are those services or activities for married or unmarried adolescent parents and their families designed to assist young parents in coping with the social, emotional, and economic problems related to pregnancy and in planning for the future. Component services or activities may include securing necessary health care and living arrangements; obtaining legal services; and providing counseling, child care education, and training in and development of parenting skills.

20 Prevention and Intervention Services

Prevention and intervention services are those services or activities designed to provide early identification and/or timely intervention to support families and prevent or ameliorate the consequences of, abuse, neglect, or family violence, or to assist in making arrangement for alternate placements or living arrangements where necessary. Such services may also be provided to prevent the removal of a child or adult from the home. Component services and activities may include investigation; assessment and/or evaluation of the extent of the problem; counseling, including mental health counseling or therapy as needed; developmental and parenting skills training; respite care; and other services including supervision, case management, and transportation.

21. Protective Services for Adults

Protective services for adults are those services or activities designed to prevent or remedy abuse, neglect or exploitation of adults who are unable to protect their own interests. Examples of situations that may require protective services are injury due to maltreatment or family violence; lack of adequate food, clothing or shelter; lack of essential medical treatment or rehabilitation services; and lack of necessary financial or other resources. Component services or activities may include investigation; immediate intervention; emergency medical services; emergency shelter; developing case plans; initiation of legal action (if needed); counseling for the individual and the family; assessment/evaluation of family circumstances; arranging alternative or improved living arrangements; preparing for foster placement, if needed; and case management and referral to service providers.

22. Protective Services for Children

Protective services for children are those services or activities designed to prevent or remedy abuse, neglect, or exploitation of children who may be harmed through physical or mental injury, sexual abuse or exploitation, and negligent treatment or maltreatment, including failure to be provided with adequate food, clothing, shelter, or medical care. Component services or activities may include immediate investigation and intervention; emergency medical services; emergency shelter; developing case plans; initiation of legal action (if needed); counseling for the child and the family; assessment/evaluation of family circumstances; arranging alternative living arrangement; preparing for foster placement, if needed; and case management and referral to service providers.

23. Recreational Services

Recreational services are those services or activities designed to provide, or assist individuals to take advantage of, individual or group activities directed towards promoting physical, cultural, and/or social development.

24. Residential Treatment Services

Residential treatment services provide short-term residential care and comprehensive treatment and services for children or adults whose problems are so severe or are such that they cannot be cared for at home or in foster care and need the specialized services provided by specialized facilities. Component services and activities may include diagnosis and psychological evaluation; alcohol and drug detoxification services; individual, family, and group therapy and counseling; remedial education and GED preparation; vocational or pre-vocational training; training in activities of daily living; supervised recreational and social activities; case management; transportation; and referral to and utilization of other services.

25. Special Services for Persons With Developmental or Physical Disabilities, or Persons With Visual or Auditory Impairments

Special services for persons with developmental or physical disabilities, or persons with visual or auditory impairments, are services or activities to maximize the potential of persons with disabilities, help alleviate the effects of physical, mental or emotional disabilities, and to enable these persons to live in the least restrictive environment possible. Component services or activities may include personal and family counseling; respite care; family support; recreation; transportation; aid to assist with independent functioning in the community; and training in mobility, communication skills, the use of special aids and appliances, and self-sufficiency skills. Residential and medical services may be included only as an integral, but subordinate, part of the services.

26. Special Services for Youth Involved in or at Risk of Involvement With Criminal Activity

Special services for youth involved in or at risk of involvement with criminal activity are those services or activities for youth who are, or who may become, involved with the juvenile justice system and their families. Components services or activities are designed to enhance family functioning and/or modify the youth's behavior with the goal of developing socially appropriate behavior and may include counseling, intervention therapy, and residential and medical services if included as an integral but subordinate part of the service.

27. Substance Abuse Services

Substance abuse services are those services or activities that are primarily designed to deter, reduce, or eliminate substance abuse or chemical dependence. Except for initial detoxification services, medical and residential services may be included but only as an integral but subordinate part of the service. Component substance abuse services or activities may include a comprehensive range of personal and family counseling methods, methadone treatment for opiate abusers, or detoxification treatment for alcohol abusers. Services may be provided in alternative living arrangements such as institutional settings and community-based halfway houses.

28. Transportation Services

Transportation services are those services or activities that provide or arrange for the travel, including travel costs, of individuals in order to access services, or obtain medical care or employment. Component services or activities may include special travel arrangements such as special modes of transportation and personnel to accompany or assist individuals or families to utilize transportation.

29. Other Services

Other Services are services that do not fall within the definitions of the preceding 28 services. The definition used by the State for each of these services should appear elsewhere in the annual report.

Appendix B to Part 96—SSBG Reporting Form and Instructions

Instructions

This form must be used by states as the reporting instrument to satisfy the requirements of 45 CFR 96.74(a) (1) through (4). Following are instructions on how to complete the form:

General

1. Enter the name of the state submitting the form.

2. Enter the fiscal year for which the form is being submitted. Either the state or federal fiscal year may be used.

3. Enter the month and year of the beginning and end of the fiscal year—e.g., 07/91 to 06/92.

Services

4. The "service" column contains a list of services that are to be used for national reporting. This list in no way mandates how a state is to design its program of services under the SSBG, but rather is to be used only to obtain nationally comparable statistics. If the services that your state provides reasonably fit the uniform service definitions in appendix A, use them. In cases where no fit is possible between the state services and the services on the form, use item number 29—the other services category. Please list all services reported under item 29, using a separate sheet if necessary. The state's definition of these services must appear in the state's annual report.

Recipient Data

In reporting the following data:

- Each state should use its own definitions of the terms "adult" and "child." These definitions should be described elsewhere in the annual report. If the definitions of adult and child vary by services, all such definitions must be included.
- States should, if possible, consider as the "recipient" of the service the individual to whom the service is provided. This means that the child would be considered the recipient of child day care services, even if such services are provided to allow the child's adult caretaker to pursue employment. Similarly, an adult who receives counseling services should be considered as the recipient of that service, even if the service is provided as part of a child's protective services plan. In cases where each member of a family, for example, receives an individual service such as counseling, each family member should be considered as a separate recipient.
- States should, if possible, consider as a service, i.e., a count of one, any service provided to a single recipient for the duration of the reporting period (one year), or any fraction thereof. In cases where an individual received a service during the reporting period, then discontinued the service, and then received the service again, the individual should only be counted once, if possible.
- The criteria applied in determining eligibility for each service—such as income eligibility guidelines, sliding fee scales, the effect of public assistance benefits, and any requirements for enrollment in school or training programs—should be described elsewhere in the annual report.

5. Under "Number of Recipients—Adults" enter the number of adults who have received each service funded in whole or part under the SSBG.

6. Under "Number of Recipients—Children" enter the number of children who have received each service funded in whole or part under the SSBG.

7. Under "Number of Recipients—Total" enter the total number of recipients of each service. This should be the sum of the adults and children reported in the preceding "adult" and "children" columns.

Expenditure Data

8. Under "Expenditures—Total $" enter all funds that the state expends on each service. This should include SSBG funds as well as funds from other federal sources, state funds, and local funds. A listing of the sources of these funds, and the amounts allocated, should appear elsewhere in the annual report.

9. Under "Expenditures—SSBG $" enter the total SSBG funds expended for each service. This column should be totaled, and the sum placed at the bottom of the column in the "Totals" box.

10. Under "Expenditures—Per Adult" enter the average amount of SSBG funds expended on each adult recipient of each service.

11. Under "Expenditures—Per Child" enter the average amount of SSBG funds expended on each child recipient of each service.

12. Item 30 in the "Total SSBG $" column should contain other expenditures and income as follows:

a. "Transfers In" should contain funds transferred from other federal block grants to the SSBG program. A listing of the source(s) of block grant funds and their amounts should appear elsewhere in the annual report.

b. "Transfers Out" should show funds transferred from the SSBG program to other federal block grants. A listing of the program(s) to which SSBG funds were transferred, and the amounts, should appear elsewhere in the annual report.

c. "Carry Forward" should show funds the state intends to carry over from the reporting fiscal year to the following fiscal year. The SSBG statute permits states two years to expend SSBG funds.

d. "Carry Over" should show funds carried from a previous fiscal year into the current reporting year.

e. "Administrative Costs" should show all other non-service use of SSBG funds—e.g., funds expended for training, licensing activities, or overhead costs.

f. This column should be totaled, and the sum placed at the bottom of the column in the "Totals" box.

13. Under "Provisions Method—Public/Private" enter a check mark on "X" in the appropriate column(s) to indicate whether a service was provided by public agencies or private agencies. In some cases, a given service may have been provided by both methods, in which case both columns would be checked for that service.

14. Enter the name, title, and telephone number of a contact person who can answer questions about the data.

15. Code Column:

Six of the columns on this form have a "C" column to the right of them. These are "Code" columns to permit a state to indicate, for expenditure data, whether each cell of data is A (actual), E (estimated), or S (sampled), and for recipient data, whether the data is based on an unduplicated (U) or duplicated (D) count of recipients. These codes will permit the Department to determine the relative degree of statistical validity of the data. Actual recipient counts and expenditure amounts must be used when available. If actual counts are not available, sampling and/or estimating may be used to derive the numbers in this report. A description of the sampling and/or estimation methods used to derive any data must appear elsewhere in the annual report.

Report Submission Using PC Diskettes

States with personal computer (PC) equipment may submit this data using PC diskettes in addition to the hardcopy form which will be included in the complete annual report. Diskettes may be either 5¼" or 3½"; data may be submitted using Lotus 1–2–3, Quattro Pro, DBase III or IV, Wordstar, Word Perfect, or ASCII formats. Use of Lotus 1–2–3 is preferred, but any of the other formats listed may be used. If a state wishes to use a format other than one listed here, please call Bryant Tudor on (202) 401–5535 or Frank Burns on (202) 401–5536, or write to the Office of Community Services, Administration for Children and Families, Fourth Floor—East Wing, 370 L'Enfant Promenade, SW., Washington, DC 10447. Use of diskettes can greatly reduce transcription errors and also facilitate processing of the data once received. We anticipate that many states will want to avail themselves of this method of reporting.

BILLING CODE 4184–01–M

ANNUAL REPORT OF SERVICES FUNDED BY THE SOCIAL SERVICES BLOCK GRANT (SSBG) FOR FISCAL YEAR 19__

STATE:

Contact: _____
Title: _____
Date: _____

Report Covers Period of:
_____ to _____
Mo./Yr. Mo./Yr

		Number of Recipients					Expenditures							Provision Method	
	Service	Adults	C	Children	C	Total	Total $	C	SSBG $	C	Per Adult	Per Child	C	Public	Private
1	Adoption Services														
2	Case Management														
3	Congregate Meals														
4	Counseling Services														
5	Day Care - Adults			[redacted]								[redacted]			
6	Day Care - Children	[redacted]									[redacted]				
7	Educ./Training Services														
8	Employment Services														
9	Family Planning Services														
10	Foster Care Svcs. - Adults			[redacted]								[redacted]			
11	Foster Care Svcs. - Children	[redacted]									[redacted]				
12	Health Related Services														
13	Home Based Services														
14	Home Delivered Meals														
15	Housing Services														
16	Indep./Trans. Living Svcs.														
17	Info. & Referral Services														
18	Legal Services														
19	Pregnancy & Parenting														
20	Prevention/Intervention														
21	Protective Svcs. - Adults			[redacted]								[redacted]			
22	Protective Svcs. - Children	[redacted]									[redacted]				
23	Recreation Services														
24	Residential Treatment														
25	Spec. Svcs. - Youth at Risk														
26	Special Svcs. - Disabled														
27	Substance Abuse Services														
28	Transportation														
29	Other Services														
30	Other Expenditures	[redacted]									[redacted]				
	a. Tranfers In														
	b. Tranfers Out														
	c. Carry Forward														
	d. Carry Over														
	e. Administrative Costs														
	TOTAL →														

[FR Doc. 93–27677 Filed 11–12–93; 8:45 am]
BILLING CODE 4184–01–C

Administration for Children and Families

45 CFR Part 233

RIN 0970–AA93

Aid to Families With Dependent Children and Adult Assistance Programs: Essential Persons

AGENCY: Administration for Children and Families, HHS.

ACTION: Final rule.

SUMMARY: This final rule applies to State agencies administering the Aid to Families with Dependent Children (AFDC) program under title IV–A and the Adult Assistance programs under titles I, X, XIV and XVI (Aid to the Aged, Blind, or Disabled) of the Social Security Act. It revokes the current regulations pertaining to "essential persons" under the AFDC program and revises others to restore Federal "essential person" policy to what it was prior to the effective date of the revoked regulations for both the AFDC and Adult Assistance programs.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Mack Stores, (202) 401–9275.

SUPPLEMENTARY INFORMATION: The current regulations at 45 CFR 233.20(a)(2)(vii) limit the categories of individuals that a State may consider to be "essential persons" under the AFDC program. Under these regulations, the "essential persons" specified by a State in its State plan would have to provide at least one of the following benefits or services: (1) Child care which enables a caretaker relative to work full-time outside the home, (2) care for an incapacitated family member in the home, (3) child care that enables a caretaker relative to attend high school or General Education Development (GED) classes on a full-time basis, (4) child care not to exceed two months that enables a caretaker relative to participate in employment search or another AFDC work program, and (5) child care that enables a caretaker relative to receive training on a full-time basis. These regulations were promulgated on January 24, 1989 (54 FR 3452).

In 1990 the district court for the Eastern District of Pennsylvania in *Vance* v. *Sullivan*, C.A. No. 89–9100, and the district court for the District of Maine in *McKenney* v. *Sullivan*, C.A. No. 89–0244–P, held that the above limitations conflict with section 402(a)(7)(A) of the Social Security Act. The courts interpreted section 402(a)(7)(A) as providing States with the authority to identify in their State plans the categories of individuals who may be recognized as "essential persons". These decisions were not appealed.

As a result of these decisions, the Department of Health and Human Services issues two action transmittals. The first is FSA–AT–91–1, "Essential Person Policy" (January 4, 1991). The purpose of that action transmittal was to notify States of a change in HHS's essential person policy pending its planned action to revoke 45 CFR 233.20(a)(2)(vii). That change was to deem in effect the "essential person" policy set forth in 45 CFR 233.20(a)(2)(vi) as in effect on December 31, 1988. The action transmittal set forth specific options for States which, in reliance on 45 CFR 233.20(a)(2)(vii), had changed their title IV–A State plans to recognize essential persons under the requirements of those regulations. The second action transmittal is ACF–AT–91–16, "Essential Person Policy" (May 16, 1991). Among other things, this action transmittal provided that: (1) If a State wishes to recognize "essential persons" or to change its "essential person" policy, it must file a State plan amendment for Federal review, and (2) the proposed amendment will be reviewed in accordance with the requirements of 45 CFR 233.20(a)(2)(vi), as in effect on December 31, 1988.

Consistent with the preceding actions, 45 CFR 233.20(a)(2)(vii) is being revoked and 45 CFR 233.20(a)(2)(vi) is being amended retroactively to read as it did on December 31, 1988. The result is that 45 CFR 233.20(a)(2)(vi) would apply to both the AFDC program and the Adult Assistance programs as it had done prior to promulgation of 45 CFR 233.20(a)(2)(vii).

Justification for Dispensing with Notice of Proposed Rulemaking

This revocation of 45 CFR 233.20(a)(2)(vii) follows from two adverse court decisions that the Department did not appeal. The amendment of 45 CFR 233.20(a)(2)(vi) to read as it did on December 31, 1988, would simply reinstitute the previous longstanding regulatory policy that had been codified at that section since 1969 and applied to the AFDC program and Adult Assistance programs. *See* 34 FR 1394 (Jan. 29, 1969). Further, the policy in the current "essential person" regulations at 45 CFR 233.20(a)(2)(vi) providing Guam, Puerto Rico, and the Virgin Islands with discretion to identify categories of "essential persons" in State plans governing the Adult Assistance programs would remain the same. Accordingly, we believe that, under 5 U.S.C. 553(b)(3)(B), good cause exists for wavier of a notice of proposed rulemaking on the grounds that it is not necessary.

Executive Order 12991

The final rule has been reviewed under Executive Order 12291 and does not meet any of the criteria for a major regulation. Therefore, a regulatory impact analysis is not required because this regulation will not:

(1) Have an annual effect on the economy of $100 million or more;

(2) Impose a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or

(3) Result in significant adverse effects on competition employment, investment, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approval is necessary under the Paperwork Reduction Act.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these rules is on State governments and individuals. Therefore, we certify that these rules will not have a significant economic impact on a substantial number of small entities because it affects benefits to individuals and payments to States. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Assistance Programs 13.780, Assistance Payments—Maintenance)

List of Subjects in 45 CFR Part 233

Aliens, Grant programs-social programs, Public assistance programs, Reporting and recordkeeping requirements.

Dated: April 21, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved June 15, 1993.

Donna E. Shalala,

Secretary.

PART 233—COVERAGE AND CONDITIONS OF ELIGIBILITY IN FINANCIAL ASSISTANCE PROGRAMS

For the reasons set forth in the preamble, 45 CFR part 233 is amended as follows:

1. The authority citation for part 233 is revised to read as follows:

Authority: 42 U.S.C. 301, 602, 602 (note), 606, 607, 1202, 1302, 1352, and 1382 (note); Pub. L. 94–114, 89 Stat. 579; Pub. L. 99–603, 100 Stat. 3359; Pub. L. 97–458, 96 Stat. 2513; Pub. L. 98–64, 97 Stat. 365; Pub. L. 99–514. 100 Stat. 2916; Pub. L. 100–241, 101 Stat. 1812.

2. Section 233.20 is amended by removing and reserving paragraph (a)(2)(vii) and revising paragraph (a)(2)(vi) to read as follows:

§ 233.20 Need and amount of assistance.

(a) * *

(2) * * *

(vi) If the State chooses to establish the need of the individual on a basis that recognizes, as essential to his well-being, the presence in the home of other needy individuals, (A) specify the persons whose needs will be included in the individual's need, and (B) provide that the decision as to whether any individual will be recognized as essential to the recipient's well-being shall rest with the recipient.

(vii) [Reserved]

* * * * *

[FR Doc. 93–27963 Filed 11–12–93; 8:45 am]
BILLING CODE 4184–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–264, FCC 93–456]

Broadcast Services; Cable Television Act

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission implements section 11(c)(2) of the Cable Television Consumer Protection and Competition Act of 1992 (1992 Cable Act) by prescribing national subscriber limits and limits on the number of channels that can be occupied on a cable system by a video programmer in which the cable operator has an attributable interest. The Commission declines at this time to impose limits on the degree to which multichannel video programming distributors may engage in the creation or production of video programming as authorized by section 11(c)(2)(C) of the 1992 Act. This action was taken in compliance with the 1992 Cable Act.

EFFECTIVE DATE: Section 76.504 will become effective January 10, 1994. Section 76.503 is stayed pending final judicial resolution of the District Court decision in *Daniels Cablevision* v. *United States*. Notice will be given in the **Federal Register** when an effective date is established for § 76.503.

FOR FURTHER INFORMATION CONTACT: Jacqueline Chorney, Mass Media Bureau, (202) 632–6990.

SUPPLEMENTARY INFORMATION: The public reporting burden for this collection of information (§ 76.503) is estimated to average 1 hour per response. The public recordkeeping burden for § 76.504 is estimated to average 15 hours per year per recordkeeper. This includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of the Managing Director, AMD–PIRS, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–XXXX), Washington, DC 20503.

This is a synopsis of the Second Report and Order (Second Report) in MM Docket No. 92–264, FCC 93–456, adopted September 23, 1993, and released October 22, 1993. The complete text of this Second Report is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, at (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of the Second Report and Order

1. In this Second Report, the Commission implements section 11(c)(2) of the 1992 Cable Act by prescribing national subscriber limits and limits on the number of channels that can be occupied on a cable system by a video programmer in which the cable operator has an attributable interest ("channel occupancy limits"). The Commission declines at this time to impose limits on the degree to which multichannel video programming distributors may engage in the creation or production of video programming as authorized by section 11(c)(2)(C) of the 1992 Act.

2. The Notice of Proposed Rule Making and Notice of Inquiry (NPRM/NOI) initiating this proceeding may be found at 58 FR 03523 (January 11, 1993), and sought comment generally on the objectives and scope of section 11(c)(2) of the 1992 Cable Act and more specifically on various issues regarding the level at which subscriber limits and channel occupancy limits would be reasonable and the appropriate implementation of such limits. In addition, the Commission questioned whether it was necessary or appropriate to adopt limits on the degree to which multichannel video programmin distributors ("multichannel distributors") should be permitted to participate in the creation or production of video programming. The Commission subsequently issued a Report and Order and Further Notice of Proposed Rule Making (R&O/FNPRM) 58 FR 42013, August 6, 1993 which sought further comment on specific proposals regarding the adoption and implementation of subscriber limits and channel occupancy limits.

3. Briefly, this Report and Order contains the following determinations. The Commission establishes a 30 percent limit on the number of homes passed nationwide that any one entity can reach through cable systems in which such entity has an attributable interest. Horizontal ownership will be determined for this purpose based on the same criteria used by the Commission in the broadcast context. In addition, to promote a diversity of views the Commission will permit ownership of additional cable systems, up to 35 percent of homes passed nationwide, provided such systems are minority-controlled. However, in view of the recent federal district court decision holding that the Commission's statutory authority to adopt horizontal ownership limits is unconstitutional, and to avoid potential confusion and uncertainty during the period of judicial review the Commission is staying the effective date of the horizontal ownership rules until final judicial resolution of the District Court's decision. (See *Daniels Cablevision* v. *United States*, No. 92–2292 (D.D.C. released September 16, 1993). The vertical ownership limits adopted pursuant to section 11, which were upheld by the Court are not stayed and will become effective as set forth below.

4. With respect to vertical ownership limits, the Commission adopts a 40 percent limit on the number of channels that can be occupied on a vertically integrated cable system by video programmers in which the cable operator has an attributable interest. In order to promote a diversity of views the Commission will allow carriage of

vertically integrated programming services on two additional channels, or up to 45 percent of a system's channel capacity, whichever is greater, provided such video programming services are minority-controlled. Vertical attribution is defined for this purpose by reference to the Commission's broadcast attribution criteria. The channel occupancy limits will apply only up to 75 channels, and channel capacity beyond 75 channels will not be subject to vertical ownership restrictions at the present time.

5. The Commission further concludes that in view of the structural and behavioral restrictions already required under the 1992 Act, additional restrictions on the ability of multichannel distributors to engage in the creation or production of video programming are unwarranted. The Commission believes that at the present time the objectives of such a restriction are fully addressed by the vertical and horizontal ownership limits required by section 11, as well as by the carriage agreement and program access provisions contained in section 12, and section 19 of the 1992 Cable Act.

6. Recognizing the conflicting advantages and disadvantages of vertical integration and horizontal concentration, Congress directed the Commission to consider and balance the following public interest objectives in establishing the ownership limits mandated by section 11: (A) To ensure that no cable operator or group of cable operators can unfairly impede the flow of video programming from the programmer to the consumer; (B) to ensure that cable operators do not favor affiliated video programmers in determining carriage and do not unreasonably restrict the flow of video programming of affiliated video programmers to other video distributors; (C) to take account of the market structure, ownership patterns, and other relationships of the cable industry, including the market power of the local franchise, joint ownership of cable systems and video programmers, and the various types of non-equity controlling interests; (D) to take into account any efficiencies and other benefits that might be gained through increased ownership or control; (E) to make rules and regulations that reflect the dynamic nature of the communications marketplace; (F) to impose no limitations that prevent cable operators from serving previously unserved rural areas; and (G) to impose no limitations that will impair the development of diverse and high quality programming.

7. The Commission first considers subscriber limits. Section 11 of the 1992 Cable Act requires that the Commission prescribe regulations establishing reasonable limits on the number of cable subscribers a person is authorized to reach through cable systems owned by such person or in which such person has an attributable interest. Regarding the applicable market for such limits, the R&O/FNPRM proposed to adopt exclusively national subscriber limits and asked commenters to indicate whether national subscriber limits would suffice to implement the objectives of the 1992 Cable Act. With respect to regional limits, the Commission tentatively concluded that the benefits of regional concentration outweigh the potential anticompetitive harm that such concentration may have on the local advertising and programming marketplace.

8. The Report and Order, while differing with those commenters who assert that the Commission is without authority to adopt regional subscriber limits, the Commission declines to adopt such limits at this time. Based on the record in this proceeding and on our interpretation of the 1992 Cable Act, the Commission believes that Congress was primarily concerned with national concentration in the cable industry. Moreover, Congress' objectives in requiring horizontal ownership limits—to prevent the "concentration of the media in the hands of a few" and to limit the ability of MSOs to exercise undue market power in the program acquisition market—can best be served by the adoption of national subscriber limits. The Commission believes that issues of regional concentration would be better addressed by other provisions of the 1992 Act designed to promote the introduction of competition to established cable franchises.

9. In addition, the Commission finds no basis in the record for imposing regional limits that could reduce investment in the development of regional programming, upgraded cable infrastructure and improved customer service. The Commission concludes that the potential benefits and efficiencies of regional concentration outweigh any anti-competitive affects in the local programming or advertising marketplace. In the absence of record evidence suggesting that any cable operator possesses undue power in the local programming or advertising market, the Commission finds it unnecessary to adopt regional limits at this time.

10. Regarding measurement and percentage limitation, the R&O/FNPRM sought comment on its proposal to establish subscriber limits as a share of homes passed. The R&O/FNPRM further proposed to adopt a 25 percent limit on the number of homes passed by cable systems owned by any one entity, although it continued to seek comment on a limit in the range of 20 percent to 35 percent of homes passed. The R&O/FNPRM also asked commenters to indicate whether it would be appropriate in calculating compliance with the subscriber limits to subtract the number of homes passed by cable systems where effective competition—as defined in the 1992 Cable Act—is established. Finally, commenters were asked to address the Commission's proposal to allow ownership of additional cable systems, beyond the specified limit, provided such systems are minority-controlled.

11. In adopting ownership limits the Commission seeks to balance two competing concerns raised by Congress: on the one hand, the possibility that large horizontally integrated MSOs might have the ability to preclude the launch of new video programming services and on the other hand, the benefits and efficiencies that result from greater horizontal concentration. Based on our consideration of these statutory factors and on the preponderance of the data provided in the record, the Commission concludes that a horizontal ownership limit prohibiting any one entity from having an attributable interest in cable systems that in the aggregate reach more than 30 percent of cable homes passed nationwide strikes the proper balance. A 30 percent horizontal ownership limit is generally appropriate to prevent the nation's largest MSOs from gaining enhanced leverage from increased horizontal concentration. Nonetheless, it also ensures that the majority of MSOs continue to expand and benefit from the economies of scale necessary to encourage investment in new video programming services and the deployment of advanced cable technologies.

12. The Commission believes that a 30 percent limit is reasonable to prevent the types of anti-competitive conduct which concerned Congress, particularly when coupled with the behavioral restrictions contained in sections 12 and 19 of the 1992 Cable Act. Moreover, sections 4 and 5 require cable operators to carry the signals of local commercial and non-commercial broadcast stations. And section 612 of the Communications Act requires cable systems to make a specified percentage of channels available to unaffiliated programmers. The cumulative effect of these regulations coupled with a horizontal

ownership limit of 30 percent should protect against any one cable system exerting undue power that could prevent the success of new video programming services or "unfairly impede the flow of video programming to the consumer." A 30 percent limit combined with the above mentioned provisions will be appropriate to address the diversity aims which underlie the statutory horizontal ownership provisions. At the same time such a limit will allow the majority of cable operators to expand their system ownership and avail themselves of any efficiencies and other benefits which might be gained through increased ownership or control of cable systems.

13. While the R&O/FNPRM proposed a 25 percent horizontal ownership limit, the Commission considered a number of factors in concluding that a 30 percent limit was reasonable, including indications in the legislative history that Congress did not intend necessarily to require the divestiture of any existing interests.[1] Thus, the Commission determined that in the absence of definitive evidence that existing levels of ownership are sufficient to impede the entry of new video programmers or have an adverse affect on diversity, existing arrangements should not be disrupted. The Commission, based on a review of the record, finds that such divestiture is unnecessary.

14. As proposed in the R&O/FNPRM, in order to encourage a diversity of viewpoints the Commission will allow ownership of additional cable systems reaching up to 35 percent of cable homes passed, provided such additional cable systems are minority-controlled. The Commission is convinced that the minority ownership incentive adopted in this Report and Order in connection with the horizontal ownership limits will be an important means of furthering the goal of increasing minority ownership and participation in the cable industry, and thus ensuring the inclusion of minority views in programming. The Commission believes that the increased diversity that this additional minority ownership will encourage outweighs the marginal impact on competition that could result from the increased concentration. Notably, the Commission provides a similar incentive in the broadcast context to increase the diversity of viewpoints available to the public.

15. The Commission declines to calculate compliance with the national subscriber limits by subtracting the number of homes passed by cable systems in areas where effective competition is established. The statutory provisions and the implementing rules adopted focus on ensuring that system operators are constrained in terms of the total share of the market they may occupy in order that no single operator exerts an undue influence, particularly at the national level, on the diversity of programming services available through cable television. The presence of competition in particular markets ameliorates some of the concerns involved and provides members of the public in those markets with the opportunity, through the competitor they select, to influence directly the services offered in those markets. The presence of effective competition in any given system or group of systems does not, however, directly respond to the concern with the exercise of undue control by a single entity at the national level.

16. The R&O/FNPRM next proposed to adopt the broadcast attribution standard to implement horizontel ownership limits. The Commission now finds that the broadcast attribution criteria contained in § 73.3555 of the Commission's rules are appropriate to implement the horizontal ownership limits. (For the sake of convenience, the actual rules now being adopted reference the standards set forth in the notes to § 76.501 of the rules. These are derived from and are not substantively different from those generally referred to as the broadcast attribution rules, i.e., § 73.3555.) Pursuant to these criteria, all voting stock interests of 5 percent or more are attributable. Non-voting stock interests (including most "preferred" stock classes) are not attributable. There are several exceptions to the presumption of attribution created by the 5 percent benchmark. Most notably there is a single majority shareholder exception, which provides that minority interests will not be attributed where there is a single 51 percent shareholder. In addition, the interests of "insulated" limited partners are not attributed.

17. The R&O/FNPRM asked commenters to address how compliance with the subscriber limits should be monitored and enforced. The Commission concludes that, in order to enforce most efficiently and effectively the horizontal ownership limits, a system of certification should be instituted. Although public information is available from various sources regarding the number of homes passed by the largest cable operators, such sources generally apply different attribution criteria than the Commission has decided to employ. Therefore, the Commission will require entities holding attributable interests in cable systems reaching 20 percent or more of homes passed nationwide to certify to the Commission, prior to the acquisition of any additional cable systems, that such acquisition will not result in a violation of the horizontal ownership limits adopted herein.[2] Where a transaction will result in a cable operator exceeding the limit, the cable operator must seek either a permanent or temporary waiver from the Commission, which might also include a commitment to divest a sufficient number of systems so as to come into compliance with these ownership limits after the acquisition is completed. The Commission will consider waiver requests only in limited circumstances where an acquisition temporarily places a cable operator over the permissible number of subscribers or where an MSO seeks to expand service into an otherwise unserved rural area.

18. Finally, in view of the fact that the cable television industry is so dynamic and fluid, the Commission believes that periodic review of the ownership limits is necessary. As proposed in the R&O/FNPRM, the Commission plans to review the subscriber limits every five years to determine whether such limits are reasonable under the prevailing market conditions and whether such limits continue to serve the objectives for which they were adopted.

19. The Commission secondly considers issues concerning channel occupancy limits. Section 11 of the 1992 Cable Act also requires the Commission to establish reasonable limits on the number of cable channels that can be occupied by a video programmer in which a cable operator has an attributable interest. As with the establishment of horizontal ownership limits, the Commission seeks to establish channel occupancy limits which strike the proper balance between

[1] We note in this regard that the largest existing MSO, TCI, using the attribution standards adopted herein, has an interest in cable systems passing approximately 23.8 million homes or 27 percent of homes passed nationwide. *See* TCI submission dated September 22, 1993. This number is larger than the number used for corporate and other reporting requirements because, *inter alia*, it includes systems in which an "attributable interest" is held rather than systems that are treated as "consolidated" for certain corporate and other reporting purposes. Compare, Television Digest, June 7, 1993, p. 4 (TCI and consolidated subsidiaries in which the ownership interest is greater than 50 percent as of December 31, 1992, pass 17.7 million homes).

[2] The Commission contemplates that the MSO whose aggregate attributable interests in cable systems equals or exceeds 20 percent of homes passed nationwide will be responsible for filing the requisite certification. Thus, if a system in which TCI holds an attributable interest acquires an additional cable system, TCI will be the party responsible for certifying to the Commission that the transaction will not result in a violation of FCC rules.

competing statutory objectives: To ensure that vertically integrated cable operators do not favor affiliated video programmers, or unfairly impede the flow of video programming to cable subscribers, on the one hand and, on the other, to encourage MSOs to continue to invest in the development of diverse and high quality video programming services.

20. In that regard, the Commission first reviews the issue of application of channel occupancy limits. The R&O/FNPRM indicated that the statutory language and legislative history were unclear regarding how Congress intended such channel occupancy limits to be applied. In particular, the Commission questioned whether Congress intended such limits to apply only to video programmers affiliated with the operator of the particular cable system in question or whether such limits were intended to apply to carriage of all cable affiliated video programming on all cable systems. The Commission also questioned whether in calculating a system's channel capacity we should subtract the number of broadcast, PEG and leased access channels.

21. Given the ambiguity, the R&O/FNPRM proposed to apply such limits only to video programmers affiliated with the particular cable operator. The R&O/FNPRM also proposed to include all activated channels including broadcast, PEG and leased access channels in calculating system capacity.

22. The Commission agrees with the majority of commenters on this issue, who assert that the most logical interpretation of the statutory language is to apply such limits only to video programmers that are vertically integrated with the particular cable operator in question. The Commission believes that this represents the most reasoned approach given Congress' stated objective of encouraging a diversity of voices and preventing unaffiliated programmers from being denied carriage on vertically integrated cable systems. In the absence of significant empirical evidence of existing discriminatory practices, we see no useful purpose in limiting the ability of cable operators to carry programming affiliated with a rival MSO. Such a restriction would be unduly burdensome on MSO investment in cable programming and would be contrary to the purpose of the statute. Moreover, we seek to adopt reasonable carriage limits that will balance both the benefits and concerns associated with vertical integration.

23. With respect to calculating channel capacity, the Commission concludes that all activated channels should be taken into account. The Commission notes that cable operators are obligated by the 1992 Cable Act to carry local broadcast and noncommercial educational channels, and are required to reserve channel capacity for lease to unaffiliated programmers. Consequently, it would be unreasonable to use such channels to reduce the base of channels available for carriage of vertically integrated programming. The Commission disagrees with NATOA's argument that the legislative history requires that the Commission subtract all broadcast, PEG and leased access channels prior to application of the channel occupancy limits. The Senate Report language relied upon by NATOA is included in an example meant to illustrate how the Commission may decide to calculate channel occupancy limits and does not appear to prohibit the Commission from adopting an alternative approach if it finds such an approach to be reasonable to promote the legislative objectives. In any event, this language is not included in the statute itself.

24. Finally, the Commission addresses the arguments advanced by some commenters that the channel occupancy provisions of the 1992 Act violate the First Amendment. At the outset, it should be noted that the Commission has an obligation to execute and enforce the provisions of section 11 enacted by Congress and therefore is not free to declare an act of Congress unconstitutional. Nevertheless, the Commission believes that the statute is constitutional. The Commission notes that Congress, in enacting the cable access provisions under the Cable Communications Policy Act of 1984, Public Law 98–549, and the cable must carry obligations under the 1992 Cable Act, carefully considered the First Amendment rights of cable operators and others and concluded that these provisions were constitutionally permissible as consistent with and in furtherance of the goals of the First Amendment. The Commission believes that the channel occupancy limits provided in Section 11 are generally analogous to the cable access and must carry provisions and, similarly, do not believe that these limits infringe the First Amendment rights of cable operators or others. Moreover, the federal district court in *Daniels Cablevision, Inc.* v. *United States*, which struck down the subscriber limit authority in section 11, upheld other provisions of the 1992 Cable Act in dispute, including the section 11 channel occupancy limits, as "facially compatible with the First Amendment."

25. The Commission secondly considers the issue of a vertical ownership attribution standard. The R&O/FNPRM proposed to employ the broadcast attribution criteria for purposes of determining vertical integration in the context of channel occupancy limits. Commenters were asked whether these criteria were appropriate or whether a higher attribution standard would be appropriate to encoaurge continued MSO investment in cable programming. Commenters were also asked to indicate whether a higher equity threshold should be adopted where more than one MSO holds a non-controlling interest in a video programming service.

26. In the context of establishing limits on vertical integration in the cable industry the Commission is concerned with identifying interests in cable programming services that are sufficient to afford influence or control over programming decisions. The Commission also seeks to identify interests that might potentially provide cable operators with an incentive to favor an affiliated video programming service over an unaffiliated or competing video programming service. However, these concerns must be balanced with the objective of preserving the benefits and efficiencies of vertical integration and encouraging continued MSO investment in new video programming services. The Commission concludes that the broadcast attribution criteria are strict enough to identify all interests that afford the potential to exert influence or control over management or programming decisions, yet flexible enough to permit continued MSO investment in new video programming services. Moreover, the Commission believes that interests of 5 percent or greater may be substantial enough to motivate cable to systems to favor an affiliated programmer over a programmer in which the cable system has no attributable interest.

27. The Commission declines to adopt a higher attribution threshold where more than one MSO holds a noncontrolling interest in a video programming service. Although the Commission recognizes that common ownership of a programming service by several MSOs may decrease the ability of any one MSO to assert influence or control over programming decisions, the Commission nonetheless continues to believe that such minority interests may be sufficient to provide cable operators with an incentive to favor an affiliated video programming service over an unaffiliated service.

28. On the issue of percentage limitation, the R&O/FNPRM proposed a 40 percent limit on the number of channels that could be occupied by affiliated video programmers. Commenters were asked to indicate whether such a limit would be reasonable and would encourage MSOs to continue to invest in new video programming services. The Commission noted its intention to establish a channel occupancy limit that would maximize the number of voices available to cable viewers without impairing the ability or incentive of cable operators to invest in new and existing video programming services.

29. The Commission determines that a 40 percent limit on the number of channels[3] that can be occupied by affiliated video programming services is reasonable to serve Congress' competing objectives in requiring such restrictions.[4] The Commission believes that a 40 percent limit is appropriate to balance the goals of increasing diversity and reducing the incentive and ability of vertically integrated cable operators to favor their affiliated programming, with the benefits and efficiencies associated with vertical integration. Moreover, Congress directed the Commission not to adopt limitations "which would impair the development of diverse and high quality video programming." In this regard, the Commission notes that cable operators' ability to carry affiliated programming is already significantly curtailed by statutorily mandated carriage obligations.

30. The Commission also notes that channel occupancy limits are not the only means by which Congress intended to prevent anti-competitive conduct by vertically integrated MSOs. Sections 12 and 19 of the 1992 Cable Act establish specific behavioral restrictions prohibiting discrimination by vertically integrated cable operators and video programming services. These provisions impose more narrowly tailored behavioral restraints, specifically prohibiting anti-competitive conduct by vertically integrated cable operators and programmers, while channel occupancy limits impose broader structural constraints, which affect the ability of all cable operators to carry programming in which they have an attributable interest. In addition, the must carry, leased access and PEG requirements imposed by other provisions of the Communications Act help to ensure that a diversity of views is available to cable subscribers. In light of the foregoing, the Commission believes that the channel occupancy limits need not be unduly restrictive in order to prevent the incentive and the ability of cable operators to favor their affiliated programmers or to promote a diversity of views to cable subscribers.

31. In addition, in order to promote the presentation of a diversity of viewpoints on cable the Commission will allow carriage of vertically integrated video programming services, on two additional channels or up to 45 percent of a cable system's channel capacity, whichever is greater, provided such additional video programming services are minority-controlled. The Commission believes that allowing such expanded carriage of minority-controlled video programming services will encourage additional MSO investment in minority-owned programming services, which will in turn promote minority ownership of video programming services and increase the diversity of viewpoints presented to cable subscribers. In this regard, the Commission believes that the diversity benefits of such increased minority ownership outweigh the access concerns associated with such an increase in integration. The Commission declines, however, to adopt a similar policy for minority-oriented programming.

32. The R&O/FNPRM next proposed to count all vertically integrated pay-per-view, pay-per-channel and multiplexed services against a system's channel occupancy limits. The Commission further proposed, however, to exempt local and regional programming networks from such limits in order to encourage the development of more local cable programming.

33. The Commission concludes that vertically integrated pay channels and multiplexed channels should not be exempted from the 40 percent channel occupancy limits. Although such channels provide subscribers with a valuable service and increase the diversity of programming available on cable, the Commission sees no compelling public interest objective to be served by such an exemption. The Commission also rejects the argument advanced by Viewer's Choice that pay-per-view services are not video programmers as contemplated by section 11 of the 1992 Cable Act. Accordingly, the Commission finds that such vertically integrated pay services should be counted against the 40 percent channel occupancy limit.

34. The Commission also disagrees with those who argue that multiplexed channels should not be counted toward the channel occupancy limits because they provide subscribers with time diversity and counter programming. The Commission does recognize, however, that some of these pay and multiplexed services as they develop are likely to occupy channels and subscriber attention in ways that are different from channels historically distributed on basic cable programming service tiers or even on a pay basis. These differences are likely to be increasingly reflected as cable systems expand beyond their traditional channel capacities. Thus, the discussion below regarding the application of channel occupancy limits to higher capacity systems is an appropriate means of addressing some of the concerns raised here with respect to multiplexed and other less traditional services.

35. The Commission determines, however, that the channel occupancy limits should apply only to video programming services distributed to cable systems on a nationwide basis. A programming service need not be distributed in every state to be regarded as a national programming service. A programming service that is distributed to cable systems in numerous states across the country or in a variety of regions may also be considered a national programming service. Programming services distributed only to a particular community or to a discrete region will be exempt from such limits. Without such an exception commenters argue that MSOs will favor national programming services which can be marketed to larger audiences across the country producing greater subscriber and advertising revenues.

36. The R&O/FNPRM next considered the effect of fiber optic cable and digital signal compression. The Commission indicated that emerging technologies such as digital signal compression and fiber optic cable would expand channel capacity such that channel occupancy limits would eventually be unnecessary

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[3] We will measure the vertical ownership limits on a per channel basis, using the traditional 6MHz per channel definition. However, given the dynamic state of cable technology, we recognize that it may soon be common for cable operators to provide several channels using a single 6MHz bandwidth segment. Accordingly, as with our other rules we intend to review periodically this definition, and if necessary to make adjustments to ensure that it is consistent with the current state of technology.

[4] In order to calculate the exact number of channels on a vertically integrated cable system that can be devoted to carriage of programming in which the cable operator has an attributable interest, parties should round up or down to the nearest decimal point. For example, on a system with 34–36 channels, 14 channels could be occupied by affiliated video programming services and on a system with the 54–56 channels, 22 could be devoted to the carriage of affiliated programming services. In addition, where a single channel is shared by affiliated and unaffiliated video programming services, such channel will be counted as an affiliated channel only if the affiliated programming service accounts for 50 percent or more of the channel's programming time.

to ensure that cable operators did not favor vertically integrated programmers. Accordingly, comments were invited on whether the Commission should establish a threshold beyond which such channel occupancy limits would not apply. The Commission also questioned whether such a cap should be adopted in this proceeding or at some future date. In this regard, commenters were asked whether there is an identifiable channel capacity threshold associated with the next generation of cable technology which would provide an appropriate level beyond which channel occupancy limits should no longer apply.

37. The Commission continues to believe that expanded channel capacity will reduce the need for channel occupancy limits. As indicated in the R&O/FNPRM, the expanded channel capacity that will result from fiber optic cable and digital compression technology will help obviate the need for such limits as a means of encouraging cable operators to carry unaffiliated or competing video programming services. Although information on how multichannel video distributors will respond to greatly increased channel capacity as necessarily somewhat speculative, the record indicates that vastly large cable systems will likely be inclined to deliver targeted "niche" video programming services aimed at correspondingly smaller audience sizes. In addition, pay-per-view and pay-per-channel offerings—also with more limited audiences—will increase as channel capacity increases. Also, as channel capacity becomes more abundant and relatively less costly, "multiplexing" is likely to increase and more capacity will be used to increase the convenience of program starting times rather than to distribute separate channels of original programming.

38. Occupancy limits in these circumstances do not parallel occupancy limits for more restricted capacity systems where most services are distributed on discrete channels to a significant portion of a system's subscribership. Accordingly, the Commission believes that occupancy limits can be relaxed once the number of cable channels on a system increases beyond the number distributed using traditional technology. Conventional cable distribution, in the absence of dual cable distribution plant, signal compression, or "fiber to the block," enables the distribution of approximately 75 video channels. At the present time, this threshold appears to be a reasonable cut-off for application of the channel occupancy limit. Thus the Commission will apply the channel occupancy limits only up to 75 channels on a cable system owned by a vertically integrated MSO.[5] Any additional channel capacity made possible through the use of advanced cable technologies will not be subject to the channel occupancy limits at this time. This limitation will be subject to periodic review along with the other provisions of these rules and may be eliminated if developments warrant.

39. The R&O/FNPRM considered effective competition, observing that once effective competition has been established and a cable operator no longer occupies a program access bottleneck position, channel occupancy limits may no longer be necessary or desirable. Thus, the Commission proposed to phase out channel occupancy limits in communities where effective competition is established. Commenters were asked to indicate whether the definition of effective competition for this purpose should include cable systems subscribed to by fewer than 30 percent of the homes located in the franchise area.

40. The Commission concludes that channel occupancy limits should not be eliminated in communities where effective competition exists. Although it is argued that the development of effective competition will preclude cable operators from exercising undue power in these situations, the effective competition standard was not adopted for this specific purpose and it is not clear that the presence of effective competition for any cable system addresses all of the relevant concerns that Congress expressed in enacting section 11 of the Act. Thus, at this time, the Commission is not prepared to say that the presence of "effective competition" is a reasonable basis for removing the channel occupancy caps. However, as with a number of other aspects of these rules, further analysis as to whether the restrictions might be phased out where effective competition develops will be appropriate as the Commission gains more experience with the rules.

41. The R&O/FNPRM next proposed to grandfather any existing vertical relationships which exceed the channel occupancy limits ultimately adopted and asked commenters to address this proposal. The Commission now determines that the public interest would be disserved by requiring cable operators to delete vertically integrated video programming services in order to comply with the channel occupancy caps. Accordingly, the Commission will grandfather all vertically integrated video programming services carried as of December 4, 1992 (the effective date of the 1992 Cable Act), which exceed the channel occupancy limits adopted herein. The Commission notes, however, that once additional capacity becomes available on a grandfathered system, the cable operator shall be prohibited from expanding its carriage of vertically integrated video programming services until such system is in full compliance with the channel occupancy limits.

42. R&O/FNPRM observed that the 1992 Cable Act and its legislative history were silent on the issue of enforcement of the channel occupancy limits and proposed to enforce channel occupancy limits through a process of certification whereby cable operators would certify annually to the Commission that their cable systems are in compliance with the channel occupancy limits. However, the Commission now determines that a preferable and less burdensome approach is to require cable operators to maintain records regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. Such information should be retained for a period of at least three years in the cable operator's public file.

43. In this regard, The Commission welcomes the assistance of local franchise authorities in monitoring compliance with the channel occupancy limits in their franchise area. Where a franchise authority has questions as to whether a local cable operator is in violation of the channel occupancy limits, such franchise authority may request to inspect the cable operator's records at reasonable times and during regular business hours. After such inspection, franchise authorities believing that a violation exists should file a complaint with the Commission. Other parties seeking to report potential violations of the channel occupancy limits may also contact the local franchise authority or report the matter directly to the Commission. If the Commission ultimately finds a cable

[5] The channel occupancy limits need not necessarily apply to the first 75 channels. For example, on a cable system with 75 channels no more than 30 channels (40 percent of 75) can be devoted to the carriage of affiliated video programming and thus no less than 45 channels (60 percent of 75) must be occupied by unaffiliated video programming services. On a system with 100 channels at least 45 channels would still be required to be devoted to the carriage of unaffiliated programming services, however, these 45 channels could be any of the system's 100 channels.

operator to be in violation of its channel occupancy rules, the Commission may impose appropriate sanctions, including cease and desist orders and forfeitures.

44. Third and finally, the Commission considered issues relating to limits on participation in program production. In that regard, the NPRM/NOI asked commenters to indicate whether it was necessary or appropriate to adopt additional restrictions on the degree to which multichannel distributors may participate in the creation or production of video programming, given the structural and behavioral restrictions contained in the 1992 Cable Act which are similarly designed to prevent anti-competitive conduct by vertically integrated cable systems and video programming services.

45. In view of the structural and behavioral restrictions already required under the 1992 Act, the Commission does not believe that additional restrictions on the ability of multichannel distributors to engage in the creation or production of video programming are warranted at the present time. The Commission concludes that at the present time the objectives of such a restriction are fully addressed by the other provisions of section 11, section 12, and section 19 of the 1992 Cable Act.

Administrative matters

Final Regulatory Flexibility Analysis

46. Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 605, it is certified that this decision will have an impact on small cable systems. As detailed in the full text of the Second Report and Order, the Commission has attempted, wherever possible within the statutory constraints, to establish regulations which, to the extent possible, minimize the burdens on the cable systems and programming services subject to the vertical and horizontal ownership limits. The full text of the Commission's final regulatory flexibility analysis may be found in appendix C of the Second Report and Order

Ordering Clauses

47. Accordingly, *it is ordered that,* Pursuant to the authority contained sections 2(a), 4(i) and (j) and 303 of the Communications Act of 1934, as amended, and the Cable Television Protection and Competition Act of 1992, Pub. L. 102–385, part 76 of the Commission's rules, 47 CFR part 76, is amended as set forth below, and will become January 10, 1994, subject to approval by the Office of Management and Budget. However, the effective date of the horizontal ownership limits contained in § 76.503 of the Commission's rules is stayed pending final judicial resolution of the District Court decision in *Daniels Cablevision* v. *United States,* No. 92–2292 (D.D.C. released September 16, 1993) holding the statutory authority for such rules unconstitutional.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission
LaVera F. Marshall,
Acting Secretary.

Amendatory Text

Part 76 of title 47 of the Code of Federal Regulations is amended to read as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended 106 Stat. 1460.

2. Section 76.503 is added to subpart J to read as follows:

§ 76.503 National subscriber limits.

(a) Except as set forth in paragraph (b) of this section no person or entity shall be permitted to reach more than 30 percent of all homes passed nationwide through cable systems owned by such person or entity or in which such person or entity holds an attributable interest.

(b) Ownership of cable systems reaching up to 35 percent of all homes passed nationwide shall be permitted provided the additional cable systems, beyond 30 percent of homes passed nationwide, are cable systems, beyond 30 percent of homes passed nationwide, are minority-controlled.

(c) Prior to acquiring additional cable systems any person or entity holding an attributable interest in cable systems reaching 20 percent, or more, of homes passed nationwide must certify to the Commission that no violation of the national subscriber limits prescribed in this section will occur as a result of such acquisition.

(d) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(e) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(f) *Attributable interest* shall be defined by reference to the criteria set forth in the Notes to § 76.501.

3. Section 76.504 is added to Subpart J to read as follows:

§ 76.504 Limits on carriage of vertically integrated programming.

(a) Except as otherwise provided in this section no cable operator shall devote more than 40 percent of its activated channels to the carriage of national video programming services owned by the cable operator or in which the cable operator has an attributable interest.

(b) The channel occupancy limits set forth in paragraph (a) of this section shall apply only to channel capacity up to 75 channels.

(c) A cable operator may devote two additional channels or up to 45 percent of its channel capacity, whichever is greater, to the carriage of video programming services owned by the cable operator or in which the cable operator has an attributable interest provided such video programming services are minority-controlled.

(d) Cable operators carrying video programming services owned by the cable operator or in which the cable operator holds an attributable interest in excess of limits set forth in paragraph (a) of this section as of December 4, 1992, shall not be precluded by the restrictions in this section.

(e) Cable operators are required to maintain records in their public file for a period of three years regarding the nature and extent of their attributable interests in all video programming services as well as information regarding their carriage of such vertically integrated video programming services on cable systems in which they also have an attributable interest. These records must be made available to local franchise authorities, the Commission, or members of the public on reasonable notice and during regular business hours.

(f) *Minority-controlled* means more than 50 percent owned by one or more members of a minority group.

(g) *Minority* means Black, Hispanic, American Indian, Alaska Native, Asian and Pacific Islander.

(h) *Attributable interest* shall be defined by reference to the criteria set forth in the Notes to § 76.501.

[FR Doc. 93–27630 Filed 11–12–93; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–266; FCC No. 93–494]

Cable Television Act of 1992

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has adopted an Order extending the freeze of regulated cable service revenues from November 15, 1993 until February 15, 1994. This Order will establish an additional opportunity for local franchising authorities and subscribers to participate in assuring the reasonableness of cable service rates prior to expiration of the freeze.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Lawrence A. Walke, (202) 416–0847.

SUPPLEMENTARY INFORMATION: The text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street NW., Washington, DC 20037.

Order

Adopted: November 10, 1993.

Released: November 10, 1993.

By the Commission: Chairman Quello issuing a separate statement; Commissioner Duggan issuing a separate statement; Commissioner Barrett dissenting.

I. Introduction

1. In this Order, on our own motion, we reconsider the expiration date of the freeze of regulated cable service revenues, and extend the expiration date of the freeze from November 15, 1993 until February 15, 1994.

II. Background

2. In the Rate Order, 58 FR 29736 (May 21, 1993), we established a comprehensive regulatory framework providing for rate regulation of the basic service tier by local franchising authorities and of cable programming services tiers by the Commission as required under the Cable Act of 1992. We established June 21, 1993 as the effective date of our rate regulations. At the same time, we were concerned that during the period between adoption of our rules and the earliest practical opportunity for local franchising authorities to establish regulation of the basic service tier, and for consumers to file complaints with the Commission concerning rates for cable programming services tiers, cable operators could raise rates, effectively undermining the statutory goal that rates for cable services remain reasonable. In particular, we were concerned that cable operators could raise rates to potentially unreasonable levels, as determined under the rate regulations ultimately adopted. We determined that a freeze of regulated cable service revenues until August 3, 1992 would provide a reasonable opportunity for local franchise authorities to become certified to regulate the basic service tier and for consumers to invoke by complaint the Commission's regulatory oversight over cable programming services tiers. Accordingly, we established a freeze until that date of revenues for cable services subject to regulation under the Cable Act of 1992.

3. Subsequently, the Commission reexamined the feasibility of implementing rate regulation by June 21, 1993 in view of the significant additional responsibilities imposed on the Commission by the Cable Act of 1992 and a severe funding shortfall faced by the Commission at that time. We extended the effective date of cable rate regulation from June 21, 1993 until October 1, 1993, and the freeze until November 15, 1993 in order to provide local franchising authorities and consumers a continued opportunity to exercise their rights under the Cable Act of 1992 and our regulations in light of the new effective date of cable rate regulation. We later determined that an earlier implementation of cable rate regulation was feasible because of a supplemental appropriation provided to the Commission and moved the effective date of rate regulation from October 1, 1993 to September 1, 1993. We did not alter the date for expiration of the freeze because we were concerned that local franchising authorities may have established implementation plans based on an effective date of October 1, 1993. Our regulations establishing rate regulation of cable service became effective September 1, 1993.

III. Discussion

4. Under the Cable Act of 1992 and our implementing regulatory framework, cable operators are generally free to raise rates for the basic service tier in the absence of local certification and for cable programming service tiers in the absence of subscriber complaints invoking the regulatory oversight of the Commission. As of November 3, 1993, the Commission has received 3425 applications for certification from local franchising authorities covering approximately 5050 communities served by cable, and no more than approximately 836 properly completed subscriber complaints. These figures represent only a small percentage of the nearly 33,000 communities that are potentially eligible to regulate the basic service tier, and an even smaller percentage of the country's 58 million cable subscribers.

5. In light of the relatively few applications for certification and subscriber complaints received to date, we are concerned that the expiration of the freeze on November 15, 1993 could undermine the statutory purpose that rates for regulated cable service be reasonable by permitting rates to rise before rate regulation has begun in earnest. We believe that the purposes of the statute will best be fulfilled if we establish an additional opportunity for local franchising authorities and subscribers to participate in assuring the reasonableness of cable service rates prior to expiration of the freeze. We believe that an extension of the freeze until February 15, 1994 will ensure that we have afforded local franchising authorities a sufficient period in which to seek Commission certification to regulate basic cable service rates, and in which cable subscribers may exercise their rights to invoke Commission oversight of cable programming services. Accordingly, we will reconsider, on our own motion, the decision in the *Deferral Order*, 58 FR 33560 (June 18, 1993), that the freeze should expire November 15, 1993, and extend the expiration date of the freeze until February 15, 1994. When the basic tier becomes subject to regulation, a cable operator may generally raise rates only after approval by local franchising authorities. Where local governments already have initiated rate regulation of the basic service tier, we are not concerned that rates for the tier could rise to unreasonable levels after November 15, 1993. Accordingly, after the effective date of this *Order*, the freeze will not apply to a basic service tier that has become subject to regulation by a local franchising authority or the Commission. In the *Rate Freeze Order*, 58 FR 17530 (April 5, 1993), we determined that it was necessary to freeze rates for the cable programming service tier in order to prevent cable operators from evading the freeze of the basic tier by moving programming from the basic to the cable programming service tier. In situations where the basic tier is already subject to regulation, it is not necessary to continue the freeze in effect for the cable programming service tier in order to prevent an evasion of rate regulation of the basic tier. Accordingly, where the basic tier has become subject to regulation, the freeze will expire on that date for both tiers. In such situations, we note that subscribers and local franchising authorities may file complaints to make the cable

programming service tier subject to regulation and establish refund liability for cable programming service rates as of the date of the complaint. Where only the cable programming service tier is subject to regulation, we do not believe that the cable operator's capacity to evade the freeze of the basic tier by shifting programming to the higher tier is sigaificantly diminished. Accordingly, where only the cable programming service tier is subject to regulation, the freeze will continue in effect for both tiers.

6. At the same time, we recognize that by this *Order* the freeze will have been in place for over ten months. We emphasize that we will entertain petitions for relief where the operator can show that the freeze is causing severe economic hardship or threatens the viability of continued provision of cable service.

7. As indicated, our comprehensive regulatory framework governing cable service rates became effective September 1, 1993. Under that framework, operators are currently scheduled to respond on November 15, 1993 to initial notices of regulation of the basic service tier that occurred prior to October 15, 1993, and to complaints filed with the Commission prior to October 15, 1993 concerning rates for cable programming services tiers. This schedule will permit local authorities and the Commission to bring to consumers the benefits of rate regulation. In particular, local authorities and the Commission can begin reviewing promptly on November 15, 1993 FCC Forms 393 where operators have elected to use the benchmark approach for setting initial rates. Under our comprehensive regulatory framework, a benchmark and price cap approach serves as the primary method of setting rates for regulated cable services. We are currently reviewing on reconsideration whether further changes to the benchmark scheme are warranted. As we stated in our first reconsideration order, we will provide for appropriate transition mechanisms should any changes be adopted. Moreover, in the *Rate Order*, we established that cost-of-service showings would be reviewed on a case-by-case basis under established standards of cost-of-service regulation traditionally applied to public utilities. Although we are in the process of developing and adopting uniform cost-of-service standards, such standards are not an essential part of our rate regulation scheme. Application of traditional cost-of-service principles on a case-by-case basis will give cable operators ample opportunity to justify their rates based on costs and ensure that their constitutional rights are not violated. In this regard, we note that the U.S. Court of Appeals for the D.C. Circuit rejected a request by several operators that our rate rules be stayed until we adopted final cost-of-service rules. *Intermedia Partners* v. *FCC*, No. 93–1491 (D.C. Cir. August 31, 1993). Thus, under the current schedule and regulatory framework, local authorities and the Commission can begin reviewing as early as November 15, 1993 cost-of-service showings and assess in individual cases the costs that may be recovered in rates for regulated cable services. These local and federal regulatory actions will enable operators and consumers to receive assurance in the near future that rates are in compliance with our requirements where rates are within permitted levels, and to enjoy the benefits of rate adjustments and refunds where rates exceed permitted levels. Our current regulatory framework and implementation schedule, therefore, will permit local authorities and the Commission to began without further delay the regulatory processes that will assure that cable service rates are reasonable as required under the Cable Act of 1992. Moreover, implementation of the rate regulation provision of the 1992 Cable Act will inevitably be a learning process for the Commission, local authorities, and the industry that will require revision and refinement over time. Accordingly, we believe it imperative that the process be commenced so that we can gain experience with the process and so that the benefits of the Act will be received by subscribers.

8. We find good cause under the Administrative Procedure Act to make this freeze effective with less than 30 days advance publication in the **Federal Register**. As explained, an extension of the freeze from November 15, 1993 until February 15, 1994 is necessary in order to afford local franchising authorities a sufficient period in which to seek Commission certification to regulate basic cable service rates, and in which cable subscribers may exercise their rights to invoke Commission oversight of cable programming services. We will make this *Order* and implementing rule changes effective upon publication in the **Federal Register** in order to prevent an expiration of the freeze that would otherwise occur under 30 days advance publication in the **Federal Register.**

IV. Ordering Clauses

9. Accordingly, *It is Ordered*, pursuant to sections 4(i) and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i) and 543, that the freeze of cable service rates established in *Order*, 8 FCC Rcd 2921, 58 FR 17530 (April 5, 1993), *clarified*, 8 FCC Rcd 2917, 58 FR 21929 (April 26, 1993), *extended*, FCC 93–304, 58 FR 33560 (June 18, 1993), *Is Extended* UNTIL February 15, 1994.

10. *It is Further Ordered*, That section 76.1090 of the Commission's rules, 47 C.F.R. Section 76.1090, *Is Amended* as set forth below.

11. *It is Further Ordered*, That this *Order* Is Effective On November 15, 1993.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Part 76 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 552, as amended, 106 Stat. 1460.

2. Section 76.1090 is amended by revising paragraph (a), and adding new paragraph (c) to read as follows:

§ 76.1090 Temporary Freeze of Cable Rates.

(a) The average monthly subscriber bill for services provided by cable operators subject to regulation under section 623 of the Communications Act shall not increase above the average monthly subscriber bill determined under rates in effect on April 5, 1993, until February 15, 1994.

* * * * *

(c) The freeze imposed by paragraph (a) of this section will not apply where a basic tier service has become subject to regulation by a local franchising authority or the Commission.

[FR Doc. 93–28068 Filed 11- 12–93; 8:45 am]

BILLING CODE 6712–01–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1033

[Ex Parte No. 334 (Sub-No. 8) and (Sub-No. 8A)]

Amendment to Rules in Response to Joint Petition for Rulemaking on Railroad Car Hire Compensation; and Joint Petition for Exemption of Arbitration Rule From Application of 49 U.S.C. 10706 and Motion to Dismiss

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Amendment to rules.

SUMMARY: The Commission amends its rules, which effect a phased deprescription of railroad car hire rates. The amendment would make the transition to deprescription more gradual by providing that rail car investments made between January 1, 1991 and December 31, 1992 may continue to be reflected in prescribed rates until January 1, 2003.

EFFECTIVE DATES: The new rules are effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359.

Regulatory Flexibility Certification

The Commission certified in its decisions served November 10 and December 22, 1992, that its actions will not have a significant impact on a substantial number of small entities. This decision, which makes the transition to deprescription even more gradual, will not change that result. To the contrary, it will give small carriers additional time to adjust to the new regulatory regime. Pursuant to 5 U.S.C. 605(b), the Commission certifies that its action will not have a significant impact on a substantial number of small entities.

Environmental Statement

This action will not significantly affect either the quality of the human environment or the conservation of energy resources.

List of Subjects in 49 CFR Part 1033

Railroads.

For reasons set forth in the preamble, title 49, chapter X, part 1033 of the Code of Federal Regulations is amended as follows:

1. Part 1033 is revised to read as follows:

PART 1033—CAR SERVICE

Sec.

1033.1 Car hire rates.
1033.2 Car service orders.

Authority: 5 U.S.C. 553; 49 U.S.C. 10321, 10326, 11121, and 11122.

§ 1033.1 Car hire rates.

(a) Definitions applicable to this section:

(1) *Car.* A freight car bearing railroad reporting marks, other than an excluded boxcar as defined in § 1039.14(c)(2) of this chapter whenever it is owned or leased by any class III carrier and bears a class III carrier's reporting marks.

(2) *Car hire.* Compensation to be paid by a user to an owner for use of a car. Such compensation may include, but need not be limited to, hourly and mileage rates.

(3) *Fixed rate car.* Any car placed in service or rebuilt prior to January 1, 1993 or for which there was a written and binding contract to purchase, build, or rebuild prior to July 1, 1992, regardless of whether such car bore railroad reporting marks prior to January 1, 1993, provided, however, that until December 31, 1993, all cars shall be deemed to be fixed rate cars.

(4) *Market rate car.* Any car that is not a fixed rate car.

(5) *Owner.* A rail carrier entitled to receive car hire on cars bearing its reporting marks.

(6) *Prescribed rates.* The hourly and mileage rates in effect on December 31, 1990, as published in Association of American Railroads Circular No. OT–10 found in the information section of tariff ICC RER 6411–U known as the Official Railway Equipment Register. This information can be obtained at the Association of American Railroads or the Commission. Prescribed rates will be enhanced to reflect OT–37 surcharges and Rule 88 rebuilds for work undertaken and completed during 1991 and 1992, and for rebuilding work for which there was a written and binding contract prior to July 1, 1992.

(7) *User.* A rail carrier in possession of a car of which it is not the owner.

(b) *Fixed rate cars.* Car hire for fixed rate cars shall be determined as follows:

(1) Except as provided in paragraph (b)(3) of this section, for a 10-year period beginning January 1, 1993, the prescribed rates shall continue to apply to fixed rate cars without regard to the aging of such cars subsequent to December 31, 1990. Prescribed car hire rates shall not be increased for any additions and betterments performed on such cars after December 31, 1990. Any OT–37 surcharge to prescribed rates for work performed prior to January 1, 1993 shall expire upon the earlier of:

(i) The car becoming a market rate car; or

(ii) The expiration date provided in Association of American Railroads Circular No. OT–37.

(2) Upon termination of the 10-year period specified in paragraph (b)(1) of this section, all fixed rate cars shall be deemed to be market rate cars and shall be governed by paragraph (c) of this section.

(3) (i) During each calendar year beginning January 1, 1994, a rail carrier may voluntarily elect to designate up to 10% of the cars in its fleet as of January 1, 1993 to be treated as market rate cars for the purposes of this section. The 10% limitation shall apply each calendar year and shall be noncumulative. Cars designated to be treated as market rate cars shall be governed by paragraph (c) of this section. Such election shall be effective only in accordance with the following provisions:

(A) An election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners if:

(*1*) The rail carrier making the election has legal title to the car; or

(*2*) The rail carrier making the election does not have legal title to the car but obtains written consent for such election from the party holding legal title; or

(*3*) The transaction pursuant to which the party holding legal title to the car has furnished the car to the rail carrier making the election was entered into after January 1, 1991.

(B) An election shall be irrevocable and binding only for the term of the transaction pursuant to which the car was furnished to the rail carrier making the election as to that rail carrier and all users and subsequent owners if:

(*1*) That rail carrier does not have legal title to the car and does not obtain written consent or such election from the party holding legal title;

(*2*) The transaction was entered into prior to January 1, 1991; and

(*3*) The transaction does not provide that the compensation to be paid to the party furnishing the car is to be based in whole or in part directly on the car hire earnings of the car; provided, however, that if the rail carrier making the election subsequently obtains legal title to the car, such election shall then be irrevocable and binding as to the rail

carrier and all users and subsequent owners.

(C) The party holding legal title to the car may revoke an election subject to the provisions of paragraph (b)(3)(i)(B) of this section only:

(*1*) At the time the transaction pursuant to which the car was furnished to the rail carrier making the election is first extended or renewed after January 1, 1991; or

(*2*) If such transaction is not extended or renewed, at the time such transaction terminates.

If such election is so revoked, a rail carrier may make a new election only with the written consent of the party holding legal title to the car, and such election shall be irrevocable and binding as to the rail carrier making the election and all users and subsequent owners.

(ii) Nothing in paragraph (b)(3)(i) of this section shall be construed to limit the rights of parties to any transaction to provide for the consent of any party to an election made pursuant to paragraph (b)(3)(i) of this section.

(c) *Market rate cars.* (1) Market rate cars shall not be subject to prescribed rates or to the provisions of 49 CFR 1039.14(c)(1) (i) and (ii) and (c)(4).

(2) (i) The Commission shall not prescribe car hire for market rate cars.

(ii) The Code of Car Hire Rules referenced in the Association of American Railroads Car Service and Car Hire Agreement provides that owners and users party to that agreement shall resolve car hire disputes thereunder. The Commission may review allegations of abuse of the car hire dispute resolution process established under those rules.

(iii) Car hire disputes involving an owner or user not a party to that agreement may be resolved by the Commission.

(d) *Car hire agreements.* Rail carriers are authorized to negotiate and enter into agreements governing car hire.

(e) *Effective date.* This part shall take effect on January 1, 1994.

§ 1033.2 Car service orders.

Emergency and temporary service orders are issued under this part but are not carried in the Code of Federal Regulations.

Decided: November 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Chairman McDonald, joined by Vice Chairman Simmons, dissented in part with a separate expression. Commissioners Philbin and Walden dissented in part with a separate expression.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27931 Filed 11–12–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 921185–3021; ID 110993A]

Groundfish of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Closure.

SUMMARY: NMFS is closing the directed fishery for Pacific ocean perch in the Aleutian Islands subarea (AI) of the Bering Sea and Aleutian Islands management area (BSAI). This action is necessary to prevent exceeding the Pacific ocean perch total allowable catch (TAC) in the AI.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 9, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, (907) 586–7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the BSAI exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for the Groundfish Fishery of the Bering Sea and Aleutian Islands Area (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 675.

In accordance with § 675.20(a)(7)(ii), the Pacific ocean perch TAC for the AI was established by the final 1993 initial specifications of groundfish (58 FR 8703, February 17, 1993) and later augmented from the reserve (58 FR 44136, August 19, 1993) to a total of 13,900 metric tons (mt). The directed fishery was closed on April 22, 1993 (58 FR 21951, April 26, 1993); the closure was rescinded on August 9, 1993 (58 FR 42031, August 6, 1993); and the fishery was again closed on August 19 (58 FR 44465, August 23, 1993). With consideration that the TAC for Pacific ocean perch in the AI had not been reached, NMFS rescinded the August 19 closure on October 22, 1993 (58 FR 54529).

The Director of the Alaska Region, NMFS (Regional Director), has determined, in accordance with § 675.20(a)(8), that the Pacific ocean perch TAC in the AI soon will be reached. Therefore, the Regional Director has established a directed fishing allowance of 13,400 mt, with consideration that 500 mt will be taken as incidental catch in directed fishing for other species in the AI. The Regional Director has determined that the directed fishing allowance has been reached. Consequently, NMFS is prohibiting directed fishing for Pacific ocean perch in the AI, effective from 12 noon, A.l.t., November 9, 1993, until 12 midnight, A.l.t., December 31, 1993.

Directed fishing standards for applicable gear types may be found in the regulations at § 675.20(h).

Classification

This action is taken under § 675.20.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 9, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28007 Filed 11–9–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93–102–1]

Importation of Pork and Pork Products From Countries Where Swine Vesicular Disease is Known to Exist

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to amend the regulations concerning importation of certain cured and dried pork and pork products from countries where swine vesicular disease is known to exist, to allow the bones to be removed in the country where the pork or pork products are processed. Current regulations require that bones be removed in the country where the swine are raised and slaughtered. This action would give processors an option as to where bones are removed, while continuing to prevent the introduction of swine vesicular disease into the United States.

DATES: Consideration will be given only to comments received on or before January 14, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–102–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import-Export Products Staff, VS, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

Regulations in 9 CFR part 94 regulate, among other things, the importation of certain animals, meat, and animal products into the United States. These regulations are designed to prevent the introduction into the United States of certain diseases of livestock and poultry. Section 94.12 restricts the importation of pork and pork products into the United States from countries where swine vesicular disease (SVD) is known to exist. In order to prevent the introduction of this disease into the United States, only pork and pork products that meet conditions detailed in the regulations are eligible for entry into the United States.

Under our current regulations, swine may be raised and slaughtered in an SVD-free country and the meat shipped to an SVD-infected country for curing and drying. However, if the resulting cured and dried pork or pork products are to be imported into the United States, all bones must be removed in the country of origin, that is, the country where the swine are raised and slaughtered. Under our current regulations, the bones may not be removed in the country where the pork or pork products are cured and dried. (See § 94.12(b)(1)(iv)(A).)

SVD is considered to exist in Germany. There are three facilities in Germany which process pork and pork products that originate in SVD-free countries for importation into the United States under the requirements of § 94.12(b)(1)(iv). Under our current regulations, all bones must be removed in the country of origin, where the swine are raised and slaughtered, not in Germany, where the pork and pork products are cured and dried.

APHIS has received a petition from the German government asking that we amend § 94.12(b)(1)(iv) to allow the importation of pork and pork products under that section if the bones have been removed in Germany, the country where the pork and pork products are cured and dried.

We have carefully considered this petition. The intent of our existing regulations is to ensure that SVD is not present in pork and pork products imported into the United States. The requirement in § 94.12(b)(1)(iv)(A) that bones be removed in the country where the swine are raised and slaughtered was designed to minimize the possibility that pork or pork products could be infected with SVD from virus in bone marrow. We have determined that, if animals are raised and slaughtered in a country which is free of SVD, and, if the resulting pork and pork products are cured and dried in a facility which has been approved by APHIS as currently required under § 94.12(b)(1)(iv)(A), there is no significant chance of infection, regardless of whether the bones are removed in the country where the swine are raised and slaughtered or in the country where the pork and pork products are cured and dried. Therefore, we are proposing to amend § 92.12(b)(1)(iv)(A) to allow the option of removing the bones in the country where the pork and pork products are cured and dried.

Executive Order 12291 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12291, and we have determined that it is not a "major rule." Based on information compiled by the Department, we have determined that this proposed rule would have an effect on the economy of less than $100 million; would not cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; and would not cause a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

At present, Germany is the only country where SVD is considered to exist that exports these cured and dried pork and pork products to the United States. During 1989, approximately 17,987 kilograms of cured and dried pork and pork products were exported from Germany to the United States. The value of these imports totaled $113,000.

Three facilities in Germany currently process cured and dried pork and pork products for the United States market.

The regulatory amendments proposed in this document would allow these processing facilities to purchase pork from SVD-free countries with the bones in, and remove the bones at the processing facilities in Germany. The proposed amendments would not have any impact on the domestic pork industry, which is valued in excess of $4 billion.

We have been unable to identify any domestic entities that would be affected by the proposed rule. We therefore estimate that the proposed rule would have a negligible impact on the domestic market for cured and dried pork and pork products.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted: (1) All State and local laws and regulations that are inconsistent with this rule will be preempted; (2) no retroactive effect will be given to this rule; and (3) administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended to read as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, and 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

2. In § 94.12, paragraph (b)(1)(iv)(A) would be revised to read as follows:

§ 94.12 Pork and pork products from countries where swine vesicular disease exists.

* * * * *

(b) * * *

(1) * * *

(iv) * * *

(A) All bones have been completely removed, either in the country of origin or in the country where the pork or pork products are processed; and

* * * * *

Done in Washington, DC, this 8th day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–28002 Filed 11–12–93; 8:45 am]

BILLING CODE 3410–24–P

FEDERAL TRADE COMMISSION

16 CFR Part 305

[RIN 3084–AA26]

Rules Concerning Disclosures of Information About Energy Consumption and Water Use for Certain Home Appliances and Other Products Required Under the Energy Policy and Conservation Act

AGENCY: Federal Trade Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Trade Commission ("Commission") seeks comments on a proposal to add general service fluorescent lamps, medium base compact fluorescent lamps and general service incandescent lamps to the list of products subject to provisions of the above referenced rule, commonly referred to as the Appliance Labeling Rule. This action is being taken pursuant to the Energy Policy Act of 1992 ("EPA 92"), which directed the Commission to prescribe, by April 24, 1994, rules requiring such products to be labeled with disclosures that will enable a purchaser to select the most energy efficient lamps that meet his or her requirements.

All persons are hereby given notice of the opportunity to submit written data, views, and arguments concerning this proposal. In addition, following the period for written comments, Commission staff plans to conduct a Public Workshop-Conference to afford interested parties an opportunity to explore and discuss issues raised during the comment period and to present oral data, views, and arguments on the proposed rules.

DATES: Written comments must be submitted on or before December 30, 1993. Due to the time constraints of this rulemaking proceeding, the Commission does not contemplate any extensions to this comment period.

Notification of interest in participating in the Public Workshop-Conference must be submitted on or before December 15, 1993. The Public Workshop-Conference is currently scheduled to be held at the Federal Trade Commission, Sixth and Pennsylvania Ave., NW, Washington, DC, on January 19, 1994, from 9 a.m. until 5 p.m.

ADDRESSES: Written comments should be submitted to Office of the Secretary, Federal Trade Commission, room 159, Sixth and Pennsylvania Avenue, NW, Washington, DC 20580, telephone number 202–326–2506. Requests to participate in the Public Workshop-Conference should be submitted to Kent C. Howerton, Attorney, Bureau of Consumer Protection, Division of Enforcement, Room S–4631, Sixth and Pennsylvania Ave., NW, Washington, DC 20580, telephone number 202–326–3013 [FAX number 202–326–3259]. Comments and requests to participate in the Public Workshop-Conference should be identified as "16 CFR Part 305—Comment—Lamp Products" and "16 CFR Part 305—Request to Participate in Public Workshop-Conference—Lamp Products," respectively. If possible, submit comments both in writing and on a personal computer diskette in Word Perfect or other word processing format (to assist in processing, please identiry the format used). Written comments should be submitted, when feasible and not burdensome, in five copies. If requests to participate in the Public Workshop-Conference are made by facsimile transmission [FAX], please confirm transmission by telephone to 202–326–3013 to ensure receipt of request.

FOR FURTHER INFORMATION CONTACT: Kent C. Howerton, Attorney, Bureau of Consumer Protection, Division of Enforcement, Room S–4631, Sixth and Pennsylvania Ave., NW, Washington, DC 20580, telephone number 202–326–3013.

SUPPLEMENTARY INFORMATION:

I. Introduction

EPA 92,[1] enacted on October 24, 1992, amends in several respects the Energy Policy and Conservation Act of 1975 ("EPCA").[2] EPCA requires the Commission to prescribe energy labeling rules for certain major household appliances. 42 U.S.C. 6294 (1988). The EPA 92 amendments to EPCA direct the Commission, within 18 months of the statute's enactment, to prescribe rules requiring that packages of general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps[3] be labeled with "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements." *Id.*[4]

Consistent with this statutory directive, the Commission is considering appropriate amendments to the Appliance Labeling Rule ("Rule"). The Commission previously has issued a rule, known as the Light Bulb Rule, governing the most common types of incandescent lamps (but excluding incandescent reflector lamps).[5] See Part II.E., below. The proposed regulations announced today will supplement, rather than supersede, that rule. The Light Bulb Rule, however, provides a starting point for the proposals in this Notice of Proposed Rulemaking ("Notice").[6]

II. Background

A. EPCA and the Existing Appliance Labeling Rule

EPCA is generally designed to promote improved energy efficiency of consumer products. 42 U.S.C.A. 6201 (West Supp. 1993). It establishes energy consumption standards for certain categories of major home appliances and directs the U.S. Department of Energy ("DOE") to devise similar standards for certain other categories of such products. 42 U.S.C.A. 6295 (West Supp. 1993). EPCA also directs the Commission to prescribe or in some cases, to consider prescribing, rules requiring appliances to be labeled with disclosures of estimated annual energy cost or another useful measure of energy usage. 42 U.S.C.A. 6294 (West Supp. 1993).

Pursuant to EPCA's directives, the Commission has adopted the Appliance Labeling Rule.[7] 16 CFR part 305. The Rule requires that certain major home appliances including furnaces, refrigerators and air conditioners be labeled with EnergyGuides. 16 CFR 305.11(a)–(c) (1993).[8] In addition, the Rule requires fluorescent lamp ballasts to be labeled or marked with the symbol "E" enclosed in a circle, to denote that the ballast meets a DOE energy efficiency standard.[9] 16 CFR 305.11(d) (1993).

Except for fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials for products covered by the Commission's Rule to contain disclosures of required energy consumption and efficiency information. 16 CFR 305.13(a), .14(a)–(b) (1993). Further, the Rule requires, for furnaces, disclosure of energy usage information on fact sheets, 16 CFR 305.11(b) (1993), and, for central air conditioners and heat pumps, similar disclosures on fact sheets or in industry directories, 16 CFR 305.11(c) (1993). For fluorescent lamp ballasts, the Rule requires catalogs and point-of-sale promotional materials to contain the same symbol that is required on labels. 16 CFR 305.13(c), .14(c) (1993).

EPCA generally authorizes the Commission to assess monetary civil penalties for violations of the Rule. 42 U.S.C. 6303(a), (d) (1988). Accordingly, the Rule provides that manufacturers or private labelers who knowingly distribute products covered by the Rule that are not properly labeled are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(1) (1993). Manufacturers, distributors, or retailers who knowingly remove or make illegible a required label similarly are subject to a penalty of not more than $100 for each unit. 16 CFR 305.4(a)(2) (1993). Manufacturers or private labelers who fail to include required disclosures in their catalog advertising are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(5) (1993). Manufacturers or private labelers who fail to keep records or provide reports or product samples as specified by the Rule also are subject to a penalty of not more than $100 per day. 16 CFR 305.4(b)(2), (4) (1993). EPCA also grants to the U.S. District Courts authority to issue injunctions against such violations. 42 U.S.C. 6304 (1988).

B. EPA 92's Provisions Concerning Lamp Products

The EPA 92 amendments to section 324(a)(2)(C)(i) of EPCA require that the Commission issue labeling rules for "general service fluorescent lamps," "medium base compact fluorescent lamps," and "general service incandescent lamps," as those terms are defined in EPCA. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). The labeling rules must require conspicuous disclosure on the packaging of the lamp of "such information as the Commission deems necessary to enable consumers to select the most energy efficient lamps which meet their requirements." *Id.* The Commission must issue the labeling rules not later than April 24, 1994. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). The rules must apply to lamp products manufactured after the twelve month period beginning on the date of publication of the rule. *Id.* The Commission proposes to interpret EPCA to authorize the Commission also to require disclosures, if appropriate, in catalogs from which each of these lamp products can be ordered, 42 U.S.C. 6296(a) (1988), and in point-of-sale written materials, 42 U.S.C. 6294(c)(4) (1988). Similarly, the Commission

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[1] Pub. L. No. 102–486, 106 Stat. 2776, 2817–2832 (1992) (codified in scattered titles of U.S.C.).

[2] 42 U.S.C. 6291 *et seq.* EPCA has also been amended by the National Energy Conservation Policy Act of 1978, Pub. L. No. 95–619, 92 Stat. 3258 (1978); the National Appliance Energy Conservation Act of 1987 ("NAECA 87"), Pub. L. No. 100–12, 101 Stat. 103 (1987); and the National Appliance Energy Conservation Amendments of 1988 ("NAECA 88"), Pub. L. No. 100–357, 102 Stat. 671 (1988).

[3] General service incandescent lamps often are referred to as "light bulbs" or "electric lights."

[4] Pursuant to other amendments to EPCA by EPA 92, the Commission also conducted a rulemaking proceeding and amended the Rule to require the disclosure of water usage rates for certain plumbing products. Final Rule, 58 FR 54955 (1993).

[5] Trade Regulation Rule for the Incandescent Lamp (Light Bulb) Industry, 16 CFR part 409 (1993); *see* 35 FR 11784 (July 23, 1970).

[6] The labeling rules proposed in this Notice would overlap the disclosures required by the Light Bulb Rule. When it concludes this proceeding, the Commission will consider the appropriate resolution of any inconsistencies between the two rules.

[7] 44 FR 66466 (1979). The Commission has amended the Rule on several occasions to add new products that must be labeled. 52 FR 46888 (1987) (adding a new product category of central air conditioners and heat pumps and two additional subcategories of furnaces, pulse combustion furnaces and condensing furnaces); 54 FR 28031 (1989) (adding a new product category of fluorescent lamp ballasts); and 58 FR 54955 (1993) (adding new product categories of showerheads, faucets, water closets and urinals).

[8] For example, labels for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, and water heaters must disclose the estimated annual operating cost (*e.g.*, "$240.00"). 16 CFR 305.11(a)(5)(i)(E) (1993). Labels for room air conditioners, central air conditioners, heat pumps, and fact sheets for furnaces, by contrast, must disclose the energy efficiency rating (*e.g.*, "10.5" for a central air conditioner or "96.5" for a furnace). 16 CFR 305.11(a)(5)(i)(E), 305.11(a)(5)(iii)(C), 305.11(b)(3)(v) (1993). The Commission is considering proposals to amend the current disclosure requirements for refrigerators, refrigerator-freezers, freezers, clothes washers, dishwashers, water heaters and room air conditioners in a separate proceeding. 53 FR 22106 (1988) and 58 FR 12818 (1993).

[9] A fluorescent lamp ballast is a device that is used to start and operate fluorescent lamps by providing a starting voltage and current and limiting the current during normal operations. 16 CFR 305.3(j) (1993).

proposes to interpret the various EPCA provisions that provide the Commission with Rule enforcement mechanisms (including those authorizing imposition of civil penalties for Rule violations), 42 U.S.C. 6296, 6299, 6302–04 (1988) to apply to all three lamp categories that will be covered by the labeling rules under EPCA section 324(a)(2)(C)(i), 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993).[10]

C. Energy Used for Lighting

Lighting is the single largest source of electricity consumption in commercial buildings. About 41 percent of electricity, and 28 percent of total energy, consumed in the commercial sector is for lighting.[11] Fluorescent lamps consume about 55 percent of lighting electricity in the commercial sector.[12] In the residential sector, energy use for lighting is small though not trivial, representing about seven percent of residential energy use.[13] Incandescent lamps provide most lighting in residences.

Energy use in both commercial and residential buildings accounts for an increasing share of total U.S. energy consumption (including electricity and other forms of energy): 27 percent in 1950, 33 percent in 1970, and 36 percent in 1990. At present, buildings account for over 60 percent of all electricity used in the U.S.[14] Thus, increasing the energy efficiency of lighting in both commercial and residential buildings could contribute significantly to energy conservation efforts.

The opportunities for improved lighting efficiency (delivering the same or better quality of light with less energy) are considerable. Using technologies already on the market, electricity use for residential lighting could be cut by about one-third. Similarly, electricity use for commercial lighting could be reduced considerably, with estimates of 39 to 83 percent, using commercially available technologies. These energy savings come largely from the use of new, efficient lighting technologies.[15]

D. Description of Lamp Products

1. General Service Fluorescent Lamps

General service fluorescent lamps account for most lighting in commercial buildings. According to the National Electrical Manufacturers Association ("NEMA"), a trade association that includes lamp manufacturers, almost 90 percent of the general service fluorescent lamps sold in the U.S. are for those applications.

Fluorescent lamps are most commonly made with tubular bulbs varying in diameter from approximately 12 millimeters (0.5 inch, "T–4" bulb) to 54 millimeters (2.125 inch, "T–17" bulb), and in overall lengths from a nominal 100 to 2240 millimeters (four to 96 inches). The bulb historically has been designated by a letter indicating the shape, followed by a number indicating the maximum diameter in eighths of an inch. Thus, "T–17" means a tubular ("T") bulb 17/8 inches, or 2 1/8 inches (54 millimeters) in diameter.[16] While there are many variations of fluorescent lamps, most of those found in commercial buildings are one of three types: (1) 4-foot long cylindrical-shaped units, which typically consume 34 to 40 watts of electricity and produce about 3,000 lumens of light; (2) 8-foot long cylindrical-shaped units, which typically consume 75 to 100 watts and produce about 6,000 to 9,000 lumens; and (3) U-shaped cylindrical lamps, which typically consume 40 watts and produce about 3,000 lumens.[17]

Fluorescent lighting consists of two components, a ballast (which regulates current and voltage) and the lamp itself.[18] When a fluorescent lamp is turned on, a current is generated between two electrodes in the lamp.[19] The lamps contain mercury gas at low pressure, with a small amount of a rare gas or a combination of gases added to facilitate starting.[20] The inner walls of the bulb are coated with fluorescent powders commonly called phosphors. When the proper voltage is applied, an arc is produced by current flowing between the electrodes through the mercury vapor. This discharge generates some visible radiation, but mostly invisible ultraviolet ("UV") radiation. The UV radiation in turn excites the phosphors to emit light.[21]

The efficiency of this process is typically about 60 to 85 lumens per watt.[22] Fluorescent lamps typically have lives of 10,000 to 20,000 hours, or 10 to 20 times longer than incandescent lamps. However, fluorescent lamps cost more initially than incandescent lamps and produce a different quality or type of light, although recent improvements have narrowed the gap between the quality of light emitted by fluorescent and incandescent lamps.[23]

According to NEMA, there are approximately 16 companies that manufacture or supply (through importation from production facilities outside the U.S.) fluorescent lamps, including general service fluorescent lamps and compact fluorescent lamps. The total market in the U.S. for fluorescent lamps is approximately 550 million units (or lamps) annually. Of these, approximately 350 million units are four foot fluorescent lamps, 55 million units are eight foot slimline fluorescent lamps and 15 million units are eight foot high output type fluorescent lamps. These three categories constitute the types of fluorescent lamps included in EPCA's definition of "general service

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[10] EPA 92 also amended EPCA section 325 to specify energy conservation standards for general service fluorescent lamps and incandescent reflector lamps. 42 U.S.C.A. 6295(i) (West Supp. 1993). DOE must issue specific testing procedures for these lamp products. 42 U.S.C. 6293(b)(6) (West Supp. 1993). In issuing the test procedures, DOE must take into consideration the requirements of the Illuminating Engineering Society of North America ("IES") and the American National Standards Institute ("ANSI") test procedures for the products. *Id.* The statute does not establish energy conservation standards or require DOE to issue test procedures for medium compact fluorescent lamps or incandescent nonreflector lamps. However, DOE has authority to issue test procedures for categories of products that are not specified in EPCA, 42 U.S.C. 6292(b), 6393(b)(1)(B) (1988), and to set minimum efficiency standards for those products, 42 U.S.C.A. 6295(l) (West Supp. 1993).

[11] U.S. Congress, Office of Technology Assessment, *Building Energy Efficiency* (hereinafter referred to as "OTA Report"), OTA–E–518 (Washington, DC: U.S. Government Printing Office, May 1992), at 50. Commercial buildings used 12.9 quads of energy at a cost of $68 billion in 1989. About two-thirds of this energy was in the form of electricity. In addition to lighting, space heating and space cooling were the principal end uses. *Id.* at 21.

[12] *Id.*, at 54.

[13] *Id.*, at 50 – 51

[14] *Id.*, at 14.

[15] *Id.*, at 50–51.

[16] IES Lighting Handbook, 1993 Reference Volume (hereinafter referred to as "IES Handbook"), at 197.

[17] OTA Report, at 54.

[18] Fluorescent lamp products require an integral or separate ballast, which regulates the voltage and current received by the fluorescent lamp. Ballasts consume energy and also affect the energy efficiency of the lamp through their voltage and current control. There are two major types of ballasts—magnetic and electronic. Use of electronic (solid-state) ballasts, which control voltage and current electronically, can increase the energy efficiency of the ballast and improve the operation of the lamp product through improved current control. Id. at 55.

[19] The Commission's Appliance Labeling Rule already applies to certain fluorescent lamp ballasts. See Part II.A. above.

[20] Standard fluorescent lamps use argon gas, energy saving types use a mixture of krypton and argon, and others use a combination of neon and argon, or neon, xenon and argon. IES Handbook, at 197.

[21] OTA Report, at 53; IES Handbook, at 197.

[22] Further, several technologies are available to increase the efficiency of standard fluorescent lamps. These technologies include filling the lamp with a higher fraction of krypton than a standard lamp, decreasing the diameter of lamps (which increases efficiency because of their greater surface-to-volume ratio), and using improved phosphors in the lamps. OTA Report, at 54.

[23] OTA Report, at 53.

fluorescent lamps." The balance of sales are of other lengths, specialized use types and compact fluorescent lamps.

NEMA estimates that approximately 20 percent of all fluorescent lamps are sold through sales channels available to residential customers (for example, hardware stores and home center stores) that also are used by small contractors and small commercial users. NEMA also estimates that not more than 12 percent of all fluorescent lamps are actually purchased by residential consumers, and not all of those are types that EPCA directs the Commission to include in labeling rules.

2. Compact Fluorescent Lamps

Medium screwbase compact fluorescent lamp products are potential replacements for general service incandescent lamps (which are discussed in Part II.D.3, below) because they can be installed easily by a consumer and can reduce energy and maintenance costs.[24] This rulemaking proceeding covers only medium base compact fluorescent lamps, as defined in the EPA 92 amendments to section 321 of EPCA. 42 U.S.C.A. 6291(30)(5)(S) (West Supp. 1993) The definition is limited to compact fluorescent lamps that are "integrally ballasted" or "self-ballasted" (that is, that contain a ballast as an inseparable part of the lamp product, not as a separate product),[25] with a medium screw base and a rated input voltage of 115 to 130 volts, and which are designed as replacements for general service incandescent lamps. *Id.*

Compact fluorescent lamps produce light in the same way as other fluorescent lamps. Low-pressure mercury vapor inside the lamp is energized and produces ultraviolet radiation. The ultraviolet radiation is then absorbed by a phosphor coating on the inner surface of the lamp, which converts the radiation to light. Compact fluorescent lamps are available in several shapes and sizes.[26]

Medium screwbase compact fluorescent lamps are available with light output ranging from 250 to 2200 initial lumens. Products with initial light output under 700 lumens (generally compact fluorescent lamps of less than 13 watts) have limited application for direct replacement of incandescent lamps. Manufacturers also sometimes describe compact fluorescent lamp products by their "wattage equivalence." By this they mean the wattage of a standard-life incandescent lamp of comparable initial rated light output.[27]

Compact fluorescent lamps achieve an efficiency of about 61 lumens per watt, which is about 3.8 times the efficiency of a comparable general service incandescent lamp.[28] Thus, a compact fluorescent lamp can provide the same light (in lumens) as a standard incandescent with just one-fourth of the energy (in watts).[29] In addition, the life of a compact fluorescent is typically about 10,000 hours, or about 13 times as long as a standard incandescent with an average operating life of 750 hours.[30]

The initial cost of compact fluorescent lamps is considerably higher than that of incandescent lamps. Manufacturers' suggested retail prices range from approximately $12 to $36 for compact fluorescent lamp products (of the type that would be covered by the proposed rules), although actual retail prices may be lower due to discounts[31] and rebates from utility companies. In comparison, non-reflector general service incandescent A-lamps[32] often cost from thirty cents to one dollar, and incandescent reflector lamps typically cost from $3 to $8. However, because of their higher efficiency and longer life, compact fluorescent lamp products usually are less expensive than incandescent lamps on a life-cycle cost basis.[33]

According to NEMA, approximately 25 to 30 million units of compact fluorescent lamps were sold during the last year in the U.S. Annual sales currently are increasing.

3. General Service Incandescent Lamps

Incandescent lamps are the source of most lighting in U.S. residences. Incandescent lamps range from very low wattage products producing low light (or lumen) output (such as nightlights) to high wattage ones with high lumen output (such as floodlights). The incandescent lamps most commonly used in homes typically achieve about 17 to 20 lumens per watt, and have a lifetimes of approximately 750 to 1,000 hours, although lamps with greater efficiency (that is, higher lumens per watt) and longer lifetimes are available. Incandescent lamp products are less efficient in converting electricity into light than are fluorescent lamp products because much of the electric energy input into incandescent lamps is converted to heat, instead of producing light.[34]

These incandescent filament lamps[35] are divided into three major groups: Large lamps, miniature lamps and photographic lamps. Although there is no sharp dividing line between the groups, the large lamp category generally refers to lamps with larger bulbs, medium or mogul bases, and for operation in circuits of 30 volts or higher. Only lamps in this large lamp category are included in this rulemaking proceeding. The proposed labeling rules, for example, will not apply to more specialized categories of lamps (such as miniature lamps or photographic lamps), to nightlights (which are very low wattage) or to small base chandelier lamps.[36]

General service incandescent lamps are large lamps made for general lighting on 120-volt circuits. They are made in sizes from 10 watts to 1500 watts and satisfy the majority of lighting applications. They are made in both clear and inside frosted bulbs, and with inside white coated finishes for bulbs below 200 watts.[37] The most common (non-reflector) general service

[24] Rensselaer Polytechnic Institute, Lighting Research Center, National Lighting Product Information Program, Specifier Reports: Screwbase Compact Fluorescent Lamp Products (hereinafter referred to as "Rensselaer Report"), Volume 1, Issue 6, April 1993, at 1.

[25] Three types of compact fluorescent lamps are available: dedicated, self-ballasted, and modular. Dedicated compact fluorescent lamp systems are similar to full-size fluorescent lighting systems in which a ballast is hard-wired to lamp holders within a luminaire (*i.e.*, the lighting fixture). Self-ballasted and modular compact fluorescent lamp products have medium screwbases, and can be used as replacements for incandescent lamp products. A self-ballasted compact fluorescent lamp contains both the lamp and ballast as an inseparable unit. A modular compact fluorescent lamp product consists of a screwbase ballast with a separate replaceable lamp. The ballast and lamp connect together using a socket-and-base design that ensures compatibility of lamps and ballasts. Rensselaer Report, at 2. Of the three types of compact fluorescent lamps, only the self-ballasted type would be covered by the proposed rules.

[26] *Id.* at 2.

[27] *Id.* at 4.

[28] The total light output of a modular compact fluorescent lamp varies depending on the particular ballast used. Because self-ballasted compact fluorescent lamps include their own ballasts, their light output ratings are based on the light output with the integral ballast. *Id.* at 6.

[29] Compact fluorescent lamps are normally tested for lamp light output ratings with the base facing upward. On the other hand, when compact fluorescent lamps are used as replacements for incandescent lamps, they normally are used with the base facing downward. This difference in position may result in a different light output. The temperature of the environment surrounding the compact fluorescent lamp also affects light output. When compact fluorescent lamps are used in enclosed luminaires with internal temperatures that are elevated above room temperature, the result may be reduced light output. The same is true when compact fluorescent lamps are operated outdoors at low temperatures. *Id.*, at 6.

[30] OTA Report, at 52. *See also*, Rensselaer Report, at 3.

[31] Rensselaer Report, at 5.

[32] *See* Part II.D.3, below.

[33] Rensselaer Report, at 5.

[34] OTA Report, at 53.

[35] Incandescent lamps use a filament (often tungsten) that produces light when an electric current passes through it. IES Handbook, at 179.

[36] *See* Part IV.F, below.

[37] IES Handbook, at 189.

incandescent lamp is a pear-shaped lamp with a medium-sized base, and is often referred to as an "A-lamp," "A-type," or "A-bulb" lamp.[38]

This category of lamps includes tungsten-halogen filament incandescent lamps (halogen lamps), which are also included in this rulemaking proceeding. Halogen lamps can be designed to produce more light and last longer than normal incandescent lamps of the same wattage.[39] Their initial purchase price may be more than standard incandescent lamps, but their reduced energy consumption and extended lamp life may result in their being no more, or even less, costly overall.[40]

Incandescent reflector lamps (also known as reflectorized incandescent lamps) have a reflecting coating directly applied to part of the bulb surface.[41] Incandescent reflector lamps allow the light output to be directed and focused. They are used both in residences and in commercial buildings. They may be used, for example, to provide lighting from recessed ceiling fixtures or as spotlights. Incandescent reflector lamps would be included as a type of general service incandescent lamps under the Commission's proposed labeling rules.[42]

According to NEMA, annual sales of general service incandescent A-lamps in the U.S. total about 1.6 billion units annually, approximately 85 percent of which are sold for use in residences. Annual sales of incandescent reflective lamps total about 100 million units annually, with approximately 50.2 percent of sales being made for residential use and 49.8 percent for commercial use.

E. Light Bulb Rule

The Commission issued the Trade Regulation Rule for the Incandescent Lamp (Light Bulb) Industry, 16 CFR part 409, in 1970.[43] The Light Bulb Rule covers general service incandescent electric lamps, with some exceptions.[44] The Rule does not cover general service fluorescent lamps, medium base compact fluorescent lamps, or incandescent reflector lamps, for which the EPA 92 amendments require the Commission to issue labeling rules.

The Light Bulb Rule requires that package containers disclose clearly and conspicuously the enclosed bulb's average initial wattage, average initial lumens, and average laboratory life expressed in hours.[45] If lamps are sold without sleeves or packaging, or are sold in universal or interchangeable sleeves or packaging without the information listed above, then all these disclosures must appear clearly and conspicuously on the lamps themselves.[46]

The Light Bulb Rule prohibits specific claims for these lamp products unless certain conditions are met.[47] It requires that the disclosures of the bulb's average initial wattage, average initial lumens, and average laboratory life be made in accordance with requirements of a specific federal purchase specification, and that the disclosures be based upon "generally accepted and approved test methods and procedures."[48] For multiple filament ("three-way") lamps, it requires that wattage and lumen ratings be disclosed for operation at each level, and that life rating be based on the life of the first filament that fails. Because the federal purchase specification cited in the Light Bulb Rule does not cover multiple filament lamps, that Rule allows industry members to substantiate wattage, lumen, and life ratings on tests that are based upon generally accepted and approved test methods. It requires that the specific method used to determine the life rating be disclosed, for example, that the lamp is burned on all three positions equally or that it is based on the life of the major filament (medium light level) of the lamp.[49]

The Light Bulb Rule specifies placement and size of the disclosures on packages.[50] The disclosures must appear on at least two panels of the outer sleeve or container in which bulbs are displayed, and also on all panels of the inner and the outer sleeves which contain any reference to wattage lumens, life, or voltage. In addition, the lumen and life disclosures must appear in immediate conjunction with the wattage rating on each panel in bold or medium faced type that is at least two-fifths (2/5) the height of the wattage rating figures (on the same panel) or three-sixteenths of an inch (3/16") in height, whichever is larger. For multiple filament lamps (three-way bulbs), the lumen and life disclosures must conform to this criteria, except that the type size must be medium faced type that is at least two-fifths (2/5) the height of the wattage rating figures or one-eighth of an inch (1/8") in height, whichever is larger.

The Light Bulb Rule remains effective notwithstanding the lamp product rulemaking initiated by this Notice of Proposed Rulemaking. In making its final decision about labeling rules for lamp products under the EPA 92 amendments to EPCA, the Commission will consider the requirements of the current Light Bulb Rule along with the proposals described in Part III, below, and proposals suggested by interested parties during the rulemaking proceeding. The disclosures proposed in this Notice for the lamp labeling rules would overlap some of those required by the Light Bulb Rule. Accordingly, following the completion of this proceeding, the Commission will decide what, if any, further action it should take concerning the Light Bulb Rule.

III. Proposed Disclosures, Where Disclosures Should Be Made, and Format of Disclosures

A. Information needed by purchasers

In this proceeding the Commission must determine what specific information about general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps (including incandescent reflector lamps) is necessary to enable purchasers to select the most energy efficient lamps which meet their requirements. 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993). Based on this determination, the Commission must prescribe disclosures that are to appear on packaging. *Id.* In addition, the Commission must determine what disclosures, if any, must be made in point-of-sale materials and catalogs from which these products may be purchased. 42 U.S.C. 6294(c)(4), 6296(a), and 6298 (1988).

EPCA identifies two elements that the disclosures must satisfy. 42 U.S.C. 6294 (a)(2)(C)(1). The first element concerns information the purchaser needs to determine the energy efficiency of each lamp. The second element concerns information the purchaser needs to determine whether a given lamp will meet the purchaser's lighting requirements.

Based on informal discussions between the Commission's staff and

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[38] *See Id.*, at 181–183. Fig. 6–8.

[39] *Id.*, at 190.

[40] Rensselaer Report, at 11.

[41] IES Handbook, at 190.

[42] *See* Part IV.F. below.

[43] 35 FR 11784 (July 23, 1970).

[44] The Light Bulb Rule specifically excludes coverage of reflector and other types of light bulbs. 16 CFR 409.1 n. 3 (1993).

[45] 16 CFR 409.1(a) (1993).

[46] 16 CFR 409.1(a)–(b) (1993).

[47] 16 CFR 409.1(c)–(d) (1993). For example, § 409.1(c) restricts representations that savings either in lamp cost or cost of light will result from the use of certain lamps because of the lamps' life or light output unless specific factors are taken into account and clearly and conspicuously disclosed. Section 409.1(d) prohibits representations that certain lamps will give more light, maintain brightness longer or furnish longer life without clearly and conspicuously disclosing light output in average initial lumens, laboratory life in average hours, and average initial wattage of the lamps with which the comparison is being made and the lamps being offered for sale.

[48] 16 CFR 409.1 n. 1 (1993).

[49] *Id.*

[50] 16 CFR 409.1 n. 4 (1993).

representatives of industry members and environmental interest groups, as well as the current requirements of the Light Bulb Rule, the Commission preliminarily has identified several types of information that could be important to purchasers in selecting the most energy efficient lamps that meet their needs. These include:[51]

(1) "Lumen rating" or "lumens." This defines the lamp's light output. This information is designed to permit the purchaser to determine whether a given lamp will provide sufficient light to meet the purchaser's requirements and to compare the relative light output of various lamp products. Consumers would generally refer to this as "brightness," although technically that term has a different meaning.

(2) "Wattage" or "watts." This designates the energy used by the lamp. Lamp fixtures frequently are marked to identify the maximum wattage lamp product that safely can be used in the fixture. Therefore, wattage information enables the purchaser to determine whether a given lamp can be used in a given fixture, as well as how much energy the lamp uses.

(3) Design "voltage" or design "volts" (if different than 120 volts). This designates the voltage at which the manufacturer has designed the lamp to operate. The voltage at which a lamp is operated affects both its lumen output and its expected average life, and voltage varies throughout the U.S. Since tests to determine lumen output are conducted at 120 volts, design voltage may be important to a purchaser (particularly a bulk purchaser) in an area where the electric voltage provided is different.

(4) "Lumens per watt." This is a measure of the efficacy or efficiency at which the lamp provides light output per measure of electrical energy input (and indirectly, per unit cost of electricity). This information is designed to enable the purchaser to evaluate the energy efficiency of the lamp, and to compare the efficiencies of competing lamps.

(5) "Life" or "lifetime." This defines the average length of time the lamp can be expected to last in operation. Combined with initial purchase price and energy cost, lifetime information can enable the purchaser to compute the cost of operating the lamp over extended time periods.

(6) The number of lamps in the package. This information enables the purchaser to determine the initial cost per unit.[52]

(7) "Estimated monetary cost of operation." This refers to estimates of how much it will cost to operate the lamp. It may be based on an estimated cost per unit of electricity (such as the representative average unit rate for electricity,[53] or another estimated uniform rate) and a defined period of operating time. Estimated monetary cost of operation can be measured per hour of use, or for a period of time such as 750 hours, one year (based on average or defined usage patterns, for example, 1200 hours per year), or the life of the lamp. This information could allow a purchaser to evaluate and compare competing lamps and to select the lamp with the lowest monetary cost to operate. However, it provides only a partial picture of the total cost of a particular lamp because it does not include the lamp's initial purchase price.

(8) "Initial purchase price." This refers to the price the purchaser originally pays for the lamp. This information, along with energy cost information, would enable the purchaser to compare the total lifetime cost of competing lamps. Initial purchase price varies from one sales outlet to another, and can be offset by rebates offered by local utility companies as incentives to purchase energy efficient lamps (such as compact fluorescent lamps).

(9) "Estimated total lifetime cost." This refers to an estimate that allows purchasers to compare total costs associated with competing lamps over the lamp's total life. It includes the initial purchase price and lifetime energy cost.

(10) "Estimated total operating cost." This refers to an estimate that allows purchasers to compare total costs associated with competing lamps. It includes a prorata share of the initial purchase price (based on the estimated life of the lamp) and the estimated energy cost per hour (based on a specific unit price of electricity, such as the representative average unit cost), or for a defined time period based such as 750 hours, or per year (based on average or defined usage patterns).

Options for incorporating information of this sort into disclosures are discussed below.

B. Proposed Disclosures

During informal meetings with the Commission's staff after EPA 92 was enacted, representatives of various industry members and environmental interest groups have suggested proposed labeling requirements for lamps. Two of the more specific proposals are described in Part III.B.1, below. Based on those two proposals and on the discussion in Parts II.C and D, and III.A, above, the Commission discusses its own proposals in Part III.B.2, below. The Commission requests both written comments and oral testimony during the Public Workshop-Conference described in Part IX.B, below, on these proposals, and on additional proposals that interested parties wish to suggest.

1. Suggestions by Interested Parties

a. *NEMA Proposal.* The National Electrical Manufacturers Association (NEMA), as noted above, is an industry trade group that includes manufacturers of lamp products. NEMA suggested that the Commission adopt a bifurcated set of disclosure requirements, one for general service fluorescent lamps and for incandescent reflector lamps, for which EPCA establishes energy conservation standards, and another for general service incandescent lamps (other than incandescent reflector lamps) and for medium base compact fluorescent lamps, for which no standards are established.

For general service fluorescent lamps and for incandescent reflector lamps, NEMA suggests disclosure only of the encircled capital letter "E," as required for fluorescent lamp ballasts.[54] This would designate that the product meets the established energy conservation standards. In support of this proposal, NEMA states that interchangeable general service fluorescent lamps that will remain on the market after the energy conservation standards set by EPA 92 become effective (April 24, 1994, for some lamp products, and October 24, 1995 for other lamp products) will have a range of output of only plus or minus four percent (± 4%).[55] It is unclear, however, why the

[51] For proposed definitions of some of these terms, based on definitions in section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993), *see* Part IV.F, below. The listing of these factors is not meant to imply that disclosure of any or all of them would be necessary to meet the statutory requirements set forth in EPCA.

[52] In addition, the Commission's regulations under section 4 of the Fair Packaging and Labeling Act, 15 U.S.C. 1451 et seq., require that packages of consumer commodities, including lamp products, disclose the net quantity of contents within the package separately and accurately on the principal display panel. 16 CFR 500.2(c), .6, .7 (1993). See also 16 CFR 503.2(b) (1993).

[53] The representative average unit cost for electricity (and for other forms of energy) is specified in § 305.9 of the Appliance Labeling Rule. 16 CFR 305.9 (1993). The unit cost figure in the Appliance Labeling Rule is updated yearly, based on figures published by DOE.

[54] *See* Part II.A, above.

[55] NEMA did not provide comparable information for incandescent reflector lamps.

limited range of output for general service fluorescent lamps would obviate the need for any additional information at all, for example, lifetime or lumen output.

NEMA suggests that the designation be indicated in the manufacturer's catalogs and other printed material, and that the encircled "E" be etched on the product itself, no smaller than the lamp designation information for wattage. If the Commission cannot require etching on the product, NEMA suggests that the carton containing one or more lamps be marked with the encircled "E," in color contrasting ink and no smaller than the manufacturer's name or logo.

For general service incandescent lamps (other than incandescent reflector lamps) and medium base compact fluorescent lamps, NEMA suggests that "light output" (meaning lumens), watts, life, design volts, and bulb quantity contents be disclosed on at least one panel of the outer sleeve of the package. One or more of these items could also be disclosed on the remaining panels. Under this proposal, lamp life, design volts, and bulb quantity contents would be at least 40 percent of the size of the wattage number, or 8 point type, whichever is greater. Whenever wattage is displayed on a single panel, however, NEMA suggests that the light output would also be displayed, with numbers no less than 50 percent in size of the wattage number. For general service incandescent lamps (other than incandescent reflector lamps), the term "lumens" in small print no less than 8 point type would follow beside or below the numerical value for light output. For medium base compact fluorescent lamps, the term "lumens (base-up)" would be used instead of "lumens."[56]

NEMA also suggests that the labeling rules require an "energy efficiency index" (consisting of the "lumens per watt" and the "yearly energy cost" of operating the lamp) on packages of general service incandescent lamps (other than incandescent reflector lamps) and of medium base compact fluorescent lamps. The label would be a square, at least one inch by one inch, divided in the middle by a horizontal line. The energy efficiency index would appear in the top portion of the square, and the yearly energy cost in the bottom. The letters and numbers would be printed in black (or whatever dark color is used in creating the Universal Product Code symbol). The efficiency index would be rounded to the nearest whole number, and all values would be based on the lamp operating on 120 volts during testing (regardless of the lamp's rated or design wattage). The efficiency index would include the disclosure: "Lumens per watt." The yearly energy cost would include the disclosure: "At 4 hours per day at $.10 per kilowatt-hour." The words "at 120 volts" would be added to each disclosure if the design voltage is other than 120 volts.

Illustration 1, below, contains samples (enlarged) of the energy efficiency labels NEMA recommends for: (1) A 100 watt, soft white, general service incandescent lamp; (2) a 100 watt long life inside frost general service incandescent lamp; and (3) a 26 watt compact fluorescent lamp.

(1)

Energy Index*
17
Yearly Energy Cost**
$ 14.60

* Lumens per watt
** At 4 hrs/day @ $0.10 per kwhr

(2)

Energy Index*
14
Yearly Energy Cost**
$ 14.60

* Lumens per watt
** At 4 hrs/day @ $0.10 per kwhr

(3)

Energy Index*
58
Yearly Energy Cost**
$ 3.80

* Lumens per watt
** At 4 hrs/day @ $0.10 per kwhr

Illustration 1

[56] See note 29, above

NEMA further suggests that, if the manufacturer elects to place the energy efficiency label on a panel other than the primary display panel of the package, it should be required to provide an additional "energy flag" on the primary display panel. The energy flag would include only the "energy index" value. The flag would be a right triangle one inch in height and resting on a perpendicular side one and one-half inches in length. The designation "Energy Index" would be printed with the energy index value inside the flag, and a reference to "See package back" would be printed immediately below the flag. The "energy flag" suggested by NEMA is shown in Illustration 2, below.

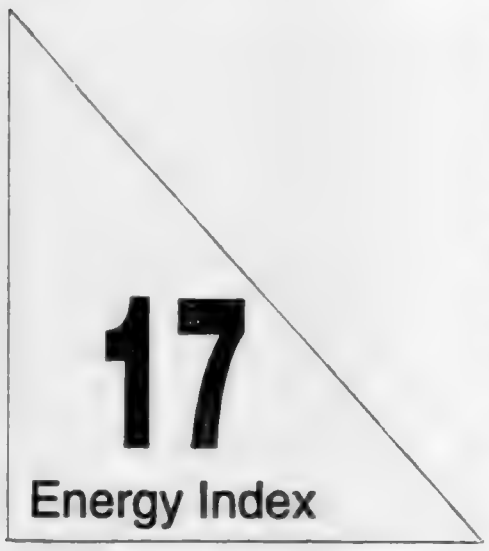

Illustration 2

In addition to these requirements, NEMA suggests that the Commission require that manufacturers of all lamp products subject to the labeling rules include on the outer (packing) cases in which the lamps are shipped a label or pre-printed message stating: "Product herein tested and labeled in compliance with the Energy Policy Act of 1992" or, alternatively, with an approved symbol. NEMA suggests that the advisory statement be integrated with or adjacent to the usual case contents label, be printed in letters of identical contrast to the other letters on the contents label, and be no smaller than 3/16 inches in height.

b. *ACEEE Proposal.* The American Council for an Energy-Efficient Economy ("ACEEE"), is a non-profit, research and advocacy organization that seeks to promote energy efficiency. ACEEE also gave the Commission's staff specific labeling suggestions for the purpose of initiating discussion. It stated that purchase patterns vary for residential and commercial purchasers, and that different labeling approaches probably would be warranted. It pointed out that commercial purchasers generally have a greater technical understanding about lamp products, whereas residential purchasers generally know very little about lighting and need information that is non-technical and easily understood. It also noted that residential purchases generally are made through grocery, hardware, and other retail outlets, where products in boxes or other packaging are selected by the purchaser off the shelf in small quantities. In contrast, commercial purchasers generally order medium to large quantities of lamps from lighting distributors, using information in catalogs and sales brochures as well as information provided orally by sales personnel. These commercial purchases often are shipped in case quantities, and printed packages for individual lamps are rare.

ACEEE suggested two types of information that should appear on labels for residential purchasers: Annual operating cost and relative light output. It suggested that annual operating cost would include both the purchase costs (manufacturer's suggested list price prorated for an assumed annual hours of operation) and annual electricity costs (for average operating hours and electricity costs).[57] To illustrate, it provided the following example: Assuming 1,000 hours per year of operation and $.08 kilowatt per hour unit electricity cost, then a 15 watt compact fluorescent lamp (with a $20 list price and 10,000 hour rated life) will have an annual operating cost of $3.20 ([$20/{10,000 hour life/1,000 hours per year} + [15 watts X 1,000 hours per year/1,000 Wh/kWh X $.08 per kilowatt hour]). In comparison, a standard 60 watt general service incandescent A-lamp (with a one dollar list price and 1,000 hour rated life) would have an annual operating cost of $5.80. ACEEE suggested that use of an annual operating cost metric such as this one would allow purchasers to compare products with different lives and costs.

ACEEE suggested that relative light output should be measured by comparing the lumen output of a product to a reference lamp, with a reference lamp defined for each common type and wattage of lamp. For example, the group suggested that the reference lamp for a 15 watt compact fluorescent lamp probably would be a 60 watt standard incandescent A-lamp. The relative light output of the compact fluorescent lamp might be 88 percent, based on average light output.[58]

ACEEE also stated that a lumens per watt disclosure probably should not be used for residential purchasers. ACEEE maintains that such a disclosure could encourage residential purchasers to buy higher wattage lamps that have higher lumen per watt ratings, when a lower wattage lamp with a lower lumen per watt rating might provide sufficient light for their needs and cost less to operate at the lower wattage. For commercial purchasers, on the other hand, ACEEE suggested that use of a lumens per watt rating probably would be acceptable because display space in catalogs is likely to be very limited and commercial purchasers are more sophisticated.

ACEEE supported disclosure of relevant information on lamp packages and other point-of-sale materials that provide information on particular products, such as fact sheets and special displays for residential sales. For commercial sales, it suggested requiring the information in catalogs and other sales materials that provide information on specific products.

Finally, ACEEE recommended that the Commission specify the label content and size (but did not make specific suggestions). However, it suggested that the Commission allow manufacturers flexibility to develop their own customized designs, consistent with these specifications.

2. Additional Disclosures Under Consideration

a. *Basic disclosures.* Based on the discussion in Part III.A, above, and the proposals suggested by interested parties described in Part III.B.1, above, the Commission proposes requiring, for all general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps (including incandescent reflector lamps), that package labels (including bulk packaging cases of lamp products not otherwise packaged individually or in smaller units for resale) and catalogs from which the lamps may be ordered conspicuously disclose the following information: (1) lumens (whether identified by that term, or another such

[57] ACEEE also suggested that ballast losses should be included in the calculations for fluorescent lamps. Those losses are more appropriately addressed in connection with the test procedures to be required, however, than in connection with the labeling requirements. See Part IV.B. below.

[58] As a preliminary matter, it appears that issues concerning the use of reference lamps in measuring relative light output would be more appropriately addressed in conjunction with specification of test procedures. See Part IV.B., below.

as "brightness" or "light output"); (2) watts; (3) design volts (if different than 120 volts); (4) average life (in hours); (5) number of items in the package, and (6) an efficiency disclosure, further discussed below.[59] In an effort to make the disclosures of lumens, watts and average lifetime more meaningful to consumers, the Commission will consider the usefulness and burden posed by use of a narrative format such as: Provides_____lumens using_____watts for_____hours. For multiple filament ("three-way") general service incandescent lamps, the Commission proposes requiring that lumens, watts, design volts, and an efficiency disclosure be disclosed for operation at each level, and that the life rating be based on the life of the first filament that fails. Finally, the Commission proposes that the following statement ("Explanatory Statement No. 1") appear: "More efficient lamps may have a higher purchase price, but may cost you less overall."

b. *Efficiency disclosures.* In addition to the disclosures in Part III.B.2.a, above, the Commission anticipates requiring disclosure of an efficiency measure. Two alternatives are under primary consideration: a lumens per watt disclosure, or a disclosure of the estimated energy cost of the lamp based on a specified use period.

i. Lumens per watt disclosure.

A lumens per watt disclosure (that is, the "energy index" suggested by NEMA) has the advantage of simplicity. It also, however, suffers from the disadvantage identified by ACEEE. That is, because higher wattage bulbs often produce disproportionately more lumens, they often will have a better energy index although they use more energy. Thus, this disclosure could lead to lumen over-purchasing. This disadvantage possibly could be countered if the Commission required a disclosure such as:

Select the light output you require before comparing the energy index of different bulbs.

ii. Estimated monetary cost of energy disclosure.

Alternatively, the Commission could require a disclosure of the estimated monetary cost of the energy used by the lamp, based on use for a specified usage period. Such a disclosure would be based on the representative average unit cost of electricity, as specified in § 305.9 of the Appliance Labeling Rule, 16 CFR 305.9 (1993), or on an assumed unit cost of electricity.

The advantage of an operating cost disclosure is that it would reduce to monetary terms the energy cost of a lamp product. At the same time, the Commission will consider carefully whether such disclosures, particularly when prorated over a period of time that is less than the life of a very energy efficient bulb, reveal sufficiently the extent to which a higher initial bulb cost can be compensated for by lower operating costs over the bulb's life.

If a monetary cost of operation disclosure is adopted, the most likely usage period for which disclosures would be calculated is 750 hours, that is, approximately the life of general service incandescent lamps with the shortest lifetimes). There are a variety of other options. One would be to set a longer period (e.g., 1000 hours). But, where this period exceeds the average life of the lamp, the cost of replacement of the lamp might come into play. Another possibility would be to use a shorter period, such as one hour, 10 hours, or 100 hours. These periods, however, may be too small to illustrate sufficiently energy cost differences among competing lamps. A usage period based on average or estimated usage patterns (e.g., one year) could be used, but there are no established patterns and estimated use will vary depending upon the location of the lamp. Accordingly, these alternatives could unduly complicate the buyer's purchase decision. For multiple filament general service incandescent lamps, the Commission would anticipate requiring disclosure of the estimated energy cost of using the lamp at each operating level for the entire usage period.

If a monetary cost of operation disclosure is adopted, the Commission must determine what electrical cost figure to use. The representative average unit cost of electricity, as specified in § 305.9 of the Appliance Labeling Rule, 16 CFR 305.9 (1993), changes as often as annually, and thus could result in consumer confusion if bulbs manufactured in different years were available for sale at the same time. In order to alleviate such confusion, it may be appropriate to require that an explanation of the manner in which the estimated energy cost was determined be disclosed in immediate proximity to the monetary cost estimate disclosure. For that purpose, the Commission is considering the appropriateness of requiring the following explanation ("Explanatory Statement No. 2") on both package labels and in catalogs: "The energy cost for 750 hours was computed based on the [year] representative average unit cost of electricity of $ [amount] ." This disclosure would allow purchasers to compare the energy costs of competing products with different lifetimes based on a time line that is within the lifetime of all the competing products and is large enough to illustrate clearly the differences among energy costs and, therefore, of energy efficiencies.

In the alternative, the Commission could require that monetary cost of operation estimates be based upon an assumed unit cost of electricity, such as 10 cents per hour. This figure would be constant, and thus not fully accurate for accounting purposes at all times, but would facilitate bulb-to-bulb comparisons.

Some purchasers may be interested in computing lamp costs in a more comprehensive manner that includes consideration of the initial purchase price and replacement cost. Accordingly, the Commission will also examine methods by which information could be provided to purchasers to enable them to determine the "estimated total operating cost" of the lamp for a standard time period, as described in Part III.A, above.

In an effort to facilitate a consumer's interest in making such a computation, the Commission has considered requiring that the following statement ("Explanatory Statement No. 3") appear on the package label:[60]

Important: Energy efficient lamps may have a higher purchase price, but could cost you less overall due to energy savings. The estimated total operating cost of this lamp for 750 hours of use is: ([Figure A] X the purchase price for one light) + [Figure B]. Compare this cost to the estimated total operating costs you calculate for other lamps that provide the same or similar lumens.

If such a disclosure is appropriate, similar disclosures could be required for catalogs, on each separate case or carton of lamps sold where the lamps are not packaged individually, and at point of sale. Under this proposal, the manufacturer would determine and preprint Figure A and Figure B in this disclosure.[61] Figure A would be

[59] For definitions of these terms, see Part III.A, above, and Part IV.F, below.

[60] For these and any other disclosures ultimately adopted, the Commission proposes that manufacturers and other sellers be pegmitted to substitute the word "light" or "light bulb" for "lamp" if the label, catalog, or point-of-sale written material uses those words in referring to lamp products.

[61] For multiple filament general service incandescent lamps, the disclosure would be:

Important: Energy efficient lamps may have a higher purchase price, but could cost you less overall due to energy savings. The estimated total operating cost of this lamp for use on the low setting (50 watts) for 750 hours of use is: ([Figure

Continued

determined by dividing 750 hours by the life in hours of one lamp to determine the proportion of the light's life that will be consumed in 750 hours of use. By multiplying Figure A by the purchase price for one light,[62] the purchaser could determine the purchase price of the light per 750 hours of use. Figure B is the estimated energy cost to operate one lamp, or light bulb, for 750 hours of use computed based on the unit cost of electricity adopted in this rulemaking, i.e., either the representative average unit cost or an alternative rate. By adding Figure B to the purchase price of the lamp per 750 hours of use, the purchaser could determine the estimated total operating cost of the lamp for 750 hours of use and could compare this cost to the estimated total operating costs the purchaser similarly calculated for other lamp products that provide the same or similar lumens. Examples to illustrate the comparison are contained in the footnotes.[63]

The Commission will consider carefully the extent to which consumers actually would use a disclosure such as "Explanatory Statement No. 3" in making a purchase decision. Consumers wishing to utilize this computation would need to make the calculation for each of the bulbs they were considering purchasing. As a practical matter, it appears that consumers may disregard, or consider too complex, a disclosure which requires them to make computations of this sort may not be useful to consumers in their efforts to choose an energy efficient bulb.

c. *Where disclosures should be made.* Section 324(a)(2)(C)(i) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp. 1993), mandates that the Commission require disclosures by manufacturers "conspicuously on the packaging of the lamp," but does not specifically define the meaning of the term "packaging." Section 326(a) of EPCA, 42 U.S.C. 6296(a) (1988), generally requires that each manufacturer, distributor, retailer, or private labeler of a product covered by the lamp labeling rules who advertises such product in a catalog from which it may be purchased disclose in the catalog all information required to be displayed on the package label, unless the Commission exempts sellers from these requirements or requires different disclosures in catalogs. Section 324(c)(4) of EPCA, 42 U.S.C. 6294(c)(4) (1988), authorizes the Commission to require that any printed matter displayed or distributed at the point of sale include any information the Commission requires to be disclosed on labels. Finally, section 328 of EPCA, 42 U.S.C. 6298 (1988) authorizes the Commission to issue such rules as it deems necessary to carry out the provisions of EPCA.

Residential purchasers normally buy lamp products through retail outlets, such as hardware, home center, and grocery stores. Residential purchasers, therefore, normally have the opportunity to examine lamp product packaging at the point of sale prior to purchase. For packaged products, the proposed disclosures on package labels would provide residential purchasers with the information they need prior to purchase to select the most energy efficient lamps that meet their needs.

Some lamp products, however, are not sold in individual packages. According to industry representatives, for example, general service fluorescent lamps frequently are shipped only in bulk containers, without individual lamp sleeves or packaging, whether the shipment is to a commercial purchaser (who purchases through a catalog) or to a local retail store for resale of unpackaged individual lamps to residential purchasers.

In addition, some sellers also may promote the sale of lamp products to residential purchasers and commercial purchasers through catalogs from which the products can be ordered. These purchasers will not see the disclosures on the product's packaging until the product is delivered, and may rely primarily (or solely) on information in the catalogs from which the lamps are ordered. For these purchasers, the catalog serves the same informational function as a package does for a retail purchaser.

The Commission proposes, for all types of lamp products covered by this rulemaking proceeding, that the basic information described in Part III.B.2.a, above, as well as the energy efficiency information discussed in Part III.B.2.b., above, be disclosed both on package labels and in catalogs from which lamp products may be purchased. As a preliminary matter, it appears that the purposes of EPCA will best be served by such a requirement.

For products that are distributed for sale to residential purchasers without individual packaging or without packaging other than the bulk shipping case, the Commission proposes two options for consideration. Option One would require that the manufacturer disclose the information proposed in Parts III.B.2.a. (except for the number of items in each package) and III.B.2.b, above, on an adhesive, hang tag, or similar type of label, attached to each unpackaged product. Option Two would require the manufacturer to include with each bulk shipping case statements disclosing the information for the enclosed products described in Parts III.B.2.a. (except for the number of items in each package) and III.B.2.b, above. Option Two would also require the retailer to post those statements conspicuously at the point of sale in immediate proximity to the sales floor display of the lamp product.

d. *Format of required disclosures.* In determining what disclosure requirements it should include in these proposed labeling rules, the

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A] X the purchase price for one light) ÷ [Figure B]. For use on the medium setting (100 watts) for 750 hours it is ([Figure A] X the purchase price for one light) ÷ [Figure B] . For use on the high setting (150 watts) for 750 hours it is ([Figure A] X the purchase price for one light) ÷ [Figure B] . Compare these costs to the estimated total operating costs you calculate for other lamps that provide the same or similar lumens.

[62] Where more than one lamp is in the package, the purchaser will need to divide the purchase price by the number of units in the package to determine the purchase price per lamp. The proposed explanatory statement does not include a direction about this because it would further complicate the statement, and it is assumed that purchasers will understand that if a package contains four lamps, the purchase price must be divided by four before starting the calculation.

[63] The following are examples to illustrate the comparison. In both examples, the electricity cost used is $0.0825 per kWh (the 1993 representative average unit cost of electricity).

1. Example One is a 60 watt inside frosted general service incandescent lamp (an A-bulb), purchased in a package of four bulbs for $1.00 ($0.25 each). It has an average lumens rating of 850 and an average life of 1,000 hours.

Figure A=750/1,000=0.75 lamps per 750 hours' use.

Figure B=((750 hours × 60 watts)÷1,000) × $0.0825=$3.71 (cost of electricity for 750 hours).

Using the formula above: [0.75 (lamps per 750 hours of use) × $0.25 (cost per lamp)]+$3.71 (cost of electricity for 750 hours)=$3.90 estimated total operating cost for 750 hours. As described above, under this proposal the manufacturer would determine and preprint Figure A and Figure B in this disclosure, so the purchaser would not have to calculate those figures.

2. Example Two is a 17 watt medium base compact fluorescent lamp, purchased for $16.99. It has an average lumens rating of 950 and an average life of 10,000 hours.

Figure A=750/10,000=0.075 lamps per 750 hours' use.

Figure B=((750 hours × 17 watts)=1,000) × $0.0825.=$1.05 (cost of electricity for 750 hours).

Using the formula above: [0.075 (lamps per 750 hours of use) X $16.99] + $1.05 (cost of electricity for 750 hours) = $2.32 estimated total operating cost for 750 hours. As described above, under this proposal the manufacturer would determine and preprint Figure A and Figure B in this disclosure, so the purchaser would not have to calculate those figures.

Note, in both Example One and Example Two, the product of hours times watts in the calculation of Figure B is divided by 1,000 to determine the number of kilowatt hours ("kWh") used to operate the lamp for 750 hours. It is necessary to convert the product to kWh because the representative average unit cost of electricity is defined in terms of cost per kWh.

Commission is concerned that it not require disclosure of so much information that the purchaser will not use the information in making purchase decisions. In addition, the Commission is concerned about requiring that necessary disclosures be made conspicuously so that the purchaser will most likely notice and use the information in making purchase decisions. If the purchaser does not notice or use the information, the labeling rules would not serve the purpose of EPA 92 and EPCA to promote energy conservation.

In considering standards for required disclosures, the Commission could require that disclosures be made through use of a flexible standard that requires "clear and conspicuous" disclosures. Under this "performance" standard, complying firms would be free to design disclosures as they wish in response to market considerations, as long as the disclosures were clear and conspicuous. Alternatively, the Commission could require that the required disclosures comply with a design format specified by the Commission. For example, such a standard might specify the size and location of the respective disclosures on the package labels.

However, to be effective, the Commission believes as a general principle that disclosure requirements should be designed to direct the purchaser's attention to the information that is most important. Information should be organized in a way that it can be easily understood and acted upon.[64] Colors, type size, symbols, and the use of graphics such as boxes and arrows can help consumers locate and read the information that they need.[65] Consistency in the format and type of information disclosed on a label can help purchasers read and understand the label, because they can relate the information to their prior experience with similar labels.[66]

With these basic principles in mind, the Commission does not at this time propose specific formats for the size or location of specific disclosures that might be required as a result of this rulemaking proceeding. The Commission will consider these issues during the proceeding.

Nevertheless, the Commission does believe that information most critical to selection of energy efficient lamps should be made in the most prominent and conspicuous manner. Accordingly, the Commission will consider requiring that those items which it ultimately deems to be most important to purchasers be featured on the front panel of a package label, perhaps within a graphic box, while permitting other disclosures to be placed elsewhere.[67]

For sales made through catalogs, the Commission proposes requiring that the information proposed in Part III.B.2.a, above, be conspicuously disclosed each time each different lamp product is listed for sale in the catalog. The Commission proposes requiring that whatever efficiency disclosures are adopted be disclosed in the catalog in the manner described in Part III.B.2.b, above. The Commission will consider specific type size and other format requirements during the rulemaking proceeding.

For lamp products sold without packaging, the Commission proposes requiring that the information proposed in Part III.B.2.a, above (except for the number of items in each package), and an efficiency disclosure as proposed in Part III.B.2.b, above, be disclosed conspicuously on an adhesive, hang tag, or similar type of label attached to the product, as described in Part III.B.2.c, above. As an alternative, the Commission proposes requiring the manufacturer to include with each bulk shipping case statements disclosing the information for the enclosed products described in Parts III.B.2.a. (except for the number of items in each package) and III.B.2.b, above. This alternative would require the retailer to post those statements conspicuously at the point of sale in immediate proximity to the sales floor display of the lamp product. The Commission will consider specific type size and other format requirements during the rulemaking proceeding.

C. Questions for Comment

The Commission solicits comments on all facets of the disclosures it proposes in Part III.B.2, above, on the proposals made by others, as discussed in Part III.B.1, above, and on alternatives, including comments identifying the costs and other burdens the proposed disclosures would impose. The Commission is particularly interested in receiving comments concerning the issues described below.[68]

1. Disclosures Based on Type of Lamp

Are each of the disclosures proposed by the Commission in Part III.B.2, above, necessary for all types of lamp products to be covered by the proposed labeling rules? If not, what particular disclosures are necessary or appropriate for each type of lamp product?

For example, lumens per watt measures the efficiency of a particular lamp product in converting electric output into lumen output. Energy efficiency information alone, however, may not provide purchasers with the information they need to select the most energy efficient lamps that meet their needs. For general service incandescent lamps, the lumens per watt rating may increase with increased wattage of the lamp. Disclosure of the lumens per watt energy efficiency rating alone, therefore, might promote the purchase of higher wattage general service incandescent lamps (which consume more electricity) than necessary to provide the required light. In addition, the efficiency rating of incandescent reflector lamps may be less than that of other general service incandescent lamps of the same wattage and lumen output. However, incandescent reflector lamps focus the lamps' lumen output, so a lesser-wattage, lower lumen output incandescent reflector lamp may provide the necessary focused light at a lower energy cost. For these reasons, disclosure of lumens per watt, without additional information about its meaning and use, could encourage, or mislead, purchasers to buy higher wattage lamps than they need. Is there a manner in which this can be avoided? Does it suggest that a lumens per watt disclosure should not be made for some or all products?

Other disclosures proposed in Part III.B, above, may not be necessary or appropriate for certain types of lamp products. For example, disclosure of design volts (if different than 120 volts) may be necessary for some types of lamp products, but not for others. What items of proposed information are most

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[64] See, e.g., Wesley A. Magat & W. Kip Viscusi, *Informational Approaches to Regulation* 186 (1992); James R. Bettman, John W. Payne & Richard Staelin, *Cognitive Considerations in Designing Effective Labels for Presenting Risk Information*, 5 Journal of Public Policy & Marketing 15 (1986).

[65] See Bettman, et al., note 64, above, at 15.

[66] *Id.* at 11.

[67] For example, the front panel of package labels, or alternatively an adhesive, hang tag, or other type of label on lamp products sold without packaging, could display lumens, an efficiency disclosure, and average life, within a graphic box, whereas wattage information (if it is deemed less important) could be featured on the front panel either in or outside the graphic box. Explanatory Statement No. 2 (which discloses the basis of the estimated monetary cost of operation), if adopted, and the number of bulbs in the package, might also be included on the front panel, although outside the graphic box. Information about design volts or any other required disclosures might appear on the front, back, or a side panel in accordance with marketing considerations.

[68] In addition to raising questions for comment about the proposed disclosure requirements here, the Commission raises additional questions for comment in Part IV, below, concerning other proposed requirements, such as substantiation of required disclosures.

important with regard to each different type or category of lamp product?

For lamp products covered by minimum efficiency standards (specifically, general service fluorescent lamps and incandescent reflector lamps), NEMA suggests that the Commission require only disclosure of the encircled capital letter "E."[60] It is not clear, however, that this symbol would provide either commercial or residential purchasers with necessary information because it indicates only that the product meets minimum efficiency standards. Mere disclosure that a product meets minimum standards may not provide purchasers with information to enable them to choose the most efficient lamps. For example, even a limited range of plus or minus four percent (± 4%) for general service fluorescent lamps that meet the minimum efficiency standards is an overall range of eight percent (8%) between the most and least efficient. Further, lamp manufacturers may now have or could develop technologies to improve the efficiencies of the products, and such technological improvement may be facilitated by specific efficiency or energy usage disclosures. The Commission has observed that products that must bear EnergyGuides disclosing energy ratings have shown improvements in energy efficiency. In addition, without an explanation of the meaning of the "E" symbol in immediate proximity to the symbol, some purchasers might not understand its significance or meaning. Last, disclosure of the "E" symbol alone would not provide purchasers with additional necessary information, such as lumens or lifetime. Given these considerations, is the proposed "E" symbol disclosure sufficient to meet the goals of EPCA?

2. Disclosures Based on Type of Purchaser

Residential and commercial purchasers may need different information about lamp products to enable them "to select the most energy efficient lamps which meet their requirements." Do residential and commercial purchasers need different information, and if so, what specific information does each type of purchaser need? The Commission is particularly interested in any research findings that indicate which items of information on existing lamp packages labels, or in catalogs or point-of-sale written materials, are most important in purchase decisions by residential and commercial purchasers. In addition, residential and commercial purchasers may need to have information provided in different sources, for example on package labels at the point of sale or in catalogs from which the products are ordered. What is the manner in which both residential and commercial purchasers normally purchase these lamps, and upon what sources of the information do they rely in making purchase decisions?

3. Disclosure of Estimated Monetary Cost of Operation

The Commission solicits comments on whether, and according to what assumptions, it should require disclosure of the estimated monetary cost of operation for lamp products, as proposed in Part III.B.2.b, above.

For example, disclosure of estimated monetary cost of operation, in addition to information such as lumen output and estimated life, could give purchasers information they need to enable them to select lamp products that will meet their lighting needs and cost the least to operate, as discussed in Part III.B.2.b, above. Should the Commission require disclosure of estimated monetary cost of operation?

If the Commission requires disclosure of estimated monetary cost of operation, on what electricity unit cost and on what usage period (*e.g.*, for 750 hours of use, or for a period such as one-year's estimated use) should the disclosure be based? For example, should the representative average unit cost of electricity that DOE publishes each year, and that the Commission adopts each year in § 305.9 of the Appliance Labeling Rule, 16 CFR 305.9, be used in the calculation, and if so, should the Commission require labels to be revised when DOE revises the unit cost annually? Alternatively, should a fixed unit cost, such as ten cents per kilowatt hour ("kWh"), or another figure, be used? If the disclosure was based on an estimated period of time, such as yearly, how many hours should constitute the estimated annual use? One proposal, for example, is based on an estimated annual use of approximately four hours per day operating time (1,460 hours per year). What data exists for selecting that or any other particular estimated or average usage pattern? In addition, even if 1,460 hours was an appropriate estimate of use per year, many general service incandescent lamps have estimated life hours less than that total amount (*e.g.*, 750 hours). Accordingly, without a disclosure that more than one lamp would be required for the estimated year's use, would purchasers understand that the estimated energy cost disclosed requires use of more than one lamp?

For multiple filament general service incandescent lamps, should the Commission require disclosure of the estimated energy cost of using the lamp for the entire usage period at each operating level? If not, on what usage period at each level should the disclosures be based? What additional disclosures, if any, should the Commission require to explain how the estimated energy cost figure, or figures, was determined?

4. Disclosure of Estimated Total Operating Cost

"Explanatory Statement No. 3" discussed in Part III.B.2.b.ii., above, would be intended to enable consumers to calculate total operating cost, which includes initial purchase cost plus estimated monetary cost of operating the lamp for a specific period of time. Although such a calculation could enable a consumer to select the most energy efficient lamp that met his or her requirements, it appears that consumers may not be likely to use such a disclosure in making purchase decisions because of the complexity of the calculation required. Accordingly, should the Commission require disclosure of estimated total operating cost information? As an alternative to Explanatory Statement No. 3, should the Commission require labeling or other disclosures that instruct purchasers how they can calculate the estimated total operating cost based on the actual initial purchase price? The Commission would be interested in suggestions for any alternative disclosures that would enable consumers to compare the total operating cost of various lamps.

If a commenter believes that Explanatory Statement No. 3 is appropriate, the Commission is interested in information regarding the likelihood that the disclosure would be utilized by consumers and regarding the specifics of the disclosure. What evidence suggests that consumers would utilize this disclosure in making purchase decisions? The initial purchase price may not be information that the manufacturer could easily or accurately include in such a disclosure on a product label, given that prices vary between sellers and may be effected by discounts and rebates. Accordingly, how should the estimated initial purchase price be determined? On what estimated unit cost of electricity should the disclosure be based, on what usage period should it be based, and what, if any, additional disclosures should be required to inform the purchaser about the assumptions on

[60] See Part III.B 1.a. above

which the disclosure is based? For multiple filament general service incandescent lamps, should the Commission require disclosure of the estimated total operating cost for the entire usage period at each operating level? If not, on what usage period at each level should the disclosures be based? What additional disclosures, if any, should the Commission require to explain how the estimated total operating cost figure, or figures, was determined for multiple filament lamps?

5. Where Disclosures Should Be Made

The Commission seeks to design the disclosure requirements so that necessary information about the different lamp products is provided effectively and efficiently to both residential and commercial purchasers. Some lamp products may not normally be sold in individual packages, or in packages other than bulk shipping cases. Should the Commission require that manufacturers attach to each unpackaged product an adhesive, hang tag, or similar label, even if the label must be very large to include all of the required disclosures in a conspicuous manner? Would requiring disclosures on labels in these circumstances impose unnecessary costs and other burdens? In addition, because commercial purchasers may make their purchase decisions primarily based on information in catalogs, do they need these disclosures on individual lamp product packages?

In order to design the disclosure requirements in the most effective and least costly manner, the Commission solicits comments about whether it should require disclosures on package labels or on other types of labels, in catalogs, or in point-of-sale written materials to best provide residential and commercial purchasers with the information they need to select the most energy efficient lamps that meet their needs. For example, should the Commission require that specific information be disclosed on package labels for residential purchasers, but only in catalogs for commercial purchasers? Should the Commission require that catalogs from which residential purchasers can order lamps also include specific disclosures?

To develop a more complete understanding of current industry practices, the Commission requests comments describing the types of packaging (including the number of lamps per package) in which specific types of lamps currently are distributed for sale both to residential and to commercial purchasers. What alternative types of labels could be used on currently unpackaged lamp products? For products that normally are not individually packaged (such as general service fluorescent lamps), should the Commission require that individual lamps contain disclosures on adhesive labels, hang tag labels, or some other kind of label? For example, would it be feasible for manufacturers to etch part or all of the required information on the lamp product itself? Or, should the Commission instead require that, for unpackaged lamp products, retailers make specific disclosures in point-of-sale written materials?

Do retailers currently post any information about unpackaged lamp products at the point of sale? If so, what does that information contain, and how and where is the information posted? What other types of information, if any, is posted by retail sellers at the point of sale for either packaged or unpackaged lamps? What difficulties would retail sellers have if the Commission required that they post specific information provided by lamp manufacturers for unpackaged lamp products they sell?

6. Format of Required Disclosures

The Commission requests comments on any factors that may affect the ability of consumers to read, understand, and act upon information proposed to be disclosed on lamp packaging. The Commission also requests comments about where on labels or in catalogs specific information should appear, on the type size in which the information should be disclosed, and on the manner in which information could most effectively be presented (for example, through use of boxed disclosures, graphics, or symbols). With regard to usefulness, how well do consumers understand that lumens are an indication of a lamp's brightness? Would consumers be better informed if lumens were defined on the package label as "brightness (lumens)"? Given the need to design an effective label, which disclosures, in order of priority, are most important? Should proposed package label disclosures of lumens, estimated energy cost, and average life, be featured more prominently than watts, and, if so, how could this be accomplished? If particular disclosures are more important than others, why? Do these priorities differ for various types of lamps covered by this rulemaking or for different types of purchasers?

7. Costs and Other Burdens of Proposed Disclosures

The Commission solicits comments concerning the specific costs and other burdens for manufacturers and other sellers of lamp products, beyond those already incurred in the ordinary course of business, that would be imposed by each of the Commission's proposals, as described in Part III.B.2, above, and by the proposals suggested by other parties, as described in Part III.B.1, above, as well as for any alternatives suggested by the commenter. How could the Commission design the disclosure requirements, including placement and format of the disclosures, for labeling, catalogs and point-of-sale written materials to minimize costs and burdens, while ensuring that purchasers are provided with the information necessary for them to select the most energy efficient lamps that meet their requirements?

IV. Proposed Requirements for Manufacturers and Other Sellers of Lamp Products

The discussion in this part of the Notice summarizes the requirements that the Commission proposes to require in the lamp labeling rules for manufacturers and other sellers of general service fluorescent lamps, medium-base compact fluorescent lamps, and general service incandescent lamps (including incandescent reflector lamps). In some instances the Commission will have to amend specific sections of the Appliance Labeling Rule to impose these requirements. In other instances, the requirements would automatically apply to the lamp products the Commission adds to the Rule, unless the Commission specifically excludes them from those requirements. To facilitate comments, the discussion below sets forth the requirements the Commission proposes to apply to manufacturers and other sellers of these lamp products, whether or not the Commission will have to amend specific provisions of the Rule to do so. In addition, § 305.4 of the current Rule, 16 CFR 305.4 (1993), specifies prohibited acts and the penalties for various violations of the Rule. Although the prohibitions and penalties specified in § 305.4 are not discussed below, the Commission proposes to apply them automatically to lamp products that the Commission includes in the Rule. The Commission solicits comments on all proposals discussed below, including alternatives to the proposals.

A. Disclosures Required in Labels, Catalogs, and Point-of-Sale Written Materials

The disclosure proposals are the core of this proceeding and of the labeling rules that section 324(a)(2)(C)(i) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6294(a)(2)(C)(i) (West Supp.

1993), directs the Commission to prescribe. Part III.B.2, above, discusses in detail disclosures the Commission proposes to require for lamp products on labels, catalogs, and point-of-sale written materials, and Part III.B.1, above, discusses propósals made by interested parties. Part III.C, above, raises specific questions for comment concerning the various disclosure proposals.

B. Substantiation and Sampling Requirements

The Commission proposes to require that manufacturers follow specific procedures to substantiate all disclosures they must make on labels, catalogs and point-of-sale written materials, and that they comply with specific sampling procedures in conducting the required substantiation testing. The substantiation and sampling procedure requirements are connected. The substantiation requirement is directed at ensuring that the disclosures are accurate and based on uniform standards. The sampling procedure requirement is directed at ensuring that the samples tested are representative of the product being produced.

The Commission solicits comments identifying existing testing and sampling procedures (including the specific versions of those procedures) that manufacturers could use to substantiate each of the disclosures proposed in Part III.B, above. For example, both the International Electrical Society ("IES") and the American National Standards Institute ("ANSI") have test procedures to measure most, if not all, the items the Commission proposes to require. Which IES and ANSI procedures could be used to substantiate each of the proposed disclosures? Are there any additional private or government test procedures or standards that could be used to substantiate each of the proposed disclosures? Are there any private or government sampling procedures that could be used in connection with those test procedures? The Commission requests commenters to identify all procedures or standards they suggest by number, title and version, as well as the part of the standard that can be used to measure each specific item the Commission proposes to require be disclosed.

Section 323(b)(6) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6293(b)(6) (West Supp. 1993), requires DOE to issue test procedures for general service fluorescent lamps and incandescent reflector lamps, taking into consideration the applicable IES or ANSI standards. When DOE issues testing and sampling procedures for those lamp products, or for any additional lamp products, the Commission will consider whether to adopt the DOE procedures as the required substantiation under the labeling rules.

C. Recordkeeping and Submission of Data Requirements

The Commission proposes to require that manufacturers of all lamp products covered by the labeling rules maintain records to substantiate each of the items the Commission determines should be disclosed, and to require them to submit those records to the Commission within 30 days of a request. These proposed requirements are necessary to enable the Commission to determine whether required disclosures are substantiated and accurate.

D. Reporting Requirements

Section 326(b)(4) of EPCA, 42 U.S.C.A. 6296(b) (West Supp. 1993), requires manufacturers of lamp products for which DOE has issued test procedures under section 323 of EPCA, as amended by EPA 92, 42 U.S.C.A. 6293 (West Supp. 1993), to supply the Commission annually with relevant information respecting energy consumption. DOE has not yet issued test procedures for any of these lamp products. The Commission, however, proposes requiring that lamp manufacturers submit annual reports on or before May 1 each year. This requirement would not become effective until after DOE issues test procedures for specific lamp products. The Commission would publish a notice at a later date, after DOE has issued test procedures, announcing when the initial reports would be due.

The Commission proposes requiring that each report contain the following information: (1) Name and address of manufacturer; (2) All trade names under which the lamps are marketed; (3) model or other identification numbers; (4) starting serial number, date code, or other means of identifying the date of manufacture (date of manufacture information must be included with only the first submission for each basic model or type); and (5) energy consumption data measured according to the DOE test procedure. This information is currently required for other categories of products covered by the Appliance Labeling Rule. The Commission has accepted trade association directories and similar submissions in lieu of individual annual reports for other product categories. To minimize the burdens imposed by this proposed reporting requirement, the Commission proposes accepting similar submissions by lamp manufacturers to comply with these reporting requirements.

E. Required Testing by Designated Laboratories

The Commission proposes requiring that manufacturers, upon request by the Commission, submit at the manufacturer's expense, a reasonable number of products to any laboratory designated by the Commission. Under this proposal, any charge levied by the laboratory for testing, however, would be paid for by the Commission. Section 305.16 of the Appliance Labeling Rule, 16 CFR 305.16 (1993), based on section 326(b)(3) of EPCA, 42 U.S.C. 6296(b)(3) (1988), currently applies this requirement to other products regulated Rule. This proposed requirement is necessary to enable the Commission to determine whether required disclosures are accurate.

F. Other Matters

Section 305.1 of the current Rule, 16 CFR 305.1 (1993), summarizes the coverage of the Rule. The Commission proposes amending § 305.1 to include a description of the disclosures proposed for labels, catalogs and point-of-sale written materials, as discussed in Part III.B, above.

Section 305.2 of the current Rule, 16 CFR 305.2 (1993), contains definitions of specific terms used in EPCA and the Rule. The Commission proposes amending this section to include definitions for the following terms relating to lamp products: [70]

(1) The term *average lamp efficacy* means the lamp efficacy readings taken over a statistically significant period of manufacture with the readings averaged over that period.

(2) The term *base* means the portion of the lamp which connects with the socket as described in ANSI C81.61–1990.

(3) The term *bulb shape* means the shape of lamp, especially the glass bulb with designations for bulb shapes found in ANSI C79.1–1980 (R1984).

(4) The term *color rendering index* or *CRI* means the measure of the degree of color shift objects undergo when illuminated by a light source as compared with the color of those same objects when illuminated by a reference source of comparable color temperature.

(5) The term *correlated color temperature* means the absolute temperature of a blackbody whose

[70] These terms are based on definitions of these terms in section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(30) (West Supp. 1993).

chromaticity most nearly resembles that of the light source.

(6) The term *IES* means the Illuminating Engineering Society of North America.

(7) The term *lamp efficacy* means the lumen output of a lamp divided by its wattage, expressed in lumens per watt (LPW).

(8) The term *lamp type* means all lamps designated as having the same electrical and lighting characteristics and made by one manufacturer.

(9) The term *lamp wattage* means the total electrical power consumed by a lamp in watts, after the initial seasoning period referenced in the appropriate IES standard test procedure and including, for fluorescent, arc watts plus cathode watts.

(10) The terms *life* and *lifetime* mean length of operating time of a statistically large group of lamps between first use and failure of 50 percent of the group in accordance with test procedures described in the IES Lighting Handbook-Reference Volume.

(11) The term *lumen output* means total luminous flux (power) of a lamp in lumens, as measured in accordance with applicable IES standards as determined by the Secretary.

Section 305.2 (n) and (o) of the current Rule, 16 CFR 305.2 (1993), includes definitions of the terms *consumer appliance product* and *covered product*, respectively. The Commission proposes amending the definitions of those terms as follows:

(1) *Consumer appliance product* and *consumer product* mean any *consumer product*, as defined in section 321(1) of the Act (42 U.S.C. 6291(1)).

(2) *Covered product* means any consumer appliance product or consumer product defined in § 305.3 of the rule.

Section 305.3 of the current Rule, 16 CFR 305.3 (1993), describes the categories of products covered by EPCA and the Rule. The Commission proposes to amend this section to add descriptions of general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps (and related terms):[71]

(1) Except as provided in item (5), below, the term *fluorescent lamp* means a low pressure mercury electric-discharge source in which a fluorescing coating transforms some of the ultra-violet energy generated by the mercury discharge into light, including only the following: (i) Any straight-shaped lamp (commonly referred to as 4-foot medium bi-pin lamps) with medium bi-pin bases of nominal overall length of 48 inches and rated wattage of 28 or more; (ii) Any U-shaped lamp (commonly referred to as 2-foot U-shaped lamps) with medium bi-pin bases of nominal overall length between 22 and 25 inches and rated wattage of 28 or more; (iii) Any rapid start lamp (commonly referred to as 8-foot high output lamps) with recessed double contact bases of nominal overall length of 96 inches and 0.800 nominal amperes, as defined in ANSI C78.1–1978 and related supplements; (iv) Any instant start lamp (commonly referred to as 8-foot slimline lamps) with single pin bases of nominal overall length of 96 inches and rated wattage of 52 or more, as defined in ANSI C78.3–1978 (R1984) and related supplement ANSI C78.3a–1985.

(2) The term *general service fluorescent lamp* means fluorescent lamps which can be used to satisfy the majority of fluorescent applications, but does not include any lamp designed and marketed for the following nongeneral lighting applications: (i) Fluorescent lamps designed to promote plant growth; (ii) Fluorescent lamps specifically designed for cold temperature installations; (iii) Colored fluorescent lamps; (iv) Impact-resistant fluorescent lamps; (v) Reflectorized or aperture lamps; (vi) Fluorescent lamps designed for use in reprographic equipment; (vii) Lamps primarily designed to produce radiation in the ultra-violet region of the spectrum; and (viii) Lamps with a color rendering index of 82 or greater.

(3) Except as provided in item (5), below, the term *incandescent lamp* means a lamp in which light is produced by a filament heated to incandescence by an electric current, including only the following: (i) Any lamp (commonly referred to as lower wattage nonreflector general service lamps, including any tungsten-halogen lamp) that has a rated wattage between 30 and 199 watts, has an E26 medium screw base, has a rated voltage or voltage range that lies at least partially within 115 and 130 volts, and is not a reflector lamp; (ii) Any lamp (commonly referred to as a reflector lamp) which is not colored or designed for rough or vibration service applications, that contains an inner reflective coating on the outer bulb to direct the light, an R, PAR, or similar bulb shapes (excluding ER or BR) with E26 medium screw bases, a rated voltage or voltage range that lies at least partially within 115 and 130 volts, a diameter which exceeds 2.75 inches, and is either—(I) a low(er) wattage reflector lamp which has a rated wattage between 40 and 205 watts; or (II) a high(er) wattage reflector lamp which has a rated wattage above 205 watts; (iii) Any general service incandescent lamp (commonly referred to as a high- or higher-wattage lamp) that has a rated wattage above 199 watts (above 205 watts for a high wattage reflector lamp).

(4) The term *general service incandescent lamp* means any incandescent lamp (other than a miniature or photographic lamp), including an incandescent reflector lamp, that has an E26 medium screw base, a rated voltage range at least partially within 115 and 130 volts, and which can be used to satisfy the majority of lighting applications, but does not include any lamp specifically designed for: (i) Traffic signal, or street lighting service; (ii) airway, airport, aircraft, or other aviation service; (iii) marine or marine signal service; (iv) photo, projection, sound reproduction, or film viewer service; (v) stage, studio, or television service; (vi) mill, saw mill, or other industrial process service; (vii) mine service; (viii) headlight, locomotive, street railway, or other transportation service; (ix) heating service; (x) code beacon, marine signal, lighthouse, reprographic, or other communication service; (xi) medical or dental service; (xii) microscope, map, microfilm, or other specialized equipment service; (xiii) swimming pool or other underwater service; (xiv) decorative or showcase service; (xv) producing colored light; (xvi) shatter resistance which has an external protective coating; or (xvii) appliance service.

(5) The terms *fluorescent lamp* and *incandescent lamp* do not include any lamp excluded by the Secretary, by rule, as a result of a determination that standards for such lamp would not result in significant energy savings because such lamp is designed for special applications or has special characteristics not available in reasonably substitutable lamp types.

(6) The term *incandescent reflector lamp* means a lamp described in item 3(ii), above.

(7) The term *tungsten-halogen lamp* means a gas-filled tungsten filament incandescent lamp containing a certain proportion of halogens in an inert gas.

(8) The term *medium base compact fluorescent lamp* means an integrally ballasted fluorescent lamp with a medium screw base and a rated input voltage of 115 to 130 volts and which is designed as a direct replacement for a general service incandescent lamp.

[71] These descriptions are based on the definitions of the terms in section 321(30) of EPCA, as amended by EPA 92, 42 U.S.C.A. 6291(3) (West Supp. 1993).

V. Paperwork Reduction Act

The Paperwork Reduction Act ("PRA"), 44 U.S.C. 3501 *et seq.*, requires government agencies, before promulgating rules or other regulations that require "collections of information" (*i.e.*, recordkeeping or reporting requirements), to obtain approval from the Office of Management and Budget ("OMB"). 44 U.S.C. 3502. The Commission proposes requiring that manufacturers of lamp products for which DOE has issued test procedures under section 323 of EPCA, 42 U.S.C. 6293, submit annual reports to the Commission. The Commission proposes requiring that the reports include relevant data about energy consumption of the lamps in accordance with the DOE test procedures. The Commission also proposes requiring that manufacturers of all lamp products to be covered by the lamp labeling rules maintain records that substantiate the required disclosures they must make on labels, catalogs, and point-of-sale written materials.

These requirements are "collections of information" as defined by 5 CFR 1320.7(c) (1993), the OMB regulations implementing PRA. They have therefore been submitted to OMB for review under the PRA. These provisions, described more fully in Parts IV.C and IV.D, above, implement the requirements of EPA 92 that manufacturers retain test records and submit energy usage data to the Commission annually.

The Commission currently has clearance for 1,000 burden hours under the Appliance Labeling Rule. OMB Control No. 3084–0068. The Commission is requesting that OMB approve the requirements for recordkeeping and reporting that the Commission proposes to require for lamp products and extend the current clearance. The supporting statement accompanying that request recommends that the current burden estimate of 1,000 hours be continued. Staff estimates that no more than 700 hours have been expended for existing collections. Approximately 50 manufacturers would be affected by the proposed amendments to the Rule and the Commission's staff estimates that it would take each company fewer than five hours to comply with the requirements, for a maximum of 250 hours. Thus, the total number of hours is well within the existing clearance of 1,000 hours (700 + 250 = 950) and the Commission proposes to retain the existing burden clearance. The Commission, however, is also seeking public comment on the paperwork burden that the proposed amendments may impose to ensure that no additional burden has been overlooked.

VI. Regulatory Flexibility Act

This Notice does not contain a regulatory analysis under the Regulatory Flexibility Act ("RFA"), 5 U.S.C.A. 603–604 (West Supp. 1993), because the Commission believes that the amendments, if promulgated, would not have "a significant economic impact on a substantial number of small entities," 5 U.S.C.A. 605 (West Supp. 1993). The proposed amendments require these companies to: (1) Disclose specific information in labels, catalogs and point-of-sale written materials; (2) submit annual reports to the Commission for some products; and (3) substantiate the required disclosures and maintain records of that substantiating data. The Commission believes that the impact of these requirements on all entities within the affected industry would be *de minimis*. Further, any economic costs imposed on small entities are primarily statutorily imposed, and the proposed regulations, will impose few, if any independent additional costs. The Commission estimates that fewer than 50 U.S. companies manufacture lamp products that the Commission proposes to cover in the labeling rules. According to industry representatives, all but three of those manufacturers are believed to be "small entities" as that term is defined in RFA, 5 U.S.C.A. 601 (West Supp. 1993), and in the regulations of the Small Business Administration, 13 CFR part 121 (1993). While the proposed rules will apply to these "small entities," the impact of the proposed rules on them would be minimal.

In light of the above, the Commission certifies, pursuant to section 605 of RFA, 5 U.S.C.A. 605 (West Supp. 1993), that the proposed amendments would not, if promulgated, have a significant impact on a substantial number of small entities. To ensure that no substantial economic impact is being overlooked, the Commission requests comments on this issue. After reviewing any comments received, the Commission will determine whether it is necessary to prepare a final regulatory flexibility analysis.

VII. Regulatory Review

The Commission has implemented a program for regulatory review of all the Commission's current and proposed rules and guides. One of the purposes of the review is to minimize the economic impact of new regulatory actions. As part of that review, the Commission requests comments on the impact of the proposed requirements for manufacturers and other sellers of lamp products. The Commission is not now requesting comments about the costs and benefits of the requirements of the Appliance Labeling Rule for products other than the lamp products that are the subject of this rulemaking proceeding.

To maximize the benefits and minimize the costs imposed by the proposed rule, the Commission solicits comments on the following questions:

(1) What would be the economic impact and regulatory impact of the proposed requirements?

(2) What paperwork requirements would the proposed requirements impose?

(3) What are the costs and benefits of the proposed rules?

(4) What is the regulatory and economic impact of the proposed rules?

(5) What burdens would be placed on entities required to comply with these requirements?

(6) What possible regulatory alternatives are there that would reduce the economic impact of the proposed requirements, yet fully implement the regulatory mandate of the EPA 92 amendments to EPCA?

VIII. Metric Conversion Act

Section 205b of the Metric Conversion Act, 15 U.S.C. 205b, states that the metric measurement system is the preferred system of weights and measures in the United States. It also requires federal agencies to use the metric system of measurement in all procurements, grants and other business-related activities (including rulemakings), except to the extent that such use is impractical or is likely to cause significant inefficiencies or loss of markets to United States firms.

It is the Commission's opinion that the units of measurement the Commission proposes to require in the labeling rules for lamp products comply with the requirements of the Metric Conversion Act. First, lumens, watts and volts are metric units.[72] Thus, if the Commission requires disclosure of this information in the final labeling rules, the disclosure requirements will comply with the Metric Conversion Act.

Second, the metric terms (lumens, watts and volts) that the Commission

[72] See "The International System of Units (SI)," National Institute of Standards and Technology ("NIST") Special Publication 330, U.S. Department of Commerce, Aug. 1991; "Guide for the Use of the International System of Units," NIST Special Publication 811, U.S. Department of Commerce, Sept. 1991; and "Preferred Metric Units for General Use by the Federal Government," Federal Standard 376B (Preprint Copy), General Services Administration, Jan. 27, 1993.

proposes to require be disclosed for lamp products should already be familiar to consumers. Since 1970, the Commission's Light Bulb Rule, 16 CFR part 409 (1993), among other things, has required the clear and conspicuous disclosure on the lamps or on their packages of the light output in lumens, the power consumption in watts, and the design voltage in volts.[73] Thus, for more than twenty years consumers have been exposed to these metric units of measurement each time they purchased incandescent lamps.

For these reasons, the Commission is of the view that the use of the metric terms lumens, watts and volts would not be "impractical" as that term is used in the Metric Conversion Act. Based on information currently available to it, the Commission believes that the use of these metric units of measurement for energy efficiency disclosures in the proposed labeling rules for lamp products comply with the requirements of the Metric Conversion Act. However, to ensure that the Commission is aware of all the relevant facts before making a final determination, the Commission seeks comments from the public on this issue concerning the terms lumens, watts and volts, and all other disclosures the Commission has proposed in Part III, above, and on any additional suggestions proposed by interested parties during the rulemaking proceeding.

IX. Information for Interested Persons

A. Invitation To Comment

Interested persons, including those who wish to participate in the Public Workshop-Conference referred to in Part IX.B, below,[74] are requested to submit written comments on any issue of fact, law or policy that may have bearing upon the proposed rules. Comments are due by December 30, 1993, ("comment due date"). Although the Commission welcomes comments on any aspect of the proposed rules, the Commission is particularly interested in comments on questions and issues raised in this Notice concerning the proposed disclosures, whether they should be required to be disclosed on package labels, in catalogs from which lamp products may be ordered, and in point-of-sale written materials, and the manner in which disclosures should be made. All written comments should state clearly the question or issue, or the specific proposed requirement, that the commenter wishes to address.

The Commission requests that commenters provide representative factual data in support of their comments. Individual firms' experiences are relevant to the extent they typify industry experience in general or the experience of similar-sized firms. Comments opposing the proposed rules or any individual proposal should, if possible, suggest specific alternatives. Proposals for alternative requirements should include reasons and data that indicate why the alternatives would better serve the statutory standard for the proposed rules, as described in Part III.A, above. Comments should be supported by a full discussion of all the relevant facts and/or be based on firsthand knowledge, personal experience or general understanding of the particular issues addressed by the proposed rules.

Before adopting final rules, the Commission will consider all written comments timely submitted to the Secretary of the Commission and those made on the record at the Public Workshop-Conference. Written comments submitted will be available for public inspection in accordance with the Freedom of Information Act, 5 U.S.C. 552, and Commission regulations, on normal business days between the hours of 8:30 a.m. to 5 p.m. at the Public Reference Room 130, Federal Trade Commission, 6th and Pennsylvania Ave., NW, Washington, DC 20580.

B. Public Workshop-Conference

The Commission's staff will conduct a Public Workshop-Conference to afford Commission staff and interested parties an opportunity to openly discuss and explore issues raised in the rulemaking proceeding, and, in particular, to examine publicly areas of significant controversy or divergent opinions that are raised in the written comments. Persons interested in participating in the Public Workshop Conference must notify the Commission staff by December 15, 1993 (the "Public Workshop notification due date") as directed under the heading **ADDRESSES**, above. The Public-Workshop-Conference will focus primarily on the information that is "necessary to enable purchasers to select the most energy efficient lamps which meet their requirements" (as discussed in Parts III.A and III.B, above), where these disclosures should be made (as discussed in Part III.B, above), and on the manner and layout for making those disclosures (as discussed in Parts III.B and III.C, above). Participants will also be afforded an opportunity to address additional issues that are raised by the rulemaking proceeding.

The conference is not intended to achieve a consensus of opinion among participants or between participants and Commission staff with respect to any issue raised in the rulemaking proceeding. The Commission will consider the views and suggestions made during the conference, in addition to any written comments, in formulating its final decisions on the proposed labeling rules.

If the number of parties who request to participate in the Public Workshop-Conference is so large that it would inhibit effective discussion among the participants, then Commission staff will select as the participants a limited number of parties to represent the interests of those who submit written comments. The selections will be made on the basis of the following criteria:

1. The party submits a written comment by the comment due date.
2. The party notifies Commission staff of its interest and authorization to represent an affected interest by the Public Workshop notification date.
3. The party's attendance would promote a balance of interests being represented at the conference.
4. The party's attendance would promote the consideration and discussion of the issues presented in the rulemaking proceeding.
5. The party has expertise in issues raised in the proposed rules.
6. The party adequately reflects the views of the affected interest(s) which it purports to represent.
7. The party has been designated by one or more interested parties (who timely file requests to participate and written comments) as a party who shares group interests with the designator(s).
8. The number of parties selected will not be so large as to inhibit effective discussion among them.

Commenters may, if they wish, designate a specific party to represent their shared group interests in the Public Workshop-Conference.

If it is necessary to limit the number of participants, those not selected to participate, but who submit both requests to participate and written comments, will be afforded an opportunity at the end of the session to present their views during a limited time period. The time allotted for these statements will be determined on the basis of the time necessary for discussion of the issues by the selected parties, as well as by the number of persons who wish to make statements.

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[73] See Parts I and II.E, above.

[74] As explained in Part IX.B, below, interested parties must file written comments to participate in the Public Workshop-Conference.

If any person cannot complete the presentation of his or her statements in the allotted time, that person will be allowed, within twenty-four (24) hours thereafter, to file a written statement covering those relevant matters that he or she did not present orally. Except for written statements submitted under these circumstances, written submissions will not be accepted after the comment due date.

A neutral, third-party facilitator will be retained for the Public Workshop-Conference. The Public Workshop-Conference is currently scheduled to be held at the Federal Trade Commission, Pennsylvania Avenue at Sixth Street, NW., Washington, DC, on January 19, 1994. Prior to the conference, the participants will be provided with copies of the written comments received in response to this Notice. The discussion during the Public Workshop-Conference will be transcribed and the transcription will be placed on the public record.

C. Motions or Petitions

Any motions or petitions in connection with this proceeding must be filed with the Secretary of the Commission. Such motions or petitions will be transmitted to a Presiding Officer. The Presiding Officer will be responsible for the orderly conduct of the proceeding and shall have all powers necessary to that end, including the authority to rule on all motions or petitions.

Applications for review of rulings by a Presiding Officer will not be entertained by the Commission prior to its review of the entire record in the rulemaking proceeding, unless the Presiding Officer certifies in writing to the Commission that a ruling involves a controlling question of law or policy as to which there is substantial ground for difference of opinion, and that an intermediate review of the ruling may materially advance the ultimate termination of the proceeding or that subsequent review will be an inadequate remedy.

D. Communications by Outside Parties to Commissioners or Their Advisors

Pursuant to Rule 1.18(c) of the Commission's rules of practice, 16 CFR 1.18(c) (1993), communications with respect to the merits of this proceeding from any outside party to any Commissioner or Commissioner's advisor during the course of this rulemaking shall be subject to the following treatment. Written communications, including written communications from members of Congress, shall be forwarded promptly to the Secretary for placement on the public record. Oral communications, not including oral communications from members of Congress, are permitted only when such oral communications are transcribed verbatim or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and are promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications. Oral communications from members of Congress shall be transcribed or summarized at the discretion of the Commissioner or Commissioner's advisor to whom such oral communications are made, and promptly placed on the public record, together with any written communications and summaries of any oral communications relating to such oral communications.

List of Subjects in 16 CFR Part 305

Advertising, Consumer protection, Energy conservation, Household appliances, Labeling, Lamp products, Penalties, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 6294.

By direction of the Commission.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Deborah K. Owen in the Matter of Appliance Labeling Rule (Lamp Products)

(File No. R611004)

Although I concur in the Commission's determination to publish a Notice of Proposed Rulemaking in accordance with the statutory directive, I am concerned about the totality of the burden resulting from some of the proposals outlined in the Notice. I am hopeful that public comment will include suggestions on how the Commission can achieve the important goals of the statute, without requiring unnecessarily burdensome disclosures that may be too complex to be entirely useful to consumers.

[FR Doc. 93–27860 Filed 11–12–93; 8:45 am]

BILLING CODE 6750–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Parts 1105, 1121 and 1152

[Ex Parte No. 511]

Petition for Rulemaking; Protection of Surveying Benchmarks in Railroad Abandonments

AGENCY: Interstate Commerce Commission.

ACTION: Petition for rulemaking; extension of comment due date.

SUMMARY: By decision served October 1, 1993 (58 FR 51800, October 5, 1993), the Commission requested comments by November 19, 1993, on a rulemaking petition to consider the protection of surveying benchmarks, monumentation, and mapping information that may be affected by Commission action in railroad abandonment proceedings.

By letter filed October 28, 1993, American Congress on Surveying and Mapping (Petitioner) requests a 30-day extension to December 20, 1993, to file comments. Petitioner states additional time is needed to: (1) Meet and exchange information with various State congresses and associations on surveying and mapping to present a comprehensive picture of the problems underlying the petition; and (2) enable counsel to propose regulations or other action that would help alleviate those problems. The request is reasonable and will be granted.

DATES: Comments must be received by December 20, 1993.

ADDRESSES: Send an original and 10 copies of comments referring to Ex Parte No. 511 to: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

FOR FURTHER INFORMATION CONTACT: Ronald M. Smullian, (202) 927–5292 or Richard B. Felder (202) 927–5610. [TDD for the hearing impaired: (202) 927–5721.]

Decided: November 10, 1993.

By the Commission, Sidney L. Strickland, Jr., Secretary.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27974 Filed 11–12–93; 8:45 am]

BILLING CODE 7035–01–P

Notices

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Availability of Housing Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces the availability of housing funds for Fiscal Year 1994 (FY 94). This action is taken due to legislation which requires that FmHA publish in the **Federal Register** notice of the availability of any housing assistance. The intended effect is to comply with Public Law 101–235 and make the public aware of housing funds available through FmHA.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Cynthia Reese-Foxworth, Loan Specialist, Rural Rental Housing Branch, Multi-Family Housing Processing Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 720–1608 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos.:

10.405 Farm Labor Housing Loans and Grants
10.410 Very Low and Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance
10.427 Rural Rental Assistance Payments
10.433 Housing Preservation Grants

Discussion of Notice

7 CFR chapter XVIII, part 1940, subpart L contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." The following guidance has been provided to FmHA State offices on FY 94 appropriations and access to funds. Administrative guidance, such as forms, computer inputs and codes, etc., have been removed for the readers convenience. The guidance references the Rural Housing Targeting Set Aside (RHTSA) contained in exhibit C to subpart L of part 1940 of this chapter. The FY 94 list of designated counties under RHTSA is not available at this time. A separate Notice will be published in the **Federal Register** when this list is available. We expect to publish this Notice by January 1, 1994. Until such Notice is published, funds available under RHTSA in FY 94 are not available, except in colonias as defined in exhibit C. The guidance provided to our State Offices is separated between assistance available in our Multi and Single Family Housing Programs as follows:

Multi-Family Housing (MFH)

I. General

A. This provides MFH allocations available to individual States for Fiscal Year 1994 (FY 94). Allocation computations have been performed in accordance with §§ 1940.575, 1940.576, and 1940.578 of subpart L of part 1940 of this chapter. The transition formula is not used.

B. State Directors are encouraged to notify nonprofit and public housing agencies of the availability of MFH loan and grant funds.

C. MFH loan and grant levels for FY 94 are as follows:

Section 514 Farm Labor Housing (FLH) loans	$16,300,000
Section 515 Rural Rental Housing (RRH) loans	540,107,000
Section 516 FLH grants (Unobligated prior year balances and/or cancellations of prior years will be added to the amount shown)	11,000,000
Supplemental appropriations FYs 1993 and 1994 Sections 516 FLH Grants and Rental Assistance (RA)	32,500,000
Section 521 RA:	
RRH new construction	116,500,000
FLH new construction	4,000,000
Section 533 Housing Preservation Grants (HPG)	23,000,000
Section 542 Rural Rental Housing Voucher Program (RHVP)	25,000,000

D. MFH loan types not allocated to States are:

1. *Section 514 FLH Loans.* These loans are funded in accordance with § 1940.579 (a) of subpart L of part 1940 of this chapter. Five percent of FY 94 FLH appropriation has been set aside under the Rural Housing Targeting Set Aside (RHTSA) for those counties designated as underserved in accordance with exhibit C of subpart L of part 1940 of this chapter. Loans within the State Director's approval authority may be obligated on a first-come-first-served basis. Proposals that include FLH grant requests or for loan amounts in excess of the State Director's approval authority are to be submitted to the Director, Multi-Family Housing Processing Division (MFHPD).

2. *Section 516 FLH Grants.* These grants are funded in accordance with § 1940.579(b) of subpart L of part 1940 of this chapter.

FY 94 appropriation	$11,000,000
Reserve for migrant farmworkers and the rural homeless	2,000,000
Available for FLH grants and technical assistance (TA) contracts	9,000,000

3. *Section 515 FLH Grants for Migrant Farmworkers and the Rural Homeless.* Funds are administratively reserved until June 30, 1994, for applicants for proposed housing under existing regulations to serve the dual population of migrant farmworkers and the homeless.

State Directors and District Directors are encouraged to promote the concept of dual purpose housing in partnership with State or local nonprofit community service agencies in agricultural market areas for migrant farmworkers and homeless individuals and their families. Project demand must be based primarily on the need for migrant farmworker housing and feasibility can be based on 90 percent grant and 100 percent RA. Proposals and discussions for this dual use housing should consider very basic yet durable structures that can be either built new or purchased and rehabilitated. All proposals should be considered and further information may be obtained by contacting the MFHPD, Special Authorities Branch (SAB).

4. *Section 516 Grants for Technical Assistance (TA) Contracts.* The funding availability for TA Contracts is based on the grant appropriation. TA is available for the development of labor housing exclusively for farmworkers and may also be used in those unique agricultural markets where there is a homeless population. More information may be obtained by contacting the MFHPD, SAB. The Agency has solicited for contract proposals for FY 94 TA contracts to begin January 1994.

5. *Rental Assistance for FLH—New Construction.* This RA is held in a National Office reserve for use with concurrent loan and grant applications in accordance with Paragraph II B 6 b (ii) B of the MFH section of this notice.

6. *Section 516 FLH Grants Under Supplemental Appropriation for Disaster Assistance.* a. A supplemental appropriation of Section 516 FLH grant funds is available to assist nonprofit and public bodies with cost of providing permanent replacement of temporary migrant housing and trailers along with RA under "Rural Housing For Domestic Farm Labor." To be eligible, the housing must address migrant and year-round farmworker needs in the Florida area that was impacted by a Presidentially declared natural disaster.

b. All funds will be retained in the National Office reserve and States may obligate against that reserve upon authorization from the National Office; RA and FLH loan funds will be made available from the MFHPD, SAB.

II. State Allocations

All allocations have been developed with the methodology and formulas stated in subpart L of part 1940 of this chapter. The funds distributed to each State for a particular quarter may exceed the funds available nationally for all States. Therefore, if funds become exhausted at the National level, some States will not have access to their full distribution for the remainder of the quarter.

A. Section 515 RRH Funds

1. Amount available for allocation

Total available	$540,107,000
Less 17 percent reserve	91,818,000
Less base allocation	11,859,000
Less administrative allocation	5,500,000
Basic formula amount	430,930,000

2. *Base Allocation.* The base allocation is an amount above the computed formula amount sufficient for each State to fund three 24-unit projects, based upon Fiscal Year 1993 (FY 93) loan activity. Regions that receive administrative allocations do not receive base allocations.

3. *Administrative Allocation.* The regions of the Western Pacific Areas and Virgin Islands are allocated $2,750,000 each which is the equivalent of three 24-unit projects, based upon FY 93 loan activity.

4. *Nonprofit Set-Aside (NPSA).* Nine percent of each States' FY 94 allocation has been set aside in the National Office for certain nonprofit applicants. These funds have been deducted from the State distributions. See exhibit B of subpart L of part 1940 of this chapter for further information on the NPSA.

5. *RHTSA.* Five percent of FY 94 RRH appropriation has been set aside for those counties designated as underserved. These funds will come from the National Office reserve. See exhibit C of subpart L of part 1940 of this chapter for further information on RHTSA.

6. *Reserves.* a. *State Office Reserve:* In States which allocate funds to Districts, § 1940.552(j) of subpart L of part 1940 of this chapter authorizes the State Director to hold a reserve. Such reserves, if established, will be available only for patch-outs, subsequent loans for repairs, transfers and cost overruns, leveraging under RHTSA and NPSA, hardships or emergency situations. The State Director will maintain records on how State Office reserves were utilized, including a justification for each disbursement.

b. *National Office Reserve.* The reserve is 17 percent of the total funds available and is broken down as follows:

(i) *General Reserve.* $22,813,000 in general reserve funds have been set aside. Since access to general reserve funds cannot be assured or guaranteed, States should not consider potential access to these funds when authorizing Form AD–622s, "Notice of Preapplication Review Action," up to 150 percent of their net allocation. After June 1, 1994, further guidance will be published administratively as to the availability of funds and how State Directors may access any remaining general reserve funds. Until June 1, 1994, State Directors can request these funds for the following purposes:

(A) *Hardships and Emergencies.* The request must include sufficient documentation to support the hardship or emergency including reasons why it is in the Government's best interest to consider the request.

(B) *Patch-outs.* A patch-out, not to exceed 30 percent of the total loan obligation, when the State needs the additional funds to obligate 100 percent of its net allocation.

(C) *Subsequent loans for repairs to an existing borrower where a transfer is not involved.* The request must include a discussion of why project reserves are insufficient to pay for the repairs, eligibility of the applicant, and steps taken to mitigate the need for a subsequent loan for repairs in the future.

(d) *Subsequent loans for repairs when a transfer is involved.* To receive general reserve funds for this purpose, the transfer must be to resolve a servicing problem, in the Government's best financial interest, and the transferee not composed of any members (borrower entity and/or general partner(s)) of the transferor. The request must include a discussion of these requirements including reasons why project reserves are insufficient to pay for the repairs and steps taken to mitigate the need for a subsequent loan for repairs in the future. Funds for this purpose must be leveraged with State allocated funds on a one-to-one basis. For example, on a transfer with a subsequent loan request of $500,000, up to $250,000 may be requested from the National Office reserve. A State may receive not more than an aggregate of $2 million for this purpose. Funds for transfers with a subsequent loan that do not meet the conditions of this subparagraph will be considered for funding from the State's allocation and in accordance with the applicable program regulations.

(ii) *Designated Reserves.* (A) *RHTSA.* An amount of $27,005,000 has been set aside for those counties designated as underserved. These funds will be subject to year-end pooling requirements.

(B) *State RA.* An amount of $5 million of the RRH funds have been set aside for States in which an active State sponsored RA program is available. The State RA program must be comparable to FmHA RA. To participate in this reserve, the State Director should submit a written request with specific information about the State RA program; i.e., memorandum of understanding, documentation from the provider, etc., to the Director, MFHPD, no later than January 21, 1994. Funds will be distributed to participating States based on a pro rata share of State RA units being provided. These funds are subject to year-end pooling requirements.

(C) *Equity loans.* An amount of $30,000,000 has been set aside for the equity loan prepayment incentive features described in subpart E to part 1965 of this chapter. The funds will be made available by quarter as follows:

(1) First quarter—up to 40 percent of the funds allocated may be used.

(2) Second quarter—up to 70 percent of the funds available may be used.

(3) Third and fourth quarters—the balance of the available funds may be used. All equity loan requests must be forwarded by the State Director to the National Office for authorization using FmHA Guide Letter 1965–E–1, (available in any FmHA office) and in accordance with the provisions of subpart E of part 1965 of this chapter. Any requests that exceed the quarterly allocation will be prioritized for future funding based on the date of receipt of FmHA Guide Letter 1965–E–1 (available in any FmHA office) in the National Office from the State Director.

(4) Equity loan funds are subject to year-end pooling requirements. The amount and percentages of equity funds available may be changed administratively by FmHA based upon use and/or need for funds.

(D) *Housing demonstration program.* Subject to the Secretary's authorization, an amount of $7,000,000 will be set aside for the Rural Rental Housing Diversity Demonstration Program (RRHDDP). A comparable amount of RA will also be set aside. Further guidance will be published in the Federal Register on application processing procedures and program implementation.

7. *Pooling of Funds.* a. *State Office Pooling.* In States which allocate funds to Districts, States are not authorized to pool unobligated funds prior to May 1, 1994.

b. *National Office Pooling.* Unused RRH funds will be placed in the National Office reserve and will be made available administratively. Year-end pooling of all RRH funds is scheduled for close of business (COB), August 15, 1994.

8. *Availability of the Allocation.* States are authorized to approve, during the first quarter of FY 94, up to 40 percent of their RRH allocation indicated in this notice and up to 70 percent during the second quarter. The remaining balances are fully available in the third and fourth quarters. In States that do not have sufficient funds to obligate at least one project during the first or second quarters, the State Director may request authorization from the Director, MFHPD, to exceed the designated percentages. Patch-outs may be authorized from next quarter allocations. A patch-out may not exceed 30 percent of the total loan obligation. In States with net allocations greater than $4 million, the State Director may authorize Form AD–622s not to exceed 150 percent of the net annual allocation available to the State. In States with net allocations less than $4 million, the State Director may authorize Form AD–622s not to exceed 200 percent of the net annual allocation available to the State.

9. *Suballocation by the State Director.* Funds may be suballocated to District Offices, at the discretion of the State Director, in accordance with § 1940.552(j) of subpart L of part 1940 of this chapter.

B. Rental Assistance (RA)

1. *Valuation of New Construction RA.* A total of $116,500,000 is available for RRH new construction RA and $4,000,000 for FLH new construction RA. These equate to an estimated 10,759 units for the RRH and FLH loan programs. To determine the number of RA units available nationwide, a national weighted average of $11,200 was utilized for new construction RA. All RA units held in the reserves are estimated, based on the national average.

2. *Estimated units available for allocation.*

Estimated total units available	10,759
FLH	357
RRH	10,402
Less NPSA	900
Less RRH reserve (RHTSA and General)	1,352
Less RRH base allocation	216
Less RRH administrative allocation	100
Basic RRH formula amount	7,834

3. *Base Allocation.* The base allocation is an amount above the computed formula sufficient for each State to receive 50 units of RA to assist at least three RRH projects with an average amount of RA.

4. *Administrative Allocation.* The regions of the Western Pacific Areas and the Virgin Islands are each allocated 50 units of RA to assist at least three RRH projects with an average amount of RA.

5. *NPSA.* Approximately 900 units of new construction RA have been set aside in the National Office for certain nonprofit applicants. See exhibit B of subpart L of part 1940 of this chapter for further information on the NPSA.

6. *Reserves.* The National Office reserve has been reduced to allocate more RA to States.

a. *State Office Reserve.* In States which allocate funds and RA to Districts, § 1940.552(j) of subpart L of part 1940 of this chapter authorizes the State Director to hold a reserve. Such reserves, if established, will be limited only to patch-outs and leveraging under the RHTSA, NPSA, hardships or emergency situations. The State Director will maintain records on how the State Office reserves are utilized, including a justification for each disbursement.

b. *National Office Reserve.* A reserve of approximately 1,352 units is being held for RRH, which includes 800 units for the RHTSA. The 357 units of RA for FLH are also held in a separate reserve. The reserve is broken down as follows:

(i) *General RRH Reserve.* A total of approximately 362 units of RA have been reserved. Except for patch-outs, hardships or emergency situations, or additional units needed to assist a State in utilizing its full allocation of funds, RA units may not be requested until June 1, 1994. Further guidance on how to access reserve RA will be published administratively prior to June 1, 1994.

(ii) *Designated Reserves.* (A) *RHTSA.* A total of approximately 800 units of RA have been reserved under a targeting set aside program for those counties designated as underserved. Further guidance on accessing this reserve will be provided at a later date.

(B) *FLH.* The 357 RA units for FLH new construction are being retained in a separate FLH reserve. Written requests for the FLH reserve may be made by State Directors in conjunction with FLH loan and grant requests, on a case-by-case basis, to the Director, MFHPD.

7. *Pooling of RA.* a. *State Office Pooling.* The States which allocate RA to Districts are not authorized to pool unobligated RA prior to May 1, 1994.

b. *National Office Pooling.* Unused RA units will be placed in the National Office reserve and will be made available administratively. Year-end pooling of RA for RRH is scheduled for COB, August 15, 1994.

8. *Availability of the Allocation.* States are authorized to approve, during the first quarter, up to 40 percent of their RA allocation indicated in this notice and up to 70 percent during the second quarter. The remaining balances are fully available in the third and fourth quarters. In States that do not have sufficient RA for at least one project during the first and second quarters, the State Directory may request authorization from the Director, MFHPD, to exceed the designated percentages. Patch-outs may be authorized from next quarter allotments. Patch-outs may not exceed 30 percent of the total RA obligation. The market should determine the need for the number of RA units assigned to a project, keeping in mind that at least 95 percent of the new construction RA assigned to a complex must be made available to serve very-low income tenants, as established in § 1944.215(i)(3) of subpart E of part 1944 of this chapter. In States with net allocations greater than $4 million, the State Director may authorize Form AD–622s not to exceed 150 percent of the

net annual allocation available to the State. In States with net allocations less than $4 million, the State Director may authorize Form AD–622s not to exceed 200 percent of the net annual allocation available to the State.

9. *Suballocation by the State Director.* RA units may be suballocated to District Offices, at the discretion of the State Director, in accordance with § 1940.552(j) of subpart L of part 1940 of this chapter.

10. *Approval and Obligation of RA.* Loans will only be obligated when sufficient RA to ensure market feasibility can be obligated at the same time. RA for loans obligated in a prior fiscal year will not be authorized.

C. Section 533 Housing Preservation Grants (HPG)

1. *Amount for allocation.*

Total available	$23,000,000
Less reserve	2,300,000
Less base allocation	5,300,000
Less administrative allocation	0
Basic formula amount	15,400,000

2. *Base allocation.* The base allocation is equal to the anticipated size of an average 1-year HPG proposal ($100,000) times the number of States and regions. The regions of the Western Pacific Areas and Virginia Islands received base allocations for FY 94.

3. *Administrative Allocations.* Not used.

4. *Reserve.* Allocated funds must be used prior to requesting reserve funds. Further guidance on accessing the National reserve will be published at a later date.

5. *Rounding of Initial Allocations.* HPG initial allocations have been rounded to the nearest $10.

6. *Pooling of Funds.* Funds in excess of the dollar amount of applications on hand will be returned to the National Office reserve for redistribution.

7. *Availability of the Allocation.* HPG is a competitive grant program. Opening and closing dates for submission of preapplications will be announced in the **Federal Register**. At this time, it is estimated that the 90-day preapplication period should begin on/or about January 1, 1994, subsequent to publication of revised HPG regulations permitting rental housing rehabilitation proposals and changing the selection criteria. (This date may be revised as well as the pooling date, depending on the publication of the announcement). Subsequent to review and ranking of preapplications and submission of final applications, States are authorized to obligate HPG requests in amounts not to exceed those reflected in this notice.

III. Exception Authority.

The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this notice which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect intent of the authorizing statute and/or RRH program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the MFHPD. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage for set-asides and/or the reserve, or restrict participation in set-asides and/or reserves.

IV. [Reserved]

V. [Reserved]

Single Family Housing (SFH)

I. General

A. This provides SFH allocations available to individual States for Fiscal Year 1994 (FY 94). Allocation computations have been made in accordance with §§ 1940.563 through 1940.568 of subpart L of part 1940 of this chapter. Each State director will make certain that this subpart is implemented within his/her jurisdiction.

B. SFH loan and grant levels authorized for FY 94 are as follows:

Section 502 Direct Rural Housing (RH) Loans:	
Very Low-income Subsidized Loans	$720,000,000
Low-income Subsidized Loans	1,030,000,000
Nonsubsidized Loans (See paragraphs I C 5 and I C 6 of the SFH section of this notice)	50,000,000
Section 502 Guaranteed RH Loans:	
Nonsubsidized Guarantees	750,000,000
Subsidized Guarantees	0
Section 504 Housing Repair Loans	35,000,000
Section 504 Housing Repair Grants*	25,000,000
Section 509 Compensation for Construction Defects*	500,000
Section 523 Self-Help Site Loans	622,000
Section 523 Self-Help Technical Assistance Grants*	12,750,000
Section 524 RH Site Loans	600,000
Supplemental Disaster Appropriations FY 93–June 30, 1994:	
Section 504 Loans	15,000,000
Section 504 Grants	15,000,000

* Unobligated/canceled funds from prior fiscal year(s) will be added to the amount shown.

C. SFH loan and grant types not allocated to States are available on a first-come-first-served basis as follows:

1. *Section 523 Self-Help Technical Assistance Grants.* Before obligating funds, State Directors must request them in writing and transmit by facsimile to National Office.

2. *Section 523 Self-Help Site Loans.* Before obligating loan funds for any project, the State Director must request funding authority from the National Office.

3. *Section 524 RH Site Loans.* Prior to loan approval, the State Director must request funding authority from the National Office.

4. *Section 509 Compensation for Construction Defects.* Prior to approval, the State Director must request and receive written funding authority from the National Office.

5. *Section 502 Nonsubsidized Funds (loan making).* a. An initial amount of $25 million has been set aside from the National Office section 502 reserve for nonsubsidized loans for loan making other than servicing actions. These funds can be increased or decreased at the discretion of the National Office, based on need and the projected availability of unobligated funds. Each State will be given an initial distribution of $400,000 and additional funds can be requested by contacting the National Office. State Directors must make this request in writing and transmit by facsimile to the National Office.

b. These funds are only for very low- and low-income applicants who are otherwise eligible for assistance, but based on the amount of the loan requested, the interest credit assistance formula results in no interest credit. These funds are to be used for loans on new or existing construction not currently financed or owned by Farmers Home Administration (FmHA).

6. *Section 502 Nonsubsidized Funds (loan servicing).* a. An initial amount of $25 million has been set aside from the National Office section 502 reserve for nonsubsidized loans for servicing actions. These funds can be increased or decreased at the discretion of the National Office, based on need and the

projected availability of unobligated funds. Request for additional increments of $50,000 or less will be considered at any given time. Each State will be given an initial distribution of $400,000 and the State Director must request in writing and transmit by facsimile to the National Office.

b. These funds will be used only for subsequent loans on properties currently financed with FmHA loan funds. Loans to above moderate-income families or persons are not authorized. Loans to very low-, low-, and moderate-income applicants/borrowers who do not qualify for interest credit assistance are authorized only for the following purposes:

(i) Subsequent loans for repair and rehabilitation.

(ii) The subsequent loan part only (i.e., repair or rehabilitation or the payment of equity) in connection with transfers by assumption or credit sales.

D. *Deferred Mortgage Payment Demonstration.* 1. The Agency has the authority to use up to $50,664,000 of Section 502 funds or credit sales in FY 94 in conjunction with the Deferred Mortgage Payment Demonstration (DMPD) program. Each State will be given an initial authority to use $600,000 for loan purposes under the DMPD program. Additional authority for the DMPD program may be requested based on need and subject to availability by contacting the National Office. To use the DMPD program authority, the State must have unobligated very low-income fund balances or obtain additional very low-income funds from the National Office. All funds are subject to the pooling requirements of this subpart, but the Administrator may pool funds at any time it is necessary.

2. Deferred mortgage loans will be obligated as directed by the State. Before rejecting a very low-income applicant, the County Supervisor must document indicating that deferred mortgage loan assistance has been considered. New loans obligated will go against the State's very low-income allocation. The State Director must add the very low-income obligations and the deferred mortgage obligations together to determine the full amount of very low-income usage.

3. [Reserved]

E. Supplemental Disaster Appropriations for FY 93–June 30, 1994

1. A supplemental appropriation of Section 504 loan and grant funds is available to assist homeowners that suffer uncompensated losses due to a Presidentially declared major natural disaster occurring in calendar year 1993. These funds are available through June 30, 1994. To be eligible, the homeowner must otherwise qualify for the program, and have an uncompensated loss due to a Presidentially declared disaster.

2. All funds will be retained in the National Office reserve.

II. State Allocations

All allocations have been developed with the methodology and formulas stated in this subpart. The funds distributed to each State for a particular quarter may exceed the funds available nationally for all States. Therefore, if funds become exhausted at the National Office level, some States will not have access to their full distribution for the remainder of the quarter.

A. Section 502 Nonsubsidized Guaranteed RH Loans

1. Amount Available for Allocation

Total Available	$750,000,000
Less National Office Reserve	112,500,000
Less Base Allocation	0
Less Administrative Allocation	1,000,000
Basic Formula Amount	636,500,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.563(b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office).

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* The base allocation is an amount, if any, above the computed formula allocation necessary for each State to receive a total allocation sufficient to run a viable program (at least $1 million).

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis and should be submitted via facsimile by the State Director to the National Office.

7. *Pooling of Funds.* Funds will be pooled and redistributed. The Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business on August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters as follows: 45 percent through the first quarter, 75 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director will retain these funds at the State Office level. Funds will not be suballocated to District or County Offices. Each State Director may set aside up to 50 percent of the State's allocation for specific lender requests. Funds which are set aside will be made available to lenders as follows:

a. The lender must make a request to the State Director for a block of funds.

b. The lender must demonstrate the ability to correctly process the requested volume of loan funds before July 1, 1994.

c. If the lender is not showing satisfactory progress in use of its set aside funds, the State Director may recapture these funds prior to July 1, 1994, by giving the lender 30-days advance notice.

d. Funds will be set aside on a first-come-first-served basis. No lender may receive more than 50 percent of the total funds eligible for set aside in the State.

B. Section 502 Direct RH Loans

1. Amount Available for Allocation

Total Available	$1,800,000,000
Less General Reserve	49,000,000
Less Designated Reserves	195,900,000
Less Administrative Allocation	6,394,000
Basic Formula Amount	1,548,706,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.565(b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office).

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* Not applicable for use this fiscal year by the National Office or by State Offices.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.*

a. *State Office Reserve.* State Directors will maintain sufficient funds in the State Office reserve only to fund loan types described in § 1944.26(b)(2)(i) and (ii) of subpart A of part 1944 of this chapter. The State Director will maintain records on how State Office reserves were utilized, including a justification for each hardship case disbursement. Each State Director must

establish management controls to make certain that loans are processed only to the point of approval unless allocated funds are available or prior approval has been received for sufficient National Office reserve funds to obligate the loans.

b. *National Office Reserve.*

(i) *General Reserve.* Use of these reserve funds will be limited to providing funds to States to handle unforeseen circumstances which cannot be funded with the State's available allocation. Reserve requests should be submitted via facsimile by State Directors to the National Office, on a case-by-case basis. Subject to the availability of funds at the National level, an advance from the formula allocation for the next quarter may also be requested. Based upon need and projected availability of unobligated funds, the Administrator reserves the right to permit expanded access to funds from the National Office without notice in the **Federal Register**.

(ii) *Designated Reserves.*

(A) *Section 502 Nonsubsidized Funds (loan making).* See paragraph I C 5 of the SFH section of this notice.

(B) *Section 502 Nonsubsidized Funds (loan servicing).* See paragraph I C 6 of the SFH section of this notice.

(C) *Rural Housing Targeting Set-Aside (RHTSA).* Of the FY 94 Section 502 appropriation, $90 million (5 percent) has been set aside for RHTSA.

(D) *Demonstration Housing Program.* Section 502 RH funds in the amount of $13.9 amount of million has been set aside for the demonstration housing program and will be designated on a project-by-project basis. Designated funds will be allotted 60 percent of low-income and 40 percent for very low-income. All funds are subject to the pooling requirements of Subpart L of Part 1940 of this chapter.

(E) *Matching Funds for States with Approved Mutual Self-Help Housing Grants.* The amount of $42 million of FY 94 section 502 appropriation has been set aside for matching funds on the basis of the National Office contributing 80 percent from the National Office reserve to the individual State's 20 percent of allocated section 502 RH funds used to assist participating self-help families. Funds are to be requested for the participating families at the time of loan approval. Requests for these funds should be submitted in writing by State Directors to the National Office. Not less than 40 percent of these funds (States or reserved) must be very low-income section 502.

7. *Pooling of Funds.*

a. *State Office Pooling.* If the pooling is conducted within a State, it must not take place more than 15 calendar days prior to the end of the first, second, and/or third quarter. If fourth quarter pooling is conducted within a State, it must not take place more than 15 calendar days prior to the National Office year-end pooling date. These pooled funds may be redistributed by the State Director provided the State Director has determined that the pooled funds could not be used in the District/County Offices receiving the funds allocated.

b. *National Office Pooling.* Funds will be pooled and redistributed. The Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated very low- and low-income funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* The Housing Act of 1949, as amended, provides that not less than 40 percent of the funds be made available for very low-income Section 502 loan applicants. Funds will be distributed by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director must suballocate to each District Office using the methodology and formulas required by this subpart. The District Director will make funds available on a first-come-first-served basis to all County Offices in the District. Funds will not be suballocated to County Offices without the prior written approval of the Administrator. No County Office will have its access to funds restricted without the prior written approval of the Administrator.

C. Section 504 Housing Repair Loans

1. *Amount Available for Allocations.*

Total Available	$35,000,000
Less General Reserve	2,450,000
Less Designated RHTSA Reserve	1,750,000
Less Administrative Allocation	2,329,000
Basic Formula Amount	28,471,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.566(b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office). This data must be used if funds are suballocated to District Offices.

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* Not applicable for use this fiscal year by the National Office or State Offices.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis and should be submitted via facsimile by the State Director to the National Office.

7. *Pooling of Funds.* Funds will be pooled and redistributed. If funding utilization is slow, the Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters as follows: 40 percent through the first quarter, 70 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

D. Section 504 Housing Repair Grants

1. *Amount Available for Allocations*

Total Available	$25,000,000
Less General Reserve	1,750,000
Less Designated RHTSA Reserve	1,250,000
Less Administrative Allocation	600,000
Basic Formula Amount	21,400,000

2. *Basic Formula Criteria, Data Source, and Weight.* See § 1940.567 (b) of subpart L of part 1940 of this chapter. Data derived from the 1990 U.S. Census was provided to each State by the National Office on August 12, 1993 (available in any FmHA State Office). This data must be used if funds are suballocated to District Offices.

3. *Transition Formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base Allocation.* Not applicable for use this fiscal year by the National Office or by State Offices.

5. *Administrative Allocation.* Due to the absence of Census Data, the Western Pacific Areas received an administrative allocation.

6. *Reserve.* Requests for National Office reserve funds will be considered on a first-come-first-served basis and should be submitted via facsimile by the Stat Director to the National Office.

7. *Pooling of Funds.* Funds will be pooled and redistributed. If funding utilization is slow, the Administrator may use a mid-year pooling as of the close of business on May 2, 1994. If utilized, all States' unobligated funds will be reallocated and distributed by formulas. Year-end pooling is tentatively scheduled for close of business on August 15, 1994. Year-end pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the Allocation.* Funds will be distributed by quarters as follows: 30 percent through the first quarter, 65 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

III. *Exception Authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this Notice which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or SFH program or result in an undue hardship applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the SFHPD. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from set asides and/or the reserve, or restrict participation in set asides and/or reserves.

The following spreadsheets allocate FY 94 MFH and SFH loan and grant funds to individual States:

MULTI-FAMILY HOUSING SECTION 515, RURAL RENTAL HOUSING ALLOCATIONS (THOUSANDS)

[Fiscal Year 1994]

State	Formula factor	Formula alloc.	Base/ admin.	Total FY 94	Less non-profit set aside	Net RRH alloc.	RA Units		
							Formula alloc.	Base/ admin	Total FY 94
Alabama	0.2957	$12,884	0	$12,884	$1,160	$11,724	234	0	234
Alaska	0.00587	2,558	192	2,750	248	2,502	46	4	50
Arizona	0.01780	7,756	0	7,756	698	7,058	141	0	141
Arkansas	0.02310	10,065	0	10,065	906	9,159	183	0	183
California	0.04653	20,274	0	20,274	1,825	18,449	369	0	369
Colorado	0.00840	3,660	0	3,660	329	3,331	67	0	67
Delaware	0.00190	828	1,922	2,750	248	2,502	15	35	50
Maryland	0.00860	3,834	0	3,834	345	3,489	70	0	70
Florida	0.02890	12,592	0	12,592	1,133	11,459	229	0	229
Georgia	0.03867	16,849	0	16,849	1,516	15,333	306	0	306
Hawaii	0.00617	2,688	62	2,750	248	2,502	49	1	50
W. Pacific Areas	0.00000	0	2,750	2,750	248	2,502	0	50	50
Idaho	0.00743	3,237	0	3,237	291	2,946	59	0	59
Illinois	0.02250	9,803	0	9,803	882	8,921	178	0	178
Indiana	0.02157	9,398	0	9,398	846	8,552	171	0	171
Iowa	0.01340	5,839	0	5,839	526	5,313	106	0	106
Kansas	0.01130	4,924	0	4,924	443	4,481	90	0	90
Kentucky	0.03483	15,176	0	15,176	1,366	13,810	276	0	276
Louisiana	0.03170	13,812	0	13,812	1,243	12,569	251	0	251
Maine	0.00913	3,978	0	3,978	358	3,620	72	0	72
Massachusetts	0.00793	3,455	0	3,455	311	3,144	63	0	63
Connecticut	0.00453	1,974	776	2,750	248	2,502	36	14	50
Rhode Island	0.00100	436	2,314	2,750	248	2,502	8	42	50
Michigan	0.02977	12,971	0	12,971	1,167	11,804	236	0	236
Minnesota	0.01673	7,289	0	7,289	656	6,633	133	0	133
Mississippi	0.03180	13,856	0	13,856	1,247	12,609	252	0	252
Missouri	0.02460	10,718	0	10,718	965	9,753	195	0	195
Montana	0.00620	2,701	49	2,750	248	2,502	49	1	50
Nebraska	0.00713	3,107	0	3,107	280	2,827	56	0	56
Nevada	0.00263	1,146	1,604	2,750	248	2,502	21	29	50
New Jersey	0.00657	2,863	0	2,863	258	2,605	52	0	52
New Mexico	0.01437	6,261	0	6,261	563	5,698	114	0	114
New York	0.02753	11,995	0	11,995	1,080	10,915	218	0	218
North Carolina	0.04497	19,594	0	19,594	1,763	17,831	356	0	356
North Dakota	0.00413	1,799	951	2,750	248	2,502	33	17	50
Ohio	0.03450	15,032	0	15,032	1,353	13,679	273	0	273
Oklahoma	0.01917	8,353	0	8,353	752	7,601	152	0	152
Oregon	0.01423	6,200	0	6,200	558	5,642	113	0	113
Pennsylvania	0.03687	16,065	0	16,065	1,446	14,619	292	0	292
Puerto Rico	0.04923	21,450	0	21,450	1,931	19,519	390	0	390
South Carolina	0.02690	11,721	0	11,721	1,055	10,666	213	0	213
South Dakota	0.00597	2,601	149	2,750	248	2,502	47	3	50
Tennessee	0.02973	12,954	0	12,954	1,166	11,788	235	0	235
Texas	0.07640	33,288	0	33,288	2,996	30,292	605	0	605
Utah	0.00430	1,874	876	2,750	248	2,502	34	16	50
Vermont	0.00403	1,756	994	2,750	248	2,502	32	18	50

MULTI-FAMILY HOUSING SECTION 515, RURAL RENTAL HOUSING ALLOCATIONS (THOUSANDS)—Continued

[Fiscal Year 1994]

State	Formula factor	Formula alloc.	Base/ admin.	Total FY 94	Less non-profit set aside	Net RRH alloc.	RA Units		
							Formula alloc.	Base/ admin	Total FY 94
New Hampshire	0.00503	2,192	558	2,750	248	2,502	40	10	50
Virgin Islands	0.00000	0	2,750	2,750	248	2,502	0	50	50
Virginia	0.02660	11,590	0	11,590	1,043	10,547	211	0	211
Washington	0.01743	7,594	0	7,594	683	6,911	138	0	138
West Virginia	0.01937	8,440	0	8,440	760	7,680	153	0	153
Wisconsin	0.01873	8,161	0	8,161	734	7,427	148	0	148
Wyoming	0.00307	1,338	1,412	2,750	248	2,502	24	26	50
State Totals	0.10000000	430,930	17,359	448,289	407,354	407,934	7,834	316	8,150
N/O Reserves	0.0			91,818					2,252
FLH RA Units	0.0								357
Totals	0.0			540,107					10,759

MULTI-FAMILY HOUSING SECTION 533, HPG INITIAL ALLOCATIONS—FISCAL YEAR 1994

State	Base allocation	Basic formula factor	Basic formula amount	Total amount	FY 94 initial allocation
Alabama	100,000	0.02957	$455,378	$555,378	$555,380
Alaska	100,000	0.00587	90,398	190,398	190,400
Arizona	100,000	0.01780	274,120	374,120	374,120
Arkansas	100,000	0.02310	355,740	455,740	455,740
California	100,000	0.04653	716,562	816,562	816,560
Colorado	100,000	0.00840	129,360	229,360	229,360
Delaware	100,000	0.00190	29,260	129,260	129,260
Maryland	100,000	0.00880	135,520	235,520	235,520
Florida	100,000	0.02890	445,060	545,060	545,060
Georgia	100,000	0.03867	595,518	695,518	695,520
Hawaii	100,000	0.00617	95,018	195,018	195,020
W. Pac. Terr.	100,000	0.00820	126,280	226,280	226,280
Idaho	100,000	0.00743	114,422	214,422	214,420
Illinois	100,000	0.02250	346,500	446,500	446,500
Indiana	100,000	0.02157	332,178	432,178	432,180
Iowa	100,000	0.01340	206,360	306,360	306,360
Kansas	100,000	0.01130	174,020	274,020	274,020
Kentucky	100,000	0.03483	536,382	636,382	636,380
Louisiana	100,000	0.03170	488,180	588,180	588,180
Maine	100,000	0.00913	140,602	240,602	240,600
Massachusetts	100,000	0.00793	122,122	222,122	222,120
Connecticut	100,000	0.00453	69,762	169,762	169,760
Rhode Island	100,000	0.00105	16,170	116,170	116,180
Michigan	100,000	0.02977	458,458	558,458	558,460
Minnesota	100,000	0.01673	257,642	357,642	357,640
Mississippi	100,000	0.03180	489,720	589,720	589,720
Missouri	100,000	0.02460	378,840	478,840	478,840
Montana	100,000	0.00620	95,480	195,480	195,480
Nebraska	100,000	0.00713	109,802	209,802	209,800
New Jersey	100,000	0.00657	101,178	201,178	201,180
New Mexico	100,000	0.01437	221,298	321,298	321,300
Nevada	100,000	0.00263	40,502	140,502	140,500
New York	100,000	0.02753	423,962	523,962	523,960
North Carolina	100,000	0.04497	692,538	792,538	792,540
North Dakota	100,000	0.00413	63,602	163,602	163,600
Ohio	100,000	0.03450	531,300	631,300	631,300
Oklahoma	100,000	0.01917	295,218	395,218	395,220
Oregon	100,000	0.01423	219,142	319,142	319,140
Pennsylvania	100,000	0.03687	567,798	667,798	667,800
Puerto Rico	100,000	0.04923	758,142	858,142	858,140
South Carolina	100,000	0.02690	414,260	514,260	514,260
South Dakota	100,000	0.00597	91,938	191,938	191,940
Tennessee	100,000	0.02973	457,842	557,842	557,840
Texas	100,000	0.07640	1,176,560	1,276,560	1,276,560
Utah	100,000	0.00430	66,220	166,220	166,220
Vermont	100,000	0.00403	62,062	162,062	162,060
New Hampshire	100,000	0.00503	77,462	177,462	177,460
Virgin Islands	100,000	0.00273	42,042	142,042	142,040
Virginia	100,000	0.02660	409,640	509,640	509,640

MULTI-FAMILY HOUSING SECTION 533, HPG INITIAL ALLOCATIONS—FISCAL YEAR 1994—Continued

State	Base allocation	Basic formula factor	Basic formula amount	Total amount	FY 94 initial allocation
Washington	100,000	0.01743	268,422	368,422	368,420
West Virginia	100,000	0.01937	298,298	398,298	398,300
Wisconsin	100,000	0.01873	288,442	388,442	388,440
Wyoming	100,000	0.00307	47,278	147,278	147,280
State Totals	5,300,000	.....	15,400,000	.....	20,700,000
N.O. Reserves	.....	.....	.....	.....	2,300,000
Total Allocation	23,000,000	.....	.....	.....	23,000,000

MULTI-FAMILY HOUSING SECTION 521, RENTAL ASSISTANCE 5 YEAR UNIT VALUES

[Fiscal Year 1994]

State	Family value renewal	Elderly value renewal	Labor housing renewal	New const. weighted RA value
Alabama	12,280	11,521	12,280	11,400
Alaska	15,410	15,410	15,410	17,378
Arizona	15,763	13,885	15,763	14,474
Arkansas	12,925	12,414	12,925	10,485
California	13,070	11,360	13,070	11,131
Colorado	13,246	13,028	13,246	10,986
Delaware	15,306	15,306	15,306	14,748
Maryland	15,248	14,214	15,248	14,681
Florida	9,313	11,432	9,313	10,177
Georgia	10,802	6,703	10,802	8,333
Hawaii	15,276	17,496	15,276	12,996
Western Pacific Areas	14,474	16,396	14,474	10,898
Idaho	13,878	9,249	13,878	10,581
Illinois	12,793	10,067	12,793	10,168
Indiana	10,394	8,549	10,394	8,941
Iowa	12,398	6,574	12,398	9,334
Kansas	12,671	6,164	12,671	8,328
Kentucky	12,660	10,129	12,660	11,057
Louisiana	13,649	11,127	13,649	12,169
Maine	17,313	16,176	17,313	18,807
Massachusetts	21,789	16,878	21,789	16,392
Connecticut	11,933	14,605	11,933	13,576
Rhode Island	16,391	16,391	16,391	15,805
Michigan	11,953	11,676	11,953	8,024
Minnesota	11,546	10,073	11,546	9,799
Mississippi	12,138	11,126	12,138	11,284
Missouri	9,429	7,502	9,429	7,862
Montana	11,026	5,629	11,026	9,746
Nebraska	10,574	10,001	10,574	8,129
Nevada	13,194	14,826	12,518	13,243
New Jersey	26,865	18,200	26,865	20,028
New Mexico	15,370	11,972	15,370	13,287
New York	13,909	14,865	13,909	12,909
North Carolina	13,416	15,968	13,416	12,879
North Dakota	10,770	6,598	10,779	8,920
Ohio	11,752	8,621	11,752	9,740
Oklahoma	12,290	10,115	12,290	9,864
Oregon	13,156	8,594	13,156	10,673
Pennsylvania	14,173	10,705	14,173	11,237
Puerto Rico	18,437	18,437	18,437	15,487
South Carolina	13,444	11,209	13,444	11,994
South Dakota	11,002	7,560	11,002	12,042
Tennessee	11,967	11,967	11,967	9,782
Texas	12,764	5,068	12,764	10,229
Utah	14,543	7,679	14,543	12,819
Vermont	14,626	15,281	14,626	15,878
New Hampshire	15,745	17,152	15,745	15,174
Virgin Islands	29,832	26,487	29,832	22,197
Virginia	12,722	10,994	12,722	10,583
Washington	12,465	10,216	12,465	9,566
West Virginia	13,723	10,167	13,723	9,617
Wisconsin	11,991	7,575	11,991	9,004
Wyoming	11,303	9,055	11,303	10,599

MULTI-FAMILY HOUSING SECTION 521, RENTAL ASSISTANCE 5 YEAR UNIT VALUES—Continued

[Fiscal Year 1994]

State	Family value renewal	Elderly value renewal	Labor housing renewal	New const. weighted RA value
National average	.....	.....	.....	11,200

* Weighted national average

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 502 GUARANTEED LOANS

[Nonsubsidized]

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0253847	16,157	N/A	16,157
Alaska	0.0061561	3,918	N/A	3,918
Arizona	0.0155290	9,884	N/A	9,884
Arkansas	0.0213661	13,600	N/A	13,600
California	0.0524861	33,407	N/A	33,407
Colorado	0.0100701	6,410	N/A	6,410
Delaware	0.0024043	1,530	N/A	1,530
Maryland	0.0104750	6,667	N/A	6,667
Florida	0.0308357	19,627	N/A	19,627
Georgia	0.0385293	24,524	N/A	24,524
Hawaii	0.0083323	5,303	N/A	5,303
W. Pacific Areas	N/A	N/A	1,000	1,000
Idaho	0.0077774	4,950	N/A	4,950
Illinois	0.0256395	16,320	N/A	16,320
Indiana	0.0236023	15,023	N/A	15,023
Iowa	0.0151422	9,638	N/A	9,638
Kansas	0.0123032	7,831	N/A	7,831
Kentucky	0.0286790	18,254	N/A	18,254
Louisiana	0.0256223	16,309	N/A	16,309
Maine	0.0113916	7,251	N/A	7,251
Massachusetts	0.0117468	7,477	N/A	7,477
Connecticut	0.0065708	4,182	N/A	4,182
Rhode Island	0.0017216	1,096	N/A	1,096
Michigan	0.0337181	21,462	N/A	21,462
Minnesota	0.0184738	11,759	N/A	11,759
Mississippi	0.0259670	16,528	N/A	16,528
Missouri	0.0253687	16,147	N/A	16,147
Montana	0.0067138	4,273	N/A	4,273
Nebraska	0.0083216	5,297	N/A	5,297
Nevada	0.0029735	1,893	N/A	1,893
New Jersey	0.0091825	5,845	N/A	5,845
New Mexico	0.0117200	7,460	N/A	7,460
New York	0.0369739	23,534	N/A	23,534
North Carolina	0.0471742	30,026	N/A	30,026
North Dakota	0.0040847	2,600	N/A	2,600
Ohio	0.0378081	24,065	N/A	24,065
Oklahoma	0.0175713	11,184	N/A	11,184
Oregon	0.0166212	10,579	N/A	10,579
Pennsylvania	0.0438367	27,902	N/A	27,902
Puerto Rico	0.0250931	15,972	N/A	15,972
South Carolina	0.0249510	15,881	N/A	15,881
South Dakota	0.0065435	4,165	N/A	4,165
Tennessee	0.0276859	17,622	N/A	17,622
Texas	0.0665018	42,327	N/A	42,327
Utah	0.0039861	2,537	N/A	2,537
Vermont	0.0057475	3,658	N/A	3,658
New Hampshire	0.0075234	4,789	N/A	4,789
Virgin Islands	0.0027236	1,734	N/A	1,734
Virginia	0.0278404	17,720	N/A	17,720
Washington	0.0200905	12,788	N/A	12,788
West Virginia	0.0172518	10,981	N/A	10,981
Wisconsin	0.0222857	14,186	N/A	14,186
Wyoming	0.0035006	2,228	N/A	2,228
State totals	1.0000000	636,500	1,000	637,500
General reserve	.....	.....	.....	112,500
Designated reserves	.....	.....	.....	0
Total	.....	.....	.....	750,000

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 502 DIRECT RURAL HOUSING LOANS

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0267275	41,393	N/A	41,393
Alaska	0.0055160	8,543	N/A	8,543
Arizona	0.0145422	22,522	N/A	22,522
Arkansas	0.0208104	32,229	N/A	32,229
California	0.0454819	70,438	N/A	70,438
Colorado	0.0091766	14,212	N/A	14,212
Delaware	0.0024571	3,805	N/A	3,805
Maryland	0.0115334	17,862	N/A	17,862
Florida	0.0312406	48,383	N/A	48,383
Georgia	0.0374586	58,012	N/A	58,012
Hawaii	0.0067195	10,407	N/A	10,407
W. Pacific areas	N/A	N/A	6,394	6,394
Idaho	0.0076722	11,882	N/A	11,882
Illinois	0.0266774	41,315	N/A	41,315
Indiana	0.0270785	41,937	N/A	41,937
Iowa	0.0163474	25,317	N/A	25,317
Kansas	0.0127369	19,726	N/A	19,726
Kentucky	0.0288838	44,732	N/A	44,732
Louisiana	0.0246715	38,209	N/A	38,209
Maine	0.0108314	16,775	N/A	16,775
Massachusetts	0.0109818	17,008	N/A	17,008
Connecticut	0.0066693	10,329	N/A	10,329
Rhode Island	0.0015545	2,407	N/A	2,407
Michigan	0.0353525	54,751	N/A	54,751
Minnesota	0.0199077	30,831	N/A	30,831
Mississippi	0.0250226	38,753	N/A	38,753
Missouri	0.0252733	39,141	N/A	39,141
Montana	0.0063685	9,863	N/A	9,863
Nebraska	0.0086752	13,435	N/A	13,435
Nevada	0.0028583	4,427	N/A	4,427
New Jersey	0.0097784	15,144	N/A	15,144
New Mexico	0.0110320	17,085	N/A	17,085
New York	0.0359041	55,605	N/A	55,605
North Carolina	0.0484405	75,020	N/A	75,020
North Dakota	0.0045131	6,989	N/A	6,989
Ohio	0.0390131	60,420	N/A	60,420
Oklahoma	0.0174005	26,948	N/A	26,948
Oregon	0.0154949	23,997	N/A	23,997
Pennsylvania	0.0467857	72,457	N/A	72,457
Puerto Rico	0.0239695	37,122	N/A	37,122
South Carolina	0.0258249	39,995	N/A	39,995
South Dakota	0.0062682	9,708	N/A	9,708
Tennessee	0.0291846	45,198	N/A	45,198
Texas	0.0660415	102,278	N/A	102,278
Utah	0.0040618	6,291	N/A	6,291
Vermont	0.0052653	8,154	N/A	8,154
New Hampshire	0.0072711	11,261	N/A	11,261
Virgin Islands	0.0020058	3,106	N/A	3,106
Virginia	0.0289841	44,888	N/A	44,888
Washington	0.0187042	28,967	N/A	28,967
West Virginia	0.0175008	27,104	N/A	27,104
Wisconsin	0.0237188	36,733	N/A	36,733
Wyoming	0.0036105	5,592	N/A	5,592
State totals	1.0000000	1,548,706	6,394	1,555,100
General reserve	.....	.....	.....	49,000
Designated Reserves	.....	.....	.....	195,900
Total	.....	.....	.....	1,800,000

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 504 RURAL HOUSING LOANS

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0291457	830	N/A	830
Alaska	0.0080402	229	N/A	229
Arizona	0.0201005	572	N/A	572
Arkansas	0.0226131	644	N/A	644

FISCAL YEAR 1994 ALLOCATION IN THOUSANDS, SECTION 504 RURAL HOUSING LOANS—Continued

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
California	0.0532663	1,517	N/A	1,517
Colorado	0.0085427	243	N/A	243
Delaware	0.0020101	57	N/A	57
Maryland	0.0095477	272	N/A	272
Florida	0.0296482	844	N/A	844
Georgia	0.0396985	1,130	N/A	1,130
Hawaii	0.0100503	286	N/A	286
W. Pacific areas	N/A	N/A	2,329	2,329
Idaho	0.0075377	215	N/A	215
Illinois	0.0226131	644	N/A	644
Indiana	0.0221106	630	N/A	630
Iowa	0.0130653	372	N/A	372
Kansas	0.0115578	329	N/A	329
Kentucky	0.0321608	916	N/A	916
Louisiana	0.0296482	844	N/A	844
Maine	0.0100503	286	N/A	286
Massachusetts	0.0080402	229	N/A	229
Connecticut	0.0040201	114	N/A	114
Rhode Island	0.0010050	29	N/A	29
Michigan	0.0291457	830	N/A	830
Minnesota	0.0175879	501	N/A	501
Mississippi	0.0301508	858	N/A	858
Missouri	0.0241206	687	N/A	687
Montana	0.0060302	172	N/A	172
Nebraska	0.0070352	200	N/A	200
Nevada	0.0030151	86	N/A	86
New Jersey	0.0070352	200	N/A	200
New Mexico	0.0150754	429	N/A	429
New York	0.0286432	816	N/A	816
North Carolina	0.0477387	1,359	N/A	1,359
North Dakota	0.0040201	114	N/A	114
Ohio	0.0331658	944	N/A	944
Oklahoma	0.0175879	501	N/A	501
Oregon	0.0150754	429	N/A	429
Pennsylvania	0.0371859	1,059	N/A	1,059
Puerto Rico	0.0341709	973	N/A	973
South Carolina	0.0281407	801	N/A	801
South Dakota	0.0060302	172	N/A	172
Tennessee	0.0296482	844	N/A	844
Texas	0.0783920	2,232	N/A	2,232
Utah	0.0040201	114	N/A	114
Vermont	0.0045226	129	N/A	129
New Hampshire	0.0055276	157	N/A	157
Virgin Islands	0.0030151	86	N/A	86
Virginia	0.0296482	844	N/A	844
Washington	0.0185930	529	N/A	529
West Virginia	0.0180905	515	N/A	515
Wisconsin	0.0195980	558	N/A	558
Wyoming	0.0035176	100	N/A	100
State totals	1.0000000	28,471	2,329	30,800
General reserve	.....	.....	.....	2,450
Designated reserves	.....	.....	.....	1,750
Total	.....	.....	.....	35,000

Fiscal Year 1994 ALLOCATION IN THOUSANDS SECTION 504 RURAL HOUSING GRANTS

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Alabama	0.0281124	602	N/A	602
Alaska	0.0056894	122	N/A	122
Arizona	0.0170683	365	N/A	365
Arkansas	0.0224230	480	N/A	480
California	0.0481928	1,031	N/A	1,031
Colorada	0.0083668	179	N/A	179
Delaware	0.0023427	50	N/A	50
Maryland	0.0100402	215	N/A	215

Fiscal Year 1994 ALLOCATION IN THOUSANDS SECTION 504 RURAL HOUSING GRANTS—Continued

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1994 allocation
Florida	0.0341365	731	N/A	731
Georgia	0.0368139	788	N/A	788
Hawaii	0.0076975	165	N/A	165
W. Pacific areas	N/A	N/A	500	500
Idaho	0.0073628	158	N/A	158
Illinois	0.0264391	566	N/A	566
Indiana	0.0244311	523	N/A	523
Iowa	0.0163989	351	N/A	351
Kansas	0.0133866	286	N/A	286
Kentucky	0.0297858	637	N/A	637
Louisiana	0.0261044	559	N/A	559
Maine	0.0103748	222	N/A	222
Massachusetts	0.0097055	208	N/A	208
Connecticut	0.0053548	115	N/A	115
Rhode Island	0.0013387	29	N/A	29
Michigan	0.0317936	680	N/A	680
Minnesota	0.0197456	423	N/A	423
Mississippi	0.0271084	580	N/A	580
Missouri	0.0257697	551	N/A	551
Montana	0.0060241	129	N/A	129
Nebraska	0.0087015	186	N/A	186
Nevada	0.0026774	57	N/A	57
New Jersey	0.0083668	179	N/A	179
New Mexico	0.0123829	265	N/A	265
New York	0.0324632	695	N/A	695
North Carolina	0.0471888	1,010	N/A	1,010
North Dakota	0.0046854	100	N/A	100
Ohio	0.0361446	773	N/A	773
Oklahoma	0.0184070	394	N/A	394
Oregon	0.0157296	337	N/A	337
Pennsylvania	0.0438420	938	N/A	938
Puerto Rico	0.0264391	566	N/A	566
South Carolina	0.0261044	559	N/A	559
South Dakota	0.0063588	136	N/A	136
Tennessee	0.0294511	630	N/A	630
Texas	0.0716198	1,530	N/A	1,530
Utah	0.0036814	79	N/A	79
Vermont	0.0046854	100	N/A	100
New Hampshire	0.0060241	129	N/A	129
Virgin Islands	0.0023427	50	N/A	50
Virginia	0.0284471	609	N/A	609
Washington	0.0184070	394	N/A	394
West Virgina	0.0180723	387	N/A	387
Wisconsin	0.0224230	480	N/A	480
Wyoming	0.0033467	72	N/A	72
State totals	1.0000000	21,400	600	22,000
General reserve	.....	.....	.....	1,750
Designated reserves	.....	.....	1,250	
.....	Total	.....	.....	25,000

Dated: November 8, 1993.

Bob Nash,

Under Secretary for Small Community and Rural Development.

[FR Doc. 93-28004 Filed 11-12-93; 8:45 am]

BILLING CODE 3410-07-M

ARMS CONTROL AND DISARMAMENT AGENCY

Performance Review Board; Membership

AGENCY: Arms Control and Disarmament Agency.

ACTION: Notice of membership of performance review board.

SUMMARY: In accordance with 5 U.S.C. 4314(c)(4), the U.S. Arms Control and Disarmament Agency announces the appointment of Performance Review Board members.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT:

Nancy Aderholdt, Director of Personnel, U.S. Arms Control and Disarmament Agency, Washington, DC 20451 (202) 647-2034.

The following are the names and present titles of the individuals appointed to the register from which Performance Review Boards will be established by the U.S. Arms Control and Disarmament Agency during the period beginning on the effective date of this notice and ending when a new register is published and becomes effective in approximately one year. Specific Performance Review Boards will be established as needed from this register.

These appointments supersede those in the announcement published at 57 FR 48598 on October 27, 1992.

Name	Title
Lisa Farrell	Special Advisor.
Ivo Spalatin	Senior Policy Advisor.
Edward Lacey	Deputy Assistant Director, Intelligence, Verification and Information Support Bureau.
O. James Sheaks	Chief, Verification & Compliance Division, Intelligence, Verification and Information Support Bureau.
Alfred Lieberman	Chief, Operations Analysis and Information Management Office, Intelligence, Verification and Information Support Bureau.
Norman Wulf	Deputy Assistant Director, Nonproliferation and Regional Arms Control Bureau.
Robert Rochlin	Chief Scientist, Nonproliferation and Regional Arms Control Bureau.
Michael Rosenthal	Chief, International Nuclear Affairs Division, Nonproliferation and Regional Arms Control Bureau.
David Clinard	Deputy Assistant Director, Multilateral Affairs Bureau.
Donald Mahley	Associate Assistant Director, Multilateral Affairs Bureau.
William Staples	Chief, Scientific & Technological Policy Division, Multilateral Affairs Bureau.
R. Lucas Fischer	Deputy Assistant Director, Strategic and Eurasian Affairs Bureau.
Stanley Riveles	Chief, Strategic Negotiations & Implementation Division, Strategic and Eurasian Affairs Bureau.
Karin Look	Chief, Strategic Transition Division, Strategic and Eurasian Affairs Bureau.
David Wollan	Chief, Theater and Strategic Defenses Division, Strategic and Eurasian Affairs Bureau.
Robert Summers	Chief, Defense Conversion Division, Strategic and Eurasian Affairs Bureau.
Cathleen Lawrence	Director of Administration, Office of Administration.
Thomas Graham, Jr.	General Counsel.
Mary Elizabeth Hoinkes	Deputy General Counsel.
Norman Clyne	Special Assistant to the General Counsel.
Joerg Menzel	Principal Deputy of the On-Site Inspection Agency.

Cathleen Lawrence,

Director of Administration.

[FR Doc. 93-27928 Filed 11-12-93; 8:45 am]

BILLING CODE 6820-32-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Mississippi Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that the Mississippi Advisory Committee to the Commission will meet on December 6, 1993, from 6 p.m. until 8 p.m. at the Edison Walthall Hotel, 225 East Capitol Street, Jackson, Mississippi 39201. The purpose of the meeting is to discuss and plan for future SAC activities.

Persons desiring additional information, or planning a presentation to the Committee, should contact Melvin L. Jenkins, Director of the Central Regional Office, 816-426-5253 (TTY 816-426-5009). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 4, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93-27896 Filed 11-12-93; 8:45 am]

BILLING CODE 6335-01-P

DEPARTMENT OF COMMERCE

Bureau of the Census

Census Advisory Committee on Agriculture Statistics; Notice of Public Meeting

Pursuant to the Federal Advisory Committee Act (Pub. L. 92-463 as amended by Pub. L. 94-409), we are giving notice of a meeting of the Census Advisory Committee on Agriculture Statistics. The meeting will convene on December 7-8, 1993 at the Bureau of the Census, Federal Building 3, Suitland, Maryland.

The Committee advises the Director, Bureau of the Census, on the kind of information that should be obtained from respondents associated with agricultural production; prepares recommendations regarding the contents of agricultural organizations and their members, and other suppliers of agricultural statistics.

The Committee is composed of 20 members appointed by the presidents of the nonprofit organizations having representatives on the Committee and a representative from the Department of Agriculture.

The agenda for the December 7 meeting that will begin at 9 a.m. and adjourn at 5 p.m. is: 1) Call to order and introduction; 2) overview; 3) General Accounting Office report "Status of 1992 Agriculture and Economic Censuses and Future Challenges"; 4) agriculture census farm definition; 5) national agriculture statistics scope of agricultural coverage; 6) data requirements for "small farms; 7) data on structure and operators; 8) sampling for national and subnational household, economic, farm practices, and other data in the 1997 census; and 9) review of first day.

The agenda for the December 8 meeting that will begin at 9 a.m. and adjourn at 4:15 p.m. is: (1) Follow-up sample surveys for the 1997 census program; (2) data collection methodology for 1997; (3) coverage evaluation for the 1997 census of agriculture; (4) public questions and comments; (5) review and development of recommendations; and (6) nomination and election of chairperson for 1995.

This meeting is open to the public and a brief period is set aside for public comment and questions. Those persons with extensive questions or statements must submit them in writing to the Census Bureau official named below at least 3 days before the meeting.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should also be directed to the Census Bureau official named below.

Persons wishing additional information regarding this meeting or who wish to submit written statements may contact Mr. George Pierce, Agriculture Division, Bureau of the Census, room 437, Iverson Mall, Suitland, Maryland. (Mailing address: Washington, DC 20233) Telephone (301) 763–8556–TDD (301) 763–4056.

Dated: November 8, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–28005 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

(A–549–801)

Antifriction Bearings From Thailand; Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On October 8, 1993, the United States Court of International Trade (the Court) rejected the Department of Commerce's (the Department's) redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Thailand (56 FR 31765, July 11, 1991). Specifically, the Court rejected the Department's methodology in the redetermination for calculating the amount of the indirect tax adjustment that was to be added to United States price (USP). The Court entered final judgement on this issue. The results covered the period November 9, 1988 through April 30, 1990.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On June 8, 1993, the Court in *The Torrington Co.* v. *United States*, Slip Op. 93–96 (June 8, 1993), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Thailand (56 FR 31765, July 11, 1991) to the Department. The Court ordered the Department to add the full amount of indirect taxes paid on each sale in the home market to foreign market value (FMV) without adjustment. On July 22, 1993, the Department submitted to the Court its redetermination on remand. On October 8, 1993, the Court ruled upon the Department's redetermination in *Torrington*. In its decision, the rejected the Department's redetermination methodology for calculating the amount of the indirect tax adjustment to be added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) *(Timken)*, the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's decision in *Torrington* on October 8, 1993, which rejected the Department's redetermination methodology for calculating the amount of the indirect tax adjustment to be added to USP, constitutes a decision not in harmony with the Department's final results.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the Court's opinion, the Department will amend the final affirmative results in the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Thailand to reflect the change in the indirect tax adjustment calculation methodology which was ordered by the Court.

Dated: November 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28008 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings From the United Kingdom; Notice of Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On October 8, 1993, the United States Court of International Trade (the Court) rejected the Department of Commerce's (the Department) final results of the third administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (58 FR 39729, July 26, 1993). *RHP Bearings et. al.* versus *United States*, (Slip Op. 93–196, October 8, 1993) (*RHP*). Specifically, the Court rejected the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions. The Court entered final judgment on this issue. The results covered the period May 1, 1991 through April 30, 1992.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1993, the Court in *RHP Bearings et. al., versus United States*, (Slip Op. 93–196, October 8, 1993) ruled upon an issue contained in the Department's final results of the third administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (58 FR 39729, July 26, 1993). Specifically, the Court reviewed the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions. In its decision, the Court rejected this determination and ordered the Department to add such direct selling expenses to foreign market value. The Court also entered final judgement on this issue.

In its decision in *Timken Co.* versus *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's decision in *RHP* on October 8, 1993, which rejected the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions, constitutes a decision not in harmony with the Department's final results.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the Court's opinion, the Department will amend the final affirmative results of

antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom to reflect the Court's order that the Department must add direct selling expenses incurred in the United States to foreign market value.

Dated: November 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28009 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[I.D. 110693B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's Surf Clam and Ocean Quahog Committee and its Surf Clam and Ocean Quahog Industry Advisory Committee will meet on November 22, 1993, at the Ramada Inn, 76 Industrial Highway, Essington PA; telephone: (215) 521–9600. The meeting will begin at 10:00 a.m.

The purpose of the meeting is to review Amendment 9 to the Surf Clam and Ocean Quahog Fishery Management Plan.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, Room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: November 9, 1993.

David S. Crestin

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28006 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 110493C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold a public meeting of its Hawaii Pelagics Advisory Panel (Panel) on November 16, 1993, at the Hawaii Maritime Center, Pier 7, Honolulu Harbor, Honolulu, HI. The meeting will begin at 1 p.m.

The Hawaii longline limited entry program proposed under Amendment #7 to the Pelagics Fishery Management Plan would require that the fleet-wide harvesting capacity not exceed that which was allowed during the April 1991–April 1994 moratorium.

The Panel will discuss and possibly make recommendations regarding alternative methods to:

(1) Measure the maximum harvesting capacity of the longline fleet during the 1991–1994 moratorium; and

(2) Regulate the harvesting capacity of longline vessels eligible for participation under the proposed limited entry program.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: November 5, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–27913 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–22–P

[I.D. 110493D]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council's Hawaii Pelagics Plan Team (Team) will hold a meeting on November 22, 1993, from 8 a.m. until noon, at the NMFS Honolulu Laboratory, 2570 Dole Street, Honolulu, Hawaii.

The Hawaii longline limited entry program proposed under Amendment #7 to the Pelagics Fishery Management Plan would require that the fleet-wide harvesting capacity not exceed that which was allowed during the April 1991–April 1994 moratorium.

The Team will discuss and possibly make recommendations regarding alternative methods to:

(1) Measure the maximum harvesting capacity of the longline fleet during the 1991–1994 moratorium; and

(2) Regulate the harvesting capacity of longline vessels eligible for participation under the proposed limited entry program.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: November 5, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–27914 Filed 11–12–93; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On September 17 and 24, 1993, the Committee for Purchase From People Who Are Blind or Severely Disabled published notices (58 FR 48637 and 49981) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and services, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Accordingly, the following commodities and services are hereby added to the Procurement List:

Commodities

Pad, Writing Paper
7530–01–273–3755
7530–01–207–4353
7530–01–207–4354
7530–01–207–4355
7530–01–207–4356

Services

Grounds Maintenance, Onizuka Park, Edwards Air Force Base, California.
Janitorial/Custodial, Weather Bureau Building, 2400 M Street, NW., Washington, DC.

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–28010 Filed 11–12–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed Additions to Procurement List.

SUMMARY: The Committee has received proposals to add to the Procurement List military resale commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 15, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the military resale commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the military resale commodities and service to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the military resale commodities and service.

3. The action will result in authorizing small entities to furnish the military resale commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the military resale commodities and service proposed for addition to the Procurement List. Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information. It is proposed to add the following military resale commodities and service to the Procurement List for production by the nonprofit agencies listed:

Military Resale Commodities

Cutlery, Place Settings, Heavy Duty
M.R. 532
Cutlery, Knives, Heavy Duty
M.R. 533
Cutlery, Forks, Heavy Duty
M.R. 534
Cutlery, Spoons, Heavy Duty
M.R. 535
Nonprofit Agency: Royal Maid Association for the Blind Hazlehurst, Mississippi

Service

Janitorial/Grounds Maintenance, Soo Area Buildings, Soo Locks, Sault Ste. Marie, Michigan,
Nonprofit Agency: Soo Sheltered Workshop for the Handicapped, Inc., Sault Ste. Marie, Michigan.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–28011 Filed 11–12–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Advisors to the National Security Education Board

AGENCY: Office of the Under Secretary (Policy).

ACTION: Notice of meeting.

SUMMARY: Pursuant to Public Law 92–463, notice is hereby given of a forthcoming meeting of advisors to the National Security Education Board (NSEB). The purpose of the meeting is to review and make recommendations to the NSEB concerning the requirements established by the National Security Education Act of 1991 (as amended) Public Law 102–183.

DATES: December 6, 1993.

ADDRESSES: Academy for Educational Development, 1255 23rd Street NW., Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Ms. Patricia Ravalgi, Assistant Director for the National Security Education Board, National Security Education Program, P.O. Box 47103, Washington, DC 20050–7103; (703) 696–1991.

SUPPLEMENTARY INFORMATION: The business meeting will be open to the public.

Dated: November 8, 1993.

P.H. Means,

OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27926 Filed 11–12–93; 8:45 am]

BILLING CODE 5000–04–M

Office of the Secretary

Per Diem, Travel and Transportation Allowance Committee

AGENCY: Per Diem, Travel and Transportation Allowance Committee.

ACTION: Publication of changes in per diem rates.

SUMMARY: The Per Diem, Travel and Transportation Allowance Committee is publishing Civilian Personnel Per Diem

Bulletin Number 173. This bulletin lists changes in per diem rates prescribed for U.S. Government employees for official travel in Alaska, Hawaii, Puerto Rico, the Northern Mariana Islands and Possessions of the United States. Bulletin Number 173 is being published in the **Federal Register** to assure that travelers are paid per diem at the most current rates.

EFFECTIVE DATE: November 1, 1993.

SUPPLEMENTARY INFORMATION: This document gives notice of changes in per diem rates prescribed by the Per Diem Travel and Transportation Allowance Committee for non-foreign areas outside the continental United States. Distribution of Civilian Personnel Per Diem Bulletins by mail was discontinued effective 1 June 1979. Per Diem Bulletins published periodically in the **Federal Register** now constitute the only notification of change in per diem rates to agencies and establishments outside the Department of Defense.

The text of the Bulletin follows:

BILLING CODE 5000-04-M

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+	M&IE RATE (B)	=	MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
ALASKA:						
ADAK 5/	$ 10		$ 34		$ 44	10-01-91
ANAKTUVUK PASS	83		57		140	12-01-90
ANCHORAGE						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
ANIAK	73		36		109	07-01-91
ATQASUK	129		86		215	12-01-90
BARROW	105		83		188	11-01-93
BETHEL	82		69		151	10-01-93
BETTLES	65		45		110	12-01-90
COLD BAY	110		54		164	07-01-93
COLDFOOT	95		59		154	10-01-92
CORDOVA	66		77		143	12-01-92
CRAIG	67		35		102	07-01-91
DILLINGHAM	85		64		149	11-01-93
DUTCH HARBOR-UNALASKA	113		67		180	05-01-92
EIELSON AFB						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
ELMENDORF AFB						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
EMMONAK	62		61		123	10-01-93
FAIRBANKS						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
FALSE PASS	80		37		117	06-01-91
FT. RICHARDSON						
05-15--09-15	174		71		245	05-15-93
09-16--05-14	81		66		147	12-01-92
FT. WAINWRIGHT						
05-15--09-15	100		66		166	05-15-93
09-16--05-14	65		67		132	12-01-92
HOMER						
05-01--09-30	71		60		131	05-01-93
10-01--04-30	53		62		115	12-01-92
JUNEAU						
05-01 -10-01	88		74		162	05-01-92
10-02--04-30	75		73		148	01-01-92
KATMAI NATIONAL PARK	89		59		148	12-01-90

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
KENAI-SOLDOTNA				
04-02--09-30	$ 94	$ 68	$162	04-02-93
10-01--04-01	57	66	123	12-01-92
KETCHIKAN				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
KING SALMON 3/	75	59	134	12-01-90
KLAWOCK	75	36	111	07-01-91
KODIAK	71	61	132	01-01-92
KOTZEBUE	133	87	220	05-01-93
KUPARUK OILFIELD	75	52	127	12-01-90
METLAKATLA	79	44	123	07-01-91
MURPHY DOME				
05-15--09-15	100	66	166	05-15-93
09-16--05-14	65	67	132	12-01-92
NELSON LAGOON	102	39	141	06-01-91
NOATAK	133	87	220	05-01-93
NOME	71	67	138	10-01-93
NOORVIK	133	87	220	05-01-93
PETERSBURG	72	64	136	05-01-92
POINT HOPE	99	61	160	12-01-90
POINT LAY 6/	106	73	179	12-01-90
PRUDHOE BAY-DEADHORSE	73	60	133	11-01-93
SAND POINT	75	36	111	07-01-91
SEWARD				
05-01--09-30	107	53	160	05-01-92
10-01--04-30	61	48	109	01-01-92
SHUNGNAK	133	87	220	05-01-93
SITKA-MT. EDGECOMBE	72	69	141	01-01-92
SKAGWAY				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
SPRUCE CAPE	71	61	132	01-01-92
ST. GEORGE	100	39	139	06-01-91
ST. MARY'S	77	59	136	06-01-93
ST. PAUL ISLAND	62	63	125	10-01-93
TANANA	71	67	138	10-01-93
TOK				
04-21--10-31	60	58	118	06-01-93
11-01--04-20	48	57	105	11-01-93

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A) +	M&IE RATE (B)	MAXIMUM PER DIEM RATE = (C)	EFFECTIVE DATE
ALASKA: (CONT'D)				
UMIAT	$ 97	$ 63	$160	12-01-90
VALDEZ				
05-01--09-01	98	53	151	05-01-93
09-02--04-30	82	70	152	12-01-92
WAINWRIGHT	90	75	165	12-01-90
WALKER LAKE	82	54	136	12-01-90
WRANGELL				
05-14--10-14	90	77	167	06-01-93
10-15--05-13	68	75	143	10-15-93
YAKUTAT	77	58	135	11-01-93
OTHER 3, 4, 6/	63	48	111	01-01-93
AMERICAN SAMOA	85	47	132	12-01-91
GUAM	155	75	230	05-01-93
HAWAII:				
ISLAND OF HAWAII: HILO	73	61	134	06-01-93
ISLAND OF HAWAII: OTHER	80	71	151	06-01-93
ISLAND OF KAUAI				
04-01--11-30	110	75	185	06-01-93
12-01--03-31	122	76	198	12-01-93
ISLAND OF KURE 1/		13	13	12-01-90
ISLAND OF MAUI				
04-01--11-30	79	71	150	06-01-93
12-01--03-31	96	73	169	12-01-93
ISLAND OF OAHU	105	62	167	06-01-93
OTHER	79	62	141	06-01-93
JOHNSTON ATOLL 2/	21	20	41	10-01-93
MIDWAY ISLANDS 1/		13	13	12-01-90
NORTHERN MARIANA ISLANDS:				
ROTA	68	55	123	01-01-93
SAIPAN	100	69	169	01-01-93
TINIAN	50	55	105	01-01-93
OTHER	20	13	33	12-01-90
PUERTO RICO:				
BAYAMON				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
CAROLINA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93

BILLING CODE 5000-04-C

MAXIMUM PER DIEM RATES FOR OFFICIAL TRAVEL IN ALASKA, HAWAII, THE COMMONWEALTHS OF PUERTO RICO AND THE NORTHERN MARIANA ISLANDS AND POSSESSIONS OF THE UNITED STATES BY FEDERAL GOVERNMENT CIVILIAN EMPLOYEES

LOCALITY	MAXIMUM LODGING AMOUNT (A)	+ M&IE RATE (B)	= MAXIMUM PER DIEM RATE (C)	EFFECTIVE DATE
PUERTO RICO: (CONT'D)				
FAJARDO (INCL CEIBA, LUQUILLO AND HUMACAO)				
04-16--12-10	$ 65	$ 52	$117	10-01-93
12-11--04-15	110	52	162	12-11-93
FT. BUCHANAN (INCL GSA SERV CTR, GUAYNABO)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
MAYAGUEZ	85	65	150	08-01-92
PONCE	96	75	171	09-01-93
ROOSEVELT ROADS				
04-16--12-10	65	52	117	10-01-93
12-11--04-15	110	52	162	12-11-93
SABANA SECA				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
SAN JUAN (INCL SAN JUAN COAST GUARD UNITS)				
05-01--12-14	93	73	166	09-01-93
12-15--04-30	116	76	192	12-15-93
OTHER	63	52	115	08-01-92
VIRGIN ISLANDS OF THE U.S.				
06-02--12-19	180	112	292	09-01-93
12-20--06-01	255	120	375	12-20-93
WAKE ISLAND 2/	4	17	21	12-01-90
ALL OTHER LOCALITIES	20	13	33	12-01-90

Footnotes

[1] Commercial facilities are not available. The meal and incidental expense rate covers charges for meals in available facilities plus an additional allowance for incidental expenses and will be increased by the amount paid for Government quarters by the traveler.

[2] Commercial facilities are not available. Only Government-owned and contractor operated quarters and mess are available at this locality. This per diem rate is the amount necessary to defray the cost of lodging, meals and incidental expenses.

[3] On any day when US Government or contractor quarters are available and U.S. Government or contractor messing facilities are using, a meal and incidental expense rate of $19.65 is prescribed to cover meals and incidental expenses at Shemya AFB, Clear AFS, Galena APT and King Salmon APT. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $4 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[4] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $34 is prescribed to cover meals and incidental expenses at Amchitka Island, Alaska. This rate will be increased by the amount paid for U.S. Government or contractor quarters and by $10 for each meal procured at a commercial facility. The rates of per diem prescribed herein apply from 0001 on the day after arrival through 2400 on the day prior to the day of departure.

[5] On any day when U.S. Government or contractor quarters are available and U.S. Government or contractor messing facilities are used, a meal and incidental expense rate of $25 is prescribed instead of the rate prescribed in the table. This rate will be increased by the amount paid for U.S. Government or contractor quarters.

[6] The meal rates listed below are prescribed for the following locations in Alaska: Cape Lisburne RRL, Cape Newenham RRL, Cape Romanzof APT, Fort Yukon RRL, Indian Mtn RRL, Sparrevohn RRL, Tatalina RRL, Tin City RRL, Barter Island AFS, Point Barrow AFS, Point Lay AFS and Oliktok AFS. The amount to be added to the cost of government quarters in determining the per diem will be $3.50 plus the following amount:

	Daily rate
DOD Personnel	$13
Non-DOD Personnel	30

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–27927 Filed 11–12–93; 8:45 am]

BILLING CODE 3000–04–M

Department of the Navy

Intent To Prepare An Environmental Impact Statement for Base Realignment At Marine Corps Air Station Cherry Point, Craven County, NC

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the realignment of Marine Corps Air Station (MCAS) Cherry Point, Craven County, North Carolina. This action is being conducted in accordance with the Defense Base Closure and Realignment Act of 1990 (Public Law 101–510) and the specific 1993 base closure and realignment decisions approved by the Congress in September 1993.

The proposed action involves the relocation of approximately 200 F/A–18 aircraft with dedicated personnel from the Naval Air Station Cecil Field, Jacksonville, Florida, to MCAS Cherry Point. Several military construction projects are required to upgrade existing facilities and construct new facilities to support the increased operations. This will most likely include construction of family housing at off-base locations within commuting distance of MCAS Cherry Point. Relocation of the F/A–18s to MCAS Cherry Point may require increased use of air training routes and ranges in Eastern North Carolina. An existing outlying airfield may need to be renovated or a new outlying airfield may need to be developed to provide for the increased training needs. Approximately 4,000 additional personnel plus their dependents will relocate to MCAS Cherry Point as a result of this action.

Alternatives addressed in the EIS will focus on means of meeting MCAS Cherry Point realignment requirements, including alternative construction site locations and alternative training scenarios. Alternative sites have been identified for construction of new hangars, shops, and other support facilities to serve the F/A–18 aircraft at MCAS Cherry Point. A Housing Market Study and Housing Site Selection Study have been initiated to determine potential locations for off-base housing sites. The feasibility of utilizing existing outlying airfields, other government controlled property, or non-government controlled sites will be evaluated to identify alternative locations for aircraft training near MCAS Cherry Point. An airspace analysis is being conducted to identify alternative scenarios for aircraft training. Cumulative impacts associated with the realignment of all personnel and activities to the Cherry Point region will be considered. Major environmental issues that will be addressed in the EIS include noise, air quality, air space use, traffic, utilities, and community facilities.

The Department of the Navy will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to this action. The Navy will hold three public scoping meetings in Eastern North Carolina as part of the preparation of the Draft EIS. Scoping meetings will be held as follows:

December 7, 1993, at the New Bern High School, 4200 Academic Drive, New Bern, North Carolina, starting at 7 p.m.

December 8, 1993, at the Duke University Marine Labs, 111 Pivers Island Road, Beaufort, North Carolina, starting at 7 p.m.

December 9, 1993, at Jones County Civic Center, Highway 58 South, Trenton, North Carolina, starting at 7 p.m.

These meetings will be advertised in selected local newspapers.

A brief presentation will precede request for public comment. Navy and Marine Corps representatives will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comments in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed to: Commander, Atlantic Division, Naval Facilities Engineering Command, 1510 Gilbert Street, Norfolk, Virginia 23511–2699 (Attn: Mr. Jim Haluska, Code 2032JH), telephone (804) 445–2307. All comments must be received no later than December 23, 1993.

Dated: November 9, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93–27977 Filed 11–12–93; 8:45 am]

BILLING CODE 3810–AE–F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 1862–009]

City of Tacoma, Washington; Extension of Time

November 9, 1993.

Take notice that the deadline for the filing of comments, recommendations, terms and conditions, or prescriptions for all issues is extended to and including February 7, 1994. This notice extends the time as published in the **Federal Register** on October 28, 1993 at 58 FR 57994.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27980 Filed 11–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Project Nos. 11432–000, et al.]

Hydroelectric Applications [Hydro Matrix Partnership, Ltd., *et al.*]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11432–000.
c. *Date Filed:* August 26, 1993.
d. *Applicant:* Hydro Matrix Partnership, Ltd.
e. *Name of Project:* Falls Lake.
f. *Location:* On the Neuse River in Wake County, North Carolina.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* James B. Price, 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.
i. *FERC Contact:* Charles T. Raabe, (202) 219–2811.
j. *Comment Date:* December 27, 1993.
k. *Description of Project:* The proposed project would utilize the existing Corps of Engineers' Falls Lake Dam and Reservoir and would consist of: (1) A new powerhouse containing two 2,500-kW generating units; (3) a 400-foot-long transmission line; (4) a 13.8-kV switchyard; and (5) appurtenant facilities.

Applicant estimates that the average annual generation would be 26GWh and that the cost of the studies under the permit would be $100,000. Power would be sold to Carolina Power and Light Co.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

2 a. *Type of Application:* Preliminary Permit.
b. *Project No.:* P–11437–000.
c. *Date Filed:* September 23, 1993.
d. *Applicant:* Hydro Matrix Partnership, Ltd.
e. *Name of Project:* Jordan Dam Project.
f. *Location:* On the Haw River, Chatham County, North Carolina.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791 (a)–825(r).
h. *Applicant Contact:* James B. Price, Hydro Matrix Partnership, Ltd., 120 Calumet Ct., Aiken, SC 29803, (803) 642–2749.
i. *FERC Contact:* Robert Bell (dt) (202) 219–2806.
j. *Comment Date:* December 27, 1993.
k. *Description of Project:* The proposed project would utilize the existing 1,150-foot-long, 118-foot-high B. Everett Jordan Dam, a rock-filled structure owned by the U.S. Army Corps of Engineers and consists of: (1) A proposed intake structure; (2) a proposed 1150-foot-long penstock within the existing outlet tunnel; (3) a proposed powerhouse containing two generating units having a total installed capacity of 5000-kW; (4) a proposed 535-foot-long, 13.8-kV transmission line; and (5) appurtenant facilities.
l. *Purpose of Project:* All project energy produced would be sold to a local utility.
m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.
n. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Hydro Matrix Partnership, Ltd. 120 Calumet Court, Aiken, SC 29803, (803) 642–2749.

3 a. *Type of Applications:* Subsequent Licenses.
b. *Project Nos.:* 2396–001, 2397–001, 2399–001, 2400–001.
c. *Date Filed:* December 31, 1991.
d. *Applicant:* Central Vermont Public Service Corporation.
e. *Name of Projects:* Pierce Mills Project, Gage Project, Arnold Falls Project, Passumpsic Project.
f. *Location:* On the Passumpsic River in Caledonia County, Vermont.
g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public, Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.
i. *FERC Contact:* Michael Dees (202) 219–2807.
j. *Deadline Date:* See standard paragraph D10. (December 27, 1993).
k. *Status of Environmental Analysis:* These applications have been accepted for filing and are ready for environmental analysis at this time—see attached standard paragraph D10.
l. *Description of Projects:*

Pierce Mills Project

The project as licensed consists of the following: a dam structure, a powerhouse, an intake structure with a penstock, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 250 kilowatts (kW), a hydraulic capacity range of 90 to 200 cubic feet per second (cfs), and an average annual generation of about 1,610 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-high of water passing over the spillway and into the 330-foot-long bypass reach. This amount of water is equivalent to a flow of 7.5 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of a spillway section, 93 feet long by 18 feet high, with a crest elevation of 603.5 feet mean sea level (msl), topped with 1.5-foot-high flashboards;

(2) An intake structure, totaling 37 feet long, consisting of (a) a retaining wall, 17 feet long, with a crest elevation of 610.5 feet msl; and (b) a nonoverflow section, with a 10-foot-high by 10-foot-wide bulkhead gate, leading to a 6-foot-diameter, 246-foot-long steel penstock;

(3) A powerhouse, 22 feet long by 22 feet wide, equipped with a vertical Francis hydroelectric generating unit, with (a) a rated capacity of 250 kilowatts (kW); (b) a hydraulic capacity range of 90 to 200 cubic feet per second (cfs); (c) an average annual generation of 1,610 megawatt-hours (MWH); and (d) a gross head of 18.3 feet;

(4) An impoundment having (a) a surface area of 24.7 acres (AC); (b) a useable storage capacity of 24.7 acre-feet (AF); and (c) a normal headwater elevation of 605.0 feet msl and tailwater elevation of 586.7 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

Gage Project

The existing Gage Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 700 kilowatts (kW), a hydraulic capacity range of 170 to 700 cubic feet per second (cfs), and an average annual generation of about 2,766 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. To enhance 1.7 miles of river reach downstream of the project, the applicant also proposed to maintain 3-inch-high of water passing just over the spillway section, rather than the entire dam length. This amount of water is equivalent to a flow of 17 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of three spillway sections: (a) The North section, 176 feet long by maximum height of 13 feet, with a crest elevation of 534.2 feet mean sea level (msl), topped with 6.0-foot-high hinged-flashboards; (b) the concrete-capped Center section, constructed on a rock-ledge island, about 30 feet long, with a crest elevation of 542.1 feet msl; and (c) the South section, 43 feet long by 18 feet high, with a crest elevation of 538.9 feet msl, topped with 1.0-foot-high wooden flashboards;

(2) An intake structure consisting of (a) a 51-foot-wide headgate structure with four headgates; and (b) a 90-foot-

long by 44-foot-wide by 16-foot-deep power canal;

(3) A powerhouse, equipped with two vertical S. Morgan Smith hydroelectric generating units: (a) one is rated at 300 kilowatts (kW) and one rated at 400 kW, totaling a plant rated capacity of 700 kW; (b) a hydraulic capacity range of 170 to 700 cubic feet per second (cfs); (c) an average annual generation of 2,766 megawatt-hours (MWH); and (d) a gross head of 15 feet;

(4) An impoundment having (a) a surface area of 15.2 acres (AC); (b) a useable storage capacity of 13.8 acre-feet (AF); and (c) a normal headwater elevation of 539.9 feet msl and tailwater elevation of 524.9 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

Arnold Falls Project

The existing Arnold Falls Project's principal features consist of a dam structure, a powerhouse, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 350 kilowatts (kW), a hydraulic capacity range of 150 to 262 cubic feet per second (cfs), and an average annual generation of about 1,580 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain 0.5- to 1-inch-high of water passing over the spillway and into the 300-foot-long bypass reach. This amount of water is equivalent to a flow of 20 cfs.

In detail, the project is described as follows:

(1) A timber crib dam consisting of two spillway sections: (a) The North dam section, 189 feet long by 18 feet high, with a crest elevation of 572.72 feet mean sea level (msl) topped with 1.5-foot-high flashboards; and (b) the South dam section, 66 feet long by 15 feet high, with a crest elevation of 572.80 msl, topped with 1.5-foot-high flashboards;

(2) A powerhouse, 18 feet long by 21 feet wide, equipped with a vertical S. Morgan Smith hydroelectric generating unit, with (a) a rated capacity of 350 kilowatts (kW); (b) a hydraulic capacity range of 150 to 262 cubic feet per second (cfs); (c) an average annual generation of 1,580 megawatt-hours (MWH); and (d) a gross head of 18 feet;

(3) An impoundment having (a) a surface area of 7.2 acres (AC); (b) a useable storage capacity of 10.8 acre-feet (AF); and (c) a normal headwater elevation of 574.3 feet msl and tailwater elevation of 556.12 feet msl;

(4) A 12.5-kilovolt (kV), transmission line; and

(5) Appurtenant facilities.

Passumpsic Project

The existing Passumpsic Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel, an impoundment, a transmission line, and appurtenant facilities. The existing project has a generator capacity of 700 kilowatts (kW), a hydraulic capacity range of 195 to 460 cubic feet per second (cfr), and an average annual generation of about 3, 868 megawatt-hours (MWH).

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. To enhance 0.8-acre of bypass reach downstream of the project, the applicant also proposed to maintain 0.5- to 1-inch-high of water passing over the spillway section. This amount of water is equivalent to a flow of 20 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of two spillway sections: (a) The North section, 126 feet long by maximum height of 10 feet, with a crest elevation of 519.98 feet mean sea level (msl), topped with 1.0-foot-high flashboards; and (b) the South section, 122 feet long by maximum height of 10 feet, with a crest elevation of 519.98 feet msl, topped with 1.0-foot-high-flashboards;

(2) An intake structure consisting of (a) a 27-foot-wide headgate structure with two headgates, each measuring about 12 feet wide by 8 feet high; and (b) an 87-foot-long by 19- to22-foot-wide power canal with an ice/waste sluice gate and a 24-foot-long overflow spillway located on the canal's outboard wall;

(3) A powerhouse, equipped with one vertical Francis hydroelectric generating unit with (a) a rated capacity at 700 kilowatts (kW); (b) a hydraulic capacity range of 195 to 460 feet per second (cfs); (c) an average annual generation of 3,868 megawatt-hours (MWH); and (d) a gross head of 24 feet;

(4) An impoundment having (a) a surface area of 18.3 acres (AC); (b) a useable storage capacity of 18.4 acre-feet (AF); adn (c) a normal headwater elevation of 520.98 feet msl and tailwater elevation of 496.98 feet msl;

(5) A 12.5-kilovolt (kV), transmission line; and

(6) Appurtenant facilities.

m. *Purpose of Projects:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Location of Application:* Copies of the applications, as amended and supplemented, are available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. Copies are also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

4 a. *Type of Application:* Subsequent License.

b. *Project No.:* 2489–001.

c. *Date Filed:* December 31, 1991.

d. *Applicant:* Central Vermont Public Service Corporation.

e. *Name of Project:* Cavendish Project.

f. *Location:* On the Black River in Windsor County, Vermont.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Robert de R. Stein, Central Vermont Public, Service Corporation, 77 Grove Street, Rutland, VT 05701, (802) 773–2711.

i. *FERC Contact:* Mr. Charles T. Raabe (tag) (202) 219–2811.

j. *Deadline Date:* See paragraph D10. (December 27, 1993).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The existing Cavandish Project's principal features consist of a dam structure, a powerhouse, an intake structure with a power tunnel and a penstock, an impoundment, a transmission line, and appurtenant facilities.

The applicant has proposed to change the existing operation of daily peaking to a run-of-river operation. The applicant would maintain within the bypass reach a year-round leakage flow of 3–5 cfs.

In detail, the project is described as follows:

(1) A concrete gravity dam consisting of two spillway sections: (a) the North section, 90 feet long by 25 feet high, with a crest elevation of 878.13 feet mean sea level (msl), topped with 6.0-foot-high flashboards; and (b) the South section, 21 feet long by 6 feet high, with a crest elevation of 881. 63 feet msl, topped with 2.5-foot-high flashboards;

(2) An intake structure consisting of (a) a 180-foot-long-power tunnel; and (b) 6-foot-diameter steel penstock;

(3) A powerhouse, 64 feet long by 34 feet wide, equipped with three

horizontal Francis hydroelectric generating units: (a) two of which are rated 520 kilowatts (kW), each, and one rated at 400 kW; (b) a hydraulic capacity range of 19 to 226 cubic feet per second (cfs); (c) an average annual generation of 6,108 megawatt-hours (MWh); and (d) a gross head of 119.53 feet;

(4) An impoundment having (a) a surface area of 10 acres (AC); (b) a useable storage capacity of 18.4 acre-feet (AF); and (c) a normal headwater elevation of 884.13 feet msl and tailwater elevation of 764.6 feet msl;

(5) A transmission line; and

(6) Appurtenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC, 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Vermont Public Service Corporation, 77 Grove Street, Rutland, VT, 05701.

5. a. *Type of Application:* New Major License.

b. *Project No.:* 2283–005.

c. *Date Filed:* December 10, 1991.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Gulf Island—Deer Rips Project.

f. *Location:* On the Androscoggin River, Androscoggin County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 6 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Gerald C. Poulin, Central Maine Power Company, Edison Drive, Augusta, ME 04336, (207) 623–3521.

i. *FERC Contact:* Robert Bell (202) 219–2806.

j. *Comment Date:* See Paragraph D9.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. *Description of Project:* The Gulf Island—Deer Rips Project (Project) consists of three discrete generating facilities, Beginning with the most upstream: The Gulf Island powerhouse, the Deer Rips powerhouse, and the Androscoggin No. 3 powerhouse. For the existing condition, the Project has a total nameplace generator capacity of 32.6 megawatts (MW) and an average annual generation of about 189,703 megawatt-hours (MWH). For the proposed condition, the Project would have a total nameplate generator capacity of 35.6 MW and an average annual generation of about 195,853 MWH.

The existing Gulf Island—Deer Rips Project's principle features consists of two dam structures, two impoundments, three powerhouses, and appurtenant facilities. In detail, the existing and proposed project is described as follows:

Gulf Island Development

(1) A concrete gravity and earthfill dam, totaling about 2,488 feet long, with a maximum height of 92 feet, consisting of (a) a 370-foot-long spillway section, topped with about 7-foot-high flashboards, having a crest elevation of 255.0 feet (USGS); (b) a 340-foot-long gate section, have (i) two stony gates, each measuring 16 feet high by 8.5 feet wide, (ii) seven Taintor gates, each measuring 15 feet high by 30 feet wide, (iii) a stanchion section, 13 feet high by 49.5 feet wide, and (iv) a 16-foot-wide sluice gate; (c) a 149-foot-long intake section, integral with the powerhouse, having trashracks with 7/16-inch steel bars at 4–9/16 inches openings; (d) a 349-foot-long bulkhead; and (e) 1,280-foot-long earth embankments;

(2) A concrete, steel, and brick powerhouse, about 90 feet high by 32 feet wide by 146 feet long, equipped with three vertical Francis units having (a) an existing total rated capacity of 22,200 kilowatts (kW), maximum hydraulic capacity of 6,450 cubic feet per second (cfs), and an average annual generation of 131,098 MWh; (b) a proposed total rate capacity of 25,200 kW, maximum hydraulic capacity of 6,610 cfs, and an average annual generation of 137,248 MWh; and (c) a rated head of 56 feet;

(3) An impoundment, about 14.7 miles long, having (a) a surface area of about 2,862 acres (AC); (b) a gross storage capacity of 55,100 acre-feet (AF); (c) a useable storage capacity of 10,300 AF; and (d) a normal pool headwater elevation of 262.0 feet (USGS) and tailwater elevation of 206.0 ft (USGS); and

(4) Appurtenant facilities.

Deer Rips—Androscoggin No. Development

(1) A concrete gravity dam, totaling about 933 feet long, with a maximum height of 50 feet considering of (a) a 738-foot-long spillway section, topped with about 4-foot-high flashboards, having a crest elevation of 201.7 feet (USGS); (b) a 94-foot-long headworks section, located on the west bank, for the Deer Rips powerhouse, having eight wooden gates, each measuring 14 feet high by 7 feet wide, leading to a canal, 650 feet long by 75 feet wide by 22 average deep; (c) a forebay, located on the east bank, 45 feet long by 38 feet wide, having 3 and 5 feet high flashboards, leading to a 45-foot-long headworks section for the Androscoggin No. 3 powerhouse, having two steel gates, each measuring 14 feet by 17.5 feet wide;

(2) The Deer Rips concrete, steel, and brick powerhouse, about 70 feet high by 47 feet wide by 136 feet long, with a 32-foot-wide by 57-foot-long addition, equipped with five horizontal twin-runner Francis units and two vertical Francis units having (a) a total rated capacity of 6,817 kW; (b) a total hydraulic capacity of 3,345 cfs; (c) an average annual generation of 31,628 MWh; (d) a rated head of 32 feet; (e) six trashracks with 3/8-inch steel bars at 2–1/8 inch openings and one trashrack with 1/4-inch steel bars at 2–1/2 inch openings; and (f) an excavated tailrace about 250 feet long by 150 feet wide;

(3) the Androscoggin No. 3 concrete, steel, and brick powerhouse, about 70 feet high by 44 feet wide by 52 feet long, equipped with one vertical fixed-blade units having (a) a rated capacity of 3,600 kW; (b) a total hydraulic capacity of 1,775 cfs; (c) an average annual generation of 26,997 MWH; (d) a rated head of 32 feet; (e) one trashrack with 3/8-inch steel bars at 3–1/2 inch openings; and (f) an excavated trailrace about 400 feet long by 60 feet wide;

(4) An impoundment, about 1.3 miles long, having (a) a surface area of about 130 AC; (b) a gross storage capacity of 1,200 AF; (c) a negligible useable storage capacity; and (d) a normal pool headwater elevation of 205.7 feet (USGS) and tailwater elevation of 173.7 ft (USGS); and

(5) Apprutenant facilities.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4, D9.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., Room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Central Main Power Company, 34 Anthony Avenue, Augusta, ME 04330, (207) 623–3521.

6 a. *Type of Application:* Minor License.

b. *Project No.:* 11264–000.

c. *Date filed:* March 6, 1992.

d. *Applicant:* Turbine Industries, Inc.

e. *Name of Project:* Coolemee Dam Hydro Project.

f. *Location:* On the South Fork of the Yadkin River, Rowan County, North Carolina.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. §§ 791(a)–825(r).

h. *Applicant Contact:* Mr. George S. Cook, Turbine Industries, Inc., 5312 Groometown Road, Greensboro, North Carolina 27407, (919) 294–9995.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Deadline for Interventions and Protests, and also for Comments, Recommendations, Terms & Conditions, and Prescriptions:* December 23, 1993.

k. *Status of Environmental Analysis:* This application has been accepted for filing and is ready for environmental analysis at this time—see attached paragraph D4.

l. *Description of Project:* The proposed project facilities would consist of: (1) an existing dam 500 feet long and 12 feet high; (2) an existing reservoir with a surface area of 20 acres at a spillway crest elevation of 658 feet mean sea level and a gross storage capacity of 56 acre-feet; (3) two existing penstocks 8 feet in diameter and 84 and 150 feet long, respectively; (4) an existing powerhouse containing two turbine-generator units having a total capacity of 1,400 kilowatts; (5) a proposed 150-foot-long, 2.4-kilovolt transmission line; and (6) appurtenant facilities. The applicant estimates that the cost of the project is $250,000. The average annual generation will be approximately 6.2 gigawatthours. The dam is owned by Turbine Industries, Inc.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A2, A3, A9, B1, and D4.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. George S. Cook, 5312 Groometown Road, Greensboro, North Carolina 27407 (919) 294–9995.

7 a. *Type of Application:* Transfer of License.

b. *Project No.:* 9654–015.

c. *Date filed:* October 21, 1993.

d. *Applicant:* MSW Credit Shelter Trust, Brian M. Wirkkala, Trustee, and Brenda Wirkkala See.

e. *Name of Project:* Burnham Creek.

f. *Location:* On Burnham Creek in Pacific County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant contact:* Brenda Wirkkala See, HCR 78 Box 608, Naselle, WA 98638, (206) 484–3878.

i. *FERC contact:* Etta Foster, (202) 219–2679.

j. *Comment Date:* December 17, 1993.

k. *Description of Proposed Action:* MSW Credit Shelter Trust, Brian M. Wirkkala, Trustee, representing the estate of Martin S. Wirkkala proposes to transfer the license for the Burnham Creek Project to Brenda Wirkkala See. MSW Credit Shelter Trust was created in accordance with the last will and testament of Martin S. Wirkkala.

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

8 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11439–000.

c. *Date filed:* October 1, 1993.

d. *Applicant:* Hydro Matrix Partnership, Ltd.

e. *Name of Project:* Gathright Dam Project.

f. *Location:* On the Jackson River, near Falling Spring, in Allegheny County, Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. § § 791 (a)–825(r).

h. *Applicant Contact:* Mr. James B. Price, Ph. D., W.V. Hydro, Inc., 120 Calumet Ct., Aiken, SC 29803. (803) 642–2749.

i. *FERC Contact:* Mary Golato (202) 219–2804.

j. *Comment Date:* January 3, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Department of the Army Corps of Engineers Gathright dam and would consist of the following: (1) a proposed penstock; (2) a proposed powerhouse containing one turbine-generator unit at a total rated capacity of 3,000 kilowatts; (3) a proposed 13.8–kilovolt (kV) transmission line running .26 mile from the switchyard connecting to an existing 13.8–kV substation. The average annual generation is estimated to be 22 gigawatthours. The cost of the studies is $100,000.

l. *This notice also consists of the following standard paragraphs:* A3, A5, A7, A9, A10, B, C, and D2.

9 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11434–000.

c. *Date Filed:* September 13, 1993.

d. *Applicant:* City of Flint DPW & Utilities.

e. *Name of Project:* Holloway Dam.

f. *Location:* On the Flint River in Genesee County, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791 (a)–825(r).

h. *Applicant Contact:* Robert C. Evans, 4520 Comanche Dr., Okemos, MI 48864, (517) 351–5400.

i. *FERC Contact:* Charles T. Raabe (tag) (202) 219–2811.

j. *Comment Date:* January 7, 1994.

k. *Description of Project:* The proposed project would consist of: (1) The existing 3,948-foot-long and 30-foot-high earth dam; (2) the existing 1,400-acre reservoir; (3) a proposed intake structure; (4) a new concrete powerhouse located downstream of the dam and housing two generating units for total installed capacity of 700 kW; (5) a proposed tailrace; (6) a new 15–kV or equivalent transmission line; and (7) appurtenant facilities. The cost of the studies to be performed under the permit would be $250,000. The site is owned by the City of Flint, Michigan. The applicant proposes that all power generated would be sold to Consumers Power Company.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, D2.

10 a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11438–000.

c. *Date Filed:* September 27, 1993.

d. *Applicant:* Dashields Hydro Associates.

e. *Name of Project:* Dashields Hydro Project.

f. *Location:* On the Ohio River, near Sewickely, Allegehany County, Pennsylvania.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. V. James Dunlevy, 185 Genesee Street, Suite 1518, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* December 27, 1993.

k. *Description of Project:* The proposed project would utilize the U.S Army Corps of Engineers' Dashields Lock and Dam and consists of the following new facilities: (1) A powerhouse containing three 8.3–MW generating units for a total installed capacity of 25 MW; (2) a 230-foot-wide, 88-foot-long tailrace; (3) a 2.2-mile-long, 69–Kv transmission line; and (5) appurtenant facilities. The average annual generation would be 96.8 GWh. The applicant estimates that the cost of the studies under the terms of the

permit would be $85,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Pittsburgh District, 1000 Liberty, Federal Building, Room 1834, Pittsburgh, PA 15222.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A2. *Development Application*—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A3. *Developement Application*—Any qualified development applicant desiring to file a competing application must submit to the Commission, on or before the specified comment date for the particular application, a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified comment date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. *Developement Application*—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. *Preliminary Permit*—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. *Preliminary Permit*—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. *Notice of intent*—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. *Proposed Scope of Studies under Permit*—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit would be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. *Comments, Protests, or Motions to Intervene*—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. *Protests or Motions to Intervene*—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. *Filing and Service of Responsive Documents*—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named document must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. *Agency Comments*—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to

have no comments. One copy of an agency's comments must also be sent to the Applicant's representives.

D4. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (December 27, 1993 for Project No. 11264–000). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 10, 1994 for Project No. 11264–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, D.C. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. *Filing and Service of Responsive Documents*—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (December 27, 1993 for Project No. 2283–005). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 10, 1994 for Project No. 2283–005).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms, and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (December 27, 1993 for Project Nos. 2396–001, *et al.* and Project No. 2489–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 7, 1994 for project Nos. 2396–001, *et al.* and Project No. 2489–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: November 9, 1993, Washington, DC.
Lois D. Cashell,
Secretary.
[FR Doc. 93–27981 Filed 11–12–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. RS92–3–004]

Arkla Energy Resources Co.; Proposed Changes in FERC Gas Tariff

November 8, 1993.

Take notice that on November 1, 1993, Arkla Energy Resources Company (AERCo) P.O. Box 21734, Shreveport, Louisiana 71151, filed in Docket Nos. RS92–3–004, RP93–3 and TM94–1–31 revised tariff sheets. The following tariff sheets, filed in compliance with the Commission's August 2, 1993, order in Docket No. RS92–3–001, to be effective September 1, 1993, reduce AERCo's rates for restructured services to reflect the overall cost of service and throughput approved by the Commission in its September 23, 1993, order in Docket No. RP93–3:

Third Revised Volume No. 1

Revised Original Sheet No. 4
Revised Original Sheet No. 4.1

AERCo states that the following tariff sheets, which are effective as of November 1, 1993, are identical to the tariff sheets described above, except that they reflect fuel percentages and fuel cost tracker language in compliance with the Commission's order of October 29, 1993, in Docket No. TM94–1–31:

Third Revised Volume No. 1

Sub 1st. Revised Sheet No. 4
Sub 1st. Revised Sheet No. 4.1

Any person desiring to be heard or to make any protest with reference to said application should on or before November 18, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,
Secretary.
[FR Doc. 93–27937 Filed 11–12–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket Nos. EF93–2011–001, EF93–2021–001, and EF93–2041–001]

United States Department of Energy—Bonneville Power Administration; Filing

November 8, 1993.

Take notice that on November 1, 1993, the Bonneville Power Administration tendered for filing in these dockets its Errata to Final Studies and Documentation filed as part of its original filings in these dockets.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,
Secretary.
[FR Doc. 93–27939 Filed 11–12–93; 8:45 am]
BILLING CODE 6717–01–M

[Docket No. CP94–46–000]

Columbia Gas Transmission Corp.; Request Under Blanket Authorization

November 8, 1993.

Take notice that on October 27, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, filed in Docket No. CP94–46–000 a request pursuant to Section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization for the construction and operation of 20 delivery points installed or proposed to be installed under NGPA Section 311 authorization, under Columbia's blanket certificate issued in Docket No. CP83–76–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to operate the 20 delivery points, 15 of which consist of existing facilities (Nos. 1–15) and 5 of which are scheduled to be constructed (Nos. 16–20), for the delivery of natural gas being transported under Columbia's Part 284 blanket certificate, issued in Docket No CP86–240–000. Details of the facilities and proposed deliveries are as follows.

Customer	Location (county/state)	Proposed quantity (dt equivalent per day)	Estimated cost (dollars)
1. National Gas and Oil Corp	Perry/OH	5,000	45,400
2. Northern Industrial Energy Development	Muskingum/OH	15	5,521
3. Kalida Natural Gas Company	Putnam/OH	1,500	36,604
4. Gasco Distribution System	Licking/OH	500	33,300
5. Panda Rosemary Corp	Northampton/NC	36,000	49,387
6. Paramount Transmission Co	Hocking/OH	5,000	13,031
7. Commonwealth Gas Services, Inc	Chesapeake/VA	96,000	15,146
8. Prestonsburg City's Utilities	Floyd/KY	3,000	51,342
9. West Ohio Gas Company	Putnam/OH	10,000	59,247
10. Graham Energy Marketing Corp	Westmoreland/PA	50,000	214,960
11. Kalida Natural Gas Company	Hancock/OH	1,500	34,306
12. Northeast Ohio Natural Gas Corp	Holmes/OH	200	9,654
13. Foraker Gas Co	Perry/OH	900	27,944
14. Symmes Natural Gas Company	Lawrence/OH	50	7,831
15. Southeastern Natural Gas Co	Morgan/OH	10,200	89,602
16. Northeast Ohio Natural Gas Corp	Fairfield/OH	100	27,100
17. Northeast Ohio Natural Gas Corp	Fairfield/OH	50	21,500

Customer	Location (county/state)	Proposed quantity (dt equivalent per day)	Estimated cost (dollars)
18. Northeast Ohio Natural Gas Corp	Trumbull/OH	250	20,000
19. Mountaineer Gas Company	Upshur/WV	200	20,830
20. Ohio Cumberland Gas Company	Holmes/OH	975	21,000

It is stated that all of the facilities were authorized for transportation service under NGPA section 311. It is explained that the transportation services are being rendered on an interruptible basis pursuant to the terms of Columbia's Rate Schedule ITS. It is stated that Columbia is being reimbursed by the customers for the construction costs. It is asserted that the proposed deliveries will be within Columbia's authorized level of service and that the proposal will have no impact on Columbia's existing design day and annual obligations to its customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27941 Filed 11–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–56–000]

Columbia Gas Transmission Corp.; Notice of Application

November 8, 1993.

Take notice that on November 3, 1993, Columbia Gas Transmission Corporation (Columbia), P.O. Box 1273, Charleston, West Virginia 25325–1273, filed in Docket No. CP94–56–000 an application pursuant to Section 7(b) of the Natural Gas Act for an order granting permission and approval to abandon a separate compression service provided to North Carolina Natural Gas Corporation (NCN), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Columbia states that by order issued October 25, 1989, in Docket No. CP89–636–000, it was authorized to provide compression service as well as sales service to NCN at the new Pleasant Hill Interconnection. It is stated that compression service was to be provided pursuant to an agreement executed between the parties on January 12, 1989, which agreement was proposed to be included in Columbia's FERC Gas Tariff, Original Volume No. 2 as Rate Schedule X–134. Columbia states that the January 12, 1989, agreement was previously filed with the Commission on January 17, 1989, as part of Exhibit P in Columbia's application in Docket No. CP89–636–000.

Columbia submits that it proposed to charge NCN an incremental rate of $.077 per Dth under Rate Schedule X–134 as originally filed. It is stated that the Commission rejected this proposed rate, 57 FERC ¶61,277 (1991). Columbia states that it refiled Rate Schedule X–134 utilizing a one part demand charge based on the cost of service. Columbia states that, while the Commission found this proposed rate treatment, subject to condition, to be acceptable (59 FERC ¶61,278 at 62,014 (1992), NCN did not agree to the proposed rate treatment and would not accept the proposed terms and conditions contained in the agreement authorized by the Commission. It is stated that NCN's application for rehearing of the latter order is currently pending before the Commission. Columbia states that authorization of its request for abandonment would render NCN's rehearing request moot.

Columbia states that an additional supplier of gas to NCN at the Pleasant Hill delivery point is Transcontinental Gas Pipe Line Corporation (Transco). It is stated that Transco subsequently agreed to provide and is currently providing increased pressure to NCN. Therefore, Columbia submits that NCN no longer requires that compression service be made available by Columbia for third party gas supplies delivered to NCN, and has withdrawn its request for such service.

Any person desiring to be heard or to make any protest with reference to said application should on or before November 29, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Columbia to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27942 Filed 11–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–431–001]

Questar Pipeline Co.; Amendment to Application

November 8, 1993.

Take notice that on November 1, 1993, Questar Pipeline Company (Questar), 79 South State Street, Salt

Lake City, Utah 84111 filed in Docket No. CP93–431–001 an amendment to its application requesting authority to abandon, by reclassification to a nonjurisdictional gathering designation, specific certificated non-main-line facilities and petition for declaratory order filed June 7, 1993, in Docket No. CP93–431–000. It is stated that Questar's amendment informs the Commission of the revised ownership of the 1.48 miles of proposed 10-inch diameter residue pipeline extending from the discharge side of the proposed Cutthroat Processing Plant, a joint venture between Questar and ANR Production company (ANRPC), to a point of interconnection with Questar's transmission facilities in southwestern Wyoming.

Quester submitted the following information to inform the Commission of changes to the previously filed application for certificate:

(1) The initial throughout of the proposed nonjurisdictional Cutthroat Processing Plant will be 68 MMcf per day rather than 35 Mmcf per day.

(2) With a pant size of 68 Mmcf per day, the estimated cost of the Cutthroat Processing Plant, excluding the residue line, has been revised upward from $9.0 million to $11.85 million.

(3) The status of ANRPC, as plant operator, is now a topic of further negotiations between Questar and ANPRC and is likely to result in Questar being designated plant operator.

(4) Questar, rather than the processing joint venture, will construct, own and operate the 1.48-mile, 10-inch diameter residue pipeline extending from the discharge side of the processing plant to Questar's transmission facilities.

Any person desiring to be heard or to make any protest with reference to said amendment to application should, on or before November 19, 1993, file with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27940 Filed 11–12–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. EL94–5–000]

San Diego Gas & Electric Co. v. Public Service Company of New Mexico; Notice of Filing

November 8, 1993.

Take notice that on October 27, 1993, San Diego Gas & Electric Company (SDG&E) filed a complaint against the Public Service Company of New Mexico (PNM). SDG&E states that the basis for the complaint is that the demand rate, combined with a five-mill energy rate "adder", charged to SDG&E by PNM under a 100-megawatt system power sale agreement (the Agreement), which went into effect in June, 1988, is unjust, unreasonable, and unduly discriminatory.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 8, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to the complaint shall be due on or before December 8, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–27938 Filed 11–12–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Final Closing Date for Special Refund Proceeding No. KEF–0120 Involving Anchor Gasoline Corporation

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of closure of Special Refund Proceeding KEF–0120, Anchor Gasoline Corporation.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces that it is terminating the proceeding established to distribute refunds from the escrow account maintained pursuant to a consent order entered into between the DOE and Anchor Gasoline Corporation.

FOR FURTHER INFORMATION CONTACT: Thomas S. Bloom, Staff Analyst, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, S.W., Washington, DC 20585, (202) 586–6602.

SUPPLEMENTARY INFORMATION: On April 2, 1992, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Anchor Gasoline Corporation. See Anchor Gasoline Corporation, 22 DOE ¶ 85,071 (1988), 53 FR 36879 (September 22, 1988). That decision established October 13, 1992, as the filing deadline for the submission of refund applications for direct restitution by purchasers of Anchor's refined petroleum products. 22 DOE 88,221.

The Office of Hearings and Appeals commenced accepting refund applications in the Anchor refund proceeding on April 2, 1992, more than one year ago. All of the Applications for Refund filed in the Anchor proceeding are currently being considered and will be resolved in the near future. Furthermore, in view of the extended period of time that has transpired since the commencement of the proceeding, we have concluded that all eligible applicants have been provided with more than ample time to file. Accordingly, as of December 13, 1993, the proceeding established to distribute funds from the escrow account maintained pursuant to the consent order entered into between the DOE and Anchor Gasoline Corporation will be closed. Applications for Refund filed after December 13, 1993, will be subject to summary dismissal. Any unclaimed funds remaining after all meritorious claims have been paid will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28013 Filed 11–12–93; 8:45 am]

BILLING CODE 6450–01–P

Final Closing Date for Special Refund Proceeding No. LEF-0005 Involving Automatic Comfort Corporation

AGENCY: Office of Hearings and Appeals, Department of Energy.

ACTION: Notice of closure of Special Refund Proceeding LEF-0005, Automatic Comfort Corporation.

SUMMARY: The Office of Hearings and Appeals (OHA) of the Department of Energy (DOE) announces that it is terminating the proceeding established to distribute refunds from the escrow account maintained pursuant to a consent order entered into between the DOE and Automatic Comfort Corporation.

FOR FURTHER INFORMATION CONTACT: Max William Yano, Department of Energy, Office of Hearings and Appeals, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586-6602.

SUPPLEMENTARY INFORMATION: On February 8, 1993, the Office of Hearings and Appeals of the Department of Energy issued a Decision and Order setting forth final refund procedures to distribute the monies in the oil overcharge escrow account established in accordance with the terms of a Consent Order entered into by the Department of Energy and the Automatic Comfort Corporation. See Automatic Comfort Corporation, 22 DOE ¶ 85,250 (1993), 58 FR 8591 (February 16, 1993). That Decision established May 17, 1993, as the filing deadline for the submission of refund applications for direct restitution by purchasers of Automatic Comfort Corporation's refined petroleum products. 22 DOE at 88,669.

The Office of Hearings and Appeals has not received any refund applications in the Automatic refund proceeding since the special refund procedures were established on February 16, 1993. Accordingly, 30 days from the date of issuance of this Notice, the proceeding established to distribute funds from the escrow account maintained pursuant to the consent order entered into between the DOE and Automatic Comfort Corporation will be closed. The unclaimed funds will be made available for indirect restitution pursuant to the Petroleum Overcharge Distribution and Restitution Act of 1986, 15 U.S.C. 4501.

Dated: November 8, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-28014 Filed 11-12-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4800-5]

Control Techniques Guidelines Document: Reactor Processes and Distillation Operations Processes

AGENCY: Environmental Protection Agency (EPA).

ACTION: Release of control techniques guidelines (CTG) document.

SUMMARY: A CTG document for control of volatile organic compound (VOC) process vent emissions from synthetic organic chemical manufacturing industry reactor processes and distillation operations is available to the public. This information document has been prepared to assist States in analyzing and determining reasonably available control technology (RACT) for stationary sources of VOC emissions located within ozone national ambient air quality standard nonattainment areas. The control techniques described in this CTG are universal and can be used to reduce VOC process vent emissions from reactor processes and distillation operations processes in other industries.

ADDRESSES: Copies of the CTG may be obtained from the U.S. EPA Library (MD-35), Research Triangle Park, NC 27711, telephone number (919) 541-2777.

Docket. Docket No. A-91-38 containing supporting information used in developing the information document, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. Leslie Evans, (919) 541-5410, Emissions Standards Division (MD-13), U.S. Environmental Protection Agency, Research Triangle Park, NC 27711.

SUPPLEMENTARY INFORMATION: Under the clean Air Act as amended (1990 Amendments), State implementation plans (SIP's) for ozone nonattainment areas must be revised to require RACT for control of VOC emissions from sources for which EPA has already published a CTG or for which it will publish a CTG between the date the 1990 Amendments were enacted and the date an area achieves attainment status. **Federal Register** notice 44 FR 53761 (September 17, 1979) defines RACT as the "the lowest emission limitation that a particular source is capable of meeting by the application of control technology that is reasonably available considering the technological and economic feasibility."

The CTG's review current knowledge and data concerning the technology and costs of various emissions control techniques. The CTG's are intended to provide State and local air pollution authorities with an information base for proceeding with their own analysis of RACT to meet statutory requirements.

Each CTG contains a "presumptive norm" for RACT for a specific source category, based on the EPA's evaluation of the capabilities and problems general to that category. Where applicable, EPA recommends that States adopt requirements consistent with the presumptive norm. However, the presumptive norm is only a recommendation. States may choose to develop their own RACT requirements on a case-by-case basis, considering the emission reductions needed to obtain achievement of the national ambient air quality standards and economic and technical circumstances of the individual source. Such determinations of case-by-case RACT must be approved by the EPA in order to become part of a State implementation plan.

This CTG recommends a RACT presumptive norm for the control of VOC rent emissions from reactor processes and distillation operations processes. Each production unit within the synthetic organic chemical manufacturing industry uses either a reactor process, a distillation operations process, or both, in manufacturing their products. The sources, mechanisms, and control of VOC process vent emissions are described.

Under Executive Order (E.O.) 12291, the EPA must judge whether a rule is "major" and, therefore, subject to the requirement of a regulatory impact analysis. This CTG document is not "rulemaking;" rather it provides information to States to aid them in developing rules. This **Federal Register** notice and the CTG were submitted to the Office of Management and Budget (OMB) for review. There were no OMB comments. The CTG has also been submitted for public review. A summary of the public comments and the EPA responses to those comments are included in the CTG document Appendix F. The complete public comments are included in the docket, which is listed in the **ADDRESSES** section of this notice.

Dated: November 2, 1993.

Robert D. Brenner,

Acting Assistant Administrator for Air and Radiation.

[FR Doc. 93–27984 Filed 11–12–93; 8:45 am]

BILLING CODE 6560–50–M

[OPPTS–140216; FRL–4742–1]

Access to Confidential Business Information by EG and G Dynatrend, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, EG and G Dynatrend, Inc. (DYT) of Burlington, Massachusetts for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W8–0126, contractor DYT, of 24 New England Executive Park, Burlington, MA 01803–5203, will assist the Office of Pollution Prevention and Toxics (OPPT) in responding to malfunctioning alarms, setting up alarms, and storing tapes with CBI data.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W8–0126, DYT will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. DYT personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide DYT access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters and at the Environmental Research Center (ERC), EPA's Annex in Research Triangle Park, North Carolina.

In a previous notice published in the **Federal Register** of February 22, 1989 (54 FR 7598), DYT was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to extend DYT's access to TSCA CBI under contract number 68–W8–0126. Upon completing review of the CBI materials, DYT will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until July 18, 1994.

DYT personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 3, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–27989 Filed 11–12–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140215; FRL–4738–6]

Access to Confidential Business Information by Labat-Anderson, Inc.

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Labat-Anderson, Inc. (LAI) of Arlington, Virginia for access to information which has been submitted to EPA under all sections of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 26,1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–W9–0052, contractor LAI, of 2200 Clarendon Blvd., Suite 900, Arlington, VA 22201, will assist the Office of Pollution Prevention and Toxics (OPPT) in managing and operating the TSCA Confidential and NonConfidential Business Information Centers.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–W9–0052, LAI will require access to CBI submitted to EPA under all sections of TSCA to perform successfully the duties specified under the contract. LAI personnel will be given access to information submitted to EPA under all sections of TSCA. Some of the information may be claimed or determined to be CBI.

EPA is issuing this notice to inform all submitters of information under all sections of TSCA that EPA may provide LAI access to these CBI materials on a need-to-know basis only. Access to TSCA CBI will take place at EPA Headquarters and at LAI's leased facility at EPA Headquarters.

In a previous notice published in the **Federal Register** of November 10, 1992, (57 FR 53501), LAI was authorized for access to CBI submitted to EPA under all sections of TSCA. EPA is issuing this notice to extend LAI's access to TSCA CBI under contract number 68–W9–0052. LAI is currently authorized access to TSCA CBI at its facility under the EPA *TSCA Confidential Business Information Security Manual*. EPA has ensured that the facility is in compliance with the manual. Upon completing review of the CBI materials, LAI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1994.

LAI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 3, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–27990 Filed 11–12–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140214; FRL–4649–3]

Access to Confidential Business Information by Research Triangle Institute

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has authorized its contractor, Research Triangle Institute

(RTI) of Research Triangle Park, North Carolina, for access to information which has been submitted to EPA under section 8 of the Toxic Substances Control Act (TSCA). Some of the information may be claimed or determined to be confidential business information (CBI).

DATES: Access to the confidential data submitted to EPA will occur no sooner than November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (TS–799), Office of Pollution Prevention and Toxics, Environmental Protection Agency, rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Under contract number 68–D1–0118, contractor RTI of 3040 Cornwallis Rd., P.O. Box 12194, Research Triangle Park, NC, will assist the Office of Pollution Prevention and Toxics (OPPT) in reviewing data submitted to EPA on asbestos milling, manufacturing, and fabrication sources in support of development of national emission standards for hazardous air pollutants.

In accordance with 40 CFR 2.306(j), EPA has determined that under EPA contract number 68–D1–0118, RTI will require access to CBI submitted to EPA under section 8 of TSCA to perform successfully the duties specified under the contract. RTI personnel will be given access to information submitted to EPA under section 8 of TSCA. Some of the information may be claimed or determined to be CBI.

In a previous notice published in the **Federal Register** of October 19, 1992, (57 FR 47644), RTI was authorized for access to CBI submitted to EPA under section 8 of TSCA. EPA is issuing this notice to extend RTI's access to TSCA CBI under the new contract number 68–D1–0118.

EPA is issuing this notice to inform all submitters of information under section 8 of TSCA that EPA may provide RTI access to these CBI materials on a need-to-know basis only. All access to TSCA CBI under this contract will take place at RTI's Research Triangle Park site only. Upon completing review of the CBI materials, RTI will return all transferred materials to EPA.

Clearance for access to TSCA CBI under this contract may continue until September 30, 1996.

RTI personnel will be required to sign nondisclosure agreements and will be briefed on appropriate security procedures before they are permitted access to TSCA CBI.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: October 29, 1993.

George A. Bonina,

Acting Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–27991 Filed 11–12–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4800–8]

National Drinking Water Advisory Council; Open Meeting

Under section (1)(a)(2) of Public Law 92–423, "The Federal Advisory Committee Act," notice is hereby given that a meeting of the National Drinking Water Advisory Council established under the Safe Drinking Water Act, as amended (Public Law 93–339), will be held at 9 a.m. on December 2, 1993 and at 8:30 a.m. on December 3, 1993, at the St. James Hotel, St. James Room, 950 24th Street NW., Washington, DC 20007. Council Subcommittees will hold their meetings on November 30 and December 1, 1993, at the Environmental Protection Agency.

The purpose of the meeting will be to seek Council advice and comments on major program issues. Some issues include: Reauthorization of the Safe Drinking Water Act; Drinking Water Research Needs; Selection of Chemicals for Standard Setting; and Small System Compliance. They will be updated on the Regulatory Negotiation for Disinfectants/Disinfection By-Products and other on-going regulatory packages.

The meeting will be open to the public. The Council encourages the hearing of outside statements and will allocate a portion of its meeting time for public participation. Oral statements will be limited to ten minutes. It is preferred that there be only one presenter for each statement. Any outside parties interested in presenting an oral statement should petition the Council by telephone at (202) 260–2285. The petition should include the topic of the proposed statement, the petitioner's telephone number and should be received by the Council before November 29, 1993.

Any person who wishes to file a written statement can do so before or after a Council meeting. Written statements received prior to the meeting will be distributed to the members before any final discussion or vote is completed. Statements received after the meeting will become part of the permanent meeting file and will be forwarded to the Council members for their information.

Any member of the public wishing to attend the Council meeting, present an oral statement, or submit a written statement, should contact Ms. Charlene Shaw, Designated Federal Official, National Drinking Water Advisory Council, U.S. Environmental Protection Agency, Office of Ground Water and Drinking Water (4601), 401 M Street SW., Washington, DC 20460 or at (202) 260–2285.

Dated: November 4, 1993.

Edward A. Kramer,

Acting Director, Office of Ground Water and Drinking Water.

[FR Doc. 93–27983 Filed 11–12–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4800–7]

Delaware; Adequacy Determination of the State's Municipal Solid Waste Permit Program

AGENCY: Environmental Protection Agency (Region III).

ACTION: Notice of tentative determination on application of State of Delaware for full program adequacy determination, public hearing and public comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA), as amended by the Hazardous and Solid Waste Amendments (HSWA) of 1984, requires states to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria (40 CFR part 258). RCRA section 4005(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether states have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will approve, or partially approve, state/tribal municipal solid waste landfill permit programs. EPA intends to approve adequate state/tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of STIR, adequacy determinations will be made based on the statutory authorities and requirements. In addition, states/tribes may use the draft STIR as an aid in

interpreting these requirements. Approved state/tribe permit programs provide for interaction between the state/tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in state/tribes with approved permit programs can use the site-specific flexibility provided by 40 CFR part 258 to the extent the state/tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a state/tribe and the permit status of any facility, the federal landfill criteria continue to apply to all permitted and unpermitted MSWLF facilities.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to enforce the Federal MSWLF criteria in 40 CFR part 258, independent of any state/tribal enforcement program. As EPA explained in the preamble to the final MSWLF criteria, EPA expects that any owner or operator complying with provisions in a state/tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

The State of Delaware through the Delaware Department of Natural Resources and Environmental Control (DNREC) has applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Delaware's MSWLF application and has made a tentative determination that all portions of Delaware's MSWLF permit program are adequate to assure compliance with the revised Federal MSWLF Criteria.

DATES: All comments on Delaware's application for a determination of adequacy must be received by EPA Region III by the close of business on December 27, 1993. If there is sufficient public interest, EPA Region III will hold a public hearing on December 27, 1993 from 10 a.m. to 1 p.m. at the offices of the Delaware Department of Natural Resources and Environmental Control, located at 89 Kings Highway, Dover, Delaware. Delaware will attend the public hearing held by EPA Region III on this subject. Oral and/or written comments can be submitted during the public hearing. In addition, written comments on Delaware's application may be submitted to EPA Region III at the address specified below during the public comment period.

Persons requesting that EPA Region III hold a public hearing and/or wishing to be notified of the public hearing, if held, should contact the EPA Region III contact given below in the **FOR FURTHER INFORMATION CONTACT** section, within thirty (30) days of the date of the publication of this notice. Such persons so contacting EPA will be notified directly if the public hearing will be held or not held, at least two weeks prior to December 27, 1993.

ADDRESSES: Copies of Delaware's application for adequacy determination are available for inspection and copying from 9 a.m. to 4 p.m. at the following State and EPA addresses: Delaware Department of Natural Resources and Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903, Attn: Mr. Richard A. Folmsbee, telephone (302) 739–3820; and U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Christopher J. Luksic, mailcode (3HW53), telephone (215) 597–2842.

The public may submit written comments on EPA Region III's tentative determination until the close of business on December 27, 1993. All comments must be sent to U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Jeffrey M. Alper, mailcode (3HW53).

FOR FURTHER INFORMATION CONTACT: U.S. EPA Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107, Attn: Mr. Andrew R. Uricheck, mailcode (3HW53), telephone (215) 597–7936.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated revised Criteria for MSWLFs (40 CFR part 258). Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires states to develop permitting programs to ensure that MSWLFs comply with the Federal Criteria under 40 CFR part 258. Section 4005 of Subtitle D requires that EPA determine the adequacy of state municipal solid waste landfill permit programs to ensure that facilities comply with the revised Federal Criteria. To fulfill this requirement, EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which state/tribal programs must satisfy to be determined adequate.

EPA intends to approve state/tribal MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for states or tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each state/tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to EPA's revised MSWLF criteria. Next, the state/tribe must have the authority to issue a permit or other notice of prior approval to all new and existing MSWLFs in its jurisdiction. The state/tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the state/tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program.

Each EPA Region will determine whether a state/tribe has submitted an "adequate" program based on the criteria outlined above. EPA expects states/tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. Delaware

On October 7, 1993, Delaware submitted a final application for adequacy determination. EPA Region III reviewed Delaware's application and tentatively has determined that all portions of Delaware's MSW landfill permitting program, with the changes proposed, will ensure compliance with the revised Federal Criteria.

EPA Region III has determined that Delaware's program satisfies the requirements of the draft State and Tribal Implementation Rule (STIR). In addition, Delaware's solid waste permit program will ensure compliance with the revised Federal MSWLF Criteria when the Delaware Regulations Governing Solid Waste (DRGSW) are amended to incorporate the changes specified in their application and described below.

Subpart A—General

The current Delaware requirements fully comply with: 40 CFR 258.1, Purpose, Scope, and Applicability; and § 258.3, Consideration of other Federal laws.

§ 258.2 Definitions—Where appropriate, the State will adopt key terms and definitions which will more clearly ensure compliance with the 40 CFR part 258 Criteria. Subpart B—Location Restrictions

§ 258.10 Airport Safety—The State will amend DRGSW Section 5.A.3. to require that the Federal Aviation Administration (FAA) and affected airport(s) are notified of a proposed landfill located within 5 miles of an airport.

§ 258.11 Floodplains—Delaware will include the requirements and terms of this section in DRGSW § 5.A.4.a.

§ 258.12 Wetlands—The current Delaware requirements fully comply with this section.

§§ 258.13 Fault Areas, 258.14 Seismic Impact Zones, and 258.15 Unstable Areas—The State will include the requirements and terms of these sections in DRGSW Sections 5.A.4.h., 5.A.4.i., and 5.A.4.j., respectively.

§ 258.16 Closure of Existing MSWLF Units—Section 258.16 will not be adopted by Delaware, since Delaware has certified that no currently operating landfills are sited in areas impacting airport safety (§ 258.10), floodplains (§ 258.11), or unstable areas (§ 258.15), as defined in these sections.

Subpart C—Operating Criteria

§ 258.20 Excluding Receipt of Hazardous Waste and § 258.26 Run-on/Run-off Control Systems—The State will amend DRGSW Sections 5.I.2.l. and 5.F.2., to include the respective requirements of these sections.

The current State requirements fully comply with: § 258.21, Daily Cover; § 258.22, Disease Vectors Control; § 258.24, Air Criteria; § 258.25, Access requirements; § 258.27, Surface Water; and § 258.29, Record Keeping.

§ 258.23 Explosive Gas Control—The State will amend DRGSW § 5.E.4. to require the specific response actions of this section when critical levels of explosive gas are exceeded.

§ 258.28 Liquids Restrictions—The Delaware Solid Waste Authority (DSWA) conducts ongoing research to stabilize wastes through leachate recirculation, thereby minimizing the length of the post-closure care periods. Delaware will allow such recirculation in landfills designed with double synthetic liners, requiring recordkeeping and reporting of leachate recirculation activities and problems encountered. Leachate recirculation at such landfill units will be subject to annual renewal and approval by the Delaware DNREC.

Subpart D—Design Criteria

§ 258.40 Design Criteria—The State will amend DRGSW § 5.B.2. to adopt EPA's performance standard for landfill design as specified in § 258.40(a)(1), (c) and (d).

Subpart E—Ground-water Monitoring and Corrective Action

§ 258.50 Applicability—Delaware fully complies with the requirements in this section.

§ 258.51 Ground-water Monitoring Systems—The State will adopt EPA's relevant point of compliance (150 meters), within which the downgradient monitoring wells must be located.

§ 258.53 Ground-water Sampling and Analysis Requirements—The State will require that unfiltered ground-water samples be obtained except where turbidity cannot be controlled through careful well construction, development, and sampling. In addition, the State will adopt the data evaluation requirements found in subsections (e), (g), (h), and (i) of this section.

§ 258.54 Detection Monitoring—The State will adopt the requirements of this section, including the requirement that the owner/operators sample ground-water at least semi-annually for Appendix I parameters. Based on the results of ground-water and leachate monitoring, the State may modify the required list of ground-water monitoring parameters. In addition, the State will amend its regulations to require leachate sampling with monthly analyses for indicator parameters and semi-annual analyses for Appendix II constituents.

§ 258.55 Assessment Monitoring—The State will proceed directly from Detection Monitoring to Corrective Measures Assessment.

§ 258.56 Corrective Measures Assessment—The required list of parameters for ground-water monitoring will be expanded in the corrective measures assessment to include those Appendix II constituents deemed appropriate from the leachate monitoring data. During the corrective measures process there will be an opportunity for public input at the time of permit modification. A permit modification is required when corrective measures are deemed necessary.

§ 258.57 Selection of Remedy, and § 258.58 Implementation of Corrective Action—The State will adopt into regulation, the requirements of these sections.

Subpart F—Closure And Post-Closure Care

§ 258.60 Closure Criteria—The State will amend their regulations to require that a geomembrane cover be used as part of a capping system where a MSWLF has been constructed with a geomembrane liner.

§ 258.61 Post-Closure Care Requirements—Delaware's current regulations fulfill the requirements of this section.

Subpart G—Financial Assurance Criteria

§ 258.70 Applicability and Effective Date—The State will remove the current financial assurance exemption for the DSWA, which currently manages all of Delaware's municipal solid waste. DSWA will comply with the financial assurance requirements which will be effective on April 9, 1995.

§ 258.71 Financial Assurance for Closure; § 258.72 Financial Assurance for Post-Closure Care; and § 258.74 Allowable Mechanisms—Delaware's current regulations fulfill the requirements of these respective sections.

§ 258.73 Financial Responsibility for Corrective Action—The State will adopt into regulation the requirements of this section.

EPA Region III will consider all public comments on its tentative determination received during the public comment period and during any public hearing if held. Issues raised by those comments will be the basis for a final determination of adequacy for Delaware's program. EPA Region III will make a final decision on whether or not to approve Delaware's program, and will give notice in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all major comments. Delaware submitted a schedule indicating that it will be able to complete their revisions by December 15, 1993. EPA Region III's final determination will not be made until Delaware has revised regulations as discussed above and they are in affect.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of U.S.C. 605(b) and 40 CFR Part 258, I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Dated: November 5, 1993.

Stanley L. Laskowski,

Acting Regional Administrator.

[FR Doc. 93–27985 Filed 11–12–93; 8:45 am]

BILLING CODE 6560–50–P

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board; Meeting Cancellation

AGENCY: General Accounting Office.

ACTION: Cancellation of November meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given of cancellation of the November 18 meeting of the Federal Accounting Standards Advisory Board. Notice of the meeting was previously published in the **Federal Register** of November 8. It is currently anticipated that the December meeting will be held as scheduled. Due notice of it will be published at a later date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First Street NE., room 1001, Washington, DC 20002, or call (202) 512–7354.

Authority: Federal Advisory Committee Act. Pub. L. 92–463, Section 10(a)(2), 86 Stat. 770, 774 (1972) (current version at 5 U.S.C. app. section 10(a)(2) (1988)); 41 CFR 101–6.1015 (1990).

Dated: November 9, 1993.

Ronald S. Young,

Executive Director.

[FR Doc. 93–28001 Filed 11–12–93; 8:45 am]

BILLING CODE 1610–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Scientific Review of Draft Current Intelligence Bulletin on the Carcinogenic Potential of Occupational Exposure to Asphalt Products; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Scientific Review of Draft Current Intelligence Bulletin on the Carcinogenic Potential of Occupational Exposure to Asphalt Products.

Times and Dates: 9 a.m.–5:30 p.m., December 1, 1993; 8 a.m.–12 noon, December 2, 1993.

Place: Robert A. Taft Laboratories, Auditorium, NIOSH, CDC, 4676 Columbia Parkway, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The purpose is to review and discuss the draft of Current Intelligence Bulletin, "Carcinogenic Potential of Occupational Exposure to Asphalt Products," with a panel of invited participants selected by NIOSH for their expertise and background in this area. The scientific review will provide NIOSH with individual input and opinion from experts outside the Institute prior to finalizing the Current Intelligence Bulletin for publication and transmittal to the Department of Labor. The review will focus on the health effects related to occupational exposures to asphalt products and on data from carcinogenicity studies in animals. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact persons for additional information: General Information may be obtained from Pam Graydon, NIOSH, CDC, 4676 Columbia Parkway, Mailstop C–30, Cincinnati, Ohio 45226, telephone 513/533–8312.

Technical information may be obtained from Crystal Ellison NIOSH, CDC 4676 Columbia Parkway, Mailstop C–31, Cincinnati, Ohio 45226, telephone 513/533–8331.

Dated: November 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–27949 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–19–M

Control of Chemical Exposures and Ergonoic Risk Factors in Commercial Dry Cleaners; Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Control of Chemical Exposures and Ergonomic Risk Factors in Commercial Dry Cleanders.

time and Date: 1 p.m.—5 p.m., December 8, 1993.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45213.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to review the protocol for a proposed NIOSH study entitled "Control of Chemical Exposures and Ergonomic Risk Factors in Commercial Dry Cleaners." This study would evaluate perchloroethylene exposures associated with the use of various dry cleaning control technologies. It would also evaluate chemical exposures during the spotting process and ergonomic risk factors during pressing. The goal of this study is to identify technologies effective in reducing these hazards to the dry cleaning worker. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person For Additional Information: Gary S. Earnest, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R–5, Cincinnati, Ohio 45226, telephone 513/841–4370.

Dated: November 8, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–27948 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–19–M

National Institute for Occupational Safety and Health; Request for Existing Information Relevant to Implementing the Workers' Family Protection Act

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for existing information.

SUMMARY: NIOSH is requesting existing information on the contamination of workers' homes by hazardous chemicals and substances transported from the workplace on equipment, clothing, or the worker's person. This information would include existing reports of incidents resulting in familial poisonings or illnesses, methods of preventing and remediating such incidents, relevant statutes and regulations to prevent such incidents, and past investigations, enforcement actions, and the role of governmental agencies in preventing and responding to such incidents.

DATES: Information in response to this notice should be submitted by February 14, 1994.

ADDRESSES: Please submit two copies of any information to Diane Manning, Docket Office Manager, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–34, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Dr. Steven Galson, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226, telephone 513/533–8302.

SUPPLEMENTARY INFORMATION: The Workers' Family Protection Act (29 U.S.C. 671a), hereafter referred to as "the Act," was enacted on October 26, 1992, as section 209 of Public Law 102–522, the "Fire Administration Authorization Act of 1992." The purpose of the Act is to protect the health of workers and their families from hazardous chemicals and substances, including infectious agents, transported from the workplace to the

home on equipment, clothing, or the worker's person. The specific objectives of the Act are the following:

(1) To increase understanding and awareness of the extent and impact on health of hazardous chemicals and substances transported from the workplace to the home;

(2) To prevent or mitigate future incidents of home contamination that could adversely affect the health and safety of workers and their families;

(3) To clarify regulatory authority for preventing and responding to incidents of home contamination; and

(4) To assist workers in redressing and responding to incidents.

Under the Act, NIOSH is mandated to conduct a study to evaluate the problem of contamination of workers' homes by hazardous chemicals and substances transported from the workplace. The study is to include review of past incidents of home contamination, actions taken by governmental agencies in response to such incidents, the roles and practices of governmental agencies and NIOSH study, and an analysis of relevant statutes, regulations, and voluntary measures. In addition to requesting existing information on these matters, NIOSH is also requesting existing information on incidents of home contamination and family illness or poisoning in situations where the workplace and home located together, such as farms and certain small businesses. NIOSH is requesting both published reports, including studies, case histories, voluntary guidance, statutes, and regulations, and unpublished reports including accounts from physicians, poison control centers, industry management, labor unions, and other parties. Existing information is specifically requested on the following:

1. Measurements of home contamination or incidents of familial poisoning or illness due to contamination of the home by hazardous chemicals or substances transported to the home from the workplace on the equipment (including vehicles), clothing, or a worker's person.

2. Any measurements of home contamination or incidents of familial poisoning or illness resulting from hazardous chemicals or substances due to the proximity of the workplace and the home, such as farms or other businesses with attached living quarters.

3. Reports of Federal, state or local government actions to either enforce statutes or regulations or provide assistance in incidents of familial poisoning or illness due to hazardous chemicals or substances transported home from the workplace, or due to the proximate nature of the home and workplace.

4. Measures used by employers to prevent or remedy home contamination, including statutory, regulatory, or voluntary industrial hygiene measures. (Please specify the approximate number of workers employed by the business establishment.)

5. Effectiveness of industrial hygiene practices in the workplace, such as housekeeping practices and the use of personal protective equipment, in preventing home contamination.

6. Effectiveness of normal house cleaning and laundry procedures in removing hazardous materials and agents from workers' homes, personal clothing and equipment (including vehicles).

7. Information on indoor air quality research that pertains to the fate of chemicals transported from a workplace into the home environment.

8. Information on any of the above items that pertains specifically to firefighters.

NIOSH presently has copies of the references listed at the end of this request for existing information.

Information received in response to this notice (except that designated trade secret and protected under Section 15 of the Occupational Safety and Health Act of 1970 [29 U.S.C. 664], or that exempt from disclosure under the Freedom of Information Act (5 U.S.C. 552) or the Privacy Act (5 U.S.C. 552a) will be available for public examination and copying at the above address.

Dated: November 5, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

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[FR Doc. 93–27947 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–19–P

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration, HHS.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Establishing Procedures for Transmitting Information Between Medicare Carriers and Medicare Supplemental Insurers; *Form No.:* HCFA–R–140; *Use:* These procedures provide for the transfer of claims information from a Medicare carrier to a Medicare supplemental (Medigap) insurer when a beneficiary has assigned his/her right of payment under the Medigap policy to a participating physician or supplier in order to speed payment of Medigap benefits to participating physicians and suppliers. Medigap insurers are required to issue, to beneficiaries, insurance enrollment cards and notification of claims payment determinations. They are also required to report to the Secretary a single mailing address to

which claims notices may be sent. States are required to submit an annual report to the Secretary which includes information on Medigap policies within the State; *Frequency:* On occasion (claims information) and annually (Medigap insurers address and State information on Medigap policies); *Respondents:* Individuals or households, State/local government, businesses or other for profit, and nonprofit institutions; *Estimated Number of Responses:* Insurers: 170,000 (cards), 350 (reports), 86,400,000 (notices); States: 50; *Average Hours Per Response:* 1 (cards), 1 (report), 3 minutes (notices), and 5–60 hours (State report); *Total Estimated Burden Hours:* 170,000 (cards), 350 (insurers reports), 4,320,000 (notices), and 1,075 (State reports) for a total of 4,491,425.

2. *Type of Request:* Extension; *Title of Information Collection:* Medicare Physician or Supplier Agreement; *Form Nos.:* HCFA–460, –463; *Use:* These forms require all physicians and suppliers to select or decline participation in Medicare. These two groupings are the basis for updating fee schedules and an annual publication of a directory of participating physicians and suppliers. Those physicians and suppliers choosing to participate in Medicare agree to accept reimbursement on a fee basis. The forms are filled out only by new physicians and suppliers; *Frequency:* Annually; *Respondents:* Businesses or other for profit, State or local governments; *Estimated Number of Responses:* 99,357; *Average Hours Per Response:* .16; *Total Estimated Burden Hours:* 15,897.

3. *Type of Request:* Extension; *Title of Information Collection:* Patient Intake Data Form for the National Home Health Agency; *Form No.:* HCFA–442; *Use:* This information collection provides data about the health and functional status characteristics of Medicare home health patients served by home health agency prospective payment demonstration providers in order to monitor the operations of the demonstration and provide information for its evaluation about the project's effects on types of patients; *Frequency:* Annually; *Respondents:* Individuals or households, businesses or other for profit, nonprofit organizations; *Estimated Number of Responses:* 46,550; *Average Hours Per Response:* .10; *Total Estimated Burden Hours:* 4,655.

4. *Type of Request:* Extension; *Title of Information Collection:* Agency Characteristics Form for the National Home Health Agency Prospective Payment Demonstration; *Form Nos.:* HCFA–443, –444; *Use:* This form will collect baseline information on approximately 400 home health agencies interested in participating in the home health agency prospective payment demonstration. An annual update will be completed by 133 agencies actually selected for participation in the two phases of the demonstration; *Frequency:* Annually; *Respondents:* Businesses or other for profit, nonprofit institutions, small businesses or organizations; *Estimated Number of Responses:* 111; *Average Hours Per Response:* .65; *Total Estimated Burden Hours:* 72.

5. *Type of Request:* New collection; *Title of Information Collection:* Intake and Assessment Survey Package for the Community Nursing Organization Demonstration; *Form No.:* HCFA–644; *Use:* This survey will collect information on approximately 4,800 individuals enrolled in the community nursing organization demonstration. The information collected will be used to evaluate the effectiveness and outcomes of the demonstration project; *Frequency:* Annually; *Respondents:* Nonprofit institutions; *Estimated Number of Responses:* 4,032; *Average Hours Per Response:* 1.0119; *Total Estimated Burden Hours:* 4,080.

6. *Type of Request:* Revision; *Title of Information Collection:* Comprehensive Outpatient Rehabilitation Facility (CORF) Eligibility and Survey Forms and Information Collection Requirements Contained in 42 CFR 485.56, 485.58, 485.60, 485.66, and 405.262; *Form Nos.:* HCFA–R–55, –359, –360; *Use:* In order to participate in the Medicare program as a CORF, providers must meet Federal conditions of participation. The certification form is needed to determine if providers meet at least preliminary requirements. The survey form is used to record provider compliance with the individual conditions and report findings to HCFA; *Frequency:* Annually; *Respondents:* State or local governments, small businesses or organizations; *Estimated Number of Responses:* 162 (reporting), 162 (recordkeeping); *Average Hours Per Response:* 3.25 (reporting), 475.39 (recordkeeping); *Total Estimated Burden Hours:* 526 (reporting), 77,013 (recordkeeping) for a total of 77,539.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Date: November 4, 1993.

John A. Streb,

Director, MPAS, OBA, Health Care Financing Administration.

[FR Doc. 93–27897 Filed 11–12–93; 8:45 am]

BILLING CODE 4120–03–P

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on the National Health Service Corps

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Nada Schnabel, National Advisory Council on the National Health Service Corps, 4350 East West Highway, 8th Floor, Rockville, Maryland 20857, Telephone (301) 594–4137.

Dated: November 8, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–27959 Filed 11–12–93; 8:45 am]

BILLING CODE 4160–15–P

Office of Inspector General

Program Exclusions: October 1993

AGENCY: Office of Inspector General, HHS.

ACTION: Notice of program exclusions.

During the month of October 1993, the HHS Office of Inspector General imposed exclusions in the cases set forth below. When an exclusion is imposed, no program payment is made to anyone for any items or services (other than an emergency item or service not provided in a hospital emergency room) furnished, ordered or prescribed by an excluded party under the Medicare, Medicaid, Maternal and Child Health Services Block Grant and Block Grants to States for Social Services programs. In addition, no program payment is made to any business or facility, e.g., a hospital, that

submits bills for payment for items or services provided by an excluded party. Program beneficiaries remain free to decide for themselves whether they will continue to use the services of an excluded party even though no program payments will be made for items and services provided by that excluded party. The exclusions have national effect and also apply to all other Federal non-procurement programs.

Subject city, state	Effective date
Program-related Convictions:	
Alcalen, Gloria S, Somerset, NJ	11/04/93
Anastas, Nick G, Pittsford, NY	11/04/93
Bravo, Sergio, Miami, FL	11/11/93
Chalkley, Walter, Baltimore, MD	11/11/93
Chaudhry, Muhammad R, Jersey City, NJ	11/04/93
Del Gizzo, Giovanni, Highlands, NJ	11/04/93
Drucker, Robert N, Napa, CA	11/03/93
Gordon, David L, Great Neck, NY	11/04/93
Grewal, Jagmohan S, Florence, CO	11/03/93
Hiotis, Michael P, Baltimore, MD	11/11/93
Hussain, Ahmed G, Forest Hills, NY	11/04/93
Hussain, Saleem, Elmhurst, NY	11/04/93
Iweagwu, Tony, Chicago, IL	11/11/93
Kalvar, Patricia N, Huntington, NY	11/04/93
Khan, Ali S, West Hempstead, NY	11/04/93
Munshi, Prabhakar, Irvington, NJ	11/04/93
Rowe, Algernon, Queens, NY	11/04/93
Samu, William, Lincoln Park, MI	11/11/93
Taylor, Grandell A, Huntington, WV	11/11/93
Vallone, Michael, Lewisburg, PA	11/04/93
Patient Abuse/Neglect Convictions:	
Beyer, Kathryn P, Georgetown, TX	11/11/93
Bland, Johnetta, Detroit, MI	11/11/93
Cook, Darryl, Detroit, MI	11/11/93
Delph, Diane Marie, Tucson, AZ	11/03/93
Heath, Janet Futral, Centreville, AL	11/11/93
Johnson, Glenda J, Tuscaloosa, AL	11/11/93
Kirksey, Anthony R, Independence, MO	11/11/93
Lizotte, Lue Ann, Bangor, ME	11/16/93
McGuire, Steven H, Farmington, MO	11/11/93
McKnight, Shannon, Conway, AR	11/11/93
Mingo, Christopher, Buckfield, ME	11/16/93
Robinson, Lena A, West Memphis, AR	11/11/93
Shields, Fabiola Canas, Tucson, AZ	11/03/93
Upchurch, Irene, Tuscaloosa, AL	11/11/93
Williams, Mary G, BALTIMORE, MD	11/11/93
Conviction for Health Care Fraud:	
Sacha, Sam, Stockton, CA	11/03/93
Winstead, Arthur III, San Jose, CA	11/03/93
Controlled Substance Convictions:	
Datto, Ralph B, Carbondale, PA	11/11/93
License Revocation/Suspension:	
Moore, Lornold W, Chicago, IL	11/21/93
Sitomer, Allen Z, Newport, RI	11/16/93
Entities Owned/Controlled by Convicted:	
Bass Ambulance, Hopkinsville, KY	06/06/91
Default on Heal Loan:	
Bacon, Pamela M, Spadalia, MO	11/21/93
Barner, Russell J, Tampa, FL	11/21/93
Burns, Christopher D, Milford, DE	11/21/93
Chow, Aaron L, Shelton, WA	11/13/93
Clifford, Fred W, Palm Desert, CA	11/13/93
Clinch, Patrick J, Rapid City, SD	11/26/93
Davis, Edward Lee, Memphis, TN	11/21/93
Diesen, James D, Orange Park, FL	11/21/93
Driessen, Todd G, Faribault, MN	11/21/93
Fontenette, Vernie, Gulfport, MS	11/21/93
Goodwin, Mark A, Tulsa, OK	11/21/93
Gorton, George F, Hinton, OK	11/21/93
Hagn, William R, E Fort Myers, FL	11/21/93
Hicks, Paul S, Elmira, NY	11/14/93
Hollander, Gregg M, Philadelphia, PA	11/21/93
Hundley, Kenneth L, Panama City, FL	11/21/93
Israelsen, John A, Logan, UT	11/26/93
Jackson, Zona G, Freeman, VA	11/21/93
Johnson, Mark A, Hyattsville, MD	11/21/93
Jones, Gale F, Richmond, VA	11/21/93
Jones, Richard H, Camp Verde, AZ	11/13/93
Jones, William B, Englewood, NJ	11/14/93
Kratt, Thomas William, Nacogdoches, TX	11/21/93
Krebill, Michael W, Colorado Springs, CO	11/26/93
Kronbeck, Gary M, Little Falls, MN	11/21/93
Lang, Lula B, Pine Bluff, AR	11/21/93
Lay, William Glenn, Tucson, AZ	11/13/93
Llewellyn, Allan, N Attleboro, MA	11/26/93
Mamby, Audley R Jr, Philadelphia, PA	11/21/93
Meldonia, Barbara J, Stevens Point, WI	11/21/93
Mercks, James L, Woodstock, GA	11/21/93
Montanari, Arthur M, La Porte, TX	11/21/93
Moore, Lornold W, Chicago, IL	11/21/93
Moore, Gregory S, Clay, WV	11/21/93
Murphy, Richard N, North Bergen, NJ	11/14/93
Norpel, Joseph W, Erdenheim, PA	11/21/93
Oliver, John A Jr, Linden, NJ	11/14/93
Pachomski, Michael P, Nashua, NH	11/26/93
Robinson, Bruce K, W Palm Beach, FL	11/21/93
Saintlouis, Josephus H, Boston, MA	11/26/93
Schumacher, Douglas E, Dayton, OH	11/21/93
Scott, Rosemary C, Saluda, VA	11/21/93
Shay, Robert J, China Grove, SC	11/21/93
Shook, Scott L, Columbus, OH	11/21/93
Urquhart, Charles N, Philadelphia, PA	11/21/93
Section 1128Aa:	
Parker, Stanley M, Bonifay, FL	10/06/93
Peer Review Organization Cases:	
Stoops, Donald, Truth or Consequences, NM	09/14/93

* * * * *

Dated: November 5, 1993.

James F. Patton,

Director, Health Care Administrative Sanctions, Office of Investigations.

[FR Doc. 93–27898 Filed 11–12–93; 8:45 am]

BILLING CODE 4150–04–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–40974]

Termination of Recreation and Public Purpose Classification; Nevada

November 4, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This action terminates Recreation and Public Purpose (R&PP) Classification N–40974 in its entirety. The land will be opened to the public land laws, including the mining laws.

EFFECTIVE DATE: The land will be open to entry effective 10 a.m. on December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Charles J. Kihm, Bureau of Land Management, Carson City District, 1535

Hot Springs Road, Carson City, Nevada 89706, 702–885–6000.

SUPPLEMENTARY INFORMATION: Pursuant to the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203 dated April 14, 1987, Recreation and Public Purpose Classification N–40974 is hereby terminated in its entirety:

Mount Diablo Meridian, Nevada

T. 8 N., R. 30 E.,
Sec. 31, SW¼NE¼NE¼.

The area described contains 10 acres in Mineral County.

The classification made pursuant to the Act of June 14, 1926, as amended, segregated the public land from all other forms of appropriation under the public land laws, including location under the United States mining laws, but not leasing under the mineral leasing laws. The land was previously leased to Mineral County for a rifle range. The lease has expired and the classification no longer serves any purpose.

At 10 a.m. on December 15, 1993, the land will become open to the operation of the public land laws generally, subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law. All valid applications received at or prior to 10 a.m. on December 15, 1993, shall be considered as simultaneously filed at that time. Those received thereafter shall be considered in the order of filing.

At 10 a.m. on December 15, 1993, the land will also be open to location under the United States mining laws. Appropriation of lands under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

Billy R. Templeton,
State Director, Nevada.

[FR Doc. 93–27902 Filed 11–12–93; 8:45 am]
BILLING CODE 4310–HC–M

[ES–940–04–4210–08–25–7A]

Eastern States: Change in Public Room Hours of Operation

SUMMARY: Effective January 3, 1994, the Eastern States Public Room hours of Operation will be Monday through Friday, 8 a.m. to 4:30 p.m. Comments shall be submitted by December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Gloria M. Ridolfi (703) 440–1605.

SUBMIT WRITTEN COMMENTS TO: Bureau of Land Management, Eastern States, 7450 Boston Boulevard, Springfield, VA 22153.

Dated: November 9, 1993
Carson W. Culp, Jr.,
State Director.

[FR Doc. 93–27957 Filed 11–12–93; 8:45 am]
BILLING CODE 4310–GJ–M

[AZ–024–04–4210–05; AZA–22268]

Notice of Realty Action; Recreation and Public; Purposes (R&PP) Act Classification; Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The following public lands, located near the City of Florence, Pinal County, Arizona, have been examined and found suitable for lease or conveyance to the Arizona National Guard under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, *et seq.*) for use for helicopter training operations.

Gila and Salt River Meridian, Arizona

T. 2 S., R. 8 E.,
Sec. 15, N½, SW¼.
Containing approximately 480 acres.

A portion of the lands are currently leased to the Arizona National Guard for helicopter training purposes, and it is proposed to include the remaining lands in the existing lease.

The lands are presently withdrawn under PLO 776 withdrawing the lands for use by the United States Air Force for the Rittenhouse Air Force Auxiliary Field.

It has been determined that the two uses (R&PP) lease or conveyance and the withdrawal) are compatible uses. The lands are not needed for Federal purposes. Lease or conveyance is consistent with current BLM land use planning and would be in the public interest.

The lease or conveyance would be subject to the following terms, conditions and reservations:

1. Provisions of the Recreation and Public Purposes Act and all regulations of the Secretary of the Interior.

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove the minerals.

3. A right-of-way for ditches and canals constructed by the authority of the United States.

4. Those rights for pipeline purposes granted to the Bureau of Reclamation by Right-of-Way AZA–21196.

5. Those rights for canal purposes (Central Arizona Project) granted to the Bureau of Reclamation by Right-of-Way AZA–22075.

6. Those rights for road purposes granted to the State of Arizona by Right-of-Way AZA–21352.

7. All rights associated with the application for withdrawal filed by the Bureau of Reclamation for the Central Arizona Project, AZA–997.

8. All rights reserved by PLO 776 to Williams Air Force Base. For detailed information concerning this action, contact Jim Andersen at the Phoenix Resource Area Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027, (602) 780–8090.

Upon publication of this notice in the **Federal Register** the lands will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease or conveyance under the Recreation and Public Purposes Act. For a period of 45 days from the date of publication of this Notice, interested parties may submit comments regarding this proposed lease, conveyance or classification of the lands to the District Manager, Phoenix District Office, 2015 West Deer Valley Road, Phoenix, Arizona 85027.

Classification Comments: Interested parties may submit comments involving the suitability of the land for helicopter training facility. Comments on the classification are restricted to whether the land is physically suited for the proposal, whether the use will maximize the future use or uses of the land, whether the use is consistent with local planning and zoning, or if the use is consistent with State and Federal programs.

Application Comments: Interested parties may submit comments regarding the specific use proposed in the application and plan of development, whether the BLM followed proper administrative procedures in reaching the decision, or any other factor not directly related to the suitability of the land for a helicopter training facility.

Any adverse comments will be reviewed by the State Director. In the absence of any adverse comments, the classification will become effective 60 days from the date of publication in the **Federal Register**.

Dated: November 3, 1993.

John R. Christensen,

Acting District Manager.

[FR Doc. 93-27901 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-32-M

[NM-920-4210-06; NMNM 21834]

Notice of Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Reclamation proposes that a 6.5-acre-withdrawal for the Conchas Canal, Tucumcari Project continue for an additional 20 years. The land will remain closed to surface entry and mining, but has been and will remain open to mineral leasing.

DATES: Comments should be received by February 14, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505-438-7501.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: The Bureau of Reclamation proposes that the existing land withdrawal made by the Secretarial Order of August 5, 1944, be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The land described as follows:

New Mexico Principal Meridian

T. 12 N., R. 29 E.,

A 300' strip reserved for the Conchas Canal right-of-way across lot 2 in section 22 more particularly described as follows: One Hundred and seventy five (175) feet left (northerly aside) and one hundred and twenty five (125) feet right (southerly side) of the centerline of the Conchas Canal; beginning at a point eight hundred and seventy nine (879.4) and four tenths feet N74°57'E of the east quarter corner of sec. 21 T. 12 N., R. 29 E., N.M.P.M., at Conchas Canal Station 2958+50.4, a point on the county line between San Miguel County and Quay County. The centerline described as follows:

Backing upstream along the Conchas Canal from the above described point, S56°42'00"E to the PI Station 2056+24.7 of a six hundred (600) foot radius curve of 2°31'30"L with curve length of 26.4 feet, then S54°10'30"E of the tangent to the PI Station 2051+13.0 of a two hundred (200) foot radius curve of 51°30'00"L with a curve length of 179.8 feet then N77°26'00"E of the tangent to the PI Station 2049+27.0 of a two hundred (200) foot radius curve of 48°23'30"R to the section line between sections 21 and 22.

The area described contains 6.5 acres in Quay County.

The purpose of the withdrawal is to protect the Conchas Canal, Tucumcari Project. The withdrawal segregates the land from settlement, sale, location, and entry, including location and entry under the mining laws, but not the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of lands and Realty, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination of the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 1, 1993.

William C. Calkins,

Acting State Director.

[FR Doc. 93-27903 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-FB-M

Fish and Wildlife Service

Availability of the Draft North Cascades Chapter of the Recovery Plan for the Grizzly Bear (Ursus arctos horribilis) for Review and Comment

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of document availability and public comment period.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces the availability for public review of the draft North Cascades Chapter (Chapter) of the Recovery Plan for the Grizzly Bear (*Ursus arctos horribilis*). This Chapter addresses recovery of the grizzly bear population in the North Cascade Mountains of Washington and is intended to be added to the Grizzly Bear Recovery Plan. The Service solicits review and comment from the public on this draft Chapter.

DATES: Comments on the draft Chapter must be received on or before February 14, 1994, to receive consideration by the Service

ADDRESSES: Persons wishing to review the draft Chapter may obtain a copy by contacting the U.S. Fish and Wildlife Service, 3704 Griffin Lane S.E., suite 102, Olympia, Washington 98501-2192. Written comments or materials regarding this Chapter should be sent to the same address. Comments and materials received are available on request for public inspection, by appointment, during regular business hours at the above address for the duration of the comment period.

FOR FURTHER INFORMATION CONTACT: Dave Frederick, Field Supervisor, U.S. Fish and Wildlife Service in Olympia, Washington (see ADDRESSES above), telephone (206) 753-9440.

SUPPLEMENTARY INFORMATION:

Background

Restoring an endangered or threatened plant or animal to the point where it is again a secure, self-sustaining member of its ecosystem is a primary goal of the U.S. Fish and Wildlife Service's (Service) endangered species program. To help guide the recovery effort, the Service is working to prepare recovery plans for most of the listed species native to the United States. Recovery plans describe suggested actions that Federal and State agencies and other involved parties can undertake for conservation of the species, establish criteria for recovery levels for downlisting or delisting them, and provide initial estimates of time and cost for implementing the needed recovery measures.

The Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires the development of recovery plans for listed species unless such a plan would not promote the conservation of a particular species. Section 4(f) of the Act, as amended in 1988, requires that public notice and an opportunity for public review and comment be provided during recovery plan development. The Service will consider all information presented during a public comment period prior to approval of each new or revised recovery plan. The Service and other Federal Agencies will also take these comments into account in the course of implementing approved recovery plans.

The grizzly bear was listed under the Act as a threatened species in the 48 conterminous States on July 28, 1975 (40 FR 31734), due to current and potential threats to the species populations and habitat from human

activities. A plan for the recovery of grizzly bears in the 48 conterminous States has been developed and approved. The proposed North Cascades Recovery Chapter (Chapter) is intended to be added to that recovery plan. It addresses recovery of grizzly bears in the North Cascade Mountains of Washington. Similar recovery chapters have already been completed for other ecosystems where grizzly bears still exist within the conterminous 48 States. These chapters are included in the Grizzly Bear Recovery Plan.

Threats to grizzly bear populations come primarily from habitat modification caused by human activities and from direct bear/human conflicts resulting from recreational and resource use activities, highway and railroad corridors, illegal mortality, etc. The grizzly bear population in the North Cascades, and in each of the ecosystems covered in the Grizzly Bear Recovery Plan, can be delisted independently once recovery criteria stated in the plan are met.

Public Comments Solicited

The Service solicits written comments on the Chapter described. All comments received by the date specified in the DATES section above will be considered prior to approval of the Chapter.

Authority: The authority for this action is section 4(f) of the Endangered Species Act, 16 U.S.C. 1533(f).

Dated: November 8, 1993.

John L. Spinks, Jr.,

Deputy Regional Director.

[FR Doc. 93-27946 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-55-M

National Park Service

Missouri National Recreational River Advisory Group; Meeting

AGENCY: National Park Service, Department of the Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets the schedule for the forthcoming meeting of the Missouri National Recreational River Advisory Group. Notice of this meeting is required under the Federal Advisory Committee Act (Pub. L. 92-463).

MEETING DATE AND TIME: December 8, 1993; 1:30 p.m. until 4:30 p.m. (Inclement weather date: December 15, 1993, same time and location.)

ADDRESS: Assumption Hall of the Catholic Church, Lynch, Nebraska (1 block south of Highway 12).

The agenda of the meeting includes an update and discussion on the status of the Missouri Recreational River General Management Plan presented by the National Park Service, including draft management alternatives and draft boundary concepts as developed by planners; public comment received from the newsletter (if available); the opportunity for public comment; and a proposed agenda, date, time, and location for the next meeting.

The meeting is open to the public. Interested persons may make oral/written presentation to the Commission or file written statements. Requests for time for making presentations may be made to the Superintendent prior to the meeting or to the Chair at the beginning of the meeting.

The meeting will be recorded for documentation and a summary in the form of minutes will be transcribed for dissemination. Minutes of the meeting will be made available to the public after approval by the Commission members. Copies of the minutes may be requested by contacting the Superintendent. An audio tape of the meeting will be available at the headquarters office of the Niobrara/Missouri National Scenic Riverways in O'Neill, Nebraska.

SUPPLEMENTARY INFORMATION: The Advisory Commission was established by the law that established the Missouri National Recreational River, Public Law 102-50. The purpose of the group, according to its charter, is to advise the Secretary of the Interior on matters pertaining to the development of a management plan, and management and operation of the recreational river. The Missouri National Recreational River is the 39-mile, free flowing segment of the Missouri River from Fort Randall Dam to the vicinity of Springfield in South Dakota.

FOR FURTHER INFORMATION CONTACT: Mr. Warren Hill, Superintendent, Niobrara/Missouri National Scenic Riverways, P.O. Box 591, O'Neill, Nebraska 68763-0591, (402) 336-3970.

Dated: November 3, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93-27952 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-70-P

Petroglyph National Monument Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act, Public Law 92-463, that a meeting of the Petroglyph National Monument Advisory Commission will be held at 7 p.m., Monday, December 6, 1993, in the Theater Conference Room, St. Joseph's on the Rio Grande Church, 4000 St. Joseph's Place, NW., Albuquerque, New Mexico.

The Petroglyph National Monument Advisory Commission was established pursuant to Public Law 101-313 establishing Petroglyph National Monument, to advise the Secretary of the Interior on the management and development of the monument and on the preparation of the monument's general management plan.

The matters to be discussed at this meeting include:

—Introduction of commissions members and guests
—Status report about monument's General Management Plan
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come, first-served basis. Any member of the public may file a written statement concerning the matters to be discussed at the commission meeting with the Superintendent, Petroglyph National Monument.

Persons who wish further information concerning the meeting, or who wish to submit written statements may contract Stephen Whitesell, Superintendent, Petroglyph National Monument, 123 4th Street SW., room 101, Albuquerque, New Mexico 87102, telephone 505/766-8375.

Minutes of the commission meeting will be available for public inspection six weeks after the meeting at the office of Petroglyph National Monument.

Dated: October 29, 1993.

Mary R. Bradford,

Acting Regional Director, Southwest Region.

[FR Doc. 93-27951 Filed 11-12-93; 8:45 am]

BILLING CODE 4310-70-M

INTERNATIONAL DEVELOPMENT COOPERATION AGENCY

Agency for International Development

Board for International Food and Agricultural Development and Economic Cooperation; Notice of Meeting

Pursuant to the provisions of the Federal Advisory Committee Act, notice is hereby given of the one hundred and eighteenth meeting of the Board for International Food and Agricultural Development and Economic Cooperation (BIFADEC) on December 9, 1993 from 8:30 a.m. to 3:30 p.m.

The purposes of the Meetings are: (1) to discuss the role of U.S. universities

in support of A.I.D.'s environment strategy; (2) to receive a report from the BIFADEC budget panel; (3) to review the Administration's policies on involvement of the historically black colleges and universities in federal programs; (4) to hear a report on linkages between U.S. scientists and the international agricultural research centers and (5) to discuss how the participation of institutions of higher education in international programs is important to the U.S. economy.

This meeting will be held in the Main State Department Building, room 1107. Any interested person may attend and may present oral statements in accordance with procedures established by the Board and to the extent time available for the Meeting permits.

All persons, visitors and employees are required to wear proper identification at all times while in the Department of State building. Please let the BIFADEC/University Center (UC) staff know (tel #703–816–0295 or 0292) if you expect to attend the meeting. Provide your full name, name of employing company or organization, address and telephone number not later than November 29, 1993. A UC staff member will meet you at the Department of State Diplomatic Entrance at C and 22 Streets, NW., with your pass.

Jiryis S. Oweis, Chief BIFADEC Support Staff will be the A.I.D. Advisory Committee Representative at this Meeting. Those desiring further information may write to Jiryis S. Oweis in care of the Agency for International Development, room 900, SA–38, Washington, DC 20523–3801 or telephone him on (703) 816–0264.

Dated: November 4, 1993.

Richard Fairley,

Acting Executive Director, Agency Center for University, Cooperation in Development.

[FR Doc. 93–27900 Filed 11–12–93; 8:45 am]

BILLING CODE 6116–01–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12 (Sub-No. 159X)]

Southern Pacific Transportation Company—Abandonment Exemption—Sacramento and El Dorado Counties, CA

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR 1152 Subpart F—*Exempt Abandonments* to abandon a 37.14-mile portion of its Placerville Branch from milepost 108.00, near the Nimbus rail station, to milepost 145.14, near the Diamond Springs rail station, in Sacramento and El Dorado Counties, CA.

SPT has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) Any overhead traffic on the line can be rerouted over other lines; and

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 12, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by November 22, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 2, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laasko, Southern Pacific Building, One Market Plaza, room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effect, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 17, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27973 Filed 11–12–93; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[Finance Docket No. 32385]

Wisconsin and Southern Railroad Co.—Trackage Rights Exemption—Soo Line Railroad Co.

Soo Line Railroad Company (Soo) has agreed to grant trackage rights to the Wisconsin and Southern Railroad Co. (WSOR), over approximately 2 miles of Soo trackage between the division of ownership with WSOR at North Milwaukee, WI (milepost 93.72) and WSOR's locomotive and car repair facility in the City of Milwaukee, Milwaukee County, WI (milepost 93.69). The trackage rights became effective November 3, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, Wisconsin and Southern Railroad Co., 5300 North 33rd Street, Milwaukee, WI 53209.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27975 Filed 11–12–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290 (Sub-No. 134X)]

Norfolk and Western Railway Co.—Abandonment Exemption—Between Huff Creek Junction and Lynco, WV

Norfolk and Western Railway Company (NW) has filed a notice of exemption under 49 CFR 1152 Subpart F—Exempt Abandonments to abandon its 1.02-mile line of railroad between milepost HC–0.00, at Huff Creek Junction, and milepost HC–1.02 at Lynco, WV.

NW has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies), 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (service of verified notice on governmental agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 15, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29[3] must be filed by November 26, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 6, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: James R. Paschall, General Attorney, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will prepare an environmental assessment (EA) by November 19, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–27972 Filed 11–12–93; 8:45 am]

BILLING CODE 7035–01–P

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[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Finance Docket No. 32392]

Chicago Southshore & South Bend Railroad—Trackage Rights Exemption—Norfolk and Western Railway Co.

Norfolk and Western Railway Company (NW) has agreed to grant Chicago SouthShore & South Bend Railroad (CSS) overhead trackage rights over a portion of its line described as follows: beginning at a point on NW's trackage from the connection between the tracks of CSS and NW in the vicinity of 124th Street near Kensington, to the connection between NW and the Illinois National Port District, near 130th Street, in Chicago, IL, a total distance of approximately 2 miles. The trackage rights became effective November 8, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Adam M. Mycyk, Weiner, Brodsky, Sidman & Kider, P.C., suite 800, 1350 New York Avenue, N.W, Washington, DC 20005.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Chicago Rail Link (CRL) filed on November 5, 1993, a petition for stay and rejection or revocation of verified notice of exemption in this proceeding. In *Railroad Consolidation Procedures*, 1 I.C.C.2d 270, 281 (1985), the Commission established a general policy against considering petitions to stay the effectiveness of notices of exemption for exempt trackage rights agreements. The Commission noted that "[s]ince notices of exemption will be effective before they are published in the **Federal Register**, petitions for stay will not lie * * *." Accordingly, we will allow time for a response from NW and CSS and will consider CRL's petition as a petition to revoke.

Dated: November 8, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland Jr.,

Secretary.

[FR Doc. 93–27976 Filed 11–12–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 2, 1993, a proposed consent decree in *United States* v. *William Davis, et al.*, No. 90–484–P, was lodged with the United States District Court for the District of Rhode Island. The decree resolves claims of the United States against defendant Providence Journal Company ("Settling Defendant") in the above-referenced action under the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA") for contamination at the Davis Liquid Waste Site in Smithfield, Rhode Island (the "Site"). In the proposed consent decree the Settling Defendant agrees to pay the United States $65,000.00 in settlement of the United States' claims for response costs incurred and to be incurred by the Environmental Protection Agency at the Site.

The proposed decree may be examined at the Office of the United States Attorney, 10 Dorrance Street, Providence, Rhode Island; and at the Environmental Enforcement Section Consent Decree Library, 1120 G Street, NW., Washington, DC 20005, (202) 624–0892. A copy of the proposed decree may be obtained in person or by mail from the Consent Decree Library.

The Department of Justice will receive written comments relating to the proposed consent decree for a period of thirty (30) days from the date of this notice. Comments should be addressed to Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Davis, et al.* (DOJ Reference No. 90–11–2–137B).

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–27904 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–01–M

Notice of Lodging of Consent Decree

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on October 27, 1993, proposed consent decrees in *United States* v. *Farber, et al.*, Civil Action No. 86–3736, were lodged with the United States District Court for New Jersey. The proposed Consent Decrees settle the United States' claims as to these parties, pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act ("CERCLA"), 42 U.S.C. 9601, *et seq.* relating to the cleanup of the Syncon Resin Superfund Site located in Kearny, New Jersey.

Under the terms of the Consent Decrees Essex Chemical Corporation will pay $412,500, Disch Corporation Company, Inc. will pay $412,500, Agway, Inc. will pay $300,000, and A & S Transportation Company and Spectrserv, Inc. will pay $100,000.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Farber, et al.*, DOJ Ref. #90–11–3–116.

The proposed consent decree may be examined at the Office of the United States Attorney, Civil Division, 970 Broad Street, Newark, New Jersey 07102; the Office of the United States Environmental Protection Agency, Region II, 26 Federal Plaza, N.Y., N.Y. 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–27905 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–01–M

Federal Bureau of Investigation

National Crime Information Center (NCIC) Advisory Policy Board

The National Crime Information Center (NCIC) Advisory Policy Board will meet on December 8–9, 1993, from 9 a.m. until 5 p.m., at the Loews Anatole Hotel, 2201 Stemmons Freeway, Dallas, Texas, telephone 214–718–1200, to formulate recommendations to the Director, Federal Bureau of Investigation, (FBI) on the security, policy, and operation of NCIC and related systems.

The topics to be discussed will include the progress of the NCIC 2000 project, status of the NCIC Gang File, Bureau of Alcohol, Tobacco, and Firearms proposal on the Violent Felon File criteria, and other operational matters.

The meeting will be open to the public on a first-come, first-seated basis. Any member of the public may file a written statement concerning the NCIC or related matters with the Board, before or after. Anyone wishing to address this session of the meeting should notify the Designated Federal Employee, at least 24 hours prior to the start of the session. The notification may be by mail, telegram, cable, or a hand-delivered note. It should contain the requestor's name; corporate designation, consumer affiliation, or Government designation; along with a short statement describing the topic to be addressed; and the time needed for presentation.A nonmember requestor will ordinarily be allowed not more than 15 minutes to present a topic, unless specially approved by the Chairman of the Board.

Inquires may be addressed to the Designated Federal Employee, Mr. David F. Nemecek, Inspector-Deputy Assistant Director, CJIS Division, FBI, 10th and Pennsylvania Avenue, Northwest, Washington, DC 20535, telephone (202) 324–8920.

Dated: November 5, 1993.

David F. Nemecek,

Inspector-Deputy Assistant Director, Designated Federal Employee.

[FR Doc. 93–27906 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–02–M

Immigration and Naturalization Service

[INS NO. 1649–93]

Office of Strategic Planning Stakeholders' Workshop

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Notice of request for input re: INS Strategic Plan and notice of Stakeholders' Workshop.

SUMMARY: The Immigration and Naturalization Service (INS) is collecting information for input to the development of a Strategic Plan. We are soliciting information from those entities potentially affected by, or interested in, the INS Strategic Plan, which, when in place, will provide long-range goals and objectives for the major functions and operations of the agency. Interested parties may provide input through written comments or attendance at a Stakeholders' Workshop to be held in December 1993.

DATES: Written comments on Strategic Plans are due by December 7, 1993. The Stakeholders' Workshop will be held December 14, 1993, from 9 a.m. to 5 p.m. Seating is limited, so participants should RSVP by phone at (202) 616–7767, by December 7, 1993. It is requested that only one or two representatives per organization attend.

ADDRESSES: The Stakeholders' Workshop will be held at the Ramada Renaissance Hotel located at 999 9th Street NW., Washington, DC. Written comments should be sent, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference the INS No. 1649–93 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Lisa Roney, Assistant Director, Policy and Planning Staff, Office of Strategic Planning, Immigration and Naturalization Service, 425 I Street, NW., room 6042, Washington, DC 20536, telephone (202) 514–3242.

SUPPLEMENTARY INFORMATION: The "Government Performance and Results Act of 1993" mandates that, no later than September 30, 1997, the head of each agency shall submit to the Director of the Office of Management and Budget and to the Congress a strategic plan for program activities. The Act also mandates that during development of strategic plans, agencies must consult with Congress and those entities potentially affected by or interested in such plans. To consult with those who have an interest in the development of the INS Strategic Plan, the Service is accepting written comments. Written comments, limited to a maximum of 3 pages, should address what you believe will be the major issues confronting INS over the next 10 years, and the recommended strategies for moving INS in desired directions to properly address those major issues.

The INS will also be holding a Stakeholders' Workshop on December 14, 1993 to further solicit the views and opinions of Congressional staff, Federal agencies, immigration groups, members of the public, and other parties which have a "stake" in the future actions of INS. The 1-day workshop will be structured to encourage participants to have open dialogue about the major long-term issues that INS needs to consider in development of its Strategic Plan. The workshop will be structured in break-out sessions led by professional facilitators. Participants should have knowledge and understandings of immigration issues. Attendees will be expected to participate in the break-out sessions and to provide direct input during discussions. The information compiled in the break-out sessions will be documented and further discussed in the afternoon during a brief-out session. Significant information developed during these sessions will be recorded, evaluated, and considered during development of the INS Strategic Plan.

Dated: November 4, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 93–27995 Filed 11–12–93; 8:45 am]

BILLING CODE 4410–10–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act Title III; State Designation of Entities as Dislocated Worker Units

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information an update of a listing of names, addresses, and telephone numbers of entities designated by States as Dislocated Worker Units.

ADDRESSES: Submit comments regarding this listing to: Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, U.S. Department of Labor, room N–5426, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Robert N. Colombo.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs. Telephone (202) 219–5577 (this is not a toll free number).

SUPPLEMENTARY INFORMATION: Title III of the Job Training Partnership Act (JTPA) provides that the Department of Labor (Department) shall fund programs for States to assist dislocated workers. Section 311(b)(2) of JTPA provides that a State will designate or create an identifiable State Dislocated Worker Unit (DWU) or office with the capability to respond rapidly, onsite, to permanent plant closures and substantial layoffs throughout the State. The DWU is a key feature of the States' implementation of programs under Title III. Periodic updates of this listing will be published, based on revisions received by the Department.

Signed at Washington, DC., this 8th day of November, 1993.

Doug Ross,

Assistant Secretary of Labor.

Dislocated Worker Units Nationwide

Alabama

Ms. Donna Barham, Supervisor, Rapid Response, Employment & Training Division, Alabama Department of Economic and Community Affairs, P.O. Box 250347, Montgomery, Alabama 36125–0347, Telephone: 205–242–5415

Alaska

Ms. Carolyn Tuovinen, DWU Coordinator, Rural Development Division, Department of Community and Regional Affairs, 333 West 4th Avenue, Suite 220, Anchorage, Alaska 99501, Telephone: 907–269–4658

Arizona

Mr. Tommy Landa, DWU Coordinator, Division of Employment and Rehabilitation Services, 1789 West Jefferson, Site Code 920Z, Phoenix, Arizona 85005, Telephone: 602–542–2484

Arkansas

Mr. William D. Gaddy, Administrator, Arkansas Employment Security Division, 201 Capitol Mall, Room 506, Little Rock, Arkansas 72203, Telephone: 501–682–2121

California

Mr. Roger Schmitt, EDWAA Coordinator, Job Training Partnership Division, Employment Development Department, 800 Capitol Mall, MIC 83, Sacramento, California 95814, Telephone: 916–324–0655

Colorado

Mr. Dick Rautio, Planner, Dislocated Worker Unit, Governor's Job Training Office, Suite 550, 720 South Colorado Boulevard, Denver, Colorado 80222, Telephone: 303–758–5020

Connecticut

Ms. Kathleen Wimer, Title III Coordinator, State Department of Labor, Dislocated Worker Unit, 200 Folly Brook Boulevard, Wethersfield, Connecticut 06109, Telephone: 203–566–7550

Delaware

Ms. Alice Mitchell, Technical Service Manager, Delaware Department of Labor, Division of Employment & Training, University Plaza, P.O. Box 9499, Newark, Delaware 19714–9499, Telephone: 302–368–6913

Florida

Mr. Larry McIntyre, DWU Coordinator, Division of Labor, Employment & Training, Department of Labor & Employment Security, 1320 Executive Center Drive, Suite 201 Atkins Building, Tallahassee, Florida 32399–0667, Telephone: 904–488–9250

Georgia

Mr. Robert Davis, Title III Coordinator, Georgia Department of Labor, Sussex Place, 148 International Boulevard NE., Atlanta, Georgia 30303, Telephone: 404–656–6336

Hawaii

Dr. Robert Watada, Administrator, Department of Labor and Industrial Relations, 830 Punchbowl Street, Room 316, Honolulu, Hawaii 96813, Telephone: 808–586–9067

Idaho

Ms. Cheryl Brush, Bureau Chief, Planning, Employment and Training Programs, Department of Employment, 317 Main Street, Boise, Idaho 83735–0001, Telephone: 208–334–6303

Illinois

Mr. Herbert Dennis, Manager, Job Training Programs Division, Department of Commerce and Community Affairs, 620 East Adams Street, Springfield, Illinois 62704, Telephone: 217–785–6006

Indiana

Mr. Tom Heeter, EDWAA Coordinator, Indiana Department of Employment and Training Services, Program Operations Division, 10 N. Senate Street, Indianapolis, Indiana 46204, Telephone: 317–232–0196

Iowa

Mr. Jeff Nall, Administrator, Div. of Job Training, Iowa Dept. of Economic Development, 200 East Grand Avenue, Des Moines, Iowa 50309, Telephone: 515–242–4779

Kansas

Mr. Jim Richardson, EDWAA Director, Department of Human Resources, Division of Employment & Training, 401 SW Topeka Boulevard, Topeka, Kansas 66603, Telephone: 913–296–5060

Kentucky

Ms. Kathy McDonald, Branch Manager, Dislocated Workers Unit, Department of Employment Services, 275 East Main, 2-West, Frankfort, Kentucky 40621, Telephone: 502–564–7015

Louisiana

Mr. Dale Miller, Assistant Director, Louisiana Department of Labor, Federal Training Program Division, P.O. Box 94094, Baton Rouge, Louisiana 70804–9094, Telephone: 504–342–7637

Maine

Mr. Michael Bourret, Special Assistant to Commissioner, Maine Department of Labor, 20 Union Street, Augusta, Maine 04330, Telephone: 207–289–1292

Maryland

Mr. Ron Windsor, Office of Employment & Training, Department of Economic and Employment Development, 1100 N. Eutaw Street, Room 310, Baltimore, Maryland 21201, Telephone: 301–333–5149

Massachusetts

Ms. Suzanne Teegarden, Director, Industrial Services Program, One Ashburton Place, Room 1413, Boston, Massachusetts 02108, Telephone: 617–727–8158

Michigan

Mr. William Castanier, Manager, Rapid Response Unit, Bureau of Employment Training, Michigan Department of Labor, Victor Center Building, P.O. Box 30015, Lansing, Michigan 48909, Telephone: 517–373–6234

Minnesota

Mr. Edward Retka, Program Coordinator, State Dislocated Worker Unit, Minnesota Department of Jobs & Training, 390 North Robert Street, First Floor, St. Paul, Minnesota 55101, Telephone: 612–296–7918

Mississippi

Mr. Wayne Miley, Rapid Response Manager, Department of Economic and Community Development, 301 West Pearl Street, Jackson, Mississippi 39203–3089, Telephone: 601–949–2244

Missouri

Mr. Larry Earley, Director, Division of Job Development and Training, Department of Economic Development, 221 Metro Drive, Jefferson City, Missouri 65109, Telephone: 314–751–7796

Montana

Mr. Dan Miles, DWU Supervisor, Research, Safety & Training Division, Montana Department of Labor & Industry, P.O. Box 1728, Helena, Montana 59624, Telephone: 406–444–4500

Nebraska

Mr. Edward Kosark, Nebraska Department of Labor, Job Training Program Division, 550 South 16th Street, Box 95004, Lincoln, Nebraska 68509–5004, Telephone: 402–471–2127

Nevada

Ms. Jan Pirozzi, DWU, State Job Training Office, Capitol Complex, 400 West King Street, Carson City, Nevada 89710, Telephone: 702–687–4310

New Hampshire

Mr. James Taylor, DWU Director, New Hampshire Job Training Coordinating Council, 64B Old Suncock Road, Concord, New Hampshire 03301, Telephone: 603–228–0381

New Jersey

Mr. Thomas Drabik, Director, Rapid Response Team/Labor Management Committee, New Jersey Department of Labor, CN 058, Trenton, New Jersey 08625–0058, Telephone: 1–800–343–3919

New Mexico

Mr. Kent James, DWU Supervisor, New Mexico Department of Labor, Job Training Division, 1596 Pacheco Street, P.O. Box 4218, Santa Fe, New Mexico 87502, Telephone: 505–827–6866

New York

Mr. Pahl H. Gunn, DWU Acting Director, New York State Department of Labor, State Office Campus—Building 12, Albany, New York 12240, Telephone: 518–457–3101

North Carolina

Mr. Joel C. New, Director, Div. of Employment & Training, Department of Economic and Community Development, 111 Seaboard Avenue, Raleigh, North Carolina 27611, Telephone: 919–733–7546

North Dakota

Mr. James Hirsch, Director, Job Training Division, Job Service North Dakota, 1000 E Divide Avenue, P.O. Box 5507, Bismark, North Dakota 58502, Telephone: 701–224–2843

Ohio

Mr. James Turner, DWU Supervisor, Ohio Bureau of Employment Services, 145 South Front Street, P.O. Box 1618, Columbus, Ohio 43215, Telephone: 614–466–3817

Oklahoma

Mr. Joe Glenn, Chief, DWU Unit, Oklahoma Employment Security Commission, Will Rogers Building, Room 408, 2401 North Lincoln Boulevard, Oklahoma City, Oklahoma 73105, Telephone: 405–557–7294

Oregon

Ms. Patricia Grose, DWU Coordinator, Economic Development Department, 775 Summer Street NE., Salem, Oregon 97310, Telephone: 503–373–1995

Pennsylvania

Mr. John Vogel, Director, DWU, Labor and Industry Building, Room 1112, 7th & Forster Streets, Harrisburg, Pennsylvania 17120, Telephone: 717–787–9282

Rhode Island

Mr. Robert Gray, EDWAA Coordinator, Department of Employment & Training, 109 Main Street, Pawtucket Rode Island 02860, Telephone: 401–277–3450

South Carolina

Mr. Maxwell F. Parrott, DWU Supervisor, South Carolina Employment Security Commission, P.O. Box 995, Columbia, South Carolina 29202, Telephone: 803–737–2588

South Dakota

Mr. Lloyd Schipper, JTPA Administrator, South Dakota Department of Labor, Kneip Building, 700 Governor's Drive, Pierre, South Dakota 57501, Telephone: 605–773–5017

Tennessee

Mr. Louis Stone, DWU Manager, Tennessee Department of Labor, Gateway Plaza, 710 James Robertson Parkway, 4th Floor, Nashville, Tennessee 37243, Telephone: 615–741–1031

Texas

Ms. Linda Williamson, Manager, DWU, Work Force Development Division, Texas Department of Commerce, P.O. Box 12728—Capitol Station, Austin, Texas 78711–2728, Telephone: 512–320–9844

Utah

Mr. Gary Gardner, DWU Supervisor, Utah Office of Job Training for Economic Development, 324 South State Street, Suite 210, Salt Lake City, Utah 84111, Telephone: 801–538–8750

Vermont

Ms. Andrea Tomasi, DWU Coordinator, Department of Employment and Training, P.O. Box 488, Montpelier, Vermont 05602, Telephone: 802–828–4177

Virginia

Mr. James Cocke, EDWAA Program Coordinator, Virginia Employment Commission, P.O. Box 1358, Richmond, Virginia 23211, Telephone: 804–786–4832.

Washington

Mr. Larry Malo, Assistant Commissioner, Employment Security Department, Training and Employment Analysis Division, 605 Woodview Drive S.E., MS KG11, Olympia, Washington 98504–5311, Telephone: 206–438–4611

West Virginia

Ms. Nancy R. Daugherty, Chief, Bureau of Employment Programs, Employment Services Division, 112 California Avenue, Charleston, West Virginia 25305, Telephone: 304–558–7849

Wisconsin

Mr. Dan Bond, Supervisor, Worker Retraining and Employer Services Section, Department of Labor, Industry and Human Relations, 201 E. Washington Avenue, P.O. Box 7972, Madison, Wisconsin 53707, Telephone: 608–226–0745

Wyoming

Mr. Matt Johnson, Deputy Director, JTPA, Department of Employment, 100 West Midwest, P.O. Box 2760, Casper, Wyoming 82602, Telephone: 307–235–3601

District of Columbia

Mrs. Shirley Arnett, DWU Chief, 1000 U Street NW., Suite 301, Washington, D.C. 202–673–4434

Puerto Rico

Mr. Ardin Teron, President, Technological-Occupational Education Council, 431 Ponce de Leon, 16th Floor, Hato Rey, Puerto Rico 00918, Telephone: 809–754–5633

Virgin Islands

Ms. Carol M. Burke, Assistant Commissioner, Employment and Training, V.I. Department of Labor, 7 & 8 Queen Street, C'sted, St. Crbix, Virgin Islands 00820, Telephone: 809–773–1994

American Samoa

Mr. Unifareti Mamea, Director, Department of Human Resources, American Samoa Government, Pago Pago, American Samoa 96799, Telephone: 9–011–684–633–4485

Federated States of Micronesia

Mr. Kohne K. Ramon, Acting Director, Office of Administrative Service, Government of the Federated States of Micronesia, Post Office Box 490, Pohnpei, FM 96941, Telephone: 228–729–6807

Guam

Mr. Peter S. Calvo, Director, Agency for Human Resources Development, P.O. Box CP, Agana, Guam 96910, Telephone: 671–646–9341

Northern Marianas

Mr. Florida M. Dela Cruz, JTPA Administrator, Office of the Governor, Commonwealth of the Northern Mariana Islands, Saipan, Mariana Islands 96950, Telephone: 9–1–0288–670–322–9511

Republic of the Marshall Islands

Honorable Antonio Eliu, Minister of Social Services, P.O. Box 1138, Majuro, Republic of Marshall Islands 96960, Telephone: 415–744–6650 (Region IX)

Republic of Palau

Mr. Kerai Mariur, Executive Director, Private Industry Council/SJTCC, P.O. Box 100, Koror, Republic of Palau 96940, Telphone: 513.

[FR Doc. 93–27996 Filed 11–12–93; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 93–79, et al; Exemption Application No. D–9452, et al.]

Grant of Individual Exemptions; Robert W. McCurdy Medical Corp. Pension Plan and Trust, et al.]

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Robert W. McCurdy Medical Corporation Pension Plan and Trust (the Plan) Located in Anderson, Indiana

[Prohibited Transaction Exemption 93–79; Application No. D–9452]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) shall not apply to the proposed sale (the Sale) from Robert W. McCurdy, M.D.'s (Dr. McCurdy) individually-directed account (the Account) in the Plan of certain properties (the Property) to Dr. McCurdy, a party in interest with respect to the Plan.

This exemption is conditioned upon the following requirements: (1) The Sale is a one-time cash transaction; (2) the Plan is not required to pay any commissions, costs or other expenses in connection with this transaction; (3) the Property is appraised by a qualified, independent appraiser; and (4) the sales price for the Property is the greater of: (a) the original amount paid by the Account for the Property at the time of acquisition plus capital improvement expenses; or (b) its fair market value on the date of the Sale.

The Department notes that the first sentence in the first paragraph on page 49329 of the Notice of Proposed Exemption incorrectly indicates that the Plan is a profit sharing plan. The sentence should read, "Robert W. McCurdy Medical Corporation (the Employer) sponsors the Plan, which is a money purchase pension plan."

The Department wishes to correct this error and accordingly incorporate the information discussed in the paragraph above into the granted exemption as corrected. For a more complete statement of the facts and

representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 22, 1993 at 58 FR 49328.

FOR FURTHER INFORMATION CONTACT: Ms. Kathryn Parr of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

PAMCAH-UA Local 675 Pension Fund (the Pension Plan) and PAMCAH-UA Local 675 Training Fund (the Training Plan; Collectively, the Plans) Located in Honolulu, HI

[Prohibited Transaction Exemption 93–80; Exemption Application Nos. D–9103 and L–9104, respectively]

Exemption

The restrictions of section 406(b)(2) of the Act shall not apply to the leasing of certain work shop space by the Pension Plan to the Training Plan under the terms of an amended lease (the Amended Lease).

This exemption is conditioned upon the following requirements: (1) The terms of the Amended Lease remain at least as favorable to the Plans as those obtainable in an arm's length transaction with unrelated parties; (2) Monroe and Friedlander Management, Inc. (MFMI), an independent fiduciary, monitors the Amended Lease on behalf of the Pension Plan as well as the terms and the conditions of the exemption at all times; (3) the rental charged by the Pension Plan to the Training Plan under the Amended Lease always remains at fair market value as determined by an independent appraiser; (4) the fair market value of the leased space is redetermined every three years by an independent appraiser who has been selected by MFMI; and (5) MFMI makes appropriate adjustments to the rental charged for the leased space as required under the Amended Lease.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on August 13, 1993 at 58 FR 43133.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

The UIU Health and Welfare Plan (the Plan) Located in Philadelphia, Pennsylvania

[Prohibited Transaction Exemption 93–81; Exemption Application No. D–9406]

Exemption

The restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act shall not apply to: (1) The lending of $3 million by the United Steelworkers of America (the USWA) to the Plan; (2) the guarantee by the USWA of the repayment of certain deferred premiums owed by the Plan to Blue Cross of Western Pennsylvania and Pennsylvania Blue Shield (BCBS); (3) the guarantee by the USWA of a $9.5 million loan made to the Plan by the Integra National Bank/Pittsburgh (Integra); and (4) the granting of a security interest by the Plan to the USWA in the Plan's building and property (the Property) or in the proceeds from the sale of the Property, in connection with the above-described extensions of credit, provided the following conditions are satisfied: (a) The loan and the extensions of credit were obtained by the Plan to enable it to satisfy its past, present and future benefit obligations; (b) the terms of the loan and extensions of credit are at least as favorable to the Plan as those obtainable in an arm's-length transaction with an unrelated party; (c) an independent consulting firm, the Segal Company (Segal), has reviewed the subject transactions and has determined that they are appropriate for the Plan; and (d) the Plan's trustees have determined that the transactions are appropriate for the Plan and in the best interest of its participants and beneficiaries.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 22, 1993 at 58 FR 49327.

EFFECTIVE DATE: This exemption is effective January 1, 1992.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–27958 Filed 11–12–93; 8:45 am]

BILLING CODE 4510–29–P

[Application No. D–9438, et al.]

Proposed Exemptions; Tenneco, Inc., The General Employee Benefit Trust (the GEBT) and Case Corp. Pension Plan for Hourly-Paid Employees, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days

from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Tenneco, Inc., The General Employee Benefit Trust (the GEBT) and Case Corporation Pension Plan for Hourly-Paid Employees (the Plan) Located in Houston, TX

[Application No. D–9438]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted, the restrictions of sections 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code shall not apply to the proposed transfer of shares of common stock (the Stock) of Cummins Engine Company, Inc. (Cummins) to the GEBT by Tenneco, Inc. (Tenneco), the Plan sponsor, to reflect the contribution of the Stock to the Plan, provided that: (a) The Stock is valued at its fair market value as of the date of contribution by a qualified, independent appraiser; (b) the contribution of the Stock is approved on behalf of the Plan by a qualified, independent fiduciary; (c) the GEBT's continued holding of the Stock is monitored by a qualified, independent fiduciary; (d) the GEBT's independent fiduciary will monitor and enforce the conditions of the exemption and take whatever action is necessary to protect the GEBT's rights, including, but not limited to, the enforcement of a legally enforceable contribution obligation (the Contribution Obligation) as described herein, which will remain in force for as long as the GEBT continues to hold any shares of the Stock; and (e) the Contribution Obligation is secured by a letter of credit issued by a bank approved by the GEBT's independent, qualified fiduciary.

Summary of Facts and Representations

1. The Plan is a defined benefit plan covering approximately 9,500 participants as of June 7, 1993. As of December 31, 1992, the Plan's assets totalled approximately $260,000,000 (which includes approximately $14,000,000 in contributions receivable for the 1992 Plan year). The estimated present value of accrued benefits under the Plan at December 31, 1992 exceeded the Plan's assets by approximately $260,000,000. The Plan is maintained by Tenneco, a corporation headquartered in Houston, Texas. Tenneco's major businesses are the transportation and marketing of natural gas; manufacture and sale of farm and construction equipment; manufacture and sale of automotive exhaust system parts, ride control products and brake products; construction and repair of ships; manufacture and sale of packaging products; and manufacture and sale of phosphorous chemicals and surfactant products.

2. Tenneco currently owns 1,600,000 shares of the Stock which, based on the closing price of $84.25 per share on the New York Stock Exchange (NYSE) on May 24, 1993, had an aggregate fair market value of $134,800,000. The Stock represents a 9.2% ownership interest in Cummins. The applicant is requesting an exemption to permit the contribution of the 1,600,000 shares of Stock to the Plan in lieu of a cash contribution. The applicant represents that the Stock would be a valuable contribution to the Plan. Prior to the contribution of the Stock, the fair market value of the Stock will be determined by an experienced, independent valuation company. That valuation will take account of the fact that all restrictions relating to the Stock (see paragraph 4), including the voting requirement (see paragraph 9), will continue upon transfer to the GEBT. Thus, the restriction on voting for directors will be taken into account in determining the proper value for the Stock.

3. The assets of the Plan and all other defined benefit plans maintained by Tenneco and its domestic subsidiaries (the Affected Plans) are held in the GEBT. Therefore, although the shares of Stock will be contributed on behalf of the Plan, the Stock will become an asset of the GEBT. Each of the Affected Plans holds units of participation representing its interest in the GEBT. Each unit represents an undivided interest in the assets of the GEBT. As of April 30, 1993, the assets of the GEBT were valued at approximately $2.6 billion. The applicant represents that the amount of Stock to be contributed would amount to approximately 4.93% of the assets of the GEBT at the time of contribution.

4. When Tenneco purchased the Cummins Stock on July 16, 1990, Tenneco and Cummins entered into an agreement which contains provisions concerning the voting of the Stock and restrictions on the transfer of the Stock. The applicant represents that these restrictions on the Stock are customary for transactions similar to this private placement transaction. When the Stock

is contributed to the GEBT on behalf of the Plan, all rights of Tenneco under the Tenneco-Cummins agreement will be transferred and assigned to the GEBT, including the right to designate a person for election to the Cummins Board of Directors (see paragraph 9 below). The restriction on the transfer of the Stock, which prohibits Tenneco from selling the Stock prior to July 16, 1996, will continue to be in effect after the Stock is contributed to the Plan. Tenneco's obligation to vote the Stock will be transferred to the GEBT and will not terminate until the earlier of (a) the latest of (1) July 16, 1996, and (2) the first date that Tenneco holds less than 5% of the outstanding Cummins Stock and (b) July 16, 2000.

5. In connection with the GEBT's continued holding of the Stock, Tenneco has agreed to be bound by the Contribution Obligation. The Contribution Obligation requires Tenneco to make a contribution to the GEBT for each calendar quarter in which the market price of the Stock falls below the "Lowest Price." The Lowest Price is defined as the lesser of: (a) The closing price of the Stock on the NYSE on the date of contribution of the Stock to the Plan; or (b) the closing price of the Stock on the NYSE on the last trading day of the prior calendar quarter with respect to which a payment was previously required to be made under the Contribution Obligation. The amount contributed pursuant to the Contribution Obligation will be determined by multiplying the number of shares of Stock held in the GEBT on the last trading day of a calendar quarter by the difference obtained by subtracting the closing price of the Stock on the NYSE on the last trading day of the relevant quarter from the Lowest Price. The Contribution Obligation shall be paid in cash. The following example illustrates the calculation of the Contribution Obligation.

Assume the per share price on the date of contribution of the Stock to the Plan is $90. If the per share price is not below $90 on the last trading day of a quarter until December 31, 1993, at which time the closing price is $88 per share, the Contribution Obligation for the quarter ending December 31, 1993 is $2 per share ($90–88).

If on March 31, 1994 the per share price is $85, the Contribution Obligation for that quarter is $3 per share ($88–85).

If on June 30, 1994 the share price rises to $87, no contribution is due. If at September 30, 1994 the per share price is $84, the Contribution Obligation for that quarter is $1 per share ($85–84) because $85 per share was established as the Lowest Price.

The Contribution Obligation will remain in effect for as long as the GEBT continues to hold any of the Stock. Any contributions made pursuant to the Contribution Obligation are separate from and in addition to any other obligation to make contributions to any of the Affected Plans. The applicant represents that any contributions made pursuant to the Contribution Obligation will be separately accounted for in a manner sufficient to demonstrate compliance with the preceding sentence.

If any of the Stock is sold by the GEBT after July 31, 1996 for less than the Lowest Price, the GEBT will be reimbursed through the Contribution Obligation for such loss. The Contribution Obligation due upon sale of the Stock will be determined by multiplying the number of shares of Stock sold by the difference obtained by subtracting the net price realized on such sale from the Lowest Price.

6. The applicant represents that the Contribution Obligation will be secured by an irrevocable letter of credit issued by a bank approved by the independent fiduciary for the GEBT (see below). The letter of credit will serve as an unconditional obligation of the issuing bank to pay the GEBT if Tenneco defaults on the Contribution Obligation. The letter of credit will be issued in an amount equal to 20% of the value of the Stock at the time of contribution to the Plan. The applicant represents that if the letter of credit is drawn upon, it will either increase the amount of the letter of credit to maintain the 20% level, or, in the alternative, will provide alternative collateral in the form of cash or government obligations. The applicant also represents that the letter of credit (or alternative collateral) will be in place for as long as the GEBT continues to hold the Stock. The GEBT's independent fiduciary shall have the right and is obligated to instruct Bankers Trust Company of the Southwest, the GEBT's trustee, to draw on the letter of credit if Tenneco fails to make any payments required under the Contribution Obligation.

7. Woodbridge Capital Management (Woodbridge) has agreed to act as an independent fiduciary representing the interests of the Plan and the GEBT. Woodbridge represents that it is knowledgeable of the fiduciary provisions of the Act and understands its duties, responsibilities and liabilities in acting as a fiduciary for the Plan under the Act. Woodbridge represents that it is a wholly-owned subsidiary of Comerica Incorporated, one of the largest banking corporations in the United States. Woodbridge represents that the income which Woodbridge and its affiliates will derive from Tenneco and its affiliates (including the fee for serving as independent fiduciary for this exemption) will amount to less than 1% of its gross annual income. Woodbridge also represents that Tenneco and Woodbridge have no common directors.

8. Woodbridge has reviewed the proposed transaction and determined that the transaction is prudent and in the best interests of the GEBT and its participants and beneficiaries. Prior to rendering its opinion, Woodbridge has taken the following factors into consideration: The liquidity and diversification requirements of the GEBT, Tenneco's responsibilities under the Contribution Obligation, the existence of a letter of credit securing the Contribution Obligation, and the percentage of total assets of the GEBT which will be involved in the proposed transaction. Woodbridge represents that the contribution of the Stock will give the GEBT valuable additional assets with the potential for appreciation and that the Contribution Obligation assumed by Tenneco will fully protect the GEBT from any adverse consequences caused by the potential for the decline in value of the Stock. Woodbridge also represents that the Contribution Obligation is an adequate substitute for giving the GEBT a right to put the Stock to Tenneco. Woodbridge has concluded that quarterly determinations of the Contribution Obligation are sufficient to protect the GEBT because the Stock has not been subject to precipitous downward swings in price in the past 3 years.

9. Woodbridge will remain independent fiduciary of the GEBT with respect to the GEBT's continued holding of the Stock. In that role, Woodbridge has agreed to monitor Tenneco's compliance with the Contribution Obligation and, if necessary, to take action to enforce such obligation. Woodbridge will exercise the voting and other privileges applicable to shareholders of the Stock, subject only to Tenneco's agreement with Cummins that the Stock be voted for the Cummins' proposed slate of directors.[1]

[1] The Department notes that the decisions to acquire and hold the Stock are governed by the fiduciary responsibility provisions of part 4, subtitle B, title I of the Act. The Department's longstanding position has been that to act prudently, in making investment decisions, a plan fiduciary must consider those factors which would affect the value of the plan's investment. The potential inability, due to the pre-existing agreement, to vote for the directors of the GEBT's choice, together with other relevant information pertaining to the Stock, must be considered by the independent fiduciary as part of its decision as to whether to accept the Stock as a contribution to the GEBT. In this regard, see paragraph 2 for a discussion concerning certain factors that must be taken into account in valuing the Stock.

Woodbridge will exercise the GEBT's right to designate a person for election to the Cummins Board of Directors subject to the instructions of the Plan Committee. In keeping with its fiduciary duties, Woodbridge has represented that it will reject the Plan Committee's nomination if it appears that the nominee would not serve the best interests of the GEBT.

10. In summary, the applicant represents that the proposed transaction satisfies the criteria contained in section 408(a) of the Act because: (1) The Stock contributed to the Plan would represent less than 10% of the total assets of the GEBT; (2) The fair market value of the Stock will be determined by a qualified, independent appraiser; (3) Tenneco has agreed to be bound by a Contribution Obligation which will fully protect the Affected Plans and the GEBT if the value of the Stock falls below the value of the Stock as of the date it was contributed to the Plan; (4) The Contribution Obligation will be secured by a letter of credit issued by a bank approved by Woodbridge, the GEBT's independent fiduciary; (5) Woodbridge has determined that the proposed transaction is prudent and in the best interest of the GEBT and its participants and beneficiaries; and (6) Woodbridge will monitor the holding of the Stock and will monitor Tenneco's compliance with the Contribution Obligation.

Notice to Interested Persons

Notice of the proposed exemption will be provided to all interested persons within 5 days of the publication of the notice of proposed exemption in the **Federal Register**. The notice will include a copy of the notice of proposed exemption as published in the **Federal Register** and it will be provided to all active participants in the Plan by posting on employee bulletin boards in each location where Plan participants are employed and will be provided to all other participants and beneficiaries by first class mail. The notice will inform intersted persons of their right to comment on and/or to request a hearing with respect to the proposed exemption. Written comments and requests for a public hearing are due within 35 days of publication of the notice of proposed exemption in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: Ms. Virginia J. Miller of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

Penn Mutual Life Insurance Company (Penn Mutual), Located in Philadelphia, Pennsylvania, The Pennsylvania Trust Company (PTC), Located in Radnor, Pennsylvania; Independence Capital Management, Inc. (ICMI), Located in Horsham, Pennsylvania

[Application Nos. D–9194, D–9195, D–9196]

Proposed Exemption

Section I. Covered Transactions

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted, the restrictions of section 406(a)(1) (A) through (D) and section 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The extension of credit by Penn Mutual, the sponsor and third party guarantor of an investment product involving a guaranteed investment contract (GIC), to a plan invested in the GIC pursuant to the terms of its participation in the Independence Stable Asset Trust (Stable Asset Trust); (2) the sale of the assets of a closed-end collective investment fund (Fund) which is part of the Stable Asset Trust to Penn Mutual upon termination of the Fund; (3) the transfer of a Fund's assets to Penn Mutual upon termination of the Fund; and (4) the operation of the Stable Asset Trust in accordance with the letter agreement between Penn Mutual and PTC.

The proposed exemption is subject to the following conditions which are set forth below in Section II.

Section II. General Conditions

The relief provided under Section I is available only if the following conditions are met:

1. The decision to invest in a Fund will be made by a plan fiduciary who is responsible for and knowledgeable regarding the investment of plan assets in GICs and similar investment products and who is independent of Penn Mutual, PTC, and ICMI and any affiliates of such entities (the Independent Fiduciary).

2. Prior to a plan's investment in a Fund, the Independent Fiduciary for such plan receives the following written disclosures:

(a) All material facts concerning the structure, operation and investment objectives of the Fund including:

i. A copy of the Supplement creating the Fund in which the plan intends to invest which identifies the proposed investment portfolio of the Fund (the Supplement), the Fund Commencement Date and the Scheduled Fund Termination Date, the date projected for the funding of all investments to be made in the Fund, the guaranteed rate of return for the Fund, and any other material terms of the Fund;

ii. The confirmation document which confirms the plan fiduciary's written approval of matters set forth in the Supplement;

iii. The Independence Stable Asset Trust Participant Investment Agreement;

iv. The Declaration of Trust of the Short Term Investment Fund of the Pennsylvania Trust Company for Employee Benefit Accounts; and

v. The letter agreement between the Pennsylvania Trust Company and the Penn Mutual Life Insurance Company (Letter Agreement).

(b) The corporate affiliation existing between Penn Mutual, PTC and ICMI and either the amount of the compensation or the method of calculation of the compensation paid to such entities.

3. Neither Penn Mutual nor any of its affiliates has discretionary authority or control with respect to the decision to invest plan assets in the proposed investment product described herein or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets.

4. The interest charged by Penn Mutual with respect to an amount advanced by Penn Mutual to a plan for a benefit payment advance will be 100% offset by the returns realized with respect to the Stable Asset Trust units held by the plan and no other interest costs or charges will be associated with benefit payment advances.

5. Penn Mutual provides copies of the proposed and final exemption as published in the **Federal Register** to each plan which invests in the proposed investment product.

6. The fees paid to Penn Mutual, PTC, and ICMI will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act and such fees cannot be increased during the term of a Fund as the result of any action taken by Penn Mutual, PTC or ICMI.

7. Penn Mutual maintains or causes to be maintained, for a period of six years, the records necessary to enable the persons described in paragraph (8) of this section to determine whether the conditions of this exemption have been met, except that (a) a prohibited

transaction will not be considered to have occurred if, due to circumstances beyond the control Penn Mutual or its agents, the records are lost or destroyed prior to the end of the six year period, and (b) no party in interest other than Penn Mutual shall be subject to the civil penalty that may be assessed under section 502(i) of the Act, or to the taxes imposed by section 4975 (a) and (b) of the Code, if the records are not maintained, or are not available for examination as required by paragraph (8) below.

(8)(a). Except as provided in section (b) of this paragraph and notwithstanding any provisions of subsections (a)(2) and (b) of section 504 of the Act, the records referred to in paragraph 7 of this section shall be unconditionally available at their customary location during normal business hours by:

(1) Any duly authorized employee or representative of the Department or Internal Revenue Service (the Service);

(2) Any fiduciary of an investing Plan or any duly authorized representative of such fiduciary;

(3) Any contributing employer to investing Plan or any duly authorized employee or representative of such employee; and

(4) Any participant or beneficiary, any investing Plan, or any duly authorized representative of such participant or beneficiary.

(b) None of the persons described above in subparagraph (2)–(4) of this paragraph (8) shall be authorized to examine the trade secrets of Penn Mutual or its affiliates or commercial or financial information which is privileged or confidential.

The availability of this exemption is subject to the express condition that the material facts and representations contained in the application are true and complete, and that the application accurately describes all material facts which are the subject of this exemption.

For purposes of this exemption, affiliate means:

(a) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person;

(b) Any officer, director or partner, in such other person; and

(c) Any corporation or partnership of which such other person is an officer, director or partner.

Control means the power to exercise a controlling influence over the management or policies of a person other than an individual.

Summary of Facts and Representations

1. Penn Mutual was founded in 1847 under the laws of the Commonwealth of Pennsylvania and is licensed to do business in all 50 states, the District of Columbia and in five Canadian provinces. With headquarters in Philadelphia, Penn Mutual is a diversified financial services organization offering a complete portfolio of individual and group life insurance and annuity products, including an array of qualified pension products. These products are offered either directly or through its affiliated companies: Penn Mutual Equity Services, Janney Montgomery Scott, Independence Capital Management, Inc. and Penn Assurance and Annuity Company. As of December 31, 1992, Penn Mutual had $46.9 billion in consolidated assets and $30.8 billion of life insurance in force.

2. PTC was organized in 1986 under a trust company charter issued by the Pennsylvania Department of Banking and is subject to the Banking Code of 1965 as well as Title 10 of the Pennsylvania Code. PTC was acquired by Penn Mutual in 1991. Located in Radnor, Pennsylvania, PTC provides an array of fiduciary and investment management services for individuals, institutions and ERISA accounts. PTC has assets under management as of year end 1992 of approximately $230 million.

3. ICMI was founded in 1989 as a wholly-owned subsidiary of Penn Mutual. Registered as an Investment Advisor with the Securities and Exchange Commission under the Investment Company Act of 1940, ICMI provides advisory services for individual and institutional investors. ICMI currently manages over $1 billion in individual and retirement assets.

4. Penn Mutual proposes to market an investment product to various employee benefit plans, including some of its existing clients. The product, which is a variation of the traditional guaranteed investment contract (GIC), is described as a "synthetic GIC". The synthetic GIC marketed by Penn Mutual is benefit responsive and involves plan investments in units of one or more closed-end investment funds, which are part of a bank collective investment trust and in units of a separate short-term bank collective investment trust. The units owned by the plans represent beneficial ownership interests in the underlying investments of the trusts.

Penn Mutual represents that this product has been developed as a substitute for conventional GIC products. It is a response to plan managers' concerns regarding the risks of conventional GIC products which have become evident with the recent financial difficulties of some insurance companies. Penn Mutual represents that the proposed investment product combines the advantages of an investment in a conventional GIC with those of a direct investment in medium term government-backed and similar securities. One problem plans are understood to face is that the amount of money needed for periodic benefit payments fluctuates from period to period due to varying frequencies of participant deaths, retirements, disabilities, separations from employment, hardship withdrawals and plan loans. Normally, to manage these funding risks plan managers will either invest more assets at short maturities than they predict that they will need, or they will employ various hedging techniques.

Like the conventional GIC, the proposed investment product is benefit-responsive and permits plans to have access to their funds without penalty whenever needed to pay plan benefits. However, Penn Mutual represents that this product differs from the conventional GIC product because the underlying assets which produce the investment yield are held in a collective investment trust and beneficial title to such assets rests with the plans. Therefore, the exposure of the plans to Penn Mutual's creditworthiness will be confined to the amount by which a plan's plan account amount, as defined in footnote 6 herein, with respect to the remaining Fund portfolio at the time of termination would exceed the plan's portion of the net proceeds from the sale of the portfolio.

5. Penn Mutual represents that the proposed investment will be structured as follows:

The Independence Stable Asset Trust (Stable Asset Trust) will hold the assets of the various individual closed-end collective investment funds (Fund or Funds) which will be established under such trust.

There will be a series of individual Funds, and participating plans may invest in units of more than one such Fund. Each of the Funds will be separate from and independent of the other Funds and will be separately held, managed, administered, valued, invested and distributed. No Fund will be answerable for any obligation assumed or liability incurred by any other Fund. The Funds will be invested in treasury and government agency securities and in mortgage pass-through securities. Once sufficient plan monies have been attracted to reach a "critical

mass" level for a given Fund, the Fund will be closed-in and funded.[2]

A separate short-term investment trust, the Liquidity Fund, will be the reinvestment medium for distributions of income such as interest and dividends from individual Fund investments.[3] In addition, amounts contributed by a plan but not invested in units of an individual Fund will be temporarily invested in units of the Liquidity Fund. PTC and ICMI respectively, will be the trustee and investment advisor for the Stable Asset Trust and the Liquidity Fund.

Plans will invest in the proposed product by establishing an investment account (Custody Account) with PTC. All monies or property deposited in a Custody Account will either be invested in units of a Fund or in units of the Liquidity Fund.[4] The units purchased by a plan in either a Fund or the Liquidity Fund will be held in the plan's Custody Account and such units will represent a beneficial interest in the underlying investments of the Fund or the Liquidity Fund.[5] PTC has appointed CoreStates Bank, N.A., as the custodian for the Custody Accounts, as well as the assets of the Stable Asset Trust and the Liquidity Fund.

6. Each Fund will be invested in Treasury and government-agency securities and in mortgage pass-through securities. The Fund investments typically will have a "Treasury" or "Agency" level of risk. For example, a Fund could have a five-year outside maturity but the risk of prepayments on the mortgages underlying any pass-through securities could shorten the weighted average maturity of the overall portfolio to a term of four years. On the fifth anniversary of the date the Fund was closed-in and funded, the assets remaining in the Fund would be liquidated and the proceeds will be distributed to the Custody Accounts ratably in accordance with their interests in the Fund. Maturities of the individual Fund investments will be selected with the outside maturity in mind. However, distributions of principal could occur earlier due to prepayments.

7. Distributions of income from individual Fund assets will be credited on a daily basis to the plans' Custody Accounts. To the extent not needed to pay benefits, all such amounts credited to the Custody Accounts will be invested in the Liquidity Fund.

8. Penn Mutual will guarantee a pre-specified rate of return and an initial target rate of return for each Fund.[6] The amounts guaranteed will be stated in the Supplement to the Stable Asset Declaration of Trust. The guarantees are provided by Penn Mutual as set forth in the Letter Agreement between Penn Mutual and PTC. Penn Mutual also agrees to guarantee to pay each plan the plan's Plan Account Amount at a Fund's Scheduled Termination date which is set forth in the Supplement.[7] Finally, Penn Mutual agrees to make benefit payment advances (Advances) to a plan's Custody Account if the plan's Custody Account and Liquidity Fund balance are less than that required to meet a benefit withdrawal request.

9. Amounts required to pay plan benefits in excess of the amounts credited to a plan's Custody Account will be paid from the plan's interest in the Liquidity Fund. If at the time plan benefit payments are required, the plan's interest in the Liquidity Fund has been totally withdrawn or otherwise is not adequate for the payment, Penn Mutual will make an Advance to the plan's Custody Account in an amount equal to the remaining balance of the required benefit payments but not exceeding the plan's Plan Account Amount with respect to Fund units held by the plan on the payment date. The interest charged by Penn Mutual with respect to an amount advanced by Penn Mutual to a plan for a benefit payment Advance will be 100% offset by the returns realized with respect to the Stable Asset Trust units held by the plan and no other interest costs or charges will be associated with benefit payment Advances.

10. Penn Mutual represents that it is not expected that any participating plan will withdraw its investment in a Fund prior to the final maturity date (typically in five years). However, some withdrawal situations may be unavoidable, such as if a participating plan loses its qualified status or encounters an unforeseen exigency (such as the termination of the plan). The withdrawing plan would be subject to a surrender charge, payable to Penn Mutual as additional compensation for its undertakings, in an amount equal to a pre-specified percentage of the Plan Account Amount as of the date of withdrawal.[8] However, there would be a credit against the amount of the surrender charge owing. The credit would be the amount by which the market value of the units of such Fund held by the plan, on the date of the withdrawal, exceed the Plan Account Amount as of such date.[9]

11. If Fund assets are outstanding at the Scheduled Termination Date for a Fund, they will either be liquidated and the proceeds will be distributed to the Custody Accounts ratably in accordance with their interests in the Fund or the assets will be liquidated in the manner provided for in paragraph 12. If after the liquidation of all remaining assets of such Fund, any plan has a positive Plan Account Amount, Penn Mutual will be obligated to deposit in the plan's Custody Account an amount in cash equal to the plan's Plan Account Amount. Conversely, if on the Fund's Termination Date the net proceeds from

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[2] Critical mass will be an amount on the order of $30,000,000.

[3] The Liquidity Fund will be invested in bonds, notes, and other evidences of indebtedness which are payable on demand, or which have a maturity date not exceeding 91 days from the date of purchase and which in either case are issued or fully guaranteed as to principal and interest by the United States government, any government sponsored enterprise, or any agency of the United States government.

[4] The Department is expressing no opinion regarding Penn Mutual's representation that any prohibited transaction arising in connection with the purchase or sale of an interest in a Fund or the Liquidity Fund would be exempt under section 408(b)(8) of the Act.

[5] Legal title to individual investments will be held by PTC. At all times, the assets of the Custody Accounts will remain the exclusive property of the participating plans and will be held separate of and segregated from the property of PTC and all other persons, all of which will be reflected clearly in the books and records of PTC.

[6] The target rate of return is the rate at which interest accrues on a plan's interest in a Fund. An initial target rate of return is set at the inception of a Fund for the first quarter and subsequent rates are reset by PTC and Penn Mutual on a quarterly basis. As described in the Letter Agreement between Penn Mutual and PTC, the target rate for any quarter will be reset based on the estimate of future cash flows (determined using commercially recognized investment models approved by the Independent Fiduciary at the inception of the Fund) minus fees paid to PTC. The applicants represent that in no event will the target rate of return be lower than the pre-specified guaranteed rate. The applicants also represent that, after the inception of any Fund, the terms of the Letter Agreement between Penn Mutual and PTC pertaining to the resetting of the target rate of return, will not be modified without the approval of the independent plan fiduciaries of the plans participating in such Fund.

[7] The plan's Plan Account Amount is the amount deposited in the Custody Account with respect to a particular Fund, less distributions and withdrawals, plus interest on the average daily balance accrued from the inception of the Fund at the target rate of return.

[8] The Applicants represent that, for the foreseeable future, the maximum surrender charge that would be imposed with respect to a non-benefit withdrawal would not be in excess of 5%.

[9] The market value of any fund asset would be determined by, in the case of an asset consisting of a security for which market quotations are readily available, the quoted market value of such security as reasonably determined by PTC. Because the investments will be confined to marketable U.S. Treasury, government agency and other similar investments, Penn Mutual expects that in virtually all cases investment values can be determined readily from any of a variety of widely available and published sources. In the case of any other asset the market value of such asset will be based upon an appraisal made by a securities dealer selected by the custodian of the Stable Asset Trust. The appraiser will not be affiliated with PTC.

the sale of the assets remaining in the Fund exceed the Plan Account Amount with respect to any plan, Penn Mutual will be paid, out of such net proceeds, an amount in cash equal to the excess of such net proceeds over such Plan Account Amount.

PTC, at its discretion, will be entitled at a Fund's Termination Date to sell any one or more of the Fund assets to Penn Mutual for a cash price sufficient to obtain net proceeds equal to the aggregate of the Plan Account Amounts of plans holding units in the Fund. The obligations of the parties under these arrangements will be netted against one another, resulting in a "swapping-out" of the entire remaining portfolio at an amount equal to the aggregate Plan Account Amounts.

12. Penn Mutual's fee for its minimum yield, liquidity guarantees and Plan Account Amount assurances will be an amount computed on and payable as of pre-set quarterly dates from each Fund. The fee will be equal to the product of the cost of the remaining invested assets in the Fund adjusted in accordance with generally accepted accounting principles for amortization of premium and accretion of discount, times the Penn Mutual Quarterly Compensation Percentage specified in the applicable Fund Supplement.

PTC's fee, as trustee, will be an amount computed on and payable as of pre-set quarterly dates from each Fund. The fee will be equal to the product of a predetermined fixed percentage rate which is specified in the applicable Fund's Supplement times the cost of the remaining invested assets in the Fund adjusted in accordance with generally accepted accounting principles for amortization of premium and accretion of discount. ICMI's fee for investment management services will be paid by PTC, out of PTC's compensation.

The applicants represent that the total of all fees that are paid in connection with services rendered for the investment product described herein will be reasonable within the meaning of section 408(b)(2) of the Act and that such fees can not be increased during the term of a Fund as the result of any action taken by Penn Mutual, PTC or ICMI.

14. In order for a plan to invest in a Fund which forms part of the Stable Asset Trust, PTC will provide the plan's Independent Fiduciary with the following: The Independence Stable Asset Trust Participant Investment Agreement; a copy of the Supplement creating the Fund in which the plan intends to invest which describes the proposed investment portfolio of the Fund, the Fund Commencement Date and the Scheduled Termination Date, the date projected for the funding of all investments to be made in the Fund and the other material terms of the Fund; an instrument of confirmation to confirm the plan fiduciary's approval of matters set forth in the supplement; the Stable Asset Declaration of Trust; the Declaration of Trust for the Short-Term Investment Fund of the Pennsylvania Trust Company for Employee Benefit Plans; and the Letter Agreement between the Pennsylvania Trust Company and the Penn Mutual Life Insurance Company.

15. In summary, the Applicant represents that the proposed transactions will meet the statutory criteria under section 408(a) because:

(a) The investment of a plan's assets in a Fund will be made and approved by a plan fiduciary which is independent of Penn Mutual and its affiliates and who is responsible for and knowledgeable regarding the investment of plan assets in GICs and similar products;

(b) Neither Penn Mutual nor any of its affiliates have discretionary authority or control with respect to the decision to invest plan assets in the proposed investment product or render investment advice (within the meaning of 29 CFR 2510.3–21(c)) with respect to those assets;

(c) The fees paid to Penn Mutual, PTC and ICMI will not be in excess of "reasonable compensation" within the meaning of section 408(b)(2) of the Act;

(d) The Independent Fiduciary will receive full and detailed written disclosure of all features of the proposed investment product, as well as all fees paid to Penn Mutual and its affiliates; and

(e) The investment product is both of limited risk and fully benefit-responsive.

FOR FURTHER INFORMATION CONTACT: Lyssa E. Hall of the Department, telephone (202) 219–8971. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 8th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–27956 Filed 11–12–93; 8:45 am]

BILLING CODE 4510–25–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93–085)]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC); Meeting on Propulsion

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a NAC, Aeronautics Advisory Committee meeting on propulsion.

DATES: December 2, 1993, 8:30 a.m. to 5 p.m.; and December 3, 1993, 8:30 a.m. to 4 p.m.

ADDRESSES: National Aeronautics and Space Administration, Lewis Research Center, room 215, Administration Building, 21000 Brookpark Road, Cleveland, OH 44135.

FOR FURTHER INFORMATION CONTACT: Dr. Carol Russo, National Aeronautics and Space Administration, Lewis Research Center, 21000 Brookpark Road, Cleveland, OH 44135, 216/433–2965.

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Program Update
—Lewis Research Center Aeronautics Program Strategy
—NASA Headquarters Aeronautics Program Strategy
—Lewis Research Center Aeronautics Program Direction

Dated: November 8, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–27953 Filed 11–12–93; 8:45 am]

BILLING CODE 7510–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Reactor Safeguards, Subcommittee Meeting on Advanced Boiling Water Reactors; Date Change

A meeting of the ACRS Subcommittee on Advanced Boiling Water Reactors scheduled to be held on Tuesday, November 16, and Wednesday, November 17, 1993 is now scheduled to be held on Wednesday, November 17, 1993 only. Notice of this meeting was published in the Federal Register on Thursday, October 28, 1993 (58 FR 58021). All other items pertaining to this meeting remain the same as previously published.

For further information contact: Dr. Medhat El-Zeftawy, cognizant staff engineer, (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST).

Dated: November 5, 1993.

Sam Duraiswmay,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–27954 Filed 11–12–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards, Subcommittee on Auxiliary and Secondary Systems; Meeting

The ACRS Subcommittee on Auxiliary and Secondary Systems will hold a meeting on November 19, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows: Friday, November 19, 1993—8:30 a.m. until the conclusion of business.

The Subcommittee will discuss: (1) Current NRC and industry positions regarding thermo-lag issues, (2) technical differences between the NUMARC and NRC staff on NUMARC test programs, and (3) details of NRX and industry initiatives on thermo-lag issues, including test programs. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff, NUMARC, and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 5, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–27955 Filed 11–12–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–528]

Palo Verde Nuclear Generating Station, Unit 2; Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–51, issued to Arizona Public Service Company (APS) (the licensee), for operation of the Palo Verde Nuclear Generating Station, Unit No. 2, located in Maricopa County, Arizona.

The proposed amendment would provide for a one-time extension of up to 72 hours to be applied to the existing Technical Specification (TS) Limiting Conditions for Operation for single train inoperability for the following systems: Emergency Core Cooling System, TS 3.5.2; Containment Spray System, TS 3.6.2.1; Auxiliary Feedwater System, TS 3.7.1.2; Essential Cooling Water System, TS 3.7.3; Essential Chilled Water System, TS 3.7.6; and Shutdown Cooling System, TS 3.7.11. The amendment would allow each train of these systems to be inoperable for up to 72 hours beyond the current by allowed outage time (of 72 hours) in order to complete sleeving of the Essential Cooling Water System (EWS) heat exchangers to prevent further tube leaks.

The amendment was requested on an exigent basis because sufficient time does not exist to process the amendment under normal circumstances and still allow the repairs to be made in advance of the licensee's established schedule in support of an upcoming mid-cycle outage. Since March of 1992 the EWS heat exchangers have required repairs on eight separate occasions. The permanent repair of the heat exchangers is necessary to eliminate the potential for further inoperability of this safety

system. Additionally, completion of the repair prior to the upcoming outage is warranted because of the need for a reliable EWS system during mid-loop operations with a hot core.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

Pursuant to 10 CFR 50.91(a)(6) for amendments to be granted under exigent circumstances, the NRC staff must determine that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not: (1) Involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

In accordance with the requirements of 10 CFR 50.92, this license amendment request involves no significant hazards considerations based on the following:

Standard 1—Does the proposed license amendment involve a significant increase in the probability or consequences of an accident previously evaluated?

During normal plant operation, the EWS, ECCS, CSS, AFS, SDCS, and ECS are not operating. The redundancy of these systems allows testing of one train of each system without a loss of the safety function of the system. When one train of the EWS is taken out of service and the 72 hour action statement is entered, the action statements for the other systems must be entered since these systems are operable only if the necessary support systems are operable.

The allowed outage times for the Technical Specifications are based upon an acceptable probability that a single failure will not occur simultaneously with an accident while system redundancy is lost. Therefore, in order to demonstrate that the proposed increase in the allowed outage time does not involve a significant increase in the probability of an accident previously evaluated, a PRA was performed to determine the impact on Core Damage Probability (CDP) associated with the proposed one-time extension of the EWS LCO allowed outage time. This analysis determined that the CDP for the extended allowed outage time for Train A of the EWS is 3E–6 and 7E–6 for Train B. Based on these CDPs, the risk associated with the proposed extended outages of the EWS heat exchangers on a one-time basis is deemed to be acceptable and the proposed amendment does not involve a significant increase in the probability of an accident previously evaluated.

The CDPs can be compared to the accepted increased risk associated with removing the Train A Auxiliary Feedwater pump from service for the Technical Specification-allowed outage time of 72 hours of 1E–5. Since the risk associated with removing the Auxiliary Feedwater pump from service for the approved action statement time of 72 hours is acceptable and is greater than the risk associated with the proposed extended outages of the EWS heat exchangers, the risk associated with the proposed outages of the EWS trains on a one-time basis is deemed to be acceptable.

The PRA also evaluated the option of performing the proposed sleeving modification during plant shutdown (Mode 5). This analysis assumed that other equipment was not removed from service to perform elective maintenance during the time period in which the EWS heat exchanger was out of service. This analysis yielded CDPs of 2E–3 for each train of the EWS. This result clearly indicates that the increased risk associated with the proposed modification is much higher during Mode 5. A comparative assessment concluded that the risk of performing the proposed modification in Modes 2, 3, or 4 is comparable to the risk of performing the modification in Mode 5.

The PRA analysis assumes that all trains of Auxiliary Feedwater, offsite power, Emergency Diesel Generators and Essential Spray Ponds, remain functional and will not be removed from service to perform elective maintenance while either EWS heat exchanger is out of service. During normal operation, cooling to Train A and B component spaces is provided by the normal chilled water system (a non-safety-related system not affected by the outage of the EWS). Essential chilled water is utilized to maintain essential equipment room temperatures below the equipment qualification temperature when the ESF pumps are running, or when normal chilled water is lost (e.g. following a loss of offsite power). For non-LOCA scenarios, the critical spaces requiring cooling are the DC equipment rooms and the AFS pump rooms. However, engineering analyses performed to support the Palo Verde PRA indicate that these room temperatures would not increase to the point where essential equipment would be expected to fail for a period of 12 hours following a total loss of chilled water (normal and essential). These analyses are conservative for the current seasonal temperatures at PVNGS. Additionally, these room temperature limits would not be exceeded in cases where normal chilled water remains available. The PRA results discussed above indicate that the probability of a sustained loss of normal chilled water during the proposed EWS heat exchanger outage windows, concurrent with failures in the opposite train which would result in core damage is acceptably small as qualified above.

If an event were to occur requiring operation of shutdown cooling, an alternate means is available if the Low Pressure Safety Injection (LPSI) and CSS pumps become unavailable in the operable train. The SDCS pumps (CSS or LPSI) from the inoperable train can be cross-connected to use the operable train's SDCS heat exchanger. This lineup is described in PVNGS procedure 42AO–2ZZ22, "Loss of Shutdown Cooling." Flow through the cross-connect is adequate to remove decay heat loads existing when it would become necessary to continue the cooldown via the SDCS.

If neither train of EWS is available for performing SDCS functions, the Nuclear Cooling Water System (NCWS) is available and can be cross-connected to the desired EWS train to provide a heat sink for shutdown cooling. Additionally, if the above alternate method fails, the EWS trains could be cross-connected through the common NCWS connection using the operable EWS pump. These flow paths would only be used as a last resort as they are not analyzed or contained in procedures; however, they involve relatively simple valve alignments which can be accomplished under the direction of qualified, licensed personnel.

The proposed amendment only impacts the time allowed for the safety trains to be inoperable and does not change the equipment which is allowed to be inoperable. Therefore, the proposed license amendment does not involve a significant increase in the consequences of an accident previously evaluated.

Standard 2—Does the proposed license amendment create the possibility of a new or different kind of accident from any accident previously evaluated?

Increasing the allowed out-of-service time of the aforementioned LCOs for an additional 72 hours on a one-time only basis for the purpose of completing sleeving modifications does not create the possibility of a new or different kind of accident from any accident previously evaluated. No new accident scenarios are created by extending the allowed outage time of the subject safety systems.

Standard 3—Does the proposed license amendment involve a significant reduction in a margin of safety?

Extension of the allowed outage time does not involve a significant reduction in a margin of safety because there are no new or common failure modes being created by the extension. The performance of the associated safety systems will not be degraded by the extended out-of-service time.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 15 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the

expiration of the 15-day notice period. However, should circumstances change during the notice period, such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 15-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By November 30, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If the amendment is issued before the expiration of the 30-day hearing period, the Commission will make a final determination on the issue of no significant hazards consideration. If a hearing is requested, the final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to Theodore R. Quay: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Nancy C. Loftin, Esq., Corporate Secretary and Counsel, Arizona Public Service Company, P.O. Box 53999, Mail Station 9068, Phoenix, Arizona 85072–3999, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the

Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 5, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room, located at the Phoenix Public Library, 12 East McDowell Road, Phoenix, Arizona 85004.

Dated at Rockville, Maryland, this 9th day of November 1993.

For the Nuclear Regulatory Commission.

Brien E. Holian,

Project Manager, Project Directorate, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28122 Filed 11–10–93; 2:19 pm]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Privacy Act of 1974; Report on Significant Change in Access to Existing System of Records

AGENCY: Office of Personnel Management (OPM).

ACTION: Reporting change in access to an existing system of records.

SUMMARY: The purpose of this document is to give notice of a significant change in access to an existing system of records, OPM/Central–9, Personnel Investigations Records (full text published April 12, 1993 (58 FR 19154)). OPM is hereby giving notice that due to improved communications techniques and equipment, direct access to the existing electronic data base (formerly limited to headquarters and specific regional sites) will now be available to OPM field investigators. OPM has taken steps to minimize the risk of unauthorized access to the system of records. The agency foresees no effect on the privacy of individuals whose records are maintained in this system of records, because the personnel gaining direct electronic access to the records already access and use such information in hard copy in the performance of their official duties. The only difference will be an increase in the speed and efficiency of work performed.

DATES: The effective date for implementation of the direct access is September 14, 1993.

FOR FURTHER INFORMATION CONTACT: C. Ronald Trueworthy, Chief, Information Policy Branch, room CHP 500, Plans and Policies Division, Office of Information Resources Management, Administration Group, Office of Personnel Management, 1900 E Street NW., Washington, DC 20415.

Lorraine A. Green,

Deputy Director.

[FR Doc. 93–27932 Filed 11–12–93; 8:45 am]

BILLING CODE 6325–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee (TPSC); Notice of the Effective Date of the Trade Agreement Between the United States of America and the Government of Romania

AGENCY: Office of the United States Trade Representative.

ACTION: Notice of the Effective Date of the Agreement on Trade Relations Between the Government of the United States of America and the Government of Romania.

SUMMARY: In Proclamation 6577 of July 2, 1993 (58 FR 35301), the President proclaimed that the "Agreement on Trade Relations Between the United States of America and the Government of Romania" would enter into force and nondiscriminatory treatment would be extended to products of Romania in accordance with the terms of the Agreement on the date of exchange of written notices of acceptance in accordance with Article XVI of the Agreement. The exchange of written notices of acceptance in accordance with Article XVI of the Agreement took place in Bucharest, Romania on November 8, 1993. Accordingly, the Agreement became effective on November 8, 1993, and nondiscriminatory treatment is extended to products of Romania as of November 8, 1993 in accordance with the Agreement and as provided for in Proclamation 6577 of July 2, 1993.

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–28118 Filed 11–12–93; 8:45 am]

BILLING CODE 3190–01–M

SECURITIES AND EXCHANGE COMMISSION

Request Under Review by Office of Management and Budget

Agency Clearance Officer: John J. Lane (202) 272-3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

New

Mutual Fund Survey—File No. 270–383.

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct a voluntary telephone consumer survey of up to 700 households to obtain background information regarding the public's understanding of the risks involved when purchasing mutual funds from a bank. The results will be used by the agency to get a sense from the general public on their understanding of the level of risk involved when purchasing mutual funds sold through banks. Each survey call is estimated to require .07 burden hour.

The estimated average burden hour is made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hour should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hour for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, Room 3208, New Executive Office Building, Washington, DC 20503.

November 3, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27933 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33162; File No. SR–CBOE–93–11]

Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Granting Approval to Proposed Rule Change Amending Common Stock Listing and Maintenance Criteria

November 5, 1993.

On February 16, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") submitted to the Securities and Exchange Commission

("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and rule 19b–4 thereunder,[2] a proposed rule change to amend its rules relating to its listing and maintenance criteria for common stock.

The proposed rule change was published for comment in Securities Exchange Act Release No. 32617 (July 12, 1993), 58 FR 38449 (July 16, 1993). No comments were received on the proposal.

The CBOE proposes to make two revisions to its common stock original listing and maintenance criteria in order to conform the text of CBOE's Rules more precisely with the text of the Memorandum of Understanding dated May 1991, between CBOE and the North American Securities Administrators Association, Inc. (the "MOU").[3] The first revision would add a new subsection (iii) to Rule 31.81 that would require shareholder approval of an issuance of common stock resulting in a change of control, thereby conforming the Rule to the requirements of Section II(H)(2) of the MOU.[4] The second revision would correct a drafting error to Rule 31.94(C)(b)(i), which governs the CBOE's maintenance criteria for common stock issues. The proposed rule change clarifies that such an issue must meet all not just any of the criteria set forth in Rule 31.94(C)(b)(i)(A) through Rule 31.94(C)(b)(i)(C) in order to continue to be listed on CBOE.[5]

The CBOE states that the proposed rule change is consistent with Section 6 of the Act in general and furthers the objectives of Section 6(b)(5) of the Act in particular in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest by imposing appropriate original listing and maintenance criteria applicable to listed companies on CBOE.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder and, in particular, with the requirements of Section 6(b) of the Act.[6] The Commission believes that the CBOE proposal is consistent with the Section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, and, in general, to protect investors and the public interest.

The development and enforcement of adequate standards governing the listing of securities on an exchange is an activity of critical importance to exchange markets and to the investing public. Listing standards serve as a means for the self-regulatory organizations to screen issuers and to provide listed status only to companies with substantial float, investor base and trading interest to ensure sufficient liquidity for fair and orderly markets. Listing standards also enable an exchange to assure itself of the bona fides of the company and its past trading history. Adequate maintenance standards are of equal importance to the development of standards for initial inclusion on an exchange. The Commission notes that, once an issue has been initially approved for listing, the Exchange must monitor continually the status and trading characteristics of that issue to ensure that it continues to meet exchange standards for trading depth and liquidity.

The Commission believes that the CBOE proposal to require shareholder approval when the issuance of common stock would result in a change of control is consistent with the requirements of section 6(b)(5) because it should provide investors with the opportunity to participate in a decision that could have significant implications regarding their investment. Moreover, as noted above, the proposal is consistent with section II(H)(2) of the MOU which requires shareholder approval of certain transactions, prior to the issuance of specified securities, when the issuance would result in a change in control of the issuer. The Commission also believes that the proposed amendments to Rule 31.94(C)(b)(i) should strengthen the CBOE's maintenance criteria by specifying that common stock issues must comply with all of the CBOE's applicable requirements for continued listing on the Exchange.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (SR–CBOE–93–11) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27969 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33168; International Series Release No. 609; File No. SR–NYSE–93–44]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the New York Stock Exchange, Inc. Relating to European Portfolio Market Index Target-Term Securities

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on November 3, 1993, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to list for trading Market Index Target-Term Securities ("MITTS"),[3] the return on which is based upon a portfolio of securities of European companies ("European Portfolio"). Initially, the European Portfolio will contain the securities of 24 European companies, as represented by American Depositary Receipts ("ADRs") listed in the United States. The 24 companies represent 8 countries throughout Europe.[4]

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See Securities Exchange Act Release No. 29748 (September 27, 1991), 56 FR 50404 (October 4, 1991) (File No. SR–CBOE–91–30) (immediate effectiveness of MOU between CBOE and North American Securities Administrators Association, Inc.).

[4] Section II(H)(2) of the MOU provides that each issuer shall require shareholder approval of certain transactions, prior to the issuance of specified securities, when the issuance will result in a change of control of the issuer.

[5] Rule 31.94(C)(b)(i) sets forth common stock maintenance criteria regarding the number of shares publicly held, the total number of round lot shareholders of record, and the aggregate market value of shares publicly held.

[6] 15 U.S.C. § 78f(b) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] "MITTS" and "Market Index Target-Term Securities" are service marks of Merrill Lynch & Co., Inc. ("Merrill Lynch").

[4] The companies represented in the European Portfolio are: Alcatel Alsthom Compagnie Generale d'Electricite; Banco Santander, S.A.; Bayer AG; Benetton Group S.p.A.; British Petroleum Company, PLC; British Telecommunications PLC; Cadbury Schweppes PLC; Deutsche Bank AG; Grand Metropolitan, PLC; Hanson PLC; Hoechst AG; L.M. Ericsson Telephone Company, Nestle S.A.; Philips Electronics N.V.; Reuters Holding PLC; Rhone-Poulenc S.A.; Royal Dutch Petroleum Company; Siemens AG; Societe Natinale Elf Aquitane; Telefonica de Espana; Total S.A.; Unilever PLC; Vodaphone Group PLC; and Waste Management International PLC.

II. Self-Regulatory Organization's Statement of the Purpose of and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NYSE has prepared summaries, set forth in Section A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

Pursuant to the listing criteria set forth in section 703.19 of the Exchange's Listed Company Manual ("Manual"), the Exchange proposes to list and trade MITTS. MITTS are securities that entitle the holder to receive from the issuer upon maturity an amount based upon the change in the market value of a stock index or portfolio, provided that a minimum amount (90% of the principal amount) will be repaid. The Exchange is submitting the proposed rule change specifically to enable the Exchange to list for trading MITTS on the European Portfolio ("European Portfolio MITTS") issued by Merrill Lynch.

European Portfolio MITTS will allow investors to combine protection of a substantial portion of the principal amount of the MITTS with potential additional payments based on a portfolio of securities of selected European companies. The European Portfolio MITTS will provide that at least 90% of the principal amount thereof will be repaid at maturity.

The Security

European Portfolio MITTS will be denominated in United States dollars, will entitle the owner at maturity to receive an amount based upon the percentage change in the value of the European Portfolio from the "pricing date" to the "final calculation period," subject to a minimum repayment amount. The "pricing date" is the date on which the issuer prices the European Portfolio MITTS issue for the initial offering to the public. The "final calculation period" is a specified number of days prior to the maturity date. The average value of the European Portfolio during the final calculation period [5] will be used in calculating the amount owners will receive upon maturity.

If the market value of the portfolio has declined, the owner will receive not less than a specified percentage of the principal amount of the security. (For instance, if the market value of the portfolio used to calculate the amount payable at maturity has declined more than 10%, the owners of the European Portfolio MITTS will receive 90% of the principal amount of the securities.) The payment at maturity is based on changes in the value of the portfolio, but does not reflect the payment of dividends on the securities that comprise the portfolio.

As with other MITTS, European Portfolio MITTS may not be redeemed prior to maturity and are not callable by the issuer. Owners may sell the security on the Exchange. The Exchange anticipates that the trading value of the security in the secondary market will depend in large part on the value of the European Portfolio and also on other factors, including the level of interest rates, the volatility of the value of the European Portfolio, the time remaining to maturity, dividend rates, and the creditworthiness of the issuer.

The Exchange will only list for trading European Portfolio MITTs issues that have at least one million outstanding securities, at least 400 owners, a minimum life of one year and at least a $4 million market value, and that otherwise comply with the Exchange's initial listing criteria. In addition, the Exchange will monitor each issue to verify that it complies with the Exchange's continued listing criteria.[6]

Merrill Lynch will deposit registered global securities representing European Portfolio MITTS with its depository, the Depository Trust Company ("DTC"), so as to permit book-entry settlement of transactions by participants in DTC.

The Portfolio

The European Portfolio consists of ADRs representing the common stock of 24 highly capitalized European companies. The ADRs of the 24 companies initially will be equally weighted within the portfolio on the pricing date. The public float (*i.e.*, the market price multiplied by the number of shares outstanding, including shares underlying the ADRs) of the 24 companies differ significantly (from a high of US$56 billion (Royal Dutch Petroleum Company) to a low of US$476 million (Benetton Group S.p.A.)), as do the market prices of their ADRs (from a high of US$488 (Deutsche Bank AG) to a low of US$17.125 (Waste Management International PLC)).[7]

Each of the ADRs representing the common stock of the 24 European companies is listed on the Exchange or is traded over the facilities of the National Association of Securities Dealers, Inc. ("NASDAQ").[8] At the outset, the ADRs of each of the companies represented in the European Portfolio will have equal representation. That is, each ADR included in the portfolio shall be assigned a multiplier on the pricing date such that all ADRs represent an equal percentage of the value of the entire portfolio on such date. The multiplier indicates the number of ADRs (or fraction of one ADR) included in the calculation of the portfolio. Thus, each of the 24 companies represented by ADRs shall represent 4.17% of the total portfolio on the pricing date.

The multipliers assigned to the ADRs will be adjusted for certain events such as stock splits, reverse stock splits, or stock dividends, and the value of the ADRs will also be adjusted for certain events including a liquidation, bankruptcy, insolvency, merger, consolidation, or nationalization involving the issuer of the underlying shares. For example, if the issuer of the shares underlying an ADR has been subject to a merger or a consolidation and is not the surviving entity, then a value for such ADR will be determined at the time such issuer is merged or consolidated and will equal the last available market price for such ADR and that value will be constant for the remaining term of the European Portfolio MITTS.

Based upon the reported prices of the ADRs, a Merrill Lynch affiliate will calculate the value of the European Portfolio on at least a daily basis and make those values available to investors.

The Issuer

The Exchange has determined that the issuer of the European Portfolio MITTS, Merrill Lynch, meets the listing criteria set forth in Section 703.19 of the Manual. The Exchange states that Merrill Lynch is an Exchange-listed company in good standing and has sufficient assets to justify the issuance

[5] The closing value for the European Portfolio will be determined by an affiliate of Merrill Lynch and will equal the sum of the products of the average market price and the applicable multiplier for each security over the final calculation period.

[6] *See* Section 703.19 of the Manual.

[7] Prices specified in this paragraph, and prices and exchange rates used to calculate public float specified in this paragraph, are as of October 11, 1993.

[8] Of the 8 NASDAQ components of the European Portfolio, 5 are traded over the NASDAQ OTC Bulletin Board Service and 3 are NASDAQ National Market System Securities.

of MITTS offerings of the size contemplated by the proposed rule change.

The Exchange believes that the proposed rule change is consistent with Section 6 of the Act, in general, and with Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The NYSE does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submission should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the NYSE. All submissions should refer to File No. SR–NYSE–93–44 and should be submitted by December 6, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28078 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33158; File No. SR–OCC–93–08]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Clearance and Settlement of Quarterly-Index Expiration Options Proposed for Trading on the New York Stock Exchange

November 4, 1993.

On May 14, 1993, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR–OCC–93–08) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act").[1] Notice of the proposal appeared in the **Federal Register** on July 19, 1993, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposed rule change accommodates the clearance and settlement of a version of Quarterly Index Expiration Options ("QIX") being proposed for trading on the New York Stock Exchange ("NYSE").

A. Background

On November 6, 1992, the Commission approved an OCC rule filing to accommodate the clearance and settlement of QIX traded on the Chicago Board Options Exchange ("CBOE") and the American Stock Exchange ("Amex").[3] QIX are stock index options that have an expiration date different from the expiration date for conventional stock index options. Conventional stock index options expire on the Saturday following the third Friday of the month. In contrast, the QIX that are currently traded on the CBOE and the Amex expire on the first business day following the end of a calendar quarter. The CBOE and Amex QIX have an exercise settlement value that is based on the closing value of the corresponding index on the last trading day prior to expiration.

On January 13, 1993, the NYSE filed with the Commission a proposed rule change to list a new version of the QIX product.[4] The NYSE QIX differs in two ways from the CBOE and Amex QIX. First, the NYSE QIX will expire on the second business day of the month following the end of a calendar quarter rather than on the first business day of the month following the end of a calendar quarter. Second, the exercise settlement value for the NYSE QIX will be based on the opening value of the corresponding index on the first trading day following the end of a calendar quarter rather than on the closing value on the trading day prior to expiration.

To accommodate the CBOE and Amex QIX, modifications were made to OCC's By-Laws. First, the definition of "expiration date" for index options was modified to provide that with respect to an index option contract that has been identified by an exchange as having an expiration date other than the Saturday following the third Friday of the expiration month, expiration date means the date identified by the exchange as such.[5] Second, a definition of QIX was added.[6] Finally, certain technical changes also were made to OCC rules.

B. NYSE QIX

QIX currently are defined as index option contracts having an expiration date on the first business day of the month following the end of a calendar quarter. Because the NYSE QIX will expire on the second business day of the month following the end of a calendar quarter, this rule proposal amends the definition of QIX in OCC's By-Laws to include the expiration dates of both versions of the QIX product.[7]

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[9] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 32608 (July 9, 1993), 58 FR 38590.

[3] Securities Exchange Act Release No. 31418 (November 6, 1992), 57 FR 54435 [File No. SR–OCC–92–27] (order approving proposed rule change relating to OCC's clearance and settlement of the CBOE and Amex QIX).

[4] Securities Exchange Act Release No. 32048 (March 25, 1993), 58 FR 16895 [File No. SR–NYSE–93–04] (notice of filing of proposed rule change).

[5] OCC By-Laws, Art. XVII (Index Options), § E(3).

[6] OCC By-Laws, Art. XVII, § 1.Q(1).

[7] *Id.*

Second, language will be deleted from OCC's By-Laws, Article VI (Clearance of Exchange Transactions), Section 18(a) to make Section 18 applicable to QIX and to all options that expire on a business day. Section 18(a) provides that if OCC is for any reason unable to make available on an expiration date any Preliminary Exercise Report or any Final Exercise Report prior to the applicable cut-off times, OCC shall make the delayed report available as soon as practicable thereafter or, in its discretion, may defer making the delayed report available until the calendar day immediately following such expiration date. The last sentence of section 18(a) currently provides that paragraphs (a), (b), and (c) of section 18, which all relate to delayed reports, "shall not apply to option contracts expiring on a business day in accordance with Rule 806." OCC believes that Article VI, Section 18 should be applicable to options expiring on a business day and, therefore, is deleting the last sentence of Section 18(a). This change was inadvertently omitted from the earlier rule filings on QIX and Flexible Exchange ("FLEX") Options.[8]

Previous changes made to OCC's Rules and By-Laws to accommodate the clearance and settlement of CBOE and Amex QIX also will accommodate the clearance and settlement of the NYSE QIX. Expiration day processing procedures will be the same for all QIX products. Specifically, holders of QIX may exercise their QIX positions by tendering an exercise notice to OCC in accordance with the time frames established in OCC Rules 1802 (Exercise of Index Options Other than on Expiration Date) or 1804 (Expiration Date Exercise Procedure for Index Options) or by being deemed exercised in accordance with the exercise-by-exception procedure set forth in OCC Rule 1804(b)(2).[9]

II. Discussion

The Commission believes that the proposal is consistent with the Act and particularly with Section 17A of the Act.[10] Section 17A(b)(3)(F) of the Act[11] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible.

Because OCC's procedures for clearing and settling the NYSE QIX will be the same, except for the minor differences noted above, as OCC's existing procedures for clearing and settling the CBOE and Amex QIX, the previous modifications OCC made to its Rules and By-Laws to accommodate the processing of the CBOE and Amex QIX for the most part also will accommodate the clearance and settlement of the NYSE QIX.[12] Neither the fact that the NYSE QIX will expire on the second business day of the month following the end of a calendar quarter rather than on the first business day as with the CBOE and Amex QIX nor the fact that the exercise settlement value for the NYSE QIX contracts will be based on the opening value of the corresponding index on the first business day of the month following the end of a calendar quarter rather than on the closing value of the corresponding index on the last trading day prior to expiration as with the CBOE and Amex QIX should impede OCC's ability to carry out its statutory obligations of promoting the prompt and accurate clearance and settlement of securities transactions and assuring the safeguarding of securities and funds in its custody or control or for which it is responsible.

III. Conclusion

For the reasons discussed above and for the reasons set forth in the Commission's approval relating to OCC's clearance and settlement of the CBOE and Amex QIX,[13] the Commission believes that the proposal is consistent with the requirements of the Act, particularly those of section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[14] that the above-mentioned proposed rule change (File No. SR–OCC–93–08) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[15]

Margaret H. McFarland,
Deputy Secretary.

[FR Doc. 93–27934 Filed 11–12–93; 8:45 am]
BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19838; 811–3597]

Collective Investment Trust for Citibank IRA's; Notice of Application

November 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: Collective Investment Trust for Citibank IRA's.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring it has ceased to be an investment company.

FILING DATE: The application was filed on October 1, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 29, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issue contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, 153 East 53rd Street, New York, New York 10043.

FOR FURTHER INFORMATION CONTACT: Diane L. Titus, Paralegal Specialist, at (202) 272–3018, or Barry D. Miller, Senior Special Counsel, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end diversified management investment company organized under the laws of the State of New York pursuant to a

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[8] For a discussion of FLEX options, refer to Securities Exchange Act Release No. 31912 (February 23, 1993), 58 FR 11879 [File No. SR–OCC–92–33] (order approving OCC's clearance and settlement of FLEX options).

[9] For a detailed description of the QIX exercise-by-exception procedure, refer to Securities Exchange Act Release No. 31418 (November 6, 1992), 57 FR 54435 [File No. SR–OCC–92–27] (order approving CBOE and Amex QIX).

[10] 15 U.S.C. 78q–1 (1988).

[11] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[12] For a detailed discussion of the Commission's rationale for approving OCC's clearance and settlement of the CBOE and Amex QIX, refer to Securities Exchange Act Release No. 31418, *supra* note 3.

[13] *Supra* note 3.

[14] 15 U.S.C. 78s(b)(2) (1988).

[15] 17 CFR 200.30–3(a)(12) (1991).

Declaration of Trust. On November 5, 1982, Applicant registered under the Act and filed a registration statement pursuant to section 8(b) of the Act. Applicant filed its initial registration statement to register its shares under the Securities Act of 1933 on November 5, 1982. That registration statement became effective and the initial public offering commenced on February 20, 1983.

2. Applicant registered an indefinite number of units of beneficial interest ("Units") representing interests in four investment portfolios: The Equity Portfolio, The Balanced Portfolio, The Income Portfolio and The Short Term Portfolio (collectively, the "Portfolios").

3. At a special meeting held on September 24, 1992, the Supervisory Committee on Applicant unanimously approved an Agreement and Plan of Reorganization (the "Plan") dated December 28, 1992 by and among Citibank, N.A. ("Citibank"), individually and in its capacity as trustee of Applicant, for Applicant and on behalf of the Portfolios and each of the following investment companies: Landmark Funds I, Landmark Funds II, Landmark Fund III and Landmark Fixed Income Funds (each, a "Landmark Fund"), each acting for itself and, respectively, on behalf of Landmark Balanced Fund (a series of Landmark Funds I), Landmark Equity Fund (a series of Landmark Funds II), Landmark Cash Reserves (a series of Landmark Funds III) and Landmark Intermediate Income Funds (a series of Landmark Fixed Income Funds).

4. Because Citibank served as investment adviser of Applicant and Landmark Funds, the Supervisory Committee considered such matters as are required to be considered by rule 17a–8 under the Act. The Supervisory Committee, including each of its members who were not interested persons of Applicant or of any Landmark Fund, made the findings required to be made by rule 17a–8.

5. The Supervisory Committee also called a Special Meeting of Participants to vote on the Plan. Proxy material was distributed to securityholders ("Participants") in the Portfolios and at the Special Meeting held on February 18, 1993, Participants in each Portfolio representing a majority of all Units of such Portfolio entitled to vote, voted to approve the Plan.

6. The Plan provided for the reorganization of each Portfolio into a series of a corresponding Landmark Fund. Pursuant to the Plan, the assets of each Portfolio were transferred to its corresponding Landmark Fund in exchange for shares of beneficial interest of the series, and the assumption by that series of the stated liabilities of the Portfolio. The aggregate net asset value of shares of each series issued in these transactions was equal to the value of the assets of the Portfolio transferred to such series less the liabilities of the Portfolio assumed. Shares of the series of the Landmark Fund so acquired by Applicant were distributed to Participants by crediting the accounts of each Participant with a *pro rata* portion of the shares of the series having a value equal to the value of units of Applicant held by such Participant.

7. Pursuant to the terms of the Plan, certain securities having an adjusted tax basis below the current value of such securities (i.e., securities with unrealized gains) were sold in order to minimize the potential for taxable gains to the Landmark Fund series and their shareholders attributable to unrealized gains which accrued prior to the reorganizations. The proceeds of such sales were reinvested in securities. All commissions and charges attributable to such sales and reinvestments were paid by Citibank.

8. The reorganizations were effected following the close of business on Friday, June 25, 1993 and were effective on Monday, June 28, 1993. Applicant's Declaration of Trust provides that the Trust shall terminate as to a Portfolio upon the sale of the assets of such Portfolio to another trust or corporation and the *pro rata* distribution of the proceeds of such sale (after providing for the payment of all liabilities) to Participants of such Portfolio. Accordingly, Applicant's legal existence ceased under New York law on June 28, 1993.

9. No expenses were incurred by Applicant in connection with the transactions effected pursuant to the Plan. In accordance with the terms of the Plan, all of Applicant's expenses associated with the Plan and the transactions contemplated thereby (approximately, $1,450,000) were borne by Citibank.

10. As of the date of the application, Applicant had no remaining assets, no debts or other liabilities and no securityholders. Applicant is not a party to any litigation or administrative proceeding. Applicant is not now engaged in and does not propose to engage.in, any business activities.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27929 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19837; 812–7741]

Lincoln National Convertible Securities Fund, Inc., et al.; Notice of Application

November 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Lincoln National Convertible Securities Fund, Inc. (the "Convertible Securities Fund"), Lincoln National Income Fund, Inc. (the "Income Fund") (together with the Convertible Securities Fund, the "Funds"), Lincoln National Investment Management Company ("LNIMC") and Lincoln National Corporation and its subsidiaries (collectively, "Lincoln National").

RELEVANT ACT SECTION: Exemption requested under sections 6(c) and 17(d) of the Act and rule 17d–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting (a) a Fund to purchase and sell securities in transactions in which Lincoln National or the other Fund is a participant, and (b) the receipt of certain fees and expenses by LNIMC in connection with such transactions.

FILING DATE: The application was filed on June 19, 1991, and amended on February 10, 1993, and July 15, 1993. By supplemental letter dated November 2, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 30, 1993, and should be accompanied by proof of service on the applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary

ADDRESSES: Secretary, SEC, 450 Fifth Street NW, Washington, DC 20549. Applicants, 1300 South Clinton Street, Fort Wayne, Indiana 46801.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Staff Attorney at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are closed-end investment companies, the shares of which are traded on the New York Stock Exchange. LNIMC, a wholly-owned subsidiary of Lincoln National Corporation, serves as investment adviser to the Funds. LNIMIC also provides investment advisory services to several open-end investment companies and to Lincoln National. Lynch & Mayer, Inc., a wholly-owned subsidiary of Lincoln National Corporation, acts as a subadviser to the Convertible Securities Fund.

2. Lincoln National Corporation is an insurance holding company. Through its subsidiaries, Lincoln National Corporation operates a multi-line insurance business. Lincoln National subsidiaries include Lincoln National Life Insurance Company, American States Insurance Company, Security-Connecticut Life Insurance Company, and First Penn-Pacific Life Insurance Company.

3. The Convertible Securities Fund's investment objective is a high level of total return on its assets through a combination of capital appreciation and current income. This objective is sought to be achieved by investing principally in convertible securities, including directly placed convertible securities.

4. The Income Fund's investment objective is the production of increasing amounts of income for distribution to shareholders. This objective is pursued through investments in debt obligations and other senior securities, and may be achieved by investing in securities acquired through private placement transactions (securities acquired in transactions exempt from registration pursuant to section 4(2) of the Securities Act of 1933, as well as securities which are eligible for the exemptions set forth in rule 144A thereunder) ("Private Placement Securities").

5. Although the amount and type of portfolio investments held by Lincoln National vary from time to time in light of Lincoln National's needs or economic forecasts, Lincoln national regularly acquires investments that are consistent with the investment objectives and policies of the Convertible Securities fund or the Income Fund, including Private Placement Securities.

6. The Convertible Securities Fund is subject to an investment restriction that prohibits investments exceeding 5% of the value of the Fund's assets in the securities of any one issuer. If the requested relief is granted, it is anticipated that the board of directors of the Convertible Securities Fund would adopt investment guidelines that would limit investments in any single issuer to no more than $1.25 million at the time of purchase. Similarly, it is anticipated that the board of directors of the Income Fund would adopt investment guidelines that would limit investments in any single issuer to no more than $1 million at the time of purchase. While the proposed guidelines are stated in absolute dollar amounts, rather than percentages of the Funds' net assets, it is anticipated that the Funds' boards would review the guidelines from time to time to determine whether the guidelines are appropriate.

7. issuers of Private Placement Securities may pay fees to purchasers or brokers of such securities in connection with the transaction. Such transaction fees may represent reimbursement for expenses, but may also include break-up or commitment fees. Break-up fees are fees that are payable if a proposed transaction is not consummated for various reasons. Commitment fees are generally fees payable to purchasers that commit to make funds available and are paid at the time such commitment is made, generally in advance of the proposed transaction. Transaction fees defray costs incurred, as well as provide compensation for a lost investment opportunity. If the requested relief is granted, it is anticipated that LNIMC would receive transaction fees in connection with the proposed transactions. Any upfront transaction fees (including break-up or commitment fees but excluding brokerage fees) paid with respect to any such transaction would be given to the co-investors on a *pro rata* basis according to the amounts invested by all co-investors. Brokerage fees payable to LNIMC in connection with the proposed transactions would be in compliance with section 17(e)(2) of the Act.

8. Applicants seek an order pursuant to sections 6(c) and 17(d) of the Act and rule 17d–1 thereunder permitting the purchase of Private Placement Securities by the Convertible Securities Fund or the Income Fund in joint transactions in which Lincoln National, the Income Fund, and/or the Convertible Securities Fund, as the case may be, is a participant. Neither LNIMC nor Lynch & Mayer, Inc. would participate with the Funds in such transactions. The order also would permit the receipt of transaction fees and expenses by LNIMC in connection with the proposed transactions.

Applicants' Legal Analysis

1. Section 17(d) of the Act prohibits any affiliated person of, or principal underwriter for, a registered investment company, or any affiliated person of such a person, acting as principal from effecting any transaction in which such registered company is a joint, or joint and several, participant with such person in contravention of such rules and regulations as the Commission may prescribe for the purpose of limiting or preventing participation by such registered company on a basis different from, or less advantageous than, that of such other participant. Rule 17d–1 under the Act provides that no joint transaction covered by the rule may be consummated unless the Commission grants an exemptive order after considering whether the participation of the investment company is consistent with the provisions, policies and purposes of the Act and the extent to which the participation is on a basis different from or less advantageous than that of other participants.

2. Applicants state that, based on LNIMC's experience in the Private Placement Securities market, LNIMC believes that co-investments by the Fund or Funds with Lincoln National or with each other in Private Placement Securities would enable the Funds to participate in a larger number of Private Placement Securities offerings than presently available to them, and would enable the Funds to consider Private Placement Securities of larger, more creditworthy issuers. Applicants state that such increased investment opportunities would better enable the Funds to diversity their portfolios and may result in higher returns for Fund shareholders. In addition, applicants state that the flexibility to make co-investments will insure to the benefit of shareholders without, in light of the conditions set forth below, sacrificing the protections otherwise afforded under the Act. Thus, applicants submit that the requested relief is in the best interests of each Fund and its shareholders.

3. Applicants further assert that the conditions to the application provide assurances that a Fund's participation in a co-investment will not be on a basis different from or less advantageous than that of others making such co-investment. All co-investments by the Funds will be made on a *pro rata* basis

on the same terms and conditions and at the same price as the other parties making such investments. The same will be true for sales of investments. The only exceptions will be in those cases in which the applicable Fund's independent directors determine that an action different from the actions taken by other affiliates is appropriate. Finally, applicants assert that the conditions to the applicant are adequate to ensure that co-investments by the Funds and/or Lincoln National in Private Placement Securities would be consistent with the provisions, policies and purposes of the Act.

4. Applicants state that transaction fees are, in effect, a component of the return on an investment, much like points payable in connection with a mortgage. Applicants assert that such fees, when shared on a *pro rata* basis according to the amounts invested by all co-investors, are not subject to section 17(e)(1) of the Act, and applicants do not request relief from section 17(e)(1).[1]

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. Co-investments will be permitted between and among only those applicants which from time to time notify LNIMC that they are willing to consider such co-investments under the terms and conditions under the application. Before a co-investment with a Fund is effected, LNIMC shall make certain determinations and provide certain information to the Funds. First, LNIMC shall, on behalf of each Fund that has elected to participate in co-investments and has monies to be invested, make an initial determination of whether the acquisition of a particular security would be consistent with the investment objective and policies of the Convertible Securities Fund or the Income Fund, as the case may be. If LNIMC determines an acquisition would be consistent with the objective and policies of a Fund, LNIMC shall prepare and deliver a written presentation regarding the proposed co-investment to a committee of the Fund's Board, comprised of all of the Independent Directors of the Fund and referred to as the Joint Transactions Committee. In addition to summarizing the terms of the security proposed to be acquired and the terms and conditions of the proposed acquisition, the materials shall provide information regarding the identity of each Fund and the Lincoln National affiliates that are considering the co-investment.

2. The Joint Transactions Committee of each Fund considering a co-investment in Private Placement Securities will review LNIMC's initial determination to make a co-investment, and may request such additional information from LNIMC or rely on such experts (including accountants and lawyers) as it deems necessary. Such review shall be conducted to determine whether the following standards are satisfied:

(a) The terms of the transaction (including the consideration to be paid) are fair and reasonable to the Fund and its shareholders and do not involve overreaching of the shareholders and the Fund on the part of any person concerned;

(b) The transaction is consistent with the investment objective and policies of the Fund as recited in its filings under the Securities Act of 1933, as amended, and the Act; and

(c) The investment by one or more of the other co-investors would not disadvantage the Fund in making, maintaining or disposing of the investment and the Fund's participation would not be on a basis different from or less advantageous than that of other co-investors.

Prior to committing to a co-investment, the Joint Transactions Committee must conclude that the standards outline above are satisfied with respect to the co-investment and the co-investment must be approved by a "required majority" of the directors of the Fund, as defined in section 57(o) of the Act (the "Required Majority").

3. Each Fund for which a co-investment would be suitable and that has funds available for investment will be entitled to acquire an amount of such class of Private Placement Securities equal to the lesser of: (a) Its *pro rata* share of the amount of the Private Placement Securities available to be acquired by Lincoln National based upon the number of co-investors (with Lincoln National and its affiliates being considered one co-investor) or (b) the amount of Private Placement Securities permitted to be acquired by the Fund pursuant to such Fund's investment objectives, policies, restrictions or guidelines.

Each of the Income Fund and the Convertible Securities Fund may, through LNIMC, decline to purchase the Private Placement Securities or decide to purchase less than the entire amount of securities offered to it, as determined by the Joint Transactions Committee. In the case where the Private Placement Securities are consistent with the objectives, policies, and restrictions of both Funds, if one of the Funds shall have declined such offer or accepted only a portion of the Private Placement Securities offered to such Fund, the other Fund will be offered up to 50% of the aggregate amount of Private Placement Securities declined by such Fund, subject again to the Fund's investment policies, restrictions or guidelines, and the other 50% of the Private Placement Securities declined will be offered to Lincoln National. Notwithstanding the preceding sentence, in no event shall the amount of the Private Placement Securities acquired by a Fund exceed the amount acquired by Lincoln National.

4. If the Income Fund and the Convertible Securities Fund choose, or either of them chooses, to acquire Private Placement Securities concurrently with Lincoln National:

(a) Each co-investor will acquire Private Placement Securities of each class acquired by any other co-investor;

(b) The ratio of the amount of Private Placement Securities of a class acquired by all co-investors will be the same for each class acquired; and

(c) The terms of the purchase, including price, settlement dates, registration rights, if any, and any other rights provided to purchasers of such investment, will be the same for each of the co-investors.

5. Any upfront transaction fees (including break-up or commitment fees but excluding broker's fees contemplated by section 17(e)(2) under the Act) paid with respect to any co-investment shall be given on a *pro rata* basis to Lincoln National and the Fund or Funds that also invest in the Private Placement Securities. If such upfront transaction fees are to be held by LNIMC pending the consummation of the transaction, the fees shall be deposited in an account maintained by Lincoln National at a bank or banks having the qualifications prescribed in paragraph (1) of section 26(a) of the Act. Lincoln National shall pay LNIMC interest on the amount of such deposits at a rate equal to the Fed AA 30-day commercial paper rate as established each day by the Federal Reserve Bank or such other published short-term rate as may be designated from time to time. LNIMC, in turn, will pay each of Lincoln National or the Fund or Funds that are to invest in the applicable Private Placement Securities in the same portion as each entity's proposed purchase of the securities bears to all those securities to be purchased by Lincoln National and the Funds.

None of such fees will be given to LNIMC. However, the reimbursement of

[1] The Division of Investment Management takes no position as to whether the transaction fees are subject to section 17(e)(1).

LNIMC's expenses in connection with a proposed acquisition of Private Placement Securities shall not be deemed to be transaction fees. The Joint Transactions Committee of the Fund or Funds shall be informed of all such fees at the time the Fund or Funds are offered the opportunity to acquire the Private Placement Securities.

6. None of Lincoln National, the Income Fund and the Convertible Securities Fund will sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and Lincoln National, unless each Fund holding such Private Placement Securities and Lincoln National, if it holds such securities, shall dispose of such interest in such Private Placement Securities and such dispositions are made at the same time, for the same unit consideration, and in amounts proportionate to their respective holding of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transactions Committee, as set forth below.

If (a) Lincoln National determines to sell, exchange, or otherwise dispose of any interest in any Private Placement Securities of a class held by the Funds or either of them and Lincoln National, and LNIMC determines not to so dispose of the Private Placement Securities held by the Funds or either of them, or (b) LNIMC determines to cause the Funds or either of them to sell, exchange or otherwise dispose of any interest in Private Placement Securities of a class held by the Funds or either of them, and Lincoln National or the other Fund, as the case may be, shall not also so dispose of such interest in the Private Placement Securities, then LNIMC shall notify in writing the Chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the Chairman by overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for LNIMC's recommendation in light of the contrary decision made with respect to Lincoln National or the other Fund. The Chairman shall convene a meeting of the Joint Transactions Committee no later than five (5) business days after receipt of the above-referenced notification at which meeting the Committee will consider LNIMC's recommendation and, based upon its review, the Joint Transactions Committee shall determine (pursuant to the vote of a Required Majority of the directors), to sell, exchange, or dispose of such Private Placement Securities pursuant to LNIMC's recommendation if they determine that such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders, and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefore, shall be recorded and made a part of the records of the Fund. None of Lincoln National or the Funds or either of them shall effect such disposition until the Joint Transactions Committee of each Fund considering such transaction has determined, pursuant to the vote of the Required Majority of directors, the action to be taken by the Fund.

7. None of Lincoln National, the Income Fund and the Convertible Securities Fund will make follow-on investments ("Follow-on Investments") or will exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and Lincoln National, unless each Fund and Lincoln National holding such Private Placement Securities shall make such Follow-on Investments or exercise such rights and such investments or exercises are made at the same time and in amounts proportionate to their respective holdings of such Private Placement Securities, subject, however, to the determinations made by a Fund's Joint Transactions Committee, as set forth below.

If (a) Lincoln National determines to make a Follow-on Investment or exercise warrants, conversion privileges, or other rights with respect to Private Placement Securities of a class held by the Funds or either of them and Lincoln National and LNIMC determines not to make such Follow-on Investments or exercise such rights with respect to such Private Placement Securities on behalf of the Funds or either of them, or (b) LNIMC determines to cause the Funds or either of them to make Follow-on Investments or to exercise warrants, conversion privileges or other rights with respect to a class of Private Placement Securities held by the Funds or either of them and Lincoln National, and Lincoln National or the other Fund shall not also so elect to make such Follow-on Investments or exercise such rights, then LNIMC shall notify in writing the Chairman of the Joint Transactions Committee of the Fund or Funds holding such Private Placement Securities by sending the relevant material to the Chairman by overnight delivery or, to the extent feasible, by telecopy. Such notification shall include a written presentation regarding the proposed transaction, including the reasons for LNIMC's recommendations to the Fund in light of the contrary decision made with respect to Lincoln National or the other Fund. The Chairman shall convene a meeting of the Joint Transactions Committee no later than five (5) business days after receipt of the above-referenced notification, at which meeting the Committee will consider LNIMC's recommendations and, based upon its review, shall determine to make such Follow-on Investments or exercise the rights with respect to such Private Placement Securities if it determines (pursuant to the vote of the Required Majority of the directors) such action is in the best interests of the Fund, is fair and reasonable to the Fund and its shareholders and does not involve overreaching of the Fund and its shareholders on the part of any person concerned. The Joint Transactions Committee's determination, and the reasons therefor, shall be recorded and maintained as part of the records of the applicable Fund. None of Lincoln National or the Funds shall effect such Follow-on Investments or exercise such rights until the Joint Transactions Committee for each Fund considering such Follow-on Investments or exercise of rights has determined, pursuant to the vote of the Required Majority of directors, the action to be taken by the Fund.

8. Any expenses associated with acquiring, holding or disposing of any Private Placement Securities (including, without limitation, the expenses of the distribution of any such securities registered for sale under the Securities Act of 1933, as amended) shall, to the extent not payable by the issuer of the security, be shared by Lincoln National and the Funds in proportion to the relative amounts of such securities held or being acquired or disposed of, as the case may be, by Lincoln National and each of the Funds.

9. No co-investment will be made by the Funds in Private Placement Securities of any entity if the other Fund or Lincoln National then currently holds a security issued by such entity.

10. The Joint Transactions Committee of each Fund (or the Independent Directors of the Fund in connection with its regularly scheduled quarterly meeting) will be provided quarterly for its review all information concerning co-investments transactions made by Lincoln National and each such Fund or the other Fund, as the case may be, including investments made by Lincoln National or the other Fund in which such Fund declined to participate, so

that the Independent Directors may determine whether all investments made during the preceding quarter, including those investments in which such Fund declined to participate, comply with the conditions set forth above. In addition, the Independent Directors of a Fund will consider periodically the continued appropriateness of the standards established for co-investment by a Fund, including whether use of the standards continues to be in the best interests of the Fund and its shareholders and does not involve overreaching of the Fund and its shareholders on the part of any party concerned.

11. Each of the Funds will maintain and preserve all records that are required by section 31 of the Act and any other provisions of the Act and the rules and regulations thereunder applicable to the Funds. The Funds will also maintain the records required by section 57(f)(3) of the Act as if each of the Funds were a business development company and the Co-Investments and any Follow-On Investments were approved under section 57(f).

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-27970 Filed 11-12-93; 8:45 am]

BILLING CODE 8010-01-M

[Release No. 35-25920]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 5, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions to the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transactions(s) summarized below. The applications(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by November 29, 1993 to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any requests for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

EUA Energy Investment Corporation ("EEIC"), P.O. 2333, Boston, Massachusetts 02107, a wholly owned subsidiary company of Eastern Utilities Associates ("EUA"), a registered holding company, has filed an application-declaration pursuant to sections 6, 7, 9(a), 10 and 12(b) of the Act and rule 45(a) thereunder.

By order dated December 4, 1987 (HCAR No. 24515), EEIC is developing an energy-related computer system ("System").[1] EEIC proposes through December 31, 1996 to transfer the System to a joint venture limited partnership known as TransCapacity Limited Partnership ("Partnership"), and to provide financing to the Partnership as described below in order to allow the Partnership to develop the business which will employ such system.[2]

EEIC, TransCapacity Service Corporation, a Delaware Corporation ("TransCapacity"), The National Registry of Capacity Rights, Inc., a Massachusetts not-for-profit corporation ("Registry"), National Capacity Registry Service Corporation, Massachusetts corporation that is wholly-owned by the Registry, the Partnership, and Gregory M. Lander and Cheryl L. Loewen (all of which, save EEIC, are sometimes collectively referred to as the "TransCapacity Parties") have entered into various agreements as more fully described below for the development and commercialization of computer software. Lander and Loewen are the beneficial owners of TransCapacity.

EEIC and certain of the TransCapacity Parties have entered into a Research and Development Agreement dated June 3, 1993 ("R&D Agreement"). Under the R&D Agreement, EEIC is funding the research and development of the System in an amount of $750,000, and EEIC owns all right, title and interest in and to the System. Upon completion of the development of the System, EEIC will have the right to determine whether or not the System is commercially viable. If EEIC determines that the System is commercially viable, EEIC will tender a $1.1 million completion payment to the Partnership ("Completion Payment"). If EEIC determines not to proceed, the Partnership shall have the right to purchase the System from EEIC fc. $937,500, plus a 10% royalty on future Partnership net cash flow.

The Partnership was organized as a Massachusetts limited partnership on May 28, 1993 by the TransCapacity Parties. Subject to Commission approval, EEIC and the TransCapacity Parties have agreed under the R&D Agreement that EEIC will contribute the System to the Partnership in consideration of a general partnership interest in the Partnership and the Partnership will become a "subsidiary company" within the meaning of Section 2(a)(8) of the Act. The Partnership will then serve as the ownership entity to commercialize the System. EEIC and certain of the TransCapacity Parties have entered into an Agreement to Form Joint Venture dated September 8, 1993 to more fully set forth the rights and obligations of the parties upon completion of the System.

The capacity rights database to be maintained by means of the System ("Registry Database") will be owned by the Registry because the Registry will serve as an open-to-all information source for distribution to interested parties of basic information from the Registry Database, and because the Registry will collect the information from pipelines. In addition, the basic Registry Database will provide to the public a computer dial-in "900" number which will use structured, non-alterable query screens and menus to provide information and answers to particular questions about the location, duration and ownership of capacity rights. The Partnership will license the Registry to use the System to provide such basic

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[1] The System is an automated computer system for the collection, compilation and distribution to interested third parties of an information database composed of information regarding natural gas pipeline capacity and capacity rights. Under a series of recent Federal Energy Regulatory Commission orders (collectively, "Order 636"), such natural gas capacity rights information will no longer be proprietary information, and must be made generally accessible to the public in a non-discriminatory manner. The system will allow customers (producers, local distributing companies, pipelines, electrical generators using natural gas fuel, and others) to quickly sort and process the information they need from several hundred gigabytes of data per day which gas pipelines will report to comply with Order 636.

[2] EEIC proposes to incorporate a Massachusetts business corporation ("EEIC Subsidary") and to contribute the System to the EEIC Subsidiary in exchange for capital stock in the EEIC Subsidiary if EEIC so elects. The initial authorized capitalization of the EEIC Subsidiary will be 200,000 shares of common stock, $.01 par value per share, and EEIC will be issued a portion of such common stock in exchange for contribution to the EEIC Subsidiary of the System. No other person or entity will own stock in the EEIC Subsidiary. References to EEIC herein shall mean EEIC or the EEIC Subsidiary, where the context so allows.

services on a non-interactive basis with the Registry Database.

The System will also provide the following enhanced information services ("Enhanced Services"): (i) A proprietary hardware and software security system, which can be leased by a customer from the Partnership, will provide the customer with customized screen view, direct data download, search, report, and alert capabilities, and will also permit the customer to formulate special queries, reports, alerts, and information in a manner that is roughly equivalent to on-line legal research services; and (ii) For customers who frequently use the information in the Registry Database, the Partnership will lease secure, proprietary central processing units (with associated communications and database software) which will be connected into the Registry Database, enabling the customer to achieve rapid response, large data storage, and real-time processing capability. Other Enhanced Services to be provided by the System include a series of value added services: (i) Imbalance exchange where customers can anonymously clear transportation contract imbalances electronically through the System; (ii) A series of capacity price and status reports which identify capacity rights by shipper, pipeline, and time period; and (iii) A series of proposed and contemplated services will also respond to the demands of the market place through monitoring of specific information, value added services involving transportation, capacity, and/or contract imbalance transactions, assurance services, emergency response services, tariff search and rate index and tariff change alerts.

The TransCapacity Parties have entered into certain license agreements dated September 8, 1993 for the System and for the Registry Database pursuant to which the Partnership will have the exclusive right to provide the Enhanced Services using the System and information in the Registry Database. The Registry and the Partnership have also entered into a Management Services Agreement dated September 8, 1993, under which the Partnership will perform necessary Registry functions on behalf of the Registry for a fee equal to the cost of provision of said services, plus a ten percent (10%) markup on certain of such services. Under the license agreements, the Partnership is not obligated to make any license fee payments. Subject to Commission approval, EEIC and the TransCapacity Parties have agreed to share the revenues from the provision of enhanced, commercial services by virtue of their respective interests in the Partnership under the partnership agreement.

Under the partnership agreement, EEIC may make additional capital contributions through December 31, 1996 to the Partnership up to $1 million to provide funds for working capital and EEIC will receive all cash distributions from the Partnership as a priority return excepting only distributions sufficient to allow the partners to pay taxes on income allocated to them by the Partnership, until such date as the partnership has: (i) repaid EEIC's Completion Payment and any additional cash capital contributions (not to exceed $1 million) to the Partnership made by EEIC; and (ii) paid interest to EEIC at a rate of prime plus 6% on such Completion Payment and capital contributions. Thereafter, profits distributions from the Partnership will be made 80% to EEIC and 20% to the TransCapacity Parties until the sum of the priority return to EEIC and all other non-tax distributions to the partners, plus the net worth of the Partnership, exceeds five million dollars ("Conversion Date"). Upon the Conversion Date, the partners' interests in profits distributions will be adjusted as follows: EEIC will have a 70 percent interest, and certain TransCapacity Parties will have a 30 percent interest.

EEIC may make, through the Conversion Date, one or more loans and/or advances to the Partnership in an aggregate amount not to exceed $2 million at the interest rate of prime plus 6% for a term of up to five years. For a period of two years after the Conversion Date, EEIC may also, at its discretion, provide the Partnership with a working capital line of credit with a maximum availability of $2 million less any amounts outstanding at prime plus 2% for a term of five years. All loans and advances will be secured by all the Partnership assets. Such loans and advances will be used by the Partnership for working capital.

TransCapacity will have its own employees, including Lander and Loewen, and others as necessary. EEIC does not intend to supply any employees of the EUA system to the Partnership in the near future. Any activities that EEIC needs to perform under the Partnership Agreement would be accomplished by employees of EUA Service Corporation. The Partnership will reimburse EEIC for its costs and expenses of performing its duties as managing general partner. No employees of EUA's retail electric utilities will be assigned to any activities involving the Partnership. EEIC does not anticipate the need to hire any additional personnel in connection with its participation in the Partnership.

Eastern Edison Company, et al. (70–8287)

Eastern Edison Company ("Eastern"), 110 Mulberry Street, Brockton, MA 02403, Blackstone Valley Electric Company ("Blackstone"), Washington Highway, P.O. Box 1111, Lincoln, RI 02865, Newport Electric Corporation ("Newport"), 12 Turner Road, P.O. Box 4128, Middletown, RI 02840, EUA Service Corporation ("Service"); EUA Ocean State Corporation ("Ocean State"); and Montaup Electric Company ("Montaup"), P.O. Box 2333, Boston, MA 02107, all subsidiary companies of Eastern Utilities Associates, a registered holding company, have filed a declaration under sections 6(a), 7 and 12(c) of the Act.

By Commission order dated November 7, 1991, HCAR No. 25404 ("November 1991 Order"), Eastern, Montaup, Blackstone, Service, and Newport were authorized, subject to various terms and agreements, to issue and sell short-term notes to banks, from time to time during the period from January 1, 1992, to December 31, 1993, in aggregate amounts outstanding at any one time not to exceed $35 million for Eastern, $25 million for Montaup, $15 million for Blackstone, $10 million for Service, and $10 million for Newport. By Commission order dated March 31, 1993, HCAR No. 25775 ("March 1993 Order") Ocean State, was authorized to borrow up to $5 million through the issuance and sale of short-term notes to banks through the period ended December 31, 1994.

Eastern, Montaup, Blackstone, Service and Newport each now propose to borrow funds through the period ending December 31, 1995 through the issuance and sale of short-term notes to banks ("Notes") in aggregate amounts outstanding at any one time not to exceed Eastern, $50 million; Montaup, $25 million; Blackstone, $15 million; Service, $10 million; and Newport, $10 million. Furthermore, Ocean State now proposes, upon the expiration of the March 1993 Order, to borrow funds through the period ending December 31, 1995 through the issuance and sale of Notes in an aggregate principal amount not to exceed $5 million at any one time. In all cases, the Notes will be issued to banks and renewed from time to time as funds are required prior to December 31, 1995 provided no such Notes will mature after September 30, 1996.

Notes will be issued to banks pursuant to informal credit line

arrangements which provide for borrowings at a floating prime rate or at available fixed money market rates. Notes will mature in not more than one year from the date of issuance. Notes bearing interest at the floating prime rate will be subject to prepayment at any time without premium. Notes bearing interest at available money market rates, which in all cases will be less than the prime rate at time of issuance, will not be prepayable.

Credit lines with banks are subject in some cases to commitment fees. The existing bank credit lines expire at June 30, 1994 and their availability is subject to continuing review by the banks involved. Bank credit lines and arrangements may be increased, decreased or changed, and additional lines may be obtained from other banks.

The existing credit line arrangements provide for borrowing at the prime rate or money market rates together with a commitment fee equal to ¼ of 1% multiplied by the line of credit. Any such commitment fee will be allocated among the six applicants and other EUA system companies who have access to system lines of credit pursuant to applicable regulatory authority, in proportion to their respective borrowing authorizations.

The funds to be borrowed by Eastern, Montaup, Blackstone, Newport, Service and Ocean State from the issuance of the Notes will be applied, together with other funds available to these companies, to: (1) Renew outstanding notes payable to banks, as they become due; (2) finance their respective 1994 and 1995 cash construction expenditures; (3) provide funds to meet certain sinking fund, and retirements or redemptions of outstanding securities; (4) provide funds to meet working capital requirements; and, (5) for other corporate purposes.

The Notes issued to banks will be repaid by any combination of, or by all of the following methods respective to each company: (1) The issuance of new notes; (2) the internal generation of funds, and; (3) the issuance and sale of long-term debt and equity securities.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27968 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19839; 812–8624]

United Financial Group, Inc.; Notice of Application

November 5, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: United Financial Group, Inc. (the "Company").

RELEVANT ACT SECTIONS: Order requested under sections 6(c) and 6(e) of the Act to grant a conditional exemption from all provisions of the Act.

SUMMARY OF APPLICATION: Applicant seeks an order that would conditionally exempt it from all provisions of the Act until December 30, 1994. The requested relief would continue an exemption originally granted until December 30, 1990 (the "1990 Order"), extended by amended orders until December 30, 1991 (the "1991 Order"), December 30, 1992 (the "1992 Order"), and December 30, 1993 (the "1993 Order").

FILING DATE: The application was filed on October 14, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on November 30, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 5847 San Felipe, suite 2600, Houston, Texas 77057.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Law Clerk, at (202) 272–3809, or Robert A. Robertson, Branch Chief, at (202) 504–2283 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. The Company was a savings and loan holding company whose primary asset and source of income was the United Savings Association of Texas ("USAT"). As a result of the recession in Texas beginning in 1986, USAT's financial condition deteriorated, and on December 30, 1988 it was placed into receivership. The assets of USAT were sold to an unaffiliated third party and the Company received no consideration for the loss of its primary subsidiary, thereby generating a substantial tax loss. In light of this tax loss, the Company determined not to liquidate, but instead to acquire an operating business.

2. The Company's efforts to acquire an operating business have been substantially hindered due to claims asserted against it by the Federal Savings and Loan Insurance Corporation (the "FSLIC") and its successor, the Federal Deposit Insurance Corporation (the "FDIC"), which term as used herein includes the FSLIC. The FDIC asserted an approximately $534 million claim against the Company in January 1989 for failure to maintain the net worth of USAT (the "Net Worth Claim") and an approximately $14 million claim concerning certain tax refunds alleged to have been received by the Company (together with the Net Worth Claim, the "FDIC Claims"). In addition, the FDIC has asserted the existence of possible other claims (the "Indemnified Claims") against the Company and certain former officers and directors of the Company and USAT. The Company may have indemnification obligations to these former officers and directors. The FDIC has not alleged a dollar amount for any Indemnified Claims. Although the Company disputes the FDIC Claims and the Indemnified Claims, their existence constitutes a large contingent liability against the Company's assets, thus making it difficult for the Company to acquire an operating business.

3. During 1989 and 1990, the Company was in continuous negotiations with the FDIC in an attempt to reach a resolution of the FDIC Claims and in early 1990 the Company reached a tentative agreement. However, in December 1990 the FDIC rejected the Company's settlement offer and informed the Company that no counter proposal would be offered. In mid-1991, the Company again contacted the FDIC to determine whether a settlement could be reached on the FDIC Claims.

Beginning in July 1991, the Company and the FDIC's representatives again began negotiations and in August 1991, the Company offered a proposed settlement. Although the FDIC has not responded to the Company's settlement proposal, in December 1991 the FDIC requested, and the Company provided, an agreement to toll the statute of limitations for the period expiring July 31, 1992. This would give the FDIC adequate time to review any possible claims against the Company that might reflect on a global settlement. This tolling agreement was subsequently extended seven times, initially through September 30, 1992, then eventually through December 30, 1993. During this tolling period, the Company has engaged in continuous discussions with the FDIC staff and as part of that process has furnished the FDIC with an extensive array of documents and financial records for their review.

4. On June 30, 1993, the Company held assets of approximately $12.58 million, comprised of approximately $.25 million in cash and cash equivalents, $10.48 million in short-term investments, $1.28 million in loans and notes receivable, and $.15 million in other assets. The Company's common stock currently is traded sporadically in the over-the-counter market. The Company does not employ any full-time employees. The Company's administrative operations are handled by contract bookkeepers, accountants, and attorneys.

5. Rule 3a–2 under the Act provides a one-year safe harbor to issuers that meet the definition of an investment company but intend to maintain that status only transiently. The Company relied on the safe harbor provided by this rule from December 30, 1988 until December 30, 1989. The expiration of the safe harbor period necessitated the filing of an application for exemption. In 1990, the Company was granted conditional relief from all provisions of the Act until December 30, 1990. Investment Company Act Release Nos. 17395 (March 21, 1990) (notice) and 17441 (April 18, 1990) (order). In 1991, this order was amended to extend this exemption until December 30, 1991. Investment Company Act Release Nos. 17941 (January 9, 1991) (notice) and 17989 (February 7, 1991) (order). In 1992, the order was amended to extend the exemption until December 30, 1992. Investment Company Act Release Nos. 18430 (December 5, 1991) (notice) and 18466 (December 31, 1991) (order). In 1993, the order was amended to extend the exemption until December 30, 1993. Investment Company Act Release Nos. 19128 (November 25, 1992) (notice) and 19175 (December 22, 1992) (order).

6. As described in detail in the applications for the 1990, 1991, and 1992 Orders, during a portion of the period in which the requested exemption will be effective, it is possible that the Company will be subject to the jurisdiction of the federal bankruptcy courts. In this regard, the Company has formulated a plan of reorganization (the "Reorganization Plan") to be implemented under Chapter 11 of the Bankruptcy Code once the FDIC approves a settlement of the FDIC Claims. The Reorganization Plan would settle the outstanding claims against the Company and provide a structure for the possible acquisition of a new operating business or businesses. Because the bankruptcy court is charged with protecting the interests of the Company's creditors and equity interest holders, the Company believes that it is not necessary for it to comply with section 17(a) or section 17(d) with respect to transactions approved by the bankruptcy court.

Applicant's Legal Analysis

1. Section 3(a)(3) of the Act defines the term "investment company" to include any issuer that "is engaged or proposes to engage in the business of investing, reinvesting, owning, holding, or trading in securities, and owns or proposes to acquire investment securities having a value exceeding 40% of the value of such issuer's total assets (exclusive of government securities and cash items) on an unconsolidated basis." The Company acknowledges that, based on its current mix of assets, it may be deemed to be an investment company under section 3(a)(3).

2. By this application, the Company requests, pursuant to sections 6(c) and 6(e) of the Act, that the SEC issue an order amending the 1990 Order, thereby exempting the Company from all provisions of the Act, subject to certain exceptions, until December 30, 1994.

3. In determining whether to grant exemptive relief for a transient investment company, the SEC considers such factors as:

(1) Whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control;

(2) Whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and

(3) Whether the company invested in securities solely to preserve the value of its assets. The Company asserts that it meets these criteria.

4. The Company asserts that its failure to become primarily engaged in a non-investment business by December 30, 1993 is a result of factors beyond its control. The existence of the FDIC Claims has precluded the Company from investing its assets in a non-investment company business. Although the Company's executive officers reviewed numerous possible asset or business acquisitions, the magnitude of the FDIC Claims and the potential threat that the FDIC would seek to enjoin any utilization of the Company's assets have prevented the Company from investing its assets in a non-investment company business.

5. Pending the settlement of the FDIC Claims, the Company has limited its investments to high quality marketable securities, cash or cash equivalents. Thus, the Company asserts that it primarily invests in securities solely to preserve the value of its assets.

6. Although the Company has made substantial efforts to formulate alternative methods by which it can acquire an operating business and utilize its tax loss, the pending settlement negotiations of the FDIC Claims make it necessary for the Company to seek an extension of the 1990 Order. This would allow the Company to seek an FDIC settlement and, if successful, to formulate and implement new plans for becoming an operating business and utilizing the Tax Loss.

7. The Company believes that the issuance of an amended order exempting it from all provisions of the Act, subject to certain exemptions, until December 30, 1994 would be in the public interest and consistent with the protection of investors and the purposes of the Act.

Applicant's Conditions

The Company agrees that the requested exemption will be subject to the following conditions, each of which will apply to the Company until it acquires an operating business or otherwise falls outside the definition of an investment company:

1. During the period of time the Company is exempted from registration under the Act, it will not purchase or otherwise acquire any securities other than securities with a remaining maturity of 397 days or less and that are rated in one of the two highest rating categories by a nationally recognized statistical rating organization, as that

term is defined in rule 2a–7(a)(10) of the Act.

2. The Company will continue to comply with sections 9, 17(e) and 36 of the Act.

3. The Company will continue to comply with sections 17(a) and 17(d), subject to the following exceptions:

(a) If the Company becomes subject to the jurisdiction of the bankruptcy court, the Company need not comply with section 17(a) or section 17(d) with respect to any transaction, including without limitation the Reorganization Plan, that is approved by the bankruptcy court; and

(b) The Company would not be required to comply with section 17(a) or section 17(d) with respect to any transaction or series of transactions that result in its ceasing to fall within the definition of an "investment company" provided that (i) no cash payments are made to an "affiliated person" (as defined in the Act) of the Company as part of such transaction or series of transactions and (ii) no debt securities are issued to an affiliated person of the Company as part of such transaction or series of transactions unless such debt securities are expressly subordinated upon liquidation to claims of the holders of the Company's 9% Debentures.

4. The Company will continue to comply with section 17(f) of the Act as provided in rule 17f–2.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27930 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1898]

United States Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint Working Group on ITU Plenipotentiary Preparations

The Department of State announces that the U.S. Organization for the International Telegraph and Telephone Consultative Committee (CCITT) and the International Radio Consultative Committee (CCIR) Joint Working Group will meet on November 30, 1993 and December 14, 1993 from 10:30 a.m. to 1:30 p.m. in room 1207, and January 11, 1994 at 10:30 to 1:30 p.m. in room 1105, at the Department of State, 2201 C Street, NW Washington, DC 20520.

The purpose of these meetings is to continue the current U.S. preparatory for the upcoming International Telecommunication Union Plenipotentiary Conference in Kyoto, Japan, September 1994.

Members of the general public may attend these meetings and joint in the discussion, subject to the instructions of the Chair. Admittance of public members will be limited to the seating available. In that regard, entrance to the Department of State building is controlled and entry will be facilitated if arrangements are made in advance of the meetings. Persons who plan to attend should advise the Office of Earl Barbely, Department of State, (202) 647–0201, FAX (202) 647–7407. The above includes government and non-government attendees. Public visitors will be asked to provide their date of birth and Social Security number at the time they register their intention to attend and must carry a valid photo ID with them to the meeting in order to be admitted. All attendees must use the C Street entrance.

Please bring 30 copies of documents to be considered at these meetings. If the document has been mailed to the membership, bring only 10 copies.

Dated: November 2, 1993.

Earl S. Barbely,

CCITT National Committee Chairman.

Warren Richards,

CCIR National Committee Chairman.

[FR Doc. 93–27909 Filed 11–12–93; 8:45 am]

BILLING CODE 4710–45–M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

Petition for Waiver of Compliance; Burlington Northern Railroad (BN) Docket Number H–93–4

Notice is hereby given that pursuant to 49 CFR 211.51, the Burlington Northern Railroad (BN) has requested a waiver for test purposes of 49 CFR 231.1(h)(2).

The BN requests a waiver for a one year test period of the requirements of 49 CFR 231.1(h)(2) which requires, inter alia, that side handholds on box and other house cars have a minimum clear length of 16 inches and preferably 24 inches.

The proposed test program is for two center beam bulkhead flat cars which are currently equipped with vertical side handholds, located on each of the four corners on the end bulkhead side channels. BN proposes to replace the vertical side handholds with three horizontal side handholds measuring 9.095 inches in clear length.

The BN states that the horizontal side handholds in place of the vertical side handholds, would improve safety during switching movements.

Interested parties are invited to participate in these proceedings by submitting written reviews, data, or comments. The Federal Railroad Administration (FRA) does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket Number H–93–4) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, FRA, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before December 24, 1993, will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

Issued in Washington, DC on November 9, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–27962 Filed 11–12–93; 8:45 am]

BILLING CODE 4910–06–P

National Railroad Passenger Corporation (BS–AP–NO. 3255); Public Hearing

The National Railroad Passenger Corporation seeks approval of the proposed modification of the traffic control signal system and supplemental cab signal system, on the main tracks, between "A" Interlocking, milepost W0.2, near New York, New York and "Dock" Interlocking, milepost 8.5, near Newark, New Jersey, New York Division, Main Line, Northeast Corridor; consisting of the installation of four additional interlockings, the installation of an expanded cab signal system, and elimination of all intermediate wayside signals.

This proceeding is identified as FRA Block Signal Application Numbers 3255.

The FRA has issued a public notice seeking comments of interested parties and is conducting a field investigation in this matter. After examining the carrier's proposal, letters of protest, and available facts, the FRA has determined that a public hearing is necessary before a final decision is made on this proposal.

Accordingly, a public hearing is hereby set for 10 a.m. on Tuesday, December 14, 1993, in room 204 of the Peter Rodino Federal Building, located at 970 Broad Street, Newark, New Jersey. Interested parties are invited to present oral statements at the hearing.

The hearing will be an informal one and will be conducted in accordance with Rule 25 of the FRA Rules of Practice (49 CFR 211.25), by a representative designated by the FRA.

The hearing will be a nonadversary proceeding and, therefore, there will be no cross-examination of persons presenting statements. The FRA representative will make an opening statement outlining the scope of the hearing. After all initial statements have been completed, those persons wishing to make brief rebuttal statements will be given the opportunity to do so in the same order in which they made their initial statements. Additional procedures, if necessary for the conduct of the hearing, will be announced at the hearing.

Issued in Washington, D.C. on November 9, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–27961 Filed 11–12–93; 8:45 am]

BILLING CODE 4910–06–P

Petition for a Waiver of Compliance

In accordance with 49 CFR 211.9 and 211.41, notice is hereby given that the Federal Railroad Administration (FRA) has received a request for a waiver of compliance with certain requirements of Federal railroad safety regulations. The individual petitions are described below, including the party seeking relief, the regulatory provisions involved, the nature of the relief being requested and the petitioner's arguments in favor of relief.

Interested parties are invited to participate in these proceedings by submitting written views, data, or comments. FRA does not anticipate scheduling a public hearing in connection with these proceedings since the facts do not appear to warrant a hearing. If any interested party desires an opportunity for oral comment, they should notify FRA, in writing, before the end of the comment period and specify the basis for their request.

All communications concerning these proceedings should identify the appropriate docket number (e.g., Waiver Petition Docket No. HS–93–17) and must be submitted in triplicate to the Docket Clerk, Office of Chief Counsel, Federal Railroad Administration, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590. Communications received before December 23, 1993 will be considered by FRA before final action is taken. Comments received after that date will be considered as far as practicable. All written communications concerning these proceedings are available for examination during regular business hours (9 a.m.–5 p.m.) in room 8201, Nassif Building, 400 Seventh Street, SW., Washington, DC 20590.

The waiver petitions are as follows:

Southeastern Pennsylvania Transportation Authority (SEPTA); FRA Waiver Petition Docket No. HSR–93–1

The SEPTA seeks a permanent exemption from the record keeping requirements of 49 CFR 228.17(a)(8) (distance between stations). SEPTA states that due to its high density frequent station operation, the cost of redesigning the dispatcher's record of train movements would cause an undue financial burden on the railroad. The railroad states that the dispatchers utilize a pre-printed form at each dispatchers desk. The form includes station names and location but does not include mile post location. The railroad states that with this form stations can be calculated by simple arithmetic. SEPTA has plans to implement a computer assisted train dispatching system which will automatically perform all record keeping requirements. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety.

CSX Transportation Incorporated (CSXT); FRA Waiver Petition Docket No. H–93–3

CSXT seeks an exemption from the record keeping requirements of 49 CFR 228.9(a)(1) (record signed by the employee). CSXT wishes to maintain the hours of service records for train dispatchers solely through electronic means. They state that CSXT should be allowed to eliminate the signed paper time slips currently submitted by its dispatchers.

Eastern Alabama Railway (EARY); FRA Waiver Petition Docket No. HS–93–20

The EARY seeks an exemption so it may permit certain employees to remain on duty not more than 16 hours in any 24-hour period. The EARY states that it is not its intention to employ a train and engine service employee more than 12 hours under normal circumstances, but this exemption, if granted, would help its operation if unusual operating conditions are encountered. The EARY provides service over 25.2 miles of track between Sylacauga and Talladega, Alabama on a lease/purchase agreement with CSXT. The EARY conducts interchange services with CSXT at Talladega, Alabama and with the Norfolk Southern at Sylacauga, Alabama. The petitioner indicates that granting the exemption is in the public interest and will not adversely affect safety. Additionally, the petitioner asserts it employs not more than 15 employees and has demonstrated good cause for granting this exemption.

PL&W Railroad Incorporated (PL&W); FRA Waiver Petition Docket No. HS–93–21

The PL&W seeks an exemption from the reporting requirements of 49 CFR 228.19, "monthly reports of excess service". The PL&W states that due to its takeover of the Youngstown and Southern Railway Company and its usual operating conditions, a waiver should be granted. The PL&W is an industrial switching railroad that provides service over 34 miles of trackage between Youngstown, Ohio and Cannelton, Pennsylvania. The PL&W conducts interchange with Consolidated Rail Corporation and Pittsburgh and Lake Erie Railroad Company at Cannelton, Pennsylvania.

Issued in Washington, DC on November 8, 1993.

Phil Olekszyk,

Deputy Associate Administrator for Safety.

[FR Doc. 93–27925 Filed 11–12–93; 8:45 am]

BILLING CODE 4910–06–P

National Highway Traffic Safety Administration

[Docket No. 93–83; Notice 1]

Thomas Built Buses, Inc.; Receipt of Petition for Determination of Inconsequential Noncompliance

Thomas Built Buses, Inc. (Thomas) of High Point, North Carolina has determined that some of its buses fail to comply with the requirements of 49 CFR 571.131, "School Bus Pedestrian Safety Devices," Federal Motor Vehicle Safety

Standard (FMVSS) No. 131, and has filed an appropriate report pursuant to 49 CFR part 573, "Defect and Noncompliance Reports." Thomas has also petitioned to be exempted from the notification and remedy requirements of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1381 *et seq.*) on the basis that the noncompliance is inconsequential as it relates to motor vehicle safety.

This notice of receipt of a petition is published under section 157 of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1417) and does not represent any agency decision or other exercise of judgment concerning the merits of the petition.

Paragraph S5.5 of FMVSS No. 131 states that "[t]he stop signal arm shall be automatically extended * * * at a minimum whenever the red signal lamps * * * are activated; except that a device may be installed that prevents the automatic extension of a stop signal arm * * *. While the device is activated, a continuous or intermittent signal audible to the driver shall sound."

Between September 2, 1992, and July 30, 1993, Thomas produced 305 Type A, B, C, and D school buses which were not equipped with a continuous or intermittent signal audible to the driver when the device is activated that prevents the automatic extension of a stop signal. Thus, these school buses do not comply with the standard.

Thomas supports its petition for inconsequential noncompliance with the following:

> Delivery of the noncomplying vehicles has been limited to one state, Virginia. That state has had a stop arm requirement since the early 1980's and has required an interrupt switch, wired to the stop arm and crossing gate, since approximately 1986. Drivers use that switch *only* when the vehicle is loading or unloading passengers in the school yard so that buses can be positioned close together without damaging the crossing gate (emphasis original). Bus drivers in Virginia have been accustomed to activating the interrupt switch without an audible signal since the signal was not required prior to the September 2, 1992 (sic) effective date of FMVSS 131.

In Thomas' Defect and Noncompliance Report, it stated that:

> All vehicles will be repaired through customer notification by the Thomas distributor in Virginia. Repair parts will be supplied at no charge. The repair will consist of installing a chime, adding a wire to the existing wire harness, and connecting the wire to the chime.

Interested persons are invited to submit written data, views, and arguments on the petition of Thomas, described above. Comments should refer to the docket number and be submitted to: Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street, SW., Washington, DC 20590. It is requested but not required that six copies be submitted.

All comments received before the close of business on the closing date indicated below will be considered. The application and supporting materials, and all comments received after the closing date, will also be filed and will be considered to the extent possible. When the petition is granted or denied, the notice will be published in the **Federal Register** pursuant to the authority indicated below.

Comment closing date: December 15, 1993.

Authority: 15 U.S.C. 1417; delegations of authority at 49 CFR 1.50 and 49 CFR 501.8.

Issued on November 9, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–27960 Filed 11–12–93; 8:45 am]

BILLING CODE 4910–59–M

UNITED STATES INFORMATION AGENCY

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "In the Temple of Solomon and the Tomb of Caiaphas" (see list [1]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are imported pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Smithsonian Institute, Washington, DC, from on or about November 19, 1993 to on or about November 28, 1993, is in the national interest. The action of the United States in this matter and the immunity based on the application of the provisions of the law involved does not imply any view of the United States concerning the ownership of the exhibition objects. Further, it is not based upon and does not represent any change in the position of the United States regarding any issue in the Middle East peace process.

Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: November 8, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–27944 Filed 11–12–93; 8:45 am]

BILLING CODE 8230–01–M

Culturally Significant Objects Imported for Exhibition; Determination

Notice is hereby given of the following determination: Pursuant to the authority vested in me by the Act of October 19, 1965 (79 Stat. 985, 22 U.S.C. 2459), Executive Order 12047 of March 27, 1978 (43 FR 13359, March 29, 1978), and Delegation Order No. 85–5 of June 27, 1985 (50 FR 27393, July 2, 1985), I hereby determine that the objects to be included in the exhibit, "Lucian Freud: Recent Work" (see list [2]), imported from abroad for the temporary exhibition without profit within the United States, are of cultural significance. These objects are important pursuant to a loan agreement with the foreign lenders. I also determine that the temporary exhibition or display of the listed exhibit objects at the Metropolitan Museum of Art, New York, New York, from on or about December 14, 1993 to on or about March 13, 1994, is in the national interest.

Public Notice of this determination is ordered to be published in the **Federal Register**.

Dated: November 8, 1993.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–27943 Filed 11–12–93; 8:45 am]

BILLING CODE 8230–01–M

[1] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

[2] A copy of this list may be obtained by contacting Mr. Paul W. Manning of the Office of the General Counsel of USIA. The telephone number is 202/619–6827, and the address is room 700, U.S. Information Agency, 301 Fourth Street, SW., Washington, DC 20547.

Sunshine Act Meetings

Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL COMMUNICATIONS COMMISSION

Deletion of Agenda Item From November 10th Open Meeting

The following item has been deleted from the list of agenda items scheduled for consideration at the November 10, 1993, Open Meeting and previously listed in the Commission's Notice of November 3, 1993.

Item No., Bureau, and Subject

2—Common Carrier—Title: Rules and Policies Regarding Calling Number Identification Service-Caller ID (CC Docket No. 91-281). Summary: The Commission will consider adoption of a *Report and Order and Further Notice of Proposed Rulemaking* establishing federal policies for interstate Caller ID and proposing restrictions on the unauthorized use or resale of calling party information.

Dated: November 9, 1993.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93-28069 Filed 11-10-93; 10:45 am]

BILLING CODE 6712-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that at 10:02 a.m. on Tuesday, November 9, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider matters relating to certain insured financial institutions.

In calling the meeting, the Board determined, on motion of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Acting Chairman Andrew C. Hove, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 522b (c)(4), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, NW., Washington, DC.

Dated: November 9, 1993.

Federal Deposit Insurance Corporation.

Patti C. Fox,

Assistant Executive Secretary.

[FR Doc. 93-28050 Filed 11-10-93; 8:54 am]

BILLING CODE 6714-01-M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 16, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Recommendation concerning a proposed amendment to the Compact of Free Association Act of 1985 in regards to the availability of federal deposit insurance to banks in the Freely Associated States of the Republic of the Marshall Islands and the Federated States of Micronesia.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550—17th Street, NW., Washington, DC.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942-3132 (Voice); (202) 942-3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898-6757.

Dated: November 9, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93-28051 Filed 11-10-93; 8:54 am]

BILLING CODE 6714-01-M

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94-409), 5 U.S.C. 552b:

DATE AND TIME: November 10, 1993 (following Regular Meeting).

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Marysville Hydro Partners, Project No. 9885.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary, Telephone (202) 208-0400.

The following members of the Commission voted that agency business requires the holding of a closed meeting on the above-described matter on less than the seven days' notice required under the Government in the Sunshine Act:

Chair Moler
Commissioner Bailey
Commissioner Hoecker
Commissioner Massey
Commissioner Santa

Dated: November 10, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28173 Filed 11-10-93; 3:54 pm]

BILLING CODE 6717-01-M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: To be published in the **Federal Register** on November 10, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., Friday, November 12, 1993.

CHANGES IN THE MEETING:

1. *Deletion of the following open item from the agenda:* Proposed amendments to Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) regarding (A) increasing the aggregate lending limit for certain small banks (proposed earlier for public comment; Docket No. R-0800); and (B)(i) exceptions to the aggregate insider lending limit; (ii) the

definition of "extension of credit"; and (iii) modifications to the recordkeeping requirements (proposed earlier for public comment; Docket No. R–0809).

2. *Addition of the following open item to the meeting:* Proposed 90-day extension of the interim rule establishing a higher aggregate lending limit under Regulation O (Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks) for certain small banks.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28036 Filed 11–9–93; 4:42 pm]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Thursday, November 18, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 10, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28174 Filed 11–10–93; 3:54 pm]

BILLING CODE 6210–01–P–M

INTERSTATE COMMERCE COMMISSION

Commission Conference

TIME AND DATE: 10:00 a.m., November 23, 1993.

PLACE: Hearing Room A, Interstate Commerce Commission, 12th & Constitution Avenue, N.W., Washington, D.C. 20423.

STATUS: The Commission will meet to discuss among themselves the following agenda items. Although the conference is open for the public observation, no public participation is permitted.

MATTERS TO BE DISCUSSED:

Ex Parte No. 347 (Sub-No. 2), *Rate Guidelines—Non-Coal Proceedings.*

AB–33 (Sub-No. 78), *Union Pacific Railroad Company—Abandonment—In Saline, Ottawa, Lincoln, Russell, Osborne and Rooks Counties, KS.*

AB–55 (Sub-No. 469), *CSX Transportation, Inc.—Abandonment—Between South Hardeeville and North Savannah in Jasper County, SC, and Chatham County, GA.*

MC–C–30198, *Advantage Tank Lines, Inc.—Petition for Declaratory Order—Ex-Pipeline Movements.*

CONTACT PERSONS FOR MORE INFORMATION: Alvin H. Brown or A. Dennis Watson, Office of External Affairs, Telephone: (202) 927–5350, TDD: (202) 927–5721.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28094 Filed 11–10–93; 12:47 pm]

BILLING CODE 7035–01–P

OCCUPATIONAL SAFETY AND HEALTH REVIEW COMMISSION

TIME AND DATE: 10:00 a.m., Thursday, December 2, 1993.

PLACE: Hearing Room 965, One Lafayette Centre, 1120—20th Street, N.W., Washington, D.C. 20036–3419.

STATUS: Open Meeting.

MATTERS TO BE CONSIDERED: Oral Argument before the Commission in *McNally Construction and Tunneling, Inc.*

OSHRC Docket No. 90–2337

CONTACT PERSON FOR MORE INFORMATION: Patrick Moran, (202) 606–5410.

Dated: November 10, 1993.

Earl R. Ohman, Jr.,

General Counsel.

[FR Doc. 93–2815 Filed 11–10–93; 3:20 pm]

BILLING CODE 7600–01–P–M

Corrections

Federal Register

Vol. 58, No. 218

Monday, November 15, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

48 CFR Parts 209 and 242

Defense Federal Acquisition Regulation Supplement; Contractor Accounting Controls

Correction

In proposed rule document 93-26604 appearing on page 58315 in the issue of Monday, November 1, 1993, in the third column, in **SUMMARY**, in the third line, "September 14, 1993" should read "September 24, 1993", and beginning in the fifth line, "October 5, 1993" should read "October 25, 1993".

BILLING CODE 1505-01-D

DEPARTMENT OF DEFENSE

48 CFR Part 252

Defense Federal Acquisition Regulation Supplement; Organizational Conflict of Interest

Correction

In proposed rule document 93-26602 beginning on page 58316 in the issue of Monday, November 1, 1993, make the following correction:

252.209-7XXX [Corrected]

1. On page 58316, in the third column, in section 252.209-7XXX, in paragraph (c) of the clause, in the third line, "in participating" should read "is participating".

BILLING CODE 1505-01-D

FEDERAL ELECTION COMMISSION

11 CFR Part 104

[Notice 1993-25]

Recordkeeping and Reporting by Political Committees: Best Efforts

Correction

In rule document 93-26445 beginning on page 57725 in the issue of Wednesday, October 27, 1993, make the following correction:

§ 104.7 [Corrected]

On page 57729, in the second column, in § 104.7(b)(1), in the first line, "of" should read "in".

BILLING CODE 1505-01-D

Federal Register

Monday
November 15, 1993

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

Changes to the Minimum Property Standards; Final Rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing—Federal Housing Commissioner

24 CFR Part 200

[Docket No. R–93–1495; FR–2599–F–02]

RIN 2502–AE64

Changes to the Minimum Property Standards

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: This final rule amends the Minimum Property Standards (MPS) by removing federal agency standards for thermal insulation, and referencing a model energy code; standardizing requirements to control termites and wood decay, and referencing the latest editions of private sector standards now in the MPS; adding requirements for the restriction of the use of fire retardant treated plywood; and revising the time for periodic changes to the MPS, and making changes of an editorial nature. These changes to the MPS are needed to keep referenced standards current, to eliminate unnecessarily duplicative and confusing federal standards, and to protect the Department's insurance fund.

DATES: Effective Date: This regulation is effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1993.

FOR FURTHER INFORMATION CONTACT: Donald Fairman, Manufactured Housing and Regulatory Functions, Standards and Products Branch, Department of Housing and Urban Development, room 3214, L'Enfant Plaza, 490 E, 451 Seventh Street, SW., Mail Room B–133, Washington, DC 20410–8000, telephone, voice: (202) 755–7440; (TDD) (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: On November 5, 1990 the Department published in the **Federal Register** a proposed rule (55 FR 46632) to amend the Minimum Property Standards (MPS) in 24 CFR part 200, subpart S by:

(1) Removing federal agency standards for thermal insulation, referencing a model agency code;

(2) Standardizing requirements to control termites and wood decay;

(3) Referencing the latest editions of private sector standards now in the MPS;

(4) Adding requirements for the restriction of the use of fire retardant treated plywood; and

(5) Revising the time for periodic changes to the MPS and making changes of an editorial nature.

Seventeen public comments were received on the proposed rule. Fifteen of the comments dealt with HUD's proposal to adopt the Council of American Building Officials' (CABO) Model Energy Code (MEC) in lieu of the energy requirements in the current MPS. Eleven were in favor of the adoption and four were opposed.

One commenter opposed adoption of the MEC on the basis that the commenter did not view the 1992 MEC as being cost effective for homes that use natural gas. The commenter urged HUD to continue to use the current standard, and claimed that the proposed rule would encourage the use of electric resistance heating. The commenter contended that the efficiency of gas is almost three times that of electric resistance as a heat source, and that natural gas produces lower levels of carbon dioxide emissions.

Other commenters recommended that HUD use two standards of the American Society of Heating, Refrigerating, and Air-Conditioning Engineers (ASHRAE): ASHRAE/IES Standard 90.1–1989 Energy Efficient Design of New Buildings Except Low-Rise Residential Buildings and ASHRAE Standard 90.2 P-Energy Efficient Design of New Low-Rise Residential Buildings. These suggestions were supported by the commenter's data, which will be considered in future Department of Energy and HUD energy studies.

A commenter contended that the use of the MEC for low-rise residential construction would have all the impact associated with a major rule, and homeowners would not "break even" on MEC-mandated energy efficient investments for up to twelve years.

Regarding the contention that adoption of the MEC for low-rise residential construction has the impact of a major rule, there are a number of factors to consider. The basic yardstick for identification of a major rule is an annual effect on the economy of $100 million or more. HUD's current calculations indicate costs far below the $100 million threshold. Over the past several years, construction starts for single family homes have been close to one hundred thousand per year. Any change in construction would be associated with a portion of homes with gas heat—which comprise approximately sixty percent of HUD single family home construction. (Requirements for electric resistance heating are equivalent in the MPS and the MEC.) Preliminary estimates indicate the average per unit cost for changing from MPS to MEC thermal criteria would be $1000. This would result in a total construction cost of $60 million. This amount would be further diminished by the number of homes already being constructed to the thermal requirements of the MEC, which is the case in a number of localities where either the MEC or more stringent local requirements already have been adopted. (Where local codes treat the same subject as the MPS, the more stringent local code prevails.) Another important consideration affecting the major rule determination is the net impact of the MEC. The net impact of adoption of the MEC will be energy and life-cycle cost savings. The present value of future reductions in fuel costs significantly exceeds the front-end costs for the energy conservation measures.

One commenter supported adoption of the MEC only if several amendments are made to the MEC in the process. One change the commenter proposed would involve retaining directions for using the MEC for rehabilitation work. This feature of the rule was removed by HUD because the MPS is used only as a standard for new construction. By HUD policy, rehabilitation is governed by local requirements. The Department feels that other changes to the MEC suggested by the commenter should be made through the established code change process.

Section 109 of the National Affordable Housing Act of 1990 (NAHA) states, in part, that:

> The Secretary of Housing and Urban Development shall, not later than one year after the date of enactment of this Act, promulgate energy efficiency standards for new construction of public and assisted housing and single-family- and multifamily residential housing (other than manufactured homes) subject to mortgages under the National Housing Act. Such standards shall meet or exceed the provisions of the most recent edition of the Model Energy Code of the Council of American Building Officials and shall be cost-effective with respect to construction and operating costs.

While the Department finds many of the above-described comments worthy of consideration for future HUD energy studies, the Department has determined that they are not sufficiently persuasive to permit HUD to violate the clearly stated mandate of the Act regarding the promulgation of energy efficiency standards. The Department's consultations with the Department of Energy (DOE) and others indicate that the MEC clearly can be considered a cost-effective standard. The following

studies, focused on various aspects of the MEC, support this position:

Economic Assessment of Model Energy Code Proposal 87–20, Submitted by MIMI, M. F. McBride, July 9, 1987;

Impacts of Alternative Residential Energy Standards—Rural Housing Amendments Study, Department of Energy, June 1988;

Comparison of the Economic Effects of Three Residential Energy Codes on Home Buyers, Battelle PNL, November 1990;

Assessment of Energy Savings Resulting from Thermal Insulation Use in the Residential Sector, ROG/Hagler, Bailey, Inc., et al., December 1990;

Better Building Codes for Energy Efficiency, the Alliance to Save Energy, September 1991.

To comply with the mandate of Section 109 of the NAHA which states: "In developing such standards the Secretary shall consult an advisory task force composed of home builders, national, state and local housing agencies (including public housing agencies), energy agencies and building code organizations and agencies, energy efficiency organizations, utility organizations, low income housing organizations, and other parties designated by the Secretary." HUD has consulted with many individuals and organizations with interest in energy usage. DOE is involved with a study to identify areas where additional research is needed that will improve energy conservation. As new improved methods and products are developed they will be proposed for changes to the standard.

One comment recommended that several standards from the American Concrete Institute, the American Society of Civil Engineers and the American Society for Testing and Materials be added to Appendix A. The recommended standards, upon examination, were determined either to be outdated or already referenced or listed in the Model Codes that HUD has adopted by reference. Accordingly, the Department has determined that it is not necessary to include them in the MPS.

A commenter opposed the use of the CABO One and Two Family Dwelling Code (OTFDC) 1992 Edition and its errata package for townhouse design because of problems the commenter claimed would be raised involving consistency with fire risk factors, and concerns involving fire retardant treated plywood. Section 200.926(d)(3) has been revised in this final rule to state that fire retardant treated plywood, where approved by a state or local building code, shall not be permitted for use in roof construction unless a technical suitability bulletin has been issued by the Department for that product.

The CABO One and Two Family Dwelling Code was developed for use in all types of One and Two Family dwellings, including townhouses (See Section R–103, Scope). In areas where no building code exists, the CABO code will establish a minimum level of construction requirements. Where a Model, State or local code is in use and it is more stringent than the CABO OTFDC, the more stringent code would apply.

One of the recommendations for fire retardant treated plywood was for a time-delay strength evaluation procedure. It was suggested that this be a part of the approval process for acceptance of this product. It was also recommended that a national standard be developed that would incorporate a method of verifying test results.

Because of the recent history of premature failures of fire retardant treated plywood, its manufacturing durability tests are being reviewed by HUD. Durability and strength tests, after treatment, must be verified before the issuance of any HUD approvals. HUD is currently working with the plywood manufacturers and treaters, the National Forest Products Association and the Forest Products Laboratory to determine future manufacturing and testing procedures. When this work has been completed, HUD will determine how and where this fire retardant treated plywood may be used.

It was recommended by one commenter that the U.S. Department of Agriculture's Home and Garden Bulletin No. 64, "Subterranean Termites, Their Prevention and Control in Buildings," be added to the list of references in Appendix A, as a convenience for builders and building officials. This bulletin is a companion to the Agriculture Handbook for Wood Frame Construction, Handbook No. 73 specified in the proposed rule. Its addition is acceptable to the Department. It was also requested that the design standards for wood construction and P.S. 20–70, the softwood lumber standards, be added to those listed in the appendix. The National Design Specification (NDS) for wood construction is included in the three Model Codes: Uniform, BOCA, and Southern. The Department has determined that it is unnecessary to reference these standards again.

By recognizing the National Design Standards for wood construction, it is not considered necessary to include P.S. 20–70. Soft wood is included in the NDS.

Consistent with section 804(f)(5)(C) of the Fair Housing Act, a new section has been added that references the Department's Fair Housing Accessibility Guidelines, published in the Federal Register on March 6, 1991 (56 FR 9472). The Guidelines may be used by builders and developers in designing and constructing covered multifamily dwelling units to comply with the Fair Housing Act and 24 CFR 100.205.

The proposed changes to the Minimum Property Standards for Housing (MPS) 4910.1 (Chapters 1 and 6) will be adopted as published in the proposed rule.

A sentence has been added to § 200.925. That section explains the applicability of the MPS. The new sentence clarifies that MPS provisions may be waived to the extent that the eligibility regulations for the specific mortgage insurance program involved may be waived. Single family program regulations are generally waiverable. For example, § 203.248 permits waiver of the eligibility requirements in Part 203 that apply to the basic section 203(b) single family program, if the requirements are not required by statute. Among those requirements is § 203.39, which requires that "buildings on the mortgaged property must conform with the standards prescribed by the Commissioner." In order for the authority to waive § 203.39 to be meaningful, waiver of the MPS is also needed since for new construction cases the MPS constitutes the standards referred to in § 203.39. HUD has therefore interpreted the § 203.39 in a case where § 203.39 applies. The rule change will expressly add this interpretation.

The Department has deleted in this final rule Appendix B to Part 200—Standards Incorporated by Reference in the Minimum Property Standards for One- and Two-Family Dwellings.

This final rule does not constitute a "significant regulatory action" as that term is defined in section 3(f) of Executive Order 12866 on Federal Regulations issued by the President on October 4, 1993. The rule does not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or the principles set forth in this Executive order.

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this rule before publication and by approving it certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule does not alter the current practice by which housing is designed or constructed. It reduces the burden of compliance which already exists for both small and large entities. In all cases, housing must be built in compliance with local codes.

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations in 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours at the Office of Rules Docket Clerk at room 10278, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.

This rule was listed as item 1523 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56427) pursuant to Executive Order 12866 and the Regulatory Flexibility Act.

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule do not have federalism implications and, thus, are not subject to review under the Order. This rule only revises HUD's Minimum Property Standards, which are harmonized with local codes and local construction practice to the maximum feasible extent. This rule presents no discernible likelihood of any conflict with State or local law.

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have a potentially significant impact on family formation, maintenance and general well-being, and, thus, is not subject to review under the Order. This rule has no significant relationship to family-related issues.

List of Subjects in 24 CFR Part 200

Administrative practice and procedure, Claims, Equal employment opportunity, Fair housing, Housing standards, Incorporation by reference, Loan programs: Housing and community development, Mortgage insurance, Organization and functions (Government agencies), Reporting and recordkeeping requirements, Minimum property standards.

Accordingly, HUD amends 24 CFR part 200 as follows:

PART 200—INTRODUCTION

1. The authority citation for part 200 continues to read as follows:

Authority: 12 U.S.C. 1701 through 1715a–18; 42 U.S.C. 3535(d)).

2. Section 200.925 is revised to read as follows:

§ 200.925 Applicability of minimum property standards.

All housing constructed under HUD mortgage insurance and low-rent public housing programs shall meet or exceed HUD Minimum Property Standards, except that this requirement shall be applicable to manufactured homes eligible for insurance pursuant to § 203.43f of this chapter only to the extent provided therein. The Minimum Property Standards may be waived to the same extent as the other regulatory requirements for eligibility for insurance under the specific mortgage insurance program involved.

3. Section 200.925a is amended by revising paragraph (d)(3)(iii) to read as follows:

§ 200.925a Multifamily and care-type minimum property standards.

* * * * *

(d) * * *

(3) * * *

(iii) Each Regional Office will maintain a current list of jurisdictions with accepted building codes and a current list of jurisdictions with partially accepted building codes. The lists will state the most recent date of each code's acceptance or partial acceptance and will be available to any interested party upon request. In addition, the list of jurisdictions whose codes have been partially accepted shall identify those portions of the codes listed at § 200.925c(a) with which the property must comply.

* * * * *

4. Section 200.925b is amended by revising paragraph (k)(1) to read as follows:

§ 200.925b Residential and institutional building code comparison items.

* * * * *

(k) * * *

(1) Reference ASME/ANSI Standard A 17.1–1987; and the ASME/ANSI A17.1b-1989 Addenda.

* * * * *

5. Section 200.925c is amended by revising paragraphs (a)(1)(i), (a)(1)(ii), (a)(1)(iii), and (a)(2); by adding paragraph (a)(3); by revising paragraphs (c)(1), (c)(2) and (c)(3), and by adding paragraph (c)(4) to read as follows:

§ 200.925c Model codes.

(a) * * *

(1) * * *

(i) *The BOCA National Building Code, 1993 Edition, The BOCA National Plumbing Code, 1993 Edition, and the BOCA National Mechanical Code, 1993 Edition,* excluding Chapter I, Administration, for the Building, Plumbing and Mechanical Codes and the references to fire retardant treated wood and a distance of 4 feet (1219 mm) from the wall in exception number 1 of paragraph 705.6 and 707.5.2 number 2 (Chapter 7) of the Building Code, but including the Appendices of the Code. Available from Building Officials and Code Administrators International, Inc., 4051 West Flossmoor Road, Country Club Hills, Illinois 60478.

(ii) *Standard Building Code, 1991 Edition, including 1992/1993 revisions. Standard Plumbing Code, 1991 Edition, Standard Mechanical Code, 1991 Edition, including 1992 revisions, and Standard Gas Code, 1991 Edition,* including the 1992 revisions, but excluding Chapter I—Administration from each standard code and the phrase "or fire retardant treated wood" in reference note (a) of table 600 (Chapter 6) of the Standard Building Code, but including Appendices A, C, E, J, K, M, and R. Available from the Southern Building Code Congress International, Inc., 900 Montclair Road, Birmingham, Alabama 35213.

(iii) *Uniform Building Code, 1991 Edition,* including the 1993 Accumulative Supplement, but excluding Part I—Administrative, and the reference to fire retardant treated plywood in section 2504(c)3 and to fire retardant treated wood in 1–HR type III and V construction referenced in paragraph 4203.2., but including the Appendix of the Code. *Uniform Plumbing Code, 1991 Edition, including the 1992 Code Changes* but excluding Part I—Administration, but including the Appendices of the Code. *Uniform Mechanical Code, 1991 Edition,* including the 1993 Accumulative Supplement but excluding Part I—Administrative, but including the Appendices of the Code. All available from the International Conference of Building Officials, 5360 South Workman Mill Road, Whittier, California 90601.

(2) *National Electrical Code,* NFPA 70, 1993 Edition, including appendices. Available from the National Fire Protection Association, Batterymarch Park, Quincy, Massachusetts 02269.

(3) *National Standard Plumbing Code*, 1993 Edition. Available from the National Association of Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, Virginia 22046.

* * * * *

(c) * * *

(1) *The BOCA National Building Code, The BOCA National Plumbing and The BOCA National Mechanical Code*, 1993 Editions.

(2) *Standard Building Code, Standard Plumbing Code, Standard Mechanical Code and Standard Gas Code*, 1991 Editions, including the revisions specified in paragraph (a)(1)(ii) of this section, and the *National Electrical Code*, 1993 Edition.

(3) *Uniform Building Code, Uniform Plumbing Code and Uniform Mechanical Code*, 1991 Editions, including the 1993 Accumulative Supplements to the Building and Mechanical Codes, and the 1992 Code Changes to the *Uniform Plumbing Code*, and the *National Electrical Code*, NFPA 70, 1993 Edition.

(4) *The National Electrical Code*, NFPA 70, 1993 Edition.

6. Section 200.926 is amended by revising paragraphs (d)(1)(i)(B)(*2*), (d)(1)(i)(C)(*1*), and (d)(1)(ii)(B)(*2*)(*ii*), and paragraph (d)(3), to read as follows:

§ 200.926 Minimum property standards for one and two family dwellings.

* * * * *

(d) * * *

(1) * * *

(i) * * *

(B) * * *

(*2*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(C) * * *

(*1*) The CABO One and Two Family Dwelling Code as identified in § 200.926b(a); and

* * * * *

(ii) * * *

(B) * * *

(*2*) * * *

(*ii*) Those portions of the CABO One and Two Family Dwelling Code designated by the HUD Field Office in accordance with § 200.926c; and

* * * * *

(d) * * *

(3) *Notification of decision.* (i) Fire retardant treated plywood, where approved by a State or local building code, shall not be permitted for use in roof construction unless a HUD technical suitability bulletin has been issued by the Department for that product.

(ii) The Secretary shall review the material submitted under § 200.926(d). Following that review, the Secretary shall issue a written notice (except where there is a previously accepted or partially accepted code which has not been changed) to the submitting party stating whether the local building code is acceptable, partially acceptable, or not acceptable. Where the local building code is not acceptable, the notice shall also state whether the State code is acceptable, partially acceptable or not acceptable. The notice shall also contain the basis for the Secretary's decision and a notification of the submitting party's right to present its views concerning the denial of acceptance if the code is neither accepted nor partially accepted. The Secretary may, in his or her discretion, permit either an oral or written presentation of views.

* * * * *

7. Section 200.926b is amended by revising paragraphs (a)(1), (a)(2), and (c), to read as follows:

§ 200.926b Model codes.

(a) * * *

(1) *CABO One and Two Family Dwelling Code*, 1992 Edition, including the 1993 amendments, but excluding Chapter I—Administrative, and the phrase "or approved fire retardant wood" contained in the exception of paragraph R–218.2.2(2), but including the Appendices A, B, D, and E of the Code. (Available from the Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041.)

(2) *Electrical Code for One and Two Family Dwellings*, NFPA 70A, 1990 Edition, including Tables and Examples. Available from the National Fire Protection Association, Batterymarch Park, Quincy, MA 02269.

* * * * *

(c) *Designation of Model Codes.* When a one or two family dwelling or townhouse is to comply with portions of the model code or the entire model code, the dwelling shall comply with the CABO One and Two Family Dwelling Code 1992 Edition, including the 1993 amendments, or portion thereof as modified by § 200.926e of this part and designated by the HUD Field Office serving a jurisdiction in which a property is located. In addition, the property shall comply with all of the standards which are referenced for any designated portions of the model code, and with the Electrical Code for One and Two Family Dwellings, NFPA 70A/1990.

§ 200.926c [Amended]

8. In Section 200.926c, the table is amended by revising the heading for the second column to read, "Portions of the CABO One and Two Family Dwelling Code, 1992 Edition, including the 1993 amendments, with which a property must comply" and by revising the last entry in the second column to read "Electrical code for 1- and 2-family dwellings (NFPA 70A–1990)."

9. Section 200.926d is amended by revising paragraphs (a)(1), (b)(3)(i), (d)(3), and (e), to read as follows:

§ 200.926d Construction requirements.

(a) * * *

(1) *General.* These standards cover the agency requirements for accessibility to physically handicapped people, variations to standards, real estate entity, trespass and utilities, site conditions, access, site design, streets, dedication of utilities, drainage and flood hazard exposure, special construction and product acceptance, thermal requirements, and water supply systems.

* * * * *

(b) * * *

(3) * * *

(i) The property shall be free of those foreseeable hazards and adverse conditions which may affect the health and safety of occupants or the structural soundness of the improvements, or which may impair the customary use and enjoyment of the property. The hazards include toxic chemicals, radioactive materials, other pollution, hazardous activities, potential damage from soil or other differential ground movements, ground water, inadequate surface drainage, flood, erosion, or other hazards located on or off site. The site must meet the standards set forth in 24 CFR part 51, and HUD Handbook 4910.1, section 606 for termite and decay protection.

* * * * *

(d) * * *

(3) *Standard Features.* These features include methods of construction, systems, sub-systems, components, materials and processes which are covered by national society or industry standards. For a list of standards and practices to which compliance is required, see HUD Handbook 4910.1, Appendix C and Appendices E and F, available from HUD, 451 Seventh Street, SW., Attention: Mailroom B–133, Washington, DC 20410.

(e) *Energy efficiency.* All detached one- and two-family dwellings and one-family townhouses not more than three stories in height shall comply with the CABO Model Energy Code, 1992

Edition, Residential Buildings, except for Sections 101.3.1, 101.3.2, 104, and 105, but Section 101.3.2.2, Historic Buildings, shall remain, and including the Appendix, and HUD intermediate MPS Supplement 4930.2 Solar Heating and Domestic Hot Water Systems, 1989 edition.

* * * * *

10. Section 200.929 is amended by revising paragraph (b)(2) and by removing paragraph (b)(3), to read as follows:

§ 200.929 Description and identification of minimum property standards.

* * * * *

(b) * * *

(2) MPS for Housing 4910.1, 1993 edition. This volume applies to buildings and sites designed and used for normal multifamily occupancy, including both unsubsidized and subsidized insured housing, and to care-type housing insured under the National Housing Act. It also includes, in Appendix K, a reprint of the MPS for One and Two Family Dwellings identified in paragraph (b)(1) of this section.

11. A new § 200.929a is added, to read as follows:

§ 200.929a Fair Housing Accessibility Guidelines.

Builders and developers may use the Department's Fair Housing Accessibility Guideline when designing or constructing covered multifamily dwelling units in order to comply with the Fair Housing Act. The Guidelines may be found in the 24 CFR Chapter I, Subchapter A, Appendix II, titled Fair Housing Accessibility Guidelines—Design Guidelines for Accessible/Adaptable Dwellings.

12. Section 200.933 is amended by revising the first sentence to read as follows:

§ 200.933 Changes in minimum property standards.

Changes in the Minimum Property Standards will generally be made every three years. * * *

13. In § 200.934, paragraphs (b)(1) and (b)(2) are revised to read as follows:

§ 200.934 User fee system for the technical suitability of products program.

* * * * *

(b) *Filing address*—(1) *Applications containing payment.* When applications for or correspondence concerning SEBs, MEBs, TCBs, MRs, or program administrator approval contain payment, such applications or correspondence shall be sent to the following address:

U.S. Department of Housing and Urban Development, Technical Suitability of Product Fees, P.O. Box 954199, St. Louis, MO. 63195–4199.

(2) *Other correspondence.* All other correspondence concerning SEBs, MEBs, TCBs, MRs, and program administrator acceptance shall be sent to the following address:

Manufactured Housing and Construction Standards Division, Department of Housing and Urban Development, 451 Seventh Street, SW., Attn: Mail Room B–133, Washington, DC 20410.

* * * * *

14. Appendix A to part 200 is revised to read as follows:

Appendix A to 24 CFR Part 200 Standards incorporated by reference in the Minimum Property Standards for Housing (HUD Handbook 4910.1)

The following publications are incorporated by reference in the HUD Minimum Property Standards (MPS) in 24 CFR part 200. The MPS are available for public inspection and can be obtained for appropriate use at 490 L'Enfant Plaza East, Suite 3214, or at each HUD Regional, Area, and Service Office. Copies are available for inspection at the Office of the **Federal Register**, 800 North Capital Street, NW., Suite 700, Washington, DC. The individual standards referenced in the MPS are available at the address contained in the following table. They are also available for public inspection at the HUD, Manufactured Housing and Construction Standards Division, Suite 3214, 490 L'Enfant Plaza East, Washington, DC 20024.

Air Conditioning Contractors of America 1513 16th Street, NW., Washington, DC 20036, (202) 483–9370.

Load Calculation for Residential Winter and Summer Air Conditioning, Manual J 1986

Aluminum Association, 900 19th Street, NW., Washington, DC 20006, Telephone (202) 862–5100.

AA–ASM 35–80 Specifications for Aluminum Sheet Metal Work in Building Construction

American Architectural Manufacturers Association, 1540 East Dundee Road, Paletine, IL 60067, Telephone (708) 202–1350.

AAMA–800–92 Voluntary Specifications and Test Methods for Sealants

AAMA–1503.1–88 Voluntary Test Method for Thermal Transmittance and Condensation Resistance of Windows, Doors and Glazed Wall Sections

AAMA 1504–88 Voluntary Standards for Thermal Performance of Windows, Doors and Glazed Wall Sections

American Concrete Institute, P. O. Box 19150, Redford Station, Detroit, Michigan 48219, Telephone (313) 532–2600.

ACI 211.1–89 Standard Practice for Selecting Proportions for Normal, Heavyweight and Mass Concrete

ACI 211.2–91 Standard Practice for Selecting Proportions for Structural Lightweight Concrete

ACI 213R–87 Guide for Structural Lightweight Aggregate Concrete

ACI 301–89 Specifications for Structural Concrete for Buildings

ACI 302.1R–80 Guide for Concrete Floor and Slab Construction

ACI 304R–89 Guide for Measuring, Mixing, Transporting and Placing Concrete

ACI 305R–77 Hot Weather Concreting (Revised 1989)

ACI 306R–78 Cold Weather Concreting (Revised 1988)

ACI 311.4R–80 Guide for Concrete Inspection (Revised 1988)

ACI 315–80 Guide for Detailing of Concrete Reinforcement

ACI 318–89 Building Code Requirements for Reinforced Structural Plain Concrete (Revised 1992)

ACI 322–72 Structural Plain Concrete

ACI 347–78 Recommended Practice for Concrete Formwork (Reapproved 1984)

ACI 504R–77 Guide to Joint Sealants for Concrete Structures

ACI 506–90 Recommended Practice for Shotcreting

ACI 515.1R–79 A Guide to the Use of Waterproofing, Dampproofing, Protective and Decorative Barrier Systems for Concrete (Revised 1985)

ACI 533.1R–69 Quality Standards and Tests for Precast Concrete Wall Panels

ACI 533.2R–69 Selection and Use of Materials for Precast Concrete Wall Panels

ACI 533.3R–70 Fabrication, Handling and Erection of Precast Concrete Wall Panels

American Forest & Paper Association, (formerly National Forest Products Association), 1250 Connecticut Ave., NW., Washington, DC 20036. National Design Specification for Wood Construction—1991.

American National Standards Institute, 11 West 42nd Street, New York, NY 10036, Telephone (212) 642–4900.

ANSI A108.1A–92 Specifications for Installation of Ceramic Tile, in the Wet Set Method with Portland Cement Mortar

ANSI A137.1–1988 Specifications for Ceramic Tile

ANSI/BHMA A156.2–1989 Standard for Bored and Preassembled Locks and Latches

ANSI/NKCA A161.1–1985 Recommended Performance and Construction Standards for Kitchen and Vanity Cabinets (Approved March 18, 1986)

ANSI A208.1–1989 Wood Particleboard

ANSI/AAMA 101–1988 Voluntary Specifications for Aluminum Prime Windows and Sliding Glass Doors

ANSI/AAMA 1002.10–1983 Voluntary Specifications for Aluminum Insulating Storm Products for Windows and Sliding Glass Doors

ANSI/AAMA 1102.7–1989 Voluntary Specifications for Aluminum Storm Doors

ANSI/AAMA 1402–1986 Standard Specifications for Aluminum Siding, Soffit and Fascia (ANSI Approved 1989)

ANSI/ACI 214–77 Recommended Practice for Evaluation of Strength Test Results of Concrete (Reapproved 1983)

ANSI/AHA A135.4–1982 Basic Hardboard (Reaffirmed 1988)

ANSI/AHA A135.6–1990 Hardboard Siding

ANSI/AHA A194.1–1985 Cellulosic Fiber Board

ANSI/APA 1–1984 Mosaic-Parquet Hardboard Slat Flooring
ANSI/NSPI–1–91 Standard for Public Swimming Pools
ANSI Z34.1–1987 American National Standard for Certification, Third-Party Certification Program
ANSI Z124.5–1989 American National Standard for Plastic Toilet Seats (Water Closet Seats)

American Society of Civil Engineers, 345 East 47th Street, New York, NY 10017.

ASCE 7–88 Minimum Design Loads for Buildings and Other Structures (Formerly ANSI A58.1)

American Society of Mechanical Engineers, 345 E 47th Street, New York, NY 10017.

ASME/ANSI A17.1–87 Safety Code for Elevators and Escalators Including the A17.1b-89 Addenda
ASME A 112.18.1M89 Plumbing Fixture Fittings

American Society for Testing and Materials, 1916 Race Street, Philadelphia, PA 19103, Telephone (215) 299–5400.

ASTM C 12–91 Standard Practice for Installing Vitrified Clay Pipe Lines
ASTM C 208–72 Insulating Board (Cellulosic Fiber), Structural and Decorative (Reapproved 1982)
ASTM C 209–84 Standard Methods of Testing Insulating Board (Cellulosic Fiber), Structural and Decorative
ASTM C 216–91c Standard Specification for Facing Brick (Solid Masonry Units Made from Clay or Shale)
ASTM C 220–91 Standard Specification for Flat Asbestos-Cement Sheets
ASTM C 221–91 Standard Specification for Corrugated Asbestos-Cement Sheets
ASTM C 223–91 Standard Specification for Asbestos-Cement Siding
ASTM C 509–91 Standard Specification for Elastomeric Cellular Preformed Gasket and Sealing Material
ASTM C 516–80 Standard Specification for Vermiculite Loose Fill Thermal Insulation (Reapproved 1985)
ASTM C 549–81 Standard Specification for Perlite Loose Fill Insulation (Reapproved 1986)
ASTM C 578–92 Standard Specification for Rigid, Cellular Polystyrene Thermal Insulation
ASTM C 640–83 Standard Specification for Insulation Board, Thermal (Cork)
ASTM C 726–88 Standard Specification for Mineral Fiber and Roof Insulation Board
ASTM C 739–91 Standard Specification for Cellulosic Fiber (Wood-Based) Loose-Fill Thermal Insulation
ASTM C 754–88 Standard Specification for Installation of Steel Framing Members to Receive Screw-Attached Gypsum
ASTM C 834–91 Standard Specification for Latex Sealants
ASTM C 841–90 Standard Specification for Installation of Interior Lathing and Furring
ASTM C 842–85 Standard Specification for Application of Interior Gypsum Plaster (Reapproved 1990)
ASTM C 843–92 Standard Specification for Application of Gypsum Veneer Plaster
ASTM C 844–85 Standard Specification for Application of Gypsum Base to Receive Gypsum Veneer Plaster
ASTM C 846–76 Standard Practice for Application of Structural Insulating Board (Fiberboard) Sheathing (Reapproved 1982)
ASTM C 864–90 Standard Specification for Dense Elastomeric Compression Seal Gaskets, Setting Blocks and Spacers.
ASTM C 926–90 Standard Specification for Application of Portland Cement-Based Plaster
ASTM C 1036–91 Standard Specification for Flat Glass
ASTM D 1037–89 Standard Test Methods for Evaluating the Properties of Wood-Base Fiber and Particle Panel Materials
ASTM C 1048–91 Standard Specification for Heat-Treated Flat Glass-Kind HS, Kind FT Coated and Uncoated Glass
ASTM D 1557–91 Test Method for Laboratory Compaction Characteristics of Soil Using the Modified Method (56,000 ft-lbf/ft_3 (2,700 kN-m/m_3))
ASTM D 2316–75 Standard Recommended Practice for Installing Bituminized Fiber Drain and Sewer Pipe (Reapproved 1984)
ASTM D 2321–89 Standard Practice for Underground Installation of Thermoplastic Pipe for Sewers and Other Gravity-Flow Applications
ASTM D 3656–89 Standard Specifications for Insect Screening and Louver Cloth Woven From Vinyl-Coated Glass Yarns
ASTM D 3679–92 Standard Specification for Rigid Poly (Vinyl Chloride) (PVC) Siding
ASTM E 72–80 Standard Methods of Conducting Strength Tests of Panels for Building Construction
ASTM E 283–91 Standard Test Method for Determining the Rate of Air Leakage Through Exterior Windows, Curtain Walls, and Doors Under Specified Pressure Differences Across the Spectrum
ASTM E 330–90 Standard Test Method for Structural Performance of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 331–86 Standard Test Method for Water Penetration of Exterior Windows, Curtain Walls, and Doors by Uniform Static Air Pressure Difference
ASTM E 380–91a Standard Practices for Use of the International Systems of Units (SI) (the Modernized Metric System)

American Society of Heating, Refrigerating and Air Conditioning Engineers, 1791 Tullie Circle, NE, Atlanta, GA 30329. ASHRAE Handbook—Fundamentals—1989. ASHRAE Cooling and Heating Load Calculation Manual—GRP 158 1979. ASHRAE Handbook—Equipment—1988. ASHRAE Handbook—HVAC Systems and Applications—1987.

American Welding Society, 550 NW Le Jeune Road, P. O. Box 351040, Miami, FL 33126, Telephone (305) 443–9353. ANSI/AWS D1.1–90 Structural Welding Code—Steel. ANSI/AWS D1.4–79 Structural Welding Code-Reinforcing Steel.

The Asphalt Institute, Asphalt Institute Building, College Park, MD 20740 Telephone (301) 277–4258.

MSI–1–81 Thickness Design—Asphalt Pavements for Highways and Streets

Asphalt Roofing Manufacturers Association, 6288 Montrose Road, Rockville, MD 20852, Telephone (301) 231–9050.

Residential Asphalt Roofing Manual—1988.

Carpet and Rug Institute, 310 Holiday Avenue, Box 2048, Dalton, GA 30722–0048, Telephone (404) 278–3176. How to Specify Commercial Carpet Installation, 1984.

Council of American Building Officials, Suite 708, 5203 Leesburg Pike, Falls Church, VA 22041, Telephone (703) 931–4533. CABO One and Two Family Dwelling Code 1992 edition with Errata Package and 1993 Amendments. CABO Model Energy Code 1992 edition CABO/ANSI A117.1–92 Accessible and Usable Buildings and Facilities.

Department of Agriculture, Publications Division, 14th and Independence Avenue, SW., Washington, DC 20050, Telephone (202) 447–3957.

Agriculture Handbook No. 73, Wood Frame House Construction
Home and Garden Bulletin No. 64. Subterranean Termites—Their Prevention and Control in Buildings, October 1983
Home and Garden Bulletin No. 73, Wood Decay in Houses, How to Prevent and Control It, May 1986

Department of Commerce, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, Telephone (301) 975–4025. PS 1–83 Product Standard for Construction and Industrial Plywood with Typical APA Trademarks. PS 2–92 Performance Standard for Wood-Based Structural-Use Panels.

Commercial Standards:

CS 138–55 Insect Wire Screening
CS 242–62 1 ¾" Steel Doors & Frames

Department of Defense, Naval Publication and Forms Center, 5801 Taber Road, Philadelphia, PA 19120, Telephone (215) 697–2179.

Federal Specifications:

L–S–125B Screening, Insect, Non-metallic Febuary 3, 1972
L–F–001641 Floor Covering Translucent or Transparent Vinyl Surface with Backing—1971 and Amendment 2—September 24, 1982
L–F–00450A Flooring, Vinyl Plastic (GSAFSS)—1970 and Amendment 1, August 5, 1975
L–F–475A Floor Covering Vinyl, Surface Tile and Roll, with Backing including Amendment 2—February 9, 1971
HH–I–521F Insulation Blankets, Thermal (Mineral Fiber—for Ambient Temperatures—1980)
HH–I–526C Insulation Board, Thermal (Mineral Fiber)—1968
HH–I–529B Insulation Board, Thermal (Mineral Aggregate)—1971
HH–I–530B Insulation Board, Thermal, Unfaced, Polyurethane or Polyisocyanurate and Interim I—1982
HH–I–551E Insulation Block and Boards, Thermal (Cellular Glass) Fiber, for Ambient Temperatures, 1974
HH–I–558B Insulation Blocks, Boards, Blankets, Felts Sleeving (Pipe and Tube Covering), and Pipe Fitting Covering, Thermal (Mineral Fiber, Insulation Type) and Amendment 3—1976
HH–I–574B Insulation, Thermal (Perlite) and Interim Amendment—1976

HH–I–585C Insulation, Thermal (Vermiculite) and Interim Amendment 1—1976
HH–I–1030B Insulation, Thermal (Mineral Fiber, for Pneumatic or Poured Application)—1980
HH–I–1252B Insulation, Thermal Reflective, (Aluminum Foil) and Interim Amendment 1—1976
HH–I–1972 Insulation Board, Thermal, Faced, Gen; 1, 2, 3, Polyurethane and Polyisocyanurate and 4, 5 & 6 Amendments—1985
LLL–I–535B Insulation Board, Thermal, Cellulosic Fiber, 1977
SS–S–346C Siding (Shingles, Clapboards, and Sheets) 1968
SS–T–312B Tile, Floor: Asphalt, Rubber, Vinyl-Composition and Interim Amendment—1979

Department of Housing and Urban Development, 451 Seventh Street, SW., Mail Room B–133, Washington, DC 20410, Telephone (202) 755–7440.
Handbooks:

4940.2–1973 Minimum Design Standards for Community Water Supply Systems
4940.3–1992 Minimum Design Standards for Community Sewerage Systems (Rev. 1–92)
4950.1–1988 Technical Suitability of Products Program, Technical and Processing Procedures (Rev. 2 which includes revisions and changes through October 24, 1991)
4930.2–1989 HUD Intermediate MPS Supplement, Solar Heating & Domestic Hot Water Systems

Use of Materials Bulletins:

25d Power Driven, Mechanically Driven and Manually Driven Fasteners—9/5/73
38h Grademarking of Lumber—7/31/79
44c HUD/FHA Standard for Carpet and Carpet Certification Program—2/22/78 (Plus Addendum 1 & 2)
48 Labels of Independent Programs for Certifying Pressure-Treated Lumber and Plywood (Plus 5 Supplements—11/15/67)
52a Quality Certification and Labeling for Wood Flush Doors—10/7/75)
58a Acrylic Plastic Sheets for Glazing—9/2/75
60 Field Glued Plywood & Wood Frame Structural Floor Systems—12/9/70
62a Factory-Applied Laminated Roofing Systems Based on Chlorosulfonated Polyethylene (CPSE)—11/16/72
65 Controlled Density Cellular Concrete Floor Fill—10/11/73
67 Polycarbonate Plastic Sheets for Glazing—9/3/75
70a Particleboard Interior Stair Treads and Certification Program—5/19/82
71 Polystyrene Foam Insulation Sheathing Board—1/10/77
72 · HUD Standard for Carpet Cushion—2/6/80
76 Chlorinated Poly (Vinyl Chloride) CPVC and Polybutylene (PB) Hot and Cold Water Distribution—4/25/78
77a Cast Iron Sanitary Drainage System with Hubless Pipe and Fittings—3/28/80
78 Polyethylene (PE), Acrylonitrile-Butadiene-Styrene (ABS), Poly Vinyl Chloride (PVC) and Polybutylene (PB) Plastic Piping for Domestic Cold Water Service—4/25/78
79a Acrylonitrile-Butadiene-Styrene (ABS) and Poly (Vinyl Chloride) (PVC) Plastic Drain, Waste and Vent Pipe and Fittings—3/7/82
80 Spray Applied Cellulosic Thermal Insulation—10/31/79
101 HUD Building Product Standards and Certification Program for Exterior Wall Insulation and Finish Systems, July 26, 1993

Environmental Protection Agency, Office of Drinking Water, 401 M Street, SW., Washington, DC 20460, Telephone (202) 382–5533.

EPA 570/9–82–004 Manual of Individual Water Supply (NTIS–PB 85242279) Systems (October 1982)

Flat Glass Marketing Association, White Lakes Professional, Building 3310 Harrison Street, Topeka, KS 66611, Telephone (913) 266–7013. FGMA Glazing Manual—1986. FGMA Sealant Manual—1990.

Hardwood Plywood Manufacturers Association, P.O. Box 2789, 1825 Michael Faraday Drive, Reston, VA 22090, Telephone (703) 435–2900. ANSI/HPMA LHF–1987 Laminated Hardwood Flooring.

Insect Screening Weavers Assn., 2000 Maple Hill Street, P.O. Box 309, Yorktown Heights, NY 10598. IWS–089 Insect Wire Screening (Wire Fabric).

National Academy of Sciences, 2101 Constitution Avenue, NW., Washington, DC 20418. Publication 1571 Criteria for Selection and Design of Residential Slabs-on-Ground, Report #33, Building Research Advisory Board (BRAB), 1968.

National Association of Home Builders, Research Center, 400 Prince Georges Boulevard, Upper Marlboro, MD 20772, Telephone (301) 249–4000. Insulation Manual, Homes and Apartments—1979.

National Association of Plumbing-Heating-Cooling Contractors, P.O. Box 6808, Falls Church, VA 22046, Telephone (703) 237–8100. National Standard Plumbing Code—1993.

National Fire Protection Association, Batterymarch Park, Quincy, MA 02269, Telephone 1–800–344–3555.
ANSI/NFPA 58–89 Standard for the Storage and Handling of Liquefied Petroleum Gases
NFPA 54–88 National Fuel Gas Code (ANSI Z223.1–1988) NFPA 70–93 National Electrical Code

National Institute of Building Sciences, 1201 L Street, NW., Washington, DC 20005. Metric Guide for Federal Construction—1992.

National Oak Flooring Manufacturers Association, 22 North Front Street, Memphis, TN 38103. Official Grading Rules, Oak, Beech, Birch, Hard Maple, Pecan (OFGR/Vol. 1, No. 1/1986 and the 1989 Addendum). Hardwood Flooring Finishing/Refinishing Manual, 1986. Hardwood Flooring Installation Manual, 1986.

National Roofing Contractors Association, One O'Hare Centre, 6250 River Road, Rosemont, IL 60018, Telephone (708) 318–6722. NRCA Roofing and Waterproofing Manual, 1989.

National Terrazzo and Mosaic Association, 3166 Des Plaines Avenue, Suite 132, Des Plaines, IL 60018, Telephone (708) 635–7744. NTMA Specifications, Details and Technical Data, "Terrazzo Ideas & Design Guide", 1990.

National Wood Window and Door Association, 205 West Touhy Avenue, Park Ridge, IL 60018, Telephone (708) 299–5200.
ANSI/NWWDA IS 1–87 Industry Standard for Wood Flush Doors
ANSI/NWWDA IS 2–87 Industry Standard for Wood Windows
NWWDA IS 3–88 Industry Standard for Wood Sliding Patio Doors
ANSI/NWWDA IS 6–86 Industry Standard for Wood Stile and Rail Doors

Post-tensioning Institute, 301 West Osborn, Suite 3500, Phoenix, AZ 85013, Telephone (602) 870–7540. Design and Construction of Post-tensioned Slabs-on-Ground—1990.

Prestressed Concrete Institute, 175 West Jackson Boulevard, Suite 1659, Chicago, IL 60604, Telephone (312) 786–0353.
PCI MNL 116 Manual for Quality Control for Plants and Production for Precast Prestressed Concrete Products—1985 PCI MNL 117 Manual for Quality Control for Plants and Production of Architectural Precast Concrete Products—1977

Resilient Floor Covering Institute, 966 Hungerford Drive, Suite 12–B, Rockville, MD 20850, Telephone (301) 340–8580. Recommended Installation Specifications for Vinyl Composition, Solid Vinyl and Asphalt Tile Floorings, 1987.

Safety Glazing Certification Council, c/o ETL Testing Laboratories, Industrial Park, Route 11, Cortland, New York 13045, Telephone (607) 753–6711. Certified Products Directory—1990.

Southern California Association of Cabinet Manufacturers, 1933 South Broadway, L. 39, Los Angeles, CA 90007, Telephone (213) 749–4355. Certified Construction Standards and Specifications, Guide for Uniform Cabinet Specifications—1973 (Revised 1985).

Steel Door Institute, 30200 Detroit Road, Cleveland, OH 44145, Telephone (216) 899–0010. ANSI/SDI A123.1–82 Nomenclature for Steel Doors and Steel Door Frames.

Tile Council of America, Inc., Box 326, Princeton, NJ 08542–0326, Telephone (609) 921–7050. Handbook for Ceramic Tile Installation—1993.

Underwriters Laboratories, 333 Pfingsten Road, Northbrook, IL 60062, Telephone (708) 272–8800. Electrical Appliance and Utilization Equipment Directory, 1992.

Water Quality Association, 4151 Naperville Road, Lisle IL 60532. Telephone (708) 396–1600.
WQA S–100 Household Commericial and Portable Exchange Water Softeners—1985
WQA S–200 Household and Commercial Water Filters—1988
WQA S–300 Point-of-Use, Low Pressure Reverse Osmosis Drinking Water Systems—1984
WQA S–400 Point-of-Use Distillation Drinking Water Systems—1986

Wood Moulding and Millwork Producers, P.O. Box 25278, Portland, OR 97225, Telephone (503) 292–9288.
WM 3–79 Exterior Wood Door Frames

PART 200—[AMENDED]

15. Appendix B to Part 200 is removed.

Dated: November 3, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–27683 Filed 11–12–93; 8:45 am]

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federal register

Monday
November 15, 1993

Part III

Department of Transportation

Coast Guard

46 CFR Parts 1 and 67
Documentation of Vessels; Recording of Instruments; Fees; Final Rule

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Parts 1 and 67

[CGD 89–007; CGD 89–007a]

RIN 2115–AD60

Documentation of Vessels; Recording of Instruments; Fees

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is establishing new recording practices to fully implement the provisions of the codification of the Ship Mortgage Act. In addition, it is simplifying the procedures for documentation of vessels and establishing new and revised fees for vessel documentation services. This final rule will make the regulations easier to use by the affected public and will more fully implement statutory requirements.

DATES: This rule is effective on January 1, 1994. The incorporation by reference of a certain publication listed in the regulations is approved by the Director of the Federal Register as of January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Mrs. Patricia J. Williams, Chief, Vessel Documentation Section, Vessel Documentation and Tonnage Survey Branch, Merchant Vessel Inspection and Documentation Division, Office of Marine Safety, Security and Environmental Protection, (202) 267–1492.

Normal office hours are between 7:30 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal authors of this regulation are Thomas L. Willis, Project Manager, Lieutenant Commander Don M. Wrye, Attorney Advisor, Vessel Documentation and Tonnage Survey Branch, and C.G. Green, Project Counsel, Office of Chief Counsel.

Regulatory History

On March 26, 1992, the Coast Guard published a notice of proposed rulemaking (NPRM) entitled "Documentation of Vessels; Recording of Instruments" in the **Federal Register** (57 FR 15044). That NPRM contained the Coast Guard's proposed revision of 46 CFR part 67, setting forth standards and procedural simplifications for documenting vessels and filing and recording instruments affecting the title of documented vessels. On May 20, 1992, the Coast Guard published an additional NPRM entitled "Documentation of Vessels; Recording of Instruments; Fees" in the **Federal Register** (57 FR 21546). The additional NPRM set forth proposed fees for services provided based on the revision to part 67 proposed on March 26, 1992 (57 FR 10544).

Comments on both proposals were received from individuals, law firms, commercial vessel documentation services, industry groups, and maritime corporations. The Coast Guard received 41 comments on its proposed standards and procedures, and 40 comments on the proposed fees. Although some comments were received after the close of the comment period, all were considered in promulgating this final rule. No public hearing was requested and none was held.

Following analysis of those comments dealing with proposed rules for submission of citizenship declarations, a final rule entitled "Documentation of Vessels; Recording of Instruments; Citizenship Declarations" was published on September 24, 1992 (57 FR 44126). This final rule partially implemented certain provisions of the Coast Guard's proposal of March 26, 1992, regarding filing a declaration of citizenship (MA–899) in connection with the filing and recording of certain instruments.

In the interest of setting forth documentation regulations as clearly as possible, the Coast Guard has combined its proposals of March 26, 1992 (57 FR 10544), and May 20, 1992 (57 FR 21546), into this single final rule. The comments received in response to both proposals are discussed below. Because this final rule revises all of part 67, the changes made in the final rule of September 24, 1992 (57 FR 44126), concerning citizenship declarations are republished without change in this rule.

Background and Purpose

On November 28, 1988, Congress enacted Public Law 100–710 (the "Codification Act") which amended and codified the Ship Mortgage Act, 1920 into 46 U.S.C. chapter 313; amended the Shipping Act, 1916 (46 U.S.C. app. 808); and eliminated the prohibition against collecting fees for commercial vessel documentation services by amending 46 U.S.C. 2210. The Codification Act was the subject of technical corrections ("Corrections") when Congress enacted Pub. L. 101–225. Both the Codification Act and the Corrections introduced significant changes which are at variance with the former law and with existing Coast Guard regulations.

Most of the provisions of the Codification Act which require changes to the Coast Guard's regulations became effective on January 1, 1989. Certain of the changes were unequivocal and were implemented by an interim final rule published October 12, 1989 (54 FR 41835). The interim final rule was adopted as final in a rulemaking published January 10, 1991 (56 FR 960).

Other statutory revisions, some of which became effective on January 1, 1989, and others which became effective on January 1, 1990, required a more considered approach, including the opportunity for public comment. These latter changes were the subject of the NPRM published March 26, 1992 (57 FR 10544). The intent of the Codification Act and the Corrections was to simplify and streamline the documentation process. Accordingly, the Coast Guard has revised all of its regulations to simplify and clarify the rules and present them in a more orderly fashion.

In addition to requiring changes in the Coast Guard's regulations, the Codification Act also required changes in rules administered by the Maritime Administration affecting the transfer of documented vessels. Those rules, which are set forth in 46 CFR part 221 were the subject of an interim final rule published on February 2, 1989 (54 FR 5382, amended at 54 FR 8195). In addition, the Maritime Administration published a notice of proposed rulemaking on April 13, 1990 (55 FR 14040), and a second interim final rule on July 3, 1991 (56 FR 30656). Following a comment period, the Maritime Administration published a final rule on June 3, 1992 (57 FR 23470). That rule was at variance with the Coast Guard requirements which were then in force with regard to the requirement to file Declarations of Citizenship with certain instruments affecting the title of documented vessels. In order to reduce uncertainty regarding the validity of certain instruments, and to allow the Coast Guard to immediately eliminate a needless paperwork burden on the public estimated at 19,600 hours per year, the Coast Guard published a final rule on September 24, 1992 (57 FR 44126), which conformed the Coast Guard's regulations regarding the filing of Declarations of Citizenship to those of the Maritime Administration.

In addition to the foregoing, the Omnibus Budget Reconciliation Act of 1990 ("Reconciliation Act") (Public Law 101–508) requires the Coast Guard to establish user fees for, among other things, Coast Guard services related to vessel documentation. The user fees required by the Reconciliation Act were the subject of the NPRM published on

May 20, 1992 (57 FR 21546). Prior to the Reconciliation Act, the only vessel documentation fees prescribed by the Coast Guard were for services related to recreational vessels, and several fees prescribed by statute relative to recording instruments affecting the title of documented vessels. As required by the Reconciliation Act, the fees set forth in this rule use the criteria in 31 U.S.C. 9701 and reflect the Coast Guard's current program costs associated with commercial and recreational vessel transactions. By implementing these fees, the Coast Guard will recover current operating and overhead costs associated with vessel documentation and filing and recording activities under 46 U.S.C. chapters 121 and 313. The fees in this rule will be reviewed annually to determine if adjustments or changes are necessary. The Coast Guard will revise these fees when costs change because of inflation, deflation, or changes in the way services are provided. In addition, new statutes may require the Coast Guard to establish new regulations or make substantive amendments to its existing regulations. When this occurs, the Coast Guard will propose appropriate user fees in each rulemaking.

Discussion of Comments and Changes

Some of the comment letters were very detailed in their comments and suggestions, while others raised questions or simply supported or opposed certain sections of the proposed rules without detailed comments or suggestions. Each comment letter received has been considered in the development of this final rule.

Among the comment letters were four requests for an extension of the comment period for the proposal published March 26, 1992 (57 FR 10544). The Coast Guard allowed 90 days for comment instead of the usual 60 days. It is doubtful that any new substantive material would be developed as a result of extending the comment period. Accordingly, the comment period was not extended. The substantive comments received are discussed below.

Four comments were received concerning the definition of acknowledgment. One comment merely expressed support for the proposed change. Three noted that the attestation which the Coast Guard proposed to accept as an acknowledgment was actually a notarization and not a true acknowledgment. One comment observed that not all of the States have adopted one of the uniform acts regarding acknowledgments. It also noted that the proposed format for a universally acceptable acknowledgment for vessel documentation purposes might not satisfy the legal requirements for an acknowledgment in a given State. In addition, the comment stated that the definition of acknowledgement as a "certificate issued under the Hague Convention Abolishing the Requirement for Legalisation of Public Documents, 1961" needs elaboration. The Coast Guard's sole purpose in providing certain standards for acknowledgments is to define the minimal requirements which must be met in order to make instruments eligible for filing and recording. The proposed definition, which is based upon the statutory definition in 46 U.S.C. 31301, was not intended to be an exhaustive or exclusive list of acceptable forms of acknowledgment. Although the Coast Guard is aware that some States may have additional requirements for acknowledgments, the legislative history of the underlying statute makes clear that the Secretary can prescribe a uniform form of acknowledgment or notarization. (H.R. 100–918) Based on the comments, the definition of *acknowledgment* has been expanded to clarify that acknowledgments or notarizations made pursuant to the laws of any State satisfy the Federal statutory requirements for acknowledgments of instruments. In addition to amending the proposed form of acknowledgment to include the term "acknowledged," there is a fuller discussion of procedures to be fulfilled in affixing certificates or "apostilles" pursuant to the Hague Convention Abolishing the Requirement for Legalisation of Public Documents, 1961.

One comment contended that the words "as defined in this section" in the definition of citizen should be struck as meaningless. The Coast Guard agrees and has made the suggested change.

One comment objected to the inclusion of "passengers" in the definition of coastwise trade, noting that the term "coastwise trade" more appropriately applies to transportation of merchandise. Although the Coast Guard agrees that the comment is technically correct, it is noted that under the statutes administered by the U.S. Customs Service a coastwise endorsement is required for transportation of passengers between points embraced within the coastwise laws of the United States. Therefore, the definition was not changed.

One comment contended that the definitions of the terms coastwise trade and fisheries were not new. Although the terms are not new, their definitions have been revised to conform to statutory changes. That comment further inquired about the change in the wording of the definition of coastwise trade from "a point in the United States embraced within the coastwise laws" to "points embraced within the coastwise laws of the United States." The change is required because Pub. L. 100–329 expanded the scope of section 27 of the Merchant Marine Act, 1920, (46 U.S.C. app. 883), to include transportation from a point or place in the United States to a point or place in the Exclusive Economic Zone of the United States.

One comment noted that the word "shellfish" had been inadvertently omitted from the definition of *fisheries*. That omission has been corrected.

The definition of hull was characterized by one comment as potentially confusing when read in conjunction with the definition of superstructure. As proposed, it would be possible to conclude that the main deck of a vessel is included in neither its hull nor superstructure. The definition of superstructure has been amended to avoid confusion.

Two comments observed that the Virgin Islands should have been included in the definition of United States. That observation is correct, and the oversight has been corrected.

Section 67.7 has been amended in response to a comment to clearly reflect the requirement that a valid endorsement is required for vessel operation.

Six comments addressed § 67.11. Each comment addressed a slightly different portion of the section, noting the need for consistency between Coast Guard regulations and pertinent Maritime Administration regulations in 46 CFR part 221. Review of the comments revealed that the proposed rulemaking had inadvertently stated that only vessels owned by citizens of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802) require approval of the Maritime Administration prior to transfer to foreign registry or operation under the authority of a foreign country. However, section 9 of the Shipping Act, 1916 (46 U.S.C. app. 808) provides that approval of the Maritime Administration is required for any documented vessel to be transferred to foreign registry or operated under the authority of a foreign country, whether or not the owner is a citizen within the meaning of section 2 of the Shipping Act, 1916. Section 67.11 has been rewritten in this final rule to properly reflect the requirements of the applicable statutes and to conform more closely to the rules of the Maritime Administration.

Two comments expressed the opinion that the cross reference in § 67.12 to 46 CFR subpart 1.03 dealing with the right of appeal is confusing. They suggest that part 67 be expanded to set out the applicable sections of subpart 1.03 or that reference be made to specific applicable sections of subpart 1.03. The Coast Guard does not agree. Complying with those suggestions would require revision of part 67 whenever subpart 1.03 is revised, and would increase the potential for the public to be misled. However, the Coast Guard has decided to amend the procedural appeal provisions in subpart 1.03 to clarify their application to vessel documentation decisions.

One comment suggested that § 67.15 should provide for a temporary Certificate of Documentation for vessels not previously documented, and which are to be used exclusively for recreational purposes. The comment asserts that 46 U.S.C. 12102(b) provides statutory authority for issuing temporary documents to avoid delays caused by a heavy workload. That assertion is a strained reading of the statute. Section 12102(b) was originally enacted as part of the Vessel Documentation Act, 1980, and was intended solely to allow documentation of vessels prior to issuance of tonnage certificates. Although there are no plans at present for issuance of temporary Certificates of Documentation for any purpose, the suggestion will be reviewed in the future.

Two comments noted that in § 67.17, Wake Island had been omitted from the list of places with which a vessel with a registry endorsement may trade. The comments are correct, and the oversight has been corrected.

One comment argued that paragraphs (a) and (b) of § 67.19 should be reworded, by substituting the words "gives a lawful right to a vessel to engage in * * *" for "entitles a vessel to employment in * * *" It is also suggested that a similar change be made in paragraph (d). The purpose of the comment is to support the submitter's contention that the First and Second Provisos of section 27 of the Merchant Marine Act of 1920 ("First Proviso" and "Second Provision") are inapplicable to any vessel which has never actually been documented with a coastwise or a Great Lakes endorsement, and therefore, in the submitter's opinion, has never gained a lawful right to engage in coastwise or Great Lakes trade. The Coast Guard does not agree. Both Coast Guard and the U.S. Customs Service, which was formerly responsible for documentation of vessels under the U.S. flag, have consistently held that a vessel gains the lawful right to engage in the coastwise trade by virtue of meeting build and ownership requirements, not by virtue of having obtained the endorsement required to engage in that trade. This interpretation is also consistent with the long-held policy of the Coast Guard that the right to engage in the restricted trades is an entitlement that appertains to the vessel and arises as a matter of law upon meeting the requisite conditions. On the other hand, a coastwise endorsement is a license to engage in the coastwise trade. Although a right is not necessarily dependent upon a license or registration, exercising that right may require obtaining a license or other registration. As an example, U.S. citizens have the lawful right to vote, but, in most cases, must register in order to exercise that right. The same comment also recommends changes to § 67.50, 67.57, 67.59, 67.63, 67.177 to make them consistent with the recommended amendment to § 67.19. Because the Coast Guard does not agree with the comment's interpretation of the meaning of the First and Second Proviso of section 27, none of the suggested changes have been adopted.

One comment questioned the propriety of granting coastwise and Great Lakes privileges to any vessel which as the subject of a forfeiture for breach of law of the United States if that vessel had previously lost coastwise privileges by virtue of having been sold foreign. The comment is based on language in the First Proviso which states that any such vessel losing its coastwise trading privileges as discussed shall not thereafter acquire the right to engage in the coastwise trade. (46 U.S.C. app. 883). However, the restriction is not absolute. Congress may, and in fact frequently does, grant special legislative relief from the First Proviso. Further, vessels qualifying under the Wrecked Vessel Statute (46 U.S.C. app. 14) have previously lost trading privileges restored. Likewise, the Coast Guard's long-standing position is that although a vessel loses coastwise trading privileges upon sale foreign, it may regain those privileges if it is subsequently forfeited for breach of law of the United States.

Section 67.31 is not new, as one comment asserted, but is an almost verbatim restatement of existing § 67.03–2. Three comments objected to paragraph (b) which requires that where title to a vessel is held by an entity comprised in whole or in part of other entities which are not individuals, each entity contributing to the stock or equity qualification of the entity holding title must be a citizen eligible in its own right to document the vessel with the trade endorsement(s) sought. This section has been the subject of litigation, *Conoco, Inc.* v. *Skinner*, 970 F.2d 1206 (3d Circ. 1992). The Third Circuit Court of Appeals has upheld the regulation from which this section is derived as proper.

Two of the comments addressing § 67.31 also argued for adoption of a "fair inference" rule, which would establish a standard for use by publicly traded corporations to infer the percentage of stock owned by U.S. citizens. The comments indicated that the Coast Guard should adopt such a test to conform its regulations to those of the Maritime Administration. The Coast Guard has consistently declined to adopt a fair inference rule. The standard most often suggested is one based on the address of the stockholders. The Coast Guard will not accept any standard based solely upon the address of the stockholders. In today's business climate of tiered corporate structures and complex equity ownership arrangements it is not unusual to find entities which are not U.S. citizens, but which have a U.S. address, owing significant percentages of the stock in a publicly traded corporation which owns a U.S. vessel.

Vessel-owning corporations are not routinely required to provide supporting evidence that their stock is owned by U.S. citizens, even to establish eligibility for coastwise or fisheries endorsements. The documentation application form (Form CG–1258), requires only that a vessel owner state, within broad ranges, the amount of stock owned by U.S. citizens.

In the past, some corporations were required to provide evidence establishing their eligibility because the Coast Guard had reason to suspect they did not meet stock interest requirements. A presumption in favor of eligibility in those cases would not have precluded the Coast Guard from requiring the additional information. The Coast Guard's experience is that a presumption in favor of eligibility would not serve to further reduce the paperwork burden on the public or make the documentation process any more efficient. The documentation laws are meant to be restrictive and are intended to limit the persons who are eligible to document vessels under U.S. flag and acquire trading privileges. Corporations can make proof of citizenship less difficult, for instance by restricting sale of their stock to U.S. citizens, or using a transfer agent to administer a dual stock certificate system. Of course, any U.S. corporation that is unwilling to subject itself to the possibility of having to prove that it

qualifies for coastwise or fisheries privileges can choose not to seek them. The Coast Guard will not be bound by an presumptions or inferences in making eligibility determinations for documentation purposes. Therefore, none have been incorporated into this final rule.

Five comments were received regarding the proposal in § 67.37 which would permit documentation of a vessel by a trust notwithstanding the existence of non-citizen beneficiaries who do not have an enforceable interest in the trust. Four of the comments found the rule too restrictive, noting that the rules concerning trusts have proven troublesome in recreational vessel documentation. The fifth comment supported the rule as written. While it is recognized that restrictive citizenship requirements may prove troublesome in documenting recreational vessels, the Coast Guard's position is that current law prohibits documentation of a vessel owned in a trust arrangement where non-citizens hold an enforceable interest in the trust. The enforceable interest requirement only defines citizenship with respect to the eligibility of a trust to document a vessel under 46 U.S.C. 12102. A trust seeking to document a vessel with a coastwise endorsement must also meet the citizenship requirements of 2 of the Shipping Act, 1916 (46 U.S.C. app. 802).

One comment agreed with the wording of § 67.39, dealing with corporations, but took exception to the Coast Guard's interpretation of the statutory requirement on which the regulation is based. The Coast Guard has consistently held that when a corporation has both a chief executive officer and president, both must be U.S. citizens. That interpretation is consistent with the language of 46 U.S.C. 12102(a)(4), which requires that the "president or other chief executive officer" must be citizens. To be consistent with the requirement that documented vessels be owned by U.S. citizens, it is necessary to read the word "or" as conjunctive, and not as exclusive in nature. Therefore, when a corporation has both a chief executive officer and a president, it is not permissible for merely one or the other to be a citizen. The Coast Guard's interpretation also furthers the general purpose of the statute ensuring that corporate officers with actual or ostensible authority to act on behalf of the corporation be U.S. citizens.

It was correctly noted by one comment that part of § 67.41 was omitted, so that the section failed to state the purpose for which it defines governmental entities as citizens. That oversight has been corrected so that it now states that "A governmental entity is a citizen for the purpose of obtaining a vessel document * * *."

No comments were received regarding § 67.45, which sets forth the citizenship savings provision for fishing vessels. This section was promulgated in its present form in the Coast Guard's final rule (CGD 88–031) published on December 12, 1990 (55 FR 51244), implementing the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. As was noted in the NPRM of March 26, 1992, this section has been the subject of litigation. In *Southeast Shipyard Assn.* v. *United States*, No. 90–11142 (D.D.C., April 30, 1991), the District Court decided that the Coast Guard's interpretation of the citizenship savings provision of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987 was incorrect. Also as noted the NPRM of March 26, 1992, the decision of the District Court was under appeal. On September 21, 1992, the Coast Guard published an advance notice of proposed rulemaking (57 FR 43432; CGD 88–031a), seeking comments on a number of issues which would need to be addressed in order to develop a rule consistent with the order of the District Court should that order be upheld on appeal. On November 24, 1992, the Circuit Court of Appeals for the District of Columbia reversed the decision of the District Court and upheld the Coast Guard's interpretation of the citizenship savings provision. Therefore, this section is unchanged in this final rule. On March 4, 1993, the Coast Guard published a notice in the **Federal Register** (58 FR 12352) withdrawing the advance notice of proposed rulemaking published on September 21, 1992. Since the Circuit Court's decision was not appealed, the Coast Guard considers this matter closed.

One comment addressing § 67.50 questioned the omission of a previous requirement for presentation of title evidence upon a change of legal name of the vessel owner. The omission was deliberate since a change of legal name does not actually constitute a change in ownership.

Four comments observed that the simplified methods of establishing title to vessels described in § 67.53 are subject to misuse and fraud, and should not be encouraged. The NPRM merely proposed options whereby owners of certain vessels may use a simplified method to establish title to a vessel. While the simplified method of establishing title may not be foolproof, any title system is vulnerable to fraud. Furthermore, 46 U.S.C. 12104(3) specifically provides that a Certificate of Documentation is not conclusive evidence of ownership in a proceeding in which ownership is in dispute.

One comment suggested that it would be appropriate to include language in § 67.57 dealing with coastwise trade prohibitions for vessels built with the aid of a construction-differential subsidy under the provisions of Article (sic) V of the Merchant Marine Act of 1936. The Coast Guard does not agree. Title V of that Act (46 U.S.C. app. 1151–1161, as amended), generally limits vessels built with construction differential subsidy funds to foreign trade, and with few exceptions, bars them from "domestic" trade. However, notwithstanding the requirement in sections 1153 and 1154 providing that such vessels must be documented under the laws of the United States, Title V is silent on the issue of coastwise trade. Moreover, any restrictions on vessel operation pursuant to the strictures of Title V arise as a contractual arrangement which is outside the scope of the Coast Guard's responsibilities under the vessel documentation laws.

One comment stated the fact that a chain of title beginning with a Manufacturer's Certificate of Origin is deemed incomplete is a reason to combine the Manufacturer's Certificate (or Statement) of Origin with the Builder's Certification. The two forms serve somewhat different purposes, and while the Coast Guard does not oppose combining the two, it lacks the statutory authority to do so.

One comment noted an error in the cross reference to § 67.13(b) in paragraph (a) of § 67.63. The cross reference should have been to § 67.131(b). That error has been corrected. Paragraph (b) of § 67.63 has also been reworded in order to eliminate the inadvertent suggestion that presentation of title evidence is applicable only to vessels documented pursuant to the Wrecked Vessel Statute (46 U.S.C. app. 14). Presentation of title evidence is also required for vessels documented pursuant to grants of special legislation.

Several comments objected to the provision in § 67.73, permitting use of the reverse of either the Builder's Certification on form CG–1261 or the Manufacturer's Certificate of Origin to transfer undocumented vessels from the party for whom built. The Coast Guard notes that these methods of evidencing transfer of title are permissible, not mandatory, and that parties still have the option to present a bill of sale if desired.

In response to a comment, § 67.79 has been reworded for clarity without substantive change.

Comments received in regard to § 67.83 demonstrated the need for a section devoted to sale of vessels deemed abandoned under State statutes. Accordingly, § 67.91 has been added to address passage of title in this manner. Another comment suggested that only an affidavit from a foreclosing party should be required, that there should be no requirement for submission of the instrument under which foreclosure was made, and that the Coast Guard was placing "undue burden" on itself in requiring demonstration of compliance with the terms of the instrument and any applicable statutes. The Coast Guard disagrees. The requirements of the regulation are the minimum necessary to ensure that there has been actual passage of title, and that the passage of title was in accordance with State law.

One comment urged the Coast Guard to merge the Builder's Certification provided for in § 67.99 with the form used for a Manufacturer's Certificate of Origin. As discussed earlier in this preamble, the Coast Guard does not disagree with this suggestion. However, the Coast Guard has concluded that it does not have the statutory authority to mandate combining the forms. Another comment recommended controlling the issuance of duplicate Builder's Certification. It was suggested that this could be done by requiring any person issuing a Builder's Certification to report that fact to the Coast Guard for inclusion in the "Coast Guard's data bank * * *." While this suggestion may seem simple to implement, the Coast Guard considers it impracticable. There is neither a restriction on who may build a vessel nor a central registry of "data bank" for vessel builders, many of whom may build only one or two vessels. Accordingly, it would be virtually impossible to enforce such a provision.

In response to § 67.101, one comment requested a definition of "competent and persuasive evidence." The term is a standard by which the Coast Guard evaluates evidence of build. Promulgating a regulatory definition of that term may ultimately prove to severely limit the types of evidence which might help to establish the facts of vessel build. The same comment suggested that a statement of a "certified surveyor" should be sufficient to establish the facts of vessel build. That suggestion has not been adopted since surveyors typically are knowledgeable about a vessel's condition and value, but will rarely, if even, know if (a) the manufacturer fabricated all major components of the vessel's hull or superstructure in the U.S., and (b) the identity of the person(s) for whom the vessel was built, along with the ownership percentage of the vessel vested in each.

One comment stated that the requirements set forth in subpart G "duplicated" measurement requirements in 46 CFR part 69. The Coast Guard does not agree. Subpart of part 67 provides basic information needed by applicants for vessel documentation, and links part 69 by cross reference.

There was general support for identifying the managing owner of a vessel as required in § 67.113, provided that owners of vessels which are currently documented do not have to exchange those documents or make a filing to designate a managing owner. There are no plans to require any such filings or exchanges of documents. However, designation of a managing owner will be required for vessels currently documented whenever the document is required to be exchanged in accordance with § 67.167, or replaced in accordance with § 67.169. One comment objected to allowing the address of the managing owner of a vessel to be based upon "any residence" suggesting that the requirement be restricted to "principal residence." It is asserted that this would assist in determining which documentation office would be most likely to have the records of a particular vessel, and establish a single place at which a vessel owner would be subject to personal jurisdiction as a foreclosure action. Another comment suggested restricting the choices of an individual vessel owner to the owner's "principal residence" or "principal place of business." The Coast Guard does not agree that limiting a vessel owner's options for establishing the port of record would be particularly advantageous in determining which port of documentation would be most likely to have records of a vessel owned by a certain owner, or necessary to establish personal jurisdiction in foreclosure actions. Allowing individuals to establish addresses based upon principal places of business is not considered a good idea since in the event of relocation, the Post Office will generally forward mail addressed to one's residence, but the same service may not be available for mail addressed to an individual at a place of business. The Coast Guard's present computer search capabilities make rigid port choices less important. Moreover, by requiring that all vessels owned by an owning entity must have the same port of record, there is a greater assurance that all records for a given vessel owner will be found at the same location. Two comments suggested that the Coast Guard continued its past practice of allowing the address of the managing owner to be based upon the address of a long-term bareboat charterer. That practice has proven problematic. Renewal notices, for instance, require an affirmative statement about such things as the vessel owner's citizenship; charterers are rarely able to make such affirmations with any degree of certitude. Moreover, the very practice of having the charterer attend to vessel documentation functions raises questions about the *de facto* ownership of the vessel. Therefore, the suggestion is not adopted.

Comments on relaxation of the rule for choice of hailing port contained in § 67.119 were generally favorable. However, one vessel documentation agent objected based on a perception that this would increase the opportunity for smugglers to confuse authorities. An individual questioned the purpose of a hailing port if the guidelines for choosing that port were liberal. The requirement for a hailing port assists in identifying vessels, particularly since there is no prohibition against many vessels bearing the same name. Moreover, because the hailing port will appear on the Certificate of Documentation upon implementation of these regulations, it will in fact be easier to identify an unauthorized alteration of a vessel's hailing port by smugglers and other miscreants.

Several persons objected to the provision of § 67.120 which would have deemed vessel documents invalid until the vessel was properly marked with its name, hailing port, and official number, noting that such a provision would give rise to questions about the efficacy of a mortgage filed to evidence a security interest in the vessel. The section has been corrected to provide that the vessel's document will not be valid for operation until it is marked in accordance with the regulations found elsewhere in subpart I.

Section 67.123 has been amended in response to a comment to provide marking criteria for certain types of vessels for which the usual marking requirements are impracticable. The same comment queried whether abbreviations of the city and State of the hailing port would be permitted. While generally recognized abbreviations, such as N.Y., N.Y. would be permitted, determinations concerning abbreviations would have to be made on a case-by-case basis. The final authority

to determine the propriety of a given hailing port, including abbreviations in a hailing port, and the proper marking of the vessel is vested in the Officer in Charge, Marine Inspection for the zone in which the vessel is principally operated.

One comment noted that there was no provision in § 67.141 for submission of consent of the vessel mortgagee to certain vessel documentation actions, if applicable. That oversight has been corrected.

Two comments objected to the fact that the prohibition against exchange of a document without mortgagee consent in § 67.145 does not apply to vessels subject only to mortgages filed or recorded before January 1, 1989, and which had not attained preferred status as of that date. The distinction in paragraph (b) of § 67.145 is based upon the provisions of section 301(b) of the Corrections, which limits the applicability of 46 U.S.C. 12111(c)(3) to those mortgages filed or recorded after January 1, 1989, the effective date of the statute, and to those mortgages which had attained preferred status as of that date. Accordingly, no change has been made.

Two comments objected to the requirement for annual renewal of the vessel's endorsement(s) in § 67.163. The Coast Guard considered alternatives to annual renewal. However, experience has shown that where annual renewal is not required, vessel owners often fail to report changes of address and other facts which may require exchange of the Certificate of Documentation. In addition, annual renewal helps the Coast Guard fulfill its statutory responsibility to ensure that vessels engaging in restricted trades remain eligible for those trades. Because the Post Office will forward mail for only one year, it is more expensive to track down vessel owners than to process renewals. The current renewal process requires a minimal effort by the vessel owner, who must merely sign a printed form and return it to the documentation officer. There is no requirement to remove the Certificate from the vessel unless there is a change requiring exchange of the document. One comment requested that renewal notices be sent to bareboat charterers rather than the vessel owner. As noted earlier in this preamble, the bareboat charterer is usually not qualified to make definitive statements about the citizenship of the vessel owner, especially if the owner is a publicly traded corporation.

In accordance with a comment, a cross reference in § 67.165(b)(2) has been corrected. The cross reference should have been to § 67.171(a) (1) through (8).

One comment espoused the view that requiring exchange of a Certificate of Documentation upon the death of a beneficiary in a family trust was too stringent. While the Coast Guard agrees, the issue is moot. The requirement in § 67.167(c)(2) for exchange applies only when a beneficiary with an enforceable interest in the trust changes by addition or substitution, not when there is a change by deletion. Two comments suggested that the new 30-day "grace period" for exchange of the document is too short under certain circumstances. The Coast Guard disagrees. This change is a significant liberalization of the current regulations which generally provide for immediate invalidation of the Certificate of Documentations. However, paragraph (f) of the section has been corrected to eradicate the erroneous statement that a Certificate of Documentation which becomes invalid under paragraph (b) remains valid for 30 days for the purposes of 46 U.S.C. chapter 313. As amended, paragraph (f) provides that a Certificate of Documentation which becomes invalid under paragraph (c) remains valid for 30 days after it otherwise would have become invalid for the purposes of filing a new mortgage or amendment, assignment, assumption, or subordination agreement.

One comment expressed concern about the provision in § 67.171 for deletion of vessels from documentation for failure to maintain the markings required elsewhere in this part. Markings are essential for proper identification of the vessel. It is incumbent on the vessel owner to maintain required markings in a legible manner.

Section 67.177 was the subject of two comments. The first, addressing paragraph (b), requested substitution of the words "had acquired the lawful right to engage in the coastwise trade * * *" in place of "which has not previously permanently lost * * * privileges * * *." The only purpose which would be served by the suggested change would be to give credence to the submitter's interpretation of the applicability of the Second Proviso of section 27 of the Merchant Marine Act, 1920; that interpretation, as noted earlier in the preamble discussion of § 67.19, has been rejected by the Coast Guard. The second comment requested that the regulation be expanded to include the Coast Guard's interpretation of the rebuilding "grandfather" of the Commercial Fishing Industry Vessel Anti-Reflagging Act of 1987. Since the period during which a rebuilding must be accomplished has passed, the Coast Guard has determined that it is not necessary to expand the regulation for that purpose.

One comment complained that § 67.200 was too restrictive by limiting the types of instruments which are eligible for filing and recording. It was suggested that the Coast Guard should also record such instruments as conditional sales contracts and charters of a vessel with an option to purchase. The rationale for the suggestion is based on the words of 46 U.S.C. 31321(a)(1), providing for filing and recording of "A bill of sale, conveyance, mortgage, assignment, or related instrument * * *." The purpose of 46 U.S.C. 31321(a)(1) is to provide for filing of instruments for a vessel at the time the application for documentation is submitted. This filing eliminates the gap in validity perceived to exist while the application for documentation is being processed. The legislative history also indicates the intent of Congress that the types of related instruments required to be filed be defined by regulations. There is nothing in the legislative history to indicate that Congress intended in the statute to expand the types of instruments requiring public notice. Furthermore, an expansion as suggested in the comment would raise a potential conflict between the regulations and those provisions in 46 U.S.C. chapter 313 which distinguish between a vessel owner, charterer, or agreed buyer in possession of the vessel. Therefore, the suggestion is not accepted. Another comment notes that there is no provision for recording a Builder's Certification, but that there is a provision for using the Builder's Certification to evidence transfer of title. Builder's Certifications are filed, noted on the General Index or Abstract of Title (form CG–1332) (referred to hereafter in this preamble as the Abstract of Title), and are kept in the vessel file, thereby fulfilling the notice provisions of 46 U.S.C. 31321 without placing them in a separate record book.

One comment suggested that § 67.203(a)(1) would foreclose the possibility of filing instruments when a vessel is undergoing changes, such as vessel lengthening. That understanding is flawed. The new "grace period" established in § 67.167(f) provides for such filings for the first time. Moreover, if the 30-day grade period has passed, it is permissible to submit new filings by filing them with a new application for documentation, provided that application is in substantial compliance with pertinent regulations in this part. Another comment requested that the Coast Guard define the term "material

alteration." The Coast Guard has employed a material alteration standard in accepting instruments for recording for many years. These long years of experience have not revealed any significant difficulty in applying that standard. Therefore, the Coast Guard will not define the term. The Coast Guard also disagrees with concern expressed in one comment that § 67.203 would preclude recording of an instrument when a Certificate of Documentation is deemed invalid because of a Coast Guard clerical error. In such an event, the vessel affected would still be the subject of an application for documentation in substantial compliance with the applicable regulations, thus permitting filing and recording of appropriate instruments.

Section 67.207 was the subject of one comment which noted that although the Coast Guard accepts "as of" dates on instruments, it does not necessarily index the "as of" date on the Abstract of Title. The comment goes on to state that "as long as an instrument bears a date, (the) Coast Guard should accept the instrument and index the date of the instrument, regardless of when it is acknowledged." The present policy of the Coast Guard is to accept instruments with "as of" dates. However, the Coast Guard does not agree that it should accept without reservation instruments bearing any date whatever. It would be improper, for example, to accept an instrument for filing in a situation where the wording and date of the acknowledgement make it apparent that the instrument could not have been signed on the purported date. Moreover, because notices of claim of lien may be recorded only against the record of a vessel subject to a preferred mortgage, the dating of that type of instrument may be absolutely critical to determine the statutory eligibility of the instrument to be filed and recorded.

Six comments were received with regard to the required number of copies set forth in § 67.209. Generally, reaction to reduction in the number of copies required was mixed. However, all six comments, which were from agents who prepare instruments for a fee, objected to language in the preamble in which the Coast Guard proposed a policy to allow mortgagors and mortgagees to jointly certify copies of preferred mortgages. The policy option of allowing the parties to a preferred mortgage to jointly certify copies has been retained.

The discussion of comments received regarding the requirement in § 67.211 for filing a citizenship declaration in connection with certain instruments was published in the preamble to the Coast Guard's final rule published on September 24, 1992 (57 FR 44126), and is not repeated here.

In response to a comment, the heading of § 67.215 has been amended by eliminating the words "and recording." Another comment noted that paragraph (b) of that section provides that when an instrument whose filing is subject to termination is replaced with a new instrument, the new instrument will receive a new filing date and time. The comment is correct in the observation. When the filing of an instrument is subject to termination, and a second instrument is substituted for that instrument, the filing of the substitute instrument does not "relate back" to the date and time of filing of the instrument being replaced. Rather, the substituted instrument receives a new date and time of filing. This does not, as claimed in the comment, contradict the discussion in the preamble which notes that the original date and time of filing may be retained in those situations where supplemental materials are filed to obviate termination of a filing. Section 67.215 has been reworded to clarify the difference in treatment between supplementing a filing and substituting a new filing.

Two comments took issue with the provisions of paragraph (c)(5) of § 67.217. One stated that vessel owners should be able to permit mortgagees to receive all terminated filings submitted in connection with documentation of the vessel and the filing of the mortgage, and that the mortgagee in turn should be able to authorize an agent on its behalf to receive all terminated filings. Another comment, from a documentation agent asserted that requiring documentation agents to obtain authorization from affected parties to receive instruments whose filing has been terminated is "an excessive burden on the agent". The Coast Guard agrees with the first comment and has clarified the section accordingly. It does not agree with the second comment. For many years, the extant requirement for agents to obtain written authorization from mortgagees in order to receive the original preferred mortgage has neither proven to be nor been portrayed as unduly burdensome.

Two comments were received with regard to § 67.223. Both favored the Coast Guard's proposal to permit the filing of bills of sale in conjunction with an application for deletion from documentation. Accordingly, that section is unchanged.

Three comments were received from documentation agents in response to the provision in § 67.231 for an Optional Application for Filing. All questioned the appropriateness of such an application. The Coast Guard notes, however, that the legislative history of the Codification Act clearly expresses the intent of Congress that such an application be accepted by the Coast Guard in accordance with the terms in § 67.231.

One comment, submitted on behalf of a legal association, objected to the provision in § 67.233 that mortgages and assumptions will not be deemed eligible for filing and recording if the mortgagor or assuming party did not hold legal title at the time of filing. It is suggested that this may be contrary to the statutory scheme and that the regulations could remain silent on this point. The Coast Guard notes that similar provisions which have been in place for many years, including one adopted in 1989, have not proven unduly burdensome. Moreover, the Coast Guard's position is that such a provision is necessary to ensure orderly administration of its filing and recording system.

In response to a comment, the Coast Guard has removed the word "chattel" from paragraph (a) of § 67.235. The word has also been removed from the heading for subpart Q.

One comment agreed with the proposal to eliminate Certificates of Ownership, but stated that the vessel's Abstract of Title should include addresses. Two comments offered no objection to elimination of Certificates of Ownership, but requested entry of addresses on Abstracts of Title. Five other comments objected outright to elimination of the Certificate of Ownership, noting that Abstracts of Title can be difficult to read, and that Certificates of Ownership provide a beneficial service. Upon consideration of all of the comments, the Coast Guard has decided that it is in the best interest of the maritime community for it to continue to issue Certificates of Ownership upon request. Section 67.305 has been added to implement this decision. The inclusion of addresses on Abstracts of Title will not be adopted since addresses are subject to change without notice and because doing so would pose an undue administrative burden on the documentation system.

Two substantive comments were received regarding §§ 67.315 and 67.317. One requested that a "temporary" certificate of some sort be made available to commercial vessels only to allow for movement of the vessel for repair work, outfitting, or similar functions, either within the confines of a port, or to another port. The Coast Guard notes that unless a vessel is being

operated in a trade, it is not required to be documented. Moreover, the Coast Guard's position is that there is insufficient statutory authority to permit issuance of such "temporary certificates."

Another comment suggested that the requirement to keep the Certificate of Documentation on board should be inapplicable when it has been submitted to a documentation officer in accordance with the requirements of § 67.167. The Coast Guard agrees in part, noting that paragraphs (d) and (e) of § 67.167 provide circumstances under which the endorsements on a Certificate of Documentation remain valid, notwithstanding an application for exchange of the Certificate. However, it is also noted that only documents whose endorsements are invalid for some reason are subject to exchange in accordance with the provisions of paragraphs (a) and (b) of § 67.167. Therefore, except for applications pursuant to paragraphs (d) and (e) of § 67.167, the affected vessel would be ineligible to engage in certain trades under any circumstances until a new Certificate of Documentation bearing the appropriate trade endorsement had been issued. Sections 67.315 and 67.317 have been modified in order to accommodate owners applying for a change in accordance with the provisions of paragraphs (d) and (e) of § 67.167.

Three comments noted the inadvertent omission of the word "invalid" from § 67.331. Actually, the phrase "which have become invalid under subpart M" was erroneously printed as a line in appendix A to part 67. The section has been corrected.

A total of 41 comments were received with regard to the fees proposed in subpart Y. Of those, 13 objected to either increase in fees or imposition of any fees whatever. Three comments found the amounts of the fees acceptable, but requested that the Coast Guard delay their implementation pending an analysis of the overall effect of all user fees affecting vessel owners. One comment requested exemption from fees for tax-exempt organizations such as the Boy Scouts. A comment from the Maritime Administration requested exemption of fees applied to vessels owned by the Federal Government.

The Coast Guard notes that the Reconciliation Act requires it to collect user fees in order to recover the costs associated with providing vessel documentation services. The law does not expressly allow for exemption of tax-exempt institutions or governmental agencies. Nor does the law provide for delayed implementation.

With regard to tax-exempt organizations, such as the Boy Scouts, vessels owned by these entities may be documented with a registry endorsement for sail-training and a recreational endorsement for other youth program purposes. Vessel documentation for these purposes is not required by law, but is permissive. Only when vessels owned by these entities are operated in the coastwise trade, Great Lakes trade, or fisheries does documentation with the requisite endorsement become mandatory. Where vessel documentation services are provided as a matter of convenience, an exemption from user fees will not be allowed. Where vessels owned by these entities compete in the restricted trades, and documentation is required by law, then as a matter of policy and fairness the tax-exempt entity should pay the fees. Therefore, no tax-exempt entity, including the Boy Scouts, is exempted.

As regards governmental entities however, further analysis is required. Underlying the Reconciliation Act, is an attempt to shift part of the cost of the administration of government from taxpayers at large to persons directly receiving a particular service. A fee charged for providing a service to a Federal agency would be directly paid with federally-appropriated funds. These funds might shift among accounts at the Treasury, but would not increase the revenues to the Treasury. Actually, this activity would increase the cost to taxpayers through added bookkeeping costs. Therefore, the purposes of the Reconciliation Act would not be met. Accordingly, when a user fee is applicable for providing documentation services to a Federal agency acting in its own behalf and that agency would have to pay the fee with federally-appropriated funds, the Coast Guard will waive collection of the fee. The Coast Guard does not anticipate waiving collection of a fee where the Federal agency obtains a documentation service for the benefit of a third party who should be obtaining the service and paying the fee directly.

Five comments, including one from an organization representing commercial vessel operators, and one from an officer of a large U.S.-flag shipping company found the fees generally fair and equitable.

Eight comments took exception to the concept of charging fees for different types of trade endorsements. These objections seem to be based on a lack of understanding of the documentation process. Although it is certainly true that the physical act of typing additional endorsements is not onerous, it is more time consuming to carefully evaluate a vessel's record to ensure that some action in the course of its history has not rendered it ineligible to engage in a restricted trade. The additional time involved in this type of evaluation results in increased costs to the Coast Guard, which in turn requires the Coast Guard to charge a higher fee to recover the costs of its operations.

Eighteen comments objected to a charge of $41.00 for Abstracts of Title. After careful analysis, the Coast Guard agrees with the comments that this fee is too high, and has reduced the fee to $25.00. The reduction is based partly on review of the time spent in issuing Abstracts of Title, which in addition to the time spent locating the file and making copies, requires a physical check of all instruments which have been received in the office, but have not yet been indexed. Another factor in the decision is the fact that the proposed fee was based on the projected number of Abstracts of Title to be issued. Although it is expected that the decision to continue to issue Certificates of Ownership will result in a lesser number of Abstracts of Title being issued, the loss of revenue will be offset by the fees the Coast Guard anticipates collecting for issuing Certificates of Ownership. Section 67.537 has been added to provide for the fee to be charged for a Certificate of Ownership, and for attachments for additional vessels with the same ownership and encumbrance information.

The fee summary table in § 67.550 of the NPRM of May 20, 1992 (57 FR 21546), contained three errors. First, the table stated the proposed fee for a Great Lakes endorsement as $19.00. The correct proposed fee of $29.00, the same as for Coastwise and Coastwise Bowaters endorsements, appeared in § 67.511. Second, the table stated the proposed fee for renewal of endorsements at a port other than the port of record as $5.00. The correct proposed fee of $15.00 appeared in § 67.515. Lastly, the table stated the proposed fee for replacement of a lost or mutilated Certificate as $49.00. The correct proposed fee of $50.00 appeared in § 67.507. The table has been corrected in this final rule. In addition, specific fee amounts are now contained only in the table for ease in use and future amendment as needed.

Eight comments suggested that payment of the proposed fees would be less onerous if fees were rounded off to multiples of five or ten dollars. Although the Coast Guard agrees in principle, there are two statutory requirements at work. First, the Coast Guard is barred from charging more than the cost of a particular service.

Second, the Coast Guard is required to recover all costs associated with documentation of recreational vessels. Although the calculation of user fees for services performed at different ports by different people is less than an exact science, the fees calculated for recreational vessels are close enough to prohibit rounding to multiples of five or ten dollars without violating the second statutory mandate. Therefore, to avoid additional confusion that would be caused where there is one fee schedule for transactions involving commercial vessels and another fee schedule for transactions involving recreational vessels, the Coast Guard has endeavored to maintain a universal cost-based fee structure in whole dollar amounts. This system provides for the most equitable and practical approach in keeping with the applicable statutory mandates and restrictions. Although the new fee schedule may initially appear unwieldy, it will be simpler than the present fee structure for recording bills of sale and mortgages, which requires payment of some multiple of 20 cents, determined by the number of words in the instrument and number of copies.

Lastly, section 5213 of the Oceans Act of 1922 (Pub. L. 102–587) added section 12123 to Title 46 U.S.C., authorizing the Coast Guard to deny the issuance or renewal of, or to revoke, the endorsement(s) on a Certificate of Documentation issued to a vessel if the owner of the vessel has failed to pay a civil penalty assessed by the Coast Guard. Section 5213 of the Oceans Act also amended 46 U.S.C. 12110(c) to render a vessel liable to seizure and forfeiture to the United States should the vessel, after its endorsement has been denied or revoked under the authority of 46 U.S.C. 12123, be operated without proper endorsement.

Almost all of the Coast Guard's vessel documentation regulations, and the statutes which authorize them, adhere to the admiralty doctrine of reification—the notion that privileges, duties, liabilities, and restrictions attached to the vessel itself rather than to its owner. However, this new authority departs from that doctrine and relates to vessel ownership, rather than the vessel itself. Therefore, if an owner fails to pay a civil penalty, adverse action may be taken against the endorsement(s) on Certificates of Documentation for any vessels owned by that owner, not just the vessel involved in the incident leading to the assessment of the civil penalty. Further, action against the endorsement(s) need not be limited to the Certificate of one vessel, but rather may be taken against the Certificates of all vessels owned by that owner. All that is required is that a civil penalty, assessed by the Coast Guard through the civil penalty process, remain unpaid. In order to conform the regulations to this new authority, amendments have been made to appropriate sections relating to application for initial issue, exchange, replacement, or renewal of a Certificate of Documentation, and deletions from documentation that denial or revocation action, as appropriate, may be taken if the vessel owner has an outstanding civil penalty assessed by the Coast Guard.

Incorporation by Reference

The Director of the Federal Register has approved the material in § 67.13 for incorporation by reference under 5 U.S.C. 552 and 1 CFR part 51. The material is available as listed in that section.

Regulatory Evaluation

This regulation is a significant regulatory action under Executive Order 12866. It is also significant under the Department of Transportation Regulatory Policies and Procedures (44 FR 11040; February 26, 1979) because it concerns matters in which there is substantial public interest. The following constitutes the regulatory evaluation for the rulemaking.

This rulemaking simplifies the paperwork and reporting requirements necessary to effect the documentation of a vessel and streamlines internal administrative procedures and requirements. In addition, it revises existing user fees and establishes new fees for services related to vessel documentation activities.

The benefits of documenting a vessel are practical, legal, and financial. The salient practical benefit (and not coincidentally the reason the concept of Federal documentation exists at all) is to ensure unencumbered interstate and international commerce. This practical benefit is intimately related to the legal benefits attendant upon Federal documentation. The existence of a Federal system of documentation serves to preempt State numbering and regulatory schemes such that a vessel operated under a Federal endorsement (e.g., a coastwise endorsement) is ensured access to State waters for various activities. In fact, the Federal documentation statutes, which date to the earliest days of our Republic, are a direct result of dissatisfaction with impediments to the free flow of commerce once imposed by the several States. That Federal documentation continues to provide this benefit is evidenced by the recurring preemption cases in which a vessel owner or operator invokes the protections of documentation against a State seeking to close its waters to nonresidents for certain activities. In the field of international commerce, documentation establishes the nationality of a vessel and confers the privileges, protections, and immunities contemplated by long-standing international law and custom. Another practical benefit of Federal documentation stems from the preferential customs and tax treatment accorded to "vessels of the United States." Established national policy seeks to promote the existence of an American merchant marine as a resource to be drawn upon in time of emergency or war. To the extent that documentation is a condition precedent to the receipt of preferential customs and tax treatment, it serves as a tool to promote national policy interests. The major financial benefit conferred by documentation is preferred mortgage financing. The availability of capital for maritime financing hinges upon the existence of the preferred mortgage as security for loans against vessels. Since the regulations will make it easier to document a vessel under U.S. law, and will make it easier to file and record instruments, including mortgages, they will enhance the benefits outlined above.

Not all vessels of the requisite size are required by law to be documented. Documentation is not statutorily required for vessels engaging in foreign trade or for those used exclusively for recreational purposes. A registry endorsement is obtained on a voluntary basis for purposes of establishing the nationality of a vessel for the protections of international law or to obtain preferred mortgage financing, or both. Recreational vessels are documented primarily for the purpose of obtaining preferred mortgage financing.

The Reconciliation Act requires the Coast Guard to collect user fees for services provided under Subtitle II of Title 46, U.S. Code. These services include: Vessel documentation, vessel inspection, marine licensing, plan review and equipment approval, and foreign vessel examinations. The bulk of this analysis will describe the vessel documentation fee structure and its cost impacts on industry and the public. Because the services performed under these regulations may impact the same individuals or companies, it is necessary to briefly examine the combined costs of these user fee regulations. Although precise final cost impacts await further study, the total amount to be collected for all services provided under Subtitle II of Title 46

U.S.C. is estimated to be less than $45 million on an annual basis. This is well below the $100 million threshold that would make this regulation a major regulation. The Coast Guard has also determined that these regulations will not have a significant impact on inflation, any one industry, geographical region, or international trade.

Estimated annual costs of the user fees associated with this regulation are $4,779,000 to the recreational boating community, and $4,156,000 to the commercial vessel industry, totalling $8,935,000. User fees, albeit at lower rates than imposed in this rule, are already in place for 60 percent of vessel documentation activities, including documentation of recreational vessels, new vessel determinations, wrecked vessel determinations, and recording of bills of sale and mortgages.

Information on the number and type of discrete vessel documentation activities and the number of transactions per activity was provided by the vessel documentation officers and Marine Safety Information System (MSIS) data. The amount of time required to complete each transaction was estimated by vessel documentation officers based on the streamlined procedures detailed herein.

Program costs were computed using COMDTINST 7310.10 dated March 21, 1990, the standard rate instruction. An average billable hourly rate was determined to be $49.75 per hour, which includes costs attributable to the MSIS computer system in support of the vessel documentation program. The Coast Guard estimates these MSIS costs to be $1,578,000 per year. Total vessel documentation program costs are estimated to be $8,935,000. Projected user fee receipts for commercial vessel documentation is based on that fraction of current vessel documentation activities that are for commercial vessels. For a vessel that is primarily used for recreational purposes (greater than 50 percent), the bulk of the projected fee collections would be identified as for the documentation of a "yacht."

The cost of these regulations to a typical owner of a new commercial vessel will be approximately $157–$210. These fees are relatively insignificant costs when compared to overall commercial vessel acquisition or operating costs. Daily rental fees for commercial vessels range from several hundred to several thousand dollars. The cost of these regulations for the owner of a new yacht will be approximately $147. Therefore, yacht owners, whose vessels are typically worth from tens of thousands to millions of dollars, should be negligibly impacted by these increased fees.

The only new fees which are more costly than the Initial Documentation fee are the fees for Rebuilt and Wrecked Vessel Determinations, which apply to the commercial vessel industry and are relatively uncommon. Of the 215,000 vessels currently documented, an average of only 15 vessels annually are the subject of a rebuilding determination. The owners of those vessels will be required to pay the $450 fee for the determination. Rebuilding a vessel is often a major financial undertaking, costing tens of thousands to millions of dollars. Comparatively, the financial impact of the Rebuilt Vessel Determination fee on vessel owners will be minimal. A very small number of vessel owners, generally fewer than four per year, will have to pay the $555 fee for each Wrecked Vessel Determination. Compared to the cost associated with rehabilitating a wrecked vessel, the financial impact of this fee compared to the overall undertaking will be minimal.

Small Entities

The procedural and administrative changes in this rulemaking are largely technical amendments which the affected small entities should have little difficulty understanding or adopting into their business practices. The new user fees and changes in existing user fees reflect the cost to the Coast Guard of providing the related documentation services and, when compared to the cost or value of the vessel, are minimal. Therefore, the Coast Guard certifies under section 605(b) of the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) that this final rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This regulation contains various collection of information requirements associated with vessel documentation procedures. The Coast Guard has submitted the requirements to the Office of Management and Budget (OMB) for review under section 6504(h) of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and OMB has approved them. The OMB approval number is OMB Control Number 2115–0110, displayed in § 67.14.

Federalism

The Coast Guard has analyzed this regulation in accordance with the principles and criteria contained in Executive Order 12612 and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this regulation and concluded that under section 2.B.2 of Commandant Instruction M16475.1B, it is categorically excluded from further environmental documentation. This regulation deals with user fees and procedural matters including reporting and recordkeeping requirements in order to obtain privileges as vessels of the United States and to record title and encumbrance instruments. These regulations are administrative in nature and clearly have no environmental impact. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects

46 CFR Part 1

Administrative practice and procedure, Organization and functions (government agencies), Reporting and recordkeeping requirements.

46 CFR Part 67

Fees, Incorporation by reference, Vessels.

For the reasons set out in the preamble, the Coast Guard amends 46 CFR part 1 and revises 46 CFR part 67 to read as follows:

PART 1—[AMENDED]

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 552; 14 U.S.C. 633, 46 U.S.C. 7701; 49 CFR 1.45, 1.46; § 1.01–35 also issued under the authority of 44 U.S.C. 3507.

2. In § 1.03–15, paragraph (h)(1) is revised to read as follows:

§ 1.03–15 General.

* * * * *

(h) * * *

(1) Commandant (G–MVI) for appeals involving vessel inspection issues, vessel documentation issues, or tonnage measurement issues; or

* * * * *

3. Section 1.03–45 is added to read as follows:

§ 1.03–45 Appeals from decisions or actions involving documentation of vessels.

Any person directly affected by a decision or action of an officer or employee of the Coast Guard acting on or in regard to the documentation of a vessel under part 67 of this chapter, may make a formal appeal of that decision or action to the Commandant in accordance with the procedures

contained in §§ 1.03–15 through 1.03–25 of this subpart.

4. Part 67 is revised to read as follows:

PART 67—DOCUMENTATION OF VESSELS

Subpart A—General

Sec.

67.1 Purpose.
67.3 Definitions.
67.5 Vessels eligible for documentation.
67.7 Vessels requiring documentation.
67.9 Vessels excluded from or exempt from documentation.
67.11 Restriction on transfer of an interest in documented vessels to foreign persons; foreign registry or operation.
67.12 Right of appeal.
67.13 Incorporation by reference.
67.14 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

Subpart B—Forms of Documentation; Endorsements; Eligibility of Vessel

67.15 Form of document—all endorsements.
67.17 Registry endorsement.
67.19 Coastwise or Great Lakes endorsement.
67.21 Fishery endorsement.
67.23 Recreational endorsement.

Subpart C—Citizenship Requirements for Vessel Documentation

67.30 Requirement for citizen owner.
67.31 Stock or equity interest requirements.
67.33 Individual.
67.35 Partnership, association, or joint venture.
67.37 Trust.
67.39 Corporation.
67.41 Governmental entity.
67.43 Evidence of citizenship.
67.45 Citizenship savings provision for fishing vessels.
67.47 Requirement for Maritime Administration approval.

Subpart D—Title Requirements for Vessel Documentation

67.50 Requirement for title evidence.
67.53 Methods of establishing title.
67.55 Requirement for removal from foreign registry.
67.57 Extent of title evidence required for initial documentation.
67.59 Extent of title evidence required for change in ownership of a documented vessel.
67.61 Extent of title evidence required for vessels returning to documentation.
67.63 Extent of title evidence required for captured, forfeited, special legislation, and wrecked vessels.

Subpart E—Acceptable Title Evidence; Waiver

67.70 Original owner.
67.73 Transfers prior to documentation.
67.75 Transfers by sale or donation subsequent to documentation.
67.77 Passage of title by court action.
67.79 Passage of title without court action following death of owner.
67.81 Passage of title in conjunction with a corporate merger or similar transaction.
67.83 Passage of title by extra-judicial repossession and sale.
67.85 Change in general partners of partnership.
67.87 Change of legal name of owner.
67.89 Waiver of production of a bill of sale eligible for filing and recording.
67.91 Passage of title pursuant to operation of State law.

Subpart F—Build Requirements for Vessel Documentation

67.95 Requirement for determination.
67.97 United States built.
67.99 Evidence of build.
67.101 Waiver of evidence of build.

Subpart G—Tonnage and Dimension Requirements for Vessel Documentation

67.105 Requirement for determination.
67.107 System of measurement; evidence.

Subpart H—Assignments and Designations Required for Vessel Documentation

67.111 Assignment of official number.
67.113 Managing owner designation; address; requirement to report change of address.
67.115 Assignment of port of record.
67.117 Vessel name designation.
67.119 Hailing port designation.

Subpart I—Marking Requirements for Vessel Documentation

67.120 General requirement.
67.121 Official number marking requirement.
67.123 Name and hailing port marking requirements.
67.125 Disputes.

Subpart J—Application for Special Qualifications for Vessel Documentation

67.130 Submission of applications.
67.131 Forfeited vessels.
67.132 Special legislation.
67.133 Wrecked vessels.
67.134 Captured vessels.

Subpart K—Application for Documentation, Exchange or Replacement of Certificate of Documentation, or Return to Documentation; Mortgagee Consent; Validation

67.141 Application procedure; all cases.
67.143 Restriction on withdrawal of application.
67.145 Restrictions on exchange; requirement and procedure for mortgagee consent.
67.147 Exchange of Certificate of Documentation; special procedure for change of port of record.
67.149 Exchange of Certificate of Documentation; vessel at sea.
67.151 Replacement of Certificate of Documentation; special procedure for wrongfully withheld document.

Subpart L—Validity of Certificates of Documentation; Renewal of Endorsement; Requirement for Exchange, Replacement, Deletion, Cancellation

67.161 Validity of Certificate of Documentation.
67.163 Renewal of endorsement.
67.165 Deposit of Certificate of Documentation.
67.167 Requirement for exchange of Certificate of Documentation.
67.169 Requirement for replacement of Certificate of Documentation.
67.171 Deletion; requirement and procedure.
67.173 Cancellation; requirement and procedure.

Subpart M—Miscellaneous Applications

67.175 Application for new vessel determination.
67.177 Required application for rebuilt determination.

Subpart N—[Reserved]

Subpart O—Filing and Recording of Instruments—General Provisions

67.200 Instruments eligible for filing and recording.
67.203 Restrictions on filing and recording.
67.205 Requirement for vessel identification.
67 207 Requirement for date and acknowledgment.
67.209 Required number of copies.
67.211 Requirement for citizenship declaration.
67.213 Place of filing and recording.
67.215 Date and time of filing.
67.217 Termination of filing and disposition of instruments.

Subpart P—Filing and Recording of Instruments—Bills of Sale and Related Instruments

67.220 Requirements.
67.223 Filing limitation.

Subpart Q—Filing and Recording of Instruments—Mortgages, Preferred Mortgages, and Related Instruments

67.231 General requirements; optional application for filing and recording.
67.233 Restrictions on recording mortgages, preferred mortgages, and related instruments.
67.235 Requirements for mortgages.
67.237 Requirements for assignments of mortgages.
67.239 Requirements for assumptions of mortgages.
67.241 Requirements for amendments of or supplements to mortgages.
67.243 Requirements for instruments subordinating mortgages.
67.245 Requirements for interlender agreements.

Subpart R—Filing and Recording of Instruments—Notices of Claim of Lien and Supplemental Instruments

67.250 General requirements.
67.253 Requirements for notices of claim of lien.
67.255 Restrictions on filing and recording.

67.257 Requirements for assignments of notices of claim of lien.
67.259 Requirements for amendments to notice of claim of lien.

Subpart S—Removal of Encumbrances

67.261 General requirements.
67.263 Requirement for removal of encumbrances by court order, affidavit, or Declaration of Forfeiture.
67.265 Requirements for instruments evidencing satisfaction or release.

Subpart T—General Index, Abstracts of Title, and Certificates of Ownership

67.301 Forwarding of General Index.
67.303 Issuance of Abstract of Title.
67.305 Issuance of Certificate of Ownership.

Subpart U—Special Provisions

67.311 Alteration of Certificate of Documentation.
67.313 Requirement to have Certificate of Documentation on board.
67.315 Requirement to produce Certificate of Documentation.
67.317 Requirement to renew endorsements on the Certificate of Documentation.
67.319 Requirement to report change in vessel status and surrender Certificate of Documentation.
67.321 Requirement to report change of address of managing owner.
67.323 Operation without documentation.
67.325 Violation of endorsement.
67.327 Operation under Certificate of Documentation with invalid endorsement.
67.329 Unauthorized name change.
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67.535 Issuance of Abstract of Title.
67.537 Issuance of Certificate of Ownership.
67.539 Copies of instruments and documents.
67.550 Fee table.

Appendix A to Part 67—Ports of Documentation

Authority: 14 U.S.C. 664; 31 U.S.C. 9701; 42 U.S.C. 9118; 46 U.S.C. 2103, 2107, 2110; 46 U.S.C. app. 841a, 876; 49 U.S.C. 322, 49 CFR 1.46.

Subpart A—General

§67.1 Purpose.

A Certificate of Documentation is required for the operation of a vessel in certain trades, serves as evidence of vessel nationality, and permits a vessel to be subject to preferred mortgages.

§67.3 Definitions.

The following definitions are for terms used in this part.

Acknowledgment means:

(a) An acknowledgment or notarization in any form which is in substantial compliance with the Uniform Acknowledgments Act, the Uniform Recognition of Acknowledgments Act, the Uniform Law on Notarial Acts, or the statutes of the State within which it is taken, made before a notary public or other official authorized by a law of a State or the United States to take acknowledgment of deeds;

(b) An acknowledgment or notarization before a notary or other official authorized to take acknowledgments of deeds by the law of a foreign nation which is a party to the Hague Convention Abolishing the Requirement for Legalisation of Public Documents, 1961, provided that the acknowledgment or notarization is accompanied by the certificate described in Article 3 of that Convention; or

(c) Any attestation which is substantially in the following form:

State:
County:

On [date] the person(s) named above acknowledged execution of the foregoing instrument in their stated capacity(ies) for the purpose therein contained.

Notary Public
My commission expires: [date]

Captured vessel means a vessel which has been taken by citizens of the United States during a period of war and is thereafter condemned as a prize by a court of competent jurisdiction.

Certification of Documentation means form CG–1270.

Citizen, unless expressly provided otherwise, means a person meeting the applicable citizenship requirements of subpart C of this part as a United States citizen.

Coastwise trade includes the transportation of passengers or merchandise between points embraced within the coastwise laws of the United States.

Commandant means the Commandant of the United States Coast Guard.

Note: Submissions and correspondence made to the Commandant pursuant to this part should be addressed to Commandant (G–MVI–5), U.S. Coast Guard, 2100 Second Street, SW., Washington, DC 20593–0001.

Documentation officer means the Coast Guard official who is authorized to process and approve applications made under this part, and record instruments authorized to be filed and recorded under this part.

Documented vessel means a vessel which is the subject of a valid Certificate of Documentation.

Endorsement means an entry which may be made on a Certificate of Documentation, and which, except for a recreational endorsement, is conclusive evidence that a vessel is entitled to engage in a specified trade.

Note: Rulings and interpretations concerning what activities constitute coastwise trade and the fisheries can be obtained from the U.S Customs Service, 1301 Constitution Avenue, NW., Washington, DC 20229 (Attn: Carrier Rulings Branch).

Exclusive Economic Zone (EEZ) means the zone established by Presidential Proclamation Numbered 5030, dated March 10, 1983 (48 FR 10105, 3 CFR, 1983 Comp., p. 22).

Fisheries includes processing, storing, transporting (except in foreign commerce), planting, cultivating, catching, taking, or harvesting fish, shellfish, marine animals, pearls, shells, or marine vegetation in the navigable waters of the United States or in the Exclusive Economic Zone.

Forfeited vessel means a vessel:

(1) Which has been adjudged forfeited by a Federal District Court to the Federal Government of the United States for a breach of its laws; or

(2) Which has been forfeited under an administrative forfeiture action to the Federal Government of the United States for a breach of its laws; or

(3) Which has been seized by the Federal Government of the United States for a breach of its laws and which

has been sold at an interlocutory sale, the proceeds of which have been adjudged forfeited by a Federal District Court to the Federal Government of the United States. A vessel is considered forfeited within the meaning of this definition even if the proceeds, though adjudged forfeited to the United States, do not actually accrue to the United States.

Hull means the shell, or outer casing, and internal structure below the main deck which provide both the flotation envelope and structural integrity of the vessel in its normal operations. In the case of a submersible vessel, the term includes all structural members of the pressure envelope.

Manufacturer's Certificate of Origin means a certificate issued under the law or regulation of a State, evidencing transfer of a vessel from the manufacturer as defined in 33 CFR part 181 to another person.

New vessel means a vessel:

(1) The hull and superstructure of which are constructed entirely of new materials; or

(2) Which is constructed using structural parts of an existing vessel, which parts have been torn down so that they are no longer advanced to a degree which would commit them to use in the building of a vessel.

Ocean thermal energy conversion facility means any facility which is standing in or moored in or beyond the territorial sea of the United States as defined in 33 CFR 2.05–5, and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work.

Ocean thermal energy conversion plantship means any vessel which is standing in or moored in or beyond the territorial sea of the United States as defined in 33 CFR 2.05–5, and which is designed to use temperature differences in ocean water to produce electricity or another form of energy capable of being used directly to perform work.

Officer in Charge, Marine Inspection (OCMI) means the Coast Guard official designated as such by the Commandant, under the superintendence and direction of a Coast Guard District Commander, who is in charge of an inspection zone in accordance with regulations set forth in 46 CFR part 1.

Person means an individual, corporation, partnership, association, joint venture, trust arrangement, the government of the United States, a State or political subdivision thereof, and includes a trustee, beneficiary, receiver, or similar representative of any of them.

Port of documentation means a port which has been designated by the Commandant as a place which may serve as a port of record for vessel documentation purposes. A documentation office is located in each port of documentation. A list of designated ports of documentation may be found in appendix A to this part.

Port of record means the port of documentation at which the records for a vessel are kept.

Registration means a certificate of number issued pursuant to rules in 33 CFR part 173, a record under the maritime laws of a foreign country, or a certificate issued by a political subdivision of a foreign country.

Secretary means the Secretary of Transportation.

State means a State of the United States or a political subdivision thereof, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States.

Superstructure means the main deck and any other structural part above the main deck.

United States, when used in a geographic sense means the States of the United States, Guam, Puerto Rico, the Virgin Islands, American Samoa, the District of Columbia, the Northern Mariana Islands, and any other territory or possession of the United States, except that for purposes of § 67.19(d)(3) trust territories are not considered to be part of the United States.

Vessel includes every description of watercraft or other contrivance used or capable of being used as a means of transportation on water, but does not include aircraft. Vessel also includes ocean thermal energy conversion facilities and ocean thermal energy conservation plantships as defined in this section.

Wrecked vessel, under the provisions of 46 U.S.C. app. 14, means a vessel which:

(1) Has incurred substantial damage to its hull or superstructure as a result of natural or accidental causes which occurred in the United States or its adjacent waters; and

(2) Has undergone, in a shipyard in the United States or its possessions, repairs equaling three times the appraised salved value of the vessel.

§ 67.5 Vessels eligible for documentation.

Any vessel of at least five net tons wholly owned by a citizen or citizens of the United States is eligible for documentation under this part. This includes, but is not limited to, vessels used exclusively for recreational purposes and vessels used in foreign trade.

§ 67.7 Vessels requiring documentation.

Any vessel of at least five net tons which engages in the fisheries on the navigable waters of the United States or in the Exclusive Economic Zone, Great Lakes trade, or coastwise trade, unless exempt under § 67.9(c), must have a Certificate of Documentation bearing a valid endorsement appropriate for the activity in which engaged.

§ 67.9 Vessels excluded from or exempt from documentation.

(a) A vessel of less than five net tons is excluded from documentation.

(b) A vessel which does not operate on the navigable waters of the United States or in the fisheries in the Exclusive Economic Zone is exempt from the requirement to have a Certificate of Documentation.

(c) A non-self-propelled vessel, qualified to engage in the coastwise trade is exempt from the requirement to be documented with a coastwise endorsement when engaged in coastwise trade:

(1) Within a harbor;

(2) On the rivers or lakes (except the Great Lakes) of the United States; or

(3) On the internal waters or canals of any State.

(d) A vessel exempt from the requirement to be documented by paragraph (b) or (c) of this section may be documented at the option of the owner, provided it meets the other requirements of this part.

§ 67.11 Restriction on transfer of an interest in documented vessels to foreign persons; foreign registry or operation.

(a) Unless approved by the Maritime Administration—

(1) A documented vessel or a vessel last documented under the laws of the United States may not be placed under foreign registry or operated under the authority of a foreign country.

(2) A documented vessel or a vessel last documented under the laws of the United States owned by a citizen of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802), may not be sold, mortgaged, leased, chartered, delivered, or otherwise transferred to any person who is not a citizen of the United States as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802).

(b) The restrictions in paragraph (a)(2) of this section do not apply to a vessel that has been operated only as:

(1) A fishing vessel, fish processing vessel, or fish tender vessel as defined in 46 U.S.C. 2101;

(2) A recreational vessel; or

(3) Both.

Note: For purposes of carrying out its responsibilities under the provisions of this

part only, the Coast Guard will deem a vessel which has been documented exclusively with a fishery or recreational endorsement or both from the time it was first documented, or for a period of not less than one year prior to foreign transfer or registry, to qualify for the exemption granted in paragraph (b) of this section.

§ 67.12 Right of appeal.

Any person directly affected by a decision or action taken under this part by or on behalf of the Coast Guard may appeal therefrom in accordance with subpart 1.03 of this chapter.

§ 67.13 Incorporation by reference.

(a) Certain material is incorporated by reference into this part with the approval of the Director of the Federal Register under 5 U.S.C. 552(a) and 1 CFR part 51. To enforce any edition other than that specified in paragraph (b) of this section, the Coast Guard must publish notice of change in the **Federal Register** and the material must be available to the public. All approved material may be inspected at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC and at the U.S. Coast Guard, Merchant Vessel Inspection and Documentation Division, 2100 Second Street SW., Washington, DC 20593–0001 and is available from the source indicated in paragraph (b) of this section.

(b) The material approved for incorporation by reference in this part and the section affected is as follows:

U.S. Department of Commerce, National Technical Information Service, Springfield, VA 22181

Federal Information Processing Standards Publication 55DC, Guideline: Codes For Named Populated Places, Primary County Divisions, And Other Locational Entities of the United States and Outlying Areas (1987)—67.119

§ 67.14 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) *Purpose.* This section collects and displays the control numbers assigned to information collection and recordkeeping requirements in this subchapter by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). The Coast Guard intends that this section comply with the requirements of 44 U.S.C. 3507(f) which requires that agencies display a current control number assigned by the Director of the OMB for each approved agency information collection requirement.

(b) *Display.*

46 CFR part or section where identified or described	Current OMB control No.
Part 67	2115–0110
Part 68	2115–0110

Subpart B—Forms of Documentation; Endorsements; Eligibility of Vessel

§ 67.15 Form of document—all endorsements.

(a) The form of document is a Certificate of Documentation, form CG–1270.

(b) Upon application in accordance with subpart K of this part and determination of qualification by the documentation officer with whom the application is filed, a Certificate of Documentation may be issued with a registry, coastwise, Great Lakes, fishery, or recreational endorsement.

(c) A Certificate of Documentation may bear simultaneous endorsements for recreation and more than one trade, including operation under 46 CFR part 68.

Note: Where a vessel possesses a Certificate of Documentation bearing more than one endorsement, the actual use of the vessel determines the endorsement under which it is operating.

§ 67.17 Registry endorsement.

(a) A registry endorsement entitles a vessel to employment in the foreign trade; trade with Guam, American Samoa, Wake, Midway, or Kingman Reef; and any other employment for which a coastwise, Great Lakes, or fishery endorsement is not required.

(b) Any vessel eligible for documentation under § 67.5 is eligible for a registry endorsement.

(c) A vessel otherwise eligible for a registry endorsement for which the Maritime Administration has not given approval for unrestricted transfer pursuant to 46 CFR part 221 loses that eligibility during any period in which it is mortgaged to a person not identified in § 67.233(b).

§ 67.19 Coastwise or Great Lakes endorsement.

(a) A coastwise endorsement entitles a vessel to employment in unrestricted coastwise trade and any other employment for which a registry, fishery, or Great Lakes endorsement is not required.

(b) A Great Lakes endorsement entitles a vessel to employment in the Great Lakes trade and any other employment for which a registry, fishery, or coastwise endorsement is not required.

(c) If eligible for documentation and not restricted from coastwise or Great Lakes trade by paragraph (d) or (e) of this section, the following vessels are eligible for a coastwise or Great Lakes endorsement or both:

(1) Vessels built in the United States (§ 67.97);

(2) Forfeited vessel (§ 67.131);

(3) Vessels granted coastwise trading privileges by special legislation (§ 67.132);

(4) Wrecked vessels (§ 67.133);

(5) Captured vessels (§ 67.134); and

(6) Vessels purchased, chartered, or leased from the Secretary of Transportation by persons who are citizens of the United States (46 U.S.C. app. 808).

(d) A vessel otherwise eligible for a coastwise or Great Lakes endorsement under paragraph (c) of this section permanently loses that eligibility if:

(1) It is thereafter sold in whole or in part to an owner:

(i) Not a citizen as defined in subpart C of this part, or

(ii) Not a person permitted to document vessels pursuant to 46 CFR part 68;

(2) It is thereafter registered under the laws of a foreign country;

(3) It undergoes rebuilding as defined in § 67.177(a) outside of the United States; or

(4) It is a crude oil tanker of 20,000 deadweight tons or above, and after October 17, 1978, has segregated ballast tanks, a crude oil washing system, or an inert gas system installed outside of the United States as defined in § 67.3.

(e) A vessel otherwise eligible for a coastwise or Great Lakes endorsement under paragraph (c) of this section loses that eligibility, except as provided in paragraph (f) of this section, during any period in which it is:

(1) Owned by a corporation which does not meet the citizenship requirements of § 67.39(b);

(2) Owned by a partnership which does not meet the citizenship requirements of § 67.35(a)(2); or

(2) Mortgaged to a person not identified in § 67.233(b).

(f) The restriction imposed by paragraph (e)(2) of this section does not apply to any vessel for which the Maritime Administration has given approval for unrestricted transfer pursuant to regulations set forth in 46 CFR part 221.

§ 67.21 Fishery endorsement.

(a) A fishery endorsement entitles a vessel to employment in the fisheries as defined in § 67.3, subject to Federal and State laws regulating the fisheries, and in any other employment for which a registry, coastwise, or Great Lakes endorsement is not required. A fishery

endorsement entitles a vessel to land its catch, wherever caught, in the United States.

(b) If eligible for documentation and not restricted from the fisheries by paragraph (c) of this section, the following vessels are eligible for a fishery endorsement:

(1) Vessels built in the United States (§ 67.97);

(2) Forfeited vessels (§ 67.131);

(3) Vessels granted fisheries privileges by special legislation (§ 67.132);

(4) Wrecked vessels (§ 67.133); and

(5) Captured vessels (§ 67.134).

(c) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section permanently loses that eligibility if it undergoes rebuilding as defined in § 67.177(a) outside of the United States.

(d) A vessel otherwise eligible for a fishery endorsement under paragraph (b) of this section and not protected by the savings provision in § 67.45, loses that eligibility during any period in which it is owned by a partnership which does not meet the requisite citizenship requirements of § 67.35(a), or by a corporation which does not meet the citizenship requirements of § 67.39(d).

§ 67.23 Recreational endorsement.

(a) A recreational endorsement entitles a vessel to pleasure use only.

(b) Any vessel eligible for documentation under § 67.5 is eligible for a recreational endorsement.

Note: A vessel having a Certificate of Documentation endorsed only for recreation may be bareboat chartered only for recreational use. Guidance on the elements of a valid bareboat charter should be obtained through private legal counsel.

Subpart C—Citizenship Requirements for Vessel Documentation

§ 67.30 Requirement for citizen owner.

Certificates of Documentation may be issued under this part only to vessels which are wholly owned by United States citizens. Pursuant to extraordinary legislation at 46 U.S.C. app. 883–1 (Bowater Amendment) and 46 U.S.C. 12106(d) (Oil Pollution Act of 1990), Certificates of Documentation with limited endorsements may be issued in accordance with part 68 of this chapter to vessels owned by certain persons who are not citizens as defined in this part.

§ 67.31 Stock or equity interest requirements.

(a) The stock or equity interest requirements for citizenship under this subpart encompass: Title to all classes of stock; title to voting stock; and ownership of equity. An otherwise qualifying corporation or partnership may fail to meet stock or equity interest requirements because: Stock is subject to trust or fiduciary obligations in favor of non-citizens; non-citizens exercise, directly or indirectly, voting power; or non-citizens, by any means, exercise control over the entity. The applicable stock or equity interest requirement is not met if the amount of stock subject to obligations in favor of non-citizens, non-citizen voting power, or non-citizen control exceeds the percentage of the non-citizen interest permitted.

(b) For the purpose of this section, control includes an absolute right to: Direct corporate or partnership business; limit the actions of or replace the chief executive officer, a majority of the board of directors, or any general partner; direct the transfer or operations of any vessel owned by the corporation or partnership; or otherwise exercise authority over the business of the corporation or partnership. Control does not include the right to simply participate in these activities or the right to receive a financial return, e.g., interest or the equivalent of interest on a loan or other financing obligations.

(c) For purposes of meeting the stock or equity interest requirements for citizenship under this subpart where title to a vessel is held by an entity comprised, in whole or in part, of other entities which are not individuals, each entity contributing to the stock or equity interest qualifications of the entity holding title must be a citizen eligible to document vessels in its own right with the trade endorsement sought.

§ 67.33 Individual.

An individual is a citizen if native-born, naturalized, or a derivative citizen of the United States, or otherwise qualifies as a United States citizen.

§ 67.35 Partnership, association, or joint venture.

(a) A partnership is a citizen if all its general partners are citizens, and:

(1) For the purpose of obtaining a registry or recreational endorsement, at least 50 percent of the equity interest in the partnership is owned by citizens;

(2) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, at least 75 percent of the equity interest in the partnership is owned by citizens; or

(3) For the purpose of obtaining a fishery endorsement, more than 50 percent of the equity interest in the partnership is owned by citizens.

(b) An association is a citizen if each of its members is a citizen.

(c) A joint venture is a citizen if each of its members is a citizen.

§ 67.37 Trust.

A trust arrangement is a citizen if each of its trustees and each beneficiary with an enforceable interest in the trust is a citizen.

§ 67.39 Corporation.

(a) For the purpose of obtaining a registry or a recreational endorsement, a corporation is a citizen if:

(1) It is incorporated under the laws of the United States or of a State;

(2) Its chief executive officer, by whatever title, is a citizen;

(3) Its chairman of the board of directors is a citizen; and

(4) No more of its directors are non-citizens than a minority of the number necessary to constitute a quorum.

(b) For the purpose of obtaining a coastwise or Great Lakes endorsement or both, a corporation is a citizen if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) At least 75 percent of the stock interest in the corporation is owned by citizens.

(c) A corporation which does not meet the stock interest requirement of paragraph (b) of this section may qualify for limited coastwise trading privileges by meeting the requirements of part 68 of this chapter.

(d) A corporation is a citizen for the purpose of obtaining a fishery endorsement if:

(1) It meets all the requirements of paragraph (a) of this section; and

(2) More than 50 percent of the stock interest in the corporation including a majority of voting shares in the corporation is owned by citizens.

§ 67.41 Governmental entity.

A governmental entity is a citizen for the purpose of obtaining a vessel document if it is an entity of the Federal Government of the United States or of the government of a State as defined in § 67.3.

§ 67.43 Evidence of citizenship.

When received by the Coast Guard, a properly completed original Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) establishes a rebuttable presumption that the applicant is a United States citizen.

§ 67.45 Citizenship savings provision for fishing vessels.

An otherwise qualifying partnership or corporation that does not meet the requisite stock interest requirements for a fishery endorsement of §§ 67.35 or 67.39, respectively, may be eligible to obtain a fishery endorsement for a

vessel if, based on evidence submitted by the owner, it is determined that prior to July 28, 1987, the vessel:

(a) Was documented under 46 U.S.C. Chapter 121 and operating as a fishing, fish processing, or fish tender vessel in the navigable waters of the United States or the Exclusive Economic Zone; or

(b) Was contracted for purchase for use as a fishing, fish processing, or fish tender vessel in the navigable waters of the United States or the Exclusive Economic Zone, if the purchase is shown by the contract or similarly reliable evidence acceptable to the Secretary or the Secretary's delegate to have been made for the purpose of using the vessel in the fisheries.

§ 67.47 Requirement for Maritime Administration approval.

(a) The following transactions, among others, require approval of the Maritime Administration in accordance with 46 CFR part 221:

(1) Placement of the vessel under foreign registry;

(2) Operation of the vessel under the authority of a foreign country; and

(3) Sale or transfer of an interest in or control of the vessel from a citizen, as defined in section 2 of the Shipping Act, 1916 (46 U.S.C. app. 802), to a person not a citizen within the meaning of section 2 of that act.

(b) A Certificate of Documentation may not be issued for a vessel which subsequent to the last issuance of a Certificate of Documentation has undergone any transaction listed in paragraph (a) of this section, even if the owner meets the citizenship requirements of this subpart, unless evidence is provided that the Maritime Administration approved the transaction.

(c) The restriction imposed by paragraph (b) of this section does not apply to a vessel identified in § 67.11(b).

Subpart D—Title Requirements for Vessel Documentation

§ 67.50 Requirement for title evidence.

The owner of a vessel must present title evidence in accordance with one of the methods specified in this subpart:

(a) When application is made for a coastwise or a Great Lakes endorsement for a vessel which has not previously been qualified for such endorsement;

(b) For initial documentation of a vessel;

(c) When the ownership of a documented vessel changes in whole or in part;

(d) When the general partners of a partnership owning a documented vessel change by addition, deletion, or substitution, without dissolution of the partnership; or

(e) When a vessel which has been deleted from documentation is returned to documentation and there has been an intervening change in ownership.

§ 67.53 Methods of establishing title.

Title to a vessel may be established through one of the following methods:

(a) *Simplified method without evidence of build.* The owner must produce a copy of the last registration of the vessel (State, Federal, or foreign) and evidence which establishes chain of title from that registration to the present owner.

(b) *Simplified method with evidence of build.* The owner must produce a copy of the last registration of the vessel (State, Federal, or foreign) and evidence which establishes chain of title from that registration to the present owner along with evidence of the facts of build in accordance with subpart F of this part.

(c) *Complete chain of title, without evidence of citizenship for each entity in that chain of title.* The owner must provide evidence which establishes:

(1) The facts of build in accordance with subpart F of this part; and

(2) A complete chain of title for the vessel from the person for whom the vessel was built to the present owner.

(d) *Complete chain of title, with evidence of citizenship for each entity in that chain of title.* The owner must provide evidence which establishes:

(1) The facts of build in accordance with subpart F of this part; and

(2) A complete chain of title for the vessel from the person for whom the vessel was built to the present owner, accompanied by competent and persuasive evidence establishing the citizenship of each entity in the chain of title.

§ 67.55 Requirement for removal from foreign registry.

The owner of a vessel must present evidence of removal of the vessel from foreign registry whenever:

(a) The owner applies for initial documentation of a vessel that has at any time been registered under the laws of a foreign country; or

(b) The owner applies for reentry into documentation of a vessel that had been registered under the laws of a foreign country since it was last documented under the laws of the United States.

§ 67.57 Extent of title evidence required for initial documentation.

(a) Vessels never registered under any system:

(1) Where a coastwise or Great Lakes endorsement is sought, the only title evidence required for a vessel being documented by the owner for whom it was built is the certification of the builder (form CG–1261) described in § 67.99. Any other applicant must present title evidence in accordance with § 67.53(d).

(2) Where a fishery endorsement is sought, the only title evidence required for a vessel being documented by the owner for whom it was built is the certification of the builder (form CG–1261) described in § 67.99. Any other applicant must present title evidence in accordance with either paragraph (c) or (d) of § 67.53.

(3) Where a registry or recreational endorsement is sought, the only title evidence required for a vessel being documented by the first owner of the vessel is the certification of the builder (form CG–1261) described in § 67.99, or a Manufacturer's Certificate of Origin. Any other applicant must also present title evidence in accordance with either paragraph (c)(2) or (d)(2) of § 67.53.

Note: Manufacturer's Certificates of Origin are sometimes used as shipping documents for vessels, and may recite as the first owner a person other than the person for which the vessel was built. Therefore, a chain of title which begins with a Certificate of Origin will be deemed incomplete.

(b) Vessels previously registered under the laws of a State or a foreign government:

(1) Where a coastwise or a Great Lakes endorsement is sought, title evidence must be presented in accordance with § 67.53(d).

(2) Where a fishery endorsement is sought, title evidence must be presented in accordance with paragraph (b), (c), or (d) of § 67.53.

(3) Where a registry or recreational endorsement is sought, title evidence must be presented in accordance with paragraph (a), (b), (c), or (d) of § 67.53.

§ 67.59 Extent of title evidence required for change in ownership of a documented vessel.

When the ownership of a documented vessel changes, in whole or in part, the applicant for documentation must present:

(a) Title evidence in accordance with subpart E of this part to reflect all ownership changes subsequent to the last issuance of a Certificate of Documentation; and

(b) Where a registry, fishery, or recreational endorsement is sought, evidence of the citizenship of all owners subsequent to the last owner for whom the vessel was documented except for a vessel:

(1) Identified in § 67.11(b); or

(2) For which the Maritime Administration has granted approval for transfer or sale under 46 CFR part 221.

(c) Where a coastwise or Great Lakes endorsement is sought, evidence establishing the citizenship of all owners subsequent to the last owner for whom the vessel was documented with a coastwise or Great Lakes endorsement, if such evidence is not already on file with the Coast Guard. If the vessel has never been documented with a coastwise or Great Lakes endorsement, evidence must be presented to establish the citizenship of each owner of the vessel for whom such evidence is not already on file with the Coast Guard.

§ 67.61 Extent of title evidence required for vessels returning to documentation.

(a) When the owner of a vessel which has been deleted from documentation applies to have the vessel returned to documentation, the owner must, except as provided in paragraphs (b) and (c) of this section, provide evidence establishing the complete chain of title from the last owner under documentation, and citizenship evidence for all owners in that chain of title.

(b) When a vessel is returned to documentation after having been under foreign registry, the owner must provide a copy of the last foreign registry, the evidence of removal from foreign registry required by § 67.55, and evidence establishing the complete chain of title from the last owner under foreign registry. No citizenship evidence need be provided for owners in that chain of title.

(c) The owner of a vessel identified in § 67.11(b) or for which the Maritime Administration has granted approval for transfer or sale, either by written order or by general approval in 46 CFR part 221, and which was under a State or Federal registration or titling system, must provide a copy of the last registration or title, the evidence of removal from foreign registry required by § 67.55, if applicable, and evidence establishing the complete chain of title from the last owner under such registry or title. No citizenship evidence need be provided for owners in that chain of title.

Note: Although vessels returned to documentation without a complete chain of title are not eligible for coastwise or Great Lakes endorsements, this does not preclude such an endorsement if the chain of title, with citizenship evidence, is completed at a later date.

§ 67.63 Extent of title evidence required for captured, forfeited, special legislation, and wrecked vessels.

(a) In the case of a captured or forfeited vessel, the owner must provide evidence establishing the chain of title from the judicial decree of capture or decree of forfeiture, or the evidence of administrative forfeiture described in § 67.131(b). Citizenship evidence for all owners in the chain of title is required only if a coastwise or Great Lakes endorsement is sought.

(b) In the case of a vessel which is the subject of special legislation or a wrecked vessel, the owner must provide:

(1) For initial documentation of a vessel or return to documentation of a vessel deleted from documentation, a copy of the last Federal, State, or foreign registration, the evidence of removal from foreign registry required by § 67.55, if applicable, and evidence establishing the chain of title from the last registration. If a coastwise or Great Lakes endorsement is sought, the owner must present citizenship evidence for all owners in the chain of title from the grant of special legislation or the determination by the Commandant that the vessel is eligible for documentation under 46 U.S.C. app. 14.

(2) For a documented vessel, the title evidence reflecting all ownership changes subsequent to the last documented owner of record. In addition, unless the vessel qualifies for exemption under § 67.11(b) or the vessel is the subject of Maritime Administration approval for unrestricted transfer, citizenship evidence must be presented for all owners in that chain of title.

Subpart E—Acceptable Title Evidence; Waiver

§ 67.70 Original owner.

The builder's certification described in § 67.99 serves as evidence of the original owner's title to a vessel.

§ 67.73 Transfers prior to documentation.

A transfer of vessel title prior to documentation may be evidenced by:

(a) Completion of the transfer information on the reverse of the builder's certification on form CG–1261;

(b) Completion of the transfer information on the reverse of the Manufacturer's Certificate of Origin; or

(c) A bill of sale which meets the criteria for filing and recording set forth in subpart P of this part.

§ 67.75 Transfers by sale or donation subsequent to documentation.

(a) Except as otherwise provided in this subpart, transfers of vessel title must be evidenced by a bill of sale which meets the criteria for filing and recording set forth in subpart P of this part. Except as otherwise provided in subpart O of this part, each bill of sale must be accompanied by a declaration of citizenship from the new owner, executed on the appropriate Maritime Administration form described in § 67.211.

(b) The bill of sale form used may be form CG–1340 or form CG–1356, as appropriate.

(c) An applicant for documentation who cannot produce required title evidence in the form of an instrument eligible for filing and recording in accordance with subpart P of this part may apply for a waiver of that requirement in accordance with the provisions of § 67.89.

§ 67.77 Passage of title by court action.

(a) When title to a vessel has passed by court action, that passage must be established by copies of the relevant court order(s) certified by an official of the court.

(b) When authority to transfer a vessel has been conferred by court action, that authority must be established by copies of the relevant court order(s) certified by an official of the court.

§ 67.79 Passage of title without court action following death of owner.

(a) When title to a vessel formerly owned in whole or in part by an individual now deceased passes without court action, an applicant for documentation must present:

(1) When title passes to a surviving joint tenant or tenants or to a tenant by the entirety, a copy of the death certificate, certified by an appropriate State official; or

(2) Where the laws of cognizant jurisdiction permit passage of title without court action, evidence of compliance with applicable State law.

(b) Passage of title subsequent to devolutions such as those described in paragraph (a) of this section, must be established in accordance with the remainder of this subpart.

§ 67.81 Passage of title in conjunction with a corporate merger or similar transaction.

When the title to a vessel has passed as the result of a corporate merger or similar transaction wherein the assets of one corporation have been transferred to another, the passage of title must be established by:

(a) Materials, such as a resolution of the board of directors or shareholders of the corporation which held title to the vessel before the transaction, which either unequivocally transfers all of the

assets of the corporation or which specifically identifies the vessel as being among the assets transferred; and

(b) In jurisdictions where there is an official recognition of corporate mergers and similar transactions, a copy of such official recognition certified by the cognizant official of that jurisdiction.

§ 67.83 Passage of title by extra-judicial repossession and sale.

When title to a documented vessel has passed by reason of an extra-judicial repossession and sale, such passage must be established by:

(a) A copy of the instrument under which foreclosure was made;

(b) An affidavit from the foreclosing party setting forth the reasons for foreclosure, the chronology of foreclosure, the statute(s) under which foreclosure was made, and the steps taken to comply with the relevant instrument and statute(s);

(c) Evidence of substantial compliance with the relevant instrument and statute(s); and

(d) A bill of sale which meets the criteria for filing and recording set forth in subpart P of this part from the foreclosing party as agent for the defaulting owner(s).

§ 67.85 Change in general partners of partnership.

When the general partners of a partnership owning a documented vessel change by addition, deletion, or substitution without dissolution of the partnership, the change must be established by a written statement from a surviving general partner detailing the nature of the change.

§ 67.87 Change of legal name of owner.

(a) When the name of a corporation which owns a documented vessel changes, the corporation must present certification from the appropriate governmental agency evidencing registration of the name change.

(b) When the name of an individual who owns a documented vessel changes for any reason, competent and persuasive evidence establishing the change must be provided.

§ 67.89 Waiver of production of a bill of sale eligible for filing and recording.

(a) When the evidence of title passage required by this subpart is a bill of sale which meets the criteria for filing and recording set forth in subpart P of this part, and the applicant is unable to produce a bill of sale meeting those criteria, the applicant may request that the documentation officer at the port where application for documentation, exchange, or redocumentation is made waive that requirement.

(b) No waiver of the requirement to produce a bill of sale eligible for filing and recording may be granted unless the applicant provides:

(1) A written statement detailing the reasons why an instrument meeting the filing and recording criteria of this part cannot be obtained; and

(2) Competent and persuasive evidence of the passage of title.

§ 67.91 Passage of title pursuant to operation of State law.

When title to a documented vessel has passed by operation of State law for reasons other than those specified in this subpart, such passage must be established by:

(a) A copy of the statute permitting transfer of title to the vessel and setting forth procedures to be followed in disposing of the vessel;

(b) An affidavit from the party acting against the vessel, setting forth the basis for selling the vessel, and the steps taken to comply with the requirements of the statute under which title passes;

(c) Evidence of substantial compliance with the relevant statute(s); and

(d) A bill of sale which meets the criteria for filing and recording set forth in subpart P of this part from the acting party as agent for the owner(s) of record.

Note: State law authorizing a marina to dispose of abandoned vessels is an example of passage of title by operation of law contemplated by § 67.91.

Subpart F—Build Requirements for Vessel Documentation

§ 67.95 Requirement for determination.

Evidence that a vessel was built in the United States must be on file for any vessel for which a coastwise, Great Lakes, or fishery endorsement is sought, unless the vessel is otherwise qualified for those endorsements under subpart J of this part.

§ 67.97 United States built.

To be considered built in the United States a vessel must meet both of the following criteria:

(a) All major components of its hull and superstructure are fabricated in the United States; and

(b) The vessel is assembled entirely in the United States.

§ 67.99 Evidence of build.

(a) Evidence of the facts of build may be either a completed original form CG–1261, or other original document containing the same information, executed by a person having personal knowledge of the facts of build because that person:

(1) Constructed the vessel;

(2) Supervised the actual construction of the vessel; or

(3) Is an officer or employee of the company which built the vessel and has examined the records of the company concerning the facts of build of the vessel.

(b) A vessel owner applying for documentation must file a separate certificate from each builder involved in the construction of the vessel.

(c) A Manufacturer's Certificate of Origin is not evidence of the facts of build.

§ 67.101 Waiver of evidence of build.

(a) A vessel owner applying for documentation unable to obtain the evidence of build required by § 67.99 may apply for a waiver of that requirement to the documentation officer at the port where application for documentation is made.

(b) No waiver of the requirement in § 67.99 to produce evidence of build may be granted unless the applicant provides:

(1) A written request for the waiver, explaining why the evidence required by § 67.99 cannot be furnished; and

(2) Competent and persuasive evidence of the facts of build.

Subpart G—Tonnage and Dimension Requirements for Vessel Documentation

§ 67.105 Requirement for determination.

The gross and net tonnage and dimensions of a vessel must be determined:

(a) For initial documentation;

(b) Whenever there is a change in the gross or net tonnage or dimensions of a documented vessel; or

(c) When the gross or net tonnage of a vessel returning to documentation has changed since the vessel was last documented.

§ 67.107 System of measurement; evidence.

(a) The gross and net tonnage and dimensions of a vessel for purposes of this part are determined in accordance with 46 CFR part 69.

(b) A Certificate of Measurement issued by an authorized official is the only acceptable evidence of the gross and net tonnage of a vessel measured in accordance with subpart B, C, or D of 46 CFR part 69. A Certificate of Measurement is not issued for vessels measured under subpart E of 46 CFR part 69 since the gross and net tonnage are determined as part of the documentation process.

Subpart H—Assignments and Designations Required for Vessel Documentation

§ 67.111 Assignment of official number.

(a) The owner of a vessel must submit an Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or the documentation office nearest where the vessel is located, to apply for an official number for the vessel when:

(1) Application is made for initial documentation of the vessel; or

(2) An existing vessel has been severed, with two or more vessels resulting. In this case, the official number of the original vessel is retired and the owner of each resulting vessel must apply for designation of a new official number.

(b) Upon receipt of form CG–1258, the documentation officer at the port where application for documentation is made will have an official number assigned to the vessel and furnish it to the vessel owner.

§ 67.113 Managing owner designation; address; requirement to report change of address.

The owner of each vessel must designate a managing owner on the Application for Documentation, Exchange or Replacement of Document; or Redocumentation (CG–1258).

(a) The managing owner of a vessel owned by one person is the owner of the vessel.

(b) The managing owner of a vessel owned by more than one person must be one of the owners. The person designated as managing owner must have an address in the United States except where no owner of the vessel has an address in the United States.

(c) The managing owner of a vessel owned in a trust arrangement must be one of the trustees.

(d) The address of the managing owner must be as follows:

(1) For an individual, any residence of the managing owner.

(2) For a partnership, its address:

(i) In the State under whose laws it is organized; or

(ii) Of its principal place of business.

(3) For a corporation, its address:

(i) For service of process within the State of incorporation; or

(ii) Of its principal place of business.

(e) Whenever the address of the managing owner changes, the managing owner shall notify the documentation officer at the port of record of the vessel within 10 days.

§ 67.115 Assignment of port of record.

(a) A port of record is assigned to a vessel:

(1) Upon initial documentation;

(2) When there is a change in the ownership of the vessel, in whole or in part; or

(3) When the owner requests to change the port of record of the vessel in accordance with paragraph (c) of this section. The owner shall not be required to change the port of record of the vessel solely because of a change of address of the managing owner.

(b) The same port of record will be assigned to all vessels owned by the same owner(s).

(c) The port of record of the vessel is:

(1) Boston, MA, if the address of the managing owner is located within the Boston Marine Inspection Zone, the Portland, ME Marine Inspection Zone, or the Providence Marine Inspection Zone in the First Coast Guard District;

(2) New York, NY, if the address of the managing owner is located within the New York Marine Inspection Zone in the First Coast Guard District;

(3) St. Louis, MO, if the address of the managing owner is located in the Second Coast Guard District;

(4) Philadelphia, PA, if the address of the managing owner is located within the Philadelphia Marine Inspection Zone in the Fifth Coast Guard District;

(5) Norfolk, VA, if the address of the managing owner is within the Hampton Roads Marine Inspection Zone, the Baltimore Marine Inspection Zone, or the Wilmington Marine Inspection Zone in the Fifth Coast Guard District;

(6) Miami, FL, if the address of the managing owner is located in the Seventh Coast Guard District;

(7) New Orleans, LA, if the address of the managing owner is located in a State other than Texas or New Mexico within the Eighth Coast Guard District;

(8) Houston, TX, if the address of the managing owner is located in Texas or New Mexico within the Eighth Coast Guard District;

(9) Cleveland, OH, if the address of the managing owner is located in the Ninth Coast Guard District;

(10) Los Angeles, CA, if the address of the managing owner is located in the Los Angeles-Long Beach Marine Inspection Zone or the San Diego Marine Inspection Zone within the Eleventh Coast Guard District;

(11) San Francisco, CA, if the address of the managing owner is located within the San Francisco Marine Inspection Zone within the Eleventh Coast Guard District;

(12) Portland, OR, if the address of the managing owner is located in Oregon or Idaho within the Thirteenth Coast Guard District;

(13) Seattle, WA, if the address of the managing owner is located within the Fourteenth Coast Guard District, or in Washington or Montana within the Thirteenth Coast Guard District; or

(14) Juneau, AK, if the address of the managing owner is located in the Seventeenth Coast Guard District.

Note: Geographical boundaries for the Coast Guard Marine Inspection Zones and Coast Guard Districts referenced in this section can be found in 33 CFR part 3.

(d) For a vessel owned by a State, territory, or possession, any political subdivision of the same, or any agency of a State, territory, possession, or political subdivision, the port of record is the port of documentation serving the address in which the capital of the State, territory, or possession is located.

(e) For a vessel owned by the United States Government the port of record is Norfolk, VA.

(f) If the managing owner does not have an address within the United States the port of record may be any port of documentation.

§ 67.117 Vessel name designation.

(a) The owner of a vessel must designate a name for the vessel on the Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258) submitted to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or the documentation office nearest where the vessel is located:

(1) Upon application for initial documentation of the vessel; or

(2) When the owner elects to change the name of the vessel.

(b) The name designated:

(1) Must be composed of letters of the Latin alphabet or Arabic or Roman numerals;

(2) May not be identical, actually or phonetically, to any word or words used to solicit assistance at sea; and

(3) May not contain nor be phonetically identical to obscene, indecent, or profane language, or to racial or ethnic epithets.

(c) The name of a documented vessel may not be changed without the prior approval of the documentation officer at the port where application for name change is made.

(d) Until such time as the owner of a vessel elects to change the name of a vessel, the provisions of paragraph (b) of this section do not apply to vessels validly documented before January 1, 1994.

§ 67.119 Hailing port designation.

(a) Upon application for any Certificate of Documentation in accordance with subpart K of this part, the owner of a vessel must designate a hailing port to be marked upon the vessel.

(b) The hailing port must be a place in the United States included in the U.S. Department of Commerce's Federal Information Processing Standards Publication 55DC.

(c) The hailing port must include the State, territory, or possession in which it is located.

(d) The OCMI for the port at which application for documentation is made has final authority to settle disputes as to the propriety of the hailing port designated.

(e) Until such time as a port of record assignment is required in accordance with § 67.115, or the owner elects to designate a new hailing port, the provisions of this section do not apply to vessels which were issued a Certificate of Documentation before July 1, 1982.

Subpart I—Marking Requirements for Vessel Documentation

§ 67.120 General requirement.

No Certificate of Documentation issued under this part will be deemed valid for operation of the vessel until the vessel is marked in accordance with this subpart.

§ 67.121 Official number marking requirement.

The official number of the vessel, preceded by the abbreviation "NO." must be marked in block-type Arabic numerals not less than three inches in height on some clearly visible interior structural part of the hull. The number must be permanently affixed to the vessel so that alteration, removal, or replacement would be obvious. If the official number is on a separate plate, the plate must be fastened in such a manner that its removal would normally cause some scarring of or damage to the surrounding hull area.

§ 67.123 Name and hailing port marking requirements.

(a) For vessels other than those covered in paragraphs (b) and (c) of this section, the name of the vessel must be marked on some clearly visible exterior part of the port and starboard bow and the stern of the vessel. The hailing port of the vessel must be marked on some clearly visible exterior part of the stern of the vessel.

(b) *Vessels with square bow.* For vessels having a square bow, the name of the vessel must be marked on some clearly visible exterior part of the bow in a manner to avoid obliteration. The name and hailing port must be marked on some clearly visible exterior part of the stern.

(c) *Recreational vessels.* For vessels documented exclusively for recreation, the name and hailing port must be marked together on some clearly visible exterior part of the hull.

(d) The markings required by paragraphs (a), (b), and (c) of this section, which may be made by the use of any means and materials which result in durable markings, must be made in clearly legible letters of the Latin alphabet or Arabic or Roman numerals not less than four inches in height.

§ 67.125 Disputes.

The OCMI for the zone in which the vessel is principally operated has final authority in any disputes concerning the permanence, durability, legibility, or placement of a vessel's markings.

Subpart J—Application for Special Qualifications for Vessel Documentation

§ 67.130 Submission of applications.

(a) All applications made under this subpart and all subsequent filings to effect documentation, except as provided in § 67.133(b), must be submitted to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located.

(b) Once a transaction under this subpart has been initiated at a documentation office, all subsequent filings for that transaction must be made at that same documentation office.

§ 67.131 Forfeited vessels.

In addition to any other submissions required by this part, the owner of a forfeited vessel applying for a Certificate of Documentation for that vessel must submit the following:

(a) Where the vessel has been adjudged forfeit, or the proceeds of the sale of the vessel have been adjudged forfeit to the Federal Government of the United States by a Federal District Court, a copy of the court order certified by an official of the court;

(b) Where the vessel was forfeited to the Federal Government of the United States under an administrative forfeiture action, an affidavit from an officer of the agency which performed the forfeiture who has personal knowledge of the particulars of the vessel's forfeiture or a Declaration of Forfeiture issued by the agency which performed the forfeiture.

§ 67.132 Special legislation.

(a) Vessels not otherwise entitled to be operated in the coastwise trade, Great Lakes trade, or in the fisheries may obtain these privileges as a result of special legislation by the Congress of the United States.

(b) In addition to any other submissions required by this part, the owner of a vessel which is entitled to engage in a specified trade because it is the subject of special legislation must include a copy of the legislation to establish the entitlement.

§ 67.133 Wrecked vessels.

(a) A vessel owner requesting a determination that the vessel is wrecked within the meaning of 46 U.S.C. app. 14 must submit the following to the Commandant:

(1) Competent and persuasive evidence of the occasion and location of the casualty. Coast Guard situation or investigation reports are acceptable as casualty evidence. Other competent and persuasive evidence may be accepted in the discretion of the Commandant.

(2) A writing setting forth the physical location of the vessel, containing a guarantee that the requesting party assumes full responsibility for all costs, liabilities, and other expenses that arise in conjunction with the services performed by the board of appraisers, and stating that at the time of documentation the vessel will be owned by a citizen of the United States.

(b) In addition to other submissions required by this part, a vessel owner applying for a Certificate of Documentation for a vessel accorded privileges by the Wrecked Vessel Statute (46 U.S.C. app. 14) must include a copy of the Commandant's determination that the vessel qualifies for documentation under the statute.

Note: The determination of the appraised salved value must be made by a board of three appraisers appointed by the Commandant. The board must determine that the repairs made upon the vessel are equal to three times the appraised salvage value. The determination of the appraised salvage value will include consideration of the fact that if the vessel is found in compliance with the Wrecked Vessel Statute it will attain coastwise and fishery privileges. The cost of the board must be borne by the applicant.

§ 67.134 Captured vessels.

In addition to other submissions required by this part, a vessel owner applying for a Certificate of Documentation for a vessel which qualifies as a captured vessel must include a copy of the court order stating that the vessel was lawfully captured and condemned as a prize.

Subpart K—Application for Documentation, Exchange or Replacement of Certificate of Documentation, or Return to Documentation; Mortgagee Consent; Validation

§ 67.141 Application procedure; all cases.

The owner of a vessel applying for an initial Certificate of Documentation, exchange or replacement of a Certificate of Documentation, or return of a vessel to documentation after deletion from documentation must:

(a) Submit the following to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located:

(1) Application for Initial Issue, Exchange, or Replacement Certificate of Documentation; or Redocumentation (form CG–1258);

(2) Title evidence, if applicable;

(3) Mortgagee consent on form CG–4593, if applicable; and

(4) If the application is for replacement of a mutilated document or exchange of documentation, the outstanding Certificate of Documentation.

(b) Upon receipt of the Certificate of Documentation and prior to operation of the vessel, ensure that the vessel is marked in accordance with the requirements set forth in subpart I of this part.

Note: Issuance of endorsements on a Certificate of Documentation may be denied if the vessel owner is the subject of an outstanding civil penalty assessed by the Coast Guard.

§ 67.143 Restriction on withdrawal of application.

A vessel owner making application pursuant to § 67.141 may not withdraw that application without mortgagee consent if a mortgage has been filed against the vessel. Consent of the mortgagee is evidenced by filing a properly completed original Consent of Mortgagee to Exchange of Certificate of Documentation or Withdrawal of Application for Documentation (form CG–4593).

§ 67.145 Restrictions on exchange; requirement and procedure for mortgagee consent.

(a) A Certificate of Documentation issued to a vessel which is the subject of an outstanding mortgage recorded pursuant to subpart Q of this part or predecessor regulations, may not be exchanged for a cause arising under §§ 67.167(a) or 67.167(b) (1) through (6) without the consent of the mortgagee, except as provided in paragraph (b) of this section.

(b) The provisions of paragraph (a) of this section do not apply to a vessel which is subject only to a mortgage filed or recorded before January 1, 1989, which had not attained preferred status as of that date.

(c) When the owner of a vessel applies for a Certificate of Documentation and the consent of the mortgagee is required under paragraph (a) of this section, the applicant must submit a properly completed original Application, Consent, and Approval for Withdrawal of Application for Documentation or Exchange of Certificate of Documentation (form CG–4593) signed by or on behalf of the mortgagee to the documentation officer at the port where application for exchange is made.

(d) If an application for exchange is made to a documentation officer at a port of documentation other than the port of record, form CG–4593 must be accompanied by a certified copy of the vessel's Abstract of Title (form CG–1332) issued at the vessel's port of record not more than 15 days prior to the date on which the application is made.

§ 67.147 Exchange of Certificate of Documentation; special procedure for change of port of record.

When the owner of a documented vessel elects or is required to change the port of record of a vessel the owner must:

(a) Comply with the requirements of § 67.141;

(b) Comply with the provisions of § 67.145, if applicable; and

(c) In accordance with § 67.301, request that the documentation officer at the vessel's present port of record forward the vessel's General Index or Abstract of Title (form CG–1332) to the new port of record assigned for the vessel in accordance with § 67.115.

Note: In the case of a simultaneous change of owner and port of record, these procedures must be followed by the new owner of the vessel.

§ 67.149 Exchange of Certificate of Documentation; vessel at sea.

(a) When exchange of a Certificate of Documentation issued to a vessel is required pursuant to subpart L of this part and the vessel is at sea, the owner may affect the exchange while the vessel is still at sea by:

(1) Complying with the requirements of § 67.141; and

(2) complying with the requirements of § 67.145, if applicable.

Note: A Certificate of Documentation is issued upon compliance with the applicable requirements, however, the requirement to mark the vessel with its new name or hailing port in accordance with subpart I of this part, if applicable, is waived until the vessel reaches its first port of call, wherever that may be.

(b) The documentation officer prepares a new Certificate of Documentation and forwards it for delivery to the vessel's next port of call. If the port of call is in the United States, the Certificate is forwarded to the nearest U.S. Coast Guard Marine Safety Office. If the port of call is in a foreign country, the Certificate is forwarded to the nearest American Consulate. The new Certificate is delivered only upon surrender of the old Certificate, which is then forwarded to the port of record of the vessel.

§ 67.151 Replacement of Certificate of Documentation; special procedure for wrongfully withheld document.

When the owner of a documented vessel alleges that the Certificate of Documentation for that vessel is being wrongfully withheld by any person the owner must:

(a) Submit to the Commandant, via the documentation officer at the port of record of the vessel assigned in accordance with § 67.115, or at the documentation office nearest where the vessel is located, a statement setting forth the reasons for the allegation; and

(b) Upon the Commandant's finding that the Certificate is being wrongfully withheld, apply for replacement of the Certificate in accordance with the requirements of § 67.141.

Subpart L—Validity of Certificates of Documentation; Renewal of Endorsement; Requirement for Exchange, Replacement, Deletion, Cancellation

§ 67.161 Validity of Certificate of Documentation.

(a) Notwithstanding any other provision of this subpart, except as provided in paragraph (b) of this section, a Certificate of Documentation but no trade endorsement thereon, issued to a vessel which is the subject of an outstanding mortgage filed or recorded in accordance with subpart Q of this part or any predecessor regulations, remains valid for purposes of:

(1) 46 U.S.C. chapter 125;

(2) 46 U.S.C. chapter 313 for an instrument filed or recorded before the date of invalidation, and an assignment or a notice of claim of lien filed after that date;

(3) Sections 9 and 37(b) of the Shipping Act, 1916 (46 U.S.C. app. 808, 835(b)); and

(4) Section 902 of the Merchant Marine Act, 1936 (46 U.S.C. app. 1242).

(b) The provisions of paragraph (a) of this section do not apply to a vessel which is subject only to a mortgage filed or recorded before January 1, 1989, which had not attained preferred status as of that date.

§ 67.163 Renewal of endorsement.

(a) *Requirement for renewal of endorsement.* Endorsements on Certificates of Documentation are valid for one year. Prior to the expiration of that year, the owner of a vessel which is not exempt from the requirement for documentation under paragraph (c) of § 67.9 must apply for renewal of the endorsement(s) by complying with paragraph (b) of this section. The owner of a vessel exempt from the requirement for documentation under paragraph (c) of § 67.9 must either:

(1) Apply for renewal of the endorsement by complying with paragraph (b) of this section; or

(2) Place the Certificate of Documentation on deposit in accordance with § 67.165.

(b) *Renewal application.* The owner of a vessel must apply for renewal of each endorsement by executing an original Notice of Expiration (CG–1280) or Final Notice After Expiration (CG–1280–B) certifying that the information contained in the Certificate of Documentation and any endorsement(s) thereon remains accurate, and that the Certificate has not been lost, mutilated, or wrongfully withheld. The completed CG–1280 or CG–1280–B must be forwarded to the documentation officer at any port of documentation.

(c) *Requirement to affix decal.* The owner must affix the renewal decal to the Certificate of Documentation. The presence of a current renewal decal is evidence that the endorsement has been renewed.

Note: Renewal of endorsements on a Certificate of Documentation may be denied if the vessel owner is the subject of an outstanding civil penalty assessed by the Coast Guard.

§ 67.165 Deposit of Certificate of Documentation.

(a) *Option for deposit in lieu of renewal of endorsement.* In lieu of renewing the endorsement(s) in accordance with § 67.163, the owner of a vessel which is exempt from the requirement for documentation under paragraph § 67.9(c) may deposit the vessel's outstanding Certificate of Documentation with the documentation officer at the vessel's port of record assigned in accordance with § 67.115.

(b) *Reporting requirement.* The owner of a vessel whose Certificate is on deposit in accordance with paragraph (a) of this section must make a written report to the documentation officer at the vessel's port of record when:

(1) Exchange of the Certificate is required upon the occurrence of one or more of the events described in § 67.167 (b), (c), or (d); or

(2) The vessel is subject to deletion from the roll of actively documented vessels upon the occurrence of one or more of the events described in § 67.171(a)(1) through (8).

(c) *Validity of document on deposit.* A Certificate of Documentation placed on deposit in accordance with paragraph (a) of this section is valid for the purposes of:

(1) 46 U.S.C. chapter 125;

(2) 46 U.S.C. chapter 313;

(3) Sections 9 and 37(b) of the Shipping Act, 1916 (46 U.S.C. app. 808, 835(b)); and

(4) Section 902 of the Merchant Marine Act, 1936 (46 U.S.C. app. 1242).

§ 67.167 Requirement for exchange of Certificate of Documentation.

(a) When application for exchange of the Certificate of Documentation is required upon the occurrence of one or more of the events described in paragraphs (b), (c), or (d) of this section, or the owner of the vessel chooses to apply for exchange of the Certificate pursuant to paragraph (e) of this section, the owner must send or deliver the Certificate to the documentation officer at the port of record of the vessel assigned in accordance with § 67.115 or at the documentation office nearest where the vessel is located, and apply for an exchange of the Certificate in accordance with subpart K of this part.

(b) A Certificate of Documentation together with any endorsement(s) thereon becomes invalid immediately, except as provided in § 67.161, when:

(1) The ownership of the vessel changes in whole or in part;

(2) The general partners of a partnership change by addition, deletion, or substitution;

(3) The port of record of the vessel changes;

(4) The State of incorporation of any corporate owner of the vessel changes;

(5) The name of the vessel changes;

(6) The hailing port of the vessel changes; or

(7) The vessel is placed under the command of a person who is not a citizen of the United States.

(c) A Certificate of Documentation together with any endorsement(s) thereon becomes invalid immediately, except as provided in § 67.161 and in paragraph (f) of this section, if the vessel is not a sea, or upon the vessel's next arrival in port anywhere in the world if the vessel is at sea, when:

(1) The gross or net tonnages or dimensions of the vessel change;

(2) Any beneficiary with an enforceable interest in a trust arrangement owning a vessel changes by addition or substitution;

(3) The trustee of a trust arrangement owning a vessel changes by addition, substitution, or deletion;

(4) A tenant by the entirety owning any part of the vessel dies;

(5) The restrictions imposed on the vessel change by addition or substitution;

(6) The legal name of any owner of the vessel changes;

(7) A self-propelled vessel becomes non-self-propelled or a non-self-propelled vessel becomes self-propelled;

(8) The endorsements for the vessel change by addition, deletion, or substitution; or

(9) A substantive or clerical error made by the issuing documentation officer is discovered.

(d) Although a Certificate of Documentation and any endorsements thereon remain valid, the owner of a documented vessel must apply for exchange of the Certificate upon an election to designate a new managing owner of the vessel in accordance with § 67.113.

(e) Although a Certificate of Documentation and any endorsement(s) thereon remain valid, the owner may apply for exchange of the Certificate if:

(1) The restrictions imposed on the vessel change by deletion; or

(2) The vessel attains a special entitlement under subpart J of this part.

(f) A Certificate of Documentation which becomes invalid pursuant to paragraph (c) of this section remains valid for the purposes of filing a new mortgage or amendment, assignment, assumption, or subordination agreement for 30 days after the date it would otherwise have become invalid.

§ 67.169 Requirement for replacement of Certificate of Documentation.

(a) The owner of a documented vessel must make application in accordance with subpart K of this part for replacement of a Certificate of Documentation which is:

(1) Lost;

(2) Mutilated; or

(3) Wrongfully withheld from the vessel owner.

(b) When application for replacement of a Certificate of Documentation is required because the Certificate has been mutilated, the existing Certificate must be physically given up to the documentation officer to whom application is made.

§ 67.171 Deletion; requirement and procedure.

(a) A Certificate of Documentation together with any endorsement(s) thereon is invalid, except as provided in § 67.161, and the vessel is subject to deletion from the roll of actively documented vessels when:

(1) The vessel is placed under foreign flag;

(2) The vessel is sold or transferred in whole or in part to a person who is not a citizen of the United States within the meaning of subpart C of this part;

(3) Any owner of the vessel ceases to be a citizen of the United States within the meaning of subpart C of this part;

(4) The owner no longer elects to document the vessel;

(5) The vessel no longer measures at least five net tons;

(6) The vessel ceases to be capable of transportation by water;

(7) The owner fails to exchange the Certificate as required by § 67.167;

(8) The owner fails to maintain the markings required by subpart I of this part;

(9) The endorsements on the Certificate are revoked because the vessel owner is the subject of an outstanding civil penalty assessed by the Coast Guard; or

(10) The owner fails to:

(i) Renew the endorsement(s) as required by § 67.163; or

(ii) Comply with the provisions of § 67.165.

(b) Where a cause for deletion arises for any reason under paragraphs (a) (1) through (6) of this section, the owner must send or deliver the original Certificate of Documentation to any documentation officer together with a statement setting forth the reason(s) deletion is required.

(c) When a Certificate of Documentation is required to be deleted because the vessel has been placed under foreign flag or has been sold or transferred in whole or in part to a non-citizen of the United States, the owner of that vessel must comply with the requirements of paragraph (b) of this section, and file:

(1) Evidence of the sale or transfer, if any; and

(2) Evidence that the Maritime Administration has consented to the sale or transfer, except for vessels identified in § 67.11(b) and vessels for which the Maritime Administration has granted approval for unrestricted sale or transfer pursuant to regulations set forth in 46 CFR part 221.

(d) A certificate evidencing deletion from U.S. documentation will be issued upon request of the vessel owner upon compliance with the applicable requirements of this subpart.

§ 67.173 Cancellation; requirement and procedure.

A Certificate of Documentation issued to a vessel together with any endorsement(s) thereon is invalid, except as provided in § 67.167, and subject to cancellation upon a determination by the Commandant or a documentation officer that the issuance of the Certificate was improper for any reason. When a Certificate is subject to cancellation, the owner of the vessel upon being notified of such requirement must send or deliver the Certificate to a documentation officer at any port of documentation. The vessel owner may submit an application for exchange in accordance with subpart K of this part to correct the error giving rise to cancellation. If the vessel for which the Certificate was cancelled was previously documented, it remains documented under the previous Certificate of Documentation, unless deleted under the provisions of § 67.171.

Note: Certificates of Documentation which have been canceled are retained at the last port of record of the vessel.

Subpart M—Miscellaneous Applications

§ 67.175 Application for new vessel determination.

(a) When a vessel has been constructed entirely of new materials, no application for a new vessel determination need be made under this section. Application for initial documentation must be made in accordance with subpart K of this part.

(b) When parts of an existing vessel have been used in the construction of a vessel and the owner wants a determination that the resulting vessel is new in accordance with this part, the owner must file with the Commandant;

(1) A builder's certification, as described in § 67.99;

(2) A written statement describing the extent to which materials from the existing vessel were used in the construction and the extent to which those materials were torn down; and

(3) Accurate sketches or blueprints of the hull and superstructure which must identify, where practicable, components of the old vessel.

§ 67.177 Required application for rebuilt determination.

(a) A vessel is rebuilt when any considerable part of its hull or superstructure is built upon or substantially altered.

(b) The owner of the vessel which has not previously permanently lost coastwise, Great Lakes, or fisheries privileges must file with the Commandant the items listed in paragraph (c) of this section if:

(1) The vessel is altered outside the United States in a manner which gives rise to a reasonable belief that the vessel is rebuilt; or

(2) A major component of the hull or superstructure not built in the United States is added to the vessel.

(c) The required submissions must consist of:

(1) A written statement outlining the work performed and naming the place where the work was performed; and

(2) Accurate sketches or blueprints describing the work performed.

Subpart N—[Reserved]

Subpart O—Filing and Recording of Instruments—General Provisions

§ 67.200 Instruments eligible for filing and recording.

Only the following listed instruments are eligible for filing and recording:

(a) Bills of sale and instruments in the nature of bills of sale;

(b) Deeds of gift;

(c) Mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof;

(d) Preferred mortgages and assignments, assumptions, supplements, amendments, subordinations, satisfactions, and releases thereof;

(e) Interlender agreements affecting mortgages, preferred mortgages, and related instruments; and

(f) Notices of claim of lien, assignments, amendments, and satisfactions and releases thereof.

§ 67.203 Restrictions on filing and recording.

(a) No instrument will be accepted for filing unless the vessel to which it pertains is the subject of:

(1) A valid Certificate of Documentation; or

(2) An application for initial documentation, exchange of Certificate of Documentation, return to documentation, or for deletion from documentation, which is in substantial compliance with the applicable regulations, submitted at the port where the filing is made.

(b) An instrument identified as eligible for filing and recording under § 67.200 may not be filed and recorded if it bears a material alteration.

(c) An instrument identified as eligible for filing and recording under § 67.200 (a) or (b) may not be filed and recorded if any vendee or transferee under the instrument is not a citizen of the United States as defined in Section 2 of the Shipping Act, 1916, (46 U.S.C.

app. 802) unless the Maritime Administration has consented to the grant to a non-citizen made under the instrument.

(d) The restriction imposed by paragraph (c) of this section does not apply to a bill of sale or deed of gift conveying an interest in a vessel which was neither documented nor last documented pursuant to these regulations or any predecessor regulations thereto at the time the instrument was executed, nor to an instrument conveying an interest in a vessel identified in § 67.11(b).

(e) An instrument identified as eligible for filing and recording under § 67.200(c) may not be filed or recorded if the mortgagee or assignee is not a person qualifying as a citizen of the United States as defined in the Shipping Act, 1916, as amended, (46 U.S.C. app. Chapter 23) or a trustee as defined in 46 U.S.C. 31328, unless the Maritime Administration has consented to the grant to a non-citizen made under the instrument. This restriction does not apply to an instrument conveying an interest in a vessel identified in § 67.11(b).

(f) An instrument identified as eligible for filing and recording under § 67.200(d) may not be filed or recorded if the mortgagee or assignee is not a person described in 46 U.S.C. 31322(a)(1)(D). This restriction does not apply to an instrument conveying an interest in a vessel identified in § 67.11(b).

§ 67.205 Requirement for vessel identification.

(a) Every instrument presented for filing and recording must contain sufficient information to clearly identify the vessel(s) to which the instrument relates.

(b) Instruments pertaining to vessels which have been documented must contain the vessel's name and official number, or other unique identifier.

(c) Vessels which have never been documented must be identified by one of the following:

(1) The vessel's Hull Identification Number assigned in accordance with 33 CFR 181.25; or

(2) Other descriptive information, which clearly describes the vessel. Such information may include length, breadth, depth, year of build, name of manufacturer, and any numbers which may have been assigned in accordance with 33 CFR part 173.

§ 67.207 Requirement for date and acknowledgment.

(a) Every instrument presented for filing and recording must:

(1) Bear the date of its execution; and

(2) Contain an acknowledgment.

(b) No officer or employee of the Coast Guard is authorized to take such acknowledgments unless the instrument is executed on behalf of the Federal Government of the United States.

§ 67.209 Required number of copies.

All instruments presented for filing and recording must be presented in duplicate; at least one copy must bear original signatures.

§ 67.211 Requirement for citizenship declaration.

(a) Instruments in the nature of a bill of sale or deed of gift, mortgages, and assignments of mortgages conveying an interest in a documented vessel are ineligible for filing and recording unless accompanied by a declaration of citizenship, except as provided in paragraph (c) and (d) of this section.

(b) Citizenship declarations must be executed on the form prescribed by the Maritime Administration in 46 CFR part 221. These forms are available from all Coast Guard documentation offices and from the Vessel Transfer and Disposal Officer (MAR–745.1), Maritime Administration, United States Department of Transportation, Washington, DC 20590.

(c) The requirement for presentation of a citizenship declaration does not apply to a transaction conveying an interest in a vessel:

(1) Described in 46 CFR 221.11(b)(1)(i) through (iv);

(2) To a person making application for documentation; or

(3) To an entity of the Federal Government of the United States or of a State or political subdivision thereof, or a corporate entity which is an agency of any such government or political subdivision.

(d) The requirement for presentation of a citizenship declaration is waived when the instrument(s) presented for filing effects a transfer for which:

(1) The Maritime Administration has given general approval in 46 CFR part 221; or

(2) Written approval of the Maritime Administrator has been obtained in accordance with 46 CFR part 221.

(e) If the transfer of interest is one which requires written approval of the Maritime Administrator in accordance with rules in 46 CFR part 221, evidence of that approval must be presented for filing with the instrument effecting the transfer of interest.

Note: If the grantee(s) of an ownership interest in a vessel described in paragraphs (c)(1) or (d) of this section do(es) not make application for documentation, a declaration of citizenship may be required in order to ensure that the vessel so conveyed retains any coastwise or Great Lakes privileges to which it may be entitled.

§ 67.213 Place of filing and recording.

(a) Instruments submitted for filing and recording at the same time that the vessel owner applies for issuance of or a change to a Certificate of Documentation must be submitted to the documentation officer where the application is made; mortgages filed in conjunction with such applications may be filed at the same port at any time before the Certificate is issued or changed. All other instruments must be submitted for filing and recording at the port of record of the vessel.

(b) All instruments are recorded at the port of record of the vessel(s) affected by the instrument.

(c) Where the port of record of a vessel is being changed, recording is effected at the new port of record.

§ 67.215 Date and time of filing.

(a) An instrument is deemed filed at the actual date and time at which the instrument is received by the documentation officer at the port of documentation where submitted for filing, except as provided in paragraph (b) of this section. Any materials submitted to supplement an instrument after the instrument is filed are deemed part of the original filing and relate back to the date and time of that filing.

(b) If filing of an instrument is subject to termination in accordance with § 67.217(a) and a new instrument is filed as a substitute for the original instrument, the filing of the original instrument will be terminated in accordance with § 67.217(c) and the substitute instrument will be considered a new filing. The substitute instrument will be deemed filed at the actual time and date it is received by the documentation officer at the port of documentation where the original instrument was filed.

§ 67.217 Termination of filing and disposition of instruments.

(a) The filing of an instrument is subject to termination if:

(1) It is determined that the instrument cannot be recorded because the instrument itself is not in substantial compliance with the applicable regulations in this part;

(2) The filing was not made in compliance with the requirements of § 67.213;

(3) The Application for Initial Issue, Exchange, or replacement of Certificate of Documentation; or Redocumentation (form CG–1258) submitted with the instrument(s) was not made in

substantial compliance with the applicable regulations of this part;

(4) The owner of the vessel submits an Application, Consent and Approval for Withdrawal of Application for Documentation or Exchange of Certificate of Documentation (form CG–4593), with mortgagee consent, if applicable; or

(5) Another instrument is filed evidencing satisfaction or release of the subject instrument and the subject instrument is one described in subpart Q of this part.

(b) Ninety days prior to terminating the filing pursuant to a reason listed in paragraphs (a) (1), (2), or (3) of this section, the documentation officer at the port where the filing was made will send written notice detailing the reasons the filing is subject to termination to the following person(s) and any agent known to be acting on behalf of the same:

(1) The applicant for documentation, if a bill of sale, instrument in the nature of a bill of sale, or a deed of gift;

(2) The mortgagee or assignee, if a mortgage or assignment or amendment thereof;

(3) The claimant, if a notice of claim of lien; or

(4) The lender first named in an interlender agreement affecting a mortgage, preferred mortgage, or related instrument.

(c) If the reason(s) which subject the filing to termination remain uncorrected for a period of 90 days after the notice described in paragraph (b) of this section is sent, or upon receipt of the request for withdrawal described in paragraph (a)(4) of this section, or satisfaction or release as described in paragraph (a)(5) of this section, the instrument will be returned to either:

(1) The applicant for documentation, if a bill of sale, instrument in the nature of a bill of sale, or a deed of gift;

(2) The mortgagee or assignee, if a mortgage or assignment or amendment thereof;

(3) The claimant, if a notice of claim of lien;

(4) The lender first named in an interlender agreement affecting a mortgage, preferred mortgage, or related instrument; or

(5) An agent for any appropriate party, provided that the agent has filed with the Coast Guard a writing bearing the original signature of the appropriate party(ies) clearly identifying the instrument(s) being returned and stating that the instrument(s) may be returned to the agent.

Subpart P—Filing and Recording of Instruments—Bills of Sale and Related Instruments

§ 67.220 Requirements.

An instrument in the nature of a bill of sale or a deed of gift must:

(a) Meet all of the requirements of subpart O of this part;

(b) Be signed by or on behalf of all the seller(s) or donor(s); and

(c) Recite the following:

(1) The name(s) and address(es) of the seller(s) or donor(s) and the interest in the vessel held by the seller(s) or donor(s); and

(2) The name(s) and address(es) of the buyer(s) or donee(s) and the interest in the vessel held by each buyer or donee.

§ 67.223 Filing limitation.

An instrument presented for filing and recording under this subpart may be filed only in conjunction with an application for initial documentation or return to documentation of the vessel or with an application for a change to or deletion of the vessel's outstanding Certificate of Documentation.

Subpart Q—Filing and Recording of Instruments—Mortgages, Preferred Mortgages, and Related Instruments

§ 67.231 General requirements; optional application for filing and recording.

(a) A mortgage or related instrument presented for filing and recording must meet all of the requirements of subpart O of this part in addition to the pertinent section(s) of this subpart.

(b) All instruments supplemental to mortgages must recite information which clearly identifies the mortgage to which the supplemental instrument is applicable. Such information will normally consist of the book and page where that mortgage is recorded and the date and time of filing. If the submission of the supplemental instrument is contemporaneous with submission of the mortgage, the information should include the names of all parties to the mortgage, the date of the mortgage, and the amount of the mortgage.

(c) An Optional Application for Filing (CG–5542) may be attached to a mortgage or related instrument. If form CG–5542 is properly completed with all information required for indexing the instrument and the signature(s) specified thereon, the instrument to which it is attached will be filed and recorded with no further review.

§ 67.233 Restrictions on recording mortgages, preferred mortgages, and related instruments.

(a) A mortgage or assumption of mortgage which otherwise meets the requirements of this subpart is nonetheless not eligible for filing and recording if:

(1) The mortgagor or assuming party(ies) did not actually hold legal title to the interest in the vessel being mortgaged or covered by the assumption at the time of filing of the mortgage or assumption; or

(2) If the vessel(s) which the mortgage cover(s) is (are) not documented or not the subject of an application for documentation.

(b) Except as provided in paragraph (c) of this section, a mortgage submitted for filing and recording as a preferred mortgage or supplemental instrument thereto which otherwise meets the requirements of this subpart, is eligible for filing and recording only if it results in a mortgage interest being held by:

(1) A State;

(2) The United States Government;

(3) A federally insured depository institution which has not been disapproved by the Secretary;

(4) An individual who is a citizen of the United States;

(5) A person qualifying as a citizen of the United States as defined in 46 U.S.C. app. 802; or

(6) A person approved by the Secretary.

(c) The requirements of paragraph (b) of this section do not apply to the mortgagee of a vessel identified in § 67.11(b) or to any other vessel to which the Maritime Administration has given approval for unrestricted transfer pursuant to regulations in 46 CFR part 221.

Note: Disapproval of a federally insured depository institution as a preferred mortgagee under § 67.233(b)(3), or approval of a person as a preferred mortgagee under § 67.233(b)(6) is determined by the Maritime Administration pursuant to regulations in 46 CFR part 221.

§ 67.235 Requirements for mortgages.

(a) A mortgage presented for filing and recording must:

(1) Be signed by or on behalf of each mortgagor; and

(2) Recite the following:

(i) The name and address of each mortgagor and the interest in the vessel held by the mortgagor(s);

(ii) The name and address of each mortgagee and the interest in the vessel granted by the mortgage; and

(iii) The amount of the direct or contingent obligations that is or may become secured by the mortgage, excluding interest, expenses, and fees. The amount may be recited in one or more units of account as agreed to by the parties.

(b) A mortgage submitted for filing and recording as a preferred mortgage must cover the whole of a vessel.

(c) A mortgage which secures more than one vessel may, at the option of the parties, provide for separate discharge of such vessels.

§ 67.237 Requirements for assignments of mortgages.

An assignment of mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each assignor; and

(b) Recite the following:

(1) The name and address of each assignor and the interest in the mortgage held by the assignor(s); and

(2) The name and address of each assignee and the interest in the mortgage granted to the assignee(s).

§ 67.239 Requirements for assumptions of mortgages.

An assumption of mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each original mortgagor, each mortgagee, and each assuming party; and

(b) Recite the following:

(1) The name and address of each original mortgagor and the interest in the vessel mortgaged; and

(2) The name and address of each assuming party and the interest in the mortgage assumed.

§ 67.241 Requirements for amendments of or supplements to mortgages.

An amendment of or supplement to a mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each mortgagor and each mortgagee; and

(b) Recite the following:

(1) The name and address of each mortgagor and mortgagee; and

(2) The nature of the change effected by the instrument.

§ 67.243 Requirements for instruments subordinating mortgages.

An instrument subordinating a mortgage presented for filing and recording must:

(a) Be signed by or on behalf of each mortgagee whose mortgage is being subordinated; and

(b) Recite the following:

(1) The name and address of each mortgagee whose mortgage is being subordinated; and

(2) The name and address of each party holding an interest in the instrument subordinating the mortgage.

§ 67.245 Requirements for interlender agreements.

An interlender agreement between multiple mortgagees must:

(a) Be signed by or on behalf of all mortgagees who are party to the interlender agreement; and

(b) Recite the names and addresses of all parties to the interlender agreement.

Subpart R—Filing and Recording of Instruments—Notices of Claim of Lien and Supplemental Instruments

§ 67.250 General requirements.

(a) A notice of claim of lien or supplemental instrument thereto submitted for filing and recording must meet all of the requirements of subpart O of this part.

(b) An instrument assigning or amending a notice of claim of lien must recite information which clearly identifies the notice of claim of lien being assigned or amended. Such information will normally consist of the book and page where the notice of claim is recorded and the date and time of filing. If the submission of the assignment or amendment is contemporaneous with submission of the notice of claim of lien, the information should include the name of each original claimant, the date of the notice of claim, and the amount of the claim and other information to adequately identify the notice of claim of lien being assigned or amended.

§ 67.253 Requirements for notices of claim of lien.

A notice of claim of lien must:

(a) Be signed by or on behalf of each claimant; and

(b) Recite the following:

(1) The name and address of each claimant;

(2) The nature of the lien claimed;

(3) The date on which the lien was established; and

(4) The amount of the lien claimed.

§ 67.255 Restrictions on filing and recording.

A notice of claim of lien is not entitled to filing and recording unless the vessel against which the lien is claimed is covered by a preferred mortgage filed or recorded in accordance with subpart Q of this part or predecessor regulations thereto and which is outstanding at the time the lien is filed and recorded.

§ 67.257 Requirements for assignments of notices of claim of lien.

An assignment of a notice of claim of lien must:

(a) Be signed by or on behalf of each original claimant or last assignee of record; and

(b) Recite the following:

(1) The name and address of each claimant; and

(2) The name and address of each assignee and the interest in the claim being assigned.

§ 67.259 Requirements for amendments to notice of claim of lien.

An amendment to notice of claim of lien presented for filing and recording must:

(a) Be signed by or on behalf of each original claimant or last assignee of record; and

(b) Recite the nature of the change being effected by the instrument.

Subpart S—Removal of Encumbrances

§ 67.261 General requirements.

The filing of an instrument against a vessel in accordance with subparts Q or R of this part may be terminated and, if recorded, removed from the record of that vessel by the filing of:

(a) A court order, affidavit, or Declaration of Forfeiture described in § 67.263; or

(b) A satisfaction or release instrument described in § 67.265 which meets the requirements of this part for filing and recording.

§ 67.263 Requirement for removal of encumbrances by court order, affidavit, or Declaration of Forfeiture.

The encumbrances described in subparts Q and R of this part are removed from the record upon filing of:

(a) A copy of the order from a court of competent jurisdiction certified by an official of the court declaring title to the vessel to be free and clear, or declaring the encumbrance to be of no effect, or ordering the removal of the encumbrance from the record;

(b) A copy of the order from a Federal District Court in an *in rem* action certified by an official of the court requiring the free and clear sale of the vessel at a Marshal's sale and, where issued under local judicial procedures, a copy of the order confirming such sale certified by an official of the court;

(c) A copy of an order from a Federal District Court certified by an official of the court declaring the vessel itself or the proceeds of its sale to be forfeited to the Federal Government of the United States for a breach of its laws; or

(d) Where the vessel was forfeited under an administrative forfeiture action to the Federal Government of the United States, either an affidavit from an officer of the agency which performed the forfeiture, who has personal knowledge of the particulars of the vessel's forfeiture, or a Declaration of Forfeiture issued by the agency which performed the forfeiture.

§ 67.265 Requirements for instruments evidencing satisfaction or release.

An instrument satisfying or releasing a mortgage, a notice of claim of lien, or a preferred mortgage presented for filing and recording must:

(a) Meet all the requirements of subpart O of this part;

(b) Be signed by or on behalf of:

(1) Each mortgagee if a mortgage; or

(2) Each claimant if a notice of claim of lien; and

(c) Recite the following:

(1) The name of each mortgagor, if any, and the name of each mortgagee or claimant;

(2) The amount of the mortgage or claim of lien; and

(3) Information which clearly identifies the mortgage or claim of lien being satisfied or released. Such information will normally consist of the book and page where that mortgage or claim of lien is recorded. If the recording information cannot be provided because the satisfaction or release is being submitted prior to recording of the mortgage or claim of lien, the instrument must recite other information sufficient to clearly identify the encumbrance being satisfied or released.

Subpart T—General Index, Abstracts of Title, and Certificates of Ownership

§ 67.301 Forwarding of General Index.

Upon application by a vessel owner for change of port of record, the documentation officer at the existing port of record of the vessel will forward the General Index or Abstract of Title (form CG–1332) of the vessel to the new port of record.

§ 67.303 Issuance of Abstract of Title.

Any person may request the documentation officer at the vessel's port of record to issue a General Index or Abstract of Title (form CG–1332) for a vessel.

§ 67.305 Issuance of Certificate of Ownership.

Any person may request the documentation officer at the vessel's port of record to issue a Certificate of Ownership (form CG–1330) for a vessel.

Subpart U—Special Provisions

§ 67.311 Alteration of Certificate of Documentation.

Except for affixing a new address label in accordance with the direction of a documentation officer or a renewal decal issued in accordance with § 67.163, no person other than a documentation officer shall intentionally alter a Certificate of Documentation.

§ 67.313 Requirement to have Certificate of Documentation on board.

(a) The person in command of a documented vessel must have on board that vessel the original Certificate of Documentation currently in effect for that vessel.

(b) The requirement of paragraph (a) of this section does not apply:

(1) To non-self-propelled vessels not engaged in foreign trade;

(2) When the Certificate of Documentation has been submitted to a documentation officer for exchange in accordance with § 67.167 (d) or (e); or

(3) When the vessel is in storage or out of the water.

§ 67.315 Requirement to produce Certificate of Documentation.

(a) The person in command of a documented vessel must produce the original Certificate of Documentation currently in effect for that vessel upon the demand of any person acting in an official public capacity.

(b) The requirement of paragraph (a) of this section does not apply:

(1) To non-self-propelled vessels not engaged in foreign trade;

(2) When the Certificate of Documentation has been submitted to a documentation officer for exchange in accordance with § 67.167 (d) or (e); or

(3) When the vessel is in storage or out of the water.

§ 67.317 Requirement to renew endorsements on the Certificate of Documentation.

(a) Except as provided in paragraph (b) of this section, the owner of a documented vessel must annually renew each endorsement upon the current Certificate of Documentation for that vessel in accordance with § 67.163.

(b) The requirement of paragraph (a) of this section does not apply to Certificates of Documentation placed on deposit in accordance with § 67.165.

§ 67.319 Requirement to report change in vessel status and surrender Certificate of Documentation.

The owner of a documented vessel must immediately report any change in vessel status which causes any Certificate of Documentation to become invalid under subpart L of this part and which must be exchanged, replaced, deleted, or canceled, to a documentation officer at any port of documentation. The outstanding Certificate must be surrendered in accordance with the requirements of subparts K and L of this part.

§ 67.321 Requirement to report change of address of managing owner.

The owner of a documented vessel shall immediately report any change in the address of the managing owner.

§ 67.323 Operation without documentation.

No vessel which is required by § 67.7 to be documented may engage in unlimited coastwise trade, the Great Lakes trade, or the fisheries without being documented in accordance with the requirements of this part.

§ 67.325 Violation of endorsement.

A vessel may not be employed in any trade other than a trade endorsed upon the Certificate of Documentation issued for that vessel. A vessel documented exclusively for recreation may not be used for purposes other than pleasure.

§ 67.327 Operation under Certificate of Documentation with invalid endorsement.

Except for vessels identified in § 67.9, no vessel may be operated under a Certificate of Documentation with endorsements which have become invalid under subpart L of this part.

§ 67.329 Unauthorized name change.

The owner of a documented vessel may not change or allow the change of the name of that vessel without exchanging the vessel's Certificate of Documentation in accordance with subpart K of this part. The new name of the vessel must be marked on the vessel upon receipt of the new Certificate of Documentation.

§ 67.331 Improper markings.

The owner of a documented vessel shall not permit the operation of that vessel unless it is marked in accordance with subpart I of this part.

Subpart V—[Reserved]

Subpart W—[Reserved]

Subpart X—[Reserved]

Subpart Y—[Reserved]

§ 67.500 Applicability.

(a) This subpart specifies documentation services provided for vessels for which fees are applicable. Fees are contained in Table 67.550.

(b) There is no fee for the annual renewal of endorsements upon the Certificate of Documentation, unless renewal is late or renewal is at a port other than the port of record.

(c) There is no fee for replacement of a Certificate of Documentation due to a wrongful withholding.

(d) The Commandant (G–MVI) may waive collection of fees applicable

under this subpart for a service provided to a Federal agency when the fee would be directly paid with federally-appropriated funds by a Federal agency acting in its own behalf.

(e) Application fees under this subpart are not refundable.

§ 67.501 Application for Certificate of Documentation.

An application fee is charged for an initial Certificate of Documentation in accordance with subpart K of this part. If application is made for any trade endorsement, the applicable fee under § 67.511 will be charged in addition to the application fee for the Certificate. The application fee does not include the fee under § 67.527 for filing and recording any required bills of sale or instruments in the nature of a bill of sale, or the application fee under § 67.519 for waivers in accordance with §§ 67.89 or 67.101.

§ 67.503 Application for exchange or replacement of a Certificate of Documentation.

(a) An application fee is charged for exchange or the simultaneous exchange and replacement of a Certificate of Documentation in accordance with subpart K of this part. Only a single application fee will be assessed when two or more reasons for exchange occur simultaneously. If application is made for any trade endorsement, the applicable fee under § 67.511 will be charged in addition to the application fee for the exchange or replacement.

(b) The application fee for exchange or replacement does not apply to:

(1) Endorsement of a change in the owner's address;

(2) Exchange or replacement solely by reason of clerical error on the part of a documentation officer; or

(3) Deletion of a vessel from documentation.

§ 67.505 Application for return of vessel to documentation.

An application fee is charged for a return of a vessel to documentation after deletion in accordance with subpart K of this part. If application is made for any trade endorsement, the applicable fee under § 67.511 will be charged in addition to the application fee for return to documentation.

§ 67.507 Application for replacement of lost or mutilated Certificate of Documentation.

An application fee is charged for replacement of a lost or mutilated Certificate of Documentation in accordance with subpart K of this part.

§ 67.509 Application for approval of exchange of Certificate of Documentation requiring mortgagee consent.

An application fee is charged for approval of exchange of a Certificate of Documentation requiring mortgagee consent in accordance with subpart K of this part.

§ 67.511 Application for trade endoresement(s).

(a) *Coastwise or Great Lakes endorsement.* An application fee is charged for a coastwise or a Great Lakes endorsement, or both, in accordance with subpart B of this part.

(b) *Coastwise Bowaters endorsement.* An application fee is charged for a coastwise Bowaters endorsement in accordance with 46 CFR part 68.

(c) *Fishery endorsement.* An application fee is charged for a fishery endorsement in accordance with subpart B of this part.

(d) *Registry or recreational endorsement.* There is no application fee for a registry or recreational endorsement, or both.

(e) When multiple trade endorsements are requested on the same application, only the single highest applicable endorsement fee will be charged.

§ 67.513 Application for evidence of deletion from documentation.

An application fee is charged for evidence of deletion from documentation in accordance with subpart L of this part.

§ 67.515 Application for renewal at port other than port of record.

An application fee is charged for renewal in accordance with subpart L of this part at a port other than the vessel's port of record.

§ 67.517 Application for late renewal.

An application fee is charged for a late renewal in accordance with subpart L of this part.

§ 67.519 Application for waivers.

An application fee is charged for waiver of original build evidence in accordance with subpart F of this part, or for waiver of bill of sale eligible for filing and recording in accordance with subpart E of this part. In cases where more than one waiver is required, each wavier application is subject to this fee.

§ 67.521 Application for new vessel determination.

An application fee is charged for a new vessel determination in accordance with subpart M of this part.

§ 67.523 Application for wrecked vessel determination.

An application fee is charged for a determination of whether a vessel is entitled to coastwise, Great Lakes, and fisheries privileges as a result of having been wrecked in waters adjacent to the United States and repaired in accordance with subpart J of this part. This fee is in addition to the cost associated with the vessel appraisals.

§ 67.525 Application for determination of rebuild.

An application fee is charged for a determination of whether a vessel has been rebuilt in accordance with subpart M of this part. This fee will be assessed for each request for either a preliminary or final determination submitted in writing by the vessel owner or the vessel owner's representative.

§ 67.527 Application for filing and recording bills of sale and instruments in the nature of a bill of sale.

An application fee is charged for filing and recording bills of sale and instruments in the nature of a bill of sale in accordance with subpart P of this part.

§ 67.529 Application for filing and recording mortgages and related instruments.

An application fee is charged for filing and recording mortgages and related instruments in accordance with subpart Q of this part.

§ 67.531 Application for filing and recording notices of claim of lien.

An application fee is charged for filing and recording notices of claim of lien in accordance with subpart R of this part.

§ 67.533 Application for Certificate of Compliance.

An application fee is charged for a Certificate of Compliance to be issued in accordance with regulations set forth in 46 CFR part 68.

§ 67.535 Issuance of Abstract of Title.

An issuance fee is charged for a General Index or Abstract of Title in accordance with subpart T of this part.

§ 67.537 Issuance of Certificate of Ownership.

An issuance fee is charged for a Certificate of Ownership in accordance with subpart T of this part. A supplemental issuance fee is charged for a Certificate of Ownership attachment for each additional vessel with the same ownership and encumbrance information.

§ 67.539 Copies of instruments and documents.

The fee charged for furnishing a copy of any instrument is calculated in accordance with 49 CFR 7.95.

§ 67.550 Fee table.

The fees charged under subpart Y are as set forth in Table 67.550.

TABLE 67.550.—FEES

Activity	Reference	Fee
Applications:		
Initial certificate of documentation	Subpart K	$133.00
Exchange of certificate of documentation	do	84.00
Return of vessel to documentation	do	84.00
Replacement of lost or mutilated certificate of documentation	do	50.00
Approval of exchange of certificate of documentation requiring mortgagee consent	do	24.00
Trade endorsement(s):		
Coastwise endorsement	Subpart B	29.00
Coastwise Bowaters endorsement	46 CFR part 68	29.00
Great Lakes endorsement	Subpart B	29.00
Fishery endorsement	do	12.00
Registry endorsement	do	none
Recreational endorsement	do	none
Note: When multiple trade endorsements are requested on the same application, only the single highest applicable endorsement fee will be charged, resulting in a maximum endorsement fee of $29.00		
Evidence of deletion from documentation	Subpart L	15.00
Renewal at port other than port of record	Subpart L	15.00
Late renewal fee	do	5.00
Waivers:		
Original build evidence	Subpart F	15.00
Bill of sale eligible for filing and recording	Subpart E	15.00
Miscellaneous applications:		
Wrecked vessel determination	Subpart J	555.00
New vessel determination	Subpart M	166.00
Rebuild determination—preliminary or final	do	450.00
Filing and recording:		
Bills of sale and instruments in nature of bills of sale	Subpart P	18.00
Mortgages and related instruments	Subpart Q	14.00
Notice of claim of lien and related instruments	Subpart R	18.00
Certificate of compliance:		
Certificate of compliance	46 CFR part 68	55.00
Miscellaneous:		
Abstract of Title	Subpart T	25.00
Certificate of ownership	do	125.00
Attachment for each additional vessel with same ownership and encumbrance data	do	10.00
Copy of instrument or document	(2)	(2)

[1] Per page.
[2] Fees will be calculated in accordance with 49 CFR 7.95.

APPENDIX A TO PART 67.—PORTS OF DOCUMENTATION

Regional port of documentation	Location	CG district served
Boston, MA	USCG Marine Safety Office, Boston, MA	First District: Boston, Portland, ME, Providence Marine Inspection Zones.
New York, NY	USCG Marine Inspection Office, New York, NY	First District: New York Marine Inspection Zone.
St. Louis, MO	USCG Marine Safety Office, St. Louis, MO	Second District: All.
Norfolk, VA	USCG Marine Safety Office, Hampton Roads, Norfolk, VA.	Fifth District: Hampton Roads, Baltimore, Wilmington Marine Inspection Zones.
Philadelphia, PA	USCG Marine Safety Office, Philadelphia, PA	Fifth District: Philadelphia, Marine Inspection Zone.
Miami, FL	USCG Marine Safety Office, Miami, FL	Seventh District: All.
New Orleans, LA	USCG Marine Safety Office, New Orleans, LA	Eighth District: All except Texas and New Mexico.
Houston, TX	USCG Marine Safety Office, Houston, TX	Eighth District: Texas and Mexico only.
Cleveland, OH	Commander, Ninth Coast Guard District (m)	Ninth District: All.
Los Angeles, CA	USCG Marine Safety Office, Long Beach, CA	Eleventh District: Los Angeles-Long Beach Marine Inspection Zone.
San Francisco, CA	USCG Marine Safety Office, San Francisco, CA	Eleventh District: San Francisco Marine Inspection Zone.
Portland, OR	USCG Marine Safety Office, Portland, OR	Thirteenth District: Oregon or Idaho.
Seattle, WA	USCG Marine Safety Office, Seattle, WA	Thirteenth District: Montana or Washington, Fourteenth District: All.
Juneau, AK	USCG Marine Safety Office, Juneau, AK	Seventeenth District: All.

Dated: November 4, 1993.

J. W. Kime,

Admiral, U.S. Coast Guard Commandant.

[FR Doc. 93-27840 Filed 11-12-93; 8:45 am]

BILLING CODE 4910-14-M

federal register

Monday
November 15, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

Coastal Barrier Improvement Act; Completion of Boundary Modification Process; Notice

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Coastal Barrier Improvement Act; Completion of Boundary Modification Process

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: The Department of the Interior, through the Fish and Wildlife Service (Service), has completed consideration of State and local government requests for minor and technical modifications to the boundaries of Coastal Barrier Resource System (System) units. It has also complied with the requests of State and local governments, and qualified organizations, to add "otherwise protected areas" under their jurisdiction to the System. This is consistent with the provisions of Section 4(e) of the Coastal Barrier Improvement Act (CBIA) (Pub. L. 101–591) and with the guidelines published in the **Federal Register** on June 6, 1991 (56 FR 26304–26312). The Service provided copies of correspondence requesting modifications and its responses to the Committee on Merchant Marine and Fisheries in the House of Representatives and to the Committee on the Environment and Public Works in the Senate.

The Service's responses to requests for modifications were also provided to the appropriate official in each State, county, or equivalent jurisdiction in which a System unit recommended for modification is located. The Service submitted its preliminary responses to requested boundary modifications on April 24, 1992. The appropriate officials were to respond no later than May 30, 1992.

In addition, this notice provides information on the modification of boundaries of two areas in North Carolina and one in Virginia, as required by section 303 of Public Law 102–440, October 23, 1992.

FOR FURTHER INFORMATION CONTACT: Ms. Linda Kelsey, U.S. Fish and Wildlife Service, Division of Habitat Conservation, 400 Arlington Square, Department of the Interior, Washington, DC 20240, (703) 358–2201.

SUPPLEMENTARY INFORMATION: Section 4(e)(1)(B) of the Coastal Barrier Improvement Act of 1990 (CBIA) requires the Department of the Interior to revise maps of the Coastal Barrier Resources System (System) to depict accepted minor and technical boundary modifications and election of "otherwise protected areas" to the System. This process was to be completed by November 16, 1992, with publication of those changes in the **Federal Register**. As required, the Fish and Wildlife Service has provided written justification for denial of requested minor and technical modifications to the appropriate officials requesting modifications. Section 303 of Public Law 102–440 requires the Department of the Interior to revise the maps of VA–60P, NC–01P and NC–05P.

Copies of the revised maps have been filed with the Committee on Merchant Marine and Fisheries, and the Committee on Banking, Finance and Urban Affairs of the House of Representatives, and the Committee on Environment and Public Works of the Senate. Copies of these same maps have been distributed to the Chief Executive Officer (or representative) of (a) each State and county (or equivalent jurisdiction) in which a revised map of a System unit is located, (b) each State coastal zone management agency in those States which have a coastal zone management plan approved and (c) each appropriate Federal agency. Copies are also available for inspection through the U.S. Fish and Wildlife Service of the Department of the Interior and appropriate Regional Offices and Field Offices (see addresses in appendix A). Interested organizations and individuals may purchase System maps (including revised maps which are indicated in **bold type**) from the U.S. Geological Survey (see appendix B).

The prohibition on Federal assistance for new development activities, including Federal flood insurance, for new areas added to the System becomes effective on the date of publication of this notice. The boundary revisions to VA–60, NC–01 and NC–05P as required by Public Law 102–440 became effective on October 23, 1992.

Coastal Barrier Resources System Revised Maps

The Service has made the following modifications to units of the System and transferred "otherwise protected areas" to the System as requested.

MASSACHUSETTS

D01 Little Compton Ponds. This unit straddles the Massachusetts/Rhode Island boundary. Massachusetts has requested that the part of the unit in Massachusetts be renumbered as C35 and renamed Richmond/Cockeast Ponds. There is no boundary modification to this unit.

RHODE ISLAND

RI–02P Sapowet Point. This "otherwise protected area" is added to RI–02.

D02BP Prudence Island Complex. The Providence Point and Gull Point segments of this "otherwise protected area" are added to D02B.

RI–06P Rumstick Point. This "otherwise protected area" is added to D02B.

RI–12P East Matunick Beach. Part of this "otherwise protected area" is transferred to the System as RI–12; the balance will remain "otherwise protected".

D05P East Beach. Part of this "otherwise protected area" is transferred to D05; the balance will remain "otherwise protected".

D08/D08P Napatree. D08 overlaps the Connecticut/Rhode Island border. The Rhode Island portion of D08 was formerly included on the Connecticut map called D08/D08P Napatree. The Rhode Island portion of this unit has been made into a separate map called D08/D08P Napatree to distinguish it from the Connecticut portion. The Connecticut portion has been made into a separate map and redesignated as CT–00 Barn Island. The portions of D08 and D08P that were depicted on the map called RI–13P, D07, D08, & D08P Misquamicut Beach, Mascheug Ponds, and Napatree have been transferred to the Rhode Island map of Napatree. There is no boundary modification to this unit.

D09P Block Island. Part of this "otherwise protected area" is transferred to D09; the balance will remain "otherwise protected".

CONNECTICUT

D08P Napatree. This "otherwise protected area" is added to the Connecticut portion of unit D08, which has been redesignated as CT–00 and renamed Barn Island. A separate map has been made for the Rhode Island portion of D08 and is called D08/D08P Napatree.

CT–02P Bluff Point. This "otherwise protected area" is added to the System as CT–02, with the exception of the area owned by the Connecticut Department of Transportation, which will remain an "otherwise protected area".

E02 Goshen Cove. The small area between the two segments of the unit is added to clarify the boundary.

CT–09 Harbor View. The northwest boundary is modified to clearly

depict the break between development and non-development.

E05P Hammonasset Point. The state-owned "otherwise protected area" is added to E05. The area in private ownership will remain designated as E05P, an "otherwise protected area".

CT–10P Hammonasset Beach. This "otherwise protected area" is added to the System as CT–10 and redesignated as Tom's Creek.

E07P Milford Point. All of the state-owned "otherwise protected area" is added to E07. The area in private ownership will remain designated as E07P, an "otherwise protected area".

NEW YORK

NY–10P Lloyd Point. This "otherwise protected area" is added to the System as NY–10.

NY–12P Centerport Harbor. This "otherwise protected area" is added to the System as NY–12.

NY–13P Hobart Beach. This "otherwise protected area" is added to the System as NY–13.

NY–14P Crab Meadow. This "otherwise protected area" is added to the System as NY–14.

NY–15P Sunken Meadow. This "otherwise protected area" is added to the System as NY–15.

NY–16P Stony Brook Harbor. This "otherwise protected area" is added to the System as NY–16.

NY–17P Cedar Beach. That part of the "otherwise protected area", plus additional areas owned by the Village of Port Jefferson on the west and northwest sides of the unit, are added to the System as NY–17; the balance will remain an "otherwise protected area".

NY–18P Wading River. This "otherwise protected area" is added to the System as NY–18.

NY–19P Baiting Hollow. This "otherwise protected area" is added to the System as NY–19.

NY–25P Orient Beach. This "otherwise protected area" is added to the System as NY–25.

NY–34P East Creek. This "otherwise protected area" is added to the System as NY–34.

NY–35P Indian Island. This "otherwise protected area" is added to the System as NY–35.

NY–45P Shell Beach. This "otherwise protected area" is added to the System as NY–45.

NY–51P Northwest Harbor. That part of this "otherwise protected area" owned by the Town is added to the System as NY–51. The privately owned tract will remain in the "otherwise protected" category.

NY–53P Big Reed Pond. This "otherwise protected area" is added to the System as NY–53.

NY–54P Oyster Pond. This "otherwise protected area" is added to the System as NY–54.

NY–55P Montauk Point. This "otherwise protected area" is added to the System as NY–55.

NY–59P Fire Island. Those parts of this "otherwise protected area" under the jurisdiction of Nassau County and the Towns of Babylon and Hempstead are added to the System as NY–59. The remaining areas will remain in the "otherwise protected area" category.

F08AP Sammys Beach. This "otherwise protected area" is added to F08A.

F08BP Acabonack Harbor. This "otherwise protected area" is added to F08B.

F10P Napeague. This "otherwise protected area" is added to F10.

F13P That part of F13P under State jurisdiction is added to F13. The Town owned lands will remain in the "otherwise protected" category.

NY–72 North Pond. The south boundary is modified to clearly delineate the break between development and non-development.

NY–73 Deer Creek Marsh. The Town of Richland owned lands adjacent to this unit are added to the unit.

NY–74 Grindstone Creek. The State and Town of Richland owned lands adjacent to this unit are added to the unit.

NY–75 Butterfly Swamp. The northeast boundary is modified to clearly delineate the break between development and non-development.

NY–77 Snake Swamp. The Town of Richland owned lands adjacent to this unit are added to the unit.

NY–87 Big Sister Creek. Part of Bennett Beach owned by Erie County is added to the unit.

DELAWARE

DE–06 Silver Lake. The north boundary is modified to clearly delineate the break between development and non-development.

VIRGINIA

VA–60P Long Creek. The southern segment of this unit is modified by section 303 of Pub. L. 102–440. That part of the area remaining is designated VA–60.

NORTH CAROLINA

L01P Currituck Banks. The state-owned Currituck Banks National Estuarine Reserve is added to L01.

NC–01P Pine Island Bay. Section 303 of Pub. L. 102–440 modifies this area to only include lands owned by the Audubon Society. The unit is redesignated as NC–01.

NC–05P Roosevelt Natural Area. Section 303 of Pub. L. 102–440 modifies this area to only include lands owned by the State of North Carolina.

SOUTH CAROLINA

SC–01 Long Pond. Land owned by a qualified organization is added to this unit.

GEORGIA

N03 Little St. Simons Island. The south boundary of this unit is modified to correct a typographical error. All of Pelican Spit is in the unit.

FLORIDA

FL–03P Guana River. The boundary of this unit as shown at the southeast corner on map 1 was covered by the legend. The legend is repositioned to display the boundary. There is no boundary modification to this unit.

FL–35/FL–35P North Key Largo. A number of boundary modifications have been made to clarify boundaries between developed and non-developed areas and to correct mapping errors.

FL–37 Rodriquez Key. The north boundary is modified to include associated aquatic habitat that clearly depicts the break with the upland.

FL–39 Tavernier Key. The east boundary is modified to include associated aquatic habitat that clearly depicts the break with the upland.

FL–47P Key Deer/White Heron. A cartographical error depicted a small subdivision in the Doctor's Arm area of Big Pine Key as being a part of the National Wildlife Refuge. This error is corrected.

FL–35, FL–50, FL–52, FL–55, FL–57 These units have been overlaid with "screen" to clarify the areas in the System. There are no additional boundary modifications.

P17/P17P Lovers Key Complex. The line around the "otherwise protected area" is changed from solid to dotted to depict the area's status. There is no boundary modification to this unit.

P31A Four Mile Village. The north boundary is modified to correct a mistake on the map. The boundary remains the right-of-way along the south edge of U.S. Highway 98, as originally depicted on the 1982 map.

FL–98P Santa Rosa Island. The parallel seaward boundary is

removed to conform with other units in the System. There is no boundary modification to this unit.

FL–103P Perdido Key. The parallel seaward boundary is removed to conform with other units in the System. There is no boundary modification to this unit.

LOUISIANA

LA–08P Rockefeller. Part of the boundary of the "otherwise protected area" was incorrectly drawn as a solid line. The boundary has been correctly drawn as a dotted line. There is no boundary modification to this unit.

S07 Point Au Fer. A technical correction was made at the mouth of Blue Hammock Bayou in Fourleague Bay to make the unit boundary on this map align with the corresponding unit boundary on the adjoining map depicting this unit.

TEXAS

T12P Boca Chica. That part of the South Bay "otherwise protected area" under state jurisdiction is added to T12; the balance remains an "otherwise protected area".

PUERTO RICO

PR–79 Penon Brusi. The boundary is modified to remove the sewage treatment plant that was inadvertently included in the unit.

PR–87 Vacia Talega. The boundary is modified to remove the sewage treatment plant that was inadvertently included in the unit.

VIRGIN ISLANDS

VI–16 Newfound Bay. The balance of the bay is added to the unit to clarify the break between associated aquatic habitat and upland.

OHIO

All units have been renumbered to be consistent with the east-west numbering system used in other Great Lakes States.

OH–01 Arcola Creek. This is a new unit added to the System by a qualified organization.

OH–02 Mentor. The State owned-lands adjacent to this unit are added. This unit was formerly numbered OH–06.

OH–03 North Pond. A new unit added by the State.

OH–04 Old Woman Creek. A new unit added by the State.

OH–05 Sheldons Marsh. A new unit added by the State.

OH–06 Bay Point. This unit was formerly numbered OH–05. There is no boundary modification to this unit.

OH–07 Middle Bass Island. This unit was formerly numbered OH–03. There is no boundary modification to this unit.

OH–08 North Bass Island. This unit was formerly numbered OH–04. There is no boundary modification to this unit.

OH–09 Fox Marsh. This unit was formerly numbered OH–04A. There is no boundary modification to this unit.

OH–10 Toussaint River. This unit was formerly numbered OH–01. There is no boundary modification to this unit.

MICHIGAN

MI–04 Sturgeon Bar. The east boundary is modified to correct a mapping error.

Dated: October 19, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

Appendix A

Location of Maps Available for Review

U.S. Fish and Wildlife Service	States of
Regional Offices	
Regional Director, Region 2, U.S. Fish & Wildlife Service, 500 Gold Ave. SW., Albuquerque, New Mexico 87103, (505) 766–2914.	Texas.
Regional Director, Region 3, U.S. Fish & Wildlife Service, BHW Federal Building, 1 Federal Dr., Ft. Snelling, Minnesota 55111–4056, (612) 725–3536.	Ohio, Michigan, Wisconsin, Minnesota.
Regional Director, Region 4, U.S. Fish & Service, 75 Spring St. SW, Atlanta, Georgia 30303, (404) 331–3580.	North Carolina, South Carolina, Georgia, Florida, Alabama, Mississippi, Louisiana, Puerto Rico, Virgin Islands.
Regional Director, Region 5, U.S. Fish & Wildlife Service, 300 Westgate Center Drive, Hadley, Massachusetts 01035–9589, (413) 253–8200.	Maine, Massachusetts, Rhode Island, Connecticut, New York, New Jersey, Delaware, Maryland, Virginia.
Field Offices	
Field Supervisor, U.S. Fish & Wildlife Service, 611 E. 6th St., Suite 407, Austin, Texas 78701, (512) 482–5436.	Texas.
Field Supervisor, U.S. Fish & Wildlife Service, 6950–H Americana Parkway, Reynoldsburg, Ohio 43068, (614) 469–6923.	Ohio.
Field Supervisor, U.S. Fish & Wildlife Service, 1405 S. Harrison Rd., East Lansing, Michigan 48823–6202, (517) 337–6650.	Michigan.
Field Supervisor, U.S. Fish & Wildlife Service, 1015 Challenger Ct, Green Bay, Wisconsin, 54311–8331, (414) 433–3803.	Wisconsin.
Field Supervisor, U.S. Fish & Wildlife Service, 4101 E. 80th St. Bloomington, Minnesota 55425–1665 (612) 725–3548.	Minnesota.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 33726 Raleigh, North Carolina 27636–3726, (919) 856–4520.	North Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 12559, Charleston, South Carolina 29412, (803) 727–4707.	South Carolina.
Field Supervisor, U.S. Fish & Wildlife Service, 801 Gloucester St., Brunswick, Georgia 31520, (912) 265–9336.	Georgia.
Field Supervisor, U.S. Fish & Wildlife Service, 6620 S. Point Dr. South, #310 Jacksonville, Florida 32216, (904) 232–2580.	Florida: Nassau, Duval, St. Johns, Flagler, Volusia, Brevard, Dixie, Levy, Pasco Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1360 U.S. Highway 1, #5, Vero Beach, Florida 32961, (407) 562–3909.	Florida: Pinellas, Hillsborough, Manatee, Sarasota, Charlotte, Lee, Collier, Monroe, Dade, Broward, Palm Beach, Martin, St. Lucie, Indian River Counties.
Field Supervisor, U.S. Fish & Wildlife Service, 1612 June Ave., Panama City, Florida, 32405–3721, (904) 769–0552.	Florida: Wakulla, Franklin, Gulf, Bay, Walton, Okaloosa, Santa Rosa, Escambia Counties.

U.S. Fish and Wildlife Service	States of
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Drawer 1190, Daphne, Alabama 36526, (205) 690–2181.	Alabama, Mississippi.
Field Supervisor, U.S. Fish & Wildlife Service, 825 Kaliste Saloom, #102, Lafayette, Louisiana 70508, (318) 262–6630.	Louisiana.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 491, Boqueron, Puerto Rico, 00622, (809) 851–7297.	Puerto Rico, Virgin Islands.
Field Supervisor, U.S. Fish & Wildlife Service, 22 Bridge St., Concord, New Hampshire, 03301–4901, (603) 225–1411.	Maine, Massachusetts.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 307, Charlestown, Rhode Island 02813 (401) 364–9124.	Rhode Island, Connecticut, & Long Island, New York.
Field Supervisor, U.S. Fish & Wildlife Service, 3817 Luker Rd., Cortland, New York 13045, (607) 753–9334.	New York (except Long Island; see above).
Field Supervisor, U.S. Fish & Wildlife Service, 927 N. Main St., Bldg. D–1, Pleasantville, New Jersey 08232, (609) 646–9310.	New Jersey.
Field Supervisor, U.S. Fish & Wildlife Service, 1825 Virginia St., Annapolis, Maryland 21401, (410) 269–5448.	Delaware, Maryland.
Field Supervisor, U.S. Fish & Wildlife Service, P.O. Box 480, White Marsh, Virginia 23183, (804) 693–6694.	Virginia.

Appendix B

Map Order Form

Coastal Barrier Resources System Maps

This form may be used to order copies of some or all of the 625 Coastal Barrier Resources System (CBRS) maps adopted by Congress pursuant to the Coastal Barrier Improvement Act of 1990 (Pub. L. 101–591). Maps that have been modified are indicated in **bold type.**

The price of *EACH* paper print is $4.00 and includes reproduction, shipping, and handling costs. All maps are cataloged by State, County (Town or Parish), Unit number and Unit name. The maps are approximately 24 inches by 28 inches in size. Please indicate the number of maps of each unit you want to order on the appropriate space. Copies of an entire State may be obtained by checking the space next to the State name.

Requests for copies must be prepaid by check or money order (no cash or stamps) and directed to: U.S. Geological Survey, ESIC–CBRS, P.O. Box 25286, Denver, CO 80225. Make checks payable to: Department of Interior—USGS.

FOR PROMPT ACCURATE SHIPMENT, PLEASE PROVIDE YOUR MAILING ADDRESS:

Name _____
Company _____
Street Address _____
_____
City _____
State _____
Zip Code _____

Please include a telephone number where you can be reached weekdays between 8:00 a.m. and 4:00 p.m. Mountain Standard Time. Area Code (_____) Number _____

_____Information regarding your order or the availability of Coastal Barrier Resources Maps may be obtained by calling (303) 236–7476.

Unit number(s)	Unit name(s)
_____STATE OF MAINE (22 maps)	
Washington County	
_____ME–02	Birch Point—1.
_____A01	Lubec Barriers—2.
_____A01A	Baileys Mistake—3.
_____ME–03P & ME–04.	Grassy Point & Seal Cove—4.
_____A03	Jasper—5.
_____A03B, ME–06 & ME–07P.	Starboard, Bare Cove & Roque Bluffs—6.
_____A03C & ME–08	Popplestone Beach/Roque Island and Flake Point—7.
_____ME–01	Carrying Place Cove—8.
_____ME–09P	Petit Manan/Bois Bubert—9.
_____ME–10/ME–10P	Over Point—10.
Hancock County	
_____ME–11	Pond Island—11.
_____ME–12	Thrumcap—12.
Waldo County	
_____A05A	Seven Hundred Acre Island—13.
Knox County	
_____ME–14	Nash Point—14.
Sagadahoc County	
_____ME–15P	Little River—15.
_____ME–16/ME–16P, ME–17 & A05B.	Hunnewell Beach, Small Point Beach & Head Beach—16.
Cumberland County	
_____ME–18	Stover Point—17.
_____A05C	Jenks Landing/ Waldo Point—18.
_____ME–19/ME–19P, A06, & A07.	Crescent Beach, Cape Elizabeth, & Scarborough Beach—19.
York County	
_____A06 & ME–20P	Crescent Surf & Ogunquit Beach—20.
_____ME–23	Phillips Cove—21.
_____A09	Seapoint—22.
_____STATE OF MASSACHUSETTS (44 maps)	
Town of Salisbury	
_____MA–01P	Salisbury Beach—1.
Town of Newbury	
_____MA–02P	Plum Island—2.
Town of Ipswich	
_____C00 & MA–03	Clark Pond & Castle Neck (MA–03 also in Essex)—3.
Town of Gloucester	
_____MA–03, C01 & C01B.	Castle Neck, Wingersheek and Brace Cove—4.
_____C01A	Good Harbor Beach/Milk Island (Milk Island in Rockport)—5.
Towns of Manchester & Beverly	
_____MA–04	West Beach—6.
Town of Swampscott	
_____MA–06	Phillips Beach—7.
Town of Quincy	
_____MA–08P, MA–09P & MA–10P.	Snake Island (in Winthrop), Wollaston Beach & Merrymount Park—8.
Town of Boston	
_____C01C & MA–11	West Head Beach & Peddocks/ Rainsford Islands (also in Hull)—9.

Unit number(s)	Unit name(s)
Town of Scituate	
_____MA–12 & C02	Cohasset Harbor (also in Cohasset) & North Scituate—10.
Town of Marshfield	
_____C03 & C03A	Rivermoor (also in Scituate) & Rexhame—11.
Town of Plymouth	
_____MA–13 & C04	Duxbury Beach (also in Marshfield & Duxbury) & Plymouth Bay—12.
_____C06	Center Hill Complex—13.
Town of Sandwich	
_____MA–14P & C08 ..	Town Neck & Scorton—14.
Town of Barnstable	
_____C07/C09P	Sandy Neck (also in Sandwich & Yarmouth)—15.
_____C14 & C15/C15P	Squaw Island and Centerville—16.
_____C16 & C17	Dead Neck & Popponesset Spit (also in Mashpee)—17.
Town of Dennis	
_____C09, MA–15P, MA–16 & C10.	Sandy Neck (in Yarmouth), Chapin Beach, Nobscusset, and Freemans Pond (also in Brewster)—18.
Town of Eastham	
_____C11, C11A/C11AP & MA–20P.	Namskaket Spits (in Brewster & Orleans), Boat Meadow & Nauset Beach/Monomoy (also in Orleans)—19.
Town of Truro	
_____MA–17AP, MA–17P, MA–18 & MA–18P.	Lieutenant Island (in Wellfleet), Griffin/Great Islands Complex (in Wellfleet), Pamet Harbor & Ballston Beach—20.
Town of Provincetown	
_____MA–19P	Provincetown (also in Truro) (1 of 2 maps)—21A.
_____MA–19P	Provincetown (2 of 2 maps)—21B.
Town of Chatham	
_____MA–20P	Nauset Beach/Monomoy (1 of 2 maps)—22A.
_____MA–20P	Nauset Beach/Monomoy (2 of 2 maps)—22B.
_____C12	Chatham Roads—23.
Town of Yarmouth	
_____MA–23P & C13/C13P.	Davis Beach (also in Dennis) & Lewis Bay (also in Barnstable)—24.
Town of Falmouth	
_____C18/C18P & C18A.	Waquoit Bay (also in Mashpee) & Falmouth Ponds—25.
_____C19 & MA–24	Black Beach & Naushon Island Complex (in Gosnold)—26.
Town of Gosnold	
_____MA–24	Naushon Island Complex—27.
_____C31 & MA–25P ..	Elizabeth Islands & Penikese Island—28.
Town of Nantucket	
_____C20 & C21	Coatue & Sesachacha Pond—29.
_____C22 & C23	Cisco Beach & Esther Island Complex—30.
_____C24 & C25	Tuckernuck Island & Muskeget Island—31.
Town of Edgartown	
_____MA–26 , MA–27P, C26, C27, MA–28P & C28.	Harthaven (in Oak Bluffs), Edgartown Beach (in Oak Bluffs), Eel Pond Beach, Cape Poge, Norton Point & South Beach—32.
Town of Chilmark	
_____C26	South Beach (also in West Tisbury)—33.
_____C29/C29P & MA–29P.	Squibnocket Complex (also in Gayhead) & Nomans Land—34.
Towns of Tisbury & West Tisbury	
_____C29A & C29B	James Pond (in West Tisbury) & Mink Meadows (in Tisbury)—35.
Town of Bourne	
_____MA–30, MA–31, MA–32 & MA–33.	Herring Brook, Squeteague Harbor (in Falmouth), Bassetts Island & Phinneys Harbor—36.
Towns of Wareham, Marion & Mattapoisett	
_____C19A & MA–35 ..	Buzzards Bay Complex & Planting Island (in Marion)—37.
Town of Fairhaven	
_____C19A & C31A	Buzzards Bay Complex (in Mattapoisett) & West Sconticut Neck—38.
_____C31B	Harbor View—39.
Town of Dartmouth	
_____MA–36, C32, MA–37P & C33.	Round Hill, Mishaum Point, Demarest Lloyd Park & Little Beach—40.
Town of Westport	
_____C33, C34/C34P & C35.	Little Beach (in Dartmouth), Horseneck Beach & Richmond/Cockeast Ponds—41.
Town of Swansea	
_____C34A	Cedar Cove—42.
_____RHODE ISLAND (15 maps)	
Town of Little Compton	
_____D01 & D01P	Little Compton Ponds & Tunipus Pond—1.
_____RI–01, D02 & RI–02.	Brown Point, Fogland Marsh (also in Tiverton), & Sapowet Point (in Tiverton)—2.
Town of Portsmouth	
_____RI–02A & RI–03P.	McCurry Point & Sandy Point—3.
_____D02B	Prudence Island Complex—4.
Town of Barrington & Warwick	
_____D02B/D02BP	Prudence Island Complex—5.
Town of Warwick & North Kingstown	
_____D02B	Prudence Island Complex—6.
Town of Middletown & Newport	
_____RI–04P, RI–05P, RI–06 & RI–07.	Sachuest Point, Easton Beach, Almy Pond & Hazards Beach—7.
Town of North Kingstown	
_____D02C	West Narragansett Bay Complex—8.

Unit number(s)	Unit name(s)
Towns of Jamestown & Narragansett	
_____RI–08/RI–08P, RI–09, & RI–10/RI–10P.	Fox Hill Marsh, Bonnet Shores, & Narragansett Beach (also in South Kingstown)—9.
Town of Narragansett	
_____RI–11/RI–11P & RI–12/RI–12P.	Seaweed Beach & East Matunick Beach (also in South Kingstown)—10.
Town of South Kingstown	
_____D03/D03P & D04	Card Ponds & Green Hill Beach—11.
Towns of Charlestown & Westerly	
_____D05/D05P & D06	East Beach & Quonochontaug Beach—12.
Town of Westerly	
_____RI–13P & D07 ...	Misquamicut Beach & Maschaug Ponds—13.
_____D08/D08P	Napatree—14.
Town of New Shoreham	
_____D09/D09P	Block Island—15.
_____CONNECTICUT (12 maps).	
Town of Stonington	
_____CT–00	Barn Island—1.
_____E01, E01A & CT–01.	Wilcox Beach, Ram Island & Mason Island—2.
Towns of Groton & Waterford	
_____CT–00/CT–02P & E02.	Bluff Point & Goshen Cove—3.
Towns of Waterford & East Lyme	
_____E03, E03A & CT–03.	Jordan Cove, Niantic Bay, & Old Black Point—4.
Towns of Old Lyme & Old Saybrook	
_____CT–04, CT–05, CT–06, CT–07 & E03B.	Hatchett Point, Little Pond, Mile Creek, Griswold Point, & Lynde Point—5.
Towns of Old Saybrook & Westbrook	
_____CT–08 & E04	Cold Spring Brook & Menunketesuck Island—6.
Towns of Clinton & Madison	
_____CT–09, E05/E05P, CT–10.	Harbor View, Hammonasset Point, Tom's Creek, & Seaview Beach—7.
Town of Branford	
_____CT–12 & CT–13 .	Lindsey Cove & Kelsey Island—8.
Towns of New Haven & West Haven	
_____CT–14P & CT–15P.	Nathan Hale Park & Morse Park—9.
Town of Milford	
_____E07/E07P	Milford Point—10.
Town of Bridgeport	
_____CT–18P & E08A	Long Beach & Fayerweather Island—11.
Towns of Westport & Norwalk	
_____E09/E09P	Norwalk Islands—12.
_____NEW YORK (49 MAPS)	
Nassau County	
_____NY–03 & NY–04P.	Sands Point & Prospect Point—1.
_____NY–05P, NY–06/NY–06P, & NY–07P.	Dosoris Pond, The Creek Beach, & Centre Island—2.
_____NY–59	Fire Island (1 of 8 maps) (See Suffolk County for maps 3 through 8)—3A.
_____NY–59/NY–59P .	Fire Island (2 of 8 maps) (See Suffolk County for maps 3 through 8)—3B.
Suffolk County	
_____NY–09P & NY–10.	Lloyd Beach & Lloyd Point—4.
_____NY–11/NY–11P, NY–12, NY–13, & F02.	Lloyd Harbor, Centerport Harbor, Hobart Beach & Eatons Neck—5.
_____NY–14	Crab Meadow—6.
_____NY–15 & NY–16	Sunken Meadow & Stony Brook Harbor—7.
_____F04	Crane Neck—8.
_____F05 & NY–17/NY–17P.	Old Field Beach & Cedar Beach—9.
_____NY–18 & NY–19	Wading River & Baiting Hollow—10.
_____NY–20P & NY–21P.	Luce Landing & Mattituck Inlet—11.
_____NY–22P	Goldsmith Inlet—12.
_____NY–23P	Truman Beach—13.
_____NY–24 & NY–25	Plum Island & Orient Beach—14.
_____NY–26, NY–27, NY–28, NY–29P, NY–30 & NY–31/NY–31P.	Pipes Cove, Conkling Point, Southold Bay, Cedar Beach Point, Hog Neck Bay & Little Creek—15.
_____NY–32 & NY–33	Downs Creek & Robins Island—16.
_____NY–34, NY–35, NY–36, NY–37, & NY–38.	East Creek, Indian Island, Flanders Bay, Red Creek Pond & Squire Pond—17.
_____NY–39 & NY–40/NY–40P.	Cow Neck & North Sea Harbor—18.
_____NY–41/NY–41P, NY–42, NY–43/NY–43P, NY–44, NY–45, NY–46, NY–47, F06, NY–48, NY–49 & NY–50.	Clam Island, Mill Creek, Short Beach, Gleason Point, Shell Beach, Crab Creek, Hay Beach Point, Shelter Island Barriers, Mashomack Point, Smith Cove & Fresh Pond—19.
_____NY–51/NY–51P, F08A, & NY–52.	Northwest Harbor, Sammys Beach, & Hog Creek—20.
_____F08B & F09	Acabonack Harbor & Gardiners Island Barriers—21.
_____F01	Fisher Island Berriers—22.
_____NY–53, NY–54 & NY–55.	Big Reed Pond, Oyster Pond, & Montauk Point—23.
_____F10	Napeague—24.
_____NY–56/NY–56P & NY–57.	Amagansett & Georgica/Wainscott Ponds—25.
_____NY–58 & F11	Sagaponack Pond & Mecox—26.
_____F12 & F13/F13P	Southampton Beach & Tiana Beach—27.
_____NY–59P	Fire Island (3 of 8 maps) (See Nassau County for Maps 1 & 2)—28A.
_____NY–59P	Fire Island (4 of 8 maps) (See Nassau County for maps 1 & 2)—28B.
_____NY–59P	Fire Island (5 of 8 maps) (See Nassau County for maps 1 & 2)—28C.

Unit number(s)	Unit name(s)
_____NY–59P	Fire Island (6 of 8 maps) (See Nassau County for maps 1 & 2)—28D.
_____NY–59/NY–59P .	Fire Island (7 of 8 maps) (See Nassau County for maps 1 & 2)—28E.
_____NY–59/NY–59P .	Fire Island (8 of 8 maps) (See Nassau County for maps 1 & 2)—28F.
Queens County	
_____NY–60P	Jamaica Bay (1 of 2 maps)—29A.
_____NY–60P	Jamica Bay (2 of 2 maps)—29B.
Jefferson County	
_____NY–61, NY–62, NY–63, NY–64 & NY–65.	Wilson Bay, Grenadier Island, Fox Island, The Isthmus & Point Peninsula—30.
_____NY–66 & NY–67	Hounsfield & Dutch John Bay—31.
_____NY–68 & NY–69	Sherwin Bay & Association Island—32.
Oswego County	
_____NY–72	North Pond—33.
_____NY–73 & NY–74	Deer Creek Marsh & Grindstone Creek—34.
_____NY–75	Butterfly Swamp—35.
_____NY–76	Walker—36.
_____NY–77	Snake Swamp—37.
Cayuga & Wayne Counties	
_____NY–78 & NY–79	Juniper Pond & Blind Sodus Bay (NY–79 in Wayne County)—38
Wayne County	
_____NY–82	Port Bay—39.
_____NY–84	Maxwell Bay—40.
Monroe County	
_____NY–86	Bogus Point—41.
Erie County	
_____NY–87	Big Sister Creek—42.
_____NEW JERSEY (16 maps)	
Middlesex & Monmouth Counties	
_____NJ–02, NJ–03P & NJ–04.	Seidler Beach, Cliffwood Beach & Conaskonk Point (NJ–03P & NJ–04 in Monmouth County)—1.
Monmouth County	
_____NJ–01P	Sand Hook—2.
_____NJ–04A	Navesink/Shrewsbury Complex—3.
Ocean County	
_____NJ–04B/NJ–04BP.	Metedeconk Neck—4.
_____NJ–05P	Island Beach (1 of 2 maps)—5A.
_____NJ–05P	Island Beach (2 of 2 maps)—5B.
_____NJ–06/NJ–06P ...	Cedar Bonnet Island—6.
Ocean, Atlantic & Burlington Counties	
_____NJ–07P	Brigantine (1 of 4 maps)—7A.
_____NJ–07P	Brigantine (2 of 4 maps)—7B.
_____NJ–07P	Brigantine (3 of 4 maps)—7C.
_____NJ–07P	Brigantine (4 of 4 maps)—7D.
Cape May County	
_____NJ–08P	Corson Inlet—8.
_____NJ–09/NJ–09P ...	Stone Harbor—9.
_____NJ–10P & NJ–11P.	Cape May & Highbee Beach—10.
_____NJ–12/NJ–12P & NJ–13.	Del Haven & Kimbles Beach—11.
Cape May & Cumberland Counties	
_____NJ–14/NJ–14P ...	Moores Beach—12.
_____DELAWARE (7 maps)	
Kent County	
_____DE–01/DE–01P .	Little Creek—1.
_____HOO/HOOP	Broadkill Beach (1 of 2 maps)—2A.
Sussex County	
_____HOO/HOOP	Broadkill Beach (2 of 2 maps)—2B.
_____DE–02P	Plum Beach Island—3.
_____DE–03P & DE–05.	Cape Henlopen & Silver Lake—4.
_____DE–07P & H01 ..	Delaware Seashore & North Bethany Beach—5.
_____DE–08P	Fenwick Island—6.
_____MARYLAND (25 maps)	
Worcester County	
_____MD–01P	Assateque Island (1 of 3 maps)—1A.
_____MD–01P	Assateque Island (2 of 3 maps)—1B.
_____MD–01P	Assateque Island (3 of 3 maps)—1C.
Somerset County	
_____MD–02 & MD–03	Fair Island & Sound Shore—2.
_____MD–04P	Cedar/Janes Island—3.
_____MD–04P, MD–06, MD–07P, & MD–08P.	Cedar/Janes Island, Joes Cove, Scott Point & Hazard Island—4.
_____MD–09P	St. Pierre Point—5.
_____MD–11 & MD–12	Little Deal Island & Deal Island—6.
_____MD–14/MD–14P, MD–15, & MD–16.	Franks Island, Long Point, & Stump Point (MD–16 in Wicomico County)—7.
_____MD–17P	Martin—8.
_____MD–18P	Marsh Island—9.
Dorchester County	
_____MD–19 & MD–20	Holland Island & Jenny Island—10.
_____MD–21P	Barren Island—11.
_____MD–22 & MD–24	Hooper Point & Covey Creek—12.
Talbot County	
_____MD–25, MD–26 & MD–27.	Castle Haven Point (in Dorchester County), Boone Creek & Benoni Point—13.
_____MD–28, MD–29 & MD–30.	Lowes Point, Rich Neck & Kent Point (in Queen Annes County)—14.
Queen Annes County	
_____MD–32 & MD–33	Stevensville & Wesley Church—15.
Kent County	
_____MD–34P & MD–35.	Eastern Neck Island & Wilson Pond—16.
Calvert County	
_____MD–37P & MD–38.	Flag Ponds & Cove Point Marsh—17.
St. Marys County	
_____MD–39, MD–40 & MD–41.	Drum Point (in Calvert County), Lewis Creek & Green Holly Pond—18.
_____MD–44	St. Clarence Creek—19.
_____MD–45, MD–46, MD–47 & MD–48P.	Deep Point, Point Look-In, Tanner Creek & Point Lookout—20.
_____MD–49 & MD–50	Bisco Creek & Chicken Cock Creek—21.
_____MD–51, MD–52, MD–53 & MD–54.	Piney Point Creek, McKay Cove, Blake Creek & Belvedere Creek—22.
_____Md–55P & MD–56.	St. Clements Island & St. Catherine Island—23.

Unit number(s)	Unit name(s)
VIRGINIA (39 maps)	
Accomack County	
VA–01P	Assateague Island (1 of 2 maps)—1A.
VA–01P	Assateague Island (2 of 2 maps)—1B.
VA–02P & VA–03P	Assawoman Island & Metomkin Island—2.
VA–03P	Metomkin Island—3.
K03	Cedar Island—4.
VA–16 & VA–17	Scarborough Neck & Craddock Neck—5.
VA–18, VA–19 & VA–20P	Hacks Neck, Parkers/Finneys Islands & Parkers Marsh—6.
VA–21 & VA–22	Beach Island & Russell Island—7.
VA–23	Simpson Bend—8.
VA–24	Drum Bay—9.
VA–25	Fox Islands—10.
VA–26	Cheeseman Island—11.
VA–27 & VA–28	Watts Island & Tangier Island—12.
Northampton County	
VA–04P	Parramore/Hog/Cobb Islands (also in Accomack County) (1 of 2 maps)—13A.
VA–04P	Parramore/Hog/Cobb Islands (2 of 2 maps)—13B.
VA–04P & K04	Parramore/Hog/Cobb Islands & Little Cobb Island—14.
VA–05P	Wreck Island—15.
VA–05P & VA–06P	Wreck Island & Smith Island (1 of 2 maps)—16A.
VA–05P & VA–06P	Wreck Island & Smith Island (2 of 2 maps)—16B.
VA–06P, K05 & K05P	Smith Island & Fishermans Island—17.
VA–09 & VA–10	Elliotts Creek & Old Plantation Creek—18.
VA–11	Wescoat Point—19.
VA–12, VA–13, & VA–14	Great Neck, Westerhouse Creek, & Shooting Point—20.
Westmoreland County	
VA–29	Elbow Point—21.
VA–30, VA–31, & VA–32	White Point, Cabin Point, & Glebe Point—22.
VA–33	Sandy Point—23.
Northumberland County	
VA–34	Judith Sound—24.
VA–35, VA–36, & VA–37	Cod Creek, Presley Creek, & Cordreys Beach—25.
VA–38 & VA–39P	Marshalls Beach & Ginny Beach—26.
VA–40, VA–41, VA–42, VA–43, VA–44, & VA–45	Gaskin Pond, Owens Pond, Chesapeake Beach, Fleet Point, Bussel Point & Harveys Creek—27.
VA–46, VA–47, VA–48 & VA–49	Ingram Cove, Bluff Point Neck, Barnes Creek & North Point (in Lancaster County)—28.
Lancaster & Middlesex Counties	
VA–50, VA–51, VA–52, VA–53 & VA–54	Windmill Point, Deep Hole Point, Sturgeon Creek, Jackson Creek & Stove Point—29.
Mathews County	
VA–55	Rigby Island/Bethal Beach—30.
VA–55 & VA–56	Rigby Island/Bethal Beach & New Point Comfort—31.
Gloucester County	
VA–57 & VA–58	Ware Neck & Severn River—32.
Poquoson & Hampton Cities	
VA–59P & VA–60/VA–60P	Plum Island & Long Creek (in Hampton City)—33.
Virginia Beach City	
VA–61P	Cape Henry—34.
VA–62P	Back Bay (1 of 2 maps)—35A.
VA–62P	Back Bay (2 of 2 maps)—35B.
NORTH CAROLINA (31 maps)	
Currituck County	
L01	Currituck Banks—1.
L01/L01P	Currituck Banks—2.
NC–01	Pine Island Bay—3.
Dare County	
NC–02	Nags Head Woods—4.
NC–03P	Cape Hatteras (1 of 14 maps)—5A.
NC–03P	Cape Hatteras (2 of 14 maps)—5B.
NC–03P	Cape Hatteras (3 of 14 maps)—5C.
NC–03P	Cape Hatteras (4 of 14 maps)—5D.
NC–03P & L03	Cape Hatteras & Hatteras Island (5 of 14 maps)—5E.
NC–03P & L03	Cape Hatteras & Hatteras Island (6 of 14 maps)—5F.
NC–03P	Cape Hatteras (7 of 14 maps)—5G.
Hyde County	
NC–03P	Cape Hatteras (also in Dare County) (8 of 14 maps)—5H.
NC–03P	Cape Hatteras (9 of 14 maps)—5I.
NC–03P	Cape Hatteras (also in Carteret County) (10 of 14 maps)—5J.
Carteret County	
NC–03P	Cape Hatteras (11 of 14 maps)—5K.
NC–03P	Cape Hatteras (12 of 14 maps)—5L.
NC–03P	Cape Hatteras (13 of 14 maps)—5M.
NC–03P	Cape Hatteras (14 of 14 maps)—5N.
NC–03P & L03AP	Cape Hatteras & Shackleford Banks—6.
L03AP & NC–04P	Shackleford Banks & Fort Macon—7.
NC–05P	Roosevelt Natural Area—8.
Onslow County	
NC–06P	Hammocks Beach—9.
L05	Onslow Beach Complex (1 of 2 maps)—10A.
L05	Onslow Beach Complex (2 of 2 maps)—10B.
L06	Topsail—11.
Pender County	
L07	Lea Island Complex—12.
New Hanover County	
L08 & L09	Wrightsville Beach & Masonboro Island—13.
L09	Masonboro Island—14.
Brunswick County	
NC–07P	Cape Fear (also in New Hanover County) (1 of 2 maps)—15A.
NC–07P	Cape Fear (2 of 2 maps)—15B.
M01	Waites Island Complex (1 of 2 maps) (also in South Carolina)—16.

Unit number(s)	Unit name(s)
_____SOUTH CAROLINA (25 maps)	
Horry County	
_____M01	Waites Island Complex (2 of 2 maps) (also in North Carolina)—1.
_____SC–01	Long Pond—2.
Georgetown County	
_____SC–03	Huntington Beach—3.
_____M02	Litchfield Beach—4.
_____M03	Pawleys Inlet—5.
_____M04 & SC–04	Debidue Beach & North/South Islands—6.
_____SC–04	North/South Islands—7.
Charleston County	
_____SC–05P	Santee (also in Georgetown County) (1 of 2 maps)—8A.
_____SC–05P	Santee (2 of 2 maps)—8B.
_____SC–05P & SC–06P.	Santee & Cape Romain (1 of 2 maps)—9A.
_____SC–05P & SC–06P.	Santee & Cape Romain (2 of 2 maps)—9B.
_____SC–06P	Cape Romain (1 of 2 maps)—10A.
_____SC–06P	Cape Romain (2 of 2 maps)—10B.
_____SC–07P	Capers Island—11.
_____M05	Dewees Island—12.
_____M06	Morris Island Complex—13.
_____M07/M07P	Bird Key Complex—14.
_____M08	Captain Sams Inlet–15.
_____M09/M09P	Edisto Complex—16.
Colleton County	
_____M10	Otter Island—17.
Beaufort County	
_____M11	Harbor Island—18.
_____SC–09P	Hunting Island—19.
_____M12	St. Phillips Island (1 of 2 maps)—20A.
_____M12	St. Phillips Island (2 of 2 maps)—20B.
Beaufort & Jasper Counties	
_____M13 & SC–10P ..	Daufuski Island & Turtle Island (SC–10P in Jasper County)—21.
_____GEORGIA (18 maps)	
Chatham County	
_____N01	Little Tybee Island (1 of 2 maps)—1A.
_____N01	Little Tybee Island (2 of 2 maps)—1B.
_____N01A/N01AP	Wassaw Island—2.
_____GA–02P	Ossabaw Island (1 of 2 maps)—3A.
_____GA–02P	Ossabaw Island (also in Bryan County) (2 of 2 maps)—3B.
Liberty County	
_____GA–02P & GA–03P.	Ossabaw Island & St. Catherine Island (also in McIntosh County)—4.
McIntosh County	
_____GA–03P & GA–04P.	St. Catherine Island & Blackbeard/Sapelo Islands—5.
_____GA–04P	Blackbeard/Sapelo Islands (1 of 3 maps)—6A.
_____GA–04P	Blackbeard/Sapelo Islands (2 of 3 maps)—6B.
_____GA–04P	Blackbeard/Sapelo Islands (3 of 3 maps)—6C.
_____GA–04P & GA–05P.	Blackbeard/Sapelo Islands & Altamaha/Wolf Islands—7.
_____GA–05P	Altamaha/Wolf Islands—8.
Glynn County	
_____N03	Little St. Simons Island—9.
_____N04	Sea Island—10.
_____GA–06P	Jekyll Island—11.
Camden County	
_____N05 & N06/N06P	Little Cumberland Island & Cumberland Island—12.
_____N0/N06P	Cumberland Island (1 of 2 maps)—13A.
_____N0/N06P	Cumberland Island (2 of 2 maps)—13B.
_____FLORIDA–EAST COAST (53 maps).	
Nassau County	
_____FL–01P	Fort Clinch—1.
Duval County	
_____P02/P02P	Talbot Islands Complex (also in Nassau County)—2.
St. Johns County	
_____FL–03P	Guana River (1 of 3 maps)—3A.
_____FL–03P	Guana River (2 of 3 maps)—3B.
_____FL–03P	Guana River (3 of 3 maps)—3C.
_____P04A & P05/P05P.	Usinas Beach & Conch Island—4.
_____FL–05P	Butler Beach—5.
Flagler County	
_____P05A/P05AP & FL–06P.	Matanzas River (also in St. Johns County) & Washington Oaks—6.
Volusia County	
_____P07/P07P	Ormond-by-the-Sea (P07P also in Flagler County)—7.
_____P08	Ponce Inlet—8.
_____FL–07P	Canaveral (1 of 6 maps)—9A.
Brevard County	
_____FL–07P	Canaveral (also in Volusia County) (2 of 6 maps)—9B.
_____FL–07P	Canaveral (also in Volusia County) (3 of 6 maps)—9C.
_____FL–07P	Canaveral (4 of 6 maps)—9D.
_____FL–07P	Canaveral (5 of 6 maps)—9E.
_____FL–07P	Canaveral (6 of 6 maps)—9F.
_____FL–13P & P09A .	Spessard Holland Park & Coconut Point—10.
Indian River County	
_____P10/P10P	Vero Beach (also in Brevard County)—11.
St. Lucie County	
_____P10A	Blue Hole (also in Indian River County)—12.
_____FL–14P	Pepper Beach—13.
_____P11	Hutchinson Island (1 of 2 maps)—14A.
_____P11	Hutchinson Island (2 of 2 maps)—14B.
Martin County	
_____P11AP & P11A ..	Joes Point & Frank B. McGilvrey—15.
_____P12/P12P	Hobe Sound—16.
Palm Beach County	
_____FL–15, FL–16P & FL–17P.	Blowing Rocks (in Martin County), Jupiter Beach & Carlin—17.
_____FL–18P	Macarthur Beach—18.
Broward County	
_____FL–19P	Birch Park—19.
_____FL–20P & P14A .	Lloyd Beach & North Beach—20.

Unit number(s)	Unit name(s)
Dade County	
FL–21P	Haulover Beach—21.
FL–22P, FL–23P & FL–34P.	Virginia Beach/ Crandon Park, Cape Florida & Biscayne Bay—22.
FL–34/FL–34P	Biscayne Bay—23.
FL–34P	Biscayne Bay (1 of 3 maps)—24A.
FL–34P	Biscayne Bay (2 of 3 maps)—24B.
FL–34P	Biscayne Bay (3 of 3 maps)—24C.
Monroe County	
FL–34P & FL–35	Biscayne Bay & North Key Largo—25.
FL–34P & FL–35/FL–35P.	Biscayne Bay & North Key Largo—26.
FL–35	North Key Largo—27.
FL–35/FL–35P & FL–36P.	North Key Largo & El Radabob Key—28.
FL–36P & FL–37	El Radabob Key & Rodriquez Key—29.
FL–39 & FL–40	Tavernier Key & Snake Creek—30.
FL–41P	Lignumvitae/Shell Keys—31.
FL–42P	Long Key—32.
FL–43 & FL–44	Channel Key & Toms Harbor Keys—33.
FL–45	Deer/Long Point Keys—34.
FL–46	Boot Key—35.
FL–47P, FL–48P & FL–50.	Key Deer/White Heron, Bahia Honda Key & No Name Key—36.
FL–51	Newfound Harbor Keys—37.
FL–47P & FL–52	Key Deer/White Heron & Little Knockemdown/ Torch Keys Complex—38.
FL–53	Budd Keys—39.
FL–47P, FL–54 & FL–55.	Key Deer/White Heron, Sugarloaf Sound & Saddlebunch Keys—40.
FL–47P, FL–55, & FL–57.	Key Deer/White Heron, Saddlebunch Keys, & Cow Key—41.
FL–47P, FL–59P & FL–60P.	Key Deer/White Heron, Fort Taylor & Key West NWR—42.
FL–61P	Tortugas—43.
FLORIDA—WEST COAST (55 maps)	
Collier County	
P15 & FL–63P	Cape Romano & Tigertail—1.
P16	Keewaydin Island (1 of 2 maps)—2A.
P16	Keewaydin Island (2 of 2 maps)—2B.
FL–64P	Clam Pass—3.
FL–65P	Wiggins Pass—4.
Lee County	
P17/P17P	Lovers Key Complex—5.
P17A & FL–67	Bodwitch Point & Bunch Beach—6.
P18P	Sanibel Island Complex—7.
P18/P18P	Sanibel Island Complex—8.
P19/P19P	North Captiva Island—9.
P20/P20P	Cayo Costa—10.
FL–70P	Gasparilla Island—11.
Charlotte County	
P21/P21P	Bocilla Island—12.
Sarasota County	
P21A/P21AP	Manasota Key—13.
FL–71P	Venice Inlet—14.
P22	Casey Key—15.
FL–72P	Lido Key—16.
Manatee County	
P23/P23P	Longboat Key—17.
FL–73P, FL–78 & FL–82.	De Soto, Rattlesnake Key & Bishop Harbor—18.
FL–80P	Passage Key—19.
Hillsborough County	
FL–81/FL–81P	Egmont Key—20.
FL–83	Cockroach Bay—21.
Pinellas County	
P24/P24P	The Reefs—22.
FL–85P	Sand Key—23.
P24A & FL–86P	Mandalay Point & Caladesi/Honeymoon Islands—24.
FL–87P	Anclote Key (also in Pasco County)—25.
Levy County	
P25/P25P	Cedar Keys (1 of 2 maps)—26A.
P25/P25P	Cedar Keys (2 of 2 maps)—26B.
Dixie County	
P26	Pepperfish Keys—27.
Franklin County	
P27A	Ochlockonee Complex (also in Wakulla County)—28.
FL–89	Peninsula Point—29.
P28	Dog Island—30.
FL–90P	St. George Island—31.
FL–90/FL–90P	St. George Island—32.
FL–90P & FL–91P.	St. George Island & St. Vincent Island—33.
FL–91P	St. Vincent Island—34.
Gulf County	
FL–92	Indian Peninsula—35.
P30/P30P	Cape San Blas (1 of 2 maps)—36A.
P30/P30P	Cape San Blas (2 of 2 maps)—36B.
Bay County	
P31	St. Andrew Complex (1 of 2 maps)—37A.
P31	St. Andrew Complex (2 of 2 maps)—37B.
P31/P31P	St. Andrew Complex—38.
FL–93P	Phillips Inlet—39.
Walton County	
FL–94	Deer Lake Complex—40.
FL–95P &FL–96	Grayton Beach & Draper Lake—41.
P31A	Four Mile Village—42.
P32	Moreno Point (also in Okaloosa County)—43.
Escambia County	
FL–98P	Santa Rosa Island—44.
FL–98/FL–98P	Santa Rosa Island—45.
FL–98P & FL–103P.	Santa Rosa Island & Perdido Key—46.
FL–103P	Perdido Key—47.
Santa Rosa County	
FL–97	Navarre Beach—48.
FL–99	Tom King—49.
FL–98P & FL–100.	Santa Rosa Island (also in Escambia County) & Town Point—50.
FL–98P, FL–101 & FL–102.	Santa Rosa Island, Garcon Point & Basin Bayou—51.
ALABAMA (9 maps)	
Baldwin County	
AL–01P & AL–02P.	Perdido Key & Gulf Park—1.

Unit number(s)	Unit name(s)
_____AL–02P	Gulf Park—2.
_____AL–03, AL–04P & Q01P.	Skunk Bayou, Cypress Point & Mobile Point—3.
_____Q01/Q01P	Mobile Point (1 of 2 maps)—4A.
_____Q01/Q01P	Mobile Point (2 of 2 maps)—4B.
Mobile County	
_____Q01P, Q01A, & AL–05P.	Mobile Point (in Baldwin County), Pelican Island & Alligator Lake—5.
_____Q02/Q02P	Dauphin Island—6.
_____Q02	Dauphin Island (1 of 2 maps)—7A.
_____Q02	Dauphin Island (2 of 2 maps)—7B.
_____MISSISSIPPI (10 maps)	
Jackson County	
_____MS–01P	Gulf Islands (1 of 4 maps)—1A.
_____MS–01P	Gulf Islands (2 of 4 maps)—1B.
_____MS–01P	Gulf Islands (3 of 4 maps)—1C.
_____MS–01P	Gulf Islands (also in Harrison County) (4 of 4 maps)—1D.
_____R01	Round Island—2.
_____R01A	Belle Fountaine Point—3.
Harrison County	
_____MS–01P	Gulf Islands—4.
_____MS–02 & R02	Marsh Point (in Jackson County) & Deer Island—5.
_____R03	Cat Island—6.
Hancock County	
_____MS–04	Heron Bay Point—7.
_____LOUISIANA (52 maps)	
St. Bernard Parish	
_____LA–01	Isle au Pitre—1.
_____LA–02	Grand Island—2.
_____LA–03P	Chandeleur Islands (1 of 7 maps)—3A.
_____LA–03P	Chandeleur Islands (2 of 7 maps)—3B.
_____LA–03P	Chandeleur Islands (3 of 7 maps)—3C.
_____LA–03P	Chandeleur Islands (4 of 7 maps)—3D.
_____LA–03P	Chandeleur Islands (also in Plaquemines Parish 5 of 7 maps)—3E.
_____LA–03P	Chandeleur Islands (6 of 7 maps)—3F.
_____LA–03P	Chandeleur Islands (7 of 7 maps)—3G.
Plaquemines Parish	
_____SO1	Bastian Bay Complex (1 of 2 maps)—4A.
_____SO1	Bastian Bay Complex (2 of 2 maps)—4B.
_____SO1 & SO1A	Bastian Bay Complex & Bay Joe Wise Complex—5.
_____SO1A	Bay Joe Wise Complex—6.
Plaquemines & Jefferson Parishes	
_____SO2 & LA–04P ...	Grand Terre Islands & Grand Isle (SO2 in Plaquemines Parish)—7.
Lafourche Parish	
_____SO3	Caminada (Also in Jefferson Parish) (1 of 3 maps)—8A.
_____SO3	Caminada (2 of 3 maps)—8B.
_____SO3	Caminada (3 of 3 maps)—8C.
_____SO4	Timbalier Bay—9.
_____SO5	Timbalier Islands (1 of 3 maps)—10A.
_____SO5	Timbalier Islands (also in Terrebonne Parish) (2 of 3 maps)—10B.
Terrebonne Parish	
_____SO5	Timbalier Islands (3 of 3 maps)—10C.
_____SO6	Isles Dernieres (1 of 3 maps)—11A.
_____SO6	Isles Dernieres (2 of 3 maps)—11B.
_____SO6	Isles Dernieres (3 of 3 maps)—11C.
_____SO7	Point au Fer (1 of 4 maps)—12A.
_____SO7	Point au Fer (2 of 4 maps)—12B.
_____SO7	Point au Fer (3 of 4 maps)—12C.
_____SO7	Point au Fer (4 of 4 maps)—12D.
Iberia Parish	
_____LA–05P	Marsh Island/ Rainey (1 of 7 maps)—13A.
_____LA–05P	Marsh Island/ Rainey (2 of 7 maps)—13B.
_____LA05P	Marsh Island/ Rainey (3 of 7 maps)—13C.
_____LA–05P	Marsh Island/ Rainey (4 of 7 maps)—13D.
_____LA–05P	Marsh Island/ Rainey (5 of 7 maps)—13E.
_____LA–05P	Marsh Island/ Rainey (also in Vermilion Parish) (6 of 7 maps)—13F.
Vermilion Parish	
_____LA–05P	Marsh Island/ Rainey (7 of 7 maps)—13G.
_____LA–05P, SO8, & LA–07.	Marsh Island/ Rainey, Cheniere au Tigre & Freshwater Bayou—14.
_____LA–07	Freshwater Bayou (1 of 2 maps)—15A.
_____LA–07	Freshwater Bayou (2 of 2 maps)—15B.
_____SO9	Rollover—16.
Cameron Parish	
_____LA–06P	Rockefeller (also in Vermilion Parish) (1 of 3 maps)—17A.
_____LA–06P	Rockefeller (2 of 3 maps)—17B.
_____LA–06P	Rockefeller (3 of 3 maps)—17C.
_____LA–08P & S10 ...	Rockefeller & Mermentau River—18.
_____S10	Mermentau River—19.
_____LA–09	Cameron (1 of 2 maps)—20A.
_____LA–09	Cameron (2 of 2 maps)—20B.
_____LA–10	Calcasieu Pass (1 of 2 maps)—21A.
_____LA–10	Calcasieu Pass (2 of 2 maps)—21B.
_____S11	Sabine (1 of 4 maps)—22A.
_____S11	Sabine (2 of 4 maps)—22B.
_____S11	Sabine (3 of 4 maps)—22C.
_____S11	Sabine (4 of 4 maps)—22D.
_____TEXAS (54 maps)	
Jefferson County	
_____T01P	Sea Rim—1.
_____T01/T01P	Sea Rim—2.
_____TX–02P	McFaddin (1 of 2 maps)—3A.
_____TX–02P	McFaddin (2 of 2 maps)—3B.
_____TX–02P & T02A	McFaddin & High Island (also in Chambers County)—4.
Galveston County	
_____T02A	High Island—5.
_____T03A	Bolivar Peninsula—6.

Unit number(s)	Unit name(s)
_____T03A/T03AP	Bolivar Peninsula—7.
_____TTX–04/TX04P ..	Swan Lake—8.
_____TX–05P	Galveston Island—9.
Brazoria County	
_____T04/T04P	Follets Island (1 of 2 maps)—10A.
_____T04/T04P	Follets Island (2 of 2 maps)—10B.
_____T05/T05P	Brazos River Complex—11.
_____T05/T05P & T06P.	Brazos River Complex & Sargent Beach (in Matagorda County)—12.
Matagorda County	
_____T06/T06P	Sargent Beach—13.
_____T07/T07P	Matagorda Peninsula (1 of 6 maps)—14A.
_____T07/T07P	Matagorda Peninsula (2 of 6 maps)—14B.
_____T07/T07P	Matagorda Peninsula (3 of 6 maps)—14C.
_____T07/T07P	Matagorda Peninsula (4 of 6 maps)—14D.
_____T07/T07P	Matagorda Peninsula (5 of 6 maps)—14E.
_____T07/T07P	Matagorda Peninsula (6 of 6 maps)—14F.
_____T07	Matagorda Peninsula—15.
_____TX–09	Coon Island Bay—16.
_____TX–10	Shell Beach—17.
Calhoun County	
_____TX–06P	Matagorda Island (1 of 4 maps)—18A.
_____TX–06P	Matagorda Island (2 of 4 maps)—18B.
_____TX–06P	Matagorda Island (3 of 4 maps)—18C.
_____TX–06P	Matagorda Island (4 of 4 maps)—18D.
_____TX–06P & T08 ...	Matagorda Island & San Jose Island Complex—19.
_____TX–06P & T08/T08P.	Matagorda Island & San Jose Island Complex (also in Aransas County)—20.
Aransas County	
_____TX–08/T08P	San Jose Island Complex (also in Calhoun County) (1 of 5 maps—21A.
_____TX–08/T08P	San Jose Island Complex (2 of 5 maps—21B.
_____TX–08/T08P	San Jose Island Complex (3 of 5 maps—21C.
_____TX–08/T08P	San Jose Island Complex (4 of 5 maps—21D.
_____TX–08/T08P	San Jose Island Complex (5 of 5 maps—21E.
Nueces County	
_____TX–15P	Mustang Island—22.
_____TX–17/TX–17P ..	Shamrock Island—23.
Kleberg County	
_____TX–16P & T10/T10P.	Four Mile Hill (in Nueces County) & North Padre Island—24.
_____T10P	North Padre Island (1 of 7 maps)—25A.
_____T10P	North Padre Island (also in Kennedy County) (2 of 7 maps)—25B.
_____T10P	North Padre Island (3 of 7 maps)—25C.
_____T10P	North Padre Island (4 of 7 maps)—25D.
_____T10P	North Padre Island (5 of 7 maps)—25E.
_____T10P	North Padre Island (6 of 7 maps)—25F.
_____T10P	North Padre Island (7 of 7 maps)—25G.
_____TX–19 & TX–21 .	Starvation Point & Kleberg Point—26.
Willacy County	
_____T10P & T11/T11P.	North Padre Island & South Padre Island—27.
_____T11P	South Padre Island—28.
Cameron County	
_____T11	South Padre Island (also in Willacy County)—29.
_____T11/T11P	South Padre Island (also in Willacy County) (1 of 3 maps)—30A.
_____T11/T11P	South Padre Island (2 of 3 maps)—30B.
_____T11P/T11P	South Padre Island (3 of 3 maps)—30C.
_____T11/T11P & TX–22P.	South Padre Island & Andy Bowie—31.
_____T12/T12P	Boca Chica—32.
_____PUERTO RICO (32 maps)	
Municipio de Rio Grande	
_____PR–02, PR–03 & PR–04P.	Ensenada Comezon, Rio Mameyes & Punta la Bandera (in Luquillo Mun.)—1.
Municipio de Fajardo	
_____PR–05, PR–06, PR–07, PR–08P & PR–08AP.	Luquillo Spit (in Luquillo Mun.), Juan Martin Spit (in Luquillo Mun.), Laguna Aquas Prietas, Cabo San Juan & La Cordillera—2.
_____PR–08A/PR–08AP.	La Cordillera—3.
_____PR–09P & PR–10.	Rio Fajardo & Punta Barrancas—4.
Municipio de Culebra	
_____PR–12P, PR–13P, PR–14P, PR–15P & PR–16P.	Playa Flamenco, Playa Brava, Playa Larga, Isla Culebrita & Puerto del Manglar—5.
Isla de Vieques	
_____PR–17P	Ensenada Sombe—6.
Municipio de Naguabo	
_____PR–18P	Cayo Algodones—7.
Municipio de Yabucoa	
_____PR–39	Puerto Yabucoa—8.
Municipio de Maunabo	
_____PR–40 & PR–41	Punta Tuna & Rio Maunabo—9.
Municipio de Patillas	
_____PR–42 & PR–43/PR–43P.	Punta Viento & Punta Guilarte—10.
Municipio de Guayama	
_____PR–44 & PR–45/PR–45P.	Las Mareas & Bahia de Jobos—11.
Municipio de Salinas	
_____PR–45P & PR–46.	Bahiua de Jobos & Cayos de Barca/Ratones Complex—12.
_____PR–47, PR–48P & PR–49P.	Arenal, Arrecife Media Luna, & Punta Aguila (in Santa Isabel Mun.)—13.

Unit number(s)	Unit name(s)
Municipio de Juana Diaz	
_____PR–50, PR–50P, PR–51 & PR–52.	Chardon (in Santa Isabel Mun.), Cayo Berberia, Rio Descalabrado & Punta Pastillo—14.
Municipio de Ponce	
_____PR–53, PR–54, PR–55, & PR–56.	Bajio de Marea (in Juana Diaz Mun.), Rio Jacaguas, Isla del Frio & Punta Cabullones—15.
_____PR–57/PR–57P & PR–58P.	Punta Cucharas & Bahia de Tallaboa (in Penuelas Mun.)—16.
Municipio de Guanica	
_____PR–59, PR–60P & PR–61.	Punta Ballena (also in Yauco Mun.), Punta Jacinto & Ensenada las Pardas—17.
_____PR–62P, PR–63P & PR–64P.	Punta Manglillo, Cayo don Luis & Bahia Montalva (also in Lajas Mun.)—18.
Municipio de Cabo Rojo	
_____PR–65P	Islas Cueva/ Guayacan (also in Lajas Mun.)—19.
_____PR–65P & PR–66/PR–66P.	Islas Cueva/ Guayacan & Cabo Rojo—20.
_____PR–67P, PR–68, PR–69 & PR–70.	Bahia de Boqueron, Boca Prieta, Punta Carenero & Belvedere—21.
Municipio de Mayaquez	
_____PR–72	Rio Guanajibo—22.
Municipio de Aquadilla	
_____PR–75/PR–75P .	Espinar—23.
Municipio de Isabela	
_____PR–76 & PR–77	Punta Aguijereada (in Aguadilla Mun.), & Bajura—24.
_____PR–78	Coto—25.
Municipios de Camuy & de Hatillo	
_____PR–79 & PR–80	Penon Brusi & Punta Maracayo—26.
Municipio de Arecibo	
_____PR–81	Puerto de Arecibo—27.
Municipio de Manati	
_____PR–82P	Punta Manati—28.
_____PR–83 & PR–84	Tortuguero (Also in Vega Baja Mun.) & Punta Garza (in Vega Baja Mun.)—29.
Municipio de Toa Baja	
_____PR–86P	Punta Salinas—30.
Municipio de Loiza	
_____PR–87P	Punta Vacia Talega—31.
_____PR–87	Punta Vacia Talega (also in Carolina Mun.)—32.
_____U.S. VIRGIN ISLANDS (7 maps)	
St. Croix	
_____VI–01, VI–02, VI–03, VI–08 & VI–09.	Rust Up Twist, Salt River Bay, Altona Lagoon, Canegarden Bay & Krause Lagoon—1.
_____VI–04/VI–04P, VI–05, VI–06 & VI–07.	Southgage Pond, Coakley Bay, Robin Bay & Great Pond—2.
_____VI–10 & VI–11/ VI–11P.	Long Point & Westerid Saltpond—3.
St. John	
_____VI–12P, VI–13P, VI–14P, VI–22P, VI–23P, VI–24P, & VI–25.	Cinnamon Bay, Maho Bay, Francis Bay, Great Lameshur Bay, Europa Bay, Reef Bay, & Fish Bay—4.
_____VI–15P, VI–16, VI–17, VI–18, VI–19P, VI–20P, & VI–21P.	Leinster Bay, Newfound Bay, Pond Bay, Lagoon Point, Ram Head, Kiddel Bay & Grootpan Bay—5.
St. Thomas	
_____VI–26, VI–27, VI–28 & VI–29.	Sprat Point, Limestone Bay, Perseverance Bay & Magens Bay—6.
_____VI–30, VI–31, VI–32, VI–33, VI–34 & VI–35P.	Mandal Bay, Smith Bay, Vessup Bay, Great Bay, Jersey Bay & Buck Island—7.
_____OHIO (7 maps)	
Lake County	
_____OH–01	Arcola Creek—1.
_____OH–02	Mentor—2.
Erie County	
_____OH–03	North Pond—3.
_____OH–04 & OH–05	Old Woman Creek & Sheldons March—4.
Ottawa County	
_____OH–06	Bay point—5.
_____OH–07, OH–08 & OH–09.	Middle Bass Island, North Bass Island & Fox Marsh—6.
_____OH–10	Toussaint River—7.
_____MICHIGAN (37 maps)	
Monroe County	
_____MI–02	Toledo Beach—1.
_____MI–03	Enrico Fermi—2.
Wayne County	
_____MI–04	Sturgeon Bar—3.
Huron County	
_____MI–05	Huron City—4.
_____MI–06 & MI–07 ..	Alaska Bay & Pointe aux Barques—5.
Arenac County	
_____MI–08	Charity Island—6.
Alpena County	
_____MI–13	Squaw Bay—7.
_____MI–14	Whitefish Bay—8.
Presque Isle County	
_____MI–17	Swan Lake—9.
Benzie County	
_____MI–20	Lower Herring Lake—10.
Manistee County	
_____MI–21	Arcadia Lake—11.
Muskegon County	
_____MI–22	Sadony Bayou—12.
Menominee County	
_____MI–24	Deadmans Point—13.
Delta County	
_____MI–25	Squaw Point—14.
Schoolcraft County	
_____MI–28 & MI–29 ..	Goadreaus Harbor & Seul Choix—15.
Mackinac County	
_____MI–31	Fox Point—16.
_____MI–32	McNeil Creek—17.
_____MI–33, MI–34, & MI–35.	Millecoquins Point, East Mile Creek & Mattix Creek—18.
_____MI–36 & MI–37 ..	Borgstrom Creek & Davenport Creek—19.
_____MI–38 & MI–39 ..	Hudson & Epoufette—20.
_____MI–40	Green Island—21.
_____MI–41	Big St. Martin Island—22.
_____MI–42	Bass Cove Lake—23.
_____MI–43	Whitefish Point—24.
_____MI–44	Albany Island—25.
Chippewa County	
_____MI–45	St. Vital Bay—26.
_____MI–46	Espanore Lake—27.
_____MI–49, MI–51 & MI–52.	Shelldrake, Marsh Lake, & Superior—28.
_____MI–53	Vermilion—29.

Unit number(s)	Unit name(s)
Luce County	
MI–55	Little Two Hearted River—30.
Alger County	
MI–59	Laughing Whitefish River—31.
Marquette County	
MI–62	Saux Head—32.
MI–63 & MI–64	Iron River & Squaw Beach—33.
MI–65	Salmon Trout Bay—34.
Baraga County	
MI–66	Lightfoot Bay—35.
Keweenaw County	
MI–71	Jacobs Creek—36.
MI–74	Gratiot River—37.
WISCONSIN (5 maps)	
Manitowoc County	
WI–01	Two Creeks—1.
Brown County	
WI–02	Point au Sable—2.
Marinette County	
WI–03 & WI–04	Peshtigo Point & Dyers Slough—3.
Bayfield County	
WI–05	Bark Bay—4.
WI–06 &WI–07	Herbster & Flag River—5.
MINNESOTA (1 map)	
St. Louis County	
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Part V

Securities and Exchange Commission

17 CFR Part 210, et al.
Adoption of Final Amendments To Rule and Form Requirements Which Govern Age of Financial Statements of Foreign Private Issuers; and Simplification of Registration and Reporting Requirements for Foreign Companies etc.; Rule and Proposed Rulemaking

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 210, 229, 239, 240

[33–7026; 34–33135; FR 41; International Series Release No. 605; File No. S7–16–91]

RIN 3235–AD96

Adoption of Final Amendments to Rule and Form Requirements Which Govern Age of Financial Statements of Foreign Private Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Commission is publishing final amendments relating to the age of financial statements of foreign private issuers that register securities for sale under the Securities Act of 1933. The amendments revise the requirements which govern the age of financial statements in registration statements to conform such requirements to the financial statement updating requirements of the home jurisdictions of a substantial majority of foreign issuers. Such conformity is intended to reduce the impediments to foreign issuers making securities offerings in the United States.

EFFECTIVE DATE: These amendments are effective November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Wayne E. Carnall, Office of the Chief Accountant, Division of Corporation Finance at (202) 272–2553; Richard M. Kosnik, Associate Director, Division of Corporation Finance at (202) 272–7735.

SUPPLEMENTARY INFORMATION: The Commission is adopting amendments to Rules 3–19(b) [1], 3–19(c) [2] and 3–19(f) [3] of Regulation S–X,[4] and Rule 15d–2 [5] under the Securities Exchange Act of 1934 ("Exchange Act"),[6] Forms F–2 [7] and F–3 [8] under the Securities Act of 1933 ("Securities Act"),[9] and Item 512(a)(4) of Regulation S–K.[10]

I. Amendments of Rules Applicable to Age of Financial Statements and Updating Requirements

The Commission is adopting amendments that relate to the age of financial statements included in registration statements by foreign private issuers at the time of effectiveness and to financial statement updating requirements for such issuers. The amendments will streamline the registration and reporting obligations of foreign companies by accommodating updating of financial statements through use of semi-annual reports more common under foreign reporting regimes.

Registration statements that are filed with the Commission by foreign private issuers are subject to Commission rules that govern the form and content of the financial statements. Rule 3–19 of Regulation S–X sets forth the requirements with respect to the age of financial statements of foreign private issuers included in filings. Until the Commission's action today, Rules 3–19 (b) and (c) taken together have required that on the effective date of a Securities Act registration statement:

(1) Financial statements in the filing must be as of a date within six months of the effective date, and

(2) the audited year end financial statements must be included in the filing if the effective date falls more than five months after the registrant's fiscal year end.

The periodic reporting requirements of many foreign jurisdictions do not require quarterly reporting. Even where interim as well as annual reporting is required, interim reporting periods frequently are longer than that prescribed in the U.S. In recognition of foreign reporting requirements, the Commission's interim reporting requirements for foreign private issuers under the Exchange Act are limited to requiring information on Form 6–K only to the extent it is otherwise provided to shareholders, exchanges or others.

Nonetheless, despite the Commission's determination not to impose any interim periodic reporting requirement on foreign private issuers, the effect of the Commission's age of financial statement provisions has been that a foreign private issuer must provide interim financial information more frequently than semi-annually if it wishes to conduct continuous offerings without interruption and to avoid delays in commencing a registered offering.

To improve foreign issuers' access to the U.S. public market without requiring them to produce quarterly financial information, the Commission is amending its age of financial statement requirements. The rules, as amended today, require foreign issuers to provide audited fiscal year financial statements within six months following the end of the fiscal year; unaudited interim financial statements are required only to the extent necessary to bring the most recent financial statements included in a filing to a date within ten months of effectiveness. Under this system, a foreign issuer can have uninterrupted access to the U.S. public market by providing within four months following the end of its fiscal year either its audited financial statements for that year or unaudited interim financial statements as of the end of the third quarter of that year.

On June 5, 1991, the Commission proposed for comment certain amendments to rules applicable to age of financial statements included in registration statements.[11] All eight commenters expressed general support for the proposals. One commenter, however, recommended retaining the requirement to include audited annual financial statements for the most recent year in a registration made effective more than five months after fiscal year-end. The rule adopted today retains the proposal's six month timetable for audited financial statements, since this tracks the existing schedule used for periodic reporting under the Exchange Act. Nonetheless, the proposal has been modified in response to this commenter's concern for more current information; the rule as adopted requires the most recent financial statements to be not older than 10 months, rather than 12 months as proposed. Thus, the amendment will enable registration statements of foreign private issuers to go effective with audited financial statements as old as 18 months (as compared to 17 months under the rule presently applicable to foreign issuers), with the most recent interim statements as old as 10 months (as compared to 6 months under the present rule and 12 months under the original proposal).

Another commenter suggested that the proposed amendments to Rule 3–19 could be read to conflict with the requirement of Section 10(a)(3) of the Securities Act, which requires a prospectus used more than nine months after the effective date of a registration statement to contain information as of a date not more than 16 months prior to such use. Item 512(a)(4) of Regulation S–K requires a foreign private issuer to update its financial statements included in a prospectus used nine months after effectiveness of a registration statement when they no longer meet the requirements of Rule 3–19. Other information included in the prospectus must be updated at the same time.

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[1] 17 CFR 210.3–19(b).
[2] 17 CFR 210.3–19(c)
[3] 17 CFR 210.3–19(f).
[4] 17 CFR part 210.
[5] 17 CFR 240.15d–2.
[6] 15 U.S.C. 78a *et seq.*
[7] 17 CFR 239.32.
[8] 17 CFR 239.33.
[9] 15 U.S.C. 77a *et seq.*
[10] 17 CFR 229.512(a)(4).
[11] Securities Act Release No. 6895 (June 5, 1991) [56 FR 27562].

These specific requirements apply in lieu of the more general updating requirements of Section 10(a)(3), which are not necessary or appropriate where the requirements of Item 512 and of Rule 3–19 are met. Item 512(a)(4) is being amended to clarify this point.

II. Amendment to Requirement To Reconcile Financial Information Otherwise Provided

Rule 3–19(f) requires interim financial information that is made available to shareholders, exchanges or others on a more frequent basis than that required by Rules 3–19 (b) and (c) to be included in any registration statement filed with the Commission. The rule has required this additional information to be reconciled to U.S. generally accepted accounting principles (GAAP). The amendments provide that such additional information need not be reconciled to U.S. GAAP if adequate narrative disclosures are provided. Specifically, if a registration statement includes reconciled financial statements as of a date which complies with Rules 3–19 (b) and (c), more current financial information which is included in the filing need not be reconciled to U.S. GAAP provided that any material variation in accounting underlying the more recent information which was not previously disclosed and quantified in the reconciliations of earlier periods is described and the quantified effects of the material variation are disclosed. The Commission has determined to adopt the amendments as proposed.

III. Other Amendments Relating to Financial Statement Updating

Other amendments are being adopted to:

(1) Clarify language in Forms F–2 and F–3 to reflect current staff practice of allowing incorporation of interim financial statements filed on Form 6–K; and

(2) Amend Rule 15d–2 to permit foreign private issuer registrants to file special year end financial statement reports (subsequent to the effectiveness of a registration statement that did not contain the audited financial statements for the most recent year end) by the later of 90 days following the effective date or six months following the registrant's fiscal year end. This amends the current rule to recognize that foreign issuers are allowed up to six months following the end of the fiscal year within which to file their annual report including audited year end financial statements. The Commission has determined to adopt the amendments as proposed.

IV. Cost-Benefit Analysis

The Commission is not aware of any costs that will result from the amendments to rules and forms relating to the age of financial statements of foreign private issuers, but as foreign issuers will be able to avoid expenses associated with more frequent financial statement updating and reconciliation, benefits are expected to result for such issuers. U.S. issuers are unaffected by these proposed amendments. The commentators did not address specifically the costs and benefits of the proposed amendments, but generally were in favor of the proposals and indicated that the proposals would be beneficial for foreign registrants.

V. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605(b)], the Chairman of the Commission has certified that the amendments will not have a significant impact on a substantial number of small entities. Members of the public who wish to obtain a copy of the Regulatory Flexibility Certification should contact Wayne E. Carnall, (202) 272–2553, Office of the Chief Accountant, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

VI. Effective Date

The amendments to Rule 3–19 and related rules and forms shall be effective immediately upon publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for, inter alia, "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

List of Subjects in 17 CFR Parts 210, 229, 239 and 240

Accounting, Reporting and recordkeeping requirements, Securities.

Text of Rule and Form Amendments

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 210—FORM AND CONTENT OF AND REQUIREMENTS FOR FINANCIAL STATEMENTS, SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934, PUBLIC UTILITY HOLDING COMPANY ACT OF 1935, INVESTMENT COMPANY ACT OF 1940, AND ENERGY POLICY AND CONSERVATION ACT OF 1975

1. The authority citation for part 210 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77aa(25), 77aa(26), 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79e(b), 79j(a), 79n, 79t(a), 80a–8, 80a–20, 80a–29, 80a–30, 80a–37, unless otherwise noted.

* * * * *

2. By amending § 210.3–19 by revising paragraphs (b), (c) and (f) to read as follows:

§ 210.3–19 Special provisions as to financial statements for foreign private issuers.

* * * * *

(b) If the filing, other than an annual report on Form 20–F, (§ 249.220f of this chapter) is made effective within six full months after the end of the registrant's fiscal year and if the audited balance sheet for the most recent fiscal year is not available, the audited balance sheets in the filing may be as of the end of the two preceding fiscal years; *Provided,* That on the effective date the filing shall include a balance sheet, which may be unaudited, as of an interim date within ten months of the effective date (except as permitted in paragraph (e) of this section).

(c) If the filing is made effective after six full months subsequent to the end of the most recent fiscal year, the filing shall include the audited financial statements described in paragraph (a) of this section. In addition, if the effective date of the filing is later than ten full months after the end of the most recent fiscal year, the filing shall also include a balance sheet, which may be unaudited, as of an interim date within ten months of the effective date (except as permitted in paragraph (e) of this section).

* * * * *

(f) Notwithstanding the above provisions of this section, if a foreign private issuer prepares and discloses to its shareholders or otherwise makes public, pursuant to applicable foreign laws or regulations or stock exchange requirements or otherwise, interim financial information relating to revenues and income that is more current than the financial statements included in the filing in order to comply with the other provisions of this section, such information also shall be included

in the filing and shall be accompanied by:

(1) A description of material variations in the accounting principles, practices and methods used in preparing the financial statements from the principles, practices and methods accepted in the United States; and

(2) Quantification of any material variations that are not quantified with respect to their occurrence in the annual or interim financial statements included in the filing.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By revising paragraph (a)(4) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by § 210.3–19 of this chapter at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, *Provided*, That the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

5. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

6. By amending Form F–2 (§ 239.32) by revising paragraph (b)(2) of Item 11 preceding the Instructions to read as follows:

Note.—The text of Form F–2 is not and the amendment will not be included in the Code of Federal Regulations.

FORM F–2

* * * * *

Item 11. Material Changes.

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference and delivery of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference and delivery of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

7. By amending Form F–3 (§ 239.33) by revising paragraph (b)(2) of Item 11 preceding the Instructions to read as follows:

Note.—The text of Form F–3 is not and the amendment will not be included in the Code of Federal Regulations.

FORM F–3

* * * * *

Item 11. Material Changes.

* * * * *

(b) * * *

(2) If the financial statements incorporated by reference from the registrant's latest Form 20–F, Form 40–F or Form 10–K in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

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PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

8. The authority citation for Part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80–29, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

9. By amending § 240.15d–2 to add one sentence to the end of paragraph (a) to read as follows:

§ 240.15d–2 Special financial report.

(a) * * * If the registrant is a foreign private issuer as defined in § 230.405 of this chapter, then the special financial report shall be filed on the appropriate form for annual reports of the registrant and shall be filed by the later of 90 days after the date on which the registration statement became effective, or six months following the end of the registrant's latest full fiscal year.

* * * * *

By the Commission.

Dated: November 3, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–27562 Filed 11–12–93; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239 and 249

[Release Nos. 33–7029; 34–33139; International Series Release No. 608; File No. S7–30–93]

RIN 3235–AF83

Simplification of Registration and Reporting Requirements for Foreign Companies; Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports

AGENCY: Securities and Exchange Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Commission is proposing today to streamline registration and reporting requirements for foreign companies by: Expanding the universe of foreign issuers eligible to use short-form and full shelf registration under the Securities Act of 1933 (the "Securities Act"); streamlining financial statement reconciliation and financial schedules requirements; providing a new safe harbor for company announcements regarding exempt offerings or unregistered offshore offerings; and expanding safe harbor protection for analyst reports with respect to sizable foreign companies publicly traded offshore.

DATES: Comments should be received on or before January 31, 1994.

ADDRESSES: Comment letters should refer to File Number S7–30–93 and be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. The Commission will make all comments available for public inspection and copying in its Public Reference Room at the same address.

FOR FURTHER INFORMATION CONTACT: Anita Klein or Sandra Folsom Kinsey, (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance or with respect to accounting proposals, Wayne E. Carnall, (202) 272–2553, Office of the Chief Accountant, Division of Corporation Finance, U.S. Securities and Exchange Commission, Washington, DC 20549.

SUPPLEMENTARY INFORMATION: As described in detail below, the Commission is proposing amendments to the following rules and forms under the Securities Act of 1933:[1] Form F–1,[2] Form F–2,[3] Form F–3,[4] Form F–4,[5] Rule 135,[6] Rule 139,[7] Rule 457,[8] Rule 462,[9] Rule 475a,[10] Rule 477,[11] Rule 902 of Regulation S,[12] Rule 502(c) of Regulation D[13] and Item 512 of Regulation S–K.[14] In addition, the Commission is proposing new Rule 135c[15] under the Securities Act and is proposing to amend Form 20–F[16] under the Securities Exchange Act of 1934 (the "Exchange Act").[17]

I. Introduction

In this and a series of companion releases, the Commission today is proposing a number of initiatives, and adopting others, designed to streamline the registration and reporting process for foreign companies accessing the U.S. public markets, further accommodate foreign market making and trading practices in connection with both registered and Rule 144A offerings,[18] and extend the availability of the U.S. and Canadian multijurisdictional disclosure systems to more companies.[19] Those actions include adoption of amendments to the rules governing the updating of financial statements used in offering documents.[20] These amendments are intended to reduce problems for foreign companies that do not publicly report quarterly financial statements.

Today's initiatives are based on the Commission's experience dealing with issues raised in connection with foreign issuers' participation in the U.S. public and private securities markets, and reflect in many instances accommodations previously made to help an individual foreign issuer's entry into the U.S. market. In the last three years, more than 350 foreign companies have registered approximately $95 billion of securities with the Commission. In the last year and a half, approximately 140 foreign companies have entered the U.S. public market for the first time, bringing the total number of foreign companies reporting with the Commission to 559, representing 40 countries. Since the adoption of Rule 144A in April 1990, 184 foreign companies have raised capital in Rule 144A transactions, including 12 companies that later made their initial entry into the U.S. public market.

The initiatives continue the ongoing efforts of the Commission to ease the transition into the U.S. disclosure system, enhance the efficiencies of the registration and reporting processes and lower costs of compliance for foreign companies, where consistent with investor protection.

II. Expanded Availability of Short-Form and Shelf Registration

The Commission is proposing to revise its registration forms to extend to foreign issuers the benefits of short-form and shelf registration to the same extent available to domestic companies.[21]

A. Short-Form Registration Statements

Currently, a foreign private issuer may use short-form registration on Form F–3 for all offerings and have the full benefits of shelf registration only if it has voting securities with at least a $300 million public float and a 36-month reporting history with the Commission. Under the proposals made today, the public float threshold would be reduced to $75 million[22] and the reporting history requirement to 12 months.[23] These are the same eligibility criteria recently adopted for domestic companies.

The proposed $75 million public float criterion would extend the benefits of Form F–3 to a larger class of foreign issuers whose trading markets and size, as well as analyst following, indicate a sufficient market following to justify use of short-form and shelf registration.[24] The number of currently reporting foreign issuers that would satisfy the public float requirement of Form F–3 would increase by one-third.

When the Commission set the $300 million public float test for foreign issuers more than a decade ago, it noted that commenters supported the use of similar types of eligibility criteria for short-form registration by domestic and foreign issuers but recommended larger numerical tests for foreign issuers.[25] In

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[1] 15 U.S.C. 77a *et seq.*

[2] 17 CFR 239.31.

[3] 17 CFR 239.32.

[4] 17 CFR 239.33.

[5] 17 CFR 239.34.

[6] 17 CFR 230.135.

[7] 17 CFR 230.139.

[8] 17 CFR 230.457.

[9] 17 CFR 230.462.

[10] 17 CFR 230.475a.

[11] 17 CFR 230.477.

[12] 17 CFR 230.902.

[13] 17 CFR 230.502(c).

[14] 17 CFR 229.512.

[15] See proposed 17 CFR 230.135c.

[16] 17 CFR 249.220f.

[17] 15 U.S.C. 78a et seq.

[18] See Securities Act Release Nos. 7027 and 7028 (November 3, 1993).

[19] See Securities Act Release No. 7025 (November 3, 1993).

[20] See Securities Act Release No. 7026 (November 3, 1993).

[21] See Securities Act Release No. 6964 (Oct. 22, 1992) [57 FR 48970].

[22] See General Instruction I.A.4. to Form F–3.

[23] See General Instruction I.A.2. to Form F–3.

[24] The public float test specified in Form F–2 is proposed to be revised to $75 million as well.

[25] See Securities Act Release No. 6360 (November 30, 1981) [46 FR 58505]; Securities Act Release No. 6437 (November 19, 1982) [47 FR 54764].

response, the Commission adopted a public float standard twice that required for domestic issuers. Subsequent Commission experience with foreign issuers, as well as the internationalization of securities markets, indicates that foreign issuers with a public float of $75 million or more have a degree of analyst following in their world-wide markets comparable to similarly-sized domestic companies. Thus, the same float test is proposed for foreign issuers on Form F–3 as for domestic issuers on Form S–3. Comment is requested concerning whether the proposed $75 million public float standard is appropriate or whether a higher level would be preferable. If a higher level is recommended, a specific level and the reasons for recommending it should be set forth.

As proposed, the reporting history requirement for Form F–3 would be reduced to 12 months, paralleling the domestic issuer requirement. Proposed Form F–3 would not require that an annual or interim report have been filed or submitted to the Commission prior to first use of the Form.[26] Although the proposal would require that a foreign issuer have been subject to the Exchange Act reporting requirements for 12 months prior to using Form F–3, it is conceivable that in some cases an issuer would not have been required to file any reports during those 12 months.[27] Foreign issuers, unlike domestic companies, are required to submit under Form 6–K only those interim reports that the issuer: (i) makes or is required to make public in its home country, (ii) publicly files or is required to file publicly with a stock exchange on which its securities are traded, or (iii) distributes or is required to distribute to its securityholders. Moreover, unlike domestic companies using Form S–3, foreign companies registering on Form F–3 are not required to incorporate all their interim reports on Form 6–K, but may choose which reports are incorporated.

Comment is requested as to whether the requirement that the issuer be a reporting company for 12 months should be supplemented with a requirement that an annual report have been filed, or a requirement that either an annual report or a semi-annual report have been filed. Should a longer period as a reporting company be required to assure that at least one annual report will have been filed prior to the use of Form F–3?

B. Shelf Registration

The expanded eligibility for short-form registration in turn would allow more foreign companies the full benefits of shelf registration.[28] Issuers eligible to register securities for primary offerings using short-form registration are able to offer those securities on a delayed or continuous basis under the Commission shelf registration procedures.[29] Shelf registration provides companies with financing flexibility and efficiency because they are able to complete their securities registration prior to any planned sales and periodically sell the securities, in one or more offerings, without further Commission clearance. Thus, through expanded Form F–3 eligibility, foreign issuers would be allowed the same flexibility and efficiency that domestic issuers have through Form S–3 eligibility.

In addition, the new unallocated shelf registration process recently introduced for domestic companies is proposed to be extended to foreign companies on the same basis. The unallocated shelf process would permit foreign private issuers registering on Form F–3 to use one registration statement to register debt, equity and other securities, without specifying the amount of each class of securities to be offered.[30] Since the introduction of the unallocated shelf registration 12 months ago, more than $65 billion of securities has been registered by domestic companies using unallocated shelf registration. Comment is requested as to the appropriateness of the expansion of shelf registration and whether there is any need to limit or condition its availability.

C. Investment Grade Non-Convertible Preferred Stock

Currently, foreign issuers may use short-form registration for investment grade non-convertible debt securities, without regard to the size of their voting stock public float.[31] Form F–3 is proposed to be amended to provide the same treatment for non-convertible investment grade preferred stock.[32] These provisions parallel those applied to domestic companies. Comment is requested on the appropriateness of the proposed change.

The proposals also would clarify in Forms F–2 and F–3 that the investment grade status of the securities covered by the registration statement is measured at the time of the sale to investors. Thus, the rating need not be obtained at the time of the filing of the registration statement.[33] If the rating that is received after the registration statement is effective falls below investment grade, and the eligibility requirements for the Form are no longer satisfied without an investment grade rating, the registrant would be required to file a new registration statement or a post-effective amendment. The new registration statement or post-effective amendment would have to provide any requisite additional disclosure, before a takedown is made to sell securities off the shelf.[34]

D. Majority-Owned Subsidiaries

Two revisions are proposed to expand the availability of short-form registration for majority-owned subsidiaries of foreign companies, and mirror the treatment of domestic companies. As proposed, a majority-owned subsidiary would be able to register non-convertible investment grade preferred stock on Form F–3 on the basis of its

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[26] See proposed revisions to Item 12 of Form F–3, General Instruction B to Form F–4 and Items 10–14 and 17 of Form F–4. In the absence of an annual report, Form F–3 issuers would be required to incorporate information from their latest Exchange Act or Securities Act registration statement.

[27] Domestic issuers are permitted to use Form S–3 after being subject to reporting requirements for 12 months, regardless of whether they have filed an annual report. Quarterly reports would have been required to be filed, however, by such issuers and would automatically be incorporated by reference into the Form S–3 registration statement.

[28] See proposed revisions to Item 512(a)(1) of Regulation S–K (§ 229.512(a)(1)) that would codify prior staff interpretations that allow foreign issuers to incorporate Exchange Act reports in order to update shelf registration statements to the same extent as domestic issuers. See also proposed revisions to Item 512(a)(4) that allow Form F–3 issuers to incorporate Exchange Act reports in order to update financial statements and other information for shelf offerings in accordance with Rule 3–19 of Regulation S–X (§ 210.3–19) and Section 10(a)(3) of the Securities Act (15 U.S.C. 77j(a)(3)).

[29] Rule 415(a)(1)(x), 17 CFR 230.415(a)(1)(x).

[30] See proposed General Instruction II.C. to Form F–3, proposed General Instruction H. to Form F–4 and proposed revisions to Rule 457 under the Securities Act. Of course, foreign issuers registering on Form F–3 based on the investment grade rating of the securities could not register non-investment grade securities on the same unallocated shelf registration statement unless the issuer satisfies the public float test.

[31] To qualify as investment grade, a security must be so rated by a nationally recognized statistical rating organization, as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F)).

[32] Corresponding changes are proposed to the provisions of Form F–2 that currently allow for registration of non-convertible investment grade debt securities (but not preferred securities) without regard to public float or reporting history. See General Instruction I.B.2. to Form F–2.

[33] See Instruction 3 to the Signatures of Forms F–2 and F–3.

[34] For example, if a non-investment grade rating is received, and the financial statements contained in the registration statement were reconciled in accordance with Item 17 of Form 20–F, a filing to include financial statements reconciled to Item 18 of Form 20–F would be required. Further, if the issuer is not eligible to use Form F–3 without the investment grade rating, the issuer may also be ineligible to use shelf registration. See Rule 415 under the Securities Act (§ 230.415).

parent company's eligibility.[35] In addition, a majority-owned subsidiary would be able to use Form F–2 or F–3 to offer non-convertible preferred stock if its parent met the eligibility requirements and fully and unconditionally guaranteed the payment obligations on the subsidiary's securities.[36] Comment is requested on the appropriateness of the proposed change.

E. Secondary Offerings, Rights Offerings, Dividend or Interest Reinvestment Plans, Convertible Securities and Warrants[37]

Under existing rules, a foreign private issuer may use short-form registration for secondary offerings and certain rights offerings, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants only if its voting securities meet a public float test.[38] The Commission is proposing to eliminate the public float requirements for registration in connection with such offerings, as none applies to domestic issuers. Comment is solicited on the appropriateness of the proposed change with respect to each type of offering. Should a public float test or additional criteria be required with respect to any or all of such offerings?

Domestic issuers that do not meet the Form S–3 public float test, however, are required to have delivered information to security holders in the 12 months prior to registering on Form S–3 for rights offerings, dividend or interest reinvestment plans, conversion of convertible securities and exercise of warrants.[39] Under the current proposals, foreign issuers would be able to use Form F–3 for such offerings without satisfying such a condition. The information that is required to have been delivered by domestic issuers to satisfy that condition is contained in the issuer's proxy statement and annual report to securityholders prepared and delivered pursuant to proxy requirements.[40] Foreign private issuers, which are exempt from such proxy requirements, would not have had reason to deliver such information to their securityholders.

Comment is requested concerning whether a similar information delivery condition should be applied to foreign issuers, or foreign issuers with a public float below $75 million. For example, should such issuers' use of the Form be conditioned upon their delivery to the securityholders to which the offering relates, in the 12 months preceding the offering, a copy of the issuer's most recent annual report or registration statement filed with the Commission?

III. Streamlining Reconciliation Requirements

A. Acceptance of Cash Flow Statements Prepared in Accordance with International Accounting Standards

Foreign private issuers currently are required to provide either a statement of cash flows prepared in accordance with U.S. generally accepted accounting principles ("U.S. GAAP") or information that is substantially similar to U.S. GAAP in a separate statement of cash flows or in a footnote to the registrant's financial statements. Under the proposals, the Commission would accept without reconciliation a cash flow statement prepared in accordance with International Accounting Standards No. 7, "Cash Flow Statements," as amended ("IAS 7").

IAS 7 was amended in October 1992, as part of the International Accounting Standards Committee's Improvement Project. While there are differences between a cash flow statement prepared in accordance with IAS 7 and one prepared in accordance with U.S. GAAP, most of the differences relate to classification and are readily apparent. The remaining differences would not significantly impact an investor's understanding of cash flows. As the informational content of a cash flow statement prepared in accordance with IAS 7 would not be significantly different from a cash flow statement prepared in accordance with U.S. GAAP, the Commission believes statements prepared in accordance with IAS 7 should provide an investor with adequate information regarding cash flows without the need for additional information or modification.

Foreign private issuers electing to provide IAS 7 cash flow statements would be required to do so for all periods required to be reconciled or presented in accordance with U.S. GAAP. Issuers whose cash flow statement complies with IAS 7 or U.S. GAAP would include a statement to that effect in the auditors report or the notes to the financial statements. Comment is requested regarding the appropriateness of relying on the International Accounting Standard, as well as whether a cash flow statement prepared in accordance with IAS 7 should be supplemented with additional disclosure. Comment also is requested as to whether there is a need for the Financial Accounting Standards Board to reconsider FAS 95, "Cash Flow Statements" to conform with IAS 7.

B. Transitional Reconciliation Requirements

Currently foreign private issuers are required to reconcile their financial statements and five-year selected financial information to U.S. GAAP if presented in accordance with a foreign jurisdiction's generally accepted accounting principles. Providing five years of reconciled financial information has been one of the principal costs for foreign companies in entering the U.S. public market. On a case-by-case basis, accommodation has been provided with respect to such information for the earlier years. The Commission is proposing to codify with broader application its transitional accommodations and permit first-time registrants with the Commission to reconcile the required financial statements[41] and selected financial data for only the two most recently completed fiscal years and any interim periods required in the registration statement.[42]

The proposals do not change the requirements with respect to the primary financial statements to be included in the filings, i.e. two years of balance sheet and three years income and cash flow statements, and separate financial statements of significant acquirees or significant investees. Likewise, the requirement to include

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[35] See General Instruction I.A.6.(ii) to Form F–3. Currently only non-convertible investment grade debt may be registered on Form F–3 by majority-owned subsidiaries on that basis.

[36] See General Instruction I.A.6.(iii) to Form F–3 and General Instruction I.G. to Form F–2. Currently only guaranteed debt may be registered on Forms F–2 and F–3 by majority-owned subsidiaries on that basis.

[37] Proposals with respect to these types of offerings that were published for comment by the Commission in Securities Act Release No. 6896 (June 5, 1991) [56 FR 27564] continue to be considered in light of public comment and issues raised by foreign disclosure practices.

[38] See General Instructions I.B.3. and I.B.4. to Form F–3. In addition, the proposed revisions would provide immediate effectiveness of registration statements relating to dividend or interest reinvestment plans. See proposed revisions to General Instruction III. to Form F–3 and Rule 462 under the Securities Act (§ 230.462). Conforming revisions to Rules 475a and 477 under the Securities Act (§§ 230.475a and 230.477) also are being proposed. See also Rule 405 under the Securities Act (§ 230.405) which defines "dividend or interest reinvestment plan."

[39] See General Instruction I.B.4. of Form S–3.

[40] See Rule 14a–3(b) under the Exchange Act (§ 240.14a–3(b)).

[41] Where financial statements of an acquired business or significant investee must also be furnished, the proposed amendments would eliminate the requirement to reconcile the earliest of the three years if that information was not previously included in a filing with the Commission.

[42] Reconciliation of interim information is not required for periodic reporting purposes under the Exchange Act.

five years of selected financial data would remain unchanged.

In each subsequent year, on a prospective basis, an additional year of reconciliation would be required. Thus, for example, a foreign company with a calendar year-end entering the U.S. market in November 1994 would be required to provide reconciled information with respect to 1993 and 1992 and interim periods. In its annual report for 1994 and any registration statements made after the filing of the 1994 annual report and prior to the filing of the 1995 annual report, the reconciled data would be provided for three years, i.e., 1992, 1993 and 1994, and interim periods if applicable. Comment is requested as to the appropriateness of the proposed accommodation. Should reconciliation continue to be required for the third year of the income and cash flow statements? Should other disclosures relating to earlier years be required in lieu of the reconciled amounts?

Changes to the foreign issuer registration forms also are proposed to allow the simpler reconciliation pursuant to Item 17 of Form 20–F for all offerings of investment grade securities (whether debt or preferred stock) regardless of the registration form used by the foreign private issuer.[43] Foreign issuers currently are able to provide reconciliation in accordance with Item 17 only if debt securities are being registered. Although only Form F–3 currently contemplates Item 17 reconciliation for offerings of investment grade debt securities, extension of Item 17 reconciliation for investment grade debt securities to the other foreign private issuer registration forms would be a codification of staff practice.

C. Reconciliation of Financial Statements of Significant Equity Investees and Significant Acquirees

Both domestic and foreign companies are required to furnish audited financial statements of significant acquired businesses. Audited financial statements are required if the acquired business is significant at a level of 10%,[44] using tests based on the size of the registrant's investment in the business, the total assets of the business, and the business' pre-tax income relative to amounts reported in the registrant's most recent audited financial statements as calculated on a U.S. GAAP basis. Subject to the same tests for significance, separate audited financial statements of less-than-majority-owned investees ("equity investees") are required for each fiscal year that those entities exceed the significance level of 20%.

Based on its experience in dealing with foreign registrants and the particular difficulty of obtaining reconciling information for smaller acquisitions and equity investees, the Commission is proposing to forego requiring reconciliation of these entities' separate financial statements, unless they exceed a higher significance level. Under the proposal, financial statements of the acquiree would not have to be reconciled unless the acquiree exceeds the 30% significance level based on the registrant's investment, assets and pre-tax income.[45] Similarly, financial statements of significant equity investees would not have to be reconciled unless the investee exceeds the 30% significance level, but using only the investment and pre-tax income tests for significance.[46] Comment is requested regarding the criteria to measure significance for purposes of providing a reconciliation to U.S. GAAP. Should the threshold of 30% be increased, for example to 40%, or decreased, or should the requirement for reconciliation of acquisitions and investees be eliminated? Should different methods of measuring significance be used? Should different tests of significance be applicable to acquisitions and investees? Should the registrant's proportionate share of total assets also be a criterion in measuring significance of an equity investee for purposes of reconciliation? Should the registrant be required to quantify separately in its U.S. GAAP reconciliation those material reconciling items that affect the registrant's investment in the investee?

D. Accommodation With Respect to Pro Rata Consolidation

Generally accepted accounting principles in some countries allow pro rata consolidation for certain joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP. Net income and shareholders' equity are not affected by an issuer's use of pro rata consolidation rather than the equity method. There may, however, be significant differences in line item amounts reported in the balance sheet and statements of income and cash flows as a result of the method chosen. Substantial reconciling information is often necessary if a registrant uses pro rata consolidation in circumstances that would not be permitted under U.S. GAAP.

The Commission proposes to streamline the reconciliation of these differences with respect to foreign private issuers that account for an investment in a joint venture using pro rata consolidation. Such an issuer generally would provide summarized financial information of the current assets/liabilities, noncurrent assets/liabilities, net sales, gross profit and net income relating to its pro rata interest in the joint venture.[47] Separate financial statements of a joint venture accounted for using the pro rata method are not proposed to be required. Comment is requested as to the appropriateness of the proposed accommodation and whether the proposed rule should be limited to certain types of joint ventures, for example, registrants that hold an undivided interest in the assets of a joint venture, or if the proposed rule should be available to all types of joint ventures. In addition, comment is requested as to whether the summarized information should be expanded to provide any information on cash flow of the joint venture.

E. Elimination of Certain Financial Statement Schedules

Currently, foreign private issuers are required to furnish supplemental financial schedules as part of the reconciling information. The Commission is proposing to eliminate the requirements to furnish the following financial schedules:

(1) Rule 12–02—Marketable Securities—Other Investments
(2) Rule 12–03—Amounts Receivable from Related Parties and Underwriters, Promoters, and Employees Other Than Related Parties
(3) Rule 12–05—Indebtedness of and to Related Parties—Not Current
(4) Rule 12–06—Property, Plant and Equipment
(5) Rule 12–07—Accumulated Depreciation, Depletion and Amortization of Property, Plant and Equipment

[43] See General Instruction I.B.2. to Form F–3, General Instruction I.D. to Form F–2, Item 11(c) of Form F–1 and proposed Instruction 2 thereto, Instructions to Item 11(a) of Form F–4, Item 12(b)(2) and 12(b)(3)(vii) of Form F–4, Instructions to Item 13(a) of Form F–4 and Item 14(h) of Form F–4.

[44] The number of years depends on level of significance: 1 year at 10%, 2 years at 20% and 3 years at 40%.

[45] Reconciliation to U.S. GAAP would continue to be required for pro forma financial information depicting the effects of a registrant's acquisition of a business.

[46] See Rule 1–02(v) of Regulation S–X (17 CFR § 210.1–02(v)). The reconciliation of the registrant's primary financial statements to U.S. GAAP will continue to encompass reconciliation of the registrant's investment in the investee.

[47] These are the same captions as required by Rule 1–02(aa) of Regulation S–X (17 CFR § 210.1–02(aa)).

(6) Rule 12–08—Guarantees of Securities of Other Issuers

The schedules are prepared using the accounting standards of the primary financial statements, but typically are not required for reporting in a foreign issuer's home jurisdiction. The Commission believes the incremental cost of the preparation and audit of the schedules proposed to be eliminated is not warranted in light of the information provided in these schedules.

The Commission requests comment as to whether any of the schedules proposed to be eliminated are necessary and therefore should continue to be required. Are there additional schedules that could be foregone without adversely affecting investors' interests?

IV. Safe Harbors for Public Announcements of Unregistered Offerings and Broker-Dealer Research Reports

A. Company Announcements of Unregistered Offerings

The growing number of cross-border and offshore offerings and private placements following the adoption in 1990 of Regulation S [48] and Rule 144A [49] under the Securities Act has resulted in repeated requests for guidance in dealing with companies' need to keep investors informed of material developments, including securities offerings, and the limitations on general solicitation and directed selling efforts in private placements and offshore offerings under Regulation S. To address these concerns, the Commission is proposing a new safe harbor for issuers' announcements of offerings not registered or required to be registered under the Securities Act.[50] The new safe harbor parallels the safe harbor currently provided for similar announcements in connection with registered offerings under Rule 135 under the Securities Act.[51] The proposed safe harbor would be available to both domestic and foreign issuers.

The new safe harbor would limit the information permitted in the announcement to the information currently allowed in the safe harbor for announcements with respect to registered offerings. In addition, the announcement would be required to contain a legend stating that the securities are not registered and may not be sold in the United States absent registration or an applicable exemption from the registration requirements. The proposed safe harbor would not be available if the announcement is being used for the purpose of conditioning the market in the United States for the securities being offered. Under the proposal, to rely on the safe harbor, a reporting company would have to file or submit the announcement with the Commission under Form 8–K or 6–K, as applicable. Non-reporting issuers claiming the Rule 12g3–2(b) exemption under the Exchange Act that rely on the safe harbor would submit the announcement to the Commission pursuant to that rule.

Comment is solicited on the appropriateness of the safe harbor. Is there information that should be deleted or added to that which is proposed to be permitted? Are there conditions to the safe harbor that should be added or subtracted from those proposed? Should the safe harbor be limited to entities with a public trading market (either in the U.S. or abroad) prior to the announcement? Should all or some (e.g., real estate and oil and gas) offerings of partnership interests be excluded? Should the safe harbor apply to offerings under Regulation D under the Securities Act?[52] Should the private placements covered be limited to offerings to qualified institutional buyers as defined in the Rule 144A under the Securities Act?[53]

B. Broker-Dealer Research Reports

Rule 139 under the Securities Act provides safe harbor protection from the registration requirements of that Act with respect to the distribution by broker-dealers of information, opinions or recommendations concerning reporting companies in the process of registration. The conditions for relying on the safe harbor protection are more streamlined where issuers are eligible to use Form F–3 based on the company's voting securities public float or offering of investment grade securities. Because of the steady stream of corporate information available in the marketplace with respect to such companies, the likelihood of market conditioning abuses arising from the existence of broker-dealer research reports have been judged by the Commission to be minimized.[54] With respect to debt offerings, the Commission has determined that fungibility of an issuer's investment grade securities with similarly rated securities of other issuers makes it unlikely that there will be the sort of conditioning and manipulation of the markets which Section 5 was intended to prevent.[55]

Because of the reporting history required for Form F–3 eligibility, broker-dealers publishing research reports on certain sizeable foreign issuers have been foreclosed from the simpler conditions of the safe harbor and have been required to satisfy the more restrictive conditions to rely on the safe harbor. Yet foreign issuers with a public float of $75 million, whose securities have traded for a year on offshore securities markets, would appear likely to have a market following of the type that justifies safe harbor protection under the simpler conditions. Likewise, the reporting history would not appear an essential prerequisite to reliance on the simpler conditions in the case of investment grade securities offerings.

The safe harbor therefore is proposed to be revised to provide an alternative offshore trading history test for offerings by reporting companies that would be eligible for Form F–3 but for the 12-month reporting history condition.[56] Under the proposal, broker-dealers would be able to rely upon the simpler conditions of the safe harbor with respect to such issuers if such issuers have had securities listed or quoted on a designated offshore securities market [57] for at least 12 months. As in the case of Form F–3 eligible issuers, the research reports covered by the revised safe harbor would be those distributed with reasonable regularity in the normal course of business. Comment is solicited as to the appropriateness of the proposed change to Rule 139. Are there conditions to reliance on the safe harbor for foreign issuers that should be added or subtracted?

V. Age of Financial Statements and Updating Requirements

Concurrent with these proposals, in a companion release the Commission is adopting amendments that facilitate registration of securities by foreign

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[48] 17 CFR 230.901–230.904 and Preliminary Notes.

[49] 17 CFR 230.144A.

[50] See proposed Rule 135c (§ 230.135c) and proposed revisions to Rule 902(b) of Regulation S (§ 230.902(b)) and Rule 502(c) of Regulation D (§ 230.502(c)). Rule 902(b) would provide that announcements made pursuant to either Rule 135 or proposed Rule 135c would not constitute "directed selling efforts" for purposes of Regulation S. Rule 502(c) would except Rule 135c announcements from the prohibition on general solicitation or general advertising.

[51] Rule 135 under the Securities Act (§ 230.135). Rule 135 also is proposed to be amended to conform to the proposed new safe harbor so as to allow statements or legends required by foreign law to be included in such notices.

[52] 17 CFR 230.501–230.508 and Preliminary Notes.

[53] 17 CFR 230.144A.

[54] See Securities Act Release No. 6492 (Oct. 6, 1983) [48 FR 46801].

[55] *Id.*

[56] See proposed revisions to Rule 139 (17 CFR 230.139).

[57] "Designated offshore securities market" is defined in Rule 902(a) of Regulation S (§ 230.902(a)).

private issuers by revising requirements relating to the age and updating of financial statements used in offering documents. The revisions have been changed from those proposed, in response to public comment, to eliminate the potential that financial statements in the offering document may not be updated for as long as 12 months.[58] The rule will permit foreign issuers to provide audited fiscal year financial statements within six months following the end of the fiscal year. Unaudited interim financial statements would be required to the extent necessary to bring the most recent financial statements included in a filing to a date within ten months of effectiveness.

In addition, the revisions adopted today provide, as proposed, that interim information contained in offering documents that is more current than that required by Commission rules need no longer be reconciled to U.S. GAAP if narrative disclosures of the differences in accounting principles are provided.

VI. Cost-Benefit Analysis

To evaluate fully the costs and benefits associated with the proposed amendments to Forms F–1, F–2, F–3 and F–4, Rules 135, 139, 457, 462, 475a and 477 under the Securities Act, Item 512 of Regulation S-K, Rule 902 of Regulation S, Rule 502(c) of Regulation D and Form 20–F under the Exchange Act, and the proposal of new Rule 135c under the Securities Act, the Commission requests commenters to provide views and empirical data as to the costs and benefits associated with such proposals.

VII. Summary of Initial Regulatory Flexibility Analysis

The Commission has prepared an Initial Regulatory Flexibility Analysis ("IRFA"), pursuant to the requirements of the Regulatory Flexibility Act,[59] regarding the proposed rules. The IRFA notes that the proposed amendments to rules and forms are intended to provide foreign private issuers greater flexibility and efficiency in accessing the public securities markets. The proposed new rule is intended to provide issuers greater certainty in determining whether announcements of certain exempt or unregistered offerings would constitute "offers" for purposes of Section 5 of the Securities Act. The proposed amendments and rule would not impose any new reporting, recordkeeping or compliance requirements on any entities. No alternatives to the proposed amendments and rule consistent with their objectives and the Commission's statutory authority were found.

It is expected that the overall effect of the proposed amendments to rules and forms will provide foreign private issuers greater flexibility and increased efficiency in raising capital from the public securities markets. One expected result of adoption of the proposed amendments to rules and forms would be that offerings by foreign companies may increase, which could be expected to increase ease of investment for small U.S. entities acting as investors. While small U.S. entities raising capital in the United States could experience some increase in competition for capital from foreign entities making offerings under the revised forms and rules, that effect would not be expected to be significant for a substantial number of small U.S. entities in view of the small increase in total competition that may result. In addition, small U.S. entities acting as financial intermediaries, such as investment banks, could be affected by an increased number of offerings being made in the United States.

Small U.S. entities that distribute information, opinions or recommendations concerning foreign private issuers could be affected by the expansion of the safe harbor to a larger group of foreign issuers. To the extent small U.S. entities are affected by the proposed expansion of the Rule 139 safe harbor, however, they are expected to benefit from the increased certainty regarding the circumstances under which such information may be distributed and the larger pool of issuers with respect to which such information may be distributed. The effects of the revisions to rules and forms, in any case, are not expected to be significant for a substantial number of small entities in the United States.

Proposed new Rule 135c is not limited to foreign private issuers, but instead provides a safe harbor for all issuers disclosing information regarding such issuers' exempt or unregistered sales of securities. This proposed rule could have a significant effect on small U.S. entities that are reporting under the Exchange Act, although it is not possible to estimate how many small U.S. entities could be affected by the proposed rule. To the extent small U.S. entities are affected by the proposed rule, however, it is expected that they would benefit from the increased certainty regarding the circumstances under which disclosure of an exempt or unregistered sale of securities may be made and from the creation of a safe harbor that did not exist previously. A copy of the IRFA may be obtained from Sandra Folsom Kinsey, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 3–9, Washington, DC 20549, (202) 272–3246.

VIII. General Request for Comments

Any interested person wishing to submit written comments on any aspect of the amendments to forms and rules that are the subject of this release are requested to do so. Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, U.S. Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and should refer to file number S7–30–93.

IX. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, as amended, and sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 229, 230, 239 and 249

Confidential business information, Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. By revising the proviso following paragraph (a)(1)(iii) and revising paragraph (a)(4) of § 229.512 to read as follows:

§ 229.512 (Item 512) Undertakings.

* * * * *

(a) * * *

(1) * * *

(iii) * * *

Provided, however, That paragraphs (a)(1)(i) and (a)(1)(ii) of this section do not apply if the registration statement is

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[58] See Securities Act Release No. 7026 (November 3, 1993).

[59] 5 U.S.C. 603 (1988).

on Form S–3 (§ 239.13 of this chapter), Form S–8 (§ 239.16b of this chapter) or Form F–3 (§ 239.33 of this chapter), and the information required to be included in a post-effective amendment by those paragraphs is contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the registration statement.

* * * * *

(4) If the registrant is a foreign private issuer, to file a post-effective amendment to the registration statement to include any financial statements required by § 210.3–19 of this chapter at the start of any delayed offering or throughout a continuous offering. Financial statements and information otherwise required by Section 10(a)(3) of the Act need not be furnished, *provided* that the registrant includes in the prospectus, by means of a post-effective amendment, financial statements required pursuant to this paragraph (a)(4) and other information necessary to ensure that all other information in the prospectus is at least as current as the date of those financial statements. Notwithstanding the foregoing, with respect to registration statements on Form F–3 (§ 239.33 of this chapter), a post-effective amendment need not be filed to include financial statements and information required by Section 10(a)(3) of the Act or § 210.3–19 of this chapter if such financial statements and information are contained in periodic reports filed with or furnished to the Commission by the registrant pursuant to section 13 or section 15(d) of the Securities Exchange Act of 1934 that are incorporated by reference in the Form F–3.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

4. The authority citations following §§ 230.139 and 230.477 are removed.

5. By revising paragraph (a)(6) of § 230.135 to read as follows:

§ 230.135 Notice of certain proposed offerings.

(a) * * *

(6) Any statement or legend required by State or foreign law or administrative authority.

* * * * *

6. By adding § 230.135c to read as follows:

§ 230.135c Notice of certain proposed unregistered offerings.

(a) For the purposes only of Section 5 of the Act, a notice given by an issuer that it proposes to make an offering of securities not registered or required to be registered under the Act shall not be deemed to offer any securities for sale if:

(1) Such notice is not used for the purpose of conditioning the market in the United States for any of the securities to be offered;

(2) Such notice states that the securities to be offered will not be registered under the Act and may not be offered or sold in the United States absent registration or an applicable exemption from registration requirements; and

(3) Such notice contains no more than the following additional information:

(i) The name of the issuer;

(ii) The title, amount and basic terms of the securities proposed to be offered, the amount of the offering, if any, to be made by selling security holders, the anticipated time of the offering and a brief statement of the manner and purpose of the offering without naming the underwriters;

(iii) In the case of a rights offering to security holders of the issuer, the class of securities the holders of which will be entitled to subscribe to the securities proposed to be offered, the subscription ratio, the proposed record date, the approximate date upon which the rights are proposed to be issued, the proposed term or expiration date of the rights and the approximate subscription price, or any of the foregoing;

(iv) In the case of an offering of securities in exchange for other securities of the issuer or of another issuer, the name of the issuer and the title of the securities to be surrendered in exchange for the securities to be offered, the basis upon which the exchange may be made, or any of the foregoing;

(v) In the case of an offering to employees of the issuer or to employees of any affiliate of the issuer, the name of the employer and class or classes of employees to whom the securities are proposed to be offered, the offering price or basis of the offering and the period during which the offering is to be made or any of the foregoing: and

(vi) Any statement or legend required by State or foreign law or administrative authority.

(b) Any notice contemplated by this section may take the form of a news release or a written communication directed to security holders or employees, as the case may be, or other published statements.

(c) Notwithstanding the provisions of paragraphs (a) and (b) of this section, in the case of a rights offering of a security listed or subject to unlisted trading privileges on a national securities exchange or quoted on the NASDAQ inter-dealer quotation system information with respect to the interest rate, conversion ratio and subscription price may be disseminated through the facilities of the exchange, the consolidated transaction reporting system, the NASDAQ system or the Dow Jones broad tape, provided such information is already disclosed in a Form 8–K (§ 249.308 of this chapter) on file with the Commission, in a Form 6–K (§ 249.306 of this chapter) furnished to the Commission or, in the case of an issuer relying on § 240.12g3–2(b) of this chapter, in a submission made pursuant to that Section to the Commission.

(d) The issuer, if reporting pursuant to Section 13 or 15(d) of the Securities Exchange Act of 1934, shall file any notice contemplated by this section with the Commission under cover of Form 8–K (§ 249.308 of this chapter) or furnish such notice under Form 6–K (§ 249.306 of this chapter), as applicable, and, if relying on § 240.12g3–2(b) of this chapter, shall furnish such notice pursuant to the provisions of that exemptive Section.

7. By redesignating paragraph (a) as paragraph (a)(1) and adding paragraph (a)(2) to § 230.139 to read as follows:

§ 230.139 Definition of "offer for sale" and "offer to sell" in sections 2(10) and 5(c) in relation to certain publications.

* * * * *

(a)(1) * * *

(a)(2) The registrant is a foreign private issuer that meets all the registrant requirements of Form F–3 (§ 239.33 of this chapter), other than the reporting history provision of paragraph (A)(2)(a) of General Instruction I of such form, and meets the minimum float or investment grade securities provisions of either paragraph B.1. or B.2. of General Instruction I. of such form, and the registrant's securities have been traded for a period of at least 12 months on a designated offshore securities market, as defined in § 230.902(a), and such information, opinion or recommendation is contained in a publication which is distributed with

reasonable regularity in the normal course of business.

* * * * *

8. By revising paragraph (o) of § 230.457 to read as follows:

§ 230.457 Computation of fee.

* * * * *

(o) Where an issuer eligible to use Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter) is registering securities pursuant to General Instruction I.B.1. or I.B.2. to Form S–3 (§ 239.13 of this chapter) or Form F–3 (§ 239.33 of this chapter), as applicable, to be offered on a delayed or continuous basis pursuant to § 230.415(a)(1)(x), or pursuant to General Instruction H. to Form S–4 (§ 239.25 of this chapter) or General Instruction F. to Form F–4 (§ 239.34 of this chapter), as applicable, in connection with a business combination transaction pursuant to § 230.415(a)(1)(viii), the registration fee may be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table.

9. By revising § 230.462 to read as follows:

§ 230.462 Effective Date of a Registration Statement Filed on Form S–8, and on Certain Forms S–3 and F–3.

A registration statement on Form S–8 (§ 239.16b of this chapter) and a registration statement on Form S–3 (§ 239.13 of this chapter) or on Form F–3 (§ 239.33 of this chapter) for a dividend or interest reinvestment plan shall become effective upon filing with the Commission.

10. By revising § 230.475a to read as follows:

§ 230.475a Certain pre-effective amendments deemed filed with the consent of the Commission.

Amendments to a registration statement on Form F–2 (§ 239.32 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form, filed prior to the effectiveness of such registration statement shall be deemed to have been filed with a consent of the Commission and shall accordingly be treated as part of the registration statement.

11. By revising paragraph (b) of § 230.477 to read as follows:

§ 230.477 Withdrawal of registration statement or amendment.

* * * * *

(b) Any application for withdrawal of a registration statement filed on Form F–2 (§ 239.32 of this chapter) relating to a dividend or interest reinvestment plan, or on Form S–4 (§ 239.25 of this chapter) complying with General Instruction G of that Form, and/or any pre-effective amendment thereto, will be deemed granted upon filing if such filing is made prior to the effective date.

* * * * *

12. By revising paragraph (c) of § 230.502 to read as follows:

§ 230.502 General conditions to be met.

* * * * *

(c) *Limitation on manner of offering.* Except as provided in § 230.504(b)(1), neither the issuer nor any person acting on its behalf shall offer or sell the securities by any form of general solicitation or general advertising, including, but not limited to, the following:

(1) Any advertisement, article, notice or other communication published in any newspaper, magazine, or similar media or broadcast over television or radio; and

(2) Any seminar or meeting whose attendees have been invited by any general solicitation or general advertising;

Provided, however, that publication by an issuer of a notice in accordance with § 230.135c shall not be deemed to constitute general solicitation or general advertising for purposes of this section.

* * * * *

13. By adding paragraph (b)(7) to § 230.902 to read as follows:

§ 230.902 Definitions.

* * * * *

(b) *Directed selling efforts.* * * *

* * * * *

(7) Notwithstanding paragraph (b)(1) of this section, publication by an issuer of a notice in accordance with § 230.135 or § 230.135c shall not be deemed "directed selling efforts."

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

14. The authority citation for Part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a–8, 80a–29, 80a–30 and 80a–37, unless otherwise noted.

* * * * *

15. By revising paragraph (c) of Item 11 and Instructions to Item 11 of Form F–1 (§ 239.31) to read as follows:

Note: For F–1 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–1

* * * * *

Item 11. Information With Respect to the Registrant

* * * * *

(c) Information required by Item 17 of Form 20–F may be furnished in lieu of the information specified by Item 18 thereof if the only securities being registered are non-convertible securities that are "investment grade securities," as defined below, or the only securities to be registered are to be offered: (1) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted on a pro rata basis to all existing security holders of the class of securities to which the rights attach and there is no standby underwriting in the United States or similar arrangement; or (2) pursuant to a dividend or interest reinvestment plan; or (3) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer.

Instructions

1. Attention is directed to Section 10(a)(3) of the Securities Act.

2. A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

16. By revising paragraph (b)(2), Instruction 2 to paragraph (b), and paragraph (d) of § 239.32; revising General Instruction I.B.2. and Instruction 2 thereto, and revising General Instruction I.D. of Form F–2 (§ 239.32) to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(b)(1) * * *

(2) The provisions of paragraph (b)(1)(i) of this section do not apply to any registrant if:

(i) The aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $75 million or more, or if non-convertible securities that are "investment grade securities," as defined in instructions to paragraph (b) of this section, are being registered; and

(ii) The registrant has filed at least one Form 20–F (§ 249.220f of this chapter), Form 40–F (§ 249.240f of this chapter) or Form 10–K (§ 249.310 of this chapter) that is the latest required to have been filed.

Instructions to Paragraph (b)

1. * * *

2. A non-convertible security is an investment grade security if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in § 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

(d) The financial statements included in this registration statement comply with Item 18 of Form 20–F (§ 249.220f of this chapter); *provided, however,* that if the securities being registered are non-convertible securities that are "investment grade securities," as defined in instructions to paragraph (b) of this section, such financial statements comply with either Item 17 or Item 18 of Form 20–F (§ 249.220f of this chapter).

* * * * *

Note: Form F–2 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–2

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–2

* * * * *

B.1. * * *

2. The provisions of this paragraph B.1.a. do not apply to any registrant if: (i) the aggregate market value worldwide of the voting stock of the registrant held by non-affiliates is the equivalent of $75 million or more, or if non-convertible securities that are "investment grade securities," as defined below, are being registered and (ii) the registrant has filed at least one Form 20–F, Form 40–F or Form 10–K that is the latest required to have been filed.

Instructions

1. * * *

2. A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be sub-categories or gradations indicating relative standing) signify investment grade.

* * * * *

D. The financial statements included in this registration statement comply with Item 18 of Form 20–F; *provided, however,* that if the securities being registered are non-convertible securities that are "investment grade securities," as defined above, such financial statements comply with either Item 17 or Item 18 of Form 20–F.

* * * * *

17. By revising the text of paragraph (g) preceding the note of § 239.32 to read as follows:

§ 239.32 Form F–2, for registration under the Securities Act of 1933 for securities of certain foreign private issuers.

* * * * *

(g) If a registrant is a majority-owned subsidiary that does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

* * * * *

18. By amending Form F–2 (§ 239.32) by revising the first sentence of paragraph G. of General Instruction I., revising paragraph (b)(2) of Item 11, revising paragraph (b) of Item 17, and revising Instruction 3 to the Signatures to read as follows:

Note: Form F–2 does not, and these amendments will not, appear in the Code of Federal Regulations.

Form F–2

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–2

* * * * *

G. If a registrant is a majority-owned subsidiary that does not meet the conditions of these eligibility requirements, it nevertheless shall be deemed to have met such conditions if its parent meets the conditions and if the parent fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

* * * * *

Item 11. Material Changes.

(a) * * *

(b)(1) * * *

(2) If the financial statements included in this registration statement in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference and delivery of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference and delivery of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

Item 17. Undertakings.

(a) * * *

(b) The registration statement shall contain an undertaking substantially as follows:

The undersigned registrant hereby undertakes to deliver or cause to be delivered with the prospectus, to each person to which the prospectus is sent or given: the registrant's latest filing on Form 20–F, Form 40–F or Form 10–K; and any filing on Form 10–Q, Form 8–K or Form 6–K incorporated by reference into the prospectus.

* * * * *

SIGNATURES

* * * * *

Instructions

* * * * *

3. Where eligibility for use of the Form is based on the assignment of a security rating under General Instruction I.B.2., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

* * * * *

19. By amending § 239.33 by revising the introductory text of paragraph (a) and paragraphs (a)(1) and (a)(2), removing paragraph (a)(4) and the Instruction thereto, redesignating paragraphs (a)(5), (a)(6) and (a)(7) as paragraphs (a)(4), (a)(5) and (a)(6), revising newly designated paragraph (a)(5) and the first sentence of the Note following newly designated paragraph (a)(5)(iii); and amending Form F–3 by revising the introductory text of General Instruction I.A. and General Instructions I.A.1. and I.A.2., removing General Instruction I.A.4. and the Instruction immediately following, redesignating General Instructions I.A.5., I.A.6. and I.A.7. as General Instructions I.A.4., I.A.5. and I.A.6., republishing the introductory text and revising paragraphs (ii) and (iii) of newly redesignated General Instruction I.A.5. and the first sentence of the Note following newly redesignated General Instruction I.A.5.(iii) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(a) *Registrant requirements.* Except as set forth in this paragraph (a), all registrants must meet the following conditions in order to use this Form F–3 for registration under the Securities Act of securities offered in the transactions specified in paragraph (b) of this section:

(1) The registrant has a class of securities registered pursuant to section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to

section 12(g) of the Exchange Act or is required to file reports pursuant to section 15(d) of the Exchange Act.

(2) The registrant:

(i) Has been subject to the requirements of section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to sections 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this form; and

(ii) Has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) § 240.12b–25(b) of this chapter with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by § 240.12b–25(b) of this chapter.

* * * * *

(5) *Majority-owned subsidiaries.* If a registrant is a majority-owned subsidiary, security offerings may be registered on this form if:

(i) The registrant-subsidiary itself meets the Registrant Requirements and the applicable Transaction Requirement;

(ii) The parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of the Transaction Requirement set forth in paragraph (b)(2) of this section (Offerings of Certain Debt or Preferred Securities) are met; or

(iii) The parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirement and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

Note: In the situation described in paragraph (a)(6)(iii) of this section, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities. * * *

* * * * *

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–3

* * * * *

A. Registrant Requirements

Except as set forth below, all registrants must meet the following conditions in order to use this Form F–3 for registration under the Securities Act of securities offered in the transactions specified in I.B. below:

1. The registrant has a class of securities registered pursuant to Section 12(b) of the Securities Exchange Act of 1934 ("Exchange Act") or has a class of equity securities registered pursuant to Section 12(g) of the Exchange Act or is required to file reports pursuant to Section 15(d) of the Exchange Act.

2. The registrant: (a) has been subject to the requirements of Section 12 or 15(d) of the Exchange Act and has filed all the material required to be filed pursuant to Sections 13, 14 or 15(d) of the Exchange Act for a period of at least twelve calendar months immediately preceding the filing of the registration statement on this Form; and (b) has filed in a timely manner all reports required to be filed during the twelve calendar months and any portion of a month immediately preceding the filing of the registration statement and, if the registrant has used (during those twelve calendar months and that portion of a month) Rule 12b–25(b) (§ 240.12b–25(b) of this chapter) under the Exchange Act with respect to a report or a portion of a report, that report or portion thereof has actually been filed within the time period prescribed by the Rule.

* * * * *

4. * * *

5. *Majority-owned Subsidiaries*

If a registrant is a majority-owned subsidiary, security offerings may be registered on this Form if:

(i) * * *

(ii) the parent of the registrant-subsidiary meets the Registrant Requirements and the conditions of Transaction Requirement B.2. (Offerings of Certain Debt or Preferred Securities) are met; or

(iii) the parent of the registrant-subsidiary meets the Registrant Requirements and the applicable Transaction Requirements and fully and unconditionally guarantees the payment obligations on the securities being registered, and the securities being registered are non-convertible securities.

Note: In the situation described in (iii) above, the parent-guarantor is the issuer of a separate security consisting of the guarantee which must be concurrently registered but may be registered on the same registration statement as are the guaranteed securities.

* * *

* * * * *

20. By revising paragraphs (b)(1), (b)(2), (b)(3) and (b)(4) and adding an Instruction to paragraph (b)(1) of § 239.33; and by revising the General Instructions I.B.1., I.B.2., I.B.3. and I.B.4. of Form F–3 (§ 239.33) to read as follows:

§ 239.33 Form F–3, for registration under the Securities Act of 1933 of securities of certain foreign private issuers offered pursuant to certain types of transactions.

* * * * *

(b) * * *

(1) *Primary offerings by certain registrants.* Securities to be offered for cash by or on behalf of a registrant, *provided* that the aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $75 million or more. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

Instruction to Paragraph (b)(1)

The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

(2) *Primary offerings of non-convertible investment grade securities.* Non-convertible securities to be offered for cash if such securities are *investment grade securities.* A non-convertible security is an *investment grade security* if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in § 240.15c3–1(c)(2)(vi)(F) of this chapter) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter).

(3) *Transactions involving secondary offerings.* Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter). In addition, Form F–3 (§ 239.33) may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

(4) *Rights offerings, dividend or interest reinvestment plans, and*

conversions or warrants. Securities to be offered:

(i) Upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or

(ii) Pursuant to a dividend or interest reinvestment plan; or

(iii) Upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; *Provided,* if the aggregate market value of the voting stock held by non-affiliates of the issuer is not $75 million or more, the issuer has sent to all record holders of such rights, or to all participants in such plans, or to all record holders of such convertible securities or transferable warrants, respectively, within the twelve calendar months immediately preceding the filing of the registration statement, the issuer's latest Form 20–F (§ 249.220f of this chapter), Form 10–K (§ 249.310 of this chapter), Form 40–F (§ 249.240f of this chapter), or Form 10 (§ 249.210 of this chapter) filed pursuant to the Exchange Act or, if no such annual report or Exchange Act registration statement has been filed with the Commission, the prospectus of the issuer's latest Securities Act registration statement filed with the Commission. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F (§ 249.220f of this chapter). The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b) (1), (2) and (3) of this section.

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

I. Eligibility Requirements for Use of Form F–3

* * * * *

B. Transaction Requirements

* * * * *

1. Primary Offerings by Certain Registrants

Securities to be offered for cash by or on behalf of a registrant, *provided* that the aggregate market value worldwide of the voting stock held by non-affiliates of the registrant is the equivalent of $75 million or more. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement must comply with Item 18 of Form 20–F.

Instruction

The aggregate market value of the registrant's outstanding voting stock shall be computed by use of the price at which the stock was last sold, or the average of the bid and asked prices of such stock, in the principal market for such stock as of a date within 60 days prior to the date of filing. See the definition of "affiliate" in Securities Act Rule 405 (§ 230.405 of this chapter).

2. Primary Offerings of Non-convertible Investment Grade Securities

Non-convertible securities to be offered for cash if such securities are "investment grade securities." A non-convertible security is an "investment grade security" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in Rule 15c3–1(c)(2)(vi)(F) under the Exchange Act (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) has rated the security in one of its generic rating categories that signifies investment grade; typically, the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F.

3. Transactions Involving Secondary Offerings

Outstanding securities to be offered for the account of any person other than the issuer, including securities acquired by standby underwriters in connection with the call or redemption by the issuer of warrants or a class of convertible securities. In the case of such securities, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F. In addition, Form F–3 may be used by affiliates to register securities for resale pursuant to the conditions specified in General Instruction C to Form S–8 (§ 239.16b of this chapter). In the case of such securities, the financial statements included in this registration statement must comply with Item 18 of Form 20–F (§ 249.220f of this chapter).

4. Rights Offerings, Dividend or Interest Reinvestment Plans, and Conversions or Warrants

Securities to be offered: (a) upon the exercise of outstanding rights granted by the issuer of the securities to be offered, if such rights are granted pro rata to all existing security holders of the class of securities to which the rights attach; or (b) pursuant to a dividend or interest reinvestment plan; or (c) upon the conversion of outstanding convertible securities or upon the exercise of outstanding transferable warrants issued by the issuer of the securities to be offered, or by an affiliate of such issuer; *Provided,* if the aggregate market value of the voting stock held by non-affiliates of the issuer is not $75 million or more, the issuer has sent to all record holders of such rights, or to all participants in such plans, or to all record holders of such convertible securities or transferable warrants, respectively, within the twelve calendar months immediately preceding the filing of the registration statement, the issuer's latest Form 20–F, Form 10–K, Form 40–F, or Form 10 filed pursuant to the Exchange Act or, if no such annual report or Exchange Act registration statement has been filed with the Commission, the prospectus of the issuer's latest Securities Act registration statement filed with the Commission. In the case of securities registered pursuant to this paragraph, the financial statements included in this registration statement may comply with Item 17 or 18 of Form 20–F. The registration of securities to be offered or sold in a standby underwriting in the United States or similar arrangement is not permitted pursuant to this paragraph. See paragraphs (b) (1), (2) and (3) of this section.

* * * * *

21. By adding paragraph C. to General Instruction II. of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

* * * * *

II. Application of General Rules and Regulations

* * * * *

C. Where two or more classes of securities being registered on this Form pursuant to General Instruction I.B.1. or I.B.2. are to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(x) (§ 230.415(a)(1)(x) of this chapter), Rule 457(o) (§ 230.457(o) of this chapter) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table ("Fee Table"). In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify for each class information as to the amount to be registered, proposed maximum offering price per unit and proposed maximum aggregate offering price.

* * * * *

22. By revising the first sentence of General Instruction III. of Form F–3 (§ 239.33) and removing the second and third sentences of General Instruction III. of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

General Instructions

* * * * *

III. Dividend or Interest Reinvestment Plans: Filing and Effectiveness of Registration Statement; Requests for Confidential Treatment

Original registration statements on this Form F–3 solely with respect to securities offered pursuant to dividend or interest reinvestment plans shall become effective automatically upon filing (Rule 456, § 230.456 of this chapter) pursuant to the provisions of Section 8(a) of the Act (Rule 462, § 230.462 of this chapter). * * *

* * * * *

23. By amending Item 11 of Form F–3 (§ 239.33) by revising paragraph (a), paragraph (b)(1) introductory text and paragraph (b)(2) to read as follows:

Note: Form F–3 does not appear and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

Item 11. Material Changes

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which certified financial statements are included in this registration statement in accordance with Item 12 of this Form and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act and incorporated by reference pursuant to Item 12 of this Form.

(b)(1) Include in the prospectus, if not included in documents incorporated by reference into the prospectus pursuant to Item 12 or a prospectus previously filed pursuant to Rule 424(b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or a Form 8–K filed during either of the two preceding years:

(i) * * *

(2) If the financial statements included in this registration statement in accordance with Item 12 are not sufficiently current to comply with the requirements of Rule 3–19 of Regulation S–X (§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented (i) directly in the prospectus, (ii) through incorporation by reference of a Form 6–K identified in the prospectus as containing such financial statements, or (iii) through incorporation by reference of an amended Form 20–F, Form 40–F or Form 10–K, in which case the prospectus shall disclose that the Form 20–F, Form 40–F or Form 10–K has been so amended.

* * * * *

24. By amending Item 12 of Form F–3 (§ 239.33) by revising paragraphs (a), (b) and (c) to read as follows:

Note: Forms F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

Item 12. Incorporation of Certain Information by Reference.

(a) The registrant's latest Form 20–F, Form 40–F, Form 10–K or Form 10 filed pursuant to the Exchange Act shall be incorporated by reference. If no such annual report or registration statement has been filed by the registrant, the registrant's most recent prospectus filed pursuant to Rule 424 (b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included at effectiveness of the registrant's most recent registration statement under the Securities Act shall be incorporated by reference. Any report on Form 10–Q or Form 8–K filed since the date of filing of the annual report, registration statement or prospectus incorporated by reference also shall be incorporated by reference. If capital stock is to be registered and securities of the same class are registered under Section 12 of the Exchange Act, the description of such class of securities which is contained in a registration statement filed under the Exchange Act, including any amendment or reports filed for the purpose of updating such description shall be incorporated by reference.

Instruction

* * * * *

(b) The prospectus shall also state that all subsequent annual reports filed on Form 20–F, Form 40–F or Form 10–K, and all subsequent filings on Forms 10–Q and 8–K filed by the registrant pursuant to the Exchange Act, prior to the termination of the offering, shall be deemed to be incorporated by reference into the prospectus.

(c) The registrant may incorporate by reference any Form 6–K meeting the requirements of this Form. If the registrant intends to incorporate any Form 6–K subsequently submitted to the Commission, the prospectus shall state that the registrant may incorporate such Forms 6–K by identifying in such Forms that they are being incorporated by reference into this Form.

Instructions

* * * * *

25. By revising Instruction 3. to the Signatures of Form F–3 (§ 239.33) to read as follows:

Note: Form F–3 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–3

* * * * *

SIGNATURES

* * * * *

3. Where eligibility for use of the Form is based on the assignment of a security rating pursuant to General Instruction I.B.2., the registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

26. By amending Form F–4 (§ 239.34) by revising General Instruction B.1.(a) and B.1.(a)(ii)C., adding paragraph 3. to General Instruction D., revising paragraphs (a), (b) and (c) of Item 10, revising the introductory text and paragraphs (a)(1), (a)(2) and Instruction 1 following paragraph (a)(3) of Item 11 to read as follows:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

General Instructions

* * * * *

B. Information with Respect to the Registrant.

1. * * *

(a) Items 10 and 11 of this Form, if the registrant elects this alternative and meets the following requirements for use of Form F–3 (§ 239.33 of this chapter) (hereinafter, with respect to the registrant, "meets the requirements for use of Form F–3") for this offering of securities:

(i) * * *

(ii) One of the following is met:

* * * * *

C. The registrant is a majority-owned subsidiary and one of the conditions of General Instruction I.A.5. of Form F–3 is met.

* * * * *

D. Application of General Rules and Regulations.

* * * * *

3. Where two or more classes of securities being registered on this Form are to be offered on a delayed or continuous basis pursuant to Rule 415(a)(1)(viii) (§ 230.415(a)(1)(viii) of this chapter), Rule 457(o) (§ 230.457(o) of this chapter) permits the registration fee to be calculated on the basis of the maximum offering price of all the securities listed in the "Calculation of Registration Fee" table ("Fee Table") if the securities are being registered by an issuer eligible to use Form F–3. In this event, while the Fee Table would list each of the classes of securities being registered and the aggregate proceeds to be raised, the Fee Table need not specify for each class information as to the amount to be registered, proposed maximum offering price per unit and proposed maximum aggregate offering price.

* * * * *

Item 10. Information with Respect to Certain Form F–3 Registrants.

* * * * *

(a) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements are incorporated by reference in accordance with Item 11 of this Form and that have not been described in a report on Form 6–K (§ 249.306 of this chapter), Form 10–Q (§ 249.308a of this chapter) or Form 8–K (§ 249.308 of this chapter) filed under the Exchange Act;

(b) If the financial statements incorporated by reference in accordance with Item 11 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X

(§ 210.3–19 of this chapter), financial statements necessary to comply with that rule shall be presented either in the prospectus, in an amended Form 20–F, 40–F or 10–K (in which case the prospectus shall disclose that such form has been so amended), or in a Form 6–K, Form 10–Q or Form 8–K; and

(c) Include in the prospectus, if not incorporated by reference from the documents filed under the Exchange Act specified in Item 11 of this Form, from a prospectus previously filed pursuant to Rule 424 (b) or (c) under the Securities Act (§ 230.424 of this chapter) or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included in the registration statement at effectiveness, or from a Form 6–K filed during either of the two preceding fiscal years:

* * * * *

Item 11. Incorporation of Certain Information by Reference.

If the registrant furnishes information in accordance with the provisions of Item 10 of this Form:

(a) * * *

(1) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to section 13(a) or 15(d) of the Exchange Act which contains financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed; or, if no such annual report has been filed, the registrant's most recent registration statement on Form 20–F, Form 10 or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F, or the registrant's most recent prospectus filed pursuant to Rule 424 (b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included at effectiveness of the registrant's most recent registration statement under the Securities Act;

(2) All reports filed pursuant to sections 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the financial statements in the report or registration statement incorporated pursuant to Item 11(a)(1) of this Form; and

* * * * *

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 11 of this Form shall contain financial statements that comply with Item 18 of Form 20–F except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–3.

* * * * *

27. By amending Form F–4 (§ 239.34) by revising the second sentence of the introductory text of Item 12, revising the introductory text of paragraph (a), paragraph (a)(1), the introductory text of paragraph (a)(2), paragraphs (a)(3) and (a)(4), the introductory text of paragraph (b), the first sentence of paragraph (b)(2), and paragraph (b)(3)(vii) of Item 12 to read as follows:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 12. Information with Respect to F–2 or F–3 Registrants.

* * * *However*, the registrant shall not provide prospectus information in the manner allowed by paragraph (a) of this Item if the financial statements incorporated by reference pursuant to Item 13 of this Form reflect: (1) * * *

(a) If the registrant elects to deliver this prospectus together with the annual report or registration statement incorporated by reference pursuant to Item 13, or a complete and legible facsimile thereof:

(1) Indicate that the prospectus is accompanied by such annual report or registration statement.

(2) If the financial statements incorporated by reference pursuant to Item 13 of this Form are not sufficiently current to comply with Rule 3–19 of Regulation S–X, provide the information required by Rule 10–01 of Regulation S–X and Item 9 of Form 20–F by one of the following means: * * *

(3) If not reflected in the registrant's annual report or registration statement incorporated by reference in accordance with Item 13 of this Form, provide information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued.

(4) Describe any and all material changes in the registrant's affairs that have occurred since the end of the latest fiscal year for which audited financial statements are incorporated by reference in accordance with Item 13 of this Form and that have not been described in a report on Form 6–K, Form 10–Q or Form 8–K delivered with the prospectus in accordance with paragraph (2)(ii) of this Item.

(5) * * *

(b) If the registrant elects not to deliver its annual report or registration statement incorporated by reference pursuant to Item 13 to the securityholders of the company to be acquired:

(1) * * *

(2) Include financial statements and information as required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2. * * *

(3) * * *

(vii) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2, and financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required under Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form, but need not be provided with respect to the company being acquired if information is being furnished pursuant to Item 17(a) of this Form); and

* * * * *

28. By amending Form F–4 (§ 239.34) by revising Item 13, revising the introductory text of Item 14 and revising paragraph (h) of Item 14 to read as follows and revising the phrase "Section 13(a) or 15(d) of the Exchange Act, or" to read "Section 13(a) or 15(d) of the Exchange Act, and" in paragraph (a) of Item 17:

Note: Form F–4 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–4

* * * * *

Item 13. Incorporation of Certain Information by Reference.

If the registrant furnishes information in accordance with the provisions of Item 12 of this Form, incorporate by reference into the prospectus, by means of a statement to that effect in the prospectus listing all documents so incorporated, the documents listed in paragraphs (a) and, if applicable, (b) below:

(a) The registrant's latest annual report on Form 20–F, on Form 10–K or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F filed pursuant to Section 13(a) or 15(d) of the Exchange Act which contains audited financial statements for the registrant's latest fiscal year for which a Form 20–F, Form 10–K or Form 40–F was required to be filed; or, if no such annual report has been filed, the registrant's most recent registration statement on Form 20–F, Form 10 or, in the case of registrants described in General Instruction A.(2) of Form 40–F, on Form 40–F, or the registrant's most recent prospectus filed pursuant to Rule 424(b) or (c) under the Securities Act or, where no prospectus was required to be filed pursuant to Rule 424(b), the prospectus included at effectiveness of the registrant's most recent registration statement under the Securities Act; and

(b) All other reports filed pursuant to Section 13(a) or 15(d) of the Exchange Act since the end of the fiscal year covered by the financial statements in the report or registration statement incorporated pursuant to Item 13(a) of this Form.

Instructions

1. All annual reports or registration statements incorporated by reference pursuant to Item 13 of this Form shall contain financial statements that comply with Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–2.

2. Where common equity securities are being issued, the information required by

Item 5 of Form 20–F, nature of trading markets, should be updated to cover any subsequent interim periods for which interim financial statements are required to be included to comply with Rule 3–19 of Regulation S–X. Such updating may be made in the prospectus, in an amended Form 20–F, Form 10–K or Form 40–F or in a Form 6–K, Form 10–Q or Form 8–K.

3. The registrant may incorporate by reference and deliver with the prospectus any Form 6–K, Form 10–Q or Form 8–K containing information meeting the requirements of Form F–2. See Rules 4–01(a)(2) and 10–01 of Regulation S–X and Item 18 of Form 20–F.

4. Attention is directed to Rule 439 regarding consent to the use of material incorporated by reference.

Item 14. Information with Respect to Foreign Registrants Other Than F–2 or F–3 Registrants.

If the foreign registrant does not meet the requirements for use of Form F–2 or F–3, or otherwise elects to comply with this Item in lieu of Items 10 and 11 or Items 12 and 13, furnish the following information:

* * * * *

(h) Financial statements required by Item 18 of Form 20–F, except that financial statements of the registrants may comply with Item 17 of Form 20–F if the only securities being registered are investment grade securities as defined in the General Instructions to Form F–1, as well as financial information required by Rule 3–05 and Article 11 of Regulation S–X with respect to transactions other than that pursuant to which the securities being registered are to be issued (Schedules required by Regulation S–X shall be filed as "Financial Statement Schedules" pursuant to Item 21 of this Form); and

* * * * *

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

29. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted;

* * * * *

30. By amending Form 20–F (§ 249.220f) by adding one sentence to the end of Instruction 7 to Item 8; and in Item 17 by revising paragraph (a), removing paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(2), in newly redesignated paragraph (c)(2), adding one sentence to the end of paragraph (c)(2)(i) before the table, redesignating paragraph (c)(2)(iii) as (c)(2)(iv), adding paragraphs (c)(2)(iii), (c)(2)(v), (c)(2)(vi) and (c)(2)(vii), and adding Instruction (4) to read as follows:

Note: Form 20–F does not and these amendments will not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 8. Selected Financial Data.

* * * * *

Instructions.

* * * * *

7. * * * Selected financial data on a basis reconciled to U.S. generally accepted accounting principles need be provided only for (i) those periods for which the primary annual financial statements have been required to be reconciled in a filing made under the Securities Act or Exchange Act, and (ii) any interim periods.

* * * * *

Item 17. Financial Statements.

(a) The registrant shall furnish financial statements for the same fiscal years and accountants' certificates that would be required to be furnished if the registration statement were on Form 10 or the annual report on Form 10–K. Schedules designated by §§ 210.12–04, 210.12–09, 210.12–10, 210.12–11, 210.12–15, 210.12–16, 210.12–17, 210.12–18, 210.12–28 and 210.12–29 of this chapter shall be furnished if applicable to the registrant.

* * * * *

(c) * * *

(2) * * *

(i) * * * However, reconciliation of net income of the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act or Exchange Act.

* * * * *

(iii) For each period for which an income statement is presented and required to be reconciled to generally accepted accounting principles in the United States, provide either a statement of cash flows prepared in accordance with generally accepted accounting principles in the United States or with International Accounting Standard No. 7, as amended in October 1992; or furnish in a note to the financial statements a quantified description of the material differences between cash or funds flows reported in the primary financial statements and cash flows that would be reported in a statement of cash flows prepared in accordance with accounting principles generally accepted in the United States.

* * * * *

(v) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a business acquired or to be acquired pursuant to § 210.3–05 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vi) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a less-than-majority-owned investee pursuant to § 210.3–09 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the first and third conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vii) For a registrant that prepares its financial statements using a comprehensive body of accounting principles other than those generally accepted in the United States that allows proportionate consolidation for investments in joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP, the quantification of variations may omit such effects. In lieu thereof, the registrant shall provide the summarized financial information relating to its pro rata interest in the joint venture using the captions specified in § 210.1–02(aa) of this chapter.

* * * * *

Instructions:

* * * * *

(4) If the cash flows statement prepared under the basis of accounting used in the primary financial statements complies with International Accounting Standard No. 7 or U.S. GAAP, a statement to this effect should be included in the financial statements or independent accountant's report. If the cash flows statement in the primary financial statements is prepared in accordance with either U.S. GAAP or International Accounting Standard No. 7 but such presentation departs from the comprehensive body of accounting principles otherwise followed in the financial statements, the reference to the departure in the report of the independent accountants should identify the body of accounting standards used in preparing the cash flow statement. If a supplemental cash flows statement that complies with either International Accounting Standards or U.S. generally accepted accounting principles is furnished in a note to the financial statements, the body of accounting standards used in preparing the statement should be indicated.

31. By amending Item 18 of Form 20–F (§ 249.220f) by revising paragraph (a), removing paragraph (c)(2), redesignating paragraph (c)(3) as paragraph (c)(2), in newly redesignated paragraph (c)(2), adding one sentence to the end of paragraph (c)(2)(i) before the table, redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(iv) and adding paragraphs (c)(2)(iii), (c)(3)(v), (c)(3)(vi) and (c)(3)(vii), and adding Instruction 3 to the Instructions to Item 18 to read as follows:

Note: Form 20–F does not and these amendments will not appear in the Code of Federal Regulations.

Form 20–F

* * * * *

Item 18. Financial Statements.

* * * * *

(a) The registrant shall furnish financial statements for the same fiscal years and accountants' certificates that would be required to be furnished if the registration statement were on Form 10 or the annual report on Form 10–K. Schedules designated by §§ 210.12–04, 210.12–09, 210.12–10, 210.12–11, 210.12–15, 210.12–16, 210.12–17, 210.12–18, 210.12–28 and 210.12–29 of this

chapter shall be furnished if applicable to the registrant.

* * * * *

(c) * * *

(2) * * *

(i) * * * However, reconciliation of net income of the earliest of the three years may be omitted if that information has not previously been included in a filing made under the Securities Act or Exchange Act.

* * * * *

(iii) For each period for which an income statement is presented and required to be reconciled to generally accepted accounting principles in the United States, provide either a statement of cash flows prepared in accordance with generally accepted accounting principles in the U.S. or with International Accounting Standard No. 7, as amended in October 1992; or furnish in a note to the financial statements a quantified description of the material differences between cash or funds flows reported in the primary financial statements and cash flows that would be reported in a statement of cash flows prepared in accordance with accounting principles generally accepted in the United States.

* * * * *

(v) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a business acquired or to be acquired pursuant to § 210.3–05 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vi) Financial statements prepared on a basis of accounting other than U.S. generally accepted accounting principles that are furnished for a less-than-majority-owned investee pursuant to § 210.3–09 of this chapter may omit the quantitative disclosures specified by paragraphs (c)(3)(i), (c)(3)(ii) and (c)(3)(iii) of this Item if the first and third conditions specified in the definition of a significant subsidiary in § 210.1–02(v) of this chapter do not exceed 30%.

(vii) For a registrant that prepares its financial statements using a comprehensive body of accounting principles other than those generally accepted in the United States that allows proportionate consolidation for investments in joint ventures that would be accounted for under the equity method pursuant to U.S. GAAP, the quantification of variations may omit such effects. In lieu thereof, the registrant shall provide the summarized financial information relating to its pro rata interest in the joint venture using the captions specified in § 210.1–02(aa) of this chapter.

* * * * *

Instructions.

* * * * *

(3) If the cash flows statement prepared under the basis of accounting used in the primary financial statements complies with International Accounting Standard No. 7 or U.S. GAAP, a statement to this effect should be included in the financial statements or independent accountant's report. If the cash flows statement in the primary financial statements is prepared in accordance with either U.S. GAAP or International Accounting Standard No. 7 but such presentation departs from the comprehensive body of accounting principles otherwise followed in the financial statements, the reference to the departure in the report of the independent accountants should identify the body of accounting standards used in preparing the cash flow statement. If a supplemental cash flow statement that complies with either International Accounting Standards or U.S. generally accepted accounting principles is furnished in a note to the financial statements, the body of accounting standards used in preparing the statement should be indicated.

* * * * *

November 3, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27557 Filed 11–12–93; 8:45 am]

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federal register

Monday
November 15, 1993

Part VI

Securities and Exchange Commission

17 CFR Part 240

Distributions of Securities of Certain Foreign Issuers; Distributions of Foreign Securities to Qualified Institutional Buyers; Statement of Policy and Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release Nos. 33–7027; 34–33137; International Series Release No. 606]

Application of Rules 10b–6, 10b–7, and 10b–8 During Distributions of Securities of Certain Foreign Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Statement of policy.

SUMMARY: The Securities and Exchange Commission ("Commission") is publishing a Statement of Policy announcing the Commission's position that, upon proper written request, class exemptions from Rules 10b–6, 10b–7, and 10b–8 (collectively, "Trading Practices Rules") under the Securities Exchange Act of 1934 ("Exchange Act") would be available during distributions in the United States by issuers located in foreign jurisdictions. The exemptions would be subject to substantially similar principles, terms, and conditions that applied to the exemptions issued on October 6, 1993 in connection with distributions of certain German securities. These exemptions would permit transactions in foreign countries that otherwise would be prohibited by the Trading Practices Rules during distributions of foreign securities in the United States.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow, Assistant Director; David A. Hebner, Branch Chief; or Laurie E. Petrell, Attorney-Adviser, Office of Trading Practices, Division of Market Regulation, at (202) 272–2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Background

A. Rules 10b–6, 10b–7, and 10b–8

Rules 10b–6,[1] 10b–7,[2] and 10b–8[3] under the Exchange Act[4] are anti-manipulation rules designed to prevent persons with an interest in a securities distribution from conditioning the market for the offered security during the distribution. Rule 10b–6 generally prohibits those persons who participate in a distribution of securities (including issuers and underwriters and their "affiliated purchasers") from bidding for, purchasing, or inducing others to purchase the security being distributed and certain other related securities until they have completed their participation in the distribution, unless such activity is excepted by[5] or exempted from[6] the rule.

Rule 10b–7 under the Exchange Act governs the stabilization of a security's price to facilitate an offering, and places limitations on the price at which stabilizing bids may be entered. Rule 10b–8 under the Exchange Act governs a distribution of securities through rights, and places restrictions on the prices at which rights may be purchased and on the prices that the securities being distributed may be offered or sold.

B. Application of the Trading Practices Rules to Multinational Distributions

The principal trading markets for foreign securities generally are located outside the United States. Trading in those markets could have the manipulative effect upon distributions in the United States that the Trading Practices Rules are designed to prevent. As a result, since shortly after the Trading Practices Rules' adoption in 1955, the Commission has taken the position that, with respect to distributions of foreign securities occurring in the United States, the Trading Practices Rules apply to all distribution participants and their affiliated purchasers, wherever they are located or effect transactions.[7]

As the securities markets of the world have become increasingly interconnected, and in particular as multinational offerings of securities have become more common, it has become apparent that application of the Trading Practices Rules to transactions effected abroad often conflicts with customs and market practices in those other jurisdictions. In addition, the Trading Practices Rules may impose compliance burdens and costs on foreign issuers, foreign underwriters, and the affiliated purchasers of these persons.

The Commission has attempted to ameliorate these effects by granting exemptions on both an individual transaction[8] and a class basis.[9] These exemptions reflect a balancing of the need to protect United States ("U.S.") investors from the abuses that the Trading Practices Rules are designed to address against the costs associated with applying the Trading Practices Rules abroad. The Commission has structured conditional exemptions from these rules' prohibitions that accommodate foreign trading practices in situations where the risks of manipulative effects in the United States from trading activities abroad is very low and the Commission is able to obtain access to information about overseas transactions.

II. Class Exemptions From the Trading Practices Rules for Distributions of Securities of Certain German Issuers

On October 6, 1993, the Division issued a letter, pursuant to delegated authority, granting class exemptions from the Trading Practices Rules with respect to distributions in the United States of actively-traded securities of very substantial German issuers ("Germany Exemptions").[10] The Germany Exemptions incorporate and expand the approach utilized by the Commission in granting exemptions from the Trading Practices Rules in other international contexts by distinguishing among transactions effected in the United States, in Germany, and in other jurisdictions where the offered security trades. The Germany Exemptions reflect the Commission's assessment that the risks of potential manipulative effects from transactions in the principal foreign market substantially are diminished through limiting the exemptions to actively-traded securities of very highly capitalized German issuers, informing

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[1] 17 CFR 240.10b–6.

[2] 17 CFR 240.10b–7.

[3] 17 CFR 240.10b–8.

[4] 15 U.S.C. 78a et seq

[5] Rule 10b–6 contains thirteen exceptions to its general prohibitions that are intended to permit an orderly distribution of securities or to limit disruptions in the market for the securities being distributed.

[6] Paragraph (i) of Rule 10b–6 provides the Commission with authority to exempt a transaction or transactions, either unconditionally or on specified terms and conditions, from the rule as not constituting a manipulative or deceptive device or contrivance. 17 CFR 240.10b–6(i). The Commission has delegated the authority to grant requests for exemptions from Rules 10b–6, 10b–7, and 10b–8 to the Director ("Director") of the Division of Market Regulation ("Division"), to be performed by the Director or by such person or persons as may be delegated from time to time by the Chairman of the Commission. See 17 CFR 200.30–3(a)(6).

[7] See, e.g., Letters regarding Royal Dutch Petroleum Company (December 23, 1957); Phillips N.V. (May 5, 1962); Standard Oil Company (New Jersey) (February 6, 1970); and S.S. Kresge & Co. (April 14, 1972).

[8] See, e.g., Letter regarding British Airways PLC (May 19, 1993), (Current Binder) Fed. Sec. L. Rep. (CCH) ¶ 76,633 (granting exemptions from Rules 10b–6, 10b–7, and 10b–8 during a rights offering by a United Kingdom issuer).

[9] For example, the Division, acting pursuant to delegated authority, recently consolidated and expanded class exemptions from Rules 10b–6 and 10b–7 to permit "passive market making" on the London Stock Exchange ("LSE") by LSE market makers affiliated with underwriters of securities being distributed in the United States. Letter regarding Distributions of SEAQ and SEAQ International Securities (July 12, 1993) ("1993 LSE Letter") (available on LEXIS).

[10] Letter regarding Distributions of Certain German Securities (October 6, 1993), Securities Exchange Act Release No. 33022 (October 14, 1993), 58 FR 53220 ("Germany Exemptions Release") (available on LEXIS).

U.S. investors about the range of potential German market activities by distribution participants, and including conditions enabling the Commission to obtain transaction information about those activities.

III. Statement of Policy

The Commission believes that the same principles that serve as a basis for granting the Germany Exemptions may be equally applicable with respect to distributions of other foreign issuers, and thus similar accommodations for other jurisdictions may be appropriate. Therefore, the Commission is issuing this Statement of Policy announcing that, upon proper written request, exemptions for actively-traded and widely-followed securities of highly capitalized issuers from other countries would be granted, subject to substantially similar terms and conditions.

The Commission seeks to accommodate customary market practices in such an issuer's home market by providing class exemptions from the Trading Practices Rules to permit all distribution participants and their affiliated purchasers to effect transactions in that market during the distribution in the United States. The exemptions would be subject to terms and conditions regarding security eligibility criteria, notice, disclosure, recordkeeping, and transaction reporting obligations as described below. Similarly, unconditional exemptions from the Trading Practices Rules would be available for transactions effected in securities markets that account for less than 10% of published world-wide trading volume in the security being distributed ("Secondary Markets"). The Trading Practices Rules would continue to apply to transactions conducted in the United States, and, unless another exemption were available, to transactions effected in securities markets that account for 10% or more of published world-wide trading volume in the security being distributed ("Significant Markets"). Although the Commission believes that it is appropriate to facilitate distributions of foreign securities in the United States by providing exemptions from these anti-manipulation rules, it is important to highlight that such accommodation would in no way affect the continued application of the general anti-fraud and anti-manipulation provisions of the federal securities laws.[11]

[11] E.g., Exchange Act sections 9(a) and 10(b), 15 U.S.C. 78i(a) and 78j(b), and 17 CFR 240.10b-5. See also Securities Act of 1933 section 17(a), 15 U.S.C. 77q(a).

IV. Exemption Requests

A. Market Information

Persons interested in obtaining a class exemption should make a written exemption request to the Division and provide background information on market practices in the issuer's home market, including:

(1) The methods used to distribute securities;[12]

(2) A description of the exchange and over-the-counter trading markets that exist in such jurisdiction, including requirements governing quotation and transaction reporting and dissemination, and information on market surveillance practices conducted by home market securities regulators;

(3) A description of customary trading practices by distribution participants during distributions (noting in particular any trading restrictions that would be applicable during securities distributions);

(4) A description of the securities laws, rules, or regulations in such jurisdiction governing fraudulent and manipulative practices, including information on the obligations of the appropriate regulators to enforce such provisions;

(5) A description of the recordkeeping obligations for transactions effected in the jurisdiction;

(6) A description of the consequences of the application of the Trading Practices Rules to the market for the security being distributed or related securities in that jurisdiction; and

(7) A description of any legal or other impediments that would prevent the Commission from obtaining any transaction information, including the identity of customers.

In addition, the written request should address the following terms and conditions which were incorporated in the Germany Exemptions.[13]

B. Notice

Distribution participants should agree to provide written notice to the Division of their intent to rely upon the exemptions. The notice would be furnished promptly, and not later than the commencement of the recordkeeping period.[14] Such notice may be furnished by the lead underwriter, global coordinator, or other offering coordinator as agent for other distribution participants relying upon the exemptions.[15]

[12] For example, the written request pertaining to the Germany Exemptions indicated that as a result of legal and judicial requirements in Germany, most primary securities distributions would involve distributions through rights. In connection with such offerings, it also was noted that the subscription price generally is deeply discounted by at least 20 to 30% from the then current market price for the underlying security. See Germany Exemptions Release.

[13] Although the Germany Exemptions should serve as a model for the essential features that should be addressed when the Commission considers granting similar exemptions to other foreign issuers, the Commission would consider the unique aspects of the particular foreign securities markets with respect to any individual request.

C. Securities Qualifications

A critical element of any exemptions from the Trading Practices Rules will be the identification of a class of substantial issuers with actively-traded securities that are widely-followed by the investment community. A security that is a component of a widely-recognized stock index, and has a market capitalization that is the equivalent of US$1 billion and a value of average daily trading volume of the equivalent of US$5 million, generally would qualify for the exemptions.[16]

D. Disclosure to U.S. Investors

The written exemption request should describe the scope of disclosure of anticipated market activities in the issuer's home country jurisdiction that would be contained in the U.S. offering materials. In this regard, the U.S. offering materials should contain a comprehensive description of the trading and other market activities that could be undertaken by distribution participants (and affiliated purchasers) in the issuer's home country pursuant to the requested exemptions. The Commission also would expect that the disclosure would state that such trading or market activities may result in prices different from that which otherwise might prevail in the open market.

E. Principal Transactions

During the reporting period, the Commission would expect that all

[14] See *infra* note 19.

[15] The notice provision of the Germany Exemptions included the following items: (1) The name of the issuer of the security being distributed; (2) if the security is a component of a stock index, the name of the index and for other securities, information with respect to the market capitalization of the security and the value of average daily trading volume; (3) the identity of all Significant Markets; (4) if the notice is provided for more than one underwriter or selling group member, the identity of all such underwriters and selling group members (other distribution participants relying upon the exemptions were required to furnish a separate notice); and (5) a statement that the distribution participants and their affiliated purchasers relying upon the Germany Exemptions are aware of the terms and conditions of the exemptions.

[16] The Commission expects that eligible securities generally would be components of a stock index of the home country which represents substantial issuers from that country.

principal transactions in the home market by distribution participants would be effected on or reported to a trading facility operated or regulated by a "foreign financial regulatory authority" ("FFRA").[17] The exemption request should discuss whether information regarding such trades is publicly disseminated.[18]

F. Recordkeeping and Reporting

Each distribution participant and its affiliated purchasers effecting transactions in the home country jurisdiction should agree to provide information with respect to each transaction in the security being distributed and related securities during a period [19] commencing prior to the commencement of the distribution in the United States and continuing until its completion.[20] The information should be submitted by each distribution participant (along with records of its affiliated purchasers) in a common record format to a single independent entity.[21] In most cases, an FFRA located in the jurisdiction would be acceptable to the Commission to act as the independent entity for transaction information.[22] The Commission also would expect the independent entity to agree to transmit transaction information supplied by the distribution participants and their affiliated purchasers to the Division within 30 days of a request for the information. If this information were not available from the independent entity, the Commission would expect the distribution participants and their affiliated purchasers to agree to provide the same transaction information directly to the Division upon request. The independent entity and the persons obligated to report their transactions would maintain this information for a period of not less than two years. In addition, distribution participants would make representatives available to the staff of the Commission to respond to inquiries relating to such information.

V. Conclusion

This policy statement is issued in the context of a continuing review of the Trading Practices Rules. The Commission believes that this Statement of Policy strikes an appropriate balance between the need to reduce burdensome costs associated with the application of the Trading Practices Rules during multinational distributions of foreign securities and the need to protect U.S. investors, and will provide additional investment opportunities to U.S. investors without compromising essential U.S. investor protections under the federal securities laws.

By the Commission.

Dated: November 3, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27555 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–P

[Release Nos. 33–7028; 34–33138; International Series Release No. 607; File No. S7–19–93]

RIN 3235–AF52; 3235–AF53; 3235–AF54; 3235–AF11

Exceptions to Rules 10b–6, 10b–7, and 10b–8 Under the Securities Exchange Act of 1934 for Distributions of Foreign Securities to Qualified Institutional Buyers

AGENCY: Securities and Exchange Commission.

ACTION: Final rule.

SUMMARY: The Commission is adopting new exceptions to Rules 10b–6, 10b–7, and 10b–8 ("Trading Practices Rules") under the Securities Exchange Act of 1934 which would permit transactions otherwise prohibited by those rules during distributions of foreign issuers' securities eligible for resale pursuant to Rule 144A under the Securities Act of 1933, when such distributions in the United States are made exclusively to qualified institutional buyers ("QIBs"). By eliminating the costs and other burdens associated with compliance with the Trading Practices Rules, the new exceptions should facilitate Rule 144A distributions of foreign securities to QIBs. However, the general anti-fraud and anti-manipulation provisions of the federal securities laws would continue to apply to activities of participants in Rule 144A distributions.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy J. Sanow, Assistant Director; Elizabeth Pucciarelli Hensley, Branch Chief; or Diane Mage Roberts, Attorney-Adviser, Office of Trading Practices, Division of Market Regulation, at (202) 272–2848, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Securities and Exchange Commission ("Commission") is adopting new exceptions to Rules 10b–6,[1] 10b–7,[2] and 10b–8[3] ("Trading Practices Rules") under the Securities Exchange Act of 1934 ("Exchange

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[17] An FFRA is defined in section 3(a)(51) of the Exchange Act, 15 U.S.C. 78c(a)(51), as any (A) foreign securities authority; (B) other governmental body or foreign equivalent or a self-regulatory organization empowered by a foreign government to administer or enforce its laws relating to the regulation of fiduciaries, trusts, commercial lending, insurance, trading in contracts of sale of a commodity for future delivery, or other instruments traded on or subject to the rules of a contract market, board of trade, or foreign equivalent, or other financial activities, or (C) membership organization a function of which is to regulate participation of its members in activities listed above.

[18] The exemption request should specify the transaction publication requirements of the trading facilities of the issuer's home country market.

[19] The Commission would expect that the recordkeeping and reporting periods generally would correspond to those of the Germany Exemptions, which vary depending upon whether the securities are being sold pursuant to a rights offering or secondary offering. In the case of a secondary offering, the transaction reporting period commences three business days prior to the determination of the offering price and continues until the distribution in the United States is completed. In the case of a rights offerings, the transaction reporting period commences when the rights subscription price is determined and continues until the distribution in the United States is completed. However, no transaction reporting would be required during this period, if the rights exercise price represents a discount of more than 10% from the then current market price of the underlying security. When the discount is at 10% or less, the reporting obligation is triggered and continues until the end of the rights subscription period, or until the discount to the current market price of the underlying security rebounds to at least 12%.

[20] The transaction information should include the following elements: (1) The name of the security; (2) the date of the transaction; (3) the time of the transaction, including execution and reporting times; (4) the volume of each transaction; (5) specification of the market where the transaction was executed; (6) the identity of the counterparty to the transaction; and (7) an indication whether the transaction was for a proprietary or customer account (provided that transactions effected for a customer account for which the person exercises discretionary authority would be reported as proprietary transactions).

The identity of customers (or counterparties other than distribution participant counterparties) would not be required if it is not legally possible under the laws of the issuer's jurisdiction to provide such information to the Commission. Distribution participants (and their affiliated purchasers) relying upon the exemptions from the Trading Practices Rules, however, would agree to waive secrecy laws or other impediments to the Commission's access to information with respect to their own transactions.

[21] Unless it were not feasible, the records would be reported in a Comma Delimited American Standard Code for Information Interchange (ASCII) format.

[22] If an FFRA were not available to act as the independent entity, the Commission would consider other alternatives. For example, the Germany Exemptions provided that the accountant for the lead German underwriter could serve as the independent entity. In all cases, the entity must be independent of the distribution participants. *Cf.* Regulation S–X under the Securities Act of 1933.

[1] 17 CFR 240.10b–6.

[2] 17 CFR 240.10b–7.

[3] 17 CFR 240.10b–8.

Act")[4] in connection with distributions of securities of foreign issuers that are eligible for resale pursuant to Rule 144A[5] ("Rule 144A—eligible securities") under the Securities Act of 1933 ("Securities Act"),[6] when such distributions in the United States are made exclusively to qualified institutional buyers ("QIBs")[7] in transactions exempt from Securities Act registration requirements under section 4(2)[8] of, or Rule 144A or Regulation D[9] under, the Securities Act ("Rule 144A Distributions"). The exceptions, which were proposed by the Commission in May 1993,[10] permit transactions otherwise prohibited by the Trading Practices Rules during such distributions. The amendments were proposed because the application of the Trading Practices Rules to Rule 144A Distributions may make it more difficult to include the United States in cross-border transactions.[11]

The Commission has determined to adopt the exceptions to the Trading Practices Rules substantially as proposed. The Commission emphasizes that the new exceptions in no way affect the continuing applicability of the general anti-fraud and anti-manipulation provisions under the federal securities laws to Rule 144A Distributions.[12]

II. Background

The Trading Practices Rules are anti-manipulation provisions governing the market conduct of persons participating in a distribution of securities and their affiliated purchasers. As described more fully in the Proposing Release, the Trading Practices Rules apply to transactions under Rule 144A that are distributions within the meaning of Rule 10b–6. Some market participants, however, have expressed concerns that the Rule 144A securities market has not achieved its full potential in part because foreign issuers are reluctant to include a United States ("U.S.") tranche in global offerings when the Trading Practices Rules apply to sales of foreign securities to U.S. institutional investors.[13] In response to these concerns, the Proposing Release sought comment on whether distributions of Rule 144A—eligible foreign securities should be excepted from the Trading Practices Rules, or whether these rules should continue to apply to such distributions.

The Commission notes that it is not aware of any abuses relating to pricing practices for Rule 144A-eligible securities, nor of any complaints or lawsuits by QIBs relating to sales of securities of foreign issuers in reliance on Rule 144A. The Commission will continue to monitor developments in the Rule 144A securities market.

III. Discussion of the Exceptions

The Commission received twelve comment letters in response to the proposed exceptions.[14] Nine commenters favored adoption of the proposed exceptions, generally stating that the exceptions would facilitate participation by institutions in the United States in the global securities markets by removing impediments to cross-border transactions by, among other things, eliminating the need for foreign issuers and underwriters to request exemptions from the Trading Practices Rules for individual transactions. Several of the commenters endorsing the proposed exceptions pointed to the fact that other provisions of the federal securities laws, including the general anti-fraud and anti-manipulation provisions, would continue to apply to Rule 144A Distributions. Six commenters suggested various modifications to the proposal. Two commenters opposed adoption of the proposed exceptions stating that, because the Trading Practices Rules are designed to protect U.S. investors, their modification would reduce the attractiveness of the Rule 144A securities market. One commenter expressed no opinion on whether the proposed exceptions should be adopted. In addition, the commenters generally were not aware of any foreign market activities that influenced improperly the price of securities during Rule 144A Distributions in the United States.

The Commission believes that the characteristics of transactions involving Rule 144A-eligible foreign securities serve as appropriate bases to either reduce or eliminate the application of these anti-manipulation rules in the limited context of offerings of Rule 144A Distributions. For example, Rule 144A Distributions are not subject to the registration provisions of the Securities Act; Rule 144A-eligible securities are not listed on a national securities exchange or quoted on an automated inter-dealer quotation system; and Rule 144A Distributions are limited to QIBs.

The Commission is adopting the exceptions as proposed, with a slight modification as discussed below. The new exceptions to the Trading Practices Rules permit market activities in all jurisdictions, including the United States,[15] without compliance with the Trading Practices Rules during distributions of Rule 144A-eligible securities of a foreign government or a foreign private issuer, as defined in Rule 3b–4 under the Exchange Act,[16] if such securities are offered and sold in the United States to QIBs (or persons reasonably believed to be QIBs) in transactions exempt from registration under section 4(2) of, or Rule 144A or Regulation D under, the Securities Act. The exceptions also are available for related securities during Rule 144A

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[4] 15 U.S.C. 78a *et seq.*

[5] 17 CFR 230.144A. Rule 144A provides a non-exclusive safe harbor from the registration requirements of the Securities Act for resales of eligible restricted or unregistered securities to QIBs. See Securities Act Release No. 6862 (April 23, 1990), 55 FR 17933 ("Rule 144A Adopting Release"). See also Securities Act Release No. 6808 (October 25, 1988), 53 FR 44016 (Rule 144A proposing release); Securities Act Release No. 6839 (July 11, 1989), 54 FR 30076 (Rule 144A reproposing release); Securities Act Release No. 6963 (October 28, 1992), 57 FR 48721 (adopting amendments to Rule 144A).

[6] 15 U.S.C. 77a *et seq.*

[7] Generally, with the exception of registered broker-dealers, an entity qualifying as a QIB must, in the aggregate, own and invest on a discretionary basis at least $100 million in securities of issuers that are not affiliated with that entity. Broker-dealers registered under the Exchange Act must own or invest on a discretionary basis at least $10 million in securities of issuers that are not affiliated with that broker-dealer. 17 CFR 230.144A(a)(1).

[8] 15 U.S.C. 77d(2).

[9] 17 CFR 230.501 through 508.

[10] Securities Exchange Act Release No. 32256, 58 FR 27686 (May 5, 1993) ("Proposing Release").

[11] *Id.*, 58 FR at 27688.

[12] *E.g.*, Securities Act Section 17(a), 15 U.S.C. 77q(a); Exchange Act Section 9(a), 15 U.S.C. 78i(a); Exchange Act Section 10(b), 15 U.S.C. 78j(b), and 17 CFR 240.10b–5. Moreover, transactions effected in accordance with the exceptions may not be engaged in for the purpose of creating actual, or apparent, active trading in or raising the price of the security in distribution or any related securities.

[13] See also Letters regarding Application of Rules 10b–6, 10b–7 and 10b–8 to Rights Offerings and Rule 144A Transactions Involving Foreign Securities (April 25, 1991 and January 15, 1993), (1991) Fed. Sec. L. Rep. (CCH) ¶79,729 ("SIA Letter Exemptions"). The exceptions adopted herein supersede the SIA Letter Exemptions.

[14] The Commission received comment letters from two law firms, four broker-dealers, one industry association, one investment adviser, one mutual fund, two pension funds, and one banking institution. A Summary of Comments has been prepared by the Division of Market Regulation ("Division") and is available in File No. S7–19–93 in the Commission's Public Reference Section at the address noted above. In addition to publishing the Proposing Release for public notice and comment, the Division sent a letter and a copy of the Proposing Release to more than 125 institutions that appeared to qualify as QIBs, including investment companies, financial institutions, investment advisers, and insurance companies, and invited their comment on the Proposing Release. Four comment letters were received in response.

[15] Rule 144A provides that the securities may not, at the time of issuance, be securities of the same class as securities listed on a national securities exchange registered under Section 6 of the Exchange Act, or quoted in a U.S. automated inter-dealer quotation system. 17 CFR 230.144A(d)(3). Accordingly, the Commission expects that transactions effected in the United States pursuant to these exceptions will be limited.

[16] 17 CFR 240.3b–4(a), (c).

Distributions. Identical exceptions to Rules 10b–6, 10b–7,[17] and 10b–8 are adopted.

A. Eligible Securities and Offerees

Commenters suggested expanding the scope of the securities and offerees to be covered by the exceptions. One commenter stated that the scope of the exceptions should be expanded to include domestic securities. Several commenters urged the Commission to broaden the proposed exceptions to cover "institutional accredited investors" under Regulation D.[18] Also some commenters suggested that the exceptions be expanded to include offers and sales to persons that are not necessarily QIBs but are not considered "U.S. persons" for the purposes of Regulation S under the Securities Act.[19]

The Commission notes that the exceptions as adopted are intended to address concerns that, because of the effects that the Trading Practices Rules can have on foreign trading activities, underwriters and foreign issuers have declined to extend Rule 144A Distributions into the United States or have limited sales of Rule 144A-eligible foreign securities in the United States so that such sales would not be deemed a distribution under Rule 10b–6. The Commission does not believe that it is appropriate at this time to extend the exceptions to Rule 144A transactions involving domestic securities or persons other than QIBs, but will continue to review the applicability of the Trading Practices Rules to private market transactions.[20]

Two commenters suggested that, consistent with the provisions of Rule 144A, the exceptions should be available to offers and sales to persons that the seller reasonably believes are QIBs. The Commission agrees that the exceptions should parallel Rule 144A in this regard,[21] and has incorporated a reasonable belief standard in the exceptions.

B. Additional Conditions

The Commission requested comment on whether certain additional conditions should be incorporated into the exceptions. For example, the Commission suggested that the liquidity of the issuer's securities may be relevant, and asked whether criteria should be included based on the issuer's public float or the U.S. dollar value of average daily trading volume of the issuer's securities. Additionally, the Commission suggested that the exceptions could require that the principal market for the issuer's securities be located in a jurisdiction with which the Commission has entered into a comprehensive information sharing and enforcement assistance agreement or understanding ("Information Sharing Agreement"). Where an Information Sharing Agreement is not available, the Commission asked whether the proposed exceptions should require distribution participants to make a commitment to maintain and produce relevant records. The Proposing Release also solicited comment on whether the exceptions should be available only for foreign securities whose principal market publicly disseminates transaction information.

Commenters generally expressed the view that liquidity conditions were not necessary or appropriate, particularly in light of the nature of participants in the Rule 144A securities market, and indicated that it may be difficult to obtain accurate or complete trading information in some markets. Another commenter stated that QIBs purchasing unregistered foreign securities do not expect foreign securities markets to have the same level of market information as is available in the United States and that these purchasers are willing to rely upon the foreign market regulation. One commenter, who opposed adoption of the proposed exceptions, expressed concern that, absent an Information Sharing Agreement, modification of the Trading Practices Rules would increase the likelihood of fraud. Other commenters generally believed that conditions requiring an Information Sharing Agreement, recordkeeping requirements, or the public dissemination of trade information should not be prerequisites for use of the proposed exceptions and expressed concern that information or recordkeeping requirements would restrict the benefit of the proposed exceptions.

The Commission also requested comment on the extent, if any, that disclosure should be provided in any offering materials that the Trading Practices Rules are not applicable to Rule 144A Distributions, and of the market activities of distribution participants and the potential effect of these activities on the security's price.[22] Commenters who addressed this issue opined that such disclosure would not be meaningful to QIBs.

After considering the comments received, the Commission has determined not to impose additional conditions. Moreover, as the commenters have observed, information regarding the nature of a foreign trading market, including market liquidity and the rules relating to transaction disclosure, are the types of information that QIBs can be expected to be able to obtain. The Commission is of the view that these additional conditions generally would restrict the utility of the exceptions and may compromise their intended purpose.

IV. Effects on Competition

Section 23(a) of the Exchange Act[23] requires the Commission, in adopting rules under the Exchange Act, to consider the anti-competitive effect of the rule, if any, and to balance any impact against the regulatory benefits to be gained. In the Proposing Release, the Commission stated that it had considered the proposed exceptions in light of this standard and believed that the proposed exceptions would not likely impose any significant burden on competition that is not necessary or appropriate in furtherance of the Exchange Act. Although the Commission sought comment on this position, no comments were received.

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[17] Comment was solicited on whether a complete exception from Rule 10b–7 was appropriate. Proposing Release, 58 FR at 27689 n.37; see also Securities Exchange Act Release No. 2446, 11 FR 10971 (March 18, 1940). Several commenters maintained that an unconditional exception to Rule 10b–7 was appropriate given that QIBs are sophisticated enough to understand that stabilizing activities would be regulated, if at all, by the jurisdiction of the foreign trading market. Two commenters opposed adoption of the proposed exceptions, implicitly arguing that a complete exception to Rule 10b–7 would be inappropriate. While the Commission is adopting the exceptions substantially as proposed, it notes that the subject of the regulation of stabilization will be considered in the context of a general review of the Trading Practices Rules.

[18] "Institutional accredited investors" are those that qualify under 17 CFR 230.501(a)(1), (2), (3), (5), (7), or (8).

[19] 17 CFR 230.902. Pursuant to paragraph (o)(2) of Rule 902, "any discretionary account * * * held for the benefit or account of a non-U.S. person by a dealer or other professional fiduciary organized, incorporated or (if an individual) resident in the United States shall not be deemed a 'U.S. person' for purposes of Regulation S."

[20] Adoption of the exceptions will have no effect on the determination of whether an offering of securities constitutes a distribution for purposes of Rule 10b–6. See 17 CFR 240.10b–6(c)(5). For example, where an offering involves a contemporaneous placement to QIBs under Rule 144A and to institutional accredited investors under Regulation D in the United States, all of the securities sold in the United States must be considered for purposes of determining whether there is a Rule 10b–6 distribution, even though the portion involving a Rule 144A Distribution may be excepted from the rule.

[21] See 17 CFR 230.144A(d)(1).

[22] Proposing Release, 58 FR at 27690 n.50.

[23] 15 U.S.C. 78w(a)(2).

V. Regulatory Flexibility Act Analysis

Section 3(a) of the Regulatory Flexibility Act ("RFA")[24] requires the Commission to undertake a regulatory flexibility analysis of the impact of the exceptions on a substantial number of small entities.[25] The application of the RFA to the exceptions is limited. Because the definition of QIB in Rule 144A generally is limited to those entities that in the aggregate own or invest on a discretionary basis at least $100 million in securities of unaffiliated entities ($10 million in the case of a broker-dealer), Rule 144A pertains to resales of securities to substantial investors. Although Rule 144A places no similar size restrictions on placement agents that may resell such securities, it appears that Rule 144A has been utilized by substantial U.S. broker-dealers to resell securities of substantial foreign issuers. The Chairman previously has certified that the exceptions would not have a significant economic impact on a substantial number of small entities. A copy of the certification can be obtained from Diane Mage Roberts, Securities and Exchange Commission, 450 Fifth Street, NW., Mail Stop 5–1, Washington, DC 20549.

VI. Effectiveness of Exceptions

Pursuant to 5 U.S.C. 553(d)(1), the Commission is making the exceptions effective upon publication in the **Federal Register** since the exceptions relieve restrictions from the Trading Practices Rules.

VII. Statutory Basis and Text of Rule Amendments

The amendments to Rules 10b–6, 10b–7, and 10b–8 are adopted under the Exchange Act, 15 U.S.C. 78a *et seq.*, and particularly sections 2, 3, 9(a)(6), 10(b), 13(e), 15(c), and 23(a) of the Exchange Act, 15 U.S.C. 78b, 78c, 78i(a)(6), 78j(b), 78m(e), 78o(c), and 78w(a).

[24] 5 U.S.C. 603(a)
[25] 5 U.S.C. 605(b)

List of Subjects in 17 CFR Part 240

Broker-dealers, Reporting and recordkeeping requirements, Securities, Issuers, Fraud.

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

2. Section 240.10b–6 is amended by redesignating paragraph (i) as paragraph (j) and adding a new paragraph (i) to read as follows:

§ 240.10b–6 Prohibitions against trading by persons interested in a distribution.

* * * * *

(i) The provisions of this section shall not apply to any distribution of securities of a foreign government or a foreign private issuer, as defined in § 240.3b–4, eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to a qualified institutional buyer, as defined in § 230.144A(a)(1) of this chapter, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believes is a qualified institutional buyer, in transactions exempt from registration under section 4(2) (15 U.S.C. 77d(2)) of the Securities Act of 1933 or § 230.144A or Regulation D (§§ 230.501–230.508) of this chapter.

* * * * *

3. Section 240.10b–7 is amended by redesignating paragraph (o) as paragraph (p) and adding a new paragraph (o) to read as follows:

§ 240.10b–7 Stabilizing to facilitate a distribution.

* * * * *

(o) The provisions of this section shall not apply to any distribution of securities of a foreign government or a foreign private issuer, as defined in § 240.3b–4, eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to a qualified institutional buyer, as defined in § 230.144A(a)(1) of this chapter, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believes is a qualified institutional buyer, in transactions exempt from registration under section 4(2) (15 U.S.C. 77d(2)) of the Securities Act of 1933 or § 230.144A or Regulation D (§§ 230.501–230.508) of this chapter.

* * * * *

4. Section 240.10b–8 is amended by redesignating paragraph (f) as paragraph (g) and adding a new paragraph (f) to read as follows:

§ 240.10b–8 Distributions through rights.

* * * * *

(f) The provisions of this section shall not apply to any distribution of securities of a foreign government or a foreign private issuer, as defined in § 240.3b–4, eligible for resale under § 230.144A(d)(3) of this chapter, if such securities are offered or sold in the United States solely to a qualified institutional buyer, as defined in § 230.144A(a)(1) of this chapter, or to an offeree or purchaser that the seller and any person acting on behalf of the seller reasonably believes is a qualified institutional buyer, in transactions exempt from registration under Section 4(2) (15 U.S.C. 77d(2)) of the Securities Act of 1933 or § 230.144A or Regulation D (§§ 230.501–230.508) of this chapter.

* * * * *

By the Commission.

Dated: November 3, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–27556 Filed 11–12–93; 8:45 am]

BILLING CODE 8010–01–P

federal register

Monday
November 15, 1993

Part VII

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 310

Boil Treatment Drug Products for Over-the-Counter Human Use; Final Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 310

[Docket No. 82N–0054]

RIN 0905–AA06

Boil Treatment Drug Products for Over-the-Counter Human Use

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule establishing that over-the-counter (OTC) boil treatment drug products are not generally recognized as safe and effective and are misbranded. This final rule applies only to topical drug products used to reduce the size of a boil or to reduce an infection related to a boil. Certain drug products used to provide relief of local symptoms (itch, pain, and discomfort) of a boil will be addressed in the rulemaking for OTC external analgesic drug products in a future issue of the **Federal Register**. FDA is issuing this final rule after considering public comments on the agency's proposed regulation, which was issued in the form of a tentative final monograph, and all new data and information on OTC boil treatment drug products that have come to the agency's attention. This final rule is part of the ongoing review of OTC drug products conducted by FDA.

EFFECTIVE DATE: May 16, 1994.

FOR FURTHER INFORMATION CONTACT: William E. Gilbertson, Center for Drug Evaluation and Research (HFD–810), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–594–5000.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of June 29, 1982 (47 FR 28306), FDA published, under § 330.10(a)(6) (21 CFR 330.10(a)(6)), an advance notice of proposed rulemaking that would classify OTC boil ointment drug products as not generally recognized as safe and effective and as being misbranded and would declare these products to be new drugs within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 321(p)). The notice was based upon the recommendations of the Advisory Review Panel on OTC Miscellaneous External Drug Products (the Panel), which was the advisory review panel responsible for evaluating data on the active ingredients in this drug class. Interested persons were invited to submit comments by September 27, 1982. Reply comments in response to comments filed in the initial comment period could be submitted by October 27, 1982.

In accordance with § 330.10(a)(10), the data and information considered by the Panel were put on public display in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, after deletion of a small amount of trade secret information.

The agency's proposed regulation, in the form of a tentative final monograph, for OTC boil treatment drug products was published in the **Federal Register** of January 26, 1988 (53 FR 2198). Interested persons were invited to file by March 28, 1988, written comments, objections, or requests for oral hearing before the Commissioner of Food and Drugs regarding the proposal. Interested persons were invited to file comments on the agency's economic impact determination by May 25, 1988. New data could have been submitted until January 26, 1989, and comments on the new data until March 27, 1989. Final agency action on that proposal occurs with publication of this final rule on OTC boil treatment drug products.

In the tentative final monograph, no active ingredients were proposed as generally recognized as safe and effective and not misbranded for the treatment of boils. However, the agency proposed labeling in § 358.450(b) in the event that data were submitted that resulted in the upgrading of any ingredients to monograph status in the final rule. The proposed indication was "For the temporary relief of pain and discomfort of boils."

The primary types of products used in the drug treatment of boils are: (1) Antibacterial "drawing salves" to reduce boil size and infection, and (2) anesthetics to relieve local symptoms, such as itch, pain, and discomfort. The agency stated in the tentative final monograph (53 FR 2198 at 2204) that clinical data were needed to demonstrate the "drawing action" on a boil of ingredients such as magnesium sulfate or ichthammol, and to demonstrate the antiseptic action of sulfur and phenol. The agency also stated that if new data that were submitted during the allotted 12-month comment and new data period were not sufficient to establish monograph conditions for OTC boil treatment drug products, the final rule would declare these products to be new drugs (53 FR 2199). In this final rule, the agency concludes that no active ingredient has been shown to be generally recognized as safe and effective for use as a drawing agent or antiseptic in OTC boil treatment drug products. The agency also concludes that several other ingredients are not generally recognized as safe and effective for use as a topical analgesic, anesthetic, and antipruritic in OTC boil treatment drug products. No substantive data were submitted for these ingredients.

As discussed, the labeling proposed in part 358 for OTC boil treatment drug products applied primarily to products used for the temporary relief of pain and discomfort of boils. Among the ingredients considered for this indication were several topical analgesic, anesthetic, and antipruritic active ingredients (benzocaine, camphor, juniper tar, menthol, and phenol) that are also being considered in the OTC external analgesic rulemaking. However, with the exception of benzocaine, no data were submitted supporting the use of these ingredients in the treatment of pain and discomfort associated with boils. Thus, the agency has determined that these ingredients (other than benzocaine) are not generally recognized as safe and effective for this use. The affected ingredients are listed in § 310.545(a)(5) (21 CFR 310.545(a)(5)). Data were submitted for benzocaine, and action on this ingredient is being deferred and transferred to a separate rulemaking for OTC external analgesic drug products.

In the ongoing rulemaking for OTC external analgesic drug products, general claims for OTC topical analgesic, anesthetic, and antipruritic active ingredients have been proposed in part 348 (48 FR 5852 at 5868, February 8, 1983). Proposed § 348.50(b)(2) would establish the temporary relief of pain, itching, or pain and itching as an intended use. The proposed labeling would also allow a description of several conditions that pain and itching are associated with, e.g., sunburn, insect bites, and minor skin irritations. Section 348.50(b) also includes proposed labeling for other specialized uses of analgesic, anesthetic, and antipruritic ingredients. See, e.g., proposed § 348.50(b)(5) for products used for the treatment of fever blisters and cold sores. (See 55 FR 3370 at 3382 and 3383, January 31, 1990.) The agency has determined that the appropriate place to include relief of the pain and itching of boils, if supported by appropriate data, would be proposed § 348.50(b). Accordingly, the agency is deferring a decision on benzocaine as a topical analgesic, anesthetic, and antipruritic active ingredient for relief of pain and discomfort of boils. That use of benzocaine will be discussed in the

external analgesic drug rulemaking in a future issue of the **Federal Register**. Products containing benzocaine labeled for the temporary relief of pain and discomfort of boils may continue to be marketed at this time.

This final rule declares OTC drug products containing active ingredients for the treatment of boils to be new drugs under section 201(p) of the act, for which an application or abbreviated application (hereinafter called application) approved under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 is required for marketing. In the absence of an approved application, products containing drugs for this use also would be misbranded under section 502 of the act (21 U.S.C. 352). In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application.

This final rule amends 21 CFR part 310 to include drug products containing ingredients for the treatment of boils by adding new § 310.531 (21 CFR 310.531) to subpart E. The inclusion of OTC boil treatment drug products in part 310 follows FDA's established policy for regulations in which there are no monograph conditions. (See, e.g., §§ 310.510, 310.519, 310.525, 310.526, 310.532, 310.533, and 310.534.) If, in the future, any ingredient is determined to be generally recognized as safe and effective for use in an OTC boil treatment drug product, the agency will promulgate an appropriate regulation at that time.

The OTC drug procedural regulations (§ 330.10) provide that any testing necessary to resolve the safety or effectiveness issues that formerly resulted in a Category III classification, and submission to FDA of the results of that testing or any other data, must be done during the OTC drug rulemaking process before the establishment of a final monograph. Accordingly, FDA does not use the terms "Category I" (generally recognized as safe and effective and not misbranded), "Category II" (not generally recognized as safe and effective or misbranded), and "Category III" (available data are insufficient to classify as safe and effective, and further testing is required) at the final monograph stage. In place of Category I, the term "monograph conditions" is used; in place of Category II or III, the term "nonmonograph conditions" is used.

As discussed in the proposed rule for OTC boil treatment drug products (53 FR 2198), the agency advised that it would provide a period of 12 months after the date of publication of the final monograph in the **Federal Register** for relabeling and reformulation of OTC boil treatment drug products to be in compliance with the monograph. Although data and information were submitted on ichthammol and sulfur in response to the proposed rule, they were not sufficient to support monograph conditions, and no monograph is being established at this time. Therefore, boil treatment drug products that are subject to this rule are not generally recognized as safe and effective and are misbranded (nonmonograph conditions). In the advance notice of proposed rulemaking (47 FR 28306), the agency advised that conditions for the drug products subject to this monograph would be effective 6 months after the date of publication of a final monograph in the **Federal Register**. Because no OTC drug monograph is being established for this class of drug products, the agency is adopting this 6-month effective date for the nonmonograph conditions for these drug products. Therefore, on or after May 16, 1993, no OTC drug products that are subject to this final rule may be initially introduced or initially delivered for introduction into interstate commerce unless they are the subject of an approved application.

In response to the proposed rule on OTC boil treatment drug products, one manufacturer submitted a comment and data. A copy of the comment and data received is on public display in the Dockets Management Branch (address above). Additional information that has come to the agency's attention since publication of the proposed rule is also on public display in the Dockets Management Branch.

I. The Agency's Conclusions on the Comment

1. The comment submitted data in support of the safety and effectiveness of benzocaine in promoting reduction in boil size and relieving pain associated with boils (furuncles) (Ref. 1). As noted above, consideration of the use of benzocaine for relief of pain associated with boils is transferred to the rulemaking for OTC external analgesic drug products. The agency is only reviewing the data as they relate to reduction in boil size in this final rule. Three studies (Florendo, Weinrauch, and Goldstein) having identical protocols were submitted. The protocol for each study prescribed a randomized, double-blind, vehicle-controlled study enrolling 30 to 50 subjects with a clinical diagnosis of boils. The active treatment contained two active ingredients, benzocaine (20 percent) and triclosan (0.35 percent), while the vehicle was stated to contain triclosan (0.25 percent) only. Subjects were examined in a dermatology clinic or private office where a clinical history was obtained and the baseline boil size was determined. Subjects were then randomly assigned to a treatment group and told to apply the medication twice daily, in the morning and evening. The first application was given in the office or clinic. Reduction in boil size was one efficacy measure in these studies. Boil size determination was supposed to be made when pain relief was first experienced and after 3 days of treatment. Reduction in boil size was the difference in diameter of the boil between baseline and the end of treatment. Change in boil diameter, percent reduction in boil diameter, and the percent of subjects with a reduction in boil size were compared for the two treatments.

The agency has determined that the data are inadequate to demonstrate benzocaine's effectiveness in reducing the size of a boil. The agency considers the study design as having a number of problems. The active treatment was a combination product with two active ingredients. To prove efficacy, a four-arm study (to include each ingredient, the combination product, and vehicle) should have been conducted. The submitted studies had no true placebo (vehicle) because the vehicle component contained triclosan 0.25 percent, a concentration 0.1 percent less than used in the active treatment. Even though this concentration is lower than that of triclosan in the active treatment, it still may have contributed to the study results because it can have antibacterial properties. Thus, beneficial results of the active treatment may have been attributable to one or both of the two active ingredients. To prove efficacy for benzocaine, a study should compare benzocaine to its vehicle without triclosan. The submitted study design was only a test of whether the combination of benzocaine and triclosan outperforms triclosan by itself in the treatment of boils. The study design did not exclude any possible beneficial effects resulting from the incorporation of triclosan into the active treatment or the vehicle.

Boil size measurements should have been made with accuracy and with diligence in a study which claimed, as one of its objectives, to influence the size of the baseline condition. There should have been exclusions for subjects on recent oral antibiotics and on systemic or intralesional corticosteroid treatment. Subjects with multiple boils in adjacent areas should not have been accepted into the studies. Carbuncles and furuncles behave very differently on a clinical basis, and the

former should not have been included in a study on boils. Carbuncles are not simple boils and should not have been included in a study on boils because these lesions behave differently and require either incision and drainage, antimicrobial therapy, or both (Ref. 2).

The Florendo study enrolled 52 subjects: 24 subjects were randomized to the placebo group, and 28 subjects were randomized to the active group. Followup data were obtained from all 52 subjects. The two treatment groups were similar with respect to sex, age, and the age and size of boils. The treatment group did have a significantly higher proportion of subjects with boils which oozed or burst than did the placebo group. Four subjects in the treatment group and five subjects in the placebo group had multiple boils. The sponsor analyzed the change in boil size both with the boil as the unit of analysis and with the person as the unit of analysis. In the latter analysis, changes in boil size were first averaged within each person.

In the sponsor's analysis, a significantly higher percentage of treatment subjects than vehicle subjects had a reduction in boil size ($p < .05$); this was true whether the analysis was by subject or by boil and whether or not boils which burst were excluded. The mean absolute reduction in boil size was greater in the treatment group than in the vehicle group in all analyses. Borderline significance was achieved ($p < .06$) in the two analyses with all boils included (whether analyzed by boil or by person). Similar findings were achieved with percentage change in boil size. The agency notes that the size of the boils was measured only to the nearest centimeter (cm). The agency believes that a more exact measurement should have been made to assess changes in size.

The Weinrauch study enrolled 51 subjects: 27 subjects were randomized to the placebo group, and 24 subjects were randomized to the treatment group. Followup data were obtained from all 51 subjects. The two treatment groups were similar with respect to sex, age, and all the baseline parameters. No subjects had multiple boils. Four boils in the vehicle group and one in the treatment group burst or oozed during the trial.

In the sponsor's analysis, when boils that burst were excluded, there was a significantly greater proportion of subjects with a reduction in boil diameter as well as a significantly greater mean absolute and percentage boil size reduction in the treatment group compared to the vehicle group. When all boils were included, the direction of these results did not change, and they did not approach statistical significance.

The Goldstein study enrolled 69 subjects, with 66 (38 vehicle and 28 treatment) subjects completing it. One placebo subject was excluded because his boil size was not initially recorded. Also, one subject was on another medication, which was a violation of the protocol. The two treatment groups were similar with respect to age and the baseline parameters. No subject had multiple boils. One boil in the treatment and one boil in the vehicle group burst during the trial.

No significant differences were observed with respect to change in boil size. The vehicle group had a slightly higher proportion of subjects with reduction in boil diameter (37 percent) than did the treatment group (32 percent).

The agency found that the data sheets (Ref. 1) showed a great variation in the times when boil size was measured. For some subjects, boil size was measured only during the first 4 hours; for other subjects, measurements were made only after 1 day or 3 days. Measurements were made on both day 1 and 3 for less than half of the subjects who received the drug. The inconsistency of these measurements makes the data unsatisfactory. Also, some subjects did not complete the 3-day study; they were stopped after 1 day to begin either oral administration of antibiotics or to have incision and drainage.

The study appears not to have been conducted with proper care. Boil size was measured only to the nearest cm. Boil size was not measured precisely or consistently on all subjects in a study that proposes to study changes in boil size resulting from treatment. The boil size was not recorded for several subjects (e.g., subject 2,612). There was some confusion as to the meaning of some of the data entries; for example, terms such as "1.3" for presence of pus (subject 2,654) and "patient aspirated pus after the first day" (subject 3,577). Data entries like these cast doubt on the validity and/or appropriateness of the data recording and the subjects studied.

The raw data sheets for the Goldstein study (Ref. 1) are included in the file and contain numerous inconsistencies. At least one subject with no baseline boil size measurement was included in the analysis. In conclusion, there are numerous errors and omissions in the conduct of the Goldstein study that cause the agency to conclude that the results should be discounted.

In summary, the three studies submitted were not designed properly. The data collection for these studies appears to be incomplete in many instances. The subjects were not uniformly assessed at the various time points specified in the protocol for data collection, and the data were not collected precisely. Boil size measurements appear not to have been carried out carefully, and measurements were made in an inexact manner. The design of the studies was not appropriate for a two-component (combination) product. A four-arm study (to include each component, the combination product, and the vehicle) was needed to demonstrate efficacy. The vehicle should not have contained either component of the combination product. In conclusion, none of the three studies is an adequate, well-controlled study. Benzocaine has not been shown to be effective in reducing the size of boils.

The comment subsequently informed the agency (Ref. 3) that triclosan in a concentration of 0.35 percent was in both the vehicle and in the active drug. The comment stated that it was a typographical error stating that the concentration was 0.25 percent.

The comment contended that the active preparation was not a combination product because the triclosan in the product (as an antimicrobial) does not have proven effectiveness. The comment further argued that even if triclosan were proven effective as an antimicrobial, its "contribution" as an inactive ingredient is irrelevant to the results. The comment maintained that the only active ingredient was benzocaine, whose efficacy for relief of pain was proven. The comment claimed that triclosan had two purposes in the product: (1) To help guard against spread of infection from a boil to other sites if the boil ruptured, and (2) to act as a bacteriostatic preservative.

Based on the comment's arguments (Ref. 3), the agency is now treating the comment as addressing only the claim that benzocaine is effective for relief of pain associated with boils, and that the comment is not interested in other claims being attributed to other ingredients used to treat boils. As noted above, the use of benzocaine for relieving pain associated with boils is being transferred to the rulemaking for OTC external analgesic drug products.

References

(1) Comment No. C4, Docket No. 82N–0054, Dockets Management Branch.

(2) Maibach, H. I., R. Aly, and W. Noble, "Bacterial Infections of the Skin" in Dermatology, 2d ed., edited by Moschella, S., and H. Hurley, W. B. Saunders Co., Philadelphia, pp. 612–613, 1985.

(3) Comment No. C5, Docket No. 82N–0054, Dockets Management Branch.

2. The comment included data in support of the usefulness of the ingredients ichthammol, sulfur, and triclosan in a combination product for the treatment of boils (Refs. 1 through 5). The comment also urged the agency to consider benzocaine in combination with ichthammol, sulfur, and triclosan used as antimicrobials for the treatment of boils.

The agency has reviewed the data submitted on ichthammol, sulfur, and triclosan as antimicrobials for the treatment of boils and finds they are inadequate to establish effectiveness for this use. Of the references submitted with the comment, the agency considers the following pertinent to ichthammol and sulfur: Kownatzki, Urich, and Schopf (Ref. 2) showed that ichthyol (ichthammol) induced a neutrophilic cell accumulation in an in vitro chemotaxis (Boyden) chamber. On this basis, they concluded that ichthyol has anti-inflammatory properties. Libenson et al. (Ref. 3) concluded from a laboratory experiment that elemental sulfur has antibacterial activity against streptococcal strains and to a lesser degree against *Staphylococcus aureus*. Woiwood (Ref. 4) concluded by an in vitro test that colloidal sulfur has antistaphylococcal activity in an experimental inoculation medium.

The agency finds that these references demonstrate that in laboratory (in vitro) experimental testing, ichthammol and sulfur possess certain properties that might make them useful in certain inflammatory and bacteriological conditions. However, the references submitted did not contain any human clinical studies on the use of ichthammol and sulfur for the treatment of boils. Thus, the references do not contain adequate data to establish that ichthammol and sulfur are safe and effective in the treatment of boils. The agency notes that, after the initial submission was made, the comment subsequently stated that triclosan at 0.35 percent does not have proven effectiveness as an antimicrobial (Ref. 5). The agency concludes that data from well-controlled human clinical studies are necessary to demonstrate the safety and efficacy of ichthammol, sulfur, or triclosan as antimicrobials useful for the treatment of boils. Likewise, clinical data are also needed to support any combination of ichthammol, sulfur, or triclosan with benzocaine.

References

(1) Comment No. C4, Docket No. 82N–0054, Dockets Management Branch.

(2) Kownatzki, E., S. Urich, and E. Schopf, "The Effect of a Sulfonated Shale Oil Extract (Ichthyol) on the Migration of Human Neutrophilic Granulocytes *in vitro*," Archives of Dermatological Research, 276:235–239, 1984, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(3) Libenson, L. et al., "Antibacterial Effect of Elemental Sulfur," Journal of Infectious Diseases, 93:28–35, 1953, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(4) Woiwood, A. J., "The Inhibition of Bacterial Growth by Colloidal Heavy Metal Sulphides and by Colloidal Sulphur," Journal of General Microbiology, 10:509–520, 1954, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(5) Comment No. C5, Docket No. 82N–0054, Dockets Management Branch.

3. The comment urged the agency to consider ichthammol and sulfur as "drawing" agents alone or in combination with benzocaine. The comment submitted a large number of published references on these ingredients (Ref. 1) together with the data on benzocaine (Ref. 2) discussed in comment 1 of section I. of this document.

The agency has reviewed the references and finds they are inadequate to establish the safety and effectiveness of ichthammol or sulfur for use as a drawing agent to treat boils. Five of the references (Refs. 3 through 7) discussed ichthammol and sulfur for various indications when applied topically, but none of the references specifically discussed the use of ichthammol, sulfur, or any ingredient as a "drawing" agent. The creation of an osmotic equilibrium is postulated as the mechanism of action for drawing salves and is discussed in comment 5 of section I. of this document below. In the advance notice of proposed rulemaking on OTC boil ointment drug products, the Panel concluded that drawing salves to treat boils do not have any merit (47 FR 28306 at 28308). The agency concludes that the data submitted are not adequate to support the effectiveness of ichthammol and sulfur as "drawing" agents individually or in combination with benzocaine in treating or in reducing the size of a boil. Data from well-controlled human clinical studies are necessary to demonstrate the safety and effectiveness of ichthammol or sulfur for use as a "drawing" agent in the treatment of boils.

References

(1) Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(2) Comment No. C4, Docket No. 82N–0054, Dockets Management Branch.

(3) Kownatzki, E., S. Urich, and E. Schopf, "The Effect of a Sulfonated Shale Oil Extract (Ichthyol) on the Migration of Human Neutrophilic Granulocytes in vitro," Archives of Dermatological Research, 276:235–239, 1984, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(4) Libenson, L. et al., "Antibacterial Effect of Elemental Sulfur," Journal of Infectious Diseases, 93:28–35, 1953, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(5) Woiwood, A. J., "The Inhibition of Bacterial Growth by Colloidal Heavy Metal Sulphides and by Colloidal Sulphur," Journal of General Microbiology, 10:509–520, 1954, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(6) Czarnetzki, B. M., "Inhibitory Effects of Shale Oils (Ichthyols) on the Secretion of Chemotactic Leukotrienes From Human Leukocytes and on Leukocyte Migration," The Journal of Investigative Dermatology, 87:694–697, 1986, in Comment No. C4, vol. 3, exhibit J, Docket No. 82N–0054, Dockets Management Branch.

(7) Combes, F. C., "The Role of Sulfur in Dermatology," New York State Journal of Medicine, 32:1019–1023, 1932, in Comment No. C4, vol. 3, Exhibit J, Docket No. 82N–0054, Dockets Management Branch.

4. The comment noted the agency's statement in the tentative final monograph (53 FR 2198 at 2204) that "the 'drawing' action of ingredients such as magnesium sulfate or ichthammol * * * needs to be shown clinically." The comment stated that, as it understood this statement, clinical proof of any "drawing" action for benzocaine will not be required.

The comment is correct in stating that clinical proof of any "drawing" action for benzocaine is not required. No claim as a "drawing" agent has been attributed to benzocaine. Thus, the statement in the tentative final monograph on "drawing" action of ingredients such as magnesium sulfate or ichthammol did not include benzocaine. However, if a claim for "drawing" action were to be made for benzocaine, then clinical proof would be required.

5. The comment contended that magnesium sulfate and ichthammol in a boil ointment formula contribute to a "drawing" action. The comment suggested that such an action "is related to the osmotic equilibrium created at the site of application, i.e., the high fluid level of the boil versus the high solids level of the formula." The comment maintained that over a period of time and as the boil increases in fluid volume, this fluid will favor the salve formula and a decrease in boil volume will result. The comment reasoned that the "drawing" action results because the magnesium sulfate and ichthammol upset the equilibrium between the fluid

in the boil and the formula containing these and other base ingredients on the surface outside the boil.

The agency acknowledges the comment's contention and theory concerning a "drawing" action for magnesium sulfate and ichthammol. However, the comment did not submit adequate effectiveness data to support a "drawing" action for magnesium sulfate or ichthammol in the treatment of boils. The agency reviewed and evaluated the comment's submitted literature references (see comment 3 of section I. of this document) and found those references inadequate to support the effectiveness of any ingredient as a "drawing" agent.

II. The Agency's Final Conclusions on OTC Boil Treatment Drug Products

At this time, there is a lack of data from adequate and well-controlled, double-blind studies to establish that benzocaine, ichthammol, magnesium sulfate, sulfur, triclosan, or any other ingredients are effective to treat or reduce the size of boils. The agency has determined that no active ingredient has been found to be generally recognized as safe and effective for this OTC use. Treatment is defined as reducing the size of a boil or reducing an infection related to a boil. Treatment has involved the use of "drawing salves" for these purposes. These "drawing salves" contained various ingredients.

In the **Federal Register** of November 7, 1990 (55 FR 46914), the agency published a final rule in part 310 establishing that certain active ingredients that had been under consideration in a number of OTC drug rulemaking proceedings were not generally recognized as safe and effective. That final rule was effective on May 7, 1991, and included in § 310.545(a)(5) the following ingredients that had been previously considered under this rulemaking for use in the treatment of boils: Aminoacridine hydrochloride, bismuth subnitrate, calomel, camphor, cholesterol, ergot fluidextract, hexachlorophene, isobutamben, juniper tar, lanolin, magnesium sulfate, menthol, methyl salicylate, oxyguinoline sulfate, petrolatum, phenol, pine tar, rosin, rosin cerate, sassafras oil, thymol, and zinc oxide. The final rule in this document establishes that any OTC boil treatment drug product is not generally recognized as safe and effective and expands the nonmonograph ingredients to include all other active ingredients for the treatment of boils, such as benzocaine, ichthammol, sulfur, and triclosan. Therefore, any ingredient that is labeled, represented, or promoted for OTC use for the treatment of boils is considered nonmonograph and misbranded under section 502 of the act and is a new drug under section 201(p) of the act for which an approved application under section 505 of the act (21 U.S.C. 355) and 21 CFR part 314 of the regulations is required for marketing. In appropriate circumstances, a citizen petition to establish a monograph may be submitted under 21 CFR 10.30 in lieu of an application. Any such OTC drug product initially introduced or initially delivered for introduction into interstate commerce after the effective date of this final rule that is not in compliance with the regulation is subject to regulatory action. In order to avoid duplication in listing OTC boil treatment active ingredients in more than one regulation and for ease in locating these ingredients in the Code of Federal Regulations, the agency is listing all of these ingredients in a single regulation in new § 310.531 entitled "Drug products containing active ingredients offered over-the-counter (OTC) for the treatment of boils." Accordingly, the ingredients currently listed in § 310.545(a)(5) are now being listed in § 310.531(d), and § 310.545(a)(5) is being removed. The additional ingredients covered by this final rule are being listed in § 310.531(e). This final rule does not apply to OTC drug products that contain benzocaine and that are labeled for the temporary relief of itch, pain, and discomfort of boils. The agency is deferring that use of benzocaine to the rulemaking on OTC external analgesic drug products. A paragraph is included in new § 310.531 to indicate that section does not apply to drug products that contain benzocaine labeled, represented, or promoted for OTC topical use with such external analgesic claims.

No comments were received in response to the agency's request for specific comment on the economic impact of this rulemaking (53 FR 2198 at 2205). The agency has examined the economic consequences of this final rule in conjunction with other rules resulting from the OTC drug review. In a notice published in the **Federal Register** of February 8, 1983 (48 FR 5806), the agency announced the availability of an assessment of these economic impacts. The assessment determined that the combined impacts of all the rules resulting from the OTC drug review do not constitute a major rule according to the criteria established by Executive Order 12291. The agency therefore concludes that no one of these rules, including this final rule for OTC boil treatment drug products, is a major rule.

The economic assessment also concluded that the overall OTC drug review was not likely to have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (Pub. L. 96–354). That assessment included a discretionary regulatory flexibility analysis in the event that an individual rule might impose an unusual or disproportionate impact on small entities. However, this particular rulemaking for OTC boil treatment drug products is not expected to pose such an impact on small businesses because only a limited number of products are affected. Therefore, the agency certifies that this final rule will not have a significant economic impact on a substantial number of small entities.

The agency has determined under 21 CFR 25.24(c)(6) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

List of Subjects in 21 CFR Part 310

Administrative practice and procedure, Drugs, Labeling, Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 310 is amended as follows:

PART 310—NEW DRUGS

1. The authority citation for 21 CFR part 310 continues to read as follows:

Authority: Secs. 201, 301, 501, 502, 503, 505, 506, 507, 512–516, 520, 601(a), 701, 704, 705, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 331, 351, 352, 353; 355, 356, 357, 360b–360f, 360j, 361(a), 371, 374, 375, 379e); secs. 215, 301, 302(a), 351, 354–360F of the Public Health Service Act (42 U.S.C. 216, 241, 242(a), 262, 263b–263n).

2. Section 310.531 is added to subpart E to read as follows:

§ 310.531 Drug products containing active ingredients offered over-the-counter (OTC) for the treatment of boils.

(a) Aminacrine hydrochloride, benzocaine, bismuth subnitrate, calomel, camphor, cholesterol, ergot fluid extract, hexachlorophene, ichthammol, isobutamben, juniper tar (oil of cade), lanolin, magnesium sulfate, menthol, methyl salicylate, oxyguinoline sulfate, petrolatum, phenol, pine tar, rosin, rosin cerate,

sassafras oil, sulfur, thymol, triclosan, and zinc oxide have been present in OTC boil treatment drug products. There is a lack of adequate data to establish general recognition of the safety and effectiveness of these or any other ingredient for OTC use for the treatment of boils. Treatment is defined as reducing the size of a boil or reducing an infection related to a boil. Treatment has involved the use of "drawing salves" for these purposes. These "drawing salves" contained various ingredients. Based on evidence currently available, any OTC drug product offered for the treatment of boils cannot be considered generally recognized as safe and effective.

(b) Any OTC drug product that is labeled, represented, or promoted for the treatment of boils is regarded as a new drug within the meaning of section 201(p) of the Federal Food, Drug, and Cosmetic Act (the act), for which an approved application or abbreviated application under section 505 of the act and part 314 of this chapter is required for marketing. In the absence of an approved new drug application or abbreviated new drug application, such product is also misbranded under section 502 of the act.

(c) Clinical investigations designed to obtain evidence that any OTC boil treatment drug product is safe and effective for the purpose intended must comply with the requirements and procedures governing the use of investigational new drugs set forth in part 312 of this chapter.

(d) After May 7, 1991, any such OTC drug product that contains aminacrine hydrochloride, bismuth subnitrate, calomel, camphor, cholesterol, ergot fluid extract, hexachlorophene, isobutamben, juniper tar (oil of cade), lanolin, magnesium sulfate, menthol, methyl salicylate, oxyguinoline sulfate, petrolatum, phenol, pine tar, rosin, rosin cerate, sassafras oil, thymol, or zinc oxide initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(e) After May 16, 1994, any such OTC drug product that contains benzocaine, ichthammol, sulfur, or triclosan initially introduced or initially delivered for introduction into interstate commerce that is not in compliance with this section is subject to regulatory action.

(f) This section does not apply to drug products that contain benzocaine labeled, represented, or promoted for OTC topical use in accordance with part 348 of this chapter.

§ 310.545 [Amended]

3. Section 310.545 *Drug products containing certain active ingredients offered over-the-counter (OTC) for certain uses* is amended by removing and reserving paragraph (a)(5).

Dated: November 8, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–27917 Filed 11–12–93; 8:45 am]

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Monday
November 15, 1993

Part VIII

Environmental Protection Agency

40 CFR Part 192
Health and Environmental Standards for Uranium and Thorium Mill Tailings; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 192

[FRL–4797–6]

Health and Environmental Standards for Uranium and Thorium Mill Tailings

AGENCY: Environmental Protection Agency.

ACTION: Final rule.

SUMMARY: EPA is amending its general environmental regulations pertaining to uranium mill tailings disposal sites pursuant to the Uranium Mill Tailings Radiation Control Act (UMTRCA) of 1978. The amendments clarify the current rule by ensuring timely emplacement of a permanent radon barrier and by requiring appropriate monitoring for nonoperational uranium mill tailings disposal sites that are licensed by the Nuclear Regulatory Commission (NRC) or one of its Agreement States (affected Agreement States). These affected Agreement States are Colorado, Washington, and Texas, which are the states that license sites to manage uranium byproduct materials pursuant to the Atomic Energy Act (AEA). This action is related to another action by EPA to rescind its National Emissions Standard for Hazardous Air Pollutants (NESHAPs) for radon emissions from the disposal of uranium mill tailings at nonoperational sites which was promulgated on December 15, 1989, as it applies to sites licensed by the NRC or an affected Agreement State.

DATES: Effective Date: January 14, 1994.

FOR FURTHER INFORMATION CONTACT: Gale C. Bonanno, Air Standards and Economics Branch (6602J), Criteria and Standards Division, Office of Radiation and Indoor Air, Environmental Protection Agency, Washington, DC 20460, (202) 233–9219.

SUPPLEMENTAL INFORMATION:

Docket

Docket A–91–67 contains the rulemaking record. The docket is available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

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I. History of Regulation of Uranium Mill Tailings

A. Description of Uranium Mill Tailings

Uranium mill tailings are sand-like wastes that result from the processing of uranium ore. Tailings are stored in large surface impoundments, called piles, in amounts from less than one million tons to over thirty million tons, over areas that may cover hundreds of acres. Most piles are located in the Western United States and all piles emit radon gas, a decay product of the waste material processed at the uranium mills.

To deal specifically with the risks associated with these piles, Congress passed the Uranium Mill Tailings Radiation Control Act (UMTRCA) in 1978 (42 U.S.C. 2022, 7901–7942). In enacting UMTRCA, Congress found that uranium mill tailings may pose a potential and significant radiation health hazard to the public, and that every reasonable effort should be made to provide for the stabilization, disposal, and control in a safe and environmentally sound manner of such tailings in order to prevent or minimize radon diffusion into the environment and to prevent or minimize other environmental hazards from such tailings. See 42 U.S.C. 7901(a). Under UMTRCA, two programs were established to protect public health and the environment from the hazards associated with uranium mill tailings. One program (Title I) required the Department of Energy (DOE) to conduct the necessary remedial actions at designated inactive uranium mill tailing sites to achieve compliance with the general environmental standards to be promulgated by EPA. These sites were generally abandoned uranium processing sites for which a license issued by the NRC or its predecessor, the Atomic Energy Commission (AEC), was not in effect on January 1, 1978.

The other program (Title II) pertained to active sites, which are those that are licensed by the NRC or an affected Agreement State. Requirements for licensed sites include the final disposal of tailings, including the control of radon after milling operations cease. UMTRCA also required that EPA promulgate standards for these licensed sites, including standards that protect human health and the environment in a manner consistent with standards established under Subtitle C of the Solid Waste Disposal Act, as amended. The NRC, or the licensing Agreement State, is responsible for implementing the EPA standards at licensed uranium milling sites.

As part of NRC's 1982 authorization and appropriations, Congress amended UMTRCA on January 4, 1983. Public Law 97–415, sections 18(a) and 22(b), *reprinted in* 2 1982 U.S. Code Cong. & Admin. News at 96 Stat. 2077 and 2080. As partially amended thereby, EPA was required to promulgate standards of general applicability for the protection of the public health, safety, and the environment from radiological and nonradiological hazards associated with the processing and with the possession, transfer, and disposal of byproduct material, e.g., uranium mill tailings. Requirements established by the NRC with respect to byproduct material must conform to the EPA standards. Any requirements of such standards adopted by the NRC shall be amended as the NRC deems necessary to conform to EPA's standards. In establishing such standards, the Administrator was to consider the risk to the public health, safety, and the environment, the environmental and economic costs of applying such standards, and such other factors as the Administrator determines to be appropriate. See 42 U.S.C. 2022(b)(1).

B. EPA and NRC's UMTRCA Rulemakings

EPA is authorized to promulgate generally applicable environmental standards to govern the remediation process. 42 U.S.C. 2022(a) and 7918 (as to DOE sites); 42 U.S.C. 2014 and 2022(b) (as to NRC-licensed sites). On January 5, 1983, EPA promulgated final rules for the disposal and cleanup of the inactive uranium mill tailings sites under UMTRCA Title I (48 FR 605).

Title I requires the Department of Energy (DOE) to conduct remedial action at inactive uranium mill tailings sites to ensure compliance with EPA's regulations for properly managing uranium byproduct materials. The program for inactive sites requires the disposal of tailings and the clean-up of on-site locations contaminated with tailings. DOE is responsible for implementing the standards established by EPA, with the concurrence of the NRC, and in cooperation with the host states. The requirements developed to implement the Title I program are not the subject of today's rulemaking.

On April 29, 1983, EPA proposed standards for Title II uranium and thorium mill tailings sites (48 FR 19584). These rules were promulgated on September 30, 1983 (48 FR 45926), and are codified at 40 CFR part 192, subparts D and E. Title II applies to currently operating uranium mill tailings facilities licensed by the NRC or an Agreement State. The Title II program established requirements for the final disposal of tailings, the control of effluents into ground water, and radon emissions[1] during and after milling operations. The requirements are divided into two parts. The first part applies to the management of tailings during the active life of the pile and during the subsequent closure period, which begins after cessation of milling operations but prior to completion of final disposal, including the period of time when the tailings are drying out. The second part of the requirements specifies the standards that must be met once the piles are closed. These standards govern the design of disposal systems, and therefore guide the activities carried out during the closure period to ensure the adequacy of the final cover. For NRC licensed mill tailings sites that are being closed, subpart D calls for reclamation plans designed to control radon emissions to a flux not to exceed an average release rate of 20 pCi/m^2-s for 1000 years to the extent reasonably achievable, but in any event for at least 200 years. 40 CFR 192.32(b)(1) (i) and (ii).

Both the UMTRCA Title I and Title II standards were challenged by several parties in the Tenth Circuit Court of Appeals. On September 3, 1985, the court upheld all aspects of EPA's standards, excepting the ground water provisions of the Title I regulations at 40 CFR 192.20(a) (2)–(3). *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985), *cert. denied* 426 U.S. 1158 (1986). On September 24, 1987, EPA proposed new regulations to replace those set aside (40 CFR part 192, subpart C, 52 FR 36000). The final action for that rulemaking is pending and is not affected by today's action.

On October 16, 1985, NRC promulgated rules at 10 CFR part 40 to conform the previous NRC regulations issued five years earlier to the provisions of EPA's general UMTRCA standards at 40 CFR part 192, as it affected matters other than ground water protection (50 FR 41852). On November 13, 1987, NRC promulgated final rules for ground water protection at uranium mill tailings sites that conformed to provisions of EPA's standards for ground water protection at 40 CFR part 192, subparts D and E (52 FR 43553).

Under the NRC regulations, uranium milling operations that process or dispose of uranium and thorium, and their byproduct materials, must apply to the NRC for a license. In its application for an NRC license, the owner or operator of the mill must demonstrate the expected compliance with the technical, financial, ownership and long-term surveillance requirements of NRC's implementing regulations during the siting and construction of the mill, its operation, the decontamination and decommissioning of the mill after operations cease, and the reclamation of the milling facility and its surrounding environs. In accordance with 10 CFR 40.41(e), the NRC may incorporate in any license or later amend the license to include additional requirements and conditions with respect to the licensee's receipt, possession, use, and transfer of source or byproduct material as it deems appropriate or necessary to protect health or to minimize danger of life or property.

C. EPA's Clean Air Act Rulemaking

Both the UMTRCA standards promulgated by EPA in 1983 and the implementing NRC standards promulgated in 1985, failed to require or otherwise establish compliance schedules to ensure that the tailings piles would be expeditiously closed, and that the 20 pCi/m^2-s standard would be met, within a reasonable period of time. Moreover, the NRC criteria also failed to require monitoring to verify compliance with the flux standard (50 FR 41852). In response to the separate requirements of the Clean Air Act, and in light of the shortcomings of the current UMTRCA program for NRC-licensed uranium mill tailings sites, EPA promulgated standards under the Clean Air Act to ensure that the piles would be closed in a timely manner. These NESHAPs were published on December 15, 1989 (54 FR 51654) codified at 40 CFR part 61, subpart T (nonoperational) and subpart W (operational).

The NESHAP for nonoperational uranium mill tailings, codified at 40 CFR part 61, subpart T, applies to both Title I and Title II sites. The standard has three primary requirements. First, it imposes an emission limit of 20 pCi/m^2-s of radon-222 from a disposed pile, consistent with the UMTRCA standard. Second, it requires that, once a uranium mill tailings pile or impoundment ceases to be operational, it must be disposed of and brought into compliance with the emission limit within two years of the effective date of the standard (by December 15, 1991) or within two years of the day it ceases to be operational, whichever is later. If it was not physically possible for a mill owner or operator to complete disposal within that time, EPA contemplated a negotiated compliance agreement with the mill owner or operator pursuant to EPA's enforcement authority to assure that disposal will be completed as quickly as possible. Third, it requires monitoring of the disposed pile to demonstrate compliance with the radon emission limit.

As noted earlier, the numerical radon emission limit, is the same as the UMTRCA standard at 40 CFR part 192, subpart D (subpart D) (although under UMTRCA, the limit is to be met through proper design of the disposal impoundment, and is to be implemented by DOE and NRC for the individual sites, while under the CAA, the standard is an emissions limit with compliance established through monitoring). However, the two year disposal requirement and the radon monitoring requirement are not separately required by the existing UMTRCA regulations.

II. Challenge to Subpart T

A. Petitions for Reconsideration

After promulgating subpart T, EPA received petitions for reconsideration filed by NRC, the American Mining Congress (AMC), Homestake Mining Co. Among other concerns set forth in these petitions is the argument that the overlap between EPA's subpart D of the UMTRCA regulations and subpart T of the CAA NESHAP has resulted in regulations that are unnecessarily burdensome and duplicative. It was also alleged that subpart T was unlawful because it was physically impossible to come into compliance with subpart T in the time required. While these petitions remain pending before EPA (at least in

[1] The term "release" is used in 40 CFR Part 192 subpart D. EPA intends "release" as used in today's amendments to subpart D and this rulemaking to mean "emission" as that term is used in 40 CFR part 61 subpart T.

part), EPA has taken several actions to address the issues they raise.

B. Section 112(d)(9) of the Clean Air Act Amendments of 1990 (the "Simpson Amendment")

In November 1990, Congress amended the CAA and included a new section, section 112(d)(9), which authorized EPA to decline to regulate radionuclide emissions from NRC-licensees under the CAA provided that EPA found, by rule, after consultation with NRC, that the regulatory scheme implemented by NRC protects the public health with an ample margin of safety. Today's action is needed to assist EPA in making the "Simpson Amendment" finding for NRC-licensed uranium mill tailings disposal sites, as it seeks to fill the timing gaps and other concerns that underlie EPA's 1989 decision to promulgate subpart T.

C. Memorandum of Understanding Between EPA and NRC

In July of 1991, EPA, NRC and the affected Agreement States entered into discussions over the dual regulatory programs established under UMTRCA and the CAA. In October 1991, those discussions resulted in a Memorandum of Understanding (MOU) between EPA, NRC and the Agreement States which outlines the steps each party will take to both eliminate regulatory redundancy and to ensure uranium mill tailings piles are closed as expeditiously as practicable. See 56 FR 55434 (MOU reproduced as part of proposal to stay subpart T); see also 56 FR 67537 (final rule to stay subpart T). The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) with the goal that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status. This goal comports with Congress' concern over timing as reflected in CAA section 112(i)(3), as amended.

In accordance with the MOU, the NRC and affected Agreement States have agreed to amend the licenses of all sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. The amended licenses would require each mill operator to establish a detailed tailings closure plan for radon to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all nonoperational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m²-s.

D. Current Regulatory Proceedings

On December 31, 1991, EPA took several steps towards fulfilling its responsibilities under the MOU and in implementing the "Simpson Amendment" by publishing three **Federal Register** (FR) notices. In the first notice (56 FR 67537), EPA published a final rule to stay the effectiveness of 40 CFR part 61, subpart T, as it applies to owners and operators of nonoperational uranium mill tailings disposal sites. The stay will remain in effect until the Agency rescinds the uranium mill tailings NESHAP at 40 CFR part 61, subpart T, and amends the UMTRCA standards at 40 CFR part 192 to ensure that the remaining rules are as protective of public health with an ample margin of safety, as would implementation of the CAA rule being rescinded. If EPA fails to complete these rulemakings by June 30, 1994, the stay will expire and the requirements of subpart T will become effective.

In a second notice published on December 31, 1991, the Agency proposed to rescind the NESHAPs for radionuclides that appear at 40 CFR part 61, subpart T, as they apply to nonoperational uranium mill tailings disposal sites licensed by the NRC or an Agreement State (56 FR 67561).

In the third notice, EPA published an advanced notice of proposed rulemaking to amend 40 CFR part 192, subpart D (56 FR 67569) to provide for site closure to occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), and appropriate monitoring requirements for nonoperational uranium mill tailings piles. These amendments would ensure timely compliance and add monitoring requirements currently lacking in the UMTRCA regulations.

EPA has tentatively concluded that with today's modifications to the general UMTRCA regulations, as properly implemented by the NRC and the Agreement States to ensure specific, enforceable closure deadlines and monitoring requirements, the NRC's regulatory program for nonoperational uranium mill tailings piles would protect the public health with an ample margin of safety. However, prior to finalizing its rule to rescind subpart T, after NRC conforms its regulations to the UMTRCA rules as modified, and all nonoperational site licenses are modified in accordance therewith, EPA currently intends to propose a finding in the **Federal Register** and provide an additional 30 day comment period on whether the NRC regulatory program protects public health with an ample margin of safety. After this occurs, EPA is likely to take final action on its proposal to rescind 40 CFR part 61, subpart T.

Consistent with their responsibilities under the MOU, as well as EPA's proposal to rescind the NESHAP at 40 CFR part 61, subpart T, NRC and the affected Agreement States have agreed to amend the licenses of all nonoperational uranium mill tailings sites to ensure inclusion of schedules for emplacing a permanent radon barrier on the tailings impoundments, as well as interim milestones. To this end, NRC and the Agreement States have already requested the licensees to voluntarily seek amended licenses and have processed those requests. Moreover, NRC and the affected Agreement States have agreed to enforce the provisions of the amended licenses to ensure compliance with the new schedules for emplacing a permanent radon barrier, including interim milestones, and to ensure (and verify) compliance with the 20 pCi/m²−s flux standard.

III. Legal Basis For This Action

A. Statutory Authority for Today's Action

1. Emphasis Upon Expeditious Radon Control

The crux of this action is additional regulatory means to ensure expeditious and permanent control of radon emissions from uranium mill tailings piles after active milling operations have ceased. The importance of timeliness is inherent to UMTRCA. It is evidenced by Congress' action in amending UMTRCA to require prompt EPA rulemaking action, and by the actual terms of Title II. It is also evidenced by the legislative history for Title II, contained in UMTRCA's two-part House Report, which confirms UMTRCA's purpose to require expeditious public health protection. See H. Rep. 95–1480(I) (Aug. 11, 1978) ("HR 1") (Interior and Insular Affairs Committee) and H. Rep. 95–1480(II) (Sept. 30, 1978) ("HR 2") (Interstate and Foreign Commerce Committee), reprinted in 6 1978 U.S. Code Cong. & Admin. News at 7433–7478 (UMTRCA passed the House on October 14, 1978, and was signed into law on Nov. 8, 1978).

Both parts of the House Report mirror UMTRCA's statutory language by: (1)

Making clear that UMTRCA is primarily directed to health risks associated with radon-222 releases into the environment from uranium mill tailings disposal; and (2) calling for "every reasonable effort . . . to provide for the disposal, stabilization and control in a safe and environmentally sound manner of such (uranium mill) tailings." HR 1 at 11, HR 2 at 25; HR 1 at 13. Expeditious control of disposed tailings was paramount. At Title I sites, DOE (in consultation with EPA, NRC and the host State) was required to quickly remediate disposed tailings sites "in accord with necessity for reducing the most threatening hazards first." HR 1 at 15. The same expeditiousness was expected of title II disposal sites, which should "in all cases be controlled and regulated by States and the Commission, to the maximum extent allowed by the state of the art, to insure that the public and the environment will be protected from the hazards from the tailings for as long as they remain a hazard." Id. at 17–18. To further underscore the urgent purpose, the Report states:

> The committee is convinced that *all* tailings pose a potential and significant radiation health hazard to the public. Legislation is needed *now* to stabilize and control all such tailings in a safe and environmentally sound manner and to minimize or eliminate radiation health hazards to the public. . . .
>
> The committee, however, is also convinced that it would be a grievous and costly mistake to authorize a remedial program for inactive mill sites without also enacting regulatory legislation to control the *even more serious problem at active (i.e., Title II) mill sites.*

HR 2 at 29 (emphasis added).

This intent is implemented by provisions in title II. For instance, NRC implements EPA's general standards for title II through licensing of active tailings sites, which licenses must be timely modified to conform to environmental standards. NRC licenses issued or renewed after enactment of UMTRCA must contain the terms and conditions which the NRC determines to be necessary to assure that, prior to termination of the license the licensee will comply with decontamination, decommissioning, and reclamation standards prescribed by the NRC consistent with EPA's general standards. Any license in effect on the enactment date of 42 U.S.C. 2113(a) must either contain the terms and conditions of renewal, or comply with paragraphs (1) and (2) of section 2113(a) upon the termination of the license, whichever first occurs. See 42 U.S.C. 2113(a). This provision, which went into effect upon enactment, meant that Congress expected action at each title II site within three, or at the most five years of enactment:

> For each licensee, such period (for implementing UMTRCA requirements) would be 3 years following enactment, or until the time at which the licensee's license would first be required to be renewed, whichever is the longer period * * *. In no case may such grace period be longer than 5 years following enactment of (UMTRCA).

HR 1 at 22; see also Id. at 23 (authorizing immediate expenditures by DOE and NRC on remediation).

Moreover, while timely implementation of Title II could financially or otherwise burden licensees, rather than delay implementation, Congress recognized these burdens and instructed NRC to take such hardships into account. H. Rep. No. 95–1480(I) at 44. While NRC was provided some authority to reasonably implement EPA's regulations on a site-by-site basis, it was assumed that in general the regulations would be implemented expeditiously.

The statute placed deadlines upon EPA, NRC and the Agreement States to promulgate and conform their respective regulations. See 42 U.S.C. 2021 and 2022. As noted above, EPA delay in promulgating standards led to UMTRCA's amendment in 1983, which added language requiring that EPA promulgate final Title II standards by October 1983 or lose the right to do so. 42 U.S.C. 2022(b) (as amended by Pub. L. 97–415); see H. Conf. Rep. No. 97–884 at 44–45, reprinted in 4 1982 U.S. Code Cong. & Admin. News at 3614–15 (expressing concern over EPA delay and emphasizing the importance of timeliness).

During the time period for NRC to conform its regulations to EPA's, NRC is not expected to "suspend the implementation or enforcement of its regulations." H. Conf. Rep. No. 97–884 at 45. Congress further made clear its view that UMTRCA implementation proceed immediately, going so far as to note that for title I sites "the '7-year clock' for the completion of cleanup . . . begins to run (for DOE) October 1, 1982." Id. As to title II sites, during the transition period for EPA to propose and promulgate regulations (and although its rules would be suspended during that period) "NRC is authorized to take such action as it may deem necessary, on a licensee-by-licensee basis, to protect public health, safety, and the environment." Id. at 47.

Thus, the legislative scheme is one of urgency. EPA is to promptly promulgate regulations that will promptly be implemented at each site through licensing by NRC. Radon emissions are identified as the primary threat to public health, and all tailings are to be controlled without exception.

In its February 1983 proposal for the existing UMTRCA rules, EPA took note of the January 1983 amendments to UMTRCA calling for EPA to promulgate rules or lose its authority to do so: "WE (sic) are therefore proceeding to establish these standards expeditiously." 48 FR 19585. EPA noted that of the 27 licensed uranium mills, only 16 were operating, 8 had recently closed, and others had been closed for some time. *Id.* EPA mirrored Congress in referencing radon emissions as the primary source of public health risk from these sites, and noted that radon emissions rates are currently at their peak. *Id.* EPA then listed the panoply of existing guidance materials, including the ALARA principle (that radiation exposure be limited to a level "as low as reasonably achievable"), and proposed that its UMTRCA standards "supplement" the existing guidance in a manner that

> (1) take(s) account of the tradeoffs between health, safety, and environmental and economic costs and benefits in a way that assures adequate protection of the public health, safety, and the environment; (2) can be implemented using *presently available techniques and measuring instruments;* and (3) are reasonable in terms of overall costs and benefits.

Id. at 19587 (emphasis added). In soliciting comment, EPA explicitly stated that it "*assumed (a) 15-year operating and 5-year dry-out*" period, and that the Agency was concerned about potentially significant risks to public health during those periods. *Id.* at 19600. Taken together—by basing its regulations on "presently available" means, and by expressing concern over the transition periods—EPA was assuming that compliance would occur expeditiously, without delay. While EPA recognized that there would be some lag in time before final closure could occur (i.e., to allow the tailings to dry), EPA certainly was not contemplating a period of additional or indefinite delay between ceased operations and final closure.

These purposes and assumptions were further augmented by EPA in taking final action on the rules. In listing the major provisions, EPA stated that the rule "(4) (r)equires that disposal of uranium mill tailings piles be designed so that, after disposal, radon emissions will be limited to 20 (pCi/m^2−s)." 48 FR 45927. The tone is one of immediacy, suggesting that the requirements will apply as soon as possible, without any more delay than is necessary to implement the design

standard. This is emphasized by EPA noting the danger of lung cancer from inhaling radon emissions, a danger that exists as much today as it will later in time. *Id.* at 45928:

> Tailings pose a present hazard to human health. Beyond this *immediate* but generally limited health threat, the tailings are vulnerable to human misuse and to dispersal by natural forces for an essentially indefinite period.

Thus, EPA acted to immediately limit the present hazards and immediately halt hazards in the future by requiring that final closure expeditiously occur following ceased operations.

2. UMTRCA's Scheme and Purposes are Consistent With Today's Action Which Clarifies and Better Implements EPA's Existing Regulations

Today's action is intended to fill gaps and otherwise clarify EPA's existing regulations in order to ensure the expeditious, effective, and permanent control of radon emissions. By making minor amendments to EPA's existing regulations to explicitly require emplacement of a radon barrier as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee), interim milestones towards emplacement, and monitoring to assure that the design of the radon barrier is effective, EPA is better fulfilling Congress' purposes in enacting UMTRCA for Title II sites. As set forth above, Congress quite clearly was seeking, through UMTRCA, to protect public health from the dangers associated with radon emissions, both today and into the future, and has taken measures to require that EPA and the implementing agencies (DOE and NRC) do so expeditiously. Nothing in today's action is intended to modify the essential purposes or the essential aspects of the existing regulatory scheme; rather, EPA intends to better fulfill Congress' mandates by clarifying the existing requirements.

In promulgating the 1983 regulations, EPA intended and expected expeditious progress towards radon control once an active site ceased milling operations. EPA "assumed . . . (a) 5-year dry-out" period after milling operations had ceased, and based its regulations on that assumption. EPA did not, however, explicitly mandate a set period for drying out, in part due to the variable circumstances at each site, and also because expeditiousness was implicit to regulatory and statutory schemes, viewed as a whole.

Today's action does not seek to change EPA's rationale or scheme set forth in its 1983 rule. Rather, through minor amendments, it seeks to clarify and supplement that scheme in a manner that will better support its initial intent. Without setting forth mandatory schedules, EPA generally requires that once a site becomes nonoperational (i.e., when final closure begins), a barrier to control radon will be emplaced as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Interim milestones towards emplacement will support and better assure this progress, and post-emplacement monitoring will serve as confirmation that the design of the cover is working as intended.

B. Interpretive Caselaw

Judicial review of EPA's and NRC's regulations has resulted in several written opinions by the United States Court of Appeals for the 10th Circuit. Those opinions interpret UMTRCA in much the same manner as does EPA—radon control is paramount, and Congress intends that EPA and NRC promulgate regulations to protect public health in a manner that has immediate and long lasting effect. More particularly, with exception only as to matters not at issue today, the courts upheld EPA's and NRC's regulations, including the agencies' consideration of costs and benefits.

It is worthwhile to review the four opinions interpreting UMTRCA: (1) *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985) ("*AMC I*") (addressing EPA's UMTRCA inactive site regulations); (2) *AMC* v. *Thomas*, 772 F.2d 640 (10th Cir. 1985) ("*AMC II*") (addressing EPA's UMTRCA active site regulations); (3) *Quivira Mining Co.* v. *NRC*, 902 F.2d 781 (10th Cir. 1989) (addressing NRC's implementing criteria); and (4) *AMC* v. *NRC*, 902 F.2d 781 (10th Cir. 1990) ("*AMC III*") (addressing amendments to NRC's implementing criteria).

1. AMC I and AMC II

The inactive site regulations at issue in *AMC I* are codified at 40 CFR part 192, subparts A-C; the active site regulations at issue in *AMC II* are codified at 40 CFR part 192, subpart D, and are the subject of this action. Stated generally, the court in *AMC I* upheld EPA's inactive site regulations under UMTRCA, except as regards a failure to adopt provisions to protect surface and groundwater. The court in *AMC II* likewise upheld EPA's active site regulations (including the groundwater protection provisions), and in so doing relied upon the extensive statutory interpretation set forth in *AMC I*.

The court in *AMC I* began its analysis with UMTRCA's statutory purposes and structure, quoting the Congressional findings at 42 U.S.C. 7901(a) (set forth above). 772 F.2d. at 621. The court also noted that the 1982 UMTRCA amendments meant that Congress strongly desired that the public health protection regulations quickly go into effect: "Anxious to institute standards for the mill tailings, Congress also provided that should the EPA miss the extended deadline, remedial action would commence using the proposed standards." *Id.* at 623 (citations omitted).

The court addressed the contention that a prerequisite to any regulations is that EPA find that uranium mill tailings present a significant risk to public health. *Id.* at 627. The court disagreed, finding that Congress had already spoken strongly on this issue:

> It would be disingenuous to hold, after reading Congress' own statement of its findings and purposes, that the EPA must make its own determination of whether radon emissions present a risk significant to warrant regulation under the UMTRCA.

Id. The court also reviewed the legislative history, and concluded that "Congress chose to consider protecting future generations by enacting the UMTRCA and requiring the *immediate stabilization and disposal of those tailings.*" *Id.* (emphasis added).

After dispensing with other less pertinent issues, the court then addressed EPA's consideration of costs and benefits. In drawing a middle course between cost-benefit "optimization" (advanced by industry), and feasibility analysis (advanced by environmental groups), the court determined only that "EPA must consider the costs involved in the regulations and, with the guidance of Congress' intent, find that these costs bear a reasonable relationship to the benefits derived." *Id.* at 632.

In *AMC II*, the court applied its analysis to the subpart D active site regulations (that EPA is today clarifying and otherwise amending). 772 F.2d at 643. The court upheld EPA's regulations in their entirety, commenting that even though EPA's cost estimates were "significant" (if accurate), "Congress placed the responsibility for evaluating them upon the EPA without imposing a specific cost-benefit requirement." *Id.* at 646.

2. Quivira Mining and AMC III

The *Quivira Mining* case involved industry challenges to NRC's 1985 UMTRCA criteria, which conform their 1980 criteria to EPA's UMTRCA regulations for active sites as

promulgated in 1983 and upheld in *AMC I* and *AMC II*, discussed above (the underlying EPA regulations are the subject of this action). Industry primarily argued that NRC had failed to properly consider costs and benefits in promulgating its 1985 criteria. 866 F.2d at 1249. The court disagreed and upheld NRC's 1985 criteria, finding that NRC's consideration of costs in its 1980 rulemaking, coupled with EPA's consideration of costs in its 1983 active site rulemaking, adequately fulfilled the relatively deferential "cost-benefit rationalization" required by UMTRCA. *Id.* at 1250, 1257–58.

Regarding NRC's reliance upon EPA's earlier consideration of costs, the court acknowledged ambiguity as to whether UMTRCA requires that NRC consider costs "anew." *Id.* at 1257. The court resolved the ambiguity in favor of NRC, deferring to the agency's reasonable construction: "It is a permissible construction of the 'due consideration' command for the NRC to accept the EPA cost-benefit analysis for the revised criteria." *Id.* at 1258.

The court in *AMC III* addressed renewed industry challenges, this time to 1987 amendments to NRC's UMTRCA criteria. 902 F.2d at 782. Among other things, industry again pressed its argument that NRC had failed to adequately consider costs and benefits under UMTRCA. *Id.* at 783. And again the court held that because EPA had properly considered costs and benefits in 1983, "NRC performed its due consideration obligation here when it conformed to the EPA's regulations it was required to adopt." *Id.* at 784.

3. Caselaw Supports This Action

The judicial interpretations set forth above are relevant to this action in two ways: (1) The *AMC I* and *AMC II* decisions affirm Congress' strong interest in the expeditious control of radon at active (i.e., NRC-licensed) uranium mill tailing disposal sites; and (2) the *Quivira Mining* and *AMC III* decisions set forth the scope of cost-benefit considerations, including the propriety of relying upon earlier efforts to the extent the regulations are not charting a new course.

This action is directed at clarifying and better effecting EPA's intent in promulgating the 1983 rules that there not be any undue delay in controlling radon emissions once a disposal site ceases milling operations. The regulatory language, including interim milestones of progress towards control and monitoring provisions, fulfill Congress' intent regarding expeditious public health protection, and are intended to better implement EPA's 1983 rules.

EPA has duly considered costs in its draft Background Information Document (BID) which addresses EPA's consideration of costs and benefits. Few if any additional costs will be incurred by site owners or operators as a result of this final action, since timely radon control has always been required. Moreover, the cost analysis which EPA conducted for its 1983 rulemaking remains relevant, since today's action encompasses amendments to the UMTRCA regulations to clarify and enhance implementation of the fundamental regulatory scheme contained in EPA's 1983 UMTRCA rules.

C. The Settlement Agreement

Two additional items further explain the legal basis and rationale for today's final action: (1) Clean Air Act section 112 (including EPA rulemaking thereunder), and (2) a litigation settlement agreement thereunder, recently entered into by EPA and the affected industry and environmental groups.

In response to the risks associated with litigation, in light of the Simpson Amendment and in order to foster a consensus approach to regulation in this area, EPA commenced discussions with NRC, the American Mining Congress ("AMC"), Homestake Mining Co., the Environmental Defense Fund ("EDF") and the Natural Resources Defense Counsel ("NRDC"). Each has a direct interest in the matter, all but NRC had challenged EPA's promulgation and/or stay of subpart T and collectively, they had historically found little common ground in this area.

As a result (and as discussed above), in October 1991, a Memorandum of Understanding ("MOU") was signed by EPA and NRC setting forth the outline to a regulatory approach that would best resolve the differences between EPA and NRC. As contemplated by the MOU, on December 31, 1991, EPA took final action to stay and propose rescission of subpart T under section 112(d)(9), and to issue an advance notice of proposed rulemaking under UMTRCA. See 55 FR 67537, 67561 and 67569. In order to preserve its rights, EDF filed a lawsuit challenging the legality of the stay. *EDF v. Reilly*, No. 92–1082 (D.C. Cir.). Litigation had previously been filed by EDF, NRDC, AMC, Homestake and others, challenging subpart T. *AMC, et al. v. EPA*, Nos. 90–1058, 90–1063, 90–1068, and 90–1074 (D.C. Cir.). NRC, AMC and Homestake had also filed an administrative petition for reconsideration of subpart T.

Discussions continued with the litigants and NRC, and in February 1993, final agreement was reached to settle the pending litigation and the administrative proceeding, avoid potential future litigation, and otherwise agree to a consensus approach to regulations of NRC-licensed nonoperational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993) (notice announcing settlement agreement under CAA section 113(g)). A copy of the settlement agreement is also in the docket to this action.

The settlement agreement adds comprehensive detail to, and thereby continues, the approach set forth in the MOU. If implemented, the agreement will result in the expeditious control of radon-222 emissions at nonoperational uranium mill tailings disposal sites without the delays and resource expenditures engendered by litigation and contentious administrative process. It will enable EPA to fulfill the requirement of section 112 (d)(9) that EPA find, by rule, that the NRC regulatory program protects public health with an ample margin of safety. It does this, in part, by changing EPA's UMTRCA regulations such that public health will be as well protected under UMTRCA as would implementation of subpart T under the CAA.

Under the agreement, the pending litigation will not be dismissed until after certain terms in the agreement are fulfilled. Moreover, the agreement does not legally bind or otherwise restrict EPA's rights or obligations under law; rather, by its terms (paragraph 12), there is no recourse for a court order to implement the agreement. Indeed, the only remedy for failure to meet the terms of the final agreement is activation of the underlying litigation.

This action is consistent with the settlement agreement. By clarifying and filling gaps in EPA's UMTRCA regulations, EPA may, after the other elements in the settlement agreement are also implemented, be able to make the finding necessary to rescind subpart T under section 112(d)(9). If properly implemented, a unified regulatory scheme under UMTRCA has the advantage of avoiding confusing and unnecessarily duplicative regulation, while also protecting public health with an ample margin of safety.

IV. Amendments to 40 CFR Part 192, Subpart D

A. Limited Scope

Today's amendments to the general UMTRCA regulations for nonoperational uranium mill tailings disposal sites at 40 CFR part 192,

subpart D (subpart D) fill specific regulatory gaps that currently exist in subpart D. While subpart D, as currently written, requires eventual compliance with the 20 pCi/m²-s flux standard, it does not mandate that compliance occur by a specific date. Rather, as promulgated by EPA under subpart D and implemented by NRC pursuant to its regulations at 10 CFR part 40, appendix A, a title II site licensed by NRC or an Agreement State, could indefinitely continue to emit radon at the same numerical emission limit as allowed under the CAA. It was this possibility which compelled EPA to promulgate subpart T under CAA section 112. In addition, the current UMTRCA regulations call for an impoundment design that will likely achieve compliance with the 20 pCi/m²-s flux standard for 1000, or at least 200 years, but they do not include any requirement that monitoring occur to verify the efficacy of the design. This action also fills this gap.

The amendments are not intended to substantively alter the current regulatory scheme; instead, they are merely intended to fill regulatory gaps with respect to timely compliance and appropriate monitoring. Once these gaps are filled by today's amendments and are implemented by NRC, EPA may then have the basis for rescinding subpart T, thereby avoiding unnecessarily duplicative and burdensome regulation.

The Agency's finding, pursuant to section 112(d)(9) of the Clean Air Act Amendments of 1990, that NRC's regulatory program protects the public health with an ample margin of safety must include a finding that NRC and the affected Agreement States are implementing and enforcing, in significant part, the regulations governing disposal of tailings and the operating license requirements that establish milestones for emplacement of a permanent radon barrier that will achieve compliance with the 20 pCi/m²-s flux standard on a programmatic and a site-specific basis. The Agency intends "in significant part" to mean that the Agency must find that NRC or an affected Agreement State has not failed to implement and enforce the requirements in a manner that may reasonably be expected to materially (i.e., more than de minimis) interfere with compliance with the 20 pCi/m²-s standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

EPA is also amending subpart E of 40 CFR part 192 to avoid any inference that today's minor amendments to subpart D also apply to subpart E. EPA is only addressing timing and monitoring requirements in subpart D, and amending subpart E only for clarification. EPA's subpart D timing and monitoring requirements at §§ 192.32(a)(3)(i–v) and 192.32(4)(i–ii) apply only to uranium mill tailings. Since subpart E references the subpart D standards at § 192.41, EPA believes it necessary to amend subpart E by adding § 192.41(e). This amendment is intended only to clarify that the amendments do not apply to subpart E sites, and is not intended to alter the present regulatory scheme. EPA does not intend by this minor amendment to subpart E to make a finding that the amendments to subpart D are not suitable for management of thorium byproduct material. EPA is not precluded from addressing these issues at a later time for management of thorium byproduct material.

B. Closure Requirements

EPA is amending 40 CFR part 192, subpart D to require (1) emplacement of a permanent radon barrier constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard by all sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the final radon barrier; and (3) that site closure occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation, with a goal that this occur by December 31, 1997, for those nonoperational uranium mill tailings piles listed in the MOU between EPA and NRC (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles.

EPA recognizes that the UMTRCA regulatory scheme encompasses a design standard. EPA is making minor amendments to this scheme to better facilitate implementation of the regulation without fundamentally altering the current method of compliance. Sites are required to construct a permanent radon barrier pursuant to a design to achieve compliance with the 20 pCi/m²-s flux standard. The new requirement for verifying the flux with monitoring is only meant to assure the efficacy of the design of the permanent radon barrier following construction and is not intended to relieve licensees of other existing requirements.

Site control shall be carried out in accordance with a written tailings closure plan (radon), and in a manner which ensures that closure activities are initiated as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees). The tailings closure plan (radon), either as originally written or subsequently amended, will be incorporated into the individual site licenses, including provisions for and amendments to the milestones for control, after NRC or an affected Agreement State finds that the schedule reflects compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). Under the Settlement Agreement, which NRC has agreed in principle to uphold, such finding will constitute final agency action. The compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site with a goal that final closure occur by December 31, 1997, for those nonoperational uranium mill tailings piles listed in the MOU between EPA and NRC (at 56 FR 67568), or seven years after the date on which the impoundments cease operation for all other piles. These schedules must include key closure milestones and other milestones which are reasonably calculated to promote timely compliance with the 20 pCi/m²-s flux standard. The phrase "milestones" refers to enforceable dates by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m²-s flux standard.

Milestones which are not reasonably calculated to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the (radon) tailings closure plans. In addition, today's final regulations will require that licensees ensure that radon closure milestone activities, such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and radon barrier construction, are constructed and undertaken to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility.

The goal of this regulation is for existing sites, or those that become nonoperational in the future, to achieve compliance as expeditiously as practicable considering technological feasibility (including factors beyond the control of licensees) within the time periods set forth in the MOU, including

Attachment A thereto, and for new sites to achieve compliance no later than seven years after becoming nonoperational. However, if the NRC or an Agreement State makes a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated through appropriate monitoring, and after providing an opportunity for public participation, the performance of the milestone(s) may be extended. Only under this circumstance and during the period of the extension must compliance with the 20 pCi/m²-s flux standard be demonstrated each year. Additionally, licensees may request, based upon cost, that the final compliance date for emplacement of the permanent radon barrier, or relevant milestone set forth in the applicable license or incorporated in the (radon) tailings closure plan, be extended. The NRC or an affected Agreement State may approve such a request if it finds, after providing the opportunity for public participation, that (1) the licensee is making good faith efforts to emplace a permanent radon barrier constructed to achieve the 20 pCi/m²-s flux standard; (2) such delay is consistent with the definition of "available technology;" and (3) such delay will not result in radon emissions that are determined to result in significant incremental risk to the public health. Such a finding should be accompanied by new deadlines which reasonably correspond to the target dates identified in Attachment A of the MOU. (56 FR 67569)

NRC may grant an extension of time to comply with either of the following deadlines: (1) "Performance of milestones" based upon a finding that compliance with the 20 pCi/m²-s flux standard has been met, or (2) "Final compliance" beyond the date or relevant milestone based upon cost. These two bases upon which NRC may grant an extension are mutually exclusive, that is a request for a specific extension may be based on one or the other but not both grounds. If a milestone is being extended for a basis other than cost, such an extension may be granted if NRC finds that compliance with the 20 pCi/m²-s flux standard has been demonstrated using EPA Method 115 or an NRC approved alternative, and the site must continue to demonstrate compliance on an annual basis. However, if a licensee requests extension of the final compliance date (or relevant milestone) based upon cost, such an extension may only be granted if NRC finds that the three criteria specified in § 192.32(a)(3)(iii) are met. EPA believes this interpretation is consistent with the reality of annual risks from radon emissions, as well as the risks associated with allowing sites to fail to close within the two year period specified in subpart T through negotiated compliance agreements.

Any extensions of the final compliance date based upon cost will be granted on a site-specific basis. If a licensee requests an extension based upon cost, technology may not be used as a basis for granting the extension unless the costs are grossly excessive, as measured by normal practice within the industry. EPA recognizes that the emissions from the pile may exceed the 20 pCi/m²-s flux standard pending final compliance, but believes these increases will be minimal and of limited duration. In addition, such extensions will only be granted if NRC or an Agreement State finds that the emissions caused by the delay will not cause significant incremental risk to the public health. EPA believes these emissions should not exceed those emissions which could occur under subpart T if compliance agreements were negotiated. Under the circumstances, EPA believes affording authority for extensions of the final compliance date based upon cost provides adequate protection of the public health.

EPA expects the NRC and Agreement States to act consistently with their commitment in the MOU and provide for public participation on proposals or requests to (1) incorporate radon tailings closure plans or other schedules for effecting emplacement of a permanent radon barrier into licenses, and (2) amend the radon tailings closure schedules as necessary or appropriate for reasons of technological feasibility (including factors beyond the control of the licensees). Under the terms of the MOU, NRC should do so with notice timely published in the **Federal Register**. In addition, consistent with the MOU, application may be made to NRC for public participation on these matters pursuant to 10 CFR 2.206. EPA also expects the Agreement States to provide comparable opportunities for public participation pursuant to their existing authorities. While EPA desires to keep the public informed and provide for public participation, such provisions are not intended to transform the licensing (and amendment) process into notice and comment rulemaking in accordance with Administrative Procedure Act (APA) requirements.

Under the existing regulatory scheme, NRC and the affected Agreement States may have the authority to allow, at a licensee's request, a portion of a site to remain accessible, during the closure process to accept byproduct material as defined in section 11(e)(2) of the AEA, (e.g., wastes from in situ mining operations, or from groundwater corrective action programs), or to accept materials from other sources that are similar to the physical, chemical and radiological characteristics of the in situ uranium mill tailings and associated wastes. In addition, NRC and the affected Agreement States may authorize a portion of a site to remain accessible to accept section 11(e)(2) byproduct material after placement of a permanent radon barrier over a portion of a pile or impoundment. Nothing in today's action alters, ratifies, or otherwise affects this authority. However, EPA notes that, consistent with the MOU and the Settlement Agreement, such authorization shall not to be used as a method to impede emplacement of the permanent radon barrier over the remainder of the site in a manner to achieve compliance with the 20 pCi/m²-s flux standard, averaged over the entire pile or impoundment as demonstrated by the licensee's monitoring described below.

EPA does not intend to substantively alter the 1983 scheme with today's action, but instead seeks to clarify and supplement that scheme to fill a regulatory gap which currently exists. By acknowledging NRC's apparent authority to allow a portion of a site to remain accessible for disposal, EPA is acknowledging a current NRC practice. EPA believes that placement of "materials similar to the physical, chemical and radiological characteristics of uranium mill tailings and associated wastes from other sources" on a portion of an impoundment is consistent with on-going disposal activities currently authorized by NRC. See 57 FR 20525. For instance, mining uranium by using uranium solution extraction processes produces "discrete (radioactive) surface wastes" which, although they do not have the same physical form as uranium mill tailings, have historically been disposed of in uranium mill tailings impoundments. See Definition of "Byproduct Material" at 10 CFR 40.4(a–1). In addition to wastes from in situ uranium mining operations and groundwater corrective actions, wastes which arise from processing non-source material for its source material content may produce wastes which are physically and chemically similar to tailings, and may be disposed of in a tailings impoundment. For instance, the tailings produced from processing ore for its copper content may produce tailings containing greater than 0.05 percent uranium, a source material, and thus, would be subject to licensure by the

NRC. See 57 FR at 20527. EPA understands that NRC's disposal of associated wastes and other byproduct materials in uranium mill tailings impoundments will not be used as a means of circumventing other applicable regulations such as 40 CFR Part 61, subpart W. See 57 FR at 20533. Moreover, while NRC may grant such authorization, licensees may not use this authorization to avoid emplacing a permanent radon barrier and complying with the 20 pCi/m²-s flux standard. In addition, under the Settlement Agreement NRC or an Agreement State may authorize a portion of a site to remain accessible for disposal of byproduct material after placement of a permanent radon barrier provided NRC or the Agreement State makes a finding, constituting final agency action and providing for public participation, that the site will continue to achieve the 20 pCi/m²-s flux standard when averaged over the entire impoundment. Even if a portion of a site is authorized to remain accessible for disposal of byproduct materials during the closure process or after placement of a permanent barrier consistent with the Settlement Agreement, as described above, this will not cause a nonoperational uranium mill tailings disposal site to revert to an operational site as defined by 40 CFR 192.31(q).

As intended by EPA, the phrase "as expeditiously as practicable considering technological feasibility," means as quickly as possible considering: (1) The physical characteristics of the tailings and sites; (2) The limits of available technology; (3) the need for consistency with mandatory requirements of other regulatory programs; and (4) factors beyond the control of the licensee, as explained below. While this phrase does not preclude economic considerations to the extent provided by the phrase "available technology," it also does not contemplate utilization of a cost-benefit analysis in setting compliance schedules. The radon control compliance schedules are to be developed consistent with the targets set forth in the MOU as reasonably applied to the specific circumstances of each site.

EPA has added an additional definition in the final rule to clarify ambiguities surrounding use of the term "permanent radon barrier." That term is now defined as "the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii)."

The term "available technology" includes technologies and methods for emplacing a permanent radon barrier on nonoperational uranium mill tailings disposal sites, but does not include extraordinary measures or techniques that would impose grossly excessive costs as measured by practice within the industry (or one that is reasonably analogous), and provided there is reasonable progress towards emplacement of the permanent radon barrier (such as, by way of illustration only, unreasonable overtime, staffing or transportation requirements, etc. considering normal practice in the industry; laser fusion of soils, etc.). To determine whether costs are grossly excessive, the closure cost estimate contained within the licensee's (radon) tailings closure plan may be used as a baseline. However, costs which are determined to be greater than the estimated costs contained in the plan will not automatically be considered grossly excessive.

The phrase "factors beyond the control of the licensee" includes factors causing delay in the schedule in the applicable license for timely emplacement of the permanent radon barrier to achieve compliance with the 20 pCi/m²-s flux standard (and 10 CFR part 40, appendix A, criteria 6) despite the good faith efforts of the licensee to achieve compliance. These factors may include, but are not limited to, physical conditions at the site; inclement weather or climatic conditions; an act of God; an act of war; a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance; labor disturbances; any modifications, cessation or delay ordered by state, federal or local agencies; delays beyond the time reasonably required in obtaining necessary governmental permits, licenses, approvals or consent for activities described in the (radon) tailings closure plan proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the tailings closure plan by NRC or the affected Agreement State; and an act or omission of any third party over whom the licensee has no control.

The term "operational" means that a uranium mill tailings pile or impoundment is being used for the continued placement of uranium byproduct material or is in standby status for such placement. A tailings pile or impoundment is operational from the day that uranium byproduct material is first placed in the pile or impoundment until the day final closure begins. When final closure begins a site is no longer in operation as that term is defined in 40 CFR 61.251(e) and 40 CFR 61 subpart W no longer applies. The closure plan contains a description of how final closure will be conducted. See 40 CFR 264.111.

C. Appropriate Monitoring

After emplacement of a permanent radon barrier designed and constructed to achieve compliance with, including attainment of, the 20 pCi/m²-s flux standard, the licensee shall conduct appropriate monitoring and analysis of the radon flux through the barrier. This monitoring will verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 will not exceed compliance with the 20 pCi/m²-s, as contemplated by 40 CFR 192.32(b)(1)(ii). Appropriate monitoring shall be conducted pursuant to the procedures described in 40 CFR part 61, appendix B, method 115, or any other measurement method proposed by a licensee and approved by NRC or the affected Agreement State as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m²-s flux standard.

EPA intends that the permanent radon barrier be designed to ensure sustained compliance with the 20 pCi/m²-s flux standard by all sites, but does not propose continuous emissions monitoring. Rather, a single monitoring event may well suffice to verify the design of the permanent radon barrier to ensure continued compliance.

If the NRC or an Agreement State extends the time for performance of milestones after making a finding that compliance with the 20 pCi/m²-s flux standard has been demonstrated by appropriate monitoring, compliance with the 20 pCi/m²-s flux standard must be demonstrated each year during the period of the extension.

When a site's tailings closure plan (radon) provides for phased installation of the radon barrier, the licensee will be allowed to conduct radon flux monitoring for each portion of the tailings area on which the radon barrier has been placed by conducting flux monitoring on the closed portion as described above.

V. Discussion of Comments and Response to Comments From NPR

A public hearing on the notice of proposed rulemaking (NPR) (58 FR

32174, June 8, 1993) was held in Arlington, Virginia on June 21, 1993. Representatives from NRC and AMC testified at the hearing. Written comments were also received from EDF, AMC, NRC, the Texas Water Commission (affected Agreement State), a few companies and an individual. To the extent they are specifically restricted to EPA's modifications to its UMTRCA regulations, the comments have been evaluated by the Agency, and a summary and response are set forth below. Some comments, not addressed here, are directed to EPA's earlier promulgation of subpart T, a rulemaking decision that is not being revisited by the amendments to subpart D. EPA responded to many of those comments when the Agency promulgated subpart T. The comments have also been repeated in subsequent petitions to reconsider that action, which are pending before the Agency. These petitions might be addressed or otherwise resolved should 40 CFR part 61, subpart T be rescinded.

1. General

In response to the NPR, environmental groups and industry generally support the proposed amendments to the regulations promulgated under UMTRCA at 40 CFR part 192 subpart D. Various commenters suggested specific revisions to the proposed regulation and preamble, as well as to the draft Background Information Document (BID). EPA has carefully reviewed all comments and suggested revisions; revising the regulation, preamble and BID where deemed appropriate.

2. Section 112(d)(9) of the Clean Air Act, as Amended ("Simpson Amendment")

Comment: The Simpson Amendment "mandates" EPA to eliminate duplicative regulation under the Clean Air Act if the NRC regulatory program adequately protects the public health.

Response: EPA disagrees with the commenters' assertion that the Simpson Amendment is mandatory. The Simpson Amendment, section 112(d)(9) of the CAA, authorizes EPA to decline to regulate radionuclide emissions from facilities licensed by the NRC or Agreement States, under section 112 of the CAA, provided that EPA determines, by rule, after consultation with NRC, that the regulatory scheme implemented by NRC protects the public health with an ample margin of safety.

3. NRC Regulatory Scheme

Comment: The existing NRC regulatory program protects the public health with an ample margin of safety and provides sufficient basis for EPA to rescind 40 CFR 61 subpart T pursuant to the Simpson Amendment; specifically, EPA's timing and monitoring concerns, the subject of these amendments, are adequately addressed in NRC's regulations at 10 CFR part 40 and Appendix A thereto. The Memorandum of Understanding (MOU) between EPA and NRC merely serves to strengthen NRC's authority under the existing regulatory program.

Response: EPA is conducting a separate rulemaking on the issue of rescission of the CAA radionuclide NESHAP at 40 CFR 61 subpart T, and the adequacy of the existing NRC regulatory program as a basis for such rescission will be addressed in that rulemaking. For a discussion of EPA's view on whether the current NRC regulatory program protects the public health with an ample margin of safety, and would thus support rescission of subpart T, see EPA's proposal to rescind subpart T, 56 FR 67561 (December 31, 1991). Comments on the adequacy of the current NRC regulatory program to support rescission of subpart T will be addressed in that rulemaking, and are not relevant to the regulatory changes adopted today.

EPA does not believe that NRC's current regulations at 10 CFR part 40 and appendix A of part 40 adequately address EPA's concerns on timing and monitoring. Both EPA's UMTRCA regulations (40 CFR part 192 subpart D) and NRC's implementing regulations did not require placement of covers by specific dates or verification that radon flux through the covers met the flux standard. These issues led to EPA's promulgation of the CAA NESHAP at 40 CFR part 61 subpart T. EPA promulgated subpart T in 1989 to address the timing issue and provide for verification of the 20 pCi/m^2-s flux standard, noting that "(S)ome piles have remained uncovered for decades emitting radon. (A)lthough recent action has been taken to move toward disposal of these piles, some of them may still remain uncovered for years" (54 FR 51683, December 15, 1989).

Although commenters suggest that 10 CFR 40.63, and 10 CFR 40.42(c)(2) (iv), (i), and (iii) adequately address EPA's timing and monitoring concerns, neither EPA's general standards nor NRC's implementing criteria compel sites to proceed toward final closure by a certain date. Moreover, neither EPA's general UMTRCA regulations, nor NRC's implementing criteria require appropriate monitoring to demonstrate the efficacy of the closure design to ensure compliance with the 20 pCi/m^2-s standard. In fact, as indicated in footnote 1 to 40 CFR 192.32(b)(1) promulgated in September 1983, the flux standard was expressly intended as a design standard, for which monitoring after installation was not required. (48 FR 45947, October 7, 1983). Thus, EPA believes that the UMTRCA standards should be amended to include timing requirements and a provision to confirm that the radon flux through the cover meets the flux standard.

Comment: It appears EPA is acknowledging and concurring in NRC's regulation of "similar byproduct material."

Response: EPA is recognizing a current NRC practice that allows a portion of a site to remain accessible for disposal in the preamble of the NPR. EPA believes that placement of "materials similar to the physical, chemical and radiological characteristics of uranium mill tailings and associated wastes from other sources" on a portion of an impoundment is consistent with on-going disposal activities currently authorized by NRC. See 57 FR 20525. Nothing in today's action is intended to ratify, alter or otherwise affect this authority.

4. EPA's Legal Rationale for the Proposed Amendments

Comment: Some commenters claim that EPA's discussion of the legislative scheme mischaracterizes the potential problem involved. These commenters objected to use of terms such as "urgency" and "immediacy," as there was no significant increase in public health risk without long term exposure to radon emissions at the levels projected.

Response: The commenter misunderstands the Agency's discussion of the legislative scheme. As described in the proposal, Congress placed great emphasis on expeditious action by EPA to impose controls on the disposal of the uranium mill tailings. This is reflected most dramatically in Congress' decision to remove EPA's authority to issue standards under 42 U.S.C. 2022(b) if EPA failed to promulgate final title II standards by the end of October 1983. In addition, Congress was clearly concerned that EPA standards lead to the expeditious control of radon emissions from uranium mill tailings piles. The relevant case law reflects this interpretation of the statute. See section III supra for a more detailed discussion of these points.

Congress believed that uranium mill tailings presented a major threat to public health, based on the extremely long radioactive decay process

associated with these piles. They amounted for all practical purposes to a "perpetual hazard." H. Rep. No. 95–1480, 95th Cong., 2nd Sess. 11, reprinted in 1978 U.S. Code Cong. & Ad. News 7433. Given the long term nature of the problem, and the prior history of minimal federal regulation of mill tailings piles, Congress required that "every reasonable effort be made by the States, the Federal Government, and private industry to provide for the disposal, stabilization, and control" of such mill tailings. H. Rep. No. 95–1480, 95th Cong., 2nd Sess. 13, reprinted in 1978 U.S. Code Cong. & Ad. News 7435. The regulatory changes adopted today are in line with this goal—they will require the control of radon emissions through expeditious emplacement of a permanent barrier. Today's regulations implement Congressional intent, and in no way contradicts the fact that uranium mill tailings present a long term threat to the public health.

5. Rescission of Subpart T

Comment: A few commenters expressed concern and suggested that EPA is not committed to rescinding subpart T.

Response: The amendments to subpart D are related to EPA's action to rescind subpart T, the NESHAP for radon emissions from the disposal of uranium mill tailings at nonoperational sites which was promulgated on December 15, 1989, as applied to NRC-licensees. EPA has demonstrated its commitment to avoid duplicative regulation of these sites and to ensure uranium mill tailings disposal piles are closed as expeditiously as practicable by executing the MOU with NRC (and the affected Agreement States) and the settlement agreement with EDF, NRDC, AMC, and Homestake Mining Co. The MOU and the settlement agreement provide the regulatory approach for this action. EPA has also proposed rescission of subpart T. See 56 FR 67561 (December 31, 1991).

EPA believes that today's amendments eliminate an existing deficiency in the regulatory scheme, and may enable EPA to rescind subpart T, providing a single consistent framework which can be implemented by NRC. EPA has tentatively concluded that the amendments to subpart D, if effectively implemented and enforced by NRC and the Agreement States to ensure specific enforceable closure deadlines and monitoring requirements, may enable EPA to make the finding required by the Simpson Amendment. EPA reiterates its commitment to the terms of the MOU and the settlement agreement.

Comment: EPA should rescind subpart T simultaneously with today's action.

Response: EPA is not rescinding subpart T with today's action. EPA is not prepared at this time to make the finding pursuant to the Simpson Amendment that the public health is protected with an ample margin of safety at this time. EPA does not intend to take final action on the proposed rescission of subpart T until after NRC and the Agreement States complete the license amendments as specified in the MOU and NRC conforms its implementing regulations to today's amendments to subpart D, and other conditions of the MOU occur. EPA plans to publish an additional notice in the **Federal Register** and provide for a 30 day comment period on whether the NRC regulatory program protects public health with an ample margin of safety, including whether: (1) EPA has effectively promulgated appropriate revisions to 40 CFR part 192, subpart D; (2) NRC's regulations at 10 CFR part 40, appendix A, either already adequately and appropriately implement the revisions to EPA's regulations, or may reasonably be expected to do so prior to rescission of subpart T; (3) the revision of NRC and Agreement State licenses reflect these new requirements; and (4) any judicial challenge to EPA or NRC regulations which is pending that presents a significant risk of interference with full compliance with the MOU and the settlement agreement.

6. Settlement Agreement

Comment: The regulatory program for nonoperational uranium mill tailings sites is best served by EPA adopting the proposed regulations to the extent the proposal is consistent with the settlement agreement executed between EPA, EDF, NRDC, AMC, Homestake Mining Co., and individual site owners (NRC agreed in principle by letter).

Response: The agreement adds comprehensive detail to, and continues the approach set forth in the MOU executed between EPA and NRC in October 1991. The settlement agreement settles the pending litigation and administrative proceeding, avoids potential future litigation; and otherwise provides a consensus approach to regulation of NRC-licensed nonoperational uranium mill tailings disposal sites. See 58 FR 17230 (April 1, 1993).

EPA believes this action is consistent with the settlement agreement. By clarifying and filling gaps in EPA's UMTRCA regulations, EPA may, after the other elements in the settlement agreement are also implemented, be able to make the finding necessary to rescind subpart T under the Simpson Amendment. The agreement does not legally bind or otherwise restrict EPA's rights or obligations under law; rather, by its terms (paragraph 12), there is no recourse for a court order to implement the agreement.

Comment: Proposed rule § 192.32(a)(3)(ii) which addresses the extension of performance milestones and the final compliance date based on cost is confusing because it combines two separate provisions of the settlement agreement. The commenter recommends separate sections in the regulation to clarify any confusion surrounding this provision. The commenter also interpreted proposed § 192.32(a)(3)(ii) such that a site need not meet the 20 pCi/m^2-s standard in all cases before any extension of either interim or final deadlines may be granted by NRC or an Agreement State.

Response: EPA agrees with the commenter that § 192.32(a)(3)(ii) as proposed is confusing because it combines the two separate instances in which extensions of milestones may be granted by the NRC or an Agreement State. EPA has revised the final regulation to incorporate the extension provisions in two separate paragraphs in § 192.32(a)(3) (ii) and (iii), to more fully reflect the intent of the settlement agreement described above.

EPA generally agrees with the commenter's interpretation of § 192(a)(3) (ii) and (iii) that a site need not satisfy the 20 pCi/m^2-s standard in all cases before NRC or an Agreement State may approve any extension of the interim milestone or the final closure date. Section 192(a)(3) (ii) and (iii) are based upon the regulatory approach set forth in settlement agreement paragraphs III.2.i. and III.2.j., and they establish the criteria for granting an extension when a site meets the 20 pCi/m^2-s standard and the criteria for an extension of the final compliance date or relevant milestone based upon cost. The criteria for an extension based upon cost does not include the requirement that the site meet the 20 pCi/m2-s standard. However, it does include other criteria designed to protect the public health.

The commenter also noted that NRC or an Agreement State may extend the date for emplacement of the radon barrier based on "factors beyond the control of the licensee," as that term is implicit in the definition of "as expeditiously as possible." EPA understands that under subpart D's provisions there is no bar to NRC or an Agreement State reconsidering a prior decision establishing a date for

emplacement of the radon barrier that meets the standard of "as expeditiously as possible." Such reconsideration could, for example, be based on the existence of factors beyond the control of the licensee, or on a change in any of the various factors that must be considered in establishing a date that meets the "as expeditious as practicable" standard of § 192.32(a)(3)(i). However EPA stresses that such a change in circumstances would not automatically lead to an extension. It would be incumbent on NRC or an Agreement State to evaluate all the factors relevant under § 192.32(a)(3)(i) before it could change a previously established milestone or date for emplacement of the final barrier, and any new date would have to meet the standard set out in § 192.32(a)(3)(i). Finally, NRC's and Agreement States' authority to reconsider previously established milestones or dates would include authority to shorten or speed up such dates, as well as extend them. EPA also expects that public participation consistent with that level of participation provided in the MOU and the settlement agreement will be afforded the public by NRC and the Agreement States in amending the licenses due to "factors beyond the control of the licensee," or for any other basis.

7. Proposed Amendments

7.1. Prescriptiveness of Proposed Amendments

Comment: One commenter suggested that EPA's amendments were more prescriptive than they should be given EPA's authority to promulgate general environmental standards. Specifically, the details of particular licensing processes should be left to the NRC and Agreement States.

Response: The regulations adopted today are within EPA's UMTRCA authority, and do not impermissibly infringe on NRC and the Agreement States.

As spelled out by Congress when it amended the Atomic Energy Act in 1978, EPA "shall, by rule, . . . promulgate . . . standards of general application for the protection of the public health, safety, and the environment" from hazards associated with uranium mill tailings at active processing or disposal sites. 42 U.S.C. 2022(b)(1).[2] Congress also required that the NRC conform its requirements to these standards, 42 U.S.C. 2022(b)(1), and assigned responsibility for the implementation and enforce-ment of EPA's UMTRCA standards to the NRC, in the licensing activities, and to the Agreement States. 42 U.S.C. 2022(e). The text of the statute thus indicates that Congress intended to grant broad, general authority to EPA in setting standards under UMTRCA, limited only by the requirement that they be of "general application" and that they be aimed at the "protection of the public health, safety, and the environment."

The legislative history for UMTRCA provides important additional insight into Congressional intent on the limits of this standard setting authority, stemming from the assignment of different responsibilities to EPA and the NRC. Congress intended that EPA's "standards and criteria should not interject any detailed or site-specific requirements for management, technology or engineering methods on licensee or on the Department of Energy." See H.Rep. No. 95–1480, 95th Cong., 2nd Sess. 17, reprinted in 1978 U.S. Code Cong. & Ad. News 7433, 7439. Also see the House Report at 46, 1978 U.S. Code Cong. & Ad. News 7473 ("The committee stresses that the EPA standards are not to be site-specific"). From this, it is clear that EPA is to establish criteria or standards that are generally applicable, but should not promulgate requirements that dictate the specific management, technology, or engineering methods required at specific sites.

Viewing EPA's authority in this light, the revisions to subpart D promulgated herein clearly fall within the range of standards authorized by Congress. They are not site-specific, and instead apply to any and all sites subject to subpart D. The regulations define when a permanent radon barrier has to be placed on the site, and require appropriate monitoring. A written plan detailing the steps for closure in compliance with these standards is to be incorporated into the individual site license, including a schedule for key closure milestone activities. The regulations also set out the criteria for extensions of these milestones. None of these requirements are site specific, and they do not dictate the management, technology, or engineering methods required for any specific site.

The revisions adopted herein do provide for site-specific variability in their application. For example, in implementing the standard of "as expeditiously as practicable considering technological feasibility," EPA expects that different sites will establish different schedules and dates for emplacement of the permanent radon barrier. This site-specific variability, however, does not transform the generally applicable standard into an unlawful site-specific standard. These site-specific results stem from the application of the general standard to the variety of circumstances found at different sites. Likewise, EPA's criteria for an extension of a milestone or for keeping sites open during or after the closure process establish general standards applicable to all sites. While not all licensees are expected to seek such extensions or authority, any such request will be measured against the generally applicable standard in these regulations. The substantive and procedural requirements for such extensions or authorizations are designed to establish generally applicable requirements that EPA believes will best ensure the proper consideration of all relevant factors in acting on such a request.

The relevant case-law supports EPA's belief that it has authority to adopt these standards and criteria. In *AMC I*,[3] the court reviewed among other things a rule allowing exceptions from the general standards for inactive sites. That regulation authorized such exceptions for the implementing agencies so long as the selected remedial action came as close to meeting the otherwise applicable standard as was reasonable under the circumstances. This provision clearly allowed site-specific variability, based on the peculiar circumstances of a site. The court upheld this regulation as generally applicable standards were in place and, if necessary, a court could determine in a specific case whether an exception was reasonable. The court's main concern was whether EPA had promulgated general standards that would apply to a case or had delegated such authority to the implementing agency. It was satisfied that EPA had acted lawfully, as EPA had promulgated a general standard applicable absent an exception, and had promulgated what amounted to a general standard applicable in those limited situations involving exceptions.

In this case, EPA has likewise promulgated a generally applicable standard, along with detailed criteria applicable for those limited circumstances where an exception is sought. EPA's requirements clearly provide an adequate basis for a court to determine, for example, in a specific case whether an extension for emplacement of the permanent radon barrier was properly granted. In fact,

[2] Congress granted similar authority to EPA with respect to inactive sites selected by the Department of Energy under Title I of UMTRCA. 42 U.S.C. 2022(a).

[3] *American Mining Congress* v. *Thomas*, 772 F.2d 617 (10th Cir. 1985) (addressing EPA's UMTRCA regulations for inactive sites).

EPA's general criteria for evaluating such exceptions would appear to be much more like a generally applicable standard than the broad authority for exceptions approved in *AMC I*, and should therefore easily meet the threshold established by that court.

7.2. Seven Year Goal

Comment: The MOU goal specifying closure of nonoperational uranium mill tailings sites by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status is not a regulatory requirement.

Response: The primary purpose of the MOU is to ensure that owners of uranium mill tailings disposal sites that have ceased operation and are not in standby status, and owners of sites that will cease operation in the future, bring those piles into compliance with the 20 pCi/m²-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee). That is the regulatory requirement adopted herein. EPA's and NRC's goal is that all current disposal sites be closed and in compliance with the radon emission standard by the end of 1997, or within seven years of the date on which existing operations and standby sites enter disposal status. EPA believes this regulatory requirement is fully consistent with the goals expressed in the MOU.

In accordance with the MOU, the NRC and affected Agreement States have amended the licenses of most sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered. Pursuant to the MOU and the regulations adopted today, the amended licenses require each mill operator to establish a detailed tailings closure plan for radon to include key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all nonoperational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m²-s.

This action amends 40 CFR part 192, subpart D to require (1) emplacement of a permanent radon barrier by all sites that, absent rescission, would be subject to subpart T; (2) interim milestones to assure appropriate progress in emplacing the final radon barrier; and (3) that site closure occur as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the impoundments cease operation. EPA believes that this regulatory approach is consistent with the goal in the MOU that this occur by December 31, 1997, or seven years after the date on which operating impoundments cease operations.

7.3. Permanent Radon Barrier

Comment: The term "permanent" should be revised to read "final radon barrier" to distinguish the barrier used to comply with the standard from any interim barriers placed during the closure process.

Response: EPA believes the term "permanent radon barrier" to be appropriate. However, to clarify any ambiguities surrounding use of this term, "permanent radon barrier" has been defined to mean "the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii)."

7.4. Tailings Closure Plan (Radon)

Comment: It is essential that the Tailings Closure Plan (Radon) be incorporated in individual site licenses and that the plan contain a schedule for compliance.

Response: EPA agrees with this comment, and both the proposed and final regulations reflect this requirement. EPA understands that the NRC and affected Agreement States have amended most of the licenses of sites whose milling operations have ceased and whose tailings piles remain partially or totally uncovered pursuant to the MOU executed between EPA, NRC and the affected Agreement States. Pursuant to the MOU and the regulations adopted today, these license amendments should establish a detailed tailings closure plan for radon, including key closure milestones and a schedule for timely emplacement of a permanent radon barrier on all nonoperational tailings impoundments to ensure that radon emissions do not exceed a flux of 20 pCi/m²−s. These schedules must include key closure milestones and other milestones which are reasonably calculated to promote timely compliance with the 20 pCi/m²−s flux standard. The phrase "milestones" refers to enforceable dates by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m²−s flux standard. Milestones which are not reasonably calculated to advance timely compliance with the radon air emissions standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the tailings closure plans (radon).

7.5. Monitoring

Comment: It is not accurate to refer to a "monitoring" requirement, since a single event is sufficient.

Response: Today's amendments require that monitoring occur after construction of the permanent radon barrier. Subpart T requires monitoring to occur only once to demonstrate compliance with the standard. EPA believes that conducting a single test and analysis of the radon emissions through the radon barrier typically will be sufficient to verify that the design of the permanent radon barrier is effective in ensuring that emissions of radon-222 do not exceed 20 pCi/m²-s as required by § 192.32(b)(1)(ii). Each tailings closure plan (radon) will establish the amount of testing and analysis required.

Comment: The timing of the monitoring requirement is ambiguous. Response: Today's amendments require monitoring to verify the efficacy of the design of the permanent radon barrier upon emplacement of such barrier. The details on timing of the monitoring requirement are left to NRC.

Comment: EPA's specification of Method 115 in the monitoring requirement limits flexibility.

Response: 40 CFR 192.32(a)(4)(i) requires monitoring to be conducted using either EPA Method 115 or any other measurement method proposed by a licensee that NRC approves as being at least as effective as Method 115 in demonstrating the efficacy of the permanent radon barrier. (emphasis added) EPA believes that this regulation does not unduly restrict flexibility as it provides for alternative methods.

Comment: EPA's Method 115 references another document, "Radon Flux Measurements on Gardiner and Royster Phosphogypsum Piles Near Tampa and Mulberry, Florida" (EPA 520/5–85–029), which should be readily available.

Response: This document is available for public inspection and is included in Docket A–91–67 which contains the rulemaking record for this action. The docket is available for public inspection between the hours of 8 a.m. and 4 p.m., Monday through Friday, in room M1500 of Waterside Mall, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

8. Amendment of 40 CFR 192 Subpart E

Comment: In addition to amending subpart D, EPA should amend 40 CFR 192 subpart E to exclude the application of the subpart D amendments to the subpart E requirements for disposal of thorium mill tailings.

Response: EPA agrees and is amending subpart E by adding a new

§ 192.41(e) to clarify EPA's intent that the subpart D timing and monitoring requirements at §§ 192.32(a)(3)(i–v) and 192.32(4)(i–ii) apply only to uranium mill tailings. This amendment is necessary as subpart E references the subpart D standards in 192.41, the only purpose of this amendment is to clarify that the amendments to subpart D do not apply to subpart E sites, and is not intended to alter the present regulatory scheme under subpart E. By amending subpart E, EPA is not making a determination that the timing and monitoring requirements imposed for subpart D sites would be improper for subpart E sites. This rulemaking is only intended to address subpart D sites, and is not intended to make substantive decisions concerning subpart E sites. The amendment to subpart E is designed to do no more than preserve the status quo, without prejudging or prejudicing the appropriateness of any future modifications to subpart E.

9. NRC Waiver Authority and Citizens Suits Provisions

Comment: NRC waiver authority and the lack of citizens suits provisions under UMTRCA provide insufficient basis for EPA to rescind subpart T.

Response: As noted previously, EPA is conducting a separate rulemaking on the issue of rescission of the CAA radionuclide NESHAP at 40 CFR 61 subpart T, and the adequacy of the existing NRC regulatory program as a basis for such rescission will be addressed in that rulemaking. For a discussion of EPA's view on whether the current NRC regulatory program protects the public health with an adequate margin of safety, and would thus support rescission of subpart T, see EPA's proposal to rescind subpart T, 56 FR 67561 (December 31, 1991). Comments on the adequacy of the current NRC regulatory program to support rescission of subpart T will be addressed in that rulemaking, and are not relevant to the regulatory changes adopted today.

10. Technical

10.1. EPA's Risk Analysis Set Forth in the Background Information Document (BID)

Comment: EPA's risk analysis set forth in the BID is flawed because the "potential risk from radon emitted during the two-year period (December 15, 1989—December 15, 1991) cannot be meaningfully compared to potential increased risks from radon emitted until sites are closed according to the dates set forth in the MOU."

Response: The purpose of this rulemaking is to incorporate the timing and monitoring provisions of subpart T into EPA's UMTRCA regulations, thereby potentially providing the basis for eventual rescission of subpart T. It is reasonable to assume the baseline risks and costs are those that would have resulted had the piles been covered by December 15, 1991, pursuant to subpart T. The modeling period used for both the baseline and for covering the piles by the MOU dates is from December 15, 1991 to December 15, 2061. This period does not include the time between promulgation, December 15, 1989, and the date the piles were to be covered, December 15, 1991.

Comment: EPA based its analysis of the health risk posed by uranium mill tailings disposal sites on a number of studies dealing with miners, however, the evaluation of the working level month (WLM) dosimetry for that population is not correct. BEIR IV was not sufficiently critical of the data on which it based its analysis of the risk of inhaling radon daughters, specifically it overestimated the risk to Swedish iron miners, and to the Beaverlodge and Ontario uranium miners.

Response: EPA relied on the National Academy of Sciences' BEIR IV report and the 1987 report by the National Institute for Occupational Safety and Health (NIOSH) in addition to other relevant studies in its risk analysis. Given the broad uncertainty inherent in the risk assessment, any potential overestimate would not change EPA's conclusion on the risk from mill tailings. In fact, the conclusion of one of the studies cited in the comments, a reassessment of the Beaverlodge uranium miners, states: "[u]nless new studies significantly reduce the range of uncertainty, there is little justification for changing the limits for exposure to radon * * * progeny * * * for occupational exposures." *Review of Risk Estimates for Inhalation of Radon Progeny by Miners: Presentation by the Atomic Energy Board of Canada (AEBC) before the ICRP Main Commission*, Nov. 1992.

Comment: The radon emissions from uncovered subpart T uranium mill tailings piles is not a significant risk to the public health.

Response: In this rulemaking EPA is not revisiting the determinations made in either the subpart T or UMTRCA rulemakings that uranium mill tailings piles need to be covered to protect the public health. In addition, the court in *AMC I* made it clear there was no requirement that EPA show a significant risk from uranium mill tailings prior to regulation of the tailings. *American Min. Congress* v. *Thomas*, 772 F.2d 617, 629 (10th Cir. 1985).

10.2. Extensions

Comment: Extensions of time and the practical aspects of closure occurring on schedule are not addressed in the BID accompanying the proposed rule.

Response: Any attempt to model extensions in the closure dates agreed to in the MOU would require the arbitrary selection of those piles to be granted extensions and choices of closure dates. There is no limit to the number of these combinations. EPA believes that the better procedure is to develop the model based on the dates in the MOU, and to recognize that extensions in the closure dates would increase total emissions and reduce present value costs.

10.3. Correlation Between 1 pCi/g of Radium to the Radon Flux

Comment: The BID relies on a false assumption that a concentration of radium of 1 pCi/g will result in 1 pCi/m^2-s radon flux from the tailings.

Response: EPA recognizes that the one-to-one radium to radon correlation is an approximation. However, there is no scientific consensus on what the value should be. Numerous factors enter into estimating the emanation rate. The rate varies according to tailings characteristics such as grain structure, grain size and moisture content. It also is affected by meteorological conditions such as temperature and barometric pressure. The impact of these factors on the emanation rate is not well understood. The rate can be expected to vary across individual piles, and from pile to pile. The Agency considered it prudent to assume a rate the tailings would be expected to exhibit at the time they are dry, prior to constructing the cover.

10.4. Equilibrium Factor

Comment: EPA does not accurately address the equilibrium factor in the BID.

Response: EPA uses a nominal value of 0.5 (rather than the 0.4 value used by the National Council for Radiation Protection (NCRP)) for the indoor equilibrium factor for radon entering houses directly from underground (see Technical Support Document for the 1991 Citizen's Guide to Radon, pp. 2–32, 33). However, when a house is located downwind from the radon source, ingrowth of radon decay products will occur, and some of these decay products will infiltrate the house. As the radon and its decay products move downwind, ingrowth will continue until an equilibrium between continued ingrowth and loss of decay

products due to ground deposition and participation scavenging is achieved. Therefore, the equilibrium fraction will increase with time, and with distance traveled, until a maximum is reached. This equilibrium will be maintained indefinitely. At a wind speed of 3.5 m/s, this maximum is calculated to be reached at about 20,000 meters (or about 12.5) miles. Since most of the population exposed to radon from the uranium mill tailings piles is more than 12.5 miles downwind, the value used in the BID is believed to be appropriate.

Comment: EPA's discussion of the equilibrium factor in the BID does not address support of the theoretical estimates utilized by monitoring data.

Response: The decay of radioactive materials such as radon is well understood. The diffusion of radon in the atmosphere is also well known; however it is a very complex phenomena. It is traditionally accepted that the atmospheric dispersion of radon and its decay products be modeled because of the difficulty of measuring their concentrations at points long distances downwind from sources such as mill tailings piles. EPA's dispersion models are based on accepted scientific principles and have received peer review. Given the difficulty inherent in the measurement of radon and its decay products in the atmosphere, we see little justification in requiring the extraordinary efforts that would necessarily be expended in accumulating monitoring data on emissions from mill tailings piles.

10.5. Moisture Content of Type B Soil

Comment: The 7.5 percent value for moisture content of type B soil used in EPA's BID should be revised to 6 percent to be consistent with NRC's Regulatory Guide 3.64.

Response: EPA used a moisture content of 7.5 percent for type B soil in estimating the emanation of radon through earthen covers on mill tailings piles. This assumed moisture content for type B soil has been used in all of EPA's rulemakings under UMTRCA and the CAA since 1983. The diffusion of radon through covers is a very complex phenomena that is affected by a large number of variables. For example, a small change in the assumed porosity of the cover material, a change within NRC's accepted range of these values (NUREG/CR–3533), would change the estimated emanation rate to a greater extent than would a change in the assumed moisture content from 7.5 percent to 6 percent. Given the sensitivity of the estimated diffusion rate to variation in the input parameters, EPA does not believe that a change to NRC's default value of 6 percent for the moisture content for type B soil is warranted.

10.6. Computer Codes Used to Assess Health Effects

Comment: It appears EPA is modifying existing regulations without benefit of rulemaking by discussing "Cap–88–EPA" in the BID, since "Comply-R" was the computer code used to assess health effects under the current CAA regulations (NESHAPs).

Response: The computer code "Comply-R" was not used in the 1989 NESHAPs rulemaking for estimating health risks from uranium mill tailings piles. EPA used "AIRDOS" for estimating the health risks from these piles in the 1989 rulemaking, which gives results essentially the same as "Cap–88–EPA."

10.7. Evaporation Ponds

Comment: Some commenters strongly support allowing evaporation ponds to remain open after emplacement of the permanent radon barrier.

Response: EPA received many comments to the Advanced Notice of Proposed Rulemaking (ANPR) noting that evaporation ponds should be excluded from the expeditious cover requirement. EPA reiterates that the Agency does not intend the expeditious radon cover requirement to extend to areas where evaporation ponds are located, even if on the pile itself, to the extent that such evaporation pond is deemed by the implementing agency (NRC or an affected Agreement State) to be an appropriate aspect to the overall remedial program for the particular site. Rather, the evaporation pond area may be covered to control radon after it is no longer in use and ready for covering. EPA believes the overall public health interest in comprehensively resolving the problems associated with each site is best served by requiring that the radon cover be expeditiously installed in a manner that does not require interruption of this aspect of remediation. Moreover, the ponds themselves serve as an effective radon barrier. EPA believes that provided all other parts of the pile are covered with the radon barrier, compliance with the 20 pCi/m ^{2}-s standard will result, and this will be maintained by covering the evaporation pond area when it is no longer in use.

11. Miscellaneous

11.1. Amending UMTRCA

Comment: One commenter objects to an apparent EPA request to amend UMTRCA to include timing requirements.

Response: EPA did not intend to request that UMTRCA be amended when it stated in the preamble to the proposed rule "[T]hus the Agency believes that UMTRCA should be amended * * * in order to find that the NRC program protects the public with an ample margin of safety * * *". EPA was referring to the proposed amendments to the UMTRCA regulations promulgated by EPA at 40 CFR 192 subpart D.

11.2. Provisions for the Impacts of Flooding at the Sites

Comment: EPA has not duly considered the possible implications of the current Midwest flooding on uranium mill tailings disposal sites, particularly one site located near the Colorado River.

Response: The MOU and this rule are directed to timely compliance with the 20 pCi/m^{2}-s flux standard and not erosion protection and groundwater remediation. This rulemaking addresses changes to the UMTRCA regulations which EPA believes are requisite to a finding that the NRC regulatory program protects the public health with an ample margin of safety. Milestones which are not reasonably calculated to advance timely compliance with the 20 pCi/m^{2}-s standard, e.g. installation of erosion protection and groundwater corrective actions, are not relevant to the tailings closure plans (radon) and are not the subject of this action. EPA does not intend today's amendments to subpart D to address groundwater and erosion protection concerns and in addition understands that no nonoperational uranium mill tailings disposal site was in jeopardy due to the recent flooding in the Midwest. EPA understands NRC and the Agreement States consider the possibility of flooding at a particular site in reviewing the site's reclamation and closure plan. Furthermore, EPA understands that the magnitude of floods considered by the NRC are based upon the probable maximum flood, or the probable maximum precipitation event. These events generally have a much lower probability of occurrence and larger magnitude for a given drainage area than the events that occurred in the Midwest this year. Design practices for protecting uranium mill tailings covers from erosion are described in NRC's *Design of Erosion Protection Covers for Stabilization of Uranium Mill Tailings Sites* (1990).

VI. Miscellaneous

A. Paperwork Reduction Act

In light of NRC's conforming regulations and any recordkeeping regulations adopted thereunder, and the designation in UMTRCA of NRC and Agreement State authority to implement and enforce such regulations, any issues under the Paperwork Reduction Act are properly considered by NRC in its conforming regulations.

B. Executive Order Requirements

This action was submitted to the Office of Management and Budget (OMB) under Executive Order 12291, which was revoked by Executive Order 12866 on September 30, 1993. This action was not classified as "major" under Executive Order 12291. Therefore, the Agency did not prepare a Regulatory Impact Analysis (RIA). OMB completed their review under Executive Order 12866. OMB's written comments (if any) are available in the public docket.

C. Regulatory Flexibility Analysis

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an "initial regulatory flexibility analysis" which describes the effect of this rule on small business entities. However, section 605(b) of the Act provides that an analysis not be required when the head of an Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities.

It was found in the 1989 rule for 40 CFR Part 61, subpart T that there was no significant impact on small business entities. There has been no change in this finding, since no new tailings piles have been constructed since 1989. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 192

Air pollution control, Environmental protection, Groundwater protection, Hazardous constituents, Hazardous materials, Radiation protection, Radium, Radon, Thorium and Uranium.

Dated: October 29, 1993.

Carol M. Browner,

Administrator.

Part 192 of chapter I, subchapter F of title 40 of the Code of Federal Regulations is amended as follows:

PART 192—[AMENDED]

1. The authority citation for part 192 continues to read as follows:

Authority: Sec. 275 of the Atomic Energy Act of 1954, 42 U.S.C. 2022, as added by the Uranium Mill Tailings Radiation Control Act of 1978, Public Law 95–604, as amended.

Subpart D—[Amended]

2. Section 192.31 is amended by adding new paragraphs (k), (l), (m), (n), (o), (p), and (q) to read as follows:

§ 192.31 Definitions and cross-references.

* * * * *

(k) *As expeditiously as practicable considering technological feasibility* means as quickly as possible considering: the physical characteristics of the tailings and the site; the limits of available technology; the need for consistency with mandatory requirements of other regulatory programs; and factors beyond the control of the licensee. The phrase permits consideration of the cost of compliance only to the extent specifically provided for by use of the term "available technology."

(l) *Permanent Radon Barrier* means the final radon barrier constructed to achieve compliance with, including attainment of, the limit on releases of radon-222 in § 192.32(b)(1)(ii).

(m) *Available technology* means technologies and methods for emplacing a permanent radon barrier on uranium mill tailings piles or impoundments. This term shall not be construed to include extraordinary measures or techniques that would impose costs that are grossly excessive as measured by practice within the industry or one that is reasonably analogous, (such as, by way of illustration only, unreasonable overtime, staffing or transportation requirements, etc., considering normal practice in the industry; laser fusion, of soils, etc.), provided there is reasonable progress toward emplacement of a permanent radon barrier. To determine grossly excessive costs, the relevant baseline against which cost increases shall be compared is the cost estimate for tailings impoundment closure contained in the licensee's tailings closure plan, but costs beyond such estimates shall not automatically be considered grossly excessive.

(n) *Tailings Closure Plan (Radon)* means the Nuclear Regulatory Commission or Agreement State approved plan detailing activities to accomplish timely emplacement of a permanent radon barrier. A tailings closure plan shall include a schedule for key radon closure milestone activities such as wind blown tailings retrieval and placement on the pile, interim stabilization (including dewatering or the removal of freestanding liquids and recontouring), and emplacement of a permanent radon barrier constructed to achieve compliance with the 20 pCi/m^2-s flux standard as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee).

(o) *Factors beyond the control of the licensee* means factors proximately causing delay in meeting the schedule in the applicable license for timely emplacement of the permanent radon barrier notwithstanding the good faith efforts of the licensee to achieve compliance. These factors may include, but are not limited to, physical conditions at the site; inclement weather or climatic conditions; an act of God; an act of war; a judicial or administrative order or decision, or change to the statutory, regulatory, or other legal requirements applicable to the licensee's facility that would preclude or delay the performance of activities required for compliance; labor disturbances; any modifications, cessation or delay ordered by state, Federal or local agencies; delays beyond the time reasonably required in obtaining necessary governmental permits, licenses, approvals or consent for activities described in the tailings closure plan (radon) proposed by the licensee that result from agency failure to take final action after the licensee has made a good faith, timely effort to submit legally sufficient applications, responses to requests (including relevant data requested by the agencies), or other information, including approval of the tailings closure plan by NRC or the affected Agreement State; and an act or omission of any third party over whom the licensee has no control.

(p) *Operational* means that a uranium mill tailings pile or impoundment is being used for the continued placement of uranium byproduct material or is in standby status for such placement. A tailings pile or impoundment is operational from the day that uranium byproduct material is first placed in the pile or impoundment until the day final closure begins.

(q) *Milestone* means an enforceable date by which action, or the occurrence of an event, is required for purposes of achieving compliance with the 20 pCi/m^2-s flux standard.

3. Section 192.32(a) is amended by redesignating paragraphs (a)(3) and (a)(4) as paragraphs (a)(5) and (a)(6), and by adding new paragraphs (a)(3) and (a)(4), to read as follows:

§ 192.32 Standards.

(a) * * *

(3) (i) Uranium mill tailings piles or impoundments that are nonoperational and subject to a license by the Nuclear Regulatory Commission or an Agreement State shall limit releases of radon-222 by emplacing a permanent radon barrier. This permanent radon barrier shall be constructed as expeditiously as practicable considering technological feasibility (including factors beyond the control of the licensee) after the pile or impoundment ceases to be operational. Such control shall be carried out in accordance with a written tailings closure plan (radon) to be incorporated by the Nuclear Regulatory Commission or Agreement State into individual site licenses.

(ii) The Nuclear Regulatory Commission or Agreement State may approve a licensee's request to extend the time for performance of milestones if, after providing an opportunity for public participation, the Nuclear Regulatory Commission or Agreement State finds that compliance with the 20 pCi/m^2-s flux standard has been demonstrated using a method approved by the NRC, in the manner required in 192.32(a)(4)(i). Only under these circumstances and during the period of the extension must compliance with the 20 pCi/m^2-s flux standard be demonstrated each year.

(iii) The Nuclear Regulatory Commission or Agreement State may extend the final compliance date for emplacement of the permanent radon barrier, or relevant milestone, based upon cost if the new date is established after a finding by the Nuclear Regulatory Commission or Agreement State, after providing an opportunity for public participation, that the licensee is making good faith efforts to emplace a permanent radon barrier; the delay is consistent with the definition of "available technology" in § 192.31(m); and the delay will not result in radon releases that are determined to result in significant incremental risk to the public health.

(iv) The Nuclear Regulatory Commission or Agreement State may, in response to a request from a licensee, authorize by license or license amendment a portion of the site to remain accessible during the closure process to accept uranium byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. 2014(e)(2), or to accept materials similar to the physical, chemical and radiological characteristics of the in situ uranium mill tailings and associated wastes, from other sources. No such authorization may be used as a means for delaying or otherwise impeding emplacement of the permanent radon barrier over the remainder of the pile or impoundment in a manner that will achieve compliance with the 20 pCi/m^2-s flux standard, averaged over the entire pile or impoundment.

(v) The Nuclear Regulatory Commission or Agreement State may, in response to a request from a licensee, authorize by license or license amendment a portion of a pile or impoundment to remain accessible after emplacement of a permanent radon barrier to accept uranium byproduct material as defined in section 11(e)(2) of the Atomic Energy Act, 42 U.S.C. 2014(e)(2), if compliance with the 20 pCi/m^2-s flux standard of § 192.32(b)(1)(ii) is demonstrated by the licensee's monitoring conducted in a manner consistent with § 192.32(a)(4)(i). Such authorization may be provided only if the Nuclear Regulatory Commission or Agreement State makes a finding, constituting final agency action and after providing an opportunity for public participation, that the site will continue to achieve the 20 $pCi/m2-s$ flux standard when averaged over the entire impoundment.

(4)(i) Upon emplacement of the permanent radon barrier pursuant to 40 CFR 192.32(a)(3), the licensee shall conduct appropriate monitoring and analysis of the radon-222 releases to demonstrate that the design of the permanent radon barrier is effective in limiting releases of radon-222 to a level not exceeding 20 pCi/m^2-s as required by 40 CFR 192.32(b)(1)(ii). This monitoring shall be conducted using the procedures described in 40 CFR part 61, Appendix B, Method 115, or any other measurement method proposed by a licensee that the Nuclear Regulatory Commission or Agreement State approves as being at least as effective as EPA Method 115 in demonstrating the effectiveness of the permanent radon barrier in achieving compliance with the 20 pCi/m^2-s flux standard.

(ii) When phased emplacement of the permanent radon barrier is included in the applicable tailings closure plan (radon), then radon flux monitoring required under § 192.32(a)(4)(i) shall be conducted, however the licensee shall be allowed to conduct such monitoring for each portion of the pile or impoundment on which the radon barrier has been emplaced by conducting flux monitoring on the closed portion.

4. Section 192.32(b)(1), footnote number 1 is revised to read as follows:

§ 192.32 Standards.

* * * * *

(b) * * *

(1) * * *

[1]The standard applies to design with a monitoring requirement as specified in § 192.32(a)(4).

Subpart E—[Amended]

5. Section 192.41 is amended by revising the introductory text and adding paragraph (e) to read as follows:

§ 192.41 Provisions.

Except as otherwise noted in § 192.41(e), the provisions of subpart D of this part, including §§ 192.31, 192.32, and 192.33, shall apply to thorium byproduct material and:

* * * * *

(e) The provisions of § 192.32(a) (3) and (4) do not apply to the management of thorium byproduct material.

[FR Doc. 93-27707 Filed 11-12-93; 8:45 am]
BILLING CODE 6560-50-P

Monday
November 15, 1993

Federal Register

Part IX

The President

Proclamation 6622—National Women Veterans Recognition Week, 1993

Notice of November 12—Continuation of Emergency Regarding Chemical and Biological Weapons Proliferation

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Federal Register
Vol. 58, No. 218
Monday, November 15, 1993

Presidential Documents

Title 3—

The President

Proclamation 6622 of November 10, 1993

National Women Veterans Recognition Week, 1993

By the President of the United States of America

A Proclamation

American women have served with distinction and courage in every overseas combat theater of conflict since World War I. Some have been wounded in the line of duty, and others have given their lives for our country, but all have contributed tremendously to the success of America's Armed Forces. Bringing their talent, skill, and vision to a variety of occupations within each of the service branches, women have made an everlasting mark on the military history of the United States.

The loyalty and the sacrifices of the women who have served our country merit the respect and admiration of all of us. It is fitting then that we set aside a special time to honor these veterans, to salute them for their tireless devotion to duty while in uniform and for their patriotism and commitment to democratic ideals in civilian life.

The Vietnam Women's Memorial is a monument dedicated to the many women who volunteered to serve in the Armed Forces during the Vietnam era. Appropriately, it recognizes the living as well as those who died. It is part of the important ongoing process of healing, both for veterans and for our country as a whole. It is a remembrance of the brave and compassionate service that is so worthy of our esteem.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 7, 1993, as National Women Veterans Recognition Week, and I encourage all Americans to join in acknowledging the contributions and sacrifices of these veterans.

IN WITNESS WHEREOF, I have hereunto set my hand this tenth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

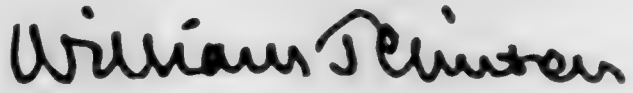

[FR Doc. 93–28204
Filed 11–12–93; 10:38 am]
Billing code 3195–01–P

Editorial note: For the President's remarks on signing this proclamation, see the *Weekly Compuation of Presidential Documents* (vol. 29, issue 45).

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Presidential Documents

Notice of November 12, 1993

Continuation of Emergency Regarding Chemical and Biological Weapons Proliferation

On November 16, 1990, consistent with the authority provided the President under the International Emergency Economic Powers Act (50 U.S.C. 1701, *et seq.*), President Bush issued Executive Order No. 12735. In that order, the President declared a national emergency with respect to the unusual and extraordinary threat to the national security posed by the proliferation of chemical and biological weapons. Because the proliferation of these weapons continues to pose an unusual and extraordinary threat to the national security and foreign policy of the United States, the national emergency declared on November 16, 1990, must continue in effect beyond November 16, 1993. Therefore, in accordance with section 202(d) of the National Emergencies Act (50 U.S.C. 1622(d)), I am continuing the national emergency declared in Executive Order No. 12735.

This notice shall be published in the **Federal Register** and transmitted to the Congress.

William J. Clinton

THE WHITE HOUSE,
November 12, 1993.

[FR Doc. 93-28224
Filed 11-12-93; 11:48 am]
Billing code 3195-01-P

Editorial note: For the President's letter to Congressional leaders transmitting this notice, see issue 45 of the *Weekly Compilation of Presidential Documents.*

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CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, stock numbers, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $775.00 domestic, $193.75 additional for foreign mailing.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	¹ Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
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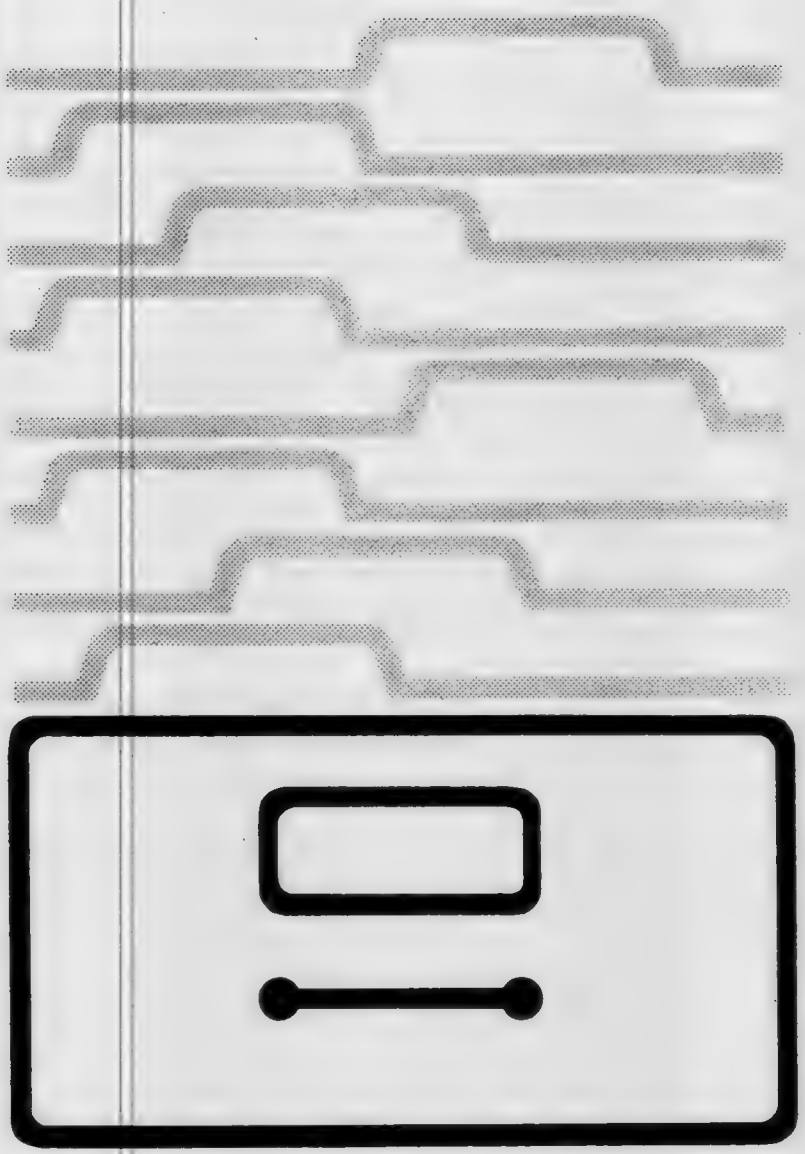

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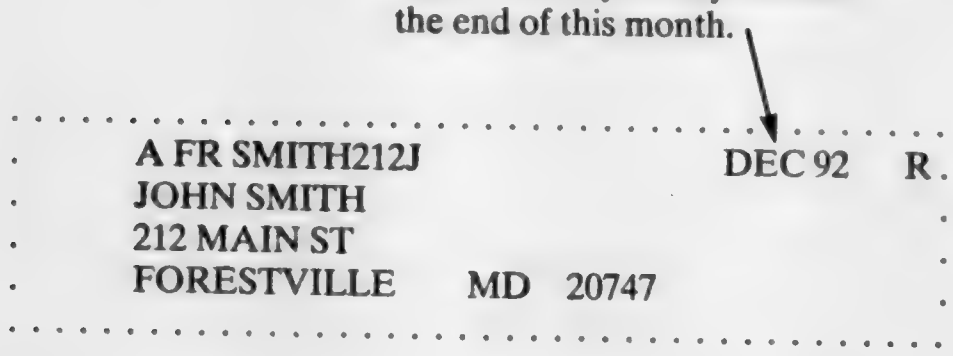

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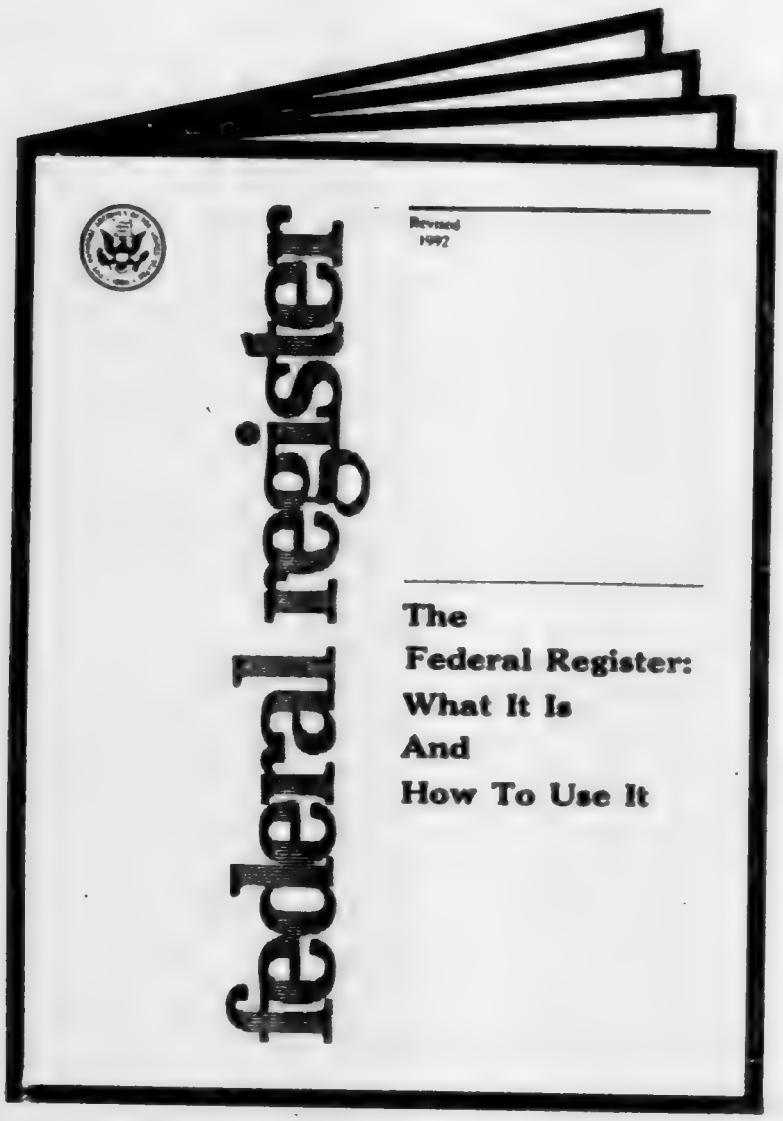

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DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 920 and 932

[Docket Nos. FV93–920–3FIR and FV92–932–1FIR, Amendment 1]

Finalization of Interim Final Rules for Specified Marketing Orders (Kiwifruit and Olives)

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: The Department of Agriculture (Department) is adopting as a final rule, without change, the provisions of two interim final rules that authorized expenses and established assessment rates for the Kiwifruit Administrative Committee and the California Olive Committee (Committees) under Marketing Order Nos. 920 and 932, respectively. Authorization of these budgets enables the Committees to incur expenses that are reasonable and necessary to administer their respective programs. Funds to administer these programs are derived from assessments on handlers.

EFFECTIVE DATE: Section 920.210 is effective August 1, 1993, through July 31, 1994; § 932.226 is effective January 1, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Britthany E. Beadle, Marketing Order Administration Branch, F&V, AMS, USDA, P.O. Box 96456, room 2524–S, Washington, DC 20090–6456; telephone: (202) 720–5127; Rose Aquayo (§ 920.210), or Terry Vawter (§ 932.226), California Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102 B, Fresno, California 93721, telephone: (209) 487–5906.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Marketing Order No. 920 (7 CFR Part 920) regulating the handling of kiwifruit grown in California and Marketing Agreement and Marketing Order No. 932 (7 CFR Part 932), both as amended, regulating the handling of olives grown in California. The marketing orders are effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is being issued in conformance with Executive Order 12866 and it has been determined that it is not a "significant regulatory action."

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. Under the marketing order provisions now in effect, kiwifruit and olives grown in California are subject to assessments. It is intended that the assessment rates specified herein will be applicable to all assessable kiwifruit and olives handled during the 1993–94 fiscal year, beginning August 1, 1993, through July 31, 1994 (M.O. 920), and January 1, 1993, through December 31, 1993 (M.O. 932). This final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities. The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 60 handlers of kiwifruit and 5 handlers of olives grown in California subject to regulation under their respective marketing orders each season. In addition, there are approximately 650 producers of kiwifruit and 1,350 producers of olives in California. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of kiwifruit producers, kiwifruit handlers, and olive producers may be classified as small entities. None of the olive handlers may be classified as small entities.

The respective marketing orders require that the assessment rates for a particular fiscal year shall apply to all assessable kiwifruit and olives handled from the beginning of such year. An annual budget of expenses is prepared by each of the Committees and submitted to the Department for approval. The members of the Kiwifruit Administrative Committee consist of producers and a non-industry member. The members of the California Olive Committee consist of producers and handlers. They are familiar with the Committees' needs and with the costs for goods, services, and personnel in their local areas and are thus in a position to formulate appropriate budgets. The budgets are formulated and discussed in public meetings. Thus, all directly affected persons have an opportunity to participate and provide input.

The assessment rates recommended by the Committees are derived by dividing anticipated expenses by expected shipments of kiwifruit and olives. Because these rates are applied to actual shipments, they must be established at rates which will produce

sufficient income to pay the Committees' expected expenses. The recommended budgets and rates of assessment are usually acted upon by the Committees shortly before a season starts, and expenses are incurred on a continuous basis. Therefore, the budget and assessment rate approval must be expedited so that the Committees will have funds to pay their expenses.

The Kiwifruit Administrative Committee (KAC) met on July 14, 1993, and unanimously recommended 1993–94 marketing order expenses of $156,150 and an assessment rate of $0.01 per tray or tray equivalent of kiwifruit. In comparison, 1992–93 marketing year budgeted expenses were $152,913, which is $3,237 less than the $156,150 recommended for this fiscal year. The assessment rate of $0.01 per tray or tray equivalent is $0.01 less than last year's assessment rate of $0.02. The major budget category for 1993–94 is $92,095 for administrative, staff and field salaries.

Assessment income for 1993–94 is estimated to total $100,000 based on anticipated fresh domestic shipments of 10 million trays or tray equivalents of kiwifruit. The assessment income will be augmented by $56,150 from the KAC's reserves to provide adequate funds to cover budgeted expenses. Funds in the reserve at the end of the 1993–94 fiscal year are estimated to be $109,882. These reserve funds will be within the maximum permitted by the order of one fiscal year's expenses.

This action was published as an interim final rule in the **Federal Register** (58 FR 45232, August 27, 1993) and provided a 30-day comment period for interested persons. No comments were received.

The California Olive Committee (COC) met on December 7, 1992, and unanimously recommended total expenses for the 1993 fiscal year of $2,796,000 and an assessment rate of $25.75 per ton of assessable olives handled. This action was published as an interim final rule in the **Federal Register** (58 FR 8538, February 16, 1993) and provided a 30-day comment period which ended March 18, 1993. The recommended 1993 expenses and assessment rate were adopted in a final rule and published in the **Federal Register** (58 FR 33013, June 15, 1993). There were no comments received prior to publication of the final rule.

At a meeting held on July 7, 1993, the COC voted unanimously to increase its expenses by $23,760 to cover additional production research projects not anticipated by the COC in December of 1992. This increased the total budget approved by the Department from $2,796,000 to $2,819,760. These increased expenses are in the form of additional funding levels for five research projects currently being conducted. No change in the assessment rate was recommended by the COC. Adequate funds are available in the COC's reserves to cover the increase in expenses resulting from this action. The amended budget was published as an interim final rule in the **Federal Register** (58 FR 45234, August 27, 1993). There were no comments received concerning the budget increase.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on all handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived from the operation of the marketing orders. Therefore, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

Interim final rules were published in the **Federal Register** (58 FR 45232, August 27, 1993), for 7 CFR part 920 and (58 FR 8538, February 16, 1993) and (58 FR 45234, August 27, 1993), for 7 CFR part 932. Each interim final rule provided a 30-day comment period for interested persons. No comments were received.

It is found that the specified expenses for the marketing orders covered in this rule are reasonable and likely to be incurred and that such expenses and the specified assessment rates to cover such expenses will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** (5 U.S.C. 553) because the Committees need to have sufficient funds to pay their expenses which are incurred on a continuous basis. The 1993–94 fiscal years for the programs began on August 1, 1993, for California kiwifruit and January 1, 1993, for olives. The marketing orders require that the rates of assessment for the fiscal year apply to all assessable kiwifruit and olives handled during the fiscal year.

In addition, handlers are aware of these actions which were recommended by the Committees at public meetings and published in the **Federal Register** as interim final rules. No comments were received concerning the two interim final rules that are adopted in this action as a final rule without change.

List of Subjects

7 CFR Part 920

Kiwifruit, Marketing agreements, Reporting and recordkeeping requirements.

7 CFR Part 932

Marketing agreements, Olives, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR parts 920 and 932 are hereby amended as follows:

1. The authority citation for 7 CFR parts 920 and 932 continue to read as follows:

Authority: 7 U.S.C. 601–674.

Note: These sections will not appear in the annual Code of Federal Regulations.

PART 920—KIWIFRUIT GROWN IN CALIFORNIA

2. Accordingly, the interim final rule amending 7 CFR part 920 which was published at 58 FR 45232, on August 27, 1993, is adopted as a final rule without change.

PART 932—OLIVES GROWN IN CALIFORNIA

3. Accordingly, the interim final rule amending 7 CFR part 932 which was published at 58 FR 45234, on August 27, 1993, is adopted as a final rule without change.

Dated: November 8, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–28035 Filed 11–15–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 926

[Docket No. FV–92–035FR]

Tokay Grapes Grown in San Joaquin County, CA; Final Rule Revising the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds the U.S. No. 1 Institutional grade to the minimum grade requirements under the handling regulation in effect for fresh market shipments of California Tokay grapes. This action will aid handlers in developing new markets for table grapes.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O.

Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 720–1755; or Kellee J. Hopper, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement and Order No. 926 (7 CFR part 926), both as amended, regulating the handling of Tokay grapes grown in San Joaquin County, California. The marketing agreement and order are authorized under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 5 handlers of San Joaquin County, California Tokay grapes subject to regulation under the marketing order, and approximately 20 producers. Small agricultural producers have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of the Tokay grape handlers and producers may be classified as small entities.

The Tokay Grape Industry Committee (committee), the agency responsible for local administration of the order, met on February 4, 1992, and unanimously recommended revising the minimum grade requirements in the handling regulation to include the U.S. No. 1 Institutional grade as set forth in the United States Standards for Grades of Table Grapes (European and Vinifera Type) (7 CFR 51.880 to 51.913) hereinafter referred to as the Standards.

Under current requirements, from August 12 through November 15 each season, Tokay grapes must meet the minimum grade and size requirements specified for U.S. No. 1 Table as set forth in the Standards, and must meet applicable color requirements.

The committee recommended adding the U.S. No. 1 Institutional grade to the minimum grade requirements in the domestic handling regulation. The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements. Individual bunches of table grapes grading U.S. No. 1 Table cannot weigh less than one-fourth pound (4 ounces). Individual bunches of grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces nor more than 5 ounces. Additionally, at least 95 percent of the containers in a lot of table grapes grading U.S. No. 1 Institutional must be legibly marked "Institutional Pack." No labelling requirements are established under the U.S. No. 1 Table grade.

The committee believes that adding the U.S. No. 1 Institutional grade to the handling regulation will promote domestic sales and exports of institutional grape packs, particularly to Canada. The committee reports an increased demand for institutional grape packs by the foodservice industry (e.g., school systems, airlines and restaurants). Due to the requirements of the current handling regulation, Tokay grape handlers are prohibited from making domestic and export shipments of institutional grape packs. The Standards were amended in April 1991 to establish the U.S. No. 1 Institutional grade.

A proposed rule concerning this action was published in the **Federal Register** (58 FR 40756, July 30, 1993). Comments concerning this action were invited until August 30, 1993. No comments were received.

Section 8(e) of the Act requires that whenever grade, size, quality or maturity requirements are in effect for table grapes under a domestic marketing order, imported table grapes must meet the same or comparable requirements. Because this final rule relaxes the minimum grade requirements to add U.S. No. 1 Institutional to the domestic handling regulation, a corresponding change is needed in the table grape import regulation. Such change will be addressed in a separate rulemaking action.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committee, and other information, it is found that this action will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 926

Grapes, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 926 is amended as follows:

PART 926—TOKAY GRAPES GROWN IN SAN JOAQUIN COUNTY, CALIFORNIA

1. The authority citation for 7 CFR Part 926 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 926.324 is amended by revising paragraphs (a)(1) and (b) to read as follows:

§ 926.324 California Tokay Grape Regulation 23.

(a) * * *

(1) Any Tokay grapes grown in the production area which do not meet the grade and size specifications of U.S. No. 1 Table grade or U.S. No. 1 Institutional, and the following additional

requirement: Of 25 percent, by count, of the berries of each bunch which are attached to the lower part of the main stem, including laterals, at least 30 percent, by count, shall show characteristic color; and

* * * * *

(b) *Definitions.* "U.S. No. 1 Table grade," "U.S. No. 1 Institutional," and "characteristic color," shall mean the same in the United States Standards for Grades for Table Grapes (European or Vinifera type) (7 CFR 51.880 through 51.912).

Dated: November 8, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–28032 Filed 11–15–93; 8:45 am]

BILLING CODE 3410-03-P

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7 CFR Part 944

[Docket No. FV–92–036FR]

Tokay Grapes Imported Into the United States; Final Rule Revising the Minimum Grade Requirements

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule adds the U.S. No. 1 Institutional grade to the minimum grade requirements for imported Tokay grapes. Currently, imported Tokay grapes must grade at least U.S. No. 1 Table, which includes a requirement that individual bunches weigh at least one-fourth pound (4 ounces). This action will permit smaller bunches of Tokay grapes to be imported into the United States, and is required under section 8e of the amended Agricultural Marketing Agreement Act of 1937.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mark J. Kreaggor, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2526–S, Washington, DC 20090–6456, telephone (202) 720–5127; or Kellee J. Hopper, California Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 2202 Monterey Street, suite 102B, Fresno, California, 93721; telephone: (209) 487–5901.

SUPPLEMENTARY INFORMATION: This final rule is issued under section 8e of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act, which provides that whenever certain specified commodities, including grapes, are regulated under a Federal marketing order, imports of that commodity must meet the same or comparable grade, size, quality and maturity requirements as those in effect for the domestically produced commodity.

This final rule has been reviewed by the Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

Import regulations issued under the Act are based on those established under Federal marketing orders. Thus, they should also have small entity orientation, and impact both small and large business entities in a manner comparable to rules issued under such marketing orders.

There are no known importers of Tokay grapes at this time. Small agricultural service firms, which include grape importers, have been defined by the Small Business Administration (13 CFR 121.601) as those having annual receipts of less than $3,500,000.

A proposed rule concerning this action was published in the **Federal Register** (58 FR 40758, July 30, 1993). Comments concerning this action were invited until August 30, 1993. No comments were received.

This action is being taken because section 8e of the Act requires imported Tokay grapes to meet the same or comparable requirements as those established under a domestic marketing order. Under this final rule, imported Tokay grapes have to meet the same minimum grade requirements as domestically produced Tokay grapes that are grown in southeastern California and regulated under Marketing Order No. 926 (7 CFR part 926).

Under the terms of the marketing order, from August 12 through November 15 each season, Tokay grapes must meet minimum grade and size requirements as specified for U.S. No. 1 Table, as set forth in the United States Standards for Table Grapes (European or Vinifera Type) (7 CFR 51.880 to 51.913), hereinafter referred to as the Standards. In addition, under the handling regulation Tokay grapes are subject to an additional color requirement. Effective April 18, 1991, a new U.S. No. 1 Institutional grade was established under the Standards.

The Tokay Grape Industry Committee (committee), the agency responsible for local administration of the marketing order, recommended that the minimum grade requirements established for domestically grown Tokay grapes be revised to include the new U.S. No. 1 Institutional grade.

The U.S. No. 1 Institutional grade will: (1) Provide greater tolerance by permitting more weight variance of individual bunches; individual bunches of grapes grading U.S. No. 1 Institutional cannot weigh less than 2 ounces or more than 5 ounces; and (2) provide that at least 95 percent of the containers in a lot of grapes grading U.S. No. 1 Institutional are required, under the Standards, to be marked "Institutional Pack." Grapes grading U.S. No. 1 Table consist of bunches of well developed grapes, which are fairly well colored, uniform in appearance, and free from decay, mold and other condition factors. Bunches must weigh at least one-fourth pound (4 ounces). The requirements of the U.S. No. 1 Institutional grade are the same as for U.S. No. 1 Table grade except for bunch size and container marking requirements.

The committee's recommendation to revise domestic handling requirements is being taken under a separate rulemaking action. This final rule relaxing the minimum grade requirement for imported Tokay grapes is necessary to make import requirements consistent with those in effect under the marketing order. This action permits smaller bunches of grapes to be imported into the United States by adding the U.S. No. 1 Institutional grade to the minimum

grade requirements for Tokay grape imports.

The primary purpose of the Standards is to provide uniform trading terms relative to quality criteria commonly recognized by buyers and sellers of grapes. Because the requirements for U.S. No. 1 Table and U.S. No. 1 Institutional grapes are identical except for bunch size, it has been determined that the U.S. No. 1 Institutional grade requirements must include a container marking requirement to avoid buyer confusion in the marketplace. Because this requirement has been determined to be essential in identifying U.S. No. 1 Institutional grapes, imports of U.S. No. 1 Institutional grade Tokay grapes have to meet all of the requirements of that grade set forth in the Standards, including the requirement that containers of such grapes be marked "Institutional Pack."

In accordance with section 8e of the Act, the United States Trade Representative has concurred with the issuance of this final rule.

Based on the above, the Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, the information and recommendations submitted by the committees and other information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

List of Subjects in 7 CFR Part 944

Avocados, Food grades and standards, Grapefruit, Grapes, Imports, Kiwifruit, Limes, Olives, Oranges.

For the reasons set forth in the preamble, 7 CFR part 944 is amended as follows:

PART 944—FRUITS; IMPORT REGULATIONS

1. The authority citation for 7 CFR part 944 is revised to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 944.605 is amended by revising paragraph (a) to read as follows:

§ 944.605 Tokay Grape Import Regulation 5.

(a) *Applicabilty to imports.* Pursuant to section 8e of the Act and Part 944—Fruits; Import Regulations, during the period August 12 through November 15 of each year the importation into the United States of Tokay variety grapes is prohibited unless such grapes meet the grade and size specifications of U.S. No. 1 Table Grade, or U.S. No. 1 Institutional, as set forth in the United States Standards for Grades of Table Grapes (European or Vinifera Type) (7 CFR 51.880 through 51.913), and the following additional requirement: Of the 25 percent, by count, of berries of each bunch which are attached to the lower part of the stem, including laterals, at least 30 percent, by count, shall show characteristic color.

* * * * *

Dated: November 8, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–28033 Filed 11–15–93; 8:45 am]

BILLING CODE 3410–02–P

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7 CFR Part 958

[Docket No. FV–92–093FR]

Onions Grown in Certain Designated Counties in Idaho and Malheur County, OR; Amendment to Handling Regulation

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule requires shipments of pearl onions to be inspected and certified as being within the maximum permissible size of 1¾ inches in diameter and requires handlers to pay assessments on such onions. Under the current regulation, pearl onions are exempt from inspection and assessments as well as minimum grade and size requirements, but cannot be larger than 1¾ inches in diameter. To eliminate redundancy in the regulations, this rule also removes one paragraph regarding imported onions, which is the same as requirements in effect under 7 CFR 980.117 for imported onions.

EFFECTIVE DATE: November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Gary Olson, Northwest Marketing Field Office, 1220 SW. Third Avenue, room 369, Portland, Oregon, 97204, telephone (503) 326–2724, or Robert F. Matthews, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, room 2523–S, Washington, DC 20090–6456, telephone (202) 690–0464, FAX (202) 720–5698.

SUPPLEMENTARY INFORMATION: This final rule is issued under Marketing Agreement No. 130 and Order No. 958 (7 CFR part 958) (order), both as amended, hereinafter referred to as the order, regulating the handling of onions grown in Idaho and Malheur County, Oregon. The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), hereinafter referred to as the Act.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action."

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This final action is not intended to have retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has a principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 35 handlers of Idaho-Oregon onions subject to regulation under the marketing order, and approximately 450 producers in the production area. Small agricultural service firms have been defined by the Small Business Administration (13 CFR 121.601) as those whose annual receipts are less than $3,500,000, and small agricultural producers are defined as those having annual receipts of less than $500,000. The majority of onion producers and handlers subject to

regulations under the order may be classified as small entities.

Onions grown in Idaho and Eastern Oregon are regulated all year by grade, size, and pack under the handling regulation (7 CFR 958.328). Paragraph (h) of § 958.328 currently defines pearl onions as onions grown using specific cultural practices that limit growth to the same general size as boiler and pickler onions, measuring 1¾ inches in diameter or less. The regulation groups all small onions under the heading of boilers and picklers with sizes up to 1¾ inches in diameter. The United States Standards for Grades of Onions (Other Than Bermuda-Granex-Grano and Creole Type) (7 CFR 51.2834) states that the size range for boiler onions shall be 1 to 1⅞ inches while picklers shall be 1 inch or less in diameter.

Pursuant to paragraph (e) of § 958.328, pearl onions are handled as special purpose shipments and, thus, are exempt from the grade, size, maturity, assessment and inspection requirements of the order. However, handlers of pearl onions must comply with safeguard requirements of the order.

The Department previously increased the exempted size of pearl onions to 1¾ inches in diameter (55 FR 36601, September 6, 1990). That increase was justified because a small number of the culturally-grown, pearl onions were larger than the intended size of 1 inch or less in diameter. The Committee had reported that buyers were more willing to purchase the somewhat larger onions in lots of pearl onions than to pay the additional handling costs associated with sorting the various sizes. Because pearl onions are sold as a specialty item, distinct from other onions grown in the production area, it was not expected that the increase in exemption size would adversely affect the marketing of other onions.

On June 30, 1992, the Idaho-Eastern Oregon Onion Committee (Committee) unanimously recommended amending the order's handling regulation to change the term "pearl onions" to "pickler onions" and to reduce the maximum size of such onions to not more than 1 inch in diameter. A proposed rule was published in the October 6, 1992, issue of the **Federal Register** (57 FR 45993), giving interested persons until November 5, 1992, to file comments with respect to the proposal. In response to the proposal, four comments were received. One extensive comment from the only current pearl onion producer (Magic Valley Foods, Ltd.) presented arguments contrary to those of the Committee. To allow both the Committee and other interested persons sufficient time to study the comments and provide additional comments and background material, the comment period was reopened until January 22, 1993 (58 FR 3234, January 8, 1993).

The Committee held a meeting on December 16, 1992, to resolve the apparent differences between the comments filed and the original recommendations of the Committee. Representatives of Magic Valley Foods, Ltd. participated in the meeting.

As a result of the meeting, the Committee filed a comment to withdraw its original recommendations to reduce the pearl onion maximum size requirement to 1 inch in diameter. The Committee believes that, because the majority of pearl onions shipped are 1 to 1¼ inches in diameter, the current requirement of 1¾ inches maximum diameter is acceptable and need not be changed.

In its comment, the Committee also requested withdrawal of its original recommendation to change the term "pearl" onion to "pickler" onion because the term pickler refers to smaller size pearl onions which are not representative of the majority of pearl onions marketed.

During the meeting, the Committee also considered further action with regard to pearl onions. It was pointed out that market inspection reports indicated that some exempt onions larger than 1¾ inches in diameter have appeared in marketing channels. The Committee concluded that the size exemption must be verified and the best way to do that would be to add inspection requirements to verify the maximum size on all pearl onions. Thus, the Committee recommended unanimously that all pearl onions be inspected and certified for maximum size.

The Committee also discussed whether pearl onions should be subject to assessments. It believes that all segments of the Idaho-Eastern Oregon onion industry, including the pearl onion segment of the industry, benefit from the order's research and promotion activities. Thus, the Committee recommended unanimously that pearl onion shipments be assessed.

Based on this recommendation, the Department issued a revised proposed rule which was published in the June 30, 1993 issue of the **Federal Register** (58 FR 34944), giving interested persons until July 30, 1993, to file comments with respect to the proposal. In response to the proposal, no comments were received. The Department is herein adopting the June 30 proposals without change.

Under this rule, all pearl onions up to a maximum of 1¾ inches in diameter would be shipped under paragraph (e) *Special purpose shipments* but such onions will be subject to maximum size, assessment, and inspection requirements. The reference to pearl onions will be removed from paragraph (f) *Safeguards*, of § 958.328, since such requirements no longer are necessary. Also, for clarification, the reference to pearl onions under paragraph (h) *Definitions*, is revised by adding after the words "boilers and picklers" the words "* * * and that have been inspected and certified as * * *."

This action also removes paragraph (i) *Applicability to imports*, of § 958.328 from the handling regulation. That paragraph provides information that is contained in 7 CFR 980.117 Import regulations; onions. Because the same information applicable to imported onions is contained in the import regulations, paragraph (i) in the domestic handling regulations should be removed to eliminate redundancy of regulations.

These changes are intended to result in clearer terminology, a more consistent application of assessments, and an improved ability by the committee to oversee compliance with program requirements.

The Administrator of the AMS has determined that this action will not have a significant economic impact on a substantial number of small entities.

The information collection requirements that are contained in these regulations have been previously approved by the Office of Management and Budget (OMB) and have been assigned OMB No. 0581–0087.

After consideration of all relevant matters presented, the committee's recommendation and other available information, it is found that the issuance of this rule will tend to effectuate the declared policy of the Act.

It is further found that good cause exists for not postponing the effective date of this section until 30 days after publication in the **Federal Register** because (1) the shipping season for onions has already begun and for maximum effectiveness this rule should apply to as many shipments as possible; (2) the proposed rule was discussed at two open public meetings, the last of which was attended by representatives of the only pearl onion grower of record in the production area; (3) no comments were filed to the June 30 proposed rule; and (4) there are no special preparations required of the handler that cannot be completed by the effective date.

List of Subjects in 7 CFR Part 958

Marketing agreements, Onions, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 958 is amended as follows:

PART 958—ONIONS GROWN IN CERTAIN DESIGNATED COUNTIES IN IDAHO AND MALHEUR COUNTY, OREGON

1. The authority citation for 7 CFR Part 958 continues to read as follows:

Authority: 7 U.S.C. 601-674.

2. Section 958.328 is amended by revising paragraphs (e), (f) introductory text, (f)(2) and (h), and removing paragraph (i) to read as follows:

§ 958.328 Handling regulation.

* * * * *

(e) *Special purpose shipments.* The minimum grade, size, maturity, assessment, and inspection requirements of this section shall not be applicable to shipments of onions for any of the following purposes: (1) planting, (2) livestock feed, (3) charity, (4) dehydration, (5) canning, (6) freezing, (7) extraction, and (8) pickling. In addition, the minimum grade, size, and maturity requirements set forth in paragraph (a) of this section shall not be applicable to shipments of pearl onions, but the maximum size requirements in paragraph (h) of this section and the assessment and inspection requirements shall be applicable to shipments of pearl onions.

(f) *Safeguards.* Each handler making shipments of onions for dehydration, planting, canning, freezing, extraction or pickling pursuant to paragraph (e) of this section shall:

* * * * *

(2) Prepare, on forms furnished by the committee, a report in quadruplicate on each individual shipment to such outlets authorized in paragraph (c) of this section;

(3) * * *

* * * * *

(h) *Definitions.* The terms "U.S. No. 1," "U.S. Commercial," and "U.S. No. 2" have the same meaning as defined in the United States Standards for Grades of Onions (Other than Bermuda-Granex-Grano and Creole Types), as amended (7 CFR 51.2830 through .2854), or the United States Standards for Grades of Bermuda-Granex-Grano Type Onions (7 CFR 51.3195 through .3209), as amended, whichever is applicable to the particular variety, or variations thereof specified in this section. The term "braided red onions" means onions of red varieties with tops braided (interlaced). "Pearl onions" means onions produced using specific cultural practices that limit growth to the same general size as boilers and picklers, and that have been inspected and certified as measuring 1¾ inches in diameter or less. The term "moderately cured" means the onions are mature and are more nearly well cured than fairly well cured. Other terms used in this section have the same meaning as when used in Marketing Agreement No. 130 and this part.

Dated: November 8, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93-28034 Filed 11-15-93; 8:45 am]

BILLING CODE 3410-02-P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93-NM-78-AD; Amendment 39-8728; AD 93-22-03]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings and installation of a retainer ring, if necessary. This amendment is prompted by a report of a missing retainer ring in the rudder (brake) pedal. The actions specified by this AD are intended to prevent reduced braking authority and reduced directional control of the airplane while it is on the ground.

DATES: Effective December 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the **Federal Register** as of December 16, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Tim Dulin, Aerospace Engineer, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2141; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on July 6, 1993 (58 FR 35905). That action proposed to require a one-time inspection of the rudder (brake) pedal assemblies for correct installation of retainer rings and installation of a retainer ring, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter, the Air Transport Association (ATA) of America, requests that the proposal be withdrawn because it is unnecessary. The ATA indicates that both of its affected member operators are already in full compliance with the proposed actions. Additionally, since the Rijksluchtvaartdienst (RLD), which is the airworthiness authority for the Netherlands, has already notified other world airline regulators of the subject discrepancy, there is no reason for the FAA to issue an AD to advise operators outside of the United States. The FAA does not concur. The FAA is encouraged by the fact that the affected ATA member operators have acted prudently and have already completed the requirements of this AD. The phrase, "Required as indicated, unless accomplished previously," as contained in the AD, indicates that those operators that have accomplished the actions specified in the rule are not required to repeat those actions. However, should any additional non-U.S.registered Fokker Model F28 Mark 0100 series airplanes be imported and added to the U.S. Register in the future, this AD is necessary to ensure the accomplishment of the required actions on those airplanes before they are placed in service. In light of this, the FAA has determined that the issuance of this AD is warranted and appropriate.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 65 airplanes of U.S. registry will be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,575, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

However, the FAA has been advised that at least 40 U.S.-registered airplanes have been inspected in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $825.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-22-03 Fokker: Amendment 39-8728. Docket 93-NM-78-AD.

Applicability: Model F28 Mark 0100 series airplanes; serial numbers 11244 through 11407, inclusive, 11409, and 11410; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent reduced braking authority and reduced directional control of the airplane while it is on the ground, accomplish the following:

(a) Within 30 days after the effective date of this AD, conduct an inspection of the rudder (brake) pedal assemblies, to verify installation of retainer rings, part number (P/N) MS16624-1075, in accordance with Fokker Service Bulletin SBF100-27-047, Revision 1, dated February 9, 1993.

(1) If all of the retainer rings are installed correctly, no further action is required by this AD.

(2) If any retainer ring is not installed, or is not installed correctly, prior to further flight, install retainer ring, P/N MS16624-1075, in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and necessary installation shall be done in accordance with Fokker Service Bulletin SBF100-27-047, Revision 1, dated February 9, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	February 9, 1993.
2-4	Original	August 28, 1992

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 16, 1993.

Issued in Renton, Washington, on October 28, 1993.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-26968 Filed 11-15-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-85-AD; Amendment 39-8727; AD 93-22-02]

Airworthiness Directives; Fokker Model F27 Rough Field Version (RFV) Series Airplanes, Excluding Model F27 Mk 050 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F27 RFV series airplanes, that requires inspection of the main landing gear (MLG) legs to determine if parts are missing or damaged, and modification, if necessary; and periodic measurements of the extension of each MLG shock absorber sliding member. Additionally, this amendment will provide for the accomplishment of a certain modification as optional terminating action for the periodic measurements. This amendment is prompted by reports of overextension of the MLG sliding member due to missing parts in the MLG leg assembly. The actions specified by this AD are intended to prevent loss of the MLG sliding member, which could result in reduced structural integrity of the MLG.

DATES: Effective December 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 16, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314; and Dowty Aerospace, Cheltenham Road, Goucester GS2 9QH, England. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F27 Rough Field Version (RFV) series airplanes was published in the **Federal Register** on July 21, 1993 (58 FR 38984). That action proposed to require a one-time inspection of the main landing gear (MLG) legs to determine proper installation of parts, and modification, if necessary. The action also proposed to require periodic measurements (and recording) of the extension of the MLG sliding member. The action also proposed to provide for a modification of the MLG assembly as optional terminating action for the periodic measurements.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 2 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $330, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–22–02 Fokker: Amendment 39–8727. Docket 93–NM–85–AD.

Applicability: Model F27 Rough Field Version (RFV) series airplanes, excluding Model F27 Mk 050 series airplanes; equipped with Dowty Aerospace main landing gear (MLG), part numbers 200563001, 200679001, 200679002, 200679003, or 200679004; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of the MLG sliding member, which could result in reduced structural integrity of the MLG, accomplish the following:

(a) Within 30 days after the effective date of this AD, inspect the MLG legs to confirm the correct installation of the sliding member out-stop installation in accordance with Fokker Service Bulletin F27–32–165, Revision 1, dated April 28, 1993, and paragraph 2.C. ("Part A Procedure") of Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993. If any parts are determined to be missing or damaged, prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993.

(b) Within 30 days after the effective date of this AD, measure and record the extension of the MLG sliding member when the landing gear is fully extended, in accordance with paragraph 2.D. ("Part B Procedure") of Dowty Aerospace Landing Gear Service Bulletin 32–81W, Revision 2, dated February 3, 1993.

(1) If the extension dimension exceeds 410.2 mm (16.15 inches), prior to further flight, modify the MLG assembly in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993.

(2) If the extension dimension is equal to or less than 410.2 mm (16.15 inches), repeat the measurement at intervals not to exceed 500 flight cycles.

(3) If the extension dimension increases by more than 1.0 mm (0.40 inch) above the initially recorded dimension during any measurement required by this paragraph, prior to further flight, inspect the MLG in accordance with paragraph (a) of this AD.

(c) Accomplishment of the modification of the MLG in accordance with Dowty Aerospace Landing Gear Service Bulletin 32–77W, Revision 4, dated February 3, 1993, constitutes terminating action for the actions required by paragraphs (a) and (b) of this AD.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspections, modifications, measurements, and recording shall be done in accordance with the following Fokker service bulletin and Dowty Aerospace Landing Gear service bulletins, as applicable, which contain the specified effective pages:

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
F27–32–165	1–3	1	April 28, 1993.
Revision 1, April 28, 1993			

Service bulletin referenced and date	Page No.	Revision level shown on page	Date shown on page
32–81W Revision 2, February 3, 1993	1, 4	2	February 3, 1993.
February 3, 1993	2, 5	1	October 12, 1992.
	3, 6, 7	Original	September 29, 1992.
32–77W	1, 5, 6	4	February 3, 1993.
Revision 4, February 3, 1993	2–4, 7–9	3	September 29, 1992.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314; and Dowty Aerospace, Cheltenham Road, Goucester GS2 9QH, England. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 16, 1993.

Issued in Renton, Washington, on October 28, 1993.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–26969 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–57–AD; Amendment 39–8733; AD 93–22–09]

Airworthiness Directives; Jetstream Aircraft Limited (Formerly British Aerospace) Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to all Jetstream Aircraft Limited Model ATP airplanes, that requires replacement of certain hydraulic selector valves with new, improved selector valves in the emergency extension system for the landing gear. This amendment is prompted by results of functional testing of the hydraulic landing gear change-over valve mechanism which revealed that the hydraulic selector valves may stick and subsequently prevent landing gear extension via the emergency extension system. The actions specified by this AD are intended to prevent failure of the emergency extension system for the landing gear, which could result in a gear-up landing.

DATES: Effective December 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 16, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to all Jetstream Aircraft Limited Model ATP airplanes was published in the **Federal Register** on June 10, 1993 (58 FR 32469). That action proposed to require replacement of certain hydraulic selector valves with new, improved selector valves in the emergency extension system for the landing gear.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule, but requests that the proposed 3,375-landing compliance time for the replacement of certain hydraulic selector valves be shortened to 6 months. The commenter indicates that the term "landing" does not take into account the uncounted number of times the landing gear could be cycled during go-around, balked landing maneuvers, or training flights. The commenter concludes that, since not every gear cycling results in a landing, an inspection threshold based upon calendar time, rather than the number of landings, would be more appropriate. The commenter also suggests that since only nine U.S.-registered airplanes would be affected by the proposal, the replacement could be implemented within a shortened compliance time.

The FAA does not concur with the commenter's request for several reasons. First, compliance times for AD's are normally based on a parameter that is related to the failure of the component addressed. In the case of this AD, failure of the landing gear selector valves is very likely related to the number of gear cycles, since the problem of silt build-up is related to the number of operations to which the valves are subject. Although the number of gear cycles is undoubtedly related to the failure, operators typically do not have records of the number of gear cyclings on an airplane. Operators are required, however, to record in their maintenance logs the number of landings on the airplane. Since each landing process entails at least one gear cycling, a calculation of the total number of landings on any given airplane would likely comprise the majority of the number of total gear cyclings on that airplane. In light of this, and the fact that the number of landings is a parameter that is readily available to operators, the FAA has determined that it is appropriate for the compliance time for this AD action be based on number of landings.

Second, although the silt build-up problem and subsequent failure of the selector valves are undoubtedly related to the number of landings (or gear cycles), there is no apparent direct relationship between such failure and calendar time. Therefore, the FAA does

not concur with the commenter's request to change the compliance time to 6 months.

Third, in developing the compliance time for this AD action, the FAA considered not only the safety implications of the unsafe condition addressed, but (1) the size and average utilization rate of the affected fleet, (2) the practical aspects of an orderly modification of the fleet during regular maintenance periods, (3) the availability of required modification parts, (4) the recommendations of the airframe manufacturer and the United Kingdom Civil Airworthiness Authority, and (5) the time necessary for the rulemaking process. Further, the FAA has determined that the existence of a primary and emergency extension system for the landing gear on these airplanes reduces the probability of an occurrence wherein the flight crew would not be able to lower the landing gear. In consideration of all of these items, the FAA has determined that the compliance time of 3,375 landings is appropriate, and finds no reason that would warrant shortening that compliance time, as the commenter suggested.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 9 airplanes of U.S. registry will be affected by this AD, that it will take approximately 4 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $50 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $2,430, or $270 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-22-09 Jetstream Aircraft Limited (formerly British Aerospace): Amendment 39-8733. Docket 93-NM-57-AD.

Applicability: All Model ATP airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent a gear-up landing, accomplish the following:

(a) Within 3,375 landings after the effective date of this AD, remove the hydraulic selector valves, part numbers AIR44880-5 and AIR44882-6, and install new, improved hydraulic selector valves, part numbers AIR46658-0 or AIR46660-0, as appropriate, in the emergency extension system for the landing gear, in accordance with AP Precision Hydraulics, Ltd., Service Bulletin AIR44880-29-02, Revision 1, dated March 9, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The removal and installation shall be done in accordance with AP Precision Hydraulics, Ltd., Service Bulletin AIR44880-29-02, Revision 1, dated March 9, 1993, which contains the specified effective pages:

Page No.	Revision level shown on page	Date shown on page
1	1	March 9, 1993.
2	Original	January 1993.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 16, 1993.

Issued in Renton, Washington, on November 4, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-27665 Filed 11-15-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-84-AD; Amendment 39-8726; AD 93-22-01]

Airworthiness Directives; Fokker Model F28 Mk 0100 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mk 0100 series airplanes, that requires connection of the liftdumper system wiring shields to ground. This amendment is prompted by reports of liftdumper system wiring shields that were not connected to ground as intended. The actions specified by this AD are intended to prevent inadvertent positive voltages on the affected system wiring, which could result in nuisance liftdumper alerts, the inability to arm the liftdumper system, and reduction in protection of the system against

inadvertent liftdumper extension in the manual mode.

DATES: Effective December 16, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 16, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mk 0100 series airplanes was published in the **Federal Register** on July 27, 1993 (58 FR 40078). That action proposed to require an inspection to determine if the wiring shields of the lift dumper system are connected to ground, and connection of the shields to ground, if necessary.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the two comments received.

Both commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 54 airplanes of U.S. registry will be affected by this AD, that it will take approximately 12 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $35,640, or $660 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–22–01 FOKKER: Amendment 39–8726. Docket 93–NM–84–AD.

Applicability: Model F28 Mk 0100 series airplanes, serial numbers 11244 through 11392 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent inadvertent positive voltage on the wiring of the liftdumper system, accomplish the following:

(a) Within 8 months after the effective date of this AD, inspect the liftdumper system wiring shield ground connections to determine if the shields are connected to ground, in accordance with Fokker Service Bulletin SBF100–27–043, dated October 1, 1992. If any shield is not connected to ground, prior to further flight, connect the shield to ground in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspection and connection shall be done in accordance with Fokker Service Bulletin SBF100–27–043, dated October 1, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 16, 1993.

Issued in Renton, Washington, on October 28, 1993.

John J. Hickey,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–26970 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 92–ASW–33; Amendment 39–8690; AD 93–18–5]

Airworthiness Directives; McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369D, 369E, 369F, 369FF, and 369H Series Helicopters

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc. Model 369 series helicopters, that requires an initial and repetitive inspections of the fuel vent line emergency shutoff valve assembly (assembly). Replacement of that assembly is required upon either

discovering a closed or otherwise obstructed vent tube or before attaining 3,000 hours' time-in-service. This amendment is prompted by several reports of erroneously high fuel quantity indications that led to inflight engine fuel exhaustion. The actions specified by this AD are intended to prevent erroneously high inflight fuel quantity indications that could lead to engine fuel exhaustion and a subsequent power-off landing.

DATES: Effective December 21, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 21, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from McDonnell Douglas Helicopter Company, 5000 East McDowell Road, Mesa, Arizona 85205–9797, Attention: Field Service Department. This information may be examined at the Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg. 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mr. Bruce Conze, Aerospace Engineer, Propulsion Branch, Los Angeles Aircraft Certification Office, ANM–143L, FAA, Northwest Mountain Region, 3229 E. Spring Street, Long Beach, California 90806–2425, telephone (310) 988–5261, fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to McDonnell Douglas Helicopter Company (MDHC) and Hughes Helicopters, Inc. Model 369 series helicopters was published in the **Federal Register** on March 23, 1993 (58 FR 15445). That action proposed to require an initial and repetitive inspections of the fuel vent line emergency shutoff valve assembly (assembly) and replacement of that assembly upon either discovering a closed or otherwise obstructed vent tube, or before attaining 3,000 hours' time-in-service.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comment received.

One commenter states that the AD would be simplified by incorporating by reference the MDHC Service Information Notice (SIN) that adequately covers the required inspection method rather than, as proposed, specifying the inspection method, procedure, and the necessary graphics in the body of the AD. The FAA agrees with the commenter. Referring to part I of the SIN condenses the AD and also facilitates compliance with the AD for those persons who have complied with the SIN. Paragraph (b) of this AD is revised by removing paragraphs (b) (1) through (4) and by adding part 1 of the SIN for a nonsubstantive substitution.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the change described previously. The FAA has determined that this change will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 2,800 helicopters of U.S. registry will be affected by this AD, that it will take approximately 8 work hours per helicopter to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $2,320 per helicopter. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $7,728,000.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

AD 93–18–05 McDonnell Douglas Helicopter Company and Hughes Helicopters, Inc.: Amendment 39–8690. Docket Number 92–ASW–33.

Applicability: Model 369D, 369E (Serial No. 0001E thru 0508E), 369F (Serial No. 0003 thru 0091), 369FF (Serial No. 0003 thru 0091), and 369H series helicopters, equipped with fuel vent line emergency shutoff valve assemblies, part number (P/N) 369H8108, 369H8108–01 or 369H8108–503, certificated in any category.

Compliance: Helicopters with less than 2,400 hours' time-in-service on the effective date of this AD shall be inspected on or before attaining 2,500 hours' time-in-service, and thereafter, at an interval not to exceed 100 hours' time-in-service from the last inspection until an improved fuel vent line emergency shutoff valve assembly (assembly) is installed in accordance with paragraph (d) of this AD. Helicopters with 2,400 hours' or more time-in-service on the effective date of this AD shall be inspected in accordance with this AD within the next 100 hours' time-in-service, and thereafter, at an interval not to exceed 100 hours' time-in-service from the last inspection until an improved assembly is installed in accordance with paragraph (d) of this AD.

To prevent erroneously high inflight fuel quantity indications due to a blocked fuel vent line in the assembly, accomplish the following:

(a) Remove the assembly from the helicopter as required by the appropriate Model 369 maintenance manual.

(b) Inspect the fuel vent line emergency shutoff valve (valve) in accordance with Part I, Fuel Vent Line Emergency Shutoff Valve Inspection, of McDonnell Douglas Helicopter Company Service Information Notice HN–234, DN–181, EN–73, FN–60, dated January 17, 1992.

(c) If the inspections conducted in accordance with the requirements of paragraph (b) uncover an incorrectly closed or obstructed valve, before further flight install an airworthy assembly in accordance with the appropriate Model 369 maintenance manual.

(d) Install assembly, P/N 369H8108–505 or higher dash number, as follows, unless already accomplished:

(1) For helicopters with 2,400 hours' or more time-in-service on the effective date of this AD, install the assembly on or before attaining the next 600 hours' time-in-service.

(2) For helicopters with less than 2,400 hours' time-in-service on the effective date of this AD, install the assembly before attaining 3,000 hours' time-in-service.

(e) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Propulsion Branch, Los Angeles Aircraft Certification Office, 3229 E. Spring Street, Long Beach, California 90806–2425. Operators shall submit their requests through an FAA Principal Maintenance Inspector, who may concur or comment and then send it to the Manager, Propulsion Branch, Los Angeles Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Propulsion Branch, Los Angeles Aircraft Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the helicopter to a location where the requirements of this AD can be accomplished.

(g) The inspection shall be done in accordance with MDHC Service Information Notice HN–234, DN–181, EN–73, FN–60, dated January 17, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from McDonnell Douglas Helicopter Company, 5000 East McDowell Road, Mesa, Arizona 85205–9797, Attention: Field Service Department. Copies may be inspected at the FAA, Office of the Assistant Chief Counsel, 4400 Blue Mound Road, bldg 3B, room 158, Fort Worth, Texas; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(h) This amendment becomes effective December 21, 1993.

Issued in Fort Worth, Texas, on September 10, 1993.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 93–27795 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 97

[Docket No. 27503; Amdt. No. 1571]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: Effective: An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which the affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification, and the amendment number.

The Rule

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally

current. It, therefore—(1) is not a significant regulatory action under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on November 5, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. app. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, & 97.35 [Amended]

By amending: § 97.33 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25, LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identifed as follows:

. . . *Effective January 6, 1994*

Scottsdale, AZ, Scottsdale, VOR–A, Amdt 2
Bellaire, MI, Antrim County, MLS RWY 2, Orig., CANCELLED
Cadillac, MI, Wexford County, MLS RWY 25, Amdt 5, CANCELLED
Goldsby, OK, David Jay Perry, VOR/DME RWY 31, Orig.
Norman, OK, David Jay Perry, VOR/DME–A, Orig., CANCELLED
Sand Springs, OK, William R Pogue Muni, NDB RWY 35, Amdt 2
La Grande, OR, La Grande/Union County, NDB–A, Amdt 3
Burnet, TX, Burnet Muni Kate Craddock Field, NDB RWY 1, Amdt 3
Burnet, TX, Burnet Muni Kate Craddock Field, VOR/DME RNAV RWY 19, Amdt 2
Ogden, UT, Ogden-Hinckley, ILS RWY 3, Amdt 3
Seattle, WA, Seattle-Tacoma Intl, VOR RWY 34L/R, Amdt 8
Seattle, WA, Seattle-Tacoma Intl, NDB RWY 34R Amdt 7
Seattle, WA, Seattle-Tacoma Intl, ILS RWY 34L, Amdt 1A, CANCELLED
Seattle, WA, Seattle-Tacoma Intl, ILS RWY 34R, Amdt 9, CANCELLED
Seattle, WA, Seattle-Tacoma Intl, ILS/DME RWY 34L, Orig.
Seattle, WA, Seattle-Tacoma Intl, ILS/DME RWY 34R, Orig.
Tacoma, WA, Tacoma Narrows, NDB RWY 35, Amdt 6
Tacoma, WA, Tacoma Narrows, ILS RWY 17, Amdt 8

. . . *Effective December 9, 1993*

Boca Raton, FL, Boca Raton, VOR/DME–A, Orig.
Burlington, KS, Coffey County, NDB RWY 36, Orig.
Baltimore, MD, Baltimore-Washington Intl, VOR RWY 33L, Amdt 4, CANCELLED
Baltimore, MD, Baltimore-Washington Intl, VOR/DME RWY 33L, Orig.
Cozad, NE, Cozad Muni, VOR RWY 13, Amdt 1
Minder, NE, Pioneer Village Field, VOR RWY 34, Amdt 1
Lancaster, OH, Fairfield County, VOR–A, Amdt 9
Lancaster, OH, Fairfield County, LOC RWY 28, Orig.
Lancaster, OH, Fairfield County, SDF RWY 28, Amdt 4, CANCELLED
Lancaster, OH, Fairfield County, NDB RWY 28, Amdt 7
Lancaster, OH, Fairfield County, VOR/DME RNAV RWY 10, Amdt 9
Wooster, OH, Wayne County, VOR RWY 9, Orig.
Wooster, OH, Wayne County, VOR RWY 27, Orig.
Wooster, OH, Wayne County, NDB RWY 27, Amdt 7
Medford, OR, Medford-Jackson County, VOR/DME RWY 14, Amdt 3
Corpus Christi, TX, Corpus Christi Intl, LOC RWY 31, Amdt 5
Houston, TX, Ellington Field, ILS RWY 22, Orig.

. . . *Effective October 27, 1993*

Macon, GA, Herbert Smart Downtown, VOR–A, Amdt 5

. . . *Effective October 22, 1993*

Billings, MT, Billings Logan Intl, VOR/DME RNAV RWY 28R, Amdt 2

[FR Doc. 93–28126 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27504; Amdt. No. 1572]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;

2. The FAA Regional Office of the region in which affected airport is located; or

3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or

2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal

Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPS and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air Traffic Control Approaches, Standard Instrument, Incorporation by reference (1) navigation.

Issued in Washington, DC on November 5, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 u.t.c. on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC Number	SIAP
09/03/93	OK	Cushing	Cushing Muni	FDC 3/5108	NDB Rwy 35 Amdt 3A.
09/08/93	OK	Perry	Perry Muni	FDC 3/5030	Vor/Dme Rwy 17 Amdt 1.
10/14/93	NJ	Newark	Newark Intl	FDC 3/5781	Procedures. This corrects NOTAM IN TL 93–23.
10/22/93	IN	South Bend	South Bend/ Michiana regional	FDC 3/5771	RADAR–1 Amdt 9.
10/22/93	IN	South Bend	South Bend/ Michiana regional	FDC 3/5772	ILS Rwy 9 Amdt 8.
10/22/93	IN	South Bend	South Bend/ Michiana regional	FDC 3/5773	NDB Rwy 27 Amdt 28.
10/22/93	IN	South Bend	South Bend/ Michiana regional	FDC 3/5774	ILS Rwy 27 Amdt 34.

Effective	State	City	Airport	FDC Number	SIAP
10/26/93	IL	Chicago	Chicago Midway	FDC 3/5866	ILS Rwy 31C, Amdt 5.
10/28/93	AR	Corning	Corning Muni	FDC 3/5908	Vor/Dme–A Amdt 1.
10/28/93	NE	Valentine	Miller Field	FDC 3/5907	NDB Rwy 31 Amdt 6.
10/28/93	TX	San Antonio	San Antonio Intl	FDC 3/5900	NDB Rwy 12R Amdt 20.
10/28/93	TX	San Antonio	San Antonio Intl	FDC 3/5901	NDB Rwy 30L Amdt 11.
10/28/93	TX	San Antonio	San Antonio Intl	FDC 3/5903	ILS Rwy 30L Amdt 8.
10/29/93	MO	Kansas City	Kansas City downtown	FDC 3/5947	ILS Rwy 3 Amdt 1B.
11/01/93	KS	Garden City	Garden City regional	FDC 3/5990	ILS Rwy 34 Orig.
11/02/93	CO	Denver	Front range	FDC 3/6005	NDB Rwy 26 Amdt 2.
11/02/93	CO	Denver	Front range	FDC 3/6006	ILS Rwy 26 Amdt 2.
11/02/93	GA	Moultrie	Moultrie Muni	FDC 3/6004	Vor Rwy 22 Amdt 11.
11/02/93	MS	Jackson	Jackson Intl	FDC 3/5670	ILS Rwy 15L Amdt 7.
11/02/93	MS	Jackson	Jackson Intl	FDC 3/5671	NDB Rwy 15L Amdt 4.
11/02/93	TX	San Antonio	San Antonio Intl	FDC 3/5997	NDB Rwy 3 Amdt 37.

Corning

Corning Muni

Arkansas
VOR/DME–A Amdt 1
Effective: 10/28/93

FDC 3/5908/4M9/FI/P Corning Muni, Corning, AR. VOR/DME–A Amdt 1—CHG note to read—Use Walnut Ridge Alstg. This becomes VOR/DME–A Amdt 1A.

Denver

Front Range

Colorado
NDB RWY 26 Amdt 2
Effective: 11/02/93

FDC 3/6005/FTG/FI/P Front Range, Denver, CO. NDB Rwy 26 Amdt 2—Alternate minimums NA. This becomes NDB Rwy 26 Amdt 2A.

Denver

Front Range

Colorado
ILS RWY 26 Amdt 2
Effective: 11/02/93

FDC 3/6006/FTG/ FI/P Front Range, Denver, CO. ILS Rwy 26 Amdt 2—Alternate Minimums NA. This becomes ILS Rwy 26 Amdt 2A.

Moultrie

Moultrie Muni

Georgia
VOR Rwy 22 Amdt 11
Effective: 11/02/93

FDC 3/6004/MGR/ FI/P Moultrie Muni, Moultrie, GA. VOR Rwy 22 Amdt 11—Delete—Min Alt Mgr 4 DME 1100 and DME minimums. This becomes VOR Rwy 22 Amdt 11A.

Chicago

Chicago Midway

Illinois
ILS Rwy 31C, Amdt 5
Effective: 10/26/93

FDC 3/5866/MDW/ FI/P Chicago Midway, Chicago, IL. ILS Rwy 31C, Amdt 5—Delete note—INOP table does not apply. Add note—for INOP LDIN LGTS increase S–31C VIS ¼ mile. This is ILS Rwy 31C, Amdt 5A.

South Bend

South Bend/Michiana Regional

Indiana
Radar–1 Amdt 9
Effective: 10/22/93

FDC 3/5771/SBN/ FI/P South Bend/Michiana Regional, South Bend, IN. Radar–1 Amdt 9—Circling MDA 1280/HAA 481 CATS B/C. Change all reference to Rwy 9–27 to 9R–27L. This is radar–1 Amdt 9A.

South Bend

South Bend/Michiana Regional

Indiana
ILS Rwy 9 Amdt 8
Effective: 10/22/93

FDC 3/5772/SBN/ FI/P South Bend/Michiana Regional, South Bend, IN. ILS Rwy 9 Amdt 8—Change all reference to Rwy 9–27 to Rwy 9R–27L. Circling MDA 1280/HAA 481 CATS B/C. Change note to read—Inoperative table does not apply to S–LOC 9 CAT C. This is ILS Rwy 9R Amdt 8A.

South Bend

South Bend/Michiana Regional

Indiana
NDB Rwy 27 Amdt 28
Effective: 10/22/93

FDC 3/5773/SBN/ FI/P South Bend/Michiana Regional, South Bend, IN. NDB Rwy 27 Amdt 28—Change all reference to Rwy 9–27 to Rwy 9R–27L. This is NDB Rwy 27L Amdt 28A.

South Bend

South Bend/Michiana Regional

Indiana
ILS Rwy 27 Amdt 34
Effective: 10/22/93

FDC 3/5774/SBN/ FI/P South Bend/Michiana Regional, South Bend, IN. ILS Rwy 27 Amdt 34—Change all reference to Rwy 9–27 to Rwy 9R–27L. Circling MDA 1280/HAA 481 CATS B/C. This is ILS Rwy 27L Amdt 34A.

Garden City

Garden City Regional

Kansas
ILS Rwy 34 Orig
Effective: 11/01/93

FDC 3/5990/GCK/ FI/P Garden City Regional, Garden City, KS. ILS Rwy 34 Orig—Chg TCH to 60.2 Ft. CHG MSA Navaid to read Pieve LOM. This is ILS Rwy 34 Orig–A.

Kansas City

Kansas City Downtown

Missouri
ILS Rwy 3 Amdt 1B
Effective: 10/29/93

FDC 3/5947/MKC/ FI/P Kansas City Downtown, Kansas City, MO. ILS Rwy 3 Amdt 1B—Change the following—Missed Approach—4.33 miles after Norge LOM, Dist to THR from OM 4.33, GS ANT 999, GS ALT AT OM 2185, TCH 44.8. This becomes ILS Rwy 3 Amdt 1C.

Jackson

Jackson Intl

Mississippi
ILS Rwy 15L Amdt 7
Effective: 11/02/93

FDC 3/5670/JAN/ FI/P Jackson Intl, Jackson, MS. ILS Rwy 15L Amdt 7—NOTAM cancelled by 3/5867.

Jackson

Jackson Intl

Mississippi
NDB Rwy 15L AMDT 4
Effective: 11/02/93

FDC 3/5671/JAN/ FI/P Jackson Intl, Jackson, MS. NDB Rwy 15L Amdt 4 . . . NOTAM cancelled by 3/5867.

Valentine

Miller Field

Nebraska
NDB Rwy 31 Amdt 6

Effective: 10/28/93

FDC 3/5907/VTN/ FI/P Miller Field, Valentine, NE. NDB Rwy 31 Amdt 6 . . . MSA from VTN NDB within 25 NM 350–170 4000, 170–350 4600. This is NDB Rwy 31 Amdt 6A.

Newark

Newark Intl

New Jersey
Procedures
Effective: 10/14/93
This corrects NOTAM in TL 93–23

FDC 3/5781/EWR/ FI/P Newark Intl, Newark, NJ. Procedures . . . ref the following procs chg MSA 090–270 to 2000. NDB Rwy 4L Amdt '9A' becomes Amdt '9B'; NDB Rwy 4R Amdt 5 becomes Amdt 5A; ILS Rwy 4L Amdt 11A becomes Amdt 11B; ILS Rwy 4R Amdt 8A becomes Amdt 8B; ILS Rwy 4R (CAT II) Amdt 8 becomes Amdt 8A.

Perry

Perry Muni

Oklahoma
VOR/DME Rwy 17 Amdt 1
Effective: 09/08/93

FDC 3/5030/F22/ FI/P Perry Muni, Perry, OK. Vor/Dme Rwy 17 Amdt 1 . . . add note . . . use Ponca City Alstg, when not received proc NA. This is Vor/Dme Rwy 17 Amdt 1A.

Cushing

Cushing Muni

Oklahoma
NDB Rwy 35 Amdt 3A
Effective: 09/03/93

FDC 3/5108/CUH/ FI/P Cushing Muni, Cushing, OK. NDB Rwy 35 Amdt 3A . . . MSA from Cushing /CUH/NDB 3100. Chg note to read . . . Use Oklahoma City/Will Rogers World Alstg. S–35 HAT 770 all Cats. TDZE 890. Trml Rtes . . . Drops Int to Cushing /CUH/ NDB CRS 257, Dist 9.8 NM. Last Int to Cushing /CUH/ NDB CRS 099, dist 25.1 NM. Totes Int to Cushing /CUH/ NDB dist 12.7 NM. This is NDB Rwy 35 Amdt 3B.

San Antonio

San Antonio Intl

Texas
NDB Rwy 12R Amdt 20
Effective: 10/28/93

FDC 3/5900/SAT/ FI/P San Antonio Intl, San Antonio, TX. NDB Rwy 12R Amdt 20 . . . MSA an LOM within 25 NM . . . 225–325 4100, 325–226 3200. This is NDB Rwy 12R Amdt 20A.

San Antonio

San Antonio Intl

Texas
NDB Rwy 30L Amdt 11
Effective: 10/28/93

FDC 3/5901/SAT/ FI/P San Antonio Intl, San Antonio, TX. NDB Rwy 30L Amdt 11 . . . MSA and LOM within 25 NM . . . 225–325 4100, 325–226 3200. This is NDB Rwy 30L Amdt 11A.

San Antonio

San Antonio Intl

Texas
ILS Rwy 30L Amdt 8
Effective: 10/28/93

FDC 3/5903/SAT/ FI/P San Antonio Intl, San Antonio, TX. ILS Rwy 30L Amdt 8 . . . Rwy 30R TDZE 788. Sidestep Rwy 30R HAT 572. This is ILS Rwy 30L Amdt 8A.

San Antonio

San Antonio Intl

Texas
NDB Rwy 3 Amdt 37
Effective: 11/02/93

FDC 3/5997/SAT/ FI/P San Antonio Intl, San Antonio, TX. NDB Rwy 3 Amdt 37 . . . MSA SA LOM within 25 NM . . . 225–325 4100, 325–226 3200. Rwy 3 TDZE 786 HAT 594 all Cats. Remove note . . . VOR required. This is NDB Rwy 3 Amdt 37A.

[FR Doc. 93–28128 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–M

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 200

Delegation of authority to Regional Administrators

CFR Correction

In Title 17 of the Code of Federal Regulations, parts 200 to 239, revised as of June 1, 1993, make the following correction. On page 36, in § 200.30–6, paragraph (d)(1)(i) was inadvertently printed incorrectly and paragraphs (d)(1)(ii), (d)(2), (d)(3), and (e) were inadvertently dropped from the volume. The reinstated text of § 200.30–6, paragraphs (d) and (e) reads as follows:

§ 200.30–6 Delegation of authority to Regional Administrators.

* * * * *

(d) With respect to the Securities Exchange Act of 1934, 15 U.S.C. 78 *et seq.:*

(1) Pursuant to Rule 17a–5(a) (§ 240.17a–5(a) of this chapter) and Rule 17a–5(d) (§ 240.17a–5(d) of this chapter):

(i) To consider applications by brokers and dealers for extensions of time within which to file reports required by Rule 17a–5 (§ 240.17a–5 of this chapter) and to grant or to deny such applications: *Provided,* Such applicant is advised of his right to have such denial reviewed by the Commission; and

(ii) To grant or deny requests by brokers and dealers for the approval of a change of date for the annual audited reports required by Rule 17a–5 (§ 240.17a–5 of this chapter) where the report will not be as of a date more than 15 months from the date as of which the last preceding annual audited report was prepared: *Provided,* Such applicant is advised of his right to have such denial reviewed by the Commission.

(2) Pursuant to section 15(b)(2)(C) of the Act (15 U.S.C. 78o(b)(2)(C)):

(i) To delay until the second six month period from registration with the Commission, the inspection of newly registered broker-dealers that have not commenced actual operations within six months of their registration with the Commission; and

(ii) To delay until the second six month period from registration with the Commission, the inspection of newly registered broker-dealers to determine whether they are in compliance with applicable provisions of the Act and rules thereunder, other than financial responsibility rules.

(3) Pursuant to Rule 0–4 (§ 240.0–4 of this chapter), to disclose to the Comptroller of the Currency, the Board of Governors of the Federal Reserve System and the Federal Deposit Insurance Corporation and to the state banking authorities, information and documents deemed confidential regarding registered clearing agencies and registered transfer agents; *Provided* That, in matters in which the Commission has entered a formal order of investigation, such disclosure shall be made only with the concurrence of the Director of the Division of Enforcement or his or her delegate, and the General Counsel or his or her delegate.

(e) With respect to the Investment Advisers Act of 1940, 15 U.S.C. 80b–1, *et seq.:* Pursuant to Rule 204–2(j)(3)(ii) (§ 275.204–2(j)(3)(ii) of this chapter), to make written demands upon non-resident investment advisers subject to the provisions of such rule to furnish to the Commission true, correct, complete and current copies of any or all books and records which such non-resident investment advisers are required to make, keep current or preserve pursuant to any provision of any rule or regulation of the Commission adopted under the Investment Advisers Act of 1940, or any part of such books and records which may be specified in any such demand.

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Social Security Administration

20 CFR Part 404

RIN 0960-AD59

Considering an Application Filed Under the Railroad Retirement Act as an Application for Social Security Benefits

AGENCY: Social Security Administration, HHS.

ACTION: Final rule.

SUMMARY: We are amending our regulation to clarify that an application filed with the Railroad Retirement Board (RRB) for an annuity under the Railroad Retirement Act of 1974 (RRA), as amended, is also an application for social security benefits under title II of the Social Security Act (the Act), unless the applicant specifies otherwise. This regulation is based on section 5(b) of the RRA.

EFFECTIVE DATE: This regulation is effective November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Jack Schanberger, Legal Assistant, 3-B-1 Operations Building, 6401 Security Boulevard, Baltimore, MD 21235, (410) 965-8471.

SUPPLEMENTARY INFORMATION: The RRA provides benefits for railroad employees and their spouses and survivors. This program is coordinated with the social security programs provided under title II of the Act to provide retirement, auxiliary, survivor, and disability benefits payable on the basis of an individual's work in the railroad industry and in work covered by social security.

Section 5(b) of the RRA (45 U.S.C. 231d(b)) provides that an application filed with the RRB for an annuity under section 2 of the RRA (45 U.S.C. 231a) shall, unless the applicant specifies otherwise, be deemed to be an application for any benefit to which such applicant may be entitled under either the RRA or title II of the Act.

The Railroad Unemployment Insurance Act (RUIA), (45 U.S.C. 351ff) provides unemployment and sickness benefits to qualified employees in the railroad industry. However, unlike the RRA, there is no provision in the RUIA for considering an application filed with the RRB for unemployment or sickness benefits under the RUIA as an application for social security benefits.

Our current regulation § 404.611 provides in paragraph (b) that an application filed with the RRB on one of its forms is also considered an application for social security benefits if the applicant is in one of three specified categories of qualified claimants. In applying this regulation, we consider an application filed with the RRB also to be an application for social security benefits only if the application is for an annuity under section 2 of the RRA. This treatment is based on the provision of section 5(b) of the RRA discussed above and the absence of a parallel provision in the RUIA, or in any other statute, stating that an application filed with the RRB for benefits under the RUIA is also an application for social security benefits.

We are amending § 404.611(b) to clarify that only an application filed with the RRB on one of its forms for an annuity under section 2 of the RRA is, unless the applicant specifies otherwise, also an application for social security benefits. This change clarifies our existing regulation to reflect more accurately the procedure we have been following pursuant to section 5(b) of the RRA. Further, since section 5(b) of the RRA applies to all applicants for an annuity under section 2 of the RRA, separate references to the three categories of claimants now listed in § 404.611(b) (1), (2), and (3) are unnecessary, and we are deleting them from the regulation.

On October 19, 1992, we published a proposed rule in the **Federal Register** at 57 FR 47584 with a 60-day comment period. We received no comments. We are, therefore, publishing this final rule unchanged from the proposed rule.

Regulatory Procedures

Executive Order No. 12291

The Secretary has determined that this is not a major rule under Executive Order 12291 because it will result in no program or administrative costs or savings. It simply clarifies existing policy and has no effect on the amount of benefit payments or existing operating procedures. Therefore, a regulatory impact analysis is not required.

Regulatory Flexibility Act

We certify that this final rule will not have a significant economic impact on a substantial number of small entities since this rule affects only individuals. Therefore, a regulatory flexibility analysis as provided in Public Law 96-354, the Regulatory Flexibility Act, is not required.

Paperwork Reduction Act

This final rule imposes no additional reporting and recordkeeping requirements subject to Office of Management and Budget clearance.

(Catalog of Federal Domestic Assistance Program Nos. 93.802 Social Security-Disability Insurance; 93.803 Social Security-Retirement Insurance; 93.805 Social Security-Survivors Insurance)

List of Subjects in 20 CFR Part 404

Administrative practice and procedure, Blind, Disability benefits, Old-Age, Survivors, and Disability Insurance, Reporting and recordkeeping requirements, Social Security.

Dated: August 6, 1993.

Lawrence H. Thompson,

Principal Deputy Commissioner of Social Security.

Approved: September 30, 1993.

Donna E. Shalala,

Secretary of Health and Human Services.

For the reasons set out in the preamble, we are amending subpart G of part 404 of 20 CFR chapter III as follows:

PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950-)

1. The authority citation for subpart G of part 404 continues to read as follows:

Authority: Secs. 202 (i), (j), (o), (p), and (r), 205(a), 216(i)(2), 223(b), 228(a), and 1102 of the Social Security Act; 42 U.S.C. 402 (i), (j), (o), (p), and (r), 405(a), 416(i)(2), 423(b), 428(a), and 1302.

2. Section 404.611 is amended by revising paragraph (b) to read as follows:

§ 404.611 Filing of application with Social Security Administration.

* * * * *

(b) *Effect of claims filed with the Railroad Retirement Board.* Pursuant to section 5(b) of the Railroad Retirement Act of 1974, as amended, 45 U.S.C. 231d(b), if you file an application with the Railroad Retirement Board on one of its forms for an annuity under section 2 of the Railroad Retirement Act of 1974, as amended, 45 U.S.C. 231a, unless you specify otherwise, this application also will be an application for any benefit to which you may be entitled under title II of the Social Security Act.

* * * * *

[FR Doc. 93-27916 Filed 11-15-93; 8:45 am]

BILLING CODE 4190-29-P

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 296

National Reconnaissance Office Freedom of Information Act Program Regulation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This final rule establishes the National Reconnaissance Office (NRO) regulation governing the disclosure of information under the Freedom of Information Act (FOIA) and conforms the NRO's rules to the Department's FOIA rule and schedule.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Michael P. Healy, (703) 892–0147.

SUPPLEMENTARY INFORMATION: The NRO published a proposed rule of this part on August 5, 1993 (58 FR 41679). No comments were received. The NRO is adopting the proposed rule with minimal changes. This rule does not constitute a significant regulatory action within the meaning of Executive Order 12866. Neither the requirements of the Regulatory Flexibility Act (5 U.S.C. 601–612), nor the reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (Pub. L. 96–511, as amended) apply. It is hereby certified that this final rule does not exert a significant economic impact on a significant number of small entities. This determination is made based upon the fact that the rule merely codifies the procedural aspects of the NRO Freedom of Information Act Program, which includes guidance on how and from whom to request information pertaining to the NRO; imposes no new requirements, rights, or benefits on small entities; will have neither a beneficial nor an adverse affect on small entities, and is not a major rule under the Regulatory Flexibility Act.

List of Subjects 32 CFR Part 296

Freedom of Information.

Accordingly, title 32, chapter I, subchapter N is amended to add part 296 to read as follow:

PART 296—NATIONAL RECONNAISSANCE OFFICE FREEDOM OF INFORMATION ACT PROGRAM REGULATION

Sec.

296.1 Purpose.
296.2 Definitions.
296.3 Indexes.
296.4 Procedures for request of records.
296.5 Appeals.

Authority: 5 U.S.C. 552.

§ 296.1 Purpose.

The purpose of this part is to provide policies and procedures for the National Reconnaissance Office (NRO) implementation of the Freedom of Information Act (FOIA), and to promote uniformity in the NRO FOIA program.

§ 296.2 Definitions.

The terms used in this rule, with the exception of the following, are defined in 32 CFR part 286.

(a) *Freedom of Information Act Appellate Authority.* The Deputy Director, NRO.

(b) *Initial Denial Authority.* The Director, External Relations, NRO, or the Acting Director.

§ 296.3 Indexes.

The NRO does not originate final orders, opinions, statements of policy, interpretations, staff manuals or instructions that affect a member of the public of the type covered by the indexing requirement of 5 U.S.C. 552(a)(2). The Director, NRO, has therefore determined, pursuant to pertinent statutory and executive order requirements, that it is unnecessary and impracticable to publish an index of the type required by 5 U.S.C. 552.

§ 296.4 Procedures for request of records.

(a) *Requests.* Request for access to records of the National Reconnaissance Office may be filed by mail addressed to the Director, External Relations, National Reconnaissance Office, 1040 Defense Pentagon, Washington, D.C. 20301–1040. Requests need not be made on any special form but must be by letter or other written statement identifying the request as a Freedom of Information Act request and setting forth sufficient information reasonably describing the requested record. All request should contain a willingness to pay assessable FOIA fees.

(b) *Determination and notification.* When the requested record has been located and identified, the Initial Denial Authority shall determine whether the record is one which, consistent with statutory requirements, executive orders and appropriate directives, may be released or should be exempted under the provisions of 5 U.S.C. 552. Normally, the Initial Denial Authority, shall notify the requester of the determination within 10 working days of the receipt of the request.

(c) *Extension of response time.* In unusual circumstances, when additional time is needed to respond, normally the Initial Denial Authority shall notify the requester in writing within the initial response period of the delay, the reasons therefore, and if specified, a date, not to exceed 10 working days, on which a determination is expected to be dispatched. When a significant number of requests have been received, e.g., 10 or more, the requests shall be initially processed in order of receipt. However, this does not preclude the Initial Denial Authority from completing action on a request which can be easily answered, regardless of its ranking within the order of receipt.

(d) *Fees.* (1) *General.* As a component of the Department of Defense, the applicable published Department rules and schedules with respect to the schedule of fees chargeable and waiver of fees will also be the policy of NRO. See 32 CFR 286.33.

(2) *Advance payments.* (i) Where a total fee to be assessed is estimated to exceed $250, advance payment of the estimated fee will be required before processing of the request, except where assurances of full payment are received from a requester with a history of prompt payment. Where a requester has previously failed to pay a fee within 30 calendar days of the date of the billing, the requester will be required to pay the full amount owed, plus any applicable interest, or demonstrate that he or she has paid the fee, as well as make an advance payment of the full amount of any estimated fee before processing of a new or pending request continues.

(ii) For all other requests, advance payment, i.e., a payment made before work is commenced, will not be required. Payment owed for work already completed is not an advance payment; however, responses will not be held pending receipt of fees from requesters with a history of prompt payment. Fees should be paid by certified check or postal money order forwarded to the Director, External Relations, and made payable to the Treasurer of the United States.

§ 296.5 Appeals.

Any person denied access to records, denied a fee waiver, or who considers a no record determination to be adverse in nature, may, within 60 days after notification of such denial, file an appeal to the Freedom on Information Act Appellate Authority, National Reconnaissance Office. Such an appeal shall be in writing addressed to the Freedom of Information Act Appellate Authority, National Reconnaissance Office, 1040 Defense Pentagon, Washington, DC 20301–1040, shall reference the initial denial, and shall contain in sufficient detail and particularity, the grounds upon which the requester believes the release of the information, or granting of the fee

waiver, is required. The Freedom of Information Act Appellate Authority shall normally make a final determination on an appeal within 20 working days after receipt of the appeal.

Dated: November 9, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–28028 Filed 11–15–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS TYPHOON (PC 5) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval patrol craft. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS TYPHOON (PC 5) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Rule 23(a)(ii), pertaining to display of a masthead light and a second (after) masthead light on vessels exceeding 50 meters in length; Annex I, paragraph 2(k), pertaining to the vertical distance between the forward and after anchor lights and the height of the forward anchor light above the hull; Rule 21(c), pertaining to location of the sternlight, without interfering with its special functions as a naval patrol craft. The Judge Advocate General of the Navy has also certified that the number of masthead lights displayed and the location of the other mentioned lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the number and placement of lights on USS TYPHOON (PC 5) in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Three of § 706.2 is amended by revising the column headings and adding the following ship:

§ 706.2 Certifications of the Secretary of Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; Rule 21(a)	Side lights arc of visibility; Rule 21(b)	Stern light arc of visibility; Rule 21(c)	Side lights distance inboard of ship's sides in meters §3(b) Annex 1	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters §2(K) Annex 1	Anchor lights relationship of aft light to forward light in meters §2(K) Annex 1
U.S.S. *Typhoon*	PC 5	.....	.....	.....	.....	[1] 25.5	3.0	1.1 below.

[1] Only when towing.

Dated: October 18, 1993.

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 93–28070 Filed 11–15–93; 8:45 am]

BILLING CODE 3810–01–P

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32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that U.S.S. *Monsoon* (PC 4) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval patrol craft. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R. R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge

Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that U.S.S. *Monsoon* (PC 4) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Rule 23(a)(ii), pertaining to display of a masthead light and a second (after) masthead light on vessels exceeding 50 meters in length; Annex I, paragraph 2(k), pertaining to the vertical distance between the forward and after anchor lights and the height of the forward anchor light above the hull; Rule 21(c), pertaining to location of the sternlight, without interfering with its special functions as a naval patrol craft. The Judge Advocate General of the Navy has also certified that the number of masthead lights displayed and the location of the other mentioned lights are in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the number and placement of lights on U.S.S. *Monsoon* (PC 4) in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

2. Table Three of § 706.2 is amended by revising the column headings and adding the following ship:

§ 706.2 Certifications of the Secretary of the Navy under Executive Order 11964 and 33 U.S.C. 1605.

* * * * *

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; Rule 21(a)	Side lights arc of visibility; Rule 21(b)	Stern light arc of visibility; Rule 21(c)	Side lights distance inboard of ship's sides in meters; § 3(b) Annex 1	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; § 2(K) Annex 1	Anchor lights relationship of aft light to forward light in meters; § 2(K) Annex 1
•	•	•	•	•	•	•	•	•
U.S.S. *Monsoon*	PC 4					[1] 25.5	3.0	1.1 below.
•	•	•	•	•	•	•	•	•

[1] Only when towing.

Dated: October 18, 1993.

H.E. Grant,

Rear Admiral, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 93–28073 Filed 11–15–93; 8:45 am]

BILLING CODE 3810–01–P

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Parts 36 and 44

RIN 2900–AG13

Loan Guaranty: Limited Denial of Participation in the Loan Guaranty Program

AGENCY: Department of Veterans Affairs.

ACTION: Final regulatory amendments.

SUMMARY: The Department of Veterans Affairs (VA) is amending its loan guaranty regulations to relocate and update certain provisions governing the suspension and debarment of participants from the VA guaranteed home loan program. These amendments clarify the procedures to be followed by VA field facilities when excluding loan guaranty program participants within their jurisdictional areas from participation, generally for periods of up to one year.

EFFECTIVE DATE: December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Judith A. Caden, Assistant Director for Loan Policy (264), Loan Guaranty Service, Veterans Benefits Administration, Department of Veterans Affairs, Washington, DC 20420, (202) 233–3042.

SUPPLEMENTARY INFORMATION: On May 3, 1993, VA published in the **Federal Register** (58 FR 26282) proposed regulatory amendments to 38 CFR Parts 36 and 44. Public comments were requested on a proposal to revise and relocate to part 44 certain provisions of part 36 governing the suspension of program participants from VA's Loan Guaranty Program. These revised provisions were to be placed into a new subpart G of part 44 entitled "Limited Denial of Participation in the Loan Guaranty Program." Please refer to the May 3, 1993, **Federal Register** for a complete discussion of the proposed amendments. No comments were received on the proposed amendments. Accordingly, VA is adopting the regulatory amendments as originally proposed.

The Secretary hereby certifies that these final regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, title 5, United States Code, section 601–612. These regulations essentially transpose VA regulations regarding exclusion from the loan guaranty program from part 36 to part 44, where they will be located with VA's Government-wide debarment regulations. The final regulations also update the archaic language in the current part 36 suspension regulations. Pursuant to 5 U.S.C. 605(b), these regulations are exempt from the initial and final regulatory analysis requirements of sections 603 and 604.

The Secretary certifies that this final rule will not impose any reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980, 44 U.S.C. Chapter 35.

Catalog of Federal Domestic Assistance Program Numbers are 64.114 and 64.119.

List of Subjects in 38 CFR Parts 36 and 44

Administrative practice and procedure, Condominium, Grants, Grant programs, Housing, Loan programs—housing and community development, Manufactured homes, Reporting and recordkeeping requirements, Veterans.

These amendments are made under the authority granted the Secretary by sections 501(a) and 3703(c) of title 38, United States Code.

Approved: October 7, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR parts 36 and 44, are amended as set forth below.

PART 36—LOAN GUARANTY

1. The authority citation for §§ 36.4201 through 36.4287 continues to read as follows:

Authority: Sections 36.4201 through 36.4287 issued under 38 U.S.C. 501(a), 3712.

2. Sections 36.4233 and 36.4235 are removed.

3. The authority citation for §§ 36.4300 through 36.4375 continues to read as follows:

Authority: Sections 36.4300 through 36.4375 issued under 38 U.S.C. 501(a).

4. Sections 36.4331, 36.4341, and 36.4361 are removed.

PART 44—GOVERNMENTWIDE DEBARMENT AND SUSPENSION (NONPROCUREMENT) AND GOVERNMENTWIDE REQUIREMENTS FOR DRUG-FREE WORKPLACE (GRANTS)

5. The authority citation for part 44 is revised to read as follows:

Authority: 38 U.S.C. 501(a) and 3703(c); E.O. 12549; E.O. 12689.

6. Sections 44.700 through 44.713 are added to read as follows:

Subpart G—Limited Denial of Participation

Sec.

44.700 General.
44.705 Causes for a limited denial of participation.
44.710 Scope and period of a limited denial of participation.
44.711 Notice.
44.712 Conference.
44.713 Appeal.

§ 44.700 General.

Field Facility Directors are authorized to order a limited denial of participation affecting any participant or contractor and its affiliates except lenders and manufactured home manufacturers. In each case, even if the offense or violation is of a criminal, fraudulent or other serious nature, the decision to order a limited denial of participation shall be discretionary and in the best interests of the Government.

§ 44.705 Causes for a limited denial of participation.

(a) *Causes.* A limited denial of participation shall be based upon adequate evidence of any of the following causes:

(1) Irregularities in a participant's or contractor's performance in the VA loan guaranty program;

(2) Denial of participation in programs administered by the Department of Housing and Urban Development or the Department of Agriculture, Farmers Home Administration;

(3) Failure to satisfy contractual obligations or to proceed in accordance with contract specifications;

(4) Failure to proceed in accordance with VA requirements or to comply with VA regulations;

(5) Construction deficiencies deemed by VA to be the participant's responsibility;

(6) Falsely certifying in connection with any VA program, whether or not the certification was made directly to VA;

(7) Commission of an offense or other cause listed in § 44.305;

(8) Violation of any law, regulation, or procedure relating to the application for guaranty, or to the performance of obligations incurred pursuant to a commitment to guaranty;

(9) Making or procuring to be made any false statement for the purpose of influencing in any way an action of the Department;

(10) Imposition of a limited denial of participation by any other VA field facility;

(b) *Indictment.* A criminal indictment or information shall constitute adequate evidence for the purpose of limited denial of participation actions.

(c) *Limited denial of participation.* Imposition of a limited denial of participation by a VA field facility shall, at the discretion of any other VA field facility, constitute adequate evidence for a concurrent limited denial of participation. Where such a concurrent limited denial of participation is imposed, participation may be restricted on the same basis without the need for an additional conference or further hearing.

§ 44.710 Scope and period of a limited denial of participation.

(a) *Scope and Period.* The scope of a limited denial of participation shall be as follows:

(1) A limited denial of participation extends only to participation in the VA Loan Guaranty Program and shall be effective only within the geographic jurisdiction of the office or offices imposing it.

(2) The sanction may be imposed for a period not to exceed 12 months except for unresolved construction deficiencies. In cases involving construction deficiencies, the builder may be excluded for either a period not to exceed 12 months or for an indeterminate period which ends when the deficiency has been corrected or otherwise resolved in a manner acceptable to VA.

(b) *Effectiveness.* The sanction shall be effective immediately upon issuance, and shall remain effective for the prescribed period. If the cause for the limited denial of participation is resolved before the expiration of the prescribed period, the official who imposed the sanction may terminate it. The imposition of a limited denial of participation shall not affect the right of the Department to suspend or debar any person under this part.

(c) *Affiliates.* An affiliate or organizational element may be included in a limited denial of participation solely on the basis of its affiliation, and regardless of its knowledge of or participation in the acts providing cause for the sanction. The burden of proving that a particular affiliate or organizational element is capable of meeting VA requirements and is currently a responsible entity and not controlled by the primary sanctioned party (or by an entity that itself is controlled by the primary sanctioned party) is on the affiliate or organizational element.

§ 44.711 Notice.

(a) *Generally.* A limited denial of participation shall be initiated by advising a participant or contractor, and any specifically named affiliate, by certified mail, return receipt requested:

(1) That the sanction is effective as of the date of the notice;

(2) Of the reasons for the sanction in terms sufficient to put the participant or contractor on notice of the conduct or transaction(s) upon which it is based;

(3) Of the cause(s) relied upon under § 44.705 for imposing the sanction;

(4) Of the right to request in writing, within 30 days of receipt of the notice, a conference on the sanction, and the right to have such conference held

within 10 business days of receipt of the request;

(5) Of the potential effect of the sanction and the impact on the participant's or contractor's participation in Departmental programs, specifying the program(s) involved and the geographical area affected by the action.

(b) *Notification of action.* After 30 days, if no conference has been requested, the official imposing the limited denial of participation will notify VA Central Office of the action taken and of the fact that no conference has been requested. If a conference is requested within the 30-day period, VA Central Office need not be notified unless a decision to affirm all or a portion of the remaining period of exclusion is issued. VA Central Office will notify all VA field offices of sanctions imposed and still in effect under this subpart.

§ 44.712 Conference.

Upon receipt of a request for a conference, the official imposing the sanction shall arrange such a conference with the participant or contractor and may designate another official to conduct the conference. The participant shall be given the opportunity to be heard within 10 business days of receipt of the request. This conference precedes, and is in addition to, the formal hearing provided if an appeal is taken under § 44.713. Although formal rules of procedure do not apply to the conference, the participant or contractor may be represented by counsel and may present all relevant information and materials to the official or designee. After consideration of the information and materials presented, the official shall, in writing, advise the participant or contractor of the decision to withdraw, modify or affirm the limited denial of participation. If the decision is made to affirm all or a portion of the remaining period of exclusion, the participant shall be advised of the right to request a formal hearing in writing within 30 days of receipt of notice of decision. This decision shall be issued promptly, but in no event later than 20 days after the conference and receipt of materials.

§ 44.713 Appeal.

Where the decision is made to affirm all or a portion of the remaining period of exclusion, any participant desiring an appeal shall file a written request for a hearing with the Under Secretary for Benefits, Department of Veterans Affairs, 810 Vermont Avenue, Washington, DC 20420. This request shall be filed within 30 days of receipt of the decision to affirm. If a hearing is requested, it shall be held in accordance with the procedures set forth at §§ 44.313 and 44.314. Where a limited denial of participation is followed by a suspension or debarment, the limited denial of participation shall be superseded and the appeal shall be heard solely as an appeal of the suspension or debarment.

[FR Doc. 93–27923 Filed 11–15–93; 8:45 am]
BILLING CODE 8320-01-P

POSTAL SERVICE

39 CFR Part 111

Changes in Preferred Postal Rates—Second-, Third- and Fourth-Class Mail

AGENCY: Postal Service.

ACTION: Postage rate changes.

SUMMARY: Under the provisions of the Revenue Forgone Reform Act signed into law October 28, 1993, the second-class in-county rates, the advertising zone rates for issues of second-class classroom and nonprofit publications that contain more than 10 percent advertising, and the zone 1 and 2 rates for science-of-agriculture publications will change. The special bulk third-class rates will change for matter other than flats. In addition, publishers will be allowed to mail books and other eligible materials at the fourth-class library rate only if they are mailed in response to a purchase order from a qualifying institution or organization.

EFFECTIVE DATE: The Board of Governors directed that the changes pertaining to postage rates and the new criterion that publishers must meet to mail materials at the library rates be implemented effective 12:01 a.m., November 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest Collins, (202) 268–5316.

SUPPLEMENTARY INFORMATION: Under the provisions of the Revenue Forgone Reform Act, the postage rates for the advertising portion of second-class special rate and classroom rate publications will be the same as the rates applicable for second-class regular rate publications when copies of an issue or edition, if applicable, of such publications contain more than 10 percent advertising; the science-of-agriculture rates will be 75 per cent of the rates charged for regular rate publications qualifying for delivery office, SCF and zones 1 and 2 rates; and the postage rates for special bulk third-class matter other than flats will change; publishers will be allowed to mail qualifying materials at the library rates only if the materials are sent in response to a purchase order from a qualifying institution or organization. The Act also contains restrictions on the kinds of materials that will be eligible for mailing at the special bulk third-class rates. Such changes will not be effective before January 1, 1994, and a proposed rule regarding the restrictions will be published in the **Federal Register** for comment by affected customers and interested parties.

The Postal Service adopts the following amendments to the Domestic Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 111.1.

List of Subjects in 39 CFR Part 111

Administrative practice and procedure, Postal Service.

PART 111—[AMENDED]

1. The authority citation for 39 CFR Part 111 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 101, 401, 403, 404, 3001–3011, 3201–3219, 3403–3406, 3621, 5001.

2. Section E419 of the Domestic Mail Manual is revised to make it clearer that certain materials may be sent between qualifying institutions, organizations and individuals at the library rate, and to incorporate the criterion that publishers must meet to mail at such rates.

Effective November 21, 1993, the Domestic Mail Manual is amended as follows:

Rates and Fees Module

* * * * *

Eligibility Module

* * * * *

E419 Library Rate

* * * * *

(Former section 1.6 is deleted and old sections 1.7, 1.8, and 1.9 are renumbered as 1.6, 1.7, and 1.8, respectively, and section 1.4 is amended to read as follows)

1.4 Mailable Items Sent Between

The following items may be mailed at the library rate when sent between: (1) Schools, colleges, universities, public libraries, museums, herbariums, and nonprofit religious, educational, scientific, philanthropic (charitable), agricultural, labor, veterans', and fraternal organizations or associations, (2) any such institution, organization, or association, and an individual who has no financial interest in the sale, promotion, or distribution of the materials, or (3) any such institution,

organization, or association, and a publisher, if such institution, organization, or association has placed an order to purchase such materials for delivery to itself:

a. Books, consisting wholly of reading matter, scholarly bibliography, or reading matter with incidental blank spaces for notations and containing no advertising except for incidental announcements of books.

b. Printed music, whether in bound or sheet form

c. Bound volumes of academic theses in typewritten or duplicated form.

d. Periodicals, whether bound or unbound.

e. Sound recordings.

f. Other library materials in printed, duplicated, or photographic form or in the form of unpublished manuscripts.

g. Museum materials, specimens, collections, teaching aids, printed matter, and interpretive materials for informing and furthering the educational work and interests of museums and herbariums.

(In 1.5 change heading to "Mailable Items Sent to or From")

* * * * *

3. Sections R200, R300 and R400 are revised to include the new postage rates for second-, third- and fourth-class library rate mail.

R200 Second-Class Mail

* * * * *

2.0 In-County Rates

2.1 Per pound or fraction

Zone	Rate
Delivery office	$0.107
All others	.117

* * * * *

3.0 Special Nonprofit Rates

3.1 Pound rates are

For the nonadvertising portion—$0.107 per pound or fraction. For the advertising portion, per pound or fraction:

Zone	Rate
Delivery office	$0.168
SCF	.178
1 and 2	.196
3	.204
4	.224
5	.258
6	.292
7	.332
8	.367

3.2 Piece Rates Per Addressed Piece

Level	Regular	Zip+4 (letter-size)	Barcoded (letter-size)	ZIP+4 barcoded (flat-size)
G	$0.170	$0.163	$0.153	$0.147
H3	.127	.123	.117	.112
H5	.127	.123	.110	.112
I1	.089	.....	.....	.....
I2	.087	.....	.....	.....
I3	.082	.....	.....	.....

4.0 Classroom Rates

4.1 Pound rates are

For the nonadvertising portion—$0.107 per pound or fraction. For the advertising portion, per pound or fraction:

Zone	Rate
Delivery office	$0.168
SCF	.178
1 and 2	.196
3	.204
4	.224
5	.258
6	.292
7	.332
8	.367

4.2 Piece Rates Per Addresses Piece

Level	Regular	ZIP+4 (letter-size)	Barcoded (letter-size)	ZIP+4 Barcoded (flat-size)
G	$0.170	$0.163	$0.153	$0.147
H3	.127	.123	.117	.112
H5	127	.123	.110	.112
I1	.089	.....	.....	.....
I2	.087	.....	.....	.....
I3	.082	.....	.....	.....

5.0 Science-of-Agriculture Rates

5.1 Pound rates are

For the nonadvertising portion—$0.147 per pound or fraction. For the advertising portion, per pound or fraction:

Zone	Rate
Delivery office	$0.126
SCF	.134
1 and 2	.147
3	.204
4	.224
5	.258
6	.292
7	.332
8	.367

* * * * *

R300 Third-Class Mail

* * * * *

6.0 Special Bulk Third-Class Letter-Size Minimum Per Piece Rates—Pieces 0.2085 LB. (3.3363 OZ) or Less

Entry discount	Nonautomation rates		Automation rates						
	Basic	3/5	Carrier route	Saturation W-S	Basic ZIP+4	3/5 ZIP+4	Basic barcoded	3-Digit barcoded	5-Digit barcoded
None	0.113	0.100	0.076	0.073	0.106	0.096	0.096	0.090	0.083
BMC	.101	.088	.064	.061	.094	.084	.084	.078	.071
SCF	.096	.083	.059	.056	.089	.079	.079	.073	.066
Delivery unit			.054	.051					

R400 Fourth-Class Mail

6.0 Library Rates

Library rate weight not exceeding pounds	Postage
1	0.66
2	0.90
3	1.14
4	1.38
5	1.62
6	1.86
7	2.10
8	2.22
9	2.34
10	2.46
11	2.58
12	2.70
13	2.82
14	2.94
15	3.06
16	3.18
17	3.30
18	3.42
19	3.54
20	3.66
21	3.78
22	3.90
23	4.02
24	4.14
25	4.26
26	4.38
27	4.50
28	4.62
29	4.74
30	4.86
31	4.98
32	5.10
33	5.22
34	5.34
35	5.46
36	5.58
37	5.70
38	5.82
39	5.94
40	6.06
41	6.18
42	6.30
43	6.42
44	6.54
45	6.66
46	6.78
47	6.90
48	7.02
49	7.14
50	7.26
51	7.38
52	7.50
53	7.62
54	7.74
55	7.86
56	7.98
57	8.10
58	8.22
59	8.34
60	8.46
61	8.58
62	8.70
63	8.82
64	8.94
65	9.06
66	9.18
67	9.30
68	9.42
69	9.54
70	9.66

A transmittal letter making these changes in the Domestic Mail Manual will be published and transmitted automatically to subscribers. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 111.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93-28087 Filed 11-15-93; 8:45 am]

BILLING CODE 5000-04-M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 271

[FRL 4797-5]

Georgia; Final Authorization of Revisions to State Hazardous Waste Management Program

AGENCY: Environmental Protection Agency.

ACTION: Immediate final rule.

SUMMARY: Georgia has applied for final authorization of revisions to its hazardous waste program under the Resource Conservation and Recovery Act (RCRA). Georgia has adopted by reference and is seeking authority to regulate certain revisions promulgated between July 1, 1990, and June 30, 1991, otherwise known as RCRA Cluster I. These requirements are listed in section B of this notice. The Environmental Protection Agency (EPA) has reviewed Georgia's application and has made a decision, subject to public review and comment, that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Thus, EPA intends to approve Georgia's hazardous waste program revisions. Georgia's application for program revision is available for public review and comment.

DATES: Final authorization for Georgia's program revision shall be effective January 18, 1994 unless EPA publishes a prior **Federal Register** action withdrawing this immediate final rule. All comments on Georgia's program revision application must be received by the close of business, December 16, 1993.

ADDRESSES: Written comments should be sent to A.R. Hanke at the address listed under **FOR FURTHER INFORMATION CONTACT**. Copies of Georgia's program revision application are available during normal business hours at the following addresses for inspection and copying: Georgia Department of Natural Resources, Waste Management Branch, 205 Butler Street, SE, Floyd Towers East, Atlanta, Georgia 30334, 404-656-2833. U.S. EPA Region IV, Library, 345 Courtland Street, NE., Atlanta, Georgia 30365; 404-347-4216.

FOR FURTHER INFORMATION CONTACT: A.R. Hanke, Chief, State Programs Section, Waste Programs Branch, Waste Management Division, U.S. Environmental Protection Agency, 345 Courtland Street, NE., Atlanta, Georgia 30365; (404-347-2234).

SUPPLEMENTARY INFORMATION:

A. Background

States with final authorization under Section 3006(b) of the Resource Conservation and Recovery Act ("RCRA" or "the Act"), 42 U.S.C. 6926(b), have a continuing obligation to maintain a hazardous waste program that is equivalent to, consistent with, and no less stringent than the federal hazardous waste program. In addition, as an interim measure, the Hazardous and Solid Waste Amendments of 1984 (Pub. L. 98-616, November 8, 1984, hereinafter "HSWA") allows States to revise their programs to become substantially equivalent instead of equivalent to RCRA requirements

promulgated under HSWA authority. States exercising the latter option receive "interim authorization" for the HSWA requirements under section 3006(g) of RCRA, 42 U.S.C. 6926(g), and later apply for final authorization for the HSWA requirements.

Revisions to State hazardous waste programs are necessary when Federal or State statutory or regulatory authority is modified or when certain other changes occur. Most commonly, State program revisions are necessitated by changes to EPA's regulations in 40 CFR parts 260–266, 268, and 124, and 270.

B. Georgia

Georgia initially received final authorization for its base RCRA program effective on August 21, 1984, and the latest Immediate Final Rule for authorizing revisions to its program was published in 58 FR 11539, on February 26, 1993. Today Georgia is seeking approval of its program revisions in accordance with 40 CFR 271.21 (b)(3).

EPA has reviewed Georgia's application and has made an immediate final decision that Georgia's hazardous waste program revisions satisfy all of the requirements necessary to qualify for final authorization. Consequently, EPA intends to grant final authorization for the additional program modifications to Georgia. The public may submit written comments on EPA's immediate final decision up until December 16, 1993. Copies of Georgia's application for these program revisions are available for inspection and copying at the locations indicated in the **ADDRESSES** section of this notice.

Approval of Georgia's program revisions shall become effective January 18, 1994, unless an adverse comment pertaining to the State's revisions discussed in this notice is received by the end of the comment period.

If an adverse comment is received, EPA will publish either (1) a withdrawal of the immediate final decision, or (2) a notice containing a response to comments which either affirms that the immediate final decision takes effect or reverses the decision.

EPA shall administer any RCRA hazardous waste permits, or portions of permits that contain conditions based upon the federal program provisions for which the State is applying for authorization and which were issued by EPA prior to the effective date of this authorization. EPA will suspend issuance of any further permits under the provisions for which the State is being authorized on the effective date of this authorization.

Georgia is today seeking authority to administer the following federal requirements promulgated between July 1, 1990 and June 30, 1991, for the remaining rules in RCRA Cluster I except for the February 21, 1991 (56 FR 7134) Burning of Hazardous Waste in Boilers and Industrial Furnaces Rule (Checklist 85).

Provision	FR reference	Federal promulgation date	State authority
CL 47 Technical correction to special requirements for hazardous waste generated by conditionally exempt small quantity generators.	53 FR 27162	7/19/88	391–3–11–.07(1).
CL 81 Petroleum refinery primary and secondary oil/water/solids separation sludge listings (FO37 and FO38).	55 FR 46354 55 FR 51707	11/2/90 12/17/90	391–3–11–.07(1).
CL 82 Wood preserving listings	55 FR 50450	12/6/90	391–3–11–.02(1).
CL 83 Land disposal restrictions for third-third scheduled wastes	56 FR 3864	1/31/91	391–3–11.07(1) 391–3–11.08(1) 391–3–11.16.
CL 89 Revision to the petroleum refining primary and secondary oil/water/solids separation sludge listings (FO37 and FO38).	56 FR 21955	5/13/91	391–3–11–.07(1).
CL 90 Mining waste exclusion III	56 FR 27300	6/13/91	391–3–11–.07.
CL 91 Wood preserving listings	56 FR 27332	6/13/91	391–3–11.07(1).

Georgia is not authorized to operate the federal program on Indian Lands. This authority remains with EPA unless provided otherwise in a future statute or regulation.

C. Decision

I conclude that Georgia's application for these program revisions meets all of the statutory and regulatory requirements established by RCRA. Accordingly, Georgia is granted final authorization to operate its hazardous waste program as revised.

Georgia now has responsibility for permitting treatment, storage, and disposal facilities within its borders and carrying out other aspects of the RCRA program, subject to the limitations of its program revision application and previously approved authorities. Georgia also has primary enforcement responsibilities, although EPA retains the right to conduct inspections under section 3007 of RCRA and to take enforcement actions under sections 3008, 3013, and 7003 of RCRA.

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this rule from the requirements of Section 6 of Executive Order 12866.

Certification Under the Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 604(b), I hereby certify that this authorization will not have a significant economic impact on a substantial number of small entities. This authorization effectively suspends the applicability of certain Federal regulations in favor of Georgia's program, thereby eliminating duplicate requirements for handlers of hazardous waste in the State. It does not impose any new burdens on small entities. This rule, therefore, does not require a regulatory flexibility analysis.

List of Subjects in 40 CFR Part 271

Administrative practice and procedure, Confidential business information, Hazardous materials, transportation, Hazardous waste, Indian lands, Intergovernmental relations, Penalties, Reporting and record-keeping requirements, Water pollution control, Water supply.

Authority: This notice is issued under the authority of sections 2002(a), 3006, and 7004(b) of the Solid Waste Disposal Act as amended 42 U.S.C. 6912(a), 6926, 6974(b).

Dated: October 28, 1993.

Patrick M. Tobin,

Acting Regional Administrator.

[FR Doc. 93–28117 Filed 11–15–93; 8:45 am]

BILLING CODE 6560–50–P

GENERAL SERVICES ADMINISTRATION

41 CFR Parts 301–3 and 301–16

[FTR Amendment 32]

Federal Travel Regulation; Commercial Carrier Accommodations; Conference Planning; Actual Subsistence Expense Reimbursement; Indirect Travel; New Appointee Relocation Allowances; "Last Move Home" Benefits; and Certain Editorial Clarifications; Correction

AGENCY: Federal Supply Service, GSA.

ACTION: Final rule; correction.

SUMMARY: This action corrects errors in a document amending the Federal Travel Regulation which was published October 29, 1993 (58 FR 58234).

EFFECTIVE DATE: October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Jane E. Groat, Transportation Management Division (FBX), Washington, DC 20406, telephone 703–305–5745.

Accordingly, the following corrections are made to FR Doc. 93–26394 in the issue of October 29, 1993.

1. On page 58239, in the first column, in § 301–3.3(d)(4)(iii)(C), in the third line, the punctuation following "packages" is corrected from a comma to a period, and the phrase "and premium-class other than first-class airline accommodations are not available." is removed.

2. On page 58239, in the second column, in § 301–3.3(d)(4)(ix), the last sentence is corrected in the next to the last line by removing the comma following the word "site".

3. On page 58242, in the second column, in § 301–16.4(a)(1), in the eleventh line, the sentence is corrected by adding the word "generally" before the words "should avoid".

Dated: November 5, 1993.

Larry A. Tucker,

Chief, Regulatory Policy Branch.

[FR Doc. 93–28048 Filed 11–15–93; 8:45 am]

BILLING CODE 6820–24–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 76

[MM Docket No. 92–265; FCC 93–457]

Cable Act of 1992—Program Distribution and Carriage Agreements

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This Second Report and Order adopts rules to implement section 12 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), which adds a new section 616 to the Communications Act of 1934 governing agreements between cable operators—or other multichannel video programming distributors—and the programming services they distribute. This action is taken in order to comply with the 1992 Cable Act.

EFFECTIVE DATE: January 10, 1994. If OMB approval is not granted by that date, FCC will publish a document concerning the effective date in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James R. Coltharp, Mass Media Bureau, (202) 632–6302 or Diane L. Hofbauer, Office of Legislative Affairs, (202) 632–6405.

SUPPLEMENTARY INFORMATION: Public reporting burden for this collection of information § 76.1302) is estimated to average 20 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, AMD-PIRS, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–XXXX), Washington, DC 20503.

This is a synopsis of the Commission's Second Report and Order in MM Docket No. 92–265, FCC 93–457, adopted September 23, 1993, and released October 22, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center, 1919 M Street, NW., Washington, DC and also may be purchased from the Commission's copy contractor, International Transcription Service (ITS), at (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Synopsis of Second Report and Order

1. This Second Report and Order adopts rules to implement section 12 of the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act"), which adds a new section 616 to the Communications Act of 1934 governing agreements between cable operators—or other multichannel video programming distributors—and the programming services they distribute. Section 616 is intended to prevent cable systems and other multichannel video programming distributors ("multichannel distributors") from taking undue advantage of programming vendors through various practices, including coercing vendors to grant ownership interests or exclusive distribution rights to multichannel distributors in exchange for carriage on their systems. The implementing rules for program carriage agreements that we adopt are intended to prohibit those activities specified by Congress in the statute without unduly interfering with legitimate negotiating practices between multichannel video programming distributors and programming vendors. As a result, in this Second Report and Order, we adopt general rules that are consistent with the statute's specific prohibitions regarding actions between distributors and program vendors in forming program carriage agreements, and we will enforce these regulations through a process that will focus on the specific facts pertaining to each negotiation.

Implementation of Carriage Agreement Provisions

2. Section 616(a)(1) of the 1992 Cable Act provides that the Commission must adopt rules to prevent a cable operator or other multichannel distributor from requiring a financial interest in a program service as a condition for carriage on the operator's systems. Given that the statute does not prohibit multichannel distributors from holding a financial interest in a programming service, the Notice 58 FR 328 (January 5, 1993) stated that it may not always be clear whether a cable operator has "required" the programming vendor to provide financial interest as a condition of carrying a particular programming service. Therefore, we sought comment on the factors we should use to determine whether such a requirement for carriage has occurred.

3. Second, section 616(a)(2) directs the Commission to adopt rules that prohibit a cable operator or other multichannel distributor from coercing a video programming vendor to provide, and from retaliating against such a vendor for failing to provide, exclusive rights against other multichannel video programming distributors as a condition of carriage. In this regard, we sought comment on (1) the types of activities that should constitute indicia of coercion; (2) how we might distinguish between "coercion" and "negotiation"; and (3) whether our implementing rules

for section 616 might preclude as "coercion" certain mutually acceptable arrangements that would otherwise comply with section 628. Further, the statute clearly states that exclusive arrangements may exist other than as a condition of carriage. Therefore, we also sought comment on our interpretation that section 616 does not prohibit exclusive arrangements, but that section 616 must be read together with section 628(c), which precludes certain exclusive arrangements and establishes standards for determining whether other exclusive contracts are in the public interest.

4. Third, section 616(a)(3) provides that the new rules must prevent a multichannel distributor from engaging in conduct that unreasonably restrains the ability of an unaffiliated video programming vendor to compete fairly, by discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors in the selection, terms or conditions for carriage of video programming. In the Notice, we sought comment on the specific conduct that we should consider a violation of this section. We also proposed that an "unaffiliated video programming vendor" would be a video programming vendor or service in which the multichannel distributor does not have an attributable interest, which could be defined by the broadcast attribution criteria of § 73.3555 of the Commission's Rules. In addition, we observed that section 616(a)(3) prohibits multichannel distributors from "discriminating in video programming distribution on the basis of affiliation or nonaffiliation of vendors." We stated our belief that a practice of discriminating in the context of carriage agreements involves different activities than those discussed with respect to section 628 regarding programming access, and we sought comment on how we should define "discrimination" in the context of section 616.[1]

5. Specific prohibitions of section 616. In implementing the provisions of section 616, we believe that our regulations must strike a balance that prescribes behavior prohibited by the specific language of the statute, but preserves the ability of affected parties to engage in legitimate, aggressive negotiations. Because the statute does not prohibit distributors from acquiring exclusivity rights or financial interests from programming vendors, we believe that resolution of section 616 complaints will necessarily require case-by-case evaluation of the specific behavior involved, and the manner in which those rights were obtained, in order to determine whether a violation has, in fact, occurred. Accordingly, we adopt general rules that are consistent with the statute's specific prohibitions regarding actions between distributors and program vendors in forming program carriage agreements. With respect to the prohibitions set forth in section 616(a) (1)–(3), we will define terms such as "coercion" and "discrimination" progressively through the case law developed by resolving section 616 complaints, because the practices at issue will necessarily involve behavior that must be evaluated within the context of specific facts pertaining to each negotiation. In addition, we observe that section 616(a)(3) prohibits only that conduct "the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly." Thus, the implementing regulations for section 616 will require that any complainant alleging a violation of section 616(a)(3) must demonstrate that the effect of the conduct that prompts the compliant is to unreasonably restrain the ability of the complainant to compete fairly.

6. We believe that this approach complies with the expressed congressional intent of the program access and carriage agreement provisions of the 1992 Cable Act, by preserving the legitimate aspects of negotiations for multichannel video programming that result in greater availability of programming to the multichannel video marketplace. Indeed, we believe that these regulations will follow the statute's directive to "rely on the marketplace, to the maximum extent feasible, to achieve greater availability" of the relevant programming. Furthermore, as suggested in the Notice, the flexibility that is inherent in this approach will be important in our overall effort to resolve both carriage agreement and program access complaints, so that our implementing rules for section 616 do not preclude as "coercion" any mutually acceptable arrangements that would otherwise comply with the program access provisions of section 628. We remind vendors and distributors, however, that our program access regulations prohibit exclusivity in areas unserved by a cable operator, and require prior Commission approval of any exclusivity rights provided in areas served by a cable operator before such rights may be enforced.

7. At the same time, we believe that this method will preclude opportunities for distributors to restrain the ability of certain program vendors to sell programming and compete fairly through attempts to (1) require financial interests in program services as conditions for carriage, (2) coerce exclusive rights or retaliate against vendors that fail to provide such rights, or (3) discriminate among affiliated or nonaffiliated vendors in the selection, terms or conditions of carriage of multichannel video programming. Thus, after reviewing the facts of individual negotiations involved in carriage agreement disputes, the Commission will be able to identify behavior that, in context, is prohibited under section 616.

8. We also observe that the record on this aspect of the 1992 Cable Act has been extremely limited. In the absence of more explicit input, we believe that it is neither helpful nor necessary to develop specific indicia of "coercion" at this time. Also, while we believe that it is unnecessary to provide further illustrative guidelines, we believe that behavior such as that described above, can provide useful guidelines. Such examples may be used by complainants to develop facts to support their complaints, thus serving as models for specific allegations pertaining to unfair program carriage agreements. We also reject the suggestions for alternative tests for identifying "coercion" or "discrimination", because we believe that the unique aspects of individual negotiations will require a more direct examination and evaluation of the facts pertaining to each complaint situation. We emphasize that the statute does not explicitly prohibit multichannel distributors from acquiring a financial interest or exclusive rights that are otherwise permissible. Thus, in the context of good faith, arms-length discussions, multichannel distributors may negotiate for, but may not insist upon, such benefits in exchange for carriage on their systems. We believe that ultimatums, intimidation, conduct that amounts to the exertion of pressure beyond good faith negotiations, or behavior that is tantamount to an unreasonable refusal to deal with a vendor who refuses to grant financial interests or exclusivity rights in exchange for carriage, should be considered examples of behavior that

[1] We note that with respect to these carriage agreement rules, the House Report indicates that "the term 'discrimination' is to be distinguished from how that term is used in connection with actions by common carriers subject to title II of the Communications Act." The House Report further provides that the Commission is to define discrimination with respect to the extensive body of law addressing discrimination in normal business practices. House Report at 110. We sought comment on the appropriate interpretation of this language, particularly with respect to developing standards for identifying "discrimination" governed by sections 616 and 628.

violates the prohibitions set forth in section 616.

9. Finally, we reject the suggestion that we should require evidence of explicit threats, because we believe that actual threats may not always comprise a necessary condition for a finding of coercion. Requiring such evidence would establish an unreasonably high burden of proof that could undermine the intent of section 616 by allowing multichannel distributors to engage in bad faith negotiations that apparently would not violate the statute and our regulations simply because explicit threats were not made during such negotiations. In contrast, we believe that section 616(a)(2) was intended to prohibit implicit as well as explicit behavior that amounts to "coercion." We also agree with the contention that section 616 is sufficiently different from antitrust law in its intent due to the absence of alternative distributors.

10. With respect to the prohibitions set forth in section 616(a)(3), in order to distinguish between programming vendors that are "affiliated" or "nonaffiliated" with particular distributors, we adopt the attribution standard as applied in the program access rules. Specifically; we will consider a vendor to be "affiliated" with respect to a multichannel distributor if the distributor holds five percent or more of the stock of the programmer, whether voting or non-voting. As in the First Report and Order 58 FR 27658 (May 11, 1993) on program access, we will not adopt the single majority shareholder aspect of the broadcast attribution rule. In addition, all officer and director positions and general partnership interests will be attributable, as will limited partnership interests of five percent or greater, regardless of insulation. While certain aspects of this attribution standard may be subject to reconsideration in the program access context, we will adopt a parallel standard in the absence of a detailed rationale that would distinguish the relationships in section 616 from the vertical integration issues in the program access provisions of section 628.

Complaint and Enforcement Procedures

11. The Notice also sought comment on the procedures to be established for review of complaints, and on the appropriate penalties and remedies to be ordered. Section 616(a)(4) provides for expedited review of any complaints made by a video programming vendor pursuant to this section. We sought comment on: (1) Whether we should follow the same review process as was discussed with respect to section 628(d), or rather, adopt different complaint procedures; and (2) whether we should afford carriage agreements confidential treatment in full, or rather, only permit confidential or proprietary information to be redacted. Section 616(a)(5) provides that the Commission must adopt appropriate penalties and remedies for violations of this subsection, including requiring the multichannel video programming distributor to carry the unaffiliated program vendor.[2] Accordingly, we sought comment on: (1) Procedures that we should establish for mandatory carriage; (2) the appropriate duration for mandatory carriage, given that we do not intend to require the multichannel distributor to carry the aggrieved programming service indefinitely; (3) guidelines that we should use to determine forfeiture amounts assessed against violators; (4) whether we should also consider ordering remedies other than forfeiture or mandatory carriage, such as establishment of prices, terms and conditions of sale, similar to the remedies specified in section 628(e)(1). In addition, section 616(a)(6) provides that the Commission must delineate penalties to be assessed against any person filing a frivolous complaint pursuant to this section. We proposed to assess monetary forfeitures for frivolous complaints and we asked for comment on (1) the factors that should determine whether a complaint is frivolous; (2) guidelines to determine forfeiture amounts; and (3) whether we should base the forfeiture amount on the resources expended by the Commission in considering the claim and by the party defending against the claim.

12. General procedures. We believe that a complaint process derived from the process we established for adjudicating undue influence complaints filed pursuant to section 628(c)(2)(A) of the program access provisions of the 1992 Cable Act will provide the most flexible and expeditious means of enforcing the carriage agreement provisions of section 616. Thus, we hereby adopt a system that promotes resolution of as many cases as possible on the basis of a complaint, answer and reply. Given the statute's explicit direction to the Commission to handle program carriage complaints expeditiously, additional pleadings will not be accepted or entertained unless specifically requested by the reviewing staff. Discovery will not necessarily be permitted as a matter of right in all cases, but only as needed on a case-by-case basis, as determined by the staff. Cases that require a relatively contained amount of discovery (limited to written interrogatories and document production) will be resolved at the staff level and shall be subject to review directly by the Commission. Interlocutory review shall be permitted only after the staff has ruled on the merits. The ex parte rules governing restricted proceedings will be applied.

13. As a practical matter, however, given that alleged violations of section 616, especially those involving potentially "coercive" practices, will require an evaluation of contested facts and behavior related to program carriage negotiations, we believe that the staff will be unable to resolve most program carriage complaints on the sole basis of a written record as described above. Rather, we anticipate that resolution of most program carriage complaints will require an administrative hearing to evaluate contested facts related to the parties' specific negotiations. In such cases, after reviewing the complaint, answer and reply, the staff will inform the parties of its determination that resolution of the complaint will require a hearing before an administrative law judge (ALJ). The parties will be given the opportunity to resolve the dispute through the Commission's alternative dispute resolution process (ADR). If ADR is not selected or is unsuccessful, the case will be designated for hearing before an ALJ. Interlocutory applications for review in such cases will be similarly limited, and any decision rendered by an ALJ shall be directly appealable to the Commission. The ex parte rules governing restricted proceedings will be applied.

14. We will require that prior to filing a program carriage complaint, an aggrieved programming vendor must first inform the multichannel distributor of its belief that a violation of Section 616 of the 1992 Cable Act has occurred. Such notice must be sufficiently detailed so that the multichannel distributor can determine the specific nature of the potential complaint. This will give the multichannel distributor a final opportunity to resolve the dispute without involving the Commission. If the parties still cannot reach resolution, the aggrieved program vendor should file its complaint along with evidence (an affidavit or copy of a certified letter) that the required notice to the multichannel distributor has been given. Complaints failing to include such evidence will be dismissed. At this

[2] We note that the House Report states that "[t]his legislation provides new FCC remedies and does not amend, and is not intended to amend, existing antitrust laws. All antitrust and other remedies that can be pursued under current law by video programming vendors are unaffected by this section." House Report at 111.

time, rather than establish a specific time period for the parties to attempt to resolve the dispute before an aggrieved party may file a complaint at the Commission, we will allow the aggrieved programming vendor to determine the appropriate duration of negotiations. At a minimum, however, the programming vendor must provide the potential defendant ten (10) days to respond to the notice, and allow a reasonable time thereafter—which will vary given the particular circumstances of each case—for negotiations. Finally, a one year statute of limitations will apply to carriage agreement complaints. Thus, a complaint filed pursuant to section 616 must be filed within one year of the date on which one of the following occurs:

(a) The complainant enters into a carriage agreement with an multichannel distributor, which the complainant alleges involves a violation of section 616;

(b) The multichannel distributor offers to carry a vendor's programming pursuant to terms that the complainant alleges to violate section 616; or

(c) The complainant notifies an multichannel distributor that it intends to file a complaint based on a request to carry programming that has been denied for reasons that allegedly involve a violation of section 616.

15. Remedies. We note that the record offers very little guidance on the subject of remedies, and in particular, provides little insight on the appropriate scope and duration of relief in the form of mandatory carriage of the complainant's programming. Thus, we do not believe that it is possible to prescribe specific requirements for such relief at this time. Instead, we will determine the appropriate relief for program carriage violations on a case-by-case basis. Complainants will be expected to include a request for relief in their complaint, along with any relevant evidence and arguments in support of the relief requested. Available remedies and sanctions include forfeitures, mandatory carriage, or carriage on terms revised or specified by the Commission. For example, if the Commission finds that a carriage agreement includes a coerced financial interest or exclusivity requirement in violation of section 616, the appropriate remedy may simply be to determine that such terms are unenforceable by the multichannel distributor, and to revise the existing agreement, ordering carriage on the same terms negotiated in that agreement without the coerced financial interest provisions or coerced promise of exclusivity.

16. If a complainant seeks mandatory carriage, it should propose specific terms for such carriage, as well as an explanation of its rationale for proposing those terms, such as the existence of comparable terms in other program carriage agreements to which either the complainant or the defendant is a party, or comparable terms that have been approved by the Commission in other program carriage complaint cases. The defendant may oppose the proposed relief in its answer, and may offer alternative remedies without prejudice to any defenses it may raise or responses to the complainant's allegations. Given the wide range of behavior that may potentially give rise to a violation of the rules adopted herein to implement section 616, we believe that a case-by-case determination of the appropriate remedies based on the specific behavior involved in a particular violation provides the only reasonable and meaningful method of enforcing section 616.

17. With respect to forfeitures, we disagree that the forfeiture amount must be related to the alleged harm to the programming vendor, or that it should be limited to the vendor's "lost profits." Such a standard has not provided the basis for FCC forfeitures in other contexts, nor is it set forth in the statute. Rather, the Commission will reply upon its forfeiture guidelines to determine the appropriate penalty.

Complaint Process

18. Complaint. When filing a complaint, the burden of proof will be on the programming vendor to establish a prima facie showing that the defendant multichannel distributor has engaged in behavior that is prohibited by section 616. The complaint must identify the relevant Commission regulation allegedly violated, and must describe with specificity the behavior constituting the alleged violation. The complainant must establish that it is a video programming vendor, as defined in § 76.1300(d) of the Commission's rules, and that the defendant is a multichannel distributor as defined in § 76.1300(c). For complaints alleging discriminatory treatment that favors "affiliated" programming vendors, the complainant must provide evidence that the defendant has an attributable interest in the allegedly favored programming vendor, as set forth in § 76.1300(a). The complaint must be supported by documentary evidence of the alleged violation, or by an affidavit (signed by an authorized representative or agent of the complaining programming vendor) setting forth the basis for the complainant's allegations. If the complaint involves a specific written program carriage agreement, that agreement should be included with the complaint with proprietary information redacted. We agree that the availability of disputed carriage agreements with redacted proprietary terms will contribute to the body of precedent concerning prohibited conduct, and will assist parties in future negotiations by deterring violations and minimizing the instance of unsuccessful or frivolous complaints. As stated, a one-year statute of limitations will be applied to program carriage complaints. Finally, the complaint should specify the relief requested. If the complainant seeks mandatory carriage, the complaint should specify the desired duration and terms of such carriage, and should include the rationale and any documentary evidence supporting such request. If the complainant seeks modification of an existing carriage agreement, it should specify the terms it seeks to change and should propose specific substitute provisions.

19. Answer and Reply. The defendant will be given thirty (30) days to file its answer responding to the complainant's allegations. The answer should be supported by documentary evidence, or an affidavit (signed by an officer of the defendant) that refutes each allegation made by the complainant or supports any affirmative defenses the defendant may raise. The answer should also include the defendant's response to the relief requested by complainant, as well as any documentary evidence that supports defendant's position. The complainant will be given (20) days to respond to the defendant's answer. As stated above, unless specifically requested by the Commission or its staff, additional pleadings such as motions to dismiss or motions for summary judgment will not be considered. We intend to keep pleadings to a minimum to comply with the statutory directive for an expedited adjudicatory process.

20. Staff Determination. After reviewing the complaint, answer and reply, the staff will make what, for the purposes of these proceedings, we will deem a prima facie determination. If the complainant has not made a prima facie case of a violation of our carriage agreement regulations the complaint will be dismissed. If the staff determines that the complainant has made a prima facie showing, the staff will so rule, and will determine whether it can grant relief on the basis of the existing record. If the record is not sufficient to resolve the complaint and grant relief, the staff will determine and outline the appropriate procedures for discovery, or

will refer the case to an ALJ for an administrative hearing.

21. Discovery. The staff will determine what additional information is necessary to resolve the complaint, and will develop a discovery process and timetable to resolve the dispute expeditiously. Given the complexity of the issues that may be raised in such cases, as well as the likely need to resolve factual disputes, we do not believe that it is practicable or advisable to add to the administrative burdens already placed on the FCC staff by the 1992 Cable Act by imposing, at the outset, a uniform requirement on the staff to dispose of these cases within 90 days. Wherever possible, to avoid discovery disputes and arguments pertaining to relevance, the staff will itself conduct discovery by issuing appropriate letters of inquiry or requiring that specific documents be produced. The staff will determine whether the materials ordered to be produced to the opposing party should also be filed with the Commission. The staff may order that any documents or answers to such inquiries will be submitted to the Commission and to the opposing party within a specified time period. Any information exchanged through discovery may be subjected to a protective order upon an appropriate showing by the relevant party that the information is proprietary. If the staff cannot readily determine what additional information is needed to resolve the dispute, it should refer the complaint to an ALJ. The staff may also hold a status conference to conduct discovery, and is authorized to issue oral rulings at the status conference which will be confirmed to the parties in writing. The parties will be required to take reasonable steps to prevent unauthorized access to protected documents and information. See 47 CFR 76.1302(h).

22. Upon the conclusion of any discovery, the staff may direct the parties to submit briefs, together with proposed findings of fact, conclusions of law and proposed remedies on a specified date. Reply briefs should be filed within the following fifteen (15) days. The parties will be given an additional five (5) days in which to file redacted copies of briefs and reply briefs for the public record when they contain confidential or proprietary information that is subject to a protective order. After a ruling on the merits, either party may file an application for review of the staff's determinations directly to the Commission. Such ruling will include a timetable for compliance, and will become effective upon release. In the absence of a stay, any relief or remedies imposed therein, with the exception of an order requiring mandatory carriage that would require the defendant to delete other programming carried on its distribution system in order to carry complainant's programming, will remain in effect pending appeal. Stays will not be routinely granted. If the staff orders mandatory carriage of the complainant's programming, and such carriage would necessitate deletion of other programming from the defendant's distribution system, the defendant need not carry the programming until the Commission has issued a final ruling on the application for review. In such cases, however, if the Commission upholds in its entirety the relief granted by the staff ruling, the defendant will be required to carry the complainant's programming for an additional time period, beyond that originally ordered by the staff, equal to the amount of time that elapsed between the staff order and the Commission's final decision, on the terms ordered by the staff and upheld by the Commission.

23. Referral to ALJ. If the staff determines that the complainant has established a prima facie case, and that disposition of the complaint will require the resolution of factual disputes or other extensive discovery, it will so advise the parties in writing. If both parties agree, they may elect to resolve the dispute through ADR. If the parties do not agree to ADR, or if ADR is unsuccessful, the staff will refer the complaint to an ALJ for an administrative hearing. As stated above, we anticipate that the majority of the program carriage complaints filed will require an administrative hearing to resolve factual disputes related to the negotiations between the parties. ALJs are expected to resolve program carriage complaints expeditiously, and should hold an immediate status conference to establish timetables for discovery, hearing and submission of briefs and proposed findings of fact and conclusions of law. Interlocutory appeals shall be permitted only after a ruling on the merits. A ruling on the merits by the ALJ must be appealed directly to the Commission. Such a ruling will include the relief granted, a timetable for compliance, and will become effective upon release. In the absence of a stay, any relief or remedies imposed therein, with the exception of an order for mandatory carriage that would require deletion of other programming, will remain in effect pending appeal. Stays will not be routinely granted. If the ALJ orders mandatory carriage of the complainant's programming, and such carriage would necessitate deletion of other programming from the defendant's distribution system, the defendant need not carry the programming until the Commission has issued a final ruling on the appeal. As in the case of a staff order, if the Commission upholds the relief granted by the ALJ in its entirety, the defendant will be required to carry the complainant's programming for an additional time period, beyond that originally ordered by the ALJ, equal to the amount of time that elapsed between the ALJ's decision and the Commission's ruling on the appeal, pursuant to the terms ordered by the ALJ and upheld by the Commission.

Frivolous Complaints

24. The regulations we have adopted to implement the proscriptions contained in section 616 of the 1992 Cable Act are intended to avoid constraining aggrieved programming vendors from filing legitimate complaints, but at the same time must afford the statutory protection to multichannel distributors from frivolous complaints. In the case of program access complaints filed under section 628 of the 1992 Cable Act, we adopt herein a regulation prohibiting the filing of frivolous complaints alleging a violation of section 616. Our regulations will also require that all complaints alleging violations of section 616 must be accompanied by an affidavit signed by an authorized officer or agent of the complainant. To enforce the prohibition against filing frivolous complaints, we will assess monetary forfeitures in accordance with section 503 of the Communications Act and our forfeiture regulations and policies. For purposes of section 503(b)(5), one finding that a non-licensee complainant has filed a frivolous complaint under any provision of section 616 will be sufficient to fulfill the citation requirements of the forfeiture provisions.

25. With respect to the type of complaints that the Commission will deem frivolous, we believe that complaints filed without any effort to ascertain or review the underlying facts should be considered frivolous. We expect that the requirement adopted herein that complaints be accompanied by affidavit should assure that such complaints are based on specific and substantiated facts. When this is not the case, the complainant will be liable for sanctions for violating our rule against frivolous complaints. Similarly, complainants will be liable for sanctions for filing a frivolous complaint when that complaint is based on arguments that have been specifically rejected by the Commission in other proceedings, or

for filing a complaint that has no plausible basis for relief. We expect that further standards with respect to frivolous complaints will develop as specific cases are adjudicated.

26. In this Second Report and Order, we adopt rules to implement the new section 616 of the Communications Act regarding program carriage agreements. Given the program access regulations previously adopted, we recognize that enhanced availability of multichannel programming to the public will also depend upon the ability of program vendors to sell their services without becoming subject to coercive or discriminatory practices. Therefore, we week to establish regulations that prevent multichannel programming distributors from entering into carriage agreements that are conditioned on concessions of various rights, including financial interests or exclusivity. By adopting this process to identify prohibited conduct in negotiating program carriage agreements, we believe that the implementing regulations remain consistent with the general approach in this proceeding to serve the congressional intent to prohibit unfair and anticompetitive actions without restraining the amount of multichannel programming available by precluding legitimate business practices common to a competitive marketplace.

Administrative Matters

Final Regulatory Flexibility Analysis

27. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis is as follows:

I. Need and purpose of this action: This action is taken to implement section 12 of the Cable Television Consumer Protection and Competition Act of 1992.

II. Summary of the issues raised by the public comments in response to the Initial Regulatory Flexibility Analysis: There were no comments submitted in response to the Initial Regulatory Flexibility Analysis.

III. Significant alternatives considered: We have analyzed the comments submitted in light of our statutory directives and have formulated regulations which, to the extent possible, minimize the regulatory burden placed on entities covered by the program carriage agreement provisions of the Cable Act. Different entities will be affected in different ways. Some programming distributors may be forced to alter their policies for negotiating for program carriage, while other vendors may receive benefits in increased flexibility in selling their program services.

IV. Federal Rules which overlap, duplicate or conflict with these rules. None.

28. The Secretary shall cause a copy of the Second Report and Order, including the Final Regulatory Flexibility Analysis, to be sent to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of the Regulatory Flexibility Act, Public Law No. 96–354, 94 Stat. 1164, 5 U.S.C. 601 et seq. (1981).

Ordering Clauses

29. Accordingly, *It is ordered* That, pursuant to Sections 2(a), 4(i), and 303(r) of the Communications Act of 1934, as amended, 47 U.S.C. 152(a), 154(i), and 303(r), part 76 of the Commission's Rules, 47 CFR part 76, is amended as set forth below, effective January 10, 1994, subject to the Office of Management and Budget approval. (See the **EFFECTIVE DATE** paragraph of this document.)

30. *It is further ordered* That MM Docket No. 92–265 is terminated.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Amendatory Text

Part 76 of title 47 of the Code of Federal Regulations is amended as follows:

PART 76—CABLE TELEVISION SERVICE

1. The authority citation for part 76 is revised to read as follows:

Authority: 47 U.S.C. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 536, 542, 543, 552.

2. Subpart P is added and reserved and subpart Q is added to part 76 to read as follows:

Subpart Q—Regulation of Carriage Agreements

Sec. 76.1300 Definitions
Sec. 76.1301 Prohibited Practices
Sec. 76.1302 Adjudicatory Proceedings
Sec. 76.1303 [RESERVED]
Sec. 76.1304 [RESERVED]
Sec. 76.1305 [RESERVED]

Subpart Q—Regulation of Carriage Agreements

§ 76.1300 Definitions.

As used in this subpart:

(a) *Affiliated.* For purposes of determining whether a video programming vendor is "affiliated" with a multichannel video programming distributor, as used in this subpart, the definitions for "attributable interest" contained in the notes to § 76.501 shall be used, provided, however that:

(1) The single majority shareholder provisions of Note 2(b) to § 76.501 and the limited partner insulation provisions of Note 2(g) to § 76.501 shall not apply; and

(2) The provisions of Note 2(a) to § 76.501 regarding five (5) percent interests shall include all voting or nonvoting stock or limited partnership equity interests of five (5) percent or more.

(b) *Buying groups.* The term "buying group" or "agent," for purposes of the definition of a multichannel video programming distributor set forth in paragraph (e) of this section, means an entity representing the interests of more than one entity distributing multichannel video programming that:

(1) Agrees to be financially liable for any fees due pursuant to a satellite cable programming, or satellite broadcast programming, contract which it signs as a contracting party as a representative of its members or whose members, as contracting parties, agree to joint and several liability; and

(2) Agrees to uniform billing and standardized contract provisions for individual members; and

(3) Agrees either collectively or individually on reasonable technical quality standards for the individual members of the group.

(c) *Multichannel video programming distributor.* The term "multichannel video programming distributor" means an entity engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming. Such entities include, but are not limited to, a cable operator, a multichannel multipoint distribution service, a direct broadcast satellite service, a television receive-only satellite program distributor, and a satellite master antenna television system operator, as well as buying groups or agents of all such entities.

(d) *Video programming vendor.* The term "video programming vendor" means a person engaged in the production, creation, or wholesale distribution of video programming for sale.

§ 76.1301 Prohibited practices.

(a) *Financial interest.* No cable operator or other multichannel video programming distributor shall require a financial interest in any program service as a condition for carriage on one or

more of such operator's/provider's systems.

(b) *Exclusive rights.* No cable operator or other multichannel video programming distributor shall coerce any video programming vendor to provide, or retaliate against such a vendor for failing to provide, exclusive rights against any other multichannel video programming distributor as a condition for carriage on a system.

(c) *Discrimination.* No multichannel video programming distributor shall engage in conduct the effect of which is to unreasonably restrain the ability of an unaffiliated video programming vendor to compete fairly by discriminating in video programming distribution on the basis of affiliation or non-affiliation of vendors in the selection, terms, or conditions for carriage of video programming provided by such vendors.

§ 76.1302 Adjudicatory proceedings.

Any video programming vendor aggrieved by conduct that it alleges to constitute a violation of the regulations set forth in this subpart may commence an adjudicatory proceeding at the Commission.

(a) *Notice required.* Any aggrieved video programming vendor intending to file a complaint under this section must first notify the defendant multichannel video programming distributor that it intends to file a complaint with the Commission based on actions alleged to violate one or more of the provisions contained in § 76.1301. The notice must be sufficiently detailed so that its recipient(s) can determine the specific nature of the potential complaint. The potential complainant must allow a minimum of ten (10) days for the potential defendant(s) to respond before filing a complaint with the Commission.

(b) *General pleading requirements.* Carriage agreement complaint proceedings are generally resolved on a written record consisting of a complaint, answer and reply, but may also include other written submissions such as briefs and written interrogatories. All written submissions, both substantive and procedural, must conform to the following standards:

(1) Pleadings must be clear, concise, and explicit. All matters concerning a claim, defense or requested remedy should be pleaded fully and with specificity.

(2) Pleadings must contain facts which, if true, are sufficient to constitute a violation of the Act or Commission order or regulation, or a defense to such alleged violation.

(3) Facts must be supported by relevant documentation or affidavit.

(4) Legal arguments must be supported by appropriate judicial, Commission, or statutory authority.

(5) Opposing authorities must be distinguished.

(6) Copies must be provided of all non-Commission authorities relied upon which are not routinely available in national reporting systems, such as unpublished decisions or slip opinions of courts or administrative agencies.

(7) Parties are responsible for the continuing accuracy and completeness of all information and supporting authority furnished in a pending complaint proceeding. Information submitted, as well as relevant legal authorities, must be current and updated as necessary and in a timely manner at any time before a decision is rendered on the merits of the complaint.

(c) *Complaint.*

(1) A carriage agreement complaint shall contain:

(i) The name of the complainant and defendant;

(ii) The address and telephone number of the complainant, the type of multichannel video programming distributor that describes the defendant, and the address and telephone number of the defendant;

(iii) The name, address and telephone number of complainant's attorney, if represented by counsel;

(iv) Citation to the section of the Communications Act and/or Commission regulation or order alleged to have been violated;

(v) A complete statement of facts, which, if proven true, would constitute such a violation;

(vi) Any evidence that supports the truth or accuracy of the alleged facts, including, when relevant, any written carriage agreement between the complainant and the defendant, with proprietary information redacted;

(vii) Evidence that supports complainant's belief that the defendant, where necessary, meets the attribution standards for application of the carriage agreement regulations;

(viii) For complaints alleging a violation of § 76.1301(c), evidence that supports complainant's claim that the effect of the conduct complained of is to unreasonably restrain the ability of the complainant to compete fairly;

(ix) The specific relief sought, and the rationale and any evidence in support of the relief sought.

(2) Every complaint alleging a violation of the carriage agreement requirements shall be accompanied by a sworn affidavit signed by an authorized officer or agent of the complainant. This affidavit shall contain a statement that the affiant has read the complaint and that to the best of the affiant's knowledge, information and belief formed after reasonable inquiry it is well grounded in fact and is warranted under Commission regulations and policies or is a good faith argument for the extension, modification or reversal of such regulations or policies, and it is not interposed for any improper purpose. If the complaint is signed in violation of this rule, the Commission upon motion or its own initiative shall impose upon the complainant an appropriate sanction.

(3) The following format may be used in cases to which it is applicable, with such modifications as the circumstances may render necessary:

Before the Federal Communications Commission, Washington, DC 20554

In the matter of Complainant, v. Defendant.
File No. (To be inserted by the Commission) [Insert Subject/Nature of Violation]

Carriage Agreement Complaint

To: The Commission.

The complainant (here insert full name of complainant, and if a corporation, the corporate title of such complainant).

1. (Here state the complainant's post office address and telephone number.)

2. (Here insert the name, defendant's method of multichannel video distribution, address and telephone number of defendant.)

3. (Here insert fully and clearly the specific act or thing complained of, together with such facts as are necessary to give full understanding of the matter, including relevant legal and documentary support.)

Wherefore, complainant asks (here state specifically the relief desired, including rationale and relevant legal and documentary support for such relief).
(Date)
(Name of complainant)
(Name, address, and telephone number of attorney, if any)

(4) The complaint must be accompanied by appropriate evidence demonstrating that the required notification pursuant to paragraph (a) of this section has been made.

(d) *Answer.*

(1) Any multichannel video programming distributor upon which a carriage agreement complaint is served under this section shall answer within thirty (30) days of service of the complaint, unless otherwise directed by the Commission.

(2) The answer shall advise the parties and the Commission fully and completely of the nature of any and all defenses, and shall respond specifically to all material allegations of the complaint. Collateral or immaterial issues shall be avoided in answers and every effort should be made to narrow the issues. Any defendant failing to file and serve an answer within the time

and in the manner prescribed by these rules may be deemed in default and an order may be entered against defendant in accordance with the allegations contained in the complaint.

(3) The answer shall state concisely any and all defenses to each claim asserted and shall admit or deny the averments on which the adverse party relies. If the defendant is without knowledge or information sufficient to form a belief as to the truth of an averment, the defendant shall so state and this has the effect of a denial. When a defendant intends in good faith to deny only part of an averment, the answer shall specify so much of it as is true and shall deny only the remainder. The defendant may make its denials as specific denials of designated averments or paragraphs, or may generally deny all the averments except such designated averments or paragraphs as the defendant expressly admits. When the defendant intends to controvert all averments, the defendant may do so by general denial.

(4) Averments in a complaint are deemed to be admitted when not denied in the answer.

(5) The answer shall also address the relief requested in the complaint, including legal and documentary support for such response, and may include an alternative relief proposal without prejudice to any denials or defenses raised.

(e) *Reply.* Within twenty (20) days after service of an answer, the complainant may file and serve a reply which shall be responsive to matters contained in the answer and shall not contain new matters. Failure to reply will not be deemed an admission of any allegations contained in the answer, except with respect to any affirmative defenses set forth therein.

(f) *Motions.* Except as provided in this section, or upon a showing of extraordinary circumstances, additional motions or pleadings by any party will not be accepted.

(g) *Discovery.*

(1) The Commission staff may in its discretion order discovery limited to the issues specified by the Commission. Such discovery may include answers to written interrogatories or document production.

(2) The Commission staff may in its discretion hold a status conference with the parties, pursuant to paragraph (j) of this section, to determine the scope of discovery.

(3) If the Commission staff determines that extensive discovery is required or that resolution of the complaint will require resolution of disputed facts, the staff will advise the parties that the proceeding will be referred to an administrative law judge in accordance with paragraph (m) of this section.

(h) *Confidentiality of proprietary information.*

(1) Any materials generated or provided by a party in the course of adjudicating a carriage agreement complaint under this subpart may be designated as proprietary by that party if the party believes in good faith that the materials fall within an exemption to disclosure contained in the Freedom of Information Act (FOIA), 5 U.S.C. 552(b). Any party asserting confidentiality for such materials shall so indicate by clearly marking each page, or portion thereof, for which a proprietary designation is claimed. If a proprietary designation is challenged, the party claiming confidentiality will have the burden of demonstrating, by a preponderance of the evidence, that the material designated as proprietary falls under the standards for nondisclosure enunciated in the FOIA.

(2) Materials marked as proprietary may be disclosed solely to the following persons, only for use in prosecuting or defending a party to the complaint action, and only to the extent necessary to assist in the prosecution or defense of the case:

(i) Counsel of record representing the parties in the complaint action and any support personnel employed by such attorneys;

(ii) Officers or employees of the opposing party who are named by the opposing party as being directly involved in the prosecution or defense of the case;

(iii) Consultants or expert witnesses retained by the parties;

(iv) The Commission and its staff; and

(v) Court reporters and stenographers in accordance with the terms and conditions of this section. These individuals shall not disclose information designated as proprietary to any person who is not authorized under this section to receive such information, and shall not use the information in any activity or function other than the prosecution or defense in the case before the Commission. Each individual who is provided access to the information by the opposing party shall sign a notarized statement affirmatively stating, or shall certify under penalty of perjury, that the individual has personally reviewed the Commission's rules and understands the limitations they impose on the signing party.

(3) No copies of materials marked proprietary may be made except copies to be used by persons designated in paragraph (h)(2) of this section. Each party shall maintain a log recording the number of copies made of all proprietary material and the persons to whom the copies have been provided.

(4) Upon termination of the complaint proceeding, including all appeals and petitions, all originals and reproductions of any proprietary materials, along with the log recording persons who received copies of such materials, shall be provided to the producing party. In addition, upon final termination of the complaint proceeding, any notes or other work product derived in whole or in part from the proprietary materials of an opposing or third party shall be destroyed

(i) *Other required written submissions.*

(1) The Commission may, in its discretion, require the parties to file briefs summarizing the facts and issues presented in the pleadings and other record evidence. These briefs shall contain the findings of fact and conclusions of law which that party is urging the Commission to adopt, with specific citations to the record, and supported by relevant authority and analysis.

(2) The Commission may require the parties to submit any additional information it deems appropriate for a full, fair, and expeditious resolution of the proceeding, including copies of all contracts and documents reflecting arrangements and understandings alleged to violate the carriage agreement requirements set forth in the Communications Act and § 76.1301, as well as affidavits and exhibits.

(3) Any briefs submitted shall be filed concurrently by both the complainant and defendant at such time as is designated by the staff. Such briefs shall not exceed fifty (50) pages.

(4) Reply briefs may be submitted by either party within twenty (20) days from the date initial briefs are due. Reply briefs shall not exceed thirty (30) pages.

(5) Briefs containing information which is claimed by an opposing or third party to be proprietary under paragraph (h) of this section shall be submitted to the Commission in confidence pursuant to the requirements of § 0.459 of this chapter, and shall be clearly marked "Not for Public Inspection." An edited version removing all proprietary data shall be filed with the Commission for inclusion in the public file within five (5) days from the date the unedited version is submitted and served on opposing parties.

(j) *Status conference.*

(1) In any carriage agreement complaint proceeding, the Commission

staff may in its discretion direct the attorneys and/or the parties to appear for a conference to consider:

(i) Simplification or narrowing of the issues;

(ii) The necessity for or desirability of amendments to the pleadings, additional pleadings, or other evidentiary submissions;

(iii) Obtaining admissions of fact or stipulations between the parties as to any or all of the matters in controversy;

(iv) Settlement of the matters in controversy by agreement of the parties;

(v) The necessity for and extent of discovery, including objections to interrogatories or requests for written documents;

(vi) The need and schedule for filing briefs, and the date for any further conferences; and

(vii) Such other matters that may aid in the disposition of the complaint.

(2) Any party may request that a conference be held at any time after the complaint has been filed.

(3) Conferences will be scheduled by the Commission at such time and place as it may designate, to be conducted in person or by telephone conference call.

(4) The failure of any attorney or party, following reasonable notice, to appear at a scheduled conference will be deemed a waiver and will not preclude the Commission from conferring with those parties or counsel present.

(5) During a status conference, the Commission staff may issue oral rulings pertaining to a variety of interlocutory matters relevant to the conduct of a carriage agreement complaint proceeding including, inter alia, procedural matters, discovery, and the submission of briefs or other evidentiary materials. These rulings will be promptly memorialized in writing and served on the parties. When such rulings require a party to take affirmative action not subject to deadlines established by another provision of this subpart, such action will be required within ten (10) days from the date of the written memorialization unless otherwise directed by the staff.

(k) *Specifications as to pleadings, briefs, and other documents; subscriptions.*

(1) All papers filed in a carriage agreement complaint proceeding must be drawn in conformity with the requirements of §§ 1.49 and 1.50 of this chapter.

(2) All averments of claims or defenses in complaints and answers shall be made in numbered paragraphs. The contents of each paragraph shall be limited as far as practicable to a statement of a single set of circumstances. Each claim founded on a separate transaction or occurrence and each affirmative defense shall be separately stated to facilitate the clear presentation of the matters set forth.

(3) The original of all pleadings and submissions by any party shall be signed by that party, or by the party's attorney. Complaints must be signed by the complainant. The signing party shall state his or her address and telephone number and the date on which the document was signed. Copies should be conformed to the original. Except when otherwise specifically provided by rule or statute, pleadings need not be verified. The signature of an attorney or party shall be a certification that the attorney or party has read the pleading, motion, or other paper; that to the best of his or her knowledge, information and belief formed after reasonable inquiry, it is well grounded in fact and is warranted by existing law or a good faith argument for the extension, modification or reversal of existing law; and that it is not interposed for any improper purpose. If any pleading or other submission is signed in violation of this provision, the Commission shall upon motion or upon its own initiative impose upon the party an appropriate sanction. Where the pleading or submission is signed by counsel, the provisions of §§ 1.52 and 1.24 of this chapter shall also apply

(l) *Copies; service.*

(1) The complainant shall file an original plus three copies of the complaint with the Commission.

(2) An original plus two copies shall be filed of all pleadings and documents other than the complaint.

(3) The complainant shall serve the complaint on each defendant at the same time that it is filed at the Commission.

(4) All subsequent pleadings and briefs, as well as all letters, documents or other written submissions, shall be served by the filing party on all other parties to the proceeding, together with proof of such service in accordance with the requirements of § 1.47 of this chapter.

(5) The parties to any carriage agreement complaint proceeding brought pursuant to this section may be required to file additional copies of any or all papers filed in the proceeding.

(m) *Referral to administrative law judge.*

(1) After reviewing the complaint, answer and reply, and at any stage of the proceeding thereafter, the Commission staff may, in its discretion, designate any carriage agreement complaint proceeding for an adjudicatory hearing before an administrative law judge.

(2) Before designation for hearing, the staff shall notify, either orally or in writing, the parties to the proceeding of its intent to so designate, and the parties shall be given a period of ten (10) days to elect to resolve the dispute resolution procedures, or to proceed with an adjudicatory hearing. Such election shall be submitted in writing to the Commission.

(3) Unless otherwise directed by the Commission, or upon motion by the Mass Media Bureau Chief, the Mass Media Bureau Chief shall not be deemed to be a party to a carriage agreement complaint proceeding designated for a hearing before an administrative law judge pursuant to this paragraph (m).

(n) *Petitions for reconsideration.* Petitions for reconsideration of interlocutory actions by the Commission's staff or by an administrative law judge will not be entertained. Petitions for reconsideration of a decision on the merits made by the Commission's staff should be filed in accordance with §§ 1.104 through 1.106 of this chapter.

(o) *Interlocutory review.*

(1) Except as provided in paragraph (o)(2) of this section, no party may seek review of interlocutory rulings until a decision on the merits has been issued by the staff or administrative law judge.

(2) Rulings listed in this paragraph are reviewable as a matter of right. An application for review of such ruling may not be deferred and raised as an exception to a decision on the merits.

(i) If the staff's ruling denies or terminates the right of any person to participate as a party to the proceeding, such person, as a matter of right, may file an application for review of that ruling.

(ii) If the staff's ruling requires production of documents or other written evidence, over objection based on a claim of privilege, the ruling on the claim of privilege is reviewable as a matter of right.

(iii) If the staff's ruling denies a motion to disqualify a staff person from participating in the proceeding, the ruling is reviewable as a matter of right.

(p) *Expedited review.*

(1) Any party to a carriage agreement complaint proceeding aggrieved by any decision on the merits issued by the staff pursuant to delegated authority may file an application for review by the Commission in accordance with § 1.115 of this chapter.

(2) Any party to a carriage agreement complaint proceeding aggrieved by any decision on the merits by an administrative judge may file an appeal

of the decision directly with the Commission in accordance with § 1.276(a) and §§ 1.277 (a) through (c) of this chapter, except that unless a stay is granted by the Commission, the decision by the administrative law judge will become effective upon release and will remain in effect pending appeal.

(q) *Frivolous complaints.* It shall be unlawful for any party to file a frivolous complaint with the Commission alleging any violation of this subpart. Any violation of this paragraph shall constitute an abuse of process subject to appropriate sanctions.

(r) *Statute of limitations.* Any complaint filed pursuant to this section must be filed within one year of the date on which one of the following events occurs:

(1) The multichannel video programming distributor enters into a contract with the complainant that the complainant alleges to violate one or more of the rules contained in this subpart; or

(2) The multichannel video programming distributor offers to carry the complainant's programming pursuant to terms that the complainant alleges to violate one or more of the rules contained in this subpart; or

(3) The complainant has notified a multichannel video programming distributor that it intends to file a complaint with the Commission based on a request for carriage or to negotiate for carriage of its programming on defendant's distribution system that has been denied or unacknowledged, allegedly in violation of one or more of the rules contained in this subpart.

(s) *Remedies for violations.*

(1) *Remedies authorized.* Upon completion of such adjudicatory proceeding, the Commission shall order appropriate remedies, including, if necessary, mandatory carriage of complainant's programming on defendant's video distribution system, or the establishment of prices, terms, and conditions for the carriage of complainant's programming. Such order shall set forth a timetable for compliance, and shall become effective upon release, unless any order of mandatory carriage would require the defendant multichannel video programming distributor to delete existing programming from its system to accommodate carriage of complainant's programming. In such instances, if the defendant seeks review of the staff or administrative law judge decision, the order for carriage of complainant's programming will not become effective unless and until the decision of the staff or administrative law judge is upheld by the Commission. If the Commission upholds the remedy ordered by the staff or administrative law judge in its entirety, the defendant will be required to carry the complainant's programming for an additional period of time equal to the time elapsed between the staff or administrative law judge decision and the Commission's ruling, on the terms and conditions approved by the Commission.

(2) *Additional sanctions.* The remedies provided in paragraph (s)(1) of this section are in addition to and not in lieu of the sanctions available under title V or any other provision of the Communications Act.

[FR Doc. 93–27880 Filed 11–15–93; 8:54 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 89–26; Notice 4]

RIN 2127–AD24

Federal Motor Vehicle Safety Standard; Convex Cross View Mirrors on School Buses

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Technical amendment, response to petition for reconsideration.

SUMMARY: This notice responds to Ford Motor Company's petition for reconsideration of a final rule amending Standard No. 111, *Rearview Mirrors* (49 CFR 571.111), with respect to the field-of-view around school buses. This notice denies the petition in most respects. However, this notice does amend the mounting requirements in section S9.3(b)(4). In addition, it redesignates certain sections related to the school bus mirror test procedures, which were incorrectly numbered in the final rule.

DATES: Effective Date: The amendment becomes effective December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Charles Hott, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street SW., Washington, DC 20590 (202) 366–0247.

SUPPLEMENTARY INFORMATION:

I. Final Rule

On December 2, 1992, NHTSA published a final rule amending Federal Motor Vehicle Safety Standard No. 111, *Rear-View Mirrors*, to ensure that a school bus provides adequate field-of-view around a stopped school bus, thus reducing the risk of school buses striking students who board or leave the vehicle. (57 FR 57015, December 2, 1992) More specifically, the final rule amended the standard to require a school bus to be designed so that the driver is able to see, either directly or through mirrors, certain specified areas in front of and along each side of the bus. To this end, the final rule addressed a number of issues related to school bus mirror systems, including the field-of-view performance requirements and testing procedures.

II. Petition for Reconsideration

NHTSA received a petition for reconsideration of the final rule from Ford Motor Company (Ford). Ford raised issues relating to the definition of "effective mirror surface," the field-of-view required of system A mirrors, and the mirror mounting requirements. Ford also raised several test procedure questions, i.e., test cylinder color, the test manikin eye location, and camera placement.

III. Agency's Response to the Petition

As explained below, the agency has decided to deny Ford's petition in most respects. The only provisions that the agency has decided to amend are the mirror mounting requirements in section S9.3(b)(4).

A. Definition of "Effective Mirror Surface"

The final rule adopted a requirement that certain images in a required mirror must be a minimum distance from the edge of the mirror's "effective mirror surface" (S9.4(a)). The rule defined "effective mirror surface" as "the portions of a mirror that reflect images, excluding the mirror rim or mounting brackets" (S4, § 571.111).

Ford argued that the definition is ambiguous and fails to be objective as required by section 103(a) of the National Traffic and Motor Vehicle Safety Act ("Safety Act"). It contended that the definition could be interpreted to include portions of a mirror housing whose surface has some degree of reflective properties. Ford requested that the agency adopt the following definition for *Effective mirror surface:* "Those portions of a mirror designed to reflect images."

NHTSA denies Ford's request. The agency believes the term "mirror surface" is adequately defined and that misunderstandings about its meaning are unlikely to occur. Moreover, Ford's requested definition would not make

the standard any more objective. Mirror housings would be excluded from the definition of "mirror surface" under both Ford's suggested definition and the standard's definition in S4.

B. System A Field-of-view Requirements

The final rule requires each school bus to be equipped with two mirror systems on each side of the bus: (1) "System A," which consists of a flat driving mirror of unit magnification and typically a convex driving mirror; and (2) "System B," which consists of convex cross view mirrors for student detection during loading and unloading. The System A mirror system must provide, among other things, a view of the area of the ground extending rearward from an area below the mirror surface. System B (convex cross view mirrors) must provide, among other things, a view of the ground that overlaps with the view of the ground provided by System A. The areas viewable along each side of the bus via the Systems A and B mirrors are required to provide the driver with a view of the ground in front of and along both sides of the bus and extending at least 200 feet rearward from the driving mirror.

Ford stated that requiring System A mirrors to provide a view of the ground immediately beneath them fails to meet the need for safety and may make currently designed flat unit magnification mirrors impracticable. Ford stated that inclusion of a ground view requirement results in a "de facto" design requirement since System B supplemental convex mirrors are the only type of mirrors that are capable of providing the ground view. It claimed that the only way a System A unit magnification mirror could comply with this ground view requirement would be to tilt the mirror downward, an action that would compromise the accident avoidance characteristics of the System A mirror. Ford also stated that the ground view requirement for System A mirrors was redundant because System B mirrors already provide a view of the ground immediately beneath the System A mirrors.

Ford requested that NHTSA amend the requirement in Standard 111 that System A mirrors provide an extended rearward view of the ground starting from the area beneath the mirror (S9.2(b)(1), (2)). Ford suggested amending the starting point for the rearward view to be "that area of the ground which extends rearward *from the rearward vertical edge of the driver's left (or right) side window* * * *" (emphasis added).

The agency has decided not to adopt Ford's suggested revision. The requirement that System A mirrors must provide a view of the ground immediately beneath them is justified by a safety need. The rule is intended to ensure that the System A mirrors detect student pedestrians along most of the length of the vehicle, and not just by the rear wheels, as Ford suggests. Ford's suggested System A mirrors would have possible blind spots in the area of the ground directly below the driver's mirrors and forward of the rear edge of the side windows. Ford is correct that the System B mirrors could detect the blind spots, but NHTSA believes requiring both the System A and B mirrors to reflect all areas around the school bus optimizes driver visibility and reduces to the greatest degree possible the likelihood of the school bus striking a student pedestrian. Additionally, a convex portion of a System A mirror would typically have a lower radius of curvature than a System B mirror, and thus would provide a larger and more readily recognizable image of a child directly under the System A mirror. For these reasons, this part of Ford's petition is denied.

In any event, NHTSA wishes to clarify Ford's understanding about manufacturers using flat unit magnification mirrors as System A mirrors. In discussing this issue in the final rule, the agency explained that it is permissible to use a combination of convex and flat mirrors to meet the System A requirements, and that the convex portion of the mirror system can be used for the view beneath the System A mirror. 57 FR at 57005.

Based on docket comments and information about common school bus practices, NHTSA believes that manufacturers will in all likelihood install System A mirrors that include a flat mirror and a convex mirror. However, NHTSA has kept open what types of mirrors could be used to meet the field-of-view requirements for System A mirrors by issuing performance oriented, not design oriented requirements. Therefore, manufacturers can choose whatever mirror system they believe is best. Avoiding unnecessary restrictions facilitates the introduction of future technological improvements in mirror systems.

C. Mounting Requirements

Section S9.3(b)(4) requires each mirror system to be "installed with a stable support designed to dampen vibration." Ford objected to the requirement pertaining to dampening mechanisms.

After reviewing this issue, NHTSA realizes there was an oversight in the final rule relating to S9.3(b)(4). The agency stated in the preamble to the rule that it was not adopting the "designed to dampen vibration" text of the proposed S9.3(b)(4). 57 FR at 57007. However, the text was inadvertently adopted. Today's document corrects the error by revising S9.3(b)(4) to read "Each mirror shall be installed with a stable support."

D. Test Cylinder Color

Section 13.1 of the final rule requires that the test cylinders "be a color which provides a high contrast with the surface on which the bus is parked."

In its petition for reconsideration, Ford stated that the requirement about cylinder color should be deleted because it has no apparent relationship to any motor vehicle safety need. Ford stated that it is not necessary to specify that the cylinders be colored or that they have a high degree of visual contrast with the surface upon which they are placed. It believed that it is meaningless to require cylinders to be colored merely for purposes of compliance test conditions, when the photographic demonstration process does not call for images to be on color film.

NHTSA does not believe Ford's objection has merit. The compliance test procedure was developed by NHTSA at the agency's Vehicle Research and Test Center (VRTC) and discussed in "Ergonomic Research on School Bus Cross View Mirror Systems," DOT–HS–807–676, August 1990. (This report is discussed at 57 FR at 57002 in the final rule document). As discussed in the report, NHTSA found that the provision for the visual appearance of the cylinders facilitates compliance testing because the cylinders can be better seen on the test film. Cylinders that are of a color that is of high contrast with the background pavement are easier to see even on black and white film. Further, while commenters to the NPRM offered varying views about the test cylinder's color, the commenters generally agreed that the test cylinder should contrast with the background.

In any event, S13 does not require that manufacturers test their school bus mirrors in the manner described therein. Manufacturers may test their buses in any manner they choose, and may choose not to highlight their cylinders against the background pavement. However, the specification in S13 means that NHTSA's cylinders will be of high contrast with the background, to ensure that the cylinders can be

accurately viewed through the mirrors in a compliance test.

For the reasons stated above, this part of Ford's petition is denied.

E. Camera Placement Related to Test Manikin Eye Location

The final rule specifies that the camera is to be placed at the center point of the eye location for a 25th percentile adult female in the driver's seat. That point is specified as the point located 27 inches vertically above the intersection of the seat cushion and seat back.

Ford stated that this requirement fails to set an objective standard, claiming that the location of the specified line is imprecise for many conventional seats and practically impossible to determine for contoured seats. Ford recommended that a manikin H point (or its shoulder point) should be used as a reference point for locating the eye point location instead of the seat back/seat cushion intersection.

NHTSA disagrees with Ford's objection to the procedures for establishing the correct camera placement. The agency based the camera placement on the driver eye location of a 25th percentile adult female, as represented by a two-dimensional manikin. The final rule provides sufficient dimensional information for locating the center point of the driver's eye location. The agency notes that the NPRM requested comments about whether the driver's eye location could be established for each type of seat, and no commenter stated that there would be a problem establishing the driver's eye location. In fact, Blue Bird (a school bus manufacturer) stated that the procedures to establish eye location would allow precise determination of the driver's eye location in any school bus. Based on the agency's research at VRTC and comments to the NPRM, NHTSA believes that the requirements for establishing the driver's eye location are sufficiently precise to establish this point for all driver seats in school buses. The agency notes that the correct height above the seat can easily be established on a contoured seat with the procedure specified in new section 13.4. Bus manufacturers do not have a problem establishing this location. In simple terms, this location is 27 inches above the lowest point of a contoured seat cushion. Accordingly, this part of Ford's petition is denied.

F. Camera Image

The second sentence of 13.5(b) specifies that the image of each cylinder is to be photographed in the appropriate mirror with the camera located so as to ensure "that the image of the mirror and comparison chart fill the camera's view finder to the extent possible." In its petition for reconsideration, Ford suggested changing the quoted text to state that the photograph is taken such that "complete images of the mirror and comparison chart are included in the photograph." Ford believed it is unnecessary to specify that the image of the mirror and chart must fill the camera's view finder; any photograph of the mirror and chart could simply be enlarged to a size large enough for analysis. In addition, Ford believed that for many cameras, the view finder might see a slightly different scene than is presented to the imaging lens (this phenomenon is referred to as "optical parallax").

The agency does not agree that the specification should be amended. The specification ensures that the photographed image is as large and as clear as possible. The definition of an object (such as the image of the test cylinder) can be diminished greatly when the image on the film is small and has to be enlarged. Without adequate definition, the images can appear blurred and could be unusable for measurement purposes. Moreover, the agency did not experience any problems regarding optical parallax in the NHTSA test program developing the test procedure for school bus mirrors, and has no reason to believe optical parallax will become a problem. Accordingly, that part of the petition is denied.

IV. Corrections

This document redesignates certain sections related to the school bus mirror test procedures in S13, which were incorrectly numbered in the final rule. Specifically, on page 57019 of the document, the sections should have been numbered beginning with "S13.4" instead of "S13.2."

V. Rulemaking Analyses and Notices

Executive Order 12291 (Federal Regulation) and DOT Regulatory Policies and Procedures

NHTSA has analyzed this rulemaking and determined that it is neither "major" within the meaning of Executive Order 12866 nor "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency believes that a full regulatory evaluation is not required because the rule will have only minimal economic impacts. The amendment is a technical amendment to make the regulatory text consistent with the agency's intent, as explained in the preamble to the final rule.

Regulatory Flexibility Act

NHTSA has considered the effects of this action under the Regulatory Flexibility Act. I hereby certify that it will not have a significant economic impact on a substantial number of small entities. School bus manufacturers are generally not small businesses within the meaning of the Regulatory Flexibility Act. Small governmental units and small organizations are generally affected by amendments to the Federal motor vehicle safety standards as purchasers of new school buses. However, any impact on small entities from this action will be minimal since the amendment makes a minimal change in the final rule that will not impose additional costs. Accordingly, the agency has determined that preparation of a regulatory flexibility analysis is unnecessary.

Executive Order 12612 (Federalism)

This rulemaking has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and NHTSA has determined that it does not have sufficient federalism implications to warrant preparation of a Federalism Assessment.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for purposes of the National Environmental Policy Act. The agency has determined that implementation of this action will not have any significant impact on the quality of the human environment.

Civil Justice Reform

This final rule does not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a state may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard. Section 105 of the Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, 49 CFR part 571 is amended, as follows:

1. The authority citation for part 571 of title 49 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

§ 571.111 [Amended]

2. In § 571.111, S9.3(b)(4) is revised to read as follows, and on pages 57019 and 57020 of Volume 57 of the Federal Register (December 2, 1992), S13.2 through S13.6 are redesignated as S13.4 through S13.8.

S9.3 * * *

(4) Each mirror shall be installed with a stable support.

* * * * * * *

Issued on: November 10, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93-28132 Filed 11-15-93; 8:45 am]

BILLING CODE 4910-59-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 18

RIN 1018-AB79

Marine Mammals; Incidental Take During Specified Activities

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Fish and Wildlife Service (Service) is issuing final regulations that will authorize and govern the incidental, unintentional take of small numbers of polar bears and walrus during oil and gas industry operations (exploration, development, and production) year-round in the Beaufort Sea and adjacent northern coast of Alaska.

Under provisions of the Marine Mammal Protection Act, the taking of these marine mammals may be allowed only if the Director of the Service finds, based on the best scientific evidence available, that the cumulative total of such taking over a 5-year period will have a negligible impact on these species and will not have an unmitigable adverse impact on the availability of these species for subsistence uses by Alaskan Natives. If these findings are made, the Service is required to establish specific regulations for the activity that set forth: Permissible methods of taking; means of effecting the least practicable adverse impact on the species and their habitat and on the availability of the species for subsistence uses; and requirements for monitoring and reporting.

Through the preparation of an Environmental Assessment, the Service has found that the total expected takings of polar bear and walrus during oil and gas industry exploration, development, and production activities will have a negligible impact on these species, and there will be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaskan Natives.

This rulemaking does not authorize the actual activities associated with oil and gas industry operations; the Department of the Interior's Minerals Management Service is responsible for permitting activities associated with such operations. Instead, this rulemaking authorizes the issuance of Letters of Authorization (LOA) that will permit the unintentional takes of small numbers of polar bears and walruses incidental to oil and gas exploration, development, and production activities.

DATES: *Effective Date:* This rule is effective beginning December 16, 1993 through June 16, 1995.

The regulations will apply for a period of 18 months beginning December 16, 1993 for entities conducting oil and gas industry activities. Certain conditions will apply as explained in the **SUPPLEMENTARY INFORMATION**. If these conditions are met, the regulations will be extended pursuant to notice and opportunity for public comment, for an additional 42 months, for a total of 5 years.

Comments: Comments on the final rule must be received by December 16, 1993.

ADDRESSES: Written comments should be submitted by mail to Supervisor, Office of Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, Suite 310, Anchorage, Alaska 99508. Comments may also be hand delivered to the same address. Comments and materials received in response to this action will be available for public inspection at this address during normal working hours of 8 a.m. to 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: John Bridges, Office of Marine Mammals Management, Fish and Wildlife Service, 4230 University Drive, suite 310, Anchorage, Alaska 99508, (907) 271-2343.

SUPPLEMENTARY INFORMATION:

Need for Action

In Alaska, the Service is responsible for the management of three marine mammal species: Polar bear (*Ursus maritimus*), sea otter (*Enhydra lutris*) which is not covered by this rule and the Pacific walrus (*Odobenus rosmarus divergens*). These species are not listed as threatened or endangered and, therefore, are not provided protection by the Endangered Species Act. However, they are protected under the Marine Mammal Protection Act of 1972, hereafter referred to as the Act. Additional protection is also accorded by the 1973 international Agreement on the Conservation of Polar Bears (Polar Bear Agreement). The United States, Canada, Denmark, Norway, and the former Union of Soviet Socialist Republics are signatories to this treaty; the United States ratified the treaty on November 1, 1976.

The Act placed a general moratorium on the taking of any marine mammal. "Take" as defined by the Act means to harass, hunt, capture, or kill or to attempt to harass, hunt, capture, or kill any marine mammal. The Act was amended in 1981 to include section 101(a)(5) which gave the Secretary of the Interior authority to allow, on request by U.S. citizens (as defined in 50 CFR 18.27(c)), the incidental, but not intentional, take of small numbers of marine mammals in a specified activity (other than commercial fishing) within a specified geographical area. Specific authorizing regulations may be issued for a period of up to 5 years; LOAs may be issued upon request subsequent to issuance of specific authorizing regulations.

The taking of marine mammals may be allowed only if the Service finds, based on the best scientific evidence available, that such takes will have a negligible impact on the species or stock and will not have an "unmitigable adverse impact" on the availability of the species or stock for subsistence uses. Also, regulations must be published that include permissible methods of taking and other means to ensure the least practicable adverse impact on the species and its habitat and on the availability of the species for subsistence uses. These regulations must include requirements for monitoring and reporting. After final regulations are established, LOAs may be issued, upon request, to individual entities to conduct activities pursuant to the regulations.

As a result of 1986 amendments to the Act, the Service on September 29, 1989, published a final rule (54 FR 40338)

amending 50 CFR 18.27 (i.e., regulations governing small takes of marine mammals incidental to specified activities) that included, among other things, a revised definition of "negligible impact" and a new definition for "unmitigable adverse impact." Negligible impact is now defined as "an impact resulting from the specified activity that cannot be reasonably expected to, and is not reasonably likely to, adversely affect the species or stock through effects on annual rates of recruitment or survival." 50 CFR 18.27(c). Unmitigable adverse impact means "an impact resulting from the specified activity (1) that is likely to reduce the availability of the species to a level insufficient for a harvest to meet subsistence needs by (i) causing the marine mammals to abandon or avoid hunting areas, (ii) directly displacing subsistence users, or (iii) placing physical barriers between the marine mammals and the subsistence hunters; and (2) that cannot be sufficiently mitigated by other measures to increase the availability of marine mammals to allow subsistence needs to be met." Ibid.

Oil and gas exploration, development and production activities conducted in marine mammal habitat risk violating the moratorium on the taking of marine mammals and therefore violating the terms of the Act. Although there is no legal requirement for the oil and gas industry to obtain incidental take authority, they have chosen to seek authorization to avoid potential conflicts between their activities and the requirements of the Act.

Summary of Request

On December 17, 1991, BP Exploration (Alaska), Inc., for itself and on behalf of Amerada Hess Corporation, Amoco Production Company, ARCO Alaska, Inc., CGG American Service, Inc., Conoco Inc., Digicon Geophysical Corp., Exxon Corporation, GECO Geophysical Co., Halliburton Geophysical Services, Inc., Mobil Oil Corporation, Northern Geophysical of America, Texaco Inc., Unocal Corporation, and Western Geophysical Company (collectively referred to as "Industry" throughout the remainder of this document), petitioned the Service to promulgate regulations pursuant to section 101(a)(5) of the Act. The regulations sought would allow the incidental, but not intentional, take of small numbers of polar bear (*Ursus maritimus*) and Pacific walrus (*Odobenus rosmarus divergens*) in the event that such a taking occurs in the course of oil and gas exploration, development, or production activities during year-round operations in the Beaufort Sea, in Alaskan State waters, and Outer Continental Shelf (OCS) waters and the adjacent northern coast of Alaska.

Specifically, the offshore geographic region addressed by this action is defined by a north/south line at Barrow, Alaska, including all Alaska State waters and the OCS waters and east of that line to the Canadian border. The onshore region is defined as that same north/south line at Barrow, 25 miles inland and east to the Canning River. Industry excluded the Arctic National Wildlife Refuge from its petitions.

A proposed rule was published by the Service on December 30, 1992 (57 FR 62283), with a 75-day comment period that ended on march 15, 1993. Public meetings were held in Anchorage, Barrow, Nuiqsut, and Kaktovik, Alaska. More than 50 persons attended the public meetings, and 12 entities, including conservation groups, Federal, State, and local government agencies, private industry, Native organizations and other interested parties, commented on the proposed rule. These comments are summarized along with responses in the discussions below.

The Service prepared an Environmental Assessment on this action and found that there would be no significant impacts on populations of walruses and polar bears and that there would be no unmitigable adverse impacts on the availability of these species for subsistence uses by Alaska Natives. A Finding of No Significant Impact (FONSI) has been made on the Environmental Assessment. A copy of the Environmental Assessment and FONSI are available on request from the persons listed above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

The Service hereby is issuing, at the request of the Industry, regulations to allow the incidental take of small numbers of polar bears and walrus. Oil and gas exploration, development, and production activities conducted in proximity to marine mammals risk violating the provisions of the Act if those activities result in "takes" of polar bears or walrus. The regulations along with the LOAs will allow the Industry to operate within the law in the event an incidental take occurs during the course of normal operations.

The final regulations allow the issuance of LOAs that will permit the incidental, unintentional take of polar bears and Pacific walrus in the Beaufort Sea and northern coast of Alaska. The regulations will be in effect for a period of 18 months beginning 30 days after the publication date of this document in the **Federal Register** for entities conducting oil and gas industry activities. Certain conditions will apply as explained below. If these conditions are met, the regulations will be extended pursuant to notice and opportunity for public comment, for an additional 42 months, for a total of 5 years.

These regulations do not authorize the intentional harassment, hunting, capturing, or killing of polar bears or walrus. They are designed to allow Industry operations to continue while working under the provisions of the Act.

These regulations do not permit the actual activities associated with oil and gas exploration, development and production, but rather allow the incidental, unintentional take of the two marine mammal species. The Department of the Interior's Minerals Management Service and the Bureau of Land Management are responsible for permitting activities associated with oil and gas activities in Federal waters and on Federal lands, respectively, and the State of Alaska is responsible for activities on State lands and in State waters.

In addition to its responsibilities under the Act, the Department of the Interior has further responsibilities under the 1973 multilateral Polar Bear Agreement. Specifically, Article II of this Agreement requires that:

> Each Contracting Party shall take appropriate action to protect the ecosystems of which polar bears are a part, with special attention to habitat components such as denning and feeding sites and migration patters. * * *

In comport with, and to meet more fully the intent of the Agreement, under this final rulemaking, within 18 months of its effective date, the Service has been directed by the Secretary of the Interior to develop and begin implementing a strategy for the identification and protection of important polar bear habitats. Development of such strategy will be done as part of the Service's management plan process pursuant to section 115 of the Act, and in cooperation with signatories to the Polar Bear Agreement, the Department of State, the State of Alaska, Alaskan Natives, Industry, conservation organizations, and academia.

For the regulations to be extended beyond the initial 18 months from their effective date for a total 5-year period, the Service must develop and begin implementing the Polar Bear Habitat Conservation Strategy. The extension of these regulations, and further authorizations under the provisions of this rule beyond 18 months, will be contingent upon the following:

(1) Within a period of 18 months from the effective date of this rulemaking, the Service will develop and begin implementing a Polar Bear Habitat Conservation Strategy, pursuant to the management planning process in section 115 of the Act, and in furtherance of the goals on Article II of the 1973 international Agreement on the Conservation of Polar Bears;

(2) The identification and designation of special considerations or closures of any polar habitat components to be further protected;

(3) Public notice and comment on those considerations or closures;

(4) Affirmative findings of the Secretary of the Interior; and

(5) Public notice and comment on the Secretary's intention to extend the term of the incidental take regulations for a period not to exceed a total of 5 years.

The authorizations for incidental take pursuant to provisions of this rule (i.e., LOAs) will be for periods of no more than one year. However, for the second year, LOAs could be subject to a 6-month limit.

Further, concern has been expressed regarding polar bear encounters where human life is in jeopardy. When human activity occurs in polar bear habitat, polar bear/human encounters are possible. However, in over 20 years of industry activity in this area, only one polar bear has been killed in defense of human life. Polar bear interaction training and knowledge of polar bear interaction plans will be required of each person operating under these regulations. In cases where polar bears must be deterred or killed for the protection of human life or welfare, the Service has authority to allow such action under section 109(h)(1) of the Act.

The authorization to take polar bear and walrus is directed to incidents that occur between Industry activities and the two species that cause minor disturbances to those marine mammals. However, minor disturbances of marine mammals, especially those that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity, may not constitute a "take."

The regulations include requirements for monitoring and reporting and measures to effect the least practicable adverse impact on these species and their habitat and on the availability of these species for subsistence uses. These regulations are based on the assumption that exploration, development, and production activities in this area may involve the taking of polar bears and walrus. The Service has found that the total impact of the takings will have a negligible impact on these species and on their availability for subsistence uses.

These regulations may be extended for a total term of 5 years, subject to public notice and comment, only if a Polar Bear Habitat Conservation Strategy has been developed and implementation begun by the Service by the end of the 18-month period following the effective date of the final rule.

An LOA will be required to conduct activities pursuant to these regulations. An LOA may be requested by each group or individual conducting an oil and gas Industry related activity where there is the likelihood of taking polar bear or walrus. The regulations require those who request an LOA to submit a polar bear awareness and interaction plan and a plan to monitor the effects on polar bear and walrus that are present during the authorized activities. Also, an applicant for an LOA must identify, in a plan of cooperation, what measures have been taken to minimize adverse impacts on the availability of marine mammals for subsistence uses if the activity takes place in or near a subsistence hunting area. Each request for an LOA will be evaluated on the specific activity and the specific location, and each LOA will be specifically conditioned for that activity and location.

LOAs will be issued annually by the Service. However, for the second year LOAs could be limited to 6 months contingent upon the Service developing and beginning implementation of the Polar Bear Habitat Conservation Strategy.

Continuation of the regulations and issuance of LOAs beyond the 18-month period are dependent upon events, developments, and achievements during the 18 months that regulations are in effect. If the regulations are extended for the total 5-year period, LOAs for the out-years will be issued annually by the Service; reissuance will be contingent upon submission of reports of monitoring activities for the previous year, evaluation by the Service, and subsequent determination that reissuance is justified. Because oil and gas development and production are continuous long-term activities, upon initial approval, LOAs for development and production would be issued for the life of the activity or until expiration of the regulations, whichever occurs first. However, submission by Industry of monitoring results associated with development and production activities would still be required annually for review by the Service; continued operation under such an LOA would be based upon annual approval by the Service of the monitoring results. If activities exceeded the standards established in section 101(a)(5)(B) of the Act and implemented in 50 CFR 18.27(f), or any subsequent polar bear habitat protection provisions and standards imposed as a result of the Service's Polar Bear Habitat Conservation Strategy, the Service could withdraw or suspend the authorizing regulations (after notice and opportunity for public comment, or in an emergency without notice and opportunity for public comment). For example, if review of monitoring data indicated that activities were having unforeseen negative impacts to polar bear or walrus populations or their availability for subsistence purposes, mechanisms exist in 50 CFR 18.27(f) to revoke incidental take authorization conferred through LOAs. The regulations in 50 CFR 18.27(f) state, in part:

> (5) Letters of Authorization shall be withdrawn or suspended, either on an individual or class basis, as appropriate, if, after notice and opportunity for public comment, the Director determines: (i) The [specific] regulations prescribed are not being substantially complied with, or (ii) the taking allowed is having, or may have, more than a negligible impact on the species or stock, or where relevant, an unmitigable adverse impact on the availability of the species or stock for subsistence uses.

Regulations in 50 CFR 18.27(f) also provide for revoking incidental take authorization in emergency situations by stating:

> (6) The requirement for notice and opportunity for public review in paragraph (f)(5) of this section shall not apply if the Director determines that an emergency exists which poses a significant risk to the well-being of the species or stocks of marine mammals concerned.

Description of Activity

In accordance with 50 CFR 18.27, Industry submitted three separate written petitions for the promulgation of incidental take regulations pursuant to section 101(a)(5) of the Act covering:

(1) Polar bear for exploration operations during the ice-covered period in coastal arctic Alaska and the Beaufort Sea,

(2) Polar bear and walrus for open-water exploration operations in the Beaufort Sea, and

(3) Polar bear and walrus for oil and gas development and production in arctic Alaska.

Activities covered in the petition are exploration activities such as geological and geophysical surveys which include: Geotechnical site investigation, reflective seismic exploration, vibrator seismic data collection, airgun and

watergun seismic data collection, explosives seismic data collection, and geological surveys and drilling operations. The latter include: drillships, floating drill platforms such as the Kulluk, ice pads, artificial islands, caisson-retained islands, and two types of bottom-founded structures: (1) Concrete island drilling system, and (2) single steel drilling caisson.

Industry documents indicate that exploratory activities for the open-water periods of 1993 through 1998 are primarily located in an area defined by a north/south line at Barrow and include all Alaska State waters and the OCS waters east of the line to the Canadian border. Estimates of the activities are approximately 28,200 vessel miles of seismic exploration, with as many as 10 vessels acquiring seismic data in the authorized area in any one year. From 3 to 12 geotechnical/geochemical programs are projected to be conducted over the time span that the regulations could be in effect. Exploratory drilling is estimated to be conducted at 2 to 19 locations over the 5 year period, utilizing drillships at 2 to 8 locations and bottom-founded structures at 3 to 11 locations.

Industry documents indicate that exploratory activities for the ice-covered periods of 1993 through 1998 are in the geographic area defined by a north/south line at Barrow and include all Alaska coastal areas, State waters and OCS waters east to the Canadian border. Industry estimates approximately 35 seismic programs (covering 7,400 to over 10,000 line miles), 7 geotechnical/geochemical programs, and 5 to 15 exploratory drilling operations over the next 5 years.

The petitions also include development and production activities of nine separate oil and gas fields in a region of 88,280 square miles. The nine fields are Prudhoe Bay, Kuparuk, Endicott, Lisburne, Milne Point, Niakuk, Point McIntyre, West Sak, and Ugnu and are collectively known as the Production Area. The Production Area extends from Barrow on the west to the Canning River on the east and 25 miles inland from the coast. The Arctic National Wildlife Refuge is specifically excluded from this action. The Production Area is operated year-round. The Prudhoe Bay Unit, discovered more than 20 years ago, is in decline and no major development activities are planned with the exception of a gas handling facility. New development is anticipated to be small and would use existing facilities and infrastructure.

Exploration, development, and production activities similar to those discussed in the petitions are currently being conducted. Operations of this type have been ongoing since the discovery of the Prudhoe Bay oil field in 1968. Because of many variable influencing Industry activities, predictions as to the exact dates, duration and location are speculative. However, specific dates, duration and locations will be required when applications for LOAs are submitted.

To reduce duplication of time, effort, and documentation, and since the three petitions submitted by Industry are similar activities in one specific geographical area, the Service determined, in accordance with section 101(a)(5) of the Act and 50 CFR 18.27, the three petitions could be combined into one rulemaking authorizing a specified activity within a specified geographical region.

Biological Information

The geographical area covered by this action is the land and water area east of a north/south line through Barrow, Alaska. The onshore area is 25 miles inland and east to the Canning River. The Arctic National Wildlife Refuge is outside of the authorized area. Offshore the area extends through Alaska State waters and into the OCS waters of the Beaufort Sea from Barrow east to the Canadian border.

Walrus

The Pacific walrus primarily occurs in the waters of the Bering and Chukchi Seas along the western coast of Alaska. Most of the population congregates near the ice edge of the Chukchi Sea pack ice during the summer. The primary summer range of the walrus does not extend east of Point Barrow. In the winter, walrus occur in areas where there are polynyas, open leads or thin ice in which they can create and maintain breathing holes. Major concentrations in the winter are located in the northwestern Bering Sea and the southeastern Bering Sea. Walrus do occur in the Beaufort Sea but only in small numbers.

Polar Bear

Polar bears occur only in the Northern Hemisphere, where their distribution is circumpolar, and they live in close association with polar ice. In Alaska, their distribution extends from south of the Bering Strait to the U.S.-Canada border. The world population has been estimated at 10,000–20,000, with possibly as many as 5,000 bears in Alaska. The Beaufort Sea population (from Point Barrow to Cape Bathurst, Northwest Territories) is estimated to be 1,300 to 2,500 bears. The most extensive north-south movements of polar bears occur with the ice in the spring and fall.

Females without dependent cubs breed in the spring and enter maternity dens by late November. Females with cubs do not mate. An average of two cubs, sometimes one and rarely three, are usually born in December and the family group emerges in late March or early April. Only pregnant females den for an extended period during the winter. Other polar bears may burrow out depressions to escape harsh winter winds. Polar bears become sexually mature at 4–8 years old and the average reproduction interval for polar bear is 3–4 years. The maximum reported age of reproduction in Alaska is 18 years. Based on these conditions, a polar bear may produce about 10 cubs in her lifetime.

Ringed seals are the primary prey species of the polar bear. Occasionally bearded seals and walrus calves may be hunted. Polar bears have been known to eat nonfood items such as styrofoam, plastic, car-batteries, anti-freeze and lubricating fluids.

The fur and blubber of the polar bear provide vital protection from the cold air and frigid water. Newly emerged cubs may not have a sufficient layer of blubber to maintain body heat when immersed in water for long periods of time. For this reason the mother is very protective of the cubs. It has been suggested that cubs abandoned prior to the normal weaning age of 2.5 years will likely not survive.

Polar bears have no natural predators, and they do not appear to be prone to death by diseases or parasites. The most significant source of mortality is man. Since 1972, with the passage of the Act, only Alaskan Natives have been allowed to hunt polar bears for their subsistence needs, handicrafts and clothing items. The Native harvest occurs without restrictions on sex, age, number or season, providing it is non-wasteful. From 1980–1991, the total annual harvest averaged 125 bears. The majority of this harvest (71 percent) came from the Chukchi Sea area.

Effects of Oil and Gas Industry Activities on Marine Mammals and on Subsistence Uses

Walrus

Oil and gas industry activities such as air and vessel traffic, noise from air traffic, seismic surveys, ice breakers, supply ships and drilling may frighten or displace walrus. However, as previously stated in this document, the primary range of the Pacific walrus is west of Point Barrow and the likelihood of many walrus being in the Beaufort

Sea is small. Therefore, it is unlikely that Industry activities will result in more than a negligible impact on the species. Likewise, activities during the ice-covered periods and the onshore development and production activities should not impact the walrus.

In the early spring, females and calves may become concentrated in the limited amount of open water between the shorefast ice and the pack ice, or the shear zone. These areas of congregation or preferred habitat result primarily because of the presence of open water. This congregation activity makes the walrus vulnerable to early arriving industry-related traffic. Air and vessel traffic may cause the animals to stampede off the ice which may result in trampling and separation of cow-calf pairs.

Stationary drilling structures may affect the movement of walrus. Walrus may be attracted to the activity or repelled by noise or smell. In the 1989 drilling season, an incident occurred in a Chukchi Sea operation where a young walrus surfaced in the center hole (moonpool) of the drillship. The walrus was removed from the drilling area by the use of a cargo net. The walrus left the scene of the incident and was not seen again.

Seismic surveys generally take place on solid ice or open water. Since most walrus activity occurs near the ice edge, interactions with walrus and the seismic activity are unlikely.

Subsistence

Compared to the overall harvest of walrus by Alaskan Natives, few are harvested in the Beaufort Sea along the northern coast of Alaska. The walrus constitutes a small portion of the harvest for the villages of Barrow and Nuiqsut. Annual harvest data of subsistence resources averaged for the period of 1962–1982 shows that the village of Barrow averaged 55 walrus per year, Nuiqsut averaged 3 walrus per year and Kaktovik shows no harvest. The majority of kills by the village of Barrow occurred to the southwest in the Chukchi Sea. Therefore, oil and gas exploration, development and production activities should have a negligible impact on walrus subsistence activities.

Polar Bear

Oil and gas exploration, development and production activities in the Beaufort Sea and adjacent northern coast of Alaska may affect the polar bear. Drillships and icebreaker activity may be physical obstructions to their normal movement. Noise, sights, and smells produced by activities may attract or repel bears. These disruptions may introduce changes in the bears' natural behavior that may be detrimental.

Exploration activities during the open-water season are not likely to impact upon the movements or natural behavior of the polar bear. Although polar bears have been documented in open water, miles from the ice edge or ice floes, normally the polar bear is found near the ice edge. Therefore, it is unlikely that exploration activities in the open-water season will have more than a negligible impact on the polar bear.

Winter oil and gas activities have a far greater possibility of having a detrimental impact on the polar bear. Since the polar bear continues to move over the ice pack throughout the year, interaction with industry activities are likely. Curious polar bears are likely to investigate drillships and artificial or natural islands where drilling operations occur. Any on-ice activity creates an opportunity for industry/bear interactions.

Offshore drillsites within the pack ice may modify the habitat by creating open water leads down current from the activity. These open water leads may create temporary niches for subadult or non-breeding ringed seals, the primary prey species for the polar bear. Should this occur, polar bears would likely be attracted, thereby creating a possibility of industry/polar bear encounters. However, most offshore drilling operations are conducted from raised platforms which isolate the drilling operation and industry employees from the ice and polar bears.

Polar bear interaction plans are developed for each operation. Industry personnel are required to participate in a polar bear interaction training program while on-site. These training programs and interaction plans are designed to ensure that the activity and possible interactions have the least detrimental effect on industry personnel and the polar bear. Occasionally, work may be required on the ice adjacent to elevated drillships or platforms. In such cases, work areas are well-lighted and open to reduce the likelihood that a polar bear would approach the work area undetected.

Winter seismic activity (survey crews) has a potential of disturbing denning females. Denning females are sensitive to noise disturbances and may be discouraged from seeking a preferred denning site, or may abandon dens, thereby risking the lives of the offspring. Prior to initiating seismic survey activity, Industry provides the Service with its proposed survey route(s). Through satellite observations of radio collared bears the Service is able to information Industry of known denning sites, and from knowledge of the geographical area the Service identifies areas of probable denning sites. Once sites are identified, Industry cooperates with the Service to alter survey routes to pass within no less than one mile of the denning sites. This on-going cooperative operating procedure ensures that known den sites are avoided within all practicable limits and every effort is made to keep at least one mile from known denning sites.

Subsistence

The polar bear is not a primary subsistence species of the villages of Barrow, Nuiqsut, or Kaktovik. Preliminary data from the Service's Marking, Tagging, and Reporting Program indicate that from July 1, 1989, to June 30, 1991, a total of 27 polar bears were killed by the Natives of Barrow. No polar bears were harvested by the Natives of the villages of Nuiqsut or Kaktovik. Hunting success varies considerably from year to year because of variable ice and weather conditions.

Industry works with the local Native groups to achieve a cooperative relationship between oil and gas activities and subsistence activities. Oil and gas exploration, development and production will not have more than a negligible impact on subsistence activities.

Oil Spills

The accidental discharge of oil into the environment during industry activities could result from operational spills during refueling, handling of lubricants and liquid products, and during general maintenance. These spills are projected to be small in quantity, generally less than a barrel of oil per incident. Drilling units maintain onboard cleanup equipment and train personnel to handle operational spills. These spills are not expected to pose a threat to polar bear or walrus.

A blowout (i.e., the loss of control of a well during drilling) is a potentially more serious type of spill accident. Based on data calculated by the Minerals Management Service, the probability of a blowout in the Beaufort Sea is extremely low. Data compiled by that agency verify that blowouts have occurred in the Canadian Beaufort Sea; however, in the course of exploratory drilling on the Alaska OCS, no blowouts have occurred.

The Service acknowledges that there is a low probability of oil spills connected with a blowout but the potential effects to polar bears or their habitats by oil spills may be significant.

Polar bears may be directly impacted by a spill by swimming in oil-contaminated waters. Bears which have been fouled by oil may suffer thermo-regulatory problems, ingest oil, and may exhibit other detrimental effects such as inflammation of the nasal passages or central nervous system. Bears that contact oil are likely to die.

An investigative study, Effects of Crude Oil on Polar Bears (Environmental Studies No. 24), was designed by N.A. Oritsland to simulate an arctic oil spill and determine its effect on polar bears experimentally exposed to the crude oil. The report states:

> A general conclusion which may be drawn from this study is that the polar bear is a potentially greatly impacted species when exposed to oil spills. An initial effect of coating with oil is that thermoregulatory and metabolic stresses develop which may cause serious disability if protracted in the wild. Oil fouling of the fur led to grooming and licking of the oil from the fur, with consequent ingestion of the oil, and absorption into the body from the gut. Residence of oil in the fur may be expected to be long if the animal is not cleaned completely, prolonging exposure by grooming/ingestion activities. Uptake of petroleum hydrocarbons and their distribution to body tissues led to behavioral abnormalities, including anorexia, as well as to tissue damage. A wide range of tissues were found to be affected, much of the effect related to uremia and severe dehydration. Peripheral hemolysis and a lack of bone marrow erythropoietic response resulted in an acute anemia in all oiled bears. The systemic toxicity effects were latent, not becoming pronounced until weeks after the initial exposure. Renal changes were the most serious under the laboratory conditions and can be assessed as the direct cause of death of two of the three oil exposed polar bears" (Oritsland et al., 1981).

A study by Derocher and Stirling (1990) documented a significantly oiled bear which appeared to have completely recovered from an oiling episode four years after it was originally sighted.

The probability of an oil spill must be balanced with the potential severity of harm to the species or stock when determining negligible impact. Even if the potential effects of a spill may be significant, if the probability of occurrence is low, a finding of negligible impact may be appropriate.

Due to the small number of walrus in the Beaufort Sea area, impacts to walrus resulting from oil spills are foreseen as negligible.

Conclusions

Based on the previous discussion, the Service makes the following findings regarding this action.

Impact on Species

The Service finds, based on the best scientific information available, that the effects of oil and gas related exploration, development and production activities for the next 5 years in the Beaufort Sea and adjacent northern coast of Alaska will have a negligible impact on the polar bear and the Pacific walrus and their habitat and on the availability of these species for subsistence uses if certain conditions are met. Oil and gas activities have occurred in the Beaufort Sea and the northern coast of Alaska for many years. To date, there has been only one documented case of a lethal take of a polar bear in defense of life at an exploratory drill site. Amstrup (1989) reported a case in which a bear died after eating ethylene glycol colored with rhodamine B. This chemical combination is used for making runway center lines on snow and ice. Other incidents, including harassment as defined by the Act, may have occurred, but no reports or legal action have verified such an incident.

Liability for illegal discharges of toxic materials into the environment is described in the Clean Water Act and other statutes such as the Resource Conservation and Recover Act (RCRA). In the event of a catastrophic spill, the Service would reassess the impacts to the polar bear and/or walrus populations and reconsider the appropriateness of authorizations for taking through section 101(a)(5) of the Act.

This finding of "negligible impact" applies to exploration, development, and production activities related to oil and gas activities. The following are generic conditions to eliminate interference with normal breeding, feeding, and possible migration patterns to ensure that the effects to the species remain negligible. These conditions will be site specific and species specific and may be expanded in the first year LOAs. Specific to polar bears, based on the results of the activities conducted under the first 1-year LOAs, information and protection provided under the Service's Polar Bear Habitat Conservation Strategy, and the Secretary's findings at the conclusion of the 18-month period of this rule, these conditions could be modified substantially or additional conditions developed in the event that, after public notice and comment, this rule was extended for the full 5-year term.

(1) No intentional taking of polar bear or walrus will be authorized. Should a situation arise where an intentional take (e.g., harassment associated with deterrent activities and/or lethal take) is required for the protection of human life or welfare, the Service may authorize such action under the authority of section 109(h)(1) and 112(c) of the Act.

(2) For the protection of pregnant polar bears during denning activities (selection, birthing, and maturation) in known and confirmed denning area, Industry will be restricted from activities in specific locations during certain specific times of the year. These restrictions will be applied on a case-by-case basis in response to a request for an LOA. In possible denning areas, pre-activity surveys, as determined by the Service, will be required to determine the presence or absence of denning activity.

(3) Each activity authorized by an LOA will require a site-specific plan of operation, a site-specific monitoring and reporting plan, a polar bear awareness and interaction plan and where relevant, a plan of cooperation. The purpose of the required plans is to ensure that the levels of activity and possible takes are consistent with the finding that the cumulative total of takes will have a negligible impact on polar bear and Pacific walrus, their habitat, and where relevant, on the availability of the species for subsistence uses.

Impact on Subsistence

Polar bear and Pacific walrus contribute a small amount of the total subsistence harvest for the villages of Barrow, Nuiqsut, and Kaktovik. However, this does not mean that the harvesting of these species is not important to Alaskan Natives. To ensure that the impact of oil and gas activity on the availability of the species or stock for subsistence uses is negligible, prior to receipt of an LOA, when working in a subsistence hunting or fishing area, Industry will be required to provide evidence to the Service that a plan of cooperation has been presented to the subsistence communities, the Eskimo Walrus Commission and the North Slope Borough. This plan of cooperation will provide the procedures on how Industry will work with the affected Natives communities and what actions will be taken to avoid interference with subsistence hunting of polar bear and walrus. The Service will review the plan to ensure that potential effects on the availability of the species are negligible.

If there is evidence that oil and gas activities will affect, or in the future may affect, the availability of polar bear or walrus for subsistence, the Service will reevaluate its findings regarding limits of incidental take and the measures required to ensure continued subsistence hunting opportunities.

Monitoring and Reporting

The purpose of monitoring programs is to determine short-term and long-term direct, indirect and cumulative effects of authorized oil and gas activities on polar bear and walrus in the Beaufort Sea and the northern coast of Alaska. Plans must identify the methods that will be used to determine and assess the effects on the movements, behavior and habitat use of polar bear and walrus in response to Industry activity. The results of the monitoring activity will be summarized and reviewed each year. Objectives for each year will be based on the previous year's monitoring results.

A service-approved plan for monitoring and reporting the effects of Industry exploration, development and production activities on polar bear and walrus will be required of all applicants prior to issuance of an LOA. For exploratory activities, a monitoring and reporting plan must be submitted each year, at least 90 days prior to initiation of planned activities, except that this 90-day requirement is waived for the first year. Monitoring results must be submitted, in final form, to the Service 90 days after completion of the activity. Since development and production activities are continuous long-term activities, upon approval, LOAs and their required monitoring and reporting plans would be issued for the life of the activity or until expiration of the regulations, whichever occurs first. Monitoring results associated with LOAs for development and production activities will be submitted by Industry annually for review by the Service. Continued operation under the LOA will be based upon annual approval of the monitoring results.

Discussion of Comments on the Proposed Rule

Comment: Several commenters believed the proposed action would violate the intent of the 1973 international Polar Bear Agreement and does not go far enough to protect important polar bear habitat components.

Response: This Final Rule is authorized by section 101(a)(5) of the Act and the Service sees no conflict between the rule and the Polar Bear Agreement. Article I of the Agreement states that "the taking of polar bears shall be prohibited * * *"; and the term "taking" is defined in Article I as including "hunting, killing and capturing," none of which is authorized by this final rule. As the resource agency responsible for polar bears, the Service is concerned about polar bear habitat and intends to ensure that polar bear habitat remains healthy and intact. However, in comport with, and to meet more fully the intent of the Polar Bear Agreement, under this final rulemaking, within 18 months of its publication, the Service will develop and begin implementing a strategy for the identification and protection of important polar bear habitats. Issuance of the rule beyond its 18-month effectiveness will be subject to public notice and comment, and will be contingent upon the development and implementation of this Habitat Conservation Strategy, special considerations or closures of any polar bear habitat components to be protected such as denning and feeding sites and migration routes, and affirmative findings of the Secretary of the Interior. Based on the results of the activities conducted under LOAs during the 18-month period of this final rule, information and protection provided under the Service's Habitat Conservation Strategy, and the Secretary's findings at the conclusion of the 18-month period, conditions specific to polar bears could be modified substantially or additional conditions developed. Pursuant to the development and implementation of the Polar Bear Habitat Conservation Strategy, additional measures could include the designation of special protective areas (e.g., "sanctuaries"), to ensure that important denning and feeding sites, migration routes, or other components have a high degree of protection. The Service will require and evaluate monitoring programs that will report the effects of the activity on polar bears and their habitat. The analysis of these monitoring reports may result in the modification of regulations or the conditions of operation, as necessary, to assure that the activity is having no more than a negligible effect upon polar bear rates of recruitment and survival. The Service may suspend or withdraw authorization for incidental take if monitoring programs indicate that the taking is having a greater than negligible effect on the population.

Comment: The Service has failed to "estimate the numbers of each species of marine mammal that may be taken and fully explain its rationale for determining that those numbers are appropriately characterized as 'small'."

Response: The regulations implementing the 1986 amendments to section 101(a)(5) of the Act define "small numbers" to mean "a portion of a marine mammal species, or stock, whose taking would have a negligible impact on that species or stock" (50 CFR 18.27(c)). The Service declines to prescribe actual numbers for taking levels. Such numerical limits do not take into account the effect of the type of taking such as harassment versus mortality. Congress recognized the imprecision of the term "small numbers," but "was unable to offer a more precise formulation because the concept is not capable of being expressed in absolute numerical limits." H.R. Rep. No. 228, 97th Cong., 1st Sess. 20 (1981).

Comment: There is no justification for establishing a 5-year period for the duration of the regulations.

Response: The suggestion that the Service consider issuing incidental take regulations for a period shorter than the 5 years allowed in section 101(a)(5) of the Act may be based on an assumption that a lack of information would justify issuing the regulations for only a "trial" period. The mechanisms are already in place to withdraw incidental take authority should the impacts demand such action. Each specific activity covered by these regulations will be required to obtain an LOA prior to beginning that activity. Monitoring and reporting are requirements of the LOA. Therefore, upon annual review of the monitoring and reporting data, should the need arise, the Service has the authority to revoke incidental take authorization. (50 CFR 18.27(f)). However, in consideration of the 1973 international Agreement on the Conservation of Polar Bears and its intent to protect and conserve habitat components, the Service will develop and begin implementation of a Polar Bear Habitat Conservation Strategy. Because special considerations or closures of any polar bear habitat components may be identified as needing further protection (e.g., denning and feeding sites and migration routes), the Secretary of the Interior has decided to make this rule effective for 18 months only, during which time the Strategy will be developed and implementation begun. Extension of the rule for the full 5-year period will be contingent upon not only development and beginning implementation of the Strategy, but also the Secretary's findings at the conclusion of the 18-month period, which would include consideration of the results of activities conducted under LOAs. The rule would not be extended for the full 5-year term without public notice and opportunity for comment. Pursuant to the development and implementation of the Polar Bear Habitat Conservation Strategy and a decision to extend the rule, additional protective measures could include the designation of special protective areas (e.g., "sanctuaries"), to ensure that

important denning and feeding sites, migration routes, or other habitat components have a high degree of protection. During the 18-month period of this rule, the Service will require and evaluate monitoring programs that will report the effects of Industry activity on polar bears and their habitat components. If the decision is made to extend the rule to the full 5-year term, the analysis of these monitoring reports also may result in the modification of those regulations or the conditions of operation, as necessary, to assure that an activity is having no more than a negligible effect upon polar bear habitat components or rates of recruitment and survival. The Service may suspend or withdraw authorization for incidental take if monitoring programs indicate that the taking is having a greater than negligible effect on the population.

Comment: Commenters believed that the Service should prepare a full Environmental Impact Statement (EIS).

Response: Through the preparation of an Environmental Assessment (EA), the Service found that the action will not significantly affect the quality of the human environment, thereby resulting in a "Finding Of No Significant Impact (FONSI)." Therefore, in accordance with the National Environmental Policy Act, no EIS is required. The EA publicly disclosed the Service's analysis of whether the proposed activity has only a negligible impact on a species or stock and does not have an unmitigable adverse impact on subsistence users.

Commenters appeared to confuse the potential impacts resulting from the incidental take of polar bear and walrus and the potential impacts resulting from oil and gas exploration, development, and production activities. The Service does not authorize the actual oil and gas activities. Those activities are authorized by other State and Federal agencies. The Service is confident in its position that the regulation does not significantly affect the quality of the human environment and, therefore, the preparation of an EIS is not required.

Comment: The EA and the Preamble of the Proposed Rule do not adequately address the need for the proposed action.

Response: Additional information has been added to the EA and the Final Rule's Preamble stating the need for the regulations.

Comment: Commenters stated that the annual review of monitoring and reporting plans is not adequate.

Response: Section 101(a)(5) of the Act does not outline specific monitoring and reporting requirements. Monitoring and reporting requirements will be specifically designed and approved for each specific activity authorized by an LOA. Monitoring and reporting requirements will be different depending upon whether the activity will be taking place on land, on ice, or in open water. An LOA will require the submission of a monitoring and reporting plan to be reviewed and approved by the Service prior to initiation of the activity. A report to the Service of monitoring and reporting activities will be required to be submitted 90 days after completion of exploration activities. The 90-day submittal time prior to the activity, the 90-day submittal time after completion of the activity and the time required for the actual activity make review of the monitoring and reporting plans more often than annually unrealistic. However, the Service is made aware of all sightings as soon as possible during the on-going activity. Therefore, if needed, the monitoring and reporting plans could be modified to meet the current situation.

Comment: One commenter pointed out an apparent inconsistency between the Service's BPX Proposed Rule (December 30, 1992, 57 FR 62284) and the Service's Shell Western E & P, Inc. (SWEPI), Final Rule (June 14, 1991, 56 FR 27453) over the issue of whether "minor disturbances" are takes. The commenter expressed confusion over our interpretation between the two rules and questioned if the Service's standard for takes had changed from the SWEPI Final Rule to the BPX Proposed Rule.

Response: The Service's standard as established in the SWEPI Final Rule has not changed. In developing that rule, the Service presented (at 56 FR 27453, column 2, last paragraph) the following rationale to clarify confusion over the term "take." That rationale still stands.

> The term "take" as defined in 50 CFR 18.3 means to harass, hunt, capture, collect, or kill any marine mammal including, without limitation, any of the following: The collection of dead animals or parts thereof; the restraint or detention of a marine mammal, no matter how temporary; tagging a marine mammal; or the negligent or intentional operation of an aircraft or vessel, or the doing of any other negligent or intentional act which results in the disturbing or molesting of a marine mammal. It is true that proof of "take" need not involve a showing of death or physical injury. However, minor disturbances of marine mammals, especially those that may occur in the absence of any negligence or intentional action by a person carrying out an otherwise lawful activity, may not constitute a "take."

The argument presented in our BPX Proposed Rule related specifically to the issue of bear/human encounters where human life is in jeopardy and whether, in such instances, the regulation could be used to authorize intentional nonlethal or lethal takings of polar bears. The rationale presented in the BPX Proposed Rule was intended as an argument against use of the regulation to authorize intentional takes of any sort; it was not intended as an argument for redefining and expanding the definition of take to include "minor disturbances."

Comment: The Proposed Rule's Preamble and the EA contain an extensive and detailed listing of objectives sought to be achieved through monitoring programs. Some appear to go far beyond what may legally and realistically be expected of an LOA holder. Research is not the responsibility of an LOA holder.

Response: The Secretary of the Interior is directed to prescribe regulations requiring the monitoring and reporting of incidental takes. The monitoring and reporting is to help the Service make the decision that the total taking during the 5-year period will have a negligible impact on the species or stock. It is the responsibility of the applicant to provide the required information and to demonstrate negligible impact. The monitoring is to determine and report when, where, how, and how many marine mammals, by species, age/size, and sex are taken in the course of the authorized activity. Monitoring methods which may accomplish these tasks include shipboard observations, aerial surveys, and possible monitoring of radio tagged walruses and polar bears in the vicinity of the authorized activity. Long-term population monitoring programs should be developed to detect possible changes in abundance, distribution, and productivity. Programs which address these basic biological questions are not necessarily the responsibility of the applicant. Basically, the Service will not specifically define what information gathering will be required. Flexible monitoring and reporting requirements, developed by the Service, in cooperation with other interested agencies and groups, will be most beneficial to the Service and the species of concern.

Comment: There seems to be a misunderstanding of the proposed area. Several commenters said "regulations do not exclude ANWR," and "the proposed regulations include ANWR."

Response: The EA, the Preamble and the actual regulations are clear in this regard. The Industry petitions for incidental take regulations specifically excluded the Arctic National Wildlife Refuge (ANWR). The regulations do not include the ANWR.

Comment: The regulations should provide an opportunity for public review and comment on LOA applications.

Response: The Act does not require a public comment period for applications for LOAs. The Service's general implementing regulations in 50 CFR 18.27 state that once specific regulations are effective, LOAs will be processed, to the maximum extent possible, within 30 days from the date they are received. The Service will notify interested parties, such as the closest coastal community, State of Alaska, and the Marine Mammal Commission regarding the receipt and content of the LOA application. Notice of issuance of LOAs will be published in the **Federal Register**. Generally speaking, the public has had the opportunity to comment on all activities that the Industry will likely conduct in the next 5 years. The regulations and the determination of "negligible" impact are based on" Industry petitions which presented activities likely to be conducted for the next 5 years. Also, the public will have an opportunity to review and comment on activities during development and implementation by the Service of the Polar Bear Habitat Conservation Strategy.

Comment: Some commenters disagreed that the total impact of the takings will have a negligible effect on the species and on their availability for subsistence uses. Furthermore, they stated that issuance of these regulations violates the rights of the Native people.

Response: The regulations authorize the incidental take of polar bear and walrus associated with Industry activities. The regulations do not authorize the actual oil and gas activities. Lethal take of the species are not authorized by the regulations. Only the "incidental," by chance, or unexpected take is authorized under the regulations. Industry activities were present on the North Slope prior to the enactment of the "small take" provisions of the Act. Likewise, these activities have been conducted since the enactment of the Act. During that period of time, all known lethal takes of polar bears have been extremely small (possible 2–3). Takes of polar bears due to "harassment" possibly have been numerous, but there is no way to document such actions. Once the LOA process is in place and monitoring and reporting are required, the Service will have documentation on the non-lethal interactions with polar bears. The Service is confident that the authorized activities will have a negligible impact on the species and will not have an unmitigable adverse impact on the availability of the species or stock for subsistence uses. Further assurance that coastal Alaskan Natives will not be adversely impacted is in the requirement that a holder of an LOA cooperate with the affected Native community. Prior to authorization, applicants must assure the Service that they have met with the local affected villages and agreed upon a plan of action that will not have an unmitigable adverse impact on subsistence uses. Further, once the Service completes the development and begins implementing the Polar Bear Habitat Conservation Strategy, any additional protection provided to polar bear denning and feeding sites and migration patterns should further ensure that an unmitigable adverse impact on subsistence uses will not occur.

Comment: In § 18.126, "Measures to ensure the availability of species for subsistence," the word "traditional" should be deleted. Traditional subsistence hunting areas or areas where subsistence hunting "historically" took place may no longer be utilized as subsistence hunting areas.

Response: The Service agrees. The purpose of § 18.126 is to ensure that Industry activities do not conflict with subsistence hunting activities. To ensure a dialogue between Industry and subsistence Native hunters, this section has been changed to require that a plan of cooperation be submitted with each application for an LOA as evidence of agreement between Industry and the Native community. This procedure will allow the Native subsistence community to have input concerning possible adverse effects.

Required Determinations

The Service has prepared an Environmental Assessment (EA) in conjunction with this rulemaking. The Service has concluded in a Finding of No Significant Impact (FONSI) that this is not a major Federal action significantly affecting the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act of 1969. Therefore, preparation of an Environmental Impact Statement is not required. A copy of the EA and FONSI may be obtained from the individual identified above in the section entitled, **FOR FURTHER INFORMATION CONTACT.**

This rule has been reviewed under Executive Order 12866. Under the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, it has been determined that this rule will not have a significant economic effect on a substantial number of small entities. Oil companies and their contractors, conducting exploration, development, and production activities in Alaska, have been identified as the only likely applicants under the regulations. These potential applicants have not been identified as small businesses.

This final rule is not expected to have a potential takings implication under Executive Order 12630 because it authorizes incidental, but not intentional, take of polar bear and walrus by oil and gas industry companies and thereby exempts them from civil and criminal liability. The rule also does not contain policies with federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

The collections of information contained in this rule have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070.

List of Subjects in 50 CFR Part 18

Administrative practice and procedure, Imports, Indians, Marine mammals, Transportation.

For the reasons set forth in the preamble, part 18, subchapter B of chapter 1, title 50 of the Code of Federal Regulations is amended as set forth below:

PART 18—MARINE MAMMALS

1. The authority citation for 50 CFR part 18 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*

2. A new subpart J is added as follows:

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

Sec.

18.121 Specified activity and specified geographical region.
18.122 Effective dates.
18.123 Permissible methods.
18.124 Prohibitions.
18.125 Level of activity.
18.126 Measures to ensure availability of species for subsistence.
18.127 Requirements for monitoring and reporting.
18.128 Letters of Authorization.
18.129 Information collection requirements.

Subpart J—Taking of Marine Mammals Incidental to Oil and Gas Exploration, Development, and Production Activities in the Beaufort Sea and Adjacent Northern Coast of Alaska

§ 18.121 Specified activity and specified geographical region.

Regulations in this subpart apply to the incidental, but not intentional, take of polar bear and walrus by U.S. citizens (as defined in § 18.27(c)) engaged in oil and gas exploration, development, and production activities in the Beaufort Sea and adjacent northern coast of Alaska. The specified geographical area is defined by a North/South line at Barrow, Alaska, and includes all Alaska State waters, and Outer Continental Shelf waters each of that line to the Canadian border and an area 25 miles inland from Barrow on the west to the Canning River on the east. The Arctic National Wildlife Refuge is excluded.

§ 18.122 Effective dates.

Regulations in this subpart are effective for an 18-month period, from December 16, 1993 through June 16, 1995 for oil and gas exploration, development, and production activities. Within the 18 month effective period of this rulemaking, the Service will develop and begin implementing a Polar Bear Habitat Conservation Strategy, pursuant to the management planning process in section 115 of the Marine Mammal Protection Act and in furtherance of the goals of Article II of the 1973 international Agreement on the Conservation of Polar Bears. This Polar Bear Habitat Conservation Strategy may identify and designate special considerations or closures of any polar bear habitat components to be further protected; public notice and comment will be sought on those considerations or closures. By June 16, 1995, pursuant to notice and opportunity for public comment, the regulations in this subpart may be extended for the full 5-year term authorized by the Act, contingent upon the Service developing and beginning to implement this Polar Bear Habitat Conservation Strategy, review of monitoring reports submitted by holders of Letters of Authorization, and an affirmative finding by the Secretary of the Interior.

§ 18.123 Permissible methods.

(a) The incidental, but not intentional, take of polar bear and walrus by U.S. citizens holding a Letter of Authorization (see § 18.128) is permitted for takes resulting from:

(1) Activities associated with conducting geological and geophysical surveys;

(2) Activities associated with drilling exploratory wells and associated activities; and

(3) Activities associated with drilling production wells and performing production support operations.

(b) The methods and activities identified in § 18.123(a) must be conducted in a manner that minimizes to the greatest extent practicable adverse impacts on polar bear and walrus, their habitat and on the availability of these marine mammals for subsistence uses. Subsequent to implementation by the Service of its Polar Bear Habitat Conservation Strategy, no adverse impacts will be authorized in those identified polar bear habitat areas afforded special protection through implementation of that strategy.

(c) The Service will evaluate each request for a Letter of Authorization based on the specific activity and the specific geographical location. Each Letter of Authorization will identify allowable conditions or methods that are specific to the activity and location.

§ 18.124 Prohibitions.

(a) Intentional takes of polar bear or walrus are not authorized by the regulations in this subpart. (Note: Pursuant to section 109(h)(1) of the Marine Mammal Protection Act, the Service may authorize the intentional take (e.g., harassment associated with deterrent activities and/or lethal take) for the protection of human life or welfare.)

(b) Any take that fails to comply with the terms and conditions of the specific regulations in this subpart or of the Letters of Authorization is prohibited.

§ 18.125 Level of activity.

When Letters of Authorization are requested, the Service will determine whether the level of activity identified in the request exceeds that considered by the Service in making a finding of negligible impact on the species and a finding of no unmitigable adverse impact on the availability of the species for subsistence. If the level of activity is greater, the Service will re-evaluate its findings to determine if those findings continue to be appropriate based on the greater level of activity. Depending on the results of the evaluation, the Service may allow the authorization to stand as is, add further conditions, or withdraw or suspend the authorization.

§ 18.126 Measures to ensure availability of species for subsistence.

When applying for a Letter of Authorization, the applicant must submit a plan of cooperation that identifies what measures have been, and will be, taken to minimize adverse effects on the availability of polar bear and walrus for subsistence uses. The applicant must contact affected subsistence communities to discuss potential conflicts with the location, timing, and methods of planned operations. The applicant must make reasonable efforts to assure that activities do not interfere with subsistence hunting or that adverse effects on the availability of polar bear or walrus are properly mitigated.

§ 18.127 Requirements for monitoring and reporting.

(a) Holders of Letters of Authorization are required to cooperate with the Service and other designated Federal, State, or local agencies to monitor the impacts of oil and gas exploration, development and production activities on polar bear and walrus.

(b) Holders of Letters of Authorization must designate a qualified individual or individuals to observe and record the effects of the activities on polar bear and walrus.

(c) When applying for a Letter of Authorization, the applicant must include a site-specific plan to monitor the effects of the activity on the populations of polar bear and walrus that are present during the on-going activities. This plan, which must be approved by the Service's Alaska Regional Director, must identify the survey techniques that will be utilized to determine the actions of the polar bear and walrus in response to the on-going activity. The monitoring program must document the actions of these marine mammals and estimate the actual level of take. The monitoring requirements will vary depending on the activity, the location, and the time.

(d) If the activity is planned in polar bear habitat, the operator must develop a polar bear awareness and interaction plan subject to approval by the Service. For the protection of human life and welfare, each employee on site must complete a basic polar bear encounter training course.

(e) At its discretion, the Service may place an observer on site of the activity, on board drillships, drill rigs, aircraft, icebreakers, or other support vessels or vehicles to monitor the impact of the activity on polar bear and walrus.

(f) The holder of the Letter of Authorization must submit a report to the Service's Alaska Regional Director within 90 days after completion of activities. For development and production activities, the annual monitoring report must be submitted no later than 15 days after completion of the previous year's activities. The report

must include, at a minimum, the following information:

(1) Dates and time of activity;

(2) Dates and locations of polar bear or walrus activity related to monitoring the effects of the activity; and

(3) Results of the monitoring activities including an estimate of the actual level of take.

§ 18.128 Letters of Authorization.

(a) Each person or entity conducting an oil and gas exploration, development, or production activity in the geographical area described in § 18.121, that may take a polar bear or walrus in execution of those activities, should apply for a Letter of Authorization for each exploration activity or a Letter of Authorization for each development and production area. The application for authorization must be submitted to the Service's Alaska Regional Director at least 90 days prior to the start of the proposed activity.

Note: The requirement that an application for a Letter of Authorization be filed at least 90 days before an activity is scheduled to begin becomes effective March 6, 1994. The final regulations in this subpart become effective December 16, 1993.

(b) When an application for a Letter of Authorization is submitted, it must include the following information:

(1) A description of the activity, the dates and duration, the specific location and the estimated area affected by that activity;

(2) A plan to monitor the behavior and effects of the activity on polar bear and walrus; and

(3) A polar bear awareness and interaction plan.

(4) Where relevant, a cooperation plan that describes the measures to be taken to mitigate potential conflicts between the proposed activity and subsistence hunting.

(c) In accordance with § 18.27(f), decisions made concerning withdrawals of Letters of Authorization, either on an individual or class basis, with regard to factors other than the term of Letters of Authorization, will be made only after notice and opportunity for public comment.

(d) The requirement for notice and public comment in § 18.128(c) will not apply should the Service determine that an emergency exists that poses a significant risk to the well-being of the species or stock of polar bear or walrus.

§ 18.129 Information collection requirements

(a) The collections of information contained in this subpart have been approved by the Office of Management and Budget under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) and assigned clearance number 1018–0070. It is necessary to collect the information in order to describe the activity and estimate the cumulative impacts of potential takings by all persons conducting the activity. The information is used to evaluate the application and determine whether to issue specific regulations and, subsequently, Letters of Authorization.

(b) The public burden associated with the 5-year period potentially covered by this is estimated at 5,802 hours including 1,002 hours to complete the three applications for specific regulations (334 hours each), 720 hours to complete 90 applications for Letters of Authorization (8 hours each), 2,880 hours to comply with recordkeeping requirements associated with 90 Letters of Authorization, and 1,200 hours to complete 150 required annual reports (8 hours each). Direct comments regarding the burden estimate or any other aspect of this requirement to the Information Collection Clearance Officer, U.S. Fish and Wildlife Service, Department of the Interior, Mail Stop 224 ARLSQ, 1849 C Street, NW., Washington, DC 20240, and the Office of Management and Budget, Paperwork Reduction Project (1018–0070), Washington, DC 20503.

Dated: July 22, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–28053 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–55–M

Proposed Rules

Federal Register
Vol. 58, No. 219
Tuesday, November 16, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

NUCLEAR REGULATORY COMMISSION

10 CFR Chapter 1

Issuance of Quarterly Report on the Regulatory Agenda

AGENCY: Nuclear Regulatory Commission.

ACTION: Issuance of Regulatory Agenda.

SUMMARY: The Nuclear Regulatory Commission (NRC) has issued the NRC Regulatory Agenda for the third quarter, July through September, of 1993. This agenda provides the public with information about NRC's rulemaking activities. The Regulatory Agenda is a quarterly compilation of all rules on which the NRC has recently completed action, or has proposed action, or is considering action, and of all petitions for rulemaking that the NRC has received that are pending disposition. Issuance of this publication is consistent with section 610 of the Regulatory Flexibility Act.

ADDRESSES: A copy of this report, designated NRC Regulatory Agenda (NUREG–0936) Vol. 12, No. 3, is available for inspection, and copying for a fee, at the Nuclear Regulatory Commission's Public Document Room, 2120 L Street, NW. (Lower Level), Washington, DC.

In addition, the U.S. Government Printing Office (GPO) sells the NRC Regulatory Agenda. To purchase it, a customer may call (202) 512–2303 or (202) 512–2249 or write to the Superintendent of Documents, U.S. Government Printing Office, Post Office Box 37082, Washington, DC 20013–7082.

FOR FURTHER INFORMATION CONTACT: Michael T. Lesar, Chief, Rules Review Section, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Telephone: (301) 492–7758, toll-free number (800) 368–5642.

Dated at Bethesda, Maryland, this 8th day of November 1993.

For the Nuclear Regulatory Commission.

David L. Meyer,

Chief, Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration.

[FR Doc. 93–28145 Filed 11–15–93; 8:45 am]

BILLING CODE 7590–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–160–AD]

Airworthiness Directives; SAAB-SCANIA Model SAAB 340B Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain SAAB-SCANIA Model SAAB 340B series airplanes. This proposal would require replacement of the existing actuator assembly on the motor operated fuel valve assembly with a new, improved actuator assembly. This proposal is prompted by electromagnetic interference (EMI) tests, which indicate that the actuator assemblies of certain fuel shut-off valves may fail to function after exposure to EMI, such as lightning or high intensity radiated fields. The actions specified by the proposed AD are intended to prevent loss of function of the fuel shut-off valves, which could result in unchecked fuel leakage or fuel imbalance after fuel system failure.

DATES: Comments must be received by January 18, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from SAAB-SCANIA AB, Product Support, S581.88, Linköping, Sweden. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Mark Quam, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2145; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–160–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–160–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Luftfartsverket, which is the airworthiness authority for Sweden, recently notified the FAA that an unsafe condition may exist on certain SAAB-SCANIA Model SAAB 340B series airplanes. The Luftfartsverket advises that electromagnetic interference (EMI) tests indicate that the actuator assemblies of certain fuel shut-off valves may fail to function after exposure to EMI, such as lightning or high intensity radiated fields (HIRF). (During EMI testing, the intensity of exposure was within the range of intensity that the design is required to withstand under the applicable airworthiness requirements.) To date, however, no service difficulties related to this potential problem have been reported on any of these airplanes. Loss of function of the fuel shut-off valves, if not detected and corrected in a timely manner, could result in unchecked fuel leakage or fuel imbalance after fuel system failure.

SAAB-SCANIA AB has issued SAAB Service Bulletin SAAB 340–28–016, dated October 21, 1992, that describes procedures for accomplishment of Modification No. 2423, which entails modifying the configuration for the motor operated fuel valve assemblies. This modification includes replacement of the existing actuator assembly with a new, improved actuator assembly, and performance of a functional test of the engine fuel shutoff valve. The new, improved actuator assembly incorporates an electromagnetic relay that is less susceptible to EMI than the hybrid circuit in the existing actuator. Additionally, this actuator assembly meets current type design requirements for EMI. The Luftfartsverket classified this service bulletin as mandatory and issued Swedish Airworthiness Directives (SAD) No. 1–056, dated October 22, 1992, in order to assure the continued airworthiness of these airplanes in Sweden.

The motor operated fuel valve assemblies have a different configuration on airplanes having serial numbers 301 through 307 inclusive and are not affected by the addressed problem. The manufacturer has installed the new, improved actuator assembly prior to delivery on airplanes having serial numbers 308 and subsequent.

This airplane model is manufactured in Sweden and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the Luftfartsverket has kept the FAA informed of the situation described above. The FAA has examined the findings of the Luftfartsverket, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the existing actuator assembly on the motor operated fuel valve assembly with a new, improved actuator assembly, and performance of a functional test of the engine fuel shutoff valve. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 6 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 3 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by SAAB-SCANIA AB at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $990, or $165 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

SAAB-SCANIA: Docket 93–NM–160–AD.

Applicability: Model SAAB 340B series airplanes; serial numbers 271, and 275 through 300 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent loss of function of the fuel shut-off valves, which could result in unchecked fuel leakage or fuel imbalance after fuel system failure, accomplish the following:

(a) Within 6 months after the effective date of this AD, modify the engine left- and right-hand fuel shutoff valve, the interconnect valve, the crossfeed valve, and the de-fuel shutoff valve from a part number (P/N) AV16B2117B–2 (SAAB P/N 9303149–002) configuration to a P/N AV16B2117B–4 (SAAB P/N 9303149–004) configuration, by removing the existing actuator assembly, P/N 130001C, and installing a new, improved actuator assembly, P/N 130003N; and perform a functional test of the modified valves once they are installed; in accordance with SAAB Service Bulletin SAAB 340–28–016, dated October 21, 1992.

(b) As of the effective date of this AD, no person shall install a fuel shutoff valve assembly having P/N AV16B2117B–2 (SAAB P/N 9303149–002) on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 9, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28141 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–146–AD]

Airworthiness Directives; Boeing Model 737–300, –400, and –500 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Boeing Model 737–300, –400, and –500 series airplanes. This proposal would require modification of the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663. This proposal is prompted by reports that fuel leaking from the fuel line at FSS 250.663 flowed through a drain hole in a slat access panel and leaked into the turbine exhaust area, The actions specified by the proposed AD are intended to prevent such a fuel leak, which could cause an external fire under the wing.

DATES: Comments must be received by January 18, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Boeing Commercial Airplane Group, P.O. Box 3707, Seattle, Washington 98124–2207. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Bray, Aerospace Engineer, Propulsion Branch, ANM–140S, FAA, Transport Airplane Directorate, Seattle Aircraft Certification Office, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2681; fax (206) 227–1181.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–146–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–146–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The strut drain system installed on certain Boeing Model 737–300, –400, and –500 series airplanes is designed to divert fuel leakage to a point five feet from the turbine exhaust area. However, there have been several incidents in which fuel leaking from the fuel line at Front Spar Station (FSS) 250.663 flowed through a drain hole in a slat access panel and leaked into the turbine exhaust area. One of these incidents caused an external fire under the wing. Typically, such a fire could occur on the ground after the engines have been shut down. The resultant fire could spread from the turbine exhaust area to the strut and, subsequently, could ignite fuel within the strut. This condition, if not detected and corrected, could cause an external fire under the wing.

The FAA has reviewed and approved Boeing Service Bulletin 737–57–1221, dated August 6, 1992, that describes procedures for modifying the leading edge slat access panel and internal structure at FSS 250.663. Incorporation of this modification entails sealing the drain hole in Slat Access Panels 6307L and 6407R, changing the internal structure of the leading edge panel by creating a drain path to the strut drain system, and sealing the slat access panel and the internal structure of the leading edge panel to keep fuel leakage within the new drain path.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require modification of the leading edge slat access panel and internal structure at FSS 250.663. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 950 Boeing Model 737–300, –400, and –500 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 400 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 10 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. The cost of required parts would be negligible. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $220,000, or $550 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket.

A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption ADDRESSES.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Boeing: Docket 93–NM–146–AD.

Applicability: Model 737–300, –400, and –500 series airplanes, line position 1001 through 1976 inclusive, 1978 through 2183 inclusive, 2185 through 2186 inclusive, and 2188 through 2193 inclusive; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent fuel from leaking into the turbine exhaust area, which could cause an external fire under the wing, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify the leading edge slat access panel and internal structure at Front Spar Station (FSS) 250.663 in accordance with Boeing Service Bulletin 737–57–1221, dated August 6, 1992.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Seattle Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Seattle ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Seattle ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 9, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28142 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–P

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Freedom of Information Act Regulations

AGENCY: United States Information Agency.

ACTION: Notice of proposed rule.

SUMMARY: This proposed Regulation revises the Agency's current regulation implementing the Freedom of Information Act (FOIA), and we are soliciting comments on the proposed rule.

DATES: Comments on the rule will be accepted until November 16, 1993. All written communications received on or before the closing date will be considered by the Agency before taking action on a final rule.

ADDRESSES: Written comments to the Freedom of Information Office, United States Information Agency, Room M–10, 301 4th Street, SW., Washington, DC 20547, telephone (202) 619–5499. Comments received may be seen in the office by appointment between 9 a.m. and 4 p.m. Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora, Freedom of Information Officer (202) 619–5499.

List of Subjects in 22 CFR Part 503

Freedom of information.

Accordingly, 22 CFR part 503 is proposed to be amended by revising §§ 503.1 through 503.6 and removing § 503.9 as set forth below.

PART 503—FREEDOM OF INFORMATION ACT REGULATION

1. The authority citation for Part 503 is revised to read as follows:

Authority: 5 U.S.C. 552 Reform Act of 1986 as amended by Pub. L. 99–570 Sec. 1801–1804; 22 U.S.C. 2658; 5 U.S.C. 301; 13 U.S.C. 8; E.O. 10477, as amended; 47 FR 9320, Apr. 2, 1982, E.O. 12356. 5 U.S.C. Sec. 552 (1988 & Supp. III 1991) *as amended by* Freedom of Information Reform Act of 1986, Pub. L. No. 99–570, title I, Sections 1801–1804, 100 Stat. 3207, 3207–48–50 (1986) (codified at 5 U.S.C. Sec. 552 (1988)); 22 U.S.C. Sec. 2658 (1988); 5 U.S.C. Sec. 301 (1988); 13 U.S.C. Sec. 8 (1988); Executive Order No. 10477, 3 CFR 958 (1949–1953) *as amended by* Executive Order No. 10822, 3 CFR 355 (1959–1963), Executive Order No. 12292, 3 CFR 134 (1982), *reprinted in* 22 U.S.C. Sec. 1472 (1988); Executive Order No. 12356, 3 CFR 166 (1983), *reprinted in* 50 U.S.C. Sec. 401 (1988).

2. Sections 503.1 through 503.6 are revised to read as follows:

503.1 Introduction and definitions.

(a) *Introduction.* The FOIA and this part apply to all records of the United States Information Agency, including all of its foreign posts. As a general policy, USIA follows a balanced approach in administering the FOIA. We recognize the right of public access to information in the possession of the Agency, but we also protect the integrity of the Agency's internal processes. This policy calls for the fullest possible disclosure of records consistent with those requirements of administrative necessity and confidentiality which are recognized by the Freedom of Information Act.

(b) *Definitions.*

Access Appeal Committee or *Committee,* means the Committee delegated by the Agency Director for making final Agency determinations regarding appeals from the initial denial of records under the FOIA. This Committee also revises final appeal denials of documents made by the National Endowment for Democracy (NED) for its records.

Agency or *USIA* means the United States Information Agency. It includes all components of USIA in the U.S. and all foreign posts abroad (known as the U.S. Information Service or USIS). (See 22 CFR part 504, chapter V—Organization.)

Commercial use, when referring to a request, means that the request is from or on behalf of one who seeks information for a use or purpose that furthers the commercial, trade, or profit interests of the requester or of a person on whose behalf the request is made. Whether a request is for a commercial use depends on the purpose of the request and the use to which the records will be put. The identity of the requester (individual, non-profit corporation, for-profit corporation), or the nature of the records, while in some cases indicative of that purpose or use, is not necessarily determinative. When a request is from a representative of the news media, the request shall be deemed not to be for commercial use.

Department means any executive department, military department, government corporation, government controlled corporation, any independent regulatory agency, or other establishment in the executive branch of the Federal Government. A private

organization is not a department even if it is performing work under contract with the Government or is receiving Federal financial assistance. Grantee and contractor records are not subject to the FOIA unless they are in the possession and control of USIA.

Duplication means the process of making a copy of a record and sending it to the requester, to the extent necessary to respond to the request. Such copies include paper copy, microform, audiovisual materials, and magnetic tapes, cards and discs.

Educational institution means a preschool, elementary or secondary school, institution of undergraduate or graduate higher education, or institution of professional or vocational education.

FOIA means section 552 of title 5, United States Code, as amended.

Freedom of Information Officer means the USIA official who has been delegated the authority to release or withhold records and assess, waive, or reduce fees in response to FOIA requests.

Non-commercial scientific institution means an institution that is not operated substantially for purposes of furthering its own or someone else's business, trade, or profit interests, and that is operated for purposes of conducting scientific research whose results are not intended to promote any particular product or industry.

Post or *USIS* means all overseas offices of the USIA.

Records means any handwritten, typed or printed documents (such as memoranda, books, brochures, studies, writings, drafts, letters, transcripts, and minutes) and documentary material in other forms (such as punchcards; magnetic tapes, cards, or discs; paper tapes; audio or video recordings; maps; photographs; slides, microfilm; and motion pictures). It does not include objects or articles such as exhibits, models, equipment, and duplication machines or audiovisual processing materials. Nor does it include books, magazines, pamphlets, or other reference material in formally organized and officially designated USIA libraries, where such materials are available under the rules of the particular library.

Representative of the news media means a person actively gathering news for an entity organized and operated to publish or broadcast news to the public. "News" means information that is about current events or that would be of current interest to the public. News media entities include television and radio broadcasters, publishers of periodicals (to the extent they publish "news") who make their products available for purchase or subscription by the general public, and entities that may disseminate news through other media (e.g., electronic dissemination of text). Freelance journalists shall be considered representatives of a news media entity if they can show a solid basis for expecting publication through such an entity. A publication contract or a requester's past publication record may show such a basis.

Request means asking in writing for records whether or not the request refers specifically to the Freedom of Information Act.

Review means examining the records to determine which portions, if any, may be released, and any other processing that is necessary to prepare the records for release. It includes only the first examination and processing of the requested documents for purposes of determining whether a specific exemption applies to a particular record or portion of a record.

Search means looking for records or portions of records responsive to a request. It includes reading and interpreting a request, and also page-by-page and line-by-line examination to identify responsive portions of a document. However, it does not include line-by-line examination where merely duplicating the entire page would be a less expensive and a quicker way to comply with the request.

§ 503.2 Making a request.

(a) *How to request records.* All requests for documents shall be made in writing. Requests should be addressed to the United States Information Agency, Freedom of Information Officer, GC/FOI, room M–10, 301 4th Street, SW., Washington, DC 20547. Write the words "Freedom of Information Act Request" on the envelope and letter.

(b) Details in your letter. Your request for documents should provide as many details as possible that will help us find the records you are requesting. If there is insufficient information, we will ask you for more. Include your telephone number(s) to help us reach you if we have questions. If you are not sure how to write your request or what details to include, you may call the FOIA Office. The more specific the request for documents, the faster the Agency will be able to respond to your requests.

(c) *Requests not handled under FOIA.* We will not provide documents requested under the FOIA and this part if the records are currently available in the National Archives, subject to release through the Archives, or commonly sold to the public by it or another agency pursuant to statutory authority (for example, records currently available from the Government Printing Office or the National Technical Information Service). Agency records that are normally freely available to the general public, such as USIA World, are not covered by the FOIA. Also requests from Federal departments and court orders for documents are not FOIA requests, nor are requests from Chairmen of Congressional committees or subcommittees.

(d) *Referral of requests outside the agency.* If you request records that were created by or provided to us by another Federal department, we may refer your request to or consult with that department. We may also refer requests for classified records to the department that classified them. In cases of referral, the other department is responsible for processing and responding to your request under that department's regulation. When possible, we will notify you when we refer your request to another department.

(e) *Responding to your request.*

(1) *Retrieving records.* The Agency is required to furnish copies of records only when they are in our possession and control. If we have stored the records you want in a records retention center, we will retrieve and review them for possible disclosure. However, the Federal Government destroys many old records, so sometimes it is impossible to fill requests. The Agency's record retention policies are set forth in the General Records Schedules of the National Archives and Records Administration and in USIA's Records Disposition Schedule, which establish time periods for keeping records before they may be destroyed.

(2) *Furnishing records.* The Agency is only required to furnish copies of records which we have or can retrieve; we are not compelled to create new records. For example, if the requested information is maintained in computerized form and we can, with minimal computer instructions, produce the information on paper, we will do so—if this is the only way to respond to a request. We are not, however, required to write a new computer program in order to print documentary material in a format you might prefer. On the other hand, we may decide to conserve government resources and at the same time supply the records you need by consolidating information from various records rather than coping them all. The Agency is required to furnish only one copy of a record. If we are unable to make a legible copy of a record to be released, we will not attempt to reconstruct it. Rather we will furnish the best copy possible and note its poor quality in our reply or on the copy. If material exists in different forms, we

will provide the record in the form that best conserves government resources. For example, if it requires less time and expense to provide a computer record as a paper printout rather than on tape, we will provide the printout.

§ 503.3 Availability of agency records.

(a) *Release of records.* If we have released a record or part of a record to others in the past, we will ordinarily release it to you also. This principle does not apply if the previous release was an unauthorized disclosure. However, we will not release it to you if a statute forbids this disclosure and we will not necessarily release it to you if an exemption applies in your situation and did not apply or applied differently in the previous situations.

(b) *Denial of requests.* All denials are in writing and described in general terms the material withheld and state the reasons for the denial, including a reference to the specific exemption of the FOIA authorizing the withholding or deletion. The denial also explains your right to appeal the decision and it will identify the official to whom you should send the appeal. Denial letters are signed by the person who made the decision to deny all or part of the request, unless otherwise noted.

(c) *Unproductive searches.* We make a diligent search for records to satisfy your request. Nevertheless, we may not be able always to find the records you want using the information you provided, or they may not exist. If we advise you that we have been unable to find the records despite a diligent search, you will nevertheless be provided the opportunity to appeal the adequacy of the Agency's search. However, if your request is for records that are obviously not connected with this Agency or your request has been provided to us in error, a "no records" response will not be considered an adverse action and you will not be provided an opportunity to appeal.

(d) *Appeal of denials.* You have the right to appeal a partial or full denial of your FOIA request. To do so, you must put your appeal in writing and address it to the official identified in the denial letter. Your appeal letter must be dated and post marked within 30 calendar days from the date of the Agency's denial letter. Because we have some discretionary authority in deciding whether to release or withhold records, you may strengthen your appeal by explaining your reasons for wanting the records. However, you are not required to give any explanation. Your appeal will be reviewed by the Agency's Access Appeal Committee which consists of senior Agency officials. When the Committee responds to your appeal, that constitutes the Agency's final action on the request. If the Access Appeal Committee grants your appeal in part or in full, we will send the records to you promptly or set up an appointment for you to inspect them. If the decision is to deny your appeal in part or in full, the final letter will state the reasons for the decision, name the officials responsible for the decision, and inform you of the FOIA provisions for judicial review.

§ 503.4 Time limits.

(a) *General*—The FOIA sets certain time limits for us to decide whether to disclose the records you requested, and to decide appeals. If we fail to meet the deadlines, you may proceed as if we had denied your request or your appeal. Since requests may be misaddressed or misrouted, you should call or write to confirm that we have the request and to learn its status if you have not heard from us in a reasonable time.

(b) *Time allowed.*

(1) We will decide whether to release records within 10 working days after your request reaches the appropriate area office that maintains the records you are requesting. When we decide to release records, we will actually provide the records at that time, or as soon as possible after that decision, or let you inspect them as soon as possible thereafter.

(2) We will decide an appeal within 20 working days after the appeal reaches the appropriate reviewing official.

(3) The FOI Officer or appeal official may extend the time limits in unusual circumstances for initial requests or appeals, up to 10 working days. We will notify you in writing of any extensions. "Unusual circumstances" include situations where we: search for and collect records from field facilities, records centers or locations other than the office processing the records; search for, collect, or examine a great many records in response to a single request; consult with another office or department that has substantial interest in the determination of the request; and/or conduct negotiations with submitters and requesters of information to determine the nature and extent of non-disclosable proprietary materials.

§ 503.5 Records available for public inspection.

(a) To the extent that they exist, we will make the following records of general interest available for your inspection and copying:

(1) Orders and final opinions, including concurring and dissenting opinions in adjudications. (See § 503.8(e) of this part for availability of internal memoranda, including attorney opinions and advice.)

(2) Statements of policy and interpretations that we have adopted but have not published in the **Federal Register.**

(3) Administrative staff manuals and instructions to staff that affect the public. (We will not make available, however, manuals or instructions that reveal investigative or audit procedures as described in § 503.8 (b) and (g) of this part.)

(4) In addition to such records as those described in paragraph (a) of this section, we will make available to any person a copy of all other Agency records, unless we determine that such records should be withheld from disclosure under subsection (b) of the Act and § 503.8 of this part.

(b) Before releasing these records, however, we may delete the names of people, or information that would identify them, if release would invade their personal privacy to a clearly unwarranted degree. (See § 503.8(f).)

(c) This Agency does not publish an FOIA index because it is impracticable to do so.

503.6 Restriction on some agency records.

Under the U.S. Information and Educational Exchange Act of 1948 (22 U.S.C. 1461, as amended), the USIA is prohibited from disseminating within the United States information about the U.S., its people, and its policies when such materials have been prepared by the Agency for audiences abroad. This includes films, radio scripts and tapes, video tapes, books, and similar materials produced by the Agency. However, this law does provide that upon request, such information shall be made available at USIA for examination only by representatives of the press, magazines, radio systems and stations, research students or scholars and available for examination only to Members of Congress.

3. Section 503.9 is removed.

§ 503.9 [Removed].

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–27950 Filed 11–15–93; 8:45 am]

BILLING CODE 8230–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL-4801-6]

Risk Management Programs for Chemical Accidental Release Prevention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: On October 20, 1993 (58FR 54190) the Environmental Protection Agency proposed regulations that would require development and implementation of risk management programs at facilities that manufacture, process, use, store, or otherwise handle regulated substances in quantities that exceed specified thresholds. EPA has proposed a list of regulated substances and thresholds separately. Risk management programs provide facilities with an integrated approach to identifying and managing the hazards posed by these regulated substances. The risk management plans developed under such programs would be registered with EPA, provided to the Chemical Safety and Hazard Investigation Board, state governments, and local planning authorities, and made available to the public. The proposed rule would assist facilities and communities in efforts to lessen the number and severity of serious chemical accidents. This notice schedules two additional public hearings.

DATES: Comments must be submitted on or before February 16, 1994. Public hearings will be held in Washington, DC on November 30, 1993, from 9 a.m. to 5 p.m.; in Chicago, IL on December 8, 1993, from 9 a.m. to 5 p.m.; in San Francisco, CA on December 15, 1993, from 9 a.m. to 5 p.m. Persons interested in appearing at the Washington public hearing should register with EPA at (703) 218–2570 by November 23, 1993. Persons interested in appearing at the Chicago public hearing should register with EPA at (312) 886–1964 by December 3, 1993. Persons interested in appearing at the San Francisco public hearing should register with EPA at (415) 744–2100 by December 10, 1993. A copy of the testimony should be submitted by the appropriate registration date, to Dr. Lyse Helsing (see the **ADDRESSES** section) and two copies to the docket.

Docket: Supporting documentation used in developing this proposed rule is contained in Docket No. A–91–73. This docket is available for public inspection and copying between 8:30 a.m. and 12 noon, and between 1:30 and 3:30 p.m. Monday through Friday, at the address listed below. A reasonable fee may be charged for copying.

ADDRESSES: Comments should be mailed or submitted to: Environmental Protection Agency, Air Docket (LE–131), Attn: Docket No. A–91–73, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Comments must be submitted in duplicate. In addition, testimony for the Washington hearing should be mailed to Dr. Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 5101, 401 M St SW., Washington, D.C. 20460. Testimony for the Chicago hearing should be mailed to Mail code HSC–9J, The Lake Michigan Room, #77 W. Jackson Blvd. Ralph H. Metcalfe Bldg., Chicago, IL 60604. Testimony for the San Francisco hearing should be mailed to Attn: RMP Hearing, Office of Health and Emergency Planning, Mail Code H–8–5, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105. The public hearings will be held at: Temple Micah, 600 M Street SW., Washington, DC; The Lake Michigan Room—12th Floor, #77 W. Jackson Blvd., Ralph H. Metcalfe Bldg., Chicago, IL; Berkeley Marina Marriott, 200 Marina Blvd., Berkeley, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 5101, 401 M St. SW., Washington, DC 20460, (202) 260–6128; or the Emergency Planning and Community Right-to-Know Hotline, (800) 535–0202; in northern Virginia and Alaska (703) 920–9877.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 93–28119 Filed 11–15–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 68

[A–91–73; FRL–4801–9]

Risk Management Programs for Chemical Accidental Release Prevention

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of public hearing.

SUMMARY: On October 20, 1993 (58FR 54190) the Environmental Protection Agency proposed regulations that would require development and implementation of risk management programs at facilities that manufacture, process, use, store, or otherwise handle regulated substances in quantities that exceed specified thresholds. EPA has proposed a list of regulated substances and thresholds separately. Risk management programs provide facilities with an integrated approach to identifying and managing the hazards posed by these regulated substances. The risk management plans developed under such programs would be registered with EPA, provided to the Chemical Safety and Hazard Investigation Board, state governments, and local planning authorities, and made available to the public. The proposed rule would assist facilities and communities in efforts to lessen the number and severity of serious chemical accidents. This notice schedules two additional public hearings.

DATES: Comments must be submitted on or before February 16, 1994. Public hearings will be held in Washington, DC on November 30, 1993, from 9 a.m. to 5 p.m.; in Chicago, IL on December 8, 1993, from 9 a.m. to 5 p.m.; in San Francisco, CA on December 15, 1993, from 9 a.m. to 5 p.m. Persons interested in appearing at the Washington public hearing should register with EPA at (703) 218–2570 by November 23, 1993. Persons interested in appearing at the Chicago public hearing should register with EPA at (312) 886–1964 by December 3, 1993. Persons interested in appearing at the San Francisco public hearing should register with EPA at (415) 744–2100 by December 10, 1993. A copy of the testimony should be submitted by the appropriate registration date, to Dr. Lyse Helsing (see the **ADDRESSES** section) and two copies to the docket.

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ADDRESSES: Comments should be mailed or submitted to: Environmental Protection Agency, Air Docket (LE–131), Attn: Docket No. A–91–73, Waterside Mall, 401 M Street, SW., Washington, DC 20460. Comments must be submitted in duplicate. In addition, testimony for the Washington hearing should be mailed to Dr. Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 5101, 401 M St SW., Washington, D.C. 20460. Testimony for the Chicago hearing should be mailed to Mail code HSC–9J, The Lake Michigan Room, #77 W. Jackson Blvd. Ralph H. Metcalfe Bldg., Chicago, IL 60604. Testimony for the San Francisco hearing should be mailed to Attn: RMP Hearing, Office of Health and Emergency Planning, Mail Code H–8–5, EPA Region 9, 75 Hawthorne St., San Francisco, CA 94105. The public hearings will be held at: Temple Micah, 600 M Street SW., Washington, DC; The Lake Michigan Room—12th Floor, #77 W. Jackson Blvd., Ralph H. Metcalfe Bldg., Chicago, IL; Berkeley Marina Marriott, 200 Marina Blvd., Berkeley, CA.

FOR FURTHER INFORMATION CONTACT: Dr. Lyse Helsing, Chemical Emergency Preparedness and Prevention Office, Environmental Protection Agency, 5101, 401 M St. SW., Washington, DC 20460, (202) 260–6128; or the Emergency Planning and Community Right-to-Know Hotline, (800) 535–0202; in northern Virginia and Alaska (703) 920–9877.

Jim Makris,

Director, Chemical Emergency Preparedness and Prevention Office.

[FR Doc. 93–28119 Filed 11–15–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Parts 552, 554, 573, 576, and 577

[Docket No. 93–68; Notice 2]

RIN 2127–AD83

Petitions for Rulemaking, Defect and Noncompliance Orders; Standards Enforcement and Defect Investigations; Defect and Noncompliance Reports; Record Retention; and Defect and Noncompliance Notification

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Proposed rule; extension of comment period.

SUMMARY: In response to a petition submitted by the American Automobile Manufacturers Association (AAMA), this notice extends the comment period on a notice of proposed rulemaking to amend several provisions of NHTSA's regulations that pertain to its enforcement of the National Traffic and Motor Vehicle Safety Act of 1966, as amended (Safety Act), and manufacturers' obligations to provide notification and remedy without charge to owners of motor vehicles or items of motor vehicle equipment that have been determined not to comply with a

Federal motor vehicle safety standard or to contain a defect related to motor vehicle safety. In view of the breadth of the proposed amendments, NHTSA agrees with petitioner that it is appropriate to allow additional time for commenters to prepare their responses. Accordingly, the agency has decided to extend the comment period from November 12, 1993 to December 3, 1993.

DATES: Comments on the notice of proposed rulemaking, Docket 93–68, Notice 1, must be received on or before December 3, 1993.

ADDRESSES: Comments should refer to Docket 93–68, Notice 1, and be submitted to the following: Docket Section, room 5109, NHTSA, 400 Seventh Street SW., Washington, DC 20590. The docket room hours are 9:30 a.m. to 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Jonathan D. White, Office of Defects Investigation, NHTSA, 400 Seventh Street, SW., Washington, DC 20590 (202–366–5227).

SUPPLEMENTARY INFORMATION: On September 27, 1993, NHTSA published a notice of proposed rulemaking (NPRM) in the **Federal Register**, 58 FR 50314, in which it proposed to amend several provisions of its regulations pertaining to manufacturers' obligations to provide notification and remedy without charge to owners of motor vehicles or items of motor vehicle equipment that have been determined not to comply with a Federal motor vehicle safety standard or to contain a defect related to motor vehicle safety.

Several of the amendments would implement provisions added to the Safety Act by the Intermodal Surface Transportation Efficiency Act of 1991 regarding notification of defects or noncompliances to vehicle lessees and for a second notification to owners of recalled vehicles. The remaining provisions would amend existing regulations related to NHTSA's consideration of petitions for rulemaking or for an investigation of an alleged safety-related defect or noncompliance (49 CFR part 552); NHTSA's procedures following an initial determination that a safety-related defect exists (49 CFR part 554); the form and content of defect and noncompliance reports submitted to NHTSA by manufacturers (49 CFR part 573); the form and content of notification letters that manufacturers must send to owners and dealers following a determination that a vehicle or item of equipment contains a safety-related defect or noncompliance (49 CFR part 577); the record retention requirements applicable to motor vehicle manufacturers (49 CFR part 576); and a clarification that NHTSA's reporting and recordkeeping regulations (49 CFR parts 573 and 576) apply to electronically generated or communicated materials.

The NPRM requested comments on the proposed amendments and specified that comments had to be submitted on or before November 12, 1993, a comment period of 45 days.

The AAMA has petitioned the agency to extend the comment period for an additional 45 days, until December 27, 1993. It noted that the proposed amendments could have a significant effect on original equipment manufacturers, suppliers, dealers and consumers. The petitioner also stated that its members needed to consider the wide variety of issues in the notice to determine the effects of such amendments on their operations.

After reviewing the petition, NHTSA agrees with the AAMA that extending the comment closing date is appropriate. Although the NPRM does not raise issues of technical complexity it does cover a wide variety of areas that are of importance to all aspects of the motor vehicle industry. An extension of the comment period will allow the petitioner and other commenters more time to better address the issues covered in the NPRM.

However, the agency believes that an additional 45 days is not required. Therefore, the agency has decided that there is good cause to extend the comment period an additional three weeks (21 days) and that this decision is consistent with the public interest.

Accordingly, the agency has decided to extend the comment period until December 3, 1993.

Issued on: November 10, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–28134 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–59–M

Notices

Federal Register
Vol. 58, No. 219
Tuesday, November 16, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forest Service

Southern Region; Exemption From Appeal of the Decision for Suppression of Southern Pine Beetle Infestation on the Pedlar Ranger District of the George Washington National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to suppress infestations of the southern pine beetle (SPB) on the Pedlar Ranger District of the George Washington National Forest by the cut and remove method. The SPB populations have increased dramatically, resulting in damage to susceptible southern yellow and white pines on approximately 130 acres in 2 areas. The primary purpose of removing trees in these areas is to slow the spread of SPB and rapidly salvage infested merchantable trees prior to excessive loss of value due to stain and decay. Approximately 480 MBF (Thousand Board Feet) would result from this cut and remove operation. The treatment would involve the removal of all infested yellow pines and white pines (*Pinus strobus*) in the stands. The species of yellow pine include Virginia pine (*P. virginiana*), shortleaf pine (*P. echinata*), and pitch pine (*P. rigida*). The two areas will be harvested as stands due to the number and activity level of SPB infestations within the surrounding them.

The treatments will resemble heavy thinnings, as the stands contain a significant hardwood species component and are not expected to be totally cleared. Compartment/stands that fall into this category are 1236/14 (approximately 90 acres) and 1241/37 (approximately 40 acres).

EFFECTIVE DATE: November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Appeals and Litigation Group Leader, Southern Region, Forest Service—USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347–4867.

SUPPLEMENTARY INFORMATION: The purpose of the SPB suppression treatments is twofold; (1) to slow the spread of this insect pest in the immediate area of the infestations and (2) to capture any value left in the dead and dying trees. Southern yellow pines are the preferred host of the SPB, but with rapidly building populations the SPB moves into nearby white pines (*Pinus strobus*). While white pines are generally less susceptible to SPB attacks, they are at risk when mixed with, or in close proximity to, infested yellow pines. Most of the major yellow pine stands on the Pedlar Ranger District are on steep and inaccessible mountain slopes that are typically unsuitable for timber production. These yellow pine stands, however, provide breeding grounds for the SPB, which then infest white pine trees in the adjacent valleys that are suitable for timber production. It is the white pine which we are the most concerned about protecting.

It is imperative that infested trees be removed as soon as possible to slow the spread of SPB. The adult beetles emerge in early spring, fly to new trees, bore into the new host trees and create galleries in the trees cambium, which eventually girdles and kills the tree. Blue stain fungi are also introduced by the beetles and accelerate tree death by blocking the vascular system of the tree. Beetle broods complete their development in about a month during the summer months and resulting in 5 to 7 generations per year. The warm summer temperatures also promote the rapid loss of timber value due to stain and decay.

This cut and remove treatment would involve the removal of all yellow pines and white pines in the stands. The two areas proposed for treatment are located on lands identified as suitable for timber production (Management Areas 11 and 16), per the approved, revised George Washington National Forest Land and Resource Management Plan.

Only areas with easy access have been proposed for treatment, which should enable these areas to be logged economically. Rehabilitation practices will be disclosed in the environmental documents and may include practices such as site preparation, slash disposal, and reforestation, depending on stand conditions and resource objectives.

The District Ranger is the responsible official. The environmental analysis is currently being done. The decision will likely be documented in either a Decision Memo (per the Forest Service Environmental Policy and Procedures Handbook, Section 31.2) or Decision Notice. The analysis will include methods of harvest, mitigation measures, and any post salvage rehabilitation practices.

Time is of the essence for this project. It is imperative that identified SPB infested areas be treated and the trees removed as soon as possible to slow the spread of SPB to adjacent pine trees and stands of pine trees, and expedite the salvage of merchantable timber.

Dated: November 9, 1993.

Ralph F. Mumme,

Acting Regional Forester.

[FR Doc. 93–28054 Filed 11–15–93; 8:45 am]
BILLING CODE 3410–11–M

Southern Region; Exemption From Appeal of the Decision for Suppression of Southern Pine Beetle Infestation on the Glenwood and New Castle Ranger Districts of the Jefferson National Forest

AGENCY: Forest Service, USDA.

ACTION: Notice; exemption of decision from administrative appeal.

SUMMARY: Pursuant to 36 CFR 217.4(a)(11), the Regional Forester for the Southern Region has determined that good cause exists and notice is hereby given to exempt from administrative appeal the decision to suppress infestations of the southern pine beetle (SPB) on the Glenwood and New Castle Ranger Districts of the Jefferson National Forest by the cut and remove method. The SPB populations have increased dramatically, resulting in damage to southern yellow and white pines on approximately 135 acres in 29 areas on the Glenwood Ranger District

and 20 acres in 6 areas, (an area may involve two or more adjacent stands). The primary purpose of removing trees in these areas is to slow the spread of SPB, reduce public safety risks, and rapidly salvage infested merchantable trees prior to excessive loss of value due to stain and decay.

Approximately 1100 MBF (Thousand Board Feet), 900 MBF on the Glenwood district and 200 MBF on the New Castle District, would result from this cut and remove operation. The treatment would involve the removal of all infested yellow pines and white pines (*Pinus strobus*) in the stands. The species of yellow pine include Virginia pine (*P. virginiana*), shortleaf pine (*P. echinata*), and pitch pine (*P. rigida*). Additionally, an area of unattacked pines (approximately 100 to 200 feet) around the infested trees will be removed. Removal of this "buffer strip" ensures the removal of freshly attacked pines that were overlooked or became infested after the spot was marked. The treatments are referred to as patch cuts, but will equate to group selections or small clearcuts in the areas dominated by pine. These patch cut areas will still contain a hardwood species component and are not expected to be totally cleared. Compartment/stands that fall into this category include: 3001/17; 3008/12, 13, 14 and 15; 3010/1 and 8; 3018/1, 3, 6 and 23; 3019/3 and 4; 3023/4 and 11; 3025/10; 3026/2 and 3; 3027/1 and 22; 5073/24; 5086/3; 5088/25; 5089/6; and 5090/84. The largest patch cut areas will be approximately six acres on the Glenwood and four acres on the New Castle. Some areas contain a mix of hardwoods and pines. Treatments in these areas will resemble partial cuts, similar to a shelterwood cut or thinning. Compartment/stands that fall into this category include: 3001/3; 3002/5, 7, 17, and 30; 3003/8 and 9; 3006/7, 22 and 28; 3012/53 and 54; 3013/19 and 21; 3021/17 and 24, and 5087/16. The largest partially cut area will be approximately 10 acres.

EFFECTIVE DATE: November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Questions about this exemption should be directed to Jean P. Kruglewicz, Appeals and Litigation Group Leader, Southern Region, Forest Service-USDA, 1720 Peachtree Road, NW., Atlanta, GA 30367 (404) 347–4867.

SUPPLEMENTARY INFORMATION: The purpose of the SPB suppression treatments is threefold; (1) to slow the spread of this insect pest in the immediate area of the infestations; (2) reduce public safety risks where infested areas are adjacent to roads; and (3) to capture any value left in the dead and dying trees. Southern yellow pines are the preferred host of the SPB, but with rapidly building populations the SPB moves into nearby white pines (*Pinus strobus*). While white pines are generally less susceptible to SPB attacks, they are at risk when mixed with, or in close proximity to, infested yellow pines. Yellow pine is not a large species component on the Glenwood and New Castle Ranger Districts; it exists most extensively on poor dry sites on mountain ridges which are typically unsuitable for timber production. These yellow pine stands, however, provide breeding grounds for the SPB, which then infest white pine trees in the adjacent valleys that are suitable for timber production. It is the white pine which we are the most concerned about protecting.

It is imperative that infested trees be removed as soon as possible to slow the spread of SPB. As the adult beetles emerge they fly to new trees, bore into the new host trees and create galleries in the trees cambium, which eventually girdles and kills the tree. Blue stain fungi are also introduced by the beetles and accelerate tree death by blocking the vascular system of the tree. Beetle broods complete their development in about a month during the warm months of the year. Reproductive activity during the fall and winter months is ongoing, but reduced depending on day time temperatures. The beetle is capable of 5 to 7 generations per year.

This cut and remove treatment would involve the removal of all yellow pines and infested white pines in the stands. All twenty-nine (29) areas on the Glenwood and six (6) areas on the New Castle, which are proposed for treatment, are located on lands identified as suitable for timber production (Management Area 7), per the approved Jefferson National Forest Land and Resource Management Plan (as amended).

One area proposed for suppression on both the Glenwood and the New Castle Districts is located within, or contains, riparian areas. The purpose for suppression in these areas would be strictly limited to protection of the riparian dependent resource of visual quality and reduction of public safety hazards. Appropriate mitigations as outlined in the Forest Land and Resource Management Plan (Forest Plan) regarding riparian areas will be followed. This proposal regarding riparian areas is consistent with Forest Plan direction found on pages IV–102–103, IV–79, appendix I, and IV–96.

Only areas with easy access have been proposed for treatment which should enable these areas to be logged economically. Rehabilitation practices will be disclosed in the environmental documents and may include practices such as, site preparation, slash disposal, and reforestation, depending on stand conditions and resource objectives. The respective District Ranger is the responsible official. The environmental analyses are currently being done. The decisions will likely be documented in either a Decision Memo (per the Forest Service Environmental Policy and Procedures Handbook, Section 31.2) or Decision Notice. The analyses will include methods of harvest, mitigation measures, and any post salvage rehabilitation practices.

Time is of the essence for this project. It is imperative that all identified SPB infested areas be treated and the trees removed as soon as possible to slow the spread of SPB to adjacent pine trees and stands of pine trees, and expedite the salvage of merchantable timber.

Dated: November 9, 1993.

Ralph F. Mumme,

Acting Regional Forester.

[FR Doc. 93–28055 Filed 11–15–93; 8:45 am]

BILLING CODE 3410–11–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Public Information Collection Requirements Submitted to OMB for Review

The Agency for International Development (A.I.D.) submitted the following public information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Comments regarding these information collections should be addressed to the OMB reviewer listed at the end of the entry. Comments may also be addressed to, and copies of the submissions obtained from the Records Management Officer, Renee Poehls, (202) 736–4748, M/AS/ISS/RM, Room 930B, N.S., Washington, DC 20523.

Date Submitted: October 25, 1993

Submitting Agency: Agency for International Development

OMB Number: 0412–0506

Form Number: AID 1420–50

Type of Submission: Renewal

Title: Information Collection Elements in the A.I.D. Consultant Registry Information System (ACRIS).

Purpose: A.I.D.'s procuring activities are required to establish bidders mailing lists "to assure access to sources and to obtain meaningful competition," (CFR 1–2.205). In compliance with this requirement, A.I.D.'s Office of

Small and Disadvantaged Business Utilization/Minority Resource Center has responsibility for "developing and maintaining a Contractor's Index of bidders/offerors capable of furnishing services for use by the A.I.D. procuring activities" (AIRDPR 7–1.704–2(b)(4)).

Annual Reporting Burden: Respondents: 2,000, annual responses: 1; average hours per response: .5; annual burden hours: 1,000

Reviewer: Jeffery Hill (202) 395–7340, Office of Management and Budget, room 3201, New Executive Office Building, Washington, DC 20503.

Dated: October 30, 1993.

Elizabeth Baltimore,

Information Support Services Division.

[FR Doc. 93–28020 Filed 11–15–93; 8:45 am]

BILLING CODE 3116–01–M

[RFA: OP/A/EE–94–A–003]

Cooperative Agreements Competition for Training Programs for Central and Eastern Europe

The Bureau for Europe and Newly Independent States within the Agency for International Development, through Partners for International Education and Training (PIET), is soliciting applications for (no fee) cooperative agreements exclusively addressing training needs in Central and Eastern Europe (CEE). These awards will be made to institutions who propose to offer quality short-term (average 3–5 months but could be from one month to one year) technical training programs to Europeans from the following CEE countries: Albania, Bulgaria, the Czech Republic, Estonia, Hungary, Latvia, Lithuania, Poland, Romania, the Slovak Republic, and the Former Yugoslav Republics of Croatia, Slovenia, and Macedonia.

Proposed programs MUST focus on SEED Act Legislation priority training areas: Economic Restructuring, Democratic Institution Building, and Quality of Life. Sharing costs will be a critical element of awards, and must include a minimum of 50% cost-sharing of total program costs (participant and/or administrative) for applications to be considered. Historically Black Colleges and Universities (HBCUs) must cost-share a minimum of 25% of the total program costs.

Funding will be for training programs held either in the United States or in U.S. institutions of higher education with campuses abroad. Programs must demonstrate linkages with CEE institutions and include demonstrated ability to: select/recruit participants, meet *A.I.D. Handbook 10—Participant Training* requirements, guarantee financial accountability, and provide program reports.

The applications packet will be available in early November without fee on FEDIX/MOLIS on-line database by modem at 1–800–783–3349 (toll free) or 301–258–0953 (local) using parameters 8–N–1; or by Internet at address: fedix.fie.com. The packet is available in the A.I.D. downloadable filename PTPE.*. FEDIX helpline telephone: (301) 975–0103. Application packets are also available upon request from Bev Frannea, Competition Director, or Colin Davies, Partners for International Education and Training, Tel: (202) 223–4291. Fax: (202) 223–4289. Closing date for responding to the solicitation will be stated in the Request for Applications, but is approximately forty-five (45) calendar days from the RFA's issuance date. Only one copy of the RFA will be provided to each organization requesting it, but it may be reproduced. Issuance of this notice does not constitute an award commitment on the part of the Government, nor does it commit the Government to pay for costs incurred by the applicant in the preparation and submission of the application.

Dated: November 3, 1993.

Mary Anne Walker,

Assistant Project Officer, Bureau for Europe and Newly Independent States.

[FR Doc. 93–27899 Filed 11–15–93; 8:45 am]

BILLING CODE 3116–01–M

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: Bureau of the Census.

Title: 1994 Long–Term Care Survey.

Form Number(s): LTC–1, 2, 3, 4, 7, 9(L1), 9(L2).

Agency Approval Number: None.

Type of Request: New collection.

Burden: 9,437 hours.

Number of Respondents: 21,573.

Avg Hours Per Response: 19 minutes.

Needs and Uses: The National Institute on Aging has awarded a grant to the Center for Demographic Studies, Duke University, to conduct the 1994 Long–Term Care Survey (LTC). Duke University has contracted with the Bureau of the Census to conduct the sampling, data collection, processing, and estimation operations. The purpose of the LTC is to obtain information about health conditions that affect older Americans' everyday activities, any special health care needs or services required, and the persons and organizations that may provide care. Planners will use the information to determine the health care needs of people 65 years and over.

Affected Public: Individuals or households.

Frequency: One–time only.

Respondent's Obligation: Voluntary.

OMB Desk Officer: Maria Gonzalez, (202) 395–7313.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Forms Clearance Officer, (202) 482–3271, Department of Commerce, room 5312, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Maria Gonzalez, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 8, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–28139 Filed 11–15–93; 8:45 am]

BILLING CODE 3510–07–F

Bureau of the Census

[Docket No. 931195–3295]

Motor Freight Transportation and Warehousing Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of Determination.

SUMMARY: In accordance with title 13, United States Code, sections 131, 182, 224, and 225, I have determined that 1993 operating revenue and expenses are needed for the for-hire trucking and public warehousing industries to provide a sound statistical basis for the formation of policy by various governmental agencies, and that these data also apply to a variety of public and business needs. These data are not publicly available from nongovernment or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Thomas E. Zabelsky, Chief, Current Services Branch, on (301) 763–5528.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on subjects covered by the major censuses authorized by Title 13, United

States Code. This survey will provide continuing and timely national statistical data on motor freight transportation and warehousing services. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic censuses. The Census Bureau will select a probability sample of trucking and warehousing firms in the United States (with revenue size determining the probability of selection) to report in the 1993 Motor Freight Transportation and Warehousing Survey. The sample will provide, with measurable reliability, national level statistics on operating revenue and expenses for these industries. We will mail report forms to the firms covered by this survey and require their submission within thirty days after receipt.

This survey has been submitted to the Office of Management and Budget (OMB), in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, and was approved under OMB Control No. 0607–0510. We will provide copies of the forms upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 8, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–28082 Filed 11–15–93; 8:45 am]

BILLING CODE 3510–07–M

International Trade Administration

[A–588–804]

Antifriction Bearings From Japan; Notice of Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On October 8, 1993, the United States Court of International Trade (the Court) rejected the Department of Commerce's (the Department's) final results of the third administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan (58 FR 39729, July 26, 1993). *NSK Ltd. and NSK Corp.* v. *United States,* (Slip Op. 93–195, October 8, 1993) (*NSK*). Specifically, the Court rejected the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions. The Court entered final judgment on this issue. The results covered the period May 1, 1991 through April 30, 1992.

EFFECTIVE DATE: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Rill, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1993, the Court in *NSK Ltd. and NSK Corp.* v. *United States,* (Slip Op. 93–195, October 8, 1993) ruled upon an issue contained in the Department's final results of the third administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from Japan (58 FR 39729, July 26, 1993). Specifically, the Court reviewed the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions. In its decision, the Court rejected this determination and ordered the Department to add such direct selling expenses to foreign market value. The Court also entered final judgment on this issue.

In its decision in *Timken Co.* v. *United States,* 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's decision in *NSK* on October 8, 1993, which rejected the Department's determination to deduct direct selling expenses incurred in the United States from exporter's sale price transactions, constitutes a decision not "in harmony" with the Department's final results.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the Court's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from Japan to reflect the Court's order that the Department must add direct selling expenses incurred in the United States to foreign market value.

Dated: November 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28137 Filed 11–15–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–412–801]

Antifriction Bearings From the United Kingdom; Notice of Court of International Trade Decision

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

SUMMARY: On October 14, 1993, the United States Court of International Trade (the Court) rejected the Department of Commerce's (the Department's) redetermination on remand of the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (56 FR 31769, July 11, 1991). *The Torrington Company and Federal-Mogul Corp.* v. *United States,* (Slip Op. 93–199, October 14, 1993) (*Torrington*). Specifically, the Court rejected the Department's methodology in the redetermination for calculating the amount of the tax adjustment that was added to United States price (USP). The Court entered final judgement on this issue. The results covered the period November 9, 1988 through April 30, 1990.

EFFECTIVE DATE: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Joanna Schlesinger or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC, 20230; telephone (202) 482–5287.

SUPPLEMENTARY INFORMATION:

Background

On June 9, 1993, the Court in *Torrington Co.* v. *United States,* Slip Op. 93–103 (June 9, 1993), remanded the final results of the first administrative review of the antidumping duty order on antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom (56 FR 31769, July 11, 1991) to the Department. The Court ordered the Department to determine the exact monetary amount of the value-added tax (VAT) paid on each sale in the home market, to make certain that the amount of the VAT adjustment added to the comparable U.S. sale is less than or equal to this amount, and to add the full amount of the VAT in the home market to foreign market value (FMV)

without adjustment. On July 23, 1993, the Department submitted to the Court its redetermination on remand. On October 14, 1993, the Court ruled upon the Department's redetermination in *Torrington*. In this decision, the Court rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP.

In its decision in *Timken Co.* v. *United States*, 893 F.2d 337 (Fed. Cir. 1990) (*Timken*), the United States Court of Appeals for the Federal Circuit held that, pursuant to 19 U.S.C. 1516a(e), the Department must publish a notice of a court decision which is not "in harmony" with a Department determination, and must suspend liquidation of entries pending a "conclusive" court decision. The Court's decision in *Torrington* on October 14, 1993, which rejected the Department's redetermination methodology for calculating the amount of the VAT adjustment added to USP, constitutes a decision not in harmony with the Department's final results.

Accordingly, the Department will continue the suspension of liquidation of the subject merchandise. Further, absent an appeal, or, if appealed, upon a "conclusive" court decision affirming the Court's opinion, the Department will amend the final affirmative results of antifriction bearings (other than tapered roller bearings) and parts thereof from the United Kingdom to reflect the change in the VAT adjustment calculation methodology which was ordered by the Court.

Dated: November 5, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-28138 Filed 11-15-93; 8:45 am]

BILLING CODE 3510-DS-P

National Institute of Standards and Technology

Visiting Committee on Advanced Technology

AGENCY: National Institute of Standards and Technology, DOC.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Institute of Standards and Technology (NIST) Visiting Committee on Advanced Technology will meet on Tuesday, December 7, 1993, from 8:30 a.m. to 5 p.m. The Visiting Committee on Advanced Technology is composed of nine members appointed by the Director of the National Institute of Standards and Technology who are eminent in such fields as business, research, new product development, engineering, labor, education, management consulting, environment, and international relations. The purpose of this meeting is to review and make recommendations regarding general policy for the Institute, its organization, its budget, and its programs within the framework of applicable national policies as set forth by the President and the Congress. The following presentations are scheduled: Technology Administration Update, NIST Management Update, Electronics and Electrical Engineering Laboratory Strategic Planning, Manufacturing Extension Partnership's Role in the Technology Reinvestment Program, Facilities Construction and Renovation, and laboratory tours. The discussion on NIST Budget, scheduled to begin at 4:15 p.m. and end at 5 p.m. on December 7, 1993, will be closed.

DATES: The meeting will convene December 7, 1993, at 8:30 a.m. and will adjourn at 5 p.m.

ADDRESSES: The meeting will be held in Lecture Room A, Administration Building, National Institute of Standards and Technology, Gaithersburg, Maryland.

FOR FURTHER INFORMATION CONTACT:

Dale E. Hall, Visiting Committee Executive Director, National Institute of Standards and Technology, Gaithersburg, Maryland 20899, telephone number (301) 975-2158.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on September 1, 1992, that portions of the meeting of the Visiting Committee on Advanced Technology which involve examination and discussion of the budget for the Institute may be closed in accordance with section 552(b)(9)(B) of title 5, United States Code, since the meeting is likely to disclose financial information that may be privileged or confidential.

Dated: November 8, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93-28156 Filed 11-15-93; 8:45 am]

BILLING CODE 3510-13-M

[Docket No. 931057-3257]

RIN 0693-AA98

Proposed Withdrawal of Federal Information Processing Standard 71, Advanced Data Communication Control Procedures (ADCCP)

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice; request for comments.

SUMMARY: The purpose of this notice is to announce the proposed withdrawal of Federal Information Processing Standard (FIPS) 71, Advanced Data Communication Control Procedures (ADCCP), which adopts ANSI X3.66-1979(R1990). This standard is proposed for withdrawal because commercial products supported by this technology are no longer needed by the Federal government. If FIPS 71 is withdrawn, FIPS 78, Guideline for Implementing Advanced Data Communication Control Procedures (ADCCP), will be withdrawn at the same time.

Prior to the submission of this proposed withdrawal to the Secretary of Commerce for review and approval, it is essential to assure that consideration is given to the needs and views of manufacturers, the public, and State and local governments. The purpose of this notice is to solicit such views.

Interested parties may obtain a copy of this standard from the National Technical Information Service, U.S. Department of Commerce, Springfield, VA 22161, telephone (703) 487-4650.

DATES: Comments on this proposed withdrawal must be received on or before February 14, 1994.

ADDRESSES: Written comments concerning the withdrawal should be sent to: Director, Computer Systems Laboratory, ATTN: Withdrawal of FIPS 71, Technology Building, Room B154, National Institute of Standards and Technology, Gaithersburg, MD 20899.

Written comments received in response to this notice will be made part of the public record and will be made available for inspection and copying in the Central Reference and Records Inspection Facility, Room 6020, Herbert C. Hoover Building, 14th Street between Pennsylvania and Constitution Avenues, NW, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT:

Ms. Shirley Radack, National Institute of Standards and Technology, Gaithersburg, MD 20899, telephone (301) 975-2833.

Dated: November 8, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93-28158 Filed 11-15-93; 8:45 am]

BILLING CODE 3510-CN-M

[Docket No. 931064-3264]

Notice of a Trial Period for a Test Method and a Validation Test Service for the Federal Information Processing Standards Publication (FIPS PUB) 150 and the Department of Defense (DoD) MIL-R-28002B Military Specification

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: NIST invites interested members of the public to participate in a one-year trial period for the NIST raster graphics validation test service for the validation of raster graphics files for conformance to FIPS PUB 150, Facsimile Coding Schemes and Coding Control Functions for Group 4 Facsimile Apparatus, and MIL-R-28002B, Requirements for Raster Graphics Representation in Binary Format. NIST will use the trial test service period to verify the accuracy and completeness of the raster graphics test procedures. The one-year trial period will help NIST to assess the suitability of the test method and the test procedures for testing conformance to the FIPS and Military Specification.

DATES: The test service trial period started October 1, 1993, and will continue through September 1994.

ADDRESSES: Those wishing to participate in the trial period for the test method and the establishment of the raster graphics test service should write to: National Institute of Standards and Technology, Attn: Raster Graphics Test Service, Technology Building, Room A266, Gaithersburg, MD 20899.

FOR FURTHER INFORMATION CONTACT: Mr. Frank Spielman, National Institute of Standards and Technology, Technology Building, Room A266, Gaithersburg, MD 20899, telephone (301) 975-3257, E-mail "spielman@nist.gov".

SUPPLEMENTARY INFORMATION:

Background

The purpose of the raster graphics standard is to facilitate the interchange of raster graphics images between different computer information systems and different computer installations.

FIPS PUB 150 was approved on November 4, 1988. It adopts Electronic Industries Association (EIA) Standard EIA-538-1988, which defines the facsimile coding schemes and their control functions for Group 4 facsimile apparatus. The EIA-538 standard defines exactly the same compression algorithm as is defined in ITU-T (formerly CCITT) Recommendation T.6.

MIL-R-28002B (Version "B") was approved December 14, 1992. It specifies the DoD requirements for raster graphics images including the compression algorithm to be used, and references FIPS PUB 150.

Federal agencies may require conformance to FIPS PUB 150 and MIL-R-28002B whether raster graphics systems are developed internally, acquired as part of an ADP system procurement, acquired by separate procurements, used under an ADP leasing arrangement, or specified for use in contracts for computer processing services. Testing may be required in order for agencies to determine if raster graphics files conform to FIPS PUB 150 and MIL-R-28002B. The Raster Graphics Validation Summary Report provided from the NIST trial validation test service will be a source of information for Federal agencies to use in making this determination. The Raster Graphics Validation Summary Report will be listed in a NIST publication, Validated Products List, available from the National Technical Information Service (NTIS), order number PB93-937303, telephone (703) 487-4650.

Updates to the Test Method and Procedures

NIST will use the Raster Graphics Validation Test Software as the test method for validating raster graphics files. This software was developed by the Federal government at NIST in cooperation with Continuous Acquisition and Life-Cycle Support (CALS) Test Network (CTN).

The Raster Graphics Validation Test Software and test procedures will be periodically updated and used as the basis for validating raster graphics files formatted according to FIPS PUB 150 and MIL-R-28002B. The update process will be used to correct errors identified in the Raster Graphics Validation Test Software and to introduce new or modified programs as appropriate. Modification to the software is also intended to ensure that raster graphics files are being formatted and encoded according to the technical specifications of the standards. Should an interpretation of the FIPS or Military Specification be made that would affect the test software, these changes would also be reflected during the update process.

Obtaining Validation Services

NIST provides the validation test service on a cost-reimbursable basis. These services are available to both the producers (generators) and users (receivers) of raster files. Upon request, NIST will supply the client with a Raster Graphics Information Pack which will include information on the test service and procedures for conducting raster graphics tests.

Dated: November 9, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93-28157 Filed 11-15-93; 8:45 am]

BILLING CODE 3510-CN-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application for a scientific research permit (P557).

SUMMARY: Notice is hereby given that Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093-0225, has applied in due form for a permit to take marine mammals for scientific research.

DATES: Written comments must be received on or before December 16, 1993.

ADDRESSES: The application and related documents are available for review upon written request or by appointment in the following offices:

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713-2289);

Director, Southwest Region, NMFS, NOAA, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802-4213 (310/980-4016); and

Coordinator, Pacific Area Office, NMFS, NOAA, 2570 Dole Street, Room 106, Honolulu, HI 96822-2396 (808/955-8831).

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS, NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the

Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee on Scientific Advisors.

SUPPLEMENTARY INFORMATION: Scripps Institution of Oceanography, Institute for Geophysics and Planetary Physics, Acoustic Thermometry of Ocean Climate Program, 9500 Gilman Drive, La Jolla, CA 92093–0225, has applied in due form for a permit to take the following marine mammals for purposes of scientific research; humpback whale (*Megaptera novaeangliae*), sperm whale (*Physeter macrocephalus*), pygmy sperm whale (*Kogia breviceps*), short-finned pilot whale (*Globicephala macrorhynchus*), Cuvier's beaked whale (*Ziphius cavirostris*), Baird's beaked whale (*Berardius bairdii*), Blainville's beaked whale (*Mesoplodon densirostris*), spinner dolphin (*Stenella longirostris*), spotted dolphin (*Stenella attenuata*), false killer whale (*Pseudorca crassidens*), rough-toothed dolphin (*Steno bredanensis*), bottlenose dolphin (*Tursiops truncatus*), and monk seal (*Monachus schauinslandi*).

The subject permit is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species ACt of 1973, as amended (16 U.S.C. 1531 *et seq.*), and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

This permit application is to incidentally harass marine mammals by a low frequency (70 Hz) sound source which will be located north of Haena, off the northern coast of Kauai, Hawaii, at a depth of 850–950m. This sound source is part of the Acoustic Thermometry of Ocean Climate (ATOC) program, and will be operated from February 1994 through December 1995, with a maximum duty cycle of 8%, to conduct research on the effects of this source on marine mammals. The transmission bandwidth is 20 Hz with a level of 195 dB (re 1 uPa at 1m), and the spectrum level for the peak frequency (70 Hz) is 182 dB. The effects of these transmissions on marine mammals will be monitored through passive acoustic tracking of Mysticetes, shore-based visual observations of marine mammals, and aerial observations and surveys of marine mammals. (The aerial components of this research will be included in a separate permit request.)

Dated: November 9, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–28056 Filed 11–15–93; 8:45 am]

BILLING CODE 3510-22-M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the North Dakota Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the North Dakota Advisory Committee to the Commission will be held Monday, December 13, 1993, at the Radisson Inn, 800 South Third Street, Bismarck, North Dakota 58504. The purpose of the meeting is to conduct orientation, review Committee policies and procedures, and approve the project proposal on civil rights enforcement in North Dakota.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Betty L. Mills, 701–223–4643 or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 5, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–28076 Filed 11–15–93; 8:45 am]

BILLING CODE 6335-01-P

Agenda and Notice of Public Meeting of the Utah Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Utah Advisory Committee to the Commission will hold a factfinding meeting on employment discrimination in Utah on Thursday, December 9, 1993, from 9 a.m. to 8:30 p.m. and Friday, December 10, 1993 from 9 a.m. to 4:30 p.m. at the Red Lion Hotel, 255 South West Temple, Salt Lake City, Utah 84101.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Dr. Mary E. Stovall, 801–378–6138 or William F. Muldrow, Director of the Rocky Mountain Regional Office, 303–866–1040 (TDD 303–866–1049). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 5, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–28077 Filed 11–15–93; 8:45 am]

BILLING CODE 6335-01-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of meeting: 30 November 1993.

Time of meeting: 0800–1700 hours.

Place: Pentagon, Washington.

Agenda: The Army Science Board's C3I Issue Group will commence their Director of Information Systems for Command, Control, Communication, and Computers (DISC4) initiated Issue Group study on Moving Army Tactical Command and Control System (ATCCS) from a Character-Oriented Message System to a Data-Oriented Message System. This meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contected for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–28148 Filed 11–15–93; 8:45 am]

BILLING CODE 3710-08-M

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting

Name of committee: Army Science Board (ASB).

Date of meeting: 1 & 2 December 1993.

Time of meeting: 1 December, 0830–0915 Hours (Open), 0915–1100 Hours (Closed), 1100–1200 Hours (Open), 1300–1700 Hours (Closed); 2 December, 0830–1230 Hours (Closed).

Place: Pentagon, Washington, DC.

Agenda: The Army Science Board's ad hoc study on "Small Arms Industrial Base" will conduct an initial meeting to agree to a study approach and to receive briefings responding to an initial call for data. This meeting will be closed to the public (where indicated) in accordance with section 552b(c) of title 5, U.S.C., specifically subparagraph (1) and (4) thereof, and title 5, U.S.C., appendix 2, subsection 10(d). The proprietary and classified matters to be discussed are so inextricably intertwined so as to preclude opening all portions of the meeting.

The open portion of the meeting will be open to the public. Any person may attend, appear before or file statement with the committee at the time and in the matter permitted by the committee. The ASB Administrative Officer Sally Warner, may be contacted for further information at (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–28149 Filed 11–15–93; 8:45 am]

BILLING CODE 3710-08-M

Defense Logistics Agency

Privacy Act of 1974; Notice to Alter a System of Records

AGENCY: Defense Logistics Agency, DoD.

ACTION: Notice to alter a system of records.

SUMMARY: The Defense Logistics Agency proposes to alter one existing record system in the DLA inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: This action will be effective without further notice on December 16, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Privacy Act Officer, Administrative Management Division, Office of Planning and Resource Management, Defense Logistics Agency Administrative Support Center, Room 5A120, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Ms. Susan Salus at (703) 617–7583.

SUPPLEMENTARY INFORMATION: The complete inventory of Defense Logistics Agency record system notices subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the Federal Register and may be obtained from the address above.

An altered system report, as required by 5 U.S.C. 552a(r) of the Privacy Act was submitted on November 5, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Office of Management and Budget (OMB) pursuant to paragraph 4c of Appendix I4o OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records About Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993). The specific changes to the record system are set forth below followed by the system notice as altered in its entirety.

Dated: November 10, 1993

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

S255.01 DLA-G

SYSTEM NAME:

Fraud and Irregularities *(February 22, 1993, 58 FR 10867).*

CHANGES:

SYSTEM IDENTIFIER:

Delete entry and replace with 'S100.50 DLA-GC.'

* * * * *

SYSTEM LOCATION:

In the first sentence, replace 'HQ DLA-G' with 'Headquarters Defense Logistics Agency.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 136, Assistant Secretaries of Defense; Pub. L 95–521, Ethics in Government Act; DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities; and DLA Regulation 5500.10, Combating Fraud in DLA Operations.'

* * * * *

PURPOSE(S):

Delete last sentence.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete first sentence.

* * * * *

RETENTION AND DISPOSAL:

Replace 'ten years' with 'six years.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'General Counsel, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and the offices of counsel at the DLA Primary Level Field Activities. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.'

* * * * *

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Delete entry and replace with 'Portions of this system may be exempt under the scope of 5 U.S.C. 552a(k)(2) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and is published at 32 CFR part 323. For more information, contact the system manager.'

* * * * *

S100.50 DLA-GC

SYSTEM NAME:

Fraud and Irregularities.

SYSTEM LOCATION:

Office of the General Counsel, Headquarters Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100, and the offices of counsel of the Defense Logistics Agency Primary Level Field Activities (DLA PLFAs). Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual or group of individuals or other entity, involved in or suspected of being involved in any fraud, criminal conduct or antitrust violation relating to DLA procurement, property disposal, or contract administration, or other DLA activities.

CATEGORIES OF RECORDS IN THE SYSTEM:

Investigative reports, complaints, pleadings and other court documents, litigation reports, working papers, documentary and physical evidence, contractor suspensions and debarments.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 136, Assistant Secretaries of Defense; Pub. L 95–521, Ethics in Government Act; DoD Directive 7050.5, Coordination of Remedies for Fraud and Corruption Related to Procurement Activities; and DLA Regulation 5500.10, Combating Fraud in DLA Operations.

PURPOSE(S):

Information is used in the investigation and prosecution of criminal or civil actions involving fraud, criminal conduct and antitrust violations and is used in determinations to suspend or debar individuals or other entities from DLA procurement and sales.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' set forth at the beginning of DLA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in combination of paper and automated files.

RETRIEVABILITY:

Filed alphabetically by the name of the subject individual or other entity.

SAFEGUARDS:

Records, as well as computer terminals, are maintained in areas accessible only to DLA personnel. In addition, access to and retrieval for computerized files is limited to authorized users and is password protected.

RETENTION AND DISPOSAL:

Records are destroyed six years after all aspects of the case are closed.

SYSTEM MANAGER(S) AND ADDRESS:

General Counsel, Defense Logistics Agency, Cameron Station, Alexandria, VA 22304–6100; and the offices of counsel at the DLA PLFAs. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the system manager of the particular DLA activity involved. Official mailing addresses are published as an appendix to DLA's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The DLA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DLA Regulation 5400.21; 32 CFR part 323; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Federal, state and local investigative agencies; other federal agencies; DLA employees; and individuals.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(2) and (k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and is published at 32 CFR part 323. For more information, contact the system manager.

[FR Doc. 93–28072 Filed 11–15–93; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before [insert the 30th day after publication of this notice].

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., Room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: November 10, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Revision.

Title: Training Assessment Form—Title IV Student Financial Assistance Programs.

Frequency: One time.

Affected Public: Individuals or households.

Reporting Burden: Burden Hours: 1,600.

Responses: 20,000.

Recordkeeping Burden: Burden Hours: 0

Recordkeepers: 0.

Abstract: The information collected will aid in the monitoring of contractors and non-Federal trainers. It will also measure the effectiveness of training offered to financial aid administrators, counselors, fiscal officers, and other administrators participating in student financial aid and other Federal aid programs.

Type of Review: Reinstatement.

Title: Income Contingent Loan Program Subpart E—Due Diligence (Reporting/Disclosure and Recordkeeping).

Frequency: On occasion.

Affected Public: Individuals or households; Businesses and other for-profit; Non-profit institutions.

Reporting Burden: Burden Hours: 52.

Responses: 563.

Recordkeeping Burden: Burden Hours: 9.

Recordkeepers: 563.

Abstract: Under the Income Contingent Loan Program, Institutions of higher education may receive Federal Funds to make loans to students. The regulations establish proper administrative standards and loan collection procedures which protect the Federal fiscal interest and stipulate disclosure and recordkeeping requirements for institutions of higher education.

[FR Doc. 93–28135 Filed 11–15–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. CP93–613–000, CP93–673–000, CP93–751–000, and CP94–29–000]

Northwest Pipeline Corp. and Paiute Pipeline Co., Intent To Prepare a Draft Environmental Impact Statement for the Proposed Northwest and Paiute Expansion II Projects and Request for Comments on Environmental Issues

November 10, 1993

The staff of the Federal Energy Regulatory Commission (FERC or the Commission) will prepare an environmental impact statement (EIS) that will discuss environmental impacts of the construction and operation of facilities proposed in the Northwest and Paiute Expansion II Projects.[1] This EIS will be used by the Commission in its decision-making process (whether or not to approve the individual projects).

The Bureau of Land Management (BLM) will be cooperating with us in the preparation of the EIS because of the amount of BLM-managed land that would be affected by the proposals. The other Federal agencies being asked to cooperate (see Appendix 1) my choose to participate once they have evaluated each proposal relative to their agencies' responsibilities.[2]

Summary of the Proposed Projects

Northwest Pipeline Corporation (Northwest) has an existing natural gas pipeline system consisting of various diameter pipe that extends from the Washington-Canadian border south and east across Washington, Oregon, Idaho, Wyoming, Utah, and Colorado to northwestern New Mexico. Northwest wants Commission authorization to transport an additional 360,488 thousand cubic feet of natural gas per day (Mcf/d) for 27 local gas distribution companies, electric generation companies, and other commercial and industrial customers, and to construct and operate the following facilities needed to transport those additional volumes:

- 115.9 miles of loop and new lateral pipeline in 15 segments;[3]
- Two new compressor stations with a total of 8,303 horsepower (hp) of compression, and 77,793 hp of additional compression at 12 existing compressor stations;
- Five new meter stations, and modifications to 36 existing meter stations; and
- A new microwave communication site.

Northwest would abandon some minor facilities at 24 of the meter stations and one of the compressor stations which will be replaced by the proposed upgraded facilities.

Paiute Pipeline Company's (Paiute) existing natural gas pipeline facilities are in northern Nevada. Paiute currently wants Commission authorization to expand and modify its facilities to transport an additional 14,886 Mcf/d to various commercial and industrial customers and Southwest Gas Corporation (a local distribution company), and to provide some general system benefits to customers on its Reno Lateral. The necessary facilities are:

- 61.3 miles of loop pipeline in 8 segments;
- Two new compressor stations with a total of 2,139 hp of compression; and
- Minor modifications at other existing meter, compressor, and pressure reduction stations.

The general locations of the facilities proposed by Northwest and Paiute are shown in appendices 2 through 4. A detailed listing of the facilities is in Appendix 5.

Several of the customers receiving gas from Northwest and Paiute as part of these projects will need to build pipelines to take the gas delivered to them. Although these facilities aren't under the jurisdiction of the FERC, they will be discussed in the EIS and are included in Appendix 5.

Land Requirements for Construction

The proposed loops would generally be built parallel and adjacent to Northwest's and Paiute's existing pipelines, using as much of the existing rights-of-way as possible. Most of Northwest's easements for existing rights-of-way allow the installation of additional pipelines. The majority of the proposed pipeline segments would be adjacent to an existing pipeline or within highway rights-of-way.

Typically, Northwest would use a construction right-of-way ranging from 55 to 95 feet wide; while Paiute's construction right-of-way would range from 25 to 95 feet wide, depending on the diameter of the proposed pipeline. After construction, the disturbed area would be restored, and a 50- or 75-foot-wide right-of-way would be permanently maintained. Where the new pipe is built adjacent to an existing pipe, there would be no change in the total width of the permanent right-of-way. The remainder of the land would revert to its preconstruction use.

Northwest would purchase the land necessary to build the new Tumwater Compressor Station (11 acres) and the Huntington Compressor Station (10 acres). The communication site associated with the Huntington Compressor Station would require an additional 2,500 square feet. Paiute

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[1] Northwest Pipeline Corporation's and Paiute Pipeline Company's applications were filed with the Commission pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] The appendices referenced in this notice are not being printed in the Federal Register. Copies are available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208–1371. Copies of the appendices were sent to all those receiving this notice in the mail.

[3] A loop is a segment of pipeline which is usually installed adjacent to an existing pipeline and connected to it at both ends. The loop allows more gas to be moved through the pipeline system at the location in which the loop is installed. A lateral is a pipeline that branches off the mainline delivery system and serves to transport gas to an outlying region.

would acquire 4 acres of land for each of its two new compressor stations.

The EIS Process

The National Environmental Policy Act (NEPA) requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The EIS we are preparing will give the Commission the information it needs to do that. NEPA also requires us to discover and address concerns the public may have about proposals. We call this "scoping" The main goal of the scoping process is to focus the analysis in the EIS on the important environmental issues, and to separate these from issues that are insignificant and do not require detailed study.

The EIS will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these general subject headings:

- Geology and paleontology
- Endangered and threatened species
- Visual resources
- Water resources
- Vegetation
- Land use
- Air quality and noise
- Wetland and riparian habitat
- Cultural resources
- Fish and Wildlife
- Socioeconomics
- Soils

We will also evaluate possible alternatives to the projects, or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will result in the publication of a Draft EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commission's official service list for these proceedings. A 45-day comment period will be allotted for review of the Draft EIS. We will consider all comments on the Draft EIS and review the document, as necessary, before issuing a Final EIS. The Final EIS will include our response to each comment received.

Currently Identified Environmental Issues

We have already identified a number of issues that we think deserve attention, based on a preliminary review of the proposed facilities and the environmental information provided by Northwest and Paiute. These issues are presented in Appendix 6. Keep in mind that this is a preliminary list; the list of issues will be added to, subtracted from, or changed based on your comments and our own analysis.

Public Participation and Scoping Meetings

You can make a difference by sending a letter with your specific comments or concerns about the projects. You should focus on the potential environmental effects of the proposals, alternatives to the proposals (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address your letter to: Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol St., NE., Washington, DC 20426;
- Reference Docket No. CP93–613–000, et al.;
- Send a copy of your letter to: Ms. Lauren O'Donnell, EIS Project Manager, Federal Energy Regulatory Commission, 825 North Capitol St., NE., room 7312, Washington, DC 20426; and
- Mail your comments so that they will be received in Washington, DC on or before December 16, 1993.

In addition to asking for written comments, we invite you to attend any of the scoping meetings listed on page 6. The meetings will be designed to provide you with more detailed information and another opportunity to offer your comments on the proposed projects. Anyone wanting to speak at the meetings can call the EIS Project Manager to pre-register their names on the speakers' list. Those people on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available at the meeting. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded.

Becoming an Intervenor

In addition to involvement in the EIS scoping process, you may want to become an official party to the proceedings or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenors. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) which is attached as appendix 7.

Schedule for EIS Scoping Meetings

Eugene, Oregon, November 30, 1993, 7 p.m. Lane Community College, Forum Building, room 308, 4000 East 30th Avenue, (503) 747–4501, ext. 2558

Gresham, Oregon, December 2, 1993, 7 p.m., Gresham City Hall, City Council Chambers, 1333 NW. Eastman Parkway, (503) 669–2589

Longview, Washington, December 1, 1993 7 p.m., R.A. Long High School, Auditorium, 2903 Nichols Boulevard, (206) 577–2731

Montpelier, Idaho, December 14, 1993, 7 p.m., Bear Lake Middle School Auditorium, 633 Washington, (208) 847–2255

Incline Village, Nevada, December 15, 1993, 7 p.m., The Chateau, 955 Fairway, (702) 832–1310

Environmental Mailing List

If you don't want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIS's, please return the Information Request (appendix 8). If you don't return the Information Request you will be taken off the mailing list.

Additional information about the proposed projects is available from Ms. Lauren O'Donnell, EIS Project Manager, at (202) 208–0874.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28096 Filed 11–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ES94–6–000, *et al.*]

Central Illinois Public Service Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 5, 1993.

Take notice that the following filings have been made with the Commission:

1. Central Illinois Public Service Co.

[Docket No. ES94–6–000]

Take notice that on November 1, 1993, Central Illinois Public Service Company filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $150 million of unsecured notes or commercial paper on or before December 31, 1995, with a maturity date no later than December 31, 1996.

Comment date: December 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. New York State Electric & Gas Corp.

[Docket No. ES94–4–000]

Take notice that on November 1, 1993, New York State Electric & Gas Corporation filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $275 million of notes, commercial paper and other short-term indebtedness prior to January 1, 1996, with a maturity of one year or less.

Comment date: December 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Maine Electric Power Company, Inc.

[Docket No. ES94–5–000]

Take notice that on November 1, 1993, Maine Electric Power Company, Inc. filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $15 million of unsecured notes or other unsecured short-term obligations on or before December 31, 1995, with a maturity of one year or less after date of issuance.

Comment date: December 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Central Maine Power Co.

[Docket No. ES94–3–000]

Take notice that on November 1, 1993, Central Maine Power Company filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $175 million of unsecured bank notes and commercial paper on or before December 31, 1995, maturing one year or less after the date of issuance.

Comment date: December 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Potomac Electric Co.

[Docket No. ER94–111–000]

Take notice that on November 2, 1993, the Potomac Electric Power Company (Pepco) tendered for filing a Sixth Amendment to the 1982 agreement for electric service to its full requirements customer, Southern Maryland Electric Cooperative, Inc. (Smeco), including revised rates increasing in steps for the years 1994–through 1996, provisions for QF's and small customer-owned generation on the Smeco system, and a revised fuel clause. These revisions to the Pepco-Smeco electric service agreement are the result of extensive negotiations and are supported by both parties. An effective date of January 1, 1994 for the revised rates and other terms is requested.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Heartland Energy Services, Inc.

[Docket No. ER94–108–000]

Take notice that on October 29, 1993, Heartland Energy Services, Inc. (HES) petitioned the Commission for acceptance of HES Rate Schedule FERC No. 1; the granting of certain blanket approvals, including the authority to sell electricity at market-based rates; and the waiver of certain Commission regulations. HES is a subsidiary of WPL Holdings, Inc. which is the parent company of Wisconsin Power and Light Company, a public utility. HES seeks an effective date of January 1, 1994.

Comment date. November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. WestPlains Energy, a division of UtiliCorp United, Inc.

[Docket No.ER94–106–000]

Take notice that on November 1, 1993, WestPlains Energy, a division of UtiliCorp United, Inc. (WestPlains) tendered for filing an amendment to the Municipal Interconnection Contract dated October 17, 1989, between WestPlains and the City of Russell Kansas. The amendment obligates WestPlains to install and construct a 30 MVA, 115/34.5 KV transformer with tap changer and associated switch gear for a new 115/34.5 KV Interconnection Facility for Russell. In light of WestPlains' agreement to install the new facilities, Russell agreed to a new contract demand for Service Schedule 90–P–1 System Participation Power. For the period January 1, 1995 through December 31, 1998, Russell's Contract Demand shall be 6,000 kilovolts. Thereafter, on a month by month basis until December 31, 2004, Russell's Contract Demand will be the actual metered demand of the new wheat gluten plant load up to 6,000 Kilowatts.

An effective date of January 1, 1995, is requested. In light of the substantial investment in facilities WestPlains must make prior to the effective date of the revised contract demand, WestPlains requests waiver of § 35.3 of the Commission's regulations.

A copy of the filing was served upon the Kansas Corporation Commission and the City of Russell.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Pennsylvania Power & Light Co.

[Docket No. ER94–107–000]

Take notice that Pennsylvania Power & Light Company (PP&L) tendered for filing on November 1, 1993, as a Supplement to its Rate Schedule FERC No. 84 an executed agreement dated as of October 29, 1992, between PP&L and Jersey Central Power & Light Company (JCP&L). The agreement reduces the rate of return on common equity in the formula rate from 12.74% to 11%. A Certificate of Concurrence executed by JCP&L accompanied PP&L's filing.

Copies of PP&L's filing have been served upon JCP&L, the Pennsylvania Public Utility Commission and the New Jersey Board of Regulatory Commissioners.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. PacifiCorp

[Docket No. ER94–95–000]

Take notice that PacifiCorp, on November 1, 1993, tendered for filing a rate for PacifiCorp Rate Schedule FERC No. 258.

This filing establishes the rate, as determined under the current contract, pursuant to the pricing methodology for power purchased under this rate schedule for calendar year 1994.

Copies of this filing were supplied to the Public Utility Commission of Oregon, the Utah Public Service Commission and the Public Service Commission of Nevada.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Arizona Public Service Co.

[Docket No. ER93–656–000]

Take notice that on November 1, 1993, Arizona Public Service Company (APS) tendered for filing supplemental information in response to a staff request for supplemental information related to APS' filings in this Docket.

Copies of this filing have been served upon the Yuma Cogeneration Associates and the Arizona Corporation Commission.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Kentucky Power Co.

[Docket No. ER94–61–000]

Take notice that Kentucky Power Company on October 28, 1993, tendered for filing proposed amendments to its FERC Electric Tariff MRS for service to the City of Olive Hill, Kentucky (Olive Hill). The proposed changes would decrease Kentucky Power's revenues from Olive Hill by approximately $36,646 based upon the 12 month period ended September 30, 1992. Kentucky Power proposes an effective date of January 1, 1994.

Kentucky Power states that a copy of its filing was served upon Olive Hill and the Kentucky Public Service Commission.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Portland General Electric Co.

[Docket No. ER93–133–000]

Take notice that on October 29, 1993, Portland General Electric Company (PGE) tendered for filing a Supplement to Filing No. 76 in Docket No. ER93–133–000: Amendment to the Valley Line Agreement Between Portland General Electric Company and PacifiCorp. This is an amendment to an interconnection agreement between PGE and Pacific necessitated by a change in ownership of some facilities. Copies of this filing have been served on the parties included in the distribution list defined in the filing letter.

PGE requests waiver of prior notice requirements, to allow the amendment to take effect November 1, 1993.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Florida Power & Light Co.

[Docket No. ER94–98–000]

Take notice that Florida Power & Light Company (FPL), on November 1, 1993, tendered for filing the Scheduling Service Agreement between Florida Power & Light Company and Florid Keys Electric Cooperative Association, Inc. FPL requests that the agreement be made effective January 1, 1994.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. New England Power Co.

[Docket No. ER94–2–000]

Take notice that on October 1, 1993, New England Power Company (NEP) tendered for filing a Notice of Cancellation of Supplement No. 4 to Service Agreement No. 11 under NEP's Tariff No. 3.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Kentucky Power Co.

[Docket No. ER94–121–000]

Take notice that Kentucky Power Company on October 28, 1993, tendered for filing proposed FERC Tariff MRS-T and a proposed Service Agreement for service to the City of Vanceburg, Kentucky (Vanceburg). Kentucky Power proposes an effective date of January 1, 1994.

The proposed Tariff and Service Agreement are filed in accordance with an agreement entered into in 1988 between Kentucky Power and Vanceburg and accepted for filing by the Commission in Docket No. ER88–408–000.

Kentucky Power states that a copy of its filing was served upon Vanceburg and the Kentucky Public Service Commission.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Entergy Services, Inc.

[Docket No. ER93–912–000]

Take notice that on October 27, 1993, Entergy Services, Inc. (Entergy Services), filed Amendment No. 1 to Service Schedule RE—Replacement Energy and Amendment No. 1 to Service Schedule E—Economy Energy. Service Schedule RE and Service Schedule E are service schedules to the Interchange Agreement between Municipal Electric Authority of Georgia and Arkansas Power & Light Company, Louisiana Power & Light Company, Mississippi Power & Light Company, New Orleans Public Service Inc., and Entergy Services (collectively "Entergy"), which was filed with the Commission in this docket on August 26, 1993. The purpose of Amendment No. 1 to Service Schedule RE is to change the adder specified in Section IV—Compensation where Entergy is the Supplying Party. The purpose of Amendment No. 1 to Service Schedule E is to limit the markup on energy that Entergy may purchase from a third party to supply to MEAG as Economy Energy.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. Entergy Services, Inc.

[Docket No. ER94–104–000]

Take notice that on November 1, 1993, Entergy Services, Inc. (Entergy Services), on behalf of Arkansas Power & Light Company (AP&L), filed the Contract Between the United States of America, represented by the Secretary of Energy, acting by and through the Administrator, Southwestern Power Administration, an Administration within the Department of Energy (SPA) and AP&L (Contract) which will supersede the August 20, 1954 Blakely Agreement (Rate Schedule FERC No. 138) and the May 14, 1971, DeGray Contract (Rate Schedule FERC No. 139), as amended. Entergy Services states that the Contract extends the term of service to December 31, 2002, but otherwise retains the same terms and conditions as in the Blakely Agreement and the DeGray Contract. According to Entergy, the Contract provides for the disposition of hydroelectric power and energy generated at the Blakely Mountain Dam Reservoir Project and the DeGray Dam Reservoir Project.

Comment date: November 19, 1993, in accordance with Standard Paragraph E at the end of this notice.

18. Sierra Pacific Power Co.

[Docket No. ER94–119–000]

Take notice that on November 3, 1993, Sierra Pacific Power Company (Sierra) tendered for filing pursuant to section 205 of the Federal Power Act (the Act) and 18 CFR 35 *et seq.* the "Interconnection Agreement Between Sierra Pacific Power Company and Plumas Sierra Rural Electric Cooperative" dated October 29, 1993, ("Interconnection Agreement").

Sierra states that the central purpose of the Interconnection Agreement is to make emergency service available to Plumas Sierra Rural Electric Cooperative during the immediate winter season and thereafter.

In order to be in strict compliance with the Commission's notice requirements, Sierra proposes that the filing be made effective on January 2, 1994 that being the date 60 days after the date of the filing. However, Sierra requests that the Commission (1) review the filing on an expedited basis and (2) make the filing effective as soon as possible. Sierra requests waiver of the 60-day notice requirement of section 205 of the Act and any regulation to allow for an immediate effective date.

Comment date: November 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

19. Public Service Company of New Mexico

[Docket No. EL94–6–000]

Take notice that on October 28, 1993, Public Service Company of New Mexico (PNM) tendered for filing a Petition to Permit Deviation from Fuel Cost and Purchased Economic Power Adjustment Clauses. In the Petition, PNM seeks such waivers of the Commission's regulations and notice requirements as are or may be necessary to permit PNM's fuel cost and purchased economic power adjustment clauses (FAC) applicable to its firm-requirements wholesale customers City of Gallup, New Mexico (Gallup), City of Farmington, New Mexico (Farmington), Texas-New Mexico Power Company (TNP) and Plains Electric Generation and Transmission Cooperative, Inc. (Plains) to deviate from the applicable filed FAC tariffs for the period of July 1985 through January 1993 and to accept

PNM's re-initiation of FAC billings under filed FERC FAC tariffs effective for fuel and purchased power expenses incurred on and after February 1, 1993.

Copies of the Petition have been served upon Gallup, Farmington, Plains, TNP and the New Mexico Public Utility Commission.

Comment date: November 22, 1993, in accordance with Standard paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28098 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER93-640-000, et al.]

Consolidated Edison Co. of New York, Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 9, 1993.

Take notice that the following filings have been made with the Commission:

1. Consolidated Edison Company of New York, Inc.

Docket No. ER93-640-000

Take notice that on November 2, 1993, Consolidated Edison Company of New York, Inc., in its capacity as a member system of the New York Power Pool, filed supplemental information and clarifications in response to Staff's requests regarding the PARS Facilities Agreement, which was filed with the Commission on May 10, 1993, as amended on September 3, 1993, in this docket. Con Edison renews its request for an effective date of August 1, 1988. Con Edison states further that it served copies of this filing on the entities which were served with the May 10, 1993 application in this docket.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. PSI Energy, Inc.

Docket No. ER93-712-000

Take notice that PSI Energy, Inc. (PSI) and The City of Logansport, Indiana on November 2, 1993, tendered for filing amended Service Schedules in the FERC filing in Docket No. ER93-712-000. In addition, PSI is requesting a deferral of action to comply with a FERC Staff request.

Copies of the filing were served on The City of Logansport, Indiana and the Indiana Utility Regulatory Commission.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Niagara Mohawk Power Corporation

Docket No. ER93-937-000

Take notice that on November 3, 1993, Niagara Mohawk Power Corporation (Niagara Mohawk) tendered for filing with the Commission an amendment to its agreement between Niagara Mohawk and Vermont Public Power Supply Authority (VPPSA) and its representatives; The Town of Hardwick Electric Department, The Village of Hyde Park Electric Department, The Village of Ludlow Electric Light Department, The Village of Stowe Water & Light Department and The Village of Swanton Electric Department for sales of system capacity and energy. The amendment is a letter waiving the requirement that the Commission act on its filing within 60 days so that Niagara Mohawk can submit additional information in support of the agreement.

A copy of this filing has been served upon VPPSA and the New York State Public Service Commission.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Consumers Power Company

Docket No. ER94-105-000

Take notice that on October 29, 1993, Consumers Power Company (Consumers) tendered for filing two supplemental agreements which extend the term of agreements under which Consumers provides service to the City of Holland (Holland). One supplemental agreement extends the term of Supplement No. 1 to Consumers Rate Schedule FERC No. 66, an interruptible wholesale agreement. The other extends the term of Consumers Rate Schedule FERC No. 66, a firm wholesale agreement, and also provides for rate increases effective January 1 of each of the next three years for firm service to Holland.

Copies of the filing were served upon the Michigan Public Service Commission and Holland.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

Docket No. ER94-109-000

Take notice that on November 1, 1993, Southern Company Services, Inc., acting as agent for Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the Operating Companies), submitted for filing Amendment No. 4 to The Southern Company System Intercompany Interchange Contract dated October 31, 1988. The amendment reflects modifications in the process used to determine the capability of the Operating Companies' capacity for use under the Intercompany Interchange Contract. In addition, the amendment incorporates the revisions necessary to implement Statement of Financial Accounting Standards No. 109 (SFAS No. 109) in a manner that does not impact billings under the Intercompany Interchange Contract. The Operating Companies request an effective date of January 1, 1994 for the capacity rating revisions and an effective date of January 1, 1993 for the SFAS No. 109 revisions.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. New England Power Company

Docket No. ER94-110-000

Take notice that New England Power Company (NEP), on November 2, 1993, tendered for filing a proposed amendment to its FERC Electric Tariff Original Volume No. 1, Schedule III-B, Terms and Conditions Governing All Requirements Service—Integrated Facilities. The proposed amendment would allow the cost of removal expenditures associated with the South Street Station to be adjusted annually to reflect the actual expenditures incurred by The Narragansett Electric Company (Narragansett).

NEP requests that the proposed amendment be permitted to become effective on January 1, 1994.

A copy of the filing has been served upon Narragansett, the Rhode Island Public Utilities Commission and the Attorney General of the State of Rhode Island.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Northern States Power Company (Minnesota Company)

[Docket No. ER94–112–000]

Take notice that on November 2, 1993, Northern States Power Company (Minnesota) (NSP) tendered for filing Supplement No. 1 to the System Control and Load Dispatch Agreement between NSP and Cooperative Power Association (CPA). Under the present System Control and Load Dispatch Agreement, NSP schedules CPA's power and energy requirements on a specifically defined integrated transmission system.

Supplement No. 1 will expand NSP's service to CPA by making NSP a host control area for CPA. NSP will perform scheduling and interchange accounting and reporting for CPA's system, including that portion of CPA's system outside of the integrated transmission system. NSP requests that Supplement No. 1 be accepted for filing effective January 1, 1994.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Northern States Power Company (Minnesota); Northern States Power Company (Wisconsin)

[Docket No. ER94–113–000]

Take notice that on November 2, 1993, Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin) jointly tendered for filing the existing Exhibit VII and revised Exhibits VIII and IX to the Agreement in Coordinate Planning and Operations and Interchange Power and Energy Between Northern States Power Company (Minnesota) and Northern States Power Company (Wisconsin).

Exhibit VII sets forth the specification of the rate of return on common equity to determine the overall cost of capital. The return on common equity for calendar year 1994 is the FERC generic rate of return effective November 1, 1991.

Exhibit VIII sets forth the specification of average monthly coincident peak demands for calendar year 1994 for each of the Companies. A statement of the impacts of these coincident peak demands on each company has been filed. These coincident peak demands were determined upon three year data consisting of 18 months actual and 18 months projected. The change from the use of the average of the 12 monthly peak demand allocation method to the use of the 36 months was approved in Docket No. ER87–279–000.

Exhibit IX sets forth a specification of depreciation rates certified by the Wisconsin Public Service Commission (PSCW) and the depreciation rates currently proposed to and pending before the Minnesota Public Utilities Commission (MPUC). A statement of the impact of the depreciation rates on each company has been filed.

The NSP Companies request an effective date of January 1, 1994, for this filing. Copies of the filing letter and Exhibits VII, VIII and IX have been served upon the wholesale and wheeling customers of the Companies. Copies of the filing have been mailed to the State Commissions of Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Idaho Power Company

[Docket No. ER94–114–000]

Take notice that on November 2, 1993, Idaho Power Company (IPC) tendered for filing the Exchange Agreement between Idaho Power Company and Montana Power Company, dated August 18, 1993. Deliveries under the Agreement are scheduled to commence January 1, 1994.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Public Service Company of New Mexico

[Docket No. ER94–116–000]

Take notice that on November 3, 1993, Public Service Company of New Mexico (PNM) tendered for filing four letters between PNM and Texas-New Mexico Power Company (TNP) that decrease the amount of power PNM will supply at wholesale to TNP in calendar years 1994 and 1995 pursuant to the Amended and Restated Contract for Electric Service between PNM and TNP. PNM requests that the Commission accept for filing the four letters to be effective as of January 1, 1994 and requests waiver of the Commission's notice requirements.

Copies of the filing have been served upon TNP and the New Mexico Public Utility Commission, as well as PNM's other firm requirements wholesale customers, the Cities of Gallup and Farmington, New Mexico and Plains Electric Generation and Transmission Cooperative, Inc.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Southern California Edison Company

[Docket No. ER94–115–000]

Take notice that on November 2, 1993, Southern California Edison Company (Edison) tendered for filing a change of rate for scheduling and dispatching services under the provisions of Edison's agreements with the parties listed below as embodied in their respective FERC Rate Schedules. Edison requests that the revised rate for these services be made effective January 1, 1994.

Entity	Rate schedule FERC No.
1. City of Anaheim	130, 164, 241, 246.
2. City of Azusa	160, 242, 247.
3. City of Banning	159, 243, 248.
4. City of Colton	162, 244, 249.
5. City of Riverside	129, 245, 250.
6. City of Vernon	149, 154, 172, 207, 257, 263, 272, 276.
7. Arizona Electric Power Cooperative.	132, 161.
8. Arizona Public Service Company.	185.
9. California Department of Water Resources.	112, 113, 181.
10. City of Burbank ...	166.
11. City of Glendale ..	143.
12. City of Los Angeles.	102, 118, 140, 141, 163, 188.
13. City of Pasadena	158.
14. Imperial Irrigation District.	259.
15. M–S–R Public Power Agency.	153.
16. Northern California Power Agency.	240.
17. Pacific Gas and Electric Company.	117, 147, 256.
18. San Diego Gas and Electric Company.	151, 232, 274.
19. Western Area Power Administration.	120.
20. PacifiCorp	275.

Copies of this filing were served upon the Public Utilities Commission of the State of California and all interested parties.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Iowa Electric Light and Power Company

[Docket No. ER94–117–000]

Take notice that Iowa Electric Light and Power Company (Iowa Electric), on November 1, 1993, tendered for filing Resale Electric Service Agreements with 23 Rate Schedule RES–3 customers, as follows: Cities of Hopkinton, Ogden, Tipton, Anita, Burt, Dike, Dysart, Grand Junction, Long Grove, Maquoketa,

Preston, Story City, Stanhope, Traer, Vinton, State Center, Whittemore, Sibley, Marathon, Westpoint and West Liberty; Farmers Electric Cooperative of Kalona and the Amana Society Service Company.

Copies of this filing have been sent to the Iowa State Utilities Board and to Iowa Electric's jurisdictional customers.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. San Diego Gas & Electric Company

[Docket No. ER94–118–000]

Take notice that on November 1, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing corrections to its original filing under Docket Nos. ER93–542–000 and ER93–543–000, requesting a change in rates for service under the Agreements with Southern California Edison for: (1) Short-Term Firm Transmission Service, FERC Rate Schedule 58; (2) Interruptible Transmission Service, FERC Rate Schedule 59; and (3) Firm Transmission Service, FERC Rate Schedule 60, accepted for filing October 25, 1993.

SDG&E respectfully requests, pursuant to § 35.11, waiver of prior notice requirements specified in § 35.3 of the Commission's regulations, and an effective date of January 1, 1993.

Copies of this filing were served upon the Public Utilities Commission of the State of California and Edison.

Comment date: November 24,1993, in accordance with Standard Paragraph E at the end of this notice.

14. Oklahoma Gas and Electric Company

[Docket No. ER94–120–000]

Take notice that on November 1, 1993, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Letter Agreement dated October 25, 1993 for the sale of replacement energy to Arkansas Electric Cooperative Corporation.

OG&E requests an effective date of August 7, 1991 for the service to commence and OG&E further requests an effective termination date of August 9, 1991.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

15. Public Service Company of Colorado

[Docket No. ER94–122–000]

Take notice that on November 4, 1993, Public Service Company of Colorado tendered for filing an amendment to its FERC Electric Service Rate Schedule, FERC No. 53. Under the proposed amendment Public Service is seeking to add two new delivery points for power and energy delivered to Grand Valley Rural Power Lines, Inc. This amendment will have no impact on the rates or revenues collected for service under this agreement.

Public Service requests an effective date of November 1, 1993 for the proposed amendment.

Copies of the filing were served upon Grand Valley Rural Power Lines, Inc. and state jurisdictional regulators which include the Public Utilities Commission of the State of Colorado and the State of Colorado Office of Consumer Counsel.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

16. Florida Power Corporation

[Docket No. ER94–123–000]

Take notice that on November 4, 1993, Florida Power Corporation (FPC) submitted for filing a Service Agreement For Transmission Service Resale Rate Schedule T–1 between FPC and Polk Power Partners, L.P., dated October 28, 1993, including Supplemental Service Specifications For Transmission Service Resale Rate Schedule T–1 for Polk Power Partners, L.P., dated October 26, 1993, a Service Agreement For Transmission Service Resale Rate Schedule T–1 between FPC and Orange Cogeneration Limited Partnership, dated October 28, 1993, including Supplemental Service Specifications For Transmission Service Resale Rate Schedule T–1, for Orange Cogeneration Limited Partnership, dated October 26, 1993, and a Letter Agreement between Mulberry Polk Power Partners, L.P. and FPC, dated October 28, 1993. The October 28, 1993 letter agreement relates to the two transmission service agreements.

According to FPC the Polk Power Partners transmission service agreement is to provide transmission service under FPC's existing tariff for 23 megawatts (MW) from the Mulberry cogeneration plant in Polk County, Florida to Tampa Electric Company. The purpose of the Orange Cogeneration Limited Partnership transmission service agreement is to provide transmission service under FPC's existing tariff for essentially the 23 MW from the Orange cogeneration plant also in Polk County, when the Orange plant comes in-service.

FPC requests waiver of the Commission's notice requirements in to allow both of these service agreements to become effective on December 1, 1994.

According to FPC, copies of this filing have been served upon Polk Power Partners, L.P. and Orange Cogeneration Limited Partnership.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

17. San Diego Gas & Electric Company

[Docket No. ER94–124–000]

Take notice that on November 4, 1993, San Diego Gas & Electric Company (SDG&E) tendered for filing and acceptance, pursuant to 18 CFR 35.12, the Power Sales Agreement between SDG&E and the City of Vernon, executed on October 27, 1993.

The Agreement provides the terms and conditions whereby SDG&E shall make available and City of Vernon shall purchase a minimum of 40 MW and a maximum of 60 MW during 1994.

Copies of this filing were served upon the Public Utilities Commission of the State of California and the City of Vernon.

Comment date: November 24, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28097 Filed 11–15–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–57–000, et al.]

Columbia LNG Corporation, et al.; Natural Gas Certificate Filings

November 5, 1993.

Take notice that the following filings have been made with the Commission:

1. Columbia LNG Corporation

[Docket No. CP94–57–000]

Take Notice that on November 3, 1993, Columbia LNG Corporation

("Columbia LNG") filed an application pursuant to section 7(b) of the Natural Gas Act ("NGA"), 15 U.S.C. 717f(b), and § 157.7 of the Commission's regulations, 18 CFR 157.7 (1993), to: (i) Abandon its service obligation to Columbia Gas Transmission Corporation ("Columbia Transmission") under Rate Schedule LNG of Columbia LNG's FERC Gas Tariff, Original Volume No. 1; (ii) abandon its certificated transportation service to Washington Gas Light Company ("WGL") under Rate Schedule X–2 of Columbia LNG's FERC Gas Tariff, Original Volume No. 2;[1] and (iii) abandon by transfer to Cove Point LNG Company, L.P. ("Cove Point LNG") all of Columbia LNG's certificated facilities located at Cove Point, Calvert County, Maryland (the "Cove Point Facilities") and the pipeline extending from the Cove Point Facilities to a point of interconnection with Columbia Transmission and CNG Transmission Corporation in Loudoun County, Virginia (the "Cove Point Pipeline").[2]

Columbia LNG states that it has entered into an agreement with PEPCO Enterprises, Inc., pursuant to which Columbia LNG and Cove Point Energy Company, a subsidiary of PEPCO Enterprises, Inc., have formed Cove Point LNG, a limited partnership, to acquire all of Columbia LNG's jurisdictional facilities. In an application filed concurrently with Columbia LNG's application, Cove Point LNG is seeking authorization to acquire these facilities in order to provide open-access peaking and transportation services. Columbia LNG states that the requested abandonment authorizations are necessary in order to permit the proposed transfer to and acquisition by Cove Point LNG of the jurisdictional facilities. Columbia LNG states that the proposed abandonment of service obligations to Columbia Transmission and WGL will have no adverse impact on the respective companies since: (i) Columbia Transmission no longer requires imported LNG under Rate Schedule LNG to meet its service obligations, and (ii) WGL will have alternative firm and interruptible transportation services available to it under an open-access transportation tariff that Cove Point LNG is proposing to implement pursuant to Subpart G of Part 284 of the Commission's Regulations.

Columbia LNG states that it has filed concurrently with the application a notice of withdrawal of its certificate application filed on February 26, 1993, in Docket No. CP93–226–000, in which Columbia LNG proposed to offer various peaking, terminaling and transportation services.

Finally Columbia LNG requests that its application be consolidated with the application being filed concurrently by Cove Point LNG.

Comment date: November 26, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Cove Point LNG Company, L.P.

[Docket No. CP94–59–000]

Take notice that on November 3, 1993, Cove Point LNG Company, L.P. ("Cove Point LNG"), 20 Montchanin Road, Wilmington, Delaware 19803, filed in Docket No. CP94–59–000 an application pursuant to section 7(c) of the Natural Gas Act ("NGA"), 15 U.S.C. 717f(c), subpart A of part 157 of the Commission's regulations, 18 CFR 157.5, *et seq.* (1993), Subpart F of Part 157 of the Commission's regulations, 18 CFR 157.201, *et seq.* (1993), and Subpart G of Part 284 of the Commission's regulations, 18 CFR 284.221, *et seq.* (1993), for: (i) Authorization to acquire all the liquefied natural gas ("LNG") facilities currently owned by Columbia LNG Corporation ("Columbia LNG") located at Cover Point, Calvert County, Maryland (the "Cove Point Facilities") and the pipeline extending from the Cove Point Facilities to a point of interconnection with Columbia Gas Transmission Corporation ("Columbia Transmission") and CNG Transmission Corporation ("CNG") in Loudoun County, Virginia (the "Cove Point Pipeline"); (ii) authorization to construct a liquefaction unit at the Cove Point Facility to liquefy natural gas for storage; (iii) authorization to recommission the Cove Point Facilities; (iv) issuance of a blanket certificate with pre-granted abandonment to operate the Cove Point Facilities and Pipeline in order to provide firm peaking services and firm and interruptible transportation services; and (v) issuance of a blanket construction certificate for the Cove Point Pipeline and the Cove Point Facility. Finally, Cover Point LNG requests that its application be consolidated with the abandonment application that is being filed concurrently herewith by Columbia LNG pursuant to which Columbia LNG is seeking to abandon the Cove Point Facilities and Cove Point Pipeline by transfer to Cove Point LNG.

Cove Point LNG states in its application that it is a limited partnership that has been formed with Columbia LNG as the general partner and Cove Point Energy Company ("Cove Point Energy") as a limited partner. Cove Point Energy is a wholly-owned subsidiary of PEPCO Enterprises, Inc., which, in turn, is a wholly-owned subsidiary of Potomac Electric Power Company.

Cove Point LNG further states that the partnership was formed pursuant to an agreement entered into by Columbia LNG and PEPCO Enterprises, Inc. Under this agreement, Columbia LNG has agreed, in recognition of Cove Point Energy's payment of a cash contribution to the partnership, to transfer the Cove Point Facilities and Cove Point Pipeline to Cove Point LNG and assign to Cove Point LNG certain precedent agreements executed by Columbia LNG with successful bidders for services offered during the second open season held by Columbia LNG pursuant to its application in Docket No. CP93–226–000. The transfer is subject to the receipt of all necessary regulatory approvals including approval by the Commission. Cove Point LNG states that Columbia LNG or an affiliate thereof will operate the facilities and pipeline pursuant to an operating agreement to be entered into by Cove Point LNG and Columbia LNG.

Upon the acquisition of the Cove Point Pipeline and Facilities, Cove Point LNG is proposing to provide 3-day, 5-day and 10-day peaking services and firm and interruptible open access transportation services using such facilities. In order to provide the peaking service, Cove Point LNG is also proposing to construct a liquefaction unit at Cove Point capable of liquefying approximately 15,000 Mcf of gas per day and to recommission certain onshore facilities at Cove Point in order to store and vaporize LNG.

Under the proposed peaking services, customers will provide natural gas for liquefaction and storage during an injection season (April 15 through December 14) pursuant to a delivery schedule to be established prior to the beginning of each injection season. During the withdrawal season (December 15 through April 14) and any other time on a reasonable efforts basis, Cove Point LNG will withdraw the LNG from storage, vaporize it, and deliver the vaporized natural gas to the peaking customers. Each customer will be permitted to withdraw up to its Maximum Daily Peaking Quantity on any day during the withdrawal season,

[1] The abandonment authorization sought in items (i) and (ii) are the same authorizations, among others, that Columbia LNG has previously requested in its pending application filed on February 26, 1993, in Docket No. CP93–226–000. However, Columbia LNG has advised the Commission that it is filing, concurrently herewith, a notice withdrawing the February 26 application.

[2] Cove Point LNG is seeking authorization to acquire and operate these facilities in an application filed concurrently with Columbia LNG's application.

provided however, that the 10-day peaking service customers will be limited to withdrawing not more than 70 percent of their Maximum Contract Peaking Quantity during any consecutive 10-day period. All receipts from and deliveries to the peaking customers will be at points along the Cove Point pipeline. Cove Point LNG will charge market-based rates for the peaking services.

Cove Point LNG also proposes to offer firm and interruptible transportation service on the Cove Point Pipeline. The rates to be charged for the transportation services will be cost based.

Cove Point LNG states that all services will be provided on an open-access, non-discriminatory basis and that it has structured its services to be in compliance with Order No. 636. Cove Point LNG is requesting blanket certificate authorization under subpart G of part 284 of the Commission's regulations to provide the services. Capacity for the firm peaking and transportation services was allocated under two open seasons held by Columbia LNG pursuant to its application in Docket No. CP93–226–000.

The proposed services are discussed more fully in the Application and in the *pro forma* tariff sheets included with the filing.

Comment date: November 26, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. Sea Robin Pipeline Company

[Docket No. CP94–49–000]

Take notice that on October 28, 1993, Sea Robin Pipeline Company (Sea Robin) P.O. Box 2563, Birmingham, Alabama 35202–2563, filed in Docket No. CP94–49–000, an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a transportation service provided pursuant to Sea Robin's Rate Schedules X–10 and X–21 on behalf of Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Sea Robin states that it has provided firm transportation service of up to 10,000 Mcf of natural gas per day on behalf of Natural pursuant to Sea Robin's Rate Schedule X–10 from South Marsh Island Block 127 and Eugene Island Block 330, offshore Louisiana, to delivery points onshore at Erath, Louisiana by order issued April 14, 1978 in Docket No. CP77–239.

Sea Robin states further that it also provided firm transportation service of up to 7,327 Mcf of natural gas per day on behalf of Natural pursuant to Sea Robin's Rate Schedule X–21 from Eugene Island Block 333, offshore Louisiana, to delivery points onshore at Erath, Louisiana by order issued November 23, 1977 in Docket No. CP77–506.

Natural, it is said, has requested abandonment of service under Sea Robin's X–10 and X–21 Rate Schedules and conversion of such service to Part 284 service under Sea Robin's Rate Schedule FT with the same terms and conditions contained in the certificated service. Natural, it is further said, has executed service agreements for self-implementing transportation service under Part 284–G of the Commission's Regulations pursuant to Sea Robin's Rate Schedule FT with effective dates of July 22, 1993 and November 1, 1993.

Sea Robin therefore requests abandonment of Rate Schedules X–10 and X–21, effective July 22, 1993 and November 1, 1993 respectively.

No facilities are proposed to be abandoned herein.

Comment date: November 26, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28099 Filed 11–15–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–2–20–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 3, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, Second Revised Sheet No. 40, with a proposed effective date of December 1, 1993.

Algonquin states that this tariff sheet is being filed pursuant to Commission order issued May 13, 1993 in Docket No. RS92–28–000 and pursuant to Section 32, Fuel Reimbursement Quantity (FRQ), contained in the General Terms and Conditions of Algonquin's FERC Gas Tariff. Section 32 provides that Algonquin will periodically track changes in its requirements to retain gas in-kind in compensation for the quantities of Company Use Gas used to provide services to Algonquin's customers.

Algonquin states that copies of the filing were mailed to all customers of Algonquin and interested state commissions shown on Algonquin's system.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the

Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28113 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-58-000]

Carnegie Natural Gas Co.; Request Under Blanket Authorization

November 9, 1993.

Take notice that on November 3, 1993, Carnegie Natural Gas Company (Carnegie), 800 Regis Avenue, Pittsburgh, Pennsylvania 15236, filed in Docket No. CP94-58-000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to add a transportation service tap which would serve as a new delivery point for providing interruptible transportation service to The Peoples Natural Gas Company (Peoples) under Carnegie's blanket certificate issued in Docket No. CP88-248-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Carnegie states that it proposes the addition of a transportation service tap under an interruptible transportation service agreement with Peoples. Carnegie further states that the proposed tap would be located at the terminus of Carnegie's M-83 pipeline in Allegheny County, Pennsylvania. Carnegie says that its tariff permits the addition of the tap and the assignment of the delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28100 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-62-000]

Columbia Gas Transmission Corp. Request Under Blanket Authorization

November 9, 1993.

Take notice that on November 4, 1993, Columbia Gas Transmission Corporation (Columbia), 1700 MacCorkle Avenue, SE., Charleston, West Virginia 25314, failed in Docket No. CP94-62-000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon two pipelines under Columbia's blanket certificate issued in Docket No. CP83-76-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Columbia proposes to abandon by sale to Vandermark Exploration, Inc. (Vandermark), transmission pipelines A-1 and A-2,[1] and all appurtenances and rights-of-way associated with the lines, which are located in Allegheny and Cattaraugus Counties, New York. Columbia describes pipeline A-1 as consisting of 14.4 miles of 8-, 6-, and 4-inch pipe; and pipeline A-2 as consisting of 6.3 miles of 6-, and 2-inch pipe. Columbia states that Vandermark also has agreed to purchase additional related facilities: (a) The Gilbert Storage Field facilities abandoned under authorization issued December 11, 1985, in Docket No. CP85-517-000 (33 FERC 61,335), and (b) non-jurisdictional production facilities: line G-1 (3.9 miles of 4-inch pipe), line G-4 (0.6 mile of 4-inch pipe), and line W-5 (0.03 mile of 2-inch pipe). Columbia states that all the facilities would be sold for $52,800 less $7,000 for expenses of metering facilities. Columbia advises that there are no pay gas customers on the facilities and Columbia has no purchase gas agreements associated with the facilities. Columbia states that the pipelines are old and deteriorating and there is no economic or operational justification to replace them.

Columbia explains that pipelines A-1 and A-2 formerly were used to move gas in and out of Gilbert Storage Field, and currently are being used to move a small amount of local interruptible transportation service (ITS) volumes for Vandermark and Bannon Energy Incorporated (Bannon). Columbia included in its application a letter dated September 13, 1993, whereby Bannon states it has no objection to the sale of pipelines A-1 and A-2 to Vandermark.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28102 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[1] The pipelines were authorized under the "grandfather" certificate issued in Docket No. G-345 on January 8, 1943 (3 FPC 895), to Home Gas Company, predecessor to Columbia.

[Docket No. CP94-61-000]

Florida Gas Transmission Co. Request Under Blanket Authorization

November 5, 1993.

Take notice that on November 4, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94-61-000, a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate a new meter station, in Orange County, Florida to accommodate gas deliveries to Orlando CoGen (II), Inc. and Orlando CoGen Fuel, Inc., collectively referred to as (Orlando CoGen) under FGT's blanket certificate issued in Docket No. CP82-553-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a turbine meter tube, approximately 100 feet of connecting pipe, and related appurtenant facilities to measure gas delivered to Orlando CoGen. FGT states that the transportation service will be provided under FGT's blanket certificate issued in Docket No. CP89-555, pursuant to § 284.221 of the Commission's Regulations. It is stated that the construction of the proposed meter station is included as part of FGT's Phase III Expansion Facilities. However,

Orlando CoGen requires the facilities, authorized by order of the Commission issued September 15, 1993 in Docket No. CP92-182-004, et al., be constructed prior to the projected in-service date of the Phase III Expansion Facilities. The application further states, that the primary purchaser of power from the Orlando CoGen facility has stated that by December 10, 1993, the facility must be served by firm transportation, and that the facilities sought in this proceeding will enable FGT to service Orlando CoGen directly.

It is stated that the proposed gas quantity that FGT will deliver through the subject meter stations is: Up to 23,600 MMBtu per day; and up to 5,509,580 MMBtu per year. FGT states that Orlando CoGen shall reimburse it for all construction costs; estimated to be $196,980. It is further stated that the end-use will be cogeneration.

In addition, FGT requests that the Commission waive the regulation set forth in § 157.205 and set a 30-day deadline for the filing of protests or interventions on this request.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93-28101 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 1746-003]

Four Rent, Inc.; Expiration of License and of Dismissal of Application to Transfer License

November 9, 1993.

On May 16, 1966, a minor license was issued to E.L. Cord for the Leidy Creek Project No. 1746, located in Esmeralda County, Nevada, partially on lands of the United States in the Inyo National Forest, and partially on Cord's ranch.[1] The license was issued for a term of twenty-five years, with an expiration date of September 30, 1991. The license waived application to the project of the relicense provisions of sections 14 and 15 of the Federal Power Act (FPA).

The project dam was damaged during a flood in 1967 and was further damaged in a flood in 1975. In 1977, the Leidy Creek Project ceased operation.

On July 2, 1985, the Director, Office of Hydropower Licensing, issued an order approving transfer of the license to Four Rent, Inc.[2] Although Four Rent, which purchased the project and the ranch from Cord, investigated the possibility of restoring generation at the project, it never performed the necessary repairs.[3] In 1987, Four Rent sold the ranch and the project to Connecticut General Life Insurance Company (Company).[4] Four Rent did not, however, file an application to transfer the license to the Company.[5] The ranch and the project were resold twice, with the present owners, James and Christine Boyce, purchasing the ranch and the project in 1989.

By letter dated February 5, 1990, the Director, Division of Project Review, notified Four Rent that it and the current project owner must jointly file a transfer application by April 5, 1990, and that Four Rent's failure to do so would constitute a violation of the FPA. No transfer application was filed; Four Rent thus remained the licensee.

As previously noted, the license for the Leidy Creek Project was due to expire September 30, 1991. Four Rent did not file an application to surrender its license, a notice of intent to file an application for a subsequent license, or an application for a subsequent license prior to the expiration date of the license,[6] nor did the Commission issue an order requiring Four Rent to continue to operate its project.[7] None of these actions having been taken, the existing license expired on September 30, 1991.[8]

On September 30, 1992, one year after expiration of the license for Project No. 1746, Four Rent and the Boyces filed an application to transfer the license from Four Rent to the Boyces.[9] Because the license has expired, it cannot be transferred, and the transfer application is therefore dismissed.[10]

Lois D. Cashell,

Secretary.

[FR Doc. 93-28105 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-4-001]

Northern Natural Gas Co.; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 5, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERS Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1993:

Substitute First Revised Sheet No. 50
Substitute First Revised Sheet No. 51
Substitute First Revised Sheet No. 53

Northern states that in compliance with the Commission's order dated October 29, 1993, in the captioned docket, the filing revises the pagination of Sheet Nos. 50, 51, and 53 originally filed in this docket on October 1, 1993, and removes the charges related to the Stranded Account No. 858 and Gas Supply Realignment (GSR) filings made on the same date in Docket Nos. RP94-6 and RP94-7, respectively.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate proceeding, but will not

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[1] 35 FPC 742. The effective date of the license was October 1, 1966.

[2] 32 FERC ¶ 62,004.

[3] See October 7, 1991 letter from the Director, Division of Project Compliance and Administration (Division Director), to James Boyce, current co-owner of the ranch and project.

[4] See December 12, 1986 letter from Erica Michaels, acting on behalf of Four Rent, to Ronald A. Corso, Director, Division of Dam Safety and Inspections.

[5] Under section 8 of the FPA, 16 U.S.C. 801, and part 9 of the Commission's regulations, 18 CFR part 9, license transfers require prior written approval of the Commission.

[6] A subsequent license is a license issued after expiration of a minor license that is not subject to the relicensing provisions of sections 14 and 15 of the FPA. See 18 CFR 16.2(d). Under section 9(b) of the Administrative Procedure Act, 5 U.S.C. 558(c), and 18 CFR 16.21(a), had Four Rent timely filed an application for subsequent license before its license expired, the existing license would be deemed to not expire until the Commission took final action on the subsequent license application.

[7] See 18 CFR 16.21(b).

[8] See October 7, 1991 letter to the Boyces, *supra* n. 3, in which the Division Director explains to the Boyces that the hydroelectric facilities located on their property are not under license, and that, should the Boyces decide to rebuild the project, they will have to first obtain a license from the Commission.

[9] According to the filing, the Boyces plan to reactivate the project and file a license application.

[10] The Boyces may file an application for preliminary permit, license, or exemption for the site, as appropriate.

serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28107 Filed 11–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–4–001]

Northern Natural Gas Co; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 5, 1993, Northern Natural Gas Company (Northern), tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, with an effective date of November 1, 1993:

Substitute First Revised Sheet No. 50
Substitute First Revised Sheet No. 51
Substitute First Revised Sheet No. 53

Northern states that in compliance with the Commission's order dated October 29, 1993, in the captioned docket, the filing revises the pagination of Sheet Nos. 50, 51, and 53 originally filed in this docket on October 1, 1993, and removes the charges related to the Stranded Account No. 858 and Gas Supply Realignment (GSR) filings made on the same date in Docket Nos. RP94–6 and RP94–7, respectively.

Northern states that copies of this filing were served upon Northern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Chashell,

Secretary.

[FR Doc. 93–28108 Filed 11–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR94–1–000]

Sinclair Oil Corp. v. Phillips Pipeline Co.; Complaint

November 9, 1993.

Take notice that on October 28, 1993, pursuant to section 13(1) of the Interstate Commerce Act (49 App. U.S.C. 13 (1988)), and Rule 206 of the Commission Rules of Practice and Procedure (18 CFR 385.206), Sinclair Oil Corporation (Sinclair) filed a complaint against Phillips Pipeline Company (Phillips). In its complaint, Sinclair asks the Commission to declare the practice of using the cost of leasing an oil pipeline to justify a rate increase to be improper, unjust and unreasonable, and to reject the rate increase proposed by Phillips in FERC Tariff No. 459, filed September 28, 1993.

In support of its complaint, Sinclair alleges that Phillips has leased capacity on the ARCO crude oil pipeline system, and has then filed rates for use of the pipeline space it has leased that are 38 percent above those that ARCO established. Sinclair states that the alleged basis of the rates are the costs Phillips has chosen to incur in leasing pipeline throughput from ARCO. Phillips further states that this "lease-and-raise" tariff has become a manipulative device to artificially increase pipeline rates in violation of the established rules of the Commission.

Any persons desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint are due on or before December 9, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28103 Filed 11–15–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–6–000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 4, 1993, Texas Eastern Transmission Corporation (Texas Eastern) submitted for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that this filing is submitted in light of the Commission's September 17, 1993 "Second Order on Compliance Filing and Order on Rehearing" for CNG Transmission Corporation (CNG) in Docket No. RS92–14 et al., (September 17 Order) and the Commission's August 2, 1993 "Order on Compliance With Restructuring Rule, Granting Clarification, and Granting and Denying Rehearing" for Carnegie Natural Gas Company (Carnegie) in Docket No. RS92–30 *et al.*, (August 2 Order).

Texas Eastern states that it is filing the tariff sheets on Appendix A for the purpose of reflecting that, pursuant to the September 17 Order and August 2 Order, certain customers of CNG and Carnegie became direct customers of Texas Eastern ("Converting Customers") [1], effective October 1, 1993, by taking assignment of their respective service rights attributable to CNG and Carnegie's service agreements as of September 30, 1993 with Texas Eastern under Texas Eastern's Rate Schedules CDS and FT–1.

Texas Eastern states that in order to reflect the decrease in CNG and Carnegie's entitlements under their affected service agreements and to reflect the relevant entitlements of the Converting Customers, it is submitting Third Revised Sheet Nos. 546–548, 549–551, 553–555, 556–558, 560–562, 563–565, 567–569, 570–572, 575–577, 578–580, 581–583 and 599–601 and Original Sheet Nos. 548A, 551A, 555A, 558A, 562A, 565A, 569A, 572A, 577A, 580A, 583A and 601A to reflect modifications to Sections 9.2, 9.3, 9.4, 9.5, 9.9 and 14.4 of the General Terms and Conditions of its FERC Gas Tariff, Sixth Revised Volume No. 1.

The proposed effective date of the tariff sheets is October 1, 1993, the effective date of assignment of CNG and Carnegie's entitlements to the respective

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[1] The Converting Customers from CNG are: Baltimore Gas and Electric Company; Boston Gas Company; Bristol and Warren Gas Company; The Brooklyn Union Gas Company; City of Richmond, Virginia; Colonial Gas Company; Commonwealth Gas Company; Corning Natural Gas Corporation; The East Ohio Gas Company; Elizabethtown Gas Company; Long Island Lighting Company; Town of Middleborough, Massachusetts; National Fuel Gas Distribution Company; New Jersey Natural Gas Company; New York State Electric and Gas Corporation; Niagara Mohawk Power Corporation; North Attleborough Gas Company; The Peoples Natural Gas Company; The Providence Gas Company; Public Service Electric and Gas Company; Public Service Company of North Carolina, Inc.; The River Gas Company; Rochester Gas and Electric Corporation; Southern Connecticut Gas Company; Virginia Natural Gas, Inc.; Washington Gas Light Company and Yankee Gas Services Company. The Converting Customers from Carnegie are: Columbia Gas of Ohio, Inc.; New Jersey Natural Gas Company and UGI Utilities, Inc.

Converting Customers. Copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28104 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP93-192-004]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 4, 1993, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheet:

2nd Sub Original Sheet No. 253F

Texas Eastern states that the Commission's October 1, 1993 Order in Docket No. RP93-192 (October 1 Order) accepted the tariff sheets filed in Docket No. RP93-192 on September 3, 1993, as supplemented September 16, 1993, to be effective October 3, 1993, subject to Texas Eastern filing certain revisions as required by ordering paragraph (B) of the October 1 Order. Texas Eastern filed in compliance with ordering paragraph (B) of the October 1 Order on October 18, 1993 in Docket No. RP93-192-002. However, Texas Eastern inadvertently omitted tariff revisions necessary to reflect the Commission's requirement in the October 1 Order that "* * * if Texas Eastern adds VKFT shippers in between quarterly GSR [Gas Supply Realignment] filings such that the GSR surcharge is not calculated based on the new shippers' MDQ, the GSR surcharge should be collected from those shippers and the revenues should be credited against future GSR costs * * *".

Accordingly, Texas Eastern states that it supplements its October 18, 1993 compliance filing with the submission of 2nd Sub Original Sheet No. 253F to reflect the Commission's requirement concerning the addition of VKFT shippers between GSR filings. Texas Eastern states that such tariff sheet provides that Texas Eastern will collect the GSR Demand Surcharge from customers under Rate Schedule VKFT executing a Rate Schedule VKFT Service Agreement whose effective date occurs in between quarterly GSR filings and the revenues so collected will be credited against future GSR Costs.

The proposed effective date of the above-captioned tariff sheet is October 3, 1993, which is the same date approved by the Commission in the October 1 Order. Copies of the filing were served on firm customers of Texas Eastern and interested state commissions. Copies of this filing have also been served on Santa Fe Energy Resources, Inc. and Murphy Exploration and Production Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 16, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28106 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-47-000]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 5, 1993, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 5, 1993:

Original Sheet No. 174
Sheet Nos. 175-199

Texas Eastern states that the above tariff sheets are filed pursuant to the Commission's April 28, 1993 order issued in Docket No. RP85-177-102, et al. (April 28 Order).

Texas Eastern states that in the April 28 Order, the Commission placed customers on notice that they may be liable for future direct bills by Texas Eastern to recover costs related to claims applicable to the period prior to November 1, 1992, the date of termination of Texas Eastern's Gas Supply Inventory Reservation Charge (GSIRC). Texas Eastern states that the proposed direct bill of GSIRC costs is allocated to those customers who were recipients of the refund of $6,072,700.97 pursuant to the April 28 Order. Texas Eastern submits such allocation methodology is appropriate for the instant filing, however Texas Eastern reserves its rights to propose a different allocation methodology to be applicable to any future filing to recover additional gas supply inventory costs.

Texas Eastern states that at each customer's individual option, payment of these direct bill amounts may be amortized over as much as a twelve month period with carrying charges calculated, net of deferred taxes, pursuant to § 154.305 of the Commission's Regulations on amounts uncollected. Texas Eastern states that the total GSIRC costs to be recovered by this filing is $2,008,377.35.

Texas Eastern states that copies of its filing have been served on all firm customers of Texas Eastern and applicable state regulatory agencies.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28110 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM94-2-17-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 4, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, the following tariff sheets, with a proposed effective date of December 1, 1993:

Seventeenth Revised Sheet No. 1J
Seventeenth Revised Sheet No. 1K
Third Revised Sheet No. 1M

Texas Eastern states that the tariff sheets listed above are being filed pursuant to Section 15.6, Applicable Shrinkage Adjustment (ASA), contained in the General Terms and Conditions of Texas Eastern's FERC Gas Tariff, Sixth Revised Volume No. 1.

Texas Eastern states that on October 29, 1993, Texas Eastern files its first regular annual ASA filing under Section 15.6 of the General Terms and Conditions. Texas Eastern states that Appendix A attached to the October 29, 1993 filing reflected the Original Volume No. 2 sheets listed above, however, Texas Eastern has since discovered that the Original Volume No. 2 tariff sheets listed above were inadvertently excluded from the October 29, 1993 filing.

Texas Eastern states that a copy of this filing was served on all firm customers of Texas Eastern and interested state commission. This filing is also being served on current shippers under Rate Schedules IT-1, PTI and ISS-1.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC, 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant a party to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28112 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-46-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 1, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, the following tariff sheets listed on Appendix A attached to the filing. The proposed effective date of such tariff sheets is December 1, 1993.

TGPL states that the instant filing is for the limited purpose of revising TGPL's Rate Schedule FT reservation rates and Rate Schedule ESS (Eminence Storage Service) demand and capacity charges in order to provide for the recovery of certain costs attributable to the expansion of TGPL's Eminence Storage Field. The revision to the Rate Schedule FT reservation charges will necessarily result in revisions to charges under Rate Schedules FT-R, FTN, FTN-R and FT-G; similarly, the revisions to the Rate Schedule ESS charges necessarily result in revisions to the Rate Schedule ESS-R charges. Moreover, the reservation rate surcharge applicable to Incremental Leidy Line Annual Firm Transportation service which has been assigned and converted from section 7(c) to service under part 284 has been reduced in order to offset the increase in the Rate Schedule FT reservation rate such that the total reservation rate for such service remains unchanged.

TGPL states that copies of the instant filing are being mailed to customers, State Commissions and other interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on a file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28109 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-48-000]

Williston Basin Interstate Pipeline Co. Proposed Changes in FERC Gas Tariff

November 9, 1993.

Take notice that on November 5, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 1, the revised tariff sheets listed in Appendix A to the filing.

Williston Basin states that the revised tariff sheets are being filed pursuant to Order No. 636, *et seq.*, to implement the recovery of $13,445,226.34 of Gas Supply Realignment Transition costs. Under the filing, Williston Basin is proposing to recover ninety percent of the costs through a reservation charge surcharge of 112.716¢ per equivalent dkt of Maximum Daily Delivery Quantity applicable to service under Rate Schedules FT-1 and ST-1 and ten percent of such costs through a base rate surcharge of 5.942¢ per dkt applicable to service under Rate Schedule IT-1.

Williston Basin has requested that the Commission accept this filing to become effective December 1, 1993.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214). All such motions or protests should be filed on or before November 17, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party to the proceeding must file a motion to intervene. Copies of the filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28111 Filed 11-15-93; 8:45 am]

BILLING CODE 6717-01-M

Financial Assistance Award: Columbia Basin College

AGENCY: Richland Operations Office, U.S. Department of Energy (DOE).

ACTION: Notice of intent to make a noncompetitive grant award.

SUMMARY: The DOE Richland Operations Office, in accordance with 10 CFR 600.7(b)(2), gives notice of its plan to award a noncompetitive grant to Columbia Basin College, a two year

community college located in Pasco, Washington, near the Hanford Site. Under the terms of the grant, the college will establish an environmental science endowment fund. The proceeds from the endowment will be used to provide scholarships to qualified students intent on completing one or two year programs in environmental science. This action is relevant to DOE's environmental restoration and waste management/ remediation mission in that it will encourage students to pursue careers in environmental science, which in turn should increase the pool of trained persons available to participate in the mission. It also supports the Secretary of Energy's position that on-going clean up activities depend on the availability of a well educated, well trained cadre of potential employees.

Funds for this award are a part of moneys set aside for a penalty assessed against Richland Operations Office and the Westinghouse Hanford Company for violation of the Washington State Hazardous Waste Management Act. The settlement agreement, which has been approved by the Washington State Pollution Control Hearings Board Administrative Appeals Judge, is in lieu of payment of the penalty to the Washington State Treasury. One of the terms of the agreement provides that "DOE shall make a grant of $40,000 to Columbia Basin College Foundation to establish a scholarship fund * * *." Competition for the award is not an option.

The duration of the grant shall be one year from the date of award.

FOR FURTHER INFORMATION CONTACT: Marji W. Parker, U.S. Department of Energy, Richland Operations Office, P.O. Box 550, Richland, WA 99352, Telephone: (509) 376–2029.

Dated: November 5, 1993.

G.L. Amidan,

Acting Director, Procurement Division, Richland Operations Office.

[FR Doc. 93–28136 Filed 11–15–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY (EPA)

[Docket No. FRL–4801]

Gulf of Mexico Program Management Committee Meeting

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Notice of meeting of the management Committee of the Gulf of Mexico program.

SUMMARY: The Gulf of Mexico Program's Management Committee will hold a meeting on December 7–8, 1993 at the Holiday Inn Crowne Plaza Hotel in New Orleans, Louisiana.

FOR FURTHER INFORMATION CONTACT: Dr. Douglas Lipka, Acting Director, Gulf of Mexico Program Office, Building 1103, John C. Stennis Space Center, Stennis Space Center, MS 39529–6000, at (601) 688–3726.

SUPPLEMENTARY INFORMATION: A meeting of the Management Committee of the Gulf of Mexico Program will be held on December 7–8, 1993, at the Holiday Inn Crowne Plaza Hotel in New Orleans, Louisiana. The committee will meet from 8:30 a.m. to 4:30 p.m. on December 7 and from 8:30 a.m. to 12 noon on December 8. Agenda items will include: proposed revision to the Action Agenda process; issue committee co-chair reports; strategic assessment capability; federal associate director positions; development of a regional consortium of minority colleges and universities; 1995 symposium; Business Council resolution; budget; and legislation update. The meeting is open to the public.

Douglas A. Lipka,

Acting Director, Gulf of Mexico Program.

[FR Doc. 93–28120 Filed 11–15–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

November 8, 1993.

The Federal Communications Commission has submitted the following information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of this submission may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., Suite 140, Washington, DC 20037, (202) 857–3800. For further information on this submission contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on this information collection should contact Timothy Fain, Office of Management and Budget, Room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0107

Title: Private Radio Application for Renewal, Reinstatement and/or Notification of Change to License Information

Form Number: FCC Form 405–A

Action: Revision of a currently approved collection

Respondents: Individuals or households, state or local governments, non-profit institutions and businesses or other for-profit (including small businesses)

Frequency of Response: On occasion reporting requirement

Estimated Annual Burden: 2,700 responses; .33 hours average burden per response; 891 hours total annual burden

Needs and Uses: In accordance with FCC Rules, radio station licensees are required to apply for renewal of their radio station authorization every five years. The Commission issues computer-generated renewal notices, however, this form will serve as a short form alternative for licensees who fail to receive that notice for whatever reason. This form is also provided for Land Mobile licensees who wish to reinstate their authorization, change the number of mobiles and/or pagers at time of renewal; for Land Mobile General Mobile licensees who wish to cancel their authorization, or file a name and/or address change. This form is revised to exclude applicants in the Maritime and Aviation Radio Services under 47 CFR parts 80 and 87. In accordance with those Rules, they are not eligible to use this form for renewal. FCC staff will use the data to determine eligibility for an authorization renewal or reinstatement, and issue a radio station license. Data is also used by Compliance personnel in conjunction with field engineers for enforcement purposes and for authorization cancellations.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–28067 Filed 11–15–93; 8:45 am]

BILLING CODE 6712–01–M

Travel Reimbursement Program; July 1, 1993—September 30, 1993; Summary Report

Total Number of Sponsored Events: 19
Total Number of Sponsoring Organizations: 19
Total Number of Different Commissioners/Employees Attending: 22
Total Amount of Reimbursement Expected:
Transportation: $8,369.10
Subsistence: 6,711.52

Other Expenses: 1,138.15
Total: $16,218.77
Sponsoring Organization:
Arkansas Broadcasters Association (ABA), 2024 Arkansas Valley Drive, Suite 201, Little Rock, Arkansas 72212.
Date of the Event:
August 15–17, 1993
Description of the Event:
ABA's Annual Convention, Little Rock, Arkansas.
Commissioners Attending:
None
Other Employees Attending:
Roy Stewart—Chief, Mass Media Bureau.
Amount of Reimbursement:
Transportation: $290.00
Subsistence: 104.50
Other Expenses: 44.00
Total: $438.50
Sponsoring Organization:
American Petroleum Institute, Keller & Heckman, 1001 G Street, NW., Suite 500 West, Washington, DC 20001
Date of the Event:
August 24–26, 1993
Description of the Event:
American National Standards Institute (ANSI), Government Subcommittee X–12G, Task Group 5, Seattle, Washington.
Commissioners Attending:
None
Other Employees Attending:
John A. Chudovan—Chief, Data Services Branch, Private Radio Bureau.
Peggy J. Frank—Legal Instructor Examiner, Private Radio Bureau.
Amount of Reimbursement:
Transportation: $886.00
Subsistence: 520.00
Other Expenses: 52.52
Total: $1,458.52
Sponsoring Organization:
Advertising Research Foundation (ARF), 641 Lexington Avenue, New York, New York 10022.
Date of the Event:
July 21, 1993
Description of the Event:
ARF Children's Research Workshop, New York, New York
Commissioners Attending:
None
Other Employees Attending:
Barbara A. Kreisman—Chief, Videc Service Div. Mass Media Bureau
Amount of Reimbursement:
Transportation: $145.00
Subsistence: .00
Other Expenses: 104.75
Total: $249.75
Sponsoring Organization:
Bienstock & Clark, First Union Financial Center, Suite 3180, 200 South Biscayne Boulevard, Miami, Florida 33131.
Date of the Event:
August 22–24, 1993
Description of the Event:
Coping with Re-Regulation Part III: FCC Implementation of 1992 Cable Act Seminar Miami, Florida
Commissioners Attending:
None
Other Employees Attending:
Diane Hofbauer—Legal Advisor, Office of Legislative Affairs
Amount of Reimbursement:
Transportation: $306.00
Subsistence: 271.24
Other Expenses: 102.79
Total: $680.03
Sponsoring Organization:
Cardiff Publishing Company, Inc., 214 Massachusetts Avenue NE., Suite 350, Washington, DC 20002.
Date of the Event:
September 20–22, 1993
Description of the Event:
International Wireless Communications Expo, Philadelphia, Pennsylvania
Commissioners Attending:
None
Other Employees Attending:
Daniel Abeyta—General Attorney, Common Carrier Bureau
Ralph A. Haller—Chief, Private Radio Bureau
Robert H. McNamara—Chief, Special Services Division, Private Radio Bureau
Frank R. Netro—Electronics Engineer, Private Radio Bureau
Amount of Reimbursement:
Transportation: $347.00
Subsistence: 823.00
Other Expenses: 54.59
Total: $1,224.59
Sponsoring Organization:
California Broadcasters Association, 1127 11th Street, Suite 730, Sacramento, California 95814.
Date of the Event:
July 18–20, 1993
Description of the Event:
Summer Convention, "The New FCC and Your Station", Monterey, California
Commissioners Attending:
None
Other Employees Attending:
Roy J. Stewart—Chief, Mass Media Bureau
Amount of Reimbursement:
Transportation: $546.00
Subsistence: 366.50
Other Expenses: 49.08
Total: $961.58
Sponsoring Organization:
Brian Kidney, Cellular Carriers Association of California, California Public Utilities Commission, 2999 Oak Street, MS 1050, Walnut Creek, California 94596.
Date of the Event:
July 20–22, 1993
Description of the Event:
Cellular Transceiver Facilities, Informational Workshop, San Francisco, California
Commissioners Attending:
None
Other Employees Attending:
Robert F. Cleveland—Physical Scientist, Office of Engineering & Technology
Amount of Reimbursement:
Transportation: $468.00
Subsistence: 296.50
Other Expenses: 72.00
Total: $836.50
Sponsoring Organization:
Cable Television Administration and marketing Society (CTAM), 635 Slaters Lane, Suite 250, Alexandria, Virginia 22314.
Date of the Event:
July 20–21, 1993
Description of the Event:
National Marketing Conference, CTAM ATLANTA: The Customer Speaks Atlanta, Georgia
Commissioners Attending:
None
Other Employees Attending:
Byron F. Marchant—Legal Advisory, to Commr. Andrew C. Barrett
Amount of Reimbursement:
Transportation: $260.00
Subsistence: 147.50
Other Expenses: 34.59
Total: $442.09
Sponsoring Organization:
Georgia Association of Broadcasters, Inc. (GAB), 8010 Roswell Road, Suite 260, Atlanta, Georgia 30350.
Date of the Event:
August 7–8, 1993
Description of the Event:
GAB's 59th Annual Convention, Amelia Island, Florida
Commissioners Attending:
None
Other Employees Attending:
Robert L. Corn-Revere—Senior Advisor to Chairman James H. Quello
Amount of Reimbursement:
Transportation: $.00
Subsistence: 120.00
Other Expenses: .00
Total: $120.00
Sponsoring Organization:
IEEE Standard Seminars, 445 Hoes Lane, P.O. Box 1331, Piscataway, New Jersey 08855.
Date of the Event:
August 13–18, 1993
Description of the Event:
Measurement of Radio-Noise Emissions, Dallas, Texas

Commissioners Attending:
None
Other Employees Attending:
Leslie A. Wall—Chief, Sampling & Measurements Branch, Office of Engineering & Technology
Amount of Reimbursement:
Transportation: $555.00
Subsistence: 622.10
Other Expenses: .00
Total: $1,177.10
Sponsoring Organization:
International Teleproduction Society (ITS), 350 Fifth Avenue, Suite 2400, New York, New York 10118.
Date of the Event:
July 9–11, 1993
Description of the Event:
ITS Annual Forum, Los Angeles, California
Commissioners Attending:
None
Other Employees Attending:
Brian F. Fontes—Chief of Staff for Chairman James H. Quello
Amount of Reimbursement:
Transportation: $437.00
Subsistence: 299.00
Other Expenses: 105.13
Total: $841.13
Sponsoring Organization:
Michigan Association of Broadcasters (MAB), Craig Benton, Financial Manager, 819 North Washington, Lansing, Michigan 48906.
Date of the Event:
August 4–10, 1993
Description of the Event:
MAB Annual Convention, Harbor Springs, Michigan
Commissioners Attending:
James H. Quello–Chairman
Other Employees Attending:
None
Amount of Reimbursement:
Transportation: $424.40
Subsistence: 435.14
Other Expenses: 60.04
Total: $919.58
Sponsoring Organization:
National Association of Broadcasters, 1771 N Street, NW., Washington, DC 20036.
Date of the Event:
September 8–11, 1993
Description of the Event:
NAB's Radio Convention, Dallas, Texas
Commissioners Attending:
None
Other Employees Attending:
Larry D. Eads—Chief, Audio Services Division, Mass Media Bureau
Charles W. Kelley—Chief, Enforcement Division, Mass Media Bureau
Amount of Reimbursement:
Transportation: $699.00
Subsistence: 784.50
Other Expenses: 88.00
Total: $1,571.50
Sponsoring Organization:
New England Cable Television Association, Inc., NECTA, 100 Grandview Road, Suite 202, Braintree, Massachusetts 02184.
Date of the Event:
July 11–14, 1993
Description of the Event:
NECTA's Annual Convention, Newport, Rhode Island
Commissioners Attending:
None
Other Employees Attending:
Byron F. Marchant—Legal Advisor to Commr. Andrew C. Barrett
Amount of Reimbursement:
Transportation: $438.00
Subsistence: 432.04
Other Expenses: 86.48
Total: $956.52
Sponsoring Organization:
Southwestern Bell Corporation-Washington, Inc., 1657 K Street, NW., Suite 1000, Washington, DC 20006.
Date of the Event:
July 20–22, 1993
Description of the Event:
Address the Southwestern Bell, Executive Staff on "Network Reliability," Dallas, Texas
Commissioners Attending:
None
Other Employees Attending:
Gregory Lipscomb—General Attorney, Common Carrier Bureau
Amount of Reimbursement:
Transportation: $475.20
Subsistence: 223.50
Other Expenses: 35.30
Total: $734.00
Sponsoring Organization:
Systematics Telecommunications Services, 4001 Rodney Parham Road, Little Rock, Arkansas 72212.
Date of the Event:
August 22–25, 1993
Description of the Event:
Telecommunications Conference, Hilton Head, South Carolina
Commissioners Attending:
None
Other Employees Attending:
Stephen L. Markendorff—Chief, Cellular Radio Branch, Common Carrier Bureau
Amount of Reimbursement:
Transportation: $282.50
Subsistence: 185.00
Other Expenses: 2.00
Total: $469.50
Sponsoring Organization:
Tri-State Committee, Exchange Carriers of Utah, P.O. Box 417, Centerville, Utah 84014.
Date of the Event:
August 3–6, 1993
Description of the Event:
Tri-State Telecommunications Conference, Park City, Utah
Commissioners Attending:
None
Other Employees Attending:
Brian F. Fontes—Chief of Staff to Chairman James H. Quello
Amount of Reimbursement:
Transportation: $.00
Subsistence: 60.00
Other Expenses: 57.38
Total: $117.38
Sponsoring Organization:
Robert Creighton, United States Telephone Association (USTA), 900 19th Street, NW., Suite 800, Washington, DC 20036.
Date of the Event:
September 27–30, 1993
Description of the Event:
1993 USTA Depreciation Seminar, Charleston, South Carolina
Commissioners Attending:
None
Other Employees Attending:
Fatina K. Frankling—Chief, Depreciation Rates Branch, Common Carrier Bureau
Amount of Reimbursement:
Transportation: $402.00
Subsistence: 304.50
Other Expenses: 57.25
Total: $763.75
Sponsoring Organization:
Utilities Telecommunications Council (UTC), 1140 Connecticut Avenue NW., Suite 1140, Washington, DC 20036.
Date of the Event:
June 30–July 2, 1993
Description of the Event:
UTC Annual Meeting, San Antonio, Texas
Commissioners Attending:
None
Other Employees Attending:
Doron Fertig—Industry Economist, Private Radio Bureau
Ralph A. Haller—Chief, Private Radio Bureau
Amount of Reimbursement:
Transportation: $934.00
Subsistence: 413.50
Other Expenses: 61.25
Total: $1,408.75
Sponsoring Organization:
Wireless Cable Association International Inc., WCA, 2000 L Street, NW., Suite 702, Washington, DC 20036.
Date of the Event:
August 1–3, 1993
Description of the Event:
1993 International Exposition and Convention, Orlando, Florida
Commissioners Attending:
None
Other Employees Attending:

Charles P Gratch—Electronics Engineer, Common Carrier Bureau

Amount of Reimbursement:
Transportation: $474.00
Subsistence: 303.00
Other Expenses: 71.00
Total: $848.00

FCC Reimburseable Travel Report

[070193 through 093093]

Event sponser	Last name	Travel auth No.	Date event beg	Date event end	Date TV rec	Trans cost	Subsit cost	Other cost	Total cost
ABA	Stewart	3CS21180644G2	08/16/93	08/17/93	08/25/93	$290.00	104.50	44.00	438.50
Total event ABA.						290.00	104.50	44.00	438.50
ANSI	Chudovan	3CS21176254G2	08/24/93	08/26/93	09/07/93	468.00	260.00	52.52	780.52
	Frank	3CS21176264G2	08/24/93	08/26/93	09/07/93	418.00	260.00	.00	678.00
Total event ANSI.						886.00	520.00	52.52	1,458.52
ARF	Kreisman	3CS21180544G2	07/21/93	07/21/93	08/03/93	145.00	.00	104.75	249.75
Total event ARF.						145.00	.00	104.75	249.75
Cable act	Hofbauer	3CS21070074G2	08/20/93	08/24/93	09/22/93	306.00	271.24	102.79	680.03
Total event Cable Act.						306.00	271.24	102.79	680.03
Cardiff	Abeyta	3CS21163124G2	09/22/93	09/22/93	10/07/93	53.00	34.00	11.00	98.00
	Haller	3CS21170094G2	09/20/93	09/22/93	09/24/93	98.00	263.00	26.50	387.50
	McNamara	3CS21170104G2	09/20/93	09/22/93	09/29/93	98.00	263.00	6.00	367.00
	Netro	3CS21170114G2	09/20/93	09/22/93	09/24/93	98.00	263.00	11.09	372.09
Total event Cardiff.						347.00	823.00	54.59	1,224.59
CBA	Stewart	3CS21180614G2	07/19/93	07/20/93	07/26/93	546.00	366.50	49.08	961.58
Total event CBA.						546.00	366.50	49.08	961.58
CPUC	Cleveland	3CS21130443G2	07/20/93	07/22/93	08/17/93	468.00	296.50	72.00	836.50
Total event CPUC.						468.00	296.50	72.00	836.50
CTAM	Marchant	3CS21BA0334G2	07/20/93	07/21/93	07/26/93	260.00	147.50	34.59	442.09
Total event CTAM.						260.00	147.50	34.59	442.09
GAB	Com-Revere	3CS21SI044G2	08/07/93	08/08/93	09/10/93	.00	120.00	.00	120.00
Total event GAB.						.00	120.00	.00	120.00
IEEE	Wall	3CS21130424G2	08/16/93	08/17/93	09/24/93	555.00	622.10	.00	1,177.10
Total event IEEE.						555.00	622.10	.00	1,177.10
ITS	Fontes	3CS21SI0394G2	07/09/93	07/11/93	07/16/93	437.00	299.00	105.13	841.13
Total event ITS.						437.00	299.00	105.13	841.13
MAB	Quello	3CS21SI0404G2	08/03/93	08/09/93	09/14/93	424.40	435.14	60.04	919.58

FCC REIMBURSEABLE TRAVEL REPORT—Continued

[070193 through 093093]

Event sponser	Last name	Travel auth No.	Date event beg	Date event end	Date TV rec	Trans cost	Subsit cost	Other cost	Total cost
Total event MAB.	.....		.....	.....	.....	424.40	435.14	60.04	919.58
NAB	Eade	3CS21180648G2	09/08/93	09/12/93	09/23/93	315.00	441.00	58.50	814.50
	Kelley	3CS21180674G2	09/08/93	09/11/93	09/23/93	384.00	343.50	29.50	757.00
Total event NAB.	.....		.....	.....	.....	699.00	784.50	88.00	1,571.50
Necta	Marchant	3CS21BA0324G2	07/11/93	07/13/93	07/26/93	436.00	432.04	86.48	956.52
Total event Necta.	.....		.....	.....	.....	436.00	432.04	86.48	956.52
SW Bell	Lipscomb	3CS21163014G2	07/21/93	07/21/93	09/02/93	475.20	223.50	35.30	734.00
Total event SW Bell.	.....		.....	.....	.....	475.20	223.50	35.30	734.00
Systematic	Markendorff .	3CS21163044G2	08/22/93	08/26/93	09/02/93	282.50	185.00	2.00	469.50
Total event System-atic.	.....		.....	.....	.....	282.50	185.00	2.00	469.50
Tri-State	Fontes	3CS21SI0424G2	08/03/93	08/08/93	09/19/93	.00	60.00	57.38	117.38
Total event Tri-State.	.....		.....	.....	.....	.00	60.00	57.38	117.38
USTA	Franklin	3CS21163034G2	09/27/93	09/30/93	10/15/93	402.00	304.50	57.25	763.75
Total event USTA.	.....		.....	.....	.....	402.00	304.50	57.25	763.75
UTC	Fertig	3CS21170064G2	06/30/93	07/02/93	07/22/93	467.00	195.50	23.25	685.75
	Heller	3CS21170054G2	06/27/93	07/01/93	07/13/93	467.00	218.00	38.00	723.00
Total event UTC.	.....		.....	.....	.....	934.00	413.50	61.25	1,408.75
WCA	Gratch	3CS21163024G2	08/01/93	08/03/93	09/02/93	474.00	303.00	71.00	848.00
Total event WCA.	.....		.....	.....	.....	474.00	303.00	71.00	848.00
Total .	.....		.....	.....	.....	$8,369.10	$6,711.52	$1,138.15	$16,218.77

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–28066 Filed 11–15–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL HOUSING FINANCE BOARD

[No. FHFB 93–87]

Federal Home Loan Bank Members Selected for Community Support Review

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Financial Institutions Reform, Recovery, and Enforcement Act of 1989 added a new section 10(g) to the Federal Home Loan Bank Act of 1932 requiring that members of the Federal Home Loan Bank (FHLBank) System meet standards for community investment or service in order to maintain continued access to long-term FHLBank System advances. In compliance with this statutory change, the Federal Housing Finance Board (Finance Board) promulgated Community Support regulations (12 CFR part 936) that were published in the **Federal Register** on November 21, 1991 (56 FR 58639). Under the review process established in the regulations, the Finance Board will select a certain number of members for review each quarter, so that all members will be reviewed once every two years. The purpose of this Notice is to announce the names of the members selected for the eighth quarter review under the regulations. The Notice also conveys the dates by which members need to comply with the Community Support regulation review requirements and by which comments from the public must be received.

DATES: *Due Date For Member Community Support Statements for Members Selected in Eighth Quarter Review:* December 31, 1993.

Due Date For Public Comments on Members Selected in Eighth Quarter Review: December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Sylvia C. Martinez, Director, Housing Finance Directorate, (202) 408–2825, or Kathleen S. Brueger, Associate Director, Housing Finance Directorate, (202) 408–2821, Federal Housing Finance Board, 1777 F Street, NW., Washington, DC 20006.

SUPPLEMENTARY INFORMATION:

A. Selection for Community Support Review

The Finance Board intends to review the entire FHLBank System membership once every two years. Approximately one-eighth of the FHLBank members in each district will be selected for review by the Finance Board each calendar quarter. Only members with post-July 1, 1990 CRA Evaluations will be selected for review in the first two years following the effective date of the regulation. In selecting members, the Finance Board will follow the chronological sequence of the members' CRA Evaluations, to the greatest extent practicable, selecting one-eighth of each District's membership for review each calendar quarter. However, the Finance Board will postpone review of new members until they have been in the System for one full year.

Selection for review is not, nor should it be construed as, any indication of either the financial condition or Community Support performance of the institutions listed.

B. List of FHLBank Members To Be Reviewed in Eighth Quarter, Grouped by FHLBank District.

Member	City	State
Federal Home Loan Bank of Boston—District 1, Post Office Box 9106, Boston, Massachusetts 02205–9106		
Hudson National Bank	Hudson	MA
City Savings Bank	Pittsfield	MA
Mutual Federal Savings Bank of Plymouth County	Whitman	MA
Ledyard National Bank	Hanover	NH
Community National Bank	Derby	VT
Federal Home Loan Bank of New York—District 2, One World Trade Center, 103rd Floor, New York, New York 10048		
Covenant Bank for Savings	Haddonfield	NJ
Tinton Falls State Bank	Tinton Falls	NJ
Central National Bank, Canajoharie	Canajoharie	NY
Community Bank, N.A.	Dewitt	NY
Lake Shore Savings and Loan Association	Dunkirk	NY
Sunrise Federal Savings Bank	Farmingdale	NY
Savings Bank of the Finger Lakes, FSB	Geneva	NY
Geddes Federal Savings and Loan Association	Syracuse	NY
Federal Home Loan Bank of Pittsburgh—District 3, 625 West Ridge Pike, Suite B–107, Conshohocken, Pennsylvania 19428		
Ambassador Bank of the Commonwealth	Allentown	PA
The First National Bank of Berwick	Berwick	PA
Central Savings Bank, PASA	Columbia	PA
Merchants National Bank of Kittanning	Kittanning	PA
Lebanon Valley National Bank	Lebanon	PA
Peoples-Thrift Savings Bank	Norristown	PA
Spring Hill Savings Bank, FSB	Pittsburgh	PA
The Miners National Bank	Pottsville	PA
First Federal of Western Pennsylvania	Sharon	PA
Bank of Charles Town	Charles Town	WV
Federal Home Loan Bank of Atlanta—District 4, Post Office Box 105565, Atlanta, Georgia 30348		
West Alabama Bank & Trust	Reform	AL
First National Bank of S.W. Florida	Cape Coral	FL
Bank of North America	Ft. Lauderdale	FL
Bartow County Bank	Cartersville	GA
First Community Bank & Trust	Cartersville	GA
The Bank of Ellijay	Ellijay	GA
Talbot State Bank	Woodland	GA
United Bank of Pike	Zebulon	GA
The Harbor Bank of Maryland	Baltimore	MD
Enfield Savings Bank, SSB	Enfield	NC
Four Oaks Bank & Trust Company	Four Oaks	NC
Kenly Savings Bank, S.S.B.	Kenly	NC
Triangle Bank & Trust Company	Raleigh	NC
Roanoke Rapids Savings Bank, SSB	Roanoke Rapids	NC
Summit Savings Bank, SSB	Sanford	NC
Tarboro Savings Bank, SSB	Tarboro	NC
Federal Home Loan Bank of Cincinnati - District 5, Post Office Box 598, Cincinnati, Ohio 45201		
Auburn Banking Company	Auburn	KY
Farmers State Bank	Booneville	KY
Bowling Green Bank & Trust Company, N.A.	Bowling Green	KY

Member	City	State
Heritage Bank, Inc.	Burlington	KY
Farmers Bank	Clay	KY
Bank of Crittenden	Crittenden	KY
Elkton Bank & Trust Company	Elkton	KY
First Federal Savings Bank of Frankfort	Frankfort	KY
The First National Bank of Grayson	Grayson	KY
Hebron Deposit Bank	Hebron	KY
First City Bank and Trust Company	Hopkinsville	KY
Horse Cave State Bank	Horse Cave	KY
The Peoples Bank of Hustonville	Hustonville	KY
Hyden Citizens Bank	Hyden	KY
Peoples Bank	Lebanon	KY
The London Bank & Trust Company	London	KY
First State Bank & Trust Company	Manchester	KY
Liberty Bank and Trust Company	Mayfield	KY
The Paducah Bank and Trust Company	Paducah	KY
Bourbon Agricultural Deposit Bank & Trust Company	Paris	KY
Richmond Bank and Trust Company	Richmond	KY
Peoples Bank	Sandy Hook	KY
Mutual Federal Savings Bank	Somerset	KY
First National Bank & Trust Company—Woodford County	Versailles	KY
Bank of the Mountains, Inc.	West Liberty	KY
Winchester Federal Savings Bank	Winchester	KY
The Andover Bank	Andover	OH
The Sutton State Bank	Attica	OH
State Home Savings Bank, F.S.B.	Bowling Green	OH
Park View Federal Savings & Loan Association	Cleveland	OH
First Federal Savings & Loan Association	Delta	OH
The Ohio Valley Bank Company	Gallipolis	OH
The Bank of Leipsic Company	Leipsic	OH
The Peoples Banking & Trust Company	Marietta	OH
The Marion Bank	Marion	OH
Farmers State Bank and Trust Company	New Madison	OH
The Sherwood State Bank	Sherwood	OH
First Bank of Ohio	Tiffin	OH
Woodsfield Savings and Loan Company	Woodsfield	OH
People's Bank and Trust Company of Pickett County	Byrdstown	TN
First Exchange Bank	Dyersburg	TN
Franklin National Bank	Franklin	TN
Merchants State Bank	Humboldt	TN
First National Bank of Knoxville	Knoxville	TN
Financial Federal Savings Bank	Memphis	TN
Nashoba Bank	Memphis	TN
Union Planters National Bank	Memphis	TN
Farmers Union Bank	Ripley	TN
The Hardin County Bank	Savannah	TN
Bank of Trenton and Trust Company	Trenton	TN

Member	City	State
Federal Home Loan Bank of Indianapolis—District 6, P.O. Box 60, Indianapolis, IN 46206–0060		
Citizens Banking Company	Anderson	IN
First Bank and Trust Company of Clay County	Brazil	IN
Salin Bank	Camden	IN
Peoples State Bank of Francesville	Francesville	IN
Goodland State Bank	Goodland	IN
First Bank of Huntingburg	Huntingburg	IN
The German American Bank	Jasper	IN
Orange County Bank	Paoli	IN
The Veedersburg State Bank	Veedersburg	IN
Southern Michigan National Bank	Coldwater	MI
First State Bank	Decatur	MI
Bank of Hudsonville	Hudsonville	MI
The Miners State Bank of Iron River	Iron River	MI
Arcadia Bank—Kalamazoo	Kalamazoo	MI
Sault Bank	Sault Saint Marie	MI
The Peoples State Bank of St. Joseph	St. Joseph	MI
Federal Home Loan Bank of Chicago—District 7, 111 East Wacker Drive, Suite 700, Chicago, Illinois 60601		
State Bank of Aviston	Aviston	IL
Beardstown Savings Bank	Beardstown	IL
St. Anthony Bank, a FSB	Cicero	IL

Member	City	State
American Savings and Loan Association of Danville	Danville	IL
The Bank of Edwardsville	Edwardsville	IL
C.P. Burnett & Sons, Bankers	Eldorado	IL
First State Bank of Eldorado	Eldorado	IL
Farmers State Bank of Ferris	Ferris	IL
Heritage Glenwood Bank	Glenwood	IL
LaSalle Bank of Lisle	Lisle	IL
Clay County State Bank	Louisville	IL
Community Savings Bank	Marion	IL
First Federal Savings Bank of Mascoutah	Mascoutah	IL
First Federal Savings Bank of Moline	Moline	IL
Mt. Morris Savings and Loan Association	Mt. Morris	IL
First Federal Bank, FSB	Paris	IL
Bank of Rantoul	Rantoul	IL
Northwest Bank of Rockford	Rockford	IL
Sterling Federal Bank, F.S.B.	Sterling	IL
Streator Home Building and Loan Association	Streator	IL
Thomson State Bank	Thomson	IL
Tiskilwa State Bank	Tiskilwa	IL
Tempo Bank, a FSB	Trenton	IL
First Banking Center—Burlington	Burlington	WI
De Forest-Morrisonville Bank	De Forest	WI
Grafton State Bank	Grafton	WI
The Bank of Kaukauna	Kaukauna	WI
Marshfield Savings Bank	Marshfield	WI
United Bank	Osseo	WI
Owen-Curtiss State Bank	Owen	WI
Prairie City Bank	Prairie du Chien	WI
Bank of Turtle Lake	Turtle Lake	WI
Federal Home Loan Bank of Des Moines—District 8, 907 Walnut Street, Des Moines, Iowa 50309		
Iowa State Bank	Algona	IA
First State Bank	Britt	IA
First Central State Bank	De Witt	IA
Decorah State Bank	Decorah	IA
First Security State Bank	Evansdale	IA
Pioneer Bank	Sergeant Bluff	IA
First State Bank	Stuart	IA
American Savings Bank	Tripoli	IA
Stearns County National Bank of Albany	Albany	MN
Community First National Bank—Benson	Benson	MN
Americana Bank	Edina	MN
The First National Bank of Elk River	Elk River	MN
Security State Bank of Fergus Falls	Fergus Falls	MN
First State Bank of Finlayson, Inc.	Finlayson	MN
First National Bank of Hawley	Hawley	MN
Security State Bank of Mankato	Mankato	MN
Community First National Bank of Marshall	Marshall	MN
First National Bank of Sauk Centre	Sauk Centre	MN
Eastwood Bank	St. Charles	MN
The Highland Bank	St. Paul	MN
Farmers Bank of Upsala	Upsala	MN
Signal Bank, Inc	West St. Paul	MN
Farmers State Bank	Cameron	MO
First State Bank and Trust Company	Caruthersville	MO
Citizens Bank & Trust Company	Chillicothe	MO
First National Bank of Clinton	Clinton	MO
First State Bank of Joplin	Joplin	MO
Security Pacific Bank	Pacific	MO
Irondale Bank	Potosi	MO
Phelps County Bank	Rolla	MO
Farmers & Merchants Bank of St. Clair	St. Clair	MO
Osage Valley Bank	Warsaw	MO
The First State Bank of La Moure	La Moure	ND
Community First National Bank of Vermillion	Vermillion	SD
Federal Home Loan Bank of Dallas—District 9, 5605 N. MacArthur Boulevard, 9th Floor, Irving, Texas 75038		
Citizens Bank	Beebe	AR
Bank of Bentonville	Bentonville	AR
Citizens Bank & Trust	Carlisle	AR
Danville State Bank	Danville	AR
First State Bank of Dermott	Dermott	AR

Member	City	State
Farmers Bank	Hamburg	AR
The Citizens National Bank of Hope	Hope	AR
Union State Bank	Junction City	AR
Peoples State Bank & Trust Company	Mountain Home	AR
First State Bank	Plainview	AR
Portland Bank	Portland	AR
The Scott County Bank	Waldron	AR
Bank of Morehouse	Bastrop	LA
Louisiana Central Bank	Ferriday	LA
National Bank of Commerce of Lake Charles	Lake Charles	LA
The Louisiana Delta Bank	Lake Providence	LA
Omni Bank	Metairie	LA
Gulf Coast Bank & Trust Company	New Orleans	LA
Community Bank of LaFourche	Raceland	LA
First Republic Bank	Rayville	LA
Ruston State Bank & Trust Company	Ruston	LA
American Security Bank of Ville Platte	Ville Platte	LA
Louisiana Bank of Ouachita Parish	West Monroe	LA
Farmers and Merchants Bank	Baldwyn	MS
First Columbus National Bank	Columbus	MS
Copiah Bank, N.A.	Hazlehurst	MS
Planters Bank & Trust Company	Indianola	MS
First American National Bank	Iuka	MS
National Bank of Commerce of Mississippi	Starkville	MS
Western Bank	Alamogordo	NM
Western Bank	Artesia	NM
Bank of Los Alamos	Los Alamos	NM
Los Alamos National Bank	Los Alamos	NM
Cattlemen's State Bank	Austin	TX
First Texas Bank	Azle	TX
The First National Bank of Bay City	Bay City	TX
Corsicana National Bank	Corsicana	TX
U.S. Trust Company of Texas, N.A.	Dallas	TX
Fidelity Bank	Ft. Worth	TX
University National Bank	Galveston	TX
First National Bank of Grapevine	Grapevine	TX
Citizens National Bank	Houston	TX
Queststar Bank, N.A.	Houston	TX
Sterling Bank	Houston	TX
Huntington State Bank	Huntington	TX
The Jacksboro National Bank	Jacksboro	TX
South Texas National Bank of Laredo	Laredo	TX
Bank of Commerce	McLean	TX
The Royall National Bank of Palestine	Palestine	TX
Southwest Bank of San Angelo	San Angelo	TX
First American Bank Sulphur Springs	Sulphur Springs	TX
Wallis State Bank	Wallis	TX

Federal Home Loan Bank of Topeka—District 10, Post Office Box 176, Topeka, Kansas 66601

First National Bank at Burlington	Burlington	CO
The Morrill and Janes Bank & Trust Company	Hiawatha	KS
Citizens Bank & Trust Company	Manhattan	KS
Morrill State Bank & Trust Company	Sabetha	KS
Sunflower Bank, NA	Salina	KS
Union National Bank of Wichita	Wichita	KS
First National Bank & Trust Company	Aurora	NE
Nebraska State Bank	Cozad	NE
Johnson County Bank	Elk Creek	NE
American National Bank	Omaha	NE
Northern Bank	Omaha	NE
American National Bank of Sarpy County	Papillion	NE
Exchange National Bank & Trust Company	Ardmore	OK
Peoples State Bank	Blair	OK
Union National Bank of Chandler	Chandler	OK
The First National Bank of Coweta	Coweta	OK
The Security National Bank & Trust Company	Duncan	OK
Community Bank and Trust Company	Oklahoma City	OK
Frontier State Bank	Oklahoma City	OK
Home Savings & Loan Association	Oklahoma City	OK
Quail Creek Bank, NA	Oklahoma City	OK
Rockwell Bank, N.A.	Oklahoma City	OK
Bank of Oklahoma, N.A.	Tulsa	OK
Tulsa National Bank	Tulsa	OK

Member	City	State
Federal Home Loan Bank of San Francisco—District 11, 307 East Chapman Avenue, Orange, California 92666		
Arizona Bank	Tucson	AZ
Tri Counties Bank	Chico	CA
Cupertino National Bank	Cupertino	CA
Sears Savings Bank	Glendale	CA
Frontier Bank, N.A.	La Palma	CA
Westside Bank, a FSB	Los Angeles	CA
Bank of the Sierra	Porterville	CA
Marin Community Bank, N.A.	San Rafael	CA
California Thrift & Loan	Santa Barbara	CA
Union Safe Deposit Bank	Stockton	CA
Kaweah Thrift & Loan	Visalia	CA
Windsor Oaks National Bank	Windsor	CA
Federal Home Loan Bank of Seattle—District 12, 1501 4th Avenue, Seattle, Washington 98101–1693		
Rainbow Financial Corporation	Honolulu	HI
Bank of Eastern Idaho	Idaho Falls	ID
Valley Bank of Ronan	Ronan	MT
Enterprise Bank of Bellevue, N.A.	Bellevue	WA
Citizens First Bank	Elma	WA
Redmond National Bank	Redmond	WA
Washington Trust Bank	Spokane	WA
Mid State Bank	Waterville	WA
The Columbia Bank	Wenatchee	WA
First Interstate Bank of Commerce	Sheridan	WY

C. Due Dates

Members selected for review must submit completed Community Support Statements to their FHLBank no later than December 31, 1993.

All public comments concerning the Community Support performance of selected members must be submitted to the member's FHLBank no later than December 31, 1993.

D. Notice to Members Selected

Within 15 days of this Notice's publication in the **Federal Register**, the individual FHLBanks will notify each member selected to be reviewed that the member has been selected and when the member must return the completed Community Support Statement. At that time, the FHLBank will provide the member with a Community Support Statement form and written instructions and will offer assistance to the member in completing the Statement. The FHLBank will only review Statements for completeness, as the Finance Board will conduct the actual review.

E. Notice to Public

At the same time that the FHLBank members selected for review are notified of their selection, each FHLBank will also notify community groups and other interested members of the public. The purpose of this notification will be to solicit public comment on the Community Support records of the FHLBank members pending review.

Any person wishing to submit written comments on the Community Support performance of a FHLBank member under review in this quarter should send those comments to the member's FHLBank by the due date indicated in order to be considered in the review process.

By the Federal Housing Finance Board.

Dated: November 9, 1993.

Daniel F. Evans, Jr.,

Chairman.

[FR Doc. 93–27999 Filed 11–15–93; 8:45 am]

BILLING CODE 6725–01–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; NLL/BHP–IMTL Space Charter Agreement

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street, NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 217–011317–001.

Title: NLL/BHP–IMTL Space Charter Agreement.

Parties: Nedlloyd Lijnen, B.V. BHP International Marine Transport Inc.

Synopsis: The proposed amendment expands the scope of the Agreement to include ports and points in the U.S. Atlantic and Gulf, and ports and points in British Columbia, Australia, New Zealand, Chile, Peru, and Panama. The parties have requested a shortened review period.

Agreement No.: 224–200164–008.

Title: Port of Oakland/Norsul Internacional S.A. Terminal Agreement

Parties: Port of Oakland Norsul International S.A.

Synopsis: The proposed amendment extends the term of the Agreement to December 31, 1993.

Agreement No.: 224–200806.

Title: Port of Oakland/China Ocean Shipping (Group) Company Terminal Agreement.

Parties: Port of Oakland ("Port") China Ocean Shipping (Group) Company ("User").

Synopsis: The proposed Agreement permits User the non-exclusive rights to certain premises of the Port's Charles P. Howard Terminal. Subject to Agreement provisions, User will pay to the Port up to ninety percent of dockage tariff charges and eighty percent of wharfage tariff charges.

Agreement No.: 224–200807.

Title: Stevedoring, Terminal, CFS and Maintenance and Repair Services Agreement between Matson Terminal,

Inc./Blue Star (North America) Ltd. (Ports of Los Angeles, Oakland and Seattle)

Parties: Matson Terminals, Inc. ("Matson") Blue Star (North America) Ltd. ("Blue Star").

Synopsis: The proposed Agreement permits Matson to furnish Blue Star with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Agreement No.: 224–200808.

Title: Stevedoring, Terminal, CFS and Maintenance and Repair Services Agreement between Matson Terminal, Inc./Columbus Line, Inc. (Ports of Los Angeles, Oakland and Seattle)

Parties: Matson Terminals, Inc. ("Matson") Columbus Line, Inc. ("Columbus")

Synopsis: The proposed Agreement permits Matson to furnish Columbus with stevedoring, terminal, container freight station, and maintenance and repair services, including berth/crane and other service guarantees at the ports of Los Angeles, Oakland and Seattle. Subject to Agreement provisions, the parties have agreed upon other matters relating to terminal services and charges.

Dated: November 9, 1993.

By Order of the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–28057 Filed 11–15–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Applicants; Suntrans International, Inc. et al.

Notice is hereby given that the following applicants have filed with the Federal Maritime Commission applications for licenses as ocean freight forwarders pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718 and 46 CFR 510).

Persons knowing of any reason why any of the following applicants should not receive a license are requested to contact the Office of Freight Forwarders, Federal Maritime Commission, Washington, DC 20573.

Suntrans International, Inc., 1120 Tower Lane, Bensenville, IL 60106, Officers: Heang J. Ahn, President/Director/Stockholder, Young M. Hong, Secretary/Director/Stockholder

ANR Freight Services, 1927 Taraval Street, San Francisco, CA 94116, Ernest Z. Razon, Sole Proprietor

Jamar Shipping Inc., 16511 Hedgecroft, Suite 208, Houston, TX 77060, Officers: Byron Albright, President, Melvin Vaughn, Secretary/Treasurer/Director

Kenehan International Services, Inc., 6020 S. Spencer, Suite A–1, Las Vegas, NV 89119, Officers: John W. Kenehan, III, President/Director/Stockholder, DeNeice Kenehan, Director, James L. Kinney, Director, Nancy Elaine Mitchell, Director

Orler Cargo, Inc., 3100 NW 72nd Ave., 108, Miami, FL 33122, Officers: Hector Orlansky, President, Eduardo Orlansky, Director, Peter Stanham, Director

Unlimited Freight Consultants, Inc., 7845 C NW 57 Street, Miami, FL 33166, Officer: Marcos A. Niebla, President

Van Esch Trading and Shipping B.V., 6033 West Century Blvd., #1222, Los Angeles, CA 90045, Officers: H. van Esch, Sr., President, J. Groenendijk, proxy holder, W. van Esch, Managing Director

Patrick Gallagher Customhouse Brokerage, 2515 East Evergreen Blvd., Vancouver, WA 98661, Patrick Gallagher, Sole Proprietor

W–C Ventures, Inc. d/b/a Worldwide Cargo Specialties, 2724 So. 3600 West, Ste. B&C, West Valley City, UT 84119, Officers: Patricia S. Williams, President, Ron Williams, Director, Derek Williams, Director

Marino Transportation Services, Inc., 2199 Eisenhower Blvd., Port Everglades, FL 33316, Officers: Gerard J. Donovan, President, Aram Bakallan, Director

Triple F. Cargo, Inc., 7966 NW 14th Street, Miami, FL 33126, Officers: Isaac F. Fonseca, President, Patricia A. Scherrer, Vice President, Nestor Llanos, Director

Tejas Freight Forwarding, Inc., 22118 Gosling Rd., Spring, TX 77389, Officers: Nimia Del Rosario Rodriguez, President, Tammy Ramirez, Vice President, Norma Neil, Secretary/Treasurer

M&M Shipping, 8058 W. 95th Street, #3E, Hickory Hills, IL 60457, Mohammad Sayyed, Sole Proprietor

Ben Odihirin Company, Inc., 690 Wainwright Street, Union, NJ 07083, Officers: Ben Odihirin, President/Director, Brian Charles, Vice President

Eagle Express Inc., 6998 N.W. 25th Street, Miami, FL 33122, Officers: Martha Rodriguez, President, Edgar F. Lara, Vice President

A&M International Corporation, 7233 N.W. 54th Street, Miami, FL 33166, Officers: Carlos Maguina, President, Rosa C. Molina, Secretary, Jesus Ardiles, Vice President

Dated: November 9, 1993.

By the Federal Maritime Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93–28021 Filed 11–15–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Midwest Bancorp, Inc.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 6, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Midwest Bancorp, Inc., Naperville, Illinois; to engage *de novo* through its subsidiary, First Midwest Mortgage, Inc., Joliet, Illinois, in making, acquiring, selling, and servicing residential mortgage loans pursuant to § 225.25(b)(1)(iii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28058 Filed 11–15–93; 8:45 am]

BILLING CODE 6210–01–F

United Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 10, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. United Bancshares, Inc., Philadelphia, Pennsylvania; to become a bank holding company by acquiring 100 percent of the voting shares of United Bank of Philadelphia, Philadelphia, Pennsylvania.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Carlisle Bancshares, Inc., Little Rock, Arkansas; to acquire at least 68.5 percent of the voting shares of Hazen First State Bank, Hazen, Arkansas.

2. Union Planters Corporation, Memphis, Tennessee; to acquire 100 percent of the voting shares of First National Bancorp of Shelbyville, Inc., Shelbyville, Tennessee, and thereby indirectly acquire First National Bank of Shelbyville, Shelbyville, Tennessee.

Board of Governors of the Federal Reserve System, November 9, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28059 Filed 11–15–93; 8:45 am]

BILLING CODE 6210–01–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Dental Products Panel of the Medical Devices Advisory Committee

Date, time, and place. December 1, 2, and 3, 1993, 8 a.m., Grand Ballroom, Washingtonian Marriott, 9751 Washingtonian Blvd., Gaithersburg, MD.

Type of meeting and contact person. Open public hearing, December 1, 1993, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 5 p.m.; open committee discussion, December 2, 1993, 8 a.m. to 5 p.m.; open public hearing, December 3, 1993, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 1 p.m.; Carolyn A. Tylenda, Center for Devices and Radiological Health (HFZ–410), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20892, 301–594–3090.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 24, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 1 and 2, 1993, the committee will discuss classification of bone filling and augmentation materials. On December 3, 1993, the committee will discuss dental amalgam and dental product ingredient labeling.

Oncologic Drugs Advisory Committee

Date, time, and place. December 15, 1993, 8 a.m., conference rms. D and E, Parklawn Bldg., 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open public hearing, 8 a.m. to 9 a.m., unless public participation does not last that long; open committee discussion, 9 a.m. to 4:30 p.m.; Adele S. Seifried, Center for Drug Evaluation and Research (HFD–9), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–4695.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational human drugs for use in treatment of cancer.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before December 10, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss: (1) New drug application (NDA) 20–388, Navelbine® for injection (vinorelbine tartrate, Burroughs Wellcome Co.), for use as a single agent or in combination for the treatment of unresectable advanced

nonsmall cell lung cancer; and (2) NDA 20–262, Taxol® for injection concentrate (paclitaxel, Bristol-Myers Squibb), for use after failure of first line chemotherapy or subsequent chemotherapy for treatment of metastatic carcinoma of the breast.

FDA public advisory committee meetings may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. There are no closed portions for the meetings announced in this notice. The dates and times reserved for the open portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 8, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–28074 Filed 11–15–93; 8:45 am]

BILLING CODE 4160–01–F

Advisory Committees; Notice of Meetings

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces forthcoming meetings of public advisory committees of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meetings and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETINGS: The following advisory committee meetings are announced:

Blood Products Advisory Committee

Date, time, and place. December 2, 1993, 8 a.m., and December 3, 1993, 8:30 a.m., Ramada Inn, Embassy Ballroom, 8400 Wisconsin Ave., Bethesda, MD 20814.

Type of meeting and contact person. Open committee discussion, December 2, 1993, 8 a.m. to 11 a.m.; open public hearing, 11 a.m. to 11:30 a.m., unless public participation does not last that long; closed committee deliberations, 11:30 a.m. to 12 m.; open committee discussion, 12 m. to 4:30 p.m.; open public hearing, 4:30 p.m. to 5 p.m., unless public participation does not last that long; open committee discussion, 5 p.m. to 6 p.m.; open committee discussion, December 3, 1993, 8:30 a.m. to 9:30 a.m.; open public hearing, 9:30 to 10 a.m., unless public participation does not last that long; open committee discussion, 10 a.m. to 2 p.m.; open public hearing, 2 p.m. to 2:30 p.m., unless public participation does not last that long; open committee discussion, 2:30 p.m. to 3:30 p.m.; Linda A. Smallwood, Center for Biologics Evaluation and Research (HFM–300), Food and Drug Administration, 1401 Rockville Pike, Bethesda, MD 20852–1448, 301–594–6700.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness, and appropriate use of blood products intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 22, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 2, 1993, the committee will review and discuss: (1) The product license application for Respiratory Syncytial Virus Immune Globulin Intravenous (Human) submitted by the Massachusetts Public Health Biologic Laboratories to reduce the incidence of severe Respiratory Syncytial Virus infection in infants with premature gestation and children with chronic pulmonary disease, and (2) the reentry algorithm for donors deferred due to a repeatedly reactive screening test for human immunodeficiency virus (HIV). On December 3, 1993, the committee will discuss and provide recommendations on blood and plasma donation issues of "Lookback" regarding product retrieval and recipient notification when repeat donors have repeatedly reactive screening tests for antibody to Hepatitis C Virus (Anti-HCV). The committee will also discuss current practices concerning donor testing and deferral

based on alanine transferase (ALT) testing.

Closed committee deliberations. On December 2, 1993, the committee will discuss trade secret and/or confidential commercial information relevant to the product license application for Respiratory Syncytial Virus Immune Globulin Intravenous (Human). This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Circulatory System Devices Panel of the Medical Devices Advisory Committee

Date, time, and place. December 13 and 14, 1993, 8:30 a.m., Potomac Inn, Ballroom, Three Research Ct., Rockville, MD.

Type of meeting and contact person. Open public hearing, December 13, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; open public hearing, December 14, 1993, 8:30 a.m. to 9:30 a.m., unless public participation does not last that long; open committee discussion, 9:30 a.m. to 3 p.m.; closed presentation of data, 3 p.m. to 4 p.m.; Wolf Sapirstein or Ramiah Subramanian, Center for Devices and Radiological Health (HFZ–450), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–2205.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 30, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss one or more premarket approval applications for a cardiac assist device and one or more interventional cardiology device(s).

Closed presentation of data. The committee may discuss trade secret and/or confidential commercial information regarding medical devices. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Dental Products Panel Plaque Subcommittee (Nonprescription Drugs) of the Medical Devices Advisory Committee

Date, time, and place. December 16 and 17, 1993, 9 a.m., Parklawn Bldg., conference rm. G, 5600 Fishers Lane, Rockville, MD.

Type of meeting and contact person. Open committee discussion, December 16, 1993, 9 a.m. to 10:45 a.m.; open public hearing, 10:45 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 4 p.m.; closed committee deliberations 4 p.m. to 5 p.m.; open committee discussion, December 17, 1993, 9 a.m. to 10 a.m.; open public hearing, 10 a.m. to 12 m., unless public participation does not last that long; open committee discussion, 12 m. to 3:30 p.m.; closed committee deliberations, 3:30 p.m. to 4 p.m.; Jeanne L. Rippere or Stephanie Mason, Center for Drug Evaluation and Research (HFD–813), Food and Drug Administration, 7520 Standish Pl., Rockville, MD 20855, 301–594–1187 or 301–594–1003.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of marketed and investigational devices and makes recommendations for their regulation.

The Dental Products Panel of the Medical Devices Advisory Committee functions at times as a nonprescription drug advisory panel. As such, the panel reviews and evaluates available data concerning the safety and effectiveness of active ingredients, and combinations thereof, of various currently marketed nonprescription drug products for human use, the adequacy of their labeling, and advises the Commissioner of Food and Drugs on the promulgation of monographs establishing conditions under which these drugs are generally recognized as safe and effective and not misbranded.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on the general issues pending before the subcommittee. Those desiring to make formal presentations should notify the contact person before December 10, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. On December 16, 1993, the subcommittee will discuss the definitions of various terms and conditions related to dental plaque, e.g., plaque, calculus, and gingivitis. It will also commence a more detailed discussion of dental plaque and other dental accumulations, including discussion of the biochemistry, microbiology, and development of plaque, calculus, pellicle, etc. The subcommittee will also consider the relationship of dental accumulations to oral diseases, such as gingivitis, periodontitis, and dental caries. This information will aid the subcommittee in developing definitions and background discussions for submission to the full panel for recommendations to the agency. On December 17, 1993, the subcommittee will hear and discuss the data and information which has been submitted relating to drug and cosmetic labeling for antiplaque products.

Closed subcommittee deliberations. The subcommittee may discuss trade secret and/or confidential commercial information related to over-the-counter drug products for plaque reduction and/or prevention. This portion of the meeting will be closed to permit discussion of this information (5 U.S.C. 552b(c)(4)).

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above. The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain

limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this **Federal Register** notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI–35), Food and Drug Administration, rm. 12A–16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, deliberations to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 10, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–28159 Filed 11–15–93; 8:45 am]

BILLING CODE 4160–01–F

Health Care Financing Administration

Provider Reimbursement Review Board

[PRRB–001–N]

Medicare Program; Withdrawal of the Provider Reimbursement Review Board Hearing Manual

AGENCY: Provider Reimbursement Review Board (PRRB), HHS.

ACTION: Notice.

SUMMARY: This notice announces that the Provider Reimbursement Review Board (PRRB) Hearing Manual is obsolete in its entirety. The PRRB Hearing Manual is no longer necessary because the applicable procedures for the processing of appeals are contained in chapter 2900 of the Provider Reimbursement Manual.

EFFECTIVE DATE: This notice is effective on December 16, 1993.

FOR FURTHER INFORMATION CONTACT: John Bader (410) 966–2053.

SUPPLEMENTARY INFORMATION: Under section 1878 of the Social Security Act (the Act), the Provider Reimbursement Review Board (PRRB) conducts hearings on appeals of payment determinations for providers of services participating in the Medicare program. Section 1878(e) of the Act authorizes the PRRB to establish the rules and procedures necessary and appropriate to carry out its duties. Regulations regarding provider reimbursement determinations and appeals are found at 42 CFR part 405, subpart R.

In July 1978, the Board published the Provider Reimbursement Review Board Hearing Manual (PRRB Pub. No. 001), which contained PRRB procedural instructions. These procedures are also set forth in chapter 2900 of the Provider Reimbursement Manual (HCFA Pub. No. 15–1), published by the Health Care Financing Administration.

Subsequently, with the introduction of the prospective payment systems for hospital inpatient operating and capital costs, the number, as well as the complexity of appeals, has increased. As a result, the Board has adopted changes to its procedures, not all of which have been reflected timely in either the PRRB Manual or the Provider Reimbursement Manual.

On September 20, 1993, we published revised PRRB appeals procedures in the Provider Reimbursement Manual (sections 2920–2926.6, including Appendix A). These procedures supersede the procedures contained in the PRRB Hearing Manual. Because the procedures in the PRRB Hearing Manual

are no longer up to date, the Board has decided to withdraw the manual in its entirety.

Therefore, this notice is to advise the public that the PRRB Hearing Manual is formally withdrawn and the procedures it contains are no longer in effect. If further modifications to the PRRB appeals procedures become necessary, they will be made through Provider Reimbursement Manual issuances.

Authority: (Section 1878 of the Social Security Act (42 U.S.C. 1395oo))

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance)

Dated: November 1, 1993.

Jack Martin,

Chairman, Provider Reimbursement Review Board.

[FR Doc. 93–28029 Filed 11–15–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Office of the Secretary

National Wild and Scenic Rivers System; Westfield River and Tributaries

AGENCY: Office of the Secretary, DOI.

ACTION: Notice of approval.

SUMMARY: The Secretary of the Interior hereby announces approval of an application by the Governor of Massachusetts to include segments of the Westfield River, Massachusetts and tributaries as state administered components of the National Wild and Scenic Rivers System.

FOR FURTHER INFORMATION CONTACT: Drew Parkin, Rivers, Trails and Conservation Program, National Park Service, North Atlantic Region, 15 State Street, Boston, Massachusetts 02109, 617–223–5130 or Bern Collins, Rivers, Trails and Conservation Program, National Park Service, P.O. Box 37127 Washington, DC 20013–7127, 202–343–3765.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted the Secretary of the Interior by section 2 of the Wild and Scenic Rivers Act (Pub. L. 90–542, as amended; 16 U.S.C. 1273, et seq.) and upon proper application of the Governor of the State of Massachusetts, 43.3 miles of the Westfield River's three branches and its tributary Glendale Brook are hereby designated as state-administered components of the National Wild and Scenic Rivers System.

On October 16, 1990, the Governor of Massachusetts petitioned the Secretary of the Interior to add 43.3 miles of the Westfield's three branches and Glendale Brook to the National System. This river had been designated a State Protected River on September 19, 1990 pursuant to the Massachusetts Scenic and Recreational Rivers Act. In response to the Governor's request, the Secretary conducted a complete review of the State application and documents associated with the designation decision. As a result of that review, the Secretary has determined that 43.3 miles of the Westfield and its tributaries should be designated as a State-administered component of the National Wild and Scenic Rivers System, as provided for in section 2(a)(ii) of the Wild and Scenic Rivers Act.

The State of Massachusetts has fulfilled the requirements of the Act by designating these segments as a "State Protected River" and by adopting a program of action that will adequately protect the river from adverse State actions. The National Park Service evaluation of the river concluded that these segments of the Westfield River meet the criteria for scenic and recreational classification under the Act.

Accordingly, the following river segments are classified as scenic or recreational pursuant to section 2(b) of the Act to be administered by State and local government:

West Branch: *Scenic*—From the upstream end of the designated segment at a railway bridge 2000 feet downstream of the Becket town center downstream to the town of Chester (10.0 miles). *Recreational*—From the town of Chester downstream to the Huntington/Chester town line (3.8 miles).

Middle Branch and Glendale Brook: *Scenic*—Glendale Brook (0.4 miles upstream from confluence with Middle Branch). *Recreational*— Peru/Worthington town line downstream to the confluence with Kinne Brook in Chester (12.6 miles).

East Branch: *Recreational*—From the Windsor/Cummington town line 8.0 miles downstream to where Route 9 diverges from the river. *Scenic*—From the downstream end of the recreational segment to the Knightville reservoir (8.5 miles).

This action is taken following public involvement and consultation with the Departments of Agriculture, Army, Energy and Transportation, the Federal Energy Regulatory Commission, and the U.S. Environmental Protection Agency as required by section 4(c) of the Wild and Scenic Rivers Act. A 45-day period for public comment on the State's application and river management plan and on the environmental assessment of the proposed national designation was provided from February 12, 1993, to March 30, 1993. All comments received have been carefully considered.

Notice is hereby given that effective upon this date, the above-described river segments are approved for inclusion in the National Wild and Scenic Rivers System to be administered by the Commonwealth of Massachusetts.

Dated: November 2, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–27616 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–70–M

Bureau of Land Management

[WY–060–04–4120–03; WYW124783]

Coal—Eagle Butte Maintenance Tract, WY

AGENCY: BLM, Interior.

ACTION: Notice of public hearing, Eagle Butte Maintenance Tract.

SUMMARY: This Notice corrects typographical errors in the Notice of Public Hearing, Eagle Butte Maintenance Tract, WYW124783, which appeared in the **Federal Register** on October 26, 1993, (58 FR 57618). These typographical errors occurred in the section titled, **SUPPLEMENTARY INFORMATION"**, lines 14, 28, and 32, which appeared in the second column on page 57618. In line 14, the number "158,631,112 million" is corrected to read "159 million". In line 28, the word "to" between the words "The addition" and "the above" is corrected to read "of". In line 32, the number "182,859,470 million" is corrected to read "183 million". The result is that the Section titled, "**SUPPLEMENTARY INFORMATION**", should read as follows (corrections bolded):

SUPPLEMENTARY INFORMATION: AMAX Land Company has filed a coal lease application with the Bureau of Land Management (BLM) pursuant to provisions of 43 CFR 3425.1 as a lease by application (LBA) for the following land located in Campbell County, Wyoming:

T. 51 N., R. 72W., 6th P.M., Wyoming
Sec. 33: Lots 1–3 (All), Lots 6–10 (All) E½ of Lot 11, E½ of Lot 14, Lots 15–16 (All);
Sec. 34: Lots 3–6 (All), Lots 9–16 (All)

Total Applied For: 914.535 acres more or less, containing estimated in-place coal reserves of 159 million tons.

To prevent a potential coal bypass situation in the future, the BLM is considering adding additional land to the tract. The legal description of the land in Campbell County, Wyoming,

proposed for addition to the Eagle Butte LBA tract by the BLM is as follows:

T. 51 N., R. 72 W., 6th P.M., Wyoming
Sec. 28: W½ of Lot 13;
Sec. 33: Lot 4, E½ of Lot 5, W½ of Lot 11, E½ of Lot 12, and W½ of Lot 14.

Total Proposed To Be Added By BLM: 144.645 acres more or less.

The addition of the above land would bring the total acreage in the tract to: 1,059.175 acres more or less, containing estimated in-place reserves of 183 million tons.

The lease application area is contiguous with the Eagle Butte Mine, operated by AMAX Coal West, Inc. AMAX proposes to lease the proposed Eagle Butte tract as a maintenance tract for the Eagle Butte Mine. Written comments will be accepted from the date of publication of this Notice in the **Federal Register** through November 30, 1993. Comments may be submitted in writing or expressed verbally at the hearing. The balance of the Notice of Public Hearing remains unchanged.

FOR FURTHER INFORMATION CONTACT: Nancy Doelger, Casper District Office, (307) 261–7600, or Laura Steele, Wyoming State Office (307) 775–6250.

Lynn E. Rust,

Chief, Branch of Mining Law & Solid Minerals.

[FR Doc. 93–28052 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–22–M

[WY–040–94–4110–03]

Environmental Impact Statement; WY

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of intent to prepare an environmental impact statement (EIS) on the proposed development of the Stagecoach Draw Unit in southwest Wyoming.

SUMMARY: Local scoping has occurred and as a result, a decision has been made to prepare an Environmental Impact Statement on the proposed development of the Stagecoach Draw Unit. Texaco Exploration and Production, Inc. has notified the Bureau of Land Management (BLM), Green River Resource Area of their intent to drill natural gas wells in Sweetwater County, Wyoming. The unit is located in portions of Townships 22, 23, 24 North, Range 107, 108 West, 6th Principal Meridian, an area of approximately 23,574.68 acres. Development would entail drilling up to 60 wells on a 320 acre spacing over a five to seven year period. One exploratory well has been drilled and two confirmation wells have been approved for drilling.

Facilitiies include access roads, well pad sites, natural gas gathering system, electrical distribution system, central or individual well tank battery, and possibly a natural gas processing plant site and compressor site. In addition, a natural gas transmission system will be required. Issues identified during local scoping include potential impacts to Sublette Pronghorn Antelope Herd, White Mountain Wild Horse Herd Management Area, ground and surface water resources including the Big Sandy River and the Green River, fisheries, T&E animal and plant species, and cumulative impacts including potential impacts to Seedskadee National Wildlife Refuge located downstream from the project area.

DATES: Comments and requests to be placed on the mailing list will be accepted on or before December 16, 1993.

ADDRESSES: Comments and mailing requests should be sent to Teresa Deakins, Bureau of Land Management, Rock Springs District Office, P.O. Box 1869, Rock Springs, WY 82902.

FOR FURTHER INFORMATION CONTACT: Teresa Deakins 307–382–5350, Bill LeBarron or Don Judice 307–362–6422.

SUPPLEMENTARY INFORMATION: The action to be analyzed in the EIS consists of the construction, operation and maintenance of a natural gas field development project. In addition to the proposed action of a 320 acre spacing drilling program, one alternative will address impacts of a 160 acre spacing drilling scenario.

Dated: November 9, 1993.

F. William Eikenberry,

Associate State Director.

[FR Doc. 93–28154 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–84–M

[CA–050–02–4333–05, CACA 32730]

Realty Action; Exchange of Public and Private Lands, Shasta County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public and private lands in Shasta County, California.

SUMMARY: The following described public lands and mineral estates are being exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1716). The subject lands will be exchanged under case file CACA 32730 and not under exchange case CACA 30114.

Shasta County

Selected Lands

M.D.M., T. 31N., R. 5 W.,
Sec. 5, Lots 12, 14, 15. 32N., R. 5W.,
Sec. 32, Lots 184, 186, 187, 188, 189, 190, 191, 192, 193, 194, 195, 196, 198, 199, 200, 201, 202, 203, 204, 205, 206, 207, 208, 218, 219, 220, 221, 222, 223, 224, 225, 226.

Totaling 127.2± acres.

In exchange for all or a portion of the above land the United States will acquire the following described land in Shasta County from David Woodfill, 1707 Placer Street, Redding, California 96001.

Offered Private Land

Shasta County

M.D.M., T.31N., R.6W.,
Section 11, E2, 319.6± acres.

DATES: This notice, as provided in 43 CFR 2201.1(b), shall segregate the public lands proposed for exchange. By publication of this notice, those vacant, unappropriated and unreserved public lands described above are segregated from settlement, location and entry under the public land laws, including the mining laws, but not the mineral leasing laws. The segregative effect shall terminate upon issuance of patent, upon publication in the **Federal Register** of a termination of the segregation, or two (2) years from the date of this notice, whichever occurs first.

SUPPLEMENTARY INFORMATION: The purpose of this exchange is to acquire non-Federal lands which have value for recreation and are located between Bureau of Land Management and National Park Service lands.

The value of lands to be exchanged will be approximately equal. Full equalization of values will be achieved by adjustment of selected land acreage and/or payment to the United States by David Woodfill in an amount not to exceed 25 percent of the total value the lands to be transferred out of public ownership. Lands to be transferred from the United States will be subject to the following reservations, terms, and conditions:

1. A right-of-way for ditches or canals constructed by the authority of the United States under the Act of August 30, 1980 (43 U.S.C. 945).

2. Authorized pipelines, power lines, roads, highways, telephone lines, mineral leases, and any other authorized land uses will be identified as prior existing rights.

3. Reservation to protect the riparian corridor of Salt Creek and its tributaries per Executive Orders 11988 and 11990.

4. All necessary clearances for archaeology, rare plants and animals, and hazardous materials shall be obtained prior to conveyance of title.

FOR FURTHER INFORMATION CONTACT: Information concerning this exchange is available from Howard Matzat at the Redding Resource Area Office, 355 Hemsted Dr., Redding, California 96002; (916) 224–2100. For a period of forty-five (45) days interested parties may submit comments to Mark Morse, Area Manager, at the above listed address. Comments on exchange parcels should be written and identify the subject parcel.

Mark T. Morse,

Redding Resource Area Manager.

[FR Doc. 93–28018 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–40–M

[CO–050–4210–04; COC–55783]

Realty Action; Correction

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action; exchange of public land in Boulder County, Colorado; correction.

SUMMARY: The following described land has been found suitable for disposal by exchange under sec. 206 of the Federal Land Policy and Management Act of 1976 (43 USC 1716):

T.1N, R.71W, Sixth P.M., CO
Sec. 16: Lot 45
Containing 4.12 acres.

This parcel was inadvertently omitted from **Federal Register** Document 92–1769, page 2925, published Friday, January 24, 1992.

FOR FURTHER INFORMATION CONTACT: Stu Parker at (719) 275–0631.

Donnie R. Sparks,

District Manager.

[FR Doc. 93–28019 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–JB–M

[CA–050–4333–02]

Occupancy and Camping Stay Limits; Ukiah District, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This occupancy and camping stay limit applies to designated campgrounds, and to undeveloped Bureau of Land Management administered public lands (that are not closed to camping) within the Ukiah District, California. Persons may camp on these public lands for a period of not more than 14 days during any calendar year, in each of the District's three Resource Area—Redding, Clear Lake and Arcata. The 14 day limit may be reached either through a number of separate visits, or through 14 days of continuous occupation. After the 14th day of occupation, campers will not be permitted to camp within that Resource Area for the remainder of the calendar year. Under special circumstances and upon request, the authorized officer may given written permission for extension of the 14 day limit.

Camping is defined as the use of tents or shelters of natural or synthetic material, preparing a sleeping bag or bedding material for use, or mooring of a vessel, or parking a vehicle or trailer for the apparent purpose of occupancy. Occupancy is defined as the taking, maintaining or holding possession of a camp or residence on public land, either by personal presence or by leaving property on the site. Vehicles or property left unattended to hold sites may be subject to impoundment

Unless elsewhere authorized, any vehicle, trailer, camper, or vessel left unattended on public lands for more than 10 days, or at a developed recreation site for more than 72 hours, will be considered abandoned and may be impounded by the Authorized Officer through the use of local towing and impounding services. This property will subsequently be subject to State and/or county laws or ordinances affecting the disposal, sale or destruction of such property.

EFFECTIVE DATE: November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Wick, Recreation Planner, Ukiah District Office, (707) 462–3873.

SUPPLEMENTARY INFORMATION: This occupancy and camping stay limit is being established to provide consistency and uniformity for the camping public on Bureau of Land Management administered lands throughout the Ukiah District, California, and to prevent user conflicts by providing equal opportunities to camp in given areas. Establishment of this length of stay limit is also to assist the Bureau in reducing the incidence of unauthorized occupancy of public lands in the name of recreational camping. These supplementary rules do not supersede camping and occupancy rules developed for special areas or emergency situations.

Authority for this stay is contained in CFR title 43, chapter II, part 8360, subparts 8364.1 and 8365.1–2(a). Violations of the supplementary rules under authority of 43 CFR 8365.1–2 are subject to a fine not exceed $100,000 and/or imprisonment not to exceed 12 months.

David E. Howell,

District Manager.

[FR Doc. 93–28017 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–40–M

[ID–942–04–4060–02]

Filing of Plats of Survey; Idaho

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 4, 1993.

The plat representing the dependent resurvey of portions of the subdivisional lines and Mineral Survey No. 1541, Idahoan Placer, the subdivision of section 25 and a metes-and-bounds survey in section 25, Township 6 North, Range 5 East, Boise Meridian, Idaho, Group No. 833, was accepted November 1, 1993.

This survey was executed to meet certain administrative needs of the USDA Forest Service.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: November 4, 1993.

Duane E. Olsen,

Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–28016 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–GG–M

Minerals Management Service

[FES 93–25]

Gulf of Mexico Region; Availability of the Final Environmental Impact Statement for Proposed Central and Western Gulf of Mexico Sales 147 and 150

The Minerals Management Service has prepared a final Environmental Impact Statement (EIS) relating to proposed 1994 Outer Continental Shelf (OCS) Oil and Gas Lease Sales 147 and 150 in the Central and Western Gulf of Mexico. The proposed Central Gulf Sale 147 will offer for lease approximately 29 million acres, and the Western Gulf Sale 150 will offer approximately 26 million acres.

Single copies of the final EIS can be obtained from the Minerals Management Service, Gulf of Mexico OCS Region, Attention: Public Information Office, 1201 Elmwood Park Boulevard, room 114, New Orleans, Louisiana 70123.

Copies of the final EIS will also be available for review by the public in the following libraries:

Texas

Austin Public Library, 402 West Ninth Street, Austin
Houston Public Library, 500 McKinney Street, Houston
Dallas Public Library, 1513 Young Street, Dallas
Brazoria County Library, 410 Brazoport Boulevard, Freeport
LaRatama Library, 505 Mesquite Street, Corpus Christi
Texas Southmost College Library, 1825 May Street, Brownsville
Rosenberg Library, 2310 Sealy Street, Galveston
Texas State Library, 1200 Brazos Street, Austin
Texas A&M University, Evans Library, Spence and Lubbock Streets, College Station
University of Texas, Lyndon B. Johnson School of Public Affairs Library, 2313 Red River Street, Austin
The University of Texas at Dallas Library, 2601 North Floyd Road, Richardson
Lamar University, Gray Library, Virginia Avenue, Beaumont
East Texas State University Library, 2600 Neal Street, Commerce
Stephen F. Austin State University, Steen Library, Wilson Drive, Nacogdoches
University of Texas, 21st and Speedway Streets, Austin
University of Texas Law School, Tarlton Law Library, 727 East 26th Street, Austin
Baylor University Library, 13125 Third Street, Waco
University of Texas at Arlington, 701 South Cooper Street, Arlington
University of Houston-University Park, 4800 Calhoun Boulevard, Houston
University of Texas at El Paso, Wiggins Road and University Avenue, El Paso
Abilene Christian University, Margaret and Herman Brown Library, 1600 Campus Court, Abilene
Texas Tech University Library, 18th and Boston Streets, Lubbock
University of Texas at San Antonio, John Peace Boulevard, San Antonio.

Louisiana

Tulane University, Howard Tilton Memorial Library, 7001 Freret Street, New Orleans
Louisiana Tech University, Prescott Memorial Library, Everet Street, Ruston
New Orleans Public Library, 219 Loyola Avenue, New Orleans
University of New Orleans Library, Lakeshore Drive, New Orleans
Louisiana State University Library, 760 Riverside Road, Baton Rouge
Lafayette Public Library, 301 W. Congress Street, Lafayette
Calcasieu Parish Library, 411 Pujo Street, Lake Charles
McNeese State University, Luther E. Frazar Memorial Library, Ryan Street, Lake Charles
Nicholls State University, Nicholls State Library, Leighton Drive, Thibodaux
University of Southwestern Louisiana, Dupre Library, 302 E. St. Mary Blvd., Lafayette
LUMCOM, Library, Star Route 541, Chauvin

Mississippi

Harrison County Library, 14th and 21st Avenues, Gulfport
Gulf Coast Research Lab., Gunter Library, 703 East Beach Drive, Ocean Springs

Alabama

Auburn University at Montgomery, Library, Taylor Road, Montgomery
University of Alabama Libraries, 809 University Boulevard East, Tuscaloosa
Mobile Public Library, 701 Government Street, Mobile
Montgomery Public Library, 445 South Lawrence Street, Montgomery
Gulf Shores Public Library, Municipal Complex, Route 3, Gulf Shores
Dauphin Island Sea Lab, Marine Environmental Science Consortium, Library, Bienville Boulevard, Dauphin Island
University of South Alabama, University Boulevard, Mobile

Florida

University of Florida Libraries, University Avenue, Gainesville
Florida A&M University, Coleman Memorial Library, Martin Luther King Boulevard, Tallahassee
Florida State University, Strozier Library, Call Street and Copeland Avenue, Tallahassee
Florida Atlantic University, Library, 20th Street, Boca Raton
University of Miami Library, 4600 Rickenbacker Causeway, Miami
University of Florida, Holland Law Center Library, Southwest 25th Street and 2nd Avenue, Gainesville
St. Petersburg Public Library, 3745 Ninth Avenue North, St. Petersburg
West Florida Regional Library, 200 West Gregory Street, Pensacola
Northwest Regional Library System, 25 West Government Street, Panama City
Leon County Public Library, 127 North Monroe Street, Tallahassee
Lee County Library, 3355 Fowler Street, Fort Myers
Charlotte-Glades Regional Library System, 2280 NW Aaron Street, Port Charlotte
Tampa-Hillsborough County Public Library System, 800 North Ashley Street, Tampa
Key Largo Public Library, 99551 No. 3 Overseas Highway, Key Largo
Selby Public Library, 1001 Boulevard of the Arts, Sarasota
Collier County Public Library, 650 Central Avenue, Naples
Marathon Public Library, 3152 Overseas Highway, Marathon
Monroe County Public Library, 700 Fleming Street, Key West.

Dated: November 10, 1993.

Thomas Gernhoser,
Associate Director for Offshore Mineral Management.
Approved:
Jonathan P. Deason,
Director, Office of Environmental Affairs.

[FR Doc. 93–28083 Filed 11–15–93; 8:45 am]
BILLING CODE 4310–MR–P

Outer Continental Shelf Advisory Board, Gulf of Mexico Regional Technical Working Group; Meeting

AGENCY: Minerals Management Service, Interior.

ACTION: Notice of Gulf of Mexico Regional Technical Working Group (RTWG) meeting.

SUMMARY: Notice of this meeting is issued in accordance with the Federal Advisory Committee Act (Pub. L. 92–463). The Gulf of Mexico RTWG meeting will be held December 13, 1993, at the Hotel Inter-Continental, 444 St. Charles, New Orleans, Louisiana.

The meeting will be held beginning at 1 p.m., December 13, 1993. Agenda items are as follows:

- Roundtable Discussion.
- Shell's Mars Discovery.
- Status of Environmental Studies Program.
- National Park Service Presentation on Beach Debris.
- MMS Bonding Requirements.

FOR FURTHER INFORMATION CONTACT: This meeting is open to the public. Individuals wishing to make oral presentations to the committee concerning agenda items should contact Ms. Ann Hanks of the Gulf of Mexico OCS Regional Office at (504) 736–2589 by December 1, 1993. Written statements should be submitted by December 8, 1993, to Ms. Hanks at 1201 Elmwood Park Boulevard, Jefferson, Louisiana 70123–2394.

SUPPLEMENTARY INFORMATION: The Gulf of Mexico RTWG advises the Director of

the Minerals Management Service on technical matters of regional concern regarding offshore prelease and postlease sale activities. The RTWG membership consists of representatives from Federal Agencies, the coastal States of Alabama, Florida, Louisiana, Mississippi, and Texas, the petroleum industry, the environmental community, and other private interests.

Dated: November 4, 1993.

Chris C. Oynes,

Acting Regional Director, Gulf of Mexico OCS Region.

[FR Doc. 93–28015 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–MR–M

National Park Service

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 6, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 1, 1993.

Carol D. Shull,

Chief of Registration, National Register.

COLORADO

Huerfano County

Lamme Hospital, 314 S. Main St., La Veta, 93001376

CONNECTICUT

Middlesex County

Starr Mill, Jct. of Middlefield St. and Beverly Heights, Middletown, 93001379

New London County

Cogswell, Edward, House, 1429 Hopeville Rd., Griswold, 93001378

Windham County

Chandler, Capt. Seth, House, 55 Converse St., East Woodstock, 93001380

HAWAII

Honolulu County

Malia (Hawaiian canoe), Jct. of Kapiolani Blvd. and McCully St., SE corner, Honolulu, 93001385

MONTANA

Toole County

Bethany Lutheran Church, 0.25 mi. S of Gus Blaze Rd., Oilmont vicinity, 93001375

NEW HAMPSHIRE

Rockingham County

Higgin Memorial Library, Jct. of Portsmouth Ave. (NH 101) and Stratham Rd., SE corner, Stratham, 93001381

NEW JERSEY

Burlington County

High Street Historic District, Roughly, High St. from Pearl St., to Federal St., Burlington, 93001386

TENNESSEE

Knox County

Russell, Avery, House (Boundary Decrease), 11409 Kingston Pike, Farragut, 93001387

Madison County

Walsh, William Kirby, House, 204 E Deaderick St., Jackson, 93001374

VERMONT

Chittenden County

Burlington Bay Horse Ferry, Address Restricted, Burlington vicinity, 93001384

WYOMING

Fremont County

Twin Pines Lodge and Cabin Camp, 218 W. Ramshorn, Dubois, 93001382

Sweetwater County

Rock Springs Elks' Lodge No. 624, 307 C St., Rock Springs, 93001383

[FR Doc. 93–28155 Filed 11–15–93; 8:45 am]

BILLING CODE 4310–70–M

INTERSTATE COMMERCE COMMISSION

[Docket No. AB–12; Sub-No. 168X]

Southern Pacific Transportation Co.; Abandonment Exemption; in Merced and Fresno Counties, CA

Southern Pacific Transportation Company (SPT) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon the 18.73 mile portion of the West Side Line from milepost 141.17, at or near the Los Banos rail station, in Merced County, to milepost 159.90, at or near the Oxalis rail station, in Fresno County, CA.

SPT has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line can be rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental report), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 16, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 26, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 6, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Gary A. Laakso, General Attorney, Southern Pacific Transportation Company, Southern Pacific Building, One Market Plaza, Room 846, San Francisco, CA 94105.

If the notice of exemption contains false or misleading information, the exemption is void ab initio.

SPT has filed an environmental report which addresses the abandonment's effects, if any, on the environmental and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 19, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made before the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept late-filed trail use statements as long as it retains jurisdiction to do so.

Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28005 Filed 11–15–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,961; TA–W–28,961A]

Betten Manufacturing Co., Inc., Fayette, AL., and Alabama Employee Services, Inc., Fayette, AL; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issues a Certification of Eligibility to Apply for Worker Adjustment Assistance on October 26, 1993, applicable to all workers of the subject firms. The certification will soon be published in the **Federal Register**.

At the request of the State Agency, the Department reviewed the certification for workers of Betten Manufacturing Company, Inc., Fayette, Alabama. The findings show that most of the workers were leased from the Alabama Employee Services, Inc., Birmingham, Alabama. The leased workers at Betten Manufacturing in Fayette, Alabama worked exclusively for Betten Manufacturing.

Accordingly, the Department is amending the certification to include the leased workers at Betten Manufacturing who were separated as a result of the adverse impact of imported jackets, raincoats, knit shirts and shorts.

Also, the Department is including a termination date of January 1, 1993 since the Fayette, Alabama plant of Betten Manufacturing ceased operations on October 23, 1992.

The amended notice applicable to TA–W–28,961 is hereby issued as follows:

All workers of Betten Manufacturing Company, Inc., Fayette, Alabama including leased workers of Alabama Employee Services who were employed exclusively for Betten Manufacturing Company, Inc., in Fayette, Alabama and who were engaged in the production of jackets, knit shirts, raincoats and shorts and who became totally or partially separated from employment on or after August 5, 1992 and before January 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this November 2, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–28093 Filed 11–15–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,827]

Carborundum Co., Monofrax Refractories Division, Falconer, NY; Affirmative Determination Regarding Application for Reconsideration

On September 27, 1993, one of the petitioners requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on August 27, 1993 and published in the **Federal Register** on September 17, 1993 (58 FR 48678).

The petitioner stated that the Department should have investigated fusion cast refractory products instead of refractories.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 2nd day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–28090 Filed 11–15–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,922]

General Electro Mechanical Corp. (GEMCOR), Buffalo, NY; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 27, 1993, applicable to all workers of the subject firm engaged in the production of riveting machines. The certification notice was published in the **Federal Register** on October 21, 1993 (58 FR 54377).

At the request of the company, the Department reviewed the certification for workers of the subject firm. A few workers were laid off prior to the Department's impact date of November 1, 1992. The intent of the Department's certification is to include all workers who were adversely affected by increased imports. Accordingly, the Department is amending the certification with a new impact date of July 20, 1992.

The amended notice applicable to TA–W–28,922 is hereby issued as follows:

All workers of General Electric Mechanical Corporation (GEMCOR), Buffalo, New York engaged in the production of riveting machines who became totally or partially separated from employment on or after July 20, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this November 4, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–28091 Filed 11–15–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,797]

H.F.S. Apparel Manufacturing, Inc., Weissport, PA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on September 7, 1993, applicable to all workers of H.F.S. Apparel Manufacturing, Inc., Weissport, Pennsylvania. The notice was published in the **Federal Register** on September 22, 1993 (58 FR 49321).

At the request of the State Agency, the Department reviewed the subject

certification. The investigation findings show that a merger occurred in February between W.F. Hofford, Inc., and Dee Ann Sportswear which were located in the same building in Weissport. The new company became H.F.S. Apparel Manufacturing. The workers at H.F.S. Apparel Manufacturing produced the same products as that produced by W.F Hofford, Inc. and Dee Ann Sportswear.

The Department is also establishing a termination date of November 1, 1993 since H.F.S. Apparel ceased production in mid-1993.

Accordingly, the Department is amending the certification to show the correct worker group and coverage period.

The amended notice applicable to TA-W-28,797 is hereby issued as follows:

All workers of H.F.S. Apparel Manufacturing, Incorporated, Weissport, Pennsylvania also known as (a/k/a) W.F. Hofford, Inc., Weissport, Pennsylvania and a k/a Dee Ann Sportswear, Inc., Weissport, Pennsylvania engaged in the production of ladies' and men's sweatpants, sweatshirts, shorts and t-shirts who became totally or partially separated from employment on or after June 9, 1992 and before November 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC this November 8, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-28088 Filed 11-15-93; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-27,028; TA-W-27,028A; TA-W-27,028B]

San Patricio Corp., Corpus Christi, TX; Foremost Management Corp., TX; and Westbay Contracting Corp., TX; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on April 30, 1992, applicable to all workers of the subject firm.

At the request of the State Agency, the Department reviewed the certification for workers of San Patricio Corporation in Corpus Christi, Texas. The findings show that several of the workers were leased from the Westbay Contracting Corporation and the Foremost Management Corporation. The leased workers at San Patricio Corporation in Corpus Christi, Texas worked exclusively for San Patricio Corporation.

Accordingly, the Department is amending the certification to include the leased workers at San Patricio Corporation who were separated as a result of the adverse impact of imported crude oil and natural gas.

The amended notice applicable to TA-W-27,028 is hereby issued as follows:

All workers of San Patricio Corporation, Corpus Christi, Texas including leased workers from the Westbay Contracting Corporation and Foremost Management Corporation both located in Texas who were employed exclusively for San Patricio Corporation in Corpus Christi, Texas and who became totally or partially separated from employment on or after March 6, 1991 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this November 2, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93-28092 Filed 11-15-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221 (a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject mater of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 26, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than November 26, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 1st day of November, 1993.

Marvin, M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Variety Knit (Wkrs)	N. Bensen, NJ	11/01/93	10/18/93	29,167	Ladies garments.
U.S. Vanadium Corp (OCAW)	Niagara Falls, NY	11/01/93	10/15/93	29,168	Ferro vanadium.
Wincup Holdings, Inc (Wkrs)	Tinton Falls, NJ	11/01/93	10/21/93	29,169	Styrofoam cups, containers and straws.
Zenith Wireline Services (Wkrs)	Lindsay, OK	11/01/93	10/14/93	29,170	Oil and gas.
Borg-Warner Automotive (UAW)	Muncie, IN	11/01/93	10/19/93	29,171	Transmissions, transfer cases and hubs.
The Ohio Art Co. (Wkrs)	Bryan, OH	11/01/93	10/19/93	29,172	Etch-A-Sketch Drawing Toy.
Shell Oil Co (Co)	Houston, TX	11/01/93	10/19/93	29,173	Oil and gas.
Shell Western Exploration & Prod. (Co)	.....do	11/01/93	10/19/93	29,174	Do.
Shell Offshore, Inc (Co)	New Orleans, LA	11/01/93	10/19/93	29,175	Do.

APPENDIX—Continued

Petitioner (union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Shell Pipe Line Corp. (Co)	Houston, TX	11/01/93	10/19/93	29,176	Do.
Shell Development Co (Co)	....do	11/01/93	10/19/93	29,177	Do.
Pecten Chemical Co (Co)	....do	11/01/93	10/19/93	29,178	Do.
Pecten International Co (Co)	....do	11/01/93	10/19/93	29,179	Do.
Snow Hill Apparel Co (Wkrs)	Snow Hill, NC	11/01/93	10/13/93	29,180	Turtlenecks and rugby tops.
SNS Plastics Co., Inc (Co)	Waldoboro, ME	11/01/93	10/20/93	29,181	Polyester garment buttons.
Fiber Materials, Inc (Wkrs)	Biddleford, ME	11/01/93	10/07/93	29,182	Graphite materials.
Tooling Systems Div., DeVlieg (UAW)	Frankenmuth, MI	11/01/93	10/15/93	29,183	Metal-working machine tools.
American Cyanamid Co (Co)	Bound Brook, NJ	11/01/93	10/21/93	29,184	Piperazine carbonyl chloride.
Library Bureau, Inc (Wkrs)	Herkimer, NY	11/01/93	10/19/93	29,185	Wood library furniture.
McDonnell Douglas Finance Corp (Wkrs)	Long Beach, CA	11/01/93	10/19/93	29,186	Financial services.
E.I. Dupont de Nemours & Co (Wkrs)	Martinsville, VA	11/01/93	10/20/93	29,187	Nylon yarn.
General Automotive Specialty (Wkrs)	North Brunswick, NJ	11/01/93	10/27/93	29,188	Automotive switches.
Four Eleven Sportwear Corp (Wkrs)	Madisonville, TN	11/01/93	10/21/93	29,189	Ladies' suit jackets, skirts and slacks.
Exploration Employment Service (Co)	Livingston, TX	11/01/93	10/22/93	29,190	Oil and gas.
Crawford Home Fashions (ACTWU)	Richmond, VA	11/01/93	10/14/93	29,191	Pillows, beanbags and cushions.
Parsons Footwear, Inc (Wkrs)	Parsons, WV	11/01/93	10/17/93	29,192	Canvas footwear.
Vertical Apparel (Wkrs)	New York, NY	11/01/93	10/15/93	29,193	Ladies' sportswear.
Vertical Apparel/(Addiction) (Wkrs)	....do	11/01/93	10/15/93	29,194	Do.
Vertical Apparel/(George Simonton) (Wkrs)	....do	11/01/93	10/15/93	29,195	Do.
Shell Oil Products (Co)	Houston, TX	11/01/93	10/19/93	29,196	Oil and Gas.
Shell Chemical Co (Co)	Houston, TX	11/01/93	10/19/93	29,197	Do.

[FR Doc. 93–28089 Filed 11–15–93; 8:45 am]
BILLING CODE 4510-30-M

LEGAL SERVICES CORPORATION

Designation of Recipient for the Provision of Civil Legal Services in Louisiana

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grant.

SUMMARY: The Legal Services Corporation hereby announces its intention to designate Kisatchie Legal Services as the regular, annualized provider of civil legal assistance to the LSC-eligible client population in Catahoula, Concordia, and LaSalle Parishes, Louisiana (Tri-Parish area). This will become effective with the 1994 grant year.

The grant awarded will be pursuant to authority conferred by section 1006(a)(1)(A) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice.

DATES: All comments and recommendations must be received by 5 p.m. on or before December 13, 1993.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants & Budget Division, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. Kisatchie Legal Services has been providing civil legal services to the Tri-Parish area since January 1, 1993 under a one-time grant with the Corporation.

The amount of the 1994 grant will be consistent with the basic field portion of the 1994 LSC Appropriations Act, which mandates that the grant amount will be based on the service area's poverty population derived from the 1990 census, but no less than the 1993 grant amount ($132,725).

Dated: November 9, 1993.

Ellen J. Smead,

Director, Office of Program Services.

[FR Doc. 93–28031 Filed 11–15–93; 8:45 am]
BILLING CODE 7050-01-P

Designation of Recipients for Legal Services State Support Centers in Hawaii and Missouri

AGENCY: Legal Services Corporation.

ACTION: Announcement of intention to award grants.

SUMMARY: The Legal Services Corporation hereby announces its intention to designate the Legal Aid Society of Hawaii, Inc. and Legal Services of Eastern Missouri, Inc. as the regular annualized providers of substantive and training support to legal service programs in the states of Hawaii and Missouri, respectively. This will become effective with the 1994 grant year.

The grants awarded will be pursuant to authority conferred by section 1006(a)(3) of the Legal Services Corporation Act of 1974, as amended. This public notice is issued with a request for comments and recommendations within a period of thirty (30) days from the date of publication of this notice.

DATES: All comments and recommendations must be received by 5 p.m. on or before December 13, 1993.

ADDRESSES: Comments should be sent to the Office of Program Services, Legal Services Corporation, 750 First Street, NE., 11th Floor, Washington, DC 20002–4250.

FOR FURTHER INFORMATION CONTACT: Phyllis Doriot, Manager, Grants & Budget Division, Office of Program Services, (202) 336–8825.

SUPPLEMENTARY INFORMATION: The Legal Services Corporation is the national organization charged with administering federal funds provided for civil legal service to the poor. Both of the programs

have been providing the stated services to their state for 1993 under individual one-time grants with the Corporation.

The amount of the 1994 grants will be consistent with the 1994 LSC Appropriations Act, which mandates the formula for allocating state support funds, but no less than the 1993 grant amount ($72,856 each).

Dated: November 9, 1993.

Ellen J. Smead,

Director, Office of Program Services.

[FR Doc. 93-28030 Filed 11-15-93; 8:45 am]

BILLING CODE 7050-01-P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice (93-086]

Fiscal Year 1993 Report of Closed Meeting Activities of Advisory Committees

AGENCY: National Aeronautics and Space Administration (NASA).

ACTION: Notice of availability of reports.

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92-463, the NASA advisory committees that held closed or partially closed meetings in Fiscal Year 1993, consistent with the policy of 5 U.S.C. 552b(c), have prepared reports on activities of these meetings. Copies of the reports have been filed and are available for public inspection at the Library of Congress, Federal Advisory Committee Desk, Washington, DC 20540; and the National Aeronautics and Space Administration, Headquarters Information Center, Washington, DC 20546. The names of the committees are: NAC Aerospace Medicine Advisory Committee, NAC Space Science and Applications Advisory Committee, NASA Wage Committee.

FOR FURTHER INFORMATION CONTACT: Mechthild E. Peterson, Code JMC, National Aeronautics and Space Administration, Washington, DC 20546 (202-358-1306).

Timothy M. Sullivan,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 93-28062 Filed 11-15-93; 8:45 am]

BILLING CODE 7510-01-M

[Notice 93-087]

NASA Advisory Council (NAC) Task Force on National Facilities; Aeronautics R&D Facilities Task Group; Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NAC Task Force on National Facilities, Aeronautics R&D Facilities Task Group.

DATES: December 1, 1993, 8:30 a.m. to 4:30 p.m.; and December 2, 1993, 8:30 a.m. to 4:30 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Room 107, Building 1218, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Mr. Wayne McKinney, National Aeronautics and Space Administration, Langley Research Center, Hampton, VA 23681 (804/864-8686).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Facility Working Group Reports
—Facility Charging Policy

It is imperative that the meeting be held on these dates to accommodate the scheduling priorities of the key participants.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93-28061 Filed 11-15-93; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on Presidential Libraries Meeting

Notice is hereby given that the Advisory Committee on Presidential Libraries will meet on Thursday, December 2, 1993, 12:30 p.m. to 3 p.m. in room 105 at the National Archives and Records Administration, Washington, DC.

The agenda for the meeting will be to introduce the Advisory Committee to the members of the newly chartered Foundation of the National Archives and to conduct a discussion of common issues between the Committee, the Foundation, and representatives of the individual Library foundations.

The meeting will be open to the public. For further information, call John Fawcett on 202-501-5700.

Dated: November 5, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93-28049 Filed 11-15-93; 8:45 am]

BILLING CODE 7515-01-M

NATIONAL FOUNDATION ON THE ARTS AND HUMANITIES

Agency Information Collection Under OMB Review

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice.

SUMMARY: The National Endowment for the Humanities (NEH) has sent to the Office of Management and Budget (OMB) the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

DATES: Comments on this information collection must be submitted on or before December 16, 1993.

ADDRESSES: Send comments to Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202-606-8494) and Mr. Steve Semenuk, Office of Management and Budget, New Executive Office Building, 726 Jackson Place, NW., room 3002, Washington, DC 20503 (202-395-7316).

FOR FURTHER INFORMATION CONTACT: Ms. Susan Daisey, Assistant Director, Grants Office, National Endowment for the Humanities, 1100 Pennsylvania Avenue, NW., room 310, Washington, DC 20506 (202) 606-8494 from whom copies of forms and supporting documents are available.

SUPPLEMENTARY INFORMATION: All of the entries are grouped into new forms, revisions, extensions, or reinstatements. Each entry is issued by NEH and contains the following information: (1) The title of the form; (2) the agency form number, if applicable; (3) how often the form must be filled out; (4) who will be required or asked to report; (5) what the form will be used for; (6) an estimate of the number of responses; (7) the frequency of response; (8) an estimate of the total number of hours needed to fill out the form; (9) an estimate of the total annual reporting and recordkeeping burden. None of these entries are subject to 44 U.S.C. 3504(h).

Category: Extensions

Title: Organizational Survey

Form Number: OMB No. 3136–0124
Frequency of Collection: Once
Respondents: Nonprofit organizations and groups
Use: Application for funding
Estimated Number of Respondents: 30
Frequency of response: Once
Estimated Hours for Respondents to Provide Information: .50 per respondent
Estimated Total Annual Reporting and Recordkeeping Burden: 15 hours

Donald Gibson,

Acting Deputy Chairman.

[FR Doc. 93–28027 Filed 11–15–93; 8:45 am]

BILLING CODE 7536–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–302]

Florida Power Corp., Crystal River Unit 3; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–72, issued to Florida Power Corporation (FPC, the licensee), for operation of Crystal River, Unit 3, located in Citrus County, Florida.

Environmental Assessment

Identification of the Proposed Action

The proposed amendment will amend the Technical Specifications (TS) to reflect currently accepted NRC standards for containment tendon surveillance testing. The proposed action is in accordance with portions of the licensee's amendment request dated August 25, 1989, and letter dated October 25, 1993.

The Need for the Proposed Action

Complete replacement of the TS with Improved Technical Specifications (ITS) was requested by the August 25, 1989, letter. By letter dated October 25, 1993, FPC requested expedited issuance of the containment section of the ITS to support containment tendon testing. Containment tendon surveillance testing was scheduled to begin on November 1, 1993, to prevent exceeding the surveillance interval which expires on January 10, 1994. Issuance of the ITS is likely in this time interval which would create a conflict of requirements since the ITS and the current TS differ in this area. FPC considers it preferable to perform the containment tendon testing to the currently accepted NRC standards contained in the ITS and the NRC agrees.

Description of the Proposed Change

The current TS specify that the structural integrity of the containment shall be maintained at a level consistent with the acceptance criteria specified in the surveillance requirements. If structural integrity is not met, it must be restored within 24 hours or the plant must be taken to cold shutdown. The surveillance requirements specify the details of the testing.

The proposed TS state that the containment structural integrity must be maintained at a level consistent with the acceptance criteria specified in the surveillance program or restored to within the limits. The proposed containment tendon surveillance program, inspection frequency, and acceptance criteria shall be in accordance with Regulatory Guide 1.35, Revision 3, 1989. The proposed TS also require that any abnormal degradation of the containment structure detected during these tests be reported to the NRC within 30 days.

In addition, in the letter dated October 25, 1993, FPC committed to follow Regulatory Guide 1.35, Revision 3, except for the timing of testing tendons deferred as part of the fifth CR–3 tendon surveillance.

Per Regulatory Guide 1.35, Revision 3, tendons that are randomly selected but cannot be tested (due to plant conditions at the time) should be inspected during the following plant shutdown. In the case of the fifth CF–3 tendon surveillance, this would require testing during the next refueling outage in April 1994, in addition to the scheduled testing beginning on November 1, 1993.

Five randomly selected tendons are inaccessible during the November 1993 testing since the testing is being performed with the plant on line. FPC proposed to perform testing on these tendons during the next tendon surveillance currently scheduled for Refuel Outage 10 in April 1996. This is approximately 2 years later than the April 1994 outage, when the testing would normally be conducted per the Regulatory Guide.

FPC stated that previous tendon testing in the area of these five tendons has met the TS requirements. The licensee concluded that operating history indicates that deferral of the testing does not increase the potential for undetected degradation during the time interval.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the TS. The changes will not affect the capability of the containment to perform its design function.

These TS changes will not increase the probability or consequences of accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure. Therefore, the Commission concludes that there are no significant radiological environmental impacts associated with the proposed TS amendment.

With regard to potential non-radiological impacts, the proposed amendment involves features located entirely within the restricted area as defined in 10 CFR part 20. It does not affect non-radiological plant effluent and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternatives to the Proposed Action

Since the Commission has concluded there is no measurable environmental impact associated with the proposed amendment, any alternatives with equal or greater environmental impact need not be evaluated. The principal alternative to the amendment would be to deny the amendment request. Such action would not enhance the protection of the environment.

Alternative Use of Resources

This action does not involve the use of resources not considered previously in the Final Environmental Statement for Crystal River, Unit 3.

Agencies and Persons Consulted

The NRC staff consulted with the State of Florida regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the Commission has determined not to prepare an environmental impact statement for the proposed amendment.

For further details with respect to this proposed action, see the licensee's letters dated August 25, 1989, and October 25, 1993. These letters are available for public inspection at the Commission's Public Document Room, The Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the

local public document room located at the Coastal Region Library, 8619 W. Crystal Street, Crystal River, Florida 32629.

Dated at Rockville, Maryland this 9th Day of November 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28152 Filed 11–15–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–322]

Long Island Power Authority, Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of a schedular exemption from the revised requirements of 10 CFR part 20 to the Code of Federal Regulations to the Long Island Power Authority (LIPA or the licensee) for the Shoreham Nuclear Power Station (SNPS) pursuant to the requirements of 10 CFR 20.2301.

Environmental Assessment

Identification of Proposed Action

As of January 1, 1994, the revised 10 CFR part 20 becomes mandatory. The approval of the schedular exemption would permit LIPA to continue the ongoing decommissioning of SNPS without implementing the revised 10 CFR part 20, and in effect continue decommissioning for 2 years beyond January 1, 1994, under the radiation protection provisions of 10 CFR 20.1 through 20.601. LIPA began dismantlement of SNPS following the NRC's issuance of the Order to Authorize Decommissioning, June 11, 1992. By January 1, 1994, LIPA will have completed approximately 90 percent of the decommissioning of SNPS. LIPA anticipates that the SNPS license will be terminated and the facility released for unrestricted release in late 1995.

The Need for the Proposed Action

A schedular exemption would eliminate the required implementation of the revised 10 CFR part 20 requirements by January 1, 1994, and allows LIPA to continue the decommissioning of SNPS under the current radiation protection provisions of 10 CFR 20.1 through 20.601 for 24 months beyond January 1, 1994. The NRC has determined that granting the proposed schedular exemption would continue to ensure adequate protection of the workers and the public and without unjustifiably increasing the licensee's decommissioning cost. Actual exposures experienced for the 75 percent completed decommissioning of SNPS, using the current SNPS radiation protection program, is 2.7 person-rems, and the total estimated exposure to complete the decommissioning of SNPS is estimated to be 4.5 person-rems, compared with a total estimated exposure in the Decommissioning Plan (DP) of 189 person-rems. The current radiation protection program has proven to be extremely effective in ensuring radiation exposures to workers are maintained at a small fraction of the 10 CFR part 20 limits and the estimated person-rem exposures calculated and provided in the licensee's decommissioning plan. LIPA estimates the 1994 exposure to complete the decommissioning of SNPS will be less than 0.3 person-rem. The maximum exposure received during the decommissioning program to date by any worker was 0.045 rem per quarter. The average individual exposure was 0.00026 rem per quarter. These individual exposures are well within the 10 CFR part 20 quarterly dose limits, and within the revised 10 CFR part 20 limit of 5 rems. Thus, the intent of the revised part 20 would be realized and there would be no apparent benefit to worker and public by requiring the implementation of the revised 10 CFR part 20.

Environmental Impact of the Proposed Action

The proposed action to allow LIPA to continue the decommissioning of SNPS using the provisions of 10 CFR 20.1 through 10 CFR 20.601, through 1995, will have no significant environmental impact. However, if circumstances cause activities related to decommissioning to extend beyond 1995, LIPA will be required to implement the revised 10 CFR part 20. The staff initially evaluated the decommissioning of SNPS before issuing the June 11, 1992, Order to Decommission, and concluded that the decommissioning of SNPS, based on the current radiation protection requirements of 10 CFR 20.1 through 10 CFR 20.601, would have no significant impact on the quality of the human environment. Granting this schedular exemption would not alter that conclusion.

A schedular exemption from the provisions of the revised 10 CFR part 20 will not affect plant non-radiological effluents and thus has no adverse environmental impact. In addition, the proposed schedular exemption will not authorize changes related to licensed activities or effect changes to the Technical Specifications with regard to allowable types or amounts of radiological effluents. With regard to potential radiological and non-radiological impacts, the NRC concludes that there are no measurable radiological or non-radiological impacts associated with this schedular exemption.

Alternatives to the Proposed Action

Since the NRC concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for SNPS.

Agencies and Persons Consulted

The licensee initiated this exemption request. The NRC staff has reviewed their request. The State of New York was notified of the proposed exemption. The State Official declined to comment.

Finding of No Significant Impact

Based upon this environmental assessment, the NRC concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC has determined not to prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's application dated July 6, 1993, and the NRC staff's Safety Evaluation Report are available for public inspection at the NRC's Public Document Room, 2120 L Street, NW., Washington DC 20037, and at the local public document room at the Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792.

Dated at Rockville, Maryland, this 5th day of November, 1993.

For the Nuclear Regulatory Commission.

John T. Greeves,

Director, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–28147 Filed 11–15–93; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50–328]

Tennessee Valley Authority, Sequoyah Nuclear Plant, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 to the Tennessee Valley Authority, licensee for the Sequoyah Nuclear Plant (SQN), Unit 2. The plant is located at the licensee's site in Hamilton County, Tennessee. The exemption was requested by the licensee in its letter dated September 27, 1993.

Environmental Assessment

Identification of Proposed Action

The action would exempt the licensee from the provisions in sections III.D.2(a) and III.D.3 of appendix J to 10 CFR part 50 with respect to the requirement to perform Primary Containment Type B and Type C local leak rate tests at intervals no greater than 2 years. The exemption would affect Unit 2 only and allow the tests to be delayed until the Cycle 6 refueling outage. This outage is scheduled to start less than 1 month after the 2-year period ends.

On March 15, 1992, SQN Unit 2 started the Cycle 5 refueling outage. All Type B and Type C local leak rate tests were performed during the outage and the unit was returned to service on May 17, 1992. Between March 1, 1993, and October 19, 1993, Unit 2 was in shutdown because of a steam leak in the secondary system. Due to the length of the shutdown, TVA has delayed the start of the Unit 2 Cycle 6 refueling outage to April 1994. As a result, the expiration of the 2-year time interval for the Type B and Type C tests occurs before the outage starts. To perform the tests in accordance with the requirement would force the unit to shut down in March 1994. To prevent this, the proposed exemption would allow a one-time deferment of the appendix J interval requirement from March 15, 1994 until the shutdown in April 1994, a total of approximately 18 days.

The Need for the Proposed Action

The proposed action is required to exempt the licensee from the requirement to conduct Type B and Type C containment local leak rate tests on SQN Unit 2 at a 2-year frequency so that the tests can be performed during the Cycle 6 refueling outage that is scheduled to start in April 1994.

Environmental Impacts of the Proposed Action

With respect to the requested action, exemption from the above requirement would allow the licensee to delay conducting Type B and Type C local leak rated tests at Unit 2 approximately 18 days beyond the scheduled expiration date of the 2-year period. This relatively small increase in the test interval does not significantly contribute to the total Type B and Type C leakage limits. The intent of sections III.D.2(a) and III.D.3 of appendix J is to ensure that containment leakage is maintained within the prescribed limits. Based on the following information, the exemption will not significantly affect the ability of the individual primary containment components that are subject to Type B or Type C tests to perform this safety function:

1. The valves and components for which the extension of the 2-year interval is being requested have a history of being leak tight and in good condition. The leak-tight condition of these components was last verified by Types B and C local leak rate tests conducted during the Cycle 5 refueling outage in 1992, and, at least for many, by the Type A containment leak rate test conducted on Unit 2 during the same refueling outage. Based on the present containment leakage that accounts for the less than 60 percent of the 0.6 percent La limit, the remaining margin is sufficient to ensure any incremental increase in leakage resulting from the extension would not cause unacceptable as-found test results.

2. Based on historical data, any incremental increase in leakage because of the extension will be small. Improved maintenance practices implemented during the Unit 2 Cycle 5 outage, including motor operated valve testing (MOVATS) of containment isolation valves, provide increased assurance that these components will perform their safety function associated with containment leakage.

3. Many of the components for which the exemption is requested were included in the Type A test performed in April 1992. This test indicated a containment leak rate of 0.15 percent per day, which is below the 0.1875 percent per day limit.

With regard to other potential radiological environmental impacts, the proposed exemption does not increase the radiological effluents from the facility and does not increase the occupational exposure at the facility. Therefore, the Commission concludes that there are no significant radiological impacts associated with the proposed exemption.

With regard to potential nonradiological environmental impacts, the proposed exemption involves systems located within the restricted areas as defined in 10 CFR part 20. It does not affect nonradiological plant effluents and has no other significant nonradiological environmental impacts associated with the proposed exemption.

Therefore, the proposed exemption does not significantly change the conclusions in the licensee's "Final Environmental Statement Related to the Operation of Sequoyah Nuclear Plant Units 1 and 2," (FES) dated February 21, 1974. The Commission concluded that the operation of the Sequoyah units will not result in any environmental impacts other than those evaluated in the FES and its letter to the licensee dated September 15, 1981, which granted the facility operating license DPR–79 for Unit 2.

Alternative to the Proposed Action

Because the staff has concluded that there is no measurable environmental impact associated with the proposed exemption, any alternative to this exemption will have either no significantly different environmental impact or greater environmental impact.

The principal alternative would be to deny the requested exemption. This would not reduce environmental impacts as a result of plant operations.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in connection with the "Final Environmental Statement Related to the Operation of the Sequoyah Nuclear Plant, Units 1 and 2," dated February 21, 1974.

Agencies and Persons Consulted

The NRC staff has reviewed the licensee's request. The staff did not consult other agencies or persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For details with respect to this action, see the licensee's request for an exemption dated September 27, 1993, which is available for public inspection at the Commission's Public Document Room, Gelman Building, 2120 L Street,

NW., Washington, DC, and at the Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402.

Dated at Rockville, Maryland, this 9th day of November 1993.

For the Nuclear Regulatory Commission.

Frederick J. Hebdon,

Director, Project Directorate II–4, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28146 Filed 11–15–93; 8:45 am]

BILLING CODE 7590–01–M

Presentations on Draft Regulatory Guides DG–1023 and DG–1025

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission will make presentations, to interested parties on the contents of two draft regulatory guides, DG–1023 and DG–1025, on reactor pressure vessel integrity issues, and answer questions to clarify the positions taken by the staff in those draft guides.

DATES: Thursday, December 9, 1993.

TIME: 9 a.m.–4 p.m.

ADDRESSES: Holiday Inn Bethesda, (301) 652–2000, 8120 Wisconsin Avenue, Bethesda, Maryland.

FOR FURTHER INFORMATION CONTACT: Mr. Michael E. Mayfield, or Mr. Shah N. Malik, Materials Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3844, or 492–3842.

SUPPLEMENTARY INFORMATION: NRC staff will make presentations on the contents of the two draft guides, DG–1023 (Evaluation of Reactor Pressure Vessels with Charpy Upper-Shelf Energy Less Than 50 Ft-Lb) and DG–1025 (Calculational and Dosimetry Methods for Determining Pressure Vessel Fluence). These two draft guides were published on September 30, 1993. The intent of the meeting is to answer questions and to clarify the regulatory positions described in the two draft guides, to aid the public in preparing focussed comments. The meeting is not an alternative to the public comment process. To be considered, public comments must be submitted in the manner described in the **Federal Register** notice advising the availability of the draft guides (see 58 FR 51392). Comments will be most helpful if received by December 17, 1993.

Dated at Rockville, Maryland, this 5th day of November, 1993.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 93–28151 Filed 11–15–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF THE UNITED STATES TRADE REPRESENTATIVE

Trade Policy Staff Committee; Initiation of a Review To Consider Redesignation of Romania as a Beneficiary Developing Country Under the Generalized System of Preferences (GSP); Initiation of a Review To Consider Designation of Kazakhstan as a Beneficiary Developing Country Under the GSP; Solicitation of Public Comments Relating to the Designation Criteria

AGENCY: Office of the United States Trade Representative.

ACTION: Solicitation of public comment with respect to the eligibility of Romania and Kazakhstan for the Generalized System of Preferences (GSP) program.

SUMMARY: The purpose of this notice is to announce the initiation of a review to consider redesignation of Romania as a beneficiary developing country under the GSP program, to announce the initiation of a review to consider the designation of Kazakhstan as a beneficiary developing country under the GSP program, and to solicit public comment relating to the designation criteria.

FOR FURTHER INFORMATION CONTACT: GSP Subcommittee, Office of the United States Trade Representative, 600 17th Street, NW., room 517, Washington, DC 20506. The telephone number is (202) 395–6971. Public versions of all documents related to this review will be available for review by appointment with the USTR Public Reading Room shortly following filing deadlines. Appointments may be made from 10 a.m. to noon and 1 p.m. to 4 p.m. by calling (202) 395–6186.

SUPPLEMENTARY INFORMATION: The Trade Policy Staff Committee (TPSC) has initiated reviews to determine if Romania and Kazakhstan meet the designation criteria of the GSP law and should be designated as beneficiaries. GSP is provided for in the Trade Act of 1974, as amended (19 U.S.C. 2461–2465). The designation criteria are listed in subsections 502(a), 502(b) and 502(c) of the Act. Interested parties are invited to submit comments regarding the eligibility of Romania and Kazakhstan for designation as GSP beneficiaries. The designation criteria mandate determinations related to participation in commodity cartels, preferential treatment provided to other developed countries, expropriation without compensation, enforcement of arbitral awards, support of international terrorism, and protection of internationally recognized worker rights. Other practices taken into account relate to the extent of market access for goods and services, investment practices and protection of intellectual property rights.

Comments must be submitted in 14 copies, in English, to the Chairman of the GSP Subcommittee, Trade Policy Staff Committee, 600 17th Street, NW., room 517, Washington, DC 20506. Comments must be received no later than 5 p.m. on December 15, 1993.

Information and comments submitted regarding Romania and Kazakhstan will be subject to public inspection by appointment with the staff of the USTR Public Reading Room, except for information granted "business confidential" status pursuant to 15 CFR 2003.6. If the document contains business confidential information, 14 copies of a nonconfidential version of the submission along with 14 copies of the confidential version must be submitted. In addition, the submission should be clearly marked "confidential" at the top and bottom of each and every page of the document. The version which does not contain business confidential information (the public version) should also be clearly marked at the top and bottom of each and every page (either "public version" or "non-confidential").

Frederick L. Montgomery,

Chairman, Trade Policy Staff Committee.

[FR Doc. 93–28060 Filed 11–15–93; 8:45 am]

BILLING CODE 3190–01–M

OFFICE OF MANAGEMENT AND BUDGET

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: OMB.

ACTION: Notice.

The Office of Management and Budget has submitted for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: "Voluntary Customer Surveys of Users of OMB Publications to Implement E.O. 12862."

Type of Request: New.

Annual burden hours: 100.

Needs and uses: The request should indicate the methods to be employed in the data collections, such as focus groups, re-interview techniques, etc. Customer satisfaction questionnaires will be included in OMB publications to improve future products.

Affected public: All.

Frequency: On Occasion.

Respondent's obligation: Voluntary.

OMB desk officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, room 3235, New Executive Office Building, Washington, DC 20503.

OMB Clearance officer: Mr. John B. Arthur. Written requests for copies of the information collection proposal should be sent to Mr. Arthur, Office of Management and Budget, room 9026, New Executive Office Building, Washington, DC 20503.

John B. Arthur,

Assistant Director for Administration.

[FR Doc. 93–28022 Filed 11–15–93; 8:45 am]

BILLING CODE 3110–01–M

OFFICE OF PERSONNEL MANAGEMENT

Historically Black Colleges and Universities (HBCU's) Federal Employment Advisory Group

AGENCY: U.S. Office of Personnel Management.

ACTION: Notice of open meeting.

SUMMARY: According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the Historically Black Colleges and Universities (HBCU's) Federal Employment Advisory Group will meet at the time and place shown below:

DATE: November 16, 1993, 9 a.m.

PLACE: Virginia Lacy Jones Exhibition Hall, Woodruff Library, Clark Atlanta University, Atlanta, Georgia.

AGENDA: The focus of the November 16th meeting will be the discussion of continued activities to enhance the employment of students and graduates from HBCU's in the Federal Government and a demonstration of employment information and videoconferencing telecommunications systems.

FOR FURTHER INFORMATION CONTACT: John Kraft, Acting Chief, Recruiting Policy Division, Office of Personnel Management, room 6332, 1900 E Street, NW., Washington, DC 20415.

SUPPLEMENTARY INFORMATION: The meeting is open to the public. If time permits, an opportunity will be provided for members of the public in attendance at the meeting to provide their views. Seating at the videoconferencing telecommunications demonstration will be very limited and will be given out to the public on a first-come, first-served basis.

Persons wishing to address the Advisory Group orally at the meeting should submit a written request no later than the close of business on November 2, 1993. The request must include the name and address of the person wishing to appear, the capacity in which the appearance will be made, a short summary of the intended presentation, and the amount of time desired.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 93–28172 Filed 11–12–93; 8:45 am]

BILLING CODE [illegible]

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33169; File No. SR–NASD–93–63]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc. Relating to Amendments to the Guidelines Regarding Communications With the Public About Collateralized Mortgage Obligations (CMOs)

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 3, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NASD. The NASD has designated this proposal as one constituting a stated policy, practice or interpretation of an existing rule of the NASD under Section 19(b)(3)(A)(i) of the Act, which renders the rule effective upon the Commission's receipt of this filing. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend its Guidelines Regarding Communications With the Public About Collateralized Mortgage Obligations (CMOs) at Article III, section 35 of the Rules of Fair Practice[1] (CMO Guidelines) to add a definition of CMOs and to advise members that they should offer educational material on CMOs to their customers. Below is the text of the proposed rule change. Proposed new language is italicized.

Guidelines Regarding Communications With the Public about Collateralized Mortgage Obligations (CMOs)

1. General Considerations

For purposes of these Guidelines and the NASD's Rules, the term "collateralized mortgage obligation" (CMO) refers to a multiclass bond backed by a pool of mortgage pass-through securities or mortgage loans. CMOs are also known as "real estate mortgage investment conduits" (REMICs). As a result of the 1986 Tax Reform Act, most CMOs are issued in REMIC form to create certain tax advantages for the issuer. The terms CMO and REMIC are now used interchangeably.

In order to prevent a communication about CMOs from being false or misleading, there are certain factors to be considered, including, but not limited to, the following.

Product Identification

In order to assure that investors understand exactly what security is being discussed, all communications concerning CMOs should clearly describe the product as a "collateralized mortgage obligation." Member firms should not use proprietary names for CMOs as they do not adequately identify the product.

To prevent confusion and the possibility of misleading the reader, communications should not contain comparisons between CMOs and any other investment vehicle, including Certificates of Deposit.

Educational Material

In order to ensure that customers are adequately informed about CMOs members should offer to customers educational material which covers the following matters:

- *A discussion of CMO characteristics as investments and their attendant risks*

[1] NASD Manual, Rules of Fair Practice, Article III, section 35 (CCH) ¶ 2195.

- *An explanation of the structure of a CMO, including the various types of tranches*
- *A discussion of mortgage loans and mortgage securities*
- *Features of CMOs, including: credit quality, prepayment rates and average lives, interest rates (including effect on values and prepayment rates), tax considerations, minimum investments, transactions costs and liquidity*
- *Questions an investor should ask before investing, and a glossary of terms that may be helpful to an investor considering an investment.*

* * * * *

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In connection with the NASD's continuing program to enhance the regulation of sales practices in connection with the marketing of CMOs to retail customers, the NASD is proposing to amend its CMO Guidelines following Article III, section 35 of the Rules of Fair Practice to add a definition of the term CMO and to advise members to offer to customers educational material on CMOs which conveys certain important information.

Definition of CMO

The CMO Guidelines adopted in early 1993 [2] did not define the term "collateralized mortgage obligation." The NASD believes that a definition of the term "collateralized mortgage obligation" would aid in the understanding and interpretation of the Guidelines. Accordingly, the NASD is proposing to amend the Guidelines to add a definition of the term. The definition is substantially identical to that used by the Public Securities Association (PSA) in its educational materials. Under the definition a CMO is described as a "multiclass bond backed by a pool of pass-through securities or mortgage loans." The relationship between a CMO and a real estate mortgage investment conduit (REMIC) is also described. For purposes of the NASD's Rules, the terms CMO and REMIC are used interchangeably.

Educating Customers

The NASD believes that the complexity of CMOs mandates that member firms take steps to ensure that their customers are fully educated about CMOs. Accordingly, the NASD is proposing to amend the Guidelines to advise member firms to offer to investors an educational document or material about CMOs. The amendment specifies that the document should: (1) Explain CMOs, including the various types of tranches; (2) discuss mortgage loans and mortgage securities; (3) explain the features of CMOs, including, credit quality, prepayment rates and average lives, interest rates (including effect on values and prepayment rates), tax considerations, minimum investments, transactions costs and liquidity; (4) discuss the questions an investor should ask before investing; and (5) contain a glossary of terms that may be helpful to an investor considering an investment.

The NASD believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act in that the amendments to the Guidelines adding a definition will clarify the Guidelines, thereby assisting members in complying with their terms. Further, the proposed rule change relating to educational material will enhance public knowledge and information on a complex securities product and will, therefore, enhance the protection of investors and the public interest by improving the baseline of standards to guide sales practices relating to CMOs.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change has become effective upon filing with the Commission pursuant to section 19(b)(3)(A)(i) of the Act and subparagraph (e) of Rule 19b–4 thereunder in that it constitutes a stated policy, practice or interpretation of an existing rule of the NASD.

At any time within 60 days of the filing of such rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 7, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[3]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28079 Filed 11–15–93; 8:45 am]

BILLING CODE 8010–01–M

[2] Securities Exchange Act Release No. 31783 (Jan. 27, 1993), 58 FR 7016 (Feb. 3, 1993).

[3] 17 CFR 200.30–3(a)(12).

[Rel. No. IC–19841; 812–8528]

White River Corporation; Notice of Application

November 8, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: White River Corporation ("White River" or "applicant").

RELEVANT ACT SECTIONS Exemption requested under sections 6(c) and 6(e) from all provisions of the Act except sections 9, 17(a) (as modified), 17(d) (as modified), 17(e) (as modified), 17(f), and 36 through 53, and the rules thereunder.

SUMMARY OF APPLICATION: Applicant was created as part of a reorganization of Fund American Enterprises Holdings, Inc. ("FAEH") as a wholly-owned subsidiary of FAEH. As part of the reorganization, FAEH plans to distribute to its shareholders a majority of its holdings in applicant. Because of applicant's asset composition, applicant falls within the definition of an investment company under the Act; however, it plans to engage in a non-investment company business. Accordingly, applicant seeks a conditional order temporarily exempting applicant from most provisions of the Act.

FILING DATE: The Application was filed on October 8, 1993, and amended on November 4, 1993. Applicant has agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 3, 1993, and should be accompanied by proof of service on the applicant, in the form of an affidavit, or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Person who wish to be notified of a hearing should write to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 777 Westchester Avenue, suite 201, White Plains, New York 10604.

FOR FURTHER INFORMATION CONTACT: Felice R. Foundos, Staff Attorney, at (202) 272–2190, or Robert A. Robertson, Branch Chief, at (202) 272–3018, (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant, a Delaware corporation organized in 1989, is a wholly-owned subsidiary of FAEH, formerly known as The Fund American Companies, Inc. ("FAC"). FAC was incorporated in Delaware in 1980 as an indirect, wholly-owned subsidiary of the American Express Company ("American Express"), and, until January 1991, conducted a nationwide insurance business through its wholly-owned subsidiary, Fireman's Fund Insurance Company ("FFIC"). In 1986, FFIC acquired substantially all the outstanding shares of a mortgage banking corporation now known as Source One Mortgage Services Corporation ("Source One").

2. In January 1991, FAC sold FFIC to a subsidiary of Allianz Aktiengesellschaft Holding ("Allianz") for approximately $2.9 billion. The sale to Allianz did not include certain investment securities and its Source One stock, together worth approximately $1.6 billion. These securities were transferred to FAC from FFIC shortly before the sale.

3. After the sale of FFIC, a substantial portion of FAC's assets consisted of investment securities. In reliance on section 7 of the Act, FAC did not register as an investment company but commenced a plan of liquidation, approved by FAC's board of directors and shareholders. Between January 1991 and July 1992, FAC paid out approximately $4 billion to its shareholders and creditors. In June 1992, FAC obtained shareholder approval to change its name to FAEH.[1]

4. Thereafter, FAEH focused on its Source One mortgage business and also actively sought to acquire an operating company. FAEH also entered the money management business through Hanover Advisors, Inc. ("Hanover"), an indirect wholly-owned subsidiary. To date, Hanover has established several advisory relationships, the largest with affiliates or affiliates of affiliates (these agreements together with such future agreements are referred to as the "Affiliated Advisory Agreements.")

5. FAEH's management has determined to restructure the company, in part by transferring a significant portion of FAEH's investment securities to applicant and thereafter distributing most of applicant's common stock to FAEH's shareholders as a taxable dividend (the "Distribution"). On September 24, 1993, FAEH and its wholly-owned subsidiary Fund American Enterprises, Inc. ("FAE"), Source One's direct parents, transferred to applicant certain employees, investment securities (the "Investment Securities"), and fixed assets, collectively having an aggregate book value of approximately $231 million, in exchange for a $50 million demand note, approximately 6.4 million shares of its common stock, a class of nonvoting preferred stock and cash.

6. Upon receipt of the requested order of exemption and pursuant to an effective registration statement under the Securities Exchange Act of 1934, FAEH will effect the Distribution and will sell applicant's preferred stock to two institutional investors. FAEH will retain approximately 1.6 million shares of applicant's common stock, most of which will be used to satisfy obligations pursuant to warrants and options to purchase applicant's stock issued by FAEH. John J. Byrne ("Byrne"), the Chairman and CEO of FAEH, will own beneficially 5% or more of applicant's stock. FAEH will issue to Byrne warrants for the purchase of an additional 640,000 shares of applicant's stock, which, if exercised, would give Byrne beneficial ownership of 15.7% of applicant's outstanding common stock.

7. To effect the capitalization, FAEH, FAE and applicant have entered into several agreements that will be void if the Distribution does not occur: (i) The Distribution Agreement, providing for the principal corporate transactions required to effect the Distribution and other matters; (ii) the Securities Purchase Agreements, under which applicant purchased the Investment Securities from FAEH and FAE for cash and stock; and (iii) the Assignment and Assumption Agreements (the "Assignment Agreements"), under which FAEH an FAE assigned to applicant rights and obligations related to certain of the Investment Securities. In addition, FAEH and applicant have entered into certain arrangements relating to the warrants granted to Byrne (the "Warrant Arrangements," and, together with the Distribution, Securities Purchase and Assignment Agreements, the "Transaction Agreements"). Certain of the Investment Securities have associated rights or options to acquire additional securities

[1] FAEH had obtained assurance from the SEC's Division of Investment Management that the Division would not recommend that the Commission take any enforcement action if FAEH proceeded to liquidate and dissolve in the manner described in its requesting letter. *The Fund American Companies, Inc.* (pub. avail. Nov. 16, 1990). Applicant believes that FAEH concluded its plan of liquidation, notwithstanding the fact that FAEH did not sell or other dispose of Source One. The issuance of the requested order does not mean the Division necessarily agrees.

(the "Rights"), which applicant may wish to exercise.

8. Applicant and Hanover have entered into a number of service and advisory agreements with FAEH and its remaining subsidiaries, which will be void if the Distribution is not effected (the "Intercompany Agreements"): (i) The Intercompany Services and Expense Sharing Agreement, pursuant to which applicant will provide certain financial and administrative services to FAEH; (ii) the Investment Management Agreement and Investment Advisory Agreement, pursuant to which Hanover will provide investment management and securities accounting services to FAEH or its subsidiaries; (iii) the Credit Agreement, pursuant to which FAEH will provide applicant with a $50 million, 30-month term loan and an 18-month, $40 million revolving credit facility ("Credit Agreement"); and (iv) the Tax Cooperation and Indemnification Agreement between FAEH and applicant, which provides for information sharing and cooperation on certain tax matters.

9. Applicant's officers and employees will participate in various benefit plans established by applicant to duplicate as closely as possible plans previously established by FAEH. They also will retain benefits previously earned under, and will continue to participate in certain FAEH employee benefit plans (the "Health Plans"). In addition, applicant has adopted Compensation Plans intended to provide its employees benefits similar to those provided by FAEH: (a) the White River 1993 Incentive Compensation Plan ("1993 Incentive Plan"); (b) the White River Voluntary Deferred Compensation Plan; and (c) the White River Deferred Benefit Plan.

10. Applicant expects to engage in certain transactions with affiliates or affiliates of affiliates that would be considered routine for operating companies. Until the date of the Distribution ("Distribution Date"), applicant will have joint arrangements with FAEH for insurance, custody of securities, banking, and professional services. Applicant also intends to enter into certain transactions with FAEH in the ordinary course of business, limited to $5,000 per transaction and $50,000 per annum. Finally, applicant wishes to allocate expenses among itself and various subsidiaries and to have the flexibility to restructure itself as required by business needs.

11. Applicant may engage in joint acquisitions with FAEH, Byrne or certain FAEH down-stream affiliates ("Joint Acquisitions"). A Joint Acquisition would occur only if it, among other things, (i) would result in the acquisition by applicant of a majority or greater ownership interest in an operating company, and (ii) were approved by a majority of applicant's directors, including a majority of the directors with no financial interest in such transaction and a majority of the directors who are not interested persons of applicant as defined in section 2(a)(19) of the Act (the "Required Majority") in accordance with the standards in section 57(f) of the Act.

Applicant's Legal Analysis

1. As of September 24, 1993, the Investment Securities represented approximately 90% of applicant's total assets, exclusive of government securities and cash items, on a consolidated basis. Applicant, therefore, meets the Act's definition of investment company. Of the 27 issues of common stock included among the Investment Securities, applicant owns 5% or more of the voting securities of 10 issuers.

2. Section 6(c) provides that the SEC may conditionally or unconditionally exempt any person, security or transaction from any provision of the Act, or of any rule or regulation thereunder, if and to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act. Section 6(e) permits the SEC to require companies exempted from the registration requirements of the Act to comply with certain specified provisions thereof as though the company were a registered investment company.

3. Applicant contends that the issuance of an order under sections 6(c) and 6(e) is necessary and appropriate in the public interest and consistent with the protection of investors and the purposes of the Act. Applicant has a bona fide intent to be engaged, as soon as reasonably possible, in a business or businesses other than investing, reinvesting, owning, holding or trading securities. The requested order will provide applicant the time needed to achieve this objective in an orderly way by disposing of Investment Securities and acquiring one or more operating companies. Applicant's Investment Securities are largely illiquid, and up to two years will be necessary and appropriate to permit applicant to make an orderly transition to non-investment company status.

4. During the term of the proposed order, applicant will comply with sections (17(a), 17(d) and 17(e) of the Act and the rules thereunder as if it were a registered investment company, modified as follows:

(i) for purposes of sections 17(a), 17(d) and 17(e), the definition of affiliated person will not include any affiliated person or affiliated person of such person (collectively, "Affiliated Persons") who is an affiliated person solely by reason of being an employee who is not also an officer or director of applicant;

(ii) the provisions of section 17(a) shall not apply to actions or transactions occurring on or after the date of the order: (a) Pursuant to the Securities Purchase Agreements; (b) pursuant to the Assignment Agreements; (c) pursuant to the Credit Agreement; (d) pursuant to the 1993 Incentive Plan; (e) pursuant to allocations of costs and expenses among the applicant's controlled group of companies, or reorganizations and transfers of assets among such companies (collectively, "Subsidiary Transactions"); (f) with an Affiliated Person (that is an Affiliated Person solely by reason of applicant's ownership of securities of such person) which are effected by applicant for the purposes of acquiring at least a majority interest in such person, provided that the transaction is approved by the Required Majority in accordance with the standards set forth in section 57(f) of the Act; (g) pursuant to the Rights; (h) pursuant to sales or other dispositions of the Investment Securities in which applicant does not intend to acquire a majority interest, including sales or other dispositions to FAEH or affiliates of the issuers of such Investment Securities, provided that the transaction is approved by the Required Majority in accordance with the standards set forth in section 57(f) of the Act; and (i) between applicant and any Affiliated Person that is an Affiliated Person solely by reason of being a limited or general partner in any limited partnership interest included in the Investment Securities (a "Partnership");

(iii) the provisions of section 17(d) shall not apply to actions and transactions occurring on or after the date of the order: (a) Pursuant to the Affiliated Advisory Agreements; (b) pursuant to the Transaction Agreements; (c) pursuant to the Intercompany Agreements; (d) pursuant to the Health Plans; (e) pursuant to the Compensation Plans; (f) pursuant to Subsidiary Transactions (to the extent that section 17(d) may be deemed to prohibit a transaction that is exempted by rule from section 17(a)); (g) with an Affiliated Person (that is an Affiliated Person solely by reason of applicant's ownership of securities of such person) which are effected by applicant for the

purposes of acquiring at least a majority interest in such person (to the extent that section 17(d) may be deemed to prohibit a transaction that is exempted by rule from section 17(a)), provided that the transaction is approved by the Required Majority in accordance with the standards set forth in section 57(f) of the Act; (h) pursuant to the Rights; (i) pursuant to sales or other dispositions of the Investment Securities in which applicant does not intend to acquire a majority interest, including sales or other dispositions to FAEH or affiliates of the issuers of such Investment Securities, provided that the transaction is approved by the Required Majority in accordance with the standards set forth in section 57(f) of the Act; (j) pursuant to a Joint Acquisition, provided that the transaction is approved by the Required Majority, in accordance with section 57(f) of the Act; (k) pursuant to the insurance, banking and custody arrangements; (l) with respect to the provision of professional services from which both FAEH and applicant benefited; (m) arising in the ordinary course of applicant's business, provided that the transactions are on terms and under conditions that are substantially the same or at least as favorable to applicant as those prevailing at the time for comparable transactions with or involving persons who are not Affiliated Persons of applicant within the meaning of section 2(a)(3) of the Act, and provided further that an individual transaction does not involve more than $5,000 and total annual transactions do not involve more than $50,000; an (n) between applicant and any Affiliated Person that is an Affiliated Person solely by reason of being a limited or general partner in the Partnerships; and

(iv) the provisions of section 17(e) shall not apply to the occasional receipt of food, drink, entertainment or related transportation or gifts that are not excessively lavish from an unaffiliated third party pursuant to the established policies of applicant.

5. Because applicant and its affiliates in their transactions and relations with applicant would be subject to sections 9, 17(a) (as modified), 17(d) (as modified), 17(e) (as modified), 17(f), and 36 through 53 of the Act, as if the applicant were a registered investment company, the interests of investors would be adequately protected during the effective period of the exemptive order.

Applicant's Conditions

Applicant agrees to comply with the following conditions until the earlier of the date on which it no longer meets the definition of investment company or two years from the date of the order:

1. Applicant will not acquire any additional "investment securities" within the meaning of section 3(a)(3) of the Act other than (a) shares of money market mutual funds, or (b) debt securities that are rated investment grade or higher by a nationally recognized statistical rating organization, or, if unrated, deemed to be of comparable quality under guidelines approved by applicant's board of directors, provided that applicant may make equity or debt investments in issuers that are not investment companies, as defined in section 3(a) of the Act (or if such issuer qualifies for a specific exclusion under section 3(c) other than under section 3(c)(1)), in the following circumstances: (i) In connection with the possible acquisition of at least a majority interest in an operating business, as evidenced by a resolution approved by applicant's board of directors, or (ii) in connection with the Rights.

2. Prior to effecting each transaction requiring the approval of a Required Majority of applicant's board of directors: (a) Applicant will (i) make all reasonable and diligent efforts to ascertain the identity of all Affiliated Persons who may have an interest in the transaction; (ii) inform the Directors of the identity of all known Affiliated Persons who are known to be parties to, or who are known to have a direct or indirect financial interest in, the transaction and the known financial interests of such persons in the transaction; and (iii) have a board of directors at least 50% of the member of which are not "interested persons" of applicant as defined in section 2(a)(19) of the Act; and (b) the Required Majority of the Board will find that (i) the terms of the transaction, including the consideration to be paid and received, are reasonable and fair to applicant and do not involve overreaching of the applicant or its shareholders; (ii) the participation of applicant in the proposed transaction will not be on a basis less advantageous to the applicant than that of other participants; and (iii) the proposed transaction is consistent with the interests of applicant's shareholders and with the stated objectives of applicant as recited in its registration statement on Form 10, its reports on Forms 10–Q and 10–K and its reports to shareholders; and (c) the board of directors will record in its minutes and preserve in its records for such periods as if such records were required to be maintained pursuant to section 31(a), a description of such transaction, its findings, the information or materials upon which its findings were based, and the basis therefor.

3. In addition to the conditions set forth in 2 above: (a) any Joint Acquisition will consist of the same class of securities, including the same registration rights (if any), and other rights related thereto, at the same unit consideration, and on the same terms and conditions, and the Joint Acquisition transaction will take place at or about the same time for each affiliated participant; (b) if one of the affiliated participants in Joint Acquisition elects to sell, exchange or otherwise dispose of an interest in a security that is acquired in the Joint Acquisition, notice must be given to the other affiliated participants at the earliest practical time and each affiliated participant must be given the opportunity to participate in such disposition at the same time for the same unit consideration and in amounts proportional to its respective holdings of such securities; (c) any decision relating to such disposition, whether to participate or not, will not be subject to the requirements set forth in 2 above; (d) no director or officer of applicant and no Affiliated Person (other than FAEH, one of FAEH's downstream affiliates or Byrne) shall participate in a Joint Acqusition unless a separate exemptive order is first obtained; and (e) no Joint Acquisition will be made of any company in which applicant or any of its affiliates has previously acquired an interest (other than the Investment Securities or a Joint Acquisition effected in more than one step as permitted by 1 above).

4. Applicant's registration statement on Form 10, its reports on Forms 10–K and 10–Q, proxy statements and its annual reports to shareholders will state that the exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that White River and other persons, in their transactions and relations with White River, are subject to sections 9, 17(a) (as modified), 17(d) (as modified), 17(e) (as modified), 17(f), and 36 through 53 of the Act, and the rules thereunder, as if White River were a registered investment company, except insofar as permitted by the order requested hereby.

5. Applicant will not "hold itself out" as engaged primarily in the business of investing, reinvesting or trading in securities.

6. Applicant will submit an initial report to the Commission's Division of Investment Management within fifteen days of the close of the quarter ended March 31, 1994, and every six months thereafter, setting forth applicant's assets and analyzing applicant's current

status under section 3(a) of the Act. Applicant will submit a final report promptly upon expiration of the Exemption Period (or at such earlier time as the applicant is no longer an investment company).

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28080 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended November 5, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C. 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49234
Date filed: November 1, 1993
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 1007 dated October 29, 1993; North & Central Pacific Expedited Resos; r-1-0020 r-2—066y r-3—75rr r-4—075rr
Proposed Effective Date: December 1, 1993

Docket Number: 49236
Date filed: November 3, 1993
Parties: Members of the International Air Transport Association
Subject: Telex COMP Mail Vote 652; Amend Mileage Manual
Proposed Effective Date: December 1, 1993

Docket Number: 49237
Date filed: November 3, 1993
Parties: Members of the International Air Transport Association
Subject: TC31 Reso/P 1008 dated November 2, 1993; North & Central Pacific Expedited Reso 015b
Proposed Effective Date: Expedited March 1, 1994

Docket Number: 49238
Date filed: November 3, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1527 dated September 24, 1993; South Atlantic-Europe/Middle East r-1 to r-20
Proposed Effective Date: April 1, 1994

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93-28064 Filed 11-15-93; 8:45 am]

BILLING CODE 4910-62-P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 5, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under Subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49235.
Date filed: November 1, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: November 29, 1993.
Description: Application of Kuwait Airways Corporation, pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for renewal of its foreign air carrier permit authorizing Kuwait Airways to engage in scheduled foreign air transportation of persons, property and mail between a point or points in Kuwait; the intermediate points London, England, and Frankfurt, Germany, and the terminal point New York, New York.

Docket Number: 49242.
Date filed: November 5, 1993.
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 3, 1993.
Description: Application of Northwest Airlines, Inc., pursuant to Section 401 of the Act and Subpart Q of the Regulations, requests a certificate of public convenience and necessity to provide scheduled foreign air transportation service between Spokane, Washington, and Vancouver, British Columbia, Canada.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93-28065 Filed 11-15-93; 8:45 am]

BILLING CODE 4910-62-P

Office of the Secretary

[Order 93-11-21]

Fitness Determination of Caribbean International Airlines, Inc.; d/b/a Caribair

AGENCY: Department of Transportation.

ACTION: Notice of Commuter Air Carrier Fitness Determination—Order to Show Cause.

SUMMARY: The Department of Transportation is proposing to find that Caribbean International Airlines, Inc. d/b/a CaribAir is fit, willing, and able to provide commuter air service under section 419(e) of the Federal Aviation Act.

RESPONSES: All interested persons wishing to respond to the Department of Transportation's tentative fitness determination should file their responses with Barbara P. Dunnigan, Air Carrier Fitness Division, P-56, room 6401, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, and serve them on all persons listed in Attachment A to the order. Responses shall be filed no later than November 23, 1993.

FOR FURTHER INFORMATION CONTACT: Mrs. Barbara P. Dunnigan, Air Carrier Fitness Division, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-2342.

Dated: November 8, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93-28025 Filed 11-15-93; 8:45 am]

BILLING CODE 4910-62-P

[Order 93-11-16 and Docket 48742]

Application of Eastwind Capital Partners, Inc. for Issuance of New Certificate Authority

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order: (1) Finding Eastwind Capital Partners, Inc., fit, willing, and able, and (2) awarding it a certificate of public convenience and necessity to engage in interstate and overseas scheduled air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than November 23, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 48742 and addressed to the Documentary Services Division (C-55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT:

Ms. Janet A. Davis, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: November 5, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–28024 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–62–M

[Order 93–11–17 and Docket 49129]

Application of Sky King, Inc. for Certificate Authority Under Subpart Q

AGENCY: Department of Transportation.

ACTION: Notice of Order to Show Cause.

SUMMARY: The Department of Transportation is directing all interested persons to show cause why it should not issue an order finding Sky King, Inc., fit, willing, and able and award it a certificate of public convenience and necessity to engage in interstate and overseas charter air transportation of persons, property, and mail.

DATES: Persons wishing to file objections should do so no later than November 23, 1993.

ADDRESSES: Objections and answers to objections should be filed in Docket 49129 and addressed to the Documentary Services Division (C–55, room 4107), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590 and should be served upon the parties listed in Attachment A to the order.

FOR FURTHER INFORMATION CONTACT: Ms. Carol A. Szekely, Air Carrier Fitness Division (P–56, room 6401), U.S. Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366–9721.

Dated: November 8, 1993.

Patrick V. Murphy,

Acting Assistant Secretary for Policy and International Affairs.

[FR Doc. 93–28023 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–62–P

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review, Kent County International Airport, Grand Rapids, MI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for Kent County International Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as "the Act") and 14 CFR part 150 by Kent County Department of Aviation. This program was submitted subsequent to a determination by the FAA that associated noise exposure maps submitted under 14 CFR part 150 for Kent County International Airport were in compliance with applicable requirements effective March 4, 1993. The proposed noise compatibility program will be approved or disapproved on or before April 27, 1994.

EFFECTIVE DATE: The effective date of the start of the FAA's review of the noise compatibility program is October 29, 1993. The public comment periods ends November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ernest P. Gubry, Community Planner, Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for Kent County International Airport which will be approved or disapproved on or before April 27, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by the FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Kent County International Airport, effective on October 29, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before April 27, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Great Lakes Regional Office, 2300 East Devon Avenue, Des Plaines, IL 60018

Federal Aviation Administration, Detroit Airports District Office, Willow Run Airport, East, 8820 Beck Road, Belleville, Michigan 48111

Kent County Department of Aviation, Kent County International Airport, 5500 44th Street, S.E., Grand Rapids, MI 49512

Questions may be directed to the individual named above under the heading, **"FOR FURTHER INFORMATION CONTACT."**

Issued in Belleville, Michigan, on October 29, 1993.

Dean C. Nitz,

Manager, Detroit Airports District Office, FAA Great Lakes Region.

[FR Doc. 93–28127 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–49]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this

notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 6, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of Part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 8, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 26103
Petitioner: Northwest Seaplanes, Inc.
Sections of the FAR Affected: 14 CFR 135.203(a)(1)
Description of Relief Sought/ Disposition: To extend Exemption 5166 to continue to permit the petitioner to conduct flight operations when necessary at an altitude below 500 feet over water outside of controlled airspace.

Docket No.: 26533
Petitioner: Jump Shack
Sections of the FAR Affected: 14 CFR 105.43(a)
Description of Relief Sought/ Disposition: To permit the petitioner and its respective employees, representatives, and other volunteer experimental parachute test jumpers under its direction and control to make tandem parachute jumps for the purpose of meeting TSO–C23c certification requirements for live tests of its dual harness, dual parachute pack.

Docket No.: 26690
Petitioner: AMR Eagle, Inc.
Sections of the FAR Affected: 14 CFR 121.411(a)(2), (3) and (b)(2); 121.413(b), (c) and (d); Part 121, Appendix H; and 135.303; 135.337(a)(2), (a)(3) and (b)(2); 135.339(a)(2), (b), and (c).
Description of Relief Sought: To amend condition/limitation number 3 of Exemption No. 5486 to allow an indefinite use of the Supervisor Transfer Program for airmen employed by any affiliate carrier at the time instructors and check airmen begin to be used in conjunction with Exemption No. 5486.

Docket No.: 27391
Petitioner: Mr. Richard B. Miller
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to fly as a pilot in Part 121 air carrier operations after his 60th birthday.

Docket No.: 27489
Petitioner: Mr. Stanley F. Blaschke
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought/ Disposition: To permit the petitioner to serve as a pilot in Part 1231 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 26048
Petitioner: National Test Pilot School
Sections of the FAR Affected: 14 CFR 91.319(a)(1) and (2)
Description of Relief Sought/ Disposition: To permit the petitioner to use aircraft that have an experimental certificate to train flight test students through the demonstration and practice of flight test techniques and teach students flight test data acquisition methods for compensation.

Grant, October 28, 1993, Exemption No. 5778

Docket No.: 26898
Petitioner: Air Transport Association of America
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought/ Disposition: To amend Exemption No. 5593 to permit member air carriers to operate, after May 26, 1994, under an FAA-approved Airplane Retirement Schedule until December 31, 1998, certain airplanes that do not have one or more of the digital flight data recorders required. The category of "certain" airplanes covered by the exemption are Stage 2 airplanes that air carriers plan to retire rather than retrofit with noise abatement equipment.

Grant, November 3, 1993, Exemption No. 5593B

Docket No.: 27225
Petitioner: Empire Airlines
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought: To allow the petitioner to continue operating aircraft not fitted by May 26, 1994, with a digital flight data recorder capable of simultaneously recording at least 11 flight parameters.

Denial, November 2, 1993, Exemption No. 5781

Docket No.: 27236
Petitioner: United Parcel Service Co.
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought: To allow the petitioner to continue operating, after May 26, 1994, 17 model DC8 aircraft not fitted with a digital flight recorder capable of simultaneously recording at least 11 flight parameters.

Denial, November 2, 1993, Exemption No. 5780

Docket No.: 27290
Petitioner: Mountain Air Cargo, Inc.
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought/ Disposition: To allow the petitioner to continue operating aircraft not fitted by May 26, 1994, with a digital flight data recorder capable of simultaneously recording at least 11 flight parameters.

Denial, November 2, 1993, Exemption No. 5782

Docket No.: 27402
Petitioner: Atlantic Coast Airlines d/b/a/ United Express
Sections of the FAR Affected: 14 CFR 61.57(e), 121.433(c)(1)(iii), 121.441(a)(1), 121.441(b)(1) and Appendix F of 121.
Description of Relief Sought: To allow the petitioner to conduct a Single Visit Training Program for flight crew members, and eventually transition into the Advanced Qualifications Program.

Grant, November 4, 1993, Exemption No. 5783

Docket No.: 27417
Petitioner: Sierra Pacific Airlines
Sections of the FAR Affected: 14 CFR 121.343(c)
Description of Relief Sought: To allow the petitioner to continue operating, after May 26, 1994. 17 model DC8 aircraft not fitted with a digital flight recorder capable of simultaneously recording at least 11 flight parameters.

Denial, November 3, 1993, Exemption No. 5784

[FR Doc. 93–28125 Filed 11–15–93; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Training and Qualifications

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss training and qualifications issues .

DATES: The meeting will be held on December 1, 1993 at 9 a.m.

ADDRESSES: The meeting will be held at the Department of Transportation, Nassif Building, in room 8440, 400 Seventh Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App. II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee (ARAC) to be held on December 1, 1993, at the Department of Transportation, Nassif Building, room 8440, 400 Seventh Street, SW., Washington, DC. The agenda for this meeting will include progress reports from the Air Carrier Working Group and the Cabin Safety Working Group. Each working group Chair will report on the progress of the working group. In addition, the Air Carrier Working Group will present its recommendation to the ARAC regarding Part 135. There also will be a briefing on the ARAC procedures.

Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading "FOR FURTHER INFORMATION CONTACT."

Because of increased security in Federal buildings, members of the public who wish to attend are advised to arrive in sufficient time to be cleared through building security.

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on November 10, 1993.

Thomas Teale,

Executive Director for Training and Qualifications, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–28124 Filed 11–15–93; 8:45 am]
BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: City of Alexandria, VA; Prince George's County, MD; Washington, DC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that a supplement to a Draft Environmental Impact Statement/Section 4(f) Evaluation will be prepared for a proposed highway project in Alexandria, Virginia, Prince George's County, Maryland, and Washington, DC.

FOR FURTHER INFORMATION CONTACT: Robert E. Gatz, Director, Office of Planning and Program Development, Federal Highway Administration, 10 S. Howard Street, Baltimore, Maryland 21201, Telephone: (410) 962–3742 or Jorg Huckabee, Project Coordinator, 211 North Union Street, Suite 111, Alexandria, Virginia 22314, Telephone: (703) 519–9800.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Maryland and Virginia Departments of Transportation and the District of Columbia Department of Public Works will prepare a supplement to the Draft Environmental Impact Statement/ Section 4(f) Evaluation for a proposal to improve the Woodrow Wilson Bridge and the I–95 approach roadway network between Telegraph Road (Rte. 241) in Virginia and Indian Head Highway (Rte. 210) in Maryland; a distance of approximately five miles. Improvements to the bridge and roadways are considered necessary to improve the structural integrity of the existing bridge and to provide for current and projected traffic demands. The original Draft Environmental Impact Statement/ Section 4(f) Evaluation for the improvements (FHWA–MD–VA–DC–EIS–91–01–D) was approved on August 26, 1991.

Alternatives under consideration include: (1) Taking no action (no build), (2) mass transit, (3) Transportation Systems Management (improving present systems) and (4) build alternatives based on upgrading the existing facility and construction on a new alignment.

A multi-jurisdictional Coordination Committee consisting of Federal, state, and local representatives has been formed to provide guidance and input towards identifying a solution which enhances mobility while assuring that community and environmental concerns are addressed. The previously established scoping process will continue and an expanded public outreach program will be implemented. Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, state, and local agencies, and to private citizens and groups who have previously expressed or are known to have an interest in this proposal.

Public notice will be given of the time and place of all public meetings and hearings. The Draft Environmental Impact Statement/Section 4(f) Evaluation will be available for public and agency review and comment prior to the public hearing.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. A Woodrow Wilson Bridge Study and Design Center has been established at 211 North Union Street, Suite 111, Alexandria, Virginia, and will be open to the general public: Monday—Thursday 10 a.m. to 7 p.m. and Friday 10 a.m. to 5 p.m.

Comments or questions concerning the proposed action or the Environmental Impact Statement/ Section 4(f) Evaluation should be sent to the Study and Design Center or the FHWA at the addresses provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The provisions of Executive Order 12372 regarding intergovernmental consultation on Federal

Programs and activities apply to this program.)

Robert E. Gatz,

Director, Office of Planning and Program Development, Region 3, Baltimore, Maryland.

[FR Doc. 93–28153 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Transit Administration

[FHWA Docket No. 93–33]

Study of Axle Weights of Public Transit Buses; Request for Comments

AGENCIES: Federal Highway Administration (FHWA) and Federal Transit Administration (FTA), DOT.

ACTION: Notice; request for comments.

SUMMARY: This is a joint request for information to assist the Secretary of Transportation (Secretary) in responding to a requirement in section 1023(h) of the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) to conduct a study of the maximum axle weight limits of public transit vehicles on the Interstate Highway System. The study results must be submitted to Congress by April 6, 1994. All the responses and comments will be fully considered before the study is submitted.

DATES: Responses to this request must be received on or before February 14, 1994.

ADDRESSES: Submit written, signed comments to FHWA Docket No. 93–33 Federal Highway Administration, Room 4232, HCC–10, Office of the Chief Counsel, 400 Seventh Street, SW., Washington, DC 20590. All comments received will be available for examination at the above address between 8:30 a.m. and 4:15 p.m. e.t., Monday through Friday, except legal Federal holidays. Those desiring notification of receipt of comments must include a self-addressed, stamped envelope or postcard.

FOR FURTHER INFORMATION CONTACT: Mr. Thomas Klimek, Office of Motor Carrier Information Management, at (202) 366–2212, Mr. Charles Medalen, Office of Chief Counsel, at (202) 366–1354, Federal Highway Administration; or Mr. Vincent R. DeMarco, Office of Engineering Evaluation, at (202) 366–0224, Mr. Richard Wong, Office of Chief Counsel, at (202) 366–1936, Federal Transit Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 341 of the DOT and Related Agencies Appropriations Act, Public Law 102–388, 106 Stat. 1520, at 1552, amended section 1023 of the ISTEA, Public Law 102–240, 105 Stat. 1914, by adding a new paragraph (h), which, in paragraph (h)(2), required the Secretary to conduct a study of the maximum axle weight limits of "public transit vehicles" on the Interstate System. In paragraph (h)(1), the legislation also exempted "any vehicle which is regularly and exclusively used as an intrastate public agency transit passenger bus" from the single- and tandem-axle weight limits imposed on the Interstate System by the second sentence in 23 U.S.C. 127 for 2 years from the effective date of the legislation, October 6, 1992. By using this language Congress evidently intended the subject of the study to be broader than the exemption. We do not believe, however, that the study should consider all vehicles that may transport the public. For example, it is unlikely that school buses would ever exceed Interstate axle weight limits. Furthermore, based on the language in paragraph (h)(2), we believe that "public transit vehicles" mean only those operated for or on behalf of a public agency, and not just any vehicle used to transport the public. Consequently, comments are sought on public transit vehicles which are operated by or on behalf of a political jurisdiction or regional transportation agency to transport the general public on specified routes which include the streets and highways within such jurisdiction and neighboring jurisdictions but excluding school buses. Such vehicles will be referred to as public transit buses in this notice.

The statute requires the Secretary to consider current public transit bus design standards, the implications for such standards of the Americans with Disabilities Act of 1990 (ADA) and Clean Air Act (CAA) requirements, and the potential impact of revised design standards on public transit bus ridership capacity, operating and replacement costs, air quality concerns, and highway wear and tear.

Axle weight limits which all States must adopt and enforce on the Interstate System are set forth in 23 U.S.C. 127. These are 20,000 pounds on a single axle and 34,000 pounds on a tandem axle. The latter is defined in 23 CFR 658.5(j) as two or more consecutive axles more than 40 inches apart but not more than 96 inches apart. Higher axle weight limits which were in effect in a State on July 1, 1956, are "grandfathered." Failure of a State to adopt and enforce these weight limits on the Interstate System may result in that State being penalized by the loss of Federal highway funds otherwise available under 23 U.S.C. 104.

The issue of overweight rear axles on public transit buses has surfaced periodically over the years. In its review of Washington State's certification of size and weight enforcement for FY 1990, the FHWA noted that the State issued permits to allow overweight rear axles on articulated public transit buses operated on the Interstate System in Seattle. Resolution of the matter was deferred pending further study of the problem by the FHWA. These efforts were superseded by the legislation requiring this study.

The most recent incident relating to the rear axle weight of public transit buses occurred in the fall of 1991 when the California Highway Patrol (CHP) began enforcing the State's single-axle weight limit against public transit buses in Orange County, California. A letter dated January 24, 1992, from the Orange County Transit Authority (OCTA) indicated that the CHP required passengers to be off-loaded from some buses until legal axle loads were achieved. In a letter dated February 11, 1992, the CHP asked that the FHWA investigate the matter of OCTA bus acquisitions and advised that it would continue to enforce the State's single-axle weight limit. One of the justifications offered to the OCTA by the CHP is that failure of the State to enforce axle weight limits on the Interstate System could result in the State being penalized by the loss of Federal highway funds under 23 U.S.C. 141(c)(2).

Based on information from the FTA's Altoona Bus Testing and Research Center and a 1983 Battelle Report, "Test Bed Transit Bus Fuel Economy Tests" [UMTA–IT–06–0219–11–2], the FTA compiled the following chart of buses currently available from manufacturers. "Curb weight" means a fully fueled bus without passengers; "seated weight" is the curb weight plus full seated capacity at 150 pounds per passenger; and "standing weight" is the seated weight plus full standee capacity at 150 pounds per 1.5 square feet of free floor space. "ADB" means Advanced Design Buses which refers to the current standard design adopted in the late 1970's, "CNG" means compressed natural gas and "LNG" means liquified natural gas.

AXLE WEIGHTS—STANDARD SIZE HEAVY DUTY PUBLIC TRANSIT BUSES

Bus manufacturer	Front axle weight	Rear axle weight	Pass. seated/standing	Rear axle over weight
Flexible 870, ADB, 40':				
Curb Weight	7,940	18,240	0/0	0
Seated Weight	10,970	21,970	48/0	1,970
Standing Weight	12,820	24,050	48/24	4,050
Flexible 870, CNG, ADB, 40':				
Curb Weight	12,375	19,725	0/0	0
Seated Weight	14,875	23,975	45/0	3,975
Standing Weight	16,375	26,975	45/30	6,975
Gillig Phantom, ADB, 40':				
Curb Weight	10,200	18,450	0/0	0
Seated Weight	12,950	22,700	46/0	2,700
Standing Weight	14,500	25,600	46/30	5,600
Stewart & Stevenson T–40 Apollo, ADB, 40':				
Curb Weight	9,250	18,450	0/0	0
Seated Weight	12,010	22,590	46/0	2,590
Standing Weight	12,850	26,250	46/30	6,250
Neoplan AN440A, ADB, 40':				
Curb Weight	8,990	18,840	0/0	0
Seated Weight	11,650	22,480	42/0	2,480
Standing Weight	12,900	24,780	42/21	4,780
Ikarus 416, LNG, ADB, 40':				
Curb Weight	11,500	20,215	0/0	215
Seated Weight	14,100	24,325	44/0	4,325
Standing Weight	15,130	27,400	44/29	7,400
Ikarus 416, ADB, 40':				
Curb Weight	10,100	18,860	0/0	0
Seated Weight	12,740	22,820	44/0	2,820
Standing Weight	14,600	25,760	44/32	5,760
BIA Orion V, ADB, 40':				
Curb Weight	8,573	17,307	0/0	0
Seated Weight	11,424	21,356	47/0	1,356
Standing Weight	14,499	25,040	47/43	5,040
BIA Orion V 502, ADB, 35':				
Curb Weight	8,800	17,900	0/0	0
Seated Weight	10,300	21,450	35/0	1,450
Standing Weight	12,450	23,750	35/28	3,750
New Flyer D–40, 40':				
Curb Weight	9,900	18,600	0/0	0
Seated Weight	12,450	22,900	45/0	2,900
Standing Weight	15,050	26,050	45/38	6,050
New Flyer D–40LFS, 40':				
Curb Weight	7,700	17,850	0/0	0
Seated Weight	8,800	21,050	29/0	1,050
Standing Weight	10,800	22,800	29/23	2,800
New Flyer D–35, 35':				
Curb Weight	9,100	18,150	0/0	0
Seated Weight	11,500	21,750	40/0	1,750
Standing Weight	14,000	23,800	40/30	3,800
TMC T80206 RTS, ADB, 40' Methanol:				
Curb Weight	9,750	19,400	0/0	0
Seated Weight	12,650	23,050	45/0	3,050
Standing Weight	15,050	26,300	45/35	6,300
TMC T80206 RTS, ADB, 40':				
Curb Weight	10,000	17,600	0/0	0
Seated Weight	12,700	21,500	45/0	1,500
Standing Weight	14,250	25,200	45/34	5,200

Articulated Buses

Bus manufacturer	Front axle weight	Mid axle weight	Rear axle weight	Pass. seated/standing	Rear axle overweight
Breda 350, 61':					
Curb Weight	13,200	15,545	20,450	0/0	450
Seated Weight	14,000	21,500	23,145	64/0	3,145
Standing Weight	14,800	26,360	26,360	64/59	6,360
Ikarus 436, 60':					
Curb Weight	12,000	10,200	20,400	0/0	400
Seated Weight	13,500	15,000	24,000	60/0	4,000

Articulated Buses

Bus manufacturer	Front axle weight	Mid axle weight	Rear axle weight	Pass. seated/standing	Rear axle overweight
Standing Weight	15,050	20,060	26,540	50/57	6,540

*From Battelle Report UMTA-IT-06-0219-11-2. All other data obtained from Altoona Bus Testing Center.

Comments are requested on the following matters and any others relating to the study:

1. Are there vehicles other than those covered by the definition which should be included in the study? Please advise which ones, if any, and why they should be included.

2. Is the chart included in this notice reasonably accurate? If not, what specific changes should be made and why?

3. In what jurisdictions (such as cities, counties, or transportation districts) in each State are public transit buses operated on the Interstate System?

4. Do public transit buses in any of these jurisdictions operate under overweight permits for single axles, middle axles on articulated three-axle buses, and rear axles? If so, how much overweight is allowed on each? How long a period of time do such permits cover, and what do they cost?

5. How many new public transit buses are purchased for use in the United States each year? Where does the money come from to purchase them?

6. How many miles do public transit buses with overweight single, middle, and/or rear axles operate on the Interstate System in each jurisdiction or State each year?

7. How much additional weight, if any, will single front and rear axles on public transit buses each have to carry in order to comply with the ADA and CAA? Please specify, in general, what additional systems or equipment will be needed to comply with these Acts. What will be the impact of these requirements on operating and replacement costs of transit buses, air quality, and highway wear and tear?

8. What effect would designing public transit buses to meet the current 20,000-pound single-axle weight limit have on transit riding capacity, operating and replacement costs, air quality, and highway wear and tear?

9. What are the problems associated with the use of tandem axles on public transit buses (e.g., maintenance, passenger capacity, cost, maneuverability, etc.)? If tandem middle and rear axles were required, should the use of existing public transit buses continue to be allowed for some period of time? If so, how long?

10. What is the average useful life of public transit buses? Is there a market for used public transit buses? What are the three most important factors, according to rank, affecting the selling price of used public transit buses?

11. Would it be feasible to design two types of public transit buses, one to meet the axle weight limit on the Interstate System and the other designed for use off that system? Please give reasons.

12. How much reduction in the weight of public transit buses could be achieved with little or no reduction in passenger safety by the use of carbon fiber (graphite) compounds, "honeycomb sandwich" panels, and other aerospace-type materials? How would the cost of such buses compare with those presently in use?

13. Should a permanent exemption from the Interstate System single-axle weight limit be authorized for public transit buses, or should the single-axle weight limit for public transit buses be raised to some higher limit? If so, what should that higher limit be? Please explain.

14. Should the FHWA adopt a policy to consider public transit buses with passengers nondivisible so that States could issue overweight permits to authorize them to use the Interstates? Why or why not?

15. What efforts have been made by public transit bus manufacturers to comply with the maximum single-axle Interstate System weight limit? Cite specific weight reduction programs and the results.

16. Without a major redesign of public transit buses, could a weight reduction program be expected to bring new buses into compliance with the single-axle weight limit on the Interstate System? Why or why not?

17. What would be the estimated time and cost required to design, test, and put into production a single rear-axle public transit bus that would meet the Interstate single-axle weight limit as well as all other applicable Federal, State, and local requirements? What would be the estimated production cost of such a public transit bus?

(Sec. 1023, Intermodal Surface Transportation Efficiency Act of 1991, Pub. L. 102-240, 105 Stat. 1914, as amended by sec. 341, Pub. L. 103-388, 108 Stat. 1520)

Issued on: November 8, 1993.

Rodney E. Slater,
Federal Highway Administrator.
Gordon J. Linton,
Federal Transit Administrator.

[FR Doc. 93-28143 Filed 11-15-93; 8:45 am]
BILLING CODE 4910-22-P

National Motor Carrier Advisory Committee Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting of the National Motor Carrier Advisory Committee. The focus of the meeting is on: (1) Regulatory Update - Drug and Alcohol Testing, (2) Overview on the Integration of the Numerous Programs in the Office of Motor Carriers, (3) Environmental Protection Agency and DOT Study on Air Quality Conformity, and (4) Subcommittee reports on: the North American Free Trade Agreement, Driver Training, Zero Base Regulatory Review, and the Sharing the Road Project.

DATES: The meeting will be from 8 a.m. to 5 p.m. on December 1, 1993.

ADDRESSES: Federal Highway Administration, 400 Seventh Street, SW., Room 2201, Washington, D.C. 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Douglas J. McKelvey, HIA-20, Room 3104, 400 Seventh Street, SW., Washington, D.C. 20590, (202) 366-1861. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except for legal Federal holidays.

(23 U.S.C. 315; 49 CFR 1.48)

Issued on: November 9, 1993.

Rodney E. Slater,
Federal Highway Administrator.

[FR Doc. 93-28144 Filed 11-15-93; 8:45 am]
BILLING CODE 4910-22-P

National Recreational Trails Advisory Committee; Public Meeting

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of public meeting.

SUMMARY: The FHWA announces a public meeting of the National Recreational Trails Advisory Committee, as authorized by the National Recreational Trails Fund Act (the Act) (sections 1301 through 1303 of the Intermodal Surface Transportation Efficiency Act of 1991; Public Law 102–240, 105 Stat. 1914, 2064). The focus of the meeting will be to review the utilization of National Recreational Trails funds by States, and make recommendations for changes in Federal policy to advance the purposes of the Act. Discussion topics will include alternative funding sources for State trail programs, concerns of State Trail Administrators, trail research needs, and trail information dissemination.

DATES: The meeting will be December 2, 1993, from 8:30 a.m. to 5 p.m. e.t., and December 3, 1993, from 8:30 a.m. to 2 p.m. The meeting is open to the public.

ADDRESSES: The meeting will be held at the Ritz-Carlton Hotel, Pentagon City, 1250 South Hayes Street, Arlington, Virginia 22202.

FOR FURTHER INFORMATION CONTACT: Christopher B. Douwes, Federal Highway Administration, Intermodal Division, HEP–50, (202) 366–5013; or John K. Kraybill, Office of the Chief Counsel, HCC–31, (202) 366–1367; 400 Seventh St., SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

(Sections 1301 through 1303, Pub. L. 102–240, 105 Stat. 1914, 2064; 23 U.S.C. 315; 49 CFR 1.48).

Issued on: November 5, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–28063 Filed 11–15–93; 8:45 am]

BILLING CODE 4910-22-P

Federal Transit Administration

Environmental Impact Statement on the Proposed Newark-Elizabeth Rail Link Project Between Elizabeth, Union County, New Jersey and Newark, Essex County, NJ

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA) and the New Jersey Transit Corporation (NJ TRANSIT) intend to prepare an Environmental Impact Statement (EIS) in accordance with the National Environmental Policy Act of 1969 (NEPA) on a proposal by the New Jersey Transit Corporation for the extension of the Newark City Subway between the central business district of the City of Newark and the central business district of the City of Elizabeth ("midtown Elizabeth").

The proposed project, known as the Newark-Elizabeth Rail Link (NERL), will extend from the Newark City Subway at Orange Street, connecting the Broad Street Station on the Morris & Essex Division of NJ Transit's commuter rail system, Newark Penn Station on the Northeast Corridor, major activity centers within downtown Newark, Newark International Airport, the Division Street area of Elizabeth and Midtown Elizabeth Station on the Northeast Corridor.

The proposed project also includes construction of a light rail transit vehicle base facility. In addition to serving the NERL vehicle fleet, the vehicle base facility could potentially service vehicles for the Newark City Subway (NCS) and other possible future NJ Transit light rail lines, and replace the present City Subway maintenance and storage facility located in Newark Penn Station.

A separate study is currently being conducted by NJ Transit to determine the need for rehabilitation and/or replacement of vehicles, maintenance and storage facilities for the NCS. At the conclusion of that study, should it be determined that an environmental assessment (EA) or environmental impact statement (EIS) is needed for the NCS improvements, an EA or EIS will be initiated at that time. If it is also determined that the NERL Light Rail Vehicle (LRV) Base Facility should be used to service the NCS fleet, the NERL LRV Base Facility will also be included in the NCS EA/EIS as a separate project.

In addition to the NERL project, the EIS will evaluate the No-Build Alternative and any new alternatives generated through the Scoping Process.

Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, four public scoping meetings, and one interagency scoping meeting.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts must be submitted by December 27, 1993. Written comments should be sent to Dr. Jerome M. Lutin, Senior Director, Newark-Elizabeth Rail Link Division, NJ TRANSIT, One Penn Plaza East, Newark, New Jersey, 07105–2246. Verbal comments should be made at one of the four public scoping meetings scheduled below. *Scoping Meetings:* Public scoping meetings concerning the proposed NERL Project will be held on:

Wednesday, December 1, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Elizabeth City Hall, 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201

Thursday, December 2, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Newark City Hall, 920 Broad Street, Newark, New Jersey 07102

Wednesday, December 8, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Bloomfield Municipal Building, Bloomfield Municipal Plaza, Bloomfield, New Jersey 07003

Thursday, December 9, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Belleville Township Hall, 152 Washington Avenue, Belleville, New Jersey 07109

An inter-agency scoping meeting will be held on Friday, December 10, 1993, from 9 a.m. to 11 a.m., at New Jersey Transit Headquarters, 9th Floor Board Room, One Penn Plaza East, Newark, New Jersey 07105–2246.

ADDRESSES: *Written Comments on the project scope should be sent to:* Dr. Jerome M. Lutin, Senior Director, Newark-Elizabeth Rail Link Division, NJ TRANSIT, One Penn Plaza East, Newark, New Jersey 07105–2246. *Scoping Meetings:* Public scoping meetings concerning the proposed NERL Project will be held at the following locations:

Wednesday, December 1, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Elizabeth City Hall, 50 Winfield Scott Plaza, Elizabeth, New Jersey 07201

Thursday, December 2, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Newark City Hall, 920 Broad Street, Newark, New Jersey 07102

Wednesday, December 8, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Bloomfield Municipal Building, Bloomfield Municipal Plaza, Bloomfield, New Jersey 07003

Thursday, December 9, 1993, from 2:30 p.m. to 5 p.m. and 6 p.m. to 8 p.m., Belleville Township Hall, 152 Washington Avenue, Belleville, New Jersey 07109

An inter-agency scoping meeting will be held at the following location: Friday, December 10, 1993, from 9 a.m. to 11 a.m., New Jersey Transit Headquarters, 9th Floor Board Room, One Penn Plaza East, Newark, New Jersey 07105–2246.

FOR FURTHER INFORMATION CONTACT: Ms. Letitia Thompson, Acting Regional Administrator, Federal Transit Administration, 26 Federal Plaza, Suite

2940, New York, NY 10278, (212) 264–8162.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and NJ TRANSIT invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the EIS and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the scoping materials by contacting Dr. Jarome M. Lutin, Senior Director, Newark-Elizabeth Rail Link Division, NJ TRANSIT, One Penn Plaza East, Newark, New Jersey, 07102–2246, or by calling him at (201) 491–7847, or by fax at (201) 491–7837. Scoping comments may be made verbally at any of the public scoping meetings or submitted in writing. See Scoping Meetings section above for the locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transportation objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the Draft EIS has been completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Dr. Jerome M. Lutin as previously described.

II. Description of Study Area and Project Need

The study area is a north-south corridor approximately 9 miles long and one mile wide between midtown Elizabeth and Broad Street Station in downtown Newark. The study area also extends to the north to include a candidate site for the proposed Light Rail Transit (LRT) vehicle base facility, located near the north end of the Newark City Subway on the Conrail Orange Branch on the Belleville/Bloomfield border. The proposed NERL project is intended to provide fixed rail transit service between key activity centers in Newark and Elizabeth. The project will also provide a downtown circulator function, connecting the Broad Street Station area, the Performing Arts Center (PAC), the Newark Penn Station area, existing and developing major trip generators in the Newark CBD, Newark City Hall and the federal government complex.

III. Alternatives

The alternatives proposed for evaluation include: (1) No Build, which involves no change to transportation services or facilities in the corridor beyond already committed projects, and (2) the NERL project. NERL is approximately a 9-mile-long extension of the Newark City Subway. The NERL would be a light rail transit service, operating at-grade where possible and on aerial guideway where necessary to avoid traffic conflicts at-grade. Stations would be located to serve significant trip generators. Fully constructed, there would be up to 17 new stations on the alignment, with eight to nine stations in downtown Newark, one station in midtown Elizabeth, and remaining stations serving Newark International Airport, Division Street and other intermediate points.

The proposed project also includes construction of a light rail transit vehicle base facility. In addition to serving the NERL vehicle fleet, the vehicle base facility could potentially service vehicles for the Newark City Subway and other possible future NJ Transit light rail lines, and replace the present City Subway maintenance and storage facility located in Newark Penn Station.

The proposed LRT vehicle base facility would replace the existing city subway maintenance facility in Newark Penn Station. The No-Build alternative would call for continued use of the existing facility. LRT vehicle base facility sites under consideration include the Orange Street site in the City of Newark, located between Orange Street and the Morris & Essex Branch of NJ Transit, east of Nesbitt Street, and a site located between Franklin Avenue and Bloomfield Avenue on the Belleville/Bloomfield border.

IV. Probable Effects

FTA will evaluate, in the EIS, all significant social, economic, and environmental impacts of the alternatives. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, traffic circulation, visual impacts, impacts on cultural and archaeological resources, and noise and vibration impacts. Impacts on air and water quality, groundwater, hazardous waste sites and water resources will also be covered. The impacts will be evaluated both for the construction period and for the long-term period of operation. Measures to mitigate significant adverse impacts will be considered.

V. FTA Procedures

The Environmental Impact Statement (EIS) and the Preliminary Engineering (PE) for the Newark-Elizabeth Rail Link project will be prepared simultaneously. The locally preferred alternative was selected during the Newark-Elizabeth Rail Link Options Study (1993). The EIS/PE process will assess the social, economic and environmental impacts of the proposed project while refining its design to minimize and mitigate any adverse impacts. After its publication, the Draft EIS will be available for public and agency review and comment, and a public hearing held. On the basis of the Draft EIS and the comments received, and New Jersey Transit Corporation will refine the project design and complete the preliminary engineering and the Final EIS.

Issued On: November 10, 1993.

Letitia Thompson,

Acting Regional Administrator.

[FR Doc. 93–28123 Filed 11–15–93; 8:45 am]

BILLING CODE 4910-57-M

National Highway Traffic Safety Administration

[Docket No. 93–64; Notice 2]

Determination That Nonconforming 1987 Jaguar XJ6 Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1987 Jaguar XJ6 passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1987 Jaguar XJ6 passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1987 Jaguar XJ6), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective on November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366-5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports, Inc. of Landsdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to determine whether 1987 Jaguar XJ6 passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 9, 1993 (58 FR 47525) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #47 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1987 Jaguar XJ6 not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1987 Jaguar XJ6 originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 9, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–28129 Filed 11–15–93; 8:45 am]

BILLING CODE 4910-59-M

[Docket No. 93–62; Notice 2]

Determination That Nonconforming 1972 Alfa Romeo Spider Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1972 Alfa Romeo Spider passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1972 Alfa Romeo Spider passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1972 Alfa Romeo Spider), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective on November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1972 Alfa Romeo Spider passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 7, 1993 (58 FR 47175) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #44 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1972 Alfa Romeo Spider not originally manufactured to comply with all applicable Federal motor vehicle

safety standards is substantially similar to a 1972 Alfa Romeo Spider originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 9, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–28130 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–63; Notice 2]

Determination That Nonconforming 1991 BMW 518i Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1991 BMW 518i passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1991 BMW 518i passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the 1991 BMW 525i), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective on or before November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register**.

Champagne Imports Inc. of Lansdale, Pennsylvania (Registered Importer No. R–90–009) petitioned NHTSA to determine whether 1991 BMW 518i passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 9, 1993 (58 FR 47525) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #46 is the vehicle eligibility number assigned to vehicles admissible under this notice of final determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1991 BMW 518i is substantially similar to a 1991 BMW 525i originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and that the 1991 BMW 518i is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 9, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–28131 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–59–M

[Docket No. 93–65; Notice 2]

Determination That Nonconforming 1969 Volkswagen 119 "Beetle" Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1969 Volkswagen 119 "Beetle" passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1969 Volkswagen 119 "Beetle" passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S. -certified version of the 1969 Volkswagen 119 "Beetle"), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective as of November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49

CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

Champagne Imports, Inc. of Landsdale, Pennsylvania (Registered Importer R–90–009) petitioned NHTSA to determine whether 1969 Volkswagen 119 "Beetle" passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 17, 1993 (58 FR 48704) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #49 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1969 Volkswagen 119 "Beetle" not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1969 Volkswagen 119 "Beetle" originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3) (A)(i)(I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 9, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–28133 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

[Docket No. 93–61; Notice 2]

Determination That Nonconforming 1991 Mercedes-Benz 190E Passenger Cars Are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that nonconforming 1991 Mercedes-Benz 190E passenger cars are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1991 Mercedes-Benz 190E passenger cars not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they are substantially similar to a vehicle originally manufactured for importation into and sale in the United States and certified by its manufacturer as complying with the safety standards (the U.S.-certified version of the 1991 Mercedes-Benz 190E), and they are capable of being readily modified to conform to the standards.

DATES: The determination is effective on November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards must be refused admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the Federal Register of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the Federal Register.

G&K Automotive Conversion, Inc. (G&K) of Santa Ana, California (Registered Importer R–90–007) petitioned NHTSA to determine whether 1991 Mercedes-Benz 190E (Model ID 201.124) passenger cars are eligible for importation into the United States. NHTSA published notice of the petition on September 7, 1993 (58 FR 47176) to afford an opportunity for public comment. The reader is referred to that notice for a thorough description of the petition. No comments were received in response to the notice. Based on its review of the information submitted by the petitioner, NHTSA has determined to grant the petition.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VSP #45 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that a 1991 Mercedes-Benz 190E not originally manufactured to comply with all applicable Federal motor vehicle safety standards is substantially similar to a 1991 Mercedes-Benz 190E originally manufactured for importation into and sale in the United States and certified under section 114 of the National Traffic and Motor Vehicle Safety Act, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i) (I) and (C)(ii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 9, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–28150 Filed 11–15–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Adjacent Gravesite Set-Aside Survey (1-Year)

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This documents lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Existing Collection in Use Without OMB Control Number

1. Adjacent Gravesite Set-Aside Survey (1-Year)
2. The information is needed to determine if individuals holding gravesite set-asides in national cemeteries wish to retain the set-aside and whether their eligibility for the set-aside has been affected.
3. Individuals or households
4. 7,000 hours
5. 10 minutes
6. Annually
7. 42,000 respondents

[FR Doc. 93–28040 Filed 11–15–93; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Application for Annual Clothing Allowance, VA Form 21–8678

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administrative (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Annual Clothing Allowance, VA Form 21–8678
2. The form is used to gather information required to determine that a veteran's service connected disability causes the wearing or use of a prosthetic or orthopedic application which tends to wear out or tear clothing. The information is used by VA to determine if the veteran is entitled to a clothing allowance payment.
3. Individuals or households
4. 1,120 hours
5. 10 minutes
6. On occasion
7. 6,720 respondents

[FR Doc. 93–28047 Filed 11–15–93; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Application for Automobile or Other Conveyance and Adaptive Equipment, VA Form 21–4502

AGENCY: Department of Veterans Affairs.
ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Automobile or Other Conveyance and Adaptive Equipment, VA Form 21–4502
2. The form is used to gather the necessary information to determine eligibility for financial assistance in the purchase of an automobile or other vehicle and/or the necessary adaptive equipment. The information is used by VA to determine initial and continuing eligibility for benefits.
3. Individuals or households
4. 375 hours
5. 15 minutes
6. On occasion
7. 1,500 respondents

[FR Doc. 93–28037 Filed 11–15–93; 8:45 am]
BILLING CODE 8320–01–M

Information Collection Under OMB Review: Application for Designation as Management Broker, VA Form 26–6685

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. Chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Designation as Management Broker, VA Form 26–6685
2. The information is used to determine the qualifications and acceptability of local management brokers who apply to participate in the sale and management of VA-owned properties.
3. Individuals or households
4. 63 hours
5. 15 minutes
6. On occasion
7. 250 respondents

[FR Doc. 93–28038 Filed 11–15–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Statement of Marital Relationship, VA Form 21–4170

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information; (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Marital Relationship, VA Form 21–4170
2. The form is used to gather the necessary information to determine if the veteran has established an other than ceremonial marriage. The information is used by VA to determine entitlement to spousal benefits.
3. Individuals or households
4. 3,000 hours
5. 30 minutes
6. On occasion
7. 6,000 respondents

[FR Doc. 93–28042 Filed 11–15–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Pension Claim Questionnaire for Farm Income, VA Form 21–4165

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Pension Claim Questionnaire for Farm Income, VA Form 21–4165
2. The form is used to obtain income and asset information to determine VA payment eligibility of veterans and dependents engaged in farming.
3. Individuals or households
4. 12,500 hours
5. 30 minutes
6. On occasion
7. 25,000 respondents

[FR Doc. 93–28046 Filed 11–15–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Determination of Eligibility and Available Loan Guaranty Entitlement, VA Form 26–1880

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable, (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Request for Determination of Eligibility and Available Loan Guaranty Entitlement, VA Form 26–1880.
2. The form is completed by an applicant to establish eligibility for Loan Guaranty benefits, request restoration of entitlement previously used, or request a duplicate Certificate of Eligibility due to the original being lost or stolen. The information is used by VA to determine eligibility for Loan Guaranty benefits.
3. Individuals or households.
4. 164,692 hours.
5. 15 minutes.
6. On occasion.
7. 658,768 respondents.

[FR Doc. 93–28045 Filed 11–15–93; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review: Student Beneficiary Report-REPS, VA Form 21–8938

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Student Beneficiary Report-REPS, VA Form 21–8938
2. The form is used to verify a student beneficiary's school attendance and continued eligibility for REPS (Restored Entitlement Program for Survivors) benefits payments.
3. Individuals or households
4. 1,767 hours
5. 20 minutes
6. On occasion
7. 5,300 respondents

[FR Doc. 93–28043 Filed 11–15–93; 8:45 am]

BILLING CODE 8320-01-M

Information Collection Under OMB Review: Application for Survivors' and Dependent's Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Survivors' and Dependents' Educational Assistance (Under Provisions of Chapter 35, Title 38, U.S.C.), VA Form 22–5490
2. The form is used to gather the necessary information to determine the entitlement of a veteran or serviceperson's son, daughter, spouse or surviving spouse to educational assistance under chapter 35 benefits. The information is used by VA to determine eligibility.
3. Individuals or households
4. 10,000 hours
5. 30 minutes
6. On occasion

7. 20,000 respondents

[FR Doc. 93–28039 Filed 11–15–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Statement of Witness to Accident, VA Form Letter 21–806

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) the title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Statement of Witness to Accident, VA Form Letter 21–806
2. The form letter is used to obtain information from a witness to determine if a veteran's accidental injury was the result of his/her misconduct. The information is used by VA to determine entitlement to disability benefits.
3. Individuals or households
4. 4,400 hours
5. 20 minutes
6. On occasion
7. 4,400 respondents

[FR Doc. 93–28041 Filed 11–15–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Work Study Time Record (Veterans-Student Services), VA Form 4–8690

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondents; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Patti Viers, Office of Information Resources Management (723), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3172.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer on or before December 16, 1993.

Dated: November 4, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Work Study Time Record (Veterans-Student Services), VA Form 4–8690
2. The form is used to record hours worked by work study participants under VA Work Study Program and to support payment allowance. The information is used by VA to process payment to the work study participant.
3. Individuals or households—Small businesses or organizations
4. 10,380 hours
5. 15 minutes
6. On occasion
7. 41,520 respondents

[FR Doc. 93–28044 Filed 11–15–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 219
Tuesday, November 16, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: To be published in the Federal Register on November 10, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 2:30 p.m., Friday, November 12, 1993.

CHANGES IN THE MEETING: *Deletion of the following open item from the agenda:*

1. Publication for comment of revision of Regulation E (Electronic Fund Transfers)
2. Proposed amendments to Regulation E (Electronic Fund Transfers) to cover Electronic Benefit Transfer (EBT) programs established by Federal, State, or local agencies. (Proposed earlier for public comment; Docket No. R-0796.) Q04

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204.

Dated: November 12, 1993

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28311 Filed 11-12-93; 3:21 pm]

BILLING CODE 6210-01-P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11 a.m., Monday, November 22, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28312 Filed 11-12-93; 3:21 pm]

BILLING CODE 6210-01-P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-34]

TIME AND DATE: November 22, 1993 at 4:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Inv. No. 731-TA-663 (Preliminary) (Certain Paper Clips from China)—briefing and vote.
5. Continuation of discussion of APO Matters
6. Outstanding action jackets:
   1. EC-93-014, The Economic effects of Significant U.S. Imports Restraints in Inv. No. 332-235
   2. GC-93-121, **Federal Register** notice of proposed rulemaking for section 201.6 of the Commission's rules of practice and procedures
   3. ID-93-022, Global Competitiveness of U.S. Advanced Technology Industries: Computers

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary (202) 205-2000.

Issued: November 10, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-28310 Filed 11-12-93; 3:21 pm]

BILLING CODE 7020-02-P

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following meetings during the week of November 15, 1993.

An open meeting will be held on Wednesday, November 17, 1993, at 10:00 a.m., in Room 1C30. A closed meeting will be held on Thursday, November 18, 1993, at 10:00 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the open meeting scheduled for Wednesday, November 17, 1993, at 10:00 a.m., will be:

The Commission will meet with members of the Financial Accounting Standards Board to discuss including stock compensation, financial instruments, and other projects, including consolidations and impairment of long-lived assets. For further information, please contact Robert Lavery at (202) 272-3081.

The subject matter of the closed meeting scheduled for Thursday, November 18, 1993, at 10:00 a.m., will be:

Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of injunctive actions.
Settlement of administrative proceedings of an enforcement nature.
Opinions.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Blair Thomas at (202) 272-2300.

Dated: November 10, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93-28313 Filed 11-12-93; 3:21 pm]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Pub. L. 94-409, that the Securities and Exchange Commission will hold the following open meeting during the week of November 22, 1993.

An open meeting will be held on Monday, November 22, 1993, at 10:00 a.m., in Room 1C30.

The subject matter of the open meeting scheduled for Monday, November 22, 1993, at 10:00 a.m., will be:

Consideration of whether to adopt amendments to the executive compensation disclosure rules. The amendments were proposed for comment on August 9, 1993 in Release No. 33–7009 and the comment period expired on October 15, 1993. The amendments will broaden the class of persons covered by the rules, require disclosure of year-end restricted stock holdings in all cases, require registrants to set forth material assumptions and adjustments used in any grant-date valuation of options, and change the point in time at which the market capitalization of a peer group index or market capitalization index is calculated from the end of the period for which a return is indicated to the beginning of such period. In addition, the Commission is adopting several technical amendments. For further information, please contact Gregg W. Corso, Paula Dubberly, Brian L. Henry or Thomas D. Twedt at (202) 272–3097.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2000.

Dated: November 10, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28314 Filed 11–12–93; 3:22 pm]

BILLING CODE 8010–01–M

TENNESSEE VALLEY AUTHORITY

[Meeting No. 1462]

TIME AND DATE: 10 a.m., November 17, 1993.

PLACE: TVA Knoxville Office Complex, 400 West Summit Hill Drive, Knoxville, Tennessee.

STATUS: Open.

AGENDA: Approval of minutes of meeting held on October 20, 1993.

Action Items

New Business

C—Energy

C1. Energy Efficiency Initiatives.

C2. Non-firm Power.

E—Real Property Transactions

E1. Grant of Permanent Easement to the Tennessee Department of Transportation Affecting Approximately 10.85 Acres of Land on Chickamauga Lake.

E2. Grant of Permanent Easement to the Tennessee Department of Transportation Affecting Approximately 6.23 Acres of Land on Kentucky Lake.

E3. Grant of Nonexclusive Permanent Easement to South Central Bell Telephone Company Affecting Approximately 9.61 Acres of Land on Watts Bar Lake.

E4. Sale of Noncommercial, Nonexclusive Permanent Easement to Ronald Cardwell and William Matheny Affecting Approximately 0.24 Acre of Land on Tellico Lake.

E5. Land Exchange by the United States Department of Agriculture, Forest Service, Affecting Approximately 25.3 Acres of Land on Fontana Lake.

E6. Land Exchange by the United States Department of Agriculture, Forest Service, Affecting Approximately 1,275 Acres of Land on Fontana Lake.

E7. Land Reconveyance by the United States Department of Agriculture, Forest Service, Affecting Approximately 0.26 Acre of Land on Chatuge Lake.

E8. Abandonment of a TVA Road Right-of-Way Affecting Approximately 0.8 Acre of Land on Chickamauga Lake.

E9. Abandonment of a Road Right-of-Way Affecting Approximately 3.0 Acres in Exchange for Permanent Road Right-of-Way Easement Affecting Approximately 2.75 Acres of Land on Wheeler Lake.

E10. Declaration of Surplus Land and the Authorization of Sale Affecting Approximately 201 Acres of Land on Beech Lake.

F—Unclassified

F1. Filing of Condemnation Cases.

F2. Delegation to Develop Arrangements to Sell Steam to E. I. DuPont De Nemours & Company at New Johnsonville, Tennessee.

F3. Award of a 5-Year Requirements Contract for Limestone at Paradise Fossil Plant.

F4. Supplement to Contract with Stone and Webster Engineering Corporation for Architect/Engineering Services at Sequoyah Nuclear Plant, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

F5. Award of a Contract with Engineering Solutions, Inc. for Professional Support Personnel at Browns Ferry Nuclear Plant, Subject to Satisfactory Negotiations and Final Review Prior to Execution.

Information Items

1. Merger of the Voluntary Retirement Savings and Investment Plan Into the Savings and Deferral Retirement Plan.

2. Fiscal Year 1993 Success Sharing Award.

CONTACT PERSON FOR MORE INFORMATION: Alan Carmichael, Vice President, Governmental Relations, or a member of his staff can respond to requests for information about this meeting. Call (615) 632–6000, Knoxville, Tennessee. Information is also available at TVA's Washington Office (202) 479–4412.

Dated: November 10, 1993.

William L. Osteen,

Associate General Counsel and Assistant Secretary.

[FR Doc. 93–28193 Filed 11–12–93; 9:34 am]

BILLING CODE 8120–08–M

Corrections

Federal Register
Vol. 58, No. 219
Tuesday, November 16, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 81

[MN-24-1-5912; FRL-4734-8]

Designation of Areas for Air Quality Planning Purposes; Minnesota

Correction

In rule document 93-23208 beginning on page 50275 in the issue of Monday, September 27, 1993, make the following correction:

§ 81.324 [Corrected]

1. On page 50281, in § 81.324, in the table entitled "Minnesota—CO", in the Benton County entry, in the third column, "Nonattainment" should read "Attainment".

BILLING CODE 1505-01-D

INTERNATIONAL TRADE COMMISSION

[Inv. Nos. TA-131-20, 503(a)-25, and 332-346]

President's List of Articles Which May Be Designated or Modified as Eligible Articles for Purposes of the U.S. Generalized System of Preferences

Correction

In notice document 93-26500 beginning on page 57710 in the issue of Tuesday, October 26, 1993 make the following correction:

1. On page 57711, Annex I was published incorrectly and should read as set forth below:

Annex I (HTS Subheadings) [1]

A. Petitions to add products to the list of eligible articles for the Generalized System of Preference (GSP).

0805.30.40	2918.30.20 (pt)	2937.92.80 (pt)
0806.20.10	2921.49.40 (pt)	2937.99.80 (pt)
2309.90.90 (pt)	2933.39.37 (pt)	8529.90.10
2902.11.00	2937.92.20 (pt)	9106.90.80 (pt)

B. Petitions to remove a product from the list of eligible articles for the GSP.

4007.00.00

C. Petitions to remove duty-free status from beneficiary countries for products on the list of eligible articles for the GSP [2]

7308.90.90 (pt) (Venezuela).

D. Petitions for waiver of competitive need limit for products on the list of eligible products for the GSP from the specified country.

4203.21.40 (Philippines)	8521.10.60 (Indonesia)
7113.19.21 (Israel)	8525.20.20 (Philippines)
8402.20.00 (Philippines)	8525.20.50 (Malaysia, Philippines, and both)
8407.34.2080 (Brazil)	8527.31.40 (Malaysia)
8409.91.91 (pt) (Brazil) [3]	8527.32.00 (Malaysia)
8471.20.00 (Indonesia, Malaysia, and both)	8528.10.30 (Malaysia)
8471.91.00 (Indonesia, Malaysia, and both)	8529.90.10 (Indonesia)

[3] Brazil is currently subject to the reduced competitive need limit specified in section 504(c)(a)(B) of the 1974 Act for this HTS subheading.

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES-940-03-4210-01-241A; MNES 46016]

Minnesota Chippewa Tribe; Transfer of Submarginal Lands

Correction

In notice document 93-12949 published at 58 FR 31413, Wednesday, June 2, 1993, and 58 FR 34842, Tuesday, June 29, 1993, a portion of the land description was published incorrectly. Section 6 of the land description is reprinted in its entirety for clarification:

3. Fifth Principal Meridian, Minnesota

* * * * *

T. 143 N., R. 39 W.,

* * * * *

Sec. 6, Lots 3, 4, 5, SE¼NE¼, SE¼NW¼, SE¼SW¼, SW¼SE¼;

* * * * *

BILLING CODE 1505-01-D

[1] See USTR **Federal Register** notice of October xx, 1993 (xx F.R. xxxxx) for article description.

[2] While the Trade Policy Staff Committee (TPSC) review will focus on the designated country(ies), the TSPC reserves the right to address removal of GSP status for countries other than those specified as well as GSP status for the entire article.

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[ES 35121]

Transfer of Lands, Sawyer County, Wisconsin; Correction

Correction

In notice document 93-14854 appearing on page 34275 in the issue of Thursday, June 24, 1993, in the third column, in the **SUMMARY**, in the last line, "Sec. W½NW¼ (70.77)." should read "Sec. 6., W½NW¼ (70.77)."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CO-930-4214-10; COC-55885]

Proposed Withdrawal: Opportunity for Public Meeting; Colorado

Correction

In notice document 93-26621 beginning on page 58176 in the issue of Friday, October 29, 1993, in the third column, in **DATES**, in the last line, "January 27, 1993" should read "January 27, 1994".

BILLING CODE 1505-01-D

federal register

Tuesday
November 16, 1993

Part II

Department of Health and Human Services

Office of the Secretary

45 CFR Part 96

Low-Income Home Energy Assistance Program; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of the Secretary

45 CFR Part 96

Block Grant Programs; Low-Income Home Energy Assistance Program

AGENCY: Office of the Secretary, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to make technical changes to the regulations for the block grant program, the low-income home energy assistance program (LIHEAP), so that dates and terms in the regulation will conform to those appropriate for "forward funding" of the program once it has been implemented and to amend the regulations to specify that transfers of LIHEAP funds to other HHS block grant programs will be eliminated after September 30, 1993, as required by the Augustus F. Hawkins Human Services Reauthorization Act (Act) of 1990. Additionally, this notice of proposed rulemaking proposes to establish submission dates and completion dates for applications for funding from States and territories for LIHEAP, the community services block grant and the social services block grant in order to facilitate compliance with the Cash Management Improvement Act of 1990. It also proposes to establish a completion date for applications for direct funding from Indian tribes and tribal organizations for LIHEAP and for the community services block grant program.

DATES: Comments must be submitted by January 3, 1994.

ADDRESSES: Send comments to: Janet M. Fox, Director, Division of Energy Assistance, Office of Community Services, Administration for Children and Families, 370 L'Enfant Promenade SW., Washington, DC 20447.

The comments received in response to this notice of proposed rulemaking may be inspected or reviewed at the above address, Monday through Friday, between 9 a.m. and 5 p.m., beginning one week after the publication of this notice.

FOR FURTHER INFORMATION CONTACT: Janet M. Fox, 202–401–9351, or Trudy Hairston, 202–401–5319.

SUPPLEMENTARY INFORMATION:

Background

The Augustus F. Hawkins Human Services Reauthorization Act of 1990, Public Law 101–501, was enacted on November 3, 1990.

Title VII of this public law contains amendments to the Low-Income Home Energy Assistance Act of 1981 (title XXVI of Pub. L. 97–35, as amended), including several changes affecting LIHEAP grantee program administration. An Interim Final Rule published January 16, 1992, in the **Federal Register** (57 FR 1960 *et seq.*) promulgated regulatory changes for several provisions which were effective for fiscal year (FY) 1991 and FY 1992. It also indicated that regulations concerning additional changes would be issued at a later date. This notice of proposed rulemaking contains proposed regulatory changes for provisions scheduled in the law to become effective in FY 1993 and FY 1994. These later changes concern "forward funding" and the end of authority to transfer LIBHEAP funds to other HHS block grants. This notice of proposed rulemaking also includes changes to provisions that were originally contained in a notice of proposed rulemaking issued by the Department of Health and Human Services on July 17, 1992 (57 FR 31685) concerning a due date for completion of applications for direct funding of Indian tribes and tribal organizations under LIHEAP and under the community services block grant program. In addition, it proposes to establish submission and completion dates for block grant applications from States and territories.

Forward Funding

A new section, 2602(c), was added to the LIHEAP statute by Public Law 101–501. This section provides that LIHEAP funds will be available for obligation on the basis of a new "program year" of July 1 through June 30, rather than on the normal Federal fiscal year basis of October 1 to September 30. The law provided that this change from a fiscal year to a program year basis, known as "forward funding", would take place beginning in fiscal year (FY) 1993, and that it would be implemented by appropriating funds in the FY 1993 HHS appropriations law for a nine-month transition period of October 1, 1992 to June 30, 1993, and also for the new program year of July 1, 1993 to June 30, 1994, a period of 21 months.

The FY 1993 appropriations law for HHS (Pub. L. 102–394) provided funding for the regular Federal fiscal year 1993, which began October 1, 1992 and ends September 30, 1993. It also provided advance funding for FY 1994 to operate the program for a nine-month transition period of October 1, 1993 to June 30, 1994, thus providing partial implementation of forward funding a year later than authorized. President Clinton's proposed budget for FY 1994 supports implementation of forward funding. It would complete implementation of forward funding by providing funding for the new program year of July 1, 1994 through June 30, 1995 and it is expected that future year appropriations laws will continue the policy of providing forward funding of the program for the new program year. Current regulations require that certain specific existing deadlines apply for the period when funding is on a regular Federal fiscal year basis. This notice of proposed rulemaking provides that new deadlines will become effective once funding is provided for the new program year. In some cases, specific requirements are also included for the transition period to the new program year, whether that period is October 1, 1993 to June 30, 1994, or some later time. Once forward funding is fully implemented, funds that are usually appropriated in the fall will be for activities taking place during the following July 1–June 30 program year. This will allow grantees to have six to nine months advance notice of their funding level for what is primarily a winter heating assistance program.

Application Submission and Completion Dates for States and Territories For Block Grants

Due dates for submission and completion of State and territorial applications for LIHEAP, the community services block grant and the social services block grant are being added to the block grant regulations so that grant awards can be issued as close as possible to the beginning of a grant period.

The Cash Management Improvement Act of 1990, (CMIA, Pub. L. 101–453) imposes requirements for the timely transfer of funds between a Federal agency and a State and for the exchange of interest where transfers are not made in a timely fashion. The CMIA also requires States to minimize the time between the receipt of Federal funds and their disbursement by the State for program purposes.

The establishment of application dates will allow the agency sufficient time to process the applications and issue the awards in a timely manner thus enabling the agency to meet the requirements imposed by the CMIA.

End of Transfer Authority

The LIHEAP statute allowed grantees to transfer to several other HHS block grant programs up to 10% of their allotment between fiscal years 1982 and 1984 and up to 10% of LIHEAP funds payable in a fiscal year during fiscal years 1985 through 1993. However, an amendment to section 2604(f) of the

statute contained in Public Law 101–501 provides that beginning in fiscal year 1994, LIHEAP funds payable to a grantee no longer may be transferred to the HHS block grant programs specified under section 2604(f). This notice of proposed rulemaking proposes to amend the current regulations to be consistent with this new statutory requirement.

The authority for territories to consolidate funding for several programs under one or more HHS programs is not considered a transfer and thus will not terminate in FY 1994. Likewise, LIHEAP funds earmarked for use for weatherization assistance or other energy-related home repair, even if administered by another grantee agency, is not considered a transfer, and this authority will not terminate in FY 1994.

Tribal Application Completion Date

Under the low-income energy assistance program and the community services block grant, Indian tribes and tribal organizations may request direct funding from HHS so that they may provide services directly to their members rather than being served by the State(s) in which they are located. The regulations currently establish a due date of September 1 for the receipt of applications for direct funding of tribes and tribal organizations. A notice of proposed rulemaking issued by the Department on July 17, 1992 (57 FR 31685) proposed establishing a date by which those applications must be completed, as well. That proposal is included in this notice of proposed rulemaking for both LIHEAP and the community services block grant, with amendments to reflect forward funding of LIHEAP.

Section-by-Section Analysis of Proposed Changes in the Regulations

Subpart B—General Procedures

Section 96.10 Prerequisites to Obtain Block Grant Funds

Application Submission and Completion Dates for States and Territories For Block Grants. Due dates for submission and completion of State and territorial applications for LIHEAP, the community services block grant and the social services block grant are being added to the block grant regulations so that grant awards can be issued as close as possible to the beginning of a grant period.

The Cash Management Improvement Act of 1990, (CMIA, Pub. L. 101–453) imposes requirements for the timely transfer of funds between a Federal agency and a State and for the exchange of interest where transfers are not made in a timely fashion. The CMIA also requires States to minimize the time between the receipt of Federal funds and their disbursement by the State for program purposes.

The CMIA applies to States and territories, but it does not apply to Indian tribes or tribal organizations. The notice of proposed rulemaking issued by the Department of July 17, 1992 (57 FR 31685) proposed completion dates for tribal applications for the community services block grant and for the low-income home energy assistance program (LIHEAP). The current notice of proposed rulemaking makes a technical adjustment in the previous date which was given for the completion of tribal applications for LIHEAP in order to implement forward funding.

The establishment of application due dates for States and territories will allow the agency sufficient time to process applications and issue awards in a timely manner, in order to minimize interest charges associated with the CMIA.

For LIHEAP, it is proposed that the submission date for applications be established as of one month before the beginning of the program period. Under forward funding, LIHEAP funds that are normally appropriated in the fall will be for the program year starting the following July. Accordingly, we believe it is appropriate to require submission of the funding application prior to the start of the funding period, since the grantee will have had plenty of time for planning based on their estimated allocation and to hold required public hearings.

For LIHEAP, the date for submission of applications from States and territories is being proposed as June 1 of the preceding program year or transition period. The due date for receipt of all information required for the completion of applications for LIHEAP by States and territories is being proposed as December 31 of the program year for which they are requesting funds. For example, for the program year which begins on July 1, 1994 and ends on June 30, 1995, applications must be submitted by June 1, 1994 and must be completed by December 31, 1994.

We are also proposing that the due date for social services block grant applications be one month prior to the beginning of the funding period. State allocations are established by an entitlement formula based on population. Each fall, estimated State allocations are published in the **Federal Register** for the following funding year, which begins either July 1 or October 1, depending on the State. The funds are not actually appropriated until the following fall, but the allocations printed in the **Federal Register** the previous fall are essentially accurate. For example, projected FY 1994 allocations are published in the **Federal Register** in the fall of 1992 for use beginning on either July 1, 1993 or October 1, 1993, but the funds are not actually appropriated until the fall of 1993. This gives the grantee plenty of time to plan its program activities.

For the social services block grant, accordingly, it is proposed that States and territories which operate on a Federal fiscal year basis submit applications (pre-expenditure reports) for funding by September 1 of the preceding fiscal year. It is proposed that States and territories which operate their social services block grant on a July 1–June 30 basis submit their applications for funding by June 1 of the preceding funding period. For example, for States and territories which operate on the basis of the fiscal year which begins on October 1, 1994, and ends on September 30, 1995, applications must be submitted by September 1, 1994. For social services block grant programs with a funding period which begins on July 1, 1994 and ends on June 30, 1995, applications must be submitted by June 1, 1994. No date is being proposed for completion of social services block grant applications.

The community services block grant program, however, is funded on a Federal fiscal year basis. The funds that are normally appropriated in the fall (sometimes as late as November or December) are for the funding period that began on October 1 of the same fiscal year, and are available for expenditure for a two-year period. In addition, the community services block grant statute requires that the State legislature conduct public hearings on the planned uses and distribution of community services block grant funds. Many State legislatures will not hold hearings until the amount of the community services block grant allocation is made available. Another complicating factor is the timing of legislative sessions. For all these reasons, we do not believe it is appropriate to require submission of the community services block grant applications prior to the beginning of the fiscal year for which funds are being requested.

Accordingly, for the community services block grant, the date for submission of applications from States and territories is being proposed as December 1 of the fiscal year for which funds are requested. The due date for the receipt of all information required

for the completion of applications for the community services block grant by States and territories is being proposed as April 30 of the fiscal year for which they are requesting funds. For example, for the fiscal year which begins on October 1, 1994 and ends on September 30, 1995, applications must be submitted by December 1, 1994, and must be completed by April 30, 1995. The funds which are appropriated in the fall of 1994 must be expended during the period from October 1, 1994 until September 30, 1996.

Section 96.14 Time Period for Obligation and Expenditure of Grant Funds

The LIHEAP statute provides that up to 10 percent of amounts appropriated under the program which are unobligated by grantees at the end of the fiscal year in which they were first allotted, shall remain available for obligation (or carried over to) the succeeding fiscal year. With the implementation of forward funding, up to 10 percent of amounts unobligated by grantees at the end of the program year for which they were first allotted, may be carried over to the succeeding program year.

The authorizing statute provides that LIHEAP funds appropriated for fiscal year 1993 are to be available for the period of October 1, 1992 through June 30, 1993 (the transition period) and July 1, 1993 through June 30, 1994 (initial program year). However, the FY 1993 appropriations law for HHS (Public Law 102–394) provided funding for the regular fiscal year 1993, which began October 1, 1992 and ends September 30, 1993. It also provided funding to operate the program for a nine-month transition period of October 1, 1993 to June 30, 1994, thus providing partial implementation of forward funding a year later than authorized. The initial program year will begin on July 1, 1994 and end on June 30, 1995, providing that forward funding is fully implemented in future appropriations laws.

The language in Public Law 102–394 makes clear that the FY 1993 appropriation is for FY 1993 only, not the 21-month period of October 1, 1992 to June 30, 1994 which had been originally authorized by the 1990 amendments to the statute. Accordingly, we have determined that the obligation periods for fiscal year 1993, the transition period, and the initial program year 1994–1995 will be determined separately. Currently, the obligation period ends on September 30 of each fiscal year for LIHEAP funds with the exception that up to 10 percent may be carried over to the next fiscal year. Funds which are carried over must be obligated by the following September 30, the end of the fiscal year to which the funds were carried over. Accordingly, the obligation period for ninety percent of fiscal year 1993 funds will end on September 30, 1993. The obligation period for the up to 10 percent carryover amount from FY 1993 will end on September 30, 1994, one year later. It is proposed that for the transition period, the obligation period would end on June 30, 1994, with the exception that up to 10 percent may be carried over to program year 1994–1995. The obligation period for this carryover amount from the transition period would end on June 30, 1995, one year later. The obligation period for the new program year 1994–1995 would end on June 30, 1995, with the exception that up to 10 percent may be carried over to program year 1995–1996 and must be obligated by June 30, 1996. The end of the obligation period for subsequent program years would also be June 30. The carryover amount for unobligated funds from LIHEAP awards will also be calculated as of these dates, and must be obligated no later than the end of the program year following the year for which they were allotted.

Additionally, the 1990 statutory amendment reduced the amount of funds that LIHEAP grantees may carry over to the next fiscal or program year from 15 percent to 10 percent of funds payable and not transferred, beginning with FY 1991 funds carried over to FY 1992. A change was made to § 96.81 by the Interim Final Rule published on January 16, 1992 (57 FR 1960 *et seq.*) to implement this statutory amendment. This notice of proposed rulemaking would make a related change to § 96.14 to reflect this reduction. Also, references in this section to fiscal year would be changed to program year, or transition period, whichever is applicable. Further, a change is made to this section to reflect the termination of the authority to transfer funds to other HHS block grants, beginning in FY 1994, as discussed further in § 96.84(d).

Section 96.81 of this notice of proposed rulemaking contains related changes involving a report grantees are required to submit to HHS each fiscal year advising HHS of the amount of LIHEAP funds it expects to carryover to the next fiscal year.

The end of the obligation period for LIHEAP leveraging incentive awards is addressed in § 96.87(k) of this notice of proposed rulemaking.

Section 96.15 Waivers

The LIHEAP statute provides that grantees may request waivers of the limit on the amount of funds that may be spent on weatherization activities and other energy-related home repairs and of certain crisis assistance performance standards.

The LIHEAP statute provides that, in general, not more than 15 percent of funds allotted to or available to a grantee for any fiscal year may be used for weatherization activities and other energy-related home repairs. Section 705 of Public Law 101–501 (42 U.S.C. 8624(k)) amended section 2605(k) of the LIHEAP statute to allow the Department, under certain circumstances, to grant a waiver to increase the maximum amount of LIHEAP funds a grantee may use for low cost weatherization or other energy-related home repairs from 15 percent to up to 25 percent of the funds allotted or available to the grantee.

Section 2604(a)(4)(c) of Public Law 97–35 (42 U.S.C. 8623(a)(4)(c)) provides that a portion of funds shall be reserved until March 15 of each year by each State for energy crisis intervention. This section describes performance standards for time frames for the provision of assistance, in addition to requirements of geographical accessibility and provisions for obtaining applications from individuals who are physically infirm. However, the statute provides a waiver of the performance standards for a program in a geographical area affected by a natural disaster designated by the Secretary or affected by a major disaster or emergency designated by the President for as long as the designation remains in effect, when the emergency makes compliance with the standards impracticable. Detailed criteria for a waiver of the crisis assistance performance standards are described in 45 CFR, 96.89.

Currently, no mention is made to indicate to whom applications for waivers that are permitted by statute should be submitted for the LIHEAP program. A statement is being added to indicate that waiver applications for the social services block grant (formerly submitted to the defunct Office of Human Development Services), LIHEAP and the community services block grant should be submitted to the Director, Office of Community Services.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

Section 96.42 General Procedures and Requirements

Under the LIHEAP block grant, Indian tribes and tribal organizations may

request direct funding from HHS so that they may provide services directly to their members rather than being served by the State(s) in which they are located. Any funds provided directly to a tribe or tribal organization are deducted from the funds that would otherwise go to those States. A specific deadline is required for applications from Indian tribes/tribal organizations so that HHS knows what portion of a State's allotment to set aside for the tribes/tribal organizations and so that the States know which of its residents they are required to serve and which will be served by the tribes/tribal organizations.

With the implementation of forward funding, the due date for the submission of tribal applications will need to change. Current regulation requires that applications for direct funding from tribes and tribal organizations must be submitted to HHS by September 1 for the following fiscal year, unless the State(s) in which the tribe is located agrees to a later date. As in the other block grant programs that allow direct tribal funding, the due date for submission of tribal applications is the first day of the last month of the fiscal year preceding the year for which funds are being requested. Under forward funding for LIHEAP, it is being proposed that the due date for submission of tribal applications for the next program year be changed to June 1, the first day of the last month of the program year (or transition period) preceding the year for which funds are being requested, unless the State(s) in which the tribe is located agrees to a later date.

Section 96.49 Due Date for Receipt of All Information Required for Completion of Tribal Applications for the Community Services and Low-Income Home Energy Assistance Block Grants

Section 96.49 was previously proposed to be added to the block grant regulations by a notice of proposed rulemaking issued by the Department on July 17, 1992 (57 FR 31685). It established completion dates for tribal applications for the community services block grant and for LIHEAP. This present notice of proposed rulemaking would revise the date previously proposed for LIHEAP, in order to implement forward funding.

This present notice of proposed rulemaking also includes the provision from the Department's July 17, 1992 notice of proposed rulemaking establishing an application completion date of June 30 of the preceding fiscal year for the community services block grant program. The community services block grant provision is included in this notice of proposed rulemaking without change, with the exception of making a minor correction by changing the statement "* * * make direct requests for funding * * *" to the more accurate "* * * make requests for direct funding * * *". If the application is not completed by June 30, the community services block grant money would revert to the State(s) in which the tribe is located, and the State would become responsible for serving the tribal members.

Section 96.49 of the notice of proposed rulemaking dated July 17, 1992 proposed that once the LIHEAP tribal applications are received by the Department, additional information needed to complete the applications must be received no later than January 31 for a given fiscal year. The July 17, 1992 proposed rule also indicated that after January 31, funds would revert to the State(s) in which the tribe is located.

With the implementation of forward funding, it is being proposed that tribes and tribal organizations that request direct LIHEAP funding must ensure that all information necessary to complete their applications is received by HHS by October 1, four months after the initial submission date for the applications. Even though this change in the date is proposed because of the shift in the funding cycle to forward funding, a pivotal concern is that funding be determined before winter weather begins. In response to § 96.49 in the notice of proposed rulemaking dated July 17, 1992, several comments were received. A commenter from a northern State indicated that the deadline should provide States with sufficient notice in case they need to provide LIHEAP assistance to the service population of a tribe that has not completed its application for a direct grant. Additionally, the commenter stated that the State's extremely cold weather necessitates that winter heating assistance begin by November 1. The deadline of October 1 for completed LIHEAP applications would allow the Department to provide sufficient notice to States that they must provide LIHEAP assistance to the service population of a tribe that has not completed its application for a direct grant.

One commenter indicated that the requirement that tribal applications be completed by January 31 or the State becomes responsible to serve the tribe would result in funds being allocated to the State after February, which is too late because in addition to the financial impact on the State, the State would not have sufficient lead time to plan, staff and implement its program to serve the tribes.

Another commenter indicated that the original due date of September 1 for submission of a tribal application for both the community services block grant and LIHEAP is satisfactory. The commenter was uncertain whether the due date for completion of the tribal applications is necessary. The commenter also expressed the need to receive LIHEAP funding as early in the fiscal year as possible.

The Department concludes that because most LIHEAP funds are spent for winter heating assistance, it is important that States know before frigid weather begins whether they will be required to serve a tribe's service population. It should be mentioned that most tribes submit all the information necessary to complete their applications in a timely manner. Under this proposed rule, the due date for receipt of all information necessary to complete LIHEAP tribal applications would be October 1, unless the State(s) in which the tribe is located agree(s) to a later submission date.

An additional commenter on the July 17, 1992 proposed rule expressed the opinion that the community services block grant program's application completion date of June 30 will cause difficulty for States to comply with the assurance requirements of HHS and will not allow sufficient time for public notice and comment on the plan. The commenter added that if the June 30 completion date is implemented, HHS should take action to ensure enforcement of notice and comment requirements. We do not believe a change is necessary on this issue. It is expected that the State will use any funds which revert to it under this provision under the terms of the plan which is already in effect for the State. It simply means that the members of the tribe affected would be eligible for assistance under the existing State plan.

Subpart H—Low-Income Home Energy Assistance Program (LIHEAP)

Section 96.80 Scope

Historically, the low-income home energy assistance program has been funded on a regular Federal fiscal year basis. With the implementation of forward funding, LIHEAP will operate on the basis of a new "program year", rather than the Federal fiscal year. When Congress authorized implementation of forward funding, it did not make related changes to the LIHEAP statute to change fiscal year references to program year. It is clear, however, that Congress intended to shift

the funding cycle and that related changes must be made to the timing of other related requirements, such as year-end reporting requirements. Accordingly, a paragraph is added to this section of the regulations to define program year as an operational year which begins on July 1 of the Federal fiscal year for which the appropriation is made and ends on the following June 30, with an effective date of July 1, 1994. This definition also provides that program year designations will include the beginning and ending years for the operational period (e.g., Program year 1994–1995 will begin on July 1, 1994 and end on June 30, 1995). Further, the definition includes a description of the nine-month transition period to forward funding, of October 1, 1993 to June 30, 1994.

Wherever a reference is made to "fiscal year" throughout these regulations, it shall be read to mean "program year" or "transition period", as appropriate, for the low-income home energy assistance program, for periods beginning after October 1, 1993, the beginning of the implementation of forward funding.

Section 96.81 Required Carryover and Reallotment Report

It is being proposed that the name of § 96.81 be revised from "Reallotment report" to "Required carryover and reallotment report" to more accurately reflect the contents of the report.

Currently, § 96.81 of the block grant regulations provides that LIHEAP grantees must submit to HHS by August 1 of each fiscal year a carryover and reallotment report which includes information on the amount of the grantee's funds, if any, which will be held available for obligation in the following fiscal year (currently limited to 10% of the funds payable to the grantee and not transferred to another HHS block grant program) and the amount, if any, which exceeds this carryover limit and thus is subject to reallotment to other grantees in the following fiscal year. The August 1 deadline is two months prior to the end of the fiscal year for which the funds were appropriated. With the implementation of the use of the program year beginning July 1 under forward funding, it is being proposed that the due date for submission of the carryover and reallotment report be revised to May 1, two months prior to the end of the program year. The same date would apply to the transition period to forward funding. Additionally, a sentence is added making clear that, beginning with funds appropriated for FY 1994, no funds may be transferred to another HHS block grant program, as required under the 1990 amendments to the LIHEAP statute. Finally, references in this section to fiscal year would be changed to program year.

In issuing Final Rules to replace the January 16, 1992 Interim Final Rule or the July 17, 1992 notice of proposed rulemaking, the Department may make additional changes to section 96.81.

Section 96.82 Required Report on Households Assisted

The name of § 96.82 would be revised from "Required report" to "Required report on households assisted" to reflect the contents of the report.

The households-served report (number and income levels of households served, and number of households served with elderly and handicapped members) required by this section currently must be submitted by October 31, one month after the end of the fiscal year. It is being proposed that, with forward funding, this date be changed to July 31, one month after the end of the program year. This date would also apply to the transition period to forward funding.

Section 96.83 Increase in Maximum Amount That May Be Used for Weatherization and Other Energy-Related Home Repair

Originally, the LIHEAP statute provided that a maximum of 15% of a State's funds could be used for low-cost residential weatherization and other energy-related home repair. As explained in the Interim Final Rule published in the **Federal Register** on January 16, 1992, Public Law 101–501 amended section 2605(k) of the LIHEAP statute to allow grantees to request a waiver from HHS beginning in fiscal year 1991 to increase the amount of their funds that may be spent on weatherization and other energy-related home repairs from 15% to up to 25% of their funds allotted or available that are not transferred to another block grant under section 2604(f) of the statute.

In the preamble to the Interim Final Rule, we asked for comments on whether the statutory prohibition against applying for such a waiver before March 31 of the year for which the funds are appropriated would cause a problem once forward funding was implemented. We were concerned that this date might not provide sufficient time for HHS to review the waiver request and obtain any additional information that might be needed, and still allow the grantee to obligate the funds by June 30, the end of the program year under forward funding.

In response to this request, two comments were received in relation to the submission date for waiver requests of the weatherization maximum. One commenter indicated that although a change in the submission date of waiver requests under forward funding was not being suggested at the immediate time, a date two to four weeks earlier might be reasonable.

The other commenter stated that the statutory requirement that grantees wait until after March 31 to submit waiver requests is impractical under forward funding since little time exists between this date and June 30, the end of the program year. The commenter suggested that grantees be allowed to submit requests for waivers after January 31.

Under the terms of Public Law 101–501, any requests for waivers of the weatherization obligation limit must be submitted to HHS after March 31. The March 31 date appears to have been selected with fiscal year funding in mind. We continue to be concerned that, once forward funding is implemented, submission of a waiver request after March 31 may mean that there would not be time for HHS to review the waiver request, to obtain any additional information that is required and to advise the grantee of its decision, and for the grantee to obligate the funds in a timely manner before the end of the program year on June 30. Accordingly, it is proposed to allow preliminary submission of waiver requests after January 31 of each program year. However, the Department will not render decisions on such requests until after March 31, and will request information from the grantees as to whether any material changes of fact have occurred since submission of the applications, thereby keeping in compliance with the requirements of the statute. Since grantees will be able to submit preliminary waiver requests as early as January 31, this will allow sufficient time for HHS review and subsequent decision soon enough after March 31 to allow the grantee time for obligation of funds prior to the end of the program year. We further propose that public comments must be allowed to be submitted to the grantee until March 15. Prior to HHS making a decision on the waiver requests, each grantee should submit to HHS the public comments which they have received, or a summary of those comments, and, if applicable, provide a statement that no comments were received. This procedure, we believe, meets Congress' intent to allow timely and meaningful public comments.

The Department will review all requests and make a decision within a

maximum of 45 days of receipt of a completed request, but no earlier than March 31. The earlier a grantee submits a request for waiver of the weatherization maximum, the quicker the grantee should receive a response, once all the required information has been received. Further, "fiscal year" is being changed to "program year" or "transition period", as appropriate.

In issuing a Final Rule to replace the January 16, 1992 Interim Final Rule, the Department may make additional changes based on other comments which were received on Section 96.83.

Section 96.84 Miscellaneous

End of Transfer Authority. Currently, grantees may transfer up to 10 per cent of LIHEAP funds payable in a fiscal year to other HHS block grant programs. The 1990 amendments to the statute provided that, beginning in fiscal year 1994, no funds payable to a grantee may be transferred to other block grant programs. Accordingly, this notice of proposed rulemaking amends the block grant regulations to provide that after September 30, 1993, grantees no longer may transfer any of their LIHEAP funds to the block grant programs specified in section 2604(f) of the statute.

The FY 1993 HHS appropriations law (Public Law 102–394) provided advance funding for the first nine months of FY 1994, and allows $141,950,340 of those funds to be used by grantees to reimburse themselves for expenses incurred in FY 1993. Because they are appropriated as advance funding for FY 1994, any such funds used by grantees to reimburse themselves for FY 1993 expenses may not be considered funds payable to grantees in FY 1993 and thus may not be used to calculate the maximum amount that may be transferred in FY 1993.

The authority for territories to consolidate funding for several programs under one or more HHS programs is not considered a transfer and thus will not terminate in FY 1994. Likewise, LIHEAP funds earmarked for use for weatherization assistance or other energy-related home repair, even if administered by another grantee agency, is not considered a transfer, and this authority will not terminate in FY 1994.

Section 96.85 Income Eligibility

The statute sets maximum and minimum income eligibility standards for participation in the LIHEAP program that are tied to poverty income guidelines and to State median income estimates as determined by the Bureau of Census. The date for adoption of the current poverty income guidelines is any time between the date of their publication in the **Federal Register** and the beginning of the fiscal year. The date for adoption of the State median income estimates is currently the first day of the fiscal year, but that date has not been reflected in the block grant regulations. It is proposed that the block grant regulations be amended to incorporate an adoption date for the State median income estimates that is consistent with the adoption date for the poverty income guidelines and to amend that adoption date to reflect the shift to forward funding. The poverty income guidelines and the State median income estimates are published annually in the **Federal Register**, generally in the month of February or March. Therefore, grantees may adopt the annual poverty income guidelines and the annual State median income estimates at any time between the date of publication in the **Federal Register** and the first day of the program year, July 1, or the beginning of the State fiscal year, whichever is later. Grantees may also choose to implement the changes during the period between the heating and cooling seasons.

Section 96.87 Leveraging Incentive Program

The references to fiscal year would be changed to program year, effective with initiation of forward funding. The FY 1993 HHS appropriations law (Public Law 102–394) provided $24,800,000 for the leveraging incentive fund for FY 1993. Although advance block grant funding was also included in Public Law 102–394 for a nine-month transition period to forward funding of October 1, 1993 to June 30, 1994, no mention of funds earmarked for leveraging in FY 1994 was included in the law. Although Public Law 101–501 authorized leveraging for FY 1994, this funding may or may not be appropriated. As indicated in the Interim Final Rule published on January 16, 1992 (57 FR 1960 et. seq.), section 2607(A) provides that grantees must submit their leveraging reports to HHS by October 31 while LIHEAP is funded on a Federal fiscal year basis and by July 31 of each year after forward funding begins. Once forward funding begins, July 31 will be one month after the end of the program year or the transition period for which leveraging activities are reported and for which funds are requested. Separate applications should be submitted for leveraging activities which take place during the transition period and for leveraging activities which take place during the new program year 1994–1995. Therefore, during the implementation period of forward funding, two applications for leveraging incentive awards should be submitted.

It is also proposed that changes be made to reflect a change in the obligation deadlines for leveraging incentive grant awards. Under the January 16, 1992 Interim Final Rule, leveraging incentive grant awards are available for obligation from the time they are awarded until the end of the following fiscal year. With the implementation of forward funding, we are proposing that any leveraging incentive grant awards may be used during the fiscal or program year or transition period during which they are awarded until the end of the following transition period or program year. In addition to reflecting the move to forward funding, this language will clarify that leveraging incentive grant awards may be used to cover expenses incurred at any time during the period for which the funds are awarded.

Regulatory Procedures

Executive Order 12291

Executive order 12291 requires that a regulatory impact analysis be prepared for major rules, which are defined in the Order as any rule that has an annual effect on the national economy of $100 million or more or has certain other specified effects. This notice proposes to make technical changes to the regulations for the block grant program, the low-income home energy assistance program (LIHEAP), so that dates and terms in the regulation will conform to those appropriate for forward funding of the program once it has been initiated and to amend the regulations to specify that transfers of LIHEAP funds to other HHS block grant programs will be eliminated after September 30, 1993, as required by the Augustus F. Hawkins Human Services Reauthorization Law of 1990 (Public Law 101–501). Additionally, this notice proposes to establish submission dates and completion dates for applications for funding from States and territories for LIHEAP, CSBG and the social services block grant program. Therefore, the Department has determined that these regulations are not major rules within the meaning of the Executive Order because they will not have an effect on the economy of $100 million or more, or otherwise meet the threshold criteria.

Paperwork Reduction Act

There are no new information collection requirements in this proposed rule which require approval under the Paperwork Reduction Act. The information collection requirements needed by this proposed rule have

previously been approved. Section 96.42 and § 96.49 of this notice of proposed rulemaking contain information collection requirements relating to the completion of the Model Plan, OMB Clearance Number: 0970–0075. Additionally § 96.81 requires information collection for the Carryover and Reallotment Report, OMB Clearance No.: 0970–0106. Section 96.82 requires information collection requirements relating to the Report of Households Assisted, OMB Clearance No.: 0970–0060. Lastly, this notice of proposed rulemaking contains information collection requirements relating to the LIHEAP Leveraging Report, OMB Clearance No.: 0970–0121.

Regulatory Flexibility Act

The Regulatory Flexibility Act (Pub. L. 96–354) requires the Federal Government to anticipate and reduce the impact of regulations and paperwork requirements on small businesses. The primary impact of these proposed rules is on State, tribal and territorial governments. Therefore, the Department of Health and Human Services certifies that these rules will not have a significant economic impact on a substantial number of small businesses because they affect payments to States, tribes and territories. Thus, a regulatory flexibility analysis is not required.

(Catalog of Federal Domestic Assistance Program Number: 93.568, Low-Income Home Energy Assistance Program)

List of Subjects in 45 CFR Part 96

Energy, Forward funding, Grant programs-energy, Grant programs-Indians, Income assistance, Leveraging incentive program, Low and moderate income housing, Reporting and record keeping requirements, Transfers, Weatherization.

Dated: August 11, 1993.

Laurence J. Love,

Acting Assistant Secretary for Children and Families.

Approved: September 2, 1993.

Donna E. Shalala,

Secretary, Department of Health and Human Services.

For the reasons set forth in the preamble, part 96 of title 45 of the Code of Federal Regulations is proposed to be amended as follows:

PART 96—BLOCK GRANTS

1. The authority citation for part 96 continues to read as follows:

Authority: 42 U.S.C. 300W *et seq.*; 42 U.S.C. 300x *et seq.*; 42 U.S.C. 300y *et seq.*; 42 U.S.C. 701 *et seq.*; 42 U.S.C. 8621 *et seq.*; 42 U.S.C. 9901 *et seq.*; 42 U.S.C. 1397 *et seq.*; 31 U.S.C. 1243 note.

Subpart B—General Procedures

2. Section 96.10 is amended by adding paragraphs (c) and (d) to read as follows:

§ 96.10 Prerequisites to obtain block grant funds.

* * * * *

(c) *Submission dates.* (1) For the community services block grant, States and territories which make requests for funding from the Secretary must insure that their applications for the fiscal year are submitted by December 1 of the fiscal year for which they are requesting funds.

(2) For the social services block grant, States and territories which operate on a Federal fiscal year basis, and make requests for funding from the Secretary, must insure that their applications (pre-expenditure reports) for funding are submitted by September 1 of the preceding fiscal year. States and territories which operate their social services block grant on a July 1–June 30 basis, must insure that their applications are submitted by June 1 of the preceding funding period.

(3) For the low-income home energy assistance program, States and territories which make requests for funding from the Secretary must insure that their applications for the program year are submitted by June 1 of the preceding program year or transition period.

(d) *Completion dates.* (1) For the community services block grant, States and territories which make requests for funding from the Secretary, must insure that all information necessary to complete their applications is received by April 30 of the fiscal year for which they are requesting funds.

(2) For the low-income home energy assistance program, States and territories which make requests for funding from the Secretary must insure that all information necessary to complete their applications is received by December 31 of the program year for which they are requesting funds.

3. Section 96.14 is amended by revising (a) introductory text and (a)(2) to read as follows:

§ 96.14 Time period for obligation and expenditure of grant funds.

(a) *Obligations.* Amounts unobligated by the State at the end of the fiscal year in which they were first allotted shall remain available for obligation during the succeeding fiscal year for all block grants except:

(1) * * *

(2) *Low-income home energy assistance.* Regular LIHEAP block grant funds authorized under section 2602(b) of Public Law 97–35 (42 U.S.C. 8621(b)) are available only in accordance with section 2607(b)(2)(B) of Public Law 97–35 (42 U.S.C. 8626(b)(2)(B)), as follows. From allotments for fiscal year 1982 through fiscal year 1984, a maximum of 25 per cent may be held available for the next fiscal year. From allotments for fiscal year 1985 through fiscal year 1990, a maximum of 15 percent of the amount payable to a grantee and not transferred to another block grant according to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f)) may be held available for the next fiscal year. From allotments for fiscal year 1991 through fiscal year 1993, a maximum of 10 percent of the amount payable to a grantee and not transferred to another block grant according to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f)) may be held available for the next fiscal year or transition period. Beginning with allotments for FY 1994, a maximum of 10 percent of the amount payable to a grantee may be held available for the next program year. The obligation period for fiscal year 1993 will end on September 30, 1993. The obligation period for the transition period will end on June 30, 1994. The obligation period for program year 1994–1995 will end on June 30, 1995. The obligation period for subsequent program years will also end on June 30 of the program year. The carryover amount for unobligated funds from the block grant awards will also be calculated as of these dates, and must be obligated no later than the end of the fiscal or program year or transition period following the year for which they were allotted. No funds may be obligated after the end of the fiscal or program year or transition period following the fiscal or program year or transition period for which they were allotted.

(b) * * *

4. Section 96.15 is revised to read as follows:

§ 96.15 Waivers.

Applications for waivers that are permitted by statute for the block grants should be submitted to the Assistant Secretary of Health in the case of the preventive health and health services, alcohol and drug abuse and mental health services, and maternal and child health services block grants; and to the Director, Office of Community Services in the cases of the community services block grant, low-income home energy assistance program, and social services block grant. Beginning with fiscal year

1986, the Secretary's authority to waive the provisions of section 2605(b) of Public Law 97–35 (42 U.S.C. 8624(b)) under the low-income home energy assistance program is repealed.

Subpart D—Direct Funding of Indian Tribes and Tribal Organizations

5. Paragraphs (c), (e), and (f) of section 96.42 are revised to read as follows:

§ 96.42 General procedures and requirements.

* * * * *

(c) If an Indian tribe or tribal organization whose service population resides in more than one State applies for block grant funds that, by statute, are apportioned on the basis of population, the allotment awarded to the tribe or organization shall be taken from the allotments of the various States in which the service population resides in proportion to the number of eligible members or households to be served in each State. If block grant funds are required to be apportioned on the basis of grants during a base year, the allotment to the Indian tribe or tribal organization shall be taken from the allotment of the State whose base year grants included the relevant grants to the tribe or organization.

* * * * *

(e) Beginning with fiscal year 1983, any request by an Indian tribe or tribal organization for direct funding by the Secretary must be submitted to the Secretary, together with the required application and related materials, by September 1 preceding the Federal fiscal year for which funds are sought. For the low-income home energy assistance program, beginning with program year 1994–1995, any request by an Indian tribe or tribal organization for direct funding by the Secretary must be submitted to the Secretary, together with the required application and related material, by June 1 preceding the program year for which funds are sought. A separate application is required for each block grant. After the deadline, tribal applications will be accepted only with the concurrence of the State (or States) in which the tribe or tribal organization is located.

(f) A State receiving block grant funds is not required to use those funds to provide tangible benefits (e.g., cash or goods) to Indians who are within the service population of an Indian tribe or tribal organization that received direct funding from the Department under the same block grant program for the same fiscal year or in the case of LIHEAP, program year. A State, however, may not deny Indians access to intangible services funded by block grant programs (e.g., treatment at a community health center) even if the Indians are members of a tribe receiving direct funding for a similar service. A tribe receiving direct block grant funding is not required to use those funds to provide trangible benefits to non-Indians living within the tribe's service area unless the tribe and the State(s) in which the tribe is located agree in writing that the tribe will do so.

6. A new § 96.49 is added to Subpart D to read as follows:

§ 96.49 Due date for completion of tribal applications.

(a) For the community services block grant, Indian tribes and tribal organizations that make requests for direct funding from the Secretary must insure that all information necessary to complete their applications for the fiscal year is received by June 30 of the fiscal year for which funds are requested. After June 30, funds will revert to the State(s) in which the tribe is located.

(b) For the low-income home energy assistance program, Indian tribes or tribal organizations that make requests for direct funding from the Secretary must insure that all information necessary to complete their applications is received by October 1 for a given program year, unless the State(s) in which it is located agrees to a later date. After October 1, funds will revert to the State(s) in which the tribe is located, unless the State(s) agrees to a later date.

Subpart H—Low-Income Home Energy Assistance Program

7. Section 96.80 is revised to read as follows:

§ 96.80 Scope.

This subpart applies to the low-income home energy assistance program (LIHEAP).

(a) Beginning in Federal fiscal year 1994, LIHEAP will be administered on a *program year* basis under forward funding. *Program year* is defined as the period of operation or budget period of the low-income home energy assistance program which begins on July 1 of the Federal fiscal year for which appropriations are made and ends on the following June 30. The initial program year will begin after a nine-month "transition period" to forward funding from October 1, 1993 to June 30, 1994. The first program year will become effective on July 1, 1994 and end on June 30, 1995. References to "program year" shall also be read to mean "transition period" unless stated otherwise in these regulations. Program year designations will include the beginning and ending calendar years for the operational period (e.g., program year 1994–1995 will begin on July 1, 1994 and end on June 30, 1995). Wherever a reference is made to "fiscal year" throughout these regulations, it shall be read to mean "program year" or "transition period", as appropriate, for the low-income home energy assistance program, for periods beginning on or after October 1, 1993.

(b) [Reserved]

8. Section 96.81 is revised to read as follows:

§ 96.81 Required carryover and reallotment report.

As a part of the reallotment procedure established by section 2607(b) of Public Law 97–35 (42 U.S.C. 8626(b)), beginning with funds to be held available for the transition period and for program year 1994–1995, each grantee must submit a report to the Secretary by May 1 of each year containing the following information:

(a) The amount of funds that the grantee desires remain available for obligation in the succeeding program year, not to exceed 10 percent of the funds payable to the grantee and not transferred pursuant to section 2604(f) of Public Law 97–35 (42 U.S.C. 8623(f)). (Beginning with funds appropriated for FY 1994, grantees may not transfer any funds that are payable to them under LIHEAP to another block grant program);

(b) A statement of the reasons that this amount to remain available will not be used in the program year or transition period for which it was allotted;

(c) A description of the types of assistance to be provided with the amount held available; and

(d) The amount of funds, if any, to be subject to reallotment.

9. Section 96.82 is revised to read as follows:

§ 96.82 Required report on households assisted.

In accordance with section 2610(a) of Public Law 97–35 (42 U.S.C. 8629(a)), each grantee shall submit to the Department by July 31 of each year a report of:

(a) The number and income levels of the households assisted by LIHEAP funds during the preceding program year or transition period; and

(b) The number of households assisted by LIHEAP funds during the preceding program year or transition period that contain one or more individuals who are 60 years or older and the number that contain one or more individuals who are handicapped.

10. Section 96.83 is amended by revising paragraphs (a), (c), (e), (f) and (g) to read as follows:

§ 96.83 Increase in maximum amount that may be used for weatherization and other energy-related home repair.

(a) *Scope.* This section concerns requests for waivers increasing from 15 percent to up to 25 percent of LIHEAP funds allotted or available to a grantee for a program year, the maximum amount that grantees may use for low-cost residential weatherization and other energy-related home repair for low-income households (hereafter referred to as "weatherization"), pursuant to section 2605(k) of Public Law 97–35 (42 U.S.C. 8624(k).

(b) * * *

(c) *Waiver request.* After March 31 of each program year, the chief executive officer (or his or her designee) may request a waiver of the weatherization obligation limit, if the grantee meets the criteria in paragraphs (c)(2) (i), (ii), and (iii) of this section, or can show "good cause" for obtaining a waiver despite a failure to meet one or more of these criteria. The grantee must allow for submission of public comments on the request until March 15. In order to speed the review process and allow for timely obligation of such funds by June 30, the grantee may submit a preliminary waiver request after January 31. If such a preliminary waiver request is submitted prior to March 31, the grantee must advise the Department after March 31 as to whether any public comments were received by March 15 and whether any material changes of fact have occurred since submission of its preliminary waiver request. The Department will make decisions on any waiver request after March 31. Prior to HHS making a decision, each grantee must submit the public comments which have been received, or a summary of those comments, to HHS. A statement that no comments were received should be submitted, if applicable. All waiver requests must be in writing and must include the following information:

(1) A statement of the total percent of its LIHEAP funds allotted or available for the program year or transition period for which the waiver is requested, that the grantee desires to use for weatherization.

(2) A statement of whether the grantee has met each of the following three criteria:

(i) In the program year or transition period for which the waiver is requested, the combined total (aggregate) number of households in the grantee's service population that will receive LIHEAP heating, cooling, and crisis assistance benefits will not be fewer than the combined total (aggregate) number that received such benefits in the preceding fiscal year, transition period or program year, whichever is applicable;

(ii) In the program year or transition period for which the waiver is requested, the combined total (aggregate) amount of LIHEAP heating, cooling, and crisis assistance benefits will not be less than the combined total (aggregate) amount received in the preceding fiscal year, transition period or program year; and

(iii) All LIHEAP weatherization activities to be carried out by the grantee in the program year or transition period for which the waiver is requested have been shown to produce measurable savings in energy expenditures.

(3) With regard to the criterion in paragraph (c)(2)(i) of this section, a statement of the grantee's best estimate of the appropriate household totals for the program year for which the waiver is requested and for the preceding fiscal year, transition period or program year.

(4) With regard to the criterion in paragraph (c)(2)(ii) of this section, a statement of the grantee's best estimate of the appropriate benefit totals for the program year for which the waiver is requested and for the preceding fiscal year, transition period or program year.

(5) With regard to the criterion in paragraph (c)(2)(iii) of this section, a description of the weatherization activities to be carried out by the grantee in the program year for which the waiver is requested (with all LIHEAP funds proposed to be used for weatherization, not just with the amount over 15 percent), and an explanation of the specific criteria under which the grantee has determined whether these activities have been shown to produce measurable savings in energy expenditures.

* * * * *

(e) *"Good cause" waiver.* (1) If a grantee does not meet one or more of the three criteria in paragraph (c)(2) of this section, then the grantee may, in accordance with the provisions in paragraphs (e)(1) and (e)(2) of this section, submit documentation that demonstrates good cause why a waiver should be granted despite the grantee's failure to meet this criterion or these criteria. "Good cause" waiver requests must include the following information, in addition to the information specified in paragraph (c) of this section:

(i) For each criterion under paragraph (c)(2) of this section that the grantee does not meet, an explanation of the specific reasons demonstrating good cause why the grantee does not meet the criterion and yet proposes to use additional funds for weatherization, citing measurable, quantified data, and stating the source(s) of the data used.

(ii) A statement of the grantee's LIHEAP heating, cooling, and crisis assistance eligibility standards and benefit levels for the program year for which the waiver is requested and for the preceding fiscal year, transition period or program year; and, if eligibility standards were less restrictive and/or benefit levels were higher in the preceding fiscal year, transition period or program year for one or more of these program components, an explanation of the reasons demonstrating good cause why a waiver should be granted in spite of this fact.

(2) If the Department determines that a grantee requesting a "good cause" waiver has demonstrated good cause why a waiver should be granted, has provided all information specified in paragraph (c) of this section and in this paragraph, has shown adequate concern for timely and meaningful public review and comment, and has proposed weatherization that meets all relevant requirements of title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable Federal regulations, the Department will approve a "good cause" waiver.

(f) *Approvals and disapprovals.* After receiving the grantee's completed waiver request, the Department will respond in writing within 45 days, informing the grantee whether the request is approved on either a "standard" or "good cause" basis. Although a preliminary waiver request may be submitted as early as January 31, the Department will not make a decision until after March 31. The Department may request additional information and/or clarification from the grantee. If additional information and/or clarification is requested, the 45-day period for the Department's response will start when the additional information and/or clarification is received. No waiver will be granted for a previous fiscal or program year.

(g) *Effective period.* Waivers will be effective from the date of the Department's written approval until the funds for which the waiver is granted are obligated in accordance with title XXVI of Public Law 97–35 (42 U.S.C. 8621 *et seq.*) and applicable regulations. Funds for which a weatherization waiver was granted that are carried over to the following program year and used for weatherization shall not be considered "funds allotted" or "funds available" for the purposes of calculating the maximum amount that may be used for weatherization in the succeeding program year.

11. Section 96.84 is amended by adding paragraph (d) to read as follows:

§ 96.84 Miscellaneous.

* * * * *

(d) *End of transfer authority.* Beginning with funds appropriated for FY 1994, grantees may not transfer any funds pursuant to section 2604(f) (42 U.S.C. 8623(f)) that are payable to them under the LIHEAP program to the block grant programs specified in section 2604(f).

12. Section 96.85 is amended by revising paragraph (a) and adding (c) to read as follows:

§ 96.85 Income eligibility.

(a) *Application of poverty income guidelines.* In implementing the income eligibility standards in section 2605(b)(2) of Public Law 97–35 (42 U.S.C. 8624(b)(2)), grantees using the Federal Government's official poverty income guidelines as a basis for determining eligibility for assistance shall, by July 1 of each year, or by the beginning of the State fiscal year, whichever is later, adjust their income eligibility criteria so that they are in accord with the most recently published update of the guidelines, except that grantees may adjust their criteria after the end of their cooling assistance program and before the beginning of their heating assistance program. Grantees may adjust their income eligibility criteria to accord with the most recently published revision to the poverty income guidelines at any time between the publication of the revision and the following July 1, or the beginning of the State fiscal year, whichever is later.

(b) * * *

(c) *Application of State median income estimates.* In implementing the income eligibility standards in section 2605(b) of Public Law 97–35 (42 U.S.C. 8624(b)(2)), grantees using the Federal Government's official State median income estimates for households as a basis for determining eligibility for assistance shall, by July 1 of each year, or the beginning of the State fiscal year, whichever is later, adjust their income eligibility criteria so that they are in accord with the most recently published update of the estimates, except that grantees may adjust their criteria after the end of their cooling assistance program and before the beginning of their heating assistance program. Grantees may adjust their income eligibility criteria to accord to the most recently published revision to the state median income estimates for households at any time between the publication of the revision and the following July 1, or the beginning of the State fiscal year, whichever is later.

13. Section 96.87 of 45 CFR part 96, is amended by removing the words "fiscal year" and inserting in their place "program year or transition period" in each place they appear and by revising paragraphs (h)(2) and (k) to read as follows:

§ 96.87 Leveraging incentive program.

* * * * *

(h) Leveraging report.

(1) * * *

(2) *Submission dates.* With the implementation of forward funding, the deadline for submission of leveraging reports will be July 31 of the program year for which funds are requested. The deadline for submission of leveraging activities occurring during the nine-month transition period to forward funding of October 1, 1993 to June 30, 1994 will be due on July 31, 1994.

* * * * *

(k) *Period of obligation for leveraging incentive funds.* Leveraging incentive funds are available for obligation during the fiscal or program year or transition period during which they awarded to a grantee until the end of the program year or transition period following the fiscal or program year or transition period in which they were awarded, without regard to limitations on carryover of funds in section 2607(b)(2)(B) of Public Law 97–35 (42 U.S.C. 8626(b)(2)(B)). Any leveraging incentive funds not obligated for allowable purposes by the end of this period must be returned to the Department.

[FR Doc. 93–27964 Filed 11–15–93; 8:45 am]
BILLING CODE 4150–04–M

Federal Register

Tuesday
November 16, 1993

Part III

Department of Health and Human Services

Public Health Service

42 CFR Part 67

Health Services Research, Evaluation, Demonstration, and Dissemination Projects; Peer Review of Grants and Contracts; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 67

RIN 0905–AD30

Health Services Research, Evaluation, Demonstration, and Dissemination Projects; Peer Review of Grants and Contracts

AGENCY: Public Health Service, HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: This NPRM would revise existing regulations governing grants for health services research, demonstration, and evaluation projects administered by the former National Center for Health Services Research (NCHSR) to reflect the establishment of the Agency for Health Care Policy and Research (AHCPR), and an expanded authority for grants for health services research, demonstration, evaluation, and dissemination projects. The proposed regulations would set out program and administrative requirements for grantees and potential grant applicants, and describe the technical and scientific peer review by which applications for grants are to be evaluated. The proposed regulations would establish procedures for the conduct of peer review of AHCPR contracts for health services research, evaluation, demonstration, and dissemination projects.

DATES: Comments, in writing, must be received by January 18, 1994.

ADDRESSES: Respondents should address comments to J. Jarrett Clinton, M.D., Administrator, Agency for Health Care Policy and Research, Executive Office Center, Suite 600, 2101 East Jefferson Street, Rockville, MD 20852. All comments received will be available for public inspection and copying at the AHCPR Office of Program Development, Program and Policy Implementation Branch, Suite 603, 2101 East Jefferson Street, Rockville, MD 20852.

FOR FURTHER INFORMATION CONTACT: Linda K. Demlo, Ph.D., Director, Office of Program Development, Agency for Health Care Policy and Research, Executive Office Center, suite 603, 2101 East Jefferson Street, Rockville, MD 20852. Phone (301) 227–8453.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Health, with the approval of the Secretary of Health and Human Services, is proposing to revise the existing regulations at 42 CFR part 67, subpart A and to substitute a new Subpart B to reflect the establishment of the Agency for Health Care Policy and Research (AHCPR) and its legislative mandates as set forth in Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989, enacted on December 19, 1989. Section 6103(a) of Public Law 101–239 added a new title IX to the Public Health Service (PHS) Act (42 U.S.C. 299–299c–6) and established AHCPR. Section 901(c) of the PHS Act provides that the Secretary will act through the Administrator of AHCPR in carrying out the authorities under this title. Title IX has been further amended by Public Law 102–410, the Agency for Health Care Policy and Research Reauthorization Act, enacted on October 13, 1992. The proposed regulations reflect these amendments as well.

The purpose of AHCPR is to enhance the quality, appropriateness, and effectiveness of health care services, and access to such services. The AHCPR is to achieve these goals through the establishment of a broad base of scientific research, and through the promotion of improvements in clinical practice (including the prevention of diseases and other health conditions) and the organization, financing, and delivery of health services. In carrying out these functions, AHCPR builds on and expands the work supported over the past twenty years by its predecessor, the National Center for Health Services Research and Health Care Technology Assessment (NCHSR).

Title IX, in particular sections 902 and 925(c), authorizes the Administrator to award grants to, and enter into cooperative agreements with, public and private nonprofit entities and individuals to support research, demonstration projects, evaluations, and the dissemination of information, on health care services and systems for the delivery of these services. When appropriate, the Administrator also may enter into contracts with individuals, as well as public and private entities.

Section 902(d) of the PHS Act, as amended by Public Law 102–410, specifies that the Administrator may provide financial assistance for the costs of developing and operating centers for multidisciplinary health services research, demonstration projects, evaluations, training, and policy analysis with respect to the delivery of health care services in rural areas and the health of low-income groups, minorities, and the elderly.

Under section 902(e), as amended by Public Law 102–410, AHCPR may use its title IX authorities to carry out, and coordinate appropriately with, activities authorized by the Social Security Act, including experiments, demonstration projects, and other related activities. Further, section 902(e) requires that research and other activities conducted under title IX on the outcomes of health care services and procedures which affect the Medicare and Medicaid programs be consistent with the provisions of section 1142 of the Social Security Act, simultaneously enacted by section 6103(b) of Public Law 101–239. The authorities in section 1142 (42 U.S.C. 1320–12b) enhance and elaborate on the authority for outcomes research provided under title IX.

Section 1142(a)(1) directs the Secretary, acting through the Administrator of AHCPR, to support research with respect to the outcomes, effectiveness, and appropriateness of health care services and procedures, in order to identify the manner in which diseases, disorders, and other health conditions can be prevented, diagnosed, treated, and managed most effectively. Section 1142(a)(2) authorizes evaluations of the comparative effects on health and functional capacity, of alternative services and procedures for preventing, diagnosing, and managing health conditions.

Factors to be considered in establishing priorities for outcomes research and evaluations with respect to a disease, disorder, or other health condition, as set out in section 1142(b), include the extent to which:

(1) Improved methods of prevention, diagnosis, treatment, and clinical management can benefit a significant number of individuals;

(2) There are significant variations among physicians in the particular services and procedures used in making diagnoses and providing treatments, or in the outcomes of health care services or procedures, due to different patterns of diagnosis or treatment;

(3) The services and procedures used result in relatively substantial expenditures; and

(4) The data necessary for such evaluations are readily available or can be readily developed.

Also provided for in section 1142(c), for the purpose of facilitating outcomes research, are various authorities to conduct and support activities such as the improvement of methodologies, criteria, and data bases used in outcomes research, and research and demonstrations on the use of claims data and data on the clinical and functional status of patients.

Section 1142(e) requires the Secretary (through AHCPR) to provide for dissemination of the findings of outcomes research conducted or supported under section 1142 and clinical practice guidelines developed under sections 911–914 of the PHS Act.

Section 1142(e)(2) provides that the Secretary (through AHCPR) will work with professional associations, medical organizations, and other relevant groups to identify and implement effective means to educate physicians and other providers, consumers, and others in using such research findings and guidelines. Authority to support evaluations of the impact of such dissemination activities and authority to support research with respect to improving methods of disseminating information on the effectiveness and appropriateness of health care services and procedures are provided under sections 1142 (f) and (g).

The proposed regulations at subpart A would establish program and administrative requirements governing grants and cooperative agreements to carry out the purposes of title IX of the PHS Act and section 1142 of the Social Security Act. The proposed regulations also would set out the technical and scientific peer review procedures and criteria by which applications for grants are to be reviewed, in accordance with section 922(e) of the PHS Act (42 U.S.C. 299c–1(e)). The provisions of the proposed regulations essentially reflect and update policies established under the existing regulations governing grants for health services research, demonstration, and evaluation projects. In addition, the existing regulations are being revised where applicable to incorporate current Department and PHS grants policies.

It should be noted that Public Law 102–410 amended section 924(a) of the PHS Act to require that the Administrator define by regulation what constitutes financial interests in grants, cooperative agreements, and contracts supported by AHCPR that will, or may be reasonably expected to, create a bias in the results of the supported projects; and the actions that will be taken in response to any such interests. It is planned to address these requirements in separate regulations. Until rules are published governing conflict of interest in AHCPR supported projects, there are PHS grants policies on conflicts of interest which are applicable to AHCPR and other PHS grantees.

Provisions of Proposed Subpart A

The following is a discussion of the major provisions of the proposed regulations at Subpart A:

Section 67.10 Purpose and Scope

Section 67.10 of the proposed regulations provides that these regulations apply to the award by AHCPR of grants and cooperative agreements under: (a) Title IX of the Public Health Service Act to support research, demonstration projects, evaluations, dissemination projects, and conferences on health care services and systems for the delivery of such services, as well as to establish and operate multidisciplinary health research centers; and (b) Section 1142 of the Social Security Act to support research on the outcomes, effectiveness, and appropriateness of health care services and procedures, including but not limited to, evaluations of alternative services and procedures, projects to improve methods and data bases for outcomes research, dissemination of research information and clinical guidelines, conferences, and research on dissemination methods.

Section 67.11 Definitions.

Section 67.11 of the proposed regulations includes, among others, definitions for the "Agency for Health Care Policy and Research (AHCPR)" and the "Administrator", consistent with the authorities provided to AHCPR and the Administrator by title IX of the PHS Act and section 1142 of the Social Security Act. "Peer review group" is also defined, conforming to section 922(c) of the PHS Act, as amended by Public Law 102–410. Specifically, section 922(c)(2) stipulates that members of a peer review group established by the Administrator shall be appointed from among individuals who by virtue of their training or experience are eminently qualified to carry out the duties of such peer review group. Public Law 102–410 amended the original definition to remove the prior restriction against officers or employees of the United States serving as peer reviewers. The new definition permits officers and employees of the United States to serve so long as they not constitute more than 25 percent of a peer review group. These provisions are consistent with those for peer review groups used by the NIH for review of its research grants.

Section 67.12 Eligible Applicants

Consistent with section 925(c) of the PHS Act, § 67.12 provides that public or nonprofit private entities and individuals are eligible for grants or cooperative agreements under these proposed regulations.

Section 67.13 Eligible Projects

Section 67.13 of the proposed regulations identifies categories of projects eligible for funding under these regulations. The listing of projects is not exhaustive, but highlights the types of projects for which support is authorized under title IX of the PHS Act and section 1142 of the Social Security Act. For example, dissemination of research information, a program category not in the existing regulations, reflects the legislative mandate in title IX of the PHS Act and section 1142 of the Social Security Act to disseminate research findings and the authority in section 1142 to support research on methods of dissemination. In addition, because of the importance of addressing national concerns regarding AIDS and HIV-related health issues, the listing of eligible projects includes projects related to access and the quality of health care services for AIDS and HIV-infected patients.

Eligible projects listed in the proposed regulations include, but are not limited to, the following areas of study: (a) Effectiveness, efficiency, and quality of health care services; (b) Outcomes of health care services and procedures; (c) Clinical practice, including primary care and practice-oriented research; (d) Health care technologies, facilities, and equipment, including assessments of health care technology diffusion; (e) Health care costs, productivity, and market forces; (f) Health promotion; (g) Health statistics and epidemiology; (h) Medical liability; (i) AIDS/HIV infection with respect to issues of access and delivery of health care services; (j) Rural health services; (k) The health of low-income, minority, elderly, and other underserved populations; and (l) Information dissemination, conferences, and research on dissemination methodologies.

Section 67.14 Application

Proposed § 67.14 addresses the standard application process for grants, including cooperative agreements.

Section 67.15 Peer Review of Applications

Section 67.15 of the proposed regulations sets forth the administrative requirements and processes to be used for the review of all grant applications, in accordance with section 922 of the PHS Act. Regulations for the conduct of peer review are required by section 922(e) of the PHS Act (42 U.S.C. 299c–1(e)).

The proposed § 67.15(a) establishes the peer review process for all grant applications, except those for small grants, as discussed below. Section 67.15(a)(1) sets out criteria for selection of members of peer review groups. Members are to be selected on the basis of their training and experience in relevant scientific and technical fields, their knowledge of health services research and the application of research findings, and their special knowledge of the issues(s) being addressed in the

grant application. The selection criteria in the NPRM also reflects AHCPR's commitment to seek appropriate representation based on gender, racial/ethnic origin, and geography.

Section 67.15(a)(3) establishes responsibilities of the peer review groups, including the reporting requirements for each application reviewed. The peer review report must include a factual summary of the proposed project; address the scientific and technical merit of the proposed project; and provide a recommendation on the disposition of the application. The peer review group may recommend that an application: (1) be considered for funding, (2) be deferred for a later decision, pending additional information, or (3) not receive further consideration for funding. Also, for each application recommended for consideration for funding, the group must provide a priority score, based on the scientific and technical merit of the proposed project, as well as the group's recommendation regarding the length of the project period and the budgetary level of support.

The proposed peer review recommendation alternatives would replace the existing set of recommendations: (1) approve, (2) defer for a later decision, or (3) disapprove. The changes are based on National Institutes of Health (NIH) modifications in their review process that are being implemented in response to congressional concerns that distinctions should be made between applications having limited scientific and technical merit and those having such significant scientific and technical merit as to warrant consideration for funding. The AHCPR peer review process is patterned after that of NIH, except for those applications for which procedural adjustments are made in accordance with section 922(d)(2) of the PHS Act (see proposed § 67.15(b), described below). Moreover, AHCPR, along with other research components of the Public Health Service, uses NIH's Division of Research Grants for the receipt and referral of applications. Therefore, the proposed regulations incorporate the new terminology used in the peer review of NIH grant applications and in the vast majority of the Department's research grants.

Section 67.15(b) proposes the requirements for review of small grant applications in accordance with section 922(d)(2) of the PHS Act. Specifically, section 922(d)(2) provides that in the case of applications for financial assistance the direct costs of which will not exceed the dollar limit specified in 922(d)(2) ($50,000), the Administrator may make appropriate procedural adjustments in the peer review process. For the purpose of these proposed regulations, applications with total direct costs over the project period that do not exceed the specified dollar limit ($50,000) are referred to as "small grants." The specific dollar limit is not stated in the body of the proposed regulations so that the regulations would not require amendment should the statutory amount be changed. In accordance with section 922(d)(2), such adjustments may be made in the peer review process for small grants for the purpose of encouraging the entry of individuals into the field of research and promoting clinical practice-oriented research, as well as for other purposes which the Administrator may determine.

Under § 67.15(b), applications for small grants may be submitted by the Administrator for review by appropriate staff members of the Department of Health and Human Services or other Federal departments, who are qualified as peers or experts in the field(s); and/or outside experts who are neither officers nor employees of the United States Government, to assess the scientific and technical merit of an application. Federal and non-Federal experts are to be selected by the Administrator, on the basis of their training and experience in particular scientific and technical fields, their knowledge of health services research and the application of research findings, and their special knowledge of the issue(s) being addressed in the specific proposal. The reviewers or group of reviewers will report on each application reviewed, as well as provide recommendations consistent with the requirements for peer review groups under paragraph (a)(3) of § 67.15.

Proposed § 67.15(c) sets out review criteria for all grant applications, including small grants. Criteria for the review of applications for conference grants, including applications for small conference grants, are set out separately. The conference grant criteria reflect currently established criteria, as published in program announcements. Provision also is made for additional review criteria that may be announced by the Administrator of AHCPR for specific categories of grants, such as proposed projects to encourage the entry of individuals into health services research; to study the dissemination of research information and practice guidelines; and to establish research centers. In general, announcements relating to grants are made by the Administrator in the "NIH Guide for Grants and Contracts" or the Federal Register.

Proposed § 67.15(d) highlights conflict of interest provisions applicable to peer reviewers.

Section 67.16 Evaluation and Disposition of Applications

Proposed § 67.16 sets out factors that the Administrator will consider in making funding decisions. The factors include the recommendations made as a result of peer review in accordance with § 67.15 discussed above; recommendations by the National Advisory Council for Health Care Policy, Research, and Evaluation (referred to as the Council) for those applications reviewed in accordance with its charter; the probable usefulness of the results of the project for dealing with national health issues, policies, and programs; and the extent that the proposed project addresses specific AHCPR program priorities which may be announced by the Administrator in the "NIH Guide for Grants and Contracts," the Federal Register, or other appropriate health research publications receiving widespread distribution.

Section 921 of the PHS Act establishes the National Advisory Council for Health Care Policy, Research, and Evaluation to advise the Secretary and the Administrator with respect to activities for carrying out the purposes of AHCPR. The Council's charter provides that it will review and make recommendations on applications for grants with proposed total direct costs in excess of $250,000 for the project period. Recently, its charter was revised to permit discretionary review of grant applications requesting total direct costs in excess of $50,000. The Council's recommendations with respect to specific applications are based on the relevance of these grant projects to AHCPR's program priorities.

Consistent with section 922(b) of the PHS Act, proposed § 67.16 provides that the Administrator may not give consideration for funding to an application, which has not been recommended for further consideration as a result of peer review in accordance with § 67.15.

Section 67.17 Grant Award

Section 67.17 of the proposed regulations sets forth grant award requirements, such as how long the Administrator intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3 to 5 years, or for small grants usually 1 year. These provisions are consistent

with PHS grants policies. PHS grants management policies are set out, and periodically updated, in the "PHS Grants Policy Statement" provided to all grantees. Section 67.17(f) provides that for particular categories of small grants, such as dissertation research support, the Administrator may establish a limit on total direct costs that is less than the amount specified for special procedures in section 922(d)(2) of the PHS Act. Any such categorical or cost limits would be announced in advance of the deadline for receipt of these applications. This provision is equivalent to that in the existing regulations.

Except for small grants, proposed § 67.17(g)(1) states that where the award of a supplemental grant(s) would result in supplemental awards in the aggregate that exceed 20 percent of the approved direct costs of the project during the project period, the Administrator will obtain, to the extent possible, the views of the peer review group prior to making any such award. A supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.21 shall be excluded from the 20 percent aggregate. Supplemental grants which would exceed the 20 percent limit specified above or which would request an increase in funds to support an expansion or change in the scope of the project will be reviewed as competing supplemental grants in accordance with § 67.15(a).

In the case of small grants, reviewed in accordance with section 922(d)(2) of the PHS Act and § 67.15(b), the Administrator will not approve a supplemental award during the project period (excluding any supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.21) that will, in the aggregate, exceed 10 percent of the approved direct costs of the project.

Proposed § 67.17(h) includes the review criteria for continuation awards that would not have to compete for funds with applications for new and supplemental grants. Specifically, each project with a project period in excess of 2 years that is not a small grant would be reviewed during the second budget period, and each subsequent budget period (except for the final year of the project). As a part of this process, the proposed continuation grant would be reviewed, to the extent possible, by at least two members of the same peer group that reviewed the initial proposal in accordance with § 67.15(a), or who participated in that review.

The group would review the application for continuation support and make recommendations to the Administrator based upon the group's evaluation of factors including, the progress of the project in meeting project objectives and the allocation of resources within the project.

Section 67.18 Use of Project Funds

Proposed § 67.18 provides that grant funds must be spent for carrying out the approved project in accordance with the PHS Act and section 1142 of the Social Security Act (if applicable), these regulations, the terms and conditions of the grant award, and, in particular, the applicable cost principles in subpart Q of 45 CFR part 74, or in 45 CFR part 92 for State and local government grantees.

Section 67.19 Other Applicable Regulations

Section 67.19 sets out a listing of several other regulations which apply to these grants.

Section 67.20 Confidentiality

Proposed § 67.20 sets out the provisions of section 903(c) of the PHS Act with respect to the confidentiality of information obtained in the course of conducting activities under title IX of the PHS Act (and those conducted under both title IX and section 1142 of the Social Security Act). This proposed section states that no information so obtained if the entity or individual supplying the information or described in it is identifiable may be used for any purpose other than the purpose for which it was supplied, unless the entity or individual supplying the information or described in it has consented to such other use, in the recorded form and manner as the Administrator may require. In addition, information so obtained may not be published or released in other form if the individual who supplied the information or who is described in it is identifiable, unless such individual has consented in the recorded form and manner as the Administrator may require. Proposed § 67.20 also makes explicit that the confidentiality provisions apply to any person who might obtain grant information in the course of working on a grant application or grant award, including Federal employees and peer reviewers.

Section 67.21 Control of Data and Availability of Publications

Proposed § 67.21 provides that, subject to the confidentiality requirements of section 903(c) of the PHS Act, section 1142(d) of the Social Security Act, and § 67.20 of this proposal:

(a) All data collected or assembled for the purposes of carrying out health services research, demonstration, evaluation, or dissemination projects supported under this subpart shall be made available to the Administrator, upon request;

(b) All publications, reports, papers, statistics, or other materials developed from work supported, in whole or in part, by an award under this subpart must be submitted in a timely manner to the Administrator. All such publications must include an acknowledgement that such materials are the results of, or describe, a grant activity supported by AHCPR;

(c) The AHCPR shall have a royalty-free non-exclusive, and irrevocable license to reproduce, publish, use, or disseminate any copyrightable materials developed from a grant, for any purpose consistent with AHCPR's statutory responsibility, and to authorize others to do so; and

(d) Except for identifying information protected by section 903(c) of the PHS Act, the Administrator, as appropriate, will make information available and disseminate such information and materials on as broad a basis as practicable and in such form as to make them as useful as possible to a variety of audiences, including consumers, health care policymakers, practitioners, and educators.

The requirement under paragraph (a) for the submission of data assembled or collected in carrying out activities under this subpart is included in the current Subpart A. This requirement helps to focus attention on the importance of reliable and valid research findings that have direct application in the practice of medicine, delivery of health care services, and related policy decisionmaking. This is particularly important in outcomes and other medical effectiveness research, the findings of which directly affect patients. Such findings are used to determine which clinical services and procedures are most effective in diagnosing and treating patients and which result in the best outcomes for patients. The data used to generate such findings should be submitted to AHCPR, upon request, for analysis and validation by AHCPR and/or outside researchers to assess the integrity of the research results before findings are incorporated into guidelines or otherwise result in clinical practice recommendations or generate changes in delivery systems.

The emphasis under proposed paragraph (b) for the timely submission of publications, reports, papers, statistics, or other materials is also extremely important in assuring that AHCPR is able to carry out its legislative mandate for timely dissemination of

research findings. In addition, in accordance with the PHS Grants Policy Statement and the general departmental Administration of Grants regulations (45 CFR 74.145), proposed paragraph (c), emphasizes that AHCPR has a non-exclusive and irrevocable license to use, publish, and disseminate copyrightable materials developed in the course of, or under a grant, for any purpose consistent with AHCPR's statutory responsibilities, and to authorize others to do so.

Discussion of Subpart B

The existing regulations at Subpart B pertain to grants for health services research centers under former section 305(e) of the PHS Act (originally section 305(d)), which described specific types of research centers to be supported and mandated particular requirements for each center. Pub. L. 101–239 repealed section 305 of the PHS Act in its entirety and provided for a broad authority for support to multidisciplinary health services research centers under the new title IX of the PHS Act (42 U.S.C. 299–299c–6). See section 902(d), as amended by Pub. L. 102–410 (42 U.S.C. 299a(d)). Pub. L. 101–239 also provided broad authority for support of research centers for the conduct of outcomes research under section 1142(c) of the Social Security Act (42 U.S.C. 1320b–12(c)(4)). Grants for centers under title IX of the PHS Act and section 1142(c) of the Social Security Act are being made in accordance with Subpart A. Consequently, the existing Subpart B is now obsolete and the Department is proposing to remove it and add a new Subpart B pertaining to the peer review of contract proposals, as discussed below. All other aspects of AHCPR contract administration and management will be conducted in accordance with the Federal Acquisition Regulations (FAR) and the Department's Acquisition Regulations (HHSAR).

Section 922 of the PHS Act requires that technical and scientific peer review shall be conducted not only with respect to each application for a grant or cooperative agreement, but also with respect to each proposal for a contract under title IX. Section 922(e) (42 U.S.C.299c–1(e)) further requires that regulations be issued for the conduct of such peer review. Proposed new Subpart B would satisfy this requirement with respect to the peer review of contracts. The proposed regulations are intended to be used in conjunction with the FAR and the HHSAR, governing all Department contracts.

The proposed regulations would apply to the peer review of contract proposals under section 1142 of the Social Security Act (42 U.S.C. 1320b–12), as well as title IX of the PHS Act. This is consistent with the interrelationship between the two authorities. The peer review requirements in proposed § 67.102 are applicable to all contract proposals, regardless of the projected costs of the contracts. (Section 922(d)(2) of the PHS Act does not provide for procedural adjustments in the peer review process for contract proposals as it does for applications for small grants as set out in proposed § 67.15(b) of Subpart A.)

Provisions of Subpart B include the following:

Section 67.101 Purpose and Scope

Proposed § 67.101 would provide that the regulations in proposed new Subpart B of Part 67 apply to the review of contract proposals for health services research, demonstration projects, evaluations, guideline development, and dissemination of information, including research on dissemination methods, on health care services and systems for the delivery of such services, under both title IX of the PHS Act and section 1142 of the Social Security Act.

Section 67.102 Definitions

Proposed § 67.102 sets forth definitions applicable to peer review of AHCPR research contract proposals. "Peer review group" is defined, conforming to section 922(c) of the PHS Act, as amended by Pub. L. 102–410. Specifically, section 922(c)(2) stipulates that members of a peer review group be established by the Administrator from among individuals who by virtue of their training or experience are eminently qualified to carry out the duties under this subpart. Pub. L. 102–410 amended the original definition to remove the prior restriction against officers or employees of the United States serving as peer reviewers. The new definition permits officers and employees of the United States to serve so long as they not constitute more than 25 percent of a peer review group.

Section 67.103 Peer Review of Contract Proposals

Proposed § 67.103 provides that peer review of contract proposals would be conducted in accordance with the Federal Acquisition Regulations and the Health and Human Services Acquisition Regulations (48 CFR Chapters I and III) and the requirements of the pertinent Request for Proposal. It sets forth provisions for the establishment and composition of peer review groups consistent with section 922(c) of the Public Health Service Act. Experts are to be selected on the basis of their training or experience in particular scientific and technical fields, their knowledge of health services research and the application of research findings, and their special knowledge of the issue(s) being addressed in the contract proposals. The selection criteria also reflect AHCPR's commitment to seek appropriate representation based on gender, racial/ethnic origin, and geography, to the extent practicable, given that the peer review group for a particular contract may consist of as few as 3 to 5 members. The regulation also would provide that members of peer review groups for contracts would be appointed for a limited period of time; such as on an annual basis, or until the peer review of the contract proposals is completed as specified in the group's charter, or until expiration of the approved contract. It also highlights conflict of interest provisions relevant to peer review of contract proposals.

Section 67.104 Confidentiality.

Proposed § 67.104 reiterates the provisions of section 903(c) of the PHS Act concerning the protection of the confidentiality of individuals and entities involved in health services research proposals reviewed under this subpart, or identifiable in research products produced with AHCPR contract funds. It would also make explicit that these confidentiality provisions apply to any person who might obtain such information in the course of working on a proposal or contract, including Federal employees and peer reviewers.

Section 67.105 Control of Data and Availability of Publications.

Proposed § 67.105 provides that: (a) Data will be collected, maintained, and supplied, as provided in each contract and subject to the confidentiality requirements of section 903(c) of the PHS Act, section 1142(d) of the Social Security Act, and § 67.104 of this subpart; (b) All publications, reports, papers, statistics, or other materials developed, in whole or in part, under an AHCPR contract must be submitted to the Administrator in accordance with the terms of the contract and all publications must include an acknowledgement that such materials are the results of, or describe, an activity supported by an AHCPR contract; (c) In accordance with 48 CFR 52.227–14, except where otherwise specified in the contract, AHCPR has an unlimited license to use, disclose, reproduce,

prepare derivative works from, distribute copies to the public, and perform publicly and display publicly copyrightable materials produced under a contract, for any purpose consistent with AHCPR's statutory responsibility, and to have or permit others to do so; and (d) Except for identifying information protected by section 903(c) of the PHS Act, the Administrator, as appropriate, will make information provided in accordance with (a) and (b) of this section available, and disseminate such information and materials on as broad a basis as practicable and in such form as to make them as useful as possible to a broad audience including consumers, health policymakers, educators, and practitioners.

This section is included to help focus attention on the importance of reliable and valid research findings that have direct application in the practice of medicine, delivery of health care services, and related policy decisionmaking; and on AHCPR's legislative mandate to disseminate information on a wide-spread basis. This section is modeled after § 67.21 in Subpart A governing AHCPR grants.

Executive Order No. 12291

These proposed regulations have been reviewed in accordance with the requirements of Executive Order No. 12291, "Federal Regulation." They make minor changes to the existing grant and contract procedures, and will not impose any consequential costs on the grantees or contractors. The Secretary, therefore, has determined that the proposed regulations do not constitute a major rule, as defined under the order, and that a regulatory impact analysis is not required.

Regulatory Flexibility Act

The proposed regulations make minor revisions to the current grant and contract procedures, and would not have a significant economic impact on a substantial number of small entities. Therefore, the Secretary has concluded that a regulatory flexibility analysis, as defined under the Regulatory Flexibility Act of 1980 (5 U.S.C. Chapter 6), is not required.

Paperwork Reduction Act of 1980

These proposed regulations do not contain reporting or recordkeeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35). The applications used for the programs covered by the regulations at 42 CFR 67, Subpart A, (Form PHS 398, "Application for Public Health Service Grant" and PHS 2590, "Application for Continuation of Public Health Service Grant"), are approved under OMB Approval No. 0925–0001.

List of Subjects in 42 CFR Part 67

Grant programs—health services research, evaluation, and demonstration projects; Health services research centers; Medical research; Reporting and recordkeeping requirements.

For the reasons set out in the preamble, it is proposed to revise 42 CFR Part 67 to read as set forth below.

Dated: March 11, 1993.

Audrey F. Manley,

Acting Assistant Secretary for Health.

Approved: September 2, 1993.

Donna E. Shalala,

Secretary.

(Catalog of Federal Domestic Assistance No. 93.226—Health Services Research and Development Grants, and No. 93.180—Medical Effectiveness Research.)

Part 67—Agency for Health Care Policy and Research Grants and Contracts

Subpart A—Research Grants for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

Sec.

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67.17 Grant award.
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Subpart B—Peer Review of Contracts for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

Sec.

67.101 Purpose and scope.
67.102 Definitions.
67.103 Peer review of contract proposals.
67.104 Confidentiality.
67.105 Control of data and availability of publications.

Authority: Pub. L. 102–410, 106 Stat. 2094–2101 and Sec. 6103, Pub. L. 102–239, 103 Stat. 2189–2208, title IX of the Public Health Service Act (42 U.S.C. 299–299c–6); and sec. 1142, Social Security Act (42 U.S.C. 1320b–12).

Subpart A—Research Grants for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

§ 67.10 Purpose and scope.

The regulations of this subpart apply to the award by AHCPR of grants and cooperative agreements under:

(a) Title IX of the Public Health Service Act to support research, demonstration projects, evaluations, dissemination projects, and conferences on health care services and systems for the delivery of such services, as well as to establish and operate multidisciplinary health research centers.

(b) Section 1142 of the Social Security Act to support research on the outcomes, effectiveness, and appropriateness of health care services and procedures, including but not limited to, evaluations of alternative services and procedures, projects to improve methods and data bases for outcomes research, dissemination of research information and clinical guidelines, conferences, and research on dissemination methods.

§ 67.11 Definitions.

As used in this subpart—

Administrator means the Administrator and any other officer or employee of the Agency for Health Care Policy and Research to whom the authority involved may be delegated.

Agency for Health Care Policy and Research (AHCPR) means that unit of the Department of Health and Human Services established by section 901 of the Public Health Service Act.

Direct costs means the costs that can be identified specifically with a particular cost objective, such as compensation of employees for the time and effort devoted specifically to the approved project, and the costs of materials acquired, consumed, or expended specifically for the purpose of the approved project.

Grant means an award of financial assistance as defined in 45 CFR parts 74 and 92, including cooperative agreements.

Grantee means the organizational entity or individual to which a grant, including a cooperative agreement, under title IX of the Public Health Service Act or section 1142 of the Social Security Act and this subpart, is awarded and which is responsible and accountable both for the use of the funds provided and for the performance of the grant-supported project or activities. The grantee is the entire legal entity even if only a particular component is designated in the award document.

Nonprofit as applied to a private entity, means that no part of the net earnings of such entity inures or may lawfully inure to the benefit of any shareholder or individual.

Peer review group means a panel of experts, as required by section 922(c) of the PHS Act, who by virtue of their

training or experience are eminently qualified to carry out the duties under this subpart. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group under this subpart.

PHS Act means the Public Health Service Act, as amended.

Principal investigator means a single individual, designated in the grant application and approved by the Administrator, who is responsible for the scientific and technical direction of the project.

Social Security Act means the Social Security Act, as amended.

§ 67.12 Eligible applicants.

Any public or nonprofit private entity or any individual is eligible to apply for a grant under this subpart.

§ 67.13 Eligible projects.

Projects for research, demonstrations, evaluations, dissemination of information (including research on dissemination), and conferences, related to health care services and the delivery of such services are eligible for grant support. These include, but are not limited to, the following project categories:

(a) Effectiveness, efficiency, and quality of health care services;

(b) Outcomes of health care services and procedures;

(c) Clinical practice, including primary care and practice oriented research;

(d) Health care technologies, facilities, and equipment, including assessments of health care technology and technology diffusion;

(e) Health care costs, productivity, and market forces;

(f) Health promotion and disease prevention;

(g) Health statistics and epidemiology;

(h) Medical liability;

(i) AIDS/HIV infection, particularly with respect to issues of access and delivery of health care services;

(j) Rural health services;

(k) The health of low-income, minority, elderly, and other underserved populations; and

(l) Information dissemination and research on dissemination methodologies.

§ 67.14 Applications.

(a) To apply for a grant, an entity or individual must submit an application in the form and at the time that the Administrator requires. The application must be signed by an individual authorized to act for the applicant and to assume on behalf of the applicant the obligations imposed by the PHS Act and the Social Security Act, as pertinent, the regulations of this subpart, and any additional terms or conditions of any grant awarded.

(b) In addition to information requested on the application form, the applicant must provide such other information as the Administrator may request.

§ 67.15 Peer review of applications.

(a) *Peer review of applications, except applications reviewed under section 922(d)(2) of the PHS Act.*

(1) All applications for support under this subpart, except those which the Administrator has determined are eligible for review under section 922(d)(2) of the PHS Act and paragraph (b) of this section (referred to as "small grants"), will be submitted by the Administrator for review to a peer review group, in accordance with section 922(a) of the PHS Act. Members of the peer review group will be selected based upon their training and experience in relevant scientific and technical fields, taking into account, among other factors:

(i) The level of formal education (e.g., R.N., M.A., M.D., Ph.D.) completed by the individual or, as appropriate, the individual's pertinent experience and expertise;

(ii) The extent to which the individual has engaged in relevant research, the capacities (e.g., principal investigator, assistant) in which the individual has done so, and the quality of such research;

(iii) The extent of the professional recognition received by the individual as reflected by awards and other honors received from scientific and professional organizations outside the Department of Health and Human Services;

(iv) The need of the peer review group to include within its membership experts from various areas of specialization within relevant scientific and technical fields; and

(v) Appropriate representation based on gender, racial/ethnic origin, and geography.

(2) Review by the peer review group under this paragraph (a) is conducted by using the criteria set out in paragraph (c) of this section.

(3) The peer review group to which an application has been submitted under this paragraph (a) shall make a written report to the Administrator on each application, which shall contain the following parts:

(i) The first part of the report shall consist of a factual summary of the proposed project, including a description of its purpose, scientific approach, location, and total budget.

(ii) The second part of the report shall address the scientific and technical merit of the proposed project and shall consist of a critique of the proposed project with regard to the factors described in paragraph (c) of this section. This portion of the report shall include a set of recommendations to the Administrator with respect to the disposition of the application based upon its scientific and technical merit. The peer review panel may recommend that an application: (A) be considered for funding, (B) be deferred for a later decision, pending additional information, or (C) not be given further consideration for funding.

(iii) For applications recommended, in accordance with paragraph (a)(3)(ii)(A) of this section, for consideration for funding, the peer review panel shall, at the end of its deliberations, provide both a priority score, based on the scientific and technical merit of the proposed project, and its recommendation regarding the appropriate project period and level of support for the proposed project.

(b) *Peer review of applications eligible for review under section 922(d)(2) of the PHS Act (small grants).*

(1) In accordance with section 922(d)(2) of the PHS Act, for applications with total direct costs that do not exceed the amount specified in that section, hereafter, referred to as "small grants", the Administrator may make adjustments in the peer review procedures established in accordance with section 922 of the PHS Act and paragraph (a) of this section.

(2) Applications for small grants may be submitted by the Administrator for review by staff members of the Department of Health and Human Services or other Federal departments, who are qualified as peers or experts in the field(s); and/or outside experts who are neither officers nor employees of the United States Government, to assess the scientific and technical merit of such applications. Federal and non-Federal experts will be selected by the Administrator on the basis of their training and experience in particular scientific and technical fields, their knowledge of health services research and the application of research findings, and their special knowledge of the issue(s) being addressed or methods and technology being used in the specific proposal.

(3) The review criteria set forth in paragraph (c) of this section shall be utilized for the review of small grants. The review may be performed by individual reviewers or a group of

reviewers assembled by the Administrator.

(4) Each reviewer or group of reviewers to whom an application has been submitted under paragraph (b) of this section shall make a written report to the Administrator on each application. Each report shall summarize the findings of the review and provide recommendations with regard to whether the application should receive consideration for funding. If the review recommends that the application be so considered, each reviewer shall provide a numerical rating of the scientific and technical merit of the proposed project.

(c) *Review criteria.* The review criteria set out in this paragraph (c) apply to both applications reviewed by peer review panels in accordance with paragraph (a) of this section, and applications for small grants reviewed in accordance with paragraph (b) of this section.

(1) *Review criteria for nonconference grants.* In carrying out a review under this section for nonconference grants, the following review criteria will be taken into account, where appropriate:

(i) The degree to which the proposed project addresses the purposes of title IX of the PHS Act and section 1142 of the Social Security Act, if applicable, and any special AHCPR priorities which have been announced by the Administrator.

(ii) The significance and originality from a scientific or technical standpoint of the goals of the project;

(iii) The adequacy of the methodology proposed to carry out the project;

(iv) The availability of data or the adequacy of the proposed plan to collect data required in the analyses;

(v) The adequacy and appropriateness of the plan for organizing and carrying out the project;

(vi) The qualifications and experience of the principal investigator and proposed staff;

(vii) The reasonableness of the budget and the time frame for the project, in relation to the work proposed;

(viii) The adequacy of the facilities and resources available to the grantee;

(ix) Where an application involves activities which could have an adverse effect upon humans, animals, or the environment, the adequacy of the proposed means for protecting against or minimizing such effects; and

(x) Any additional criteria that may be announced by the Administrator from time to time for specific categories of grant applications (e.g., proposed projects to encourage the entry of individuals into health services research; to study the dissemination of research findings and guidelines; and to establish research centers) eligible for support under this subpart.

(2) *Review criteria for conference grants.* In carrying out a review under this paragraph (c) for conference grants, the following review criteria will be taken into account:

(i) The degree to which the proposed project addresses the purposes of title IX of the PHS Act and section 1142 of the Social Security Act, if applicable, and any special AHCPR program priorities which have been announced by the Administrator;

(ii) The significance of the proposed conference, specifically:

(A) The importance of the issue or problem addressed in the delivery, cost, quality of, or access to health services, or a methodological or technical issue in dealing with the development and conduct of health services research;

(B) The implications of the conference's intended outcomes for future health services research, for identifying or resolving methodological problems, and for organizing and managing research activities; and

(C) The implications of the conference for technological innovations in health care communications and dissemination of knowledge, or for the effective utilization of the material communicated and disseminated;

(iii) The design of the proposed conference, specifically:

(A) The logic and soundness of the conference's conceptual framework;

(B) The role, composition, and expertise of individuals and advisory groups to be utilized in planning or conducting the conference, including the involvement of the potential users of the information or other products of the conference;

(C) The reasonableness of the techniques proposed to ensure maximum participation and interaction among participants, e.g., discussion in large and small groups, prior distribution of papers, panels versus individual speakers, and periods for questions and answers;

(D) The specificity of the proposed agenda of topics to be addressed, the proposed speakers and panel members for each topic, their credentials, and the criteria for their selection; and

(E) The nature and quality of the informational products to be disseminated as a result of the conference (such as proceedings, research agendas, publications, training manuals and other products), and a plan for dissemination;

(iv) The qualifications of the personnel and the facilities involved, specifically:

(A) The experience and training of the applicant indicating the ability of the applicant to design, organize and carry out a health services research conference; and

(B) The adequacy of the facilities available for conducting the conference; and

(v) The appropriateness of the proposed budget, specifically:

(A) The reasonableness of the overall cost of the conference, given the proposed approach; and

(B) The cost effectiveness of the total proposed expenditure in terms of the probable value of the conference results.

(d) *Conflict of interest.*

(1) Members of peer review groups are subject to applicable conflict of interest statutes and policies, including the relevant provisions in title 18 of the United States Code related to criminal activity, Standards of Ethical Conduct for Employees of the Executive Branch (5 CFR Part 2635), and Executive Order 12674 (as modified by Executive Order 12731).

(2) In addition to any restrictions imposed under paragraph (d)(1) of this section:

(i) No member of a peer review group may participate in or be present during any review by such group of a grant application in which, to the member's knowledge, any of the following has a financial interest: (A) the member or his or her spouse, minor child, or partner; (B) any organization in which the member is serving as an officer, director, trustee, general partner, or employee; or (C) any organization with which the member is negotiating or has any arrangement concerning prospective employment or other similar association.

(ii) In the event any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the principal investigator or member of the staff responsible for carrying out any research or development activities contemplated as part of a grant application, that group is disqualified and the review will be conducted by another group with the expertise to do so. If there is no other group with the requisite expertise, the review will be conducted by an ad hoc group no more than 50 percent of whose members may be from the disqualified group. The composition of any such ad hoc group will be determined in accordance with § 67.15(a) of this subpart.

(iii) No member of a peer review group may participate in any review under this subpart of a specific grant application for which the member has had or is expected to have any other

responsibility or involvement (whether preaward or postaward) as an officer or employee of the United States.

(3) Where permissible under the statutes, standards, and order cited in paragraph (d)(1) of this section, the Administrator may waive the requirements in paragraph (d)(2) of this section if it is determined that there is no other practical means for securing appropriate expert advice on a particular grant application.

§ 67.16 Evaluation and disposition of applications.

(a) *Evaluation.* After appropriate peer review in accordance with § 67.15, the Administrator will evaluate applications recommended for funding, taking into consideration, among other factors:

(1) Recommendations made by reviewers pursuant to § 67.15;

(2) Recommendations made by the National Advisory Council for Health Care Policy, Research, and Evaluation for projects subject to review under the Council's charter;

(3) The appropriateness of the budget;

(4) The extent to which the research proposal and the fiscal plan provide assurance that effective use will be made of grant funds;

(5) The demonstrated business management capability of the applicant;

(6) The demonstrated competence and skill of the staff, especially the senior personnel, in light of the scope of the project;

(7) The probable usefulness of the results of the project for dealing with national health care issues, policies, and programs; and

(8) The degree to which the proposed project addresses specific priorities or purposes, which may be announced by the Administrator from time to time.

(b) *Disposition.* On the basis of the evaluation of the application as provided in paragraph (a) of this section, the Administrator shall: (1) give consideration for funding, (2) defer for a later decision, pending additional information, or (3) give no further consideration for funding, to any application for a grant under this subpart; except that the Administrator may not give consideration for funding to an application which has not been so recommended as a result of peer review in accordance with § 67.15. A recommendation against consideration for funding shall not preclude reconsideration, if the application is revised, responding to peer review issues and questions, and resubmitted for peer review at a later date.

§ 67.17 Grant award.

(a) Within the limits of available funds, the Administrator may award grants to those applicants whose projects are being considered for funding, which in the judgment of the Administrator, will promote best the purposes of title IX of the PHS Act and section 1142 of the Social Security Act, if applicable, and the regulations of this subpart.

(b) The Notice of Grant Award specifies how long the Administrator intends to support the project without requiring the project to recompete for funds. This period, called the project period, will usually be for 3–5 years, except for small grants, usually 1 year. The project period as specified in the Notice of Grant Award shall begin no later than 9 months following the date of the award, except that the project period must begin in the same fiscal year as that from which funds are being awarded.

(c) Upon request from the grantee, PHS grants policy permits an extension of the project period for up to 12 months when more time is needed to complete the research. The Administrator may approve an additional extension of time based on appropriate written justification submitted by the grantee prior to the completion of the project period.

(d) Generally, a grant will be for 1 year and subsequent continuation awards will be for 1 year at a time. A grantee must submit a separate application to have the support continued for each subsequent year. Decisions regarding continuation awards and the funding level of such awards will be made after consideration of such factors as the grantee's progress and management practices and the availability of funds. In all cases, continuation awards require a determination by the Administrator that continuation is in the best interest of the Federal Government.

(e) Neither the approval of any application nor the award of any grant commits or obligates the Federal Government in any way to make any additional, supplemental, continuation, or other award with respect to any approved application.

(f) *Small grants.* For particular categories of small grants, such as dissertation research support, the Administrator may establish a limit on total direct costs that is less than the amount specified in section 922(d)(2) of the PHS Act. Any such categorical limits will be announced in advance of the deadline for receipt of applications for such small grants.

(g) *Supplemental awards.* (1) Except for small grants, where the award of a supplemental grant(s) would result in supplemental awards in the aggregate that exceed 20 percent of the approved direct costs of the project during the project period, the Administrator will obtain, to the extent possible, the views of the peer review group that evaluated the initial application, prior to making any such award. A supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.21 shall be excluded from the 20 percent aggregate. Supplemental grants that would exceed the 20 percent limit or that request an increase in funds to support an expansion or change in the scope of the project will be reviewed as competing supplemental grants in accordance with § 67.15(a).

(2) In the case of small grants, reviewed in accordance with section 922(d)(2) of the PHS Act and § 67.15(b), the Administrator will not approve a supplemental award during the project period (excluding any supplemental award for preparation of data in suitable form for transmittal in accordance with § 67.21) that will, in the aggregate, exceed 10 percent of the approved direct costs of the project.

(h) *Noncompeting continuation awards.* Each project with a project period in excess of 2 years and with direct costs over the project period in excess of the amount specified in section 922(d)(2) will be reviewed during the second budget period and during each subsequent budget period (except for the last budget period of the project period) by, if possible, at least two members of the peer review group that reviewed the initial proposal or individuals who participated in that review. Such individuals shall review the application for continuation support and make recommendations to the Administrator concerning the disposition of the application based upon evaluation of:

(1) The progress of the project in meeting project objectives;

(2) The appropriateness of the management of the project and allocation of resources within the project;

(3) The adequacy and appropriateness of the plan for carrying out the project during the budget period in light of the accomplishments during previous budget periods; and

(4) The reasonableness of the proposed budget for the subsequent budget period.

§ 67.18 Use of project funds.

Grant funds must be spent solely for carrying out the approved project in accordance with the PHS Act, section 1142 of the Social Security Act (if applicable), the regulations of this subpart, the terms and conditions of the

award, and, in particular, the applicable cost principles, prescribed in subpart Q of 45 CFR part 74, or in 45 CFR part 92 for State and local government grantees.

§ 67.19 Other applicable regulations.

Several other regulations apply to grants under this subpart. These include, but are not limited to:

42 CFR Part 50 Subpart A—Responsibility of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science
42 CFR Part 50 Subpart D—Public Health Service grant appeals procedure
37 CFR Part 401—Inventions and patents
45 CFR Part 16—Procedures of the Departmental Grant Appeals Board
45 CFR Part 46—Protection of human subjects
45 CFR Part 74—Administration of grants
45 CFR Part 75—Informal grant appeals procedures
45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drugfree workplace (grants)
45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services effectuation of Title VI of the Civil Rights Act of 1964
45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title
45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance
45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs or activities receiving Federal financial assistance
45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements with State and local governments
45 CFR Part 93—New restrictions on lobbying

§ 67.20 Confidentiality.

The confidentiality of information obtained by a grantee in conducting activities under this subpart is protected by section 903(c) of the PHS Act. Specifically:

(a) No information obtained in the course of conducting activities supported under this subpart, if the entity or individual supplying the information or described in it is identifiable, may be used for any purpose other than the purpose for which it was supplied, unless the identifiable entity or individual supplying the information or described in it has consented to such other use, in the recorded form and manner as the Administrator may require; and

(b) No information obtained in the course of activities supported under this subpart may be published or released in other form if the individual who supplied the information or who is described in it is identifiable, unless such individual has consented, in the recorded form and manner as the Administrator may require, to such publication or release.

(c) The provisions of this section are applicable to any person who might obtain such information in the course of working on a grant application or grant award, including Federal employees and peer reviewers.

§ 67.21 Control of data and availability of publications.

Except as otherwise provided in the terms and conditions of the award and subject to the confidentiality requirements of section 903(c) of the PHS Act, section 1142(d) of the Social Security Act and § 67.20 of this subpart:

(a) All data collected or assembled for the purposes of carrying out health services research, demonstration, evaluation, or dissemination projects supported under this subpart shall be made available to the Administrator, upon request;

(b) All publications, reports, papers, statistics, or other materials developed from work supported, in whole or in part, by an award made under this subpart must be submitted, in accordance with the terms and conditions of the award, to the Administrator in a timely manner. All publications must include an acknowledgement that such materials are the results of, or describe, a grant activity supported by AHCPR;

(c) The AHCPR retains a royalty-free, non-exclusive, and irrevocable license to reproduce, publish, use, or disseminate any copyrightable materials developed in the course of or under a grant, for any purpose consistent with AHCPR's statutory responsibilities, and to authorize others to do so; and

(d) Except for identifying information protected by section 903(c) of the PHS Act, the Administrator, as appropriate, will make information available and disseminate such information and materials on as broad a basis as practicable and in such form as to make them as useful as possible to a variety of audiences, including consumers, health policymakers, educators, and practitioners.

§ 67.22 Additional conditions.

The Administrator may, with respect to any grant awarded under this subpart, impose additional conditions prior to or at the time of any award when in the Administrator's judgment such conditions are necessary to assure or protect advancement of the approved project, the interest of the public health, or the conservation of grant funds.

Subpart B—Peer Review of Contracts for Health Services Research, Evaluation, Demonstration, and Dissemination Projects

§ 67.101 Purpose and scope.

(a) The regulations of this subpart apply to the peer review of contracts under:

(1) Title IX of the Public Health Service Act to support research, evaluations, guideline development, demonstrations, and dissemination projects, including conferences, on health care services and systems for the delivery of such services.

(2) Section 1142 of the Social Security Act to support research on the outcomes, effectiveness, and appropriateness of health care services and procedures, including, but not limited to, evaluations of alternative services and procedures, projects to improve methods and data bases for outcomes research, dissemination of research information and clinical guidelines, conferences, and research on dissemination methods.

(b) The regulations of this subpart incorporate provisions with respect to confidentiality of research data, control of data, and availability of information.

§ 67.102 Definitions

Contract proposal means a written offer to enter into a contract, submitted to a contracting officer by an individual or non-Federal organization, and including at a minimum a description of the nature, purpose, duration, cost of project and methods, personnel, and facilities to be utilized in carrying it out.

Peer review group means a panel of experts, as required by section 922(c) of the PHS Act, established to conduct technical and scientific review of contract proposals and to make recommendations to the Administrator regarding the merits of such proposals.

Request for proposals means a Government solicitation to prospective offerors, under procedures for negotiated contracts, to submit a proposal to fulfill specific agency

requirements based on terms and conditions defined in the solicitation. The solicitation contains information sufficient to enable all offerors to prepare competitive proposals, and is as complete as possible with respect to: the nature of work to be performed; descriptions and specifications of items to be delivered; performance schedule; special requirements, clauses or other circumstances affecting the contract; and evaluation criteria by which the proposals will be evaluated.

§ 67.103 Peer review of contract proposals.

(a) *Peer review of contract proposals.* All contract proposals for support under this subpart will be submitted by the Administrator for review to a peer review group, as required in section 922(a) of the PHS Act. Proposals will be reviewed in accordance with the Federal Acquisition Regulations and the Health and Human Services Acquisition Regulations (48 CFR chapters I and III) and the requirements of the pertinent Request for Proposal.

(b) *Establishment of peer review group.* In accordance with section 922(c) of the PHS Act, the Administrator shall establish such peer review groups as may be necessary to review all contract proposals submitted to AHCPR.

(c) *Composition of peer review groups.* The peer review groups shall be composed of individuals, in accordance with section 922(c) of the PHS Act, as amended, who by virtue of their training or experience are eminently qualified to carry out the duties of such a peer review group. Officers and employees of the United States may not constitute more than 25 percent of the membership of any such group. Such officers and employees may not receive compensation for service on such groups in addition to the compensation otherwise received for duties carried out as such officers and employees. Members of the peer review group will be selected based upon their training or experience in relevant scientific and technical fields, taking into account, among other factors:

(1) The level of formal education (e.g., R.N., M.A., M.D., Ph.D.) completed by the individual or, as appropriate, the individual's pertinent experience and expertise;

(2) The extent to which the individual has engaged in relevant research, the capacities (e.g., principal investigator, assistant) in which the individual has done so, and the quality of such research;

(3) The extent of the professional recognition received by the individual as reflected by awards and other honors received from scientific and professional organizations outside the Department of Health and Human Services;

(4) The need of the peer review group to include within its membership experts from various areas of specialization within relevant scientific and technical fields; and

(5) Appropriate representation based on gender, racial/ethnic origin, and geography, to the extent practicable.

(d) *Term of peer review group members.* Notwithstanding section 922(c)(3) of the PHS Act, members of peer review groups appointed to review contract proposals will be appointed to such groups for a limited period of time, such as on an annual basis, or until the peer review of the contract proposals is completed as specified in the group's charter, or until the expiration of the contract(s) awarded as a result of the peer review.

(e) *Conflict of interest.*

(1) Members of peer review groups are subject to applicable conflict of interest statutes and policies, including the relevant provisions in title 18 of the United States Code related to criminal activity, the Standards of Ethical Conduct for Employees of the Executive Branch and (5 CFR part 2635) and Executive Order 12674 (as modified by Executive Order 12731).

(2) In addition to any restrictions imposed under paragraph (e)(1) of this section:

(i) No member of a peer review group may participate in or be present during any review by such group of a contract proposal in which, to the member's knowledge, any of the following has a financial interest: (A) The member or his or her spouse, minor child, or partner; (B) any organization in which the member is serving as an officer, director, trustee, general partner, or employee; or (C) any organization with which the member is negotiating or has any arrangement concerning prospective employment or other similar association.

(ii) In the event any member of a peer review group or his or her spouse, parent, child, or partner is currently or expected to be the project director or member of the staff responsible for carrying out any contract requirements as specified in the contract proposal, that group is disqualified and the review will be conducted by another group with the expertise to do so. If there is no other group with the requisite expertise, the review will be conducted by an ad hoc group no more than 50 percent of whose members may be from the disqualified group. The composition of any such ad hoc group will be determined in accordance with § 67.103 of this subpart.

§ 67.104 Confidentiality.

Information obtained by a Federal employee, peer reviewer, or contractor in the course of conducting AHCPR contract activities is protected by section 903(c) of the PHS Act. Specifically:

(a) No information obtained in the course of conducting AHCPR contract activities, if the entity or individual supplying the information or described in it is identifiable, may be used for any purpose other than the purpose for which it was supplied, unless the identifiable entity or individual supplying the information or described in it has consented to such other use, in the recorded form and manner as the Administrator may require; and

(b) No information obtained in the course of conducting AHCPR contract activities under this subpart may be published or released in other form if the individual who supplied the information or who is described in it is identifiable, unless such individual has consented, in the recorded form and manner as the Administrator may require, to such publication or release.

§ 67.105 Control of data and availability of publications.

(a) Data will be collected, maintained, and supplied as provided in each contract subject to the confidentiality requirements of section 903(c) of the PHS Act, section 1142(d) of the Social Security Act, and § 67.104 of this subpart;

(b) All publications, reports, papers, statistics, or other materials developed from work supported in whole or inpart by contracts under title IX of the PHS Act and section 1142 of the Social Security Act, if applicable, must be submitted to the Administrator in accordance with the terms of the contract. All publications must include an acknowledgement that such materials are the results of, or describe, a contractual activity supported by AHCPR;

(c) In accordance with 48 CFR part 52.227–14 and except as otherwise specified in the contract, AHCPR has the license to use, disclose, reproduce, prepare derivative works from, distribute copies to the public, and perform publicly and display publicly any copyrightable materials produced under a contract for any purpose consistent with AHCPR's statutory responsibilities, and to have or permit others to do so; and

(d) Except for identifying information protected by section 903(c) of the PHS

Act, the Administrator, as appropriate, will make information provided in accordance with paragraphs (a) and (b) of this section available, and disseminate such information and materials on as broad a basis as practicable and in such form as to make them as useful as possible to a variety of audiences, including consumers, health policymakers, educators, and practitioners.

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federal register

Tuesday
November 16, 1993

Part IV

Department of the Interior

Fish and Wildlife Service

50 CFR Part 15

Importation of Exotic Wild Birds to the United States; Final Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 15

RIN: 1018–AB93

Importation of Exotic Wild Birds to the United States; Final Rule Implementing the Wild Bird Conservation Act of 1992

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: On October 23, 1992, the Wild Bird Conservation Act of 1992 (WBCA) was signed into law, the purposes of which include promoting the conservation of exotic birds by: ensuring that all imports into the United States of species of exotic birds are biologically sustainable and not detrimental to the species; ensuring that imported birds are not subject to inhumane treatment during capture and transport; and assisting wild bird conservation and management programs in countries of origin. This final rule implements the prohibitions stipulated in the WBCA and provides permit requirements and procedures for some allowed exemptions. This rule also replaces the feather importation quota regulations.

EFFECTIVE DATE: This rule is effective November 16, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Susan S. Lieberman, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Dr., room 420C, Arlington, VA 22203, telephone (703) 358–2093.

SUPPLEMENTARY INFORMATION: This rule implements some aspects of the Wild Bird Conservation Act (WBCA), which was signed into law on October 23, 1992. The WBCA limits or prohibits imports of exotic bird species to ensure that their populations are not harmed by trade. It also encourages wild bird conservation programs in countries of origin by both ensuring that all trade in such species involving the United States is biologically sustainable and not detrimental to the species, and by creating an Exotic Bird Conservation Fund to provide conservation assistance in countries of origin. The effects of the WBCA, which this rule implements, are as follows:

The WBCA covers the importation of all bird species not indigenous to the 50 United States and the District of Columbia, while exempting the following bird families from its provisions: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae, based on "Reference List of the Birds of the World" by Morony, Bock, and Farrand (1975).

An immediate moratorium, effective October 23, 1992, was established on the importation of ten species of wild birds of particular concern that are listed in Appendix II of the Convention on International Trade in Endangered Species (CITES), two of which were moved to Appendix I at the March 1992 CITES meeting. The prohibition on importation of those species was announced in the **Federal Register** of December 4, 1992 (57 FR 57510).

During the one-year delay period from October 23, 1992, to October 22, 1993, there has been a maximum number of individuals of any CITES-listed bird species that can be imported. That quota, equal to the number imported during the last year for which the Service had complete data (1991), was announced in the **Federal Register** of December 4, 1992 (57 FR 57510).

A notice published on March 30, 1993 (58 FR 16644) solicited public comments and announced a public meeting, held April 15–16, 1993, to receive input from the public in the development of regulations to implement some of the provisions of the WBCA. Useful input was received from a broad cross-section of interested members of the public who participated in the meeting and submitted comments in writing; that input was utilized in developing this rule. A notice published on April 16, 1993, (58 FR 19840) announced species for which the quota had been met and no further individual birds could be imported.

On August 12, 1993 the Service published a proposed rule (58 FR 42926) which proposed regulations implementing the prohibitions stipulated in the WBCA and provided permit requirements and procedures for some allowed exemptions. That rule also proposed to replace the feather importation quota regulations and gave notice that comments must be received by September 13, 1993, in order to be assured consideration.

Effective October 23, 1993, imports of all CITES-listed birds are prohibited, except for species included in an approved list, or for which an import permit has been issued. The approved list will include species (by country) and/or specific captive-breeding facilities. The Service will publish a proposed rulemaking establishing the criteria for adopting the approved list in the very near future. The Service also has the emergency authority to suspend imports of any CITES-listed bird species at any time based on a series of criteria.

The WBCA authorizes the Service to issue permits for the importation of individual birds from otherwise prohibited species for the following purposes (after required findings are made): (1) Scientific research; (2) personally owned pets of individuals returning to the United States after being out of the country for at least a year; (3) zoological breeding or display programs; and (4) cooperative breeding programs designed to promote the conservation of the species and maintain the species in the wild, as long as such programs are developed and administered by organizations meeting certain standards. This final rule finalizes the proposals made in the **Federal Register** of August 12, 1993, with some modifications based on comments received and further analysis by the Service.

Regulatory Schedule

This rule replaces CFR part 15 so that it relates only to implementation of the Wild Bird Conservation Act. There is regulatory text for the following subparts: subpart A (Introduction and General Provisions), subpart B (Prohibitions and Requirements), and subpart C (Permits and Approval of Cooperative Breeding Programs). It is the Service's intent to propose text for subparts D (Approved list of species) and E (Qualifying foreign breeding facilities) in the near future, and to propose text for subpart F (Prohibited non-CITES species) not long thereafter.

Comments and Information Received

Comments were received from 73 organizations and private individuals, including 2 Universities, 5 conservation and/or animal welfare organizations (including 1 submission representing 14 organizations), 6 zoos or zoological organizations, 1 importer, 1 representative of the pet industry, 2 private companies, 19 bird breeders or avicultural organizations (one of which submitted 24 form letters), and 37 private individuals.

Comments of a General Nature

Several commenters supported the permit provisions of the proposed rule in their entirety, whereas others had specific concerns that are addressed in the discussion of comments received, below. In reference to permit application and issuance requirements, several commenters considered the proposed rule to be excessive and/or burdensome. It was not the Service's intention to be either excessive or burdensome, but rather to fully clarify

the information required to be submitted in order to facilitate the Service's making the required findings under the law, and to expedite the permit issuance process. In many cases in its past experience the Service has found that permit applicants submit minimal information, and in order to make the necessary findings, the Service must write back to applicants for further information. The proposed rule intended to provide the public with a full view as to what information is necessary. The Service, in analyzing all comments received, agrees that some of the permit application and issuance requirements may appear too restrictive or burdensome, and has modified them accordingly. The Service notes, that in order to make a finding of non-detriment to a species' survival in the wild, or whether or not a cooperative breeding program benefits a species' conservation, a stricter test will be applied for species listed in Appendix I of the Convention than for Appendix II or III species. The Service agrees with some commenters who noted that the information it proposed to be required, while appropriate for endangered or Appendix I species, may not be as necessary for Appendix II species. The Service has modified the rule accordingly, by eliminating some proposed requirements and modifying others to include language such as "as appropriate" or "when applicable," to provide more flexibility to both the public and the Service.

Feather Import Quotas: Elimination of Rule

This rule eliminates regulations currently in 50 CFR part 15, which implement feather import quotas contained in the Tariff Classification Act of 1962 (19 U.S.C. 1202). The previous regulations in 50 CFR part 15 contained three subparts regulating the importation of skins bearing feathers of the mandarin duck, a jungle fowl, and six species of pheasants, under the authority of the Tariff Classification Act of 1962; these regulations were last amended in January, 1974 (39 FR 1168). The Service believes that those feather import quota regulations are unnecessary and wasteful of government and private resources, with no benefit to wildlife species. The Service notes there are a number of other laws and regulations that protect species of birds for which there is cause for concern and for which importation of skins bearing feathers could be of concern. These laws include the Lacey Act Amendments of 1981, the Migratory Bird Treaty Act, the Bald and Golden Eagle Protection Act, the Endangered Species Act, and CITES. The Service notes that the regulations in 50 CFR part 15, and the Tariff Classification Act, were passed prior to the signing and implementation by the United States of the CITES treaty. The feather import regulations that are hereby repealed prohibited the importation of feathers of two species that are listed in the CITES Appendices; *Gallus sonnerati* and *Crossoptilon mantchuricum* were listed in CITES Appendix II and I, respectively, in 1975. The Service believes that if there were any conservation concern regarding trade in feathers of the other species listed in 50 CFR part 15, the government authorities responsible could have proposed their listing in the CITES Appendices. There were no comments in opposition to this proposal, and one in support.

Renumbering of 50 CFR Part 15

The Service hereby includes the regulations implementing the WBCA in 50 CFR part 15. The Service hereby eliminates those three subparts regulating the importation of skins bearing feathers of the mandarin duck, a jungle fowl, and six species of pheasants, and includes the regulations implementing the WBCA in 50 CFR part 15 subparts A–F.

Comments Pertaining to Subpart A—Wild Bird Conservation Act: Introduction and General Provisions

Comments Pertaining to Section 15.1: Purpose of Regulations

This section outlines the general purpose of the regulations in 50 CFR part 15, which apply to all species of exotic birds as defined in this subpart. No comments were received on this section.

Comments Pertaining to Section 15.2: Scope of Regulations

This section clarifies that all of the requirements of part 15 are in addition to the existing requirements in parts 13 and 14, part 17 (species listed as endangered or threatened under the Endangered Species Act (ESA)), part 21 (Migratory Bird Treaty Act) and part 23 (species listed in the Appendices to the Convention on International Trade in Endangered Species). Thus, for example, in addition to the requirements of part 15 relating to the Wild Bird Conservation Act (WBCA), importation of a species of bird listed in CITES Appendix I would still require a CITES Appendix I import permit and be required to comply with the requirements of 50 CFR part 23. One application will suffice for both sets of requirements, and one permit will be issued covering CITES, ESA, and Wild Bird Conservation Act requirements, as is now done for imports requiring both CITES and ESA permits. Two commenters supported this intent of the Service, while one also requested that the Service require through these regulations that permits be issued within 30 days, and approval of cooperative breeding programs within 60 days. It is the Service's intent to process all applications as expeditiously as possible. The Service cannot, however, impose a regulatory time frame within which permits or approvals for cooperative breeding programs will be issued, as the processing time depends on the completeness of an application, whether the Service needs further information from an applicant, the Service's ability to make the required findings, and financial and personnel resources available to the relevant Service offices. In the case of permit applications involving birds removed from the wild, and particularly when the species is listed in Appendix I, a finding of non-detriment to the wild application is particularly critical, dependent on information from a wide range of sources, and often more time consuming. The Service encourages applicants to provide all of the information necessary to make the required findings.

Comments Pertaining to Section 15.3: Definitions

This section defines a number of terms used in part 15. The definitions in parts 10 and 23 of 50 CFR, unless defined herein, also apply. The definitions of exotic bird, person, species, and United States are taken directly out of the text of the WBCA. One commenter explicitly supported the definitions as proposed.

Regarding the definition of exotic bird, one commenter (on behalf of 14 organizations) requested that the Service not exempt from the provisions of the WBCA exotic birds in the families Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae, Rheidae, Dromaiinae, and Gruidae. Another commenter requested that only some species in those families be exempted from the provisions of the WBCA. While arguments given for not exempting some species in those families may be valid, the statute itself provides that exemption, and the Service cannot by regulation make the WBCA applicable to species that Congress explicitly in the law decided to exempt from the statute's provisions. Another commenter requested that two additional families of

birds (Accipitridae and Falconidae) be exempted from the provisions of the WBCA through this definition of exotic bird, in order to facilitate their importation. The Service cannot exempt entire families of birds that Congress did not choose to exempt. However, the Service is aware that many species in those two orders are either already part of successful existing cooperative breeding programs, which could qualify for approval under subpart C, or are bred in captivity in facilities that could obtain approval under subpart E. Another commenter asked that dead specimens also be regulated. The Service notes that the WBCA explicitly excludes dead sport-hunted birds, dead museum specimens, and dead scientific specimens, which is reflected in the definition.

One commenter supported the inclusion of hybrids of any species or subspecies as covered by these regulations; the Service agrees, and notes that this is consistent with CITES requirements. Hybrids will be treated according to the more restrictive Appendix or category in which either parental species is listed.

Comments Pertaining to Subpart B: Prohibitions and Requirements

Comments Pertaining to Section 15.11: Prohibitions

This section describes the prohibitions under the Act, which relate to the importation of birds into the United States. It is unlawful to import any exotic bird listed under CITES if it is not listed either in the approved list of species pursuant to subpart D or in the approved list of qualifying foreign captive-breeding facilities pursuant to subpart E. It is unlawful to import any bird from an approved breeding facility if the bird was not bred at that facility. It is unlawful to import any non-CITES bird if it is listed under subpart F as a prohibited species, or if it was exported from a prohibited country, also under subpart F. It is unlawful to engage in any activity in violation of a specified condition of a permit issued pursuant to subpart C that authorizes the import of an exotic bird under this part 15. If a species is re-exported from a country, whether or not it can be imported into the United States is dependent on the country of origin (the country of first export) of the bird. For example, if a CITES-listed bird species is re-exported from country A, but originated in country B, that species must be listed as an approved species from country B. These regulations can be illustrated through an example; these examples are not meant to imply approval or disapproval of any species or country but are just for the sake of giving an example. *Example 1:* If exports of *Amazona aestiva* are approved from Argentina but not from any other country, then *A. aestiva* could not be imported into the United States with an export permit from Venezuela or Peru; a re-export from Belgium could only be imported with a valid CITES permit indicating the original country of export as Argentina, and giving the valid Argentina CITES Permit number. *Example 2:* If Species X is listed as a captive-bred species under subpart D, it can be imported from any country with a valid CITES permit; no additional permits are required. *Example 3:* If Smith's Breeding Farm in England is listed under subpart E as approved for *Amazona aestiva* and *Amazona albifrons*, then those two species can be imported from Smith's Breeding Farm with a valid CITES permit; no additional import permit is required from the Service; they must have been bred at Smith's. If Smith's is the only approved facility for the species, imports from any other facility or country are only allowed with a valid import permit issued by the Service, pursuant to subpart C.

Thirty-two (32) organizations or private individuals commented on this section. A large number of those comments indicate confusion about the proposed rule, the Service's intent, or the relationship between these regulations and other parts in 50 CFR, so for the sake of clarity the Service will respond for each paragraph of this section for which it received specific comments from the public.

Comments Pertaining to Section 15.11(c): CITES Appendix III

Three commenters supported the Service's interpretation that Appendix III species are considered CITES-listed species for the purposes of these regulations only if they originate in the country that listed them in Appendix III. Four commenters (including one on behalf of 14 organizations) opposed this interpretation. The Service notes that listing of a species in Appendix III is a unilateral action by a particular CITES Party, thereby requiring CITES permits and implementation of CITES permits issuance requirements for that country; when the species is found in other countries that did not list it in Appendix III, only a certificate of origin is required, stating that it did not originate in the country that listed the species in Appendix III. Therefore, when the species is found in countries other than where listed in Appendix III, it is not subject to the same level of CITES controls, and indeed is only listed in the Appendices in the country so annotated in the official CITES Appendices. Several commenters stated that this provision allows too many finches and other non-psittacine birds to be legally imported, given that they are prone to high transport mortalities. The Service notes that if there is evidence that trade in those species [listed in Appendix III that originate in a country that has not listed them in Appendix III] is detrimental to the species' survival, or inhumane, a petition may be submitted to the Service pursuant to the WBCA to impose a moratorium on the species' import. In addition, the option remains to list the entire species in CITES Appendix I or II at a meeting of the CITES Conference of the Parties, if appropriate, commensurate with the conservation and trade status of the species. Therefore, the Service has retained this provision as proposed.

Comments Pertaining to Section 15.11(e): Qualifying Facility

One commenter agreed with this paragraph. Three commenters recommended that individual foreign hobby breeders be able to consolidate their shipments, to be considered a single qualifying facility. This will be dealt with in a future proposed rulemaking. The Service notes, however, that the prohibition on importing birds from a qualifying foreign breeding facility that were not bred at the listed facility derives directly from the WBCA.

Comments Pertaining to Section 15.11(f): Possession of an Illegally Imported Bird

In the proposed rule published on August 12, 1993, the Service proposed that it be unlawful to possess an exotic bird imported into the United States contrary to any of the requirements of this part 15. Numerous commenters were opposed to this provision, including several form letters, although in many cases the intent of the Service was perhaps not sufficiently clear in the proposed rule. It was not the Service's intention to require a proof of legality of all birds in the possession of citizens of the United States, as was misinterpreted by several commenters. Rather, the Service notes that it is already prohibited under the Lacey Act Amendments of 1981 to import a bird possessed or sold in violation of any foreign or State law. The provision proposed herein that possession be a violation of this part 15 is therefore eliminated as largely redundant with the Lacey Act Amendments. Four commenters asked that a special

exemption be provided in this paragraph for pre-Act birds. The Service notes that such a provision was debated and rejected by Congress, and explicitly is not found in the WBCA.

Comments Pertaining to Section 15.12: Requirements

This section establishes that no exotic bird can be imported into the United States except in accordance with the provisions of subparts D–F, or under the terms of a valid import permit issued pursuant to subpart C. Even if a species is prohibited from import, or originates in a prohibited country, individuals are eligible to apply for a permit under subpart C if the purpose for which they desire to import a bird qualifies for one of the four types of permits. There were no comments on this section.

Comments Pertaining to Previously Exported Birds

Numerous commenters misinterpreted the Service's intentions regarding birds that have previously been exported from the United States and are being "re-imported," and therefore the Service is changing the rule in that regard. The Service agrees with the 21 commenters who requested that any person who is issued a permit to export birds from the United States should be allowed to return to the United States, with the *same* birds, at any time; such a person would not be subject to the limitation on two pet birds per individual or to being out of the United States for more than a year. The Service notes that the WBCA was silent on this issue, and therefore the proposed rule published on August 12, 1993 intentionally adhered strictly to the letter of the law, in limiting imports to two pet birds per year. (The Service was aware that this might cause some concern, and wanted to assess comments from the public.) The Service appreciates the attention the public focused on this issue, and the full consensus of all commenters that any bird legally exported from the United States on a permit issued by the Service's Office of Management Authority be able to return to the United States, whether for personal or other purposes. The Service is in full agreement with the public that the intent of the WBCA is to conserve and protect exotic birds in the wild, and therefore any bird that the Service agrees can be exported from the United States can return with its original owner to the United States. The Service notes that, based on its past experience, this provision will apply largely to individuals traveling on vacation or on overseas assignment with their pet bird.

Therefore, the Service has modified this section accordingly, such that a bird can be imported to the United States that was legally exported from the United States with a permit issued by the Service's Office of Management Authority, provided that: (1) the import is by the same person [as defined by this part 15] who exported the bird; (2) the person provides a copy of the cleared (validated) CITES export permit or certificate issued by the Service; (3) the Service is satisfied that the same bird is being imported as is indicated on the aforementioned permit or certificate; and (4) the import complies with all other applicable Service regulations. The Service stresses that this "return" provision *does not apply* to any bird obtained or purchased outside of the United States and entering the United States for the first time. The Service will monitor the implementation of this provision, and if there is evidence that it is being used to facilitate illegal importation or smuggling of birds into the United States, the Service may modify it in the future. The Service's Office of Management Authority will also notify future recipients of CITES export permits or certificates for pet birds leaving the United States of these provisions, particularly in that a copy of the cleared permit or certificate must be retained.

General Comments Pertaining to Subpart C: Permits and Approval of Cooperative Breeding Programs

This subpart establishes procedures, application requirements, and issuance criteria for four types of permits authorized under the WBCA. The Service received several comments on the following issues that pertain to terms used in several different paragraphs in §§ 15.22–15.26:

Comments Pertaining to Sex (Section 15.22(a)(1)(i), Section 15.23(a)(1)(i), Section 15.24(a)(1)(i), Section 15.25(a)(1)(i))

Several commenters noted that the sex of an exotic bird to be imported is not always known, but the proposed rule requested the applicant provide the Service with the sex of the bird to be imported. The Service is aware that for many birds, particularly monomorphic species, sex cannot be determined without surgical methods or chromosome analysis. The Service has modified the rule (in §§ 15.22–15.25) to require sex, when known.

Comments Pertaining to Age (Section 15.22(a)(1)(i), Section 15.23(a)(1)(i), Section 15.24(a)(1)(i), Section 15.25(a)(1)(i), Section 15.26(a)(1))

Several commenters misunderstood the application requirement in the proposed rule, which requested the age of the bird to be imported, thinking that a permit would not be issued if the bird's exact age in months and years was not known. The Service is quite aware that for wild-caught birds, an individual bird's exact age cannot necessarily be determined, although age class (i.e. chick, fledgling, juvenile, sub-adult, adult) is known. For captive-bred birds, however, age is often known with certainty. Therefore, the Service has modified the rule to require either age or age class.

Comments Pertaining to Locations (Section 15.22(a)(2)(i), Section 15.23(a)(2)(i), Section 15.24(a)(2))

In the proposed rule, for permits for scientific research, zoological breeding or display, or cooperative breeding involving imports of wild-caught birds, the Service had proposed to require both the country and specific location where the bird was [or was to be] removed from the wild. Several commenters misunderstood that the Service wanted exact location, including fully accurate details, as to where the bird was or was to be removed from the wild. Such is not the case; rather, in order to make the required finding that the import will not be detrimental to the species survival, the Service needs to know the location in the country of origin where the bird was [or will be] removed from the wild. In many countries, a species may be locally abundant in one area or region, while rare and/or declining in another. therefore, for the clarity of the public, the Service has changed location to region, to indicate the region within the country of origin. However, particularly in the case of Appendix I species, permit applicants should provide as much information to the Service as is necessary to make the required non-detriment finding. This is for the benefit of the public, since if the Service does not have sufficient information on which to base a non-detriment finding, it cannot issue a permit.

Comments Pertaining to Persons Capturing Birds

In the proposed rule, for all of the permits except personal pets, the Service had proposed to require, for wild-caught birds, the names and qualifications of persons who will capture or who captured the bird.

Several commenters felt this was overly burdensome. The Service did not intend this to be burdensome, but rather considered that for wild-caught birds such information is useful. The Service agrees that it is not necessary in most cases, and has removed the requirement. However, as was discussed above, in the case of Appendix I species, permit applicants should provide as much information to the Service as is necessary to make the required non-detriment finding. Several commenters noted that zoological institutions often import birds that were obtained illegally and have been confiscated by other governments, and therefore details as to their origin in the wild are often unavailable. The service is aware of such situations although they are rare, and will take such circumstances into consideration if there is extenuating information showing that the import will benefit the conservation of the species.

Comments Pertaining to Status of the Species in the Area of Capture (Section 15.22(a)(2)(ii), Section 15.23(a)(2)(ii), Section 15.24(a)(2)(ii))

In the proposed rule, the Service proposed to require a description of the status of the species in the area of capture. Such information is necessary to make a non-detriment finding. In order to be consist with the changed language regarding region rather than location where a bird was removed from the wild, area of capture has been changed to region of removal. The Service hereby clarifies that status in this context refers to the species' conservation status in the wild (i.e., increasing, stable, declining, protected, endangered, threatened, rare, vulnerable, insufficiently known). The Service has scientific information available to help it make the required findings, and may consult the Convention Scientific and/or Management Authority in the country of origin; however, the Service encourages permit applicants to provide as detailed information in this regard as may be readily available to them.

Comments Pertaining to Collecting Permits (Section 15.22(a)(2)(iii), Section 15.23(a)(2)(iii), Section 15.24(a)(2)(iii))

In the proposed rule, the Service proposed to require, for wild-caught birds, a copy of any foreign collecting permit or authorizing letter. Several commenters felt this was a burdensome requirement. The Service does not consider this requirement to be excessive and has retained the requirement, with the addition of the words "if applicable," such that any case where there is no such permit required or it does not apply, such a permit is not required. However, in many cases of scientific research, or export to zoological institutions, the Service is aware of the requirement of the country of origin for a collecting permit.

Comments Pertaining to Manner of Taking

In the proposed rule, the Service proposed to require a description of the manner of taking of wild-caught birds. Several commenters considered this either excessive, or not within the capability of the applicant to ascertain. The Service agrees that it may be more information than is necessary to make a non-detriment finding. In the future proposed rulemaking establishing criteria for approval of sustainable use management plans for wild-caught birds, the Service will address this issue. The Service agrees that it is not critical for permits issuance, and has removed it from the final rule. However, particularly in the case of Appendix I species, if that information is available to the permit applicant, it could assist the Service in making the necessary findings.

Comments Pertaining to Date of Removal

In the proposed rule, the Service requested the date when a specimen was removed from the wild, for wild-caught birds that had been held in captivity for more than a year. Several commenters misunderstood this requirement, and thought that the Service wanted the exact calendar date that a bird was removed from the wild. Rather, the Service had included this requirement for the benefit of permit applicants, in order to facilitate the necessary findings and to expedite permit processing. The Service has however removed this requirement, since it was apparently unclear. Rather, in order to determine if a particular removal from the wild was detrimental to a species' survival, the Service will need to know, approximately, when it was so removed. For a given species, the more information the Service has about when an individual bird was removed from the wild, the easier it may be to make the required non-detriment finding. The Service encourages applicants to err on the side of providing too much rather than too little information.

Comments Pertaining to Length of Time in Captivity

In the proposed rule, the Service Distinguished between birds not yet removed from the wild and those wild-caught birds that had been held in captivity for more than a year. The distinction facilitated requiring more information, including about capture, for imports of birds not yet removed from the wild. Since there is now no difference between the two situations, the Service has combined paragraphs (2) and (3) in the proposed rule, for §§ 15.22–15.24.

Comments Pertaining to Progeny (Section 15.22(a)(4)(iv), Section 15.23(a)(4)(v), Section 15.24(a)(5)(iv), and Section 15.26(a)(2)(vi))

Several commenters were concerned that the rule requires plans for the disposition of exotic birds imported and any progeny, upon completion of the applicable project or program. These commenters either did not understand the meaning of the term progeny, or were confused as to how many generations of progeny are referred to. The Service notes that "progeny" is the more zoologically correct version of the more anthropomorphic "offspring", but means the same. The Service notes that it has required information on plans for disposition of progeny, and not a full reporting in every case of whether those plans were fulfilled. If progeny of imported birds are sold or otherwise leave the control of the permittee, then the applicant can have no plans for the disposition of their progeny. The purpose of this application requirement is to assist the service in making the determination required by the statute that the birds are being imported *exclusively* for the purpose for which the permit is issued. The Service notes that it will constitute a violation of a permit issued under this part 15 to utilize imported birds for purposes other than those authorized by the permit.

Comments Pertaining to Multiple Transactions (Section 15.22(a)(3)(ii), Section 15.23(a)(3)(ii), Section 15.24(a)(3)(ii))

For permits for birds that were bred in captivity, the Service proposed requiring documentation showing the bird was acquired from the breeder and a history of multiple transactions, when the applicant is not the breeder. Some commenters misunderstood this requirement. The Service has added the words "if applicable," such that only if it is applicable should such a history be provided. The Service notes that, if a permit is for a bird that is bred in captivity, it will be far easier for the Service to make a non-detriment finding, particularly in the case of Appendix I species. In addition, recent

law enforcement investigations have shown cases of wild-caught birds being falsely claimed to have been bred in captivity. In one particular case, eggs from protected parrot species in Australia (prohibited from export) were smuggled from Australia to New Zealand, where they were declared to be captive-bred and then exported to the United States. Therefore, the Service must be particularly vigilant in being certain that it is satisfied that birds claimed to be so, were indeed bred in captivity.

Comments Pertaining to Preparation for Shipment

In the proposed rule, the Service proposed to require a description (for all permits to be issued under this part 15) of the shipping methods and enclosure to be used to transport the exotic bird, including feeding and care during transport, along with an issuance criterion that the birds would be prepared and shipped as to minimize the risk of injury, damage to health, or cruel treatment. Numerous commenters objected to this requirement, noting that it is not explicitly stated as a permit requirement in the WBCA. The Service is cognizant of that fact, but included this requirement in the proposed rule for these reasons, which were for the benefit and convenience of the importing public: All shipments of exotic birds into the United States must comply with the humane and healthful transport requirements of 50 CFR part 14, which incorporated by reference the International Air Transport Association (IATA) Live Animals Regulations (LAR); all CITES shipments must also comply with the IATA LAR. The Service included a requirement to provide shipping and transport information, and the requirement to make a finding that the proposed shipping and transport would comply with all CITES and U.S. requirements. Such requirements were to assist the importing public in avoiding a situation where an import permit was issued, but the birds suffered high mortalities, the shipment was found in violation of U.S. law, or was even possibly confiscated, due to lack of awareness by the importer and/or exporter. Since so many commenters did not understand this proposed requirement (which required nothing more than is already required), the Service has removed it from the final rule. However, the Service stresses that all exotic bird imports into the United States must fully comply with all humane transport requirements of U.S. law. Copies of the humane and healthful transport regulations in 50 CFR part 14 are available from the Service on request.

Comments Pertaining to Enhancement or Promotion of the Conservation of Species in the Wild

Several commenters objected strongly to the proposal by the Service that importation of birds for zoological breeding or display and scientific research purposes should enhance, or promote, the conservation of the species in the wild. These commenters claimed that because Section 112 of the WBCA authorizes the Secretary to issue permits for otherwise prohibited species if the Secretary determines that the import is not detrimental to the survival of the species and if the bird is being imported exclusively for the stated purpose, the Secretary (and thereby the Service) should ignore that stated purpose of the WBCA (Section 103) to "promote the conservation of exotic birds." The Service disagrees with this comment in principle. The Service notes that Congress, in the Committee Report on the WBCA, said that the primary goal of the WBCA is "to conserve birds in the wild in order to protect their genetic diversity and the integrity of the ecosystems in which they are found." The Service feels strongly that the underlying principle of the WBCA is to promote the conservation of exotic birds in the wild. Any permit issued is an exemption to otherwise prohibited acts, which the Service, acting on behalf of the Secretary, may or may not authorize, depending on individual circumstances.

However, the Service is also cognizant that the rule as proposed appeared to many commenters to utilize the same standard for Appendix II and III species as for endangered, threatened, or Appendix I species. As is standard practice within the Offices of Scientific and Management Authority, a stricter test is applied to Appendix I than to Appendix II and III species. The rule has been modified, such that for permits for zoological breeding or display, or for scientific research, applications will not be judged as to whether or not the import will promote or enhance the conservation of the species in the wild. In the case of wild-caught specimens of Appendix I species, however, such a test will be utilized.

In the same context, several comments objected to the inclusion in the proposed rule (previous § 15.22(a)(5)(ii) and § 15.23(a)(5)(v)), for scientific research and zoological breeding and display, of a requirement that applicants state the relationship of the breeding or display program, or the research, to promoting the conservation of the species in the wild. In light of the aforementioned discussion, in this final rule the Service will not require information on how the program will promote the conservation of the species per se, but retains a requirement for information on the relationship (§ 15.22(a)(4)(2) and § 15.23(a)(4)) of the research or breeding or display program to the conservation of the species in the wild. That is for two reasons: First, to allow the Service to make the necessary non-detriment finding and second, to make the finding inherent in issuance criterion 3 in both cases. Issuance criterion 3 (§ 15.22(b)(3), § 15.23(b)(3), and § 15.26(b)(3)) refers to whether a permit (or approval, in the case of cooperative breeding programs), if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed. This does not require that the import actually enhance the survival of the population, but rather would prohibit any import that conflicted with a conservation program in a country of origin.

Two ornithologists commented that captive breeding of endangered species should be conducted in the country of origin of the species (in situ) for conservation purposes and ex situ captive-breeding programs should only be sanctioned when it is not possible to set up captive-breeding programs in the country of origin. The Service feels quite strongly that conservation, management, and recovery programs in countries of origin should be given full consideration. This is consistent with the Statement of Purpose of the WBCA (Section 103), whereby a purpose of the WBCA is "to promote the conservation of exotic birds by assisting wild bird conservation and management programs in the countries of origin of wild birds." The Service notes that, for permits for cooperative breeding, for the convenience of the public, once a program is approved, this finding is not required for individual permits.

Several commenters objected to the issuance criterion in § 15.24(b)(3) and § 15.26(b)(4) requiring the Service to determine if the cooperative breeding program for which the permit is required would be likely to enhance or promote the conservation of the exotic bird species in the wild or result in a self-sustaining population of the exotic birds species in captivity. The Service disagrees, and has retained that provision in the rule. Unlike the situation for other exemptions specified in Section 112 of the WBCA, the law requires that cooperative breeding programs are "designed to promote the conservation of the species and

maintain the species in the wild [emphasis added] by enhancing the propagation and survival of the species." The Service is therefore required to make such a finding that the cooperative breeding program and imports pursuant to it promote or enhance the species' conservation. The Service believes that it is being flexible in allowing, as an alternative, that the program could also lead towards a self-sustaining population of the exotic bird species in captivity. However, it may be more difficult to make a non-detriment finding for imports of CITES Appendix I species solely for this latter purpose, if specific offsetting conservation value is lacking.

Comments Pertaining to Letters of Recommendation or Endorsement

Several commenters opposed the proposed requirement for three letters of recommendation or endorsement for permits for scientific research, zoological breeding or display, and cooperative breeding programs. Some commenters felt this was a burdensome requirement. The Service disagrees that this would be burdensome, and notes that this requirement was actually included in the proposed rule for the benefit of the public, to provide the opportunity for an application to be accompanied by additional supportive information that might expedite permit processing. The Service does agree that this information is not necessary in all cases, and has eliminated it. The Service has also removed the requirement for a letter of endorsement from the Convention Scientific Authority in the country from which an exotic bird is to be [or was] removed from the wild, based on its agreement with commenters that this need not be required in all cases (Appendix I, II, and III). However, for wild-caught birds, the Service may require such an endorsement or other information from the Convention Scientific Authority in the country of origin, on a case-by-case basis. The Service stresses that such supporting documentation for any relevant permit may expedite processing of the permit application, particularly in the case of appendix I, endangered, or threatened species.

Comments Pertaining to the Same or Similar Species (Section 15.23(a)(7), Section 15.24(a)(9), Section 15.26(a)(3))

Several commenters expressed concern as to what is meant by the phrase "same or similar species." Specifically, permit applicants are required to submit a history of either their zoological breeding or display program, or cooperative breeding program, with the same or similar species. Some commenters inquired if the Service wanted voluminous records of all bird species, or of all bird species in the same order, particularly if applicants are zoos with large collections and years of experience with many exotic bird species. Such is not the Service's intent. Rather, in order to make the required finding that the exotic bird will be imported for the intended purpose, the Service needs to be convinced that the applicant has experience with either the species requested, or closely related or otherwise similar species. Thus, if the applicant has extensive experience with the species or genus applied for, that may suffice. If an applicant has no experience with birds of the same species or genus, the application should include pertinent information for bird species as closely related to the species applied for as is possible. Clearly, particularly in the case of birds being taken from the wild, the applicant is expected to have experience with similar bird species. The Service notes that similarity can be behavioral or physiological, and not necessarily only taxonomic.

Comments Pertaining to Plans for Disposition of Birds (Section 15.22(a)(4)(iv), Section 15.23(a)(4)(v), Section 15.24(a)(5)(iv), Section 15.26(a)(2)(vi))

Several commenters noted that the proposed rule requested planned disposition of birds, and individuals, zoological institutions, or breeding programs cannot know in advance what disposition of birds will be. The Service agrees, and clarifies that its intent is for the applicant to indicate any plans it may have for the disposition of birds and/or their immediate progeny. This will assist the Service in determining that the exotic birds for which the permit is requested will be used for the requested purpose. This will also assist the Service in assessing a given breeding or display program. This information will also assist the Service in issuing future permits for the same or similar species to the same applicant. The Service has clarified this requirement in all cases by changing "planned disposition" to "plans for disposition."

Comments Pertaining to Care and Maintenance of the Exotic Bird (Section 15.22(a)(6), Section 15.23(a)(5), Section 15.24(a)(8))

Several commenters opposed the proposed requirement for a description of the care and maintenance of the exotic bird, including how the facility meets professionally recognized standards. The Service disagrees, and considers this information critical to its determination that the expertise, facilities, or other resources that are available to the applicant are adequate for proper care and maintenance of the exotic bird, in order to successfully accomplish the objectives stated in the application. Such a finding is critical to determining that the exotic bird is being imported exclusively for the purpose for which the permit is issued, as is required by the WBCA. Furthermore, the Service reminds the public of the existing requirements in 50 CFR part 13 for all permits issued by the Service.

Several commenters opposed the inclusion of the address of any facility, expressing a concern that they did not want members of the general public knowing where they or their birds are. The Service disagrees, and feels strongly that it must have both the name and address of any facility that will house birds for which an import permit is being issued; this is consistent with existing requirements of 50 CFR part 13. Several commenters objected to the requirement of photographs or diagrams of the facility, as being excessive. The Service agrees that this information may not be necessary in all cases, and has eliminated the requirement. Several commenters objected to the requirement for information on qualifications and experience of personnel responsible for the care of the bird, as being excessive and/or duplicative. The Service agrees that this information may not be necessary in all cases, and has eliminated the requirement. However, the Service will accept the aforementioned documentation for any relevant permit.

Comments Pertaining to Veterinary Care

Several commenters considered this proposed requirement excessive or unnecessary. The Service agrees that it is not necessary and was insufficiently clear, and is indeed covered by the term "husbandry practices" (discussed below). The Service has eliminated the requirement.

Comments Pertaining to Husbandry Practices (Section 15.22(a)(6)(iii), Section 15.23(a)(5)(iii), Section 15.24(a)(8)(iii))

Some commenters questioned what is meant by husbandry practices, and why it is required. The Service is requiring details on husbandry practices, for scientific research, zoological breeding or display, and cooperative breeding permits (but not cooperative breeding programs, as several facilities could be involved). Information on husbandry practices is required in the context of a

description of the care and maintenance of the exotic bird, and how professionally recognized standards are met. That information is necessary to allow the Service to determine that the expertise, facilities, or other resources available to the applicant appear adequate to accomplish the objectives in the application. Such an issuance criterion is vital to determining whether the stated objectives in the application could be expected to be accomplished, and whether the exotic bird will be imported exclusively for a purpose allowed by the WBCA (as required by the statute). Husbandry practices can include information on: diet and feeding regimes; provision of water; temperature control; veterinary practices, such as vaccination and health screening; and substrate and/or bedding provided. Information on husbandry practices should include the specific needs of the particular species of exotic bird.

Comments Pertaining to Opinions of Other Scientists or Organizations With Expertise (Section 15.22(b) and Section 15.23(b))

Several commenters objected to the proposed issuance criterion regarding the opinions of scientists or other persons or organizations having expertise concerning the exotic bird or other matters germane to the application. The Service agrees that this is not strictly an issuance criterion. The Service has eliminated this requirement as unnecessarily duplicative with its existing authority under 50 CFR part 13 to obtain information as is necessary to issue any permit.

Comments Pertaining to Publication of Permit Applications in the **Federal Register**

Several commenters objected to the Service's proposed requirement to publish all applications for scientific research and zoological breeding and display permits in the **Federal Register**, for public comment from interested parties. The Service had included this requirement in order to facilitate receiving information from the widest possible sources. The Service agrees, however, that such publication is not necessary in all cases, particularly for Appendix II species. Since this constituted the Service placing an additional administrative burden upon itself, this requirement has been eliminated for scientific research and zoological breeding and display permits. Several commenters objected to publication in the **Federal Register** of permit applications for cooperative breeding programs. The Service notes that this was not included in the proposed rule of August 12, 1993; the publication in the **Federal Register** applied to approval of cooperative breeding programs (§ 15.26) and not to the import permits for individual birds (§ 15.24). However, in the case of controversial permits, or permits for which the Service deems it necessary to obtain information from the public, the Service by policy reserves the option of publishing in the **Federal Register** a notice of any permit application.

Several commenters objected to publication in the **Federal Register** of applications for approval of cooperative breeding programs. The Service disagrees, and has retained the requirement to publish all applications for approval of cooperative breeding programs (§ 15.26(c)) in the **Federal Register**. The Service notes that this is a new program, and exotic wild birds and their conservation will benefit from the Service's receiving information from all knowledgeable members of the public in granting approval to cooperative breeding programs. Therefore, this requirement is not changed in the final rule.

Comments Pertaining to Section 15.21: General Application Procedures

All applications should be submitted to the Service's Office of Management Authority. In all cases, any additional requirements in 50 CFR parts 13, 14, 17, 21, and 23 must also be met. For the four types of permits, each section (§§ 15.22–15.25) is organized in the following manner: (1) Application requirements, which contains the information the applicant must provide to the Service; (2) Issuance criteria, which includes the findings the Service must make before a permit can be issued; and (3) Permit conditions: All permits are subject to the general conditions set forth in 50 CFR part 13, as well as any special conditions. Approval of cooperative breeding programs, § 15.26, is organized in the following manner: (1) Application requirements, which contains the information the applicant must provide to the Service; (2) Approval criteria, which include the findings the Service must make before approval can be granted; (3) Approval conditions: All approvals are subject to the general conditions set forth in 50 CFR part 13. An approved cooperative breeding program is required to maintain records of birds imported and their immediate progeny, and their disposition, which shall be made available to the Service on request; and (4) Publication in the **Federal Register**. Requests for approval will be published in the **Federal Register** for public comment.

One commenter was supportive of this section, while another inquired if cooperative breeding programs in the United States are subject to approval. The Service stresses that the only cooperative breeding program that needs to apply for approval under this part 15 is a program that intends to import exotic birds into the United States. The Service is not proposing to regulate breeding of exotic birds within the United States, nor is such regulation called for under the WBCA.

Comments Pertaining to Section 15.22: Permits for Scientific Research

Five commenters, including one ornithologist and one commenter on behalf of 14 organizations, agreed with the proposed rule. Four commenters considered the application requirements to be too restrictive or burdensome for scientific researchers. Comments pertaining to a number of issues were discussed above, in the general introduction to subpart C, as they pertain to all or most of the types of permits. In addition, comments were received regarding the following application requirements in paragraph (a) of this section:

Comments Pertaining to Section 15.22(a)(4): Description of Scientific Research

Several commenters considered it excessive to request information on a formal research protocol. The Service disagrees. Since the Service is required by the statute to determine that the import is exclusively for the stated purpose, in this case scientific research, the Service is by necessity required to ascertain the nature of the scientific research. One commenter felt that the application requirements for scientific research could discourage valid research, by requiring excessive information. The Service disagrees, since the information required is, in the Service's experience, standard information contained in research grant applications, and would not require additional work to provide that information to the Service. The Service agrees with some of the comments that the requirements for scientific research permits may appear excessive, and, in addition to those modifications addressed under "General Comments Pertaining to Subpart C," above, has made some modifications.

Section 15.22(a)(4)(i): In the proposed rule, the Service had required details on the funding of the research. Several commenters considered this excessive, unnecessary information. The Service agrees that this information is not necessary in all cases, and has removed

the requirement, but notes that it will accept such information for any relevant permit for scientific research, particularly in the case of Appendix I, endangered, or threatened species.

Comments Pertaining to Section 15.22(a)(5): Qualifications Statement

Several commenters considered it excessive to request information on the qualifications of the principal investigator conducting the proposed research.

The Service agrees that the information requested in the proposed rule may have been more than is necessary to make the required findings. However, the Service considers the issuance criteria in § 15.22(b) (4) and (5) to be valid, important, and consistent with the purposes of the Act. That is, the Service feels that the research for which a permit is required should have scientific merit, and the expertise, facilities, or other resources available to the applicant should be adequate for proper care and maintenance of the exotic bird, in order to successfully accomplish the stated research objectives. Such a finding is critical to the Service's being convinced that the exotic bird imported will indeed be used for the stated purpose of scientific research. The Service does not consider it appropriate to issue permits for activities that do not constitute *bona fide* scientific research, are unnecessary, or are duplicative. The Service notes that, based on its experience, unqualified individuals calling themselves researchers may attempt to engage in activities that no accredited research or zoological institution would consider to be a *bona fide* scientific research. Furthermore, one commenter requested clarification if scientific research had to be done at a public or academic institution, or if private research firms could qualify. The Service believes that nothing in this final rule precludes private institutions from receiving import permits for scientific research, under this section. The Service has modified the rule accordingly. The Service does not wish to burden legitimate, useful scientific research in a way. Therefore, instead of the detailed requirements in the proposed rule, the rule now requires only the qualifications of the scientific personnel conducting the proposed research, including applicable experience and a description of relevant past research conducted.

In summary, persons desiring to import otherwise prohibited species of exotic birds for scientific research must therefore provide information to the Service as prescribed in this section, and import permits will be valid for up to one year.

Comments Pertaining to Section 15.23: Permits for Zoological Breeding or Display

Twelve commenters considered the proposed requirements in § 15.23(a) to be too restrictive, while five agreed in principle. Two commenters requested that permits be issued only for zoological breeding and display, but not for display programs alone. The Service notes that the term "zoological breeding or display programs" is directly from the statute, and has been retained. Comments pertaining to a number of issues were discussed above, in the general introduction to subpart C, as they pertain to all or most of the types of permits. In addition, comments were received regarding the following aspects of this section:

Several commenters objected to the proposed requirement in § 15.23(a) that applicants for permits for zoological breeding or display programs provide information on their breeding and inventory records, including hatching, survival and mortality records, as well as causes of any mortalities and efforts made to correct any problems. These commenters felt that such a requirement was unnecessary and burdensome on zoological institutions. The Service disagrees. Permit applications for species that suffer high mortality in captivity need to be evaluated as to how such mortality affects the need for further removal of wild-caught birds from their natural populations. Furthermore, in order to evaluate further applications for the same species from the same facility, the Service will benefit from knowing the mortalities and survival rates of a given species at a facility.

Several zoological institutions suggested that the information provided in a given application might also be pertinent for one or more other applications submitted by the same institution. The Service agrees; such would be the case in particular for information on the same or similar species, a history of the facility's programs, husbandry practices, and other facility information. Some institutions suggested that the Service maintain facility files that an applicant can refer to in a permit application, to avoid sending duplicate information. The Service accepts this suggestion, although it will be implemented as a matter of policy and not as a regulation in this Part 15. The Service will endeavor to maintain a master file for each institution with multiple applications. However, a separate application will still be required to be submitted for each separate importation of exotic birds, in order to obtain the permits under this section. It is the responsibility of the applicant to guarantee that the information available to the Service from previous permit applications is current and accurate.

Comments Pertaining to Expertise of a Zoological Institution

One commenter inquired what was meant by a zoological institution, in order to determine what type of facility could apply for permits under this section. The Service considers a zoological institution, or zoo, to be one that is open to the public, has animals on public display, and in the context of this section, one that has a breeding or educational protocol that includes providing educational materials to the general public on the ecology and/or conservation of the species. Some commenters recommended only allowing applications for permits under this section to zoological institutions accredited by the American Association of Zoological Parks and Aquariums (AAZPA). Some commenters considered issuance criterion § 15.23(b)(5) to be unnecessary if only AAZPA-accredited institutions were eligible. Other commenters considered application requirement § 15.23(a)(5) unnecessary (the requirement for a description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards of the public display community). The Service disagrees. The Service agrees that AAZPA accreditation is an important indicator of a facility's level of professionalism and expertise, and such accreditation is an indicator that the facility meets the professionally recognized standards of the public display community. However, the Service is also aware that there is a possibility that a facility might meet those standards, and satisfy the issuance criteria in § 15.23(b), without being accredited by AAZPA. Furthermore, the U.S. Government cannot limit applicants for permits authorized by statute to facilities recognized or accredited by a private entity, whose standards are not subject to government review or the Administrative Procedure Act.

Some commenters requested that zoological institutions be subject to the same requirements as cooperative breeding programs. The Service notes that the WBCA explicitly differentiated between the two, and this rule is consistent with the distinctions in the statute. One commenter felt that the zoological breeding community needs

more structure and integration of programs, particularly as regards genetic management plans. Indeed, the Service notes that no zoological institution is precluded from participating in a cooperative breeding program approved under § 15.26, and applying for an import permit under § 15.24. The Service is supportive of cooperative breeding efforts that involve coordination between private and public programs or institutions.

In summary, persons desiring to import otherwise prohibited species of exotic birds for zoological breeding or display must provide information to the Service as prescribed in this section, and import permits will be valid for up to one year.

Comments Pertaining to Section 15.24: Permits for Cooperative Breeding

Four commenters agreed in principle with the proposed rule, while 48 considered the proposed rule to be too restrictive, burdensome, or unnecessary. Several commenters recommended overview of applicants by approved avicultural organizations, which is the case in this rule. Comments pertaining to a number of issues were discussed above, in the general introduction to supart C, as they pertain to all or most of the types of permits. In addition, comments were received regarding the following aspects of this section:

Several commenters expressed concerns that requirements for approval of cooperative breeding programs were excessive and/or prohibitive of captive breeding; they are discussed under § 15.26, below. Several commenters were confused as to the "two-tiered" system for cooperative breeding programs. The Service notes that a cooperative breeding program may apply for approval under § 15.26. If a cooperative breeding program is approved, for importation of otherwise prohibited species, individuals affiliated with that program may apply to import birds under § 15.24. This process is expedited by requiring approval first of the program, and information that the Service would have needed to require from all applicants will only be required for the approval of the program. Information required from individual applicants refers to specific imports of specific exotic birds by a person.

Several commenters were confused about whether or not the Service had proposed to regulate interstate commerce in captive-bred exotic birds, or in general to regulate captive breeding of exotic birds in the United States. The Service stresses that that is not the case, and any person not wishing to import exotic birds need not apply for a permit under this part 15, and any cooperative breeding program that does not intend to import exotic birds does not need to apply for approval. Some commenters raised concerns about marking requirements; none were proposed in the proposed rule of August 12, 1993, and none are found in this final rule. Other general comments pertaining to captive breeding in general will be discussed under § 15.26, below.

Comments Pertaining to Origin of Birds

One commenter objected to requiring information from applicants on the origin of the birds to be imported (wild-caught or captive-bred), as being unnecessary information for captive breeding purposes. The Service disagrees, and feels that this information is vital to making the required non-detriment finding. This information is also for the benefit of the applicant, since a less strict test of non-detriment will be employed in the case of captive-bred birds to be imported.

Comments Pertaining to Recordkeeping, Section 15.24(a)(5)(iii)

Several commenters opposed or expressed concern about the requirement for details on recordkeeping. The Service clarifies that it does not want all records kept by a participant in a cooperative breeding program. Rather, applicants are required to provide recordkeeping details pertaining to the relationship of the exotic bird to be imported to the cooperative breeding program approved under § 15.26. This is to assist the Service in being certain that records are kept that allow the cooperative breeding program to exercise the necessary oversight, to comply with the requirements of § 15.26, and to satisfy the intent of Congress that permittees for birds for cooperative breeding keep track of birds and their progeny. This issue is discussed further under § 15.26, below. The Service notes that it has removed the requirement for veterinary details, as being redundant with other requirements.

In summary, persons desiring to import otherwise prohibited species of exotic birds for cooperative breeding programs must first be affiliated with a cooperative breeding program approved under the provisions of § 15.26. If a person is affiliated with an approved program, to apply for a permit they must provide information to the Service as prescribed in this section. Import permits will be valid for up to one year.

Comments Pertaining to Section 15.25: Permits for Personal Pets

Several commenters expressed concerns about the Service's intentions regarding birds that have previously been exported from the United States and are being returned to the United States. The Service has modified the rule, and discussed this issue under § 15.12, above.

Comments Pertaining to Section 15.25(a): Two Birds Per Individual

In the proposed rule, the Service had required that no household be able to import more than two birds as pets in any year, although section 112 of the WBCA clearly states that the restriction is on two birds per individual. Some commenters felt that limiting imports to two birds per household was an unnecessary restriction when compared with the requirements of statute. The Service agrees, and in this final rule the restriction is on two birds per individual per year. The Service had proposed household rather than individual, for a number of reasons, including to avoid situations where persons would purchase birds for each member of their family, and import them for commercial purposes. The Service has however returned to the original language of the statute. If a household wishes to import more than two birds, individual members of that household must each apply for import permits. The Service is still required to make the required findings, including whether the import is detrimental to the species in the wild. The Service has retained the permit condition that the exotic birds cannot be imported with the intention to sell. One commenter requested that the rule limit imports to one per individual rather than two birds; the Service has retained the two bird limit, as that is contained in the statute.

Comments Pertaining to Section 15.25(a): One Year Resident Outside of the United States

Several commenters were concerned about the requirement that in order to obtain a permit to import a personally owned pet bird acquired outside of the United States, individuals are required to show documentation that they have continually resided outside of the United States for a minimum of one year. Several commenters noted that the WBCA states that individuals must have been "continuously out of the country for a minimum of one year"; these commenters felt that the residence requirement was more restrictive than the statute. Actually, the opposite is the

case. The Service is aware of many situations where U.S. citizens are stationed overseas for several years (and thereby reside outside of the United States), but they have not actually been physically out of the country for the entire time, as they make frequent visits to family in the United States. The Service did not consider it the intent of Congress to prevent Foreign Service and military officers stationed outside of the United States for one or more years to import their birds, if perchance they had visited the United States during that period. The proposed rule language has not been changed. Another commenter recommended increasing the required period of residency outside of the United States to two years; the Service disagrees, since one year is specified in the WBCA, the one year requirement has been retained.

One commenter objected to requiring information from applicants on the origin of their pet bird (wild-caught or captive-bred), as being information unavailable to the general public. The Service disagrees, and feels that this information is vital to making the required non-detriment finding, and considers the detail of information requested to not be excessive.

Comments Pertaining to Section 15.26: Approval of Cooperative Breeding Programs

Sixteen commenters considered the provisions of the proposed rule to be too restrictive, redundant, or unnecessary, while five agreed in principle. Comments pertaining to a number of issues were discussed above, in the general introduction to subpart C, as they pertain to all or most of the types of permits and to approval of cooperative breeding programs. In addition, comments were received regarding the following aspects of this section:

Some commenters expressed concerns that the proposed rule would discourage captive breeding. The Service disagrees. One commenter claimed that the "intent of the WBCA is to promote breeding of exotic avian species." The Service notes that the stated purpose of the WBCA, in section 103 of the statute, is "to promote the conservation of exotic birds", in a number of ways, with a focus on benefits to exotic birds in the wild. Nevertheless, the Service is aware of, and agrees with, exemptions provided for in the WBCA for importation of otherwise prohibited exotic bird species for cooperative breeding programs. Based on comments received and its own analysis, the Service has changed or eliminated elements of the proposed rule that relates to cooperative breeding programs (see "General comments pertaining to subpart C", above), and that may have been unnecessary.

Some commenters recommended that the Service leave any regulation of cooperative breeding programs to avicultural organizations. The Service believes that the final rule is quite self-regulating, in that cooperative breeding programs must submit information on a number of topics, but the Service has allowed for great flexibility in these topics and in how cooperative breeding programs are designed. For example, the Service has required information on a breeding protocol, genetic management plan and breeding methods, and plans for developing and maintaining a self-sustaining population in captivity of the exotic bird species; the Service has not directed cooperative breeding programs as to what breeding protocol should be used, or how to allocate birds, but rather is leaving that up to each program to coordinate. The Service notes that in the public meeting of April 15–16, 1993, there was consensus of those attending (including many aviculturists) that the most expeditious way to handle cooperative breeding programs in a rulemaking implementing the WBCA would be a two-tiered system, with approval of the entire program first, followed by applications from individual breeders.

Comments Pertaining to Section 15.26(a)(1): Birds to be Imported

One commenter suggested that individual cooperative breeding programs be eligible for approval whether or not they intend to import birds. The Service agrees that a cooperative breeding program may not have a specific importation planned, and has modified the rule accordingly to require a description of the exotic bird(s) to be imported or to be covered under the program. However, the Service notes that any program breeding exotic birds in captivity with no intent to import birds has no need to apply for approval under the WBCA.

Comments Pertaining to Recordkeeping and Tracking of Birds

Some commenters objected to the proposed requirement in § 15.26(a)(2) for submission by cooperative breeding programs of details on the system of recordkeeping and tracking of birds and their progeny. The Service however considers that requirement to be vital, and has retained it in the final rule. Congress, in the House Committee Report on the Wild Bird Conservation Act, said that it "expects that the Secretary will issue permits for the importation of birds for breeding if the applicant can demonstrate that he or she is capable and fully intends to keep track of the whereabouts of the offspring of birds that are imported under this exemption. The purpose of this requirement is to ensure that it efforts to reintroduce the species into the wild are undertaken, the location of birds that might be included in such a program and their genetic makeup will be known." To comply with the intent of Congress in this matter, the Service has retained the requirement for information on plans for disposition of progeny, a breeding protocol that includes a discussion of the proposed genetic management plan, and details on the system of recordkeeping to be used.

Comments Pertaining to Types of Facilities

One commenter felt very strongly that cooperative breeding programs for endangered species and/or CITES Appendix I be done only in closed, single-species facilities, because of disease transmission concerns; the commenter cited the Service's policy for the captive breeding of Puerto Rican Parrots. The Service agrees that there are serious risks of disease exposure in captive-breeding programs for threatened or endangered species. The Service, as a matter of policy, for Appendix I species or species listed under the Endangered Species Act, will seek to obtain information as to whether facilities are single or multi-species, where reintroduction is the stated objective of the breeding program.

Comments Pertaining to Annual Reports

One commenter felt that the proposed requirement in § 15.26(a)(5) to provide annual reports for 3 years imposes an impediment to creating new cooperative breeding programs, since there are very few such programs established for CITES Appendix II-listed species. The Service neither intended nor wishes to discourage the formation of new cooperative breeding programs. Therefore, the Service has modified the proposed requirement to ask for such information from pre-existing cooperative breeding programs, by including "if applicable " in the rule.

Comments Pertaining to Affiliation

Several commenters were unclear what is meant by professional affiliation in § 15.26, which requires a qualification statement for each individual who will be overseeing a cooperative breeding program, and requires that individuals overseeing the program demonstrate an affiliation with an avicultural, conservation or zoological organization. The proposed

rule required that this affiliation be professional. Some commenters noted that some avicultural organizations are administered by volunteers, who might be thought of as non-professionals. The Service agrees, and has removed the requirement that affiliations be professional. The Service notes however that the individuals overseeing a cooperative breeding program must be able to demonstrate some formal affiliation with the avicultural, zoological, or conservation organization, whether professional, as an officer, or otherwise.

Comments Pertaining to Country of Origin

Two commenters recommended that captive breeding of endangered species be conducted in the country of origin of the species (*in situ*) for conservation purposes and *ex situ* captive breeding programs should only be sanctioned when it is not possible to set up captive breeding programs in the country of origin. The Service feels strongly that conservation, management, and recovery programs in countries of origin should be given full consideration.

Comments Pertaining to Studbooks

One commenter objected to the requirement for information on a studbook, if one has been developed for the species, as being superfluous. The Service disagrees, and considers that if a studbook has been developed for a species, that information is useful in making the required findings.

Comments Pertaining to Publication in the **Federal Register** (§ 15.26(c))

Several commenters objected to publication in the **Federal Register** of applications for approval of cooperative breeding programs. The Service disagrees, and has retained its commitment and requirement to publish all applications for approval of cooperative breeding programs in the **Federal Register.** The Service notes that this is a new program, and exotic wild birds and their conservation will benefit from the Service's receiving information form all knowledgeable members of the public in granting approval to cooperative breeding programs. The Service notes that individual permit applications associated with approved cooperative breeding programs will not be required to be published in the **Federal Register.**

Comments Pertaining to Renewal of Approval, Section 15.26(e)

Cooperative breeding programs will be approved for two years, and can apply for renewal of approval. One commenter inquired if a cooperative breeding program that does not intend to import any more birds needs to apply for renewal. The Service stresses that no renewal would then be needed, and renewal is *not* obligatory. The Service further stresses that approval of cooperative breeding programs is *only* necessary when participants in the program intend to apply to import otherwise prohibited species of exotic birds.

In summary, cooperative breeding programs that wish to oversee the importation of otherwise prohibited species of exotic birds must be approved under this section before persons can apply for import permits under § 15.24. In applying for approval, a cooperative breeding program must provide information to the Service as prescribed in this section.

Comments Pertaining to Subpart D-Approved List of Species Listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

No comments were received on the proposed organization of this subpart. This subpart D is established in this rule; actual text will be proposed in a future proposed rulemaking. The subpart is organized as follows:

15.31 Criteria for including species in the approved list.
(a) Captive-bred species
(b) Non-captive-bred species
15.32 Species included in the approved list.
(a) Captive-bred species
(b) Non-captive-bred species

Comments Pertaining to Subpart E: Qualifying Facilities Breeding Exotic Birds in Captivity

No comments were received on the proposed organization on this subpart. This subpart E is established in this rule; actual text will be proposed in a future proposed rulemaking. The subpart is organized as follows:

Section 15.41 Criteria for including facilities as qualifying for imports.
Section 15.42 List of foreign qualifying breeding facilities.

Comments Pertaining to Subpart F: List of Prohibited Species Not Listed in the Appendices to the Convention on International Trade in Endangered Species of Wild Fauna and Flora

No comments were received on the proposed organization of this subpart. This subpart F is established in this rule; actual text will be proposed in a future proposed rulemaking. The subpart is organized as follows:

Section 15.51 Criteria for including species and countries in the prohibited list.
Section 15.52 Species included in the prohibited list.
Section 15.53 Countries of export included in the prohibited list.

General Comments

Comments Pertaining to Marking of Exotic Birds

One commenter noted that section 114 of the WBCA calls on the Secretary to review a program for labeling of exotic birds and certification of breeding facilities, and to report to Congress the results of that review by October 23, 1994. The Service has not yet begun that review, but welcomes the voluntary contribution of information or suggestions from members of the public on the way to proceed with this review. Several commenters inquired if the Service intends to propose regulations pursuant to Section 115 of the WBCA, which authorizes the Secretary to promulgate regulations requiring marking or recordkeeping for certain species of exotic birds. The Service will review that issue, and decide in the future on what regulations to propose.

Comments Pertaining to the Regulatory Flexibility Act

One commenter inquired how the Service could certify that these regulations will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. The Service notes that while the statute may have an economic effect, these regulations establishing permit procedures will allow the importation of otherwise prohibited species; since the regulations remove an automatic restriction, any potential economic effect is either minor or beneficial.

Effects of the Rule

The Service has determined that this rule is categorically excluded under Departmental procedures in complying with the National Environmental Policy Act (NEPA). The regulations are procedural in nature, and the environmental effects are judged to be minimal, speculative, and do not lend themselves to meaningful analysis. See 516 DM [Departmental Manual] 2, Appx. 1, Paragraph 1.10. The permits authorized under the WBCA and regulations may be subject to NEPA documentation requirements, on a case-by-case basis. For good cause as explained herein, the effective date of this final rule has not been delayed for thirty (30) days after publication in the **Federal Register** because, in accordance

with 5 U.S.C. 553(d) (1) and (3), the rule recognizes permitting exceptions to the requirements of the Wild Bird Conservation Act, which automatically imposes broad import bans as of October 23, 1993.

Executive Orders 12866, 12612, and 12630 and the Regulatory Flexibility Act

It had been previously determined that these revisions to 50 CFR Part 15 do not constitute a "major" rule under the criteria established by Executive Order 12291. Since that time, President Clinton has signed Executive Order 12866 which revokes Executive Order 12291 and requires, among other things, that agencies determine whether a regulatory action is significant. This rule is not significant as defined in Executive Order 12866. This action is not expected to have significant taking implications for U.S. citizens, as per Executive Order 12630. It has also been certified that these revisions will not have a significant economic effect on a substantial number of small entities as described by the Regulatory Flexibility Act. Since the rule applies to importation of live wild birds into the United States, it does not contain any Federalism impacts as described in Executive Order 12612.

Paperwork Reduction

The information collection requirement(s) contained in this section have been approved by the Office of Management and Budget, as required by 44 U.S.C. 3501 *et seq.* The collection of this information has been assigned approval number 1018–0084 by the Office of Management and Budget and the expiration date of August 31, 1996.

Author

The primary author of this final rule is Dr. Susan S. Lieberman, Office of Management Authority, U.S. Fish and Wildlife Service, Washington, D.C. 20240 (703/358–2093).

List of Subjects in 50 CFR Part 15

Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Regulation Promulgation

Accordingly, part 15 of Chapter I of title 50 of the Code of Federal Regulations is hereby revised to read as follows:

PART 15—WILD BIRD CONSERVATION ACT

Subpart A—Introduction and General Provisions

Sec.
15.1 Purpose of regulations.
15.2 Scope of regulations.
15.3 Definitions.

Subpart B—Prohibitions and Requirements

15.11 Prohibitions.
15.12 Requirements.

Subpart C—Permits and Approval of Cooperative Breeding Programs

15.21 General application procedures.
15.22 Permits for scientific research.
15.23 Permits for zoological breeding or display programs.
15.24 Permits for cooperative breeding.
15.25 Permits for personal pets.
15.26 Approval of cooperative breeding programs.

Subpart D—Approved List of Species Listed in the Appendices to the Convention

15.31 Criteria for including species in the approved list. [Reserved]
15.32 Species included in the approved list. [Reserved]

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

15.41 Criteria for including facilities as qualifying for imports. [Reserved]
15.42 List of foreign qualifying breeding facilities. [Reserved]

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention

15.51 Criteria for including species and countries in the prohibited list. [Reserved]
15.52 Species included in the prohibited list. [Reserved]
15.53 Countries of export included in the prohibited list. [Reserved]

Authority: 61 U.S.C. 4901–4916.

Subpart A—Introduction and General Provisions

§ 15.1 Purpose of regulations.

The regulations in this part implement the Wild Bird Conservation Act of 1992, Pub. L. 102–440, 16 U.S.C. 4901–4916.

§ 15.2 Scope of regulations.

(a) The regulations in this part apply to all species of exotic birds, as defined in section 15.3.

(b) The provisions in this part are in addition to, and are not in lieu of, other regulations of this subchapter B that may require a permit or prescribe additional restrictions or conditions for the import, export, reexport, and transportation of wildlife.

§ 15.3 Definitions.

In addition to the definitions contained in Parts 10 and 23 of this subchapter B, and unless the context requires otherwise, in this Part:

Exotic bird means any live or dead member of the Class Aves that is not indigenous to the 50 States or the District of Columbia, including any egg or offspring thereof, but does not include domestic poultry, dead sport-hunted birds, dead museum specimens, dead scientific specimens, products manufactured from such birds, or birds in any of the following families: Phasianidae, Numididae, Cracidae, Meleagrididae, Megapodiidae, Anatidae, Struthionidae Rheidae, Dromaiinae, and Gruidae.

Indigenous means a species that is naturally occurring, not introduced as a result of human activity, and that currently regularly inhabits or breeds in the 50 States or the District of Columbia.

Person means an individual, corporation, partnership, trust, association, or any other private entity; or any officer, employee, agent, department, or instrumentality of the Federal Government, of any State, municipality, or political subdivision of a State, or of any foreign government; any State, municipality, or political subdivision of a State; or any other entity subject to the jurisdiction of the United States.

Species means any species, any subspecies, or any district population segment of a species or subspecies, and includes hybrids of any species or subspecies. Hybrids will be treated according to the more restrictive Appendix or category in which either parental species is listed.

United States means the 50 States, the District of Columbia, the Commonwealth of Puerto Rico, American Samoa, the Virgin Islands, Guam, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands.

Subpart B—Prohibitions and Requirements

§ 15.11 Prohibitions.

(a) Except as provided under a permit issued pursuant to subpart C of this Part, it is unlawful for any person subject to the jurisdiction of the United States to commit, attempt to commit, to solicit another to commit, or to cause to be committed, any of the acts described in paragraphs (b) through (f) of this section in regard to any exotic bird.

(b) It is unlawful to import into the United States any exotic bird species listed in the Appendices to the Convention that is not included in the approved list of species, pursuant to subpart D of this part, except that

(1) This paragraph (b) does not apply to any exotic bird that was bred in a foreign breeding facility listed as qualifying pursuant to subpart E of this part, and

(2) This paragraph (b) does not apply to an exotic bird species listed in

Appendix III to the Convention that originated in a country that has not listed the species in Appendix III.

(c) It is unlawful to import into the United States any exotic bird species not listed in the Appendices to the Convention that is listed in the prohibited species list, pursuant to subpart F of this Part. In addition to all other exotic birds species, this paragraph also applies to exotic bird species listed in Appendix III to the Convention that originated in a country that has not listed the species in Appendix III.

(d) It is unlawful to import into the United States any exotic bird species from any country included in the prohibited country list, pursuant to subpart F of this part.

(e) It is unlawful to import into the United States any exotic bird species from a qualifying facility breeding exotic birds in captivity, listed pursuant to subpart E of this part, if the exotic bird was not captive-bred at the listed facility.

(f) It is unlawful for any person subject to the jurisdiction of the United States to engage in any activity with an exotic bird imported under a permit issued pursuant to this Part that violates a condition of said permit.

§ 15.12 Requirements.

(a) No person shall import into the United States any exotic bird except as may be permitted under the terms of a valid permit issued pursuant to the provisions of subpart C of this part and 50 CFR part 13, or in accordance with the provisions of subparts D–F of this part 15, or in accordance with the provisions of paragraph (b) of this section.

(b) Any exotic bird can be imported to the United States if it was legally exported from the United States with a permit issued by the Service's Office of Management Authority, provided that the import is by the same person who exported the bird, the import is accompanied by a copy of the cleared CITES export permit or certificate issued by the Service that was used to export the exotic bird, and the Service is satisfied that the same bird is being imported as is indicted on the aforementioned permit or certificate.

Subpart C—Permits and Approval of Cooperative Breeding Programs

§ 15.21 General application procedures.

(a) The Director may issue a permit authorizing the importation of exotic birds otherwise prohibited by § 15.11, in accordance with the issuance criteria of this subpart, for the following purposes only: Scientific research; zoological breeding or display programs; cooperative breeding programs designed to promote the conservation and maintenance of the species in the wild; or personally owned pets accompanying persons returning to the United States after being out of the country for more than 1 year.

(b) Additional requirements as indicated in parts 13, 14, 17, 21, and 23 of this subchapter must also be met.

(c) Applications for permits under this subpart and applications for approval of cooperative breeding programs under this subpart shall be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 N. Fairfax Drive, Arlington, Virginia 22203 by the person wishing to engage in the activity. Each application must be submitted on an official application (Form 3–200) provided by the Service and must contain all of the information specified in the applicable section, § 15.22–15.26. The sufficiency of the application shall be determined by the Director in accordance with the requirements of this part and part 13 of this subchapter.

§ 15.22 Permits for scientific research.

(a) Application requirements for permits for scientific research. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including:

(i) The common and scientific names of the species, number, age or age class, and, when known, sex; and

(ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is in the wild or was taken from the wild, include:

(i) The country and region where the removal will occur or occurred;

(ii) A description of the status of the species in the region of removal; and

(iii) A copy of any foreign collecting permit or authorizing letter, if applicable;

(3) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, including the name and address of the breeder, and when known, hatch date and identity of the parental birds; and

(ii) If the applicant is not the breeder, documentation showing the bird was acquired from a breeder and a history of multiple transactions, if applicable:

(4) A statement of the reasons the applicant is justified in obtaining a permit, and a complete description of the scientific research to be conducted on the exotic bird requested, including:

(i) Formal research protocol with timetable;

(ii) The relationship of such research to the conservation of the species in the wild;

(iii) A discussion of possible alternatives and efforts to obtain birds from other sources; and

(iv) Plans for disposition of the exotic birds and any progeny upon completion of the research project;

(5) Qualifications of the scientific personnel conducting the proposed research, including applicable experience and a description of relevant past research conducted;

(6) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards, including:

(i) The name and address of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each; and

(iii) Husbandry practices.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in Part 13 of this subchapter, the following factors:

(1) Whether the purpose of the scientific research is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild, taking into consideration the conservation status of the species in the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the research for which the permit is required has scientific merit;

(5) Whether the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the research objectives stated in the application.

(c) Permit conditions. In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be

subject to special conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.23 Permits for zoological breeding or display programs.

(a) Application requirements for permits for zoological breeding or display programs. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including:

(i) The common and scientific names of the species, number, age or age class, and, when known, sex; and

(ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is in the wild or was taken from the wild include:

(i) The country and region where the removal will occur or occurred;

(ii) A description of the status of the species in the region of removal; and

(iii) A copy of any foreign collecting permit or authorizing letter, if applicable;

(3) If the exotic bird was bred in captivity, include:

(i) Documents or other evidence that the bird was bred in captivity, including the name and address of the breeder, and when known, identity of the parental birds, and hatch date; and

(ii) If the applicant is not the breeder, documentation showing the bird was acquired from a breeder and a history of multiple transactions, if applicable;

(4) A statement of the reasons the applicant is justified in obtaining a permit, and a complete description of the breeding or display program to be conducted with the exotic bird requested, including:

(i) A breeding or education protocol that provides information on educational materials on the ecology and/or conservation status of the species provided to the general public;

(ii) Plans, if any, for developing or maintaining a self-sustaining population of the exotic bird species in captivity;

(iii) A statement on efforts to obtain birds from alternative sources or sources within the United States;

(iv) The relationship of such a breeding or display program to the conservation of the species in the wild; and

(v) Plans for disposition of the exotic birds and any progeny.

(5) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards of the public display community, including:

(i) The name and address of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for the birds to be imported and number of birds to be housed in each;

(iii) Husbandry practices;

(6) A history of the zoological facility's breeding programs with the same or similar species, including:

(i) participation in any cooperative breeding programs;

(ii) breeding and inventory records for the last two years, including hatching, survival, and mortality records; and

(iii) causes of any mortalities and efforts made to correct any problems.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the zoological breeding or display program is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild, taking into consideration the conservation status of the species in the wild;

(3) Whether the permit, if issued, would conflict with any known program intended to enhance the survival of the population from which the exotic bird was or would be removed;

(4) Whether the breeding or display program for which the permit is required has conservation merit; and

(5) Whether the expertise, facilities or other resources available to the applicant appear adequate for proper care and maintenance of the exotic bird and to successfully accomplish the zoological breeding or display objectives stated in the application.

(c) Permit conditions. In addition to the general conditions set forth in Part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.24 Permits for cooperative breeding.

(a) Application requirements for permits for cooperative breeding. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported, including:

(i) The common and scientific names of the species, number, age or age class, and, when known, sex; and

(ii) A statement as to whether, at the time of the application, the exotic bird is still in the wild, has already been removed from the wild, or was bred in captivity;

(2) If the exotic bird is still in the wild or was taken from the wild include;

(i) The country and region where the removal will occur or occurred;

(ii) A description of the status of the species in the region of removal; and

(iii) A copy of any foreign collecting permit or authorizing letter, if applicable;

(3) If the exotic bird was bred in captivity, include;

(i) Documents or other evidence that the bird was bred in captivity, including the name and address of the breeder, when known, the identity of the parental birds and hatch date; and

(ii) If the applicant is not the breeder, documentation showing the bird was acquired from the breeder and a history of multiple transactions, if applicable;

(4) A statement of the reasons the applicant is justified in obtaining a permit, and a statement detailing the applicant's participation in a cooperative breeding program approved under section 15.26 of this chapter, including;

(i) Copies of any signed agreements or protocols with the monitoring avicultural, conservation, or zoological organization overseeing the program; and

(ii) Applicable records of the cooperative breeding program of any other birds imported, their progeny, and their disposition;

(5) A complete description of the relationship of the exotic bird to the approved cooperative breeding program, including;

(i) A statement of the role of the exotic bird in a breeding protocol;

(ii) A plan for maintaining a self-sustaining captive population of the exotic bird species;

(iii) Details on recordkeeping; and

(iv) Plans for disposition of the exotic birds and any progeny produced during the course of this program.

(6) A statement outlining the applicant's attempts to obtain the exotic bird in a manner that would not cause its removal from the wild, and attempts

to obtain the specimens of the exotic bird species from stock available in the United States;

(7) A description of the care and maintenance of the exotic bird, and how the facility meets professionally recognized standards, including:

(i) The name and address of the facility where the exotic bird will be maintained;

(ii) Dimensions of existing enclosures for birds to be imported and number of birds to be housed in each; and

(iii) Husbandry practices;

(8) A history of the applicant's past participation in cooperative breeding programs with the same or similar species, including:

(i) breeding and inventory records for at least the last two years;

(ii) hatching, survival, and mortality records;

(iii) causes of any mortalities and efforts made to correct any problems.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in part 13 of this subchapter, the following factors:

(1) Whether the cooperative breeding program is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic bird was bred in captivity or was (or will be) taken from the wild, taking into consideration the conservation status of the species in the wild;

(3) Whether the cooperative breeding program for which the permit is required would be likely to enhance or promote the conservation of the exotic bird species in the wild or result in a self-sustaining population of the exotic bird species in captivity; and

(4) Whether the expertise, facilities, or other resources available to the applicant appear adequate for proper care and maintenance of the exotic birds and to successfully accomplish the cooperative breeding objectives stated in the application.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit, but in no case will these permits be valid for longer than one year.

§ 15.25 Permits for personal pets.

(a) Application requirements for personal pets not intended for sale. No individual may import more than two exotic birds as pets in any year. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird to be imported, including:

(i) The common and scientific names, number, age, and, when known, sex;

(ii) A band number, house name, or any other unique identifying feature; and

(iii) A statement as to whether the exotic bird was bred in captivity or taken from the wild;

(2) A statement of the reasons the applicant is justified in obtaining a permit;

(3) Documentation showing that the applicant has continually resided outside of the United States for a minimum of one year;

(4) A statement of the number of exotic birds imported during the previous 12 months as personal pets by the applicant;

(5) Information on the origin of the exotic bird, including:

(i) Country of origin; and

(ii) A description and documentation of how the exotic bird was acquired, including a copy of any Convention permit under which the bird was re-exported or exported. If there is no such permit, a sales receipt or signed statement from seller with name and address of seller, date of sale, species, and other identifying information on the bird or signed breeder's certificate or statement with name and address of breeder, date of sale or transfer, species and hatch date.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a permit should be issued. In making this decision, the Director shall consider, in addition to the general criteria in Part 13 of this subchapter, the following factors:

(1) Whether the proposed import would be detrimental to the survival of the exotic bird species in the wild;

(2) Whether the exotic bird to be imported is a personal pet owned by the applicant, who has continuously resided outside the United States for a minimum of one year, and who has no intention to sell the bird; and.

(3) Whether the number of exotic birds imported in the previous 12 months by the applicant does not exceed two.

(c) Permit conditions. In addition to the general conditions set forth in part 13 of this subchapter, every permit issued under this section shall be subject to special conditions that no individual may import more than two exotic birds as personal pets in any year, the exotic birds cannot be sold after importation into the United States, and any other conditions as the Director may deem appropriate.

(d) Duration of permits. The duration of the import permits issued under this section shall be designated on the face of the permit.

§ 15.26 Approval of cooperative breeding programs.

Upon receipt of a complete application, the Director may approve cooperative breeding programs. Such approval will allow individuals to import exotic birds otherwise prohibited by section 15.11, with permits under section 15.24. Such approval for cooperative breeding programs shall be granted in accordance with the issuance criteria of this section.

(a) Application requirements for approval of cooperative breeding programs. Each application shall provide the following information and such other information that the Director may require:

(1) A description of the exotic bird(s) to be imported or to be covered under the program, including the common and scientific names of the species, number, sex ratio (if applicable), and age class;

(2) A statement of the reasons the applicant is justified in obtaining this approval, and a description of the cooperative breeding program requested for the exotic bird species, including:

(i) A breeding protocol, including a genetic management plan and breeding methods;

(ii) A statement on the plans for developing and maintaining a self-sustaining population in captivity of the exotic bird species;

(iii) Details on the system of recordkeeping and tracking of birds and their progeny, including how individual specimens will be marked or otherwise identified;

(iv) A statement on the relationship of such a breeding program to the conservation of the exotic bird species in the world;

(v) Details on the funding of this program; and

(vi) Plans for disposition of the exotic birds and any progeny;

(3) A qualification statement for each individual who will be overseeing the cooperative breeding program. This statement should include information on the individual's prior experience

with the same or similar bird species. Individuals overseeing the program will be required to demonstrate an affiliation with an avicultural, conservation, or zoological organization;

(4) A statement of the oversight of the program by the avicultural, zoological, or conservation organization, including their monitoring of participation in the program, criteria for acceptance of individuals into the program, and the relationship of the cooperative breeding program to enhancing the propagation and survival of the species; and

(5) A history of the cooperative breeding program, including an annual report for the last 3 years (if applicable), mortality records, breeding records, and a studbook if one has been developed for the species.

(b) Issuance criteria. Upon receiving an application completed in accordance with paragraph (a) of this section, the Director will decide whether or not a cooperative breeding program should be approved. In making this decision, the Director shall consider, in addition to the general criteria in Part 13 of this subchapter, the following factors:

(1) Whether the cooperative breeding program for which the approval is requested is adequate to justify removing the exotic bird from the wild or otherwise changing its status;

(2) Whether the granting of this approval would be detrimental to the survival of the exotic bird species in the wild, including whether the exotic birds were bred in captivity or will be taken from the wild, taking into consideration the conservation status of the species in the wild;

(3) Whether the granting of this approval would conflict with any known program intended to enhance the survival of the population from which the exotic bird species was or would be removed;

(4) Whether the cooperative breeding program for which the permit is requested would be likely to enhance or promote the conservation of the exotic bird species in the wild or result in a self-sustaining population of the exotic bird species in captivity; and

(5) Whether the expertise or other resources available to the program appear adequate to successfully accomplish the objectives stated in the application.

(c) Publication in the **Federal Register**. The Director shall publish notice in the **Federal Register** of each application submitted under Section 15.26(a). Each notice shall invite the submission from interested parties of written data, views, or arguments with respect to the application. The Director shall publish periodically a notice as appropriate in the **Federal Register** of the list of approved cooperative breeding programs.

(d) Approval conditions. In addition to the general conditions set forth in part 13 of this subchapter, every approval issued under this paragraph shall be subject to the special condition that the cooperative breeding program shall maintain records of all birds imported under permits issued under this subpart and their progeny, including their sale or transfer, death, or escape, and breeding success. These records shall be made available to the Service on request and when renewing an approval.

(e) Duration of approval. Cooperative breeding programs shall be approved for two years, at which time applicants may apply to the Service for renewal of a program's approval. Applications for renewal of approval shall comply with the general conditions set forth in part 13 of this subchapter.

Subpart D—Approved List of Species Listed in the Appendices to the Convention

§ 15.31 Criteria for including species in the approved list. [Reserved].

§ 15.32 Species included in the approved list. [Reserved].

Subpart E—Qualifying Facilities Breeding Exotic Birds in Captivity

§ 15.41 Criteria for including facilities as qualifying for imports. [Reserved].

§ 15.42 List of foreign qualifying breeding facilities. [Reserved].

Subpart F—List of Prohibited Species Not Listed in the Appendices to the Convention

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Dated: October 19, 1993.

Bruce Blanchard,

Deputy Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–28085 Filed 11–15–93; 8:45 am]

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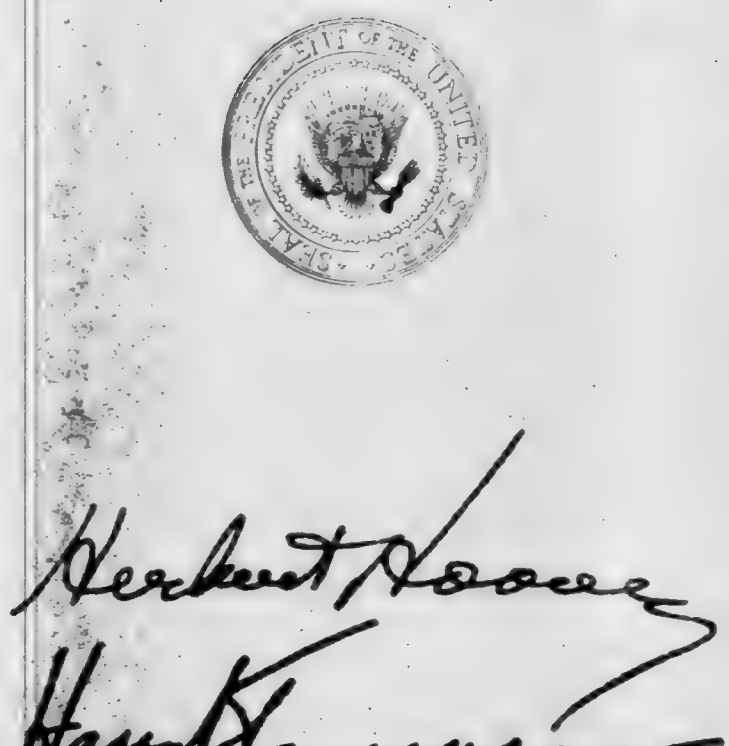

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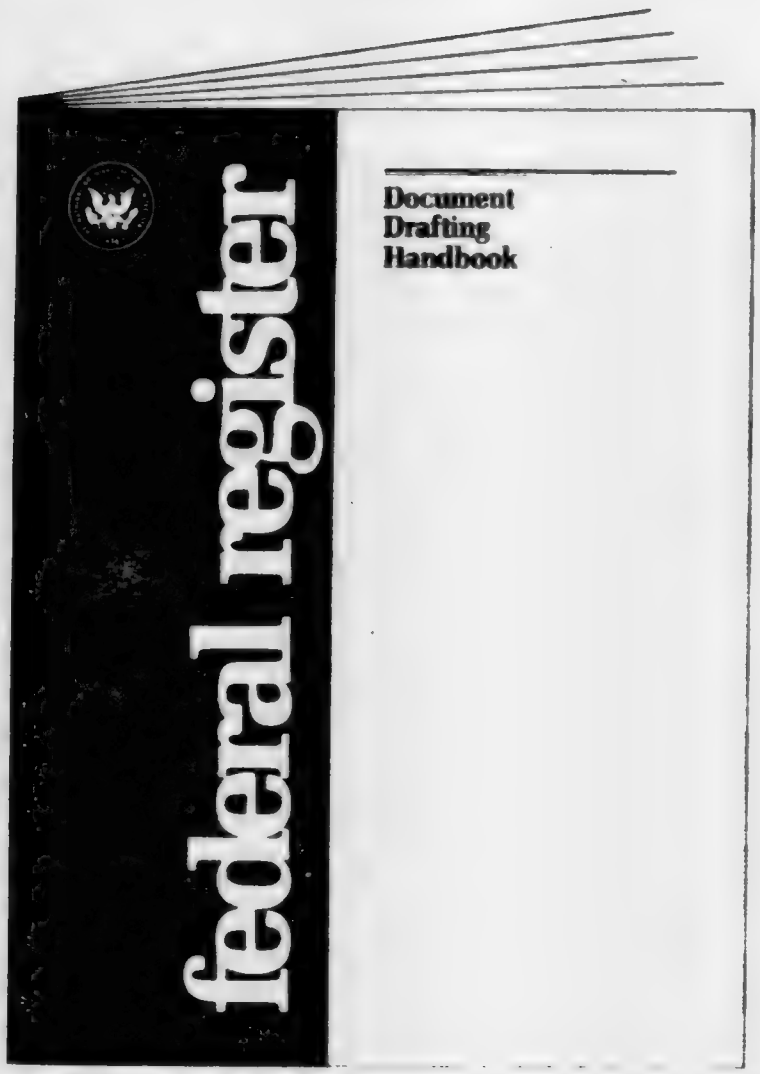

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Wednesday
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Rules and Regulations

Federal Register
Vol. 58, No. 220
Wednesday, November 17, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 2

Delegations of Authority

AGENCY: Department of Agriculture.

ACTION: Final rule.

SUMMARY: This document amends the delegations of authority from the Secretary of Agriculture and general officers of the Department of Agriculture to delegate the authority of the Secretary of Agriculture to implement an Emergency Wetlands Reserve Program (EWRP) to the Assistant Secretary for Natural Resources and Environment and the Chief of the Soil Conservation Service (SCS).

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Edward G. Riekert, Director Watershed Projects Division, P.O. Box 2890, Washington, DC 20013, (202) 720–2847.

SUPPLEMENTARY INFORMATION: The Wetland Reserve Program (WRP) was established under the authority of sections 1237–1237f of the Food Security Act of 1985, as amended, 16 U.S.C. 3837–3837f, and is administered by the Agricultural Stabilization and Conservation Service (ASCS) pursuant to regulations found at 7 CFR part 703. Under the WRP, persons who own croplands and other related lands that have wetland characteristics or the potential for restoration of such characteristics and who agree to the restoration and long-term maintenance of those lands as wetlands may be eligible to enroll the lands in the WRP and receive a payment for the long-term maintenance easement and some cost-sharing assistance for the restoration costs.

The Emergency Supplemental Appropriations for Relief from the Major, Widespread Flooding in the Midwest Act of 1993, Public Law 103–75, provides appropriations to SCS for the repair of "damages to the waterways and watersheds resulting from the Midwest floods and other disasters of 1993" under the Emergency Watershed Protection Program of SCS. See 107 Stat. 742. That appropriation to SCS further provides that if the Secretary of Agriculture "determines that the cost of land and levee restoration exceeds the fair market value of an affected cropland, the Secretary may use sufficient funds provided under this head to accept bids from willing sellers to enroll such cropland inundated by the Midwest floods of 1993 in any of the affected States in the Wetlands Reserve Program as authorized by subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985."

This rule amends the delegations of authority of the Department of Agriculture contained in 7 CFR part 2 to delegate the authority of the Secretary of Agriculture for the EWRP to the Assistant Secretary for Natural Resources and Environment to the Chief of SCS. The EWRP will be administered by SCS as an adjunct to the WRP administered by ASCS. The delegations provided in this rule are separate from and do not affect the delegations related to the WRP that have previously been made to the Under Secretary for International Affairs and Commodity Programs and the Administrator of ASCS. The policies and procedures for implementing the EWRP will be published by the SCS.

This rule relates to internal agency management. Therefore, notice of proposed rulemaking [to provide] and an opportunity for public comment are not required pursuant to 5 U.S.C. 553, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Orders 12778 and 12866.

This action is not a rule as defined by Public Law 96–354, the Regulatory Flexibility Act, and thus is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 2

Authority delegations (Government agencies).

Accordingly, part 2, title 7, Code of Federal Regulations is amended as follows:

PART 2—DELEGATIONS OF AUTHORITY BY THE SECRETARY OF AGRICULTURE AND GENERAL OFFICERS OF THE DEPARTMENT

1. The authority citation for part 2 contineus to read as follows:

Authority: 5 U.S.C. 301 and Reorganization Plan No. 2 of 1953.

Subpart C—Delegations of Authority to the Deputy Secretary, the Under Secretary for International Affairs and Commodity Programs, the Under Secretary for Small Community and Rural Development, and Assistant Secretaries

2. Section 2.19 is amended by revising paragraph (c)(13) to read as follows:

§ 2.19 Assistant Secretary for Natural Resources and Environment.

* * * * *

(c) * * *

(13) Carry out responsibilities for the conservation of highly erodible lands and wetlands pursuant to sections 1211–1233 of the Food Security Act of 1985, as amended (16 U.S.C. 3821–3823), provide technical assistance for soil and water conservation technology for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Food Security Act of 1985, as amended (16 U.S.C. 3831–3844), and administer the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Food Security Act of 1985, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Public Law 103–75.

* * * * *

Subpart G—Delegations of Authority by the Assistant Secretary for Natural Resources and Environment

3. Section 2.62 is amended by revising paragraph (a)(13) to read as follows:

§ 2.62 Chief, Soil Conservation Service.

(a) * * *

(13) Carry out responsibilities for the conservation of highly erodible lands and wetlands pursuant to sections 1211–1233 of the Food Security Act of 1985, as amended (16 U.S.C. 3821–3823), provide technical assistance for soil and water conservation technology

for the implementation and administration of the Conservation Reserve Program authorized by sections 1231–1244 of the Food Security Act of 1985, as amended (16 U.S.C. 3831–3844), and administer the Emergency Wetlands Reserve Program authorized by sections 1237–1237f of the Food Security Act of 1985, as amended (16 U.S.C. 3837–3837f), and the Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993, Public Law 103–75, 107 Stat. 739, 742.

* * * * *

Dated: November 9, 1993.

Mike Espy,

Secretary of Agriculture.

For subpart G:

Dated: November 9, 1993

Terry D'Addio,

Acting Assistant Secretary for Natural Resources and Environment.

[FR Doc. 93–28180 Filed 11–16–93; 8:45 am]

BILLING CODE 3410–01–M

Agricultural Marketing Service

7 CFR Part 1106

[DA–93–28]

Milk in the Southwest Plains Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends for the moths of October 1993 through January 1994 certain portions of the supply plant shipping requirements of the Southwest Plains Federal milk marketing order. The suspension, requested by Kraft General Foods (Kraft), would relax the requirement that supply plants ship 50 percent of their dairy farmer receipts to pool distributing plants during each of the months of October through January. Kraft contends that shipments from supply plants will not be required to meet the market's fluid requirements because there are plentiful supplies of milk available directly from producers' farms to meet the needs of the market's pool distributing plants.

EFFECTIVE DATE: October 1, 1993, through January 30, 1994.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 7, 1993; published October 15, 1993 (58 FR 53438).

This order of suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act) and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR, part 900).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this proposed action would not have a significant economic impact on a substantial number of small entities. This action will lessen the regulatory impact of the order on certain milk handlers and will tend to ensure that dairy farmers will have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action."

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect, and it will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** (58 FR 53438) on October 15, 1993, concerning the proposed suspension of certain portions of the pool plant definition. The public was afforded the opportunity to comment on the notice by submitting written data, views, and arguments by October 22, 1993. One comment was received and is summarized in the statement of consideration.

After consideration of all relevant material, including the proposal in the notice and other available information, it is hereby found and determined that the following provisions of the order will not tend to effectuate the declared policy of the Act during months of October 1993 through January 1994.

1. In § 1106.6, the words "during the month".

2. In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of that paragraph.

Statement of Consideration

This suspension was requested by Kraft General Foods (Kraft) to allow a supply plant that has been associated with the Southwest Plains order during the months of September 1992 through January 1993 to qualify as a pool plant without shipping any milk to a pool distributing plant during the months of October 1993 through January 1994. In its letter requesting the suspension, Kraft stated that there were abundant supplies of milk available to distributing plants on a direct-ship basis and that supplemental shipments of producer milk from more distant supply plants will not be needed.

Mid-America Dairymen, Inc. (Mid-America) filed a comment in support of the proposed action. Mid-America anticipates that there will be ample supplies of direct-ship producer milk in the Southwest Plains marketing order for the months of October 1993 through August 1994. Mid-America agrees with Kraft that supplemental shipments of milk from more distant supply plants, such as Kraft's plant located in Bentonville, Arkansas, are unnecessary to meet the fluid needs of the market. No comments were filed in opposition to the proposed suspension.

For the reasons discussed above, it is appropriate to suspend certain provisions of the order to permit a supply plant that has qualified as a pool plant in the Southwest Plains market to retain its pool status. In particular, it is appropriate to suspend certain portions of the provision that requires a supply plant to ship 50 percent of its producer receipts to pool distributing plants to qualify as a pool plant during the months of October through January.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties, and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective October 1, 1993.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

For the reasons set forth in the preamble, the following provisions in title 7 part 1106 are hereby suspended from October 1, 1993, through January 30, 1994:

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1106.6 [Temporarily suspended in part]

2. In § 1106.6, the words "during the month".

§ 1106.7 [Temporarily suspended in part]

3. In § 1106.7(b)(1), beginning with the words "of February through August" and continuing to the end of that paragraph.

Dated: November 8, 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–28178 Filed 11–16–93; 8:45 am]

BILLING CODE 3410–02–M

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7 CFR Part 1220

[No. LS–92–006]

RIN 0581–AA77

Soybean Promotion and Research Program; Procedures for Conduct of Referenda

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: Pursuant to the Soybean Promotion, Research, and Consumer Information Act (Act) a referendum will be conducted among eligible soybean producers to determine whether the Soybean Promotion and Research Order (Order) should be continued. The Act requires the Secretary to conduct such referendum not earlier than 18 months and no later than 36 months after the issuance of an Order. This final rule establishes the procedures for conducting the required continuance referendum. The final rule is also applicable to any subsequent referenda which may be conducted pursuant to the Act.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Ralph L. Tapp, Chief; Marketing Programs Branch; Livestock and Seed Division; AMS, USDA, room 2624–S; P.O. Box 96456; Washington, DC 20090–6456. Telephone number 202/720–1115.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding: Proposed Rule—Soybean Promotion and Research Program; Procedures for Conduct of Referendum published May 6, 1993 (58 FR 26933).

Regulatory Impact

This final rule has been reviewed by the U.S. Department of Agriculture in accordance with Departmental Regulation No. 1512–1 and the criteria contained in Executive Order No. 12291 and has been determined to be a nonmajor rule because it does not meet the criteria for a major rule as stated in the Order.

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. It is not intended to have a retroactive effect.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1971 of the Act, a person subject to the Order may file with the Secretary a petition stating that the Order, any provision of the Order, or any obligation imposed in connection with the Order is not in accordance with law and requesting a modification of the Order or an exemption from the Order. The petitioner is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The statute provides that the District Court of the United States in any district in which the person who is a petitioner, resides, or carries on business has jurisdiction to review a ruling on the petition if a complaint for the purpose is filed not later than 20 days after the date of the entry of the ruling.

Further, section of the Act provides, with certain exceptions, that nothing in the Act may be construed to preempt or supersede any other program relating to soybean promotion, research, consumer information, or industry information organized and operated under the laws of the United States or any State. One exemption in the Act concerns assessments collected by Qualified State Soybean Boards. The exception provides that to ensure adequate funding of the operations of Qualified State Soybean Boards under the Act, no State law or regulation may limit or have the effect of limiting the full amount of assessments that a Qualified State Soybean Board in that State may collect, and which is authorized to be credited under the Act. Another exception concerns certain referenda conducted during specified periods by a State relating to the continuation or termination of a Qualified State Soybean Board or State soybean assessment.

This action has also been reviewed under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.* This final rule establishes procedures for the conduct of referenda. It permits all eligible soybean producers to register and to vote. Participation in referenda is voluntary. The Administrator of the Agricultural Marketing Service (AMS) has determined that this rule will not have a significant economic impact on a substantial number of small business entities.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the information collection requirements contained in this final rule have been approved by the Office of Management and Budget. They have been assigned OMB control number 0581–0093. The information collection required by this action and necessary to conduct a referendum include the following:

(a) For "in-person" voting:

(1) Each producer of soybeans voting in a referendum must complete a Ballot (Form LS–49) at the county Cooperative Extension Service (CES) office. The producer must fill out the ballot and insert it in the Ballot Envelope (Form LS–49–1).

(2) Each producer must fill out a Certification and Registration Form which is printed on the Referendum Envelope (LS–49–2). The Ballot Envelope containing the ballot is then inserted in the Referendum Envelope (Form LS–49–2). The estimated average time burden for completing the forms for in-person voting is 6 minutes per voter.

(b) For absentee voting: Each producer of soybeans requesting absentee voting in a referendum must complete a Combined Registration and Absentee Ballot (Form LS–50). The producer must fill out the form and insert the ballot portion in a Ballot Envelope (LS–49–1) (same as in-person voting) and then insert the sealed Ballot Envelope and the registration portion in the Referendum Envelope (LS–50–1) and place in the mail. The estimated average time burden for completing this procedure is 6 minutes per voter.

(c) The final rule contains a requirement that for in-person voting the producer sign the voter registration list (Form LS–49–3). For the absentee voting, the county CES agent shall enter on the Absentee Voter Request List (Form LS–50–2) the names and addresses of each person or entity requesting an absentee ballot and the date the forms were mailed or provided. This information is necessary for the Department to list the identities of each voter in the referendum and to allow voters and interested parties to see the identity of each voter in the referendum. This information can be used to validate ballots and to challenge potentially ineligible voters. Each county CES agent will fill out one or more of Form LS–50–2 per referendum. The estimated average reporting burden will vary depending on the number of absentee ballots requested.

The estimated number of producers who will vote in the referendum is 100,000, each voting once.

Background

The Act (7 U.S.C. 6301–6311) provides for the establishment of a coordinated program of promotion and research designed to strengthen the soybean industry's position in the marketplace and to maintain and expand domestic and foreign markets and uses for soybeans and soybean products. The program is financed by an assessment of 0.5 of 1 percent of the net market price of soybeans sold by producers. Pursuant to the Act, an Order was made effective July 9, 1991, and the collection of assessments began September 1, 1991.

The Act requires that a referendum be conducted not earlier than 18 months and not later than 36 months after the issuance of the Order to determine whether the Order should be continued. The initial referendum is to be conducted among persons who were producers of soybeans during a representative period specified by the Secretary for the purpose of determining whether the Order should be continued. The Secretary will establish the representative period and will announce it in an official press release and by other means as specified in § 1220.514. The Order shall be continued only if it is approved by a majority of persons voting in the referendum. If continuation of the Order is not approved by a majority of those persons voting in the referendum, the Secretary shall terminate collection of assessments under the Order within 6 months after the referendum. The Secretary shall terminate the Order in an orderly manner as soon as practicable.

If continuation of the Order is approved, the Act requires that no later than 18 months after approval, the Secretary conduct a poll of soybean producers to determine if producers support the conduct of a referendum on the continuance of the payment of refunds under the Order. If the Secretary determines, based on the poll, that the conduct of a refund referendum is supported by at least 20 percent of the producers (not in excess of one-fifth of which may be producers in any one State), a referendum will be conducted not later than 1 year after the Secretary's decision.

The Act also requires the Secretary to hold additional referenda if requested by 10 percent or more of the producers who during a representative period were engaged in the production of soybeans. No more than one-fifth may be producers in any one State, as determined by the Secretary.

The Act specifies that a referendum shall be conducted for a reasonable period of time not to exceed 3 days as determined by the Secretary and that eligible persons are to certify that they were engaged in the production of soybeans during the representative period and vote at the same time. The Secretary has determined that the referendum shall be conducted on 1 day. That date will be announced in an official Department press release and by other means as specified in § 1220.514. The Act also provides that referenda shall be conducted at county offices of the State CES and that provision shall be made for absentee mail ballots to be provided on request. The Extension Service of the U.S. Department of Agriculture will coordinate the State and county CES roles in conducting the referendum.

On May 6, 1993, AMS published in the **Federal Register** (58 FR 26933) a proposed rule which set forth procedures to be followed in conducting referenda under the Act. The proposed rule included provisions concerning definitions, supervision of the referenda, registration, voting procedures, reporting referenda results, and disposition of the ballots and records. It also proposed that the Agricultural Stabilization and Conservation Service (ASCS) of the Department, assist in the conduct of referenda by: (1) Counting ballots; (2) determining the eligibility of challenged voters; and (3) reporting referenda results.

The proposed rule was published with a request for comments to be submitted by June 7, 1993. The Department received 10 written comments. One from the United Soybean Board and nine from Qualified State Soybean Boards. The commenters generally supported the proposed procedures for the conduct of referenda with certain qualifications.

The substantive changes suggested by commenters are discussed below, together with a description of substantive changes made by the Department upon review of the proposed procedures for the conduct of referenda. The "LS" numbers identifying the forms used for absentee voting in the referenda have been changed as shown below. Also, other minor changes of a nonsubstantive nature are made by the Department for purposes of clarity and accuracy. For the reader's convenience, the discussion is organized by topic headings of the proposed rule.

LS Forms

LS forms for absentee voting referenced throughout the text are changed as follows:

	Proposed rule	Final rule
1. Voter request list	LS–44–3	LS–50–2
2. Combined absentee registration and voting form.	LS–44	LS–50
3. Ballot envelope	LS–44–2	LS–49–1
4. Referendum envelope.	LS–44–1	LS–50–1

Definitions

Section 1220.513 Producer

One commenter pointed out that the proposed rule has a comma after the word "United States" while the comma is not there in the Act or Order. The commenter feels this could introduce an element of uncertainty to the definition. In the interest of uniformity, the comma is deleted in this final rule.

Referendum

Section 1220.527 Registration Form and Ballot

One commenter suggested changes to this section; however, we believe the commenter meant to refer to § 1220.528 and have therefore responded in the section below.

Section 1220.528 Registration and Voting Procedure

Regarding § 1220.528(a)(2) and § 1220.528(b)(4) (per the preceding paragraph), one commenter suggested that in two places in this section, the reference to "his" be changed to "his/her". This is a valid suggestion. The reference to "his" is deleted in this final rule.

Regarding § 1220.528(b)(1), several commenters suggested modifying this section to allow absentee ballots to be requested at county CES offices as well as State CES offices. The commenters concern was that absentee ballots be as widely available as possible. We agree that this is a valid concern; however, we believe that the potential for requests to be lost increases when the request is handled by more than one office. Therefore, we have changed this section to permit eligible producers to request absentee ballots at the county CES office serving the county in which they reside, if individuals, or serving the county in which their main office is located, if a corporation or other entity. We have eliminated the provision that absentee ballots may be requested from the State CES office. Additionally, we have added that ballots may be requested in person as well as by mail. However, all ballots requested will be provided by mail.

The commenters went on to suggest a technical correction to § 1220.528(b)(1) to clarify that county CES offices would receive appropriate absentee voter request lists. This suggestion is not necessary due to the change in § 1220.528(b)(1) as described above. Each county CES office will maintain its own voter request list which will then be provided to the appropriate ASCS county office.

Regarding § 1220.528(b)(1), one commenter suggested that in the first sentence, the phrase "unable to vote in person" be deleted to make it consistent with the Act. Accordingly, the phrase is deleted.

Regarding § 1220.528(b)(3), several commenters were concerned that producers have maximum opportunity to identify the address of the local CES office so that the absentee ballot could be properly mailed. The commenters suggested that each absentee ballot mailed include a list of local CES office addresses and telephone numbers. This was a helpful suggestion although not adopted as presented. To preclude misaddressed ballots and to provide a means to better protect the integrity of the referendum, the county CES offices will include with each absentee ballot mailed, an envelope marked "Soybean Referendum" (Form LS–50–1) pre-addressed with the address of the appropriate county CES office.

Another commenter suggested a system of color coding for the ballot, ballot envelope and referendum envelope, as well as explicit directions on the envelope flaps to ensure ballots are correctly submitted. In the interest of limiting the cost of conducting the referendum, the Department believes that the use of color coding, which would increase cost, is not necessary. However, we concur with the commenter's intent to make the voting process as easy to understand as possible. Thus, while the commenters suggestion for color coding is not adopted, instructions are included on the forms and envelopes.

Another commenter suggested a modification to allow written requests for absentee ballots to be hand delivered by a spouse, partner, or employee. This is allowed in the rule and has been clarified. The rule specifies that the absentee ballot may be requested in person or in writing but does not specify that the written request has to be mailed; therefore, written requests may be hand delivered by a spouse, partner, or employee. However, the absentee ballot, like all absentee ballots, will be mailed to the eligible voter by the county CES office. In summary, the language has been adjusted slightly and conforms with the suggestion of the commenter.

Section 1220.533 ASCS County Office Report

One commenter viewed as inconsistent one sentence that reads: "* * * results of the referendum in each county may be made available to the public" and another sentence which reads "* * * results shall be posted for 30 days in the ASCS county office * * *." The intent of this section as proposed was that the results in each county could be released immediately after the counting of the ballots and any required review for the verification for accuracy. Additionally, such results would be posted thereafter for 30 days. This is a valid suggestion; therefore, we have revised this section to clarify the intent.

Section 1220.553; § 1220.534 ASCS State Office Report; and § 1220.535 Results of the Referendum

These sections provide for the reporting of referendum results from the county ASCS office to the State ASCS office, to the Administrator of ASCS, and to the Secretary of Agriculture. Several commenters noted that time periods had not been provided to ensure the prompt compilation and release of referendum results. The commenters proposed that State ASCS offices submit the results to the Deputy Administrator, ASCS, no later than 4 business days following the day the ballots are counted. The commenter further proposed that the Deputy Administrator, ASCS, submit to the Administrator, AMS, the results of the referendum no later than 6 business days following the day the ballots are counted. We share the commenters concerns and appreciate the importance of timely and accurate reporting of the results. We believe the deadlines suggested by the commenters are realistic, and we anticipate that they will be met. However, imposing absolute time limits could unduly restrict the Department's ability to compile, verify, and report accurate results. Therefore, this suggestion is not adopted in this final rule.

In summary, this final rule adopts the proposed rule with the substantive changes discussed herein and with other minor changes made for purposes of clarity and accuracy. One additional change was made by the Agency to clarify the challenge procedures in § 1220.530. Each challenge will be required to be separate and signed by the challenger.

Pursuant to the provisions in 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because postponing the final rule would unduly interfere with the anticipated scheduling of the referendum.

List of Subjects in 7 CFR Part 1220

Agricultural research, Reporting and recordkeeping requirements, Soybeans.

For the reasons set forth in the preamble, 7 CFR part 1220 is amended as follows:

PART 1220—SOYBEAN PROMOTION, RESEARCH, AND CONSUMER INFORMATION

1. The authority citation for part 1220 continues to read as follows:

Authority: Title XIX, Pub. Law 101–624, 104 Stat. 3359, 3881 (7 U.S.C. 6301–6311).

2. Subpart E, consisting of §§ 1220.501 through 1220.537, is added to read as follows:

Subpart E—Procedure for the Conduct of Referenda

Sec.

Definitions

1220.501 Act.
1220.502 Administrator.
1220.503 Agricultural Stabilization and Conservation County Committee.
1220.504 Agricultural Stabilization and Conservation Service.
1220.505 Agricultural Stabilization and Conservation Service County Executive Director.
1220.506 Cooperative Extension Service.
1220.507 Cooperative Extension Service Agent.
1220.508 Department.
1220.509 Deputy Administrator.
1220.510 Extension Service of the U.S. Department of Agriculture.
1220.511 Order.
1220.512 Person.
1220.513 Producer.
1220.514 Public notice.
1220.515 Referenda.
1220.516 Registration period.
1220.517 Representative period.
1220.518 Secretary.
1220.519 Soybeans.
1220.520 State and United States.
1220.521 Voting period.

Referendum

1220.522 General.
1220.523 Supervision of referenda.
1220.524 Eligibility.
1220.525 Time and place of registration and voting.
1220.526 Facilities for registering and voting.
1220.527 Registration form and ballot.
1220.528 Registration and voting procedure.
1220.529 List of registered producers.
1220.530 Challenge of eligibility.
1220.531 Receiving ballots.
1220.532 Canvassing ballots.
1220.533 ASCS county office report.
1220.534 ASCS State office report.
1220.535 Results of the referendum.
1220.536 Disposition of ballots and records.
1220.537 Instructions and forms.

Subpart E—Procedure for the Conduct of Referenda

Definitions

§ 1220.501 Act.

The term "Act" means the Soybean Promotion, Research, and Consumer Information Act set forth in title XIX, subtitle E of the Food, Agriculture, Conservation and Trade Act of 1990 (Pub. L. 101–624) and any amendments thereto.

§ 1220.502 Administrator.

The term "Administrator" means the Administrator of the Agricultural Marketing Service, or any officer or employee of the Department to whom there has heretofore been delegated or may hereafter be delegated the authority to act in the Administrator's stead.

§ 1220.503 Agricultural Stabilization and Conservation County Committee.

The term "Agricultural Stabilization and Conservation County Committee," also referred to as "ASC County Committee," means the group of persons within a county elected to act as the County Agricultural Stabilization and Conservation Committee.

§ 1220.504 Agricultural Stabilization and Conservation Service.

The term "Agricultural Stabilization and Conservation Service," also referred to as "ASCS," means the Agricultural Stabilization and Conservation Service of the Department.

§ 1220.505 Agricultural Stabilization and Conservation Service County Executive Director.

The term "Agricultural Stabilization and Conservation Service County Executive Director," also referred to as "ASCS Executive Director," means the person employed by the ASC County Committee to execute the policies of the ASC county committee and be responsible for the day-to-day operation of the ASCS county office or the person acting in such capacity.

§ 1220.506 Cooperative Extension Service.

The term "Cooperative Extension Service," also referred to as "CES," means the State partner in the Cooperative Extension system.

§ 1220.507 Cooperative Extension Service Agent.

The term "Cooperative Extension Service Agent," also referred to as "CES Agent," means an employee of the Cooperative Extension Service.

§ 1220.508 Department.

The term "Department" means the U.S. Department of Agriculture.

§ 1220.509 Deputy Administrator.

The term "Deputy Administrator" means the Deputy or Acting Deputy Administrator, State and County Operations, Agricultural Stabilization and Conservation Service, U.S. Department of Agriculture.

§ 1220.510 Extension Service of the U.S. Department of Agriculture.

The term "Extension Service" of the U.S. Department of Agriculture, also referred to as "ES" means the Federal partner of the Cooperative Extension System.

§ 1220.511 Order.

The term "Order" means the Soybean Promotion and Research Order.

§ 1220.512 Person.

The term "Person" means any individual, group of individuals, partnership, corporation, association, cooperative, or any other legal entity.

§ 1220.513 Producer.

The term "Producer" means any person engaged in the growing of soybeans in the United States who owns or shares the ownership and risk of loss of such soybeans.

§ 1220.514 Public Notice.

The term "Public Notice" means information regarding a referendum which shall be provided by the Secretary, without advertising expenses, through press releases and by State and county CES offices and county ASCS offices, by means of newspapers, electronic media, county newsletters, and the like. Such notice shall contain the referendum date and location, registration and voting requirements, rules regarding absentee voting, and other pertinent information.

§ 1220.515 Referenda.

The term "Referenda" means any referenda to be conducted by the Secretary pursuant to the Act whereby producers shall be given the opportunity to vote.

§ 1220.516 Registration period.

The term "Registration period" means a 1-day period to be announced by the Secretary for registration of producers desiring to vote in a referendum. The registration period shall be the same day as the voting period.

§ 1220.517 Representative period.

The term "Representative period" means the period designated by the Secretary pursuant to section 1970 of the Act.

§ 1220.518 Secretary.

The term "Secretary" means the Secretary of Agriculture of the United States or any other officer or employee of the Department to whom there has been delegated or to whom authority may hereafter be delegated the authority to act in the Secretary's stead.

§ 1220.518 Soybeans.

The term "Soybeans" means all varieties of Glycine max or Glycine soja.

§ 1220.520 State and United States.

The terms "State and United States" include the 50 States of the United States of America, the District of Columbia, and the Commonwealth of Puerto Rico.

§ 1220.521 Voting period.

The term "Voting period" means a 1-day period to be announced by the Secretary for voting in a referendum.

Referendum

§ 1220.522 General.

(a) A referendum to determine whether eligible producers favor the continuance of the Order and other referenda provided for under the Act shall be conducted in accordance with this subpart.

(b) Referendum results will be based on the Secretary's determination of approval or disapproval by a majority of the producers casting valid ballots in a referendum.

(c) Referenda shall be conducted at the county offices of the Cooperative Extension Service.

(d) The Agricultural Stabilization and Conservation Service of the Department shall assist in the conduct of referenda.

§ 1220.523 Supervision of referenda.

The Administrator, AMS, shall be responsible for conducting referenda in accordance with this subpart.

§ 1220.524 Eligibility.

(a) *Eligible producers.* Each person who was a producer during the representative period is entitled to register and vote in the referendum. Each producer entity shall be entitled to cast only one ballot in the referendum.

(b) *Proxy registration and voting.* Proxy registration and voting is not authorized except that an officer or employee of a corporate producer, or any guardian, administrator, executor, or trustee of a producer's estate, or an authorized representative of any eligible producer entity (other than an individual producer), such as a corporation or partnership, may register and cast a ballot on behalf of such entity. Any individual registering to vote in the referendum on behalf of any producer entity shall certify that he or she is authorized by such entity to take such action.

(c) *Joint and group interest.* A group of individuals, such as members of a family, joint tenants, tenants in common, a partnership, owners of community property, or a corporation engaged in the production of soybeans as a producer entity shall be entitled to only one vote; provided, however, that any member of a group may register to vote as a producer if he or she is an eligible producer separate from the group.

§ 1220.525 Time and place of registration and voting.

A referendum shall be held for 1 day on a date to be determined by the Secretary. Eligible persons shall register and vote following the procedures in § 1220.528. Except for absentee ballots, the registration and voting shall take place during business hours of each county CES office.

§ 1220.526 Facilities for registering and voting.

Each county CES office shall provide adequate facilities and space to permit producers to register and to mark their ballots in secret and a sealed box or other suitable receptacle for registration forms and ballots which shall be kept under observation during office hours and secured at all times. Copies of the Order and a summary of the Order shall be available for review.

§ 1220.527 Registration form and ballot.

A ballot (Form LS–49) and certification and registration form (Form LS–49–2) shall be used for voting in person. The information required includes name, address, and telephone number and also contains a certification statement, referenced in § 1220.528(a)(1). The ballot requires producers to check a "yes" or "no." A combined registration and voting form (Form LS–50) shall be used for absentee voting.

§ 1220.528 Registration and voting procedure.

(a) *Registering and voting in person.*

(1) Each producer desiring to vote in a referendum shall register on the day of voting at the county CES office in which the producer's residence is located or at the county CES office serving the county in which the producer's residence is located. Producer entities other than individuals shall register at the county CES office in the county in which their headquarters office or business is located or at the county CES office serving the county in which the entities headquarters office or business is located. Producers will be required to list their names on the voter registration list (Form LS–49–3) prior to receiving a registration form and ballot. To register, each producer shall complete the registration form/envelope (Form LS–49–2) and certify that:

(i) They or the entity they represent were producers during the specified representative period; and

(ii) If voting on behalf of an entity referred to in § 1220.524, they are authorized to do so.

(2) Each eligible producer who has not voted by means of an absentee ballot may cast a ballot in person at the location and time set forth in § 1220.525 and on a date to be announced by the Secretary. Eligible persons who enter their names on the voter registration list (Form LS–49–3) will receive a registration form/envelope (Form LS–49–2) and a ballot (Form LS–49). Voting shall be by secret ballot under the supervision of the local county CES agent or designee. The ballot shall be marked by the voter to indicate "yes" or "no." Voters shall place their marked ballots in an envelope marked "SOYBEAN BALLOT," seal it, and place it in the completed and signed registration form/envelope marked "SOYBEAN REFERENDUM," seal that envelope, and personally place it in a box marked "Ballot Box" or other suitable receptacle.

(b) *Absentee voting.*

(1) Eligible producers and entities may request and obtain a combined absentee registration and voting form (Form LS–50) and two envelopes—one marked "SOYBEAN BALLOT" (Form LS–49–1) and the other marked "SOYBEAN REFERENDUM" (Form LS–50–1) in writing or in person from the county CES office serving the county in which they reside if individuals, or serving the county where their main office is located, if a corporation or other entity. Only one absentee registration form and absentee ballot will be provided to each eligible producer. The forms must be requested in writing or in person during a specified time period which will be announced by the Secretary. The county CES office shall enter on the absentee voter request list (Form LS–50–2) the name and address of each person or entity requesting an absentee ballot and the date the forms were mailed. Absentee forms will be provided by mail only. A copy of the absentee voter request list (Form LS–50–2) prepared by the county CES office shall be provided to each ASCS county office for absentee voter verification.

(2) To register, eligible producers must complete and sign the registration (Form LS–50), and certify that:

(i) They or the entity they represent were producers during the specified representative period; and

(ii) If voting on behalf of an entity referred to in subsection § 1220.524, they are authorized to do so.

(3) A producer, after completing the registration form and marking the ballot, shall remove the ballot portion of Form LS–50 and seal the completed ballot in a separate envelope marked "SOYBEAN BALLOT" (Form LS–49–1) and place it in a second envelope marked "SOYBEAN REFERENDUM" (Form LS–50–1) along with the signed registration form. Voters shall print and sign their names on the envelope marked "SOYBEAN REFERENDUM" (Form LS–50–1), affix postage, and mail it in the pre-addressed envelope provided with the ballot.

(4) Absentee ballots must be received in the county CES office by the close of business, 5 business days before the date of the referendum. Absentee ballots received after that date shall be counted as invalid ballots. Upon receiving the "SOYBEAN REFERENDUM" envelope containing the registration form and ballot, the county CES agent or designee shall place it, unopened, in a secure ballot box. In addition, the county CES agent or designee shall enter on the voter request list (Form LS–50–2) beside the name of the voter the date the absentee ballot was received.

(5) A person casting an absentee ballot which is not recorded as being received or which is received after the deadline specified in this section may vote in person at the appropriate CES office on the day of the referendum.

§ 1220.529 List of registered producers.

The voter registration list (Form LS–49–3) and the absentee voter request list (Form LS–50–2) shall be available for inspection on the day of the referendum at the county CES office and subsequently at the ASCS county office. They shall be posted during regular office hours in a conspicuous public location at the ASCS county office by the second business day following the date of the referendum.

§ 1220.530 Challenge of eligibility.

(a) *Challenge period.* On the day of the referendum, the names of challenged voters may be reported to the CES county agent who will refer them to the ASCS county office. After that, the names of the challenged voters shall be referred directly to the ASCS county office. A challenge of a person's eligibility to vote may be made no later than the close of business the second business day after the date of the referendum.

(b) *Who may challenge.* A person's eligibility to vote may be challenged by any person. Any person wishing to challenge must do so in writing and must include the full name of the individual or other entity being challenged. Each challenge must be separate and must be signed by the challenger. The Secretary may issue other guidelines as the Secretary deems necessary.

(c) *Determination of challenges.* The ASC county committee or its representative shall make a determination concerning the eligibility of a producer who has been challenged and notify challenged producers as soon as practicable, but no later than 5 business days after the date of the referendum. If the ASC county committee or its representative is unable to determine whether a person was a producer during the representative period, it may require the person to submit records such as tax returns, sales documents, or other similar documents to prove that the person was a producer during the representative period.

(d) *Challenged ballot.* The registration form/envelope (Form LS–49–2) containing the ballots cast by producers voting in person whose eligibility is challenged shall be removed from the ballot box and placed in a separate box until the challenge has been resolved. Envelopes (Forms LS–50–1) containing absentee voter registration forms and absentee ballots of challenged absentee voters also shall be removed from the ballot box and placed in the box containing ballots of challenged producers. A challenged ballot shall be determined to have been resolved if the determination of the ASC county committee or its representative is not appealed within the time allowed for appeal or there has been a determination by the ASC county committee after an appeal.

(e) *Appeal.* A person declared to be ineligible to register and vote by the ASC county committee or its representative may file an appeal at the ASCS county office within 3 business days after notification of such decision. Such person may be required to provide documentation such as tax returns, sales documents, or similar documents in order to demonstrate his or her eligibility. An appeal shall be determined by the ASC county committee as soon as practicable; but, in all cases, not later than the 9th business day after the date of the referendum. The ASC county committee's determination on an appeal is final.

§ 1220.531 Receiving ballots.

A ballot shall be considered to have been received during the voting period if:

(a) It was cast in the county CES office prior to the close of business on the day of the referendum; or

(b) An absentee ballot was received in the county CES office not later than close of business 5 business days before the date of the referendum.

§ 1220.532 Canvassing ballots.

(a) *Counting the ballots.* The county CES agent or designee shall deliver the sealed ballot box, the voter registration list (Form LS–49–3), and the absentee voter request list (Form LS–50–2) to the ASCS county office by the close of business on the first business day following the date of the referendum. ASCS county employees and the county CES agent or designee shall check the registration forms of all voters against the voter registration list (Form LS–49–2) and the absentee voter request list (Form LS–50–2) to determine properly registered voters. The ballots of producers voting in person whose names are not on the voter registration list (Form LS–49–3) shall be declared invalid. Likewise, the ballots of producers voting absentee, whose names are not on the absentee voter request list (Form LS–50–2) shall be declared invalid. Ballots declared invalid and all ballots of challenged voters declared ineligible shall be kept separate from the other ballots and the envelopes containing these ballots shall not be opened. The valid ballots shall be counted on the 10th business day after the referendum date. ASCS county office employees shall remove the sealed "Soybean Ballot" envelope from the registration form/envelopes or absentee ballot envelopes of all eligible voters and all challenged voters determined to be eligible. When removing the "Soybean Ballot" envelopes, steps shall be taken to ensure that the voter's name cannot be identified. After removing all "Soybean Ballot" envelopes, ASCS county employees shall open them and count the ballots. The ballots shall be tabulated as follows:

(1) Number of eligible producers casting valid ballots;

(2) Number of producers favoring the Order;

(3) Number of producers not favoring the Order;

(4) Number of challenged ballots;

(5) Number of challenged ballots deemed ineligible;

(6) Number of invalid ballots; and

(7) Number of spoiled ballots.

(b) *Invalid ballots.* Ballots shall be declared invalid if a producer voting in person has failed to sign the voter registration list (Form LS–49–3), or an absentee voter's name is not on the absentee voter request list (Form LS–50–2), or the registration form or ballot was incomplete or incorrectly completed.

(c) *Spoiled ballots.* Ballots shall be considered as spoiled ballots when they are mutilated or marked in such a way that it cannot be determined whether it is a "yes" or "no" vote. Spoiled ballots shall not be considered as approving or disapproving the Order, or as a ballot cast in the referendum.

(d) *Confidentiality.* All ballots shall be confidential and the contents of the ballots shall not be divulged except as the Secretary may direct. The public may witness the opening of the ballot box and tabulation of the votes but may not interfere with the process.

§ 1220.533 ASCS county office report.

The ASCS county office shall notify the ASCS State office of the results of the referendum. Each ASCS county office shall transmit the results of the referendum in its county to the ASCS State office. Such report shall include the information listed in § 1220.532(a). The results of the referendum in each county may be made available to the public immediately after the ballots have been counted and any verification for accuracy has been completed. A copy of the report of those results shall be posted for 30 days in the ASCS county office in a conspicuous place accessible to the public, and a copy shall be kept on file in the ASCS county office for a period of at least 12 months.

§ 1220.534 ASCS State office report.

Each ASCS State office shall transmit to the Deputy Administrator, ASCS, a written summary of the results of the referendum received from all the ASCS county offices within the State. The summary shall include the information on the referendum results contained in the reports from all county offices within each State and be certified by the ASCS State executive director. The ASCS State office shall maintain a copy of the summary where it shall be available for public inspection for a period of not less than 12 months.

§ 1220.535 Results of the referendum.

(a) The Deputy Administrator, ASCS, shall submit to the Administrator, AMS, the results of the referendum. The Administrator, AMS, shall prepare and submit to the Secretary a report of the results of the referendum. The results of any referendum shall be issued by the Department in an official press release. State reports and related papers shall be available for public inspection in the office of the Marketing Programs Branch, Livestock and Seed Division, Agricultural Marketing Service, USDA, room 2624 South Building, 14th and Independence Avenue, SW., Washington, DC.

(b) If the Secretary deems it necessary, the report of any State or county shall be re-examined and checked by such persons that may be designated by the Deputy Administrator, ASCS, or the Secretary.

§ 1220.536 Disposition of ballots and records.

Each ASCS county executive director shall place in sealed containers marked with the identification of the referendum the voter registration list, absentee voter request list, voted ballots, challenged registration forms/envelopes, challenged absentee voter registration forms, challenged ballots found to be ineligible, invalid ballots, spoiled ballots, and county summaries. Such records shall be placed under lock in a safe place under the custody of the ASCS county executive director for a period of not less than 12 months after the date the referendum was held. If no notice to the contrary is received from the Deputy Administrator, ASCS, by the end of such time, the records shall be destroyed.

§ 1220.537 Instructions and forms.

The Administrator is hereby authorized to prescribe additional instructions and forms not inconsistent with the provisions of this subpart to govern the conduct of the referendum.

Dated: November 8, 1993.

Kenneth C. Clayton,

Deputy Administrator for Marketing Programs.

[FR Doc. 93–28182 Filed 11–16–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1485

Cooperative Agreements for the Development of Foreign Markets for Agricultural Commodities

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule with request for comments.

SUMMARY: The amendments made by this interim rule implement the provisions of section 1302 of the Ominbus Budget Reconciliation Act of 1993 concerning the Market Promotion Program. These changes are intended to enable the Secretary of Agriculture to achieve savings and improve the effectiveness of the Market Promotion Program.

DATES: This interim rule is effective November 17, 1993. Comments must be received in writing by January 18, 1994 to be assured of consideration.

ADDRESSES: Send comments to the Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW., Ag Box 1042, Washington, DC 20250–1042. Telephone: (202) 720–5521.

FOR FURTHER INFORMATION CONTACT: Director, Marketing Operations Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW., Washington, DC 20250–1042. Telephone: (202) 720–5521. The Regulatory Impact Analysis concerning the interim rule published at 56 FR 40745 (August 16, 1991) is available upon request from the Director, Planning and Evaluation Staff, Foreign Agricultural Service, United States Department of Agriculture, 14th and Independence Avenue, SW., Ag Box 1043 Washington, DC 20250–1043. Telephone: (202) 690–1198.

SUPPLEMENTARY INFORMATION: This interim rule has been reviewed under Executive Order 12291 and Departmental Regulation 1512–1 and has been classified as "nonmajor". It has been determined that this interim rule will not result in an annual effect on the economy of $100 million or more; will not cause a major increase in costs to consumers, individual industries, Federal, State or local government agencies or geographic regions; and will not have an adverse effect on competition, employment, investment, productivity, innovation, or the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or foreign markets. Furthermore, the Acting Vice President, CCC, certified that this action will not have a significant economic effect on a substantial number of small entities because this action does not require any significant actions on the part of small businesses as a condition of participation in the Market Promotion Program (MPP). It is also not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials (see the Notice related to 7 CFR Part 3015, subpart V, 48 FR 29115).

This interim rule has been reviewed under the Executive Order 12778, Civil Justice Reform. The interim rule has pre-emptive effect with respect to any State or local laws, regulations, or policies which conflict with such provisions or which otherwise impede their full implementation. The interim rule does not have retroactive effect. Administrative proceedings are not required before suit may be filed.

Background

Statutory Background

MVP is authorized by section 203 of the Agricultural Trade Act of 1978, as amended by section 1531 of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, enacted November 28, 1990, and the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66. These statutes direct the CCC to carry out a program to encourage the development, maintenance and expansion of commercial export markets for agricultural commodities through cost-share assistance to eligible trade organizations.

Program Changes

Following is a listing of the changes made applicable to the MPP by this interim rule. These changes are intended to improve the effectiveness of the program and should help U.S. firms compete with foreign companies overseas. Entities that currently have MPP agreements as well as those that have participated in the Targeted Export Assistance Program should carefully review this rule.

1. Except in the case of activities conducted by small-sized entities operating through state groups, assistance will only be provided to counter or offset the adverse effects of a subsidy, import quota, or other unfair trade practice of a foreign country.

2. For brand promotions, assistance will be provided on a priority basis to small-sized entities determined on the basis of Small Business Administration criteria.

3. CCC resources will not be used to promote a specific brand product in a single market for more than five years unless CCC determines that further assistance is necessary to meet the objectives of the program. For purposes of implementing this provision, CCC will consider a "market" to be a single country. This will ease administration of the program and will conform to the strategic plan.

4. For nonbrand promotions, participants under MPP agreements will be required to provide a minimum level of contributions of no less than 10 percent of CCC resources expended. CCC may increase the required contribution level in any subsequent year that an eligible trade organization receives assistance.

5. Each participant will be required to certify that CCC resources will supplement, but not supplant, any private or third party funds or other contributions to program activities.

6. CCC may require a participant to contract for an independent evaluation or audit of program activities. CCC resources will not be used to cover the cost of such an evaluation or audit.

7. No funds made available under this program may be used for activities to develop, maintain, or expand foreign markets for tobacco.

Although comment is requested on the entire rule, public comments are specifically requested on the criteria for extending the promotion of a brand product in a market beyond the 5-year limit, defining market as a country in this context, and the use of the criteria for size determination published by the Small Business Administration.

Effective Date

Section 1302 of the Omnibus Budget Reconciliation Act of 1993 requires that regulations implementing the specified amendments to the Market Promotion Program be issued within 90 days after enactment of the Act (August 10, 1993). It is also required that these changes be made prior to implementation of the fiscal year 1994 program. Therefore, it is determined that it is impractical to give notice and obtain public comment on this rule prior to its effective date. For the same reasons, good cause is shown to make the rule effective immediately upon publication in the **Federal Register**.

These regulations will be implemented at the beginning of each participant's 1994 program and corresponding activity plan year.

Comments on the provisions of these regulations are invited and must be received within 60 days of the effective date. CCC will consider all comments received when evaluating the rule in completion of the rulemaking process. Further changes to these regulations may be made based on the comments received.

Information Collection Requirements

The information collection requirements for participating in the Market Promotion Program (MPP) were approved for use by the Office of Management and Budget (OMB) through October 31, 1994 and assigned OMB No. 0551–0027. The amendments set forth in this interim rule impose new information collection requirements to participate in the MPP, different from those previously reviewed and approved by OMB. These regulations have been submitted to the OMB for approval under the provision of 44 U.S.C. chapter 35. Due to the deadlines imposed by the Omnibus Budget Reconciliation Act of 1993 concerning the issuance of regulations, the Agency has requested emergency processing of this collection of information. Public reporting for these collections is estimated at 15 minutes per response, including time for reviewing instructions, searching existing sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250–7630, and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503.

List of Subjects in 7 CFR Part 1485

Agricultural commodities, Exports.

Accordingly, 7 CFR part 1485, subpart B is amended as follows:

PART 1485—COOPERATIVE AGREEMENTS FOR THE DEVELOPMENT OF FOREIGN MARKETS FOR AGRICULTURAL COMMODITIES

1. The authority citation for part 1485 is revised to read as follows:

Authority: 7 U.S.C. 5623, 7 U.S.C. 5662–5664 and section 1302 of the Omnibus Budget Reconciliation Act of 1993, Public Law 103–66.

Subpart B—Market Promotion Program

2. Section 1485.11, paragraph (oo) is added to read as follows:

§ 1485.11 Definitions.

* * * * *

(oo) *Small-sized entity* means any U.S. commercial entity which meets the small business size standards published by the Small Business Administration in the Standard Industrial Classification codes and Size standards in 13 CFR part 121, Small Business Size Regulations. The definitions contained in 13 CFR part 121 121.401, 121.402, 121.403, 121.404, 121.407, and 121.601 shall apply in determining size eligibility.

3. Section 1485.12, is amended by revising the first sentence of paragraph (a), by revising paragraphs (b)(2)(iv) and (b)(2)(viii), and adding paragraph (b)(2)(xi) to read as follows:

§ 1485.12 General program requirements and application procedures.

(a) *Agreements.* MPP and EIP/MPP agreements are intended, except for small-sized entities operating through state groups, to counter or offset the adverse effects of a subsidy, import quota, or other unfair trade practice of

a foreign country, through cost-share assistance, in order to permit the development, maintenance, and expansion of commercial export markets for U.S. agricultural commodities and products. * * *

(b) * * *

(2) * * *

(iv) Except for small-sized entities operating through state groups, a description of the unfair trade practice affecting export trade in the agricultural commodity or product to be addressed.

* * * * *

(viii) The total amount of CCC resources requested which includes the specific amounts requested for brand and generic promotion activities, and the anticipated percentage of CCC resources to be made available to small-sized entities for brand promotion.

* * * * *

(xi) A statement certifying that any CCC resources received will supplement, but not supplant, any private or third party funds or other contributions to program activities. These statements will be subject to audits certifying their accuracy. CCC seeks to ensure that MPP expenditures result in increased exports that otherwise would not have occurred.

* * * * *

4. Section 1485.13 is amended by revising paragraph (b)(7)(i), adding paragraph (b)(8), redesignating paragraph (c) as (c)(1), and adding paragraph (c)(2) to read as follows:

§ 1485.13 Special requirements of the Export Incentive Program.

* * * * *

(b) * * *

(7) * * *

(i) Such an agreement with a U.S. commercial entity will counter or offset the adverse effects of a subsidy, import quota, or other unfair trade practice of a foreign country so as to allow the development, maintenance, or expansion of exports of the corresponding agricultural commodity or product.

* * * * *

(8) CCC will not provide assistance to promote a specific brand product in a single country market for more than five years unless CCC determines that further assistance is necessary in order to meet the objectives of the program. This determination will be based on the continued existence of an unfair trade practice or identification of a new unfair trade practice. This five year period shall not begin prior to the 1994 program and the participant's corresponding activity plan year. In those situations where a commercial entity has been in a market already for more than 5 years, CCC will, as in the past, review the application to ensure that sufficiently strong justification exists to support continued funding.

(c) (1) * * *

(2) Applicants seeking priority consideration for assistance based on size must certify that they are a small-sized entity and demonstrate size eligibility through the submission of annual receipts or number of employees.

* * * * *

5. Section 1485.14 is amended by revising paragraphs (d)(1)(ii), (e)(2)(iv) and (e)(3)(i) and by adding paragraphs (e)(4)(vii), (e)(4)(viii), (e)(4)(ix) and (e)(8) to read as follows:

§ 1485.14 Special requirements of the Market Promotion Program.

* * * * *

(d) * * *

(1) * * *

(ii) Request approval for a reduction in the rate of contribution by submitting an APAR to CCC. A participant contribution rate below ten percent of CCC resources expended for nonbrand promotion will not be approved beginning with the participant's 1994 program and corresponding activity plan year. CCC may increase the required contribution level in any subsequent year that an eligible trade organization receives assistance for nonbrand promotion. Also, CCC will take into account the ability of the participant to increase its contribution beyond the minimum contribution level.

* * * * *

(e) * * *

(2) * * *

(iv) The applicant must describe how the program will be made available to U.S. and/or foreign commercial entities and any differences between how U.S. and/or foreign commercial entities will operate the program. It must also identify the method to be used for announcing the availability of the program, the information solicited from brand participants, the method or criteria for giving priority consideration to small-sized entities, and the provisions for evaluating brand promotions.

(3) *Distribution of CCC resources for MPP participant brand promotion.* (i) In distributing CCC resources among U.S. Commercial entities, the MPP participant must give priority consideration to those applicants that qualify as small-sized entities. Other criteria for distributing CCC resources among U.S. commercial entities must be objective and reasonably related to its worldwide promotional program goals. The distribution procedures and criteria shall be included in the strategic plan and in the announcement of the program's availability to the U.S. commercial entities.

* * * * *

(4) * * *

(vii) Describes specific documentation requirements for a brand applicant seeking priority consideration for assistance based on eligibility as a small-size entity.

(viii) Includes a requirement that all records supporting a brand participant's claim as a small-sized entity, in addition to those required to be submitted with the application, shall be available upon request to CCC, the FAS Compliance Review Staff, the USDA Office of the Inspector General, and the General Accounting Office for purposes of making audits, examinations, excerpts and transcripts.

(ix) Includes a requirement that the U.S. commercial entity submit to the participant a statement certifying that any Federal funds received will supplement, but not supplant, any private or third party funds or other contributions to program activities.

* * * * *

(8) CCC will not provide assistance to promote a specific brand product in a single country market for more than five years unless CCC determines that further assistance is necessary in order to meet the objectives of the program. This determination will be based on the continued existence of an unfair trade practice or identification of a new unfair trade practice without regard to whether the U.S. commercial entity promoting a brand product is a small-sized entity operating through a state group. This five year period shall not begin prior to the 1994 program and the participant's corresponding activity plan year. In those situations where a commercial entity has been in a market already for more than 5 years, CCC will, as in the past, review the application to ensure that sufficiently strong justification exists to support continued funding.

6. Section 1485.15 is amended by adding a sentence at the end of paragraph (a)(1), revising paragraph (a)(2) and by adding (a)(3) to read as follows:

§ 1485.15 Criteria for allocation of CCC resources.

(a) *General.* (1) * * * CCC will not enter into an EIP/MPP Agreement or MPP Agreement for the promotion of tobacco or tobacco products.

(2) Except for small-sized entities operating through state groups,

allocations will only be made to applicants who will promote commodities or products affected by a documented unfair trade practice.

(3) In providing assistance for brand promotions, priority will be given to small-sized entities.

* * * * *

7. Section 1485.27 is amended by revising paragraph (a) to read as follows:

§ 1485.27 Compliance review.

(a) *Accessibility of records.* All MPP and EIP/MPP participant records pertaining to program agreements, activity plans, reimbursement claims and contributions, and all records supporting the certifications required by these regulations that a U.S. commercial entity is a small-sized entity and that funds will supplement, but not supplant, any private or third party funds or other contributions shall be available upon request to authorized officials of the United States for purposes of making audits, examinations, excerpts and transcripts.

* * * * *

8. Section 1485.28(a) is revised to read as follows:

§ 1485.28 CCC recourse in the event of noncompliance with regulations.

(a) *General.* CCC may periodically require participants to certify compliance with the requirements of this regulation. If as a result of an evaluation or audit of activities of a participant under the program, CCC determines that further review is needed in order to ensure compliance with the requirements of the program, CCC may require the participant to contract for an independent audit of the program activities, including activities of any subcontractor. Any expenditures for such evaluation or audit will be the sole responsibility of the participant, cannot be paid with program funds, and cannot be claimed as a participant contribution.

* * * * *

Signed at Washington, DC on November 12, 1993.

Christopher E. Goldthwait,

Acting Vice President, Commodity Credit Corporation and Acting General Sales Manager, Foreign Agricultural Service.

[FR Doc. 93–28289 Filed 11–16–93; 8:45 am]

BILLING CODE 3410–10–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket Nos. 91–ANM–14, 91–ANM–16, 91–ANM–17, 93–ANM–1, 93–ANM–2, 93–ANM–3, and 93–ANM–5]

Establishment of Class E Airspace and Alteration of Class D and Class E Airspace Areas, VOR Federal Airways and Jet Routes

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 7, 9, and 10, 1993, the Federal Aviation Administration (FAA) published final rules altering the Class D airspace area in Broomfield, CO; altering the Class D airspace and establishing Class E airspace in Aurora, CO; altering Class D and Class E airspace areas in Englewood, CO; altering the Class E airspace area in Denver, CO; altering VOR Federal airways in Colorado, Nebraska, and Wyoming; and altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming. These actions support the new Denver International Airport airspace reconfiguration. In view of the delay in the opening date of the new Denver International Airport, this action delays the rules' effective date until March 9, 1994.

EFFECTIVE DATE: Effective November 17, 1993, the effective dates of the final rules at 58 FR 47041, 58 FR 47371, 58 FR 47372, 58 FR 47373, 58 FR 47631, 58 FR 47633, and 58 FR 47635 are delayed until 0701 UTC, March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP–240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–9230.

SUPPLEMENTARY INFORMATION: On September 7, September 9, and September 10, 1993, the Federal Aviation Administration (FAA) published final rules altering and establishing Class D and Class E airspace areas, VOR Federal airways, and jet routes to support the new Denver International Airport airspace reconfiguration. The official opening of the Denver International Airport has been delayed until March 9, 1994. Accordingly, the effective date of the related final rules should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective November 17, 1993, the effective dates of Airspace Docket 93–ANM–1 modifying the Class D airspace area in Broomfield, CO (58 FR 47041; September 7, 1993); Airspace Docket No. 93–ANM–2 modifying the Class D airspace area and establishing a Class E airspace area in Aurora, CO (58 FR 47371; September 9, 1993); Airspace Docket No. 93–ANM–3 modifying the Class D and Class E airspace areas in Englewood, CO (58 FR 47372; September 9, 1993); Airspace Docket No. 93–ANM–5 modifying the Class E airspace areas at the Denver Centennial Airport, CO, Denver, CO, and Erie, CO, (58 FR 47373; September 9, 1993); Airspace Docket No. 91–ANM–14 altering VOR Federal airways in Colorado, Nebraska, and Wyoming (58 FR 47631; September 10, 1993); Airspace Docket No. 91–ANM–16 altering jet routes in Colorado, Idaho, Kansas, Nebraska, South Dakota, Utah, and Wyoming (58 FR 47633; September 10, 1993); and Airspace Docket No. 91–ANM–17 altering VOR Federal airways in Colorado and Wyoming (58 FR 47635; September 10, 1993) are delayed from December 19, 1993, to March 9, 1994.

Issued in Washington, DC, on November 9, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93–28294 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Parts 71 and 91

[Airspace Docket No. 91–AWA–3]

RIN 2120–AE46

Alteration of the Denver Class B Airspace Area; CO

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; delay of effective date.

SUMMARY: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. In view of the delay in the opening date of

the new Denver International Airport, this action delays the rule's effective date until March 9, 1994.

EFFECTIVE DATE: Effective November 17, 1993, the effective date of the final rule at 58 FR 48722 is delayed until 0701 UTC, March 9, 1994.

FOR FURTHER INFORMATION CONTACT: Norman W. Thomas, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9230.

SUPPLEMENTARY INFORMATION: On September 17, 1993, the Federal Aviation Administration (FAA) published a final rule altering the Denver, CO, Class B airspace area. The official opening of the Denver International Airport has been delayed until March 9, 1994. Accordingly, the effective date of the alteration of the related Class B airspace area and revision to Special Federal Aviation Regulation No. 62, Section 2, paragraph 7, should be postponed to coincide with the opening of the new airport.

Because the public needs to be made aware of this postponement immediately, notice and public procedure are impracticable and good cause exists for making the postponement effective in less than 30 days.

In consideration of the foregoing, effective November 17, 1993, the effective date of the final rule altering the Denver, CO, Class B airspace area (58 FR 48722; September 17, 1993) is delayed from December 19, 1993, to March 9, 1994.

Issued in Washington, DC, on November 9, 1993.

Willis C. Nelson,

Acting Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-28293 Filed 11-16-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 177

[Docket No. 93F-0165]

Indirect Food Additives: Polymers; Technical Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule; technical amendment.

SUMMARY: The Food and Drug Administration (FDA) is amending the food additive regulations by correcting an error in nomenclature as identified in a notice in the **Federal Register** of June 23, 1993 (58 FR 34058). The amendment would add dipentamethylenethiuram hexasulfide for use as an accelerator in the production of rubber articles intended for repeated food-contact use, and remove the erroneous listing of dipentamethylenethiuram tetrasulfide from the regulation. This action responds to a food additive petition filed by R. T. Vanderbilt Co., Inc.

DATES: Effective November 17, 1993; written objections and requests for a hearing by December 17, 1993.

ADDRESSES: Submit written objections to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Helen R. Thorsheim, Center for Food Safety and Applied Nutrition (HFS-216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202-254-9511.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of June 23, 1993 (58 FR 34058), FDA announced that a food additive petition (FAP 3B4370) had been filed by R. T. Vanderbilt Co., Inc., P.O. Box 5150, Norwalk CT 06856-5150. The petition proposed that the food additive regulations in § 177.2600 *Rubber articles intended for repeated use* (21 CFR 177.2600) be amended to correct an error in nomenclature. The petition proposed the addition of dipentamethylenethiuram hexasulfide for use as an accelerator in the production of rubber articles intended for repeated food-contact use, and the deletion of the erroneous listing of dipentamethylenethiuram tetrasulfide from the regulation.

A substance believed to be dipentamethylenethiuram tetrasulfide was originally regulated as an accelerator in the production of rubber articles as a result of FAP 1B0317 submitted in 1961 by the Rubber Manufacturers Association, Inc. Subsequently, in 1965, companies producing the compound determined that the regulated substance was actually composed predominantly of dipentamethylenethiuram hexasulfide. In support of the current petition, R. T. Vanderbilt has used modern analytical instrumentation that was not available in 1965 to substantiate the hexasulfide structure.

FDA has evaluated data in the petition supporting the chemical identity of the additive. The agency concludes that the petitioner has adequately shown that the regulated accelerator is actually dipentamethylenethiuram hexasulfide, not dipentamethylenethiuram tetrasulfide as currently listed, and that 21 CFR 177.2600 should be amended as set forth below. To identify the regulated additive more clearly, FDA is adding the CAS Reg. No. 971-15-3 for dipentamethylenethiuram hexasulfide to § 177.2600.

In accordance with § 171.1(h) (21 CFR 171.1(h)), the petition and the documents that FDA considered and relied upon in reaching its decision to approve the petition are available for inspection at the Center for Food Safety and Applied Nutrition by appointment with the information contact person listed above. As provided in 21 CFR 171.1(h), the agency will delete from the documents any materials that are not available for public disclosure before making the documents available for inspection.

The agency has previously considered the environmental effects of this rule as announced in the notice of filing for FAP 3B4370 (58 FR 34058). No new information or comments have been received that would affect the agency's previous determination that there is no significant impact on the human environment and that an environmental impact statement is not required.

Any person who will be adversely affected by this regulation may at any time on or before December 17, 1993, file with the Dockets Management Branch (address above) written objections thereto. Each objection shall be separately numbered, and each numbered objection shall specify with particularity the provisions of the regulation to which objection is made and the grounds for the objection. Each numbered objection on which a hearing is requested shall specifically so state. Failure to request a hearing for any particular objection shall constitute a waiver of the right to a hearing on that objection. Each numbered objection for which a hearing is requested shall include a detailed description and analysis of the specific factual information intended to be presented in support of the objection in the event that a hearing is held. Failure to include such a description and analysis for any particular objection shall constitute a waiver of the right to a hearing on the objection. Three copies of all documents shall be submitted and shall be

identified with the docket number found in brackets in the heading of this document. Any objections received in response to the regulation may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 177

Food additives, Food packaging.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Director, Center for Food Safety and Applied Nutrition, 21 CFR part 177 is amended as follows:

PART 177—INDIRECT FOOD ADDITIVES: POLYMERS

1. The authority citation for 21 CFR part 177 continues to read as follows:

Authority: Secs. 201, 402, 409, 721 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321, 342, 348, 379e).

§ 177.2600 [Amended]

2. Section 177.2600 is amended in paragraph (c)(4)(ii)(*b*) by revising the entry for "Dipentamethylenethiuram tetrasulfide" to read as follows:

§ 177.2600 Rubber articles intended for repeated use.

* * * * *

(c) * * *
(4) * * *
(ii) * * *
(*b*) * * *

Dipentamethylenethiuram hexasulfide (CAS Reg. No. 971–15–3).

* * * * *

Dated: November 5, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–28164 Filed 11–16–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD07–93–086]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the Siesta Key Drawbridge (SR758), GIWW mile 71.6, across Roberts Bay at Sarasota for 30 days to test proposed revisions to the bridge operating schedule. This test is being made because of complaints about highway traffic delays during certain hours.

DATES: Comments must be received on or before January 31, 1994. This rule is effective on January 1, 1994, and, terminates on January 30, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–93–086] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral representations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant Commander Brad Mozee, Project Counsel.

Background and Purpose

This drawbridge presently opens on signal except that from 11 a.m. to 6 p.m., weekends and holidays, the draw opens only on the quarter hour. In response to a request for a 30-minute opening schedule from the Sarasota/Manatee Metropolitan Planning Organization (MPO) and the Florida Department of Transportation (FDOT), the bridge owner, the Coast Guard has evaluated the impact on navigation and highway traffic and determined that a 20-minute schedule may be more appropriate. This 30-day test is being made to determine whether the proposed change to the regulations would relieve highway traffic congestion while still meeting the reasonable needs of navigation.

Discussion of Proposed Amendments

The proposal, as requested by the MPO and FDOT, to open only on the hour and half hour during a 7 hour period is not justified by the available traffic and bridge opening data. However, traffic volume has increased to a level where the Coast Guard believes a change might be warranted and proposes a 30-day test of a 20-minute regulation to determine if the change would relieve traffic congestion without unreasonable impact on navigation. The test period is to begin on Saturday, January 1, 1994, and continue through Sunday, January 30, 1994.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business

concerns" under section 3 of the Small Business Act (15 U.S.C. 632).

Since tugs with tows are exempt from this proposal the economic impact is expected to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.287, paragraph (b–1) is temporarily revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(b–1) The draw of the Siesta Key bridge, mile 71.6 at Sarasota, shall open on signal, except that, from 11 a.m. to 6 p.m. daily, the draw need open only on the hour, 20 minutes past the hour, and 40 minutes past the hour.

* * * * *

Dated: October 25, 1993.

W. P. Leahy,

Admiral, U.S. Coast Guard, 7th Coast Guard District.

[FR Doc. 93–28274 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD07–93–093]

Drawbridge Operation Regulations; Gulf Intracoastal Waterway, Sarasota, FL

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule with request for comments.

SUMMARY: The Coast Guard is temporarily changing the regulations governing the Cortez and Anna Maria Drawbridges at Bradenton for 30 days to test staggered 30-minute openings at the request of the Mayor of Bradenton Beach. This test is being made to determine whether staggered 30-minute openings would relieve highway traffic congestion without adversely impacting the movement of vessels between these adjacent drawbridges.

DATES: Comments must be received on or before January 31, 1994. This rule is effective on January 1, 1994, and terminates on January 30, 1994.

ADDRESSES: Comments may be mailed to Commander (oan), Seventh Coast Guard District, 909 S.E. 1st Avenue, Miami, Florida 33131–3050, or may be delivered to room 406 at the above address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is 305–536–4103.

The Commander, Seventh Coast Guard District maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at the above address.

FOR FURTHER INFORMATION CONTACT: Mr. Ian MacCartney, Project Manager, Bridge Section, at (305) 536–4103.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data; views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking [CGD07–93–093] and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgment of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to Mr. Ian MacCartney at the address under **ADDRESSES.** The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Ian MacCartney, Project Manager, and Lieutenant Commander Brad Mozee, Project Counsel.

Background and Purpose

These two drawspans are located 1.8 statute miles apart. The drawbridges now open on the hour, 20 minutes past the hour and 40 minutes past the hour, if needed. The Mayor of Bradenton Beach has requested that a test of staggered 30-minute openings be implemented. One bridge would open on the hour and half hour while the other bridge would open on the quarter hour and three-quarter hour. Traffic counts would be taken and tender logs copied. The purpose of the test is to determine whether the concept would improve highway traffic flow without adversely impacting the movement of navigation through this reach of the Gulf Intracoastal Waterway.

Discussion of Proposed Amendments

The 30-day trial period is scheduled to occur during the winter tourist season, when the beach areas experience the heaviest vehicular traffic and the greatest number of drawbridge openings. The daily staggered 30-minute operating schedules will be in effect from 7 a.m. to 6 p.m. each day. When the test is completed, the results will be compared with the existing 20-minute opening schedule to determine which operating schedule best meets the needs of navigation and helps reduce vehicular traffic delays.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order

12866 and is not significant under the Department of Transportation regulatory policies and procedures (44 FR 11040; February 26, 1979.) The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632.)

Since tugs with tows are exempt from this proposal the economic impact of this proposal to be so minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that, under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, promulgation of operating requirements or procedures for drawbridges is categorically excluded from further environmental documentation. A Categorical Exclusion Determination is available in the docket for inspection or copying where indicated under **ADDRESSES**.

List of Subjects in 33 CFR Part 117

Bridges.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR Part 117 as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1 . The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. In § 117.287, paragraphs (d)(1) and (d)(2) are temporarily revised to read as follows:

§ 117.287 Gulf Intracoastal Waterway.

* * * * *

(d)(1) The draw of the Cortez (SR684) bridge, mile 87.4, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the quarter hour and three-quarter hour.

(2) The draw of the Anna Maria (SR64) bridge, mile 89.2, shall open on signal; except that, from 7 a.m. to 6 p.m., the draw need open only on the hour and thirty minutes past the hour.

Dated: October 25, 1993.

W.P. Leahy,

Admiral, U.S. Coast Guard, 7th Coast Guard District.

[FR Doc. 93–28275 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 165

[CGD13–93–035]

Security/Safety Zone Regulation; Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a 1000 yard security and safety zone around Blake Island, Washington. This security/safety zone is needed to safeguard the President of the United States and visiting Leaders from 14 countries while attending the Asian-Pacific Economic Cooperation Conference from sabotage or other subversive acts, accidents or other causes of a similar nature. Entry into this security/safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATES: This regulation is effective on November 19, 1993 at 4 p.m. PDT. It terminates on November 20, 1993 at 7 p.m. PDT, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT J. D. Gafkjen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 286–5540.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to the President of the United States and the visiting Leaders. Any harm to these persons would cause far-reaching negative impacts on all people of the United States. Due to the extensive and complex planning and coordination between various Federal and Washington State agencies, notice of final details were not available more than 21 days in advance of the event.

Drafting Information

The drafters of this regulation are LT J. D. Gafkjen, project officer for the Captain of the Port, and LT L. J. Argenti, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on November 19, 1993 at 4 p.m. PDT and will terminate on November 20, 1993 at 7 p.m. PDT or sooner if the Captain of the Port determines that the safety/security zone is no longer needed. The Coast Guard is establishing a 1000 yard safety/security zone around Blake Island, Washington. The security/safety zone is needed to safeguard the President of the United States and fourteen other Leaders of State (or their representative) while at Blake Island, Washington, This security/safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other Federal agencies.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary. The entities most likely to be affected are persons on pleasure craft who are engaged in recreational activities or who wish to view the President. These individuals and vessels have ample space outside of the safety/security zone to engage in these activities and therefore they will not be subject to undue hardship. The zone may impact ferries or other commercial vessels transiting the Puget Sound region around Blake Island and Seattle, Washington, however, it is expected that the impact will not cause undue hardship on these vessels. Any hardships experienced by persons or vessels due to the zone are considered minimal compared to the national

interest in protecting the President and visiting Leaders.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

This Regulation is issued pursuant to 50 U.S.C. 191; 33 U.S.C. 1231; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5 as set out in the authority citation for all of part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T13030 is added to read as follows:

§ 165.T13030 Security/safety zone: COTP Puget Sound Zone.

(a) *Location.* The following areas are a security/safety zone: All waters within 1000 yards of Blake Island, Washington,

(b) *Effective date.* This section is effective on November 19, 1993 at 4 p.m. PDT. It terminates on November 20, 1993 at 7 p.m. PDT, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

Dated: November 9, 1993.

Roger D. Mowery,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 93–28272 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 165

[CGD13–93–034]

Security/Safety Zone Regulation; Puget Sound, WA

AGENCY: Coast Guard, DOT.

ACTION: Temporary final rule.

SUMMARY: The Coast Guard is establishing a security and safety zone around U.S. Coast Guard Pier 36, Seattle, Washington and the M/V Tyee while in transit from Pier 36 to Blake Island and the return trip from Blake Island to Pier 36. This security/safety zone is needed to safeguard the President of the United States and visiting Leaders from 14 countries while attending the Asian-Pacific Economic Cooperation Conference from sabotage or other subversive acts, accidents or other causes of a similar nature. Entry into this security/safety zone is prohibited unless authorized by the Captain of the Port.

EFFECTIVE DATE: This regulation is effective on November 20,1993, at 5 a.m. PDT. It terminates on November 20, 1993, at 7 p.m. PDT, unless sooner terminated by the Captain of the Port.

FOR FURTHER INFORMATION CONTACT: LT J. D. Gafkjen, c/o Captain of the Port Puget Sound, 1519 Alaskan Way South, Seattle, Washington 98134, (206) 286–5540.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is needed to prevent injury to the President of the United States and the visiting Leaders. Any harm to these persons would cause far-reaching negative impacts on all people of the United States. Due to the extensive and complex planning and coordination between various Federal and Washington State agencies, notice of final details were not available more than 21 days in advance of the event.

Drafting Information

The drafters of this regulation are LT J. D. Gafkjen, project officer for the Captain of the Port, and LT L. J. Argenti, project attorney, Thirteenth Coast Guard District Legal Office.

Discussion of Regulation

The event requiring this regulation will begin on November 20, 1993 at 5 a.m. PDT and will terminate on November 20, 1993 at 7 p.m. PDT or sooner if the Captain of the Port determines that the safety/security zone is no longer needed. The Coast Guard is establishing a safety/security zone around the following areas: 500 yards around Pier 36, Seattle Washington and a 1000 yard moving zone around the M/V TYEE while in transit from Pier 36, Seattle, Washington upon U.S. navigable waters to Blake Island, Washington and while in transit from Blake Island, Washington to Pier 36, Seattle, Washington. The security/safety zone is needed to safeguard the President of the United States and fourteen other Leaders of State (or their representative) while in the Puget Sound region of the State of Washington. This security/safety zone will be enforced by representatives of the Captain of the Port Puget Sound, Seattle, Washington. The Captain of the Port may be assisted by other Federal agencies.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a regulatory evaluation is unnecessary. The entities most likely to be affected are landside individuals wishing to view the President and pleasure craft engaged in recreational activities or wishing to view the President. These individuals and vessels have ample space outside of the safety/security zone to engage in these activities and therefore they will not be subject to undue hardship. The zone may impact ferries or other commercial vessels transiting the Puget Sound region around Blake Island and Seattle, Washington, however, it is expected that the impact will not cause undue hardship on these vessels. Any hardships experienced by persons or vessels due to the zone are considered minimal compared to the national interest in protecting the President and visiting Leaders.

Federalism Assessment

This action has been analyzed in accordance with the principles and

criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Assessment

This final rule has been thoroughly reviewed by the Coast Guard and determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c. of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

This Regulation is issued pursuant to 50 U.S.C. 191; 33 U.S.C. 1231; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6 and 160.5 as set out in the authority citation for all of Part 165.

List of Subjects in 33 CFR Part 165

Harbors, Marine security, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

Regulation

In consideration of the foregoing, subpart D of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—[AMENDED]

1. The authority citation for part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5.

2. A new § 165.T13029 is added to read as follows:

§ 165.T13029 Security/Safety Zone: COTP Puget Sound Zone

(a) *Location.* The following areas are a security/safety zone: All waters within 500 yards of Pier 36, Seattle, Washington; all waters within 1000 yards of the M/V TYEE while in transit from Pier 36, Seattle, Washington to Blake Island, Washington and during the return transit from Blake Island to Pier 36.

(b) *Effective date.* This section is effective on November 20, 1993 at 5 a.m. PDT. It terminates on November 20, 1993 at 7 p.m. PDT, unless sooner terminated by the Captain of the Port.

(c) *Regulations.* In accordance with the general regulations in § 165.33 of this part, entry into this zone is prohibited, unless authorized by the Captain of the Port.

Dated: November 9, 1993.

Roger D. Mowery,

Captain, U.S. Coast Guard, Captain of the Port Puget Sound.

[FR Doc. 93–28273 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[OPP–300289A; FRL–4739–5]

RIN 2070–AB78

Fensulfothion; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This rule revokes all tolerances for residues of the insecticide/nematicide fensulfothion (*O,O*-diethyl *O*-[*p*-(methylsulfinyl) phenyl] phosphorothioate) in or on raw agricultural commodities. EPA has taken this action because all registered uses of products containing the pesticide fensulfothion were cancelled as of October 18, 1988.

EFFECTIVE DATE: This regulation becomes effective November 17, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number [OPP-300289A], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and should also be submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver objections and hearing requests filed with the Hearing Clerk to: rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA, Headquarters Accounting Operations Branch, OPP (tolerance fees), P.O.Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Brian Steinwand, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Rm. WF32N4, 2800 Jefferson Davis Highway, Arlington, VA (703-308-8174).

SUPPLEMENTARY INFORMATION: This document announces the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a, for residues of the insecticide/nematicide fensulfothion (*O,O*-diethyl *O*-[*p*-(methylsulfinyl) phenyl] phosphorothioate) in or on various raw agricultural commodities.

EPA issued a proposed rule, published in the **Federal Register** of July 14, 1993 (58 FR 37893), which proposed the revocation of tolerances for residues of fensulfothion in or on various raw agricultural commodities. The Agency's decision to revoke these tolerances was based on the fact that all registered uses of fensulfothion had been cancelled as of October 18, 1988, and sale and distribution prohibited after October 18, 1989.

The Agency believes that sufficient time has passed for legally treated agricultural commodities to have gone through the channels of trade. Since it is unlikely that fensulfothion, which is not a persistent pesticide, would persist in soil more than 4 years and since the sale of fensulfothion was prohibited after October 18, 1989, there is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels are being recommended to replace these revoked tolerances.

No public comments or requests for referral to an advisory committee were received in response to the notice of proposed rulemaking.

Therefore, based on the information considered by the Agency and discussed in detail in the July 14, 1993 proposal and in this final rule, the Agency is hereby revoking the tolerances listed in 40 CFR 180.234 for residues of fensulfothion (*O,O*-diethyl *O*-[*p*-(methylsulfinyl) phenyl] phosphorothioate).

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or a request for a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on

which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities (also known as "economically significant"); (2) planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President' priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review.

Regulatory Flexibility Act

This rulemaking has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601 et seq.), and it has been determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. The reasons for this conclusion are discussed in the July 14, 1993 proposed rule.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 23, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.234 [Removed]

2. By removing § 180.234 *(O,O-diethyl O-[p-(methylsulfinyl) phenyl] phosphorothioate); tolerances for residues.*

[FR Doc. 93–28287 Filed 11–16–93; 8:45 am]
BILLING CODE 6560–50–F

Proposed Rules

Federal Register
Vol. 58, No. 220
Wednesday, November 17, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Rural Electrification Administration

7 CFR Part 1755

REA Specification for Terminating Cables

AGENCY: Rural Electrification Administration, USDA.

ACTION: Proposed rule.

SUMMARY: The Rural Electrification Administration (REA) proposes to amend its regulations on telecommunications standards and specifications for materials, equipment and construction. The revised specification will require that terminating cables comply with Article 800–50 of the 1993 National Electrical Code regarding fire retardancy of these products, include raw material requirements for insulating and jacketing compounds, update the end product requirements associated with these type cables.

DATES: Comments concerning this proposed rule must be received by REA or postmarked no later December 17, 1993.

ADDRESSES: Comments should be mailed to the Director, Telecommunications Standards Division, Rural Electrification Administration, room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500. REA requests an original and three copies of all comments (7 CFR part 1700). All comments received will be made available for public inspection at room 2835, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500 between 8 a.m. and 4 p.m. (7 CFR 1.27(b)).

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This proposed rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this proposed rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceeding before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this proposed rule will not have a significant economic impact on a substantial number of small entities, as defined by the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). This proposed rule involves standards and specifications, which may increase the direct short term costs to REA borrowers. However, the long-term direct economic costs are reduced through greater durability and lower maintenance cost over time.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this proposed rule have been approved by OMB under control number 0572–0077 which expires on January 31, 1994. Comments concerning these requirements should be directed to the office of Information and Regulator Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator of REA has determined that this proposed rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this proposed rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402–9325.

Executive Order 12372

This proposed rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consultation with state and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

REA issues publications titled "Bulletins" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure REA financing. REA issues standards and specifications for construction of telephone facilities financed with REA loan funds. REA is proposing to rescind Bulletin 345–87, REA Specification for Terminating (TIP) Cable, PE–87, and proposing to codify the revised specification at 7 CFR 1755.870, REA Specification for Terminating Cables.

Terminating cables are used to connect the incoming outside plant cables to the vertical side of the main distributing frame in a telephone central office. Since these cables are installed inside of a building, these cables are required to be listed in accordance with Article 800–50 of the 1993 National Electrical Code (NEC). The current specification does not require these cables to be listed in accordance with Article 800–50 of the 1993 NEC.

Therefore, REA is revising the current specification to require these cables to be listed in accordance with Article 800–50 of the 1993 NEC.

The current specification does not include insulation and jacketing raw requirements, because these requirements were previously covered by REA Bulletins 345–21, 345–51, and 345–58 which have since been rescinded. Therefore, revision of the current specification is necessary to incorporate essential jacketing and insulation raw material requirements. By incorporating the raw material requirements which were formerly found in REA Bulletins 345–21, 345- 51, and 345–58 into 7 CFR 1755.870, a comprehensive document will be published for the manufacture of terminating cable products.

The current specification contains end product performance requirements that have become outdated for these type cables because of the technological advancements made in the design of terminating cables over the past ten years. Therefore, REA is revising the current specification to update the end product performance requirements associated with these cables to reflect the technological advancements made in the design of these cables.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, REA proposes to amend Chapter XVII of title 7 of the Code of Federal Regulations as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

2. Section 1755.97 is amended by removing the entry REA Bulletin 345–87 from the table.

3. Section 1755.870 is added to read as follows:

§ 1755.870 REA specification for terminating cables.

(a) *Scope.* (1) This section establishes the requirements for terminating cables used to connect incoming outside plant cables to the vertical side of the main distributing frame in a telephone central office.

(i) The conductors are solid tinned copper, individually insulated with extruded solid dual insulating compounds.

(ii) The insulated conductors are twisted into pairs which are then stranded or oscillated to form a cylindrical core.

(iii) The cable structure is completed by the application of a core wrap, a shield, and a polyvinyl chloride jacket.

(2) The number of pairs and gauge size of conductors which are used within the REA program are provided in the following table:

American Wire Gauge (AWG) .	22	24
Number of Pairs	12	12
	50	50
	100	100
	200	200
	300	300
	400	400
	600	600
	800	800

Note: Cables larger in pair sizes from those shown in this table shall meet all the requirements of this section.

(3) All cables sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For cables manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole authority on what constitutes a design change.

(4) Materials, manufacturing techniques, or cable designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of modified materials, manufacturing techniques, or cable designs shall be provided to substantiate product utility and long term stability and endurance.

(5) The American National Standard Institute/Electronic Industries Association (ANSI/EIA) 359–A–84, EIA Standard Colors for Color Identification and Coding, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/EIA 359–A–84 are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from EIA, 2001 Pennsylvania Avenue, NW., suite 900, Washington, DC 20006, telephone number (202) 457–4966.

[Note: The incorporation by reference and availablity of inspection copies are pending approval by the Office of the Federal Register.]

(6) American Society for Testing and Materials Specifications (ASTM) B 33–91, Standard Specification for Tinned Soft or Annealed Copper Wire for Electrical Purposes; ASTM B 736–92a Standard Specification for Aluminum, Aluminum Alloy and Aluminum Clad Steel Cable Shielding Stock; ASTM D 1248–84(1989), Standard Specification for Polyethylene Plastics Molding and Extrusion Materials; ASTM D 1535–89, Standard Test Method for Specifying Color by the Munsell System; ASTM D 2287–81(1988), Standard Specification for Nonrigid Vinyl Chloride Polymer and Copolymer Molding and Extrusion Compounds; ASTM D 2436–85, Standard Specification for Forced-Convection Laboratory Ovens for Electrical Insulation; ASTM D 2633–82, Standard Methods of Testing Thermoplastic Insulations and Jackets for Wire and Cable; ASTM D 3349–86, Standard Test Method for Absorption Coefficient of Carbon Black Pigmented Ethylene Plastic; ASTM D 4101–82(1988), Standard Specification for Propylene Plastic Injection and Extrusion Materials; ASTM D 4565–90a, Standard Test Methods for Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4566–90, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; and ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

[Note: The incorporation by reference and availablity of inspection copies are pending approval by the Office of the Federal Register.]

(7) American National Standard Institute/National Fire Protection Association (ANSI/NFPA) 70, 1993 National Electrical Code referenced in this section is incorporated by reference

by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the ANSI/NFPA standard is available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from NFPA, Batterymarch Park, Quincy, Massachusetts 02269, telephone number 1 (800) 344–3555.

[Note: The incorporation by reference and availablity of inspection copies are pending approval by the Office of the Federal Register.]

(8) Underwriters Laboratories Inc. (UL) 1666, Standard Test for Flame Propagation Height of Electrical and Optical-Fiber Cables Installed Vertically in Shafts, dated January 22, 1991, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. A copy of the UL standard is available for inspection during normal business hours at REA, room 2845, U.S. Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from UL Inc., 333 Pfingsten Road, Northbrook, Illinois 60062–2096, telephone number (708) 272–8800.

[Note: The incorporation by reference and availablity of inspection copies are pending approval by the Office of the Federal Register.]

(b) *Conductors and conductor insulation.* (1) Each conductor shall be a solid round wire of commercially pure annealed tin coated copper. Conductors shall meet the requirements of the American Society for Testing and Materials (ASTM) B 33–91 except that requirements for *Dimensions and Permissible Variations* are waived.

(2) Joints made in conductors during the manufacturing process may be brazed, using a silver alloy solder and nonacid flux, or they may be welded using either an electrical or cold welding technique. In joints made in uninsulated conductors, the two conductor ends shall be butted. Splices made in insulated conductors need not be butted but may be joined in a manner acceptable to REA.

(3) (i) The tensile strength of any section of a conductor, containing a factory joint, shall not be less than 85 percent of the tensile strength of an adjacent section of the solid conductor of equal length without a joint.

(ii) Engineering Information: The sizes of wire used and their nominal diameters shall be as shown in the following table:

AWG	Nominal diameter	
	Millimeters	(Inches)
22	0.643	(0.0253)
24	.511	(0.0201)

(4) Each conductor shall be insulated with a primary layer of natural or white solid, insulating grade, high density polyethylene or crystalline propylene/ethylene copolymer and an outer skin of colored, solid, insulating grade, polyvinyl chloride (PVC) using one of the insulating materials listed in paragraphs (b)(4) (i) through (iii) of this section.

(i) The polyethylene raw material selected to meet the requirements of this section shall be Type III, Class A, Category 4 or 5, Grade E9, in accordance with ASTM D 1248–84(1989).

(ii) The crystalline propylene/ethylene raw material selected to meet the requirements of this section shall be Class PP 200B 40003 E11 in accordance with ASTM D 4101–82(1988).

(iii) The PVC raw material selected to meet the requirements of this section shall be either Type PVC–64751E3XO, Type PVC–76751E3XO, or Type PVC–77751E3XO in accordance with ASTM D 2287–81(1988).

(iv) Raw materials intended as conductor insulation furnished to these requirements shall be free from dirt, metallic particles, and other foreign matter.

(v) All insulating raw materials shall be accepted by REA prior to their use.

(5) All conductors in any single length of cable shall be insulated with the same type of material.

(6) A permissible overall performance level of faults in conductor insulation when using the test procedures in paragraph (b)(7) of this section shall average not greater than one fault per 12,000 conductor meters (40,000 conductor feet) for each gauge of conductor.

(7) The test used to determine compliance with paragraph (b)(6) of this section shall be conducted as follows:

(i) Samples tested shall be taken from finished cables selected at random from standard production cable. The samples tested shall contain a minimum of 300 conductor meters (1,000 conductor feet) for cables sizes less than 50 pairs and 1,500 conductor meters (5,000 conductor feet) for cables sizes greater than or equal to 50 pairs. No further sample need be taken from the same cable production run within 6,000 cable meters (20,000 cable feet) of the original test sample from that run.

(ii) The cable sample shall have its jacket, shield, and core wrap removed and its core shall be immersed in tap water for a minimum period of 6 hours. In lieu of removing the jacket, shield, and core wrap from the core, the entire cable may be tested. In this case, the core shall be completely filled with tap water, under pressure; then the cable assembly shall be immersed for a minimum period of 6 hours. With the cable core still fully immersed, except for end connections, the insulation resistance (IR) of all conductors to water shall be measured using a direct current (dc) voltage of 100 volts to 550 volts.

(iii) An IR value of less than 500 megohms for any individual insulated conductor tested at or corrected to a temperature of 23 °C is considered a failure. If the cable sample is more than 7.5 meters (25 feet) long, all failing conductors shall be retested and reported in 7.5 meter (25 foot) segments.

(iv) The pair count, gauge, footage, and number of insulation faults shall be recorded. This information shall be retained on a 6 month running basis for review by REA when requested.

(v) A fault rate, in a continuous length in any one reel, in excess of one fault per 3,000 conductor meters (10,000 conductor feet) due to manufacturing defects is cause for rejection. A minimum of 6,000 conductor meters (20,000 conductor feet) is required to develop a noncompliance in a reel.

(8) Repairs to the conductor insulation during manufacturing are permissible. The method of repair shall be accepted by REA prior to its use. The repaired insulation shall be capable of meeting the relevant electrical requirements of this section.

(9) All repaired sections of insulation shall be retested in the same manner as originally tested for compliance with paragraph (b)(6) of this section.

(10) The colored composite insulating material removed from or tested on the conductor, from a finished cable, shall be capable of meeting the following performance requirements:

Property	Composite insulation
Tensile strength, minimum megapascals (MPa) (pounds per square inch (psi))	16.5 (2400)
Ultimate elongation percent, minimum	125
Cold bend failures, maximum	0/10

Property	Composite insulation
Shrinkback, maximum millimeter (mm) (inches (in.))	9.5 (3/8)
Adhesion, maximum newtons (N) (pound-force (lbf))	13.3 (3)
Compression minimum, N (lbf)	1780 (400)

(11) *Testing procedures.* The procedures for testing the composite insulation samples for compliance with paragraph (b)(10) of this section shall be as follows:

(i) *Tensile strength and ultimate elongation.* Samples of the insulation material, removed from the conductor, shall be tested in accordance with ASTM D 2633–82, except that the speed of jaw separation shall be 50 millimeters/minute (50 mm/min) (2 inches/minute (2 in./min)).

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate shall be retested at the 50 mm/min (2 in./min) rate to determined specification compliance.

(ii) *Cold bend.* Samples of the insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a at a temperature of −40 ± 1°C with a mandrel diameter of 6 mm (0.25 in.). There shall be no cracks visible to normal or corrected-to-normal vision.

(iii) *Shrinkback.* Samples of insulation shall be tested for four hours at a temperature of 115 ± 1°C in accordance with ASTM D 4565–90a.

(iv) *Adhesion.* Samples of insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a with a crosshead speed of 50 mm/min (2 in./min).

(v) *Compression.* Samples of the insulation material on the conductor shall be tested in accordance with ASTM D 4565–90a with a crosshead speed of 5 mm/min (0.2 in./min).

(12) Other methods of testing may be used if acceptable to REA.

(c) *Identification of pairs and twisting of pairs.* (1) The PVC skin shall be colored to identify:

(i) The tip and ring conductor of each pair; and

(ii) Each pair in the completed cable.

(2) The colors used to provide identification of the tip and ring conductor of each pair shall be as shown in the following table:

Pair No.	Color	
	Tip	Ring
1	White	Blue.
2	White	Orange.
3	White	Green.
4	White	Brown.
5	White	Slate.
6	Red	Blue.
7	Red	Orange.
8	Red	Green.
9	Red	Brown.
10	Red	Slate.
11	Black	Blue.
12	Black	Orange.
13	Black	Green.
14	Black	Brown.
15	Black	Slate.
16	Yellow	Blue.
17	Yellow	Orange.
18	Yellow	Green.
19	Yellow	Brown.
20	Yellow	Slate.
21	Violet	Blue.
22	Violet	Orange.
23	Violet	Green.
24	Violet	Brown.
25	Violet	Slate.

(3) *Standards of color.* The colors of the insulated conductors supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and shall comply with the "Table of Wire and Cable Limit Chips" as defined in ANSI/EIA–359–A–84. (Visual color standards meeting these requirements may be obtained directly from the Munsell Color Company, Inc., 2441 North Calvert Street. Baltimore, Maryland 21218).

(4) Positive identification of the tip and ring conductors of each pair by marking each conductor of a pair with the color of its mate is permissible. The method of marking shall be accepted by REA prior to its use.

(5) Other methods of providing positive identification of the tip and ring conductors of each pair may be employed if accepted by REA prior to its use.

(6) The insulated conductors shall be twisted into pairs.

(7) In order to provide sufficiently high crosstalk isolation, the pair twists shall be designed to enable the cable to meet the capacitance unbalance and the crosstalk loss requirements of paragraphs (h)(2), (h)(3), and (h)(4) of this section.

(8) The average length of pair twists in any pair in the finished cable, when measured on any 3 meter (m) (10 foot (ft)) length, shall not exceed 152 mm (6 in.).

(d) *Forming of the cable core.* (1) Twisted pairs shall be assembled in such a way as to form a substantially cylindrical group.

(2) When desired for lay-up reasons, the basic group may be divided into two or more subgroups called units.

(3) Each group, or unit in a particular group, shall be enclosed in bindings of the colors indicated for its particular pair count. The pair count, indicated by the color of insulation, shall be consecutive as indicated in paragraph (d)(5) of this section through units in a group.

(4) Threads or tapes used as binders shall be non-hygroscopic and nonwicking. The threads shall consists of a suitable number of ends of each color arranged as color bands. When tapes are used as binders, they shall be colored. Binders shall be applied with a lay of not more than 100 mm (4 in.). The colored binders shall be readily recognizable as the basic intended color and shall be distinguishable from all other colors.

(5) The colors of the bindings and their significance with respect to pair count shall be as shown in the following table:

Group No.	Color of bindings	Group pair count
1	White-Blue	1–25
2	White-Orange	26–50
3	White-Green	51–75
4	White-Brown	76–100
5	White-Slate	101–125
6	Red-Blue	126–150
7	Red-Orange	151–175
8	Red-Green	176–200
9	Red-Brown	201–225
10	Red-Slate	226–250
11	Black-Blue	251–275
12	Black-Orange	276–300
13	Black-Green	301–325
14	Black-Brown	326–350
15	Black-Slate	351–375
16	Yellow-Blue	376–400
17	Yellow-Orange	401–425
18	Yellow-Green	426–450
19	Yellow-Brown	451–475
20	Yellow-Slate	476–500
21	Violet-Blue	501–525
22	Violet-Orange	526–550
23	Violet-Green	551–575
24	Violet-Brown	576–600

(6) The use of the white unit binder in cables of 100 pair or less is optional.

(7) When desired for manufacturing reasons, two or more 25 pair groups may be bound together with nonhygroscopic and nonwicking threads or tapes into super-units. The group binders and the super-unit binders shall be colored such that the combination of the two binders shall positively identify each 25 pair group from every other 25 pair group in the cable.

(8) Super-unit binders shall be of the colors shown in the following table:

SUPER-UNIT BINDER COLORS

Pair No.	Binder color
1–600	White.
601–1200	Red.

(e) *Core wrap.* (1) The core shall be completely covered with a layer of nonhygroscopic and nonwicking dielectric material. The core wrap shall be applied with an overlap.

(2) (i) The core wrap shall provide a sufficient heat barrier to prevent visible evidence of conductor insulation deformation or adhesion between conductors, caused by adverse heat transfer during the jacketing operation.

(ii) Engineering Information: If required for manufacturing reasons, white or uncolored binders of nonhygroscopic and nonwicking material may be applied over the core and/or core wrap.

(f) *Shield.* (1) An aluminum shield, plastic coated on one side, shall be applied longitudinally over the core wrap.

(2) The shield may be applied over the core wrap with or without corrugations (smooth) and shall be bonded to the outer jacket.

(3) The shield overlap shall be a minimum of 3 mm (0.125 in.) for cables with core diameters of 15 mm (0.625 in.) or less and a minimum of 6 mm (0.25 in.) for cables with core diameters greater than 15 mm (0.625 in.). The core diameter is defined as the diameter under the core wrap and binding.

(4) General requirements for application of the shielding material shall be as follows:

(i) Successive lengths of shielding tapes may be joined during the manufacturing process by means of cold weld, electric weld, soldering with a nonacid flux, or other acceptable means;

(ii) The metal shield with the plastic coating shall have the coating removed prior to joining the metal ends together. After joining, the plastic coating shall be restored without voids using good manufacturing techniques;

(iii) The shields of each length of cable shall be tested for continuity. A one meter (3 ft) section of shield containing a factory joint shall exhibit not more than 110 percent of the resistance of a shield of equal length without a joint;

(iv) The breaking strength of any section of a shield tape containing a factory joint shall not be less than 80 percent of the breaking strength of an adjacent section of the shield of equal length without a joint;

(v) The reduction in thickness of the shielding material due to the corrugating or application process shall be kept to a minimum and shall not exceed 10 percent at any spot; and

(vi) The shielding material shall be applied in such a manner as to enable the cable to pass the bend test as specified in paragraph (i)(1) of this section.

(5) The dimensions of the uncoated aluminum tape shall be 0.2030±0.0254 mm (0.0080±0.0010 in.).

(6) The aluminum tape shall conform to either Alloy AA–1100–0, AA–1145–0, or AA–1235–0 as covered in the latest edition of Aluminum Standards and Data, issued by the Aluminum Association, except that requirements for tensile strength are waived.

(7) The single-sided plastic coated aluminum shield shall conform to the requirements of ASTM B 736–92a, Type I Coating, Class 1 or 2, or Type II Coating, Class 1. The minimum thickness of the Type I Coating shall be 0.038 mm (0.0015 in.). The minimum thickness of the Type II Coating shall be 0.008 mm (0.0003 in.).

(8) The plastic coated aluminum shield shall be tested for resistance to water migration by immersing a one meter (3 ft) length of tape under a one meter (3 ft) head of water containing a soluble dye plus 0.25 percent wetting agent.

(i) After a minimum of 5 minutes, no dye shall appear between the interface of the shield tape and the plastic coating.

(ii) The actual test method shall be acceptable to REA.

(9) The bond between the plastic coated shield and the jacket shall conform to the following requirements.

(i) Prepare test strips approximately 200 mm (8 in.) in length. Slit the jacket and shield longitudinally to produce 4 strips evenly spaced and centered in 4 quadrants on the jacket circumference. One of the strips shall be centered over the overlapped edge of the shielding tape. The strips shall be 13 mm (0.5 in.) wide. For cable diameters less than 19 mm (0.75 in.) make two strips evenly spaced.

(ii) Separate the shield and jacket for a sufficient distance to allow the shield and jacket to be fitted in the upper and lower jaws of a tensile machine. Record the maximum force required to separate the shield and jacket to the nearest newton. Repeat this action for each test strip.

(iii) The force required to separate the jacket from the shield shall not be less than 9 N (2 lbf) for any individual strip when tested in accordance with paragraph (f)(9)(ii) of this section. The average force for all strips of any cable shall not be less than 18 N (4 lbf).

(g) *Cable jacket and extraneous material.* (1) The jacket shall provide the cable with a tough, flexible, protective covering which can withstand stresses reasonably expected in normal installation and service.

(2) The jacket shall be free from holes, splits, blisters, or other imperfections and shall be as smooth and concentric as is consistent with the best commercial practice.

(3) The raw material used for the cable jacket shall be one of the following four types:

(i) Type PVC–55554EOXO in accordance with ASTM D 2287–81(1988);

(ii) Type PVC–65554EOXO in accordance with ASTM D 2287–81(1988);

(iii) Type PVC–55556EOXO in accordance with ASTM D 2287–81(1988); or

(iv) Type PVC–66554EOXO in accordance with ASTM D 2287–81(1988).

(4) The jacketing material removed from or tested on the cable shall be capable of meeting the following performance requirements:

Property	Jacket performance
Tensile Strength-Unaged Minimum, MPa (psi)	13.8 (2000)
Ultimate Elongation-Unaged Minimum, Percent (%)	200
Tensile Strength-Aged Minimum, % of original value	50
Ultimate Elongation-Aged Minimum, % of original value	50
Impact Failures, Maximum	2/10

(5) *Testing procedures.* The procedures for testing the jacket samples for compliance with paragraph (g)(4) of this section shall be as follows.

(i) *Tensile strength and ultimate elongation-unaged.* The test shall be performed in accordance with ASTM D 2633–82, using a jaw separation speed of 50 mm/min (2 in./min).

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate shall be retested at the 50 mm/min (2 in./min) rate to determine specification compliance.

(ii) *Tensile strength and ultimate elongation-aged.* The test shall be performed in accordance with paragraph (g)(5)(i) of this section after being aged for 7 days at a temperature of 100±1°C in a circulating air oven conforming to ASTM D 2436–85.

(iii) *Impact.* The test shall be performed in accordance with ASTM D 4565–90a using an impact force of 4 newton-meter (3 pound force-foot) at a temperature of −10±1°C. The cylinder

shall strike the sample at the shield overlap. A crack or split in the jacket constitutes failure.

(6) *Jacket thickness.* The nominal jacket thickness shall be as specified in the following table. The test method used shall be either the End Sample Method (paragraph (g)(6)(i) of this section) or the Continuous Uniformity Thickness Gauge Method (paragraph (g)(6)(ii) of this section).

No. of pairs	Nominal jacket thickness mm (in.)
25 or less	1.4 (0.055)
50	1.5 (0.060)
100	1.7 (0.065)
200	1.9 (0.075)
300	2.2 (0.085)
400	2.4 (0.095)
600	2.9 (0.115)
800 and over	3.3 (0.130)

(i) *End sample method.* The jacket shall be capable of meeting the following requirements:

Minimum Average Thickness—90 % of nominal thickness.

Minimum Thickness—70 % of nominal thickness.

(ii)(A) *Continuous uniformity thickness gauge method.* The jacket shall be capable of meeting the following requirements:

Minimum Average Thickness—90 % of nominal thickness.

Minimum (Min.) Thickness—70 % of nominal thickness.

Maximum (Max.) Eccentricity—55 %.

$$\text{Eccentricity} = \frac{\text{Max. Thickness} - \text{Min. Thickness}}{\text{Average Thickeness}} \times 100$$

(B) Maximum and minimum thickness values. The maximum and minimum thickness values shall be based on the average of each axial section.

(7) The color of the jacket shall be either black or dark grey in conformance with the Munsell Color System specified in ASTM D 1535–89.

(8) There shall be no water or other contaminants in the finished cable which would have a detrimental effect on its performance or its useful life.

(h) *Electrical requirements*—(1) *Mutual capacitance and conductance.* (i) The average mutual capacitance (corrected for length) of all pairs in any reel shall not exceed the following when tested in accordance with ASTM D 4566–90 at a frequency of 1.0±0.1 kilohertz (kHz) and a temperature of 23±3° C.

No. of cable pairs	Mutual capacitance	
	Nanofarad/ kilometer	(Nanofarad/ mile)
12	52±4	(83±7)
Over 12	52±2	(83±4)

(ii) The root mean square (rms) deviation of the mutual capacitance of all pairs from the average mutual capacitance of that reel shall not exceed 3.0 % when calculated in accordance with ASTM D 4566–90.

(iii) The mutual conductance (corrected for length and gauge) of any pair shall not exceed 3.7 micromhos/kilometer (micromhos/km) (6.0 micromhos/mile) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0±0.1 kHz and a temperature of 23±3° C.

(2) *Pair-to-pair capacitance unbalance.* The capacitance unbalance as measured on the completed cable shall not exceed 45.3 picofarad/kilometer (pF/km) (25 picofarad/1000 ft (pF/1000 ft)) rms when tested in accordance with ASTM D 4566–90 at a frequency of 1.0±0.1 kHz and a temperature of 23±3° C.

(3) *Pair-to-ground capacitance unbalance.* (i) The average capacitance unbalance as measured on the completed cable shall not exceed 574 pF/km (175 pF/1000 ft) when tested in accordance with ASTM D 4566–90 at a frequency of 1±0.1 kHz and a temperature of 23±3° C.

(ii) When measuring pair-to-ground capacitance unbalance all pairs except the pair under test are grounded to the shield except when measuring cable containing super-units in which case all other pairs in the same super-unit shall be grounded to the shield.

(iii) Pair-to-ground capacitance unbalance may vary directly with the length of the cable.

(4) *Crosstalk loss.* (i) The rms output-to-output far-end crosstalk loss (FEXT) measured on the completed cable in accordance with ASTM D 4566–90 at a test frequency of 150 kHz shall not be less than 68 decibel/kilometer (dB/km) (73 decibel/1000 ft (dB/1000 ft)). The rms calculation shall be based on the combined total of all adjacent and alternate pair combinations within the same layer and center to first layer pair combinations.

(ii) The FEXT crosstalk loss between any pair combination of a cable shall not be less than 58 dB/km (63 dB/1000 ft) at a frequency of 150 kHz. If the loss K_o at a frequency F_o for length L_o is known, then K_x can be determined for any other frequency F_x or length L_x by:

$$\text{FEXT loss } (K_X) = K_O - 20 \log 10 \frac{F_X}{F_O} - 10 \log 10 \frac{L_X}{L_O}$$

(iii) The near-end crosstalk loss (NEXT) as measured within and between units of a completed cable in accordance with ASTM D 4566–90 at a frequency of 772 kHz shall not be less than the following mean minus sigma (M-S) crosstalk requirement for any unit within the cable:

Unit size within unit	M–S decibel (dB)
12 and 13 pairs	56
18 and 25 pairs	60
Between Unit:	
Adjacent 13 pairs	65
Adjacent 25 pairs	66
Nonadjacent (all)	81

Where M–S is the Mean near-end coupling loss based on the combined total of all pair combinations, less one Standard Deviation, Sigma, of the mean value.

(5) *Insulation resistance.* Each insulated conductor in each length of completed cable, when measured with all other insulated conductors and the shield grounded, shall have an

insulation resistance of not less than 152 megohm-kilometer (500 megohm-mile) at 20±1° C. The measurement shall be made in accordance with the procedures of ASTM D 4566–90.

(6) *High voltage test.* (i) In each length of completed cable, the dielectric strength of the insulation between conductors shall be tested in accordance with ASTM D 4566–90 and shall withstand, for 3 seconds, a direct current (dc) potential whose value is not less than:

(A) 3.6 kilovolts for 22-gauge conductors; or

(B) 3.0 kilovolts for 24-gauge conductors.

(ii) In each length of completed cable, the dielectric strength between the shield and all conductors in the core shall be tested in accordance with ASTM D 4566–90 and shall withstand, for 3 seconds, a dc potential whose value is not less than 10 kilovolts.

(7) *Conductor resistance.* The dc resistance of any conductor shall be measured in the completed cable in accordance with ASTM D 4566–90 and shall not exceed the following values when measured at or corrected to a temperature of 20±1 °C.

AWG	Maximum resistance	
	ohms/kilo-meter	(ohm/1000 ft)
22	60.7	(18.5)
24	95.1	(29.0)

(8) *Resistance unbalance.* (i) The difference in dc resistance between the two conductors of a pair in the completed cable shall not exceed the values listed below when measured in accordance with the procedures of ASTM D 4566–90.

AWG	Resistance unbalance—Maximum for any reel	
	Average percent	Individual pair percent
22	1.5	4.0
24	1.5	5.0

(ii) The resistance unbalance between tip and ring conductors shall be random with respect to the direction of unbalance. That is, the resistance of the tip conductors shall not be consistently higher with respect to the ring conductors and vice versa.

(9) *Electrical variations.* (i) Pairs in each length of cable having either a ground, cross, short, or open circuit condition shall not be permitted.

(ii) The maximum number of pairs in a cable which may vary as specified in paragraph (h)(9)(iii) of this section from the electrical parameters given in this section are listed in this paragraph. These pairs may be excluded from the arithmetic calculation.

Nominal pair count	Maximum No. of pairs with allowable electrical variation
12–100	1
101–300	2
301–400	3
401–600	4
601 and above	6

(iii) *Parameter variations*—(A) *Capacitance unbalance-to-ground.* If the cable fails either the maximum individual pair or average capacitance unbalance-to-ground requirement and all individual pairs are 3280 pF/km (1000 pF/1000 ft) or less the number of pairs specified in paragraph (h)(9)(ii) of this section may be eliminated from the average and maximum individual calculations.

(B) *Resistance unbalance.* Individual pair of not more than 7 percent for all gauges.

(C) *Far end crosstalk.* Individual pair combination of not less than 52 dB/km (57 dB/1000 ft).

Note: REA recognizes that in large pair count cables (600 pair and above) a cross, short, or open circuit condition occasionally may develop in a pair which does not affect the performance of the other cable pairs. In these circumstances rejection of the entire cable may be economically unsound or repairs may be impractical. In such circumstances the manufacturer may desire to negotiate with the customer for acceptance of the cable. No more than 0.5 percent of the pairs may be involved.

(i) *Mechanical requirements*—(1) *Cable cold bend test.* The completed cable shall be capable of meeting the requirements of ASTM D 4565–90a after conditioning at −20±2 °C except the mandrel diameters shall be as specified as follows:

Cable outside diameter	Mandrel diameter
<40 mm (1.5 in.)	15x
≥40 mm (1.5 in.)	20x

(2) *Cable flame test.* The completed cable shall be capable of meeting a maximum flame height of 3.7 m (12.0 ft) when tested in accordance with Underwriters Laboratories (UL) 1666 dated January 22, 1991.

(3) *Cable listing.* All cables manufactured to the specification of this section at a minimum shall be listed as Communication Riser Cable (Type CMR) in accordance with Sections 800–50 and 800–51(b) of the 1993 National Electrical Code.

(j) *Sheath slitting cord* (optional). (1) Sheath slitting cords may be used in the cable structure at the option of the manufacturer.

(2) When a sheath slitting cord is used it shall be nonhygroscopic and nonwicking, continuous throughout a length of cable, and of sufficient strength to open the sheath without breaking the cord.

(3) Sheath slitting cords shall be capable of consistently slitting the jacket and/or shield for a continuous length of 0.6 m (2 ft) when tested in accordance with the procedure specified in Appendix B of this section.

(k) *Identification marker and length marker.* (1) Each length of cable shall be permanently identified as to manufacturer and year of manufacture.

(2) The number of conductor pairs and their gauge size shall be marked on the jacket.

(3) The marking shall be printed on the jacket at regular intervals of not more than 1.5 m (5 ft).

(4) An alternative method of marking may be used if accepted by REA prior to its use.

(5) The completed cable shall have sequentially numbered length markers in feet or meters at regular intervals of not more than 1.5 m (5 ft) along the outside of the jacket.

(6) The method of length marking shall be such that for any single length of cable, continuous sequential numbering shall be employed.

(7) The numbers shall be dimensioned and spaced to produce good legibility and shall be approximately 3 mm (0.125 in.) in height. An occasional illegible marking is permissible if there is a legible marking located not more than 1.5 m (5 ft) from it.

(8) The method of marking shall be by means of suitable surface markings producing a clear, distinguishable, contrasting marking acceptable to REA. Where direct or transverse printing is employed, the characters should be indented to produce greater durability of marking. Any other method of length marking shall be acceptable to REA as producing a marker suitable for the field. Size, shape and spacing of numbers, durability, and overall legibility of the marker shall be considered in acceptance of the method.

(9) The accuracy of the length marking shall be such that the actual length of any cable section is never less than the length indicated by the marking and never more than one

percent greater than the length indicated by the marking.

(10) The color of the initial marking for a black colored jacket shall be either white or silver. The color of the initial marking for a dark grey colored jacket shall be either red or black. If the initial marking of the black colored jacket fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the white or silver color or leave the defective marking on the cable and re-mark with yellow. If the initial marking of the dark grey colored jacket fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the red or black color or leave the defective marking on the cable and re-mark with yellow. No further re-marking is permitted. Any re-marking shall be on a different portion of the cable circumference than any existing marking when possible and have a numbering sequence differing from any other existing marking by at least 5,000.

(11) Any reel of cable which contains more than one set of sequential markings shall be labeled to indicate the color and sequence of marking to be used. The labeling shall be applied to the reel and also to the cable.

(l) *Preconnectorized cable* (optional). (1) At the option of the manufacturer and upon request by the purchaser, cables 100 pairs and larger may be factory terminated in 25 pair splicing modules.

(2) The splicing modules shall meet the requirements of REA Bulletin 345–54, PE–52, REA Specification for Telephone Cable Splicing Connectors (Incorporated by Reference at § 1755.97), and be accepted by REA prior to their use.

(m) *Acceptance testing and extent of testing.* (1) The tests described in Appendix A of this section are intended for acceptance of cable designs and major modifications of accepted designs. REA decides what constitutes a major modification. These tests are intended to show the inherent capability of the manufacturer to produce cable products having long life and stability.

(2) For initial acceptance, the manufacturer shall submit:

(i) An original signature certification that the product fully complies with each section of the specification;

(ii) Qualification Test Data, per Appendix A of this section;

(iii) To periodic plant inspections;

(iv) A certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*);

(v) Written user testimonials concerning performance of the product; and

(vi) Other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telephone).

(3) For requalification acceptance, the manufacturer shall submit an original signature certification that the product fully complies with each section of the specification, excluding the Qualification Section, and a certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*) for acceptance by June 30 every three years. The required data and certification shall have been gathered within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to: Chairman, Technical Standards Committee "A" (Telephone), Telecommunications Standards Division, Rural Electrification Administration, Washington, DC 20250–1500.

(5) *Tests on 100 percent of completed cable.* (i) The shield of each length of cable shall be tested for continuity using the procedures of ASTM D 4566–90.

(ii) Dielectric strength between all conductors and the shield shall be tested to determine freedom from grounds in accordance with paragraph (h)(6)(ii) of this section.

(iii) Each conductor in the completed cable shall be tested for continuity using the procedures of ASTM D 4566–90.

(iv) Dielectric strength between conductors shall be tested to ensure freedom from shorts and crosses in accordance with paragraph (h)(6)(i) of this section.

(v) Each conductor in the completed preconnectorized cable shall be tested for continuity.

(vi) Each length of completed preconnectorized cable shall be tested for split pairs.

(vii) The average mutual capacitance shall be measured on all cables. If the average mutual capacitance for the first 100 pairs tested from randomly selected groups is between 50 and 53 nF/km (80 to 85 nF/mile), the remainder of the pairs need not to be tested on the 100 percent basis. (See paragraph (h)(1) of this section).

(6) *Capability tests.* Tests on a quality assurance basis shall be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Performance requirements for conductor insulation and jacket material;

(ii) Bonding properties of coated or laminated shielding materials;

(iii) Sequential marking and lettering;

(iv) Capacitance unbalance and crosstalk;

(v) Insulation resistance;

(vi) Conductor resistance and resistance unbalance;

(vii) Cable cold bend and cable flame tests; and

(viii) Mutual conductance.

(n) *Summary of records of electrical and physical tests.* (1) Each manufacturer shall maintain a suitable summary of records for a period of at least 3 years for all electrical and physical tests required on completed cable by this section as set forth in paragraphs (m)(5) and (m)(6) of this section. The test data for a particular reel shall be in a form that it may be readily available to the purchaser or to REA upon request.

(2) Measurements and computed values shall be rounded off to the number of places of figures specified for the requirement according to ASTM E 29–90.

(o) *Manufacturing irregularities.* (1) Repairs to the shield are not permitted in cable supplied to the end user under this section.

(2) No repairs or defects in the jacket are allowed.

(p) *Preparation for shipment.* (1) The cable shall be shipped on reels unless otherwise specified or agreed to by the purchaser. The diameter of the drum shall be large enough to prevent damage to the cable from reeling or unreeling. The reels shall be substantial and so constructed as to prevent damage to the cable during shipment and handling.

(2) A waterproof corrugated board or other means of protection acceptable to REA shall be applied to the reel and shall be suitably secured in place to prevent damage to the cable during storage and shipment.

(3) The outer end of the cable shall be securely fastened to the reel head so as to prevent the cable from becoming loose in transit. The inner end of the cable shall be securely fastened in such a way as to make it readily available if required for electrical testing. Spikes, staples, or other fastening devices which penetrate the cable jacket shall not be used. The method of fastening the cable ends shall be accepted by REA prior to it being used.

(4) Each length of cable shall be wound on a separate reel unless otherwise specified or agreed to by the purchaser.

(5) The arbor hole shall admit a spindle 63 mm (2.5 in.) in diameter

without binding. Steel arbor hole liners may be used but shall be acceptable to REA prior to their use.

(6) Each reel shall be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the cable on the reel.

(7) Each reel shall be stenciled or labeled on either one or both sides with the name of the manufacturer, year of manufacture, actual shipping length, an inner and outer end sequential length marking, description of the cable, reel number and the REA cable designation:

Cable Designation

CT
Cable Construction
Pair Count
Conductor Gauge
A=Coated Aluminum Shield
P=Preconnectorized Cable

Example: CTAP 100–22

Terminating Cable, Coated Aluminum Shield, Preconnectorized, 100 pairs, 22 AWG.

(8) When preconnectorized cable is shipped, the splicing modules shall be protected to prevent damage during shipment and handling. The protection method shall be acceptable to REA prior to its use.

(The information and recordkeeping requirements of this section have been approved by the Office of Management and Budget (OMB) under the Control Number 0572–0077.)

Appendix A to 7 CFR 1755.870—Qualification Test Methods

(I) The test procedures described in this appendix are for qualification of initial designs and major modifications of accepted designs. Included in paragraph (V) of this appendix are suggested formats that may be used in submitting test results to REA.

(II) *Sample Selection and Preparation.* (1) All testing shall be performed on lengths removed sequentially from the same 25 pair, 22 gauge jacketed cable. This cable shall not have been exposed to temperatures in excess of 38° C since its initial cool down after sheathing. The lengths specified are minimum lengths and if desirable from a laboratory testing standpoint longer lengths may be used.

(a) Length A shall be 12±0.2 meters (40±0.5 feet) long. Prepare the test sample by removing the jacket, shield, and core wrap for a sufficient distance on both ends to allow the insulated conductors to be flared out. Remove sufficient conductor insulation so that appropriate electrical test connections can be made at both ends. Coil the sample with a diameter of 15 to 20 times its sheath diameter. Two lengths are required.

(b) Length B shall be 300 millimeters (1 foot) long. Three lengths are required.

(c) Length C shall be 3 meters (10 feet) long and shall be maintained at 23±3° C for the duration of the test. Two lengths are required.

(2) *Data Reference Temperature.* Unless otherwise specified, all measurements shall be made at 23±3° C.

(III) *Environmental Tests*—(1) *Heat Aging Test*—(a) *Test Samples.* Place one sample each of lengths A and B in an oven or environmental chamber. The ends of sample A shall exit from the chamber or oven for electrical tests. Securely seal the oven exit holes.

(b) *Sequence of Tests.* Sample B referenced in paragraph (III)(1)(a) of this appendix shall be subjected to the insulation compression test outlined in paragraph (III)(2) of this appendix.

(c) *Initial Measurements.* (i) For sample A, measure the open circuit capacitance and conductance for each odd pair at 1, 150, and 772 kilohertz after conditioning the sample at the data reference temperature for 24 hours. Calculate the average and standard deviation for the data of the 13 pairs on a per kilometer (per mile) basis.

(ii) Record on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(d) *Heat Conditioning.* (i) Immediately after completing the initial measurements, condition the sample for 14 days at a temperature of 65±2° C.

(ii) At the end of this period. Measure and calculate the parameters given in paragraph (III)(1)(c) of this appendix. Record on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(e) *Overall Electrical Deviation.* (i) Calculate the percent change in all average parameters between the final parameters after conditioning with the initial parameters in paragraph (III)(1)(c) of this appendix.

(ii) The stability of the electrical parameters after completion of this test shall be within the following prescribed limits:

(A) *Capacitance.* The average mutual capacitance shall be within 10 percent of its original value;

(B) The change in average mutual capacitance shall be less than 10 percent over the frequency range of 1 to 150 kilohertz and;

(C) *Conductance.* The average mutual conductance shall not exceed 3.7 micromhos/kilometer (6 micromhos/mile) at a frequency of 1 kilohertz.

(2) *Insulation Compression Test*—(a) *Test Sample B.* Remove jacket, shield, and core wrap being careful not to damage the conductor insulation. Remove one pair from the core and carefully separate and straighten the insulated conductors. Retwist the two insulated conductors together under sufficient tension to form 10 evenly spaced 360 degree twists in a length of 100 millimeters (4 inches).

(b) *Sample Testing.* Center the mid 50 millimeters (2 inches) of the twisted pair between two smooth rigid parallel metal plates measuring 50 millimeters (2 inches) in length or diameter. Apply a 1.5 volt direct current potential between the conductors, using a light or buzzer to indicate electrical contact between the conductors. Apply a constant load of 67 newtons (15 pound-force) on the sample for one minute and monitor for evidence of contact between the conductors. Record results on suggested formats in paragraph (V) of this appendix or on other easily readable formats.

(3) *Temperature Cycling.* (a) Repeat paragraphs (III)(1)(a) through (III)(1)(c)(ii) of this appendix for a separate set of samples A and B which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, subject the test samples to 10 cycles of temperature between −40° C and +60° C. The test samples shall be held at each temperature extreme for a minimum of 1.5 hours during each cycle of temperature. The air within the temperature cycling chamber shall be circulated throughout the duration of the cycling.

(c) Repeat paragraphs (III)(1)(d)(ii) through (III)(2)(b) of this appendix.

(IV) *Control Sample—(1) Test Samples.* One length of sample B shall have been maintained at 23±3° C for at least 48 hours before the testing.

(2) Repeat paragraphs (III)(2) through (III)(2)(b) of is appendix.

(3) *Surge Test.* (a) One length of sample C shall be used to measure the breakdown between conductors while the other length of C shall be used to measure core to shield breakdown.

(b) The samples shall be capable of withstanding, without damage, a single surge voltage of 20 kilovolts peak between conductors, and 35 kilovolts peak between conductors and the shield as hereinafter described. The surge voltage shall be developed from a capacitor discharge through a forming resistor connected in parallel with the dielectric of the test sample. The surge generator constants shall be such as to produce a surge of 1.5×40 microseconds wave shape.

(c) The shape of the generated wave shall be determined at a reduced voltage by connecting an oscilloscope across the forming resistor with the cable sample connected in parallel with the forming resistor. The capacitor bank is charged to the test voltage and then discharged through the forming resistor and test sample. The test sample shall be considered to have passed the test if there is no distinct change in the wave shape obtained with the initial reduced voltage compared to that obtained after the application of the test voltage.

(V) The following suggested formats may be used in submitting the test results to REA:

Environmental Conditioning

FREQUENCY 1 KILOHERTZ

Pair Number	Capacitance		Conductance	
	nF/km (nF/mile)		micromhos/km (micromhos/mile)	
	Initial	Final	Initial	Final
1	____	____	____	____
3	____	____	____	____
5	____	____	____	____
7	____	____	____	____
9	____	____	____	____
11	____	____	____	____
13	____	____	____	____
15	____	____	____	____

Environmental Conditioning —Continued

FREQUENCY 1 KILOHERTZ

Pair Number	Capacitance nF/km (nF/mile) Initial	Capacitance nF/km (nF/mile) Final	Conductance micromhos/km (micromhos/mile) Initial	Conductance micromhos/km (micromhos/mile) Final
17				
19				
21				
23				
25				
Average $\bar{x}$				

Overall Percent Difference in Average $\bar{x}$ _____ _____

Environmental Conditioning —Continued

FREQUENCY 772 KILOHERTZ

Pair Number	Capacitance nF/km (nF/mile) Initial	Capacitance nF/km (nF/mile) Final	Conductance micromhos/km (micromhos/mile) Initial	Conductance micromhos/km (micromhos/mile) Final
17				
19				
21				
23				
25				
Average $\bar{x}$				

Overall Percent Difference in Average $\bar{x}$ _____ _____

Environmental Conditioning

FREQUENCY 150 KILOHERTZ

Pair Number	Capacitance nF/km (nF/mile) Initial	Capacitance nF/km (nF/mile) Final	Conductance micromhos/km (micromhos/mile) Initial	Conductance micromhos/km (micromhos/mile) Final
1				
3				
5				
7				
9				
11				
13				
15				
17				
19				
21				
23				
25				
Average $\bar{x}$				

Overall Percent Difference in Average $\bar{x}$ _____ _____

Environmental Conditioning

FREQUENCY 772 KILOHERTZ

Pair Number	Capacitance nF/km (nF/mile) Initial	Capacitance nF/km (nF/mile) Final	Conductance micromhos/km (micromhos/mile) Initial	Conductance micromhos/km (micromhos/mile) Final
1				
3				
5				
7				
9				
11				
13				
15				

Insulation Compression

	Failures
Control	
Heat Age	
Temperature Cycling	

Surge Test (kilovolts)

Conductor-to-Conductor	
Shield-to-Conductors	

Appendix B to 7 CFR 1755.870—Sheath Slitting Cord Qualification

(I) This test procedure described in this appendix is for qualification of initial and subsequent changes in sheath slitting cords.

(II) *Sample selection.* All testing shall be performed on two 1.2 m (4 ft) lengths of cable removed sequentially from the same 25 pair, 22 gauge jacketed cable. This cable shall not have been exposed to temperatures in excess of 38 °C since its initial cool down after sheathing.

(III) *Test procedure.* (1) Using a suitable tool, expose enough of the sheath slitting cord to permit grasping with needle nose pliers.

(2) The prepared test specimens shall be maintained at a temperature of 23±1 °C for at least 4 hours immediately prior to and during the test.

(3) Wrap the sheath slitting cord around the plier jaws to ensure a good grip.

(4) Grasp and hold the cable in a convenient position while gently and firmly pulling the sheath slitting cord longitudinally in the direction away from the cable end. The angle of pull may vary to any convenient and functional degree. A small starting notch is permissible.

(5) The sheath slitting cord is considered acceptable if the cord can slit the jacket and/or shield for a continuous length of 0.6 m (2 ft) without breaking the cord.

Dated: November 3, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc. 93–27890 Filed 11–16–93; 8:45 am]

BILLING CODE 3410–15–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 27

[Docket No. 93–ASW–5; Notice No. SC–93–5–SW]

Special Condition: Agusta Model A109C Helicopter, Electronic Flight Instrument System

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special condition.

SUMMARY: This notice proposes a special condition for the Agusta Model A109C helicopter modified by Agusta Aerospace Corporation. This helicopter will have a novel or unusual design feature associated with the Electronic Flight Instrument System. The applicable airworthiness regulations do not contain adequate or appropriate safety standards for the protection of these critical function systems from the effects of external high intensity radiated fields (HIRF). This notice contains the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the airworthiness standards of part 27 of the Federal Aviation Regulations.

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration (FAA), Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ASW–5, Fort Worth, Texas 76193–0007, or delivered in duplicate to the Office of the Assistant Chief Counsel, Building 3B, room 158, 4400 Blue Mound Road, Forth Worth, Texas. Comments must be marked Docket No. 93–ASW–5. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 9 a.m. and 3 p.m.

FOR FURTHER INFORMATION CONTACT:

Mr. Robert McCallister, FAA, Rotorcraft Directorate, Policy and Procedures Group, Fort Worth, Texas 76193–0112; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed special condition by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before taking action on this proposal. The special condition proposed in this notice may be changed in light of comments received. All comments received will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ASW–5." The postcard will be date and time stamped and returned to the commenter.

Background

On July 21, 1993, Agusta Aerospace Corporation, Grand Prairie, Texas, applied for a Supplemental Type Certificate for installation of an Electronic Flight Instrument System in Agusta Aerospace Corporation Model A109C helicopter. This model is a 7 passenger, twin engine, 5,997 pound normal category helicopter

Type Certification Basis

The certification basis established for the Agusta Model A109C helicopter includes: Federal Aviation Regulation (FAR) § 21.29 and part 27 effective February 1, 1965, Amendments 29–1 through 29–8; FAR part 29 dated February 1, 1965, paragraph 2903(b), for Category "A" engine isolation; equivalent safety in lieu of compliance shown for: FAR 27.1189 (regarding shut-off means), and FAR 27.927(c) as amended by Amendment 27–12; Airworthiness Criteria for Helicopter Instrument Flight, eligible for day and night Instrument Flight Rules (IFR) operations, with one or two pilots, when Agusta Kit No. 109–0810–22, Revision E or later approved revision, is incorporated and the helicopter is operated in accordance with Model A109C Rotorcraft Flight Manual.

If the Administrator finds that the applicable airworthiness regulations do not contain adequate or appropriate safety standards for this helicopter because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with FAR § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), and become part of the type certification basis in accordance with § 21.101(b)(2).

Discussion

The Agusta Model A109C helicopter, at the time of the application for modification by Agusta Aerospace Corporation, was identified as having proposed modifications which will incorporate one and possibly more electrical, electronic, or combination of electrical and electronic (electrical/electronic) systems that will perform functions critical to the continued safe flight and landing of the helicopters. The electronic flight instrument system performs the attitude display function. The display of attitude, altitude, and airspeed is critical to the continued safe flight and landing of the helicopters for IFR operations in instrument meteorological conditions. After the design is finalized, Agusta Aerospace Corporation will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by the electrical/electronic systems that are critical to the continued safe flight and landing of the helicopters.

Recent advances in technology have prompted the design of aircraft that include advanced electrical and electronic systems that perform functions required for continued safe flight and landing. However, these advanced systems respond to the transient effects of induced electrical current and voltage caused by the high intensity radiated fields (HIRF) incident on the external surface of the helicopters. These induced transient currents and voltages can degrade the performance of the electrical/electronic systems by damaging the components or by upsetting the systems' functions.

Furthermore, the electromagnetic environment has undergone a transformation not envisioned by the current application of FAR § 29.1309(a). Higher energy levels radiate from operational transmitters currently used for radar, radio, and television; the number of transmitters has increased significantly.

Existing aircraft certification requirements are inappropriate in view of these technological advances. In addition, the FAA has received reports of some significant safety incidents and accidents involving military aircraft equipped with advanced electrical/electronic systems when they were exposed to electromagnetic radiation.

The combined effects of technological advances in helicopter design and the changing environment have resulted in an increased level of vulnerability of the electrical and electronic systems required for the continued safe flight and landing of the helicopters. Effective measures to protect these helicopters against the adverse effects of exposure to HIRF will be provided by the design and installation of these systems. The following primary factors contributed to the current conditions:

(1) Increased use of sensitive electronics that perform critical functions,

(2) Reduced electromagnetic shielding afforded helicopter systems by advanced technology airframe materials,

(3) Adverse service experience of military aircraft using these technologies, and

(4) An increase in the number and power of radio frequency emitters and the expected increase in the future.

The FAA recognizes the need for aircraft certification standards to keep pace with technological developments and a changing environment and in 1986 initiated a high priority to:

(1) Determine and define electromagnetic energy levels;

(2) Develop guidance material for design, test, and analysis; and

(3) Prescribe and promulgate regulatory standards.

The FAA participated with industry and airworthiness authorities of other countries to develop internationally recognized standards for certification.

The FAA and airworthiness authorities of other countries have identified a level of HIRF environment that a helicopter could be exposed to during IFR operations. While the HIRF requirements are being finalized, the FAA is adopting a special condition for the certification of aircraft that employ electrical/electronic systems that perform critical functions. The accepted maximum energy levels that civilian helicopter system installations must withstand for safe operation are based on surveys and analysis of existing radio frequency emitters. This special condition will require the helicopters' electrical/electronic systems and associated wiring to be protected from these energy levels. These external threat levels are believed to represent

the worst-case exposure for a helicopter operating under IFR.

The HIRF environment specified in this proposed special condition is based on many critical assumptions. With the exception of takeoff and landing at an airport, one of these assumptions is the aircraft would be not less than 500 feet above ground level (AGL). Helicopters operating under visual flight rules (VFR) routinely operate at less than 500 feet AGL and perform takeoffs and landings at locations other than controlled airports. Therefore, it would be expected that the HIRF environment experienced by a helicopter operating VFR may exceed the defined environment by 100 percent or more.

This special condition will require the systems that perform critical functions, as installed in the aircraft, to meet certain standards based on either a defined HIRF environment or a fixed value using laboratory tests.

The applicant may demonstrate that the operation and operational capabilities of the installed electrical/electronic systems that perform critical functions are not adversely affected when the aircraft is exposed to the defined HIRF environment. The FAA has determined that the environment defined in table 1 is acceptable for critical functions in helicopters operating at or above 500 feet AGL. For critical functions of helicopters operating at less than 500 feet AGL, additional factors must be considered.

The applicant may also demonstrate by a laboratory test that the electrical/electronic systems that perform critical functions can withstand a peak electromagnetic field strength in a frequency range of 10 KH_z to 18 GH_z. If a laboratory test is used to show compliance with the defined HIRF environment, no credit will be given for signal attenuation due to installation. A level of 100 v/m and other considerations, such as an alternate technology backup that is immune to HIRF, are appropriate for critical functions during IFR operations. A level of 200 v/m and further considerations, such as an alternate technology backup that is immune to HIRF, are more appropriate for critical functions during VFR operations.

Applicants must perform a preliminary hazard analysis to identify electrical/electronic systems that perform critical functions. The term "critical" means those functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the helicopters. The systems identified by the hazard analysis as performing critical functions are required to have HIRF protection.

A system may perform both critical and noncritical functions. Primary electronic flight display systems and their associated components perform critical functions such as attitude, altitude, and airspeed indications. HIRF requirements would apply only to the systems that perform critical functions.

Compliance with HIRF requirements will be demonstrated by tests, analysis, models, similarity with existing systems, or a combination of these methods. The two basic options of either testing the rotorcraft to the defined environment or laboratory testing may not be combined. The laboratory test allows some frequency areas to be under tested and requires other areas to have some safety margin when compared to the defined environment. The areas required to have some safety margin are those shown, by past testing, to exhibit greater susceptibility to adverse effects from HIRF; and laboratory tests, in general, do not accurately represent the aircraft installation. Service experience alone will not be acceptable since such experience in normal flight operations may not include an exposure to HIRF. Reliance on a system with similar design features for redundancy, as a means of protection against the effects of external HIRF, is generally insufficient because all elements of a redundant system are likely to be concurrently exposed to the radiated fields.

The modulation that represents the signal most likely to disrupt the operation of the system under test, based on its design characteristics, should be selected. For example, flight control systems may be susceptible to 3 H_z square wave modulation while the video signals for electronic display systems may be susceptible to 400 H_z sinusoidal modulation. If the worst-case modulation is unknown or cannot be determined, default modulations may be used. Suggested default values are a 1 KH_z sine wave with 80 percent depth of modulation in the frequency range from 10 KH_z to 400 MH_z, and 1 KH_z square wave with greater than 90 percent depth of modulation from 400 MH_z to 18 GH_z. For frequencies where the unmodulated signal would cause deviations from normal operation, several different modulating signals with various waveforms and frequencies should be applied.

Acceptable system performance would be attained by demonstrating that the critical function components of the system under consideration continue to perform their intended function during and after exposure to required electromagnetic fields. Deviations from system specifications may be acceptable but must be independently assessed by the FAA on a case-by-case basis.

TABLE 1.—FIELD STRENGTH VOLTS/METER

Frequency	Peak	Average
10–100 KH,	50	50
100–500	60	60
500–2000	70	70
2–30 MH,	200	200
30–100	30	30
100–200	150	33
200–400	70	70
400–700	4020	935
700–1000	1700	170
1–2 GH,	5000	990
2–4	6680	840
4–6	6850	310
6–8	3600	670
8–12	3500	1270
12–18	3500	360
18–40	2100	750

Conclusion

This action affects only certain unusual or novel design features on one model of helicopter. It is not a rule of general applicability and affects only the applicant who applied to the FAA for approval of these features on the affected helicopters.

List of Subjects in 14 CFR Part 27

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety

The authority citations for this special condition are as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2); 42 U.S.C. 1875f–10, 4321 et seq.; E.O. 11514; 49 U.S.C. 106(g).

The Proposed Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration (FAA) proposes the following special condition as a part of the type certification basis for the Agusta Model A109C helicopter.

Protection for Electrical and Electronic Systems From High Intensity Radiated Fields

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these critical functions are not adversely affected when the helicopters are exposed to high intensity radiated fields external to the helicopters.

Issued in Fort Worth, Texas, on November 4, 1993.

Larry M. Kelly,

Acting Manager, Rotorcraft Directorate Aircraft Certification Service.

[FR Doc. 93–28271 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Part 284

[Docket No. RM93–4–000]

Standards for Electronic Bulletin Boards Required Under Part 284 of the Commission's Regulations

November 10, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of filing.

SUMMARY: The Federal Energy Regulatory Commission (Commission) received a filing on November 3, 1993, from industry working groups containing revisions in the capacity release data sets from those proposed in the Notice of Proposed Rulemaking (58 FR 41647, August 5, 1993) in this docket. The Commission will be considering these issues at an informal conference and is permitting interested persons an opportunity to file comments on this filing.

DATES: Informal conference to be held on November 17, 1993, at 10 a.m.

Comments are due by November 19, 1993.

ADDRESSES: The conference will be held at: Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street NE., Washington, DC 20426.

All filings should refer to Docket No. RM93–4–000 and should be filed at: Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Michael Goldenberg, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2294.

Marvin Rosenberg, Office of Economic Policy, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–1283.

Brooks Carter, Office of Pipeline and Producer Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0666.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits, and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this notice will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Take notice that Industry Working Groups 1 and 2 made a filing on November 3, 1993, detailing revisions in the capacity release data sets from those proposed in the Notice of Proposed Rulemaking in this docket.

These revisions will be discussed at an informal Commission conference being held on November 17, 1993, beginning at 10 a.m., at the Federal Energy Regulatory Commission, Hearing Room 1, 810 First Street NE., Washington, DC 20426. Any person desiring to submit comments on this filing should file an original and 14 copies of such comments with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 on or before November 19, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28257 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Chapter I

[FRL–4802–9]

Open Meeting of the Architectural and Industrial (AIM) Maintenance Coatings Negotiated Rulemaking Advisory Committee

AGENCY: Environmental Protection Agency.

ACTION: Meeting.

SUMMARY: The AIM Negotiated Rulemaking Advisory Committee will meet in Washington, DC to attempt to reach consensus that can be used as the basis of a proposed rule.

DATES: The meeting will take place on December 9 and 10. On December 9, we'll start at 9 a.m. and run until completion. On December 10, we'll start at 8:30 a.m. and end by 4 p.m.

ADDRESSES: The meeting will be held at the Georgetown Conference Center, 3800 Reservoir Road, Washington, DC, (202) 687–3232.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on substantive aspects of the rule should call Bruce Madariaga of EPA's Office of Air Quality Planning and Standards at 919–541–5290. Persons needing further information on meeting logistics should call Barbara Stinson the Committee Co-chair at 303–468–5822.

Dated: November 12, 1993.

Chris Kirtz,

Director, Consensus and Dispute Resolution Program.

[FR Doc. 93–28264 Filed 11–16–93; 8:45 am]

BILLING CODE 6560–50–M

40 CFR Ch. I

[FRL–4803–5]

Public Meeting of the Hazardous Waste Manifest Rulemaking Committee

AGENCY: Environmental Protection Agency.

ACTION: Public meeting.

SUMMARY: As required by the Federal Advisory Committee Act, we are giving notice of the final public meeting of the Hazardous Waste Manifest Rulemaking Committee. The meeting is open to the public without advance registration.

The purpose of the meeting is to complete work on revising the uniform national hazardous waste manifest form and rule. The committee reached consensus on most of the outstanding issues at its September, 1993 meeting.

Among the issues the committee will address at this meeting are: Whether or not to have continuation pages and waste handling codes. The Committee will also discuss the preamble to the rule and the final committee agreement document.

DATES: The Committee meeting will be held on December 2, from 10 a.m. to 6 p.m., and on December 3, 1993 from 8:30 a.m. to 4 p.m.

ADDRESSES: The meeting will be held at Resolve-World Wildlife, 1250 Twenty-fourth Street, NW., Fifth Floor, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Persons needing further information on the substantive matters of the rule should contact Rick Westlund, Regulatory Management Division, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, (202) 260–2745. Persons needing further information on procedural or logistical matters should call the Committee's facilitator, Suzanne Orenstein, Resolve, 1250 24th Street, NW., suite 500, Washington, DC 20037, (202) 778–9533.

Dated: November 15, 1993.

Deborah S. Dalton,

Deputy Director, EPA Consensus and Dispute Resolution Program, Office of Regulatory Management and Evaluation.

[FR Doc. 93–28448 Filed 11–16–93; 8:45 am]

BILLING CODE 6560–50–M

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40 CFR Part 180

[OPP–300310; FRL–4159–9]

RIN 2070–AB78

Ronnel; Revocation of Tolerances

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes to revoke the tolerances for residues of the pesticide ronnel (*O,O*-dimethyl *O*-(2,4,5-trichlorophenyl) phosphorothioate), including its 2,4,5-trichlorophenyl-containing metabolites, in or on all raw agricultural commodities. EPA is proposing this action because all registered uses of ronnel on these commodities have been canceled. Therefore, there is no need to maintain these tolerances.

DATES: Written comments, identified by the document control number [OPP-300310], must be received on or before December 17, 1993.

ADDRESSES: By mail, submit comments to Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. In person, deliver comments to rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA.

Information submitted as a comment concerning this document may be claimed confidential by marking any or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice.

FOR FURTHER INFORMATION CONTACT: By mail: Jeff Morris, Special Review and Reregistration Division (7508W), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Special Review Branch, Crystal Station #1, 3rd Floor, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8029.

SUPPLEMENTARY INFORMATION: Ronnel is an insecticide developed to control a variety of pest species. Before its cancellation, over 100 hundred companies had registered products containing ronnel as the active ingredient, principally for the control of insects on livestock.

The Federal Food, Drug, and Cosmetic Act (FFDCA, 21 U.S.C. 301 et seq.) authorized the establishment of tolerances (maximum legal residue levels) and exemptions from the requirement of a tolerance for residues of pesticide chemicals in or on raw agricultural commodities pursuant to section 408 (21 U.S.C. 346(a)). Without such tolerances or exemptions, a food containing pesticide residues is considered to be "adulterated" under section 402 of the FFDCA and hence may not legally be moved in interstate commerce (21 U.S.C. 342). To establish a tolerance or an exemption under section 408 of the FFDCA, EPA must make a finding that the promulgation of the rule would "protect the public health" (21 U.S.C. 346a(b)). For a pesticide to be sold and used in the production of a food crop or food animal, the pesticide must not only have appropriate tolerances under the FFDCA, but must be registered under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA, 7 U.S.C. 136 et seq.). FIFRA requires the registration of pesticides that are sold and distributed in the United States.

Dow Chemical Co., the sole manufacturer of ronnel, ceased all production of ronnel in 1979 and in 1986 voluntarily canceled its ronnel technical registration. Notice of this cancellation was published in the **Federal Register** of January 22, 1986 (51 FR 2953), and took effect on February 21, 1986. EPA allowed existing stocks of ronnel to be distributed, sold, and used for 1 year following the effective date of the cancellation, or until the stocks were exhausted. Between the 1986 cancellation and January 22, 1991 (56 FR 4992), EPA canceled the registrations held by registrants other than Dow for all products containing ronnel as the active ingredient. There are currently no EPA-registered ronnel products, and EPA does not believe that there are any existing stocks of ronnel.

Because ronnel is no longer registered in the United States for use on any food or animal feed crops, and a tolerance is generally not necessary for a pesticide chemical that is not registered for a particular food use, this document proposes the revocation of tolerances established under section 408 of the Federal Food, Drug, and Cosmetic Act (FFDCA), 21 U.S.C. 346a, for residues of the insecticide ronnel (*O,O*-dimethyl *O*-(2,4,5-trichlorophenyl) phosphorothioate), including its 2,4,5-trichlorophenyl-containing metabolites, in or on the commodities listed in 40 CFR 180.177. These tolerances are as follows: 10 parts per million (ppm) in fat of cattle, goats, and sheep; 4 ppm in meat and meat byproducts of cattle, goats, and sheep; 3 ppm in fat of hogs; 2 ppm in meat and meat byproducts of hogs; 1.25 ppm in milk fat (reflecting negligible residues in whole milk); 0.5 ppm on bananas (of which residue, zero shall be in the pulp after the peel is removed and discarded); 0.03 ppm on eggs; and 0.01 ppm in meat, fat, and meat byproducts of poultry. There is no anticipation of a residue problem due to environmental contamination. Consequently, no action levels will be recommended to replace the tolerances upon their revocation.

Interested persons are invited to submit written comments, information, or data in response to this proposed rule. Comments must be received by EPA on or before December 17, 1993. Comments must bear a notation indicating the document control number. Three copies of the comments should be submitted to either location listed under ADDRESSES above in this document. Documents considered and relied upon by EPA in reaching its decision and all written comments filed pursuant to this document will be available for public inspection in rm. 1128, Crystal Mall #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

between 8 a.m. and 4 p.m., Monday through Friday, except public holidays. Any person who has registered, or who has submitted an application for registration of ronnel under FIFRA, may request that this proposal be referred to an advisory committee. Such a request must be made within 30 days of the publication of this proposal. To satisfy requirements for analysis specified by Executive Order 12866 and the Regulatory Flexibility Act, EPA has analyzed the impacts of this proposal. This analysis is available for public inspection in rm. 1128 at the Virginia address given above.

Executive Order 12866

Under Executive Order 12866 (58 FR 51735, Oct. 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Managment and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economy significant"); (2) creating serious inconsistenty or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

Regulatory Flexibility Act

This proposed rule has been reviewed under the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601 et seq.), and EPA has determined that it will not have a significant economic impact on a substantial number of small businesses, small governments, or small organizations. Accordingly, I certify that this proposed rule does not require a separate regulatory flexibility analysis under the Regulatory Flexibility Act.

Paperwork Reduction Act

This proposed regulatory action does not contain any information collection requirements subject to review by OMB under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: October 23, 1993.

Victor J. Kimm,

Acting Assistant-Administrator for Pesticides and Toxic Substances.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

§ 180.177 [Removed]

2. Section 180.177 *Ronnel; tolerances for residues* is removed.

[FR Doc. 93-28285 Filed 11-16-93; 8:45 am]
BILLING CODE 6560-50-F

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40 CFR Part 372

[OPPTS-400073A; FRL-4643-8]

Glycol Ethers Category; Toxic Chemical Release Reporting; Community Right-to-Know; Notice of Availability, Technical Amendment, Extension of Comment Period

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule; notice of availability, technical amendment, and extension of public comment period.

SUMMARY: In the **Federal Register** of July 6, 1993, EPA issued a proposed rule to redefine the glycol ethers category on the list of toxic chemicals subject to reporting under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). In this document, EPA is announcing the availability of two additional references included in the public docket for this proposal. EPA is also announcing at this time a change in the original proposed rule language. To assure that the public and other interested parties have sufficient time to review the documents added to the public docket (Docket Number OPPTS-400073) and the revision to the rule language, the comment period has been extended. The original comment period ended September 7, 1993.

DATES: Comments must be received by December 2, 1993.

ADDRESSES: Written comments should be submitted in triplicate to: OPPT Document Control Officer, TSCA Nonconfidential Information Center (NCIC), also known as TSCA Public Docket Office, 7407, Environmental Protection Agency, E-G99, 401 M St., SW., Washington, DC 20460, Attn: Docket Number OPPTS-400073. Nonconfidenital comments and the references are available for viewing and photocopying in TSCA NCIC from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at EPA Headquarters, Rm. E-G102, 401 M St., SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS-120, 401 M St., SW., Washington, DC 20460, Toll free: 800-535-0202, Toll free TDD: 800-553-7672.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of July 6, 1993 (58 FR 36180), EPA issued a proposed rule to redefine the glycol ethers category on the list of toxic chemicals subject to reporting under section 313 of (EPCRA).

This proposed redefinition will change the current definition of the glycol ethers category to exclude the high molecular weight glycol ethers that do not, in EPA's judgement, meet the criteria set out in EPCRA section 313(d). The proposed definition would retain in the category all glycol ethers that are known to or may be reasonably anticipated to cause adverse human health and/or environmental effects, and those for which there is insufficient evidence to establish any of the section 313(d) criteria. The proposed redefinition of the glycol ethers category is based on EPA's review of available human health data on low molecular weight glycol ethers. EPA believes that the category can be redefined to exclude the high molecular weight glycol ethers. The Agency also believes it may be appropriate to further narrow the definition beyond this exclusion of surfactants. However, based on current data EPA is not able to establish a molecular "size" or weight below which there are no concerns for adverse effects on human health.

In the proposed rule, the proposed definition of the glycol ethers category was incorrectly defined in the preamble at page 36181, third column, and in the table to § 372.65 as follows:

In the preamble:

R - $(OCH_2CH_2)_n$ - OR'
Where:
n = 1, 2, or 3
R = alkyl C_7 or less or R = phenyl or alkyl substituted phenyl
R' = H or alkyl C_7 or less
or carboxylic acid ester (for example, acetate),
sulfate,
phosphate,
nitrate, or
sulfonate.

In the regulatory text:
Glycol Ethers
R - $(OCH_2CH_2)_n$ - OR'
Where:
n = 1, 2, or 3
R = alkyl C_7 or less or R = phenyl or alkyl substituted phenyl
R' = H or alkyl C_7 or less
or carboxylic acid ester
sulfate
phosphate
nitrate
sulfonate.

The correct definition is:
Glycol Ethers
R - $(OCH_2CH_2)_n$ - OR'
Where:
n = 1, 2, or 3
R = alkyl C_7 or less or R = phenyl or alkyl substituted phenyl
R' = H or alkyl C_7 or less
or OR' = carboxylic acid ester,
sulfate,
phosphate,
nitrate, or
sulfonate.

Additionally, EPA inadvertently omitted from the public docket two documents that were used in support of the proposed rule. Therefore, the following references have been added to public docket [OPPTS–400073]:

(1) Baker and Hostetler, February 13, 1991. Letter to Maria Doa concerning additional information on the glycol ethers category.

(2) Foster, et al, Toxicology, 43 (1987) 17–30. Comparison of the *in vivo* and *in vitro* testicular effects produced by methoxy-, ethoxy-, and *n*-butoxy acetic acids in the rat.

Accordingly, EPA is amending the proposed rule of July 6, 1993 (58 FR 36180), to revise the definition of the glycol ethers category.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 9, 1993.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, the proposed amendment to 40 CFR 372.65(c), published at 58 FR 36180, July 6, 1993, is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 would continue to read as follows:

Authority: 42 U.S.C. 11013 and 11028.

2. In § 372.65(c), the proposed definition for the glycol ethers category, published at page 36183, is correctly revised to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(c) * * *

Category Name	Effective Date
* * *	*
Glycol Ethers ..... R - $(OCH_2CH_2)_n$ - OR' Where: n = 1, 2, or 3 R = alkyl C_7 or less or R = phenyl or alkyl substituted phenyl R' = H or alkyl C_7 or less or OR' = carboxylic acid ester, sulfate, phosphate, nitrate, or sulfonate	1/1/94
* * *	*

[FR Doc. 93–28284 Filed 11–16–93; 8:45 am]

BILLING CODE 6560-50-F

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Parts 611 and 672

[Docket No. 931199–3299; I.D. 110193B]

Foreign Fishing; Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1994 initial specifications of groundfish and associated management measures; request for comments.

SUMMARY: NMFS proposes initial harvest specifications of groundfish and associated management measures in the Gulf of Alaska (GOA) for the 1994 fishing year. This action is necessary to carry out management objectives contained in the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP).

DATES: Comments must be received by December 10, 1993.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, National Marine Fisheries Service, P.O. Box 21668, Juneau, AK 99802–1668. The preliminary Stock Assessment and Fishery Evaluation Report, dated September 1993, is available from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510.

FOR FURTHER INFORMATION CONTACT: Jessica A. Gharrett, Fishery Management Biologist, NMFS, (907) 586–7230.

SUPPLEMENTARY INFORMATION:

Background

The domestic and foreign groundfish fisheries in the Exclusive Economic Zone of the GOA are managed by the Secretary of Commerce (Secretary) according to the FMP. The FMP was prepared by the North Pacific Fishery Management Council (Council) under the authority of the Magnuson Fishery Conservation and Management Act (Magnuson Act). The FMP is implemented by regulations for the foreign fishery at 50 CFR part 611 and for the U.S. fisheries at 50 CFR part 672. General regulations that also pertain to the U.S. fisheries appear at 50 CFR part 620.

This action is published under authority of those regulations. It proposes for the 1994 fishing year: (1) Specifications of total allowable catch (TAC) for each groundfish target species category in the GOA and apportionments thereof among domestic annual processing (DAP), joint venture processing (JVP), total allowable level of foreign fishing (TALFF), and reserves; (2) apportionments of reserves to DAP; (3) apportionments of the sablefish TAC to users of hook-and-line trawl gear; (4) apportionments of pollock TAC; (5) apportionments of Pacific cod TAC; (6) apportionments of Atka mackerel and "other species" TAC; (7) halibut PSC limits; and, (8) seasonal allocations of the halibut PSC limits. NMFS also announces interim groundfish specifications that are in effect January 1, 1994, until superseded, the opening date of the directed fishery for sablefish for hook-and-line gear, and closures to directed fishing. A discussion of each of these measures follows.

1. Proposed Establishment of TACs and Apportionments Thereof Among DAP, JVP, TALFF, and Reserves

Under § 672.20(c)(1)(ii), NMFS, after consultation with the Council, publishes in the **Federal Register** proposed specifications of annual TACs and interim harvest limits. These proposed specifications indicate apportionments of TACs among DAP, JVP, reserves, and TALFF for each target species and the "other species" category. The sum of the TACs for all species must fall within the combined optimum yield (OY) range, of 116,000–800,000 metric tons (mt), established for these species. Comments on the proposed 1994 specifications are invited from the public through December 10, 1993. After again consulting with the Council, NMFS will publish final TACs and apportionments for the 1994 fishing year in the **Federal Register**.

Species TACs are apportioned initially among DAP, JVP, TALFF, and reserves under § 611.92(c)(1) and § 672.20(a)(2). DAP amounts are intended for harvest by U.S. fishermen for delivery and sale to U.S. processors. JVP amounts are intended for joint ventures in which U.S. fishermen deliver their catches to foreign processors at sea. TALFF amounts are intended for harvest by foreign fishermen. Existing harvesting and processing capacity of the U.S. industry is capable of utilizing the entire 1994 TAC specification for GOA groundfish. Therefore, the Council recommended that DAP equal TAC for each species category, resulting in no proposed amounts of TALFF or JVP for the 1994 fishing year.

The reserves for the GOA are 20 percent of the TACs for pollock, Pacific cod, flatfish target species categories, and "other species." If necessary, these reserve amounts may be set aside for possible apportionment to DAP and/or to JVP if the initial apportionments prove inadequate. Reserves that are not apportioned to DAP or JVP may be reapportioned to TALFF. Given that the GOA groundfish TACs have been fully utilized by DAP since 1987, NMFS has reapportioned all the reserves to DAP effective on January 1 for the preceding 6 years, including 1993.

The Council met during September 21–26, 1993, to review scientific information concerning groundfish stocks. The preliminary Stock Assessment and Fishery Evaluation Report (SAFE), dated September 1993, prepared and presented to the Council by the GOA Plan Team (Plan Team), summarizes the best available scientific information. At this time, the September 1993 SAFE report information is largely unchanged from that used to manage the groundfish fisheries in the GOA during 1993, except for a decrease in pollock and Pacific cod biomass, and new biomass estimates for Atka mackerel and for three species in the demersal shelf rockfish (DSR) complex. Additional information from the 1993 triennial trawl survey is anticipated to be incorporated in the final 1993 SAFE report, to be released in November 1993 for review by the Council, Scientific and Statistical Committee (SSC), and Advisory Panel (AP) in December. Except for pollock, Pacific ocean perch (POP), DSR, and Atka mackerel, changes in information concerning stock abundance and trends relative to the 1993 fishing year result from new analyses of existing data as updated with recent commercial catch information.

For pollock, updated information about exploitable biomass and the acceptable biological catch (ABC) in the combined Western and Central GOA (W/C GOA) are derived from the 1993 spring hydroacoustic survey in Shelikof Strait, new egg production estimates of spawning biomass, estimates of catch-at-age from the 1992 fishery, length frequency data from the 1992–1993 hydroacoustic surveys and from the commercial fishery, and updated catch and discard estimates. Following a discussion of stock synthesis model and risk assessment, the Plan Team recommended a W/C GOA ABC of 172,000 mt but recommended that the 1994 pollock TAC should be lower than the ABC to address the following concerns: (1) Although the 1994 projected pollock biomass is considered healthy, stock biomass is in a declining trend, which began in 1983; (2) the optimal fishing mortality rate derived from the current model spawning pollock biomass is projected to approach historic lows by 1995; and, (3) the current biomass is supported by a single strong year class (1988) with no signs of more recent strong year classes. In consideration of these factors and overall concerns for the GOA ecosystem, the SSC could not support an increase to the ABC above the value obtained from using the fishing exploitation rate used during the past several years, 78,000 mt. The SSC concurred in the Plan Team's estimated biomass increase projected for the Eastern GOA, but recommended reducing the Plan Team's recommended ABC (12,250 mt) to 5,550 mt, consistent with proportionate decreases recommended by the SSC for the W/C GOA. The Council adopted the SSC's recommendation of an ABC.

For Pacific cod, the status of stocks analysis presented in the SAFE report was updated with catch and discard data. The analysis results in a 1994 biomass estimate of 294,000 mt, lower than the 324,000 mt established for 1993. The Council adopted the Plan Team's and SSC's recommendation of 52,700 mt for the 1994 Pacific cod ABC, which is a 4,000 mt decrease from the 1993 ABC level (56,700 mt).

No new analyses were presented for flatfishes. However, the Plan Team recommended that rex sole be removed from deep water flatfish and established as a separate target species to provide flexibility in managing rockfish bycatch. With the exception of subtracting the ABC for rex sole from the 1993 ABC specified for the deep water flatfish complex, ABCs for flatfish groups did not change from those in the November 1992 SAFE.

For POP, the preliminary biomass assessment for 1994 had only minor differences from that used to manage POP in 1993. The 1994 assessment uses spawn-recruit data generated by a stock synthesis model to derive an optimal fishing mortality rate (0.08) and target female spawner biomass (150,000 mt), estimates of F_{MSY} and B_{MSY}, respectively. The optimal fishing mortality rate was then adjusted by the ratio of current spawner biomass/target spawner biomass and the resultant exploitation rate was used to arrive at an ABC for POP of 3,378 mt (rounded to 3,380 mt). At its September 1993 meeting, the Council also recommended that overfishing levels for POP be established by regulatory area as a means to control POP mortality in the Central Regulatory Area, where bycatch needs in existing fisheries exceed available POP ABC.

For 1994, the Plan Team did not recommend separation of the black rockfish from the pelagic shelf rockfish complex as in 1993. In addition to a lack of information on which to base biomass and ABC estimates, the 1993 black rockfish catch appears to have fallen dramatically from that of recent years, alleviating the need to provide immediate additional protection for this species.

For DSR, new biomass estimates were presented for quillback, rosethorn, and tiger rockfish. In past years, the ABC for DSR was based on the natural mortality and biomass of yelloweye rockfish, but for 1994 the basis for determining DSR ABC was expanded to account for the proportion of catch of other species in the complex. The overfishing level for DSR remains based solely on yelloweye rockfish.

Atka mackerel occurs primarily in the Western Regulatory Area and is currently part of the "other species" complex. A recently-developed target fishery or Atka mackerel in the Western Regulatory Area preempted fishing activities for this category in other GOA areas and prompted separate TAC specifications for "other species" for the three regulatory areas for 1993. Amendment 31, approved on October 18, 1993, establishes a separate target category for Atka mackerel beginning with the 1994 fishing year. In anticipation of such approval, the SSC, AP, and Council made preliminary 1994 recommendations of overfishing and ABC for Atka mackerel. These recommendations are based on a new biomass assessment for Atka mackerel presented in the Amendment 31 Environmental Assessment and to the Plan Team, SSC, AP, and Council in September 1993. This assessment is based on the 1990 trawl survey and a ratio of ABC/biomass similar to that recommended for the Aleutian Islands subarea (0.15). Because Atka mackerel is established as a separate target species, it is no longer necessary to establish separate TACs for "other species" for the three regulatory areas. Therefore, NMFS proposes applying a GOA-wide TAC for "other species" in 1994.

The Council considered information in the SAFE report, recommendations from its SSC and its AP, as well as public testimony. The Council then proposed the ABCs as recommended by the SSC and the TACs as recommended by the AP. Each of these TAC specifications is shown in Table 1.

TABLE 1.—PRELIMINARY 1994 ABCS, PROPOSED TACS, ONE-FOURTH TACS AND DAPS OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE PROPOSED TO BE APPORTIONED TO DAP

Species	Area[1]	ABC	TAC=DAP	1/4 TAC=DAP
Pollock:[2]				
Shumagin	(61)	16,930	16,930	4,232
Chirikof	(62)	18,250	18,250	4,563
Kodiak	(63)	42,820	42,820	10,705
Subtotal	W/C	78,000	78,000	19,500
Subtotal	E	5,550	5,550	1,387
Total		83,550	83,550	20,887
Pacific cod:[3]				
Inshore	W	.....	15,660	3,915
Offshore	W	.....	1,740	435
Inshore	C	.....	29,430	7,357
Offshore	C	.....	3,270	818
Inshore	E	.....	2,340	585
Offshore	E	.....	260	65
Subtotal	W	17,400	17,400	4,350
Subtotal	C	32,700	32,700	8,175
Subtotal	E	2,600	2,600	650
Total		52,700	52,700	13,175
Flatfish[4] (deepwater)	W	740	500	125
	C	20,680	8,000	2,000
	E	4,990	500	125
Total		26,410	9,000	2,250
Rex sole[4]	W	1,280	500	125
	C	14,900	7,000	1,750
	E	2,940	500	125
Total		19,120	8,000	2,000
Flathead sole	W	12,580	2,000	500
	C	31,830	5,000	1,250
	E	5,040	3,000	750
Total		49,450	10,000	2,500
Flatfish[5] (shallow water)	W	27,480	4,500	1,125
	C	21,260	10,000	2,500
	E	1,740	1,740	435
Total		50,480	16,240	4,060
Arrowtooth flounder	W	38,880	5,000	1,250
	C	253,330	20,000	5,000
	E	29,080	5,000	1,250

TABLE 1.—PRELIMINARY 1994 ABCs, PROPOSED TACs, ONE-FOURTH TACs AND DAPs OF GROUNDFISH (METRIC TONS) FOR THE WESTERN/CENTRAL (W/C), WESTERN (W), CENTRAL (C), AND EASTERN (E) REGULATORY AREAS AND IN THE WEST YAKUTAT (WYK), SOUTHEAST OUTSIDE (SEO), AND GULF-WIDE (GW) DISTRICTS OF THE GULF OF ALASKA. AMOUNTS SPECIFIED AS JOINT VENTURE PROCESSING (JVP) AND TOTAL ALLOWABLE LEVEL OF FOREIGN FISHING (TALFF) ARE PROPOSED TO BE ZERO AND ARE NOT SHOWN IN THIS TABLE. RESERVES ARE PROPOSED TO BE APPORTIONED TO DAP—Continued

Species	Area[1]	ABC	TAC=DAP	¼ TAC=DAP
Total		321,290	30,000	7,500
Sablefish[6]	W	2,030	2,030	508
	C	9,610	9,610	2,402
	WYK	3,830	3,830	958
	SEO	5,430	5,430	1,357
Total		20,900	20,900	5,225
Pacific ocean perch[7]	W	760	341	85
	C	950	949	238
	E	1,670	1,270	317
Total		3,380	2,560	640
Short raker/rougheye[8]	W	100	90	23
	C	1,290	1,161	290
	E	570	513	128
Total		1,960	1,764	441
Other rockfish Helvetica[9 10 11]	W	330	214	54
	C	1,640	1,064	266
	E	6,330	4,105	1,026
Total		8,300	5,383	1,346
Northern rockfish[12]	W	1,000	1,000	250
	C	4,720	4,720	1,180
	E	40	40	10
Total		5,760	5,760	1,440
Pelagic shelf rockfish[13]	W	1,010	1,010	253
	C	4,450	4,450	1,112
	E	1,280	1,280	320
Total		6,740	6,740	1,685
Demersal shelf rockfish[11]	SEO	943	800	200
Thornyhead rockfish	GW	1,180	1,062	265
Atka mackerel[14]	GW	4,800	4,800	1,200
Other species[14]	GW	*N/A	12,963	3,241
Grand total[15]		656,963	272,222	68,055

*Not available.

[1] See § 672.2 for definitions of regulatory area, regulatory district, and statistical area.

[2] Pollock is apportioned to three statistical areas in the combined Western/Central Regulatory Area (Table 3), each of which is further divided into equal quarterly allowances. The first quarterly allowances are in effect on an interim basis. In the Eastern Regulatory Area, pollock is not divided into quarterly allowances, and one-fourth of the TAC is available on an interim basis.

[3] Pacific cod is allocated 90 percent to the inshore, and 10 percent to the offshore component. One-fourth of the inshore and offshore allocations will be available on an interim basis. Component allowances are shown in Table 4.

[4] "Deep water flatfish" means Dover sole and Greenland turbot. Rex sole is a separate target species beginning with the 1994 fishing year.

[5] "Shallow water flatfish" means flatfish not including "deep water flatfish," flathead sole, rex sole, or arrowtooth flounder.

[6] Sablefish is allocated to trawl and hook-and-line gears (Table 2).

[7] "Pacific ocean perch" means *Sebastes alutus*.

[8] "Shortraker/rougheye rockfish" includes *Sebastes borealis* (shortraker) and *S. aleutianus* (rougheye).

[9] "Other rockfish" in the Western and Central Regulatory Areas and in the West Yakutat District includes slope rockfish and demersal shelf rockfish. The category "other rockfish" in the Southeast Outside District includes Slope rockfish.

[10] "Slope rockfish" includes *Sebastes aurora* (aurora), *S. melanostomus* (blackgill), *S. paucispinis* (bocaccio), *S. goodei* (chilipepper), *S. crameri* (darkblotch), *S. elongatus* (greenstriped), *S. variegates* (harlequin), *S. wilsoni* (pygmy), *S. proriger* (redstripe), *S. zacentrus* (sharpchin), *S. jordani* (shortbelly), *S. brevispinis* (silvergrey), *S. diploproa* (splitnose) *S. saxicola* (stripetail) *S. miniatus* (vermilion), and *S. reedi* (yellowmouth).

[11] "Demersal shelf rockfish" includes *Sebastes pinniger* (canary), *S. nebulosus* (china), *S. caurinus* (copper), *S. maliger* (quillback), *S. babcocki* (redbanded), *S. helvomaculatus* (rosethorn), *S. nigrocinctus* (tiger), and *S. ruberrimus* (yelloweye).

[12] "Northern rockfish" means *Sebastes polyspinis*.

[13] "Pelagic shelf rockfish" includes *Sebastes malanops* (black), *S. mystinus* (blue), *S. ciliatus* (dusky), *S. entomelas* (widow), and *S. flavidus* (yellowtail).

[14] Atka mackerel is a separate target species beginning in 1994. "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, squid, and octopus. The TAC for "other species" equals 5 percent of the TACs of target species.
[15] The total ABC reflects the sum of the ABCs for target species.

The sum of the TACs proposed by the Council, including a separate TAC for Atka mackerel and resultant adjustments to the "other species" category, is 272,222 mt, which is 89 percent of the sum of TACs for 1993 and which falls within the OY range specified by the FMP. In many cases, the proposed 1994 TAC specification for a target species category is the same as the final 1993 initial TAC specification. Target species with proposed TACs equal to those in 1993 are flathead sole, shallow water flatfish, arrowtooth flounder, sablefish, and all rockfishes including thornyhead rockfish. Target species for which recommended TACs are lower than in previous years are pollock, Pacific cod, and deep water flatfish, including rex sole. For pollock, 1994 recommended TACs for the W/C GOA are substantially lower than those adopted in 1993. A decrease in pollock biomass and ABC estimates prompted recommendation of 1994 TACs equalling 70 percent of 1993 TACs. Only the TAC for pollock in the Eastern Regulatory Area was recommended to be higher than in 1993. In the Eastern Regulatory Area, analysis of trawl survey data resulted in an increased biomass estimate and a greater than 60 percent increase over the 1993 TAC.

Proposed TAC amounts for other species remain unchanged from 1993 levels except for Pacific cod, deep water flatfish, and Atka mackerel. Continued decline in Pacific cod stock abundance resulted in a recommended decrease in the 1994 TACs; the total proposed 1994 GOA TAC is lower than the 1993 ABC, TAC, and catch. Flatfish TACs adopted in recent years have been substantially lower than ABCs due both to limited demand and because harvests have been controlled by halibut bycatch mortality restrictions. For 1994, the Council recommended that rex sole be established as a separate target species, because the principal target species, rex and Dover sole, experience different bycatch rates of POP, which could then be more effectively managed. The sum of the rex sole and remaining deep water flatfish TACs is 17,000 mt, slightly lower than the 19,740 mt specified for 1993. For POP, the Council recommended a preliminary 1994 TAC, of 2,560 mt, the same as that specified by the Secretary for 1993 after the April 1993 Council meeting. In a separate but related action, the Council adopted a rebuilding policy for POP under proposed Amendment 32 to the FMP. If approved, that amendment would establish the method for calculating the annual POP TAC in the FMP. Although the amendment would not be effective until some time during the 1994 fishing year, the TAC implicit in the Council's preferred alternative would presumably be reflected in the December Council TAC recommendation. A recommendation to apply the overfishing definition for POP by regulatory area is anticipated to promote uniform rebuilding rates and limit POP mortality by curtailing fishing activities in the Central Regulatory Area in 1994.

For Atka mackerel, the Council recommended a preliminary 1994 TAC equal to the recommended ABC of 4,800 mt. Creation of this new target species also results in an increase of the TAC for "other species" category, which is designated as 5 percent of the TACs of target species. At the December 1993 Council meeting, the Council will make final recommendations for 1994 initial groundfish TACs.

NMFS has reviewed the Council's recommendations for TAC specifications and apportionments and hereby proposes these specifications under § 672.20(c)(1)(ii)(A). Public comment and new information may be forthcoming that could cause the Council to change its recommendations at its December 1993 meeting.

2. Proposed Apportionment of Reserves to DAP

Regulations implementing the FMP require 20 percent of each TAC for pollock, Pacific cod, flatfish species, and the "other species" category be set aside in reserves for possible apportionment at a later date (§ 672.20(a)(2)(ii)). Consistent with (§ 672.20(a)(2)(iii), NMFS is proposing to apportion the 1994 reserves for each of the four species categories to DAP, anticipating that domestic harvesters and processors have established markets for these species and should be provided the opportunity to realize revenues from the harvest of the full DAP amounts so specified. Specifications of DAP shown in Table 1 reflect apportioned reserves.

3. Proposed Apportionment of the Sablefish TACs to Users of Hook-and-Line and Trawl Gear

Under § 672.24(c), sablefish TACs for each of the regulatory areas and districts are assigned to hook-and-line and trawl gear. In the Central and Western Regulatory Areas, hook-and-line gear is assigned 80 percent of the TACs and 20 percent is assigned to trawl gear. In the Eastern Regulatory Area, 95 percent of the TAC is assigned to hook-and-line gear and 5 percent is assigned to trawl gear. The trawl gear allocation in the Eastern Regulatory Area may only be used as bycatch to support directed fisheries for other target species. Sablefish caught in the GOA with gear other than hook-and-line or trawl must be treated as prohibited species and may not be retained. Table 2 shows the assignments of the proposed 1994 sablefish TACs between hook-and-line and trawl gears.

TABLE 2.—PROPOSED 1994 SABLEFISH TAC SPECIFICATIONS IN THE GULF OF ALASKA AND ASSIGNMENTS THEREOF TO HOOK-AND-LINE AND TRAWL GEAR. VALUES ARE IN METRIC TONS.

Area/District	TAC	Hook-and-line share	Trawl share
Western	2,030	1,624	406
Central	9,610	7,688	1,922
Eastern:			
West Yakutat	3,830	3,638	192
Southeast Outside	5,430	5,158	272
Total	20,900	18,108	2,792

4. Proposed Apportionments of Pollock TAC

In the GOA, pollock is apportioned by area and season. These amounts are further apportioned between inshore and offshore components. Regulations at § 672.20(a)(2)(iv) require that the TAC for pollock in the combined W/C GOA be apportioned among statistical areas Shumagin (61), Chirikof (62), and Kodiak (63) in proportion to known distribution of the pollock biomass. This measure was intended to provide spatial distribution of the pollock harvest as a sea lion protection measure. Each statistical area apportionment is further divided equally into the four calendar quarters. Within any fishing year, any unharvested amount of any quarterly allowance of pollock TAC is added in equal proportions to the quarterly allowances of following quarters, resulting in a sum for each quarter not to exceed 150 percent of the initial quarterly allowance. Similarly, harvests in excess of a quarterly allowance of TAC are deducted in equal proportions

from the remaining quarterly allowances of that fishing year. The Eastern Regulatory Area proposed TAC of 5,550 mt is not allocated among smaller areas, or quarterly.

Regulations at § 672.20(a)(2)(v)(A) require that the DAP apportionment for pollock in all regulatory areas and all quarterly allowances thereof be divided into inshore and offshore components. The inshore component is apportioned 100 percent of the pollock DAP in each regulatory area after subtraction of amounts that are determined by the Regional Director to be necessary to support the bycatch needs of the offshore component in directed fisheries for other groundfish species. At this time, these bycatch amounts are unknown, and will be determined during the fishing year. The proposed distribution of pollock within the combined W/C GOA is shown in Table 3, except that inshore and offshore component apportionments of pollock are not shown.

TABLE 3.—PROPOSED DISTRIBUTION OF POLLOCK IN THE WESTERN AND CENTRAL REGULATORY AREAS OF THE GULF OF ALASKA (W/C GOA); BIOMASS DISTRIBUTION, AREA APPORTIONMENTS, AND QUARTERLY ALLOWANCES. ABC FOR THE W/C GOA IS PROPOSED TO BE 78,000 METRIC TONS (mt.). BIOMASS DISTRIBUTION IS BASED ON 1990 SURVEY DATA. TACS ARE EQUAL TO ABC. INSHORE AND OFFSHORE ALLOCATIONS OF POLLOCK ARE NOT SHOWN. ABCS AND TACS ARE ROUNDED TO THE NEAREST 10 MT.

Statistical area	Biomass percent	1994 ABC=TAC	Quarterly allowance
Shumagin (61)	21.7	16,930	4,232
Chirikof (62)	23.4	18,250	4,563
Kodiak (63)	54.9	42,820	10,705
Total	100.0	78,000	19,500

5. Proposed Apportionments of Pacific Cod TAC

Regulations at § 672.20(a)(2)(v)(B) require that the DAP apportionment of Pacific cod in all regulatory areas be divided into inshore and offshore components. The inshore component is equal to 90 percent of the Pacific cod TAC in each regulatory area. Inshore and offshore component allocations of the proposed 52,700 mt TAC for each regulatory area are shown in Table 4.

TABLE 4.—PROPOSED 1994 ALLOCATION (METRIC TONS) OF PACIFIC COD IN THE GULF OF ALASKA; ALLOCATIONS TO INSHORE AND OFFSHORE COMPONENTS

Regulatory area	TAC	Component allocation	
		Inshore (90%)	Offshore (10%)
Western	17,400	15,660	1,740
Central	32,700	29,430	3,270
Eastern	2,600	2,340	260
Total	52,700	47,430	5,270

6. Proposed Apportionments of Atka Mackerel and "Other Species" TAC

The FMP specifies that amounts for the "other species" category are calculated as 5 percent of the combined TACs for target species. For 1993, the Council recommended that "other species" be made available separately in each of the three regulatory areas to avoid preemption of fishing activities in the remainder of the GOA by a target fishery for Atka mackerel that developed in the Western Regulatory Area. Approval of Amendment 31, which established Atka mackerel as a separate target species, rather than a species component of "other species," removed the necessity to apportion "other species" among regulatory areas in 1994. In anticipation of approval of Amendment 31, the Council at the September 1993 meeting recommended GOA-wide TACs for Atka mackerel and "other species". The preliminary 1994 Atka mackerel TAC is equal to the ABC of 4,800 mt. The "other species" TAC is calculated as 12,963 mt, which is 5 percent of the sum of combined TACs for the target species.

7. Proposed Halibut Prohibited Species Catch (PSC) Mortality Limits

Under § 672.20(f), annual Pacific halibut PSC mortality limits are established for trawl and hook-and-line gear and may be established for pot gear. For 1993, NMFS, after consulting with the Council, established halibut PSC mortality limits of 2,000 mt and 750 mt for trawl and hook-and-line gear, respectively. The hook-and-line halibut PSC limit is further apportioned between the DSR fishery (10 mt halibut mortality) and all other hook-and-line fisheries (740 mt).

At its September 1993 meeting, the Council recommended that for 1994, the Secretary re-establish 1993 PSC limits of 2,000 mt and 750 mt to trawl and hook-and-line gear, respectively, with 10 mt of the hook-and-line limit allocated to the DSR fishery and the remainder to other hook-and-line gear fisheries. As in 1993, the Council proposes to exempt pot gear from halibut limits for 1994. The Council proposed this exemption after considering that the groundfish catch and associated halibut bycatch and mortality rates for pot gear are low (5 percent).

At the September 1993 meeting, the Council recommended that NMFS prepare a proposed rule for Secretarial review that, if approved, would authorize separate apportionments of the trawl halibut bycatch mortality limit between trawl fisheries for deep water and shallow water species. These apportionments could be seasonally divided to avoid seasonally high halibut bycatch rates. The proposed and final rule for that action would include proposed and final 1994 PSC halibut specifications for trawl fisheries.

NMFS preliminary concurs in the Council's 1994 recommendations. In doing so, NMFS has considered the following types of information as presented by, and summarized from, the preliminary 1993 SAFE report, or from public comment and testimony:

(A) *Estimated Halibut Bycatch in Prior Years*

The best available information on estimated halibut bycatch is available from 1993 observations of the groundfish fisheries as a result of the NMFS Observer Program. The calculated halibut bycatch mortality by trawl, hook-and-line, and pot gear through September 25, 1993, is 1,658 mt, 1,328 mt, and 2.4 mt, respectively, for a total of 2,988 mt. Halibut bycatch restrictions seasonally constrained trawl gear fisheries during the first, second, and third quarters of the fishing year. Trawling, with the exception of trawling for pollock with pelagic trawl gear, was

closed in 1993 from March 24 to March 29 (58 FR 16372, March 26, 1993), from April 19 to June 28 (58 FR 21545, April 22, 1993), and from August 3 to October 4 (58) FR 41640, August 5, 1993) as a result of halibut PSC seasonal allowances. NMFS projects that the GOA trawl fishery will reach the fourth quarter seasonal allowance by early November 1993. Hook-and-line gear was closed to directed fishing for all but DSR on June 4 to December 31, 1993 (58 FR 32064, June 8, 1993; 58 FR 46095, September 1, 1993).

The amount of groundfish that trawl or hook-and-line gear might have harvested if halibut had not been seasonally limiting in 1993 is unknown. For trawl gear, some remaining groundfish will be harvested during the fourth quarter of 1993 pending the availability of halibut PSC bycatch. However, lacking market incentives, some amounts of groundfish will not be harvested, regardless of halibut PSC bycatch availability. Sablefish and Pacific cod are of the most interest to fishermen using hook-and-line gear. Over 900 mt of sablefish in the Western Regulatory Area, and 1,000 mt of Pacific cod in the Eastern Regulatory Area remain unharvested. An unknown portion of these amounts likely would have been harvested had 1993 halibut restrictions not been limiting.

(B) *Expected Changes in Groundfish Stocks*

At its September 1993 meeting, the Council adopted lower ABCs for W/C GOA pollock, GOA-wide Pacific cod, and a higher ABC for pollock in the Eastern Regulatory Area than ABCs adopted for these species for 1993. Other ABCs are essentially unchanged from 1993 levels. More information on these proposed changes is included in the preliminary SAFE report, dated September 1993, and in the Council minutes.

(C) *Expected Changes in Groundfish Catch*

The total of the proposed 1994 specified TACs for the GOA is 272,222 mt, which represents 89 percent of the sum of TACs for 1993 (306,651 mt). Significant changes in TACs for pollock and Pacific cod are proposed.

TACs for W/C GOA pollock and GOA-wide Pacific cod are proposed to decrease from 111,000 mt to 78,000 mt, and from 56,700 mt to 52,700 mt, respectively. Reduced Pacific cod TACs could result in reduced halibut mortality associated with those fisheries, and in more halibut bycatch becoming available to support other trawl fisheries, especially those for flatfishes. Proposed 1994 TACs for flatfishes are the same as those for 1993, except for the separation of rex sole from the deep water complex and a slight decrease in the total TAC available for the two target groups. The changes in pollock TACs are not expected to affect halibut bycatches, because most of the pollock harvest in the GOA is accomplished with pelagic trawls that experience low bycatch rates of halibut.

(D) *Current Estimates of Halibut Biomass and Stock Condition*

The stock assessment for 1992 conducted by the International Pacific Halibut Commission (IPHC) indicates that the total exploitable biomass of Pacific halibut was 265.8 million pounds. This represents a decline in biomass of 11 percent from the previous stock assessment, a rate similar to declines observed in previous years. The IPHC is preparing a 1993 stock assessment for the 1993 fishing year, which is expected to be available in the final SAFE dated November 1993.

(E) *Potential Impacts of Expected Fishing for Groundfish on Halibut Stocks and U.S. Halibut Fisheries*

Halibut fisheries will be adjusted to account for the overall halibut PSC mortality limit established for groundfish fisheries. The 1994 groundfish fisheries are expected to use the entire proposed halibut PSC limit of 2,750 mt. The allowable directed commercial catch is determined by accounting for the recreational catch, waste, and bycatch mortality, and then providing the remainder to the directed fishery. Therefore, although the amount of halibut available for directed halibut fisheries will be reduced, halibut bycatch in groundfish fisheries is not expected to have any effect on halibut stocks.

(F) *Methods Available For, and Costs of, Reducing Halibut Bycatches in Groundfish Fisheries*

Methods available for reducing halibut bycatch include (1) reducing amounts of groundfish TACs, (2) reducing halibut bycatch rates through a Vessel Incentive Program, (3) modifications to gear and fish handling procedures, and (4) changes in groundfish fishing seasons.

Reductions in groundfish TACs provide no incentives for fishermen to reduce bycatch rates. Costs that would be imposed on fishermen as a result of reducing TACs depend on species and amounts of groundfish foregone.

Trawl vessels carrying observers for purposes of complying with the Observer Plan are subject to the Vessel Incentive Program. The program encourages trawl fishermen to avoid high halibut bycatch rates while conducting groundfish fisheries by specifying bycatch rate standards for various target fisheries.

Current regulations require groundfish pots to have halibut exclusion devices to reduce halibut bycatches. Resulting low bycatch and mortality rates of halibut in pot fisheries have justified exempting pot gear from PSC limits. Because halibut bycatch mortality in the pot fisheries is so low, and not expected to increase during 1994, the Council has proposed to continue to exempt these fisheries from halibut bycatch restrictions in 1994. A recent change in the definition of pelagic trawl gear is intended to reduce bycatch of halibut by displacing fishing effort off the bottom of the sea floor when certain halibut bycatch levels are reached during the fishing year. The definition provides standards for physical conformation and also for performance of the trawl gear in terms of crab bycatch (58 FR 39680, July 26, 1993). A recent regulatory change required all hook-and-line vessel operators to employ careful release measures when handling halibut bycatch (58 FR 28799, May 17, 1993). This measure is intended to reduce handling mortality, increase the amount of groundfish harvested under the available halibut mortality bycatch limits, and possibly lower overall halibut bycatch mortality in groundfish fisheries.

Halibut bycatch has been reduced by changes in some groundfish fishing seasons. The sablefish hook-and-line season starts around May 15, and the rockfish trawl fishery is delayed until the third quarter, around July 1. These delays postpone the start of the sablefish and rockfish fisheries to times when seasonal halibut bycatch rates are lower.

Methods available for reducing halibut bycatch listed above will be reviewed by NMFS and the Council to determine their effectiveness. Changes will be initiated as necessary in response to this review or to public testimony and comment, either through regulatory or FMP amendments.

Consistent with the goals and objectives of the FMP to reduce halibut bycatches while providing an opportunity to harvest the groundfish OY, NMFS proposes the assignments of 2,000 mt and 750 mt of halibut PSC mortality limits to trawl and hook-and-line gear, respectively. While these limits would reduce the harvest quota for commercial halibut fishermen, NMFS has determined that they would

not result in unfair allocation to any particular user group. NMFS recognizes that some halibut bycatch will occur in the groundfish fishery, but expansion of the Vessel Incentive Program, required modifications to gear and handling procedures, and delays to the start of the sablefish hook-and-line gear and rockfish trawl gear fisheries are intended to reduce adverse impacts on halibut fishermen while promoting the opportunity to achieve the OY from the groundfish fishery.

8. Proposed Seasonal Allocations of the Halibut PSC Limits

Under § 672.20(f)(2)(iii), NMFS proposes to allocate seasonally the halibut PSC limits based on recommendations from the Council. The FMP requires that the following information be considered by the Council in recommending seasonal allocations of halibut: (1) Seasonal distribution of halibut; (2) seasonal distribution of target groundfish species relative to halibut distribution; (3) expected halibut bycatch needs on a seasonal basis relevant to changes in halibut biomass and expected catches of target groundfish species; (4) expected bycatch rates on a seasonal basis; (5) expected changes in directed groundfish fishing seasons; (6) expected actual start of fishing effort; and, (7) economic effects of establishing seasonal halibut allocations on segments of the target groundfish industry.

The Council recommended the same seasonal allocation of PSC limits for the 1994 fishing year as those in effect during the 1993 fishing year (58 FR 16787, March 31, 1993). The publication of the final 1993 initial groundfish and PSC specifications (58 FR 16787, March 31, 1993) summarizes Council findings with respect to each of the FMP considerations set forth above. At this time, the Council's findings are unchanged from those set forth for 1993.

Slight adjustments from the 1993 seasonal allocations are proposed to accommodate dates of anticipated fishing effort and the opening date of the hook-and-line directed fishery for sablefish (May 18, 1994). Pacific halibut PSC catch limits, and apportionments thereof, are presented in Table 5. Regulations specify that any overages or shortfalls in PSC catches will be accounted for within the 1994 season.

TABLE 5.—PROPOSED 1993 PACIFIC HALIBUT PSC LIMITS, ALLOWANCES, AND APPORTIONMENTS. THE PACIFIC HALIBUT PSC LIMIT FOR HOOK-AND-LINE GEAR IS ALLOCATED TO THE DEMERSAL SHELF ROCKFISH (DSR) FISHERY AND FISHERIES OTHER THAN DSR. VALUES ARE IN METRIC TONS. ALL ALLOWANCES AND APPORTIONMENTS OTHER THAN THOSE ON JANUARY 1 AND DECEMBER 31 BEGIN AND END AT 12 NOON, ALASKA LOCAL TIME

Trawl gear		Hook-and-line gear			
		Other than DSR		DSR	
Dates	Amounts	Dates	Amounts	Dates	Amounts
January 1–April 1	600 (30%)	January 1–May 18	200 (27%)	January 1–December 31	10 (100%)
April 1–July 1	400 (20%)	May 18–August 31	500 (68%)		
July 1–October 1	600 (30%)	September 1–December 31	40 (5%)		
October 1–December 31	400 (20%)				
Total	2,000 (100%)		740 (100%)		10 (100%)

Assumed halibut mortality rates for halibut PSC bycatch in 1993 are based on an average of bycatch rates seen by NMFS observers in 1990 and 1991. These rates are listed in Table 6, and reflect mandatory careful release measures implemented during 1993 (58 FR 28799, May 17, 1993).

TABLE 6.—1993 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA WITH MANDATORY CAREFUL RELEASE MEASURES. TABLE VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD

Gear and target	Observed vessels	Unobserved vessels
Hook-and-line:		
Sablefish	14.0	17.0
Other targets	11.5	14.0
Trawl:		
Pelagic pollock	75.0	75.0
Rockfish, shallow water flatfish, "other spp."	60.0	60.0

TABLE 6.—1993 ASSUMED PACIFIC HALIBUT MORTALITY RATES FOR VESSELS FISHING IN THE GULF OF ALASKA WITH MANDATORY CAREFUL RELEASE MEASURES. TABLE VALUES ARE PERCENT OF HALIBUT BYCATCH ASSUMED TO BE DEAD—Continued

Gear and target	Observed vessels	Unobserved vessels
Pacific cod, non-pelagic pollock, deep water flats	55.0	55.0
Pot:		
All targets	5.0	5.0

The IPHC analyzed data collected inseason from NMFS observers during the 1993 fishing year. The results of this analysis are presented as an appendix to the preliminary SAFE report (September 1993) and suggest that halibut mortality rates for trawl and pot vessels are unchanged from those assumed during 1993. However, halibut bycatch mortality rates for hook-and-line vessels appear to have changed from those established preseason for 1993. Rates based on inseason observer data suggest that halibut mortality experienced in 1993 hook-and-line fisheries under regulations requiring careful release procedures were as follows: For vessels targeting sablefish, 18 percent (observed vessels) and 20.5 percent (unobserved); and for Pacific cod, 8 percent for all vessels. The IPHC is anticipated to provide additional data for the final 1993 SAFE report in November which will reflect a thorough analysis of debriefed observer data from 1992 fisheries. After the December 1993 Council meeting, NMFS will consider all available data and will publish preseason assumed halibut mortality rates in the **Federal Register** publication announcing the final 1994 initial specifications of groundfish TACs.

Interim Groundfish Harvest Specifications

Current regulations at § 672.20(c)(1)(ii)(A) require that one-fourth of the preliminary specifications (not including the reserves and the first quarterly allowance of pollock), one-fourth of the inshore and offshore

allocations of Pacific cod in each regulatory area, and one-fourth of the halibut PSC amounts, take effect on January 1 on an interim basis and remain in effect until superseded by the final 1994 initial specifications published in the **Federal Register**. Seasonal apportionments of TACs or PSC limits under provisions of other regulations may supersede this interim specification. Table 1 shows amounts of preliminary specifications of target species and the "other species" categories in effect on an interim basis beginning January 1, 1994.

Opening Date of the Directed Fishery for Sablefish for Hook-and-Line Gear

Under regulations at § 672.23(c), the opening date for the directed fishing season for sablefish with hook-and-line gear is the calendar day from May 9 through May 22 upon which the tide with the smallest tidal range occurs. According to annual tide tables published by NOAA for 1994, this date is May 18, 1994. Therefore, in accordance with § 672.23 (b) and (c), the season will commence at 12:00 noon, Alaska local time, May 18, 1994.

Closures to Directed Fishing

Under § 672.20(c)(2)(ii), if the Regional Director determines that the amount of a target species or "other species" category apportioned to a fishery, or with respect to Pacific cod, to an allocation to the inshore or offshore component, is likely to be reached, the Regional Director may establish a directed fishing allowance for that species or species group. In establishing a directed fishing allowance, the Regional Director shall consider the amount of that species group or allocation of Pacific cod to the inshore or offshore component that will be taken as incidental catch in directed fishing for other species in the same regulatory area or district. If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year, NMFS will prohibit directed fishing for that species or species group in the specified regulatory area or district. The Regional Director has determined that interim amounts of groundfish specified by this proposed specification (Table 1) for species or species groups identified in Table 7 will be necessary as incidental catch to support anticipated groundfish fisheries prior to the time that final specifications of groundfish are in effect for the 1994 fishing year. Therefore, NMFS is prohibiting directed fishing for those target species, gears, and components listed in Table 7 to prevent exceeding the interim amounts of groundfish TACs specified. These closures will be in effect during the period that the appropriate interim specifications of groundfish TACs are in effect. During these closures, applicable directed fishing standards may be found at § 672.20(g). Additional closures and restrictions may be found in existing regulations at 50 CFR part 672.

TABLE 7.—CLOSURES TO DIRECTED FISHING FOR INTERIM TOTAL ALLOWABLE CATCHES IMPLEMENTED BY THIS NOTICE.[1] OFFSHORE=THE OFFSHORE COMPONENT; TRW=TRAWL; ALL=ALL GEARS; WG=WESTERN REGULATORY AREA; CG=CENTRAL REGULATORY AREA; EG=EASTERN REGULATORY AREA; GOA=ENTIRE GULF OF ALASKA

Fishery	Component	Gear	Closed areas
Atka mackerel	.....	ALL	GOA.
Northern rockfish	.....	ALL	EG.
Other rockfish[2]	.....	ALL	WG, CG.
Pacific cod	Offshore	ALL	WG, CG, EG.
Pacific ocean perch	.....	ALL	WG, CG, EG.
Rex sole	.....	ALL	WG.
Sablefish	.....	TRW	WG, CG.
Shortraker/rougheye rockfish	.....	ALL	WG, CG, EG.
Thornyhead rockfish	.....	ALL	GOA.

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR Part 672.
[2] Other rockfish includes slope and demersal shelf rockfish in the WG and CG.

After consideration of public comments and additional scientific information presented at its December 1993 meeting, the Council may recommend other closures to directed fishing. Additionally, NMFS may implement other closures at the time the final 1994 initial specifications of groundfish TACs are promulgated or during the 1994 fishing year as necessary for effective management.

Under § 672.20(b)(1), when NMFS determines after consultation with the Council that the TAC for any species or species group will be fully harvested in the DAP fishery, NMFS may specify for each calendar year the PSC limit applicable to any JVP or TALFF fisheries for that species or species group. Any PSC limit specified shall be for bycatch only and cannot be retained. Under § 672.20(c)(6), if the Regional Director determines that a PSC limit applicable to a directed JVP or TALFF fishery has been or will be reached, NMFS will publish a closure in the **Federal Register** prohibiting all further JVP or TALFF fishing in all or part of the regulatory area concerned.

The Council did not propose any PSC limits for fully utilized groundfish species at its September meeting, and it is not expected to make such recommendations at its December meeting. Groundfish PSC limits only would have been relevant if the Council had recommended groundfish apportionments to JVP or TALFF. The Council is not expected to recommend JVP or TALFF apportionments for the 1994 fishing year.

Other Matters

This action is authorized under 50 CFR 611.92 and 672.20 and is covered by the regulatory flexibility analysis prepared for the implementing regulations.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1993 SAFE report will be available for public review at the December 6–10, 1993, Council meeting. After the December meeting, a final EA will be prepared on the final 1994 TAC amounts recommended by the Council.

Consultation pursuant to section 7 of the Endangered Species Act has been initiated for the 1994 GOA initial specifications.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations.

50 CFR Part 672

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 10, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–28171 Filed 11–10–93; 4:59 pm]

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50 CFR Parts 611 and 675

[Docket No. 93110–3300; I.D. 110193D]

Foreign Fishing; Groundfish of the Bering Sea and Aleutian Islands

AGENCY: National Marine Fisheries Service (NMFS), National Atmospheric and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed 1994 initial specifications of groundfish and associated management measures; closures; and request for comments.

SUMMARY: NMFS proposes 1994 initial total allowable catches (TACs) for each category of groundfish and specifications for prohibited species bycatch allowances for the groundfish fishery of the Bering Sea and Aleutian Islands management area (BSAI). MNFS also is closing specified fisheries consistent with the interim 1994 groundfish specifications. This action is necessary to inform the public about proposed 1994 harvest specifications and associated management measures. The intended effect is to conserve and manage the groundfish resources in the BSAI and to provide an opportunity for public participation in this decision-making process.

DATES: Comments will be received through December 10, 1993, 12:00 noon, Alaska local time.

ADDRESSES: Comments should be sent to Ronald J. Berg, Chief, Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, Alaska 99802–1668. The preliminary 1994 Stock Assessment and Fishery Evaluation (SAFE) report may be requested from the North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510. Telephone (907) 271–2809.

FOR FURTHER INFORMATION CONTACT: Ellen R. Varosi, Fishery Management Biologist, NMFS, 907–586–7228.

SUPPLEMENTARY INFORMATION: Groundfish fisheries in the BSAI are governed by Federal regulations (50 CFR parts 611.93 and 675) that implement the Fishery Management Plan for the Groundfish Fishery of the BSAI (FMP). The FMP was prepared by the North Pacific Fishery Management Council (Council) and approved by the Secretary of Commerce (Secretary) under the Magnuson Fishery Conservation and Management Act (Magnuson Act).

The FMP and implementing regulations require the Secretary, after consultation with the Council, to specify for each calendar year the TAC for each target species and the "other species" category, the sum of which must be within the optimum yield range of 1.4 million to 2.0 million metric tons (mt) (§ 675.20(a)(2)). Regulations under § 675.20(a)(7)(i) further require NMFS to annually publish and solicit public comment on amounts of proposed annual TACs, apportionments of each TAC, prohibited species catch allowances, and seasonal allowances of pollock. The specifications set forth in Tables 1–6 of this action satisfy these requirements. For 1994, the proposed sum of TACs is 1,998,620 mt. Under § 675.20(a)(7)(ii), NFMS will publish the final annual TACs for 1994 and initial apportionments thereof, after considering: (1) Comments received within the comment period (see DATE); and, (2) consultations with the Council at its December 1993 meeting.

The specified TACs for each species are based on the best available biological and socioeconomic information. At its September and December meetings, the Council, its Advisory Panel (AP), and its Scientific and Statistical Committee (SSC), annually review biological information about the condition of groundfish stocks in the BSAI. This information is compiled by the Council's BSAI Groundfish Plan Team and is presented in the SAFE report. The Plan Team annually produces such a report as the first step in the process of specifying TACs. The SAFE report contains a review of the latest scientific analyses and estimates of each species' biomass, maximum sustainable yield (MSY), acceptable biological catch (ABC) and other biological parameters, as well as summaries of the economic condition of groundfish fisheries off Alaska. A preliminary 1994 SAFE report dated September 1993 provides an update on status of stocks. These preliminary assessments will be updated based on biological survey work done during the summer of 1993. Assessments will be made available by the Council in November, 1993, in the final edition of the 1994 SAFE report. Final ABCs for the 1994 fishing year will be based on the most recent stock assessments. The proposed ABCs adopted by the Council for the 1994 fishing year will be based on the best available scientific information, including projected biomass trends, information on assumed distribution of stock biomass, and revised technical methods used to calculate stock biomass.

Procedure for Estimating ABC

The Council bases its definition of ABC on the definition contained in 50 CFR part 602—Guidelines For Fishery Management Plans. These guidelines (§ 602.11(e)(1)) state, "ABC is a preliminary description of the acceptable harvest (or range of harvests) for a given stock or stock complex. Its derivation focuses on the status and dynamics of the stock, environmental conditions, other ecological factors, and prevailing technological characteristics of the fishery."

Under these guidelines, the Council is provided with the flexibility needed to develop a definition of overfishing appropriate to the individual stock or species characteristics, as long as it is defined in a way that allows the Council and the Secretary to evaluate the condition of the stock relative to the definition. Application of the overfishing definition requires some flexibility because the amount of data for different stocks varies. The calculations used to derive preliminary overfishing levels for a given stock or stock complex are described in the preliminary 1994 SAFE report dated September 1993.

Calculation of ABC varies among species depending on the quality of available data and prior knowledge of a species' stock status. The Plan Team has adopted three steps for estimating ABCs. First, the exploitable biomass of a stock is estimated. Second, the ABC for a stock is calculated by multiplying an exploitation rate times the estimated exploitable biomass. Various exploitation rates or fishing mortality (F) rates may be used in this calculation. For example, the exploitation rate that would produce MSY (F_{MSY}) may be used when the stock is known to be in good condition, high in abundance and not in danger of drastic declines. When more conservative stock management is indicated, a $F_{0.1}$ harvest strategy is used to determine an exploitation rate. This strategy determines a level of F at which the marginal increase in yield-per-

recruit due to an increase in F is 10 percent of the marginal yield-per-recruit in a newly exploited fishery. Recruitment refers to the growth of juvenile fish into the adult or exploitable population. Generally, the $F_{0.1}$ harvest strategy produces a more conservative exploitation rate than F_{MSY}. Another alternative is to use historical exploitation rates when historical fishery data indicate that a stock is not adversely affected by such rates. A switch in harvest strategy from F_{35} to F=natural mortality (M) can be used when current maturity parameter estimates are unreliable. Finally, an empirical estimation of ABC based on historical catch levels may be used when information is insufficient to estimate the biomass of a stock. Details of overfishing, ABC, and other calculation procedures are discussed in the preliminary 1994 SAFE report dated September 1993. This report is available from the Council (see **ADDRESSES**).

The Plan Team's recommendations for preliminary ABCs for each species for 1994 and other biological data are provided in the preliminary 1994 SAFE report. At its September 20–26, 1993, meeting, the Council's SSC reviewed the Plan Team's preliminary recommendations for 1994 ABCs. The SSC recommended revisions from the Plan team's recommended ABCs for Aleutian Basin (Bogoslof) pollock, Atka mackerel, and Greenland turbot. The Council adopted the ABCs recommended by the SSC (Table 1).

TABLE 1.—PROPOSED 1994 ACCEPTABLE BIOLOGICAL CATCH (ABC), TOTAL ALLOWABLE CATCH (TAC), INITIAL TAC (ITAC) AND ITAC APPORTIONMENTS, OF GROUNDFISH IN THE BERING SEA AND ALEUTIAN ISLANDS AREA.(1)(2)

[The 1994 Interim ITACs Are Established as 25 Percent of the Proposed ITAC.]

Species	ABC	TAC	Initial TAC (ITAC) = DAP(3)(4)	Over fishing level
Pollock:				
Bering Sea (BS)	1,340,000	1,300,000	1,105,000	1,340,000
Aleutian Islands (AL)	58,700	51,600	43,860	62,600
Bogoslof District	32,000	1,000	850	180,000
Pacific cod	183,000	183,000	155,550	267,000
Sablefish:				
BS	1,500	1,500	1,275	2,000
AL	2,600	2,600	2,210	3,400
Atka mackerel(9) Total	122,500	40,425	34,362	484,000
	W 53,900	13,475	11,454	.....
	C 55,125	13,475	11,454	.....
	E 13,475	13,475	11,454	.....
Yellowfin sole	238,000	193,075	164,114	275,000
Rock sole	185,000	75,000	63,750	270,000
Greenland turbot	7,000	7,000	5,950	26,100
Arrowtooth flounder	72,000	10,000	8,500	96,000
Other flatfish(5)	191,000	79,000	67,150	228,000
Pacific Ocean perch:				
BS	3,330	3,330	2,830	3,750
AL	13,900	13,900	11,815	16,800
Other red rockfish(6):				
BS	1,400	1,200	1,020	1,400
Sharpchin/Northern:				
AL	5,670	5,100	4,335	5,670
Shortraker/Rougheye:				
AL	1,220	1,100	935	1,220
Other rockfish(7)				
BS	400	360	306	400
AL	925	830	705	925
Squid	3,400	2,000	1,700	3,400
Other Species(8)	26,600	26,600	22,610	156,000
Totals	2,490,145	1,998,620	1,698,827	3,423,665

(1) Amounts are in metric tons. These amounts apply to the entire Bering Sea (BS) and Aleutian Islands (AI) area unless otherwise specified. With the exception of pollock and for the purpose of these specifications, the BS includes the Bogoslof district.
(2) Zero amounts of groundfish are specified for Joint Venture Processing (JVP) and Total Allowable Level of Foreign Fishing (TALFF).
(3) Initial TAC (ITAC) = 0.85 of TAC; initial reserve = TAC − ITAC = 299,793 mt.
(4) DAP = domestic annual processing = ITAC.
(5) "Other flatfish" include all flatfish species except for Pacific halibut (a prohibited species) and all other flatfish species that have a separate specified TAC amount.
(6) "Other red rockfish" include shortraker, rougheye, sharpchin, and northern.
(7) "Other rockfish" include *Sebastes* and *Sebastolobus* species except for Pacific ocean perch, sharpchin, northern, shortraker, and rougheye.
(8) "Other species" includes sculpins, sharks, skates, eulachon, smelts, capelin, and octopus.
(9) W is the western AI district; C is the central AI district; and E is the eastern AI/Bering Sea subarea.

A brief discussion of the SSC's revisions to the ABCs recommended by the Plan Team for Aleutian Basin pollock, Atka mackerel, and Greenland turbot follows:

Aleutian Basin pollock. The SSC concurred in the Plan Team's concept that the Aleutian Basin (Bogoslof District) pollock stock should continue to be managed separately from the Bering Sea and Aleutian Islands pollock stocks. Accordingly, separate ABCs and TACs are specified for each stock.

Although the SSC concurred in the Plan Team's preliminary biomass and ABC recommendations for the Bering

Sea and Aleutian Islands pollock stocks, the SSC did not concur in the Plan Team's projected estimate of 1994 biomass for Bogoslof District pollock. The Plan Team used new survey information to estimate a 1993 biomass of 600,000 mt. The SSC assumed that no recruitment will occur in 1993 or 1994, and calculated a projected biomass for 1994 of 491,000 mt using M = .02. The SSC then calculated the $F_{0.35}$ exploitation rate of 0.26 and adjusted this rate downward by 25 percent to select a ratio of current biomass to optimal biomass. Multiplying this result (0.065) by 491,000 yields an ABC of 32,000. Due to lack of recruitment predicted for 1993 and 1994 stocks, the Council recommended a proposed TAC of 1,000 mt to provide for bycatch in other groundfish operations.

Atka Mackerel. The SSC accepted the Plan Team's 1994 estimate of ABC (245,000 mt), although it expressed concern that the time series of trawl surveys is short and inconsistent in the extent of coverage. The SSC also was apprehensive about the possible ecosystem ramifications of an increased catch of the magnitude proposed by the Plan Team's estimate of 1994 ABC. In particular, Atka mackerel is a prey species of northern fur seals, a species listed as depleted under the Marine Mammal Protection Act, and Steller sea lions, a species listed as threatened under the Endangered Species Act. The effect of a large increase in the Atka mackerel fishery on these species is presently unclear. Given these concerns, the SSC recommended to continue its 1992 and 1993 policy to phase in the Plan Team's estimate of ABC over a 6-year period by adopting the 1993 biomass estimate (816,000 mt) and raising the exploitation rate incrementally during this period. According to this policy, the recommended ABC for 1994 is 122,500 mt. The main purpose of this approach is to postpone a large ABC increase until new survey estimates are available to validate exploitable biomass estimates.

Amendment 28 to the BSAI FMP became effective August 11, 1993 (58 FR 37660, July 13, 1993). This amendment establishes three new management districts in the Aleutian Islands (AI) subarea (western, central, and eastern AI districts) for the purpose of apportioning TAC of groundfish. To allow for improved TAC management, disperse fishing effort, and minimize the potential for undesirable effects of concentrated fishing effort on Atka mackerel stocks and marine mammal predators, the Council recommended the proposed TAC for Atka mackerel be divided equally among the western AI district, central AI district, and the eastern AI district/Bering Sea subarea. This results in a total proposed TAC for Atka mackerel in the BSAI of 40,425 mt, or 13,475 mt each for the western district, central district, and eastern district/Bering Sea subarea.

Greenland Turbot. The Plan Team used a new stock synthesis model to estimate an ABC of 18,800 mt. The SSC agreed with the use of this model. However, the SSC recommended that ABC be set at 7,000 mt due to continued poor recruitment and stock abundance levels. The Council concurred with this ABC recommendation and set the TAC at 7,000 mt for this species.

Proposed TAC Specifications

In general, the Council recommended TACs for individual groundfish species or species groups be set at either the 1993 TAC level or the 1994 proposed ABC amount. The Council adopted the 1993 TAC levels for all species except Atka mackerel, yellowfin sole, and Pacific cod. For Atka mackerel and Pacific cod, the Council adopted TACs at the proposed 1994 ABC level. For yellowfin sole, the Council recommended that the TAC be reduced from the ABC (238,000 mt) to allow for increases in the Atka mackerel and Pacific cod TACs, while maintaining the sum of the total TAC within the optimum yield range of 1.4 million to 2.0 million mt (§ 675.20(a)(2)).

The Council has expressed concern about localized depletion of sablefish in the AI and has requested that the Plan Team provide, at the Council's December 1993 meeting, information on apportioning the AI sablefish TAC among the three AI districts established under Amendment 28.

Apportionment of TAC

As required by §§ 675.20(a)(3) and 675.20(a)(7)(i), each species' TAC initially is reduced by 15 percent. The sum of these 15 percent amounts is the reserve. The reserve is not designated by species or species group, and any amount of the reserve may be reapportioned to a target species or the "other species" category during the year, providing that such reapportionments do not result in overfishing.

The initial TAC (ITAC) for each target species and the "other species" category at the beginning of the year, which is equal to 85 percent of TAC, is then apportioned between the domestic annual harvest (DAH) category and the total allowable level of foreign fishing (TALFF). Each DAH amount is further apportioned between two categories of U.S. fishing vessels. The domestic annual processing (DAP) category includes U.S. vessels that process catch on board or deliver it to U.S. fish processors. The joint venture processing (JVP) category includes U.S. fishing vessels working in joint ventures with foreign processing vessels authorized to receive catches in the exclusive economic zone.

In consultation with the Council, the initial amounts of DAP and JVP are determined by the Director, Alaska Region, NMFS (Regional Director). Consistent with the final 1991–1993 initial specifications, the Council recommended that 1994 DAP specifications be set equal to ITAC and that zero amounts of groundfish be allocated to JVP and TALFF. In making this recommendation, the Council considered the capacity of DAP harvesting and processing operations and anticipates that 1994 DAP operations will harvest the full ITAC specified for each BSAI groundfish species category.

The proposed ABCs, TACs, ITACs, overfishing levels and initial apportionments of groundfish in the BSAI area for 1994 are given in Table 1. These proposed specifications are subject to change as a result of public comment, analysis of the current biological condition of the groundfish stocks, and consultation with the Council at its meeting scheduled for December 6–10, 1993.

Regulations at § 675.20(a)(7)(i) require that one fourth of each proposed ITAC and apportionment thereof, one fourth of each prohibited species catch allowance, and the first seasonal allowance of pollock be in effect on January 1 on an interim basis and remain in effect until superseded by a **Federal Register** publication of final specifications. Proposed seasonal allowances of pollock and prohibited species bycatch allowances are discussed below. The interim ITAC specifications for the 1994 fishing year are 25 percent of the ITACs listed in Table 1.

Apportionment of the Pollock TAC to the Inshore and Offshore Components and to the Western Alaska Community Development Quota

Regulations at § 675.20(a)(2)(iii) require that the proposed 1994 pollock ITAC specified for the BSAI be allocated 35 percent to vessels catching pollock for processing by the inshore component and 65 percent to vessels catching pollock for processing by the offshore component (table 2). Definitions of these components are found at § 675.2.

TABLE 2.—SEASONAL ALLOWANCES OF THE INSHORE AND OFFSHORE COMPONENT ALLOCATIONS OF POLLOCK TACS [1] [2]

Subarea	TAC	ITAC [3]	Roe season [4]	Non-roe season [5]
Bering Sea:				
Inshore	.....	386,750	174,038	212,712.
Offshore	.....	718,250	323,212	395,038.
	1,300,000	1,105,000	497,250	607,750.
Aleutian Islands:				
Inshore	.....	15,351	15,351	remainder.
Offshore	.....	28,509	28,509	remainder.
	51,600	43,860	43,860	remainder.
Bogoslof:				
Inshore	.....	298	298	remainder.
Offshore	.....	552	552	remainder.
	1,000	850	850	remainder.

[1] TAC = total allowable catch.
[2] Based on an allocation of 0.65 (TAC) to vessels catching pollock for processing by the offshore component and an allocation of 0.35 (TAC) to vessels catching pollock for processing by the inshore component.
[3] ITAC = initial TAC = 0.85 of TAC;
[4] January 1 through April 15.
[5] August 15 through December 31.

Regulations at § 675.20(a)(3)(ii) require one-half of the pollock TAC placed in the reserve for each subarea or district, or 7.5 percent of each TAC, be assigned to a Community Development Quota (CDQ) reserve for each subarea or district. Given the proposed 1994 pollock TACs recommended by the Council, the 1994 CDQ reserve amounts for each subarea would be as follows:

BSAI subarea	Pollock CDQ
Bering Sea	97,500 mt
Aleutian Islands	3,870 mt
Bogoslof	74 mt

Under § 675.27 NMFS may allocate portions of the 1994 CDQ reserve established for each subarea or district to eligible Western Alaska communities or groups of communities that have an approved community development plan (CDP). The State of Alaska received six CDP applications pursuant to § 675.27 and State of Alaska regulations at 6 AAC 93. All six applications were submitted in conformance with both sets of regulations and have been fully reviewed by the State. Pending approval by NMFS, 1994 allocations of the CDQ reserve to the successful CDP recipients will be published in the **Federal Register** prior to the 1994 fishing year.

Seasonal Allowances of Pollock TAC

Under § 675.20(a)(2)(ii), the ITAC of pollock for each subarea or district of the BSAI area is divided, after subtraction of reserves (§ 675.20(a)(3)), into two allowances. The first allowance will be available for directed fishing from January 1 to April 15 (roe season). The second allowance will be available from August 15 through the end of the fishing year (non-roe season).

The Council recommended that the 1994 seasonal allowances of pollock be set at the same relative levels as in 1993, or 45 percent of the pollock ITAC specified for each management subarea or district during the roe season and 55 percent during the non-roe season. Seasonal allowances for the 1994 CDQ pollock fishery were not discussed but are anticipated to be set at the same relative levels as 1993.

When specifying seasonal allowances of the pollock TAC, the Council and the Secretary consider the following nine factors as listed in section 14.4.10 of the FMP:

1. Estimated monthly pollock catch and effort in prior years;
2. Expected changes in harvesting and processing capacity and associated pollock catch;
3. Current estimates of, and expected changes in, pollock biomass and stock conditions; conditions of marine mammal stocks, and biomass and stock conditions of species taken as bycatch in directed pollock fisheries;
4. Potential impacts of expected seasonal fishing for pollock on pollock stocks, marine mammals, and stocks and species taken as bycatch in directed pollock fisheries;
5. The need to obtain fishery data during all or part of the fishing year;
6. Effects on operating costs and gross revenues;
7. The need to spread fishing effort over the year, minimize gear conflicts, and allow participation by various elements of the groundfish fleet and other fisheries;
8. Potential allocative effects among users and indirect effects on coastal communities; and
9. Other biological and socioeconomic information that affects the consistency of seasonal pollock harvests with the goals and objectives of the FMP.

The Council seeks pubic comment on the effects of the recommended seasonal allowances with respect to these nine factors.

Apportionment of Pollock TAC to the Non-pelagic Trawl Gear Fishery

Regulations under § 675.24(c)(2) authorize the Secretary, in consultation with the Council, to limit the amount of pollock TAC that may be taken in the directed fishery for pollock using non-pelagic trawl gear. This authority is intended to reduce the amount of halibut and crab bycatch that occurs in non-pelagic trawl operations.

The Council did not propose to limit the amount of pollock TAC that may be taken in the 1994 directed fishery for pollock by vessels using non-pelagic trawl gear. At its December 1993 meeting, the Council has the option of restricting the amount of pollock that may be taken with non-pelagic trawl gear.

Proposed Allocation of the Pacific Cod TAC

At its June 1993 meeting, the Council adopted Amendment 24 to the FMP. This amendment would authorize fixed allocations of the Pacific cod TAC among vessels using trawl gear, hook-and-line gear or pot gear, and jig gear. NMFS has submitted the proposed amendment and implementing regulations to the Secretary for review and approval. The proposed rule was published in the **Federal Register** on October 27, 1993 (FR 58 57803), and includes for public comment and review, proposed 1994 initial specifications for Pacific cod authorized under Amendment 24. If the

amendment and its implementing regulations are approved, final specifications for Pacific cod would be published with the final rule implementing Amendment 24 that would supersede those in effect under the current specification process.

Allocation of Prohibited Species Catch (PSC) Limits Crab, Halibut, and Herring

PSC limits of red king crab and C. bairdi Tanner crab in Bycatch Limitation Zones (50 CFR 675.2) of the Bering Sea subarea, and for Pacific halibut throughout the BSAI area are specified under § 675.21(a). At this time the 1994 PSC limits are:

—200,000 red king crabs applicable to Zone 1;
—one million C. bairdi Tanner crabs applicable to Zone 1;
—three million C. bairdi Tanner crabs applicable to Zone 2;
—3,775 mt mortality of Pacific halibut applicable to the BSAI trawl fisheries; and
—900 mt mortality of Pacific halibut to non-trawl fisheries in the BSAI.

The PSC limit of Pacific herring caught while conducting any trawl operation for groundfish in the BSAI is 1 percent of the annual eastern Bering Sea herring biomass. At this time, the best estimate of 1994 herring biomass is 212,187 mt. This amount was derived using 1992 survey data and an aged structured biomass projection model developed by the Alaska Department of Fish and Game (ADF&G). Complete analysis of the 1993 spawning data by the ADF&G will be presented during the Council's December 1993 meeting. The proposed herring PSC limit for 1994 is 2,122 mt. This value is subject to change pending an updated forecast analysis of 1993 herring biomass that will be presented to the Council by the ADF&G during the Council's December 1993 meeting.

Regulations under § 675.21(b) authorize the apportionment of each PSC limit into PSC allowances that are assigned to specified fishery categories. Regulations at § 675.21(b)(1)(iii) authorize the apportionment of PSC limits established for trawl gear fisheries to seven fishery categories (midwater pollock, Greenland turbot/arrowtooth flounder/sablefish, rock sole/other flatfish, yellowfin sole, rockfish, Pacific cod, and bottom pollock/Atka mackerel/"other species"). Regulations at § 675.21(b)(2)(ii) authorize the apportionment of the non-trawl halibut PSC limit among three fishery categories (Pacific cod hook-and-line gear fishery, groundfish pot gear fishery, and other non-trawl fisheries). The proposed PSC allowances are listed in Table 3.

In 1993, the Council recommended to exempt groundfish pot gear fisheries from halibut bycatch restrictions because of the low halibut bycatch mortality rates associated with these fisheries. During 1992, the halibut mortality associated with this groundfish catch was only 5 mt, based on an assumed halibut mortality rate of 5 percent. Given this small amount of bycatch mortality and the Council's desire to encourage fishing operations that experience low halibut mortality rates, the Council recommended to continue to exempt groundfish pot gear fisheries from halibut bycatch restrictions during 1994.

Regulations at § 675.20(a)(7)(i) require that one-fourth of each proposed PSC allowance be made available on an interim basis for harvest at the beginning of the fishing year until superseded by the final initial specifications. These interm PSC bycatch allowances are 25 percent of the annual allowances listed in Table 3.

TABLE 3.—PROPOSED 1994 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

[25 Percent of the Allowances Listed Below Will Be Made Available on an Interim Basis January 1, 1994, Until Superseded by the Final 1994 Initial Specifications]

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
Red king crab, number of animals:			
Yellowfin sole	40,000	.....	.....
Rcksol/othflat [1]	110,000	.....	.....
Turb/arrow/sabl [2]	.....	.....	.....
Rockfish	0	.....	.....
Pacific cod	10,000	.....	.....
Pick/Atka/othr [3]	40,000	.....	.....
Total	200,000	.....	.....
C. bairdi Tanner crab, number of animals:			
Yellowfin sole	175,000	1,225,000	.....
Rcksol/oth.flat	475,000	200,000	.....
Turb/arrow/sabl	0	0	.....
Rockfish	0	0	.....
Pacific cod	175,000	400,000	.....
Pick/Atka/othr	175,000	1,150,000	.....
Total	1,000,000	3,000,000	.....
Pacific halibut, mortality (mt):			
Yellowfin sole	.....	.....	592
Rcksol/oth.flat	.....	.....	588
Turb/arrow/sabl	.....	.....	137
Rockfish	.....	.....	201
Pacific cod	.....	.....	1,000
Pick/Atka/othr	.....	.....	1,257
Total	.....	.....	3,775
Pacific herring, (mt):			
Midwater pollock	.....	.....	1,534
Yellowfin sole	.....	.....	359
Rcksol/oth.flat	.....	.....	0
Turb/arrow/sabl	.....	.....	0
Rockfish	.....	.....	9
Pacific cod	.....	.....	27
Pick/Atka/othr [4]	.....	.....	193

TABLE 3.—PROPOSED 1994 PROHIBITED SPECIES BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES—Continued

[25 Percent of the Allowances Listed Below Will Be Made Available on an Interim Basis January 1, 1994, Until Superseded by the Final 1994 Initial Specifications]

Trawl fisheries	Zone 1	Zone 2	BSAI-wide
Total			2,122
Non-trawl fisheries:			
Pacific halibut, mortality (mt):			
Pacific Cod hook-and-line			525
Other non-trawl			75
Groundfish Pot Gear			Exempt
Total			900

[1] Rock sole and other flatfish fishery category.
[2] Greenland turbot, arrowtooth flounder, and sablefish fishery category.
[3] Pollock, Atka mackerel, and "other species" fishery category.
[4] Pollock other than midwater pollock, Atka mackerel, and "other species" fishery category.

Proposed seasonal apportionments of the 1994 Pacific halibut bycatch allowances are shown in Table 4. At this time the Council recommended, with the exception of the rockfish fishery, not to apportion halibut by season for trawl gear. The AP recommended that the seasonal apportionment of halibut for the directed rockfish fishing during the period January 1 through April 1 be set at zero. Prohibiting directed fishing on these species is necessary to avoid potentially high bycatch rates of halibut and address overfishing concerns for certain species of rockfish. The AP's recommendation is intended to delay the start of the rockfish fishery to provide a greater opportunity for participants in this fishery to more fully harvest TAC amounts of all rockfish species under existing halibut bycatch limitations. The Council also recommended that the halibut bycatch mortality allowance specified for the Pacific cod hook-and-line gear fishery be seasonally apportioned. The recommended apportionment (Table 4) is based on: (1) The council's anticipation that the proposed allocation of Pacific cod TAC among gear groups under Amendment 24 will be approved; (2) most of the hook-and-line gear effort for Pacific cod will occur during the first half of 1994; and, (3) the Council's desire to limit a hook-and-line fishery for Pacific cod during summer months when halibut bycatch rates are high.

Prohibited species bycatch allowances and the seasonal apportionment of those allowances will be subject to change at the December 1993 Council meeting, pending public comment, year-to-date information on bycatch performance, and updated information on anticipated fishing patterns in 1994.

TABLE 4.—PROPOSED SEASONAL APPORTIONMENTS OF THE 1994 PACIFIC HALIBUT BYCATCH ALLOWANCES FOR THE BSAI TRAWL AND NON-TRAWL FISHERIES

[All Allowances and Apportionments Other Than Those on January 1 and December 31 Begin and End at 12 Noon, Alaska Local Time]

Fishery	Seasonal bycatch allowance (mt halibut)
Trawl Gear:	
Yellowfin sole	592
Rock sole/"other flatfish"	586
Turbot/arrowtooth flounder/sablefish	137
Rockfish.	
Jan. 01–Apr. 01	0
Apr. 01–Jul. 01	81
Jul. 01–Dec. 31	120
Total	201
Pacific cod 1,000.	
Pollock/Atka mackerel/"other species"	1,257
Total Trawl Halibut Mortality	3,775
Non-Trawl Gear:	
Pacific cod[1]:	
Jan. 01–Apr. 01	585
Apr. 01–Jul. 01	40
Jul. 01–Dec. 31	Remainder
Total	725
Other Non-trawl	175
Total Non-trawl Halibut Mortality	900

[1] Pending approval of Amendment 24, a seasonal allocation of Pacific cod also could be implemented for 1994.

For purposes of monitoring the halibut bycatch mortality allowances specified in Table 4, the Regional Director will use observed halibut bycatch rates and reported and observed groundfish catch to project when a fishery's halibut bycatch mortality allowance is reached. The Regional Director will monitor the fishery bycatch mortality allowances using assumed mortality rates that are based on the best information available, including that contained in the final annual SAFE report.

The best information available on assumed halibut mortality rates is based on 1990–1993 observer data and summarized in Table 5. Assumed halibut mortality rates for halibut PSC bycatch in 1993 were based on NMFS observer data from 1990–1991. A discussion on the derivation of these assumed rates is presented in the preamble to the final rule implementing Amendment 21 to the FMP (58 FR 14524, March 18, 1993). The International Pacific Halibut Commission (IPHC) analyzed preliminary 1993 data on Pacific halibut condition factors collected by NMFS certified observers. Results of this analysis suggest that halibut mortality rates for trawl and pot gear fisheries are unchanged from those assumed for 1993 (Table 5). Except for the hook-and-line Pacific cod fishery, analysis of the 1993 observer data also suggests that mortality rates for the hook-and-line gear fisheries generally reflect 1993 assumed rates (15 percent for observed vessels; 12.5 percent for unobserved vessels). The 1993 observer data suggest that the mortality rate assumed for observed vessels participating in the 1993 Pacific cod fishery (12.5 percent) was too low, and should be increased to 15 percent during 1994 (Table 5).

The IPHC is anticipated to provide additional data for the final 1993 SAFE report, which will reflect a thorough analysis of debriefed observer data from the 1992 fisheries to further assess mortality rate assumptions for 1994. These final determinations will be published in the **Federal Register** with the final 1994 initial specifications of groundfish TACs.

TABLE 5.—ASSUMED PACIFIC HALIBUT MORTALITY RATES PROPOSED FOR THE BSAI FISHERIES DURING 1994

	Unobserved vessels (percent)	Observed vessels (percent)
Hook-and-Line Gear Fisheries:		
BSAI Pacific cod	15.0	15.0
BSAI Greenland turbot	12.5	15.0
BSAI sablefish	12.5	15.0

	Percent
Trawl Gear Fisheries (Proposed Mortality rates are unchanged from 1993):	
Midwater pollock	80.0
Atka mackerel	.....
Rock sole	.....
Yellowfin sole	.....
Other flatfish	70.0
Pacific cod	.....
Bottom pollock	.....
Rockfish	60.0
Arrowtooth flounder	.....
Greenland turbot	.....
"Other species" and sablefish	40.0
Pot Gear Fisheries	5.0

Groundfish PSC Limits

At this time, no groundfish are proposed to be allocated to either JVP or TALFF and specifications of groundfish PSC limits are unnecessary. No PSC limits for groundfish species that would be applicable to JVP and TALFF fisheries, as authorized by § 675.20(a)(6), are proposed to be specified for 1994.

Sablefish Gear Allocation

Regulations under § 675.24(c)(1) allocate sablefish TACs for the BSAI subareas between gear types. In the Bering Sea subarea, hook-and-line and pot gear may be used to take up to 50 percent of the TAC for sablefish, and trawl gear may be used to take up to 50 percent of the TAC for sablefish. In the Aleutian Islands subarea, hook-and-line and pot gear may be used to take up to 75 percent of the TAC for sablefish, and trawl gear may be used to take up to 25 percent of the TAC for sablefish.

If the initial specifications are adopted for the 1994 fishing year, gear allocations of sablefish will be apportioned according to the percentage shares listed in Table 6 for the TAC and ITACs listed in Table 1.

TABLE 6.—PROPOSED 1994 GEAR SHARES OF BSAI SABLEFISH TAC

Subarea	Gear	Percent of TAC	Share of TAC (mt)	Share of ITAC (mt) [1]
Bering Sea [2]	Trawl	50	750	637
	Hook-and-line/pot gear	50	750	638
Aleutian Islands	Trawl	25	650	553
	Hook-and-line/pot gear	75	1,950	1,657

[1] Initial TAC (ITAC) = 0.85 of TAC, rounded to the nearest whole mt; 0.15 of TAC is apportioned to reserve. The sum of both ITAC gear shares in a subarea is equal to the ITAC for that subarea in Table 1.
[2] Includes Bogoslof district.

Closures to Directed Fishing

If the Regional Director establishes a directed fishing allowance and that allowance is or will be reached before the end of the fishing year or, with respect to pollock, before the end of the fishing season, NMFS will prohibit directed fishing for that species or species group in the specified subarea or district under § 675.20(a)(8). The Regional Director has determined that interim TAC amounts of groundfish specified by this announcement for species or species groups identified in Table 7 will be necessary as incidental catch to support other anticipated groundfish fisheries prior to the time that final specifications of groundfish are in effect for the 1994 fishing year. Therefore, NMFS is prohibiting directed fishing for those target species, gears, and components, to prevent exceeding the interim amounts of groundfish TACs specified. These closures will be implemented for the period that the interim specifications of groundfish TACs are effective (from January 1 until the effective date of the final 1994 groundfish specifications).

TABLE 7.—CLOSURES TO DIRECTED FISHING UNDER 1994 INTERIM TACS [1]

Fishery (All Gear) Closed Areas:	
Pollock	518.
Pacific Ocean Perch	ALL BSAI.
Sharpchin/Northern rockfish	AI Subarea.
Shortraker/rougheye rockfish	AI Subarea.
Other rockfish [2]	All BSAI.
Other Red rockfish [3]	Bering Sea.
Subarea.	

[1] These closures to directed fishing are in addition to closures and prohibitions found in regulations at 50 CFR part 675.
[2] "Other rockfish" include *Sebastes* and *Sebastolobus* species except for Pacific ocean perch and the "other red rockfish" species.

[3] "Other red rockfish" include shortraker, rougheye, sharpchin, and northern.

After consideration of public comments and additional scientific information presented at its December 1993 meeting, the Council may recommend other closures to directed fishing. Additionally, NMFS may implement other closures at the time the final specifications of groundfish TACs for 1994 are promulgated or during the 1994 fishing year as necessary for effective management.

Other Matters

This action is authorized under 50 CFR 611.93(b) and 675.20, complies with E.O. 12866, and is covered by the regulatory flexibility analysis prepared for the implementing regulations.

A draft environmental assessment (EA) on the allowable harvest levels set forth in the final 1993 SAFE report will be available for public review at the December 6–10, 1993, Council meeting. After the December meeting, a final EA will be prepared on the final 1994 TAC amounts recommended by the Council.

Consultation pursuant to section 7 of the Endangered Species Act has been initiated for the 1994 BSAI initial specifications.

List of Subjects

50 CFR Part 611

Fisheries, Foreign relations, Reporting and recordkeeping requirements.

50 CFR Part 675

Fisheries, Reporting and recordkeeping requirements.

Authority: 16 U.S.C. 1801, *et seq.*

Dated: November 10, 1993.

Gary Matlock,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–28170 Filed 11–10–93; 4:34 pm]

BILLING CODE 3510–22–M

Notices

Federal Register
Vol. 58, No. 220
Wednesday, November 17, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 93-083-1]

General Conference Committee of the National Poultry Improvement Plan; Renewal

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice of renewal.

SUMMARY: We are giving notice that the Secretary of Agriculture has renewed the General Conference Committee of the National Poultry Improvement Plan (Committee) for a 2-year period. The Secretary has determined that the Committee is necessary and in the public interest.

FOR FURTHER INFORMATION CONTACT: Mr. Andrew Rhorer, Senior Coordinator, National Poultry Improvement Plan, VS, APHIS, USDA, room 205, Federal Building, 6525 Belcrest Road, Hyattsville, MD 20782 (301) 436-7768.

SUPPLEMENTARY INFORMATION: We are giving notice that the Secretary of Agriculture has renewed the General Conference Committee of the National Poultry Improvement Plan (Committee) for a 2-year period. The purpose of this Committee is to maintain and ensure industry involvement in Federal administration of matters pertaining to poultry health.

The Committee Chairperson and the Vice Chairperson shall be elected by the Committee from among its members. There are seven members on the Committee with 4-year staggered terms. This Committee differs somewhat from other advisory committees in the selection process and composition of its membership. The poultry industry elects the members to the Committee. The members represent six geographic areas with one member-at-large. The membership is not subject to the U.S. Department of Agriculture's review, and a formal request for nominations for membership is not published in the **Federal Register**.

Done in Washington, DC, this 4 day of November, 1993.

Wardell C. Townsend, Jr.,

Assistant Secretary for Administration.

[FR Doc. 93-28268 Filed 11-16-93; 8:45 am]
BILLING CODE 3410-34-M

Rural Electrification Administration

Seminole Electric Cooperative, Inc., Intent To Prepare a Supplemental Environmental Impact Statement

AGENCY: Rurarl Electrification Administration, USDA.

ACTION: Notice of intent to prepare a supplemental Environmental Impact Statement.

SUMMARY: Notice is hereby given that the Rural Electrification Administration (REA), pursuant to the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*), the Council on Environmental Quality Regulations for Implementing NEPA (40 CFR parts 1550-1508), and REA Environmental Policies and Procedures (7 CFR part 1794) intends to prepare a supplemental environmental impact statement for its Federal action related to a proposal by Seminole Electric Cooperative, Inc. (SECI), to own and operate a new 440-megawatt (MW) combined cycle power plant. REA may provide financing assistance to Seminole for project construction costs or take other approval actions that would be necessary for the project to be constructed. The Environmental Protection Agency (EPA) will be a cooperating agency in the preparation of the supplemental environmental impact statement because of its action related to the modification of the National Pollution Discharge Elimination System Permit for the Hardee Power Station. The proposed impact statement will be a supplement to the final environmental impact statement prepared for the Hardee Power Station by REA, EPA, and the Federal Energy Regulatory Commission completed in January of 1991. The supplemental environmental impact statement will be made available for public review in draft and final version. The public will have an opportunity to comment on both versions. It is anticipated that a draft document will be available sometime during the third quarter of 1994.

FOR FURTHER INFORMATION CONTACT: Lawrence R. Wolfe, Chief, Environmental Compliance Branch, Electric Staff Division, room 1246, South Agriculture Building, Rural Electrification Administration, Washington, DC 20250, telephone (202) 720-1784.

SUPPLEMENTARY INFORMATION: Seminole is planning to own and operate a new 440-megawatt (MW) combined cycle power plant to be known as the Hardee Power Station Unit 3. This project would be constructed on the site of the existing 295 MW Hardee Power Station. The Hardee Unit 3 project would be constructed under a turnkey agreement with Westinghouse Electric Corporation and Black & Veatch Construction, Inc., at a cost of $315 million. The Hardee Unit 3 project would consist of a highly efficient combined cycle unit made up of two 150 MW Westinghouse Model 501F combustion turbines. Exhaust heat from the CTs is proposed to be captured and "recycled" through heat recovery steam generators which would produce steam to power a single steam turbine and generate an additional 140 MW of electricity.

The Hardee Unit 3 project is proposed to be built on the 1,300 acre Hardee Power Station site, which straddles the Hardee and Polk County lines, approximately 9 miles northwest of Wauchula and 16 miles south-southwest of Bartow. This site has been extensively mined for phosphate and has been previously certified pursuant to the Florida Electric Power Plant Siting Act for the construction of a 660 MW power plant. This site is owned by a Seminole subsidiary and is the location of an existing 295 MW combined cycle power plant. Locating the Hardee Unit 3 project on the same site as the existing 295 MW plant would allow SECI to utilize on-site facilities as the existing 570 acre cooling reservoir, substation, and transmission lines.

The primary fuel for the Hardee Unit 3 project is proposed to be natural gas, with low-sulfur distillate fuel oil as a backup. Through the use of natural gas as the primary fuel and the installation of dry low nitrogen oxide combustors, the Hardee Unit 3 project would represent the state of the art in air

emissions control for the electric power industry.

Alternatives to the proposed construction such as purchase power, conservation (demand side management), other generation technologies, size, and timing options will be discussed in an Alternative Analysis to be prepared by SECI and submitted to REA. The draft and final supplemental environmental impact statements will include a section on alternatives.

Comments and questions regarding the scope of the proposed project should be submitted in writing to REA at the address provided herein or to Mr. Michael P. Opalinski, Manager of Environmental Affairs, Seminole Electric Cooperative, Inc., P.O. Box 272000, Tampa, Florida 33688–2000.

Any final action by REA related to the proposed project will be subject to, and contingent upon, compliance with all relevant Federal environmental laws and regulations and completion of Environmental procedures as prescribed by Council on Environmental Quality and REA environmental policies and procedures as applicable.

Dated: November 9, 1993.

Robert Peters,

Action Administrator.

[FR Doc. 93–28181 Filed 11–16–93; 8:45 am]

BILLING CODE 3410–15–M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket Nos. 1101–01 and 1102–01]

The Sound You Company, Ltd. and Yuzo Oshima; Administrative Review and Order

Summary

Pursuant to the July 30, 1993 Decision and Order on Remand of the Administrative Law Judge (ALJ) (which is attached hereto), the Sound You Company, Ltd., and its president, Yuzo Oshima (individually, and doing business as the Sound You Company, Ltd.) are hereby denied all export privileges in the United States for a period of twenty (20) years, based on three violations of the Export Administration Regulations.

Discussion

This case concerns four charges of violating the Export Administration Regulations (EAR). The first and second charges allege that Respondents violated §§ 787.2 and 787.3(a) of the EAR, which provide, respectively, that

> No person may cause, or aid, abet, counsel, command, induce, procure or permit the doing of any act [prohibited by the EAR].
>
> and
>
> No person may do any act that solicits the commission of, or that constitutes an attempt to bring about [a violation of the EAR].

The third charge was based on § 787.4, which provides that

> No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with a knowledge or reason to know that a violation of the [EAR] has occurred, is about to occur, or is intended to occur with respect to any transaction.

The fourth charge was based on § 787.5(b), which provides that

> No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of the [EAR].

The ALJ's initial (February 12, 1992) Decision and Order found that the Respondents had violated the EAR as alleged in all four charges. He commended that the Respondents be denied export privileges for a period of 20 years. However, the Acting Under Secretary remanded the decision to the ALJ for further consideration. In his July 30, 1993 Decision and Order on Remand, the ALJ addressed the most substantantive arguments set forth in the Acting Under Secretary's decision, and upheld his earlier decision as to the first three charges. However, he reversed his earlier decision on the fourth charge, finding that the record provided insufficient evidence to support his earlier determination that the Respondents had violated § 787.5(b) as alleged.

The ALJ's Decision and Order on Remand is hereby affirmed.

Order

On July 30, 1993, the ALJ entered his Decision and Order on Remand in the above-referenced matter. Having examined the record, and based on the facts in these cases, I hereby affirm the ALJ's recommended Order that:

I. For a period of 20 years from the date of this Order, Respondents, The Sound You Company, Ltd., and its president, Yuzo Oshima, with addresses at: Tatsuno-Nishitenma Building, 3–1–6, Nishitenma; Kita-ku, Osaka, Japan, and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Export Administration Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export licensee or export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Export Administration Act and implementing Export Administration Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent(s) appear or participate, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)' privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on

negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

Dated: November 4, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

Decision and Order on Remand

Appearance for Respondents: Yuzo Oshima, President, Pro Se, The Sound You Company, Ltd., Tatsuno-Nishitenma Building, 3–1–6, Nishitenma, Kita-ku, Osaka, Japan.

Appearance for Agency: Anthony Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Suite H–3839, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

By separate charging letters issued February 6, 1991 the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce, initiated administrative proceedings against Yuzo Oshima (Oshima) and The Sound You Company, Ltd. (Sound You) pursuant to the Export Administration Act of 1979, as amended (currently codified at 50 U.S.C. app. 2401–2420 (supp. 1991) (the Act), and the Export Administration Regulations.[1] Respondent Yuzo Oshima and Respondent Sound You Company, Ltd. responded to their respective charging letters by filing a document entitled "Statement of Defense" with this Tribunal on March 12, 1991. On May 16, this Tribunal issued a scheduling order pursuant to 15 CFR 788.14. The Respondents requested this adjudication be made without a hearing, pursuant to that section of the Regulations. The Agency did not request a hearing. This matter was therefore presented for determination upon the submissions of the parties. Following a number of postponements, exchanges of records and submissions were completed. The record closed on October 3, 1991 for determination on the submissions of all parties. Because the allegations in the charging letters are the same as to both of the Respondents, the cases were consolidated for disposition.

The charging letters allege that between February 20, 1990 and June 19, 1990, the Respondents committed four violations of the Regulations. Charges One and Two allege in the time specified that:

Respondents requested the Intel Corporation to export, dispose of, direct or ship U.S.-origin Intel 80386 microprocessors (CPU–386 microprocessors) to Oshima's and Sound You's client in North Korea without the validated license required by § 772.1(b). Sound You, through Oshima, did an act that solicited Intel to commit a violation of the Regulations, thereby violating § 787.3(a) of the Regulations; and did an act that counseled, commanded, or induced the doing of an act prohibited by § 787.2 of the Regulations.

Charge Three alleges that:

Respondents ordered the above-mentioned 80386–25 microprocessors with knowledge or reason to know that a validated license was required by § 772.1(b) for the export from the United States to North Korea and that Respondents intended to export the CPU–386 without obtaining such validated license. The Respondents knew or had reason to know that a violation was about to occur or was intended to occur, and thereby committed one violation of § 787.4 of the Regulations.

Charge Four alleges that:

With knowledge that such action was prohibited, Respondents hired lawyers and/or other persons to establish entities as intermediate destinations in other countries from which Respondents intended to ship the CPU–386s to North Korea without the required validated license. In so doing, Respondents engaged in transactions or took action, through other persons, with the intent to evade the Regulations, and thereby committed one violation of Section 787.5(b) of the Regulations.

A Decision and Order by the Administrative Law Judge issued on February 12, 1992. It was vacated and remanded by the Acting Under Secretary for Export Administration on March 13, 1991. The concerns expressed in the Remand and the substance of the February 12, 1992, Decision are addressed herein.

Facts

By telefacsimile letter dated February 20, 1990, with the return address of "Sound You Co., Ltd.", Yuzo Oshima, president of Sound You Company, Ltd., asked the Intel Corporation to export for him 800,000 units of "CPU–386"[2] to North Korea (Agency Ex. 2). The CPU–386 is a high-performance microprocessor, which at the time of the request by Sound You, was a scarce commodity, and part of the Commodity Control List under ECCN 1564A[3] for reasons of national security (Agency Ex. 3 at 2, 4). Office of Export Enforcement documents regarding licensing determinations for the microprocessors indicate a presumption that exports to North Korea would be denied. A direct request for licensing determination made on March 13, 1990 reflects that the control of the product was for national security reasons (Agency Ex. 4 at 1). Another request for licensing determination for export to North Korea for the time period of January 1, 1990 to December 31, 1990, also reflects a presumption of denial (Agency Ex. 4 at 2).[4]

In his letter to Intel, Respondent Oshima stated that his client was in North Korea and that he knew "COCOM regulations" prohibited export of such shipments to a Communist country (Agency Ex. 2). Respondent Oshima, aware of and concerned with restrictions on the export of the microprocessor from Japan and suggested alternatives to his taking delivery in Japan (*Id.*). Moreover, Respondent wrote that he "would like to see the business transaction in any way possible" (*Id.*). At this early stage, it is not articulated whether Respondents were aware of the U.S. laws governing the exportation of this product.

On February 22, a special agent with the Office of Export Enforcement (OEE) commenced an investigation into the

[1] The Act expired on September 30, 1990. Under 1 U.S.C. § 109, violations committed while the Act was in effect remain litigable. Executive Order 12730 (55 FR 40373, October 2, 1990) continued the Regulations in effect under the International Emergency Economic Powers Act (50 U.S.C.A. §§ 1701–1706 [Supp. 1990]). The Act was reauthorized by Pub. L. 103–34, dated May 31, 1993.

[2] The CPU–386 is variously referred to as the 386 microprocessor, the 8086 microprocessor and the 80386 microprocessor. The CPU–386 is also referred to as the CPU–386–25. The suffix refers to the speed of the microprocessor.

[3] "ECCN" refers to export commodity control number.

[4] The signature of the engineer on this request is dated what appears to be 7–16–91.

activities of Sound You and Oshima. Intel assigned one of its employees to assume the role of a fictitious marketing executive, "Leonard Garcia," during the investigation (Agency Ex. 3).

On March 13, 1990, Intel, through its Director of Strategic Marketing, responded by facsimile letter to Oshima (Agency Ex. 6). In that letter, Intel clearly informed Respondent that the CPU–386 is regulated by "the United States and COCOM" and could "only be exported from the United States under a Department of Commerce Export License" (*Id.*). The letter further requested particulars of the Respondents' U.S. agents as a suggested means of expediting delivery and advised Oshima that Leonard Garcia, a fictitious name for the investigator in this matter, would be handling his account (*Id.*). On March 16, 1990, Oshima responded on Sound You Company, Ltd. letterhead. He clarified the requested amount of units as 800,000 and suggested a delivery schedule of 80,000 per month for 10 months. Oshima again made reference to the ultimate user in Pyongyoung, North Korea, noting that the units were to be used in the manufacture of telephone switchboards (Agency Ex. 7). No mention was made regarding export licensing requirements; however, Respondents requested that Intel deal directly with the North Korea corporation through the intermediation of Sound You (*Id.*).

On April 2, 1990, Intel responded through its named employee, Leonard Garcia, and reiterated that the Export Administration Regulations prohibited the export of the CPU–386s to North Korea (Agency Ex. 8). Garcia submitted that he would work with Sound You "and a representative of DPRK to fill this order and move these units to a delivery point mutually acceptable between the three of us, whereby you [Oshima] can arrange for reexport to Pyongyoung, North Korea" (*Id.*). In the same letter, Garcia told Oshima that his services and those of the freight forwarder would require a "cash inducement" of $5.00 per unit.[5] He also informed Oshima that no one else at Intel knew that the order was destined for North Korea and he requested that "all incoming correspondence" with regard to Oshima's account be sent "only" to him (*Id.*).

On April 5, 1990, Garcia placed an overseas telephone call to Oshima, who provided his own interpreter.[6] The Intel account representative, Garcia, did not speak Japanese. Respondent Oshima apparently had a very limited command of English (Agency Ex. 3 at 3). Much of the evidence in the record is composed of, or derives from, the taped telephone conversations between Garcia and Respondent Oshima. During the April 5 conversation, Oshima stated that he knew that the export of the CPU–386s to North Korea was prohibited under COCOM "regulations" and asked if there was any way that the CPU–386s could be shipped directly, or indirectly through Moscow, Peking, Bulgaria or Czechoslovakia to North Korea (Agency Ex. 9 at 2, 3, 4). Oshima made it clear that he did not want the CPU–386s to enter Japan and that none of the meetings in connection with his acquisition of the CPU–386s should take place in Japan because the COCOM regulations were strictly enforced there.

On May 1, 1190, Oshima stated that Sound You had hired some attorneys to establish North Korea representatives in countries to which the CPU–386s could be shipped, at which point the Sound You would be doing business with North Korea in foreign territory beyond COCOM jurisdiction. Oshima noted that a final determination regarding the legality of this scheme had not been made (Agency Ex. 10 at 3, 4, 5). In response, Intel informed Oshima that Intel could not lawfully ship the CPU–386s to North Korea through other countries (Agency Ex. 10 at 5). Oshima responded saying that he wanted to proceed with the purchase of the CPU–386s even through he knew that it was unlawful to export those microprocessors to North Korea under U.S. law (*Id.*). Oshima's primary concern seemed to be his liability under the law of Japan; he apparently discounted his liability under U.S. law and did not concern himself with Intel's liability (Agency Ex. 10 at 4, 5). At Garcia's suggestion, Oshima expressed a preference for obtaining a U.S. export license to give "the appearance that everything was legal," but again asserted that any such action must conform with Japanese law (Agency Ex. 10 at 5; Respondents' Statement of Defense, march 12, 1991, at 8).

Conservations and correspondence during the remainder of May addressed currency problems and delivery schedules. During a conversation taped May 7, 1990, Garcia informed Oshima that Intel could not ship directly to Peking, Bulgaria, or Moscow due to COCOM regulations. In response to Garcia's query of where Intel should deliver the product, Oshima advised that he would study the question (Agency Audiotape dated 5/7/90).

On June 6, 1990, Oshima informed Intel by facsimile letter that he would pay for the CPU–386s in cash and that he would travel to the United States to accept the first delivery of 1,000 units (Agency Ex. 11). In a telephone conversation held June 13, 1990, Garcia acknowledged receipt of the fax and objected to the quantity requested; an accord was reached that Oshima would take delivery of 10,000 units in the United States and that the price would be reduced to $190 (plus Garcia's $5 "commission") to pay for two "go-betweens" between Oshima and North Korea who also required "commissions" (Agency Audiotape dated 6/13/90). The presence of a "go-between" was also mentioned in a telephone conversation the next day (Agency Audiotape dated 6/14/90).

On June 15, 1990, Garcia communicated with Oshima by facsimile letter stating that he would be able to sell him the CPU–386s but that it would be very risky for him because the transaction was unlawful. Garcia recommended that "you and your business associates be discreet while visiting Intel in San Francisco and not mention North Korea to anyone else at Intel other than myself" (Agency Ex. 12).

On or about June 18, 1990, Oshima submitted a letter and facsimile purchase order to Intel for 120,000 CPU–386s, with a total purchase price of $23,400,000 (Agency Ex. 13). The purchases were to span a seven-month period and the first delivery of 36,000 units was to occur on June 28, 1990 (*Id.*). In that letter of transmittal, Oshima stated, "As for your concern in the previous fax, we have decided to suspend that trade until conditions could be arranged to legally carry out the trade. So our now-undertaking does not include any risk that you are concerned about." (Agency Ex. 13; Respondent Ex. 5). Oshima did not indicate any new destination or identify new customers in the purchase order or correspondence. Oshima also reiterated his earlier assertion that he would pay cash for the first shipment of CPU–386s and to come to the United States to take possession of them, despite the fact that the quantity ordered would be "at least three full pallets, each four to five feet

[5] With the cost per unit quoted at $290, the total cost for 800,000 units, without fees, was in the order of $232,000,000. The "cash inducement" of $5 per unit amounted to $4,000,000 for 800,000 units!

[6] Several different interpreters were used in the series of telephone conversations; at times the interpreters were provided by Intel and at other times by Sound You.

high" (Agency Ex. 14).[7] In a telephone conversation held after the fax was sent, Oshima also told Garcia that he would bring the $180,000 "inducement" for Garcia and give it to him in "cash" (Agency Ex. 14 at 5).[8] This conversation is also the first time companies in Singapore and Taiwan are mentioned (Agency Ex. 14 at 3).

On June 20, 1990, Oshima stated that the would not be sending the CPU–386s to North Korea, but rather intended to ship them to customers in Taiwan and Singapore (Agency Ex. 15). Oshima still agreed to pay Garcia the solicited $180,000 cash inducement (36,000 times the $5.00 per unit commission), even though the CPU–386s could be shipped to Singapore and Taiwan legally; Oshima did request a reduction in the "fee" given the reduction in risk, but Garcia insisted that the inducement should be paid to compensate his having held back 50,000 units from other customers and his being "uncomfortable [sic] because he [Oshima] was talking about dealing with North Korea * * *" (Agency Ex. 15 at 12). Oshima stated that payment for the CPU–386s would still be in cash (Agency Ex. 15, 16, 17). Intel requested details of the new customers during this telephone conversation in order to arrange shipment and to prepare shipping and licensing documentation (Agency Ex. 15 at 2). By facsimile letter dated June 22, 1990, Oshima provided the names, addresses, and allocation of shipment, information for customers in Singapore and Taiwan (Respondent Ex. 10). On June 28, Oshima again sent the same information by fax, adding that the "intended end use of all of these three customers is to manufacture personal computers" (Respondent Ex. 13). Pre-licensing inquiry checks into these companies revealed that they had no direct dealings with or knowledge of Oshima and The Sound You Company (Agency Ex. 3 at 4).[9] Thereafter followed letters from Respondent Oshima to Intel suggesting delivery dates and asking for information on how the efforts to get the license is proceeding. Oshima also asked Garcia to reserve a room at the Wells Fargo bank wherein the "cash" transaction could be carried out during a meeting that was scheduled to take place on June 26, 1990, but later postponed. On July 4, Respondent Oshima proposed a delivery schedule. (Respondent Ex. 15). On July 13, Oshima stated by fax that he hoped the transaction can be carried out. (Respondent Ex. 16). Then on July 17, in a letter to Intel, Respondent Oshima stated that three weeks had now passed, that he was "in big trouble", and that he hopes the transaction works out as was arranged on June 25. (Respondent Ex. 17). On July 20, Intel informed Oshima that it had received an unfavorable pre-license check from the Department of Commerce.

By July 20, 1990, the Agency has also learned that two of the end users named by Oshima had not ordered the CPU–386s or any other equipment from him or Sound You and informed Intel of this fact (Agency Ex. 18).[10] Therefore, Intel informed Oshima that it could not do business with him (*Id.*). On September 7, 1990, Intel broke off all further negotiations with the Respondents due to the unfavorable pre-license check from the Department of Commerce. (Respondent Ex. 22). On September 19, 1991, Oshima wrote to Intel saying he had received a letter from Intel advising him to contact the Department of Commerce (Agency Ex. 20). In that letter, Oshima writes, "However, it is impossible for me to gain any information without your cooperation. If your advise were not what pulls my leg, please cooperate me for the purpose of making unfavorable matters favorable." (*Id.*) Oshima also requests that Intel "please let me know your promotive suggestion concerning how to carry out our transaction even without an export license, which you had promised me." (*Id.*) There were two contacts from Respondents to Intel referenced in two letters dated October 25 and November 2 enclosing letters purportedly from Respondents' customers regarding their intended use of the microprocessors (Agency Ex. 21). The intended use statements were from WIN Technologies and Hsing Tech Enterprise Company, Ltd., two end users who had previously denied any contact with Sound You or Oshima (Agency Ex. 3 at 4, 6; Resp. Ex. 22, 23). The final contact was a letter dated February 5, 1991, in which Oshima stated that he had already sent documents to the Department of Commerce to clear the problems raised by Intel during a November 18th telephone conference and further stated," I believe we will be able to carry out the transaction without a license as Intel had promised in the early stages of their negotiations." (Agency Ex. 19). A search of U.S. Department of Commerce, Bureau of Export Administration licensing files covering the period of October 1, 1989 to July 18, 1991 uncovered no records relating to Oshima or Sound You (Agency Ex. 22).

On February 6, 1991, the charging letters were filed.

Law and Regulations

In the charging letter, the Agency cited sections 787.1(b), 787.2, 787.3(a), 787.4, and 787.5(b) of the Export Administration Regulations (currently codified at 15 CFR parts 768–799) (1990).

Section 787.1(b) provides:

> No commodity or technical data subject to the Export Administration Regulations may be exported to any destination without a validated license issued by the Office of Export Licensing, except where the export is authorized by a general license or other authorization by the Office of Export Licensing.

Section 787.2 provides:

> No person may cause, or aid, abet, counsel, command, induce, procure, or permit the doing of any act prohibited, or the omission of any act required, by the Export Administration Act or any regulation order, or license issued under the Act.

Section 787.3(a) provides in relevant part:

> No person may do any act that solicits the commission of, or that constitutes an attempt to bring about, a violation of the Export Administration Act or any regulation, order, or license issued under the Act.

Section 787.4 of the Regulations provides:

> (a) No person may order, buy, receive, conceal, store, use, sell, loan, dispose of, transfer, transport, finance, forward, or otherwise service, in whole or in part, any commodity or technical data exported or to be exported from the United States or which is otherwise subject to the Export Administration Regulations, with knowledge or reason to know that a violation of the Export Administration Act or any regulation, order, or license has occurred, is about to occur, or is intended to occur with respect to any transaction.
>
> (b) No person may possess any commodities or technical data, controlled for

[7] Subsequent shipments were to be paid for by Letter of Credit.

[8] Because the violations are alleged to have occurred between February 20 and June 19, 1990, the evidence of acts and comments after the latter date is not received or considered as evidence of violations but rather shows the Respondents' frame of mind during the charged period.

[9] At the request of the Office of Export Enforcement, the Foreign Commercial Offices in Singapore and Taipei contacted the named consignees. Both Mr. Lee, President of WIN Technologies and Mr. Chiang, President of Hsing Tech Enterprises, told the commercial officers that they had not placed orders with Sound You and that they did not know Oshima. There was no response from the Foreign Commercial Post in Singapore as the World Wide Integrated Agencies. No evidence was submitted regarding the substance or direction of these inquiries or the general practice adopted for making prelicensing inquiries.

[10] The Agency acknowledges that it never learned whether the third end user was legitimate and Oshima did not allude to that entity again (Agency Ex. 3). The names and locations of the two Taiwanese firms that deny placing such orders, or even knowing Respondents are set forth in the record. No purpose would be served by specific identification here.

national security or foreign policy reasons under section 5 or 6 of the Act:

(1) With the intent to export such commodities or technical data in violation of the Export Administration Act or any regulation, order, license, or other authorization under the Act, or

(2) Knowing or having reason to believe that the commodities or technical data would be so exported.

Finally, the Regulations provide in part at § 787.5(b):

No person may engage in any transaction or take any other action, either independently or through any other person, with intent to evade the provisions of the Act, or any regulation, order, license, or other authorization issued under the Act.

Discussion

The Under Secretary's Decision to Vacate and Remand the Decision and Order of February 12, 1992 directed the undersigned to consider the evidence contained in the twenty-eight (28) documents submitted by Respondents and to reconsider the remaining evidence on the record in light of Respondents' submissions. Those submissions, in substantial part, relate to activities that occurred after the time period during which the alleged violations happened. The concerns raised more specifically in the body of the Under Secretary's Decision to Vacate and Remand will be addressed first.

The "language issue" expressed in the Decision and Order previously issued remains unchanged. There is concededly some variance between the spoken work and that which is set forth in the transcribed report (*e.g.* Agency Ex. 9, 10, 14, 15). With the exception of the June 18, 1990 telephone conference, the interpreters were provided by the Respondents. The assertion that the "skill and objectivity of the interpreters involved in this matter [may] have been less than adequate for a proceeding of this magnitude" by the Under Secretary is not borne out by any significant questioning of what was communicated. In addition, a company negotiating a $200 million deal hires inadequate translators at its own peril. Such concerns affect the weight of the evidence, but they do not eliminate it. Respondents cannot rely on a language barrier to shield them from civil liability in this context. The contact with Intel was made with the knowledge that a language difference existed; it was in Respondents' own interest to arrange for an able translator to assist in the negotiations. The record reflects that he did so.

Charge One alleges that the Respondents did an act that solicited the commission of a violation of the Export Administration Regulations. Solicitation is defined as "asking another person to commit an offense." W. LaFave and A. Scott, *Criminal Law*, section 58 at 418 (1972). For the offense of solicitation to be completed, the actor must entice, advise, incite, order or otherwise encourage another person to commit an offense. It is not necessary that the crime actually be completed. Based on the same events set forth *supra*, Charge Two alleges that the Respondents counseled, commanded or induced the doing of an act prohibited by the Regulations.

The evidence establishes that between February 20, 1990 and June 18, 1990, Oshima solicited Intel to obtain 800,000 CPU–386 microprocessors for a client in North Korea. Respondent Oshima was aware that "COCOM" regulations prohibited such shipments from Japan and his inquiry to Intel was made with the intent of evading Japanese law. Given the controls in place in Japan at the time of these events, Oshima could reasonably be considered to be on "inquiry notice" regarding United States controls of exports to communist countries. However, Oshima left his "inquiry" to Intel, asking the manufacturer to suggest a way to sell microprocessors in such a way that he might profit without violating Japanese law. Respondents' defenses generally reveal an exaggerated reliance on Intel for legal and transactional advice.[11] Such reliance may be characterized as either extraordinarily naive or duplicitous. This Tribunal concludes that given the facts and circumstances of this case, most notably the magnitude of the deal and the requests to a seller for advice (when that seller stands to sell $232 million of product!), Respondents acted duplicitously. Subsequent proclamations that "Our interests were strictly limited to legal transaction [sic]" were self-serving and contradictory of the Respondents' total actions (Resp. Ex. 3A, Statement of Defense at 9).

Oshima solicited Intel to obtain 800,000 CPU–386 microprocessors and export them to North Korea without a validated license. Intel's 80386 microprocessors are controlled under ECCN1566A and require a validated license for export to North Korea. During the earliest stages of his correspondence with Intel, Oshima was advised that Intel's 80386 [TM] microprocessors were regulated by the Export Regulations of the United States and that exports to North Korea were prohibited. Intel, in its March 13, 1990 letter and its April 2, 1990 letter expressed a willingness to conduct trade within the U.S. or to move the units to a delivery point mutually acceptable to Intel, Oshima, and the North Korean client. Oshima, on being advised that a direct shipment from Intel to North Korea would be illegal, suggested that Intel ship the units indirectly, via Moscow, Peking, Bulgaria, or Czechoslovakia. Oshima was also advised that such indirect shipments were illegal; yet, in the telephone conversation between Garcia and himself, he reiterated that the shipment would have to be made to Moscow, Peking or Hong Kong. Oshima clearly wanted to avoid involvement with Japanese applications of "COCOM regulations," but was will to let Intel run a risk regarding U.S. export regulations in exchange for a huge sale and a $5.00 per unit "commission." The on-going negotiations between Intel and Oshima, with the inducement and enticement of an expressed willingness to buy large quantities at a high price and with an additional commission constituted solicitation under § 787.3(a) of the Regulations. The repeated suggestion and instruction that delivery be made by a circuitous route constituted counseling and commanding the doing of an act prohibited by the Regulations, in violation of § 787.2 of the Regulations.

Charge Three alleges that Sound You and Oshima ordered 80386 microprocessors with knowledge or reason to know that a validated license was required by the United States for export. From the time Oshima first solicited Intel to sell him the CPU–386s, he knew that shipments to North Korea of those microprocessors were controlled. In fact, it was due to his experience with and knowledge of Japanese controls that he asked Intel to ship to North Korea directly. Respondents contend that a number of newspaper articles predicting the easing of these controls encouraged them to pursue the trade with North Korea (Resp. Ex. 1, 2, 3). The only interpretation to be given to those articles is that the controls were still in effect but they might be relaxed. Just as Respondents were encouraged to trade, they likewise should have remained wary of precisely which regulations would change. Respondents were not new to trade with North Korea (Agency Ex. 5). They were familiar with international shipments and the controls affecting communist states. Moreover, Oshima was repeatedly told by Garcia that the Regulations

[11] It is worth noting that at no time did Respondents request Intel's technical advice; indeed, when such advice was gratuitously offered, Respondents rejected it even though it was their first time trading with this type of technology. (Agency Ex. 9 at 5)

prohibited such exports. Nevertheless, Oshima was intent on obtaining the CPU–386s, offering cash incentives to Garcia if he would help him to do so, suggesting that he had lawyers working on a scheme whereby the CPU–386s could be shipped through other countries to North Korea.

Respondents argue that at no time did they ask that the microprocessors be shipped without a validated license. Indeed, nowhere in the record can Respondent Oshima be found to say (even through translation), "Ship the CPU without a validated license" or some similar statement. In fact, the purchase order specified that delivery was to be made in the United States. Respondents asked that delivery be made in the United States after informing Intel that the products were to go to North Korea and after having been informed that both direct and indirect shipments from Intel to North Korea were prohibited by U.S. Export Regulations. Respondent further argues that on June 18, 1990, when the purchase order was sent, the "customer" was no longer North Korea, but rather some companies in Taiwan and Singapore—countries to which the CPU could be shipped under general license instead of a validated license. In Support of the claim, Respondents note that Intel was given the names, addresses and intended use of the product for each new customer.

Respondents' version of events may be the way they would have me believe that the Export Regulations and related laws are supposed to work: an exporter of controlled U.S. products, after determining his liability under U.S. law, changes his plans to export a product illegally and instead finds new customers in other countries. Perhaps, in such a context, Respondents' initial illegal proposal should not taint subsequent legal proposals if all events were as Respondents represent. There are, however, a number of inconsistencies in Repondents' chronology of events that must be noted. After providing Intel with the new customer list following the June 18 purchase order, investigating inquiries by U.S. officials revealed that none of these companies was familiar with or had done business with Sound You or Oshima. Moreover, Sound You had never listed Singapore or Taiwan as one of its areas of trade. Respondent explained both these discrepancies by insisting that (1) in an effort to protect Intel, with whom negotiations had been time-consuming, and to be "fair" to Garcia, Respondents had struggled to find new clients after discovering that trade with North Korea would be illegal and (2) the reason given respecting why none of the companies named by Sound You and Oshima had heard of the Respondents was because they had dealt through a middleman—the mysterious J.K. Pen. Respondents' valiant efforts were only half-hearted. Despite assertedly finding clients in countries for which no validated license was required, no application was made by Respondents for any export license for these new clients (Agency Ex. 22). The introduction to the record of the existence of a middleman by the Respondents, which I find to be a false representation, was made after the Agency introduced evidence of its investigation of the clients. The letters which Oshima submitted as proof of business relationship with the "new clients" did not constitute valid orders; do not mention any such agency with Pen; and were untimely (Agency Ex. 22; Resp. Ex. 22, 23). Even Respondents' own evidence regarding this issue, tapes and transcripts of conversations between Sound You and the companies listed in the purchase order to Intel well after Respondents had been charged, shows only that some of the companies had tried to order microprocessors in 1990. Those contacted showed no familiarity or acquaintance with Respondents Oshima or Sound You (Resp. Ex. 26, 27).

The totality of the circumstances supports the conclusion that Respondents ordered 80386 microprocessors with knowledge or reason to know that a validated license was required by § 772.1(b) for the export from the United States to North Korea and that Respondents intended to export the CPU–386 without obtaining such validated license. Respondents planned to take delivery from Intel in the United States. Despite this, they did not attempt to obtain a license and instead presented evidence showing reliance on Intel to work with the Department of Commerce on their behalf. Viewed in the light most favorable to Respondents, the contention that they did not know the mechanisms for exporting goods from the U.S. and that they relied on Intel to provide this information is no defense. Ignorance of the law is no excuse. Respondents, like all others who export goods from the U.S., have a responsibility to plunge the byzantine depths of export regulations before claiming complete and total confusion. Had they taken delivery in the United States, they would have been the one to obtain an export license. The entire set of actions following the placement of the order on June 18, 1990 was but an attempt to purse the same illegal venture, dressing it as a silk purse.

Section 787.4 of the Regulations, provides that no person may order any commodity to be exported from the United States or which is subject to the Regulations with knowledge or reason to know that a violation of the Export Administration Regulations is about to occur or is intended to occur with respect to any transaction.

Charge four alleges that "with knowledge that such action was prohibited, Respondents hired lawyers and/or other persons to establish entities as intermediate destinations in other countries from which Respondents intended to ship the CPU–386s to North Korea without the required validated license" in an attempt to evade the Regulations, which is a violation of Section 787.5(b) of the Regulations. The evidence reflects that, on May 1, 1990, Oshima stated to Garcia during a telephone conversation that he had hired some attorneys to look into the possibility of setting up entities in countries to which the CPU–386s could be shipped under U.S. law, noting that they could then be reexported from those countries to North Korea. Respondent Oshima noted that no final determination had been made regarding the legality of such a scheme. The evidence also establishes that, in response, Garcia informed Oshima that Intel could not lawfully ship the CPU–386s to North Korea through other countries without an export license. Oshima responded by saying that he wanted the CPU–386s regardless of U.S. law. The Agency's position is that once Oshima realized that the Regulations would present an obstacle to his obtaining the CPU–386s he wanted for shipment to North Korea and acknowledged that he could not export through Japan because of the strict enforcement of COCOM controls, he represented that he consulted with counsel to devise a scheme to evade those Regulations by involving "dummy companies" in various countries and shipping the CPU–386s through those companies to North Korea.

The evidence in the record does not support the alleged violation of § 787.5(b) of the Regulations. Consultation with counsel regarding possibilities is not implementation. The only evidence in the record that directly support Agency's allegation is Respondent Oshima's remark that his lawyers were investigating the possibility. Agency presented no evidence to support the claim that the plan was implemented. No connection was drawn between Respondents and any company in the original proposed

shipping destinations of Moscow, Bulgaria, or Peking. The later companies introduced by Respondents in Singapore and Taiwan had not even heard of the Respondents; all indications suggests that these companies were independent of Oshima and Sound You.

Liability of Sound You Corporation

The liability of an agent acting within the scope of his employment is imputed to his employer, *Gleason* v. *Seaboard Airline Railway Co.*, 278 U.S. 349 (1929). It is also well-established that corporations act only through individuals and that the acts of an officer of a corporation may be imputed to the corporation when his conduct was in the course of his employment and for the benefit of the corporation. See, *e.g.*, *PTF Enterprises* v. *United States*, 558 F. Supp. 1317 (W.D. Mo. 1983), aff'd 716 F.2d 908 (8th Cir. 1983).

Oshima was the president of Sound You. He signed his name as president on the numerous pieces of correspondence generated in connection with this matter. Oshima's conduct was clearly within the course of his employment because, as the president of a firm involved in the export of items to North Korea, Oshima would certainly be authorized to negotiate a transaction like the one at issue here.

Moreover, Oshima's actions were also thought to be clearly for the benefit of the corporation, because any profit derived as a result would be profit for the corporation of which he was president. In its answer, Sound You did not allege that Oshima was not authorized to take the actions he took in this matter and that those actions did not benefit the corporation. Oshima's acts are fully imputable to Sound You.

The Remand

The Remand is based on the assertion that the decision is unsupported by substantial evidence on the record in that it: (1) Mischaracterizes certain evidence, (2) fails to address other evidence potentially favorable to Respondents, and (3) it effectively deprives Respondents of a full and fair opportunity to be heard. A number of other assertions in the Remand also deserve comment. These include: (a) Respondent Oshima's lack of fluency in English, (b) lack of skill and objectivity of interpreters, (c) failure to address evidence favorable to Respondent and mischaracterizing evidence, and (d) failure to cite, or respond to Respondents' 28 exhibits or arguments.

Persons who seek to violate the export and other laws do not broadcast their intentions in clear and explicit language. Here Intel officials perceived that inquiry was being made to effect an impermissible transfer of protected technology to North Korea. That responsible domestic company then gave appropriate notice to the Department of Commerce. Contacts were then monitored and it was concluded that a significant diversion of controlled items to North Korea was being attempted by Respondents. The story told in this record admits of no other conclusion.

A. The inquiry from Oshima to Intel clearly reflected his knowledge that export of CPU–386s to Communist countries was prohibited and that Respondents nevertheless sought to find a way to effect such export. Since Oshima alluded to COCOM it may be inferred that he knew what that term meant. Neither the Department nor a vendor has the burden of educating a prospective purchaser when no questions or inquiry are posed.

B. Respondent stated his understanding that CPU–386 could not be exported to Communist countries. The restatement of that conclusion by Intel constituted a clear and unequivocal reiteration of the fact.

C. The discussions respecting shipment through another country with subsequent transfer to North Korea was identified as an illegal diversion and clearly so understood by Mr. Oshima. The probability of reshipment to Russia was suggested by Mr. Oshima. The facts and understandings were neither misunderstood nor mischaracterized. The subsequent proposed to changes of consignees to three companies in the far east outside of North Korea rather than reflecting legitimate sales, warranted inference that a diversion through third parties and countries was in the offing. This was confirmed when two of the companies that were identified advised that no such orders had been placed.

The payment of a "cash inducement" of $5.00 per unit for ultimately 800,000 units was not found to be a "Commission" or "inducement". It was, and was found to be, an offer of a bribe for illegal acts. Plain and simple.

Conclusion

From the evidence presented by the Agency, I conclude that Respondent Yuzo Oshima and Respondent Sound You Company, Ltd., acting through individuals under its control, did commit three violations of the Export Administration Act and the Regulations promulgated thereunder, as set forth in Charges One, Two and Three of the charging letter. Evidence presented by the Agency regarding Charge Four, alleging the establishment of entities as intermediate destinations in other countries with the intent to evade the Regulations, as discussed above, does not support a finding of a violation on that charge.

Sanctions

I concur with Agency Counsel's proposal that the appropriate sanction in this matter for both Oshima and Sound You is denial of their U.S. export privileges for a period of 20 years.

The actions here involve microprocessor units that were controlled for reasons of national security and which were intended for North Korea, a country against which the United States has a virtual embargo. Oshima was told repeatedly that a validated export license was required to export the CPU–386s to North Korea. Even so, he systematically attempted to find a way to export those microprocessors without first obtaining such a license. Oshima first tried to get Intel to export the CPU–386s directly to North Korea, expressing his willingness to pay his point of contact with Intel a "cash" inducement to see that the export took place. That was not a bonus, bounty, or premium nor was it a kumshaw, baksheesh or dashee except in an American G.I. sense. To offer or agree to pay 5% of a $232 million gross price, as occurred here, was plainly and simply an agreement to bribe. Next, Oshima proposed to have Intel to export the CPU–386s to North Korea through other countries, going so far as to explore the possibility of setting up "dummy" companies to make the transaction look legitimate. Oshima also suggested, during later negotiations with Intel, that the CPU–386s were going to be exported to end users in Taiwan and Singapore. However, this was not true as is established by the fact that the companies his identified to Intel as end users in Taiwan denied any affiliation with Oshima or Sound You. The fact that Oshima was willing to pay an enormous amount in cash for the CPU–386s and his insistence on taking personal delivery of several large pallets of the CPU–386s also indicates that this was not a legitimate business transaction but rather was proposed to set up a blind trail to an impermissible destination to which the microprocessors could not be traced.

Order

I. For a period of 20 years from the date of the final Agency action, Respondent The Sound You Company, Ltd. and Yuzo Oshima with addresses at Tatsuno-Nishitenma Building 3–1–6, Nishitenma Kita-ku, Osaka, Japan and

all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing an export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

(IV) All outstanding individual validated export licenses in which Respondent(s) appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent(s)'s privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance of otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. § 2412(c)(1)).

Dated: July 30, 1993.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, Bureau of Export Administration, U.S. Department of Commerce, room H-3898B, 14th & Constitution Ave., N.W., Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to Section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance. 15 CFR 788.23(e).

Certificate of Mailing

I certify that I have sent the attached document by courier Federal Express (International Shipment) to:

Yuzo Oshima, President, Pro Se The Sound You Company, Ltd., Tatsuno-Nishitenma Building 3–1–6, Nishitenma Kita-ku, Osaka, 530 Japan (Airbill No. 400–94226510)

I also certify that the attached document was delivered to:

Anthony Hicks, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Suite 3839, Washington, DC 20230.

Dated: July 30, 1993.

Lynn Clemons.

[FR Doc. 93–27873 Filed 11–16–93; 8:45 am]

BILLING CODE 3510-DT-M

International Trade Administration

Initiation of Antidumping and Countervailing Duty Administrative Reviews

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of initiation of antidumping and countervailing duty administrative reviews.

SUMMARY: The Department of Commerce has received requests to conduct administrative reviews of various antidumping and countervailing duty orders, findings and suspension agreements with October anniversary dates. In accordance with the Commerce Regulations, we are initiating those administrative reviews.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Holly A. Kuga, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–2104.

SUPPLEMENTARY INFORMATION:

Background

The Department of Commerce (the Department) has received timely requests, in accordance with §§ 353.22(a) and 355.22(a) of the Department's regulations, for administrative reviews of various antidumping and countervailing duty orders, findings, and suspension agreements with October anniversary dates.

Initiation of Reviews

In accordance with §§ 353.22(c) and 355.22(c) of the Department's regulations, we are initiating administrative reviews of the following antidumping and countervailing duty orders, findings, and suspension agreements. We intend to issue the final results of these reviews not later than October 31, 1994.

Antidumping duty proceedings	Period to be Previewed
Italy:	
Pressure Sensitive Plastic Tape	
A–475–059	
N.A.R. S.p.A	10/1/92–9/30/93
Japan:	
Tapered Roller Bearings and Parts Thereof, Finished and Unfinished; Tapered Roller Bearings and Certain Components Thereof	
A–588–604	
A–588–054	
NTN Corporation, Koyo Seiko Co., Ltd., NSK Ltd., Nachi-Fujikoshi, Fuji Heavy Ind., C. Itoh, Kawasaki Heavy Ind., Maekawa Bearings, MC International, Niigata Convertor Co., Ltd., Sumitomo Shoji, Suzuki Motor Co., Ltd., Honda Motor Co., Toyosha Co., Ltd., Yamaha Motor Co., Ltd., Daido Steel, Kawada Tekkosho, Asakawa Seisakusho, Fuserashi, Gotoh Nut Seisakusho, Hamanaka Nut, Ichiyanagi Tekko, Ishi Nut Ind., Kawada Tekko, Kinki Marusei Nut Kogyo Kumiai, Kitazawa Valve Co., Nittetsu Bolten, Shiga Bolt, Shinko Bolt, Sugira Seisakusho, Sumikin Seiatsu, Toyo Valve Co., Unytite Kogyo	10/1/92–9/30/93
Malaysia:	
Extruded Rubber Thread	
A–557–805	
Rubberflex SDN BHD	4/2/92–9/30/93
Suspension Agreements	
Kazakhstan:	
Uranium	
A–834–802	10/16/92–9/30/93
Kyrgyzstan:	
Uranium	
A–835–802	10/16/92–9/30/93
Russian Federation:	
Uranium	
A–821–802	10/16/92–9/30/93
Uzbekistan:	
Uranium	
A–844–802	10/16/92–9/30/93
Venezuela:	
Gray Portland Cement and Clinker	
A–307–803	
Corporation Venezolana de Cementos, S.A.C.A. Cementos Caribe, C.A.	2/1/92–1/31/93
Countervailing Duty Proceedings	
India:	
Certain Iron-Metal Castings	
C–533–063	1/1/92–12/31/92

Interested parties must submit applications for administrative protective orders in accordance with §§ 353.34(b) and 355.34(b) of the Department's regulations.

These initiations and this notice are in accordance with section 751(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1675(a)) and 19 CFR 353.22(c)(1) and 355.22(c)(1) (1993).

Dated: November 12, 1993.

Joseph A. Spetrini,

Deputy Assistant Secretary for Compliance.

[FR Doc. 93–28265 Filed 11–16–93; 8:45 am]

BILLING CODE 3510–DS–M

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Corrected Notice of Opportunity To Apply to Serve on Binational Review Panels and Extraordinary Challenge Committees

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Correction to Notice of opportunity to apply for inclusion on lists of candidates eligible to serve on binational panels and Extraordinary Challenge Committees convened pursuant to Chapter 19 of the United States—Canada Free-Trade Agreement (CFTA or Agreement) published in 58 FR 59705 on Wednesday, November 10, 1993. The notice omitted Annex A, the U.S. Article 1904 Roster List and Annex B, Final List of Candidates for Article 1904.13 Extraordinary Challenge Committees, both of which are published in this corrected notice. The text of the notice is otherwise unchanged.

SUMMARY: The CFTA provides for the establishment of binational panels to review final determinations in U.S. and Canadian antidumping and countervailing duty proceedings involving merchandise from Canada or the United States. The CFTA also provides for review of binational panel decisions, in limited circumstances, by Extraordinary Challenge Committees. Pursuant to the CFTA and its implementing legislation, USTR maintains lists of candidates eligible to serve on Chapter 19 panels and Extraordinary Challenge Committees. USTR and the interagency group established pursuant to section 405 of the United States—Canada Free-Trade Agreement Implementation Act of 1988, Public Law 100–449 (the Act), invite eligible citizens of the United States to apply for inclusion on these candidate lists.

DATES: Eligible citizens are encouraged to supply a resume to the office indicated below by November 24, 1993 in order to be considered for the 1994 candidate lists.

ADDRESSES: Section 405 Group, room 223, Office of the United States Trade

Representative, 600 17th Street NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: Dorothy Balaban, Legal Assistant, Office of the General Counsel, Office of the United States Trade Representative, (202) 395–3432.

SUPPLEMENTARY INFORMATION: Chapter 19 of the CFTA substituted binational panel review for judicial review by national courts of final determinations in antidumping and countervailing duty proceedings. Chapter 19 panels review determinations to decide whether the competent investigating authority complied with the relevant national laws, applying the standard of review that would otherwise have been applied by a national court in comparable circumstances.

Since the implementation of the CFTA, 46 binational panel proceedings have been convened pursuant to Chapter 19. 30 of these panel proceedings have involved determinations by U.S. investigating authorities; 16 have involved Canadian determinations. Six of these panels have reviewed countervailing duty determinations; 23 proceedings have involved antidumping duty determinations; 14 have involved injury determinations; and three have involved scope determinations. 21 panel proceedings are currently pending.

Binational panels convened pursuant to Chapter 19 consist of five independent experts. A separate panel is formed for each challenged determination. The panelists are nominated by the United States and Canada from lists of eligible candidates developed in advance pursuant to the requirements of the CFTA and the Act. The majority of individuals on each panel must be attorneys.

Panel decisions are not subject to appeal, but may be reviewed in limited circumstances by a binational Extraordinary Challenge Committee. Extraordinary Challenge Committees are composed of current and former Federal judges. To date, two panel decisions has been considered by Extraordinary Challenge Committees.

Section 405 of the Act establishes an interagency group, chaired by USTR, to propose lists of candidates eligible to serve on Chapter 19 panels and Extraordinary Challenge Committees. After consulting with the Senate Committee on Finance and the House Committee on Ways and Means, USTR approves a final candidate list. Pursuant to section 405, the candidate list may be modified twice each year.

The current U.S. list of candidates eligible to serve on chapter 19 binational panels is set forth in Annex A to this notice. The current U.S. list of candidates eligible to serve on Extraordinary Challenge Committees is set forth in Annex B.

Criteria for Eligibility

Chapter 19 establishes specific criteria for panel selection. First, candidates must be U.S. or Canadian citizens and not affiliated with either government. They also must be of good character, high standing and repute, and must be chosen strictly on the basis of objectivity, reliability, sound judgment and general familiarity with international trade law. Although the Act precludes active judges from serving on Chapter 19 panels, former judges are encouraged to apply.

Section 405 of the Act establishes further requirements for the selection of eligible U.S. candidates to serve on Chapter 19 binational panels. Candidates are to be selected without regard to political affiliation. Individuals who would be prevented by conflicts of interest from serving on many panels convened pursuant to Chapter 19 may be excluded from the final candidate list. Not all individuals included on the final candidate list necessarily will be selected for panels.

Remuneration

The two governments share equally in compensating panel members. The amount of remuneration varies according to the exchange rate and is currently $320 per day, plus reasonable expenses. Although panelists will receive remuneration from the United States, section 405(b) of the Act specifies that panelists are not considered employees of the Government.

Procedures for Application

Interested parties are encouraged to supply one copy of their resumes to Section 405 Group, room 223, Office of the United States Trade Representative, 600 17th Street NW., Washington, DC 20506. Upon receipt of resumes, the Section 405 Group may send a letter requesting further information in order to allow a thorough evaluation of the application.

The applicant's resume and any supplementary information provided by an applicant will be used by USTR for the purpose of selecting candidates for the final lists and for nominating candidates for particular panels or committees. Further information concerning potential conflicts may be requested, on an as needed basis, from individuals prior to final selection or appointment to particular panels or committees. This information will be provided to the Government of Canada upon the nomination of candidates to particular panels or committees.

Current Members

Current members of the candidate lists need not reapply in response to this notice. Current members who are no longer interested in serving on panels or committees should notify USTR so that they can be removed from the list. In the absence of such notice, USTR will assume that the individual wishes to remain on the list. Individuals who have previously applied but have not been selected for a final candidate list may reapply.

False Statements

Pursuant to section 405(a)(2)(C) of the Act, false statements by an applicant to USTR regarding the applicant's personal or professional qualifications, or financial or other relevant interests, that bear upon the applicant's suitability for placement on a list of eligible candidates or appointment to panels or committees are subject to criminal sanctions under 18 U.S.C. 10901.

Dated: November 12, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

Annex A—United States Article 1904 Roster List

Bruce Aitken
Bill Alberger
William P. Alford
Steven W. Baker
John H. Barton
David E. Birenbaum
Lawrence J. Bogard
James R. Cannon
Michael J. Coursey
Gail T. Cumins
Joel Davidow
Joseph F. Dennin
Harry B. Endsley
Howard N. Fenton, III
Harry First
Peter J. Gartland
Timothy A. Harr
David Hartquist
C. Michael Hathaway
Mark D. Herlach
F. Lynn Holec
O. Thomas Johnson, Jr.
Alan G. Kashdan
Harold H. Koh
Daniel M. Kolkey
Jane C. Luxton
Robert E. Lutz, II
Michael P. Mabile
W. Clark McFadden, II
Brian E. McGill
John J. Miller, CPA
Carol A. Mitchell
Philip D. O'Neill, Jr.
Daniel G. Partan
Kathleen F. Patterson

John M. Peterson
Morton Pomeranz
Lauren D. Rachlin
John A. Ragosta
Kenneth B. Reisenfeld
W. Michael Reisman
Robert E. Ruggeri
Francis J. Sailer
Michael Sandler
Leonard E. Santos
Tom M. Schaumberg
Thomas J. Schoenbaum
Melvin S. Schwechter
Saul L. Sherman
Mary T. Staley
Eugene L. Stewart
Terence P. Stewart
The Honorable Paula Stern
Steven S. Weiser
Gary M. Welsh

Annex B—Final List of Candidates for Article 1904.13 Extraordinary Challenge Committees

Honorable Arlin M. Adams
Honorable Patricia J. Boyle
Honorable Susan Getzendanner
Honorable Lynn C. Higby
Honorable Frederick B. Lacey
Honorable Miles W. Lord
Honorable Frank J. McGarr
Honorable Thomas R. McMillen
Honorable James R. Miller, Jr.
Honorable Robert J. O'Connor
Honorable John A. Reed
Honorable Charles B. Renfrew
Honorable Philip W. Tone
Honorable Harold R. Tyler, Jr.
Honorable Malcolm R. Wilkey

[FR Doc. 93-28266 Filed 11-16-93; 8:45 am]
BILLING CODE 3510-GT-M

Lehigh University, et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93-095. *Applicant:* Lehigh University, Bethlehem, PA 18015. *Instrument:* Gas Source Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 58 FR 47887, September 13, 1993. *Reasons:* The foreign instrument provides internal precisions of 0.1 per mil for 1.0 x 10^7 to 1.0 x 10^4 mole samples of both N_2 and CO_2 in dual-inlet continuous viscous flow mode.

Docket Number: 93-097. *Applicant:* University of Oklahoma, Norman, OK 73019. *Instrument:* Gas Chromatograph Isotope Ratio Mass Spectrometer, Model MAT 252. *Manufacturer:* Finnigan MAT, Germany. *Intended Use:* See notice at 58 FR 47887, September 13, 1993. *Reasons:* The foreign instrument provides: (1) An internal precision of 0.005 per mil for 3 bar µl samples of CO_2, (2) two ion multicollector systems and (3) an all metal inlet with gold seals.

Docket Numbers: 93-100 and 93-101. *Applicant:* University of Michigan, Ann Arbor, MI 48109-1063. *Instruments:* (2) Used Rare Gas Mass Spectrometers and Accessories, Models VG 1200S and VG 3000. *Manufacturer:* Fisons, United Kingdom. *Intended Use:* See notice at 58 FR 49023, September 21, 1993. *Reasons:* The Model VG 1200S instrument provides a sensitivity of 1 x 10^{-3} amps/Torr for Ar and low background (partial pressure at mass 36 is less than 3 x 10^{-13} cm^3 STP). The Model VG 3000 instrument provides detection and measurement of ion beams of 6 x 10^{-16} amps with a 3:1 signal/noise ratio and measurement of helium isotopic compositions ($^3He/^4He$) to 5.0%.

The capability of each of the foreign instruments described above is pertinent to each applicant's intended purposes. We know of no instrument or apparatus being manufactured in the United States which is of equivalent scientific value to any of the foreign instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.

[FR Doc. 93-28300 Filed 11-16-93; 8:45 am]
BILLING CODE 3510-DS-F

University of Arkansas et al.; Consolidated Decision on Applications for Duty-Free Entry of Scientific Instruments

This is a decision consolidated pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instruments described below, for such purposes as each is intended to be used, is being manufactured in the United States.

Docket Number: 93-096. *Applicant:* University of Arkansas, Fayetteville, AR 72701.

Docket Number: 93-098. *Applicant:* Oklahoma State University, Stillwater, OK 74078.

Instrument: Tandem Fabry-Perot Interferometers and Accessories.

Manufacturer: J.R. Sandercock, Switzerland.

Intended Use: See notices at 58 FR 47887, September 13, 1993 and 58 FR 49023, September 21, 1993. *Reasons:* The foreign instrument provides a 3-pass dynamically isolated tandem system with contrast in the range 10^9 to 10^{11} and optimal dynamic range with minimal draft. *Advice Received From:* National Institute of Standards and Technology, October 15, 1993.

The National Institute of Standards and Technology advises that (1) the capabilities of each of the foreign instruments described above are pertinent to each applicant's intended purpose and (2) it knows of no domestic instrument or apparatus of equivalent scientific value for the intended use of each instrument.

We know of no other instrument or apparatus being manufactured in the United States which is of equivalent scientific value to the foreign instruments.

Frank W. Creel,
Director, Statutory Import Programs Staff.

[FR Doc. 93-28302 Filed 11-16-93; 8:45 am]
BILLING CODE 3510-DS-F

University of California; Decision on Application for Duty-Free Entry of Scientific Instrument

This decision is made pursuant to section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89-651, 80 Stat. 897; 15 CFR part 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as it is intended to be used, is being manufactured in the United States.

Docket Number: 92-169R. *Applicant:* University of California, Los Alamos, NM 87545. *Instrument:* UHV Scanning Tunneling Microscope. *Manufacturer:* Omicron Associates, Germany. *Intended Use:* See notice at 58 FR 4976, January 19, 1993. *Reasons:* The foreign

instrument provides: (1) In-situ tip exchange, (2) guaranteed atomic resolution on gold and (3) an additional substrate electrode and preamp for ballistic electron emission microscopy capability.

The capabilities of the foreign instrument described above are pertinent to the applicant's intended purpose and we know of no other instrument or apparatus of equivalent scientific value to the foreign instrument which is being manufactured in the United States.

Frank W. Creel,

Director, Statutory Import Programs Staff.

[FR Doc. 93-28301 Filed 11-16-93; 8:45 am]

BILLING CODE 3510-DS-F

Minority Business Development Agency

[I.D. No. 06-10-94004-01]

Business Development Center Applications: Little Rock MBDC

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from April 1, 1994 to March 31, 1995 is estimated at $169,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Little Rock, Arkansas MSA geographic service area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project costs through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is December 28, 1993. Applications must be postmarked on or before December 28, 1993.

ADDRESSES: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242, (214) 767-8001.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, Dallas Regional Office, telephone (214) 767-8001.

A pre-bid conference will be held on December 10, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640-0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Departmental Grants Office may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/

cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification from prescribed above applies to applications/bids for grants, cooperative agreements, and contacts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 8, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–28188 Filed 11–16–93; 8:45 am]

BILLING CODE 3510–21–M

[I.D. No. 06–10–94001–01]

Business Development Center Applications: Shreveport MBDC

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from April 1, 1994 to March 31, 1995 is estimated at $169,125. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Shreveport, Louisiana MSA geographic service area.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: The experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to any one evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an application not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project costs through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is December 28, 1993. Applications must be postmarked on or before December 28, 1993.

ADDRESSES: Dallas Regional Office, 1100 Commerce St., room 7B23, Dallas, Texas 75242, (214) 767–8001.

FOR FURTHER INFORMATION CONTACT: Melda Cabrera, Regional Director, Dallas Regional Office, telephone (214) 767–8001.

A pre-bid conference will be held on December 10, 1993 in the Earl Cabell Federal Building, room 7B23, on 1100 Commerce Street, Dallas, Texas at 10 a.m.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this

award is 120 days. Executive Order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs—Applicants are hereby notified that if they incur any costs to an award being made, they do solely at their own risk of not being reimbursed by the Government. Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award costs. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable—No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy—All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination—The Department Grants Office may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which can cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal and punishable by law.

False Statements—A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications—All primary applicants must submit a completed Form CD–511, "Certification Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension—Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR Part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace—Grantees (as defined at 15 CFR part 26, Section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying—Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contacts for more than $100,000.

Anti-Lobbying Disclosures—Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications—Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development (Catalog of Federal Domestic Assistance)

Dated: November 8, 1993.

Melda Cabrera,

Regional Director, Dallas Regional Office.

[FR Doc. 93–28189 Filed 11–16–93; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of a public hearing.

SUMMARY: The Gulf of Mexico Fishery Management Council (Council) will convene a public hearing on draft Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic. Amendment 7 proposes to: (1) Suballocate the Eastern zone commercial quota for Gulf group king mackerel equally between the east and west coasts of Florida (the North area and the South/West area are separated at the boundary between Florida's Dade and Monroe counties); and (2) further suballocate the South/West area quota between net and troll fishermen.

DATES: Written comments on the proposed action must be received by January 3, 1994. The hearing is scheduled for Tuesday, December 7, 1993, from 7 p.m., to 10 p.m.

ADDRESSES: Comments should be addressed to Terrance R. Leary, Gulf of Mexico Fishery Management Council, 5401 West Kennedy Boulevard, suite 331, Tampa, FL, 33609. The hearing will be held in the Conference Room at the NMFS Panama City Laboratory, 3500 Delwood Beach Road, Panama City, Florida (904–234–6541).

FOR FURTHER INFORMATION CONTACT: Terrance R. Leary, 813–228–2815.

SUPPLEMENTARY INFORMATION: The hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aides should be directed to Beverly Badillo at the above Council address by November 30, 1993.

Dated: November 10, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28177 Filed 11–16–93; 8:45 am]

BILLING CODE 3510-22-M

National Technical Information Service

Prospective Grant of Exclusive Patent License

This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Technical Information Service (NTIS), U.S. Department of Commerce, is contemplating the grant of an exclusive license in the United States to practice the invention embodied in U.S. Patent No. 4,973,194 (Serial No. 7–229,935), titled "Method for Burial and Isolation of Waste Sludge," to Del Mar Environmental Technologies, Inc., a company in the process of incorporating and organizing operations in the State of Virginia. The patent rights in this invention have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within sixty days from the date of this published Notice, NTIS receives written evidence and argument which establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The invention describes a method of disposal of waste solid material in an underwater geologic formation on the continental margins which comprises the steps of: Drilling a large diameter hole into the geologic formation to a depth of several hundred feet in a single stroke operation; depositing a slug of a paste of waste material into the bottom of the hole thereby burying the slug; and permitting the geologic formation adjacent to the hole above the buried slug to fill the hole above the slug, thereby sealing the buried slug in the geologic formation. A continuous slug of waste material can be used, or the waste material can be formed into discrete charges of material.

The availability of Patent No. 4,973,194 for licensing was published in the **Federal Register**, Vol. 56, No. 21, p. 3822 (January 31, 1991). A copy of the above-identified patent may be purchased from the Commissioner of Patents and Trademarks, Box 9, Washington, DC 20231 for $3.00 (payable by check or money order).

Inquires, comments and other materials relating to the contemplated license must be submitted to Neil L. Mark, Office of Federal Patent Licensing, NTIS, Box 1423, Springfield, VA 22151. Properly filed competing applications received by the NTIS in response to this Notice will be considered as objections to the grant of the contemplated license.

Douglas J. Campion,

Acting Director, Office of Federal Patent Licensing.

[FR Doc. 93–28161 Filed 11–16–93; 8:45 am]

BILLING CODE 3510-04-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Bangladesh

November 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Ross Arnold, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for Categories 334 and 634 are being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60174, published on December 18, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 11, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Bangladesh and exported during the twelve-month period which began on February 1, 1993 and extends through January 31, 1994.

Effective on November 17, 1993, you are directed to amend further the directive dated December 11, 1992 to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of Bangladesh:

Category	Adjusted twelve-month limit [1]
334	112,321 dozen.
634	392,958 dozen.

[1] The limits have not been adjusted to account for any imports exported after January 31, 1993.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28296 Filed 11–16–93; 8:45 am]

BILLING CODE 3510-DR-F

Adjustment of Import Limits for Certain Man-Made Fiber Textile Products Produced or Manufactured in India

November 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Tallarico, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the

quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6705. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 641 is being increased by application of swing, reducing the limit for Categories 647/648 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 56328, published on November 27, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 20, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, man-made fiber, silk blend and other vegetable fiber textile products, produced or manufactured in India and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 17, 1993, you are directed to amend further the directive dated November 20, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and India:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
641	895,965 dozen.
647/648	282,444 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28299 Filed 11–16–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Philippines

November 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Jennifer Aldrich, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6713. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for special shift.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53473, published on November 10, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 4, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products and silk blend and other vegetable fiber apparel, produced or manufactured in the Philippines and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 17, 1993, you are directed to amend further the directive dated November 4, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Philippines:

Category	Adjusted twelve-month limit [1]
Levels in Group I:	
335	148,220 dozen.
634	364,952 dozen.
635	290,385 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28298 Filed 11–16–93; 8:45 am]

BILLING CODE 3510–DR–F

Adjustment of an Import Limit for Certain Wool Textile Products Produced or Manufactured in Poland

November 10, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce,

(202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Category 443 is being increased for carryforward.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 48022, published on October 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 10, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on October 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Poland and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 17, 1993, you are directed to amend the directive dated October 15, 1992 to increase the limit for Category 443 to 239,673 numbers [1], as provided under the terms of the current bilateral agreement between the Governments of the United States and the Republic of Poland.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28297 Filed 11–16–93; 8:45 am]
BILLING CODE 3510–DR–F

Request for Public Comments on Bilateral Textile Consultations With the Government of the People's Republic of China on Certain Silk Blend and Other Vegetable Fiber Textile Products

November 12, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing a limit.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715. For information on categories on which consultations have been requested, call (202) 482–3740.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

On October 29, 1993, under the terms of the Bilateral Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textile Agreement of February 2, 1988, as amended, between the Governments of the United States and the People's Republic of China, the United States Government requested consultations with the Government of the People's Republic of China with respect to silk blend and other vegetable fiber luggage in Category 870.

The U.S. Government has decided to implement a limit for the prorated period beginning on October 29, 1993 and extending through December 31, 1993.

A summary market statement concerning Category 870 follows this notice.

Anyone wishing to comment or provide data or information regarding the treatment of Category 870, under the agreement with the the Government of the People's Republic of China, or to comment on domestic production or availability of products included in Category 870, is invited to submit 10 copies of such comments or information to Rita D. Hayes, Chairman, Committee for the Implementation of Textile Agreements, U.S. Department of Commerce, Washington, DC 20230; ATTN: Helen L. LeGrande. The comments received will be considered in the context of the consultations with the Government of the People's Republic of China.

Comments or information submitted in response to this notice will be available for public inspection in the Office of Textiles and Apparel, room H3100, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Further comments may be invited regarding particular comments or information received from the public which the Committee for the Implementation of Textile Agreements considers appropriate for further consideration.

The solicitation of comments regarding any aspect of the agreement or the implementation thereof is not a waiver in any respect of the exemption contained in 5 U.S.C. 553(a)(1) relating to matters which constitute "a foreign affairs function of the United States."

The United States remains committed to finding a solution concerning Category 870. Should such a solution be reached in consultations with the Government of the People's Republic of China, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Market Statement—China

Category 870—Luggage of Silk-Blend and Non-Cotton Vegetable Fiber

October 1993

Import Situation and Conclusion

U.S. imports of Category 870 luggage—silk-blend and non-cotton vegetable fiber—from China reached 26.1 million kilograms in the year ending in August 1993, 63 percent above the 16.0 million kilograms imported a year earlier. During the first eight months of 1993, China shipped 17.7 million kilograms, 55 percent above their January-August 1992 level and 89 percent of their total calendar year 1992 level. China is the largest uncontrolled supplier accounting for 84

percent of total Category 870 imports during the year ending August 1993.

Imports of silk-blend and non-cotton vegetable fiber luggage compete directly with domestically produced man-made fiber luggage, Category 670 Part. The sharp and substantial increase in Category 870 imports from China is causing a real risk of market disruption in the U.S. market for man-made fiber luggage.

U.S. Production, Import Penetration, and Market Share

U.S. production of man-made fiber luggage, Category 670 Part, measured in kilograms of fabric consumed in the production of luggage, declined seven percent between 1989 and 1992. In contrast, Category 670 Part luggage imports, measured in kilograms of fabric content, increased by nine percent between 1989 and 1992. The ratio of imports to domestic production in Category 670 Part luggage increased to 229 percent in 1992 from 195 percent in 1989. The domestic manufacturers' share of this market fell from 34 percent in 1989 to 30 percent in 1992, a decline of 4 percentage points.

U.S. imports of silk-blend and non-cotton vegetable fiber luggage, Category 870, surged in 1992 reaching 25,599,000 kilograms (actual weight of luggage) in 1992, 41 percent above the 1991 level. Imports continued to surge in 1993 increasing 37 percent in the first eight months of 1993 over the January-August 1992 level.

When imports of the directly competitive Category 870 luggage, adjusted for fabric content, are included in the market analysis, the import to domestic production ratio increases by 81 percentage points to 310 percent in 1992 and the domestic manufacturers' share of the market declines six percentage points to 24 percent in 1992.

Duty-Paid Value and U.S. Producers' Price

Nearly all of Category 870 luggage imports from China during 1993 entered the U.S. under HTSUSA numbers 4202.12.6000—suitcases and similar containers of non-cotton vegetable fibers, not of pile or tufted construction, and 4202.92.2000—travel bags and similar bags of non-cotton vegetable fiber, not of pile or tufted construction. The prices of these imports of luggage from China are lower than the prices of comparable U.S. produced luggage.

Committee for the Implementation of Textile Agreements

November 12, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China and exported during the period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 19, 1993, you are directed to establish a limit for silk blend and other vegetable fiber textile products in Category 870, produced or manufactured in China and exported during the period beginning on October 29, 1993 and extending through December 31, 1993 at a level of 5,058,892 kilograms [1].

Textile products in Category 870 which have been exported to the United States prior to October 29, 1993 shall not be subject to the limit established in this directive.

Textile products in Category 870 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1) prior to the effective date of this directive shall not be denied entry under this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93-28295 Filed 11-16-93; 8:45 am]

BILLING CODE 3510-DR-F

[1] The limit has not been adjusted to account for any imports exported after October 28, 1993.

COPYRIGHT ROYALTY TRIBUNAL

[CRT Docket No. 93-1-92DRD]

1992 Audio Home Recording Act Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: On November 4, 1993, the American Society of Composers, Authors and Publishers, Broadcast Music Inc., Copyright Management, Inc., Gospel Music Coalition, The Harry Fox Agency, Inc., SESAC, Inc. and The Songwriters Guild of America ("Parties") filed a joint motion to consolidate the 1992 and 1993 Dart Distribution Proceedings in the Musical Works Fund. The Tribunal invites comments from interested parties.

DATES: Comments are due by November 23, 1993. Reply comments will not be accepted.

ADDRESSES: An original and five copies of the comments shall be addressed to Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Cindy Daub, Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009, (202) 606-4400.

SUPPLEMENTARY INFORMATION: On June 30, the parties in Joint Comments advised the Tribunal that they had reached agreement among themselves and with certain individual claimants within the Musical Works Fund who had filed claims in the Writers Subfund, the Publishers Fund, or both Subfunds for 1992. By that agreement, the parties advised the Tribunal that claims to 1992 Musical Works Fund royalties were "rolled over" into the 1993 Distribution Proceedings and claims of settling parties to shares of the respective Subfunds of the 1992 Musical Works Fund are to be settled based on the shares each receives of the respective 1993 Subfunds. In Supplementary Comments dated September 8, 1993, the parties advised the Tribunal that they had reached agreement with other individual claimants who filed claims within the Musical Work Fund and that no controversy existed as among these additional individual claimants. Further, Mr. James Cannings was the only claimant in the Musical Work Fund to file a Notice of Intent to Participate in the 1992 DART Distribution Proceedings and had not agreed to "roll over" his 1992 claims into the 1993 Distribution Proceeding.

The parties express that because of, the unique circumstances presented and in the interest of justice and efficient administration they request the Tribunal to consolidate the 1992 and 1993 DART Distribution Proceedings in the Musical Works Fund. The parties note the following several reasons why consolidation is the fairest and most prudent course:

1. The size of the 1992 DART royalty fund does not justify a proceeding, for the costs of a proceeding will leave nothing to distribute;

2. The first DART Distribution Proceeding will have precedential effect, and should not be held in these circumstances; precisely, that if the Tribunal were to conduct a special Distribution Proceeding at this time to determine Mr. Canning's 1992 entitlement, those claimants not appearing will be denied the opportunity to be heard on the important matters of the procedure and substance of Music Works Fund

Distribution Proceedings. The parties further note that significant prejudice would be avoided if the Tribunal were to consolidate the 1992 and 1993 DART Distribution Proceedings.

3. Because of the pendency of H.R. 2840 and S. 1346, bills introduced to abolish by the Tribunal, to conduct a 1992 DART Distribution Proceeding at this time may truncate the proceeding and needlessly expend effort and resources. Additionally, the parties note that in view of this legislation, the Tribunal has already suspended conduct of the 1990 Cable Royalty Distribution Proceeding. Also, the Tribunal's procedural schedule calls for submission of written direct cases by December 1, 1993, and commencement of hearings on January 10, 1994. If parties acted on this schedule, and the legislation is enacted, the parties would have gone to the expense of preparing direct cases for nought.

4. Consolidation would improve the quality of any evidence to be adduced and enhance the prospects for settlement; and finally,

5. Consolidation of the 1992 and 1993 DART Distribution Proceedings will not prejudice Mr. Cannings since the parties do not seek to impose on Mr. Cannings the settlement for 1992 that all other parties in the Musical Works Fund have found acceptable. Mr. Cannings would have a full and fair opportunity to present his evidence of entitlement during one consolidated Distribution Proceeding. The parties assert that the only conceivable detriment Mr. Cannings may suffer from consolidation of the two proceedings is that he will have to wait slightly longer to receive the 1992 award.

Cindy Daub,

Chairman.

[FR Doc. 93–28422 Filed 11–16–93; 8:45 am]

BILLING CODE 1410-09-M

DEPARTMENT OF DEFENSE

Department of the Army

Army Science Board, Open Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (P.L. 92–463), announcement is made of the following Committee Meeting:

Name of Committee: Army Science Board (ASB).

Date of Meeting: 9 December 1993.

Time of Meeting: 1400–1600 hours.

Place: Pentagon, Washington.

Agenda: The Army Science Board's C3I Issue Group will commence their Director of Information Systems for Command, Control, Communication, and Computers (DISC4) initiated Issue Group study on Moving Army Tactical Command and Control System (ATCCS) from a Character-Oriented Message System to a Data-Oriented Message System. this meeting will be open to the public. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–28162 Filed 11–16–93; 8:45 am]

BILLING CODE 3710-08-M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF93–131–000]

UNIGAS Corp.; Motion to Revoke Self-Certification

November 10, 1993.

Take notice that on November 4, 1993, Advanced Extraction Technologies, Inc., (AET) filed a motion with the Federal Energy Regulatory Commission (Commission) requesting the Commission to revoke the qualifying small power production facility status of the UNIGAS Corporation (Unigas), pursuant to § 292.207(d) of the Commission's regulations. Unigas' notice of self-certification was filed with the Commission on June 12, 1993, in the above-captioned docket.

AET maintains that certification should be revoked by the Commission on the ground that the natural gas that Unigas proposes to burn in the small power production facility is not waste. According to AET, Unigas will be burning valuable gas and not "waste" in contravention of the Commission's regulations.

Any person desiring to be heard or objecting to the revocation of the qualifying small power production facility status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests should be filed on or before November 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to this proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28256 Filed 11–16–93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 3574–004, et al.]

Hydroelectric Applications; Continental Hydro Corp., et al.; Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1 a. Type of Application: Major License (Notice of Tendering).

b. Project No.: 3574–004.

c. Date filed: October 18, 1993.

d. Applicant: Continental Hydro Corporation.

e. Name of Project: Tiber Dam Hydroelectric Project.

f. Location: At the U.S. Department of the Interior, Bureau of Reclamation's Tiber Dam, on the Marias River in Liberty County, Montana. Township 30 North, Range 5 East, Sections 28, 29, 32, and 33.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Robert L. Winship, Vice President, Continental Hydro Corporation, 745 Atlantic Avenue, 10th Floor, Boston, MS 02111–2735, (617) 357–9029.i. FERC Contact: James Hunter at (202) 219–2839.

i. FERC Contact: James Hunter at (202) 219–2839.

j. Brief Description of Project: The proposed project will consist of a penstock connecting to the existing outlet, a powerhouse with an installed capacity of 7.5 megawatts, and a transmission line connecting to an existing Western Area Power Administration substation.

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by § 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR at § 800.4.

l. In accordance with § 4.32(b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, not later than 60 days from the filing date and serve a copy of the request on the Applicant.

2 a. Type of Application: Exemption of Small Conduit Hydroelectric Facility.
b. Project No.: 11178–001.
c. Date filed: July 12, 1993.
d. Applicant: City of Tucson, Arizona.
e. Name of Project: City of Tucson Hydroelectric Project.
f. Location: At eleven locations within the city of Tucson's water distribution system, which gets its water from an existing U.S. Bureau of Reclamation aqueduct located west of the city, in Pima County, Arizona.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. Thomas Mundinger, Tucson Water, City of Tucson, Arizona, P.O. Box 27210, Tucson, Arizona 85726–7210.
i. FERC Contact: Mr. Michael Strzelecki, (202) 219–2827.
j. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D–4.
k. Comment Deadline: Sixty days from the issuance date of this notice. (January 4, 1994).
l. Description of Project: The project would be located on the city of Tucson's water distribution system which includes the enclosed Clearwell Reservoir and approximately 28 miles of water distribution pipeline. The project itself would consist of 11 powerhouses whose generating units have installed capacities ranging from 49 Kw to 1,275 Kw, for a cumulative capacity of 4,246 Kw. The project excludes the existing conduits on which the powerhouses are located.
m. This notice also consists of the following standard paragraphs: A2, A9, B1, and D4.
n. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Tucson Water, in Tucson Arizona.
3 a. Type of Application: Preliminary Permit.
b. Project No.: 11435–000.
c. Date Filed: September 22, 1993.
d. Applicant: Hildebrand Hydro Associates.
e. Name of Project: Hildebrand.
f. Location: On the Monongahela River in Monongalia County, West Virginia.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Mr. V. James Dunlevy, 185 Genesee Street, suite 1518 Utica, NY 13501.
i. FERC Contact: Charles T. Raabe (dt) (202) 219–2811.
j. Comment Date: December 29, 1993.
k. Description of Project: The proposed project would utilize the existing U.S. Army Corps of Engineers' Hildebrand Dam and Reservoir and would consist of: (1) A powerhouse containing one 5 MW horizontal pit turbine-generator; (2) 4.16 kV generator leads; (3) a 4.16/25–kV, 7/13 MVA transformer; (4) a 528-foot-long transmission line; and appurtenant facilities. Applicant estimates that the average annual generation would be 17,100 MWh and that the cost of the studies under the permit would be $75,000.
l. This notice also consists of the following standard paragraphs: A5, A7, A9, A10, B, C & D2.
4 a. Type of Application: Minor License.
b. Project No.: 10822–000.
c. Date filed: September 19, 1989.
d. Applicant: Summit Hydropower.
e. Name of Project: Upper Collinsville.
f. Location: On the Farmington River in Hartford County Connecticut.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Duncan Broatch, 92 Rocky Hill Rd., Woodstock, CT 06281, (203) 974–1620.
i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.
j. Deadline Date: See paragraph D9. (January 3, 1994).
k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.
l. Description of Project: The proposed project would consist of: (1) An existing 18-foot-high stone masonry dam owned by Connecticut Department of Environmental Protection (2) a reservoir with a surface area of 55 acres and a total volume of 350-acre-feet at elevation 289.2 feet msl; (3) an existing set of eight 4-foot by 8-foot cast iron slide gates; (4) an existing 140-foot-long power canal; (5) an existing sluice gate located along the power canal; (6) an existing powerhouse containing one generating unit with a rated capacity of 1,400 Kw; (7) an existing 70-foot-long tailrace; (8) a proposed 150-foot-long transmission line; and, (9) appurtenant facilities. The energy generation is estimated to be 5,165,000 Kwh.
m. Purpose of Project: Power produced would be sold to a local power company.
n. This notice also consists of the following standard paragraphs: A4 and D9.
o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE, room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Summit Hydropower, 92 Rocky Hill Rd., Woodstock, CT 06281, or by calling (203) 974–1620.
5 a. Type of Application: Minor License.
b. Project No.: 10823–000.
c. Date filed: September 19, 1989.
d. Applicant: Summit Hydropower.
e. Name of Project: Lower Collinsville.
f. Location: On the Farmington River in Hartford County, Connecticut.
g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).
h. Applicant Contact: Duncan Broatch, 92 Rocky Hill Rd., Woodstock, CT 06281, (203) 974–1620.
i. FERC Contact: Ms. Julie Bernt, (202) 219–2814.
j. Deadline Date: See paragraph D9. (January 3, 1994).
k. Status of Environmental Analysis: This application is ready for environmental analysis at this time—see attached paragraph D9.
l. Description of Project: The proposed project would consist of: (1) An existing 20-foot-high concrete gravity dam owned by Connecticut Department of Environmental Protection (2) a reservoir with a surface area of 32 acres and a total volume of 270-acre-feet at elevation 269.7 feet msl; (3) an existing set of low-level slide gates; (4) an existing gatehouse; (5) an existing 650-foot-long power canal; (6) an existing powerhouse containing one generating unit with a rated capacity of 1,150 kW; (7) an existing 100-foot-long tailrace; (8) a proposed 150-foot-long transmission line; and, (9) appurtenant facilities. The energy generation is estimated to be 4,560,000 kWh.
m. Purpose of Project: Power produced would be sold to a local power company.
n. This notice also consists of the following standard paragraphs: A4 and D9.
o. Available Locations of Application: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the offices of Summit Hydropower, 92 Rocky Hill Rd., Woodstock, CT 06281, or by calling (203) 974–1620.

6 a. Type of Application: Conduit Exemption.

b. Project No.: 11441–000.

c. Date filed: October 13, 1993.

d. Applicant: Metropolitan Water District of Southern California.

e. Name of Project: Etiwanda Small Conduit Hydroelectric Power Plant.

f. Location: On the existing Etiwanda Pipeline in the City of Rancho Cucamonga, San Bernardino County, California; T1S, R6W, in Section 8.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. Richard Balcerzak, Assistant General Manager, The Metropolitan Water District, of Southern California, P.O. Box 54153, Terminal Annex, Los Angels, CA 90054, (213) 217–6686.

i. FERC Contact: Mr. Surender M. Yepuri, P.E., (202) 219–2847.

j. Brief Description of Project: The proposed project consists a masonry powerhouse containing a turbine with an installed capacity of 23.9 Megawatts (project excludes the existing conduit on which the powerhouse is proposed).

k. With this notice, we are initiating consultation with the State Historic Preservation Officer (SHPO), as required by section 106, National Historic Preservation Act, and the regulations of the Advisory Council on Historic Preservation, 36 CFR, at § 800.4.

l. In accordance with § 4.32 (b)(7) of the Commission's regulations, if any resource agency, SHPO, Indian Tribe, or person believes that an additional scientific study should be conducted in order to form an adequate, factual basis for a complete analysis of this application on its merits, they must file a request for the study with the Commission, together with justification for such request, no later than December 13, 1993, and must serve a copy of the request on the applicant.

7a. Type of Application: Approval of a Revised Recreation Plan.

b. Project No.: 487–009.

c. Date Filed: September 20, 1993.

d. Applicant: Pennsylvania Power and Light Company.

e. Name of Project: Wallenpaupack Project.

f. Location: Lake Wallenpaupack, Wayne and Pike Counties, Pennsylvania.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. David J. Dulick, Senior Counsel, Pennsylvania Power and Light Company,Two North Ninth Street, Allentown, PA 18101–1179, (215) 774–4107.

i. FERC Contact: Heather Campbell, (202) 219–3097.

j. Comment Date: December 27, 1993.

k. Description of Project: Pennsylvania Power and Light Company filed a revised recreation plan. The revisions to the plan include not developing Shumans Point Recreation Area and allowing the Wallenpaupeck Creek Recreation Area to revert to a natural area for conservation and passive recreation. This plan will define recreational development for the length of the license period.

l. This notice also consists of the following standard paragraphs: B, C1, and D2.

8 a. Type of Application: Major License.

b. Project No.: 10756–001.

c. Date filed: May 28, 1992.

d. Applicant: Blue Diamond South Pumped Storage Power Company, Inc.

e. Name of Project: Blue Diamond South Pumped Storage.

f. Location: Mostly on U.S. lands administered by the Bureau of Land Management, on two man-made reservoirs—on and near the Blue Diamond Hill, about 5 miles west of Las Vegas in Clark County, Nevada.

g. Filed Pursuant to: Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. Applicant Contact: Mr. David K. Iverson, Synergics, Inc., 191 Main Street, Annapolis, MD 21401, (410) 268–8820.

i. FERC Contact: Mr. Surender M. Yepuri, P.E. (202) 219–2847

j. Deadline Date: Sixty days from the issuance date of this notice (January 4, 1994).

k. Status of Environmental Analysis: This application has been accepted for filing and is ready for environmental analysis at this time—see attached standard paragraph D9.

l. Description of Project: The proposed project consists of: (1) A forebay—a lined earthen embankment reservoir with a capacity of 1,200 acre-feet, a surface area of 30.87 acres, and a maximum water elevation of 4,825 feet (msl); (2) a afterbay—a lined earthen embankment reservoir with a capacity of 1,200 acre-feet, a surface area of 31.43 acres, and a maximum water elevation of 3,317 feet (msl); (3) a five-section water conduit system connecting the forebay to the afterbay; (4) a underground, circular concrete powerhouse containing 2 pump-turbine and generator-motor units with a combined rated capacity of 200 MW; (5) a control building, 80 feet long and 60 feet wide, that is contiguous to the powerhouse; (6) a booster substation, about 300 feet square, with two transformers; (7) a 138-kV transmission line, 17,000 feet long, connecting the project substation to the Nevada Power Company's proposed substation; (8) a water line, 6 inches in diameter, to initially fill the system; and (9) appurtenant facilities.

m. This notice also consists of the following standard paragraph: D9.

n. Available Locations of Applications: A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the applicant's office (see item (h) above).

Standard Paragraphs

A2. Development Application—Any qualified applicant desiring to file a competing application must submit to the Commission, on or before the specified deadline date for the particular application, a competing development application, or a notice of intent to file such an application. Submission of a timely notice of intent allows an interested person to file the competing development application no later than 120 days after the specified deadline date for the particular application. Applications for preliminary permits will not be accepted in response to this notice.

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing

development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b)(1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC. 20426. An additional copy must be sent to Director, Division of Project Review, Federal Energy Regulatory Commission, Room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtain by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D4. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice (January 4, 1994 for Project No. 11178–01). All reply comments must be filed with the Commission within 105 days from the date of this notice (February 15, 1994 for Project No. 11178–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "PROTEST", "MOTION TO INTERVENE", "NOTICE OF INTENT TO FILE COMPETING APPLICATION," "COMPETING APPLICATION," "COMMENTS," "REPLY COMMENTS," "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy of any protest or motion to intervene must be served upon each representative of the applicant specified in the particular application. A copy of all other filings in reference to this application must be accompanied by proof of service on all persons listed in the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b) and 385.2010.

D9. Filing and Service of Responsive Documents—The application is ready

for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to section 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 3, 1994 for Project Nos. 10822–000 and 10823–000; January 4, 1994 for Project No. 10756–001). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 17, 1994 for Project Nos. 10822–000 and 10823–000; February 18, 1994 for Project No. 10756–001).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must (1) bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, Room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

Dated: November 12, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28235 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. JD94–00821T Texas—152]

Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 10, 1993.

Take notice that on November 1, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, Bear Grass (Travis Peak), underlying certain portions of Leon County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 5 and consists of the portions of the following surveys:

William F. Gray Survey, Abstract 296
J.M. Mead Survey, Abstract 629
Thomas B. Hearn Survey, Abstract 351

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28254 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10987–001 Washington]

Ohop Mutual Light Co., Inc.; Surrender of Preliminary Permit

November 10, 1993.

Take notice the Ohop Mutual Light Company, Inc. Permittee for the Little Mashel Project No. 10987, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10987 was issued March 14, 1991, and would have expired February 28, 1994. The project would have been located on Little Mashel River, in Pierce County, Washington.

The Permittee filed the request on November 1, 1993, and the preliminary permit for Project No. 10987 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR Part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28255 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–48–000]

Proposed Changes in FERC Gas Tariff; Algonquin Gas Transmission Co.

November 10, 1993.

Take notice that on November 5, 1993, Algonquin Gas Transmission Company (Algonquin) tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 1, 1993:

Third Revised Sheet No. 20A
Original Sheet No. 95B

Algonquin states that the purpose of this filing is to provide for the recovery of transition costs to be paid by Algonquin to Texas Eastern Transmission Corporation (Texas Eastern) pursuant to Texas Eastern's third direct bill of Account No. 191 purchased gas costs filed on October 29, 1993.

Algonquin requests that the Commission waive Section 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to

the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28260 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-50-000]

Arkla Energy Resources Co.; Request Under Blanket Authorization

November 10, 1993.

Take notice that on October 29, 1993, Arkla Energy Resources Company (AER), 525 Milam Street, P.O. Box 21734, Shreveport, Louisiana 71151 filed in Docket No. CP94-40-000 a request pursuant §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act for authorization to abandon certain facilities in Louisiana, under its blanket certificate issued in Docket No. CP82-384-000 and CP82-384-001, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER specifically proposed to abandon a 1-inch diameter domestic sales tap served by Arkansas Louisiana Gas Company on AER's AM-165 line in Howard County, Arkansas. AER indicates that the customer will no longer be located at the tap's delivery point.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the date after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7(c) of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28243 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP91-161-017; RP91-160-014]

Columbia Gas Transmission Corp., Columbia Gulf Transmission Co.; Proposed Changes in FERC Gas Tariff

November 10, 1993.

Take notice that on November 5, 1993, Columbia Gas Transmission Corporation (Columbia) and Columbia Gulf Transmission Company (Columbia Gulf) (collectively Columbia) tendered for filing the following proposed changes to their respective FERC Gas Tariff, Second Revised Volumes No. 1, as set forth on Attachment A to the filing, to become effective January 1, 1994.

Columbia states that the instant filing is being made to implement the last sentence of Article I.A.(2)(c)(v) of the Settlement in Docket Nos. RP91-160-000 et al., and RP91-161-000 et al., which states: "If the Commission permits the OPEB accrual in rates but requires a ratemaking methodology other than that reflected in the settlement rates, Columbia Transmission and Columbia Gulf will file within 30 days after a final order to adjust their rates accordingly on a prospective basis." The Commission issued its statement of policy concerning OPEB on December 17, 1992, (Docket No. PL93-1-000) and an order on rehearing on the statement of policy on October 6, 1993. The October 6, 1993, order in Docket No. PL93-1-001 is a "final order" requiring a prospective rate change as contemplated by the above mentioned Settlement. The instant filing removes from Columbia's costs of service the taxes related to OPEB expenses used in the Settlement consistent with the statement of policy.

Columbia states that copies of the filing were served upon Columbia's jurisdictional customers, interested state commission and the official service list in the aforementioned dockets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's rules of Practice and Procedure. All such protests should be filed on or before November 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of Columbia's filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28258 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TX94-2-000]

El Paso Electric Co., and Central and South West Services, Inc., as Agent for Public Service Co. of Oklahoma, West Texas Utilities Co., Southwestern Electric Power Co. and Central Power & Light Co.

November 10, 1993.

Take notice that on November 4, 1993, El Paso Electric Company (El Paso) and Central and Southwest Services, Inc. (CSWS), as agent for Public Service Company of Oklahoma (PSO), West Texas Utilities Company (WTU), Southwestern Electric Power Company (SWEPCO), and Central Power and Light Company (CPL) (collectively "the Applicants"), filed with the Federal Energy Regulatory Commission an application requesting that the Commission issue an order pursuant to section 211 of the Federal Power Act requiring Southwestern Public Service Company (Southwestern) to provide certain transmission services and grant the Applicants certain other relief.

Specifically, the Applicants have requested that the Commission order Southwestern to provide up to 133 MW of firm and non-firm transmission service to the Applicants to assist them in the coordinated operation of their electric systems following the merger of El Paso and a subsidiary of Central and South West Corporation. The Applicants expect to require non-firm service beginning on or about January 1, 1995, and firm service beginning on or about January 1, 1999. The Applicants require such services for transfers of power and energy between the control areas of El Paso and PSO, both of whose transmission system are directly interconnected with Southwestern's transmission system.

Pursuant to the Commission's Order No. 560, the Applicants have served a copy of the application on Southwestern, the Southwestern Power Administration, the Public Utility Commission of Texas, the Public Service Commission of New Mexico, the Oklahoma Corporation Commission, the Arkansas Public Service Commission and the Louisiana Public Service Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal

Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28262 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP94-67-000]

El Paso Natural Gas Co.; Request Under Blanket Authorization

November 10, 1993.

Take notice that on November 8, 1993, El Paso Natural Gas Company (El Paso), Post Office Box 1492, El Paso, Texas 79978, filed in Docket No. CP94-67-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.212) for authorization to construct and operate delivery tap facilities, referred to as the Afton Meter Station, to enable El Paso to provide a new delivery point in Dona Ana County, New Mexico to City of Las Cruces, New Mexico (Las Cruces), under the blanket certificate issued in Docket No. CP82-435-000, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

El Paso asserts that effective November 1, 1991, Las Cruces elected to convert its firm sales entitlement under its existing service agreement to firm transportation service pursuant to the provisions of El Paso's Global Settlement at Docket No. CP88-44-000, *et al.* It is stated that this firm transportation service is being rendered pursuant to the terms of a transportation service agreement dated August 15, 1991, which provides for the firm transportation of Las Cruces' full requirements of natural gas to consumers situated within the City of Las Cruces, New Mexico and its surrounding areas.

El Paso also states that Las Cruces seeks to deliver natural gas for its customers from a point on El Paso's existing El Paso-Douglas and California Lines in Dona Ana County, New Mexico. To meet that request, El Paso proposes to construct and operate the Afton Metering Station, consisting of dual 6⅝-inch senior orifice-type meter runs including tap and valve assemblies. El Paso estimates the cost of the metering facilities at $151,600, which would be reimbursed by Las Cruces.

El Paso states that construction of the proposed delivery point is not prohibited by El Paso's existing tariff. El Paso further states that it has sufficient capacity to accomplish the deliveries of the requested gas volumes without detriment or disadvantage to its other customers.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary,

[FR Doc. 93-28249 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. EG94-4-000]

EPZ 93-1 Trust, Acting Through its Trustee, State Street Bank and Trust Co. of Connecticut, National Assoc.; Filing

November 10, 1993.

On October 29, 1993, EPZ 93-1 Trust (the "Trust"), acting through its trustee, State Street Bank and Trust Company of Connecticut, National Association, filed with the Federal Energy Regulatory Commission an application for determination of exempt wholesale generator status pursuant to part 365 of the Commission's regulations. The Trust will own an undivided interest in a 600 MW electric generating facility located in Geertruidenberg, The Netherlands.

The Trust states that it is exclusively in the business of being the owner of the eligible facility and of selling energy at wholesale from the eligible facility.

Any person desiring to be heard concerning the application for exempt wholesale generator status should file a motion to intervene or comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. The Commission will limit its consideration of comments to those that concern the adequacy or accuracy of the application. All such motions or protests must be filed on or before November 30, 1993, and must be served on the applicant. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28250 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP85-221-025]

Frontier Gas Storage Co.; Sale Pursuant to Settlement Agreement

November 10, 1993.

Take notice that on October 21, 1993, Frontier Gas Storage Company (Frontier), % Reid & Priest, Market Square, 701 Pennsylvania Ave., NW., Washington, DC 20004, in compliance with the provisions of the Commission's February 13, 1985 Order in Docket No. CP82-487-000 et. al., submitted an executed Service Agreement under Rate Schedule LVS-1 providing for the possible sale of up to 5 Bcf of Frontier's gas storage inventory on an "as metered" basis to Prairielands Energy Marketing, Inc. (Prairielands). The Service Agreement, dated October 20, 1993, contemplates the possible sale to commence November 4, 1993.

Under subpart (b) of Ordering Paragraph (F) of the Commission's February 13, 1985 Order, Frontier is "authorized to commence this sale of its inventory under such an executed service agreement fourteen days after the filing of the agreement with the Commission and may continue making such sale unless the Commission issues an order either requiring Frontier to stop selling and setting the matter for hearing or permitting the sale to continue and establishing other procedures for resolving the matter."

Any person desiring to be heard or to make a protest with reference to said tariff sheet filing should, on or before December 1, 1993, file with the Federal Energy Regulatory Commission (825 North Capitol Street, NE., Washington,

DC 20426) a motion to intervene or protest in accordance with the requirements of the Commission's Rules of Practice and Procedures, 18 CFR 385.214 or 385.211. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28241 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–65–000]

Koch Gateway Pipeline Co.; Request Under Blanket Authorization

November 10, 1993.

Take notice that on November 8, 1993, Koch Gateway Pipeline Company (Gateway), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–65–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery tap to Endevco Oil and Gas Company (Endevco) under Gateway's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

Specifically, Gateway proposes to construct and operate a tap on its Index 370, Clarence to Olla 30-inch pipeline in LaSalle Parish, Louisiana, to deliver gas, transported by Gateway, to Endevco. Gateway states that it would deliver, on an interruptible basis, up to 2,000 Mcf per day of natural gas to Endevco. The gas would ultimately be deliverd to a Louisiana Pacific Corporation paper mill in LaSalle Parish, Lousiana, it is stated.

Gateway states that the proposed facilities will not have an impact on its curtailment plan, that it has sufficient capacity to provide the proposed service without detriment or disadvantage to its other existing customers, and that its tariff does not prohibit the proposed construction of facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28248 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. FA91–53–000]

New England Power Co.; Order Establishing Hearing Procedures

November 12, 1993.

On September 21, 1993 the Chief Accountant issued a letter under delegated authority noting New England Power Company's (NEP) disagreement with the recommendations of the Division of Audits regarding the accounting and fuel adjustment clause treatment for certain payments made to Central Maine Power Company as discussed in Part I of the audit report. NEP was requested to advise whether it would agree to the disposition of the contested issue under the shortened procedures provided for by part 41 of the Commission's Regulations. 18 CFR part 41.

By letter dated October 18, 1993, NEP responded that it did not consent to the shortened procedures. Section 41.7 of the Commission's Regulations provides that in case consent to the shortened procedures is not given, the proceeding will be assigned for hearing. Accordingly, the Secretary, under authority delegated by the Commission, will set the issue [1] for hearing.

Any interested person seeking to participate in this docket shall file a protest or motion to intervene pursuant to Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) no later than 15 days after the date of publication of this order in the **Federal Register.**

It is ordered:

(A) Pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by section 402(a) of the Department of Energy Organization Act, the provisions of the Federal Power Act, particularly sections 205, 206, and 301 thereof, and pursuant to the Commission's Rules of Practice and Procedures (18 CFR Chapter I), a public hearing shall be held concerning the appropriateness of NEP's practices as discussed above.

(B) A Presiding Administrative Law Judge, to be designated by the Chief Administrative Law Judge, shall convene a prehearing conference in this proceeding, to be held within 45 days of the date of this order, in a hearing room of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426. The Presiding Judge is authorized to establish procedural dates and to rule on all motions (except motions to dismiss) as provided in the Commission's Rules of Practice and Procedure.

(C) This order shall be published in the **Federal Register.**

Lois D. Cashell,

Secretary.

[FR Doc. 93–28234 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[1] Tariff Exception No. 1 Accounting and Billing for Certain Reimbursements Made to Another Utility described in Part I of the audit report.

[Docket No. ER94–69–000]

New England Power Co.; Filing

November 10, 1993.

Take notice that New England Power Company on November 2, 1993, tendered for filing an amendment to its filing in this docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28252 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94-3-59-000]

Proposed Changes in FERC Gas Tariff, Northern Natural Gas Co.

November 10, 1993.

Take notice that on November 5, 1993, Northern Natural Gas Company (Northern), tendered for filing changes in its FERC Gas Tariff, Fifth Revised Volume No. 1.

On November 5, 1993, Northern filed revised Sheet No. 1 Revised 2 Revised No. 53 to establish the October 1993 Index Price for determining the dollar/volume equivalent for any transportation imbalances that may exist on contracts between Northern and its Shippers. Since the Index Price is applied to any imbalances generated during a given production month, Northern utilized the Index Price methodology set forth in its Fourth Revised Volume No. 1 to maintain consistency for the time period during which the provisions of Northern's Fourth Revised Volume No. 1 Tariff were in effect.

Northern states that copies of the filing were served upon Northern's customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Section 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 18, 1993. Protests will be considered by the Commission in determining the appropriate proceeding, but will not serve to make protestant parties to the proceedings. Copies of this filing are on file with the Commission and are available for inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28261 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. ER93-645-000]

Southern California Edison Co.; Filing

November 10, 1993.

Take notice that on October 22, 1993, Southern California Edison Company (Edison) tendered for filing additional information which was requested by the Commission Staff in Docket No. ER93-645-000, an agreement between Edison and the Metropolitan Water District (District) which contains the terms and conditions for the interconnection of District's Etwisanda Power Plant with the Edison System.

Copies of this filing were served upon the Public Utilities Commission on the State of California and all interested parties.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 285.211 and 18 CFR 285.214). All such motions or protests should be filed on or before November 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28251 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP94-33-001]

Texas Eastern Transmission Corp.; Proposed Changes in FERC Gas Tariff

November 10, 1993.

Take notice that on November 8, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, Third Revised Sheet No. 627, with a proposed effective date of November 28, 1993.

Texas Eastern states that on October 29, 1993, it filed in Docket No. RP94-33 tariff sheets to incorporate proposed revisions to Sections 15.2(C) and 15.2(D) of Texas Eastern's General Terms and Conditions to be effective November 28, 1993, (October 29 Filing). Texas Eastern states that such revisions reflect the same method of allocating GSR Costs and stranded costs between system wide customers and incremental customers as were originally proposed in Docket No. CP92-184-000 ("October 1 Filing"). However, the Commission's October 28, 1993, order accepting the October 1 Filing rejected, without prejudice to Texas Eastern's rights to refile, the tariff sheets which would have revised Section 15.2(C) and Section 15.2(D) on the ground that such revisions were inappropriate to include in a compliance filing.

Texas Eastern states that on October 14, 1993, Long Island Lighting Company (LILCO) filed with the Commission in Docket No. CP92-184-000 a "Motion to Intervene and Comments of LILCO" (Comments). LILCO stated therein that, while it did not take issue with the proposed allocation methodology proposed in the October 1 Filing, Texas Eastern should revise the refund methodology for GSR Costs contained in Section 15.2(C)(2)(c) to be consistent with the proposed new allocation methodology for collecting the GSR Costs.

After further consideration of LILCO's Comments, Texas Eastern states that it agrees with LILCO's proposed revision to Section 15.2(C)(2(c). Accordingly, Texas Eastern herewith supplements its October 29 Filing with the submission of Third Revised Sheet No. 627 to reflect LILCO's concern about the refunds of GSR Costs. Such tariff sheet provides that Texas Eastern will refund any GSR Costs actually incurred and recovered on the same basis as such costs were allocated in Section 15.2(C)(2)(a) for the time period during which the GSR Costs were allocated.

Texas Eastern states that copies of the filing were served on firm customers of Texas Eastern and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure. All such protests should be filed on or before November 18, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28259 Filed 11-16-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. CP80-391-013]

Transcontinental Gas Pipe Line Corp.; Refund Report

November 10, 1993.

Take notice that on September 30, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) filed a report of cash-out refunds totaling $6,281,332.92 made to its jurisdictional firm and interruptible transportation customers on September 29, 1993. TGPL reports that the refunds cover the annual period August 1, 1992, through July 31, 1993, and are made pursuant to Section 15 of the General Terms and Conditions of its

FERC Gas Tariff, Third Revised Volume No. 1.

In support of its refund report, TGPL submitted a report of cash-out purchases and a report comparing cash-out revenues received with costs incurred for the annual period ending July 31, 1993. TGPL also submitted a copy of the refund letter sent each customer which states that the refund amount reflects the carry forward of TGPL's net underrecovery for the prior cash-out annual period—August 1991 through July 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28242 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

Docket No. CP94–55–000

Transwestern Pipeline Co.; Application

November 10, 1993.

Take notice that on November 2, 1993, Transwestern Pipeline Company (Transwestern), 1400 Smith Street, P.O. Box 1188, Houston, Texas 77251–1188, filed in Docket No. CP94–55–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon the transportation and exchange of natural gas services between it and Caprock Pipeline Company (Caprock) with was authorized in Docket Nos. CP72–254–000 and CP75–218–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

Transwestern indicates that the exchange with Caprock as set forth under an exchange agreement designated as Rate Schedule X–9 in Transwestern's FERC Gas Tariff, continued until recently, when Transwestern, by cancellation notice dated June 16, 1993, requested that Caprock terminate the exchange service, effective September 1, 1993.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission on its designee on this application if not motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Transwestern to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28244 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–125–000]

Western Resources, Inc.; Filing

November 10, 1993.

Take notice that on November 4, 1993, Western Resources, Inc. (WRI) tendered for filing an Electrical Interconnection Agreement between the Kansas City, Kansas, Board of Public Utilities (BPU) and WRI. WRI states that the Agreement is a fifteen year contract that will allow both parties to realize additional operating benefits from the interconnected operation of their respective electric utility systems and from the purchase, sale and exchange of electric power and energy between their respective systems under the terms of the Agreement. Service under the Agreement is expected to commence November 8, 1993.

Copies of this filing have been served upon BPU and the Kansas Corporation Commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28253 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–64–000]

Williams Natural Gas Co., Natural Gas Pipeline Co., of America; Application

November 10, 1993.

Take notice that on November 5, 1993, Williams Natural Gas Company (Williams), P.O. Box 3288, Tulsa, Oklahoma 74102, and Natural Gas Pipeline Company of America (Natural), 701 East 22nd Street, Lombard, Illinois 60148, jointly referred to Applicants, filed in Docket No. CP94–64–000 an application pursuant to section 7(b) of the Natural Gas Act for authorization to abandon two certificated exchange services, all as more fully set forth in the joint application which is on file with the Commission and open to public inspection.

Applicants state that they were authorized, inter alia, to exchange gas by order issued October 30, 1953, in Docket No. G–1988, (12 FPC 1338) and have been implementing the exchange agreement under each company's Rate Schedule X–5. Applicants now indicate that they have executed an agreement dated October 15, 1993, terminating the exchange agreement.

Applicants also state that they were authorized to exchange gas by order issued January 2, 1964, in Docket No. CP64–89 (31 FPC 3) and have been implementing the exchange, as

subsequently amended, under Williams' Rate Schedule X–6 and Natural's Rate Schedule X–11. Applicants now indicate that Williams has submitted a letter to Natural dated April 30, 1990, providing a one-year notice that it wished to terminate the exchange agreement. It is also indicated that the imbalance in deliveries between the parties under the agreement reached zero in January of 1993.

Applicants state that in each instance no abandonment of facilities is requested.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 1, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Williams or Natural to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28247 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–60–000]

Williston Basin Interstate Pipeline Co.; Request Under Blanket Authorization

November 10, 1993.

Take notice that on November 4, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), Suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed in Docket No. CP94–60–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon 24,120 feet of 6-inch pipeline and a field meter station under Williston Basin's blanket certificate issued in Docket Nos. CP83–1–000 and CP82–487–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Williston Basin indicates that the services for which the facilities served have either expired or have terminated. As a result, Williston Basin would sever and cap both ends and abandon the pipeline in place. Williston Basin indicates that it would remove all above ground facilities.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28246 Filed 11–16–93; 8:45 am]

BILLING CODE 6717–01–M

The Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of August 23 Through August 27, 1993

During the week of August 23 Through August 27, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Colorado River Commission, 8/26/93, LFA–0311

The Colorado River Commission of Nevada filed an Appeal from a denial by the Western Area Power Administration of the Department of Energy (DOE/WAPA) for documents describing the environmental hazards or risks associated with ownership, operation and maintenance of the Hoover-Basic Transmission Line. In considering the Appeal, the DOE found that DOE/WAPA had properly withheld certain draft documents under Exemption 5. The Appeal was remanded to DOE/WAPA for preparation of a descriptive index and release of maps contained in one or more documents.

Government Accountability Project, 8/27/93, LFA–0312

The Government Accountability Project (GAP) filed an Appeal from a determination issued by the Department of Energy Field Office, Oak Ridge (DOE/OR), in response to a request for information submitted under the Freedom of Information Act (FOIA). GAP had requested documents related to various activities of Oak Ridge National Laboratory (ORNL) and DOE Contractor Martin Marietta Energy Systems (MMES). DOE/OR denied GAP's request for FOIA requests filed with the DOE by or on behalf of MMES, stating that the request failed to reasonably describe the records it was seeking. DOE/OR also denied GAP's request for a waiver of fees in connection with three other items of the request. In considering the Appeal, the DOE found that: (1) DOE/OR should conduct a search of its FOIA database for requests filed by MMES, but was not required to conduct a manual search through requests filed before the database came into existence, as these requests were not indexed by the name of the requestor; (2) DOE/OR should issue a determination on GAP's fee waiver request only after it has had the opportunity to review the information to be released to consider whether its disclosure is likely to contribute significantly to public understanding of the operation or activities of government. Accordingly, the matter was remanded to DOE/OR with instructions to conduct the search described above and to issue a new determination on GAP's fee waiver request. To the extent that the Appeal requested a decision by the OHA where

no appealable determination had been issued, the matter was dismissed. In all other respects, the Appeal was denied.

Motion for Discovery

Chevron U.S.A. Inc., 8/24/93, LRD–0007 LRH–0003

Chevron U.S.A. Inc. (Chevron) filed a Motion for Discovery and Motion for Evidentiary Hearing, relating to a Proposed Remedial Order (PRO) issued to Chevron by the Economic Regulatory Administration (ERA) on March 26, 1992. In the PRO, the ERA alleges that as a result of its participation in the DOE Tertiary Incentive Program (TIP), Chevron received excess tertiary incentive revenue attributable to its first sales of domestically produced crude oil during the period January 1980 through January 27, 1981, in violation of 10 CFR. 212.78, 212.73, 212.74, and 205.202. In considering Chevron's Motion for Discovery, the DOE determined that Chevron's request to depose certain ERA personnel was without proper basis, but that the ERA should be deemed to admit certain factual matters specified in firm's request for admissions. Further, in considering Chevron's Motion for Evidentiary Hearing, the DOE determined that an evidentiary hearing should be convened regarding the factual issue of the amount of revenue actually received by Chevron under the TIP. Accordingly, both Chevron's Motion for Discovery and Motion for Evidentiary Hearing were granted in part.

Implementation Of Special Refund Procedures

Kaiser International Corporation, Century Resources Development, Inc., Entex Petroleum, Inc., 8/26/93, KEF–0125, KEF–0126, KEF–0127

The Department of Energy (DOE) issued a final Decision and Order implementing special refund procedures to distribute a total of $5,048,242.96, plus accrued interest, remitted to the DOE, as part of either a settlement agreement or a DOE consent order, by three companies, Kaiser International Corporation, Century Resources Development, Inc., and Entex Petroleum, Inc. in settlement of alleged violations of the crude oil portions of the Mandatory Petroleum Price and Allocation Regulations. The DOE determined that the monies would be added to the crude oil refund pool to be disbursed to the Federal Government, the States, and eligible claimants in accordance with the DOE's Statement of Modified Restitutionary Policy in Crude Oil Cases. Accordingly, eighty percent of the funds in these cases will be divided equally between the Federal Government and the States. Twenty percent of the funds are to be initially reserved for direct restitution to injured parties submitting claims to the Office of Hearings and Appeals under 10 CFR Part 205, subpart V. In making this determination, the DOE rejected the comments filed by Philip P. Kalodner concerning the sufficiency of the twenty percent set-aside for injured claimants. The specific information to be included in the Applications for Refund, and the standards by which Subpart V crude oil refund claims will be evaluated, are included in the Decision. The Decision also includes a discussion of the presumption of injury for end-users. All Applications for Refund must be submitted by June 30, 1994. However, applications should not be filed by applicants who have previously filed refund claims in the Crude Oil Subpart V Special Refund Proceeding.

Lunday-Thagard Oil Co., Lotus Petroleum, Inc., and William T. Tootle, 08/26/93, LEF–0050, LEF–0051

The DOE issued a Decision and Order implementing procedures for the distribution of $31,199.66 plus accrued interest, in alleged overcharges obtained from Lunday-Thagard Oil Co. (Lunday-Thagard) and William T. Tootle, (Tootle) president of Lotus Petroleum, Inc. These funds were remitted by Lunday-Thagard and Tootle to settle possible pricing violations with respect to the sale of crude oil. The DOE determined that these funds will be distributed in accordance with the DOE's Modified Statement of Restitutionary Policy Concerning Crude Oil Overcharges. Under the Modified Policy, crude oil overcharge monies are divided among the states (40%), federal government (40%), and injured purchasers of refined products (20%). Accordingly, Applications for Refund will be accepted from any party who purchased refined petroleum during the period of price controls. The specific information to be included in applications for crude oil refunds, which must be submitted by June 30, 1994, is included in the Decision. Any party who has previously filed an Application for Refund in the crude oil proceedings will be deemed to have filed an application in these proceedings.

Refund Applications

Flatiron Paving Company of Greeley, Flatiron Paving Company of Boulder, 8/24/93, RF272–25573, RD272–25573, RF272–78408

The DOE issued a Decision and Order granting Applications for Refund filed by Flatiron Paving Company of Greeley (Flatiron Greeley) and Flatiron Paving Company of Boulder (Flatiron Boulder) in the subpart V crude oil refund proceeding. A group of States and Territories (States) objected to Flatiron Greeley's application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to Flatiron Greeley in this Decision was $65,212, and the refund granted to Flatiron Boulder was $24,395.

Texaco Inc./Steve's Texaco, 8/23/93, RF321–7708

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding. Steven R. Bon (Bon) applied for a refund based upon purchases from Texaco made by his outlet, Steve's Texaco. Bon stated, in his Application, that for part of the consent order period he operated the outlet as a partnership. Bon argued that he should be entitled to the entire refund because he had purchased his partner's interest in the firm. The DOE determined that the mere fact that Bon purchased his partner's interest did not operate as a transfer of his partner's right to a refund. Because Bon was unable to provide the DOE with any evidence that his partner's right to a refund was transferred to him, the DOE determined that Bon was entitled to only one-half of the refund for the purchases made by the outlet while it was operated as a partnership. In this Decision, the applicant was granted a refund totaling $1,133, representing $829 principal plus $304 interest.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Ashmore Bros., Inc	RF272-67016	08/26/93
Ashmore Bros., Inc	RD272-67016	
Atlantic Richfield Company/Jake's Arco et al	RF304-14031	08/26/93
Atlantic Richfield Company/Mansfield Oil Company, Inc	RF304-13855	08/26/93
Atlantic Richfield Company/Murray's Arco Service et al	RF304-14078	08/26/93
City of Corvallis, Oregon et al	RF272-88312	08/24/93
Companie Sud-Americana De Vapores	RF272-69666	08/27/93
Companie Sud-Americana Devapores	RF272-69666	
Davis Oil Co., Inc. et al	RF272-90000	08/24/93
Drum Services, Inc. et al	RF272-90357	08/27/93
East Palestine City SD et al	RF272-80232	08/26/93
Eastern Shore Hospital Center et al	RF272-88005	08/23/93
Farmers Union Oil Co. (MN)	RF272-89022	08/27/93
Farmers Union Oil Co. (ND)	RF272-89036	
Gulf Oil Corporation/Hopkins County et al	RF300-21100	08/24/93
Gulf Oil Corporation/Oglethorpe County Bd. of Comm. et al	RF300-20413	08/24/93
New Reigel Local Schools et al	RF272-87124	08/27/93
NVF Company	RF272-21104	08/27/93
NVF Company	RD272-21104	
Polk County Highway Depart. et al	RF272-85221	08/26/93
Shell Oil Company/Green Acres Shell	RF315-8413	08/27/93
Texaco Inc./Lakewood Texaco et al	RF321-577	08/26/93
Texaco Inc./Pecan Shoppe of Camden, Inc. et al	RF321-13113	08/24/93
Texaco Inc./Southern California Rapid Transit District et al	RF321-6653	08/24/93
Town of Sutton et al	RF272-83750	08/27/93

Dismissals

The following submissions were dismissed:

Name	Case No.	Name	Case No.	Name	Case No.
Alaska Village Elec. Coop.	RF272-92740	Kulaga's Garage & Service Station.	RF321-17762	School District of the Chathams.	RF272-83477
Anniston City School District.	RF272-85182	LaFourche Parish Council	RF272-87796	Shiocton School District	RF272-83530
Aratex-Services	RF272-86042	Mexia ISD	RF272-83485	Southern Concrete	RF300-13558
Big Horn County School District No. 3.	RF272-83440	Mit Transportation, Inc	RF272-92492	Standard Marine Ltd	RF321-17796
Bland County Public Schools.	RF272-83326	Moniteau County C-1	RF272-79573	Sublette County School District No. 9.	RF272-83323
Bolton School District	RF272-83563	Palmyra-Eagle Area School District.	RF272-83576	The Firestone Tire & Rubber Company.	RF272-92324
Carroll Oil, Inc	RF321-8214	Pecan Shoppe of Lottie	RF321-16447	Washburn Public Schools	RF272-83363
Del Paso Heights Elementary.	RF272-79468	Perry Community High School District 172.	RF272-83367	Waverly Central School	RF272-87335
ERB Lumber Co	RF272-92608	Perry School District 57	RF272-83366	Weinbach Texaco	RF321-8575
Fred M. Luth & Sons, Inc	RF272-92074	Riverside Co. of Office of Education.	RF272-92625	West Frankfort C.U. District 168.	RF272-79230
Gornick's Texaco Service	RF321-17768	Roy Smith Texaco Service Center.	RF321-17761		
James River Corporation	RF321-19626				

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E-234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 10, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-28277 Filed 11-16-93; 8:45 am]

BILLING CODE 6450-01-P

Issuance of Decisions and Orders During the Week of September 20 through September 24, 1993

During the week of September 20 through September 24, 1993 the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Hanford Education Action League, 9/24/93, LFA-0315

Hanford Education Action League filed an Appeal from a partial denial by the DOE's Richland Field Office (Richland) of a Request for Information

that it had submitted under the Freedom of Information Act (the FOIA). In considering the Appeal, the DOE found that the internal audit reports that Richland had contended were not "agency records" under the FOIA were in fact agency records. The DOE also found that the internal audit reports were not properly withheld under either FOIA exemptions 4 or 5. Accordingly, the matter was remanded to Richland with instructions to release the documents.

James L. Schwab, 9/24/93, *LFA–0316*

James L. Schwab filed an Appeal from a denial by the Office of the Inspector General of the Department of Energy (OIG). In considering the Appeal, the DOE found that the OIG had improperly applied Exemptions 2, 5, 6 and 7(C) to certain documents requested by Mr. Schwab. The matter was remanded to the OIG for release of those documents or preparation of an explanation as to why it would not be appropriate to do so.

Refund Applications

Texaco Inc./B-OK Super Service, 9/23/93, RF321–16254

The DOE issued a Decision and Order granting a refund to Dave Dickerson, owner of B-OK Super Service, a retail outlet located in Kennewick, WA, for 2,776,551 gallons of Texaco petroleum products purchased indirectly. Mr. Dickerson was previously granted a full volumetric refund of $9,679 for 8,798,766 gallons purchased directly from Texaco under Case No. RF321–4744. The OHA combined the purchase volumes of Mr. Dickerson's two claims to calculate one allocable share of $10,137. Since Mr. Dickerson is limited to the larger of $10,000 or 50% of his allocable share by the medium-range presumption, his principal refund in this instance was limited to $321 ($10,000 − $9,769=$321). The total refund granted to Mr. Dickerson in this Decision was $440 ($321 principal plus $119 interest).

Texaco Inc./Broadway Texaco, 9/22/93, RF321–892

The DOE denied an Application for Refund filed by Broadway Texaco (Broadway) an indirect purchaser and reseller of products covered by the consent order the DOE entered into with Texaco Inc. Broadway purchased Texaco motor gasoline through Oakwood Oil Company (Oakwood). In a previous Decision, the DOE had granted Oakwood a refund based on a finding that Oakwood had absorbed costs associated with Texaco's alleged overcharges. Therefore the DOE determined that Broadway, as a customer of Oakwood, could not have incurred any injury as a result of Texaco's alleged overcharges. Accordingly, Broadway's Application for Refund was denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/Fred Wright et al	RF304–14217	09/21/93
Atlantic Richfield Company/Gasco Gasoline, Inc. et al	RF304–14004	09/24/93
Atlantic Richfield Company/Shultz's Arco et al	RF304–13949	09/21/93
Banks Construction Co. et al	RF272–66087	09/23/93
Banks Construction Co.	RD272–66087	.....
C. J. Langenfelder & Son, Inc	RD272–67566	.....
Beardstown C.U. School Dist. 15 et al	RF272–79189	09/22/93
City of Bedford et al	RF272–83001	09/21/93
Copperas Cove Independent School District et al	RF272–81252	09/22/93
East Valley School District et al	RF272–81974	09/23/93
Gulf Oil Corporation/Anderson-Gilyard	RR300–203	09/21/93
Lincoln Land Oil Co	RR300–205	.....
Saunders Oil Co	RR300–214	.....
Glenn Smith Oil Co	RR300–215	.....
Bestrom Oil Co	RR300–217	.....
Mount Vernon Mills, Inc	RC272–215	09/24/93
Shell Oil Company/Miller Shell Service	RF315–5656	09/21/93
St. Croix Petrochemical Corp	RF272–58649	09/24/93
St. Croix Petrochemical Corp	RD272–58649	.....
Texaco Inc./Gay Meadows Texaco	RR321–121	09/21/93
Texaco Inc./Ray Gessner Texaco #1 et al	RF321–4789	09/21/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Alma Public Schools	RF272–82477
Andres Martinez Solis	RF315–9319
Animal By-Products	RF272–90544
Art's Airport Texaco	RF321–14745
Auburn Car Clean	RF321–14748
Bellaire Texaco	RF321–803
Bernie's Automotive	RF272–80322
Bluford Comm. Cons. Dist. No. 114.	RF272–79490
Bob & Bobbie's Texaco	RF321–11715
Branson Texaco	RF321–884
Brown & Son Texaco	RF321–14796
City of South Pasadena	RF272–82791
Courthouse Texaco	RF321–16591
Days Inn	RF300–14140
E. Quiett, Jr	RF321–14759
Forbes Texaco	RF321–14719
Fred's Texaco	RF321–14720
Grizzly Bear Trading Post	RF321–14712
Haleakala Dairy	RF272–90582
Pete's Texaco	RF321–18840
Rakes Texaco	RF321–14741
Rob's Fair Park	RF321–9745
Robert L. Frederick	RF321–14600
Sak's Texaco Service Station.	RF321–2467
Slagle Texaco	RF321–14713
Sterling High School District.	RF272–82819
Terry McGovern Services, Inc.	RF315–9543
Terry McGovern Services, Inc.	RF315–9433
Tex-Fan, Inc	RF300–15640
Triple Clean Texaco	RF321–14747

Name	Case No.
Triple Clean Texaco	RF321-14746
Waters Bros. Texaco	RF321-11360

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forestall Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy /Guidelines, a commercially published loose leaf reporter system.

Dated: November 10, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-28278 Filed 11-16-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4800-9]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before December 17, 1993.

FOR FURTHER INFORMATION CONTACT: For further information, or to obtain a copy of this ICR, contact Sandy Farmer at EPA, (202) 260-2740.

SUPPLEMENTARY INFORMATION:

Office of Prevention, Pesticides and Toxic Substances

Title: Polychlorinated Byphenils (PCBs): Exclusions, Exemptions, and Use Authorizations. (EPA ICR No: 1001.05; OMB No: 2070-0008). This is a request for extension of the expiration date of a currently approved collection with no changes.

Abstract: Section 6(e) of the Toxic Substances Control Act (TSCA), generally prohibits the manufacture, processing, distribution in commerce and use of PCBs. However, regulations under 40 CFR 761.1(f) excludes certain manufacturing processes from these prohibitions. To be eligible for such an exclusion, respondents must comply with certain reporting, certification and recordkeeping requirements.

Excluded chemical manufacturers must submit a notification to the EPA. The notification must identify the manufacturing processes that generate PCBs in products at levels above two parts per million (ppm), and they are also required to certify compliance with all PCB release conditions on excluded processes. They must state whether the certification is based on actual monitoring data or on theoretical analysis of the chemical reaction(s) involved in the manufacturing process. They must report to the Agency data on their processes during periods of unusually high generation or releases of PCBs. In addition, excluded chemical manufacturers must keep records of all their monitoring data (or other analysis) that were used to support determination of compliance, as well as records of copies of the signed certification of compliance.

The EPA uses these date to verify the generation of only trace quantities of PCBs, to ensure compliance with the regulations, and to identify sites for compliance inspections.

Burden Statement: Burden for this collection of information is estimated to average 25 hours per respondent for reporting and 5 hours per recordkeeper annually. This estimate includes the time needed to review instructions, gather and submit the information, maintain the data needed, and review the collection of information.

Respondents: Excluded chemical manufacturers.

Estimated Number of Respondents: 5 respondents will report and 160 will keep records.

Estimated Number of Responses per Respondents: 1.

Estimated Total Annual Burden on Respondents: 925 hours.

Frequency of Collection: On occasion.

Send comments regarding the burden estimate, or any other aspect of the information collection, including suggestions for reducing the burden to:

Sandy Farmer, U.S. Environmental Protection Agency, Information Policy Branch (2136), 401 M Street, SW., Washington, DC 20460.

and

Matthew Mitchell, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: November 10, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-28279 Filed 11-16-93; 8:45 am]

BILLING CODE 6560-50-F

[OPPTS-00137; FRL-4589-9]

Archive of Human Monitoring Specimens; Disposition to Private Sector or Other Governmental Party; Notice of Availability

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice invites the public or any governmental party to apply to acquire by donation all or portion of a national repository of human adipose tissue specimens collected by EPA for monitoring human exposure to chemicals. This archive of some 14,000 specimens, collected according to a national design for representativeness between 1970 and 1992, is now available for donation by EPA to a private-sector organization or to other Federal or State or government-related organizations. This notice announces an initial period for making application so that EPA can gauge public interest in this acquisition. EPA hopes that qualified research institutes will be interested in acquiring portions of the repository or the archive as a whole.

DATES: Written requests for samples must be submitted on or before December 22, 1993.

ADDRESSES: Parties interested in this acquisition should submit a written request following the guidance suggested in Unit V of this notice and send two copies to the TSCA

Nonconfidential Information Center, Rm. E–G99, Office of Pollution Prevention and Toxics (7407), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Should the applicant be unable to meet the application deadline above, a written request for an extension along with partial information should be submitted prior to the deadline.

FOR FURTHER INFORMATION CONTACT: Sarah S. Shapley, Chemical Management Division (7404), Office of Pollution Prevention and Toxics, Rm. NE–G012, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 260–3979, Fax: (202) 260–0001.

SUPPLEMENTARY INFORMATION:

I. Repository Description

The National Human Adipose Tissue Survey (NHATS) has been part of EPA's program to monitor pesticides and other toxic substances in human tissues and fluids since the early 1970's. Monitoring data are used in exposure assessments and are important elements in the quantitative evaluations of hazard and risk. Researchers use the data to monitor the prevalence and levels of selected toxic substances in the general U.S. population. Data are also used to provide average baseline levels for the U.S. population, to identify trends in exposure, and to assess the effects of regulatory action.

Specimens have been collected in 47 metropolitan statistical areas (MSAs) according to a statistically determined survey design. Design specifications include age, sex, and race of the U.S. Census population for the area. The geographic stratification ensures a representative sample for all regions of the country. More than 90 pathologists and medical examiners participated in the collection network each fiscal year (October-September). However, for the years 1970–1987 there is not available a complete set for each since specimens have been the subject of chemical analysis by the EPA. Table 1 below gives the number of specimens remaining by year. More detailed information can be made available to applicants.

Table 1.—Number of Specimens Available by Year

Year	Total Number of Remaining Specimens
1970	0
1971	249
1972	405
1973	850
1974	656
1975	545
1976	323
1977	551
1978	384
1979	570
1980	1,158
1981	963
1982	689
1983	454
1984	641
1985	699
1986	718
1987	946
1988	1,248
1989	1,625
1990	1,461
1991	1,329
1992	1,183
TOTAL	14,058

Physically, the specimens are stored in 1 inch-diameter glass vials, ranging from 2 to 3 inches in height. The specimens are the only contents in the vial; there is no preservative solution. The 14,000 vials take approximately 400 square feet of refrigerated storage space.

Over the years, EPA has concentrated its chemical and statistical analysis of organochlorine pesticides, polychlorinated biphenyls, dioxins and furans, as well as certain special studies of selected volatile compounds and semi-volatile compounds. A listing of the latter and a complete bibliography of reports available in the public docket are in Unit VII of this notice. Chemical analysis has been by both individual and composite samples.

As an illustration of the usage possible with such a data base, a special study by EPA may be helpful. EPA used FY82 NHATS data to determine the presence of compounds cited in the Superfund Amendments and Reauthorization Act (SARA) as chemicals of interest or identified as present at hazardous waste sites. A partial listing of these chemicals and related factors, along with the frequency of detection (%) for composite samples is given below.

Volatile Compounds	Frequency of Detection (%)	Semi-Volatile Compounds	Frequency of Detection (%)
Benzene	96	Biphenyl	20
Chloroform	76	Bis(ethylhexyl) Phthalate	91
Dichlorobenzene	81	Cresol	88
Ethyl Isovalerate	96	Diphenyl Ether	91
Limonene	100	2-Phenyl phenol	48
Pentyl Alcohol	83		
Styrene	100		
Toluene	91		
Trichloroethylene	43		
Xylene	100		

II. Ancillary Contents: Analytic Documentation

The recipient would receive vials, each containing a human adipose tissue sample. Each vial will have a coded label on the top of the vial. The coded label establishes a link between the sample and the information pertaining to that sample.

Information on the samples is stored in computer files. The recipient may receive, at his or her own cost, a computer diskette with the sample information in a PC-SAS file. Sensitive information, such as donor initials, donor identification number, and hospital/medical examiner name, will not be released. The cost of masking such sensitive information on the vials themselves will be borne by the recipient.

For specimens in the vials, the following data are available: date specimen was collected; State where specimen was collected; sex of donor, race of donor, age of donor, and occupation of donor; whether specimen was collected at surgery or post-mortem; and whether donor was hospitalized more than 24 hours before the sample was taken. For specimens previously analyzed, the results of the chemical analysis can also be made available.

III. Terms of Transfer of Custody and Disposal by EPA

Since EPA intends to relinquish possession and custody of the NHATS Repository, as a whole or in portions, the terms of transfer will involve the recipient's taking both legal possession to the repository property and also immediate custody by physical transfer of the property. EPA will effectuate this transfer in concert with the General Services Administration. EPA will also announce its disposition from the initial pool of applicants in November 1993 and may re-open the offer should some portion of the archive remain after this initial disposition.

IV. Criteria for Donation

The criteria for awarding this property to a research or medical institute or governmental party are as follows: Clearly defined and programmed environmental or medical goals for usage; usage in the near-term; commitment to publication and public presentation of results of both chemical and statistical analyses; adequate facilities for maintaining the storage and retrieval of specimens; adequate analytic instrumental capability to undertake chemical analysis of specimens; and commitment and capability for using and continuing the statistical aspect of data analysis possible with this archive. Priority will be given to Federal and then State governmental agencies before private-sector institutions.

V. Request for Samples

Interested parties should submit two copies of a written request for samples. Applicants may wish to include the following information in their requests:

1. Name of research/medical organization proposed to take legal title to property. Other organizational identification as needed.

2. Address of proposed legal title-holder and other addresses as needed.

3. Official point of contact for EPA in consultation on this offer. Include person's name, position, address, telephone and telefax numbers.

4. Annual reports for calendar years 1990–1992.

5. Proof of federal tax status.

6. Brief summary of mission and business structure relevant to this offer.

7. Proposed technical program personnel taking receipt of property and responsible for its use. Include resumes.

8. Statement of intent for use of repository. This is not a binding statement but should include institution's policy and specifics on public communication of results of the institution's use. It should also cover how and where this repository fits into its current program and projection in time for such use.

VI. Public Docket For Applicants

A public docket for this proceeding is established in the TSCA Nonconfidential Information Center referred to above under the unit ADDRESSES. It contains the following documents.

(1) USEPA. "Quality Assurance Project Plan...Analysis of Adipose Tissue for Dioxins and Furans." Contractor Report, MRI #68–02–4252. August 11, 1988.

(2) USEPA. "Quality Assurance Project Plan...Broad Scan Analysis of Adipose Tissue from the FY 1986 EPA NHATS Repository." Contractor Report, MRI #68–02–4252. September 29, 1988.

(3) USEPA. "National Human Adipose Tissue Survey: Operations Manual." Contractor Report, MRI #68–D0–0137. As revised February 28, 1992. The second group are reports published using NHATS data.

(4) USEPA. "NHATS"/National Human Adipose Tissue Survey. August 1990. Pamphlet.

(5) NAS/NRC. "Monitoring Human Tissues for Toxic Substances." 1991.

(6) USEPA. "Baseline Estimates and Time Trends for Beta-benzene hexachloride; Hexachlorobenzene, and Polychlorinated Biphenyls in Human Adipose Tissue, 1970–1983." 1985. EPA #560/5–85–025.

(7) USEPA. "Analysis for Polychlorinated Dibenzo-p-Dioxins (PCDD) and Dibenzofurans (PCDF) in Human Adipose Tissue: Method Evaluation Study." 1986. EPA #560/5–86–020.

(8) USEPA. "Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens." Vol. I - Executive Summary. 1986. EPA #560/5–86–035.

(9) USEPA. "Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens." Vol. II - Volatile Organic Compounds. 1986. EPA #560/5–86–036.

(10) USEPA. "Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens." Vol. III - Semi-Volatile Organic Compounds. 1986. EPA #560/5–86–037.

(11) USEPA. "Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens." Vol. IV - Polychlorinated Dibenzo-p-Dioxins (PCDD) and Polychlorinated Dibenzofurans (PCDF)." 1986. EPA #560/5–86–038.

(12) USEPA. "Broad Scan Analysis of the FY82 National Human Adipose Tissue Survey Specimens." Vol. V - Trace Elements. 1986. EPA #560/5–86–039.

(13) USEPA. "Characterization of HRGC/MS Unidentified Peaks from the Analysis of Human Adipose Tissue." Vol. I - Technical Approach. 1987. EPA #560/5-87-002A.

(14) USEPA. "Characterization of HRGC/MS Unidentified Peaks from the Analysis of Human Adipose Tissue." Vol. II - Appendices. 1987. EPA #560/5–87–002B.

(15) USEPA. "Volatile Organic Compounds in Whole Blood-Determination by Heated Dynamic Headspace Purge and Trap Isotope Dilution GC/MS." 1987. EPA #560/5–87–008.

(16) USEPA. "Identification of SARA Compounds in Adipose Tissue." 1989. EPA #560/5–89–003.

(17) USEPA. "Broad Scan Analysis: Population Estimates from Fiscal Year 1982 Specimens." 1989. EPA #560/5–90–001.

(18) USEPA. "Brominated Dioxins and Dibenzofurans in Human Adipose Tissue." 1990. EPA #560/5–90–005.

(19) USEPA and DVA. "Pattern Recognition Analysis of VA/EPA PCDD and PCDF Data." 1990. With the Office of Environmental Epidemiology, Department of Veterans Affairs. EPA #560/5–90–006.

(20) USEPA. "Mass Spectral Confirmation of Chlorinated and Brominated Diphenylethers in Human Adipose Tissues." 1990. EPA #560/5–90–012.

(21) USEPA and DVA. "Dioxins and Dibenzofurans in Adipose Tissue of U.S. Vietnam Veterans and Controls." With the Veterans Health Services Research Administration. 1990.

(22) USEPA. "Chlorinated Dioxins and Furans in the General U.S. Population: NHATS FY87 Results." 1991. EPA #560/5–91–003.

(23) USEPA. "Chlorinated Dioxins and Furans in the General U.S. Population: NHATS FY87 Results. Executive Summary." 1991.

(24) USEPA. "NHATS Comparability Study." 1992. EPA #700/R92010.

List of Subjects

Environmental protection.

Dated: November 9, 1993.

John W. Melone,

Director, Chemical Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93-28288 Filed 11-16-93; 8:45 am]

BILLING CODE [illegible]

[FRL-4602-6]

Clean Air Scientific Advisory Committee; Public Meeting

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Clean Air Scientific Advisory Committee will hold a conference call from 1 p.m. until 3 p.m. on December 2, 1993.

The Committee will receive briefings from Agency personnel on the requested retrospective analysis of air quality models required by the Clean Air Act Amendments of 1990. The Committee will also review appropriate documents and provide comments.

The conference call lines are open to the public, but the number of lines available is limited. Callers will be able to access the call until all lines are in use. Any member of the public wishing further background information on this call should contact Mr. Jim DeMocker of EPA's Office of Air and Radiation at (202) 260-8980. Any member of the public who wishes to submit oral or written comments should contact the Designated Federal Official, Mr. Randall C. Bond, Science Advisory Board (1400), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; telephone 202/260-8414; FAX 202/260-1889.

Dated: November 9, 1993.

Edward S. Bender,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93-28280 Filed 11-16-93; 8:45 am]

BILLING CODE [illegible]

[FRL-4603-1]

Public Hearing on Proposal of the Ozone Transport Commission for a Regional Low Emission Vehicle (LEV) Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of public hearing and availability of proposal.

SUMMARY: The United States Environmental Protection Agency is announcing a public hearing of the Ozone Transport Commission, which is preparing a proposal for regional implementation of a program calling for more stringent emission standards for new light duty motor vehicles. The resulting pollution reductions can then be used by States in their ozone State Implementation Plans. Under Section 177 of the Clean Air Act, States choose to have vehicles certified to California emission standards (rather than Federal emission standards), a program which is widely known as the Low Emission Vehicle (LEV) program. Under Section 184(c) of the Clean Air Act, the Ozone Transport Commission (OTC), after notice and opportunity for public comment, may recommend to the U.S. Environmental Protection Agency (EPA) control measures for EPA to require in all or part of the Ozone Transport Region. The Ozone Transport Region created by Section 184(a) of the Clean Air Act, includes the States of Connecticut, Delaware, Maine, Maryland, Massachusetts, New Hampshire, New Jersey, New York, Pennsylvania, Rhode Island, and Vermont, the District of Columbia, and that portion of the State of Virginia within the Washington, DC, Consolidated Metropolitan Statistical Area (CMSA).

The proposal along with a technical support document, will be available from the OTC office (see below) starting on the afternoon of Tuesday, November 16, 1993. Information on the public hearing and the public comment period is provided below.

DATES: The public hearing will be held on December 16-17, 1993. Comments must be received by January 7, 1994. Proposals submitted as alternatives to a regional LEV program must be submitted by December 17, 1993.

TIME AND PLACE: The public hearing will be held at: Connecticut Department of Environmental Protection, 79 Elm Street, Hartford, CT 06102-5066.

Times: December 16, 1993-1 p.m.-5 p.m., December 17, 1993-9 a.m.-5 p.m.

ADDRESSES: Comments may be mailed to David Foerter, Ozone Transport Commission, 444 North Capitol Street, NW., suite 604, Washington, DC 20001. Copies of documents relevant to this action, including all comments received, are available for public inspection during normal business hours at the Connecticut Department of Environmental Protection, Bureau of Air Management, 79 Elm Street, Hartford, Connecticut 06106.

FOR FURTHER INFORMATION CONTACT:

David Foerter, Ozone Transport Commission, (202) 508-3840

Doug Gutro, U.S. Environmental Protection Agency, Region I, (617) 565-3383

FOR PRESS INQUIRIES CONTACT: Margot Callahan, Connecticut Department of Environmental Protection, (203) 566-3489.

FOR DOCUMENTS CONTACT: Stephanie Cooper, Ozone Transport Commission, (202) 508-3840.

SUPPLEMENTARY INFORMATION: The Ozone Transport Commission is actively encouraging submission of alternative proposals to the OTC proposal which will be available on November 16, 1993. However, any alternatives to the OTC proposal which are submitted as comments must be submitted by December 17, 1993, so that the public may also comment on the alternative prior to the conclusion of the public comment period on January 7, 1994. Copies of all comments will be available for public inspection (see address above).

David A. Fierra,

Acting Regional Administrator, EPA Region I.

[FR Doc. 93-28263 Filed 11-16-93; 8:45 am]

BILLING CODE [illegible]

[FRL-4602-5]

Technical Workshop on WTI Incinerator Risk Issues

AGENCY: U.S. Environmental Protection Agency.

ACTION: Notice of meeting.

SUMMARY: This notice announces a workshop sponsored by the U.S. Environmental Protection Agency's (EPA's) Risk Assessment Forum. This workshop is a technical review of an EPA plan, called a "project plan", for conducting a science-based assessment of risk for the Waste Technologies Incorporated (WTI) incinerator in East Liverpool, Ohio.

DATES: The workshop will begin on Wednesday, December 8, 1993, at 8:30 a.m. and end on Thursday, December 9, 1993, at 1 p.m. Members of the public may attend as observers.

ADDRESSES: The meeting will be held at the Holiday Inn Capitol, 550 C Street, SW., Washington, DC 20024. Eastern Research Group, Inc., an EPA contractor, is providing logistical support for the workshop. To attend the workshop as an observer, contact Helen Murray, Eastern Research Group, Inc., 110 Hartwell Avenue, Lexington, Massachusetts 02173, Tel: 617/674-7307 by December 1, 1993. Space is limited, so please register early.

FOR FURTHER INFORMATION CONTACT: For technical inquiries, or to obtain a copy of the draft project plan, contact Dr. Mario Mangino, U.S. EPA Region V, 77 West Jackson Boulevard, Chicago, IL 60604, Telephone (312) 353-0398.

For other workshop information, contact Clare Stine, U.S. Environmental Protection Agency (8101), 401 M Street, SW., Washington, DC 20460, Telephone (202) 260–6743.

SUPPLEMENTARY INFORMATION: EPA risk assessment activities for the WTI incinerator consist of two phases. In 1992, EPA Region V conducted a risk assessment before authorizing interim operations of the WTI incinerator (Phase I). This risk assessment, which was developed by a contractor, focused on direct exposure through the inhalation pathway in accordance with EPA's Office of Solid Waste guidelines. Early this year, EPA's Office of Health and Environmental Assessment conducted an additional screening level analysis, with preliminary risk estimates for four exposure scenarios, each of which included indirect exposures through the food chain.

For Phase II, which EPA expects to complete next spring, EPA has undertaken additional studies to evaluate exposure pathways. Meteorological data collected over a one-year period from the WTI site will be utilized, as well as emissions monitoring data from the recent trial burn and subsequent performance test. These data will be used to perform air-dispersion and deposition modeling for emission constituents. Other site-specific data related to exposure are being collected for the risk assessment so that it will reflect the characteristics of the site to the extent possible.

On December 8 and 9, EPA will hold the first of two external peer reviews of Phase II risk assessment work. For this December meeting, EPA is asking several scientific experts to comment on the draft plan for conducting the risk assessment. EPA will use the expert recommendations to complete the plan and conduct the risk assessment. At the second meeting, currently projected to be held next spring, EPA will seek expert peer review of the draft risk assessment report.

For each meeting, EPA will convene a peer review panel of independent scientists from the fields of toxicology, environmental fate and transport, combustion engineering, atmospheric modeling, and exposure assessment. These experts will focus on scientific data, methods, and analyses, along with the related assumptions and uncertainties that describe risk at the site.

Dated: November 10, 1993.

Carl Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–28283 Filed 11–16–93; 8:45 am]

BILLING CODE [illegible]

[OPP–66185; FRL–4648–6]

Request for Voluntary Cancellation of Calo-Clor and Calo-Gran Brand Turf Fungicides; and Cancellation Order

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of Agency decision.

SUMMARY: This Notice, issued pursuant to section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) announces that Grace Sierra Crop Protection Company (Grace Sierra) has voluntarily requested that EPA cancel the registrations of two of its products, Calo-Gran and Calo-Clor Brand Turf Fungicide Products, and that EPA has granted this request. Both products each contain the two active ingredients mercuric chloride and mercurous chloride. These two products were the last mercurial based pesticide products registered under FIFRA. The cancellation became effective on November 1, 1993. This Notice also discusses the disposition of existing stocks.

DATES: The cancellation order became effective on November 1, 1993.

FOR FURTHER INFORMATION CONTACT: By mail: Tom Moriarty, Special Review and Reregistration Division (7508W), Office of Prevention, Pesticides and Toxic Substances, U.S. Environmental Protection Agency, 401 M St., SW., Washington DC, 20460. Office location and phone number: Special Review Branch, 3rd Floor, Crystal Station, 2800 Crystal Drive, Arlington, VA, (703) 308–8035.

SUPPLEMENTARY INFORMATION: This Notice announces the Agency's decision on a request for voluntary cancellation of two products, Calo-Gran and Calo-Clor (EPA registrations number 58185–4 and 58185–1 respectively). This Notice also specifies the effective date of the cancellation and describes the provisions for sale, distribution, and use of the existing stocks of these two products.

I. Request for Voluntary Cancellation

Calo-Clor and Calo-Gran are mercurial based fungicides used on golf course turfs and greens. Each product contains two active ingredients, mercuric chloride and mercurous chloride, at different percentages. Calo-Clor and Calo-Gran were registered to control Pink Snow Mold (*Fusarium nivale*) and Grey Snow Mold (*Typhula incarnata* and *Typhula ishikarinsis*).

In 1992 the Agency issued two Data Call-In Notices (DCI) under FIFRA section 3(c)2(B) to Grace Sierra requiring data in order to maintain the product registrations. One DCI, issued February 19, 1992, required economic benefits information on Calo-Clor and Calo-Gran and a worker exposure study. The second DCI, issued on June 18, 1992, was issued under Phase 4 of the reregistration program pursuant to section 4(f)(1)(B) of FIFRA. The second DCI required data from several guideline studies. In the course of generating the required data, Grace Sierra requested voluntary cancellation of these two products.

In a letter dated June 25, 1993, Grace Sierra requested voluntary cancellation of the registrations of Calo-Clor and Calo-Gran. Evidence has been submitted to the Agency which demonstrates that Grace Sierra was last in compliance with the DCIs on June 25, 1993. Accordingly, Grace Sierra has voluntarily requested cancellation of its two products, Calo-Clor and Calo- Gran, and an existing stocks provision based on that date.

In a letter dated August 20, 1993, Grace Sierra amended its original request for voluntary cancellation by also waiving any comment period associated with its original request for voluntary cancellation as well as the requirement for **Federal Register** publication of a notice announcing the Agency's receipt of this request prior to the Agency's acceptance of this request.

II. EPA's Decision on the Request for Voluntary Cancellation, the Cancellation Order, and Provision for Existing Stocks

Under section 6(f)(1) of FIFRA, a pesticide registrant may request at any time that EPA cancel any of its pesticide registrations. EPA must publish in the **Federal Register** a notice of receipt of the request and allow public comment before granting the request unless either the registrant requests a waiver of the notice or the Administrator determines that the continued use of the pesticide would pose an unreasonable adverse effect on human health or the environment. In a letter dated August 20, 1993, amending its request for voluntary cancellation, Grace Sierra also requested that EPA waive the comment period and the requirement for publication of a notice in the **Federal Register** announcing the Agency's receipt of the request for voluntary cancellation prior to the Agency's

acceptance of Grace Sierra's request. Accordingly, the Agency is announcing its receipt of this request and its acceptance in this Notice.

EPA has reviewed Grace Sierra's requests for voluntary cancellation and for a 1–year existing stocks provision for the two affected products. In accordance with the Agency's existing stocks policy (56 FR 29363), the Agency has concluded that the requests can be accepted.

EPA hereby grants Grace Sierra's requests that the registrations of the products Calo-Clor (EPA registration number 58185–1) and Calo-Gran (EPA registration number 58185–4) be voluntarily canceled and that there be a 1–year existing stocks provision for these products. The products are hearby canceled. The additional terms and conditions of the cancellation order follow. Grace Sierra will have 1 year from June 25, 1993 to sell, distribute, or use any existing stocks of Calo-Gran and Calo-Clor which were packaged, labeled, and released for shipment or sale on or before June 25, 1993. Grace Sierra's 1–year existing stocks provision ends on June 24, 1994; any further sale, distribution, or use of any quantity of either of these products by Grace Sierra after June 24, 1994 would be a violation of this cancellation order and of FIFRA. All other distributors and users may sell, distribute, or use their stocks of Calo-Gran and Calo-Clor until such stocks are exhausted.

Any sale, distribution or other disposition of existing stocks that is not consistent with the terms of this Order will be considered a violation of FIFRA section 12(a)(2)(K) and/or section 12(a)(1)(A) as appropriate.

List of Subjects

Environmental protection.

Dated: November 1, 1993.

Daniel M. Barolo,

Director, Special Review and Reregistration Division, Office of Pesticide Programs.

[FR Doc. 93–28115 Filed 11–16–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–34047; FRL 4736–5]

Notice of Receipt of Requests for Amendments to Delete Uses in Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of request for amendment by registrants to delete uses in certain pesticide registrations.

DATES: Unless a request is withdrawn, the Agency will approve these use deletions and the deletions will become effective on February 15, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA, (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of FIFRA, provides that a registrant of a pesticide product may at any time request that any of its pesticide registrations be amended to delete one or more uses. The Act further provides that, before acting on the request, EPA must publish a notice of receipt of any such request in the **Federal Register**. Thereafter, the Administrator may approve such a request.

II. Intent to Delete Uses

This notice announces receipt by the Agency of applications from registrants to delete uses in the seven pesticide registrations listed in the following Table 1. These registrations are listed by registration number, product names and the specific uses deleted. Users of these products who desire continued use on crops or sites being deleted should contact the applicable registrant before February 15, 1994, to discuss withdrawal of the applications for amendment. This 90–day period will also permit interested members of the public to intercede with registrants prior to the Agency approval of the deletion.

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

Registration No.	Product Name	Delete from Label
000264–00454	Lindane Crystals Insecticide	Apples, apricots, asparagus, avocados, cherries, grapes, guavas, mangos, mushrooms, nectarines, peaches, pears, pecans, pineapples, plums, prunes, quinces, strawberries, tobacco, ornamental plants, beef cattle, goats, hogs, horses, mules, sheep, human skin/clothing, in or around any structure
000264–00455	Lindane Powder	Apples, apricots, asparagus, avocados, cherries, grapes, guavas, mangos, mushrooms, nectarines, peaches, pears, pecans, pineapples, plums, prunes, quinces, strawberries, tobacco, ornamental plants, beef cattle, goats, hogs, horses, mules, sheep, human skin/clothing, in or around any structure
009754–00006	Sunbugger #6	All indoor uses, dogs and cats, citrus (lime, lemons, & tangerines)
034147–00005	Lindane 99.5% Technical	Apples, apricots, asparagus, avocados, cherries, grapes, guavas, mangos, mushrooms, nectarines, peaches, pears, pecans, pineapples, plums, prunes, quinces, strawberries, tobacco, ornamental plants, beef cattle, goats, hogs, horses, mules, sheep, human skin/clothing, in or around any structure
034147–00006	Lindane Dust Concentrate	Apples, apricots, asparagus, avocados, cherries, grapes, guavas, mangos, mushrooms, nectarines, peaches, pears, pecans, pineapples, plums, prunes, quinces, strawberries, tobacco, ornamental plants, beef cattle, goats, hogs, horses, mules, sheep, human skin/clothing, in or around any structure
034704–00585	Simazine 80W Herbicide	Asparagus, artichokes, sugarcane, Florida citrus
034704–00586	Simazine 90 Water Dispersible Granula Herbicide	Asparagus, artichokes, sugarcane, Florida citrus, Florida turf

TABLE 1. — REGISTRATIONS WITH REQUESTS FOR AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS—Continued

Registration No.	Product Name	Delete from Label
034704–00687	Simazine 4L Flowable Herbicide	Asparagus, artichokes, sugarcane, Florida citrus
040083–00001	Lindane Technical	Apples, apricots, asparagus, avocados, cherries, grapes, guavas, mangos, mushrooms, nectarines, peaches, pears, pecans, pineapples, plums, prunes, quinces, strawberries, tobacco, ornamental plants, beef cattle, goats, hogs, horses, mules, sheep, human skin/clothing, in or around any structure
051036–00127	Simazine 4 FL	Asparagus, artichokes, sugarcane, non-cropland areas

The following Table 2, includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA company number.

TABLE 2. — REGISTRANTS REQUESTING AMENDMENTS TO DELETE USES IN CERTAIN PESTICIDE REGISTRATIONS

EPA Company No.	Company Name and Address
000264	Rhone-Poulenc, 2 T.W. Alexander Dr., Research Triangle Park, NC 27709.
009754	Gro-Lyte Division of Sungro Chemicals, Inc., P.O. Box 24632, Los Angeles, CA 90024.
034704	Platte Chemical Co., P.O. Box 667, Greeley, CO 80632.
034147	Hoechst-Roussel Agri-Vet Co., Route 202-206, P.O. Box 2500, Somerville, NJ 08876.
040083	Inquinosa, c/o McKenna & Cuneo, 1575 Eye St., NW., Washington, DC 20005.
051036	Micro Flo Co., P.O. Box 5948, Lakeland, FL 33807.

III. Existing Stocks Provisions

The Agency has authorized registrants to sell or distribute product under the previously approved labeling for a period of 18 months after approval of the revision, unless other restrictions have been imposed, as in special review actions.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 3, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–27992 Filed 11–16–93; 8:45 am]

BILLING CODE 6560–50–F

[OPP–180905; FRL–4739–1]

Emergency Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has granted specific exemptions for the control of various pests to the 15 States as listed below and one to the United States Department of Agriculture. There were also 10 crisis exemptions initiated by various States. These exemptions, issued during the months of January through August 1993, are subject to application and timing restrictions and reporting requirements designed to protect the environment to the maximum extent possible. EPA has denied specific exemption requests from the North Dakota and Texas Departments of Agriculture and one public health exemption from the Alaska Department of Environmental Conservation. Information on these restrictions is available from the contact persons in EPA listed below.

DATES: See each specific and crisis exemption for its effective date.

FOR FURTHER INFORMATION CONTACT: See each emergency exemption for the name of the contact person. The following information applies to all contact persons: By mail: Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, CS #1, 2800 Jefferson Davis Highway, Arlington, VA, (703–308–8417).

SUPPLEMENTARY INFORMATION: EPA has granted specific exemptions to the:

1. Arizona Department of Agriculture for the use of bifenthrin on broccoli, cauliflower, and head lettuce to control the sweet potato whitefly; August 5, 1993, to May 15 ,1994. (Andrea Beard)

2. Arizona Department of Agriculture for the use of avermectin on head lettuce to control leafminers; July 27, 1993, to July 26, 1994. (Larry Fried)

3. Arizona Department of Agriculture for the use of avermectin on melons to control leafminers; July 30, 1993, to July 28, 1994. (Larry Fried)

4. Arizona Department of Agriculture for the use of imidacloprid on broccoli, cauliflower, cabbage, and head lettuce to control the sweet potato whitefly; August 5, 1993, to May 15, 1994. A notice published in the **Federal Register** of July 28, 1993 (58 FR 40424), and no comments were received. The exemption was issued because EPA determined that an urgent, nonroutine situation exists, and growers could suffer significant losses. This chemical is systemic and is to be used at or near planting only, to protect the germinating seedlings. (Andrea Beard)

5. Arkansas State Plant Board for the use of fomesafen on snap beans to control morningglory and pigweed *spp.*; June 10, 1993, to September 5, 1993. (Larry Fried)

6. California Environmental Protection Agency for the use of bifenthrin on broccoli, cauliflower, cabbage, rapini, and head lettuce to control the sweet potato whitefly; August 17, 1993, to April 30, 1994. (Andrea Beard)

7. California Environmental Protection Agency for the use of imidacloprid on broccoli, cauliflower, cabbage, rapini, and head/leaf lettuce to control the sweet potato whitefly; August 20, 1993, to December 31, 1993. (Andrea Beard)

8. California Environmental Protection Agency for the use of

avermectin on pears to control two-spotted spider mites; May 7, 1993, to September 15, 1993. California had initiated a crisis exemption for this use. (Larry Fried)

9. California Environmental Protection Agency for the use of avermectin on tomatoes to control leafminers; July 15, 1993, to July 14, 1994. (Larry Fried)

10. California Environmental Protection Agency for the use of avermectin on peppers to control leafminers; July 30, 1993, to July 29, 1994. (Larry Fried)

11. California Environmental Protection Agency for the use of avermectin on celery to control leafminers; April 7, 1993, to April 6, 1994. (Larry Fried)

12. California Environmental Protection Agency for the use of avermectin on strawberries to control two-spotted spider mites; March 26, 1993, to March 25, 1994. (Larry Fried)

13. California Environmental Protection Agency for the use of avermectin on head lettuce to control leafminers; July 27, 1993, to July 26, 1994. (Larry Fried)

14. California Environmental Protection Agency for the use of bayleton on peppers to control powdery mildew; April 19, 1993, to November 1, 1993. (Larry Fried)

15. Colorado Department of Agriculture for the use of bifenthrin on corn to control mites; August 25, 1993, to August 31, 1993. Colorado had initiated a crisis exemption for this use. (Andrea Beard)

16. Idaho Department of Agriculture for the use of avermectin on pears to control spider mites and pear psylla; May 7, 1993, to August 30, 1993. (Larry Fried)

17. Idaho Department of Agriculture for the use of avermectin on hops to control spider mites; May 14, 1993, to September 20, 1993. (Larry Fried)

18. Idaho Department of Agriculture for the use of pirimicarb on seed alfalfa to control alfalfa aphids and blue aphids; June 18, 1993, to August 31, 1993. (Larry Fried)

19. Illinois Department of Agriculture for the use of fomesafen on snap beans to control puncturevine; July 13, 1993, to September 1, 1993. (Larry Fried)

20. Michigan Department of Agriculture for the use of avermectin on pears to control spider mites and pear psylla; May 7, 1993, to September 30, 1993. (Larry Fried)

21. Minnesota Department of Agriculture for the use of 2,4-D on wild rice to control common water plantain; June 9, 1993, to July 31, 1993. (Larry Fried)

22. Nevada Department of Agriculture for the use of pirimicarb on seed alfalfa to control alfalfa aphids and blue aphids; June 18, 1993, to August 31, 1993. (Larry Fried)

23. New York Department of Environmental Conservation for the use of fomesafen on snap and dry beans to control broadleaf weeds; August 13, 1993, to August 31, 1993. New York had initiated a crisis exemption for this use. (Larry Fried)

24. New York Department of Environmental Conservation for the use of avermectin on pears to control spider mites and psylla; May 17, 1993, to September 30, 1993. (Larry Fried)

25. Oregon Department of Agriculture for the use of avermectin on pears to control spider mites and psylla; May 7, 1993, to August 30, 1993. (Larry Fried)

26. Oregon Department of Agriculture for the use of oxyfluorfen on blackberries to control primocanes; April 19, 1993, to July 31, 1993. (Larry Fried)

27. Oregon Department of Agriculture for the use of avermectin on hops to control spider mites; May 14, 1993, to September 20, 1993. (Larry Fried)

28. Oregon Department of Agriculture for the use of oxyfluorfen on grasses grown for seed to control various weeds, grasses, and volunteer crop seedlings; August 26, 1993, to January 15, 1994. (Larry Fried)

29. Oregon Department of Agriculture for the use of oxyfluorfen on raspberries to control primocanes; April 19, 1993, to May 15, 1993. Oregon had initiated a crisis exemption for this use. (Larry Fried)

30. Oregon Department of Agriculture for the use of pirimicarb on seed alfalfa to control alfalfa aphids and blue aphids; June 18, 1993, to August 31, 1993. (Larry Fried)

31. Pennsylvania Department of Agriculture for the use of avermectin on pears to control spider mites and psylla; May 7, 1993, to September 30, 1993. (Larry Fried)

32. Texas Department of Agriculture for the use of cyfluthrin on sugarcane to control Mexican rice borers; August 13, 1993, to September 30, 1993. (Libby Pemberton)

33. Texas Department of Agriculture for the use of avermectin on bell, chili, and jalapeno peppers to control broad mites; January 27, 1993, to October 13, 1993. Texas had initiated a crisis exemption for this use. (Larry Fried)

34. Utah Department of Agriculture for the use of avermectin on pears to control spider mites and psylla; May 7, 1993, to September 1, 1993. (Larry Fried)

35. Washington Department of Agriculture for the use of avermectin on pears to control pear psylla; May 7, 1993, to September 1, 1993. (Larry Fried)

36. Washington Department of Agriculture for the use of chlorothalonil on rhubarb to control Ramularia leaf and stalk spot; August 17, 1993, to September 15, 1993. Washington had initiated a crisis exemption for this use. (Susan Stanton)

37. Washington Department of Agriculture for the use of avermectin on hops to control spider mites; May 14, 1993, to September 20, 1993. (Larry Fried)

38. Washington Department of Agriculture for the use of oxyfluorfen on raspberries to control primocanes; April 19, 1993, to June 1, 1993. Washington had initiated a crisis exemption for this use. (Larry Fried)

39. Washington Department of Agriculture for the use of pirimicarb on seed alfalfa to control alfalfa aphids and blue aphids; June 18, 1993, to August 31, 1993. (Larry Fried)

40. United States Department of Agriculture for the use of brodifacoum and bromethalin on Rose Island, Rose Atoll National Wildlife Refuge to control the Polynesian rat; April 19, 1993, to April 18, 1994. (Larry Fried)

Crisis exemptions were initiated by the:

1. California Environmental Protection Agency on May 20, 1993, for the use of avermectin on pears to control two spotted spider mites. This program has ended. (Larry Fried)

2. Idaho Department of Agriculture on August 27, 1993, for the use of paraquat on dry peas and lentils to control weeds. This program has ended. (Susan Stanton)

3. Idaho Department of Agriculture on July 30, 1993, for the use of chlorpyrifos on hops to control hop aphids. This program has ended. (Andrea Beard)

4. Minnesota Department of Agriculture on August 3, 1993, for the use of metalaxyl on potatoes to control late blight. This program has ended. (Susan Stanton)

5. Nebraska Department of Agriculture on July 24, 1993, for the use of propiconazole on corn to control fungal diseases. This program has ended. (Andrea Beard)

6. North Dakota Department of Agriculture on August 4, 1993, for the use of metalaxyl on potatoes to control late blight. This program has ended. (Susan Stanton)

7. Texas Department of Agriculture on June 3, 1993, for the use of avermectin on melons to control leafminers. This program has ended. (Larry Fried)

8. Virginia Department of Agriculture and Consumers Services on August 18, 1993, for the use of bifenthrin on peanuts to control mites. This program has ended. (Andrea Beard)

9. Washington Department of Agriculture on August 27, 1993, for the use of paraquat on dry peas and lentils to control weeds. This program has ended. (Susan Stanton)

10. Washington Department of Agriculture on April 30, 1993, for the use of avermectin on pears to control pear psylla. This program has ended. (Larry Fried)

EPA has denied specific exemption requests from the:

1. North Dakota Department of Agriculture for the use of mancozeb on sunflowers to control rust. The Agency denied the exemption because an emergency condition does not exist. It cannot be determined that an economic loss will result without the use of mancozeb. (Margarita Collantes)

2. Texas Department of Agriculture for the use of oxyfluorfen on leucaena leucocephala to control various weed species. The specific exemption was denied based on the determination that an emergency condition did not exist. The section 18 crisis exemption issued April 8, 1993, for this chemical was revoked. (Larry Fried)

3. Texas Department of Agriculture for the use of metolachlor on leucaena leucocephala to control various weed species. The Agency determined that an emergency condition does not exist. In addition, the Agency believes that the section 18 process is not the appropriate mechanism for EPA to make pesticides available to control routine pest problems on new crops. The crisis exemption declared by Texas was revoked. (Larry Fried)

EPA denied a public health exemption on August 12, 1993, from the Alaska Department of Environmental Conservation for the use of capsaicin products to repel wild bear and moose. June 28, 1993, EPA issued a memorandum announcing the implementation of two-part strategy concerning the unregistered use of bear repellants which includes a provision to excercise enforcement discretion and defer taking additional actions against these types of products for a 1-year period. Because of the enforcement discretion, the requested products are available for use and an emergency condition does not exist. (Susan Stanton)

Authority: 7 U.S.C. 136.

List of Subjects

Environmental protection, Pesticides and pests, Crisis exemptions.

Dated: October 25, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–27993 Filed 11–16–93; 8:45 am]

BILLING CODE 6560-50-F

[OPP–66186; FRL 4739–3]

Notice of Receipt of Requests to Voluntarily Cancel Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In accordance with section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, EPA is issuing a notice of receipt of requests by registrants to voluntarily cancel certain pesticide registrations.

DATES: Unless a request is withdrawn by February 15, 1994, orders will be issued cancelling all of these registrations.

FOR FURTHER INFORMATION CONTACT: By mail: James A. Hollins, Office of Pesticide Programs (7502C), Environmental Protection Agency, 401 M Street SW, Washington, DC 20460. Office location for commercial courier delivery and telephone number: Room 216, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA (703) 305–5761.

SUPPLEMENTARY INFORMATION:

I. Introduction

Section 6(f)(1) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended, provides that a pesticide registrant may, at any time, request that any of its pesticide registrations be cancelled. The Act further provides that EPA must publish a notice of receipt of any such request in the **Federal Register** before acting on the request.

II. Intent to Cancel

This notice announces receipt by the Agency of requests to cancel some 56 pesticide products registered under section 3 or 24(c) of FIFRA. These registrations are listed in sequence by registration number (or company number and 24(c) number) in the following Table 1.

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION

Registration No.	Product Name	Chemical Name
000004–00126	Bonide Flower-Vegetable 4-In-1 Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) 2,4-Dinitro-6-octyl* phenyl crotonate, 2,6-dinitro-4-octyl* phenyl crotonate and *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate
000004–00303	Zinc Phosphide Bait	Zinc phosphide
000070–00117	Kill-Ko New Improved Roach and Ant Killer	*o*-Isopropoxyphenyl methylcarbamate 2,2-Dichlorovinyl dimethyl phosphate
000100 IA–91–0004	Beacon Herbicide	Methyl 2-[[[[4,6-bis(difluoromethoxy)-2-pyrimidinylaminocarbonylaminosulfo
000100 MS–92–0004	Beacon Herbicide	Methyl2-[[[[4,6-bis(difluoromethoxy)-2-pyrimidinylaminocarbonylaminosulfo
000100 NJ–91–0005	Larvadex 2SL	*N*-Cyclopropyl-1,3,5-triazine-2,4,6-triamine
000100 PA–91–0002	Larvadex 2 SL	*N*-Cyclopropyl-1,3,5-triazine-2,4,6-triamine
000100 UT–91–0002	Larvadex 2 SL	*N*-Cyclopropyl-1,3,5-triazine-2,4,6-triamine
000230–00073	CDB Clearon Detergent Sanitizer	Sodium dichloroisocyanurate dihydrate
000270–00181	Fly Stop Sticky Fly Trap	(*Z*)-9-Tricosene
000279–02234	Niagara Ferbam 7-G-3 Dust	Ferric dimethyldithiocarbamate *O,O*-Dimethyl *S*-((4-oxo-1,2,3-benzotriazin-3(4*H*)-yl)methyl) phosphorodithioate

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
000279 MT–84–0004	Dimethoate 267 Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
000279 MT–84–0006	Dimethoate 267 Systemic Insecticide	*O,O*-Dimethyl *S*-((methylcarbamoyl)methyl)phosphorodithioate
000675–00151	Oxford Kilz-M	*o*-Isopropoxyphenyl methylcarbamate *N*-Octyl bicycloheptene dicarboximide Pyrethrins
000935–00035	ACL-58	Potassium dichloro-*s*-triazinetrione
000935–00043	SPA-60 Chlorinating Granules	Sodium dichloro-*s*-triazinetrione
000935–00044	SPA-90 Chlorinating Tablet 1≥	Trichloro-*s*-triazinetrione
000935–00046	Shielded Shock Granules	Sodium dichloro-*s*-triazinetrione
000935–00049	MWWS 60 Wash and Surface Sanitizer	Sodium dichloro-*s*-triazinetrione
000935–00051	MAWS 60 Acid Wash Sanitizer	Sodium dichloro-*s*-triazinetrione
000935–00052	MAS 60 Alkaline Sanitizer	Sodium dichloroisocyanurate dihydrate
000935–00053	MDS 60 Detergent Sanitizer	Sodium dichloro-*s*-triazinetrione
000935–00056	MFDS 60 Fabric and Diaper Sanitizer	Sodium dichloro-*s*-triazinetrione
000935–00060	Convert-A-Clor Brominating Granules	Sodium bromide Sodium dichloroisocyanurate dihydrate
001258–00745	Olin Pool Chlorine	Potassium dichloro-*s*-triazinetrione
001258–00897	Olin HTH Brand Plus Two Pool Chlorine Concentrate	Sodium dichloro-*s*-triazinetrione
001258–00898	HTH Brand Hold Pool Chlorine Concentrate	Sodium dichloro-*s*-triazinetrione
001629–00016	Weevil-Cide Tool-Fog Fogging Spray	Methoxychlor (2,2-bis(*p*-methoxyphenyl)-1,1,1-trichloroethane) *O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate (Butylcarbityl)(6-propylpiperonyl) ether 80% and related compounds 20% Pyrethrins
002139 AZ–89–0009	Carzol SP	*m*-(((Dimethylamino)methylene)amino)phenyl-*N*-methylcarbamate, hydrochloride
003540–00061	Sanitergent Mark X	Sodium dichloro-*s*-triazinetrione
003876–00136	Betz Slimicide C-56P	Trichloro-*s*-triazinetrione
006264–00038	CPC Algazine	2-Chloro-4,6-bis(ethylamino)-*s*-triazine
007616–00054	Kem-Tek Algy-Cop	Copper (from triethanolamine complex)
007679–00023	American Brand Nicotine Sulfate	Nicotine
009157–00033	Sun Fast Tabs	Trichloro-*s*-triazinetrione
009429–00002	Weigicide Cleaner	Sodium metasilicate Sodium hydroxide
010163–00025	Prokil Malathion Cryolite 4.50 Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Cryolite
010163–00066	Prokil Malathion-Cryolite 6-50 Dust	*O,O*-Dimethyl phosphorodithioate of diethyl mercaptosuccinate Cryolite
010182 AZ–91–0009	Stauffer Eptam 10.G Granules	*S*-Ethyl dipropylthiocarbamate
010182 FL–91–0005	Gramoxone Extra Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010182 MS–87–0006	Gramoxone Super Herbicide	1,1'-Dimethyl-4,4'-bipyridinium dichloride
010428–00016	Chlor-San 16	Sodium dichloroisocyanurate dihydrate
011649–00015	Avitrol FC Corn Chops-99s	4-Aminopyridine
011715–00211	Farnam No-Gnaw	Benzyl diethyl ((2,6-xylylcarbamoyl)methyl) ammoniumbenzoate Essential oils Thymol
034571–00007	Betz Entec 346	Sodium dichloro-*s*-triazinetrione
037982–00004	Pure - Chlor Jumbo 100 Swimming Pool Chlorinating Table	Trichloro-*s*-triazinetrione
037982–00005	Pure-Chlor Swimming Pool Chlorinating Tablets	Trichloro-*s*-triazinetrione
037982–00019	Spachlor Chlorinating Granules	Sodium dichloro-*s*-triazinetrione
037982–00022	All Pure Dry Algaecide	Trichloro-*s*-triazinetrione
037982–00023	All Pure Chlorinating Granules	Sodium dichloro-*s*-triazinetrione

TABLE 1. — REGISTRATIONS WITH PENDING REQUESTS FOR CANCELLATION—Continued

Registration No.	Product Name	Chemical Name
043660–00009	C-960	Sodium dichloroisocyanurate dihydrate
045309–00006	Aqua Clear Hydro Tabs	Trichloro-*s*-triazinetrione
045309–00015	Aqua Clear Mini Rapid Tabs	Trichloro-*s*-triazinetrione
045309–00022	Aqua Clear Econo-Gran	Trichloro-*s*-triazinetrione
045309–00023	Aqua Clear Tri-Gran	Trichloro-*s*-triazinetrione
045309–00024	Aqua Clear Tri-Shock	Trichloro-*s*-triazinetrione

Unless a request is withdrawn by the registrant within 90 days of publication of this notice, orders will be issued cancelling all of these registrations. Users of these pesticides or anyone else desiring the retention of a registration should contact the applicable registrant directly during this 90–day period. The following Table 2 includes the names and addresses of record for all registrants of the products in Table 1, in sequence by EPA Company Number.

TABLE 2. — REGISTRANTS REQUESTING VOLUNTARY CANCELLATION

EPA Company No.	Company Name and Address
000004	Bonide Products Inc., 2 Wurz Ave., Yorkville, NY 13495.
000070	Wilbur-Ellis Co., Box 16458, Fresno, CA 93755.
000100	Ciba-Geigy Corp., Box 18300, Greensboro, NC 27419.
000230	Olin Corp., CDB Products, 120 Long Ridge Rd., Stamford, CT 06904.
000270	Farnam Companies Inc., 301 W. Osborn Rd, Phoenix, AZ 85013.
000279	FMC Corp., ACG Speciality Products, 1735 Market Street, Philadelphia, PA 19103.
000875	Diversey Corp., 12025 Tech Center Dr., Livonia, MI 48150.
000935	Occidental Chemical Corp., Development Center, V-81, Box 344, Niagara Falls, NY 14302.
001258	Olin Corp., Box 586, Cheshire, CT 06410.
001629	McShares, Inc., Box 1460, Salina, KS 67402.
002139	Nor-Am Chemical Co, Little Falls Centre One, 2711 Centerville Rd, Wilmington, DE 19808.
003640	Stearns Packaging Corp., Box 3216, Madison, WI 53704.
003876	Betz Laboratories, Inc., 4636 Somerton Rd., Trevose, PA 19053.
006264	Richey Industries, Inc., Box 928, Medina, OH 44258.
007616	Chem Lab Products Inc., 5160 E. Airport Dr., Ontario, CA 91761.
007679	American Brand Chemical Co., Box 4, Bonham, TX 75418.
009157	Morgan Gallacher Inc., 8707 Millergrove Dr., Santa Fe, CA 90670.
009429	Cotey Chemical Co., 1939 Ave., H., Lubbock, TX 79404.
010163	Gowan Co, Box 5569, Yuma, AZ 85366.
010182	Zeneca Inc., Zeneca Ag Products, New Murphy Rd. & Concord Pike Box 751, Wilmington, DE 19897.
010429	Wesmar Co., Inc., 1451 NW 46th, Seattle, WA 98107.
011549	Avitrol Corp., 7644 E. 46th Street, Tulsa, OK 74145.
011715	Speer Products Inc., Box 18993, Memphis, TN 38181.
034571	Betz Entec Inc., 506 Prudential Rd., Horsham, PA 19044.
037982	All-Pure Chemical Co, 26700 S. Banta Rd - Box 268, Tracy, CA 95376.
043660	Weas Engineering Inc., Box 816, Carmel, IN 46032.
045309	Aqua Clear Industries Inc., Box 5430, Albany, NY 12205.

III. Loss of Active Ingredients

Unless these requests for cancellation are withdrawn, one pesticide active ingredient will no longer appear in any registered products. Those who are concerned about the potential loss of this active ingredient for pesticidal use are encouraged to work directly with the registrants to explore the possibility of their withdrawing the request for cancellation. This active ingredient is listed in the following Table 3, with the EPA Company Number of the registrant:

TABLE 3. — ACTIVE INGREDIENTS WHICH WOULD DISAPPEAR AS A RESULT OF REGISTRANTS' REQUESTS TO CANCEL

CAS No.	Chemical Name	EPA Company No.
3734-33-6	Benzyl diethyl((2,6-xylylcarbamoyl)methyl) ammonium benzoate	011715

IV. Procedures for Withdrawal of Request

Registrants who choose to withdraw a request for cancellation must submit such withdrawal in writing to James A. Hollins, at the address given above, postmarked before February 15, 1994. This written withdrawal of the request for cancellation will apply only to the applicable 6(f)(1) request listed in this notice.

If the product(s) have been subject to a previous cancellation action, the effective date of cancellation and all other provisions of any earlier cancellation action are controlling. The withdrawal request must also include a commitment to pay any reregistration fees due, and to fulfill any applicable unsatisfied data requirements.

V. Provisions for Disposition of Existing Stocks

The effective date of cancellation will be the date of the cancellation order. The orders effecting these requested cancellations will generally permit a registrant to sell or distribute existing stocks for 1 year after the date the cancellation request was received. This policy is in accordance with the Agency's statement of policy as prescribed in **Federal Register** No. 123, Vol. 56, dated June 26, 1991. Exceptions to this general rule will be made if a product poses a risk concern, or is in noncompliance with reregistration requirements, or is subject to a data call-in. In all cases, product-specific disposition dates will be given in the cancellation orders.

Existing stocks are those stocks of registered pesticide products which are currently in the United States and which have been packaged, labeled, and released for shipment prior to the effective date of the cancellation action. Unless the provisions of an earlier order apply, existing stocks already in the hands of dealers or users can be distributed, sold or used legally until they are exhausted, provided that such further sale and use comply with the EPA-approved label and labeling of the affected product(s). Exceptions to these general rules will be made in specific cases when more stringent restrictions on sale, distribution, or use of the products or their ingredients have already been imposed, as in Special Review actions, or where the Agency has identified significant potential risk concerns associated with a particular chemical.

List of Subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 8, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-28286 Filed 11-16-93; 8:45 am]

BILLING CODE 6560-50-F

[OPP-180907; FRL 4742-9]

Receipt of Application for Emergency Exemption to use Imidacloprid; Solicitation of Public Comment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has received a specific exemption request from the Florida Department of Agriculture and Consumer Services (hereafter referred to as the "Applicant") to use the pesticide imidacloprid (CAS 105827-78-9) to treat up to 50,000 acres of tomatoes to control the sweet potato whitefly *Bemesia tabaci*. The Applicant proposes the use of a new chemical; therefore, in accordance with 40 CFR 166.24, EPA is soliciting public comment before making the decision whether or not to grant the exemption.

DATES: Comments must be received on or before December 2, 1993.

ADDRESSES: Three copies of written comments, bearing the identification notation "OPP-180907," should be submitted by mail to: Public Docket and Freedom of Information Section, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA.

Information submitted in any comment concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information." Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain Confidential Business Information must be provided by the submitter for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments filed pursuant to this notice will be available for public inspection in Rm. 1132, Crystal Mall #2, 1921 Jefferson Davis Highway, Arlington, VA, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Andrea Beard, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW, Washington, DC 20460. Office location and telephone number: Floor 6, Crystal Station #1, 2800 Jefferson Davis Highway, Arlington, VA, 703-308-8791.

SUPPLEMENTARY INFORMATION: Pursuant to section 18 of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) (7 U.S.C. 136p), the Administrator may, at her discretion, exempt a state agency from any registration provision of FIFRA if she determines that emergency conditions exist which require such exemption. The Applicant has requested the Administrator to issue a specific exemption for the use of imidacloprid on tomatoes to control the sweet potato whitefly (SPWF). Information in accordance with 40 CFR part 166 was submitted as part of this request.

The SPWF was discovered in Florida in 1900, and has been a pest in the "desert-cropping systems" in California and Arizona for some time. It is common on many wild and cultivated crops such as tomatoes, cotton, cucurbits and solanaceae. The Applicant states that the SPWF first caused economic impacts in Florida in 1987, and since then, its impacts have rapidly expanded over the total production area. The SPWF causes direct damage to the tomato plant through its feeding activity and the production of honeydew which enhances sooty mold development. The

SPWF is also considered responsible for the introduction and distribution of at least one geminivirus (which can lead to extreme yield losses), and also causes a physiological disorder resulting in irregular ripening of fruit. The Applicant claims that adequate control of the SPWF is not being achieved with the currently registered compounds.

Along with this request, the Applicant has also requested a specific exemption for use of a different chemical (fenpropathrin) on tomatoes, also for control of the SPWF. The Applicant justifies requests for two chemicals, by stating that the imidacloprid would be applied at or near transplanting, as a soil-incorporated treatment; since imidacloprid is a systemic, it would be taken up by the small tomato transplants, and protect them from SPWF feeding during this early stage of development. The Applicant states that fenpropathrin, being non-systemic, is only of use as a foliar spray, which is of little value during the early phase of development, as there is limited leaf area at that time. Thus the Applicant proposes that use of fenpropathrin be allowed later in the crop season, as a foliar treatment, to maintain season-long control. The Applicant indicates that imidacloprid would not be of use as both a soil treatment and a foliar spray, because its mode of action is such that resistance development is a concern. The Registrant of imidacloprid will not support the use of this chemical further into the growing season for this reason. The Applicant claims that without control of the SPWF, individual fields could experience 100 percent yield loss. Yield losses due to geminivirus can be 25 to 70 percent; irregular ripening can reduce yields by 36 to 100 percent; and direct feeding losses can be as much as 10 to 15 percent.

The Applicant proposes to apply imidacloprid at a maximum rate of 0.25 pound (dry) active ingredient (16 fluid ounces of product) per acre with a maximum of one application per crop season on a total of 50,000 acres of tomatoes. It is possible to produce two tomato crops per calendar year on a given acre, and therefore, the acreage could potentially receive two applications of imidacloprid per calendar year. Therefore, use under this exemption could potentially amount to a maximum total of 25,000 pounds of active ingredient, or 12,500 gallons of product. This is the first time that the Applicant has applied for the use of imidacloprid on tomatoes. However, the Applicant requested, and was granted, specific exemptions for the use of fenpropathrin for SPWF control in tomatoes for the past 2 years (this is the third consecutive year for this request for fenpropathrin). This notice does not constitute a decision by EPA on the application itself. The regulations governing section 18 require publication of a notice of receipt of an application for a specific exemption proposing use of a new chemical (i.e., an active ingredient not contained in any currently registered pesticide). Such notice provides for opportunity for public comment on the application. Accordingly, interested persons may submit written views on this subject to the Field Operations Division at the address above.

The Agency, accordingly, will review and consider all comments received during the comment period in determining whether to issue the emergency exemption requested by the Florida Department of Agriculture and Consumer Services.

List of Subjects

Environmental protection, Pesticide and pests, Crisis exemptions.

Dated: November 4, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–27988 Filed 11–16–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4802–2]

Greenback Industries, Inc., Site, Greenback, TN; Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Greenback Industries Site, Greenback, Tennessee, with Handy and Harman, parent firm of Greenback Industries. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region, IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: November 5, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93–28282 Filed 11–16–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4802–3]

Sapp Battery Company Site: Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122 (g) and (h) of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et. seq.*, the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the Sapp Battery Company Site, Cottondale, Florida with the following Potentially Responsible Parties:

Alabama Power Company
Atlanta Metal Company, Inc.
Pete Bates #1 Auto Parts
Dekalb County, Georgia
Falk Steel & Metals Company
Ralph Heath
James Auto Parts
Mills Auto Parts
Mobile Power & Brake Equipment-Company Inc.
Mobile Electric Garage Inc.
National Automotive Parts Assoc.
Estate of Joseph Treadwell
Curt Miller Oil Company

EPA will consider public comments on the proposed settlements for thirty (30) days. EPA may withdraw from or modify the proposed settlements should such comments disclose facts or considerations which indicate the proposed settlements are inappropriate, improper, or inadequate. Copies of the proposed *De Minimis* settlements are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404/347–5059.

Written comments must be submitted to the person above within 30 days from the date of publication.

Dated: November 14, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93–28281 Filed 11–16–93; 8:45 am]

BILLING CODE 6560–50–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

[FEMA-997-DR]

Illinois; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Illinois (FEMA-997-DR), dated July 9, and related determinations.

EFFECTIVE DATE: November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint David Skarosi of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Walter Pierson as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 93-28206 Filed 11-16-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-996-DR]

Iowa; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Iowa (FEMA-996-DR), dated July 9, and related determinations.

EFFECTIVE DATE: November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Edward Thomas of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of Richard A. Buck as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 93-28207 Filed 11-16-93; 8:45 am]

BILLING CODE 6718-02-M

[FEMA-1000-DR]

Kansas; Amendment to Notice of a Major Disaster Declaration

AGENCY: Federal Emergency Management Agency (FEMA).

ACTION: Notice.

SUMMARY: This notice amends the notice of a major disaster for the State of Kansas (FEMA-1000-DR), dated July 22, and related determinations.

EFFECTIVE DATE: November 5, 1993.

FOR FURTHER INFORMATION CONTACT: Pauline C. Campbell, Disaster Assistance Programs, Federal Emergency Management Agency, Washington, DC 20472, (202) 646-3606.

SUPPLEMENTARY INFORMATION: Notice is hereby given that, effective this date and pursuant to the authority vested in the Director of the Federal Emergency Management Agency under Executive Order 12148, I hereby appoint Charles Biggs of the Federal Emergency Management Agency to act as the Federal Coordinating Officer for this declared disaster.

This action terminates my appointment of John W. McKay as Federal Coordinating Officer for this disaster.

(Catalog of Federal Domestic Assistance No. 83.516, Disaster Assistance.)

James L. Witt,

Director.

[FR Doc. 93-28208 Filed 11-16-93; 8:45 am]

BILLING CODE 6718-02-M

FEDERAL MARITIME COMMISSION

[Petition Nos. P87-93, P88-93, P89-93]

Seaboard Marine Ltd., et al.; Petition for Temporary Exemption From Electronic Tariff Filing Requirements

In the Matter of Petition of Seaboard Marine Ltd., Petition of Distribution Services Ltd., Petition of Tropical Shipping & Construction Co., Ltd.

Notice is hereby given of the filing of petitions by the above named petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petition no later than November 23, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573-0001, shall consist of an original and 15 copies, and shall be served as follows:

P87-93—Mr. Jose Concepcion, Vice President, Pricing, Seaboard Marine Ltd., 1306 Port Boulevard, Dodge Island, Florida 33132

P88-93—David P. Street, Esq., Galland, Kharasch, Morse & Garfinkle, P.C., 1054 31st Street, NW., Washington, DC 20007-4492

P89-93—Paul D. Coleman, Esq., Hoppel, Mayer & Coleman, 1000 Connecticut Avenue, NW., Washington, DC 20036

Copies of the petitions are available for examination at the Washington, DC Office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93-28192 Filed 11-16-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

BACKGROUND: Notice is hereby given of the submission of proposed information collection(s) to the Office of Management and Budget (OMB) for its review and approval under the Paperwork Reduction Act (title 44 U.S.C. chapter 35) and under OMB regulations on Controlling Paperwork Burdens on the Public (5 CFR part 1320). A copy of the proposed information collection(s) and supporting documents is available from the agency clearance officer listed in the notice. Any comments on the proposal should be sent to the agency clearance officer and to the OMB desk officer listed in the notice.

DATES: Comments should be submitted on or before November 24, 1993.

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer: Mary M. McLaughlin (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired

only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer: Gary Waxman (202-395-3740), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3208, Washington, DC 20503.

Request for OMB Approval To Extend, Without Revision, The Following Report:

1. *Report title:* Country Exposure Report for U.S. Branches and Agencies of Foreign Banks

Agency form number: FFIEC 019

OMB Docket number: 7100-0213

Frequency: Quarterly

Reporters: U.S. branches and agencies of foreign banks

Annual reporting hours: 12,320

Estimated average hours per response: 10 hours

Number of respondents: 308

Small businesses are not affected.

General Description of Report

This information collection is mandatory (12 U.S.C. 3105, 3108 for the Board of Governors of the Federal Reserve System; sections 7 and 10 of the Federal Deposit Insurance Act (12 U.S.C. 1817, 1820) for the Federal Deposit Insurance Corporation; and the National Bank Act (12 U.S.C. 161) for the Office of the Comptroller of the Currency) and is given confidential treatment (5 U.S.C. 552(b)(8)).

SUMMARY: All individual U.S. branches and agencies of foreign banks that have more than $30 million in direct claims on residents of foreign countries must file the FFIEC 019 report quarterly. Currently, all respondents report adjusted exposure amounts to the five largest countries having at least $5 million in total adjusted exposure. The proposed revision would increase the total adjusted exposure reporting threshold to $20 million. The data collected are used to monitor the extent to which such branches and agencies are pursuing prudent country risk diversification policies and limiting potential liquidity pressures.

Board of Governors of the Federal Reserve System, November 10, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-28197 Filed 11-16-93; 8:45 am]

BILLING CODE 6210-01-F

[Docket R-0813]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice.

SUMMARY: The Board has approved a Private Sector Adjustment Factor (PSAF) for 1994 of $103.6 million, as well as 1994 fee schedules for Federal Reserve priced services. These actions were taken in accordance with the requirements of the Monetary Control Act of 1980, which requires that fees for Federal Reserve priced services be established on the basis of all direct and indirect costs, including the PSAF. The Board also has approved the elimination of the blended fee option that is currently offered in connection with the tiered prices used for some check collection products.

DATES: The PSAF, the fee schedules, and the elimination of the blended fee option for check collection products become effective January 3, 1994.

FOR FURTHER INFORMATION CONTACT: For questions regarding the Private Sector Adjustment Factor: Gwendolyn Mitchell, Senior Accounting Analyst, (202/452–3841), or Gregory Evans, Project Leader, (202/452–3945), Division of Reserve Bank Operations and Payment Systems; for questions regarding fee schedules: Edith Collis, Financial Services Analyst, Check Payments (202/452–3638), Jack Walton, Manager, Automated Clearing House (202/452–2660), Darrell Mak, Financial Services Analyst, Funds Transfer (202/452–3223), Kirstin Wells, Assistant Financial Services Analyst, Book Entry (202/452–5871), Kenneth Buckley, Manager, Information Technology (202/452–3646), Michael Bermudez, Financial Services Analyst, Fiscal Agency & Definitive Securities (202/452–2216), and Ruth Robinson, Senior Financial Services Analyst, Cash (202/452–3944), Division of Reserve Bank Operations and Payment Systems; for the hearing impaired only: Telecommunication Device for the Deaf, Dorothea Thompson (202/452–3544).

Copies of the 1994 fee schedules for check collection, automated clearing house, funds transfer and net settlement, book-entry securities, noncash collection, special cash services, and electronic connections to the Federal Reserve are available from the Reserve Banks.

SUPPLEMENTARY INFORMATION:

Private Sector Adjustment Factor

The Board approved a 1994 Private Sector Adjustment Factor (PSAF) for Federal Reserve Bank priced services of $103.6 million. This amount represents an increase of $12.2 million or 13.3 percent over the PSAF of $91.4 million targeted for 1993.

As required by the Monetary Control Act, the Federal Reserve's fee schedule for priced services includes "taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm." These imputed costs are based on data developed in part from a model comprised of the nation's 50 largest (in asset size) bank holding companies (BHCs).

The methodology first entails determining the value of Federal Reserve assets that will be used in producing priced services during the coming year. Short-term assets are assumed to be financed by short-term liabilities; long-term assets are assumed to be financed by a combination of long-term debt and equity derived from the BHC model. The mix of long-term debt and equity was modified slightly to ensure an imputed equity to asset ratio of 4 percent as required for adequately capitalized institutions under provisions of Regulation F.

Imputed capital costs are determined by applying related interest rates and rates of return on equity derived from the bank holding company model. The rates drawn from the BHC model are based on consolidated financial data for the 50 largest BHCs in each of the last five years. Because short-term debt, by definition, matures within one year, only data for the most recent year are used for computing the short-term debt rate.

The PSAF comprises capital costs, imputed sales taxes, expenses of the Board of Governors related to priced services, and an imputed FDIC insurance assessment on clearing balances held with the Federal Reserve to settle transactions.

Asset Base—The estimated value of Federal Reserve assets to be used in providing priced services in 1994 is reflected in Table 11. Table 12 shows that the assets assumed to be financed through debt and equity are projected to total $651.5 million. As shown in Table 13, this represents a net decrease of $5.6 million or 0.9 percent from 1993. This decrease results primarily from lower priced asset base levels at the Reserve Banks, partially offset by higher short-term assets resulting from a revision to the estimated average level of accrued service revenue.

Cost of Capital, Taxes, and Other Imputed Costs—Table 13 shows the financing and tax rates as well as the other required PSAF recoveries

proposed for 1994 and compares the 1994 rates with the rates used for developing the PSAF for 1993. The pre-tax return on equity rate increased from 8.6 percent in 1993 to 12.7 percent for 1994. The increase is a result of stronger 1992 BHC financial performance included in the 1994 BHC model, relative to the 1987 BHC financial performance, included in the 1993 BHC model.

The decrease in the FDIC insurance assessment from $21.3 million in 1993 to $19.8 million in 1994, as shown in Table 13, is attributable to lower adjusted gross CIPC and, to a lesser extent, lower clearing balances. The FDIC rate of $0.26 for every $100 in clearing balances, remains unchanged from the 1993 final PSAF.

Capital Adequacy—As shown on Table 14, the amount of capital imputed for the proposed 1994 PSAF totals 31.6 percent of risk-weighted assets, well in excess of the 8 percent capital guideline for state member banks and BHCs.

1994 Fee Schedules

Overview—Based on the Reserve Banks' estimates of costs, volumes, and revenues, the proposed 1994 fees for priced services are expected to yield net income of $20.2 million for the year, compared with a targeted return on equity (ROE) of $34.6 million.[1] Thus, the Reserve Banks project that 98.2 percent of total expenses, including targeted ROE, will be recovered. In addition, during 1994, approximately $25 million of automation consolidation special project costs will be deferred and financed.[2]

Unique situations are facing the check, automated clearing house (ACH), and noncash collection services that contribute to the projected, lower-than-targeted return on equity. First, the same-day settlement (SDS) regulation will be effective on January 3, 1994. Under the SDS regulation, private collecting institutions will be able to present checks directly to payor institutions and to demand settlement in same-day funds. It is anticipated that many institutions currently using intermediaries, such as the Reserve Banks, to collect checks will begin to present checks directly to payor institutions. The Reserve Banks expect the total number of checks collected by the System to decline by approximately 10 percent.

While the Reserve Banks are taking a number of steps to control costs and to enhance their check services, the resource adjustments (both labor and equipment) that will most likely be needed can only be made over time, following actual volume losses. As a result, the Reserve Banks are proposing modest increases in check fees for 1994 and projecting net income of $14.8 million, compared with a targeted ROE of $26.3 million. In addition, all automation consolidation costs are being deferred and financed.

Experience following the initial implementation of Regulation CC in 1988 indicates that the Reserve Banks are able to adjust to structural changes and fully recover total expenses, plus targeted ROE, in a relatively short time period (see Table 1). Further, raising check fees substantially in 1994 could reduce the overall efficiency of the check collection mechanism.

Second, the ACH service continues to be affected by the one-time expenses associated with the transition to consolidated automation operations and the new Fednet® data communications network. Although priced service management may defer and finance a portion of automation consolidation special project costs, a substantial portion of the costs incurred to implement the Federal Reserve Automation Service (FRAS) and Fednet® are being charged to operating expenses as they are incurred. In addition, new ACH application software is being developed to support consolidated operations and to enhance the Reserve Banks' ACH services. All costs incurred to develop the new software are included in current expenses as well as the costs associated with maintaining the current ACH software.

The Reserve Banks are taking steps to reduce ACH direct and overhead costs, are deferring all special project costs, and are proposing to raise selected fees. Estimates indicate that these efforts will permit the ACH service to realize $1.3 million in net income, compared with a targeted ROE of $3.4 million. If fees were raised in an attempt to generate the revenue needed to realize the targeted ROE, future ACH volume growth could be negatively affected. The Federal Reserve's electronic payment services will benefit from automation consolidation and Fednet® in the future through enhanced reliability and increased efficiency. In addition, users of the System's ACH services will benefit from flow processing and enhanced delivery options when the new ACH software is implemented. Each of these efforts is expected to contribute to growth in the use of electronic payments.

Third, the noncash collection service has faced rapidly declining volume levels since the Tax Equity and Fiscal Responsibility Act of 1982 (TEFRA) was enacted. Following the enactment of TEFRA, many bearer municipal securities were "immobilized," or converted to book-entry form, thus eliminating interest coupons. Largely due to significant volume losses, the Reserve Banks incurred an operating loss in 1992 and project operating losses in 1993 and 1994.

The number of institutions providing noncash collection services is dwindling. Even though the Reserve Banks are not currently among the highest volume service providers, offering noncash collection services provides a measure of stability in a volatile environment.

To address the difficulties associated with recovering noncash collection costs in a declining market, the Reserve Banks have reduced the number of operating sites to four and plan to reduce the number to three by year-end 1994 and to two by year-end 1995. In addition, the Board approved a modified fee structure that more effectively reflects the composition of costs and the demand of both low-volume and high-volume users of the service. (See Docket R–0814 elsewhere in today's **Federal Register**.) Once all operational adjustments are made, the Reserve Banks believe that the total costs of providing noncash collection services can be recovered.

The 1994 fees approved by the Board result in a projected ROE that is below the target established using the 50 bank holding company model. Both the MCA and the Board's pricing principles indicate that fees for Federal Reserve priced services should be set to recover costs, including the PSAF, over the long run. The Board believes that the Reserve Banks have demonstrated their ability to adjust to structural changes since the MCA was implemented and believes that the Reserve Banks will be able to make the appropriate adjustments in the future. In addition, the Board believes that the Federal Reserve's efforts to enhance its data processing and data communications facilities will provide

[1] As required by the Monetary Control Act (MCA), the Federal Reserve's fees for priced services are set to recover all direct and indirect costs of providing the services plus imputed costs, such as taxes that would have been paid and the return on capital that would have been provided had the services been furnished by a private business firm. These imputed costs are based on data developed in part from a model comprised of the nation's 50 largest (in asset size) bank holding companies (BHCs). The ROE is derived from the BHC model based on consolidated financial data for each of the last five years.

[2] In 1981, the Board adopted a policy that permits the Reserve Banks to defer and finance development costs if the development costs would have a material affect on unit costs, provided a conservative time period is set for full cost recovery and a financing factor is applied to the deferred portion of development costs.

significant benefits to all users of Federal Reserve payment services in the future.

Discussion—The 1993 fees approved by the Board were expected to recover 99.1 percent of the costs of providing priced services in 1993, including imputed expenses, automation consolidation special project costs, and targeted ROE. Through September 1993, the System recovered 99.7 percent of total priced services expenses plus ROE. The Reserve Banks now estimate that, priced services revenues will yield net income of $18.3 million for the year, compared with a targeted ROE of $24.8 million. The recovery rate after targeted ROE is estimated to be 99.2 percent. Approximately $27.1 million in automation consolidation special project costs will be recovered in 1993 and $12.2 million will be financed and recovered later. (See Table 1.)

Total priced services costs including special project costs recovered and ROE are expected to be 1.1 percent below original projections and total revenue is estimated to be about 1.0 percent lower than original projections.

In 1994, priced service expenses before special project costs (see Table 1, column 2) are projected to increase 2 percent compared with 1993 levels. Approximately $24.7 million of automation consolidation special project costs will be deferred and financed, resulting in accumulated special project costs to be recovered in the future of $36.9 million.

Total revenue is projected to decrease 0.3 percent compared with the 1993 level. Based on the Reserve Banks' estimates of costs, volumes, and revenues, the 1994 fees are expected to yield net income of $20.2 million for the year, compared with a targeted return on equity of $34.6 million. These estimates result in a recovery rate after targeted ROE of 98.2 percent. Table 1 highlights the cost and revenue performance for priced services since 1989.

TABLE 1.—COST AND REVENUE PERFORMANCE [1]

[$ millions]

Year	Revenue	Operating costs & imputed expenses [2]	Special project costs recovered	Total expense [2+3]	Net income (ROE) [3] [1–4]	Target ROE [4]	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs deferred & financed [5]
	1	2	3	4	5	6	7	8
1989	718.6	691.0	4.6	695.6	23.0	32.9	98.6	0.0
1990	746.5	696.0	2.8	698.8	47.7	33.6	101.9	0.0
1991	750.2	708.4	1.6	710.0	40.2	32.5	101.0	0.0
1992	760.8	723.1	11.2	734.2	26.6	26.0	100.1	1.6
1993 (Est) [6]	776.4	730.9	27.1	758.1	18.3	24.8	99.2	12.2
1994 (Bud)	774.4	745.5	8.8	754.2	20.2	34.6	98.2	36.9

[1] Details may not sum to totals because of rounding.
[2] Imputed expenses include interest on debt, taxes, FDIC insurance, and the cost of float. Credits for prepaid pension costs under FASB 87 and the charges for post-retirement benefits in accordance with FASB 106 are included beginning in 1993.
[3] Net income was less than targeted ROE during 1989 due to structural adjustments associated with implementing Regulation CC in 1988.
[4] Targeted ROE has not been adjusted to reflect automation consolidation expenses deferred and financed. The Reserve Banks plan to recover these costs in the future.
[5] Totals are cumulative and include financing costs.
[6] The modified methodology adopted by the Board on September 28, 1993, for imputing net income on clearing balances is reflected in revenue beginning in 1993.

Check

Table 2 presents the actual 1992, estimated 1993, and projected 1994 cost recovery performance for the check collection service.

TABLE 2.—PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs & imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs Deferred & financed
	1	2	3	4	5	6	7	8
1992	578.4	552.7	6.6	559.3	19.1	19.3	100.0	(0.4)
1993 (Est)	600.6	565.4	14.2	579.5	21.0	18.6	100.4	(0.1)
1994 (Bud)	593.5	578.7	0.0	578.7	14.8	26.3	98.1	11.8

1992 Performance—Revenues from the check service recovered 100.0 percent of total expenses, including targeted ROE in 1992. The volume of checks collected increased 1.9 percent over 1991 levels and the volume of return items decreased 6.0 percent.

1993 Performance—Through September 1993, revenues from the check service recovered 100.7 percent of total expenses, including targeted ROE. The volume of checks collected increased less than 0.1 percent and return item volume decreased 2.1 percent, compared with 1992 volume levels. The Reserve Banks originally projected an increase of 1.9 percent for

checks collected and a decrease of 0.9 percent for return items.

The Reserve Banks now project net income to amount to $21.0 million, compared with a targeted ROE of $18.6 million. Total expenses and revenues are expected to be lower than original projections by approximately 1.0 percent and 0.4 percent, respectively. The volume of checks collected is now projected to increase only 0.3 percent over 1992 levels and return item volume is expected to decline by 4.7 percent. Because the Reserve Banks have controlled costs effectively during 1993, the Board believes that the Reserve Banks' projections are reasonable.

1994 Issues—The Reserve Banks will be challenged by a changing check environment in 1994 as a result of the implementation of the SDS regulation on January 3. The regulation will permit collecting institutions to present checks to payor institutions for payment in same-day funds without the imposition of presentment fees if the checks are presented by 8:00 a.m. local time. Many collecting banks currently using the Federal Reserve's check collection services are expected to begin presenting checks directly to payor institutions. As a result, the Reserve Banks estimate that total check collection volume will decline by 10 percent; reflecting decreases of 32.5 percent for fine sort deposits and 2.3 percent for processed deposits. Return item volumes are expected to decline by 1.9 percent.

In light of the changes in the check collection mechanism that implementation of the SDS regulation will create, the Reserve Banks are (1) instituting cost containment efforts, (2) taking steps to adjust fees to encourage more efficient use of Federal Reserve services, and (3) introducing forward collection products with attractive deadlines.

The Board also approved the elimination of the blended fee option from the check service's tiered pricing structure. Tiered pricing enables Reserve Banks to establish prices that more precisely reflect their costs to collect checks drawn on paying institutions within a given check collection zone. Under a tiered pricing structure, different fees are assessed depending on whether a check is presented to a high-cost or low-cost endpoint in a collection zone. The blended fee option is currently offered as an alternative to tiered prices within most collection zones where tiered prices have been implemented. The blended fee option was included to address the concerns raised by public commenters regarding the complexities associated with monitoring and reconciling bills for products with tiered prices. At that time, the Board committed to evaluating the need to offer the blended fee option after experience was gained with this pricing methodology.

The Board believes that the circumstances supporting the need for the blended fee option have changed. In the SDS environment, Reserve Banks expect to lose volume drawn on low-cost/low-tier endpoints. The proportional increase in volume drawn on high-cost/high-tier endpoints will result in increases in the blended fees, which will make the difference between them and the high-tier fees insignificant. Thus, the usefulness of a blended fee will be significantly reduced. In 1992, the Minneapolis Reserve Bank received approval to eliminate the blended fee alternative because the difference between the blended fee and the high-tier fee became insignificant. In addition, experience has shown that the billing reconcilement complexities associated with tiered pricing have not been an obstacle to most depositors because few depositors have chosen the blended fee option.

1994 Fees—Overall, 1994 check prices will increase 2.4 percent on a weighted average basis, compared with 1993 fees. To reflect the fixed and variable costs of providing check collection services more accurately, cash letter fees and fine sort package fees are increasing, on average, 21 percent and 46 percent, respectively. Forward processed and fine sort per-item fees are decreasing 1.4 percent and 12.6 percent, respectively. Of the 2,126 forward collection and fine-sort fees, 13 percent are lower than 1993 fees, almost 37 percent are unchanged, and 15 percent represent new product offerings. Eighty-seven forward fees have been discontinued, largely due to the elimination of the blended fee option for products with tiered prices.

Fees for return items are increasing 8.1 percent overall, reflecting in part increases in return cash letter and package fees. Of the 1,489 return fees, 6 percent will decrease, 44 percent are unchanged, 46 percent will increase, and 4 percent represent new fees.

Table 3 highlights selected price ranges for 1993 and 1994 check collection fees.

TABLE 3.—PRICE RANGES

Products	1993 Price Ranges	1994 Price Ranges
Items	(per item)	(per item)
Forward processed		
City	$0.008 to 0.049	$0.003 to 0.049.
RCPC	0.007 to 0.060	0.005 to 0.077.
Fine Sort		
City	0.002 to 0.009	0.002 to 0.012.
RCPC	0.002 to 0.015	0.002 to 0.012.
Qualified return items		
City	0.110 to 0.530	0.100 to 0.530.
RCPC	0.120 to 0.570	0.120 to 0.600.
Raw return items		
City	0.580 to 1.680	0.580 to 1.680.
RCPC	0.800 to 1,680	0.800 to 1.680.
Cash Letters	(per cash letter)	(per cash letter)
Forward processed	0.50 to 4.50	1.50 to 7.50.
Forward fine-sort package	1.50 to 4.50	3.00 to 11.00.
Return items: raw and qualified	0.50 to 4.50	1.50 to 7.50.

In order to improve the efficiency of the payments mechanism through the promotion of electronic check presentment, a revised framework for pricing electronic check products was implemented in mid-1993. Under that

framework, fees for payor bank information products are to be set at a higher level than fees for presentment products. All Reserve Banks have adopted this pricing structure for 1994. Prices for less efficient, non-electronic methods of delivery for both information and presentment services will be set higher than electronic delivery methods.

Service Level Changes—Beginning in 1994, all Reserve Banks will offer a basic electronic check presentment service (BECP) and local truncation (safekeeping) services, with the capability of handling at least two distinct customer account number ranges. Each of the electronic check presentment products will have a separate per-item fee. Fees for BECP will be set at lower levels and fees for truncation products will be set at the higher levels.

Enhancements to the minimum check service level standards approved by the Board in 1992 will be fully implemented by all Reserve Banks in 1994. These enhancements are designed to speed interdistrict check collection, to be responsive to depositors' needs for improved deadlines and availability, and to offer more uniform national check collection services.

The Reserve Banks have taken steps to control operating costs and will defer $11.8 million of automation consolidation special project costs, which will be financed and recovered later. The Board approved the 1994 fees for the check service, although net income is projected to be $11.5 million below the targeted ROE of $26.3 million. Increasing check fees more than the planned 2.4 percent could contribute to inefficiencies in check collection markets. Moreover, the Reserve Banks have demonstrated their ability to adjust to structural changes in the past, and the Board believes that the Reserve Banks will be able to make the appropriate adjustments in the future.

Automated Clearing House (ACH)

Table 4 below presents the actual 1992, estimated 1993, and projected 1994 cost recovery performance for the commercial ACH service.

TABLE 4.— PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs & imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1−4]	Target ROE	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs deferred and financed
	1	2	3	4	5	6	7	8
1992	60.2	60.6	0.0	60.6	(0.4)	2.4	95.6	2.3
1993 (Est)	60.1	62.9	0.0	62.9	(2.7)	2.5	92.0	10.9
1994 (Bud)	67.9	56.6	0.0	56.6	1.3	3.4	96.9	19.9

1992 Performance—Revenues from the ACH service recovered 95.6 percent of total expenses, including targeted ROE, during 1992. The principal factors contributing to the revenue shortfall were (1) higher than planned automation consolidation-related expenses and (2) lower than anticipated non-automated revenue due to a more rapid conversion to the all electronic ACH than planned. Commercial ACH volume increased 18.6 percent, compared with 1991 volume levels.

1993 Performance—Through September 1993, revenues from the ACH service recovered 92.1 percent of total expenses plus ROE, compared with a targeted recovery rate of 92.3 percent for the year. Commercial ACH volume increased 16.4 percent, compared with 1992 volume levels.

Consistent with their original projections, the Reserve Banks now project an operating loss of $2.7 million, compared with a targeted ROE of $2.5 million. Total expenses and revenues are expected to be lower than original projections by 2.1 percent and 2.4 percent, respectively. Commercial ACH volume is now anticipated to increase 14.6 percent above 1992 levels, compared with an original projection of 16.3 percent.

While the Reserve Banks' revised volume projections appear somewhat pessimistic, the implementation of two additional ACH processing cycles on October 1, 1993, could increase operating costs. In addition, revenues could decline because the new processing schedules enable some originating institutions to avoid the surcharge on debit transactions processed on the last, or premium, cycle.

1994 Issues—Several significant factors continue to affect the costs of the ACH service and its ability to recover total expenses, including the targeted ROE allocated to the service. First, the Reserve Banks are continuing their multi-year effort to implement FRAS and the improved data communications network, Fednet®. Both of these efforts will enhance the reliability and the quality of the ACH service. While all automation consolidation special project costs are being deferred and financed, all other costs associated with the implementation of FRAS and Fednet® are expensed in the year they are incurred.

Second, the ACH service is in the midst of a multi-year effort to develop application software designed to operate in the consolidated processing environment. The software, known as FedACH, will also provide enhanced services, such as flow processing, to depository institutions. The development costs of the FedACH software are being expensed as they are incurred, while the Reserve Banks continue to incur expenses to maintain and operate the current ACH application software.

Third, the projected 13.8 percent increase in commercial ACH transaction volume reflects a continuing reduction in the growth rate of commercial ACH transactions. At the same time, total expenses are projected to rise by only 5.9 percent due to the Reserve Banks' cost control programs.

1994 Fees—Given the magnitude and nature of the one-time expenses described above, the Board continues to believe that increasing ACH fees by the amount necessary to recover the targeted ROE in 1994 would have a negative effect on the continued growth of the ACH because it would introduce short-term price aberrations into the market.[4] This conclusion is supported by the scale economies that exist in producing ACH services, which are demonstrated by the 12.1 percent average annual decrease in per-item

[4] Docket R–0779, 57 FR 53740, November 10, 1992.

ACH processing costs from 1988 through 1992. If the Federal Reserve were to raise ACH transaction fees substantially in 1994 and 1995, the potential to realize the long-term benefits of this efficient payment mechanism would likely be diminished.

At the same time, the Board believes that it is beneficial to structure fees for the ACH service in a manner that more accurately reflects the service's underlying cost structure and that will facilitate the transition to the future operating environment. In particular, a significant proportion of the costs incurred in providing ACH services are fixed, but the majority of ACH revenues are derived from transaction fees. As a result, the current fee structure may discourage use of ACH services because transaction fees are considerably higher than average variable costs. Further, the eventual consolidation of ACH processing will eliminate the differences in processing local and interregional transactions. Thus, when the new FedACH processing system is implemented, only one transaction fee would be assessed. The Reserve Banks' staffs are currently developing a proposal to modify the ACH fee structure and are planning to request that the Board issue it for public comment during early 1994.

The 1994 price changes are listed in Table 5.

TABLE 5.—PRICE CHANGES

Product	1993	1994 (proposed)
Interregional Transaction Fee	$0.015	$0.014
Account Servicing Fee (monthly)	10.00	20.00
File Processing Fee	1.50	1.75
Discrete File Delivery	NA	10.00

In addition, the premium processing cycle surcharge of $0.01 on all items processed on the fourth exchange (last processing exchange of the day) will go into effect January 3, 1994.[5] All other ACH transaction fees, such as the local, presort, and return item fees, will remain unchanged in 1994.

Each of the fee changes listed above was designed to meet System pricing goals. First, lowering the interregional (IRE) transaction fee to $0.014 from $0.015 per transaction begins the transition to a single transaction fee, which is consistent with the consolidated processing environment that will exist when the FedACH software is implemented.

Second, the Account Servicing Fee (ASF), previously referred to as the "Participation Fee," will be increased from $10 to $20 per month per routing transit number (RTN). The ASF is intended to recover a greater portion of the fixed costs incurred in providing ACH services. Third, increasing the input file fee from $1.50 to $1.75 per file will better reflect the incremental cost of processing ACH files. Finally, one of the service improvements offered beginning October 1, 1993, is a value-added delivery service that will allow receiving institutions, such as third-party processors and correspondent banks, to receive ACH transactions sorted separately by individual institutions. A subscription fee of $10 per month per file requested will be assessed for this service. For example, if a correspondent bank receives commercial ACH transactions for 10 institutions, including itself, and requests to receive files sorted by individual institution, the monthly cost for the service would be $90.

The effect of the fee changes on depository institutions' monthly ACH charges will be small. For example, the ASF will increase annual charges for the large majority of depository institutions by only $120. The increase in the file fee will have a negligible effect (ranging from an average of $0.16 per month for low-volume institutions to approximately $30 per month for the highest volume institutions).

The discrete file fee will not affect the ACH costs for most receiving institutions, but will provide enhanced services to the institutions that select this delivery option. And, the reduction in the IRE transaction fee will benefit all users of Federal Reserve ACH services. The cumulative effect of these proposed fee changes vary based on individual depository institutions' volume levels. On average, low-volume institutions will face an average monthly increase of about $10, or 42 percent of their current ACH charges. Conversely, high-volume institutions should realize a reduction of about 2 percent in their monthly ACH charges.

Although net income is projected to be $2.1 million below the targeted ROE of $3.4 million, the Board approved the 1994 fees for the ACH service.

Funds Transfer and Net Settlement

Table 6 presents the actual 1992, estimated 1993, and projected 1994 cost recovery performance for the funds transfer and net settlement service.

TABLE 6.—PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs & imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs deferred & financed
	1	2	3	4	5	6	7	8
1992	85.6	73.3	3.8	77.1	8.5	3.3	106.5	(0.4)
1993 (Est)	88.6	75.0	11.2	86.2	2.5	2.9	99.5	0.3
1994 (Bud)	86.5	75.6	7.2	82.7	3.8	3.8	100.0	3.4

[5] The premium processing cycle surcharge, effective October 1, 1993, was approved by the Director of Reserve Bank Operations and Payment Systems under delegated authority on March 16, 1993. Due to concerns expressed by the private-sector about the ability of receiving institutions to post payments timely under the new operating schedule, an announcement was issued on August 27, 1993, delaying the implementation of the surcharge until January 1, 1994.

1992 Performance—Revenues from the funds transfer and net settlement service recovered 106.5 percent of total expenses, including targeted ROF. Funds transfer volume increased 4.4 percent over 1991 levels.

1993 Performance—Through September 1993, revenues from the funds transfer and net settlement service recovered 101.1 percent of total expenses, including ROE. During the same period funds transfer volume increased 1.4 percent, compared with a projected increase of 4.7 percent for the year. The decline in the volume growth rate is due to a variety of market factors, including merger activity and shifting payment patterns.

The Reserve Banks now project net income of $2.5 million, compared with a targeted ROE of $2.9 million. Total expenses are expected to be about 1.7 percent lower than original projections and revenue is anticipated to be approximately 2.2 percent below original estimates. Funds transfer volume is now projected to increase only 0.5 percent over 1992 levels.

1994 Issues—The Reserve Banks expect funds transfer volume to decline nearly 2 percent in 1994, due to continuing volume shifts to CHIPS related to format differences between the two funds transfer networks and the implementation of charges for intraday overdrafts in Federal Reserve accounts in April 1994. In light of declining volume levels, the Reserve Banks are taking steps to control costs and plan to defer approximately $3.1 million of automation consolidation special project costs for recovery in the future.

1994 Fees—The Board approved the Reserve Banks' maintaining the current funds transfer and net settlement fees in 1994.

Book-Entry Securities

Table 7 presents the actual 1992, estimated 1993, and projected 1994 cost recovery performance for the book-entry securities service.[6]

TABLE 7.—PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs & imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs deferred & financed
	1	2	3	4	5	6	7	8
1992	13.1	11.8	0.7	12.5	0.6	0.4	101.2	(0.1)
1993 (Est)	14.2	11.8	1.8	13.6	0.7	0.4	101.7	0.8
1994 (Bud)	15.9	13.5	1.7	15.2	0.7	0.7	100.3	1.6

1992 Performance—Revenues from the book-entry securities service recovery 101.2 percent of total expenses, including targeted ROE, in 1992. Government agency securities transfer volume increased 16.7 percent over 1991 levels, reflecting an increase in mortgage refinancings.

1993 Performance—Through September 1993, revenues from the book-entry securities service recovered 100.6 percent of total expenses, including ROE. The volume of on-line book-entry securities transfers originated increased 10.7 percent, compared with an original projection of 9.7 percent for 1993.

The Reserve Banks now project net income of $0.7 million, compared with a targeted ROE of $0.4 million. Total expenses are expected to be about 1.4 percent below original estimates and revenue is projected to equal original projections. Despite a higher than projected volume growth through September, the Reserve Banks now project that on-line book-entry securities transfers will increase only 8.6 percent over 1992 levels.

1994 Projections—Total 1994 expenses for the book-entry securities service are projected to increase 13.6 percent, reflecting the increasing costs associated with the continued implementation of Fednet® and the development of the new book-entry applications software. Securities transfer volume is projected to increase 9.1 percent, reflecting continued increases in the trading of agency mortgage-backed securities.

1994 Fees—To reflect the increasing costs of handling telephone requests for book-entry securities transfers, the Board approved an increase in the current off-line transfer fee of $8.50 to $10.00, and the retention of all other fees at 1993 levels.

Purchase and Sale

On September 24, 1993, the Board approved the consolidation of purchase and sale activities at the Federal Reserve Bank of Chicago, effective on January 1, 1994. Consolidation is expected to reduce purchase and sale costs in 1994 by 16.1 percent. The increase in the purchase and sale fee to $34.00 from $30.00, which was approved under delegated authority, and the cost reductions related to consolidation should result in full cost recovery for the service. The purchase and sale activities will be transferred to the book-entry securities service line for cost recovery reporting purposes in 1994.

Electronic Connections

The Federal Reserve charges fees for electronic connections to the Reserve Banks for accessing priced services. The costs and revenues associated with electronic access are allocated to the various priced services based on the relative number of endpoints that access each service.

The Board approved retaining most electronic connection fees at their 1993 levels for 1994. In particular, the monthly fees for Receive Only Dial, Receive and Send Dial, Multi-Drop Leased, and Dedicated Leased (up to and including speeds of 9.6 Kbps) connections will be retained at $30, $65, $300, and $700, respectively.

The Board also approved the following new standard monthly fees for several categories of high-speed connections: $850 and $1000 for High-Speed Dedicated Leased connections with speeds of 19.2 and 56 Kbps, respectively, and $350 for High-Speed Dial connections. The Board believes it

[6] These financial data reflect the costs and revenues for book-entry transfers of government agency securities, which are priced by the Federal Reserve. The U.S. Treasury establishes fees for book-entry transfers of Treasury securities.

is appropriate that uniform national prices be adopted for high-speed connections, consistent with the treatment of other types of electronic connections.

Finally, the Board approved the elimination of the monthly Gateway Connection surcharge. A gateway connection allows a depository institution (or its designated processor) to have electronic access to Federal Reserve services at more than one Reserve Bank via a single physical connection. Because processing for most payment services and the accounting system is being centralized at a single site, the Gateway Connection surcharge is no longer appropriate. The costs for activities related to initiating a gateway connection to support non-centralized applications, such as check, however, will continue to be incurred by the Reserve Banks. Therefore, the Board approved retaining the current Installation and Software Certification charges for initiating such gateway connections.

Definitive Safekeeping

Table 8 presents the actual 1992 and estimated 1993 cost recovery performance for the definitive safekeeping service.

TABLE 8.—PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs & imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs deferred & financed 1992
	1	2	3	4	5	6	7	8
1992	3.1	3.8	0.0	3.8	(0.7)	0.2	78.4	0.0
1993 (Est)	1.6	3.9	0.0	3.9	(2.3)	0.2	40.4	0.0

1992 Performance—Revenues from the definitive safekeeping service recovered 78.4 percent of total expenses, including targeted ROE in 1992.

1993 Performance—Through September 1993, revenues from the definitive safekeeping service recovered 49.7 percent of total expenses, including targeted ROE. Reflecting the Reserve Banks' withdrawal from the definitive safekeeping service, volume decreased 49 percent, compared with 1992 volume levels.

The Reserve Banks will complete full withdrawal from the definitive safekeeping service by year-end 1993. The Reserve Banks now project an operating loss of $2.3 million, compared with the planned operating loss of $2.1 million. The increase in the projected operating loss results from the faster than anticipated withdrawals of securities and the absorption of associated processing and shipping costs.

Noncash Collection

Table 9 presents the actual 1992, estimated 1993 and projected 1994 cost recovery performance for noncash collection.

TABLE 9.—PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs & imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1–4]	Target ROE	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs deferred & financed
	1	2	3	4	5	6	7	8
1992	7.5	8.3	0.0	8.3	(0.8)	0.3	86.6	0.0
1993 (Est)	4.9	5.7	0.0	5.7	(0.8)	0.2	83.3	0.2
1994 (Bud)	4.5	5.0	0.0	5.0	(0.5)	0.2	85.5	0.2

1992 Performance—Revenues from the noncash collection service recovered 86.6 percent of total expenses, including targeted ROE, during 1992. The principal factor contributing to the revenue shortfall was the 28 percent decrease in the volumes of coupons and bonds deposited for collection, compared with 1991 levels.

1993 Performance—Through September 1993, revenues from the noncash collection service recovered 85.3 percent of total expenses plus ROE, compared with a targeted recovery rate of 97.3 percent for the year. Noncash collection volumes decreased 42.6 percent, compared with 1992 volume levels.

The Reserve Banks now project an operating loss of $0.8 million, compared with a targeted ROE of $0.2 million. The Reserve Banks have reduced the number of offices providing noncash collection services from eight in 1992 to four at present, contributing to a reduction in total expenses of about 3.3 percent, compared with original estimates. Revenues, however, are now expected to decline nearly 17 percent, due to continuing volume declines.

1994 Issues—Since the mid 1980s, the noncash collection service has faced rapidly declining volume levels. Following enactment of the Tax Equity and Fiscal Responsibility Act of 1982, many bearer municipal securities have been "immobilized," or converted to book-entry form, thus eliminating interest coupons. In addition, the number of institutions providing noncash collection services is dwindling.

To address the difficulties associated with recovering costs in a declining market, the Reserve Banks are planning to reduce the number of operating sites to three by year-end 1994 and to two sites by year-end 1995. Through the

consolidation of operating sites, the Reserve Banks have been able to reduce operating costs by approximately 48 percent since 1991. Nevertheless, because of the continuing rapid decline in volume and the complications in processing caused by the increasing number of changes in paying agents, the Reserve Banks do not expect to recover costs in 1994.

1994 Fees—Because of the volatility in the current market, the System's noncash collection service offers a measure of stability even though the Reserve Banks are not among the highest volume service providers. To improve the ability of the Reserve Banks to recover costs, the Board approved 1994 fees which are based on a modified fee structure that more effectively reflects the composition of costs and the demand of both low-volume and high-volume users. (See Docket R–0814 elsewhere in today's Federal Register.) Once the new fee schedule is implemented and all operational adjustments are made, the Reserve Banks believe that the total costs of providing noncash collection services can be recovered.

Cash Services

Cash services that are priced by the Federal Reserve Banks include cash transportation, coin wrapping, nonstandard packaging of currency orders and deposits, and nonstandard frequency of access to cash services.

Data on priced cash services are being included to provide a complete view of Reserve Bank priced service performance. Cash transportation fee changes do not require Board approval. The staff, however, is notified when changes occur. The fees for the other priced cash services have been approved by the Director of the Division of Reserve Bank Operations and Payment Systems under delegated authority.

Table 10 presents actual 1992, estimated 1993, and projected 1994 cost recovery performance for the priced cash services.

TABLE 10.—PRO FORMA COST AND REVENUE PERFORMANCE

[$ millions]

Year	Revenue	Operating costs & imputed expenses	Special project costs recovered	Total expense [2+3]	Net income (ROE) [1−4]	Target ROE	Recovery rate after target ROE (percent) [1÷(4+6)]	Special project costs deferred & financed
	1	2	3	4	5	6	7	8
1992	12.9	12.6	0.0	12.6	0.3	0.1	102.0	0.0
1993 (Est)	6.2	6.3	0.0	6.3	(0.1)	0.1	97.8	0.0
1994 (Bud)	5.0	5.0	0.0	5.0	0.0	0.1	98.7	0.0

The operating loss of $0.1 million for 1993 reflects the full-year effect of the discontinuation of transportation services in the Cleveland office and the San Francisco District. By mid-year 1994, the Chicago office plans to discontinue offering registered mail shipments, which contributes to the projected recovery rate after targeted ROE of 98.7 percent for 1994.

The 1994 fees for wrapped coin, nonstandard packaging, and nonstandard access, as well as fees for other cash transportation services and registered mail fees can be obtained by contacting the individual Reserve offices.

Competitive Impact Analysis

All operational and legal changes considered by the Board that have a substantial effect on payment system participants are subject to the competitive impact analysis described in the March 1990 policy statement "The Federal Reserve in the Payments System." In this analysis, staff assesses whether the proposed change would have a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services due to differing legal powers or constraints or due to a dominant market position of the Federal Reserve deriving from such legal differences.

The Board believes that the price and service level changes would not have a substantial effect on payments system participants and would not have a direct and material effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. The Board recognizes that the 1994 fees proposed by the Reserve Banks result in a projected ROE that is below the target based on the 50 bank holding company model. The Board believes, however, that the Reserve Banks have demonstrated their ability to adjust to structural changes since the MCA was implemented and believes that the Reserve Banks will be able to make the appropriate adjustments in the future. The Board believes that the approach that is being recommended to set fees for the ACH, check, and noncash collection services is consistent with the approach that would be used by a private-sector firm, which would absorb the results of one-time structural changes through its retained earnings account or would borrow funds to finance capital improvements. Therefore, the Board does not believe that the 1994 fees for Federal Reserve priced services should have an adverse affect on the ability of other service providers to compete with the Reserve Banks.

By order of the Board of Governors of the Federal Reserve System, November 10, 1993.

William W. Wiles,

Secretary of the Board.

TABLE 11.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES

[Millions of dollars—average for year]

	1994	1993
Short-term assets:		
Imputed reserve requirement on clearing balances	$583.6	$534.8
Investment in marketable securities	5,342.3	5,465.2

TABLE 11.—COMPARISON OF PRO FORMA BALANCE SHEETS FOR FEDERAL RESERVE PRICED SERVICES—Continued

[Millions of dollars—average for year]

	1994	1993
Receivables [1]	64.3	32.6
Materials and supplies [1]	5.5	5.4
Prepaid expenses [1]	16.1	9.3
Items in process of collection	3,198.9	3,826.4
Total short-term assets	$9,220.7	$9,873.7
Long-term assets:		
Premises [1 2]	$349.9	$359.0
Furniture and equipment [1]	183.1	201.0
Leasehold improvements and long-term prepayments [1]	32.1	49.8
Capital leases	0.5	0.0
Total long-term assets	565.6	609.8
Total assets	$9,786.4	$10,483.5
Short-term liabilities:		
Clearing balances and balances arising from early credit of uncollected items	$5,935.9	$6,652.4
Deferred credit items	3,198.9	3,174.1
Short-term debt [3]	85.9	47.3
Total short-term liabilities	$9,220.7	$9,873.7
Long-term liabilities:		
Obligations under capital leases	$0.0	$0.0
Long-term debt [3]	174.1	201.8
Total long-term liabilities	174.1	201.8
Total liabilities	$9,394.8	$10,075.5
Equity [3]	391.5	408.0
Total liabilities and equity	$9,786.4	$10,483.5

Note: Details may not add to totals due to rounding.
[1] Financed through PSAF; other assets are self-financing.
[2] Includes allocations of Board of Governors' assets to priced services of $0.4 million for 1994 and $0.4 million for 1993.
[3] Imputed figures represent the source of financing for certain priced services assets.

TABLE 12.—DERIVATION OF THE 1994 PSAF

[millions of dollars]

A. Assets to be Financed [1]			
Short-term	$85.9		
Long-term [2]	565.6		$651.5
B. Weighted Average Cost:			
1. Capital Structure [3]			
Short-term Debt	13.2%		
Long-term Debt	26.7%		
Equity	60.1%		
2. Financing Rates/Costs [3]			
Short-term Debt	4.3%		
Long-term Debt	8.7%		
Pre-tax Equity [4]	12.7%		
3. Elements of Capital Costs			
Short-term Debt	$85.9	× 4.3% =	$3.7
Long-term Debt	174.1	× 8.7% =	15.2
Equity	391.5	× 12.7% =	49.7
			$68.6
C. Other Required PSAF Recoveries:			
Sales Taxes	$12.5		
Federal Deposit Insurance Assessment	19.8		
Board of Governors Expenses	2.7		$35.0
D. Total PSAF Recoveries			$103.6
As a percent of capital	.....	.....	15.9%
As a percent of expenses [5]	.....	.....	17.0%

[1] Priced service asset base is based on the direct determination of assets method.

[2] Consists of total long-term assets, including the priced portion of FRAS assets, less capital leases, which are self financing.
[3] All short-term assets are assumed to be financed by short-term debt. Of the total long-term assets, 31 percent are assumed to be financed by long-term debt and 69 percent by equity.
[4] The pre-tax rate of return on equity is based on the average after-tax rate of return on equity, adjusted by the effective tax rate to yield the pre-tax rate of return on equity for each bank holding company for each year. These data are then averaged over five years to yield the pre-tax return on equity for use in the PSAF.
[5] Systemwide 1994 budgeted priced service expenses less shipping are $608.5 million.

TABLE 13.—COMPARISON BETWEEN 1994 AND 1993 PSAF COMPONENTS

	1994	1993
A. Assets to be Financed (millions of dollars):		
Short-term	$85.9	$47.3
Long-term	565.6	609.8
Total	$651.5	$657.1
B. Cost of Capital:		
Short-term Debt Rate	4.3%	6.2%
Long-term Debt Rate	8.7%	9.0%
Pre-tax Return on Equity	12.7%	8.6%
Weighted Average Long-term Cost of Capital	11.5%	8.8%
C. Tax Rate	30.4%	29.5%
D. Capital Structure:		
Short-term Debt	13.2%	7.8%
Long-term Debt	26.7%	30.5%
Equity	60.1%	61.7%
E. Other Required PSAF Recoveries (millions of dollars)		
Sales Taxes	$12.5	$11.4
Federal Deposit Insurance Assessment	19.8	21.3
Board of Governors Expenses	2.7	2.3
F. Total PSAF:		
Required Recovery	$103.6	$91.4
As Percent of Capital	15.9%	13.9%
As Percent of Expenses	17.0%	15.1%

TABLE 14.—COMPUTATION OF CAPITAL ADEQUACY FOR FEDERAL RESERVE PRICED SERVICES

[millions of dollars]

	Assets	Risk weight	Weighted assets
Imputed reserve requirement on clearing balances	$593.6	0.0	$0.0
Investment in marketable securities	5,342.3	0.0	0.0
Receivables	64.3	0.2	12.9
Materials and supplies	5.5	1.0	5.5
Prepaid expenses	16.1	1.0	16.1
Items in process of collection	3,198.9	0.2	639.8
Premises	349.9	1.0	349.9
Furniture and equipment	183.1	1.0	183.1
Leases & long-term prepayments	32.7	1.0	32.7
Total	$9,786.4	.....	$1,239.9
Imputed Equity for 1994	$391.5	.....	.....
Capital to Risk-Weighted Assets	31.6%	.....	.....
Capital to Total Assets	4.0%	.....	.....

[FR Doc. 93–28195 Filed 11–16–93; 8:45 am]
BILLING CODE 6210–01–P

(Docket No. R–0814)

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.
ACTION: Notice.

SUMMARY: The Board has approved the use of volume-based cash letter and coupon envelope fees for the Reserve Banks' noncash collection service; option pricing for the following check products offered by the Federal Reserve Bank of Minneapolis—weekday and weekend Other Fed deposits, City Fine Sort deposits, and payor bank truncation products; and option pricing for two payor bank products offered by all offices in the Richmond Federal Reserve District—Account Total and Account Total Plus products. The specific noncash collection and check fees appear in the 1994 priced services' fee schedules, which are available from the Reserve Banks.

DATES: January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Florence M. Young, Assistant Director, Division of Reserve Bank Operations and Payment Systems (202/452–2745). For questions regarding noncash collection services: Michael Bermudez, Financial Services Analyst, Fiscal Agency & Definitive Securities (202/452–2216); for questions regarding check services: Edith Collis, Financial Services Analyst, Check Payments (202/452–3638). For the hearing impaired *only:* Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION:

Introduction

The Monetary Control Act (MCA) requires the Federal Reserve to set fees for its payment services based on all direct and indirect costs actually incurred in providing the services plus imputed costs that would be incurred by a private-sector service provider, such as interest on debt, taxes, and return on capital. These imputed costs are called the private sector adjustment factor (PSAF). While the MCA also indicates that due regard should be given to competitive factors and the provision of an adequate level of service nationwide, it does not indicate how the Reserve Banks should accomplish these goals.

In setting fees to recover the total costs of payment services, the Reserve Banks have tended to use cost-based pricing methodologies. Because the technologies for providing payment services generally require fairly large capital expenditures and there can be increasing returns to scale associated with the provision of such services, the Reserve Banks have developed fee schedules for most services that consist of a combination of fixed and variable fees. This approach provides a means to set variable fees near the incremental costs of providing the service and to recover total costs, including the PSAF. Using such combinations of fees contributes to efficient use of services.

In some cases, the Reserve Banks have modified the cost-based methodology to reflect premium service levels and demand considerations. It is not clear, however, that the approaches that have been used by the Reserve Banks to set fees address competitive factors effectively nor result in the most economically efficient prices. The depository institutions that comprise the customer base for Federal Reserve priced services range from large money-center banks with affiliates nationwide to small credit unions and one-office rural community banks. Such widely divergent institutions have vastly different business needs. While significant attention has been given to increasing the sophistication of cost-based pricing methodologies, the Reserve Banks have generally attempted to address demand considerations through product design. For example, the mixed check deposit product was designed for smaller depository institutions for whom any amount of sorting would be burdensome. These institutions deposit a single cash letter that contains both local items and items payable in other Federal Reserve territories. The per-item fees for this product are high, relative to other check products, because the Reserve office performs all check sorting. On the other hand, check deposit products called "group sorts" have been designed to appeal to larger institutions that typically have the technological capability and capacity to perform a substantial amount of check sorting. Depositors are charged lower per-item fees or are offered later deposit deadlines for these products because Reserve offices perform less sorting and can use their check sorting equipment more efficiently.

It is difficult, however, to satisfy the needs of both high-volume and low-volume institutions solely through differing product offerings. High-volume users typically have the ability to select among a number of sources to obtain payment services, including acquiring expensive equipment to perform functions in-house or purchasing the services from a variety of suppliers. Fewer options are available to low-volume users because the costs associated with many of the alternatives are relatively high. In part, it appears that some of the differences in the alternatives available to smaller institutions reflect the higher costs associated with providing service to large numbers of institutions depositing small transaction volumes. Fee structures that do not reflect such cost differences result in competition among service providers for the low-cost customers, but not for the high-cost customers. Similar situations exist in other industries. For example, in the telecommunication area, AT&T charged that MCI eschewed high-cost, low-return services for more profitable services. AT&T also alleged that Comsat syphoned off low-cost customers.[1]

Providing services that meet the needs of low-volume customers, in particular, may require a pricing methodology that addresses the demands of both high- and low-volume users. Specifically, without high-volume customers, all of the fixed costs associated with the provision of services would have to be borne by the low-volume customers. Thus, low-volume customers would face either higher prices or lower quality services. This conclusion reflects the level of fixed costs required to provide payment services and the fact that, at low-volume levels, scale economies could not be achieved.

The distributors of natural gas face similar pricing concerns. The 1978 Natural Gas Policy Act created the possibility for industrial plants to bypass local distribution utilities by building direct connections to pipelines, gas producers, or intermediaries.[2] Without big industrial customers, however, all of the fixed costs associated with local gas distribution would be borne by the smaller industrial plants and consumers. The loss of the high-volume customers would raise the rates of low-volume commercial and residential users or would reduce the quality of their service because economies of scale could not be attained without both user groups. Thus, social costs would be higher because scale economies would not be achieved and, most likely, some pipeline capacity would remain idle. On the other hand, a volume-based pricing strategy could be used to retain high-volume customers and achieve scale economies.

Several automated clearing house (ACH) service providers that have a customer base of both low- to high-volume users offer volume-based pricing strategies. Visa U.S.A., a national service provider, offers a transaction discount of 10 percent to institutions with transactions volumes greater than 500,000 transactions per month. Deluxe ACH Services, a regional service provider, charges lower transaction fees for transaction volumes over 5 million items per month, and still lower fees for transactions in excess of 10 million items.[3] In each case the price structure is designed to meet different customers' needs for essentially the same product.

The Clearing House Interbank Payment System (CHIPS), operated by the New York Clearing House Association, allocates its total costs for operations among the participants according to usage, that is, the number of messages sent and received during the previous month. There is a minimum charge of $1,500 per month. High-volume users with over 80,000 messages a month are charged $0.13 to send a message and $0.13 to receive a message. Senders of fewer than 80,000 messages per month are charged $0.18 to $0.40, depending upon whether their messages are coded with the receiver's identification.[4]

In approving the use of volume-based pricing for the noncash collection service and for selected check products at the Federal Reserve Banks of Richmond and Minneapolis, which is discussed below, the Board requested the staff to recommend principles that

[1] Jean-Jacques Laffont and Jean Tirole, "Optimal Bypass and Cream Skimming," American Economic Review, vol. 80 (December 1990), pp. 1042–1061.

[2] Ibid., p. 1042.

[3] Woolworth/Dudley Associates, "Comparative Analysis of ACH Service Providers," April 1991.

[4] New York Clearing House Association.

would be used in the future to determine when and how volume-based pricing might be used in setting fees for Federal Reserve priced services. Following review by the Board, public comment will be requested on the proposed principles.

Discussion

Noncash Collection Service—Noncash collection volume levels began to decline rapidly after 1983, when the issuance of bearer securities was discontinued following the enactment of the Tax Equity and Fiscal Responsibility Act of 1982. Since that time, many bearer municipal securities have been "immobilized," or converted to book-entry form. Moreover, recent low interest rates have prompted many municipalities to call outstanding bonds and reissue securities in either registered or book-entry form. Largely due to the significant reduction in volume, the Reserve Banks incurred an operating loss in 1992 and project an operating loss in 1993.

To address the difficulties associated with recovering the Reserve Banks' costs in a declining market, the Reserve Banks (1) have reduced the number of noncash operating sites to four offices (Cleveland, Jacksonville, New York, and Chicago) and plan to reduce the number of offices to three by year-end 1994, and to two by year-end 1995 and (2) are adopting a modified fee structure that more effectively reflects the composition of the Reserve Banks' costs and the demand of both low- and high-volume users.

Currently, the Reserve Banks assess a variable fee for each envelope containing matured coupons that is deposited. Higher fees are generally assessed for interregional deposits than for local deposits and some Reserve offices apply separate postage and insurance charges. As is the case for other services, there are fixed and variable costs associated with processing coupon deposits. An analysis of the costs incurred in processing coupon deposits indicated that approximately 35 percent of the costs is associated with cash letter processing. Because these costs do not vary significantly across the volume of coupon envelopes received, the costs incurred in providing coupon collection services cannot be recovered effectively solely by charging variable fees. As a result, the Board approved a fee structure under which both cash letter and coupon envelope fees will be assessed. In addition, shipping expenses will be recovered through the coupon envelope fees.

Further, a wide variety of depository institutions use the noncash collection service. Implementing cash letter fees will raise the cost of using this service for institutions that deposit relatively few coupon envelopes and should reduce the cost for institutions that deposit relatively higher volumes. To address the potential cost increase for low-volume depositors and the price sensitivity of high-volume depositors, the Board approved cash letter and coupon envelope fees that vary based on the number of coupon envelopes included in a deposit. For example, for local deposits containing five or fewer coupon envelopes, the cash letter fee would be $7.50 and coupon envelope fees would be $4.25 or $4.50. For local deposits containing more than five coupon envelopes, the cash letter fee would be $15.00 with coupon envelope fees of $2.50 or $3.00. Higher coupon envelope fees would be assessed for interregional deposits. (The 1994 fee schedules with the specific fees to be assessed by each of the four offices providing noncash collection services are available from the Reserve Banks.)

The noncash collection service faces significant uncertainty due to declining volumes, a dwindling number of other service providers, and the adjustment to a more consolidated operating environment. The Board believes that implementing a combination of cash letter and coupon envelope fees, which vary based on the size of the deposit, will improve the Reserve Banks' ability to recover the costs of providing noncash collection service over the longer run.

Check Service

The Board approved the use of option pricing for the following deposit products and payor bank services—the Minneapolis office's weekday and weekend Other Fed deposits, its City Fine Sort deposits, and its payor bank truncation products and the Richmond District's Account Total and Account Total Plus payor bank services.

Traditionally, the Reserve Banks have charged the same price for a given check product, regardless of the number of items processed for an individual depository institution. As noted above, some products have been designed to appeal either to high-volume or low-volume institutions. Nevertheless, a single fee is assessed for each Federal Reserve product without regard to the number of items that are processed. Private-sector service providers frequently set prices that take into account the efficiencies that can be realized in handling high transaction volumes. Option pricing will allow the Reserve Banks to recognize these economies in the fees charged for check services.

Option pricing for deposit products and payor bank services will be structured similarly. Each depository institution will be presented with the same set of pricing options. One option will combine a relatively low cash letter fee (for deposit products) or daily minimum fee (for payor bank services) with a relatively high per-item fee. The other option will combine a relatively high cash letter or minimum fee with a relatively low per-item fee. It is expected that low-volume institutions would find the first alternative more attractive, while high-volume institutions would prefer the second option. Both options, however, will be presented to every institution, and the user will decide which option is more appropriate for the institution's business needs.

The following table demonstrates how option pricing would affect a depository institution's costs over a range of transaction volumes. In this example, Option I would consist of a $1.50 fixed fee and a $0.05 per-item fee. Option II would combine a $7.50 fixed fee with a per-item fee of $0.044. At volumes under 1,000 items, a user would face lower costs by selecting Option I. At volumes above 1,000 items, a user would incur lower charges by selecting Option II.

Number of items	Option I		Option II	
	Total cost	Unit cost	Total cost	Unit cost
100	$6.50	$0.065	$11.90	$0.119
500	26.50	0.053	29.50	0.059
1,000	51.50	0.052	51.50	0.052
2,000	101.50	0.051	95.50	0.048
10,000	501.50	0.050	447.50	0.045

The application of option pricing would be most beneficial for check products that are used by institutions of varying sizes, such as the city, RCPC, country, and Other Fed deposit options and most payor bank services. It would provide little benefit for products that were designed specifically to appeal to a single user class, such as mixed deposits.

The Board believes that option pricing is an efficient pricing methodology and that it should ultimately benefit both high- and low-volume users.

Competitive Impact Analysis

In assessing the competitive impact of implementing a volume-based pricing alternative, the staff considered whether there would be a direct and material adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services and, if so, whether the effects are due to legal differences or to a dominant market position deriving from such differences. The Board believes that use of volume-based pricing in the noncash collection service and for selected check products at the Richmond and Minneapolis Reserve Banks should not adversely affect the ability of private-sector providers to compete with the Federal Reserve in providing similar services. A number of private-sector service providers use comparable pricing methodologies.

Noncash Collection Service—The Federal Reserve does not have a dominant market position in the noncash collection business although the number of service providers is diminishing. The System's efforts to reduce operating costs by consolidating processing sites and to set fees that are attractive to both high- and low-volume users is intended to provide a stabilizing presence in the market. Because there are very few competing service providers, the use of volume-based pricing should be viewed positively by institutions collecting municipal coupons.

Check Service—Although the Federal Reserve is currently a dominant provider of interterritory check collection services, the implementation of the same-day settlement regulation provides private-sector banks the right to present checks directly to payor banks and should enhance the ability of private-sector banks to compete with Federal Reserve check collection services. The Board believes that the use of volume-based pricing for selected check products by the Richmond and Minneapolis Reserve Banks will not have a direct and material adverse effect on the ability of other service providers to compete with the Federal Reserve. Permitting the Reserve Banks to implement volume-based fees should stimulate competition and lead to more efficient use of check services.

By order of the Board of Governors of the Federal Reserve System, November 10, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93–28196 Filed 11–16–93; 8:45 am]

BILLING CODE 6210–01–F

FEDERAL TRADE COMMISSION

Appliance Labeling Rule

AGENCY: Federal Trade Commission.

ACTION: Notice of Application to OMB under the Paperwork Reduction Act (44 U.S.C. 3501–3518) for information collection requirements contained in proposed amendments to the Commission's Appliance Labeling Rule, 16 CFR part 305.

SUMMARY: The FTC is seeking OMB clearance for information collection requirements contained in proposed amendments to the Commission's Appliance Labeling Rule.

The Energy Policy Act of 1992 ("EPA"), Public Law 102–486, amends the Energy Policy and Conservation Act of 1975, which directed the Commission to issue the Appliance Labeling Rule. The Appliance Labeling Rule establishes labeling requirements for the disclosure of energy cost or energy consumption information for eight appliance categories: (1) Refrigerators, refrigerator-freezers and freezers; (2) dishwashers; (3) clothes washers; (4) water heaters; (5) room air conditions; (6) furnaces; (7) central air conditioners and heat pumps; and (8) fluorescent lamp ballasts. EPA 92 adds three new categories of lamp products (general service fluorescent lamps, medium base compact fluorescent lamps, and general service incandescent lamps, both reflector and non-reflector) to the products under EPCA for which the Commission must issue labeling rules. The proposed amendments would require manufacturers to retain records to substantiate required discloses on product labels, in catalogs, and in point-of-sale written materials. The proposed amendments also would require manufacturers covered by minimum efficiency standards to submit to the Commission annually, trade names, model numbers, and energy usage information.

Estimate of Information Collection Burden

Commission staff believes that approximately 100 industry members currently are covered by the bookkeeping and reporting requirements of the Rule for the eight covered product categories. For approximately 85% of the manufacturers of covered products, the reporting burden has been reduced to zero because these manufacturers submit product information for publication in trade association directories in the normal course of their business activities. The other 15% of manufacturers, however, must fulfill the reporting requirement by submitting individual company reports to the Commission. Staff estimates that each of these companies would expend no more than 10 hours to comply with this requirement. Therefore, staff estimates that the maximum current total yearly burden of the Rule is 150 hours (10 hours per year times 15 industry members).

The Commission has underway a proceeding to amend the existing Rule to add pool heaters and two specialized types of water heaters (instantaneous water heaters and heat pump water heaters) to the Rule. 58 FR 7852 (Feb. 9, 1993). After considering comments received from the public, Commission staff estimates that no more than 50 companies would be affected and that each company would expend less than 10 hours to comply, for a total burden of approximately 500 hours.

In addition, the Commission has underway a proceeding to amend the existing Rule to add four categories of plumbing products (showerheads, faucets, water closets, and urinals) to the list of covered products. 58 FR 26715 (May 5, 1993). At this time, staff estimates that approximately 100–120 plumbing products manufacturers would be affected and that it would take each manufacturer less than a half hour per year to comply with the requirements, resulting in a total of less than 60 hours of paperwork burden.

In the proceeding to add lamp products to the Rule, staff estimates that approximately 50 or fewer lamp products manufacturers could be affected by the proposed recordkeeping and reporting requirements. Staff estimates that it will take each of the manufacturers less than an additional five hours per year to comply with the proposed requirements, resulting in a total of approximately 250 hours of paperwork burden. This estimate is small because manufacturers already maintain some of the required records in the normal course of business.

Records that are likely to be retained by industry members during the normal course of business are excluded from the "burden" for OMB purposes. See 5 CFR 1320.7(b)(1).

Based on these figures, staff estimates that the current total yearly burden of the Rule is 150 hours (10 hours per year times 15 industry members). The water heater amendment would add 10 hours per year times 50 industry members. Staff further estimates that the total additional yearly burden imposed by the proposed amendment to add plumbing products would be 60 hours (30 minutes per year times 120 industry members). The proposal to add lamp products would result in approximately 250 hours for a new burden total of approximately 960 hours, which has been rounded up to 1,000 hours.

DATES: Comments on this application must be submitted on or before December 17, 1993.

ADDRESSES: Send comments both to Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, room 3228, Washington, DC 20503, ATN: Desk Officer for the Federal Trade Commission and to the Office of the General Counsel, Federal Trade Commission, Washington, DC 20580. Copies of the submission to OMB, including the application, may be obtained from the Public Reference Section, Room 130, Federal Trade Commission, Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Elaine W. Crockett, Attorney, Office of the General Counsel, Federal Trade Commission, Washington, DC 20580 (202) 326–2453.

Donald S. Clark,

Secretary.

[FR Doc. 93–28184 Filed 11–16–93; 8:45 am]

BILLING CODE 6750–01–M

[File Nos. 911–0020, and 901–0108]

Homecare Oxygen & Medical Equipment Co., et al, Home Oxygen & Medical Equipment Co., et al., and Certain Home Oxygen Pulmonologists; Proposed Consent Agreements With Analyses to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, these three consent agreements, accepted subject to final Commission approval, would require, among other things, two California-based suppliers of oxygen systems prescribed for home use—respectively located in Contra Costa County and Almeda County—to make divestitures such that 25 percent or fewer of the pulmonlogists in each of the two relevant geographic markets would be affiliated with each partnership. It would also prohibit the forming of any new oxygen company which would have market power over oxygen referrals in the relevant geographic market.

DATES: Comments must be received on or before January 18, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary, room 159, 6th St. and Pa. Ave., NW., Washgington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Linda Badger or Kerry O'Brien, San Francisco Regional Office, Federal Trade Commission, 901 Market Street, suite 570, San Francisco, CA 94103, 415–744–7920.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreements containing consent orders to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, have been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

Agreement Containing Consent Order

In the Matter of: Homecare Oxygen & Medical Equipment Company, a limited partnership, Michael, L. Cohen, M.D., Harry J. MacDannald, M.D., Gerald R. Del Rio, M.D., Ravinder N. Gupta, M.D., Gregory D. Anderson, M.D., David S. Safianoff, M.D., Richard S. Kops, M.D., Richard A. Bordow, M.D., Herman R. Bruch, M.D., Frederick J. Nachtwey, M.D., and Jorge A. Salazar-Suero, M.D., individually and as partners, trading and doing business as Homecare Oxygen & Medical Equipment Company.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Homecare Oxygen & Medical Equipment Company, a limited partnership, Michael L. Cohen, M.D., Harry J. MacDannald, M.D., Gerald R. Del Rio, M.D., Ravinder N. Gupta, M.D., Gregory D. Anderson, M.D., David S. Safianoff, M.D., Richard S. Kops, M.D., Richard A. Bordow, M.D., Herman R. Bruch, M.D., Frederick J. Nachtwey, M.D., and Jorge A. Salazar-Suero, M.D., individually and as partners, trading and doing business as Homecare Oxygen & Medical Equipment Company (collectively "proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to remedy the acts and practices being investigated,

It Is Hereby Agreed by and between proposed respondents and their duly authorized attorneys and counsel for the Federal Trade Commission ("Commission") that:

1. Proposed respondent Homecare Oxygen & Medical Equipment Company (hereinafter "Homecare") is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California. It has its principal place of business at 4041 Pike Lane, suite C, Concord, California 94520.

2. Proposed respondent Michael L. Cohen, M.D., is an individual who has been, and is now, a general partner of Homecare. His place of business is located at 130 La Casa Via, Building 2, suite 208, Walnut Creek, California 94598.

3. Proposed respondent Harry J. MacDannald, M.D., is an individual who has been, and is now, a general partner of Homecare. His place of business is located at 130 La Casa Via, Building 2, suite 208, Walnut Creek, California 94598.

4. Proposed respondent Gerald R. Del Rio, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 2220 Gladstone, No. 3, Pittsburg, California 94565.

5. Proposed respondent Ravinder N. Gupta, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 3741 Sunset Lane, Antioch, California 94509.

6. Proposed respondent Gregory D. Anderson, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 130 La Casa Via, Building 2, suite 208, Walnut Creek, California 94598.

7. Proposed respondent David S. Safianoff, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 2222 East Street, suite 300, Concord, California 94520.

8. Proposed respondent Richard S. Kops, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 2222 East Street, suite 300, Concord, California 94520.

9. Proposed respondent Richard A. Bordow, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 2000 Vale Road, San Pablo, California 94806.

10. Proposed respondent Herman R. Bruch, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 2000 Vale Road, San Pablo, California 94806.

11. Proposed respondent Frederick J. Nachtwey, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 2000 Vale Road, San Pablo, California 94806.

12. Proposed respondent Jorge A. Salazar-Suero, M.D., is an individual who has been, and is now, a limited partner in Homecare. His place of business is located at 2211 East Street, Concord, California 94520.

13. Proposed respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

14. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

15. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

16. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of Complaint here attached.

17. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondents at their addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

18. Proposed respondents have read the proposed Complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. The proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

A. "Durable medical equipment" or "DME" means medical equipment sold, rented, or leased to customers for home use. DME includes, but is not limited to, ambulatory aids, wheelchairs, walkers, hospital beds, commodes and respiratory therapy equipment, such as oxygen systems. "DME" encompasses all aspects of supplying DME, including, but not limited to, delivering and servicing the equipment, and rendering accompanying services to customers.

B. "Oxygen systems" means DME used to service individuals who are unable to obtain adequate oxygen through independent breathing. Oxygen systems include, but are not limited to, oxygen gas contained in tanks; liquid oxygen stored in reservoirs and smaller, portable containers; and electrically-operated oxygen concentrators. "Oxygen systems" encompasses all aspects of supplying these oxygen systems, including, but not limited to, delivering and servicing the equipment, supplying oxygen content, and rendering accompanying services to customers.

C. "Hospital" means a health facility, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, and whose primary function is to provide inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities. "Hospital" includes any affiliate, subsidiary, or partnership in which the hospital holds a ten (10) percent or greater interest.

D. "Medical Professional" means any individual who is licensed by the State of California as a Medical Doctor.

E. "Pulmonologist" means a medical professional who specializes in the diagnosis and treatment of pulmonary disease, regardless of whether the medical professional has been certified as a specialist in pulmonary disease. "Pulmonologist" does not include medical professionals who specialize in the diagnosis and treatment of patients who would not use the type of oxygen systems defined herein, such as patients suffering from allergies and pediatric patients requiring oxygen systems specially designed for children.

F. "Practicing" means having staff privileges, including, but not limited to, active or courtesy staff privileges, at any hospital.

G. "Relative" means an individual who is related to the individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the individual.

H. "Own" or "Ownership interest" means any and all stock, share, capital, equity or other interest, asset, property, license, lease, or other right or privilege, tangible or intangible, whether obtained or held, directly or indirectly, through any relative, employee or agent, or through any corporate or other device.

I. "Affiliated with" means having an ownership interest in the entity or being

a member of the same group practice as an investor in the entity.

J. "Relevant geographic market" means Contra Costa County, California, including the south-east portion of Alameda County referred to as the "Tri-Valley" area. The Tri-Valley area includes the cities of Livermore, Dublin and Pleasanton.

K. "Service Area" means the geographic area in which an entity engages in the sale, rental, or lease of oxygen systems.

L. "Intended Service Area" means the service area that the entity plans to have the capacity to service during its first several years of operation.

II.

It Is Ordered that, within eight (8) months from the date this Order becomes final, as many of the pulmonologist respondents as are necessary divest, absolutely and in good faith, their ownership interests in Homecare such that no greater than twenty-five (25) percent of the pulmonologists practicing in the relevant geographic market are affiliated with Homecare. Any divestiture pursuant to this provision must comply with the provision of Paragraph IV of this Order.

III

It Is Further Ordered that, if the divestitures required by paragraph II of this Order have not been completed within the eight (8) month period, all respondents who are pulmonologists shall each divest, absolutely and in good faith, their ownership interest in respondent Homecare within twelve (12) months from the date this Order becomes final.

IV

It Is Further Ordered that the divestitures required by paragraphs II and III of this Order shall not be effected by a transfer or sale, with or without valuable consideration, to Home Oxygen & Medical Equipment Company located in Alameda County, California, or to any of its current or former owners.

V

It Is Further Ordered that, for a period of ten (10) years from the date of this Order, no respondent shall grant or acquire, with or without valuable consideration, an ownership interest in any entity engaged in the sale, rental, or lease of oxygen systems in the relevant geographic market if, after such grant or acquisition, more than twenty-five (25) percent of the pulmonologists practicing in the relevant geographic market would be affiliated with the entity.

VI

It Is Further Ordered that for a period of ten (10) years from the date this Order becomes final, the individual respondents shall notify the Commission within thirty (30) days after acquiring, either directly or indirectly, or through any corporate or other device, any ownership interest in an entity engaged in the sale, rental, or lease of oxygen systems. Such notification shall include:

(a) An identification of all owners of the entity;

(b) An identification of any pulmonologist practicing in the entity's service area or intended service area who has an ownership interest in the entity;

(c) A list of all pulmonologists practicing in the entity's service area or intended service area;

(d) A description of the products or services offered, or to be offered by the entity;

(e) A copy of the entity's offering memorandum and/or prospectus; and

(f) An identification of the entity's location, including the location of any and all of the entity's parent organizations, and subsidiaries.

Respondents shall comply with requests by the Commission staff for additional information within fifteen (15) days of service of such requests.

Provided, However, that nothing in this Order shall require notice for acquisitions of voting securities of any publicly traded company involved in the sale, rental, or lease of oxygen systems unless, as a result of such acquisition, the respondent would hold more than one (1) percent of such company.

VII

It Is Further Ordered that the respondent Homecare shall:

A. Within thirty (30) days from the date this Order becomes final, distribute a copy of the Complaint and Order to each managerial employee;

B. For a period of five (5) years from the date this Order becomes final, distribute a copy of the Complaint and Order to each new managerial employee within thirty (30) days of the entrance of such employee to employment;

C. For a period of five (5) years from the date this Order becomes final, distribute a copy of the Complaint and Order to each new partner within thirty (30) days of the entrance of such partner to the partnership.

VIII

It Is Further Ordered that each respondent shall, within sixty (60) days from the date of this Order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of paragraphs II and III of this Order, submit a report in writing to the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these provisions.

Such compliance reports shall include a summary of all contacts and negotiations with potential purchasers of the ownership interests to be divested under this Order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

The respondents shall submit such further written reports as the staff of the Commission may from time to time request in writing to assure compliance with this Order.

IX

It Is Further Ordered that:

A. Within sixty (60) days from the date this Order becomes final, each respondent shall file with the Commission a verified written report of compliance with this Order;

B. One year from the date this Order becomes final and annually thereafter for nine (9) years, each respondent shall file with the Commission a verified written report of compliance with this Order.

X

It Is Further Ordered that respondent Homecare, upon written request of the staff of the Federal Trade Commission, made to Homecare, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, shall permit duly authorized representatives of the Commission:

A. Reasonable access during Homecare's office hours, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in Homecare's possession or control that relate to any matter contained in this Order; and

B. An opportunity, subject to Homecare's reasonable convenience, to interview general partners or employees of Homecare, who may have counsel present, regarding such matters.

XI

It Is Further Ordered that respondent Homecare notify the Commission at least thirty (30) days prior to any consummation of an organizational change, such as dissolution, assignment

or sale resulting in the emergence of a successor organization, or any other change in the organization that may affect compliance with the obligations arising out of the Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Homecare Oxygen and Medical Equipment Company ("Homecare Oxygen"), a California partnership, and its investor pulmonologists, individually and as partners in the company.

The proposed consent order has been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreement and the comments received and will decide whether it should withdraw from the agreement and take other appropriate action or make final the agreement's proposed order.

This matter concerns the allegedly anticompetitive conduct of a durable medical equipment ("DME") company located in Contra Costa County, California. The Commission's complaint charges that respondents engaged in unfair methods of competition in the market for home oxygen systems, a type of DME used by patients suffering from pulmonary disorders. Specifically, the complaint alleges that Homecare Oxygen aggregated approximately sixty (60) percent of the most prominent pulmonologists practicing in the relevant geographic market as partners in the company. Because pulmonologists have the ability to influence the choice of oxygen systems suppliers to service patients needing oxygen at home, Homecare Oxygen was able to acquire and maintain market power in the relevant market.

The proposed consent order contains provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts or practices in the future. To remedy the respondent's current anticompetitive impact on the market, the proposed order requires that a certain percentage of Homecare Oxygen's investor pulmonologists divest their ownership interests in the company. The proposed order requires only a partial divestiture so that any possible quality of care benefits from pulmonologists involvement in the company would remain intact. The order also contains prospective relief, preventing the respondents from granting or acquiring an ownership interest in an oxygen systems company that would create similar antitrust concerns in the future.

Part I of the proposed order consists of definitions necessary to interpret and implement the provisions that follow. Part II of the proposed order requires that as many of the investor pulmonologists as are necessary divest their interests in Homecare Oxygen such that no greater than twenty-five percent of the pulmonologists practicing in the relevant geographic market are affiliated with Homecare Oxygen. This partial divestiture is designed to diffuse Homecare Oxygen's power over oxygen referrals. The twenty-five percent threshold was chosen to prevent Homecare Oxygen from maintaining a captive source of referrals large enough to confer market power. This percentage affords some "fencing-in relief" to account for the fact that Homecare Oxygen's partnership included many of the most prominent pulmonologists in the area, including many of the medical directors of the respiratory therapy departments of the largest private hospitals located in the relevant geographic market. Finally, this provision requires the respondents to accomplish the necessary divestiture within eight months.

To ensure that the partial divestiture occurs, Part III of the proposed order requires a total divestiture by the Homecare Oxygen pulmonologists if the partial divestiture is not completed within eight months. Part IV of the proposed order specifies that the divestitures required by parts II and III cannot be fulfilled by any sale or transfer to Home Oxygen and Medical Equipment Company, a DME company located in Alameda County, California. This company, located in a neighboring county, has allegedly engaged in similar acts and practices as those alleged against Homecare Oxygen, and is the subject of a similar proposed order.

Part V of the proposed order contains prospective relief. This provision prevents the respondents from selling or acquiring an interest in any oxygen systems company if such transaction would cause more than twenty-five percent of the pulmonologists who practice in the area to be affiliated with the company. This provision will prevent the respondents from forming a new oxygen company which would have market power over oxygen referrals in the relevant geographic market.

Part VI of the proposed order is a notification provision which requires the proposed respondents to notify the Commission when they acquire an interest in an oxygen systems company. In the absence of this provision, the proposed respondents would be free to enter into similar structural arrangements in other areas of the country. This provision is necessary to notify the Commission of other physician joint ventures which may be structured by the respondents to create market power in an oxygen systems market.

Part VII of the proposed order requires Homecare Oxygen to give a copy of the complaint and order to current and future managerial employees, and to new partners. The remaining parts of the proposed order are standard reporting provisions designed to ensure that the proposed respondents comply with the order.

The purpose of this analysis is to facilitate public comment on the proposed order. It is not intended to constitute an official interpretation of the agreement and proposed order or to modify in any way their terms.

Agreement Containing Consent Order

In the Matter of: Home Oxygen & Medical Equipment Co., a limited partnership, Mitchell P. Tarkoff, M.D., Revels M. Cayton, M.D., Robert I. Deutsch, M.D., Leland G. Dobbs, M.D., Fredric N. Hershkowitz, M.D., Jerrold A. Kram, M.D., R. Wayne Mall, M.D., Richard A. Nusser, M.D., Joel H. Richert, M.D., John E. Sailer, M.D., Herbert M. Schub, N.D., Jamil S. Sulieman, M.D., and T. Craig Williams, M.D., individually, and as partners, trading and doing business as Home Oxygen & Medical Equipment Company.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Home Oxygen & Medical Equipment Co., a limited partnership, Mitchell P. Tarkoff, M.D., Revels M. Cayton, M.D., Robert I. Deutsch, M.D., Leland G. Dobbs, M.D., Fredric N. Herskowitz, M.D., Jerrold A. Kram, M.D., R. Wayne Mall, M.D., Richard A. Nusser, M.D., Joel H. Richert, M.D., John E. Sailer, M.D., Herbert M. Schub, M.D., Jamil S. Sulieman, M.D., and T. Craig Williams, M.D., individually, and as partners, trading and doing business as Home Oxygen & Medial Equipment Company (collectively "proposed respondents"), and it now appearing that proposed respondents are willing to enter into an agreement containing an order to remedy the acts and practices being investigated,

It Is Hereby Agreed by and between proposed respondents and their duly authorized attorneys and counsel for the Federal Trade Commission ("Commission") that:

1. Proposed respondent Home Oxygen & Medical Equipment Co. (hereinafter "Home Oxygen") is a limited

partnership organized, existing and doing business under and by virtue of the laws of the State of California. It has its principal place of business at 2456 Verna Court, San Leandro, California, 94577.

2. Proposed respondent Mitchell P. Tarkoff, M.D., is an individual who has been, and is now, a general partner of Home Oxygen. His place of business is located at 350 30th Street, suite 526, Oakland, California 94609.

3. Proposed respondent Revels M. Cayton, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 400 29th Street, suite 419, Oakland, California 94609.

4. Proposed respondent Robert I. Deutsch, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 2070 Clinton Avenue, Almeda, California 94051.

5. Proposed respondent Leland G. Dobbs, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 350 30th Street, suite 520, Oakland, California 94609.

6. Proposed respondent Fredric N. Herskowitz, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 350 30th Street, suite 520, Oakland, California 94609.

7. Proposed respondent Jerrold A. Kram, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 350 30th Street, suite 520, Oakland, California 94609.

8. Proposed respondent R. Wayne Mall, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 2000 Mowry Avenue, Fremont, California 94538.

9. Proposed respondent Richard A. Nusser, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 365 Hawthorne Avenue, suite 202, Oakland, California 94609.

10. Proposed respondent Joel H. Richert, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 2557 Mowry Avenue, suite 12, Fremont, California 94538.

11. Proposed respondent John E. Sailer, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business was located at 13851 East 14th Street, suite 302, San Leandro, California 94578.

12. Proposed respondent Herbert M. Schub, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 2070 Clinton Avenue, Alameda, California 94501.

13. Proposed respondent Jamil S. Sulieman, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 550 South Beretania Street, Honolulu, Hawaii 96813.

14. Proposed respondent T. Craig Williams, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 13851 East 14th Street, suite 302, San Leandro, California 94578.

15. Proposed respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

16. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

17. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

18. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of Complaint here attached.

19. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondents at their addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

20. Proposed respondents have read the proposed Complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. The proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

A. "Durable medical equipment" or "DME" means medical equipment sold, rented, or leased to customers for home use. DME includes, but is not limited to, ambulatory aids, wheelchairs, walkers, hospital beds, commodes and respiratory therapy equipment, such as oxygen systems. "DME" encompasses all aspects of supplying DME, including, but not limited to, delivering and servicing the equipment, and rendering accompanying services to customers.

B. "Oxygen systems" means DME used to service individuals who are unable to obtain adequate oxygen through independent breathing. Oxygen systems include, but are not limited to, oxygen gas contained in tanks; liquid oxygen stored in reservoirs and smaller, portable containers; and electrically-operated oxygen concentrators. "Oxygen systems" encompasses all aspects of supplying these oxygen systems, including, but not limited to, delivering and servicing the equipment, supplying oxygen content, and rendering accompanying services to customers.

C. "Hospital" means a health facility, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, and whose primary function is to provide inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities. "Hospital" includes any affiliate, subsidiary, or partnership in which the hospital holds a ten (10) percent or greater interest.

D. "Medical Professional" means any individual who is licensed by the State of California as a Medical Doctor.

E. "Pulmonologist" means a medical professional who specializes in the diagnosis and treatment of pulmonary disease, regardless of whether the medical professional has been certified as a specialist in pulmonary disease. "Pulmonologist" does not include medical professionals who specialize in the diagnosis and treatment of patients who would not use the type of oxygen systems defined herein, such as patients suffering from allergies and pediatric patients requiring oxygen systems specially designed for children.

F. "Practicing" means having staff privileges, including, but not limited to, active or courtesy staff privileges, at any hospital.

G. "Relative" means an individual who is related to the individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the individual.

H. "Own" or "Ownership interest" means any and all stock, share, capital, equity or other interest, asset, property, license, lease, or other right or privilege, tangible or intangible, whether obtained or held, directly or indirectly, through any relative, employee or agent, or through any corporate or other device.

I. "Affiliated with" means having an ownership interest in the entity or being a member of the same group practice as an investor in the entity.

J. "Relevant geographic market" means Alameda County, California, excluding the south-east portion of Alameda County referred to as the "Tri-Valley" area. The Tri-Valley area includes the cities of Livermore, Dublin and Pleasanton.

K. "Service Area" means the geographic area in which an entity engages in the sale, rental, or lease of oxygen systems.

II

It Is Ordered that, within eight (8) months from the date this Order becomes final, as many of the pulmonologist respondents as are necessary divest, absolutely and in good faith, their ownership interests in Home Oxygen such that no greater than twenty-five (25) percent of the pulmonologists practicing in the relevant geographic market are affiliated with Home Oxygen. Any divestiture pursuant to this provision must comply with the provision of paragraph IV of this Order.

III

It is Further Ordered that, if the divestitures required by Paragraph II of this Order have not been completed within the eight (8) month period, all respondents who are pulmonologists shall each divest, absolutely and in good faith, their ownership interest in respondent Home Oxygen within twelve (12) months from the date this Order becomes final.

IV

It Is Further Ordered that the divestitures required by Paragraphs II and III of this Order shall not be effected by a transfer or sale, with or without valuable consideration, to Homecare Oxygen & Medical Equipment Company located in Contra Costa County, California, or to any of its current or former owners.

V

It Is Further Ordered that, for a period of ten (10) years from the date of this Order, no respondent shall grant or acquire, with or without valuable consideration, an ownership interest in any entity engaged in the sale, rental, or lease of oxygen systems in the relevant geographic market if, after such grant or acquisition, more than twenty-five (25) percent of the pulmonologists who practice in the relevant geographic market would be affiliated with the entity.

VI

It Is Further Ordered that for a period of ten (10) years from the date this Order becomes final, the individual respondents shall notify the Commission within thirty (30) days after acquiring, either directly or indirectly, or through any corporate or other device, any ownership interest in an entity engaged in the sale, rental, or lease of oxygen systems. Such notification shall include:

(a) An identification of all owners of the entity;

(b) An identification of any pulmonologist practicing in the entity's service area or intended service area who has an ownership interest in the entity;

(c) A list of all pulmonologists who practice in the entity's service area or intended service area;

(d) A description of the products or services offered, or to be offered by the entity;

(e) A copy of the entity's offering memorandum and/or prospectus; and

(f) An identification of the entity's location, including the location of any and all of the entity's parent organizations, and subsidiaries.

Respondents shall comply with requests by the Commission staff for additional information within fifteen (15) days of service of such requests.

Provided, However, that nothing in this order shall require notice for acquisitions of voting securities of any publicly traded company involved in the sale, rental, or lease of oxygen systems unless, as a result of such acquisition, the respondent would hold more than one (1) percent of such company.

VII

It Is Further Ordered that the respondent Home Oxygen shall:

A. Within thirty (30) days from the date this Order becomes final, distribute a copy of the Complaint and Order to each managerial employee;

B. For a period of five (5) years from the date this Order becomes final, distribute a copy of the Complaint and Order to each new managerial employee within thirty (30) days of the entrance of such employee to employment;

C. For a period of five (5) years from the date this Order becomes final, distribute a copy of the Complaint and Order to each new partner within thirty (30) days of the entrance of such partner to the partnership.

VIII

It Is Further Ordered that each respondent shall, within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraphs II and III of this Order, submit a report in writing to the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these provisions.

Such compliance reports shall include a summary of all contacts and negotiations with potential purchasers of the ownership interests to be divested under this Order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

The respondents shall submit such further written reports as the staff of the Commission may from time to time request in writing to assure compliance with this Order.

IX

It Is Further Ordered that:

A. Within sixty (60) days from the date this Order becomes final, each respondent shall file with the Commission a verified written report of compliance with this Order;

B. One year from the date this Order becomes final and annually thereafter for nine (9) years, each respondent shall file with the Commission a verified written report of compliance with this Order.

X

It Is Further Ordered that respondent Home Oxygen, upon written request of the staff of the Federal Trade Commission, made to Home Oxygen, for the purpose of determining or securing compliance with this Order, and subject to any legally recognized privilege, shall permit duly authorized representatives of the Commission:

A. Reasonable access during Home Oxygen's office hours, in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda, reports, and other records and documents in Home Oxygen's possession or control that relate to any matter contained in this Order; and

B. An opportunity, subject to Home Oxygen's reasonable convenience, to interview general partners or employees of Home Oxygen, who may have counsel present, regarding such matters.

XI

It Is Further Ordered that respondent Home Oxygen notify the Commission at least thirty (30) days prior to any proposed organizational change, such as dissolution, assignment or sale resulting in the emergence of a successor organization, or any other change in the organization that may affect compliance with the obligations arising out of the Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Home Oxygen and Medical Equipment Company ("Home Oxygen"), a California partnership, and thirteen of its investor pulmonologists, individually and as partners in the company. Home Oxygen's remaining pulmonologist investors agreed to a separate, but virtually identical, proposed consent order with the caption "Certain Home Oxygen Pulmonologists."

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements and take other appropriate action or make final the agreements' proposed orders.

This matter concerns the allegedly anticompetitive conduct of a durable medical equipment ("DME") company located in Alameda County, California. The Commission's complaints charge that respondents engaged in unfair methods of competition in the market for home oxygen systems, a type of DME used by patients suffering from pulmonary disorders. Specifically, the complaints allege that Home Oxygen aggregated approximately sixty (60) percent of the most prominent pulmonologists practicing in the relevant geographic market as partners in the company. Because pulmonologists have the ability to influence the choice of oxygen systems suppliers to service patients needing oxygen at home, Home Oxygen was able to acquire and maintain market power in the relevant market.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts or practices in the future. To remedy the respondent's current anticompetitive impact on the market, the proposed orders require that a certain percentage of Home Oxygen's investor pulmonologists divest their ownership interests in the company. The proposed orders require only a partial divestiture so that any possible quality of care benefits from pulmonologist involvement in the company would remain intact. The orders also contain prospective relief, preventing the respondents from granting or acquiring an ownership interest in an oxygen systems company that would create similar antitrust concerns in the future.

Part I of the proposed order against Home Oxygen and its thirteen investor pulmonolgists consists of definitions necessary to interpret and implement the provisions that follow. Part II of the proposed order requires that as many of the investor pulmonologists as are necessary divest their interests in Home Oxygen such that no greater than twenty-five percent of the pulmonologists practicing in the relevant geographic market are affiliated with Home Oxygen. This partial divestiture is designed to diffuse Home Oxygen's power over oxygen referrals. The twenty-five percent threshold was chosen to prevent Home Oxygen from maintaining a captive source of referrals large enough to confer market power. This percentage affords some "fencing-in relief" to account for the fact that Home Oxygen's partnership included many of the most prominent pulmonologists in the area, including many of the medical directors of the respiratory therapy departments of the largest private hospitals located in the relevant geographic market. Finally, this provision requires the respondents to accomplish the necessary divestiture within eight months.

To ensure that the partial divestiture occurs, Part III of the proposed order requires a total divestiture by the Home Oxygen pulmonologists if the partial divestiture is not completed within eight months. Part IV of the proposed order specifies that the divestitures required by parts II and III cannot be fulfilled by any sale or transfer to Homecare Oxygen and Medical Equipment Company, a DME company located in Contra Costa County, California. This company, located in a neighboring county, has allegedly engaged in similar acts and practices as those alleged against Home Oxygen, and is the subject of a similar proposed order.

Part V of the proposed order contains prospective relief. This provisions prevents the respondents from selling or acquiring an interest in any oxygen systems company if such transaction would cause more than twenty-five percent of the pulmonologists who practice in the area to be affiliated with the company. This provision will prevent the respondents from forming a new oxygen company which would have market power over oxygen referrals in the relevant geographic market.

Part VI of the proposed order is a notification provision which requires the proposed respondents to notify the Commission when they acquire an interest in an oxygen systems company. In the absence of this provision, the proposed respondents would be free to

enter into similar structural arrangements in other areas of the country. This provision is necessary to notify the Commission of other physician joint ventures which may be structured by the respondents to create market power in an oxygen systems market.

Part VII of the proposed order requires Home Oxygen to give a copy of the complaint and order to current and future managerial employees, and to new partners. The remaining parts of the proposed orders are standard reporting provisions designed to ensure that the proposed respondents comply with the order.

The proposed order relating to the remaining pulmonologist investors, captioned "Certain Home Oxygen Pulmonologists," is virtually identical to the order described above. The material difference in the two orders relates only to the divestiture provision. The divestiture provision in the proposed order against "Certain Home Oxygen Pulmonologists" requires that all four of these investor pulmonologists divest their ownership interests in Home Oxygen only if the twenty-five percent threshold has not already been met pursuant to the divestiture provision in Part II of the proposed order against Home Oxygen, et al.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Agreement Containing Consent Order

In the Matter of: Certain Home Oxygen Pulmonologists, Barry R. Horn, M.D., Alan Lifshay, M.D., Gerald L. Meyers, M.D., Oscar R. Scherer, M.D., individually and as limited partners in a business known as Home Oxygen & Medical Equipment Company.

The Federal Trade Commission having initiated an investigation of certain acts and practices of Barry R. Horn, M.D., Alan Lifshay, M.D., Gerald L. Meyers, M.D., and Oscar R. Scherer, M.D., individually and as limited partners, in a business known as Home Oxygen & Medical Equipment Company (collectively "proposed respondents"), and its now appearing that proposed respondents are willing to enter into an agreement containing an order to remedy the acts and practices being investigated,

It is Hereby Agreed by and between proposed respondents and their duly authorized attorneys and counsel for the Federal Trade Commission ("Commission") that:

1. Proposed respondent Barry R. Horn, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 3001 Colby Street, Berkeley, California 94705.

2. Proposed respondent Alan Lifshay, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 3001 Colby Street, Berkeley, California 94705.

3. Proposed respondent Gerald L. Meyers, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 3001 Colby Street, Berkeley, California 94705.

4. Proposed respondent Oscar R. Scherer, M.D., is an individual who has been, and is now, a limited partner in Home Oxygen. His place of business is located at 3001 Colby Street, Berkeley, California 94705.

5. Proposed respondents admit all the jurisdictional facts set forth in the draft of Complaint here attached.

6. Proposed respondents waive:

(a) Any further procedural steps;

(b) The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;

(c) All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and

(d) Any claim under the Equal Access to Justice Act.

7. This agreement shall not become part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of Complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify proposed respondents, in which event it will take such action as it may consider appropriate, or issue and serve its Complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

8. This agreement is for settlement purposes only and does not constitute an admission by proposed respondents of facts, other than jurisdictional facts, or of violations of law as alleged in the draft of Complaint here attached.

9. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to proposed respondents, (1) issue its Complaint corresponding in form and substance with the draft of Complaint here attached and its decision containing the following Order in disposition of the proceeding and (2) make information public in respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified or set aside in the same manner and within the same time provided by statute for other orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the Complaint and decision containing the agreed-to Order to proposed respondents at their addresses as stated in this agreement shall constitute service. Proposed respondents waive any right they may have to any other manner of service. The Complaint may be used in construing the terms of the Order, and no agreement, understanding, representation, or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

10. Proposed respondents have read the proposed Complaint and Order contemplated hereby. They understand that once the Order has been issued, they will be required to file one or more compliance reports showing that they have fully complied with the Order. The proposed respondents further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following definitions shall apply:

A. "Home Oxygen & Medical Equipment Company" or "Home Oxygen" is a limited partnership organized, existing and doing business under and by virtue of the laws of the State of California. It has its principal place of business at 2456 Verna Court, San Leandro, California 94577.

B. "Durable medical equipment" or "DME" means medical equipment sold, rented, or leased to customers for home use. DME includes, but is not limited to, ambulatory aids, wheelchairs, walkers, hospital beds, commodes and respiratory therapy equipment, such as oxygen systems. "DME" encompasses all aspects of supplying DME, including, but not limited to, delivering and servicing the equipment, and rendering accompanying services to customers.

C. "Oxygen systems" means DME used to service individuals who are

unable to obtain adequate oxygen through independent breathing. Oxygen systems include, but are not limited to, oxygen gas contained in tanks; liquid oxygen stored in reservoirs and smaller, portable containers; and electrically-operated oxygen concentrators. "Oxygen systems" encompasses all aspects of supplying these oxygen systems, including, but not limited to, delivering and servicing the equipment, supplying oxygen content, and rendering accompanying services to customers.

D. "Hospital" means a health facility, other than a federally-owned facility, having a duly organized governing body with overall administrative and professional responsibility and an organized professional staff that provides 24-hour inpatient care, and whose primary function is to provide inpatient services for medical diagnosis, treatment, and care of physically injured or sick persons with short-term or episodic health problems or infirmities. "Hospital" includes any affiliate, subsidiary, or partnership in which the hospital holds a ten (10) percent or greater interest.

E. "Medical Professional" means any individual who is licensed by the State of California as a Medical Doctor.

F. "Pulmonologist" means a medical professional who specializes in the diagnosis and treatment of pulmonary disease, regardless of whether the medical professional has been certified as a specialist in pulmonary disease. "Pulmonologist" does not include medical professionals who specialize in the diagnosis and treatment of patients who would not use the type of oxygen systems defined herein, such as patients suffering from allergies and pediatric patients requiring oxygen systems specially designed for children.

G. "Practicing" means having staff privileges, including but not limited to, active or courtesy staff privileges, at any hospital.

H. "Relative" means an individual who is related to the individual, as father, mother, son, daughter, brother, sister, uncle, aunt, great aunt, great uncle, first cousin, nephew, niece, husband, wife, grandfather, grandmother, grandson, granddaughter, father-in-law, mother-in-law, son-in-law, daughter-in-law, brother-in-law, sister-in-law, stepfather, stepmother, stepson, stepdaughter, stepbrother, stepsister, half-brother, half-sister, or who is the grandfather or grandmother of the spouse of the individual.

I. "Own" or "Ownership interest" means any and all stock, share, capital, equity or other interest, asset, property, license, lease, or other right or privilege, tangible or intangible, whether obtained or held, directly or indirectly, through any relative, employee or agent, or through any corporate or other device.

J. "Affiliated with" means having an ownership interest in the entity or being a member of the same group practice as an investor in the entity.

K. "Relevant geographic market" means Alameda County, California, excluding the south-east portion of Alameda County referred to as the "Tri-Valley" area. The Tri-Valley area includes the cities of Livermore, Dublin and Pleasanton.

L. "Service Area" means the geographic area in which an entity engages in the sale, rental, or lease of oxygen systems.

II

It Is Ordered that all respondents shall each divest, absolutely and in good faith, their ownership interest in Home Oxygen within twelve (12) months from the date this Order becomes final. Any divestiture pursuant to this provision must comply with the provisions of Paragraphs III and IV of this Order.

Provided, However, that no such divestiture is required if, within eight (8) months from the date this Order becomes final, no greater than twenty-five (25) percent of the pulmonologists practicing in the relevant geographic market are affiliated with Home Oxygen.

III

It Is Further Ordered that the divestiture required by Paragraph II of this Order shall not be effected by a transfer or sale, with or without valuable consideration, to Homecare Oxygen & Medical Equipment Company located in Contra Costa County, California, or to any of its current or former owners.

IV

It Is Further Ordered that, for a period of ten (10) years from the date of this Order, no respondent shall grant or acquire, with or without valuable consideration, an ownership interest in any entity engaged in the sale, rental, or lease of oxygen systems in the relevant geographic market if, after such grant or acquisition, more than twenty-five (25) percent of the pulmonologists who practice in the relevant geographic market would be affiliated with the entity.

V

It Is Further Ordered that for a period of ten (10) years from the date this Order becomes final, the respondents shall notify the Commission within thirty (30) days after acquiring, either directly or indirectly, or through any corporate or other device, any ownership interest in an entity engaged in the sale, rental, or lease of oxygen systems. Such notification shall include:

(a) An identification of all owners of the entity;

(b) An identification of any pulmonologist practicing in the entity's service area or intended service area who has an ownership interest in the entity;

(c) A list of all pulmonologists who practice in the entity's service area or intended service area;

(d) A description of the products or services offered, or to be offered by the entity;

(e) A copy of the entity's offering memorandum and/or prospectus; and

(f) An identification of the entity's location, including the location of any and all of the entity's parent organizations, and subsidiaries.

Respondents shall comply with requests by the Commission staff for additional information within fifteen (15) days of service of such requests.

Provided, However, that nothing in this Order shall require notice for acquisitions of voting securities of any publicly traded company involved in the sale, rental, or lease of oxygen systems unless, as a result of such acquisition, the respondent would hold more than one (1) percent of such company.

VI

It Is Further Ordered that each respondent shall, within sixty (60) days from the date this Order becomes final and every sixty (60) days thereafter until it has fully complied with the provisions of Paragraph II of this Order, submit a report in writing to the Commission setting forth in detail the manner and form in which it intends to comply, is complying, and has complied with these provisions.

Such compliance reports shall include a summary of all contacts and negotiations with potential purchasers of the ownership interests to be divested under this Order, the identity and address of all such potential purchasers, and copies of all written communications to and from such potential purchasers.

The respondents shall submit such further written reports as the staff of the Commission may from time to time request in writing to assure compliance with this Order.

VII

It Is Further Ordered that:

A. Within sixty (60) days from the date this Order becomes final, each respondent shall file with the

Commission a verified written report of compliance with this Order;

B. One year from the date this Order becomes final and annually thereafter for nine (9) years, each respondent shall file with the Commission a verified written report of compliance with this Order.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted an agreement, subject to final approval, to a proposed consent order from respondents Home Oxygen and Medical Equipment Company ("Home Oxygen"), a California partnership, and thirteen of its investor pulmonologists, individually and as partners in the company. Home Oxygen's remaining pulmonologist investors agreed to a separate, but virtually identical, proposed consent order with the caption "Certain Home Oxygen Pulmonologists."

The proposed consent orders have been placed on the public record for sixty (60) days for reception of comments by interested persons. Comments received during this period will become part of the public record. After sixty (60) days, the Commission will again review the agreements and the comments received and will decide whether it should withdraw from the agreements and take other appropriate action or make final the agreements' proposed orders.

This matter concerns the allegedly anticompetitive conduct of a durable medical equipment ("DME") company located in Alameda County, California. The Commission's complaints charge that respondents engaged in unfair methods of competition in the market for home oxygen systems, a type of DME used by patients suffering from pulmonary disorders. Specifically, the complaints allege that Home Oxygen aggregated approximately sixty (60) percent of the most prominent pulmonologists practicing in the relevant geographic market as partners in the company. Because pulmonologists have the ability to influence the choice of oxygen systems suppliers to service patients needing oxygen at home, Home Oxygen was able to acquire and maintain market power in the relevant market.

The proposed consent orders contain provisions designed to remedy the violations charged and to prevent the respondents from engaging in similar acts or practices in the future. To remedy the respondent's current anticompetitive impact on the market, the proposed orders require that a certain percentage of Home Oxygen's investor pulmonologists divest their ownership interests in the company. The proposed orders require only a partial divestiture so that any possible quality of care benefits from pulmonologist involvement in the company would remain intact. The orders also contain prospective relief, preventing the respondents from granting or acquiring an ownership interest in an oxygen systems company that would create similar antitrust concerns in the future.

Part I of the proposed order against Home Oxygen and its thirteen investor pulmonologists consists of definitions necessary to interpret and implement the provisions that follow. Part II of the proposed order requires that as many of the investor pulmonologists as are necessary divest their interests in Home Oxygen such that no greater than twenty-five percent of the pulmonologists practicing in the relevant geographic market are affiliated with Home Oxygen. This partial divestiture is designed to diffuse Home Oxygen's power over oxygen referrals. The twenty-five percent threshold was chosen to prevent Home Oxygen from maintaining a captive source of referrals large enough to confer market power. This percentage affords some "fencing-in relief" to account for the fact that Home Oxygen's partnership included many of the most prominent pulmonologists in the area, including many of the medical directors of the respiratory therapy departments of the largest private hospitals located in the relevant geographic market. Finally, this provision requires the respondents to accomplish the necessary divestiture within eight months.

To ensure that the partial divestiture occurs, Part III of the proposed order requires a total divestiture by the Home Oxygen pulmonologists if the partial divestiture is not completed within eight months. Part IV of the proposed order specifies that the divestitures required by parts II and III cannot be fulfilled by any sale or transfer to Homecare Oxygen and Medical Equipment Company, a DME company located in Contra Costa County, California. This company, located in a neighboring county, has allegedly engaged in similar acts and practices as those alleged against Home Oxygen, and is the subject of a similar proposed order.

Part V of the proposed order contains prospective relief. This provision prevents the respondents from selling or acquiring an interest in any oxygen systems company if such transaction would cause more than twenty-five percent of the pulmonologists who practice in the area to be affiliated with the company. This provision will prevent the respondents from forming a new oxygen company which would have market power over oxygen referrals in the relevant geographic market.

Part VI of the proposed order is a notification provision which requires the proposed respondents to notify the Commission when they acquire an interest in an oxygen systems company. In the absence of this provision, the proposed respondents would be free to enter into similar structural arrangements in other areas of the country. This provision is necessary to notify the Commission of other physical joint ventures which may be structured by the respondents to create market power in an oxygen systems market.

Part VII of the proposed order requires Home Oxygen to give a copy of the complaint and order to current and future managerial employees, and to new partners. The remaining parts of the proposed order are standard reporting provisions designed to ensure that the proposed respondents comply with the order.

The proposed order relating to the remaining pulmonologist investors, captioned "Certain Home Oxygen Pulmonologists," is virtually identical to the order described above. The material difference in the two orders relates only to the divestiture provision. The divestiture provision in the proposed order against "Certain Home Oxygen Pulmonologists" requires that all four of these investor pulmonologists divest their ownership interests in Home Oxygen only if the twenty-five percent threshold has not already been met pursuant to the divestiture provision in part II of the proposed order against Home Oxygen, et al.

The purpose of this analysis is to facilitate public comment on the proposed orders. It is not intended to constitute an official interpretation of the agreements and proposed orders or to modify in any way their terms.

Donald S. Clark,

Secretary.

Concurring Statement of Commissioner Mary L. Azcuenaga in Home Oxygen & Medical Equipment Co., File 901-0109, and Homecare Oxygen & Medical Equipment, File 911-0020

Although I have joined in the Commission's decision to accept these consent agreements for public comment, I have reservations about the usefulness of the orders to which the respondents have consented and about the advisability, on the basis of the information we have, of charting the new territory that these cases represent.

Here, I believe, sufficient evidence exists to satisfy the statutory standard of reason to believe the law has been violated but precious little more. As I have said before, the truncated record on which consent agreements ordinarily are based leaves something to be desired as a basis for establishing new Commission policy.

Antitrust analysis, as we know it today, requires a search for understanding of markets, an understanding that, experience shows, may be founded on elements that lie well below the surface of what even those in a particular industry may readily comprehend. See, *e.g.*, *Broadcast Music, Inc.* v. *CBS*, 441 U.S. 1 (1979). It is easy to underestimate the difficulty of showing justifications that are cognizable under the antitrust laws and sufficient to defend against the application of novel antitrust theories. The Commission may not be as well positioned as the parties to identify and understand justifications for the challenged conduct. Yet the parties may be ill-equipped to undertake the esoteric analytic endeavor that modern antitrust law may demand. When neither the parties nor the Commission fully comprehends the justifications, "ignorance leads straight to condemnation," *Chicago Professional Sports Limited Partnership* v. *NBA*, 961 F.2d 667, 676 (7th Cir. 1992), and condemnation without understanding may lead to consumer harm.

It is useful, indeed, advisable for the Commission to continue to evaluate new factual situations and to develop new theories under section 5 of the Federal Trade Commission Act to remedy anticompetitive effects. But it is well, in doing so, to keep in mind the admonition of the court in *Chicago Professional Sports Limited Partnership* v. *NBA*, 961 F.2d at 676, that "[e]xplanations of problematic conduct take time to develop and more time to test. . . . Understanding novel practices may require years of study and debate."

I have voted to publish the consent agreements for comment but remain mindful of these concerns.

Statement of Commissioner Roscoe B. Starek, III

In the Matters of Home Oxygen and Medical Equipment Co. and Homecare Oxygen and Medical Equipment Co.

I respectfully dissent from the Commission's decision to accept for public comment the consent orders in these matters. The challenged conduct does appear to have the potential to be anticompetitive. Under the rule of reason, however, the evidence presented does not indicate that the conduct of the respondents was anticompetitive or that it is likely to have been anticompetitive.[1] Therefore, I do not have reason to believe that the respondents have violated section 5 of the FTC Act, as the complaints allege.

The complaints name two limited partnerships and 28 pulmonologist partners in these ventures. The complaints allege that the respondents have "acquired and maintained market power" (¶ 18) as a consequence of the fact that a "majority" of the pulmonologists in each of the two areas in which the two partnerships operate are partners in the ventures (¶ 14). I am concerned that this might be read to imply that the Commission will take enforcement actions against physician-owned ancillary joint ventures simply because participating physicians constitute a majority of those practicing in the relevant market, without regard to the ventures' effects or likely effects on the market.

The complaints do not challenge, and the consent agreements do not prohibit, "self-referral" of patients to entities owned by the respondent physicians.[2] However, the Analysis of Proposed Consent Order to Aid Public Comment states the respondents were able to "acquire and maintain market power" because "pulmonologists have the ability to influence the choice of oxygen suppliers to service patients needing oxygen at home." Because pulmonologists make referrals to providers of home oxygen services, they do have the ability to influence their patients' choice of oxygen suppliers. But this "influence" does not necessarily equate to or result in any market power.

Market power is the focus of the Commission's analysis of physician-owned ancillary joint ventures. In fact, the very violation alleged in the complaints in these matters is that the ventures "acquired and maintained market power." Market power is not necessarily created when a majority share of a relevant market is attained. Market power is defined as "the ability profitably to maintain prices above competitive levels for a significant period of time."[3] Within the context of a case under Section 5 of the FTC Act, the Commission has argued that

> The test for market power depends on all of the relevant characteristics of a market: the strength and capacity of current competitors; the potential for entry; the historic intensity of competition; and the impact of the legal or natural environment, to name just a few.[4]

Here, the two limited partnerships each have approximately 60% market shares in the respective counties in which they operate. Assuming, arguendo, that the alleged product and geographic markets are relevant antitrust markets, these market shares alone do not justify an inference of market power. In addition to the respondents, the evidence indicates that there are nine competing sellers of home oxygen in Alameda County, and eight competing sellers in Contra Costa County. Some of these firms have market shares of about 10%.

If these other firms suffer from substantial competitive weaknesses that prevent them from offering the same quality of services or the same low prices as the respondents, the respondents might be able to exercise market power through their joint ventures. I have not seen evidence that any of these competitors have such competitive weaknesses.[5]

Medicare patients, who apparently comprise the vast majority of patients purchasing home oxygen services, might

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[1] The challenged conduct must be analyzed under the rule of reason. The arrangements at issue cannot be characterized as naked restraints of the trade subject to summary condemnation, and thus the rule of reason applies. See *NCAA* v. *Board of Regents*, 468, U.S. 85, 103 (1984). The joint DOJ/FTC Health Care Enforcement Guidelines indicate that the antitrust agencies will apply a rule of reason to conduct falling outside of well defined "safety zones." Statements of Antitrust Enforcement Policy in the Health Care Area, Department of Justice and Federal Trade Commission, September 15, 1993, at 10–11, 36. The six policy statements of these Guidelines do not explicitly cover the type of conduct at issue here, i.e., physician-owned ancillary joint ventures. In any case, the arrangements here most likely would fall outside of any safety zone similar to those defined in the Guidelines, because they appear to have market shares of about 60% in their respective markets.

[2] The President recently signed legislation prohibiting physicians from self-referral of Medicare patients for several categories of services, including those services provided by the respondents. Omnibus Budget Reconciliation Act of 1993, Public Law 103–66, ch. 2, section 5074 because the vast majority of home oxygen services apparently are sold to Medicare patients, it may be the case that virtually no home oxygen provider would be willing to maintain physician ownership that would cut itself off from the vast majority of market demand. If that is the case, Commission action on this matter is moot. However, I am not certain that this is true, and more importantly, this case might be viewed as precedent for Commission actions outside of the services covered by the recent legislation.

[3] U.S. Department of Justice and Federal Trade Commission, Horizontal Merger Guidelines (1992), reprinted in 4 Trade Reg. Rep. (CCH) ¶ 13104, section 0.1 ("Sellers with market power also may lessen competition on dimensions other than price, such as product quality, service, or innovation.")

[4] General Foods Corp. 103 FTC 204, 345 (1984).

[5] In fact, one major third-party payer in the region purchases home oxygen primarily from one of the respondents' ventures in one county, while in the other county it purchases home oxygen primarily from one of the respondents' competitors. While hardly dispositive on this issue, this suggests that this major customer considers the available services of the respondents' competitors to be of acceptable and comparable quality and price.

be less price sensitive than third-party payers such as HMOs, and thus might appear to be vulnerable to anticompetitive behavior. Medicare's restrictive reimbursement policies may severely limit suppliers' potential ability to exercise market power. But it is doubtful that these policies eliminate the possibility of an exercise of market power in these markets.

It sometimes has been argued that physician ownership can create an incentive to refer for financial gain for services that are not medically necessary. But it is critical to distinguish between the potential for anticompetitive harm and the potential for inappropriate or excessive referrals resulting from physician ownership. Regardless of market share or market power, physicians sometimes may make inappropriate treatment referrals to facilities in which they have a financial interest.[6] While real consumer injury can result from such "self-referral," this behavior is not by itself actionable under the antitrust laws. Of course, this does not mean that anticompetitive behavior could not occur in these markets. But we should be careful to distinguish anticompetitive behavior from other forms of imperfect market performance.

If patients seldom question their physicians' referrals, physicians could profit from directing patients to home oxygen providers in which they have an ownership interest. But any such "vertical control" that physicians have does not necessarily result in any horizontal market power of the ancillary ventures in which they have an interest. An ancillary venture can enable the participating physicians to coordinate some of their competitive activities. But an exercise of market power is possible only when the coordination of activities within such a venture insulates the participating physicians from outside competition sufficiently that they are able to raise prices or reduce services.

For example, in some cases, an exercise of market power may be possible if enough of the market is aggregated through the joint venture so that there is insufficient remaining market demand to sustain viable competitors. That clearly is not the case here. The evidence is at best ambiguous as to whether these ventures, which have been in operation since 1984, have had any anticompetitive effect.

Physician-owned ancillary joint ventures have a potential to accomplish significant cost savings that can be passed on to consumers in the form of lower prices and higher quality of care. Physicians frequently may be in the best position to recognize a potential demand for an ancillary medical service in their community, to back up this perception with their own capital, and to operate and monitor the venture's performance. Clearly physicians and hospitals could have more control over the quality of a service by owning a supplier of that service than by merely writing a prescription. Evidence that physician investors frequently are passive with respect to the operation of these companies does not dismiss the potential of these ventures to accomplish substantial efficiencies.

Of course, the respondents' large scale and market share may not be necessary to achieve the potential efficiencies of such arrangements. But even incontrovertible evidence that these firms did not gain additional efficiency by growing to their current size would be relevant only after a determination that the firms had acted anticompetitively.

The orders continue to allow self-referral, and only limit the market share of the respondent pulmonologists associated with an entity providing home oxygen. Thus, the remedy does not address any harm that might result from the mere fact of self-referral.[7] The order also would allow efficiencies from self-referral to occur, but it is far from clear that the restructuring of the two ventures required under the orders would preserve all of the efficiencies that they may have been able to accomplish. Thus it may be the case that the orders reduce efficiency, do not reduce market power, and also fail to address any real harm to consumers that might result from self-referral.

The overriding reason to cast my vote against the acceptance of these consents is the precedential effect of discouraging physicians and hospitals from forming ancillary ventures, particularly in circumstances in which it may be important to achieve a high market share in order to gain efficiencies, or even to be able to introduce a service that benefits consumers in the area. Thus, enforcement actions should be limited to conduct for which anticompetitive harm is demonstrable or highly likely to occur. Because that burden has not been met, I respectfully dissent from the Commission's actions in these matters.

[FR Doc. 93-28186 Filed 11-16-93; 8:45 am]

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[6] The potential problem of inappropriate referrals made for financial gain is not limited to instances in which physicians have financial interests in facilities, equipment, or service providers that are physically or legally separate from their primary practices. The potential problem is present whenever a physician performs both diagnosis and treatment. Patients and third-party payers have limited information about whether treatments are medically necessary, and thus physicians frequently have some degree of discretion to recommend treatments that are not necessary.

[7] As I noted above, self-referral by itself is not actionable under the antitrust laws. Thus it is appropriate that any such perceived harm is not addressed in an order resolving the allegations in these complaints.

[Dkt. C-3468]

McCormick & Company, Inc.; Prohibited Trade Practices, and Affirmative Corrective Actions

AGENCY: Federal Trade Commission.

ACTION: Consent order.

SUMMARY: In settlement of alleged violations of federal law prohibiting unfair acts and practices and unfair methods of competition, this consent order requires, among other things, the largest spice and seasonings company in the U.S. to divest enough specifically-bred seeds to produce a total of 100 million pounds of low-water onions and at last 5,000 pounds of additional onion seeds for future planting, and to provide the Commission-approved purchaser certain technical assistance upon request for one year.

DATES: Compliant and Order issued October 25, 1993.[1]

FOR FURTHER INFORMATION CONTACT:

Claudia Higgins or Ann Malester, FTC/S-2308, Washington, DC 20580. (202) 326-2682.

SUPPLEMENTARY INFORMATION: On Tuesday, August 10, 1993, there was published in the **Federal Register**, 58 FR 42552, a proposed consent agreement with analysis In the Matter of McCormick & Company, Inc., for the purpose of soliciting public comment. Interested parties were given sixty (60) days in which to submit comments, suggestions or objections regarding the proposed form of the order.

A comment was filed and considered by the Commission. The Commission has ordered the issuance of the complaint in the form contemplated by the agreement, made its jurisdictional findings and entered an order to divest, as set forth in the proposed consent agreement, in disposition of this proceeding.

[1] Copies of the Complaint and the Decision and Order are available from the Commission's Public Reference Branch, H-130, 6th Street & Pennsylvania Avenue, NW., Washington, DC 20580.

(Sec. 6, 38 Stat. 721; 15 U.S.C. 46. Interpret or apply sec. 5, 38 Stat. 719, as amended; sec. 7, 38 Stat. 731, as amended; 15 U.S.C. 45, 18)

Donald S. Clark,

Secretary.

[FR Doc. 93–28185 Filed 11–16–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Advisory Committee for Energy-Related Epidemiologic Research: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Advisory Committee for Energy-Related Epidemiologic Research.

Times and dates: 8:30 a.m–5 p.m., December 2, 1993. 8:30 a.m.–12 noon, December 3, 1993.

Place: Sheraton Suites Hotel, 801 North St. Asaph Street, Alexandria, Virginia 22314.

Status: Open to the public, limited only by the space available. The meeting room accommodates approximately 50 people.

Purpose: This committee is charged with providing advice and recommendations to the Secretary of Health and Human Services (HHS); the Assistant Secretary for Health; the Director, CDC; and the Administrator, Agency for Toxic Substances and Disease Registry (ATSDR), on the establishment of a research agenda and the conduct of a research program pertaining to energy-related analytic epidemiologic studies. The committee will take into consideration information and proposals provided by the Department of Energy (DOE), the Advisory Committee for Environment Safety and Health which was established by DOE under the guidelines of a Memorandum of Understanding between HHS and DOE, and other agencies and organizations, regarding the direction HHS should take in establishing the research agenda and in the development of a research plan.

Matters to be discussed: The National Institute for Occupational Safety and Health will make presentations on additions to their research agenda and progress of current studies. Additional agenda items will include: Public involvement activities, the National Center for Environmental Health (NCEH) activities, ATSDR updates, and reports from the Oak Ridge Institute for Science and Education, the Los Alamos National Laboratory, the Pacific Northwest Laboratory, and the Hanford Environmental Health Foundation.

Agenda items are subject to change as priorities dictate.

Contact person for more information: Nadine Dickerson, Program Analyst, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway, NE., (F–35), Atlanta Georgia 30341–3724, telephone 404/488–7040.

Dated: November 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–28191 Filed 11–16–93; 8:45 am]

BILLING CODE 4160–18–M

Board of Scientific Counselors, National Center for Infectious Diseases: Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Board of Scientific Counselors, National Center for Infectious Diseases (NCID).

Times and Dates: 8:30 a.m.–5:30 p.m., December 2, 1993. 8:30 a.m.–4 p.m., December 3, 1993.

Place: CDC, Auditorium B, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: The Board of Scientific Counselors, NCID, provides advice and guidance to the Director, CDC, and Director, NCID, in the following areas: program goals and objectives; strategies; program organization and resources for infectious disease prevention and control; and program priorities.

Matters To Be Discussed: The agenda will focus on health reform and implications for NCID, the President's childhood immunization practices initiative, CDC Emerging Infections Plan, CDC's role in global surveillance, and minority and underserved population health priorities/NCID prevention agenda. Infectious disease updates will be provided on the following topics: Hantaviruses, other viruses, Guinea worm surveillance, group B streptococcal disease, opportunistic infections, and tuberculosis. Other agenda items include announcements/introductions; NCID update; and follow-up on actions recommended by the Board (May 1993).

The discussion will include presentations by community, State, and Federal representatives. Agenda items are subject to change as priorities dictate.

Written comments are welcome and should be received by the contact person listed below prior to the opening of the meeting.

Contact Person for More Information: Diane S. Holley, Office of the Director, NCID, CDC, Mailstop C–20, 1600 Clifton Road, NE, Atlanta, Georgia 30333, telephone 404/639–0044.

Dated: November 10, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–28190 Filed 11–16–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93F–0402]

Lonza, Inc.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Lonza, Inc., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of decylisononyldimethyl ammonium chloride as a slimicide in the manufacture of paper and paperboard intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by December 17, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Mitchell Cheeseman, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9511.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 4B4405) has been filed by Lonza, Inc., c/o Delta Analytical Corp., 7910 Woodmont Ave., Bethesda, MD 20814. The petition proposes to amend the food additive regulations to provide for the safe use of decylisononyldimethyl ammonium chloride as a slimicide in the manufacture of paper and paperboard intended to contact food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested

persons may, on or before December 17, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the Federal Register. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the Federal Register in accordance with 21 CFR 25.40(c).

Dated: November 8, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93-28163 Filed 11-16-93; 8:45 am]

BILLING CODE 4160-01-F

Advisory Committee; Notice of Meeting

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: This notice announces a forthcoming meeting of a public advisory committee of the Food and Drug Administration (FDA). This notice also summarizes the procedures for the meeting and methods by which interested persons may participate in open public hearings before FDA's advisory committees.

MEETING: The following advisory committee meeting is announced:

Vaccines and Related Biological Products Advisory Committee

Date, time, and place. December 1, 1993, 2 p.m., Food and Drug Administration, Bldg. 29, conference room 121, 8800 Rockville Pike, Bethesda, MD.

Type of meeting and contact person. This meeting will be held by a telephone conference call. A speaker telephone will be provided in the conference room to allow public participation in the meeting. Open committee discussion on review of research, 2 p.m. to 2:45 p.m.; closed committee deliberations on review of research, 2:45 p.m. to 3:45 p.m.; open public hearing, 3:45 p.m. to 4:45 p.m., unless public participation does not last that long; Nancy Cherry or Stephanie Milwit, Center for Biologics Evaluation and Research (HFM-21), Food and Drug Administration, 8800 Rockville Pike, Bethesda, MD 20892, 301-594-1054.

General function of the committee. The committee reviews and evaluates data on the safety and effectiveness of vaccines intended for use in the diagnosis, prevention, or treatment of human diseases.

Agenda—Open public hearing. Interested persons may present data, information, or views, orally or in writing, on issues pending before the committee. Those desiring to make formal presentations should notify the contact person before November 24, 1993, and submit a brief statement of the general nature of the evidence or arguments they wish to present, the names and addresses of proposed participants, and an indication of the approximate time required to make their comments.

Open committee discussion. The committee will discuss the intramural scientific programs of the Laboratory of Molecular Pharmacology and the Laboratory of Method Development.

Closed committee deliberations. The committee will discuss the intramural scientific program. This portion of the meeting will be closed to prevent disclosure of personal information concerning individuals associated with the research program, disclosure of which would constitute a clearly unwarranted invasion of personal privacy (5 U.S.C. 552b(c)(6)).

FDA regrets that it is publishing this notice in the Federal Register less than 15 days prior to the meeting of the Vaccines and Related Biological Products Advisory Committee because of time constraints due in part to the holiday.

Each public advisory committee meeting listed above may have as many as four separable portions: (1) An open public hearing, (2) an open committee discussion, (3) a closed presentation of data, and (4) a closed committee deliberation. Every advisory committee meeting shall have an open public hearing portion. Whether or not it also includes any of the other three portions will depend upon the specific meeting involved. The dates and times reserved for the separate portions of each committee meeting are listed above.

The open public hearing portion of each meeting shall be at least 1 hour long unless public participation does not last that long. It is emphasized, however, that the 1 hour time limit for an open public hearing represents a minimum rather than a maximum time for public participation, and an open public hearing may last for whatever longer period the committee chairperson determines will facilitate the committee's work.

Public hearings are subject to FDA's guideline (subpart C of 21 CFR part 10) concerning the policy and procedures for electronic media coverage of FDA's public administrative proceedings, including hearings before public advisory committees under 21 CFR part 14. Under 21 CFR 10.205, representatives of the electronic media may be permitted, subject to certain limitations, to videotape, film, or otherwise record FDA's public administrative proceedings, including presentations by participants.

Meetings of advisory committees shall be conducted, insofar as is practical, in accordance with the agenda published in this Federal Register notice. Changes in the agenda will be announced at the beginning of the open portion of a meeting.

Any interested person who wishes to be assured of the right to make an oral presentation at the open public hearing portion of a meeting shall inform the contact person listed above, either orally or in writing, prior to the meeting. Any person attending the hearing who does not in advance of the meeting request an opportunity to speak will be allowed to make an oral presentation at the hearing's conclusion, if time permits, at the chairperson's discretion.

The agenda, the questions to be addressed by the committee, and a current list of committee members will be available at the meeting location on the day of the meeting.

Transcripts of the open portion of the meeting may be requested in writing from the Freedom of Information Office (HFI-35), Food and Drug Administration, rm. 12A-16, 5600 Fishers Lane, Rockville, MD 20857, approximately 15 working days after the meeting, at a cost of 10 cents per page. The transcript may be viewed at the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857, approximately 15 working days after the meeting, between the hours of 9 a.m. and 4 p.m., Monday through Friday. Summary minutes of the open portion of the meeting may be requested in writing from the Freedom of Information Office (address above) beginning approximately 90 days after the meeting.

The Commissioner has determined for the reasons stated that those portions of the advisory committee meetings so

designated in this notice shall be closed. The Federal Advisory Committee Act (FACA) (5 U.S.C. app. 2, 10(d)), permits such closed advisory committee meetings in certain circumstances. Those portions of a meeting designated as closed, however, shall be closed for the shortest possible time, consistent with the intent of the cited statutes.

The FACA, as amended, provides that a portion of a meeting may be closed where the matter for discussion involves a trade secret; commercial or financial information that is privileged or confidential; information of a personal nature, disclosure of which would be a clearly unwarranted invasion of personal privacy; investigatory files compiled for law enforcement purposes; information the premature disclosure of which would be likely to significantly frustrate implementation of a proposed agency action; and information in certain other instances not generally relevant to FDA matters.

Examples of portions of FDA advisory committee meetings that ordinarily may be closed, where necessary and in accordance with FACA criteria, include the review, discussion, and evaluation of drafts of regulations or guidelines or similar preexisting internal agency documents, but only if their premature disclosure is likely to significantly frustrate implementation of proposed agency action; review of trade secrets and confidential commercial or financial information submitted to the agency; consideration of matters involving investigatory files compiled for law enforcement purposes; and review of matters, such as personnel records or individual patient records, where disclosure would constitute a clearly unwarranted invasion of personal privacy.

Examples of portions of FDA advisory committee meetings that ordinarily shall not be closed include the review, discussion, and evaluation of general preclinical and clinical test protocols and procedures for a class of drugs or devices; consideration of labeling requirements for a class of marketed drugs or devices; review of data and information on specific investigational or marketed drugs and devices that have previously been made public; presentation of any other data or information that is not exempt from public disclosure pursuant to the FACA, as amended; and, notably deliberative session to formulate advice and recommendations to the agency on matters that do not independently justify closing.

This notice is issued under section 10(a)(1) and (2) of the Federal Advisory Committee Act (5 U.S.C. app. 2), and FDA's regulations (21 CFR part 14) on advisory committees.

Dated: November 10, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–28209 Filed 11–12–93; 11:47 am]

BILLING CODE 4160–01–F

National Institutes of Health

Reestablishment

Pursuant to the Federal Advisory Committee Act of October 6, 1972 (Pub. L. 92–463, 86 Stat. 770–776) and section 402(b)(6), of the Public Health Service Act, as amended (42 U.S. Code 282(b)(6), the Acting Director, National Institutes of Health (NIH), announces the reestablishment of the Sickle Cell Disease Advisory Committee.

This Committee advises the Secretary; the Assistant Secretary for Health; the Director, NIH; the Director, National Heart, Lung, and Blood Institute (NHLBI); and the Director of the Division of Blood Diseases and Resources on the Sickle Cell Disease Program, NHLBI; recommends priorities within the program; identifies research opportunities and needs; and makes recommendations concerning the planning, execution and evaluation of the program.

Unless renewed by appropriate action prior to its expiration, the Committee will terminate two years from the date of establishment.

Dated: November 8, 1993.

Ruth L. Kirschstein,

Acting Director, National Institutes of Health.

[FR Doc. 93–28166 Filed 11–16–93; 8:45 am]

BILLING CODE 4140–01–M

National Institutes of Health (NIH)

National Heart, Lung, and Blood Institute; Meeting

Notice is hereby given of the meeting of the National Heart Attack Alert Program Coordinating Committee, sponsored by the National Heart, Lung, and Blood Institute (NHLBI) on Tuesday, December 14, 1993 from 8:30 am to 3:15 pm at the Bethesda Marriott Hotel, 5151 Pooks Hill Road, Bethesda, MD 20814, (301) 897–9400. The entire meeting is open to the public. The Coordinating Committee is meeting to discuss the progress of the National Heart Attack Alert Program with its participating organizations.

Attendance by the public will be limited to space available.

For detailed program information, agenda, list of participants, and meeting summary, contact Ms. Mary McDonald Hand, Coordinator of the National Heart Attack Alert Program, Health Education Branch, Office of Prevention, Education and Control, NHLBI, NIH, Bldg 31, room 4A18, Bethesda, MD 20892, (301) 496–1051.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. McDonald Hand, in advance of the meeting.

Dated: November 8, 1993.

Ruth L. Kirschstein,

Acting Director, NIH.

[FR Doc. 93–28167 Filed 11–16–93; 8:45 am]

BILLING CODE 4140–01–M

Prospective Grant of Exclusive License: Antigen-specific T-cell Death for the Treatment of Autoimmune Disorders and Graft Rejection

AGENCY: National Institutes of Health, Public Health Service, DHHS.

ACTION: Notice.

SUMMARY: This notice is in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of a limited field of use exclusive license in the United States to practice the invention embodied in U.S. Patent Application Numbers 07/751,090 entitled "Interleukin–2 stimulated T Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders, and Graft Rejection", and 07/926,290 entitled "Interleukin–4 Stimulated T Lymphocyte Cell Death for the Treatment of Autoimmune Diseases, Allergic Disorders and Graft Rejection" to Alexion Pharmaceuticals, Inc., having a place of business in New Haven, CT. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use would be limited to T-cell mediated human diseases applicable to autoimmune and graft rejection but specifically excluding allergenic disorders.

The present inventions relate to diseases mediated by T-lympocytes, including graft rejection, autoimmune disorders. The subject intellectual property makes claims for broad paradigms of therapeutic regimens. In principle, the paradigm, which consists of a process which induces antigen-specific lymphocyte death, should be applicable to the treatment of any disease in which activated lymphocytes contribute to the clinical condition. It has been shown that IL–2 and IL–4 can potentially predispose T lymphocytes of undergo antigen-specific death. This mechanism, termed propriocidal regulation, may govern the replicative potential of lymphocytes during normal immune responses.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. Daniel R. Passeri, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. Properly filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application of a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: November 4, 1993.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 93–28168 Filed 11–16–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

National Park Service

Final Environmental Impact Statement/ General Management Plan/ Development Concept Plan, Fort Laramie National Historic Site, WY

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement/ General Management Plan/Development Concept Plan for Fort Laramie National Historic Site.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement/ General Management Plan/Development Concept Plan (FEIS/GMP/DCP) for Fort Laramie National Historic Site, Wyoming.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP/DCP will be available for review at the following locations:

Office of the Superintendent, Fort Laramie National Historic Site, P.O. Box 86, Fort Laramie, WY 82212, Telephone: (307) 837–2221.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828.

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: In November 1992, the National Park Service released for a 60-day public review a Draft Environmental Impact Statement/General Management Plan/ Development Concept Plan (DEIS/GMP/ DCP) that evaluated three alternatives that provided for the preservation of historic resources while providing for visitor use. Under the no-action alternative, existing management activities would continue. Under alternative A, the minimum-action alternative, the existing level and degree of interpretive, administrative, resource management, and visitor services would be maintained; twentieth century intrusions on the historic site would be limited; exhibitry, circulation, visitor contact and maintenance operations would all be improved; and the interpretive theme would have the narrow focus of the role Fort Laramie National Historic Site played as a military fort, with only minor discussion and interpretation of other interpretive topics. The preferred alternative and proposed action would expand the interpretive theme to include the fort's complete and complex role over decades in American history.

The DEIS/GMP/DCP in particular evaluated the environmental consequences of the proposed action and the other alternatives on soils and vegetation associated with uncontrolled pedestrian trailing near visitor use areas, floodplains and wetlands, wildlife, threatened and endangered species, surrounding land uses, and socioeconomic resources. The environmental consequences of the proposed action and alternatives considered are fully disclosed in the FEIS/GMP/DCP. Also included are the results of the public involvement and consultation and coordination for this project.

FOR FURTHER INFORMATION CONTACT: Superintendent, Fort Laramie National Historic Site, at the above address and telephone number.

Dated: November 1, 1993.

Ronald E. Everhart,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93–28198 Filed 11–16–93; 8:45 am]

BILLING CODE 4310–70–P

National Park Service

Acadia National Park Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Public Law 92–463, 86 Stat. 770, 5 U.S.C. Ap. 1, sec. 10), that the Acadia National Park Advisory Commission will hold a meeting on Monday, December 6, 1993.

The Commission was established pursuant to Public Law 99–420, sec. 103. The purpose of the commission is to consult with the Secretary of the Interior, or his designee, on matters relating to the management and development of the park, including but not limited to the acquisition of lands and interests in lands (including conservation easements on islands) and termination of rights of use and occupancy.

The meeting will convene at Acadia National Park Headquarters, Bar Harbor, Maine, at 1 p.m. to consider the following agenda:

1. Review and approval of minutes from the meeting held August 30, 1993.
2. Report of the Conservation Easement Subcommittee.
3. Report of the Acquisition Subcommittee.
4. Superintendent's report.
5. Public comments.
6. Proposed agenda and date of next Commission meeting.

The meeting is open to the public. Interested persons may make oral/ written presentations to the Commission or file written statements. Such requests should be made to the Superintendent at least seven days prior to the meeting. Further information concerning this meeting may be obtained from the Superintendent, Acadia National Park, P.O. Box 177, Bar Harbor, Maine 04609, telephone: (207) 288–3338.

Dated: November 9, 1993.
John C. Reed,
Acting Regional Director.
[FR Doc. 93–28200 Filed 11–16–93; 8:45 am]
BILLING CODE 4310–70–P

Cape Cod National Seashore Advisory Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App 1, section 10), that a meeting of the Cape Cod National Seashore Advisory Commission will be held on Friday, December 3, 1993.

The Commission was reestablished pursuant to Public Law 99–349, Amendment 24. The purpose of the Commission is to consult with the Secretary of the Interior, or his designee, with respect to matters relating to the development of the Cape Cod National Seashore, and with respect to carrying out the provisions of sections 4 and 5 of the Act establishing the Seashore.

The commission members will then meet at 1 p.m. at Park Headquarters, Marconi Station for their regular business meeting which will be held for the following reasons:

1. Adoption of Agenda.
2. Approval of Minutes of Previous Meeting.
3. Reports of Officers.
4. Old Business:
5. Superintendent's Report.
6. GMP Subcommittee Report.
7. National Biological Survey.
8. Commercial Certificates.
9. Improved Properties.
10. New Business.
11. Agenda for next meeting.
12. Date for next meeting.
13. Communications/Public Comment.
14. Adjournment.

The business meeting is open to the public. It is expected that 15 persons will be able to attend the meeting in addition to the Commission members.

Interested persons may make oral/written presentations to the Commission during the business meeting or file written statements. Such requests should be made to the park superintendent at least seven days prior to the meeting. Further information concerning the meeting may be obtained from the Superintendent, Cape Cod National Seashore, So. Wellfleet, MA 02663.

Dated: November 9, 1993.
John C. Reed,
Acting Regional Director.
[FR Doc. 93–28201 Filed 11–16–93; 8:45 am]
BILLING CODE 4310–70–P

Denali National Park Subsistence Resource Commission; Meeting

AGENCY: National Park Service, Interior.
ACTION: Subsistence Resource Commission meeting.

SUMMARY: The Superintendent of Denali National Park and the Chairperson of the Subsistence Resource Commission for Denali National Park announce a forthcoming meeting of the Denali National Park Subsistence Resource Commission.

The following agenda items will be discussed:

1. Introduction of commission members and guests.
2. Superintendent's welcome.
3. Old business:
   a. Approval of summary of minutes.
   b. Review of SRC function and purpose.
   c. South Slope Denali Development Concept Plan.
4. Federal Subsistence Management Program update.
   a. Federal Subsistence Board.
   b. Federal Regional Advisory Councils.
   c. Denali Federal Registration Permit Hunts.
   d. Appeal of Hwy residents C&T, GMU–20C.
5. New business:
   a. Update of wildlife surveys and studies.
   b. Proposed DOT routes, Parks Hwy to McGrath.
   c. Hunting regulations review.
6. Hunting Plan recommendations work session.
7. Public and other agency comments.
8. Set time and place of next SRC meeting.
9. Adjournment.

DATES: The meeting will be held Tuesday, November 30, 1993. The meeting will begin at 10 a.m. and conclude around 5 p.m.

LOCATION: The meeting will be held at the Denali Park Headquarters, Recreation Hall, in Denali Park, Alaska.

FOR FURTHER INFORMATION CONTACT: Russ Berry, Superintendent, PO Box 9, Denali Park, Alaska 99755. Phone (907) 683–2294.

SUPPLEMENTARY INFORMATION: The Subsistence Resource Commissions are authorized under title VIII, section 808, of the Alaska National Interest Lands Conservation Act, Pub. L. 96–487, and operate in accordance with the provisions of the Federal Advisory Committees Act.

Judith C. Gottlieb,
Acting Regional Director.
[FR Doc. 93–28199 Filed 11–16–93; 8:45 am]
BILLING CODE 4310–70–M

Sudbury, Assabet and Concord Rivers Study Committee; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770, 5 U.S.C. App. 1 Section 10), that there will be a meeting of the Sudbury, Assabet and Concord Rivers Study Committee on Thursday, December 2, 1993.

The Committee was established pursuant to Public Law 101–628. The purpose of the Committee is to consult with the Secretary of the Interior and to advise the Secretary in conducting the study of the Sudbury, Assabet and Concord River segments specified in section 5 (a) (110) of the Wild and Scenic Rivers Act. The Committee shall also advise the Secretary concerning management alternatives, should some or all of the river segments studied be found eligible for inclusion in the National Wild and Scenic Rivers System.

The meeting will be held at 7:30 p.m. at the Wayland Town Offices, 41 Cochituate Road, Wayland, Massachusetts. Driving Directions: Wayland Town Hall is located on the west side of Rte. 27, just south of the intersection of Rtes. 20 and 27 in Wayland center. From the north, take Rte. 27 south and turn right at first driveway after crossing Rte. 27. From the west, take Rte. 20 east, turn left on Rte. 27 south and take immediate right into driveway. Parking lot is behind building.

The agenda is as follows:

I. Welcome and introductions, approval of minutes from 9/23/93 and 10/28/93 meetings.
II. Brief questions and comments from public.
III. Subcommittee Reports—Subcommittee Chairs.
   A. River Conservation Planning Subcommittee.
   B. Water Resources Subcommittee: Water Resources Study.
   C. Public Participation Subcommittee.
V. Issues of Local Concern.
VI. Opportunity for public questions and comments.
VII. Other Business.
   A. Next meeting dates and locations.

Dated: November 9, 1993.
John C. Reed,
Acting Regional Director.
[FR Doc. 93–28202 Filed 11–16–93; 8:45 am]
BILLING CODE 4310–70–P

New Bedford, MA, Special Resource Study; Public Review and Comment

In accordance with Public Law 101–512, the National Park Service announces that the Draft New Bedford (Massachusetts) Special Resource Study is available for public review and comment.

A special resource study is used by the National Park Service to evaluate a resource for national significance and to assess its suitability and feasibility for inclusion in the National Park system. Based on the results of this assessment, the study presents a range of possible management alternatives. In order for an area to become a National Park unit, it must meet all three criteria identified in the NPS "Criteria for Parklands."

National Significance: A proposed unit will be considered nationally significant if it meets all four of the following standards:

—It is an outstanding example of a particular type of resource.
—It possesses exceptional value or quality in illustrating or interpreting the natural or cultural themes of our Nation's heritage.
—It offers superlative opportunities for recreation, for public use and enjoyment, or for scientific study.
—It retains a high degree of integrity as a true, accurate, and relatively unspoiled example of the resource.

Suitability: To be suitable for inclusion in the System an area must represent a natural or cultural theme or type of recreational resource that is not already adequately represented in the National Park System or is not comparably represented and protected for public enjoyment by another land managing entity.

Feasibility: To be feasible as a new unit of the National Park System an area's natural systems and/or historic settings must be of sufficient size and appropriate configuration to ensure long-term protection of the resources and to accommodate public use. It must have potential for efficient administration at a reasonable cost.

The draft "New Bedford (Massachusetts) Special Resource Study is available for review at the Waterfront Historic Area League (WHALE) offices at 13 Centre Street, New Bedford, MA, 02740 from November 18, 1993, through December 20, 1993. Copies are also available at the North Atlantic Regional Office of the National Park Service, 15 State Street, Attn: Ellen Levin, Boston, MA, 02109. Call 617–223–5048 for further information. Written comments will be accepted through December 24, 1993 at North Atlantic Regional Office, National Park Service, 15 State Street, Boston, MA 02109; Attn: Ellen Levin.

Dated: November 9, 1993.

John C. Reed,

Acting Regional Director.

[FR Doc. 93–28203 Filed 11–16–93; 8:45 am]

BILLING CODE 4310–70–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–669–670 (Preliminary)]

Certain Cased Pencils From the People's Republic of China and Thailand

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–669–670 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from the People's Republic of China and Thailand of certain pencils with leads encased in a rigid sheath, provided for in subheading 9609.10.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 27, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Valerie Newkirk (202–205–3190), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 10, 1993, by the Pencil Makers Association, Inc., Marlton, NJ.

Limited disclosure of business proprietary information (BPI) under an administrative protective order (APO) and BPI service list.—Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 1, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Valerie Newkirk (202–205–3190) not later than November 23, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 6, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either

the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

By order of the Commission.

Issued: November 12, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-28352 Filed 11-16-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-360]

Certain Devices for Connecting Computers via Telephone Lines; Notice of Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 12, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Farallon Computing, Inc., 2470 Mariner Square Loop, Alameda, California 94501. An amendment to the complaint was filed on November 1, 1993, and a supplement to the complaint was filed on November 2, 1993. The complaint, as amended and supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain devices for connecting computers via telephone lines by reason of alleged direct or induced infringement of claim 10, 18, and 20 of U.S. Letters Patent 5,003,579, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and issue a permanent exclusion order and a permanent cease and desist order.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202-205-1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

FOR FURTHER INFORMATION CONTACT: Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202-205-2577.

Authority: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in section 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

Scope of Investigation

Having considered the complaint, the U.S. International Trade Commission, on November 10, 1993, *Ordered That*—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection 337(a)(1)(B) in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain devices for connecting computers via telephone lines by reason of alleged infringement of claim 10, 18, or 20 of U.S. Letters Patent 5,003,579, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Farallon Computing, Inc., 2470 Mariner Square Loop, Alameda, California 94501.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

ABL Electronics Corp., 2155 Greenspring Drive, Timonium, Maryland 21093

Caltechnology International Ltd., 17th Floor, 167 Hsin Hai Road, Section 2, Taipei City, Taiwan

CPU Products, 144 North Water, Derby, Kansas 67037

Enhance Cable Technology, 730 North Ninth Street, Suite Q, San Jose, California 95112

Focus Enhancements, Inc., 800 West Cummings Park, Suite 4500, Woburn, Massachusetts 01801

Full Enterprises Corp., 24 Alley 23 Lane 482, Chung Shan Road, Section 2, Chung Ho City, Taipei County, Taiwan

Good Way Industrial Co. Ltd., Room 502, 159 Keelung Road, Section 1, Taipei City, Taiwan

MACProducts USA, 608 West 22nd Street, Austin, Texas 78705

MicroComputer Cable Co., Inc., 12200 Delta Drive, Taylor, Michigan 48180

Ming Technology Corporation, 52 Alley 1 Lane 131, 7th Floor, Yen Chi Street, Taipei City, Taiwan

Pan International (USA), 9477 Archibald Avenue, Rancho Cucamonga, California 91730

Shiunn Yang Enterprises Co. Ltd., 1st Floor, 11 Huai Jen Street, Pan Chiao City, Taipei County, Taiwan

Taiwan Techtron Corporation, 5th Floor-1, 115 Pa Teh Road, Section 4, Taipei City, Taiwan

Technology Works, Inc., 4030 Braker Lane West, Suite 350, Austin, Texas 78759

Total Technologies, Ltd., 2110 South Anne Street, Sante Ana, California 92704

Tremon Enterprises Co. Ltd., 14th Floor-2, 420 Fu Hsing North Road, Taipei City, Taiwan

(c) Steven A. Glazer, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401-K, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with section 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to sections 201.16(d) and 210.21(a) of the Commission's Rules, 19 C.F.R. §§ 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

By order of the Commission.

Issued: November 12, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-28292 Filed 11-16-93; 8:45 am]

BILLING CODE 7020-02-P

[Investigation No. 337-TA-358]

Commission Determination Not to Review an Initial Determination Terminating the Temporary Relief Phase of the Investigation as to Three Respondents on the Basis of a Consent Order; Issuance of Consent Order; Denial of Motion To Shorten Public Comment Period and the Period for Commission Consideration of Initial Determination

In the matter of certain recombinantly produced human growth hormone.

AGENCY: International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a joint motion to terminate the temporary relief phase of the investigation as to three respondents on the basis of a consent order. The Commission has also determined to deny movants' motion to shorten the public comment period and the period for Commission consideration of the ID.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202-205-3104.

SUPPLEMENTARY INFORMATION: On October 14, 1993, complainant Genentech Inc., ("Genentech") and respondents Novo-Nordisk A/S; Novo-Nordisk of North America, Novo-Nordisk Pharmaceuticals, Inc.; and ZymoGenetics, Inc. (collectively, "the Novo respondents") moved jointly pursuant to interim rule 210.51 to terminate the investigation as to the Novo respondents on the basis of a proposed consent order and consent order agreement. The Commission investigative attorney filed a response in support of the joint motion. On October 19, 1993, the presiding ALJ issued an ID (Order No. 22) granting the motion. No petitions for review or agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, D.C. 20436, telephone 202-205-2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202-205-1810.

By order of the Commission.

Issued: November 10, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-28291 Filed 11-16-93; 8:45 am]

BILLING CODE 7020-02-P

INTERSTATE COMMERCE COMMISSION

[Docket Nos. AB-369 (Sub-No. 2X) and AB-55 (Sub-No. 457X)]

Buffalo & Pittsburgh Railroad, Inc.—Discontinuance and Abandonment Exemption—Between DC Tower and Homer City, in Jefferson and Indiana Counties, PA, Between Ridge Branch Junction and Clarksburg, in Indiana County, PA and Between Lucerne Junction and Lucerne Mines, in Indiana County, PA and CSX Transportation, Inc.—Discontinuance of Service Exemption—in Jefferson and Indiana Counties, PA

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 10903 and 10904: (1) Buffalo & Pittsburgh Railroad, Inc.'s (B&P) discontinuance of operations over 58.58 miles of track, in Jefferson and Indiana Counties, PA; (2) B&P's abandonment of 1.86 miles of track, in Indiana County, PA; and (3) CSX Transportation, Inc.'s (CSXT) discontinuance of service over 58.58 miles of track, in Jefferson and Indiana Counties, PA. The exemptions will be subject to standard labor protective conditions.

DATES: The exemption is effective on December 17, 1993. Petitions to stay must be filed by December 2, 1993. Petitions to reopen must be filed by December 13, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-369 (Sub-No. 2X) or Docket No. AB-55 (Sub-No. 457X) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; (2) B&P's representative, Charles D. Cramton, Esq., Harter, Secrest & Emery, 700 Midtown Tower, Rochester, New York 14604; and (3) CSXT's representative, Charles M. Rosenberger, Esq., CSX Transportation, Inc., Law Department, 500 Water Street, Jacksonville, Florida 32202.

FOR FURTHER INFORMATION CONTACT: Deputy Director Richard Felder (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC. 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5271.]

Decided: November 2, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28205 Filed 11-16-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Antitrust Division

U.S. v. Primestar Partners, L.P. et al.; Public Comments and Response on Proposed Final Judgment

Pursuant to the Antitrust Procedures and Penalties Act, 15 U.S.C. § 16(b)-(h), the United States publishes below the comments received on the proposed Final Judgment in *United States* versus *Primestar Partners, L.P.; ATC Satellite, Inc.; Comcast Corporation; Comcast DBS, Inc.; Continental Cablevision, Inc.; Continental Satellite Company, Inc.; Cox Enterprises, Inc.; Cox Satellite, Inc.; GE American Communications, Inc.; GE Americom Services, Inc.; Newhouse Broadcasting Corporation; New Vision Satellite; Tele-Communications, Inc.; TCI K-1, Inc.; Time Warner Inc.; United Artists K-1 Investments, Inc.; Viacom Inc.; Viacom K-Band, Inc.; and Warner Cable SSD, Inc.*, Civil Action No. 93-CIV-3913, United States District Court for the Southern District of New York, together with the response of the United States to the comments.

Copies of the response and the public comments are available on request for inspection and copying in room 3233 of the Antitrust Division, U.S. Department of Justice, Tenth Street and Pennsylvania Avenue, NW., Washington, DC 20530, and for inspection at the Office of the Clerk of the United States District Court for the Southern District of New York, United

States Courthouse, Foley Square, New York, New York 10007.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

Response to Public Comments

Pursuant to section 2(b) of the Antitrust Procedures and Penalties Act (15 U.S.C. 16(b)–(h)) ("APPA"), the United States of America hereby files its Response to Public Comments.

I

Introduction

The United States has carefully reviewed the comments submitted on the proposed Final Judgment and remains convinced that entry of the Final Judgment is in the public interest.

II

Background

This action was commenced on June 9, 1993, when the United States filed a complaint alleging that the defendants have engaged in a continuing agreement, combination and conspiracy in restraint of competition in the provision of multichannel subscription television service, in violation of Section 1 of the Sherman Act, 15 U.S.C. 1. On the same date, the United States submitted a proposed Final Judgment and a Stipulation between the United States and the defendants pursuant to which the United States and the defendants consented to entry of the proposed Final Judgment. The Stipulation provides that the proposed Final Judgment may be entered by the Court after completion of the procedures required by the APPA.

III

Compliance With the APPA

Upon publication of this Response in the Federal Register, the procedures required by the APPA prior to entry of the proposed Final Judgment were completed, and the Court is free to enter the proposed Final Judgment.

IV

Response to Public Comments

The Department has received comments relating to the proposed Final Judgment from the following commenters or groups of commenters:

—Joint Comments filed by Ameritech Corporation, Bell Atlantic Corporation, BellSouth Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, US West, Inc., GTE Service Corporation, and the United States Telephone Association (hereinafter "Telcos");

—comments filed by the Wireless Cable Association International, Inc. (hereinafter "WCAI");

—joint comments filed by DirecTv, Inc., the National Rural Telecommunications Cooperative, Consumer Federation of America, and Television Viewers of America, Inc. (hereinafter "DirecTv Comments");

—comments filed by Continental Satellite Corporation (hereinafter "Continental");

—Advanced Communications Corporation (hereinafter "Advanced"); and

—the Attorney General of the State of Arkansas.

Issues raised by commenters relating to the standard of judicial review will be discussed below in Section IV(E).

A. Telco Comments

The Telcos comprise the eight largest local telephone companies in the country and their industry association. In 1992, the Telcos received authorization from the FCC to provide "video dialtone" services, in which the telephone companies provide the wires through which other parties can provide programming to customers, along with certain enhanced services. Several of the Telcos are beginning to introduce such services on a small scale. The Telcos believe that they are potentially effective competitors to cable systems, particularly if the current legal prohibition against their direct provision of programming to subscribers is removed.[1]

As providers of multichannel subscription television, the Telcos would fall within the protections of the program access provisions of Sections IV(A), IV(B), IV(C)(1), and IV(C)(2) of the proposed Final Judgment. They complain, however, that Section IV(C)(3)(a), which prevents the MSO defendants from entering into or renewing programming supply agreements that contain provisions that preclude specified types of providers of multichannel subscription television from gaining access to the programming services listed in Exhibit A of the proposed order, does not extend to them or their future video dialtone customer/programmers,[2] and that such exclusion places them at a competitive disadvantage in access to critical programming and is thus anticompetitive. The Telcos further argue that the proposed Final Judgment is insufficient as an antitrust remedy in that it is not broad enough to protect all competitors, is inconsistent with the government's purposes in filing the suit, and is contrary to the purposes of the Cable Television Consumer Protection and Competition Act of 1992, ("1992 Cable Act").[3]

The Telco Comments acknowledge that "the specific instances on which the complaint focused concerned the efforts of cable providers to thwart emerging competition from direct broadcast satellite (DBS) providers * * *" Telco Comments at 11, n. 12. The Telcos contend that the Complaint's prayer for relief and Competitive Impact Statement disclose an intent to prevent cable operators from denying program access to any potential competitors and that the exclusion was possibly inadvertent. Telco Comments at 11, 15. This is incorrect.

Notwithstanding the fact that DBS is but one of many types of multichannel subscription television service, the government's complaint was based upon the defendants' agreement and joint conduct in establishing the Primestar DBS joint venture to thwart competition from DBS entrants by delaying and raising barriers to entry into DBS, restraining the availability of programming to other DBS entrants or potential entrants, and facilitating a coordinated retaliatory response by the MSO defendants to DBS entry. Complaint, Para. 48. The government's investigation and complaint involves anticompetitive conduct with the effect of delaying, if not pre-empting, cable-competitive entry into DBS by imposition of unreasonable restraints on the availability of programming to DBS entrants. Complaint, Paras. 49–52. The investigation conducted by the government, and the complaint filed, did not address all competition to cable, nor did it have anything to do with entry by telephone companies into multichannel subscription television. In fact, at the time of the formation of the Preimestar venture and the investigation, the telephone companies did not have video dialtone authority and were not generally considered to be imminent entrants into multichannel subscription television. The investigation did not reveal any record

[1] In *C&P Telephone Company of Virginia* v. *United States*, No. 92–1751–A (E.D. Va., decided August 24, 1993), the district court held unconstitutional the provision of the 1992 Cable Act that bars local telephone companies from providing video programming directly to subscribers within its service area. The court's order applies only to Bell Atlantic.

[2] Section IV(C)(3)(c) expressly provides that the term "cable operator" does not include common carriers, such as the Telcos.

[3] Pub. L. No. 102–385, 106 Stat. 1460 (October 5, 1992), *codified at* 47 U.S.C. 521.

of denial of programming to telephone companies.[4]

The Telcos confuse the issue of whether the proposed Final Judgment is in the public interest with whether it gives them all they might wish for themselves. The government negotiated a consent judgment with the defendants that provided a complete remedy to the violation alleged, as well as additional relief relating to other types of multichannel subscription television not subject of the investigation and complaint, for which there seemed justification based on a history of difficulty in obtaining programming access. The additional relief includes the telephone companies in most cases. That the government did not obtain an even broader judgment covering conduct not alleged as a violation is not a grounds for rejecting the settlement under the public interest standard.[5]

The Telcos' contention that the proposed Final Judgment is contrary to the "policy judgment of Congress and the FCC that common carriers and their video dialtone customer/programmers should be included in whatever program access requirements are developed" is also incorrect and irrelevant. First, and most importantly, the proposed Final Judgment does not, nor could it, conflict with any portion of the Act or FCC regulations. Second, the proposed judgment simply prohibits many exclusive contracts; it does not expressly authorize others. Exclusive contracts are not automatically illegal under the antitrust laws. To the extent, however, that the 1992 Cable Act or FCC regulations thereunder prohibit such contracts, this proposed Final Judgment will not immunize them.[6]

It is also important to note that not only does the proposed Final Judgment not interfere with any rights of the Telcos under the 1992 Cable Act or FCC regulations, it also does not terminate any rights of the Telcos to bring their own suit under the Sherman Act if victimized by any violation of the antitrust laws.

B. WCAI Comments

The WCAI, a trade association for the wireless cable industry, believes that wireless cable (or Multichannel Multipoint Distribution Service ("MMDS") in the proposed Final Judgment), given recent technological and regulatory developments, also will provide meaningful competition to cable systems. The WCAI argues that Section IV(C)(3)(a) of the proposed Final Judgment does not fully resolve its members' problems caused by the MSO defendants in gaining access to programming.[7] This provision would prohibit the MSO defendants from entering into or renewing programming contracts that contain exclusivity provisions vis-a-vis DBS providers, MMDS providers, and others, that would prevent access by WCAI members. This provision would go farther for DBS providers, to enjoin enforcement of existing contracts that prevent access to programming, but would not go so far as to enjoin enforcement of existing agreements that prevent access by MMDS providers. Thus, while WCAI members gain some benefits in terms of programming access under this provision, they do not receive as much benefit as do DBS providers.

The response to this comment is similar to that made above with respect to the Telcos. The investigation conducted by the Department and the violation and effects alleged in the complaint relate to the Primestar venture and programming access by DBS providers, not the programming access problems of MMDS or other potential competitors to cable. Aware of a past history of complaints by MMDS providers relating to denials of access to programming that have nothing at all to do with the Primestar venture, the government also negotiated additional provisions that protect future competition by assuring that MMDS providers will not be unreasonably denied access to programming in the future. Absent a conclusion that existing programming contracts were illegal or closely related to the violation alleged in the complaint, enjoining the enforcement of existing exclusive contracts in all respects was not required for effective relief of the government's complaint. Finally, the rights of members of the WCAI to bring their own antitrust suit, or seek additional legislative protection, are in no way impaired by entry of the proposed Final Judgment.

C. DirecTv Comments

DirecTv, which is entering the DBS business,[8] believes that Section IV(D) is anticompetitive in that it undermines the 1992 Cable Act and permits the MSO defendants to continue their anticompetitive conduct with regard to DBS, and is concerned about the possibility of its persuasive or precedential effects on proceedings in other forums. Section IV(D) provides that Primestar may not license, and no defendant may license to Primestar, any exclusive rights to the programming specified in Exhibit A of the proposed Final Judgment, except that if a competing DBS venture obtains any exclusive programming, Primestar may upon notice to the Department obtain a "reasonably comparable amount of programming of a reasonably comparable type and quality on a reasonably comparable exclusive basis". This provision was included in the proposed Final Judgment to insure that Primestar's ability to compete with other DBS services was not inadvertently impaired by the programming access provisions of the proposed Final Judgment.

DirecTv argues that allowing any DBS firm to have exclusive access to some programming would harm consumers, since consumers wanting the full panoply of services would have to subscribe to both USSB and DirecTv. In particular, DirecTv claims that another DBS competitor, United States Satellite Broadcasting Company, Inc. (USSB), may be able to obtain some important programming on a basis that excludes DirecTv. DirecTv argues that this undermines and may violate the 1992 Cable Act and the implementing FCC regulations.

Contrary to DirecTv's arguments, Section IV(D) is consistent with the procompetitive purposes of the proposed Final Judgment by prohibiting *Primestar*, the defendants' DBS joint venture, from obtaining programming specified in Exhibit A of the proposed Final Judgment on an exclusive basis, except to respond in a reasonably comparable way to such action by a DBS

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[4] On the other hand, other multichannel competitors, including SMATV and MMDS, did have a history of being denied access to programming. These firms are covered by Section III(C)(3)(a) of the proposed Final Judgment.

[5] It is axiomatic that in a settlement, one often gets less than all that one might want or get at trial, or there would be no settlement. *E.g., United States v. Armour & Co.*, 402 U.S. 673, 682 (1971).

[6] The 1992 Cable Act generally prohibits "unfair methods of competition * * * the purpose or effect of which is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming * * * to consumers." 47 U.S.C. 548(b). Assuming that the Telcos are covered by the Act, it cannot be assumed that any denial of programming access to the Telcos is a violation, and it is left to the FCC to determine whether any particular access denial would be an unfair method of competition.

[7] The WCAI also argues that neither the 1992 Cable Act nor the order in *State of New York, et. al. versus Primestar Partners, L.P., et. al.*, 93 Civ. 3868 (JES) fully addresses its members' problems in gaining programming access.

[8] DirecTv is joined in its comments by the National Rural Telecommunications Cooperative ("NRTC"), which is also entering the DBS business, and two consumer organizations, Consumer Federation of America ("CFA") and Television Viewers of America ("TVA"). CFA and TVA obviously do not have the same commercial interests as DirecTv and NRTC, but our response to their comments does not depend on those commercial interests.

competitor. Section IV(D) does not create or ratify any exclusive arrangements between a programmer and a DBS provider otherwise prohibited by law. The provision allowing Primestar to obtain exclusive rights only to match its DBS competitors is intended to assure both that Primestar cannot block programming access to other DBS competitors and that it may offer competitive programming to compete against other DBS providers. The goal of free competition is not served by disadvantaging Primestar against other DBS competitors.

The proposed Final Judgment does not undermine the 1992 Cable Act. That statute prohibits exclusive arrangements between programming vendors and cable operators, but does not expressly prohibit such arrangements between programming vendors and a noncable firm such as USSB. The Department has no occasion on which to comment on whether such an arrangement violates the 1992 Cable Act's prohibition against unfair methods of competition in Section 19(b), or constitutes non-price discrimination in violation of Section 19(c)(2)(B). In any event, the proposed Final Judgment prohibits the defendants from granting programming to Primestar to the exclusion of all DBS competitors, and further prohibiting exclusive contracts as between DirecTv and USSB or any other DBS competitor is not necessary for the proposed Final Judgment to be in the public interest in light of the antitrust violation charged.[9]

The critical point with respect to DirecTv's 1992 Cable Act arguments is that the proposed Final Judgment in no way interferes with DirecTv's right to pursue claims of unfair competition or discrimination in the event that its feared scenario materializes. Indeed, DirecTv is in the process of arguing such claims before the FCC (DirecTv Comments at 18). DirecTv is concerned that entry of the proposed Final Judgment will have a persuasive or precedental effect on the forums considering programming access issues, and that the proposed Final Judgment will be construed to mean that a particular DBS industry structure or programming access principle has been ratified by the Department. DirecTv seeks a statement from the Department that the proposed judgment does not reflect its views on programming access obligations under any other legal authority.

The proposed Final Judgment is a negotiated settlement of a civil antitrust case that was brought to end specified collusive activities of the defendants. It is not a statement of interpretation of the 1992 Cable Act and does not reflect the views of the Department as to the interpretation of FCC rules or their application.

D. Other Comments

Continental and Advanced are DBS licensees with pending applications before the FCC seeking authority to launch high-power DBS satellites. Continental's comments relating specifically to the proposed Final Judgment urge that in addition to the proposed Final Judgment, the Court should prohibit the defendants from acquiring an ownership interest in any high-power satellite permittee until the last of the original nine DBS permittees has been in service for 8 years or the year 2010, whichever is sooner. Continental does not urge the Court to enjoin defendant TCI, through its permittee subsidiary Tempo Satellite Corporation, from fulfilling its license and entering DBS, although it would not oppose such action. Advanced also objects to aspects of the proposed Final Judgment, along with the states' judgment, because it believes that the federal and state settlements could have anticompetitive effects on the market for high-power DBS services, and because entry of the proposed judgments could undermine implementation of the 1992 Cable Act.

The Department does not agree with Continental that cable companies must be enjoined from entry into high-power DBS. While enjoining collusive conduct to deter entry into DBS promotes competition in multichannel subscription television, a flat ban that prevented cable operators from expanding into new technologies for delivering video services to consumers is unwarranted and may slow the development of DBS by depriving it of well-situated potential entrants. It is unnecessary to forego any potential benefits of cable entry into DBS in order to protect other DBS entrants from unlawful and anticompetitive conduct.

The bulk of Continental's comments relate to allegations of unlawful conduct by persons not party to this lawsuit directed at defrauding or depriving Continental of its DBS license, and request that the Department expand its investigation to include these allegations. These allegations have nothing to do with the government's complaint and proposed settlement relating to Primestar.[10]

E. Standard of Judicial Review

The standard of review is set forth in section 2(e) of the APPA,[11] which provides that "the court shall determine that entry of such judgment is in the public interest" and provides that in making such determination, the court may consider the competitive impact of the judgment and its impact on the public generally and individuals alleging injury from the violations charged. 15 U.S.C. 16(e). In addition to this statutory guidance as to the meaning of the "public interest," this term takes its meaning from the statute underlying the complaint—the Sherman Act—which has as its basis the protection of competition. See, e.g., *United States* versus *American Cyanamid Co.*, 719 F.2d 558, 565 (2d Cir. 1983), *cert. denied*, 104 S.Ct. 1596 (1984); *United States* versus *Loew's Inc.*, 783 F. Supp. 211, 213 (S.D.N.Y. 1992); *United States* versus *Columbia Artists Management, Inc.*, 662 F. Supp. 865, 869 (S.D.N.Y. 1987).

Application of this standard starts with the principle that in enforcing the antitrust laws, the Department represents the public interest in competition. See, e.g., *United States* versus *Bechtel Corp.*, 648 F.2d 660, 666 (9th Cir.), *cert. denied*, 454 U.S. 1083 (1981); *United States* versus *Associated Milk Producers, Inc.*, 534 F.2d 113, 116–17 (8th Cir.), *cert. denied*, 429 U.S. 940 (1976). It is part of the Department's responsibilities in representing the public interest to determine whether continued prosecution or one of a range of settlement options will best serve the public interest in competition. See, e.g., *Bechtel*, 648 F.2d at 665–66; *United States* versus *Gillette Co.*, 406 F. Supp. 713 (D. Mass. 1975).

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[9] The effects of DirecTv's proposal on competition among DBS providers is not entirely clear. DirecTv will ultimately be in a position to sell approximately 150 channels of programming, as opposed to approximately 30 for USSB. If DirecTv were able to offer all of the attractive programming that was available to USSB, competition between DirecTv and USSB might be impaired. DirecTv appears to understand the need for differentiated programming between itself and USSB as it has, the Department understands, obtained certain exclusive programming rights vis-a-vis USSB.

[10] Similarly, the comments of Advanced and the Attorney General of Arkansas raise no specific objections to entry of the proposed Final Judgment.

[11] "Before entering any consent judgment proposed by the United States under this section, the court shall determine that the entry of such judgment is in the public interest. For the purpose of such determination, the court may consider

(1) The competitive impact of such judgment, including termination of alleged violations, provisions for enforcement and modification, duration or relief sought, anticipated effects of alternative remedies actually considered, and any other considerations bearing upon the adequacy of such judgment;

(2) The impact of entry of such judgment upon the public generally and individuals alleging specific injury from the violations set forth in the complaint including consideration of the public benefit, if any, to be derived from a determination of the issues at trial." 15 U.S.C. 16(e).

The courts have recognized that the Department has broad discretion in controlling the government's antitrust litigation. See, e.g., *Loew's*, 783 F. Supp. at 214; *Sam Fox Publishing Co.* versus *United States*, 366 U.S. 683, 689 (1961). The judicial role in determining under these circumstances whether a proposed Final Judgment is in the public interest is critical but limited. One frequently-cited description of this role, recently cited by Judge Conner in *Loew's* is as follows:

> Absent a showing of corrupt failure of the government to discharge its duty, the Court, in making its public interest finding, should * * * carefully consider the explanations of the government * * * and its responses to comments in order to determine whether those explanations are reasonable under the circumstances
>
> * * * * * *
>
> The Court may not substitute its opinion or views concerning the prosecution of alleged violations of the antitrust laws or the determination of appropriate injunctive relief for the settlement of such cases absent proof of an abuse of discretion.

783 F. Supp. at 214 (quoting *United States* versus *Mid-America Dairymen, Inc.*, 1977–1 Trade Cas. ¶61,508 at 71,980, 1977 WL 4352 (W.D. Mo. 1977). The court is not required to find that the proposed Final Judgment is one that will best serve the public; its role "is one of insuring that the government has not breached its duty to the public in consenting to the decree," and to confirm whether the proposed settlement is "within the reaches of the public interest." *Bechtel*, 648 F.2d at 666 (quoting *Gillett*, 406 F. Supp. at 716).

Clearly, there has been no showing that the proposed settlement constitutes an abuse of the Department's discretion. Put simply, entry of the proposed Final Judgment enhances competition in a number of ways. Section IV (A) enjoins enforcement of provisions of the Primestar agreement that restrain access to programming by multichannel subscription television competitors. Section IV (B) enjoins collusive retaliation, actual or threatened, by the defendant cable companies with the purpose of deterring persons from providing programming or investing in such competitors. Section IV (C)(1) enjoins each programming service controlled by one or more MSO defendants from entering into any agreement with any other programming service that might restrict the availability of programming to competitors of the MSO defendants. Section IV (C)(2) enjoins agreements between cable systems controlled by the MSO defendants that would restrict the availability of programming to competitors of the MSO defendants. Section IV (C)(3) enjoins cable systems controlled by the MSO defendants from entering into or from renewing any agreements with any of the specified programming services that would limit the ability of such programming service to deal with any provider of the most significant existing types of multichannel subscription television services (direct-to-home satellite, MMDS, SMATV, and cable), as well as the DBS providers that were the focus of the government's complaint. Moreover, each MSO defendant is enjoined from enforcing any existing contract that would limit the rights of a programming service to deal with any DBS provider.

It cannot be denied that the effect of these provisions is to make it easier for DBS providers to enter the market, and thereby enhance competition in multichannel subscription television. This was the Department's objective in filing the complaint. In addition, the government was able to secure relief that would also remove some of the existing impediments faced by other types of providers of multichannel subscription television, albeit to a somewhat more limited extent than was provided to DBS providers which were the subject of the government's case. Nonetheless, the proposed Final Judgment clearly removes restrictions on competition that were imposed by the defendants, and will thus further the public interest.

Dated: November 2, 1993.

Respectfully submitted,

N. Scott Sacks,

Attorney, United States Department of Justice, Antitrust Division, 555 Fourth Street, NW., room 8104, Washington DC 20001, (202) 514–5815.

August 23, 1993

Richard L. Rosen,

Chief, Communications and Finance Section, United States Department of Justice, Antitrust Division, 555 Fourth Street NW., Room 8104, Washington, DC 20001

Re: *United States of America* v. *Primestar Partners, L.P., et al.*

Dear Mr. Rosen: I am writing on behalf of the Wireless Cable Association International, Inc. ("WCA") and pursuant to Section 2(d) of the Antitrust Procedures and Penalties Act ("APPA")[1] to express WCA's serious reservations regarding the proposed Final Judgment submitted for entry in the above-referenced civil antitrust proceeding. Simply stated, the proposed decree fails to fully remedy the anticompetitive consequences caused by the formation of Primestar Partners, L.P. and its predecessors, while at the same time it unreasonably discriminates against wireless cable system operators in favor of competitors that employ Direct Broadcast Satellite ("DBS") technology.

WCA is the principal trade association of the wireless cable industry. A wireless cable system, which is referred to as "Multichannel Multipoint Distribution Service" or "MMDS" in the proposed Final Judgment, the Complaint, and the Competitive Impact Statement ("CIS"), utilizes frequencies licensed by the Federal Communications Commission ("FCC") in the 2 GHz band to transmit traditional cable television programming services (such as Home Box Office, ESPN and C-SPAN) to small antennas located on subscribers' rooftops as far as 40–50 miles away from the transmitters.

At the outset, WCA suspects that the Department's failure to adequately protect wireless cable system operators in crafting the Final Judgment may stem from a misconception of the ability of wireless cable technology to provide a meaningful competitive alternative to cable. In the CIS, the Department states that wireless cable suffers "technological limitations, including line-of-sight requirements, that limit its availability and attractiveness as an alternative to cable television service for most current or potential cable subscribers."[2] That simply is not correct; wireless cable technology has been proven superior to that employed by cable. While it is true that transmissions at 2 GHz require a direct "line-of-sight" between the transmission antenna and the reception antenna (*i.e.* the signal cannot pass through buildings or terrain), the FCC has recently authorized wireless cable operators to employ low power signal repeaters to serve areas that are otherwise shadowed by buildings or terrain.[3] With the introduction of signal repeaters, technological criticism of wireless cable is moot.

Indeed, wireless cable has proven itself to be an extremely effective distribution medium for video programming, particularly in countries where programming has been readily available on equitable terms.[4] Congress and the FCC have frequently acknowledged that wireless cable is today "one of the most promising sources of multichannel competition in the local market."[5] The capital markets agree—today's

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[1] 15 U.S.C. 16(d).

[2] CIS, at 4.

[3] *Amendment of parts 21, 43, 74,78, and 94 of the Commission's Rules Governing use of the Frequencies in the 2.1 and 2.5 GHz Bands Affecting: Private Operational-Fixed Service, Multipoint Distribution Service, Multichannel Multipoint Distribution Service, Instructional Television Fixed Service, and Cable television Relay Service*, 5 FCC Rcd 6410, 6422–23 (1990), *on recon.* 6 FCC Rcd 6784 (1991); *Amendment of parts 1, 2 and 21of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 8 FCC Rcd 1444, 1448 (1993).

[4] *See, e.g.* "WCAI points to wireless success in overseas market," *Private Cable Plus Wireless Cable*, at 8 (July 1993); "Wireless World View," *Wireless Investor*, at 3 (May 13, 1990). The largest wireless cable system in operation currently has approximately 100,000 subscribers in the Mexico City area. *See* "Young wireless operation rates among largest in the country," *Private Cable Plus Wireless Cable*, at 6 (Oct. 1992)

[5] *Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of*

Wall Street Journal reports that "on Wall Street 'wireless' is synonymous with skyrocketing stock prices."[6]

That is not to say, however, that there are no storm clouds on wireless cable's horizon. While the FCC has recently modified its rules to further promote wireless' competitive potential in the United States,[7] it has also recognized that wireless continues to be severely hampered by "unfair or discriminatory practices in the sale of video programming."[8] The effect of those anti-wireless practices will not be eliminated under the proposed Final Judgment.

Under section 2(3) of the APPA, a proposed settlement should not be proffered by the Department, and cannot be approved by the reviewing court, unless "it effectively opens the relevant markets to competition and prevents the recurrence of anticompetitive activity, all without imposing undue and unnecessary burdens upon the other aspects of the public interest * * *"[9] As summarized in the CIS, "the complaint seeks injunctive relief to assure that Primestar does not restrain the availability of programming to multichannel subscription television service competitors of the MSO defendants, or does not deter entry into multichannel subscription television by others by serving as a device to facilitate a coordinated retaliatory response by the MSO defendants."[10] Unfortunately, the proposed Final Judgment falls far short of fully opening the multichannel subscription television market to competition.

From the perspective of the wireless cable industry, the fundamental flaw in the Final Judgment is that it inexplicably fails to remedy the anticompetitive effect of conduct by the defendant cable operators that has deprived wireless cable operators of access to programming that is essential to competitive viability. Compounding this failure, the Final Judgment unreasonably discriminates against all competitors to cable other than DBS operators. Specifically, Section IV.C3.a. of the proposed Final Judgment provides that the defendant cable operators may continue to enforce exclusive rights to programming under existing agreements against all competitors except DBS providers. In other words, the defendant cable operators may no longer invoke exclusivity clauses in programming contracts against DBS operators, but may continue to do so against wireless cable operators and all other competitors to cable.

These exclusivity clauses have hobbled the wireless cable industry. Based on representations made before Congress, the FCC and elsewhere, WCA believes that the most important programming services that remain unavailable to wireless cable operators today are being withheld in many markets because exclusive local distribution rights have been granted to cable systems controlled by the defendants.[11] WCA further believes that in many cases, programmers have granted the defendant cable operators exclusive rights to programming simply because they feared a coordinated retaliatory response from the defendant cable operators if exclusivity rights were withheld. That fear would certainly be legitimate—as the Department expressly acknowledges in the CIS, the cable operator defendants in this action control access to a sufficient number of cable households that they can effectively retaliate against any programmer that deals with a competitive programming distributor.[12] Presumably, Section IV.C.3.a of the proposed Final Judgment is intended to remedy any anticompetitive consequences of that ability.

The Final Judgment fails to provide a complete remedy because under Section IV.C.3.a, access to essential programming subject to existing exclusivity provisions will be Balkanized based on technology. DBS will have access, other competitors will not. What possible pro-competitive purpose is served by providing DBS operators, but not wireless cable operators, access to this critical programming? Admittedly, DBS may someday in the future provide consumers a viable competitive alternative to cable. However, wireless cable operators are providing that alternative today. The public interest in providing the widest diversity of programming alternatives at the lowest possible cost cannot be advanced by permitting the defendant cable operators to select the technology against which they will compete, particularly where that technology has yet to prove itself in the marketplace.

Significantly, this flaw in the proposed Final Judgment is not rectified by either Section 19 of the Cable Television Consumer Protection and Competition Act of 1992 (the "1992 Cable Act") or the proposed consent decrees in the action brought by the State of New York. Thus, the Department's assertion that those restraints upon the activities of these defendants "provide additional assurances that access to programming will not be unreasonably restricted by the defendants and others in the cable television industry" is simply not true.[13]

WCA has already briefed the United States District Court for the Southern District of New York on the fundamental defects in the proposed consent decrees in the state action. In the interest of brevity, WCA will refrain from repeating those arguments at length here. Rather, a copy of WCA's July 21, 1993 memorandum of law in opposition to the entry of those proposed decrees is attached and incorporated by reference.[14] Suffice it to say that in its memorandum, WCA establishes that the proposed *state* decrees in that *parens patriae* action, while appearing to serve the public interest by providing fair access to programming, are actually riddled with exceptions that effectively entrench the major cable operators in an advantaged position *vis a vis* other multichannel video programming distributors. Among the myriad flaws in the state consent decrees are provisions providing DBS operators with superior rights to programming than are afforded wireless cable operators.

Moreover, Section 19 of the 1992 Cable Act represents a series of political compromises and does not address fully the anticompetitive conduct that the defendants visited upon the wireless cable industry. First, the reach of Section 19 and the FCC's implementing rules is effectively limited to those programming services that are vertically integrated with a cable system operator, so that exclusive agreements between the cable system defendants and non-integrated programmers are unaffected Second, Section 19 and the FCC's implementing rules have "grandfathered" numerous exclusive agreements between the cable operator defendants and vertically-integrated programmers that would be banned by Section 19 were they entered into today. Thus, the wireless cable operators will only be able to secure access to a wide variety of programming that is subject to exclusive rights granted the defendant cable operators if the Final Judgment is modified to provide all competitors to cable with the same rights currently afforded DBS operators.

In conclusion, while WCA applauds the Department's efforts to create a more competitive multichannel programming distribution marketplace, WCA is unable to support the proposed Final Judgment. The Final Judgment simply does not go far enough to correct the distortions in the marketplace that resulted from the formation of Primestar Partners, L.P. and the resulting establishment of a mechanism for facilitating coordinated retaliation against programmers that refused to grant exclusive program distribution rights.

Cable Television Service, MM Docket No. 89-600, at 20 (rel. Dec. 29, 1989). *See also* S.R. No. 102-92, 102d Cong., 1st Sess., at 14-15; H.R. No. 102-268, 102d Cong., 2d Sess., at 44-45; Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules, 5 FCC Rcd 971 (1990); *Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 7 FCC Rcd 3268 (1992).

[6] Calian, "Wireless Cable Issues Are Flying High," *Wall Street Journal*, at C1 (August 23, 1993).

[7] A full description of those efforts can be found at *Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 7 FCC Rcd 3268 n. 8 (1992).

[8] *Amendment of Parts 1, 2, and 21 of the Commission's Rules Governing Use of the Frequencies in the 2.1 and 2.5 GHz Bands*, 8 FCC Rcd 1444, 1444-45 (1993).

[9] *United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131, 153 (D.D.C. 1982), *aff'd sub nom. Maryland* v. *United States*, 460 U.S. 1001 (1983).

[10] CIS, at 2.

[11] *See* S.R. No. 102-92, 102d Cong., 1st Sess., at 26-27; Comments of Turner Broadcasting System, MM Docket No. 92-265, at 8 (filed Jan. 26, 1993).

[12] *See* CIS, at 8.

[13] *Id.* at 13.

[14] In that memorandum, WCA also establishes the need for clarification that the state consent decrees, if entered, cannot serve as persuasive or precedential evidence in other proceedings in other forums as to the views of the state Attorneys Generals or the reviewing court for purposes of evaluating the propriety under the 1992 Cable Act and the implementing rules of the FCC of conduct that is condoned by the consent decrees. For the same reasons, the Department should take whatever steps are necessary to make certain that the Final Judgment is not mis-cited as representing the views of the Department concerning the propriety under the 1992 Cable Act and the FCC's implementing rules of conduct condoned by the Final Judgment.

Respectfully submitted,

Paul J. Sinderbrand,

Counsel to the Wireless Cable Association International, Inc.

93 Civ. 3868 (JES)

MEMORANDUM OF LAW OF AMICUS CURIAE THE WIRELESS CABLE ASSOCIATION INTERNATIONAL, INC., IN OPPOSITION TO PROPOSED CONSENT DECREES

Paul J. Sinderbrand (PS 2868),

Sinderbrand & Alexander, 888 Sixteenth Street NW., Suite 610, Washington, DC 20006–4103, (202) 835–8292, Counsel to The Wireless Cable, Association, International, Inc.

July 21, 1993.

I. Preliminary Statement

The Wireless Cable Association International, Inc. ("WCA") is the principal trade association of the wireless cable industry. Its members are among the intended beneficiaries of the program access and fair dealing provisions of the proposed consent decrees in this proceeding.[1] Because the interests of WCA's members are not entirely aligned with the other amici, WCA has sought and, by order of the Court on July 15, 1993, secured leave to file this separate memorandum in opposition to those proposed decrees.[2]

WCA is in general agreement with the memorandum of law submitted on July 16, 1993 by amici DirecTV, Inc. ("DirecTV"), National Rural Telecommunications Cooperative, Television Viewers of America, Inc. and Consumer Federation of America (collectively the "DBS Amici"). Specifically, WCA agrees with the DBS Amici: (a) that the Court has the power to reject proposed consent decrees in a *parens patriae* action if they fail to serve the public interest;[3] and (b) that the proposed consent decrees in this *parens patriae* action, while appearing to serve the public interest by obligating the Primestar Partners, Viacom and Liberty Media to provide fair access to programming, are actually riddled with exceptions that effectively entrench the major cable operators in an advantaged position *vis a vis* other multichannel video programming distributors ("MVPDs").[4] In the interest of brevity, WCA incorporates the DBS Amici's legal arguments on these points by reference.

II. The Proposed Consent Decrees Do Not Serve the Public Interest

While the DBS Amici focus on the adverse impact the proposed consent decrees will have an DirecTV, DirecTV is not the only MVPD that would be adversely affected by entry of those decrees. Indeed, the consent decrees will permit the Primestar Partners, Viacom and Liberty Media to continue courses of conduct that have frustrated the growth of wireless cable. Once the complex proposed consent decrees are parsed, it becomes evident that any purported benefits to wireless cable and other MVPDs are ephemeral—the Primestar Partners, Viacom and Liberty Media will remain free to withhold fair access to programming from all noncable MVPDs, not just DBS.

The Complaint correctly acknowledges that to succeed, a MVPD must not merely provide a substantial number of programming options, it must have access on reasonable terms to the particular programming services that consumers have come to associate with "cable." See Complaint, at ¶ 42. The fundamental flaw in the consent decrees is that while they may afford MVPDs employing one given technology improved access to some programming, and while they may afford MVPDs employing another technology improved access to some other programming, the consent decrees do not assure any non-cable MVPD fair access to the entire mix of programming services necessary to effectively compete. The net result is that the proposed consent decrees will not prevent the Primestar Partners, Viacom and Liberty Media from crippling any MVPD they choose.

A wireless cable system, which is referred to as "Multichannel Multipoint Distribution Service" or "MMDS" in the proposed decrees, utilizes frequencies licensed by the Federal Communications Commission ("FCC") in the 2 GHz band to transmit traditional cable television programming services (such as Home Box Office, ESPN and C-SPAN) to small antennas located on subscribers' rooftops as far as 40-50 miles away from the transmitters. Wireless cable has proven itself to be an extremely effective distribution medium for video programming, particularly in countries where programming has been readily available on equitable terms.[5] Congress and the FCC have frequently acknowledged that wireless cable is today "one of the most promising sources of multichannel competition in the local market."[6] While the FCC recently has modified its rules to promote wireless' competitive potential in the United States,[7] it has also recognized that wireless continues to be severely hampered by "unfair or discriminatory practices in the sale of video programming."[8] Those anti-wireless practices will not be eliminated under the proposed consent decrees.

A. The Consent Decrees Condone Discriminatory Pricing

Section IV.A.1. (f) of the proposed Viacom decree effectively condones Viacom's current practice of charging a wireless cable operator more for programming than a similarly situated cable operator. That Section permits Viacom to continue its discriminatory pricing policies for all services other than Nickelodeon and MTV. With respect to the Nickelodeon and MTV services, Section IV.A.1. (f) permits Viacom to engage in unreasonable price discrimination except with respect to wireless cable operators with 50,000 or more subscribers. No wireless cable operator serves 50,000 or more subscribers.[9] Similarly, Section IV.A.1. (b) of the Primestar decree, while banning discrimination with respect to future agreements, permits the Primestar Partners to continue to enforce existing

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[1] For convenience of reference, the phrase "consent decrees" will be used herein to refer to the proposed final judgments against Viacom Inc. and Viacom K-Band Inc. (collectively, "Viacom") and against all Defendants other than Viacom (collectively, the "Primestar Partners"), as well as to the Agreement with Liberty Media Corp. ("Liberty Media") that is an integral part of the settlement of this case.

[2] Counsel for WCA has been authorized to state that Consumer Federation of American and Television Viewers of America, Inc. support the views expressed herein by WCA.

[3] See DBS Amici Memorandum at 4–5, citing In re Panasonic Consumer Electronic Products Antitrust Litigation, 1969–1 Trade Cas. (CCH) ¶ 68,613, at 61,243 (S.D.N.Y. 1969); *State of New York* v. *Dairylea Cooperative, Inc.*, 547 F. Supp. 306, 307–308 (S.D.N.Y. 1982).

[4] See DBS Amici Memorandum, at 16–20.

[5] See, *e.g.*, "Wireless World View," Wireless Investor, at 3 (May 13, 1993). The largest wireless cable system in operation currently has approximately 100,000 subscribers in the Mexico City area. See "Young wireless operation rates among largest in the country," Private Cable Plus Wireless Cable, at 6 (Oct. 1992).

[6] Competition, Rate Deregulation and the Commission's Policies Relating to the Provision of Cable Television Service, MM Docket No. 89–600, at 20 (rel. Dec. 29, 1989). See also S.R. No. 102–92, 102d Cong., 1st Sess., at 14–15; H.R. No. 102–268, 102d Cong., 2d Sess., at 44–45; Amendment of Parts 21, 43, 74, 78, and 94 of the Commission's Rules, 5 FCC Rcd 971 (1990); Amendment of Parts 1, 2, and 21 of the Commission's Rules, 7 FCC Rcd 3266 (1992).

[7] A full description of those efforts (which include a technological solution to the line of sight limitation cited in the Justice Department's Competitive Impact Statement as a drawback to wireless) can be found at Amendment of Paris 1, 2, and 21 of the Commission's Rules, 7 FCC Rcd 3266 n. 8 (1992).

[8] Amendment of Parts 1, 2 and 21 of the Commission's Rules, 8 FCC Rcd 1444, 1444–45 (1993).

[9] See "Young wireless operation rates among largest in the country," Private Cable Plus Wireless Cable, at 6 (Oct. 1992).

agreements that discriminate against non-cable MVPDs.

These provisions stand in stark contrast to Section 2(a)(ii) of the Liberty Media agreement, which provides that in dealing with DBS and wireless cable, Liberty Media "will not discriminate against such technology as compared to the most favorable price and other terms (taken as a whole) offered to a cable operator of comparable size."

There is no pro-competitive rationale for accepting any lesser commitment to fair pricing from the Primestar Partners and Viacom than agreed to by Liberty Media. Indeed, in comments submitted to the FCC less than six months ago, the Attorneys General of Texas, Maryland, Ohio, and Pennsylvania—all members of the National Association of Attorneys General Cable Television Investigative Group—advocated that the public interest would be served by adoption of rules under which all "[p]rogrammers should be required to offer their programming to competitors of cable operators at the same prices and on the same terms as they offer it to cable operators."[10] Those comments cannot be squared with the provisions of the proposed consent decrees.

B. The Consent Decrees Condone Unjustified Refusals to Deal

Other provisions of the proposed consent decrees directly favor DBS operators over wireless cable and other non-DBS MVPDS in gaining access to critical programming. Section IV.C.1 of the proposed Primestar decree and Section IV.C.1 of the proposed Viacom decree provide that the Primestar Partners and Viacom may continue to enforce exclusive rights to programming under existing agreements against all MVPDs except DBS providers. Based on representations made before Congress, the FCC and elsewhere, WCA believes that some of the most important programming services that remain unavailable (such as Turner Network Television ("TNT")) are withheld in many markets because exclusive local distribution rights have been granted to cable systems controlled by the Primestar Partners and Viacom.[11]

Under the proposed decrees, access to this essential programming will be Balkanized based on technology; DBS will have access, other non-DBS MVPDs will not. What possible pro-competitive purpose is served by providing DBS operators, but not wireless cable operators, access to this critical programming? The public interest in providing the widest diversity of programming alternatives at the lowest possible cost cannot be advanced by permitting Primestar Partners and Viacom to select the technologies against which they will compete.

C. Critical Programming Services Are Excluded From The Reach of the Proposed Decrees

In their Memorandum, the DBS Amici correctly note that the Liberty Media agreement is rendered largely illusory because the definition of the services covered excludes virtually every important programming network in which Liberty Media holds an interest.[12] The Primestar Decree is similarly flawed—through a definitional construct it excludes from its reach critical programming services.

As noted above, perhaps the most important program service that is currently withheld from the wireless cable industry is TNT. TNT is owned by Turner Broadcasting System, Inc. ("TBS"), which is turn is owned by R.E. ("Ted") Turner, by numerous companies with cable interests—including several of the Primestar Partners—and by others. Under the terms of the Primestar Decree, the programming services owned by TBS are considered to be non-controlled programming services. Presumbly this is because "control" for purposes of the Primestar Decree is defined by reference to 16 CFR 801.1, which essentially requires the controlling entity to own 50% or more of the stock or have the ability to select 50% or more of the members of the board of directors. Apparently, the Primestar Partners do not fit that definition with respect to TBS.

However, it is well-recognized that two of the Primestar Partners—Tele-Communications, Inc. ("TCI") and Time Warner Inc. ("Time Warner")—exercise effective control over TBS through there ability to veto major TBS proposals that require super-majority board approval.[13] Thus, although TCI and Time Warner have the ability to assure that TNT and other TBS services are made available on fair terms and conditions to non-cable MVPDs through exercise of their extraordinary corporate powers, they are under no obligation to do so.

This omission is rendered particularly troubling by comparison of the Primestar Decree to the proposed consent decree in *United States* v. *Primestar Partners, L.P.* That proposed consent decree includes in its definition of control an ownership interest that gives "the right, contractual or otherwise, to direct the management decisions of an entity."[14] Thus, the programming services owned by TBS will be subject to the federal decree, if it is entered. It is understandable that the Primestar Partners would want to exclude the TBS services from the state decree, as it provides far greater relief to MVPDs that the federal decree. However, it is difficult to imagine why it is in the public interest to include the TBS programming services within the reach of the federal decree, but exclude them from the reach of the state decree.

III. The Court Should Make Clear That the Consent Decrees Cannot Be Used as Persuasive or Precedential Evidence in Other Proceedings in Other Forums

In its memorandum, the DBS Amici explained in detail why the Court should clarify that the proposed decrees in no way supersede the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") or reflect the views of the Court or the plaintiffs for purposes of evaluating the propriety under the 1992 Cable Act and the implementing rules of the FCC of conduct that is condoned by the consent decrees.[15] WCA agrees.

Indeed, the need for a declaration along the lines requested by the DBS Amici has now become patent. As DBS Amici have firmly established, United States Satellite Broadcasting Company, Inc. ("USSB") is the beneficiary of many of the most discriminatory provisions in the proposed consent decrees. The FCC currently is considering whether Section 19 of the 1992 Cable Act mandates the adoption of rules that would invalidate exclusive distribution agreements entered into by USSB and certain programmers. Last week, USSB opposed the contention that the proposed rules are mandated by the 1992 Cable Act by arguing as follows:

> It should be noted that the proposed antitrust consent decree in the pending *Primestar Partners* suit brought by 40 states against Primestar Partners, L.P. and 19 other defendants recognizes that high-power DBS providers at the 101° orbital position may enter into exclusive contracts with cable program providers. It is unlikely that 40 states would have agreed to the provisions

[10] Comments of the Attorneys General, MM Docket No. 92–265, at 4 (filed Jan. 25, 1993).

[11] See S.R. No. 102–92, 102d Cong., 1st Sess., at 26–27; Comments of Turner Broadcasting System, MM Docket No. 92–265, at 6 (filed Jan. 25, 1993).

[12] See DBS Amici Memorandum, at 15–16.

[13] See e.g., Carter, "Ted Turner's Time of Discontent," N.Y. Times, at § 3, p. 6 (June 6, 1993); Landro, "Time, TCI Mull Plan for Turner Assets," Wall St. J., at B1 (April 6, 1993); Lippman, "TBS Breakup Negotiations Appear To Be Breaking Up," L.A. Times, at D1 (April 21, 1993); "Ted Turner: putting his financial house in order," Broadcasting, at 40 (Feb. 29, 1988).

[14] See section II.A.

[15] See id., at 20–22.

that recognize such exclusive contracts if there was any question as to whether the Cable Act prohibited such exclusive arrangements.[16]

As this argument illustrates, the DBS Amici are correct when they argue that the proponents of the proposed consent decrees and the beneficiaries of those decrees can and will attempt to cite the consent decrees as evidence of the views of the State Attorneys General.

IV. Conclusion

This Court has an affirmative obligation to assure that the proposed consent decrees promote fair competition in the MVPD marketplace. It is clear, however, that they do not; Primestar Partners, Viacom and Liberty Media remain free to deny critical programming to any MVPD they choose. For this reason, this Court should reject the proposed consent decrees in their present form.[17]

July 21, 1993.

Respectfully submitted,

By: Paul J. Sinderbrand (PS 2868).

Sinderbrand & Alexander,

888 Sixteenth Street, NW., Suite 610, Washington, DC 20006–4103 (202) 835–8292.

The Honorable Webster L. Hubbell,
United States Department of Justice, Room 5111, 10th & Constitution Avenue NW., Washington, DC 20530.

Re: *United States* v. *Primestar Partners, et al.*, 93 CV–3913 (S.D.N.Y.)
State of New York, et al. v. *Primestar Partners L.P., et al., 93 CIV 3868 (S.D.N.Y.)*

Dear Web: We represent Advanced Communications Corporation, which is an Arkansas corporation licensed by the Federal Communications Commission to provide high-power direct broadcast services within the United States from orbital location 110°W. This emerging technology to be employed by our client promises to provide wireless data transmission, including cable tv-type entertainment services throughout the United States through the use of a dishplate size household receiver. This technology seems to be a critical extension of the electronic data highway discussed in the Campaign.

The Cable Television Consumer Protection and Competition Act of 1992 is major legislation designed to enhance the performance of the marketplace for electronic information including its response to this new emerging technology.

Prior to the passage of the 1992 Cable Act, several states attorneys general (proceeding in parens patria) and the United States Justice Department sued Primestar Partners and others accusing those defendants of violations of the Sherman Act. That litigation was designed to increase the access by cable companies and others to entertainment media allegedly "controlled" by the defendants. That litigation has been settled and the settlement is before the Honorable John Sprizzo of the United States District Court for the Southern District of New York for approval as required by applicable law.

My client objects to aspects of the settlement because among other things, it undermines the policies of the Cable Act and violates some of its express provisions. We believe that these two consent settlements could have serious and progressive anticompetitive impact on the market for high-power direct satellite broadcast information services. Although these proposed consents recite that the Cable Act is controlling in the event terms of the settlement deviate from its provisions, we believe the precedent set by the proposed consents are also dangerous to the implementation of the Cable Act.

Among the parties opposing the consents are the Federal Communications Commission, the National Rural Telecommunications Cooperative, Consumer Federation of America, and Television Viewers of America, Inc. Congressman Edward J. Markey highlighted the concerns shared by all of the parties opposing these consents in a letter to the attorney general of the state of New York dated July 1, 1993. That letter is attached.

We understand a hearing is scheduled in this matter for September 6, 1993. We have made known our opposition to Winston Bryant and other attorneys general in the parens patria litigation. This communication is to request that you review this matter with Assistant Attorney General Bingaman to determine whether this Justice Department should continue the settlement posture authored under the previous administration, which has become widely recognized as contrary to the Cable Act and potentially detrimental to consumers the Cable Act was intended to benefit. At a minimum we urge that the Justice Department request a continuance of the Tunney Act approval process to allow this Administration to consider carefully the long-term significance of its participation in the present settlement.

I know that time is short. This matter was only recently brought to our attention by Advanced Communications. It is only because of the shortness of the time that I impose upon our historic friendship to communicate this matter to the Justice Department in this fashion. Anything you can do to address this issue would be greatly appreciated.

Respectfully yours,

Williams & Anderson,

Peter G. Kumpe.

The Honorable Webster L. Hubbell,
United States Department of Justice, Room 5111, 10th and Constitution Avenue, NW., Washington, DC 10530.

Re: *United States* v. *Primestar Partners, et al.*, 93 CV-3913 (S.D.N.Y.)
State of New York, et al., v. *Primestar Partners L.P., et al.*, 93 Civ. 3868 (S.D.N.Y.)

Dear Webb: I have only recently become aware of serious concerns voiced by certain competitors and consumer groups about provisions in the settlement agreement and consent decrees filed in the above-styled cases, which are now pending before the Honorable Judge John Sprizzo of the United States District Court for the Southern District of New York. Arkansas is one of forty states which are signatory plaintiffs in the State of New York actions. While I remain convinced that the policy considerations underlying these proposed decrees are, in the main, exemplary, I am particularly troubled by what I have learned about one section of the Primestar decree, section IV A.1.(g). The FCC, and others, are concerned by the Justice settlement, as well.

While the technical issues involved are confusing to the untutored, I fear there is a danger that this provision may be used to craft anti-competitive arguments to weaken the future interpretation of Section 19 of the 1992 Cable Act. This certainly was not my intent in joining this action brought by our sister states. Because our discovery of this controversy is of such recent origin and because the rest of the proposed decree appears to accomplish laudable goals, the only action our office is positioned to take is to request that Justice take a hard look at requesting a continuance of the Tunney Act approval process and to suggest this also to the New York Attorney General, which we are doing by separate letter. This would permit all of us time to make a more reasoned examination of this issue, since it is my understanding that the matter is scheduled for hearing tomorrow, September 3 in Judge Sprizzo's court. I apologize for writing you on such short notice, but, nonetheless, feel compelled to share my reservations which are based on communications I received only yesterday. As always, I am proud of the outstanding job you are doing at Justice.

Sincerely,

Winston Bryant,

Attorney General.

Mr. Richard L. Rosen, Esq.,
Chief, Communications and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 8104, Washington, DC 20001.

In Re: *United States of America* v. *Primestar Partners, et al.*, Civil Action No. 93–CIV–3913.

Public Comments of Continental Satellite Corporation Concerning Proposed Final Judgment, Stipulation, and Competitive Impact Statement.

Dear Mr. Rosen: Continental Satellite Corporation, by its Founder and President,

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[16] Opposition of United States Satellite Broadcasting Co. to Petition for Reconsideration, MM Docket No. 92–265, at 6 n. 6 (filed July 14, 1993).

[17] The importance of the Viacom decree to the competitive marketplace is intensified by Viacom's pending petition to the FCC for rule changes that would exclude Viacom from the FCC's program access rules under the 1992 Cable Act. See Petition of Viacom International for Reconsideration and Clarification, MM Docket No. 92–265, at 2–6 (filed June 10, 1993). If Viacom prevails, the consent decree will be the effective check on Viacom's program access policies.

files these *Comments* concerning the above-captioned proceeding which was recently brought before the United States District Court for the Southern District of New York in *United States* v. *Primestar Partners, et al.*, Civil Action No. 93–CIV–3913. Pursuant to the Antitrust Procedures and Penalties Act, we request that these Comments be given due consideration by the Department of Justice.

Continental was licensed in August 1989 by the Federal Communications Commission (hereafter, the "FCC") to operate as a Part 100 Direct Broadcast Satellite licensee in the Ku-Band. In August 1990 Continental filed an Application for Launch Authority with the FCC, including a request for DBS channel and orbital assignments. As of this date, Continental is still awaiting grant of its Application. On 25 October 1991 Continental received a Subpoena Duces Tecum and Interrogatories relating to a multi-agency investigation into whether certain companies had committed violations of state and federal antitrust laws and prohibitions against restraints of trade, including, but not limited to:

1. Engaging in a joint venture that either has the effect of substantially lessening competition or creating a monopoly within the market for direct broadcast satellite Ku-band program delivery or whereby a monopoly within this market is or may be established, and,

2. Engaging in a combination and conspiracy to restrain trade and competition within the market for direct broadcast satellite Ku-Band program delivery.

In addition to these specific focal points of the investigation, certain questions were directed to us, as an FCC-licensed Part 100 DBS operator, as to whether or not certain companies may have delayed or hindered Continental's performance as a DBS operator.

Since we submitted our first Reply to that Subpoena, Continental has fully cooperated with the investigation. Besides filing our initial Reply in July 1992, we filed three additional Supplements to the original Reply as part of an ongoing attempt by us to keep both the Antitrust Division of the Department of Justice and the Antitrust Bureau of the New York State's Attorney General's Office fully appraised of certain alarming developments in the nascent Part 100 DBS industry.

In addition to these submissions, we provided regular progress reports to appropriate law enforcement agencies. These reports (in the form of letters, telephone call updates, and fax reports) were directed to specific individuals who were heavily involved in the day-to-day investigations. Their subject matter concerned mounting evidence that Loral Corporation (hereafter, "Loral"), through its subsidiary Space System/Loral (hereafter, "SS/Loral"), might have become involved in combination and conspiracy with Cablevision Systems (hereafter, "Cablevision"), with Cablevision's subsidiary Rainbow Programming Holdings, Inc. (hereafter "Rainbow"), and with Continental's former Chief Executive Officer James B. Dixon (collectively referred to hereafter as "the Parties") to restrain trade and competition within the market for direct broadcast satellite Ku-Band program delivery.

We also reported on what appeared to us to be continuing attempts by SS/Loral to violate and to contravene Section 310 of the Communications Act of 1934, as amended, which prohibits ownership of American telecommunications companies by foreign corporations.[1] We also filed a formal complaint of abusive business practices because of the growing harassment we were facing from SS/Loral as we attempted to prepare for final assignment by the FCC of our DBS channel assignment and orbital allocations.[2] These actions by SS/Loral led to the filing of a law suit by SS/Loral's parent company, Loral Aerospace Holdings, Inc. (hereafter, "LAHI") against Continental on Christmas Eve 1992. In its suit, LAHI sought issuance of a court order that, had it been granted, would have forced Continental's Chief Executive Officer James H. Schollard to commit perjury before the FCC in an involuntary, court-ordered filing of an illegal Application for Consent to Transfer Control of Continental's DBS license to SS/Loral or to LAHI. The suit between LAHI and Continental is now pending binding arbitration in California.

Request for Expanded Investigation of Possible Combination and Conspiracy To Restrain Trade in the Part 100 DBS Industry

Continental requests that the United States Department of Justice expand its investigation of abusive practices against the DBS industry to include investigation of a possible combination and conspiracy to restrain Continental's trade by the Parties. Toward that end, Continental is informed and believes, and on the basis of this information and belief, hereby alleges that:

1. Cablevision's Director of New Business Development Theodore ("Ted") May, former FCC Chairman Charles Ferris,[3] Cablevision's General Counsel David Deitch, Cablevision's DBS Consultant Michael ("Mickey") Alpert, Loral's Chief Executive Officer Bernard Schwartz, Loral's Senior Vice President Michael Targoff, Loral's Vice President of Policy and Planning Rex Hollis, SS/Loral's President Robert Berry, SS/Loral's Executive Director Dan Collins, and Continental's former Chief Executive Officer James B. Dixon formed a combination and conspiracy to restrain trade in the Part 100 DBS industry by unlawfully attempting to garner control of Continental's DBS construction permit.

2. Loral's Chief Executive Officer may have attempted to meet, or may have met with a representative or representatives of other Part 100 DBS applicants during the week of July 12–16, 1993 in an attempt to garner control of at least two other Part 100 DBS operators assigned to or about to be assigned to DBS orbital allocation 61.5° West Longitude. Should Loral and Cablevision be successful in their shared acquisition efforts (which we call and hope the Justice Department will soon call a "combination and conspiracy"), these two giant corporations will jointly control more than one quarter of the entire allotment of Part 100 DBS channels available.[4]

3. Continental's former CEO Dixon actively cooperated with Cablevision's Ted May, David Deitch, and Mickey Alpert in a conspiracy to defraud Continental of its DBS License. The methodology for accomplishing this conspiracy included the creation of a fake corporation, composition of falsified minutes of board meetings that never took place,[5] establishment of fraudulent bank accounts, diversion of interstate wire transfers, and multitudinous acts of *ultra vires* on the part of Continental's former CEO James Dixon.[6]

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[1] Forty-nine percent of SS/Loral is owned by four foreign corporations.

[2] See our letter of 5 February 1993 to the U.S. Department of Justice appended to these Comments as Attachment 1.

[3] Continental alleges that former FCC Chairman Ferris, while acting in his capacity as communications counsel to Cablevision, utilized his considerable influence as former FCC Chairman in a deliberate and clandestine attempt to circumvent the Rules of the FCC with respect to an illegal takeover of Continental's DBS license by Cablevision. As part of his activities to assist Cablevision in restraining Continental's trade, Mr. Ferris secretly sent a letter to FCC Mass Media Bureau Chief Roy Stewart without notifying Continental of the letter's existence. Continental only learned of the letter's existence when it was accidentally made part of Continental's public file number DBS–87–01 through an inadvertent error apparently made by a filing clerk. (Mr. Ferris' letter is attached hereto as Attachment 3. Continental's response to Mr. Ferris letter is attached hereto as Attachment 4.)

[4] See specific excerpts from Satellite News, a respected satellite industry trade newsletter, attached to these Comments as Attachment 11. These excerpts report on possible unauthorized acquisition efforts with respect to Continental's DBS license, as well as other DBS licensees who may eventually be assigned by the FCC to 61.5° West Longitude. Continental has never received any purchase offers from Tele-Communications, Inc., or from any other company, for that matter. **Please Note:** If the press reports set forth in Attachment 11 are even marginally correct, then a combined Loral/TCI/Cablevision venture could easily garner 44 of the 128 Part 100 DBS channel assignments allocated by the FCC—i.e., about 35% of the entire US DBS market could come under control of only one business entity. If the possibility of such a scenario coming to reality does not warrant an immediate, full-scale investigation by the U.S. Department of Justice, then Continental's exhaustive efforts to cooperate with the Office of the Attorney General for the People of the State of New York in answer to its *Subpoena Duces Tecum and Interrogatories* will have been undertaken in vain and the "Gang of Three" (Loral, TCI, and Cablevision) will have pulled off the DBS Coup of the Century.

[5] See Attachment 9 and Attachment 10, included with these Comments. Note that Attachment 10 would have given Dixon authority to negotiate a deal to turn over the DBS license to a consortium of Cablevision and Loral.

[6] These parties executed a one-sided Lease Option agreement between Cablevision and a sham Oregon corporation that Dixon created with the same corporate name as Continental. The difference was that the California corporation is the true DBS licensee. The Oregon corporation, also named Continental Satellite Corporation, executed the Lease Option with Cablevision. A concise summary of the affair has been set forth by Continetal's Communication Counsel Lawrence Bernstein in a Request for Declaratory Ruling which was filed on 26 July 1993 at the FCC. In our Request, we are asking the FCC to rule that the Lease Option agreement, along with its attendant Lease Agreement and Management Agreement, be declared illegal and unenforceable. A copy of the Request is included herewith as Attachment 2.

4. Via interstate wire fraud, Dixon diverted a payment of $250,000 into his own personal bank account. The money had been intended by Cablevision to go to the DBS licensee as payment for a six-month lease option on Continental's DBS spectrum. Instead, Dixon violated federal RICO statutes by creating a sham corporation, which he named Continental Satellite Corporation, an Oregon Corporation. While using the Oregon corporation as a front for his embezzlement, Dixon diverted the funds to a bank account which he had set up in the name of James B. Dixon, DBA Continental Satellite Corporation. Dixon's own social security number was used as the Taxpayer Identification Number on the account in place of Continental's Employee Identification Number.

5. Loral and its subsidiaries LAHI and SS/Loral, through Loral's corporate counsel Philip Verveer, threatened on multiple occasions to destroy Continental's DBS license if Continental did not turn over 51% of its voting stock to SS/Loral.[7] When Continental refused to participate in such an illegal act,[8] LAHI sued Continental, as mentioned *supra*, requesting a court to turn Continental's controlling interest over to LAHI in a blatant attempt to skirt the requirements of Section 310 of the FCC's Rules.

6. In perhaps the most blatant evidence of conspiracy, Continental's fired CEO Dixon engaged in many conversations with SS/Loral's Dan Collins and Tom Johnson in an attempt to solicit financial aid in defending himself with respect to Continental's suit against him.[9] In one of the written records of these conversations, SS/Loral employee Tom Johnson was quoted by Dixon as stating that Loral would reward Dixon for his efforts in assisting Loral to take over controlling interest in Continental by giving him 26% of the remaining stock.[10]

7. Dixon and SS/Loral conspired together with respect to strategies intended to force Continental into a settlement with Cablevision, under the terms of which Loral would own 51% of Continental and Cablevision and Dixon would own the rest.[11]

Continental believes it has become the victim of a deliberate and concerted effort to defraud it of its DBS license. This effort has been undertaken with the full knowledge and consent of the highest senior management and executives of Loral Corporation, its subsidiaries Loral Aerospace Holdings and Space Systems/Loral, Cablevision Systems, its subsidiary Rainbow Programming Holdings, and Continental's disgraced and former Chief Executive Officer James B. Dixon.

Therefore, for the reasons so briefly summarized in these Comments, Continental respectfully requests that the United States Department of Justice expand its investigation to include the Parties named above before the proposed Final Judgment, Stipulation, and Competitive Impact Statement is placed into full force and effect by the United States District Court for the Southern District of New York in *United States* v. *Primestar Partners, et al.*, Civil Action No. 93–CIV–3913.

Questions concerning these Comments may be directed to Continental at the address and telephone numbers set forth in our letterhead.

Very truly yours,

For Continental Satellite Corporation.

William P. Welty,

Founder and President.

Mr. Richard L. Rosen, Esq.,
Chief, Communications and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 8104, Washington, DC 20001.

In Re: *United States of America* v. *Primestar Partners, et al.*, Civil Action No. 93–CIV–3913.

Public Comments of Continental Satellite Corporation Concerning Proposed Final Judgment, Stipulation, and Competitive Impact Statement.

To Mr. Rosen, your Honor and all others:

I would like first to confirm the accuracy of the attached letter written by Mr. Welty.

My work with Continental Satellite Corporation began early 1989. Basically, Mr. Welty and I have done most of the work for our small corporation. We could be called a "mom and pop" company with the vision to spend hundreds of thousands of dollars and years of effort in pursuing our DBS business. At first, the large corporations either lacked the vision or were simply not interested in DBS at the time. Now their attitude seems to be "Let's get involved, anyway we can."

I am a very simple man with a simple background. I come from an industry (perishable meats) where you live and die by your word. If you didn't perform on what you said you would do, you would be out of business quickly.

How naive I was to think other industries would be so self-regulated for their corporate survival! In my business experience I've also had "first hand, in-your-face" looks at labor unions. I worked through four strikes. I have been threatened, harassed, and oh-so-much more, beyond the scope of this letter. But I have now seen college educated "gangsters-in-suits" who are far more subtle, cunning, deceptive, threatening and bullying than any of the thugs I survived from the unions.

I'm not telling you this to give you a "tough-guy" image of myself. I have always been described as more than fair to anyone who has had any business or personal dealings with me. But the folks we are dealing with are not fair—simply put, they want it all.

My greatest hope is that someone, somewhere, still cares about the things America is all about—proper preparation, honest hard work, followed by a moderate to large amount of success.

I see these things being tugged away from us by two well-oiled, well-financed, corporate machines who are trying to drag us into the Court system. We feel we're being worn down both financially and physically—but never in spirit. We'll fight them as long as possible and then fight them some more.

I only pray they do not succeed in the theft of our DBS license, even though "a size makes right" mentality seems to prevail in many peoples' minds. I expect the representatives of our United States government who are employed by the Department of Justice to rise above that mentality.

I close with the same words I used to say to our former CEO each time we spoke on the phone:

Do the right thing.

That's a simple statement, apparently very hard for some to follow. But please give us the benefit of the doubt.

Please grant Mr. Welty's request in his Public Comments and direct the United States Department of Justice to expand its investigation to include Loral Corporation, its subsidiaries Space Systems/Loral and Loral Aerospace Holdings, and Cablevision Systems and its subsidiary Rainbow Programming Holdings.

Very truly yours,

For Continental Satellite Corporation.

James H. Schollard,

Chief Executive Officer.

Mr. Richard L. Rosen, Esq.,
Chief, Communications and Finance Section, U.S. Department of Justice, Antitrust Division, 555 Fourth Street, NW., Room 8104, Washington, DC 20001.

In Re: *United States of America* v. *Primestar Partners, et al.*, Civil Action No. 93–CIV–3913.

Supplement to Public Comments of Continental Satellite Corporation Concerning Proposed Final Judgment, Stipulation, and Competitive Impact Statement.

Dear Mr. Rosen: On 28 July 1993, Continental Satellite Corporation filed Public Comments concerning the above-captioned proceeding which was recently brought before the United States District Court for the Southern District of New York in *United States* v. *Primestar Partners, et al.*, Civil Action No. 93–CIV–3913.

We filed these Comments in order to bring to the attention of the Court our allegations that Loral Corporation (hereafter, "Loral"), through its subsidiary Space Systems/Loral (hereafter, "SS/Loral"), may have become involved in a combination and conspiracy with Cablevision Systems (hereafter, "Cablevision"), with Cablevision's subsidiary Rainbow Programming Holdings, Inc.

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[7] See the letter dated 18 December 1992 from Continental's Communications Counsel Lawrence Bernstein to Philip Verveer, included with these Comments as Attachment 5.

[8] Because SS/Loral is 49% foreign-owned, 51% ownership of Continental's stock by SS/Loral would mean that 24.99% of Continental would be controlled by foreign business entities (51%×49%=24.99%). Section 310 of the FCC's Rules prohibits foreign ownership of more than 20% of a U.S. telecommunications firm such as Continental. Thus SS/Loral is prohibited from owning controlling interest in DBS licensee Continental.

[9] Copies of correspondence from Dixon to his counsel Patrick O'Malley in the matter of *Continental Satellite Corporation* v. *James B. Dixon (Case No. 92–10–176)* dated 27 January 1993 and 18 February 1993 are included herewith as Attachment 6 and Attachment 7, respectively.

[10] See Attachment 6.

[11] See the letter dated 18 February 1993 from Dixon to his counsel Patrick O'Malley included herewith as Attachment 8.

(hereafter, "Rainbow"), and with Continental's former Chief Executive Officer James B. Dixon (collectively referred to hereafter as "the Parties") to restrain our trade in the Part 100 DBS industry.

We also hoped to encourage the Court to order a full-scale investigation into our charges by the United States Department of Justice or by other appropriate state and federal law enforcement agencies. On 9 August 1993 we received photocopies of the proposed Final Judgment for the Primestar Partners, the proposed Final Judgment for the Viacom defendants, and the Agreement for Liberty Media Corp. These documents were sent to us from the Antitrust Bureau of the New York Attorney General's Office.

Pursuant to the Antitrust Procedures and Penalties Act, we request that this Supplement to Public Comments of Continental Satellite Corporation (hereafter, the "Supplement") be given due consideration by the Department of Justice. We further request that its contents be published in the **Federal Register** along with our Public Comments of 28 July 1993.

As we noted in our Public Comments, in the interest of saving tax payers' money, we have no objection if the exhibits to this Supplement are omitted from publication in the **Federal Register**, so long as photocopies are made available to authorized parties upon request.

Comments With Respect to the Proposed Final Judgment

Continental believes that the American cable companies and other MSO's are now starting to attempt business operations in the high-powered Part 100 DBS in an attempt to avoid being accountable to the Cable Television Consumer Protection and Competition Act of 1992 (hereafter, the "1992 Cable Act").

To put it bluntly, high-powered Ku-band DBS is uncharted broadcast territory. It is comparatively unregulated. This relaxed regulatory climate enjoyed by the Part 100 DBS permittees was wisely intended by the Federal Communications Commission to encourage initial development of the nascent high-powered DBS industry by the "Gang of Nine" Part 100 licensees.

The relaxed regulatory climate was also intended to encourage investment on the part of the American financial community in the embryonic Part 100 DBS industry. By keeping governmental "red tape" to a minimum, it was thought that the hundreds of millions of dollars needed by the Part 100 "Gang of Nine" could be more easily raised. Unfortunately for the Part 100 DBS permittees, when the Cable Act was passed many MSO's started looking jealously to high-powered DBS in an attempt to avoid the standards of competitive accountability called for by the Cable Act.

Rather than letting the Part 100 DBS permittees use the relaxed regulatory climate as a means to ease the rigors of the funding process, the cable companies appear to be looking with envy at the comparatively "greener grass" on the other side of the regulatory fence. As noted in the comments that we filed on 28 July 1993 concerning this proceeding, Cablevision Systems is already on the prowl. We wonder how long it will take for the other MSO's to wake up to the potential of high-powered DBS.

According to the Federal Communications Commission's interpretation of the 1992 Cable Act, the purpose of the 1992 Cable Act is to mandate

That where competition is present, cable television rates shall not be subject to regulation by government but shall be regulated by the market. The Act contains a clear and explicit preference for competitive resolution of issues where that is feasible.[1]

While monopolistic or duopolistic business practices are endemic to terrestrially distributed cable television, healthy and legal competition is built into the very design fabric of the Part 100 DBS industry. As we noted recently in our Comments on Notice of Proposed Rule Making in MM Docket No.: 93–25

* * * Unlike the terrestrial cable television industry, DBS is not a duopoly * * *. Part 100 DBS operators are exempt from the business temptations that have resulted in abuses by terrestrial cable operators and by their host communities * * *. [By 1996 t]here will be nine Part 100 DBS competitors active in each community, not just two. The likelihood of duopolistic price manipulations or abusive practices is measurably reduced or even eliminated by a competitive business environment consisting of nine separate DBS operators allotted to each city.[2]

Continental urges the Court to ensure that cable television operators, besides abiding by the terms of the proposed Final Judgment, enjoin them from acquiring interest in any Part 100 DBS licenses.

In order to discourage the cable companies from "jumping ship" to the Part 100 DBS industry (and thus avoiding legal accountability for a season until the nascent Part 100 DBS industry becomes more regulated), we urge the Court to require that all of the Defendants in the instant proceeding, including Viacom, Viacom K-Band, Inc., and Liberty Media Corporation, be prohibited from owning or acquiring any ownership interest of any kind in any Part 100 DBS permittee.

We urge the Court to make this prohibition stay in full force and effect until the start of the eighth year after the final "Gang of Nine" licensee to commence operations actually begin on-orbit broadcast operations, or the year 2010, whichever year comes first.

As the Court will note from our Public Comments filed on 28 July 1993, Continental is already at loggerheads with one American cable company—Cablevision Systems—over precisely this issue of abuse by American cable companies. The unethical and untrustworthy conduct exhibited by Cablevision is utterly egregious and irredeemable.

Furthermore, early on during our applicable process before the FCC we were procedurally harassed by nitpicky and antagonistic filings against us committed by TEMPO Satellite Corporation, a subsidiary of defendant Tele-communications, Inc. (TCI).[3] We can only guess what the future might hold for us and for other smaller Part 100 permittees at the hands of the Defendants in the instant proceeding if the Court fails to protect us from the abusive business practices hinted at by the US Justice Department and the Attorneys General for 40 States.

To sum up, we urge the Court as part of the proposed Final Judgment to prohibit aggregate ownership of more than one percent in any Part 100 licensee by any of the Defendants until the commencement of the eighth year of on-orbit operations by the final Part 100 DBS licensee to commence broadcasting. Obviously, since TCI already owns a DBS license, we would not be so presumptuous as to request that the Court require TCI to surrender its Part 100 DBS license back to the FCC as part of the Final Judgment.[4]

Supplemental Comments With Respect to Previous Allegations Concerning Loral Corporation and Cablevision

Since the filing of our initial Public Comments on 28 July 1993, more events have occurred which corroborate our allegation that the Parties have attempted to restrain Continental's trade and competition within the market for direct broadcast satellite Ku-Band program delivery.

On 5 August 1993, we filed an Opposition to Cablevision's Request for Declaratory Ruling.[5] In our Opposition, we noted that Cablevision has admitted that the Lease

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[1] Quoted in Appendix A: Cable Rate Regulation Executive Summary, Page 1, Section I, Paragraph 2, lines 1–5. Appendix A begins on page 358 of the Federal Communications Commission's Report and Order and Further Notice of Proposed Rulemaking, MM Docket No. 92–266 (Adopted April 1, 1993 and Released May 3, 1993) in RE Implementation of Sections of the Cable Television Consumer Protection and Competition Act of 1992: Rate Regulation.

[2] A copy of our Comments on Notice of Proposed Rule Making in MM Docket No.: 93–25 is included in this Supplement as Attachment Three.

[3] We are happy to report that these procedural harrassments appear to have ceased—for the moment at least. TEMPO recently withdrew an objection that it had filed three years ago against an Application for Launch Authority that we filed with the FCC in August 1990. We find it amusing that TEMPO's withdrawal of its objections of our 1990 Application was filed with the FCC about the time the proposed Final Judgment was published. Was this coincidence? We think not. We invite the Justice Department to keep a close eye on our DBS application (FCC file number DBS–87–01). Don't be surprised if over the next two years you see a huge influx of antagonistic filings on the part of MSO companies against smaller Part 100 DBS permittees such as Continental.

[4] On the other hand, we won't oppose such a forced surrender, either. Neither the Court, nor the US Justice Department, nor the Attorneys General for the various states that participated in this proceeding, nor the FCC, nor the other Part 100 DBS applicants will hear an objection from Continental if the Court elects to order TCI to so surrender its DBS construction permit back to the FCC as part of the Final Judgment in *United States of America* v. *Primestar Partners, et al.* We couldn't think of a better way to ensure a safe and truly competitive business environment for the nascent Part 100 DBS industry than for the Court to order cable companies to stay out of Part 100 DBS licensee ownership until the year 2010.

[5] See Attachment One to this Supplement.

Agreement and Management Agreement would have had the effect of creating an illegal transfer of control of Continental's DBS license away from Continental. We also noted that the essence of former FCC Chairman Charles Ferris' "Dear Roy" letter of 23 July 1993 was an admission that the Lease Agreement and the Management Agreement were in fact intended to force that transfer of control. "Luckily" for Cablevision, former Chairman Ferris has admitted that Cablevision has "abandoned" the illegal Lease Agreement and Management Agreement.

Instead, it now appears that Cablevision is about to try to force Continental to file a Transfer of Control application before the FCC in order to make Continental surrender its DBS license to Cablevision.[6]

Ex Parte Contact by Cablevision Before the Federal Communications Commission

On 9 August Continental received a copy of Cablevision's 1992 Form 10–K which had been filed with the Securities and Exchange Commission on 23 March 1993. On page 109 of that Form 10–K filing, former Federal Communications Commission Chairman Charles D. Ferris is listed as a member of the Board of Directors of Cablevision.[7] In fact, Mr. Ferris signed the Form 10–K in his official capacity as a member of the Board of Directors.[8]

Since we obtained a copy of Mr. Ferris' now infamous and illegally filed "Dear Roy" letter of 23 July 1993, a spirited correspondence has arisen between Continental's FCC counsel Lawrence Bernstein and former Chairman Ferris.[9] Nowhere in *any* of his correspondence to Continental, and nowhere in any of his filings before the FCC with respect to Continental's DBS construction permit did Mr. Ferris inform the FCC that he is a member of the board of directors of Cablevision.

Instead, Mr. Ferris filed his behind the scenes requests relying on his position as FCC counsel to Cablevision's subsidiary Rainbow. Mr. Ferris' more significant relationship to Cablevision is not his employment as FCC counsel but rather his vested interest as a board member of Cablevision. Accordingly, Mr. Ferris' filings represent unauthorized and prohibited ex *parte* contacts with the Commission.

Purchase Inquiry on Behalf of Loral

On 12 August 1993 Continental's Chief Executive Officer James H. Schollard and I visited Intraspace Corporation, the vendor of our DBS spacecraft. On 20 July 1993 our previous DBS spacecraft construction contract with SS/Loral had expired. On 19 July 1993 we had awarded a construction contract to Intraspace as a replacement to the contract with SS/Loral. The replacement contract was intended to go into effect concomitantly with the 20 July 1993 expiration date of our previous contract with SS/Loral.[10]

We were visiting Intraspace in order to confirm certain business plans and decisions regarding the new contract. While we were at lunch with Robert D'Ausilio, Chief Executive Officer of Intraspace, Mr. D'Ausilio received a phone call from Mr. Lonnie Kennedy, a low-to-mid level executive with one of Loral Corporation's offices in Texas.

Not knowing the reason for Mr. Kennedy's call, Mr. D'Ausilio innocently returned the call upon his return from our lunch appointment with him. Mr. James Mellos, Intraspace's Director of Marketing, Mr. Schollard, and I listened in on the telephone conversation via speakerphone. In the telephone conversation, Mr. Kennedy inquired as to whether or not Mr. D'Ausilio would be willing to sell Intraspace to Loral. He repeatedly stated that Loral "has lots and lots of money" to spend and that there was a strong interest in Loral purchasing Intraspace.

Our corporate counsel recommended we inform the Justice Department of this conversation. We believe that if Loral were to successfully acquire Intraspace, Loral would be in a position to default on Continental's contract with Intraspace, thus forcing Continental into default before the FCC with respect to its DBS due diligence showing. Naturally, Loral would then be in a position to "save the day" for Continental by forcing us to sign up again with Loral at twice the price of our contract with Intraspace. We believe Loral's surreptitious call to their direct DBS satellite construction competition demonstrates predatory intent and is a deliberate attempt to interfere with Continental's DBS business.

Summary and Conclusions

To sum up, we urge the Court as part of the proposed Final Judgment to prohibit aggregate ownership of more than one percent in any Part 100 licensee by any of the Defendants until the commencement of the eighth year of on-orbit operations by the final Part 100 DBS licensee to commence broadcasting. This prohibition will guard the nascent Part 100 DBS operators from heavy-handed takeover attempts by cable or other MSO's.

We again reiterate our call for a full scale criminal investigation of Loral's and Cablevision's deliberate and concerted effort to defraud Continental—and possibly other Part 100 DBS operators—of its DBS license.

Questions concerning these Comments may be directed to Continental at the address and telephone numbers set forth in our letterhead.

Very truly yours,

For Continental Satellite Corporation.

William P. Welty,

Founder and President.

WPW/pw

cc: Lawrence Bernstein, FCC communications counsel; Office of Attorney General for State of New York; Office of Attorney General for State of California; Continental's FCC Public File DBS–87–01

Joint Comments of the Common Carriers

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Table of Authorities

[6] See page one of Attachment Three of our Public Comments filed on 28 July 1993.

[7] See Attachment Two to this Supplement.

[8] See the yellow highlighted portion on page 2, lines 26 and 27 of Attachment Two.

[9] Copies of these letters are included in this Supplement as part exhibits to our Opposition. See Attachment One.

[10] A copy of this replacement contract with Intraspace was filed with the FCC on 21 July 1993. An amended due diligence showing and progress report accompanied the filing of the contract. A copy of this filing is available for inspection in Continental's public access file number DBS–87–01 at the offices of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

Cases

Besser Manufacturing Co. v. *United States*, 343 U.S. 444 (1952)
Cascade Natural Gas Corp. v. *El Paso Natural Gas Co.*, 386 U.S. 129 (1967)
Columbia Broadcasting System, Inc. v. *ASCAP*, 562 F.2d 130 (2d Cir. 1977)
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Hecht v. *Pro-Football, Inc.*, 570 F.2d 982 (DC Cir 1977)
International Boxing Club of New York, Inc. v. *United States*, 358 U.S. 242 (1959)
International Salt Co. v. *United States*, 332 U.S. 392 (1947)
K–91, Inc. v. *Gershwin Publishing Corporation*, 372 F.2d 1 (9th Cir. 1967)
Northern Pacific Railway Co. v. *United States*, 356 U.S. 1 (1958)
Schine Chain Theatres, Inc. v. *United States*, 334 U.S. 110 (1948)
United States v. *American Cyanamid Co.*, 556 F. Supp. 361 (1983)
United States v. *AT&T*, 524 F. Supp. 1336 (D.D.C. 1981)
United States v. *AT&T*, 552 F. Supp. 131 (D.D.C. 1982)
United States v. *Borden Company*, 347 U.S. 514 (1954)
United States v. *Carter Products Inc.*, 211 F. Supp. 144 (S.D.N.Y. 1962)
United States v. *CIBA Corporation*, 50 F.R.D. 507 (S.D.N.Y. 1970)
United States v. *Columbia Artists Management, Inc.*, 662 F. Supp. 865 (S.D.N.Y. 1987)
United States v. *Crescent Amusement Co.*, 323 U.S. 173 (1944)
United States v. *Glaxo Groups, Ltd.*, 410 U.S. 52 (1972)
United States v. *Grinnell Corp.*, 384 U.S. 563 (1966)
United States v. *Terminal R.R. Association*, 224 U.S. 383 (1912)
United States v. *United Shoe Machinery Corp.*, 391 U.S. 244 (1968)
United States v. *United States Gypsum Co.*, 340 U.S. 76 (1950)

Regulatory Cases

In re Telephone Company/Cable Television Cross-Ownership Rules, 7 F.C.C. Rcd 5781 (1992)
In re Implementation of Sections 11 and 13 of the Consumer Protection and Competition Act of 1992, 8 F.C.C. Rcd 210 (1992)
In re Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, 8 F.C.C. Rcd 3359 (1993)

Statutes

15 U.S.C. 18(a)
The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102–385, 106 Stat. 1460 (Oct. 5, 1992), codified at 47 U.S.C. 521
47 U.S.C. 522(12)
47 U.S.C. 533(b)(3)
47 U.S.C. 548(a)
47 U.S.C. 548(b)

Miscellaneous

House Committee on Energy and Commerce, H.R. Rep. No. 102–628, 102nd Cong. 2d Sess. (1992)

Joint Comments of the Common Carriers

The proposed consent decree in this case is marred by an important, but easily remedied, flaw. As currently drafted, the decree excludes common carriers (*i.e.*, telephone companies), their affiliates and subsidiaries, and their video dialtone customers from one of its most critical program access provisions. Neither the decree itself nor the Department's Competitive Impact Statement offers any explanation for this exclusion. Nor could any reasonable justification be offered. The exclusion is anticompetitive on its face, inconsistent with the remaining provisions of the decree, and contrary to the public interest determination of Congress in enacting the 1992 Cable Act.

Access to a wide variety of programming is essential to any viable competitor of the cable industry. The cable industry has sought to perpetuate its market power by locking up programs (either by buying the programmers or signing exclusive contracts with them) and then denying those programs to potential competitors. The whole point of this suit was to break that stranglehold and guarantee open access to cable programming for all. By settling for a remedy that denies common carriers—who are widely acknowledged as potent potential competitors of the cable industry—equal access to the most desirable programming covered by the decree, the proposed decree would put those carriers at a serious competitive disadvantage. Instead of prying open the cable industry to ensure competition for the benefit of the public, the proposed decree would permit the cable industry to manage competition for its own benefit.

Beyond this, the proposed consent decree must be measured against the declared public policy of the United States contained in the 1992 Cable Act. The 1992 Cable Act confers broad rights of access to programming at nondiscriminatory prices, terms and conditions to all cable competitors, on a technology neutral basis, and prohibits exclusive cable programming contracts unless they are proven to be in the public interest. By contrast, the proposed consent decree excludes common carriers and their video dialtone customers from access to the most desirable programming covered by the decree. Such a result is contrary to the public interest as determined by Congress.

Accordingly, Ameritech, Bell Atlantic Corporation, BellSouth Corporation, GTE Service Corporation, NYNEX Corporation, Pacific Telesis Group, Southwestern Bell Corporation, U S WEST, Inc., and the United States Telephone Association ("USTA")[1] ask the Department of Justice to modify the proposed consent decree to ensure that common carriers and their video transport customers receive the full program access protections afforded to other competitors of the cable industry.

Statement of Facts

A. The Current Video Distribution Marketplace

The distribution of multichannel video programming today is dominated by the cable industry. Cable systems are accessible to 96 percent of television households and over 60 percent of those households subscribe. Annual cable revenues now exceed $21 billion, and the industry is increasingly dominated by large entities called Multiple Systems Operators (MSOs).[2] Most significantly, in all but a handful of communities, there is only one cable provider. See Complaint ¶ 36. Moreover, the largest MSOs have entrenched their position by vertically integrating into cable programming (either through purchases or exclusive contracts) and then denying access to that programming to potential competitors.[3]

B. The Provision of Video Programming by Common Carriers

Under the 1984 Cable Act, common carriers are permitted to provide video programming outside their telephone service areas and in certain rural areas.[4] In addition, under recent FCC regulations, telephone companies may, within their service areas, provide "video dialtone" services, which allow customers to access a wide variety of video programs over the telephone

[1] USTA is the principal trade association of the local telephone industry, with about 1,100 members who together provide nearly all of the nation's telephone lines. The individual companies provide local telephone service, as well as a variety of other communications and information services, throughout most of the United States.

[2] The five largest MSOs, all of whom are defendants here, serve over 50 percent of all cable subscribers. See Complaint ¶ 37.

[3] House Committee on Energy and Commerce, H.R. Rep. No. 102–628, 102nd Cong. 2d Sess., 42–43 (June 29, 1992); *In re Implementation of Sections 11 and 13 of the Consumer Protection and Competition Act of 1992*, 8 F.C.C. Rcd 210, 218 (1992).

[4] See 47 U.S.C. 533(b)(3).

network.[5] Under the video dialtone regulations, telephone companies provide the transport and the programming is packaged by any number of third parties (generally referred to as "customer/programmers" of the video dialtone network). If the video dialtone networks are to succeed, however, those customer/programmers must have access to quality video programming. Without such access, the video dialtone networks will lose their customers, and the benefits sought by the FCC—"creating opportunities to develop an advanced telecommunications infrastructure, increasing competition in the video marketplace, and enhancing the diversity of video services to the American public"[6]—will not be realized.[7]

Common carriers are widely viewed as potent potential competitors of the cable industry, even in their role as transporters of third-party programming. Moreover, they may soon be allowed to provide video programming directly to subscribers within their service areas. All the expert federal agencies that have examined the issue have determined that the prohibition should be removed, and Congress is currently considering legislation to do so.[8] The ban is also facing a challenge in federal court in Virginia, where the Chesapeake and Potomac Telephone Company of Virginia (C&P), and its affiliate, Bell Atlantic Video Services Company (BVS), have challenged the constitutionality of the ban under the First Amendment.[9]

C. The 1992 Cable Act and the Proposed Consent Decree

In the 1992 Cable Act, Congress expressly guaranteed access to cable programming for new and existing competitors to cable.[10] The FCC has issued detailed regulations implementing these program access provisions.[11] Current federal protections extend to *all* actual and potential competitors of the cable industry, including telephone companies, their video programming affiliates, and the third-party customer/programmers of their video dialtone networks.

In many respects, the proposed consent decree complements the regulatory regime established by the 1992 Cable Act. Most of its program access provisions apply to "any provider of multichannel subscription television." See, *e.g.*, Proposed Decree at IV(A) (emphasis added) (prohibiting defendants from enforcing or carrying out any provision of the Partnership agreement that "affects the availability, price, terms or conditions of provision, sale, or licensure of programming to *any provider of multichannel subscription television*"); *id.* at IV(B) (emphasis added) (prohibiting defendants from retaliating or threatening to retaliate against a person that "provides, sells, or licenses programming to or invests in * * * *any provider of multichannel subscription television*"); *id.* at IV(C)(1) (emphasis added) (prohibiting defendants from entering into any agreement or understanding with any programming service "with respect to the terms or conditions on which [that] service will sell, provide or license, or refuse to sell, provide or license, programming to *any provider of multichannel subscription television*"); *id.* at IV(C)(2) (emphasis added) (prohibiting defendants from entering into any agreement or understanding with any cable system "to purchase, procure, or license programming, whereby such purchase, procurement or license is subject to any condition that prohibits the purchase or directly affects the availability, price, terms, or conditions of, the purchase, procurement or licensing of that programming by *any other provider of multichannel subscription television*").

"Multichannel subscription television" is defined in the decree as "a service providing multiple channels of video programming to consumers by *any* of various methods, and for which a periodic subscription fees is charged." Proposed Decree at II(C) (emphasis added). No invidious distinctions are drawn on the basis of the identity of the provider or the technology used for distribution. Thus, video dialtone customer/programmers—which provide multiple channels of video programming to consumers over common carrier video dialtone networks—clearly fall within the definition. Common carriers themselves also fall within the definition to the extent that they provide multiple channels of video programming to their customers.

In short, four of the program access provisions of the decree expressly apply to any provider or multichannel subscription television, including common carriers and their video dialtone customers. Inexplicably, however, the fifth and most important such provision, does not.

Section IV(C)(3) purports to prevent the defendants from entering into or renewing any exclusive distribution agreements or contracts with any national video programming service listed in Exhibit A of the decree or with any existing or new regional sports service. This is an absolutely critical provision. Exhibit A lists sixty-one national video programming services, including American Movie Classics, Black Entertainment Network, Cinemax, The Discovery Channel, The Disney Channel, Home Box Office (HBO), Music Television (MTV), Nickelodeon, and Turner Network Television (TNT). Exhibit A also lists thirty-three regional Sports services, including Home Team sports, and numerous regional affiliates of Prime Sports Network and Sports Channel.

These are the crown jewels of cable television. Access to these programs is essential to the success of a cable competitor. Yet these programs are denied to common carriers and their video dialtone customer/programmers. Section IV(C)(3)(a) only precludes the defendants from entering into "exclusivity provisions * * * that restrict or limit the rights of such programming service to deal with any direct-to-home satellite service, Multichannel Multipoint Distribution Service, Satellite Master Antenna Television Service (SMATV), or cable

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[5] *In re Telephone Company/Cable Television Cross-Ownership Rules*, 7 F.C.C. Rcd 5781 (1992). Because the telephone network is interactive, telephone companies have the capability to offer "video on demand," *i.e.*, the ability of a customer to dial-up and view any television show or movie stored in an accessible database.

[6] *Id.* at 5783.

[7] Although telephone company video dialtone is a relatively new service, the FCC has already authorized two carriers to begin providing it. A number of additional applications are pending at the FCC.

[8] As the FCC recently explained, the ban was enacted at a time when cable was a "fledgling industry unable to compete"; today, by contrast, cable holds the "leading position in the delivery and provision of video programming to the American public." 7 F.C.C. Rcd at 5848. The Commission concluded that repeal of the ban would "increase[e] competition in the video marketplace, spur[] the investment necessary to deploy an advanced infrastructure, and increase[e] the diversity of services made available to the public." *Id.* at 5847. The two other federal agencies with primary responsibility for overseeing the telecommunications industry, the National Telecommunications and Information Administration (NTIA) of the Department of Commerce and the Department of Justice, have likewise urged entry of the telephone companies into the cable market. See Comments of NTIA at 3, *Telephone Company-Cable Television Cross-Ownership Rules*, CC Dkt. No. 87-266 (F.C.C. Feb. 3, 1992); Reply Comments of the United States Department of Justice at 44, CC Dkt. No. 87-266 (F.C.C. Mar. 13, 1992).

[9] *C&P Telephone Company of Virginia* v. *United States*, No. 92-1751-A (E.D. Va. 1992). Motions for summary judgment are pending before the court, and a decision is expected shortly.

[10] The Cable Television Consumer Protection and Competition Act of 1992, Pub. L. No. 102-385, 106 Stat. 1460 (Oct. 5, 1992), *codified at* 47 U.S.C. 521.

[11] *In re Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992*, 8 F.C.C. Rcd 3359, 3362-3363, 3404, 3412 (1993) (hereinafter *Program Access Regulations*).

operator." Common carriers, which do not fit into any of the other categories, are then expressly excluded from the definition of "cable operator."

> For the purposes of this decree, a cable operator shall not include a common carrier, subject in whole or in part to Title II of the Communications Act of 1934 (47 U.S.C. 201–204), as it reads on the date of entry of this decree, or an affiliate owned by, operated by, or under common control with the common carrier that provides video programming to subscribers in its telephone service area, except to the extent that, on the date of entry of this decree, such carrier provides telephone exchange service in a rural area and is authorized by the Federal Communications Commission to provide video programming to subscribers in such rural area.

Proposed Consent Decree at IV(C)(3)(c). Section IV(C)(3) also excludes the customer/programmers of video dialtone networks. The decree defines a "cable operator" as an entity that must provide a programming service and have a significant ownership interest in the cable facility. Proposed Consent Decree at IV(C)(3)(c). A third party customer/programmer does not have any ownership interest in the local telephone company's network or transmission facilities.

It would have been easier, and more natural in light of the rest of the decree, to draft Section IV(C)(3) to preclude the defendants from entering into "exclusivity provisions * * * that restrict or limit the rights of such programming service to deal with [any provider of multichannel subscription television]." That is how the other decree provisions read. And that it what the Competitive Impact Statement claims the decree accomplishes. Why the decree suddenly imposes limitations on the most important of its program access provision—limitations that appear to exclude only common carriers and their video dialtone customer/programmers—is both unexplained and inexplicable.

ARGUMENT

The Proposed Consent Decree Should Be Modified so That Its Program Access Protections Extend to all Potential Competitors of the Cable Industry, Including Common Carriers and Their Video Dialtone Customer Programmers

It is well established that a properly fashioned antitrust remedy must "effectively pry open to competition a market that has been closed by defendants' illegal restraints." *International Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947). The remedy "should operate as an effective deterrent to a repetition of the unlawful conduct"; it should "suppress the unlawful practices and * * * take such reasonable measures as would preclude their revival." *United States* v. *Crescent Amusement Co.*, 323 U.S. 173, 186, 188 (1944). Thus, "[t]he remedy in an antitrust action—whether imposed by a court or agreed upon between the parties—is measured both by how well it halts the objectionable practices and by its prospects for minimizing the likelihood that such practices will occur in the future." *United States* v. *AT&T*, 552 F. Supp. 131, 165 (D.D.C. 1982). See also *United States* v. *United Shoe Machinery Corp.*, 391 U.S. 244, 251 (1968); *United States* v. *Grinnell Corp.*, 384 U.S. 563, 577 (1966); *Schine Chain Theatres, Inc.* v. *United States*, 334 U.S. 110, 128–129 (1948).

The proposed consent decree fails this test. It is anticompetitive on its face in that it leaves the defendants free to abuse their market power to impede entry by common carriers and their video dialtone customer/programmers. Insofar as it excludes common carriers from its most important protections, the decree is also contrary to the stated purpose of the United States in proposing this consent decree and to the public interest determination of Congress in enacting the 1992 Cable Act.

A. The Proposed Consent Decree is Anticompetitive Insofar as It Places Common Carriers and Their Video Transport Customers at a Competitive Disadvantage in Access to Video Programming

The development of a viable competitor to the current monopoly power of the cable industry no longer depends on technology—today, there are technological alternatives to cable. Competition depends on programming. As the Complaint in this case acknowledges (at ¶ 41), a viable competitor to the cable industry must be able to obtain "a sufficient quantity of popular programming, such as that currently provided to cable subscribers," if it is ever to get its foot (or wire, or satellite dish) in the door.

Recognizing this fact, the cable industry has used its power over the distribution of programming to lock up access to programming through a series of buyouts and exclusive contracts. The instant lawsuit was brought to obtain broad equitable relief, including an order that the defendant cable companies provide program access on reasonable terms to any provider of multichannel subscription television. Complaint at Prayer for Relief ¶¶ 2–3.[12]

The proposed consent decree falls short of that goal; indeed, the decree as written will affirmatively undermine it. Common carriers and their video dialtone customer/programmers are potent potential competitors of the cable industry. Yet Section IV(C)(3), by its express terms, allows the cable defendants to enter into exclusive distribution agreements denying to common carriers and their video dialtone customer/programmers access to the most desirable and popular programming in the country—the very shows that are critical to viable competition. That result cannot be reconciled with the mandate of the antitrust laws to knock down such anticompetitive barriers to entry. *Ford Motor Co.* v. *United States*, 405 U.S. 562, 578 (1972); *United States* v. *American Cyanamid Co.*, 556 F. Supp. 361, 364 (1983); *United States* v. *AT&T*, 552 F. Supp. at 150, n.80; *United States* v. *Carter Products Inc.*, 211 F. Supp. 144, 146 (S.D.N.Y. 1962). Nor can it be reconciled with the requirement that an antitrust decree, not merely protect a few potential competitors, but "effectively pry open to competition a *market* that has been closed by defendants' illegal restraints." *International Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947) (emphasis added).

The proper purpose of an access provision in an antitrust decree is to make such access available "upon such just and reasonable terms * * * as will * * * place *every* such [competitor] upon as nearly as equal [a] plane as may be." *United States* v. *AT&T*, 524 F. Supp. 1336, 1353 (D.D.C. 1981) (emphasis added). See also *United States* v. *Terminal R.R. Association*, 224 U.S. 383, 411 (1912).[13] This decree, by

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[12] Although the specific instances on which the complaint focused concerned the efforts of cable providers to thwart emerging competition from direct broadcast satellite (DBS) providers, it is clear from the prayer for relief and the Competitive Impact Statement that the government intended to prevent cable providers from denying program access to any potential competitors. See Part B, *infra*.

[13] Access provisions are found in numerous antitrust decrees. Invariably, they provide access to all of the defendant's competitors, not just some subset preferred by the defendant. See, *e.g.*, *United States* v *Glaxo Groups, Ltd.*, 410 U.S. 52, 60–64 (1973); *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. 129, 135, 141 (1967); *International Boxing Club of New York Inc.* v. *United States*, 358 U.S. 242, 261 (1959); *Northern Pacific Railway Co.* v. *United States*, 356 U.S. 1, 4–5 (1958); *United States* v. *Borden Company*, 347 U.S. 514, 518 (1954); *Besser Manufacturing Co.* v. *United States*, 343 U.S. 444, 447 (1952); *United States* v. *United States Gypsum Co.*, 340 U.S. 76,

Continued

contrast, singles out one subset of potential competitors—those, apparently, that the cable industry fears the most—and subjects them to discriminatory treatment. Indeed, the decree gives the cable industry a virtual license to use program access restrictions to block entry by common carriers and their video dialtone customer/programmers.

It is no answer to say that common carriers and their video dialtone customer/programmers are free to bring their own suit. As an initial matter, this is their suit, in the sense that an antitrust action by the United States is supposed to be brought on behalf of those customers and businesses harmed by the anticompetitive practices of the defendants; and in negotiating the provisions of a consent decree, the United States is expected to represent the interest of the public in full and open competition. See 15 U.S.C. 16(e). See also *Cascade Natural Gas Corp.* v. *El Paso Natural Gas Co.*, 386 U.S. at 135; *United States* v. *Borden Company*, 347 U.S. at 518; *United States* v. *CIBA Corporation*, 50 F.R.D. 507, 513 (S.D.N.Y. 1970).

Second, a separate suit would take years to prosecute and, in the meantime the consent decree would place common carriers and their video dialtone customer/programmers at such a clear competitive disadvantage to the cable defendents and other cable competitors that it would create a strong disincentive for entry into the cable market. An important source of competition to the cable industry would thereby be weakened and potentially eliminated. Video customers generally would be the losers, because the lack of competition would force them to pay higher prices and enjoy fewer choices.

Finally, there is a significant danger that the cable industry would be able to use this consent decree as a shield in any judicial or regulatory proceedings designed to open access to programming to common carriers and their video dialtone customer/programmers. A finding by the Court that the decree is in the public interest, combined with the implied conclusion of the Department of Justice that the exclusion of common carriers and their video dialtone customer/providers from the benefits of open access to programming is appropriate, could provide a significant obstacle to any further action. See, *e.g.*, *Columbia Broadcasting System, Inc.* v. *ASCAP*, 562 F.2d at 139 n.25 (although a consent decree does not automatically insulate defendant from later suits, it would be inappropriate to give "no weight at all" to government consent decrees in future suits, since Department of Justice "has the responsibility for enforcing the Sherman Act").

B. The Proposed Consent Decree Is Inconsistent With the Goals of This Suit as Explained in the Complaint and the Competitive Impact Statement

The proposed consent decree is not merely anticompetitive on its face. It is also inconsistent with the stated purpose of the United States in bringing this litigation and proposing this decree, which was to break open the multichannel subscription television *market* to competition. As the government's Competitive Impact Statement indicates (at 2), '[t]he complaint seeks injunctive relief to assure that Primestar does not restrain the availability of programming to multichannel subscription television service competitors of the MSO defendants, or does not deter entry into multichannel subscription television by others by serving as a device to facilitate a coordinated retaliatory response by the MSO defendants."

No sub-class of "multichannel subscription television service competitors" is identified as somehow less deserving of such protection. Indeed, no rationale for the exclusion of common carriers and their video dialtone customer/programmers is ever given by the Department of Justice, whether in the complaint, the proposed decree, or the Competitive Impact Statement. In fact, there are some indications that the Department's acquiescence in the exclusion of common carriers and their video dialtone customer programmers from the protection of Section IV(C)(3) was inadvertent.

The Competitive Impact Statement describes Section IV(C)(3) as prohibiting exclusivity agreements that would limit the rights of programming services "to deal with other providers of multichannel subscription television, including any direct-to-home satellite service, MMDS, SMATV, or cable operator." Competitive Impact Statement at 11 (emphasis added). This passage seems to indicate that the specific technologies listed in Section IV(C)(3) were intended to be illustrative rather than exhaustive.

This impression is reinforced by the next paragraph in the Competitive Impact Statement, which states that Section IV(C)(3)'s anti-exclusivity provision "complement[s] the prohibitions of Section IV(C) (1) and (2) by prohibiting the MSO defendants from entering into or renewing program supply agreements that preclude *competing suppliers of multichannel subscription television* from gaining access to programming services that are most likely to be important to the success of potential competitors." Competitive Impact Statement at 11–12 (emphasis added). See also *id.* at 13 ("By restricting certain exclusive contracting practices of the MSO defendants, the proposed Final Judgment provides further assurance that * * * the MSO defendants will not coordinate their behavior through the ostensibly unilateral conduct of vertically integrated firms with common interests").

As it now stands, however, the wording of the proposed decree directly contradicts the assurances of the Competitive Impact Statement that Section IV(C)(3) protects providers of multichannel subscription television in general. The provision as written expressly excludes common carriers and their video dialtone customer/programmers. It is essential, therefore, that Section IV(C)(3) be amended so that it applies, as do the rest of the decree's protections, to "any provider of multichannel subscription television." Only when and if that is done will it be true that "the proposed Final Judgment fully addresses the antitrust violation alleged in the complaint." Competitive Impact Statement at 13.

C. The Proposed Consent Decree Is Contrary to the Access Provisions of the 1992 Cable Act and FCC Implementing Regulations

As currently worded, the proposed consent decree is also directly contrary to the policy judgment of Congress and the FCC that common carriers and their video dialtone customer/programmers should be included in whatever program access requirements are developed.

As noted, the Cable Act of 1992 contains a general prohibition against "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent *any* multichannel video programming distributor from providing satellite cable programming * * * to consumers." 47

94 (1950); *United States* v. *Crescent Amusement Co.*, 323 U.S. at 186; *Hecht* v. *Pro-Football, Inc.*, 570 F.2d 982, 992 (D.C. Cir. 1977); *Columbia Broadcasting System, Inc.* v. *ASCAP*, 562 F.2d 130, 139, n. 25 (2d Cir. 1977); *K–91, Inc.* v. *Gershwin Publishing Corporation*, 372 F.2d 1, 2 (9th Cir. 1967); *United States* v. *Columbia Artists Management, Inc.*, 662 F. Supp. 865 (S.D.N.Y. 1987); *United States* v. *AT&T*, 552 F. Supp. at 183–188.

U.S.C. 548(b) (emphasis added).[14] And the Act broadly defines a "multichannel video programming distributor" (MVPD) as any person "who makes available for purchase, by subscribers or customers, multiple channels of video programming." 47 U.S.C. 522(12). Unlike the proposed consent decree, the 1992 Cable Act does not exclude common carriers or their customers from its program access protections or create any other invidious distinctions among video programming distribution technologies by discriminating as to which technologies will receive the Act's protections. Congress concluded that the public interest would best be served by ensuring access for all potential competitors, thereby promoting the broadest range of "competition and diversity in the multichannel video programming market, * * * and spur[ing] the development of communications technologies." 47 U.S.C. 548(a).

The FCC's implementing regulations faithfully carry out this inclusive mandate. MVPDs subject to the protections of those regulations are defined by the FCC to include any entities "engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming."[15] Again, there is no exclusion for common carriers or their video dialtone customer/providers.

In short, the clear public policy expressed in the 1992 Cable Act and its implementing regulations is that access to cable programming should be extended to all potential competitors of the cable industry. By excluding common carriers and their video dialtone customer/programmers from the protection against defendants' exclusive distribution agreements under IV(C)(3)(a), the proposed settlement violates public policy and should therefore be modified. It is simply not in the public interest for any antitrust consent decree to codify a set of rules that run counter to the regulatory scheme fashioned by Congress.

It is no answer to say that the proposed consent decree merely supplements, but does not supplant, the program protections designed by Congress and the FCC. Congress and the FCC have made a considered policy judgment that all potential competitors to the cable industry should receive equal access to cable programming. For the United States, at the behest of the cable industry, to devise a supplemental regime that favors some competitors and disfavors others is directly antithetical to that policy judgment.

Conclusion

The proposed consent decree should be modified so that its program access protections extend to all potential competitors of the cable industry, including common carriers and their video dialtone customer/programmers.

Respectfully submitted.

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I. Preliminary Statement

On June 9, 1993, the U.S. Department of Justice ("Justice Department") and the Attorneys General of 40 states filed proposed consent decrees in the U.S. District Court for the Southern District of New York to settle an antitrust investigation into the formation of Primestar Partners. Primestar was formed as a direct broadcast satellite ("DBS") multichannel subscription television service by seven of the largest cable multisystem operators ("MSOs"), some of which are leading suppliers of video programming. Primestar and its cable owners were under investigation for conspiracy to raise barriers to entry by other DBS operators to the multichannel subscription television service market and to restrict access to programming by other DBS entrants.[1]

Although the proposed consent decrees were supposed to terminate and prevent the cable defendants' anticompetitive behavior alleged in the federal and state complaints, they actually do just the opposite sanctioning anticompetitive exclusive arrangements, thereby, undermining the Cable Television Consumer Protection and Competition Act of 1992 ("1992 Cable Act") enacted prior to their filing and intended to remedy the same behavior on the part of the cable defendants.

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[14] The reference to "satellite cable programming" merely reflects the fact that all significant cable programming is delivered to program distributors by means of satellite. The distributors then determine the mode of distribution (DBS, cable, SMATV, etc.) to their customers.

[15] *Program Access Regulations*, 8 F.C.C. Rcd at 3362 n.3.

[1] *United States* v. *Primestar Partners, L.P.*, No. 93–CIV–3913 at ¶ 48 (S.D.N.Y. June 9, 1993) ("U.S. Complaint").

While the States' proposed consent decrees are ambitiously broad in their approach and purport to provide significant remedies to the cable defendants' anticompetitive behavior towards the various competitors to cable, they are so riddled with exceptions and exclusions that they are invidiously anticompetitive in their effects on the multichannel video programming marketplace.[3] They do not protect the public against the anticompetitive practices of the cable defendants. Rather, the States' proposed consent decrees have the effect of protecting the cable defendants from the full force and effect of the 1992 Cable Act.

The federal consent decree takes a fundamentally different approach and focusses more narrowly upon the specific provisions of the Primestar Partnership Agreement itself. The federal decree attempts to target and enjoin the enforcement of those provisions of the Primestar Partnership Agreement which create a framework for the cable defendants to engage in anticompetitive behavior. Inexplicably however, the proposed federal decree contains an exception to this approach—Section IV.D. This provision appears to be aimed at diminishing the competitiveness of the direct broadcast satellite ("DBS") industry by permitting the cable defendants to continue to engage in anticompetitive conduct with regard to access to programming for DBS. The Justice Department offers no legal or public policy rationale for the disadvantageous treatment of the DBS industry.

Section IV.D permits Primestar to enter into exclusive programming agreements if a competing DBS venture obtains any exclusive programming. During the term of the consent decree, there will likely be only two non-cable owned DBS competitors to Primestar. One of the DBS ventures may have already entered into exclusive arrangements with the cable defendants for "premium pay cable television" programming. Section IV.D would ratify these exclusive contracts and allow Primestar to lock up the remaining cable programming services under the control of its cable owners. This profoundly anticompetitive regime will reduce competition in the multichannel video programming market by denying video programming vital to the success of any cable competitor. The ultimate result of this reduced competition will be fewer viewing choices and higher prices for consumers.

The potential anticompetitive consequences of this provision would seem to be at odds with the objectives of the Justice Department in bringing this antitrust action and with the declared public policy of the United States embodied in the 1992 Cable Act. In enacting the 1992 Cable Act, the Congress envisioned the fullest competition to cable as being in the best interest of consumers.[3] Therefore, the Act confers broad access to programming rights at nondiscriminatory prices, terms and conditions to all cable competitors and prohibits exclusive cable programming contracts unless they are proven to be in the public interest. The regulations promulgated by the Federal Communications Commission ("FCC") implement Congressional intent.[4] Section IV.D sets up a clear conflict with the nondiscrimination provisions of the Act and the implementing regulations.

Therefore, DirecTv, Inc.[5], the National Rural Telecommunications Cooperative ("NRTC")[6], Consumer Federation of America ("CFA")[7], and Television Viewers of America, Inc. ("TVA")[8] request that the Department of Justice modify the proposed consent decree to eliminate the clause beginning with the word "provided" and the parenthetical information from Section IV.D.

II. Background of the Multichannel Video Programming Distribution Industry

The current multichannel video programming distribution marketplace is dominated by the cable industry. As the Complaint notes, "[m]ore than 90% of the more than 91 million television households in the United States are in areas served by cable," most of whom can purchase multichannel subscription television service only from a single local cable distributor. U.S. Complaint at ¶¶ 30, 36. The cable industry presently faces very limited competition from other multichannel video programming distributors ("MVPDs"), such as C-band satellite, Multichannel Multipoint Distribution Service ("MMDS"), and Satellite Master Antenna Television systems ("SMATV"). U.S. Complaint at ¶32.

High-power DBS has been viewed by the cable industry and the communications industry generally as having the potential to provide a competitive alternative to cable television service.[9] Its technological

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[2] See discussion *infra* at 16. See also Joint Amicus Curiae Memorandum of Law of DirecTv, Inc., National Rural Telecommunications Cooperative, Consumer Federation of America and Television Viewers of America, Inc., *State of New York* v. *Primestar Partners*, No. 93 Civ. 3866 (S.D.N.Y. June 9, 1993) (included as Appendix A).

[3] See S. Rep. No. 102–92, 102d Cong., 1st Sess. at 1 (1991) ("The purpose of this legislation is to promote competition in the multichannel video marketplace and to provide protection for consumers against monopoly rates and poor customer service."); H. Rep. No. 102–628, 102d Cong., 2d Sess. at 28 (1992) ("The Legislation will protect consumers by preventing unreasonable rates, by improving the cable industry's customer service practices, and by sparking the development of a competitive marketplace.")

[4] First Order and Report, In re Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, MM Docket No. 92–265 (released April 30, 1993) ("Program Access Order).

[5] DirecTv, Inc. and Hughes Communications Galaxy, Inc. ("HCG") are sister subsidiaries of Hughes Communications, Inc. ("HCI"). HCG has been licensed by the FCC to provide high-power DBS service. DirecTv is the DBS operating, customer service and programming acquisition arm of the HCI family. DirecTv will launch, in December of this year, the first high-powered U.S. DBS satellite, and shortly thereafter will introduce American consumers to the first truly competitive service to cable television . As a high-power DBS provider, DirecTv will provide approximately 150 channels of high-quality subscription and pay-per-view video programming to the public.

[6] NRTC is a non-profit corporation, owned and controlled by 521 rural electric cooperatives and 231 rural telephone systems located throughout 49 states. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America on an affordable basis. On April 10, 1992, NRTC signed a DBS Distribution Agreement with HCG to provide DBS services to rural subscribers across the country. Under the DBS Distribution Agreement, HCG provides NRTC, its members and affiliated companies the satellite capacity and other necessary services to market and distribute 20 channels of popular cable programming services to rural households equipped with 18" DBS receiving antennas. Most of the programming services to be offered are owned or controlled by cable companies.

[7] CFA is the nation's Largest consumer advocacy group, composed of more than 240 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, with more than 50 million individual members. CFA was the lead representative of the public in the legislative deliberations that led to the 1992 Cable Act. The millions of television viewers and cable consumers who constitute the membership of CFA's affiliates have a "paramount" First Amendment right to receive a variety of information from diverse sources. *Red Lion Broadcasting* v. *FCC*, 395 U.S. 367, 390 (1969). See also, *Office of Communications of the United Church of Christ* v. *FCC*, 359 F.2d 994 (D.C. Cir. 1966) (Burger, J.). They have been undeniably harmed by the power that the cable industry has acquired and historically exercised to dominate the multichannel video programming distribution marketplace. CFA is therefore critically concerned with the anticompetitive and anti-consumer effects of the proposed decree on the public interest.

[8] With members in 19 states and the District of Columbia, TVA is a grassroots, non-profit public interest consumer organization devoted, *inter alia*, to competition in multichannel television delivery. Founded in 1991, TVA was active in the legislative struggle which resulted in the 1992 Cable Act.

[9] U.S. Complaint at ¶39. See also House Committee on Energy and Commerce, H.R. Rep. No. 102–268, 102d Cong., 2d Sess. (1992) at 46 (citing RAND Study below and agreeing that "during the 1990's, high-powered DBS systems have greater

capability is meaningless, however, without the ability to obtain and offer quality programming to subscribers. As the Complaint acknowledges, "[a]n important component of successful commercial development of DBS is obtaining sufficient quantity of popular programming, such as that currently provided to cable subscribers."[10] The Justice Department concludes that one of the primary purposes for which the cable defendants formed Primestar Partners was to make it more difficult or more costly for any other DBS service to obtain popular cable programming. *Id.* at ¶44.

Such anticompetitive activities of the cable industry spurred Congress to enact the program access provisions of the 1992 Cable Act. In order to prevent vertically integrated cable companies from choking off the program access essential to a vigorously competitive multichannel video programming distribution industry and vital to ensuring greater viewer choice and price competition for consumers, Section 19 of the 1992 Cable Act creates a broad prohibition against unfair and discriminatory practices in the sale of satellite cable and satellite broadcast programming.[11] The avowed objective of the program access provisions is to increase the availability of new and existing competitors to cable in order to promote diversity, competition, and new technologies.[12] The FCC's Program Access Order implements Congressional intent in enacting Section 19. The FCC's new rules are grounded in Congress' express concern that "potential competitors to incumbent cable operators often face unfair hurdles when attempting to gain access to the programming they need in order to provide a viable and competitive multichannel alternative to the American public."[13]

III. DirecTv and the Proposed Federal Consent Decree

Following the launch of the first high-power DBS satellite scheduled for December 1993, DirecTv will initiate the first such DBS service in the United States in early 1994, operating from an FCC-assigned orbital location of 101°. Later in 1994 when the second satellite is in operation, DirecTv will have the technology to provide more than 150 channels of video programming directly to households throughout the United States. NRTC will market and distribute approximately 20 channels of video programming to rural households.

Another separate DBS provider, United States Satellite Broadcasting Company, Inc. ("USSB"), will also begin operation of a high-power DBS system from the 101° orbital position in 1994, utilizing a five-transponder "payload" located on the first of HCG's two satellites to be co-located at 101°.[14] USSB will thus have the technological capability to offer approximately 30 channels of video programming to consumers. Althqugh a number of other applications to operate DBS satellite have been granted by the FCC, because of the significant capital costs of start-up, DirecTv and USSB are the only non-cable owned high-power DBS services likely to be operational in this decade. Thus, for the period of time encompassed by the proposed consent decree, the developing high-power DBS industry will consist of a universe of two non-cable owned licensees at 101° and possibly Primestar leasing capacity from TCI-owned Tempo licensed at 119°.[15] DirecTv will possess the greater amount of channel capacity at 101°.

As a DBS provider, DirecTv has had first-hand experience attempting to negotiate contracts with vertically integrated prôgrammers to obtain programming that is vital to any viable MVPD. As of late January 1993, DirecTv had been unable to announce any programming deals with vertically integrated programmers. After the 1992 Cable Act passed, the "log jam" began to break and DirecTv was able to enter into its first agreements with vertically integrated programmers. But, to this date, less than six months from launch of its first satellite, DirecTv has still been unable to reach an agreement directly with either of the cable defendants Time Warner and Viacom to allow DirecTv and NRTC access to some of the most popular and most essential cable video programming, such as HBO and Showtime.

Section IV.D of the proposed consent decree generally prohibits, with certain exceptions, Primestar and the cable defendants from entering into exclusive arrangements for existing national video programming.[16] This programming, listed on Exhibit A to the decree, includes HBO, Cinemax, Showtime, MTV, Nickelodeon, and VH-1—readily acknowledged as some of the most popular cable programming.[17] However, this provision contains an exception which singles out DBS for disparate treatment from all other competitors to cable. Section IV.D permits Primestar to enter into exclusive programming contracts if a competing DBS venture obtains any exclusive programming. This exception will allow the cable defendants to carve up the video programming market between themselves and the competing DBS venture of their choice.

As indicated above, DirecTv/NRTC and USSB will be the only competing DBS providers in operation during the decree period. DirecTv understands that, after passage of the 1992 Cable Act but before the filing of the proposed consent decree, USSB had already entered into arrangements with varying degrees of exclusivity for access to "premium cable" programming—HBO,

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potential for widespread competition with cable systems than do other multichannel video alternatives"); Leland Johnson and Deborah R. Castleman, Direct Broadcast Satellites: A Competitive Alternative to Cable Television, R-4047-MF/RL (Rand 1991) at 78 (concluding that widespread competition to cable is most likely to come from high-power DBS).

[10] U.S. Complaint at ¶41. See also 138 Cong. Rec. H6533 (daily ed. July 23, 1992) (remarks of Rep. Tauzin) ("It will do us little good to hope in vain for the advent of a DBS, direct broadcast satellite, industry or for the expansion of wireless cable in America as competition to [the cable] monopoly if none of it can get programming. Programming is the key.").

[11] Section 19(b) provides: "It shall be unlawful for a cable operator, a satellite cable programming vendor in which a cable operator has an attributable interest, or a satellite broadcast programming vendor to engage in unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent any multichannel video programming distributor from providing satellite cable programming or satellite broadcast programming to subscribers or consumers." 47 U.S.C. 628.

[12] See, e.g., House Committee on Energy and Commerce, H.R. Rep. No. 102-862, 102d Cong., 2d Sess. (1992) at 53 ("The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable.")

[13] Program Access Order at ¶9.

[14] Rather than constructing and launching its own satellite, USSB entered into an agreement with HCG to purchase a payload of 5 transponders on one of the HCG satellites to be located at 101°. USSB will retain full operational control over its transponders, and will have sole discretion as to the content of programming transmitted over those five transponders. See United Satellite Broadcasting Co. and Hughes Communications Galaxy, Inc., 7 FCC Rcd at 7249. Thus, although operating from the same satellite, DirecTv and USSB are direct competitors.

[15] See In re: Applications of Tempo Satellite, Inc. for Minor Modification of Construction Permit for its Direct Broadcast Satellite System, FCC File No.____(filed July 26, 1993). See also "ICI Buying $400 Million in Satellites," Broadcasting & Cable, Aug. 2, 1993 at 45, "Primestar Buys Compression for $250M," Broadcasting & Cable, Aug. 9, 1993 at 49.

[16] Section IV.D provides, in pertinent part: "Primestar is enjoined from licensing to itself, and each defendant is enjoined from licensing to Primestar, any exclusive rights to any national video programming service existing as of May 1, 1992; provided, however, that if a competing DBS venture obtains any exclusive programming, Primestar may, upon sixty (60) days prior written notice to the Department, obtain a reasonably comparable amount of programming of a reasonably comparable type and quality on a reasonably comparable exclusive basis." *United States* v. *Primestar Partners, L.P.*, No. 93-CIV-3913, 58 FR 33,944, 33946 (June 23, 1993).

[17] 58 FR at 33,947, 33,948.

Showtime owned by the cable defendants.[19] Thus the unambiguous effect of Section IV.D is to ratify in a consent degree the cable defendants' pre-existing arrangements with USSB and to authorize Primestar and the cable defendants to lock up the remaining comparable programming services to the exclusion of the only other DBS competitor. This profoundly anticompetitive market structure conflicts with Congress' mandatory program access policy and the FCC's implementation of that policy.

IV. The Proposed Consent Decree Undermines the 1992 Cable Act and the FCC's Implementing Regulations

The regime created by the 1992 Cable Act and the implementing regulations was intended to promote the broadest possible competition to cable. The Congress and the FCC deemed DBS to be a particularly strong potential competitor. The introduction of competition would help drive down prices and improve service quality for consumers. Congress specifically sought to create as much competition as the marketplace would permit and severely limited exclusive contracts because it perceived them to operate contrary to that objective in the current marketplace.[19] Section 19 of the 1992 Cable Act, one of the most intensely debated and vigorously contested provisions of the law, creates a broad prohibition against vertically integrated cable companies engaging in "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent *any* multichannel video programming distributor [e.g., a DBS provider] from providing satellite cable programming * * * to subscribers or consumers."[20] Section 19(c)(2)(C) prohibits exclusive contracts by vertically integrated cable companies in non-cabled areas[21] and Section 19(c)(2)(D) prohibits exclusive contracts between vertically integrated cable programmers and a cable operator in cabled areas unless the FCC finds that they serve the public interest, applying statutorily mandated criteria.[22]

V. The Proposed Consent Decree is Not in the Public Interest and Should be Modified

"Antitrust relief should unfetter a market from anticompetitive conduct and 'pry open to competition a market that has been closed by defendants' illegal restraints.'" *Ford Motor Company* v. *United States*, 405 U.S. 562, 578, 579 (1972) (quoting *International Salt Co.* v. *United States*, 332 U.S. 392, 401 (1947)). Such relief should "break up or render impotent the monopoly power found to be in violation of the Act." *United States* v. *Grinnell Corp.*, 384 U.S. 563, 577 (1966). See also *United States* v. *United Shoe Machinery Co.*, 391 U.S. 244, 251 (1968). Therefore, an antitrust consent decree "must leave the defendant without the ability to resume the actions which constituted the antitrust violation in the first place. For these reasons, the decree should not be limited to past violations; it must also effectively foreclose the possibility that antitrust violations will occur or recur." *United States* v. *AT&T*, 552 F. Supp. 131, 150 (D.D.C. 1982) *aff'd Maryland* v. *United States*, 460 U.S. 1001 (1983).

The proposed Federal consent decree does not meet this test. It permits the cable defendants to continue to abuse their monopoly power to impede the development of the DBS industry through restricting access to vital programming. This clearly contravenes the stated purpose of the United States in proposing this decree and to the public policy established by the U.S. Congress in the 1992 Cable Act.

A. The Consent Decree Permits the Cable Defendants To Continue Their Anticompetitive Behavior With Regard to the DBS Industry

At the conclusion of its investigation into the anticompetitive efforts to restrict program access by the cable defendants, the Justice Department contemporaneously filed the instant lawsuit and the proposed consent decree to remedy "anticompetitive effects of the Primestar venture."[23] The goal of the proposed Federal decree was "to assure that Primestar does not restrain the availability of programming to multichannnel subscription television service competitors of the MSO defendants."[24] However, as described above, the proposed Federal consent inexplicably permits the cable defendants to continue the monopolistic control over access to vital cable programming, thereby further impeding the development of DBS. This runs contrary to the Justice Department's obligation to ensure that the proposed federal consent decree both remedies past violations of the antitrust laws as well as forecloses the possibility of recurrence.

As DirecTv/NRTC and USSB will provide the only non-cable owned high-power DBS service in the foreseeable future, the proposed decree permits the cable defendants to pursue a strategy of excluding a DBS competitor from access to vital programming. Section IV.D of this decree contemplates that the cable defendants will be permitted to sell at their choice an incomplete set of different critical programming on an exclusive basis to each of USSB or DirecTv/NRTC, thus denying each access to the full menu of key programming they must have to attract subscribers. The cable defendants would then face only "hobbled" competition from DBS competitors. Indeed, USSB may have already obtained access to premium programming—HBO and Showtime—on an exclusive basis. Without these and other widely viewed services, both USSB and DirecTv/NRTC will stand at a severe competitive disadvantage relative to cable and the consuming public will ultimately suffer the consequences.

If the decree is entered unmodified, consumers will be harmed in several ways. If the exclusive arrangements which Section IV.D of the proposed federal consent decree permits are allowed to stand, the result will probably be a DBS alternative to cable that is decidedly less appealing and less friendly to consumers than would otherwise be the case. Under this scenario, since each DBS operator would have exclusive rights to only certain cable programming services offered to it by the cable-owned programmers, a potential DBS customer likely would have to subscribe to both

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[19] See USSB Opposition to Petition for Reconsideration of the NRTC, Program Access Order, MM Docket No. 92-265 at 5 (filed July 14, 1993) ("USSB has already entered into contracts for many of the programming services that will be available on its DBS service, including contracts for the cable programming services of HBO, Cinemax, Showtime, The Movie Channel, FLIX, Comedy Central, MTV, VH-1, and Nickelodeon. Programming has been acquired by USSB with varying degrees of exclusivity to USSB vis-a-vis other DBS providers.").

[19] See Program Access Order at 28, ¶83 ("Congress has clearly placed a higher value on new competitive entry than on continuation of exclusive distribution practices that impede this entry.")

[20] See 47 U.S.C. 628 (emphasis added).

[21] The NRTC is currently seeking a clarification of the FCC's regulation implementing this prohibition. See Petition for Reconsideration of the NRTC, Program Access Order, MM Docket No. 92-265 (filed June 10, 1993). DirecTv is supporting the NRTC's petition in this regard. USSB and cable defendant Viacom are opposing this petition for reconsideration. See note, 15 *supra*; Viacom International Inc. Opposition to Petition for Reconsideration, Program Access Order, MM Docket No. 92-265 (filed July 14, 1993).

[22] 47 U.S.C. 628(c)(2)(C) and (c)(2)(D).

[23] *United States* v. *Primestar Partners, L.P.*, No. 93-CIV-3913, Competitive Impact Statement, 58 FR at 33,948 (June 23, 1993) ("Competitive Impact Statement").

[24] *Ibid.*

DirecTv/NRTC and USSB to derive a competitive service to one offered by the local cable operator. MMDS operator or others able to provide the full multichannel benefits. That would mean most customers would probably be precluded from one-stop shopping. They would have to deal with two DBS providers, two billing entities, and two customer service centers.[25] The net effect would be to create customer confusion in a new marketplace. The pricing of the programming to either USSB or DirecTv without competition between the two could be managed by the programmer to the detriment of the consumer. These factors combine to weaken materially DBS as a competitive technology to cable. To require a particularly promising industry segment to suffer such artificial disadvantage, without rational justification, is contrary to the public interest. The end result will be higher prices and reduced program diversity for customers.

B. The Proposed Decree Is Inconsistent With the Market Structure Mandated by Congress in the 1992 Cable Act

The scheme permitted by the proposed federal consent decree sets up on a potential conflict with Congressional and FCC action implementing the 1992 Cable Act. By permitting exclusive arrangements between vertically integrated programmers and *one* DBS provider, the proposed consent decree appears to violate the Act's general prohibition as well as contravene the prohibitions regarding exclusive contracts by permitting such programmers to preclude completely another DBS provider from offering the programming to its subscribers.[26] Moreover, Section IV.D. of the proposed consent decree appears to run afoul of the non-price discrimination provisions of Section 19(c)(2)(B) of the 1992 Cable Act because it condones a refusal to sell "to a particular distributor when the vendor has sold its programming to that distributor's competitor." [27]

Congress has established a clear public policy for the regulation of this industry in the 1992 Cable Act. The Justice Department claims that passage of the 1992 Cable Act provides "additional assurances that access to programming will not be unreasonably restricted by the defendants and others in the cable television industry." [28] However, it is not in the public interest for this antitrust consent decree to be used to codify a set of rules for this industry which not only fails to protect competition as fully as the regulatory scheme established by the Congress and the FCC, but at its core contains a presumption that is contrary to that regulatory scheme. By creating this parallel but inconsistent regime, the proposed consent decree will sow confusion about which cable industry practices are impermissible and will weaken Congressional and FCC efforts to combat this problem, all to the detriment of competitors to cable and the consuming public.

C. The States' Proposed Consent Decrees Contain Profoundly Anticompetitive Flaws

Moreover, the Justice Department wrongly relies upon the proposed consent decrees filed by the States' Attorneys General in the parallel case [29] to provide "additional assurance" of access to programming.[30] The States' proposed consent decrees are so grossly riddled with exceptions and exclusions that they are invidiously anticompetitive in their effects on all segments of the multichannel video marketplace.[31]

The States' proposed consent decrees single out the high-power DBS industry with laser-like precision to enshrine a market allocation scheme which allows the cable defendants to carve up the DBS market between themselves and *one* DBS provider using exclusive contracts to block access to programming by other DBS competitors. Moreover, the States' decrees permit the cable defendants to charge substantially higher than cable rates to a DBS competitor.

These practices are in direct contravention to the stated purpose of the state and federal investigation into the formation of the Primestar Partners and the conclusions which were reached. It is clear that the Justice Department's reliance upon the States' proposed consent decrees as a supplement to the remedies contained in the proposed federal decree is entirely misplaced.

D. The Proposed Decree Should Be Modified To Eliminate the Possibility of any Persuasive or Precedential Effect on Other Proceedings in Other Forums

One additional significant danger that could result from the decree being entered without modification is that the cable defendants would argue in other forums that the decree reflects the views of the Justice Department and the Court on the appropriate structure of the multichannel video programming distribution market and competition principles. This is not a mere hypothetical issue. Indeed, USSB is currently citing with impunity the consent decrees filed by the States' Attorneys General for just such a proposition.[32] The FCC is in the midst of considering reconsideration petitions in its Program Access proceedings and thus the precise scope and operation of the rules are not yet finalized.

Moreover, even after the proceedings have been completed, certain crucial aspects of the rules with respect to exclusionary practices may call for an evaluation of a particular cable MSO's program access obligation under an antitrust standard.[33] A high-power DBS provider seeking to enforce its rights could be faced with a claim by the cable industry that the DBS industry structure sanctioned by the decree is dispositive.

Accordingly, the Justice Department should clarify that the proposed consent

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[25] In addition, DirecTV understands that the exclusive arrangements reached between USSB and Viacom and Time Warner may be at rates significantly higher than those prices which comparable cable providers must pay and far higher than the non-discriminatory prices envisioned by the 1992 Cable Act. Because this is the case, consumers would presumably be forced to pay artificially high prices for such programming delivered by DBS.

[26] See discussion in *supra* at 11.

[27] See Program Access Order at 54, ¶116. The FCC construes non-price discrimination as falling within Section 19(c) of the Act. *Id.* The FCC has used the example of a vertically integrated cable programming supplier's "unreasonable refusal to sell" programming "to a class of distributors, or *refusing to initiate discussions with a particular distributor when the vendor has sold its programming to the distributor's competitor.*" *Id.* (emphasis added). Courts generally show great deference to the interpretation given a statute by the agency charged with its administration, particularly when the agency construction was rendered contemporaneously with the statutes' passage. *Udall* v. *Tallman*, 380 U.S. 1, 16 (1965).

[28] Competitive Impact Statement, 58 FR at 33,950.

[29] The States' Attorneys General filed three separate decrees: the Primestar Decree, the Viacom Decree, and the Liberty Media Agreement.

[30] Competitive Impact Statement, 58 FR at 33,950.

[31] See Appendix A for further discussion of the fatal flaws contained in the States' proposed consent decrees.

[32] See, USSB Opposition to Petition for Reconsideration of the NRTC, Program Access Order, MM Docket No. 92–265 at 9 (filed July 14, 1993) ("It should be noted that the proposed antitrust consent decree in the pending *Primestar Partners* suit brought by 40 states against Primestar Partners, , L.P. and 19 other defendants recognizes that high-power DBS providers at 101° orbital position may enter into exclusive contracts with cable program providers. It is unlikely that 40 states would have agreed to the provisions that recognize such exclusive contracts if there was any question as to whether the Cable Act prohibited such exclusive arrangements.")

[33] For example, with regard to its rules on non-price discrimination, the FCC stated: "Our implementation of the non-price discrimination aspects of Section 628(c) concerning unreasonable refusals to sell or similar exclusionary practices will draw upon certain antitrust precedents to define 'unreasonable' as well as other illegal principles, and will be addressed individually through the enforcement process." Program Access Order at 16, ¶41.

decree does not reflect the Department's views concerning the program access obligations of the cable defendants under any other legal authority.

VI. Conclusion

Section IV.D is inconsistent with the Justice Department's stated goal in proposing this consent decree. This provision will permit the cable defendants to continue to exercise their market power over access to programming to impede the development of the DBS industry. The resulting reduced level of competition in the multichannel video programming distribution marketplace will mean fewer programming choices and higher prices for consumers. The inclusion of Section IV.D as currently drafted ensures that the proposed consent decree will be unable to meet its public interest obligation. Therefore, the proposed consent decree should be modified to eliminate the clause beginning with word "provided" and the parenthetical information from Section IV.D.

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JOINT AMICUS CURIAE MEMORANDUM OF LAW OF DirecTv, INC., NATIONAL RURAL TELECOMMUNICATIONS COOPERATIVE, CONSUMER FEDERATION OF AMERICA AND TELEVISION VIEWERS OF AMERICA, INC.

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I. Preliminary Statement

This case arises from the cable industry's monopolization of the multichannel video distribution market. By engaging in widespread unfair and discriminatory practices against emerging Multichannel Video Programming Distributors ("MVPDs") [1] the cable industry has denied to consumers the benefits of competition

[1] MVPDs are entities "engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming." In the Matter of Implementation of Sections 12 and 19 of the Cable Television Consumer Protection and Competition Act of 1992, Development of Competition and Diversity in Video Programming Distribution and Carriage, First Report and Order, MM Docket No. 92–265 (released April 30, 1993), at 3, ¶ 6 n.3 ("Program Access Order."). For the convenience of the Court, the full text of the Program Access Order appears at Appendix 1.

and the ability to receive a wide variety of programming from diverse sources.

On June 9, 1993, forty States and the Justice Department filed proposed consent decrees (the "Decrees")[2] in this Court to settle antitrust lawsuits which sought to "enjoin, restrain and remedy monopolistic and anticompetitive conduct" within the multichannel video distribution industry.[3] The lawsuits arise from an antitrust investigation into the formation of Primestar Partners, L.P. ("Primestar"), a medium-power direct broadcast satellite ("DBS") multichannel pay television service[4] founded by seven of the nation's ten largest cable system operators, also known as multiple system operators ("MSOs").

Some of these cable MSOs possess substantial ownership interests in the leading suppliers of video programming, such as HBO, Showtime, Cinemax and MTV. Both the States and the United States alleged, *inter alia*, that Primestar and its cable owners conspired to delay, hinder and preempt entry by other firms into the multichannel video distribution market by restricting access to the programming that certain of these defendants control. Thus, the States' Complaint alleges that the MSO defendants "monopolized, attempted to monopolize, combined and conspired to monopolize and restrain trade in the delivery of multichannel subscription television programming to consumers." Complaint at ¶ 1.[5] The Complaint alleges that they designed and structured their DBS venture in order to reduce the potential for direct competition with the defendant MSOs' cable systems and undermine the ability of any cable competitive DBS service to develop."[6]

Pursuant to an Order dated June 17, 1993, this Court granted *amici curiae* leave to object to the proposed consent judgments. DirecTv, Inc. ("DirecTv"),[7] the National Rural Telecommunications Cooperative ("NRTC")[8] the Consumer Federation of America ("CFA")[9] and the Television Viewers of America, Inc. ("TVA")[10] have joined in objecting to the proposed Decrees. All *amici curiae* herein have a direct interest in furthering both competition and consumer protection in the multichannel video distribution industry.

The Decrees should be rejected, or their approval conditioned on their modification, for two reasons. First, although the Decrees are a significant part of the government's efforts to structure the MVPD industry, they neither benefit consumers nor protect competition. The Decrees compromise the MSO defendants' purported obligations to provide fair, reasonable and nondiscriminatory access to programming with a host of exceptions that benefit and entrench the MSOs. The advantages thus conferred on the MSOs will make it very difficult for any MVPD to compete with them. Second, the Decrees undercut the pro-competitive policies of the government's companion effort to structure the MVPD industry, the Cable Television Consumer Protection and Competition Act of 1992, Public Law 102–385, 102d Cong., 106 Stat. 1460 (Oct. 5, 1992) (the "Act"). The Decrees provide for far less competition than mandated by the Act, and position the cable industry to argue that the Act's competition requirements can and should be construed in accordance with the narrow provisions of the Decrees. It is not in the public interest for antitrust decrees to be used to structure an industry anticompetitively, particularly if they would impose a scheme that contravenes the pro-competitive statutory and regulatory structure that governs the industry.

II. The Court's Power To Reject the Proposed Consent Decrees, or To Require Modification as a Condition of Approval, if They Fail To Serve the Public Interest

The antitrust actions from which the Decrees arise were brought by the State Attorneys General as *parens patriae* pursuant to the Clayton Act. See *Complaint* ¶¶ 2, 6. As such, they cannot be settled "without the approval of the court." 15 U.S.C.§ 15c(c).[11]

In reviewing a proposed settlement of a *parens patriae* action, courts examine the proposed decrees to ensure that they are "fair, reasonable and adequate."[12] This inquiry involves the court in reviewing whether the proposed settlement "violates public policy," *Panasonic*, 1989–1 Trade Cas. (CCH) ¶ 68,613, at 61,244 (citing *Dairylea Cooperative*, 547 F. Supp. at 307–08),

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[2] Three Decrees were filed in the actions brought by the States: (1) The Primestar Decree; (2) the Viacom Decree; and (3) the Liberty Media Decree. The Liberty Media Decree is actually styled as an "Agreement." It is unclear whether it has been or will be submitted to this Court. In any event, it is an integral part of the settlement "package" and its contents are highly relevant. The operation of the three Decrees is explained in more detail below.

[3] *State of New York* v. *Primestar Partners, L.P. et al., Complaint*, 93 Civ. No. 3868 (S.D.N.Y. June 9, 1993), at ¶ 1.

[4] Medium-power DBS service utilizes a medium-power satellite, which can transmit to a dish between 2.5–5 feet in diameter and can be installed more cheaply than larger television receive-only ("TVRO") dishes. Medium power DBS was seen as a potential advance over lower power TVRO service in terms of being more competitive with cable. Primestar is presently the only operating medium-power DBS service. *See United States* v. *Primestar Partners, L.P. et al.*, No. 93-Civ–3913, Competitive Impact Statement, 58 Fed. Reg. 33,948 (June 23, 1993), ("Competitive Impact Statement").

[5] The suit alleges that cable companies exercised their monopoly power to deny alternative MVPDs access to programming outright, or made it available only at discriminatory prices. Complaint at ¶¶ 40, 43–44, 50. The suit further alleges that the cable defendants formed the Primestar partnership, bought rights to a communications satellite, and set up a sham DBS system in an effort to "suppress and eliminate DBS competition in the delivery of multichannel subscription television programming." Complaint at ¶ 52.

[6] Complaint at ¶ 58.

[7] DirecTv will launch, in December of this year, the first high-powered U.S. DBS satellite, and shortly thereafter will introduce to American consumers the first truly competitive service to cable television. As a high-power DBS provider, DirecTv will provide approximately one hundred and fifty channels of high quality subscription and pay-per-view video programming to the public.

[8] NRTC is a non-profit corporation, owned and controlled by 521 rural electric cooperatives and 231 rural telephone systems located throughout 49 states. Through the use of satellite distribution technology, NRTC is committed to extending the benefits of information, education and entertainment programming to rural America on an affordable basis. On April 10, 1992, NRTC signed a DBS Distribution Agreement with HCG to provide DBS services to rural subscribers across the country. Under the DBS Distribution Agreement, HCG provides NRTC, its members and affiliated companies the satellite capacity and other necessary services to market and distribute 20 channels of popular cable programming services to rural households equipped with 18" DBS receiving antennas. Most of the programming services to be offered are owned or controlled by cable companies.

[9] CFA is the nation's largest consumer advocacy group, composed of more than 240 state and local affiliates representing consumer, senior citizen, low-income, labor, farm, public power, and cooperative organizations, with more than 50 million individual members. CFA was the lead representative of the public in the legislative deliberations that led to the 1992 Cable Act. The millions of television viewers and cable consumers who constitute CFA's affiliates' members have a "paramount" First Amendment right to receive a variety of information from diverse sources, *Red Lion Broadcasting* v. *FCC*, 395 U.S. 367, 390 (1969), and have been undeniably harmed by the power that the cable industry has acquired and historically exercised to dominate the MVPD marketplace. CFA is therefore critically concerned with the anticompetitive and anti-consumer effects of the proposed Decrees on the public interest.

[10] With members in 19 states and the District of Columbia, Television Viewers of America is a grassroots, non-profit, public interest consumer organization devoted, *inter alia*, to competition in multi-channel television delivery. Founded in 1991, TVA was active in the legislative struggle which resulted in the Cable Television Consumer Protection and Competition Act of 1992.

[11] Section 15c's requirement of court approval applies to actions for injunctive relief as well as to damage actions. See *In re Montgomery County Real Estate Antitrust Litigation*, 452 F. Supp. 54, 57–60 (D. MD. 1978).

[12] See *States of New York and Maryland, et al.* v. *Nintendo of America, Inc.*, 775 F. Supp. 676, 680 (S.D.N.Y. 1991); *In re Panasonic Consumer Electronics Products Antitrust Litigation*, 1989–1 Trade Cas. (CCH) ¶ 68,613, at 61,243 (S.D.N.Y. 1989); *State of New York* v. *Dairylea Cooperative, Inc.*, 547 F. Supp. 306, 307–08 (S.D.N.Y. 1982).

i.e., whether the public interest in competition has been addressed fairly and adequately by the proposed settlement, and whether competition may be adversely affected by the settlement. *See e.g., Dairylea Cooperative*, 547 F. Supp. at 307–08; see also Montgomery County Real Estate Antitrust Litigation, 83 F.R.D. at 315.[13] If the interests of the public are not served by the terms of the settlement, the Court may exercise its discretion to reject or to approve the proposed decrees conditionally subject to certain modifications.[14]

III. The MVPD and DBS Industries, the Program Access Provisions of the Cable Act and an Overview of the Proposed Decrees

A. The MVPD and DBS Industries

MVPDs are entities "engaged in the business of making available for purchase, by subscribers or customers, multiple channels of video programming."[15] Cable television operators, who transmit programming via wires directly to the home, have been the predominant type of MVPD. As Congress found in passing the Act:

> There has been a substantial increase in the penetration of cable television systems over the past decade. Nearly 56,000,000 households, over 69 percent of the households with televisions, subscribe to cable television, and this percentage is almost certain to increase. As a result of this growth, the cable television industry has become a dominant nationwide medium.[16]

Similarly, the Complaint points out that cable has replaced over-the-air broadcasting as "the nation's major television distribution medium," and notes that "approximately 3,660,000 households subscribe to a cable service" in New York. Complaint at ¶ 33.

Congress has expressly sought to encourage competition to cable, particularly because cable service is typically provided by only one operator in each local community.[17] Congress was concerned by rising cable rates, poor customer service and the general implications for "the flow of news, information and entertainment to the American people" arising from cable's market power.[18] It recognized the public importance of encouraging emerging MVPD competitors to cable, because "[f]air competition in the delivery of television programming should foster the greatest possible choice of programming and should result in lower prices for consumers."[19] Thus, a principal purpose of the legislation was to promote MVPDs using "alternative and new technologies."[20] Such alternative distribution media include: Multichannel Multipoint Distribution Service ("MMDS" or "Wireless Cable"), Satellite Master Antenna Television systems ("SMATV"), Television Receive-Only ("TVRO") satellite programming services[21] and DBS.[22] These alternative distribution media are in their commercial infancy. Each has its distinct characteristics which offer consumers a choice, but as yet remain untested in the mass market. Without access to programming, however, none of the MVPD competitors to cable using these new media will emerge as a strong and robust challenger.

Of all of the emerging MVPD alternatives technologies, high-power DBS has long been recognized as perhaps the most formidable nationwide potential medium capable of competing with cable television.[23] High-power DBS service involves the provision of multichannel video programming service to "dinner plate"-size home dishes approximately eighteen inches in diameter, via satellites operating at high-power levels in the higher frequency direct broadcast portion of the Ku Band.[24]

DirecTv and Hughes Communications Galaxy, Inc. ("HCG") are sister subsidiaries of Hughes Communications, Inc. ("HCI"). HCG has been licensed by the Federal Communications Commission ("FCC") to provide high-power DBS service.[25]

DirecTv is the DBS operating, customer service and programming acquisition arm of the HCI family. HRTC has entered into a DBS Distribution Agreement with HCG to provide services to rural subscribers across the country.[26]

Following the launch of the first high-power DBS satellite scheduled for December 1993, DirecTv will initiate the first such DBS service in the United States in early 1994, operating from an FCC-assigned orbital location of 101°. With its full complement of satellites in orbit, DirecTv will have the technology to provide more than 150 channels of video programming directly to households throughout the United States. NRTC will market and distribute approximately 20 channels of video programming to rural households.

Another separate DBS provider, United States Satellite Broadcasting Company, Inc. ("USSB"), will also begin operation of a high-power DBS system from the 101° orbital position in 1994, utilizing a five-transponder "payload" located on the first of HCG's two satellites to be co-located at 101°.[27] USSB will thus have the technological capability to offer approximately 30

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[13] The Court's public policy inquiry is particularly important where, as here, the interests affected by the proposed decrees "are far broader than those of the particular parties in a particular lawsuit." *Patterson* v. *Newspaper and Mail Deliverers' Union*, 384 F. Supp. 585, 588 (S.D.N.Y. 1974). In such cases, where significant public interests are at stake, the Court must "determine whether the decree adequately protects the public interest and is in accord with the dictates of Congress." *United States* v. *Hooker Chemical and Plastics Corp.*, 607 F. Supp. 1052, 1057 (D.C.N.Y. 1985); see *United States* v. *Ketchikan Pulp Co.*, 430 F. Supp. 83, 86 (D. Alaska 1977) (same, where "court is asked to enter a judgment which clearly will have an effect on the public").

[14] See, *e.g., Dairylea Cooperative*, 547 F. Supp. at 307–08; *see also United States* v. *GTE Corp.*, 603 F. Supp. 730, 753 (D.D.C. 1984); *United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. 131, 216 (D.D.C. 1982); *United States* v. *Associated Milk Producers, Inc.*, 394 F. Supp. 29, 40 (W.D. Mo. 1975).

[15] *Program Access Order* at 3, ¶ 6 n.3.

[16] The Act, § 2(a)(3).

[17] See *id.* at (a)(2).

[18] House Committee on Energy and Commerce, H.R. Rep. No. 102–268, 102d Cong., 2d Sess. (1992) ("House Report") at 26.

[19] Act § 2(a) H.R. Rep. No. 102–862, House Comm. on Energy & Commerce, 102d Cong., 2d Sess. (1992) ("Conference Report"), at 53; see Act, § 2(a)(6) ("There is a substantial governmental and First Amendment interest in promoting a diversity of views through multiple technology media."); § 2(b)(1) (stating that it is the policy of Congress to "promote the availability to the public of a diversity of views through cable television and other distribution media").

[20] House Report at 27.

[21] Currently, using C-band technology, NRTC and its members provide various packages of satellite-delivered programming, called "Rural TV®," to more than 70,000 TVRO subscribers. C-band technology requires the use of six to twelve foot receiving antennas.

[22] See Competitive Impact Statement at 33,948 for a description of these MVPD services; see also 1990 Cable Report, 5 FCC Rcd 4962, 5013 (1990).

[23] See Competitive Impact Statement at 33948 (observing that because " of its small dish size and lower installation cost, high-power DBS is considered to be a potential competitive threat to cable"); House Report at 48 (citing RAND Study below and agreeing that "during the 1990's, high-powered DBS systems have greater potential for widespread competition with cable systems than do other multichannel video alternatives"); Leland Johnson and Deborah R. Castleman, Direct Broadcast Satellites: A Competitive Alternative to Cable Television, R–4047–MF/RL (Rand 1991), at 78 (concluding that widespread competition to cable is most likely to come from high-power DBS) (included as Appendix 2).

[24] See Competitive Impact Statement at 33,948.

[25] See United States Satellite Broadcasting Co. and Hughes Communications Galaxy, Inc., 7 FCC Rcd 7247 (1992).

[26] See supra note 8.

[27] Rather than constructing and launching its own satellite, USSB entered into an agreement with HCG to purchase a payload of 5 transponders on one of the HCG satellites to be located at 101°. USSB will retain full operational control over its transponders, and will have sole discretion as to the content of programming transmitted over those five transponders. See United Satellite Broadcasting Co. and Hughes Communications Galaxy, Inc., 7 FCC Rcd. at 7249. Thus, although operating from the same satellite, DirecTv and USSB are direct competitors.

channels of video programming to consumers. Although a number of other applications to operate DBS satellites have been granted by the FCC, only DirecTv and USSB are licensed to provide operational high-power DBS service in this decade. Thus, for the period of time encompassed by the Decrees, the developing high-power DBS industry will consist of a universe of two licensees, with DirecTv possessing the greater amount of channel capacity.[28]

Although high-power DBS may be the most promising nationwide potential technological competitor to cable television, technological capability is meaningless without the ability to obtain and offer quality programming to subscribers. Thus, in 1990 the FCC observed that DBS "could become a strong competitor [to cable] by the mid-1990s if .*.*. DBS can obtain reasonable access to programming." [29] Similarly, the Complaint acknowledges:

> Programming is the lifeblood of the multichannel subscription television industry. A competitor to cable television must be able to offer a substantial number of programming options to consumers. Beyond mere possession of programming, a competitor must have the ability to deliver particular programming which consumers have come to associate with multichannel subscription television (*e.g.*, CNN, ESPN, MTV, HBO, Nickelodeon, Showtime, Cinemax, The Disney Channel, TNT and USA).[30]

In this regard, most "marquee" multichannel subscription programming is supplied by companies that are vertically integrated with cable MSOs.[31] Historically, these vertically integrated programmers have been either flatly unwilling to deal with alternative MVPD cable competitors, or have done so only at highly discriminatory rates, terms and conditions.[32]

As a DBS provider, DirecTv has had first-hand experience attempting to negotiate contracts with vertically integrated programmers to obtain programming that is vital to any viable MVPD business. As of late January 1993, DirecTv had been unable to announce any programming deals with vertically integrated programmers. After the Act was passed, the "log jam" began to break and DirecTv was able to enter into its first agreements with vertically integrated programmers. But, to this date, less than six months from launch of its first satellite, DirecTv has still been unable to reach an agreement directly with either of defendants Time Warner and Viacom to allow DirecTv and NRTC access to two of the most popular and most essential examples of multichannel programming, HBO and Showtime.

The cable industry also sought to hinder DBS providers' access to programming in another way as well. As alleged by both the plaintiff States and the Department of Justice, the MSOs formed Primestar in response to the "threat of cable-competitive entry into medium or high-power DBS," [33] and in order to "suppress and eliminate DBS competition in the delivery of multichannel subscription television programming to consumers." [34] As further alleged by the plaintiff States, defendants "designed and structured their DBS venture in order to reduce the potential for direct competition" with their cable systems, in order to "undermine the ability of any cable competitive DBS service to develop." [35]

B. The Legislative and Regulatory Effort To Combat Cable's Anti-Competitive Effort To Dominate The MVPD Industry

Congress enacted the Cable Act in order to prevent the vertically integrated cable companies from choking off the program access that is essential to a pro-competitive MVPD industry structure and vital to ensuring and encouraging program diversity. First, Section 19 of the Act, 47 U.S.C. 628, expressly prohibits unfair and discriminatory practices in the sale of satellite cable and satellite broadcast programming. The avowed objective of Section 628's "program access" provisions is to increase the availability of programming to new and existing alternative MVPDs in order to promote diversity and competition.[36] The FCC's regulations contained in the Program Access Order implement Congressional intent in enacting Section 628.[37] The FCC's new rules are grounded in Congress's express concern that "potential competitors to incumbent cable operators often face unfair hurdles when attempting to gain access to the programming they need in order to provide a viable and competitive multichannel alternative to the American public." [38]

C. Overview of the Proposed Consent Decrees

Both the Antitrust Division of the Justice Department and the Attorneys General of a large number of States also pursued a coordinated investigation into the cable MSOs' anticompetitive efforts to restrict program access. The State investigation concluded that alternative MVPDs "have been thwarted by the cable companies which conspired to prevent their competitors from obtaining good programming." [39] The instant lawsuit, arising from the investigation, was accordingly brought

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[28] While high-power DBS is commercially attractive, there are only two orbital locations other than 101° that can offer optimum coverage of the entire continental United States. Moreover, the capital commitment required to construct, launch and operate a DBS satellite is quite extensive. These factors principally account for the limited number of competitors in this segment of the MVPD industry.

[29] *1990 Cable Report* at 5020 (emphasis supplied).

[30] Complaint at ¶ 42; see also 138 Cong. Rec. H6533 (daily ed. July 23, 1992) (remarks of Rep. Tauzin) ("It will do us little good to hope in vail for the advent of a DBS, direct broadcast satellite, industry or for the expansion of wireless cable in America as competition to [the cable] monopoly if none of it can get programming. Programming is the key.").

[31] The House Report notes that, according to the National Cable Television Association ("NCTA"), 39 of the 68 nationally delivered cable networks have some ownership affiliation with cable operators. House Report at 41. Two MSO defendants in this proceeding, for example, Time Warner and Viacom, supply such "showcase" services as Home Box Office, Cinemax, Showtime, The Movie Channel, MTV, Nickelodeon, Comedy Channel, Entertainment Television, among others. Competitive Impact Statement at 33,948; see Complaint at ¶ 44. TCI, the nation's largest MSO, owned financial interests in American Movie Classics, the Discovery Channel, QVC Networks, Inc., and Encore. Senate Comm. on Commerce, Science & Transportation, 102d Cong., 1st Sess. (1991) at 25 ("Senate Report"). These interests were subsequently transferred to its successor "spin off" corporation, Liberty Media. Liberty Media Decree at 2.

[32] See 1992 Cable Act § 2(a)(5) (finding that the cable industry has become vertically integrated; cable operators and cable programmers often have common ownership * * * vertically integrated program suppliers * * * have the incentive and ability to favor their affiliated cable operators over nonaffiliated cable operators and programming distributors using other technologies"); Program Access Order at 4, ¶ 9 (observing that "in enacting the program access provisions of the Cable Act, Congress expressed its concern that potential competitors to incumbent cable operators often face unfair hurdles when attempting to gain access to the programming they need in order to provide a viable and competitive multichannel alternative to the American public"); see also 1990 Cable Report, 5 FCC Rcd. at 5031 ("It seems fairly clear from the above facts that vertically integrated MSOs have the ability to limit competition to particular programming services."); *Id.* at 5015 ("The record shows that programming is not available on the same terms and conditions to wireless cable operators as it is to traditional cable operators.").

[33] Competitive Impact Statement at 33,949, see Complaint at ¶¶ 51–62.

[34] Complaint at ¶ 52.

[35] Complaint at ¶ 58.

[36] See e.g., Conference Report at 93 ("The conferees intend that the Commission shall encourage arrangements which promote the development of new technologies providing facilities-based competition to cable").

[37] Significantly, however, the battle with respect to the FCC's program access regulations is not over. On June 10, 1993, nine petitions for reconsideration of the program access rules were filed at the FCC, including petitions by Liberty Media, Time Warner and Viacom. See 58 FR 34,800 (June 23, 1993) (providing public notice of nine petitions for reconsideration of the FCC's program access rules).

[38] Program Access Order at 4, ¶ 9.

[39] Abrams Announces Settlement With Cable Television Industry, Press Release (June 9, 1993) (included as Appendix 3).

to obtain broad equitable relief, including an order that the defendant MSOs provide program access on reasonable terms to all MVPD competitors. Complaint at Prayer for Relief ¶ D.

Nevertheless, the parties now seek approval of three separate Decrees with purported access protections so discriminatory as to certain MVPD industry segments, and so riddled with exceptions, that they are anticompetitive. These provisions are also fundamentally at odds with certain key Cable Act provisions protecting program access. The Decrees are described briefly below.

1. The Primestar Decree

The Primestar Decree constitutes the heart of this proceeding. The "Primestar Partner Services" listed on Exhibit B to the decree include HBO, The Discovery Channel, The Learning Channel, E! Entertainment Television and Cinemax.[40] The Primestar Decree generally requires the MSOs to provide these Primestar Partner Services to all MVPDs, subject to certain exceptions. In particular, subsections IV.A.1.(a)–(f) of the Primestar Decree impose upon the Primestar defendants certain obligations to deal with DBS and MMDS providers. These provisions appear to be generally consistent with (though much less pro-competitive than) the provisions of the Act and its regulations.[41]

Section IV.A.1.(g), however, singles out high-power DBS for especially unfavorable treatment. Subsection (g) "supersedes" the preceding protections of (a)–(f) by providing that the Primestar Partners need not deal with more than one high-power DBS provider at the 101° orbital location.[42] As indicated above, DirecTv/NRTC and USSB will be the only high-power DBS providers in operation during the Decree period, and will both operate at the 101° location. Thus, Subsection (g) expressly allows each Primestar Partner to refuse to deal with at least 50% of that industry segment.[43]

In addition, Section IV.A.1.(g) of the Primestar Decree states that any agreements made at orbital locations other 101° shall be made on terms which shall in no case be less favorable than the price or terms agreed to between the Primestar Partners and the first DBS provider at the 101° location. This is the only example in the Decree of rates *not* defined by reference to the prices and business terms offered to a cable operator serving a comparable number of subscribers. It is set instead by reference to whatever separate rate the MSOs are allowed to charge to high-power DBS providers. In other words, all competitors get access at cable rates—except high-power DBS providers, who get it at a separate high-power DBS rate, if they get it at all.[44]

The impact of this provision could well make it extraordinarily difficult for the high-power DBS industry to compete. DirecTv understands that, after the passage of the Act but before the filing of the Decree, USSB had already entered into arrangements for access to HBO, Showtime and MTV and other related services. DirecTv also understands that these agreements may have been entered into at rates far higher than those comparable cable providers must pay. Thus, the Primestar Decree for high-power DBS sets up a discriminatory market allocation scheme that allows for rates significantly higher than cable rates, and a market structure significantly at odds with Congress' policy and the FCC's implementation of that policy.[45]

2. The Viacom Decree

The proposed Viacom Decree, while organized and worded slightly differently, is substantially similar to the Primestar Decree. Like the Primestar Partners, Viacom controls several critical programming services: Showtime, The Movie Channel, MTV, VH–1 and Nickelodeon.[46] Section IV.A.1.(j) of the Viacom Decree essentially mirrors Section IV.A.1.(g) of the Primestar Decree, described above.

3. The Liberty Media Decree

The simplest of the Decrees is the proposed settlement between the plaintiff States and Liberty Media Corporation. Liberty Media is an owner of both cable programming and operating interests, with substantial ownership interests in Encore (90%) and American Movie Classics (50%), two premium movie channels, as well as minority interests in such services as The Family Channel, QVC Network, Black Entertainment Television ("BET"), The Jukebox Network, and Court TV.[47]

While the Liberty Media Decree does not contain the anticompetitive market allocation restrictions set forth in the other Decrees, the Liberty Media Decree's purported access protections are in fact meaningless, because the Decree expressly exempts from its coverage all of Liberty Media's prime services, along with virtually any others that might be remotely valuable to an MVPD cable competitor.[48] The Liberty Media Decree thereby reveals that the Primestar partners are willing to build legitimately pro-competitive terms into a settlement only if that settlement otherwise excludes any meaningful grant of program access from its scope.

IV. The Reasons the Proposed Consent Decrees Are Not in the Public Interest and Should Not Be Approved

A. The Consent Decrees Sanction an Anticompetitive and Discriminatory Scheme for High-Power DBS

As shown above, the two principal decrees overtly sanction an anticompetitive arrangement permitting access exclusion only with respect to high-power DBS. There is no legal or public policy rationale for singling DBS out in this fashion. Moreover, sanctioning such an arrangement will retard significantly the development of

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[40] See Primestar Consent Decree at IV.A.1.(a)

[41] For programming services in which they do not have a controlling interest, the Primestar partners are obligated under Section IV.B. of the Decree not to "seek or support" conduct or arrangements inconsistent with the protections set forth in IV.A., were such services subject to them. These "non-controlled programming services" are listed on Exhibit D to the Decree.

[42] Although there are certain conditions that must be met in order to trigger Subsection (g)'s program access exception for DBS, see Primestar Consent Decree, Section IV A.1.(g)(i)–(iii), there is no realistic prospect that these conditions will not be met.

[43] Subsection (g) also allows for the similar exclusion of high-power DBS operators at other orbital locations, should any ever materialize, if the Primestar Partners deal with at least one provider (of their choosing) at that location.

[44] Significantly, the Liberty Media Decree does not single out DBS in this manner, and provides that the price and terms offered to individual DBS providers shall be compared against those offered to comparably sized cable operators. Liberty Media Decree at 5, ¶2(a)(ii). The reason is that the Liberty Media Decree does not cover any competitively significant programming. See infra at 15.

[45] The last sentence of IV.A.1.(g) of the Primestar Decree contains a so-called "savings clause," which purports to re-institute the access protections in (a)–(f) "for all DBS providers" if the Act or its implementing regulations prohibit the scheme set forth in (g), *i.e.*, prohibit exclusive contracts with high-power DBS providers or require that access be made available to all high-power DBS providers. As argued *infra*, this clause only highlights the Decree's anticompetitive effects on DBS and the MVPD industry.

[46] See Viacom Decree at IV.A.1.(a).

[47] See Senate Report at 25; Liberty Media Consent Decree at Exhibits B and C.

[48] The protections of the Liberty Media Decree apply only to "Wholly Owned Existing Services," which consist of three minor programming services listed on Exhibit B to the Decree. Liberty Media's competitively significant programming is either specifically exempted from the decree in the definition of "Existing Services," or is defined as a "Partially Owned Existing Service" listed on Exhibit C. As to these latter services, the decree merely obligates Liberty Media not to seek or support any conduct or arrangements inconsistent with the access protections for "Wholly Owned Existing Services," but does not obligate Liberty Media to provide or even to facilitate access to such programming, even though it owns as much as 50% of some of these services.

the service to the ultimate detriment of MVPD competition.

As DirecTv/NRTC and USSB will provide the only high-power DBS service in the foreseeable future, the proposed decrees permit the MSOs to pursue a strategy of excluding over 50% of that key industry segment (and probably the potentially strongest competitor) from access to vital programming. Indeed, USSB has already obtained access to the premium programming that "consumers have come to associate with multichannel subscription television"[49] HBO and Showtime. Without these services, DirecTv/NRTC would stand at a severe competitive disadvantage relative to cable.

The Decrees would also permit the defendants to sell an incomplete set of different critical programming on an exclusive basis to each of USSB or DirectTv, thus potentially denying high-power DBS providers at 101° access to the full menu of key programming they must have to attract subscribers. The cable monopolies would then face only "hobbled" DBS competitors.

The Decrees also fail to protect access to programming for DBS competitors to cable at reasonably competitive prices. By enshrining possibly higher than cable rate deals with MSO defendants as the benchmark for the reasonable price and business terms to be offered DBS providers operating from other orbital locations, Section IV.A.1.9(g) of the Primestar Decree and Section IV.A.1.(j) of the Viacom Decree effectively permit vertically integrated programmers to charge high-power DBS providers higher rates than they charge to comparably situated cable providers. There is neither a pro-competitive rationale for such a pricing differential, nor a principled justification for such a different benchmark for high-power DBS.

This is not a case that can be dismissed merely by invoking the litany that "the antitrust law protects competition and not competitors." The Decrees permit the defendant MSOs to refuse to deal at all with at least 50% of the high-power DBS industry, or to deny either high-power DBS provider a full and adequate menu of programming. By these means, the Decrees permit the defendant MSOs to cripple half or all of the high-power DBS segment of the MVPD industry. No reasonable basis exists for singling out potentially the strongest nationwide competitor to cable for such treatment. Moreover, if only a particular competitor and not competition is at stake, why are the MSO defendants so anxious to exclude high-power DBS providers from the protective scope of the Decrees?

If the Decrees are entered in their current form, high-power DBS can expect to be disadvantaged in crippling ways. Unlike other competitors, a high-power DBS competitor will be unable to enforce a right to program access through the simple mechanism of a Decree. It will be forced instead to rely on a comparatively complicated and expensive antitrust proceeding to enforce such rights, or to utilize FCC processes, the final contours of which are not yet clear. Moreover, the knowledge that all in the industry will have of any high-power DBS provider's inability to enforce a right to access through the Decrees—or to obtain that access at cable competitive prices—will inevitably weaken the high-power DBS provider's leverage as compared to other actors in the industry. It will be harder for the high-power DBS providers to negotiate their program access contracts, and for such providers to obtain access at reasonable rates.

To require a particularly promising industry segment to suffer such artificial disadvantage, without justification, is contrary to the public interest.[50] The end-result will likely be higher prices and reduced program diversity for customers.

B. The Proposed Decrees Are Utterly Inconsistent With the Market Structure Mandated by Congress in the Act

The Decrees do not stand simply as conventional settlements of private antitrust actions. First, the lawsuits by the States were one of two key steps in government's efforts to regulate the MVPD industry. The suits accordingly purport to address fundamental questions concerning what constitutes anticompetitive, unfair and discriminatory conduct in the MVPD industry. Second, a *parens patriae* case is by definition of public importance. See In re Montgomery County Real Estate Antitrust Litigation, 452 F. Supp. 54, 60 (D. Md. 1978).

The Decrees themselves correspond to the comprehensive scope of the States' complaints. They purport to impose a comprehensive scheme for enforcing program access. However, because the scheme established by the Decrees is fundamentally at odds with Congressional and FCC action implementing the Act, that scheme should be rejected.

The irony of a proposed antitrust settlement that undercuts a pro-competitive statutory and regulatory scheme is reflected in many facets of the Decrees. For example, Subsection IV.A.1.(g) of the Primestar Decree appears to violate the Act's general prohibition against "unfair methods of competition or unfair or deceptive acts or practices, the purpose or effect of which is to hinder significantly or prevent *any* multichannel video programming distributor from providing satellite cable programming * * * to consumers." 47 U.S.C. 628(b) (emphasis supplied). By sanctioning exclusive arrangements between vertically integrated programmers and one DBS provider at a particular orbital location, the provision permits such programmers to completely preclude another DBS provider operating from the same orbital location from offering the programming to its subscribers.[51] In addition, the provision runs afoul of the non-price discrimination provisions in Section 628(c) because it condones a refusal to sell "to a particular distributor when the vendor has sold its programming to that distributor's competitors."[52] Finally, if (as appears to be the case already) the pricing of the exclusive contract between the first DBS operator and a vertically integrated programmer is higher than comparable rates charged to cable operators, it enshrines a pricing term at odds with Section 628(c)(2)(b) of the Act.

Congress specifically sought to create as much competition as the marketplace would permit, and to severely limit exclusive contracts because it perceived them to operate in a manner contrary to that objective in the current marketplace.[53] Subsection (g) cuts in precisely the opposite direction by embracing refusals to deal and exclusivity, an approach explicitly rejected by Congress. It is not in the public interest for antitrust consent decrees to be used to codify a set of rules for an industry which not only

[49] Complaint at ¶42.

[50] Even if high-power DBS were to suffer these disadvantages only for the years it would take to establish and enforce a right to access in a legal proceeding, its unique lack of a full complement of key programming during that critical start-up period would surely render its viability more fragile than the interests of competition should permit.

[51] See 1992 Cable Act, Section 628(c)(2)(C).

[52] See Program Access Order at 54, ¶116. The FCC construes non-price discrimination by a programming vendor between competing distributors as falling within Section 628(c) of the Act *Id.* The FCC has used the example of a vertically integrated programming supplier's "unreasonable refusal to sell" programming "to a class of distributors, *or refusing to initiate discussions with a particular distributor when the vendor has sold its programming to that distributor's competitor.*" *Id.* (emphasis supplied).

[53] See Program Access Order at 28, ¶63 ("Congress has clearly placed a higher value on new competitive entry than on continuation of exclusive distribution prices that impede this entry.").

fails to protect competition as fully as the regulatory scheme that governs that industry, but also begins with a presumption that is actively contrary to the regulatory scheme.

Subsection (g)'s last sentence is particularly revealing. It implicitly concedes that the exclusivity and discriminatory treatment it sanctions is fundamentally at odds with the intent of Congress and the Act. Its lame provision that it will be deemed to extend the pro-competitive protections of the Decree to high-power DBS only if federal law is determined to do so fails to alleviate the burdens on high-power DBS described above.

The "savings" clause essentially is an afterthought. In its affirmative operation, Subsection (g) presumptively favors the Primestar defendants' continued ability to engage in exclusionary and discriminatory practices over a significant class of MVPDs that the Decree as a whole purports to protect. In conducting its public interest inquiry, the Court should consider the Decree in the manner in which it is affirmatively intended to operate—not according to a "savings" clause which would require high-power DBS to prove that it is covered by the Act in order to win protection under the Decree. Further, if there is no public interest or consumer protection rationale for Subsection (g)'s anticompetitive exclusion, then its continued presence can serve no purpose other than to "muddy the waters" in interpreting and understanding the Act's protections. As argued directly below, this is a real and invidious danger of allowing the "savings" clause to justify Subsection (g)'s presence in the Decree.

C. In All Events The Proposed Decrees Should Be Modified To Eliminate The Possibility Of Any Persuasive Or Precedential Effect On Other Proceedings In Other Forums

One additional significant danger that could result from this Court's approval of the Decrees in their current form is that the cable monopolies would argue in other forums that the Decrees reflect the views of the State Attorneys General and the Court on the appropriate MVPD market structure and competition principles. This is not a mere hypothetical issue. The FCC is in the midst of considering reconsideration petitions in its Program Access proceedings and thus the precise operation and scope of the rules are not yet finalized.[54]

[54] See supra note 37.

Moreover, even after the proceedings have been completed, certain crucial aspects of the rules with respect to exclusionary practices may call for an evaluation of a particular MSO's program access obligation under an antitrust standard requiring a competitive market structure. With regard to its rules on non-price discrimination, for example, the FCC has stated:

> Our implementation of the non-price discrimination aspects of Section 628(c) concerning unreasonable refusals to sell or similar exclusionary practices will draw upon certain antitrust precedents to define "unreasonable" as well as other illegal principles, and will be addressed individually through the enforcement process.[55]

This is by no means the only example of an area in the FCC's new rules that remains to be clarified through the FCC's enforcement process. For example, in interpreting Section 628(b)'s prohibition of "unfair practices" which hinder significantly or prevent any MVPD from obtaining access to cable programming, the FCC has stated:

> Elements of an offense under this provision would, however, include a demonstration that "the purpose or effect" of the conduct was to "hinder significantly or prevent any multichannel video programming distributor from providing * * * programming to subscribers or consumers."[56]

A high-power DBS provider seeking to enforce its rights under this provision could, in the absence of clarification from this Court, be faced with a claim by the cable industry that the DBS industry structure sanctioned by the Decrees is dispositive on the question of whether the high-power DBS provider has been hindered significantly in its ability obtain cable programming.

Accordingly, whatever results from this proceeding, the *amici* respectfully urge the Court to make a specific finding that this case in no way reflects the view of any party or the Court concerning the program access obligations the MSOs will have under other legal authorities, such as the Cable Act and the FCC's rules, or of what constitutes an adequately competitive market structure or conduct under those authorities.

D. The Court Should Exercise Its Equitable Discretion To Refuse To Sanction the Decrees Because of Their "Clear Anticompetitive Effect"

This Court has long since resolved the propriety of refusing to approve an antitrust consent decree with a "clear anticompetitive effect." Accordingly, the Court should adopt its previous approach in *State of New York* v. *Dairylea Cooperative, Inc.*, 547 F. Supp. 306, 308 (S.D.N.Y. 1982). In *Dairylea Cooperative*, the state of New York sued a dairy cooperative for conspiring to fix the wholesale and retail prices of milk and to allocate retail customers. As part of the proposed settlement, the defendant would have issued "cent-off coupons" redeemable for discounts on its products. *Id.* at 308. This Court rejected the proposed settlement based upon the "clear anticompetitive effect of the couponing plan." *Id.* The Court reasoned:

> The plan unquestionably both gives substantial future marketing advantages to Dairylea, the alleged antitrust wrongdoer, and makes no effort to at least endeavor to provide payments that are at a minimum made to those very customers actually injured in the past by Dairylea's allegedly wrongful conduct. As I read it, the plan which plaintiff and Dairylea propose converts a "compensatory" legal settlement into a marketing program.

Id. Significantly, the Court pointed out in rejecting the settlement the fact that the defendant's "competitors" were "disadvantaged at every turn" by the settlement, and that the parties should come up with "further proposals that adequately deal with the above concerns." *Id.* This Court should similarly require the parties to propose real program access protections as a condition of settlement, and should decline to lend its imprimatur to unreasonably discriminatory access protections presented in the guise of consumerism. The Decrees, like the *Dairylea Cooperative* plan, damage a significant group of competitors, competition, and consumers—and should therefore be rejected.

V. Conclusion

This Court should act to ensure that the Decrees promote fair competition in the MVPD industry, and should reject or conditionally approve the proposed settlements if they do not. See *United States* v. *American Telephone and Telegraph Co.*, 552 F. Supp. at 216. DBS providers are the primary nationwide emerging competitors to cable television, yet, the terms of the proposed settlements—in particular Section V.A.1.(g) of the Primestar Decree and Section IV.A.1.(j) of the Viacom Decree—disadvantage DBS providers "at every turn." *Dairylea Cooperative, Inc.*, 547 F. Supp. at 308. In particular, the proposed Decrees disadvantage DBS as a major class of cable competitors by expressly targeting and carving out from their protections

[55] Program Access Order at 55 ¶118.

[56] Program Access Order at 18, ¶41.

over half of the Universe of DBS providers that can viably compete with cable; by sanctioning anticompetitive exclusive arrangements at other DBS orbital locations; by imposing a benchmark of allegedly "reasonable" rates on DBS providers that in reality ensures that DBS providers can only be charged anticompetitive rates; and by treating the DBS industry disparately in the decrees relative to other technologies.

This Court should accordingly reject the Decrees in their current form.

Respectfully submitted,

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Affidavit of Service

Sharon Cole, being duly sworn, deposes and says:

1. I am not a party to this action and I am over 18 years of age.

2. I am employed by Latham & Watkins, 885 Third Avenue, New York, New York 10022, attorneys for DirecTv, Inc.

3. On July 16, 1993, I caused to be served by hand true copies of the annexed Joint Amicus Curiae Memorandum Law of DirecTv, Inc., National Rural Telecommunications Cooperative, Consumer Federation of America and Television Viewers of America, Inc., together with Appendices 1, 2 and 3 thereto, on the following:

Robert Abrams,

Attorney General of the State of New York, 120 Broadway, suite 2601, New York, N.Y. 10271, Attn: Joseph Opper, Esq.

Kenneth R. Logan, Esq.,

Simpson Thacher & Bartlett, 435 Lexington Avenue, New York, New York 10017, Attorneys for Viacom Inc. and Viacom K-Band, Inc.

3. On July 16, 1993, I also caused to be served by hand true copies of the annexed Joint Amicus Curiae Memorandum of Law of DirecTv, Inc., National Rural Telecommunications Cooperative, Consumer Federation of America and Television Viewers of America, Inc., together with Appendices 1, 2 and 3 thereto, on Arthur F. Golden, Esq., Davis Polk & Wardwell, 450 Lexington Avenue, New York, NY 10017 counsel for Primestar Partners L.P. and coordinating counsel. We were instructed by Davis, Polk & Wardwell that as coordinating counsel they have the authority to accept service on behalf of all defendants in this action, except for Viacom Inc. and Viacom K-Band, Inc.

4. On July 16, 1993, I also caused copies of the documents identified above to be served by federal express mail upon the following:

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Attorney General of the State of New Hampshire, 25 Capitol Street, Concord, N.H. 03301.

Robert J. Del Tufo,

Attorney General of the State of New Jersey, 25 Market Street—CN 085, Trenton, New Jersey 08625.

Tom Udall,

Attorney General of the State of New Mexico, P.O. Drawer 1508, Sante Fe, New Mexico 87504.

Michael F. Easley,

Attorney General of the State of North Carolina, NC Department of Justice, Post Office Box 629, Raleigh, N.C. 27609–0629.

Heidi Hietkamp,

Attorney General of the State of North Dakota, Office of the Attorney General, State

Capitol, 600 East Boulevard Ave., Bismarck, ND 58505.

Theodore R. Kulongoski,

Attorney General of the State of Oregon, 1162 Court Street NE., Salem, Oregon 97310.

Mark Barnett,

Attorney General of the State of South Dakota, 500 E. Capitol, Pierre, South Dakota 57501–5070.

Charles W. Burson,

Attorney General and Reporter, State of Tennessee, 450 James Robertson Parkway, Nashville, Tennessee 37243–0492.

Jan Graham,

Attorney General of the State of Utah, 111 State Capitol Bldg., Salt Lake City, UT 84114.

Jeffrey L. Amestoy,

Attorney General of the State of Vermont, 109 State Street, Montpelier, VT 05609–1001.

Stephen D. Rosenthal,

Attorney General of the Commonwealth of Virginia, Office of the Attorney General, 101 North Eighth Street, Richmond, Virginia 23219.

Christine O. Geogoire,

Attorney General of the State of Washington, 900 4th Avenue, Suite 2000, Seattle, WA 98164–1012.

James E. Doyle,

Attorney General of the State of Wisconsin, Wisconsin Department of Justice, Post Office Box 7857, Madison, Wisconsin 53707–7857.

Sharon Cole,

Sworn to before me this 16th day of July, 1993.

Alan L. Bushlow,

Notary Public, State of New York, No. 41–4940029, Qualified in Queens County. Commission Expires August 1, 1994.

September 9, 1993.

The Honorable Anne K. Bingaman,
Assistant Attorney General for Antitrust, Room 3101, Main Justice, 10th Street and Constitution Avenue NW., Washington, DC 20530.

Re: The Proposed Consent Decree in *U.S.* v. *Primestar Partners.*

Dear Anne: As you suggested, I am writing to elaborate upon some of the points we discussed during our conversation yesterday regarding the proposed federal consent decree in the *Primestar Partners* case.

As you know, we are particularly concerned about the provisions in the State and Federal decrees that permit or contemplate exclusive arrangements between the cable defendant programmers and one of the competitive direct broadcast satellite ("DBS") operators. We believe that these arrangements are antithetical to the purposes of the 1992 Cable Act and the FCC regulations implementing the Act. If these arrangements are permitted to stand, the result will probably be a DBS alternative to cable that is decidedly less appealing and more costly to consumers than would otherwise be the case. Ultimately DBS would be weakened materially as a competitor to the cable industry, precisely the end sought by the cable industry and absolutely contrary to the pro-competitive objectives of the Justice Department in bringing its antitrust action.

It is evident, however, from the hearing held on September 3, 1993 that the judge will sign the proposed decrees in the corresponding case between the state Attorneys General and the cable defendants. The judge based his decision on principles of federalism which he believed dictated that he defer to the judgment of the state Attorneys General. He made clear, however, that his acceptance of the state decrees can in no way be viewed as a judicial stamp of approval of the lawfulness or propriety of any particular arrangements, contracts or practices under the 1992 Cable Act, matters over which he disclaimed jurisdiction. He emphasized that his entry of final judgment on these decrees should not be given any weight in proceedings before the Federal Communications Commission or other courts where challenges might be asserted to exclusive contracts between a cable programmer and a DBS provider pursuant to the 1992 Cable Act.

To some extent, the court's statements according no precedential effect to the state decrees mitigates the substantial harm to the DBS industry that could result if the cable defendants were permitted to use these decrees to prejudice the rights available to their competitors in other fora. At a minimum, we would request that the Justice Department take a similar position to that adopted by the court regarding the use of these decrees in other proceedings brought under the 1992 Cable Act.

Accordingly, we asked that the Justice Department's Tunney Act filing with the court contain a statement to the effect that entry of the decree cannot be viewed as an approval by the U.S. Government of any contracting arrangements involving DBS exclusivity and that the DOJ does not intend that the decree in any way prejudice the rights or remedies afforded to multichannel video programming distributors under the 1992 Cable Act. Such a stand would bolster the court's statements with regard to the state decrees and further alleviate the potential for the federal decree to be misused to impede the enforcement of the 1992 Cable Act.

Obviously, DirecTv and the other signatories to its comments filed with the Justice Department on August 23, 1993, pursuant to the Tunney Act, continue to have serious, substantive objections to that portion of Section IV.D of the proposed federal consent decree dealing with DBS exclusivity. I would hope that you would give serious consideration to those arguments, as well.

If I may provide you with further information, please let me know. Thank you for your consideration and I look forward to further discussions with you.

With best regards.

Sincerely,

Harry McPherson.

[FR Doc. 93–27910 Filed 11–16–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

Advisory Committee on Construction Safety and Health; Request for Nomination of Members

The Assistant Secretary of Labor for Occupational Safety and Health requests nominations for individuals to be appointed to the Advisory Committee on Construction Safety and Health. The Committee is established under section 107(e)(1) of the Contract Work Hours and Safety Standards Act (40 U.S.C. 333) and section 7(b) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 656). The function of the Committee is to advise the Assistant Secretary on occupational safety and health matters in the construction industry.

The Committee meets approximately four to six times per year for one or two days per meeting. The Committee has 15 members, categorized as follows:

—Five representatives of employee interests;
—Five representatives employer interests;
—Two representatives of State safety and health agencies;
—Two representatives qualified by knowledge and experience related to construction safety and health; and
—One representatives from the National Institute for Occupational Safety and Health.

Nominations of new members and renominations of current members will be accepted in all categories of membership.

The terms of the present members of the Committee will expire March 23, 1994. The term of office for the new and reappointed members is two years and will end on March 23, 1996.

Nominees must have specific experience and be actively engaged in work related to occupational safety or health in the construction industry. No member of the Committee (other than representatives of employers and employees) shall have an economic interest in any proposed rule. The category of membership for which the candidate is qualified should be specified in the nomination letter(s). Nominations for particular category of membership should come from organizations or individuals within that category.

A summary of the nominee's background, experience and qualifications with date of birth, current address, telephone number and Social Security number should be included

with the nomination. In addition, each nomination letter shall state that the person nominated is:

—Aware of the nomination;
—Willing to serve as a Committee member;
—Able to be present at meetings; and
—Free of apparent conflicts of interest that would preclude unbiased service on the Committee.

Nominations should be submitted to Tom Hall, Division of Consumer Affairs, Occupational Safety and Health Administration, room N–3647, 200 Constitution Avenue, NW., Washington, DC 20210, no later than January 15, 1994. For further information, contact Tom Hall at (202) 219–8615.

Signed at Washington, DC, this 9th day of November 1993.

Joseph A. Dear,

Assistant Secretary of Labor.

[FR Doc. 93–28276 Filed 11–16–93; 8:45 am]

BILLING CODE 4510-26-M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

November 10, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of Permit Application Received Under the Antarctic Conservation Act of 1978, P.L. 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permit applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Antarctic Conservation Act of 1978 at title 45 part 670 of the Code of Federal Regulations. This is the required notice of permit applications received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 11, 1993. Permit applications may be inspected by interested parties at the Permit Office, address below.

ADDRESSES: Comments should be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Guy G. Guthridge at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Antarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations establish such a permit system to designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

Applicant: David R. Marchant, Institute for Quaternary Studies/Room 320, 5711 Boardman Hall, University of Maine, Orono, ME 04469–5711.

Activity for Which Permit Requested

Two members of U.S. Antarctic Program project S–156 (D. Marchant and C. Narwhold) request permission to conduct glacial geology along the western boundary of the Site of Special Scientific Interest (SSSI) at Cape Crozier, Ross Island.

The ice-free land southwest of Post Office Hill at Cape Crozier represents that only locality in the entire McMurdo Sound region that shows late Quaternary glacial deposits above 600 meters elevation. A detailed map of these deposits, along with a collection of reworked marine shells and corals removed from these deposits (for radiocarbon dating), will afford the only geologic reconstruction of grounded ice in the Ross Embayment during late Quaternary time. Scientists have mapped similar, but lower elevation, glacial deposits east of Cape Crozier on Ross Island (Cape Bird, Cape Evans, Hut Point) and in the McMurdo Dry Valleys region (Taylor, Ferrar, Wright Garwood, and Marshall valleys), but now require the critical evidence from Cape Crozier to complete an understanding of (reconstruct) the extent of former ice-sheets in the region. This reconstruction represents the primary objective of the S–156 proposal. Understanding the extent of former ice sheets helps in understanding the relationship of ice sheets and climate change.

The glacial deposits that require study occur just along the border of the SSSI, and therefore some of the work may fall 100 to 200 meters within the SSSI. However, nearly all of the work will occur outside the SSSI, about 1 kilometer southwest of Post Office Hill and along a north-south transect at 600 to 700 meters elevation west of the main SSSI boundary. The applicants will not work near the sea ice and, therefore, will not disturb the emperor and Adélie penguins.

If this request is accepted, access to the work-site will be by helicopter, with a landing outside the SSSI. The scientists will walk into the work-site (no vehicles). They plan to map the terrain and survey the upper limit of glacial deposits using hand-held altimeters. They will collect reworked marine shells using small shovels and hand trowels. They will not use motorized machinery of any kind. They plan to spend a maximum of 2 days at the Cape Crozier site. It is very likely that they can accomplish the task in one good working day. Therefore, at present, they do not have any plans for camping at Cape Crozier. However, if they must set up a small campsite (one Scott tent), they will do so well outside the SSSI and walk to the work-site in a direction perpendicular to the border of the SSSI.

Location:

Cape Crozier.

Date: 12/13/93–03/1/94.

Guy G. Guthridge,

Permit Office.

[FR Doc. 93–28169 Filed 11–16–93; 8:45 am]

BILLING CODE 7555-01-M

Committee of Visitors of the Advisory Committee for Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and time: December 14, 1993, 8:30 a.m. to 5 p.m.

Place: National Science Foundation, 4201 Wilson Boulevard, Washington, DC, room 365.

Type of meeting: Closed.

Contact person: John C. Cherniavsky, Head, (OCDA), National Science Foundation, 1800 G St. NW., Washington, DC 20550. Telephone: (202) 357–7349.

Purpose of meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the CISE Instrumentation awards and declinations.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: November 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28303 Filed 11–16–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Geosciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Geosciences.

Date and time: December 7, 1993; 8:30 am–5 pm.

Place: St. James Hotel, 950 24th Street, NW., Washington, DC 20037.

Type of meeting: Closed.

Contact person: Dr. Joan R. Mitchell, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (703) 306–1582.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review and evaluate Research Experiences for Undergraduate proposals as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 12, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28304 Filed 11–16–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–320]

General Public Utilities Nuclear Corp., Three Mile Island Nuclear Station, Unit 2; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to License No. DPR–73, issued to GPU Nuclear Corporation (GPUN or the licensee), for the Three Mile Island Nuclear Plant, Unit 2 (TMI–2) located in Londonderry Township, Dauphin County, Pennsylvania, on an island in the Susquehanna River. The licensee holds a Possession Only License that allows GPUN to possess but not operate TMI–2.

Environmental Assessment

Identification of the Proposed Action

The NRC, on its own motion, is considering granting an exemption from the training program establishment, implementation, and maintenance requirements of 10 CFR 50.120. The licensee, in its letter of July 29, 1993, provided supplemental information supporting this action.

The Need for the Proposed Action

The TMI–2 is currently in the final stages of readying the facility for long term storage, termed Post Defueling Monitored Storage. The licensee has completed a multi-year fuel removal and decontamination program that began just after the March 28, 1979 accident. The reactor fuel has been shipped offsite and the facility is currently in a safe stable condition conducive to long term storage. There is no longer any requirement to have licensed operators at the facility and the Technical Specifications for TMI–2 do not require manning the control room. On September 14, 1993, GPUN was granted a Possession Only License which prohibits operation. The proposed exemption would relieve the licensee from the requirements of 10 CFR 50.120. However, it would not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility or environmental impact is extremely remote. The TMI–2 reactor vessel has been defueled and the fuel shipping offsite. Remaining residual fuel is of insufficient quantity and configuration to result in an inadvertent criticality. Many of the functional programs (i.e. training, site security, emergency preparedness and radcon) that were once required as facility specific to TMI–2 have been assumed by the Three Mile Island Nuclear Station, Unit 1 (TMI–1) organization. TMI–1 is required to comply with 10 CFR 50.120. The existing training programs for the few remaining TMI–2 personnel are deemed acceptable, given the low level of activity at the facility and the shutdown and defueled status of the plant.

Based on the staff review of the July 29, 1993 submittal, the staff concludes that the environmental and safety consequences of accidents which may potentially result in a radiological release are greatly decreased given the permanently shutdown and defueled status TMI–2.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the NRC staff concludes that the proposed action would result in no significant radiological environment impact. With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny this action. This would not reduce environmental impacts of plant activities and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Programmatic Environmental Statement for TMI–2, dated March 1981, as supplemented.

Agencies and Persons Consulted

The NRC staff consulted with representatives of the State of Pennsylvania regarding the environmental impact of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment.

Accordingly, the NRC staff has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee letter dated July 29, 1993, which is available for public inspection at the Commission Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document

room for TMI–2 at the Government Publications Section, State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Box 1601 Harrisburg, Pennsylvania 17105.

Dated at Rockville, Maryland, this 10th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28212 Filed 11–16–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co. et al., Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption to Facility Operating License No. NPF–1, issued to Portland General Electric Company (PGE or the licensee), for the Trojan Nuclear Plant (Trojan), a permanently shutdown plant, located in Columbia County, Oregon, on the west bank of the Columbia River.

Environmental Assessment

Identification of the Proposed Action

The proposed action would grant an exemption from the requirements of title 10 § 50.54(w) of the Code of Federal Regulations (10 CFR 50.54(w)), which requires that each electric utility licensee maintain a minimum insurance coverage, or equivalent, of $1.06 billion for stabilization of the reactor and the decontamination of the reactor and the reactor station site in the event of an accident. The licensee requested the exemption in a letter dated July 8, 1993. The license committed, in the July 8, 1993 letter, to maintain for Trojan decontamination insurance, or demonstrate an equivalent level of protective coverage, in the amount of $5 million. The licensee stated, in the July 8, 1993 letter, that the $5 million is appropriate for postulated design basis accidents at a facility that is permanently defueled.

The Need for the Proposed Action

The requirements of 10 CFR 50.54(w) were promulgated to assure that sufficient funds were available at an operational facility to first stabilize the reactor and next to decontaminate the reactor and the reactor station site in the event of a major accident.

On February 2, 1993, the licensee informed the NRC that Trojan had permanently ceased power operations, all fuel had been removed from the reactor to the spent fuel pool, and that PGE had begun to develop detailed plans to decommission the facility. On March 24, 1993, the NRC staff issued a confirmary order that prohibits the licensee from placing any nuclear fuel into the Trojan reactor. Furthermore, on May 5, 1993, the NRC staff issued an amendment to the license for Trojan that allows PGE to possess, but not operate, the nuclear plant. When compared to an operational power reactor facility, the status of Trojan provides a significantly reduced risk from a radiological release and subsequent contamination of the site. Furthermore, with the removal of the fuel from the reactor there is no longer any need to assure there are sufficient funds available to stabilize and decontaminate the reactor in the event of an accident.

The range of credible accidents and accident consequences for Trojan are reduced because of its shutdown and defueled condition. The types of accidents defined in the regulation, 10 CFR 50.54(w)(2)(1), are not likely to occur at the facility. The licensee analysis shows that the worst case design basis accident for the facility, in its permanently shutdown defueled state, is a fire in the radioactive waste annex building. The licensee calculated that the postulated fire in the Trojan radioactive waste annex would result in an estimated cleanup cost of $4.9 million. To provide a conservation estimate the licensee estimated the cost to recover from the fire and added a 25 percent cushion to arrive at the value of $4.9 million. The staff agrees that the estimate to recover from the fire is conservative. The license also considered a second design basis accident scenario, a fuel handling accident involving the spent fuel stored in the spent fuel pool. The licensee estimated site decontamination cost for the fuel handling accident at $0.5 million. This estimate also contains the 25 percent cushion. The staff finds the licensee analysis consistent with past industry events. The staff also requested that the licensee examine a hypothetical accident sequence involving the complete or partial loss of water from the spent fuel pool as a result of a major seismic event near the plant. This beyond design basis accident, describe in NUREG–1353, could result in a zirconium fuel cladding fire in some of the recently irradiated spent reactor fuel stored in the spent fuel pool resulting in a significant radioactive release, and associated site contamination. Based on the licensee evaluation, and the NRC staff review of the evaluation, the staff concludes that the likelihood of a beyond design basis cladding fire in the spent fuel pool resulting in significant onsite contamination is extremely remote and insurance coverage to recover from this accident scenario is unnecessary.

Based on a thorough evaluation of potential accidents at the Trojan site, the staff concludes that a significant reduction in onsite liability coverage to stabilize and decontaminate the site is warranted.

Environmental Impacts of the Proposed Action

The proposed action does not involve any measurable environmental impacts, since the facility configuration or plant operations will not change. PGE conducted a safety analysis in support of the exemption requests which documents that there is no credible accident sequence that would result in significant onsite contamination or radiation doses greater than the U.S. Environmental Protection Agency Protective Action Guides.

The NRC staff, based on independent evaluation, finds that the licensee analyses demonstrates sufficient bases to conclude that the consequences of radiological accidents which may potentially result in a radiological release or site contamination are greatly decreased for Trojan given the permanently shutdown and defueled status of the facility. A reduction in onsite liability insurance coverage is therefore warranted.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action does not affect noradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of activities at the plant and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Trojan Nuclear Plan, dated August 1973.

Agencies and Persons Consulted

The NRC staff consulted with representatives of the State of Oregon Department of Energy regarding the environmental impact of the proposed action. The State representatives had no comment.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application for exemption dated July 8, 1993, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Trojan Nuclear Plant at the Branford Price Millar Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 12th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28239 Filed 11–16–93; 8:45 am]

BILLING CODE 7590–01–M

Revision of Appendix A to 10 CFR Part 100; Meeting

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

SUMMARY: The Nuclear Regulatory Commission Staff will meet with representatives of the Nuclear Management and Resources Council (NUMARC) to discuss their comments pertaining to the proposed revision of Appendix A, "Seismic and Geologic Siting Criteria for Nuclear Power Plants," to 10 CFR part 100.

DATES: November 30, 1993, 8 a.m. to 5 p.m. (If necessary, meeting will continue on December 1, 1993, at the same location and time).

ADDRESSES: 11555 Rockville Pike, Room: 1 F7/9, Rockville, Maryland.

FOR FURTHER INFORMATION CONTACT: Dr. Andrew J. Murphy, Chief, Structural and Seismic Engineering Branch, Office of Nuclear Regulatory Research, Nuclear Regulatory Commission, Washington, DC 20555. Telephone: (301) 492–3860.

SUPPLEMENTARY INFORMATION: The Nuclear Management and Resources Council, on behalf of the nuclear power industry, reviewed the proposed rule, 10 CFR parts 50, 52, and 100, Reactor Siting Criteria: Including Seismic and Earthquake Engineering Criteria for Nuclear Power Plants and Proposed Denial of Petition for Rulemaking From Free Environment, Inc., et al. (57 FR 47802), and offered comments in a letter dated March 24, 1993. The NRC staff reviewed the NUMARC comments and has identified areas where additional information or clarifications are needed.

The purpose of this meeting is to meet with NUMARC and other industry representatives to obtain the rationale for their suggested changes (Ref. Memorandum from Lawrence C. Shao, NRC to William H. Rasin, NUMARC, dated November 9, 1993, available at NRC Document Room at 2120 L Street NW., (Lower Level), Washington, DC). No specific agenda is being proposed.

Dated at Rockville, Maryland, this 9th day of November, 1993, for the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 93–28211 Filed 11–16–93; 8.45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–424 and 50–425]

Georgia Power Co., et al. Denial of Amendments to Facility Operating Licenses and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) has denied a request by the Georgia Power Company, et al. (the licensee) for amendments to Facility Operating License Nos. NPF–68 and NPF–81 issued to the licensee for operation of the Vogtle Electric Generating Plant, Units 1 and 2, located in Burke County, Georgia. A Notice of Consideration of Issuance of this amendment request was published in the Federal Register on July 8, 1992 (57 FR 30249).

The proposed amendment request was to revise Technical Specifications (TS) 3/4.6.1.7 and 4.6.1.2f to allow for quarterly leak rate testing to be performed outside containment by pressurizing between the containment purge supply and exhaust isolation valves. This results in the inboard valves being pressure tested in the direction opposite that which would be pressurized during accident conditions.

The NRC staff has concluded that testing of the valves in the reverse direction will not provide equivalent or more conservative results than that required by Section III.C of Appendix J to 10 CFR part 50, and that the request cannot be granted. The licensee was notified of the Commission's denial of the proposed change by letter dated November 10, 1993.

By December 17, 1993, the licensee may demand a hearing with respect to the denial described above. Any person whose interest may be affected by this proceeding may file a written petition for leave to intervene.

A request for hearing or petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 by the above date.

A copy of any petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Mr. Arthur H. Domby, Troutman Sanders, NationsBank Plaza, Suite 5200, 600 Peachtree Street, NE., Atlanta, Georgia 30308–2210, attorney for the licensee.

For further details with respect to this action, see (1) the application for amendments dated November 7, 1991, as revised June 17, 1992, and (2) the Commission's letter to the licensee dated November 10, 1993.

These documents are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Burke County Public Library, 312 Fourth Street, Waynesboro, Georgia 30830. A copy of item (2) may be obtained upon request addressed to the

U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Document Control Desk.

Dated at Rockville, Maryland, this 10th day of November 1993.

For the Nuclear Regulatory Commission.

Robert A. Hermann,

Acting Director, Project Directorate II–3, Division of Reactor Projects-I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28213 Filed 11–16–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF PERSONNEL MANAGEMENT

Federal Prevailing Rate Advisory Committee Cancellation of Open Committee Meeting

According to the provisions of section 10 of the Federal Advisory Committee Act (Pub. L. 92–463), notice is hereby given that the meeting of the Federal Prevailing Rate Advisory Committee scheduled for Thursday, December 2, 1993, has been cancelled.

Information on other meetings can be obtained by contacting the Committee's Secretary, Office of Personnel Management, Federal Prevailing Rate Advisory Committee, room 1340, 1900 E Street, NW., Washington, DC 20415, (202) 606–1500.

Dated: November 9, 1993.

Anthony F. Ingrassia,

Chairman, Federal Prevailing Rate, Advisory Committee.

[FR Doc. 93–28176 Filed 11–16–93; 8:45 am]

BILLING CODE 6325–01–M

National Partnership Council; Meeting; Correction

AGENCY: Office of Personnel Management.

SUMMARY: This document corrects the place and point of contact for the November 19, 1993, 2 p.m., meeting of the National Partnership Council, which were published November 5, 1993 (58 FR 59082).

PLACE: Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., Auditorium, Washington, DC 20415–0001. The auditorium is located on the ground level.

POINT OF CONTACT: Douglas K. Walker, Office of Communications, Office of Personnel Management, Theodore Roosevelt Building, 1900 E Street, NW., room 5F12, Washington, DC 20415–0001, (202) 606–1800.

Office of Personnel Management.

James B. King,

Director.

[FR Doc. 93–28232 Filed 11–16–93; 8:45 am]

BILLING CODE 6325–01–M

PENSION BENEFIT GUARANTY CORPORATION

Exemption From Bond/Escrow Requirement Relating to Sale of Assets by an Employer Who Contributes to a Multiemployer Plan; Plaid Holdings Corp.

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of exemption.

SUMMARY: The Pension Benefit Guaranty Corporation has granted a request from Plaid Holdings Corporation for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) of the Employee Retirement Income Security Act of 1974, as amended ("ERISA"). A notice of the request of exemption from the requirement was published on May 14, 1993 (58 FR 28646). The effect of this notice is to advise the public of the decision on the exemption request.

ADDRESSES: The nonconfidential portions of the request for an exemption and the PBGC response to the request are available for public inspection at the PBGC Communications and Public Affairs Department, suite 7100, at the address below, between the hours of 9 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT Nathaniel Rayle, Attorney, Office of General Counsel (22514), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006; telephone 202–778–8823 (202–956–5059 for TTY and TDD). These are not toll-free numbers.

SUPPLEMENTARY INFORMATION:

Background

Section 4204 of the Employee Retirement Income Security Act of 1974, as amended by the Multiemployer Pension Plan Amendments Act of 1980, ("ERISA") or "the Act"), provide that a bona fide arm's-length sale of assets of a contributing employer to an unrelated party will not be considered to result in a withdrawal if three conditions are met. These conditions, enumerated in section 4204(a)(1)(A)–(C), are that—

(A) The purchaser has an obligation to contribute to the plan with respect to the operations for substantially the same number of contribution base units for which the seller was obligated to contribute;

(B) The purchaser obtains a bond or places an amount in escrow, for a period of five plan years after the sale, in an amount equal to the greater of the seller's average required annual contribution to the plan for the three plan years preceding the year in which the sale occurred or the seller's require annual contribution for the plan year preceding the year in which the sale occurred (the amount of the bond or escrow is doubled if the plan is in reorganization in the year in which the sale occurred); and

(C) The contract of sale provides that if the purchaser withdraws from the plan within the first five plan years beginning after the sale and fails to pay any of its liability to the plan, the seller shall be secondarily liable for the liability it (the seller) would have had but for section 4204.

The bond or escrow described above would be paid to the plan if the purchaser withdraws from the plan or fails to make any required contributions to the plan within the first five plan years beginning after the sale.

Additionally, section 4204(b)(1) provides that if a sale of assets is covered by section 4204, the purchaser assumes by operation of law the contribution record of the seller for the plan year in which the sale occurred and the preceding four plan years.

Section 4204(c) of ERISA authorizes the Pension Benefit Guaranty Corporation ("PBGC") to grant individual or class variances or exemptions from the purchaser/s bond/escrow requirement of section 4204(a)(1)(B) when warranted. The legislative history of section 4204 indicates a Congressional intent that the sales rules be administered in a manner that assures protection of the plan with the least practicable intrusion into normal business transactions. Senate Committee on Labor and Human Resources, 96th Cong., 2nd Sess., S. 1076, The Multiemployer Pension Plan Amendments Act of 1980: Summary and Analysis of Considerations 16 (Comm. Print, April 1980); 128 Cong. Rec. S10117 (July 29, 1980). The granting of an exemption or variance from the bond/escrow requirement does not constitute a finding by the PBGC that a particular transaction satisfies the other requirements of section 4204(a)(1). Such questions are to be decided by the plan sponsor in the first instance, and any disputes are to be resolved in arbitration. 29 U.S.C. 1382, 13399, 1401.

Under the PBGC's regulation on variances for sales of assets (29 CFR part 2643), a request for a variance or waiver

of the bond/escrow requirement under any of the tests established in the regulation (29 CFR 2643.12–2643.14) is to be made to the plan in question. The PBGC will consider wavier requests only when the request is not based on satisfaction of one of the four regulatory tests or when the parties assert that the financial information necessary to show satisfaction of one of the regulatory tests is privileged or confidential financial information within the meaning of 5 U.S.C. 552(b)(4) (the Freedom of Information Act).

Under § 2643.3 of the regulation, the PBGC shall approve a request for a variance or exemption of it determines that approval of the request is warranted, in that it—

(1) Would more effectively or equitably carry out the purposes of title IV of the Act; and

(2) Would not significantly increase the risk of financial loss to the plan.

Section 4204(c) of ERISA and § 2643.3(b) of the regulation require the PBGC to publish a notice of the pendency of a request for a variance or exemption in the **Federal Register**, and to provide interested parties with an opportunity to comment on the proposed variance or exemption.

The Decision

On May 14, 1993 (58 FR 28645), the PBGC published a request from the Plaid Holdings Corporation ("the Buyer") for an exemption from the bond/escrow requirement of section 4204(a)(1)(B) with respect to its purchase of assets of the men's clothing business of Crystal Brands, Inc. ("the Seller"). The sale of assets became effective on October 19, 1992. No comments were received in response to the notice.

According to the request, the Seller was required to contribute to the Amalgamated Insurance Fund ("the Fund") for work at the purchased operations. At the time of the sale, the Buyer was (and continues to be) obligated to contribute to the Fund for operations other than the purchased operations.

As part of the purchase transaction, the Buyer agreed to comply with the terms of section 4204 of ERISA. The Buyer will post a bond or other security acceptable to the Fund in the event an exemption from the requirements of section 4204(a)(1)(B) is not granted. The Seller has agreed to be secondarily liable for its withdrawal liability should the Buyer withdraw from the Fund within five years of the transaction and fail to pay its withdrawal liability when due.

The amount of the bond/escrow that would be required of the Buyer under section 4204(a)(1)(B) of ERISA is $3,600,241. The Seller's potential withdrawal liability is estimated to be $22,021,073. The Buyer's withdrawal liability for its other operations if it withdrew with respect to such operations in 1992 would be $3,011,496.

The Buyer does not meet the net tangible assets test described in 29 CFR 2643.14(a)(2) as of the end of the plan year in which the transaction occurred. That provision requires that the Buyer's net tangible assets as of the end of its fiscal year preceding the year of the transaction equal or exceed the combined withdrawal liability for the purchased operations and its other operations. However, the Buyer has submitted pro forma financial statements as of December 31, 1992, showing that its net tangible assets as of that date exceed the combined liability for the purchased operations and its other operations. The Buyer has requested confidential treatment of the financial statements under 5 U.S.C. 552(b)(4) because the Buyer is a privately owned business whose financial records are not publicly available.

Based on the facts of this case and the representations and statements made in connection with the request for an exemption, the PBGC has determined that an exemption from the bond/escrow requirement is warranted, in that it would more effectively carry out the purposes of title IV of ERISA and would not significantly increase the risk of financial loss to the Fund. Therefore, the PBGC hereby grants the request for an exemption for the bond/escrow requirement. The granting of an exemption or variance from the bond/escrow requirement of section 4204(a)(1)(B) does not constitute a finding by the PBGC that the transaction satisfies the other requirements of section 4204(a)(1). The determination of whether the transaction satisfies such other requirements is a determination to be made by the Plan sponsor.

Issued at Washington, DC, on this 9th day of November, 1993.

Martin Slate,

Executive Director.

[FR Doc. 93–28187 Filed 11–16–93; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33180; File No. SR–BSE–93–20]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to Its Smoking Policy

November 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 28, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange seeks to amend its Smoking Policy to ban smoking in the hallways outside of the restrooms.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to amend the current Smoking Policy to redesignate the hallways outside of the restrooms as areas where smoking is prohibited. This change in policy is being adopted in response to concerns regarding the effects of smoking on non-smokers in the work environment, balancing these concerns with providing an area or areas for smokers. The stated policy of the Exchange provides that the Market

Performance Committee is authorized to make changes in the designated areas for smoking with due notice to the membership.[1] A memorandum was issued on October 22, 1993, informing members that the amended policy would become effective on November 22, 1993.

2. Statutory Basis

The statutory basis for the proposed smoking policy is section 6(b)(1) of the Act, in that the policy is an administrative action by the Exchange to require its members to comply with its rules and policies, and will ensure the orderly conduct of business on the floor and in the administrative areas without interfering with the personal comfort and safety of the members and staff.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

The Exchange has neither solicited nor received comments on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change constitutes stated policy, practice or interpretation with respect to the meaning, administration or enforcement of an existing rule of the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR-BSE-93-20 and should be submitted by December 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28227 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

[1] See Securities Exchange Act Release No. 32552 (June 29, 1993), 58 FR 36714 (July 8, 1993) (order approving File No. SR-BSE-93-03).

[Release No. 34-33184; File No. SR-BSE-93-22]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Boston Stock Exchange, Inc. Relating to an Extension of Amendments to its Transaction Fee Schedule for a Six Month Period

November 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. On November 3, 1993, the BSE submitted Amendment No. 1 to the proposed rule change.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated October 29, 1993. Amendment No. 1 requested that the BSE value charges be extended for six months instead of one year.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The BSE proposes to extend the temporary effectiveness of its fee schedule regarding certain Intermarket Trading System ("ITS") fees for a six month period.[2] The affected fees are as follows:

new language
[deleted language]
Value Charges
All [BSE] *other* Executions *(includes trades over 2,000 shares and ITS trades)*
First $10 million per month
$.16 per $1,000 contract value
Next $40 million per month
$.13 per $1,000 contract value
Next $50 million per month
$.10 per $1,000 contract value
Next $100 million per month
$.08 per $1,000 contract value
Next $300 million per month
$.05 per $1,000 contract value
$500.1 + million per month
$.01 per $1,000 contract value
Maximum charge per side (non-cross)
$100.00
Maximum charge per side (cross)
$75.00
I.T.S. User Fee
No charge for non-specialist firms

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed rule change is to request a six month extension of the temporary approval of

[2] On November 24, 1992, the Commission announced the immediate effectiveness of a BSE proposal which, among other things, amended the BSE fee schedule to impose value charges on all non-specialist outbound ITS trades for a one year period. See Securities Exchange Act Release No. 31515 (November 24, 1992), 57 FR 56937 (December 1, 1992) (notice of immediate effectiveness of File No. SR-BSE-92-9).

the Exchange's fee schedule regarding certain ITS fees. At the request of the Commission, the BSE sought temporary approval of that portion of its proposed rule filing SR–BSE–92–9 regarding certain ITS transactions.[3] The affected fees are comprised of the value charges instituted on all non-specialist, outbound ITS trades which replaced the ITS User Fee of $.003 per share on all outbound trades incurred by non-specialist firms. The Commission granted temporary approval of the value charges on a one year basis pending the outcome of the Market 2000 Study.

2. Statutory Basis

The statutory basis for this proposal is section 6(b)(4) of the Act in that the proposal provides for the equitable allocation of reasonable dues, fees and other charges among the BSE's members, issuers and other persons using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were solicited from the Fee Committee of the Board of Governors, comprised of representatives of dealer-specialist, retail, and institutional firms; from the Executive Committee, which serves as the Board of Governors of the Clearing Corporation; and from the Board of Governors of the Exchange.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee, or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraphs (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of this filing will also be available for inspection and copying at the principal office of the BSE. All submissions should refer to File No. SR–BSE–93–22 and should be submitted by December 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28228 Filed 11–16–93; 8:45 am]

BILLING CODE 8010–01–M

[3] See Release No. 34–31515, *supra* note 2.

[Release No. 34–33166; File No. SR–CBOE–93–42]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on the Nasdaq 100 Index

November 8, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 22, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE.[1] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

[1] The CBOE amended the rule change proposal on October 27, 1993 to include an updated list of the securities comprising the Nasdaq 100 Index. This list of securities became the basis of calculations of the value of the Nasdaq 100 Index as of October 26, 1993. See letter from Robert B. Wilcox, Jr., Schiff Hardin & Waite to Michael A. Walinskas, Staff Attorney, Division of Market Regulation, SEC, dated October 27, 1993 ("amendment No. 1").

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the Nasdaq 100 Index ("Nasdaq Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade options based on the Nasdaq Index. Such options are sometimes referred to in this proposed rule change as "NDQ options." The Nasdaq Index is calculated and maintained by the Nasdaq Stock Market, Inc. ("Nasdaq"), a subsidiary of the National Association of Securities Dealers, Inc. ("NASD"). NDQ options will be cash-settled, European-style and A.M.-settled.

1. Index Design, Maintenance, and Calculation

The Nasdaq Index is a capitalization-weighted index composed of one hundred of the largest non-financial securities issued by U.S. issuers and traded on the Nasdaq National Market. No more than one security issued by an issuer may be included in the Index at any time. The Index is comprised of stocks that range in capitalization from $437 million to $26.8 billion, as of the market close on October 25, 1993. As of that time, the total capitalization of the Index was $253.8 billion, the median capitalization of the stocks in the Index was $1.3 billion, the largest stock in the Index accounted for 10.54% of the total capitalization of the Index, and the smallest stock in the Index accounted for 0.17% of the total capitalization of the Index.

As is true with respect to other capitalization-weighted indexes, the representation of each security in the

Index is proportional to its last sale price times the total number of shares outstanding, in relation to the total market value of all of the securities in the Index. The level of the Index is calculated as follows:

$$\text{Index Level} = \frac{\text{Current Market Value}}{\text{Adjusted Base Period Market Value}} \times 250$$

$$\text{Adjusted Base Period Market} = \frac{\text{Current Market Value After Adjustments}}{\text{Current Market Value Before Adjustments}} \times \text{Previous Base Period Market Value}$$

The numerical value of the Index was established at 250 prior to the opening of the market on February 1, 1985, and on November 3, 1993 was at approximately 776. Nasdaq has advised the CBOE that it has determined to split the value of the Index in half prior to the commencement of trading of NDQ options, and the current value of the Index, after giving effect to the split, would be approximately 388.

Nasdaq has notified the CBOE that it recently updated the list of securities comprising the Index and will continue to make revisions to the Index on an annual basis.[2] Nasdaq also, in its discretion, will make special adjustments to the securities comprising the Index to reflect such events as mergers, acquisitions, and capitalization changes and adjustments (resulting from stock splits, stock dividends, spin-offs and similar events). Updates to the Index and special adjustments result in value changes to both the current market value and adjusted base period market value in the formula set forth above, and therefore do not in and of themselves alter the level of the Index. The level of the Index therefore changes (except in the case of a split in the Index, as described above) only as a result of price changes in the securities comprising the Index.

The Index is calculated continuously by Nasdaq and disseminated no less often than every fifteen seconds. Index values are disseminated by Nasdaq to Level 2 and Level 3 Nasdaq terminals and to Level 1 vendors and the print media. Nasdaq will also calculate the exercise settlement value for each expiring series of NDQ options and make this value available to the CBOE for use by the Options Clearing Corporation in effecting settlement of exercises and assignments of the options.[3]

2. NDQ Option Trading

The Exchange is proposing in the proposed rule change to trade "regular" NDQ options and full-value and reduced-value long-term options ("LEAPS") based on the Nasdaq Index ("NDQ LEAPS"). Chapter XXIV of the CBOE's Rules, as modified by this rule change, will govern trading of NDQ options. The CBOE attached to its rule filing with the Commission an exhibit summarizing the proposed contract specifications for NDQ options.

(a) *Reporting authority.* The existing Interpretation to CBOE Rule 24.1 that identifies the "reporting authority" for each index underlying options traded on the Exchange will be amended to specify that the reporting authority for the Nasdaq Index is Nasdaq.

(b) *Current index value.* The "current index value" for regular NDQ options will be equal to the level of the Nasdaq Index as reported by Nasdaq (after giving effect to the split in the Index described above).[4] The "current index value" for reduced-value NDQ LEAPS will be one-tenth of the value of the related regular NDQ options.

(c) *Exercise and settlement.* Rule 24.9 will specify that NDQ options will have European-style exercise and will be "A.M.-settled index options." Regular NDQ options and NDQ LEAPS will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

(d) *Position limits.* The Exchange proposes initially[5] to establish the same position limits for NDQ options that are applicable to most index options trading on the Exchange, namely, 25,000 on the same side of the market, with no more than 15,000 of such contracts in the series with the nearest expiration date. The Exchange also proposes to apply the same hedge exemption provisions to NDQ options that are applied to all other index options (other than options on the S&P 500 Index), namely, a maximum of 75,000 contracts on the same side of the market. The existing provisions of Rule 24.4 (specifically, paragraph 24.4(a) and Interpretation .01 to Rule 24.4) implement these proposals without any change.

(e) *Strike prices.* Interpretation .01 to Rule 24.9, which describes the procedures for adding and deleting strike prices for index options, will apply to NDQ options.

(f) *Expiration cycle.* Existing Rule 24.9(a)(2), which describes the expiration months for regular index options, will apply to regular NDQ options, and NDQ options will have up to three near-term consecutive expiration months plus up to three farther-out expiration months at three-month intervals. Existing Rule 24.9(b), which describes the expiration months for LEAPS index options, will apply to LEAPS NDQ options.

3. Inclusion in Rules of Disclaimer of Liability on Behalf of Nasdaq

The CBOE has agreed with Nasdaq to place a disclaimer of liability on behalf of Nasdaq in the CBOE's Rules. The disclaimer is similar in concept to the disclaimers on behalf of Standard & Poor's Corporation, Frank Russell Company, and LIFFE Administration &

[2] Nasdaq has advised the CBOE that it will conduct an update of the components of the Index in each future year, that these annual future updates will be conducted using closing values for the final day of trading in November, that Nasdaq will make any changes in the Index publicly available in early December, and that the Index as updated will become the basis for calculations of values of the Index as of the first trading day following the third Friday of December in each year.

[3] Because NDQ options will be A.M.-settled, each exercise settlement value will be an "opening index value," i.e., a value derived from first reported sale (opening) prices of the securities in the Index on the last day of trading in the securities prior to expiration, or from the last reported sale prices of any securities that do not open for trading on that day.

[4] The "current index value" is defined in CBOE Rule 24.1(g) (as amended by File No. SR–CBOE–93–05) for regular options to mean "the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by the Exchange."

[5] The Exchange may file a separate proposed rule change in the near future to revise the position limits applicable to all A.M.-settled index options. Approval of that proposed rule change would have the effect of revising the position limits applicable to NDQ options.

Management that are currently in the CBOE's Rules.

4. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it will permit trading in NDQ options pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby providing investors with the ability to invest in options based on an additional index.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–42 and should be submitted by December 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28214 Filed 11–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33174; File No. SR–NASD–93–64]

Self-Regulatory Organizations; Notice of Filing and Order Granting Temporary Accelerated Approval of Proposed Rule Change by National Association of Securities Dealers, Inc. Extending the Advertising Prefiling Requirement as It Relates to Collateralized Mortgage Obligation (CMO) Advertisements

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 4, 1993, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

1. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NASD is proposing to amend Article III, section 35(c)(2) of the Rules of Fair Practice and section 8(c)(1)(B) of the Government Securities Rules to extend temporarily the effectiveness of the advertising prefiling requirement as it relates to collateralized mortgage obligation (CMO) advertisements. Below is the text of the proposed rule change. Proposed new language is italicized; proposed deletions are in brackets.

Rules of Fair Practice

Article III

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Communications With the Public

Sec. 35.

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(c) Filing Requirements and Review Procedures

(2) Advertisements concerning collaterlized mortgage obligations registered under the Securities Act of 1933 shall be filed with the Association's Advertising Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, Association approval. This subsection (c)(2) shall remain in effect for one year from November 16, 199[2]*3* unless modified or extended prior thereto by the Board of Governors.

Government Securities Rules

* * * * *

Communications With the Public

Sec. 8

* * * * * * *

(c) Filing Requirements and Review Procedures

(1) Members shall file advertisements for review with the Association's Advertising Department as follows:

* * *

(B) advertisements concerning collateralized mortgage obligations shall be filed with the Association's Advertising Department for review at least 10 days prior to use (or such shorter period as the Department may allow in particular circumstances) for approval and, if changed or expressly disapproved by the Association, shall be withheld from publication or circulation until any changes specified by the Association have been made or, in the event of disapproval, until the advertisement has been refiled for, and has received, Association approval. This subsection (c)(1)(B) shall remain in effect for one year from November 16, 199[2]*3* unless modified or extended prior thereto by the Board of Governors.

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II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the NASD included statements concerning

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[6] 17 CFR 200.30–3(a)(12) (1993).

the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The NASD has prepared summaries, set forth in Sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

As part of its continuing program to enhance the regulation of sales practices in connection with the marketing of CMOs, the NASD reviewed the CMO advertising pre-use filing provisions adopted by the NASD last year.[1] The provisions require members to file CMO advertising at least 10 days prior to first use and are set forth in Article III, Section 35(c)(2) of the Rules of Fair Practice and Section 8(c)(1)(B) of the Government Securities Rules. When adopted, the prefiling provisions contained sunset clauses which specified that they would be effective until November 16, 1993, unless modified or extended prior thereto by the NASD's Board of Governors.

On the basis of information provided by the NASD's Advertising Regulation Department staff, the NASD determined that the prefiling requirement has been an extremely effective tool in controlling the use of misleading advertising. There has been a significant decline in the number of non-complying filings as well as a marked reduction in the number of complaints relating to CMO advertising referred for disciplinary action. The NASD is, therefore, proposing in a separate rule filing submitted to the SEC, to amend the rules to eliminate the sunset provisions thereby making the filing requirement permanent.[2]

In the interim, until the SEC has had the opportunity to review and publish for public comment the NASD's proposal to make the prefiling provisions permanent, the NASD is proposing to extend temporarily the effectiveness of the prefiling provisions for one year.

The NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act[3] in that the amendments will ensure that the positive effect of the prefiling requirement in controlling the use of misleading advertising, which protects investors and the public interest by enhancing sales practices relating to CMOs, will be extended temporarily for one year while the proposal to make the prefiling provisions permanent is reviewed and published for public comment by the SEC.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NASD does not believe that the proposed rule change will result in any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act, as amended.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The NASD has requested that the Commission find good cause pursuant to section 19(b)(2) for approving the proposed rule change prior to the 30th day after publication in the **Federal Register**. The NASD notes that: the proposed rule change is an interim rule; the NASD has filed a proposed rule change soliciting public comment concerning whether to make the prefiling requirement permanent; and the NASD previously has solicited member comment concerning the prefiling requirement.

Based on the NASD'S representations that: (1) The prefiling requirement has been an effective tool in controlling the use of misleading advertising, (2) there has been a marked decline in the number of advertising filings that do not comply with the rules, and (3) there has been a significant reduction in the number of complaints relating to CMO advertising referred for disciplinary action, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6). Section 15A(b)(6) requires, in part, that the rules of the NASD be designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest.

The Commission finds good cause for approving the proposal on an accelerated basis to avoid the operation of the current sunset clauses which would cause the prefiling provisions to expire on November 16, 1993. The Commission believes that the proposed rule change promotes the public interest by continuing a regulatory policy that has successfully reduced the use of misleading CMO advertising by NASD members and believes it is appropriate to continue these requirements uninterrupted.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the NASD. All submissions should refer to the file number in the caption above and should be submitted by December 8, 1993.

It Is Therefore Ordered, Pursuant to section 19(b)(2)[4] that the proposed rule change (SR–NASD–93–64), extending until November 16, 1994 the requirement that collateralized mortgage obligation advertisements be prefiled with the NASD, is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority, 17 CFR 200.30–3(a)(12).

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28175 Filed 11–16–93; 8:45 am]

BILLING CODE 8010–01–M

[1] See Securities Exchange Act Release No. 31369 (October 28, 1992), 57 FR 49732 (Nov. 3, 1992) (approving File No. SR–NASD–92–32).

[2] The proposed rule change, the text of which may be examined in the Commission's Public Reference Room, also would require the filing of advertisements and sales literature relating to investment companies. See File No. SR–NASD–93–66, filed with the Commission on November 4, 1993.

[3] 15 U.S.C. 78o–3.

[4] 15 U.S.C. 78s(b)(2).

[Release No. 34-33182; File No. SR-PSE-93-27]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to a Two Month Waiver of Certain Fees for Floor Members

November 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE proposes to waive certain fees for floor members set forth in the PSE's Schedule of Rates for Exchange Services ("Schedule of Rates") for a two month period.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange is proposing to waive the following monthly fees that are applicable to its equity and options floor members: (1) Equity Floor Broker Booth Fees of $125, $250 and $375 for small, large and area booths, respectively; (2) Equity Floor Privilege Fees of $165 per registered floor member and registered clerk; (3) approximately 31% of the Systems Fee of $1,700 per post on the equity floor; (4) approximately 45% of the Options Floor Booth Fees of $300, $400 and $500 for retail booths, clearing booths and stock execution booths, respectively, and approximately 45% of the $350 surcharge for prime location booths; and (5) approximately 45% of the Options Market Maker Fees of $725 per month. The Exchange proposes that the waivers be in effect for two months.

The purpose of the proposed waiver is to provide the Exchange's floor members, who have borne the most significant burden of fee increases in recent years, with a discount in floor fees in response to increased revenues for this year. The Exchange stated that the fees proposed to be waived correspond to fees that have been increased in recent years.[1]

2. Statutory Basis

The proposed rule change is consistent with Section 6(b)(4) of the Act in that it provides for the equitable allocation of reasonable fees and other charges among members using its facilities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b-4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR-PSE-93-27 and should be submitted by December 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28229 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

[1] See letter from David P. Semak, Vice President, Regulation, PSE, to Louis A. Randazzo, Attorney, Commission, dated November 5, 1993.

[Release No. 34-33183; File No. SR-PSE-93-28]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the Pacific Stock Exchange, Inc. Relating to a Three Month Waiver of Market Maker Transaction Fees in Certain Issues

November 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 29, 1993, the Pacific Stock Exchange, Inc. ("PSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The PSE is proposing to waive all market maker transaction fees for transactions in IDTI (Integrated Device Technology) and FPNX (First Pacific Network) options. The waiver will cover a three month period from November 1, 1993 to January 31, 1994.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The Exchange believes that the proposed temporary waiver of market maker transactions fees will result in greater liquidity, enhanced competition and a higher quality of markets in IDTI and FPNX options on the Options Floor of the Exchange.

2. Statutory Basis

The proposed waiver is consistent with Section 6(b)(5) of the Act in that it will facilitate transactions in securities.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance of the purposes of the Act.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

Comments were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The foregoing rule change establishes or changes a due, fee or other charge imposed by the Exchange and therefore has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the PSE. All submissions should refer to File No. SR–PSE–93–28 and should be submitted by December 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28230 Filed 11–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33179; File No. SR–Phlx–93–14]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating To Hedge Orders

November 10, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on April 1, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Phlx. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx, pursuant to Rule 19b–4, proposes to amend Exchange Rules 1033 and 1066, Options Floor Procedure Advice ("OFPA" or "advice") D–2, and OFPA F–4, as well as to adopt OFPA F–14 and OFPA F–16 to permit various types of hedge orders to attain spread priority.

The text of the proposed rule change is available at the Office of the Secretary, Phlx, and the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of, and statutory basis for, the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Phlx has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The Phlx proposes to permit certain types of hedge orders to attain spread priority, that is, to be executed as a single transaction, with priority over certain existing bids/offers for each leg of the transaction. Accordingly, the Exchange proposes to amend Exchange Rule 1066 to define the types of hedge orders that would be eligible for spread priority. Specifically, paragraph (f) of Rule 1066 would be amended to define hedge orders as either spread type orders (spreads, straddles, and combinations) or synthetic orders (buy-writes, synthetic calls or synthetic puts). The current definition of a "spread order" [1] in Rule 1066(d) would be moved to Rule 1066(f)(1), as a sub-paragraph of the definition of hedge orders.

Currently, Phlx Rule 1033(d) affords priority to certain spread transactions. Under this provision, an eligible spread is executable as a single transaction at a total net credit/debit with one contra-side as long as that net credit/debit improves the established market for the spread as measured by the aggregate price of the respective legs, if executed individually. The proposed language to Rule 1033(d) would clarify the existing requirement to improve the established market so that at least one option leg is executed at a better price than the established market for the option and no option leg is executed outside of the established market. Pursuant to this

[1] A spread order is defined as an order to buy a stated number of option contracts and to sell the same number of option contracts, in a different series of the same class of options.

proposed rule change, all of the types of hedge orders defined in proposed Rule 1066(f) would be eligible for spread priority. Rule 1033 would also be amended to add headings to each paragraph for quick reference to appropriate topic.

As a result of the proposed changes to Rules 1066 and 1033, corresponding changes to OFPA D–2 and F–4 will be required. Specifically, OFPA D–2 (Instances of Non-Liability for Floor Brokers or Specialists) would be amended to include synthetic orders.[2] Currently, a floor broker and a specialist are not held liable for the non-execution of an order in two or more series based on transaction prices from any opening, closing or trading rotation. Synthetic orders would be added as an example of an order in two or more series.

In addition, OFPA F–4 (Orders Executed as Spreads, Straddles, or Combinations) would be amended to reflect the definitional changes to Rule 1066. Accordingly, the title would be changed to "Orders Executed as Spread, Straddle, Combination or Synthetic Orders," and the text would reflect the new term, synthetic orders. OFPA F–4 would additionally require the marking of order tickets executed in reliance upon the spread priority rules with a "syn" for synthetic orders in addition to the existing requirement that spreads, straddles, and combinations also be marked.[3] A new Advice enumerating the procedure for executing hedge orders is also proposed for both equity option and foreign currency option ("FCO") floors. OFPA F–14 (Executing Hedge Orders) restates the definitions in Rule 1066(f) and the procedures in Rule 1033(d) for easy reference by floor persons in the floor procedure advice handbook.

Certain changes proposed by the Phlx to Rules 1066 and 1033 are applicable solely to the trading of FCOs. First, because Rule 1033 deals with priority for different types of spreads, existing Commentary .02 of Rule 1066 is proposed to be moved to Rule 1033(f). A new Commentary .02 to Rule 1066 would be adopted containing a definition of multi-spread transactions in FCOs, because Rule 1066 generally contains definitional provisions.

Second, Rule 1033(f) is proposed to be added to state that a spread order may consist of a ratio spread. As a result, ratio spreads would become eligible for spread priority pursuant to Rule 1033(d). Rule 1033(f) defines the permissible ratios as one-to-one, one-to-two, one-to-three, and two-to-three.

Third, proposed Rule 1033(g) is a new paragraph governing multi-spread priority. Eligible multi-spread transactions in FCOs, as defined in new Commentary .02 of Rule 1066, could be executed as a single transaction as long as at least one leg of each spread improves the established market and no leg is executed outside of the established market. The language of Rule 1033(g) parallels existing language in Rule 1033(e), relating to three-way transactions.[4]

Lastly, OFPA F–16 (Two-Way and Multi-Spread Transactions) is proposed by the Phlx for adoption. This Advice would contain the aforementioned definitions and procedures regarding FCO spread priority.

As a whole, the Phlx believes that the proposed changes to Rule 1033, Rule 1066, OFPA D–2, and OFPA F–4, as well as the proposed adoption of OFPA F–14 and OFPA F–16, are consistent with section 6(b)(5) of the Act. The Exchange notes that the current text of Rule 1033(d) is understood to cover various types of spread orders. However, in order to prevent confusion and provide a more accommodating market for the execution of conservative hedge trading strategies involving hedge orders such as ratio spreads and three-way transactions, the Phlx seeks to incorporate both the definitions and execution procedures into express provisions in Exchange rules as well as floor procedure Advices. Accordingly, the Exchange believes that expanding the category of hedge transactions eligible for spread priority and clarifying the procedure for executing these transactions should promote just and equitable principles of trade and protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Phlx does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

No written comments were either solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) By order approve such proposed rule change, or

(b) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to the file number in the caption above and should be submitted by December 8, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

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[2] A synthetic option order is defined in Proposed Rule 1066(f)(4) a an order to buy or sell a stated number of option contracts and buy or sell the underlying stock in an amount that would offset (on a one-for-one basis) the option position.

[3] OFPA F–4 would also establish a fine schedule which is intended to be incorporated into the Exchange's minor rule violation enforcement and reporting plan, administered pursuant to Phlx Rule 970. Telephone Conversation between Jeffrey P. Burns, Attorney, Branch of Derivatives Regulation, SEC, and Edith Hallahan, Special Counsel, Regulatory Services, Phlx, on November 2, 1993.

[4] Proposed amended Rule 1033(e) defines three-way transactions as spread, straddle, and combination orders of three individual series in the same FCOs where (i) the order size for each of the three individual series are equal to each other, or (ii) the combined order size of any two series on the same side of the market is either equal to the order size of the third series or differs from the order size of the third series by a permissible ratio. A permissible ratio is any one of the following: one-to-one, one-to-two, one-to-three, and two-to-three.

[5] 17 CFR 200.30–3(a)(12) (1992).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93-28215 Filed 11-16-93; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-19861; 811-4778]

MFS Lifetime High Income Fund; Application

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime High Income Fund.

RELEVANT ACT SECTION: Section 8(f)

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 30, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 29, 1986, and the initial public offering commenced on or about that date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust III, a registered open-end management investment company (formerly, Massachusetts Financial High Income Fund), on behalf of one of its series, MFS High Income Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a-8 under the Act.[1]

3. On July 2, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on August 27, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 27, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 27, 1993, applicant had 51,731,954.71 shares outstanding, having an aggregate net asset value of $322,565,970.20 and a per share net asset value of $6.24.

5. Applicant and the Surviving Fund assumed their own expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $15,000, $1,245, $22,445, $14,066, $2,745, and $2,506 respectively, were borne by applicant. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $23,824, $1,245, $8,239, $30,962, $10,362, and $2,807 respectively, were borne by the Surviving Fund.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93-28216 Filed 11-16-93; 8:45 am]
BILLING CODE 8010-01-M

[Rel. No. IC-19860; 811-4780]

MFS Lifetime Money Market Fund; Application

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime Money Market Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson,

[1] Rule 17a-8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 30, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 29, 1986, and the initial public offering commenced on or about that date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust I (formerly, MFS Lifetime Managed Sectors Fund), a registered open-end management investment company on behalf of one of its series, MFS Cash Reserve Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On July 1, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 30, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 7, 1993, applicant had 114,566,047.856 shares outstanding, having an aggregate net asset value of $114,566,047.856 and a per share net asset value of $1.00.

5. The Surviving Fund assumed all expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, and proxy solicitor expenses were in the approximate amount of $11,574, $1,245, $13,490, $10,338, and $1,850, respectively.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28217 Filed 11–16–93; 8:45 am]

BILLING CODE 8010-01-M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–19859; 811–4774]

MFS Lifetime Municipal Bond Fund; Application

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime Municipal Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interests, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 30, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 29, 1986, and the initial public offering commenced on or about that date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Municipal Series Trust (formerly, MFS Multi-State Municipal Bond Trust), a registered open-end management investment company, on behalf of one of its series, MFS Municipal Income Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On June 3, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 30, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On

[1] Rule 17a–8 provides an exemption form section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

September 7, 1993, applicant had 58,432,387.786 shares outstanding, having an aggregate net asset value of $532,704,481.70 and a per share net asset value of $9.12.

5. The Surviving Fund assumed all expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses were in the approximate amount of $11,474, $1,245, $12,312, $11,948, $2,559, and $3,181, respectively.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28210 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC—19858; 811-4779]

MFS Lifetime Total Return Fund; Application for Deregistration

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime Total Return Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 30, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 29, 1986, and the initial public offering commenced on or about that date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust V (formerly, MFS Total Return Fund), a registered open-end management investment company, on behalf of one of its series, MFS Total Return Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a-8 under the Act.[1]

3. On May 25, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 23, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on August 23, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On August 23, 1993, applicant had 44,956,960.51 shares outstanding, having an aggregate net asset value of 498,557,128.70 and a per share net asset value of $11.09.

5. Applicant and the Surviving Fund assumed their own expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $15,000, $1,245, $34,917, $34,654, $7,100, and $3,347 respectively, were borne by applicant. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $28,474, $1,245, $19,526, $71,389, $22,640, and $6,096 respectively, were borne by the Surviving Fund.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28211 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

[1] Rule 17a-8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC—19857; 811-4772]

MFS Lifetime Worldwide Equity Fund; Application for Deregistration

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime Worldwide Equity Fund.

RELEVANT ACT SECTION: Section 8(f)

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 30, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 29, 1986, and the initial public offering commenced on or about that date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust VI (formerly, MFS Worldwide Total Return Fund), a registered open-end management investment company, on behalf of one of its series, MFS World Equity Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On July 11, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 30, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 7, 1993, applicant had 8,485,380.326 shares outstanding, having an aggregate net asset value of $133,764,131.10 and a per share net asset value of $15.76.

5. The Surviving Fund assumed all expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses were in the approximate amount of $15,624, $1,245, $14,021, $12,792, $2,641, and $1,174, respectively.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28220 Filed 11–16–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–19856; 811–2672]

MFS Managed Municipal Bond Trust; Application for Deregistration

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Managed Municipal Bond Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation.

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On September 9, 1976, applicant registered under the Act as an investment company, and on December 6, 1976 filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on January 17, 1977, and the initial public offering commenced on or about that date.

2. On April 21, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant, on behalf of its sole series, MFS Municipal Bond Fund (the "Terminating Fund"), and MFS Series

Trust IV (formerly, Massachusetts Cash Management Trust), a registered open-end management investment company, on behalf of one of the MFS Series Trust IV's series, MFS Municipal Bond Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On June 9, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on August 5, 1993, the Terminating Fund's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, the Terminating Fund transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class A shares with the equivalent net asset value. The Terminating Fund then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of the Terminating Fund owned Class A shares of the Surviving Fund with the same aggregate net asset value as the shares of the Terminating Fund owned by the shareholder immediately prior to the reorganization. On September 7, 1993, the Terminating Fund had 187,609,111.702 shares outstanding, having an aggregate net asset value of $2,185,149,277 and a per share net asset value of $11.67.

5. The Surviving Fund assumed all expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses were in the approximate amount of $18,599, $1,245, $14,207, $44,773, $9,206, and $6,400, respectively.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28221 Filed 11–16–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC—19855; 811–4773]

MFS Lifetime Government Mortgage Fund; Application for Deregistration

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime Government Mortgage Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate or service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 30, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 29, 1986, and the initial public offering commenced on or about that date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Government Mortgage Fund, a registered open-end management investment company (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On May 26, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 23, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 7, 1993, applicant had 250,015,381.4 shares outstanding, having an aggregate net asset value of $1,773,235,696 and a per share net asset value of $7.09.

5. Applicant and the Surviving Fund assumed their own expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $15,000, $1,245, $55,691, $78,406, $16,539, and $38,406 respectively, were borne by applicant. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $25,874, $1,245, $11,528, $32,356, $10,626, and $3,211 respectively, were borne by the Surviving Fund.

6. There are not securityholders to whom distributions in complete liquidation of their interests have not

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28222 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19854; 811-4776]

MFS Lifetime Capital Growth Fund; Application for Deregistration

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission".

ACTION: Notice of application of deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime Capital Growth Fund.

RELEVANT ACT SECTION: Sction 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 30, 1986, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 29, 1986, and the initial public offering commenced on or about that date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust II (formerly, MFS Lifetime Capital Growth Fund), a registered open—end management investment company, on behalf of one of its series, MFC Capital Growth Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a-8 under the Act.[1]

3. On June 3, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 30, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 7, 1993, applicant had 32,428,985.142 shares outstanding, having an aggregate net asset value of $475,836,679.70 and a per share net asset value of $14.67.

5. The Surviving Fund assumed all expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses were in the approximate amount of $12,324, $1,245, $17,352, $40,987, $8,521, and $2,980, respectively.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28223 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

[1] Rule 17a-8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC-19853; 811-3228]

MFS Emerging Growth Fund; Application for Deregistration

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Emerging Growth Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On July 23, 1981, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on December 4, 1981, and the initial public offering commenced on or about that date.

2. On April 21, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust II (formerly, MFS Lifetime Emerging Growth Fund), a registered open-end management investment company, on behalf of one of its series, MFS Emerging Growth Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On June 2, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 21, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 13, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class A shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class A shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 7, 1993, applicant had 16,509,906.97 shares outstanding, having an aggregate net asset value of $341,390,536.60 and a per share net asset value of $20.68.

5. Applicant and the Surviving Fund assumed their own expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $15,000, $1,245, $52,209, $32,903, $6,985, and $2,408 respectively, were borne by applicant. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $27,099, $1,245, $29,610, $43,459, $14,571, and $2,275 respectively, were borne by the Surviving Fund.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28225, Filed 11–16–93; 8:45 am]

BILLING CODE 8010-01-M

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

[Rel. No. IC–19852; 811–5705]

MFS Lifetime Government Securities Fund; Application for Deregistration

November 10, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS Lifetime Government Securities Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 6, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On December 1, 1988, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on January 6, 1989, and the initial public offering commenced on or about the date.

2. On April 14, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Government Securities Fund, a registered open-end management investment company (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a–8 under the Act.[1]

3. On May 25, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on July 23, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on August 30, 1993, applicant transferred all of its

[1] Rule 17a–8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

assets to the Surviving Fund in consideration of the Surviving Fund's Class B shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class B shares of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On August 30, 1993, applicant had 10,819,799.24 shares outstanding, having an aggregate net asset value of $109,249,023.80 and per share net asset value of $10.10.

5. Applicant and the Surviving Fund assumed their own expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $15,000, $1,245, $27,827, $4,636, $873, and $807 respectively, were borne by applicant. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses in the approximate amount of $31,024, $1,245, $4,612, $17,302, $5,813, and $1,085 respectively, were borne by the Surviving Fund.

6. There are no security holders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28226 Filed 11-16-93; 8:45 am]

BILLING CODE 8010-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of Noise Compatibility Program; Cincinnati/Northern Kentucky International Airport, Covington, KY

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the noise compatibility program submitted by the Kenton County Airport Board under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96-193) and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96-52 (1980). On April 28, 1993, the FAA determined that the noise exposure maps submitted by the Kenton County Airport Board under part 150 were in compliance with applicable requirements. On October 25, 1993, the Administrator approved the Cincinnati/Northern Kentucky International Airport noise compatibility program. All of the recommendations of the program were approved in full or in part. The noise compatibility program supplements the original noise compatibility program, approved August 6, 1991, for Cincinnati/Northern Kentucky International Airport.

EFFECTIVE DATE: The effective date of the FAA's approval of the Cincinnati/Northern Kentucky International noise compatibility program is October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Peggy S. Kelley, Federal Aviation Administration, Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131-0301; Telephone 901-544-3495. Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to the noise compatibility program for Cincinnati/Northern Kentucky International Airport, effective October 25, 1993.

Under section 104(a) of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator who has previously submitted a noise exposure map may submit to the FAA a noise compatibility program which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible land uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, government agencies, airport users, and FAA personnel.

Each airport noise compatibility program developed in accordance with Federal Aviation Regulations (FAR) part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to which measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act and is limited to the following determinations:

a. The noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program are delineated in FAR part 150, section 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the program nor a determination that all measures covered by the program are eligible for grant-in aid funding from the FAA. Where federal funding is sought, requests for project grants must be submitted to the FAA Airports District office in Memphis, Tennessee.

The Kenton County Airport Board submitted to the FAA on November 2, 1992, the noise exposure maps, descriptions, and other documentation produced during the FAR part 150 supplemental noise compatibility

planning study conducted from April through October 1992. The Cincinnati/Northern Kentucky International Airport noise exposure maps were determined by FAA to be in compliance with applicable requirements on April 28, 1993. Notice of this determination was published in the **Federal Register** on May 11, 1993.

The Cincinnati/Northern Kentucky International Airport FAR part 150 Supplemental Study contains a proposed noise compatibility program comprised of actions designed for phased implementation by airport management and adjacent jurisdictions from the date of study completion beyond the year 1997. It was requested that the FAA evaluate and approve this material as a noise compatibility program as described in section 104(b) of the Act. The FAA began its review of the program on April 28, 1993, and was required by provision of the Act to approve or disapprove the program within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such program within the 180-day period shall be deemed an approval of such a program.

The submitted program contained 14 operational measures, 12 land use measures and 3 implementation measures for noise mitigation on and off the airport. Some of the measures had been approved in 1991 in the original noise compatibility study for Cincinnati/Northern Kentucky International Airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The overall program, therefore, was approved by the Administrator effective October 25, 1993.

Approval for part 150 was granted, in total or in part, for all of the proposed operational measures. Most of the operational procedures will require an environmental decision before implementation by FAA. The approval for one operational measure will not be effective for part 150 purposes until such time that this procedure will in fact reduce non-compatible land uses. Based on the part 150 Supplemental Study this will be true in the long term. One operational measure, extension of Runway 18R/36L, was approved in part. The request to establish a declared distance of 10,000 feet for takeoffs, after the extension of Runway 18R–36L, was disapproved because it did not provide any tangible noise benefit and would have no effect on runway use patterns. Another operational measure, use of hold short capability on 18R after extension of 18R/36L, was approved but is subject to the discretion of the pilot in command. Approval was granted for all the land use and implementation actions. Land Use measures include purchase assurance, soundproofing, acquisition in the DNL 75, voluntary acquisition within the DNL 65 contour in the preferential nighttime corridor, and soundproofing of eligible schools. The Implementation Plan includes an ARTS tracking system.

These determinations are set forth in detail in a Record of Approval endorsed by the Administrator on October 25, 1993. The Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Kenton County Airport Board.

Issued in Memphis, Tennessee, October 29, 1993.

Billy J. Langley,

Manager, Memphis Airports District Office.

[FR Doc. 93–28270 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Jacksonville International Airport, Jacksonville, FL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and Part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Orlando Airport District Office, 9677 Tradeport Dr., Suite 130, Orlando, Florida 32827.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Jay R. Stucki, Director of Aviation of the Jacksonville Port Authority at the following address: P.O. Box 3005, Jacksonville, Florida 32206.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Jacksonville Port Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Carlos E. Maeda, Plans and Programs Manager, Orlando Airport District Office, 9677 Tradeport Dr., Suite 130, Orlando, Florida 32827, (407) 648–6583. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Jacksonville International Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation regulations (14 CFR part 158).

On November 2, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by Jacksonville Port Authority was substantially complete within the requirements of section 158.25 of Part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 2, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00; Proposed charge effective date: March 1, 1994; Proposed charge expiration date: August 31, 1997; Total estimated PFC revenue: $12,300,000.

Brief description of proposed project(s): Rehabilitate runway 7–25; Extend runway 7–25; Install glide slope/MALSR runway 25; Reconstruct taxiways C and E; Install taxiway guidance signs; Lighting improvements runway 13–31; Construct ARFF facility.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators filing FAA Form 1800–31.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT.**"

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Jacksonville Port Authority, 2831 Talleyrand Avenue, Jacksonville, Florida 32206–0005.

Issued in Atlanta, Georgia on November 2, 1993.

Dell T. Jernigan,

Manager, Planning and Development Branch, Airports Division, Southern Region.

[FR Doc. 93–28194 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Rulemaking, Research and Enforcement Programs Meetings

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice of NHTSA industry meetings.

SUMMARY: This notice announces a public meeting at which NHTSA will answer questions from the public and the automobile industry regarding the agency's rulemaking, enforcement and other programs. In addition, NHTSA will hold a separate public meeting to describe and discuss specific research and development projects.

DATES: The Agency's regular, quarterly public meeting relating to the agency's rulemaking, enforcement and other programs will be held on December 16, 1993, beginning at 9:30 a.m. and ending at approximately 12:30 p.m. Questions relating to the agency's rulemaking, enforcement and other programs must be submitted in writing by December 8, 1993, to the address shown below. If sufficient time is available, questions received after the December 8 date may be answered at the meeting. The individual, group or company submitting a question(s) does not have to be present for the question(s) to be answered. A consolidated list of the questions submitted by December 8, 1993, and the issues to be discussed will be mailed to interested personnel by December 10, 1993, and will be available at the meeting.

Also, the agency will hold a second public meeting on December 15 devoted exclusively to a discussion of research and development programs. The meeting will begin at 1 p.m. and end at approximately 4:30 p.m. This meeting is described more fully in a separate announcement.

ADDRESSES: Questions for the December 16 NHTSA Technical Industry Meeting, to be held from 9:30 a.m. to 12:30 p.m., relating to the agency's rulemaking, research, and enforcement programs should be submitted to Barry Felrice, Associate Administrator for Rulemaking, National Highway Traffic Safety Administration, room 5401, 400 Seventh Street, SW., Washington, DC 20590. Questions for the Research and Development Program Meeting to be held December 15 from 1 p.m. to 4:30 p.m. should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, room 6206, 400 Seventh Street, SW., Washington, DC 20590. Both meetings will be held in room 2230, Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20590.

SUPPLEMENTARY INFORMATION: NHTSA will hold its regular, quarterly meeting from 9:30 a.m. to 12:30 p.m., to answer questions from the public and the regulated industries regarding the agency's rulemaking, enforcement and other programs, on December 16, 1993. Since the agency is holding a separate meeting on its research and development programs, any questions on those issues will only be answered at the afternoon meeting to be held on December 15, 1993 from 1 p.m. to 4:30 and should be submitted to the Research and Development Office. However, questions on aspects of the agency's research and development activities that relate to ongoing rulemaking procedures should be submitted, as in the past, to the agency's Rulemaking Office. The meeting will be held in room 2230, Department of Transportation Headquarters Building, 400 Seventh Street, SW., Washington, DC 20590. The purpose of the meeting is to focus on those phases of NHTSA activities which are technical, interpretative or procedural in nature. Transcripts of the meetings will be available for public inspection in the NHTSA Technical Reference Section in Washington, DC, within four weeks after the meetings. Copies of the transcript will then be available at ten cents a page, (length has varied from 100 to 150 pages) upon request to NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW., Washington, DC 20590. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide auxiliary aids to participants as necessary, during the NHTSA Technical Industry Meeting and the NHTSA Industry Research and Development Meeting. Thus, any person desiring assistance of "auxiliary aids" (e.g., sign-language interpreter, telecommunications devices for deaf persons (TDDs), readers, taped texts, Brailled materials, or large print materials and/or a magnifying device), please contact Barbara Carnes on (202) 366–1810, by COB December 8, 1993, for the 9:30 a.m. to 12:30 p.m. portion of the meeting or Barbara Coleman (202) 366–1537 by COB December 8, 1993 for the 1 p.m. to 4:30 p.m. portion.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–28179 Filed 11–16–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Applications for Exemptions

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applicants for exemptions.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. Each mode of transportation for which a particular exemption is requested is indicated by a number in the "Nature of Application" portion of the table below as follows: 1—Motor vehicle; 2—Rail freight; 3—Cargo vessel; 4—Cargo aircraft only; 5—Passenger-carrying aircraft.

DATES: Comments must be received on or before December 17, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption application number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

NEW EXEMPTIONS

Application No.	Applicant	Regulation(s) affected	Nature of exemption thereof
11148–N	Willert Home Products, St. Louis, MO.	49 CFR 172.101, 173.156	To authorize the transportation of up to 16 ounces of hydrofluoric acid, solution Class 8 or sodium dithionite, Division 4.1 contained in polyethylene bottles overpacked in a fiberboard box, described as consumer commodity. (mode 1)
11151–N	SET Environmental, Inc., Wheeling, IL.	49 CFR 177.848(d)	To authorize the transportation of hazardous waste, classed as Division 6.1, Hazard Zone A material in combination packaging in the same transport vehicle with Class 3 and 8, Division 4.1, 4.2, 4.3, 5.1 and 5.2. (mode 1)
11153–N	SET Enivironmental, Inc., Wheeling, IL.	49 CFR 177.848(d)	To authorize the shipment of lab packs containing hazardous wastes, classed as Division 4.2 and Class 8 in the same transport vehicle. (mode 1)
11156–N	Austin Powder Company, Cleveland, OH.	49 CFR 173.62	To authorize the transport of ammonium nitrate-fuel oil mixture, classed as Division 1.5 in specially designed multi-wall plastic lined bags meeting UN packaging criteria except not sift-proof. (mode 1)
11157–N	Northwest Ohio Towing & Recovery, Beaverdam, OH.	49 CFR 173.242(b)	To authorize the transport of gasoline residue, Class 3, in non-DOT specification cargo tanks used in airport operations to be secured to a flat bed truck and transported to a repair facility. (mode 1)
11158–N	CEM International Pty Ltd., Coolarro Victoria, Australia.	49 CFR 178.245	To authorize the manufacture, mark and sell of non-DOT specification portable tanks built comparable to a DOT-Specification 51 for use in transporting liquefied petroleum gas, Division 2.1. (modes 1, 3)
11159–N	Fort Container Systems Inc., Brampton, Ontario, Canada.	49 CFR 178.253, CFR part 173, subpart F, 178.19.	To authorize the manufacture, mark and sell of rotationally moulded polyethylene intermediate bulk containers equipped with stackable steel frame, with a capacity of 300 gallons, for shipment of Class 8 material. (modes 1, 2)
11160–N	Dow Chemical Company, Freeport, TX.	49 CFR 173.247	To authorize the bulk transport of molten magnesium, Class 9, in specially design stainless steel 600 gallon container via specially built road vehicles on private roads that cross state highways. (modes 1, 2)
11163–N	Control Instruments Corporation, Fairfield, NJ.	49 CFR 172.101	To authorize the transport of hydrogen, compressed, Division 2.1, otherwise forbidden on passenger aircraft, as part of a portable monitoring system. (mode 5)
11164–N	Elastochem, Inc., Chardon, OH	49 CFR 173.225	To authorize the shipment of 70 percent organic peroxide, Type F Solid, Division 5.2, as nonregulated based on test criteria, contained in heavy gauge polyethylene bags containing not more than 25 kilos of material and unitized on wooden pallets. (mode 1)
11165–N	Oxford Container Co., New Oxford, PA.	49 CFR 178.205	To authorize the manufacture, mark and sale of corrugated fiberboard, slotted boxes constructed to DOT–12B–65 specification equipped with two hinged handholes for use as overpack for shipment of various classes of hazardous material. (mode 1)
11166–N	Sun Company, Inc., Philadelphia, PA.	49 CFR 173.29(a)(2)	To authorize a one-time shipment of out-of-test DOT Specification 111A100W rail car, containing combustible liquid residue. (mode 2)
11167–N	Eco-Pak, Inc., Elizabeth, TN	49 CFR 173.240–244	To manufacture, marking and sell a non-DOT specification 250 gallon capacity packaging system, consisting of an inner and outer cylindrical metal container meeting group I packaging criteria, for shipment of all packaging group I materials, solids and liquids. (modes 1, 2, 3, 4)
11168–N	Aldrich Chemical Company, Inc., Milwaukee, WI.	49 CFR 173.21(b), 173.54(k), 173.57(a), 173.124(a).	To authorize the transportation of small quantities of 1-methyl-3-nitro-1-nitrosoguanidine (MNNG) a thermally unstable material, which is forbidden for transportation, to be shipped as a Division 4.1 when contained in specially designed packaging. (modes 1, 2)

Note: Notice of Application No. 11142–N appeared at page 53239 of the **Federal Register** for October 14, 1993, should have appeared Air Products and Chemicals Inc. that 11161–N.

This notice of receipt of applications for new exemptions is published in accordance with part 107 of the Hazardous Materials Transportation Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 10, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93-28237 Filed 11-16-93; 8:45 am]

BILLING CODE 4910-60-M

DEPARTMENT OF TRANSPORTATION

Research and Special Programs Administration

Applications for Modification of Exemptions or Applications To Become a Party to an Exemption

AGENCY: Research and Special Programs Administration, DOT.

ACTION: List of applications for modification of exemptions or applications to become a party to an exemption.

SUMMARY: In accordance with the procedures governing the application for, and the processing of, exemptions from the Department of Transportation's Hazardous Materials Regulations (49 CFR part 107, subpart B), notice is hereby given that the Office of Hazardous Materials Safety has received the applications described herein. This notice is abbreviated to expedite docketing and public notice. Because the sections affected, modes of transportation, and the nature of application have been shown in earlier **Federal Register** publications, they are not repeated here. Requests for modifications of exemptions (e.g. to provide for additional hazardous materials, packaging design changes, additional mode of transportation, etc.) are described in footnotes to the application number. Application numbers with the suffix "X" denote a modification request. Application numbers with the suffix "P" denote a party to request. These applications have been separated from the new applications for exemptions to facilitate processing.

DATES: Comments must be received on or before December 2, 1993.

ADDRESS COMMENTS TO: Dockets Unit, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590.

Comments should refer to the application number and be submitted in triplicate. If confirmation of receipt of comments is desired, include a self-addressed stamped postcard showing the exemption number.

FOR FURTHER INFORMATION CONTACT: Copies of the applications are available for inspection in the Dockets Unit, room 8426, Nassif Building, 400 7th Street SW., Washington, DC.

Application No.	Applicant	Modification of exemption
9355-X	Ultralife Batteries, Inc., Newark, NY[1]	9355
10755-X	Minnesota Mining and Manufacturing Company (3M), St. Paul, MN[2]	10775
10911-X	The Pallet Reefer Company, Seaford, DE[3]	10911

[1] To modify exemption to provide for shipment of lithium manganese dioxide batteries, Class 8, containing no more than 8.0 grams of lithium and cells containing no more than 1.5 grams per cell.

[2] To modify exemption to delete the provision that material for which no exceptions are permitted in column 8 of 49 CFR 172.101 Table are not authorized to be shipped under this exemption.

[3] To modify exemption to provide for air as an additional mode of transportation.

Application No.	Applicant	Parties to exemption
4803-P	D-H Acquisition, Inc., Dallas, TX	4803
4850-P	Halliburton Energy Services, Houston, TX	4850
5951-P	Rowell Chemical Corporation, Hinsdale, IL	5951
6691-P	United States Welding, Inc., Denver, CO	6691
6810-P	ILL-MO Products Company, Jacksonville, IL[1]	6810
6971-P	Protocol Analytical Supplies, Inc., Middlesex, NJ	6971
7879-P	Halliburton Energy Services, Houston, TX	7879
7887-P	North Coast Operations/North Coast Rocketry, Inc., Salt Lake City, UT	7887
7991-P	Abbeville & Grimes Railroad, Panama City, FL	7991
8006-P	Daisy Manufacturing Company, Rogers, AR	8006
8009-P	KC Resources, Inc., Cardiff, CA	8009
8196-P	Elf Atochem North America, Inc., Philadelphia, PA	8196
8451-P	Halliburton Energy Services, Houston, TX	8451
8451-P	Ferranti Technologies, Inc., Lancaster, PA	8451
8451-P	Chemical Waste Management, Inc., Oakbrook, IL	8451
8845-P	Halliburton Energy Services, Houston, TX	8845
8871-P	Chase Packaging, Inc., Newport News, VA	8871
9262-P	Halliburton Energy Services, Houston, TX	9262
9275-P	Sanofi Beaute, Inc., Edison, NJ	9275
9281-P	Halliburton Energy Services, Houston, TX	9281
9372-P	Halliburton Energy Services, Houston, TX	9372
9549-P	Halliburton Energy Services, Houston, TX	9549
9769-P	Chemical Waste Management, Inc., Oak Brook, IL	9769
9781-P	Rowell Chemical Corporation, Hinsdale, IL	9781
9880-P	Halliburton Energy Services, Houston, TX	9880
10307-P	Boliden Intertrade Inc., Atlanta, GA	10307
11055-P	Chemical Waste Management, Inc., Oak Brook, IL	11055
11119-P	Marson Corporation, Chelsea, MA	11119
11119-P	Crater Auto Supply, Inc., Medford, OR	11119

Application No.	Applicant	Parties to exemption
11119–P	Fibre Glass Evercoat Co., Inc., Cincinnati, OH	11119
11119–P	Akzo Coatings, Inc., Norcross, GA	11119
11150–P	Casco Bay Island Transit District, Portland, ME[2]	11150

[1] To authorize party status and modify exemption provided for 10 tank configuration for the shipment of helium which was originally issued on an emergency basis.
[2] To reissue party status originally issued on an emergency basis.

This notice of receipt of applications for modification of exemptions and for party to an exemption is published in accordance with part 107 of the Hazardous Materials Transportations Act (49 U.S.C. 1806; 49 CFR 1.53(e)).

Issued in Washington, DC, on November 10, 1993.

J. Suzanne Hedgepeth,

Chief, Exemption Programs, Office of Hazardous Materials Exemptions and Approvals.

[FR Doc. 93–28238 Filed 11–16–93; 8:45 am]

Billing Code 4910–60–M

UNITED STATES INFORMATION AGENCY

Privacy Act of 1974; Amendments to the Appendix I—Prefatory Statement of General Routine Uses

AGENCY: United States Information Agency.

ACTION: Amendments to the routine use statement of notice of systems of records adding debt collection use.

SUMMARY: In accordance with the Private Act of 1974, as amended (5 U.S.C. 552a(e)(4)), the United States Information Agency (USIA) is publishing amendments to its Routine Use Statement adding debt collection use. The Debt Collection Act of 1982, as amended (31 U.S.C. 3302, 3701 (1988)), requires agencies to refer commercial and consumer, non-employee, delinquent debt, on a non-exclusive basis, to credit bureaus (referred to as Credit Agencies). Passage of the Cash Management Improvement Act Amendments of 1992 (Pub. L. 102–589), requires agencies to refer non-employee delinquent debt to the Internal Revenue Service for offset of individual tax refunds and/or salaries.

These two new Routine Use statements are necessary for USIA to participate in the Tax Refund Offset Program for the 1994 tax year, as well as eventual salary offset for employees. Collection procedures will use USIA's Accounts Receivable System. The system covers procedures whereby delinquent debts owed to USIA will be referred to credit agencies (4 CFR parts 101–105) that will incorporate account information into its data files, credit reports, and other business information, and procedures whereby delinquent debts owed USIA will further be referred to the Internal Revenue Service (IRS) for collection either by offset against Federal income tax refunds under 31 U.S.C. 3720A, or by salary offset of Federal government employees.

EFFECTIVE DATE: November 17, 1993.

ADDRESSES: 301 4th Street, SW., Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Lola L. Secora (202) 619–5499.

SUPPLEMENTARY INFORMATION: Agencies must comply with the Debt Collection Act of 1982, as amended, the Federal Claims Collection Standards, OMB Circular A–129 and the Treasury Financial Manual Credit Supplement when reporting information to credit bureaus. Agencies must comply with the provisions of the Privacy Act of 1974, as amended (5 U.S.C. 552a, Pub. L. 93–579, 88 Stat. 1896), and OMB Guidelines (54 FR 25818, June 19, 1989) on implementation of the requirements of the Computer Matching and Privacy Protection Act (Pub. L. 100–503).

New Routine Use Statements:

* * * * *

16. To Credit Agencies, on a non-exclusive basis, information on its commercial debts as described in the Treasury Financial Manual Credit Supplement. The Credit Agency will incorporate this account information into its data files, credit reports, and other business information products and services. Before furnishing the account information, USIA will verify its accuracy in accordance with its standard procedures for debt verification.

17. To the Internal Revenue Service (IRS), U.S. Postal Service and the Defense Manpower Data Center, Department of Defense, to conduct computer matching programs for the purpose of identifying and locating individuals who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debts owned to the U.S. Government under certain programs administered by the United States Information Agency in order to collect the debts under the provisions of the Debt Collection Act of 1982 (Pub. L. 97–365) by voluntary repayment, tax refund procedures, or by administrative or salary offset procedures.

To any other Federal agency for the purpose of effecting administrative or salary offset procedures against a person employed by that agency or receiving or eligible to receive some benefit payments from the agency when the United States Information Agency as a creditor has a claim against that person.

Disclosure of information about persons who are receiving Federal salaries or benefit payments and are delinquent in their repayment of debt owned to the U.S. Government under certain programs administered by the United States Information Agency may be made to other Federal agencies, but only to the extent of determining whether the person is employed by that agency and, if so, effecting administrative or salary offset procedures against the person.

R. Wallace Stuart,

Acting General Counsel.

[FR Doc. 93–28233 Filed 11–16–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 220

Wednesday, November 17, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

EQUAL EMPLOYMENT OPPORTUNITY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 52138, Thursday, November 4, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: 2:00 p.m. (Eastern Time) Tuesday, November 16, 1993.

CHANGE IN THE MEETING:

Closed Session

The closed portion of the meeting has been cancelled.

CONTACT PERSON FOR MORE INFORMATION: Frances M. Hart, Executive Officer on (202) 663–4070.

Dated: November 15, 1993.

Frances M. Hart,

Executive Officer, Executive Secretariat.

[FR Doc. 93–28408 Filed 11–15–93; 1:04 pm]

BILLING CODE 6750-06-M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 15, 22, 29, and December 6, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 15

Wednesday, November 17

9:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Final Rule, 10 CFR Parts 30, 40, 50, 70, and 72, "Self-Guarantee as an Additional Financial Assurance Mechanism" (Tentative)
(Contact: Clark Prichard, 301–492–3734)
(Postponed from November 10)

Week of November 22–Tentative

Wednesday, November 24

9:00 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of November 29—Tentative

Friday, December 3

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 6—Tentative

Tuesday, December 7

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–504–2326)

Thursday, December 9

10:00 a.m.
Briefing on Status of TVA Nuclear Programs (Public Meeting)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by Northeast Utilities (Public Meeting)

Friday, December 10

10:00 a.m.
Briefing by IG on Fee Audit (Public Meeting)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill (301) 504–1661.

Dated: November 10, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–28353 Filed 11–15–93; 8:45 am]

BILLING CODE 7590-01-M

Corrections

Federal Register
Vol. 58, No. 220
Wednesday, November 17, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

FEDERAL HOUSING FINANCE BOARD

[No. 93-80]

Pricing of Services

Correction

In notice document 93-27423 beginning on page 59468 in the issue of Tuesday, November 9, 1993, make the following correction:

On page 59468, in the second column, in **DATES:**, in the last line, "January 10, 1993." should read "January 10, 1994."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-020-03-5410-11-A004; AZA-28010]

Receipt of Conveyance of Mineral Interest Application

Correction

In notice document 93-18882 beginning on page 42096 in the issue of Friday, August 6, 1993, make the following correction:

On page 42097, in the first column, under parcel 2, the land description for T. 5 N., R. 4 W. is corrected to read "Sec. 33, S½SW¼NW¼SE¼."

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[AZ-040-4210-03-03; AZA 28166]

Realty Action; Recreation and Public Purposes Act Classification; Arizona

Correction

In notice document 93-25134 beginning on page 53209 in the issue of Thursday, October 14, 1993, on page 53209, in the third column, in land description T. 17 S., R. 12 E., in Sec. 11, "SE¼" should read "SW¼".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-052-04-5440-10-B043; CACA 33071]

Realty Action; Exchange of Public and Private Lands, San Bernardino County, CA

Correction

In notice document 93-26013 beginning on page 54599 in the issue of Friday, October 22, 1993, on page 54599, in the second column, in land description T.16N., R.13E., in Section 12, in the second line, "S½SE¼SE¼SE¼NE¼," should read "S½SE¼SE¼NE¼,".

BILLING CODE 1505-01-D

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[CA-940-4210-06; CACA 33164]

Proposed Withdrawal; California

Correction

In notice document 93-25189 beginning on page 53211 in the issue of Thursday, October 14, 1993, make the following corrections:

1. On page 53212, in the first column:

a. In T. 13 N., R. 10 E., in Sec. 30, in the second line, "and 5," should read "and 6,".

b. In T. 14 N., R. 10 E., in Sec. 30, in the second line, "lot 178," should read "lot 18,".

c. In T. 13 N., R. 11 E., in Sec. 4, in the first line, insert "2" after "lot".

d. In T. 14 N., R. 11 E., in Sec. 32, in the first line, "S½N½SE¼," should read "S½N½SE¼;".

e. In the same T. and R., in the same Sec., remove the second line.

f. Under the heading **National Forest System Lands**, in the heading Tahoe and Eldora National Forests, "Eldora" should read "Eldorado".

g. In the first paragraph of text, in the third line, "1,361" should read "1,361", and "served" should read "reserved".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

46 CFR Part 69

[CGD 93-069]

Measurement of Vessels; Water Ballast Exemption

Correction

In rule document 93-26463 beginning on page 57747 in the issue of Wednesday, October 27, 1993, make the following corrections:

1. On page 57747, in the 3d column, in **SUPPLEMENTARY INFORMATION**, in the 1st paragraph, in the 16th line from the end, "waster" should read "water".

2. On page 57748, in the first column, in next to last line of the first paragraph, "to benefit" should read "to the benefit".

3. On the same page, in the same column, in the first full paragraph, in the seventh line from the end, "section" should read "sections".

BILLING CODE 1505-01-D

Federal Register

Wednesday
November 17, 1993

Part II

Department of Transportation

Federal Highway Administration

49 CFR Chapter III

Regulatory Guidance for the Federal Motor Carrier Safety Regulations; Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

49 CFR Chapter III

Regulatory Guidance for the Federal Motor Carrier Safety Regulations

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Regulatory guidance.

SUMMARY: This document presents interpretive guidance material for the Federal Motor Carrier Safety Regulations (FMCSRs) now contained in the FHWA's Motor Carrier Regulation Information System (MCREGIS). The FHWA has consolidated previously issued interpretations and regulatory guidance materials and developed concise interpretive guidance in question and answer form for each part of the FMCSRs. These questions and answers are generally applicable to drivers, commercial motor vehicles, and motor carrier operations on a national basis. All prior interpretations and regulatory guidance of the FMCSRs issued previously in the **Federal Register**, as well as FHWA memoranda and letters, may no longer be relied upon as authoritative insofar as they are inconsistent with the guidance published today. Many of the interpretations of the FMCSRs published on November 23, 1977, and the interpretations of the Inspection, Repair, and Maintenance regulations published on July 10, 1980, have been revised. These revisions are reflected in the new questions and answers. Future interpretive guidance will be issued within the MCREGIS which will be kept current in the FHWA's Office of Motor Carrier Standards. The MCREGIS will also be updated periodically and published in the **Federal Register** so that interested parties may have ready reference to official interpretations and guidance regarding the FMCSRs. This guidance will provide the motor carrier industry with a clearer understanding of the applicability of many of the requirements contained in the FMCSRs in particular situations.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. David J. Osiecki, Office of Motor Carrier Standards, (202) 366–4009, or Mr. Charles E. Medalen, Office of the Chief Counsel, (202) 366–0834, Federal Highway Administration, Department of Transportation, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except Federal legal holidays.

SUPPLEMENTARY INFORMATION: This document contains revised and new regulatory guidance pertaining to Title 49, Code of Federal Regulations (CFR), parts 325, 383, 386, 387, 390 to 393, 395 to 397, and 399 of the FMCSRs. The information published in this document supersedes all previously issued interpretations and regulatory guidance, to the extent they are inconsistent with the guidance published today, including that published on November 23, 1977, at 42 FR 60078, and on July 10, 1980, at 45 FR 46425. In addition, much of the previously issued guidance was issued in the form of letters to individuals and motor carriers. These previous interpretations may no longer be relied upon as authoritative. To the maximum extent possible, those opinions have been incorporated into this document. If an individual or a motor carrier has an interpretive letter issued by the FHWA that is not addressed in this document, a copy of the letter may be sent to the FHWA Office of Motor Carrier Standards at the above address for consideration in a future update of this guidance. Periodic updates of this guidance will be published in future issues of the **Federal Register**.

Members of the motor carrier industry and other interested parties may access the guidance in this document through the FHWA's Electronic Bulletin Board System (FEBBS) using a microcomputer and modem. The FEBBS is a read-only facility. The telephone number for FEBBS is Area Code 202–366–3764. While the system supports 300, 1200, and 2400 baud line speeds, and a variety of terminal types and protocols, setting the modem for 2400 baud, 8 data bits, full duplex, and no parity will give optimal performance. Once a connection has been established and the <R<egistration item completed, callers should go to the C>onferences M>otor Carrier section and select either <M<CREGIS Questions and Answers, or <I<nformation for more detailed help.

For Technical Assistance to gain access to FEBBS, contact: FHWA Computer Help Desk, HMS–40, room 4401, 400 Seventh Street, SW., Washington, DC 20590. (202) 366–1120.

Specific questions addressing any of the interpretive material published in this document may be directed to the contact persons listed above, the FHWA Regional Offices, or the FHWA Division Office in each State.

For ease of reference, the following listing of acronyms used throughout this document is provided:

Appendix G The Minimum Periodic Inspection Standards published as an appendix to the Federal Motor Carrier Safety Regulations
CDL Commercial Driver's License
CDLIS Commercial Driver's License Information System
CFR Code of Federal Regulations
CMV Commercial Motor Vehicle
CMVSA Commercial Motor Vehicle Safety Act of 1986
COE Cab-over-engine truck tractor
CVSA Commercial Vehicle Safety Alliance
DOT U.S. Department of Transportation
DVIR Driver Vehicle Inspection Report
DWI Driving While Intoxicated
EAP Employee Assistance Program
EPA U.S. Environmental Protection Agency
FHWA Federal Highway Administration
FMCSRs Federal Motor Carrier Safety Regulations
FMVSS Federal Motor Vehicle Safety Standards (developed and issued by the National Highway Traffic Safety Administration)
FR Federal Register
FRSI Farm-Related Service Industries
GCWR Gross Combination Weight Rating
GVW Gross Vehicle Weight
GVWR Gross Vehicle Weight Rating
HM Hazardous Materials
HMRs Hazardous Materials Regulations
HMTUSA Hazardous Materials Transportation, Uniform Safety Act of 1990
ICC Interstate Commerce Commission
Form MCS–90 Endorsement(s) for Motor Carrier Policies of Insurance for Public Liability Under Sections 29 and 30 of the Motor Carrier Act of 1980 issued by an insurer
MCSA Motor Carrier Safety Act of 1984
MPH Miles Per Hour
MRO Medical Review Officer
NDR National Driver Register
NHTSA National Highway Traffic Safety Administration within DOT
RDMC Regional Director of Motor Carriers
SSN Social Security Number
STAA Surface Transportation Assistance Act of 1982
U.S.C. United States Code

Questions and Answers

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Part 325—Compliance with Interstate Motor Carrier Noise Emission Standards
Part 383—Commercial Driver's License Standards; Requirements and Penalties
Part 386—Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings
Part 387—Minimum Levels of Financial Responsibility for Motor Carriers
Part 390—Federal Motor Carrier Safety Regulations; General
Part 391—Qualifications of Drivers
Part 391—SubPart H—Controlled Substances Testing Requirements
Part 392—Driving of Motor Vehicles
Part 393—Parts and Accessories Necessary for Safe Operation
Part 395—Hours of Service of Drivers
Part 396—Inspection, Repair and Maintenance
Part 397—Transportation of Hazardous Materials; Driving and Parking Rules
Part 399—Employee Safety and Health Standards

Part 325—Compliance With Interstate Motor Carrier Noise Emission Standards

Sections Interpreted

325.1

Section 325.1 Scope of the Rules in This Part

Question 1: What noise emission requirements are applicable to auxiliary generators?

Guidance: Auxiliary generators which normally operate only when a CMV is stopped or moving at 5 mph or less are "auxiliary equipment" of the kind contemplated by EPA and are, therefore, exempt from the noise limits in Part 325. However, noise from generators that run while the CMV is moving at higher speeds would be measured as Part of total vehicle noise.

Question 2: Do refrigeration units on tractor-trailer combinations fall within the exemption listed in Part 325, subpart A of the FMCSRs?

Guidance: No.

Part 383—Commercial Driver's License Standards; Requirements and Penalties

Sections Interpreted

383.3 Applicability
383.5 Definitions
383.7 Waiver Provisions
383.21 Number of Drivers' Licenses
383.23 Commercial Driver's License
383.33 Notification of Driver's License Suspensions
383.37 Employer Responsibilities
383.51 Driver Disqualifications—General Questions—
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383.71 Driver Application Procedures
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383.91 Vehicle Groups
383.93 Endorsements
383.95 Air Brake Restriction
383.131 Test Procedures
383.133 Testing Methods
383.153 Information on the Document and Application
Special Topics—Motor Coaches and CDL
Special Topics—State Reciprocity

Section 383.3 Applicability

Question 1: Are school and church bus drivers required to obtain a CDL?

Guidance: Yes, if they drive vehicles designed to transport 16 or more people.

Question 2: Do mechanics, shop help and other occasional drivers need a CDL if they are operating a CMV or if they only test drive a vehicle?

Guidance: Yes, if the vehicle is operated or test-driven on a public highway.

Question 3: Does part 383 apply to drivers of recreational vehicles?

Guidance: No, if the vehicle is used strictly for non-business purposes.

Question 4: Does part 383 apply to drivers of vehicles used in "van pools"?

Guidance: Yes, if the vehicle is designed to transport 16 or more people.

Question 5: May a person operate a CMV wholly on private property, not open to public travel, without a CDL?

Guidance: Yes.

Question 6: Does the FHWA include off-road motorized construction equipment under the definitions of "motor vehicle" and "CMV" as used in §§ 390.5 and 383.5?

Guidance: No, because it is neither used on the highway nor used in the transportation of passengers or property.

Question 7: What types of equipment are included in the category of off-road motorized construction equipment?

Guidance: The definition of off-road construction equipment is to be narrowly construed and limited to equipment which, by its design, appearance and function, is obviously not intended for use on a public road. Such equipment would include motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenchers and bulldozers.

Question 8: Do operators of motorized cranes and vehicles used to pump cement at construction sites have to meet the testing and licensing requirements of the CDL program?

Guidance: Yes, because such vehicles are designed to be operated on the public highways and therefore do not qualify as off-road construction equipment. The fact that these vehicles are only driven for limited distances, at less than normal highway speeds and/or incidental to their primary function, does not exempt the operators from the CDL requirements.

Question 9: May a State require persons operating recreational vehicles or other CMVs used by family members for non-business purposes to have a CDL?

Guidance: Yes. States may extend the CDL requirements to recreational vehicles.

Question 10: Do drivers of either a tractor trailer or straight truck that is converted into a mobile office need a CDL?

Guidance: Yes, if the vehicle meets the definition of a CMV.

Question 11: Do State motor vehicle inspectors who drive trucks and motorcoaches on an infrequent basis and for short distances as part of their job have to obtain a CDL?

Guidance: Yes.

Question 12: Are State, county and municipal workers operating CMVs required to obtain CDLs?

Guidance: Yes, unless they are waived by the State under the firefighting and emergency equipment exemption.

Question 13: Do the regulations require that a person driving an empty school bus from the manufacturer to the local distributor obtain a CDL?

Guidance: Yes. Any driver of a bus that is designed to transport 16 or more persons, or that has a GVWR of 26,001 pounds or more, is required to obtain a CDL in the applicable class with a passenger endorsement.

Question 14: Are employees of any governmental agency who drive emergency response vehicles that transport HM in quantities requiring placarding subject to the CDL regulations?

Guidance: No, as long as the vehicle does not meet the weight/configuration thresholds for Groups A or B (in § 383.91). The HMTUSA of 1990 provides one exception from the need for government-employed CMV drivers to obtain a CDL. Under the HMTUSA of 1990, only when a government agency, Federal, State or local, "offers HM for transportation in commerce or transports HM in furtherance of a commercial enterprise" are its vehicles subject to the placarding requirements of part 172, subpart F. Therefore, vehicles that are controlled and operated by government agencies in the conduct of governmental functions are not subject to placarding. Based on the above stated conditions, local police emergency responders driving a vehicle having a gross vehicle or combination weight rating under 26,001 pounds do not need a CDL, according to the Federal minimum standards, when transporting HM as a function of their agency. The drivers should check with their State licensing agency to determine what class of license the State may require to operate the vehicles.

Question 15: Are public transit employees known as "hostlers," who maintain and park transit buses on transit system property, subject to CDL requirements?

Guidance: No, unless operating on public roads.

Question 16: Are non-military amphibious landing craft that are usually used in water but occasionally used on a public highway CMVs?

Guidance: Yes, if they are designed to transport 16 or more people.

Section 383.5 Definitions

Question 1: a. Does "designed to transport" as used in the definition of a CMV in § 383.5 mean original design or current design when a number of seats are removed?

b. If all of the seats except the driver's seat are removed from a vehicle originally designed to transport only passengers to convert it to a cargo-carrying vehicle does this vehicle meet the definition of a CMV in § 383.5?

Guidance: a. "Designed to transport" means the original design. Removal of seats does not change the design capacity of the CMV.

b. No, unless this modified vehicle has a GVWR over 26,000 pounds or is used to transport placarded HM.

Question 2: Are rubberized collapsible containers or "bladder bags" attached to a trailer considered a tank vehicle, thus requiring operators to obtain a CDL with a tank vehicle endorsement?

Guidance: Yes.

Question 3: a. Who may lawfully change the original GVWR plate by issuing a new GVWR plate to reflect a revised rating due to vehicle modifications?

b. What would be the CDL requirements for the driver of a modified and recertified vehicle?

Guidance: a. Only a manufacturer that is registered with the NHTSA in accordance with 49 CFR 566.5.

b. If under the revised rating, the vehicle still meets the definition of a CMV a CDL would be required.

Question 4: When a State agency contracts with private parties for services involving the operation of CMVs, is the State agency or contractor considered the employer?

Guidance: If the contractor employs individuals and assigns and monitors their driving tasks, the contractor is considered the employer. If the State agency assigns and monitors driving tasks, then the State agency is the employer for purposes of part 383.

Question 5: A driver operates a tractor of exactly 26,000 pounds GVWR, towing a trailer of exactly 10,000 pounds GVWR, for a GCWR of 36,000 pounds. Hazardous materials and passengers are not involved. Is it a CMV and does the driver need a CDL?

Guidance: No to both questions. Although the vehicle has a GCWR of 36,000 pounds, it is not a CMV under any part of the definition of that term in § 383.5, and a CDL is not federally required.

Question 6: Can the actual gross weight or registered vehicle weight be used when the GVWR or the GCWR cannot be determined?

Guidance: Yes, the actual gross weight or registered vehicle weight may be used when the GVWR or the GCWR cannot be determined.

Section 383.7 Waiver Provisions

Question 1: Are operators of farm vehicles required to get CDLs?

Guidance: Yes; however, the State may waive the CDL requirements for operators of farm vehicles which are:

a. controlled and operated by a farmer;

b. used to transport either agricultural products, farm machinery, farm supplies or some combination thereof to or from a farm;

c. not used in the operation of a common or contract motor carrier; and

d. used within 150 miles of the person's farm.

"Operated by a farmer" in condition (a) above includes employees or family members of the farmer, as long as the vehicle is controlled by the farmer and conditions (b) through (d) are met.

Question 2: Does the farmer waiver option apply to tree farmers, lumbering operations, livestock operations and nursery operations?

Guidance: Yes, as long as all four of the conditions are met, including control and operation of the vehicle by "a farmer."

Question 3: Is the 150-mile criterion for waivers of farm vehicle operators intended to mean air miles or highway miles?

Guidance: Either, at the State's discretion.

Question 4: If adjoining States adopt different versions of the farm waiver, how would a farmer who lives on the border of these States be affected?

Guidance: It would depend on the agreement between the adjoining States. While there is no Federal requirement to provide reciprocity of a CDL farm waiver as there is for a CDL, reciprocity may be granted between adjoining States. In the absence of an agreement, the farmer would be required to obtain a CDL to drive in the adjoining State.

Question 5: Do drivers of rice and cane mill product vehicles qualify under the Federal farm waiver provisions?

Guidance: No. Mill drivers employed by agricultural processing plants or contract motor carriers do not qualify because the vehicles are not controlled and operated by a farmer.

Question 6: May States grant CDL waivers to drivers of firefighting and other emergency equipment?

Guidance: Yes. The intent of the waiver was to include the drivers of these vehicles that meet the conditions of the waiver, whether or not they are part of a volunteer or paid fire organization, provided the vehicles are equipped with audible and visual signals and are not subject to normal traffic regulation. The decision to grant the waiver and the conditions of the waiver are up to each individual State.

Question 7: a. Are police officers who operate buses and vans which are designed to carry 16 or more persons and are used to transport police officers during demonstrations and other crowd control activities required to obtain a CDL?

b. May the CDL requirements be waived for police officers who operate vehicles that are over 26,000 pounds GVWR and used in SWAT team activities?

Guidance: a. Yes. The CMVSA applies to anyone who operates a CMV, including employees of Federal, State and local governments. Crowd control activities do not meet the conditions for a waiver of operators of firefighting and other emergency vehicles.

b. Yes, if the vehicle is used in the execution of emergency governmental functions performed under emergency conditions.

Question 8: May fuel be considered "farm supplies" as used in the four conditions for waivers of operators of farm vehicles?

Guidance: Yes, subject to the provisions of 53 FR 37314, September 26, 1988. The decision to grant the waiver is left to each individual State.

Question 9: Is the transportation of seed-cotton modules from the cotton field to the gin by a module transport vehicle considered a form of custom harvesting activity that may be included under the FRSI waiver?

Guidance: Yes. The transportation of seed-cotton modules from field to gin may, at the State's discretion, and can be considered as custom harvesting and therefore eligible for the FRSI waiver. However, cotton ginning operations as an industry and, specifically the transport of cotton from the gin, are not eligible activities under the FRSI waiver because these activities are not considered appropriate elements of custom harvesting.

Question 10: Does the Motor Carrier Act of 1991 amendment of Section 12019(5) of the CMVSA of 1986 (CMVSA) exempt all custom harvesting operations from the CDL requirements or only when operating combines?

Guidance: Section 4010 of the Motor Carrier Act of 1991 modifies the definition of a CMV in Section 12019(5) of the CMVSA of 1986 by excluding "custom harvesting farm machinery" from the definition. The conference report clarifies the intent of the

exclusion by stating: "The substitute removes custom harvesting farm machinery from the Act. Operators of such machinery are not covered by the Commercial Motor Vehicle Safety Act of 1986. A State, however, may still impose a requirement for a commercial driver's license if it so desires. The change does not apply to vehicles used to transport this type of machinery." (H.R. Conf. Rep. No. 404, 102d Cong., 1st Sess. 449 (1991)).

Therefore, the intent of Congress was only to exempt operators of combines and other equipment used to cut the grain and not the operators of trucks, truck-trailers, trailers, semitrailers or any other CMV.

Question 11: Are endorsements permitted on a FRSI-restricted CDL?

Guidance: No, the endorsements mentioned in §§ 383.93 and 383.153 may not appear on an FRSI-restricted CDL.

Question 12: What endorsement privileges, if any, does the FRSI-restricted CDL confer on its holders?

Guidance: The FRSI-restricted CDL automatically confers, without testing and without addition of the endorsement to the license, the following privileges:

a. The tank vehicle ("N") endorsement, in Group B and C vehicles and, for allowable HM, subject to capacity/volume restrictions; and

b. The following commodities under the HM "H" endorsement:

1. Diesel fuel in quantities of 1,000 gallons or less;

2. Liquid fertilizers in vehicles or implements of husbandry with total capacities of 3,000 gallons or less; and

3. Solid fertilizers that are not transported with any organic substance.

c. No other § 383.93 endorsement privileges are obtainable by an FRSI-restricted CDL holder.

Question 13: May the holder of a FRSI-restricted CDL drive vehicles for which a passenger endorsement would be required under part 383?

Guidance: No, the holder of a FRSI-restricted CDL may not drive a CMV designed to transport 16 or more passengers, including the driver.

Question 14: May a State issue a FRSI-restricted CDL that shows more than one season of commercial validity at a time, particularly if the State performs a revalidation on the holder's driving record prior to each of the seasons shown?

Guidance: No, the license document may not show more than one period of seasonal validity at a time, irrespective of any procedures performed by the State.

Question 15: May a person hold an unrestricted CDL and a FRSI-restricted CDL at the same time?

Guidance: No; this would constitute a multiple license as prohibited under § 383.21.

Question 16: May a State (1) require an applicant for a CDL farm waiver to take HM training as a condition for being granted a waiver and (2) reduce the 150-mile provision in the waiver to 50 miles if the driver is transporting HM?

Guidance: Yes. The Federal farm waiver is permissive, not mandatory.

Question 17: Do active duty military personnel, not wearing military uniforms, qualify for a waiver from the CDL requirements if the CMVs are rental trucks or leased buses from the General Services Administration?

Guidance: Yes. The drivers in question do not need to be in military uniforms to qualify for the waivers as long as they are on active duty. In regard to the vehicles, they may be owned or operated by the Department of Defense.

Question 18: Does the waiver of the CDL requirements for military personnel include National Guard technicians?

Guidance: Yes. The intent of the military waiver was to include National Guard technicians who are civilians and required to wear military uniforms.

Question 19: Does the waiver of the CDL requirements for military personnel include U.S. Army Reserve technicians?

Guidance: No. U.S. Reserve technicians fail to meet either of the conditions that would distinguish them from other civilian drivers who are working for the military. These conditions are that they are required to wear military uniforms or are subject to the code of military justice while in their employment as technicians.

Question 20: Does the waiver of the CDL requirements for non-civilian operators of military equipment include U.S. Coast Guard?

Guidance: Yes. The intent of the waiver was to include all military services and the Coast Guard.

Question 21: Are custom harvesters who harvest trees for tree farmers eligible to be considered "custom harvesters" for purposes of the FRSI waiver from selected CDL requirements?

Guidance: If the State considers a firm that harvests trees for tree farmers to be a custom harvesting operation, then its employees could qualify for the FRSI-restricted CDLs, subject to the stringent conditions and limitations of the waiver notice.

Question 22: May a farmer who meets all of the conditions for a farm waiver be waived from the CDL requirements when transporting another farmer's products absent any written contract?

Guidance: If a farmer is transporting another farmer's products and being paid for doing so, he or she is acting as a contract carrier and does not meet the conditions for a farm waiver. The existence of a contract, written or verbal, is not relevant to the CDL waiver provisions.

Section 383.21 Number of Drivers' Licenses

Question 1: Are there any circumstances under which the driver of a CMV as defined in § 383.5 is allowed to hold more than one driver's license?

Guidance: Yes. A recipient of a new driver's license may hold more than one license during the 10 days beginning on the date the person is issued a driver's license.

Question 2: Is a person from Puerto Rico required to surrender his or her driver's license in order to obtain a nonresident CDL?

Guidance: Since Puerto Rico and the U.S. Territories are not included in the definition of a State in § 12016 of the CMVSA, they must be considered a foreign country for purposes of the CDL requirements. Under part 383, a person domiciled in a foreign country is not required to surrender his or her foreign license in order to obtain a nonresident CDL. There are two reasons for permitting this dual licensing to a person domiciled in Puerto Rico:

a. There is no reciprocal agreement with Puerto Rico recognizing its CMV testing and licensing standards as equivalent to the standards in part 383 and,

b. The nonresident CDL may not be recognized as a valid license to drive in Puerto Rico.

Section 383.23 Commercial Driver's License

Question 1: May a holder of a CMV learner's permit continue to hold his/her basic driver's license from any State without violating the single-license rule?

Guidance: Yes, since the learner's permit is not a license.

Question 2: The requirements for States regarding CMV learners' permits in § 383.23 appear to be ambiguous. For example, if the CMV learner's permit is "considered a valid CDL" for instructional purposes, is the State to enter the learner's permit issuance as a CDLIS transaction?

Guidance: No such requirement currently exists.

Section 383.33 Notification of Driver's License Suspensions

Question 1: When a driver receives an Administrative Order of Suspension due to a blood alcohol reading in excess of the legal limit with notice that the suspension is not to be effective until 45 days after the notice or after an administrative hearing, and a hearing is subsequently held, in effect suspending the license, what is the effective date of suspension for purposes of notifying the employer under § 383.33?

Guidance: The effective date of the suspension for notification purposes, is the day the employee received notice of the suspension.

Section 383.37 Employer Responsibilities

Question 1: Section 383.37(a) does not allow employers to knowingly use a driver whose license has been suspended, revoked or canceled. Do motor carriers have latitude in their resulting actions: firing, suspension, layoff, authorized use of unused vacation time during suspension duration, transfer to non-driving position for duration of the suspension?

Guidance: Yes. The employer's minimum responsibility is to prohibit operation of a CMV by such an employee.

Question 2: a. A motor carrier recently found a driver who had a detectable presence of alcohol, placed him off-duty in accordance with § 392.5, and ordered a blood test which disclosed a blood alcohol concentration of 0.05 percent. Is the carrier obligated to place the driver out of service for 24 hours as prescribed by § 392.5(c)?

b. Is the carrier obligated to disqualify the driver for a period of one year as prescribed by §§ 383.51(b) and 391.15(c)(3)(i) of the FMCSRs?

Guidance: a. Only a State or Federal official can place a driver out of service. Instead, the carrier is obligated to place the driver off-duty and prevent him/her from operating or being in control of a CMV until he/she is no longer in violation of § 392.5.

b. No. A motor carrier has no authority to disqualify a driver. Disqualification for such an offense only occurs upon a conviction.

Question 3: If an individual driver had two convictions for serious traffic violations while driving a CMV, and neither FHWA nor his/her State licensing agency took any disqualification action, does the motor carrier have any obligation under FHWA regulations to refrain from using this driver for 60 days? If so, when did that time period begin?

Guidance: No. Only the State or the FHWA has the authority to take a disqualification action against a driver. The motor carrier's responsibility under § 383.37(a) to refrain from using the driver begins when it learns of the disqualification action and continues until the disqualification period set by the State or the FHWA is completed.

Question 4: Is a driver who has a CDL, and has been convicted of a felony, disqualified from operating a CMV under the FMCSRs?

Guidance: Not necessarily. The FMCSRs do not prohibit a driver who has been convicted of a felony, such as drug dealing, from operating a CMV unless the offense involved the use of a CMV.

If the offense involved a non-CMV, or was unrelated to motor vehicles, there is no FMCSR prohibition to employment of the person as a driver.

Section 383.51 Driver Disqualifications

General Questions

Question 1: a. If a driver received one "excessive speeding" violation in a CMV and the same violation in his/her personal passenger vehicle, would the driver be disqualified? *or,*

b. If a driver received two "excessive speeding" violations in his/her personal passenger vehicle, would the driver be disqualified?

Guidance: No in both cases. Convictions for serious traffic violations, such as excessive speeding, only result in disqualification if the offenses were committed in a CMV—unless the State has stricter regulations.

Question 2: Section 383.51 of the FMCSRs disqualifies drivers if certain offenses were committed while operating a CMV. Will the States be required to identify on the motor vehicle driver's record the class of vehicle being operated when a violation occurs?

Guidance: No, only whether or not the violation occurred in a CMV. The only other indication that may be required is if the vehicle was carrying placardable amounts of HM.

Question 3: If a CDL holder commits an offense that would normally be disqualifying, but the CDL holder is driving under the farm waiver, must conviction result in disqualification and action against the CDL holder?

Guidance: Yes. Possession of the CDL means the driver is not operating under the waiver. In addition, the waiver does not absolve the driver from disqualification under part 391.

Question 4: What is meant by leaving the scene of an accident involving a CMV?

Guidance: As used in part 383, the disqualifying offense of "leaving the scene of an accident involving a CMV" is all-inclusive and covers the entire range of situations where the driver of the CMV is required by State law to stop after an accident and either give information to the other party, render aid, or attempt to locate and notify the operator or owner of other vehicles involved in the accident.

Question 5: If a State disqualifies a driver for two serious traffic violations under § 383.51(c)(2)(i), and that driver, after being reinstated, commits a third serious violation, what additional period of disqualification must be imposed on that driver?

Guidance: If three years have not elapsed since the original violation, then the driver is now subject to a full 120-day disqualification period.

Question 6: May a State issue a "conditional," "occupational" or "hardship" license that includes CDL driving privileges when a CDL holder loses driving privileges to operate a private passenger vehicle (non-CMV)?

Guidance: Yes, provided the CDL holder loses his/her driving privileges for operating a non-CMV as the result of a conviction for a disqualifying offense that occurred in a non-CMV. A State is prohibited, however, from issuing any type of license which would give the driver even limited privileges to operate a CMV when the conviction is for a disqualifying offense that occurred in a CMV.

Question 7: What information needs to be contained on a "conditional," "occupational" or "hardship" license document that includes CDL driving privileges?

Guidance: The same information that is required under § 383.153, including an explanation of restrictions of driving privileges.

Question 8: Is a State obligated to grant reciprocity to another State's "conditional," "occupational" or "hardship" license that includes CDL driving privileges?

Guidance: Yes, in regard to operating a CMV as stated in § 383.73(h).

Section 383.51 Driver Disqualifications

Alcohol Questions

Question 1: Are States expected to make major changes to their enforcement procedures in order to apply the alcohol disqualifications in the Federal regulations?

Guidance: No. Sections 383.51 and 392.5 do not require any change in a State's existing procedures for initially stopping vehicles and drivers.

Roadblocks, random testing programs, or other enforcement procedures which

have been held unconstitutional in the State or which the State does not wish to implement are not required.

Question 2: Is a driver disqualified for driving a CMV while off-duty with a blood alcohol concentration over 0.04 percent?

Guidance: Yes. Section 383.51 applies to any person who is driving a CMV, as defined in § 383.5, regardless of the person's duty status under other regulations. Therefore, the driver, if convicted, would be disqualified under § 383.51.

Question 3: Does a temporary license issued pursuant to the administrative license revocation (ALR) procedure authorize the continued operation of CMVs when the license surrendered is a CDL? Does the acceptance of a temporary driver's license place the CDL holder in violation of the one driver's license requirement?

Guidance: The ALR procedure of taking possession of the driver's CDL and issuing a "temporary license" for individuals who either fail a chemical alcohol test or refuse to take the test is valid under the requirements of part 383. Since the CDL that is being held by the State is still valid until the administrative revocation action is taken, the FHWA would interpret the document given to the driver as a "receipt" for the CDL, not a new "temporary" license. The driver violates no CDL requirements for accepting the receipt which may be used to the extent authorized.

Question 4: Is a driver disqualified under § 383.51 if convicted of driving under the influence of alcohol while operating a personal vehicle?

Guidance: The convictions triggering mandatory disqualification under § 383.51 all pertain to offenses that occur while the person is driving a CMV. However, a driver could be disqualified under § 383.51(b)(2)(i) if the State has stricter standards which apply to offenses committed in a personal vehicle. (The same principle applies to all other disqualifying offenses listed in § 383.51.)

Question 5: Would a driver convicted under a State's "open container" law be disqualified under the CDL regulations if the violation occurred while he/she was operating a CMV?

Guidance: If a conviction under a particular State's "open container law" is a conviction for "driving under the influence" or "driving while intoxicated," and if the person committed the violation while driving a CMV, then the driver is disqualified for one year under § 383.51, assuming it is a first offense.

Section 383.71 Driver Application Procedures

Question 1: What must a driver certify if he/she is in interstate commerce but is excepted or exempted from part 391 under the provisions of parts 390 or 391?

Guidance: The State should instruct the driver to certify that he/she is not subject to part 391.

Question 2: Since an applicant is required to turn in his/her current license when issued a FRSI-restricted CDL, should the applicant return to the State exam office and be re-issued the old license when the seasonal validation period expires?

Guidance: No. This approach violates the requirements of part 383 and the FRSI waiver regarding the single-license concept. It violates the waiver requirement that the FRSI-restricted CDL is to have the same renewal cycle as an unrestricted CDL and shall serve as an operator's license for vehicles other than CMVs. The license issued under the waiver is a CDL and must be treated the same as an unrestricted CDL in regard to the driver record being maintained through the CDLIS and subject to all disqualifying conditions for the full renewal cycle. The restriction determining when the driver may use the CDL to operate a CMV should be clearly printed on the license.

Question 3: Do the regulations require that a driver be recertified for the hazardous materials "H" endorsement every two years?

Guidance: No. If the driver wishes to retain a hazardous materials endorsement, he/she is required at the time of license renewal to pass the test for such endorsement. The only times a driver may be required to pass the test for such endorsement in a condensed time frame is within the 2 years preceding a license transfer if he/she is transferring a CDL from one State of domicile to a new State of domicile [see § 383.73(b)(4)], or if the State has exercised its prerogative to establish more stringent requirements.

Section 383.73 State Procedures

Question 1: Does the State have any role in certifying compliance with § 391.11(b)(2) of the FMCSRs, which requires driver competence in the English language?

Guidance: No. The driver must certify that he or she meets the qualifications of part 391. The State is under no duty to verify the certification by giving exams or tests.

Question 2: Are States required to change their current medical standards for drivers who need CDLs?

Guidance: No, but interstate drivers must continue to meet the Federal standards, while intrastate drivers are subject to the requirements adopted by the State.

Question 3: To what does the phrase "* * * as contained in § 383.51" refer to in § 383.73(a)?

Guidance: The phrase refers only to the word "disqualification." Thus the State must check the applicant's record to ensure that he/she is not subject to any suspensions, revocations, or cancellations for any reason, and is not subject to any disqualifications under § 383.51.

Question 4: Is a State required to refuse a CDL to an applicant if the NDR check shows that he/she had a license suspended, revoked, or cancelled within 3 years of the date of the application?

Guidance: Yes, if the person's driving license is currently suspended, revoked, or cancelled.

Question 5: Must a new State of record accept the out-of-State driving record on CDL transfer applications and include this record as a permanent part of the new State's file?

Guidance: Yes.

Question 6: What does the term "initial licensure" mean as used in § 383.73?

Guidance: The term "initial licensure" as used in the context of § 383.73 is meant to refer to the procedures a State must follow when a person applies for his/her first CDL.

Question 7: May a State allow an applicant to keep his/her current valid State license when issued a FRSI-restricted CDL?

Guidance: No. It would violate the single-license concept.

Question 8: Does the word "issuing" as used in § 383.73(a) include temporary 60-day CDLs as well as permanent CDLs?

Guidance: Yes, the word "issuing" applies to all CDLs whether they are temporary or permanent.

Section 383.75 Third Party Testing

Question 1: May the CDL knowledge test be administered by a third party?

Guidance: No. The third party testing provision found in § 383.75 applies only to the skills portion of the testing procedure. However, if an employee of the State who is authorized to supervise knowledge testing is present during the testing, then the FHWA regards it as being administered by the State and not by the third party.

Question 2: Do third party skills test examiners have to meet all the requirements of State-employed examiners—i.e. all the State's qualification and training standards?

Guidance: No. Section 383.75(a)(2)(iii) requires third party examiners to meet the same standards as State examiners only "to the extent necessary to conduct skills tests."

Question 3: Do third-party skills test examiners have to be qualified to administer skills tests in all types of CMVs?

Guidance: No.

Section 383.77 Substitute for Driving Skills Test

Question 1: May a State grandfather drivers from skills testing under § 383.77?

Guidance: Yes, provided the applicant meets all the eligibility conditions under § 383.77, including current operation of a CMV (§ 383.77(b)(1)). Therefore, the pool of applicants eligible for grandfathering is limited to drivers with current CMV operating experience under a CDL waiver (e.g., farm, FRSI, firefighting, emergency and military vehicles).

Question 2: May a driver applicant be "grandfathered" from any CDL knowledge test?

Guidance: No. "Grandfathering" of CDL basic or endorsement knowledge testing is not permitted by part 383.

Section 383.91 Vehicle Groups

Question 1: May a State expand a vehicle group to include vehicles that do not meet the Federal definition of the group?

Guidance: Yes, if:

a. A person who tests in a vehicle that does not meet the Federal standard for the Group(s) for which the issued CDL would otherwise be valid, is restricted to vehicles not meeting the Federal definition of such Group(s); and

b. The restriction is fully explained on the license.

Question 2: Is a driver of a combination vehicle with a GCWR of less than 26,001 pounds required to obtain a CDL even if the trailer GVWR is more than 10,000 pounds?

Guidance: No, because the GCWR is less than 26,001 pounds. The driver would need a CDL if the vehicle is transporting HM requiring the vehicle to be placarded or if it is designed to transport 16 or more persons.

Question 3: Can a State which expands the vehicle group descriptions in § 383.91 enforce those expansions on out-of-State CMV drivers by requiring them to have a CDL?

Guidance: No. They must recognize out-of-State licenses that have been validly issued in accordance with the Federal standards and operative licensing compacts.

Question 4: What CMV group are drivers of articulated motorcoaches (buses) required to possess?

Guidance: Drivers of articulated motorcoaches are required to possess a Class B CDL.

Section 383.93 Endorsements

Question 1: Is the hazardous materials endorsement needed for operation of State and local government vehicles carrying hazardous materials?

Guidance: No.

Question 2: Are drivers of double and triple saddle mount combinations required to have the double/triple trailers endorsement on their CDLs?

Guidance: Yes. If the GCWR is 26,001 or more pounds and the GVWR of the vehicles being towed is in excess of 10,000 pounds.

Question 3: Are drivers delivering empty buses required to have the passenger endorsement on their CDLs?

Guidance: Yes.

Question 4: Would the driver in the following scenarios be required to have a CDL with a hazardous materials endorsement?

a. A driver transports 1,000 or more pounds of Division 1.4 (Class C explosive) materials in a vehicle with a GVWR of less than 26,001 pounds?

b. A driver transports less than 1,000 pounds of Division 1.4 (Class C explosive) materials in a vehicle with a GVWR of less than 26,0001 pounds?

c. The driver transports any quantity of Division 1.1, 1.2 or 1.3 (Class A or B explosive) materials in any vehicle.

Guidance: a. Yes.

b. No.

c. Yes.

Question 5: Do ready mix concrete mixers need a tank vehicle endorsement ("N") on their CDL?

Guidance: No.

Question 6: Does an unattached tote or portable tank with a cargo capacity of 1,000 gallons or more meet the definition of "portable tank" requiring a tank vehicle endorsement on the driver's CDL?

Guidance: Yes.

Question 7: Must all drivers of vehicles required to be placarded have CDLs containing the hazardous materials endorsement?

Guidance: Yes, unless waived.

Question 8: Is a driver who operates a truck tractor pulling a heavy-haul trailer with a "jeep" attached to the front of the trailer that meets the definition of a CMV under part 383 required to have a CDL with a double/triple trailer endorsement?

Guidance: Yes. The "jeep," also referred to as a dolly or load divider, is defined by the FHWA as a short frame-type trailer complete with upper coupler, fifth wheel and undercarriage assembly and designed in such a manner that when coupled to a semitrailer and tractor it carries a portion of the trailer kingpin load while transferring the remainder to the tractor fifth wheel.

Question 9: Do persons transporting battery-powered fork-lifts need to obtain a hazardous materials endorsement?

Guidance: No.

Section 383.95 Air Brake Restrictions

Question 1: A driver has a Group B or C CDL valid for air-brake-equipped vehicles. He or she later upgrades to a Group A license by testing in a vehicle that is not equipped with air brakes. Must the State restrict the upgraded license to non-air-brake-equipped vehicles?

Guidance: No, because the air brake systems on combination versus single vehicles do not differ significantly.

Section 383.131 Test Procedures

Question 1: Are there any Federal regulations which require the States to retain for a specified period of time the CDL knowledge tests (or the test results) used to test CMV drivers?

Guidance: No, there are no Federal regulations regarding such record retention.

Section 383.133 Testing Methods

Question 1: May States administer the CDL knowledge and endorsement test in foreign languages or in other than a written format?

Guidance: Yes.

Question 2: Do the Federal standards limit the number of times a driver may take a test if he or she fails?

Guidance: The rule does not limit the number of times a driver may take a test.

Question 3: Is a State allowed to provide for an alternative test (e.g., oral) or administer alternate exam formats providing it meets FHWA requirements?

Guidance: Yes. The knowledge portion of the test may be administered in written form, verbally, in automated formats, or otherwise at the discretion of the State.

Section 383.153 Information on the Document and Application

Question 1: May a State use the residence address as opposed to the mailing address on the CDL?

Guidance: Yes.

Question 2: May a State issue temporary non-photo CDLs?

Guidance: Yes, as long as—

a. The State does not liberalize any existing procedures for issuing non-photo licenses; and

b. The State does not allow drivers to operate CMVs indefinitely without a CDL which meets all the standards of § 383.153.

Question 3: May a State choose to implement a driver license system involving multiple part license documents?

Guidance: Yes. A two or more part document, as currently used in some States, is acceptable, provided:

a. All of the documents must be present to constitute a "license;"

b. Each document is explicitly "tied" to the other document(s), and to a single driver's record. Each document must indicate that the driver is licensed as a CMV driver, if that is the case, and;

c. The multi-part license document includes all of the data elements specified in part 383, subpart J.

Question 4: If the State restricts the CDL driving privilege, must that restriction be shown on the license?

Guidance: Yes.

Question 5: Is a State required to show the driver's SSN on the CDL?

Guidance: No. Section 383.153 does not specify the SSN as a required element of the CDL document; although, the regulation does require a driver applicant who is domiciled in the U.S. to provide his or her SSN on the CDL application.

Question 6: Is a State prohibited from issuing a CDL to an applicant who, for religious reasons, does not possess a SSN?

Guidance: No. The determination of whether a person needs a SSN is left up to the Social Security Administration.

Question 7: Is a color-digitized image of a driver acceptable for purposes of a CDL?

Guidance: Yes. The FHWA will accept a color-digitized image of a driver on a CDL in lieu of a color photograph.

Special Topics—Motor Coaches and CDL

Question 1: May a State develop a knowledge test exclusively for motorcoach operators which excludes cargo handling and hazardous materials?

Guidance: Yes. A State could develop a basic knowledge test for bus drivers only, by deleting the cargo handling and HM questions from its normative basic knowledge test. In that case, the driver applicant would still need to pass the specialized knowledge and skills tests for the passenger endorsement, and the State would need to restrict the CDL to passenger operations only.

Question 2: What skills test is required for a CDL holder seeking to add a passenger endorsement? If a person already holds a CDL without a passenger endorsement, and subsequently applies for such endorsement, three situations may arise:

a. The passenger test vehicle is in the same vehicle group as that shown on the CDL.

This situation poses no problem since there is no discrepancy.

b. The passenger test vehicle is in a greater vehicle group than that shown on the preexisting CDL.

This is an upgrade situation. The driver and the State must meet the requirements of §§ 383.71(d) and 383.73(d), and the upgraded CDL must show the vehicle group of the passenger test vehicle.

c. The passenger test vehicle is in a lesser vehicle group than that shown on the preexisting CDL.

In this situation, the CDL retains the vehicle group of the preexisting CDL, but also restricts the driver, when engaged in CMV passenger operations, to vehicles in the group in which the passenger skills test was taken, or to a lesser group.

Special Topics—State Reciprocity

Question 1: May a State place an "intrastate only" or similar restriction on the CDL of a driver who certifies that he or she is not subject to part 391?

Guidance: Yes; however, this restriction would not apply to drivers in interstate commerce who are excepted or exempted from part 391 under the provisions of parts 390 or 391.

Question 2: May a State allow a driver possessing an out-of-State CDL containing an intrastate restriction to operate a CMV in their jurisdiction?

Guidance: Yes, provided the driver operates exclusively intrastate.

Question 3: May States choose to interpret "intrastate" in ways that differ from established transportation practice?

Guidance: No. States do not have the discretion to change the Federal definition of either "interstate" or "intrastate" commerce.

Part 386—Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings

Sections Interpreted

386.1 Scope of Rules in this Part

Section 386.1 Scope of Rules in This Part

Question 1: What is the authority of the RDMC to issue provisions as a part of the terms in a Notice of Abatement, Notice of Assessment, Compliance Order and Consent Order?

Guidance: The MCSA of 1984 provided the authority to penalize violators of Notices and Orders issued by the FHWA. Regulations were issued under part 386 which specify these penalties. Notices to Abate and Notices of Assessment/Claim generally deal with specific regulatory requirements. Consent Orders and Compliance Orders often require remedial measures not specifically mentioned in the FMCSRs since the motor carrier's compliance record often indicates that additional measures are needed to improve safety and compliance with the regulations. Violations of specific provisions of Consent or Compliance Orders may result in penalties up to $10,000 per day.

Part 387—Minimum Levels of Financial Responsibility for Motor Carriers

Sections Interpreted

Subpart A Motor Carriers of Property
387.1 Purpose and Scope
387.3 Applicability
387.5 Definitions
387.7 Financial Responsibility Required
387.11 State Authority and Designation of Agent
387.15 Forms
Subpart B Motor Carriers of Passengers
387.25 Purpose and Scope
387.27 Applicability
387.31 Financial Responsibility Required
387.39 Forms

Subpart A Motor Carriers of Property

Section 387.1 Purpose and Scope

Question 1: May a State require a higher level of financial responsibility coverage than is required by part 387?

Guidance: Yes.

Section 387.3 Applicability

Question 1: At what GVWR, as assigned by a manufacturer, does the requirement to comply with the financial responsibility regulations begin?

Guidance: Generally, part 387 subpart A applies if the vehicle has a GVWR of 10,000 pounds or more. Part 387 subpart A does not apply to the intrastate transportation of non-bulk oil, non-bulk hazardous materials, substances or wastes. Motor vehicles used to transport any quantity of Divisions 1.1, 1.2 or 1.3 (explosive) materials, poison gas, or highway route controlled quantity of radioactive materials in interstate or foreign commerce are subject to Federal regulation regardless of the GVWR.

Question 2: Does the GVWR apply to the power unit only?

Guidance: No.

Question 3: When are tow trucks subject to financial responsibility coverage?

Guidance: For-hire tow trucks with a GVWR or GCWR of 10,000 pounds or more performing emergency moves in interstate or foreign commerce are required to maintain minimum levels of financial responsibility in the amount of $750,000. For-hire tow trucks performing secondary moves are required to maintain levels of coverage applicable to the commodity being transported by the vehicle being towed.

Question 4: Are Federal, State or local political subdivisions subject to the financial responsibility regulations?

Guidance: No.

Question 5: Is a motor vehicle owned by an owner-operator, and being dead-headed (returning empty), or a tractor that is being bobtailed (operating without a trailer), subject to the financial responsibility regulations?

Guidance: A motor vehicle deadheading or bobtailing while in the service of a motor carrier would be subject to the financial responsibility regulations.

Question 6: Is a motor carrier transporting mail under contract for the U.S. Postal Service wholly within the boundaries of a single State subject to the minimum levels of financial responsibility requirements of part 387?

Guidance: Yes. The transportation of U.S. mail is considered to be interstate commerce because of the intermingling of inter- and intrastate mail on every vehicle.

Question 7: Are motor carriers transporting hazardous materials that are excepted from the HMRs subject to financial responsibility regulations?

Guidance: Yes. Packaging or transportation exceptions in the HMRs do not change the need for financial responsibility at the appropriate level commensurate with the commodity being transported.

Question 8: Are motor vehicles being transported, for purposes of the financial responsibility requirements, considered to be hazardous materials requiring the higher limits set forth in the regulations?

Guidance: No, while motor vehicles are identified as hazardous materials in the Hazardous Materials Table at § 172.101, motor vehicles, by themselves, are not to be treated as hazardous materials and should be considered non-hazardous property.

Question 9: Is a travel trailer or motor home that has propane cylinders attached subject to part 387 of the FMCSRs?

Guidance: No. The FHWA considers such propane cylinders to be an integral part of the recreational vehicle and not subject to the financial responsibility regulations.

Section 387.5 Definitions

Question 1: Does the definition of the term "in bulk" include solids as well as liquids even though the definition refers to containment systems with capacities in excess of 3,500 water gallons?

Guidance: Yes, the term "3,500 water gallons" is used as a volumetric value and includes solids as well as liquids.

Question 2: What is the definition of a "hopper type" vehicle as indicated in § 387.9?

Guidance: A "hopper type" vehicle is one which is capable of discharging its load through a bottom opening without tilting. This vehicle type would also include belly dump trailers. Rear dump trailers and roll-off containers do not meet the definition of a bottom discharging vehicle.

Section 387.7 Financial Responsibility Required

Question 1: May a large corporation which has many wholly-owned subsidiaries have one policy for the parent corporation and maintain the policy and the Form MCS–90 at the corporate headquarters?

Guidance: Generally, the required financial responsibility must be in the exact name of the motor carrier and the proof of that coverage must be maintained at the motor carrier's principal place of business. A parent corporation may, however, have a single policy of insurance or surety bond covering the parent and its subsidiaries, provided the name of the parent and the name of each subsidiary are listed on the policy or bond. Further, the required proof must have listed thereon the name of the parent and its subsidiaries. A copy of that proof of financial responsibility coverage must be maintained at each motor carrier subsidiary's principal place of business.

Question 2: What is the definition of "Certificate of Registration" in § 387.7(b)(3)?

Guidance: "Certificate of Registration" means a document issued by the ICC to all Mexican motor carriers, for-hire as well as private, that allows them to enter the U.S., but restricts them to the ICC's commercial zone for a particular border municipality. The border municipality is the Port of Entry wherever the motor carrier's vehicle enters the U.S.

Question 3: How does a Mexican motor carrier prove that it is complying with § 387.7?

Guidance: Mexican motor carriers are permitted to obtain trip insurance and are required to carry, on the vehicle, a Form MCS–90 along with an insurance verification document listing the date and time the insurance coverage began and expires.

Question 4: Is the financial responsibility requirement met when an owner-operator (lessor) provides the motor carrier (lessee) a copy of the policy and Form MCS–90 where the carrier is named as an additional insured to the policy (Form MCS–90)?

Guidance: No. The motor carrier has the responsibility to obtain the proper financial responsibility levels.

Section 387.11 State Authority and Designation of Agent

Question 1: How does a Mexican motor carrier demonstrate that its insurance company complies with § 387.11?

Guidance: With a properly executed Form MCS–90 from an insurance company licensed in the U.S.

Section 387.15 Forms

Question 1: May the motor carrier meet the financial responsibility requirements by aggregating insurance in layers?

Guidance: Yes. A motor carrier may aggregate coverage, by purchasing insurance in layers with each layer consisting of a separate policy and endorsement. The first layer of coverage is referred to as primary insurance and each additional layer is referred to as excess insurance.

Example: ABC Motor Carrier transports Class A explosives and is required to maintain $5 million coverage. ABC Motor Carrier decides to meet this requirement by purchasing a primary insurance policy of $1 million from insurance company A, an excess policy of $1 million from insurance company B, and a $3 million excess policy from insurance company C. Each policy would have a separate endorsement (Form MCS–90). The endorsement provided by insurer A would state "This insurance is primary and the company shall not be liable for amounts in excess of $1,000,000 for each accident." The endorsement provided by insurer B would state "This insurance is excess and the company shall not be liable for amounts in excess of $1 million for each accident in excess of the underlying limit of $1 million for each accident." The endorsement provided by insurer C would state "This insurance is excess and the company shall not be liable for amounts in excess of $3 million for each accident in excess of the underlying limit of $2 million for each accident."

Question 2: May the Form MCS–90 required by part 387 for proof of minimum financial responsibility be modified?

Guidance: The prescribed text of the document may not be changed. However, the format (i.e., number of pages, layout of the text, etc.) may be altered.

Question 3: Is the use of a printed or stamped signature on the Form MCS–90 endorsement acceptable?

Guidance: Yes.

Question 4: Must a motor carrier obtain a new Form MCS–90 each year if it retains the same insurance company?

Guidance: If the insurance policy, as identified by the policy number on the Form MCS–90, is still valid upon the renewal of insurance, no new Form MCS–90 is required. If the policy number has changed or the insurance policy has been cancelled in accordance with the terms shown on Form MCS–90, then a new Form MCS–90 must be completed and attached to the valid insurance policy.

Subpart B—Motor Carriers of Passengers

Section 387.25 Purpose and Scope

Question 1: May a State require a higher level of financial responsibility coverage than is required by part 387?

Guidance: Yes.

Section 387.27 Applicability

Question 1: Is a non-profit corporation, providing for-hire interstate transportation of passengers, subject to the minimum levels of financial responsibility for motor carriers of passengers?

Guidance: Yes.

Question 2: What determines the level of coverage required for a passenger carrier, the number of passengers or the number of seats in the vehicle?

Guidance: The level of financial responsibility required is predicated upon the manufacturer's designed seating capacity, not on the number of passengers riding in the vehicle at a particular time. The minimum levels of financial responsibility required for various seating capacities are found in § 387.33.

Question 3: Are luxury limousines with a seating capacity of fewer than seven passengers and not operated on a regular route or between specified points exempted under § 387.27(b)(2)?

Guidance: No. Taxi cab service is highly regulated by local governments, usually conducted in marked vehicles, which makes them readily identifiable to enforcement officials. Limousines are not taxi cabs and are therefore not exempted from the financial responsibility requirements.

Question 4: When must a contract school bus operator comply with part 387?

Guidance: When the contractor is not engaged in transportation to or from school and the transportation is not organized, sponsored, and paid for by the school district.

Question 5: Does the exemption for the transportation of school children end at the high school level or does it extend to educational institutions beyond high school, for example junior college or college?

Guidance: The exemption does not extend beyond the high school level.

Section 387.31 Financial Responsibility Required

Question 1: May a large corporation which has many wholly-owned subsidiaries have one policy of insurance for the parent corporation and maintain the policy and Form MCS–90B at the corporate headquarters?

Guidance: Generally, the required financial responsibility must be in the exact name of the motor carrier and the proof of that coverage must be maintained at the motor carrier's principal place of business. A parent corporation may, however, have a single policy of insurance or surety bond covering the parent and its subsidiaries, provided the name of the parent and the name of each subsidiary are listed on the policy or bond. Further, the required proof must have listed thereon the name of the parent and its subsidiaries. A copy of that proof of financial responsibility coverage must be maintained at each motor carrier subsidiary's principal place of business.

Section 387.39 Forms

Question 1: May the motor carrier meet the financial responsibility requirements by aggregating insurance in layers?

Guidance: Yes. A motor carrier may aggregate coverage, by purchasing insurance in layers with each layer consisting of a separate policy and endorsement. The first layer of coverage is referred to as primary insurance and each additional layer is referred to as excess insurance.

Example: ABC Motor Carrier transports Class A explosives and is required to maintain $5 million coverage. ABC Motor Carrier decides to meet this requirement by purchasing a primary insurance policy of $1 million from insurance company A, an excess policy of $1 million from insurance company B, and a $3 million excess policy from insurance company C. Each policy would have a separate endorsement (Form MCS–90). The endorsement provided by insurer A would state "This insurance is primary and the company shall not be liable for amounts in excess of $1,000,000 for each accident." The endorsement provided by insurer B would state "This insurance is excess and the company shall not be liable for amounts in excess of $1 million for each accident in excess of the underlying limit of $1 million for each accident." The endorsement provided by insurer C would state "This insurance is excess and the company shall not be liable for amounts in excess of $3 million for each accident in excess of the underlying limit of $2 million for each accident."

Question 2: May the Form MCS–90 required by part 387 for proof of minimum financial responsibility be modified?

Guidance: The prescribed text of the document may not be changed. However, the format (i.e., number of pages, layout of the text, etc.) may be altered.

Question 3: Is the use of a printed or stamped signature on the Form MCS–90 endorsement acceptable?

Guidance: Yes.

Part 390—Federal Motor Carrier Safety Regulations; General

Sections Interpreted

390.3 General Applicability
390.5 Definitions
390.9 State and Local Laws, Effect on
390.15 Assistance in Investigations and Special Studies
390.21 Marking of Commercial Motor Vehicles
390.23 Relief From Hours-of-Service Regulations—Disasters
Section 390.31 Copies of Records or Documents

Section 390.3 General Applicability

Question 1: Does the government exception in § 390.3(f)(2) apply to motor carriers doing business with the government?

Guidance: No. The exception applies only when the government is the motor carrier.

Question 2: Are intrastate drivers of an interstate motor carrier subject to the FMCSRs?

Guidance: No, except when carrying hazardous materials.

Question 3: Are the FMCSRs applicable to drivers and CMVs which transport tools, equipment and supplies across State lines in a CMV?

Guidance: Yes, the FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the tools, equipment and supplies.

Question 4: Are the operations of a church which provides bus tours to the general public for compensation subject to the FMCSRs as a for-hire motor carrier?

Guidance: Yes, the church is a for-hire motor carrier of passengers subject to the FMCSRs (see 58 FR 27328, May 7, 1993).

Question 5: Are the FMCSRs applicable to the rail movement of trailers and intermodal container chassis that previously or subsequently

moved by highway by a motor carrier in interstate commerce?

Guidance: No. They are only subject when being moved as a motor vehicle by highway by a motor carrier.

Question 6: Are personnel involved in road testing CMVs across a State line subject to the FMCSRs?

Guidance: Yes, any driver (including mechanics, technicians, driver trainees and other personnel) operating a CMV in interstate commerce must be in compliance with the FMCSRs.

Question 7: How does one distinguish between intra- and interstate commerce for the purposes of applicability of the FMCSRs.

Guidance: Interstate commerce is determined by the essential character of the movement, manifested by the shipper's fixed and persistent intent at the time of shipment, and is ascertained from all of the facts and circumstances surrounding the transportation. When the intent of the transportation being performed is interstate in nature, even when the route is within the boundaries of a single State, the driver and CMV are subject to the FMCSRs.

Question 8: Are Red Cross vehicles/drivers subject to the FMCSRs?

Guidance: Red Cross vehicles/drivers used to provide emergency relief per the provisions of § 390.23 are not subject to the FMCSRs while providing the relief. However, these vehicles/drivers would be subject when operating at other times provided they are used in interstate commerce and the vehicles meet the definition of a CMV.

Question 9: May a motor carrier require fingerprinting as a pre-employment condition?

Guidance: The FMCSRs do not require or prohibit fingerprinting as a condition of employment. Section 390.3(d) allows employers to enforce more stringent requirements.

Question 10: Are the FMCSRs applicable to drivers/vehicles operated by a State or local educational institution which is a political subdivision of the State?

Guidance: Section 390.3(f)(2) specifically exempts transportation performed by a State or a political subdivision including any agency of a State or locality from the FMCSRs. The drivers, however, may be subject to the CDL requirements and/or State laws that are similar to the FMCSRs.

Question 11: Are the FMCSRs applicable to drivers/vehicles operated by a transit authority owned and operated by a State or a political subdivision of the State?

Guidance: Section 390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.

Question 12: Is the interstate transportation of students, teachers and parents to school events such as athletic contests and field trips performed by municipalities subject to the FMCSRs? If a fee is charged to defer the municipality's expenses, does this affect the applicability of the regulations?

Guidance: Section 390.3(f)(2) specifically exempts transportation performed by the Federal Government, a State, or any political subdivision of a State from the FMCSRs. Charging a fee to defer governmental costs does not affect this exemption. However, this exemption does not apply to the CDL requirements in part 383. Also, if governmental entities engage in interstate charter transportation of passengers, they must comply with accident report retention requirements of part 390.

Question 13: What is the applicability of the FMCSRs to school bus operations performed by Indian Tribal Governments?

Guidance: Transportation performed by the Federal Government, States, or political subdivisions of a State is generally excepted from the FMCSRs. This general exception includes Indian Tribal Governments, which for purposes of § 390.3(f) are equivalent to a State governmental entity. When a driver is employed and a bus is operated by the governmental entity, the operation would not be subject to the FMCSRs, with the following exceptions: The requirements of part 383 as they pertain to commercial driver licensing standards are applicable to every driver operating a CMV and the accident report retention requirements of part 390 are applicable when the governmental entity is performing interstate charter transportation of passengers.

Question 14: A motor carrier dispatches an empty CMV from State A into adjoining State B in order to transport cargo or passengers between two points in State B, and then to return empty to State A. Does the transportation of cargo or passengers within State B constitute interstate commerce?

Guidance: Yes. The courts and the ICC developed a test that clarifies the legal status of intrastate portions of interstate trips. The character of the intrastate leg depends on the shipper's fixed and persistent intent when the transportation began. The fixed and persistent intent in this case was to move property—the vehicle itself—across State lines and between two points in State B where it was used to haul cargo or passengers. The transportation within State B, therefore, constitutes interstate commerce. In some cases the motor carrier may be the shipper.

Question 15: What is the applicability of the FMCSRs to motor carriers owning and operating school buses that contract with a municipality to provide pupil transportation services?

Guidance: For the purposes of the FMCSRs, parts 390–399, "school bus operation" means the use of a school bus to transport school children and/or school personnel from home to school and from school to home. A "school bus" is a passenger motor vehicle designed to carry more than 10 passengers in addition to the driver, and used primarily for school bus operations (see § 390.5). School bus operations and transportation performed by government entities are specifically exempted from the FMCSRs under § 390.3(f). However, anyone operating school buses under contract with a school is a for-hire motor carrier. When a non-government, for-hire motor carrier transports children to school-related functions other than "school bus operation" such as sporting events, class trips, etc., and operates across State lines, its operation must be conducted in accordance with the FMCSRs. This applies to motor carriers that operate CMVs as defined under part 390 which includes vehicles which have a GVWR of 10,001 pounds or more or are designed to carry more than 15 passengers, including the driver.

In certain instances, carriers providing school bus transportation are not subject to the Bus Regulatory Reform Act of 1982 and the minimum financial responsibility requirements (part 387) issued under this Act. Transportation of school children and teachers that is organized, sponsored, and paid for by the school district is not subject to part 387. Therefore, school bus contractors must comply with the FMCSRs for interstate trips such as sporting events and class trips but are not required by Federal regulations to carry a specific level of insurance coverage.

For those operations provided by school bus contractors that are subject to the FMCSRs, the motor carriers must keep driver and vehicle records as required by the regulations. This would include driver qualifications records (part 391), driver records-of-duty-status

(part 395), accident report retention (part 390), and inspection, repair, and maintenance records (part 396) for the drivers and vehicles that are used on the trips that are subject to the FMCSRs. These records are not required under the FMCSRs for the other vehicles in the motor carrier's fleet that are not subject to the regulations.

Question 16: May drivers be coerced into employing loading or unloading assistance (lumpers)?

Guidance: No. The Motor Carrier Act of 1980 made it illegal to coerce someone into unwanted loading or unloading and require payment for it. The ICC is responsible for the enforcement of regulations forbidding coercion in the use of lumpers.

Question 17: a. Are vehicles which, in the course of interstate transportation over the highway, are off the highway; loading, unloading or waiting, subject to the FMCSRs during these times?

b. Are vehicles and drivers used wholly within terminals and on premises or plant sites subject to the FMCSRs?

Guidance: a. Yes.

b. No.

Question 18: What protection is afforded a driver for refusing to violate the FMCSRs?

Guidance: Section 405 of the STAA (49 U.S.C. App. Section 2305) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

Section 390.5 Definitions

Question 1: Do the definitions of "farm," "farmer" and "agricultural crops" apply to greenhouse operations?

Guidance: Yes.

Question 2: Is a vehicle used to transport or tow anhydrous ammonia nurse tanks considered a CMV and subject to FMCSRs?

Guidance: Yes, provided the vehicle's GVWR or GCWR meets or exceeds that of a CMV as defined in § 390.5 and/or the vehicle transports hazardous materials in a quantity that requires placarding.

Question 3: Do modifications to a vehicle that reduce the GVWR below that specified as a CMV render the vehicle and its drivers exempt from the FMCSRs, provided the vehicle does not transport hazardous materials or passengers?

Guidance: No. The applicability of the FMCSRs is based on the GVWR specified by the manufacturer.

Question 4: A driver used by a motor carrier operates a CMV to and from his/her residence out of State. Is this considered interstate commerce?

Guidance: If the driver is operating a CMV at the direction of the motor carrier it is considered interstate commerce and is subject to the FMCSRs. If the motor carrier is allowing the driver to use the vehicle for private personal transportation, such transportation is not subject to the FMCSRs.

Question 5: Is transporting an empty CMV across State lines for purposes of repair and maintenance considered interstate commerce?

Guidance: Yes. The FMCSRs are applicable to drivers and CMVs in interstate commerce which transport property. The property in this situation is the empty CMV.

Question 6: Is "off-road" motorized construction equipment, i.e., "motorscrapers, backhoes, motorgraders, compactors, excavators, tractors, trenchers and bulldozers," subject to the FMCSRs?

Guidance: Such equipment is routinely found at construction sites and is operated by personnel requiring specialized skills. Occasionally, such equipment is moved to or from construction sites by "driving" the "vehicles" short distances on public highways. Their appearance on the highway is only incidental to their primary function, they are not designed to operate in traffic, and their mechanical manipulation often requires a different set of knowledge and skills. The types of construction equipment discussed above do not come within the definition of a "CMV" and hence the operators and equipment are not subject to the FMCSRs.

Question 7: Are mobile cranes operating in interstate commerce subject to the FMCSRs?

Guidance: Yes, the definition of CMV encompasses mobile cranes.

Question 8: Does the FHWA define for-hire transportation of passengers identically as the ICC?

Guidance: To the extent our authority stems from 49 USC § 3102 or other sections of Title 49 which are rooted in the Interstate Commerce Act, we are bound by judicial precedent and legislative history in interpreting that Act, much of which relates to the operations of the ICC. However, since the MCSA of 1984 reestablished our jurisdictional authority and resulted in a repromulgation of the FMCSRs, the FHWA has been establishing its own precedents based on "safety" rather than "economics" as the overriding consideration. This has resulted in some deviation in the definition of terms by the two agencies, e.g., commercial zones, for-hire transportation, etc.

The term "for-hire motor carrier" as defined in part 390 means a person engaged in the transportation of goods or passengers for compensation. The FHWA has determined that any business entity that assesses a fee, monetary or otherwise, directly or indirectly for the transportation of passengers is operating as a for-hire carrier. Thus, when operating in interstate commerce, the transportation of passengers in motor vehicles designed to convey more than 15 passengers, including the driver, associated with the following operations would typically be subject to all parts of the FMCSRs, including part 387, since some fee is charged, usually indirectly in a total package charge or other assessment, for transportation performed: Whitewater river rafters, hotel/motel shuttle transporters, rental car shuttle services, etc (see 58 FR 27328, May 7, 1993).

Question 9: A company has a truck with a GVWR under 10,001 pounds towing a trailer with a GVWR under 10,001 pounds. However, the GVWR of the truck added to the GVWR of the trailer is greater than 10,001 pounds. Would the company operating this vehicle in interstate commerce have to comply with the FMCSRs?

Guidance: Section 390.5 of the FMCSRs includes in the definition of CMV a vehicle with a GVWR or GCWR of 10,001 or more pounds. The section further defines GCWR as the value specified by the manufacturer as the loaded weight of a combination (articulated) vehicle. In the absence of a value specified by the manufacturer, the GCWR will be determined by adding the GVWR of the power unit and the total weight of the towed unit and any weight thereon. Therefore, if the GVWR of the truck added to the GVWR of the trailer exceeds 10,001 pounds, the driver and vehicle are subject to the FMCSRs.

Question 10: A CMV becomes stuck in a median or on a shoulder, and has had no contact with another vehicle, a pedestrian, or a fixed object prior to becoming stuck. If a tow truck is used to pull the CMV back onto the travelled portion of the road, would this be considered an accident?

Guidance: No.

Question 11: To what extent would the windshield and/or mirrors of a vehicle have to be damaged in order for

it to be considered "disabling damage" as used in the definition of an accident in § 390.5?

Guidance: The decision as to whether damage to a windshield and/or mirrors is disabling is left to the discretion of the investigating officer.

Section 390.9 State and Local Laws, Effect On

Question 1: If an interstate driver gets stopped by a State enforcement officer for an inspection, would the inspecting officer be enforcing the Federal regulations or State regulations?

Guidance: A State enforcement officer can only enforce State laws. However, under the Motor Carrier Safety Assistance Program, quite often State laws are the same as or similar to the FMCSRs.

Section 390.15 Assistance in Investigations and Special Studies

Question 1: May a motor carrier create an accident register of its own, or is there a specified form that must be used?

Guidance: There is no specified form. A motor carrier may create or use any accident register as long as it includes the elements required by § 390.15.

Question 2: Would the accident report retention requirement in § 390.15(b)(2) include an "Adjuster's Report" that is normally considered to be an internal document of an insurance company?

Guidance: No. The intent of § 390.15(b)(2) is for motor carriers to maintain copies of all documents that the motor carrier is required by the insurance company to complete and/or maintain. Section 390.15(b)(2) does not require motor carriers to maintain documents, such as "Adjuster's Reports," that are typically internal documents of the insurance company.

Section 390.21 Marking of Commercial Motor Vehicles

Question 1: What markings must be displayed on a CMV when used by two or more motor carriers?

Guidance: The markings of the motor carrier responsible for the operation of the CMV must be displayed at the time of transportation. If 2 or more names are on the vehicle, the name of the operating motor carrier must be preceded by the words "operated by."

Section 390.23 Relief From Hours-of-Service Regulations—Disasters

Question 1: Does § 390.23 create an exemption from the FMCSRs each and every time the delivery of electricity is interrupted, no matter how isolated or minor the occurrence?

Guidance: The rule creates an exemption from the FMCSRs when interruptions of electricity are severe enough to trigger a declaration of an emergency by a public official authorized to do so.

An interruption of electricity that does not produce a declaration by a public official is not an emergency for purposes of the regulation and does not exempt a motor carrier or driver from the FMCSRs. A call reporting a downed power line, whether directed to the State police or a public utility company, does not create a declared emergency.

The authority to declare emergencies has been delegated to different officials in the various States. The FHWA has not attempted to list these officials. In order to utilize the exemption provided by § 390.23, drivers and motor carriers must therefore ascertain that a declaration of an emergency was made by a State or local official authorized to do so.

Question 2: Section 390.23(a) provides that parts 390 through 399 do not apply to any motor carrier or driver operating a CMV to provide direct assistance in an emergency. Is a motor carrier or driver required to keep a record of the driver's on-duty or driving time while providing relief?

Guidance: No.

Question 3: After providing emergency relief under § 390.23, what on-duty hours must a driver use to determine how much off-duty time he/she must have before returning to the service of the employing motor carrier?

Guidance: The driver must total the number of hours worked while the driver actually provided direct assistance to the emergency relief effort.

Section 390.31 Copies of Records or Documents

Question 1: May records required by the FMCSRs be maintained in an automated format?

Guidance: Yes, provided the motor carrier can produce the information required by the regulations. Documents requiring a signature must be capable of replication (i.e., photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand.

Question 2: How long does a motor carrier have to produce records if a motor carrier maintains all records in an automated format?

Guidance: A motor carrier must produce all records maintained in an automated format within 2 working days after the request. Documents requiring a signature must be capable of replication (e.g., photocopy, facsimile, etc.) in such form that will provide an opportunity for signature verification upon demand.

Part 391—Qualification of Drivers

Sections Interpreted

391.2 General Exemptions
391.11 Qualifications of Drivers
391.15 Disqualification of Drivers
391.21 Application for Employment
391.23 Investigation and Inquiries
391.25 Annual Review of Driving Record
391.27 Record of Violations
391.31 Road Test
391.41 Physical Qualifications for Drivers
391.43 Medical Examination; Certificate of Physical Examination
391.45 Persons Who Must Be Medically Examined and Certified
391.47 Resolution of Conflicts of Medical Evaluation
391.51 Driver Qualification Files
391.63 Intermittent, Casual, or Occasional Drivers
391.65 Drivers Furnished By Other Motor Carriers

Section 391.2 General Exemptions

Question 1: Must exempt intracity zone (see § 390.5) drivers comply with the medical requirements of this subpart?

Guidance: No, provided:

a. the driver was otherwise qualified and operating in a municipality or exempt intracity zone thereof throughout the 1 year period ending November 18, 1988, and;

b. the driver's medical condition has not substantially worsened since August 23, 1988.

Question 2: What driver qualification requirements must a farm vehicle driver (as defined in § 390.5) comply with in part 391?

Guidance: Drivers meeting the definition of "farm vehicle driver" who operate straight trucks of any GVWR and articulated vehicles rated at 10,000 GVWR and less are exempted from all driver qualification requirements of part 391. All drivers of articulated motor vehicles at 10,001 GVWR or greater are required to possess a current medical certificate as required in §§ 391.41 and 391.45 and a current drug test as required in part 391 subpart H (see § 391.67).

Section 391.11 Qualifications of Drivers

Question 1: Is there a maximum age limit for driving in interstate commerce?

Guidance: The FMCSRs do not specify any maximum age limit for drivers.

Question 2: Does the age requirement (in § 391.11(b)(1)) apply to CMV drivers involved entirely in intrastate commerce?

Guidance: No. Neither the CDL requirements in part 383 nor the FMCSRs in parts 390–399 require drivers engaged purely in intrastate commerce to be 21 years old. The States may set age thresholds for intrastate drivers.

Question 3: What role does the Age Discrimination in Employment Act play in minimum and maximum age of an interstate driver?

Guidance: None. The Age Discrimination in Employment Act, 29 U.S.C. 621–634, recognizes an exception when age is a bona fide occupational qualification. 29 U.S.C. 623(f)(1).

Question 4: May a motor carrier be exempt from driver qualification requirements by hiring a driver leasing company or temporary help service?

Guidance: No. The FMCSRs apply to, and impose responsibilities on, motor carriers and their drivers. The FHWA does not regulate driver leasing companies or temporary help service companies.

Question 5: May a motor carrier lawfully permit a person not yet qualified as a driver in accordance with § 391.11 to operate a vehicle in interstate commerce for the purpose of attending a training and indoctrination course in the operation of that specific vehicle?

Guidance: No. If the trip is in interstate commerce, the driver must be fully qualified to operate a CMV.

Question 6: Is there a requirement that a driver must personally load, block, brace, and tie down the cargo on the property carrying CMV he/she drives?

Guidance: No. There is no requirement that the driver must personally secure the cargo, nor is there one prohibiting him/her from doing so. The driver is required to be familiar with methods and procedures for securing cargo in or on the vehicle he/she drives.

Question 7: Does the Military Selective Service Act of 1967 require a motor carrier to place a returning veteran in his/her previous position (driving interstate) even though he/she fails to meet minimum physical standards?

Guidance: No. The Act does not require a motor carrier to place a returning veteran who does not meet the minimum physical standards into his/her previous driving position. The returning veteran must meet the physical requirements and obtain a medical examiners certificate before driving in interstate operations.

Section 391.15 Disqualification of Drivers

Question 1: May a driver convicted of a disqualifying offense be "disqualified" by a motor carrier?

Guidance: No. Motor carriers have no authority to disqualify drivers. However, a conviction for a disqualifying offense automatically disqualifies a driver from driving for the period specified in the regulations. Thus, so long as a motor carrier knows, or should have known, of a driver's conviction for a disqualifying offense, it is prohibited from using the driver during the disqualification period.

Question 2: Is a decision of probation before judgment sufficient for disqualification?

Guidance: Yes, provided the State process includes a finding of guilt.

Question 3: Is a driver holding a valid driver's license from his or her home State but whose privilege to drive in another State has been suspended or revoked, disqualified from driving by § 391.15(b)?

Guidance: Yes, the driver would be disqualified from interstate operations until his privileges are restored by the authority that suspended or revoked them, provided the suspension resulted from a driving violation. It is immaterial that he holds a valid license from another State. All licensing actions should be accomplished through the CDLIS or the controlling interstate compact.

Question 4: What are the differences between the disqualification provisions listed in §§ 383.51 and 383.5 and those listed in § 391.15?

Guidance: Part 383 disqualifications are applicable generally to drivers who drive CMVs above 26,000 pounds GVWR, regardless of where the CMV is driven in the U.S. Part 391 disqualifications are applicable generally to drivers who drive CMVs above 10,000 pounds GVWR, only when the vehicle is used in interstate commerce in a State, including the District of Columbia.

Question 5: Do the disqualification provisions of § 391.15 apply to offenses committed by a driver who is using a company vehicle, for personal reasons, while off-duty?

Guidance: No. The disqualification provisions of § 391.15 do not apply to a driver using a company vehicle, for personal reasons, while off-duty. For example, an owner-operator using his own vehicle in an off-duty status, or a driver using a company truck, or tractor for transportation to a motel, restaurant or home, would be outside the scope of this section if he returns to the same terminal from which he went off-duty (see § 383.51 for additional information).

Question 6: If a driver has his/her privileges to drive a pleasure vehicle revoked or suspended by State authorities, but his/her privileges to operate a CMV are left in tact, would the driver be disqualified under the terms set forth in § 391.15?

Guidance: No. The driver would not be disqualified from operating a CMV.

Question 7: If a driver is convicted of one of the specified offenses in § 391.15(c), but is allowed to retain his driver's license, is he/she still disqualified?

Guidance: Yes. A driver who is convicted of one of the specified offenses in § 391.15(c), or has forfeited bond in collateral on account of one of these offenses, and who is allowed to retain his/her driver's license, is still disqualified. The loss of a driver's license and convictions of certain offenses in § 391.15(c) are entirely separate grounds for disqualification.

Question 8: If a driver has his/her license suspended for driving while under the influence of alcohol, and two months later, as a result of this same incident, the driver is convicted of a DWI, must the periods of disqualification be combined since these are both disqualifying offenses?

Guidance: No. Disqualification during the suspension of an operating license continues until the license is restored by the jurisdiction that suspended it. Disqualification for conviction of DWI is for a fixed term. The fact that the driver was already disqualified for driving under the influence of alcohol because of the suspension action may mean that the total time under disqualification for the DWI conviction may exceed the stated term.

Question 9: If a driver commits a felony while operating a CMV not in the employ of a motor carrier, is it a disqualifying offense?

Guidance: No. There are 2 conditions required to be present for a felony conviction to be a disqualifying offense: (1) the offense was committed during on-duty time; and, (2) the driver was employed by a motor carrier or was engaged in activities that were in furtherance of a commercial enterprise.

Section 391.21 Application for Employment

Question 1: If a driver submits an application for employment and has someone else type, write or print the answers to the questions for him and he signs the application, does this constitute a valid application?

Guidance: Yes. The applicant, by signing the application, certifies that all entries on it and information therein are true and complete to the best of the applicant's knowledge.

Question 2: Is there a prescribed or specified form that must be used when a driver applies for employment, or can a carrier develop it's own application?

Guidance: There is no specified form to be used in an application for employment. Carriers may develop their own forms, which may be tailored to their specific needs. The application form must, at the minimum, contain the information specified in § 391.21(b).

Section 391.23 Investigation and Inquiries

Question 1: When a motor carrier receives a request for driver information from another motor carrier about a former or current driver, is it required to supply the requested information?

Guidance: No.

Section 391.25 Annual Review of Driving Record

Question 1: To what extent must a motor carrier review a driver's overall driving record to comply with the requirements of § 391.25?

Guidance: The motor carrier must consider as much information about the driver's experience as is reasonably available. This would include all known violations, whether or not they are part of an official record maintained by a State, as well as any other information that would indicate the driver has exercised a lack of due regard for the safety of the public. Violations of traffic and criminal laws, as well as the driver's involvement in motor vehicle accidents, are such indications and must be considered. A violation of size and weight laws should also be considered.

Question 2: Is a driver service or leasing company that is not a motor carrier permitted to perform annual reviews of driving records (§ 391.25) on the drivers it furnishes to motor carriers?

Guidance: The driver service or leasing company may perform annual reviews if designated by a motor carrier to do so.

Section 391.27 Record of Violations

Question 1: Are notifications to a motor carrier by a driver convicted of a driver violation as required by § 383.31 to be maintained in the driver's qualification file as part of the supporting documentation or certifications noted in the requirements listed in § 391.27(d)?

Guidance: Section 391.27(d) does not require documentation in the qualification file. However, § 391.51 does require that such notifications be maintained in the qualification file.

Question 2: Must violations of size and weight laws be reported on the annual record of violations the driver furnishes to the carrier every 12 months?

Guidance: Yes. Violations of size and weight laws are considered motor vehicle traffic laws and must be reported to the carrier.

Section 391.31 Road Test

Question 1: Are employers still required to administer road tests since all States have implemented CDL skills testing?

Guidance: Section 391.33(a)(1) allows an employer to accept, in lieu of the road test, a CDL. However, if the employer intends to assign to the driver a vehicle necessitating the doubles/triples or tank vehicle endorsement, the employer still needs to administer the road test under § 391.31 in that type of vehicle.

Question 2: How does a student enrolled in a driver training school comply with the requirement to pass a road test?

Guidance: The road test is administered only after the student has demonstrated a sufficient degree of proficiency on a range or off-road course. A student who passes the road test and is qualified to operate in interstate commerce could cross a State line in the process of receiving training.

Question 3: May a carrier use a blanket certification of road test for specific vehicles (driver's names, etc., left out)?

Guidance: No.

Question 4: May a motor carrier designate another person or organization to administer the road test?

Guidance: Yes. A motor carrier may designate another person or organization to administer the road test as long as the person who administers the road test is competent to evaluate and determine the results of the tests.

Section 391.41 Physical Qualifications for Drivers

Question 1: Who is responsible to insure medical certification requirements are met?

Guidance: Medical certification determinations are the responsibility of the medical examiner. The motor carrier has the responsibility to ensure that the medical examiner is informed of the minimum medical requirements and the characteristics of the work to be performed. The motor carrier is also responsible for ensuring only medically qualified drivers are operating CMVs in interstate commerce.

Question 2: Do the physical qualification requirements of the FMCSRs infringe upon a person's religious beliefs if such beliefs prohibit being examined by a licensed doctor of medicine or osteopathy?

Guidance: No. To determine whether a governmental regulation infringes on a person's right to freely practice his religion, the interest served by the regulation must be balanced against the degree to which a person's rights are adversely affected. *Biklen* v. *Board of Education*, 333 F. Supp. 902 (N.D.N.Y. 1971) aff'd 406 U.S. 951 (1972).

If there is an important objective being promoted by the requirement and the restriction on religious freedom is reasonably adapted to achieving that objective, the requirement should be upheld. *Burgin* v. *Henderson*, 536 F.2d 501 (2d. Cir. 1976).

Based on the tests developed by the courts and the important objective served, the regulation meets Constitutional standards. It does not deny a driver his First Amendment rights.

Question 3: What medical/physical conditions prohibit a driver from being qualified to operate a CMV in interstate commerce?

Guidance: Drivers are prohibited from being qualified if they do not meet the standards for vision, hearing, diabetes, epilepsy, or loss of a limb. The exception to these prohibitions is if the individual has received a waiver from the FHWA.

Question 4: What other medical/physical conditions prohibit a driver from being qualified to operate a CMV in interstate commerce?

Guidance: All other medical conditions listed in § 391.41 render a driver unqualified unless a medical examiner makes a determination that the driver is capable of safely operating a CMV.

Question 5: Is a driver who is taking prescription methadone qualified to drive a CMV in interstate commerce?

Guidance: Methadone is a habit-forming narcotic which can produce drug dependence and is not an allowable drug for operators of CMVs.

Section 391.43 Medical Examination; Certificate of Physical Examination

Question 1: May a motor carrier accept medical examination results conducted under other Federal or State agencies or foreign jurisdiction requirements?

Guidance: Yes, as long as the driver is medically certified in accordance

with the procedures in part 391 subpart E.

Question 2: May a urine sample collected for purposes of performing a subpart H test be used to test for diabetes as part of a driver's FHWA-required physical examination?

Guidance: In general, no. However, the Department has recognized an exception to this general policy whereby, after 60 milliliters of urine have been set aside for subpart H testing, any remaining portion of the sample may be used for other non-drug testing, but only if such other non-drug testing is required by the FHWA (under part 391, subpart E) such as testing for glucose and protein levels.

Question 3: Is a chest X-ray required under the minimum medical requirements of the FMCSRs?

Guidance: No, but a medical examiner may take an x-ray if appropriate.

Question 4: Does § 391.43 of the FMCSRs require that physical examinations of applicants for employment be conducted by medical examiners employed by or designated by the carrier?

Guidance: No.

Question 5: Does a medical certificate displaying a facsimile of a medical examiner's signature meet the "signature of examining health care professional" requirement?

Guidance: Yes.

Section 391.45 Persons Who Must be Medically Examined and Certified

Question 1: Is it intended that the words "person" and "driver" be used interchangeably in § 391.45?

Guidance: Yes.

Question 2: Do the FMCSRs require applicants, possessing a current medical certificate, to undergo a new physical examination as a condition of employment?

Guidance: No. However, if a motor carrier accepts such a currently valid certificate from a driver subject to subpart H, the driver is subject to additional controlled substance testing requirements unless otherwise excepted in subpart H.

Question 3: Must a driver who is returning from an illness or injury undergo a medical examination even if his current medical certificate has not expired?

Guidance: The FMCSRs do not require an examination in this case unless the injury or illness has impaired the driver's ability to perform his/her normal duties. However, the motor carrier may require a driver returning from any illness or injury to take a physical examination. But, in either case, the motor carrier has the obligation to determine if an injury or illness renders the driver medically unqualified.

Section 391.47 Resolution of Conflicts of Medical Evaluation

Question 1: Does the FHWA issue formal medical decisions as to the physical qualifications of drivers on an individual basis?

Guidance: No, except upon request for resolution of a conflict of medical evaluations.

Section 391.51 Driver Qualification Files

Question 1: When a motor carrier purchases another motor carrier, must the drivers of the acquired motor carrier be requalified by the purchasing motor carrier?

Guidance: No.

Question 2: Is a driver training school required to keep a driver qualification file on each student?

Guidance: Yes, but only when operating in interstate commerce.

Section 391.63 Intermittent, Casual, or Occasional Drivers

Question 1: Is a person employed by a non-motor carrier in his normal duties considered an intermittent, casual or occasional driver when employed by a motor carrier as a driver on a part time basis?

Guidance: No. A person who drives for one motor carrier (even if it is only one day per month) would not meet the definition of an intermittent, casual or occasional driver in § 390.5 since he/she is employed by only one motor carrier. The motor carrier must fully qualify the driver and maintain a qualification file on the employee as a regularly employed driver.

Section 391.65 Drivers Furnished by Other Motor Carriers

Question 1: May a non-motor carrier which owns a CMV prepare the qualification certificate provided for in § 391.65?

Guidance: No, only a motor carrier which regularly employs a driver may issue the required certification.

Question 2: May the certificate of qualification as prescribed by § 391.65 be incorporated into another carrier's forms such as a lease and/or interchange agreement?

Guidance: Yes. However, the certificate of qualification must be signed and dated by an officer or authorized employee of the regularly employing carrier.

Question 3: Is a motor carrier required to accept a certificate from the driver's regularly employing motor carrier certifying that the driver is qualified per § 391.65?

Guidance: No. If the motor carrier chooses not to accept the certificate issued by the regularly employing motor carrier furnishing the driver, the motor carrier must then assume responsibility for assuring itself that the driver is fully qualified in accordance with part 391.

Question 4: If a driver furnished by another motor carrier is in the second carrier's service for a period of 7 consecutive days or more, may the driver still fall under the exemption in § 391.65?

Guidance: No. The driver becomes a regularly-employed driver of the second motor carrier and the exemption in § 391.65 is inapplicable.

Part 391 Subpart H Controlled Substances Testing Requirements

Sections Interpreted

391.81 Purpose and Scope
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Special Topics

Section 391.81 Purpose and Scope

Question 1: May a motor carrier test for additional drugs that are not part of the DOT drug rule?

Guidance: Section 391.81(c) of the FHWA regulation states that a motor carrier may test for additional drugs only as a part of reasonable cause testing and only if approved by the FHWA Administrator under part 40. This section further indicates that such approval will only be granted for a substance for which the Department of Health and Human Services has established an approved testing protocol and positive threshold.

Section 391.83 Applicability

Question 1: Do the FHWA's controlled substances testing regulations apply to motor carriers and drivers in Puerto Rico and Guam?

Guidance: No.

Question 2: Which drivers are to be included in a drug testing program under the FHWA's rule?

Guidance: Any person who operates a CMV, as defined in § 391.85, in interstate commerce and is subject to the driver qualification requirements of part 391 is to be included in the program.

Question 3: Is a foreign resident driver operating between the U.S. and a foreign country from a U.S. terminal for a U.S.-based motor carrier subject to the FHWA drug testing regulations?

Guidance: Yes. The driver would not be protected by foreign law since he is operating for a U.S.- based motor carrier and is subject to subpart H.

Question 4: Would a foreign resident driver operating from a foreign terminal of a U.S.-based carrier between a foreign country and the U.S. be subject to the FHWA drug testing regulations?

Guidance: No. The motor carrier that is operating from the foreign terminal would have to comply with the requirements of the foreign government. Therefore, the driver would not be required to comply with the controlled substances testing requirements.

Section 391.87 Notification of Test Results and Recordkeeping

Question 1: Where must the records required by § 391.87(f) be maintained?

Guidance: The driver's qualification file need not be physically one recordkeeping medium such as a file folder, but must be a filing system that is identifiable to a specific individual. Examples would include, in addition to a file folder, an electronic file such as a record on a database program, or a filing system which may contain several physical files each labeled to a specific individual. These records are to be maintained at the carrier's principal place of business, unless they have divided records authority. Participation in a consortium does not relieve a motor carrier of its responsibility to comply with these recordkeeping requirements.

Question 2: May a motor carrier as a member of a consortium satisfy the annual summary requirements by using the aggregate testing information of the consortium?

Guidance: No. A motor carrier's annual summaries must be employer specific.

Question 3: May a motor carrier, as a part of its annual summary, include records of drug tests of employees covered by other U.S. DOT agencies?

Guidance: Yes.

Question 4: What if a motor carrier's MRO refuses to maintain the records required by § 391.87(e) for a 5-year period?

Guidance: The motor carrier must instruct the MRO to maintain the records or the carrier should use the services of another MRO who will maintain the records.

Question 5: When subsidiaries of a parent company join together as a consortium for the purpose of satisfying the FHWA's random drug testing requirements, is it permissible for each subsidiary to use the aggregate testing totals to satisfy the annual summary requirements of § 391.87(h)?

Guidance: No. The annual summary must be specific to each subsidiary.

Question 6: While completing the annual summary required under § 391.87(h), must the motor carrier include the information required by § 391.87(h) (6) and (7) if it is likely that information about an individual's test can be readily inferred?

Guidance: No. If the monthly statistical summaries received from the laboratory or consortium include data from which the existence of these elements can be readily inferred, a motor carrier is not required to complete these items.

Section 391.89 Access to Individual Test Results or Test Findings

Question 1: A driver whose test is returned positive is subsequently terminated by the employer. The driver initiates an unemployment or workers compensation proceeding. May an employer, without a driver's authorization, disclose information to a decision-maker in an unemployment or workers compensation proceeding?

Guidance: An employer may release information concerning a driver's drug test results after these four actions have taken place:

1. The driver initiates a claim for benefits;

2. The adjudicator requests information from the employer concerning the circumstances under which the driver's employment was terminated;

3. The employer responds to the adjudicator that the driver is medically unqualified to operate a CMV in interstate commerce because the driver does not meet the medical qualification standards of part 391, subpart E; and

4. The adjudicator requests the employer to identify which Federal medical qualification standard in subpart E the driver does not meet.

At this point, the employer may release the information that the driver tested positive for controlled substances during a test which was conducted in accordance with U.S. DOT procedures found at 49 CFR part 40.

Section 391.93 Implementation Schedule

Question 1: If a motor carrier commenced operations after 01/01/92, is the carrier entitled to take advantage of the 12-month phase-in period for random testing provided in § 391.93(e)?

Guidance: Yes.

Question 2: What does the phrase "spread reasonably through the 12-month period" in § 391.93(e)(1) mean?

Guidance: The FHWA regulations do not set the number of selection periods a motor carrier must use during the year. The agency believes, however, that larger motor carriers should perform the selection at least four times a year. A small motor carrier which chooses not to belong to or is not able to belong to a consortium may choose to randomly select drivers fewer than four times a year.

Section 391.95 Drug Use Prohibitions

Question 1: What must be done in order to allow a CMV driver who has been tested and confirmed positive for the use of controlled substances to return to driving in interstate commerce?

Guidance: The driver would have to submit to another controlled substances test with a negative result and be medically recertified by a medical examiner. (See § 391.97, Question Number 2 for additional guidance)

Question 2: When a driver tests positive for controlled substances, may that driver be assigned to non-driving duties?

Guidance: Yes. A driver may be assigned non-driving duties until such time as the driver may successfully pass another controlled substances test.

Question 3: If a driver refuses to submit to a controlled substances test, would he/she be considered medically unqualified?

Guidance: Yes. A refusal to test is considered the same as a positive test and the driver is considered medically unqualified.

Section 391.97 Prescribed Drugs

Question 1: May an MRO declare a positive drug test negative without impugning the laboratory or the methods of collection of the specimen?

Guidance: Yes. The MRO's responsibility is to find possible alternative medical explanations for a positive drug test result. When an MRO contacts a driver to discuss a confirmed positive test result, the MRO is attempting to discover whether any medical explanation that the driver may provide could explain why a positive test was obtained. An MRO's decision to

change a laboratory-confirmed positive test result to an MRO-verified negative test result does not impugn the laboratory or the collection methods.

Question 2: If a driver tests positive, is the driver required to be medically recertified?

Guidance: Yes. The medical examiner must examine the driver again because of the prior use of drugs and certify that the driver is medically qualified to drive. The complete examination need not always be given. The extent to which the driver must be physically reexamined must be determined by the medical examiner.

Section 391.103 Pre-Employment Testing Requirements

Question 1: Must a motor carrier wait for the results from a pre-employment drug test prior to using a driver in interstate commerce?

Guidance: A driver who is required to submit to a pre-employment controlled substance test may not drive until the subpart H drug test negative results are received by the motor carrier using the driver.

Question 2: Must all drivers who do not work for an extended period of time (such as layoffs over the winter months) be pre-employment drug tested each season when they return to work?

Guidance: If the driver is considered to be an employee of the company during the extended (layoff) period, a pre-employment test would not be required so long as the driver has been included in the company's random testing program during the layoff period. However, if the driver was not considered to be an employee of the company at any point during the layoff period, or was not covered by a program, or was uncovered for more than 30 days, then a pre-employment test would be required.

Section 391.105 Biennial (Periodic) Testing Requirements

Question 1: When may biennial (periodic) testing be discontinued?

Guidance: A motor carrier may discontinue biennial (periodic) testing of a specific driver when that specific driver has had at least one prior biennial, pre-employment or random test and the motor carrier is testing at the 50 percent or higher rate under its random program. A motor carrier that is phasing in random testing during the first 12 months cannot discontinue periodic testing until such time as testing is conducted at the 50 percent annualized rate.

Question 2: Must a drug test which will become a part of the periodic physical examination be administered by the company or may the driver choose a medical practitioner himself?

Guidance: The rule clearly places the responsibility for compliance with the rule on the motor carrier. If the motor carrier decides to have the test performed by another entity, FHWA will continue to look to the motor carrier to ensure that any testing performed complies with the rule.

Question 3: What is the relationship between a medical examination and a periodic drug test?

Guidance: Subpart H testing for controlled substances may be performed as an integral part of the medical examination; as a separate collection activity during the visit to the medical examiner's office; or as a totally separate activity from the medical examination.

If subpart H testing is performed as a part of the medical examination, the medical examiner should receive the results of the test from the MRO or the motor carrier. (A release from the person being tested will be needed in order to obtain the results.) If the results are negative and the driver is otherwise physically qualified, the medical examiner should sign the medical examiner's certificate.

If, however, the medical examiner does not receive the subpart H test results or if the testing is performed as a separate activity from the medical examination (either the specimen is collected during the same visit or as a totally separate activity), the medical examiner should perform the medical examination as has been done in the past and sign the certificate if the driver is physically qualified in accordance with § 391.41. In such cases, the medical examiner should line out the reference to subpart H on the medical examiner's certificate and initial the line out. The motor carrier is responsible to ensure that controlled substances tests are performed when and as required and are documented in the drivers' qualification files. Furthermore, a motor carrier may not use a driver until the motor carrier has received negative results of a controlled substances test for pre-employment or periodic testing if the driver's current medical examiner's certificate has expired.

If a periodic test for controlled substances is performed separately from the medical examination, the test should be performed before the expiration of the driver's medical certificate, but no more than 60 days prior to such expiration, to ensure that the subpart H test results are received before the expiration of the certificate.

Question 4: Does subpart H require a CMV driver be issued and carry a medical examiner's certificate which states the outcome of a controlled substances test performed in accordance with subpart H and part 40?

Guidance: No. The only certificate that is required to be in the driver's possession while operating a CMV is the medical examiner's certificate required in § 391.41(a) and, if applicable, a waiver of certain physical defects issued under § 391.49.

Section 391.109 Random Testing Requirements

Question 1: Once an employee is randomly tested during a calendar year, is his/her name removed from the pool of names for the calendar year?

Guidance: No, the names of those tested earlier in the year must be returned to the pool for each new selection. Each driver must be subject to an equal chance of being selected during each selection process.

Question 2: May a motor carrier or consortium include intrastate drivers and other non-covered employees into one random pool?

Guidance: Yes, as long as the motor carrier or consortium can document that it is meeting or exceeding the 50 percent testing rate of U.S. DOT-covered positions.

Question 3: Is it permissible to make random selections by terminals?

Guidance: It would be permissible to use a random selection method that is based on geographic locations or terminals. If random selection is done based on location, a two-stage selection process must be utilized. The first selection would be the location and the second selection would be of employees at that location.

Question 4: When a driver works for two or more different companies in whose random pool must the driver be included?

Guidance: The driver must be in the pool of each motor carrier for which the driver works.

Question 5: After what period of time may a motor carrier remove a casual driver from a random pool?

Guidance: A motor carrier may remove a casual driver, who is not used by the carrier, from its random pool when it no longer expects the driver to be used. The time period should be no longer than one year.

Question 6: If an employee is off work due to a letter of layoff or a long-term illness or injury, should that individual's name be removed from the random pool?

Guidance: No. When the individual is randomly selected for drug testing, the driver's name may be skipped and another driver would be tested. The driver's name would remain in the

selection pool for each period the driver is employed by the motor carrier. The driver's test should not be deferred until the driver returns to duty.

Question 7: When a driver is off because of long-term illness, injury or layoff, how will a motor carrier document its random testing program to indicate the driver was included in the random pool?

Guidance: A notation that the driver was in the random pool and that the driver was ill, injured or laid off would suffice.

Question 8: If an employee is on vacation when randomly selected may the collection of the driver's urine be deferred until he returns to work?

Guidance: Yes. The test should be deferred. A motor carrier may collect urine specimens at any time during a selection period. The motor carrier has from the time of selection of the driver's name until the next selection period to require a driver to submit a urine specimen. In many cases, a driver may return from vacation prior to the next selection and would be required to be tested.

Question 9: An employee takes five consecutive weeks of vacation. The motor carrier selects drivers' names 12 times each year. Is the driver considered to be not employed by the carrier for more than thirty days?

Guidance: No. The driver does not leave the motor carrier's employ when on vacation. A selected driver's name may be skipped. Another driver would be selected and the vacationing driver's name would be placed in the pool for the next selection period.

Question 10: Is it necessary for an individual (owner-operator) to belong to a consortium?

Guidance: Owner-operators are required to belong to a consortium.

Question 11: If a motor carrier joins a consortium, and the consortium is randomly testing at the 50 percent rate, will this rate meet the requirement of the controlled substances testing for the motor carrier even though 50 percent of the motor carriers drivers were not randomly tested?

Guidance: Yes.

Question 12: What evidence should a motor carrier maintain to document that a participating consortium is testing according to the rules?

Guidance: Motor carriers are responsible for documenting compliance with subpart H, including that the random testing program in which their drivers participate is testing at the 50 percent rate. Members should obtain a complete and comprehensive description of the procedures to be used by the consortium. With respect to random testing, this description would include: the random testing pool, the method of selection and notification of drivers, the method of collection (at terminal sites, clinics, "on the road", etc.), methods of reporting the results of the tests on an individual basis as well as summary reports to the members. A key issue is the determination and documentation that the consortium is testing at the prescribed rate.

Question 13: Is it permissible to combine the drivers from the subsidiaries of a parent company into one pool, with the parent company acting as a consortium?

Guidance: Yes, if this newly created consortium is testing at the random rate of 50 percent.

Question 14: When must a motor carrier notify a driver who has been selected for random testing, and when must the driver submit the specimen?

Guidance: A driver does not have to be notified immediately after being selected. A motor carrier may notify and test the selected driver any time before the next selection is made. However, the fact that a driver has been selected shall remain confidential until notification.

Motor carriers must ensure a selected driver, once notified, proceeds immediately to a collection site. Immediately, in this context, means that all the driver's actions, after notification, lead to the expeditious submission of the specimen. This ensures that a driver selected for testing will not have an opportunity to do anything which may affect the outcome of the test. Any activity (e.g., loading, unloading, accepting a new dispatch, making a delivery, completing required paperwork, performing vehicle inspections, etc.) which does not directly lead to submitting a specimen should be deferred by the driver until the specimen is collected. There may be a few activities which must be completed by the driver prior to submitting a specimen. Motor carriers should clearly indicate, in their random testing procedures, what these activities are so that there will be no misunderstandings among their drivers.

Motor carriers choosing to notify their drivers while they are "on the road" should establish procedures which will allow drivers to report to a nearby collection facility before continuing their current trip. This may require a driver to detour from a planned route. Notifying drivers at terminals and while they are in heavily populated areas should minimize any negative effect the expedited compliance may have on a motor carrier's operation.

Question 15: How should a motor carrier compute the number of random tests to be given to ensure that the 50 percent testing rate is achieved given the fluctuations in driver populations and in the high turnover rate of drivers?

Guidance: A motor carrier should take into account fluctuations by estimating the number of random tests needed to be performed over the course of the year. If the carrier's driver workforce is expected to be relatively constant (i.e., the total number of driver positions are approximately the same) then the number of tests to be performed in any given year could be determined by multiplying the average number of driver positions by the testing rate.

If there are large fluctuations in the number of driver positions throughout the year without any clear indication of the average number of driver positions, the motor carrier should make a reasonable estimate of the number of positions. After making the estimate, the motor carrier should then be able to determine the number of tests necessary.

Section 391.113 Post-Accident Testing Requirements

Question 1: If a driver receives a citation for a moving violation by mail, more than 32 hours after a recordable accident as defined in § 390.15, is this cause for a post-accident drug test?

Guidance: No. A post-accident controlled substances test should not be initiated after the 32nd hour following a recordable accident.

Question 2: May a driver subject to post-accident drug testing continue to drive pending receipt of the results of the drug test?

Guidance: A driver could continue to drive, if there is no reasonable cause to believe that the driver used drugs in violation of the FHWA's regulations, and there is no other reason to believe that the driver is not qualified or has been disqualified from driving.

Section 391.117 Disqualification

Question 1: Is a driver who tests positive for controlled substances disqualified under § 391.117?

Guidance: In addition to being medically unqualified, a driver who tests positive or refuses to be tested after a fatal accident will be disqualified by issuance of a letter of disqualification for a period of one year.

Section 391.121 EAP Training Program

Question 1: Does § 391.121 require motor carriers to provide recurrent education and training to drivers or supervisory personnel?

Guidance: No. Section 391.121 provides that EAP training for all

drivers and supervisory personnel must consist of at least 60 minutes. Such training is to be provided to drivers or supervisors used for the first time by the motor carrier.

Question 2: How does a motor carrier document that an employee has completed an EAP?

Guidance: The company should keep in the employee's file documentation that at least 60 minutes of drug information and training were provided to the employee.

Question 3: May a motor carrier accept proof of EAP training for a driver from another motor carrier?

Guidance: Yes. This information should be transmitted from the company that administered the training directly to the company needing documentation of that program.

Question 4: How soon after being hired does the driver have to complete EAP?

Guidance: The FMCSRs are silent on this issue. However, it is recommended that a newly hired driver undergo the mandatory 60 minutes of drug education and training before beginning work for a company.

Section 391.123 After-Care Monitoring

Question 1: Is a driver who tested positive for drug use required to participate in an after-care monitoring program?

Guidance: Subpart H does not require an after-care monitoring program. However, motor carriers providing employees with after-care monitoring programs are required to have drivers continue in the after-care monitoring program.

Question 2: If a driver tests positive and is retained as an employee, but not as a CMV operator, does § 391.123 still apply to that employee?

Guidance: No. The FMCSRs are only applicable to drivers of CMVs in interstate commerce.

Question 3: If a driver who tested positive, but was no longer subject to § 391.123 due to non-driving duties, decides to bid on a CMV driver position, is this driver subject to § 391.123, based on the prior positive drug test?

Guidance: Yes.

Special Topics—Controlled Substances Testing

Question 1: May a motor carrier use more than one MRO?

Guidance: Yes.

Question 2: Who is responsible for the cost of controlled substances tests, the driver, the owner-operator or the motor carrier?

Guidance: The FHWA leaves these decisions to be made between the drivers, owner-operators and the motor carriers.

Question 3: A medical examiner conducts a medical examination of a driver and also acts as MRO for the driver's pre-employment drug test. Though the driver is otherwise physically qualified, the medical examiner declines to issue a medical examiner's certificate because the driver tested positive for controlled substances. What should the medical examiner do when the same driver, under the aegis of a different motor carrier, returns a short period later, is otherwise physically qualified, and tests negative for controlled substances? What, if anything, may the medical examiner reveal to the second motor carrier if he/she declines to issue a certificate to the driver?

Guidance: The driver may be physically unqualified under § 391.41(b)(12) if the medical examiner determines, based on evidence other than the drug test, including knowledge of the prior positive test result, that the driver continues to use prohibited drugs. If the medical examiner so determines, a medical examiner's certificate may not be issued. If the medical examiner determines that the driver does not use prohibited drugs, a medical examiner's certificate may be issued.

The FHWA does not regulate communications between a medical examiner and motor carrier, other than requiring notification by the MRO to the carrier of drug test results under subpart H (see § 391.87(a)). Though medical examiners must retain the physical examination form, motor carriers are not required to do so. Many motor carriers choose, however, to contract with medical examiners to provide copies of the "long form" to the carriers. The FMCSRs leave it solely a matter between the medical examiner and the motor carrier whether the medical examiner merely declines to issue a medical examiner's certificate or also makes available to the carrier the long form, which may include notes on drug use.

Part 392—Driving of Motor Vehicles

Sections Interpreted

392.3 Ill or Fatigued Operator
392.5 Intoxicating Beverage
392.6 Schedules to Conform With Speed Limits
392.7 Equipment, Inspection and Use
392.9 Safe Loading
392.14 Hazardous Conditions; Extreme Caution
392.16 Use of Seat Belts
392.42 Notification of License Revocation
392.60 Unauthorized Persons Not To be Transported
392.62 Bus Driver; Distraction

Section 392.3 Ill or Fatigued Operator

Question 1: What protection is afforded a driver for refusing to violate the FMCSRs?

Guidance: Section 405 of the Surface Transportation Assistance Act of 1982 (49 U.S.C. App. Section 2305) states, in part, that no person shall discharge, discipline, or in any manner discriminate against an employee with respect to the employee's compensation, terms, conditions, or privileges of employment for refusing to operate a vehicle when such operation constitutes a violation of any Federal rule, regulation, standard, or order applicable to CMV safety. In such a case, a driver may submit a signed complaint to the Occupational Safety and Health Administration.

Section 392.5 Intoxicating Beverage

Question 1: Do possession and use of alcoholic beverages in the passenger area of a motorcoach constitute "possession" of such beverages under § 392.5(a)(3)?

Guidance: No.

Question 2: Can a motor carrier, which finds a driver with a detectable presence of alcohol, place him/her out of service in accordance with § 392.5?

Guidance: No. The term "out of service" in the context of § 392.5 refers to an act by a State or Federal official. However, the motor carrier must prevent the driver from being on duty or from operating or being in physical control of a CMV for at least as long as is necessary to prevent a violation of § 392.5.

Question 3: Does the prohibition against carrying alcoholic beverages in § 392.5 apply to a driver who is using a company vehicle, for personal reasons, while off-duty?

Guidance: No. For example, an owner-operator using his own vehicle in an off-duty status, or a driver using a company truck, or tractor for transportation to a motel, restaurant or home, would normally be outside the scope of this section.

Section 392.6 Schedules to Conform With Speed Limits

Question 1: How many miles may a driver record on his/her daily record of duty status and still be presumed to be in compliance with the speed limits?

Guidance: Drivers are required to conform to the posted speed limits prescribed by the jurisdictions in or through which the vehicle is being operated. Where the total trip is on

highways with a speed limit of 65 mph, trips of 550–600 miles completed in 10 hours are considered questionable and the motor carrier may be asked to document that such trips can be made. Trips of 600 miles or more will be assumed to be incapable of being completed without violations of the speed limits and may be required to be documented. In areas where the 55 mph speed limit is in effect, trips of 450–500 miles are open to question, and runs of 500 miles or more are considered incapable of being made in compliance with the speed limit and hours of service limitation.

Section 392.7 Equipment, Inspection and Use

Question 1: Must a driver prepare a written report of a pre-trip inspection performed under § 392.7?

Guidance: No.

Question 2: Must both drivers of a team operation comply with the provisions of § 392.7 before driving?

Guidance: Section 392.7 of the FMCSRs states that a driver must be satisfied that the vehicle is in good working order before operating the vehicle. If a driver is satisfied with a co-driver's inspection, or a safety lane inspection, then the requirement of this section will have been met.

Section 392.9 Safe Loading

Question 1: Is a vehicle's cargo compartment considered sealed according to the terms of § 392.9(b)(4) when it is secured with a padlock, to which the driver holds a key?

Guidance: No. The driver has ready access to the cargo compartment by using the padlock key and would be required to perform the examinations of the cargo and load-securing devices described in § 392.9(b).

Question 2: Does the FHWA have authority to enforce the safe loading requirements against a shipper that is not the motor carrier?

Guidance: No, unless hazardous materials as defined in § 172.101 are involved. It is the responsibility of the motor carrier and the driver to ensure that any cargo aboard a vehicle is properly loaded and secured.

Question 3: How may the motor carrier determine safe loading when a shipper has loaded and sealed the trailer?

Guidance: Under these circumstances, a motor carrier may fulfill its responsibilities for proper loading a number of ways. Examples are:

a. Arrange for supervision of loading to determine compliance; or

b. Obtain notation on the connecting line freight bill that the lading was properly loaded; or

c. Obtain approval to break the seal to permit inspection.

Section 392.14 Hazardous Conditions; Extreme Caution

Question 1: Who makes the determination, the driver or carrier, that conditions are sufficiently dangerous to warrant discontinuing the operation of a CMV?

Guidance: Under this section, the driver is clearly responsible for the safe operation of the vehicle and the decision to cease operation because of hazardous conditions.

Section 392.16 Use of Seat Belts

Question 1: May a driver be exempted from wearing seat belts because of a medical condition such as claustrophobia?

Guidance: No.

Question 2: Are motorcoach passengers required to wear seat belts?

Guidance: No.

Section 392.42 Notification of License Revocation

Question 1: If a driver's driving privilege is suspended as a result of a violation committed off-duty, in a personal vehicle, is the driver required to notify the employing motor carrier under the provisions of § 392.42?

Guidance: Yes.

Section 392.60 Unauthorized Persons not to be Transported

Question 1: Does § 392.60 require a driver to carry a copy of the written authorization (required to transport passengers) on board a CMV?

Guidance: No, the authorization must be maintained at the carrier's principal place of business. At the discretion of the motor carrier, a driver may also carry a copy of the authorization.

Section 392.62 Bus Driver; Distraction

Question 1: Are drivers prohibited by § 392.62 from using CB radios and earphones?

Guidance: No, CB radios and earphones are not prohibited under the regulations, as long as they do not distract the driver and the driver is capable of complying with § 391.41(b)(11).

Part 393—Parts and Accessories Necessary for Safe Operation

Sections Interpreted

393.11 Lighting Devices and Reflectors
393.17 Lamps and Reflectors-Combinations in Driveaway-Towaway Operation
393.24 Requirements for Head Lamps and Auxiliary Road Lighting Lamps
393.25 Requirements for Lamps Other Than Head Lamps
393.28 Wiring to be Protected
393.31 Overload Protective Devices
393.40 Required Brake Systems
393.41 Parking Brake Systems
393.42 Brakes Required on All Wheels
393.43 Breakaway and Emergency Braking System
393.44 Front Brake Lines, Protection
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393.51 Warning Devices and Gauges
393.52 Brake Performance
393.60 Glazing in Specified Openings
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393.65 All Fuel Systems
393.67 Liquid Fuel Tanks
393.70 Coupling Devices and Towing Methods, Except for Driveaway-Towaway Operations
393.71 Coupling Devices and Towing Methods, Driveaway-Towaway Operations
393.75 Tires
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393.88 Television Receivers
393.89 Buses, Driveshaft Protection
393.92 Buses, Marking Emergency Doors
393.93 Seats, Seat Belt Assemblies and Seat Belt Assembly Anchorages
393.95 Emergency Equipment on All Power Units
393.100 General Rules for Protection Against Shifting or Falling Cargo
393.102 Securement Systems
393.106 Front-End Structure
393.201 Frames

Special Topics

Section 393.11 Lighting Devices and Reflectors

Question 1: What is the definition of "body" with respect to trucks and trailers?

Guidance: The FMCSRs do not include a definition of "body." However, a truck or trailer body generally means the structure or fixture designed to contain, or support, the material or property to be transported on the vehicle.

Section 393.17 Lamps and Reflectors-Combinations in Driveaway-Towaway Operation

Question 1: What are the lighting requirements when a tow truck is pulling a wrecked or disabled vehicle?

Guidance: A wrecker pulling a vehicle would be considered a driveaway-towaway operation and would have to be equipped with the lighting devices specified in § 393.17 when operating in interstate commerce.

Section 393.24 Requirements for Head Lamps and Auxiliary Road Lighting Lamps

Question 1: Must additional lamps that are not required be operative if all required lamps are operative?
Guidance: No.

Section 393.25 Requirements for Lamps Other Than Head Lamps

Question 1: Are lighting devices on mobile homes/house trailers required to be permanently mounted?
Guidance: No. The movement of mobile homes/house trailers is considered to be a driveaway-towaway operation.
Question 2: Are there any special lighting requirements for large containers?
Guidance: No.
Question 3: What are the lighting requirements when a container assumes the structural requirements of a trailer?
Guidance: All relevant requirements of the regulations must be met by this container/trailer.

Section 393.28 Wiring to be Protected

Question 1: Does a frame channel of a CMV constitute a protective "sheath or tube" as specified in § 393.28?
Guidance: No. To be acceptable, a sheath or tube must enclose the wires throughout their circumference. In the absence of a sheath or tube, the group of wires must be protected by nonconductive tape, braid, or other covering capable of withstanding severe abrasion.

Section 393.31 Overload Protective Devices

Question 1: Must all trailers be equipped with overload protective devices?
Guidance: No. Trailers do not need overload protective devices when protection of trailer circuits is provided on the towing vehicle. A circuit breaker is required only when the head lamp circuit is protected in common with one or more other circuits. A circuit breaker, if required, must be an automatic reset type.

Section 393.40 Required Brake Systems

Question 1: May a system such as "driveline brakes" be used as an emergency brake provided it complies with the requirements of § 393.52?
Guidance: Yes. Commercial motor vehicles which were not subject to the emergency brake requirements of FMVSS Nos. 105 or 121 may use "driveline brakes" provided those vehicles meet the requirements of § 393.52.

Section 393.41 Parking Brake Systems

Question 1: May the "park" position of a CMV's transmission be used as a parking brake to comply with the § 393.41?
Guidance: No. The "park" position of the transmission is only a locking device used to lock the transmission.
Question 2: Does § 393.41 prohibit air brake systems from being equipped with a means to release the spring brakes for purposes of towing disabled vehicles in emergency situations?
Guidance: No, provided the brakes are designed and maintained so they cannot be released unless adequate energy is available to make immediate reapplication of the brakes when the brake system is operable.
Question 3: Are parking brakes required on every CMV manufactured before March 7, 1990?
Guidance: No.

Section 393.42 Brakes Required on All Wheels

Question 1: Do retractable or lift axles have to be equipped with brakes?
Guidance: Yes, when the wheels are in contact with the roadway.
Question 2: How does the term GVW, as used in the diagram in the FMCSRs under § 393.42, relate to the term GVWR used in § 393.42(b)(3)?
Guidance: GVW was originally used to determine whether a CMV was required to be equipped with brakes. In the December 7, 1988, **Federal Register** (53 FR 49380), the term GVWR was erroneously substituted for GVW.
Question 3: Are unladen converter dollies covered by the exemption in § 393.42(b)(3)?
Guidance: Yes. However, if the converter dolly is laden, the brakes must be operable.
Question 4: Is a three-axle steering pole trailer (dolly) required to have operable brakes on the steering axle?
Guidance: Such trailers do not have to have operable brakes on the steering axle, provided the combination of vehicles meets the stopping distance requirements of § 393.52.
Question 5: Section 393.42(b)(3) of the FMCSRs states that any full trailer, any semitrailer, or any pole trailer having a GVWR of 3,000 pounds or less must be equipped with brakes if the weight of the towed vehicle resting on the towing vehicle exceeds 40 percent of the GVWR of the towing vehicle. Is the manufacturer of the trailer responsible for ensuring that the trailer is equipped with brakes when required?
Guidance: No. The motor carrier pulling the trailer is responsible for ensuring that the trailer is in compliance with all applicable FMCSRs.

Section 393.43 Breakaway and Emergency Braking System

Question 1: Are tractor protection valves required by § 393.43(b), or may similar devices be used?
Guidance: No. Similar devices may be used provided the devices meet the performance requirements of § 393.43(b).
Question 2: Are all brakes on a trailer required to be applied automatically upon breakaway?
Guidance: Yes.

Section 393.44 Front Brake Lines, Protection

Question 1: Does the term "rear wheels" include the tag axle on a bus/motorcoach?
Guidance: Yes. The braking system on a bus/motorcoach must be constructed so that if any brake line to either front wheel is broken, the driver can apply the brakes to all of the wheels on each rear axle.

Section 393.48 Brakes to be Operative

Question 1: Do surge brakes comply with § 393.48?
Guidance: No. Section 393.48 requires that brakes be operable at all times. Generally, surge brakes are only operative when the vehicle is moving in the forward direction and as such do not comply with § 393.48 (see question number 1 in § 393.49).
Question 2: If a CMV manufactured on or after July 25, 1980 (see § 393.42) has brake components on the front axle, and the brakes are not operable, does the vehicle comply with § 393.48?
Guidance: No.

Section 393.49 Single Valve to Operate All Brakes

Question 1: Does a combination of vehicles using a surge brake to activate the towed vehicle's brakes comply with § 393.49?
Guidance: No. The surge brake cannot keep the trailer brakes in an applied position. Therefore, the brakes on the combination of vehicles are not under the control of a single valve as required by § 393.49 (see question number 1 in § 393.48).

Section 393.51 Warning Devices and Gauges

Question 1: Is the low pressure warning device required to operate before the tractor protection valve?
Guidance: No. Section 393.51 does not explicitly require the warning device to operate before the protection valve. It is implied that if the operating

pressure of the warning device is at least 1/2 of the governor cut-out pressure, and that pressure is not less than the pressure at which the protection valve (or similar device) activates, the requirements of § 393.51 are satisfied.

Question 2: Is the vacuum portion of vacuum-assisted hydraulic brake systems required to have a warning device?

Guidance: No. Only the hydraulic portion of vacuum-assisted hydraulic brake systems is required to have a warning device. FMVSS No. 105 does not require a warning device for the vacuum portion of the vacuum-assisted hydraulic brake systems. It is the intention of the FHWA that § 393.51 be consistent with FMVSS No. 105.

Question 3: Are vacuum gauges required on the vacuum portion of vacuum-assisted hydraulic brakes?

Guidance: No. Section 393.51(d)(2) requires that only CMVs with vacuum brakes (not hydraulic brakes applied or assisted by vacuum) be equipped with a vacuum gauge.

Question 4: Is a warning device required in a CMV with a single hydraulic brake system which uses the driveline parking brake as the emergency brake system?

Guidance: No. Warning devices are not required on such CMVs because the driver will be given ample warning of system failure by the movement and feel of the brake pedal.

Question 5: What difference, if any, is there between a warning device and a warning signal?

Guidance: For purposes of § 393.51, the terms may be used interchangeably.

Section 393.52 Brake Performance

Question 1: May the information in the stopping distance table be used to determine the stopping distances at speeds greater than 20 mph?

Guidance: No, it is not intended to be used to predict or determine stopping distances at speeds greater than 20 mph.

Section 393.60 Glazing in Specified Openings

Question 1: May windshields and side windows be tinted?

Guidance: Yes, as long as the light transmission is not restricted to less than 70 percent of normal (refer to the American Standards Association publication Z26.1–1966 and Z26.1a–1969).

Question 2: May a decal designed to comply with the periodic inspection documentation requirements of § 396.17 be displayed on the windshields or side windows of a CMV?

Guidance: Yes, provided the decal is being used in lieu of an inspection report and is in compliance with § 393.60(c).

Question 3: If a crack extended into the thickness of the glass at such an angle as to measure ¼" or more, measuring from the top edge of the crack on the outside surface of the windshield to vertical line drawn through the windshield to the far edge of this angled crack on the inside of the windshield, would this constitute a crack of ¼" or more in width as defined in § 393.60(b)(2)?

Guidance: No. The crack, in order to fall outside the exception, would have to be a gap of ¼" or more on the same surface of the windshield.

Section 393.61 Window Construction

Question 1: Do school buses used for purposes other than school bus operations (as defined in § 390.5), have to meet additional emergency exits requirements under § 393.61?

Guidance: Yes. Section 393.61(b)(2) says that "a bus, including a school bus, manufactured on and after September 1, 1973," [emphasis added] must conform with NHTSA's § 571.217 (FMVSS 217). At the time this provision was adopted, FMVSS 217 applied only to other buses and it was optional for school buses. The FHWA inserted the language, "including school buses," in § 393.61(b)(2) to make clear that school buses used in interstate commerce and, therefore, subject to the FMCSRs, were required to comply with the bus exit standards in Standard FMVSS 217. Section 393.61(b)(3) regarding push-out windows provides that older buses must conform with the requirements of §§ 393.61(b) or 571.217. Buses which are subject to § 571.217 would follow NHTSA's interpretation on push-out windows. Buses which are subject to § 393.61(b)(1) of the FMCSRs are required to have emergency windows that are either push-out windows or that have laminated safety glass that can be pushed out in a manner similar to a push-out window.

Section 393.62 Window Obstructions

Question 1: May a bus being operated by a for-hire motor carrier of passengers, under contract with a governmental agency to provide transportation of prisoners in interstate commerce, be allowed to operate with security bars covering the emergency push out windows, and with locked emergency door exits?

Guidance: Yes. Even when the transportation is performed by a contract carrier, the welfare, safety and security of the prisoners is under the authority of the governmental corrections agency and, thus, the agency may require additional security measures. For these types of operations, a carrier may meet the special security requirements of the governmental corrections agency regarding emergency exits. However, CMVs that have been modified to meet the security requirements of the corrections agency may not be used for other purposes that are subject to the FMCSRs unless they meet the emergency exit requirements.

Section 393.65 All Fuel Systems

Question 1: May a fuel fill pipe opening be placed above the passenger floor level if it is not physically within the passenger compartment?

Guidance: Yes. In addition, the fill pipe may intrude into the passenger compartment as long as the fill pipe opening complies with § 393.65(b)(4), and the fill pipe is protected by a housing or covering to prevent leakage or fumes into the passenger compartment.

Section 393.67 Liquid Fuel Tanks

Question 1: May a properly vented fuel cap be used on a fuel tank equipped with another fuel venting system?

Guidance: Yes (see § 393.3).

Question 2: Do the FMCSRs specify a particular pressure relief system?

Guidance: No, but the performance standards of § 393.67(d) must be met.

Question 3: What standards under the FMCSRs must be met when a liquid fuel tank is repaired or replaced?

Guidance: A replacement/repaired tank must meet the applicable standards in § 393.67.

Section 393.70 Coupling Devices and Towing Methods, Except for Driveaway-Towaway Operations

Question 1: Is there a minimum number of fasteners required to fasten the upper fifth wheel plate to the frame of a trailer?

Guidance: The FMCSRs do not specify a minimum number of fasteners. However, the industry recommends that a minimum of 10 5/8 inch bolts be used. If 1/2 inch bolts are used, the industry recommends at least 14 bolts. The CVSA has adopted these industry standards as a part of its vehicle out-of-service criteria.

Question 2: When two safety chains are used, must the ultimate combined breaking strength of each chain be equal to the gross weight of the towed vehicle(s) or would the requirements be met if the combined breaking strength of the two chains is equal to the gross weight of the towed vehicle(s).

Guidance: If the ultimate combined breaking strength of the two chains is equal to the gross weight of the towed

vehicle(s), the requirements of § 393.70(d) are satisfied. It should be noted that some States may have more stringent requirements for safety chains.

Section 393.71 Coupling Devices and Towing Methods, Driveaway-Towaway Operations

Question 1: May a fifth wheel be considered as a coupling device when towing a semi-trailer in a driveaway-towaway operation?

Guidance: Yes. Section 393.71(g) requires the use of a tow-bar or a saddle-mount. Since a saddle-mount performs the function of a conventional fifth wheel the use of a fifth wheel is consistent with the requirements of this section.

Section 393.75 Tires

Question 1: If a CMV has a defective tire, may the driver remove the defective tire from the axle and drive with three tires on an axle instead of four?

Guidance: Yes, provided the weight on the single remaining tire does not exceed the maximum allowed under § 393.75(f).

Question 2: May a CMV be operated with tires that carry a greater weight than the weight marked on the sidewall of the tires?

Guidance: Yes, but only if the CMV is being operated under the terms of a State-issued special permit, and at a reduced speed that is appropriate to compensate for tire loading in excess of the rated capacity.

Question 3: May a vehicle transport hazardous materials when equipped with retreaded tires?

Guidance: Yes. The only CMV that may not utilize retreaded tires is a bus, and then only on its front wheels.

Question 4: May tires be filled with materials other than air (e.g., silicone, polyurethane)?

Guidance: Section 393.75 does not prohibit the use of tires filled with material other than air. However, § 393.3 may prohibit the use of such tires under certain circumstances. Some substances used in place of air in tires may not maintain a constant physical state at different temperatures. While these substances are solid at lower temperatures, the increase in temperature from highway use may result in the substance changing from a solid to a liquid. The use of a substance which could undergo such a change in its physical characteristics is not safe, and is not in compliance with § 393.3.

Section 393.76 Sleeper Berths

Question 1: If a compartment in a CMV is no longer used as a sleeper berth, must it be maintained and equipped as a sleeper berth as required in § 393.76?

Guidance: No.

Section 393.78 Windshield Wipers

Question 1: Are windshield washer systems required?

Guidance: No, only windshield wipers are required.

Section 393.81 Horn

Question 1: Do the FMCSRs specify what type of horn is to be used on a CMV?

Guidance: No.

Question 2: Are there established criteria in the FMCSRs to determine the minimum sound level of horns on CMVs?

Guidance: No.

Section 393.82 Speedometer

Question 1: What does the phrase "reasonable accuracy" mean?

Guidance: "Reasonable accuracy" is interpreted to mean accuracy to within plus or minus 5 mph at a speed of 50 mph.

Section 393.83 Exhaust System

Question 1: Is a heat shield mandatory on a vertical exhaust stack?

Guidance: No. However, § 393.83 requires the placement of the exhaust system in such a manner as to prevent the burning, charring, or damaging of the electrical wiring, the fuel supply, or any combustible part of the CMV.

Question 2: Does § 393.83 specify the type of exhaust system, vertical or horizontal, to be used on trucks or truck-tractors?

Guidance: No.

Section 393.87 Flags on Projecting Loads

Question 1: May a triangular-shaped flag or device be used by itself to mark an oversized load?

Guidance: No. However, nothing prohibits using a triangular-shaped flag in conjunction with the prescribed flag.

Section 393.88 Television Receivers

Question 1: Does § 393.88 restrict the use of closed circuit monitor devices being used as a safety viewing system that would eliminate blind-side motor carrier accidents?

Guidance: No. The restriction of this section would not apply because the device cannot receive television broadcasts or be used for the viewing of video tapes.

Section 393.89 Buses, Driveshaft Protection

Question 1: For the purposes of § 393.89, would a spline and yoke that is secured by a nut be considered a sliding connection?

Guidance: No. To be considered a sliding connection, the spline must be able to move within the sleeve. When the end of the spline is secured by a nut, it no longer has that freedom.

Question 2: On multiple driveshaft buses, does § 393.89 require that all segments of the driveshaft be protected no matter the segments' length?

Guidance: Yes. Each driveshaft must have one guard or bracket for each end of a shaft which is provided with a sliding connection (spline or other such device).

Question 3: How does an existing pillow bearing (shaft support) on a multiple driveshaft system affect the requirement?

Guidance: It does not affect the requirement. It is part of the requirement.

Section 393.92 Buses, Marking Emergency Doors

Question 1: Is a contractor-operated school bus operating in interstate commerce required to have emergency lights over the exit door?

Guidance: Yes. Any bus used in interstate commerce for other than school bus operations, as defined in § 390.5, is subject to the FMCSRs.

Section 393.93 Seats, Seat Belt Assemblies and Seat Belt Assembly Anchorages

Question 1: If a CMV, other than a motorcoach, is equipped with a passenger seat, is a seat belt required for the passenger seat?

Guidance: Yes.

Section 393.95 Emergency Equipment on all Power Units

Question 1: May other warning devices be used in lieu of the devices required by § 393.95?

Guidance: No. However, other additional warning devices may be used in conjunction with the required devices provided those devices do not decrease the effectiveness of the required warning devices.

Question 2: Are pressure gauges the only acceptable means for a visual determination that a fire extinguisher is fully charged?

Guidance: No, as long as there is some means to permit a visual determination that a fire extinguisher is fully charged.

Section 393.100 General Rules for Protection Against Shifting or Falling Cargo

Question 1: When securing cargo, is the use of a tiedown every 10 linear feet, or fraction thereof, adequate?

Guidance: Yes, as long as the aggregate strength of the tiedowns is equal to the requirements of § 393.102, and each article is secured.

Question 2: Are CMVs transporting metal objects required to use option C?

Guidance: Only those CMVs which cannot comply with options A, B, or D are required to conform to option C (see § 393.100(c)).

Question 3: Are the requirements of § 393.100 the only cargo securement requirements motor carriers must comply with?

Guidance: No. A motor carrier, when transporting cargo, must comply with all the applicable cargo securement requirements of subpart I and § 392.9.

Question 4: Do the rules for protection against shifting or falling cargo apply to CMVs with enclosed cargo areas?

Guidance: Yes. All CMVs transporting cargo must comply with the applicable provisions of §§ 393.100–393.106 (subpart I) to prevent the shifting or falling of cargo aboard the vehicle.

Question 5: May an intermodal container be transported aboard a flatbed or lowboy trailer?

Guidance: Yes, if the flatbed or lowboy trailer is equipped with integral latching devices.

Question 6: How many tiedowns are required for the transportation of logs on pole trailers with trip-bolsters or other stanchions?

Guidance: Section 393.100(b) provides motor carriers with several options for complying with § 393.100. Although option B specifically addresses the use of tiedowns for each 10 linear feet of lading or fraction thereof (with certain exceptions), option D indicates the motor carrier may use "other means * * * which are similar to, and at least as effective * * *" as options A, B, and C. Therefore, the trip-bolsters or other stanchions in conjunction with securement devices meeting the requirements of § 393.102 may (depending on the amount by which the logs exceed the length of the trailer) be used to satisfy option D.

Section 393.102 Securement Systems

Question 1: What is the relationship between the working-load limit of the securement device and the ultimate breaking strength of the same device?

Guidance: The working-load limit, as used in the CVSA/FHWA out of service criteria, is equal to one-third of the ultimate breaking strength of the same device.

Section 393.106 Front-end Structure

Question 1: When describing a headerboard or cab protection device, the regulations state that similar devices may be used. What is meant by the term similar devices?

Guidance: The term similar devices has reference to devices equivalent in strength and function, though not necessary in appearance and construction as headerboards.

Section 393.201 Frames

Question 1: Are cross members of CMVs considered part of the frame?

Guidance: Yes.

Question 2: Does § 393.201 of the FMCSRs apply to trailers?

Guidance: No. Section 393. 201 is specific to buses, trucks, and truck tractors.

Special Topics—CMV Parts and Accessories

Question 1: Do tires marked "NHS" (not for highway service) mean that highway use is prohibited by § 393.75?

Guidance: No, provided the use of such tires does not decrease the safety of operations (see Periodic Inspection Requirements, Appendix G to subpart B).

Part 395—Hours of Service of Drivers

Sections Interpreted

395.1 Scope of the Rules in This Part
395.2 Definitions
395.3 Maximum Driving and On-Duty Time
395.8 Drivers's Record of Duty Status
395.13 Drivers Declared Out of Service

Section 395.1 Scope of the Rules in This Part

Question 1: If a driver invokes the exception for adverse driving conditions, does a supervisor need to sign the driver's record of duty status when he/she arrives at the destination?

Guidance: No.

Question 2: May a driver use the adverse driving conditions exception if he/she has accumulated driving time and on-duty (not driving) time, that would put the driver over 15 hours or over 70 hours in 8 consecutive days?

Guidance: No. The adverse driving conditions exception applies only to the 10-hour rule.

Question 3: Are there allowances made in the FMCSRs for delays caused by loading and unloading?

Guidance: No. Although, the regulations do make some allowances for unforeseen contingencies such as in § 395.1(b) adverse driving conditions, and § 395.1(b)(2) emergency conditions, loading and unloading delays do not fall within the definition of these sections.

Question 4: May time spent in sleeping facilities being transported as cargo (e.g., boats, campers, travel trailers) be recorded as sleeper berth time?

Guidance: No, it cannot be recorded as sleeper berth time.

Question 5: May sleeper berth time and off-duty periods be combined to meet the 8-hour off-duty requirement?

Guidance: Yes, as long as the 8 hour period is consecutive and not broken by on duty or driving activities. This does not apply to drivers at natural gas or oil well locations who may separate the periods.

Question 6: What constitutes the 100 air-mile radius exemption?

Guidance: The term "air-mile" is internationally defined as a "nautical mile" which is equivalent to 6,076 feet/ 1,852 meters. Thus, the 100 air miles are equivalent to 115.08 statute-miles or 185.2 kilometers.

Question 7: What documentation must a driver claiming the 100 air-mile radius exemption (§ 395.1(e)) have in his/her possession?

Guidance: None.

Question 8: Must a motor carrier retain 100 air-mile driver time records at its principal place of business?

Guidance: No. However, upon request by an authorized representative of the FHWA or State official, the records must be produced within a reasonable period of time (2 working days) at the location where the review takes place.

Question 9: How may a driver utilize the adverse driving conditions exception, or the emergency conditions exception as found in § 395.1(b), to preclude an hour of service violation?

Guidance: An absolute prerequisite for any such claim must be that the trip involved is one which could normally and reasonably have been completed without a violation and that the unforeseen event occurred after the driver began the trip.

Drivers who are dispatched after the motor carrier has been notified or should have known of adverse driving conditions are not eligible for the two hours additional driving time provided for under § 395.1(b), Adverse driving conditions. The term "in any emergency" shall not be construed as encompassing such situations as a driver's desire to get home, shippers' demands, market declines, shortage of drivers, or mechanical failures.

Question 10: May a driver record sleeper berth time as off-duty time on line one of the record of duty status?

Guidance: No. The driver's record of duty status must accurately reflect the driver's activities.

Question 11: May an operation that changes its normal work-reporting location on an intermittent basis utilize the 100 air-mile radius exemption?

Guidance: Yes. However, when the motor carrier changes the normal

reporting location to a new reporting location, that trip (from the old location to the new location) must be recorded on the record of duty status because the driver has not returned to his/her normal work reporting location.

Question 12: When must a driver prepare a record of duty status for a day when the driver exceeds the 100 air-mile radius exemption criteria?

Guidance: A driver must begin to prepare the record of duty status for the day immediately after he/she becomes aware that the terms of the 100 air-mile radius exemption cannot be met.

Question 13: When a driver fails to meet the provisions of the 100 air-mile radius exemption (§ 395.1(e)), is the driver required to have copies of his/her records of duty status for the previous seven days? Must the driver prepare daily records of duty status for the next seven days?

Guidance: The driver must only have in his/her possession a record of duty status for the day he/she does not qualify for the exemption.

Question 14: May a driver use a record of duty status form as a time record to meet the requirement contained in the 100 air-mile radius exemption?

Guidance: Yes, provided the form contains the mandatory requirements.

Question 15: Must the driver's name and each date worked appear on the time record prepared to comply with § 395.1(e), 100 air-mile radius driver?

Guidance: Yes. The driver's name or other identification and date worked must be shown on the time record.

Question 16: May drivers who work split shifts take advantage of the 100 air-mile radius exemption found at § 395.1(e)?

Guidance: Yes. Drivers who work split shifts may take advantage of the 100 air-mile radius exemption if:

1. The drivers operate within a 100 air-mile radius of their normal work-reporting locations;

2. The drivers return to their work-reporting locations and are released from work at the end of each shift and each shift is less than 12 consecutive hours;

3. The drivers are off-duty for more than 8 consecutive hours before reporting for their first shift of the day and spend less than 12 hours, in the aggregate, on-duty each day;

4. The drivers do not exceed a total of 10 hours driving time and are afforded 8 or more consecutive hours off-duty prior to their first shift of the day; and

5. The employing motor carriers maintain and retain the time records required by 395.1(e)(5).

Question 17: A company prepares and maintains time records for drivers classified as 100 air-mile radius drivers. The drivers usually do not work every day of the week. Does the motor carrier have to maintain time records for the days the drivers do not work?

Guidance: The motor carrier must maintain time records stating that the drivers were off-duty during the days the drivers did not work. However, if the drivers are off consecutive days, the employer may prepare a single time record stating the days each driver was off-duty.

Question 18: May a driver who is taking advantage of the 100 air-mile radius exemption in § 395.1(e) be intermittently off-duty during the period away from the work-reporting location?

Guidance: Yes, a driver may be intermittently off-duty during the period away from the work-reporting location provided the driver meets all requirements for being off-duty. If the driver's period away from the work-reporting location includes periods of off-duty time, the time record must show both total on duty time and total off-duty time during his/her tour of duty. In any event, the driver must return to the work-reporting location and be released from work within 12 consecutive hours.

Question 19: Is the exemption contained in § 395.1(f) concerning department store deliveries during the period from December 10 to December 25 limited to only drivers employed by department stores?

Guidance: No. The exemption applies to all drivers engaged solely in making local deliveries from retail stores and/or retail catalog businesses to the ultimate consumer, when driving solely within a 100-air mile radius of the driver's work-reporting location, during the dates specified.

Section 395.2 Definitions

Question 1: A company told all of its drivers that it would no longer pay for driving from the last stop to home and that this time should not be shown on the time cards. Is it a violation of the FMCSRs to operate a CMV from the last stop to home and not show that time on the time cards?

Guidance: The FMCSRs do not address questions of pay. All the time spent operating a CMV for, or at the direction of, a motor carrier must be recorded as driving time.

Question 2: What conditions must be met for a CMV driver to record meal and other routine stops made during a tour of duty as off-duty time?

Guidance: 1.The driver must have been relieved of all duty and responsibility for the care and custody of the vehicle, its accessories, and any cargo or passengers it may be carrying.

2. The duration of the driver's relief from duty must be a finite period of time which is of sufficient duration to ensure that the accumulated fatigue resulting from operating a CMV will be significantly reduced.

3. If the driver has been relieved from duty, as noted in (1) above, the duration of the relief from duty must have been made known to the driver prior to the driver's departure in written instructions from the employer. There are no record retention requirements for these instructions on board a vehicle or at a motor carrier's principal place of business.

4. During the stop, and for the duration of the stop, the driver must be at liberty to pursue activities of his/her own choosing and to leave the premises where the vehicle is situated.

Question 3: Do telephone calls to or from the motor carrier that momentarily interrupt a driver's rest period constitute a change of the driver's duty status?

Guidance: Telephone calls of this type do not prevent the driver from obtaining adequate rest. Therefore, the FHWA does not consider these brief telephone calls to be a break in the driver's off-duty status.

Question 4: If a driver is required, by a motor carrier, to carry a pager/beeper to receive notification to contact the motor carrier for a duty assignment, how should this time be recorded?

Guidance: The time is to be recorded as off-duty.

Question 5: May a sleeper berth be used for a period of less than 2 hours' duration?

Guidance: Yes. The sleeper berth may be used for such periods of inactivity. Periods of time of less than 2 hours spent in a sleeper berth may not be used to accumulate the 8 hours of off-duty time required by § 395.3 of the FMCSRs.

Question 6: If a "driver trainer" occasionally drives a CMV, thereby becoming a "driver" (regardless of whether he/she is paid for driving), must the driver record all non-driving (training) time as on-duty (not driving)?

Guidance: Yes.

Question 7: A driver drives on streets and highways during the week and jockeys CMVs in the yard (private property) on weekends. How is the yard time to be recorded?

Guidance: On-duty, driving.

Question 8: If a driver is permitted to use a CMV for personal reasons, how must the driving time be recorded?

Guidance: When a driver is relieved from work and all responsibility for

performing work, time spent traveling to and from the driver's work reporting location is considered off-duty time. The type of conveyance used between the terminal and the driver's home, restaurant, etc., would not alter the situation. The driver who uses a motor carrier's CMV for transportation home, and is subsequently called by the employing carrier and is dispatched from home, would be on-duty from the time the driver leaves home. A driver placed out of service for exceeding the requirements of the hours of service regulations may not drive a CMV to any location to obtain rest.

Question 9: How does compensation relate to on-duty time?

Guidance: The fact that a driver is paid for a period of time does not always establish that the driver was on-duty for the purposes of part 395 during that period of time. A driver may be relieved of duty under certain conditions and still be paid.

Question 10: Must non-transportation-related work for a motor carrier be recorded as on-duty time?

Guidance: Yes. All work for a motor carrier, whether compensated or not, must be recorded as on-duty time. The term "work" as used in the definition of "on-duty time" in § 395.2 of the FMCSRs is not limited to driving or other non-transportation-related employment.

Question 11: How should time spent in transit on a ferry boat be recorded?

Guidance: Time spent on a ferry by drivers may be recorded as off-duty time if they are completely relieved from work and all responsibility and obligation to the motor carriers for which they drive. This relief must be consistent with existing regulations of the ferry company and the U.S. Coast Guard.

Question 12: What is the duty status of a co-driver (truck) who is riding seated next to the driver?

Guidance: On-duty (not driving).

Question 13: How must a CMV driver driving a non-CMV at the direction of a motor carrier record this time?

Guidance: If CMV drivers operate motor vehicles with GVWRs of 10,000 pounds or less at the direction of a motor carrier, the FHWA requires those drivers to maintain records of duty status and record such time operating as on-duty (not driving).

Question 14: How must the time spent operating a motor vehicle on the rails (roadrailers) be recorded?

Guidance: On-duty (not driving).

Question 15: Must a driver engaged in union activities affecting the employing motor carrier record such time as on-duty (not driving) time?

Guidance: A driver's union activities which involve the employing motor carrier must be recorded as on-duty (not driving) time.

Question 16: How is the 50 percent driving time in the definition of "driver-salesperson" in § 395.2 determined?

Guidance: The driving time is determined on a weekly basis. The driver must be employed solely as a driver-salesperson. The driver-salesperson may not participate in any other type of work activity.

Question 17: May a driver change from and to a driver salesman status at any time?

Guidance: Yes, if the change is made on a weekly basis.

Question 18: Is the time spent by CMV drivers, submitting to random and post-accident drug tests, and time spent traveling to and from collection sites at the direction of the motor carrier, on-duty time within the meaning of § 395.2(a)?

Guidance: The time spent at a collection site, as well as traveling to and from a collection site, at the direction of a motor carrier is considered to be on-duty time.

Question 19: May the time a driver spends attending safety meetings, ceremonies, celebrations, or other company-sponsored safety events be recorded as off-duty time?

Guidance: Yes, if attendance is voluntary.

Question 20: How must a driver record time spent on-call awaiting dispatch?

Guidance: The time that a driver is free from obligations to the employer and is able to use that time to secure appropriate rest may be recorded as off-duty time. The fact that a driver must also be available to receive a call in the event the driver is needed at work, even under the threat of discipline for non-availability, does not by itself impair the ability of the driver to use this time for rest. If the employer generally requires its drivers to be available for call after a mandatory rest period which complies with the regulatory requirement, the time spent standing by for a work-related call, following the required off-duty period, may be properly recorded as off-duty time.

Question 21: How does a driver record the hours spent driving in a school bus operation when he/she also drives a CMV for a company subject to the FMCSRs?

Guidance: If the school bus meets the definition of a CMV, it must be recorded as driving time.

Question 22: A motor carrier relieves a driver from duty. What is a suitable facility for resting?

Guidance: The only resting facility which the FHWA regulates is the sleeper berth. The sleeper berth requirements can be found in § 393.76.

Question 23: How many times may a motor carrier relieve a driver from duty within a tour of duty?

Guidance: There is no limitation on the number of times a driver can be relieved from duty during a tour of duty.

Question 24: If a driver is transported by automobile from the point of a breakdown to a terminal, and then dispatched on another run, how is the time spent in the automobile entered on the record of duty status? How is the time entered if the driver goes off-duty once he reaches the terminal?

Guidance: The time spent in the automobile would be on-duty (not driving) if dispatched on another run once he/she reaches the terminal, and off-duty if he/she is given 8 consecutive hours off-duty upon reaching the terminal.

Question 25: When a driver experiences a delay on an impassable highway, should the time he/she is delayed be entered on the record of duty status as driving time or on-duty (not driving)?

Guidance: Delays on impassable highways must be recorded as driving time because § 395.2 defines "driving time" as all time spent at the driving controls of a CMV in operation.

Question 26: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver required to record such time as off-duty, or is it the driver's decision whether such time is recorded as off-duty?

Guidance: It is the employer's choice whether the driver shall record stops made during a tour of duty as off-duty time. However, employers may permit drivers to make the decision as to how the time will be recorded.

Question 27: A driver has been given written permission by his/her employer to record meal and other routine stops made during a tour of duty as off-duty time. Is the driver allowed to record his stops during a tour of duty as off-duty time when the CMV is laden with hazardous materials and the CMV is parked in a truck stop parking lot?

Guidance: Drivers may record meal and other routine stops made during a tour of duty as off-duty time, except when a CMV is laden with explosive hazardous materials classified as hazard divisions 1.1, 1.2, or 1.3 (formerly Class A or B explosives). In addition, when hazardous materials classified under hazard divisions 1.1, 1.2, or 1.3 are on a CMV, the employer and the driver

must comply with § 397.5 of the FMCSRs.

Section 395.3 Maximum Driving and On-Duty Time

Question 1: May a motor carrier switch from a 60-hour/7-day limit to a 70-hour/8-day limit or vice versa?

Guidance: Yes. The only restriction regarding the use of the 70-hour/8-day rule is that the motor carrier must have CMVs operating every day of the week. The 70-hour/8-day rule is a permissive provision in that a motor carrier with vehicles operating every day of the week is not required to use the 70-hour/8-day rules for calculating its drivers' hours of service. The motor carrier may, however, assign some or all of its drivers to operate under the 70-hour/8-day rule if it so chooses. The assignment of individual drivers to the 60-hour/7-day or the 70-hour/8-day time rule is left to the discretion of the motor carrier.

Question 2: Does a driver, employed full time by one motor carrier using the 60-hours in 7-days rule, and part-time by another motor carrier using the 70-hours in 8-days rule, have the option of using either rule in computing his hours of service?

Guidance: No. The motor carrier that employs the driver on a full-time basis determines which rule it will use to comply with § 395.3(b). The driver does not have the option to select the rule he/she wishes to use.

Question 3: May a carrier which provides occasional, but not regular service on every day of the week, have the option of the 60 hours in 7 days or 70 hours in 8 days with respect to all drivers, during the period in which it operates one or more vehicles on each day of the week?

Guidance: Yes.

Question 4: A Canadian driver is subjected to a log book inspection in the U.S. The driver has logged one or more 13-hour driving periods while in Canada during the previous 7 days, but has complied with all the FMCSRs while operating in the U.S. Has the driver violated the 10-hour driving requirement in the U.S.?

Guidance: No. Canadian drivers are required to comply with the FMCSRs only when operating in the U.S.

Section 395.8 Driver's Record of Duty Status

Question 1: How should a change of duty status for a short period of time be shown on the driver's record of duty status?

Guidance: Short periods of time (less than 15 minutes) may be identified by drawing a line from the appropriate on-duty (not driving) or driving line to the remarks section and entering the amount of time, such as "six minutes," and the geographic location of the duty status change.

Question 2: May a rubber stamp signature be used on a driver's record of duty status?

Guidance: No, a driver's record of duty status must bear the signature of the driver whose time is recorded thereon.

Question 3: If a driver's record of duty status is not signed may enforcement action be taken on the current day's record if it contains false information?

Guidance: Enforcement action can be taken against the driver even though that record may not be signed. The regulations require the driver to keep the record of duty status current to the time of last change of duty status (whether or not the record has been signed). Also, § 395.8(e) states that making false reports shall make the driver and/or the carrier liable to prosecution.

Question 4: Must drivers, alternating between interstate and intrastate commerce, record their intrastate driving time on their record of duty status?

Guidance: Yes, to account for all on-duty time for the prior seven or eight days preceding an interstate movement.

Question 5: May a driver, being used for the first time, submit records of duty status for the preceding seven days in lieu of a signed statement?

Guidance: The carrier may accept true and accurate copies of the driver's record of duty status for the preceding seven days in lieu of the signed statement required by § 395.8(j)(2).

Question 6: How should multiple short stops in a town or city be recorded on a record of duty status?

Guidance: All stops made in any one city, town, village or municipality may be computed as one. In such cases the sum of all stops should be shown on a continuous line as on-duty (not driving). The aggregate driving time between such stops should be entered on the record of duty status immediately following the on-duty (not-driving) entry. The name of the city, town, village, or municipality, followed by the State abbreviation where all the stops took place, must appear in the "remarks" section of the record of duty status.

Question 7: Is the Canadian bilingual or any other record of duty status form acceptable in the U.S.?

Guidance: Yes, provided the grid format and specific information required are included.

Question 8: May a motor carrier return a driver's completed record of duty status to the driver for correction of inaccurate or incomplete entries?

Guidance: Yes, although the regulations do not require a driver to submit "corrected" records of duty status. A driver may submit corrected records of duty status to the motor carrier at any time. It is suggested the carrier mark the second submission "CORRECTED COPY" and staple it to the original submission for the required retention period.

Question 9: May a duplicate copy of a record of duty status be submitted if an original was seized by an enforcement official?

Guidance: A driver must prepare a second original record of duty status to replace any page taken by an enforcement official. The driver should note that the first original had been taken by an enforcement official and the circumstances under which it was taken.

Question 10: What regulation, interpretation, and/or administrative ruling requires a motor carrier to retain supporting documents and what are those documents?

Guidance: Section 395.8(k)(1) requires motor carriers to retain all supporting documents at their principal places of business for a period of 6 months from date of receipt.

Supporting documents are the records of the motor carrier which are maintained in the ordinary course of business and used by the motor carrier to verify the information recorded on the driver's record of duty status. Examples are: bills of lading, carrier pros, freight bills, dispatch records, driver call-in records, gate record receipts, weight/scale tickets, fuel receipts, fuel billing statements, toll receipts, international registration plan receipts, international fuel tax agreement receipts, trip permits, port of entry receipts, cash advance receipts, delivery receipts, lumper receipts, interchange and inspection reports, lessor settlement sheets, over/short and damage reports, agricultural inspection reports, Commercial Vehicle Safety Alliance reports, accident reports, telephone billing statements, credit card receipts, driver fax reports, on-board computer reports, border crossing reports, custom declarations, traffic citations, overweight/oversize reports and citations, and/or other documents directly related to the motor carrier's operation, which are retained by the motor carrier in connection with the operation of its transportation business. Supporting documents may include other documents which the motor

carrier maintains and can be used to verify information on the driver's records of duty status. If these records are maintained at locations other than the principal place of business but are not used by the motor carrier for verification purposes, they must be forwarded to the principal place of business upon a request by an authorized representative of the FHWA or State official within 2 business days.

Question 11: Is a driver who works for a motor carrier on an occasional basis and who is regularly employed by a non-motor carrier entity required to submit either records of duty status or a signed statement regarding the hours of service for all on-duty time as "on-duty time" as defined by § 395.2?

Guidance: Yes.

Question 12: May a driver use "white-out" liquid paper to correct a record of duty status entry?

Guidance: Any method of correction would be acceptable so long as it does not negate the obligation of the driver to certify by his or her signature that all entries were made by the driver and are true and correct.

Question 13: Are drivers required to draw continuous lines between the off-duty, sleeper berth, driving, and on-duty (not driving) lines on a record of duty status when changing their duty status?

Guidance: No. Under § 395.8(h) the FMCSRs require that continuous lines be drawn between the appropriate time markers within each duty status line, but they do not require that continuous lines be drawn between the appropriate duty status lines when drivers change their duty status.

Question 14: What documents satisfy the requirement to show a shipping document number on a record of duty status as found in § 395.8(d)(11)?

Guidance: The following are some of the documents acceptable to satisfy the requirement: shipping manifests, invoices/freight bills, trip reports, charter orders, special order numbers, bus bills or any other document that identifies a particular movement of passengers or cargo.

In the event of multiple shipments, a single document will satisfy the requirement. If a driver is dispatched on a trip, which is subsequently completed, and then is dispatched on another trip on that calendar day, two shipping document numbers or two shippers and commodities must be shown in the remarks section of the record of duty status.

Question 15: If a driver from a foreign country only operates in the U.S. one day a week, is he required to keep a record of duty status for every day?

Guidance: A foreign driver, when in the U.S., must produce a current record of duty status, and sufficient documentation to account for his duty time for the previous 6 days.

Question 16: Are drivers required to include their total on duty time for the previous 7/8 days (as applicable) on the driver's record of duty status?

Guidance: No.

Section 395.13 Drivers Declared Out of Service

Question 1: May a driver operate any motor vehicle, at the direction of the motor carrier, after being placed out of service for an hours of service violation?

Guidance: An out of service order issued under § 395.13 extends only to the operation of CMVs. State procedures may differ.

Question 2: May a driver operating a CMV under a lease arrangement with a motor carrier, after being placed out of service for an hours of service violation, cancel the lease and continue to operate the vehicle as a private personal conveyance?

Guidance: No. Cancellation of a lease does not relieve the driver of the responsibility of complying with the out of service order which prohibits the driver from operating a CMV.

Part 396—Inspection, Repair and Maintenance

Sections Interpreted

396.1 Scope
396.3 Inspection, Repair, and Maintenance
396.9 Inspection of Motor Vehicles in Operation
396.11 Driver Vehicle Inspection Report(s)
396.13 Driver Inspection
396.17 Periodic Inspection
396.19 Inspector Qualifications
396.21 Periodic Inspection Recordkeeping Requirements
396.25 Qualifications of Brake Inspectors

Section 396.1 Scope

Question 1: What vehicles are subject to part 396?

Guidance: All vehicles falling within the definition of a CMV as defined in § 390.5.

Section 396.3 Inspection, Repair, and Maintenance

Question 1: What is meant by "systematic inspection, repair and maintenance"?

Guidance: Generally, systematic means a regular or scheduled program to keep vehicles in a safe operating condition. Section 396.3 does not specify inspection, maintenance or repair intervals because such intervals are fleet specific and, in some instances, vehicle specific. The inspection, repair and maintenance intervals are to be determined by the motor carrier. The requirements of §§ 396.11, 396.13, and 396.17 are in addition to the systematic inspection, repair and maintenance required by § 396.3.

Question 2: Section 396.3(b)(5) refers to a record of tests. What tests are required of push-out windows and emergency door lamps on buses?

Guidance: Generally, inspection of a push-out window would require pushing out the window. However, if the window may be destroyed by pushing out to test its proper functioning, a visual inspection may qualify as a test if the inspector can ascertain the proper functioning of the window without opening it. Checking to ensure that the rubber push-out molding is properly in place and has not deteriorated and that any handles or marking instructions have not been tampered with would meet the test requirement. Inspection of emergency door marking lights would require opening the door to test the lights.

Question 3: Who has the responsibility of inspecting and maintaining leased vehicles and their maintenance records?

Guidance: The motor carrier must either inspect, repair, maintain, and keep suitable records for all vehicles subject to its control for 30 consecutive days or more, or cause another party to perform such activities. The motor carrier is solely responsible for ensuring that the vehicles under its control are in safe operating condition and that defects have been corrected.

Question 4: Is computerized recordkeeping of CMV inspection and maintenance information permissible under § 396.3 of the FMCSRs?

Guidance: Yes, if the minimum inspection, repair, and maintenance records required are included in the computer information system and can be reproduced on demand.

Question 5: Where must vehicle inspection and maintenance records be retained if a vehicle is not housed or maintained at a single location?

Guidance: The motor carrier may retain the records at a location of its choice. If the vehicle maintenance records are retained at a location apart from the vehicle, the motor carrier is not relieved of its responsibility for ensuring that the records are current and factual. In all cases, however, upon request of the FHWA the maintenance records must be made available within a reasonable period of time (2 working days).

Section 396.9 Inspection of Motor Vehicles in Operation

Question 1: Under what conditions may a vehicle that has been placed "out of service" under § 396.3 be moved?

Guidance: The vehicle may be moved by being placed entirely upon another vehicle, towed by a vehicle equipped with a crane or hoist, or driven if the "out of service" condition no longer exists.

Question 2: Is it the intent of § 396.9 to allow "out of service" vehicles to be towed?

Guidance: Yes; however, not all out of service vehicles may be towed away from the inspection location. The regulation sets up a flexible situation that will permit the inspecting officer to use his/her best judgment on a case-by-case basis.

Section 396.11 Driver Vehicle Inspection Report(s)

Question 1: Does § 396.11 require the DVIR to be turned in each day by a driver dispatched on a trip of more than one day's duration?

Guidance: A driver must prepare a DVIR at the completion of each day's work and shall submit those reports to the motor carrier upon his/her return to the home terminal. This does not relieve the motor carrier from the responsibility of effecting repairs and certification of any items listed on the DVIR, prepared at the end of each day's work, that would be likely to affect the safety of the operation of the motor vehicle.

Question 2: Does § 396.11 require that the power unit and the trailer be inspected?

Guidance: Yes. A driver must be satisfied that both the power unit and the trailer are in safe operating condition before operating the combination.

Question 3: May more than one power unit be included on the DVIR if two or more power units were used by a driver during one day's work?

Guidance: No. A separate DVIR must be prepared for each power unit operated during the day's work.

Question 4: Does § 396.11 require a motor carrier to use a specific type of DVIR?

Guidance: A motor carrier may use any type of DVIR as long as the report contains the information and signatures required.

Question 5: Does § 396.11 require a separate DVIR for each vehicle and a combination of vehicles or is one report adequate to cover the entire combination?

Guidance: One vehicle inspection report may be used for any combination, provided the defects or deficiencies, if any, are identified for each vehicle and the driver signs the report.

Question 6: Does § 396.11(c) require a motor carrier to effect repairs of all items listed on a DVIR prepared by a driver before the vehicle is subsequently driven?

Guidance: The motor carrier must effect repairs of defective or missing parts and accessories listed in Appendix G to the FMCSRs before allowing the vehicle to be driven.

Question 7: What constitutes a "certification" as required by § 396.11(c)(1) and (2)?

Guidance: A motor carrier or its agent must state, in writing, that certain defects or deficiencies have been corrected or that correction was unnecessary. The declaration must be immediately followed by the signature of the person making it.

Question 8: Who must certify under § 396.11(c) that repairs have been made when a motor vehicle is repaired en route by the driver or a commercial repair facility?

Guidance: Either the driver or the commercial repair facility.

Question 9: Must certification for trailer repairs be made?

Guidance: Yes. Certification must be made that all reported defects or deficiencies have been corrected or that correction was unnecessary. The certification need only appear on the carrier's copy of the report if the trailer is separated from the tractor.

Question 10: What responsibility does a vehicle leasing company, engaged in the daily rental of CMVs, have regarding the placement of the DVIR in the power unit?

Guidance: A leasing company has no responsibility to comply with § 396.11 unless it is the carrier. It is the responsibility of a motor carrier to comply with part 396 regardless of whether the vehicles are owned or leased.

Question 11: Which carrier is to be provided the original of the DVIR in a trip lease arrangement?

Guidance: The motor carrier controlling the vehicle during the term of the lease (i.e. the lessee) must be given the original of the DVIR. The controlling motor carrier is also responsible for obtaining and retaining records relating to repairs.

Question 12: Must the motor carrier's certification be shown on all copies of the DVIR?

Guidance: Yes.

Question 13: Must a DVIR carried on a power unit during operation cover both the power unit and trailer being operated at the time?

Guidance: No. The DVIR must cover the power unit being operated at the time. The trailer identified on the report may represent one pulled on the preceding trip.

Question 14: In instances where the DVIR has not been prepared or cannot be located, is it permissible under § 396.11 for a driver to prepare a DVIR based on a pre-trip inspection and a short drive of a motor vehicle?

Guidance: Yes. Section 396.11 of the FMCSRs places the responsibility on the motor carrier to require its drivers to prepare and submit the DVIR. If, in unusual circumstances, the DVIR has not been prepared or cannot be located the motor carrier may cause a road test and inspection to be performed for safety of operation and the DVIR to be prepared.

Question 15: Is it permissible to use the back of a record of duty status (daily log) as a DVIR?

Guidance: Yes, but the retention requirements of § 396.11 and § 395.8 must be met.

Question 16: Does § 396.11 require that specific parts and accessories that are inspected be identified on the DVIR?

Guidance: No.

Question 17: Is the Ontario pre-trip/post-trip inspection report acceptable as a DVIR under § 396.11?

Guidance: Yes, provided the report from the preceding trip is carried on board the motor vehicle while in operation and all entries required by §§ 396.11, 396.13 are contained on the reports.

Question 18: Where must DVIRs be maintained?

Guidance: Since § 396.11 is not specific, the DVIRs may be kept at either the motor carrier's principal place of business or the location where the vehicle is housed or maintained.

Question 19: Who is responsible for retaining DVIRs for leased vehicles including those of owner-operators?

Guidance: The motor carrier is responsible for retaining the original copy of each DVIR and the certification of repairs for at least 3 months from the date the report was prepared.

Question 20: Is a multi-day DVIR acceptable under §§ 396.11 and 396.13?

Guidance: Yes, provided all information and certifications required by §§ 396.11 and 396.13 are contained on the report.

Question 21: Is a DVIR required by a motor carrier operating only one tractor trailer combination?

Guidance: No. One tractor semi-trailer/full trailer combination is considered one motor vehicle. However, a carrier operating a single truck tractor and multiple semi-trailers which are not

capable of being operated as one combination unit would be required to prepare DVIRs.

Question 22: Are motor carriers required to retain the "legible copy" of the last vehicle inspection report (referenced in § 396.11(c)(3)) which is carried on the power unit?

Guidance: No. The record retention requirement refers only to the original copy retained by the motor carrier.

Question 23: Does the record retention requirement of § 396.11(c)(2) apply to all DVIRs, or only those reports on which defects or deficiencies have been noted?

Guidance: The record retention requirement applies to all DVIRs.

Section 396.13 Driver Inspection

Question 1: If a DVIR does not indicate that certain defects have been repaired, and the motor carrier has not certified in writing that such repairs were considered unnecessary, may the driver refuse to operate the motor vehicle?

Guidance: The driver is prohibited from operating the motor vehicle if the motor carrier fails to make that certification. Operation of the vehicle by the driver would cause the driver and the motor carrier to be in violation of § 396.11(c) and both would be subject to appropriate penalties. However, a driver may sign the certification of repairs as an agent of the motor carrier if he/she is satisfied that the repairs have been performed.

Question 2: At the end of the day's work and upon completion of the required DVIR, what does the driver do with the copy of the previous DVIR carried on the power unit?

Guidance: There is no requirement that the driver submit the copy of that previous DVIR to the motor carrier nor is there a retention requirement for the motor carrier.

Section 396.17 Periodic Inspection

Question 1: Some of a motor carrier's vehicles are registered in a State with a mandated inspection program which has been determined to be as effective as the Federal periodic inspection program, but these vehicles are not used in that State. Is the motor carrier required to make sure the vehicles are inspected under that State's program in order to meet the Federal periodic inspection requirements?

Guidance: No. Those CMVs that are subject to a mandatory State inspection program may meet the periodic inspection requirements through that State's inspection program. Section 396.17 through 396.23 requirements may be met through a motor carrier self-inspection, a third party inspection, a CVSA inspection, or a periodic inspection performed in any State with a program that FHWA determines as effective as the part 396 requirements. However, compliance with the Federal periodic inspection requirements does not relieve a motor carrier from State registration requirements.

Question 2: May the due date for the next inspection satisfy the requirements for the inspection date on the sticker or decal?

Guidance: No. The rule requires that the date of the inspection be included on the report and sticker or decal. This date may consist of a month and a year.

Question 3: Must each vehicle in a combination carry separate periodic inspection documentation?

Guidance: Yes, unless a single document clearly identifies all of the vehicles in the CMV combination.

Question 4: Does the sticker have to be located in a specific location on the vehicle?

Guidance: No. The rule does not specify where the sticker, decal or other form of documentation must be located. It is the responsibility of the driver to produce the documentation when requested. Therefore, the driver must know the location of the sticker and ensure that all information on it is legible and current. The driver must also be able to produce the inspection report if that form of documentation is used.

Question 5: Is new equipment required to pass a periodic inspection under § 396.17?

Guidance: Yes, but a dealer who meets the inspection requirements may provide the documentation for the initial periodic inspection.

Question 6: Are the Federal periodic inspection requirements applicable to U.S. Government trailers operated by motor carriers engaged in interstate commerce?

Guidance: Yes. The transportation is not performed by a governmental entity but by a for-hire carrier in interstate commerce.

Question 7: Does a CMV equipped with tires marked "Not for Highway Use" meet the periodic inspection requirements?

Guidance: No. Appendix G to Subchapter B—Minimum Periodic Inspection Standards, lists tires so labeled as a defect or deficiency which would prevent a vehicle from passing an inspection.

Question 8: Is a CMV subject to a roadside inspection by State or Federal inspectors if it displays a periodic inspection decal or other evidence of a periodic inspection being conducted in the past 12 months?

Guidance: Yes. Evidence of a valid periodic inspection only precludes a citation for a violation of § 396.17.

Question 9: Is a State required to accept the periodic inspection program of another State having a periodic inspection program meeting minimum FHWA standards as contained in Appendix G to the FMCSRs?

Guidance: Yes. Section 210 of the Motor Carrier Safety Act of 1984 establishes the principle that State inspections meeting federally approved criteria must be recognized by every other State.

Question 10: Do vehicles inspected under a periodic Canadian inspection program comply with the FHWA periodic inspection standards?

Guidance: Yes. The FHWA has determined that the inspection programs of all of the Canadian Provinces meet or exceed the Federal requirements for a periodic inspection program.

Question 11: Must a specific form be used to record the periodic inspection mandated by § 396.17?

Guidance: No. Section 396.21 does not designate any particular form, decal or sticker, but does specify the information which must be shown on these documents.

Question 12: May an inspector certify a CMV as meeting the periodic inspection standards of § 396.17 if he/she cannot see all components required to be inspected under Appendix G?

Guidance: No. The affixing of a decal or sticker or preparation of a report as proof of inspection indicates compliance with all requirements of Appendix G to part 396.

Question 13: If an intermodal container is attached to a chassis at the time of a periodic inspection, must the container also be inspected to comply with § 396.17 inspection requirements?

Guidance: Yes. Safe loading is one of the inspection areas covered under Appendix G. If the chassis is loaded at the time of inspection, the method of securement of the container to the chassis must be included in the inspection. Although integral securement devices such as twist locks are not listed in Appendix G, the operation of these devices must be included in the inspection without removal of the container.

Section 396.19 Inspector Qualifications

Question 1: May an entity other than a motor carrier maintain the evidence of inspector qualifications required by § 396.19(b)?

Guidance: Yes. In those cases in which the inspection is performed by a commercial garage or similar facility or a leasing company, the motor carrier may allow the commercial garage or leasing company to maintain a copy of the inspector's qualifications on behalf of the motor carrier. The motor carrier, however, is responsible for obtaining copies of evidence of the inspector's qualifications upon the request of Federal, State or local officials. If, for whatever reason, the motor carrier is unable to obtain this information from the third party, the motor carrier may be cited for non-compliance with § 396.19.

Question 2: Is there a specific form or format to be used in ensuring that inspectors are qualified in accordance with § 396.19?

Guidance: No. Section 396.19(b) requires the motor carrier to retain evidence satisfying the standards without specifying any particular form.

Section 396.21 Periodic Inspection Recordkeeping Requirements

Question 1: What recordkeeping requirements under § 396.21 is a carrier subject to when it utilizes an FHWA-approved State inspection program?

Guidance: The motor carrier must comply with the recordkeeping requirements of the State. The requirements specified in § 396.21(a) & (b) are applicable only in those instances where the motor carrier self-inspects its CMVs or has an agent perform the periodic inspection.

Section 396.25 Qualifications of Brake Inspectors

Question 1: Does a CDL with an air brake endorsement qualify a person as a brake inspector under § 396.25?

Guidance: No.

Question 2: May a driver who does not have the necessary experience perform the adjustment under directions issued by telephone by a qualified inspector?

Guidance: Yes. A driver is permitted to perform brake adjustments at a roadside inspection providing they are done under the supervision of a qualified brake adjuster and the carrier is willing to assume responsibility for the proper adjustment.

Question 3: May a driver or other motor carrier employee be qualified as a brake inspector under § 396.25 by way of experience or training to perform brake adjustments without being qualified to perform other brake-related tasks such as the repair or replacement of brake components?

Guidance: Yes. A driver may be qualified by the motor carrier to perform a limited number of tasks in connection with the brake system, e.g., inspect and/or adjust the vehicle's brakes, but not repair them.

Question 4: Would a mechanic who is employed by a leasing company and only works on CMVs that the leasing company leases to other motor carriers be required to meet the brake inspector certification requirements?

Guidance: No. The mechanic is not required to meet the certification requirements of § 396.25(d) since he/she is not employed by a motor carrier.

Part 397—Transportation of Hazardous Materials; Driving and Parking Rules

Sections Interpreted

397.1 Application of the Rules in this Part
397.5 Attendance and Surveillance of Motor Vehicles
397.7 Parking
397.9 Routes
397.13 Smoking

Section 397.1 Application of the Rules in This Part

Question 1: Who is subject to part 397?

Guidance: Part 397 applies to interstate motor carriers that transport hazardous materials in types and quantities requiring marking or placarding under § 177.823. Wholly intrastate operations of an interstate motor carrier, when hauling hazardous materials subject to § 177.823, are subject to this part. Clearly the intrastate operations of an interstate motor carrier are subject to part 397 when § 177.823 is applicable.

Question 2: Is the interstate transportation of anhydrous ammonia, in nurse tanks, subject to part 397?

Guidance: The requirements of part 397 do not apply to the direct application of ammonia to fields from nurse tanks. However, part 397 does apply to the transportation of nurse tanks on public highways, when performed by interstate motor carriers.

Section 397.5 Attendance and Surveillance of Motor Vehicles

Question 1: What defines a "public highway" or "shoulder" of a public highway for the purpose of determining violations under § 397.5(c)?

Guidance: The applicable engineering/highway design plans.

Question 2: Must a driver of a motor vehicle transporting hazardous materials, other than Division 1.1, 1.2, or 1.3 (Class A or B) explosives, always maintain an unobstructed view and be within 100 feet of that vehicle?

Guidance: No. If the vehicle is not located on a public street or highway or on the shoulder of a public highway, then the vehicle need not be within 100 feet of the driver's unobstructed view, unless it contains Division 1.1, 1.2, or 1.3 (Class A or B) materials.

Question 3: May a motor carrier consider fuel stop operators as "qualified representative(s)" for purposes of the attendance and surveillance requirements of § 397.5?

Guidance: Yes. However, the fuel stop operator must be able to perform the required functions.

Question 4: Who determines what is a "safe haven"?

Guidance: The selection of safe havens is a decision of the "competent government authorities" having jurisdiction over the area. The definition found in § 397.5(d)(3) is purposely void of any specific guidelines or criteria. A truck stop may be considered a safe haven if it is so designated by local or State governmental authorities.

Section 397.7 Parking

Question 1: When is a vehicle considered "parked"?

Guidance: For the purposes of part 397, "parked" means the vehicle is stopped for a purpose unrelated to the driving function (e.g., fueling, eating, loading, unloading).

Question 2: What constitutes "knowledge and consent of the person in charge," as used in § 397.7(a)(2)?

Guidance: In order to satisfy the requirement for "knowledge and consent," actual notice of "the nature of the hazardous materials the vehicle contains" must be given to the person in charge, and that person must affirmatively agree to allow the vehicle to be parked on the property under his/her control.

Question 3: Is the motor carrier or driver relieved from the requirements of § 397.7(a)(3) if the person in charge of the private property is notified of the explosive hazardous materials contained in the vehicle?

Guidance: No. A vehicle transporting Division 1.1, 1.2, or 1.3 (Class A or B) explosives must meet the 300-foot separation requirement, regardless of any notification made to any person.

Question 4: What is meant by the term "brief periods when necessities of operation require . . ." in § 397.7(a)(3)?

Guidance: Brief periods of time depend upon the "necessities of operation" in question. Parking a vehicle containing Division 1.1, 1.2 or 1.3 (Class A or B) materials closer than 300 feet to buildings, dwellings, etc. for periods up to 1 hour for a driver to eat would not be permitted under the provisions of § 397.7(a)(3). Parking at fueling facilities to obtain fuel, oil, etc., or at a carrier's terminal would be considered necessities of operation.

Question 5: May a safe haven be designated within 300 feet of an area where buildings and other structures are likely to be occupied by large numbers of people?

Guidance: The selection and designation of safe havens are a decision of the "competent government authorities" having jurisdiction over the area.

Question 6: If a motor vehicle is transporting Division 1.1, 1.2, or 1.3 (Class A or B) explosives and is parked in a safe haven, must it be in compliance with the parking requirements of § 397.7?

Guidance: Yes. Safe havens, as outlined in § 397.5, relate to attendance and surveillance requirements. The parking restrictions of § 397.7 still apply.

Question 7: May a driver transporting Division 1.1, 1.2 or 1.3 (Class A or B) materials park within 100 feet of an eating establishment in order to meet the attendance and surveillance requirements?

Guidance: No, because it will result in a violation of § 397.7(a)(3).

Section 397.9 Routes

Question 1: May a motor vehicle which contains hazardous materials use expressways or major thoroughfares to make deliveries within a populated area?

Guidance: Yes, unless otherwise specifically prohibited by State or local authorities. In many instances a more circuitous route may present greater hazards due to increased exposure. However, in those situations where a vehicle is passing through a populated or congested area, use of a beltway or other bypass would be considered the appropriate route, regardless of the additional economic burden.

Section 397.13 Smoking

Question 1: May a driver of a CMV transporting hazardous materials, listed in § 397.13, smoke while at the controls or in the sleeper berth of the vehicle?

Guidance: No. All persons are prohibited from smoking or carrying lighted smoking materials at any time while "on or within 25 feet" of such a vehicle. The word "on" includes any time while in the cab, sleeper berth, etc.

Part 399—Employee Safety and Health Standards

Sections Interpreted

399.207 Truck and Truck-Tractor Access Requirements

Section 399.207 Truck and Truck-Tractor Access Requirements

Question 1: If a high-profile COE truck or truck-tractor is equipped with a seat on the passenger's side, must steps and handholds be provided for any person entering or exiting on that side of the vehicle?

Guidance: Yes, all high-profile COE trucks and truck-tractors shall be equipped on each side of the vehicle where a seat is located, with a sufficient number of steps and handholds to comply with the requirements of § 399.207(a).

Question 2: What does the foot accommodation rule mean when it states: "The step need not retain the disc at rest"?

Guidance: The note under § 399.207(b)(4) states that the disc referred to is a measuring device. The step or rung does not have to be configured in such a manner as to keep the measuring disc from falling off the step or rung.

Question 3: In § 399.207(b)(4), Illustration III, what does the unshaded area within the disc suggest?

Guidance: The unshaded area illustrates the height of the open area required for a driver to insert his or her foot.

Question 4: May the step be a rung? If so, what minimum diameter must the rung be?

Guidance: Yes, the step may be a rung. There is no minimum requirement for the diameter of a step rung. However, it must meet the performance requirements in § 399.207(b)(5).

(5 U.S.C. 553(b); 49 CFR 1.48)

Issued on: November 3, 1993.

Rodney E. Slater,

Federal Highway Administrator.

[FR Doc. 93–27711 Filed 11–16–93; 8:45 am]

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federal register

Wednesday
November 17, 1993

Part III

Department of Justice

Bureau of Prisons

28 CFR Part 504

Control, Custody, Care, Treatment and Instruction of Inmates; Acceptance of Donations; Rule

DEPARTMENT OF JUSTICE

Bureau of Prisons

28 CFR Part 504

Control, Custody, Care, Treatment and Instruction of Inmates; Acceptance of Donations

AGENCY: Bureau of Prisons, Justice.

ACTION: Final rule.

SUMMARY: In this document, the Bureau of Prisons is amending its regulations on the acceptance of donations for use by the Bureau of Prisons or Federal Prison Industries, Inc. This amendment delegates to the Warden the authority to accept unsolicited donations to an institution of printed material, audio tapes, or video tapes. The intended effect of this action is to ensure the efficient and economical operation of the Bureau of Prisons and Federal Prison Industries, Inc.

EFFECTIVE DATE: November 17, 1993.

ADDRESSES: Office of General Counsel, Bureau of Prisons, room 754, 320 First Street, NW., Washington, DC 20534.

FOR FURTHER INFORMATION CONTACT: Roy Nanovic, Office of General Counsel, Bureau of Prisons, phone (202) 514–6655.

SUPPLEMENTARY INFORMATION: The Bureau of Prisons is amending its regulations on the acceptance of donations for use by the Bureau of Prisons or Federal Prison Industries, Inc. The authority to accept such donations was statutorily provided to the Attorney General in 18 U.S.C. 4044. This authority has been delegated by the Attorney General to the Director of the Bureau of Prisons in 28 CFR 0.96(s). A final rule on this subject was published in the **Federal Register** on September 22, 1989 (54 FR 39094).

The current rulemaking revises 28 CFR 504.1 in order to include specific delegation of authority to the Warden and to make an editorial change. Section 504.2 is amended by revising paragraph (a) to include procedures pertinent to the Warden's authority to accept or reject donations.

Because these regulations pose no burden on the public, and are intended to provide agency management guidelines for implementing 18 U.S.C. 4044, the Bureau finds good cause for exempting the provisions of the Administrative Procedure Act (5 U.S.C. 553) requiring notice of proposed rulemaking, the opportunity for public comment, and delay in effective date. Members of the public may submit comments concerning this rule by writing the previously cited address. These comments will be considered but will receive no response in the **Federal Register**.

The Bureau of Prisons has determined that this rule is not a significant regulatory action for the purpose of E.O. 12866. After review of the law and regulations, the Director, Bureau of Prisons has certified that this rule, for the purpose of the Regulatory Flexibility Act (Pub. L. 96–354), does not have a significant impact on a substantial number of small entities.

List of Subjects in 28 CFR Part 504

Administrative practice and procedure, Prisoners.

Kathleen M. Hawk,

Director, Bureau of Prisons.

Accordingly, pursuant to the rulemaking authority vested in the Attorney General in 5 U.S.C. 552(a) and delegated to the Director, Bureau of Prisons in 28 CFR 0.96(p), subchapter A of 28 CFR chapter V is amended as set forth below.

SUBCHAPTER A—GENERAL MANAGEMENT AND ADMINISTRATION

PART 504—ACCEPTANCE OF DONATIONS

1. The authority citation for 28 CFR part 504 continues to read as follows:

Authority: 5 U.S.C. 301; 18 U.S.C. 3621, 4001, 4003, 4042, 4044, 4081; 28 U.S.C. 509, 510; 28 CFR 0.95–0.99.

2. Section 504.1 is revised to read as follows:

§ 504.1 Purpose and scope.

Pursuant to 18 U.S.C. 4044, and as delegated to the Director, Bureau of Prisons, in 28 CFR 0.96(s), any devise, bequest, gift or donation of money or property for use by the Bureau of Prisons or Federal Prison Industries, Inc., may be accepted in accordance with these rules. Pursuant to 28 CFR 0.97, the Director's authority to accept such donations is redelegated to the Assistant Directors and Regional Directors of the Bureau of Prisons. Authority to accept unsolicited donations to an institution of printed material, audio tapes, or video tapes is further delegated to the Warden.

3. Section 504.2 is amended by revising paragraph (a) to read as follows:

§ 504.2 Procedures.

(a)(1) Other than as provided for in paragraph (a)(2) of this section, in accepting any devise, bequest, gift or donation, the Regional Director or Assistant Director must determine in writing that the property or money is appropriate to the program and mission of the Bureau of Prisons or Federal Prison Industries, Inc., that it does not create a conflict of interest for the Bureau of Prisons or Federal Prison Industries, Inc., and that it provides benefits to the Bureau of Prisons or Federal Prison Industries, Inc., in excess of any incidental costs incurred in obtaining or operating the donation.

(2) In accepting a donation to an institution of printed material, audio tapes, or video tapes, the Warden must determine if the material is consistent with the intent of Bureau policy (including the provisions of paragraph (a)(1) of this section). The Warden shall document in writing the type of donation, the donor organization, and the decision to accept or reject such donation.

* * * * *

[FR Doc. 93–28183 Filed 11–16–93; 8:45 am]

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The President

Proclamation 6623 of November 14, 1993

Geography Awareness Week, 1993 and 1994

By the President of the United States of America

A Proclamation

From ancient times, when prehistoric peoples used colored clay and charred sticks to draw primitive maps on cave walls, our ancestors have sought to identify their relationship to their surroundings.

Geography, from the Greek "geographia"—earth description—is the field of knowledge that examines those connections that link the earth and its inhabitants.

After a recent decline in the emphasis placed on the study of geography, it is once again receiving the attention it deserves as a necessary element in the education of our citizens. The world has become smaller—politically, economically, and socially—and geographic literacy, knowledge, and understanding of other cultures have increasingly become more and more essential.

America must keep pace with the rest of the world. Our Nation's ability to interact in a global environment depends greatly upon our capacity to comprehend and operate within an interconnected sphere. Young Americans must possess the tools necessary to succeed in this endeavor. They must exhibit a basic understanding of the relationships between countries, between peoples, and among themselves. Without this knowledge, our future leaders will run the risk of taking a narrow and uninformed view of the world as they pursue international initiatives.

My Administration's education reform legislation, Goals 2000: Educate America Act, proposes to specifically include geography in the National Education Goals, and we support the development of voluntary national curricular standards to include geography.

We are making progress. By committing ourselves to this goal, we expect results—and we have already begun to see them. Many schools around the country are engaged in wonderful activities to improve their students' understanding of our mutually shared planet. We must build on these burgeoning efforts for the future of this Nation and for the future of the world.

To recognize the special value of geography to the well-being of our country and all its citizens, the Congress by Senate Joint Resolution 131 has designated the weeks beginning November 14, 1993, and November 13, 1994, as Geography Awareness Week and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the weeks of November 14, 1993, and November 13, 1994, as "Geography Awareness Week." I call upon the people of the United States, governmental officials, educators, volunteers, and students of all ages to observe these weeks with appropriate programs, ceremonies, and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this fourteenth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-28538
Filed 11-16-93; 2:17 pm]
Billing code 3195-01-P

Rules and Regulations

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Thursday, November 18, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–99–AD; Amendment 39–8730; AD 93–22–06]

Airworthiness Directives; Airbus Industrie Model A300 Series Airplanes, Excluding Models A300–600 and A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Airbus Model A300 series airplanes, that requires installation of a protective cover above each generator control unit (GCU) and installation of a drainage circuit. This amendment is prompted by reports indicating that the GCU's are susceptible to damage due to foreign fluid drainage. The actions specified by this AD are intended to prevent liquid from entering the GCU and causing internal short circuiting, which could result in the failure of the GCU and subsequent loss of electrical generation capacity.

DATES: Effective December 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington-98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Airbus Model A300 series airplanes was published in the **Federal Register** on July 23, 1993 (58 FR 39475). That action proposed to require installation of a protective cover above each generator control unit (GCU) and installation of a drainage circuit.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the proposed rule.

Another commenter requests that the proposed compliance time of 6 months be extended. This commenter states that the lead time for obtaining the required installation parts is 4 months from the date of order; because of this timeframe, affected operators may have difficulty complying with the AD within the 6-month compliance time. The FAA does not concur. If operators acted prudently and ordered the installation kit on the effective date of this AD, and if the installation kit was received within 4 months after ordering, operators would still have an additional 2 months after receipt to install the parts. In light of the fact that installation necessitates only 5 work hours to accomplish, it is unreasonable to assume that an operator could not comply with this AD within 6 months. For these reasons, the FAA considers any extension to the compliance time to be unwarranted.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 21 airplanes of U.S. registry will be affected by this AD, that it will take approximately 5 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $350 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $13,125, or $625 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39–AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-22-06 Airbus: Amendment 39-8730. Docket 93-NM-99-AD.

Applicability: Model A300 series airplanes, excluding Model A300-600 series airplanes and Model A310 series airplanes; on which Airbus Modification 10361 has not been installed; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent liquid from entering the generator control unit (GCU) and causing internal short circuits, which could result in the failure of the GCU and subsequent loss of electrical generation capacity, accomplish the following:

(a) Within 6 months after the effective date of this AD, install a protective cover over each GCU and install a drainage circuit, in accordance with Airbus Industrie Service Bulletin A300-24-0082, dated March 3, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The installations shall be done in accordance with Airbus Industrie Service Bulletin A300-24-0082, dated March 3, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Airbus Industrie, 1 Rond Point Maurice Bellonte, 31707 Blagnac Cedex, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 17, 1993.

Issued in Renton, Washington, on November 2, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-27373 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 93-NM-176-AD; Amendment 39-8732; AD 93-22-08]

Airworthiness Directives; Jetstream Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Jetstream Model 4101 airplanes. This action requires inspections to detect certain discrepancies of the earth post assemblies installed in the vicinity of the engine nacelles, and replacement, if necessary. This amendment is prompted by a report of a failure of an earth post assembly. The actions specified in this AD are intended to prevent such failures, which could result in high current arcing and overheating at the earth post assemblies and their associated earth (ground) cables, thus creating an in-flight fire hazard.

DATES: Effective December 3, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 3, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 18, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM-103, Attention: Rules Docket No. 93-NM-176-AD, 1601 Lind Avenue, SW., Renton, Washington 98055-4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, ANM-113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055-4056; telephone (206) 227-2148; fax (206) 227-1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Jetstream Model 4101 airplanes. The CAA advises that an operator has reported a failure of an earth post assembly installed in the vicinity of the left and right engine nacelle. Consequently, the earth cable for the propeller de-icing system and the earth post incurred overheat damage. If the earth post assembly, which grounds the DC generator and propeller de-icing systems, is not precisely attached to the airframe structure, it can overheat and fail due to improper grounding of the earth cables. This condition, if not corrected, could cause high current arcing and overheating at the earth post assemblies and their associated earth (ground) cables, thus creating an in-flight fire hazard.

Jetstream Aircraft, Limited, has issued Series 4100 Alert Service Bulletin J41-A24-012, Revision 1, dated September 13, 1993, that describes procedures for a one-time visual and hands-on inspection of the earth post assemblies installed in the vicinity of the left and right engine nacelle. The service bulletin also describes procedures for conducting a visual inspection to detect damage caused by overheating of each earth post and its associated airplane structure, to detect damage caused by overheating of the cables and terminal tags on each earth post (DC generator and propeller de-icing cables), and to verify that at least two threads of the earth bolt are visible. Procedures for conducting a hands-on inspection is also included in the service bulletin; this inspection is performed to verify that the terminal tags of the earth cables are tightly attached to the earth post assembly. The service bulletin also describes procedures for installation of a new earth post assembly and subsequent testing of that assembly to ensure proper grounding of the earth cables. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United

States, this AD is being issued to prevent failure of certain earth post assemblies, which could result in high current arcing and overheating at the earth post assemblies and attached earth (ground) cables, thus creating an in-flight fire hazard. This AD requires a one-time visual and hands-on inspection to detect discrepancies (i.e., overheating, looseness, etc.) of the earth post assemblies installed in the vicinity of the left and right engine nacelle, and replacement of earth post assemblies and earth cables with new assemblies, if necessary. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**.

All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–176–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–22–08 Jetstream Aircraft, Limited: Amendment 39–8732. Docket 93–NM–176–AD.

Applicability: All Model 4101 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent high current arcing and overheating of certain earth post assemblies and their associated earth (ground) wires, thus creating an in-flight fire hazard, accomplish the following:

(a) Within 25 hours time-in-service after the effective date of this AD, conduct a visual and hands-on inspection to detect discrepancies (i.e., overheating, looseness, etc.) of earth post EP2 (left) and earth post EP4 (right) and their attached earth cables, in accordance with the Accomplishment Instructions of Jetstream Series 4100 Alert Service Bulletin J41–A24–012, Revision 1, dated September 13, 1993.

(1) If no discrepancy is detected, no further action is required.

(2) If any discrepancy is detected, prior to further flight, replace the discrepant earth post with a new earth post and earth cables in accordance with paragraph B. of the Accomplishment Instructions of Jetstream Series 4100 Alert Service Bulletin J41–A24–012, Revision 1, dated September 13, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections and replacement shall be done in accordance with Jetstream Series 4100 Alert Service Bulletin J41–A24–012, Revision 1, dated September 13, 1993, which contains the following list of effective pages:

Page No.	Revision level shown on page	Date shown on page
1, 3, 6	1	Sept. 13, 1993.
2, 4–5, 7, 8, 9.	Original	Sept. 8, 1993.

This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR Part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 3, 1993.

Issued in Renton, Washington, on November 3, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27482 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–13–P

14 CFR Part 39

[Docket No. 93–NM–53–AD; Amendment 39–8706; AD 93–19–07]

Airworthiness Directives; Fokker Model F28 Mark 0100 Series Airplanes, Equipped With Air Cruisers Company Escape Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Fokker Model F28 Mark 0100 series airplanes, that requires modification of the decorative cover on the L1 passenger door escape slide. This proposal is prompted by reports that escape slides located at the L1 passenger door have failed to deploy properly because the decorative cover obstructed slide deployment. The actions specified by this AD are intended to prevent failed deployment of escape slides, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective December 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Timothy J. Dulin, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2141; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Fokker Model F28 Mark 0100 series airplanes was published in the **Federal Register** on May 27, 1993 (58 FR 30725). That action proposed to require modification of the decorative cover on the L1 passenger door escape slide.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the three comments received.

All of the commenters support the proposed rule.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 73 airplanes of U.S. registry will be affected by this AD, that it will take approximately 1 work hour per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $4,015, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–19–07 Fokker: Amendment 39–8706. Docket 93–NM–53–AD.

Applicability: Model F28 Mark 0100 series airplanes, equipped with Air Cruisers Company escape slide, part number D31840–( ), with a cover having Air Cruisers Company part number 60750–101, 60750–103, or 61862–101; or with a cover having Fokker part number Y00294–401; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failed deployment of escape slides, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 30 days after the effective date of this AD, modify the decorative cover on the L1 passenger door escape slide, in accordance with Fokker Service Bulletin SBF100–25–064, dated February 23, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with Fokker Service Bulletin SBF100–25–064, dated February 23, 1993 This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Fokker Aircraft USA, Inc., 1199 North Fairfax Street, Alexandria, Virginia 22314. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 17, 1993.

Issued in Renton, Washington, on September 29, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-28456 Filed 11-17-93; 8:45 am]

BILLING CODE 4910-13-P

14 CFR Part 39

[Docket No. 92-NM-241-AD; Amendment 39-8710; AD 93-20-03]

Airworthiness Directives; Lockheed Model L-1011 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to Lockheed Model L-1011 series airplanes, that requires the implementation of a corrosion prevention and control program either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program. This amendment is prompted by reports of incidents involving corrosion and fatigue cracking in transport category airplanes that are approaching or have exceeded their economic design goal; these incidents have jeopardized the airworthiness of the affected airplanes. The actions specified by this AD are intended to prevent degradation of the structural capabilities of the airplane due to the problems associated with corrosion.

DATES: Effective December 17, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 17, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Thomas B. Peters, Aeronautical Engineer, Flight Test Branch, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia 30349; telephone (404) 991-3915; fax (404) 991-3606.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to Lockheed Model L-1011 series airplanes was published in the **Federal Register** on February 3, 1993 (58 FR 6906). That action proposed to require the implementation of a corrosion prevention and control program (CPCP) either by accomplishing specific tasks or by revising the maintenance inspection program to include such a program.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

Two commenters support the rule.

One commenter requests that the wording of proposed paragraph (a)(1)(iii) be revised to refer to "each corrosion task," rather than "all airplane areas." This change will make the language consistent with the rest of the paragraph. The FAA concurs and has changed the wording of the final rule accordingly. This change is meant only for clarifying purposes; it does not affect the requirements of the rule in any way.

Another commenter requests that paragraph (e) be revised to require that a proposed corrective action be submitted to the FAA within 60 days after the determination is made that corrosion exceeds Level 1, and then implemented within 30 days after FAA approval of the corrective action. As proposed, the rule would require that the FAA-approved corrective action be implemented within 60 days after the determination is made that corrosion exceeds Level 1. The commenter considers that a 60-day schedule is too short a time period in which to expect operators to design a corrective action, submit the proposed corrective action to the FAA, wait for FAA approval, revise their maintenance program to include the corrective action, and implement the corrective action. Further, this commenter points out that the suggested change is identical to a parallel requirement in similar AD's applicable to Boeing Model 737 and 747 series airplanes [reference AD 90-25-01, amendment 39-6789 (55 FR 49263, November 27, 1990); and AD 90-25-05, amendment 39-6790 (55 FR 49268, November 27, 1990)]. The FAA does not concur with the commenter's request. The FAA does not consider that 60 days is inadequate for necessary action to be taken and a revised program implemented. The determination that corrosion "findings" exceed Level 1 in any area is generally expected to be made some time after the detection of such corrosion on more than one airplane. Therefore, during the interim between detection and determination, an operator would have ample opportunity to consider possible program adjustments, even before the final determination is made. In addition, the means for reducing future findings to Level 1 or better are commonly known in the industry and are generally simple in concept, such as reducing a corrosion task interval or using multiple applications of corrosion inhibitors; therefore, a long period of time would not necessarily be required for an operator to develop or design some new means. The 60-day time period allotted for this requirement is meant simply to allow time for the operator's final coordination of the change with its local FAA inspector and for implementation of the program adjustment; the FAA does not consider it to be excessively restrictive.

This commenter is correct in pointing out that the AD's applicable to Boeing products differ from this AD in that an additional 30 days is provided for accomplishing a similar requirement. The FAA notes, however, that the reason for the additional 30 days provided is based on the fact that the FAA approval authority for changes to the Boeing product CPCP programs resides in a remote location, namely, the Seattle Aircraft Certification Office. In the case of this AD for the Lockheed Model L-1011, however, that approval authority is assigned to each operator's local FAA Principal Maintenance Inspector (PMI); therefore, the approval cycle should be expedited because of this. Additionally, the FAA is committed to responding as expeditiously as possible to operators' proposals so as to avoid delays in the review and approval process.

Further, this AD action is meant to address a worldwide system for preventing unsafe levels of corrosion. AD 90-25-01 and AD 90-25-05 require that, if corrosion is found that exceeds Level 1, the operator must review its corrosion control program and implement an FAA-approved means to reduce corrosion to Level 1 or better; the operator's FAA-approved maintenance program must then be revised to incorporate the approved corrective action. The requirements of paragraph (e) of this new AD differ from those of AD 90-25-01 and AD 90-25-05 specifically in order to address airplanes

that are not operated under an FAA-approved maintenance program.

One commenter requests that proposed paragraph (f)(2), concerning airplanes not previously maintained in accordance with the AD, be revised to require that only the specific corrosion tasks that are "past due" on the newly acquired airplane be accomplished prior to further flight, rather than all tasks. This commenter states that some Model L–1011's currently are less than 10 years old and the implementation age in many areas of the airplane may not yet have been reached. Since the corrosion prevention and control program is based on aircraft age, implementation age, and AD effective date, the requirements of proposed paragraph (a)(1) should still apply to those areas that are not "past due" (those that have not yet reached the implementation age). By changing paragraph (f)(2) as suggested, the implementation schedule for newly acquired airplanes would be similar to that of the rest of an operator's fleet. The FAA does not agree that a change to paragraph (f)(2) is necessary. While the commenter is correct concerning younger airplanes, the majority of the Model L–1011 fleet is older than 10 years. The intent of paragraph (f) is to ensure that transferred airplanes are inspected in accordance with the baseline corrosion prevention and control program on the same basis as if there were continuity in ownership. It is essential that scheduling of the inspections for each airplane not be delayed or postponed due to a transfer of ownership. Paragraph (f)(2) does require that the corrosion tasks be performed before the airplane is placed in service (i.e., prior to further flight); however, it also allows for the use of alternative schedules, provided they are approved by the FAA. Operators who acquire younger airplanes should consider following that provision of the paragraph.

One commenter requests that the proposed rule be revised to require the reporting of Levels 2 and 3 corrosion found as a result of opportunity inspections. A note that appeared in paragraph (g) of the proposed rule indicates that such reporting is merely "highly desirable," not required. The commenter considers that all corrosion findings are important to the corrosion program, and corrosion reports will be helpful in making future improvements to the program. The FAA does not agree that any revision to the rule is necessary. This AD alone cannot possibly address every type of inspection in which corrosion potentially could be found. This rule requires operators to report corrosion found as a result of specified inspections; however, this rule does not relieve operators from routinely reporting corrosion findings as required by Federal Aviation Regulations (FAR) Section 121.703 ("Mechanical reliability reports"). Reporting of opportunity inspection results would fall under that regulation.

Another commenter requests that the proposed rule be revised to exclude airplanes that are within 6 months of "retirement." The commenter states that it would not be cost effective to require operators to inspect airplanes so close to retirement. Further, the commenter considers that the structural integrity of the airplane would not be impaired if it remains in service for 6 months after the time limit for implementing the initial corrosion task. The commenter considers this amount of time to be reasonable and points out that proposed paragraph (c) allows scheduling revisions of up to 6 months after the indicated compliance time. The FAA does not concur with the commenter's request. The intent of the CPCP is obviously to detect and correct corrosion within a time frame consistent with an adequate level of safety for the airplane. The implementation ages were developed by the L–1011 Structures Working Group (which is sponsored by the Airworthiness Assurance Task Force) with this goal in mind. Deferral of the inspections, for economic or other reasons, and without adequate technical justification for doing so, would be inconsistent with this goal. Paragraph (h) of the final rule does provide operators with the opportunity to apply for FAA approval of adjusted compliance times or alternative compliance methods, provided that sufficient justification is submitted to ensure that an acceptable level of safety is maintained in the meantime.

One commenter requests that the proposed rule be revised to remove the basic corrosion task and reporting requirements for landing gear components. This commenter indicates that service experience has shown that normal overhaul procedures are adequate to maintain corrosion at safe levels on Model L–1011 landing gear components. This commenter also points out that similar action was taken for the Boeing Model 737 CPCP. Upon further review, the FAA concurs with the commenter's request. The FAA has determined that corrosion task numbers C–32–710–01 (nose landing gear) and C–32–730–01 (main landing gear, left and right) may be removed from the accomplishment requirements of this AD. Paragraphs (a) and (b) of the final rule have been revised to specify this. Operators should note, however, that other corrosion tasks in the "C–32" series listed in the referenced Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L–1011," remain under the corrosion inspection program required by this AD.

One commenter points out that no mention was made in the proposal of section 7.2 of the Lockheed CPCP document. That section lists corrosion-related service bulletins recommended for regulatory action by the Airworthiness Assurance Task Force. The commenter questions whether or not the intent of the proposed rule is to make these service bulletins mandatory. The FAA notes that the service bulletins listed in section 7.2 of the CPCP document relate to various modifications of fuselage structure, and not specifically to the corrosion program. The FAA intends to address those service bulletins by separate rulemaking action.

One commenter, the manufacturer, states that the number of corrosion tasks that would be required by the proposed AD is 127, rather than 226, as was indicated in the economic impact information in the preamble of the notice. The FAA has verified this information and has corrected the economic information, below, accordingly.

The FAA has revised paragraph (a)(1)(iv) of the final rule to clarify that it specifies a mandatory rate of task accomplishment only for aircraft areas that have exceeded their implementation age (IA).

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

There are approximately 241 Model L–1011 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 117 airplanes of U.S. registry will be affected by this proposed AD. It will take an average of 20 work hours per task to accomplish the 127 corrosion tasks called out in the Document; this represents a total of 2,540 work hours. The average labor rate is $55 per work hour. Based on these figures, the total cost impact of the AD on U.S. operators for the 6-year average inspection cycle is estimated to be $16,344,900, or $139,700 per airplane. This total cost figure assumes that no

operator has yet accomplished the requirements of this AD.

The number of required work hours, as indicated above, is presented as if the accomplishment of the actions (corrosion tasks) required by this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part will be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary additional work hours will be minimal in many instances. Likewise, any costs associated with special airplane scheduling is likely to be minimal.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-20-03 Lockheed: Amendment 39-8710. Docket 92-NM-241-AD.

Applicability: All Model L-1011 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: This AD references Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L-1011," dated March 15, 1991, including "Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L-1011," issued September 29, 1992 (hereafter, both publications are referred to as "the Document"), for corrosion tasks, definitions of corrosion levels, compliance times, and reporting requirements. In addition, this AD specifies inspection and reporting requirements beyond those included in the Document. Where there are differences between the AD and the Document, the AD prevails.

Note 2: As used throughout this AD, the term "the FAA" is defined differently for different operators, as follows: For those operators complying with paragraph (a) of this AD, "the FAA" is defined as "the Manager of the Atlanta Aircraft Certification Office (ACO)." For those operators operating under Federal Aviation Regulation (FAR) Part 121 or 129, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant PMI." For those operators operating under FAR Part 91 or 125, and complying with paragraph (b) of this AD, "the FAA" is defined as "the cognizant Maintenance Inspector at the appropriate FAA Flight Standards office."

To preclude structural failure due to corrosion, accomplish the following:

(a) Except as provided in paragraph (b) of this AD, complete each of the corrosion tasks specified in Section 4 of the Document in accordance with the procedures of the Document, and the schedule specified in paragraphs (a)(1) and (a)(2) of this AD. Corrosion task numbers C-32-710-01 (nose landing gear) and C-32-730-01 (main landing gear, left and right) are not required to be accomplished as part of this AD.

Note 3: A "corrosion task," as defined in Section 4 of the Document, includes inspections; procedures for a corrective action, including repairs, under identified circumstances; application of corrosion inhibitors; and other follow-on actions.

Note 4: Corrosion tasks completed in accordance with the Document before the effective date of this AD may be credited for compliance with the initial corrosion task requirements of paragraph (a)(1) of this AD.

Note 5: Where non-destructive inspection (NDI) methods are employed, in accordance with Section 4 of the Document, the standards and procedures used must be acceptable to the Administrator in accordance with FAR Section 43.13.

(1) Complete the initial corrosion task of each "airplane area" specified in Section 4 of the Document as follows:

(i) For airplane areas that have not yet exceeded the "implementation age" (IA) for a corrosion task as of one year after the effective date of this AD: Initial compliance must occur no later than the IA plus the repeat (R) interval.

(ii) For airplane areas that have exceeded the IA for a particular corrosion task, as of one year after the effective date of this AD: Initial compliance must occur within one R interval for that task, measured from a date one year after the effective date of this AD.

(iii) For airplanes that are 20 years old or older as of one year after the effective date of this AD: Initial compliance must occur for each corrosion task within one R interval for that task, but not to exceed 6 years, measured from a date one year after the effective date of this AD, whichever occurs first.

(iv) Notwithstanding paragraph (a)(1)(i), (a)(1)(ii), and (a)(1)(iii) of this AD, for airplane areas that exceed the IA for that area, the operator must accomplish the initial corrosion task for each such area at a minimum rate equivalent to one such area per year, beginning one year after the effective date of this AD.

Note 6: This paragraph does not require inspection of any area that has not exceeded the IA for that area.

Note 7: This minimum rate requirement may cause an undue hardship on some small operators. In those circumstances, requests for adjustments to the implementation rate will be evaluated on a case-by-case basis under the provisions of paragraph (h) of this AD.

(2) Repeat each corrosion task at a time interval not to exceed the R interval specified in the Document for that task.

(b) As an alternative to the requirements of paragraph (a) of this AD: Prior to one year after the effective date of this AD, revise the FAA-approved maintenance/inspection program to include the corrosion prevention and control program specified in the Document; or to include an equivalent program that is approved by the FAA. In all cases, the initial corrosion task for each airplane area must be completed in accordance with the compliance schedule specified in paragraph (a)(1) of this AD. Corrosion task numbers C-32-710-01 (nose landing gear) and C-32-730-01 (main landing gear, left and right) are not required to be accomplished as part of this AD.

(1) Any operator complying with paragraph (b) of this AD may use an alternative recordkeeping method to that otherwise required by FAR Section 91.417 or Section 121.380 for the actions required by this AD, provided it is approved by the FAA and is included in a revision to the FAA-approved maintenance/inspection program.

(2) Subsequent to the accomplishment of the initial corrosion task, extensions of R intervals specified in the Document must be approved by the FAA.

(c) To accommodate unanticipated scheduling requirements, it is acceptable for an R interval to be increased by up to 10%, but not to exceed 6 months. The FAA must be informed, in writing, of any such extension within 30 days after such adjustment of the schedule.

(d)(1) If, as a result of any inspection conducted in accordance with paragraphs (a) or (b) of this AD, Level 3 corrosion is determined to exist in any airplane area, accomplish either paragraph (d)(1)(i) or (d)(1)(ii) within 7 days after such determination:

(i) Submit a report of that determination to the FAA and complete the corrosion task in the affected areas on all Model L–1011 series airplanes in the operator's fleet; or

(ii) Submit to the FAA for approval one of the following:

(A) A proposed schedule for performing the corrosion tasks in the affected areas on the remaining Model L–1011 series airplanes in the operator's fleet, which is adequate to ensure that any other Level 3 corrosion is detected in a timely manner, along with substantiating data for that schedule; or

(B) Data substantiating that the Level 3 corrosion found is an isolated occurrence.

Note 8: Notwithstanding the provisions of Section 1 of the Document, which would permit corrosion that otherwise meets the definition of Level 3 corrosion (i.e., which is determined to be a potentially urgent airworthiness concern requiring expeditious action) to be treated as Level 1 if the operator finds that it "can be attributed to an event not typical of the operator's usage of other airplanes in the same fleet," this paragraph requires that data substantiating any such finding be submitted to the FAA for approval.

(2) The FAA may impose schedules other than those proposed, upon finding that such changes are necessary to ensure that any other Level 3 corrosion is detected in a timely manner.

(3) Within the time schedule approved under paragraph (d)(1) or (d)(2) of this AD, accomplish the corrosion tasks in the affected areas of the remaining Model L–1011 series airplanes in the operator's fleet.

(e) If, as a result of any inspection after the initial inspection conducted in accordance with paragraphs (a) or (b) of this AD, it is determined that corrosion findings exceed Level 1 in any area, within 60 days after such determination, implement a means, approved by the FAA, to reduce future findings of corrosion in that area to Level 1 or better.

(f) Before any operator places into service any airplane subject to the requirements of this AD, a schedule for the accomplishment of corrosion tasks required by this AD must be established in accordance with paragraph (f)(1) or (f)(2) of this AD, as applicable:

(1) For airplanes previously maintained in accordance with this AD, the first corrosion task in each airplane area to be performed by the new operator must be accomplished in accordance with the previous operator's schedule or with the new operator's schedule, whichever would result in the earlier accomplishment date for that task. After each corrosion task has been performed once, each subsequent task must be performed in accordance with the new operator's schedule.

(2) For airplanes that have not been previously maintained in accordance with this AD, the first corrosion task for each airplane area to be performed by the new operator must be accomplished prior to further flight or in accordance with a schedule approved by the FAA.

(g) Reports of Level 2 and Level 3 corrosion must be submitted at least quarterly to Lockheed Aeronautical Systems in accordance with section 5 of the Document.

Note 9: Reporting of Level 2 and Level 3 corrosion found as a result of any opportunity inspections is highly desirable.

(h) An alternative method of compliance or adjustment of the compliance time, which provides an acceptable level of safety, may be used when approved by the Manager, Atlanta Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through the cognizant Maintenance Inspector at the appropriate FAA Flight Standards Office, who may concur or comment and then send it to the Manager, Atlanta ACO.

Note 10: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Atlanta ACO.

(i) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate airplanes to a base in order to comply with the requirements of this AD.

(j) Reports of corrosion inspection results required by this AD have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(k) The completion of the corrosion tasks shall be done in accordance with Lockheed Document Number LR 31889, "Corrosion Prevention and Control Program, TriStar L–1011," dated March 15, 1991; including "Errata Sheet, LR 31889, Corrosion Prevention and Control Program, TriStar L–1011," issued September 29, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Lockheed Western Export Company, Attn: Commercial and Customer Support, Dept. 693, Zone 0755, 86 South Cobb Drive, Marietta, Georgia 30063. Copies may be inspected at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Atlanta Aircraft Certification Office, 1669 Phoenix Parkway, Suite 210C, Atlanta, Georgia; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(l) This amendment becomes effective on December 17, 1993.

Issued in Renton, Washington, on October 8, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28457 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

15 CFR Parts 922, 924, 929, 935, 936, 937, 938, 941, 942, 943, and 944

National Marine Sanctuary Program

AGENCY: Office of Ocean and Coastal Resource Management (OCRM), National Ocean Service (NOS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule.

SUMMARY: These final regulations incorporate the revised statutory language of certain provisions of the National Marine Sanctuaries Program Amendments Act of 1992, (1992 Amendments), and certain provisions of the National Marine Sanctuaries Program Amendments and Authorization of 1988, (1988 Amendments). The 1992 and 1988 Amendments (the Amendments) encompass a wide range of procedural and policy revisions relating to the National Marine Sanctuary Program. The promulgation of this final rule effects conformity of NOAA's marine sanctuary regulations with those statutory revisions.

EFFECTIVE DATE: These regulations are effective on November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Captain Francesca Cava, Chief, Sanctuaries and Reserves Division, Office of Ocean and Coastal Resource Management, National Ocean Service, National Oceanic and Atmospheric Administration, 3105 East-West Highway, suite 11520, Silver Spring, MD 20910, (301/713–3125).

SUPPLEMENTARY INFORMATION:

I. Authority

This final rulemaking is issued under the authority of title III of the Marine Protection, Research, and Sanctuaries Act (Act), 16 U.S.C. 1431 *et seq.*; as amended by title II of Public Law 102–587 (1992) and title II of Public Law 100–627 (1988). The Amendments reauthorize and amend title III of the Act.

II. Background

On November 7, 1988, President Reagan approved Public Law 100–627; Title II of Public Law 100–627 contains the 1988 Amendments.[1] The 1988

[1] A notice of proposed rulemaking was published in the **Federal Register** to implement the 1988 Amendments, 57 FR 31160 (July 14, 1992). That notice may be withdrawn and a substitute version of the regulations implementing the section of the

Amendments authorize appropriations through FY 1991 and amend the Act.

On November 4, 1992, President Bush approved Public Law 102–587; title II of Public law 102–587 contains the 1992 Amendments. The National Marine Sanctuary Program is administered by the Sanctuaries and Reserves Division, NOS, NOAA, Department of Commerce.

The 1988 Amendments: (1) Modify the sanctuary designation procedures to reduce the length of the process to two and one-half years; (2) require the Secretary of Commerce (Secretary) to promote and coordinate the use of marine sanctuaries for marine research by NOAA and other Federal and state agencies; (3) authorize the Secretary to issue special use permits for conducting specific activities in sanctuaries and to assess fees for conducting activities under such permits; (4) allow the Secretary to enter into cooperative agreements with nonprofit organizations for the promotion of, and the solicitation of private donations for, interpretive, historical, educational and scientific activities, and to accept donations for use in designating and administering marine sanctuaries; (5) make any person who destroys, causes the loss of, or injures any sanctuary resource liable to the United States for response costs and damages, and make recovered funds available for restoration, replacement, or acquisition of equivalent resources and for sanctuary management purposes; and (6) expand enforcement authority.

The 1992 Amendments: (1) Strengthen and clarify the purposes and policies of the National Marine Sanctuary Program; (2) clarify certain definitions and other provisions; (3) streamline the sanctuary designation process; (4) require the Secretary to cooperate with not only the appropriate Regional Fishery Management Council, but also other appropriate fishery management authorities in drafting any sanctuary fishing regulations; (5) require interagency consultation on proposed activities that are likely to damage sanctuary resources; (6) require reviews of sanctuary management plans every five years; (7) require the Secretary to engage in international cooperation; (8) make explicit that it is unlawful to destroy, cause the loss of, or injure sanctuary resources; (9) increase the maximum civil penalty amount from $50,000 to $100,000; (10) make explicit that a civil penalty constitutes a maritime lien; (11) make explicit that proceeds from forfeiture constitute a separate recovery; (12) make technical changes regarding use of amounts received as civil penalties, forfeitures and costs; (13) clarify that the area of application and enforceability of the Act includes the territorial sea and exclusive economic zone; (14) strengthen the roles of research and monitoring as components of sanctuary management; (15) provide greater flexibility to enter into cooperative and other ventures to carry out the purposes and policies of the Act; (16) allow the Secretary to acquire land or other property necessary and appropriate to carry out the purposes and policies of the Act; (17) make certain technical amendments to section 312 of the Act, which addresses liability for destruction, loss and injury to sanctuary resources; and (18) allow the Secretary to establish advisory councils to provide assistance regarding the designation and management of sanctuaries.

III. Purpose of This Rule

The purpose of this rule is to amend the National Marine Sanctuary Program and individual-sanctuary regulations to make them consistent with the Act, as amended.

IV. Specific Amendments to the Regulations

A. Findings, Purposes and Policies

The 1992 Amendments revise the existing findings at subsection 301(a)(2) by reiterating that certain areas of the marine environment possess conservation, recreational, ecological, historical, research, educational or esthetics qualities that give them special national significance, and adding "and in some cases, international" significance. The 1992 Amendments add "research" to subsection 301(a)(4) as an additional factor to be considered in identifying special areas of the marine environment. In addition, the 1992 Amendments add a new finding at subsection 301(a)(6) that "protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations."

The 1992 Amendments revise subsection 301(b)(2) to clarify that one of the purposes and policies of the Act is to provide authority for comprehensive and coordinated conservation and management of not only these special marine areas but also "activities affecting them". Subsection 301(b)(3) is revised to emphasize support, promotion and coordination of "long-term" monitoring and research as a purpose and policy of the Act. The following purposes and policies are also added: To "develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas"; to "create models of, and incentives for, ways to conserve and manage these areas"; to "cooperate with global programs encouraging conservation of marine resources"; and to "maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate." These additions are incorporated into the Act at subsections 301(b)(6)-(b)(9).

This final rule amends § 922.1 to incorporate these additions and clarifications.

B. Definitions

The 1992 Amendments clarify that the definition of "marine environment" at section 302(3) includes the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act. The 1988 Amendments defined "sanctuary resource" as "any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological historical, research, educational, or aesthetic value of the sanctuary" (section 302(8)). This final rule amends § 922.2 to incorporate these additions and clarifications.

C. Sanctuary Designation Standards

The 1992 Amendments revise subsection 301(a)(2)(B) by specifying that in order to designate a sanctuary, the Secretary need only find that existing State and Federal authorities "should be supplemented," not necessarily that they are inadequate. The Secretary is to consider "maintenance of critical habitat of endangered species," as a factor in determining whether an area meets the Sanctuary designation standards (subsection 303(b)(1)(A)). This rule amends paragraphs (a) and (b) of § 922.33 to incorporate these changes.

D. Designation Procedures

The 1992 Amendments require that the resource assessment report section of the environmental impact statement for a proposed sanctuary include information on "governmental" uses of the area and on any "past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed

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1988 Amendments addressing liability for destruction, loss and injury to sanctuary resources (section 312 of the Act) will be proposed. The final rule promulgated today implements those sections of the 1988 Amendments that NOAA has determined may be implemented without notice and an opportunity for comment.

sanctuary." The Secretary is to consult with the Secretary of Defense, the Secretary of Energy and the Administrator of the Environmental Protection Agency in preparing the discharge/disposal section (subsection 303(b)(3)). This final rule revises paragraph (h) of § 922.31 to incorporate these requirements.

This final rule revises paragraph (e) of § 922.31 to eliminate the statement that the time period between Active Candidate selection and proposing to designate an area as a national marine sanctuary will normally not exceed three years. Paragraph (e) of § 922.31 continues to require that the draft management plan and the draft environmental impact statement be prepared as quickly as possible to allow for maximum public input, and adds the provision "and compliance with statutory timeliness for designation."

The 1992 Amendments eliminate the requirement of preparation of a prospectus for Congress for each proposed designation (subsection 304(a)), and instead require only submission of "documents, including an executive summary" providing the required information about the proposed designation (section 304(a)(1)(C)). The final rule amends § 922.32 to incorporate this streamlining.

The 1992 Amendments require that the Secretary cooperate with not only the appropriate Regional Fishery Management Council, but also other appropriate fishery management authorities in drafting regulations for fishing within the exclusive economic zone for a proposed sanctuary (subsection 304(a)(5)). The final rule amends paragraph (f) of § 922.31 to incorporate this requirement.

The 1988 Amendments revised subsection 304(b)(1) to require the Secretary to either issue a notice of designation with respect to a proposed site not later than 30 months after the date the notice declaring the site to be an active candidate is published in the **Federal Register** or publish in the **Federal Register** "findings regarding why such notice has not been published." The final rule revises paragraph (a) of § 922.34 to incorporate this requirement.

The 1992 Amendments further revised section 304(b) by eliminating the subsection providing for Congressional disapproval of a sanctuary designation through enactment of a joint resolution. Subsection 304(b)(3) is eliminated and subsection 304(b)(4) is redesignated as subsection 304(b)(3) to conform with this change. Subsection 304(b)(2) is also revised to reflect this change. The final rule makes appropriate revisions to § 922.34 to reflect this deletion.

E. Pre-existing Activities

The 1992 Amendments revised subsection 304(c)(1) to simplify the legislative language with respect to the date on which a lease, permit, license or right of subsistence use or of access is pre-existing for purposes of the Act. The subsection now provides that nothing in the Act is to be construed as terminating or granting to the Secretary the right to terminate any valid lease, permit, license or right of subsistence use or of access if the lease, permit, license or right "is in existence on the date of designation of any national marine sanctuary." The final rule revises § 922.11 to reflect this change.

A section 304(e) has been added by the 1992 Amendments requiring the Secretary to review sanctuary management plans and their implementation every five years. Although not previously a statutory requirement, the final rule implementing the 1984 amendments to the Act included such a requirement (15 CFR 922.40(d)). The 1992 Amendments make this requirement statutory and clarify that the Secretary "shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this title." The final rule revises paragraph (d) of § 922.40 to reflect this change.

F. Enforcement

The 1992 Amendments revised section 307, the enforcement section, by increasing the maximum civil penalty for violation of the Act or any regulation or permit issued under the Act from $50,000 to $100,000 (subsection 307(c)(1)). The final rule amends the enforcement provisions of each of the individual-sanctuary regulations to change the maximum amount of the civil penalty to the new amount. The changed sections are 924.4, 929.9, 935.8, 936.7, 937.7, 938.7, 941.10, 942.7, 943.8, and 944.7. Further, the references in those regulations to NOAA's consolidated civil procedure regulations (15 CFR part 904) have been updated as necessary.

The 1992 Amendments also make explicit that a civil penalty constitutes a maritime lien and that proceeds from forfeiture actions constitute a separate recovery, and make technical changes regarding use of amounts received as civil penalties, forfeiture and costs. The 1992 Amendments also clarify that the area of application and enforceability of the Act includes the territorial sea and the exclusive economic zone. No revision to NOAA's regulations is necessary.

G. Research, Monitoring and Education

The 1988 Amendments added a section 309 to the Act dealing with the promotion and coordination of national marine sanctuaries for research purposes. The 1992 Amendments revise section 309 to emphasize monitoring and education, in addition to research, as priorities within national marine sanctuaries. This section also directs the Secretary to promote and coordinate the use of national marine sanctuaries for research, education and monitoring, e.g., consulting with "Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons," including coordination with the National Estuarine Research Reserve System (section 309(b)). A new § 922.42 is added by the final rule to set forth the provisions of section 309.

V. Miscellaneous Rulemaking Requirements

A. Executive Order 12866: Regulatory Impact

NOAA has concluded that these regulations are not significant within the meaning of section 3(f) of Executive Order 12866 because they will not result in:

(1) An annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment or public health and safety;

(2) A serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) A material alteration of the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of such recipients; or

(4) A novel legal or policy issue arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

B. Regulatory Flexibility Act

A Regulatory Flexibility Analysis is not required for this rulemaking. The regulations set forth procedures for designating and managing national marine sanctuaries in accordance with the Amendments. The regulations will not have a significant impact on a substantial number of "small entities" as defined by the Regulatory Flexibility Act, and the General Counsel of the Department of Commerce has so certified to the Chief Counsel for Advocacy of the Small Business Administration. As a result, no

Regulatory Flexibility Analysis was prepared.

C. Paperwork Reduction Act of 1980

These Regulations will impose no collection of information requirements of the type covered by the Paperwork Reduction Act.

D. National Environmental Policy Act

NOAA has concluded that this regulatory action does not constitute a major Federal action significantly affecting the quality of the human environment. Therefore, an environmental impact statement is not required.

E. Administrative Procedure Act

This final rule amends the existing National Marine Sanctuary Program and individual sanctuary regulations to make them consistent with the Act, as amended. The changes to the regulations are non-discretionary and except from minor editorial changes have been accomplished by incorporating the statutory language into the regulations. Because the 1988 and 1992 Amendments have already changed the law, no purpose would be served by publishing general notice of proposed rulemaking in the **Federal Register** and allowing public comment. Accordingly, as provided by section 553(b) of title 5 of the United States Code, the agency for good cause finds that the notice and public comment procedure therein is unnecessary.

The changes in the law were self-implementing upon enactment. Therefore, NOAA for good cause finds no purpose served by delaying the effective date of these regulations as would otherwise be required by section 553(d) of title 5 of the United States Code. Accordingly, under 5 U.S.C. 553(d)(3) the agency is making them effective immediately.

F. Executive Order 12612

These regulations do not contain policies with sufficient Federalism implications to warrant preparation of a Federalism assessment under Executive Order 12612.

List of Subjects in

15 CFR Part 922

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Recreation and recreation areas, Research.

15 CFR Parts 924, 929, 935, 936, 937, 938, 941, 942, 943, 944

Administrative practice and procedure, Coastal zone, Education, Environmental protection, Marine resources, Natural resources, Penalties, Recreation and recreation areas, Reporting and recordkeeping requirements, Research.

Dated: October 7, 1993.

W. Stanley Wilson,

Assistant Administrator for Ocean Services and Coastal Zone Management.

Accordingly, 15 CFR parts 922, 924, 929, 935, 936, 937, 938, 941, 942, 943 and 944 are amended as follows:

PART 922—NATIONAL MARINE SANCTUARY PROGRAM

1. The authority citation for part 922 is revised to read as follows:

Authority: 16 U.S.C. 1431 *et seq.*

2. Section 922.1 is amended by revising paragraphs (a) and (b) to read as follows:

§ 922.1 Mission, goals, and special policies.

(a) In accordance with the standards set forth in title III of the Marine Protection, Research, and Sanctuaries Act of 1972 (Act), the mission of the National Marine Sanctuary Program (Program) is to identify, designate and manage areas of the marine environment of special national, and in some cases international, significance due to their conservation, recreational, ecological, historical, research, educational, or esthetics qualities.

(1) Protection of these special areas can contribute to maintaining a natural assemblage of living resources for future generations.

(2) [Reserved]

(b) The goals of the Program are to carry out the mission to:

(1) Identify and designate as national marine sanctuaries areas of the marine environment which are of special national significance;

(2) Provide authority for comprehensive and coordinated conservation and management of these marine areas, and activities affecting them, in a manner which complements existing regulatory authorities;

(3) Support, promote, and coordinate scientific research on, and monitor of, the resources of these marine areas, especially long-term monitoring and research of these areas;

(4) Enhance public awareness, understanding, appreciation, and wise use of the marine environment;

(5) Facilitate to the extent compatible with the primary objective of resource protection, all public and private uses of the resources of these marine areas not prohibited pursuant to other authorities;

(6) Develop and implement coordinated plans for the protection and management of these areas with appropriate Federal agencies, State and local governments, Native American tribes and organizations, international organizations, and other public and private interests concerned with the continuing health and resilience of these marine areas;

(7) Create models of, and incentives for, ways to conserve and manage these areas;

(8) Cooperate with global programs encouraging conservation of marine resources; and

(9) Maintain, restore, and enhance living resources by providing places for species that depend upon these marine areas to survive and propagate.

* * * * *

3. Section 922.2 is amended by removing the paragraph designation preceding each definition, adding in alphabetical order new definitions for *Exclusive economic zone* and *Sanctuary resource* and revising the definition for *Marine environment* to read as follows:

§ 992.2 Definitions.

* * * * *

Exclusive economic zone means the exclusive economic zone as defined in the Magnuson Fishery Conservation and Management Act.

* * * * *

Marine environment means those areas of coastal and ocean waters, the Great Lakes and their connecting waters, and submerged lands over which the United States exercises jurisdiction, including the exclusive economic zone, consistent with international law.

* * * * *

Sanctuary resource means any living or nonliving resource of a national marine sanctuary that contributes to the conservation, recreational, ecological, historical, research, educational, or aesthetic value of the sanctuary.

* * * * *

4. Section 922.11 is revised to read as follows:

§ 922.11 Access and valid rights.

Leases, permits, licenses, or rights of subsistence use or access in existence on the date of designation of any national marine sanctuary shall not be terminated by the Secretary. The Secretary may, however, regulate the exercise of such leases, permits, licenses, or rights consistent with the purposes for which the Sanctuary was designated.

5. Section 922.31 is amended by revising paragraphs (e), (f) introductory text, and (h) to read as follows:

§ 922.31 Development of designation materials.

* * * * *

(e) The draft management plan and DEIS shall be prepared as quickly as possible to allow for maximum public input and compliance with statutory timeliness for designation.

(f) The Secretary shall provide the appropriate Regional Fishery Management Council with the opportunity to prepare and recommend for consideration by the Secretary draft regulations for fishing within the proposed sanctuary if the proposed sanctuary includes waters within the exclusive economic zone.

The Secretary shall also cooperate with other appropriate fishery management authorities with rights or responsibilities within the proposed sanctuary at the earliest practicable stage in drafting any sanctuary fishing regulations.

* * * * *

(h) As part of the DEIS, the Secretary shall develop a resource assessment report documenting present and potential uses of the area, including commercial and recreational fishing, research and education, minerals and energy development, subsistence uses, and other commercial, governmental, or recreational uses. In consultation with the Secretary of the Interior, the Secretary shall draft a resource assessment section for the report concerning any commercial, governmental, or recreational resource uses in the area that are subject to the primary jurisdiction of the Department of the Interior. The Secretary, in consultation with the Secretary of Defense, the Secretary of Energy, and the Administrator, shall draft a resource assessment section for the report, including information on any past, present, or proposed future disposal or discharge of materials in the vicinity of the proposed sanctuary. Public disclosure by the Secretary of such information shall be consistent with national security regulations.

* * * * *

6. Section 922.32 is amended by revising the section heading, the introductory text of paragraph (a), and paragraph (b) to read as follows:

§ 922.32 Congressional documents.

(a) As required by subsection 304(a)(1)(C) of the Act, on the same day that the **Federal Register** notice in paragraph (i) of § 922.31 is issued, the Secretary shall submit to the House Committee on Merchant Marine and Fisheries and the Senate Commerce, Science, and Transportation Committee documents, including an executive summary, consisting of:

* * * * *

(b) In accordance with the provisions of section 304 of the Act, the Secretary shall not publish a notice to designate an area proposed as a national marine sanctuary until after forty-five (45) days of continuous session of Congress starting with the day the documents required by paragraph (a) of this section are submitted to Congress.

7. Section 922.33 is amended by revising paragraphs (a)(2)(ii) and (b)(1) to read as follows:

§ 922.33 Designation determination and findings.

(a) * * *

(2) * * *

(ii) Existing state and Federal authorities are inadequate or should be supplemented to ensure coordinated and comprehensive conservation and management of the area, including resource protection, scientific research, and public education;

* * * * *

(b) * * *

(1) The area's natural resource and ecological qualities, including its contribution to biological productivity, maintenance of ecosystem structure, maintenance of ecologically or commercially important or threatened species or species assemblages, maintenance of critical habitat of endangered species, and the biogeographic representation of the site;

* * * * *

8. Section 922.34 is revised to read as follows:

§ 922.34 Designation.

(a) In designating an area as a national marine sanctuary, the Secretary shall publish a notice of the designation in the **Federal Register** not later than 30 months after the date a notice declaring the site to be an active candidate for sanctuary designation is published in the **Federal Register** pursuant to § 922.30(b), or shall publish not later than such date in the **Federal Register** findings regarding why such notice has not been published. The notice of designation shall be published together with the text of the final implementing regulations. The Secretary shall also advise the public of the availability of the final management plan and the FEIS.

(b) The designation and regulations shall become final and take effect after the close of a review period of forty-five (45) days of continuous session of Congress, computed in accordance with subsection 304(b)(3) of the Act, beginning on the date of publication of the **Federal Register** notice in paragraph (a) of this section unless in the case of a national marine sanctuary that is located partially or entirely within the seaward boundary of any state, the Governor(s) of the affected state(s) certifies to the Secretary that the designation or any of its terms is unacceptable, in which case the designation or the unacceptable term shall not take effect in the area of the sanctuary lying within the seaward boundary of the state(s).

(c) If the Secretary determines that the actions in paragraph (b) of this section affect the sanctuary designation in a manner that sanctuary goals and objectives cannot be fulfilled, the Secretary may withdraw the entire designation. If the Secretary does not withdraw the designation, only those terms of the designation not certified under paragraph (b) of this section shall take effect.

9. Section 922.40 is amended by revising paragraphs (a) and (d) to read as follows:

§ 922.40 General.

(a) The Secretary shall implement the management plan, and applicable regulations, including carrying out surveillance and enforcement activities and conducting such research, monitoring, evaluation, and education programs as are necessary and reasonable to carry out the purposes and policies of the Act.

* * * * *

(d) Not more than five years after the date of designation of any national marine sanctuary, and thereafter at intervals not exceeding five years, the Secretary shall evaluate the substantive progress toward implementing the management plan and goals for the sanctuary, especially the effectiveness of site-specific management techniques, and shall revise the management plan and regulations as necessary to fulfill the purposes and policies of this chapter.

10. Section 922.42 is added to read as follows:

§ 922.42 Promotion and coordination of sanctuary use.

The Secretary shall take such action as is necessary and reasonable to promote and coordinate the use of national marine sanctuaries for research, monitoring, and education purposes. Such action may include consulting with Federal agencies, States, local governments, regional agencies, interstate agencies, or other persons to promote use of one or more sanctuaries for research, monitoring and education, including coordination with the

National Estuarine Research Reserve System

PART 924—MONITOR MARINE SANCTUARY

PART 929—KEY LARGO NATIONAL MARINE SANCTUARY FINAL REGULATIONS

PART 935—THE CHANNEL ISLANDS NATIONAL MARINE SANCTUARY REGULATIONS

PART 936—THE POINT REYES/ FARALLON ISLANDS MARINE SANCTUARY REGULATIONS

PART 937—THE LOOE KEY NATIONAL MARINE SANCTUARY REGULATIONS

PART 938—THE GRAY'S REEF NATIONAL MARINE SANCTUARY REGULATIONS

PART 941—FAGATELE BAY NATIONAL MARINE SANCTUARY REGULATIONS

PART 942—CORDELL BANK NATIONAL MARINE SANCTUARY

PART 943—FLOWER GARDEN BANKS NATIONAL MARINE SANCTUARY

PART 944—MONTEREY BAY NATIONAL MARINE SANCTUARY

11. Section 924.4, 929.9, 935.8, 936.7, 937.7, 938.7, 941.10, 942.7, 943.8 and 944.7 are revised to read as follows (Text of each section is identical):

§ ____ Penalties.

(a) Each violation of the act, any regulation in this part, or any permit issued pursuant thereto, is subject to a civil penalty of not more than $100,000. Each day of a continuing violation constitutes a separate violation.

(b) Regulations setting forth the procedures governing administrative proceedings for assessment of civil penalties, permit sanctions and denials for enforcement reasons, issuance and use of written warnings, and release or forfeiture of seized property appear at 15 CFR part 904.

[FR Doc. 93-27859 Filed 11-17-93; 8:45 am]
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DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Part 914

Indiana Regulatory Program; Show Cause Orders

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Final rule; approval of amendment.

SUMMARY: OSM is announcing the approval, with an exception, of a proposed amendment to the Indiana permanent regulatory program (hereinafter referred to as the Indiana program) under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The proposed amendment revises the Indiana Surface Mining Rules governing show cause orders and adjudicative proceedings for the suspension and revocation of surface coal mining permits. The amendment is intended to revise the Indiana program to be consistent with corresponding Federal regulations.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Roger W. Calhoun, Director, Indianapolis Field Office, Office of Surface Mining Reclamation and Enforcement, Minton-Capehart Federal Building, 575 North Pennsylvania Street, room 301, Indianapolis, IN 46204, Telephone (317) 226-6166.

SUPPLEMENTARY INFORMATION:

I. Background on the Indiana Program
II. Submission of the Amendment
III. Director's Findings
IV. Disposition of Comments
V. Director's Decision
VI. Procedural Determination

I. Background on the Indiana Program

The Secretary of the Interior conditionally approved the Indiana program effective July 29, 1982. Information on the background of the Indiana program, including the Secretary's findings, the disposition of public comments and a detailed explanation of the conditions of approval can be found in the July 26, 1982, **Federal Register** (47 FR 32107).

Subsequent actions concerning the conditions of approval and program amendments are identified at 30 CFR 914.15 and 914.16.

II. Submission of the Amendment

By letters dated August 15, 1989, and December 5, 1989 (Administrative Record Numbers IND-0674 and 0723), the Indiana Department of Natural Resources (IDNR) submitted a proposed amendment to the Indiana program at Indiana Administrative Code (IAC) 310 IAC 06 and 310 IAC 12-6-6.5. The amendment proposed changes to the Indiana program concerning suspension or revocation of permits and adjudicative proceedings. The program amendment was reviewed and approved, in part, by the Director on January 18, 1991 (56 FR 1915). In the same **Federal Register** notice, certain required program amendments were codified at 30 CFR 914.16 (d) and (e) which are intended to require Indiana to revise the Indiana program to be no less effective than the corresponding Federal regulations.

By letter dated February 24, 1993 (Administrative Record Number IND-1214), the IDNR submitted program amendment number 93-2 in response to the required program amendments. The proposed amendment includes revisions in 310 IAC 0.6-1-5, 310 IAC 0.6-1-13, 310 IAC 0.7-3-5, and 310 IAC 12-6-6.5.

OSM announced receipt of the proposed amendment in the March 26, 1993, **Federal Register** (58 FR 16381), and in the same notice, opened the public comment period and provided opportunity for a public hearing on the adequacy of the proposed amendment. The public comment period ended on April 26, 1993.

On July 23, 1993, OSM sent Indiana a letter listing its concerns raised during OSM's review of the proposed amendment (Administrative Record No. IND-1284). Indiana chose not to respond to this letter and informed OSM on September 28, 1993, that it should proceed with a final rulemaking.

III. Director's Findings

Set forth below, pursuant to SMCRA and the Federal regulations at 30 CFR 732.15 and 732.17, are the Director's findings concerning the proposed amendment to the Indiana program. Only substantive changes will be discussed in detail. Revisions not specifically discussed are found to be no less stringent than SMCRA and no less effective than the Federal regulations.

1. 310 IAC 0.6-1-5 Petitions for Review; Response

(a) 310 IAC 0.6-1-5, Hearing Procedures

In the January 18, 1991, **Federal Register** (56 FR 1918), the Director of OSM found that Indiana's proposed two-tiered hearing procedure was less effective than 30 CFR 843.13 which provides for only one hearing opportunity. The Director believed that

the two-tiered process would result in undue delays in the issuance of show cause orders. Required program amendment 30 CFR 914.16(d) was promulgated to require Indiana to revise its rules to be no less effective than the Federal regulations at 30 CFR 843.13 and 43 CFR 4.1190 through 4.1196.

Indiana now proposes to satisfy this required amendment by deleting the terms "complaint" and "complaint and proposed" from 310 IAC 0.6–1–5 and other rules governing hearing procedures to avoid the creation of a two-tiered hearing process. The Director finds that the proposed deletion of the terms "complaint" and "complaint and proposed," together with other changes discussed below, have eliminated the presence of a two-tiered system of hearings. He, therefore, finds that the deletions of the terms "complaint" and "complaint and proposed" in 310 IAC 0.6–1–5 create adjudicatory proceedings for the suspension and revocation of permits which are the same or similar to those contained in section 521(a)(4) of SMCRA and 43 CFR 4.1190 through 4.1196.

(b) 310 IAC 0.6–1–5(d), Service of Show Cause Orders

Indiana proposes to add a provision that will require each show cause order to be served either by certified mail or personal delivery. 43 CFR 4.1109(b) requires that copies of documents by which any proceeding is initiated shall be served on all statutory parties personally or by registered or certified mail, return receipt requested. All subsequent documents shall be served personally or by first class mail. Indiana's proposed language is substantively identical to 43 CFR 4.1109, insofar as it pertains to the isusance of show cause orders and can, therefore, be approved.

(c) 310 IAC 0.6–1–5(e), Contents of Answer To Show Cause

Indiana proposes to add language to require the permittee's answer to a show cause order to set forth certain details refuting the order. The proposed language would require the permittee to state the reasons in detail why a pattern of violations or any permit condition does not exist or has not existed including reasons for contesting: the fact of any violations alleged in the order as constituting a pattern of violations; the willfulness of the violations; or whether the violations were caused by unwarranted failure of the permittee. The permittee must also state the mitigating factors the permittee believes exist in determining the terms of the revocation or the length and terms of the suspension, any other alleged relevant facts, and whether a hearing on the show cause order is desired. This proposed language at 310 IAC 0.6–1–5(e) is substantively identical to 43 CFR 4.1192 which sets forth the required contents of a show cause answer in the Federal rules. The Director, therefore, finds that proposed 310 IAC 0.6–1–5(e) can be approved.

(d) 310 IAC 0.6–1–5(f), Timeline for Director's Decision

Indiana proposes to require the director of the IDNR to submit within 45 days of the permittee's receipt of a show cause order, a written recommendation to the Natural Resource Commission (Commission) that the permit be suspended or revoked if the permittee has not filed an answer to the show cause order. There is no Federal counterpart to the State's proposed 45 day timeline for the director of IDNR to submit a written recommendation to the Commission in situations where the permittee fails to respond to a show cause order. However, the Director finds that 310 IAC 0.6–1–5(f) contains the same or similar procedures as those found in section 521(a)(4) of SMCR and at 43 CFR 4.1190 through 4.1196, governing surface coal mining permit suspension and revocation proceedings.

(e) 310 IAC 0.6–1–5(g), Determination by the Administrative Law Judge

Indiana proposes to add language that would require an administrative law judge to consider the factors set forth in 310 IAC 12–6–6.5, the suspension or revocation of permits, in proceedings to suspend or revoke a permit. Since 310 IAC 12–6–6.5 (a), (b), and (c) contain language which is substantively identical to that contained in the Federal regulations at 30 CFR 843.13(a) (1), (2) and (3), governing factors which support the issuance of a show cause order, the Director finds that the language added to 310 IAC 0.6–1–5(g) can be approved.

Indiana further proposes new language that will require, upon a determination by the administrative law judge that a pattern of violations exists or has existed, that the judge shall order the permit either suspended or revoked. In making a determination that a pattern of violations exists or existed, the administrative law judge need not find that all violations listed in the show cause order occurred, but only that sufficient violations occurred to establish a pattern. If the permit is suspended, the minimum suspension period shall be three days unless the administrative law judge finds that imposition of the suspension period would result in manifest injustice or would not further the purpose of Indiana's State regulatory program. Preconditions to be satisfied prior to the suspension being lifted may be imposed by the administrative law judge. This proposed laneguage is substantively identical to 43 CFR 4.1194 (a)–(b) and can, therefore, be approved.

Proposed 310 IAC 0.6–1–5(g)(2) states that, if the administrative law judge determines the facts alleged in the order are true, the administrative law judge shall enter findings and a non-final order under IC 4–21.5–3–27 for final action by the Commission that the permit be suspended or revoked. In making this non-final order, the administrative law judge shall consider the factors in 310 IAC 12–6–6.5, the State's rules which govern the suspension or revocation of permits. The administrative law judge is required to issue the findings and a non-final order within 60 days after conclusion of the hearing. Indiana also proposes to add language to subsection (h) of 310 IAC 0.6–1–5 requiring the Commission to issue a final order within 60 days after the conclusion of the administrative law judge's hearing or 60 days after the answer is filed, if no hearing is requested. The State's proposed rules provide the same concurrent time allotment to both the administrative law judge and the Commission to render a decision which creates the possibility that the administrative law judge could use all the allotted time for issuance of a non-final order leaving no time for the Commission's issuance of a final order. This problem was brought to Indiana's attention in a July 23, 1993, letter (Administrative Record No. IND–1284) to which Indiana did not respond. The Federal rules at 30 CFR 843.13(c) provide that within 60 days after the hearing and within the time limits set forth in 43 CFR part 4, the Office of Hearings and Appeals shall issue a written determination as to whether a pattern of violations exists and, if appropriate, an order. 43 CFR 4.1194(c) states that the decision of the administrative law judge shall be issued within 20 days following the date the hearing record is closed by the administrative law judge or within 20 days of receipt of the answer, if no hearing is requested by any party and the administrative law judge determines that no hearing is necessary. The Director finds that Indiana must reconcile the time periods for its administrative law judge non-final order and the Commission final order so that a final decision is made no later than 60

days after the conclusion of the administrative law judge hearing. Additionally, the State proposes at subsection (h) that the 60 day period may be waived for good cause or extended upon written consent of the State and the operator. This provision is inconsistent with 30 CFR 843.13(c) which provides for no such waiver of the 60-day time period. For these two reasons, the Director finds that proposed 310 IAC 0.6–1–5(h) is less effective than the Federal rules and cannot be approved. Therefore, the required amendment at 30 CFR 914.16(d) cannot be removed.

Indiana proposes to revise 310 IAC 0.6–1–5(i) by making the Commission rather than the IDNR responsible for serving parties with a copy of the final order of the commission and by providing that following notification a party may apply for judicial review under IC 4–21.5. Indiana has added the language "under IC–4–21.5" to reference Indiana's Administrative Adjudication Act. The Director finds that these revisions clarify responsibilities and procedures under the Indiana program and can, therefore, be approved.

2. 310 IAC 0.6–1–13 Awards of Litigation Expenses

The proposed provisions at 310 IAC 0.6–1–13 concern the award of costs and attorney's fees for a proceeding under the Indiana Surface Mine Coal Reclamation Act, Oil and Gas Code, and Entomology and Plant Pathology Code. Paragraph (b) has been revised to provide that no award for costs and expenses, including attorney's fees shall be entered under IC 13–8–15–7 or IC 14–7–11–5, unless there is a finding that the person against whom the award is made acted for the purpose of harassing or embarrassing an opposing party. IC 13–8–15–7 pertains to oil and gas and IC 14–7–11–5 pertains to entomology and plant pathology. All references to the Indiana Surface Mining Control and Reclamation Act (I–SMCRA) have been removed. The proposed revision, therefore, does not apply to the State's surface coal mining program. Furthermore, revisions to paragraph (c) only apply to those persons who initiate or participate in proceedings under IC 13–8–5–7 which pertains to oil and gas.

Proposed paragraphs (d), (e), (f) and (g) are applicable to proceedings under I–SMCRA. Under proposed paragraph (d), appropriate costs and expenses, including attorney's fees, may be awarded to any person from the permittee, if the person initiates or participates in an administrative proceeding reviewing enforcement and a finding is made by the administrative law judge or Commission that a violation of IC 13–4.1, 310 IAC 12 or permit has occurred, or that an imminent hazard existed; and that the person made a substantial contribution to the full and fair determination of the issues. A contribution of a person who did not initiate a proceeding must be separate and distinct from the contribution made by a person initiating the proceeding. Appropriate costs and expenses may also be awarded under the proposal to: (1) A person, from the department, other than to a permittee or the permittee's authorized representative, who prevails in whole or in part, achieving at least some degree of success on the merits, upon a finding that the person made a substantial contribution to a full and fair determination of the issues; (2) a permittee from the department if the permittee demonstrates that the department issued a cessation order, notice of violation, or an order to show cause why a permit should not be suspended or revoked in bad faith and for the purpose of harassing or embarrassing the permittee; (3) a permittee from a person where the permittee initiated a proceeding under IC 13–4.1–11 or participated in the proceeding in bad faith for the purpose of harassing or embarrassing the permittee; and (4) to the department where it demonstrates that a person sought administrative review or participated in a proceeding in bad faith and for the purpose of harassing or embarrassing the department. The above provisions of proposed paragraph (d) concerning the award of costs and expenses, including attorney's fees, are substantively identical to 43 CFR 4.1294 (a)(1) and (b) through (e) can, therefore, be approved.

As a result of this approval, the Director finds that the required amendment at 30 CFR 914.16(e) has been satisfied and can now be removed.

3. 310 IAC 0.7–3–5 Delegations for Programs Administered by the Division of Reclamation

Indiana proposes to revise 310 IAC 0.6–1–5(b) by removing language which created a two-tiered hearing procedure for the forfeiture of bonds. While there is no Federal counterpart to 310 IAC 0.6–1–5(b), the Director finds that the proposed change is not inconsistent with SMCRA or the Federal regulations.

4. 310 IAC 12–6–6.5 Suspension or Revocation of Permits

Indiana proposes to revise 310 IAC 12–6–6.5 (c), (d) and (e) by removing language which created a two-tiered hearing procedure. These deletions reflect proposed changes to 310 IAC 0.6–1–5 which created a hearing procedure that is the same as or similar to its Federal counterpart. The Director finds that the proposed changes render the procedures in 310 IAC 12–6–6.5 the same as or similar to those contained in 30 CFR 843.13 and are necessary in order for Indiana's rules to be internally consistent.

IV. Disposition of Comments

Pursuant to section 503(b) of SMCRA and the implementing regulations at 30 CFR 732.17(h)(11)(i), comments were solicited from various Federal agencies with an actual or potential interest in the Indiana program. The U.S. Department of Agriculture, Forest Service; U.S. Department of Agriculture, Soil Conservation Service; and the U.S. Department of Interior, Bureau of Mines responded without substantive comment.

One individual responded to OSM's invitation for public comment by commenting on proposed 310 IAC 0.6–1–13(d) which concerns awards of litigation expenses. In the State's proposal, appropriate costs and expenses including attorney's fees, may be awarded under IC 13–4.1–11–9 "only" as set forth in the rule. The Federal counterpart at 43 CFR 4.1294 states that appropriate costs and expenses, including attorney's fees may be awarded as set forth in the rule. The commenter believed the State's use of the term "only" appeared more restrictive than the Federal counterpart and that this could discourage citizen participation. As previously indicated, the Director has determined that the proposed language at 310 IAC 0.6–1–13 is substantively identical to 43 CFR 4.1294. The use of the term "only" does not make the State's rule more restrictive than its Federal counterpart since the Federal and State provisions are substantively identical in content, and since the criteria contained in 43 CFR 4.1294 are the only criteria contained in the Federal regulations which pertain to the award of attorney fees in administrative proceedings.

The same commenter asked why the State indicated on the side-by-side submitted to OSM that there was no Federal counterpart to 310 IAC 0.7–3–5(a)(1) since the Federal rules do contain a counterpart to permit termination where no mining has started in a certain period. 310 IAC 0.7–3–5 applies to the delegation of programs administered by the division of reclamation. There is no Federal counterpart to the State's rules governing the delegation of authority.

There is, as the commenter points out, a Federal rule at 30 CFR 773.19(e) which requires that a permit be terminated if the permittee has not begun the surface coal mining and reclamation operations covered by the permit within three years of the permit's issuance. In any event, this provision is not being amended as a part of this rulemaking.

V. Director's Decision

Based upon the above findings, the Director is approving, with an exception, program amendment number 93–2 as submitted by Indiana on February 24, 1993. The Director has determined that the amendment which revises 310 IAC 0.6–1–5, 310 IAC 0.6–1–13, 310 IAC 0.7–3–5, and 310 IAC 12–6–6.5 is consistent with SMCRA and no less effective than the Federal rules. The exception is proposed 310 IAC 0.6–1–5(g)(2) and (h) to the extent that these provisions: (1) Provide for concurrent time periods for the administrative law judge to issue findings and a non-final order and for the Commission to issue a final order, and (2) allow for the waiver and extension of the 60 day time period for the Commission to issue a final order. The Federal regulations at 30 CFR part 914 codifying decisions concerning the Indiana program are being amended to implement this decision.

EPA Concurrence

Under 30 CFR 732.17(h)(11)(ii), the Director is required to obtain the written concurrence of the Administrator of the Environmental Protection Agency (EPA) with respect to any provisions of a State program amendment which relate to air or water quality standards promulgated under the authority of the Clean Water Act (33 U.S.C. 1251 *et seq.*) or the Clean Air Act (42 U.S.C. 7401 *et seq.*). The Director has determined that this amendment contains no such provisions and that EPA concurrence is therefore unnecessary. However, by letter dated March 26, 1993 (Administrative Record No. IND 1227), EPA submitted its concurrence without comment.

Effect of Director's Decision

Section 503 of SMCRA provides that a State may not exercise jurisdiction under SMCRA unless the State program is approved by the Secretary. Similarly, 30 CFR 732.17(a) requires that any alteration of an approved State program be submitted to OSM for review as a program amendment. Thus, any changes to the State program are not operational until approved by OSM. The Federal regulations at 30 CFR 732.17(g) prohibit any unilateral changes to approved State programs. In the oversight of the Indiana program, the Director will recognize only the statutes, regulations and other materials approved by him, together with any consistent implementing policies, directives and other materials, and will require the enforcement by Indiana of only such provisions.

VI. Procedural Determinations

Executive Order 12866

This final rule is exempted from review by the Office of Management and Budget under Executive Order 12866.

Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of the Executive Order 12778 and has determined that, to the extent allowed by law, this rule meets the applicable standards of subsections (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15 and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the other requirements of 30 CFR parts 730, 731, and 732 have been met.

National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 914

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 10, 1993.

Carl C. Close,

Assistant Director, Eastern Support Center.

For the reasons set out in the preamble, title 30, chapter VII, subchapter T of the code of Federal Regulations is amended as set forth below:

PART 914—INDIANA

1. The authority citation for part 914 continues to read as follows:

Authority: 30 U.S.C. 1201 *et seq.*

2. Section 914.15 is amended by adding a new paragraph (YY) to read as follows:

§ 914.15 Approval of regulatory program amendments.

* * * * *

(YY) The following amendment (Program Amendment Number 93–2) to the Indiana regulatory program, as submitted to OSM on February 24, 1993, is approved with an exception, effective November 18, 1993: The approved amendment to the Indiana Administrative Code (IAC) at 310 IAC 0.6–1–5, 310 IAC 0.6–1–13, 310 IAC 0.7–3–5, and 310 IAC 12–6–6.5 pertains to show cause orders and adjudicatory proceedings for the suspension and revocation of surface coal mining permits. OSM is not approving 310 IAC 0.6–1–5(g) (2) and (h) to the extent that these provisions provide for the waiver and extension of the 60 day time period for the Commission to issue a final order and for concurrent time periods for rulings by the Commission and administrative law judge.

3. Section 914.16 is amended by revising paragraph (d) and removing and reserving paragraph (e) to read as follows:

§ 914.16 Required program amendments.

* * * * *

(d) By July 1, 1994, Indiana shall submit for OSM approval, an

amendment to its permanent regulatory program which provides for adjudicative proceedings for suspension or revocation of permits which are no less effective than the Federal regulations at 30 CFR 843.13 and 43 CFR 4.1190 through 4.1196.

(e) Removed and reserved.

* * * * *

[FR Doc. 93–28369 Filed 11–17–93; 8:45 am]
BILLING CODE 4310–05–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 307

Cost of Living Adjustment of the Mechanical Royalty Rate; Correction

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule; correction.

SUMMARY: This document contains corrections to the final rule published November 1, 1993 (58 FR 58282), relating to the cost of living adjustment of the mechanical royalty rate.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT:
Barbara N. Gray, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009, (202) 606–4400.

SUPPLEMENTARY INFORMATION: In the Cost of Living Adjustment of the Mechanical Royalty Rate; Final Rule, in the issue of Monday, November 1, 1993 (58 FR 58282), rule document 93–26883, beginning on pages 58282 and 58283, please make the following corrections:

1. On page 58282, in column 3, in **SUMMARY**, lines 6 and 7, "1993. The rate is increased to either 6.61 cents, or 1.3 cents per minute of playing," should read, "1993. The rate is increased to either 6.60 cents, or 1.25 cents per minute of playing."

2. On page 58283, in column 1, lines 8 and 9, "effective January 1, 1994, shall be 6.61 cents, or 1.3 cents per minute of playing," should read, "effective January 1, 1994, shall be 6.60 cents or 1.25 cents per minute of playing."

3. On page 58283, in column 2, in § 307.3(f), line 5, "shall be either 6.61 cents, or 1.3 cents," should read, "shall be either 6.60 cents, or 1.25 cents."

Dated: November 15, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–28430 Filed 11–17–93; 8:45 am]
BILLING CODE 1410–09–M

POSTAL SERVICE

39 CFR Part 20

Implementation of Mexico Direct Service

AGENCY: Postal Service.

ACTION: Interim rule and request for comment.

SUMMARY: Mexico Direct service is a new type of international mail service that is available only to customers with operations in both the United States and Mexico that agree to tender to the Postal Service during a 60-day period at least 10,000 items meeting the applicable makeup and preparation requirements for Mexican domestic mail. The Postal Service transports these items to Mexico for entry into Mexico's domestic mail system. The charge for Mexico Direct service is $1.01 per pound. The customer also is responsible for paying the applicable Mexican domestic postage. Details about each Mexico Direct mailing must be specified in a service agreement between the Postal Service and the customer. Interim implementing regulations have been developed and are set forth below for comment and suggested revision prior to adoption in final form.

DATES: The interim regulations take effect on November 17, 1993. Comments must be received on or before December 17, 1993.

ADDRESSES: Manager, International Product Management, U.S. Postal Service, Washington, DC 20260–2410. Copies of all written comments will be available for public inspection and photocopying between 9 a.m. and 4 p.m., Monday through Friday, in room 5300, 475 L'Enfant Plaza West, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:
Mr. Rainer Hengst, (202) 268–6095.

SUPPLEMENTARY INFORMATION: Under article 25 of the Universal Postal Convention, a postal administration is not obligated to deliver mail that senders resident in its territory post in large quantities in a foreign country. A postal administration may invoke this provision not only against mail sent by a company organized under the laws of the administration's territory, but also against mail sent by a company organized under the laws of a foreign country if the company does business in the administration's territory.[1] Consequently, a company with commercial activity in both the United States and another country may be unable to use the Postal Service to mail items to addressees in that country even if the company's operations justify its posting the items in the United States.

Due in large part to the proximity and size of the Mexican consumer market, many U.S. companies either already have established, or are in the process of establishing, operations in Mexico. These companies send a variety of mail to their Mexican customers, including direct mail pieces, parcels containing merchandise, and bills. Whether the companies produce such mail in the United States or Mexico depends on a number of factors. For instance, a company sending bills to its Mexican customers may require data processing capabilities that are available only in the United States. Similarly, a company sending advertising mail to Mexican customers may need to print its promotional material in the United States. In both cases, it may make economic sense for the company to post its Mexico-bound mail in the United States. However, since the Mexican Postal Service may consider the company to be a resident of Mexico by virtue of its Mexican operations, the company may have no choice but to post its mail in Mexico.

Several U.S. companies with operations in Mexico have asked the Postal Service to develop a means for them to post their Mexico-bound mail in the United States. In response, the Postal Service has worked with the Mexican Postal Service to develop a way for the companies to meet their mailing needs. As a result of discussions between the two administrations, the Postal Service is implementing Mexico Direct service. Regulations for this new service appear in Section 610 of the International Mail Manual.

Under Mexico Direct service, customers are able to tender items prepared as Mexican domestic mail to the Postal Service. The Postal Service transports the items to Mexico, where they are presented to the Mexican Postal Service and entered into Mexico's domestic mail system. The charge for this service is $1.01 per pound or fraction of a pound (plus the applicable Mexican domestic postage). Postage is paid on the total gross weight of the mailing, which includes the weight of the Mexico Direct items plus the weight of the mailing equipment used to prepare the items.

Mexico Direct service is available only to customers with operations in both the United States and Mexico. In addition, the Postal Service's agreement with the Mexican Postal Service

[1] A postal administration invoking article 25 typically detains the incoming international mail and refuses to deliver it until the sender pays the applicable domestic postage.

requires that this be a bulk service. Consequently, the customer must agree to send at least 10,000 Mexico Direct items during a 60-day period.

Mexico Direct customers are responsible for ensuring that their items meet the Mexican Postal Service's applicable makeup and preparation requirements for Mexican domestic mail and for paying the applicable Mexican domestic postage. As part of the service, the Postal Service will provide customers with information received from the Mexican Postal Service regarding makeup and preparation requirements. Further, the two administrations have agreed to work together to develop a mechanism whereby the Postal Service will be able to collect Mexican domestic postage from Mexico Direct customers and remit it to the Mexican Postal Service. Depending on the form that mechanism takes, those customers may be charged an additional fee to cover the Postal Service's costs of providing Mexican postage payment service.

A customer interested in using the service must contact the Postal Service at least 21 days before a planned Mexico Direct mailing date. At that time, the customer must provide the following information to the Postal Service:

(1) The customer's name and address;
(2) The planned mailing date;
(3) Where the mail will be tendered to the Postal Service;
(4) The type of items that will be contained in the planned mailing;
(5) The size and weight of items that will be contained in the planned mailing;
(6) The number of items that will be contained in the planned mailing;
(7) How the customer intends to sort its items;
(8) The mailing equipment that the customer intends to use to prepare its items; and
(9) How the customer intends to pay postage to the Mexican Postal Service.

Upon receipt of this information, the Postal Service will contact the Mexican Postal Service to ascertain whether the planned mailing is acceptable and, if it is not, how the mailing can be made acceptable. The Postal Service will inform the customer of the Mexican Postal Service's response. If the Postal Service and the Mexican Postal Service both agree to accept the mailing, the Postal Service and the customer will enter into a service agreement that stipulates the following information about the mailing:

(1) The mailing date;
(2) Where and when the customer is tendering the mail to the Postal Service;
(3) The total weight of the mailing;
(4) How the items are to be prepared;
(5) How the items are to be sorted; and
(6) How the customer is paying postage to the Mexican Postal Service.

Although 39 U.S.C. 407 does not require advance notice and opportunity for submission of comments, and the Postal Service is exempted by 39 U.S.C. 410(a) from the advance notice requirements of the Administrative Procedure Act regarding rulemaking (5 U.S.C. 553), the Postal Service invites interested persons to submit written data, views, or arguments concerning the interim rule.

The Postal Service adopts the following interim amendments to the International Mail Manual, which is incorporated by reference in the Code of Federal Regulations. See 39 CFR 20.1.

List of Subjects in 39 CFR Part 20

International postal service, Foreign relations.

PART 20—[AMENDED]

1. The authority citation for 39 CFR part 20 continues to read as follows:

Authority: 5 U.S.C. 552(a); 39 U.S.C. 401, 404, 407, 408.

2. Chapter 6 of the International Mail Manual is amended by titling the chapter "Special Programs" and by adding new section 610 to read as follows:

CHAPTER 6—SPECIAL PROGRAMS

* * * * *

610 MEXICO DIRECT

611 Description.

Mexico Direct service is an international mail service that is available only pursuant to a service agreement between the Postal Service and a qualifying mailer. This service enables a mailer to tender items meeting the applicable makeup and preparation requirements for Mexican domestic mail to the Postal Service. The Postal Service transports the items to Mexico for entry into Mexico's domestic mail system. The mailer is responsible for ensuring that the items meet the Mexican Postal Service's applicable makeup and preparation requirements and for paying for applicable Mexican domestic postage.

612 Qualifying Mailers.

To qualify, a mailer must have operations in both the United States and Mexico. In addition, the mailer must agree to send at least 10,000 Mexico Direct items during a 60-day period.

613 Postage

613.1 Rate.

The charge for this service is $1.01 per pound or fraction of a pound (plus the applicable Mexican domestic postage). Postage is paid on the total gross weight of the mailing, which includes the weight of the Mexico Direct items plus the weight of the mailing equipment used to prepare the items.

613.2 Postage Payment Method.

Mailers must pay through an advance deposit account or affix postage stamps or meter postage to the mailing statement.

613.3 Mailing Statement.

Compute postage on the mailing statement provided by the Postal Service. A separate mailing statement must be completed for each mailing and must be presented at the time of mailing.

614 Preparation Requirements.

Mexico Direct items must be prepared in sacks weighing at least 30 pounds each or in trays, in accordance with the terms of the service agreement.

615 Prenotification.

A qualifying mailer interested in using the service must contact the Postal Service at least 21 days before a planned Mexico Direct mailing date. (Communications should be directed to International Product Management, U.S. Postal Service, Washington, DC 20260–2410; (202) 268–2275 or –2276.) At that time, the customer must provide the following information to the Postal Service:

a. The customer's name and address.
b. The planned mailing date.
c. Where the mail will be tendered to the Postal Service.
d. The type of items that will be contained in the planned mailing.
e. The size and weight of items that will be contained in the planned mailing.
f. The number of items that will be contained in the planned mailing.
g. How the customer intends to sort its items.
h. The mailing equipment that the customer intends to use to prepare its items.
i. How the customer intends to pay postage to the Mexican Postal Service.

616 Service Agreement.

Upon receipt of this information, the Postal Service will contact the Mexican Postal Service to ascertain whether the planned mailing is acceptable and, if it is not, how the mailing can be made acceptable. The Postal Service will

inform the customer of the Mexican Postal Service's response. If the Postal Service and the Mexican Postal Service both agree to accept the mailing, the Postal Service and the customer will enter into a service agreement that stipulates the following information about the mailing:

a. The mailing date.

b. Where and when the customer is tendering the mail to the Postal Service.

c. The total weight of the mailing.

d. How the items are to be prepared.

e. How the items are to be sorted.

f. How the customer is paying postage to the Mexican Postal Service.

A transmittal letter making the changes in the pages of the International Mail Manual will be published and transmitted to subscribers automatically. Notice of issuance of the transmittal letter will be published in the **Federal Register** as provided by 39 CFR 20.3.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–28398 Filed 11–17–93; 8:45 am]

BILLING CODE 7710–12–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Part 421

[BPO–102–F]

RIN 0938–AF59

Medicare Program; Carrier Jurisdiction for Claims for Durable Medical Equipment, Prosthetics, Orthotics, and Supplies (DMEPOS)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This final rule would address the provisions of section 1834(a)(12) of the Social Security Act that authorizes us to designate one carrier for one or more regions to process all claims within that region. It incorporates in regulations the four designated carriers that will process claims for durable medical equipment, prosthetics, orthotics, supplies and certain other items covered under Part B of Medicare. We expect the above changes to lead to more efficient and economical administration of the Medicare program.

EFFECTIVE DATE: These regulations are effective on December 17, 1993.

FOR FURTHER INFORMATION CONTACT:

Lisanne Bradley, (410) 966–3359, for carrier jurisdiction for claims for durable medical equipment, prosthetics, orthotics and supplies, and other issues involving suppliers.

Larry Pratt, (410) 966–7403, for criteria and standards for evaluating designated carriers processing durable medical equipment, prosthetics, orthotics, and supplier claims.

Juliette Jenkins, (410) 966–6997, for questions relating to the medical review of claims for durable medical equipment, prosthetics, orthotics and supplies.

Nancy Siebert, (410) 966–6012, for questions about the regional carriers and other questions relating to claims for durable medical equipment, prosthetics, orthotics and supplies.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1842(a) of the Social Security Act (the Act) authorizes the Secretary to enter into contracts with carriers for the payment of claims for Part B Medicare-covered services and items. The statute does not place any restriction on the area that a carrier must serve. Consequently, we have contracts for carriers to process claims in areas that are multi-State, Statewide, or lesser areas. In addition, section 1842(g) of the Act requires the Railroad Retirement Board (RRB) to contract with a carrier or carriers to process claims for services or items furnished to qualified railroad retirement beneficiaries entitled to Medicare in accordance with regulations prescribed by the Secretary.

Our experience has been that there is diversity among carriers in their interpretation of coverage policies, local medical review policies, and pricing for similar items and services. To some extent a carrier's performance is affected by the nature of its workload. That is, the more unusual a piece of equipment or supply is in an area, the more difficult it is for a carrier to make a coverage or pricing determination. To the extent that carrier determinations reflect local conditions, diversity is desirable, but to the extent that local norms result in unwarranted variations in payment amounts, utilization parameters, or claims documentation policies for items furnished nationally, such diversity is undesirable.

Claims for durable medical equipment, prosthetics, orthotics, and supplies (DMEPOS) are submitted to carriers by suppliers. The Medicare regulations (42 CFR 400.202) define "supplier" as "a physician or other practitioner, or an entity other than a provider, that furnishes health care services under Medicare." Section 400.202 also defines "provider" as a "hospital, a skilled nursing facility, a comprehensive outpatient rehabilitation facility, a home health agency, or a hospice that has in effect an agreement to participate in Medicare, or a clinic, a rehabilitation agency, or a public health agency that has a similar agreement but only to furnish outpatient physical therapy or speech pathology services."

In practice, before August 17, 1992, an entity, including a provider, that wished to become a supplier to Medicare beneficiaries did so merely by submitting claims for Medicare covered items and services. Most carriers required some identifying information from a supplier before it received a billing number, but there were no national requirements that a DMEPOS supplier had to meet. The absence of a well-defined process for issuing supplier numbers and the diversity in handling claims have resulted in some abuses under the Medicare program. Some suppliers exploited carrier jurisdiction policies by submitting claims only to those carriers whose claims review policies result in more inclusive or expansive determinations of Medicare coverage, or in higher payment amounts, for the items they supply.

Section 1834(a)(12) of the Act authorizes the Secretary to "designate, by regulation under section 1842, one carrier for one or more entire regions to process all claims within the region for covered items under this section." When read in conjunction with sections 1834(a)(13) and (h)(3), the covered items include all covered durable medical equipment (DME), prosthetics, prosthetic devices, and orthotics. Other items for which claims may be processed by regional carriers include: home dialysis supplies and equipment; surgical dressings; immunosuppressive drugs; parenteral and enteral nutrients, equipment and supplies; and other items that we may designate, including those provided by a physician for home use, but not those items covered "incident to" a physician's service or bundled into a facility payment.

II. Provisions of the Final Rule With Comment Period

We published a final rule with comment period in the **Federal Register** on June 18, 1992 (57 FR 27290), that amended 42 CFR parts 405, 420, 421, and 424. The final rule had an effective date of August 17, 1992, with the comment period ending on August 17, 1992. The disclosure of ownership provisions were applied to new suppliers on August 17, 1992, and for all other suppliers on January 1, 1993. The supplier standards provisions were

applied to all suppliers on August 17, 1992. The requirement to use beneficiary residence claims jurisdiction for claims submitted to regional carriers were effective on July 1, 1993. This criterion will not be implemented until October 1, 1993, since it took longer to award the contracts than we anticipated. Claims will be transferred to the four durable medical equipment regional carriers (DMERCs) over a 5-month period beginning October 1, 1993.

The June 1992 final rule—

- Modified regulations to provide that claims for DMEPOS and certain other items covered under Part B of Medicare be processed by designated carriers.
- Specified the jurisdictions each designated carrier will serve, and changed the method by which claims for DMEPOS are allocated among the carriers from "point of sale" to "beneficiary residence."
- Established certain minimum standards for suppliers for purposes of obtaining supplier billing numbers.
- Incorporated in regulations certain supplier disclosure requirements imposed under section 1124A of the Act, as amended by section 4164 of the Omnibus Budget Reconciliation Act of 1990 (OBRA '90), as a supplier standard that must be met before a supplier billing number is issued or renewed.
- Described the criteria and standards to be used beginning October 1, 1993, for evaluating the performance of designated carriers processing claims for DMEPOS in the administration of the Medicare program.
- Established that DMEPOS claims for RRB beneficiaries entitled to Medicare be processed by the DMERCs.
- Made the following technical changes:

— It revised the definition of "locality" to specify that a locality is the geographical area for which the carrier derives the reasonable charges or fee schedule amounts for services or items, and can include a State or larger area.

— It clarified that a regional DMEPOS carrier is exempt from the requirements of § 421.200 regarding carrier functions that apply to other carriers, by adding the phrase "other than a regional DMEPOS carrier." The DMERCs are bound, instead, by their contracts, which include most of the same functions.

— It allowed us to assign to DMERCs the processing of claims for Part B items not bundled into a physician or facility payment or provided as an integral part of a physician's service. (Claims for items sold or rented by a physician to his or her Medicare patients for home use will be processed by the DMERCs.)

- Added definitions for the acronym "DMEPOS" and the term "supplier". Defined "supplier" as an entity or individual, including a physician or Part A provider, that sells or rents Part B covered items to Medicare beneficiaries under the standards of § 424.57(c), and an "enrolled supplier" is a supplier that has an active billing number.

III. Analysis of and Responses to Public Comments

In response to the June 1992 final rule with comment period, we received 22 timely items of correspondence. Comments were submitted from Medicare carriers, a Medicaid agency, various associations and organizations representing facilities and suppliers, medical and other professional individuals, and law firms. Some of the comments duplicated previous comments we received in response to the proposed rule we published on November 6, 1991 (56 FR 56612). A summary of individual comments and responses to our rule are discussed below:

Regionalization

Comment: Four commenters continue to recommend that the existing specialty carriers for parenteral and enteral nutrition (PEN) claims be retained.

Response: As we have previously responded (57 FR 27291), it would not be cost effective for us to retain these special arrangements when PEN claims can be processed just as correctly, but more efficiently, by the four DMERCs. One of the DMERCs is currently a PEN specialty carrier and will assist the other DMERCs in maintaining the national PEN program.

Comment: Another commenter again requested that there be a specialty carrier arrangement for home dialysis supplies.

Response: This arrangement would also not be an efficient or cost effective plan for the Medicare program. Claims for home dialysis supplies are very similar to other claims to be processed by DMERCs. The more claims that are pooled together, the lower the cost of processing a claim.

Comment: One commenter asked that suppliers be allowed to submit all their claims to one DMERC.

Response: Based on the residence of the beneficiary, suppliers must submit proper claims to one of four DMERCs. Suppliers may submit claims electronically or on paper. Suppliers who submit claims electronically may submit all of their claims to one DMERC, no matter where their customers reside. The DMERC receiving the electronic submissions will forward claims (also electronically) to the appropriate DMERCs for processing and payment, although we will not be able to send electronic remittance notices for claims processed by other than the receiving DMERC. Pricing will continue to be done on a State-by-State basis and coverage and utilization rules will be established for each DMERC. A DMERC for one region will not maintain pricing and policy for another region.

Comment: One commenter relayed the following comments.

- It is too burdensome for doctors of medicine, osteopathy, and optometry to submit claims to the DMERCs for V code items such as cataract lenses and frames when they have to submit claims for professional services to local carriers.
- Submission of V code claims to the DMERCs is confusing for beneficiaries and carriers.
- Implementation of the OBRA '90 requirement, which limits the number of cataract lenses or eyeglasses per beneficiary to "one per lifetime" is difficult to implement.

Response: The V code situation is no different from that of claims for supplies submitted by physicians for items that they have sent home with beneficiaries, such as surgical dressings and ostomy bags. Since physicians are in competition with non-physician suppliers for these supply items, just as they are with non-physician suppliers that sell eyeglass frames, etc., it is proper that all claims for these items be adjudicated by the same processors. We do not believe that this is confusing for beneficiaries since the DMERCs will inform them that all items used at home are processed by the DMERC for their area. Local carriers will simply deny V code claims. Regionalization of V codes will not inhibit the implementation of the "one per lifetime" rule since the Common Working File (CWF) stores data on Medicare beneficiaries residing within the area, and contains information on all cataract patients.

Competition for Regional Carrier Contracts

Comment: One carrier believes the Request for Proposals (RFP) precluded its submission of a proposal.

Response: A full and open competition was held for the four regional carriers, and all potential offerors were given a chance to comment on a pre-solicitation notice before the issuance of the RFP. We believe the specific criteria, as well as the weights for those criteria, published in the RFP did not preclude the participation of any entity qualifying as a carrier.

Claims Jurisdiction Policy

Comment: One commenter asked that there be an exemption from basing the claims jurisdiction on a beneficiary's residence when the beneficiary resides within 60 miles of the border of a region or has more than one domicile or quasi-domicile.

Response: We do not agree with the commenter. Those exceptions would be very difficult to implement and monitor. Instead, we have structured the regions to limit the number of suppliers operating over regional borders. Also, only a small percentage of DMEPOS is purchased or rented by "snowbirds" who tend to be healthier than their less mobile counterparts. The small numbers of claims in each category do not justify the operational expense and effort that would be needed to implement the exceptions.

Standardization

Comment: Over half of the commenters restated that the transition to DMERCs should be done in conjunction with national standardization of DMEPOS coverage guidelines and utilization parameters.

Response: As we previously explained in the June 1992 final rule (57 FR 27298), in order to require standardization of DMEPOS coverage guidelines and utilization parameters, we would have to engage in a long and cumbersome process involving publication of each decision in the Federal Register. Instead, the Medical Director for each DMERC will determine the guidelines and parameters for his or her region after taking into account any national coverage policies and discussions with the other DMERC Medical Directors. We believe that the regional guidelines and parameters will be very similar in the four regions

Comment: Two commenters recommended that we establish national pricing, with one suggesting local variations, for DMEPOS items

Response: As we stated in our response to similar comments to the final rule (57 FR 27299), we are limited to the pricing areas prescribed by statute. We cannot establish national pricing without authorizing legislation

Disclosure of Ownership and Control

Comment: One supplier asked that we not require information on subcontracting entered into before publication of the final rule.

Response: Section 1124A of the Act does not allow us to exclude this information. Section 1124A specifically requires a "disclosing part B provider," as defined in that section, to identify each person with an ownership or control interest in the provider or in any subcontractor that the provider directly or indirectly has a 5 percent or more ownership interest.

Comment: One commenter asked that we define "significant business transaction" and shorten the period for reporting a transition from 5 to 3 years.

Response: The term "significant business transaction" is defined in § 420.201 "as any business transaction or series of transactions during any one fiscal year, the total of which exceeds the lesser of $25,000 and 5 percent of the total operating expenses of the provider." This definition is unchanged by this regulation.

The 5-year requirement for reporting a "significant business transaction" is consistent with the reporting requirements for transactions for other Medicare providers. The 3-year period applies to the reporting of ownership or control interests (section 1124A(a)(2)(A) of the Act).

Comment: One commenter asked that we specify what records must be kept in order to comply with disclosure rules.

Response: No particular types of records are required.

Comment: Two other commenters insisted that disclosure of ownership requirements not be imposed on suppliers that do not accept assignment.

Response: Section 1833(e) of the Act gives us the general authority to obtain any information we need to pay part B claims correctly. We believe that this authority extends to ownership information, which can be relevant in determining whether there are outstanding overpayments for individuals involved with a supplier We also believe that the disclosure provision in section 4164(b) of OBRA '90 also provides authority, as specified in section 1124A of the Act, to request information from all suppliers. The statute states that "No payment may be made under part B of title XVIII for items or services furnished by any disclosing part B provider unless such provider has provided the Secretary with full and complete information * * *." Under the statute, a "disclosing part B provider means any entity receiving payment on an assignment-related basis for furnishing items or services for which payment may be made under part B * * *." Even suppliers that do not "participate," that is, agree always to accept assignment, may accept assignment on any claim. The statute does not require that more than one assigned claim be presented, but does require that full disclosure be made before payment of that claim. Therefore, it is reasonable to require disclosure routinely from all suppliers. It is also much more administratively efficient, since over 90 percent of all DMEPOS claims are, indeed, assigned.

We have made disclosure a supplier standard. All entities, including individuals selling personal property, must attest that they have made full and accurate disclosure in order to qualify as a Medicare supplier and to obtain and retain a billing number. However, claims submitted by beneficiaries for used equipment purchased from an individual selling personal property (for example, at a yard or garage sale) will be processed by the DMERCs, subject to all other claims processing rules such as physician certification of medical necessity.

Supplier Standards

Comment: Two commenters repeated their comments on the proposed rule that suppliers of DMEPOS should be held to health and safety standards.

Response: We explained in the June 1992 final rule (57 FR 27296) that we do not believe it would be appropriate to establish standards other than those business standards we have established for suppliers, since we only pay for the items themselves and not for the associated services. We also believe that those health and safety standards might be inappropriately stringent for small businesses causing them to have to discontinue their participation in the Medicare program and limiting access for Medicare beneficiaries.

Comment: Two commenters asked that there be a supplier standard that requires the acceptance of assignment on all claims for dually-eligible Medicare and Medicaid recipients.

Response: We do not have the statutory authority to implement this requirement.

Comment: One commenter requested that we modify the supplier standard on equipment returns to eliminate as a reason for return "not what the beneficiary thought they were purchasing", unless it was the supplier's mistake. They also want a time frame after which used items cannot be returned.

Response: Much of the "accepts return" standard merely acts as a warranty for areas where there are restricted warranties. The major innovation in this standard is to assure that beneficiaries understand what they are purchasing or renting. We believe that this is an appropriate business standard to impose on suppliers. They are in the best position to explain whatever options their physicians' prescriptions allow and the use, maintenance, purpose, etc., of the item.

We also do not believe that any given time limit would be appropriate for all types of items. Most defects or mistakes should be immediately apparent; others may not be discovered until after a period of reasonable use.

Supplier Numbers

Comment: One commenter asked that supplier number revocation notices include the reasons for the revocation and that before revocation an intermediate sanction, such as a temporary suspension, be imposed.

Response: Revocation notices include the reasons for the revocation, as well as how to appeal the decision. Intermediate sanctions are not appropriate. The supplier standards define those entities for which Medicare allows payment for covered items and services. If an entity does not meet those standards, it cannot be paid. Suspension of payment merely would delay when an entity is paid.

Comment: One commenter believed that the 8-week period for final administrative review of a National Supplier Clearinghouse decision, with the concurrence of HCFA, to deny or terminate a supplier billing number, is too long. The commenter would prefer that either the administrative review period be shortened to 1 week or that claims be paid during the intervening 8 weeks.

Response: We do not agree with the commenter. Action to deny or terminate a supplier billing number is taken in only the most egregious cases. It would be inappropriate to continue to pay the suppliers, especially since, if the decision is upheld, there would be no monies coming due to the supplier from which to withhold the 8-week overpayment.

Complaint Log

Comment: One commenter asked that we clarify the amount of time that complaint files must be kept by suppliers.

Response: We recommend that complaint files, like any Medicare-related records, be kept for up to 7 years from the filing of a complaint, since the statute of limitations for fraud cases arising under the False Claims Act is 6 years. These files should help a supplier show its business practices for the entire period covered by any fraud complaint and the time it may take to prosecute the complaint.

Comment: One commenter thought there should be a limit on the amount of time beneficiaries have to lodge complaints about rented or purchased items.

Response: We do not agree that there should be a time limit. However, complaints about a newly purchased or rented item, depending on the seriousness of the complaint, are more compelling than a complaint on an item purchased 5 years ago.

Comment: Two commenters stated that some sort of due process procedures should be met before a DMERC can impose on a supplier the requirement to keep a fully documented complaint log. Three commenters stated that the complaint log requirement should be imposed only when there are repeated complaints of the same nature after the supplier has received verbal and written warnings.

Response: We do not view requiring a complaint log as a punishment but rather as an administrative requirement that will protect Medicare beneficiaries, the supplier, and the Medicare program when there are questions about the supplier's business practices. Some complaints or series of complaints are so serious that they will require a DMERC to act immediately. If appropriate, DMERCs will use verbal and written warnings. When there are questions about the business, it is a good business practice to keep detailed records of alleged problems.

Transition to DMERCs

Oversight

Comment: Two commenters asked that we oversee closely the transition to DMERCs.

Response: We agree with the commenters. Each DMERC has a detailed implementation plan that is being closely monitored by us.

Comment: Another commenter asked that administration of the DMERCs be handled by HCFA's central office.

Response: The project officer for each DMERC will be the Associate Regional Administrator for Medicare in the lead regional office for that DMERC. The following regional offices are lead regions:

- Region A DMERC—Philadelphia region.
- Region B DMERC—Chicago region.
- Region C DMERC—Dallas region.
- Region D DMERC—Seattle region.

Our central office will continue technical coordination and will monitor the implementation process.

Losing Carriers

Comment: Several of the commenters seemed to believe that local carriers would be "losing their contracts" when the DMEPOS claims are transferred.

Response: This is not true. DMEPOS claims are about 5 percent of the average carrier's workload. Local carriers will continue to process all other types of Part B claims and to be subject to claims processing standards.

Comment: Since reviews and hearings would be handled by the local carrier or DMERC that processed the underlying claim, a commenter was concerned that local carriers might put a low priority on processing these reviews and hearings and that they might take years to resolve.

Response: Again, because these are carriers subject to evaluation and contract renewal each year we do not believe this will occur. If there is evidence of "slow downs", we should be notified.

Phase In

Comment: Two commenters repeated their request that the DMERCs be phased in by type of product rather than State.

Response: As we responded in the final rule with comment (57 FR 27293), we believe that phase in by product would impose a hardship on suppliers that provide more than one type of product. Also, it would be more costly for the Medicare program, which would have to continue the DMEPOS program in all local carriers until the last claims are transferred to the DMERCs.

Comment: Another commenter asked how multi-State suppliers would be handled in the transition.

Response: We will designate one DMERC as the National Supplier Clearinghouse for processing all supplier number applications and for housing files on all DMEPOS suppliers. The National Supplier Clearinghouse will, when re-enrolling all suppliers, ask multi-State suppliers if they wish to transfer all their claims to the DMERCs during the first month of regional processing. Suppliers whose claims constitute no more than 10 percent of all DMEPOS claims will be chosen for processing during the first month. All of their claims from the first date of processing will be handled by the DMERCs. All other multi-State suppliers will continue to bill as they have been billing. As a local carrier to which they have been billing is phased out of DMEPOS processing, the claims that they would have submitted to that carrier must be submitted to the appropriate DMERC(s). A multi-State supplier may, during the various transition months, be billing both local and regional carriers.

Information Transfer

Comment: One commenter emphasized the need to ensure that there is adequate transfer of beneficiary

information, provider numbers, coverage guidelines, and customary charge profiles to new carriers.

Response: The RFP clearly outlined the procedures that must be followed to perform a successful transition. Some of the necessary information, such as customary charge profiles, must be transferred from the local carriers. Beneficiary history and entitlement information is obtainable from the Common Working File. New national supplier numbers will be issued. In the absence of national coverage determination guidelines and medical review policies, a regional carrier will develop its own, in consultation with the other DMERCs.

Public Relations

Comment: One commenter asked that we closely monitor transition education for suppliers, beneficiaries, physicians, and carrier staff.

Response: The RFP was very explicit on these requirements. Their fulfillment, as outlined in each transition plan, will be closely monitored.

Payment Amounts and Policy

Comment: One commenter asked about how regional pricing and DMERC coverage and medical review policy would be implemented by carriers whose DMEPOS claims have not yet been incorporated into DMERC processing.

Response: Beginning January 1, 1993, the basis for pricing for items paid on the basis of reasonable charges was standardized to Statewide localities. These prices, as well as the fee schedule prices for DMEPOS, will be carried over and used by the DMERCs. PEN pricing is made on a national basis, and will continue to be, after transition to the DMERCs. The DMERCs will be establishing new coverage and medical review policies. These will not be used by the local carriers, which will continue to use their own policies on any DMEPOS claims that they process during the transition period.

Grandfathering

Comment: One commenter asked that beneficiaries be allowed to choose whether or not their claims are "grandfathered", by the DMERCs; that is, processed under the medical review guidelines of the local carrier that had previously processed their claims.

Response: We believe this would be inappropriate and would lead to inequitable results. Instead, each DMERC will determine, in consultation with the other DMERCs, a beneficiary-specific "grandfathering" policy for a limited time. This policy will take into account the types of DMEPOS involved, the beneficiary's condition, and whether or not the beneficiary resides at home or in a nursing home.

PEN Claims

Comment: One commenter stated that DMERC staff should receive thorough training on PEN issues with input from the PEN industry. The association further requested that there be separate medical review staff for PEN claims.

Response: DMERC staff will receive thorough training on PEN and other benefits. Some DMERCs may choose to request PEN industry input to this training. Each DMERC will determine whether it will have medical review staff who specialize in PEN claims.

Comment: A commenter asked that DMERCs implement a streamlined process for approving new PEN products.

Response: We will develop a process with the DMERCs to assure timely determination of coverage for PEN and other DMEPOS items. Regional and national coverage decisions will be announced in quarterly newsletters that are published by each DMERC for its area, as well as by written response to those who request the decision.

Electronic Claims

Comments: One commenter asked that we correct the modifications of fields made by local carriers to the national standard format (NSF) adopted by us for submission of Part B electronic claims, before transition to the regional carriers.

Response: All local carriers are required to accept the NSF without modifications. Suppliers can change to using the NSF now, so that the conversion to regional processing will be easier.

Comment: Another commenter asked that we modify the NSF certificate of medical necessity for PEN claims or use another existing PEN software package rather than NSF.

Response: It is most efficient for Medicare to use one national format, and we have chosen the NSF. A PEN certification form is being developed under the NSF.

Non-Calendar Month Billing

Comment: One commenter asked that suppliers that bill for a month's worth of supplies, when the start of the billing period does not coincide with the first day of the month, be allowed to bill their existing local carriers, as usual, for the month before their claims are transferred to the DMERCs.

Response: We agree with the commenter.

Advance Payments

Comment: Six commenters wanted assurance that advance payments would be available during the transition to the DMERCs, both for claims payable by the local carriers before transition to the DMERCs and for claims payable by the DMERCs.

Response: As we stated in the June 1992 final rule (57 FR 27292), there will be no special advance payment rules for DMEPOS claims. We are developing a regulation that will prescribe the conditions under which Medicare will make advance payments. We will issue instructions in the Medicare Carriers Manual before the transition to the new regional carriers. These instructions will prescribe how to handle advance payments, to the extent permissible, during the interim period before publication of the final regulation.

Supplier Review Council

Comment: Two commenters suggested that there be a supplier council to review and support the DMERC transition plan and implementation.

Response: We are interested in support from the supplier community during the transition to regional DMEPOS processing. We are particularly interested in any perceived problems with the transition plan and process. However, we do not believe that it would be appropriate for suppliers or their representatives to participate in the government's transition team or process.

DMERC Operations

Policy

Comment: One commenter asked that the beneficiary and supplier communities be given 45 days notice of any HCFA directive and a penalty for retroactive implementation. Two commenters requested that there be no retroactive changes in coverage, payment, etc.

Response: We do not believe that one rule would be correct for all types of directives. Some HCFA directives are due to court orders or legislative and budget changes. If they require immediate implementation, the effect may, in fact, be retroactive for suppliers that submit claims between HCFA's notice to the carriers and the carrier's notice to the suppliers. Other HCFA directives are the result of changes in regulations. Before implementing a regulation change, we publish a proposal of our intentions and generally allow a 60-day public comment period.

Except in unusual circumstances, a final regulation is not effective until 30 days after its publication in the Federal Register. Still other directives are the result of administrative changes, some of which are transparent to beneficiaries and suppliers. The degree of impact on the supplier and beneficiary communities generally dictates the amount of notice that is given for these directives. In addition, carriers set their own policies in certain areas when no national coverage policy is available. Carrier-developed coverage and medical review policy is subject to notice and comment requirements. Currently, a 45-day comment period is required; 30 days notice of a change is also required. Changes in pricing due to inherent reasonableness determinations have similar notice and comment requirements. Other types of changes, such as those due to mistakes in pricing that need to be corrected, are not subject to notice and comment requirements, since immediate correction of processing errors is in the best interest of the Medicare program.

Comment: Two commenters asked that the DMERCs be required to publish the utilization parameters and screens.

Response: We currently require publication in carrier bulletins of our policy for establishing utilization parameters and screens according to which claims are adjudicated. We are currently studying the effect the release of the parameters would have on utilization.

Supplier Review

Comment: One supplier commented that all suppliers under special review or operating outside normal parameters should be notified by the DMERCs.

Response: Many of those suppliers will be notified and asked to provide information or an explanation. However, we do not generally notify a supplier that is under review for suspected fraud, unless we confirm the supplier is acting inappropriately.

Supplier Relations

Comment: One commenter asked that we require that the carrier medical directors "directly consult" with representatives of the supply industry and beneficiaries twice per year: that is, physicians, nursing home administrators, suppliers, carriers, home health agencies, and consumers.

Response: The DMERCs are required by the RFP to conduct training and/or provide information to all parts of the DMEPOS industry, beneficiaries, physicians, etc. The plans will differ somewhat among the regions depending on variables such as the size of the region and the cooperation of local carriers, intermediaries, and professional and beneficiary representative associations. In addition, the DMERCs are required to consult with representative organizations on all new medical review policy.

Beneficiary Data

Comment: Two commenters again asked that suppliers be given access to the Common Working File or other beneficiary system to confirm beneficiary eligibility.

Response: There are always privacy considerations in the release of beneficiary information contained in the Common Working File system. We will be initiating next year several tests to determine the effects of disclosing beneficiary information to participating doctors (and one supplier) meeting predetermined requirements.

Comment: Another commenter asked that we establish a system that suppliers could use to confirm a beneficiary's residence.

Response: We previously stated in the June 1992 final rule (57 FR 27294) that we do not believe this is necessary. Permanent residence is defined as the address at which a beneficiary intends to spend over 6 months of the calendar year. If a beneficiary moves to another address with the intent to stay at that address for over 6 months of the calendar year, then that address becomes the permanent residence. Thus, only the beneficiary can designate his or her permanent residence. A supplier must obtain permanent residence information from its customer, the beneficiary, or his or her authorized representative.

Crossover Claims

Comment: Three commenters asked that we require the DMERCs to furnish deductible and coinsurance information via electronic media to State Medicaid agencies and that they also provide State Medicaid agencies with copies of provider memoranda and pricing information.

Response: Each DMERC is required to negotiate crossover agreements with each Medicaid agency in its region in sufficient time to implement those agreements before they begin processing claims. During those negotiations, each State Medicaid agency will be able to come to agreement with the region's DMERC about what information, in addition to the claims, they would like to receive from the DMERC.

Criteria and Standards for Evaluating DMERC Performance

Additional Performance Standards

Comment: One commenter suggested a performance standard for the timely response to requests for information under the Freedom of Information Act (FOIA).

Response: Requests for information under the FOIA that are received directly by our contractors are responded to within 6 days after the requests are reviewed and approved for release either by our regional office or our central office. Therefore, we do not believe it would be appropriate to require a performance standard for our contractors for this activity.

Comment: Three commenters suggested a performance standard for the accuracy with which the DMERC identifies a claim as "clean".

Response: "Clean" claims are defined in sections 1816(c)(2)(B)(i) and 1842(c)(2)(B)(i) of the Act as "a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment from being made on the claim". We do not believe that there is a significant problem among our contractors in identifying claims as "clean claims." However, we will continue to monitor our contractors on this issue and, if circumstances change, we will further evaluate the situation.

Comment: Two commenters suggested performance standards to evaluate the capability of the DMERCs to perform certain functions, that is, automated crossovers, system/software testing, and retention of staff knowledgeable in the home medical equipment field.

Response: Minimum standards were included in the RFP. Those standards will be incorporated into the DMERC's contract. If the DMERCs do not meet the RFP standards, they are subject to contract termination. The above capabilities were appropriately evaluated as a part of the procurement process used for selecting the DMERCs.

Comment: Five commenters suggested performance standards for timely claims processing, correct payment of fees, timely processing of reviews and hearings, and timely implementation of our directives.

Response: These suggestions have already been made a part of proposed criteria and standards. The timeliness of claims processing is evaluated under the Efficiency Criterion, Standard 1 (95.0 percent of clean claims processed within mandated timeframes and 97.0 percent of all claims must be processed

within 60 days). The correct payment of fees is evaluated under the Quality Criterion, Standard 1. (Claims must be processed at an accuracy rate of 98.5 percent.) The timeliness of processing reviews and hearings is evaluated under the Service Criterion, Standard 1 (95.0 percent of reviews and hearings must be accurate and timely). Our directives are issued to Medicare contractors with specific implementation dates. None of our directives are retroactively applied.

Comment: One commenter suggested that we conduct customer satisfaction surveys regarding the DMERC's handling of inquiries.

Response: While customer satisfaction surveys currently are not a part of the criteria and standards, we are proposing to include a national survey of physician satisfaction in the evaluation of Medicare carriers for FY 1994. Consideration will be given to developing a customer satisfaction survey for evaluating the DMERCs after we have had an opportunity to study the results from the national physician survey.

Comment: One commenter suggested that we establish a performance measure of provider interaction in setting coverage and medical necessity policies.

Response: This suggestion has already been included as a part of the DMEPOS criteria and standards under the Service Criterion, Standard 3 (Respond to Beneficiary and Supplier Education and Training Needs).

Comment: One commenter suggested an evaluation of the clarity and accuracy of communications including education materials and DME-specific Explanation of Medicare Benefits.

Response: This suggestion has also been included as a part of Standard 3 of the Service Criterion.

Revisions/Clarifications to Proposed Criteria and Standards

Comment: One commenter suggested tighter claims processing timeliness standards.

Response: We believe that requiring DMERCs to process 95.0 percent of clean claims within mandated timeframes (currently set at 15 to 24 days) to be reasonable and appropriate in light of similar timeframes for processing of all other Part B claims.

Comment: One commenter suggested that we evaluate the DMERCs' responsiveness to inquiries by posing as beneficiaries or suppliers.

Response: As a part of our evaluation of the DMERCs' performance in responding to beneficiary and supplier inquiries, Standard 1 of the Service Criterion, we propose the use of questions called in to the DMERCs to test the accuracy of responses on a variety of topics. However, we believe it would be inappropriate to "pose" as a beneficiary or supplier.

Comment: One commenter asked how we would evaluate the processing of specific claim types, for example, PEN, DME, prosthetics, orthotics, and other claim types.

Response: All claim types will be evaluated under the criteria and standards together without distinction for the type of service or supply billed.

Comment: One commenter asked for definitions of "mandated timeframes" and "clean claims."

Response: As previously noted, the term "clean claim" is defined in sections 1816 (c)(2)(B)(i) and (c)(2)(B)(i) as "a claim that has no defect or impropriety (including any lack of any required substantiating documentation) or particular circumstance requiring special treatment that prevents timely payment". The term "mandated timeframes" is used to refer to the timeframes established in sections 1816(c)(2)(B)(ii) and 1842(c)(2)(B)(ii). These timeframes may change as new legislation is enacted. The claims processing timeliness performance standards use the terms "clean claim" and "mandated timeframe" to automatically apply whatever specific changes may occur in legislation.

Performance Standards for Local Carriers During Transition

Comment: One commenter suggested that local carriers should be persuaded to continue to expedite appeals and hearings in a reasonable timeframe.

Response: Part B carriers will be evaluated under the Contractor Performance Evaluation Program for their processing of all reviews and hearings, including DMEPOS claims previously processed, during Fiscal Year 1994. We will be closely monitoring the performance of a DMERC's Part B contractors in a number of key areas related specifically to the handling of DMEPOS claims and corollary issues. We do not anticipate any increase in the amount of time that it takes to expedite appeals and hearings.

Relative Weight of Proposed Performance Standards

Comment: One commenter suggested that we publish the weights of the performance standards.

Response: The criteria and standards reflect an evaluation of the most important functions to be performed by the DMERCs. They are not intended to evaluate every activity performed by the carriers. Thus, all performance standards are given equal value; no points or weights are assigned to the individual standards. All standards are pass or fail, requiring the carriers to meet all performance requirements to "pass" the standard.

IV. Provisions of the Final Regulations

The provisions of this final rule that differ from the June 1992 final rule follow.

- In § 421.210(e)(2), we have identified the four DMERCs that will process DMEPOS claims for all Medicare beneficiaries residing in their respective regions (the boundaries of the four regions for processing DMEPOS claims is defined in § 421.210(c)), including those entitled to benefits under the Railroad Retirement Act. Those DMERCs will be The Travelers Insurance Company (Region A), which will be processing claims in Pennsylvania; Associated Insurance Companies, Inc.—AdminaStar (Region B), which will be processing claims in Indiana; Blue Cross and Blue Shield of South Carolina (doing business as Palmetto Government Benefits Administrators) (Region C), which will be processing claims in South Carolina; and Connecticut General Life Insurance Co. (a CIGNA Company) (Region D), which will be processing claims in Tennessee.

In § 421.210(e)(3), we have indicated that Blue Cross and Blue Shield of South Carolina (Palmetto Government Benefits Administrators) has been selected to serve as both the National Supplier Clearinghouse and the Statistical Analysis DMERC (SADMERC).

The regionalization of DMEPOS claims processing presents the opportunity to consolidate the identification and ownership data of all DMEPOS suppliers in the Medicare program. The consolidated supplier files will allow a central entity, called the National Supplier Clearinghouse, to identify and associate suppliers which are serving multiple areas.

The SADMERC will have four primary functions:

—To coordinate the interpretation of certain DMEPOS codes and modifiers.

—To analyze and distribute national DMEPOS claims history data and store up to 3 years of those data.

—To establish and distributer to the DMERCs certain national pricing files.

—To conduct comprehensive postpayment review of national suppliers.

- We have added a new § 421.212, which states that the RRB contracts with the DMERCs.

V. Collection of Information Requirements

This final rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 et seq.).

VI. Regulatory Impact Statement

Executive Order 12291 (E.O. 12291) requires us to prepare and publish a regulatory impact analysis for any rule that meets one of the E.O. 12291 criteria for a "major rule"; that is, that will be likely to result in—

- An annual effect on the economy of $100 million or more;
- A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or
- Significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In addition, we generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule will not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, we do not consider carriers to be small entities, therefore an RFA is not required.

Also, section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 604 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds. Because claims for DMEPOS submitted by hospitals will not be moved to regional carriers, there will be no impact on hospitals.

This final rule identifies the four DMERCs that will process DMEPOS claims for all Medicare beneficiaries residing in their respective regions, including those beneficiaries entitled to Medicare as Railroad Retirement beneficiaries.

We believe naming the four DMERCs will lead to more efficient and economical administration of the Medicare program. In addition, there will be additional savings attributable to both the prevention of fraud and the more effective and timely identification of fraud.

Although we have the authority under section 1842 of the Act to select carriers non-competitively, we chose to use a competitive process. A pre-solicitation notice for comment was issued in January, 1992. An RFP was issued in May 1992. We received proposals from qualified offerors including some Medicare carriers. The offerors were not restricted to a particular region, and several did apply to be the DMERC for more than one region.

General criteria for designating the DMERCs are included in § 421.210(d); specific criteria were included in the RFP. Technical excellence was a primary consideration in the selection process. We expect to achieve a greater degree of effectiveness and efficiency of the Medicare program as measured by—

- Timeliness of claims processing;
- Cost per claim;
- Claim processing quality;
- Experience in claims processing and in establishing local medical review policy; and
- Other criteria that HCFA believes to be pertinent.

The DMERC contracts are for a 2-year period with an option for two 1-year extensions. The contracts, though they were effective January 1, 1993, allow a 9-month implementation period. Therefore, the DMERCs are scheduled to begin processing DMEPOS claims on October 1, 1993. The National Supplier Clearinghouse contract is for 1 year, with three 1-year extensions, and the Statistical Analysis DMERC contract is for 2 years, with two 1-year extensions.

Section 421.212 of this final rule states that the RRB contracts with DMERCs for processing Medicare claims for Railroad Retirement beneficiaries for the same contract periods as the contracts entered into between HCFA and the DMERCs. This arrangement will promote efficiency by subjecting claims for DMEPOS services provided to Railroad Retirement beneficiaries to the same Medicare review policy and pricing schedules. By using the DMERCs for RRB claims, suppliers furnishing services to railroad retirees will be able to submit that limited number of claims via the electronic media approved for submission for Medicare claims to the DMERCs. Claims for DMEPOS items to railroad retirees account for approximately 4 percent of the total DMEPOS claims.

This final rule will not meet the $100 million criterion nor will it meet the other E.O. 12291 criteria. Therefore, this final rule is not a major rule under E.O. 12291, and a regulatory impact analysis is not required.

We are not preparing analyses for either the RFA or section 1102(b) of the Act since we have determined, and the Secretary certifies, that this final rule will not result in a significant economic impact on a substantial number of small entities and will not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects in 42 CFR Part 421

Administrative practice and procedure, Health facilities, Health professions, Medicare, Reporting and recordkeeping requirements.

42 CFR part 421 is amended as follows:

PART 421—INTERMEDIARIES AND CARRIERS

1. The authority citation for part 421 continues to read as follows:

Authority: Secs. 1102, 1815, 1816, 1833, 1834 (a) and (h), 1842, 1861(u), 1871, 1874, and 1875 of the Social Security Act (42 U.S.C. 1302, 1395g, 1395h, 1395l, 1395m (a) and (h), 1395u, 1395x(u), 1395hh, 1395kk, and 1395ll), and 42 U.S.C. 1395b–l.

2. In § 421.210, paragraph (e)(2) is revised, and new paragraphs (e)(3) and (e)(4) are added to read as follows:

§ 421.210 Designations of regional carriers to process claims for durable medical equipment, prosthetics, orthotics and supplies.

* * * * *

(e) *Carrier designation.*

* * * * *

(2) The regional carriers designated to process DMEPOS claims (as defined in paragraph (b) of this section) for all Medicare beneficiaries residing in their respective regions (as designated in paragraph (c) of this section), including those entitled under the Railroad Retirement Act, are the following:

(i) The Travelers Insurance Company (Region A), which will be processing claims in Pennsylvania.

(ii) Associated Insurance Companies, Inc.—AdminaStar (Region B), which will be processing claims in Indiana.

(iii) Blue Cross and Blue Shield of South Carolina (doing business as Palmetto Governments Benefits Administrators) (Region C), which will be processing claims in South Carolina.

(iv) Connecticut General Life Insurance Co. (a CIGNA Company) (Region D), which will be processing claims in Tennessee.

(3) Blue Cross and Blue Shield of South Carolina (Palmetto Government Benefits Administrators) has been

selected to serve as the National Supplier Clearinghouse and the Statistical Analysis DME regional carrier.

(4) The contracts for the four DME regional carriers will be periodically recompeted. The National Supplier Clearinghouse and Statistical Analysis DME regional carrier do not constitute separate contracts, but are contract amendments to one of the DME regional carrier contracts. The National Supplier Clearinghouse and Statistical Analysis DME regional carrier contract amendments will also be periodically recompeted.

* * * * *

3. A new § 421.212 is added to read as follows:

§ 421.212 Railroad Retirement Board contracts.

In accordance with this subpart C, the Railroad Retirement Board contracts with DMEPOS regional carriers designated by HCFA, as set forth in § 421.210(e)(2), for processing claims for Medicare-eligible Railroad Retirement beneficiaries, for the same contract period as the contracts entered into between HCFA and the DMEPOS regional carriers.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance and No. 93.774 Supplementary Medical Insurance Program)

Dated: August 13, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: September 30, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–28160 Filed 11–17–93; 8:45 am]

BILLING CODE 4120–01–P

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1035

[Ex Parte No. 495]

Bills of Lading

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Final rule.

SUMMARY: The Commission revises its regulations pertaining to railroad and water carrier uniform bills of lading and livestock contracts. The purpose of the revision is to clarify the terms, to remove obsolete references and to permit railroads and shippers mutually to make changes to the language on the front of the bill of lading, as set forth below. The intended effect is to make the rules understandable and to bring information requirements into conformity with modern billing and accounting practice.

EFFECTIVE DATE: December 18, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660 or Andrew J. Nosacek (202) 927–5318; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: A notice of proposed rulemaking was published in the **Federal Register**, (58 FR 34775) on June 29, 1993. Additional information is contained in the Commission's decision served November 18, 1993. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4329. (Assistance for the hearing impaired is available through TDD services (202) 927–5721.)

We reaffirm our initial finding that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We reaffirm our initial conclusion that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. The purpose of this action is to clarify language in the existing regulations and to reduce a regulatory burden. The economic impact on small entitles, if any, is not likely to be significant within the meaning of the Regulatory Flexibility Act.

List of Subjects in 49 CFR Part 1035

Bills of lading, Railroads, Water carriers.

Decided: November 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set out in the preamble and the Commission's decision, the Interstate Commerce Commission amends title 49, chapter X, part 1035 of the Code of Federal Regulations as follows:

Part 1035 is revised to read as follows:

PART 1035—BILLS OF LADING

Sec.

1035.1 Requirement for certain forms of bills of lading.
1035.2 Modification of front of uniform bill of lading.
Appendix A to Part 1035—Uniform Straight Bill of Lading.
Appendix B to part 1035—Contract Terms and Conditions.

Authority: 49 U.S.C. 10321 and 5 U.S.C. 553.

§ 1035.1 Requirement for certain forms of bills of lading.

(a) All common carriers, except express companies, engaged in the transportation of property other than livestock and wild animals, by rail or by water subject to the Interstate Commerce Act are required to use straight bills of lading as prescribed in Appendix A and B to this part, or order bills of lading as prescribed in Appendix A and B to this Part, except that order bills of lading shall:

(1) Be entitled "Uniform Order Bill of Lading" and be designated as "Negotiable" on the front (appendix A to this part);

(2) Indicate consignment "to the order of * * *" on the front (appendix A to this part); and

(3) Provide for endorsement on the back portion (appendix B to this part).

(b) All such bills of lading:

(1) May be either documented on paper or issued electronically;

(2) May be a copy, reprographic or otherwise, of a printed bill of lading, free from erasure and interlineation;

(3) May vary in the arrangement and spacing of the printed matter on the face of the form.

§ 1035.2 Modification of front of uniform bill of lading.

Notwithstanding any other provision of § 1035.1(a), with respect to the information called for, the front portion only (appendix A to this part) of a bill of lading may deviate from the language prescribed in this part so long as the deviation conforms with approved national standards for the electronic data interchange or other commercial requirements for bill of lading information; *provided* that no such deviation in the language shall affect the obligations of any shipper to provide information absent the consent of such shipper nor shall such deviation be deemed to alter any rights or obligations conferred by statute or regulation on either carriers or shippers with respect to the preparation or issuance of bills of lading.

Appendix A to Part 1035

Uniform Straight Bill of Lading

Original—Not Negotiable

Shipper's No _____

Agent's No _____

Company _____

Received, subject to the classifications and tariffs in effect on the date of this Bill of Lading:

at_____, 19__

from _____

the property described below, in apparent good order, except as noted (contents and condition of contents of packages unknown), marked, consigned, and destined as indicated below, which said company (the word company being understood throughout this contract as meaning any person or corporation in possession of the property under the contract) agrees to carry to its usual place of delivery at said destination, if on its own road or its own water line, otherwise to deliver to another carrier on the route to said destination. It is mutually agreed, as to each carrier of all or any of said property over all or any portion of said route to destination, and as to each party at any time interested in all or any of said property, that every service to be performed hereunder shall be subject to all the conditions not prohibited by law, whether printed or written, herein contained, including the conditions on back hereof, which are hereby agreed to by the shipper and accepted for himself and his assigns.

[Mail or street address of consignee—For purposes of notification only.]

Consigned to _____

Destination _____

State of _____

County of _____

Route _____

Delivering Carrier _____

Car Initial _____

Car No _____

Trailer Initials/Number _____

Length _____

Plan _____

Length _____

Plan _____

Container Initials/Number _____

Length _____

Plan _____

Length _____

Plan _____

No. packages	Description of articles, special marks, and exceptions	*Weight (subject to correction)	Class or rate	Check column

Subject to Section 7 of conditions, if this shipment is to be delivered to the consignee without recourse on the consignor, the consignor shall sign the following statement:

The carrier shall not make delivery of this shipment without payment of freight and all other lawful charges.

.....

(Signature of consignor)

If charges are to be prepaid, write or stamp here, "To be Prepaid."

Received $_____ to apply in prepayment of the charges on the property described hereon.

.....

Agent or Cashier

Per_____

(The signature here acknowledges only the amount prepaid.)

*If the shipment moves between two ports by a carrier by water, the law requires that the bill of lading shall state whether it is "carrier's or shipper's weight."

Note.—Where the rate is dependent on value, shippers are required to state specifically in writing the agreed or declared value of the property.

The agreed or declared value of the property is hereby specifically stated by the shipper to be not exceeding—

_____per_____

Charges advanced: _____ _____

Shipper _____

Agent _____

Per _____

Per _____

Permanent post office address of shipper _____

Appendix B to Part 1035

Contract Terms and Conditions

Sec. 1. (a) The carrier or party in possession of any of the property herein described shall be liable as at common law for any loss thereof or damage thereto, except as hereinafter provided.

(b) No carrier or party in possession of all or any of the property herein described shall be liable for any loss thereof or damage thereto or delay caused by the act of God, the public enemy, the authority of law, or the act or default of the shipper or owner, or for natural shrinkage. The carrier's liability shall be that of warehouseman, only, for loss, damage, or delay caused by fire occurring after the expiration of the free time allowed by tariffs lawfully on file (such free time to be computed as therein provided) after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination, or tender of delivery of the property to the party entitled to receive it, has been made. Except in case of negligence of the carrier or party in possession (and the burden to prove freedom from such negligence shall be on the carrier or party in

possession), the carrier or party in possession shall not be liable for loss, damage, or delay occurring while the property is stopped and held in transit upon the request of the shipper, owner, or party entitled to make such request, or resulting from a defect or vice in the property, or for country damage to cotton, or from riots or strikes.

(c) In case of quarantine the property may be discharged at risk and expense of owners into quarantine depot or elsewhere, as required by quarantine regulations or authorities, or for the carrier's dispatch at nearest available point in carrier's judgment, and in any such case carrier's responsibility shall cease when property is so discharged, or property may be returned by carrier at owner's expense to shipping point, earning freight both ways. Quarantine expenses of whatever nature or kind upon or in respect to property shall be borne by the owners of the property or be a lien thereon. The carrier shall not be liable for loss or damage occasioned by fumigation or disinfection or other acts required or done by quarantine regulations or authorities even though the same may have been done by carrier's officers, agents, or employees, nor for detention, loss, or damage of any kind occasioned by quarantine or the enforcement thereof. No carrier shall be liable, except in case of negligence, for any mistake or inaccuracy in any information furnished by the carrier, its agents, or officers, as to quarantine laws or regulations. The shipper shall hold the carriers harmless from any expense they may incur, or damages they may be required to pay, by reason of the introduction of the property covered by this contract into any place against the quarantine laws or regulations in effect at such place.

Sec. 2. (a) No carrier is bound to transport said property by any particular train or vessel, or in time for any particular market or otherwise than with reasonable dispatch. Every carrier shall have the right in case of physical necessity to forward said property by any carrier or route between the point of shipment and the point of destination. In all cases not prohibited by law, where a lower value than actual value has been represented in writing by the shipper or has been agreed upon in writing as the released value of the property as determined by the classification or tariffs upon which the rate is based, such lower value plus freight charges if paid shall be the maximum amount to be recovered, whether or not such loss or damage occurs from negligence.

(b) As a condition precedent to recovery, claims must be filed in writing with the receiving or delivering carrier, or carrier issuing this bill of lading, or carrier on whose line the loss, damage, injury or delay occurred, within nine months after delivery of the property (or, in case of export traffic, within nine months after delivery at port of export) or, in case of failure to make delivery, then within nine months after a reasonable time for delivery has elapsed; and suits shall be instituted against any carrier only within two years and one day from the day when notice in writing is given by the carrier to the claimant that the carrier has disallowed the claim or any part or parts thereof specified in the notice. Where claims are not filed or suits are not instituted thereon in accordance with the foregoing provisions, no carrier hereunder shall be liable, and such claims will not be paid.

(c) Any carrier or party liable on account of loss of or damage to any of said property shall have the full benefit of any insurance that may have been effected upon or on account of said property, so far as this shall not avoid the policies or contracts of insurance: Provided, That the carrier reimburse the claimant for the premium paid thereon.

Sec. 3. Except where such service is required as the result of carrier's negligence, all property shall be subject to necessary cooperage and baling at owner's cost. Each carrier over whose route cotton or cotton linters is to be transported hereunder shall have the privilege, at its own cost and risk, of compressing the same for greater convenience in handling or forwarding, and shall not be held responsible for deviation or unavoidable delays in procuring such compression. Grain in bulk consigned to a point where there is a railroad, public or licensed elevator, may (unless otherwise expressly noted herein, and then if it is not promptly unloaded) be there delivered and placed with other grain of the same kind and grade without respect to ownership (and prompt notice thereof shall be given to the consignor), and if so delivered shall be subject to a lien for elevator charges in addition to all other charges hereunder.

4. (a) Property not removed by the party entitled to receive it within the free time allowed by tariffs, lawfully on file (such free time to be computed as therein provided), after notice of the arrival of the property at destination or at the port of export (if intended for export) has been duly sent or given, and after placement of the property for delivery at destination has been made, may be kept in vessel, car, depot, warehouse or place of delivery of the carrier, subject to the tariff charge for storage and to carrier's responsibility as warehouseman, only, or at the option of the carrier, may be removed to and stored in a public or licensed warehouse at the place of delivery or other available place, at the cost of the owner, and there held without liability on the part of the carrier, and subject to a lien for all freight and other lawful charges, including a reasonable charge for storage.

(b) Where nonperishable property which has been transported to destination hereunder is refused by consignee or the party entitled to receive it, or said consignee or party entitled to receive it fails to receive it within 15 days after notice of arrival shall have been duly sent or given, the carrier may sell the same at public auction to the highest bidder, at such place as may be designated by the carrier: Provided, That the carrier shall have first mailed, sent, or given to the consignor notice that the property has been refused or remains unclaimed, as the case may be, and that it will be subject to sale under the terms of the bill of lading if disposition be not arranged for, and shall have published notice containing a description of the property, the name of the party to whom consigned, or, if shipped order notify, the name of the party to be notified, and the time and place of sale, once a week for two successive weeks, in a newspaper of general circulation at the place of sale or nearest place where such newspaper is published: Provided, That 30 days shall have elapsed before publication of notice of sale after said notice that the property was refused or remains unclaimed was mailed, sent, or given.

(c) Where perishable property which has been transported hereunder to destination is refused by consignee or party entitled to receive it, or said consignee or party entitled to receive it shall fail to receive it promptly, the carrier, may, in its discretion, to prevent deterioration or further deterioration, sell the same to the best advantage at private or public sale: Provided, That if time serves for notification to the consignor or owner of the refusal of the property or the failure to receive it, and request for disposition of the property, such notification shall be given, in such manner as the exercise of due diligence requires, before the property is sold.

(d) Where the procedure provided for in the two paragraphs last preceding is not possible, it is agreed that nothing contained in said paragraphs shall be construed to abridge the right of the carrier at its option to sell the property under such circumstances and in such manner as may be authorized by law.

(e) The proceeds of any sale made under this section shall be applied by the carrier to the payment of freight, demurrage, storage, and any other lawful charges and the expense of notice, advertisement, sale, and other necessary expense and of caring for and maintaining the property, if proper care of the same requires special expense, and should there be a balance it shall be paid to the owner of the property sold hereunder.

(f) Property destined to or taken from a station, wharf, or landing at which there is no regularly appointed freight agent shall be entirely at risk of owner after unloaded from cars or vessels or until loaded into cars or vessels, and except in case of carrier's negligence, when received from or delivered to such stations, wharves, or landings shall be at owner's risk until the cars are attached to and after they are detached from locomotive or train or until loaded into and after unloaded from vessels.

Sec. 5. No carrier hereunder will carry or be liable in any way for any documents, specie, or for any articles of extraordinary value not specifically rated in the published classifications or tariffs unless a special agreement to do so and a stipulated value of the articles are indorsed hereon.

Sec. 6. Every party, whether principal or agent, shipping explosives or dangerous goods, without previous full written disclosure to the carrier of their nature, shall be liable for and indemnify the carrier against all loss or damage cased by such goods, and such goods may be warehoused at owner's risk and expense or destroyed without compensation.

Sec. 7. The owner or consignee shall pay the freight and average, if any, and all other lawful charges accruing on said property; but, except in those instances where it may lawfully be authorized to do so, no carrier by railroad shall deliver or relinquish

possession at destination of the property covered by this bill of lading until all tariff rates and charges thereon have been paid. The consignor shall be liable for the freight and all other lawful charges, except that if the consignor stipulates, by signature, in the space provided for that purpose on the face of this bill of lading that the carrier shall not make delivery without requiring payment of such charges and the carrier, contrary to such stipulation, shall make delivery without requiring such payment, the consignor (except as hereinafter provided) shall not be liable for such charges. Provided, that, where the carrier has been instructed by the shipper or consignor to deliver said property to a consignee other than the shipper or consignor, such consignee shall not be legally liable for transportation charges in respect of the transportation of said property (beyond those billed against him at the time of delivery for which he is otherwise liable) which may be found to be due after the property has been delivered to him, if the consignee (a) is an agent only and has no beneficial title in said property, and (b) prior to delivery of said property has notified the delivering carrier in writing of the fact of such agency and absence of beneficial title, and, in the case of a shipment reconsigned or diverted to a point other than that specified in the original bill of lading, has also notified the delivering carrier in writing of the name and address of the beneficial owner of said property; and, in such cases the shipper or consignor, or, in the case of a shipment so reconsigned or diverted, the beneficial owner, shall be liable for such additional charges. If the consignee has given to the carrier erroneous information as to who the beneficial owner is, such consignee shall himself be liable for such additional charges. On shipments reconsigned or diverted by an agent who has furnished the carrier in the reconsignment or diversion order with a notice of agency and the proper name and address of the beneficial owner, and where such shipments are refused or abandoned at ultimate destination, the said beneficial owner shall be liable for all legally applicable charges in connection therewith. If the reconsignor or diverter has given to the carrier erroneous information as to who the beneficial owner is, such reconsignor or diverter shall himself be liable for all such charges.

If a shipper or consignor of a shipment of property (other than a prepaid shipment) is also the consignee named in the bill of lading and, prior to the time of delivery, notifies, in writing, a delivering carrier by railroad (a) to deliver such property at destination to another party, (b) that such party is the beneficial owner of such property, and (c) that delivery is to be made to such party only upon payment of all transportation charges in respect of the transportation of such property, and delivery is made by the carrier to such party without such payment, such shipper or consignor shall not be liable (as shipper, consignor, consignee, or otherwise) for such transportation charges but the party to whom delivery is so made shall in any event be liable for transportation charges billed against the property at the time of such delivery, and also for any additional charges which may be found to be due after delivery of the property, except that if such party prior to such delivery has notified in writing the delivering carrier that he is not the beneficial owner of the property, and has given in writing to such delivering carrier the name and address of such beneficial owner, such party shall not be liable for any additional charges which may be found to be due after delivery of the property; but if the party to whom delivery is made has given to the carrier erroneous information as to the beneficial owner, such party shall nevertheless be liable for such additional charges. If the shipper or consignor has given to the delivering carrier erroneous information as to who the beneficial owner is, such shipper or consignor shall himself be liable for such transportation charges, notwithstanding the foregoing provisions of this paragraph and irrespective of any provisions to the contrary in the bill of lading or in the contract of transportation under which the shipment was made. The term "delivering carrier" means the line-haul carrier making ultimate delivery.

Nothing herein shall limit the right of the carrier to require at time of shipment the prepayment or guarantee of the charges. If upon inspection it is ascertained that the articles shipped are not those described in this bill of lading, the freight charges must be paid upon the articles actually shipped.

Where delivery is made by a common carrier by water the foregoing provisions of this section shall apply, except as may be inconsistent with part III of the Interstate Commerce Act.

Sec. 8. If this bill of lading is issued on the order of the shipper, or his agent, in exchange or in substitution for another bill of lading, the shipper's signature to the prior bill of lading as to the statement of value or otherwise, or election of common law or bill of lading liability, in or in connection with such prior bill of lading, shall be considered a part of this bill of lading as fully as if the same were written or made in or in connection with this bill of lading.

Sec. 9. (a) If all or any part of said property is carried by water over any part of said route, and loss, damage or injury to said property occurs while the same is in the custody of a carrier by water the liability of such carrier shall be determined by the bill of lading of the carrier by water (this bill of lading being such bill of lading if the property is transported by such water carrier thereunder) and by and under the laws and regulations applicable to transportation by water. Such water carriage shall be performed subject to all the terms and provisions of, and all the exemptions from liability contained in the Act of Congress of the United States, approved on February 13, 1893, and entitled "An act relating to the navigation of vessels, etc." and of other statutes of the United States according carriers by water the protection of limited liability as well as the following subdivisions of this section: and to the conditions contained in this bill of lading not inconsistent with this section, when this bill of lading becomes the bill of lading of the carrier by water.

(b) No such carrier by water shall be liable for any loss or damage resulting from any fire happening to or on board the vessel, or from explosion, bursting of boilers or breakage of shafts, unless caused by the design or neglect of such carrier.

(c) If the owner shall have exercised due diligence in making the vessel in all respects seaworthy and properly manned, equipped and supplied, no such carrier shall be liable for any loss or damage resulting from the perils of the lakes, seas, or other waters, or from latent defects in hull, machinery, or appurtenances whether existing prior to, at the time of, or after sailing, or from collision, stranding, or other accidents of navigation, or from prolongation of the voyage. And, when for any reason it is necessary, any vessel carrying any or all of the property herein described shall be at liberty to call at any port or ports, in or out of the customary route, to tow and be towed, to transfer, trans-ship, or lighter, to load and discharge goods at any time, to assist vessels in distress, to deviate for the purpose of saving life or property, and for docking and repairs. Except in case of negligence such carrier shall not be responsible for any loss or damage to property if it be necessary or is usual to carry the same upon deck.

(d) General Average shall be payable according to the York-Antwerp Rules of 1924, sections 1 to 15, inclusive, and sections 17 to 22, inclusive, and as to matters not covered thereby according to the laws and usages of the Port of New York. If the owners shall have exercised due diligence to make the vessel in all respects seaworthy and properly manned, equipped and supplied, it is hereby agreed that in case of danger, damage or disaster resulting from faults or errors in navigation, or in the management of the vessel, or from any latent or other defects in the vessel, her machinery or appurtenance, or from unseaworthiness, whether existing at the time of shipment or at the beginning of the voyage (provided the latent or other defects or the unseaworthiness was not discoverable by the exercise of due diligence), the shippers, consignees and/or owners of the cargo shall nevertheless pay salvage and any special charges incurred in respect of the cargo, and shall contribute with the shipowner in general average to the payment of any sacrifices, losses or expenses of a general average nature that may be made or incurred for the common benefit or to relieve the adventure from any common peril.

(e) If the property is being carried under a tariff which provides that any carrier or carriers party thereto shall be liable for loss from perils of the sea, then as to such carrier or carriers the provisions of this section shall be modified in accordance with the tariff provisions, which shall be regarded as incorporated into the conditions of this bill of lading.

(f) The term "water carriage" in this section shall not be construed as including lighterage in or across rivers, harbors, or lakes, when performed by or on behalf of rail carriers.

Sec. 10. Any alteration, addition, or erasure in this bill of lading which shall be made without the special notation hereon of the agent of the carrier issuing this bill of lading, shall be without effect, and this bill of lading

shall be enforceable according to its original tenor.

[FR Doc. 93-28403 Filed 11-17-93; 8:45 am]
BILLING CODE 7035-01-P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 672

[Docket No. 921107-3068; I.D. 111293A]

Groundfish of the Gulf of Alaska

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Modification of a closure.

SUMMARY: NMFS is rescinding the closure to directed fishing for vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Areas in the Gulf of Alaska (GOA). This action is necessary to fully utilize the allocation of the total allowable catch (TAC) of Pacific cod for vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Area of the GOA.

EFFECTIVE DATE: 12 noon, Alaska local time (A.l.t.), November 15, 1993, until 12 midnight, A.l.t., December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Andrew N. Smoker, Resource Management Specialist, NMFS, 907-586-7228.

SUPPLEMENTARY INFORMATION: The groundfish fishery in the GOA exclusive economic zone is managed by the Secretary of Commerce according to the Fishery Management Plan for Groundfish of the Gulf of Alaska (FMP) prepared by the North Pacific Fishery Management Council under authority of the Magnuson Fishery Conservation and Management Act. Fishing by U.S. vessels is governed by regulations implementing the FMP at 50 CFR parts 620 and 672.

The directed fishery for Pacific cod in the GOA by vessels catching Pacific cod for processing by the offshore component was previously closed under § 672.20(c)(2)(ii) in the final 1993 initial specifications of groundfish harvest (58 FR 16787, March 31, 1993).

The Regional Director, Alaska Region, NMFS, has determined that the remaining allocation of the TAC of Pacific cod for vessels catching Pacific cod for processing by the offshore component in the Central and Western Regulatory Areas of the GOA is in excess of the amounts necessary as incidental catch for other groundfish fisheries. Therefore, NMFS is rescinding those closures and is reopening directed fishing for Pacific cod in the Western and Central GOA by vessels catching Pacific cod for processing by the offshore component effective at 12 noon, A.l.t., November 15, 1993, until 12 midnight, A.l.t., December 31, 1993.

Classification

This action is taken under 50 CFR 672.20.

List of Subjects in 50 CFR Part 672

Fish, Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-28433 Filed 11-15-93; 4:06 pm]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 221
Thursday, November 18, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Office of the Comptroller of the Currency

12 CFR Part 30

[Docket No. 93–17]

FEDERAL RESERVE SYSTEM

12 CFR Parts 208, 225, and 263

[Docket No. R–0766]

FEDERAL DEPOSIT INSURANCE CORPORATION

12 CFR Parts 303, 308, and 364

RIN 3064–AB13

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 570

[OTS 93–101]

RIN 1550–AA54

Standards for Safety and Soundness

AGENCIES: Office of the Comptroller of the Currency, Treasury; Board of Governors of the Federal Reserve System; Federal Deposit Insurance Corporation; and Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking

SUMMARY: The Office of the Comptroller of the Currency (OCC), the Board of Governors of the Federal Reserve System (Board), the Federal Deposit Insurance Corporation (FDIC), and the Office of Thrift Supervision (OTS) (collectively "the agencies") solicit comments on all aspects of proposed safety and soundness standards required to be prescribed by regulation pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act)). The standards are intended to enable the agencies to address problems at banks, thrifts, and depository institution holding companies before the problems cause significant deterioration in the financial condition of the institution or holding company. Public comment is invited on all aspects of this proposal.

DATES: Written comments must be received on or before January 3, 1994.

ADDRESSES: Interested parties are invited to submit written comments to any or all of the agencies. All comments will be shared among the agencies.

OCC: Communications Division, 250 E Street SW., Washington, DC 20219, attention: Docket No. 93–17. Comments will be available for public inspection and photocopying at the same location on business days between 9 a.m. and 5 p.m.

Board: Comments, which should refer to Docket No. R–0766, may be mailed to Mr. William Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington, DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street, NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding Availability of Information, 12 CFR 261.8.

FDIC: Hoyle L. Robinson, Executive Secretary, Attention: Room F–402, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429. Comments may be hand-delivered to room F–400, 1776 F Street, NW., Washington, DC, on business days between 8:30 a.m. and 5 p.m. [FAX number (202)898–3838]. Comments will be available for inspection and photocopying in room 7118, 550 17th Street, NW., Washington, DC 20429, between 9 a.m. and 4:30 p.m. on business days.

OTS: Comments should be directed to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, Attention: Docket No. 93–101. These submissions may be hand delivered to 1700 G Street, NW., from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX number (202) 906–7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed, or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street NW., from 1 p.m. until 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: *OCC:* Emily R. McNaughton, National Bank Examiner (202/874–5170), Office of the Chief National Bank Examiner; David Thede, Senior Attorney, Bank Operations and Assets Division (202/874–4460), Office of the Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.

Board: David Wright, Supervisory Financial Analyst (202/728–5854), Division of Banking Supervision and Regulation; Scott G. Alvarez, Associate General Counsel (202/452–3583), Gregory A. Baer, Senior Attorney (202/452–3236), Legal Division, Board of Governors of the Federal Reserve System. For the hearing impaired *only*, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

FDIC: Robert W. Walsh, Examination Specialist (202/898–6911) or Michael D Jenkins, Examination Specialist (202/898–6896), Division of Supervision; Lisa M. Stanley, Senior Counsel (202/898–7494), Jeffrey M. Kopchik, Counsel (compensation standards) (202/898–3872), or Nancy L. Alper, Counsel (enforcement) (202/898–3720), Legal Division, Federal Deposit Insurance Corporation, 550 17th Street, NW., Washington, DC 20429.

OTS: Robert Fishman, Senior Program Manager (202/906–5672), Deirdre Kvartunas, Program Analyst (202/906–7933), Policy Office, Cheryl Martin, Regional Coordinator (202/906–7869), Regional Operations; Kevin Corcoran, Assistant Chief Counsel for Business Transactions (202/906–6962), Teri M. Valocchi, Counsel (Banking and Finance) (202/906–7299), Chief Counsel's Office, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Statutory Framework

Section 132 of the Federal Deposit Insurance Corporation Improvement Act (FDICIA), Public Law 102–242, added a new section 39 to the FDI Act (12 U.S.C. 1831p–1) which requires each agency to prescribe by regulation certain safety and soundness standards for the insured depository institutions and depository institution holding companies for which it is the primary Federal regulator. Section 39 was subsequently amended in the compensation area by section 956 of the Housing and Community Development Act of 1992, Public Law 102–550.

Three types of standards must be prescribed: (1) Operational and managerial; (2) asset quality and earnings; and (3) compensation. Stock valuation standards must be prescribed to the extent feasible.

Section 39(a) requires the agencies to prescribe by regulation operational and managerial standards relating to: (1) Internal controls, information systems, and internal audit systems, in accordance with section 36 of the FDI Act (12 U.S.C. 1831m); (2) loan documentation; (3) credit underwriting; (4) interest rate exposure; (5) asset growth; and (6) compensation, fees, and benefits, in accordance with subsection (c) of section 39.

Section 39(b) requires the agencies to prescribe by regulation standards specifying: (1) A maximum ratio of classified assets to capital; (2) minimum earnings sufficient to absorb losses without impairing capital; and (3) to the extent feasible, a minimum ratio of market value to book value for publicly traded shares of institutions and holding companies.

If an agency determines that an institution or holding company fails to meet any standard prescribed under sections 39(a) or 39(b), the institution or company must submit to the agency an acceptable plan to achieve compliance with the standard. In the event that an institution or company fails to submit an acceptable plan within the time allowed by the agency or fails in any material respect to implement an accepted plan, the agency must, by order, require the institution or company to correct the deficiency. The agency may, and in some cases must, take other supervisory actions until the deficiency has been corrected.

Section 39(c) requires the agencies to prescribe by regulation standards prohibiting as an unsafe and unsound practice excessive compensation or compensation that could result in a material financial loss to an institution. This subsection also requires that the agencies prescribe standards specifying when compensation is excessive.

II. Advance Notice of Proposed Rulemaking

In July 1992, the agencies published in the **Federal Register** an advance notice of proposed rulemaking (ANPR) requesting public comments on all aspects of the safety and soundness standards to be prescribed pursuant to section 39 of the FDI Act. See 57 FR 31336, July 15, 1992. In addition, for each safety and soundness standard, the ANPR requested comment on specific questions asked by the agencies.

The agencies received over 400 comment letters in response to the ANPR, though some letters were submitted to more than one agency. The majority of comments were received from insured depository institutions. With respect to each of the three principal areas in which regulatory standards must be prescribed, commenters strongly recommended that the agencies adopt general rather than specific standards in order to avoid regulatory micromanagement of the banking and thrift industries.

The comments are discussed in further detail below in the description of the proposed rule.

III. Proposed Rule

A. Summary and Purpose

In enacting section 39, Congress sought to protect the deposit insurance funds. Section 39 requires the agencies to identify and address problems at institutions or holding companies before capital becomes impaired. The agencies have proposed standards under section 39 that they believe serve this end without dictating how institutions are to be managed and operated. The proposed standards are specific enough to identify emerging safety and soundness problems and require submission of a compliance plan before those problems become serious; however, the standards do not specify each operational and managerial procedure an institution must have in place. Where possible, the standards establish the ends that proper operations and management shall achieve, while leaving the means to each institution. Where the agencies do establish features that an institution's systems must include, these features are of a basic type.

The proposed standards do not represent a change in the agencies' policies; rather, these standards represent the fundamental standards used by the agencies to assess the operational and managerial quality of an institution. Thus, under the proposed regulations, the agencies believe that well-managed institutions generally should not find it necessary to amend their operations in order to comply with the operational and managerial standards. The agencies request comment on whether the proposed standards would require institutions to amend their operations in order to comply.

The agencies expect that violations of the standards promulgated pursuant to section 39 generally will be detected during examinations and inspections of institutions and companies. Violations of the earnings standard (and, for OTS, the classified assets to total capital ratio), however, may be detected as a result of the submission of a report of condition or thrift financial report or through off-site monitoring of the institution or company.

B. Effect on Existing Authority

Compliance with the standards required by section 39 would not preclude a finding that an institution is engaged in an unsafe or unsound practice or is in an unsafe or unsound condition. Accordingly, supervisory action may be taken against an institution or company that has not been cited for a deficiency under section 39.

Conversely, failure to comply with the safety and soundness standards established pursuant to section 39 (except for the standard prohibiting payment of excessive compensation) would not necessarily constitute an unsafe or unsound practice. An agency may request submission of a plan to achieve compliance pursuant to section 39 without taking any additional supervisory or enforcement action.

C. Operational and Managerial Standards

The proposed operational and managerial standards address an institution's general practices. The agencies believe that section 39 allows the agencies to evaluate an institution's overall practices in order to determine whether those practices are sound in principle and whether procedures are in place to ensure that they are applied in the normal course of business. Thus, for example, in the areas of credit underwriting or loan documentation, an institution would not fail one of these standards merely because it had failed to document one loan properly or had used poor underwriting standards in making a single loan. Instead, the agencies would consider each institution's performance in the aggregate.

Recognizing that smaller institutions may require less sophisticated systems and practices given the relatively limited types of activities in which they engage, the proposal states that internal controls and information systems, internal audit systems, and credit underwriting practices shall be appropriate to the size of the institution and the nature and scope of its activities. The proposal also states that an institution shall manage its interest rate risk in a manner that is appropriate to the size of the institution and the complexity of its assets and liabilities.

1. Internal Controls, Information Systems, and Internal Audit Systems

The ANPR sought comment on the appropriate level of specificity for standards governing internal controls, information systems, and internal audit systems. Commenters strongly preferred that standards in this area be general, in order to enable each institution to comply with the standards by using control systems that are tailored to its individual operating environment. The proposed standards describe the functions that adequate internal controls and information systems must be able to perform.

Section 39(a)(1)(A) requires the agencies to prescribe standards relating to internal controls, information systems, and internal audit systems in accordance with section 36 of the FDI Act (12 U.S.C. 1831m). Section 36 requires certain institutions' management to submit to the agencies and to any State bank or State thrift supervisor an annual report containing a statement of management's responsibility for establishing and maintaining an adequate internal control structure and procedures for financial reporting. Section 36 also requires the independent public accountant for certain institutions to attest to, and report separately on, management's assertions in the internal control report in accordance with generally accepted standards for attestation engagements.

The agencies are proposing to prescribe the functions that adequate internal controls and information systems must be able to perform, rather than providing types of controls or systems that must be present in every case. Thus, for example, internal controls must provide for effective risk assessment, though each institution may establish its own type of controls to meet this requirement. Similarly, each institution must have an organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies, though the institution is free to choose its own organizational structure.

The proposed regulations address internal audit systems separately. In this area, the agencies believe that there are necessary components of an adequate internal audit system. The proposed regulations require that an institution's internal audit system: (1) Provide for those performing internal audits to be qualified and independent; (2) include testing and review of internal controls and information systems; (3) adequately document the tests performed and their findings, as well as any corrective actions taken as a result of the audit; and (4) provide for the results of the audit to be reviewed and acted upon by management.

The agencies are aware that many institutions use data processing service organizations to execute and record transactions, maintain related records and process related data. The determination of whether an institution's independent auditor needs to review a service organization's operations, as they relate to the institution's internal controls, should be made in accordance with generally accepted auditing standards.

2. Loan Documentation

Commenters were strongly opposed to any item-by-item listing of requirements for loan documentation, favoring general standards instead. Commenters also felt that the standards had to be sufficiently general to allow for different treatment according to loan type and amount.

The proposed regulations do not specify in detail what loan documentation must contain. Instead, they specify what loan documentation must enable an institution to do. Thus, documentation practices at an institution will not be evaluated against a checklist of requirements but instead will be evaluated based on whether they: (1) Enable the institution to make an informed lending decision and to assess risk as necessary on an ongoing basis; (2) identify the purpose of the loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner; (3) ensure that any claim against a borrower is legally enforceable; (4) demonstrate appropriate administration and monitoring of a loan; and (5) take account of the size and complexity of a loan. The agencies believe that the proposed regulations provide a standard against which compliance can be measured, while at the same time allowing for differing approaches to loan documentation.

On March 30, 1993, the agencies issued a joint policy statement regarding documentation of small and medium-sized business and farm loans. Under that policy statement, well-managed, well or adequately capitalized institutions are allowed to establish a "basket" of small and medium-sized business and farm loans that will not be subject to examiner criticism based on documentation. Under the proposed safety and soundness regulation, the interagency policy statement would continue to apply. The OTS has amended its current loan documentation regulation to conform to the interagency policy statement.

The OTS's current loan documentation regulation at 12 CFR 563.170(c)(1)–(7) establishes detailed loan documentation requirements that may not be necessary in light of the standards proposed in this rulemaking. The OTS specifically requests comment on changes to the loan documentation rule that would be appropriate to eliminate unnecessarily detailed and burdensome regulatory requirements.

3. Credit Underwriting

Commenters overwhelmingly favored general credit underwriting standards rather than an item-by-item listing of requirements that must be met for each extension of credit.

In the proposal, the agencies have established the general parameters of safe and sound credit underwriting practices. The standards would require each institution to establish and maintain prudent credit underwriting practices that: (1) Are commensurate with the types of loans the institution will make and consider the terms and conditions under which they will be made; (2) consider the nature of the markets in which loans will be made; (3) provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed; (4) establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors; (5) take adequate account of concentration of credit risk; and (6) are appropriate to the size of the institution and the nature and scope of its activities.

4. Interest Rate Exposure

Several commenters suggested that the standard for interest rate exposure focus on an institution's management system for controlling interest rate

exposure. Commenters generally opposed any absolute limit on interest rate exposure under section 39, with some noting that section 305 of FDICIA already addresses that issue. Many commenters argued that the financial condition of the institution should be considered in the standards, with better capitalized institutions allowed to take greater risk. Some commenters also felt that smaller institutions should be allowed to take greater risk, as they pose a lesser risk to the deposit insurance funds and do not have the resources for sophisticated systems to manage interest rate risk.

Recognizing that many smaller institutions do not need a sophisticated system for quantifying interest rate risk, the agencies have not proposed to require such systems in all cases. Rather, institutions would be required to manage interest rate risk in a manner that is appropriate to the size of the institution and the complexity of its assets and liabilities. Larger institutions that are exposed to significant interest rate risk would be expected to maintain a more formal system for the measurement and management of such risk. Under section 305 of FDICIA, which requires amendment of the risk-based capital standards to take account of interest rate risk, some institutions may be required to quantify interest rate risk.

5. Asset Growth

A large number of commenters asked that the agencies rely on current policies and regulations regarding asset growth and on existing capital standards. The commenters also strongly supported reliance on existing laws and regulations regarding asset growth through merger. The agencies considered existing policies and regulations in drafting the proposed regulations.

The agencies have not proposed a quantitative limit on asset growth. A quantitative limit for all institutions regardless of size and financial condition would be overly restrictive and inconsistent with safety and soundness. Further, the agencies do not believe that it would be feasible to establish a separate quantitative limit for each distinguishable class of institution. Moreover, asset growth does not necessarily cause safety and soundness problems; rather, unplanned or poorly managed asset growth is cause for concern.

Under the proposal, an institution would be required to base its asset growth on a plan that reflects consideration of (1) the source, volatility and use of the funds that support asset growth; (2) any increase in credit risk or interest rate risk as a result of growth; and (3) the effect of growth on the institution's capital. Asset growth by an institution would be evaluated against the institution's plan.

6. Compensation, Fees and Benefits

Subsection (a) of section 39 requires the agencies to establish operational and managerial standards relating to compensation, fees and benefits. This mandate is distinguishable from that of subsection (c) of section 39, which requires the agencies to prohibit as an unsafe and unsound practice any compensation that is excessive or could lead to a material financial loss to an institution.

The proposed regulations would require that each institution maintain safeguards to prevent the payment of compensation, fees, or benefits that are excessive or could lead to material financial loss. Because section 39(a) provides that operational and managerial standards in the compensation area are to be prescribed in accordance with section 39(c), the agencies' proposed operational and managerial standard is tailored to prevent the payment of compensation, fees, and benefits prohibited under section 39(c). The agencies do not believe that it would be appropriate to define how institutions are to set compensation. Instead, the proposal would require that the method selected be designed to prevent payment of compensation, fees, or benefits that are excessive or could lead to material financial loss.

D. Asset Quality, Earnings, and Stock Valuation Standards

Section 39(b) requires the agencies to establish a maximum ratio of classified assets to capital, to require minimum earnings sufficient to absorb losses without impairing capital, and to establish, to the extent feasible, a minimum ratio of market to book value. These quantitative standards are somewhat different from the operational and managerial standards because they are designed to detect a deterioration in the overall financial condition of an institution or holding company rather than the existence of operational or managerial deficiencies. Specifically, these standards are meant to alert institutions and the agencies to developing conditions that warrant submission of a compliance plan to the appropriate agency for evaluation. The proposed quantitative standards are meant to supplement, rather than replace, the detailed analyses of these areas that occur during the examination. Therefore, institutions that meet these standards may still be advised at the end of an examination that earnings or asset quality are not adequate and that problems need to be addressed.

1. Maximum Ratio of Classified Assets to Capital

In the ANPR, the agencies sought comment on various aspects of the maximum ratio of classified assets to capital required by section 39, including what types of capital should be included in the ratio and whether classified assets should be weighted for purposes of calculating the ratio. Commenters strongly favored use of existing measures so as to reduce complexity. Some commenters also favored weighting the classified assets according to their probability of loss. With regard to the denominator of the ratio, commenters stressed that the allowance for loan and lease losses, which is currently excluded from tier 1 capital (core capital for OTS), should be included in order to capture capital set aside for losses inherent in the loan portfolio.

The agencies are proposing a maximum ratio whose numerator includes all classified assets on a non-weighted basis and whose denominator includes total capital plus any allowance for loan and lease losses (general valuation allowance for thrifts) otherwise excluded from total capital. The required maximum ratio would be 1.0. Although the agencies are proposing a maximum ratio of 1.0, the agencies have considered other ratios including 0.50 and 0.75. The agencies are particularly interested in receiving comment on the appropriate maximum ratio.

Under this proposed ratio, the numerator should include only assets classified as substandard and doubtful. Assets classified as loss are considered only to the extent that related losses have not been recognized.

The agencies have decided not to propose a weighted measure of classified assets. In trials of ratios using both weighted and non-weighted classified assets, the agencies found that substantially the same institutions were identified under each approach. Because both approaches yield similar results, the agencies have proposed the simpler, non-weighted ratio, which should be less burdensome for institutions to calculate and monitor. However, the agencies seek comment on the relative accuracy of the two measures.

The agencies emphasize that section 39(b) requires the agencies to prescribe a *maximum* ratio of classified assets to

capital. Because it is a maximum ratio, institutions should generally strive to operate at ratios well below the maximum ratio. Regardless of the ratio adopted by the agencies, the agencies will continue to exercise supervisory judgment and to require corrective action through existing supervisory and enforcement means, as appropriate.

The agencies further emphasize that this ratio is only one of many factors considered in determining the overall financial condition of an institution. Thus, the agencies may require an institution to take steps to reduce its ratio of classified assets to capital even though the institution is operating with a ratio that is less than the maximum ratio that is ultimately required in the agencies' final regulations. In order to clarify this point, the proposed standard expressly preserves the agencies' existing authority to require an institution to maintain a ratio of classified assets to capital that is less than the maximum required under section 39.

2. Minimum Earnings Standard

In the ANPR, the agencies sought comment on various aspects of the minimum earnings standard required by section 39, including the appropriate measure for earnings and the time period for determining whether minimum earnings have been achieved. Commenters suggested various definitions of "earnings," including average return on equity, earnings or losses prior to taxes, retained earnings, and net income after dividends. There was no consensus on a time period for measuring earnings, and recommendations included one, two, three and five year periods.

The proposed standard requires that an institution continue to meet minimum capital standards assuming that any losses experienced over the past four quarters were to continue over the next four quarters. Specifically, if an institution has an aggregate net loss over the past four quarters, the institution's capital ratios would be recalculated under the assumption that those losses will continue over the next four quarters.

The agencies believe that this standard would identify institutions that are currently operating above minimum capital standards but whose earnings are not sufficient to avoid impairing capital. The agencies also believe that this standard is relatively simple to calculate and administer.

The agencies recognize that some institutions may not meet this standard due to accounting losses that are one-time events unlikely to recur, such as charges to earnings for retiree health benefits. In such instances, an institution's compliance plan could consist of an explanation of the circumstances surrounding the event, and in general no further action would be required.

3. Minimum Ratio of Market Value to Book Value

In the ANPR, the agencies requested comment on whether a minimum ratio of market value to book value for publicly traded institutions was feasible. The commenters concluded in overwhelming numbers that such a minimum ratio was not feasible, setting forth a variety of practical and theoretical problems with such a ratio.

Clearly, a minimum market value to book value ratio is technically possible, but the agencies do not believe that technical possibility is what Congress had in mind in directing the agencies to establish such a ratio "if feasible." Accordingly, the agencies view the statutory language as a directive to consider whether adoption of such a ratio is a reasonable means to advance the objectives sought by Congress.

In light of the comments and their own experience, and for the reasons set forth below, the agencies believe that establishing a minimum market value to book value ratio for publicly traded institutions is not a feasible means to the end desired by Congress: Identifying problems at insured depository institutions and holding companies in their early stages and correcting such problems through a compliance plan. Therefore, no such ratio is included in the proposed regulations.

The agencies believe that a market-to-book ratio would not be an operationally reliable indicator of safety and soundness. In the long run, the market value of an institution or holding company is dependent on financial condition and performance. However, in the short run, market value may also be affected by factors unrelated to the institution's or holding company's condition and performance. These include the attractiveness of institution or holding company stocks relative to other competitors and industries; the performance of the general stock market; industry conditions; random fluctuations; an institution's perceived potential for takeover; merger, acquisition or other rumors; international factors; weakness in the dollar; or the regional economic outlook. Thus, a safe and sound institution could well be found in violation of a minimum market-to-book ratio as a result of factors that are not necessarily indicative of an institution's condition.

A requirement that an institution submit a compliance plan if it fails to meet the ratio would also not be feasible. A publicly traded institution or holding company does not have direct control over the market's evaluation of its stock's value. This is especially true for distressed institutions or holding companies that may not be able in the short run to persuade investors to bid higher for shares or to purchase newly issued stock. Moreover, in an attempt to gain compliance, some institutions might take "quick fix" actions such as asset sales that could erode the institution's long-term value.

The agencies believe that implementation of a minimum market value to book value ratio could have unintended consequences that could actually reduce the safety and soundness of the banking and thrift industries.

- Such a ratio might be considered a "penalty" and therefore discourage mutual institutions from converting to a stock form of ownership and discourage closely held institutions from exposing their stock to the public market. This would give non-public companies a perceived advantage over public companies because they would not have to meet the minimum ratio.
- Market speculators might take advantage of the standard by short selling distressed company stocks, especially those with thinner markets. Market manipulators could attempt to push an institution's stock price below the regulatory standard and expect the market to respond by pushing the price down even further, to the speculator's advantage. The agencies believe such speculative actions could adversely affect an institution's safety and soundness by limiting its access to liquidity and the capital markets.
- A sharp decline in the stock market might cause numerous institutions to fail to meet the standard, which could hinder institutions from providing liquidity to the market when it was needed.

During examinations and off-site monitoring of publicly traded institutions, the agencies currently consider stock price changes, market price to book value ratios, bond ratings and other indicators of the market's assessment of an institution's performance. Although the agencies believe that a minimum market to book ratio is not feasible to implement as a regulatory standard, they will continue to consider these factors.

E. Compensation That Is Excessive or That Could Lead to Material Financial Loss

Commenters strongly supported the use of the factors set forth in section 39(c) as the sole standard in defining excessive compensation. Commenters felt that regulations specifying in more detail when compensation would be considered excessive would constitute micro-management of an institution's management practices. The agencies have relied upon the statutory language in formulating the standard under this section.

Under the proposal, compensation would be considered excessive if it were unreasonable or disproportionate to the services actually performed by the individual being compensated. In making that determination, the agencies will consider all relevant factors, including those set out in section 39(c)—(1) the compensation history of the individual and other individuals with comparable expertise at the institution, (2) the financial condition of the institution, (3) comparable compensation practices at comparable institutions, and (4) any connection between the individual and any wrongdoing at the institution.

F. Coverage of Holding Companies

Section 39(a) requires the appropriate Federal banking agency to establish operational and managerial standards for depository institution holding companies as well as depository institutions. Section 39(b) requires that a maximum ratio of classified assets to capital, minimum earnings sufficient to avoid impairing capital, and a minimum ratio of market to book value (to the extent feasible) be prescribed for depository institution holding companies. Section 39(c), governing compensation, does not apply to holding companies, and commenters strongly opposed the establishment of compensation standards for depository institution holding companies.

1. Bank Holding Companies

As the appropriate Federal banking agency for bank holding companies, the Board is proposing regulations to apply section 39 (a) and (b) to those companies. First, the Board is proposing to require that each bank holding company ensure that each of its subsidiary insured depository institutions is in compliance with the applicable safety and soundness standards adopted pursuant to section 39. Second, rather than adopt a separate set of operational and managerial standards for bank holding companies, the Board's proposal applies to bank holding companies the same standards regarding internal controls, information systems, internal audit systems, interest rate exposure, asset growth, and compensation, fees, and benefits that it is proposing to apply to state member banks. In doing so, the Board is proposing to apply such standards only when relevant to the operations of the holding company and thereby avoid imposing an unnecessary burden on small and shell bank holding companies.

Two of the operational and managerial standards required to be established by section 39(a)—those regarding credit underwriting and loan documentation—may not apply to all bank holding companies. The Board's proposed regulation makes clear that if a bank holding company does not extend credit at the holding company level, then the credit underwriting and loan documentation standards are not applicable to the holding company, and the holding company will not be expected to have practices or policies in these areas.

For the same reason that the agencies have determined that establishing a maximum ratio of market value to book value for depository institutions would not be feasible, the Board believes that such a ratio would not be feasible for bank holding companies. The Board is proposing to apply the same maximum ratio of total classified assets to total capital and the requirement of minimum earnings sufficient to avoid impairing capital to both bank holding companies and state member banks. For purposes of calculation of those ratios, the Board will examine a bank holding company on a consolidated basis. The Board believes that applying those ratios only at the holding company level could paint a false picture of the safety and soundness of the holding company and create perverse financial incentives, such as an incentive to leave classified assets at an insured depository institution rather than upstreaming them to the holding company, where the deposit insurance fund is not at risk.

Bank holding companies with less than $150 million in assets that meet the requirements of the Federal Reserve's reporting exemption do not report consolidated capital or earnings figures. Thus, applying to these companies the standards for minimum earnings and maximum classified assets applicable to insured depository institutions would require the imposition of consolidated reporting. In order to avoid imposing such a significant reporting burden on these companies, and because, in the case of small bank holding companies, substantially all of the consolidated institution's classified assets and earnings are derived from their subsidiary institutions, the Board is proposing a different standard for them: if any subsidiary depository institution of a bank holding company with less than $150 million in assets is in violation of the quantitative standards, then the bank holding company will be found to be in violation. The Board believes that this standard would identify bank holding companies with insufficient earnings or an excess of classified assets.

In applying section 39 to bank holding companies, the Board does not propose to apply safety and soundness standards to the non-U.S. operations of bank holding companies that are foreign banks, companies that own foreign banks, or non-U.S. subsidiaries of foreign banks. The operations of foreign banks would be covered by the proposed rule to the extent that they are conducted through a U.S.-incorporated company that owns an insured bank. The Board seeks comment on this issue.

2. Savings and Loan Holding Companies

As the appropriate Federal banking agency for savings and loan holding companies, the OTS is proposing regulations for savings and loan holding companies that focus on savings and loan holding company activities most likely to cause losses at a holding company's subsidiary savings association.

In the view of the OTS, the safety and soundness standards developed for savings and loan holding companies under section 39 should be consistent with the current statutory framework that defines savings and loan holding company regulation. Many of the areas listed in section 39, while readily applicable to depository institutions, have no meaningful applicability to savings and loan holding companies. For example, neither the Savings and Loan Holding Company Act (SLHCA) nor any other statute has ever established a framework for capital requirements for savings and loan holding companies. Nor is there a legislative framework to subject the assets of savings and loan holding companies to classification or to regulate the loan documentation, credit underwriting, interest rate risk exposure or asset growth of savings and loan holding companies.

Given the ability of savings and loan holding companies to conduct a broader range of activities than bank holding companies, such standards would be impractical, if not impossible, to apply and would not effectively focus on

reducing risk to the deposit insurance funds.

The OTS is proposing that each savings and loan holding company shall: (1) Ensure that transactions and relationships between the holding company and its subsidiary savings association satisfy applicable fiduciary standards and do not have a detrimental effect on the savings association's safe and sound operation; (2) not engage in any activity, or cause its subsidiary savings association to engage in any activity, that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association; (3) not take any action that would impede the ability of its subsidiary savings association to comply with the requirements of section 39 or fully implement any safety and soundness compliance plan required of the savings association; and (4) take any corporate actions necessary to enable the subsidiary savings association to take actions required by a safety and soundness compliance plan.

The OTS believes these standards are consistent with the objectives of section 39 and the statutory framework for savings and loan holding company regulation, and further the goal of resolving problems of insured depository institutions at the lowest possible long-term loss to the deposit insurance funds. Commenters are specifically requested to address whether other standards, consistent with the requirements of section 39, would better accomplish these goals.

G. Procedures for Submission of Compliance Plans and Issuance of Orders

Section 39(e) of the FDI Act requires that the agencies establish deadlines for submission and review of compliance plans. The deadlines must provide institutions and companies with reasonable time to submit compliance plans in the event that a deficiency is detected under the operational and managerial standards or asset quality and earnings standards. The deadlines must also require the agencies to act on such plans expeditiously. The proposed regulations provide for an institution or company to file a compliance plan within 30 days of such plan being requested by the appropriate Federal banking agency, although the agency may extend or shorten the time for filing. The agency would then generally have 30 days to review the plan. The proposed regulations provide that a compliance plan under section 39 may, with the permission of the agency, be part of a capital restoration plan submitted pursuant to section 38 of the FDI Act (prompt corrective action), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection.

In the event that an institution or company fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted compliance plan within the time allowed by the agency, section 39 provides that the agency must order the institution or company to correct the deficiency and may: (1) Restrict asset growth; (2) require the institution or company to increase its ratio of tangible equity to assets; (3) restrict the rates of interest that the institution or company may pay; or (4) take any other action that would better carry out the purpose of prompt corrective action. In certain cases, the agency is required to take one or more actions.[1] Orders issued pursuant to section 39 are enforceable under section 8 of the FDI Act.

Section 39 does not provide for any prior notice or administrative review of an agency order. However, given the potential effect of such an order on the institution or company subject to the order, the agencies are proposing to give the institutions and companies prior notice of, and an opportunity to respond to, a proposed order.

The proposed procedures are modelled after those adopted by the agencies for issuance of prompt corrective action directives pursuant to section 38 of the FDI Act. Under the proposed procedures, the appropriate agency generally must provide written notice to an institution or company prior to issuing an order. The notice would describe the action contemplated by the agency. The institution or company would then be provided at least 14 calendar days to submit written arguments and evidence in response to the proposed order. Failure to file a timely response would constitute consent to issuance of the order and a waiver of the opportunity to appeal. The agency would consider the submission in determining whether to issue the order.

Under the proposed rules, the agencies would reserve the right to issue orders that are effective immediately. In these cases, the institution would have an opportunity to seek modification or rescission of the order on an expedited basis. An institution or company that appeals an immediately effective order would be required to file a written appeal within 14 calendar days of receiving the notice, and the agency would be required to consider the appeal within 60 days of its receipt.

The agencies intend to establish appropriate delegations in accordance with their own procedures. In connection with this proposal, the FDIC is proposing to revise its regulation governing delegations of authority.

H. Other Issues

1. Implementation at Holding Company Level

The ANPR sought comment on the extent to which a multi-bank or thrift holding company may establish safety and soundness standards for its subsidiary institutions so long as the standards are affirmed by the boards of the subsidiary institutions. Almost all of the commenters responding to this question supported the procedure based on the reasoning that such a procedure would allow, but not require, the holding company to establish some or all of the required standards at the holding company level, thereby creating uniformity when desired and avoiding duplication among subsidiary institutions.

Commenters also suggested allowing a bank holding company to implement section 39 at the bank holding company level in exchange for an enforceable commitment to serve as a source of strength for its depository institution subsidiaries and a reaffirmation of the liability of each of its subsidiary depository institutions pursuant to section 5(e) of the FDI Act.

Under the proposed regulation, a holding company could establish policies and practices for the entire organization, with each of the subsidiary depository institutions affirming those policies and practices. Furthermore, once a safety and soundness deficiency is detected at an institution—particularly with regard to asset quality and earnings standards—an acceptable compliance plan submitted or affirmed by the institution could include a commitment by the institution's holding company to take action to ensure that the deficiency is remedied.

[1] One such case where section 39 requires supervisory action is where the institution has, during the prior 18-month period, experienced extraordinary growth, as defined by the appropriate agency. The Board, the OCC, and the FDIC are proposing a regulatory definition of extraordinary growth, while the OTS expects to rely on existing guidance. The OTS' Regulatory Bulletin 3a–1 "Policy Statement on Growth for Insured Institutions" states that the OTS determines whether an institution has undergone excessive growth on the basis of the institution's management and asset quality, capital adequacy, interest rate risk profile and operating controls and procedures.

Some commenters also suggested that a bank holding company be allowed to implement, and be held responsible for, the practices and policies that comply with the standards prescribed under section 39. The agencies note that under such a scenario the primary regulator of the depository institution would still be required to review and act on any compliance plan. The agencies seek comment on how a holding company might ensure, and be held responsible for, compliance with the standards in section 39—in particular, what parts of section 39 could be covered and how compliance could be monitored and enforced.

2. Incorporation by Reference

The ANPR also sought comment on the issue of whether existing guidelines, opinions, advisories and other literature should be incorporated into certain operational and managerial standards. Commenters were divided on the extent to which existing guidance should be incorporated. In establishing standards in the proposed regulations, the agencies have reviewed existing guidance as well as the comments. The proposal does not incorporate existing guidance by reference, as the agencies believe that subsequent changes to existing guidance would then require notice and comment, greatly complicating the administration of that guidance. However, the agencies will use existing and future supplemental supervisory guidance in this area where appropriate. The agencies have also proposed in their operational and managerial standards that institutions ensure compliance with applicable laws and regulations.

3. Recordkeeping and Reporting

The agencies request comment on whether the proposed standards, if adopted, would increase the recordkeeping or reporting requirements imposed on depository institutions and depository institution holding companies by the agencies.

IV. Regulatory Flexibility Act

Each agency has concluded after reviewing its proposed regulation that the regulation, if adopted, will not impose a significant economic hardship on small institutions. The proposal does not necessitate the development of sophisticated recordkeeping or reporting systems by small institutions; nor will small institutions need to seek out the expertise of specialized accountants, lawyers, or managers in order to comply with the regulations. The agencies therefore hereby certify pursuant to section 605(a) of the Regulatory Flexibility Act (5 U.S.C. 605) that the proposal, if adopted, will not have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act (5 U.S.C. 601 *et. seq.*).

V. Executive Order 12866

The OCC and the OTS have determined that their final regulations do not constitute "significant regulatory actions."

List of Subjects

OCC

12 CFR Part 30

Administrative practice and procedure, National banks, Reporting and recordkeeping requirements, Safety and soundness.

Board

12 CFR Part 208

Accounting, Agriculture, Banks, Banking, Confidential business information, Currency, Reporting and recordkeeping requirements, Securities.

12 CFR Part 225

Administrative practice and procedure, Banks, Banking, Holding companies, Reporting and recordkeeping requirements, Securities.

12 CFR Part 263

Administrative practice and procedure.

FDIC

12 CFR Part 303

Administrative practice and procedure, Authority delegations (Government agencies), Bank deposit insurance, Banks, Banking, Reporting and recordkeeping requirements, Savings associations.

12 CFR Part 308

Administrative practice and procedure, Claims, Equal access to justice, Lawyers, Penalties.

12 CFR Part 364

Banks, Banking, Safety and soundness.

OTS

12 CFR Part 570

Accounting, Administrative practices and procedures, Bank deposit insurance, Holding companies, Reporting and recordkeeping requirements, Savings associations, Safety and soundness.

Authority and Issuance

Office of Comptroller of the Currency
12 CFR Chapter I

For the reasons set out in the preamble, chapter I of title 12 is proposed to be amended by adding a new part 30 to read as follows:

PART 30—SAFETY AND SOUNDNESS STANDARDS

Subpart A—Standards

Sec.
30.1 Authority, purpose, scope and preservation of existing authority.
30.2 Definitions.
30.3 Operational and managerial standards.
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30.11 Scope.
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30.13 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.
30.14 Filing of safety and soundness compliance plan.
30.15 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
30.16 Enforcement of orders.

Authority: 12 U.S.C. 1831p–1.

Subpart A—Standards

§ 30.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose and scope.* This part establishes operational, managerial, asset quality and earnings standards for all national banks, and standards that prohibit as an unsafe and unsound practice the payment of compensation that is excessive or could lead to material financial loss to a national bank. These standards are designed to identify potential safety and soundness concerns at national banks and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance fund.

(c) *Preservation of existing authority.* Neither section 39 nor this part in any way limits the authority of the OCC to address unsafe or unsound practices, violations of law, unsafe or unsound

conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OCC.

(d) *Insured Federal branches and agencies.* The safety and soundness standards in this part apply to insured Federal branches and agencies of foreign banks in accordance with 12 U.S.C. 3102(b).

§ 30.2 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813, 1831p–1).

(b) *Classified assets* means assets classified, in the most recent examination conducted by the OCC, as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Ineligible allowance* means any allowance for loan and lease losses not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under 12 CFR part 3.

(e) *Net income or loss* means net income or net loss as reported in the report of condition required to be filed with the OCC.

(f) *Principal shareholder* means a person (other than an insured bank) that directly or indirectly, or acting through or in concert with one or more persons, owns, controls, or has the power to vote more than 10 percent of any class of voting securities of a national bank or company. Shares owned or controlled by a member of an individual's immediate family are considered to be held by the individual. A principal shareholder of a national bank includes:

(1) A principal shareholder of a company of which the national bank is a subsidiary; and

(2) A principal shareholder of any other subsidiary of that company.

(g) *Tier 1 capital* means the amount of Tier 1 capital as defined in 12 CFR 3.2(c), as reported in the most recent quarterly report of condition.

(h) *Total assets* means the amount of total assets as defined in 12 CFR part 3, as reported in the most recent quarterly report of condition.

(i) *Total capital* means the amount of total capital as defined in 12 CFR 3.2(e), as reported in the most recent quarterly report of condition.

§ 30.3 Operational and managerial standards.

(a) *Internal controls and information systems.* A national bank shall have internal controls and information systems that are appropriate to the size of the bank and the nature and scope of its activities, and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A national bank shall have an internal audit system that is appropriate to the size of the bank and the nature and scope of its activities, and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the national bank's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A national bank shall establish and maintain loan documentation practices that:

(1) Enable the national bank to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A national bank shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the national bank will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the national bank and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A national bank shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the national bank and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A national bank's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the national bank's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A national bank shall maintain safeguards to prevent the payment of compensation, fees and benefits that are excessive or could lead to material financial loss to the national bank, in accordance with § 30.5 of this part.

§ 30.4 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital—*

(1) *In general.* A national bank shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) *Preservation of authority.* Nothing in section 39 or this part shall limit the

authority of the OCC to require a bank to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A national bank shall have minimum earnings sufficient to absorb losses without impairing capital. A national bank's earnings are sufficient to absorb losses without impairing capital if:

(1) The national bank is in compliance with the minimum capital requirements established in 12 CFR part 3; and

(2) The national bank would, if its net income or loss over the last four quarters of earnings continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a national bank would remain in compliance with minimum capital requirements under this paragraph, the OCC will deduct the dollar amount of any net loss experienced by the national bank over the most recent four quarters from the national bank's Tier 1 capital and total assets and calculate the national bank's capital ratios.

§ 30.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the national bank;

(3) The financial condition of the national bank;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the national bank;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the national bank; and

(7) Any other factors the OCC determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a national bank is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC under section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831o(i)(2)(F)) and 12 CFR part 325.

Subpart B—Procedures

§ 30.11 Scope.

The rules and procedures set forth in this subpart apply to national banks that are subject to the provisions of section 39 of the FDI Act (12 U.S.C. 1831p–1).

§ 30.12 Purpose.

Section 39 of the FDI Act requires the OCC to establish safety and soundness standards for national banks. Pursuant to section 39, a national bank must submit a compliance plan if it violates a safety and soundness standard under section 39 (a) or (b). An enforceable order under section 8 of the FDI Act (12 U.S.C. 1818) may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the national bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requesting submission of a compliance plan and issuing enforceable orders pursuant to section 39.

§ 30.13 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The OCC may, based upon an examination, inspection, or any other information that becomes available to the OCC, determine that a national bank has failed to satisfy the safety and soundness standards set out in subpart A of this part.

(b) *Request for compliance plan.* If the OCC determines that a national bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the OCC shall request by letter or through a report of examination or report of inspection the submission of a compliance plan, and the national bank shall be deemed to have notice of the deficiency three days after mailing of the letter by the OCC or delivery of the report of examination or inspection.

§ 30.14 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—(1) In general.* A national bank shall file a written safety and soundness compliance plan with the OCC within 30 days of receiving a request for a compliance plan pursuant to § 30.13(b) of this part, unless the OCC notifies the national bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a national bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act (12 U.S.C. 1818), a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the OCC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the national bank will take to correct the deficiency.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the OCC shall provide written notice to the national bank of whether the plan has been approved or seek additional information from the national bank regarding the plan. The OCC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan—(1) Supervisory actions.* If a national bank fails to submit an acceptable plan within the time specified by the OCC or fails in any material respect to implement a compliance plan, then the OCC shall, by order, require the national bank to correct the deficiency and may take further actions provided in section 39(e)(2)(B) (12 U.S.C. 1831p–1(e)(2)(B)). Pursuant to section 39(e)(3) (12 U.S.C. 1831p–1(e)(3)), the OCC may be required to take certain actions if the national bank commenced operations or experienced a change in control within the past 24-month period, or the national bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, *extraordinary growth* means an increase in assets of more than 7.5 percent during any calendar quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Holding Company Act, Bank

Merger Act, National Bank Act, or Federal Reserve Act will be excluded.

(e) *Amendment of compliance plan.* A national bank that has filed an approved compliance plan may, after prior written notice to and approval by the OCC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the national bank shall implement the compliance plan as previously approved.

§ 30.15 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order*—(1) In general. The OCC shall provide a national bank prior written notice of the OCC's intention to issue an order requiring such national bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The national bank shall have such time to respond to a proposed order as provided by the OCC under paragraph (c) of this section.

(2) Immediate issuance of final order. If the OCC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the OCC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a national bank immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A national bank that is subject to such an immediately effective order may submit a written appeal of the order to the OCC. Such an appeal must be received by the OCC within 14 calendar days of the issuance of the order, unless the OCC permits a longer period. The OCC shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the OCC, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the national bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OCC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the national bank subject to the order may file with the OCC a written response to the notice.

(c) *Response to notice*—(1) Time for response. A national bank may file a written response to a notice of intent to issue an order within the time period set by the OCC. The date shall be at least 14 calendar days from the date of the notice unless the OCC determines that a shorter period is appropriate in light of the safety and soundness of the national bank or other relevant circumstances.

(2) Content of response. The response should include:

(i) An explanation why the action proposed by the OCC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the national bank regarding the proposed order.

(d) *OCC consideration of response.* After considering the response, the OCC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the national bank; or

(3) Seek additional information or clarification of the response from the national bank, or any other relevant source.

(e) *Failure to file response.* Failure by a national bank to file with the OCC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any national bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the OCC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the OCC, the order shall continue in place while such request is pending before the OCC.

§ 30.16 Enforcement of orders.

(a) *Judicial remedies.* Whenever a national bank fails to comply with an order issued under section 39, the OCC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act (12 U.S.C. 1818(i)(1)).

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act (12 U.S.C. 1818(i)(2)(A)), the OCC may assess a civil money penalty against any national bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OCC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Dated: November 2, 1993.

Eugene A. Ludwig,

Comptroller of the Currency.

Federal Reserve System
12 CFR Chapter II

For the reasons outlined in the preamble, the Board proposes to amend 12 CFR parts 208, 225, and 263 as set forth below:

PART 208—MEMBERSHIP OF STATE BANKING INSTITUTIONS IN THE FEDERAL RESERVE SYSTEM (REGULATION H)

1. The authority citation for 12 CFR part 208 is revised to read as follows:

Authority: 12 U.S.C. 36, 248 (a) and (c), 321–338, 461, 481–486, 601, and 611, 1814, 1823(j), 1831o, 1831p–1, 3906–3909, 3310, 3331–3351; 15 U.S.C. 78b, 78o–4(c)(5), 78q, 78q–1, 78w, 781(b), 781(i), and 1781(g).

2. A new Subpart D, comprising §§ 208.60 through 208.64, is added to part 208 to read as follows:

Subpart D—Safety and Soundness Standards

Sec.

§ 208.60 Authority, purpose, scope and preservation of existing authority.
§ 208.61 Definitions.
§ 208.62 Operational and managerial standards.
§ 208.63 Asset quality and earnings standards.
§ 208.64 Prohibition on compensation that constitutes an unsafe and unsound practice.

Subpart D—Safety and Soundness Standards

§ 208.60 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued by the Board pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose and scope.* This part establishes operational, managerial,

asset quality and earnings standards for all state member banks, and standards that prohibit as an unsafe and unsound practice the payment of compensation that is excessive or could lead to material financial loss to a bank. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance funds.

(c) *Preservation of existing authority.* Neither section 39 nor this subpart in any way limits the authority of the Board to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this subpart may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the Board.

§ 208.61 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p–1).

(b) *Classified assets* means assets classified, in the most recent Federal examination or State examination that is acceptable to the Board pursuant to section 10(d)(3) of the FDI Act, as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital or allowance.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Director* shall have the meaning described in 12 CFR 215.2(c).

(e) *Executive officer* shall have the meaning described in 12 CFR 215.2(d).

(f) *Ineligible allowance* means any allowance for loan and lease losses not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under 12 CFR part 208, appendix A.

(g) *Net income or loss* means net income or net loss as reported in the quarterly report of condition.

(h) *Principal shareholder* shall have the meaning described in 12 CFR 215.2(j).

(i) *Tier 1 capital* means the amount of Tier 1 capital as defined in 12 CFR part 208, appendix A, and as reported in the most recent quarterly report of condition.

(j) *Total assets* means the amount of total assets as defined in 12 CFR part 208, appendix A, and as reported in the most recent quarterly report of condition.

(k) *Total capital* means the amount of total capital as defined in 12 CFR part 208, appendix A, as reported in the most recent quarterly report of condition.

§ 208.62 Operational and managerial standards.

(a) *Internal controls and information systems.* A State member bank shall have internal controls and information systems that are appropriate to the size of the bank and the nature and scope of its activities, and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A state member bank shall have an internal audit system that is appropriate to the size of the bank and the nature and scope of its activities, and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the bank's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A State member bank shall establish and maintain loan documentation practices that:

(1) Enable the bank to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A State member bank shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the bank will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the bank and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A State member bank shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the bank and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A State member bank's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the bank's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A State member bank shall maintain safeguards to prevent the payment of compensation, fees and benefits that are excessive or could lead to material financial loss to the bank, in accordance with § 208.64 of this part.

§ 208.63 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital*—(1) *In general.* A State

member bank shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) *Preservation of authority.* Nothing in section 39 or this part shall limit the authority of the Board to require a bank to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A State member bank shall have minimum earnings sufficient to absorb losses without impairing capital. A State member bank has minimum earnings sufficient to absorb losses without impairing capital if:

(1) The bank is in compliance with the minimum capital requirements established in 12 CFR part 208, appendix A; and

(2) The bank would, if its net income or loss over the last four quarters continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a bank would remain in compliance with minimum capital requirements under this paragraph (b)(2), the Board will deduct the dollar amount of any net loss experienced by the bank over the most recent four quarters from the bank's Tier 1 capital and total assets and calculate the bank's capital ratios.

§ 208.64 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the bank;

(3) The financial condition of the bank;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the bank;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the bank; and

(7) Any other factors the Board determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a State member bank is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC under section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831o(i)(2)(F)) and part 325 of this title.

PART 225—BANK HOLDING COMPANIES AND CHANGE IN BANK CONTROL (REGULATION Y)

1. The authority citation for 12 CFR part 225 is revised to read as follows:

Authority: 12 U.S.C. 1817(j)(13), 1818, 1831i, 1831p–1, 1843(c)(8), 1844(b), 1972(l), 3106, 3108, 3907, 3909, 3310, and 3331–3351.

2. A new Subpart I, comprising § 225.81, is added to part 225 to read as follows:

Subpart I—Safety and Soundness Standards

Sec.
§ 225.81 Safety and soundness standards.

Subpart I—Safety and Soundness Standards

§ 225.81 Safety and soundness standards.

(a) *Obligation to ensure compliance.* If a safety and soundness deficiency is detected pursuant to section 39 of the FDI Act at one of its subsidiary insured depository institutions, a bank holding company shall ensure that the subsidiary insured depository institution returns to compliance with the safety and soundness standards.

(b) *Applicability of operational and managerial standards to holding companies*—(1) In general. The standards for safety and soundness regarding internal controls, information systems, internal audit systems, interest rate exposure, asset growth, and compensation, fees, and benefits prescribed pursuant to section 39(a) of the FDI Act for state member banks and § 208.62 of this chapter shall apply to a bank holding company in the same manner and to the same extent as a State member bank.

(2) Standards relating to credits. The standards for safety and soundness regarding credit underwriting and loan documentation prescribed pursuant to section 39(a) of the FDI Act for State member banks pursuant to §§ 208.62 (c) and (d) of this chapter shall apply to a bank holding company in the same manner as a State member bank to the extent that the holding company engages in credit underwriting at the holding company level.

(3) Standards for asset quality and earnings—(i) *Applicability.* Except as provided in paragraph (b)(3)(iii) of this section, the maximum ratio of total classified assets to total capital and the requirement of minimum earnings sufficient to avoid impairing capital prescribed pursuant to section 39(a) of the FDI Act for State member banks and §§ 208.63 (a) and (b) of this chapter shall apply to a bank holding company in the same manner and to the extent as a State member bank.

(ii) *Measurement.* For purposes of paragraph (b)(3)(i) of this section, total classified assets, total capital, Tier 1 capital, and net income (loss) shall be measured on a consolidated basis.

(iii) *Standard for bank holding companies with assets under $150 million.* For a bank holding company with assets of less than $150 million:

(A) *Asset quality.* The holding company shall be found to have exceeded the maximum ratio of classified assets to capital if any of its subsidiary depository institutions exceeds the maximum ratio of classified assets to capital applicable to that institution; and

(B) *Earnings.* The holding company shall be found to have violated the requirement of minimum earnings sufficient to avoid impairing capital if any of its subsidiary depository institutions is in violation of the minimum earnings requirement applicable to that institution.

(c) *Procedures for correcting a deficiency.* In taking any action under section 39 that is within the Board's discretion to take in connection with a bank holding company, the Board shall follow the procedures for requesting a safety and soundness compliance plan, ordering correction of a safety and soundness deficiency, and taking corrective action based on the failure to submit and implement a compliance plan that are prescribed under subpart I of part 263 of this chapter.

PART 263—RULES OF PRACTICE FOR HEARINGS

1. The authority citation for 12 CFR part 263 is revised to read as follows:

Authority: 5 U.S.C. 504; 12 U.S.C. 248, 324, 504, 505, 1817(j), 1818, 1828(c), 1831o, 1831p–1, 1847(b), 1847(d), 1884(b), 1972(2)(F), 3105, 3107, 3108, 3907, 3909; 15 U.S.C. 21, 78o–4, 78o–5, and 78u–2.

2. A new Subpart I, comprising §§ 263.300 through 263.305, is added to part 263 to read as follows:

Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies

Sec.
263.300 Scope.
263.301 Purpose.
263.302 Determination of failure to meet safety and soundness standard and request for compliance plan.
263.303 Filing of safety and soundness compliance plan.
263.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
263.305 Enforcement of orders.

Subpart I—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies

§ 263.300 Scope.

The rules and procedures set forth in this subpart apply to State member banks and bank holding companies that are subject to the provisions of section 39 of the FDI Act.

§ 263.301 Purpose.

Section 39 of the FDI Act requires the Board to establish safety and soundness standards. Pursuant to section 39, a bank or company must submit a compliance plan if it violates a safety and soundness standard under section 39(a) or (b). An enforceable order under section 8 may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, a bank or company fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requesting submission of a compliance plan and issuing enforceable orders pursuant to section 39.

§ 263.302 Determination of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The Board may, based upon an examination, inspection, or any other information that becomes available to the Board, determine that a bank or bank holding company has failed to satisfy the safety and soundness standards set out in part 208, subpart D, and part 225, subpart I of this chapter.

(b) *Request for compliance plan.* If the Board determines that a State member bank or bank holding company has failed a safety and soundness standard pursuant to paragraph (a) of this section, the Board shall request by letter or through a report of examination or report of inspection the submission of a compliance plan, and the bank or bank holding company shall be deemed to have notice of the deficiency three days after mailing of the letter by the Board or delivery of the report of examination or report of inspection.

§ 263.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—*(1) *In general.* A State member bank or bank holding company shall file a written safety and soundness compliance plan with the Board within 30 calendar days of receiving a request for a plan pursuant to § 263.302(b) of this part, unless the Board notifies the bank or bank holding company in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a State member bank or bank holding company is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act, a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the Board, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the State member bank or bank holding company will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the Board shall provide written notice to the bank or bank holding company of whether the plan has been approved or seek additional information from the bank or bank holding company regarding the plan. The Board may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan—*

(1) *Supervisory actions.* If a State member bank or bank holding company fails to submit an acceptable plan within the time specified by the Board or fails in any material respect to implement a compliance plan, then the Board shall, by order, require the bank or bank holding company to correct the deficiency and may take further actions provided in section 39(e)(2)(B) of the FDI Act. Pursuant to section 39(e)(3) of the FDI Act, the Board may also be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the bank experienced extraordinary growth during the previous 18-month period.

(2) *Extraordinary growth.* For purposes of paragraph (d)(1) of this section, *extraordinary growth* means an increase in assets of more than 7.5 percent during any calendar quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Holding Company Act, Bank Merger Act, National Bank Act, or Federal Reserve Act will be excluded.

(e) *Amendment of compliance plan.* A State member bank or bank holding company that has filed an approved compliance plan may, after prior written notice to and approval by the Board, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank or bank holding company shall implement the compliance plan as previously approved.

§ 263.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order—*(1) *In general.* The Board shall provide a bank or bank holding company prior written notice of the Board's intention to issue an order requiring such bank or bank holding company to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank or bank holding company shall have such time to respond to a proposed order as provided by the Board under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the Board finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the Board may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank or bank holding company immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A State member bank or bank holding company that is subject to such an immediately effective order may submit a written appeal of the order to the Board. Such an appeal must be received by the Board within 14 calendar days of the issuance of the

order, unless the Board permits a longer period. The Board shall consider any such appeal, if filed in a timely matter, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the Board, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank or bank holding company;

(2) A description of any restrictions, prohibitions, or affirmative actions that the Board proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank or bank holding company subject to the order may file with the Board a written response to the notice.

(c) *Response to notice*—(1) *Time for response.* A bank or bank holding company may file a written response to a notice of intent to issue an order within the time period set by the Board. Such a response must be received by the Board within 14 calendar days from the date of the notice unless the Board determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) *Content of response.* The response should include:

(i) An explanation why the action proposed by the Board is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank or bank holding company regarding the proposed order.

(d) *Consideration of response.* After considering the response, the Board may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank or bank holding company; or

(3) Seek additional information or clarification of the response from the bank or bank holding company, or any other relevant source.

(e) *Failure to file response.* Failure by a bank or bank holding company to file with the Board, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank or bank holding company that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the Board reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the Board, the order shall continue in place while such request is pending before the Board.

§ 263.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a State member bank or bank holding company fails to comply with an order issued under section 39, the Board may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the Board may assess a civil money penalty against any State member bank or bank holding company that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the Board may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Dated: November 4, 1993.

William W. Wiles,

Secretary to the Board of Governors of the Federal Reserve System.

Federal Deposit Insurance Corporation
12 CFR Chapter III

For the reasons outlined in the preamble, the Board of Directors of the Federal Deposit Insurance Corporation proposes to amend 12 CFR parts 303 and 308 and to add 12 CFR part 364 as follows:

PART 303—APPLICATIONS, REQUESTS, SUBMITTALS, DELEGATIONS OF AUTHORITY, AND NOTICES REQUIRED TO BE FILED BY STATUTE OR REGULATION

1. The authority citation for part 303 is revised to read as follows:

Authority: 12 U.S.C. 378, 1813, 1815, 1816, 1817(j), 1818, 1819 (Seventh and Tenth), 1828, 1831e, 1831o, 1831p–1; 15 U.S.C. 1607.

2. In § 303.9, a new paragraph (o) is added to read as follows:

§ 303.9 Delegation of authority to act on certain enforcement matters.

* * * * *

(o) *Compliance plans under section 39 of the Act (standards for safety and soundness) and part 308 of this chapter.* (1) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, or to the appropriate regional director or deputy regional director, to accept, to reject, to require new or revised compliance plans or to make any other determinations with respect to the implementation of compliance plans pursuant to part 308, subpart R, of this chapter.

(2) Authority is delegated to the Director, and where confirmed in writing by the Director, to an associate director, to:

(i) Issue notices of intent to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(1) of this chapter;

(ii) Issue an order requiring the bank immediately to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the Act (12 U.S.C. 1831p–1) and in accordance with the requirements contained in § 308.304(a)(2) of this chapter; and

(iii) Act on requests for modification or rescission of an order.

(3) The authority delegated under paragraph (o)(1) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement, or in cases where a regional director or deputy regional director accepts, rejects or requires new or revised compliance plans or makes any other determinations with respect to compliance plans, by the appropriate regional counsel, that the action taken is consistent with the Act.

(4) The authority delegated under paragraph (o)(2) of this section shall be exercised only upon the concurrent certification by the Associate General Counsel for Compliance and Enforcement that the allegations contained in the notice of intent, if proven, constitute a basis for the issuance of a final order pursuant to section 39 of the Act or that the issuance of a final order is consistent with section 39 of the Act or that the stipulated section 39 order is consistent with section 39 and is an order which has become final for purposes of enforcement pursuant to the Act.

PART 308—RULES OF PRACTICE AND PROCEDURE

3. The authority citation for part 308 is revised to read as follows:

Authority: 5 U.S.C. 504, 554–557; 12 U.S.C. 1815(e), 1817(a) and 1818(j), 1818, 1820, 1828(j) 1829, 1831i, 1831o, 1831p–1; 15 U.S.C. 781(h), 78(m), 78n(a), 78n(c), 78n(d), 78n(f), 78(o), 78o–4(c)(5), 78(p), 78(q), 78q–1, 78s.

4. A new subpart R is added to part 308 to read as follows:

Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders To Correct Safety and Soundness Deficiencies

Sec.
§ 308.300 Scope.
§ 308.301 Purpose.
§ 308.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.
§ 308.303 Filing of safety and soundness compliance plan.
§ 308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
§ 308.305 Enforcement of orders.

Subpart R—Submission and Review of Safety and Soundness Compliance Plans and Issuance of Orders to Correct Safety and Soundness Deficiencies

§ 308.300 Scope.

The rules and procedures set forth in this subpart apply to insured State nonmember banks and to State-licensed insured branches of foreign banks, that are subject to the provisions of section 39 of the Federal Deposit Insurance Act (section 39) (12 U.S.C. 1831p–1).

§ 308.301 Purpose.

Section 39 of the FDI Act requires the FDIC to establish safety and soundness standards. Pursuant to section 39, a bank must submit a compliance plan if it violates a safety and soundness standard under section 39 (a) or (b). An enforceable order under section 8 may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, the bank fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This subpart establishes procedures for requesting submission of a compliance plan and issuing an enforceable order pursuant to section 39.

§ 308.302 Determination and notification of failure to meet safety and soundness standard and request for compliance plan.

(a) *Determination.* The FDIC may, based upon an examination, inspection, or any other information that becomes available to the FDIC, determine that a bank has failed to satisfy the safety and soundness standards set out in part 364 of this chapter.

(b) *Request for compliance plan.* If the FDIC determines that a bank has failed a safety and soundness standard pursuant to paragraph (a) of this section, the FDIC shall request, by letter or through a report of examination or report of inspection, the submission of a compliance plan and the bank shall be deemed to have notice of the deficiency three days after mailing of the letter by the FDIC or delivery of the report of examination or report of inspection.

§ 308.303 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—*

(1) *In general.* A bank shall file a written safety and soundness compliance plan with the FDIC within 30 days of receiving a request for a compliance plan pursuant to § 308.302(b) of this part, unless the FDIC notifies the bank in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a bank is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act (12 U.S.C. 1831o), a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination or report of inspection, it may, with the permission of the FDIC, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the bank will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this subpart, the FDIC shall provide written notice to the bank of whether the plan has been approved or seek additional information from the institution or company regarding the plan. The FDIC may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan—*

(1) Supervisory actions. If a bank fails to submit an acceptable plan within the time specified by the FDIC or fails in any material respect to implement a compliance plan, then the FDIC shall, by order, require the bank to correct the deficiency and may take further actions provided in section 39(e)(2)(B). Pursuant to section 39(e)(3), the FDIC may be required to take certain actions if the bank commenced operations or experienced a change in control within the previous 24-month period, or the bank experienced extraordinary growth during the previous 18-month period.

(2) Extraordinary growth. For purposes of paragraph (d)(1) of this section, extraordinary growth means an increase in assets of more than 7.5 percent during any quarter within the 18-month period preceding the issuance of a request for submission of a compliance plan, by a bank that is not well capitalized for purposes of section 38 of the FDI Act. For purposes of calculating an increase in assets, assets acquired through merger or acquisition approved pursuant to the Bank Merger Act (12 U.S.C. 1828(c)) will be excluded.

(e) *Amendment of compliance plan.* A bank that has filed an approved compliance plan may, after prior written notice to and approval by the FDIC, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the bank shall implement the compliance plan as previously approved.

§ 308.304 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order—*

(1) In general. The FDIC shall provide a bank prior written notice of the FDIC's intention to issue an order requiring the bank to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The bank shall have such time to respond to a proposed order as provided by the FDIC under paragraph (c) of this section.

(2) Immediate issuance of final order. If the FDIC finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the FDIC may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a bank immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39. A bank that is subject to such an immediately effective order may submit a written appeal of the order to the FDIC. Such an appeal must be received by the FDIC within 14 calendar days of the issuance of the order, unless the FDIC permits a longer period. The FDIC shall consider any such appeal, if filed in a timely matter,

within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the agency, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the bank;

(2) A description of any restrictions, prohibitions, or affirmative actions that the FDIC proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the bank subject to the order may file with the FDIC a written response to the notice.

(c) *Response to notice—*

(1) Time for response. A bank may file a written response to a notice of intent to issue an order within the time period set by the FDIC. Such a response must be received by the FDIC within 14 calendar days from the date of the notice unless the FDIC determines that a different period is appropriate in light of the safety and soundness of the bank or other relevant circumstances.

(2) Content of response. The response should include:

(i) An explanation why the action proposed by the FDIC is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the bank regarding the proposed order.

(d) *Agency consideration of response.* After considering the response, the FDIC may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the bank; or

(3) Seek additional information or clarification of the response from the bank, or any other relevant source.

(e) *Failure to file response.* Failure by a bank to file with the FDIC, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any bank that is subject to an order under this subpart may, upon a change in circumstances, request in writing that the FDIC reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the FDIC, the order shall continue in place while such request is pending before the FDIC.

§ 308.305 Enforcement of orders.

(a) *Judicial remedies.* Whenever a bank fails to comply with an order issued under section 39, the FDIC may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the FDIC may assess a civil money penalty against any bank that violates or otherwise fails to comply with any final order issued under section 39 and against any institution-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the FDIC may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

5. A new part 364 is added to read as follows:

PART 364—STANDARDS FOR SAFETY AND SOUNDNESS

Sec.

364.1 Authority, purpose, scope and preservation of existing authority.
364.2 Definitions.
364.3 Operational and managerial standards.
364.4 Asset quality and earnings standards.
364.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

Authority: 12 U.S.C. 1819 (Tenth), 1831p–1.

§ 364.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued by the FDIC pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1), as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose and scope.* This part establishes operational, managerial, asset quality and earnings standards for insured State nonmember banks and, except for the earnings standard, for State-licensed insured branches of foreign banks, and standards that prohibit as an unsafe and unsound practice the payment of compensation that is excessive or could lead to material financial loss to those institutions. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance funds.

(c) *Preservation of existing authority.* Neither section 39 nor this part in any way limits the authority of the FDIC to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the FDIC.

§ 364.2 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813 and 1831p–1).

(b) *Classified assets* means assets classified, in the most recent Federal examination or State examination that is acceptable to the FDIC pursuant to section 10(d)(3) of the FDI Act (12 U.S.C. 1820(d)(3)), as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital or allowance.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Director* shall have the meaning described in 12 CFR 215.2(c).

(e) *Executive officer* shall have the meaning described in 12 CFR 215.2(d).

(f) *Ineligible allowance* means any allowance for loan and lease losses not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under Appendix A to 12 CFR part 325, subpart A.

(g) *Net income or loss* means net income or net loss as reported in the quarterly report of condition.

(h) *Principal shareholder* shall have the meaning described in 12 CFR 215.2(j).

(i) *Tier 1 capital* means the amount of Tier 1 capital as defined in 12 CFR part 325 and as reported in the most recent quarterly report of condition.

(j) *Total capital* refers to that term as described in Table I of the FDIC's Statement of Policy on Risk-Based Capital (Appendix A to 12 CFR part 325, subpart A), as reported in the most recent quarterly report of condition.

(k) *Total assets* means the amount of total assets as defined in 12 CFR part 325, as reported in the most recent quarterly report of condition.

(l) In the case of a State-licensed insured branch of a foreign bank, the following terms shall have the meaning described in this paragraph:

(1) *Board of directors* means the managing official in charge of the insured foreign branch.

(2) *Total capital* means that portion of the assets maintained pursuant to 12 CFR 346.20 which exceeds 100 percent of the preceding quarter's average book value of the branch's liabilities or, in the case of a newly-established branch, the estimated book value of its liabilities at the end of the first full quarter of operation, exclusive of liabilities due to the foreign bank's head office, other branches, agencies, offices, or wholly-owned subsidiaries.

§ 364.3 Operational and managerial standards.

(a) *Internal controls and information systems.* A bank shall have internal controls and information systems that are appropriate to the size of the bank and the nature and scope of its activities and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A bank shall have an internal audit system that is appropriate to the size of the bank and the nature and scope of its activities and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the bank's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A bank shall establish and maintain loan documentation practices that:

(1) Enable the bank to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A bank shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the bank will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the bank and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A bank shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the bank and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A bank's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the bank's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A bank shall maintain safeguards to prevent the payment of compensation, fees, and benefits that are excessive or that could lead to material financial loss to the bank, in accordance with § 364.5 of this part.

§ 364.4 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital*—(1) In general. A bank shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) Preservation of authority. Nothing in section 39 or this part shall limit the authority of the FDIC to require a bank to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A bank shall have minimum earnings sufficient to absorb losses without impairing capital. A bank's earnings are sufficient to absorb losses without impairing capital if:

(1) The bank is in compliance with the minimum capital requirements established in 12 CFR part 325; and

(2) The bank would, if its net income or loss over the last four quarters of earnings continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a bank would remain in compliance with minimum capital requirements under this paragraph, the FDIC will deduct the dollar amount of any net loss experienced by the bank over the most recent four quarters from the bank's Tier 1 capital and total assets and calculate the bank's capital ratios.

(c) *State-licensed insured branches.* Paragraph (b) of this section shall not apply to State-licensed insured branches of foreign banks.

§ 364.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the bank;

(3) The financial condition of the bank;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the bank;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the bank; and

(7) Any other factors the FDIC determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a bank is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC pursuant to section 38(i)(2)(F) (12 U.S.C. 1831o(i)(2)(F)) of the FDI Act and part 325 of this chapter.

By Order of the Board of Directors.

Dated at Washington, DC, this 9th day of June, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

Office of Thrift Supervision
12 CFR Chapter V

For the reasons outlined in the preamble, the Office of Thrift Supervision proposes to add 12 CFR Part 570 to read as follows:

SUBCHAPTER D—REGULATIONS APPLICABLE TO ALL SAVINGS ASSOCIATIONS

PART 570—STANDARDS FOR SAFETY AND SOUNDNESS

Sec.

570.1 Authority, purpose, scope and preservation of existing authority.
570.2 Definitions.
570.3 Operational and managerial standards.
570.4 Asset quality and earnings standards.
570.5 Prohibition on compensation that constitutes an unsafe and unsound practice.
570.6 Safety and soundness standards for savings and loan holding companies.
570.7 Determination and notification of failure to meet safety and soundness standards and request for compliance plans.
570.8 Filing of safety and soundness compliance plan.
570.9 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.
570.10 Enforcement of orders.

Authority: 12 U.S.C. 1831p–1.

§ 570.1 Authority, purpose, scope and preservation of existing authority.

(a) *Authority.* This part is issued by the OTS pursuant to section 39 of the Federal Deposit Insurance Act (FDI Act) (12 U.S.C. 1831p–1) as added by section 132 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) (Pub. L. 102–242, 105 Stat. 2236 (1991)), and as amended by section 956 of the Housing and Community Development Act of 1992 (Pub. L. 102–550, 106 Stat. 3895 (1992)).

(b) *Purpose.* (1) This part establishes operational, managerial, asset quality and earnings standards for all savings associations, and standards that prohibit as an unsafe and unsound practice the payment of compensation, fees or benefits that are excessive or could lead to material financial loss to a savings association. This part also establishes safety and soundness standards for savings and loan holding companies. These standards are designed to identify potential safety and soundness concerns and ensure that action is taken to address those concerns before they pose a risk to the deposit insurance fund.

(2) Pursuant to section 39, a savings association or savings and loan holding company must submit a compliance plan if it violates a safety and soundness standard under section 39 (a) or (b). An enforceable order under section 8 of the FDI Act may be issued if, after being notified that it is in violation of a safety and soundness standard prescribed under section 39, a savings association or savings and loan holding company fails to submit an acceptable compliance plan or fails in any material respect to implement an accepted plan. This part establishes procedures for requesting submission of a compliance plan and issuing enforceable orders pursuant to section 39.

(c) *Scope.* This part implements the provisions of section 39 of the FDI Act as they apply to savings associations and to any company that controls a savings association.

(d) *Preservation of existing authority.* Neither section 39 nor this part in any way limits the authority of the OTS to address unsafe or unsound practices, violations of law, unsafe or unsound conditions, or other practices. Action under section 39 and this part may be taken independently of, in conjunction with, or in addition to any other enforcement action available to the OTS.

§ 570.2 Definitions.

(a) *In general.* For purposes of this part, except as modified in this section or unless the context otherwise requires, the terms used in this part have the same meanings as set forth in sections 3 and 39 of the FDI Act (12 U.S.C. 1813; 12 U.S.C. 1831p–1).

(b) *Classified assets* means assets classified, in the most recent Thrift Financial Report or the most recent Federal examination or State examination that is acceptable to the OTS pursuant to section 10(d)(3) of the FDI Act, as substandard or doubtful and assets classified as loss to the extent the loss amount has not been deducted from total capital or allowance.

(c) *Compensation* means all direct and indirect payments or benefits, both cash and non-cash, granted to or for the benefit of any executive officer, employee, director, or principal shareholder of the savings association, including but not limited to payments or benefits derived from an employment contract, compensation or benefit agreement, fee arrangement, perquisite, stock option plan, postemployment benefit, or other compensatory arrangement.

(d) *Core capital* means the amount of core capital as defined in 12 CFR 567.5(a), as reported in the most recent quarterly Thrift Financial Report.

(e) *Director* shall have the meaning described in 12 CFR 215.2(c).

(f) *Executive officer* shall have the meaning described in 12 CFR 215.2(d).

(g) *Ineligible allowance* means any general valuation allowance not eligible for inclusion in total capital for purposes of the calculation of risk-based capital under 12 CFR 567.6.

(h) *Net income or loss* means net income or net loss as reported in the quarterly Thrift Financial Report.

(i) *Principal shareholder* shall have the meaning described in 12 CFR 215.2(j).

(j) *Total assets* means the amount of total assets as reported in the most recent quarterly Thrift Financial Report.

(k) *Total capital* means the amount of total capital as defined in 12 CFR 567.5(c).

§ 570.3 Operational and managerial standards.

(a) *Internal controls and information systems.* A savings association shall have internal controls and information systems that are appropriate to the size of the savings association and the nature and scope of its activities, and that provide for:

(1) An organizational structure that establishes clear lines of authority and responsibility for monitoring adherence to prescribed policies;

(2) Effective risk assessment;

(3) Timely and accurate financial, operational and regulatory reports;

(4) Adequate procedures to safeguard and manage assets; and

(5) Compliance with applicable laws and regulations.

(b) *Internal audit system.* A savings association shall have an internal audit system that is appropriate to the size of the savings association and the nature and scope of its activities, and that provides for:

(1) Independence and objectivity;

(2) Qualified persons to perform internal audits;

(3) Adequate testing and review of internal controls and information systems;

(4) Adequate documentation of audit tests and findings and any corrective actions;

(5) Verification and review of management actions to address identified weaknesses; and

(6) Review by the savings association's audit committee or board of directors of the effectiveness of the internal audit system.

(c) *Loan documentation.* A savings association shall establish and maintain loan documentation practices that:

(1) Enable the savings association to make an informed lending decision and to assess risk as necessary on an ongoing basis;

(2) Identify the purpose of a loan and the source of repayment, and assess the ability of the borrower to repay the indebtedness in a timely manner;

(3) Ensure that any claim against a borrower is legally enforceable;

(4) Demonstrate appropriate administration and monitoring of a loan;

(5) Take account of the size and complexity of a loan; and

(6) Ensure compliance with applicable laws and regulations.

(d) *Credit underwriting.* A savings association shall establish and maintain prudent credit underwriting practices that:

(1) Are commensurate with the types of loans the savings association will make and consider the terms and conditions under which they will be made;

(2) Consider the nature of the markets in which loans will be made;

(3) Provide for consideration, prior to credit commitment, of the borrower's overall financial condition and resources, the financial responsibility of any guarantor, the nature and value of any underlying collateral, and the borrower's character and willingness to repay as agreed;

(4) Establish a system of independent, ongoing credit review with appropriate communication to management and to the board of directors;

(5) Take adequate account of concentration of credit risk;

(6) Are appropriate to the size of the institution and the nature and scope of its activities; and

(7) Ensure compliance with applicable laws and regulations.

(e) *Interest rate exposure.* A savings association shall:

(1) Manage interest rate risk in a manner that is appropriate to the size of the savings association and the complexity of its assets and liabilities;

(2) Provide for periodic reporting to management and the board of directors regarding interest rate risk; and

(3) Ensure compliance with applicable laws and regulations.

(f) *Asset growth.* A savings association's asset growth shall be based on a plan that:

(1) Reflects consideration of:

(i) The source, volatility and use of the funds that support asset growth;

(ii) Any increase in credit risk or interest rate risk as a result of growth; and

(iii) The effect of growth on the association's capital; and

(2) Ensures compliance with applicable laws and regulations.

(g) *Compensation, fees and benefits.* A savings association shall maintain safeguards to prevent the payment of compensation, fees and benefits that are excessive or could lead to material financial loss to the savings association, in accordance with § 570.5 of this part.

§ 570.4 Asset quality and earnings standards.

(a) *Maximum ratio of classified assets to capital*—(1) *In general.* A savings association shall maintain a ratio of classified assets to total capital and ineligible allowances that is no greater than 1.0.

(2) *Preservation of authority.* Nothing in section 39 or this part shall limit the authority of the OTS to require a savings association to maintain a ratio of classified assets to total capital and ineligible allowances that is less than 1.0.

(b) *Minimum earnings sufficient to absorb losses without impairing capital.* A savings association shall have minimum earnings sufficient to absorb losses without impairing capital. A savings association has minimum earnings sufficient to absorb losses without impairing capital if:

(1) The savings association is in compliance with the minimum capital requirements established in 12 CFR part 567; and

(2) The savings association would, if its net income or loss over the last four quarters of earnings continued over the next four quarters, remain in compliance with minimum capital requirements. For purposes of calculating whether a savings association would remain in compliance with minimum capital requirements under this paragraph, the OTS will deduct the dollar amount of any net loss experienced by the savings association over the most recent four quarters from the savings association's core capital and total assets and calculate the savings association's capital ratios.

§ 570.5 Prohibition on compensation that constitutes an unsafe and unsound practice.

(a) *Excessive compensation.* Excessive compensation is prohibited as an unsafe and unsound practice. Compensation shall be considered excessive when the amounts paid are unreasonable or disproportionate to the services performed by an executive officer, employee, director, or principal shareholder, considering the following:

(1) The combined value of all cash and non-cash benefits provided to the individual;

(2) The compensation history of the individual and other individuals with comparable expertise at the savings association;

(3) The financial condition of the savings association;

(4) Comparable compensation practices at comparable institutions, based upon such factors as asset size, geographic location, and the complexity of the loan portfolio or other assets;

(5) For postemployment benefits, the projected total cost and benefit to the savings association;

(6) Any connection between the individual and any fraudulent act or omission, breach of trust or fiduciary duty, or insider abuse with regard to the savings association; and

(7) Any other factors the OTS determines to be relevant.

(b) *Compensation leading to material financial loss.* Compensation that could lead to material financial loss to a savings association is prohibited as an unsafe and unsound practice.

(c) *Preservation of existing authority.* Nothing in this section shall limit the authority of the FDIC under section 38(i)(2)(F) of the FDI Act (12 U.S.C. 1831o(i)(2)(F)) and part 325 of this title.

§ 570.6 Safety and soundness standards for savings and loan holding companies.

(a) Each savings and loan holding company shall:

(1) Ensure that transactions and relationships between the holding company, its directors, officers, principal shareholders, or uninsured subsidiaries and its subsidiary savings association satisfy applicable fiduciary

standards and do not have a detrimental effect on the savings association's safe and sound operation;

(2) Not engage in any activity, or cause its subsidiary savings association to engage in any activity, that might create a serious risk that the liabilities of the holding company and its other affiliates may be imposed on the savings association;

(3) Not take any action that would impede the ability of its subsidiary savings association to comply with the requirements of this part or fully implement any safety and soundness compliance plan required of the savings association under § 570.7 of this part; and

(4) Take any corporate actions necessary to enable its subsidiary savings association to take actions required by the savings association's safety and soundness compliance plan.

§ 570.7 Determination and notification of failure to meet safety and soundness standards and request for compliance plans.

(a) *Determination of failure to meet safety and soundness standard.* The OTS may, based upon an examination or any other information that becomes available to the OTS, determine that a savings association has failed to satisfy the safety and soundness standards set out in §§ 570.3, 570.4 and 570.5 of this part or that a savings and loan holding company has failed to satisfy the safety and soundness standards set out in § 570.6 of this part.

(b) *Request for compliance plan.* If the OTS determines that a savings association or savings and loan holding company has failed a safety and soundness standard pursuant to paragraph (a) of this section, the OTS shall request by letter or through a report of examination the submission of a compliance plan, and the savings association or savings and loan holding company shall be deemed to have notice of the deficiency three days after mailing of the letter by the OTS or delivery of the report of examination.

§ 570.8 Filing of safety and soundness compliance plan.

(a) *Schedule for filing compliance plan—(1) In general.* A savings association or savings and loan holding company shall file a written safety and soundness compliance plan with the OTS within 30 days of receiving a request for a compliance plan pursuant to § 570.7 of this part, unless the OTS notifies the savings association or savings and loan holding company in writing that the plan is to be filed within a different period.

(2) *Other plans.* If a savings association or savings and loan holding company is obligated to file, or is currently operating under, a capital restoration plan submitted pursuant to section 38 of the FDI Act, a cease-and-desist order entered into pursuant to section 8 of the FDI Act, a formal or informal agreement, or a response to a report of examination, it may, with the permission of the OTS, submit a compliance plan under this section as part of that plan, order, agreement, or response, subject to the deadline provided in paragraph (a)(1) of this section.

(b) *Contents of plan.* The compliance plan shall include a description of the steps the savings association or savings and loan holding company will take to correct the deficiency and the time within which those steps will be taken.

(c) *Review of safety and soundness compliance plans.* Within 30 days after receiving a safety and soundness compliance plan under this section, the OTS shall provide written notice to the savings association or savings and loan holding company of whether the plan has been approved or seek additional information from the savings association or holding company regarding the plan. The OTS may extend the time within which notice regarding approval of a plan will be provided.

(d) *Failure to submit or implement a compliance plan.* If a savings association or savings and loan holding company fails to submit an acceptable plan within the time specified by the OTS or fails in any material respect to implement a compliance plan, then the OTS shall, by order, require the savings association or holding company to correct the deficiency and may take further actions provided in section 39(e)(2)(B) of the FDI Act. Pursuant to section 39(e)(3) of the FDI Act, the OTS may also be required to take certain actions if the savings association commenced operations or experienced a change in control within the previous 24-month period, or the savings association experienced extraordinary growth during the previous 18-month period.

(e) *Amendment of compliance plan.* A savings association or savings and loan holding company that has filed an approved compliance plan may, after prior written notice to and approval by the OTS, amend the plan to reflect a change in circumstance. Until such time as a proposed amendment has been approved, the savings association or holding company shall implement the compliance plan as previously approved.

§ 570.9 Issuance of orders to correct deficiencies and to take or refrain from taking other actions.

(a) *Notice of intent to issue order—(1) In general.* The OTS shall provide a savings association or savings and loan holding company prior written notice of the OTS's intention to issue an order requiring such savings association or holding company to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39 of the FDI Act. The savings association or holding company shall have such time to respond to a proposed order as provided by the OTS under paragraph (c) of this section.

(2) *Immediate issuance of final order.* If the OTS finds it necessary in order to carry out the purposes of section 39 of the FDI Act, the OTS may, without providing the notice prescribed in paragraph (a)(1) of this section, issue an order requiring a savings association or savings and loan holding company immediately to take actions to correct a safety and soundness deficiency or to take or refrain from taking other actions pursuant to section 39.

(3) *Appeal.* A savings association or holding company that is subject to such an immediately effective order may submit a written appeal of the order to the OTS. Such an appeal must be received by the OTS within 14 calendar days of the issuance of the order, unless the OTS permits a longer period. The OTS shall consider any such appeal, if filed in a timely manner, within 60 days of receiving the appeal. During such period of review, the order shall remain in effect unless the OTS, in its sole discretion, stays the effectiveness of the order.

(b) *Contents of notice.* A notice of intention to issue an order shall include:

(1) A statement of the safety and soundness deficiency or deficiencies that have been identified at the savings association or savings and loan holding company;

(2) A description of any restrictions, prohibitions, or affirmative actions that the OTS proposes to impose or require;

(3) The proposed date when such restrictions or prohibitions would be effective or the proposed date for completion of any required action; and

(4) The date by which the savings association or holding company subject to the order may file with the OTS a written response to the notice.

(c) *Response to notice—(1) Time for response.* A savings association or savings and loan holding company may file a written response to a notice of intent to issue an order within the time period set by the OTS. Such a response

must be received by the OTS within 14 calendar days from the date of the notice unless the OTS determines that a different period is appropriate in light of the safety and soundness of the savings association or other relevant circumstances.

(2) Content of response. The response should include:

(i) An explanation why the action proposed by the OTS is not an appropriate exercise of discretion under section 39;

(ii) Any recommended modification of the proposed order; and

(iii) Any other relevant information, mitigating circumstances, documentation, or other evidence in support of the position of the savings association or savings and loan holding company regarding the proposed order.

(d) *OTS consideration of response.* After considering the response, the OTS may:

(1) Issue the order as proposed or in modified form;

(2) Determine not to issue the order and so notify the savings association or holding company; or

(3) Seek additional information or clarification of the response from the savings association or savings and loan holding company, or any other relevant source.

(e) *Failure to file response.* Failure by a savings association or savings and loan holding company to file with the OTS, within the specified time period, a written response to a proposed order shall constitute a waiver of the opportunity to respond and shall constitute consent to the issuance of the order.

(f) *Request for modification or rescission of order.* Any savings association or savings and loan holding company that is subject to an order under this section may, upon a change in circumstances, request in writing that the OTS reconsider the terms of the order, and may propose that the order be rescinded or modified. Unless otherwise ordered by the OTS, the order shall continue in place while such request is pending before the OTS.

§ 570.10 Enforcement of orders.

(a) *Judicial remedies.* Whenever a savings association or savings and loan holding company fails to comply with an order issued under section 39, the OTS may seek enforcement of the order in the appropriate United States district court pursuant to section 8(i)(1) of the FDI Act.

(b) *Administrative remedies.* Pursuant to section 8(i)(2)(A) of the FDI Act, the OTS may assess a civil money penalty against any savings association or savings and loan holding company that violates or otherwise fails to comply with any final order issued under section 39 and against any savings association-affiliated party who participates in such violation or noncompliance.

(c) *Other enforcement action.* In addition to the actions described in paragraphs (a) and (b) of this section, the OTS may seek enforcement of the provisions of section 39 or this part through any other judicial or administrative proceeding authorized by law.

Dated: June 17, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

[FR Doc. 93–27936 Filed 11–17–93; 8:45 am]

BILLING CODE 4810–33–P, 6210–01–P, 0714–01–P, 0722–01–P

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 203

[Docket No. R–93–1680; FR–3216–P–01]

RIN 2502–AF63

Single Family Mortgage Insurance—Reimbursement Limitation for Preservation and Protection Expenditures

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would change the amount mortgagees may claim in insurance benefits for FHA single family mortgages by reducing the reimbursable amount for preservation and protection of properties to two-thirds of the costs incurred by the mortgagee. The reason for this proposed rule change is to improve the efficiency of the single family mortgage insurance program.

DATES: Comment due date: January 18, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this proposed rule to the Rules Docket Clerk, Office of the General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: Jacqueline B. Campbell, Deputy Director, Office of Insured Single Family Housing, room 9266, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3046. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Background

This rule proposes to amend the regulations governing FHA-insured mortgages for single family homes, authorized by title II of the National Housing Act (12 U.S.C. 1709). Under the FHA program, home mortgages are insured through revolving funds, which provide the money to pay insurance claims to lenders upon default of the mortgages. The funds are replenished by insurance premiums paid by mortgagors to obtain the insurance, and by income from the investment of proceeds from the sales of homes that HUD acquires upon payment of insurance claims to the lenders.

This proposed rule would amend the regulations governing reimbursement of expenses paid for the preservation, protection and operation of the properties until conveyance to HUD. The purpose of these amendments is to improve the efficiency of the program, thereby protecting the insurance funds and assuring the availability of the program for use by future homebuyers. In developing the final rule, the Department will analyze public comments and all other available data to assure the effectiveness of the proposed changes in improving the efficiency of the program.

Currently, HUD regulations (24 CFR 203.402(g)) authorize the Department to reimburse a mortgagee 100% for all reasonable expenses paid for the preservation, protection, and operation of properties until conveyance to HUD. There is little incentive for mortgagees to keep costs down. In many cases, the maximum allowable amounts become the claimed amount without an attempt to secure the same services for lower amounts. Moreover, HUD has experienced problems with mortgagees exceeding established limits without approval, and submitting claims for inappropriate expenditures. These practices indicate that many mortgagees

are not attempting to keep costs to a minimum.

The Department believes that placing a two-thirds reimbursement limitation on preservation and protection expenses will provide a strong financial incentive for mortgagees to monitor their preservation and protection expenditures more carefully. The cost-sharing aspect of this proposed rule should encourage tighter internal controls within a mortgagee's own operation to prevent higher than necessary expenses and result in a decrease on the demands on HUD's insurance funds. This change is also consistent with FHA's cost-sharing practice of limiting mortgagees to a two-thirds reimbursement of foreclosure costs in single family claims. Moreover, the Department believes that this proposed rule change will provide a further incentive for mortgagees to make sound underwriting decisions on FHA-insured mortgages so as to lower the probability of a foreclosure claim. However, because the changes proposed in this rule are discretionary changes, these changes would apply prospectively only.

This proposed rule would place a two-thirds reimbursement limitation on preservation and protection expenses, which include the costs of performing an inspection as required by 24 CFR 203.377, the costs of determining whether the property is vacant or abandoned, the costs of evicting occupants, and the costs of removing personal property from the property. Mortgagees will continue to be responsible for maintaining the same level of preservation and protection services and the Department will continue to hold mortgagees accountable for the security of the property pending conveyance to the Secretary.

II. Other Matters

A. Executive Order 12866

This proposed rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this proposed rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "ADDRESSES."

B. Environmental Impact

A finding of no significant impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding of No Significant Impact is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW., Washington, DC 20410.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this proposed rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the federal government and the states, or on the distribution of power and responsibilities among the various levels of government. As a result, the proposed rule is not subject to review under the order. Specifically, the requirements of this proposed rule are directed to lenders, and do not impinge upon the relationship between Federal government and State and local governments.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive order 12606, The Family, has determined that this proposed rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities. The proposed rule is expected to encourage greater efficiency and economies among lenders in expending funds on preserving and protecting houses prior to their conveyance to HUD. While lenders will assume a portion of these costs, the costs associated with preservation are not expected to have a significant economic impact on lenders participating in the program.

F. Regulatory Agenda

This proposed rule was listed as sequence number 1505 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56423) under Executive Order 12866 and the Regulatory Flexibility Act, and was requested by and submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

G. The Catalog of Federal Domestic Assistance program number(s) are 14.117, 14.120, 14.121, 14.123.

List of Subjects in 24 CFR Part 203

Hawaiian Natives, Home improvement, Loan programs—housing and community development, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Accordingly, 24 CFR part 203 would be amended as follows:

PART 203—SINGLE FAMILY MORTGAGE INSURANCE

1. The authority citation for part 203 would continue to read as follows:

Authority: 12 U.S.C. 1709, 1710, 1715b; 42 U.S.C. 3535(d)). In addition, subpart C is also issued under 12 U.S.C. 1715u.

2. In § 203.402, paragraph (g) would be revised, paragraph (q) would be removed, and paragraph (r) would be redesignated to be paragraph (q), to read as follows:

§ 203.402 Items included in payment—conveyed and non-conveyed properties.

* * * * *

(g)(1) For mortgages insured under firm commitments issued before November 19, 1992, or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter before November 19, 1992, reasonable costs paid by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating or preserving the property, or removing debris from the property.

(2) For mortgages insured under firm commitments issued on or after November 19, 1992, but before [insert effective date of the final rule], or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after November 19, 1992, but before [insert effective date of the final rule], reasonable costs paid by the mortgagee, with the approval of the Secretary, for the purpose of protecting, operating or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359.

(3) For mortgages insured under firm commitments issued on or after [insert effective date of the final rule], or under direct endorsement processing where the credit worksheet was signed by the mortgagee's approved underwriter on or after [insert effective date of the final rule], reasonable costs paid by the mortgagee, with the approval of the Secretary, in an amount not to exceed two-thirds of such costs, for the purpose of protecting, operating or preserving the property, or removing debris from the property prior to the time of conveyance required by § 203.359.

(4) Reasonable costs incurred by the mortgagee in protecting, operating or preserving the property include the costs of performing inspections required by § 203.377, the costs of determining whether the property is vacant or abandoned, the costs incurred in evicting occupants, and the costs incurred in removing personal property from acquired properties.

* * * * *

Dated: November 12, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner.

[FR Doc. 93-28387 Filed 11-17-93; 8:45 am]

BILLING CODE 4210-27-P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 300

[FRL-4801-5]

National Oil and Hazardous Substances Pollution Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of intent to delete the Witco Chemical Corporation site from the National Priorities List: Request for comments.

SUMMARY: The Environmental Protection Agency (EPA) Region II announces its intent to delete the Witco Chemical Corporation (Witco) site from the National Priorities List (NPL) and requests public comment on this action. The NPL constitutes appendix B to the National Oil and Hazardous Substances Pollution Contingency Plan (NCP), which EPA promulgated pursuant to section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended. EPA and the State of New Jersey Department of Environmental Protection and Energy (NJDEPE) have determined that no further cleanup by responsible parties is appropriate under CERCLA. Moreover, EPA and NJDEPE have determined that remedial activities conducted at the site to date have been protective of public health, welfare, and the environment.

DATES: Comments concerning the deletion of the Witco site from the NPL may be submitted on or before December 17, 1993.

ADDRESSES: Comments may be mailed to: John Osolin, Remedial Project Manager, U.S. Environmental Protection Agency, Region II, 26 Federal Plaza, room 747, New York, New York 10278.

Comprehensive information on the Witco site is contained in the EPA Region II public docket, which is located at EPA's Region II office, and is available for viewing, by appointment only, from 9 a.m. to 5 p.m., Monday through Friday, excluding holidays. For further information, or to request an appointment to review the public docket, please contact Mr. Osolin at (212) 264-9301.

Background information from the Regional public docket is also available for viewing at the Witco site's Administrative Record repository located at: Oakland Public Library, Municipal Plaza, Oakland, New Jersey 07436, (201) 337-3742. Hrs. M-TH 10 a.m.-9 p.m. F&SA 10 a.m.-5 p.m.

FOR FURTHER INFORMATION CONTACT: John Osolin at 212-264-9301.

SUPPLEMENTARY INFORMATION:

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I. Introduction
II. NPL Deletion Criteria
III. Deletion Procedures
IV. Basis for Intended Site Deletion

I. Introduction

EPA Region II announces its intent to delete the Witco site, Oakland, New Jersey, from the NPL and requests public comment on this deletion. The NPL is appendix B to the NCP, which EPA promulgated pursuant to section 105 of CERCLA, as amended. EPA identifies sites that appear to present a significant risk to public health, welfare, or the environment and maintains the NPL as the list of those sites. Sites on the NPL may be the subject of remedial actions financed by the Hazardous Substances Superfund Response Trust Fund (the Fund). Pursuant to § 300.425(e)(3) of the NCP, any site deleted from the NPL remains eligible for Fund-financed remedial actions, if conditions at such site warrant action.

EPA will accept comments concerning the Witco site for thirty (30) days after publication of this notice in the **Federal Register** until December 17, 1993.

Section II of this notice explains the criteria for deleting sites from the NPL. Section III discusses procedures that EPA is using for this action. Section IV discusses how the Witco site meets the deletion criteria.

II. NPL Deletion Criteria

The NCP establishes the criteria that the Agency uses to delete sites from the NPL. In accordance with 40 CFR 300.425(e)(1)(i)-(iii), sites may be deleted from the NPL where no further response is appropriate. In making this determination, EPA, in consultation with NJDEPE, will consider whether any of the following criteria has been met:

1. Responsible or other parties have implemented all appropriate response actions required; or

2. All appropriate Fund-financed response under CERCLA has been implemented, and no further response action by responsible parties is appropriate; or

3. The remedial investigation has shown that the release poses no significant threat to public health or to the environment and, therefore, taking remedial measures is not appropriate.

Deletion of a site from the NPL does not preclude eligibility for subsequent Fund-financed actions if future conditions warrant such actions. Section 105(e) of CERCLA states: "Whenever there has been, after January 1, 1985, a significant release of hazardous substances or pollutants or contaminants from a site which is listed by the President as a "Site Cleaned Up to Date" on the National Priorities List, the site shall be restored to the National Priorities List without application of the hazard ranking system."

III. Deletion Procedures

The NCP provides that EPA shall not delete a site from the NPL until the State in which the release was located has concurred, and the public has been afforded an opportunity to comment on the proposed deletion. Deletion of a site from the NPL does not affect responsible party liability or impede agency efforts to recover costs associated with response efforts. The NPL is designed primarily for informational purposes and to assist Agency management.

EPA Region II will accept and evaluate public comments before making a final decision to delete. The Agency believes that deletion procedures should focus on notice and comment at the local level. Comments from the local community may be most pertinent to deletion decisions. The following procedures were used for the intended deletion of the Witco site:

1. EPA Region II has recommended deletion and has prepared the relevant documents.

2. NJDEPE has concurred with the deletion decision.

3. Concurrent with this Notice of Intent to Delete, a notice has been published in local newspapers and has been distributed to appropriate federal, state and local officials, and other interested parties. This notice announces a thirty (30) day public comment period on the deletion package starting on November 18, 1993, and concluding on December 17, 1993.

4. The Region has made all relevant documents available in the Regional Office and the local site information repositories.

The comments received during the comment period will be evaluated before the final decision is made. EPA Region II will prepare a Responsiveness Summary which will address the comments received during the public comment period.

If after consideration of these comments, EPA decides to proceed with deletion, the EPA Regional Administrator will place a Notice of Deletion in the **Federal Register**. The NPL will reflect any deletions in the next final update. Public notices and copies of the Responsiveness Summary will be made available to local residents by EPA.

IV. Basis for Intended Site Deletion

The following summary provides the Agency's rationale for recommending deletion of the Witco Site, Oakland, New Jersey from the NPL.

Witco has owned and operated a technical research facility for the development of specialty chemicals at this 9-acre site on Bauer Drive in Oakland, New Jersey from 1966 through the present. From 1966 through 1984, the company neutralized laboratory wastewater in a 2,000 gallon underground acid neutralizing tank, and then discharged it to a series of underground seepage pits.

On March 10, 1982, representatives of NJDEPE's Division of Water Resources performed an inspection at the facility to review operations and wastewater management practices for compliance with the New Jersey Water Pollution Control Act.

On April 2, 1982, NJDEPE issued a directive requiring that Witco take measures to cease the unpermitted discharge of industrial wastewaters to ground water at the site. On July 16, 1982, NJDEPE further directed Witco to submit a plan for the elimination of the discharge of industrial wastewaters into ground water and to implement a hydrogeological study to investigate possible soil and ground-water contamination.

On April 14, 1982 and November 18, 1982, NJDEPE collected seepage pit, soil and ground-water samples at the facility. Compounds detected include petroleum hydrocarbons, chloroform, toluene, carbon tetrachloride, chlorobenzene, benzene, xylene and ethylbenzene.

In response to NJDEPE's directive, Witco initiated a hydrogeological investigation in November 1982 which included the installation and sampling of four ground-water monitoring wells. In addition, three soil borings and two sludge samples from the seepage pit system were collected and analyzed. The analyses revealed that the ground water, soil and sludge were contaminated with petroleum hydrocarbons and various organic compounds including toluene, carbon tetrachloride, chloroform, xylene, benzene and chlorobenzene.

In February 1984, Witco replaced its underground seepage pit system with a 6,000 gallon capacity fiberglass tank with associated line connections, pumps and level gauges. This tank is used for the accumulation of laboratory wastewaters prior to off-site disposal. The system has been in operation at the facility from February 1984 through the present.

On August 28, 1985, EPA performed a Site Investigation at the facility to evaluate potential contamination due to the previous operation of the underground seepage pit system. Ground water, soil and surface water were sampled and analyzed. Compounds detected during the Site Investigation include 2-butanone, dieldrin, 4,4'-DDE, 4,4'-DDT and benzo(a)pyrene.

On November 30, 1987, Witco initiated activities at the site including excavation and stockpiling of soils, removal of sludge from the six seepage tanks, and removal and disposal of the seepage tanks. These activities were completed in January 1988. Soils that were shown by Witco's analyses to contain greater than 100 parts per million of petroleum hydrocarbons were removed and disposed of off site. Witco reported that approximately 720 cubic yards of soil and other debris, and fourteen 55-gallon drums of sludge were disposed of off site. Ground-water samples from monitoring wells at the facility were collected and analyzed by Witco on five occasions from February 1987 to June 1988 as part of a voluntary monitoring program. The removal and disposal of materials from the site and the collection and analyses of samples were conducted voluntarily by Witco and were not subject to EPA or NJDEPE oversight or verification.

The site was proposed for inclusion on the Superfund National Priorities List (NPL) by a notice published in the **Federal Register** (53 FR 23988), on June 24, 1988. On October 4, 1989, the site was formally placed on the NPL by a notice published in the **Federal Register** (54 FR 41000–41015).

In June 1989, EPA notified Witco of its potential Superfund liability with respect to the site. EPA offered Witco the opportunity to conduct or finance the Remedial Investigation and Feasibility Study (RI/FS) for the site and Witco agreed. Witco and EPA entered into an Administrative Order on Consent (Order) which provided for Witco's performance of the RI/FS with oversight by EPA. The Order became effective on August 29, 1989.

Witco contracted with Roy F. Weston, Inc. (Weston) to conduct an investigation to characterize the geology, ground-water hydrology and the chemical quality of the soil and ground water at the site. The investigation included the installation of additional monitoring wells and piezometers, drilling of soil borings, collection of soil samples, and four rounds of ground-water samples. All samples were analyzed for volatile organic compounds, inorganic compounds, base-neutral and acid extractable organic compounds (BNAs), pesticides and polychlorinated biphenyls (PCBs). The analytical results indicated no significant levels of contaminants in site soils or surface water, and although there were sporadic detections of contaminants in site ground water, no discernible contaminant plume was found.

Based on the results of the RI, it appears that the removal of the seepage pits and surrounding soil, undertaken by Witco in 1987, effectively remediated the contamination at the Witco Site. Therefore, on September 28, 1992, EPA signed a Record of Decision (ROD) for this site, selecting "No Further Action" to address the site. The ROD also calls for the implementation of a limited ground-water monitoring program. EPA will monitor the residential well located at 18 Bailey Avenue, once a year for a period not less than five years. This well was selected because it is the only residential well downgradient of the Site which is located between the site and Oakland Public Supply Well #5. In the unlikely event that site-related contamination has migrated off the site, the monitoring program will not only ensure that this residential well has not been impacted, but will provide an early

warning for the public water supply, should any such contamination migrate toward Oakland Public Supply Well #5.

Because the "No Further Action" remedy does not result in hazardous substances, pollutants, or contaminants (attributable to on-site activities) remaining on-site above health-based levels, the five-year review does not apply.

Having met the deletion criteria, EPA proposes to delete this site from the NPL. EPA and NJDEPE have determined that the response actions are protective of human health and the environment.

Dated: September 8, 1993.

William J. Muszynski,

Acting Regional Administrator.

[FR Doc. 93–27987 Filed 11–17–93; 8:45 am]

BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 1

[ET Docket No. 93–62; DA 93–1350]

Guidelines for Evaluating the Environmental Effects of Radiofrequency Radiation

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; extension of comment period.

SUMMARY: The Chief of the Commission's Office of Engineering and Technology has granted a 60 day extension for filing comments and reply comments in response to the Notice of Proposed Rule Making (NPRM). This extension is in response to requests filed by CBS, Inc. ("CBS"), Capital Cities/ABC Inc. ("Capital Cities") and Hammett and Edison, Inc. The additional time will allow for further analysis with respect to recent data and information relevant to the Commission's implementation of new radiofrequency exposure guidelines.

DATES: Comments are due by January 11, 1994. Reply comments are due by February 10, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Robert Cleveland, Office of Engineering and Technology, Federal Communications Commission, (202) 653–8169.

SUPPLEMENTARY INFORMATION: 1. On November 2, 1993, CBS Inc. ("CBS") and Capital Cities/ABC Inc. ("Capital Cities"), licensees of AM, FM and television broadcast stations, filed with the Commission a "Request for Extension of Time" in the above-named proceeding. CBS and Capital Cities requested that the Commission extend, by a period of sixty (60) days, the time for filing comments and reply comments. A similar request was filed by Hammett and Edison, Inc., a broadcast consulting firm, on November 2, 1993.

2. The deadline originally established for filing comments was August 13, 1993, and the date for reply comments was September 13, 1993. Previously, on August 3, 1993, the Commission granted a request filed by the National Association of Broadcasters (NAB) for an extension of time of ninety (90) days for filing comments and reply comments.[1] This action established a new deadline for filing comments on November 12, 1993, and a new deadline for reply comments of December 13, 1993.

3. The previous extension was granted to allow NAB time to complete a study commissioned to develop non-measurement based techniques for determining compliance with new guidelines for human exposure to radiofrequency (RF) fields proposed for adoption by the Commission.[2] The Commission has proposed to incorporate into its rules the newly revised standard of the American National Standards Institute (ANSI) developed by the Institute of Electrical and Electronics Engineers (IEEE) and designated IEEE C95.1–1991 (also ANSI/IEEE C95.1–1992).[3] CBS and Capital Cities have requested the latest extension in order to complete their analysis of recent data and information, including results from the NAB study and experimental results from the laboratory of Dr. Om P. Gandhi, that have become available relative to broadcaster compliance with the new guidelines.

4. CBS, Capital Cities, and Hammett and Edison note that the new information with respect to the consequences of the proposed guidelines has only recently become available. CBS and Capital Cities state that preliminary assessment of this information suggests that adoption of the guidelines, especially those that relate to induced RF currents, may significantly impact broadcasters. Hammett and Edison also have indicated that the new data is likely to affect implementation requirements for broadcasters. CBS and Capital Cities maintain that additional time is necessary to consider the implications of the new data, both to determine whether further study is required and to assess the effect that the proposed guidelines will have on broadcast operations.

5. CBS and Capital Cities believe that additional time is required to allow broadcasters to conduct field measurements to evaluate the new theoretical and experimental results. They also point out that the equipment necessary to make such measurements has not been readily available commercially, further justifying the need for additional time.

6. The Commission does not routinely grant requests for extensions of time.[4] However, we recognize the complexity of the issues raised by the new exposure guidelines and the difficulties in developing reasonable methods by which compliance can be evaluated. In this regard, it is clear to us that there is a need for additional data and analysis, particularly with respect to the new guidelines for induced and contact currents. If by granting this request for an extension meaningful insights can be gained into these issues, it appears that such an extension will benefit all concerned parties.

7. An extension could delay somewhat the implementation schedule for new guidelines. However, by providing further opportunity to acquire information needed for accurate and reasonable procedures and methods, an extension may actually facilitate the process of guideline implementation. It appears that there is adequate justification to support these requests, and we believe that the public interest will best be served by an extension.

8. Accordingly, *it is ordered* that, The deadline for filing comments is extended to January 11, 1994, and the deadline for filing reply comments is extended to February 10, 1994. This action is taken pursuant to sections 4(i) and 303 of the Communications Act of 1934, as amended, 47 U.S.C. 154(i) and 303, and pursuant to §§ 0.31, 0.241 and 1.46 of the Commission's Rules, 47 CFR 0.31, 0.241 and 1.46.

Federal Communications Commission.,

Thomas P. Stanley,

Chief Engineer.

[FR Doc. 93–28382 Filed 11–17–93; 8:45 am]

BILLING CODE 6712–01–M

[1] See Order Extending Time for Comments and Reply Comments, ET Docket 93–62, 8 FCC Rcd 5528 (1993).

[2] See Notice of Proposed Rule Making in ET Docket 93–62, 8 FCC Rcd 2849 (1993).

[3] *Id.*, Note 2 at paragraph 1.

[4] 47 CFR 1.46 (1991).

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Chapter V

[Docket No. 93–85; Notice 01]

Negotiated Rulemaking

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Request for comments.

SUMMARY: NHTSA is requesting comments on which of its contemplated future rulemaking proposals would be suitable candidates for development through the use of the negotiated rulemaking process beginning in calendar year 1994. NHTSA is requesting these comments to aid it in complying with the requirement in a recent Executive Order for each agency to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. These comments will help the agency identify possible candidates for negotiated rulemaking.

DATES: Comments must be received by December 17, 1993.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m. Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Mary Versailles, Office of Chief Counsel, NCC–20, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–2992.

SUPPLEMENTARY INFORMATION: On September 30, 1993, the President issued Executive Order 12866, Regulatory Planning and Review, which requires Federal agencies to take various actions to improve the regulatory process. Among those directives is one requiring each agency to explore and, where appropriate, use consensual mechanisms for developing regulations, including negotiated rulemaking. By memorandum of the same date, the President further ordered each agency to identify, within 90 days (i.e., by December 29, 1993), at least one rulemaking that the agency will develop through the use of negotiated rulemaking during the upcoming year. Alternatively, the agency must explain why it will not be feasible.

Negotiated rulemaking is a supplement to the traditional rulemaking procedures that, if used properly, can result in better rulemaking. In negotiated rulemaking, a regulatory agency arranges for face-to-face negotiations among representatives of affected interests, including the agency, with a goal of arriving at a consensus decision on a recommended approach to a particular problem within the agency's rulemaking authority. The recommendation is then used by the agency as the basis for issuing a Notice of Proposed Rulemaking, if that recommendation is within the agency's statutory authority.

The purpose of this notice is to request interested persons to submit comments that would aid NHTSA in determining which, if any, of the agency's future proposals for rulemaking would be appropriate candidates for a negotiated rulemaking by NHTSA beginning in calendar year 1994. To aid interested persons in preparing their comments, the agency recommends that they consult the list of future NHTSA proposed rulemaking actions listed in the Department of Transportation's recently published Semiannual Regulatory Agenda (58 FR 56632, at 56644; October 25, 1993).

Further, the agency requests that interested persons base their comments on the criteria that should be satisfied in order to have a successful negotiated rulemaking. These criteria relate to the nature both of the interested parties and of the issues. The agency has summarized these criteria below. For additional details, see, David M. Pritzker and Deborah S. Dalton, Negotiated Rulemaking Handbook (1990); and Philip J. Harter, Negotiating Regulations: A Cure for Malaise, 71 Geo. L.J. 1 (1982).

I. Parties

A. *Number.* The negotiation process is appropriate only if the affected interests can be represented by a limited number of participants, no more than 15 to 20.

B. *Well-Organized Interests.* It must be possible to identify people or organizations who can effectively represent each of the affected interests.

C. *Power.* No single interests should be powerful enough to dictate the outcome of the proceeding without incurring an unacceptable sanction from the other parties. Even though a party may have the power to dictate the outcome of a regulation, it may be possible for the negotiation to be successful, if another party can impose an unacceptable sanction (e.g., higher costs or delay).

D. *Opportunity for Gain.* So that parties see it in their interest to negotiate, it must be possible for all parties to win.

E. *Agency is a Willing Participant.* The parties must have a reasonable expectation that the agency will use any consensus reached as the basis of a proposed rule.

II. Issues

A. *Maturity.* The subject matter of the negotiation must be identified, and there must be sufficient information on which to base a decision. A rulemaking is inappropriate if it requires extensive factual research.

B. *Information.* In the alternative, if the agency lacks all the necessary information to develop a proposed rule, negotiated rulemaking can provide a better, less adversarial process for obtaining information in the possession of other affected interests.

C. *Deadline.* There should be a deadline for reaching a decision, to help convince the parties that it is in their interests to compromise instead of having another party make the decision. The deadline could arise from a statute or court order, or alternatively, an artificial deadline can be created (e.g., by NHTSA committing to publish an NPRM by a specific date). However, the deadline must be selected so as to provide sufficient time to negotiate.

D. *Multiple Issues.* The rule should involve diverse issues. This will allow room for compromise or trade in the negotiation process.

E. *Fundamental Values.* The issues should be such that no party will have to compromise a fundamental value. However, it may be possible to agree to negotiate only those issues which do not affect fundamental values and for the agency to tentatively decide the other issues.

If a commenter recommends that a particular rulemaking be developed through negotiated rulemaking, that commenter should show how the parties and issues in that rulemaking would satisfy each of the above criteria.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the

complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

Issued on November 12, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93-28351 Filed 11-12-93; 4:49 pm]

BILLING CODE 4910-59-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 216

[Docket No. 930939-3239; I.D. 062993B]

Taking and Importing of Marine Mammals; Fisheries Certificate of Origin

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Proposed rule.

SUMMARY: NMFS proposed to amend its regulations to allow importers or brokers to file "Fisheries Certificates of Origin," which are required for importation of certain fish and fish products, using the U.S. Customs Service's Automated Broker Interface system. The purpose of this amendment is to eliminate excess paperwork and minimize the reporting burden, while maintaining an efficient, accurate system to monitor the importation of regulated fish and fish products.

DATES: Written comments must be received on or before December 17, 1993.

ADDRESSES: Comments should be sent to Dr. Gary Matlock, Acting Regional Director, Southwest Region, NMFS, 501 W. Ocean Blvd., suite 4200, Long Beach, CA 90802-4213.

FOR FURTHER INFORMATION CONTACT: LT Steven A. Thompson, 310-980-4000.

SUPPLEMENTARY INFORMATION:

Background

NMFS is obligated to monitor the importation of certain fish and fish products to ensure that the products are in compliance with various provisions of the Marine Mammal Protection Act (16 U.S.C. 1361 *et seq.*) (MMPA), the Dolphin Protection Consumer Information Act (Pub. L. 101-627, title IX) (DPCIA), and the International Dolphin Conservation Act (Pub. L. 102-523) (IDCA). These laws reflect the policy of the U.S. Government to ameliorate a worldwide environmental crisis in which marine mammals and other marine life are killed by commercial fishing technology, such as large-scale driftnets and purse seine nets deployed to encircle dolphins.

The MMPA requires that the Assistant Administrator for Fisheries, NMFS (AA), prohibit the importation of yellowfin tuna (*Thunnus albacares*) from nations that have purse seine vessels of greater than 400 short tons carrying capacity operating in the eastern tropical Pacific Ocean (ETP), unless the AA has made a finding to allow importation. A finding can be made only if that nation has both a marine mammal protection program and an incidental mortality of marine mammals comparable to that of the United States.

On November 28, 1990, President Bush signed into law the Fishery Conservation Amendments of 1990, Pub. L. 101-627, title IX of which was the DPCIA. The DPCIA: (1) Regulates the use of labels suggesting that tuna is "dolphin safe;" (2) amends the MMPA to require documentation for the importation of fish or fish products potentially harvested by large-scale driftnet; and (3) authorizes civil penalties for knowing and willful false statements submitted to document the authenticity of "dolphin safe" labels on tuna products.

On September 19, 1991, NMFS published in the **Federal Register** (56 FR 47418) interim final regulations to implement the DPCIA. As part of those regulations, the existent SF 370-1 "Yellowfin Tuna Certificate of Origin" was replaced by the NOAA Form 370 "Fisheries Certificate of Origin" (FCO). The labelling requirements of the DPCIA apply to all tuna products, not just yellowfin tuna. Furthermore, the DPCIA requires documentation of fish species other than tuna, in order to prevent the importation of fish and fish products harvested with large-scale driftnets on the high seas. In addition to the information required on the old SF 379-1, the new FCO provides space to identify the method of harvest, the regulatory category under which the product was entered, and for government certification of the shipment and for endorsement by each importer, exporter, and processor of "dolphin safe" tuna. The FCO provides the U.S. Customs Service (USCS) a tool to monitor and deny entry of those fish products that are prohibited entry into the United States.

Proposal

NMFS would like to eliminate excess paperwork and minimize the reporting burden on all parties involved. The Paperwork Reduction Act requires that all duplication of data collection and all unnecessary paperwork be eliminated. Some, but not all, of the information contained on a properly completed FCO is contained in other import documents. Moreover, the USCS has established an Automated Broker Interface (ABI) to allow electronic filing of importation documentation without submission of the paper forms.

NMFS proposes to allow brokers or importers to use the ABI system in lieu of the paper FCO. This proposal advances USCS's long-range plan to automate the importation process with the goal of eliminating unnecessary paperwork. NMFS has requested, and USCS has agreed, to incorporate the FCO into the ABI system. USCS has agreed to collect the information and to make the information available to NMFS by electronic transfer. This is a mutually beneficial approach. Much of the paperwork required for entry of fish products would be eliminated. NMFS would have the required information, while the need for NMFS to employ data entry personnel would be eliminated. Some of the information collected on the FCO is already collected electronically on Customs Form 7501 or other entry documents. Electronic filing would help to speed the process of bringing imported fish products into the United States and would reduce paper processing by importers, while continuing to allow NMFS to continue to receive all

information required to monitor the importation of the fish and fish products subject to these regulations.

NMFS receives 6,000–8,000 FCOs per year. Most are forwarded by USCS from the entry ports, but some are sent directly from U.S. canneries or import brokers. These documents are reviewed and the information is entered into a database. The forms are then archived.

It is the policy of USCS and the Office of Management and Budget (OMB), the agency charged with paperwork reduction, to: (1) Eliminate the paper form requirement for users of the ABI system to reduce the paperwork burden on the public; (2) prevent duplication of electronic data collection among Federal agencies; and (3) increase the number of entries eligible for paperless processing. This proposal would accomplish these goals.

The ABI system for the FCO will not be ready until the first quarter of 1994. Many details still need to be worked out before initiating electronic filing of the FCO. Recognizing this, NMFS is structuring its regulations to accommodate both the existing paper system and the future electronic filing of the FCO. To facilitate the conversion to electronic filing, the proposed rule would permit electronic filing at any and all points of entry where the ABI system is or may become available. After the ABI system is implemented for the FCO, importers would have the option to file electronically or submit the paper FCO upon entry. If an importer is unable to participate in the electronic filing system, the paper FCO could still be used.

Part of the effect of these rule modifications would be to reduce the filing burden on the import industry, to require some potentially new record keeping by importers and to significantly reduce the time and effort required for importers to make the required filings. The Federal Communications Commission (FCC) evaluated the ABI system before adopting its usage for some of its import requirements, and has estimated that a 40-percent reduction in preparation/submission time, from 5 minutes to 3 minutes per submission, is possible. This translates into a productivity increase from 12 submissions per hour to 20 submissions per hour. This improvement is due primarily to the benefits of automation and to the fact that much of the FCC required data is already collected by USCS for its own purposes. A similar estimate is made for NMFS requirements. NMFS would continue to receive the same information electronically that it now receives on the paper NOAA Form 370.

Importers or their brokers would be required to maintain documentation to verify electronic entries for a period of 5 years after the entry; any FCOs acquired from foreign exporters, invoices, "dolphin safe" certification, etc., must be maintained by the broker or importer. NMFS enforcement officers would have access to these documents, upon request, for routine inspections and when investigating alleged violations of the MMPA or "dolphin safe" labeling violations.

In addition to a reduction in workload for both industry and the Government, the change to electronic filing would enhance the ability of NMFS to enforce rules pertaining to importation of fish products. Enforcement personnel would be able to review filings on a much more timely basis. Once electronic filing is implemented and the increased ability and activity of NMFS enforcement efforts is known, compliance with the rules is expected to increase.

Classification

NMFS has determined that this proposed rule will not have a significant impact on the human environment. From an environmental perspective, this proposed rule is a technical change to the regulations. The overall regulations have been analyzed in Environmental Assessments (EAs) prepared for previous regulations implementing section 101(a) of the MMPA. Therefore, this proposed rule is categorically excluded from the requirement to prepare an EA by section 6.02b.3.(b)(ii)(aa) of NOAA Administrative Order 216–6, and an Environmental Assessment of the proposed action has not been prepared.

The AA has determined that this rule is not a "major rule" requiring a regulatory impact analysis under Executive Order 12291. The estimated economic impact on tuna imports, if any, could be expected to result in a slight benefit to importers that would have their paperwork burden decreased. This proposed rule will not result in: (1) An annual major increase in costs or prices for consumers, individual industries or government agencies; (2) an annual effect on the economy of $100 millon or more; or (3) significant adverse effect on competition, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or import markets.

The General Counsel of the Department of Commerce has certified to the Small Business Administration that the proposed modifications to the regulations would not have a significant impact on a substantial number of small entities. The only persons affected by this rule would be those who opted to file through the ABI system. No one will be forced to use ABI; rather, it is an option intended to save money for small businesses. The impact, if any, would be the requirement to maintain a file of documentation for each electronic filing for 5 years. Most brokers and importers already maintain such a file in the normal management of their business.

This rule involves collection of information requirements subject to the Paperwork Reduction Act, which have been approved by the Office of Management and Budget under control number 0648–0040. Public reporting burden is estimated to average 24 minutes per response for the electronic submission of information and 5 minutes for the recordkeeping requirement, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding these burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden to: National Marine Fisheries Service (F/PR), 1335 East-West Highway, Silver Spring, MD 20910, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503 (Attn: Paperwork Reduction Act Project).

List of Subjects in 50 CFR Part 216

Administrative practice and procedure, Imports, Indians, Marine mammals, Penalties, Reporting and recordkeeping requirements, Transportation.

Dated: November 5, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

For the reasons set forth in the preamble, 50 CFR part 216 is proposed to be amended as follows:

PART 216—REGULATIONS GOVERNING THE TAKING AND IMPORTING OF MARINE MAMMALS

1. The authority citation for part 216 continues to read as follows:

Authority: 16 U.S.C. 1361 *et seq.*, unless otherwise noted.

2. Section 216.3 is amended by adding, in alphabetical order, a definition of *ABI*, to read as follows:

§ 216.3 Definitions.

* * * * *

ABI means Automated Broker Interface, the electronic product-entry

filing system under the control of the U.S. Customs Service, Department of the Treasury.

* * * * *

3. In § 216.34, paragraph (e)(3)(i)(A)(*1*) is revised to read as follows:

§ 216.24 Taking and related acts incidental to commercial fishing operations.

* * * * *

(e) * * *

(3) * * *

(i) * * *

(A) * * *

(*1*) Accompanied by a completed fisheries Certificate of Origin described in paragraph (e)(3)(iii) of this section, or, for points of entry where the ABI system is available, the information required for the Certificate may be filed electronically by the ABI system in lieu of the paper form, provided that the electronic filing is made no later than at the time of entry and, all documentation in support of the ABI entry is maintained by the importer or broker for not less than 5 years and must be available for inspection by NMFS personnel upon request;

* * * * *

[FR Doc. 93-28306 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-22-M

Notices

Federal Register
Vol. 58, No. 221
Thursday, November 18, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 12, 1993

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- National Agricultural Statistics Service Vegetable Surveys

On occasion; Weekly; Seasonally
Farms; Businesses or other for-profit; 17,971 responses; 2,723 hours
Larry Gambrell (202) 720–5778

- Food Safety and Inspection Service

Additional Methods for Destruction of Trichinae in Pork Products
Recordkeeping; Once every 13 weeks
Businesses or other for-profit; 36 responses; 37 hours
Lee Puricelli (202) 720–7163

Reinstatement

- Animal and Plant Health Inspection Service

National Agricultural Pest Information System (NAPIS)
PPQ Forms 391, 395, and 396
On occasion; Semi-annually
State or local governments; 176,200 responses; 1,092 hours
C. David McNeal, Jr. (301) 436–8247

Larry K. Roberson,
Deputy Department Clearance Officer.
[FR Doc. 93–28362 Filed 11–17–93; 8:45 am]
BILLING CODE 3410–01–M

Forest Service

Greenhorn Ranger District; Sequoia National Forest, CA; Notice of Intent To Prepare Supplement to Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the Cottonwood and Golf Timber Sales Final Environmental Impact Statement, Greenhorn Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service will prepare a Supplement to the Cottonwood and Golf Timber Sales Final Environmental Impact Statement to provide further information of impacts on the California spotted owl, and current information on reforestation success, on the Sequoia National Forest, Kern County, California.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed supplement to Sandra Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, California 93257–2035, telephone (209) 784–1500.

SUPPLEMENTARY INFORMATION: A lawsuit was filed by Sequoia Forest Alliance and Tulare County Audubon Society on April 29, 1993 in the United States District Court for the Eastern District of California. On August 10, 1993, the District Court issued a preliminary injunction prohibiting any further activity on the Cottonwood Timber Sale pending completion of a supplement to the FEIS for the Cottonwood Timber Sale which addressed new information relating to the California spotted owl.

In response to the court's order, existing information will be reanalyzed based on further investigation of the sale and consideration of new information. Although not required by the court's order, the supplement will include additional information on reforestation success for the plantations in the area of the Cottonwood timber sale.

Sandra H. Key, Forest Supervisor, Sequoia National Forest is the responsible official.

The draft supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by the end of November 1993. At that time EPA will publish a notice of availability of the draft supplement in the **Federal Register**.

The comment period on the draft supplement will be 45 days from the date EPA publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contention. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel.* 803 F.2d 1016, 1022 (9th Circuit 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed supplement, comments on the draft supplement to the environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement.

Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 12, 1993.

Lee R. Belau,

Acting Forest Supervisor.

[FR Doc. 93–28366 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Musselshell Ecosystem Management Project; Clearwater National Forest, Clearwater County, ID

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare environmental impact statement.

SUMMARY: The Forest Service will prepare an environmental impact statement (EIS) to disclose the environmental effects of a proposed timber harvest which would remove approximately 8.5 million board feet of timber from about 2,051 acres, build about 1.6 miles of road, and reconstruct about 5.5 miles of road. The proposal also includes fishery and wildlife improvement projects such as installing log wiers, building sediment traps, and closing roads, as well as improving recreation facilities.

The area is located on the Pierce District of the Clearwater National Forest, Townships 35 and 36 North, Range 6 East, Boise Meridian.

The purpose of the proposal, and subsequent effects analysis, is to meet the intent of the Clearwater Forest Plan using an ecosystem management approach for management areas included in the 14,800 acre analysis area. There are six management areas (MA) within the analysis area. MA–E1 emphasizes growth and yield of timber, MA–M2 emphasizes protection of riparian resources, MA–A6 emphasizes recreational activities associated with the Lewis and Clark and Nee-Me-Poo Historical Trails, MA–C3 emphasizes management of big-game winter range not suited for timber production, and MA–A5 manages for developed recreation opportunities.

DATES: Comments concerning the scope of the analysis should be received in writing by January 3, 1994, to receive timely consideration in the preparation of the Draft EIS. The Draft EIS will be filed with the Environmental Protection Agency in September 1994. The Final EIS and Record of Decision is expected to be issued in December 1994.

ADDRESSES: Send written comments to Rick Kusicko, Acting District Ranger, Pierce Ranger District, P.O. Box 308, Kamiah, ID 83536.

FOR FURTHER INFORMATION CONTACT: Linda Lilly, EIS Project Team Leader, Pierce Ranger District, P.O. Box 308, Kamiah, ID 83536. (208) 935–2513.

SUPPLEMENTARY INFORMATION: In response to public demand for sustainable forest management, the Forest Service has developed an ecologically-based, integrated resource approach to the management of the National Forest lands. Ecosystem Management means recognizing the complexity and dependencies of resources within ecosystems, so effects to the ecosystems can be predicted and monitored after activities occur. The proposal includes timber harvest as determined by the ecological need of the analysis area. This may vary from slashing non-merchantable dead trees and replanting to clearcuts with reserve trees. Harvesting may not follow traditional unit configuration, or prescription. The natural changes in tree densities, natural history, and health of the landscape will dictate how the areas will be treated. Biological corridors and riparian areas will be considered in that natural landscape, as well as human imposed landscapes and restrictions, such as visual quality corridors, cultural sites, recreation areas etc. The harvesting prescriptions may be dispersed in small clumps, reach across large areas, or meander in and out of each other.

Because instream conditions are not meeting desired conditions for cobble embeddedness, erosion sources in the watershed would be corrected. This may include closing and stabilizing roads that are no longer needed.

Because of the below standard instream conditions in Gold and Musselshell Creeks, the Forest Service may install sediment traps, remove sediment by dredging, exclude grazing along Musselshell Creek through fencing, install woody debris and boulders for summer and winter habitat improvement, and plant riparian areas to provide shade to lower stream temperatures.

Because the old growth patch size is small, and snag retention areas are lacking, the Forest Service would manage biological corridors, and designate five percent or more old growth habitat per 10,000 acre compartment.

Because use is increasing in dispersed camping areas, the Forest Service would install vault toilets in two areas in the analysis area.

Because there are dying stands of white pine and other silvicultural treatment needs in the analysis area, the Forest Service would rehabilitate dying white pine plantations, salvage dead and dying timber, improve the species mix through commercial and precommercial thinning, and harvest stands that have reached maturity while maintaining the old growth component.

Scoping began with the position statement of a previous planned activity called Musselshell Gold, which has been incorporated into the Musselshell EIS. Scoping will continue with the announcement of this new proposal, open houses, and public contracts. Issues emerging from internal and external scoping which will lead to the development of alternatives to this proposal.

The lead agency for this project is the U.S. Forest Service. The Forest Service will cooperate with other County, State, and Federal Agencies who display an interest in the project, and who require assessment and concurrence.

The responsible official for decisions regarding this analysis is James Caswell, Clearwater National Forest Supervisor. His address is 12730 Highway 12, Orofino, ID 83544.

The Draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in September 1994. The comment period on the draft environmental impact statement will be 45 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes it is important to give reviewers notice at this early stage of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statement must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in

the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

Dated: November 5, 1993.

James L. Caswell,

Forest Supervisor.

[FR Doc. 93–28364 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Bull Sweats Vegetative Treatment; Vegetative Management Including Tree Removal by Commercial Harvesting, Prescribed Fire, Tree Thinning and Temporary Road Construction, Helena National Forest, Lewis & Clark County, MT

AGENCY: Forest Service, USDA.

ACTION: Notice; intent to prepare Environmental Impact Statement.

SUMMARY: The USDA, Forest Service is gathering information and preparing an Environmental Impact Statement (EIS) for a vegetation treatment proposal. This proposal will utilize prescribed fire on grassland/shrubland vegetation types and a combination of prescribed fire and tree removal within the forested vegetation. The proposal will also involve the reconstruction of existing roads and the construction of new roads within the project area. Temporary access roads would be physically closed when no longer needed by this proposal. The project area is located approximately 17 air miles northeast of Helena, Montana.

The Forest Service proposes to treat approximately 1350 acres of grassland/shrub land and forested vegetation through prescribed burning and tree removal. Approximately 1,300 acres would be treated with prescribed burning and 350 acres of timber would be harvested. The 350 acres of timber harvest would be prescribe burned following tree removal to reduce slash and needle cast. Timber would be sold and removed using predominantly unevenaged harvest systems such as individual tree selection and group selection, as well as some commercial thinning. Approximately 0.5 mile of new temporary road construction and 1.7 miles of reconstruction of existing roads is needed to access treatment areas. Following treatment the new roads would be physically closed. New road construction and road reconstruction would occur in the Bull Run Gulch and Dry Gulch vicinity.

The proposal is designed to help achieve the goals and objectives of the 1986 Helena National Forest Plan and move selected areas towards the desired conditions identified from the Forest Plan. These needs are supported by the findings of the Big Belts Integrated Resource Analysis. More specifically, the proposal has the following purpose:

1. Treatment of nonforested grassland vegetation through prescribed fire to promote nutrient cycling within the system and reduce the amount of coniferous vegetation that has colonized these sites.

2. Initiate activities to move the age class distribution of forested vegetation towards the desired condition. This will assist in maintaining healthy and sustainable forested ecosystems and long-term sustainability of soils productivity, riparian function, vegetation and wildlife as described in the Helena Forest Plan and further refined in the Big Belts Integrated Resource Analysis. The Big Belts Integrated Resource Analysis determined that the project area has been affected by past forest management practices, primarily fire suppression. Prior to fire suppression frequent fires (in the range of 5 to 25 year recurrence intervals) burned through the area. These fires maintained fuels at low levels and killed most of the smaller trees seedlings which had seeded into the area. The thick barked mature ponderosa pine within the area survived these low intensity firms. This differentiation in tree survival caused by frequent low intensity fires led to the development of a savannah of a widely spaced forest of large old ponderosa pine.

Since fire suppression tree seedlings have survived at rates which are in excess of historical conditions. This has led to the development of densely stocked stands which range in tree size from seedling through sapling, pole, intermediate and dominant size classes. These stands, when they burn, spread the fire through the forest canopy due to the development of these "ladder fuels". This is an event which the forest has not evolved to survive. When such a fire occurs it causes the mortality of a significant portion of the forest overstory. It may take several centuries for the forest to return to the large old forest type following such a fire.

The increase in vegetation density has also resulted in greater competition between trees for available resources such as water, sunlight and nutrients. This competition causes trees to weaken which makes them more susceptible to mortality from insects, diseases and climatic stresses.

The proposed treatments are designed to protect the larger and older trees within stands from mortality in the event of a fire through the removal of ladder fuels. Smaller trees are proposed to be removed leaving the larger trees in a more open grown situation. This treatment would also reduce competition between trees for available resources.

Experience has shown that as we implement the Helena Forest Plan, as would occur in this proposed action, we collect better on-site field information which at times results in Forest Plan amendments. To date, no amendment has been identified or is being proposed relative to this proposal. Further analysis of the proposed action and alternatives to that proposal may result in a decision(s) that include amendments to the Forest Plan.

DATES: Comments concerning the scope of the analysis should be received in writing by December 17, 1993.

ADDRESSES: The responsible official is Tom Clifford, Forest Supervisor, Helena National Forest, Supervisor's Office, 2880 Skyway Drive, Helena, MT 59601. Phone: (406) 449–5201.

FOR FURTHER INFORMATION CONTACT: Denis A. Hart, Helena District Ranger, Helena Ranger District, 2001 Poplar Helena, MT 59601. Phone: (406) 449–5490; or Jerry V. Adelblue, Interdisciplinary Team Leader, Helena National Forest, 2880 Skyway Drive, Helena, MT 59601.

SUPPLEMENTARY INFORMATION: The prescribed burning, timber sale(s), temporary road construction, thinning and green firewood cutting would occur on National Forest lands in portions of the Trout Creek, Soup Creek, and Beaver Creek, Sweats Gulch, Cottonwood Gulch, Bridge Gulch, Bridge Creek, Pole Creek, Cabin Gulch, and Bull Run Gulch drainages of the Helena Ranger District. Included in the area being analyzed is all or portions of T.12N., R.2W., Sections 11–14; T.12N; R.1W., Sections 7–9, 16–20, 30–33; T.11N., R 1W., Sections 4,5,8, Montana Principle Meridian.

Portions of the prescribed fire treatment units, temporary road construction and tree removal are

within the Middleman Mountain/Hedges Mountain roadless area (1612/X1613). Approximately 700 acres of prescribed burning, 320 acres of tree removal and 0.5 mile of temporary road construction are proposed in the roadless area. This area has not been proposed for inclusion in the National Wilderness System by the Helena Forest Plan nor has it been included in any of the past legislative wilderness proposals.

The areas of proposed tree removal are within management areas L–2 and T–3 described in the Helena Forest Plan. Prescribed burning is also proposed within management areas L–2, T–2, and W–2. In some cases, combinations of tree removal and prescribed burning are proposed. The Forest Plan direction states that:

L–1 | Generally nonforested forage producing areas that forage production is optimized and timber harvest and prescribed fire may be used as tools for this purpose, but not for timber management sake.

L–2 | Essentially nonforest lands identified as big game winter ranger within grazing allotments. Prescribed fire may be used to reduce fuels and increase forage.

T–2 | Should be maintained or enhanced for big game winter range for which programmed timber harvest and prescribed fire may be used.

T–3 | Should be managed in such a way to maintain and/or enhance habitat characteristics favoring elk and other big game species allowing the use of programmed timber harvest and prescribed fire.

W–2 | Important spring, summer and fall habitat for big game, such as elk and deer. Forage for both big game and livestock must be provided. Timber harvest and prescribed fire can be used only to maintain or enhance habitat values.

The decisions to be made, based on this environmental analysis, are:

1. Whether or not to treat the forested and nonforested vegetation at this time, and if so, what areas to treat, and what treatment methods would be employed.

2. What roads, trails, and areas need to be closed or restricted to provide for wildlife security and habitat effectiveness.

3. What project specific monitoring, if any, is needed.

If it is decided to treat the vegetation at this time, activities may begin as early as 1995 and take up to 5 years to implement.

This EIS will tier to the Helena Forest Plan Final EIS of April 1986, that provides program goals, objectives and standards and guidelines for conducting management activities in this area. All activities associated with the proposal will be designed to maintain or enhance the resource objectives identified in the Forest Plan and further refined in the Big Belts Integrated Resource Analysis.

The Forest Service is seeking information and comments from Federal, State, local agencies and other organizations or individuals who may be interested in or affected by the proposed action. The Forest Service invites written comments and suggestions on the issues for the proposal and the area being analyzed. Information received will be used in preparation of the Draft EIS. Preparation of the EIS will include the following steps:

1. Identification of potential issues.

2. Identification of issues to be analyzed in depth.

3. Elimination of insignificant issues or those that have been covered by a relevant previous environmental analysis.

4. Identification of additional reasonable alternatives.

5. Identification of potential environmental effects of the alternatives.

Prescribed harvest treatments for tree removal in this proposal include unevenaged management techniques such as individual tree selection and group selection. Intermediate treatments such as commercial thinning will also be considered. Alternatives to this proposal will include the "no action" alternative, in which none of the proposed treatments will be implemented. Other alternatives will examine variations in the location, amount and method of vegetative management.

The preliminary issues identified are:

1. The effects on forested and nonforested vegetation.

2. The effects on visual resources.

3. The effects on the fisheries and wildlife resources.

4. The effects on the roadless and wilderness character of the Middleman Mountain/Hedges Mountain Roadless Area.

5. The effects on riparian management and function.

6. The effects on the proposed Cabin Gulch Research Natural Area.

7. The effects on air quality.

8. The economic tradeoffs of implementing this proposal.

9. The effects on cultural resources within the project area.

10. The effects upon public safety and adjacent private lands.

The Forest Service will analyze and disclose in the DEIS and FEIS the environmental effects of the proposed action and a reasonable range of alternatives. The DEIS and FEIS will disclose the direct, indirect and cumulative environmental effects of each alternative and its associated site specific mitigation measures.

Public participation is especially important at several points of the analysis. Interested parties may visit with the Forest Service officials at any time during the analysis. However, two periods of time are specifically identified for the receipt of comments. The first comment period is during the scoping process when the public is invited to give written comments to the Forest Service. This period extends for 30 days from the date of publication of this notice in the **Federal Register**. The second review period is during the 45 day review of the DEIS in and when the public is invited to comment on the DEIS.

The DEIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review in April 1994. At that time, the EPA will publish a notice of availability of the DEIS in the **Federal Register**.

The comment period on the DEIS will be 45 days from the date the notice of availability is published in the **Federal Register**.

At this early stage in the scoping process, the Forest Service believes it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviews of DEIS must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Secondly, environmental objections that could be raised at the draft environmental impact statement stage, but that are not raised until after completion of the FEIS may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F. 2d 1016, 1022 (9th cir. 1986) and Wisconsin *Heritages, Inc.* v. *Harris,* 490 F. Supp. 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45-day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the FEIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the DEIS should be as specific as possible. It is also helpful if comments refer to specific pages or

chapters of the draft statement. Comments may also address the adequacy of the DEIS or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the DEIS, the comments will be analyzed and considered by the Forest Service in preparing the FEIS. The FEIS is expected to be filed in August 1994.

Dated: November 5, 1993.

Tom Clifford,

Forest Supervisor, Helena National Forest.

[FR Doc. 93–28321 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Environmental Impact Statement; Monongahela National Forest, WV

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service will prepare a draft and final legislative environmental impact statement (LEIS) concerning the suitability of twelve rivers in the Monongahela National Forest in West Virginia for inclusion in the National Wild and Scenic Rivers System. The twelve rivers included are Shavers Fork, Dry Fork, Blackwater, Glady Fork, Laurel Fork, Otter Creek, Red Creek, South Branch Potomac, North Fork South Branch Potomac, Seneca Creek, Williams, and North Fork Cherry. The rivers under study are located in the following counties: Grant, Greenbrier, Nicholas, Pendleton, Pocahontas, Randolph, Tucker, and Webster.

The agency invites written comments and suggestions on the suitability of these twelve rivers for designation as wild, scenic, or recreational rivers. In addition, the agency gives notice of the environmental analysis and decisionmaking process that will occur on this study so that interested and affected people are aware of how they may participate and contribute to the decision.

DATES: Comments should be received in writing by December 17, 1993 to ensure timely consideration.

ADDRESSES: Send written comments to Jim Page, Forest Supervisor, Monongahela National Forest, 200 Sycamore St., Elkins, WV 26241.

FOR FURTHER INFORMATION CONTACT: Harry B. Mahoney, River Planner, Monongahela National Forest, 200 Sycamore St., Elkins, WV 26241, (304) 636–1800.

SUPPLEMENTARY INFORMATION: The Monongahela National Forest Land and Resource Management Plan, approved July 7, 1986, directed that National Forest lands within ¼ mile of rivers within the Monongahela National Forest that were listed in the Nationwide Rivers Inventory (NRI) should be managed so that potential wild classification would not be precluded until a future study could be completed. The American Rivers Conservation Council, now America Rivers, Inc., subsequently appealed the Forest Plan because it did not include specific direction for management of wild and scenic rivers, and did not determine eligibility and probable classification, nor schedule a future study. In resolution of this appeal, the Forest Service agreed to determine eligibility and classification of the NRI rivers, to amend the Forest Plan, and to schedule a study of suitability. A coalition of organizations, the West Virginia Rivers Coalition, petitioned the Forest Service to include additional specified rivers, and the West Virginia Chapter of the Sierra Club subsequently asked that two other streams be studied.

The Forest Service evaluated a total of 14 streams within the Forest to determine their eligibility and probable classification for potential inclusion in the National Wild and Scenic Rivers Systems with the participation of rivers interest groups, the West Virginia Division of Natural Resources, West Virginia University, the National Park Service, and interested individuals. An "Evaluation of Eligibility and Probable Classification" of fourteen streams or stream segments within the Forest boundary was distributed to participants in June, 1991. The 14 steams included eight NRI rivers (Cheat, Shavers Fork, Dry Fork, Blackwater, Glady Fork, South Branch Potomac, North Fork South Branch, and South Fork Cherry), four additional streams proposed by the Rivers Coalition (Laurel Fork, Otter Creek, Williams, and North Fork Cherry), and the two streams proposed by the Sierra Club (Red Creek and Seneca Creek). Two streams, the portion of Cheat River inside the Forest boundary and South Fork Cherry, were determined to be ineligible and were dropped from further consideration. The portion of Cheat River in the Forest boundary was identified as a candidate for possible future consideration as part of a longer stream. Portions of Shavers Fork, Glady Fork, and North Fork South Branch were also dropped from further consideration. Three other rivers (Greenbrier, Gauley, and Cranberry), listed as Study Rivers in the Wild and Scenic Rivers Act, had already been studied and were not included in the current study.

The decision to be made is: Which, if any, segments of the 12 rivers under consideration should be recommended to the Congress of the United States for designation under the Wild and Scenic Rivers Act.

The suitability study and environmental impact statement will consider the following rivers or river segments, which have been determined to be eligible for designation, with the probable classifications shown in parentheses:

Shavers Fork

A total of 77.9 miles in two segments consisting of 56.0 miles between the Snowshoe dam and US 33 (Recreational) and 21.9 miles between WV 33/8 and Jobs Run near Porterwood (Scenic). Scenic, recreational, and other values have been identified.

Dry Fork

13.7 miles between the confluence with Laurel Fork and the confluence with Blackwater (Recreational). Recreational values have been identified.

Blackwater

8.7 miles between the Blackwater Falls State Park bridge and Hickory Lick Run near Hendricks (Scenic). Scenic and recreational values have been identified.

Glady Fork

A total of 31.6 miles between the confluence of the East and West Forks near the town of Glady and the confluence with Dry Fork at Gladwin, including 4.5 miles between the forks and Frazier Creek (Recreational), 7.7 miles between Frazier Creek and .5 mile above US 33 (Wild), 4.3 miles from .5 mile above US 33 to Waterfall Run (Recreational), and 15.1 miles between Waterfall Run and Dry Fork (Scenic). Recreational values have been identified.

Laurel Fork

A total of 38.2 miles from the upstream boundary of Laurel Fork South Wilderness to the confluence with Dry Fork including 16.5 miles within the Laurel Fork North and South Wildernesses and Laurel Fork Recreation Area (Scenic), 9.1 miles between Laurel Fork North Wilderness and .5 mile below US 33 (Recreational),

4.9 miles from .5 mile below US 33 to Shears Hollow (Scenic), 6.6 miles between Shears Hollow and private land (Wild), and 1.1 miles to Dry Fork (Recreational). Recreational and scenic values have been identified. The 9.1 miles between the wilderness boundary and .5 mile below US33 were determined to be ineligible by themselves, but are included for study as part of the whole stream.

Otter Creek

A total of 11.0 miles from the upstream boundary of Otter Creek Wilderness and the confluence with Dry Fork, including 10.5 miles within the Wilderness (Scenic) and .5 mile between the Wilderness and Dry Fork (Recreational). Scenic and recreational values have been identified. The lower .5 mile, considered ineligible by itself, has been included as part of the whole stream.

Red Creek

A total of 8.7 miles shown as a perennial stream on the USGS quadrangle (Blackbird Knob) to the downstream boundary of the Dolly Sods Wilderness, including 5.3 miles within the Wilderness (Scenic). Scenic and recreational values have been identified.

South Branch Potomac

A total of 22.5 miles from the Jake Hill Bridge near Upper Tract and the National Forest Boundary near Petersburg, including 10.0 miles from Jake Hill Bridge to Big Bend Recreation Area (Recreational), 9.3 miles from Big Bend to the exit from Smokehole Canyon (Scenic), 3.2 miles from the canyon exit to the Forest boundary (Recreational). Scenic, recreational, geologic, wildlife, and historical values have been identified.

North Fork South Branch

3.2 miles within the Hopeville Canyon between High Ridge Run and the outskirts of the community of Hopeville (Scenic). Scenic and recreational values have been identified. Portions of the North Fork above and below this section were determined to be ineligible due to extensive modification and channelization.

Seneca Creek

A total of 13.0 miles between Trussel Run near Spruce Knob and the downstream boundary of the Spruce Knob-Seneca Rocks National Recreation Area near US 33, including 8.0 miles between Trussel Run and private land near the Falls of Seneca (Wild) and 5.0 miles between the private boundary and the NRA boundary (Recreational). Recreational, scenic, and fish values have been identified.

Williams

26.0 miles from National Forest property boundary above Black Mountain Run to Spice Run above Dyer (Recreational). Scenic and recreational values have been identified.

North Fork Cherry

15.6 miles from Darnell Run to private land .5 miles above Richwood (Recreational). Scenic and recreational values have been identified.

The Forest Service and the State of West Virginia are cooperating in the study of these rivers through the establishment of a Wild and Scenic Rivers Co-Leadership Team for overall direction of the study process. This team consists of representatives from the Forest Service and the West Virginia Divisions of Natural Resources, Environmental Protection, and Tourism and Parks of the Department of Commerce, Labor, and Environmental Resources. Public participation is especially important at several points in the study process. The first point is the scoping process (40 CFR 1501.7). The Forest Service is seeking information, comments, and assistance from Federal, State, and local agencies, individuals, and organizations who may be interested in or affected by this proposed action. The public input will be used in preparation of the draft LEIS.

The Forest Service initiated the suitability phase of the evaluation in the fall of 1991 by distributing a letter requesting issue identification to approximately 1500 individuals, group, and local, state, and federal agencies known or believed to have an interest in management of one or more of the twelve rivers. Meetings were held with several interested groups and individuals, and subsequent public mailings were made.

The following preliminary issues have been identified on the basis of public and agency responses and will be considered along with any additional significant issues identified during formal scoping: (1) Effects of maintenance of free flow on potential impoundments, flood control, and similar projects; (2) potential effects on private lands; (3) potential effects on opportunities for fish habitat improvement; (4) effects on protection, enhancement, and restoration of ecosystem health and other values; (5) effects on national forest management programs; (6) effects on recreation opportunities and quality; (7) effects on local economies; and (8) conflicting interpretations of provisions of the Act regarding water resources projects and maintenance of free flow.

A range of alternatives will be considered including an alternative recommending designation of none of the rivers (no-action alternative) and one recommending designation of all rivers under consideration. Additional alternatives will be considered to reflect identified issues. The environmental impact statement will disclose the direct, indirect, and cumulative effects of implementing each of the alternatives.

The draft study and LEIS is expected to be filed with the Environmental Protection Agency (EPA) and be available for public review by May 1994. At that time, EPA will publish a notice of availability of the draft environmental impact statement in the **Federal Register**.

The comment period on the draft study report and LEIS will be 45 days from the date EPA's notice of availability appears in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 533 (1978). Also, environmental objections that could be raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1988) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 f. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 45 day comment period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement. Comments may also address the adequacy of the draft environmental impact statement or the merits of the

alternatives formulated and discussed in the statement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

After the comment period ends on the draft study and legislative environmental impact statement, comments will be analyzed and considered by the Forest Service in preparing the final study and legislative environmental impact statement. In the final study and LEIS, the Forest Service will respond to comments received (40 CFR 1503.4). The final study and LEIS is scheduled to be completed by the end of December 1994. The Secretary will consider the comments, responses, and consequences discussed in the study, applicable laws, regulations, and policies in making a recommendation to the Congress regarding the suitability of these river segments for inclusion into the National Wild and Scenic Rivers System. The final decision on inclusion of a river in the National Wild and Scenic Rivers System rests with the Congress of the United States.

Dated: November 12, 1993.

Mark A. Reimers,

Deputy Chief, Programs and Legislation.

[FR Doc. 93–28334 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Management of the Red-cockaded Woodpecker and its Habitat on National Forests in the Southern Region

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Southern Region of the Forest Service continues to prepare a draft environmental impact statement (EIS) and plans to prepare a final EIS on a proposal to establish Regional standards and guidelines for managing and the red-cockaded woodpecker (RCW) and its habitat; establish criteria to delineate habitat management areas (HMAs) and determine population objectives; establish tentative HMAs; and establish monitoring requirements, in order to provide Regional direction to the affected National Forests within the Southern Region. The purpose is to ensure protection of the RCW and fulfill the responsibility toward recovery of the species. The EIS is being prepared in accordance with the National Environmental Policy Act (NEPA), the National Forest Management Act (NFMA) and the Endangered Species Act (ESA).

The USDI, Fish and Wildlife Service is a cooperating agency.

This revised notice contains the following substantial changes: Revised title, revised proposed action (addition of tentative HMAs), revised preliminary alternative #4, changed draft and final EIS dates.

DATES: Comments concerning the original scope of analysis were received in writing by November 29, 1991. Those comments based on the original notice of intent to file this EIS need not be resubmitted as they are being addressed in the draft EIS. The Forest Service invites any new comments based on the revised proposed action and preliminary alternatives. Additional comments, based on this revised notice of intent, along with comments on the draft EIS, will be used to prepare the final EIS. Previous notices relevant to this proposal were published in the **Federal Register:** May 5, 1989, pages 19422–19423; July 24, 1989, pages 30771–30772; October 29, 1991, pages 55657–55658; and October 29, 1991, pages 55656–55657.

ADDRESSES: Send written comments on the revised proposed action and preliminary alternatives to: RCW Team Leader; USDA Forest Service, Southern Region; 1720 Peachtree Rd. NW.; room 718N; Atlanta, GA 30367.

FOR FURTHER INFORMATION CONTACT: Joseph M. Dabney, RCW Team Leader, (404) 347–5097.

SUPPLEMENTARY INFORMATION: The Forest Service proposes to revise the Regional Wildlife Habitat Management Handbook (Handbook), amend the Southern Regional Guide (Regional Guide), and amend affected forest plans with new management direction for the endangered red-cockaded woodpecker (RCW). The proposed action has several elements and levels of implementation. The revised Handbook/Regional Guide amendment would establish criteria to delineate RCW Habitat Management Areas (HMAs) and determine population objectives and establish standards and guidelines for management within HMAs. This direction would be implemented on each affected forest when incorporated in the forest plan by amendment or revision.

Because of the time lag between the Handbook revision/Regional Guide amendment and individual forest plan amendments or revisions, the Forest Service also proposes to amend relevant forest plans with the designation of tentative HMAs in the Record of Decision (ROD) with EIS (This has been added to the proposed action since the original notice of intent was published). These forest plan amendments delineating tentative HMAs would require specific management practices to conserve the RCW and avoid jeopardy to the species. This direction would remain in place until superseded by individual forest plan amendments or revisions that incorporate the revised Handbook/Regional Guide.

The proposed regional direction would apply an ecosystem management approach at the landscape level, focusing on restoration of the habitat conditions under which the RCW evolved. The Revised Handbook would be implemented on National Forest System lands and would not apply to other federal, state, or private lands. Using the revised Handbook/Regional Guide, each affected National Forest within the Southern Region will conduct a Forest-level analyses to determine the effect of allocating land to RCW management and the effect of applying the Regional RCW standards and guidelines on the RCW, its habitat, and other forest resources. The affected National Forests will also develop procedures for implementing the monitoring requirements established through the Regional direction. The Forest-level analyses will be conducted as part of the Forest Plan amendment/revision process in compliance with NEPA, NFMA, and ESA. During Forest-level analyses, if new information surfaces regarding RCW management, reasonable alternatives that deviate from the Regional direction may be developed by the affected National Forests. In this event, consultation with the Fish and Wildlife Service will be required. A "No Jeopardy" opinion will be required for alternatives that deviate from revised Handbook//Regional Guide.

Pursuant to the National Forest System Land and Resource Management Planning regulations (36 CFR part 219), the Regional Guide for the Southern Region (the Guide) was issued in June 1984. This provided Regional standards and guidelines to facilitate land and resource management planning for the National Forests within the Southern Region. The Guide did not include any specific direction for management of the RCW or its habitat. Specific direction for RCW management was issued in the Wildlife Habitat Management Handbook (FSH 2609.23R), which was incorporated by reference into the Guide. The RCW chapter (420) in the Handbook was originally issued in 1975, with revisions in 1979 and 1985.

The 1985 revision was finalized following consultation with Fish and

Wildlife Service. In 1989, analysis of RCW survey information indicated most populations of the endangered RCW were declining in the Southern Region. This evidence prompted a review of management practices which led to the Regional Forester issuing a "Policy on Cutting within ¼ mile of RCW colonies on Existing Timber Sale Contracts" (the policy). The policy, implemented on March 27, 1989, was instituted to ensure Forest Service actions did not jeopardize the species. The policy was continued by the decision notice of June 26, 1989. This completed Phase I of a 3-Phase process initiated to protect the RCW and establish new RCW management direction.

Phase II included an environmental analysis and the preparation of an environmental assessment, "Environmental Assessment for Interim Standards and Guidelines for the Protection and Management of RCW habitat within ¼ mile of Colony Sites" (Interim Guide). The Interim Guide, implemented May 9, 1990, and supplemented May 3, 1991, currently apply to all RCW populations in the Southern Region, except the National Forests in Texas, where a court ordered management plan is still in effect. The Interim Guide will remain in effect until affected National Forests implement the Regional direction through Forest Plan amendments/revisions.

The Forest Service is now conducting Phase III, the establishment of Regional standards and guidelines for the management of the red-cockaded woodpecker (RCW) and its habitat; the establishment of criteria that will be used to delineate HMAs and determine population objectives; the establishment of tentative HMAs; and the establishment of monitoring requirements.

The purpose of the proposed action is to ensure protection of the RCW on affected National Forests in the Southern Region and to fulfill responsibility toward recovery of the species. In addition, a range of preliminary alternatives to the proposed action has been developed.

The proposed action will: (1) Establish Regional standards and guidelines for management of the red-cockaded woodpecker (RCW) and its habitat as follows: (a) Set a maximum percentage of the area within ¼ mile of RCW clusters allowed in the 0–10 and 0–30 age classes at 6.5 percent and 20 percent, respectively, to prevent habitat fragmentation; (b) set minimum rotation ages ranging from 70–120 years, depending on tree species, to ensure trees suitable for cavity development, and (c) set four different management intensity levels based on RCW population size and trend to ensure adequate protection of small, vulnerable populations; (2) establish criteria that will be used to delineate HMAs and determine population objectives to ensure demographic stability; and (3) establish monitoring requirements to determine if the objectives of the new RCW management direction is being met; and (4) establish tentative HMAs.

The preliminary alternatives include: (1) The No Action alternative. This will be a continuation of the Interim Guide which (a) controls habitat fragmentation by setting timber harvest limitations within ¼ mile of RCW clusters, (b) sets a minimum rotation age of 120 years for all pine species, (c) applies the same management intensity to all RCW populations regardless of size, and (d) defines management areas as a ¾ mile radius circle around both active and inactive clusters. (2) An alternative based on the 1985 Handbook which (a) does not set specific criteria to prevent habitat fragmentation, (b) sets minimum rotation ages ranging from 70–100 years, depending upon tree species, (c) applies the same management intensity to all RCW populations regardless of size, and (d) does not specifically define a RCW management area. (3) An alternative similar to the proposed action, with the following exceptions: (a) Controls habitat fragmentation by limiting timber harvest within ¼ miles of RCW clusters. (b) sets minimum rotation ages ranging from 60–200 years based upon tree species and site index, and (c) has 5 different management intensity levels. (4) An alternative that will be similar to alternative three, except there is no planned sustained yield of timber (This alternative has been revised since the original notice of intent was published).

The following preliminary issues, derived from comments received during preparation of the Interim Guide, as well as issues identified during the earlier EIS scoping process, are being considered in the environmental analysis: (1) Economic effects on local communities, (2) effects on RCW habitat resulting from modification of silvicultural practices, (3) effects of direct habitat improvements and population manipulation on the RCW, and (4) effects on other forest resources from RCW management.

The EIS will disclose the direct, indirect, and cumulative effects of implementing the proposed action and the alternatives.

Public participation is especially important at several points during the analysis process. The first point in the analysis is the scoping process (40 CFR 1501.7). The scoping process includes, but is not limited to: (1) Identifying potential issues, (2) identifying issues to be analyzed in depth, (3) eliminating insignificant issues or those which have been covered by a relevant previous environmental analysis, (4) exploring additional alternatives, and (5) identifying potential environmental effects of the proposed action and alternatives (i.e., direct, indirect, and cumulative effects).

The Forest Service is interested in comments from Federal, State, and local agencies and other individuals or organizations who may be interested in or affected by the revised proposed action and preliminary alternatives. Comments received on previous notices of intent to file this EIS need not be resubmitted as they are being addressed in the draft EIS. Additional comments, based on this revised notice of intent, along with comments on the draft EIS, will be used to prepare the final EIS. Additional public participation will include notifying known interested and affected publics and key contacts in person and/or by mail. News releases will be used to provide general notice to the public.

The draft EIS is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by December 1, 1993. At that time, EPA will publish a notice of availability of the draft EIS in the **Federal Register**.

The comment period on the draft EIS will be 90 days from the date the Environmental Protection Agency publishes the notice of availability in the **Federal Register**.

The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. Upon release of the draft EIS, projected for December 1, 1993, reviewers must structure their participation in the environmental review of the proposal, so that it is meaningful and alerts an agency to the reviewer's position and contentions. *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, (1978). Also, environmental objections that could be raised at the draft EIS stage, but that are not raised until after completion of the final EIS, may be waived or dismissed by the courts. *City of Angoon* v. *Hodel*, 803 F. 2d 1016, 1022 (9th Cir. 1986) and *Wisconsin Heritages, Inc.* v. *Harris*, 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the 90-day comment period, so that substantive comments and objections are made

available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final EIS.

To assist the Forest Service in identifying and considering issues and concerns on the proposed action, comments on the draft EIS should be as specific as possible. It is also helpful if comments refer to specific pages or chapters of the draft statement.

Comments may also address the adequacy of the draft EIS, or the merits of the alternatives formulated and discussed in the statement. (Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act, at 40 CFR 1503.3 in addressing these points.)

After the comment period ends on the draft EIS, the comments will be analyzed, considered, and responded to by the Forest Service in preparing the final EIS. The final EIS is scheduled to be completed by June 1994. The responsible official will consider the comments, responses, environmental consequences discussed in the final EIS, and applicable laws, regulations, and policies in making a decision regarding this revision of regional direction. The responsible official will document the decision and reasons for the decision in the Record of Decision. That decision will be subject to appeal in accordance with 36 CFR 217.

The responsible official is: Marvin C. Meier, Acting Regional Forester; USDA Forest Service, Southern Region; 1720 Peachtree Rd. NW., Atlanta, GA 30367–9102.

Dated: October 26, 1993.

Charles E. Steele,

Acting Regional Forester.

[FR Doc. 93–28322 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Grand Targhee Resort Master Development Plan, Targhee National Forest, Teton County, WY

AGENCY: Forest Service, USDA.

ACTION: Revised Notice of Intent to prepare an Environmental Impact Statement. (Original notice of intent was published December 12, 1990 FR Vol. 55, No. 239, p. 51138–5113, two notice of extension of comment period published November 30, 1992, FR Vol. 57, No. 230, p. 56557 and December 18, 1992, FR Vol. 57, No. 244, p. 60170, and a previous revised Notice of Intent was published May 28, 1992 FR Vol. 57, No. 103 p. 22456).

SUMMARY: The Targhee National Forest, Wyoming, announced (55 FR Doc. 90–29088, December 11, 1990) its intent to prepare an Environmental Impact Statement (EIS) which would analyze a proposal by Grand Targhee Resort for a new Master Development Plan. A Draft EIS was to have been completed by October 1, 1991, and offered for a comment period of 60 days. This was revised for release in July of 1992. A sixty day comment period was to follow. The final EIS was scheduled to be published in February 1993.

Due to unanticipated changes in work priorities and extensive public involvement with this project the Draft EIS was completed September 25, 1993 and allowed a total comment period (including two extensions) of 120 days. The final EIS is expected to be filed with the Environmental Protection Agency (EPA) and available for public review by December 1993 instead of the February 1993 date published in the initial revised notice of intent.

Also, due to a change in personnel, the Responsible Official has changed. The Responsible Official is now William P. LeVere, Acting Forest Supervisor, Targhee National Forest.

FOR FURTHER INFORMATION CONTACT: Lynn Ballard, Interdisciplinary Team Leader (208) 624–3151, Targhee National Forest, P.O. Box 208, St. Anthony, ID 83445.

Dated: November 3, 1993.

William P. LeVere,

Acting Forest Supervisor.

[FR Doc. 93–28325 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Cannell Meadow Ranger District; Sequoia National Forest, CA; Notice of Intent To Prepare Supplement to Environmental Impact Statement

AGENCY: Forest Service, USDA.

ACTION: Notice of intent to prepare a supplement to the Casa-Guard Timber Sale Final Environmental Impact Statement, Cannell Meadow Ranger District, Sequoia National Forest.

SUMMARY: The Forest Service will prepare a Supplement to the Casa-Guard Timber Sale Final Environmental Impact Statement to provide further information of impacts on the California spotted owl, cumulative and inter-sale watershed effects within the Fish Creek watershed, and current information on reforestation success, on the Sequoia National Forest, Tulare County, California.

FOR FURTHER INFORMATION CONTACT: Direct questions about the proposed supplement to Sandra Key, Forest Supervisor, Sequoia National Forest, 900 W. Grand Avenue, Porterville, California 93257–2035, telephone (209) 784–1500.

SUPPLEMENTARY INFORMATION: A lawsuit was filed by Sequoia Forest Alliance and Tulare County Audubon Society on April 29, 1993 in the United States District Court for the Eastern District of California. On August 10, 1993, the District Court issued a preliminary injunction prohibiting any further activity on the Casa-Guard Timber Sale pending completion of a supplement to the FEIS for the Casa-Guard Timber Sale which addressed new information relating to the California spotted owl.

In response to the court's order, existing information will be reanalyzed based on further investigation of the sale and consideration of new information. Although not required by the court's order, the supplement will include additional information on reforestation success as well as cumulative and inter-sale watershed effects.

Sandra H. Key, Forest Supervisor, Sequoia National Forest is the responsible official.

The draft supplement is expected to be filed with the Environmental Protection Agency (EPA) and to be available for public review by the end of November 1993. At that time EPA will publish a notice of availability of the draft supplement in the **Federal Register**.

The comment period on the draft supplement will be 45 days from the date EPA publishes the notice of availability in the **Federal Register**. The Forest Service believes, at this early stage, it is important to give reviewers notice of several court rulings related to public participation in the environmental review process. First, reviewers of draft environmental impact statements must structure their participation in the environmental review of the proposal so that it is meaningful and alerts an agency to the reviewer's position and contention. *Vermont Yankee Nuclear Power Corp.* v. *NRDC, 435 U.S. 519, 553 (1978).* Also, environmental objections that could have been raised at the draft environmental impact statement stage but that are not raised until after completion of the final environmental impact statement may be waived or dismissed by the courts. *City of Angoon* v. *Hodel,* 803 F.2d 1016, 1022 (9th Circuit 1986) and *Wisconsin Heritages, Inc.* v. *Harris,* 490 F. Supp. 1334, 1338 (E.D. Wis. 1980). Because of these court rulings, it is very important that those interested in this proposed action participate by the close of the comment

period so that substantive comments and objections are made available to the Forest Service at a time when it can meaningfully consider them and respond to them in the final supplement to the environmental impact statement.

To assist the Forest Service in identifying and considering issues and concerns on the proposed supplement, comments on the draft supplement to the environmental impact statement should be as specific as possible. It is also helpful if comments refer to specific pages of the draft supplement. Reviewers may wish to refer to the Council on Environmental Quality Regulations for implementing the procedural provisions of the National Environmental Policy Act at 40 CFR 1503.3 in addressing these points.

Dated: November 12, 1993.

Lee R. Belau,

Acting Forest Supervisor.

[FR Doc. 93–28367 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

Forest Legacy Program Implementation

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Forest Service will hold three listening sessions in the next month to receive comments on the Forest Legacy program. Those who participate are asked to comment on the adequacy of the current program guidelines and possible changes to the guidelines or the authorizing statute, which is subject to reauthorization in 1995. The sessions will be chaired by the Forest Service and facilitated by staff from American Forests, a non-profit forestry organization.

DATES: The meetings will be held November 30, December 6, and December 13, 1993.

ADDRESSES: The meetings will be held at the following times and locations:

November 30—9:30 a.m. to 4:30 p.m., American Forests, 1516 P Street, NW., Washington, DC.

December 6—9 a.m. to 3:30 p.m., Society for the Protection of New Hampshire Forests, 54 Portsmouth Street, Concord, NH.

December 13—9 a.m. to 3:30 p.m., Sacramento Tree Foundation, 201 Lathrop Way, Suite F, Sacramento, CA 95815.

Those who wish to submit written comments in lieu of attending a listening session should submit them to: Director, Cooperative Forestry, Forest Service, USDA, P.O. Box 96090, Washington, DC 20090–6090.

FOR FURTHER INFORMATION CONTACT: Ted Beauvais, Forest Legacy Program Leader, Cooperative Forestry, Forest Service, USDA, Washington, DC 20090–6090, (202) 205–1190, FAX (202) 205–1271.

Dated: November 19, 1993.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 93–28399 Filed 11–17–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Tennessee Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission On Civil Rights, that a meeting of the Tennessee Advisory Committee to the Commission will convene at 1 p.m. and adjourn at 5 p.m. on Thursday, December 9, 1993, and reconvene at 9 a.m. and adjourn at 12 p.m. on Friday, December 10, 1993, at the Days Inn-Vanderbilt, West End Room, 1800 West End Avenue, Nashville, Tennessee. The purpose of the meeting is to: (1) To discuss civil rights progress and/or problems in the State; (2) to discuss the status of the Commission and Advisory Committees; (3) to report on the current project, "Racial Tensions in Tennessee"; and (4) hear from local representatives on the SAC's next proposed project on the enforcement of Title VI in Tennessee.

Persons desiring additional information, or planning a presentation to the Committee, should contact Bobby D. Doctor, Director of the Southern Regional Office, 404–730–2476 (TDD 404–730–2481). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 10, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–28412 Filed 11–17–93; 8:45 am]

BILLING CODE 6335–01–P–M

DEPARTMENT OF COMMERCE

1994 Departmental Performance Review Board

Organization/Member/Type of Appointment, and Term Expiration

Chief of Staff and Chief Financial Officer and Assistant Secretary for Administration

General Counsel

Carol Darr, Deputy General Counsel (NC), 11/95

Barbara S. Fredericks, Assistant General Counsel for Administration (C), 11/95

Economics and Statistics Administration

Allan H. Young, Chief Statistician, Bureau of Economic Analysis (C), 11/95

O. Bryant Benton, Associate Director for Field Operations, Bureau of the Census (C), 11/95

Harry A. Scarr, Deputy Director, Bureau of the Census (C), 11/95

Frederick T. Knickerbocker, Executive Director (C), 11/95

Arnold A. Jackson, Acting Associate Director for Information Technology, Bureau of the Census (C), 11/95

Technology Administration

Kelly Carnes, Deputy Assistant Secretary for Technology Policy (NC), 11/95

Joan Rosenblatt, Director, Computing & Applied Mathematics Laboratory (NIST) (C), 11/94

Guy W. Chamberlain, Director of Administration (NIST) (C), 11/94

Donald Johnson, Director, NTIS (C), 11/94

George A. Sinnott, Director for International and Academic Affairs (NIST) (C), 11/95

John C. Williams, Director, Office of Technology Policy (C), 11/95

National Telecommunications and Information Administration

Michele C. Farquhar, Director, Office of Policy Coordination and Management (NC), 11/95

William F. Maher, Jr., Associate Administrator, Office of Policy Analysis and Development (C), 11/95

Economic Development Administration

John E. Corrigan, Atlantic Regional Director (C), 11/94

International Trade Administration

Barbara Stafford, Deputy Assistant Secretary for Investigations, Import Administration (NC), 11/95

Peter A. Cashman, Director, Office of the Pacific Basin, International Economic Policy (C), 11/95

Holly A. Kuga, Director, Office of Agreements Compliance, Import (C), 11/94

Daniel J. McLaughlin, Deputy Assistant Secretary for Domestic Operations, U.S. and Foreign Commerce Service (NC), 11/95

Henry Misisco, Acting Deputy Assistant Secretary for Basic Industries, Trade Development (C), 11/95

J. Hayden Boyd, Director, Office of Consumer Goods, Trade Development (C), 11/95

National Oceanic and Atmospheric Administration

Diana H. Josephson, Deputy Under Secretary for Oceans and Atmosphere (NC), 11/95

Margaret F. Hayes, Assistant General Counsel for Fisheries, Office of General Counsel (C), 11/95

Lois J. Gajdys, Chief, Management and Budget Office, NWS (C), 11/95

Michael P. Sissenwine, Senior Scientist for Fisheries, NMFS (C), 11/95

Alan R. Thomas, Deputy Assistant Administrator for laboratories, Oceanic and Atmospheric Research (C), 11/95

Melbourne G. Briscoe, Director, Office of Ocean and Earth Sciences, National Ocean Service (C), 11/95

Patent and Trademark Office

Robert M. Anderson, Deputy Assistant Commissioner for Trademarks (C), 11/95

Edward P. Kazenske, Executive Assistant to the Commissioner and Director of Interdisciplinary Programs (C), 11/95

Boyd L. Alexander, Deputy Assistant Commissioner for Information Systems (C), 11/94

Bureau of Export Administration

Sue Eckert, Deputy Assistant Secretary for Planning (NC), 11/95

Frank Deliberti, Director of Export Enforcement (C), 11/95

Robert F. Kugelman, Director of Administration (C), 11/95

Dated: November 5, 1993.

Marcia P. Kirksey,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 93–28324 Filed 11–17–93; 8:54 am]

BILLING CODE 3510–BS–M

Bureau of Export Administration

Action Affecting Export Privileges; Ali Reza Foyuzi Yousefi; Order Denying Permission To Apply for or Use Export Licenses

In the Matter of: Ali Reza Foyuzi Yousefi with addresses at P.O. Box 1341, Tajresh, Tehran, Iran 19395 and 38 Firouzkh, Tajresh, Tehran, Iran.

On July 26, 1989, Ali Reza Foyuzi Yousefi (hereinafter referred to as "Yousefi") was convicted in the U.S. District Court for the District of South Carolina of, among other crimes, one count of violating section 38 of the Arms Export Control Act (22 U.S.C.A. 2778 (1990 and Supp. 1993)) ("AECA"), by exporting a cathode assembly for a Varian and Associates VA–868A klystron tube from the United States to Switzerland without obtaining the required export license or written approval from the U.S. Department of State. Section 11(h) of the Export Administration Act of 1979, as amended (50 U.S.C.A. 2401–2420 (1991, Supp. 1993, and Pub. L. 103–10, March 27, 1993)) ("EAA"), provides that, at the discretion of the Secretary of Commerce,[1] no person convicted of a violation of the AECA, or certain other provisions of the United States Code, shall be eligible to apply for or use any export license issued pursuant to, or provided by, the EAA or the Export Administration Regulations (currently codified at 15 CFR parts 768–799 (1993)) ("the Regulations"), for a period of up to 10 years from the date of the conviction. In addition, any export license issued pursuant to the EAA in which such a person had any interest at the time of his conviction may be revoked.

Pursuant to §§ 770.15 and 772.1(g) of the Regulations, upon notification that a person has been convicted of violating the AECA, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, shall determine whether to deny that person permission to apply for or use any export license issued pursuant to, or provided by, the EAA and the Regulations and shall also determine whether to revoke any export license previously issued to such a person. Having received notice of Yousefi's conviction for violating section 38 of the AECA, and following consultations with the Director, Office of Export Enforcement, I have decided to deny Yousefi permission to apply for or use any export license, including any general license, issued pursuant to, or provided by, the EAA and the Regulations, for a period of 10 years from the date of his conviction. The 10-year period ends on July 26, 1999. I have also decided to revoke all export licenses issued pursuant to the EAA in which Yousefi had an interest at the time of his conviction.

Accordingly, *it is hereby ordered:*

I. All outstanding individual validated licenses in which Yousefi appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Yousefi's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

II. Until July 26, 1999, Ali Reza Foyuzi Yousefi, with addresses at P.O. Box 1341, Tajresh, Tehran, Iran 19395, and at 38 Firouzkh, Tajresh, Tehran, Iran, hereby is denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction in the United States or abroad involving any commodity or technical data exported or to be exported from the United States, in whole or in part, and subject to the Regulations. Without limiting the generality of the foregoing, participation, either in the United States or abroad, shall include participation, directly or indirectly, in any manner or capacity: (i) As a party or as a representative of a party to any export license application submitted to the Department; (ii) in preparing or filing with the Department any export license application or request for reexport authorization, or any document to be submitted therewith; (iii) in obtaining from the Department or using any validated or general export license, reexport authorization or other export control document; (iv) in carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported or to be exported from the United States, and subject to the Regulations; and (v) in financing, forwarding, transporting, or other servicing of such commodities or technical data.

III. After notice and opportunity for comment as provided in § 770.15(h) of the Regulations, any person, firm, corporation, or business organization related to Yousefi by affiliation,

[1] Pursuant to appropriate delegations of authority that are reflected in the Regulations, the Director, Office of Export Licensing, in consultation with the Director, Office of Export Enforcement, exercises the authority granted to the Secretary by section 11(h) of the EAA.

ownership, control, or position of responsibility in the conduct of trade or related services may also be subject to the provisions of this Order.

IV. As provided in § 787.12(a) of the Regulations, without prior disclosure of the facts to and specific authorization of the Office of Export Licensing, in consultation with the Office of Export Enforcement, no person may directly or indirectly, in any manner or capacity: (i) Apply for, obtain, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to an export or reexport of commodities or technical data by, to, or for another person then subject to an order revoking or denying his export privileges or then excluded from practice before the Bureau of Export Administration; or (ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance, or otherwise service or participate: (a) In any transaction which may involve any commodity or technical data exported or to be exported from the United States; (b) in any reexport thereof; or (c) in any other transaction which is subject to the Export Administration Regulations, if the person denied export privileges may obtain any benefit or have any interest in, directly or indirectly, any of these transactions.

V. This Order is effective immediately and shall remain in effect until July 26, 1999.

VI. A copy of this Order shall be delivered to Yousefi. This Order shall be published in the **Federal Register**.

Dated: November 9, 1993.

Eileen M. Albanese,

Acting Director, Office of Export Licensing.

[FR Doc. 93–28413 Filed 11–17–93; 8:45 am]

BILLING CODE 351.–DT–M

International Trade Administration

[A–427–812]

Postponement of Final Determinations of Sales at Less Than Fair Value; Calcium Aluminate Cement and Cement Clinker From France and Calcium Aluminate Flux From France

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Jim Cunningham, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–4207.

POSTPONEMENTS: On October 27, 1993 (58 FR 58683, November 3, 1993), the Department of Commerce (the Department) issued an affirmative preliminary determination in the antidumping duty investigation of calcium aluminate (CA) cement and cement clinker from France. Also on October 27, 1993 (58 FR 58683, November 3, 1993), the Department issued a negative preliminary determination in the antidumping duty investigation of CA flux from France.

On October 29, 1993, the sole respondent, Lafarge Fondu International and Lafarge Calcium Aluminates Incorporated (collectively, Lafarge), requested that the Department postpone the final determination in the investigation of CA cement and cement clinker from France, in accordance with section 735(a)(2)(A) of the Tariff Act of 1930, as amended, (the Act). Lafarge made this request in order to prepare for verification. Also on October 29, 1993, the petitioner, Lehigh Portland Cement Company (Lehigh) requested that the Department postpone the final determination in the investigation of CA flux from France, in accordance with section 735(a)(2)(B) of the Act. Lehigh made this request in order to permit ample time for verification. We find no compelling reasons to deny these requests.

For the reasons above, we are postponing the above-referenced final determinations to the full extent authorized under section 735(a)(2) of the Act (19 U.S.C. 1673d(a)(2)). The final determinations will, therefore, be issued not later than March 18, 1994, which is 135 days after the date of publication of the preliminary determinations. Because of the postponement of the final determinations, the current hearing date of December 21, 1993, and the dates for the submission of case and rebuttal briefs have been changed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies now must be submitted to the Assistant Secretary for Import Administration no later than February 8, 1994, and rebuttal briefs no latter than February 15, 1994. We request that parties in these cases provide with briefs an executive summary of no more than two pages on the major issues to be addressed. Further, briefs should contain a table of authorities. Citations to Department determinations and court decisions should include the page number where cited information appears. In preparing the briefs, please begin each issue on a separate page. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to give interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearings will be held on February 18, 1994, at 9:30 a.m. at the U.S. Department of Commerce, room 4830, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice in the **Federal Register**. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act (19 U.S.C. 1673d(d)) and 19 CFR 353.20(b)(2).

Dated: November 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28423 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[A–588–810]

Mechanical Transfer Presses From Japan; Preliminary Results of Antidumping Administrative Review

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review: Mechanical transfer presses from Japan.

SUMMARY: In response to requests by the petitioners and two manufacturers/exporters, the Department of Commerce is conducting an administrative review of the antidumping duty order on mechanical transfer presses from Japan. The review covers four manufacturer/exporters of the subject merchandise to the United States during the period February 1, 1992, through January 31, 1993. The review indicates the existence of dumping margins during the period.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the differences between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Rebecca Trainor or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On February 17, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 8739) a notice of "Opportunity to Request an Administrative Review" of the antidumping duty order on mechanical transfer presses (MTPs) from Japan. On February 25, 1993, the petitioners, the Verson Division of Allied Products Corp., the United Autoworkers of America, and the United Steelworkers of America (AFL–CIO/CLC), requested a review of Ishikawajima-Harima Heavy Industries Co., Ltd. (IHI), and Hitachi-Zosen Corp. (Hitachi). Komatsu Ltd. (Komatsu), requested to be reviewed on February 25, 1993, and Aida Engineering, Ltd. (Aida), requested to be reviewed on February 26, 1993. All requests were in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Tariff Act), and § 353.22(a) of the Department's regulations. We published the notice of initiation of the antidumping duty administrative review on March 26, 1993 (58 FR 16397), covering the period February 1, 1992, through January 31, 1993.

Two of the four companies named in the initiation notice, IHI and Hitachi, had no shipments to the United States during the period of review. We analyzed the responses of Aida and Komatsu to the Department's antidumping questionnaire. The Department has now conducted the review in accordance with section 751 of the Tariff Act.

Scope of the Review

Imports covered by this review include MTPs currently classifiable under Harmonized Tariff Schedule (HTS) item numbers 8462.99.0035 and 8466.94.5040. The HTS numbers are provided for convenience and for U.S. Customs purposes. The written description remains dispositive.

The term "mechanical transfer presses" refers to automatic metal-forming machine tools with multiple die stations in which the workpiece is moved from station to station by a transfer mechanism designed as an integral part of the press and synchronized with the press action, whether imported as machines or parts suitable for use solely or principally with these machines. These presses may be imported assembled or unassembled.

This review covers sales by Aida and Komatsu of MTPs from Japan entered into the United States during the period February 1, 1992, through January 31, 1993. This review does not cover spare and replacement parts and accessories, which were determined to be outside the scope of the order. See "Final Scope Ruling on Spare and Replacement Parts," U.S. Department of Commerce, March 20, 1992. The review also does not cover Aida's FMX series cold forging press, with optional transfer feed unit, which is the subject of a pending scope ruling. If the Department determines that the FMX press is within the scope of the antidumping duty order, we may include sales of FMX presses by Aida in the final results of this administrative review.

Verification

We verified the questionnaire responses of Aida and Komatsu between September 28, 1993, and October 4, 1993, at the companies' offices in Japan.

United States Price

The Department used purchase price (PP), as defined in section 772 of the Tariff Act, in calculating U.S. price for Aida and Komatsu because all sales were made directly to unrelated parties prior to importation into the United States. U.S. price was based on packed, ex-factory, ex-godown, f.o.b. Japanese or U.S. port, or delivered prices, as appropriate. We made deductions, where applicable, for foreign inland freight and insurance, ocean freight, brokerage and handling, stevedoring charges, loading charges, marine insurance, U.S. Customs duties and fees, U.S. inland freight, and supervision of installation charges.

As a result of verification, we adjusted the reported costs in those instances where costs were not appropriately quantified or valued. For Aida, we revised the reported warranty expense to include costs discovered at verification which were not reported in Aida's questionnaire response. For Komatsu, we adjusted the charges for loading, ocean freight, and foreign inland freight, which had been incorrectly reported.

Foreign Market Value

We have preliminarily determined that models of MTPs sold in the home market are not comparable to the U.S. models sold during the period of review. This is due, in large part, to the custom-built nature of MTPs. Accordingly, the Department has used constructed value (CV), as defined in section 773(e) of the Tariff Act, to calculate foreign market value (FMV).

We calculated CV as the cost of materials and fabrication of the merchandise exported to the United States, plus general expenses, profit and packing. We used the respondents' CV data, except in the following instances where the costs were not appropriately quantified or valued:

For Aida:

1. We increased Aida's submitted cost information to account for its understatement of inputs provided by a related party supplier.

For Komatsu:

1. We adjusted the submitted general and administrative (G&A) expenses to exclude the gain on the sale of real estate.

2. We increased Komatsu's submitted cost information to account for its understatement of inputs provided by a related party supplier.

We made circumstance-of-sale adjustments to CV for credit, export proceeds insurance, advertising, warranty expenses and product liability insurance to reflect the differences between the home market and U.S. costs. We made an addition to CV for commissions on the U.S. sales, and subtracted from the CV the amount of home market selling expenses up to the amount of the U.S. commissions. No other adjustments were claimed or allowed.

Preliminary Results of Review

As a result of our review, the Department preliminarily determines that the following margins exist for the period February 1, 1992 through January 31, 1993:

Manufacturer/exporter	Margin (percent)
Aida Engineering, Ltd.	3.51
Komatsu Ltd.	0.00
Ishikawajima-Harima Heavy Ind.	[1] 0.00
Hitachi-Zosen Corporation	[2] 14.51

[1] No shipments during the period. Rate is from the last final results of review for this company.

[2] No shipments during the period. Rate is the "all others" rate from the less than fair value (LTFV) final determination, since this company was not specifically named in the final determination or a completed review.

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44

days after the date of publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between U.S. price and FMV may vary from the percentages stated above. The Department will issue appraisement instructions on each exporter directly to the Customs Service.

Furthermore, the following deposit requirements will be effective upon publication of the final results of this administrative review for all shipments of MTPs from Japan entered, or withdrawn from warehouse, for consumption on or after the publication date, as provided for by section 751(a)(1) of the Tariff Act: (1) The cash deposit rates for the reviewed companies will be those established in the final results of this administrative review; (2) for previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period; (3) if the exporter is not a firm covered in this review or the LTFV investigation, but the manufacturer is, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise; and (4) the cash deposit rate for all other manufacturers or exporters will be the "all others" rate established in the final notice of the LTFV investigation of this case, in accordance with the Court of International Trade's decisions in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal Mogul Corporation and the Torrington Company* v. *United States*, Slip Op. 93–83. The all others rate is 14.51 percent. These deposit requirements, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 8, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28424 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–427–009]

Nitrocellulose From France; Intent To Revoke Antidumping Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping duty order on nitrocellulose from France.

Domestic interested parties who object to this revocation must submit their comments in writing no later than December 17, 1993.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Dave Dirstine or Richard Rimlinger, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington DC 20230, telephone: (202) 482–4733.

SUPPLEMENTARY INFORMATION:

Background

On August 10, 1983, the Department of Commerce (the Department) published an antidumping duty order on nitrocellulose from France (48 FR 36303). The Department has not received a request to conduct an administrative review of this order for more than four consecutive annual anniversary months (August 3, 1993, was the fifth annual anniversary month).

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. On August 3, 1993, the Department published an "Opportunity to Request Administrative Review" for the period August 1, 1992 through July 31, 1993 (58 FR 41239). We received no request for review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke this order.

Opportunity to Object

No later than December 17, 1993, domestic interested parties, as defined in § 353.2(k)(3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke this antidumping duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

Since no interested party requested an administrative review by August 31, 1993, in accordance with the Department's notice of opportunity to request administrative review, if no domestic interested party objects to this intent to revoke by December 17, 1993, we shall conclude that the duty order is not longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 29, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–28425 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–DS–M

[C–508–806, C–201–816, C–307–810]

Initiation of Countervailing Duty Investigations: Phthalic Anhydride From Israel, Mexico and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: The following officials of the Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, Washington, DC 20230, may be contacted for further information: Gary Bettger (202) 482–2239 for Israel; Stephanie Hager (202) 482–5055 for Mexico; and Elizabeth Graham (202) 482–4105 for Venezuela.

The Petition

On October 22, 1993, we received petitions in proper form filed by Aristech Chemical Corporation; BASF Corporation; Koppers Industries, Inc.; and Stepan Company on behalf of the

United States phthalic anhydride (PA) industry. In accordance with 19 CFR 355.12, petitioners allege that manufacturers, producers, or exporters of the subject merchandise in Israel, Mexico and Venezuela receive subsidies within the meaning of section 701 of the Tariff Act of 1930, as amended (the Act).

Injury Test

Israel and Mexico are each a "country under the Agreement" within the meaning of section 701(b) of the Act. Title VII of the Act applies to these investigations. Accordingly, the U.S. International Trade Commission (ITC) must determine whether imports of the subject merchandise from Israel and Mexico materially injure, or threaten material injury to, a U.S. industry.

On August 31, 1990, Venezuela became a contracting party to the General Agreements on Tariffs and Trade (GATT). Since qualification as a "country under the Agreement" under section 701(b)(3) requires a finding that the GATT does not apply between the United States and the country from which the subject merchandise is imported, Venezuela is no longer eligible for treatment as a "country under the Agreement" within the meaning of section 701(b)(3). However, because Venezuela is a GATT contracting party and the merchandise within the scope of the petition which is imported under Harmonized Tariff Schedule of the United States (HTSUS) subheading 2917.35.00, enters duty-free, the ITC is required to determine whether, pursuant to section 303(a)(2) of the Act, imports of this merchandise from Venezuela materially injure, or threaten material injury to, a U.S. industry.

Standing

Petitioners have stated that they are interested parties, as defined in section 771(9)(C) of the Act, and that they have filed the petitions on behalf of the U.S. industry producing the merchandise subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, such party should file a written notification with the Assistant Secretary for Import Administration, in accordance with 19 CFR 355.31.

Exclusion Requests

Under the Department's regulations, any producer or reseller seeking exclusion from a potential countervailing duty order must submit its request for exclusion within 30 days of the date of publication of this notice. The procedures and requirements regarding the filing of such requests are contained in 19 CFR 355.14.

Scope of Investigation

For purposes of these investigations, PA is an aromatic synthetic organic chemical usually produced from a primary petrochemical called orthoxylene, although sometimes it is produced from napthalene. PA is predominately used in the production of plasticizers, unsaturated polyester resins, and alkyd resins, which in turn are generally used to produce plastics and paints. The subject PA is produced in two physical forms, molten and flaked.

The PA subject to these investigations is currently classified under subheading 2917.35.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

Allegations of Subsidies

Section 702(b) of the Act requires the Department to initiate a countervailing duty proceeding whenever an interested party files a petition, on behalf of an industry, that (1) alleges the elements necessary for the imposition of a duty under section 701(a), and (2) is accompanied by information reasonably available to the petitioner supporting the allegations.

Initiation of Investigations

The Department has examined the petitions on PA from Israel, Mexico and Venezuela and found that they comply with the requirements of section 702(b) of the Act. Therefore, in accordance with section 702 of the Act, we are initiating countervailing duty investigations to determine whether manufacturers, producers or exporters of PA receive countervailable subsidies. The following programs are included in our investigations.

Israel

1. Encouragement of Capital Investments Law (ECIL) of 1959
   a. Income tax exemptions
   b. Capital grants
   c. Research and development grants
2. Exchange Rate Risk Insurance Scheme (EIS)

Mexico

1. Preferential pricing of orthoxylene feedstock
2. Short-term pre-export financing from Bancomex
3. Short-term import financing from Bancomex
4. PITEX ("Duty-Free Imports for Companies that Export")
5. Accelerated depreciation allowance

Venezuela

1. Preferential pricing of orthoxylene feedstock
2. Export subsidies
   a. FINEXPO preferential short-term export loans
   b. FINEXPO preferential long-term export loans
   c. Excessive tariff drawbacks
3. Preferential tax exemptions under the 1966 Income Tax Law

We are not including the following programs which are alleged to be benefitting producers of the subject merchandise in Venezuela. (For a more detailed discussion, see the Memorandum to Barbara R. Stafford from Team dated November 12, 1993, on file in the Central Records Units of the Main Commerce Building.)

1. Preferential Finance Company of Venezuela (FIVCA) Loans

Petitioners alleged that Venezuelan PA producers received preferential FIVCA export financing. However, the preferential FIVCA loan program was determined in previous cases to be a domestic, not an export, program and petitioners have provided no evidence to the contrary. See e.g. Final Determination: Certain Electrical Conductor Aluminum Redraw Rod from Venezuela, 53 FR 24763 (June 30 1988). Furthermore, petitioners did not allege or provide any supporting information indicating that the program is specific or that the loans are provided on terms inconsistent with commercial considerations.

2. Provision of Preferential Pricing of Raw Materials for Exports

The program was found not to exist in Final Affirmative Countervailing Duty Determination and Countervailing Duty Order: Circular Welded Non-Alloy Steel Pipe from Venezuela 57 FR 42964 (Sept. 17, 1992). Petitioners have provided no evidence to the contrary.

3. Export Incentives

Petitioners describe a program that appears to be the Export Bond Program. The Export Bond Program was designed to provide partial compensation for the requirement that exporters convert foreign currency export earnings to bolivars at an official rate significantly lower than the free market rate. This program was previously found to be amended to cover only agricultural products (see Final Affirmative Countervailing Duty Determination: Ferrosilicon From Venezuela; and

Countervailing Duty Order for Certain Ferrosilicon From Venezuela, 58 FR 27539 (May 10, 1993)). Petitioners have not provided any evidence to the contrary.

4. Government Grants to Oxidor

Petitioners allege that PEQUIVEN (a state-owned orthoxylene supplier) provided funding to Oxidor. Petitioners basis for this allegation is a June 2, 1992 General System of Preference (GSP) petition, in which Aristech, a petitioning company, noted that PEQUIVEN had "provided significant funding to at least one Venezuelan PA producer (Oxidor)." Petitioners have provided no information that this funding is provided pursuant to a specific government program. In addition, petitioners have made no arguments regarding the specificity of the funding.

ITC Notification

Pursuant to section 702(d) of the Act, we have notified the ITC of these initiations.

Preliminary Determinations by the ITC

The ITC will determine by December 6, 1993, whether there is a reasonable indication that a United States industry is being materially injured, or threatened with material injury, by reason of PA imports from Israel, Mexico and Venezuela. Any ITC determination which is negative will result in the respective investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to 702(c)(2) of the Act and 19 CFR 355.13(b).

Dated: November 12, 1993.

Joseph Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28428 Filed 11–17–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–351–822, A–437–803, A–508–805, A–201–815 and A–307–809]

Initiation of Antidumping Duty Investigations: Phthalic Anhydride From Brazil, Hungary, Israel, Mexico and Venezuela

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: V. Irene Darzenta, or Kate Johnson, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–6320, or 482–4929.

INITIATION OF INVESTIGATIONS:

The Petition

On October 22, 1993, we received a petition filed in proper form by Aristech Chemical Corporation, BASF Corporation, Koppers Industries, Inc., and Stepan Company (petitioners). In accordance with 19 CFR 353.12, the petitioners allege that imports of phthalic anhydride (PA) from Brazil, Hungary, Israel, Mexico and Venezuela are being, or are likely to be, sold in the United States at less than fair value within the meaning of section 731 of the Tariff Act of 1930, as amended (the Act), and that these imports are materially injuring, or threaten material injury to, a U.S. industry.

The petitioners have stated that they have standing to file the petition because they are interested parties, as defined under section 771(9)(C) of the Act, and because the petition was filed on behalf of the U.S. industry producing the product subject to these investigations. If any interested party, as described under paragraphs (C), (D), (E), or (F) of section 771(9) of the Act, wishes to register support for, or opposition to, this petition, it should file a written notification with the Assistant Secretary for Import Administration.

Under the Department's regulations, any producer or reseller seeking exclusion from a potential antidumping duty order must submit its request for exclusion within 30 days of the date of the publication of this notice. The procedures and requirements are contained in 19 CFR 353.14.

Period of Investigation

The period of investigation is May 1, 1993, to October 31, 1993.

Scope of Investigations

For purposes of these investigations, phthalic anhydride (PA) is an aromatic synthetic organic chemical usually produced from a primary petrochemical called orthoxylene, although it is sometimes produced from napthalene. PA is predominantly used in the production of plasticizers, unsaturated polyester resins, and alkyd resins, which in turn are generally used to produce plastics and paints. The subject PA is produced in two physical forms, molten and flaked.

The PA subject to these investigations is currently classifiable under subheading 2917.35.00 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheading is provided for convenience and customs purposes, our written description of the scope of these investigations is dispositive.

United States Price and Foreign Market Value

Brazil

Petitioners based United States Price (USP) on 1993 monthly U.S. Customs values of imported Brazilian PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners based foreign market value (FMV) on both prices and constructed value (CV). Petitioners' prices are not actual price quotes, but rather are annualized dollar figures. Accordingly, we believe petitioners' calculation based on CV is the most appropriate methodology for purposes of initiation. In calculating CV, petitioners based the cost on the U.S. industry experience adjusted for known 1993 differences in Brazilian production expenses. Petitioners used the statutory minimum of 10 and eight percent for selling, general and administrative expenses (SG&A) and profit, respectively. We made no adjustments to petitioners' calculations.

The dumping margin for PA from Brazil based on a comparison of USP to FMV alleged by petitioners is 65 percent.

Hungary

Petitioners based USP on 1993 monthly U.S. Customs values of imported Hungarian PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners, alleging that Hungary is a non-market economy (NME) country, based FMV on CV using U.S. factors of production valued using costs from Brazil. Petitioners explained that they approached numerous sources to try to obtain Hungarian factors of production, but were unable to obtain this information. Consequently, petitioners used U.S. factors of production, an approach that they claimed is more conservative because the U.S. production facility used as a basis for comparison has greater capacity utilization and is more efficient than the Hungarian producer.

The range of dumping margins of PA from Hungary based on a comparison of

USP to FMV alleged by petitioners is 43–74 percent.

Israel

Petitioners based USP on 1993 monthly U.S. Customs values of imported Israeli PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners based FMV on a home market price as well as on CV. For purposes of initiation, we have accepted petitioners' price analysis, which is based on an Israeli PA producer's ex-factory price, exclusive of taxes. By accepting petitioners' price calculations, we have not evaluated the CV.

The dumping margin of PA from Israel based on a comparison of USP to FMV alleged by petitioners is 22 percent.

Mexico

Petitioners based USP on 1993 monthly U.S. Customs values of imported Mexican PA. These customs values are exclusive of transportation, insurance, and import duties. No adjustments were made to USP.

Petitioners based FMV on home market prices as well as on CV. For purposes of initiation, we have accepted petitioners' price analysis based on average monthly, ex-factory, net tax prices charged to Mexican customers, as obtained from a confidential industry source. By accepting petitioners' price calculations, we have not evaluated the CV.

The range of dumping margins of PA from Mexico based on a comparison of USP to FMV alleged by petitioners is 30–40 percent.

Venezuela

Petitioners based USP on monthly U.S. Customs values of imported Venezuelan PA. These customs values are exclusive of transportation, insurance, import duties, and other costs associated with shipments to the United States. Petitioners made no adjustments to USP.

Petitioners based FMV on CV because they were unable to obtain Venezuelan PA price information. Petitioners calculated CV based on U.S. industry experience, adjusted for known differences between the U.S. and Venezuelan manufacturing process. Petitioner used the statutory minimum of 10 and eight percent for SG&A, and profit, respectively. We made no adjustments to petitioners' calculations.

The range of dumping margins for PA from Venezuela based on a comparison of USP to FMV alleged by petitioners is 28–52 percent.

Initiation of Investigations

We have examined the petition on PA from Brazil, Hungary, Israel, Mexico, and Venezuela, and have found that the petition meets the requirements of section 732(b) of the Act. Therefore, we are initiating antidumping duty investigations to determine whether imports of PA from Brazil, Hungary, Israel, Mexico, and Venezuela are being, or are likely to be, sold in the United States at less than fair value.

Preliminary Determination by the International Trade Commission

The International Trade Commission (ITC) will determine by December 6, 1993, whether there is a reasonable indication that imports of PA from Brazil, Hungary, Israel, Mexico and Venezuela are materially injuring, or threaten material injury to, a U.S. industry. A negative ITC determination on any one of these investigations will result in that investigation being terminated; otherwise, the investigations will proceed according to statutory and regulatory time limits.

This notice is published pursuant to section 732(c)(2) of the Act and 19 CFR 353.13(b).

Dated: November 12, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28426 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–831–803, A–832–803, A–822–803, A–833–803, A–835–803, A–841–803, A–842–803, A–843–803, A–844–803, A–447–803, A–449–803, A–451–803]

Titanium Sponge From Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan; Intent To Revoke Antidumping Findings

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke antidumping findings.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the antidumping findings on titanium sponge from Armenia, Azerbaijan, Belarus, Estonia, Georgia, Kyrgyzstan, Latvia, Lithuania, Moldova, Tajikistan, Turkmenistan, and Uzbekistan.

Domestic interested parties who object to this revocation must submit their comments in writing no later than December 17, 1993.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: David Genovese or Pamela Woods, Office of Antidumping Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230, telephone: (202) 482–5253.

SUPPLEMENTARY INFORMATION:

Background

On August 28, 1968, the Treasury Department published an antidumping finding on titanium sponge from the U.S.S.R. (33 FR 12138). On August 12, 1992, the finding was transferred to the individual states when the Department of Commerce transferred the antidumping finding on titanium sponge from the U.S.S.R. to the Commonwealth of Independent States and the Baltic States (57 FR 36070). The Department of Commerce has not received a request to conduct an administrative review of these findings for more than four consecutive annual anniversary months (August 1993 was the fifth annual anniversary month).

In accordance with 19 CFR 353.25(d)(4)(iii), the Secretary of Commerce will conclude that a finding is no longer of interest to interested parties and will revoke the finding if no interested party objects to revocation or requests an administrative review by the last day of the fifth anniversary month. On August 3, 1993, the Department published an "Opportunity to Request Administrative Review" for the period August 1, 1992 through July 31, 1993 (58 FR 41239). We received no request for review by the last day of the fifth anniversary month. Accordingly, as required by 19 CFR 353.25(d)(4)(i), we are notifying the public of our intent to revoke these findings.

Opportunity To Object

No later than December 17, 1993, domestic interested parties, as defined in section 353.2(k)(3); (4); (5); and (6) of the Department's regulations, may object to the Department's intent to revoke these antidumping findings.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230.

Since no interested party requested an administrative review by August 31, 1993, in accordance with the Department's notice of opportunity to request administrative review, if no domestic interested party objects to this

intent to revoke on or before December 17, 1993, we shall conclude that the findings are no longer of interest to interested parties and shall proceed with revocation.

This notice is in accordance with 19 CFR 353.25(d).

Dated: October 29, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-28427 Filed 11-17-93; 8:45 am]

BILLING CODE 3510-DS-M

National Institute of Standards and Technology

[Docket No. 931061-3261]

Standard Reference Data Grants and Cooperative Agreements Program

AGENCY: National Institute of Standards and Technology, Commerce.

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform potential applicants that the Standard Reference Data Program (SRD) of the National Institute of Standards and Technology (NIST) is continuing its program for grants and cooperative agreements to provide critically evaluated data to the scientific and engineering communities. For the next two years, the areas of priority are thermochemistry and molecular spectroscopy, although proposals in other areas will be considered. Typical data projects are supported on the order of $15,000 to $30,000 in annual funding. It is anticipated that in FY 1994 a total of $100,000 will be available and that four to six projects will be selected. Similar funds are expected for FY 1995.

DATES: Proposals must be received no later than the close of business December 20, 1993.

ADDRESSES: Applicants must submit one signed original plus two (2) copies of the proposal along with the Grant Application, revised Standard Form 424 (Rev. 4/88) to: Standard Reference Data Program, Attention: Mr. Malcolm W. Chase, National Institute of Standards and Technology, A323 Physics Building, Gaithersburg, MD 20899-0001.

FOR FURTHER INFORMATION CONTACT: Dr. Malcolm W. Chase—(301) 975-2200.

SUPPLEMENTARY INFORMATION: As authorized by section 16 of the Act of March 3, 1901, as amended (15 U.S.C. 290) and by the Standard Reference Data Act of 1968 (Public Law 90-396), the NIST Standard Reference Data (SRD) Program conducts directly and through grants and cooperative agreements a program to collect, evaluate, and disseminate scientific and technical data. The emphasis of the program is on data evaluation, that is, the assessment of the quality and reliability of data by examining their documentation, their adherence to known scientific and engineering laws and principles, and their comparison to related data. Academic institutions, non-Federal agencies, and independent and industrial laboratories are eligible to apply. The program is listed in the Catalog of Federal Domestic Assistance under the following name and number: National Standard Reference Data System; 11.603.

Because of the high cost of data programs, the Standard Reference Data Act attempts to maximize cooperation among all interested groups. Many SRD projects involve cooperative efforts to maximize the output from limited resources. Matching funds are not required for these awards.

Grants awarded under the SRD program will generally provide financial assistance to the recipient without substantial NIST involvement in the data project. Cooperative Agreements awarded for SRD data projects will generally involve a close working relationship between a group of NIST experts and the recipient and, in some cases, financial assistance. However, any financial assistance whether for Grants or for Cooperative Agreements, will be provided on a yearly basis.

The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The National Institute of Standards and Technology reserves a royalty-free, nonexclusive and irrevocable license to reproduce, publish, or otherwise use, and to authorize others to use for Federal Government purposes, copyrights developed or purchased by a recipient under an SRD grant.

Program Objectives

Standard Reference Data is responsible for program management and coordination of the National Standard Reference Data System (NSRDS). The major aim of the program is to provide critically evaluated numerical data to the scientific and technical community in a convenient and accessible form. Other outputs, such as annotated bibliographies, data collections, and procedures for computerized handling of data are also made available. A second aim is to provide feedback into experimental and theoretical programs to help raise the general standards of measurement and provide guidance as to the relative needs of various data. By communicating the experience gained in evaluating the world output of data in the physical sciences, NSRDS helps to advance the level of techniques applied to research and development and improve the reliability of physical measurements. A third aim is to contribute to the U.S. competitive edge through providing technical efforts with the most recent and reliable reference data on which to base design of processes and applications.

The technical scope of the program gives primary emphasis to well-defined physical and chemical properties of substances and systems which are well characterized. Also included are engineering materials (alloys, ceramics, etc.) whose composition may vary only within clearly stated ranges. While these definitions leave many borderline cases, the overall intent is to concentrate the effort on intrinsic properties that are clearly defined in terms of accepted physical theory and substances whose composition and history are so well known as to justify evaluation of the data. Biological properties and data relating to large natural systems (e.g., the atmosphere, the oceans) also fall outside the program.

For the upcoming 2-year period, SRD is interested in funding data evaluation projects. Although the major emphasis is in thermodynamics and spectroscopy, SRD will entertain other subject areas.

a. Thermodynamic Data: Evaluated thermochemistry and thermophysics data for inorganic and organic substances

b. Molecular Spectroscopy: Evaluated spectroscopic data for diatomic and polyatomic molecules, with emphasis on homonuclear molecules

Proposal Review Process

All proposals will be assigned to the appropriate SRD Program Manager for the above programs for review, including internal and external peer review, and recommendations on funding. The following items will be taken into consideration in the Program Manager's recommendation to the Program Chief:

1. The existence or planned existence of a NIST data activity in this area (see Program Objectives above).

2. Previous data experience of the applicant.

3. The importance to the U.S. industrial scientific and engineering community.

4. Technical merit of the proposal.

Applicants should allow up to 60 days' processing time. Proposals will be evaluated for technical merit by at least three professionals from NIST, the

Standard Reference Data Program, or technical experts from other government agencies or the community at large.

Evaluation Criteria

a. Need for data activity	0–20 points.
b. Complementary to existing or planned NIST data activity.	0–10 points.
c. Related to priority list for SRD FY 94 program.	0–40 points.
d. Experience of proposing group with respect to.	
i. previous data evaluation—general.	0–30 points.
ii. previous data evaluation in this area.	0–30 points.
iii. experience in computerized databases—general.	0–10 points.
iv. experience in computerized databases in this area.	0–20 points.
e. Feasibility of completing project in proposed time.	0–20 points.
f. Technical merit of the proposal.	0–25 points.
Total	0–205 points.

All proposals will be evaluated and given numeric ratings. Awards will be made based on the high score and availability of funds.

Paperwork Reduction Act

The SF–424 mentioned in this notice is subject to the requirements of the Paperwork Reduction Act and has been approved by OMB under Control No. 0348–0006.

Additional Requirements

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying, and the following explanation is provided:

1. Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies;

2. Drug-Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies;

3. Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification form prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000, and loans and loan guarantees for more than $150,000, or the single family maximum mortgage limit for affected programs, whichever is greater; and

Anti-Lobbying Disclosure

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B;

Lower Tier Certifications

Notification must be provided that recipients shall require applicants/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

Applicants are hereby notified that if they incur any costs prior to an award being made they do so solely at their own risk of not being reimbursed by the Government. Applicants are also notified that notwithstanding any verbal assurance that they may have received, there is no obligation on the part of DOC to cover pre-award costs.

If an application is accepted for funding, DOC has no obligation to provide any additional future funding in connection with that award. Renewal of an award, increased funding, or extending the period of performance is at the total discretion of NIST.

Unsatisfactory performance under prior Federal awards may result in an application not being considered for funding.

All for-profit and nonprofit applicants will be subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing criminal charges such as fraud, theft, perjury, or other matters which significantly reflect on the applicant's management, honesty, or financial integrity.

A false statement on an application is grounds for denial or termination of funds and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either:

1. The delinquent account is paid in full,

2. A negotiated repayment schedule is established and at least one payment is received, or

3. Other arrangements satisfactory to DOC are made.

Awards under the Standard Reference Data Program shall be subject to all applicable Federal laws and Federal and Departmental regulations, policies, and procedures applicable to financial assistance awards.

Applicants are reminded of the applicability of Executive Order 12372, "Intergovernmental Review of Federal Programs."

Dated: November 10, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–28429 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–13–M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of application to modify permit no. 810 (P524).

SUMMARY: Notice is hereby given that the University of Hawaii at Manoa, 96–043 Ala Ike, Pearl City, HI 96782, has requested a modification to Permit No. 810.

ADDRESSES: The modification request and related documents are available for review upon written request or by appointment in the following office(s):

Permits Division, Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Sliver Spring, MD 20910 (301/713–2289);

Director, Southwest Region, NMFS, 501 West Ocean Blvd., Suite 4200, Long Beach, CA 90802–4213; and

Coordinator, Pacific Area Office, NMFS, 2570 Dole Street, Room 106, Honolulu, HI 96822–2396.

Written data or views, or requests for a public hearing on this request should be submitted to the Assistant Administrator for Fisheries, NMFS,

NOAA, U.S. Department of Commerce, 1315 East-West Highway, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular modification request would be appropriate.

Concurrent with the publication of this notice in the **Federal Register**, the Secretary of Commerce is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

SUPPLEMENTARY INFORMATION: The subject modification to Permit No. 810, issued on January 12, 1993 (58 FR 5360) is requested under the authority of the Marine Mammal Protection Act of 1972, as amended (16 U.S.C. 1361 *et seq.*), the Regulations Governing and Taking and Importing of Marine Mammals (50 CFR part 216), the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*) and the regulations governing the taking, importing, and exporting of endangered fish and wildlife (50 CFR part 222).

Permit No. 810 authorizes the Permit Holder to: conduct scientific research on humpback whales (*Megaptera novaenangliae*) over a 5-year period. The Permit Holder requests that the Permit be modified to include Hawaiian monk seals (*Monachus schauinslandi*) and several odontocete species indigenous to Hawaii.

Dated: November 10, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–28409 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–22–M

Coastal Migratory Pelagic Resources of the Gulf of Mexico and South Atlantic; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearing.

SUMMARY: The South Atlantic Fishery Management Council (Council) will convene a public hearing on draft Amendment 7 to the Fishery Management Plan for the Coastal Migratory Pelagic Resources for the Gulf of Mexico and South Atlantic. Amendment 7 proposes to: (1) Suballocate the Eastern zone commercial quota for Gulf group king mackerel equally between the east and west coasts of Florida (the North area and the South/West area are separated at the boundary between Florida's Dade and Monroe counties); and (2) further suballocate the South/West area quota between net and troll fishermen. The Council is also considering an endorsement to the king mackerel vessel permit for the Eastern zone, that would allow fishermen to fish in either the northern area or the southern area each season, but not in both.

DATES: Written comments on the proposed action must be received by January 3, 1994. The hearing is scheduled for Tuesday, November 30, 1993, from 7 p.m., to 10 p.m.

ADDRESSES: Comments should be addressed to Robert K. Mahood, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, South Carolina 29407–4699. The hearing will be held at the Fort Pierce Civic Center, room 101, 2300 Virginia Avenue, Fort Pierce, Florida (407–468–1415).

FOR FURTHER INFORMATION CONTACT: Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, (803–571–4366).

SUPPLEMENTARY INFORMATION: The hearing is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aides should be directed to Carrie Knight at the above Council address by November 22, 1993.

Dated: November 12, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28359 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–22–M

National Weather Service, Modernization Transition Committee; Meeting

Time and date: December 8, 1993 from 8:30–11:30 a.m. and 1–4 p.m.; and December 9, 1993 from 9 a.m.–12 noon and 1–2 p.m.

Place: This meeting will take place at the Quality Hotel, 8727 Colesville Road, Silver Spring, Maryland 20910.

Status: The meeting will be open to the public. The last 30 minutes of the last day will be set aside for oral comments or questions from the public. Approximately 20 seats will be available on a first-come first-served basis for the public.

Matters to be considered: This meeting will be to familiarize Committee members with the National Weather Service and its modernization activities and to initiate consultation on the agenda items noted below. Action items will be addressed at the second meeting of the Committee tentatively scheduled in January 1994. The meeting will cover: (1) the National Weather Service roles and responsibilities; (2) Modernization and Associated Restructuring (MMAR); (3) the role of the Committee; (4) Public Law 102–567; (5) the modernization criteria required by section 704 of Public Law 102–567 (initiate consultation); and (6) the National Implementation Plan (initiate consultation). The Chairman of the National Research Council's (NRC) National Weather Service Modernization Committee will address the Modernization Transition Committee on the role of the NRC's Modernization Committee and their report on modernization criteria that was issued in July, 1993.

Contact person for more information: Mr. Senator Raygor, National Weather Service, Transition Program Office, 1325 East-West Highway, SSMC2, Silver Spring, MD 20910 telephone: 301–713–0391.

Dated: November 12, 1993.

Elbert W. Friday,

Assistant Administrator for Weather Services.

[FR Doc. 93–28360 Filed 11–17–93; 8:45 am]

BILLING CODE 3510–12–M

COMMODITY FUTURES TRADING COMMISSION

Chicago Board of Trade Proposed International Edible Oils Index Futures Contract

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice of availability of the terms and conditions of proposed commodity futures contract.

SUMMARY: The Chicago Board of Trade (CBT or Exchange) has applied for designation as a contract market in the international edible oils index futures contract. The Acting Director of the Division of Economic Analysis (Division) of the Commission, acting pursuant to the authority delegated by Commission Regulation 140.96, has determined that publication of the proposal for comment is in the public interest, will assist the Commission in considering the views of interested persons, and is consistent with the purposes of the Commodity Exchange Act.

DATES: Comments must be received on or before December 17, 1993.

ADDRESSES: Interested persons should submit their views and comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K

Street NW., Washington, DC 20581. Reference should be made to the CBT international edible oils index futures contract.

FOR FURTHER INFORMATION CONTACT: Please contact Fred Linse of the Division of Economic Analysis, Commodity Futures Trading Commission, 2033 K Street NW., Washington, DC 20581, telephone 202–254–7303.

SUPPLEMENTARY INFORMATION: Copies of the terms and conditions will be available for inspection at the Office of the Secretariat, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581. Copies of the terms and conditions can be obtained through the Office of the Secretariat by mail at the above address or by phone at (202) 254–6314.

Other materials submitted by the Exchange in support of the application for contract market designation may be available upon request pursuant to the Freedom of Information Act (5 U.S.C. 552) and the Commission's regulations thereunder (17 CFR part 145 (1987)), except to the extent they are entitled to confidential treatment as set forth in 17 CFR 145.5 and 145.9. Requests for copies of such materials should be made to the FOI, Privacy and Sunshine Act Compliance Staff of the Office of the Secretariat at the Commission's headquarters in accordance with 17 CFR 145.7 and 145.8.

Any person interested in submitting written data, views, or arguments on the proposed terms and conditions, or with respect to other materials submitted by the Exchange, should send such comments to Jean A. Webb, Secretary, Commodity Futures Trading Commission, 2033 K Street, NW., Washington, DC 20581 by the specified date.

Issued in Washington, DC, on November 12, 1993.

Blake Imel,

Acting Director.

[FR Doc. 93–28335 Filed 11–17–93; 8:45 am]

BILLING CODE 6351–01–M

Financial Products Advisory Committee

This is to give notice, pursuant to section 10(a) of the Federal Advisory Committee Act, 5 U.S.C. App. 2 section 10(a) and 41 CFR 101–6.1015(b), that the Commodity Futures Trading Commission's Financial Products Advisory Committee (FPAC) will conduct a public meeting in the Lower Level Hearing Room (B–1) at the Commission's Washington, DC headquarters located at 2033 K Street, NW., Washington, DC 20581, on December 2, 1993, beginning at 1:30 p.m. and lasting until 5 p.m. The agenda will consist of:

1. A briefing on the Commission's recently issued Study of Swaps and Off-Exchange Derivatives;
2. A panel discussion of regulators and industry representatives on issues relating to coordination of regulation of managed funds;
3. A briefing on the recent Treasury Department decision concerning the tax treatment of gains and losses from hedging;
4. Briefing by CFTC staff on current regulatory issues including recent litigation concerning application of the Treasury Amendment, recently promulgated rules on insider trading and update on development of risk assessment rules; and
5. Other items for Committee consideration; timing of next meeting; other Committee business.

The purpose of this meeting is to solicit the views of the Committee on these agenda matters. The Advisory Committee was created by the Commodity Futures Trading Commission for the purpose of advising the Commission on the assessment of issues concerning individuals and industries interested in or affected by financial markets regulated by the Commission. The purposes and objectives of the Advisory Committee are more fully set forth in the April 23, 1993 Charter of the Advisory Committee.

The meeting is open to the public. The Chairman of the Advisory Committee, Acting Chairman Sheila C. Bair, is empowered to conduct the meeting in a fashion that will, in her judgment, facilitate the orderly conduct of business. Any member of the public who wishes to file a written statement with the Advisory Committee should mail a copy of the statement to the attention of: the Commodity Futures Trading Commission Financial Products Advisory Committee, c/o Susan Milligan, 2033 K Street NW., Washington, DC 20581, before the meeting. Members of the public who wish to make oral statements should also inform Ms. Milligan in writing at the foregoing address at least three business days before the meeting. Reasonable provision will be made, if time permits, for an oral presentation of no more than five minutes each in duration.

Issued by the Commission in Washington, DC., on November 16, 1993.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 93–28517 Filed 11–17–93; 8:45 am]

BILLING CODE 6351–01–M

DEPARTMENT OF ENERGY

Proposed Finding of No Significant Impact—Construction and Operation of the Knolls Site Low Level Radioactive Material Processing Facility, Schenectady County, NY

AGENCY: Energy.

ACTION: Proposed finding of no significant impact.

SUMMARY: The Department of Energy (DOE) Office of Naval Reactors has prepared an Environmental Assessment of the proposed action to construct and operate the Knolls Site Low Level Radioactive Material Processing Facility. This facility will include equipment for the treatment, reclamation, and packaging for off-site disposal of radiologically controlled liquid and solid waste. The operations to be conducted are the same as those currently conducted in a portion of Building H2 at the Knolls Site. Building H2 is part of the former Separations Process Research Unit complex. This complex was built over forty years ago and was used in the early 1950's as a pilot-scale facility for investigating processes for separating fissionable isotopes from irradiated uranium. Moving current radioactive waste processing operations to a different location is necessary to make Building H2 available for decommissioning and removal.

The Environmental Assessment discusses alternatives to the proposed action and concludes that there are no alternatives to the proposed action that would accomplish the desired goal of continuing current waste processing operations at a location other than Building H2 but close to the locations where the waste is generated. The Environmental Assessment summarizes and references the extensive body of existing published reports which discuss the environmental performance of the Knolls Site, including the releases of radioactivity from the Site and the absence of environmental impact from Site operations. The Environmental Assessment discusses the fact that the operations and amounts of radioactivity processed will remain unchanged.

Naval Reactors provided a draft of this Environmental Assessment to New York State for review and comment. New York State did not have any comments.

Based on the analysis in the Environmental Assessment, Naval Reactors considers that the proposed action is not a major Federal action significantly affecting the quality of the human environment, within the meaning of the National Environmental

Policy Act (NEPA) of 1969, (42 U.S.C. 4321 et seq.). Therefore, Naval Reactors proposes to issue a Finding of No Significant Impact. In accordance with the Council on Environmental Quality regulations which allow agencies to determine circumstances under which public review of proposed Findings are appropriate, Naval Reactors is making the proposed Finding and the Environmental Assessment available for public comment for a period of 30 days following the date of **Federal Register** publication of this notice. Comments postmarked within the 30 day public comment period will be considered by Naval Reactors prior to a final determination whether to issue the Finding of No Significant Impact or to prepare an Environmental Impact Statement for the proposed action.

DATES: Comments on the proposed Finding of No Significant Impact may be sent to Mr. Richard A. Guida, Associate Director for Regulatory Affairs, Office of Naval Reactors at the address indicated below. Comments must be postmarked by December 17, 1993 to ensure consideration.

FOR FURTHER INFORMATION CONTACT: Persons requesting additional information on the Finding of No Significant Impact for construction and operation of the Knolls Site Low Level Radioactive Material Processing Facility, the National Environmental Policy Act process associated with this proposed action, or wishing a copy of the Environmental Assessment should contact Ms. Lisa Megargle, U.S. Department of Energy, Office of Naval Reactors (NE–60), Washington, DC, 20585, (703) 603–6126.

SUPPLEMENTARY INFORMATION:

Background

The Naval Nuclear Propulsion Program is a joint Navy/DOE program established in Presidential Executive Order 12344 (permanently enacted by Public Law 98–525, 42 U.S.Code 7158). The Office of Naval Reactors is the Naval Nuclear Propulsion Program organization within the DOE. Under the law, Naval Reactors is responsible for all matters pertaining to Naval nuclear propulsion including "* * * research, development, design, acquisition, specification, construction, inspection, installation, certification, testing, overhaul, refueling, operating practices and procedures, maintenance, supply support, and ultimate disposition of naval nuclear propulsion plants * * *" and "* * * the safety of reactors and associated naval nuclear propulsion plants, and control of radiation and radioactivity associated with naval nuclear propulsion activities * * *." Naval Reactors is responsible for the Knolls Atomic Power Laboratory, which conducts research and development work on improved nuclear propulsion plants for U.S. Navy warships.

Proposed Action

The proposed action is to construct and operate the Knolls Site Low Level Radioactive Material Processing Facility. This facility will include equipment for the treatment, reclamation, and packaging for off-site disposal of radiologically controlled liquid and solid waste. The operations to be conducted are the same as those currently conducted in a portion of Building H2 at the Knolls Site. Building H2 is part of the former Separations Process Research Unit complex. This complex was built over forty years ago and was used in the early 1950's as a pilot-scale facility for investigating processes for separating fissionable isotopes from irradiated uranium. Moving current radioactive waste processing operations to a different location is necessary to make Building H2 available for decommissioning and removal.

Alternatives Considered

There are no alternatives to the proposed action that would accomplish the desired goal of continuing current waste processing operations at a location other than Building H2 but close to the locations where the waste is generated.

Environmental Considerations

An extensive body of existing environmental reports document the environmental performance of the Knolls Site, including current waste processing operations at the Site. Radiation exposure to any member of the public due to the Knolls Site is too small to be measurable. The total annual radiation exposure to the Site workforce is less than the amount allowed by Federal regulations for a single worker. Releases of airborne radionuclides result in off-site doses that are less than one percent of the U.S. Environmental Protection Agency standard. The General Accounting Office recently completed a thorough fourteen month review of environment, health, and safety matters (including reactor safety) at DOE sites under the cognizance of Naval Reactors, including the Knolls Site. The General Accounting Office reported to Congress that they found no significant deficiencies. Since operations to be conducted in the proposed facility are the same as those currently conducted in Building H2, the proposed action would result in no change from the current insignificant environmental impacts from the Knolls Site.

Proposed Determination

Based on the information and analysis in the Environmental Assessment, Naval Reactors considers the proposed action does not constitute a major Federal action significantly affecting the quality of the human environment, within the meaning of NEPA. Naval Reactors proposes to issue a Finding of No Significant Impact and will make a final determination following a 30 day public review period.

Issued at Arlington, Virginia this 4th day of November 1993.

B. DeMars

Deputy Assistant Secretary for Naval Reactors.

[FR Doc. 93–28407 Filed 11–17–93; 8:45 am]

BILLING CODE 5450–01–P

Federal Energy Regulatory Commission

[Docket No. JD94–00822T Texas–153]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 12, 1993.

Take notice that on November 1, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to section 271.703(c)(3) of the Commission's regulations, that the Travis Peak Formation, Bear Grass (Travis Peak), underlying certain portions of Freestone and Leon Counties, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 5 and consists of portions of the following surveys:

Isaac Connelly Survey, Abstract A–117
Isaac Connelly Survey, Abstract A–1152
Getrudis Diaz Survey, Abstract A–178

The notice of determination also contains Texas' findings that the referenced portion of the Travis Peak meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and

275.204, within 20 days after the date this notice is issued by the Commission.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28350 Filed 11–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–45–005]

ANR Pipeline Co.; Report of Refunds

November 12, 1993.

Take notice that on July 29, 1993, ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of a $484,907.84 refund made to High Island Offshore Systems (HIOS) on July 9, 1993. ANR states that the refund is in compliance with section 1. of a July 28, 1992, Stipulation and Agreement approved by the Commission on October 26, 1992. The refund covers services ANR provided for HIOS under Contract X–64 at Grand Chenier from January 1, 1992 through December 31, 1992.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28356 Filed 11–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–39–003]

ANR Pipeline Co.; Notice of Report of Refunds

November 12, 1993.

Take notice that on October 28, 1993, ANR Pipeline Company (ANR) tendered for filing with the Federal Energy Regulatory Commission (Commission) its report of a $173,966.36 refund made to High Island Offshore Systems (HIOS). ANR states that the refund is in full compliance with Section 1. of a March 3, 1993, Stipulation and Agreement approved by the Commission on May 4, 1993. The refund covers services ANR provided for HIOS under Contract X–64 at Grand Chenier from January 1, 1993 through August 31, 1993.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.211. All such protests should be filed on or before November 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28357 Filed 11–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–35–001]

Colorado Interstate Gas Co.; Revised Tariff Filing

November 12, 1993.

Take notice that on November 5, 1993, Colorado Interstate Gas Company (CIG), tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, First Revised Sheet No. 14, to be effective November 10, 1993. CIG states that Sheet No. 14 reflects CIG's proposed Account 191 direct bill amounts, by customer, that were included on appendix A of CIG's initial filing in this proceeding on October 29, 1993.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28358 Filed 11–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–22–004]

Natural Gas Pipeline Co. of America; Filing of Report of Refund

November 12, 1993

Take notice that on September 8, 1993, Natural Gas Pipeline Company of America (Natural), tendered for filing its Report of Distribution of Refunds distributed to its jurisdictional customers.

Natural states that on September 8, 1993, it refunded $798,224.33 to its jurisdictional customers in accordance with the provisions of Section 34 of the General Terms and Conditions of Natural's FERC Gas Tariff, Fourth Revised Volume No. 1.

Natural states that a copy of this report has been mailed to each of Natural's jurisdictional customers, intervenors and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.211 of the Commission's Rules and Regulations. All such protests must be filed on or before November 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28355 Filed 11–17–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP88–67–070]

Texas Eastern Transmission Corp.; Proposed Changes to FERC Gas Tariff

November 12, 1993.

Take notice that on October 28, 1993, Texas Eastern Transmission Corporation (Texas Eastern), tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1 and Original Volume No. 2, the tariff sheets listed on appendix A to the filing, with a proposed effective date of December 1, 1993.

Texas Eastern states that the tariff sheets submitted in this filing reflect the base tariff rates applicable for the period December 1, 1993 through November 30, 1994 (Year 4) pursuant to the terms of the Stipulation and Agreement (Settlement) in Texas Eastern Transmission Corporation, Docket Nos. RP88–67, et al. (Phase II/PCBs).

On December 17, 1991, Texas Eastern filed the Settlement regarding rate recovery of costs associated with environmental assessment and remediation costs related to polychlorinated biphenyl (PCB) contamination of its system and sites adjacent to its system. The Commission approved the Settlement, and it became final and non-appealable on April 17, 1992. Pursuant to the terms of the Settlement, in section 26 "Article VI Adjustment" of Texas Eastern's FERC Gas Tariff, Texas Eastern is required to submit on or before October 31, 1993, tariff sheets that set forth the Settlement rates for Year 4. Texas Eastern states that the proposed tariff sheets have been filed to comply with this requirement of the settlement.

Texas Eastern states that copies of the filing were served upon Texas Eastern's jurisdictional customers, interested state commissions, and all parties on the service list in Docket Nos. RP88–67, et al. (Phase II/PCBs).

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 19, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28354 Filed 11–17–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4802–6]

Public Water Supervision Program: Program Revision for the State of Connecticut

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Connecticut is revising its approved State Public Water Supervision Primacy Program. Connecticut has adopted drinking water regulations for total coliforms (including fecal coliforms and E. Coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by December 17, 1993, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a hearing is made by December 17, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective December 17, 1993.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Connecticut Department of Public Health and Addiction Services (formerly Connecticut Department of Health Services),Water Supplies Section, 21 Grand Street, Hartford, CT 06106.

and

U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, One Congress Street, 11th Floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Mark Sceery, U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3604.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: October 27, 1993.

Patricia L. Meaney,

Acting Regional Administrator.

[FR Doc. 93–28391 Filed 11–17–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4802–8]

Notice of Public Water Supervision Program: Program Revision for the State of Rhode Island

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: Notice is hereby given that the State of Rhode Island is revising its approved State Public Water Supervision Primacy Program. Rhode Island has adopted: (1) Drinking water regulations for total coliforms (including fecal coliforms and E. Coli) that correspond to the National Primary Drinking Water Regulations for total coliforms (including fecal coliforms and E. Coli) promulgated by EPA on June 29, 1989 (54 FR 27544); and (2) filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria that correspond to the National Primacy Drinking Water Regulations for filtration, disinfection, turbidity, Giardia lamblia, viruses, Legionella, and heterotrophic bacteria requirements promulgated on June 29, 1989 (54 FR 27486). EPA has determined that the State program revisions are no less stringent than the corresponding Federal regulations. Therefore, EPA has tentatively decided to approve these State program revisions. All interested parties are invited to request a public hearing. A request for a public hearing must be submitted by December 17, 1993, to the Regional Administrator at the address shown below. Frivolous or insubstantial requests for a hearing may be denied by the Regional Administrator. However, if a substantial request for a public hearing is made by December 17, 1993, a public hearing will be held. If no timely and appropriate request for a hearing is received and the Regional Administrator does not elect to hold a hearing on his own motion, this determination shall become effective December 17, 1993.

Any request for a public hearing shall include the following:

(1) The name, address, and telephone number of the individual, organization or other entity requesting a hearing.

(2) A brief statement of the requesting person's interest in the Regional Administrator's determination and of information that the requesting person intended to submit at such hearing.

(3) The signature of the individual making the request; or, if the request is made on behalf of an organization or other entity, the signature of a responsible official of the organization or other entity.

ADDRESSES: All documents relating to this determination are available for inspection between the hours of 8 a.m. and 4:30 p.m. Monday through Friday, at the following offices:

Rhode Island Department of Health, Division of Water Quality,3 Capitol Hill, Providence, RI 01908.

and

U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, One Congress Street, 11th Floor, Boston, MA 02203.

FOR FURTHER INFORMATION CONTACT: Ellie Kwong, U.S. Environmental Protection Agency, Region I, Ground Water Management and Water Supply Branch, JFK Federal Building, Boston, MA 02203, Telephone: (617) 565–3620.

Authority: Section 1413 of the Safe Drinking Water Act, as amended (1986); and 40 CFR 142.10 of the National Primary Drinking Water Regulations.

Dated: October 19, 1993.

Paul Keough,

Acting Regional Administrator.

[FR Doc. 93–28390 Filed 11–17–93; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirements Submitted to Office of Management and Budget for Review

November 12, 1993.

The Federal Communications Commission has submitted the following information collection requirements to OMB for review and clearance under the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

Copies of these submissions may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800. For further information on these submissions contact Judy Boley, Federal Communications Commission, (202) 632–0276. Persons wishing to comment on these information collections should contact Timothy Fain, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395–3561.

OMB Number: 3060–0315.

Title: Section 76.221, Sponsorship identification; list retention; related requirements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 450 recordkeepers; 0.5 hours average burden per recordkeeper; 225 hours total annual burden.

Needs and Uses: A cable system operator is required to retain a list of the executive officers, or board of directors, or executive committee, etc. of the organization paying for such matter, when a cablecast is of a political or controversial nature pursuant to § 76.221(d). Sponsorship announcements are waived with respect to the broadcast of "want ads" sponsored by an individual but the licensee shall maintain a list showing the name, address and telephone number of each advertiser (§ 76.221(f)). These lists shall be made available for public inspection. The data is used by the public so that they may know by whom they are being persuaded.

OMB Number: 3060–0393.

Title: Section 73.54, Antenna resistance and reactance measurements.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: Recordkeeping requirement.

Estimated Annual Burden: 200 recordkeepers; 1 hour average burden per recordkeeper; 200 hours total annual burden.

Needs and Uses: Section 73.54(d) requires that AM licensees file notification with the FCC when determining power by the direct method pursuant to 47 CFR 73.51. This notification requirement is accomplished through a formal application process and has OMB approval under FCC Form 302 (OMB Control No. 3060–0029). In addition, § 73.54(d) requires that background information regarding antenna resistance measurement data for AM stations must be kept on file at the station. The background information is used by FCC staff in field investigations to ensure that measurements are taken properly and by station licensees to identify any problems that may occur.

OMB Number: 3060–0209.

Title: Section 73.1920, Personal attacks.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 1,375 responses; 0.5 hours average burden per response; 688 hours total annual burden.

Needs and Uses: During the presentation of views on a controversial issue of public importance, an attack may be made upon the honesty, character, integrity, or like personal qualities of an identified person or group. Section 73.1920 requires that a licensee of a broadcast station must transmit to the person or group attacked a notification of the date, time and identification of the broadcast of a personal attack; a script or tape of the attack, and an offer of a reasonable opportunity to respond to the attack over the licensee's facilities. This data is used to notify a person or group that a personal attack has been made and to afford that person or group attacked an opportunity to respond to the attack over the licensee's facilities.

OMB Number: 3060–0175.

Title: Section 73.1250, Broadcasting emergency information.

Action: Extension of a currently approved collection.

Respondents: Businesses or other for-profit (including small businesses).

Frequency of Response: On occasion reporting requirement.

Estimated Annual Burden: 50 responses; 1 hour average burden per response; 50 hours total annual burden.

Needs and Uses: Emergency situations in which the broadcasting of information is considered as furthering the safety of life and property include, but are not limited to: Tornadoes, hurricanes, floods, tidal waves, earthquakes, and school closings. Section 73.1250(e) requires that immediately upon cessation of an emergency during which broadcast facilities were used for the transmission of point-to-point messages or when daytime facilities were used during nighttime hours by an AM station, a report in letter form shall be forwarded to the FCC in Washington, DC, setting forth the nature of the emergency, the dates and hours of the broadcasting of emergency information and a brief description of the material carried during the emergency. A certification of compliance with the noncommercialization provision must accompany the report where daytime facilities are used during nighttime hours by an AM station. The report is used by FCC staff to evaluate the need and nature of the emergency broadcast to confirm that an actual emergency existed.

Federal Communication Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93-28381 Filed 11-17-93; 8:45 am]
BILLING CODE 6712-01-M

FEDERAL RESERVE SYSTEM

Whitman T. Eastman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 8, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Whitman T. Eastman, and Margaret M. Eastman, Gunnison, Colorado; to acquire an additional 22.1 percent of the voting shares of First National Bankshares of Gunnison, Inc., Gunnison, Colorado, for a total of 36.4 percent, and thereby indirectly acquire First National Bank of Gunnison, Gunnison, Colorado.

2. James Miller, Walthill, Nebraska; to acquire an additional 10.6 percent of the voting shares of FNB Insurance Agency, Inc., Walthill, Nebraska, for a total of 31.8 percent, and thereby indirectly acquire First National Bank, Walthill, Nebraska.

Board of Governors of the Federal Reserve System, November 12, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93-28375 Filed 11-17-93; 8:45 am]
BILLING CODE 6210-01-F

MegaBank Financial Corporation; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 8, 1993.

A. MegaBank Financial Corporation, Englewood, Colorado; to engage *de novo* through its subsidiary, Colorado Partnership Corporation, Englewood, Colorado, in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 12, 1993.
Jennifer J. Johnson,
Associate Secretary of the Board.
[FR Doc. 93-28376 Filed 11-17-93; 8:45 am]
BILLING CODE 6210-01-F

National City Corporation; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 2, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. National City Corporation, Cleveland, Ohio, to acquire certain assets and assume certain liabilities of CTI Logistics, Inc., Rahway, New Jersey, and thereby engage in freight payments data processing services, pursuant to § 225.25(b)(7) of the Board's Regulation Y. The data processing activities proposed to be conducted include pre-payment audit, rate analysis, electronic funds transfer, cost accounting functions, and the collection of economic and financial

data resulting from the provision of such freight payment services.

Board of Governors of the Federal Reserve System, November 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28377 Filed 11-17-93; 8:45 am]

BILLING CODE 6210-01-F

Vermont Financial Services Corp., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 13, 1993.

A. Federal Reserve Bank of Boston (Robert M. Brady, Vice President) 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Vermont Financial Services Corp., Brattleboro, Vermont; to acquire 100 percent of the voting shares of West Mass Bankshares, Inc., Greenfield, Massachusetts, and thereby indirectly acquire United Savings Bank, Conway, Massachusetts.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Summerville/Trion Bancshares, Inc., Summerville, Georgia; to acquire up to 7 percent of the voting shares of Bank of Adairsville, Adairsville, Georgia, and Peoples Bank of Crawfordville, Crawfordville, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Bancorp of New Glarus, Inc., New Glarus, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of The Bank of New Glarus, New Glarus, Wisconsin.

D. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. United Bankers' Bancorporation, Inc., Bloomington, Minnesota; to become a bank holding company by acquiring at least 85 percent of the voting shares of United Bankers' Bank, Bloomington, Minnesota.

E. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Austin Bancshares, Inc., Kansas City, Missouri; to become a bank holding company by acquiring 100 percent of the voting shares of Waverly Bancshares, Inc., Kansas City, Missouri, and thereby indirectly acquire Bank of Waverly, Waverly, Missouri.

F. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Hill Bancshares Holdings, Inc., Weimar, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of Hill Bank & Trust Co., Weimar, Texas.

2. Odem Bancshares, Inc., Odem, Texas; to become a bank holding company by acquiring 100 percent of the voting shares of First State Bank of Odem, Odem, Texas.

Board of Governors of the Federal Reserve System, November 12, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28378 Filed 11-17-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Senior Executive Service Performance Review Board Membership; Addendum

Title 5, U.S. Code, section 4314(c)(4) of the Civil Service Reform Act of 1978, Public Law 95–454, requires that the appointment of Performance Review Board members be published in the **Federal Register**.

These additional individuals will serve on the Performance Review Boards or Panels which oversee the evaluation of performance appraisals of Senior Executive Service members of the Department of Health and Human Services:

Richard H. Adamson, Ph.D.
Kenneth S. Apfel
Beverly Dennis, III
Anna L. Durand
Samuel C. Fish
Sharon Smith Holston
Robert A. Israel
Arthur C. Jackson
Joseph J. Jacobs, M.D.
Duane L. Jeanotte
Barry L. Johnson, Ph.D.
John H. Kelso
Eugene Kinlow
Darrell G. Kirch, M.D.
Irwin J. Kopin, Ph.D.
Edward D. Korn, Ph.D.
Carl Kupfer, M.D.
Risa J. Lavizzo-Mourey, M.D.
Richard A. Leman, Ph.D.
Claude J. Lenfant, M.D.
Joseph R. Leone
Arthur S. Levine, M.D.
Samuel Lin, M.D., Dr.P.H.
Donald A. B. Lindberg, M.D.
V. Markku Linnoila, M.D.
Lance Liotta, M.D., Ph.D.
David Lipman, M.D.
John D. Mahoney
Thomas Malone, Ph.D.
Audrey Manley, M.D.
John A. McLachlan, Ph.D.
Merle G. McPherson, M.D.
Richard A. Millstein
Jay Moskowitz, Ph.D.
Gary R. Noble, M.D., M.P.H.
Robert Nussenblatt, M.D.
Kenneth Olden, Ph.D.
Barbara Packard, M.D., Ph.D.
Claude F. Pickelsimer
Roy Pickens, Ph.D.
Alan S. Rabson, M.D.
David Rodbard, M.D.
Saul W. Rosen, M.D.
Marla E. Salmon, Sc.D.
Ruth Sanchez-Way, Ph.D.
Philip E. Schambra, Ph.D.
Carol Scheman
Paul M. Schwab
Lawrence E. Shulman, M.D.
James B. Snow, Jr., M.D.
Allen M. Spiegel, M.D.
Edwin M. Sullivan
Frank J. Sullivan, Ph.D.
Sandra Swain, M.D.
Michael Taylor
Judith L. Vaitukaitis, M.D.
Mary Jo Veverka
Josephine T. Waconda
Edwin L. Walker
James Walsh
Judith N. Wasserheit, M.D.
Jacquelyn Y. White
Richard Wyatt, Ph.D.

Dated: November 9, 1993.

Eugene Kinlow,

Acting Assistant Secretary for Personnel Administration.

[FR Doc. 93–28240 Filed 11–17–93; 8:45 am]

BILLING CODE 4551-04-M

Food and Drug Administration

[Docket No. 89D-0368]

Revocation of Action Levels for Residues of Toxaphene in Food and Feed

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing the revocation of the agency's action levels for residues of the cancelled pesticide, toxaphene, in human food and animal feed. The agency has taken this action because the results of FDA monitoring indicate that toxaphene residues are no longer occurring as unavoidable contaminants in the food and feed commodities subject to action levels.

DATES: The revocation of the action levels for unavoidable residues of toxaphene in food and feed is effective September 30, 1993.

FOR FURTHER INFORMATION CONTACT: John R. Wessel, Office of Regulatory Affairs (HFC-6), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301-443-1815.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 109.4(c)(2) and 509.4(c)(2), FDA is announcing changes in action levels for an added poisonous or deleterious substance. The changes concern the revocation of all action levels for residues of the pesticide toxaphene in certain food and feed.

FDA is responsible under section 402(a)(2)(B) and (a)(2)(C) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 342(a)(2)(B) and (a)(2)(C)) for enforcing tolerances for pesticide residues that are established by the Environmental Protection Agency (EPA) pursuant to section 408 of the act (21 U.S.C. 346a) and EPA-established food additive regulations promulgated pursuant to section 409 of the act (21 U.S.C. 348). Under section 402(a)(2)(B) and (a)(2)(C) of the act, food or feed is adulterated if it contains a pesticide residue that is unsafe within the meaning of section 408 or 409 of the act. A pesticide residue is unsafe under the act if the residue exceeds an established EPA tolerance or food additive regulation or if it is one for which there is no established EPA tolerance or food additive regulation. Shipment of adulterated food or feed in interstate commerce is prohibited, (21 U.S.C. 301(a)), and food or feed so shipped is subject to FDA seizure and condemnation under 304 of the act (21 U.S.C. 334).

Tolerances and food additive regulations established by EPA generally apply to pesticide residues resulting from the registered (i.e., approved) use of the chemical in agriculture. In some circumstances, however, FDA encounters pesticide residues in food or feed for which there is no tolerance or food additive regulation, but where the residues present may be due to an unavoidable source of contamination. The pesticides most commonly associated with unavoidable contamination of food and feed are certain chlorinated hydrocarbon pesticides (e.g., DDT), which persist in the environment even after their uses have been discontinued. Generally, tolerances have not been established by EPA for unavoidable pesticide residues that may be present in food or feed.

The act provides that in the absence of a tolerance, any amount of a pesticide residue in a food or feed is unsafe, and therefore renders the food or feed adulterated under section 402(a)(2)(B) or (a)(2)(C) of the act. FDA, in consultation with EPA, has found, however, that the level of unavoidable pesticide residue is frequently so low that it is not of regulatory or public health significance. In cases where the agency has found such contamination levels, it has determined, again in consultation with EPA, that pursuing an enforcement action would provide no substantial benefit to the public. For these situations, FDA has established action levels, usually based on levels recommended by EPA, to define a level of unavoidable contamination at which food or feed may be regarded as adulterated under the act. FDA action levels are guidelines, and are not binding, as discussed in FDA's general policy statement published in the **Federal Register** of April 17, 1990 (55 FR 14359). The action levels currently in effect for unavoidable pesticide residues are contained in Attachment B of Compliance Policy Guide (CPG) 7141.01.

Toxaphene was one of the pesticides in this listing. Its action levels appeared as Attachment B.12 of CPG 7141.01. The action levels for unavoidable residues of this chemical were established for the following commodities: processed animal feed, artichokes, asparagus, cherries, figs, fish, melons, mustard greens, plums, pumpkins, certain root vegetables and small fruits, squash, and turnip greens.

The registered agricultural uses of toxaphene were cancelled by EPA in 1982. The EPA tolerances in 40 CFR 180.138 that were established for residues resulting from these registered uses, however, continued in effect until September 1, 1993. On that date, EPA published a final rule in the **Federal Register** (58 FR 46087) that revoked these tolerances for toxaphene residues.

Prior to EPA's revocation of the toxaphene tolerances, FDA reviewed its regulatory monitoring data for 1991 and 1992, which showed that of the approximately 40,000 samples of food examined by FDA, only two samples were found to contain measurable levels of toxaphene residues—one fish sample contained 0.2 parts per million (ppm) toxaphene and one animal feed (peanut byproduct) contained 0.2 ppm toxaphene. Based upon these limited findings of toxaphene residues, FDA has concluded that toxaphene is no longer persistent in the environment whereby it may be unavoidably contaminating food or feed at levels of regulatory or public health concern. For this reason, FDA has decided to revoke all action levels for unavoidable residues of toxaphene in food and feed, effective September 30, 1993. The agency has advised its district officers to remove the toxaphene action level listing in Attachment B. 12 of CPG 7141.01.

Dated: November 9, 1993.

Gary Dykstra,

Acting Associate Commissioner for Regulatory Affairs.

[FR Doc. 93-28372 Filed 11-17-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93F-0385]

Compagnia Italiana di Ricerca e Sviluppo, SRL; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Compagnia Italiana di Ricerca e Sviluppo, srl (CIRS), has filed a petition proposing that the food additive regulations be amended to provide for the safe use of formaldehyde, polymer with 1-naphthylenol, as an antiscaling agent applied on the internal parts of reactors employed in the production of polyvinyl chloride and acrylic copolymers intended for food-contact applications.

DATES: Written comments on petitioner's environmental assessment by December 17, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA-305), Food and Drug Administration, rm. 1-23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Vir Anand, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3B4380) has been filed by Compagnia Italiana di Ricerca e Sviluppo, srl (CIRS), c/o AAC Consulting Group, 1730 Rhode Island Ave. NW., Washington, DC 20036. The petition proposes to amend the food additive regulations to provide for the safe use of formaldehyde, polymer with 1-naphthylenol, as an antiscaling agent applied on the internal parts of reactors employed in the production of polyvinyl chloride and acrylic copolymers intended for food-contact applications.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 17, 1993, submit to the Dockets Management Branch written comments regarding the environmental assessment. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–28373 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0357]

Science Applications International Corp.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Science Applications International Corp. has filed a petition proposing that the food additive regulations be amended to provide for the safe use of a source of fast (high energy) neutrons to inspect cargo containers which may contain food.

DATES: Written comments on the petitioner's environmental assessment by December 17, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3M4399) has been filed by Science Applications International Corp., 2950 Patrick Henry Dr., Santa Clara, CA 95054. The petition proposes that the food additive regulations in § 179.21 *Sources of radiation used for inspection of food, for inspection of packaged food, and for controlling food processing* (21 CFR 179.21) be amended to provide for the safe use of a source of fast (high energy) neutrons to inspect cargo containers which may contain food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 17, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–28374 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

Program Announcement and Proposed Strategic Directions for Cooperative Agreements For Acquired Immunodeficiency Syndrome (AIDS) Regional Education and Training Centers Program for Fiscal Year 1994

The Health Resources and Services Administration (HRSA), announces that during fiscal year (FY) 1994, applications will be accepted to continue the development of the AIDS Regional Education and Training Centers (AETCs) program for one year. This program is authorized under section 776(a), (previously section 788A), title VII of the Public Health Service Act (the Act), as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on proposed strategic directions under development for this program.

Public Law 102–408 makes the following revisions to this program:

*Extends the eligibility for awards to include any "public and nonprofit private entity".

*Modifies the list of disciplines in which faculty training could be supported to delete "psychology" and substitutes "mental health practice"—defined elsewhere in the Act as meaning clinical psychology, clinical social work, and marriage and family therapy;

*Provides general authority for training of practitioners to provide for the health care needs of individuals with HIV disease; and

*Develops and disseminates curricula *and resource materials* relating to the care and treatment of individuals with HIV disease *and the prevention* of the disease among individuals at risk of contacting the disease.

Proposed Strategic Directions for AETC Program

The AIDS Education Training Centers program was initially designed to provide information on the prevalence of AIDS and identification of groups at increased risk of HIV infection. As the HIV/AIDS epidemic matured, it became apparent that the AETCs had to shift their priorities from HIV/AIDS information transfer to more intensive clinical training. This shift was necessitated by the introduction of new therapeutic interventions, such as antiretroviral therapies, which offered the promise of delaying the onset of opportunistic infections associated with AIDS. The mission of the AETCs is to address the ever increasing issues surfacing because of the changes in the HIV epidemic by constantly adding new priorities to address new issues. The Bureau of Health Professions and the Division of Medicine have developed new strategic directions which will have to be more fully incorporated into the priorities of the AETC program. These strategic directions include an emphasis on generalism, a continued emphasis on minorities and the underserved and an emphasis on interdisciplinary training. The AETC program review will look at: The structure of the AETC network; the current and projected status of the HIV epidemic, the appropriate role for the AETCs; the approximate proportion of resources that should be devoted to information dissemination, prevention, and treatment; which provider groups should be targeted for training; and emerging issues that AETCs need to devote more of their resources addressing such as HIV in correctional facilities and HIV in border areas.

The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. This announcement is related to the priority area of HIV infection. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone: (202) 783–3238).

Interested persons are invited to comment on the proposed strategic directions for the AETC program. All comments received on or before December 17, 1993 will be considered before the strategic directions are finalized.

Written comments should be addressed to: Marc L. Rivo, M.D., M.P.H., Director, Division of Medicine, Bureau of Health Professions, Health Resources and Services Administration, 5600 Fishers Land, Parklawn Building, room 4C–25, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Medicine, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Approximately $16,106,839 will be available for this program in FY 1994. This amount would support approximately 17 continuation awards averaging $986,375. Only projects which previously received funds in FY 1993, are eligible to receive continuation awards in FY 1994. The AETCs will continue to provide multidisciplinary training for primary health care personnel in the care of people with Acquired Immunodeficiency Syndrome (AIDS) and other conditions related to infection with the Human Immunodeficiency Virus (HIV).

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In fiscal years 1992 and 1993, HRSA reviewed 17 continuation applications for Cooperative Agreements for AIDS Regional Education and Training Centers (AETCs). All of the continuation applications were funded.

Eligibility and Purpose

Awards are made to accredited public and nonprofit private entities and schools and academic health science centers in meeting the costs of projects—

1. To train the faculty of schools and graduate departments or programs of, medicine, nursing, osteopathic medicine, dentistry, public health, mental health practice (clinical psychology, clinical social work and marriage and family therapy), allied health, to teach health professions students to provide for the health care needs of individuals with HIV disease;

2. To train practitioners to provide for the health care needs of such individuals;

3. With respect to improving clinical skills in the diagnosis, treatment, and prevention of such disease, to educate and train the health professionals and clinical staff of schools of medicine, osteopathic medicine, and dentistry; and

4. To develop and disseminate curricula and resource materials relating to the care and treatment of individuals with such disease and the prevention of the disease among individuals who are at risk of contracting the disease.

Definitions

"Accredited Health Professional Schools" means schools of medicine, dentistry, osteopathic medicine, pharmacy, optometry, podiatric medicine, veterinary medicine, public health, and chiropractic, as define in section 799(l)(E) of the Act, schools of allied health as defined in section 701(10) of the Act, and schools of nursing as defined in section 853 of the Act, which are located in States as defined in section 701(11) of the Act and which are accredited as provided in section 701(5) of the Act. The term also includes a "graduate program in health administration" and a "graduate program in clinical psychology" as defined in section 701(4) of the Act and a program for the training of physician assistants as defined in section 701(8)(A).

"Academic Health Science Center" means an organization within a post-secondary educational system, which brings together major divisions or programs of health professions instruction, research in the health sciences, and health services.

These definitions are consistent with the use of the terms within other title VII programs administered by HRSA.

Project Requirements

The following project requirements, which were published in the **Federal Register** FY 1989, after public comment dated September 8, 1989, 54 FR 37378, will be continued in FY 1994.

The project requirements are designed to direct Federal resources where the greatest needs exist. Each project must define a geographic region and identify the types of providers to be targeted for training within that region. Thus, the focus of FY 1994 will continue to focus on clinical education of primary care providers in high HIV/AIDS prevalence areas. Consistent with this emphasis is the requirement that a minimum of two-thirds of the primary care providers (i.e., physicians, nurses, dentists, physician

assistants, nurse practitioners, and dental hygienists). In addition, at least fifty percent of project funds must be expended for training activities in high AIDS incidence MSAs identified prior to the competitive award or high AIDS incidence MSAs identified for funding through the "Ryan White" CARE ACT program.

Each ETC must provide or perform the following:

- Clinical training of primary care physicians, nurses, dentists, physician assistants, nurse practitioners, and dental hygienists;
- Training of other health professionals such as mental health care providers and case managers;
- An updated needs-assessment of the education and training needs of the primary care providers within the proposed service area which is linked to the allocation of Federal funds;
- Training in risk assessment, prevention, early intervention, and treatment;
- Development of primary/tertiary care linkages and networking;
- Outreach to minorities, including involvement of minority providers, minority professional organizations, and minority health care delivery systems;
- Linkages to "Ryan White" CARE ACT, titles I, II, III, and IV funded health services programs and the Hemophilia and Pediatric/Family HIV Health Care Demonstration Programs;
- Linkage to PHS funded migrant (Sec. 329(a)(1) and community health (Sec. 330(a) centers, health care for the homeless programs (Sec. 340) State and local health agencies and health care facilities involved in providing care for HIV infected individuals;
- Linkage with substance abuse programs;
- Collaboration with health professions organizations in the proposed region;
- Networking with other community agencies to concentrate on filling the gaps in training;
- Dissemination of state-of-the-art information and educational materials in concert with other PHS agencies, using mechanisms such as hotlines;
- Program assessment and data collection on program and trainees which can be used for regional and national evaluative purposes; and
- Plan for future non-Federal funding of project.

Collaboration

The AETCs must operate in collaboration with health professions schools, community hospitals, health departments, PHS funded Area Health Education Centers, "Ryan White" CARE ACT funded health services programs, the Hemophilia and Pediatric/Family HIV Health Care Demonstration Programs, Health Care for the Homeless programs, community and migrant health centers, and with substance abuse programs, community-based organizations, and other organizations involved in the provision of care to people with HIV/AIDS related conditions.

AETC projects also are encouraged to collaborate with the national network of AIDS Clinical Trial Units (ACTUs) and the Community Programs for Clinical Research on AIDS funded by the National Institute of Allergy and Infectious Diseases of the National Institutes of Health, and with other community based clinical trials sponsored by foundations such as the Robert Wood Johnson Foundation or the American Foundation for AIDS Research. It is also suggested that projects collaborate with the NIAID Pediatric Clinical Trials Centers.

Degree of Federal Involvement Agreement

Substantial involvement will occur in the following areas:

- The design or direction of activities to develop a clinically-oriented training delivery model, with special emphasis for minority providers and providers who serve minority populations;
- The approval of key AETC project staff with particular emphasis on recruitment of minority faculty;
- The review of major contracts and agreements with subcontractors;
- The dissemination of state-of-the-art diagnostic and therapeutic clinical guidelines and algorithms, with a particular emphasis on early intervention strategies, which will include antiretroviral therapy, prophylaxis for opportunistic infections, and immunizations for viral and bacterial pathogens.

Review Criteria

The review criteria stated below, which were established in the **Federal Register** in FY 1989, dated September 8, 1989, 54 FR 37378, after public comment, will be continued in FY 1994.

Applications will be reviewed and rated according to the applicant's ability to meet the following:

1. The potential effectiveness of the project in carrying out the purposes of the program;
2. The degree to which the project plan adequately provides for meeting the project requirements;
3. The capability of the applicant to conduct the proposed activities in a cost efficient manner;
4. The soundness of the fiscal plan for assuring effective utilization of funds; and
5. The potential of the project to continue on a self-sustaining basis after the period of support.

Definitions

The following definitions apply to those training sites/facilities listed in the project requirements above.

Facilities

"Community Health Center" means an entity as defined in section 330(a) of the Public Health Service Act and in regulations at 42 CFR 57.102(c).

"Health Care for the Homeless Program", as used here, means a community-based program of comprehensive primary health care and substance abuse services brought to the homeless population under section 340 of the PHS Act. At a minimum, this program of care and services must be fully integrated and must assure that care, coordination and case management are rigorously employed. A full description of the program may be found in **Federal Register**, (55 FR 31233) (August 1, 1990).

"Health Professional Shortage Area" means an area designated under section 332 of the PHS Act.

"Migrant Health Center" means an entity as defined in section 329(a)(1) of the Public Health Service Act and in regulations at 42 CFR 56.102(g)(1).

Other Definitions

"Rural Area" means a Non-Metropolitan Statistical Area or an area located outside a Metropolitan Statistical Area as defined by standards followed by the Office of Management and Budget.

"Rural Regional Education and Training Center" is an AIDS ETC project which meets the essential characteristics of an ETC, is adapted to serve the health professions education needs of rural areas and rural primary care providers, and has components which may be replicated in other rural areas. The application deadline date is December 17, 1993.

Applications shall be considered as meeting the established deadline if they are either:

1. *Received on* or before the established deadline date; or
2. *Sent on or before* the established deadline and received in time for orderly processing. (Applicants should request a legibly dated postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service postmark. Private metered

postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

Additional Information

Requests for technical or programmatic information should be directed to: Elaine Daniels, M.D., Ph.D, Chief, HPHIVE Branch, AIDS Regional Education and Training Centers Program, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 4C–03, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6364.

Application Requests

Application materials and additional information regarding business, administrative and fiscal issues related to the awarding of funds under this notice may be requested from: Grants Management Branch (D35), Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone: (301) 443–6857.

Completed applications should be forwarded to the Grants Management Branch at the above address.

This program is listed at 93.145 in the Catalog of Federal Domestic Assistance and is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100).

This program is not subject to the Public Health System Reporting Requirements.

Dated: September 27, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–28327 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–15–P

Program Announcement and Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate" for Implementation of the Statutory Funding Preference for Allied Health Project Grants for Fiscal Year 1994

The Health Resources and Services Administration (HRSA) announces that applications will be accepted for fiscal year (FY) 1994 Allied Health Project Grants under the authority of section 767, title VII of the Public Health Service Act, as amended by the Health Professions Education Extension Amendments of 1992, Public Law 102–408, dated October 13, 1992. Comments are invited on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference.

Approximately $3.4 million will be available in FY 1994 for this program. Total continuation support recommended is approximately $2 million. It is anticipated that approximately $1.4 million will be available to support 10 to 12 competing awards averaging approximately $106,000.

Previous Funding Experience

Previous funding experience information is provided to assist potential applicants to make better informed decisions regarding submission of an application for this program. In FY 1993, HRSA reviewed 83 applications for Allied Health Project Grants. Of those applications, 59 percent were approved and 41 percent were disapproved. Eight projects, or 10 percent of the applications received, were funded. In FY 1992, HRSA reviewed 113 applications for Allied Health Project Grants. Of those applications, 46 percent were approved and 54 percent were disapproved. Eleven projects, or 10 percent of the applications received, were funded.

Purposes

Section 767 authorizes the award of grants to assist in meeting the costs associated with expanding or establishing programs that will increase the number of individuals trained in allied health professions. Programs and activities funded under this section may include:

(1) Those that expand enrollments in allied health professions with the greatest shortages or whose services are most needed by the elderly;

(2) Those that provide rapid transition training programs in allied health fields to individuals who have baccalaureate degrees in health-related sciences;

(3) Those that establish community-based allied health training programs that link academic centers to rural clinical settings;

(4) Those that provide career advancement training for practicing allied health professionals;

(5) Those that expand or establish clinical training sites for allied health professionals in medically underserved or rural communities in order to increase the number of individuals trained;

(6) Those that develop curriculum that will emphasize knowledge and practice in the areas of prevention and health promotion, geriatrics, long-term care, home health and hospice care, and ethics;

(7) Those that expand or establish interdisciplinary training programs that promote the effectiveness of allied health practitioners in geriatric assessment and the rehabilitation of the elderly;

(8) Those that expand or establish demonstration centers to emphasize innovative models to link allied health clinical practice, education, and research; and

(9) Those that provide financial assistance (in the form of traineeships) to students who are participants in any such program; and

(A) Who plan to pursue a career in an allied health field that has a demonstrated personnel shortage; and

(B) Who agree upon completion of the training program to practice in a medically underserved community;

That shall be utilized to assist in the payment of all or part of the costs associated with tuition, fees and such other stipends as the Secretary may consider necessary.

To maximize program benefit, programs that provide financial assistance in the form of traineeships to students will not be considered for funding in FY 1994. The period of Federal support will not exceed 3 years.

Eligibility

Eligible entities for the purpose of this grant are:

(1) Schools, universities, or other educational entities which provide for allied health personnel education and training and which meet such standards as the Secretary may prescribe; or

(2) Other public or nonprofit private entities capable, as determined by the Secretary, of carrying out the purpose of the Allied Health Project Grants program; and

(3) Located in a State.

National Health Objectives for the Year 2000

The Public Health Service urges applicants to submit work plans that address specific objectives of Healthy People 2000. Potential applicants may obtain a copy of Healthy People 2000 (Full Report; Stock No. 017–001–00474–0) or Healthy People 2000 (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone 202–783–3238).

Education and Service Linkage

As part of its long-range planning, HRSA will be targeting its efforts to strengthening linkages between U.S.

Public Health Service education programs and programs which provide comprehensive primary care services to the underserved.

Review Criteria

The review criteria, stated below, which were established in FY 1990 (55 FR 12424, dated 4/3/90) after public comment, will remain unchanged in FY 1994.

- The extent to which the proposed project meets the legislative purpose;
- The background and rationale for the proposed project;
- The extent to which the project contains clearly stated realistic and achievable objectives;
- The extent to which the project contains a methodology which is integrated and compatible with project objectives, including collaborative arrangements and feasible workplans;
- The evaluation plans and procedures for program and trainees, if involved;
- The administrative and management capability of the applicant to carry out the proposed project, including institutional infrastructure and resources;
- The extent to which the budget justification is complete, cost-effective and includes cost-sharing, when applicable; and
- Whether there is an institutional plan and commitment for self-sufficiency when Federal support ends.

Other Considerations

In addition, the following funding factors may be applied in determining funding of approved applications.

A funding preference is defined as the funding of a specific category or group of approved applications ahead of other categories or groups of approved applications in a discretionary program, or favorable adjustment of the formula which determines the grant award in a formula grant program.

Special consideration is defined as the enhancement of priority scores by merit reviewers based on the extent to which applications address special areas of concern.

It is not required that applicants request consideration for a funding factor. Applications which do not request consideration for funding factors will be reviewed and given full consideration for funding.

Funding Preference

The statutory preference identified in section 767(b)(2) and the statutory preference identified in section 791(a) of the PHS Act have been combined in the following preference which will be applied to Allied Health Project Grants for fiscal year 1994: Preference shall be given to qualified applicants that—

(A) Expand and maintain first-year enrollment by not less than 10 percent over enrollments in base year 1992; OR

(B) Demonstrate that not less than 20 percent of the graduates of such training programs during the preceding 2-year period are working in medically underserved communities (high rate for placing graduates in practice settings having the principal focus of serving residents of medically underserved communities); OR

(C) During the 2-year period preceding the fiscal year for which such an award is sought, has achieved a significant increase in the rate of placing graduates in such settings.

Proposed Minimum Percentages for "High Rate" and "Significant Increase in the Rate"

"High rate" is defined as a minimum of 20 percent of graduates in academic year 1991–92 or academic year 1992–93, whichever is greater, who spend at least 50 percent of their worktime in clinical practice in the specified settings. Graduates who are providing care in a medically underserved community as a part of a fellowship or other educational experience can be counted.

"Significant increase in the rate" means that, between academic years 1991–92 and 1992–93, the rate of placing graduates in the specified settings has increased by a minimum of 50 percent and that not less than 15 percent of graduates from the most recent year are working in these settings.

Additional information concerning the implementation of this preference has been published in the **Federal Register** at 58 FR 40659, dated July 29, 1993.

Established Special Consideration

The following special consideration was established in FY 1991 after public comment (56 FR 14939, dated 4/12/91) and the Administration is extending it in FY 1994.

Special consideration will be given to applicants demonstrating affiliation agreements for interdisciplinary training experiences in one or more of the following: a nursing home; hospital or ambulatory care center providing substantial geriatric health care; Migrant Health Center (section 329 of the Act); Community Health Center (section 330 of the Act); Health Professional Shortage Area (section 332 of the Act); Area Health Education Center (section 746 of the Act); or a State or local public health or designated clinic or center serving an underserved population, or a rural health clinic or other facility with training opportunities in a rural area.

Section 329 authorizes support for migrant health facilities nationwide and comprises a network of health care services for migrant and seasonal farm workers;

Section 330 authorizes support for community health care services to medically underserved populations;

Section 332 establishes criteria to designate geographic areas, population groups, medical facilities, and other public facilities in the States as Health Professional Shortage Areas; and

Section 746 authorizes support for Area Health Education Centers to improve the distribution, supply, quality, utilization, and efficiency of health personnel in the health services delivery system.

Information Requirements Provision

Under section 791(b) of the Act, the Secretary may make an award under the Allied Health Project Grants only if the applicant for the award submits to the Secretary the following information:

1. A description of rotations of preceptorships for students, or clinical training programs for residents, that have the principal focus of providing health care to medically underserved communities.
2. The number of faculty on admissions committees who have a clinical practice in community-based ambulatory settings in medically underserved communities.
3. With respect to individuals who are from disadvantaged backgrounds or from medically underserved communities, the number of such individuals who are recruited for academic programs of the applicant, the number of such individuals who are admitted to such programs, and the number of such individuals who graduate from such programs.
4. If applicable, the number of recent graduates who have chosen careers in primary health care.
5. The number of recent graduates whose practices are serving medically underserved communities.
6. A description of whether and to what extent the applicant is able to operate without Federal assistance under this title.

Additional details concerning the implementation of this information requirement have been published in the **Federal Register** at 58 FR 43642, dated 8/17/93, and will be provided in the application materials.

Paperwork Reduction Act

The standard application form PHS 6025–1, HRSA Competing Training

Grant Application, General Instructions and supplement for this program have been approved by the Office of Management and Budget under the Paperwork Reduction Act. This approval includes the burden for collection of information for the statutory general preference and for the information requirement provision. (OMB #0915–0060, expiration date 7/31/95)

Additional Information

Interested persons are invited to comment on the proposed minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference. The comment period is 30 days. All comments received on or before December 17, 1993 will be considered before the final minimum percentages for "high rate" and "significant increase in the rate" for implementation of the statutory funding preference are established. Written comments should be addressed to: Neil Sampson, Director, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8–101, 5600 Fishers Lane, Rockville, Maryland 20857.

All comments received will be available for public inspection and copying at the Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, at the above address, weekdays (Federal holidays excepted) between the hours of 8:30 a.m. and 5 p.m.

Application Requests

Application forms will be sent to FY 1993 applicants and to those who request kits.

Requests for application materials and questions regarding grants policy and business management issues should be directed to: Ms. Jacquelyn Whitaker (D37), Grants Management Specialist, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–26, 5600 Fishers Lane, Rockville, Maryland 20857.

Telephone: (301) 443–6857 FAX: (301) 443–6343. Completed applications should be returned to the Grants Management Branch at the above address.

If additional programmatic information is needed, please contact: Dr. Norman Clark, Program Officer, Associated Health Professions Branch, Division of Associated, Dental and Public Health Professions, Bureau of Health Professions, Health Resources and Services Administration, Parklawn Building, room 8C–02, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6763.

The deadline date for receipt of applications is February 9, 1994. Applications will be considered to be "on time" if they are either:

(1) *Received on or before* the established deadline date, or

(2) *Sent on or before* the established deadline date and received in time for orderly processing. (Applicants should request a legibly dated U.S. Postal Service postmark or obtain a legibly dated receipt from a commercial carrier or U.S. Postal Service. Private metered postmarks shall not be acceptable as proof of timely mailing.)

Late applications not accepted for processing will be returned to the applicant.

The Catalog of Federal Domestic Assistance number for this program is 93.191. This program is not subject to the provisions of Executive Order 12372, Intergovernmental Review of Federal Programs (as implemented through 45 CFR Part 100). This program is not subject to the Public Health System Reporting Requirements.

Dated: October 4, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–28326 Filed 11–17–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Meeting of the Advisory Committee to the Director, NIH

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Advisory Committee to the Director, NIH, on December 1, 1993, at the National Institutes of Health, Bethesda, Maryland 20892, from 8:30 a.m. to 4:30 p.m., the Building 31, Conference Room 10, C Wing. The meeting will be open to the public. Attendance by the public will be limited to space available.

The meeting will be devoted to discussion of (1) The NIH Intramural Research Program Review, and (2) Equal Employment Opportunity Activities.

The Executive Secretary, Sandy Cahmblee, J.D., National Institutes of Health, Shannon Building, Room 103, Bethesda, Maryland 20892, (301 496–2122, will furnish the meeting agenda, rosters of Committee members and consultants, and substantive program information upon request.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Carol Chism on (301) 496–3154 in advance of the meeting.

Dated: November 10, 1993.

Susan K. Feldman,

NIH Committee Management Officer.

[FR Doc. 93–28332 Filed 11–17–93; 8:45 am]

BILLING CODE 4140–01–M

National Library of Medicine; Meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Planning Subcommittee of the Board of Regents of the National Library of Medicine on December 8–9, 1993, in the Board Room of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland.

The entire meeting will be open to the public from 9 a.m. to approximately 5 p.m. on December 8, and from 9 a.m. to adjournment on December 9. This will be the second meeting in a total of three to determine the possibility of programs and activities of the National Library of Medicine, of individuals, of professional associations, and of other institutions that might be undertaken over the next 10 years to assure that our society benefits from the skills of medical librarians. Attendance by the public will be limited to space available. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Susan Buyer.

Ms. Susan P. Buyer, Deputy Assistant Director for Planning and Evaluation of the National Library of Medicine, 8600 Rockville Pike, Bethesda, Maryland, telephone 301–496–6834, will provide a summary of the meeting, a roster of subcommittee members, and substantive program information upon request.

Dated: November 10, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28333 Filed 11–17–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. N–93–3361; FR–3193–N–06]

Announcement of Funding Awards for HOPE for Homeownership of Multifamily Units Program (HOPE 2)

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Announcement of funding award.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this is an announcement notifying the public of the funding decision made by the Department in a second selection from the competition for funding under a Notice of Funding Availability for HOPE for Homeownership of Multifamily Units Program (HOPE 2), published on January 14, 1992 (57 FR 1585). The first selection was published on October 15, 1992 at 57 FR 47343. This announcement contains the names and addresses of the award winners and the amount of the awards in a second round of selections.

DATES: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Margaret Milner, Director, Office of Resident Initiatives, Office of Housing, room 6130, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–4542. The TDD number for the hearing impaired is (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The purpose of the competition was to make available funding for grants under the HOPE for Homeownership of Multifamily Units Programs (HOPE 2). (HOPE is an acronym for Homeownership Opportunity for People Everywhere.) The HOPE 2 program, which was authorized by the National Affordable Housing Act (Pub. L. 101–625, approved November 28, 1990), provides planning grants and implementation grants to selected eligible applicants to assist them in developing and carrying out approved homeownership programs for eligible families.

These HOPE 2 grants, totaling $24 million, will enable 16 resident and housing-related organizations to begin the process of purchasing over 1,800 housing units in multifamily properties financed, owned, or with mortgages insured by the government. HOPE 2 awards were made in 12 states and the Virgin Islands in both planning and implementations categories. Recipients in both the first and second funding rounds were chosen in a national competition under selection criteria announced in the January 14, 1992 NOFA and described more fully in program guidelines published with the NOFA.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the names, addresses, and amount of the awards are attached to this Notice.

Dated: November 12, 1993.

Nicolas R. Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

FISCAL YEAR 1992 HOPE 2 AWARDS

[2nd Round Selections]

Region	Grantee	Property	Number of units	Amount of award
01	H2–92–MA–010–I–R, CHRLSBK Apts Tenants Assoc., 650 Huntington Avenue, Apt 3L, Boston, MA 02115, Contact: Kerstin Hildebrant, Phone: (617) 232–5713.	Charlesbank Apartments, 650 Huntington Avenue, Apt. #3L, Boston, MA 02115.	276	$8,799,834.00 Implementation Grant.
02	H2–92–NJ–004–F–N, New Community Corporation, 322 West Market Street, Newark, NJ 07103, Contact: Larry Goldston, Phone: (201) 623–2800.	Englewood I & II, 80 Jay 68–82 William Streets, Englewood, NJ 07631.	40	$181,370.00 Planning Grant.
02	H2–92–NY–301–F–N, Domestic Violence Services, 480 Broadway—Suite LL–20, Saratoga Springs, NY 12866, Contact: Colleen McGrath, Phone: (315) 583–0280.	Hotel Honig Rehabilitation, 116 Caroline Street, Saratoga Springs, NY 12866.	6	$96,717.00 Planning Grant.
02	H2–92–NY–004–I–M, Mutual HSG Group Inc, 20 South Broadway, Room 912, Yonkers, NY 10701, Contact: Duane Nealson, Phone (914) 964–6554.	31 Ravine Avenue, Yonkers, NY 10701.	21	$435,500.00 Implementation Grant.
04	H2–92–GA–005–I–M, Atlanta Mutual HSG. Assoc., 44 Broad St., N.W.—Suite 607, Atlanta, GA 30303, Contact: David W. Landis, Phone (404) 331–7428.	Defoors Ferry Manor Apts, 2788 Defoors Road, N.W., Atlanta, GA 30318.	286	$3,468,868.00 Implementation Grant.
4	H2–92–VQ–003–F–P, Govt. of the U.S. Virgin Islands, LBJ Gardens Office Complex, Christian sted, St. Croix, Virgin Islands 00820, Contact: James M. McNamara, Phone: (809) 773–0160.	Estate Annas Hope Housing Apts, Christianstead, St. Croix, U.S. Virgin Islands, VI	16	$151,000.00 Planning Grant.
05	H2–92–IL–004–I–N, The Neighborhood Institute, 1750 East 71st Street, Chicago, IL 60649, Contact; Tayani Suma, Phone: (312) 684–4610.	Parkside-Lotus Cooperative, 5449 West Congress Avenue, Chicago, IL 60649.	70	$2,902,593.00 Implementation Grant.
05	H2–92–MI–008–F–N, CSA Enterprises, Inc, 555 Tower (P.O. Box 915), Ypsilanti, MI 48197, Contact: Stephen B. Terry, Phone: (313) 484–6610.	Forest Knoll Apartments, 693 Arbor Drive, Ypsilanti, MI 48197.	231	$200,000.00 Planning Grant.
05	H2–92–MI–007–F–N, CSA Enterprises, Inc, 555 Tower (P.O. Box 915), Ypsilanti, MI 48197, Contact: Stephen B. Terry, Phone: (313) 484–6610.	Arbor Manor Apartments, 1334 Monroe, Ypsilanti, MI 48197.	80	$95,000.00 Planning Grant.
05	H2–92–OH–005–I–N, Capital City C.U.R.C, 787 S. State Street, Westerville, OH 43081, Contact: Charles L. Adrian, Phone: (614) 882–1447.	Hickory Ridge, 2890 Bridgewalk Street, Columbus, OH 43224.	96	$3,852,000.00 Implementation Grant.

FISCAL YEAR 1992 HOPE 2 AWARDS—Continued

[2nd Round Selections]

Region	Grantee	Property	Number of units	Amount of award
06	H2–92–OK–003–I–N, Most Worshipful Prince Hall Grand Lodge, P.O. Box 1588, Muskogee, OK 74402–1588, Contact: Deary Vaughn, Phone: (918) 683–3123.	Summit Point Apartments, 1801 South 132nd East Avenue, Tulsa, OK.	172	$1,451,900.00 Implementation Grant.
06	H2–92–OK–002–F–R, Meadows Tenant Assoc., 2820 South 116th East Avenue, Tulsa, OK 74129, Contact: Tereasa Patterson, Phone: (918) 622–7376.	The Meadows Apartments, 2820 South 116th East Avenue, Tulsa, OK 74129.	176	$200,000.00 Planning Grant.
06	H2–92–TX–313–F–N, Land Services Associates, 2323 Allen Parkway, Houston, TX 77019, Contact: Charles Rushing, Phone: (713) 461–3604.	Eastwood Terrace Apartments, Nacogdoches, TX.	100	$199,180.00 Planning Grant.
07	H2–92–MO–301–F–N, West End Community Conference, 724 Union Blvd., St. Louis, MO 63108, Contact: Marie W. Flower, Phone: (314) 367–7049.	Dead Building Awakening, 5838 Enright, St. Louis, MO.	12	$135,000.00 Planning Grant.
07	H2–92–NE–002–F–N, New Comm. Dev. Corp., 2001 No. 35th Street, Omaha, NE 68111, Contact: Michael Maroney, Phone: (402) 451–2228.	Tommie Rose Garden, 34th & Lake, Omaha, NE.	100	$200,000.00 Planning Grant.
08	H2–92–CO–006–I–M, Greater Denver Mutual HSG., 1776 S. Jackson, Suite 810, Denver, CO 80210, Contact: Steven W. Barbier, Phone: (303) 762–7274.	Mountain Terrace Apartments, 3650 West 84th Avenue, Westminster, CO 80030.	148	$2,256,221.00 Implementation Grant.
			1,830	$24,625,183.00

[FR Doc. 93–28384 Filed 11–17–93; 8:45 am]

BILLING CODE 4210–27–M

Office of the Secretary

[Docket Nos. N–93–3630; FR–3523–C–02 and N–93–3631; FR–3524–C–02]

Federal Home Loan Mortgage Corporation; Interim Housing Goals; Correction, and Federal National Mortgage Association; Interim Housing Goals; Corrections

AGENCY: Office of the Secretary, HUD.

ACTION: Notices of interim housing goals; Corrections.

SUMMARY: On October 13, 1993 (58 FR 53048 and 53072), the Department published in the **Federal Register**, Notices of Interim Housing Goals for the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), respectively. The purpose of this document is to make editorial and typographical corrections to those two notices.

FOR FURTHER INFORMATION CONTACT: Ben E. Laden, Director, Financial Institutions Regulation Staff, telephone (202) 708–1464 or Kenneth A. Markison, Assistant General Counsel for Administrative Law, telephone (202) 708–3137; Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. A telecommunications device (TDD) for hearing- or speech-impaired persons (TDD) is available at (202) 708–0770. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: Accordingly, the following corrections are made to FR Doc. 93–25181 and FR Doc. 93–25182, Notices of Interim Housing Goals for Federal National Mortgage Association and Federal Home Loan Mortgage Corporation, published in the **Federal Register** on October 13, 1993 at 58 FR 53048 and 53072, respectively, to read as follows:

1. On page 53064, in the third column, correct the table heading in column one to read "Household income as a percent of area median income", and correct the table heading in column two to read "Percent of mortgage applications approved".

2. On page 53070, in the first column, correct the table to read as follows:

Type of property	Efficiency	Number of bedrooms		
		1	2	3 or more
Multifamily	$45	$51	$69	$91
Single family	65	70	96	122

3. On page 53089, in the first column, correct the table heading in column one to read "Household income as a percent of area median income", and correct the table heading in column two to read "Percent of mortgage applications approved".

4. On page 53091, in column two, correct the footnote following the table in item C.1.b. by removing "85 percent" and inserting in its place "8 percent".

Dated: November 12, 1993.

Sally Warner Watts,

Acting Assistant General Counsel for Regulations.

[FR Doc. 93–28383 Filed 11–17–93; 8:45 am]

BILLING CODE 4210–32–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–950–4830–02]

Documentation of Current Administrative Boundaries for Bureau of Land Management Offices; Montana, South Dakota, North Dakota

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The management boundaries between districts and resource areas are delineated below. This description is provided to identify the current administrative boundaries to facilitate users, the general public, or other entities desiring office and geographical areas of management responsibility.

FOR FURTHER INFORMATION CONTACT: Janet Singer, BLM Montana State Office, P.O. Box 36800, Billings, MT 59107–6800, 406–255–2742.

SUPPLEMENTARY INFORMATION: The boundaries between districts and resource areas, where applicable, are described as follows:

Dickinson District

The State of North Dakota.

Butte District

Beginning at a point on the Canadian border and the county line between Flathead and Glacier Counties; thence southeasterly along the county line; thence southeasterly along the Flathead-Pondera County line; thence southeasterly along the Flathead-Teton County line; thence southerly along the Flathead-Lewis and Clark County line; thence southerly along the Powell-Lewis and Clark County line to a point at the southwest corner of Township 15 North, Range 9 West; thence easterly along the township line to the Cascade County line; thence south and east along the Lewis and Clark-Cascade County line; thence southeast along the Lewis and Clark-Meagher County line; thence southeast along the Broadwater-Meagher County line; thence easterly along the southern line of Meagher County; thence south and east along the Park-Sweetgrass County line; thence east along the Park-Stillwater County line; thence south along the Park-Carbon County line to the Wyoming state line; thence west and south along the Wyoming state line to the Idaho state line; thence westerly and northerly along the Idaho state line to the Canadian border; thence east to the point of beginning.

Garnet Resource Area

The northwest portion of the area described as Butte District and delineated on the east and south as follows: Beginning at the southwest corner of Township 15 North, Range 9 West; thence southeasterly along the Powell-Lewis and Clark County line to the Jefferson County line; thence southwesterly along the Powell-Jefferson County line; thence along the southerly lines of Powell, Granite, and Ravalli Counties to the Idaho state line.

Dillon Resource Area

The southwest portion of the area described as Butte District and bounded on the north and east as follows: Beginning at the Idaho state line on the Ravalli-Beaverhead County line; thence northeasterly along the Ravalli-Beaverhead County line; thence southeasterly along the Beaverhead-Deer Lodge County line to its intersection with the section line between Sec. 12, T. 1 S., R. 15 W., PMM and Sec. 7, T. 1 S., R. 14 W., PPM; thence south between Secs. 12 and 7 and Secs. 13 and 18 to the Corner of Secs. 13, 18, 19, and 24; thence east between Secs. 18 and 19 and 17 and 20 to the section corner of Secs. 16, 17, 20, and 21 which is on the boundary of Beaverhead National Forest; thence north, east, and southeast along the Forest boundary to the corner of Secs. 13 and 24, T. 1 S., R. 10 W. and Secs. 18 and 19, T. 1 S., R. 9 W., PMM; thence north along the range line to the Big Hole River which is the Beaverhead/Silver Bow County line; thence southeast along the county line to its intersection with the Madison County line; thence easterly and southerly along the Madison County line to the Idaho state line.

Headwaters Resource Area

That portion of central and eastern Butte District including Deer Lodge County, Silver Bow County, Jefferson County, the southern portion of Lewis and Clark County, Broadwater County, Gallatin County, Park County, and that portion of Beaverhead County south of the Big Hole River and north of the Beaverhead National Forest which is described above and not included in the Dillon Resource Area.

Lewistown District

The northcentral portion of Montana from the Canadian border and along the east boundary of Butte District to the southeast corner of Meagher County; thence north along the east line of Meagher County; thence east along the south line of Judith Basin County; thence east along the south line of Fergus County; thence east along the south line of Petroleum County; thence north along the east line of Petroleum County; thence northeast along the south line of Phillips County; thence northeast along the south line of Valley County to the boundary of the Fort Peck Indian Reservation; thence in a northerly direction along the west boundary of the Fort Peck Indian Reservation; thence east along the north boundary of the Fort Peck Indian Reservation; thence north along the east line of Valley County to the Canadian border thence west along the border to the northwest corner of Glacier County.

Great Falls Resource Area

The western portion of the Lewistown District including all of Glacier County, Toole County, Liberty County, Pondera County, Teton County, Cascade County, Meagher County, and the northern part of Lewis and Clark County which lies within the Lewistown District boundaries.

Havre Resource Area

The northern portion of Lewistown District including all of Hill and Blaine County and the northern portion of Choteau County which lies north of the Missouri River.

Phillips Resource Area

The northern portion of Lewistown District which includes all of Phillips County.

Valley Resource Area

The most northeasterly portion of Lewistown District which includes all of Valley County except for the portion lying within the Fort Peck Indian Reservation.

Judith Resource Area

The southcentral portion of Lewistown District which includes all of Petroleum, Fergus, and Judith Basin Counties and the portion of Choteau County which lies south of the Missouri River.

Miles City District

The southeast and eastern portions of Montana bounded on the west by Butte and Lewistown Districts and includes the State of South Dakota.

Billings Resource Area

The southwest portion of Miles City District which includes all of Wheatland, Golden Valley, Musselshell, Yellowstone, Stillwater, Sweetgrass, and Carbon Counties and all of Big Horn County, except for the easterly portion which lies outside of the Crow Indian Reservation. From the north county line in Township 1 North, Range 38 East follow the section line between sections 4 and 5 South to the boundary of the Crow Indian Reservation. Continue south and along the boundary between the Crow and Northern Cheyenne Indian Reservations, thence follow the boundary of the Crow Indian Reservation to the Wyoming state line.

Big Dry Resource Area

The northern portion of the Miles City District which includes the portion of Valley County included in the Fort Peck Indian Reservation; Rosebud County north of the Yellowstone River; Custer County north of the Yellowstone River and the northeasterly portion of Custer County which is described as beginning on the county line between Custer and Prairie Counties at the southwest corner of T. 10 N., R. 51 E., Section 33; then south one mile to the southwest section corner of T. 9 N., R. 51 E., Section 4; then east one mile to the southwest section corner of T. 9 N., R. 51 E., Section 3; then south one mile to the

southwest section corner of T. 9 N., R. 51 E., Section 10; then east one mile to the southwest section corner of T. 9 N., R. 51 E., Section 11; then south one mile to the southwest section corner of T. 9 N., R. 51 E., Section 14; then west 5 miles to the northwest section corner of T. 9 N., R. 50 E., Section 24; then south one mile to the southwest section corner of T. 9 N., R. 50 E., Section 24; then west 2 miles to the northwest section corner of T. 9 N., R. 50 E., Section 27; then south one mile to the southwest section corner of T. 9 N., R. 50 E., Section 27; then east 3 miles to the southwest section corner of T. 9 N., R. 51 E., Section 30; then south 2 miles to the southwest section corner of T. 8 N., R. 51 E., Section 4; then east approximately 2½ miles to the Powder River in T. 8 N., R. 51 E., Section 2; then southerly along the Powder River approximately 6 miles to the southern boundary of T. 8 N., R. 51 E., Section 26; then east approximately 1¼ miles to the southwest section corner of T. 8 N., R. 52 E., Section 30; then south one mile to the southwest section corner of T. 8 N., R. 52 E., Section 31; then east one mile to the southwest section corner of T. 8 N., R. 52 E., Section 32; then south 2 miles to the southwest section corner of T. 7 N., R. 52 E., Section 8; then west approximately 3¼ miles to the Powder River in T. 7 N., R. 51 E., Section 15; then southerly along the Powder River approximately 35 miles to the eastern boundary of T. 4 N., R. 53 E., Section 25; then north approximately one mile to the southwest section corner of T. 4 N., R. 54 E., Section 19; then east 2 miles to the southwest section corner of T. 4 N., R. 54 E., Section 21; then north approximately 2¼ miles to the ⅛₀ corner of T. 4 N., R. 54 E., Sections 8 and 9; then due east approximately 1¼ miles across T. 4 N., R. 54 E., Sections 9 and 10; then due north ¼ mile; east ¼ mile; south ¼ mile; and east ¼ mile to the eastern boundary of T. 4 N., R. 54 E., Section 10; then southeast along the allotment boundary across T. 4 N., R. 54 E., sections 11, 14, and 24 to the eastern boundary of T. 4 N., R. 54 E., section 24 and the intersection of the line between Custer and Carter Counties.

Also included in Big Dry Resource Area is the northwest corner of Carter County which includes Sections 5, 6, 7, 8, 9, 16, 17, 18, 19, 29, and 30 in Township 4 North, Range 55 East; and all of Daniels; Dawson; Fallon; Garfield; McCone; Prairie; Richland; Roosevelt; Sheridan and Wibaux Counties.

Powder River Resource Area

The southeastern portion of Miles City District which includes the easterly portion of Bighorn County which lies outside of the Crow Indian Reservation (as excluded from the Billings Resource Area), the portion of Rosebud County which lies south of the Yellowstone River, the portions of Custer and Carter Counties not listed above in the Big Dry Resource Area, and all of Treasure and Powder River Counties.

South Dakota Resource Area

The State of South Dakota.

Dated: November 12, 1993.

Robert H. Lawton,

State Director.

[FR Doc. 93-28414 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-DN-M

[WY-920-41-5700; WYW102537]

Notice of Proposed Reinstatement of Terminated Oil and Gas Lease

Dated: November 12, 1993.

Pursuant to the provisions of 30 U.S.C. 188 (d) and (e), and 43 CFR 3108.2-3(a) and (b)(1), a petition for reinstatement of oil and gas lease WYW102537 for lands in Carbon County, Wyoming, was timely filed and was accompanied by all the required rentals accruing from the date of termination. The lessee has agreed to the amended lease terms for rentals and royalties at rates of $5.00 per acre, or fraction thereof, per year and 16⅔ percent, respectively.

The lessee has paid the required $500 administrative fee and $125 to reimburse the Department for the cost of this **Federal Register** notice. The lessee has met all the requirements for reinstatement of the lease as set out in Section 31 (d) and (e) of the Mineral Lands Leasing Act of 1920 (30 U.S.C. 188), and the Bureau of Land Management is proposing to reinstate lease WYW102537 effective December 1, 1992, subject to the original terms and conditions of the lease and the increased rental and royalty rates cited above.

Florence R. Speltz,

Supervisory Land Law Examiner.

[FR Doc. 93-28415 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-22-M

[CA-060-7122-08-1016; CACA 28548]

Notice of Issuance of Land Exchange Conveyance Document; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The purpose of this exchange was to acquire the non-Federal lands to consolidate public landownership and achieve the multi-agency objectives of the Western Mojave Land Tenure Adjustment Project. The public interest was well served through completion of this exchange.

FOR FURTHER INFORMATION CONTACT:

Viola Andrade, BLM California State Office, 2800 Cottage Way, room E-2845, Sacramento, California 95825, 916-978-4820.

SUPPLEMENTARY INFORMATION: The values of the public lands and non-Federal lands in the exchange were appraised at $1,568,500 and $1,600,000, respectively. The equalization payment required of the United States in the amount of $31,500 was waived by the proponent.

1. On September 15, 1993, the United States issued an exchange conveyance document to the Bank of A. Levy as Trustee in Trust for P&V Enterprises, Inc., Final Beneficiary under the Antelope Park Trust (Subdivision Trust Agreement No. 80307), pursuant to Section 206 of the Act of October 21, 1976 (43 U.S.C. 1716), for the following described lands, more particularly described in the exchange conveyance document:

San Bernardino Meridian, California

T. 9 N., R. 2 W.,
Sec. 10;
T. 7 N., R. 4 W.,
Secs. 30, 31, and 32;
T. 6 N., R., 5 W.,
Sec. 2;

Comprising 857.72 acres of public land in San Bernardino County. A complete description of the lands is available in the California State Office at the address shown above.

2. In exchange for these lands, the United States acquired the following described lands from the Bank of A. Levy as Trustee in Trust for P&V Enterprises, Inc., Final Beneficiary under the Antelope Park Trust (Subdivision Trust Agreement No. 80307):

Mount Diablo Meridian, California

T. 31 S., R. 41 E.,
Secs. 23, 25, 27, and 35;

Comprising 2,560 acres of non-Federal lands in San Bernardino County.

Dated: November 8, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93-28416 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-40-M

[CO-010-04-4210-05; COC-54601]

Realty Action: Sale of Public Land in Grand County, CO

AGENCY: Bureau of Land Management, Department of the Interior.

ACTION: Notice of realty action.

SUMMARY: The following public land in Grand County, Colorado have been examined and found suitable for direct sale under section 203 and 209(b) of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713 & 1719), at not less than the appraised fair market value. The mineral interest will be included in the sale.

Affected Public Lands

Sixth Principal Meridian, Colorado

T. 4 N., R. 76 W.,
Sec. 24, lot 13.

The lands described above contain 1.73 acres, more or less.

FOR FURTHER INFORMATION CONTACT: The environmental assessment and other information concerning this sale is available for review by contacting Madeline Dzielak at the Kremmling Resource Area Office at 1116 Park Avenue, Kremmling, Colorado 80459, (303) 724-3437.

SUPPLEMENTARY INFORMATION: Publication of this notice in the **Federal Register** segregates the public land from operation of the public land laws, including the mining laws, for a period of 270 days from the date of publication of this notice. The land will be segregated as specified above unless the sale is canceled or completed prior to that date

The following reservations will be made in a patent issued for the public lands:

1. A reservation to the United States of a right-of-way for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

For a period of 45 days from the date of this notice, interested parties may submit comments to the District Manager, Craig District Office, Bureau of Land Management, 455 Emerson Street, Craig, Colorado 81625. Any adverse comments will be evaluated by the State Director, who may sustain, vacate, or modify this realty action. In the absence of any adverse comments, this realty action will become the final determination of the Department of Interior.

Dated: November 10, 1993.

William J. Pulford,

District Manager.

[FR Doc. 93-28418 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-84-M

[CO-050-4210-05, COC-55107]

Realty Action; Sale or Exchange of Public Lands, Clear Creek County, CO

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of realty action, direct sale or exchange of public lands in Clear Creek County, Colorado. COC-55107.

SUMMARY: The following described land has been examined and found suitable for disposal by sale under section 203, or by exchange under section 206 of the Federal Land Policy and Management Act of 1976 (43 U.S.C. 1713) at no less than the appraised fair market value. The land will not be offered for sale or exchange until at least 60 days after the date of this notice.

Sixth Principal Meridian, Colorado

T. 3 S., R. 74 W.,
Sec. 28: Lots 15, 47
Containing 9.31 acres

The land described is hereby segregated from appropriation under the public land laws, including the mining laws, until the land is sold or exchanged, or for two years following publication of this notice, whichever occurs first.

This parcel will be offered by direct sale or by exchange to Michael Dugan. The patent, when issued, will reserve ditches and canals and mineral interests to the Untied States, and will be subject to existing rights-of-way for a power transmission line and for a municipal water pipeline. Detailed information concerning these reservations as well as specific conditions of the sale will be available on request.

ADDRESSES: Bureau of Land Management, Canon City District, P.O. Box 2200, Canon City, Colorado 81215-2200.

DATES: Interested parties may submit comments to the District Manager at the above address until December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Jan Fackrell at (719) 275-0631.

SUPPLEMENTARY INFORMATION: Any adverse comments will be evaluated by the State Director, and he may vacate, modify, or continue this realty action.

Dated: November 8, 1993.

Stuart L. Freer,

Associate District Manager.

[FR Doc. 93-28417 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-JB-M

[MT-070-04-4210-04; M82176]

Realty Action: Exchange of Public and Private Lands, Broadwater County, MT

AGENCY: Butte District, Bureau of Land Management, DOI.

ACTION: Designation of public lands in Broadwater County for transfer out of Federal ownership in exchange for private lands in Broadwater and Gallatin Counties, Montana.

SUMMARY: The Bureau of Land Management (BLM) proposes to exchange public land to acquire the private land at the junction of Sixteenmile Creek and the Missouri River to provide important public access and recreational opportunities.

The following public land is being considered for exchange pursuant to section 206 of the Federal Land Policy and Management Act of October 21, 1976, 43 U.S.C. 1716.

Principal Meridian, Montana

T. 3 N., R. 2 E.,
Sec. 12, lots 6, 7, SW¼NW¼.
T. 4 N., R. 2 E.,
Sec. 12, lot 6;
Sec. 26, W½;
Sec. 34, E½.

The lands described above comprise 750.27 acres in Broadwater County. These lands are segregated from entry under the mining laws, except the mineral leasing laws, effective upon publication of this notice in the **Federal Register**. The segregative effect will terminate upon issuance of patent or 2 years from the date of this publication, whichever occurs first.

Final determination of disposal will await completion of an Environmental Assessment. Upon completion of the Environmental Assessment, a Notice of Realty Action shall be published specifying the lands to be exchanged and the lands to be acquired.

DATES: On or before January 3, 1994, interested parties may submit comments to the Butte District Manager, P.O. Box 3388, Butte, Montana 59702.

Dated: November 5, 1993.

James R. Owings,

District Manager.

[FR Doc. 93-28323 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-DN-M

[OR-942-00-4730-02: G4-025]

Filing of Plats of Survey: Oregon/Washington

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The plats of survey of the following described lands are scheduled to be officially filed in the Oregon State Office, Portland, Oregon, thirty (30) calendar days from the date of this publication.

Willamette Meridian

Oregon

T. 12 S., R. 1 E., accepted October 14, 1993
T. 15 S., R. 6 W., accepted September 16, 1993
T. 27 S., R. 7 W., accepted October 27, 1993

Washington

T. 10 N., R. 18 E., accepted September 15, 1993
T. 16 N., R. 19 E., accepted September 30, 1993
T. 36 N., R. 19 E., accepted October 27, 1993
T. 16 N., R. 20 E., accepted September 30, 1993
T. 17 N., R. 20 E., accepted September 30, 1993
T. 16 N., R. 22 E., accepted September 30, 1993
T. 15 N., R. 23 E., accepted September 30, 1993
T. 16 N., R. 23 E., accepted September 30, 1993

If protests against a survey, as shown on any of the above plat(s), are received prior to the date of official filing, the filing will be stayed pending consideration of the protest(s). A plat will not be officially filed until the day after all protests have been dismissed and become final or appeals from the dismissal affirmed.

The plat(s) will be placed in the open files of the Oregon State Office, Bureau of Land Management, 1300 N.E. 44th Avenue, Portland, Oregon 97213, and will be available to the public as a matter of information only. Copies of the plat(s) may be obtained from the above office upon required payment. A person or party who wishes to protest against a survey must file with the State Director, Bureau of Land Management, Portland, Oregon, a notice that they wish to protest prior to the proposed official filing date given above. A statement of reasons for a protest may be filed with the notice of protest to the State Director, or the statement of reasons must be filed with the State Director within thirty (30) days after the proposed official filing date.

The above-listed plats represent dependent resurveys, survey and subdivision.

FOR FURTHER INFORMATION CONTACT: Bureau of Land Management, 1300 N.E. 44th Avenue, P.O. Box 2965, Portland, Oregon 97208.

Dated: November 8, 1993.

Robert D. DeViney, Jr.,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-28419 Filed 11-17-93; 8:45 am]

BILLING CODE 4310-33-M

[AZ-930-4210-06; A-903, AR-05059, AR-05172, AR-07159]

Proposed Modification and Continuation of Withdrawals; Opportunity for Public Comments, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years Public Land Orders (PLO) 1176 (AR-05059), PLO 1390 (AR-05172), PLO 3263 (AR-07159), and PLO 4373 (A-903), which withdrew National Forest System lands in the Apache-Sitgreaves National Forests for use by the Forest Service as campgrounds, forest camps and picnic grounds. All sites have improvements located thereon and the Forest Service intends to continue to utilize the sites for the purposes withdrawn. It does not anticipate any significant change in land use in the surrounding areas in the near future. All the withdrawn lands were closed to appropriation under the mining laws but not to the mineral leasing laws. In addition, PLO 1176 and PLO 1390, closed the lands to operations under the Public Land Laws. The proposed action is to continue closure to the mining laws, to establish a 20-year time limit for the specific withdrawal, and to open lands covered by PLO 1176 and PLO 1390, to use authorizations applicable to National Forest System lands. The withdrawn areas presently are, or soon will be, the smallest unit possible necessary to meet existing needs.

DATES: Comments on the proposed action should be received on or before February 16, 1994.

ADDRESSES: Comments should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona, 85014, or P.O. Box 16563, Phoenix, Arizona, 85011-6563.

FOR FURTHER INFORMATION CONTACT: John Mezes, BLM, Arizona State Office, 602-650-0509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that PLO 1176, 1390, 3263 and 4373, withdrawing lands for uses such as campgrounds, forest camps and picnic grounds, be modified and generally continued for 20 years. Some of the same orders have been utilized to withdraw other sites for a variety of uses. These will be the subject of other notices and withdrawal review reports. All sites, or portions thereof, remaining withdrawn will continue to be closed to operations under the mining laws only, unless otherwise specified. The land will continue to be open to mineral leasing and to other types of uses applicable to National Forest System lands. Continuation of the withdrawals as proposed in this notice are in conformance with existing forest plans. All sites listed below are located within the boundaries of the Apache-Sitgreaves National Forests in Coconino, Apache, Navajo and Greenlee Counties. The specific sites are identified and described as follows:

Gila and Salt River Meridian

Lakeside Forest Camp Recreation Area (AR-05059)

T. 9 N., R. 22 E.,
Sec. 23, N½SW¼SE¼.
The area described totals 20.00 acres.

Granville Campground and Recreation Area (AR-05172)

T. 3 S., R. 29 E.,
Sec. 8, W½NW¼NE¼, S½SW¼NE¼, W½NW¼SE¼, E½SE¼NW¼.
The area described totals 80.00 acres.

Alpine Divide Forest Camp (AR-07159)

T. 6 N., R. 30 E.,
Sec. 23, SW¼.
The area described totals 160.00 acres.

Blue Crossing Forest Camp (AR-07159)

T. 3 N., R. 31 E.,
Sec. 1, SW¼SW¼.
The area described totals 40.00 acres.

Buffalo Administrative Camp Site (AR-07159)

T. 4 N., R. 28 E.,
Sec. 1, E½NE¼SW¼.
The area described totals 20.00 acres.

Hannagan Forest Camp (AR-07159)

T. 3 N., R. 29 E., (Unsurveyed)
Sec. 3, NE¼SE¼.
The area described totals 40.00 acres.

KP Cienega Forest Camp (AR-07159)

T. 3 N., R. 29 E., (Unsurveyed)
Sec. 28, S½NW¼, N½SW¼.
The area described totals 160.00 acres.

Middle Blue Forest Camp (AR-07159)

T. 3 N., R. 31 E.,
Sec. 22, NE¼NW¼.
The area described totals 40.00 acres.

West Fork Black River Forest Camps (AR-07159)

T. 5 N., R. 28 E.,
Sec. 29, S½SW½;
Sec. 30, E½SE¼;

Sec. 32, W½NE¼, NE¼NW¼, N½SE¼, lots 3 and 4.

The areas described aggregate 434.79 acres.

East Fork Black River Forest Camp (AR–07159)

T. 4 N., R. 28 E.,
Sec. 1, Lots 1 and 2;
Sec. 12, NW¼.
T. 5 N., R. 28 E.,
Sec. 25, SW¼, W½SE¼, lots 3 and 4;
Sec. 35, NE¼, N½SE¼, lots 8 and 9;
Sec. 36, NW¼, NW¼SE¼, N½SW¼, lots 1, 4 and 5.
T. 5 N., R. 29 E.,
Sec. 19, S½SE¼;
Sec. 20, E½NE¼, SW¼NE¼, NW¼SE¼, SW¼;
Sec. 21, NW¼NW¼;
Sec. 30, NE¼, E½NW¼, NE¼SW¼, lots 2 and 3.

The areas described aggregate 2,074.43 acres.

South Fork Campground Recreation Area (AR–07159)

T. 8 N., R. 28 E.,
Sec. 20, W½NE¼, NE¼NW¼.

The areas described total 120.00 acres.

Upper Blue Forest Camp (AR–07159)

T. 4 N., R. 32 E.,
Sec. 18, SW¼NE¼, SE¼NW¼, S½NE¼NW¼.

The areas described total 120.00 acres.

Canyon Point Campground and Recreation Area (A–903)

T. 11 N., R. 14 E.,
Sec. 22, SE¼NE¼, E½SE¼;
Sec. 23, SW¼NW¼, W½SW¼, SE¼SW¼;
Sec. 26, SW¼NE¼, N½NW¼, SE¼NW¼, E½SW¼, W½SE¼, SE¼SE¼ (that portion within the Sitgreaves National Forest);
Sec. 35, N½NE¼, SE¼NE¼, NE¼NW¼ (those portions within the Sitgreaves National Forest).

The areas described aggregate 780.00 acres.

The total acreage of the areas described in this publication is 4,089.22 acres. The purpose of the withdrawals was and continues to be to protect Forest Service campgrounds, forest camps and picnic grounds from possible location, entry and disturbances that may be caused by mining activity.

For a period of 90 days from the date of publication of this notice, all persons wishing to submit comments in connection with these proposed actions may present their views in writing to this office. The authorized officer of the BLM will undertake such investigations as may be necessary to determine the proper existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the **Federal Register** in the form of a PLO. The existing withdrawals will continue in force pending the final determination on each action.

Phillip Moreland,

Acting Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93–28420 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–32–M

[CA–940–4210–06; CACA 32220]

Notice of Proposed Withdrawal and Opportunity for Public Meeting; California

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Department of Agriculture, Forest Service, has filed an application to withdraw 45 acres of National Forest System lands for protection of a seismographic station of the University of California, Berkeley. This notice closes the lands for up to 2 years from location and entry under the United States mining laws. The lands will remain open to all other uses which may be made of National Forest System lands.

DATES: Comments and requests for meeting should be received on or before February 16, 1994.

ADDRESSES: Comments and meeting requests should be sent to the California State Director, BLM, 2800 Cottage Way, room E–2845, Sacramento, California 95825.

FOR FURTHER INFORMATION CONTACT: Viola Andrade, BLM California State Office, 916–978–4820.

SUPPLEMENTARY INFORMATION: On June 10, 1993, the United States Department of Agriculture filed an application to withdraw the following described National Forest System lands from location and entry under the United States mining laws, subject to valid existing rights:

Mount Diablo Meridian

Klamath National Forest
T. 45 N., R. 8 W.,
Sec. 24, NE¼SE¼ and N½NW¼SE¼SE¼.

The area described contains 45 acres in Siskiyou County.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the California State Director of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the California State Director within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the lands will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are land uses permitted by the Forest Service under existing laws and regulations.

Dated: November 10, 1993.

Nancy J. Alex,

Chief, Lands Section.

[FR Doc. 93–28421 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–40–M

Bureau of Mines

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

A request extending the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed collection of information and related forms and explanatory material may be obtained by contacting the Bureau's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made within 30 days directly to the Bureau clearance officer and to the Office of Management and Budget, Paperwork Reduction Project, Washington, DC 20503, telephone 202–395–7340.

Title: Minerals Yearbook Volume III Customers Survey.

OMB approval number: None.

Abstract: Information is needed to evaluate customer response to recent publication format changes as well as quality and timeliness issues. The results will provide guidance to the Bureau on future content direction and

distribution policies for this publication.

Bureau form number: None.

Frequency: One time survey.

Description of respondents: Academia, private companies, Government institutions and international consultants.

Annual responses: 9,000.

Annual burden hours: 1,500.

Bureau clearance officer: Alice J. Wissman 202–501–9569.

Dated: October 25, 1993.

Hermana Enzer,

Acting Director, Bureau of Mines.

[FR Doc. 93–28305 Filed 11–17–93; 8:45 am]

BILLING CODE 4310-83-M

Fish and Wildlife Service

Possible New Listing Criteria for Appendices of the Convention on International Trade in Endangered Species of Wild Fauna and Flora

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice and request for comments.

SUMMARY: The Convention on International Trade in Endangered Species of Wild Fauna and Flora (CITES or the Convention) regulates international trade in certain animals and plants. Species for which trade in specimens is controlled are listed in Appendices I, II, and III to the Convention.

A draft resolution with possible new criteria for listing species in CITES Appendices I and II has been circulated by the CITES Standing Committee. The U.S. Fish and Wildlife Service (Service) announces the availability (upon request) of the draft resolution, and solicits comments on the draft criteria, and on their potential application.

DATES: The Service will consider all comments received by December 13, 1993, in developing a response on the draft resolution, for transmittal to the CITES Secretariat by December 31, 1993. Further, the Service will consider all comments received by February 11, 1994, in determining the U.S. negotiating positions on any revision of the draft resolution for the U.S. representatives to the March 1994 meeting of the CITES Standing Committee. Any resulting final draft resolution would be submitted to the Parties for their consideration at the ninth meeting of the Conference of the Parties to CITES (COP9), to be held in Ft. Lauderdale, Florida, during November 7–18, 1994.

ADDRESSES: Comments, information, and questions should be sent to Chief, Office of Scientific Authority; U.S. Fish and Wildlife Service; 4401 North Fairfax Drive, room 725; Arlington, Virginia 22203; fax number 703–358–2276. Express and messenger deliveries should be addressed to the Office of Scientific Authority; 4401 North Fairfax Drive, room 750; Arlington, Virginia. Comments and materials received will be available for public inspection by appointment from 8 a.m. to 4 p.m. Monday through Friday near Washington, DC at the above address in Arlington, Virginia (room 750).

FOR FURTHER INFORMATION CONTACT: Dr. Charles W. Dane, Chief, Office of Scientific Authority, concerning the biological criteria and the assessment thereof (telephone 703–358–1708) or Mr. Marshall P. Jones, Chief, Office of Management Authority, concerning policy and administrative matters (telephone 703–358–2093).

SUPPLEMENTARY INFORMATION:

Background

The Convention (TIAS 8249) regulates import, export, re-export, and introduction from the sea of certain animal and plant specimens. Those species for which such trade is controlled are included in three appendices. Appendix I lists species threatened with extinction that are or may be affected by the trade. Under the provisions of CITES Article II, paragraph 2(a), Appendix II lists species that although not necessarily now threatened with extinction may become so, unless the trade in them is strictly controlled. Under the provisions of Article II.2(b), Appendix II also lists other species that must be subject to regulation, in order that the trade in those currently and potentially threatened species may be brought under effective control (e.g., because of difficulty in distinguishing specimens of those currently or potentially threatened species among the specimens of other species). (Appendix III includes species that any Party country identifies as being subject to regulation within its jurisdiction for purposes of preventing or restricting exploitation, and for which it needs the cooperation of the other Parties in controlling trade.)

Any country that is a Party to this treaty may propose amendments to Appendix I or II, for consideration usually at a meeting of the Conference of the Parties. Criteria on (1) addition or uplisting of species and other taxa for Appendix I or II, and on (2) deletion or downlisting of species and other taxa for Appendix I or II, were established in Resolutions Conf. 1.1 and Conf. 1.2 respectively, in 1976 at the first meeting of the Conference of the Parties to CITES (COP1). These criteria have been supplemented with criteria for particular situations in several other resolutions adopted at subsequent COPs. The format for the proposed amendments was established in Resolution Conf. 2.17, adopted in 1979 at COP2.

In 1992 at COP8, the Parties adopted Resolution Conf. 8.20, which directed the CITES Standing Committee (SC) to undertake, with the assistance of the CITES Secretariat, a revision of the criteria for amending the appendices. This resolution directed a joint meeting of the CITES Animals Committee (AC) and CITES Plants Committee (CPC) to prepare a draft resolution on such criteria. Later in 1992 the SC provided further direction to the process: (1) Designating the World Conservation Union (IUCN) along with individuals selected by the SC to provide recommendations on new criteria and a report for the March 1993 SC meeting; and (2) determining that the joint meeting would consist of the Regional and as well the alternate representatives of the AC and CPC, and also the members of the SC, which is comprised of six Regional representatives, the depository government (Switzerland), the country that hosted the last COP (Japan), and the country hosting the next COP.

The CITES Parties are organized within six Regions: Africa, Europe, Asia, Oceania, North America, and South America, Central America and the Caribbean. Canada is the North American Regional representative on the Standing Committee, and has the alternate member on the Animals Committee. Mexico has the Regional representative on the Animals Committee, and the alternate member on the Plants Committee. The United States is a member of the Standing Committee as the next host country (for COP9 in 1994), and has the Regional representative on the Plants Committee.

Joint Meeting on Possible New Criteria

IUCN submitted their report with recommendations on possible new listing criteria to the SC meeting in March 1993, where concerns with the IUCN draft were discussed. The draft was revised by the IUCN, and the revision was circulated to the Parties by the SC Chairman in April 1993 for review and comment. The Service made that revised report available for commentary, in preparing for the joint meeting (see the June 15, 1993, Federal Register; 58 FR 33103). IUCN

meanwhile sought to "validate" the draft criteria based on information available on a selected number of species, by the IUCN Species Survival Commission Specialist Groups trying the criteria to determine how particular species would be classified. Information from this undertaking was available for the joint meeting.

The joint SC/AC/CPC meeting was held in Brussels, Belgium from August 30 through September 3, 1993. The resulting draft resolution contains new or revised: (1) Biological criteria for Appendix I species; (2) criteria for Appendix II species under CITES Article II.2(a); (3) criteria for special cases, *i.e.*, for (a) Appendix II species under Article II.2(b), (b) split-listings, and (c) higher taxa listings; (4) precautionary measures; (5) definitions and notes; and (6) a format, subsequently annotated, for the proposals on taxa (the submission of amendments to the appendices).

Information Sought

This draft resolution resulting from the joint meeting has been received by the Service, and is available upon request to the Office of Scientific Authority (see the **ADDRESSES** section). It has not been adopted by the SC, which did endorse the continuation of this evaluation process at its September 6–8, 1993, meeting in Brussels, Belgium.

The Service is interested in receiving any comments on the scientific and technical adequacy of the draft resolution, as well as the following points singled out by the joint meeting:

(1) Any considerations that should have been included but were not.

(2) Comments on the usage and the definitions of "decline", "continuing decline" and "marked decline".

(3) Particularly, views on the text in the draft resolution's Annex 2, which provides the criteria for Appendix II species under CITES Article II.2(a).

(4) Whether a periodic review of the efficacy of including species in the appendices should be confined to Appendix I species or also should extend to those in Appendix II.

The Service would be interested in receiving any other comments on the interpretation and the application of the draft criteria. If efforts also are made to assess the criteria in terms of whether a certain species would be classified in Appendix I, or II, or neither, the Service would be interested in receiving all the information used in making that assessment. If the biological or trade information is inferred to be inadequate to determine in which appendix the species should be placed, the Service would be interested in discussion of what was perceived to be insufficient and what information would be needed to apply these criteria.

The Service also is interested in any input from scientific or other experts on alternative listing criteria or other alternatives, considering the Standing Committee's prospect next March of recommending a draft resolution to the Parties.

Future Actions

In his October 15, 1993, letter to the CITES Parties, the SC Chairman stated that the SC is keen to receive the views of the Parties on all aspects of the draft resolution. He asked that their comments be provided in the form of proposed amendments to the draft resolution, for the SC to consider. The commentary is scheduled to be analyzed in January 1994, with possible preparation of a revised draft resolution for consideration by the SC, which intends to hold its next meeting on March 21–25, 1994, in Geneva, Switzerland.

Any important issue should be identified and submitted to the CITES Secretariat by December 31, 1993, and so the Service is requesting that any comments on the important issues be submitted to the Service by December 13, 1993. In addition, the Service is requesting that all comments on this draft resolution or its application be submitted by February 11, 1994. Prior to participation in the next SC meeting in March 1994, the United States will also consult with Canada and Mexico (the other members of the North American Region).

This notice was prepared by Dr. Bruce MacBryde, Office of Scientific Authority, under the authority of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531 *et seq.*)

Dated: November 3, 1993.

Bruce Blanchard,

Acting Director.

[FR Doc. 93–28329 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–55–M

Receipt of Applications for Permit

The following applicants have applied for a permit to conduct certain activities with endangered species. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (16 U.S.C. 1531, *et seq.*):

PRT–782954

Applicant: Dr. Ennis Barker, Portage, MI.

The applicant requests a permit to purchase in interstate commerce up to 6 captive-born Indian monitors (*Varanus bengalensis*) from Danny Gorman, Levittown, New York, to enhance the propagation and survival of the species.

Written data or comments should be submitted to the Director, U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203 and must be received by the Director within 30 days of the date of this publication.

Documents and other information submitted with these applications are available for review, subject to the requirements of the Privacy Act and Freedom of Information Act, by any party who submits a written request for a copy of such documents to the following office within 30 days of the date of publication of this notice: U.S. Fish and Wildlife Service, Office of Management Authority, 4401 North Fairfax Drive, room 420(c), Arlington, Virginia 22203. Phone: (703/358–2104); FAX: (703/358–2281).

Dated: November 12, 1993.

Susan Jacobsen,

Acting Chief, Branch of Permits, Office of Management Authority.

[FR Doc. 93–28363 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–55–M

Availability of an Environmental Assessment for an Amendment to the Incidental Take Permit (PRT–739678) and Short-term Habitat Conservation Plan for the Endangered Stephens' Kangaroo Rat in Western Riverside County, CA

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice.

SUMMARY: This notice advises the public that the Riverside County Habitat Conservation Agency (RCHCA) seeks the approval of the U.S. Fish and Wildlife Service (Service) for an amendment to extend the duration of incidental take permit PRT–739678 (permit) from December 31, 1993, until September 30, 1994. The proposed amendment would extend the expiration date of the permit 9 months to facilitate the establishment of permanent Stephens' kangaroo rat (SKR) reserves, and to allow for the completion of the long-term SKR Habitat Conservation Plan (HCP) currently being prepared by the RCHCA. This notice is provided pursuant to section 10(c) of the Endangered Species Act of 1973, as amended (Act) and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the proposed amendment or the Environmental Assessment (EA) should be received on or before December 17, 1993.

ADDRESSES: Comments regarding the adequacy of the EA should be addressed to Dr. Peter Stine, Acting Field Supervisor, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008. Please refer to permit number PRT–739678 when submitting comments.

FOR FURTHER INFORMATION CONTACT: Dr. John Bradley, U.S. Fish and Wildlife Service, 2730 Loker Avenue West, Carlsbad, California 92008 (619–431–9440). Individuals wishing copies of the EA for review should immediately contact the above individual.

SUPPLEMENTARY INFORMATION:

Background

Under section 9 of the Act, "taking" of the SKR, an endangered species, is prohibited. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are in 50 CFR 17.22. In July 1990, the Service issued the 2-year permit for the incidental take of SKR to the local governments who are members of the RCHCA. The authorization granted by the permit is conditioned on implementation of the HCP submitted by the RCHCA members and on compliance with the implementation agreement signed by the participating jurisdictions. In general, the HCP and implementation agreement established a program during which permanent SKR reserves would be established and a limited amount of incidental take would be allowed under certain conditions. Since 1990, the permit has been amended four times.

The EA considers the environmental consequences of the alternatives, including the proposed action and the no action alternatives. The proposed action would allow the amendment of the permit to extend the expiration date 9 months, until September 30, 1994. The proposed action would not alter the restrictions on take imposed by the permit, or change the level of incidental take of the SKR specified in the current biological opinion. The proposed action would facilitate establishment of SKR reserves by maintaining land use controls in reserve study areas and continue the collection of mitigation fees during the additional months required to complete the long-term SKR HCP. Under the no action alternative, the existing terms and conditions of the permit would remain in effect and the permit would expire on December 31, 1993. Under the no action alternative there would be a gap in the collection of mitigation fees required for SKR habitat mitigation, and some land use and management restrictions imposed on lands within SKR reserve study areas would be lifted. An alternative considered, but eliminated from further consideration was incorporation of the amendment into an application for a new incidental take permit. It was eliminated from further consideration because the proposed amendment would not alter the existing permit in a way that would necessitate submittal of a new permit application. Moreover, the proposed amendment is intended to allow for the completion of the long-term plan and not to initiate its implementation.

Dated: November 10, 1993.

William E. Martin,

Acting Regional Director, Region 1, U.S. Fish and Wildlife Service.

[FR Doc. 93–28365 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Delaware and Lehigh Navigation Canal National Heritage Corridor; Meeting

AGENCY: National Park Service; Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, Interior.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the date of the forthcoming meeting of the Delaware and Lehigh Navigation Canal National Heritage Corridor Commission.

DATES: December 15, 1993 at 1:30 p.m.

INCLEMENT WEATHER RESCHEDULE DATE: None.

ADDRESSES: Public Safety Building, 10 E. Church Street, room P–205, Bethlehem, PA 18018.

FOR FURTHER INFORMATION CONTACT: Millie Alvarez, Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 East Church Street, room P–208, Bethlehem, PA 18018, (215) 861–9345.

SUPPLEMENTARY INFORMATION: The Commission was established by Public Law 100–692 to assist the Commonwealth and its political subdivisions in planning and implementing an integrated strategy for protecting and promoting cultural, historical and natural resources. The Commission will report to the Secretary of the Interior and to Congress. The agenda for the meeting will focus on the planning process.

The meeting will be open to the public. Any member of the public may file a written statement concerning agenda items. The statement should be addressed to Delaware and Lehigh Navigation Canal National Heritage Corridor Commission, 10 E. Church Street, room P–208, Bethlehem, PA 18018, Attention: Millie Alvarez. Minutes of the meeting will be available for inspection four weeks after the meeting, at the above-named address.

Charles P. Clapper, Jr.,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 93–28370 Filed 11–17–93; 8:45 am]

BILLING CODE 4310–70–M

AGENCY FOR INTERNATIONAL DEVELOPMENT

Housing Guaranty Program; Investment Opportunity

The Agency for International Development (A.I.D.) has authorized the guaranty of loans to the Government of Tunisia ("Borrower") as part of A.I.D.'s development assistance program. The proceeds of these loans will be used to finance infrastructure and shelter projects for low-income families in Tunisia. At this time, the Government of Tunisia has authorized A.I.D. to request proposals from eligible lenders for a loan under this program of $8.0 Million U.S. Dollars (U.S. $8,000,000). The name and address of the Borrower's representative to be contacted by interested U.S. lenders or investment bankers, the amount of the loan and project number are indicated below:

Government of Tunisia

Project: 664–HG–004D—$8,000,000.

Housing Guaranty Loan No: 664–HG–009 A01.

1. Attention: Mr. Mongi Grine, Directeur, Direction des Paiements Exterieur, Banque Centrale de Tunisie, Tunis, Tunisia. Telex No.: BANCENT 15375, 13311. Telefax No.: 216–1–340–615 (preferred communication). Telephone No.: 216–1–340–588, 254–000.

Interested lenders should contact the Borrower as soon as possible and indicate their interest in providing financing for the Housing Guaranty Program. Interested lenders should submit their bids to the Borrower's representative by Tuesday, November 30, 1993, 12:00 noon Eastern Standard Time. Bids should be open for a period of 48 hours from the bid closing date. Copies of all bids should be simultaneously sent to the following:

Mr. Lane Smith or Ms. Monia Ben Khalifa, Rhudo/Nena—USAID/Tunisia, c/o American Embassy, Tunis, Tunisia, (Street address: 28 Rue Suffex, Notre Dame, Tunis, Tunisia), Telex No.: 14182 USAID TN, Telefax No.: 216–1–783–350 (preferred communication), Telephone No.: 216–1–784–300.

Mr. David Grossman/Mr. Peter Pirnie, Agency for International Development, Office of Housing and Urban Programs, PRE/H, Room 401, SA–2, Washington, DC 20523–0214, Telex No.: 892703 AID WSA, Telefax No.: 202/663–2552 (preferred communication), Telephone No.: 202/663–2530.

For your information the Borrower is currently considering the following terms:

(1) *Amount:* U.S. $8.0 million.

(2) *Term:* 30 years.

(3) *Grace Period:* Ten years grace on repayment of principal (during grace period, semi-annual payments of interest only). If *variable* interest rate, repayment of principal to amortize in equal, semi-annual installments over the remaining 20-year life of the loan. If *fixed* interest rate, semi-annual level payments of principal and interest over the remaining 20-year life of the loan.

(4) *Interest Rate:* Alternatives of fixed and variable rates, and variable rates with interest "caps", are requested.

(a) *Fixed Interest Rate:* If rates are to be quoted based on a spread over an index, the lender should use as its index a long bond, specifically the 6¼% U.S. Treasury Bond due August 15, 2023. Such rate is to be set at the time of acceptance.

(b) *Variable Interest Rate:* To be based on the six-month British Bankers Association LIBOR, preferably with terms relating to Borrower's right to convert to fixed. The rate should be adjusted weekly.

(c) *Variable Interest Rate with "Caps":* Offers should include a maximum (cap) rate ranging from 10% to 12% per annum, and are to be based on the six-month British Bankers Association LIBOR. The rate should be adjusted weekly.

(5) *Prepayment:*

(a) Offers should include options for prepayment and mention prepayment premium, if any.

(b) Federal statutes governing the activities of A.I.D. require that the proceeds of A.I.D.-guaranteed loans be used to provide affordable shelter and related infrastructure and services to below median-income families. In the extraordinary event that the Borrower materially breaches its obligation to comply with this requirement, A.I.D. reserves the right, among its other rights and remedies, to accelerate the loan.

(6) *Fees:* Offers should specify the placement fees and other expenses, including A.I.D. fees, Paying and Transfer Agent fees, out of pocket expenses, etc. Lenders are requested to include all legal fees in their placement fee. Such fees and expenses shall be payable at closing from the proceeds of the loan.

(7) *Closing Date:* Estimated 60 days from date of selection of lender.

Selection of investment bankers and/or lenders and the terms of the loan are initially subject to the individual discretion of the Borrower and thereafter subject to approval by A.I.D. Disbursements under the loan will be subject to certain conditions required of the Borrower by A.I.D. as set forth in agreements between A.I.D. and the Borrower.

The full repayment of the loans will be guaranteed by A.I.D. The A.I.D. guaranty will be backed by the full faith and credit of the United States of America and will be issued pursuant to authority in Section 222 of the Foreign Assistance Act of 1961, as amended (the "Act").

Lenders eligible to receive an A.I.D. guaranty are those specified in Section 238(c) of the Act. They are: (1) U.S. citizens; (2) domestic U.S. corporations, partnerships, or associations substantially beneficially owned by U.S. citizens; (3) foreign corporations whose share capital is at least 95 percent owned by U.S. citizens; and, (4) foreign partnerships or associations wholly owned by U.S. citizens.

To be eligible for an A.I.D. guaranty, the loans must be repayable in full no later than the thirtieth anniversary of the disbursement of the principal amount thereof and the interest rates may be no higher than the maximum rate established from time to time by A.I.D.

Information as to the eligibility of investors and other aspects of the A.I.D. housing guaranty program can be obtained from:

Mr. Peter M. Kimm, Director, Office of Housing and Urban Programs, Agency for International Development, Room 401, SA–2, Washington, DC 20523–0214, Telephone: 202/663–2530.

Dated: November 10, 1993.

Michael G. Kitay,

Assistant General Counsel, Bureau for Private Enterprise, Agency for International Development.

[FR Doc. 93–28475 Filed 11–17–93, 8:45 am]

BILLING CODE 6116–01–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–359]

Certain Dielectric Miniature Microwave Filters and Multiplexers Containing Same Investigation

AGENCY: International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337 and provisional acceptance of motion for temporary relief.

SUMMARY: Notice is hereby given that a complaint and a motion for temporary relief were filed with the U.S. International Trade Commission on October 4, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Space Systems/Loral, Inc., 3825 Fabian Way, Palo Alto, California 94303–4697. A letter supplementing the complaint was filed on October 29, 1993. The complaint, as supplemented, alleges violations of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain dielectric miniature microwave filters and multiplexers containing same by reason of alleged infringement of claims 1, 3, 7–11, and 14 of U.S. Letters Patent 4,489,293, and that there exists an industry in the United States as required by subsection (a)(2) of section 337. The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and a permanent cease and desist order.

The motion for temporary relief requests that the Commission issue a temporary exclusion order and a temporary cease and desist order prohibiting the importation into and the sale within the United States after importation of infringing dielectric miniature microwave filters and multiplexers during the course of the Commission's investigation.

ADDRESSES: The complaint and the motion for temporary relief, except for any confidential information contained therein, are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2582.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12. The authority for provisional acceptance of the motion for temporary relief is contained in § 210.24(e) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.24(e).

SCOPE OF INVESTIGATION: Having considered the complaint and the motion for temporary relief, the U.S. International Trade Commission, on November 8, 1993, ordered that—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain dielectric miniature microwave filters and multiplexers containing same by reason of alleged infringement of claims 1, 3, 7, 8, 9, 10, 11, or 14 of U.S. Letters Patent 4,489,293, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) Pursuant to § 210.24(e)(8) of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.24(e)(8), the motion for temporary relief under subsection (e) of section 337 of the Tariff Act of 1930, which was filed with the complaint, be provisionally accepted and referred to an administrative law judge.

(3) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Space Systems/Loral, Inc., 3825 Fabian Way, Palo Alto, California 94303–4697.

(b) The respondent is the following company alleged to be in violation of section 337, and is the party upon which the complaint and motion for temporary relief are to be served: Com Dev Ltd., 155 Sheldon Drive, Cambridge, Ontario, Canada N1R 7H6.

(c) Mary Jane Boswell, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street SW., room 401–I, Washington, DC 20436, shall be the Commission investigative attorney, party to this investigation; and

(4) For the investigation and temporary relief proceedings so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding administrative law judge.

Responses to the complaint, the motion for temporary relief, and the notice of investigation must be submitted by the named respondent in accordance with §§ 210.21 and 210.24 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21 and 210.24. Pursuant to §§ 201.16(d), 210.21(a), and 210.24(e)(9) of the Commission's Rules, 19 CFR 201.16(d), 210.21(a), and 210.24(e)(9), such responses will be considered by the Commission if received not later than 10 days after the date of service by the Commission of the complaint, the motion for temporary relief, and the notice of investigation. Extensions of time for submitting responses will not be granted unless good cause therefor is shown.

Failure of the respondent to file a timely response to each allegation in the complaint, in the motion for temporary relief, and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint, the motion for temporary relief, and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondent, to find the facts to be as alleged in the complaint, motion for temporary relief, and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of an exclusion order or a cease and desist order or both directed against the respondent.

Issued: November 9, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28290 Filed 11–17–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 31024]

The Durango & Silverton Narrow Gauge Railroad Co.—Petition for Declaratory Order or Exemption

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 The Durango & Silverton Narrow Gauge Railroad Company's (D&SNG) discontinuance of interstate freight operations over D&SNG's entire 45-mile line between Durango and Silverton, CO, subject to the standard labor protective conditions.

DATES: Unless a formal expression of intent to file an offer of financial assistance is received, this exemption will be effective on December 18, 1993. Formal expressions of intent to file an offer of financial assistance [1] under 49 CFR 1152.27(c)(2) must be filed by November 29, 1993, petitions to stay must be filed by December 3, 1993, and petitions for reopening must be filed by December 13, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 31024 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) Petitioner's representative: Edward T. Lyons, Jr., 1625 Broadway, suite 1600, Denver, CO 80202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD Services (202) 927–5721).

Decided: November 3, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28404 Filed 11–17–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–167 (Sub-No. 1130X)]

Consolidated Rail Corp.—Abandonment Exemption—in Grant County, IN

Consolidated Rail Corporation (Conrail) has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon approximately 1.14 miles of railroad between milepost 162.0±, near Marion and milepost 163.14±, in Sweetser, in Grant County, IN.

Conrail has certified that:

(1) No local traffic has moved over the line for at least 2 years;

(2) There is no overhead traffic on the line;

(3) No formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with

[1] See Exemp. of Rail Line Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and

(4) The requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to use of this exemption, any employee adversely affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 22, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 2, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 13, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Robert S. Natalini, Consolidated Rail Corporation, Two Commerce Square, 2001 Market Street, P.O. Box 41416, Philadelphia, PA 19101–1416.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Conrail has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 26, 1993. Interested persons may obtain a copy of the EA by writing to SEE (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28405 Filed 11–17–93; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit the Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

[Finance Docket No. 32380]

Golden Triangle Railroad—Trackage Rights Exemption—SouthRail Corp.

SouthRail Corporation has agreed to grant trackage rights to Golden Triangle Railroad over approximately 4.5 miles of rail line between milepost 9.5 at or near Columbus, MS, and milepost 5.0 at or near Bentoak, MS. The trackage rights were to become effective on November 9, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Jay M. Nadlman, SouthRail Corporation, 114 West Eleventh St., Kansas City, MO 64105.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: November 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28401 Filed 11–17–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32345 (Sub-No. 1)]

North Carolina Ports Railway Commission—Purchase and Operation Exemption—CSX Transportation, Inc., Line in North Carolina; Wilmington Terminal Railroad, L.P.—Lease and Operation Exemption—North Carolina Ports Railway Commission

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the regulatory requirements of 49 U.S.C. 11343, *et seq.*, (1) in Finance Docket No. 32345, the purchase and operation by North Carolina Ports Railway Commission (NCPR) of CSX Transportation, Inc., lines in Wilmington, NC, known as the New River Spur and the Front Street Spur, with a combined length of about 4.2 miles, subject to standard labor protective conditions, and (2) in Finance Docket No. 32345 (Sub-No. 1), the lease and operation by Wilmington Terminal Railroad, L.P., of the above-described lines to be purchased by NCPR in Finance Docket No. 32345, subject to standard labor protective conditions.

DATES: This exemption is effective on November 23, 1993. Petitions to reopen must be filed by December 8, 1993.

ADDRESSES: Send pleadings referring to Finance Docket Nos. 32345 and 32345 (Sub-No. 1) to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Patricia E. Dietrich, 1224 17th Street NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD services (202) 927–5721).

Decided: November 5, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28402 Filed 11–17–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32386]

Soo Line Railroad Co.—Trackage Rights Exemption—Indiana Southern Railroad Co.

Indiana Southern Railroad Company has agreed to grant trackage rights to Soo Line Railroad Company over approximately 19.6 miles of rail line between milepost 94.20 at Elnora, IN, and milepost 113.80 at Maysville, IN. The trackage rights were to become effective on November 10, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Larry D. Starns, Soo Line Railroad Company, 1000 Soo Line Building, 105 South Fifth St., Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees adversely affected by the trackage rights will be protected under Norfolk and Western Ry. Co—Trackage Rights—BN, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., Inc.—Lease and Operate, 360 I.C.C. 653 (1980).

Decided: November 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28400 Filed 11–17–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Consent Judgment Pursuant to the Resource Conservation and Recovery Act; United States v. Hanlin Group, Inc., et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 Fed. Reg. 19029, notice is hereby given that a proposed Consent Decree in *United States* v. *Hanlin Group, Inc.*, (D. Me.), Civil Action No. 91–0188–B, was lodged with the United States District Court for the District of Maine on October 27, 1993. The proposed Consent Decree requires the Defendant to perform a facility investigation, corrective measures study, and any necessary stabilization measures at its Orrington, Maine facility. Also, the Decree provides that the Defendant will pay a civil penalty of $1,152,000 for its violations of the Resource Conservation and Recovery Act, 42 U.S.C. 67901 *et seq.*

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be address to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Hanlin Group, Inc.*, D.O.J. Ref. No. 90–7–1–593.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 100 Middle Street Plaza, East Tower, 6th Floor, Portland, Maine 04101 (c/o Michael Dubose); at the Region I Office of the Environmental Protection Agency, One Congress Street, Boston, Massachusetts 02203 (c/o Amelia Welt Katzen); and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $38.00 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–28315 Filed 11–17–93; 8:45 am]

BILLING CODE 4410–01–M

Settlement Agreement in Action Brought Under the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a Settlement Agreement in *United States* v. *Washington Department of Transportation, et al.*, Civil Action No. C92–1351R, was lodged with the United States District Court for the Western District of Washington on September 29, 1992. As to one defendant, the State of Washington Department of Transportation, this Settlement Agreement resolves claims filed by the United States pursuant to section 113 of the Clean Air Act, 42 U.S.C. 7413, and section 309(b) of the Clean Water Act, 33 U.S.C. 1319(b).

The United States Department of Justice brought this action on behalf of the U.S. Environmental Protection Agency, to recover civil penalties from and obtain injunctive relief against defendants Washington Department of Transportation, McDonald's Corporation and James M. Pirie Construction Co., Inc., for alleged violations of the Clean Air Act, the National Emission Standards for Hazardous Air Pollutants for asbestos ("the asbestos NESHAP") promulgated thereunder, and the Clean Water Act during the 1987 renovation and demolition of the old Crabpot restaurant on the Colman Dock, Pier 52, in downtown Seattle, Washington. The United States previously entered into settlements with McDonald's and Pirie Construction which included civil penalty payments of $150,000 and $50,000, respectively. In this final settlement in this case, the State of Washington Department of Transportation agrees to pay the United States a civil penalty of $40,000.

The Department of Justice will accept written comments relating to this proposed Consent Decree for thirty (30) days from the date of publication of this notice. Please address comments to the Assistant Attorney General, Environment and Natural Resources Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044 and refer to *United States* v. *Washington Department of Transportation, et al.*, DOJ number 90–5–2–1–1686.

Copies of the proposed Settlement Agreement may be examined at the Office of the United States Attorney, Western District of Washington, 800 Fifth Avenue Plaza, Seattle, Washington 98104, and at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region 10, 1200 Sixth Avenue, Seattle, Washington 98101. Copies of the proposed Settlement Agreement may also be obtained from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed Settlement Agreement may be obtained by mail or in person from the Consent Decree Library. When requesting a copy of the Settlement Agreement, please enclose a check in the amount of $3.75 (25 cents per page reproduction costs) payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–28309 Filed 11–17–93; 8:45 am]

BILLING CODE 4410–05–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Bell Communications Research, Inc.

Notice is hereby given that, on September 28, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Bell

Communications Research, Inc. ("Bellcore") has filed written notifications on behalf of Bellcore and Accuwave, Inc. ("Accuwave") simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of the venture. The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Bellcore, Livingston, NJ; and Accuwave, Santa Monica, CA. Bellcore and Accuwave entered into an agreement effective as of September 4, 1993, to engage in cooperative research on the topic of wavelength-division multiplexed optical communications systems to better understand the feasibility and application of these technologies for exchange and exchange access services, including experimental prototype fabrication for the demonstration of such technologies.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28316 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petrotechnical Open Software Corp.

Notice is hereby given that, on October 14, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301, *et seq.* ("the Act"), Petrotechnical Open Software Corporation ("POSC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the protections of the Act limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following additional parties have become new, non-voting members of POSC: Z&S Consultants Ltd., London, United Kingdom; Geomatic A.S., Oslo, Norway; United States Government, Department of the Interior, Bureau of Land Management, Washington, DC.

No other changes have been made in either the membership or planned activity of POSC.

On January 14, 1991, POSC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 7, 1991, 56 FR 5021. The last notification was filed with the Department on July 15, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 17, 1993, 58 FR 43655.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28319 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Portland Cement Association

Notice is hereby given that, on October 5, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Portland Cement Association ("PCA") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Cadence Chemical Resources, Inc. has resigned its associate membership effective August 31, 1993.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and PAC intends to file additional written notification disclosing all changes in membership.

On January 7, 1985, PAC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on February 5, 1985, 50 FR 5015.

The last notification was filed with the Department on August 30, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on October 6, 1993, 58 FR 52120.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28317 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

Notice Pursuant To the National Cooperative Research and Production Act of 1993—Software Productivity Consortium

Notice is hereby given that, on September 23, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Software Productivity Consortium ("SPC") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the following companies have become small business members of SPC: Space Applications, Inc., Santa Ana, CA; and Systems Engineering and Management Associates, Inc., Alexandria, VA. BTG, Inc., Vienna, VA has been admitted as a basic member; and Aerojet Electronic Systems Division of Gencorp Inc., Asusa, CA has been admitted as an affiliate member.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and SPC intends to file additional written notification disclosing all changes in membership.

On December 21, 1984, SPC filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on January 17, 1985 (50 FR 2633).

The last notification was filed with the Department on March 26, 1991. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 1, 1991 (56 FR 36848).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28318 Filed 11-17-93; 8:45 am]

BILLING CODE 4410-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Advancement Phase I Media Arts Section) to the National Council on the Arts will be held on December 2, 1993 from 9:30 a.m. to 4:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10 a.m. for introductions and a brief Advancement Overview.

The remaining portion of this meeting from 10 a.m. to 4:30 p.m. is for the purpose of Panel review, discussion,

evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28346 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Challenge and Advancement Advisory Panel (Construction/Renovation Challenge Review Section) to the National Council on the Arts will be held on December 10, 1993 from 9:30 a.m. to 5:30 p.m. This meeting will be held in room 714, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW, Washington, DC, 20506.

A portion of this meeting will be open to the public from 9:30 a.m. to 10:30 a.m. for introductions and a Challenge Process Overview.

The remaining portion of this meeting from 10:30 a.m. to 5:30 p.m. is for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, this session will be closed to the public pursuant to subsection (c), (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW, Washington, DC, 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28347 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Expansion Arts Advisory Panel (Multidisciplinary Section) to the National Council on the Arts will be held on November 30 to December 3, 1993 from 9 a.m. to 6 p.m. on November 30, 1993 to December 2, 1993 and from 9 a.m. to 4:30 p.m. on December 3, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m. to 4:30 p.m. on December 3, 1993 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 6 p.m. on November 30 to December 2, 1993 and from 9 a.m. to 3 p.m. on December 3, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1993, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28342 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Folk Arts Advisory Panel (Folk Art Projects Section) to the National Council on the Arts will be held on December 7–10, 1993 from 9 a.m. to 6:30 p.m. on December 7 and 9, 1993; from 9 a.m. to 10:30 p.m. on December 8, 1993; and from 9 a.m. to 4:30 p.m. on December 10, 1993. This meeting will be held in room 716, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

A portion of this meeting will be open to the public from 10:30 a.m. to 12:30 p.m. on December 9, 1993 for a policy review.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on December 7, 1993; from 9 a.m. to 10:30 p.m. on December 8, 1993; from 9 a.m. to 10:30 a.m. and 12:30 p.m. to 6:30 p.m. on December 9, 1993; and 9 a.m. to 4:30 p.m. on December 10, 1993 are for the purpose of Panel review, discussion, evaluation, and

recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6), and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28345 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

Literature Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Literature Advisory Panel (Literary Publishing Section) to the National Council on the Arts will be held on November 30, 1993 to December 3, 1993 from 9 a.m. to 5:30 p.m. on November 30 to December 2, 1993 and from 9 a.m. to 5 p.m. on December 3, 1993. This meeting will be held in room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 3 p.m. to 5 p.m. on December 3, 1993 for a discussion of policy and guidelines.

The remaining portions of this meeting from 9 a.m. to 5:30 p.m. on November 30 to December 2, 1993 and from 9 a.m. to 3 p.m. on December 3, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28343 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Local Arts Agency Advisory Panel (Local Incentive and Rural Development Sections) to the National Council on the Arts will be held on November 30 to December 3, 1993 from 1 p.m. to 5 p.m. on November 30, 1993; from 9 a.m. to 7 p.m. on December 1–2, 1993; and from 9 a.m. to 3 p.m. on December 3, 1993. This meeting will be held in room 730, at the Nancy Hanks Center, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. A policy discussion will be held in addition to application review.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28344 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

National Endowment for the Arts; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Music Advisory Panel (Orchestra Section) to the National Council on the Arts will be held on December 6–11, 1993 from 9 a.m. to 6 p.m. on December 6, 1993; from 9 a.m. to 7 p.m. on December 7–9, 1993; and from 9 a.m. to 5 p.m. on December 10–11, 1993. This meeting will be held in room M–14, on December 6–10, 1993 and room 714 on December 11, 1993, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC, 20506.

Portions of this meeting will be open to the public from 3:30 p.m. to 5 p.m. on December 10, 1993 and from 4 p.m. to 5 p.m. on December 11, 1993 for a discussion of policy and guidelines.

The remaining portions of this meeting from 9 a.m. to 6 p.m. on December 6, 1993; from 9 a.m. to 7 p.m. on December 7–9, 1993; from 9 a.m. to 3:30 p.m. on December 10, 1993; and from 9 a.m. to 4 p.m. on December 11, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of

section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC, 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28341 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that meeting of the Opera-Musical Theater Advisory Panel (New American Works Section B) to the National Council on the Arts will be held on December 7–10, 1993 from 9 a.m. to 10 p.m. on December 7–9, 1993, and from 9 a.m. to 5 p.m. on December 10, 1993. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. on December 7, 1993 for Introductions and Orientation, and from 11:15 a.m. to 12:15 p.m. on December 10, 1993 for a policy discussion.

The remaining portions of this meeting from 10 a.m. to 10 p.m. on December 7, 1993; from 9 a.m. to 10 p.m. on December 8–9, 1993; from 9 a.m. to 11:15 a.m. and 12:15 p.m. to 5 p.m. on December 10, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c)(4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28348 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (New American Works Section A) to the National Council on the Arts will be held on November 30–December 3, 1993 from 9 a.m. to 10 p.m. on November 30–December 2, 1993, and from 9 a.m. to 5 p.m. on December 3, 1993. This meeting will be held in room M–07, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

Portions of this meeting will be open to the public from 9 a.m. to 10 a.m. on November 30, 1993 for introductions and orientation, and from 11:15 a.m. to 12:15 p.m. on December 3, 1993 for a policy discussion.

The remaining portions of this meeting from 10 a.m. to 10 p.m. November 30, 1993; from 9 a.m. to 10 p.m. on December 1–2, 1993; from 9 a.m. to 11:15 a.m. and 12:15 p.m. to 5 p.m on December 3, 1993 are for the purpose of panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of Title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 12, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–28349 Filed 11–17–93; 8:45 am]

BILLING CODE 7537–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–312]

Sacramento Municipal Utility District, Rancho Seco Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from the requirements of 10 CFR 140.11(a)(4) to Facility Operating License No. DPR–54, issued to the Sacramento Municipal District (SMUD or the licensee), for the Rancho Seco Nuclear Generating Station located at the licensee site in Sacramento County, California.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and exemption from participation in the industry

retrospective rating plan (secondary level financial protection) for the Rancho Seco Nuclear Generating Station. The licensee requested the exemption in a letter dated November 14, 1990, and supplemented by letter dated October 15, 1992.

The Need for the Proposed Action

The Rancho Seco Nuclear Generating Station (Rancho Seco) was permanently shut down on June 7, 1989, and completely defueled on December 8, 1989. The NRC in license Amendment No. 117, dated March 17, 1992, modified Facility Operating License DPR–54 to a Possession Only License (POL). The license is conditioned so that SMUD is not authorized to operate or place fuel in the reactor vessel, thus formalizing the licensee commitment to permanently cease power operations. The plant has not operated for approximately four years and three months and radioactive decay has significantly reduced the radioactive nuclide inventory and decay heat of the spent fuel. Since a sufficient spent fuel cooling period of three years has elapsed, the potential for causing significant offsite consequences no longer exists at Rancho Seco. Therefore, the requested exemption addresses two areas for relief in financial protection requirements: (1) A reduction in the primary financial protection coverage requirements from $200,000,000 to $100,000,000 and (2) withdrawal from participation in the industry retrospective rating plan. Since Rancho Seco no longer contributes as great a risk to the industry retrospective rating plan participants as an operating plant, this reduction in risk should be reflected in the indemnification requirements to which the licensee is subject. Approval of this request would allow a more equitable allocation of financial risk.

Environmental Impact of the Proposed Action

The proposed action does not involve any environmental impacts. The proposed exemption is in a subject area, changes in surety, insurance and/or indemnity requirements, for which the Commission in 10 CFR 51.22(c)(10) has determined that a license amendment would meet the criteria for categorical exclusion from the need for either an environmental assessment or an environmental impact statement.

Since the proposed action does not involve a change in plant operation or configuration, there is reasonable assurance that the proposed action would not increase the probability or the consequences of an accident or reduce the margin of safety, no changes would be made in the types or quantities of effluents that may be released offsite, and there would be no significant increase in the allowable individual or cumulative radiation exposure.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the Commission has concluded that there are no measurable environmental impacts associated with the proposed action, any alternative with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of resources not previously considered in the Final Environmental Statement for the Rancho Seco Nuclear Generating Station dated March 1973.

Agencies and Persons Consulted

The NRC staff consulted with a representative of the State of California regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the licensee application for exemption dated November 14, 1990, and supplemented by letter dated October 15, 1992, which is available for public inspection at the Commission Public Document Room, Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room for the Rancho Seco Nuclear Generating Station at the Central Library, Government Documents, 828 I Street, Sacramento, California 95814.

Dated at Rockville, Maryland, this 12th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28393 Filed 11–17–93; 8:45 am]

BILLING CODE 7590–01–M

In the Matter of: All Boiling Water Reactors (BWRS) Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that, on August 12, 1993, September 13, 1993, and September 17, 1993, Mr. Paul M. Blanch submitted petitions on his own behalf to the U.S. Nuclear Regulatory Commission (NRC) pursuant to 10 CFR 2.206 regarding BWR reactor pressure vessel level instrumentation condensate pots, as discussed in NRC Generic Letter 92–04, "Resolution of the Issues Related to Reactor Vessel Water Level Instrumentation in BWRs Pursuant to 10 CFR 50.54(f)," dated August 19, 1992, and NRC Bulletin 93–03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs," dated May 28, 1993. The Petitions have been referred to the Office of Nuclear Reactor Regulation for preparation of a response.

Petitioner requested in his August 12, 1993, letter that each operating BWR either conclusively demonstrate the operability of the condensate pots and associated level instruments, interlocks, and ECCS functions or be provided a plant specific license exemption with the plant specific safety analysis. Petitioner further stated that if operability cannot be demonstrated and/or the NRC fails to grant plant specific relief from the regulations, each BWR must comply with the Action Statements of the Technical Specifications for inoperable level instruments.

Petitioner requested in his September 13, 1993, letter that an enforcement conference, to be conducted between the NRC staff and Northeast Utilities to discuss a potential failure to perform a timely analysis of a known operability concern on the Feedwater Coolant Injection System at Millstone Unit 1, be opened to the general public and that Petitioner be allowed to participate. While Petitioner requested this action under the provisions of 10 CFR 2.206, the NRC staff has determined that this request does not fall within the Scope of 10 CFR 2.206. Petitioner was

informed in the NRC acknowledgement of the petitions of the Commission policy on public attendance at enforcement conferences. Petitioner further requested a response to two questions related to a discussion on the NRC's regulations that occurred at a workshop on § 2.206 petitions held in July 1993 by the NRC staff with the public. These questions again did not fall within the scope of 10 CFR 2.206, and Petitioner was informed that the NRC staff would address his questions by separate correspondence.

Petitioner requested in his September 17, 1993, letter that the NRC staff, under the provisions of 10 CFR 2.206, provide responses to six specific questions. The NRC staff has determined that this request does not fall within the scope of 10 CFR 2.206, and so informed Petitioner in the NRC acknowledgement of the petitions. Petitioner was further informed that the NRC staff would address the questions by separate correspondence.

By letter dated November 9, 1993, the Petitioner was informed of the referral of these petitions to the Director, Office of Nuclear Reactor Regulation, and was further informed of the determinations regarding what aspects of the Petitions fell within 10 CFR 2.206, as discussed in the preceding paragraphs. As provided by § 2.206, appropriate action with regard to the specific requests made in Petitions that are within the scope of § 2.206 will be taken within a reasonable time.

A copy of the Petitions are available for inspection at the Commission Public Document Room at 2120 L Street NW., Washington, DC 20555.

Dated at Rockville, Maryland this 9th day of November, 1993.

For the Nuclear Regulatory Commission.

Thomas E. Murley,

Director, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28396 Filed 11–17–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–219; License No. DPR–16; EA 93–136]

GPU Nuclear Corp., Oyster Creek Nuclear Generating Station, Forked River, New Jersey; Order Imposing a Civil Monetary Penalty

I

GPU Nuclear Corporation (Licensee) is the holder of Operating License No. DPR–16 (License), issued by the U.S. Nuclear Regulatory Commission (NRC or Commission). The License authorizes the Licensee to operate the Oyster Creek Nuclear Generating Station, in accordance with the conditions specified therein.

II

An inspection of licensed activities was conducted on May 17 and 18, 1993. The results of this inspection indicated that the Licensee had not conducted its activities in full compliance with NRC requirements. A written Notice of Violation and Proposed Imposition of Civil Penalty (Notice) was served upon the Licensee by letter dated August 17, 1993. The Notice states the nature of the violations, the provisions of the NRC's requirements that the Licensee had violated, and the amount of the civil penalty proposed for the violations.

The Licensee responded to the Notice on September 20, 1993. In its response, the Licensee admitted the violations, and paid $50,000 of the $75,000 proposed. However, the licensee requested withdrawal of the remaining portion of the civil penalty.

III

After consideration of the Licensee's response and the statements of fact, explanation, and argument for mitigation contained therein, the NRC staff has determined, as set forth in the Appendix to this Order, that the violations occurred as stated, and that the portion of the civil penalty not paid by the licensee should be imposed for the violations designated in the Notice.

IV

In view of the foregoing and pursuant to section 234 of the Atomic Energy Act of 1954, as amended (Act), 42 U.S.C. 2282, and 10 CFR 2.205, *It is hereby ordered that:*

The Licensee pay a civil penalty in the amount of $25,000 within 30 days of the date of this Order, by check, draft, money order, or electronic transfer, payable to the Treasurer of the United States and mailed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, ATTN: Document Control Desk, Washington, DC 20555.

V

The Licensee may request a hearing within 30 days of the date of this Order. A request for a hearing should be clearly marked as a "Request for an Enforcement Hearing" and shall be addressed to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, with a copy to the Commission's Document Control Desk, Washington, DC 20555. Copies also shall be sent to the Assistant General Counsel for Hearings and Enforcement at the same address and to the Regional Administrator, NRC Region I, 475 Allendale Road, King of Prussia, Pennsylvania 19406.

If a hearing is requested, the Commission will issue an Order designating the time and place of the hearing. If the Licensee fails to request a hearing within 30 days of the date of this Order, the provisions of this Order shall be effective without further proceedings. If payment has not been made by that time, the matter may be referred to the Attorney General for collection.

In the event the Licensee requests a hearing as provided above, the issues to be considered at such hearing shall be whether, on the basis of the violations admitted by the Licensee, this Order should be sustained.

Dated at Rockville, Maryland, this 9th day of November, 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

Appendix—Evaluation and Conclusion

On August 17, 1993, a Notice of Violation and Proposed Imposition of Civil Penalty (Notice) in the amount of $75,000 was issued to the licensee for five violations identified during an NRC inspection. GPU Nuclear Corporation (Licensee) responded to the Notice on September 20, 1993. The Licensee admitted the violations, paid $50,000 of the civil penalty, but requested withdrawal of the remaining $25,000 of the civil penalty. The NRC's evaluation and conclusion regarding the licensee's requests are as follows:

1. Restatement of Violations

A. Plant Technical Specification (TS) 6.11 requires, in part, that procedures for personnel radiation protection be prepared consistent with the requirements of 10 CFR part 20 and shall be approved, maintained and adhered to for all operations involving personnel radiation exposure.

Licensee radiation safety procedure 9300–ADM–4110.04, Rev. 8, "Radiation Work Permit (RWP)," paragraph 7.2.3, Block 3, Work Description, written to comply with TS 6.11 and 10 CFR Part 20, requires that sufficient detail be provided in the RWPs for Radiological Controls personnel to understand the scope of the task.

Contrary to the above, RWP 930254, prepared for decontamination work scheduled for May 7, 1993, in the New Radwaste Building fill aisle, did not provide sufficient detail for Radiological Controls personnel to understand the scope of the task. Specifically, the RWP did not indicate that personnel would enter into the batch tank pit on the 23' elevation of the New Radwaste Building. Consequently, on May 7, 1993, workers entered the batch tank pit, while neither the Radiation Controls Technician providing job coverage to the workers, nor the Radiological Engineering Department, which establishes as low as reasonably achievable (ALARA) controls and support, knew that this entry was to be made under this RWP.

B. 10 CFR 20.201(b) requires that each licensee make such surveys as (1) may be necessary to comply with the requirements of part 20 and which (2) are reasonable under the circumstances to evaluate the extent of radiation hazards that may be present. As defined in 10 CFR 20.201(a), "survey" means an evaluation of the radiation hazards incident to the production, use, release, disposal, or presence of radioactive materials or other sources of radiation under a specific set of conditions. 10 CFR 19.12 requires, in part, that all individuals working in any portion of a restricted area be kept informed of radiation in such portions of the restricted area, and be instructed in the precautions and procedures to minimize exposure to radiation. The extent of these instructions shall be commensurate with potential radiological health protection problems in the restricted area.

Contrary to the above, prior to the May 7, 1993, entry by personnel into the batch tank pit on the 23' elevation of the New Radwaste Building, a portion of the licensee's restricted area that was posted as a locked high radiation area and which required respirator usage, the licensee did not (1) survey the batch pit to assure compliance with that portion of 10 CFR 20.101 that limits total occupational dose and (2) inform individuals working in the area of radiation levels in the area and had not instructed those individuals in the precautions and procedures to minimize exposure to radiation. The floor of the batch pit had been covered with spilled powder resin from the batch tank and had contact dose rates of about 10 R/hr.

C. 10 CFR 20.103(c)(2) requires, in part, that the licensee maintain and implement a respiratory protection program that includes, as a minimum, air sampling sufficient to identify the hazard and permit proper equipment selection.

Licensee radiation safety procedure 9300–4020.03, Revision 8, "Use of Respiratory Protection Equipment," paragraph 7.9.2 requires that the protection factor (PF) for respiratory protection equipment selected be greater than the multiple by which the peak concentration of airborne radioactive materials is expected to exceed the values of Appendix B, Table I, Column I of 10 CFR Part 20 as determined by the sampling of the airborne contamination.

Contrary to the above, on May 11, 1993, the licensee did not maintain and implement a respiratory protection program in that (1) radiation workers were permitted entry into the batch tank pit on the 23' elevation of the New Radwaste Building to remove debris, without prior air sampling being conducted in the pit to identify the hazard and (2) the respiratory protection equipment (negative pressure full face respirators) worn by the workers provided a PF of 50, which was less than the required PF indicated by the air sampling conducted during the pit entry.

D. 10 CFR 20.103(a)(3), requires, in part, that for purposes of determining compliance with the requirements of 10 CFR 20.103, the licensee shall use suitable measurements of concentrations of radioactive material in air for detecting and evaluating airborne radioactivity in restricted areas.

Contrary to the above, on May 11, 1993, two radiation workers entered the batch tank pit on the 23' elevation of the New Radwaste Building, a posted restricted area requiring respiratory protection equipment for entry, and the licensee did not use suitable measurements of concentrations of radioactive material in air for detecting and evaluating airborne radioactivity. Specifically, only one person had been issued a breathing zone analyzer (BZA), despite the fact that only one person could enter the batch tank pit at a time. This resulted in a situation where the worker without the BZA could be working in higher concentrations of airborne radioactivity.

E. Plant Technical Specification 6.11 requires that procedures for personnel radiation protection be prepared consistent with the requirements of 10 CFR part 20 and shall be approved, maintained, and adhered to for all operators involving personnel radiation exposure.

Licensee radiation safety procedure 9300–ADM–4010.02, Revision 5, "ALARA Review Procedure," Section 7.3, "ALARA Review Criteria", in part, implements the requirements of 10 CFR part 20 by specifying the circumstances in which an ALARA review must be done.

Contrary to the above, as of May 18, 1993, procedure 9300–ADM–4010.02 did not adequately specify criteria for performing an ALARA review for highly contaminated systems and components in that such reviews were left to the discretion of Radiological Engineering without guidelines for exercising that discretion. As a consequence, Radiological Engineering waived the performance of an ALARA review for a planned decontamination task involving highly contaminated material in a locked high radiation exclusion area—a situation for which an ALARA review would normally have been warranted by sound radiological protection principles.

These violations are categorized in the aggregate as a Severity Level III problem (Supplement IV).

Civil Penalty—$75,000.

2. Summary of Licensee Request for Mitigation

The license, in its response, admitted the violations, and paid $50,000 of the proposed civil penalty. However, the licensee, requested withdrawal of the $25,000 escalation of the civil penalty. (The NRC had escalated the base civil penalty of $50,000 by 25% based on the long term corrective actions not being adequate or timely, and another 25% based on the licensee's prior performance). As a basis for its request, the licensee stated that prior to the enforcement conference, the Vice President/Director of the Station directed that future decontamination activities, similar to the May 7 and 11 tasks, be performed under the licensee's work management planning process. The licensee also indicated that Radiological Controls management had issued directives to define the expected interpretations of the As-Low-As Reasonably-Achievable (ALARA) review criteria. These directives were included in the procedures shortly after the enforcement conference. Therefore, the licensee requests that the 25% escalation based on the corrective action factor be withdrawn.

With respect to the licensee's prior performance, the licensee contends that the May 1993 event and the April 1991 event, the latter being the subject of a past escalated enforcement action (Reference: EA No. 91–056), do not have similar root causes. Therefore, the licensee maintains that the two events are not indicative of the same failure, and corrective actions for the April 1991 event cannot be expected to have prevented the May 7th event. On this basis the licensee contends that the 25% escalation of the base civil penalty on prior performance is inappropriate.

3. NRC Evaluation of Licensee Response

The NRC has evaluated the licensee response and has determined that the licensee has not provided an adequate basis for withdrawal of the $25,000 portion of the civil penalty attributed to the 50% escalation of the base amount.

With respect to the 25% escalation of the penalty based on corrective actions, the licensee's presentation at the June 24, 1993 enforcement conference, more than six weeks after the event, indicated that the licensee had not completed its determination on a need for clarifying the ALARA review procedure or on the need for instituting long-term corrective actions that focused on ALARA review and job-planning. Weaknesses in the ALARA procedure were a major contributing factor in the root cause of the violations, because had the procedure specified clear criteria for performing an ALARA review in this case, such a review would have provided the necessary elements of radiological planning to prevent the violations from occurring.

The NRC recognizes that the licensee's May 24, 1993, "ALARA Reviews and RWP Requirements" memorandum instructed the licensee's staff to perform reviews for a broad category of work. However, at the enforcement conference, the licensee indicated that they had not determined if these changes would be made permanent by incorporating them in the ALARA procedure. While the licensee's May 24, 1993 memorandum constituted an adequate interim corrective action, it needed to be incorporated into the radiation protection procedures to qualify as a long-term corrective action, because Technical Specification 6.11 requires that all operations involving personnel radiation exposure shall be conducted following personnel radiation protection procedures. In this case the necessary procedure changes, including the temporary change to the ALARA review procedure, were not made until the NRC emphasized the need for permanent procedural guidance at the enforcement conference. Therefore, the NRC maintains that the licensee's long-term corrective actions were not adequate or timely and the 25% civil penalty escalation based on corrective actions was appropriate.

With respect to the 25% escalation of the penalty based on past performance, the NRC maintains that the 1991 and May 1993 events were similar in that they both indicated weaknesses in job planning and communication, and failure of personnel to ensure that radiological requirements

regarding appropriate survey, instructions and monitoring were followed. For example, in 1991, one operator entered a locked high radiation area of unknown radiation intensity without appropriate survey, monitoring equipment, and instructions in precautions and procedures to minimize exposure to radiation, as required by the plant technical specifications and the regulations. In May 1993, workers entered a highly contaminated locked high radiation area of unknown radiation hazard without appropriate survey and instructions, and on one occasion, one worker entered the same area without suitable monitoring equipment for airborne radioactivity, as required by the regulations.

In addition, the 1991 event indicated a need for the licensee to enhance its procedure regarding personnel monitoring during group entry, in particular, the practice of allocating certain monitors to only one person when more than the one person was entering the area. During the May 11, 1993 event, the same "group entry" criterion was applied and resulted in not having suitable measurements of radioactive dose for one of the two workers, since they were separately entering the highly contaminated area.

When considering whether to escalate the penalty based on the licensee performance factor, a number of criteria are considered, as stated in Section VI.B.2 of the Enforcement Policy. In addition to the effectiveness of previous corrective actions for similar problems, those criteria consist of Systematic Assessment of Licensee Performance (SALP) evaluations, prior enforcement history overall as well as in the area of concern. The base civil penalty may also be escalated by as much as 100% if the current violation reflects the licensee's poor prior performance. Even if the NRC were to accept the licensee's argument that the events were not similar, a basis for partial escalation based on past performance still exists, given the licensee's prior enforcement history in the area of radiological controls, since it included the escalated enforcement action in 1991 along with several cited and non-cited violations since then. In light of the prior events, the NRC could have considered an even higher escalation, rather than the 25% applied, but chose not to because of the licensee's improving SALP rating in this area. Therefore, based on the above, the NRC maintains that 25% escalation on the factor is appropriate.

4. NRC Conclusion

The NRC concludes that the licensee has not provided an adequate basis for mitigating the escalation of the civil penalty based on the corrective action and prior performance adjustment factors. Accordingly, the NRC has determined that a monetary civil penalty in the amount of $25,000 should be imposed.

[FR Doc. 93–28395 Filed 11–17–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–482]

Wolf Creek Nuclear Operating Corp.; Issuance of Amendment to Facility Operating License

The U.S. Nuclear Regulatory Commission (the Commission) has issued Amendment No. 69 to Facility Operating License No. NPF–42, issued to Wolf Creek Nuclear Operating Corporation (the licensee), which revised the License and Technical Specifications for operation of the Wolf Creek Generating Station located in Coffey County, Kansas.

The amendment revises the License and the Technical Specifications to allow an increase in the maximum reactor core power level (rated thermal power) from the present value of 3411 megawatts thermal (MWt) to a revised limit of 3565 MWt. The increase in allowed core power combined with the energy added by the reactor coolant pumps would result in the proposed changes allowing Wolf Creek to operate at a nuclear steam supply system power of 3579 MWt. In addition to the increased core power level, changes were made in the allowable operating temperatures of the reactor coolant system. The reductions in reactor coolant hot-leg temperatures were made in order to reduce the potential for stress corrosion cracking of steam generator tubes.

The application for the amendment complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of amendment and Opportunity for Hearing in connection with this action was published in the **Federal Register** on June 9, 1993 (58 FR 32392). No request for a hearing or petition for leave to intervene was filed following this notice.

The Commission has prepared an Environmental Assessment related to the action and has determined not to prepare an environmental impact statement. Based upon the environmental assessment, the Commission has concluded that the issuance of this amendment will not have a significant effect on the quality of the human environment. The environmental assessment and finding of no significant impact was published in the **Federal Register** on October 25, 1993 (58 FR 55086).

For further details with respect to the action see (1) the application for amendment dated January 5, 1993, as supplemented by letter dated October 1, 1993, (2) Amendment No. 69 to License No. NPF–42, (3) the Commission's related Safety Evaluation, and (4) the Commission's Environmental Assessment. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Rooms, Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621. A copy of items (2), (3), and (4) may be obtained upon request addressed to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Director, Division of Reactor Projects, III/IV/V.

Dated at Rockville, Maryland, this 10th day of November 1993.

For the Nuclear Regulatory Commission.

William D. Reckley,

Project Manager, Project Directorate IV–2, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28394 Filed 11–17–93; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Requests Under Review by Office of Management and Budget

Agency Clearance Office: John J. Lane, (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

New

Municipal Securities
Interviews
File No. 270–384.

Notice if hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission ("Commission") has submitted for OMB approval a request to conduct informal interviews of up to 100 persons or entities concerning issues related to disclosure practices in the municipal securities markets. These interviews are necessary to gain a greater understanding and appreciation of matters significant to regulation of disclosure provided by issuers and market participants to the primary and

the secondary markets for municipal securities. Each interview is estimated to require three burden hours. Persons and entities interviewed also may be asked to provide the staff, on a voluntary basis, with any available data concerning current disclosure practices, such as existing studies and reports by industry participants.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 8, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28340 Filed 11–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33172; International Series Release No. 610, File No. SR–AMEX–93–29]

Self-Regulatory Organizations; Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange, Inc. Relating to Index Warrants on the Amex Hong Kong 30 Index

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 14, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex proposes to clarify the manner in which it calculates the Amex Hong Kong 30 Index ("Index") and determines the settlement value of warrants based on the Index. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On October 8, 1993, the Exchange received Commission approval to list and trade warrants on the Index.[1] The Exchange is now proposing, prior to the actual listing or trading of any warrants on the Index, to clarify the manner in which it calculates the Index and determines the settlement value of warrants based on the Index. The Index value and the settlement value will be based upon the most recent official closing prices of each of the component securities as reported by the Stock Exchange of Hong Kong ("HKSE"). The Index is then calculated by multiplying the HKSE closing price of each security by the number of shares outstanding. The Index value for purposes of settling warrants on the Index upon exercise or at the warrant expiration will be calculated based on the most recent official closing prices for each of the Index's component securities as reported by the HKSE.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in facilitating transactions in securities, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

[1] See Securities Exchange Act Release No. 33036 (October 8, 1993), 58 FR 53588.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the Exchange it has become effective pursuant to section 19(b)(3)(A) of the Act and subparagraph (e) of Rule 19b–4 thereunder. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–AMEX–93–29 and should be submitted by December 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

[2] 17 CFR 200.30–3(a)(12) (1993).

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 93-28338 Filed 11-17-93; 8:45 am]
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[Release No. 34-33173; File No. SR-CBOE-93-49]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on the CBOE Gaming Index.

November 9, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the CBOE Gaming Index ("Gaming Index" or "Index"). The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade cash-settled, European-style stock index options on an industry index, the CBOE Gaming Index.

The CBOE states that the Gaming Index represents a segment of the U.S. equity market that is not currently represented in the derivative markets and, as such, will offer investors a low-cost means to achieve diversification or to tilt a portfolio toward or away from the gaming industry. The Index will provide retail and institutional investors with a means to benefit from their forecasts of that industry's market performance. Options on the Index also can be utilized by portfolio managers and investors to provide a performance measure and evaluation guide for passively or actively managed gaming industry funds, as well as a means of hedging the risks of investing in the gaming industry.

1. Index Design, Maintenance, and Calculation

The Gaming Index is based on fifteen gaming industry stocks. Eight of those stocks currently trade on the New York Stock Exchange ("NYSE"), and seven currently trade through the facilities of the National Association of Securities Dealers Automated Quotation System ("NASDAQ").[1] The Index is priceweighted and will be calculated on a real-time basis using last-sale prices. The Index is comprised of stocks that range in capitalization from $137.1 million to $5.1 billion, as of October 20, 1993. As of that time, the total capitalization of the Index was $19.6 billion, the median capitalization of the stocks in the Index was $447.6 million, the largest stock in the Index accounted for 16.19% of the total capitalization of the Index, and the smallest stock in the Index accounted for 1.57% of the total capitalization of the Index. All fifteen Index component stocks presently have options listed upon them.

The Index will be calculated continuously by the CBOE or its designee and will be disseminated every 15 seconds by the CBOE. If a component stock in not currently being traded, the most recently traded price will be used in the Index calculation.

Similar to other industry indices that previously have been approved for trading on the Exchange, the Gaming Index is priceweighted and reflects changes in the prices of the component stocks relative to the base date. The Index is calculated by summing the prices of the component stocks and then dividing by a divisor that yielded an Index value of 100.00 as of January 2, 1992. As of October 20, 1993, the Index value was 258.79.

The Index will be maintained by the CBOE. To maintain continuity in the Index following an adjustment to a component security, the divisor will be adjusted. Changes which may result in divisor changes include, but are not limited to, spin-offs, certain rights issuances, and mergers and acquisitions.

The Index is reviewed on approximately a monthly basis by the CBOE staff. The CBOE may change the composition of the Index at any time or from time to time to reflect conditions in the gaming industry. If a company in the Index is no longer representative of the gaming industry, the stock will be removed from the Index. If it becomes necessary to remove a stock from the Index (generally due to a takeover or merger), every effort will be made to add a stock that is representative of the gaming industry. In such circumstances, the CBOE will take into account the capitalization, liquidity, volatility, and name recognition of the proposed replacement stock.

The CBOE will not make any change in the composition of the Index if such change would result in less than ninety percent of the Index, by weight, consisting of stocks that are eligible for individual equity options as provided in CBOE Rule 5.3. The CBOE will most likely maintain fifteen stocks in the Index at all times. Absent prior approval by the Commission, the CBOE will not increase to more than twenty or decrease to fewer than ten the number of stocks in the Index.

2. Index Option Trading

The Exchange proposes to base trading in options on the Gaming Index on the full value of that Index. The Exchange may list long-term index option series ("LEAPS"), as provided in Rule 24.9. The Exchange also may provide for the listing of reduced-value LEAPS for which the underlying value will be computed at one-tenth of the Gaming Index. The current and closing index value of any such reduced-value LEAPS will, after such initial computation, be rounded to the nearest one-hundredth. The Exchange submitted to the Commission, as an exhibit to the present rule filing, proposed contract specifications for the Gaming Index options.

3. Exercise and Settlement

Gaming Index options will have European-style exercise[2] and will be "A.M.-settled index options" within the meaning of the rules in Chapter XXIV, including Rule 24.9, which is being amended to refer specifically to Gaming

[1] All seven NASDAQ component stocks are currently qualified for and traded on the NASDAQ National Market.

[2] A European-style option can only be exercised during a specified period before the option expires.

Index options.[3] The proposed options will expire on the Saturday following the third Friday of the expiration month. Thus, the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

4. Exchange Rules Applicable to Industry Index Options

An industry index contract such as the Gaming Index option will be deemed to be "narrow-based" for purposes of the position limit requirements of Rule 24.4A. Ten reduced-value options will equal one full-value contract for such purposes.

The CBOE represents that it has the necessary systems capacity to support new series that would result from the introduction of Gaming Index options.

5. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

[3] Under CBOE Rule 24.9, A.M.—settled index options are settled based on an index value derived from opening prices on the last day of trading prior to expiration.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, D.C. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–49 and should be submitted by December 9, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[4]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28339 Filed 11–17–93; 8:45 am]

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[Release No. 34–33185; File No. SR–NASD–93–13]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to the Filing Requirements of the Corporate Financing Rule

November 10, 1993.

On May 4, 1993,[1] the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[2] and Rule 19b–4 thereunder.[3] The proposal clarifies the exemption from the filing requirements of the NASD's Corporate Financing Rule[4] for securities registered on Form S–3[5] or Form F–3[6] and offered pursuant to Rule 415[7] under the Securities Act of 1933 ("Securities Act"). The proposal also clarifies the exemption from the filing requirements of the NASD's Corporate Financing Rule for Canadian securities registered on Form F–10 under the Securities Act.[8]

Notice of the proposed rule change, together with its terms of substance, appeared in the **Federal Register** on May 21, 1993.[9] The Commission received one letter commenting on the proposal. This order approves the rule change.

NASD rules provide an exemption from the filing requirements of the Corporate Financing Rule for offerings filed on Form S–3 or Form F–3 and offered pursuant to Rule 415, and Canadian offerings filed on Form F–10 and offered pursuant to the home jurisdiction's shelf prospectus offering procedures. On October 21, 1992, the Commission approved amendments expanding the classes of issuers eligible to file on Form S–3 pursuant to Rule 415.[10] In light of these amendments, issuers newly eligible to file on Form S–3 are also exempt from the NASD's Corporate Financing Rule filing requirements.

The NASD has reviewed its exemption from the Corporate Financing Rule filing requirements, and has concluded that it does not have sufficient information with respect to these newly eligible issuers and transactions to determine whether the market forces related to such offerings result in the presence of fair and reasonable underwriting terms and arrangements.[11] Accordingly, the NASD is amending the Corporate Financing Rule to limit the exemption to offerings[12] that meet Form S–3's eligibility criteria as set forth in that

[4] 17 CFR 200.30–3(a)(12) (1993).

[1] The NASD initially filed the proposed rule change with the Commission on March 10, 1993. On May 4, 1993, the NASD filed Amendment No. 1, which clarified the language of, and statutory basis for, the rule change.

[2] 15 U.S.C. 78s(b)(1) (1988).

[3] 17 CFR 240.19b–4 (1993).

[4] *NASD Manual*, Rules of Fair Practice, Art. III, Sec. 44(b)(7)(C) (CCH) ¶ 2200D.

[5] 17 CFR 239.13.

[6] 17 CFR 239.33.

[7] 17 CFR 230.415.

[8] 17 CFR 239.40.

[9] Securities Exchange Act Release No. 32316 (May 17, 1993), 58 FR 29672.

[10] Securities Act Release No. 6964 (October 22, 1992), 57 FR 48970 (October 29, 1992).

[11] In this connection, the NASD's Corporate Financing Department conducted a preliminary review of filings of issuers that would meet the new Form S–3 standards, and identified compensation or regulatory issues in a number of the filings.

[12] The NASD determined that investment grade non-convertible debt and investment grade non-convertible securities registered on amended Form S–3 should continue to be exempt from the Corporate Financing Rule Filing Requirements, regardless of the registration form relied on, under a separate exemption set forth in Section (b)(7)(B) of the Corporate Financing Rule.

Form prior to October 21, 1992—i.e., the date of the Commission's approval of the amendments to Form S–3.[13] The NASD will undertake a review of offerings filed with the NASD on Form S–3 that are offered pursuant to Rule 415 by companies that would not meet the prior criteria for Form S–3 to determine whether the market forces related to such offerings result in the presence of fair and reasonable underwriting terms and arrangements.[14]

The NASD is also amending the exemption from the filing requirements of the Corporate Financing Rule for offerings of foreign private issuers filed on Form F–3 and Canadian offerings filed on Form F–10. At the time it amended Form S–3, the Commission had not proposed amendments expanding the class of issuers eligible to file on Form F–3 or Form F–10. Since that time, the Commission has adopted amendments to Form F–10 expanding the class of issuers eligible to file on that Form,[15] and has proposed amendments to Form F–3 expanding the class of issuers eligible to file on that Form.[16] The NASD believes it should clarify its Form F–3 and Form F–10 exemption in light of the Commission's amendments to Form F–10, and in the event the Commission adopts amendments to Form F–3 in the future. Therefore, the NASD is amending the Corporate Financing Rule to reflect that the Form F–3 and Form F–10 filing exemption is limited to offerings that meet the eligibility criteria as set forth in those Forms prior to October 21, 1992.[17]

The NASD recognizes its responsibility to ensure that application of the Rule does not impose a substantial burden on issuers. In this regard, the NASD's Corporate Financing Department maintains procedures to expedite its review of shelf offerings.[18] The NASD will clarify these procedures in its Notice to Members announcing approval of the rule change.

The Commission received one comment letter opposing the proposal, from the firm of Sullivan & Cromwell.[19] The NASD responded to issues raised by the commenter in letters dated July 20[20] and September 17, 1993.[21] Sullivan & Cromwell argues that the NASD's rationale for the rule change is inconsistent with the Commission's determination to expand the availability of Form S–3 to a larger class of issuers. Sullivan & Cromwell notes that NASD filing requirements impose significant costs in terms of filing fees and legal expenses, and can delay the offering. Sullivan & Cromwell believes that the additional expense and delay is inconsistent with the Commission's intent to eliminate unnecessary regulatory obstacles and increasing the flexibility and efficiency of the shelf registration process.

Sullivan & Cromwell also argues that issuers newly eligible to file on Form S–3 are financially sophisticated and capable of protecting their interests in negotiating underwriting arrangements. Sullivan & Cromwell points out that the amendments to Form S–3 did not reduce the amount of information these issuers must disclose to the investing public, and that these issuers are closely followed by market professionals. Accordingly, Sullivan & Cromwell believes that market forces are sufficient to ensure fair and reasonable underwriting terms and arrangements.

In response, the NASD argues that the Commission's concerns in amending Form S–3 focused on market following and public float, whereas the NASD is concerned principally with the fairness of the underwriter compensation arrangements. The NASD believes that while a one-year reporting history is sufficient to justify the incorporation-by-reference form of disclosure in connection with a secondary offering, a one-year reporting history does not necessarily ensure fair underwriting terms and arrangements. The NASD notes that in its study of offerings by these newly eligible issuers, a significant number of proposed underwriting arrangements did not comply with the Corporate Financing Rule. In addition, the NASD argues that the benefits of the proposed rule change in terms of ensuring fair and reasonable underwriting arrangements outweigh the costs attributable to increased fees, legal expenses, and delay.

Sullivan & Cromwell also objects to footnote 5 of the NASD's filing,[22] which clarifies the NASD's position that the Form S–3, Form F–3, and Form F–10 exemptions from the Corporate Financing Rule filing requirements cannot be used for offerings when the Rule 415 box is checked on the cover page of the registration statement but the securities are distributed in a single traditional underwriting arrangement shortly after effectiveness. Sullivan & Cromwell argues that to the extent financial sophistication and market interest can be presumed from Form S–3 eligibility, Form S–3 issuers should be able to protect their own interests in

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[13] The NASD indicated that it will publish the prior version of Form S–3 in a Notice to Members, and will include a reference to that Notice to Members, following Subsection (b)(7)(C) of the Corporate Financing Rule in the NASD Manual, specifying that the Notice of Members includes a copy of Form S–3 as in effect prior to October 21, 1992. NASD staff will provide determinations to members and their counsel as to whether an offering would meet the objective criteria of Form S–3 as in effect prior to October 21, 1992. Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, Division of Market Regulation, SEC (April 14, 1993). The NASD will follow the same approach for Forms F–3 and F–10, as discussed below.

[14] The NASD anticipates that its review will cover the period of one year following the effective date of the proposed rule change. The NASD has agreed to provide the Commission with a report of its findings within 18 months following the effective date of the rule change. See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC (September 3, 1993).

[15] See Securities Act Release No. 7025 (November 3, 1993) (eliminating the market capitalization threshold, establishing a public float threshold of U.S. $75 million, and reducing the reporting history requirements to 12 months).

[16] See Securities Act Release No. 7029 (November 3, 1993) (reducing the public float threshold to U.S. $75 million and the reporting history requirement to 12 months).

[17] See Securities Act Release No. 6902 (June 21, 1991), 56 FR 30036 (July 1, 1991).

[18] The procedures previously approved by the NASD's Corporate Financing Committee are as follows:

1. Where the participating NASD member(s) have not been determined, the issuer may file the offering with the NASD on behalf of potential NASD member participants.

2. All necessary documents should be filed as set forth in Section (b)(5) of the Corporate Financing Rule.

3. The cover letter to the filing should include all information listed under "Information Required to Be Filed" in subsection (b)(6) of the Corporate Financing Rule requiring, inter alia, estimates of the maximum underwriting compensation, maximum price per share, and maximum amounts of any other underwriting compensation, as well as a statement of any affiliations between the issuer, any NASD member, and any purchases of securities of the issuer made by any NASD member in the prior twelve months.

4. The Corporate Financing Department staff will render an opinion of no objections to the underwriting terms and arrangements if undertakings are received with respect to the compensation and disclosure of the compensation in the offering document and to the effect that the Corporate Financing Department would be notified of any changes of issuer-member affiliation or purchases of the issuer's securities by a member.

5. In recognition of the market timing issues associated with shelf offerings, the staff of the Corporate Financing Department are authorized to grant priority to the review of shelf offerings. In order to determine the timetable for a proposed shelf offering, NASD staff routinely contact counsel on the date the offering is filed. NASD staff believe that in every case where the SEC staff grants "no review" status to an offering, NASD review is completed within the underwriter's time constraints. The average length of time for review of all offerings on a Form S–3 is currently 4.7 days.

Release No. 34–32316.

[19] See letter from Sullivan & Cromwell to Jonathan G. Katz, Secretary, SEC (June 9, 1993).

[20] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC ("NASD July letter").

[21] See letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Selwyn Notelovitz, Branch Chief, SEC ("NASD September 17 letter").

[22] Release No. 34–32316, 58 FR at 29673, n.5.

negotiating underwriting arrangements. Thus, there is no reason to limit the exemption from the Corporate Financing Rule to offerings pursuant to Rule 415, in which the securities are distributed in a series of delayed transactions as opposed to a single transaction.

The NASD responds that the interpretation referred to in footnote 5 merely reflects the NASD's original intent to limit the Corporate Financing Rule filing exemption to "delayed basis" shelf offerings.[23] Furthermore, the NASD believes that it is inappropriate for a member to rely on an exemption from the filing requirements of the Corporate Financing Rule if, at any time between filing and the effective date, the member does not reasonably believe that the offering qualifies for the exemption.[24] For example, a Rule 415 election on the cover page of Form S–3 may relate to the future issuance of common stock underlying warrants or common stock registered on behalf of selling shareholders, and not to securities offered on the same registration statement that are to be sold in a conventional underwriting shortly after effectiveness. Thus, the fact that an issuer filing on Form S–3 is relying on Rule 415 should not automatically qualify the offering for an exemption under the Corporate Financing Rule. Similarly, when a registrant files with the Commission on Form S–3 and relies on Rules 415 and 430A,[25] the possibility arises that the securities may be sold in a traditional underwriting arrangement shortly after effectiveness. The NASD believes that an offering in which the registrant is relying on both Rule 415 and Rule 430A should not be eligible for the Corporate Financing Rule exemption because the member cannot reasonably believe that the offering qualifies for the exemption.

The Commission has considered the above comments and has determined to approve the NASD's proposed rule change. The Commission recognizes the NASD's obligation to ensure the fairness of underwriting terms and arrangements as a self-regulatory organization registered under section 15A of the Act. The Commission believes that in light of the NASD's findings regarding newly eligible issuers, continued review of these issuers' underwriting compensation arrangements may benefit investors by ensuring that a greater share of the offering proceeds accrue to the issuer.

At the same time, the Commission believes that the rule change appropriately balances the need to ensure investor protection with the interests of issuers in reduced regulatory burdens and increased efficiency for offerings off the shelf. In this regard, the Commission recognizes that the NASD has established special procedures for expediting its review of shelf offerings, and that the NASD states that it consistently completes its review of these offerings within the underwriter's time constraints. The Commission, therefore, does not believe that the rule change imposes significant regulatory inefficiencies on issuers filing on Form S–3, Form F–3, or Form F–10.[26]

In addition, the Commission has reviewed the NASD's interpretation, referred to in footnote 5 of the rule filing, that the Form S–3 and Form F–3 exemption from the Corporate Financing Rule filing requirements cannot be used for offerings when the Rule 415 box is checked on the cover page of the registration statement but the securities are distributed in a single traditional underwriting arrangement shortly after effectiveness. The Commission believes that it is reasonable for the NASD to limit its exemption from the Corporate Financing Rule filing requirements to offerings that qualify—both at the time of filing and up to the effective date—for the NASD's exemption as a delayed basis shelf offering filed on Form S–3 under Rule 415.[27]

For these reasons, and for the reasons stated above, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD and, in particular, the requirements of section 15A(b)(6) of the Act.[28] Section 15A(b)(6) requires that the NASD's rules be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing and settling, processing information with respect to, and facilitating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest. The Commission believes that the proposed rule change will promote just and equitable principles of trade and in general protect investors and the public interest by ensuring compliance with the NASD's Corporate Financing Rule in terms of fair and reasonable underwriting terms and arrangements.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change SR–NASD–93–13 be, and hereby is approved, effective February 1, 1994.

For the Commission, by the Division of Market Regulation pursuant to delegated authority.[29]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28337 Filed 11–17–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33171; File No. SR–PSE–92–20]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change by the Pacific Stock Exchange Inc., Relating to the Insider Trading and Securities Fraud Enforcement Act of 1988

November 9, 1993.

I. Introduction

On December 14, 1992, the Pacific Stock Exchange Inc. ("PSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt Rule 2.6(e) relating to the establishment, maintenance and enforcement of procedures designed to prevent the misuse of material, non-

[23] See NASD July letter at 2.

[24] See NASD September 17 letter at 4–5.

[25] Under Rule 430A, certain pricing and underwriting compensation information need not appear in the registration statement at the time it becomes effective, provided the information is included in a final prospectus filed with the SEC within five days following the effective date of the offering. 17 CFR 230.430A. A registrant that is eligible to engage in a delayed offering pursuant to Rule 415 but is uncertain at the time of filing whether or not the securities will be offered promptly after effectiveness or on a delayed basis may retain the option to proceed under either Rule 415 or Rule 430A. Securities Act Release No. 6714 (May 27, 1987), 52 FR 21252 (June 5, 1987).

[26] Nevertheless, the Commission is concerned that the rule as drafted may make it inconvenient to locate the eligibility requirements for the Form S–3, Form F–3, and Form F–10 filing exemptions from the Corporate Financing Rule. These requirements will appear only in the NASD Notice to Members announcing approval of the rule change. The Commission believes that after gaining experience in administering and interpreting the rule, the NASD should consider making the relevant eligibility requirements more accessible to members and their counsel.

[27] In its release adopting the amendments to Form S–3, the Commission reminded potential registrants that "disclosure in the registration statement at the time of effectiveness should accurately reflect the registrant's current plans and arrangements with respect to the distribution of its securities." Securities Act Release No. 6964 (October 22, 1992), 57 FR 48970 (October 29, 1992).

[28] 15 U.S.C. 78o–3(b)(6).

[29] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

public information. On October 25, 1993, the PSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

Notice of the proposal appeared in the **Federal Register** on April 27, 1993.[4] No comments were received on the proposal. This order approves the proposal.

II. Description of the Proposal

A. Background

In November 1988, Congress enacted the Insider Trading and Securities Fraud Enforcement Act of 1988 ("ITSFEA"), designed primarily to prevent, deter, and prosecute insider trading.[5] ITSFEA created a new section 15(f) of the Act[6] to require broker-dealers to maintain procedures designed to prevent the misuse of material, non-public information by such broker-dealers or any person associated with such broker-dealers. ITSFEA also grants the Commission broad rule-making authority concerning so-called "Chinese Wall" procedures developed by broker-dealers to deter and prevent insider trading.[7] Pursuant to this grant of rule-making authority, the Division undertook a comprehensive review of broker-dealer policies and procedures and, in March of 1990, issued a report of its findings, conclusions and recommendations.[8] In the Report, the Division stated that, among other things, it was concerned about the need for firms to "maintain documentation sufficient to recreate actions taken pursuant to Chinese Wall procedures."[9] Accordingly, the Division urged the self-regulatory organizations ("SROs") to develop standards of documentation for their member firms as well as effective examination programs.

B. The Proposal

The proposed rule change would establish a new Exchange Rule 2.6(e), which is designed to supplement section 15(f) of the Act. Proposed Rule 2.6(e) would require every member of the Exchange to establish, maintain and enforce written policies and procedures reasonably designed to prevent the misuse of material, non-public information by such member and any person associated with the member. In addition, Rule 2.6(e) would mandate that all members that are required to file SEC Form X–17A–5 ("FOCUS Reports") with the Exchange on an annual basis must submit with their FOCUS Reports an attestation signed by such members stating that the procedures mandated by this Rule have been established, enforced and maintained. Finally, the proposed Rule would establish minimum standards for compliance with the recordkeeping requirements of the Rule and the Act, and require any members and associated persons who become aware of any possible misuse of material, non-public information to notify promptly the Exchange's Equities or Options Surveillance Department.

The proposal contains four Commentaries to Rule 2.6(e). Commentary .01 describes conduct that would constitute the misuse of material, non-public information. Specifically, such conduct would include, but would not be limited to: (1) Trading in any securities, or in any related securities, options or other derivative securities issued by a corporation while in possession of material, non-public information concerning the corporation; (2) trading in a security or related options or other derivative securities while in possession of material, non-public information concerning imminent transactions in the security or related securities; and (3) disclosing to another person or entity any material non-public information involving a corporation whose shares are publicly traded or an imminent transaction in an underlying security or related securities for the purpose of facilitating the possible misuses of such material, non-public information.

The Exchange states that the scope of the aforementioned definition is intended to be consistent with the goal of section 15(f) of the Act and ITSFEA: To prevent the misuse of material, non-public information. The Exchange believes that this definition should be broad enough to encompass frontrunning, trading on the basis of material corporate inside information, tipping and misappropriating material corporate inside information.

Commentary .02 would define the terms "associated person" and "person associated with a member" as any partner, officer, director, or branch manager of a member (or any person occupying a similar status or performing similar functions), any person directly or indirectly controlling, controlled by, or under common control with a member, or any employee of a member. The Exchange states that the purpose of this Commentary is to provide a definition that is consistent with the definition of "associated person" in section 3(a)(21) of the Act.[10]

Commentary .03 would require that, at a minimum, each member establish, maintain and enforce certain policies and procedures pursuant to Rule 2.6(e). Specifically, members would be required to: (1) Advise all associated persons in writing of the prohibition against the misuse of material, non-public information; (2) maintain for at least three years, the first two years in an easily accessible place, signed attestations from each member organization, and all associated persons of that member organization, affirming their awareness of, and agreement to abide by, the above-mentioned prohibitions; (3) maintain for at least three years, the first two years in an easily accessible place, copies of trade confirmation and monthly account statements for each account in which an associated person either has a direct or indirect interest or makes investment decisions. The member organization would be required to review all such account statements and trade confirmations at least quarterly for the purpose of detecting the possible misuse of material non-public information; and (4) all associated persons would be required to disclose to the member organization whether they, or any persons in whose account they have a direct or indirect financial interest or make investment decisions, is an officer, director, or 10% shareholder in a company whose shares are publicly traded. Any transaction in the stock (or option thereon) of such company must be reviewed to determine whether the transaction may have involved a misuse of material non-public information.

The Exchange states that the standards in this Commentary are intended to be minimum standards for compliance with the record-keeping requirement of the Act and the Rule. According to the Exchange, adherence to these standards will not, in all cases, necessarily constitute compliance with the Act and the Rule for all members. The adequacy of any one member's policies and procedures will depend on the nature of that member's business.

Commentary .04 and the Bulletin (Exhibit B to the proposed rule change) describes a set of forms, denominated as the "Sample ITSFEA Compliance

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[3] See letter from Deena G. Doherty, Senior Attorney, Options Compliance, PSE, to Diana Luka, Branch Chief, Exchange Regulation, Division of Market Regulation, Commission, dated October 25, 1993. Amendment No. 1 made non-substantive, clarifying changes to the proposal.

[4] See Securities Exchange Act Release No. 32178 (April 21, 1993), 58 FR 25685 (April 27, 1993).

[5] 4 Pub. L. No. 100–704.

[6] 15 U.S.C. 78o(f) (1988).

[7] "Chinese Walls" are broker-dealer policies and procedures designed to segment the flow and prevent the misuse of material, non-public information.

[8] See Broker-Dealer Policies and Procedures Designed to Segment the Flow and Prevent the Misuse of Material Non-public Information ("Report"), Division of Market Regulation, Commission, March 1990.

[9] *Id.* at 26.

[10] 15 U.S.C. 78c(a)(21) (1988).

Procedures" (Exhibit C to the proposed rule change), which may be used by certain "eligible members" to facilitate their compliance with the record-keeping and filing requirements of Rule 2.6(e). "Eligible members" are member organizations and sole PSE members that do not carry or introduce customer accounts and for whom the Exchange is the Designated Examining Authority ("DEA"). The Exchange states that the sample ITSFEA forms are intended to constitute the minimum policies and procedures required by the Act and the Rule. Their use, however, would not ensure compliance with the record-keeping and filing requirements.

The Sample ITSFEA Compliance Procedures require: (1) All associated persons to disclose each securities account in which they have a direct or indirect financial interest, or make investment decisions; (2) all associated persons to disclose whether they are an officer, director or 10% shareholder in a company whose shares are publicly traded or if any persons in whose account they have a direct or indirect financial interest or over whose account they may make investment decisions is an officer, director, or 10% shareholder in a company whose shares are publicly traded; (3) a written affirmation by all associated persons that they understand and will abide by the prohibition against the misuse of material, non-public information; and (4) the designation of a Senior Reporting Member to be responsible for implementing all necessary policies and procedures on behalf of the member organization. The Senior Reporting Member must submit a written affirmation that he or she ensures that all of the ITSFEA compliance procedures are being followed, including the regular review of all accounts and trading activities of associated persons.

III. Discussion and Conclusion

The Commission believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and section 6(b)(5) of the Act, in particular,[11] in that it is designed to prevent fraudulent and manipulative acts and practices and promote just and equitable principles of trade. The proposal will accomplish this by setting standards and bringing consistency to member practices to prevent the misuse of material, non-public information.

Broker-dealer Chinese Walls predate section 15(f) of the Act and have evolved to include policies and physical apparatus designed to prevent the improper or unintended dissemination of market sensitive information from one division of a multi-service firm to another. The Chinese Wall procedures also have developed trading reviews designed to prevent and detect illegal trading. Prior to the existence of section 15(f), however, the policies and procedures varied from one broker-dealer to the next, ranging from very tight, centralized control of information and review to little or no review or follow-up. The Division, in its Report, stated that broker-dealer oversight with regard to section 15(f) is an important issue and is best effectuated by SRO examinations and regulation subject to Commission oversight.[12] The Commission believes that the PSE's proposal adequately addresses the concerns raised in the Division's Report and that it should help to prevent the misuse of material non-public information by brokers and dealers.

Specifically, the Commission believes that the policies and procedures set forth in Rule 2.6(e) and the corresponding Commentaries will serve to ensure that PSE members establish, maintain and enforce policies to prevent the misuse of material, non-public information, thereby helping to assure that PSE members are in compliance with section 15(f) of the Act. First, the requirement that all associated persons be advised in writing of the prohibition against the misuse of material, non-public information as defined in the Rule, and the requirement that member organizations and persons associated with them sign attestations affirming their awareness of, and agreement to abide by, the aforementioned prohibitions will serve to heighten awareness of associated persons of this prohibition. Second, the requirement that member organizations maintain copies of trade confirmations and monthly account statements for each account in which an associated person has a direct or indirect financial interest or makes investment decision will assist Exchange and Commission review of those records and make any fraudulent acts easier to deter and detect. Third, the requirement that all associated persons disclose to the member organization whether they, or any person in whose account they have a direct or indirect financial interest, or make investment decisions is an officer, director or 10% shareholder in a company whose shares are publicly traded, and the requirement that transactions in the stock (or option thereon) of such company be reviewed to determine whether the transaction may have involved a misuse of material non-public information will assist the Exchange and the Commission in the detection and deterrence of the misuse of material, non-public information.

The Commission believes that it is consistent with the Act for PSE Rule 2.6(e) to require that only members who file their FOCUS reports annually with the Exchange submit, along with their FOCUS Reports, an attestation of their compliance with Rule 2.6(e). In this regard, the Commission notes that members that file FOCUS Reports on a more frequent basis are subject to more frequent periodic audits by the Exchange. During these audits, the Exchange will review the procedures maintained by such members pursuant to Rule 2.6(e). Members who file FOCUS Reports on an annual basis, however, are subject to audits on a more infrequent basis. Accordingly, the Commission believes that the requirement that these members file an annual attestation that they are in compliance with Rule 2.6(e) will serve as a continuing reminder of the obligations of this rule. This should result in more internal compliance checks by members and, therefore, assist the Exchange in the administration of Rule 2.6(e) without compromising the effectiveness of the rule or adherence to section 15(f) of the Act.

Finally, the Commission believes that Rule 2.6(e), Commentary .02, which defines "associated person" or "person associated with a member" is consistent with the Act. Currently, the Exchange, in enforcing its rules, applies the definition of "person associated with a member" or "associated person of a member" contained in the Act. The proposal adopts this definition into the Exchange's rules.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–PSE–92–20) is hereby approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28336 Filed 11–17–93; 8:45 am]

BILLING CODE 8010-01-M

[11] 15 U.S.C. 78f(b)(5) 1988).

[12] See Report, supra note 8 at 23.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

SMALL BUSINESS ADMINISTRATION

Portland District Advisory Council; Public Meeting

The U.S. Small Business Administration Portland District

Advisory Council will hold a public meeting at 8 a.m. on Wednesday, December 1, 1993, at The Beard Library, located at 6639 SW. Macadam (SW. Macadam and Vermont), Portland, Oregon, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Mr. John L. Gilman, District Director, U.S. Small Business Administration, 222 SW. Columbia, suite 500, Portland, Oregon 97201, (503) 326–5221.

Dated: November 8, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–28380 Filed 11–17–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1899]

Telecommunications Regulation Training, Inviting Applications for Award

Purpose of Program: The purpose of this program is to create the foundation for a self-sustaining graduate-level training program in the emerging democracies of Central and Eastern Europe without long-term U.S. government financial support which will meet the requirements for government telecommunications and broadcast regulators and for telecommunications operators and managers who will be working in an increasingly commercialized and competitive communications sector. Additionally, the purpose is to assist the Hungarian, Czech, and Polish governments in the development, administration, and execution of clear telecommunications regulations that create an open, non-discriminatory process and an effective, level playing field for U.S. investors in the telecommunications sector.

Eligible Applicants: Profit and nonprofit, public and private, agencies, organizations, and institutions are eligible to apply for a grant or cooperative agreement.

Applications Available: On or about November 17, 1993.

For Further Information Contact: Carrie Davison, U.S. Department of State, Office of Acquisitions, P.O. Box 9115, Arlington, VA 22219. Telephone: (703) 875–6011.

Dated: November 8, 1993.

Warren Clark, Jr.,

Special Advisor, Communications and Information Policy.

[FR Doc. 93–28320 Filed 11–17–93; 8:45 am]

BILLING CODE 4710–45–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

Region 3 Advisory Board; Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Change of Meeting Time.

SUMMARY: This is to announce a time change for the Region 3 Advisory Board meeting scheduled for December 2 as published in the **Federal Register**, October 19, 1993, page 53985. The new meeting time is 8 a.m. to 11:30 a.m.

DATES: December 2, 8 a.m. to 11:30 p.m.

ADDRESSES: Seattle Hilton, Sixth and University Streets, Seattle, Washington.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street, NW., Washington, DC 20232, 202/786–9675.

Dated: November 15, 1993.

Jill Nevius,

Committee Management Officer.

[FR Doc. 93–28406 Filed 11–17–93; 8:45 am]

BILLING CODE 2222–01–M

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Environmental Impact Statement; Dade County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed multi-modal project in Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, room 2015, Tallahassee, Florida 32302, Telephone: (904) 681–7236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to improve modal interfaces in the vicinity of the Miami International Airport in Dade County, Florida. Improvements to the modal interfaces are considered necessary to provide for the existing and projected traffic demand.

The Intermodal Center facility is envisioned as providing modal interfaces between the Metro-Dade Metro-rail and Metrobus Systems, Tri-rail, Amtrak, potentially a High Speed Rail, and light rail connection to the Port of Miami. Alternative travel modes linking the center to the Miami International Airport Passenger Terminal being considered range from shuttle buses to an automated ground transport (AGT) system. The center will provide general public parking and may also contain car rental and tour bus facilities.

Alternatives under consideration include (1) taking no action; and (2) three (3) alternative sites near the Miami International Airport.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings will be held in Dade County. In addition, a public hearing will be held. Public notice will be given of the time and place of the meetings and hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned within the project vicinity during December, 1993.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

Issued on: November 8, 1993.

R.V. Robertson,

District Engineer, Tallahassee, Florida.

[FR Doc. 93–28307 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement; Dade County, FL

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS)

will be prepared for a proposed multi-modal project in Dade County, Florida.

FOR FURTHER INFORMATION CONTACT: R.V. Robertson, District Engineer, Federal Highway Administration, 227 N. Bronough Street, room 2015, Tallahassee, Florida 32302. Telephone: (904) 681–7236.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Florida Department of Transportation will prepare an EIS for a proposal to improve the SR 836 corridor in Dade County, Florida. The proposed project would include highway and transit improvements to the SR 836 corridor from the Florida Turnpike at Florida International University (FIU) to Miami International Airport, through downtown Miami to the Miami Beach Convention Center, which is a distance of approximately 13.5 miles. Improvements to the corridor are considered necessary to provide for the existing and projected travel demand and to address safety and operational issues.

Alternatives under consideration include:

(1) No-Build Alternative;

(2) Transportation Systems Management (TSM) Alternative;

(3) Expressway Widening Alternative, consisting of widening SR 836 from the Florida Turnpike to NW 17th Avenue;

(4) Elevated Express Lanes Alternative, which consists of an elevated structure over SR 836 carrying express lanes;

(5) Metrorail Alternative, consisting of roadway operational improvements to SR 836 and a Metrorail line along SR 836 from FIU through the Miami Intermodal Center at the Airport, to the Stage I Metrorail line at Earlington Heights, with a second line departing the Stage I Metrorail line at Overtown Station and branching to the Port of Miami and across the MacArthur Causeway to the Miami Beach Convention Center;

(6) SR 836 Alternative, consisting of roadway operational improvements to SR 836 and a Metrorail or "hybrid" line with an Airport branch, which would extend from FIU following SR 836 through downtown Miami to the Port of Miami, and across the MacArthur Causeway to the Miami Beach Convention Center;

(7) Flagler Street Alternative, consisting of roadway operational improvements to SR 836 and an LRT alignment with an Airport branch beginning at FIU and extending along SW 8th Street, Flagler Street, through downtown Miami, to the Port of Miami, and across the MacArthur Causeway to the Miami Beach Convention Center.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State, and local agencies, and to private organizations and citizens who have expressed interest in this proposal. A series of public meetings are currently being held in Dade County. In addition, a public hearing will be held. Public notice will be given of the time and place of the public hearing. The Draft EIS will be made available for public and agency review and comment. A formal scoping meeting is planned within the project vicinity during December 1993.

To ensure that the full range of issues related to the proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program.)

R.V. Robertson,

District Engineer, Tollahassee, Florida.

[FR Doc. 93–28308 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–22–M

Federal Transit Administration

Environmental Impact Statement on the Griffin Line Corridor

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of intent to prepare an environmental impact statement.

SUMMARY: The Federal Transit Administration (FTA), the Greater Hartford Transit District (GHTD) and the Capitol Region Council of Governments (CRCOG) intend to undertake a corridor study, which will become the core of an Environmental Impact Statement (EIS) in accordance with the Intermodal Surface Transportation Act (ISTEA) and the National Environmental Policy Act (NEPA). The local joint lead agencies will ensure that the EIS also satisfies the requirements of the Connecticut Environmental Policy Act (CEPA). While the corridor study focuses on the initial 9.2 mile segment from Union Station in Hartford to Griffin Center Office Park in Bloomfield, federal environmental policy (NEPA) and FTA policy (ISTEA) direct the scope to address the impacts of the "reasonably foreseeable actions" of the proposed alternative. As a result, the corridor study will also assess impacts of the potential longer term transit improvements to the Airport. In addition to a proposed transitway, which will consider both busway and light rail transit alternatives from Union Station to Griffin Office Park, the corridor study will evaluate the No-Action and the Transportation System Management (TSM) alternatives and any new alternatives generated through the scoping process. Scoping will be accomplished through correspondence with interested persons, organizations, and federal, state and local agencies, and through a public meeting. See **SUPPLEMENTARY INFORMATION** below for details.

DATES: *Comment Due Date:* Written comments on the scope of alternatives and impacts to be considered should be sent to the Greater Hartford Transit District by December 17, 1993.

Scoping Meeting: The public scoping meeting will be held on Thursday, December 9, 1993 from 4 p.m. to 8 p.m. at the Union Station Great Hall. See **ADDRESSES** Below.

ADDRESSES: *Written comments* on project scope should be sent to Mr. David Vozzolo, Director of Planning, Greater Hartford Transit District, One Union Place, Hartford, Connecticut 06103. The *Scoping meeting* will be held at the following location:

Thursday, December 9, 1993—4 p.m.
Union Station Great Hall
One Union Place
Hartford, Connecticut 06103.

FOR FURTHER INFORMATION CONTACT: Mr. Max Vigil, Director of Program Development, Federal Transit Administration, Region I, (617) 494–2484.

SUPPLEMENTARY INFORMATION:

I. Scoping

FTA and the local joint lead agencies invite interested individuals, organizations, and federal, state and local agencies to participate in defining the alternatives to be evaluated in the corridor study which will become the core of the Environmental Impact Statement (EIS) and identifying any significant social, economic, or environmental issues related to the alternatives. An information packet describing the purpose of the project, the proposed alternatives, the impact areas to be evaluated, the citizen involvement program, and the preliminary project schedule is being mailed to affected federal, state and local agencies and to interested parties on record. Others may request the

scoping materials by contacting Ms. Anna Maruca at the Greater Hartford Transit District at the address above or by calling her at (203) 247–5329. Scoping comments may be made verbally at the public scoping meeting or in writing. See the **DATES** and **ADDRESSES** sections above for locations and times. During scoping, comments should focus on identifying specific social, economic or environmental impacts to be evaluated and suggesting alternatives which are less costly or less environmentally damaging while achieving similar transit objectives. Scoping is not the appropriate time to indicate a preference for a particular alternative. Comments on preferences should be communicated after the EIS is completed. If you wish to be placed on the mailing list to receive further information as the project develops, contact Ms. Anna Maruca at the Greater Hartford Transit District as previously described.

II. Description of Study Area and Project Need

While the Greater Hartford Transit District is proposing initial implementation from Union Station in Hartford to Griffin Center Office Park in Bloomfield, due to federal environmental policy (NEPA) and FTA policy (ISTEA) the corridor study will assess the impacts within the full corridor of approximately 20 miles from the Hartford Enterprise Zone to Union Station to Griffin Center in Bloomfield to Bradley International Airport in Windsor Locks. The proposed transitway is intended to improve transit service in the Griffin Line corridor, improve the mobility of the corridor's transit dependent population, provide additional transportation capacity in the Hartford CBD and Asylum Hill areas and the Griffin Corridor and become a focal point for economic development and redevelopment in the corridor. The project would support the Region's attainment and maintenance of its air quality goals by providing a competitive alternative to the automobile.

III. Alternatives

The alternatives proposed for evaluation include: No-Action which involves no change to transportation services or facilities in the corridor beyond already committed projects; the TSM alternative which consists of low-to-medium cost improvements to the facilities and operations of Connecticut Transit, including expansion of peak and off-peak express bus services in the corridor; the minimum segment light rail transit alternative which consists of providing light rail service at eight stations along the 9.2 mile right of way, with possible extension to the Hartford Enterprise Zone and to Bradley International Airport; and the minimum segment busway alternative which consists of local and express bus service on the dedicated right of way, with possible extension to the Hartford Enterprise Zone and to Bradley International Airport. Eight stations are proposed for both the light rail transit minimum segment and busway minimum segment alternatives: Union Station, Garden Street, Woodland Street, Albany Avenue with a corridor park and ride facility, University Park/Blue Hills, COPACO/Cottage Grove Road with a corridor park and ride facility, Bloomfield Town Center and Griffin Office Park, which would be a terminal station of the minimum segment alternatives with a corridor park and ride facility. Feeder buses would serve the station areas at Griffin Office Park, Bloomfield Town Center, COPACO/Cottage Grove Road, University Park/Blue Hills, Woodland Street, Garden Street and Union Station.

IV. Probable Effects

FTA and the local joint lead agencies plan to evaluate in the corridor study, which will become the core of the EIS, all significant social, economic, and environmental impacts of the alternatives. Among the primary issues are the expected increase in transit ridership, the expected increase in mobility for the corridor's transit dependent, the potential for increased economic development, the support of the region's air quality standards, the capital outlays needed to construct the project, the cost of operating and maintaining the facilities created by the project and the financial impacts on the funding agencies. Environmental and social impacts proposed for analysis include land use and neighborhood impacts, traffic and parking impacts near stations, health and safety impacts, impacts on wetland areas, and noise and vibration impacts. Impacts on natural areas, rare and endangered species and air and water quality, will also be covered. The cumulative environmental impacts of possible fixed guideway extensions in the corridor will also be analyzed. The impacts will be evaluated both for the construction period and for the long term period of operations. Measures to mitigate significant adverse impacts will be explored.

V. FTA Procedures

In accordance with the Intermodal Surface Transportation Efficiency Act (ISTEA) and FTA policy, environmental analyses prepared as part of this corridor study will become the core of the Final Environmental Impact Statement (FEIS) which will be prepared in conjunction with Preliminary Engineering. Upon completion of the Corridor Study, the Capitol Region Council of Governments, as the designated MPO, in cooperation with the corridor municipalities, will select a locally preferred alternative and the GHTD, as lead agency, will seek approval from FTA to continue with Preliminary Engineering and preparation of the Final EIS.

Issued on November 15, 1993.

Richard H. Doyle,

Regional Administrator.

[FR Doc. 93–28431 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–60–M

National Highway Traffic Safety Administration

[Docket No. 93–49; Notice 2]

Determination That Nonconforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) Multi-Purpose Passenger Vehicles are Eligible for Importation

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of determination by NHTSA that conforming 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) multi-purpose passenger vehicles (MPVs) are eligible for importation.

SUMMARY: This notice announces the determination by NHTSA that 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs that were not originally manufactured to comply with all applicable Federal motor vehicle safety standards are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all such standards.

DATES: The determination is effective on November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Ted Bayler, Office of Vehicle Safety Compliance, NHTSA (202–366–5306).

SUPPLEMENTARY INFORMATION:

Background

Under section 108(c)(3)(A)(i)(I) of the National Traffic and Motor Vehicle Safety Act (the Act), 15 U.S.C. 1397(c)(3)(A)(i)(I), a motor vehicle that was not originally manufactured to conform to all applicable Federal motor vehicle safety standards shall be refused

admission into the United States on and after January 31, 1990, unless NHTSA has determined that the motor vehicle is substantially similar to a motor vehicle originally manufactured for importation into and sale in the United States, certified under section 114 of the Act, and of the same model year as the model of the motor vehicle to be compared, and is capable of being readily modified to conform to all applicable Federal motor vehicle safety standards. Where there is no substantially similar U.S.-certified motor vehicle, section 108(c)(3)(A)(i)(II) of the Act, 15 U.S.C. 1397(c)(3)(A)(i)(II), permits a nonconforming motor vehicle to be admitted into the United States if its safety features comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards based on destructive test data or such other evidence as NHTSA determines to be adequate.

Petitions for eligibility determinations may be submitted by either manufacturers or importers who have registered with NHTSA pursuant to 49 CFR part 592. As specified in 49 CFR 593.7, NHTSA publishes notice in the **Federal Register** of each petition that it receives, and affords interested persons an opportunity to comment on the petition. At the close of the comment period, NHTSA determines, on the basis of the petition and any comments that it has received, whether the vehicle is eligible for importation. The agency then publishes this determination in the **Federal Register.**

Europa International, Inc. of Santa Fe, New Mexico (Registered Importer No. R–91–002) petitioned NHTSA to determine whether 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs are eligible for importation into the United States. NHTSA published notice of the petition on July 6, 1993 (58 FR 36246) to afford an opportunity for public comment. As described in that notice, the petitioner claimed that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV has safety features that comply with Standard Nos. 102 *Transmission Shift Lever Sequence . . .* (based on visual inspection and operation), 103 *Defrosting and Defogging Systems* (based on inspection), 104 *Windshield Wiping and Washing Systems* (based on operation and certification of vehicle to European standard), 105 *Hydraulic Brake Systems* (based on documented testing and comparison of components to U.S.-model counterparts), 106 *Brake Hoses* (based on visual inspection of certification markings), 107 *Reflecting Surfaces* (based on visual inspection), 113 *Hood Latch Systems* (based on operation), 116 *Brake Fluids* (based on visual inspection of certification markings), 119 *New Pneumatic Tires for Vehicles other than Passenger Cars* (based on visual inspection of certification markings), 124 *Accelerator Control Systems* (based on operation and comparison with certified engine components), 201 *Occupant Protection in Interior Impact* (based on test film and conformance with similar performance requirements), 202 *Head Restraints* (based on test film and certification of vehicle to European standard), 203 *Impact Protection for the Driver from the Steering Control System* (based on certification of vehicle to European standard), 204 *Steering Control Rearward Displacement* (based on test film), 205 *Glazing Materials* (based on visual inspection of certification markings), 206 *Door Locks and Door Retention Components* (based on certification of vehicle to European standard), 207 *Seating Systems,* (based on test results and certification of vehicle to European standard), 209 *Seat Belt Assemblies* (based on certification markings), 211 *Wheel Nuts, Wheel Discs and Hubcaps* (based on visual inspection), 219 *Windshield Zone Intrusion* (based on engineering evaluation of Standard No. 208 compliance test film and test data), and 302 *Flammability of Interior Materials* (based on composition of upholstery).

The petitioner also contended that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV is capable of being modified to comply with the following standards, in the manner indicated:

Standard No. 101 *Controls and Displays:* Substitution of a lens marked "Brake" for a lens with an ECE symbol on the brake failure indicator lamp.

Standard No. 108 *Lamps, Reflective Devices and Associated Equipment:* (a) Installation of U.S.-model sealed beam headlamps; (b) installation of U.S.-model side marker lamps and reflectors. The petitioner asserted that testing performed on the taillamp revealed that it complies with the standard, even though it lacks a DOT certification marking, and that all other lights are DOT certified.

Standard No. 111 *Rearview Mirrors:* Replacement of the convex passenger side rearview mirror with a flat surfaced mirror, or inscription of the required warning statement on the mirror's convex surface.

Standard No. 114 *Theft Protection:* Installation of a warning buzzer in the steering lock electrical circuit.

Standard No. 115 *Vehicle Identification Number:* Installation of the VIN plate that can be read from outside the left windshield pillar, and a VIN reference label on the edge of the door or latch post nearest the driver.

Standard No. 118 *Power-Operated Window Systems:* Rewiring of the power window system so that the window transport is inoperative when the front doors are open.

Standard No. 120 *Tire Selection and Rims of Vehicles other than Passenger Cars:* Installation of a tire information placard. The petitioner asserted that the tire rims are certified by their manufacturer as complying with the standard, even though they lack a DOT certification marking.

Standard No. 208 *Occupant Crash Protection:* Installation of a driver's side air bag and a seat belt warning buzzer. The petitioner asserted that the vehicle conforms to the standard's injury criteria at the front passenger position based on a test report from the vehicle's manufacturer. The petitioner also submitted data indicating that the vehicle satisfies the applicable injury criteria at the driver position based on tests performed on a 1980 model Gelaendewagon equipped with a driver's side air bag. There is no difference between the ladder-style frame structure of the 1980 and the 1993 Gelaendewagon, aside from cross members behind the crumple zone, which were modified solely to accommodate a new exhaust system.

Standard No. 210 *Seat Belt Assembly Anchorages:* Insertion of instructions on the installation and use of child restraints in the owner's manual for the vehicle.

Standard No. 212 *Windshield Retention:* Application of cement to the windshield's edges.

The petitioner provided test data indicating that the vehicle satisfied the frontal barrier requirements of Standard No. 301 *Fuel System Integrity.* The petitioner also supplied data on a rear barrier crash at 31 mph with crash forces approximating those required by the standard. The data revealed that fuel leaked from the vent during the rollover that was conducted as part of this test. The petitioner installed a rollover valve in the fuel tank line to resolve that problem. The petitioner also stated that the vehicle should comply with the lateral impact test at 20 mph due to the reinforcing structure surrounding the fuel tank and the placement of the fuel lines inside the main frame of the vehicle. Based on its analysis of information provided by the petitioner, as well as its engineering judgment, the agency is satisfied that the vehicle will comply with the side impact requirements of Standard No. 301.

One comment was received in response to the notice of the petition, from Mercedes-Benz of North America, Inc. ("MBNA"), the U.S. subsidiary of the original manufacturer, Daimler-Benz A.G. Although this comment was received after the closing date for comments on the petition, it nevertheless was considered by NHTSA in preparing this determination. In its comment, MBNA contended that the petition must be denied because the petitioner did not submit destructive test data or similar evidence to demonstrate that the 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPV complies with Federal motor vehicle safety standards. MBNA stated that the petition's "primary deficiency" is its failure to demonstrate through destructive test data or other means that the vehicle complies with Standard No. 208 *Occupant Crash Protection*. As discussed above, the petitioner did perform Standard No. 208 tests on an earlier model Gelaendewagon equipped with a driver's side airbag. Given the structural similarity between the tested vehicle and the 1993 Gelaendewagon, NHTSA has accepted the data submitted by the petitioner on these tests as being sufficient to demonstrate that the 1993 Gelaendewagon satisfies the standard's injury criteria.

Vehicle Eligibility Number for Subject Vehicles

The importer of a vehicle admissible under any final determination must indicate on the form HS–7 accompanying entry the appropriate vehicle eligibility number indicating that the vehicle is eligible for entry. VCP #3 is the vehicle eligibility number assigned to vehicles admissible under this determination.

Final Determination

Accordingly, on the basis of the foregoing, NHTSA hereby determines that 1993 Mercedes-Benz Gelaendewagon 300GE (Type 463) MPVs are eligible for importation into the United States because they have safety features that comply with, or are capable of being modified to comply with, all applicable Federal motor vehicle safety standards.

Authority: 15 U.S.C. 1397(c)(3)(A)(i)(II) and (C)(iii); 49 CFR 593.8; delegations of authority at 49 CFR 1.50 and 501.8.

Issued on: November 12, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–28328 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

[Notice No. 93–22]

Safety Advisory: Service Life of Composite Cylinders Used in a Self-Contained Breathing Apparatus (SCBA) or in Other Services

AGENCY: Research and Special Programs Administration (RSPA), DOT.

ACTION: Safety advisory notice.

SUMMARY: This is to notify persons using composite cylinders manufactured and authorized under DOT exemptions that those cylinders have a 15-year service life limit. The service life limitation applies to cylinders based on RSPA's fiber-reinforced-plastic (FRP) cylinder standards for metal-lined fiber-reinforced-composite cylinders which form part of an SCBA or are used in other services. The cylinders typically have service pressures of between 2,000 and 4,500 psig. Composite cylinders marked with a DOT exemption number that are older than 15 years should be removed from service. Such cylinders may have reduced strength without any visual indication of damage.

FOR FURTHER INFORMATION CONTACT: James K. O'Steen or Charles H. Hochman, telephone (202) 366–4545, Office of Hazardous Materials Technology, Research and Special Programs Administration, U.S. Department of Transportation, Washington, DC 20590–0001. Office hours are: 8:30 a.m. to 5 p.m., Monday through Friday.

SUPPLEMENTARY INFORMATION: RSPA has recently received numerous letters concerning the service life of certain cylinders used in Self-Contained Breathing Apparatuses (SCBAs). The letters express the concerns of fire departments and others with the 15-year service life limitation on FRP composite cylinders which form part of an SCBA. Commenters are particularly concerned with the cost of replacing the cylinders after 15 years. These cylinders are manufactured and authorized for transportation under DOT exemptions.

An FRP composite cylinder is composed of an inner metallic liner over-wrapped with fiber filaments, most commonly fiberglass or kevlar, bonded together with a plastic resin. The large forces produced by the high pressure inside such a cylinder are restrained by the inner liner and the thousands of fiber filaments windings around the inner vessel. In a composite cylinder used for an SCBA, a large portion of the strength of the cylinder is provided by the fiber filaments.

Because fiber filaments provide much of the strength of an FRP cylinder, the useful life of an SCBA cylinder is greatly dependent on the properties of fiber filaments. Two of these properties are susceptibility to brittle fracture and stress rupture.

Brittle fracture. Fiber filaments are very strong but brittle. Once a crack starts in a filament, the crack continues to grow until the filament breaks. Unfortunately, filaments cannot be manufactured without some microscopic cracks. Cracks are also caused by in-service damage and pressure cycling. As cracks in a filament grow and a filament breaks, the filament's load is transferred to adjacent filaments. With increasing load, cracks in other filaments grow faster, additional filaments break, and load transfer increases. As the process accelerates with time, the bursting strength of the cylinder may be reduced and the cylinder could rupture in service.

Stress rupture is an actual reduction of fiber strength that occurs with time when the fiber is under load. Stress rupture varies greatly with material type; fiberglass is more susceptible to stress rupture than carbon fiber. In structures made of a material subject to stress rupture, such as fiberglass, the load level on filaments eventually exceeds their strength and the cylinder may rupture at the marked service pressure with potentially lethal consequences.

Because brittle fracture damage and stress rupture may occur without any visual indication of damage, cannot be found by available non-destructive tests, and produce a general reduction in a cylinder's strength over time, a maximum life was established to prevent cylinder rupture in service. The 15-year restriction was based on technical data presented by the cylind manufacturers in support of their exemption requests, and is consistent with the service life limitation found in a position paper, "Basic Considerations for Composite Cylinders," developed and published by the Compressed Gas Association.

Only one manufacturer of SCBA has requested that DOT amend its exemption to extend the cylinder service life from 15 years to 18 years. RSPA technical staff performed an extensive technical review of the manufacturer's information that resulted in a denial of the request. RSPA concluded that the test data presented in support of an increased service life indicated a trend toward accelerated loss in cylinder burst strength and an increasing probability of cylinder

failure, and did not support a service life extension.

RSPA is aware of, and concerned about, the financial burden associated with limiting the service life of composite cylinders, but RSPA must weigh this burden against the safety risk of a cylinder failure to firefighters and other users. For example, a Corem, New York firefighter was killed earlier this year by the rupture of a composite cylinder which was more than 15 years old. While the cause of that rupture was neither brittle fracture nor stress rupture, it is an example of the severe consequences of a composite cylinder failure.

Based on the above information, RSPA has retained the 15-year service life limitation on composite cylinders. At a minimum, persons finding composite cylinders that are older than 15 years should remove those cylinders from service. Composite cylinders are authorized for SCBA and other services under the following exemptions:

DOT-E 7218	DOT-E 8391	DOT-E 10019
DOT-E 7235	DOT-E 8487	DOT-E 10147
DOT-E 7277	DOT-E 8718	DOT-E 10256
DOT-E 7769	DOT-E 8725	DOT-E 10345
DOT-E 8023	DOT-E 8814	DOT-E 10637
DOT-E 8059	DOT-E 8965	DOT-E 10905
DOT-E 8115	DOT-E 9634	
DOT-E 8162	DOT-E 9659	

Issued in Washington, DC on November 12, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–28432 Filed 11–17–93; 8:45 am]

BILLING CODE 4910–60–P

UNITED STATES INFORMATION AGENCY

Advisory Board for Cuba Broadcasting; Meeting

The Advisory Board for Cuba Broadcasting will conduct a meeting on November 18, 1993, in the first floor banquet room for the Airport Marriott located at 1201 NW. LeJeune Road, Miami, Florida. Below is the intended agenda.

Thursday, November 18, 1993

Agenda

Part One—Closed to the Public

12:30 p.m.

1. Technical Matters
2. Budget Matters: Radio and TV Martí

Part Two—Open to Public

2:00 p.m.

1. Approval of Minutes
2. Update on Radio Martí
3. Update on TV Martí
4. OCB Office of Program Evaluation/Focus Group Results
5. Public Testimony

Items one and two which will be discussed from 12:30 p.m. to 2 p.m., will be closed to the public. Discussion of items one and two will include information the premature disclosure of which would be likely to frustrate the implementation of a proposed agency action (5 U.S.C. 522(c)(9)(B)).

Members of the public interested in attending the open portion of the meeting should contact Ms. Liz Fernández, from the directorate of the Office of Cuba Broadcasting. Ms. Fernández can be reached at (202) 401–7013.

Dated: November 10, 1993.

Joseph Duffey,

Director.

[FR Doc. 93–28361 Filed 11–17–93; 8:45 am]

BILLING CODE 8230–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 221

Thursday, November 18, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. CONSUMER PRODUCT SAFETY COMMISSION

TIME AND DATE: Thursday, November 18, 1993.

LOCATION: Room 556, Westwood Towers, 5401 Westbard Avenue, Bethesda, Maryland.

STATUS:

Closed to the Public

MATTERS TO BE CONSIDERED:

Compliance Status Report

The staff will brief the Commission on the status of various compliance matters.

For a recorded message containing the latest agenda information, call (301) 504–0709.

CONTACT PERSON FOR ADDITIONAL INFORMATION: Sheldon D. Butts, Office of the Secretary, 5401 Westbard Ave., Bethesda, MD 20207 (301) 504–0800.

Dated: November 12, 1993.

Sheldon D. Butts,

Deputy Secretary.

[FR Doc. 93–28545 Filed 11–16–93; 2:16 pm]

BILLING CODE 6355–01–M

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: Notice to be published in the **Federal Register** on November 16, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 11:00 a.m., Monday, November 22, 1993.

CHANGES IN THE MEETING: Addition of the following closed item(s) to the meeting: International banking matter.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 15, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28468 Filed 11–16–93; 10:54 am]

BILLING CODE 6210–01–P

federal register

Thursday
November 18, 1993

Part II

Department of the Interior

Bureau of Land Management

43 CFR Parts 2090 and 2200
Exchanges—General Procedures; Final Rule

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Parts 2090 and 2200

[AA-260-4212-02 24 1A; Circular No. 2653]

RIN 1004-AB28

Exchanges—General Procedures

AGENCY: Bureau of Land Management, Interior.

ACTION: Final rule.

SUMMARY: This final rule implements primarily the exchange provisions of the Federal Land Policy and Management Act of 1976, as amended by the Federal Land Exchange Facilitation Act of August 20, 1988. Also, the rule implements other authorities and procedural requirements that are applicable to Federal Land Policy and Management Act land exchanges. The principal provisions in the rule pertain to exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

EFFECTIVE DATE: December 17, 1993.

ADDRESSES: Inquiries or suggestions should be sent to: Director (140), Bureau of Land Management, U.S. Department of the Interior, Room 5555, Main Interior Building, 1849 C Street NW, Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Don Simpson or Dave Cavanaugh, (202) 653-9215.

SUPPLEMENTARY INFORMATION: The purpose of the Federal Land Exchange Facilitation Act of August 20, 1988 (Pub.L. 100-409)(hereafter referred to as the Act), is to facilitate and expedite certain land exchanges under the authority of the Secretary of the Interior and the Secretary of Agriculture by streamlining and improving the procedures for such exchanges. The Act endorses the long-standing policy that land exchange is an important tool to consolidate land ownership for more efficient management and to secure important objectives of resource management, enhancement, development, and protection; to meet the needs of communities; to promote multiple-use management; and to fulfill other public needs. The Act requires each Secretary to promulgate rules for exchanges of land.

On October 2, 1991, the Bureau of Land Management (BLM) and the Forest Service published separate proposed rules in the **Federal Register** (56 FR 49948-49977), with 60-day comment periods. The proposed rules were intended to implement the amendments made by the Act to section 206 of the Federal Land Policy and Management Act (43 U.S.C. 1716)(FLPMA), and to incorporate other authorities and procedural requirements applicable to each agency. Included in the rules were provisions to streamline and expedite exchanges involving Federal and non-Federal lands such as exchange agreements, assembled land exchanges, segregation, compensation for costs assumed, appraisal standards, bargaining, arbitration, approximately equal value exchanges, value equalization, cash equalization waiver, and simultaneous transfer of title.

The BLM and Forest Service received comments from 58 sources, including: 6 individuals, 18 business and industrial entities, 2 civic organizations, 2 environmental organizations, 2 professional societies, and 28 Federal, State, and local government entities.

All comments received on the rules were shared and jointly analyzed by the BLM and Forest Service. The analysis of comments pertaining to the BLM rule, and the corresponding responses and changes, are discussed as follows. Editorial and grammatical corrections also have been made as necessary.

General Comments

Two commenters stated that the time frames in the rule are too lengthy, particularly those related to the initiation and review process. The time periods specified in various sections of the rule were either imposed by the Act or administratively required to comply with BLM's public participation and environmental analysis procedures. Additionally, the BLM and the Forest Service have made further adjustments in their scheduling requirements to develop more uniform regulations and reduce the time periods wherever possible.

A respondent felt that streamlining the process to expedite the processing of exchanges may promote rapid disposal of Federal holdings in urbanized areas and forgo revenue-making opportunities on those properties. It was further suggested that a process for mid-course review at the highest departmental levels be built into the regulations. Land management agencies generally do not administer lands for intense development in urban areas. However, each exchange opportunity must be analyzed on an individual basis. Certain high-value or complex exchanges may involve Secretarial review, but to require a mid-course review of all exchanges would create unnecessary delay.

A commenter expressed concern that the appraisal provisions did not lend themselves to land exchanges involving mineral interests, particularly those exchanges in Alaska. It was suggested that there be sufficient discretion in the rules to permit land exchanges where there has been insufficient exploration data to permit valuation by standard appraisal methods. The standard appraisal process is less reliable when there is very little exploration data or market information available to estimate market value reliably. Consequently, § 2201.3-2(b) of the proposed and final rule gives the authorized officer discretion to use other methods when this is the case.

It was pointed out by one commenter that there is no provision in the rule for conducting public hearings. In conjunction with the written notification requirements in §§ 2201.2 and 2201.7-1 of the rule, the BLM authorized officer may hold public hearings or public meetings whenever appropriate to solicit information from the public. The need to conduct hearings or meetings will vary depending on the level of interest and potential controversy associated with a land exchange. Therefore, a separate provision to cover public hearings, meetings, etc. is unnecessary.

One commenter suggested the preparation of an "environmental values document" to compare relative ecological values to be exchanged. All resource values associated with the lands involved in an exchange are examined through an environmental analysis pursuant to Council on Environmental Quality regulations and Departmental and BLM directives. Therefore a separate "environmental values" document is not required.

Specific Comments

Part 2090 Special Laws and Rules

Section 2091.2-2 Opening

One respondent felt the section will restrict management of minerals by eliminating the "ability to lease minerals." The same respondent felt the value of the Federal parcel offered in the exchange would be less because of this "restriction." It does remove leasing as a management option, but only until rules are promulgated. The value of the lands is based on the highest and best use, and where mineral development is the highest and best use, the values of the mineral(s) will be reflected in the appraised value. No change was made

in the final rule in response to these comments.

Section 2091.3–1 Segregation

Two respondents suggested correcting the reference to lands administered by the Forest Service by inserting the word "Forest" between the words "National" and "System." One further suggested adding a citation of the pertinent BLM and Forest Service regulations at the end of the section. Both of these suggestions have been adopted in the final rule.

Section 2091.3–2 Opening

One commenter suggested using consistent wording regarding the segregation of reserved minerals from the mining laws in this section and § 2201.1–2. Section 2201.1–2 of the final rule has been revised to make these two sections consistent.

One comment recommended "deleting (c) of this section because the segregation and opening is by operation of law as discussed in § 2091.3–1 supra." This paragraph is deleted as suggested in the final rule.

Section 2200.0–5 Definitions

One commenter expressed concern with the use of the term "eminent domain" in the definition of "acquisition" because of the negative implications associated with condemnation and the erosion of private property rights. The definition of acquisition has been deleted from the rule.

One commenter recommended that language be added at the end of the definition of "agreement to initiate" to clarify that the signing of such agreement is not required for preliminary discussions between the parties to assess the feasibility of an exchange. No revision to the definition was considered necessary because § 2201.1(a) and (b) of the rule allow the parties to assess the feasibility of an exchange proposal before entering into an agreement to initiate.

It was recommended that the definition of "approximately equal value" be replaced with the Small Tracts Act (43 U.S.C. 682a) regulation definition in 36 CFR 254.31 or that the Small Tracts Act definition be amended by these rules. The definition in the rule was revised to conform with the definition in the Small Tracts Act regulations.

One commenter recommended that the definition of "bargaining" include other issues such as minerals, access, reservations, etc. This suggestion was not adopted because § 2201.4(a)(1) of the rule states that bargaining shall be based upon an objective analysis of the valuation in the appraisal report(s). An appraisal will take into account all factors that might influence the value of the estate to be conveyed.

One commenter stated that the definition of "highest and best use" may be too broad and recommended that the phrase "and present use of surrounding and/or adjacent property" be added after the words "based on market evidence." Use of nearby property is always considered by the appraiser in determining the highest and best use, but limiting consideration to adjacent properties could result in inaccurate estimates of value. Therefore, no change was made to the definition in the final rule.

It was suggested that the definition of "market value" include mineral and timber interests, archaeological sites, and cultural resources. Market value is an estimate of the price that lands or interests in lands would bring in a competitive market. Interests in lands, such as timber or cultural resources, are valued accordingly. Section 2201.3–2 of the final rule identifies the various interests that may be considered in estimating market value.

One commenter asked if the mineral leasing laws under the definition of "mineral laws" include the Act of March 4, 1917, involving mineral resources on Weeks Act (16 U.S.C. 480, 500 *et seq.*) lands. "Mineral laws," as used in this rule, are identified for the purposes of segregation under §§ 2201.1–2 and 2201.9(b). Since segregation applies only to those lands reserved from the public domain for National Forest purposes, mineral prospecting and leasing on acquired lands with Weeks Act status are not included in the definition of "mineral laws."

It was recommended that the definition of "party" be amended to recognize States as full parties to an exchange. The definition in the proposed rule clearly recognized States as being eligible to enter into an agreement to initiate an exchange and is adopted without change in the final rule.

One commenter recommended that the definition of "segregation" be amended to clarify that Federal lands may be segregated from operation of the public land laws "and/or" mineral laws. The commenter suggested adding the phrase "or by operation of law" after the word Secretary, presumably to reflect the automatic segregation of lands acquired through exchange provided by the Act. The purpose of segregation is to avoid the appropriation or long-term encumbrance of Federal lands being considered for conveyance in an exchange. The intent is to segregate from appropriation under both the public land laws and the mineral laws. The term "by operation of law" was not added to the final rule because the authority for segregation, and the authority to exchange for non-Federal lands that would automatically be segregated under the Act, lies with the Secretary.

A commenter indicated that the definition of "statement of value" did not appear to conform to the Uniform Standards of Professional Appraisal Practice (USPAP) and could place appraisers at risk in violating their professional standards if they produced a statement of value rather than a full appraisal report. The regulations only require the qualified appraiser to determine if the value of Federal lands exceeds $150,000; they do not require a formal appraisal report. It is expected, however, that the appraiser's analysis will meet the minimum standards contained in the USPAP.

One commenter suggested language and recommended that the definitions of "resource values" and "management objectives" be added to clarify the determination of public interest under § 2200.0–6 (b)(1) and (b)(2) of the rule. A definition of resource values has been included in the final rule; however, the term "management objectives" was not added because it is used consistent with the common definition of the two words.

It was suggested that the term "presence of environmental values" be defined in the rule and that the definition address cultural resource values and the associated costs of survey, mitigation, tests, excavations, etc. to ensure that such values are not overlooked in the exchange process. Section 2200.0–6 of the rule mentions cultural resources as one of several factors to be considered in the determination of public interest, and § 2201.1–3 of the rule allows for compensation for costs associated with cultural resource surveys and mitigation. Additionally, § 2200.0–6(h) of the rule requires that an environmental analysis be prepared. This analysis will ensure that environmental values such as cultural resources are not overlooked in the determination of public interest. No changes were made in the final rule in response to this comment.

Section 2200.0–6 Policy

(a) *Discretionary nature of exchanges.* One commenter recommended that this paragraph be amended to clarify that the decision of the Secretary when

determining public and State interest is subject to review. This section of the rule requires consideration of the needs of State and local residents. Section 2201.7–1(c)(1) of this rule sets forth the requirements for public notice of decisions and subsequent review. No changes were made in response to this comment.

(b) *Determination of public interest.* One commenter suggested that protection of watersheds be listed as a criterion in the determination of public interest. This suggestion was adopted.

It was suggested that the term "best served" be used instead of "well served." The same commenter pointed out that there was nothing in the regulations on what type of lands would be acquired and suggested a list of lands most desirable. The term "well served" is retained in the final rule because it is the term used in section 206(a) of FLPMA. It would be impracticable to list types of lands that should be acquired through exchange, due to the variety of resources on involved lands. Identification of types of lands to be acquired is more appropriate during the land use planning process.

One commenter stated that the phrase "accommodation of land use authorizations" was ambiguous and suggested wording to ensure that right-of-way corridors for energy transportation and utility purposes are considered in the determination of public interest. The suggestion was adopted by expanding the term "authorized uses" in § 2201.1(c)(4) of the rule to include grants, permits, easements or leases.

One commenter recommended that the management and development of private lands be emphasized in this section and suggested wording for inclusion into the final rule. Additionally, two commenters recommended that this section include an analysis of a State's economic needs and that the rationale and decision of the authorized officer be included in the public record. They specifically requested that additional regulatory requirements be imposed to provide an analysis of coal development, the feasibility of future leasing, and any possibility of royalty losses and the attendant impacts to States. This section of the final rule was revised to read "* * * to meet the needs of State and local residents and their economies * * *" to emphasize the importance of these public interest criteria. The "notice of exchange proposal" at § 2201.2 of the rule allows the public to participate early in the exchange process and to identify any issues or concerns it may have regarding an exchange proposal. This could include issues such as mineral resource development potential on the involved Federal lands, the potential loss of royalties, and the related impacts to State and local economies. The information received in response to the notice of exchange proposal will be considered in the development of an environmental analysis. The environmental analysis and related studies will serve as the basis for the "notice of decision" at § 2201.7–1 of the rule. This decision and all supporting documents will be included in the public record.

Another respondent suggested adding coal as a specific value to be considered. This is not necessary since coal is included within the reference to mineral values throughout the rule.

A local government suggested that an exchange should not be approved if it may adversely affect recreation, open space preservation, habitat, air quality or other resources. No change was made in response to this suggestion since potential impacts must be considered in the environmental analysis pursuant to § 2200.0–6(h) of the rule and a decision to proceed with an exchange must consider any adverse impacts identified in the analysis.

A State government respondent stated that Regional Coal Teams should be provided the opportunity for full participation in reviewing any exchange proposal. When processing exchanges involving coal, the appropriate Regional Coal Team shall have a major role in reviewing the exchange. However, it is impracticable to list in the rule all of the entities that should be given review opportunities.

One respondent suggested that the provision that provides that the intended use of conveyed Federal land not be in conflict with management objectives of adjacent Indian Trust lands be removed or limited to those uses of conveyed Federal lands that conflict with management objectives of "adjoining" Indian Trust lands that were established formally prior to that exchange proposal. This suggestion has been partially adopted by inserting the words "significantly conflict with established" before "management objectives" in § 2200.0–6(b)(2).

A local government respondent suggested that as a condition of exchange the Federal lands that may be used for landfills that may affect air quality use LAER (lowest achievable emission rates) technology, not the less stringent BDT (best demonstrated technology). Rather than prescribing specific technologies in this rule, appropriate methods of analysis of air quality and other considerations will be identified as proposals are developed. Public input will be considered in selecting assessment methods.

In order to meet the needs of State and local residents, wording was suggested that would require a determination regarding the consistency of the intended use of conveyed Federal lands with local government zoning and other land use plans for adjacent non-Federal lands. The authority of State and local governing bodies to regulate and zone non-Federal land, including land that has been conveyed from Federal ownership, is recognized in § 2200.0–6(i) of the rule. Therefore, no change has been made in response to this suggestion.

Five commenters felt that the requirement that the land exchanged into non-Federal ownership be used or managed to conform to or enhance adjacent Federal land uses was costly, inequitable, unfair or may otherwise limit exchange opportunities. It would not be in the public interest to convey lands out of Federal ownership if the intended use were to create substantial management conflicts with adjacent Federal lands; therefore, this provision is retained in the final rule. The language of § 2200.0–6(b)(2) of the rule does not imply control over future uses or place any requirement on the management of the Federal land after conveyance to the non-Federal party, unless specific reservations, covenants, or restrictions are included in the deed or patent pursuant to § 2200.0–6(i) of the rule. This section simply requires the authorized officer to consider the intended use in making the public interest determination.

One respondent felt that the two-part finding of public interest must be broad enough to encompass all management objectives contemplated and that emphasis not be placed on noncommodity resources. Section 2200.0–6(b) is sufficiently broad to include all involved resource values and all identified management objectives. Further, a definition of "resource values" has been added to § 2200.0–5 of the rule. That definition includes both commodity and non-commodity values, surface and subsurface.

It was requested that the reference to cultural resources be strengthened in the final regulations. Cultural resources is specified as a resource to consider in reaching a public interest determination. No change in the final rule is necessary.

Another suggested the words "promotion of" be changed to "continuation of." The language of the proposed rule has been retained because

section 2(a)(1) of the Act found that land exchanges are an important tool for "the promotion of multiple-use values."

Concern was expressed that the regulation "* * * guts the entire public interest test set forth in FLPMA," and a recommendation was made to delete the section. The Department disagrees. Section 206(a) of FLPMA provides a listing of considerations to be "included" in any public interest determination. That listing also includes "better Federal land management and the needs of State and local people." Section 2(a)(1) of the Federal Land Exchange Facilitation Act further states the findings and declaration of Congress, from which were drawn most of the public interest criteria of § 2200.0–6(b) of the rule.

(c) *Equal Value Exchanges.* One commenter recommended that this paragraph be amended by adding "Equal value can include the use of a public interest finding as authorized by specific statutes such as the ANILCA (Alaska National Interests Lands Conservation Act) (16 U.S.C. 3192)." This suggestion cannot be adopted. Section 206(b) of FLPMA requires equal value exchanges on a monetary basis. The elements of a public interest finding may be considered in the valuation of a property, only to the degree that those elements are reflected in the real estate market.

It was suggested that a cross reference to the provisions for approximately equal value exchanges in § 2201.5 be included in this section. This suggestion was adopted.

(d) *Same State Exchanges.* Four commenters recommended that this paragraph be amended to allow for interstate exchanges. This suggestion cannot be adopted because section 206(b) of FLPMA requires that the Federal and non-Federal lands involved in an exchange be located in the same state.

(e) *O & C Land Exchanges.* One commenter suggested an amendment to this paragraph to clarify that non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands shall be located in "any one of the 18 counties" in which the original grants were made. This suggestion was adopted.

(f) *Congressional Designations.* One respondent felt it was unclear if these regulations considered those areas outside the California Desert Conservation Area that have been created by statute but are not National Conservation Areas or National Recreation Areas. No change has been made in response to this comment. The listing of systems and areas in this section was taken directly from the Act. Lands acquired within areas created by statute but not listed in the Act will not become part of the unit or area under this rule.

It was suggested that in line 2 the words "United States" be deleted and replaced with "authorized officer." Title is accepted by the authorized officer on behalf of and in the name of the United States. No change has been made in the final rule in response to this comment.

(g) *Land and Resource Management Planning.* Several commenters felt the rule limited the consideration of exchange proposals to those consistent with existing agency land management plans. Agency plans can be amended to recognize new information or changes in conditions. The reference in the rule to land use plans includes plans that have been amended in response to new information or changes in conditions that may surface in conjunction with or following an exchange proposal.

Another respondent felt that the regulations should not require that land use plans specifically authorize an exchange of Federal land, stating that the land use plan could not foresee all exchange proposals. The rule does not require that a land use plan specifically authorize an exchange, but only that an exchange proposal be consistent with the goals and objectives of the plan. No change was made in the final rule.

Concern was expressed that there were no provisions for identifying non-Federal lands for exchange and initiating contact with the private landowner. This suggestion was not incorporated in the final rule because land use plans identify areas or specific tracts of non-Federal lands that the agency is interested in acquiring to effect consolidation. Private landowners have the opportunity to provide input in the planning process to help identify long-range goals and opportunities to exchange lands. Since exchanges are voluntary, both the non-Federal landowner and the United States must agree to the exchange.

One commenter questioned whether BLM lands suitable for exchange to benefit the Forest Service are identified in BLM planning or in Forest Service planning and, if it is BLM's responsibility, how BLM proposes to determine public interest. It was suggested that it be identified in the BLM planning process. The Forest Plans do not identify BLM lands to be used in exchanges. Such exchanges occur only after negotiations between the non-Federal party and the agencies and must be consistent with BLM land use plans. The public interest determination will be made by BLM using criteria specified in § 2200.0–6(b). No change was made in the final rule in response to this comment.

(h) *Environmental Analysis.* One respondent noted that this paragraph does not invite the public to submit comments on the environmental consequences of the proposed land exchange. The Council on Environmental Quality regulations implementing the National Environmental Policy Act (42 U.S.C. 4332 *et seq.*)(NEPA) and BLM policy and procedures referenced in paragraph (h) already address public notice and comment on environmental documents; therefore, it is not necessary to restate the specific requirements in the final rule. In addition, § 2201.2 of the rule provides for public notice of the proposed exchange, with an opportunity for the public to submit timely comments that shall be considered in the environmental analysis of the proposed exchange.

A concern was expressed that compliance with Section 106 of the National Historic Preservation Act (16 U.S.C. 469–470) is not mentioned under this section of the rule. Cultural resources is only one of the many significant resources that must be considered. This rule does not limit or exclude any resources from consideration.

(i) *Reservations or restrictions made in the public interest.* Several commenters questioned the need and authority for reservations or restrictions in the conveyance of Federal land. Two commenters suggested that reservations or restrictions are not needed if the exchange is in the public interest. Another commenter suggested conveying partial interests to third parties in lieu of reservations or restrictions. Two commenters were concerned with the burden placed on the Federal and non-Federal parties by reservations or restrictions. Identification of the need for reservations or restrictions begins with the agreement to initiate an exchange. Subsequent analysis will determine if the exchange is in the public interest and, if so, confirm what reservations or restrictions are needed. The rule allows alternative methods of protection such as third party participation. Although reservations or restrictions may place burdens on the Federal and non-Federal parties, the effect of reservations or restrictions will be considered by each party prior to a decision to proceed. Section 206 of FLPMA and other authorities provide for the use of reservations or restrictions.

A major utility expressed the thought that the United States could retain title to, or administration of, lands involved in the exchange that are subject to rights-of-way. This is correct; the authority to reserve and retain any rights and interest, including rights-of-way, easements, or grants, when it is in the public interest, is provided in § 2200.0–6(i) of the rule.

It was suggested that any covenants be developed in consultation with appropriate Federal and State agencies, including the State Historic Preservation Office. Covenants and restrictions may be developed to protect any number of public interests, including cultural resources, and consultation with appropriate Federal and State agencies will occur as a matter of course. Therefore, the final rule does not incorporate explicit language on consultation with State Historic Preservation Officers.

Three commenters suggested the United States retain an interest in the stream of mineral royalties when exchanging Federal lands. Reserving mineral interests is preferred to maintaining royalty interests for administrative reasons. Depending on the type of royalty interest reserved, the generation of revenues may be prevented or reduced as a result of mineral development decisions made by the owner of the mineral interests. By contrast, reserving the mineral estate would allow the United States to manage the development of the resources in a way that would protect Federal interests. In addition, there may be no statutory authority for reserving a royalty interest.

(j) *Hazardous substances.* The Community Environmental Response Facilitation Act (106 Stat. 2174)(CERFA) was signed into law on October 19, 1992, one year after the proposed land exchange rules were published in the **Federal Register**. No changes to the final rule have been made as a result of the new legislation. However, the procedural requirements of CERFA will be followed to the extent applicable, and consideration will be given to the need for rulemaking in connection with this new law.

One respondent suggested requiring "hold harmless" agreements when conveying Federal lands affected by hazardous substances to a "potentially responsible party." Hold harmless agreements generally are desirable; however, it is necessary to maintain flexibility in negotiating land exchanges.

One commenter identified a perceived inconsistency in the requirement of notification for private parties and the Federal government. The notice to the non-Federal party requires that "known" storage, release, or disposal of hazardous substances be identified, whereas the private party must notify the government of "known or suspected * * *." The respondent favored the broader application but suggested that in any case they should be consistent. Full disclosure of the potential existence of hazardous substances on the non-Federal lands is necessary to avoid sole future liability by the United States incurred as a result of dissolution, bankruptcy, etc., of the non-Federal party. The non-Federal party will have no such risk because the Federal government will be available for correction or mitigation should future hazardous substance issues arise.

The same respondent pointed out that the proposed regulations would require the Federal officer to determine whether hazardous substances are present on non-Federal lands but do not require him to do so on Federal lands, and recommended that the provisions be made consistent. Paragraph (j)(1) of the final rule has been revised to incorporate this suggestion.

Several commenters proposed that the private parties only be required to provide a broad hold harmless indemnification if the government will reciprocate. This suggestion cannot be adopted. The United States is required not only to clean up any hazardous substances found on the Federal lands prior to conveyance, but also must warrant in the conveyance document to other than a "potentially responsible party," that the United States will be responsible for any further cleanup necessary. Further, obligating Federal government expenditure via indemnification agreements made in advance of necessary appropriations would be a violation of the Anti-Deficiency Act (31 U.S.C. 1341(a)).

A respondent stated that the "hold harmless" requirement may not protect Federal interests from cleanup liability imposed by a third party. The comment is correct. However, the "hold harmless" agreement would provide a mechanism for compensating the United States for cleanup costs and claims after conveyance.

It was suggested that the regulations state that the government is acquiring lands or interests in lands as an "innocent purchaser." This suggestion was not adopted as it is doubtful that such a disclaimer in the rule would establish the United States as an "innocent purchaser" in every case. In many cases, it is recognized that the owner of the property shares in whatever liability may exist.

Two comments indicated the regulations failed to take into account a recent court ruling (*Hercules Incorporated* v. *United States Environmental Protection Agency*, 938 F.2d 276, D.C. Cir. 1991) that the United States is responsible for providing notice of the storage, release or disposal of hazardous substances on Federal lands regardless of ownership at the time the substances came to be on the lands, and suggested the phrase "* * * during time of Federal ownership * * *" be deleted. The phrase has been deleted in the final rule.

Another reviewer mentioned that 42 U.S.C. 9620 requires the conveyance document to contain a notice of known storage, release, or disposal of hazardous substances. These regulations do not supplant the requirements of 42 U.S.C. 9620.

(k) *Legal description of properties.* One commenter said that property description by legal survey is sometimes difficult and suggested that the rule be amended to allow the use of a map as an alternative. This suggestion cannot be adopted. Department of Justice Standards and public land laws pertaining to the transfer of title to Federal lands do not permit the use of a map in lieu of legal description of lands. Maps alone generally would not provide an unambiguous description of lands being considered for exchange; however, maps may be used to supplement legal descriptions.

(l) *Unsurveyed school sections.* An agency respondent suggested that the word "mineral" be inserted between the words "all" and "rights." It is intended that States must waive all rights, including those related to minerals, to unsurveyed school sections used in an exchange. This suggestion was not adopted.

(m) *Coordination with State and local governments.* Two respondents expressed concern that local government plans and land use ordinances be noted and respected in the exchange process. One suggested including a provision requiring a consistency review by the State government. Section 2200.0–6(i) states that the Federal lands conveyed will be subject to local government laws, regulations and zoning, and § 2200.0–6(m) provides for notification 60 days before conveyance. These provisions afford State and local governments the opportunity to conduct whatever reviews they feel are needed, including consideration of land uses and zoning, in commenting on the proposed exchange. Therefore, no additional references to local plans and ordinances have been made in the final rule.

Section 2200.0–7 Scope

One respondent suggested that paragraph (b) of the rule be clarified as to whether certain existing regulations would be superseded or merely amended. Part 2200 of the existing regulation is being revised with portions amended or superseded as indicated.

Two parties commented on paragraph (c), regarding the lack of uniform applicability of the proposed rule in Alaska. One suggested separate regulations for such exchanges, similar to the Small Tracts Act regulations. The other felt the rule should allow the authorized officer to depart from this rule to a degree consistent with ANILCA. The rule provides the authorized officer the latitude allowed by law to pursue land exchanges. No changes have been made in response to this comment.

Three comments were received suggesting clarification of paragraph (d) of the proposed rule. This paragraph provided for the continuation of exchanges agreed to prior to issuance of this final rule under the laws and regulations in existence at the time the initial agreement to exchange was entered. Paragraph (d) of the proposed rule has been revised in the final rule to remove the confusion generated and to reflect the provisions of the Act more accurately.

It is the intent of the Department to follow the principles established in subsection (g) of section 206 of FLPMA, as amended. Under these principles, the Department intends that the following will apply: (1) Before this rule takes effect, pending exchanges may proceed in accordance with existing statutory law, including the applicable provisions of the Federal Land Exchange Facilitation Act (the Act) as well as the regulations that are being superseded by this rule; and nothing in the Act shall be construed so as to delay or otherwise hinder the processing or consummation of any such exchange; (2) The principles expressed above are subject to the following caveat—if the parties agreed to initiate the exchange before August 20, 1988, the date of enactment of the Act, subsections (d) through (i) of section 206 of FLPMA, as amended, shall not apply to a pending exchange, unless the parties agree otherwise; (3) After this rule takes effect, pending exchanges initiated on or after August 20, 1988, shall proceed in accordance with this rule except where, in the judgment of the authorized officer, it would be more expeditious to continue otherwise, and to do so would not be inconsistent with current statutory law, including the applicable provisions of the Act, or a binding agreement is in effect and completion of the exchange would not be inconsistent with current statutory law.

Section 2201.1 Agreement to Initiate an Exchange

A representative of an environmental group suggested a provision requiring full public input and also specifying that the NEPA process begin as soon as the agreement is executed. The opportunity for public input will occur in accordance with the public notice and comments provisions of section 2201.2 of the rule. These provisions require publication of a notice as soon as the agreement to initiate is entered into, but the NEPA process may be initiated before that event if the authorized officer believes it would be proper. The opportunity for public input will depend upon the level of NEPA analysis and documentation, which, in turn, depends upon the complexity of each exchange proposal.

Another respondent suggested that the agreement to initiate should detail who will be responsible for costs incurred in the event the exchange process is terminated prior to execution of an exchange agreement (or an exchange of titles). Such a requirement would be in direct conflict with §§ 2200.0–6(a), 2201.1(f) and 2201.7–2(c) of the final rule, which provide that there are no obligations or reimbursement requirements in exchanges that are terminated short of a binding exchange agreement. The statutory authority for this rule does not provide for reimbursement of expenses outside of an exchange transaction. Compensation, or reimbursement of the non-Federal party for costs incurred, in the event an exchange is terminated would raise myriad procurement and contracting issues and, in some cases, may not be authorized. This limitation, however, is not intended to preclude payment to anyone with whom the Government has contracted directly for services that in fact have been received.

One respondent asked whether, if an exchange proponent were to propose exchanging non-Federal lands within the boundaries of the National Forest System for public lands under the jurisdiction of the BLM, the proponent would be required to indicate as a part of the proposal document that the offered land is covered by a Forest Service management plan showing the land is essential to the programs of the National Forest System. The proponent would not be required to show that the non-Federal land is essential to the National Forest System. In such an instance, the proposal would be submitted to the BLM authorized officer. In analyzing the proposal, the BLM would consult with the Forest Service to determine whether the public interest would be well served, to assess environmental effects, and to determine if the exchange would be consistent with agency plans.

Another respondent suggested adding language at the end of paragraph (a) of this section requiring the authorized officer and the non-Federal party to meet and discuss proposed exchanges prior to determining whether an agreement to initiate an exchange should be executed. The Department does not believe such a requirement is needed in the rule. Advance meetings and discussions are commonplace and are necessary to reach the point of entering an agreement to initiate.

A commenter suggested language requiring the prospective exchange parties to agree to a preliminary estimate of value prepared by a qualified appraiser if the property to be conveyed out of Federal ownership exceeds $150,000 in value. The preliminary estimate of value is a tool available to the parties to be used to evaluate the feasibility of an exchange proposal. The Department recognizes that preliminary estimates of value may be useful in evaluating exchange proposals but does not see a need to require the use of preliminary estimates in all cases.

A comment suggested that the preliminary estimate reflect the intended use of the lands, thus eliminating potential for substantial profits. In preparing any preliminary estimate, the appraiser takes into consideration all probable uses of the property, including the proposed or intended use. These uses must be legal, economically feasible, physically possible and result in the highest and best use, i.e., most profitable use, of the property. It would be improper to disregard an important element of information that may influence market value; that is, the intended use may not always be the highest and best use of the property.

A number of comments were received on the listed requirements for an agreement to initiate an exchange. One respondent suggested that a form be developed listing the information needs for a Federal land exchange to help determine whether an exchange is feasible. The general types of information to be included in agreements to initiate are listed in the rule. A form would be most appropriately located in a handbook, not in the regulations.

Another respondent was of the opinion that identification of the non-Federal lands should not be mandatory in the agreement to initiate, since the environmental review process could result in changes of included lands. While amendment of the list of lands may occur at any time during the process, identification of all lands that might be included in the final transaction of the exchange is necessary in the agreement to initiate, as that document is the source of the descriptions in the public notice of the proposal. Therefore, this recommendation was not adopted in the final rule.

Several additions to the current list of requirements were suggested. These included: (1) A citation of the exchange authority, (2) a statement regarding the need for segregation of the Federal lands once the exchange is started, and (3) identification of the status that the acquired lands would assume following title acceptance by the United States and termination of the 90-day segregation period. It was also suggested that the appropriate United States officer having jurisdiction over title records for lands and minerals review these items. Such considerations, while essential to completion of an exchange, are generally not elements of an exchange upon which agreement must be reached. Therefore, these suggestions were not included in the final rule.

Two parties suggested revisions to the requirements for identification of the parties involved in the exchange. One respondent suggested a full disclosure of any holding companies, officers, directors, holders of significant blocks of stock, campaign contributions made to holders of Federal office, and any agreements made for subsequent sale or exchange of lands to be acquired from the Federal government. This suggestion was not adopted because such requirements would go far beyond the legal authority to identify the party with whom the agency is exchanging land, their citizenship, or corporate standing.

One industry representative suggested that all known uses be identified in the agreement to initiate, and that right-of-way grants be specifically identified as an authorized use. Section 2201.1(c)(4) of the rule was amended to adopt this recommendation. Identification of uses known to the Federal and non-Federal parties will ensure proper consideration of these uses in the analysis of the exchange proposal.

Another industry respondent pointed out that paragraph (c)(7) requires documentation of any agreed upon compensation of assumed costs normally the responsibility of the other party, but that nowhere in the regulation are these responsibilities laid out. It was suggested that the final rule spell out what costs are normally to be borne by either party. Section 2201.1–3 of the rule gives a partial listing of costs for which compensation may be made, but the assignment of these costs is best made by the authorized officer in accordance with accepted real estate practices in the vicinity of the lands to be exchanged. No changes were made to paragraph (c)(7) in the final rule in response to this comment, but reference to compensating for costs ordinarily borne by the other party under local custom or practice was added to § 2201.1–3.

Another respondent suggested that the requirement of paragraph (c)(11), regarding relocation of tenants on the non-Federal lands, apply on an equal basis to the Federal lands and any occupants. This suggestion was not adopted. The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970 (42 U.S.C. 4621–4626) only applies to qualified displaced parties on acquired non-Federal land. Section 2201.8(c)(2) of the rule specifies the measures required to protect authorized occupants of the Federal lands.

Two parties asked that paragraph (d) also be used to establish the sequence and time lines for other required reports and/or clearances. The requirement that the agreement provide a time line is already specified in paragraph (c)(5) and is retained in the final rule. The sequence of preparing or approving required reports is subject to negotiation and agency administrative procedure.

Another respondent recommended deleting the entire second sentence of paragraph (d) relating to estimating value in the absence of current market information. By way of explanation, the respondent said that it is "inconsistent with" and would "eviscerate" the section on appraisals (2201.3 through 2201.3–3). To the contrary, the provisions of this paragraph are consistent with the provision of § 2201.3–2(b). No change in the final rule is needed.

Several comments on paragraph (g) questioned whether any authority exists to deny appeal rights to exchange proponents, or anyone else, when the Federal or non-Federal parties withdraw from an exchange proposal. One of the parties recommended deleting this paragraph. Another felt there should be no appeal opportunity if the non-Federal party withdraws. Only decisions of the authorized officer are appealable through the Interior Board of Land Appeals; the Department has no jurisdiction over decisions of non-Federal parties. In the case of land exchanges, the decision is made and documented through the final Notice of Decision. Section 2201.7–1 of the final rule establishes the provisions for appeal of this decision.

Section 2201.1–1 Assembled Land Exchanges

Most comments on this section centered on the appraisal methods to be employed when processing assembled land exchanges. Several commenters suggested relaxing the safeguards for dealing with certain assembled land exchanges. A detailed explanation of assembled land exchanges is provided below to assist in responding to these comments and in interpreting the rule.

Assembled land exchanges provide the opportunity to package multiple parcels of Federal and/or non-Federal land. There are two types of assembled exchanges provided for in the rule: (1) Single transaction exchanges, and (2) multiple transaction exchanges using a running ledger account to track value differentials for each of the transactions. Single transaction assembled exchanges result in one closing for a collection of parcels. Multiple transaction exchanges involve two or more closings and are intended to facilitate processing of large acreages. Assembled land exchanges are subject to all of the general provisions of this rule in addition to the specific requirements of section 2201.1–1.

Section 2201.1–1 of the rule will require establishing the terms of any assembled land exchange in the agreement to initiate an exchange. For multiple transaction exchanges, the rule will restrict running ledger value differences to no more than 25 percent of the value of the conveyed Federal lands, require balancing values of the Federal and non-Federal lands conveyed with land or money at least every three years, and authorize the authorized officer to require deposits of cash, bonds or other sureties to offset temporary balances owed to the Federal government.

An example of a multiple transaction exchange would be where a State government offers $100,000 worth of land in exchange for an equal value of Federal land. In the agreement to initiate an exchange, it is agreed to use a ledger account and two transactions. The offered and selected lands are identified in the agreement, and all necessary analyses and clearances are conducted. The first transaction results in the conveyance of $50,000 of State land to the United States and the conveyance of $40,000 of Federal land to the State. The difference of $10,000

is noted to the ledger as a credit to the State. The second transaction involves $60,000 of Federal land being transferred to the State and $50,000 of State land being conveyed to the United States. The second transaction erases the $10,000 outstanding balance owed to the State and concludes the exchange.

One respondent felt that it would be useful to allow the Federal or non-Federal party to waive the 25 percent limit. The commenter felt that given that the values are to be balanced at least every two years, the risks of exceeding the 25 percent limit are minimal. The Federal Land Policy and Management Act requires that exchanges be limited to values within 25 percent of the involved public land value. Where ledger accounts are used, the limit will be 25 percent of the sum of the values of the Federal land conveyed in the current transaction and all previous transactions. This limitation provides protection for the Federal government and exchange proponents.

Another respondent noted that "* * * most beneficial exchanges, when a ledger account is established, would easily take longer to complete * * * than the 2-year balancing requirement * * *" This respondent suggested a period longer than two years. This suggestion has been adopted, the two-year balancing requirement has been extended to three years. However, the Department intends that the duration of the period(s) over which there is an outstanding ledger balance be minimized.

Several States expressed concern that under the proposed regulations, States might be considered single owners of multiple parcels involved in an exchange, resulting in lower appraised values of the State lands when compared with assembled multiple ownership exchanges. Section 2201.3–2 of the rule discusses values of the lands assembled from multiple ownerships by any non-Federal party. This section also provides that Federal and non-Federal lands be appraised in a similar manner.

For paragraph (f), it was suggested that termination of the assembled exchange arrangement be effective after 30 days written notice to the other party. Requirements for advance notice of termination should be addressed in the agreement to initiate an exchange. A critical requirement, however, is that values must be equalized, pursuant to § 2201.6 of this rule, prior to termination. Also, it is intended that multiple transaction exchanges otherwise be arranged in a manner that will reasonably protect the public interest throughout each phase of the exchange should the decision be made by either party to terminate the agreement.

Section 2201.1–2 Segregative Effect

This section of the proposed rule provided for the temporary segregation of Federal lands from entry under the public land and mineral laws for up to five years when a proposal is made to exchange Federal lands.

One respondent felt that no further segregation authority should be provided because too much land has been withdrawn in the past. Another felt the statutory authority for the five-year segregation is limited to the "mining laws" not the "public land laws." Regarding the first comment, the commenter is referred to the definition of segregation in § 2200.0–5(v). It states the purpose of segregation is "to allow for the orderly administration of the Federal lands." As to the second comment, the commenter is correct. However, due to the purpose stated above, the rule has been expanded to include segregation from the "public land laws" and the "mineral laws." It is well established that the Secretary of the Interior may exercise his rulemaking authority in order to segregate lands temporarily to allow for the orderly administration of the lands under his care and supervision (see, e.g., *Byron* v. *United States*, 259 F. 371, 377 (9th Cir. 1919); *Hopkins* v. *United States*, 414 F.2d 464, 473 (9th Cir. 1969); *Marion Q. Kaiser*, 65 I.D. 485, 488–89 (1958)). Although a two-year segregation from public land laws has been used in other Department rules, this final rule provides for a five-year segregation from the public land laws to be consistent with the five-year segregation from the mineral laws provided by the Act.

One respondent raised a question regarding the effect on right-of-way authorizations that expire during the segregative period. That respondent felt that the holder of a right-of-way should have the ability to renew during the period of segregation. The segregation is from the mining laws and the public land laws only. The public land laws as defined in § 2200.0–5(s) deal with the disposal in fee of public lands. Normally rights-of-way are not fee interests, and therefore, would not be affected by the segregation. The discretionary renewal of a right-of-way during the period of segregation likewise would not be precluded.

Several comments were received regarding paragraph (d) pertaining to the 90-day segregation of lands acquired by the United States. That provision has been moved to § 2201.9 of the rule.

Section 2201.1–3 Assumption of Costs

Thirty-one comments were received on this section. The major concern of the respondents related to the requirement to meet the criteria to qualify for compensation of costs. They believed this requirement places unwarranted limitations on the exercise of the cost compensation authority. The Act requires the Secretary to determine when it is in the public interest to make adjustments to values compensating the non-Federal party for assuming certain costs. The requirement to meet the criteria is necessary to ensure that compensation for costs assumed is in the public interest and has been retained in the final rule.

A concern was expressed that the cash equalization funds for compensation not be restricted to specific exchanges but be available in a general exchange fund so processing is not affected by budget delays. Funding arrangements will be dealt with outside of the rulemaking process.

Although § 2200.1–3(b) sets criteria for when costs may be compensated, it appeared to one respondent that there are no such restrictions on the adjustment of relative values as a way of providing compensation, other than the 25 percent cap. The Act states that these amounts be reasonable and accurately reflect the value of the cost and service. This wording is incorporated in § 2201.1–3 of the rule as one of the five criteria that must be met before compensation can be made. Each exchange presents unique circumstances so anything beyond general restrictions may lead to impediments to exchange. The five criteria contained in § 2201.1–3(b), along with the 25 percent limitation, offer the authorized officer reasonable parameters for ensuring that Federal assumption of or compensation for costs assumed by other parties is in the public interest.

A suggestion was made to state which costs will be borne by whom within the agreement to initiate an exchange. As previously noted, § 2201.1(c) of the rule provides that an agreement to initiate must assign responsibility for costs and specify whether certain costs will be compensated.

Two comments stressed the need to list the costs associated with the completion of NEPA documentation as not necessarily being costs associated with the Federal government's portion of the exchange. This suggestion was not adopted. Section 2201.1(c)(6) requires an assignment of responsibility for performance of required functions and for costs associated with processing

an exchange in the agreement to initiate. Documentation of environmental analysis is one of those required functions and is typically a responsibility of the Federal agency.

One respondent wanted to confirm that the costs associated with the cultural resources survey, mitigation (including excavation), reports, and coordination with the State Historic Preservation Officer are considered. Section 2201.1–3(a)(2) of the proposed rule states that parties may agree to make adjustments in relative value for a variety of costs, including cultural resource surveys and mitigation. This paragraph has been retained in the final rule.

It was suggested that the term "in the public interest" be defined. Public interest, as used in § 2201.1–3, involves many factors and is best left as a determination based on national and regional concerns as well as Federal, State and local issues and values in the area of the Federal land.

One commenter suggested clarifying § 2201.1–3 as it applies to discussing the assumption of costs with or without compensation in agreements to initiate an exchange under paragraph (a). Paragraph (a) merely states that either party may agree to assume, with or without compensation, the costs that would ordinarily be borne by the other party. Paragraph (b) establishes the criteria for compensation or assumption of costs by the Federal party. No change was made in the final rule in response to this suggestion.

It was suggested that costs incurred by the non-Federal party as a result of the Federal government being a party to the exchange should be compensated by the government. This respondent further stated that "section (b) attempts to combine compensation to the non-Federal party with compensation for Federal costs and becomes vague." Each exchange is based on its own unique situation. The special requirements of each party, including the United States, must be addressed on a case-by-case basis. It would be inappropriate to require compensation of the non-Federal party as a standard practice. Paragraph (b) of the final rule specifically describes the conditions that must be met and documented: (1) To assume non-Federal costs without compensation, or (2) to compensate the non-Federal party for assuming Federal costs.

Section 2201.2 Notice of Exchange Proposal

Several respondents requested that the State government be notified at this stage rather than waiting until the Notice of Decision stage. One of these also requested that the Congressional delegation be included in this notice of exchange proposal. These recommendations have been adopted, but the requirement for notifying State and local governments was retained in the Notice of Decision section of the rule.

An existing right-of-way holder requested that notice be provided to the authorized users concurrent with the publication of the first newspaper notice. Concurrent notice of all authorized users, including right-of-way holders, is implied in § 2201.2(a) of the rule. No change was made in the final rule in response to this comment.

One commenter questioned if the notice would be published in all newspapers in the counties in which the lands to be exchanged are located. Paragraph (a) of this section of the rule requires a notice to be published in a newspaper of general circulation in each of the counties where the Federal and non-Federal lands involved in the exchange proposal are located. That could require publication in one or more newspapers or a single newspaper that covers several counties, as needed to notify the public.

A respondent suggested that minor modifications to the Notice of Exchange, in the case of acreage adjustments to equalize values, should not have to be republished because republication would be counter to the intent to expedite exchanges. Minor corrections of descriptions or acreages, or reduction of published acreages to achieve equal values do not require republication. However, any addition of new lands to achieve equal values will require publication. No change was made in response to this comment.

One respondent suggested that paragraph (a)(4) be revised to clarify that public comments regarding the environmental impacts of the proposed exchange are sought. This respondent also felt paragraph (a) should include a statement describing the present use and proposed use of the lands to be exchanged and asked for clarification of the meaning of "description" of the lands being considered for exchange. Paragraph (a)(4) of this section has been revised in the final rule to make it clear that public comments on exchange proposals are sought and that timely comments will be considered in the environmental analysis of the proposal. A primary purpose of the notice of exchange proposal is to identify those persons with interests in the lands or claims against the involved properties. To facilitate this notification the properties must be described legally. However, the authorized officer may include additional descriptions as appropriate. Information regarding uses of the involved lands is always available at the local agency office.

Two respondents expressed confusion as to when the public is notified. The public is notified of a proposed exchange when the parties enter into an agreement to initiate, and again when a decision is reached. The first notice seeks information and opinion and the second conveys the decision. No changes were made in the final rule in response to these comments.

Two respondents suggested that the notice to authorized users should be by certified mail. The authorized officer may choose to notify authorized users by certified mail or any other means deemed appropriate or necessary. Although certified mail will likely be the most frequently used method of notification, the Department does not feel this should be made a requirement of the rule in order to preserve other options for notification.

A State government official requested that notice be placed in the **Federal Register**. Although **Federal Register** notice would reach groups and other members of the public on a national scale, newspaper publication ordinarily is a more effective way to reach interested and potentially affected persons and groups. The authorized officer, however, has discretion to publish in the **Federal Register** should that official deem it necessary or appropriate to do so.

One respondent expressed confusion as to how the notice of exchange proposal relates to land use planning notices. Unless the proposed exchange requires a plan amendment, this notice of exchange proposal has no relationship to land use planning.

Section 2201.3 Appraisals

A commenter expressed concern with the reference to the Uniform Appraisal Standards for Federal Acquisitions, since it is focused on acquisition under threat of condemnation, and recommended instead that the Standards of Professional Practice promulgated by the American Institute of Real Estate Appraisers (now the Appraisal Institute) be adopted as the accepted standard. The Act directs the agencies to comply with appraisal standards set forth in "Uniform Appraisal Standards for Federal Acquisitions," to the extent practicable. The appraisal standards adopted in this rule are consistent with that direction. However, some aspects of the Appraisal Institute's Standards of Professional

Practice have also been incorporated in this rule.

Section 2201.3–1 Appraiser Qualifications

Several comments were received regarding the proposal to require appraisers to be certified or licensed under State law. Two commenters believed requiring all appraisers to be State certified or licensed was impractical. One of the two suggested that it should be a goal and not a requirement. Two professional appraisal organizations expressed support for the provision. Agency compliance will depend upon the applicability of State laws. Seventeen States, as of January 22, 1993, require all appraisers to be either certified or licensed regardless of the type of real estate transaction. The remaining States require only those appraisers involved in appraising property for federally regulated financial agencies to be certified or licensed. In some States, appraisers not involved in federally related financial transactions may voluntarily become certified or licensed. Therefore, appraisers should comply with State appraisal certification or licensing requirements.

Federal staff appraisers performing appraisal assignments related to their jobs are generally exempt from State licensing requirements. However, it is important that agency appraisers be equally qualified and meet training and experience standards adopted by State regulatory agencies. To eliminate potential problems, we adopted language requiring qualified appraisers to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (103 Stat. 183) (FIRREA). Consequently, the agencies will assist and encourage staff appraisers to become certified or licensed. Where it is unnecessary or impractical to meet State requirements, staff appraisers will possess qualifications consistent with generally accepted regulatory requirements in other States.

One State government agency explained that its staff appraisers were exempt from certification requirements under the State law. The State agency suggested that the rule be revised to indicate clearly that State agency staff appraisers who are exempt from the State requirements be recognized as being qualified to do exchange proposals. This suggestion was partially adopted. Appraisers exempt from State law do not have to be certified or licensed. However, the appraisers must meet standards generally comparable to State training and experience qualifications as established by the BLM and the Forest Service.

Another comment expressed concern that criteria for a qualified appraiser did not address reciprocity; i.e., State agreement to accept certification and licenses issued by other States. The commenter felt that unless the States generally agreed on qualification standards that permitted reciprocity, it would be difficult for agency and contract appraisers to appraise in States other than those in which they are certified or licensed. Inconsistent State standards will hamper the free flow of appraisal services across State boundaries; however, reciprocity is a State issue that cannot be resolved in this rule.

The definition of a qualified appraiser contained in the proposed rule included a provision that the appraiser be approved by the authorized officer. Three commenters suggested this was unfair and that, instead, the parties should agree on selection of the appraiser. It was not intended that the authorized officer would unilaterally select the appraiser; however, the appraiser must be approved by the authorized officer. No change was made in response to these comments.

One commenter interpreted the first sentence in § 2201.3–1(a) of the rule to require the agency to use one appraiser for both the Federal and non-Federal lands in all cases. This respondent suggested the section be changed to allow use of a second appraiser when only one side of an exchange is in dispute. There was no intention to require only one appraiser to appraise both the Federal and non-Federal lands. In response, the final rule refers to "appraisers" to alleviate this potential misunderstanding.

Two professional appraisal organizations suggested that the agencies adopt the Uniform Standards of Professional Appraisal Practice (USPAP) to assure consistency and quality in appraisals. The USPAP includes standards for real estate appraisal, real estate analysis, mass appraisal, personal property, and business appraisal, and are more general since they set standards for the act or process of estimating value. Since the USPAP definition of an appraisal report is different from that generally recognized by Federal agencies, this suggestion was not adopted. The appraisal standards in this rule apply specifically to land exchanges entered into by the BLM and the Forest Service. They reflect standards applicable to exchange transactions and appraisals or appraisal reports as defined in section 2200.0–5 of the rule. The standards are consistent with the USPAP and incorporate Government-wide standards published by the Interagency Land Acquisition Conference and the Department of Transportation.

Section 2201.3–2 Market Value

A mining industry association suggested that § 2201.3–2(a) include a statement that appraisers disregard any increase in value to Federal lands resulting from the non-Federal party's particular need to acquire the land. It was the association's belief that appraisers overvalue Federal lands adjacent to operating mines. This suggestion was not adopted since the appraiser must take into consideration all potential buyers and uses of the property including possible purchase by adjacent property owners. The value estimated should reflect motivational factors evident in similar transactions; e.g., sales of abutting lands.

A commenter suggested inserting "* * * in the same general location as the subject property;" at the end of § 2201.3–2(a)(3). However, this limitation would severely limit the appraiser's analysis of properties possessing unique historic, wildlife, recreation, wilderness, scenic or other resource values; therefore, the suggestion was not adopted.

Several comments were received asking that the list of resource values in § 2201.3–2(a)(3) be expanded to include watershed and archeological values. However, the listing of resource values to be considered by the appraiser is not all inclusive. This paragraph of the rule includes a reference to "other resource values or amenities" which adequately covers these and other resources that may have value in the private competitive market, including watershed and archaeological values.

A commenter suggested that § 2201.3–2(a)(4) be revised to require the appraiser to consider water rights along with timber and mineral interests. The commenter noted that water rights may be transferred in an exchange, but, depending on the State, may not be considered to be an "interest in the land." Water rights were added in the final rule to the list of contributory interests that may be considered.

Several comments were received regarding what appear to be conflicting instructions contained in § 2201.3–2(a)(5) and (6). If stipulated in the agreement to initiate, lands assembled from multiple ownerships can be appraised separately. Sections (a)(5) and (6) of this section of the proposed rule

were combined in the final rule to clarify the procedure.

Several States suggested that appraisals of individual tracts required in § 2201.3–2(a)(5) of the rule not be limited to individuals buying lands for purposes of an exchange. The States suggested that the concept be extended to State agencies conveying multiple tracts. This provision is limited to those parties who acquire lands for eventual conveyance to the United States through exchange under the terms of an agreement to initiate. A State agency, or any other party, may qualify for such treatment if it meets the test of acquiring tracts from multiple ownerships for purposes of an exchange.

Several persons commented on § 2201.3–2(a)(7) of the proposed rule that would have required the appraiser to disregard any change in market value caused by the intent of the agency to acquire the non-Federal property. One recommended "similar protection" for the non-Federal party. Another suggested adding an exclusion for property where the intended use is the highest and best use. Another stated that this section "clearly violates" the provision of the Act that requires that the same nationally approved appraisal standards be used in appraising both the Federal and non-Federal lands. This respondent added that the paragraph should be deleted or the non-Federal parties should be afforded the same protection. In response to the various comments, this provision has been deleted from the final rule.

One commenter thought that standardized appraisal methods may not be applicable to exchanges in Alaska, as there are very few sales, lands are often unsurveyed, and very little information is available regarding resource values, particularly mineral values. The commenter suggested that the authorized officer be permitted to instruct the appraiser to use the best procedure available to provide a reasonable estimate of value. This suggestion was already provided for in proposed paragraph (b) of the rule, which would allow the authorized officer to use other acceptable methods to estimate values when market information is not readily available. This provision is retained in the final rule.

One commenter suggested the "departure" provisions of USPAP be followed. The commenter stated that this would require an appraiser to indicate the basis for using only the market approach to value (as opposed to all three approaches—market, cost, and income) as required under USPAP in the appraisal report of the property. This suggestion was not adopted. The USPAP is one of several sources used to develop the appraisal standards. There is no intent to depart from these standards nor to require use of all three approaches to value, when it usually is not applicable or necessary.

Section 2201.3–3 Appraisal Report Standards

Three commenters expressed concern that language contained in § 2201.3–3(e) of the proposed rule was vague and could subject appraisers to open ended liability regarding disclosure of potentially hazardous environmental conditions. This provision has been modified to incorporate the comments. The rewritten provision will require the appraiser to disclose in the appraisal report any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised.

One commenter expressed concern over the lack of sufficient safeguards to protect against potential "windfalls." This respondent suggested that two independent appraisals be required on exchanges when land values exceed $300,000. Such a requirement is unnecessary, as dollar thresholds are not a reliable indication that an appraisal assignment is complex and, therefore, requires another independent valuation. Further, such a regulatory requirement would increase processing costs and could delay the land exchange. The decision to require more than one appraisal should be left to the parties involved in the exchange.

One commenter observed that parties to the exchange would be required to invest considerable time and expense in conducting studies, appraisals and title clearances before an informed decision could be made to pursue the exchange. Since values can change over a period of time, it was suggested that once the parties agree on value, those values be binding for a period of not to exceed two years. We believe the provisions of § 2201.7–2(a)(3) regarding the signing of an exchange agreement fixing the agreed upon values upon such terms as the parties concur in provide sufficient protection for the exchange parties.

Another commenter suggested that § 2201.3–3(j)(2), requiring all appraisers to certify that they personally examined all comparable sales, may be unrealistic. This reviewer felt that since comparable properties may be located in many different areas of a State or other regions of the country, this provision may be unnecessarily costly and lead to inordinate delays. An appraiser cannot perform an accurate comparative analysis without a personal examination of the comparable sales. Therefore, this suggestion was not adopted.

Section 2201.3–4 Appraisal Review

There were few comments regarding appraisal review. However, one appraisal organization concurred with the outlined review process and suggested requiring additional education and experience for an appraiser to be considered a qualified review appraiser. Although this may be desirable, the standards set forth in § 2201.3–1(b) are adequate in that they require the appraiser to possess qualifications consistent with State regulatory requirements meeting the intent of Title XI of FIRREA.

Other comments suggested that the review appraiser be an agency employee and that the reviewer be appointed by the authorized officer. Section 2201.3–1(a) will allow reviewers to be employees or contractors to the Federal or non-Federal exchange parties. However, as a matter of policy, the Federal agencies will use qualified appraisers as review appraisers. Review appraisers are appointed through authority delegated by the Secretary.

Section 2201.4 Bargaining; Arbitration

Sixteen comments were received regarding: (1) Appointment of the arbitrator by the Secretary, (2) allowing the arbitration decision to be binding for a period not to exceed two years, (3) allowing the agency 180 days for review of the appraisal, and (4) limiting arbitration to issues regarding value of the property. No change was made to the rule in response to these comments as these requirements are specific provisions of Section 3 of the Act.

One commenter expressed concern over who would pay the costs of arbitration. Issues regarding arbitration may be addressed in the agreement to initiate. Further, the Act provides that arbitration be conducted under the rules of the American Arbitration Association, which provide for the assignment of costs.

Section 2201.5 Exchanges at Approximately Equal Value

One commenter felt the $150,000 limit was too high, and recommended establishing a level consistent with the Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970. This suggestion was not adopted. The $150,000 limit was established by the Federal Land Exchange Facilitation Act.

Section 2201.6 Value Equalization; Cash Equalization Waiver

One respondent stated that the rule needed to provide safeguards against windfalls, asserting that proponents acquiring property under the guise of an equalization payment are actually purchasing that land with no competition. Section 206(b) of FLPMA protects against such windfalls by limiting cash payment to 25 percent of the value of the involved Federal lands.

One respondent stated that the BLM should have the same prohibition on waiving payments as the Forest Service. Another felt that the Forest Service should revise its rule on cash waivers to be in line with the BLM. The Act's prohibition on waiver of cash equalization applies only to the Secretary of Agriculture. In cases where values of the Federal and non-Federal lands are close, the waiver of cash equalization may allow consummation of exchanges critical to the objectives of Federal land management. Therefore, the Department of the Interior intends to retain the option of waiving cash equalization.

It was suggested that the 25 percent limitation not be applied in Alaska and that ANILCA guidance be used instead. This is already accommodated in § 2200.0–7(c), which specifies that the rules apply to exchanges made under the authority of the Alaska Native Claims Settlement Act (ANCSA)(43 U.S.C. 1601–1628) or ANILCA, except to the extent that the rules conflict with the provisions of those acts.

Two respondents expressed concern about the 25 percent limitation imposed by the regulations. One felt that this limitation is not in compliance with FLPMA and the Act, and that while section 206(b) of FLPMA limits equalization to 25 percent of the value of the Federal lands, the Act provides that any adjustment can be made to the relative value of the lands for assumption of costs. The respondent asserted that, therefore, these limitations are independent. The other felt the agency is limiting its ability to complete exchanges with this provision. That portion of the Act dealing with adjustments to relative value is an amendment of Section 206 of FLPMA. The compensation of costs is made in lieu of cash equalization payment and, therefore, is subject to the 25 percent limitation found in Section 206(b) of FLPMA.

Section 2201.7–1 Approval of Exchange; Notice of Decision

A State agency felt that notification to States will occur too late, as all appraisals and reviews will have been completed. The notice under this section of the rule advises interested and concerned individuals and organizations that the proposed exchange has been approved. The earlier notice of exchange proposals sent to State and local governments, and others, under § 2201.2 of the rule, is intended to provide all who are interested an opportunity to comment on the proposed exchange before appraisal(s) and environmental analysis.

One respondent requested a specific citation for information on appeals. The general reference to part 4 of Title 43 includes all applicable subparts.

In response to a reviewer who asked when the appeal period would begin, paragraphs (b) and (c) of the proposed rule were amended to make it clear that the proposed decision to approve or disapprove an exchange is subject to protest for a period of 45 days after the date of publication of the notice of availability of the decision, and the right to appeal from a protest decision may be pursued in accordance with the procedures of 43 CFR part 4.

Some respondents addressed the duplicative publication of information required by the two exchange notices and the increased workload associated with this requirement. While there are two publication requirements, each serves a different purpose. The first is essential to apprise the public of the agency's intent to initiate a land exchange and to obtain public comment. This notification provides an opportunity for the collection and submission of data that can be used in the analysis of the proposal. The second notice published at the time the final decision is issued advises the public of the outcome and affords the opportunity to protest and appeal.

Two respondents expressed concern that, because of the notice and appeal procedures, appraisals may become outdated before the completion of an exchange. When there is concern that consummation of a land exchange may be delayed beyond the life of the appraisal(s), the parties to the exchange have the option of entering a binding land exchange agreement, upon approval of the exchange, which may lock in the appraised values or provide a procedure for a reappraisal and adjustment of values or an election to terminate.

Section 2201.7–2 Exchange Agreement

One respondent suggested that appraisals could be reviewed and approved in advance of an exchange agreement. No change is needed. The necessary appraisals will be reviewed and approved in advance of entering an exchange agreement provided under this section of the rule.

Section 2201.8 Title Standards

One respondent suggested expanding the discussion of the various types of conveyance documents and their associated degrees of warranty. Since this rule does not change significantly established methods of conveyance, the suggestion was not adopted. Detailed descriptions of the various forms of conveyance are addressed in other sources, such as the Department of Justice Standards.

One respondent suggested that paragraph 2201.8(c)(1) be revised to state that title would be accepted by both parties as set forth in the agreement to initiate. While the parties to an exchange are free to include general terms concerning title closing matters in the agreement to initiate, there is no requirement for addressing terms of title closing in this agreement and the agreement to initiate is not binding. The regulatory requirements for title closing are presented in § 2201.9 of this rule.

Another remarked that the authorized officer should be given discretionary authority to acquire lands with reservations or outstanding rights that could be construed to interfere with Federal use or management of the land. This suggestion was not adopted. Property acquired by the United States cannot contain reservations or interests that are inconsistent with the purpose for which the lands are being acquired.

A spokesperson for an environmental group said that paragraph (c)(1)(iii) should require the government to seek the costs of removing personal property from the lands to be acquired if the non-Federal party fails to do so. This does not need to be explicitly stated in the text of the rule. This section of the rule provides sufficient authority to the authorized officer to condition acceptance of title upon removal of any personal property.

Several commenters felt the proposed rule did not provide sufficient protection for the continuation of currently existing third party uses of Federal land following an exchange of title. As previously noted, § 2201.1(c)(4) was revised to address authorized uses in the agreement to initiate. Further, agency policy requires recognition and protection of third party uses to an extent consistent with the use authorization.

A respondent recommended that the non-Federal exchange party be required to offer a perpetual easement to replace Federal authorizations. The land exchange party and the third party user

may agree to an easement. Presumably, authorizations with terms similar to the original authorizations, as opposed to perpetual easements, will generally be the practice. Both are within the purview of the rule.

Three comments offered by the ski industry stated that lands occupied by a permitted ski area should not be exchanged without the specific consent of the permittee. Holders of ski area permits are due the same degree of protection of rights under the terms of the permit as other types of special use authorization holders.

A suggestion was received from one respondent that when a non-Federal exchange party offers to provide for the continued use of the Federal lands, under substantially the same conditions after the exchange, objections raised by the third party user should not be permitted to prevent the completion of, or cause modifications to, a proposed exchange. The failure of an authorized user to agree to terms offered by the non-Federal party, when their rights are protected, generally would not jeopardize the consummation of the exchange. However, the Department believes that third party users adversely affected by the decision should have the right to protest and appeal.

An industry respondent requested that the regulation clarify that: (1) A mineral lease holder would not be required to negotiate with a non-Federal exchange party, (2) the holder of a Federal mineral lease could reject any proposed agreement from the non-Federal exchange party related to uses authorized by the lease, (3) the proposed regulations would have no effect on existing lease terms and conditions, and (4) BLM could not terminate or interfere with the exercise of valid lease rights, unless otherwise specifically provided for in the Federal lease. The rule provides that holders of mineral leases, and other forms of land use authorizations, may reach agreement for disposition of current uses. The holders of Federal use authorizations are in no way required to reach agreement. Unless specifically provided for in the terms of the use authorization, there will be no terminations due to transfer of title to the Federal lands. Other alternatives, such as the issuance of patent subject to existing authorizations, will be used to protect the rights of third party interests.

Another comment from the business sector was that the regulations should permit only those reservations to be placed on the Federal land that were specified in the agreement to initiate. The agreement to initiate is the point to recognize known title issues. However, after an agreement to initiate is entered, additional rights and reservations may be identified and, therefore, should be recognized. The agreement to initiate is a nonbinding agreement. It is not intended to be all inclusive or definitive in all respects.

A commenter suggested that proof of an agreement between the third party user and non-Federal exchange party should not be required at the time the exchange is approved, but should be required upon entering into an exchange agreement. The Department disagrees. The decision to proceed with an exchange cannot be made without considering the effects of the proposal on authorized uses of the involved Federal lands.

Section 2201.9 Case Closing

Much of this section was rewritten in response to comments to clarify the patent issuance process for land exchanges as affected by the Act. A key provision of the Act is the simultaneous issuance of title transfer documents as the standard closing practice. Prior to the Act, Federal title was often conveyed by a procedure that in effect precluded simultaneous title transfers.

One respondent felt that "Case closing" was an inappropriate title and suggested "Acceptance of Title" instead. This section of the rule deals with automatic segregation and notice to public officials in addition to title transfers. Therefore, the more general title of "Case closing" has been retained.

It was suggested that paragraph (a) refer to patents or "other documents of conveyance." Paragraph (a) has been changed to refer to "documents of conveyance."

It was pointed out that acceptance of title needs to be precisely defined in order to determine when the 90-day segregation period begins. Section 2201.9 has been revised to clarify that, unless otherwise agreed, acceptance of title occurs upon recordation of the documents of conveyance in the local land records and that the segregation period terminates at midnight of the 90th day thereafter. Title insurance policies and final binders, or other title evidence (e.g., opinions, certifications), should set forth the date and time of recordation.

A commenter suggested specifying that the date of acceptance be noted on the land records. This suggestion has been adopted. This section of the rule has been revised to clarify that, unless otherwise agreed, title acceptance by the United States occurs upon recordation in the city, county or other local land records. Notation on the official BLM land status records of the date and time of acceptance is determined by that event.

Concern was expressed that in § 2201.9(a) the word "only" reverses the meaning and intent of section 3(a) of the Act regarding the simultaneous issuance of patents or titles and should be deleted. In response to this and other comments, this section has been rewritten in the final rule.

In *United States* v. *Schurz*, 102 U.S. 378 (1880), the United States Supreme Court ruled that delivery of a patent is not required to effect a transfer of the title of the United States to the public lands under its ownership. The concept of a simultaneous transfer of title, ordinarily requiring a simultaneous delivery of title documents, is found in section 3(a) of the Act. It does not comport with the ruling in *Schurz*. For this reason, § 2201.9(a) of the final rule states, in effect, that in simultaneous transfer cases the decision of *Schurz*, to the extent that it might otherwise be applicable, is not to be followed.

It was suggested that § 2201.9(b) concerning automatic segregation include the regulatory citation for the initiation of withdrawals. A citation to the FLPMA withdrawal regulations has been added. However, if Congress enacts other withdrawal authority in special cases, that authority could also be exercised.

Two agency respondents expressed concern that if the lands acquired are to be withdrawn, a 90-day segregation would be insufficient to complete a withdrawal. Although 90 days may not provide enough time to complete a withdrawal, further segregation may be possible upon withdrawal application under 43 CFR part 2300. The rule has been revised to make it clear that unless a withdrawal is initiated within the 90-day period, segregation will expire.

An environmental group pointed out that exchanges are final only after the administrative appeal process has been completed. This comment was received before 43 CFR 4.21 appeal regulations were amended to delete provisions for automatic stays pending the resolution of appeals. Appeal procedures for this rulemaking are governed by 43 CFR part 4.

A State government respondent suggested that a time constraint be placed on the Solicitor's review. This suggestion has not been implemented. Legal review of complicated title issues can be time consuming, but it is an essential step in any land exchange.

Subpart 2202 Exchanges—National Forest Exchange

One commenter recommended a wording change by deleting "the public

land laws and" from the ninth line. The reference to the public land laws must remain in order to allow the exchange proposal to be protected from other land conveyance options. Should the other conveyances have merit, the exchange should be terminated and the lands open for other filings. This process protects the investment that both parties have in processing the transaction. Therefore, no change was made in the final rule.

Subpart 2203 Exchanges Involving Fee Federal Coal Deposits

It was suggested that there be special requirements for submissions to the Attorney General where coal is involved and that the State should be formally involved earlier in the process. Section 2201.2 of the final rule has been revised to provide "authorized users, jurisdictional State and local governments and the Congressional delegation" with a copy of the Notice of Exchange Proposal. The rule still provides notification 60 days prior to title transfer (2200.0–5 (m)) to State and local jurisdictions.

The principal authors of this final rule are David Cavanaugh, Roger Taylor, Don Simpson, and Mark Stiles of the BLM Washington Office (WO), James Dear of the Forest Service Headquarters Office, and Mike Pool of the BLM New Mexico State Office. This rule was also prepared in cooperation with Paul Tittman, and Phil Bayles of the Forest Service.

It has been determined that this rulemaking does not constitute a major Federal action significantly affecting the quality of the human environment. An environmental assessment of the impacts of the rule was conducted and a determination made that no detailed statement was required pursuant to Section 102(2)(C) of NEPA.

This rule has been reviewed under Executive Order 12866.

The Department has further determined that this rulemaking will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 605 *et seq.*). Although small entities will benefit from the expedited exchange of lands, the effects will generally be minor. Also, implementation of the rule primarily will affect the parties voluntarily involved in an exchange.

This final rule has been considered in light of E.O. 12630 concerning possible impacts on private property rights. E.O. 12630 exempts from takings implications assessments, activities that are consensual in nature between the United States and non-Federal parties. Exchanges are consensual and, therefore, do not raise taking issues. Accordingly, no further consideration of takings implications was deemed necessary in this rule.

The Department has certified to the Office of Management and Budget that these regulations meet the applicable standards provided in sections 2(a) and 2(b)(2) of Executive Order 12778.

The collection of information contained in this rule has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056.

List of Subjects

43 CFR Part 2090

Airports, Alaska, Coal, Grazing lands, Indians—lands, Public lands, Public lands—classification, Public lands—mineral resources, Public lands—withdrawals, Seashores.

43 CFR Part 2200

Administrative practices and procedures, National forests, Public lands-classification.

For the reasons set forth in the preamble and under the authority of the Federal Land Policy and Management Act of 1976, as amended (43 U.S.C. 1716 and 1740), parts 2090 and 2200 of groups 2000 and 2200, subchapter B, chapter II of title 43 of the Code of Federal Regulations are amended as follows:

Dated: October 27, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

PART 2090—SPECIAL LAWS AND RULES

1. The authority citation for part 2090 is revised to read as follows:

Authority: 16 U.S.C. 3124; 25 U.S.C. 334; 30 U.S.C. 189; 43 U.S.C. 322, 641, 869 *et seq.*, 1201, 1624, 1714, 1740; 48 U.S.C. 462 note; 72 Stat. 339–340, unless otherwise noted.

Subpart 2091—Segregation and Opening of Lands

§ 2091.0–3 [Amended]

2. Section 2091.0–3 is amended by revising the citation "Federal Land Policy and Management Act of 1976 (43 U.S.C. 1701 *et seq.*)" to read "Federal Land Policy and Management Act of 1976, as amended, (43 U.S.C. 1701 *et seq.*)."

§ 2091.2–1 [Amended]

3. Section 2091.2–1 is amended by removing the semicolon and the word "and" at the end of paragraph (b) and adding a period, and removing paragraph (c).

4. Section 2091.2–2 is amended by removing paragraph (c) and revising paragraph (b) to read as follows:

§ 2091.2–2 Opening.

* * * * *

(b) Mineral interests reserved by the United States in connection with the conveyance of public lands under the Recreation and Public Purposes Act or section 203 of the Federal Land Policy and Management Act, shall remain segregated from the mining laws pending the issuance of such regulations as the Secretary may prescribe.

5. The heading of § 2091.3 is revised to read as follows:

§ 2091.3 Segregation and opening resulting from a proposal or application.

6. Section 2091.3–1 is amended by removing paragraph (b), redesignating paragraph (a) as paragraph (b), and adding a new paragraph (a) to read as follows:

§ 2091.3–1 Segregation.

(a) If a proposal is made to exchange public lands administered by the Bureau of Land Management or lands reserved from the public domain for National Forest System purposes, such lands may be segregated by a notation on the public land records for a period not to exceed 5 years from the date of notation (See 43 CFR 2201.1–2 and 36 CFR 254.6).

* * * * *

7. Section 2091.3–2 is revised to read as follows:

§ 2091.3–2 Opening.

(a) If a proposal or an application described in § 2091.3–1 of this part is not denied, modified, or otherwise terminated prior to the end of the segregative periods set out in § 2091.3–1 of this part, the segregative effect of the proposal or application automatically terminates upon the occurrence of either of the following events, whichever occurs first:

(1) Issuance of a patent or other document of conveyance to the affected lands; or

(2) The expiration of the applicable segregation period set out in § 2091.3–1 of this part.

(b) If the proposal or application described in § 2091.3–1 of this part is denied, modified, or otherwise terminated prior to the end of the segregation periods, the lands shall be opened promptly by publication in the **Federal Register** of an opening order specifying the date and time of opening.

(c) Upon conveyance of public lands under section 206 of the Federal Land

Policy and Management Act, mineral interests reserved by the United States shall not be open to the operation of the mining laws pending the issuance of such regulations as the Secretary may prescribe.

(d) Subject to valid existing rights, non-Federal lands acquired through exchange by the United States shall be segregated automatically from appropriation under the public land laws and mineral laws for 90 days after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title. (See 43 CFR 2201.9(b))

PART 2200—EXCHANGES—GENERAL PROCEDURES

8. The authority citation for part 2200 is revised to read as follows:

Authority: 43 U.S.C. 1716, 1740.

9. Subpart 2200 is revised to read as follows:

Subpart 2200—Exchanges—General

Sec.

2200.0–2 Objective.
2200.0–4 Responsibilities.
2200.0–5 Definitions.
2200.0–6 Policy.
2200.0–7 Scope.
2200.0–9 Information Collection.

Subpart 2200—Exchanges—General

§ 2200.0–2 Objective.

The objective is to encourage and expedite the exchange of Federal lands for non-Federal lands, found to be in the public interest, in accordance with applicable statutory policies, standards and requirements.

§ 2200.0–4 Responsibilities.

The Director of the Bureau of Land Management has the responsibility of carrying out the functions of the Secretary of the Interior under these regulations.

§ 2200.0–5 Definitions.

As used in this part:

(a) *Adjustment to relative values* means compensation for exchange-related costs, or other responsibilities or requirements assumed by one party, which ordinarily would be borne by the other party. These adjustments do not alter the agreed upon value of the lands involved in an exchange.

(b) *Agreement to initiate* means a written, nonbinding statement of present intent to initiate and pursue an exchange, which is signed by the parties and which may be amended by the written consent of the parties or terminated at any time upon written notice by any party.

(c) *Appraisal or Appraisal report* means a written statement independently and impartially prepared by a qualified appraiser setting forth an opinion as to the market value of the lands or interests in lands as of a specific date(s), supported by the presentation and analysis of relevant market information.

(d) *Approximately equal value* determination means a decision that the lands involved in an exchange have readily apparent and substantially similar elements of value, such as location, size, use, physical characteristics, and other amenities.

(e) *Arbitration* means a process to resolve a disagreement among the parties as to appraised value, performed by an arbitrator appointed by the Secretary from a list recommended by the American Arbitration Association.

(f) *Assembled land exchange* means the consolidation of multiple parcels of Federal and/or non-Federal lands for purposes of one or more exchange transactions over a period of time.

(g) *Authorized officer* means any employee of the Bureau of Land Management who has been delegated the authority and responsibility to make decisions and perform the duties described in this part.

(h) *Bargaining* means a process, other than arbitration, by which parties attempt to resolve a dispute concerning the appraised value of the lands involved in an exchange.

(i) *Federal lands* means any lands or interests in lands, such as mineral or timber interests, that are owned by the United States and administered by the Secretary of the Interior through the Director of the Bureau of Land Management, without regard to how the United States acquired ownership, except: (1) Lands located on the Outer Continental Shelf; and (2) lands held for the benefit of Indians, Aleuts and Eskimos.

(j) *Hazardous substances* means those substances designated under Environmental Protection Agency regulations at 40 CFR part 302.

(k) *Highest and best use* means the most probable legal use of a property, based on market evidence as of the date of valuation, expressed in an appraiser's supported opinion.

(l) *Lands* means any land and/or interests in land.

(m) *Ledger account* means an accounting mechanism that tracks the differential in dollar value of lands conveyed throughout a series of transactions. A ledger reports each transaction by date, value of Federal land, value of non-Federal land, the difference between these values upon completion of each transaction, and a cumulative balance and differential.

(n) *Market value* means the most probable price in cash, or terms equivalent to cash, that lands or interests in lands should bring in a competitive and open market under all conditions requisite to a fair sale, where the buyer and seller each acts prudently and knowledgeably, and the price is not affected by undue influence.

(o) *Mineral laws* means the mining laws, mineral leasing laws, and the Geothermal Steam Act, but not the Materials Sales Act, administered by the Secretary of the Interior through the Bureau of Land Management.

(p) *Outstanding interests* means rights or interests in property held by an entity other than a party to an exchange.

(q) *Party* means the United States or any person, State or local government who enters into an agreement to initiate an exchange.

(r) *Person* means any individual, corporation, or other legal entity legally capable to hold title to and convey land. An individual must be a citizen of the United States and a corporation must be subject to the laws of the United States or of the State where the land is located or the corporation is incorporated.

(s) *Public land laws* means that body of general land laws administered by the Secretary of the Interior through the Bureau of Land Management, excepting, however, the mineral laws.

(t) *Reserved interest* means an interest in real property retained by a party from a conveyance of the title to that property.

(u) *Resource values* means any of the various commodity values (e.g., timber or minerals) or non-commodity values (e.g., wildlife habitat or scenic vistas), indigenous to particular land areas, surface and subsurface.

(v) *Secretary* means the Secretary of the Interior or the individual to whom the authority and responsibilities of that official, as to matters considered in this part, have been delegated.

(w) *Segregation* means the removal for a limited period, subject to valid existing rights, of a specified area of the Federal lands from appropriation under the public land laws and mineral laws, pursuant to the authority of the Secretary of the Interior to allow for the orderly administration of the Federal lands.

(x) *Statement of value* means a written report prepared by a qualified

appraiser that states the appraiser's conclusion(s) of value.

§ 2200.0–6 Policy.

(a) *Discretionary nature of exchanges.* The Secretary is not required to exchange any Federal lands. Land exchanges are discretionary, voluntary real estate transactions between the Federal and non-Federal parties. Unless and until the parties enter into a binding exchange agreement, any party may withdraw from and terminate an exchange proposal or an agreement to initiate an exchange at any time during the exchange process, without any obligation to reimburse, or incur any liability to, any party, person or other entity.

(b) *Determination of public interest.* The authorized officer may complete an exchange only after a determination is made that the public interest will be well served. When considering the public interest, the authorized officer shall give full consideration to the opportunity to achieve better management of Federal lands, to meet the needs of State and local residents and their economies, and to secure important objectives, including but not limited to: Protection of fish and wildlife habitats, cultural resources, watersheds, wilderness and aesthetic values; enhancement of recreation opportunities and public access; consolidation of lands and/or interests in lands, such as mineral and timber interests, for more logical and efficient management and development; consolidation of split estates; expansion of communities; accommodation of land use authorizations; promotion of multiple-use values; and fulfillment of public needs. In making this determination, the authorized officer must find that:

(1) The resource values and the public objectives that the Federal lands or interests to be conveyed may serve if retained in Federal ownership are not more than the resource values of the non-Federal lands or interests and the public objectives they could serve if acquired, and

(2) The intended use of the conveyed Federal lands will not, in the determination of the authorized officer, significantly conflict with established management objectives on adjacent Federal lands and Indian trust lands. Such finding and the supporting rationale shall be made part of the administrative record.

(c) *Equal value exchanges.* Except as provided in § 2201.5 of this part, lands or interests to be exchanged shall be of equal value or equalized in accordance with the methods set forth in § 2201.6 of this part. An exchange of lands or interests shall be based on market value as determined by the Secretary through appraisal(s), through bargaining based on appraisal(s), or through arbitration.

(d) *Same-State exchanges.* The Federal and non-Federal lands involved in an exchange authorized pursuant to the Federal Land Policy and Management Act of 1976, as amended, shall be located within the same State.

(e) *O and C land exchanges.* Non-Federal lands acquired in exchange for revested Oregon and California Railroad Company Grant lands or reconveyed Coos Bay Wagon Road Grant lands are required to be located within any one of the 18 counties in which the original grants were made, and, upon acquisition by the United States, automatically shall assume the same status as the lands for which they were exchanged.

(f) *Congressional designations.* Upon acceptance of title by the United States, lands acquired by an exchange that are within the boundaries of any unit of the National Forest System, National Park System, National Wildlife Refuge System, National Wild and Scenic Rivers System, National Trails System, National Wilderness Preservation System, or any other system established by Act of Congress; the California Desert Conservation Area; or any national conservation or national recreation area established by Act of Congress, immediately are reserved for and become part of the unit or area within which they are located, without further action by the Secretary, and thereafter shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(g) *Land and resource management planning.* The authorized officer shall consider only those exchange proposals that are in conformance with land use plans or plan amendments, where applicable. Lands acquired by an exchange within a Bureau of Land Management district shall automatically become public lands as defined in 43 U.S.C. 1702 and shall become part of that district. The acquired lands shall be managed in accordance with existing regulations and provisions of applicable land use plans and plan amendments. Lands acquired by an exchange that are located within the boundaries of areas of critical environmental concern or any other area having an administrative designation established through the land use planning process shall automatically become part of the unit or area within which they are located, without further action by the Bureau of Land Management, and shall be managed in accordance with all laws, rules, regulations, and land use plans applicable to such unit or area.

(h) *Environmental analysis.* After an agreement to initiate an exchange is signed, an environmental analysis shall be conducted by the authorized officer in accordance with the National Environmental Policy Act of 1969 (42 U.S.C. 4371), the Council on Environmental Quality regulations (40 CFR parts 1500–1508), and the environmental policies and procedures of the Department of the Interior and the Bureau of Land Management. In making this analysis, the authorized officer shall consider timely written comments received in response to the published exchange notice, pursuant to § 2201.2 of this part.

(i) *Reservations or restrictions in the public interest.* In any exchange, the authorized officer shall reserve such rights or retain such interests as are needed to protect the public interest or shall otherwise restrict the use of Federal lands to be exchanged, as appropriate. The use or development of lands conveyed out of Federal ownership are subject to any restrictions imposed by the conveyance documents and all laws, regulations, and zoning authorities of State and local governing bodies.

(j) *Hazardous substances*— (1) *Federal lands.* The authorized officer shall determine whether hazardous substances may be present on the Federal lands involved in an exchange and shall provide notice of known storage, release, or disposal of hazardous substances on the Federal lands to the other parties in accordance with the provisions of 40 CFR part 373. The authorized officer shall provide this notice in the exchange agreement. The authorized officer shall also provide such notice, to the extent information is readily available, in the agreement to initiate an exchange. Unless the non-Federal party is a potentially responsible party under 42 U.S.C. 9607(a), the conveyance document from the United States shall contain a covenant in accordance with 42 U.S.C. 9620(h)(3). Where the non-Federal party is a potentially responsible party with respect to the property, it may be appropriate to enter into an agreement, as referenced in 42 U.S.C. 9607(e), whereby that party would indemnify the United States and hold the United States harmless against any loss or cleanup costs after conveyance.

(2) *Non-Federal lands.* The non-Federal party shall notify the authorized officer of any known, suspected and/or reasonably ascertainable storage, release, or disposal of hazardous substances on the non-Federal land

pursuant to § 2201.1 of this part. Notwithstanding such notice, the authorized officer shall determine whether hazardous substances are known to be present on the non-Federal land involved in an exchange. If hazardous substances are known or believed to be present on the non-Federal land, the authorized officer shall reach an agreement with the non-Federal party regarding the responsibility for appropriate response action concerning the hazardous substances before completing the exchange. The terms of this agreement and any appropriate "hold harmless" agreement shall be included in an exchange agreement, pursuant to § 2201.7–2 of this part.

(k) *Legal description of properties.* All lands subject to an exchange shall be properly described on the basis of either a survey executed in accordance with the Public Land Survey System laws and standards of the United States or, if those laws and standards cannot be applied, the lands shall be properly described and clearly locatable by other means as may be prescribed or allowed by law.

(l) *Unsurveyed school sections.* For purposes of exchange only, unsurveyed school sections, which would become State lands upon survey by the Secretary, are considered as "non-Federal" lands and may be used by the State in an exchange with the United States. However, minerals shall not be reserved by the State when unsurveyed sections are used in an exchange. As a condition of the exchange, the State shall have waived, in writing, all rights to unsurveyed sections used in the exchange.

(m) *Coordination with State and local governments.* At least 60 days prior to the conveyance of and upon issuance of the deed or patent for Federal lands, the authorized officer will notify the Governor of the State within which the Federal lands covered by the notice are located and the head of the governing body of any political subdivision having zoning or other land use regulatory authority in the geographical area within which the Federal lands are located.

(n) *Fee coal exchanges.* As part of the consideration of whether public interest would be served by the acquisition of fee coal through exchange, the provisions of subpart 3461 of this title shall be applied and shall be evaluated as a factor and basis for the exchange.

§ 2200.0–7 Scope.

(a) These rules set forth the procedures for conducting exchanges of Federal lands. The procedures in these rules are supplemented by the Bureau of Land Management Manuals and Handbooks 2200 and 9310. The contents of these supplemental materials are not considered to be a part of these rules.

(b) These rules apply to all exchanges involving Federal lands, as defined herein, except to the extent they are inconsistent with the authorities listed in parts 2210, 2240, 2250, and 2270 of this title. These rules also apply to the exchange of interests in either Federal or non-Federal lands, including, but not limited to, minerals, water rights, and timber.

(c) The application of these rules to exchanges made under the authority of the Alaska Native Claims Settlement Act, as amended (43 U.S.C. 1621) or the Alaska National Interest Lands Conservation Act (16 U.S.C. 3192), shall be limited to those provisions that do not conflict with the provisions of these Acts.

(d) Pending exchanges initiated prior to December 17, 1993 shall proceed in accordance with this rule unless:

(1) In the judgment of the authorized officer, it would be more expeditious to continue following the procedures in effect prior to December 17, 1993; or

(2) A binding agreement to exchange was in effect prior to December 17, 1993; and

(3) To proceed as provided in paragraphs (d) (1) or (2) of this section would not be inconsistent with applicable law.

(e) Exchanges proposed by persons holding fee title to coal deposits that qualify for exchanges under the Surface Mining Control and Reclamation Act of 1977 (30 U.S.C. 1260(b)(5)) and as provided in subpart 3436 of this title shall be processed in accordance with this part, except as otherwise provided in subpart 3436 of this title.

§ 2200.0–9 Information collection.

(a) The collection of information contained in part 2200 of Group 2200 has been approved by the Office of Management and Budget under 44 U.S.C. 3501 *et seq.* and assigned clearance number 1004–0056. The information will be used to initiate and complete land exchanges with the Bureau of Land Management. Responses are required to obtain benefits in accordance with the Federal Land Policy and Management Act of 1976, as amended.

(b) Public reporting burden for this information is estimated to average 4 hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, should be sent to the Division of Information Resources Management (870), Bureau of Land Management, 1849 C Street, NW., Washington, DC 20240; and the Paperwork Reduction Project (1004–0056), Office of Management and Budget, Washington, DC 20503.

10. Subpart 2201 is revised to read as follows:

Subpart 2201—Exchanges—Specific Requirements

Sec.

2201.1 Agreement to initiate an exchange.
2201.1–1 Assembled land exchanges.
2201.1–2 Segregative effect.
2201.1–3 Assumption of costs.
2201.2 Notice of exchange proposal.
2201.3 Appraisals.
2201.3–1 Appraiser qualifications.
2201.3–2 Market value.
2201.3–3 Appraisal report standards.
2201.3–4 Appraisal review.
2201.4 Bargaining; arbitration.
2201.5 Exchanges at approximately equal value.
2201.6 Value equalization; cash equalization waiver.
2201.7 Approval of exchanges.
2201.7–1 Notice of decision.
2201.7–2 Exchange agreement.
2201.8 Title standards.
2201.9 Case closing.

Subpart 2201—Exchange—Specific Requirements

§ 2201.1 Agreement to initiate an exchange.

(a) Exchanges may be proposed by the Bureau of Land Management or by any person, State, or local government. Initial exchange proposals should be directed to the authorized officer responsible for the management of Federal lands involved in an exchange.

(b) To assess the feasibility of an exchange proposal, the prospective parties may agree to obtain a preliminary estimate of the values of the lands involved in the proposal. The preliminary estimate is generally not an appraisal but shall be prepared by a qualified appraiser.

(c) If the authorized officer agrees to proceed with an exchange proposal, a nonbinding agreement to initiate an exchange shall be executed by all prospective parties. At a minimum, the agreement shall include:

(1) The identity of the parties involved in the proposed exchange and the status of their ownership or ability to provide title to the land;

(2) A description of the lands or interest in lands being considered for exchange;

(3) A statement by each party, other than the United States and State and local governments, certifying that the party is a citizen of the United States or a corporation or other legal entity subject to the laws of the United States or a State thereof;

(4) A description of the appurtenant rights proposed to be exchanged or reserved; any authorized uses including grants, permits, easements, or leases; and any known unauthorized uses, outstanding interests, exceptions, adverse claims, covenants, restrictions, title defects or encumbrances;

(5) A time schedule for completing the proposed exchange;

(6) An assignment of responsibility for performance of required functions and for costs associated with processing the exchange;

(7) A statement specifying whether compensation for costs assumed will be allowed pursuant to the provisions of § 2201.1–3 of this part;

(8) Notice of any known release, storage, or disposal of hazardous substances on involved Federal or non-Federal lands, and any commitments regarding responsibility for removal or other remedial actions concerning such substances on involved non-Federal lands. All such terms and conditions regarding non-Federal lands shall be included in a land exchange agreement pursuant to § 2201.7–2 of this part;

(9) A grant of permission by each party to conduct a physical examination of the lands offered by the other party;

(10) The terms of any assembled land exchange arrangement, pursuant to § 2201.1–1 of this part;

(11) A statement as to any arrangements for relocation of any tenants occupying non-Federal land, pursuant to § 2201.8 (c)(1)(iv) of this part;

(12) A notice to an owner-occupant of the voluntary basis for the acquisition of the non-Federal lands, pursuant to § 2201.8 (c)(1)(iv) of this part; and

(13) A statement as to the manner in which documents of conveyance will be exchanged, should the exchange proposal be successfully completed.

(d) Unless the parties agree to some other schedule, no later than 90 days from the date of the executed agreement to initiate an exchange, the parties shall arrange for appraisals, which are to be completed within timeframes and under such terms as are negotiated. In the absence of current market information reliably supporting value, the parties may agree to use other acceptable and commonly recognized methods to estimate value.

(e) An agreement to initiate an exchange may be amended by written consent of the parties or terminated at any time upon written notice by any party.

(f) Entering into an agreement to initiate an exchange does not legally bind any party to proceed with processing or to consummate a proposed exchange, or to reimburse or pay damages to any party to a proposed exchange that is delayed or is not consummated or to anyone assisting in any way, or doing business with, any such party.

(g) The withdrawal from, and termination of, an exchange proposal, or an agreement to initiate an exchange, by the authorized officer at any time prior to the notice of decision, pursuant to § 2201.7–1 of this part, is not protestable or appealable under 43 CFR part 4.

§ 2201.1–1 Assembled land exchanges.

(a) Whenever the authorized officer determines it to be practicable, an assembled land exchange arrangement may be used to facilitate exchanges and reduce costs.

(b) The parties to an exchange may agree to such an arrangement where multiple parcels of Federal and/or non-Federal lands are consolidated into a package for the purpose of completing one or more exchange transactions over a period of time.

(c) An assembled land exchange arrangement shall be documented in the agreement to initiate an exchange, pursuant to § 2201.1 of this part.

(d) Values of the Federal and non-Federal lands involved in an assembled exchange arrangement shall be estimated pursuant to § 2201.3 of this part.

(e) If more than one transaction is necessary to complete the exchange package, the parties shall establish a ledger account under which the Federal and non-Federal lands can be exchanged. When a ledger account is used, the authorized officer shall:

(1) Assure that the value difference between the Federal and non-Federal lands does not exceed 25 percent of the total value of the Federal lands conveyed in the assembled land exchange up to and including the current transaction;

(2) Assure that the values of the Federal and non-Federal lands conveyed are balanced with land and/or money at least every 3 years pursuant to § 2201.6 of this part; and

(3) If necessary, require from the non-Federal party a deposit of cash, bond or other approved surety in an amount equal to any outstanding value differential.

(4) Assembled land exchanges are subject to the value equalization and cash equalization waiver provisions of § 2201.6 of this part. Cash equalization waiver shall only be used in conjunction with the final transaction of the assembled land exchange and the termination of any ledger account used.

(f) The assembled exchange arrangement may be terminated unilaterally at any time upon written notice by any party or upon depletion of the Federal or non-Federal lands assembled. Prior to termination, values shall be equalized pursuant to § 2201.6 of this part.

§ 2201.1–2 Segregative effect.

(a) If a proposal is made to exchange Federal lands, the authorized officer may direct the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the Federal lands shall be segregated from appropriation under the public land laws and mineral laws for a period not to exceed 5 years from the date of record notation.

(b) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation by noting the public land status records.

(c) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, such order to be promptly issued and published by the appropriate State Office of the Bureau of Land Management in the **Federal Register**, if a decision is made not to proceed with the exchange or upon removal of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

(d) Upon conveyance of public lands under section 206 of the Federal Land Policy and Management Act, mineral interests reserved by the United States, together with the right to prospect for, mine and remove the minerals, shall be removed from the operation of the mining laws pending issuance of such regulations as the Secretary may prescribe.

§ 2201.1–3 Assumption of costs.

(a) Generally, parties to an exchange will bear their own costs of the exchange. However, if the authorized

officer finds it is in the public interest, subject to the conditions and limitations specified in paragraphs (b) and (c) of this section, an agreement to initiate an exchange may provide that:

(1) One or more of the parties may assume, without compensation, all or part of the costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties; or

(2) The parties may agree to make adjustments to the relative values involved in an exchange transaction in order to compensate parties for assuming costs or other responsibilities or requirements that the authorized officer determines would ordinarily be borne by the other parties. These costs or services may include but are not limited to: Land surveys, appraisals, mineral examinations, timber cruises, title searches, title curative actions, cultural resource surveys and mitigation, hazardous substance surveys and controls, removal of encumbrances, arbitration including all fees, bargaining, cure of deficiencies preventing highest and best use of the land, conduct of public hearings, assemblage of non-Federal parcels from multiple ownerships, expenses of complying with laws, regulations, and policies applicable to exchange transactions, and expenses that are necessary to bring the Federal and non-Federal lands involved in the exchange to their highest and best use for appraisal and exchange purposes.

(b) The authorized officer may agree to assume without compensation costs ordinarily borne under local custom or practice by the non-Federal party or to compensate the non-Federal party for costs ordinarily borne under local custom or practice by the United States but incurred by the non-Federal party, but only when it is clearly in the public interest and the authorized officer determines and documents that each of the following circumstances exist:

(1) The amount of the cost assumed or compensation is reasonable and accurately reflects the value of the goods and services received;

(2) The proposed exchange is a high priority of the agency;

(3) The land exchange must be expedited to protect important Federal resource values, such as congressionally designated areas or endangered species habitat;

(4) Cash equalization funds are available for compensating the non-Federal party; and

(5) There are no other practicable means available to the authorized officer of meeting Federal exchange processing costs, responsibilities, or requirements.

(c) The total amount of adjustment agreed to as compensation for costs incurred pursuant to this section shall not exceed the limitations set forth in § 2201.6 of this part.

§ 2201.2 Notice of exchange proposal.

(a) Upon entering into an agreement to initiate an exchange, the authorized officer shall publish a notice once a week for 4 consecutive weeks in newspapers of general circulation in the counties in which the Federal and non-Federal lands or interests proposed for exchange are located. The authorized officer shall notify authorized users, jurisdictional State and local governments, and the congressional delegation, and shall make other distribution of the notice as appropriate. At a minimum, the notice shall include:

(1) The identity of the parties involved in the proposed exchange;

(2) A description of the Federal and non-Federal lands being considered for exchange;

(3) A statement as to the effect of segregation from appropriation under the public land laws and mineral laws, if applicable;

(4) An invitation to the public to submit in writing any comments on or concerns about the exchange proposal, including advising the authorized officer as to any liens, encumbrances, or other claims relating to the lands being considered for exchange; and

(5) The deadline by which comments must be received, and the name, title, and address of the official to whom comments must be sent.

(b) To be assured of consideration in the environmental analysis of the proposed exchange, all comments shall be made in writing to the authorized officer and postmarked or delivered within 45 days after the initial date of publication.

(c) The authorized officer is not required to republish descriptions of any lands excluded from the final exchange transaction, provided such lands were identified in the notice of exchange proposal. In addition, minor corrections of land descriptions and other insignificant changes do not require republication.

§ 2201.3 Appraisals.

The Federal and non-Federal parties to an exchange shall comply with the appraisal standards set forth in §§ 2201.3–1 through 2201.3–4 of this part and, to the extent appropriate, with the Department of Justice "Uniform Appraisal Standards for Federal Land Acquisitions" when appraising the values of the Federal and non-Federal lands involved in an exchange.

§ 2201.3–1 Appraiser qualifications.

(a) A qualified appraiser(s) shall provide to the authorized officer appraisals estimating the market value of Federal and non-Federal properties involved in an exchange. A qualified appraiser may be an employee or a contractor to the Federal or non-Federal exchange parties. At a minimum, a qualified appraiser shall be an individual, approved by the authorized officer, who is competent, reputable, impartial, and has training and experience in appraising property similar to the property involved in the appraisal assignment.

(b) Qualified appraisers shall possess qualifications consistent with State regulatory requirements that meet the intent of title XI of the Financial Institutions Reform, Recovery and Enforcement Act of 1989 (FIRREA) (12 U.S.C. 3331). In the event a State does not have approved policies, practices and procedures regulating the activities of appraisers, the Bureau of Land Management may establish appraisal qualification standards commensurate with those adopted by other States meeting the requirements of FIRREA.

§ 2201.3–2 Market value.

(a) In estimating market value, the appraiser shall:

(1) Determine the highest and best use of the property to be appraised;

(2) Estimate the value of the lands and interests as if in private ownership and available for sale in the open market;

(3) Include historic, wildlife, recreation, wilderness, scenic, cultural, or other resource values or amenities that are reflected in prices paid for similar properties in the competitive market;

(4) Consider the contributory value of any interest in land such as minerals, water rights, or timber to the extent they are consistent with the highest and best use of the property; and

(5) Estimate separately, if stipulated in the agreement to initiate in accordance with § 2201.1 of this part, the value of each property optioned or acquired from multiple ownerships by the non-Federal party for purposes of exchange, pursuant to § 2201.1–1 of this part. In this case, the appraiser shall estimate the value of the Federal and non-Federal properties in a similar manner.

(b) In estimating market value, the appraiser may not independently add the separate values of the fractional interests to be conveyed, unless market evidence indicates the following:

(1) The various interests contribute their full value (pro rata) to the value of the whole; and

(2) The valuation is compatible with the highest and best use of the property.

(c) In the absence of current market information reliably supporting value, the authorized officer may use other acceptable and commonly recognized methods to determine market value.

§ 2201.3–3 Appraisal report standards.

Appraisals prepared for exchange purposes shall contain, at a minimum, the following information:

(a) A summary of facts and conclusions;

(b) The purpose and/or the function of the appraisal, a definition of the estate being appraised, and a statement of the assumptions and limiting conditions affecting the appraisal assignment, if any;

(c) An explanation of the extent of the appraiser's research and actions taken to collect and confirm information relied upon in estimating value;

(d) An adequate description of the physical characteristics of the lands being appraised; a statement of all encumbrances; title information, location, zoning, and present use; an analysis of highest and best use; and at least a 5-year sales history of the property;

(e) A disclosure of any condition that is observed during the inspection of the property or becomes known to the appraiser through normal research that would lead the appraiser to believe that hazardous substances may be present on the property being appraised;

(f) A comparative market analysis and, if more than one method of valuation is used, an analysis and reconciliation of the methods used to support the appraiser's estimate of value;

(g) A description of comparable sales, including a description of all relevant physical, legal, and economic factors such as parties to the transaction, source and method of financing, effect of any favorable financing on sale price, and verification by a party involved in the transaction;

(h) An estimate of market value;

(i) The effective date of valuation, date of appraisal, signature, and certification of the appraiser;

(j) A certification by the appraiser signing the report to the following:

(1) The appraiser personally contacted the property owner or designated representative and offered the owner an opportunity to be present during inspection of the property;

(2) The appraiser personally examined the subject property and all comparable sale properties relied upon in the report;

(3) The appraiser has no present or prospective interest in the appraised property; and

(4) The appraiser has not, and will not, receive compensation that was contingent on the analysis, opinions, or conclusions contained in the appraisal report; and

(k) Copies of relevant written reports, studies, or summary conclusions prepared by others in association with the appraisal assignment that were relied upon by the appraiser to estimate value, which may include but is not limited to current title reports, mineral reports, or timber cruises prepared by qualified specialists.

§ 2201.3–4 Appraisal review.

(a) Appraisal reports shall be reviewed by a qualified review appraiser meeting the qualifications set forth in § 2201.3–1 of this part. Statements of value prepared by agency appraisers are not subject to this review.

(b) The review appraiser shall determine whether the appraisal report:

(1) Is complete, logical, consistent, and supported by a market analysis;

(2) Complies with the standards prescribed in § 2201.3–3 of this part; and

(3) Reasonably estimates the probable market value of the lands appraised.

(c) The review appraiser shall prepare a written review report, containing at a minimum:

(1) A description of the review process used;

(2) An explanation of the adequacy, relevance, and reasonableness of the data and methods used by the appraiser to estimate value;

(3) The reviewing appraiser's statement of conclusions regarding the appraiser's estimate of market value; and

(4) A certification by the review appraiser to the following:

(i) The review appraiser has no present or prospective interest in the property that is the subject of the review report; and

(ii) The review appraiser has not, and will not, receive compensation that was contingent on the approval of the appraisal report.

§ 2201.4 Bargaining; arbitration.

(a) Unless the parties to an exchange agree in writing to suspend or modify the deadlines contained in paragraphs (a)(1) through (a)(4) of this section, the parties shall adhere to the following schedule:

(1) Within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange may agree on the appraised values of the lands involved in an exchange. If the parties cannot agree on the appraised values, they may agree to initiate a process of bargaining or some other process to resolve the dispute over values. Bargaining or any other process shall be based on an objective analysis of the valuation in the appraisal report(s) and shall be a means of reconciling differences in such reports. Bargaining or another process to determine values may involve one or more of the following actions:

(i) Submission of the disputed appraisal(s) to another qualified appraiser for review;

(ii) Request for additional appraisals;

(iii) Involvement of an impartial third party to facilitate resolution of the value disputes; or

(iv) Use of some other acceptable and commonly recognized practice for resolving value disputes.

Any agreement based upon bargaining shall be in writing and made part of the administrative record of the exchange. Such agreement shall contain a reference to all relevant appraisal information and state how the parties reconciled or compromised appraisal information to arrive at an agreement based on market value.

(2) If within 180 days from the date of receipt of the appraisal(s) for review and approval by the authorized officer, the parties to an exchange cannot agree on values but wish to continue with the land exchange, the appraisal(s) may, at the option of either party, be submitted to arbitration unless, in lieu of arbitration, the parties have employed a process of bargaining or some other process to determine values. If arbitration occurs, it shall be conducted in accordance with the real estate valuation arbitration rules of the American Arbitration Association. The Secretary or an official to whom such authority has been delegated shall appoint an arbitrator from a list provided by the American Arbitration Association.

(3) Within 30 days after completion of arbitration, the parties involved in the exchange shall determine whether to proceed with the exchange, modify the exchange to reflect the findings of the arbitration or any other factors, or withdraw from the exchange. A decision to withdraw from the exchange may be made upon written notice by either party at this time or at any other time prior to entering into a binding exchange agreement.

(4) If the parties agree to proceed with an exchange after arbitration, the values established by arbitration are binding upon all parties for a period not to

exceed 2 years from the date of the arbitration decision.

(b) Arbitration is limited to the disputed valuation of the lands involved in a proposed exchange, and an arbitrator's award decision shall be limited to the value estimate(s) of the contested appraisal(s). An award decision shall not include recommendations regarding the terms of a proposed exchange, nor shall an award decision infringe upon the authority of the Secretary to make all decisions regarding management of Federal lands and to make public interest determinations.

§ 2201.5 Exchanges at approximately equal value.

(a) The authorized officer may exchange lands that are of approximately equal value when it is determined that:

(1) The exchange is in the public interest and the consummation of the proposed exchange will be expedited;

(2) The value of the lands to be conveyed out of Federal ownership is not more than $150,000 as based upon a statement of value prepared by a qualified appraiser and approved by the authorized officer;

(3) The Federal and non-Federal lands are substantially similar in location, acreage, use, and physical attributes; and

(4) There are no significant elements of value requiring complex analysis.

(b) The authorized officer shall determine that the Federal and non-Federal lands are approximately equal in value and shall document how the determination was made.

§ 2201.6 Value equalization; cash equalization waiver.

(a) To equalize the agreed upon values of the Federal and non-Federal lands involved in an exchange, either with or without adjustments of relative values as compensation for various costs, the parties to an exchange may agree:

(1) To modify the exchange proposal by adding or excluding lands; and/or

(2) To use cash equalization after making all reasonable efforts to equalize values by adding or excluding lands.

(b) The combined amount of any cash equalization payment and/or the amount of adjustments agreed to as compensation for costs under § 2201.1–3 of this part may not exceed 25 percent of the value of the Federal lands to be conveyed.

(c) The parties may agree to waive a cash equalization payment if the amount to be waived does not exceed 3 percent of the value of the lands being exchanged out of Federal ownership or $15,000, whichever is less. This provision shall not be applied to exchanges where the value differential is in excess of $15,000.

(d) A cash equalization payment may be waived only after the authorized officer determines in writing how the waiver will expedite the exchange and why the public interest will be better served by the waiver.

§ 2201.7 Approval of exchanges.

§ 2201.7–1 Notice of decision.

(a) Upon completion of all environmental analyses and appropriate documentation, appraisals, and all other supporting studies and requirements to determine if a proposed exchange is in the public interest and in compliance with applicable law and regulations, the authorized officer shall decide whether to approve an exchange proposal.

(1) When a decision to approve or disapprove an exchange is made, the authorized officer shall publish a notice of the availability of the decision in newspapers of general circulation. A notice also may be published in the **Federal Register** at the discretion of the authorized officer. At a minimum, the notice shall include:

(i) The date of decision;

(ii) A concise description of the decision;

(iii) The name and title of the deciding official;

(iv) Directions for obtaining a copy of the decision; and

(v) The date of the beginning of the protest period.

(2) The authorized officer shall distribute notices to State and local governmental subdivisions having authority in the geographical area within which the lands covered by the notice are located pursuant to § 2200.0–6(m) of this part, the non-Federal exchange parties, authorized users of involved Federal lands, the congressional delegation, individuals who requested notification or filed written objections, and others as appropriate.

(b) For a period of 45 days after the date of publication of a notice of the availability of a decision to approve or disapprove an exchange proposal, such decision shall be subject to protest.

(c) A right of appeal from a protest decision of the authorized officer may be pursued in accordance with the applicable appeal procedures of 43 CFR part 4.

§ 2201.7–2 Exchange agreement.

(a) The parties to a proposed exchange may enter into an exchange agreement subsequent to a decision by the authorized officer to approve the exchange, pursuant to § 2201.7–1 of this part. Such an agreement is required if hazardous substances are present on the non-Federal lands. An exchange agreement shall contain the following:

(1) Identification of the parties, a description of the lands and interests to be exchanged, identification of all reserved and outstanding interests, the amount of any necessary cash equalization, and all other terms and conditions necessary to complete the exchange;

(2) The terms regarding responsibility for removal, indemnification ("hold harmless" agreement), or other remedial actions concerning any hazardous substances on the involved non-Federal lands;

(3) A description of the goods and services and their corresponding costs for which the noncomplying party is liable in the event of failure to perform or to comply with the terms of the exchange agreement; and

(4) The agreed upon values of the involved lands.

(b) An exchange agreement, as described in paragraph (a) of this section, is legally binding on all parties, subject to the terms and conditions thereof, provided:

(1) Acceptable title can be conveyed;

(2) No substantial loss or damage occurs to either property from any cause;

(3) No undisclosed hazardous substances are found on the involved Federal or non-Federal lands prior to conveyance;

(4) In the event of a protest, or of an appeal from a protest decision under 43 CFR part 4, a decision to approve an exchange pursuant to § 2201.7–1 is upheld; and

(5) The agreement is not terminated by mutual consent or upon such terms as may be provided in the agreement.

(c) Absent an executed legally binding exchange agreement, any action taken by one or more of the parties, or a failure of one or more of the parties to take any action, prior to consummation of an exchange does not create any legal obligation or right enforceable against or enjoyed by any party.

§ 2201.8 Title standards.

(a) *Title evidence.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, evidence of title for the non-Federal lands being conveyed to the United States shall be in conformance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land

Acquisitions by the United States" in effect at the time of conveyance.

(2) The United States is not required to furnish title evidence for the Federal lands being exchanged.

(b) *Conveyance documents.* (1) Unless otherwise specified by the Office of the Solicitor of the Department of the Interior, all conveyances to the United States shall be prepared, executed, and acknowledged in recordable form and in accordance with the Department of Justice regulations and "Standards for the Preparation of Title Evidence in Land Acquisition by the United States" in effect at the time of conveyance.

(2) Conveyances of lands from the United States shall be by patent, quitclaim deed, or deed without express or implied warranties, except as to hazardous substances pursuant to § 2200.0–6(j)(1) of this title.

(c) *Title encumbrances.*—(1) *Non-Federal lands.* (i) Title to the non-Federal lands must be acceptable to the United States. For example, encumbrances such as taxes, judgment liens, mortgages, and other objections or title defects shall be eliminated, released, or waived in accordance with requirements of the preliminary title opinion of the Office of the Solicitor of the Department of the Interior or the Department of Justice, as appropriate.

(ii) The United States shall not accept lands in which there are reserved or outstanding interests that would interfere with the use and management of land by the United States or would otherwise be inconsistent with the authority under which, or the purpose for which, the lands are to be acquired. Reserved interests of the non-Federal landowner are subject to agreed upon covenants or conditions included in the conveyance documents.

(iii) Any personal property owned by the non-Federal party that is not a part of the exchange proposal should be removed by the non-Federal party prior to acceptance of title by the United States, unless the authorized officer and the non-Federal party to the exchange previously agree upon a specified period to remove the personal property. If the personal property is not removed prior to acceptance of title or within the otherwise prescribed time, it shall be deemed abandoned and shall become vested in the United States.

(iv) The exchange parties must reach agreement on the arrangements for the relocation of any tenants. Qualified tenants occupying non-Federal lands affected by a land exchange may be entitled to benefits under 49 CFR 24.2. Unless otherwise provided by law or regulation (49 CFR 24.101(a)(1)), relocation benefits are not applicable to owner-occupants involved in exchanges with the United States provided the owner-occupants are notified in writing that the non-Federal lands are being acquired by the United States on a voluntary basis.

(2) *Federal lands.* If Federal lands proposed for exchange are occupied under grant, permit, easement, or non-mineral lease by a third party who is not a party to the exchange, the third party holder of such authorization and the non-Federal party to the exchange may reach agreement as to the disposition of the existing use(s) authorized under the terms of the grant, permit, easement, or lease. The non-Federal exchange party shall submit documented proof of such agreement prior to issuance of a decision to approve the land exchange, as instructed by the authorized officer. If an agreement cannot be reached, the authorized officer shall consider other alternatives to accommodate the authorized use or shall determine whether the public interest will be best served by terminating such use in accordance with the terms and provisions of the instrument authorizing the use.

§ 2201.9 Case closing.

(a) *Title transfers.* Unless otherwise agreed, and notwithstanding the decision in *United States* v. *Schurz,* 102 U.S. 378 (1880), or any other law or ruling to the contrary, title to both the non-Federal and Federal lands simultaneously shall pass and be deemed accepted by the United States and the non-Federal landowner, respectively, when the documents of conveyance are recorded in the county clerk's or other local recorder's office. Before recordation, all instructions, requirements, and conditions set forth by the United States and the non-Federal landowner shall be met. The requirements and conditions necessary for recordation at a minimum will include the following, as appropriate:

(1) The determination by the authorized officer that the United States will receive possession, acceptable to it, of such lands; and

(2) The issuance of title evidence as of the date and time of recordation, which conforms to the instructions and requirements of the Office of the Solicitor's preliminary title opinion.

(b) *Automatic segregation of lands.* Subject to valid existing rights, non-Federal lands acquired through exchange by the United States automatically shall be segregated from appropriation under the public land laws and mineral laws until midnight of the 90th day after acceptance of title by the United States, and the public land records shall be noted accordingly. Except to the extent otherwise provided by law, the lands shall be open to the operation of the public land laws and mineral laws at midnight 90 days after the day title was accepted unless otherwise segregated pursuant to part 2300 of this title.

(c) *Notice to State and local governments.* Following the transfer of title to the Federal lands involved in an exchange, notice will be given to State and local officials as prescribed in § 2200.0–6(m) of this part.

Subpart 2202—Exchanges—National Forest Exchange

11. Section 2202.1 is amended by revising paragraph (b) and adding new paragraphs (c) and (d) to read as follows:

§ 2202.1 Applicable regulations.

* * * * *

(b) If a proposal is made to exchange lands reserved from the public domain for National Forest System purposes, the authorized officer may request the appropriate State Office of the Bureau of Land Management to segregate the Federal lands by a notation on the public land records. Subject to valid existing rights, the record notation shall segregate the Federal lands from appropriation under the public land laws and the mineral laws as defined under § 2200.0–5 of this title for a period not to exceed 5 years from the date of notation.

(c) Any interests of the United States in the non-Federal lands that are covered by the exchange proposal may be noted and segregated from appropriation under the mineral laws for a period not to exceed 5 years from the date of notation.

(d) The segregative effect shall terminate upon the occurrence of any of the following events, whichever occurs first:

(1) Automatically, upon issuance of a patent or other document of conveyance to the affected lands;

(2) On the date and time specified in an opening order, published by the appropriate State Office of the Bureau of Land Management in the **Federal Register**, if a decision is made not to proceed with the exchange or upon deletion of any lands from an exchange proposal; or

(3) Automatically, at the end of the segregation period not to exceed 5 years from the date of notation of the public land records.

Subpart 2203—Exchanges Involving Fee Federal Coal Deposits

12. Section 2203.1 is revised to read as follows:

§ 2203.1 Opportunity for public comment and public meeting on exchange proposal.

Upon acceptance of a proposal for a fee exchange of Federal coal deposits, the authorized officer shall publish and distribute a notice of exchange proposal as set forth in § 2201.2 of this title.

13. Section 2203.2 is amended by revising paragraphs (a) and (d) to read as follows:

§ 2203.2 Submission of information concerning proposed exchange.

(a) Any person submitting a proposal for a fee exchange of Federal coal deposits shall submit information concerning the coal reserves presently held in each geographic area involved in the exchange along with a description of the reserves that would be added or eliminated by the proposed exchange. In addition, the person filing a proposed exchange under this section shall furnish any additional information requested by the authorized officer in connection with the consideration of the antitrust consequences of the proposed exchange.

* * * * *

(d) Where the entity proposing a fee coal exchange has previously submitted information, a reference to the date of submission and to the serial number of the record in which it is filed, together with a statement of any and all changes in holdings since the date of the previous submission, shall be accepted.

§ 2203.3 [Amended]

14. Section 2203.3 is amended by removing the phrase "notice of realty action" in the third line of the introductory paragraph and replacing it with "notice of decision," and in the same paragraph removing the citation "§ 2201.1(e)" and replacing it with the citation "§ 2201.7–1."

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Part III

Department of Education

Research in Education of Individuals With Disabilities Program; Notice

DEPARTMENT OF EDUCATION

Research in Education of Individuals With Disabilities Program

AGENCY: Department of Education.

ACTION: Notice of Final Priorities for Fiscal Years 1994 and 1995.

SUMMARY: The Secretary announces final priorities for the Research in Education of Individuals with Disabilities Program. The Secretary announces these priorities to ensure effective use of program funds and to direct funds to areas of identified need during fiscal years 1994 and 1995.

EFFECTIVE DATE: These priorities take effect either 45 days after publication in the **Federal Register** or later if the Congress takes certain adjournments. If you want to know the effective date of these priorities call or write the Department of Education contact person.

FOR FURTHER INFORMATION CONTACT: The name, address, and telephone number of the person at the Department to contact for information on each specific priority is listed under that priority.

SUPPLEMENTARY INFORMATION: The Research in Education of Individuals with Disabilities Program, authorized by Part E of the Individuals with Disabilities Education Act (20 U.S.C. 1441–1443), provides support: (1) To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn; and (2) for research and related purposes, surveys or demonstrations relating to physical education or recreation, including therapeutic recreation, for infants, toddlers, children, and youth with disabilities.

On July 7, 1993, the Secretary published a notice of proposed priorities for this program in the **Federal Register** (58 FR 36576–36580).

These priorities support the National Education Goals by improving our understanding of how to enable children and youth with disabilities to reach high levels of academic achievement.

The publication of these priorities does not preclude the Secretary from proposing additional priorities, nor does it limit the Secretary to funding only these priorities, subject to meeting applicable rulemaking requirements.

Funding of particular projects depends on the availability of funds, and the quality of the applications received. Further, FY 1995 priorities could be affected by enactment of legislation reauthorizing these programs.

Note: This notice of final priorities does not solicit applications. A notice inviting applications under these competitions is published in a separate notice in this issue of the **Federal Register**.

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed priorities, fourteen parties submitted comments. An analysis of the comments and of the changes in the proposed priorities follows. Technical and other minor changes—as well as suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Priority: School-Linked Services to Support Better Outcomes for Children With Disabilities and Their Families

Comment: One commenter indicated the need for close attention to the methods of research employed by the grantee. The commenter further suggested that surveys alone may not be effective but may provide valuable information when conducted with in-depth case studies.

Discussion: The Secretary believes that the priority as written allows applicants to employ the research methodology most appropriate to their particular project. Also, the selection criteria used to evaluate the applications include a specific criterion related to technical soundness that requires the peer reviewers to evaluate the proposed methodology.

Changes: None.

Comment: One commenter suggested that the school be "a" central participant in planning and governing the collaborative effort rather than "the" central participant.

Discussion: It is important that schools, health care providers, and social services agencies collaborate to provide comprehensive services to children and families. The Secretary agrees that the school may be "a" central participant and not necessarily the "the" central participant in planning and governing the collaborative effort.

Changes: The word "the" is replaced by the word "a" in the background description of school-linked services.

Comment: One commenter suggested that "and their families" be added to the title of the priority to emphasize the need for including families in all phases of the educational process.

Discussion: The Secretary agrees with the commenter that families of children and youth with disabilities must be acknowledged and included in all phases of the educational process and believes the priority as written provides for this inclusion.

Changes: The title of the priority has been changed to reflect this comment.

Comment: One commenter suggested that the project provide a description of the implementation process for the school-linked approach to be studied and suggested that the description should include, for example, information on funding mechanisms, staffing patterns, system planning and development, referral mechanisms, and facility structural adaptations."

Discussion: The Secretary agrees with the commenter on the importance of including a description of the implementation process. Therefore, a new paragraph has been added, and the others are renumbered.

Changes: A new paragraph (c) is added to read: "(c) Provide a description of the implementation process including, for example, information on funding mechanisms, staffing patterns, system planning and development, referral mechanisms, and facility structural adaptations."

Comment: One commenter indicated the importance of including providers of related services, such as school psychologists, in the school-linked approaches to service delivery.

Discussion: The Secretary agrees with the importance of including the related services called for in the Individuals with Disabilities Education Act (IDEA) as part of school-linked services since they encourage collaboration and facilitate successful inclusion. The priority as written does not exclude related services as an integral part of school-linked services.

Changes: None.

Comment: One commenter suggested the convening of regional conferences in advance of the national meetings.

Discussion: The national meetings are for directors of all projects funded under the Research in Education of Individuals with Disabilities Program. Since the meetings are not just for projects supported under this priority, the Secretary does not consider it necessary to conduct regional meetings prior to the national meeting.

Changes: None.

Priority: Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Comment: One commenter recommended that parents, educators, policy makers, and related agencies

representing all age levels be included in both the initial input and the forum.

Discussion: The Secretary agrees that input from parents, educators, policy makers, and related agencies is critical for guiding the focus of the synthesis and commenting on the synthesis at the Forum described in paragraph (b)(1)(i) of the priority. In addition, the topic of the synthesis will be guided by the state of the research knowledge to date. Researchers will use rigorous methods to objectively synthesize the data. The composition of individuals and organizations providing initial input and comments at the Forum will be matched with the appropriate topic of the synthesis.

Changes: None.

Comment: One commenter recommended that the reviewers for this priority should include family members, individuals with disabilities, and advocates.

Discussion: The Secretary believes that it is important to include parents, individuals with disabilities, and members of traditionally underrepresented populations as panel reviewers. The Secretary is committed to the inclusion of those reviewers for all priorities announced by the Office of Special Education and Rehabilitative Services (OSERS). OSERS is involved in an ongoing effort to identify and recruit members of the aforementioned groups as panel reviewers, and the current field reader pool includes significant increases in the numbers of potential readers identified. The Secretary notes that the process for the recruitment of reviewers and the convening of panels is a separate process from the publication of the priorities, and does not need to be specified in individual priorities.

Changes: None.

Priority: State and Local Education Efforts to Implement the Transition Requirements in the Individuals With Disabilities Education Act

Comment: Three commenters questioned whether the part E authority permits studies of State and local efforts to implement the transition requirements added to the Individuals with Disabilities Education Act (IDEA) by the 1990 amendments. The commenters stated their opinion that these studies might be more appropriately supported under section 618 of part B.

Discussion: The Secretary agrees with the commenters that section 618 specifically authorizes support for studies of progress in implementation of the Act as well as the evaluation of State, local and Department of Interior efforts to provide a free appropriate public education and early intervention. The secretary believes, however, that the authority of part E to support a wide range of research and related activities includes authority for studies that examine local, Statewide, regional, or national effects of implementation of the various requirements of IDEA. The Secretary believes that a contrary reading of the statute would unnecessarily restrict research of potential value in the improvement of education and related services to individuals with disabilities. However, since it has generally been the practice of the Department to fund studies such as this under the section 618 authority, the Department has decided to establish this priority under the section 618 Special Studies Program. A more thorough discussion of this decision will be set forth in the notice of final priorities for the Special Studies Program.

Changes: This activity is removed from the priorities for the Research in Education of Individuals with Disabilities Program and will be published as a FY 1994 and 1995 priority under the section 618 Special Studies Program.

Priority: Center for Policy Research

Comment: One commenter expressed opposition to the proposed Center for Policy Research, stating that stronger enforcement of compliance with the provisions of IDEA by the Department of Education would make it unnecessary to support such a center. The commenter reasoned that if compliance review and enforcement went beyond examination of procedural requirements, the high quality of outcomes of special education would be assured.

Discussion: The Secretary believes that support of a center for policy research that documents the outcomes of special education reform is not inconsistent with ongoing management by States of their funds under IDEA, nor with the administrative responsibilities of the Department. The Secretary believes that this priority will investigate and inform the relationship between implementation of service delivery policies and outcomes.

Changes: None.

Comment: One commenter lauded the study of policy and mentioned the need for consideration of strategic planning at the school district level by persons who are representative of the community.

Discussion: The Secretary agrees that community perspectives are important, and believes that the priority as written allows for the inclusion of community (local) representation.

Changes: None.

Comment: One commenter questioned whether the proposed center for policy research would address issues meaningful to special education personnel and policy-makers. This commenter suggested four specific topical issues that it felt should be addressed: (1) Cost-effective assessment, (2) "real world" issues of inclusion implementation in schools, (3) behavior management of emotionally disturbed children, and (4) the process of internal policy change in SEAs.

Discussion: The Secretary agrees that the topical issues suggested are important, and could be among those addressed by the center. The Secretary, however, believes it is not necessary to prescribe the issues in this detail.

Changes: None.

Comment: One commenter addressed the issue of the disparate quality and quantity of services that may be available to students with disabilities from minority, immigrant and migrant populations. The commenter urged the support of a separate policy research center to address issues of differential impact of possible disparate provision of services to these populations.

Discussion: The Secretary agrees with the concern expressed by the commenter for the equality of resources provided to all students, and further believes that a single comprehensive center for policy research should explicitly address issues of resource allocation.

Changes: The Secretary has revised paragraph (c)(3) to read as follows: "How State and local efforts to restructure the delivery of both general education and special education have affected the delivery of services to students with disabilities, including the differential impact, if any, on those from underrepresented groups such as minority, immigrant, and migrant populations."

Comment: Two commenters questioned whether the part E authority is appropriate for the proposed funding of the Center for Policy Research in view of the legislative authority and the Congressional intent, and took the view that section 618 was the more appropriate authority.

Discussion: The Secretary believes that the statutory and regulatory provisions of part E, section 641, are not inconsistent with the investigation proposed, and have, in fact, regularly provided the authority for support of a wide variety of policy-related research studies of varying magnitude. Historically, including the period following the 1990 amendments, policy studies have been funded under this

authority. These studies range from research initiated by the field that examines current issues and derives policy implications from the research findings, to support of centers for policy studies at major research universities. The statute and implementing regulations do not place limitations on such activities as part of the part E research authority. The Secretary believes the conduct of research under part E from which implications may be drawn that would affect local, State, or national policies in educating children and youth with disabilities is consistent with the expressed intent of part E and contributes to the advancement of knowledge and practice in education of individuals with disabilities.

Changes: None.

Comment: Two commenters urged the Secretary to consider whether there should be multiple, rather than single, awards supported under the Center for Policy Research priority. The reasons expressed were that multiple awards permit inquiry that targets conditions close to the practice level, permitting examination of the complex interaction of features of policy, procedure, practice, resources, history, etc., thus potentially advancing greater understanding and giving greater external validity to overall findings. The commenters felt that the recognized difficulties of multiple awards could be overcome by a requirement to coordinate the information such that it becomes optimally useful from the Federal perspective.

Discussion: The Secretary appreciates the rationale presented by the commenters. However, given the current availability of funds and the need for a national perspective, the Secretary believes that a single award is the most appropriate choice at this time.

Changes: None.

Priority: Initial Career Awards

Comment: One commenter addressed the paucity of research scholars in the field of special education who are representative of minority populations. The writer urged the development of special programs of incentives to encourage new scholars as well as to interest senior research faculty members who might serve as their mentors.

Discussion: The Secretary agrees that greater efforts should be made to encourage minorities and members of other under-represented groups to enter the field of special education research. The priority as written states: "Projects proposing to support individuals who are members of racial or ethnic minority groups, or both, are particularly encouraged by the Secretary to apply for grants under this priority." The Secretary believes that a competitive preference of 10 points should be awarded to otherwise qualified applicants for the support of individuals who are members of groups that are underrepresented in the field of special education research, such as members of racial or ethnic minority groups and individuals with disabilities.

Changes: The priority is revised by deleting language that simply encourages projects supporting individuals who are members of underrepresented groups. Instead, the Secretary will award a competitive preference of up to ten points to applications for projects that will give priority to supporting members of groups that are underrepresented in the field of special education research, such as members of racial or ethnic minority groups and individuals with disabilities. These points would be in addition to any points the application earns under the selection criteria for the program. While a project must give priority to underrepresented groups in order to receive a competitive preference, it may not exclude individuals from consideration for support based on race or national origin.

General Comments

Comment: Two commenters made recommendations concerning dissemination of project findings. One commenter recommended that grantees be required to work with dissemination specialists and professional and parent organizations to ensure the development of appropriate products and communication strategies for findings. The second commenter recommended that all projects funded under these priorities should have some methodology for disseminating findings to local school districts, or, at a minimum, to State Departments of education and the States' special education advisory councils and parent training components.

Discussion: Over the last two years, the Division of Innovation and Development (DID) has worked with dissemination specialists and organizations to ensure products are appropriate for specific audiences and has engaged in activities to encourage not just access to the products, but to facilitate their use. In addition, section 610 of the Individuals with Disabilities Education Act and the program regulations require all grantees, if appropriate, to prepare reports describing their procedures, findings, and other relevant information in a form that will maximize the dissemination and use of such procedures, findings, and information. In accordance with section 610, the secretary requires their delivery, as appropriate, to the Regional and Federal Resource Centers, the Clearinghouses, and the Technical Assistance to Parents Program (TAPP) assisted under parts C and D of the Act, as well as the National Diffusion Network, the ERIC Clearinghouse on the Handicapped and Gifted, and the Child and Adolescent Service Systems Program (CASSP) under the National Institute of Mental Health, appropriate parent and professional organizations, organizations representing individuals with disabilities, and such other networks as the Secretary may determine to be appropriate. The Secretary believes the statute and regulations provide the necessary requirements for dissemination and that it is not necessary to include language in individual priorities.

Changes: None.

Comment: One commenter urged that any studies performed under the proposed priorities include attention to the needs for recreation, including therapeutic recreation, in the lives of individuals with disabilities. The commenter also encouraged the involvement of therapeutic recreation professionals as well as other educators in any programs for individuals with disabilities.

Discussion: The Secretary agrees that recreation and leisure are important considerations in the lives of individuals with disabilities. The Secretary believes, however, that the priorities as written permit consideration of recreational issues in projects supported under these priorities.

Changes: None.

Priorities:

Under 34 CFR 75.105(c)(3) the Secretary gives an absolute preference to applications that meet the following priorities. The Secretary will fund under these competitions only applications that meet these absolute priorities:

Absolute Priority 1—School-Linked Services To Support Better Outcomes for Children With Disabilities and Their Families

Background:

Special and general educators are increasingly engaged in the search for and implementation of services that will ensure equity, excellence, and inclusion for children and youth with disabilities. While successful adult outcomes are significantly based on one's education as a child, productivity, independence, and quality of life are also influenced by

access to and provision of health and social services. Schools increasingly acknowledge that many of these noneducational services are vitally needed, but the needs often go unmet. In response, some schools are coordinating and providing these services through policies and approaches described as school-linked services.

The provision of school-linked services appears to offer considerable promise but presents many issues. Multiple service systems must operate in a coordinated and flexible manner to meet the educational, related services, and noneducational needs of children with disabilities. Differences in organization and administrative structures, regulations and mandates, funding mechanisms and incentives, professional roles, and governance can represent barriers and make the development and implementation of school-linked services difficult. Very little is known about the extent of involvement or outcomes of children and youth with disabilities in schools developing or providing school-linked services, or about the policy and programmatic implications of these types of services for these children.

The purpose of this priority is to support research projects to study: (1) The participation of and outcomes for families and students with disabilities who receive services in schools developing or implementing school-linked services, and (2) the programmatic and policy implications associated with the delivery of educational and related services using school-linked approaches.

School-linked services are those (1) provided to children and their families through a collaboration among schools, health care providers, and social services agencies; (2) that place the school as a central participant in planning and governing the collaborative effort; and (3) provided or coordinated by personnel located at or near the school.

Priority:

A project must select one or more sites located in schools that are committed to developing or implementing school-linked approaches to service delivery. In planning and implementing its research, a project must—

(a) Analyze and describe the participation of and academic and social outcomes for students with disabilities and their families;

(b) Provide an in-depth profile of the particular school-linked approach studied including information describing community, school, and student characteristics;

(c) Provide a description of the implementation process including, for example, information on funding mechanisms, staffing patterns, system planning and development, referral mechanisms, and facility structural adaptations.

(d) Describe the advantages and disadvantages of the particular approach implemented by the project as compared to other approaches (e.g., traditional, community-based, family-based);

(e) Describe the programmatic and policy implications, including barriers that would need to be overcome, associated with the provision of services to students with disabilities within the school-linked approach studied by the project;

(f) Incorporate the ongoing involvement of relevant service systems, parents, and policymakers at the community level in the goals, design, and implementation strategies of the project; and

(g) Develop products and information that are usable by, accessible to, and disseminated to relevant audiences, including the research community, representatives of school and other relevant service systems, and parents.

A project must budget for two trips annually to Washington, DC, for (1) a two-day Research Project Directors' meeting; and (2) another meeting, to meet and collaborate with the project officer of the Office of Special Education Programs and the other projects funded under this priority, to share information and to discuss findings and methods of dissemination.

Competitive Priority:

Within this absolute priority 1, the Secretary, under 34 CFR 75.105(c)(2)(i), will give preference to applications that meet the following competitive priority. The Secretary will award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points would be in addition to any points the application earns under the selection criteria for the program:

A project that would include a site or sites where, due to high levels of poverty or complicated social, cultural, or geographic relationships, the need for closer ties between schools and the providers of vital noneducational services (e.g., health and social services) is especially great.

For Further Information Contact: Judith Fein, U.S. Department of Education, 400 Maryland Avenue, SW., room 3524, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8116. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 2—Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice

Background:

Traditionally researchers have communicated their findings from individual research projects and systematic lines of research through journal publications and conference presentations. These findings are communicated to other researchers and engage researchers in dialogues. These dialogues contribute to innovation and development in special education.

In recent years the Office of Special Education Programs (OSEP) has sought to expand these traditional approaches. While continuing to support innovation and development, OSEP has established a goal to foster the use of a professional knowledge base by professionals who educate children and youth with disabilities and parents who are involved in the education of their children and youth with disabilities. This goal challenges the research and practice communities to examine beliefs and attitudes about empirical and practice knowledge, the methods for capturing the knowledge, and the communication across professional communities committed to improving the outcomes for children and youth with disabilities.

The purpose of this priority is to synthesize and communicate an extant professional knowledge base on curricular, instructional, or organizational strategies and approaches that would contribute to professional practice as a means for achieving better outcomes for children and youth with disabilities.

Priority:

A project must—

(a) In conducting a synthesis of the literature—

(1) Identify and implement rigorous social science methods for synthesizing the professional knowledge base (e.g., integrative reviews (Cooper, 1982), best-evidence synthesis (Slavin, 1989), meta-analysis (Glass, 1977), multi-vocal approach (Ogawa & Malen, 1991), and National Institute of Mental Health consensus development program (Huberman, 1977));

(2) Identify the topical focus and the relevant and irrelevant concepts under review, and pose hypotheses around which the synthesis would be conducted;

(3) Develop hypotheses with input from potential consumers of the synthesis to enhance the usability and validity of project efforts. Consumers include researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents;

(4) Develop and implement procedures for locating and organizing the extant literature and ensure that these procedures address and guard against potential threats to the integrity and generalizability of findings;

(5) Establish criteria and procedures for judging the appropriateness of studies;

(6) Meet with the Office of Special Education Programs and with the other projects funded under this priority to review their topical focus and methodological approach for conducting the synthesis prior to the start of their respective synthesis; and

(7) Analyze and interpret the professional knowledge base, including identification of general trends in the literature, points of consensus and conflict among the findings, and areas of evidence where the literature base is lacking. The interpretation of the literature base must address the contributions of the findings for improving the practice of professionals educating children and youth with disabilities; and

(b) In communicating its findings—

(1)(i) Cooperate with OSEP to convene a forum—to be held in Washington, DC between the 18th and 21st months of the project—at which the project would exchange findings from the synthesis activity with researchers, policymakers, educators, other relevant practitioners, individuals with disabilities, and parents; and

(ii) Provide draft copies of its analysis and interpretations to participants;

(2) Based on discussion and feedback from forum participants, prepare final synthesis documents; and

(3)(i) Develop the information products that have the greatest potential for use by national professional education and parent organizations in their existing communication systems and member networks;

(ii) In developing the information products the project must propose products appropriate for the topical focus and audience, provide a rationale for those proposed types of products, and propose communication strategies for fostering the use of the products by the appropriate audience;

(iii) The project must coordinate with OSEP to finalize information products for various systems and networks. Each project must budget for:

(1) A two-day meeting in Washington, DC, during the first year, as described under paragraph (b)(1) of this priority;

(2) The two-day Research Project Directors' meeting to be held in Washington, DC, each year of the project; and

(3) Two trips for up to two days each to Washington, DC, for the activity described under paragraph (b)(3)(iii) of this priority.

For Further Information Contact: Ellen Schiller, U.S. Department of Education, 400 Maryland Avenue, SW, room 3523, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8123. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 3—Center for Policy Research

Background:

After 16 years of experience implementing the requirements of the Individuals with Disabilities Education Act, parents, educators, and policymakers are calling for reforms in the ways services are delivered to students with disabilities and for a careful examination of the procedures used to ensure that students with disabilities are effectively and appropriately served. A recent report from the National Association of State Boards of Education (1992) calls for sweeping reforms in the service delivery system and in the way special education has been organized and administered at the Federal, State, and local levels. The Center for Policy Options in Special Education at the University of Maryland has identified issues and options associated with the restructuring of schools and the implications for special education (1992).

Increasingly concerns are expressed with the emphasis that has been placed on procedural compliance, rather than quality outcomes, for special education. A school district could be in full compliance with all procedural requirements and yet have a dropout rate in excess of 40 percent for students with disabilities. Reports from many jurisdictions suggest that much reform in special education service delivery is already emerging at the school building and school district level. However, the anecdotes, while revealing potentially promising innovations, indicate that little systematic research is occurring to document the effects of these reforms. Furthermore, the reform activities themselves have typically not been well described. The need also exists to improve the capacity to conduct policy research in special education.

The Secretary intends to make an award with a project period of up to 36 months. The Secretary may make a continuation award for an additional two-year period, subject to the requirements of 34 CFR 75.253(a). Under 34 CFR 75.234(a)(4), the Secretary would assess in particular the continued need for the center funded by this priority.

Priority:

This priority would establish a center to conduct a program of policy research to examine the impact of general education reform on students with disabilities and the impact of special education reform activities on the education of all students. The specific goals of the center would be—

- To improve educational outcomes for students with disabilities by describing and documenting reforms occurring at the Federal, State, and local levels; assessing the impact of these reforms; and providing policy options to decision-makers at all levels; and
- To contribute to improving the quality of policy research as it relates to the education of students with disabilities. This would require collaboration between special education researchers and nationally recognized policy researchers in related fields.

The center must—

(a) Fund as research assistants at least five graduate students per year who have concentrations in either policy or disability issues;

(b) Contribute to the development and use of rigorous methodologies in conducting policy research by (1) demonstrating the use of innovative and rigorous methodologies in studying critical policy issues, and (2) facilitating the exchange of relevant information with those conducting research in either or both special education and general education;

(c) In consultation with the Office of Special Education Programs (OSEP), develop a program of policy research that addresses the significant reform issues impacting on service delivery to students with disabilities. The reform issues to be considered must include, but are not limited to, the following:

(1) How statutory and regulatory flexibility can be provided at the

Federal, State, and local levels while the rights of students with disabilities are protected.

(2) How performance and compliance monitoring and program audits can promote program improvement, and how other program strategies (e.g., technical assistance) contribute to program improvement.

(3) How State and local efforts to restructure the delivery of both general education and special education have affected the delivery of services to students with disabilities, including the differential impact, if any, on those from underrepresented groups such as minority, immigrant, and migrant populations.

(4) What policies and other strategies have been effective in promoting the inclusion of students with disabilities in regular education programs, and what policies, and other strategies have provided disincentives.

(5) The effects of efforts at the Federal, State, and local levels to coordinate various categorical programs; e.g., the Chapter 1 program for disadvantaged students and programs for students with disabilities;

(d) Develop and use effective communication strategies for ensuring that the center's policy research is available for decision making at the appropriate Federal, State, and local levels. Issues to be addressed in developing communication strategies must include, but are not limited to, the timing and format of information; the method of communication; and the scientific and practical credibility of the information;

(e) Address the needs of various audiences for policy research in both the substance and format of the information; and

(f) Create organizational support for using information through involving decisionmakers in early stages of investigations, prior to the development of communication strategies. Study planning and implementation must include the participation of a group of appropriate policymakers, administrators, people with disabilities, advocates, and other relevant constituents including the National Center on Outcomes funded by the Office of Special Education Programs.

The center must budget for two trips, annually, to Washington, DC for (1) a two-day Research Project Directors' meeting; and (2) another meeting to meet with the project officer of the Office of Special Education Programs to plan and review project activities and progress.

For Further Information Contact: Louis Danielson, U.S. Department of Education, 400 Maryland Avenue, SW., room 3532, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8119. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Absolute Priority 4—Initial Career Awards

Background:

There is need to enable individuals in the initial phases of their careers to initiate and develop promising lines of research that would improve early intervention services for infants and toddlers, and special education for children and youth with disabilities. Support for research activities among individuals in the initial phases of their careers is intended to develop the capacity of the special education research community. This priority would address the additional need to provide support for a broad range of field-initiated research projects—focusing on the special education and related services for children and youth with disabilities and early intervention for infants and toddlers—consistent with the purpose of the program as described in 34 CFR 324.1.

The purpose of this priority is to award grants to eligible applicants for the support of individuals in the initial phases of their careers to initiate and develop promising lines of research consistent with the purposes of the program.

For fiscal year 1994 awards, projects may support individuals who completed a doctoral program and graduated no earlier than the 1989–90 academic year. For fiscal year 1995 awards, individuals must have completed a doctoral program and graduated no earlier than the 1990–1991 academic year.

Priority:

To be considered for funding under this priority, a project must—

(a) Pursue a line of inquiry that reflects a programmatic strand of research emanating either from theory or a conceptual framework. The line of research must be evidenced by a series of related questions that establish directions for designing future studies extending beyond the support of this award. The project is not intended to represent all inquiry related to the particular theory or conceptual framework; rather, it is expected to initiate a new line or advance an existing one;

(b) Include, in its design and conduct, sustained involvement with nationally recognized experts having substantive or methodological knowledge and expertise relevant to the proposed research. Experts do not have to be at the same institution or agency at which the project is located, but the interaction must be sufficient to develop the capacity of the researcher to effectively pursue the research into mid-career activities. At least 50 percent of the researcher's time must be devoted to the project;

(c) Prepare its procedures, findings, and conclusions in a manner that informs other interested researchers and is useful for advancing professional practice or improving programs and services to infants, toddlers, children, and youth with disabilities and their families; and

(d) Disseminate project procedure findings, and conclusions to appropriate research institutes, clearinghouses, and technical assistance providers.

A project must budget for the two-day Research Project Directors' meeting to be held in Washington, D.C., each year of the project.

Competitive Priority:

Within this absolute priority 4, the Secretary, under 34 CFR 75.105(c)(2)(i), will give preference to applications that meet the following competitive priority. The Secretary will award up to 10 points to an application that meets this competitive priority in a particularly effective way. These points will be in addition to any points the application earns under the selection criteria for the program:

A project that would give a priority to providing support for individuals who are members of groups that have been underrepresented in the field of special education research, such as members of racial or ethnic minority groups (e.g. Black, Hispanic, American Indian, or Alaskan Native, Asian or Pacific Islander), and individuals with disabilities.

For Further Information Contact: Melville J. Appell, U.S. Department of Education, 400 Maryland Avenue, SW., room 3525, Switzer Building, Washington, DC 20202–2640. Telephone: (202) 205–8113. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Applicable Program Regulations: 34 CFR part 324.

Program Authority: 20 U.S.C. 1441–1443.

(Catalog of Federal Domestic Assistance Number 84.023, Research in Education of Individuals with Disabilities Program)

Dated: November 10, 1993.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–28330 Filed 11–17–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF EDUCATION

[CFDA No.: 84.023]

Research in Education of Individuals With Disabilities Program; Notice inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of Program: To advance and improve the knowledge base and improve the practice of professionals, parents, and others providing early intervention, special education, and related services—including professionals in regular education environments—to provide children with disabilities effective instruction and enable them to successfully learn.

This notice supports the National Education Goals by improving understanding of how to enable children and youth with disabilities to reach higher levels of academic achievement.

Eligible Applicants: Eligible applicants are State and local educational agencies, institutions of higher education, and other public agencies and nonprofit private organizations.

Applicable Regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 80, 81, 82, 85, and 86; and (b) The regulations for this program in 34 CFR part 324.

Applications Available: December 7, 1993.

Priorities

The priorities in the notice of final priorities for this program, as published elsewhere in this issue of the **Federal Register**, apply to these competitions.

RESEARCH IN EDUCATION OF INDIVIDUALS WITH DISABILITIES PROGRAM

[Application Notices for Fiscal Year 1994]

Title and CFDA No.	Deadline for transmittal of applications	Available funds	Estimated size of awards	Estimated number of awards	Project period in months
School-linked services to support better outcomes for children with disabilities and their families (CFDA 84.023D).	02/11/94	$720,000	$180,000 per year [1]	4	Up to 36.
Synthesize and communicate a professional knowledge base: Contributions to research and practice (CFDA 84.023E).	03/25/94	$450,000	$150,000 for the first year [2]	3	Up to 24.
Center for Policy Research (CFDA 84.023H)	04/08/94	$500,000	$500,000 per year [1]	1	Up to 60.
Initial career awards (CFDA 84.023N)	02/18/94	$300,000	$75,000 per year [1]	4	Up to 36.

NOTE: The Department of Education is not bound by any estimates in this notice.

[1] Amounts listed are the estimated funding levels for the first 12 months of the projects. Multi-year projects are likely to be level funded unless there are increases in costs attributable to significant changes in activity level.

[2] Amount listed is the estimated funding level for the first 12 months of the projects. The estimated funding level for the second year is $50,000 per project.

For Technical Information Contact: For information on the School-Linked Services to Support Better Outcomes for Children with Disabilities and Their Families competition (CFDA 84.023D) please contact Judith Fein, U.S. Department of Education, 400 Maryland Avenue SW., room 3524, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8119. For information on Synthesize and Communicate a Professional Knowledge Base: Contributions to Research and Practice competition (CFDA 84.023E) please contact Ellen Schiller, U.S. Department of Education, 400 Maryland Avenue SW., room 3523, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8123. For information on the Center for Policy Research competition (CFDA 84.023H) please contact Louis Danielson, U.S. Department of Education, 400 Maryland Avenue SW., room 3532, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8119. For information on the Initial Career Awards competition (CFDA 84.023N) please contact Melville Appell, U.S. Department of Education, 400 Maryland Avenue SW., room 3529, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8113. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

For Applications and General Information Contact: Requests for applications and general information should be addressed to: Darlene Crumblin, U.S. Department of Education, 400 Maryland Avenue SW., room 3525, Switzer Building, Washington, DC 20202–2641. Telephone: (202) 205–8953. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m. Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1441–1443.

Dated: November 10, 1993.

Howard R. Moses,

Acting Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–28331 Filed 11–17–93; 8:45 am]

BILLING CODE 4000–01–P

federal register

Thursday
November 18, 1993

Part IV

Department of the Treasury

Fiscal Service

31 CFR Part 316, et al.

Offering of United States Savings Bonds and United States Savings Notes; Final Rule

DEPARTMENT OF THE TREASURY

Fiscal Service

31 CFR Parts 316, 332, 342, 351, and 352

Offering of United States Savings Bonds, Series E, EE, and H, HH, and United States Savings Notes

AGENCY: Bureau of the Public Debt, Fiscal Service, Department of the Treasury.

ACTION: Final rule.

SUMMARY: The purpose of the Final Rule is to amend the offering circulars for United States Savings Bonds and Savings Notes to reflect the reductions in their guaranteed minimum investment yields. The reduction affects newly-issued United States Savings Bonds, Series EE and HH, and outstanding United States Savings Bonds, Series E/EE, H/HH, and United States Savings Notes (Freedom Shares), entering into an authorized optional extended maturity period. Also, the reduction has resulted in a lengthening of the initial maturity period of newly-issued United States Savings Bonds, Series EE. The reduction was made to reflect changes in prevailing interest rates.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Calvin Ninomiya, Chief Counsel, Bureau of the Public Debt, Washington, DC 20239–0001, (202) 219–3320.

SUPPLEMENTARY INFORMATION: The Secretary of the Treasury has announced, by a press release issued February 28, and a notice published in the **Federal Register** on March 2, 1993, that the guaranteed minimum investment yield for Series EE savings bonds issued on or after March 1, 1993, was reduced from 6 percent per annum, compounded semiannually, to 4 percent. The 4 percent rate applies to all such Series EE bonds issued until the effective date of any subsequent change in the guaranteed minimum investment yield. The guaranteed minimum investment yield for Series EE bonds held for five years or more, and for bonds entering an extended maturity period, had been fixed at 6 percent per annum, compounded semiannually, since November 1, 1986. The new guaranteed minimum investment yield also applies to any Series E, EE, H, and HH savings bond, and savings note, that entered into an authorized extended maturity period on or after March 1, 1993, except for Series E bonds bearing July 1, or August 1, 1953 issue dates. The latter bonds reached final maturity on July 1, and August 1, 1993, respectively, and continued to receive a guaranteed minimum investment rate of six percent through those dates.

Effective March 1, 1993, the investment yield of Series HH savings bonds issued in exchange for Series E/EE savings bonds and/or savings notes, or issued upon the reinvestment of matured Series H savings bonds, was also reduced to 4 percent per annum, paid semiannually. This yield applies to Series HH bonds issued on or after March 1, 1993, until the effective date of any subsequent change in the investment yield.

In addition, effective March 1, 1993, the original maturity period for Series EE savings bonds bearing the issue date of March 1, 1993, or thereafter, has been lengthened from 12 years to 18 years. The original maturity period was lengthened so that the issue prices of the bonds will remain unchanged and their maturity values (calculated at the guaranteed minimum investment yield) will continue to be approximately twice the purchase price at issue.

The guaranteed minimum investment yield is being reduced to reflect a general decline in interest rates. Also, the change preserves the cost-effectiveness of the Savings Bond Program, and avoids undue disparity with other thrift instruments.

The market-based rate program and the basic features of Series E/EE bonds and savings notes remain unchanged, providing owners a fair return given current market conditions. Bonds and notes held five years or longer receive (a) 85 percent of the average market yield on Treasury marketable securities with a remaining term to maturity of approximately 5 years, or (b) the applicable guaranteed minimum investment yield, whichever yield produces the higher value.[1] Series E/EE bonds and savings notes are exempt from State and local income taxes, and the Federal income tax thereon may be deferred until the bonds or notes are redeemed, disposed of, or reached final maturity. The semiannual interest payments on Series H/HH bonds are also exempt from State and local income taxes, but are reportable for Federal income tax purposes for each tax year in which they are paid.

The provisions of the several savings bond and note circulars which describe the guaranteed minimum investment yields have also been revised to improve clarity and to aid understanding. Revised tables of redemption values and interest payments are being published with these amendments of 31 CFR parts 316, 332, 342, 351, and 352.

[1] Monthly averages of the market yield on outstanding Treasury securities with a remaining term to maturity of approximately five years are published in the quarterly Treasury Bulletin and by the Board of Governors of the Federal Reserve System. They may be found in the Board's statistical releases G.13 and H.15, and in Table 1.35 of the monthly Federal Reserve Bulletin.

Procedural Requirements

This Final Rule is not considered a "major rule" for purposes of Executive Order No. 12291. A regulatory impact analysis, therefore, is not required.

Because this Final Rule relates to public contracts and procedures for United States securities, the notice, public comment, and delayed effective date provisions of the Administrative Procedure Act are inapplicable, pursuant to 5 U.S.C. 553(a)(2). As no notice of proposed rulemaking is required, the provisions of the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*) do not apply.

There are no collections of information required by this Final Rule, and, therefore, the Paperwork Reduction Act does not apply.

List of Subjects in 31 CFR Parts 316, 332, 342, 351, and 352

Bonds, Government Securities.

Dated: November 9, 1993.

Gerald Murphy,

Fiscal Assistant Secretary.

31 CFR chapter II is amended as follows:

PART 316—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES E

1. The authority citation for part 316 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

2. Section 316.8 is amended as follows:

A. Paragraph (c) is amended by completely revising paragraph (c)(1), by removing the introductory text of paragraph (c)(2) and paragraphs (c)(2)(i) through (viii), and by redesignating current paragraph (c)(2)(ix) as (c)(2). As revised, paragraph (c)(1) reads as follows:

§ 316.8 Extended terms and yields for outstanding bonds.

* * * * *

(c) *Guaranteed minimum investment yield*—(1) *General.* Except as provided in paragraph (c)(2) of this section, the guaranteed minimum investment yields for outstanding Series E bonds are as follows:

(i) For Series E bonds that were in original or extended maturity periods prior to November 1, 1982, the guaranteed minimum investment yield

was 8.5 percent per annum, compounded semiannually, effective for the period from the first semiannual interest accrual date on or after May 1, 1981, through the end of such periods, unless the bonds reached final maturity before November 1, 1981.[3] For bonds that entered extensions, see paragraphs (c)(1)(ii) through (c)(1)(iv) of this section.

(ii) For Series E bonds that entered extended maturity periods during the period of November 1, 1982, through October 1, 1986, the guaranteed minimum yield was or is 7.5 percent per annum, compounded semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered on 1st day of—
Mar. 1953–Nov. 1957.	3rd	Nov. 1982–Oct. 1986.
Feb. 1965–Dec. 1970.	2nd	Nov. 1982–Oct. 1986.
Nov. 1977–June 1980.	1st	Nov. 1982–June 1985.

(iii) For Series E bonds that entered into extended maturity periods during the period of November 1, 1986, through February 1, 1993, the guaranteed minimum yield was or is 6 percent per annum, compounded semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension[4]	Entered on 1st day of—
May 1952–Aug. 1953.	4th (final)[5]	Jan. 1992–Apr. 1993.
Dec. 1957–May 1965.	3rd	Nov. 1986–Feb. 1993.
Dec. 1965–Feb. 1966.	3rd (final)	Dec. 1992–Feb. 1993.
Jan. 1971–Feb. 1978.	2nd	Nov. 1986–Feb. 1993.

[4] Interest for interest accrual periods of less than 6 months is prorated.

[5] All Series E bonds issued between May 1, 1941 and April 1, 1953, have matured and are no longer earning interest.

(iv) For Series E bonds entering extended maturity periods on or after March 1, 1993, the guaranteed minimum yield is 4 percent per annum, compounded semiannually, or the guaranteed minimum investment yield in effect at the beginning of the period, including bonds that enter extended maturity periods, as shown below:[6]

Issue dates—1st day of—	Extension[7]	Entered on 1st day of—
Sep. 1953–May 1965.	4th (final)	May 1993–Feb. 2003.
Jun. 1965–Nov. 1965.	3rd	Mar. 1993–Aug. 1993.
Jun. 1965–Nov. 1965.	4th (final)	Mar. 2003–Aug. 2003.
Mar. 1966–Feb. 1978.	3rd (final)	Mar. 1993–Feb. 2003.
Mar. 1978–Jun. 1980.	2nd	Mar. 1993–Jun. 1995
Mar. 1978–Jun. 1980.	3rd (final)	Mar. 2003–Jun. 2005.

[7] See footnote 2 above.

* * * * *

B. Paragraph (e) is amended by redesignating footnote 12 as footnote 8 and by removing the reference to paragraph (b)(1)(ix) and replacing it with a reference to paragraph (b)(2).

PART 332—OFFERING OF U.S. SAVINGS BONDS, SERIES H

3. The authority citation for part 332 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

4. In § 332.8, paragraph (b) is revised to read as follows:

§ 332.8 Extended terms and yield for outstanding bonds.

* * * * *

(b) *Investment yields for outstanding bonds—General—interest rates.* The investment yields on outstanding Series H bonds are as set out below:

(1) For Series H bonds that were in original or extended maturity periods prior to November 1, 1982, the investment yield was 8.5 percent per annum, paid semiannually, effective for the period from the first semiannual interest payment date occurring on or after May 1, 1981, through the end of such periods. For bonds that entered extensions, see paragraphs (b)(2) through (b)(4) of this section.

(2) For Series H bonds that entered extended maturity periods from November 1, 1982, through October 1, 1986, the investment yield was 7.5 percent per annum, paid semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Nov. 1962–Oct. 1966.	2nd (final)	Nov. 1982–Oct. 1986.
Nov. 1972–Oct. 1976.	1st	Nov. 1982–Oct. 1986.

(3) For Series H bonds that entered extended maturity periods from November 1, 1986, through February 1, 1993, the investment yield was 6 percent per annum, paid semiannually, for such periods, including bonds that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Nov. 1966–Feb. 1973.	2nd (final)	Nov. 1986–Feb. 1993.
Nov. 1976–Dec. 1979.	1st	Nov. 1986–, Dec. 1989.

(4) For Series H bonds that entered or enter extended maturity periods on or after March 1, 1993, the guaranteed minimum investment yield is 4 percent per annum, paid semiannually, or the investment yield in effect at the beginning of such periods, including bonds that enter into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Mar. 1973–Dec. 1979.	2nd (final)	Mar. 1993–Dec. 1999.

* * * * *

PART 342—OFFERING OF UNITED STATES SAVINGS NOTES

5. The authority for Part 342 continues to read as follows:

Authority: 31 U.S.C. 3103, 5 U.S.C. 301.

6. In § 342.3 paragraph (b) is amended by completely revising paragraph (b)(1), removing the introductory text of paragraph (b)(2) as well as (b)(2)(i) and (ii), and redesignating current paragraph (b)(2)(iii) as (b)(2), as follows:

§ 342.3 [Amended]

* * * * *

(b) *Guaranteed minimum investment yield—(1) General.* Except as provided in paragraph (b)(2) of this section, the guaranteed minimum investment yields for outstanding savings notes are as follows:

(i) For savings notes in extended maturity periods prior to November 1, 1982, the guaranteed minimum investment yield was 8.5 percent per annum, compounded semiannually, effective for the period from the first semiannual interest accrual date on or

[3] Series E bonds issued from May 1, 1941, through October 1, 1941, had reached final maturity May 1, 1981, through October 1, 1981, before the 8.5 percent yield had become effective.

[6] Series E bonds with issue dates of July 1 and August 1, 1953, entered a final maturity period of 4 months on March 1, and April 1, 1993, respectively, and received a minimum investment yield of 6 percent per annum, compounded semiannually, for that period.

after May 1, 1981, through their next extended maturity dates on or after November 1, 1982.

(ii) For savings notes that entered extended maturity periods during the period of November 1, 1982, through October 1, 1986, the guaranteed minimum investment yield was 7.5 percent per annum, compounded semiannually, for such periods, including notes that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
May 1968–Oct. 1970.	2nd	Nov. 1982–Apr. 1985.

(iii) For savings notes that entered into extended maturity periods during the period of November 1, 1986, through February 1, 1993, the guaranteed minimum investment yield is 6 percent per annum, compounded semiannually, for such periods, including notes that entered into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
May 1967–Aug. 1968.	3rd (final)	Nov. 1991–Feb. 1993.

(iv) For savings notes that entered or enter extended maturity periods on or after March 1, 1993, the guaranteed minimum investment yield is 4 percent per annum, compounded semiannually, for such periods, or the investment yield in effect at the beginning of such periods, including notes that enter into an extended maturity period, as shown below:

Issue dates—1st day of—	Extension	Entered—1st day of
Sep. 1968–Oct. 1970.	3rd (final)	Mar. 1993–Apr. 1995.

* * * * *

7. Footnotes 1 and 2 are removed and footnote 3 is redesignated footnote 1. Further, reference in redesignated footnote 1 to paragraph (b)(2)(iii) is removed and replaced with paragraph (b)(2).

PART 351—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES EE

8. The authority citation for part 351 continues to read as follows:

Authority: 31 U.S.C. 3105, 31 U.S.C. 301.

§ 351.0 [Amended]

9. In § 351.0, "January 1, 1990" is removed and "March 1, 1993" is added in its place.

§ 351.2 [Amended]

10. Section 351.2 is amended as follows:

A. The table in paragraph (c) is amended by revising the last line and adding a new line to read as follows:

Nov. 1986–Feb. 1993.	Nov. 1998–Feb. 2005.	12 years.
Mar. 1993, and thereafter.	Mar. 2011, and thereafter.	18 years.

B. In the introductory text of paragraph (e) is amended by removing "table 1 and 2 in the appendix" and adding in its place "tables 1, 2, and 3 in the appendix."

C. In paragraph (e)(1), the text beginning with the words "for a bond", after the last comma, is revised and a new sentence is added at the end of the paragraph to read, as follows:

§ 351.2 Description of bonds

* * * * *

(e) * * *

(1) * * * for a bond bearing an issue date of November 1, 1986, through February 1, 1993; and, 4 percent per annum, compounded semiannually, for a bond bearing an issue date of March 1, 1993, or thereafter. Interest that accrues on a Series EE bond becomes part of its redemption value and is paid, as set out in § 351.2(h).

D. The tables at the end of paragraph (g)(2) are revised to read as follows:

Issues dates—1st day of:	Original terms	Original maturity dates—day of:	Final maturity dates—1st day of:
Jan. 1980–Oct. 1980	11 years	Jan. 1991–Oct. 1991	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	9 years	Nov. 1989–Apr. 1990	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	8 years	May 1989–Oct. 1990	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	10 years	Nov. 1992–Oct. 1996	Nov. 2012–Oct. 2016.
Nov. 1986–Feb. 1993	12 years	Nov. 1998–Feb. 2005	Nov. 2016–Feb. 2023.
Mar. 1993, and thereafter	18 years	Mar. 2011, and thereafter	Mar. 2023, and thereafter.

Issues dates—1st day of:	1st extended maturity dates—1st day of:	Years to final maturity	Final maturity dates—1st day of:
Jan. 1980–Oct. 1980	Jan. 2001–Oct. 2001	9 years	Jan. 2010–Oct. 2010.
Nov. 1980–Apr. 1981	Nov. 1999–Apr. 2000	11 years	Nov. 2010–Apr. 2011.
May 1981–Oct. 1982	May 1999–Oct. 2000	12 years	May 2011–Oct. 2012.
Nov. 1982–Oct. 1986	Nov. 2002–Oct. 2006	10 years	Nov. 2010–Oct. 2016.
Nov. 1986–Feb. 1993	Nov. 2008–Feb. 2015	8 years	Nov. 2016–Feb. 2023.
Mar. 1993, and thereafter	Mar. 2021, and thereafter	2 years	Mar. 2023, and thereafter.

[1] At 10 years after original maturity.

* * * * *

E. Paragraph (g)(3)(i) is amended by revising the second sentence to read as follows:

* * * * *

(g) * * *

(3) * * *

(i) * * * Bonds that entered an extended maturity period from May 1, 1989, through February 1, 1993, have a guaranteed minimum investment yield of 6 percent per annum, compounded semiannually, during that extended maturity period. Bonds that entered or enter an extended maturity period on or after March 1, 1993, have a guaranteed minimum investment yield of 4 percent per annum, compounded semiannually, during that extended maturity period, or the guaranteed minimum investment yield in effect at the beginning of that period. * * *

* * * * *

F. Paragraph (h) is amended by revising the fourth sentence and adding a new sentence following it to read as follows:

* * * * *

(h) * * * For bonds with issue dates from November 1, 1986, through February 1, 1993, the redemption values

increase on the first day of each month from the third through the thirtieth month after issue, and thereafter on the first day of each successive 6-month period. For bonds with issue dates on and after March 1, 1993, the redemption values increase on the first day of each month from the third through the sixtieth month after issue, and thereafter either on the first day of each month or on the first day of each successive 6-month period, whichever accrual schedule ensures that the actual yield from issue date to redemption date is in no case less than 4 percent per annum, compounded semiannually. * * *

* * * * * *

G. The first sentence of paragraph (i) is amended by removing "Tables 1, 2," and adding in its place "Tables 1, 2, and 3,".

Appendix to Part 351 [Amended]

10. The Appendix to Part 351 is amended as follows:

A. Table 2 is revised to read as set forth below.

B. A new Table 3 is added at the end of the Appendix to read as follows:

BILLING CODE 4810-39-P

TABLE 2

EE BONDS BEARING ISSUE DATES FROM NOVEMBER 1, 1986 THROUGH FEBRUARY 1, 1993

ISSUE PRICE	$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$1000.00	$5000.00	$10000.00
MATURITY VALUE	50.82	76.23	101.64	203.28	508.20	1016.40	5082.00	10164.00	

PERIOD	(1) REDEMPTION VALUES DURING EACH PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD)								
ARE AND MONTHS AFTER ISSUE)	$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$1000.00	$5000.00	$10000.00
1/(11/1/86) TO (5/1/87)	25.16	37.77	50.36	100.72	251.80	503.60	1007.20	5036.00	10072.00
(5/1/87) TO (11/1/87)	25.26	37.89	50.52	101.04	252.60	505.20	1010.40	5052.00	10104.00
(11/1/87) TO (5/1/88)	25.34	38.01	50.68	101.36	253.40	506.80	1013.60	5068.00	10136.00
(5/1/88) TO (11/1/88)	25.42	38.13	50.84	101.68	254.20	508.40	1016.80	5084.00	10168.00
(11/1/88) TO (5/1/89)	25.52	38.28	51.04	102.08	255.20	510.40	1020.80	5104.00	10208.00
(5/1/89) TO (11/1/89)	25.68	38.52	51.36	102.72	256.80	513.60	1027.20	5136.00	10272.00
(11/1/89) TO (5/1/90)	25.84	38.76	51.68	103.36	258.40	516.80	1033.60	5168.00	10336.00
(5/1/90) TO (11/1/90)	26.00	39.00	52.00	104.00	260.00	520.00	1040.00	5200.00	10400.00
(11/1/90) TO (5/1/91)	26.16	39.24	52.32	104.64	261.60	523.20	1046.40	5232.00	10464.00
(5/1/91) TO (11/1/91)	26.32	39.48	52.64	105.28	263.20	526.40	1052.80	5264.00	10528.00
(11/1/91) TO (5/1/92)	26.48	39.72	52.96	105.92	264.80	529.60	1059.20	5296.00	10592.00
(5/1/92) TO (11/1/92)	26.64	39.96	53.28	106.56	266.40	532.80	1065.60	5328.00	10656.00
(11/1/92) TO (5/1/93)	26.80	40.20	53.60	107.20	268.00	536.00	1072.00	5360.00	10720.00
(5/1/93) TO (11/1/93)	26.96	40.44	53.92	107.84	269.80	539.20	1078.40	5392.00	10784.00
(11/1/93) TO (5/1/94)	27.12	40.68	54.24	108.48	271.20	542.40	1084.80	5424.00	10848.00
(5/1/94) TO (11/1/94)	27.28	40.92	54.56	109.12	272.80	545.60	1091.20	5456.00	10912.00
(11/1/94) TO (5/1/95)	27.44	41.16	54.88	109.76	274.40	548.80	1097.60	5488.00	10976.00
(5/1/95) TO (11/1/95)	27.60	41.40	55.20	110.40	276.00	552.00	1104.00	5520.00	11040.00
(11/1/95) TO (5/1/96)	27.76	41.64	55.52	111.04	277.60	555.20	1110.40	5552.00	11104.00
(5/1/96) TO (11/1/96)	27.92	41.88	55.84	111.68	279.20	558.40	1116.80	5584.00	11168.00
(11/1/96) TO (5/1/97)	28.08	42.12	56.16	112.32	280.80	561.60	1123.20	5616.00	11232.00
(5/1/97) TO (11/1/97)	28.24	42.36	56.48	112.96	282.40	564.80	1129.60	5648.00	11296.00
(11/1/97) TO (5/1/98)	28.40	42.60	56.80	113.60	284.00	568.00	1136.00	5680.00	11360.00
(5/1/98) TO (11/1/98)	28.56	42.84	57.12	114.24	285.60	571.20	1142.40	5712.00	11424.00
(11/1/98) TO (5/1/99)	28.72	43.08	57.44	114.88	287.20	574.40	1148.80	5744.00	11488.00
(5/1/99) TO (11/1/99)	28.88	43.32	57.76	115.52	288.80	577.60	1155.20	5776.00	11552.00
(11/1/99) TO (5/1/00)	29.04	43.56	58.08	116.16	290.40	580.80	1161.60	5808.00	11616.00
(5/1/00) TO (11/1/00)	29.20	43.80	58.40	116.80	292.00	584.00	1168.00	5840.00	11680.00
(11/1/00) TO (5/1/01)	29.36	44.04	58.72	117.44	293.60	587.20	1174.40	5872.00	11744.00
(5/1/01) TO (11/1/01)	29.52	44.28	59.04	118.08	295.20	590.40	1180.80	5904.00	11808.00
(11/1/01) TO (5/1/02)	29.68	44.52	59.36	118.72	296.80	593.60	1187.20	5936.00	11872.00
(5/1/02) TO (11/1/02)	29.84	44.76	59.68	119.36	298.40	596.80	1193.60	5968.00	11936.00
(11/1/02) TO (5/1/03)	30.00	45.00	60.00	120.00	300.00	600.00	1200.00	6000.00	12000.00
(5/1/03) TO (11/1/03)	30.16	45.24	60.32	120.64	301.60	603.20	1206.40	6032.00	12064.00
(11/1/03) TO (5/1/04)	30.32	45.48	60.64	121.28	303.20	606.40	1212.80	6064.00	12128.00
(5/1/04) TO (11/1/04)	30.48	45.72	60.96	121.92	304.80	609.60	1219.20	6096.00	12192.00
(11/1/04) TO (5/1/05)	30.64	45.96	61.28	122.56	306.40	612.80	1225.60	6128.00	12256.00
(5/1/05) TO (11/1/05)	30.80	46.20	61.60	123.20	308.00	616.00	1232.00	6160.00	12320.00
(11/1/05) TO (5/1/06)	30.96	46.44	61.92	123.84	309.60	619.20	1238.40	6192.00	12384.00
(5/1/06) TO (11/1/06)	31.12	46.68	62.24	124.48	311.20	622.40	1244.80	6224.00	12448.00
(11/1/06) TO (5/1/07)	31.28	46.92	62.56	125.12	312.80	625.60	1251.20	6256.00	12512.00
(5/1/07) TO (11/1/07)	31.44	47.16	62.88	125.76	314.40	628.80	1257.60	6288.00	12576.00
(11/1/07) TO (5/1/08)	31.60	47.40	63.20	126.40	316.00	632.00	1264.00	6320.00	12640.00
(5/1/08) TO (11/1/08)	31.76	47.64	63.52	127.04	317.60	635.20	1270.40	6352.00	12704.00
(11/1/08) TO (5/1/09)	31.92	47.88	63.84	127.68	319.20	638.40	1276.80	6384.00	12768.00
(5/1/09) TO (11/1/09)	32.08	48.12	64.16	128.32	320.80	641.60	1283.20	6416.00	12832.00
(11/1/09) TO (5/1/10)	32.24	48.36	64.48	128.96	322.40	644.80	1289.60	6448.00	12896.00
(5/1/10) TO (11/1/10)	32.40	48.60	64.80	129.60	324.00	648.00	1296.00	6480.00	12960.00
(11/1/10) TO (5/1/11)	32.56	48.84	65.12	130.24	325.60	651.20	1302.40	6512.00	13024.00
(5/1/11) TO (11/1/11)	32.72	49.08	65.44	130.88	327.20	654.40	1308.80	6544.00	13088.00
(11/1/11) TO (5/1/12)	32.88	49.32	65.76	131.52	328.80	657.60	1315.20	6576.00	13152.00
(5/1/12) TO (11/1/12)	33.04	49.56	66.08	132.16	330.40	660.80	1321.60	6608.00	13216.00
(11/1/12) TO (5/1/13)	33.20	49.80	66.40	132.80	332.00	664.00	1328.00	6640.00	13280.00
(5/1/13) TO (11/1/13)	33.36	50.04	66.72	133.44	333.60	667.20	1334.40	6672.00	13344.00
(11/1/13) TO (5/1/14)	33.52	50.28	67.04	134.08	335.20	670.40	1340.80	6704.00	13408.00
(5/1/14) TO (11/1/14)	33.68	50.52	67.36	134.72	336.80	673.60	1347.20	6736.00	13472.00
(11/1/14) TO (5/1/15)	33.84	50.76	67.68	135.36	338.40	676.80	1353.60	6768.00	13536.00
(5/1/15) TO (11/1/15)	34.00	51.00	68.00	136.00	340.00	680.00	1360.00	6800.00	13600.00
(11/1/15) TO (5/1/16)	34.16	51.24	68.32	136.64	341.60	683.20	1366.40	6832.00	13664.00
(5/1/16) TO (11/1/16)	34.32	51.48	68.64	137.28	343.20	686.40	1372.80	6864.00	13728.00
(11/1/16) TO (5/1/17)	34.48	51.72	68.96	137.92	344.80	689.60	1379.20	6896.00	13792.00
(5/1/17) TO (11/1/17)	34.64	51.96	69.28	138.56	346.40	692.80	1385.60	6928.00	13856.00
(11/1/17) TO (5/1/18)	34.80	52.20	69.60	139.20	348.00	696.00	1392.00	6960.00	13920.00
(5/1/18) TO (11/1/18)	34.96	52.44	69.92	139.84	349.60	699.20	1398.40	6992.00	13984.00
(11/1/18) TO (5/1/19)	35.12	52.68	70.24	140.48	351.20	702.40	1404.80	7024.00	14048.00
(5/1/19) TO (11/1/19)	35.28	52.92	70.56	141.12	352.80	705.60	1411.20	7056.00	14112.00
(11/1/19) TO (5/1/20)	35.44	53.16	70.88	141.76	354.40	708.80	1417.60	7088.00	14176.00
(5/1/20) TO (11/1/20)	35.60	53.40	71.20	142.40	356.00	712.00	1424.00	7120.00	14240.00
(11/1/20) TO (5/1/21)	35.76	53.64	71.52	143.04	357.60	715.20	1430.40	7152.00	14304.00
(5/1/21) TO (11/1/21)	35.92	53.88	71.84	143.68	359.20	718.40	1436.80	7184.00	14368.00
(11/1/21) TO (5/1/22)	36.08	54.12	72.16	144.32	360.80	721.60	1443.20	7216.00	14432.00
(5/1/22) TO (11/1/22)	36.24	54.36	72.48	144.96	362.40	724.80	1449.60	7248.00	14496.00
(11/1/22) TO (5/1/23)	36.40	54.60	72.80	145.60	364.00	728.00	1456.00	7280.00	14560.00
(5/1/23) TO (11/1/23)	36.56	54.84	73.12	146.24	365.60	731.20	1462.40	7312.00	14624.00
(11/1/23) TO (5/1/24)	36.72	55.08	73.44	146.88	367.20	734.40	1468.80	7344.00	14688.00
(5/1/24) TO (11/1/24)	36.88	55.32	73.76	147.52	368.80	737.60	1475.20	7376.00	14752.00
(11/1/24) TO (5/1/25)	37.04	55.56	74.08	148.16	370.40	740.80	1481.60	7408.00	14816.00
(5/1/25) TO (11/1/25)	37.20	55.80	74.40	148.80	372.00	744.00	1488.00	7440.00	14880.00
(11/1/25) TO (5/1/26)	37.36	56.04	74.72	149.44	373.60	747.20	1494.40	7472.00	14944.00
(5/1/26) TO (11/1/26)	37.52	56.28	75.04	150.08	375.20	750.40	1500.80	7504.00	15008.00
(11/1/26) TO (5/1/27)	37.68	56.52	75.36	150.72	376.80	753.60	1507.20	7536.00	15072.00
(5/1/27) TO (11/1/27)	37.84	56.76	75.68	151.36	378.40	756.80	1513.60	7568.00	15136.00
(11/1/27) TO (5/1/28)	38.00	57.00	76.00	152.00	380.00	760.00	1520.00	7600.00	15200.00
(5/1/28) TO (11/1/28)	38.16	57.24	76.32	152.64	381.60	763.20	1526.40	7632.00	15264.00
(11/1/28) TO (5/1/29)	38.32	57.48	76.64	153.28	383.20	766.40	1532.80	7664.00	15328.00
(5/1/29) TO (11/1/29)	38.48	57.72	76.96	153.92	384.80	769.60	1539.20	7696.00	15392.00
(11/1/29) TO (5/1/30)	38.64	57.96	77.28	154.56	386.40	772.80	1545.60	7728.00	15456.00
(5/1/30) TO (11/1/30)	38.80	58.20	77.60	155.20	388.00	776.00	1552.00	7760.00	15520.00
(11/1/30) TO (5/1/31)	38.96	58.44	77.92	155.84	389.60	779.20	1558.40	7792.00	15584.00
(5/1/31) TO (11/1/31)	39.12	58.68	78.24	156.48	391.20	782.40	1564.80	7824.00	15648.00
(11/1/31) TO (5/1/32)	39.28	58.92	78.56	157.12	392.80	785.60	1571.20	7856.00	15712.00
(5/1/32) TO (11/1/32)	39.44	59.16	78.88	157.76	394.40	788.80	1577.60	7888.00	15776.00
(11/1/32) TO (5/1/33)	39.60	59.40	79.20	158.40	396.00	792.00	1584.00	7920.00	15840.00
(5/1/33) TO (11/1/33)	39.76	59.64	79.52	159.04	397.60	795.20	1590.40	7952.00	15904.00
(11/1/33) TO (5/1/34)	39.92	59.88	79.84	159.68	399.20	798.40	1596.80	7984.00	15968.00
(5/1/34) TO (11/1/34)	40.08	60.12	80.16	160.32	400.80	801.60	1603.20	8016.00	16032.00
(11/1/34) TO (5/1/35)	40.24	60.36	80.48	160.96	402.40	804.80	1609.60	8048.00	16096.00
(5/1/35) TO (11/1/35)	40.40	60.60	80.80	161.60	404.00	808.00	1616.00	8080.00	16160.00
(11/1/35) TO (5/1/36)	40.56	60.84	81.12	162.24	405.60	811.20	1622.40	8112.00	16224.00
(5/1/36) TO (11/1/36)	40.72	61.08	81.44	162.88	407.20	814.40	1628.80	8144.00	16288.00
(11/1/36) TO (5/1/37)	40.88	61.32	81.76	163.52	408.80	817.60	1635.20	8176.00	16352.00
(5/1/37) TO (11/1/37)	41.04	61.56	82.08	164.16	410.40	820.80	1641.60	8208.00	16416.00
(11/1/37) TO (5/1/38)	41.20	61.80	82.40	164.80	412.00	824.00	1648.00	8240.00	16480.00
(5/1/38) TO (11/1/38)	41.36	62.04	82.72	165.44	413.60	827.20	1654.40	8272.00	16544.00
(11/1/38) TO (5/1/39)	41.52	62.28	83.04	166.08	415.20	830.40	1660.80	8304.00	16608.00
(5/1/39) TO (11/1/39)	41.68	62.52	83.36	166.72	416.80	833.60	1667.20	8336.00	16672.00
(11/1/39) TO (5/1/40)	41.84	62.76	83.68	167.36	418.40	836.80	1673.60	8368.00	16736.00
(5/1/40) TO (11/1/40)	42.00	63.00	84.00	168.00	420.00	840.00	1680.00	8400.00	16800.00
(11/1/40) TO (5/1/41)	42.16	63.24	84.32	168.64	421.60	843.20	1686.40	8432.00	16864.00
(5/1/41) TO (11/1/41)	42.32	63.48	84.64	169.28	423.20	846.40	1692.80	8464.00	16928.00
(11/1/41) TO (5/1/42)	42.48	63.72	84.96	169.92	424.80	849.60	1699.20	8496.00	16992.00
(5/1/42) TO (11/1/42)	42.64	63.96	85.28	170.56	426.40	852.80	1705.60	8528.00	17056.00
(11/1/42) TO (5/1/43)	42.80	64.20	85.60	171.20	428.00	856.00	1712.00	8560.00	17120.00
(5/1/43) TO (11/1/43)	42.96	64.44	85.92	171.84	429.60	859.20	1718.40	8592.00	17184.00
(11/1/43) TO (5/1/44)	43.12	64.68	86.24	172.48	431.20	862.40	1724.80	8624.00	17248.00
(5/1/44) TO (11/1/44)	43.28	64.92	86.56	173.12	432.80	865.60	1731.20	8656.00	17312.00
(11/1/44) TO (5/1/45)	43.44	65.16	86.88	173.76	434.40	868.80	1737.60	8688.00	17376.00
(5/1/45) TO (11/1/45)	43.60	65.40	87.20	174.40	436.00	872.00	1744.00	8720.00	17440.00
(11/1/45) TO (5/1/46)	43.76	65.64	87.52	175.04	437.60	875.20	1750.40	8752.00	17504.00
(5/1/46) TO (11/1/46)	43.92	65.88	87.84	175.68	439.20	878.40	1756.80	8784.00	17568.00
(11/1/46) TO (5/1/47)	44.08	66.12	88.16	176.32	440.80	881.60	1763.20	8816.00	17632.00
(5/1/47) TO (11/1/47)	44.24	66.36	88.48	176.96	442.40	884.80	1769.60	8848.00	17696.00
(11/1/47) TO (5/1/48)	44.40	66.60	88.80	177.60	444.00	888.00	1776.00	8880.00	17760.00
(5/1/48) TO (11/1/48)	44.56	66.84	89.12	178.24	445.60	891.20	1782.40	8912.00	17824.00
(11/1/48) TO (5/1/49)	44.72	67.08	89.44	178.88	447.20	894.40	1788.80	8944.00	17888.00
(5/1/49) TO (11/1/49)	44.88	67.32	89.76	179.52	448.80	897.60	1795.20	8976.00	17952.00
(11/1/49) TO (5/1/50)	45.04	67.56	90.08	180.16	450.40	900.80	1801.60	9008.00	18016.00
(5/1/50) TO (11/1/50)	45.20	67.80	90.40	180.80	452.00	904.00	1808.00	9040.00	18080.00
(11/1/50) TO (5/1/51)	45.36	68.04	90.72	181.44	453.60	907.20	1814.40	9072.00	18144.00
(5/1/51) TO (11/1/51)	45.52	68.28	91.04	182.08	455.20	910.40	1820.80	9104.00	18208.00
(11/1/51) TO (5/1/52)	45.68	68.52	91.36	182.72	456.80	913.60	1827.20	9136.00	18272.00
(5/1/52) TO (11/1/52)	45.84	68.76	91.68	183.36	458.40	916.80	1833.60	9168.00	18336.00
(11/1/52) TO (5/1/53)	46.00	69.00	92.00	184.00	460.00	920.00	1840.00	9200.00	18400.00
(5/1/53) TO (11/1/53)	46.16	69.24	92.32	184.64	461.60	923.20	1846.40	9232.00	18464.00
(11/1/53) TO (5/1/54)	46.32	69.48	92.64	185.28	463.20	926.40	1852.80	9264.00	18528.00
(5/1/54) TO (11/1/54)	46.48	69.72	92.96	185.92	464.80	929.60	1859.20	9296.00	18592.00
(11/1/54) TO (5/1/55)	46.64	69.96	93.28	186.56	466.40	932.80	1865.60	9328.00	18656.00
(5/1/55) TO (11/1/55)	46.80	70.20	93.60	187.20	468.00	936.00	1872.00	9360.00	18720.00
(11/1/55) TO (5/1/56)	46.96	70.44	93.92	187.84	469.60	939.20	1878.40	9392.00	18784.00
(5/1/56) TO (11/1/56)	47.12	70.68	94.24	188.48	471.20	942.40	1884.80	9424.00	18848.00
(11/1/56) TO (5/1/57)	47.28	70.92	94.56	189.12	472.80	945.60	1891.20	9456.00	18912.00
(5/1/57) TO (11/1/57)	47.44	71.16	94.88	189.76	474.40	948.80	1897.60	9488.00	18976.00
(11/1/57) TO (5/1/58)	47.60	71.40	95.20	190.40	476.00	952.00	1904.00	9520.00	19040.00
(5/1/58) TO (11/1/58)	47.76	71.64	95.52	191.04	477.60	955.20	1910.40	9552.00	19104.00
(11/1/58) TO (5/1/59)	47.92	71.88	95.84	191.68	479.20	958.40	1916.80	9584.00	19168.00
(5/1/59) TO (11/1/59)	48.08	72.12	96.16	192.32	480.80	961.60	1923.20	9616.00	19232.00
(11/1/59) TO (5/1/60)	48.24	72.36	96.48	192.96	482.40	964.80	1929.60	9648.00	19296.00
(5/1/60) TO (11/1/60)	48.40	72.60	96.80	193.60	484.00	968.00	1936.00	9680.00	19360.00
(11/1/60) TO (5/1/61)	48.56	72.84	97.12	194.24	485.60	971.20	1942.40	9712.00	19424.00
(5/1/61) TO (11/1/61)	48.72	73.08	97.44	194.88	487.20	974.40	1948.80	9744.00	19488.00
(11/1/61) TO (5/1/62)	48.88	73.32	97.76	195.52	488.80	977.60	1955.20	9776.00	19552.00
(5/1/62) TO (11/1/62)	49.04	73.56	98.08	196.16	490.40	980.80	1961.60	9808.00	19616.00
(11/1/62) TO (5/1/63)	49.20	73.80	98.40	196.80	492.00	984.00	1968.00	9840.00	19680.00
(5/1/63) TO (11/1/63)	49.36	74.04	98.72	197.44	493.60	987.20	1974.40	9872.00	19744.00
(11/1/63) TO (5/1/64)	49.52	74.28	99.04	198.08	495.20	990.40	1980.80	9904.00	19808.00
(5/1/64) TO (11/1/64)	49.68	74.52	99.36	198.72	496.80	993.60	1987.20	9936.00	19872.00
(11/1/64) TO (5/1/65)	49.84	74.76	99.68	199.36	498.40	996.80	1993.60	9968.00	19936.00
(5/1/65) TO (11/1/65)	50.00	75.00	100.00	200.00	500.00	1000.00	2000.00	10000.00	20000.00
(11/1/65) TO (5/1/66)	50.16	75.24	100.32	200.64	501.60	1003.20	2006.40	10032.00	20064.00
(5/1/66) TO (11/1/66)	50.32	75.48	100.64	201.28	503.20	1006.40	2012.80	10064.00	20128.00
(11/1/66) TO (5/1/67)	50.48	75.72	100.96	201.92	504.80	1009.60	2019.20	10096.00	20192.00
(5/1/67) TO (11/1/67)	50.64	75.96	101.28	202.56	506.40	1012.80	2025.60	10128.00	20256.00
(11/1/67) TO (5/1/68)	50.82	76.23	101.64	203.28	508.20	1016.40	2032.80	10164.00	20328.00
(5/1/68) TO 2/	50.82	76.23	101.64	203.28	508.20	1016.40	2032.80	10164.00	20328.00

1/ MONTH, DAY, AND YEAR ON WHICH ISSUES OF NOVEMBER 1, 1986 ENTER EACH PERIOD. FOR SUBSEQUENT ISSUE MONTHS AND THE APPROPRIATE

2/ MATURITY

MONTH, DAY, AND YEAR ON WHICH ISSUES OF NOVEMBER 1, 1986 ENTER EACH PERIOD. FOR SUBSEQUENT ISSUE MONTHS ADD THE APPROPRIATE NUMBER OF MONTHS.
MATURITY VALUE IS REACHED 12 YEARS AND 0 MONTHS AFTER ISSUE DATE.

THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES BEFORE FIVE YEARS AFTER ISSUE ARE THOSE ESTABLISHED UNDER SECTION 351.2(e) OF THIS CIRCULAR.
THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES FIVE YEARS AFTER ISSUE AND THEREAFTER REPRESENT THE MINIMUM GUARANTEED INVESTMENT YIELDS PROVIDED BY SECTION 351.2(e)(1) OF THIS CIRCULAR. THESE REDEMPTION VALUES WILL APPLY UNLESS APPLICATION OF THE VARIABLE RATE PRESCRIBED UNDER SECTION 351.2(e)(2) PRODUCES A HIGHER REDEMPTION VALUE.

TABLE 3

EE BONDS BEARING ISSUE DATES BEGINNING MARCH 1, 1993

ISSUE PRICE	$250.00	$500.00	$2500.00	$ 5000.00	APPROXIMATE INVESTMENT YIELD
MATURITY VALUE	$ 500.00	$ 1000.00	$ 5100.00	$ 10200.00	(ANNUAL PERCENTAGE RATE)

PERIOD (YEARS AND MONTHS AFTER ISSUE)		(1) REDEMPTION VALUES DURING EACH DAY OF PERIOD)								(2)FROM ISSUE DATE TO START OF PERIOD	(3)DURING EACH PERIOD	(4)FROM START OF PERIOD TO MATURITY
		FIRST DAY OF PERIOD	$250.00	$500.00	$2500.00	$ 5000.00	$25.00	$50.00	$100.00	PERCENT	PERCENT	PERCENT
0	0	2 1/(	$250.00	$500.00	$2500.00	$ 5000.00	$25.00	$50.00	$100.00	4.35	4.00	4.00
0	3	C 3/1/93)	251.80	503.60	2518.00	5036.00	25.18	50.36	100.72	4.35	3.84	4.000
0	4	C 4/1/93)	252.60	505.20	2526.00	5052.00	25.26	50.52	101.04	4.18	3.83	4.000
0	5	C 5/1/93)	253.40	506.80	2534.00	5068.00	25.34	50.68	101.36	4.09	3.82	4.000
0	6	C 6/1/93)	254.20	508.40	2542.00	5084.00	25.42	50.84	101.68	4.04	3.81	4.000
0	7	C 7/1/93)	255.00	510.00	2550.00	5100.00	25.50	51.00	102.00	4.00	4.75	4.000
0	8	C 8/1/93)	256.00	512.00	2560.00	5120.00	25.60	51.20	102.40	4.11	3.78	4.000
0	9	C 9/1/93)	256.80	513.60	2568.00	5136.00	25.68	51.36	102.72	4.07	3.77	4.000
0	10	C 10/1/93)	257.60	515.20	2576.00	5152.00	25.76	51.52	103.04	4.03	3.76	4.000
0	11	C 11/1/93)	258.40	516.80	2584.00	5168.00	25.84	51.68	103.36	4.01	4.69	4.000
1	0	C 12/1/93)	259.40	518.80	2594.00	5188.00	25.94	51.88	103.76	4.07	3.73	4.000
1	1	C 1/1/94)	260.20	520.40	2602.00	5204.00	26.02	52.04	104.08	4.04	3.72	4.000
1	2	C 2/1/94)	261.000	522.00	2610.00	5220.00	26.10	52.20	104.40	4.01	4.64	4.000
1	3	C 3/1/94)	262.000	524.00	2620.00	5240.00	26.20	52.40	104.80	4.006	3.69	4.000
1	4	C 4/1/94)	262.80	525.60	2628.00	5256.00	26.28	52.56	105.12	4.003	3.68	4.000
1	5	C 5/1/94)	263.60	527.20	2636.00	5272.00	26.36	52.72	105.44	4.001	4.60	4.000
1	6	C 6/1/94)	264.60	529.20	2646.00	5292.00	26.46	52.92	105.84	4.005	3.66	4.000
1	7	C 7/1/94)	265.40	530.80	2654.00	5308.00	26.54	53.08	106.16	4.003	3.66	4.000
1	8	C 8/1/94)	266.20	532.40	2662.00	5324.00	26.62	53.24	106.48	4.001	4.55	4.000
1	9	C 9/1/94)	267.20	534.40	2672.00	5344.00	26.72	53.44	106.88	4.003	3.62	4.000
1	10	C 10/1/94)	268.000	536.00	2680.00	5360.00	26.80	53.60	107.20	4.001	3.60	4.000
1	11	C 11/1/94)	269.000	538.00	2690.00	5380.00	26.90	53.80	107.60	4.004	3.60	4.000
2	0	C 12/1/94)	269.80	539.60	2698.00	5396.00	26.98	53.96	107.92	4.002	4.49	4.000
2	1	C 1/1/95)	270.80	541.60	2708.00	5416.00	27.08	54.16	108.32	4.004	3.57	4.000
2	2	C 2/1/95)	271.60	543.20	2716.00	5432.00	27.16	54.32	108.64	4.002	4.46	4.000
2	3	C 3/1/95)	272.60	545.20	2726.00	5452.00	27.26	54.52	109.04	4.003	3.55	4.000
2	4	C 4/1/95)	273.40	546.80	2734.00	5468.00	27.34	54.68	109.36	4.002	4.43	4.000
2	5	C 5/1/95)	274.40	548.80	2744.00	5488.00	27.44	54.88	109.76	4.003	3.52	4.000
2	6	C 6/1/95)	275.20	550.40	2752.00	5504.00	27.52	55.04	110.08	4.002	3.40	4.000
2	7	C 7/1/95)	276.20	552.40	2762.00	5524.00	27.62	55.24	110.48	4.003	3.50	4.000
2	8	C 8/1/95)	277.000	554.00	2770.00	5540.00	27.70	55.40	110.80	4.001	4.37	4.000
2	9	C 9/1/95)	278.000	556.00	2780.00	5560.00	27.80	55.60	111.20	4.000	3.48	4.000
2	10	C 10/1/95)	278.80	557.60	2788.00	5576.00	27.88	55.76	111.52	4.000	4.33	4.000
2	11	C 11/1/95)	279.80	559.60	2798.00	5596.00	27.98	55.96	111.92	4.001	3.44	4.000
3	0	C 12/1/95)	280.80	561.60	2808.00	5616.00	28.08	56.16	112.32	4.002	4.33	4.000
3	1	C 1/1/96)	281.60	563.20	2816.00	5632.00	28.16	56.32	112.64	4.002	3.44	4.000
3	2	C 2/1/96)	282.60	565.20	2826.00	5652.00	28.26	56.52	113.04	4.002	4.30	4.000
3	3	C 3/1/96)	283.60	567.20	2836.00	5672.00	28.36	56.72	113.44	4.002	3.41	4.000
3	4	C 4/1/96)	284.40	568.80	2844.00	5688.00	28.44	56.88	113.76	4.001	4.26	4.000
3	5	C 5/1/96)	285.40	570.80	2854.00	5708.00	28.54	57.08	114.16	4.002	4.24	4.000
3	6	C 6/1/96)	286.40	572.80	2864.00	5728.00	28.64	57.28	114.56	4.002	3.38	4.000
3	7	C 7/1/96)	287.20	574.40	2872.00	5744.00	28.72	57.44	114.88	4.001	4.21	4.000
3	8	C 8/1/96)	288.20	576.40	2882.00	5764.00	28.82	57.64	115.28	4.001	4.20	4.000
3	9	C 9/1/96)	289.20	578.40	2892.00	5784.00	28.92	57.84	115.68	4.001	4.19	4.000
3	10	C 10/1/96)	290.20	580.40	2902.00	5804.00	29.02	58.04	116.08	4.002	3.33	4.000
3	11	C 11/1/96)	291.000	582.000	2910.00	5820.00	29.100	58.20	116.40	4.000	4.16	4.000
4	0	C 12/1/96)	292.000	584.000	2920.00	5840.00	29.200	58.40	116.80	4.000	4.14	4.000
4	1	C 1/1/97)	293.000	586.000	2930.00	5860.00	29.300	58.60	117.20	4.000	4.13	4.000
4	2	C 2/1/97)	294.000	588.000	2940.00	5880.00	29.400	58.80	117.60	4.000	4.12	4.000
4	3	C 3/1/97)	295.000	590.000	2950.00	5900.00	29.500	59.00	118.000	4.000	4.10	4.000
4	4	C 4/1/97)	296.000	592.000	2960.00	5920.00	29.600	59.20	118.400	4.000	4.09	4.000
4	5	C 5/1/97)	297.00	594.00	2970.00	5940.00	29.70	59.40	118.80	4.02	3.25	4.000
4	6	C 6/1/97)										
4	7	C 7/1/97)										

A/

| ISSUE PRICE | | |

ISSUE PRICE	$250.00	$500.00	$2500.00	$ 5000.00	APPROXIMATE INVESTMENT YIELD
MATURITY VALUE	510.00	1020.00	5100.00	10200.00	(ANNUAL PERCENTAGE RATE)

(YEARS AND MONTHS AFTER ISSUE) — PERIOD

					(2)FROM ISSUE DATE TO START OF PERIOD	(3)DURING EACH PERIOD	(4)FROM START OF PERIOD TO MATURITY
9- 0 TO 9- 1	357.20	714.40	3572.00	7144.00	4.00	4.07	4.000
9- 1 TO 9- 2	358.40	716.80	3584.00	7168.00	4.000	4.05	4.000
9- 2 TO 9- 3	359.60	719.20	3596.00	7192.00	4.000	4.04	4.000
9- 3 TO 9- 4	360.80	721.60	3608.00	7216.00	4.01	4.02	3.999
9- 4 TO 9- 5	362.00	724.00	3620.00	7240.00	4.01	4.01	3.999
9- 5 TO 9- 6	363.20	726.40	3632.00	7264.00	4.01	4.00	3.999
9- 6 TO 9- 7	364.40	728.80	3644.00	7288.00	4.01	3.98	3.999
9- 7 TO 9- 8	365.60	731.20	3656.00	7312.00	4.01	3.97	3.999
9- 8 TO 9- 9	366.80	733.60	3668.00	7336.00	4.01	3.96	3.999
9- 9 TO 9- 10	368.00	736.00	3680.00	7360.00	4.000	3.95	3.999
9- 10 TO 9- 11	369.20	738.40	3692.00	7384.00	4.000	3.93	4.000
9- 11 TO 10- 0	370.40	740.80	3704.00	7408.00	4.000	3.92	4.000
10- 0 TO 10- 1	371.60	743.20	3716.00	7432.00	4.000	3.91	4.000
10- 1 TO 10- 2	372.80	745.60	3728.00	7456.00	4.000	3.89	4.000
10- 2 TO 10- 3	374.00	748.00	3740.00	7480.00	4.000	3.88	4.000
10- 3 TO 10- 4	375.20	750.40	3752.00	7504.00	4.000	3.87	4.000
10- 4 TO 10- 5	376.40	752.80	3764.00	7528.00	4.000	3.85	4.000
10- 5 TO 10- 6	377.60	755.20	3776.00	7552.00	4.000	3.84	4.000
10- 6 TO 10- 7	378.80	757.60	3788.00	7576.00	4.000	3.83	4.000
10- 7 TO 10- 8	380.00	760.00	3800.00	7600.00	4.000	3.82	4.000
10- 8 TO 10- 9	381.20	762.40	3812.00	7624.00	4.000	3.80	4.000
10- 9 TO 10- 10	382.40	764.80	3824.00	7648.00	4.000	3.79	4.000
10- 10 TO 10- 11	383.60	767.20	3836.00	7672.00	4.000	3.78	4.000
10- 11 TO 11- 0	384.80	769.60	3848.00	7696.00	4.000	3.77	4.000
11- 0 TO 11- 1	386.00	772.00	3860.00	7720.00	4.000	3.75	4.000
11- 1 TO 11- 2	387.20	774.40	3872.00	7744.00	4.000	3.74	4.000
11- 2 TO 11- 3	388.40	776.80	3884.00	7768.00	4.000	3.73	4.000
11- 3 TO 11- 4	389.60	779.20	3896.00	7792.00	4.000	3.72	4.000
11- 4 TO 11- 5	390.80	781.60	3908.00	7816.00	4.000	3.70	4.000
11- 5 TO 11- 6	392.00	784.00	3920.00	7840.00	4.000	3.69	4.000
11- 6 TO 11- 7	393.20	786.40	3932.00	7864.00	4.000	3.68	4.000
11- 7 TO 11- 8	394.40	788.80	3944.00	7888.00	4.000	3.67	4.000
11- 8 TO 11- 9	395.60	791.20	3956.00	7912.00	4.000	3.65	4.000
11- 9 TO 11- 10	396.80	793.60	3968.00	7936.00	4.000	3.64	4.000
11- 10 TO 11- 11	398.00	796.00	3980.00	7960.00	4.000	3.63	4.000
11- 11 TO 12- 0	399.20	798.40	3992.00	7984.00	4.000	3.62	4.000
12- 0 TO 12- 1	400.40	800.80	4004.00	8008.00	4.000	3.61	4.000
12- 1 TO 12- 2	401.60	803.20	4016.00	8032.00	4.000	3.59	4.000
12- 2 TO 12- 3	402.80	805.60	4028.00	8056.00	4.000	3.58	4.000
12- 3 TO 12- 4	404.00	808.00	4040.00	8080.00	4.000	3.57	4.000
12- 4 TO 12- 5	405.20	810.40	4052.00	8104.00	4.000	3.56	4.000
12- 5 TO 12- 6	406.40	812.80	4064.00	8128.00	4.000	3.55	4.000
12- 6 TO 12- 7	407.60	815.20	4076.00	8152.00	4.000	3.54	4.000
12- 7 TO 12- 8	408.80	817.60	4088.00	8176.00	4.000	3.53	4.000
12- 8 TO 12- 9	410.00	820.00	4100.00	8200.00	4.000	3.52	4.000
12- 9 TO 12- 10	411.20	822.40	4112.00	8224.00	4.000	3.51	4.000
12- 10 TO 12- 11	412.40	824.80	4124.00	8248.00	4.000	3.50	4.000
12- 11 TO 13- 0	413.60	827.20	4136.00	8272.00	4.000	3.49	4.000
13- 0 TO 13- 1	414.80	829.60	4148.00	8296.00	4.000	3.48	4.000
13- 1 TO 13- 2	416.00	832.00	4160.00	8320.00	4.000	3.47	4.000
13- 2 TO 13- 3	417.20	834.40	4172.00	8344.00	4.000	3.46	4.000
13- 3 TO 13- 4	418.40	836.80	4184.00	8368.00	4.000	3.45	4.000
13- 4 TO 13- 5	419.60	839.20	4196.00	8392.00	4.000	3.44	4.000
13- 5 TO 13- 6	420.80	841.60	4208.00	8416.00	4.000	3.43	4.000
13- 6 TO 13- 7	422.00	844.00	4220.00	8440.00	4.000	3.42	4.000

ISSUE PRICE	$25.00	$37.50	$50.00	$100.00
MATURITY VALUE	51.00	76.50	102.00	204.00

(1) REDEMPTION VALUES DURING EACH PERIOD
FIRST DAY OF PERIOD

(3/1/02)	35.72	53.58	71.44	142.88
(4/1/02)	35.84	53.76	71.68	143.36
(5/1/02)	35.96	53.94	71.92	143.84
(6/1/02)	36.08	54.12	72.16	144.32
(7/1/02)	36.20	54.30	72.40	144.80
(8/1/02)	36.32	54.48	72.64	145.28
(9/1/02)	36.44	54.66	72.88	145.76
(10/1/02)	36.56	54.84	73.12	146.24
(11/1/02)	36.68	55.02	73.36	146.72
(12/1/02)	36.80	55.20	73.60	147.20
(1/1/03)	36.92	55.38	73.84	147.68
(2/1/03)	37.04	55.56	74.08	148.16
(3/1/03)	37.16	55.74	74.32	148.64
(4/1/03)	37.28	55.92	74.56	149.12
(5/1/03)	37.40	56.10	74.80	149.60
(6/1/03)	37.52	56.28	75.04	150.08
(7/1/03)	37.66	56.49	75.32	150.64
(8/1/03)	37.78	56.67	75.56	151.12
(9/1/03)	37.90	56.85	75.80	151.60
(10/1/03)	38.02	57.03	76.04	152.08
(11/1/03)	38.16	57.24	76.32	152.64
(12/1/03)	38.28	57.42	76.56	153.12
(1/1/04)	38.40	57.60	76.80	153.60
(2/1/04)	38.54	57.81	77.08	154.16
(3/1/04)	38.66	57.99	77.32	154.64
(4/1/04)	38.78	58.17	77.56	155.12
(5/1/04)	38.92	58.38	77.84	155.68
(6/1/04)	39.04	58.56	78.08	156.16
(7/1/04)	39.18	58.77	78.36	156.72
(8/1/04)	39.30	58.95	78.60	157.20
(9/1/04)	39.44	59.16	78.88	157.76
(10/1/04)	39.56	59.34	79.12	158.24
(11/1/04)	39.70	59.55	79.40	158.80
(12/1/04)	39.82	59.73	79.64	159.28
(1/1/05)	39.96	59.94	79.92	159.84
(2/1/05)	40.08	60.12	80.16	160.32
(3/1/05)	40.22	60.33	80.44	160.88
(4/1/05)	40.36	60.54	80.72	161.44
(5/1/05)	40.48	60.72	80.96	161.92
(6/1/05)	40.62	60.93	81.24	162.48
(7/1/05)	40.76	61.14	81.52	163.04
(8/1/05)	40.90	61.35	81.80	163.60
(9/1/05)	41.02	61.53	82.04	164.08
(10/1/05)	41.16	61.74	82.32	164.64
(11/1/05)	41.30	61.95	82.60	165.20
(12/1/05)	41.44	62.16	82.88	165.76
(1/1/06)	41.58	62.37	83.16	166.32
(2/1/06)	41.70	62.55	83.40	166.80
(3/1/06)	41.84	62.76	83.68	167.36
(4/1/06)	41.98	62.97	83.96	167.92
(5/1/06)	42.12	63.18	84.24	168.48
(6/1/06)	42.26	63.39	84.52	169.04
(7/1/06)	42.40	63.60	84.80	169.60
(8/1/06)	42.54	63.81	85.08	170.16
(9/1/06)	42.68	64.02	85.36	170.72

ISSUE PRICE		$25.00	$37.50	$50.00	$100.00	$250.00	$500.00	$2500.00	$ 5000.00	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
MATURITY VALUE		51.00	76.50	102.00	204.00	510.00	1020.00	5100.00	10200.00			
PERIOD (YEARS AND MONTHS AFTER ISSUE)		(1) REDEMPTION VALUES DURING EACH PERIOD (VALUES INCREASE ON FIRST DAY OF PERIOD)								(2)FROM ISSUE DATE TO START OF PERIOD	(3)DURING EACH PERIOD	(4)FROM START OF PERIOD TO MATURITY
										PERCENT	PERCENT	PERCENT
13- 7 TO 13- 8	(10/1/06)	42.82	64.23	85.64	171.28	428.20	856.40	4282.00	8564.00	4.00	3.96	4.00
13- 8 TO 13- 9	(11/1/06)	42.96	64.44	85.92	171.84	429.60	859.20	4296.00	8592.00	4.00	3.94	4.00
13- 9 TO 13-10	(12/1/06)	43.10	64.65	86.20	172.40	431.00	862.00	4310.00	8620.00	4.00	3.93	4.00
13-10 TO 13-11	(1/1/07)	43.24	64.86	86.48	172.96	432.40	864.80	4324.00	8648.00	4.00	4.48	4.00
13-11 TO 14- 0	(2/1/07)	43.40	65.10	86.80	173.60	434.00	868.00	4340.00	8680.00	4.00	3.90	3.99
14- 0 TO 14- 1	(3/1/07)	43.54	65.31	87.08	174.16	435.40	870.80	4354.00	8708.00	4.00	3.89	3.99
14- 1 TO 14- 2	(4/1/07)	43.68	65.52	87.36	174.72	436.80	873.60	4368.00	8736.00	4.00	3.88	4.00
14- 2 TO 14- 3	(5/1/07)	43.82	65.73	87.64	175.28	438.20	876.40	4382.00	8764.00	4.00	3.86	4.00
14- 3 TO 14- 4	(6/1/07)	43.96	65.94	87.92	175.84	439.60	879.20	4396.00	8792.00	4.00	4.41	4.00
14- 4 TO 14- 5	(7/1/07)	44.12	66.18	88.24	176.48	441.20	882.40	4412.00	8824.00	4.00	3.84	3.99
14- 5 TO 14- 6	(8/1/07)	44.26	66.39	88.52	177.04	442.60	885.20	4426.00	8852.00	4.00	3.83	4.00
14- 6 TO 14- 7	(9/1/07)	44.40	66.60	88.80	177.60	444.00	888.00	4440.00	8880.00	4.00	4.36	4.00
14- 7 TO 14- 8	(10/1/07)	44.56	66.84	89.12	178.24	445.60	891.20	4456.00	8912.00	4.00	3.80	3.99
14- 8 TO 14- 9	(11/1/07)	44.70	67.05	89.40	178.80	447.00	894.00	4470.00	8940.00	4.00	3.79	3.99
14- 9 TO 14-10	(12/1/07)	44.84	67.26	89.68	179.36	448.40	896.80	4484.00	8968.00	4.00	4.32	4.00
14-10 TO 14-11	(1/1/08)	45.00	67.50	90.00	180.00	450.00	900.00	4500.00	9000.00	4.00	3.76	3.99
14-11 TO 15- 0	(2/1/08)	45.14	67.71	90.28	180.56	451.40	902.80	4514.00	9028.00	4.00	4.29	4.00
15- 0 TO 15- 1	(3/1/08)	45.30	67.95	90.60	181.20	453.00	906.00	4530.00	9060.00	4.00	3.74	3.99
15- 1 TO 15- 2	(4/1/08)	45.44	68.16	90.88	181.76	454.40	908.80	4544.00	9088.00	4.00	4.26	4.00
15- 2 TO 15- 3	(5/1/08)	45.60	68.40	91.20	182.40	456.00	912.00	4560.00	9120.00	4.00	3.71	3.99
15- 3 TO 15- 4	(6/1/08)	45.74	68.61	91.48	182.96	457.40	914.80	4574.00	9148.00	4.00	4.23	4.00
15- 4 TO 15- 5	(7/1/08)	45.90	68.85	91.80	183.60	459.00	918.00	4590.00	9180.00	4.00	3.69	3.99
15- 5 TO 15- 6	(8/1/08)	46.04	69.06	92.08	184.16	460.40	920.80	4604.00	9208.00	4.00	4.21	4.00
15- 6 TO 15- 7	(9/1/08)	46.20	69.30	92.40	184.80	462.00	924.00	4620.00	9240.00	4.00	4.19	3.99
15- 7 TO 15- 8	(10/1/08)	46.36	69.54	92.72	185.44	463.60	927.20	4636.00	9272.00	4.00	3.65	3.99
15- 8 TO 15- 9	(11/1/08)	46.50	69.75	93.00	186.00	465.00	930.00	4650.00	9300.00	4.00	4.16	4.00
15- 9 TO 15-10	(12/1/08)	46.66	69.99	93.32	186.64	466.60	933.20	4666.00	9332.00	4.00	4.15	3.99
15-10 TO 15-11	(1/1/09)	46.82	70.23	93.64	187.28	468.20	936.40	4682.00	9364.00	4.00	3.62	3.99
15-11 TO 16- 0	(2/1/09)	46.96	70.44	93.92	187.84	469.60	939.20	4696.00	9392.00	4.00	4.12	4.00
16- 0 TO 16- 1	(3/1/09)	47.12	70.68	94.24	188.48	471.20	942.40	4712.00	9424.00	4.00	4.11	4.00
16- 1 TO 16- 2	(4/1/09)	47.28	70.92	94.56	189.12	472.80	945.60	4728.00	9456.00	4.00	4.10	3.99
16- 2 TO 16- 3	(5/1/09)	47.44	71.16	94.88	189.76	474.40	948.80	4744.00	9488.00	4.00	4.08	3.99
16- 3 TO 16- 4	(6/1/09)	47.60	71.40	95.20	190.40	476.00	952.00	4760.00	9520.00	4.00	3.56	3.98
16- 4 TO 16- 5	(7/1/09)	47.76	71.61	95.48	190.96	477.40	954.80	4774.00	9548.00	4.00	4.06	4.00
16- 5 TO 16- 6	(8/1/09)	47.90	71.85	95.80	191.60	479.00	958.00	4790.00	9580.00	4.00	4.04	4.00
16- 6 TO 16- 7	(9/1/09)	48.06	72.09	96.12	192.24	480.60	961.20	4806.00	9612.00	4.00	4.03	4.00
16- 7 TO 16- 8	(10/1/09)	48.22	72.33	96.44	192.88	482.20	964.40	4822.00	9644.00	4.00	4.01	4.00
16- 8 TO 16- 9	(11/1/09)	48.38	72.57	96.76	193.52	483.80	967.60	4838.00	9676.00	4.00	4.00	3.99
16- 9 TO 16-10	(12/1/09)	48.54	72.81	97.08	194.16	485.40	970.80	4854.00	9708.00	4.00	3.99	3.99
16-10 TO 16-11	(1/1/10)	48.70	73.05	97.40	194.80	487.00	974.00	4870.00	9740.00	4.00	3.98	3.99
16-11 TO 17- 0	(2/1/10)	48.86	73.29	97.72	195.44	488.60	977.20	4886.00	9772.00	4.00	3.96	4.00
17- 0 TO 17- 1	(3/1/10)	49.02	73.53	98.04	196.08	490.20	980.40	4902.00	9804.00	4.00	3.95	4.00
17- 1 TO 17- 2	(4/1/10)	49.18	73.77	98.36	196.72	491.80	983.60	4918.00	9836.00	4.00	4.43	4.00
17- 2 TO 17- 3	(5/1/10)	49.36	74.04	98.72	197.44	493.60	987.20	4936.00	9872.00	4.00	3.92	3.96
17- 3 TO 17- 4	(6/1/10)	49.52	74.28	99.04	198.08	495.20	990.40	4952.00	9904.00	4.00	3.91	3.97
17- 4 TO 17- 5	(7/1/10)	49.68	74.52	99.36	198.72	496.80	993.60	4968.00	9936.00	4.00	3.90	3.97
17- 5 TO 17- 6	(8/1/10)	49.84	74.76	99.68	199.36	498.40	996.80	4984.00	9968.00	4.00	3.88	3.98
17- 6 TO 17- 7	(9/1/10)	50.00	75.00	100.00	200.00	500.00	1000.00	5000.00	10000.00	4.00	4.36	4.00
17- 7 TO 17- 8	(10/1/10)	50.18	75.27	100.36	200.72	501.80	1003.60	5018.00	10036.00	4.00	3.86	3.93
17- 8 TO 17- 9	(11/1/10)	50.34	75.51	100.68	201.36	503.40	1006.80	5034.00	10068.00	4.00	3.84	3.95
17- 9 TO 17-10	(12/1/10)	50.50	75.75	101.00	202.00	505.00	1010.00	5050.00	10100.00	4.00	4.32	3.98
17-10 TO 17-11	(1/1/11)	50.68	76.02	101.36	202.72	506.80	1013.60	5068.00	10136.00	4.00	3.82	3.81
17-11 TO 18- 0	(2/1/11)	50.84	76.26	101.68	203.36	508.40	1016.80	5084.00	10168.00	4.00	3.81	3.81
18- 0 2/	(8/1/11)	51.00	76.50	102.00	204.00	510.00	1020.00	5100.00	10200.00	4.00		

1/ MONTH, DAY, AND YEAR ON WHICH ISSUES OF MARCH 1, 1993 ENTER EACH PERIOD. FOR SUBSEQUENT ISSUE MONTHS ADD THE APPROPRIATE NUMBER OF MONTHS.
2/ MATURITY VALUE IS REACHED 18 YEARS AND 0 MONTHS AFTER ISSUE DATE.

A/ THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES BEFORE FIVE YEARS AFTER ISSUE ARE THOSE ESTABLISHED UNDER SECTION 351.2(e) OF THIS CIRCULAR.
B/ THE REDEMPTION VALUES AND INVESTMENT YIELDS SHOWN FOR INTEREST ACCRUAL DATES FIVE YEARS AFTER ISSUE AND THEREAFTER REPRESENT THE MINIMUM GUARANTEED INVESTMENT YIELDS PROVIDED BY SECTION 351.2(e)(1) OF THIS CIRCULAR. THESE REDEMPTION VALUES WILL APPLY UNLESS APPLICATION OF THE VARIABLE RATE PRESCRIBED UNDER SECTION 351.2(e)(2) PRODUCES A HIGHER REDEMPTION VALUE.

BILLING CODE 4810-39-C

PART 352—OFFERING OF UNITED STATES SAVINGS BONDS, SERIES HH

11. The authority citation for part 352 continues to read as follows:

Authority: 31 U.S.C. 3105, 5 U.S.C. 301.

§ 352.0 [Amended]

12. In § 352.0, the words "October 1, 1989," are removed and the words "March 1, 1993," are added.

13. Section 352.2 is amended as follows:

A. Current paragraphs (e)(1)(i) through (e)(1)(vi) are redesignated paragraphs (e)(1)(ii) through (e)(1)(vii).

B. New paragraph (e)(1)(i) is added, and redesignated paragraph (e)(1)(ii) is revised, to read as set forth below.

C. In paragraph (e)(1), wherever the word "compounded" is found, it should be removed and the word "paid", is added.

D. Paragraph (e)(2) is revised to read as set forth below.

§ 352.2 Description of bonds.

* * * * *

(e) * * *

(1) * * *

(i) *Current offering.* Series HH bonds issued on or after March 1, 1993, yield 4 percent per annum, paid semiannually, to original maturity. See Table 1 in the Appendix to this Circular.

(ii) *Bonds with issue dates of November 1, 1986, through February 1, 1993.* Series HH bonds with issue dates of November 1, 1986, through February 1, 1993, yield 6 percent per annum, paid semiannually, to original maturity.

* * * * *

(2) *During extended maturity.* The investment yield during the 10-year extended maturity period authorized for Series HH bonds is 4 percent per annum, paid semiannually, unless changed prior to the beginning of such period, for any Series HH bond that entered or enter such period on or after March 1, 1993; and, 6 percent per annum, paid semiannually, for any Series HH bond that entered into such period from January 1, 1990, through February 1, 1993.

* * * * *

14. The Table at the end of part 352 is revised to read as follows:

BILLING CODE 4810-39-P

TABLE 1

HH BONDS BEARING ISSUE DATES BEGINNING MARCH 1, 1993

ISSUE PRICE	$500	$1,000	$5,000	$10,000	APPROXIMATE INVESTMENT YIELD (ANNUAL PERCENTAGE RATE)		
REDEMPTION AND MATURITY VALUE 1/	500	1,000	5,000	10,000			
PERIOD OF TIME BOND IS HELD AFTER ISSUE DATE	(1) AMOUNTS OF INTEREST PAYMENTS FOR EACH DENOMINATION				(2) FROM ISSUE TO EACH INTEREST PAYMENT DATE	(3) FOR HALF-YEAR PERIOD PRECEDING INTEREST PAYMENT DATE	(4) FROM EACH INTEREST PAYMENT DATE TO MATURITY
					PERCENT	PERCENT	PERCENT
0.5 YEARS	$10.00	$20.00	$100.00	$200.00	4.00	4.00	4.00
1.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
1.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
2.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
2.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
3.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
3.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
4.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
4.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
5.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
5.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
6.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
6.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
7.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
7.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
8.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
8.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
9.0 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
9.5 YEARS	10.00	20.00	100.00	200.00	4.00	4.00	4.00
10.0 YEARS 2/	10.00	20.00	100.00	200.00	4.00	4.00	----

1/ AT ALL TIMES, EXCEPT THAT BOND IS NOT REDEEMABLE DURING FIRST 6 MONTHS.
2/ MATURITY REACHED AT 10 YEARS AND 0 MONTHS AFTER ISSUE DATE.

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Thursday
November 18, 1993

Part V

Environmental Protection Agency

40 CFR Parts 72 and 73
Acid Rain Program: Permits and Allowance System; Proposed Regulations

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72 and 73

[FRL–4600–4]

RIN 2060–AD40 and AD46

Acid Rain Program: Permits and Allowance System

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed regulations and notice of public hearing.

SUMMARY: Title IV of the Clean Air Act, as amended by Public Law 101–549, the Clean Air Act Amendments of 1990 (the Act), authorizes the Environmental Protection Agency (EPA or Agency) to establish the Acid Rain Program to reduce the adverse effects of acidic deposition. On January 11, 1993, the Agency promulgated final rules implementing the program. The instant notice includes proposed revisions of rules that implement sections 404 (b) and (c) (Phase I substitution plans) and 408(c)(1)(B) (reduced utilization plans) of the Act.

EPA has determined that the existing rules can be read to give utilities an ability to use substitution and reduced utilization plans to create excess, new allowances. These allowances—potentially 200,000 allowances per year in Phase I—will authorize emissions in excess of total emissions without the plans and will result from emission reductions made, or required by federal or State law adopted, before enactment of title IV of the Act. This creation of allowances can compromise the achievement of the sulfur dioxide emissions reductions intended under title IV and is contrary to the statutory purposes of sections 404 (b) and (c) and 408(c)(1)(B).

Consequently, EPA is proposing today to modify sections of part 72 of the January 11, 1993 regulations, implementing substitution and reduced utilization plans and allowance surrender related to reduced utilization, and to make minor changes to part 73. The intended effect of the proposed modifications is to prevent the use of substitution and reduced utilization plans to create excess, new allowances.

DATES: *Comments.* Comments on the regulations proposed by this action must be received on or before January 3, 1994, except as provided below in connection with the public hearing. The request for comments is strictly limited to the matters addressed in this proposal. The Agency will deem irrelevant, and will not respond to, any comments pertaining to other aspects of the Acid Rain Program.

Public Hearing. The Agency will hold a public hearing, strictly limited to the matters addressed in the proposal, on December 3, 1993. The hearing will begin at 12:30 p.m., with registration at 12:15 p.m. Requests to schedule oral testimony must be received by the Acid Rain Division at (202) 233–9077 on or before November 26, 1993. Persons must restrict oral presentations to 10 minutes and may submit written copies of their complete comments. The record of the public hearing will be kept open until January 3, 1994 to allow submission of written information that rebuts or supplements the information presented at the public hearing.

ADDRESSES: *Comments.* All written comments (including those submitted in connection with the hearing) must be identified with the appropriate docket number and must be submitted in duplicate to: EPA Air Docket Section (LE–131), Attention, Docket No. A–93–40, Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Hearing. The Agency will hold the December 3, 1993 public hearing at the EPA Education Center, Waterside Mall, 401 M Street, SW., Washington DC 20460.

Docket. Docket No. A–93–40, containing supporting information used to develop the proposal and copies of all comments received, is available for public inspection and copying from 8:30 a.m. to 12 p.m. and 1 p.m. to 3:30 p.m., Monday through Friday, excluding legal holidays, at EPA's Air Docket Section in room 1500, first floor at 401 M Street, SW., Washington DC 20460.

FOR FURTHER INFORMATION CONTACT: Dwight C. Alpern, Attorney-advisor, at (202) 233–9151, Acid Rain Division (6204J), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, or the Acid Rain Hotline at (202) 233–9620.

SUPPLEMENTARY INFORMATION: The contents of the preamble to the proposed rule are as follows:

I. Statutory Purposes of Substitution and Reduced Utilization Provisions
II. January 11, 1993 Regulations
III. Need to Modify January 11, 1993 Regulations
A. January 11, 1993 regulations can be read to give utilities ability to bring Phase II units into Phase I in order to create excess, new allowances
B. Under January 11, 1993 regulations, entry of Phase II units into Phase I can compromise emissions reduction goals of title IV
C. Other statutory provisions support limiting entry of Phase II units into Phase I and creation of new allowances
IV. Proposed Modifications of January 11, 1993 Regulations
A. Substitution Plans
1. Limiting allowances allocated to each substitution unit
a. Emissions rate used to allocate allowances
b. Utilization used to allocate allowances
2. Limiting number of substitution units
3. Requiring common owner or operator
4. Other changes
B. Reduced Utilization Plans
1. Option 1: end-of-year review of need for compensating units
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b. Limiting number of compensating units
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2. Option 2: limiting units that can qualify as compensating units
V. Applicability of Rule Revisions to Existing Permit Applications
VI. Administrative Requirements
A. Executive Order 12291 and Regulatory Flexibility Act
B. Paperwork Reduction Act

I. Statutory Purposes of Substitution and Reduced Utilization Provisions

The provisions in sections 404 (b) and (c) and 408(c)(1)(B) of the Act concerning substitution and reduced utilization plans have specific statutory purposes related to the achievement of the sulfur dioxide emissions reduction goals of title IV. Upon reflection, the Agency believes that Congress did not intend that these provisions provide utilities an ability to create excess, new allowances by bringing Phase II units into Phase I. Because the January 11, 1993 regulations implementing these provisions can be read to allow the creation of potentially 200,000 excess, new allowances per year in Phase I, the Agency proposes to revise the regulations to ensure that this does not occur.

Congress established substitution plans as a compliance option to "expand the compliance flexibility" of the unit specified in Table A of section 404 as required to reduce emissions in Phase I. Senate Rep. No. 101–228, 101st Cong., 1st Sess. at 327 (Dec. 20, 1989). The purpose of a substitution plan is to allow a Table A unit (i.e., a unit listed in Table A) to reassign all or part of such reduction obligation to a non-Table A unit under the owner's or operator's control. *Id.* at 307 and 327–8. With this reassignment or "emissions reduction trading," the non-Table A unit will make emissions reductions in lieu of the Table A unit. *Id.* at 328. The non-Table A unit's reduction will free up allowances for the Table A unit that is not making the reductions. The

substitution will be requested presumably because the non-Table A unit can reduce emissions at a lower cost than the Table A unit. Thus, the purpose of substitution plans is to increase flexibility and reduce the overall costs of compliance in Phase I while still achieving the emissions reductions intended by Congress under title IV.

The requirement that the intended emissions reductions still be achieved is stated plainly in section 404(b)(5) of the Act. That section requires that, in approving a substitution plan, the Administrator ensure that the substitution results in total emissions reductions at least equal to the total reductions that otherwise "would have been achieved" by these Table A and non-Table A units "without such substitution." 42 U.S.C. 7651c(b)(5); see also Senate Rep. No. 101–228 at 328. In short, the substitution provision is intended to provide an alternative means of achieving Phase I reductions, not a mechanism for creating excess, new allowances and avoiding emission reductions.

The provision for reduced utilization plans has a statutory purpose that is also aimed at ensuring realization of emission reductions. Congress recognized that the potential for circumvention of emission limitation requirements exists because in Phase I only a minority of all utility units are subject to such requirements. A utility could circumvent the required reductions "simply by utilizing an affected unit less and an [sic] unit with no tonnage limitations in its place." Senate Rep. No. 101–228 at 334. Such load-shifting "would not yield a true net reduction in emissions: whatever emissions were avoided from the first [Phase I] unit would only occur at the second [e.g., a Phase II unit]." *Id.* While the Phase II unit would not have to use up allowances for its increased emissions, the Phase I unit would use up fewer allowances. Since there would be more unused allowances available to authorize future emissions in Phase I or Phase II, this "practice, if unchecked [,] could [] frustrate the emissions reduction objectives of the program." *Id.*

In section 408(c)(1)(B), Congress adopted the solution of requiring owners and operators of any Phase I unit that, for compliance purposes, propose reducing utilization of the unit below 1985–87 utilization (i.e., its baseline) to submit a reduced utilization plan. 42 U.S.C. 7651g(c)(1)(B). In such a plan, the owners and operators must specify "the unit or units that will provide electrical generation to compensate for the reduced output" at the Phase I unit or demonstrate that the reduced utilization "will be accomplished through energy conservation or improved unit efficiency." *Id.* The Administrator approves or disapproves each plan after determining whether it meets the requirements of title IV. 42 U.S.C. 7651g(c)(2). These requirements include, of course, achievement of the full amount of sulfur dioxide emissions reductions intended under the Acid Rain Program.

Each compensating unit designated in an approved plan becomes subject to all requirements for Phase I units with regard to sulfur dioxide, including the emissions limitations, and is allocated allowances equal to that unit's baseline times the lesser of the 1985 actual or allowable emissions rate for the unit. Congress made compensating units subject to Phase I in order to:

> Ensure that total emissions from the initially affected units and the units to which the production is shifted together equal no greater amount of emissions than would have occurred at the affected unit had it reduced emissions without load-shifting * * *
>
> In enforcing this provision, the Administrator should consider any pattern or practice that is counter to the intent of section 404 and this title. Shifting load use, e.g., from a baseload to a peak load unit, without accounting for the emissions consequences of increasing use at another unit is not an acceptable compliance strategy * * *.

Senate Rep. No. 101–228 at 334. Thus, like the substitution provisions, the provisions for designating compensating units in a reduced utilization plan are intended to both allow flexibility in compliance and protect the emission reduction goals of title IV by requiring that such a plan not result in more emissions than would occur in the absence of the plan.

II. January 11, 1993 Regulations

On January 11, 1993, EPA promulgated regulations that implemented the major provisions of title IV, including the substitution and reduced utilization provisions. Under § 72.41 of the January 11, 1993 regulations, the designated representative for a unit on Table A (which covers the same units as Table 1 of § 73.10(a)) may include in the Phase I permit application a substitution plan designating, as substitution units, one or more existing units that are Phase II units not on Table A. 40 CFR 72.41(b). There is no express requirement that the substitution unit make reductions in addition to those that it would have made without the plan or actually provide allowances for the Table A unit. Moreover, there is no express limit on the number of substitution units that a Table A unit may designate. Thus, the regulations can be read to allow substitution plans that, with few limitations, bring Phase II units into Phase I in a manner that creates excess, new allowances. See 58 FR 3600.

Section 72.43 of the January 11, 1993 regulations requires that the designated representative for a Phase I unit submit a reduced utilization plan under certain circumstances. A plan must be submitted if the owners and operators of the unit plan to reduce utilization of the unit below its baseline for purposes of complying with Phase I emissions limitations and to accomplish this by shifting generation to a non-Phase I unit or to a sulfur-free generator or by using energy conservation or improved unit efficiency measures. 40 CFR 72.43(b). However, the regulation establishes broad exceptions to the requirement to submit a plan. For example, where underutilization is caused by system sales decline, forced outage, or economic dispatching, a plan is not required. 40 CFR 72.43(e). Instead, §§ 72.91 and 72.92 require allowances to be surrendered to the extent a Phase I unit is underutilized and shifts generation to a non-Phase I unit.

Once a reduced utilization plan is approved (or a conditionally approved plan is activated), § 72.43 does not expressly require termination of the plan for years during which the Phase I unit does not actually have any reduced utilization or the compensating unit does not actually provide any compensating generation to the Phase I unit. Moreover, there is no express limit on the number of compensating units that a Phase I unit may designate and no express bar on a compensating unit itself designating a compensating unit. (However, the designation of a large number of compensating units or a compensating unit's designation of its own compensating unit or a sulfur-free generator might throw into question the validity of the Phase I unit's reduced utilization plan.) Thus, as with substitution plans, the regulations can be read to allow utilities to use reduced utilization plans that, with few limitations, bring Phase II units into Phase I and create excess, new allowances.

Under the current regulations, early entry of Phase II units through substitution or reduced utilization plans can create excess, new allowances: i.e., allowances that would not otherwise be available and that reflect reductions that would occur in the absence of the plans. For each year that a plan remains in effect, each substitution or

compensating unit under the plan becomes a Phase I unit allocated a number of allowances equal to the unit's baseline times the lesser of the 1985 actual or allowable emissions rate for the unit. See 40 CFR 72.41(c)(3) and (d) and 72.43(c)(4)(ii) and (d). Since there is no cap on total allowances in Phase I, the allocations to substitution and compensating units do not reduce the allowances already allocated to Phase I units. Moreover, a substitution or compensating unit that reduces its emissions rate after 1985 for reasons other than the reduction requirements and allowance trading under title IV may receive a Phase I allowance allocation significantly in excess of what its emissions would have been in Phase I in the absence of the plan. For example, before the enactment of title IV, some units had reduced emissions rates for economic reasons and some States had already enacted laws requiring their utilities to reduce emissions rates prior to Phase II; all such reductions have taken, or will take, place for reasons independent of the substitution and reduced utilization provisions of title IV.

To provide allowances—potentially 200,000 allowances per year in Phase I—for emissions reductions that would occur in the absence of these compliance options under title IV will create excess authorizations to emit sulfur dioxide. As discussed below, this can compromise achievement of the emissions reductions that Congress intended to result from title IV.

III. Need to Modify January 11, 1993 Regulations

Beginning in February 1993, EPA received Phase I permit applications covering all 263 Table A units. These applications included many substitution and reduced utilization plans proposing to designate a total of 250 Phase II units as substitution and compensating units. Further, on March 12, 1993, petitions for judicial review of the January 11, 1993 regulations were filed with the U.S. Court of Appeals for the District of Columbia Circuit. Three of the petitioners raised issues concerning, inter alia, substitution and reduced utilization plans. On May 21, 1993, some of the petitioners also submitted to EPA a petition for reconsideration of the reduced utilization provisions of the regulations. Based in large part on its review of the permit applications, the reconsideration motion, and issues raised by the petitioners in litigation, the Agency is proposing to modify the January 11, 1993 regulations implementing substitution and reduced utilization plans.[1]

A. January 11, 1993 Regulations Can Be Read To Give Utilities Ability To Bring Phase II Units Into Phase I in Order To Create Excess, New Allowances

The Agency is concerned that the current regulations can be read to give utilities an ability to use substitution and reduced utilization plans to bring selected Phase II units into Phase I and create excess, new allowances. Moreover, the number of new allowances created may greatly exceed the number needed by those Phase II units to cover their emissions in the absence of the plans. This result does not appear to be consistent with the statutory purposes of the substitution and reduced utilization provisions. The potential number of excess, new allowances can be sufficient to compromise achievement of the emissions reductions intended by Congress under title IV. This prospect is highlighted by the large number of substitution and compensating unit designations that have already been submitted in permit applications. EPA's review of these submissions indicates that approval of such designations for the full five years of Phase I would result in the creation of excess, new allowances. The Agency is therefore proposing to modify the regulations in order to ensure that these compliance options are used in a manner consistent with Congressional intent.

Several factors give rise to this problem. First, the current regulations can be read to give utilities a largely unlimited ability to bring selected Phase II units into Phase I. A utility arguably can elect to designate Phase II units as substitution or compensating units whether or not the Phase I unit for which they are designated actually reassigns any emissions reduction obligation or reduces its utilization below baseline. To submit a reduced utilization plan, the utility must merely plan to have reduced utilization at the original Phase I unit while, for substitution plans, there are no prerequisites.

Moreover, a Phase I unit can arguably designate an unlimited number of Phase II units as substitution or compensating units. The regulations do not expressly establish any minimum amount of substitution or compensation that an individual substitution or compensating unit must provide in order to be designated in a plan. The only express limits on the number of substitution or compensating units are that the designated representatives of the units must agree to the designation of the units and, with regard to substitution plans, the Table A unit and its substitution unit must have a common owner or operator. Each designated substitution or compensating unit approved by EPA is then allocated allowances equal to its baseline times the lesser of its 1985 actual or allowable emissions rate.

Second, a utility's decision on whether to bring a given Phase II unit into Phase I as a substitution or compensating unit is largely discretionary. In the case of substitution plans, there is no requirement to designate a particular Phase II unit as a substitution unit except under very limited circumstances involving units with a common stack. See, e.g., 58 FR 3599 and 40 CFR 75.15(a)(2)(ii). In the case of reduced utilization plans, there are broad exemptions from the requirement to submit a plan. 58 FR 3605–3606.

Further, the regulations give utilities flexibility to decide, near the end of the year, whether or not a particular Phase II unit will be brought in as a substitution or compensating unit in that year. Utilities may submit substitution and reduced utilization plans for approval or conditional approval. An approved plan goes into effect for the years selected in the plan but may be terminated for a given year so long as the utility informs the Agency by 60 days (i.e., generally December 1) before the allowance transfer deadline for the year. 40 CFR 72.41(e)(3)(ii) and 72.43(e)(4)(ii). A conditionally approved plan may be activated for a given year so long as the utility informs the Agency by that same date. Thus, a utility with approved or conditionally approved plans can decide whether a Phase II unit will be a substitution or compensating unit in a given year after the utility reviews actual operating results for most of that year.

[1] Although the Agency is addressing in this proposal the concerns raised in the petition for reconsideration, it is doing so because of the significant of the issues raised and not due to any obligation under section 307(d)(7)(B) of the Act. That section would apply with regard to an objection that "was impracticable to raise" during the public comment period on the January 11, 1993 regulations or if the grounds for the objection "arose after the period for public comment (but within the time specified for judicial review)." 42 U.S.C. 7607(d)(7)(B). On July 2 and 6, 1993, the Utility Air Regulatory Group (UARG) and Ohio Edison Company (Edison) submitted comments on the petition for reconsideration. Contrary to those comments, the Agency maintains (as discussed in this proposal) that it has the authority under title IV to limit the designation of compensation units. UARG and Ohio Edison will have the opportunity, during the comment period, to present their positions and address the specific proposal presented here. The Agency will address, in the course of the rulemaking, all relevant comments.

Consequently, Phase II units will likely enter Phase I only if they will benefit from early entry, e.g., where they will create new allowances because they have actual emissions in Phase I that are lower than the allowances (i.e., baseline times 1985 actual or allowable emissions rate) they will receive as substitution or compensating units.[2] Some of the Phase II units entering Phase I may create allowances in excess of emissions because of emissions rate reductions that would not otherwise have been made in the absence of such early entry. However, entry into Phase I will also enable other Phase II units that would have reduced their emissions rate after 1985 even in the absence of such early entry (e.g., for economic reasons or due to State law) to convert these reductions into additional allowances in excess of their Phase I emissions. Phase II units with actual emissions in Phase I that exceed their allowance allocation as substitution or compensating units are less likely to voluntarily enter Phase I because they would have to obtain more allowances or reduce emissions. By remaining outside Phase I, they are free to increase their emissions until Phase II. Thus, voluntary entry into Phase I is likely to be selective: Phase II units that can create new allowances in excess of emissions are more likely to become and remain substitution or compensating units.

B. Under the January 11, 1993 Regulations, Entry of Phase II Units Into Phase I Can Compromise Emissions Reduction Goals of Title IV

The Agency estimates that if all Phase II units that reduced emissions rates between 1985 and 1991 for economic reasons or that are required to reduce emissions rates between 1985 and 1995 due to federal law (other than title IV) or State law—thus putting emissions below each unit's allowances as a substitution or compensating unit under the current rule—were to enter Phase I, about 200,000 allowances in excess of emissions without such entry would be created per year in Phase I.[3] See Calculation of Potential Impacts of Phase I Substitution Units, ICF Inc. (July 7, 1993). Additional allowances could be created by early entry of other Phase II units projected to reduce their emissions rate between 1990 and 2000 for economic reasons. However, today's proposal focuses on the allowances created by early entry of the former group of Phase II units because their new allowances result from emissions rate changes that are most reasonably viewed as reductions that would have taken place in the absence of the substitution and reduced utilization provisions of title IV.

These estimates are based on the following data for Phase II units: Baseline and 1985 actual and allowable emissions rates from the National Allowance Data Base, version 2.11 (58 FR 15720 (March 23, 1993)); 1990 actual emissions rates derived from data submitted by utilities to the Department of Energy on EIA form 767;[4] and 1995 projected emissions rates and utilization in the data base relied on by Congress in developing and passing the Act (see Senate Rep. No. 101–228 at 302). The study addressed only the excess, new allowances that could result from designating Phase II units as substitution units. However, the same Phase II units could instead be designated as compensating units and, under the January 11, 1993 rules, would be allocated allowances under the same formula. Further, because the study relied on the same 1995 projected utilization figures as were relied on by Congress in passing the Act, the study does not reflect the impact of future utility dispatch decisions that may be aimed at maximizing the creation of new allowances under the current regulations. The analysis still provides a reasonable, but conservative, estimate of the potential aggregate impact of the early entry of Phase II units that may be allowed under the current regulations.

Thus, as a result of early entry of Phase II units, 200,000 excess, new allowances may become available to affected units in Phase I and/or in Phase II and may enable such units to avoid making emissions reductions that title IV would otherwise require them to make. The excess allowances will result from emissions rate reductions that would occur at Phase II units in the absence of the substitution and reduced utilization provisions of title IV and will therefore diminish the emissions reductions that Congress intended to be achieved by virtue of title IV. In sum, under a possible reading of the regulations, the statutory substitution and reduced utilization provisions are inadvertently turned on their heads and transformed from provisions for facilitating and protecting anticipated emissions reductions under title IV into potential means of creating new allowances that can be used to avoid such reductions.

The potential magnitude of the number of excess, new allowances that may be created through substitution and reduced utilization plans is sufficient to compromise achievement of the emissions reductions that Congress expected under title IV. Congress expected the emission limitations in title IV to result in annual emissions reductions of 2.8 to 4.4 million tons in Phase I. Senate Rep. No. 101–228 at 327; Cong. Rec. S16980 (Oct. 27, 1990). The range in the annual expected reductions in Phase I was due, in large part, to uncertainty over what reductions or increases in emissions would occur at Phase II units during Phase I. With regard to Phase I units alone, the expected reductions during Phase I are more precisely known: About 2.4 million tons in 1995 and 1996; and about 3.5 million tons in 1997, 1998, and 1999. Under the current regulations, Phase I units could avoid some of these reductions by offsetting their emissions in Phase I with excess, new allowances resulting from the plans. The use of 200,000 excess, new allowances per year in Phase I would negate a significant portion (i.e., 6 to 8 percent) of the expected reductions for Phase I units.

Alternatively, banking these new allowances for use in Phase II would diminish the intended emissions reduction impact of the 8.95 million ton cap established by Congress for Phase II. The cap—which was regarded as the "centerpiece" of title IV—was adopted because, without it, Congress expected that there would be an additional 1.2 to 3 million tons of emissions per year in 2000 and up to 5 million additional tons by 2010. House Rep. No. 101–490 at 364 (May 17, 1990). Congress therefore required (with limited exceptions) that, if the total allowances allocated in Phase II exceeded the cap, EPA was to "make pro rata adjustments to reduce the total to 8.9 million" in order to guarantee that "neither extra allowances

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[2] Phase II units may also benefit from early entry because, by becoming Phase I units, they may be subject to Phase I NO_x emissions limitations and may be grandfathered under any future action by EPA to promulgate more stringent NO_x limitations for Phase II. See 15 U.S.C. 7651(f)(b)(2).

[3] The Agency also estimated the number of allowances that would be allocated, under the current rule and the proposal, to all the substitution and compensating units under the active and conditional plans already submitted to the Agency. For purposes of making that estimate, the Agency calculated allowances for compensating units by using the same allocation formulas as for substitution units. EPA estimates that, assuming all the plans would be active for each year in Phase I, approval of the plans under the current rule would result in about 385,000 more allowances being allocated than would approval of the plans under the proposal.

[4] There information for 1990 was missing from the EIA forms, data were substituted from the EPA AIRS inventory if possible. If the information was still unavailable and the boiler was not reported as off-line or retired, a value was substituted by scaling data for the unit from the closest calendar year with data (1985, 1988, or 1989). The scaling was done using the ratio of the estimated national totals for 1990 and the closest calendar year.

for clean utilities nor other provisions granting allowances in this title violate the cap." *Id.* at 368. Congress recognized that the precise amount of reductions resulting from the imposition of the cap may vary depending on the extent to which units make greater than required reductions in Phase I and carry forward a corresponding number of allowances. Senate Rep. No. 101–228 at 315. However, the carryover and use of the excess, new allowances created by early entry of Phase II units into Phase I (e.g., the use of 200,000 allowances per year for the first five years of Phase II) could result in emissions exceeding the cap for each of those years by 200,000 tons.

The Agency concludes that Congress did not intend to provide Phase II units, through sections 404(b) and (c) and 408(c)(1)(B), the ability to create excess, new allowances for pre-Phase II emissions reductions that would have been achieved in the absence of substitution and reduced utilization plans under title IV.

C. Other Statutory Provisions Support Limiting Entry of Phase II Units Into Phase I and Creation of New Allowances

The Agency's conclusion that Congress did not intend to allow creation of excess, new allowances through entry of Phase II units into Phase I is supported not only by the emission reduction goals of title IV and the purposes of the substitution and reduced utilization provisions, but also by Congress' approach in other sections of title IV.

In section 405 of the Act, Congress set forth the procedures for allocating allowances to Phase II units for each year in Phase II. Beginning in 2000, each Phase II unit that would otherwise have emissions exceeding its allowances must reduce emissions or acquire more allowances. With the limited exception in section 404(e), a Phase II unit that reduces emissions before 2000 is not allocated any additional allowances for making reductions early.

Under section 404(e), Congress permitted the allocation of additional allowances for early emissions reductions by Phase II units but only under very limited circumstances. In order for a Phase II unit to qualify for such allowances, the unit must meet stringent criteria, including the following:

1. The Governor of the State in which the unit is located authorized the unit to reduce emissions prior to 1995.

2. The total coal-fired electric generation of the unit's utility system as a percentage of total system generation decreased by more than 20% between January 1, 1980 and December 31, 1985.

3. The weighted capacity factor for all coal-fired units within the utility system, averaged from January 1, 1985 to December 31, 1987, was less than 50%.

4. The emission reductions are achieved by physical changes or changes in methods of operation made after November 15, 1990, including changes in the type or quality of fuel being burned.

5. The emission reductions are made during 1995 through 1999.

See 42 U.S.C. 7651d(e); 40 CFR 73.16(a) and (b) and 73.20(a) and (b); and 57 FR 29942–29943 (July 7, 1992).

Further, in section 410 of the Act, Congress directly addressed the matter of units voluntarily entering the Acid Rain Program. In this section, Congress established a procedure under which owners and operators of units can elect to enter the Acid Rain Program, receive allowances, and become subject to the emissions limitations and other requirements of the program. Congress was careful to limit such voluntary entry to "any unit that is not, nor will become, an affected unit under section 403(e), 404, or 405 [of the Act]." 42 U.S.C. 7651i(a). Congress thereby excluded Phase II units from electing into Phase I under section 410.

The fact that Congress was so careful in sections 404(e), 405, and 410 to limit the ability of Phase II units to obtain allowances for emissions reductions made before Phase II strongly suggests that other sections of the Act should not be interpreted to allow allowance allocations for all such reductions.

IV. Proposed Modifications of the January 11, 1993 Regulations

A. Substitution Plans

The Agency proposes to modify the January 11, 1993 regulations concerning substitution plans by limiting the allowances allocated to the substitution unit to the baseline times the lesser of 1985 actual or allowable emissions rate, 1990 actual emissions rate, or the most stringent federal or State allowable rate for sulfur dioxide for Phase I as of November 15, 1990, the date of enactment of title IV of the Act. In addition, it is proposed that the regulations provide that having a common designated representative does not meet the common owner or operator requirement for substitution plans.

1. Limiting Allowances Allocated to Each Substitution Unit

a. Emissions rate used in allocating allowances. Under today's proposal, as in the January 11, 1993 regulations, each unit designated as a substitution unit in an approved plan becomes a Phase I unit and is allocated allowances. However, consistent with the purposes of section 404, the proposal limits the number of allowances allocated to each substitution unit by calculating the allocation based on an emissions rate that is more representative of what would have been achieved without the substitution plan. A substitution unit will be allocated allowances equal to baseline times the lesser of the unit's 1985 actual or allowable emissions rate, the unit's 1990 actual emissions rate, or the most stringent federal or State allowable emissions rate as of November 15, 1990 that applies to the unit in 1995–99. In contrast, the January 11, 1993 regulations consider only the unit's 1985 actual or allowable emissions rate.

As discussed above, section 404(c) requires that the substitution plan include a demonstration "to the satisfaction of the Administrator" that the plan will "achieve the same or greater emissions reduction than would have been achieved by the original affected unit and the substitute unit or units without such substitution." 42 U.S.C. 7651c(b)(5). Upon reflection, the Agency interprets this provision to require that the plan achieve total reductions equal to or greater than both; (i) The Table A unit's reduction obligation in Phase I, and (ii) the reductions that the substitution unit would have made if it had not entered Phase I, including reductions made for economic reasons prior to passage of title IV and reductions mandated by federal or State emissions limitations adopted prior to title IV. The preamble to the January 11, 1993 regulations set forth a different interpretation that the Agency now concludes is erroneous.

In the January 11, 1993 preamble, the Agency stated that any reductions in emissions rate that have been, or will be, made at the substitution unit after 1985 without the substitution plan (e.g., reductions for economic reasons or required by federal or State law) "will not have resulted from title IV" and so should "*not* be counted as reductions that would have occurred without the plan." 58 FR 3601 (emphasis added). The difficulty with this interpretation is that it appears to read out of section 404(b)(5) the requirement to ensure that a substitution plan does not negate reductions "that would have been achieved by * * * the substitute unit * * * without such substitution." 42 U.S.C. 7651c(b)(5). In the absence of the plan, the substitution unit would not be subject to title IV until Phase II. If only reductions required by title IV were considered under section 404(b)(5), the

amount of reductions that would have been achieved by the substitution unit without the plan (i.e., the reductions in Phase I) would always be zero. See Comments of Utility Air Regulatory Group (UARG) at 85 n. 90 (filed February 12, 1992); and 56 FR 63015 (December 3, 1991). The reference to such reductions would therefore be meaningless. In interpreting the Act, it should not be presumed that Congress adopted meaningless language. *See U.S.* v. *Menache*, 348 U.S. 528, 538–9 (1955); *Motor & Equipment Manufacturers Assn.* v. *E.P.A.*, 627 F.2d 1095, 1107–8 (D.C. Cir. 1979), *cert. den.*, 446 U.S. 952 (1980).

The Agency concludes that the better interpretation of section 404(b)(5) is to take into account, and avoid allocating allowances to the substitution unit for, all reductions that would otherwise have been made at the substitution unit since 1985.[5] Moreover, the Agency maintains that all emissions rate reductions by a substitution unit between 1985 and 2000 that were mandated by federal or State law as of the enactment of title IV are, by definition, reductions that would otherwise have been made in the absence of the substitution plan. Substitution units therefore will not be allocated allowances based on an emissions rate that is greater than the most stringent emissions limitation imposed in Phase I by federal or State law, as of November 15, 1990.

The Agency notes that some units may have multiple emissions rate limitations whose applicability depends on certain conditions (e.g., the operations of other units at the same plant). In such cases, the Agency proposes to use the most stringent of those limitations for the unit.

The Agency also notes that some mandated emissions limitations are not unit specific. For example, under some State laws (e.g., the acid rain laws for Massachusetts and Wisconsin), a utility has a maximum, average emissions rate for all its units in the State. Under other State laws (e.g., for Minnesota), a utility has a total tonnage emissions cap for all its units in the State. In order to account for this variation in way that emissions limitations are expressed, the Agency proposes to reserve the authority to determine on a case-by-case basis the federally enforceable or State enforceable emissions limitations that will be used in establishing the allowance allocation for substitution units. Where a utility is required to submit upfront to the State a plan for complying in 1995 with a State maximum, average emissions rate or total tonnage emissions cap, the Agency may exercise this authority and require use of the individual-unit emissions rates set forth in or underlying such a plan as the applicable State limits in Phase I for purposes of determining allowance allocations for substitution units.

Comment is requested on how to establish the State limitation when no State plan is submitted upfront for 1995. Further, comment is requested on the Agency's general approach to establishing the most stringent emissions limitation and on whether the discussion here concerning how the Agency will determine the federal or State emissions limitation in particular circumstances should be incorporated in the regulations. After reviewing the comments, the Agency may incorporate in the final rule detailed provisions explaining how to determine the emissions limitation. The Agency also requests comment on alternative approaches, for example, where if a State law imposes a maximum utility-wide average emissions rate, that average rate would be used as the applicable State limit for each unit.

Comment is also requested concerning whether the Agency should provide for an end-of-year review in Phase I with regard to substitution units subject to a State utility-wide average emissions rate or tonnage cap. In the end-of-year review, each utility subject to such a State limit would have to demonstrate whether, if the allowances allocated to substitution units covered by that State limit were treated for purposes of the review as emissions by those units, the utility would be in compliance for that year with the State limit. In this demonstration, the State methodology for determining compliance would be applied, but using the allocated allowances, rather than actual annual emissions, for each substitution unit whose allocation exceeded its emissions. To the extent that the utility would not be in compliance, allowances allocated to the substitution units for that year would be surrendered. To the extent that the utility would overcomply with the State limit, additional allowances would be allocated to the substitution units for the year but the total allowances allocated to any substitution unit could still not exceed the amount based on the lesser of 1985 actual or allowable emissions rate or the 1990 actual emissions rate. The allowance surrender or the allocation of additional allowances would be distributed among the substitution units involved in proportion to the number of allowances that they were originally allocated. Comment is requested on this approach and on whether any limits should be imposed on the trading of allowances allocated to such substitution units prior to this end-of-year review. (To the extent such limits are appropriate, § 73.52, in addition to § 72.41, would be revised to incorporate such limits.)

In addition to federal or State mandated emissions rate reductions, some substitution units' emissions rates have been, or will be, reduced after 1985 for economic reasons. To the extent a unit's emissions rate reductions are caused by economic factors that would have existed even if the unit did not become a substitution unit, such reductions should also be taken into account under section 404(b)(5). For example, some units may have found it economical to switch to lower sulfur fuel even in the absence of any obligation to hold allowances to cover emissions. Allowances should not be allocated for such reductions. EPA believes that this approach is reasonable because prior to enactment of the Clean Air Act Amendments of 1990, utilities had no reason to believe that such reductions would generate nationally tradable allowances under the Act.

For the implementation of section 404(b)(5) to be administratively feasible, the Agency believes that there must be a bright line drawn to determine whether a unit's voluntary reductions (i.e., those that are not mandated by law) in emissions rate between 1985 and 2000 would have occurred even if the unit were not a substitution unit. The Agency is concerned about the time- and resource-consuming process of case-by-case determination. In order to avoid the need to resolve issues such as whether a particular unit took actions to reduce its emissions rate in anticipation of becoming a substitution unit, the Agency proposes to treat all voluntary emissions rate reductions after 1985 and through 1990, the year in which title IV of the Act was passed, as reductions that would have occurred in the absence of a substitution plan. Even though reductions after 1990 perhaps would have occurred in the absence of the substitution plan, this is difficult to determine for periods after the

[5] EPA may have some authority to implement the proper interpretation of section 404(b)(5) without revising the current regulations, e.g., by announcing its rejection of the preamble discussion noted above and disapproving substitution plans that would result in allowance allocations for emissions reductions since 1985 that are not the result of substitution plans under title IV. See 40 CFR 72.41(b)(1)(ii) (repeating the requirement in section 404(b)(5)). However, the Agency believes that a more straightforward solution is to amend the allowance allocation formula for substitution units to reflect clearly the proper interpretation of the statute.

substitution provision was enacted. December 31, 1990 is used as the cut-off point since emissions rate data is available on a calendar year basis. A unit's 1990 emissions rate (which is the most recent, actual rate prior to the enactment of title IV) will therefore be treated as representative of its emissions rate in Phase I in the absence of a substitution plan. All voluntary emissions rate reductions after 1990 will be treated as reductions that would not otherwise have occurred. Consequently, substitution units should not be allocated allowances at a rate greater than either the 1990 actual emissions rate or the emissions limitation required by federal or State law for Phase I as of November 15, 1990.

Consistent with the approach proposed with regard to voluntary reductions, the Agency proposes to use 1990 as the cut-off point with regard to federal or State mandated emissions rate reductions. The Agency believes that the best approach is to establish a bright line as to whether a federal or State law mandating an emissions rate reduction would have been adopted in the absence of substitution plans under title IV. Consequently, only those emissions rate reductions that were mandated by federal or State law adopted on or before November 15, 1990, the enactment date of title IV, will be treated as reductions that would otherwise have occurred. Since dates of adoption of mandated emissions limitations can be precisely determined, there is no need to use December 31, 1990 as the cut-off point.

In sum, the Agency proposes that substitution units be allocated allowances based on the lesser of four emissions rates: 1985 actual emissions rate, 1985 allowable emissions rate, 1990 actual emissions rate, or the most stringent federal or State allowable emissions rate applicable in 1995–99 as of November 15, 1990. The first two emissions rates are set forth in section 404(b)(2) of the Act. The latter two are added in order to ensure, in accordance with section 404(b)(5), that a substitution plan will result in at least the same amount of reductions that would have occurred without the plan. Consistent with the position adopted in the January 11, 1993 regulations concerning the use of current allowable emissions rate with regard to Phase I extensions (58 FR 3604), the most stringent allowable rate for purposes of substitution plans will be the most stringent rate (as of November 15, 1990) after conversion to pounds per mmBtu but without any annualization.

The Agency recognizes that the proposal relies on information (i.e., the 1990 actual emissions rate and the most stringent federal or State allowable emissions rate for the substitution unit) that is not specifically listed in section 404(b) as information required in a proposed substitution plan. However, the Agency concludes that section 404(b) provides adequate authority to require submission of the additional data and to use the data to calculate the allowance allocation under the plan. Section 404(b)(6) requires designated representatives to submit "such other information as the Administrator may require." 42 U.S.C. 7651c(b)(6). Moreover, using the 1990 emissions rate and the most stringent allowable rate to allocate allowances is a reasonable exercise of the Administrator's broad discretion, in approving substitution plans under section 404(c), to impose "modifications or conditions * * * which will ensure the emissions reductions contemplated by [ ] title [IV]." 42 U.S.C. 7651c(c).[6] Finally, since reliance on substitution plans is optional and the use of the most stringent allowable rate (in conjuction with the 1985 actual or allowable rate and the 1990 actual rate) to allocate allowances under such plans is necessary to meet statutory emissions reduction goals, it is difficult to see how such use of the most stringent allowable rate could be viewed as unfair to utilities located in States that mandated reductions. This approach simply prevents the creation of excess, new allowances and thereby ensures that reductions mandated by such States are not used to increase emissions elsewhere above the levels that title IV was intended to achieve.

Comment is requested on whether it would be appropriate for the Agency to consider only emissions rate reductions mandated by federal or State law in determining, under section 404(b)(5) of the Act, what emissions reductions would have been achieved without the substitution plan and therefore how many allowances should be allocated to substitution units (either upfront or in an end-of- year review). In this regard, the Agency also asks for comment on the need for, and policy and practical implications of, including or not including voluntary reductions in determining the emissions reductions without the plan. Comment is also requested on whether it is appropriate for the Agency to consider voluntary reductions by using the 1990 emissions rate as one of the criteria for determining how many allowances should be allocated. Comment on alternatives to the 1990 emissions rate and the policy and practical implications of such alternatives is requested.

b. Utilization used in allocating allowances. Under today's proposal, a substitution unit's allowance allocation is calculated by multiplying the lower of the above-discussed four emissions rates by the baseline, which reflects 1985–87 utilization. In the public comments that preceded the January 11, 1993 regulations, some commenters suggested that the allowance allocation be based on current utilization at the time the permit application is submitted. Allegedly, current utilization would be a more reasonable projection, than baseline, of the substitution unit's utilization in Phase I in the absence of a substitution plan. 58 FR 3600–3601; Comments of National Rural Electric Cooperative Association (NRECA) at 6–7 (filed February 12, 1992). In developing today's proposal, the Agency reconsidered the option of requiring utilities to project what future utilization of the substitution units would be in Phase I without the substitution plan. The Agency concludes that, particularly since utilization can vary greatly from year to year, there is no basis for assuming that such future utilization would equal current utilization, which occurs before Phase I, and that it would be very difficult for the utilities to make accurate utilization projections. Similarly, it would be difficult for the Agency to evaluate such projections to ensure that they would not result in the creation of excess, new allowances. See Comments of UARG at 58 and n. 57 and 92.

While projections are used to allocate allowances from the Phase I extension reserve, the use of projections under substitution plans is more problematic. The Phase I extension reserve is fixed and thus there is a limit on the total number of allowances that can be allocated based on projections. 42 U.S.C. 7651c(a)(2). Unduly high projections in that context will affect the distribution of Phase I extension allowances among applicants for the Phase I extension but will not increase the total number of allowances allocated under the Phase I extension.

[6] The proposal is also a reasonable exercise of the Administrator's authority under section 404(c) to ensure that substitution plans are approved to the extent that they are "consistent with the orderly functioning of the allowance system." 42 U.S.C. 7651c(c). The creation of excess, new allowances interferes with the allowance system in two ways. First, introducing allowances into the system that were not intended by Congress and that are in excess of the substitution unit's emissions in the absence of the plan will tend to skew the market price of an allowance. Second, allowing such allowances into the system undermines its integrity and may encourage further attempts at gaming.

In contrast, there is no express statutory limit on the total number of allowances that can be allocated to substitution units. Allocating allowances based on projected utilization would mean that the higher the projection, the greater the total number of excess, new allowances that would be created. Consequently, allocating allowances based on a higher utilization than the substitution unit would have had without the substitution plan would have the same result as allocating allowances based on a higher emissions rate than that which the unit would otherwise have had. In either case, new allowances would be created that could result in fewer total reductions than in the absence of the substitution plan. This is precisely the result that Congress required the Administrator to prevent. The Agency does not believe that it would have sufficient information or expertise to ensure that the utilization projections were sufficiently accurate to prevent this result.

Moreover, even if the Agency could ensure sufficiently accurate utilization projections, allocating allowances based on them could still compromise the statutory requirement of no fewer reductions than without the substitution plan. A substitution unit that was allocated allowances based on projected utilization could decrease its utilization below the projected level and shift the generation to another Phase II unit that was not subject to the requirement to hold allowances in Phase I. This is analogous to the problem that Congress recognized with regard to "initially affected units" in Phase I (and other Phase I units) and resolved in section 408(c)(1)(B) by requiring reduced utilization plans. Senate Rep. No. 101–228 at 334. However, section 408(c)(1)(B) addresses only decreases of utilization below baseline, not decreases below a projected utilization.

Rather than attempting to craft a second "reduced utilization" requirement solely for substitution units, the Agency concludes that the better and more administratively feasible approach is to allocate allowances to substitution units using their baseline. The existing reduced utilization provisions in section 408(c)(1)(B) will then continue to apply to such substitution units and ensure that reductions that would have been achieved without the substitution plan will not be circumvented by the substitution unit shifting generation to other units not subject to allowance requirements in Phase I. The Agency requests comment on whether an updated or projected level of utilization should be used, rather than baseline, in allocating allowances to substitution units.

2. Limiting number of substitution units

The Agency considered modifying the January 11, 1993 regulations to make upfront approval of the designation of substitution units and allocation of allowances to such units contingent on an end-of-year review of the need for such units for each year that the plan was in effect. Under such an approach, the Agency would allow only those designations of substitution units that actually proved to be needed.

The Agency would determine at the end of each year whether the Table A unit actually had any reduction obligation to reassign to a substitution unit, i.e., whether the Table A unit had emissions in excess of its allowance allocation. The Agency would also determine each year the extent to which each substitution unit had an allowance allocation exceeding actual emissions and thus could provide extra allowances to the Table A unit.

The number of units treated as substitution units for the year would be limited to the minimum necessary to provide allowances needed to ensure that the Table A unit could cover its emissions. Any additional units that had been designated, and allocated allowances, as substitution units would be de-designated for the year and would be required to surrender their allocated allowances. In order to ensure that there would be sufficient allowances for the surrender, the substitution units could be barred from transferring their allocated allowances for a given year until completion of the year-end review for that year.

The Agency believes that requiring end-of-year review of the need for substitution units and thereby limiting the number of such units is probably unnecessary but only if allowance allocations for substitution units are limited as proposed above. If each substitution unit is allocated allowances based on no greater an emissions rate than its 1985 actual or allowable, 1990 actual, or most stringent allowable emissions rate and is subject to reduced utilization requirements, the substitution unit will have to use up all or almost all of its allocated allowances—either to cover its emissions or to account for its reduced utilization—unless that unit voluntarily reduces its emissions rate to an even lower level. This significantly limits the ability of a substitution unit to create new allowances in excess of its Phase I emissions, which allowances could be banked or transferred to other units. Moreover, since any new allowances will result from reductions that would be unlikely to occur in the absence of a substitution plan, the allowances will not result in fewer total reductions than would have been achieved without the substitution plan.

The Agency requests comment on its determination that end-of- year review of the need for substitution units is not necessary. To the extent commenters believe that end-of-year review is needed, they are requested to address the above explanation of how the review would be conducted.

3. Requiring Common Owner or Operator

The January 11, 1993 regulations provide that the statutory requirement that the Table A unit and its substitution unit have a common owner or operator is satisfied where such units have a common designated representative. 40 CFR 72.41(b)(1)(i); see also 42 U.S.C. 7651c(b). The regulations also allow the selection of an alternate designated representative to act in lieu of the designated representative. 40 CFR 72.22(a). The regulations do not expressly address whether having a common alternate designated representative alone meets the common owner or operator requirement.

The Agency proposes to reverse its interpretation that having a common designated representative meets the statutory requirement of a common owner or operator. In the January 11, 1993 regulations, the Agency concluded that, "[i]n general, a designated representative is not considered to be an operator." 58 FR 3600. This is because the Act distinguishes between designated representatives and owners and operators. See 58 FR 3599. On one hand, the Act states that designated representatives represent owners and operators and, in that capacity, are responsible, along with owners and operators, for holding and transfering allowances and submitting and complying with permit applications and compliance plans. 15 U.S.C. 7651a(26), 7651b(b), 7651g(c)(1), (d)(2), and (h)(1). On the other hand, the Act makes only owners and operators responsible for meeting emissions limitations and monitoring requirements. 15 U.S.C. 7651(c)(a), 7651d(a), and 7651k.

However, the Agency determined, in the preamble of the January 11, 1993 regulations, that "[i]n some cases" the designated representative's "duties and level of responsibility can be equivalent to that of an operator." Id. One such case, identified by the Agency, was where a designated representative represents multiple sources

participating in a substitution plan and lacking any other common owner or operator. In that case, the designated representative's responsibilities are allegedly "broad enough to bring him or her within the definition of operator." Id. The problem with that analysis, upon reflection, is that it is difficult to see how a designated representative's responsibilities in a multi-source substitution plan are actually any broader or more complex than they are under other compliance options involving multiple owners and operators and multiple units and sources.

In order to use the substitution compliance option, a designated representative must submit a substitution plan that covers all the units involved and that is included in the permit applications of the sources at which such units are located. See 40 CFR 72.41(b)(2). A common designated representative must coordinate among owners and operators of the sources that he or she represents to the extent necessary to ensure that he or she is authorized by the owners and operators to submit such a plan. See 40 CFR 72.21(b)(1). Once the substitution plan is approved, the owners and operators of a unit under the plan are liable for violations of the plan at that unit or at any other unit that is its substitution unit or for which it is a substitution unit. 40 CFR 72.41(e)(2).

Designated representatives have similar responsibilities under other multi-unit compliance options. For example, Phase I extension plans can involve a control unit at one source and transfer units at other sources and the sources involved need not have common owners or operators. In that case, the designated representatives of the sources involved must coordinate among owners and operators of the sources, agree on a single Phase I extension plan, and sign and submit the plan as part of their respective permit applications. See 40 CFR 72.40(b)(1)(i) and 72.42(b)(2)(ii). Under an approved Phase I extension plan, owners and operators are potentially liable for violations of the plan by other units governed by the plan. See 40 CFR 72.42(f)(1) and (4).

The situation is similar for reduced utilization plans, which can involve a Phase I unit and compensating units located at multiple sources. All the designated representatives must agree on and submit a single plan. See 40 CFR 72.40(b)(1)(i) and 72.43(b)(4). Further, under § 72.91(a), the designated representatives of the Phase I unit and compensating units under a plan must use consistent figures in their annual compliance certification reports to calculate the adjusted utilization of the respective units. See 40 CFR 72.91(a)(3)(ii) and (4). Under Option 1 of today's proposal, the designated representatives of units under an approved plan will also have to cooperate in order to meet the special end-of-year reporting requirements for determining which compensating units are necessary. See section IV(B)(1) of this preamble. Again, owners and operators are potentially liable for violations of the plan by other units governed by the plan. 40 CFR 72.43(f)(3).

In short, the common designated representative's responsibilities under a multi-source substitution plan are no broader or more complex than those of designated representatives under multi-source Phase I extension or reduced utilization plans. The Agency concludes that there is no basis for treating designated representatives in the context of substitution plans differently than in the context of other compliance options. Moreover, there is nothing unique to substitution plans (other than the declaration, in the January 11, 1993 regulations, that a common designated representative "is" an operator under a substitution plan) that would make the designated representative, rather than simply the owners and operators, responsible for meeting emissions limitations or monitoring requirements that are applicable to all Phase I units. Under all these multi-unit compliance plans, the designated representative actually has less extensive responsibilities than, and thus should not be considered to be, an owner or operator.

Finally, in the preamble of the January 11, 1993 regulations, the Agency suggested that treating a common designated representative as an operator would give small utilities flexibility to use substitution plans. However, the Agency notes that none of the permit applications submitted in February 1993 included substitution plans using a common designated representative as the common owner or operator. Subsequently, one such plan involving four permit applications was submitted but none of the applications involved small utilities. The Agency requests comment on the effect that the proposed interpretation of the requirement of a common owner or operator would have on the ability of utilities to bring in selected Phase II units into Phase I as substitution units and, as a result, on their ability to create new allowances.

While the Agency proposes to change its interpretation in the January 11, 1993 regulations that a common designated representative meets the statutory common-owner-or-operator requirement for substitution plans, the Agency notes that in the absence of such a change, it would still be necessary to clarify that having a common alternate designated representative would not meet the statutory requirement. Whatever determination is made concerning the responsibilities of designated respresentatives as compared to those of owners and operators, the Agency believes that an alternate designated representative clearly does not carry the same level of responsibilities as a designated representative.

While the alternate designated representative can act in lieu of the designated representative, the latter is expected to be the primary representative. For this reason, where the Administrator determines that the designated representative and the alternate designated representative have taken "concurrent and conflicting" actions, the action of the designated representative "shall take precedence." 40 CFR 72.22(c). Moreover, the purpose of allowing a unit to have an alternate designated representative is to ensure that there will be someone to represent the unit in the event that the designated representative is unavailable. See 56 FR 63009. It is possible that the alternate designated representative will never actually have to take any actions. There is therefore no logical basis to treat a common alternate designated representative as equivalent to a common designated representative.

4. Other Changes

The Agency proposes to make other minor changes to clarify the current § 72.41. For example, under the current rule, substitution allowances may be distributed in the plan between the substitution unit and the Table A unit. However, there may be more than one Table A unit in a plan and each substitution unit may not be designated by all the Table A units. The language of the current regulation is not clear on how allowance distribution is to occur in such a case. The Agency proposes to modify the regulation to make it clear that substitution allowances may be distributed from a given substitution unit only to the respective Table A unit that designated that substitution unit.

B. Reduced Utilization Plans

The January 11, 1993 regulations concerning reduced utilization—and the rulemaking proposal and public comments that preceded those regulations—focused primarily on concerns that utilities might be unable

to designate a compensating unit and therefore might engage in uneconomic dispatching in order to avoid reduced utilization that would require such designation. See 56 FR 63020; Comments of UARG at 35; Comments of NRECA at 23–4; and Comments of Environmental Defense Fund at 3 (filed February 12, 1992). To allay these concerns, § 72.43 of the January 11, 1993 regulations establishes broad safe harbors under which the requirement to submit a reduced utilization plan may be avoided. 40 CFR 72.43(e). Further, §§ 72.91 and 72.92 of the regulations set forth an allowance surrender procedure for accounting for the emission consequences of utilizing a Phase I unit below baseline. 40 CFR 72.91(a) and 72.92(a) and (c). The allowance surrender procedure gives utilities the flexibility to use economic dispatching without designating compensating units and still accounts for the emissions consequences of load shifts from Phase I units to non-Phase I units.

While the January 11, 1993 regulations address when utilities can avoid submitting reduced utilization plans, the significant number of reduced utilization plans and compensating units proposed in the Phase I permit applications highlight the opposite problem[7] utilities actively seeking reduced utilization plans and designating compensating units in order to create excess, new allowances by bringing Phase II units into Phase I. The designation of compensating units under reduced utilization plans should be limited to cases where the designation will serve the statutory purpose of section 408(c)(1)(B), i.e., to account for emissions from generation that is provided by a Phase II unit and that is needed to compensate for the reduced utilization of a Phase I unit.

Although the current regulations implementing substitution and reduced utilization plans pose similar problems concerning the creation of allowances, the Agency is proposing different approaches in modifying the requirements for the two compliance options. In contrast with sections 404 (b) and (c), which give the Administrator discretion in determining how many allowances to allocate to substitution units, section 408(c)(1)(B) states the formula for allocating allowances for compensating units. In order to ensure that reduced utilization plans are used as a means of accounting for emissions from load shifting and not as a method of creating excess, new allowances through early entry of Phase II units into Phase I, the Agency must limit the circumstances under which Phase II units can become compensating units.[7]

Today, the Agency is proposing two basic options for limiting the designation of compensating units. The Agency requests comment on both options.

Under Option 1, units will be allowed to become compensating units and will be allocated allowances only where there is a demonstration that the compensating units are actually needed to account for reduced utilization. The Agency proposes in Option 1 to modify the reduced utilization provisions by granting upfront approval of a reduced utilization plan with compensating units but making approval contingent on an end-of-year determination by the Administrator that each compensating unit is needed for the year. A unit designated as a compensating unit will become a Phase I unit and will be allocated allowances upon upfront approval of the reduced utilization plan and issuance of the Acid Rain permit containing the plan.

However, a compensating unit will not be allowed to transfer allowances allocated for any given year in Phase I unless and until an end-of-year determination of need is made for that unit for that year. A compensating unit will be deemed to be needed only if certain specified conditions are met. If those conditions are not met, the unit will be retroactively de-designated for the year and the allowances allocated for the year will be deducted. The limitation on transfer will ensure the availability of the allowances for such end-of-year deduction and will prevent the use of what are potentially excess allowances by other units in the meantime. Since section 408(c)(1)(B) of the Act does not specify when allowances are to be allocated to compensating units, the Agency could have delayed any allocation until completion of the end-of-year review. The Agency maintains that the approach proposed here is within its authority and is more consistent with the overall operation of the Acid Rain Program.

Current § 73.52 will be revised both to reflect this transfer limitation and to make it clear the transfer limitation (and the one under § 72.44 (repowering)) apply to transfers of specific allowances and of allowances in perpetuity. (The latter revision to § 73.52 will also be made under Option 2 (discussed below) with regard to the § 72.44 transfer limitation.)

In the end-of-year review, a unit will be deemed to be needed as a compensating unit only for years in which: the Phase I unit actually had utilization below baseline; the Phase I units in the initial Phase I unit's dispatch system actually had total net utilization below the sum of their baselines after taking account of all sulfur-free generation acquired by the dispatch system; and the proposed compensating unit actually provided compensating generation to that dispatch system. Further, the number of compensating units allowed under a single reduced utilization plan will be limited to the number needed. As part of the end-of-year review, the Administrator will determine how much compensating generation all the original Phase I units in the dispatch system potentially needed and how much excess generation each compensating unit proposed for any such Phase I unit potentially could have provided. The only compensating-unit designations that will be allowed for any of the Phase I units in the dispatch system will be designations of compensating units whose potential excess generation was necessary to meet the potential need for compensating generation for the dispatch system as a whole.

Under Option 2, the category of units that may be designated as compensating units will be limited to those units whose designation cannot create excess, new allowances. A unit can be designated as a compensating unit only if: The unit's baseline times the lesser of its 1985 actual or allowable SO_2 emissions rate does not exceed the unit's baseline times the lesser of its 1990 actual SO_2 emissions rate or its most stringent federally enforceable or State enforceable emissions limitation for SO_2 for 1995–99 as of November 15, 1990.

Comment is requested on policy and practical implications of both Option 1 and Option 2, including whether they are workable and what impact they would have on the functioning and development of the allowance system and the allowance trading market. Comment is also requested concerning

[7] EPA believes that it has authority under the current regulations to limit, at least to some extent, the ability of utilities to designate compensating units and create excess, new allowances. For example, where a reduced utilization plan designates compensating units that are not shown to provide compensating generation under the plan or the approval of a plan would result in fewer total emissions reductions than intended by Congress, the Administrator may rely on her authority under section 408(c)(2) of the Act to disapprove the plan or approve it with changes necessary to prevent the creation of excess, new allowances. Although the Agency is reviewing the reduced utilization plans already submitted and determining whether they are consistent with section 408(c)(1)(B) and title IV generally, the Agency also maintains that the current rule should be revised to establish detailed criteria for approval of such plans.

the consistency of Options 1 and 2 with section 408(c)(1)(B) and title IV in general.

1. Option 1: end-of-year review of need for compensating units

a. Requiring actual reduced utilization and provision of compensating generation. Under Option 1, the requirements for upfront approval of reduced utilization plans with compensating units remain essentially the same as under the current regulations. Compensating units designated under an approved plan will be allocated allowances under the statutory formula. However, during each year for which the plan is approved, certain conditions must be met in order for the plan to be effective for that year and for a unit to remain a compensating unit and retain the allowances that it is allocated under the plan for that year. The Administrator will determine after the end of the year whether these conditions have been met.

First, the Phase I unit's need for compensating generation from a compensating unit, i.e., the Phase I unit's "potential reduced generation," will be calculated. "Potential reduced generation" equals: (i) The Phase I unit's baseline, adjusted for any decline in total sales of electricity by the dispatch system, less (ii) the Phase I unit's actual utilization, (iii) estimated savings from conservation and unit efficiency measures, (iv) compensating generation received from designated sulfur-free generators, and (v) compensating generation provided by the Phase I unit if the unit itself is a compensating unit for other Phase I units. These factors are already defined and used in § 72.91 of the January 11, 1993 regulations to calculate "adjusted utilization" in order to determine whether a reduced utilization plan is required under § 72.43(e) and whether allowances must be surrendered under § 72.92.

The Phase I unit's "potential reduced generation" for the year must be greater than zero in order to be allowed to have a compensating unit for that year. This requirement is aimed at allowing only needed compensating units to enter into Phase I. If a Phase I unit's "potential reduced generation" is less than or equal to zero, then the Phase I unit is not actually underutilized compared to its baseline or the unit already has sufficient conservation or unit efficiency savings or sulfur-free generation to account for its underutilization. Consequently, there is no need for generation from a compensating unit. It should be noted that although year-end estimates of conservation and unit efficiency savings may be altered by subsequent verification procedures, the Agency proposes to evaluate the need for compensating units using estimated savings rather than waiting for verified savings figures, which may not be available until as long as six months after the end of the year. See 58 FR 3607; and § 72.91(b)(1) (requiring submission of verified savings figures by July 1 and providing for extension of the deadline for good cause).

The second requirement is that the "dispatch system potential reduced generation" (which is the sum of the "potential reduced generation" for all Phase I units in the Phase I unit's dispatch system less sulfur-free generation acquired by the dispatch system from any non-designated sulfur-free generators) must be greater than zero. If "dispatch system potential reduced generation" is less than or equal to zero, then either no Phase I unit needs compensating generation or the potential reduced generation of underutilized Phase I units in the dispatch system is fully offset by utilization above baseline of the other Phase I units in the same system or by sulfur-free generation.

Where there is a full offset (or to the extent there is any partial offset) by other Phase I units, there is no basis for concluding that Phase II units, rather than other Phase I units, provided to the dispatch system the generation that compensated for underutilized Phase I units. See Comments of UARG at 32. To prevent unnecessary designation of compensating units, underutilized Phase I units are assumed to first shift generation to other Phase I units. Phase II units may become compensating units only to the extent necessary to compensate for net potential reduced generation of the Phase I units. This approach is consistent with § 72.43(e)(1)(ii)(A) of the January 11, 1993 regulations, which removes the requirement to submit a reduced utilization plan to the extent that underutilization at a Phase I unit is offset by overutilization at other Phase I units in the dispatch system. See also 40 CFR 72.92(c)(2)(i); and 58 FR 3608 (explaining that allowance surrender is based on the net underutilization of all Phase I units in the dispatch system).

For similar reasons, in calculating "dispatch system potential reduced generation", the designated representative must subtract any sulfur-free generation acquired by the dispatch system from sulfur-free generators that were not designated under a reduced utilization plan. This is because, to the extent that a dispatch system acquired increased sulfur-free generation since 1985–87 from generators that could have been designated, there is no basis for concluding that Phase II units, rather than sulfur-free generators, provided compensating generation for underutilized Phase I units.

The third requirement considered in the end-of-year review concerns the designated compensating unit, which must actually provide compensating generation to the Phase I unit's dispatch system during the year. The utility must show that the compensating unit—whether inside or outside the Phase I unit's dispatch system—provided to the dispatch system an amount of electricity at least equal to the amount of claimed compensating generation.

b. Limiting number of compensating units: In order to prevent the unnecessary creation of new allowances, the Agency proposes to limit the number of compensating units under a reduced utilization plan to those necessary to provide compensating generation. This will be done by determining how much compensating generation can potentially be provided by the compensating units designated by the utility and comparing that potential with the amount of compensating generation that is needed. A unit will be allowed to remain a compensating unit for a given year only if it is shown, in the year-end review, that the unit's potential for providing compensating generation is necessary to meet the potential need for such generation for that year.

As discussed above, the Agency proposes to determine the need for compensating generation on a dispatch system basis, i.e., by calculating the dispatch system potential reduced generation. Similarly, the number and identity of the allowed compensating units will be determined on a dispatch system basis, and the same list of compensating units must be used in all reduced utilization plans for Phase I units in a given dispatch system. The dispatch system potential reduced generation will be compared with the compensating generation potentially provided by all the compensating units designated by any Phase I units in the dispatch system. This is appropriate because, while individual Phase I units designate compensating units, the electricity resulting from all compensating generation is actually transmitted to the Phase I unit's dispatch system (not to the Phase I unit itself) for resale. A compensating unit designated to provide compensating generation for one Phase I unit in a dispatch system is equally capable of providing compensating generation for other Phase I units in that system until

the compensating unit reaches its full potential for generation.

Under Option 1, the "potential compensating generation" for each designated compensating unit will equal the higher of: the unit's baseline (converted to Kwhs) or the highest annual generation by the unit since 1987 as of the date of submission of the plan. The highest actual generation is used, rather than the nameplate capacity of the generator served by the unit, in order to obtain a realistic figure for the full generation capability of the unit.

The designated compensating units will then be considered in the order that they are listed in the reduced utilization plans for the dispatch system. Only those units whose potential compensating generation is necessary to cover the dispatch system's need for compensating generation for the year will be allowed to remain as compensating units for that year for any Phase I unit in the dispatch system. This is accomplished by requiring that the sum of the "potential compensating generation" of all units that are listed ahead of the last allowed compensating unit not exceed the "dispatch system potential reduced utilization." Comment is requested as to whether designated representatives should be allowed to revise, after the end of the year, the order in which compensating units are listed in the plans.

The Agency anticipates that the above-described requirements for allowing compensating units will minimize the need for case-by-case review of reduced utilization plans to ensure that the reduced utilization provisions are used for their statutory purposes and not simply to create excess, new allowances. However, in accordance with section 408(c)(2) of the Act, the Agency will continue to review proposed plans with compensating units to determine whether the designated representative demonstrates that the units will provide compensating generation to Phase I units or whether the plan is otherwise consistent with the purposes and requirements of title IV. For example, the Administrator will scrutinize and may disapprove plans that create a daisy chain of compensating units, i.e., where a compensating unit is itself underutilized and designates its own compensating unit. The Administrator will consider, *inter alia*, whether there is a sufficient showing that the compensating generation will really be provided to the Phase I unit by its proposed compensating unit, rather than by a subsequent compensating unit in the daisy chain. As a further example, the Administrator may well disapprove plans where Phase I units in two dispatch systems designate different compensating units in a third dispatch system or designate the same compensating units in a third dispatch system but in a different order. Moreover, under section 408(c)(2), the Agency also reserves the right, after the end of each year, to review any compensating unit designation to determine whether it is consistent with the purposes and requirements of title IV (e.g., whether the designation unnecessarily creates excess, new allowances), even if the designation otherwise meets the requirements of proposed § 72.91(c). Where a plan is disapproved or a compensating unit designation is not allowed to be in effect, the allowance surrender formula will, of course, apply.

c. Reporting requirements and allowance surrender. In order to implement the above-described limitations on designation of compensating units, the proposal augments the requirements for the annual compliance certification report submitted by Phase I units. In particular, the annual report submitted for any Phase I unit with a designated compensating unit must include demonstrations that the above-described conditions for compensating-unit designation and the limitations on the number of compensating units are met.

These proposed requirements are in addition to the requirements in the January 11, 1993 regulations concerning: calculation, in the annual compliance certification report, of a unit's "adjusted utilization" (40 CFR 72.91(a)); and submission of the confirmation report by Phase I units claiming to have realized kilowatt hour savings or reductions in heat input from conservation or improved unit efficiency measures (40 CFR 72.91(b)). These existing reporting provisions are not, for the most part, substantively altered. Several minor, nonsubstantive changes are proposed. For example, the terminology used in § 72.91(a) (such as the terms "shifts to designated sulfur-free generators" and "compensating generation provided to other units") is corrected to make it consistent throughout the section. Also, the definition of "compensating generation provided to other units" (40 CFR 72.91(a)(4)) is clarified by, *inter alia*, removing the superfluous but potentially confusing sentence at the end of the definition.

In addition to these minor changes, the proposal clarifies several other aspects of the provisions concerning reduced utilization plans and the calculation of adjusted utilization. For example, § 72.43 of the January 11, 1993 rule requires that energy conservation measures under a reduced utilization plan must be installed after the baseline period, i.e., after December 31, 1987. That section is amended to make it clear that unit efficiency measures, which are a category of energy conservation measures, must meet the same requirement.

As a further example, under § 72.91 of the January 11, 1993 regulations, where there are shifts to sulfur-free generators outside a unit's dispatch system, the designated representative must document that electricity of at least the amount claimed to have been shifted was actually "purchased" by the unit's dispatch system from the generator. Some sulfur-free generators have multiple owners and may be owned in part by the unit's dispatch system. In such cases, the unit's dispatch system may not "purchase" electricity from the generator but rather may acquire the electricity based on its ownership share. The proposal therefore requires that there be documentation that the dispatch system "acquired" the electricity from the sulfur-free generator. An analogous change is proposed for § 72.43(c)(4)(iv). Further, in order to ensure that multiple owners of sulfur-free generators claim only their respective shares of the sulfur-free generation, the documentation requirement is proposed to apply whether the sulfur-free generator is in or outside the dispatch system. For similar reasons, the documentation requirement is also applied to compensating units in or outside the dispatch system, for purposes of calculating "adjusted utilization."

Further, under § 72.91 of the current regulations, two or more Phase I units may include savings or generation from the same conservation measure or sulfur-free generator, provided that the designated representatives submit a certification that apportions the savings or generation among the units. Section 72.91 is revised to require the same approach where savings and improvement in heat rate from the same supply-side measure are claimed by two or more Phase I units.

In addition, under current § 72.91, plan reductions (i.e., underutilization accounted for by conservation or improved unit efficiency measures, sulfur-free generation, or shifts to compensating units under a reduced utilization plan) are considered only to the extent that they account for underutilization of the Phase I unit for which the plan was approved. 40 CFR 72.91(a)(3) (defining "plan reductions"). This approach was taken in order to

prevent the plan reductions of one Phase I unit from being used to offset the underutilization of another Phase I unit that has no reduced utilization plan. Today's proposal adds a provision at § 72.91(a)(7) to make this limitation clear.

2. Option 2: Limiting Units That Can Qualify as Compensating Units

The Agency also requests comment on Option 2, which is an alternative approach to restricting the designation of compensating units and thereby preventing the creation of excess, new allowances. Under Option 2, the Agency will adopt an upfront limitation on the category of units that can qualify for designation as compensating units. Once the Agency determines that a proposed compensating unit meets the upfront limitation, the Agency will approve the designation and allocate allowances for the unit and, as under the current regulations, will not conduct any end-of-year review of the need for the compensating unit.

Option 2 takes the approach that excess allowances will likely be created by the designation of any Phase II unit whose baseline, multiplied by what its annual emissions rate in Phase I would be in the absence of the designation, is less than the annual allowances allocated to the unit as a compensating unit. Without making any more emission rate reductions than it would have otherwise made, such a Phase II unit can increase its own generation (or purchase generation from a third party) to provide compensating generation and use its own allowance allocation to cover its own emissions. In addition, the unit may still have extra allowances to transfer, sell, or bank for future use. In order to prevent the creation of excess, new allowances, such units will not be allowed to be designated as compensating units.

Consistent with the reasoning underlying the approach proposed above with regard to substitution units, the lesser of a prospective compensating unit's 1990 actual emisssions rate or most stringent federally enforceable or State enforceable emission rate in Phase I as of November 15, 1993 will be treated as the unit's likely emissions rate in the absence of the reduced utilization plan. That emissions rate times baseline will be compared with, and must equal or exceed, the unit's potential allowance allocation (i.e., baseline times the lesser of 1985 actual or allowable emissions rate). Only compensating-unit designations that meet this requirement can be approved. Because of the inherent unreliability of projected utilization figures (discussed above in section IV(A)(1)(b) of this preamble), baseline, rather than projected utilization, will be used to determine whether a unit qualifies as a compensating unit. If a utilization projection less than baseline were used to determine that a unit qualified as a compensating unit but subsequently the unit had a higher actual utilization in Phase I that would have otherwise disqualified the unit, the unit could create excess, new allowances. In order to be approved, the designation of a compensating unit, of course, must meet the requirements in the current regulations for reduced utilization plans as well as the additional requirement proposed in Option 2.

Comment is requested on whether only emission rate reductions mandated by federal or State law should be considered in determining which units qualify to be designated as compensating units. In this regard, the Agency also asks for comment on the need for, and policy and practical implications of, including or not including voluntary reductions in this determination. Comment is also requested on whether the Agency should consider voluntary reductions by using the 1990 emissions rate as one of the criteria for determining which units qualify. Comment on alternatives to the 1990 emissions rate and the policy and practical implications of such alternatives is requested. The Agency also requests comment on whether an up-dated or projected level of utilization should be used, rather than baseline, in determining which units qualify.

If a designated representative of a Phase I unit has no Phase II unit that will provide compensating generation and that will qualify under Option 2, the designated representative will not be required to submit a reduced utilization plan designating a compensating unit. Instead, the allowance surrender provisions in §§ 72.91 and 72.92 will apply. The Agency proposes to adopt, under Option 2, the same clarifications and other revisions, as proposed under Option 1, to the portions of § 72.91 concerning calculation of adjusted utilization and confirmation reports. See section IV(B)(1)(c) of this preamble.

V. Applicability of Rule Revisions to Existing Permit Applications

As discussed above, the Agency has determined that rule revisions are necessary to ensure that the rule, and compliance plans approved under the rule, are consistent with the purposes of title IV of the Act. However, owners and operators of some affected sources have already submitted to EPA substitution or reduced utilization plans based on their reading of the January 11, 1993 regulations. In order to provide these owners and operators an opportunity to adjust their compliance strategies in the event of revision of the regulations, EPA has recently proposed, in draft permits, to approve for 1995 those substitution plans, and those reduced utilization plans (and parts of plans) with compensating units, that EPA determined to be in compliance with the existing regulations. In the draft permits, EPA also proposed to defer action on those compliance options for 1996–99 pending completion of the instant rulemaking. 58 FR 38371 (July 16, 1993); 58 FR 39542 (July 23, 1993); 58 FR 40812 (July 30, 1993); 58 FR 42065 (Aug. 6, 1993); and 58 FR 43107 (Aug. 13, 1993).

In the July 16, 1993 **Federal Register** notice of the issuance of draft permits, the Agency also first gave notice of its concern that the January 11, 1993 regulations can be read to allow the creation of excess, new allowances contrary to title IV and announced its intention to propose revisions of the regulations. 58 FR 38371. In that notice, the Agency further indicated that it intended to adopt a consistent approach with regard to all substitution plans, and reduced utilization plans with compensating units, that were submitted to EPA before the date of the notice and that are consistent with the January 11, 1993 regulations: the Agency stated that it intends, in issuing five-year Phase I permits, to approve such plans for 1995 and defer action on them for 1996–99. *Id.* This approach will be taken even where such plans are revised after their submittal so long as the revisions do not add units to the plans.

As stated in the July 16, 1993 notice, however, the Agency does not intend to give one-year approval for substitution plans or reduced utilization plans with compensating units that are submitted, or revised to add units, on or after July 16, 1993. The Agency notes that where such new or revised plans are submitted before issuance of Phase I permits for the units involved, the revisions must undergo a completeness review under § 72.61. The Agency's six-month period for acting on a permit addressing the revisions will run from the date that they are received by EPA, provided that the revisions are determined, or deemed, to be complete under § 72.61(a). In those cases where the Agency issues such permit before completion of the instant rulemaking, the Agency intends to defer action for 1995–99 on the substitution plans and reduced utilization plans with compensating units. *Id.* Similarly,

where substitution plans or reduced utilization plans with compensating units are submitted or revised on or after July 16, 1993 and after issuance of Phase I permits for the Phase I units involved, EPA intends to defer action on those plans for 1995–99. To the extent that action on a plan is deferred, the plan will be reviewed and acted on in accordance with the regulations resulting from the instant rulemaking. *Id.*; see also 58 FR 39542–39543.

This seems appropriate because in such cases the owners and operators of the Phase I units involved will have originally developed compliance strategies and submitted compliance plans (as part of their Phase I permit applications) that did not include the newly submitted substitution or compensating units. Consequently, with regard to the newly proposed substitution or compensating units, these owners and operators will not have relied, prior to July 16, 1993, on the current regulations revised in today's proposal. Similarly, the owners and operators of the newly proposed substitution or compensating units will not have previously submitted plans based on the current regulations and, in any event, such units are not otherwise required to comply with title IV emissions limitations until 2000. Any submissions of new or revised plans on or after July 16, 1993 are made after the Agency gave notice of its intent to amend the current regulations to make them consistent with the purposes and requirements of title IV and to prevent the creation of excess, new allowances.

However, the Agency is considering a modification of this general approach in response to comment on the draft permits. Some commenters on the draft permits have suggested that the Agency approve for 1995–99 those plans that clearly would not result in the creation of excess, new allowances and thus would not be affected by the revised regulations proposed today. The Agency is considering these comments in connection with the draft permits. If the Agency were to approve plans for 1995–99 for the reasons noted, any such approval would make it clear that the Agency retained the right to reopen the permits under 40 CFR 72.85 and revise the plans for 1996–99, where necessary, if the final regulations resulting from the instant rulemaking differ from today's proposal in a way that would be inconsistent with the five-year approval of such plans.

The Agency requests comment on its approach to addressing any reliance by owners and operators on the January 11, 1993 regulations, including the one-year period for which plans submitted before July 16, 1993 will be approved. This includes comment on whether the one-year approval period is too generous or too short. For example, comment is requested on whether it is appropriate to limit the application of the revised regulations proposed here to amendments of existing substitution and reduced utilization plans, and to new plans, submitted in the future. Under such a limitation, substitution and reduced utilization plans that have already been submitted to EPA and that are in compliance with the current regulations would be approved for 1995–99.

Finally, the Agency maintains that it has the authority under section 408 of the Act and the current § 72.62(a) to defer ruling on substitution or reduced utilization plans or parts of such plans. Under section 408(c)(2), the Administrator must "review each proposed compliance plan to determine whether it satisfies the requirements of * * * title [IV]" and must "approve or disapprove such plan within six months of receipt of a complete submission." 15 U.S.C. 7651g(c)(2). In carrying out its statutory responsibilty to resolve issues concerning the consistency of a compliance plan with title IV, EPA has the administrative discretion to organize its consideration of the issues and decide some issues ahead of others. Consistent with its rulings on the initially decided issues, the Agency can approve or disapprove a compliance plan (which includes at a minimum the agreement that the designated representative will hold sufficient allowances) while reserving decision on all or a portion of particular proposed compliance options. The Agency maintains that, once the Agency has approved or disapproved a compliance plan, its consideration of the deferred issues on a compliance option is not subject to the six-month deadline.

The current § 72.62(a) allows for this type of flexibility in structuring and resolving issues concerning a proposed compliance plan. The regulation provides that the Administrator may issue a draft permit that "incorporates in whole or in part, or with changes or conditions, as appropriate, the permit application." 40 CFR 72.62(a). The Agency has exercised such authority in issuing the draft permits that, by including approved compliance plans and deferring action on some proposed compliance options for certain years, incorporate in part the permit applications. See, e.g., 58 FR 38370. As discussed above, the Agency maintains that the current regulations governing substitution and reduced utilization plans can be read to allow excess, new allowances to be created contrary to the purposes and requirements of title IV. In order to ensure that only compliance options for 1996–99 that are consistent with title IV will be approved, the Agency has issued draft permits that, inter alia, defer action on those compliance options for 1996–99 until completion of the instant rulemaking and the issuance of final rules addressing those compliance options in a manner consistent with title IV.

While deferral of action on compliance options is authorized under the current § 72.62(a), the Agency wishes to remove any possible doubt concerning such authority under the regulations. Therefore, the Agency proposes to add language making this authority more explicit, both with regard to the issuance of permits and the revision (whether through permit modification or fast-track modification) of previously issued permits.

VI. Administrative Requirements

A. Executive Order 12291 and Regulatory Flexibility Act

Under Executive Order 12291, the Administrator must judge whether a regulation is "major" and therefore subject to the requirements to conduct a Regulatory Impact Analysis. In the preamble of the January 11, 1993 regulations, the Agency determined that the regulations were "major" because their annual effect on the economy would be greater than $100 million. 58 FR 3648. A Regulatory Impact Analysis was therefore submitted, along with the regulations, to the Office of Management and Budget (OMB) for review. 58 FR 3649.

The Regulatory Flexibility Act of 1980 requires each federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities." In the preamble of the January 11, 1993 regulations, the Administrator certified that the regulations would not have such impact. *Id.*

This document proposes to modify a few sections of the January 11, 1993 regulations. These proposed modifications are not significant enough to change the regulatory or economic impacts addressed in the preamble of the January 11, 1993 regulations. Today's proposal was submitted to OMB for review prior to publication as required by E.O. 12291.

B. Paperwork Reduction Act

The information collection requirements in this proposed rule have been submitted for approval to OMB

under the Paperwork Reduction Act, 44 U.S.C. 3501, *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1584), and a copy may be obtained from Sandy Farmer, Information Policy Branch, Environmental Protection Agency, 401 M Street, SW., (Mail Code 2136), Washington, DC 20460 or by calling (202) 260–2740.

This collection of information has an estimated reporting and recordkeeping burden averaging 16 hours per response. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

An Information Collection Request document and estimates of the public reporting burden were prepared in connection with the January 11, 1993 regulations. 56 FR 63098; 58 FR 3650. The regulation modifications contained in today's proposal will not significantly change the reporting burden that was previously estimated.

Send comments regarding this burden analysis or any other aspect of this collection of information, including suggestions for reducing the burden, to Chief, Information Policy Branch of EPA at the above address; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place, NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Parts 72 and 73

Environmental protection, Air pollution control, Compliance plans, Electric utilities, Permits, Reporting and recordkeeping requirements, and Sulfur dioxide.

Dated: November 4, 1993.

Carol M. Browner,

Administrator, U.S. Environmental Protection Agency.

For the reasons set forth in the preamble, chapter I of title 40 of the Code of Federal Regulations is amended as follows:

PART 72—[AMENDED]

1. The authority citation for part 72 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

2. Section 72.41 is amended by revising paragraphs (b)(1)(i), (c)(3)(i)(B), (c)(3)(i)(C), (c)(3)(ii), (c)(4)(ii), (d)(2), and (e)(3)(iv) to read as follows:

§ 72.41 Phase I substitution plans.

* * * * *

(b)(1) * * *

(i) Any unit under paragraph (a)(2) of this section has a common owner or operator with the unit under paragraph (a)(1) of this section; and

* * * * *

(c) * * *

(3) * * *

(i) * * *

(B) The lesser of the unit's 1985 actual SO_2 emissions rate, 1985 allowable SO_2 emissions rate, 1990 actual SO_2 emissions rate, or, as of November 15, 1990, the most stringent federally enforceable or State enforceable emissions limitation for sulfur dioxide applicable to the unit for 1995–99. For purposes of determining the most stringent emissions limitation, applicable emissions limitations shall be converted to lb/mmBtu in accordance with appendix B of this part. Where the most stringent emissions limitation is not the same for every year during 1995–99, the lesser of the emissions rates shall be determined, as provided in paragraph (c)(3)(i)(B) of this section, separately for each year during 1995–99 using the most stringent emissions limitation for that year. Where the federally enforceable or State enforceable emissions limitation governing the unit is not a unit-specific limitation, the Administrator will determine on a case-by-case basis the unit-specific, most stringent federally enforceable or State enforceable emissions limitation to be used in determining the lesser of the emissions rates under paragraph (c)(3)(i)(B) of this section.

(C) The product of the baseline in paragraph (c)(3)(i)(A) of this section and the emissions rate in paragraph (c)(3)(i)(B) of this section, divided by 2000 lbs/ton. Where the most stringent emissions limitation is not the same for every year during 1995–99, the product shall be calculated, as provided in the prior sentence, separately for each year during 1995–99 using the emissions rate determined for that year in paragraph (c)(3)(i)(B) of this section.

(ii)(A) The sum of the amounts in paragraph (c)(3)(i)(C) of this section for all substitution units to be governed by the plan. Except as provided in paragraph (c)(3)(ii)(B) of this section, this sum is the total number of allowances available each year under the substitution plan.

(B) Where the most stringent emission limitation is not the same for every year during 1995–99, the sum shall be calculated, as provided under paragraph (c)(3)(ii)(A) of this section, separately for each year during 1995–99 using the amounts calculated for that year in paragraph (c)(3)(i)(C) of this section. Each separate sum is the total number of allowances available for the respective year under the substitution plan.

(4) * * *

(ii) A list showing any annual distribution of the allowances in paragraph (c)(3)(ii) of this section from a substitution unit to the respective unit under paragraph (a)(1) of this section to be governed by the plan. The total number of such allowances allocated among such units each year may not exceed the sum calculated and applicable to that year under paragraph (c)(3)(ii) of this section.

* * * * *

(d) * * *

(2) In no event shall allowances be allocated, under paragraph (d)(1) of this section, for any year in excess of the sum calculated and applicable to that year under paragraph (c)(3)(ii) of this section, as adjusted by the Administrator in approving the plan.

* * * * *

(e) * * *

(3) * * *

(iv) *Change of owner or operator.* If there is a change in the owners or operators of any unit governed by an approved substitution plan and the requirement under paragraph (b)(1)(i) of this section is no longer met, then the designated representatives of the units governed by the plan shall terminate the plan as of January 1 of the calendar year during which the change was made. If the designated representatives fail to terminate the plan, the Administrator, on his own motion, shall terminate the plan and deduct the allowances required to be surrendered under paragraph (e)(3)(ii) of this section.

3. Section 72.43 is amended as follows:

§ 72.43 Phase I reduced utilization plans.

Option 1 for Paragraph (a)

[Unchanged]

Option 2 for Paragraphs (a) Introductory Text, (a)(1) Introductory Text [revised] and (a)(2) [Added]

(a) *Applicability.* This section shall apply to the designated representative of:

(1) Any Phase I unit, including:

* * * * *

(2) Any affected unit that:

(i) Is not otherwise subject to any Acid Rain emissions limitation or emissions reduction requirements during Phase I; and

(ii) Meets the requirement that the unit's baseline multiplied by the lesser of the unit's 1985 actual SO_2 emissions rate or 1985 allowable SO_2 emissions rate, divided by 2000 lbs/ton, does not exceed the unit's baseline multiplied by the lesser of the unit's 1990 actual SO_2 emissions rate or, as of November 15, 1990, the most stringent federaly enforceable or State enforceable emissions limitation for sulfur dioxide for 1995–99, divided by 2000 lbs/ton.

Option 1 for Paragraph (b)(1)

[Unchanged]

Option 2 for Paragraphs (b)(1) Introductory Text, (b)(1)(ii)(A) and (b)(3)(i) [revised]

(b)(1) The designated representative of any unit under paragraph (a)(1) of this section shall include in the Acid Rain permit application for the unit a reduced utilization plan, meeting the requirements of this section, when the owners and operators of the unit plan to:

* * * * *

(ii) * * *

(A) Shifting generation of the unit to a unit under paragraph (a)(2) of this section or to a sulfur-free generator; or

* * * * *

(3)(i) Improved unit efficiency measures shall be implemented in the unit after December 31, 1987. Such measures include supply-side measures listed in appendix A, section 2.1 of part 73 of this chapter.

* * * * *

Option 1 for Paragraphs (c)(4)(i) and (iv), (d), (f)(1)(i), (f)(4)(i), (f)(4)(ii)(B) and (f)(4)(iii) [Revised] and (c)(4)(v) [Added]

(c) * * *

(4) * * *

(i) Identification of each compensating unit or sulfur-free generator. All units in the same dispatch system that submit a plan designating one or more compensating units shall identify the same list of compensating units.

* * * * *

(iv) For each compensating unit or sulfur-free generator not in the dispatch system of the unit reducing utilization under the plan, the system directives or power purchase agreements or other contractual agreements governing the acquisition, by the dispatch system, of the electrical energy that is generated by the compensating unit or sulfur-free generator and on which the plan relies to accomplish reduced utilization.

(v) For each compensating unit, the higher of the baseline or the highest actual annual utilization for any calendar year starting after 1987 and ending by the date that the plan is submitted.

* * * * *

(d) *Administrator's Action.* (1) In approving the reduced utilization plans (including conditional approval), the Administrator will provide that the plan will be in effect:

(i) With regard to any portion of the plan that relies on sulfur-free generation or energy conservation or improved unit efficiency measures, for the calendar years in Phase I that are specified in the plan or until the calendar year for which a termination of the plan takes effect; and

(ii) With regard to any portion of the plan that designates any compensating units, for those calendar years included under paragraph (d)(1)(i) of this section for which the Administrator determines that the requirements of §§ 72.91(c)(1)(ix) and (3)(v) are met and for compensating units for which the Administrator determines that the requirements of § 72.91(c)(5)(v) are met; except to the extent that the Administrator determines that designation of a compensating unit is inconsistent with the purposes of title IV of the Act.

(2) If the Administrator approves the reduced utilization plan, he or she will allocate allowances, as provided in the approved plan, to the Allowance Tracking System accounts for any designated compensating unit upon issuance of an Acid Rain permit containing the plan, except that, if the plan is conditionally approved, the allowances will be allocated upon revision of the permit to activate the plan. The designated representative of any compensating unit shall not transfer the allowances allocated for any year under paragraph (d)(2) of this section unless and until the Administrator determines under paragraph (d)(3) of this section that the plan is in effect for that unit and for that year.

(3) After the end of each calendar year for which allowances are allocated under paragraph (d)(2) of this section, the Administrator will determine whether, and for which compensating units, the reduced utilization plan is in effect in accordance with paragraph (d)(1) of this section. For each compensating unit, if the Administrator determines that no plan designating such unit as a compensating unit for any Phase I unit is in effect for the year, he or she will deduct from the compensating unit's Allowance Tracking System account the allowances allocated to the compensating unit for the year under paragraph (d)(2) of this section.

* * * * *

(f) * * *

(1) * * *

(i) Any compensating unit designated under an approved reduced utilization plan shall become a Phase I unit for each calendar year for which the plan is in effect in accordance with paragraph (d)(1) of this section, except that such unit shall not become subject to the Acid Rain emissions limitations for nitrogen oxides in Phase I under section 407 of the Act and the regulations implementing section 407 of the Act.

* * * * *

(4) *Termination.* (i) No reduced utilization plan that designates a compensating unit that serves as a control unit under a Phase I extension plan shall be terminated, and no such unit shall be de-designated as a compensating unit, before the end of Phase I.

(ii) * * *

(B) In the notification to terminate, the designated representative of any compensating unit governed by the plan shall state that he or she surrenders for deduction from the unit's Allowance Tracking System account the allowances allocated under paragraph (d)(2) of this section to each compensating unit for the calendar years for which the plan is to be terminated.

(iii) If the requirements of paragraph (f)(3)(ii) are met and upon revision of the permit to terminate the reduced utilization plan, the Administrator will deduct the allowances specified in paragraph (f)(3)(ii)(B) of this section. No reduced utilization plan shall be terminated, and no unit shall be de-designated as a Phase I unit under paragraph (f)(4)(ii) of this section, unless such deduction is made.

Option 2 for Paragraphs (c) (4)(i), (ii) and (iv) [Revised]

(c) * * *

(4) * * *

(i) Identification of each compensating unit or sulfur-free generator.

(ii) For each compensating unit.

(A) The compensating unit's baseline multiplied by the lesser of the compensating unit's 1985 actual SO_2 emissions rate or 1985 allowable SO_2 emissions rate, divided by 2000 lbs/ton.

(B) The compensating unit's baseline multiplied by the lesser of the compensating unit's 1990 actual SO_2 emissions rate or, as of November 15, 1990, the most stringent federally enforceable or State enforceable emissions limitation for sulfur dioxide for 1995–99, divided by 2000 lbs/ton.

(C) The allowance allocation calculated as the amount under paragraph (c)(4)(ii)(A) of this section. If the compensating unit is a new unit, it shall be deemed to have a baseline of zero and shall be allocated no allowances.

* * * * *

(iv) For each compensating unit or sulfur-free generator not in the dispatch system of the unit reducing utilization under the plan, the system directives or power purchase agreements or other contractual agreements governing the acquisition, by the dispatch system, of the electrical energy that is generated by the compensating unit or sulfur-free generator and on which the plan relies to accomplish reduced utilization.

* * * * *

4. Section 72.62 is amended by revising paragraph (a) to read as follows:

§ 72.62 Draft permit.

(a) After the Administrator receives a complete Acid Rain permit application and any supplemental information, the Administrator will issue a draft permit that incorporates in whole, in part, or with changes or conditions as appropriate, the permit application or deny the source a draft permit. In issuing such a draft permit, the Administrator may defer ruling on any compliance option for any year.

* * * * *

5. Section 72.82 is amended by revising paragraph (d) to read as follows:

§ 72.82 Fast-track modifications.

* * * * *

(d) Within 30 days of the close of the public comment period, the permitting authority shall consider the fast-track modification and the comment received and approve, in whole or in part or with changes or conditions as appropriate, or disapprove the modification. In addressing the fast-track modification, the permitting authority may defer ruling on any compliance option for any year. A fast-track modification shall be effective immediately upon issuance, in accordance with § 70.7(a)(1)(v) of this chapter as applied to significant permit modifications.

6. Section 72.91 is amended by revising the section heading and paragraphs (a)(3)(iii) introductory text (formula is unchanged), (a)(3)(iv), (a)(4), (a)(5), (a)(6), (b)(2), and adding paragraphs (a)(7) and (c) to read as follows:

Option 1 for Section Heading

§ 72.91 Phase I unit adjusted utilization and determination of compensating units.

Option 2 for Section Heading

§ 72.91 Phase I unit adjusted utilization. [Unchanged]

(a) * * *

(3) * * *

(iii) "Shifts to designated sulfur-free generators" is the reduction in utilization (in mmBtu), for the calendar year, that is accounted for by all sulfur-free generators designated under the reduced utilization plan. This term equals the sum, for all such generators, of the "shift to sulfur-free generator." "Shift to sulfur-free generator" shall equal the amount, to the extent documented under paragraph (a)(6) of this section, calculated for each generator using the following formula:

* * * * *

(iv) "Shifts to designated compensating units" is the reduction in utilization (in mmBtu) that is accounted for by increased generation at compensating units for which the reduced utilization plan is in effect for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this section, of the unit reducing utilization multiplied by the sum, for all such compensating units, of the "shift to compensating unit" for each compensating unit. "Shift to compensating unit" shall equal the amount of compensating generation (in Kwh), to the extent documented under paragraph (a)(6) of this section, that the designated representatives of the unit reducing utilization and the compensating unit have certified (in their respective annual compliance certification reports) as the amount that will be converted to mmBtus and used, in accordance with paragraph (a)(4) of this section, in calculating the adjusted utilization for the compensating unit.

(4) "Compensating generation provided to other units" is the total amount of utilization (in mmBtu) necessary to provide the generation (if any) that was shifted to the unit as a designated compensating unit under any other reduced utilization plans that were in effect for the unit and for the calendar year. This term equals the heat rate, under paragraph (a)(3) of this section, of such unit multiplied by the sum of each "shift to compensating unit" that is attributed to the unit in the annual compliance certification reports submitted by the Phase I units under such other plans and that is certified under paragraph (a)(3)(iv) of this section.

(5) Notwithstanding paragraphs (a)(3)(i), (ii), and (iii) of this section, where two or more Phase I units include in "plan reductions", in their annual compliance certification reports for the calendar year, expected kilowatt hour savings or improvement in heat rate from the same specific conservation or improved unit efficiency measures or increased utilization of the same sulfur-free generator:

(i) The designated representatives of all such units shall submit with their annual reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings, improvement in heat rate, or increased utilization among such units.

(ii) Each designated representative shall include in the annual report only the respective unit's share of the total savings, improvement in heat rate, or increased utilization, in accordance with the certification under paragraph (a)(5)(i) of this section.

(6)(i) Where a unit includes in "plan reductions" under paragraph (a)(3) of this section the increase in utilization of any sulfur-free generator, the designated representative of the unit shall submit, with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the "shift to sulfur-free generator" attributed to the sulfur-free generator in the annual report was actually acquired by the unit's dispatch system from the sulfur-free generator.

(ii) Where a unit includes in "plan reductions" under paragraph (a)(3) of this section utilization of any compensating unit, the designated representative of the unit shall submit with the annual compliance certification report, documentation demonstrating that an amount of electrical energy at least equal to the "shift to compensating unit" attributed to the compensating unit in the annual report was actually acquired by the unit's dispatch system from the compensating unit.

(7) Notwithstanding paragraphs (a)(3)(i), (ii), (iii), and (iv), (a)(4), and (a)(5) of this section, (plan reductions—compensating generation provided to other units) shall not exceed (baseline—actual utilization).

(b) * * *

(2) Notwithstanding paragraph (b)(1)(i) of this section, where two or more Phase I units include in the confirmation report the verified kilowatt hour savings or reduction in heat rate from the same specific conservation or improved unit efficiency measures:

(i) The designated representatives of all such units shall submit with their confirmation reports a certification signed by all such designated representatives. The certification shall apportion the total kilowatt hour savings or reduction in heat rate among such units.

(ii) Each designated representative shall include in the confirmation report only the respective unit's share of the total savings or reduction in heat rate in accordance with the certification under paragraph (b)(2)(i) of this section.

* * * * *

Option 1 for Paragraph (c)

(c) Annual Compliance Certification Report: compensating units. The designated representative for each Phase I unit that designates any compensating units for the calendar year under an approved reduced utilization plan shall include the following elements in the annual compliance certification report for the calendar year; provided that the reporting requirement in this paragraph (c) shall not apply to the annual compliance certification report submitted for 1995 by the designated representative of a Phase I unit whose plan, as approved, is not governed by § 72.43(d)(1)(ii) for 1995.

(1) Potential reduced generation of the unit, calculated as follows:

potential reduced generation =

{[(baseline × (1 + percentage change in dispatch system sales))—actual utilization)] heat rate)—reduction from energy conservation—(reduction from improved unit efficiency + heat rate)—shifts to designated sulfur-free generators + compensating generation provided to other units

where:

(i) "Baseline" is as defined in § 72.2.

(ii) "Percentage change in dispatch system sales" is as calculated under paragraph (a)(3)(iii)(C) of this section; provided that if the result of the formula is greater than or equal to zero, then the percentage change in dispatch system sales shall be treated as zero only for purposes of paragraph (c)(1) of this section.

(iii) "Actual utilization" is the figure calculated under paragraph (a)(2) of this section.

(iv) "Heat rate" is the actual annual average heat rate (Btu/Kwh × 10^{-6}) of the unit (determined in accordance with part 75 of this chapter) before the employment of any improved unit efficiency measures under an approved plan.

(v) "Reduction from energy conservation" is as calculated under paragraphs (a)(3)(i) and (5) of this section, without converting to mmBtus. This figure shall not be adjusted under paragraph (b) of this section.

(vi) "Reduction from improved unit efficiency" is as calculated under paragraphs (a)(3)(ii) and (5) of this section. This figure shall not be adjusted under paragraph (b) of this section.

(vii) "Shifts to designated sulfur-free generators" is as calculated under paragraphs (a)(3)(iii) and (5) of this section, without converting to mmBtus.

(viii) "Compensating generation provided to other units" is as calculated under paragraph (a)(4) of this section, without converting to mmBtus.

(ix) Where a reduced utilization plan designates any compensating units for a Phase I unit, the plan will be in effect for the calendar year only if the Phase I unit's potential reduced generation is greater than zero.

(2) A list of all sulfur-free generators from which the unit's dispatch system actually acquired electrical energy during the calendar year and that are not designated in a reduced utilization plan that is in effect for the calendar year for any unit under paragraph (c)(3)(i) of this section. The list shall include the "potential shift to sulfur-free generator" calculated for each sulfur-free generator as the lesser of:

(i) The amount of electrical energy actually acquired during the calendar year from the sulfur-free generator by the unit's dispatch system, which amount shall be supported by documentation submitted with the annual compliance certification report even if the amount under paragraph (c)(2)(ii) of this section is the lesser amount; or

(ii) Actual sulfur-free generation—[average 1985–87 sulfur-free generation × (1 + percentage change in dispatch system sales)]

where:

(A) "Actual sulfur-free generation" is the actual annual generation (in Kwh) of the sulfur-free generator for the calendar year.

(B) "Average 1985–87 sulfur-free generation" is the sum of annual generation (in Kwh) for 1985, 1986, and 1987 for the sulfur-free generator, divided by three.

(C) "Percentage change in dispatch system sales" is as calculated under paragraph (a)(3)(iii)(C) of this section; provided that if the result is less than or equal to zero, then percentage change in dispatch system sales shall be treated as zero only for purposes of paragraph (c)(2) of this section.

(D) If the result under paragraph (c)(2)(ii) of this section is less than or equal to zero, then that result shall be treated as zero.

(iii) Notwithstanding paragraph (c)(2)(ii) of this section, if two or more dispatch systems, with any Phase I units governed by paragraph (c) of this section, acquired electrical energy during the calendar year from the same sulfur-free generator, the designated representative of all such units may apportion the amount under paragraph (c)(2)(ii) of this section and use the respective dispatch system's share as the amount under paragraph (c)(2)(ii) of this section; provided that:

(A) The designated representatives shall submit with their annual reports a certification signed by such designated representatives. The certification shall apportion the amount under paragraph (c)(2)(ii) of this section among such dispatch systems.

(B) Each designated representative shall use, as the amount under paragraph (c)(2)(ii) of this section, only the respective dispatch system's share of the amount, in accordance with the certification.

(3) Dispatch system potential reduced generation, calculated as follows:

$$\text{Dispatch system potential reduced generation} = \sum_{i=1}^{u} \text{potential reduced generation}_i - \sum_{i=1}^{s} \text{potential shift to sulfur-free generator}_i$$

where:

(i) u = all units in the dispatch system that:

(A) Are listed in Table 1 of § 73.10(a) of this chapter; or

(B) Are substitution units for the calendar year under approved substitution plans.

(ii) "Potential reduced generation$_i$" is as calculated under paragraph (c)(1) of this section separately for each unit under paragraph (c)(3)(i) of this section. The designated representative of each such unit shall certify the figure for potential reduced generation for the respective unit.

(iii) s=all sulfur-free generators listed under paragraph (c)(2) of this section.

(iv) "Potential shift to sulfur-free generator$_i$" is the figure calculated for each sulfur-free generator under paragraph (c)(2) of this section.

(v) If the result of the formula for "dispatch system potential reduced generation" is less than or equal to zero, then "dispatch system potential reduced generation" shall be deemed to be zero. Any reduced utilization plan that

designates any compensating units for any Phase I units in the dispatch system shall be in effect for the calendar year only if dispatch system potential reduced generation is greater than zero.

(4) The list of all compensating units designated by any Phase I unit in the unit's dispatch system under a reduced utilization plan approved for the calendar year. The list shall include the potential compensating generation of each compensating unit, calculated for each compensating unit as follows:

Potential compensating generation=highest generation − actual generation + compensating generation provided to units in dispatch system

where:

(i) "Highest generation" is the figure under § 72.43(c)(4)(v) for the compensating unit, as adjusted by the Administrator in approving the reduced utilization plan.

(ii) "Actual generation" is the actual annual generation (in Kwh) for the calendar year for the compensating unit.

(iii) "Compensating generation provided to units in dispatch system" is the sum of each "shift to compensating unit", as calculated under paragraph (a)(3)(iv) of this section, that is attributed to the compensating unit in the annual compliance certification report submitted by the Phase I unit or any other unit in the Phase I unit's dispatch system.

(5) Specification of those compensating units on the list in paragraph (c)(4) of this section whose potential compensating generation is necessary to cover the dispatch system's potential reduced generation. A compensating unit's potential compensating generation shall be deemed necessary only if the following requirement is met:

$$\left(\text{Dispatch system potential reduced generation} - \sum_{i=1}^{r-1} \text{potential compensating generation}_i\right) > 0$$

where:

(i) r=the rank of the compensating unit that the designated representative is considering for specification under paragraph (c)(5) of this section.

(ii) i=the rank of a compensating unit on the list under paragraph (c)(4) of this section.

(iii) "Dispatch system potential reduced utilization" is the figure calculated under paragraph (c)(3) of this section.

(iv) "Potential compensating generation$_i$" is the figure calculated under paragraph (c)(4) of this section for a compensating unit with rank i.

(v) Any reduced utilization plan that designated any compensating units for any Phase I units in the dispatch system shall be in effect for the calendar year only for compensating units whose potential compensating generation is deemed necessary under paragraph (c)(5) of this section and from which the acquisition of electrical energy is documented under paragraph (a)(6) of this section.

(6) If the unit is a designated compensating unit for any Phase I units under any other reduced utilization plans, the identification of such Phase I units whose plans are in effect for the unit and for the calendar year.

Option 2 No Paragraph (c) To Be Added

PART 73—[AMENDED]

7. The authority citation for part 73 is revised to read as follows:

Authority: 42 U.S.C. 7601 and 7651 *et seq.*

8. Section 73.52 is amended by revising paragraph (a)(3) to read as follows:

§ 73.52 EPA recordation.

(a) * * *

Option 1 for Paragraph (a)(3)

(3) If allowances specified or indicated pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.43(d)(2) or § 72.44(h)(1)(i) of this chapter, the transfer is in accordance with such limitation; and

Option 2 for Paragraph (a)(3)

(3) If allowances specified or indicated pursuant to § 73.50(b)(1)(ii) are subject to the limitation on transfer imposed pursuant to § 72.44(h)(1)(i) of this chapter, the transfer is in accordance with such limitation; and

* * * * * *

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Part VI

Environmental Protection Agency

40 CFR Part 761

Polychlorinated Biphenyls (PCBs); Reclassification of PCB and PCB Contaminated Transformers; Proposed Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 761

[OPPTS–66015; FRL–3948–8]

RIN 2070–AC39

Polychlorinated Biphenyls (PCBs); Reclassification of PCB and PCB-Contaminated Transformers

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the requirements that govern the reclassification of transformers from a PCB (≥500 ppm PCBs) or a PCB-Contaminated (≥50 – <500 ppm PCBs) status to a lower regulatory status as a PCB-Contaminated or a non-PCB (<50 ppm PCBs) Transformer. This proposed rule would change the methods used to reclassify transformers by: Eliminating the 50° Centigrade (C) requirement for all PCB and PCB-Contaminated Transformers; eliminating the "in-service use" requirement for all transformers with a PCB concentration of <1,000 ppm PCB; modifying the 90–day requirement for post-retrofill testing of PCB Transformers with a PCB concentration <1,000 ppm PCB; eliminating the post-retrofill testing requirement for PCB-Contaminated Transformers after retrofill; and specifying the procedures that must be followed during a retrofill for these units. This proposed rule would amend the procedure for reclassification of certain transformers and reduce the regulatory and economic burden on those in the regulated community who wish to take advantage of the reclassification procedure.

DATES: Written comments must be received on or before January 3, 1994. If persons request time for oral comment by December 3, 1993, EPA will hold an informal hearing in Washington, DC on or about January 18, 1994. If a hearing is requested, the exact time and location of the hearing will be published in the **Federal Register** at least 30 days before the hearing.

ADDRESSES: Three copies of comments identified with the docket number OPPTS–66015 must be submitted to: TSCA Public Docket Office (TS–793), Office of Pollution Prevention and Toxics, Rm. NE G004, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551, FAX: (202) 554–5603 (document requests only).

SUPPLEMENTARY INFORMATION: Section 6(e) of the Toxic Substances Control Act (TSCA) bans the manufacture, processing, distribution in commerce, and use of PCBs unless the PCBs are totally enclosed. Section 6(e) gives EPA authority, however, to authorize these PCB activities if the Administrator finds that they will not present an unreasonable risk of injury to human health or the environment. In the **Federal Register** of May 31, 1979 (44 FR 31514), EPA permitted routine servicing but prohibited rebuilding of PCB Transformers (40 CFR 761.31(a)). Routine servicing results in minimal exposures to PCBs and allows the use of most existing transformers to continue through their useful lifetimes. Rebuilding of PCB-Contaminated Transformers was allowed based on the lower concentration and corresponding lower risks to human health and the environment. Therefore, owners of PCB Transformers could only rebuild those units if they were reclassified to <500 ppm PCBs. The guidelines for reclassification of transformers are currently found at 40 CFR 761.30(a)(2)(v).

I. Background

EPA published a final rule in the **Federal Register** of May 31, 1979 (44 FR 31514) which, among other things, authorized the rebuilding of PCB-Contaminated Transformers with concentrations <500 ppm. Owners of PCB Transformers who wished to rebuild these units were required to reclassify them to PCB-Contaminated status prior to rebuilding (40 CFR 761.31(a)). Reclassification is the process by which a high PCB concentration in a transformer can be converted to a lower PCB concentration. To reclassify a PCB Transformer, it must be drained, refilled with non-PCB dielectric fluid, placed in service (i.e., operated) for at least 3 months, and finally, tested to determine if the PCB concentration has been reduced. If the transformer was tested and determined to be <500 ppm PCBs, it could then be rebuilt rather than replaced. In 40 CFR 761.30(a)(2)(v), as published in the **Federal Register** of August 25, 1982 (47 FR 37342), EPA established more specific requirements for the reclassification of PCB Transformers. The rule currently states:

> A PCB Transformer may be converted to PCB-Contaminated Electric Equipment or to a non-PCB Transformer and, a transformer that is classified as PCB-Contaminated Electrical Equipment may be reclassified to a non-PCB Transformer by draining, refilling and/or otherwise servicing the transformer. In order to reclassify, the transformer's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or less than 50 ppm PCB (for conversion to a non-PCB Transformer) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the transformer. In-service means that the transformer is used electrically under loaded conditions that raise the temperature of the dielectric fluid to at least 50° Centigrade. The Director, Exposure Evaluation Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from transformers for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60.

Also in this rule, EPA clarified the definition of "in-service use" for transformers by specifying that a minimum dielectric fluid temperature of 50° C must be reached. This temperature had been shown experimentally to be associated with a condition of light electrical loading, and to cause a release of PCBs from the internal components of the transformer into the dielectric fluid, i.e., leachback.

Alternate methods, as authorized at 40 CFR 761.30(a)(2)(v), involve simulating loaded conditions of in-service use. Based on the vast number of requests received for approval of alternate methods, it has been EPA's experience that these requests for an alternate method are typically necessary when a transformer has failed, is being serviced and is therefore not on line, or for some other reason cannot be operated under normal loaded conditions. Requests for reclassifying transformers using an alternate method have typically involved simulating in-service use or requesting that the temperature requirement of 50° C (interpreted by EPA to mean at whatever frequency the transformer normally reaches 50° C during operation, i.e., once per week, once per month, etc.) for the 90–day time period be waived.

Over the last few years, EPA has received information that questions the correlation between both the 90–day time period for testing after retrofill and the 50° C temperature requirements of reclassification, and the leachback of dielectric fluid from the internal components of a transformer. Additionally, information submitted to EPA indicates that many transformers, even under normal operating conditions, never reach 50° C because

the technical limitations of the equipment. Transformers may also fail to reach 50° C due to equipment failure, low ambient temperatures, or transformer loading restrictions (Refs. 3, 6, 7, 11, 12, 13, and 14).

EPA believes there are drawbacks associated with attempting to comply with the 50° C temperature requirement by simulating in-service use of the transformers. These include safety risks to maintenance personnel, fire hazards associated with energizing or insulating equipment which is not designed to withstand heavy loads or increased temperatures, and the economic and resource commitment that must be borne by the transformer owners (Ref. 4). EPA solicits comments on the validity and accuracy of these drawbacks and seeks data concerning whether to drop the 50° C temperature requirement.

The utility industry has also suggested that the 50° C requirement has no bearing on the degree of the leachback of PCBs from the internal components of a transformer. Further, EPA has been criticized for relying on a single study which correlates 50° C with "light electric loading," and thus failing to justify the selection of the 50° C temperature requirement as a criterion for reclassification (Ref. 1 and 2).

An industry-sponsored study was conducted to assess the various regulatory criteria for the reclassification of transformers. Data collected during the study were analyzed and summarized in a report (Ref. 3). The report indicates that there is no statistical correlation between the 50° C temperature or the 90–day time requirements in accelerating the leachback of PCBs from the internal components of a wide variety of PCB and PCB-Contaminated Transformers. EPA later conducted independent statistical analyses of this data and reached the same conclusions (Ref. 4). The variables addressed by this report included an assessment of the following characteristics:

1. Transformer manufacturer.
2. Transformer KVA rating.
3. Transformer age (in years).
4. Pre-retrofill PCB concentration.
5. Whether the transformer was flushed.
6. Whether the transformer was energized (i.e., whether voltage was applied to the primary side; minimally operational).
7. Whether the transformer was loaded (i.e., fully operational).
8. Whether the transformer was heated to 50° Centigrade.
9. Post-retrofill PCB concentration.
10. Number of days from "Pre" test to "Post" test. ("Pre-test" refers to the PCB concentration measured prior to the retrofill of the transformer. "Post-test" refers to the PCB concentration measured after the retrofilling procedure.)

Study data were collected from more than 380 transformers that were retrofilled by several dozen utility companies. EPA's assessment of the data, however, focused only on the 263 transformers for which the submitted data were deemed complete. The data revealed that of the 175 retrofilled transformers with pre-retrofill PCB concentrations of <500 ppm and not energized to reach 50° C, 99.43 percent were reduced to <50 ppm PCBs. The concentrations were tested both immediately after and 90 days following the retrofill. Only one transformer (0.57 percent of the units) was found to have an asymptotic (leveling off) PCB concentration >50 ppm (that concentration was 53 ppm). Further examination of 88 retrofilled, unenergized transformers, with pre-retrofill PCB concentrations ≥500 ppm, but <1,000 ppm, show that only 8 (9.0 percent) had asymptotic post-retrofill concentrations >50 ppm. The mean asymptotic post-retrofill concentration for these eight transformers was 64.4 ppm. EPA's assessment of the relevant data from actual transformers indicates that there is no correlation or direct relationship between either elevated temperatures of dielectric fluid or a 90–day in-service time period prior to testing, and an increase in the leaching of PCBs from the inner core and coil of the transformer into the newly retrofilled fluid (Ref. 4).

The conclusion which these data strongly support is that retrofilled, unenergized transformers with pre-retrofill PCB concentrations <500 ppm very rarely have PCB concentrations >50 ppm after retrofill, therefore, EPA is proposing to eliminate the post-retrofill testing requirement for these units. In addition, EPA is proposing to eliminate the 50° C and modify the 90–day time requirements for testing PCB Transformers containing <1,000 ppm PCBs.

II. Proposed Changes to the Reclassification Provision

Based upon the statistical data which suggest there is no strong evidence to support a correlation between temperature and the leachback of PCBs in a transformer, EPA is requesting comments on its proposal to modify the current regulations. The primary changes are as follows:

1. Eliminate the 50° C temperature requirement for all transformers undergoing reclassification.
2. Eliminate the 90–day "in-service use" requirement for all transformers with a PCB concentration <1,000 ppm.
3. Allow PCB Transformers with a PCB concentration <1,000 ppm to be initially tested after a 21–day time period rather than after 90 days, if a properly conducted retrofill was conducted. Then, if the results of the post-retrofill test are <25 ppm PCB, the transformer may be reclassified to non-PCB status. If the results are ≥25 – <500 ppm PCB, it may be reclassified to PCB-Contaminated status.
4. Allow immediate reclassification rather than a 90–day post-retrofill test of PCB-Contaminated Transformers to non-PCB status, after a properly conducted retrofill. An owner or operator would be able to assume, for purposes of compliance with the proposed reclassification requirements, that a properly reclassified transformer is regulated in accordance with its reclassified status. However, because of the potential for the concentration to "creep" upward, or due to errors in the reclassification process, the transformer owner would remain responsible and liable for any violation incurred if the PCB concentration of a transformer, even after a properly conducted retrofill, is tested and found to exceed the designated PCB-Contaminated or non-PCB levels.

The owner would be required to keep records, as proposed at § 761.180(a)(3), to substantiate that quality controlled and assured laboratory analyses were employed for all of the PCB concentration measurements, and that the proper reclassification procedures were followed. EPA recognizes gas chromatography as an accurate method for determining the concentration and nature of PCBs in oil (ASTM D 923–86 and 923–89). Accurate records are necessary in the event of an EPA inspection and/or subsequent PCB violation.

Owners of mineral-oil transformers who wish to take advantage of the reclassification provisions in this proposed rule would be required to test their units to determine the actual PCB concentration prior to retrofill. They could not assume that prior to retrofill the concentration is between 50 and 499 ppm. Based on the actual pre-retrofill PCB concentration in the dielectric fluid, EPA proposes, that for the purpose of identifying the procedures to be used in reclassifying transformers, the transformers be categorized into three groups by PCB concentrations that are: (1) ≥50 ppm but <500 ppm, (2)

≥500 but <1,000 ppm, and (3) ≥1,000 ppm PCB. However, the standard PCB concentration categories (<50 ppm for non-PCB, 50 ppm to <500 ppm for PCB-Contaminated, and ≥500 ppm for PCB) would still apply for designating the PCB reclassification status and for complying with all of the PCB regulatory provisions. Deviations from the requirements of this proposed rule would still require a waiver from EPA before undertaking such activity.

The following chart of the proposed modifications to the regulatory requirements for reclassification is provided to assist the reader in understanding this rule. It is not a substitute for the rule itself.

RECLASSIFICATION RULE CHART

Original concentrations	Proposed modification
<500 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill No testing required.
500 – <1000 PPM PCB.	Remove 50° C Remove in-service loading Drain, flush and fill Test after 21 days. If <25 ppm, reclassify as non-PCB. If ≥25 – <500 ppm, reclassify as PCB-Contaminated. If ≥ 500 ppm, retest after a total of 90 days.
≥1000 PPM PCB.	Remove 50° C In-service loading is still required Drain, flush (optional) and fill Testing still required after 90 days to determine PCB status.

III. Rationale Of Proposed Modifications

A. 50° Centigrade Requirement

This rule proposes to eliminate the 50° C temperature requirement for all reclassification of PCB and PCB-Contaminated Transformers. The original intent of the 50° C requirement was to achieve a temperature that would allow the natural convection forces of the dielectric fluid to circulate within the transformer (47 FR 37354, August 25, 1982). It was believed that this oil movement promoted leaching of PCBs from the core and coil and other internal parts of the transformer into the dielectric fluid and, thus, accelerated the process of reaching PCB equilibrium. Based on an analysis of the data indicating that temperature has little bearing on the leachback of PCBs into the dielectric fluid, as discussed under Unit I. of this preamble, EPA is soliciting comments on whether to drop the 50° C temperature requirement for all PCB and PCB-Contaminated Transformers.

B. In-Service Use Requirement

Using the same rationale as for eliminating the 50° C requirement, EPA also proposes to eliminate the "in-service use" requirement for transformers contaminated with <1,000 ppm PCB. But, any transformer with a 1,000 ppm or greater PCB concentration, such as most substation power transformers, must undergo a minimum 90–day in-service use period and post-retrofill testing. The difference between small, distribution transformers and the large, substation power transformers is that distribution transformers are usually PCB-Contaminated, are more peripherally located throughout a region than the substation power systems, and are difficult and dangerous to sample after having been reconnected. Most pole-top transformers fall into this "distribution transformer" category, as do many other equivalent size power transformers such as pad-mounted transformers which are usually located on a concrete foundation. The larger power transformers contain greater volumes and higher concentrations of PCBs and, therefore, pose a potentially greater risk to the environment and human health. The in-service use requirement on the larger transformers poses less of a burden for those who operate them. Since they are essential for supplying major sources of power, most are in service on a regular basis. Furthermore, due to the design of the equipment and their locations, they can be conveniently and safely sampled while in active service.

Although there is some overlap between large, substation power transformers and typically smaller, distribution transformers, further support for distinguishing between the two categories is found in an American National Standards Institute (ANSI) publication C57 (Sections C57.12.20 through C57.12.26). ANSI indicates that distribution transformers with less than a 500 Kilovolt-ampere (KVA) rating are not required to have sampling valves. Power transformers, however, will almost always have sampling valves to allow for easy sampling of the transformer fluid (Ref. 5). Sampling valves are most typically found on transformers with a KVA rating of 500 or greater.

In a letter from Baltimore Gas and Electric (BG&E) to EPA (Ref. 12) BG&E states that distribution transformers with a KVA rating of 500 or less are not required to have sampling valves, and that sampling these units outside of the shop environment is precarious. BG&E argues that the 500 KVA benchmark for distribution transformers is a logical breakpoint for not requiring post retrofill testing, i.e., distribution transformers 500 KVA and below need not be tested and those greater than 500 KVA should be tested. EPA is soliciting comments on the appropriateness of factoring in the KVA rating of particular transformers insofar as it relates to the type of reclassification/sampling schedule a transformer owner may opt for, or whether the pre-retrofill concentration of the transformer, regardless of KVA rating, should be the only criteria. In addition, if KVA rating should be factored in, is there a corresponding PCB concentration that should be associated with that KVA rating, i.e., should testing be required of a transformer with ≥500 KVA and ≥1000 ppm PCB or should testing be required of only those transformers ≥500 KVA regardless of PCB concentration. EPA's analysis of the data that were submitted for review looked exclusively at the PCB concentration of the transformers and did not factor the KVA rating into the reclassification equation. EPA, therefore, solicits data to support the relevance of including KVA rating into the reclassification equation.

C. Post Retrofill 90–Day Testing Requirement

1. *Elimination of post-retrofill testing requirement for transformers <500 ppm PCBs.* This rule proposes to eliminate the 90–day, post-retrofill test requirement for transformers containing pre-retrofill concentrations of <500 ppm PCBs, thereby allowing for immediate reclassification of PCB-Contaminated Transformers to non-PCB status after a properly conducted retrofill. Based on the data and rationale provided in Unit III.C.1 of this preamble, routine testing of retrofilled PCB-Contaminated Transformers may not be necessary to verify that PCB levels are <50 ppm. EPA is soliciting comments on whether PCB-Contaminated Transformers with a PCB concentration of <500 ppm should be immediately reclassified to non-PCB status (i.e., <50 ppm) after a properly conducted retrofill procedure as proposed in § 761.30(a)(2)(v). A "properly conducted retrofill" would mean a procedure where: (a) The PCB dielectric fluid is drained from the transformer and stored and disposed of pursuant to the storage and disposal requirements of 40 CFR 761.65 and 761.60 and the manifest requirements at § 761.207 to § 761.209; (b) the transformer is flushed with no less than

10 percent of the transformer's volume (as reflected on the original nameplate) with a dielectric fluid that contains <2 ppm PCBs or with solvent in which the solubility of PCBs is 5 percent or more by weight (the flush material must be stored and disposed of in accordance with § 761.65 and § 761.60 and the manifest requirements of § 761.207 to § 761.209 must be adhered to); and (c) the transformer is refilled with <2 ppm PCB dielectric fluid. If no nameplate exists that provides volume information, the transformer height, width and depth would be measured to estimate the volume.

2. *Transformers with a PCB concentration ≥500 ppm but <1,000 ppm.* EPA is soliciting comment on its proposal to modify the 90–day requirement of § 761.30(a)(2)(v) for testing PCB Transformers with ≥500 ppm but <1,000 ppm PCBs. Transformers with PCB concentrations ≥1,000 ppm PCBs will continue to be subject to the requirement to test the fluid 90 days after the retrofill.

To take advantage of the shortened post-retrofill testing requirement, i.e., 21 days vs. 90 days, for transformers between ≥500 and >1,000 ppm, the transformer would be required to undergo a properly conducted retrofill.

A statistical review conducted by EPA of the data submitted for 380 transformers of varying concentrations indicates that a properly conducted retrofill process removes a very high percentage of the PCBs (Ref. 4). A comparison of PCB concentration levels, at various points of time after a retrofill, indicates that leachback occurs at the highest rate over the first few days and becomes statistically insignificant over time. Of all of the transformers tested, the vast majority which showed asymptotic (leveling off) PCB levels above 10 percent of the original PCB concentration had relatively low initial PCB concentrations (i.e., <200 ppm PCB). This means that a transformer with a pre-retrofill PCB concentration of 200 ppm may retain up to 25 percent of the original PCBs and still fall below the 50 ppm criterion for reclassification as a non-PCB Transformer. Over 80 percent of the transformers which were tested 90 days after such a retrofill, retained less than 8 percent of the original PCB concentration.

A post-retrofill measurement of the PCB level of the dielectric fluid would be required for reclassification to non-PCB status (i.e., <50 ppm) for all transformers with a PCB concentration ≥500 ppm. If the original PCB concentration of a transformer is ≥500 ppm but <1,000 ppm PCB, the post-retrofill measurement would be required to be taken at least 21 days after the last retrofill. If 21 days after retrofill the PCB concentration in the transformer is <25 ppm, the transformer would be immediately reclassified to non-PCB status. The existing transformer retrofill data indicate that the asymptotic PCB concentration in properly retrofilled transformers has a low statistical probability to ever increase as much as 200 percent over their tested post–21–day PCB concentration. Transformers that have a PCB concentration ≥25 ppm but <500 ppm after 21 days could be immediately reclassified to PCB-Contaminated status. If non-PCB status is still desired, retesting would be required 90 days after the initial retrofill. If the 90–day retest shows a PCB concentration of <50 ppm, the transformer would be immediately reclassified to non-PCB status. If the retest shows ≥50 – <500 ppm PCB it would be reclassified to PCB-Contaminated status.

EPA is proposing 25 ppm as the maximum concentration allowable for designation as non-PCB status after the 21–day test based on its analysis of existing industry test data. EPA solicits comment on whether this new limit is reasonable given the results of existing or new industry test data. Would setting the limit higher than 25 ppm be reasonable since there is a low statistical probability for the PCB concentration in a range above 25 ppm to exceed 50 ppm after 90 days? Alternatively, is a limit lower than 25 ppm justified? EPA also solicits comment on whether setting a limit of 25 ppm for non-PCB status would impose an unnecessary burden on retrofillers that desire non-PCB status due to the potential for test results to fall between 25 ppm and 50 ppm after the 21–day test and still be less than 50 ppm after 90 days.

If reclassification of transformers ≥500 ppm – <1000 ppm PCB is not achieved after one retrofill, EPA is proposing that 90 days elapse between each subsequent retrofill. The goal is to achieve a stable equilibrium between the PCBs within the internal components and the transformer core's dielectric fluid. Use of this approach is at the discretion of the transformer owner or operator. Notwithstanding a "properly conducted retrofill," the transformer owner or operator would remain responsible and liable for any subsequent violations associated with the reclassification of any transformer due to potential statistical deviations, laboratory calibration errors, variations in the design of the different models of transformers, etc.

3. *Transformers ≥1,000 ppm.* PCB Transformers with a PCB concentration ≥1,000 ppm must still be drained, refilled, and tested after a minimum of 90 days of in-service use, as currently specified at 40 CFR 761.30(a)(2)(v), in order to determine whether the transformer has been reclassified. However, under this proposal, the requirement to reach the 50° C temperature level would be eliminated. EPA lacks information on whether a properly conducted retrofill and/or the elimination of the post 90–day test after retrofill for transformers ≥1,000 ppm PCBs is warranted. EPA solicits comments and/or data on this issue.

The proposed modifications to the reclassification requirements of § 761.30(a)(2)(v) should eliminate the need for submission of individual waiver requests to EPA, especially for those transformers <1,000 ppm PCBs. If, however, the transformer owner wished to deviate in any way from the specifications of the modifications contained in this proposed rule (e.g., by not employing a "properly conducted retrofill" as defined in Unit III.C.1 of this preamble and as proposed at § 761.30(a)(2)(v), by failing to wait the designated amount of time prior to conducting the post-retrofill, or by failing to obtain a laboratory analysis of the post-retrofill PCB concentration, etc.), the transformer would not be reclassified and the owner could be subject to an enforcement action if the owner is not in compliance with all of the appropriate regulatory provisions.

4. *Electromagnets, switches, and voltage regulators ≥500 ppm PCBs.* Currently, the PCB regulations at § 761.30(h)(2)(v) allow for the reclassification to non-PCB or PCB-Contaminated status of those voltage regulators, switches and electromagnets that are ≥500 ppm PCBs. The regulation does not require these pieces of electrical equipment to reach 50° C but does require a minimum of 3 months of in-service use subsequent to the last servicing conducted for purposes of lowering the concentration of this equipment. In this proposed rule, EPA is soliciting comments and requesting supporting data on whether the proposed criteria in this rule for PCB and PCB-Contaminated Transformers are also appropriate or viable for these other pieces of electrical equipment. In § 761.30(h)(2)(v), as is already the case in § 761.30(a)(2)(v), EPA is proposing to change the approval authority for granting the use of alternate methods to simulate the loaded conditions of in-service use from the Assistant Administrator to the Director of the Chemical Management Division. EPA solicits comments on this proposed change in approval authority.

In addition, EPA is proposing recordkeeping requirements pursuant to § 761.180(a)(3) for this electrical equipment undergoing reclassification.

IV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, issued February 17, 1982, EPA must judge whether a rule is a "major rule" and, therefore, subject to the requirement that a Regulatory Impact Analysis be prepared. EPA has determined that this proposed rule would not be a "major rule" as that term is defined in section 1(b) of the Executive Order because the annual effect of the rule on the economy will be considerably less than $100 million; it will not cause any noticeable increase in costs or prices for any sector of the economy or for any geographic region; and it will not result in any significant adverse effects on competition, employment, investment, productivity, or innovation, or on the ability of U.S. enterprises to compete with foreign enterprises in domestic or foreign markets. This proposed rule would, in fact, mitigate the burden on industry to comply with requirements for reclassifying PCB and PCB-Contaminated Transformers. This proposed rule was submitted to the Office of Management and Budget (OMB) for review prior to publication, as required by Executive Order 12291.

B. Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act (the Act), 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with rulemaking. The initial regulatory flexibility analysis must describe the impact of the rule on small business entities. Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities."

EPA considers a small business to be one whose annual sales revenues are less than $40 million. This cutoff is in accordance with EPA's definition of a small business for purposes of reporting under section 8(a) of TSCA, which was published in the **Federal Register** of November 16, 1984 (49 FR 45430).

In accordance with section 605(b) of the Act, the Administrator certifies that this proposed rule, if promulgated, would not have a significant adverse economic impact on a substantial number of small business entities. Rather, it would relieve the burden placed on business by modifying the current regulations. In addition, EPA is sending a copy of this proposed rule to the Chief Counsel for Advocacy of the Small Business Administration.

C. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., authorizes the Director of OMB to review certain information collection requests by Federal Agencies. EPA has determined that the recordkeeping requirements of this proposed rule constitute a "collection of information" as defined at 44 U.S.C. 3502(c).

The information collection requirements of this proposed rule have been submitted for approval to OMB under the Paperwork Reduction Act. An amended Information Collection Request document has been prepared by EPA (OMB Control numbers 2070–0112 and 2070–0061). The public recordkeeping burden for this collection of information is estimated to be 15 minutes per each reclassification project. These are records that are already generated by the respondent. This estimate is based on the need to maintain these documents on file at the facility.

Comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, should be submitted to the Chief, Information Policy Branch (PM–223), Environmental Protection Agency, 401 M St., SW, Washington, DC, 20460. These comments should also be submitted to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC, 20503, marked ATTENTION: Desk Officer for EPA. The final rule will respond to any OMB or public comments on the information collection requirements in this proposal.

V. Public Record

In accordance with the requirements of section 19(a)(3) of TSCA, EPA is issuing the following list of documents which constitute the record of this proposed rulemaking. This record includes basic information considered by the Agency in developing this proposal. The official records of previous PCB rulemakings are incorporated by reference as they exist in the TSCA Public Docket. A full list of these materials is available for inspection and copying in the TSCA Public Docket Office. However, any Confidential Business Information (CBI) that is part of the record for this rulemaking is not available for public review. A public version of the record, from which CBI has been excluded, is available for inspection. The address for the TSCA Public Docket Office appears under the "ADDRESSES" section of this proposed rule.

A. Previous Rulemaking Records

(1) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions." Final Rule. 44 FR 31514, (May 31, 1979).

(2) USEPA. "Polychlorinated Biphenyls (PCBs) Manufacturing, Processing, Distribution in Commerce, and Use Prohibitions; Use in Electrical Equipment." Final Rule. 47 FR 37342, (August 25, 1982). Docket #OPTS–62015C.

B. References

(1) "Equilibrium Study of PCBs Between Transformer Oil and Transformer Solid Materials," by Electric Power Research Institute (EPRI). (December 3, 1981).

(2) Letter from C. H. Manger of Baltimore Gas and Electric Company to Denise Keehner, USEPA/OPTS/EED, challenging the 50° C temperature criterion of reclassification. (July 27, 1987).

(3) Baltimore Gas and Electric Company. "PCB-Contaminated Distribution Transformer Reclassification Study." Baltimore Gas and Electric Company, Electric Test Department, Paul J. Frey, (August 1986).

(4) Memorandum from Dan Reinhart to Tony Baney, "Background Report on Empirical Basis for Proposed Changes to Reclassification Criteria for PCB and PCB-Contaminated Transformers", USEPA/OPPTS/OPPT/EED/DDB, undated.

(5) American National Standards Institute, Inc, The Institute of Electrical and Electronics Engineers, Inc., Distribution, Power, and Regulating Transformers. Standard numbers: (a) C57.12.20–1988, (b) C57.12.21–1980, (c) C57.12.22–1989, (d) C57.12.23–1986, (e) C57.12.24–1988, (f) C57.12.25–1981, and (g) C57.12.26–1987.

(6) Excerpt from PCB Seminar Notebook, San Diego, California, October 3–9, 1989, Sponsored by the Electrical Power Research Institute, "Reclassification: Simulating In-service Use", H. Carl Manger, Baltimore Gas and Electric.

(7) Letter from Richard E. Bell, Resource Planning Corporation to Carl Manger, Baltimore Gas and Electric. Results of analysis from transformer retrofill data. (April 24, 1989).

(8) Letter from Don Clay, Director, Office of Toxic Substances, EPA, to Tim Hardy, Kirkland and Ellis. What constitutes in-service use and simulation of in-service use for purposes of reclassifying electrical transformers containing PCBs. (June 13, 1984).

(9) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90–day testing

requirements for reclassification of 95,000 pole-top transformers. (November 29, 1990).

(10) Letter from Joseph J. Merenda, Director, Exposure Evaluation Division, EPA, to Edward Karapetian, Department of Water and Power the City of Los Angeles. Response to request to waive the 50° C and 90–day testing requirements for reclassification of 95,000 pole-top transformers. (May 22, 1991).

(11) Memorandum from Dan Reinhart, EPA/OPTS/EED, to Joe Davia, EPA/OPTS/EED, "Examination of the Relationship Between PCB Leeching and Load Level in Transmission Transformers by Baltimore Gas and Electric Company." (May 20, 1988).

(12) Letter from H. C. Manger, Baltimore Gas and Electric Company to Jan Canterbury, EPA/OPTS/EED. Possible changes to the regulations regarding reclassification of oil-filled transformers containing PCBs. (July 24, 1991).

(13) Letter from Gil Addis, Electric Power Research Institute to Jan Canterbury, EPA/OPTS/EED. Reclassification of Mineral Oil transformers contaminated with PCB, and Askarel transformers. (November 6, 1990).

(14) Letter from Dana S. Myers, S.D. Myers Transformer Consultants to Jan Canterbury, EPA/OPTS/EED. Average operating temperature of an askarel transformer. (August 16, 1991).

(15) PCB Residues in Transformer Carcasses. EPRI EL–6237, Project 2028–19, Final Report, August 1989. Prepared by the General Electric Company, Pittsfield, Massachusetts.

List of Subjects in 40 CFR Part 761

Environmental protection, Hazardous substances, Labeling, Polychlorinated biphenyls, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Carol M. Browner,

Administrator, Environmental Protection Agency.

Therefore, it is proposed to amend 40 CFR Chapter I, as follows:

PART 761—[AMENDED]

1. The authority citation for part 761 continues to read as follows:

Authority: 15 U.S.C. 2605, 2607, 2611, 2614, and 2616.

2. In § 761.30 by revising paragraphs (a)(1)(iii)(C)(*2*)(*iii*), (a)(2)(v), and (h)(2)(v), to read as follows:

§ 761.30 Authorizations.

* * * * *

(a) * * *
(1) * * *
(iii) * * *
(C) * * *
(*2*) * * *

(*iii*) Once a retrofilled transformer has been installed for reclassification purposes, it must follow the procedures specified in paragraph (a)(2)(v) of this section.

* * * * *

(2) * * *

(v) A PCB Transformer that has been tested and determined to have a concentration between ≥500 and <1,000 ppm PCBs may be reclassified to a PCB-Contaminated Transformer or a non-PCB Transformer, and a PCB-Contaminated Transformer may be reclassified to a non-PCB Transformer by first performing a properly conducted retrofill. A properly conducted retrofill means the PCB dielectric fluid is drained from the transformer and stored and disposed of in accordance with § § 761.60 and 761.65 and the manifest requirements of § § 761.207 to 761.209 must be adhered to. Then the transformer must be flushed with dielectric fluid below 2 ppm PCB or a solvent in which PCBs are at least 5 percent soluble by weight using no less than 10 percent of the original nameplate volume. If no nameplate exists that provides volume information, the transformer must be flushed with PCB dielectric fluid containing less than 2 ppm PCB or a solvent in which PCBs are at least 5 percent soluble by weight using no less than 10 percent of the estimated volume of the transformer. The flushed dielectric fluid must be stored and disposed of in accordance with the requirements of § § 761.60 and 761.65 and the manifest requirements of § § 761.207 and 761.209 must be adhered to. The transformer must be refilled with dielectric fluid below 2 ppm PCB.

(A) After properly retrofilling the transformer in accordance with the requirements in paragraph (a)(2)(v) of this section, the reclassification must be conducted as follows:

(*1*) A PCB Transformer that has been tested and determined to have PCB concentrations between ≥500 and <1,000 ppm must be tested by a laboratory using an EPA-approved test method at least 21 days after the retrofill. The PCB Transformer may be reclassified to a non-PCB status if testing shows that the post-retrofill PCB concentration is <25 ppm. If the post-retrofill PCB concentration is ≥25 ppm but <500 ppm, the transformer may be reclassified to PCB-Contaminated status. If non-PCB status is still desired, the PCB Transformer must be re-tested 90 days after the initial retrofill to determine if it may be reclassified to a PCB-Contaminated status if the test shows a post retrofill concentration of ≥50 but <500 ppm, or non-PCB status, if the post retrofill concentration is <50 ppm.

(*2*) A transformer that has been tested and determined to be PCB-Contaminated (50 to <500 ppm) may be reclassified immediately to a non-PCB Transformer (<50 ppm).

(B) A PCB Transformer that has been tested and determined to be ≥1,000 ppm PCBs must be operated electrically under loaded conditions for 90 days after retrofill. After 90 days, the transformer must be analyzed for PCB concentration by a laboratory using EPA-approved testing methods. If the test shows a PCB concentration of 50–499 ppm, the transformer may be reclassified to PCB-Contaminated status. If the test shows a PCB concentration of <50 ppm, the transformer may be reclassified to non-PCB status. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of electrical operation.

(C) If the owner still wishes to reclassify the transformer but the test indicates failure to achieve the desired lower PCB status, the entire process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated.

(D) Transformer owners that are reclassifying or have reclassified their transformers must keep records pursuant to § 761.180(a)(3).

(E) If, after reclassification, the transformer is tested and found to contain a higher PCB concentration, (i.e., ≥50 ppm if non-PCB status was desired or ≥500 ppm PCB if PCB-Contaminated status was desired) the reclassification is void, and the transformer is classified based on its actual concentration. The process as specified in paragraph (a)(2)(v)(A) or (a)(2)(v)(B), as appropriate, of this section must be repeated if reclassification is still desired. The transformer owner remains liable for any subsequent violation incurred if the PCB concentration of the transformer is found to exceed the designated PCB-Contaminated or non-PCB level after reclassification.

* * * * *

(h) * * *
(2) * * *

(v) An electromagnet, switch or voltage regulator with a PCB concentration of at least 500 ppm may be converted to PCB-Contaminated Electrical Equipment or to non-PCB status and PCB-Contaminated Electrical Equipment may be reclassified to non-PCB status by draining, refilling and/or otherwise servicing the equipment. In order to be reclassified, the equipment's dielectric fluid must contain less than 500 ppm PCB (for conversion to PCB-Contaminated Electrical Equipment) or

less than 50 ppm PCB (for conversion to a non-PCB classification) after a minimum of 3 months of in-service use subsequent to the last servicing conducted for the purpose of reducing the PCB concentration in the equipment. In-service use means that the transformer is used electrically under loaded conditions. The Director, Chemical Management Division may grant, without further rulemaking, approval for the use of alternative methods that simulate the loaded conditions of in-service use. All PCBs removed from this equipment for purposes of reducing PCB concentrations are subject to the disposal requirements of § 761.60. In addition, records must be kept pursuant to § 761.180(a)(3).

* * * * *

3. In § 761.180 by adding paragraph (a)(3), to read as follows:

§ 761.180 Records and monitoring.

* * * * *

(a) * * *

(3) Transformer owners and owners of electromagnets, switches, and voltage regulators that are reclassifying or have reclassified such equipment must keep the following documentation for at least 3 years after the equipment has been disposed of:

(i) The pre-retrofill concentration of the equipment.

(ii) The retrofill and reclassification schedule and procedure.

(iii) A copy of the analysis indicating the equipment's reclassified status (i.e., final PCB concentration).

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federal register

Thursday
November 18, 1993

Part VII

Corporation for National and Community Service

45 CFR Part 2550

Requirements and General Provision for State Commissions and Alternative Administrative or Transitional Entities; Interim Final Rule

CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

45 CFR Part 2550

Requirements and General Provision for State Commissions and Alternative Administrative or Transitional Entities

AGENCY: Corporation for National and Community Service.

ACTION: Interim final rule.

SUMMARY: The Corporation for National and Community Service (the Corporation) is issuing this interim final rule concerning requirements and funding for State Commissions on National and Community Service (as well as for alternative or transitional entities which may be approved by the Corporation to perform the same functions) as authorized by the National and Community Service Act of 1990, as amended (the Act). These requirements and funding provisions are intended to help States meet unmet human, educational, and public safety needs by providing assistance to States in building service infrastructure and carrying out the statutory mandates necessary to receive funding from the Corporation. This rulemaking governs the awarding of administrative grants to States. The Corporation will soon be issuing a proposed rule for public comment on its national and community service grant programs.

DATES: The interim rule is effective November 18, 1993.

Comments must be received on or before January 3, 1994.

ADDRESSES: Comments may be mailed to the Office of General Counsel, The Corporation for National and Community Service, Room 9200, 1100 Vermont Avenue, NW., Washington, DC, 20525. Comments received may also be inspected at room 9200 between 9:30 a.m. and 4:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Terry Russell (Acting General Counsel), (202) 606–5000.

SUPPLEMENTARY INFORMATION: The Corporation's mission is to engage Americans of all ages and backgrounds in service at the community level. This service will address the Nation's human, educational, environmental, and public safety needs to achieve direct results. States will play a major role in achieving these goals. They will develop comprehensive national service plans, assemble applications for funds, and administer service programs. States will conduct these activities through nonpartisan or bipartisan State Commissions or Alternative Administrative Entities (AAEs).

$11 million will be available for fiscal year 1994 to make grants to States for the purpose of establishing and operating State Commissions on National and Community Service. These State Commissions (or AAEs approved by the Corporation, as explained in the rule below) should become functional prior to a State's applying for and receiving program funds during fiscal year 1994. Accordingly, the Corporation is publishing this rule in interim final form so as to be able to make these grants to the States as soon as possible.

This interim final rule explains the structure and duties of the State Commissions and alternative or transitional entities, and explains the conditions States must meet in order to receive administrative grants for the purpose of establishing or operating such commissions or entities. The National and Community Service Act of 1990, as amended (the Act) (42 U.S.C. 12501 et seq.), is fairly detailed on many of these issues. All provisions of the Act on these issues have been included in this interim final rule. There are a number of instances, however, where the Act is less detailed, requiring the Corporation to make certain policy decisions. Those policy decisions, along with alternative options and the rationale behind the decisions, are listed below.

Administrative Grants to States

Section 501 of the Act states that the Corporation must set aside not less than 40 percent of any administrative appropriation for the purpose of making grants to the State Commissions. For fiscal year 1994, the Corporation was appropriated $25 million for administrative costs; of this money, Congress earmarked $11 million (or 44 percent) to be set aside for grants to State Commissions.

The Act provides little guidance and few restrictions on how the Corporation can or should distribute this $11 million among the States, specifying only that any grants the Corporation makes to States for the purpose of establishing or operating State Commissions or alternative or transitional entities must be between $125,000 and $750,000, inclusive. The Act does not specify whether a State may receive more than one grant, who qualifies as a State, or how the size of any grants should be determined.

(1) *Who qualifies as a State*? The rule provides that the 50 States, the District of Columbia, and Puerto Rico are eligible as "States" to receive grants to establish and operate State Commissions. Requiring the establishment of State Commissions for Indian tribes and territories other than Puerto Rico would impose an onerous regulatory burden on them.

(2) *By what date must a State notify the Corporation of its intent to apply for an administrative grant*? States can submit requests for administrative funds at any time. However, States that have not requested authorization for a State Commission, AAE, or Transitional Entity by February 1, 1994, will not be eligible to apply under subtitles B or C of the Act for fiscal year 1994 program funds.

(3) *Can a State receive more than one administrative grant in a given year?* The rule provides that no State eligible to receive more than one administrative grant. If Congress had intended the Corporation to be able to offer more than one grant to a given State, it clearly would not have set a maximum for the amount of a single grant.

(4) *How will the administrative grant money be distributed among the eligible States?* The Corporation considered several different options for allocating funds among the States, including geographical size, population, existing service infrastructure, program development and others. The $125,000 minimum level of the grants reflects the fact there are certain fixed costs, e.g., minimum personnel costs, that every State must bear regardless of size, population, or existing infrastructure. Similarly, the $750,000 maximum ensures that no one State will receive a disproportionately large grant and encourages States to keep bureaucracy to a minimum.

After weighing the positive and negative aspects of a number of different options, the Corporation decided to distribute the grants according to a population-based formula.

There are clearly shortcomings in distributing the grants solely according to State population. A State's population is not necessarily the most accurate determinant of a State's reasonably expected costs for the State Commission; all of the additional factors mentioned above will play a role as well. Indeed, in future years, the Corporation may base the size of its administrative grants to States on some or all of these more subjective factors. In fiscal year 1994, however, it is necessary to make these grants as soon as possible, and it is impossible to do a comprehensive assessment of the precise expected costs of each State's State Commission. The Corporation therefore deemed it prudent, in the interest of expediency and equity, to adopt an objective calculus for the

distribution of these grants. State population was the only truly objective and readily available criterion with a strong, if imperfect, correlation to expected State Commission costs.

Once the decision was made to base the size of a State grant on a State's relative population, a number of further sub-options were considered. Preliminarily, the ratio of each State's population to the national population (including Puerto Rico) was multiplied by $11 million, yielding a raw distribution of grants which arranged from roughly $20,000 to $1.3 million. When the statutorily mandated maximum and minimun levels were imposed on this raw distribution, 24 States received the minimum and 3 States received the maximum amounts. The Corporation felt this was inequitable because it left States with widely different populations receiving the same size grants. For instance, Oregon and Wyoming would have received the same minimal $125,000 grant despite the fact that Oregon's population is over six times that of Wyoming. To compensate for this, the Corporation designed a series of models that used multipliers of between .4 and 1.0 to bring the raw distribution grant of each State closer to the average grant.

The multiplier of .5 was selected because it produced a population distribution which very nearly fit within the parameters of the $125,000 minimum and $750,000 maximum. Under this model, the raw grant for each State is exactly half-way between the district population distribution and the average overall grant ($11,000,000/52). Specifically the raw material for each State is determined by the following calculus:

(([$11mm * (State population/total State population)]-($11mm/.52)□*.5)+($11mm/52)

Any State that falls below the minimum or above the maximum receives the minimum or maximum grant, respectively. Because the aggregate amount that some States are below the minimum is greater than the aggregate amount that other States are above the maximum, the actual grant (as opposed to the raw grant) available to each State will be slightly less (not more than $1,100 less, however) than the above formula would indicate.

The population figures used to determine the distribution were the most recent estimates available from the United States Bureau of the Census (July 1992). The precise amount for which each State is eligible to apply are listed in the table below:

State	Allocation
Alabama	$193,438
Alaska	125,000
Arkansas	156,599
Arizona	186,995
California	750,000
Colorado	179,321
Connecticut	175,315
Delaware	125,000
District of Columbia	125,000
Florida	391,569
Georgia	248,867
Hawaii	130,357
Idaho	128,386
Illinois	352,307
Indiana	225,784
Iowa	165,374
Kansas	159,248
Kentucky	185,362
Louisiana	196,539
Maine	131,947
Maryland	209,802
Massachusetts	232,631
Michigan	284,605
Minnesota	200,730
Mississippi	161,177
Missouri	215,843
Montana	125,000
Nebraska	139,811
Nevada	133,897
New Hampshire	129,319
New Jersey	270,869
New Mexico	139,281
New York	489,830
North Carolina	250,817
North Dakota	125,000
Ohio	339,271
Oklahoma	173,853
Oregon	168,871
Pennsylvania	360,319
Puerto Rico	185,205
Rhode Island	127,072
South Carolina	182,141
South Dakota	125,000
Tennessee	212,261
Texas	480,016
Utah	144,199
Vermont	125,000
Virginia	240,940
Washington	214,635
West Virginia	144,177
Wisconsin	210,820
Wyoming	125,000

None of the above should in any way be construed as implying that a State is entitled to an administrative grant. This interim final rule lays out very specific conditions which States must meet in order to receive a grant.

State Commissions

The Corporation made a number of policy decisions with regard to State Commissions specifically and with regard to any entity to be approved by the Corporation to perform the duties of a State Commission. Except where otherwise indicated, all policy issues listed under this State Commission subsection also apply to AAEs and Transitional Entities. (Collectively, these three entities are referred to in this rule as "State entities.")

(5) *May the head of the State educational agency designate another individual from the agency to serve on the State Commission or AAE in his or her place?* Yes. The Act provides that the head of the State education agency sits on the State Commission or Alternative Administrative Entity. The rule provides that the head of each State educational agency is a voting, ex officio member of the State Commission or AAE, and he or she may designate another individual from the agency to serve in his or her place on the State Commission or AAE. The Corporation made this decision to give the States greater flexibility.

(6) *Can individuals other than those listed in the legislation be appointed as voting members of the State Commissions or AAEs?* Yes. The legislation provides a list of types of individuals who must be and may be appointed to State Commissions or AAEs. By this rulemaking, the Corporation has determined that the list is non-exhaustive, and that types of individuals other than those listed may be appointed. This policy decision is intended to remove any categorical constraints that would unnecessarily restrict a State's capacity to appoint the highest quality individuals as members of the State Commission or AAE.

(7) *Should State Commissions allow the Corporation representative to vote?* No. State Corporation representatives are not technically restricted by Federal law from voting on the State Commissions; however, the Corporation strongly believes that State decisions should remain autonomous. Accordingly, we recommended that Corporation representatives serve only in an advisory capacity.

(8) *Are State Commissions required to notify the Corporation if individuals who would otherwise have been ineligible to vote on a given issue (because of a potential conflict-of-interest) were allowed to vote in order to achieve a quorum?* Yes. The Act provides that any voting member of a State Commission or AAE who, in the one-year period before the submission of a program's application, was or still is an officer, director, trustee, full-time volunteer, or employee of that program or entity applying for assistance, must recuse him-or herself from the administration of the grant program under which the application was submitted. Such individuals also are prohibited from being involved in the development or preparation of a grant application, or any discussion or decision regarding the provision of assistance (including approved national service positions) within the grant

program to which such a program applies, including selection, oversight, evaluation, continuation, suspension, or termination. If, however, as a result of members being disqualified from voting on applications by this rule, the number of voting members of the State Commission or AAE is insufficient to establish a quorum for the purpose of making decisions regarding the provision of assistance or approved national positions to programs or organizations, then voting members otherwise excluded from participation may participate in the administration of the grant program. In the event this occurs, the State Commission must document the event and report to the Corporation within 30 days of the vote. This requirement was put in place to ensure accountability, to avoid conflict of interest, and to provide documentation in the event of a grievance procedure.

(9) *Are State Commissions required to select which programs they would like to provide funding to prior to applying to the Corporation for funding?* Yes. The Act implies that Congress intended for State Commissions to select programs (including subtitle C programs and community-based service learning programs authorized under subtitle B of the Act) they would like to fund through a competitive process prior to applying to the Corporation for funds. This rule transforms Congressional intent into Corporation policy.

Alternative Administrative Entities (AAEs)

The Act gives the Corporation wide latitude in determining the qualification criteria for AAEs. There are two opposing considerations which the Corporation took into account in establishing these criteria. On the one hand, the Corporation had to set up enough safeguards to guarantee the establishment of an informed and politically non-partisan or bipartisan body committed to the cause of service—such safeguards as those employed by the Act in the State Commission model. On the other hand, the Corporation did not want to establish overly rigorous regulatory criteria for AAEs which would restrict or prohibit the participation of States that had in good faith set out to establish an entity devoted to furthering national and community service.

(10) *Should AAEs be subject to the same qualification criteria as State Commissions?* With few exceptions, yes. In order to ensure that any approved AAEs are likely to be able to work effectively with the Corporation, the Corporation has determined that AAEs should, except for those items listed below, be required to meet the same qualification criteria as State Commissions. The following exceptions are in place to give States the flexibility to establish State entities which are designed with a similar purpose and mission as the State Commissions, but which are unable to meet one or more of the State Commission requirements:

—In certain instances, the Corporation may choose not to require an AAE to numerically demonstrate nonpartisan or bipartisan political composition. This exception allows for the participation of those States in which it is illegal to request political party affiliation information from prospective members. Nonetheless, the Corporation expects the selection process to be politically neutral.

—The Corporation may allow an AAE, given compelling circumstances, to have more than 25 voting members. This provision accommodates States with existing bodies containing more than 25 voting members as well as for certain other compelling cases.

—The Corporation may allow members of an AAE, who would otherwise be appointed by the chief executive officer of a State, to instead be appointed in another reasonable manner.

Transitional Entities

The Corporation recognizes that in certain instances States will be unable, despite their best efforts, to establish a State Commission or AAE in a timely manner. In many States, legislation is necessary to establish such an entity, and there may be other legitimate impediments to the immediate establishment of a State Commission or AAE. Absent a provision allowing for Transitional Entities, some States would be unable to participate in the first year of the national service programs In order to involve all States that wish to participate, the Transitional Entity provision was created.

Under certain circumstances, the provision allows the Corporation, for States that can demonstrate the need, to approve a State agency to function as the State Commission for a finite period of time. (Transitional Entities may under no circumstance, however, be approved subsequent to the expiration of the 27 month transitional period.) Because the Act provides little detail with regard to Transitional Entities, most of the provisions in this rule involved Corporation policy decisions, which are as follows:

(11) *Under what circumstances will the Corporation approve a Transitional Entity to be used in lieu of the State Commission or AAE?* Because of the inclusive nature of State Commissions and AAEs, the Corporation views such entities as significantly preferable to a Transitional Entity. Consequently the Corporation will only approve a Transitional Entity if a State is legitimately and demonstrably unable to establish a State Commission or AAE in time to be eligible to perform its duties. In addition, a State must a) provide the Corporation with assurances that substantive steps are being taken toward the establishment of a State Commission or AAE; and b) explain how it will perform an open and inclusive planning process in a bipartisan or nonpartisan manner.

(12) *For what period of time will the Corporation approve Transitional Entities?* Up to 12 months. The precise period of time will be determined on a case-by-case basis for each State. At the end of the first period of approval, a State may reapply to have a Transitional Entity continue to perform the duties of the State Commission or AAE; however, in order to receive an extension of any sort, the State must demonstrate, in addition to the initial requirements, that substantial progress has been made toward the establishment of a State Commission or AAE. These limitations are included to encourage the prompt establishment of a State Commission or AAE.

(13) *What funds are Transitional Entities eligible to receive?* An approved Transitional Entity may apply for and receive both administrative and program funds from the Corporation. As stated earlier, the Corporation will only grant approval of a Transitional Entity if a State cannot establish a State Commission or AAE. However, because the Corporation wishes to fully include such States despite administrative or legal barriers that may exist, approved Transitional Entities have precisely the same duties and responsibilities, and access to Corporation funding, as do State Commissions and AAEs.

Miscellaneous Requirements:

States should be advised that because the assistance provided under the authority of this rule constitutes Federal financial assistance for the purposes of title VI of the Civil Rights Act of 1964 (which bars discrimination based on race, color, or national origin), title IX of the Education Amendments of 1972 (which bars discrimination on the basis of gender), the Rehabilitation Act of 1973 (which bars discrimination on the basis of disability), and the Age Discrimination Act of 1975 (which bars discrimination on the basis of age), State entities will be required to comply with

the aforementioned provisions of Federal law.

States will be expected to expend corporation grants in a judicious and reasonable manner, consistent with pertinent provisions of Federal law and regulations. States must keep records according to Corporation guidelines, including records which fully disclose the amount and disposition by the State of the proceeds of a Corporation grant. The inspector general of the Corporation (or other authorized official) shall have access, for the purpose of audit and examination, to the books and records of the State which may be related or pertinent to the Corporation grant.

States should further be advised that Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments, and Administrative Requirements for Grants and Cooperative Agreements to other than State and Local Governments, as well as regulations for the Privacy Act, Freedom of Information Act, Sunshine Act, Government-wide Debarment and Suspension, and Government-wide Requirements for Drug-Free Workplace will also be published prior to awarding administrative grants to States.

As required by the Regulatory Flexibility Act, it is hereby certified that this rule will not have a significant impact on small business entities.

The Corporation has separately submitted, under the terms of the Paperwork Reduction Act, an application package to be used by States when applying for Administrative grants from the Corporation for the purpose of establishing and/or operating a State Commission or alternative entity. To request a copy of this application, please contact the Corporation for National and Community Service at the address listed above.

As required by the Regulatory Flexibility Act, it is hereby certified that this final rule will not have a significant impact on small business entities. The provisions of the Paperwork Reduction Act do not apply as this action will not create any new record-keeping or reporting burdens or substantially increase costs to the Government and the public.

List of Subjects in 45 CFR Part 2550

Grant programs—Social programs.

For the reasons set forth in this preamble, the Corporation for National and Community Service is hereby amending chapter XXV in title 45 of the Code of Federal Regulations as follows:

CHAPTER XXV—CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

1. The heading for chapter XXV is revised as set forth above.

2. Part 2550 is added to read as follows:

PART 2550—REQUIREMENTS AND GENERAL PROVISION FOR STATE COMMISSIONS, ALTERNATIVE ADMINISTRATIVE ENTITIES AND TRANSITIONAL ENTITIES

Sec.

2550.10 What is the purpose of this part?
2550.20 Definitions.
2550.30 How does a State decide which of the three entities to establish?
2550.40 How does a State get Corporation authorization and approval for the entity it has chosen?
2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commission?
2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?
2550.70 What are the composition or other requirements for Transitional Entities?
2550.80 What are the duties of the State entities?
2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?
2550.100 Do State entities or their members incur any risk of liability?
2550.110 What money will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

Authority: 42 U.S.C. 12501 *et seq.*

§ 2550.10 What is the purpose of this part?

(a) The Corporation for National and Community Service (the Corporation) seeks to meet the Nation's pressing human, educational, environmental and public safety needs through service and to reinvigorate the ethic of civic responsibility across the Nation. If the Corporation is to meet these goals, it is critical for each of the States to be actively involved.

(b) The Corporation will distribute nearly $200 million in grants under subtitle C of the Act (hereinafter, "subtitle C") to help establish, operate and expand national service programs. At least two-thirds of these funds will go to the States, which will then subgrant to State agencies or local programs. However, in order to be eligible to apply for program funding and/or approved national service positions with an educational award, each State is required to establish a State Commission on National and Community Service to administer the State program grantmaking process and to develop a State plan. The Corporation may, in some instances approve Alternative Administrative Entities (AAEs) or allow a State agency to perform the duties of the State Commission. (For the purposes of this part, a State agency which has been authorized by the Corporation to perform State Commission duties is called a "Transitional Entity".)

(c) The Corporation recognizes that establishing and operating State Commissions involves significant effort and cost. Therefore, grants of between $125,000 and $750,000 will be distributed to the States to cover the Federal share of operating the State Commissions, AAEs, or Transitional Entities. (For the purposes of this part, notwithstanding the definition of "State" that appears in the National and Community Service Act of 1990, as amended (the Act), "State" means the 50 States, the District of Columbia, and Puerto Rico.) In order to receive any Corporation grant, however, a State must commit to establishing a State Commission or AAE as soon as possible.

(d) The purpose of this part is to provide States with the basic information essential to participate in the subtitle C programs. Of equal importance, this part gives an explanation of the preliminary steps States must take in order to receive money from the Corporation. This part also offers guidance on which of the three State entities States should seek to establish, and it explains the composition requirements, duties, responsibilities, restrictions, and other relevant information regarding State Commissions, AAEs, and approved Transitional Entities.

§ 2550.20 Definitions.

(a) *AAE.* Alternative Administrative Entity.

(b) *Administrative costs.* As used in this part, those costs incurred by a State in the establishing and operating a State entity; the specific administrative costs for which a Corporation administrative grant may be used as defined in the Uniform Administrative Requirements for Grants and Agreements to State and Local Governments.

(c) *Alternative Administrative Entity (AAE).* A State entity approved by the Corporation to perform the duties of a State Commission, including developing a three-year comprehensive national service plan, preparing applications to the Corporation for funding and approved national service positions, and administering service program grants; in general, an AAE must meet the same composition and other requirements as a State Commission, but may receive waivers from the Corporation to accommodate State laws that prohibit inquiring as to the political affiliation of

members, to have more than 25 voting members (the maximum for a State Commission), and/or to select members in a manner other than selection by the chief executive officer of the State.

(d) *Approved National Service Position.* A national service program position for which the Corporation has approved the provision of a national service educational award as one of the benefits to be provided for successful completion of a term of service.

(e) *Corporation.* As used in this part, the Corporation for National and Community Service established pursuant to the National and Community Service Trust Act of 1993 (42 U.S.C. 12651).

(f) *Corporation representative.* Each of the individuals employed by the Corporation for National and Community Service to assist the States in carrying out national and community service activities; the Corporation representative must be included as a member of the State Commission or AAE.

(g) *Indian tribe.* (1) An Indian tribe, band, nation, or other organized group or community, including—

(i) Any Native village, as defined in section 3(c) of the Alaska Native Claims Settlement Act (43 U.S.C. 1602(c)), whether organized traditionally or pursuant to the Act of June 18, 1934 (commonly known as the "Indian Reorganization Act"; 48 Stat. 984, chapter 576; 25 U.S.C. 461 et seq.); and

(ii) Any Regional Corporation or Village Corporation as defined in the Alaska Native Claims Settlement Act (43 U.S.C. 1602 (g) or (j)), that is recognized as eligible for the special programs and services provided by the United States under Federal law to Indians because of their status as Indians; and

(2) Any tribal organization controlled, sanctioned, or chartered by an entity described in paragraph (g)(1) of this section.

(h) *Older adult.* An individual 55 years of age or older.

(i) *Service-learning.* A method under which students or participants learn and develop through active participation in thoughtfully organized service that is conducted in and meets the needs of a community and that is coordinated with an elementary school, secondary school, institution of higher education, or community service program, and with the community; service-learning is integrated into and enhances the academic curriculum of the students, or the educational components of the community service program in which the participants are enrolled, and it provides time for the students or participants to reflect on the service experience.

(j) *Service learning programs.* The totality of the service learning programs receiving assistance from the Corporation under subtitle B of the Act, either directly or through a grant-making entity; this includes school-based, community-based, and higher education-based service-learning programs.

(k) *State.* As used in this part, the term *State* refers to each of the 50 States, the District of Columbia, and the Commonwealth of Puerto Rico.

(l) *State Commission.* A bipartisan or nonpartisan State entity, approved by the Corporation, consisting of 15–25 members (appointed by the chief executive officer of the State), that is responsible for developing a comprehensive national service plan, assembling applications for funding and approved national service positions, and administering national and community service programs in the State.

(m) *State Educational Agency.* The same meaning given to such term in section 1471(23) of the Elementary and Secondary Education Act of 1965 (20 U.S.C. 2891(23)).

(n) *State entity.* A State Commission, AAE, or Transitional Entity that has been authorized by the Corporation to perform the duties of a State Commission.

(o) *Transitional Entity.* An existing State agency which has been authorized by the Corporation to perform the duties of a State Commission; the Corporation will not authorize the use of a Transitional Entity unless a State is demonstrably unable to establish a State Commission or AAE.

§ 2550.30 How does a State decide which of the three entities to establish?

(a) Although each State's chief executive officer has the authority to select an administrative option, the Corporation strongly encourages States to establish State Commissions which meet the requirements in this part as quickly as possible. The requirements for State Commissions were established to try to create informed and effective entities.

(b) The Corporation recognizes that some States, for legal or other legitimate reasons, may not be able to meet all of the requirements of the State Commissions. The AAE is essentially the same as a State Commission; however, it may be exempt from some of the State Commission requirements. A State that cannot meet one of the waivable requirements of the State Commission (as explained in § 2550.60), and which can demonstrate this to the Corporation, should seek to establish an AAE.

(c) Over the long term, States that wish to participate in the Corporation's grant programs must have either a State Commission or an AAE approved by the Corporation. Some States, due to legal or other procedural requirements, may be unable to establish one of these two entities in time to participate in fiscal years 1994 or 1995. Therefore, during the 27-month period beginning on September 21, 1993 and ending on December 21, 1995, a State may apply to the Corporation for authorization to use a Transitional Entity.

(d) A State should consider applying to have a Transitional Entity approved only if it can demonstrate that it is impossible, for legal or procedural reasons, to establish a State Commission or AAE in time to participate in the national service programs.

(e) Regardless of which entity a State employs, each State is required to solicit broad-based, local input in an open, inclusive, non-political planning process.

§ 2550.40 How does a State obtain Corporation authorization and approval for the entity it has chosen?

(a) To receive approval of a State Commission or AAE, a State must formally establish an entity that meets the corresponding composition, membership, authority, and duty requirements of this part. (For the AAE, a State must demonstrate why it is impossible or unreasonable to estalbish a State Commission; an approved AAE, however, has the same rights and responsibilities as a State Commission.) Once the entity is established, the State must provide written notice—in a format to be prescribed by the Corporation—to the chief executive officer of the Corporation of the composition, membership, and authorities of the State Commission or AAE and explain how the entity will perform its duties and functions. Further, the State must agree to, first, request approval from the Corporation for any subsequent changes in the composition or duties of a State Commission or AAE the State may wish to make, and, second, to comply with any future changes in Corporation requirements with regard to the composition or duties of a State Commission or AAE. If a State meets the applicable requirements, the Corporation will approve the State Commission or AAE.

(b) If the Corporation rejects a State application for approval of a State Commission or AAE because that application does not meet one or more

of the requirements of §§ 2250.50 or 2550.60, it will notify the State of the reasons for rejection and offer assistance to make any necessary changes. The Corporation will reconsider revised applications within 14 working days of resubmission.

(c) To receive approval to use an existing State agency as a Transitional Entity, a State must, first, satisfactorily demonstrate why it is unable to establish a State Commission or AAE, and, second, explain how it will carry out the duties of the State Commission and conduct a broad-based, open and inclusive planning process in a non-political manner. In addition, in order to receive any administrative funds from the Corporation, a State must commit to establish a State Commission or AAE as soon as possible, and prior to the expiration of the 27-month transition period ending on December 21, 1995. Administrative grants will only be given for up to 12-month periods. If a Transitional Entity wishes to receive an additional administrative grant subsequent to the expiration of an initial 12-month administrative grant, that State entity must demonstrate satisfactory progress toward establishment of a State Commission or AAE.

§ 2550.50 What are the composition requirements and other requirements, restrictions or guidelines for State Commissions?

The following provisions apply to both State Commissions and AAEs, except that AAEs may obtain waivers from certain provisions as explained in § 2550.60.

(a) *Size of the State Commission and terms of State Commission members.* The chief executive officer of a State must appoint 15–25 voting members to the State Commission (in addition to any non-voting members he or she may appoint). Voting members of a State Commission must be appointed to renewable three-year terms, except that initially a chief executive officer must appoint a third of the members to one-year terms and another third of the members to two-year terms.

(b) *Required voting members on a State Commission.* A member may represent none, one, or more than one category, but each of the following categories must be represented:

(1) A representative of a community-based agency or organization in the State;

(2) The head of the State education agency or his or her designee;

(3) A representative of local government in the State;

(4) A representative of local labor organizations in the State;

(5) A representative of business;

(6) An individual between the ages of 16 and 25, inclusive, who is a participant or supervisor of a service program for school-age youth, or of a campus-based or national service program;

(7) A representative of a national service program;

(8) An individual with expertise in the educational, training, and development needs of youth, particularly disadvantaged youth; and

(9) An individual with experience in promoting the involvement of older adults (age 55 and older) in service and volunteerism.

(c) *Appointment of other voting members of a State Commission.* Any remaining voting members of a State Commission are appointed at the discretion of the chief executive officer of the State; however, although this list should not be construed as exhaustive, the Corporation suggests the following types of individuals:

(1) Educators, including representatives from institutions of higher education and local education agencies;

(2) Experts in the delivery of human, educational, environmental, or public safety services to communities and persons;

(3) Representatives of Indian tribes;

(4) Out-of-school or at-risk youth; and

(5) Representatives of programs that are administered or receive assistance under the Domestic Volunteer Service Act of 1973, as amended (DVSA) (42 U.S.C. 4950 et seq.).

(d) *Appointment of ex officio, non-voting members of a State Commission.* The chief executive officer of a State may appoint as ex officio, non-voting members of the State Commission officers or employees of State agencies operating community service, youth service, education, social service, senior service, or job training programs.

(e) *Other composition requirements.* To the extent possible, the chief executive officer of a State shall ensure that the membership of the State Commission is balanced with respect to race, ethnicity, age, gender, and disability characteristics. Not more than 50% plus one of the members of a State Commission may be from the same political party. In addition, the number of voting members of a State Commission who are officers or employees of the State may not exceed 25% of the total membership of that State Commission.

(f) *Selection of Chairperson.* The chairperson is elected by the voting members of a State Commission. To be eligible to serve as chairperson, an individual must be an appointed, voting member of a State Commission.

(g) *Vacancies.* If a vacancy occurs on a State Commission, a new member must be appointed by the chief executive officer of the State to serve for the remainder of the term for which the predecessor of such member was appointed. The vacancy will not affect the power of the remaining members to execute the duties of the Commission.

(h) *Compensation of State Commission members.* A member of a State Commission may not receive compensation for his or her services, but may be reimbursed (at the discretion of the State) for travel and daily expenses in the same manner as employees intermittently serving the State.

(i) *The role of the Corporation representative.* The Corporation will designate one of its employees to serve as a representative to each State or group of States. This individual must be included as an ex officio member on the State Commission, and may be designated as a voting member by the chief executive officer of a State. However, because the Corporation wishes to encourage State autonomy in the design and development of the State plan and in State national service programs, States are discouraged from allowing the Corporation representative to vote. In general, the Corporation representative will be responsible for assisting States in carrying out national service activities.

§ 2550.60 From which of the State Commission requirements is an Alternative Administrative Entity exempt?

(a) An AAE is not automatically exempt from any of the requirements that govern State Commissions. However, there are three specific State Commission requirements which the Corporation may waive if a State can demonstrate that one or more of them is impossible or unreasonable to meet. If the Corporation waives a State Commission requirement for a State entity, that State entity is, de facto, an AAE. The three criteria which may be waived for an AAE are as follows:

(1) *The requirement that a State's chief executive officer appoint the members of a State Commission.* If a State can offer a compelling reason why some or all of the State Commission members should be appointed by the State legislature or by some other appropriate means, the Corporation may grant a waiver.

(2) *The requirement that a State Commission have 15–25 members.* If a State compellingly demonstrates why its

commission should have a larger number of members, the Corporation may grant a waiver.

(3) *The requirement that not more than 50% plus one of the State Commission's voting members be from the same political party.* This requirement was established to prevent State Commissions from being politically motivated or controlled; however, in some States it is illegal to require prospective members to provide information about political party affiliation. For this or another compelling reason, the Corporation may grant a waiver.

(b) Again, any time the Corporation grants one or more of these waivers for a State entity, that entity becomes an AAE; in all other respects an AAE is the same as a State Commission, having the same requirements, rights, duties and responsibilities.

§ 2550.70 What are the composition or other requirements for Transitional Entities?

Because a Transitional Entity is by definition contained within a State agency, there are no membership or composition requirements. If a State takes the necessary steps to obtain approval for a Transitional Entity (listed in § 2550.40(c)), it meets the requirements of a Transitional Entity.

§ 2250.80 What are the duties of the State entities?

The duties of each of the three eligible State entities—States Commissions, AAEs and Transitional Entities—are precisely the same. The duties listed in this section apply to all three, and they are jointly referred to as "State entities." Functions described in paragraphs (a) through (d) of this section require policymaking and may not be delegated to another State agency or nonprofit organization. Functions described in paragraphs (e) through (j) of this section are non-policymaking and may be delegated to another State agency or nonprofit organization. The duties are as follows:

(a) *Development of a three-year comprehensive national and community service plan and establishment of State priorities.* The State entity must develop and annually update a Statewide plan for national service that is consistent with the Corporation's broad goals of meeting human, educational, environmental and public safety needs and that meets the following minimum requirements:

(1) The plan must be developed through an open and public process (such as through regional forums or hearings) that provides for maximum participation and input from national service programs within the State, and from other interested members of the public.

(2) The outreach process must, to the maximum extent practicable, include input from representatives of established State service programs, representatives of diverse, broad-based community organizations that serve underserved populations, and other interested individuals, including young people; the State entity should do so by creating State networks and registries or by utilizing existing ones.

(3) The plan may contain such other information as the State Commission considers appropriate and must contain such other information as the Corporation may require.

(b) *Pre-selection of subtitle C programs and preparation of application to the Corporation.* Each State must:

(1) Administer a competitive process to select national service programs to be included in any application to the Corporation for funding; and

(2) Prepare an application to the Corporation to receive funding and/or educational awards for the programs selected pursuant to paragraph (b)(1) of this section.

(c) *Preparation of Service Learning applications.* (1) The State entity is required to assist the State education agency in preparing the application for subtitle B school-based service learning programs.

(2) The State entity may apply to the Corporation to receive funding for community-based subtitle programs after coordination with the State Educational Agency.

(d) *Administration of the grants program.* After subtitle C and community-based subtitle B funds are awarded, States entities will be responsible for administering the grants and overseeing and monitoring the performance and progress of funded programs.

(e) *Evaluation and monitoring.* State entities, in concert with the Corporation, shall be responsible for implementing comprehensive, non-duplicative evaluation and monitoring systems.

(f) *Technical assistance.* The State entity will be responsible for providing technical assistance to local nonprofit organizations and other entities in planning programs, applying for funds, and in implementing and operating high quality programs. States should encourage proposals from underserved communities.

(g) *Program development assistance and training.* The State entity must assist in the development of subtitle C programs; such development might include staff training, curriculum materials, and other relevant materials and activities. A description of such proposed assistance must be included in the State comprehensive plan referred to in paragraph (a) of this section. A State may apply for additional subtitle C programs training and technical assistance funds to perform these functions. The Corporation will issue notices of availability of funds with respect to training and technical assistance.

(h) *Recruitment and placement.* The State entity, as well as the Corporation, will develop mechanisms for recruitment and placement of people interested in participating in national service programs.

(i) *Benefits.* The State entity shall assist in the provision of health and child care benefits to subtitle C program participants, as will be specified in the regulations implementing the subtitle C programs.

(j) *Activity ineligible for assistance.* A State Commission or AAE may not directly operate or run any national service program receiving financial assistance, in any form, from the Corporation.

(k) *Make recommendations to the Corporation* with respect to priorities within the State for programs receiving assistance under DVSA.

(l) *Coordination.* (1) Coordination with other State agencies.—A State entity must coordinate its activities with the activities of other State agencies that administer Federal financial assistance programs under the Community Services Block Grant Act (42 U.S.C. 9901 et seq.) or other appropriate Federal financial assistance programs.

(2) Coordination with volunteer service programs.—In general, the State entity shall coordinate its functions (including recruitment, public awareness, and training activities) with such functions of any division of ACTION, or the Corporation, that carries out volunteer service programs in the State. Specifically, the State entity may enter into an agreement with a division of ACTION or the Corporation to carry out its functions jointly, to perform its functions itself, or to assign responsibility for its functions to ACTION or the Corporation.

(3) In carrying out the activities under paragraphs (l) (1) and (2) of this section, the parties involved must exchange information about the programs carried out in the State by the State entity, a division of ACTION or the Corporation, as well as information about opportunities to coordinate activities.

§ 2550.90 Are there any restrictions on the activities of the members of State Commissions or Alternative Administrative Entities?

To avoid a conflict of interest (or the appearance of a conflict of interest) regarding the provision of assistance or approved national service positions, members of a State Commission or AAE must adhere to the following provisions:

(a) *General restriction.* Members of State Commissions and AAEs are restricted in several ways from the grant approval and administration process for any grant application submitted by an organization for which they are currently, or were within one year of the submission of the application, officers, directors, trustees, full-time volunteers or employees. The restrictions for such individuals are as follows:

(1) They cannot assist the applying organization in preparing the grant application;

(2) They must recuse themselves from the discussions or decisions regarding the grant application and any other grant applications submitted to the Commission or AAE under the same program (e.g., subtitle B programs or subtitle C programs); and

(3) They cannot participate in the oversight, evaluation, continuation, suspension or termination of the grant award.

(b) *Exception to achieve a quorum.* If this general restriction creates a situation in which a Commission or AAE does not have enough eligible voting members to achieve a quorum, the Commission or AAE may involve some normally-excluded members subject to the following conditions:

(1) A Commission or AAE may randomly and in a non-discretionary manner select the number of refused members necessary to achieve a quorum;

(2) Notwithstanding paragraph (b)(1) of this section, no Commission or AAE member may, under any circumstances, participate in any discussions or decisions regarding a grant application submitted by an organization with which he or she is or was affiliated according to the definitions in paragraph (a) of this section; and

(3) If recused members are included so as to achieve quorum, the State Commission or AAE must document the event and report to the Corporation within 30 days of the vote.

(c) *Rule of construction.* Paragraph (a) of this section shall not be construed to limit the authority of any voting member of the State Commission or AAE to participate in—

(1) Discussion of, and hearings and forums on, the general duties, policies and operations of the Commission or AAE, or general program administration; or

(2) Similar general matters relating to the Commission or AAE.

§ 2550.100 Do State entities or their members incur any risk of liability?

(a) *State liability.* Except as provided in paragraph (b) of this section, a State must agree to assume liability with respect to any claim arising out of or resulting from any act or omission by a member of the State Commission or AAE, within the scope of the service of that member.

(b) *Individual liability.* A member of the State Commission or AAE shall have no personal liability with respect to any claim arising out of or resulting from any act or omission by that member, within the scope of the service of that member. This does not, however, limit personal liability for criminal acts or omissions, willful or malicious misconduct, acts or omissions for private gain, or any other act or omission outside the scope of the service of that member. Similarly, this part does not limit or alter in any way any other immunities that are available under applicable law for State officials and employees not described in this section; nor does this part affect any other right or remedy against the State or any person other than a member of a State Commission or AAE.

§ 2550.110 What money will be available from the Corporation to assist in establishing and operating a State Commission, Alternative Administrative Entity, or Transitional Entity?

(a) *Range of grants.* The Corporation may make administrative grants to States of between $125,000 and $750,000 (inclusive) for the purpose of establishing or operating a State Commission or AAE; these grants will be available to States which have Corporation-approved Transitional Entities only if those States commit to establishing a Corporation-approved State Commission or AAE prior to the expiration of the transitional period.

(b) *Limitation on Federal share.* Notywithstanding the amounts specified in this section, the amount of a grant that may be provided to a State under this subsection, together with other Federal funds available to establish or operate the State Commission or AAE, may not exceed 85 percent of the total cost to establish or operate the State Commission or AAE for the first year for which the State Commission or AAE receives an administrative grant under this section.[1] In subsequent years, the Corporation will establish larger matching requirements for States so that by the fifth and subsequent years of assistance, the Federal share does not exceed 50 percent.

Terry Russell,

Acting General Counsel.

[FR Doc. 93–28231 Filed 11–17–93; 8:45 am]

BILLING CODE 6820–BA–M

[1] See OMB Circulars A–102 and A–122. Copies of the circulars may be obtained from the Office of Administration, EOP Publications, 725 17th Street, NW., Room 2200, New EOB, Washington, DC 20503.

federal register

Thursday
November 18, 1993

Part VIII

The President

Executive Order 12880—National Drug Control Program

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Thursday, November 18, 1993

Presidential Documents

Title 3—

The President

Executive Order 12880 of November 16, 1993

National Drug Control Program

The Office of National Drug Control Policy has the lead responsibility within the Executive Office of the President to establish policies, priorities, and objectives for the Nation's drug control program, with the goal of reducing the production, availability, and use of illegal drugs. All lawful and reasonable means must be used to ensure that the United States has a comprehensive and effective National Drug Control Strategy.

Therefore, by the authority vested in me as President by the Constitution and the laws of the United States of America, including the National Narcotics Leadership Act of 1988, as amended (21 U.S.C. 1501 *et seq.*), and in order to provide for the effective management of the drug abuse policies of the United States, it is hereby ordered as follows:

Section 1. GENERAL PROVISIONS. (a) Because the United States considers the operations of international criminal narcotics syndicates as a national security threat requiring an extraordinary and coordinated response by civilian and military agencies involved in national security, the Director of the Office of National Drug Control Policy (Director), in his role as the principal adviser to the National Security Council on national drug control policy (50 U.S.C. 402(f)), shall provide drug policy guidance and direction in the development of related national security programs.

(b) The Director shall provide oversight and direction for all international counternarcotics policy development and implementation, in coordination with other concerned Cabinet members, as appropriate.

(c) An Interagency Working Group (IWG) on international counternarcotics policy, chaired by the Department of State, shall develop and ensure coordinated implementation of an international counternarcotics policy. The IWG shall report its activities and differences of views among agencies to the Director for review, mediation, and resolution with concerned Cabinet members, and if necessary, by the President.

(d) A coordinator for drug interdiction shall be designated by the Director to ensure that assets dedicated by Federal drug program agencies for interdiction are sufficient and that their use is properly integrated and optimized. The coordinator shall ensure that interdiction efforts and priorities are consistent with overall U.S. international counternarcotics policy.

(e) The Director shall examine the number and structure of command/control and drug intelligence centers operated by drug control program agencies involved in international counter-narcotics and suggest improvements to the current structure for consideration by the President and concerned members of the Cabinet.

(f) The Director, utilizing the services of the Drugs and Crime Data Center and Department of Justice Clearinghouse, shall assist in coordinating and enhancing the dissemination of statistics and studies relating to anti-drug abuse policy.

(g) The Director shall provide advice to agencies regarding ways to achieve efficiencies in spending and improvements to interagency cooperation that could enhance the delivery of drug control treatment and prevention services to the public. The Director may request agencies to provide studies, information, and analyses in support of this order.

Sec. 2. GOALS, DIRECTION, DUTIES AND RESPONSIBILITIES WITH RESPECT TO THE NATIONAL DRUG CONTROL PROGRAM. (a) *Budget Matters.* (1) In addition to the budgetary authorities and responsibilities provided to the Director by statute, 21 U.S.C. 1502, for those agency budget requests that are not certified as adequate to implement the objectives of the National Drug Control Strategy, the Director shall include in such certifications initiatives or funding levels that would make such requests adequate.

(2) The Director shall provide, by July 1 of each year, budget recommendations to the heads of departments and agencies with responsibilities under the National Drug Control Program. The recommendations shall apply to the second following fiscal year and address funding priorities developed in the annual National Drug Control Strategy.

(b) MEASUREMENT OF NATIONAL DRUG CONTROL STRATEGY OUTCOMES. (1) The National Drug Control Strategy shall include long-range goals for reducing drug use and the consequences of drug use in the United States, including burdens on hospital emergency rooms, drug use among arrestees, the extent of drug-related crime, high school dropout rates, the number of infants exposed annually to illicit drugs in utero, national drug abuse treatment capacity, and the annual national health care costs of drug use.

(2) The National Drug Control Strategy shall also include an assessment of the quality of techniques and instruments to measure current drug use and supply and demand reduction activities, and the adequacy of the coverage of existing national drug use instruments and techniques to measure the total illicit drug user population and groups at-risk for drug use.

(3) The Director shall coordinate an effort among the relevant drug control program agencies to assess the quality, access, management, effectiveness, and standards of accountability of drug abuse treatment, prevention, education, and other demand reduction activities.

(c) *Provision of Reports.* To the extent permitted by law, heads of departments and agencies with responsibilities under the National Drug Control Program shall make available to the Office of National Drug Control Policy, appropriate statistics, studies, and reports, pertaining to Federal drug abuse control.

William J. Clinton

THE WHITE HOUSE,
November 16, 1993.

[FR Doc. 93-28578
Filed 11-17-93; 10:49 am]
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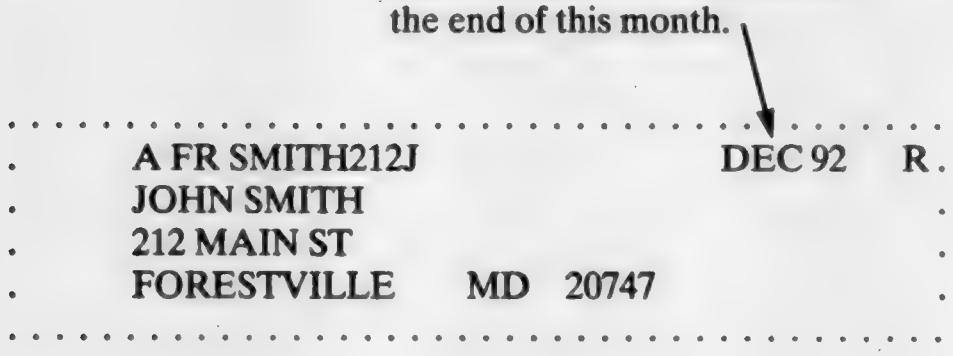

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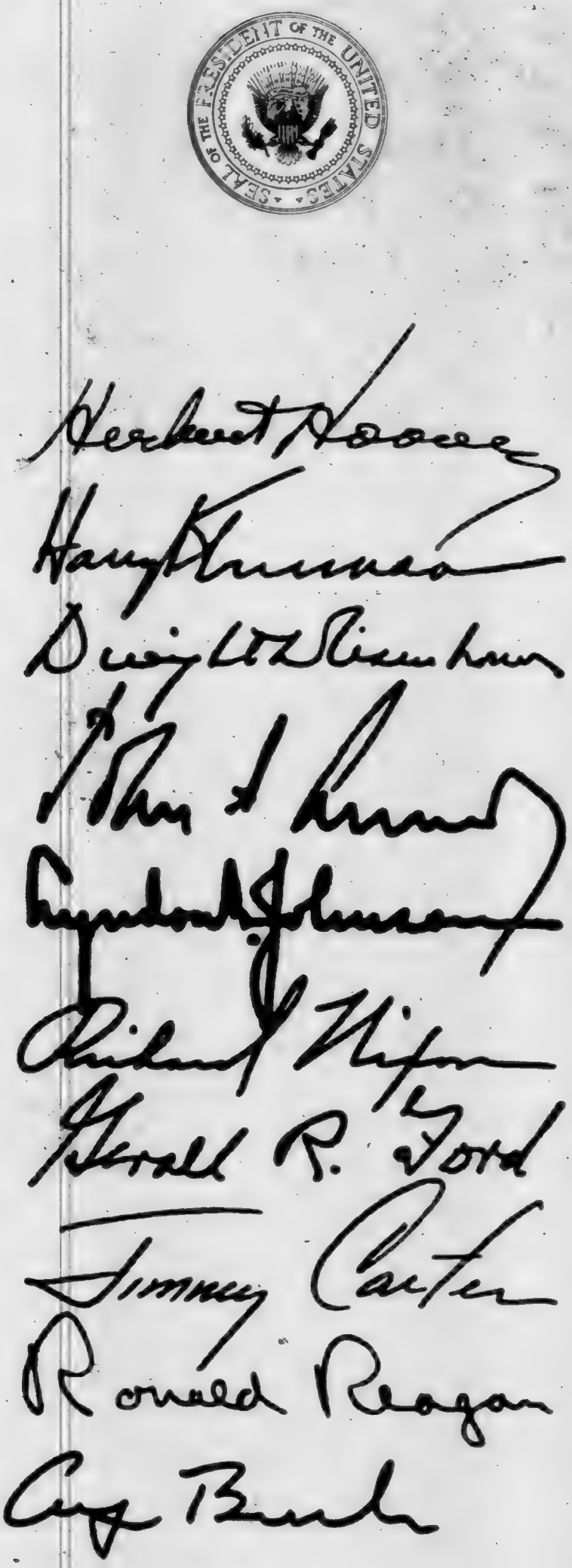

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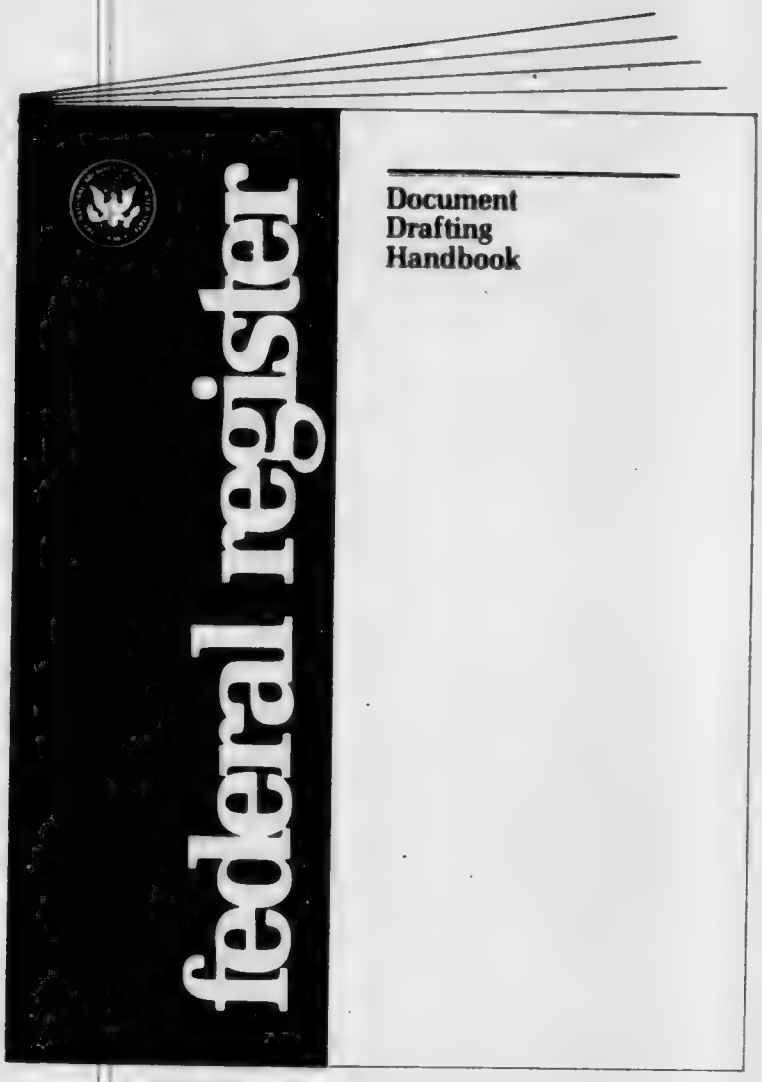

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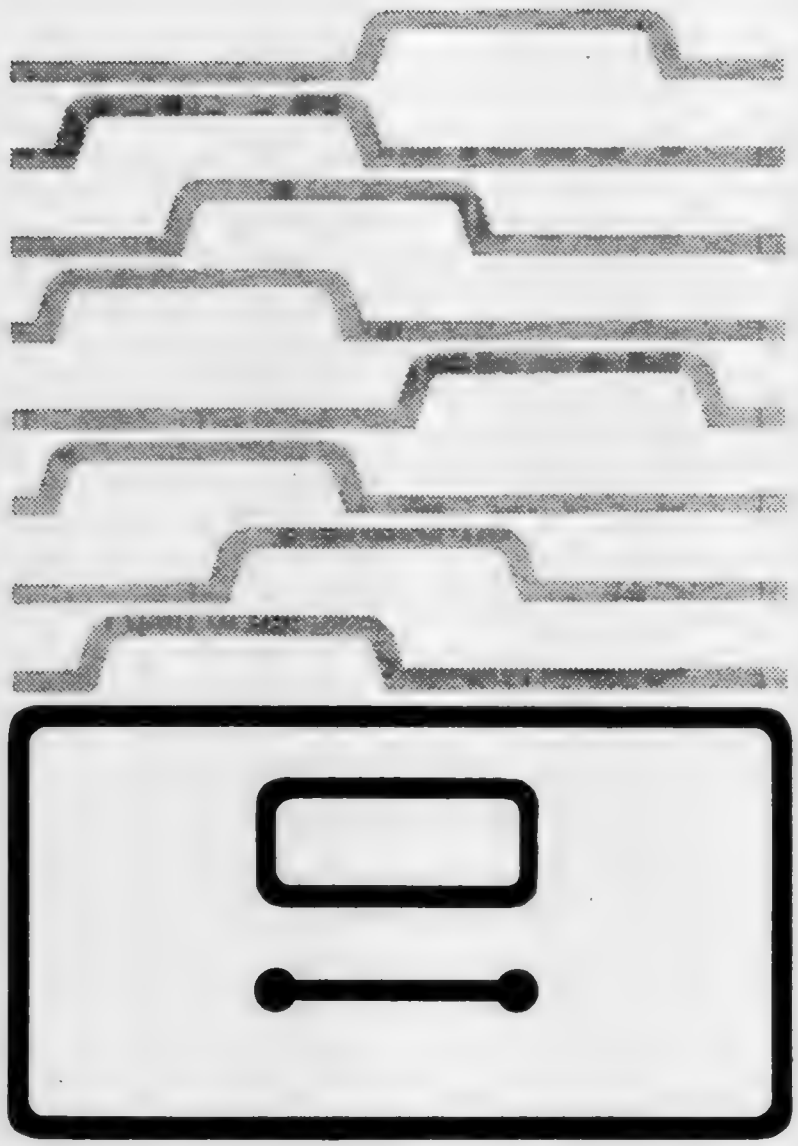

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Federal Register
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Friday, November 19, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

OFFICE OF PERSONNEL MANAGEMENT

5 CFR Part 179

RIN 3206–AF28

Claims Collection Standards; Debt Collection Act of 1982: Administrative Offset

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to govern the collection of debts owed to the United States which arose from transactions involving OPM's administrative accounts. These regulations implement the debt collection procedures provided under the Debt Collection Act of 1982 (Act). The Act authorizes the Federal Government to collect debts by means of administrative offset from other payments due the debtor from the United States, without the debtor's consent, provided that the debtor is properly notified and given the opportunity to exercise certain administrative rights. OPM's collection of debts due the Retirement and Insurance Group for payment to the Civil Service Retirement and Disability Fund, Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Fund (74 Stat. 849), or the Employees' Health Benefits Fund is governed by the provisions in 5 CFR part 831, subparts M and N, 5 CFR part 845, subparts B and C, 5 CFR parts 870, 871, 872, and 873, subpart D, and 5 CFR part 890, subpart E, as applicable.

DATES: These regulations are effective November 19, 1993. Comments must be submitted on or before January 18, 1994.

ADDRESSES: Send or deliver written comments to E. John Prebis, Chief Financial Officer (CFO), Office of Personnel Management, room 5489A, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Anna Wilson, Chief, Financial Policy Division, Office of the CFO, (202) 606–5075.

SUPPLEMENTARY INFORMATION: Section 10 of the Debt Collection Act of 1982 (Act) (Public Law 97–365) makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, administrative offset may be initiated when the head of an agency determines that an individual or entity is indebted to the United States, or is notified by the head of another agency that a person or entity is indebted to the United States and that the debtor is owed monies by the United States as a result of transactions with a Federal agency. After the debtor has received certain due process rights, the debt may be collected by administratively offsetting the debt against the amount due.

Under the Act, before the Government may collect a debt by administrative offset, a debtor must be provided with notice that a debt is owed, the opportunity to inspect and copy Government records relating to the debt, the option to enter into a written repayment agreement, and an opportunity for review of the agency's determination concerning the existence or the amount of the debt, or the repayment terms. The debtor must notify the agency of his or her intent to exercise these rights within time periods prescribed in these regulations.

The Act permits the agency to initiate an administrative offset prior to the completion of the due process requirements if failure to do so would substantially jeopardize the agency's ability to collect the debt and if the time remaining before payment is to be made does not reasonably permit completion of the due process procedures. Such prior offset must be followed by completion of the due process procedures.

The Act requires agencies to issue regulations for administrative offset. This interim rule establishes the procedures OPM will follow in making an administrative offset from funds paid to a debtor from OPM's administrative accounts. These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service Retirement and Disability Fund (the Fund), or where a request for an offset from OPM's administrative accounts—other than the Fund—is received by OPM from another Federal Agency. Regulations for other agencies to request OPM's Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R of part 831 of title 5, Code of Federal Regulations. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

OPM has determined that this document is interpretative because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by the Department of Justice and the General Accounting Office. Accordingly, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(a)(2). Moreover, for these reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2). The Office will, however, consider any public comments before issuing a final rule.

Executive Order (E.O.) 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are regulations that will affect only Federal employees.

List of Subjects in 5 CFR Part 179

Claims.

U.S. Office of Personnel Management.

Patricia W. Lattimore,

Acting Deputy Director.

Accordingly, OPM is amending part 179 of title 5 of the Code of Federal Regulations as follows:

PART 179—CLAIMS COLLECTION STANDARDS

1. The authority citation in part 179 is revised to read as follows:

Authority: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K; 31 U.S.C. 3701; 31 U.S.C. 3711; 31 U.S.C. 3716; 31 U.S.C. 3720A.

2. Subpart C, consisting of §§ 179.301 through 179.309, is added to read as follows:

Subpart C—Administrative Offset

Sec.

179.301 Scope of regulations.
179.302 Definitions.
179.303 General.
179.304 Notification procedures.
179.305 Agency review.
179.306 Written agreement for repayment.
179.307 Administrative offset.
179.308 Accelerated procedures.
179.309 Additional administrative procedures.

Subpart C—Administrative Offset

§ 179.301 Scope of regulations.

These regulations apply to the collection of debts owed to the United States arising from transactions with OPM other than those involving payments made from the Civil Service retirement and Disability Fund (the Fund), or where a request for an offset from OPM's administrative accounts—other than the Fund—is received by OPM from another Federal agency. Regulations for other agencies to request OPM's Retirement and Insurance Group to recover a debt from the Fund are provided at subpart R of part 831 of title 5, Code of Federal Regulations. These regulations are consistent with the Federal Claims Collection Standards on administrative offset issued jointly by the Department of Justice and the General Accounting Office as set forth in 4 CFR 102.3.

§ 179.302 Definitions.

Administrative offset, as defined in 31 U.S.C. 3701(a)(1), means withholding money payable by the United States Government to, or held by the Government for, a person to satisfy a debt the person owes the Government.

Person, includes a natural person or persons, profit or nonprofit corporation, partnership, association, trust, estate, consortium, or other entity which is capable of owing a debt to the United States Government except that agencies of the United States, or of any State or local government, shall be excluded.

§ 179.303 General.

(a) The Director or his or her designee, after attempting to collect a debt from a person under section 3(a) of the Federal Claims Collection Act of 1966, as amended (31 U.S.C. 3711(a)), may collect the debt by administrative offset subject to the following:

(1) The debt is certain in amount; and

(2) It is in the best interest of the United States to collect the debt by administrative offset because it is less costly and speeds payment of the debt;

(b) The Director, or his or her designee, may initiate administrative offset with regard to debts owed by a person to another agency of the United States Government, upon receipt of a request from the head of another agency, or his or her designee, and a certification that the debt exists and that the person has been afforded the necessary due process rights.

(c) The Director, or his or her designee, may request another agency that holds funds payable to an OPM debtor to offset the debt against the funds held and will provide certification that:

(1) The debt exists; and

(2) The person has been afforded the necessary due process rights.

(d) If the 6-year period for bringing action on a debt provided in 28 U.S.C. 2415 has expired, then administrative offset may be used to collect the debt only if the costs of bringing such action are likely to be less than the amount of the debt.

(e) No collection by administrative offset shall be made on any debt that has been outstanding for more than 10 years unless facts material to the Government's right to collect the debt were not known, and reasonably could not have been known, by the official or officials responsible for discovering and collecting such debt.

(f) These regulations do not apply to:

(1) A case in which administrative offset of the type of debt involved is explicitly provided for or prohibited by another statute.

(2) Debts owed to OPM by other agencies of the United States or by any State or local government.

§ 179.304 Notification procedures.

Before collecting any debt through administrative offset, a notice of intent to offset shall be sent to the debtor by certified mail, return receipt requested, at the most current address that is available to OPM. The notice shall provide:

(a) A description of the nature and amount of the debt and the intention of OPM to collect the debt through administrative offset;

(b) An opportunity to inspect and copy the records of OPM with respect to the debt;

(c) An opportunity for review within OPM concerning OPM's determinations with respect to the debt; and

(d) An opportunity to enter into a written agreement for the repayment of the amount of the debt.

§ 179.305 Agency review.

(a) A debtor may dispute the existence of the debt, the amount of the debt, or the terms of repayment. The request to review a disputed debt must be received by the OPM official identified in the notification within 30 calendar days of the debtor's receipt of the written notice described in § 179.305.

(b) If the debtor requests an opportunity to inspect or copy OPM's records concerning the disputed claim, 10 business days will be granted for the review. The time period will be measured from the time the request for inspection is granted or from the time the copy of the records is received by the debtor.

(c) Pending the resolution of a dispute initiated by the debtor, transactions in any of the debtor's account(s) maintained in OPM may be temporarily suspended. Depending on the type of transaction, the suspension could preclude payment, removal, or transfer, as well as prevent the payment of interest or discount due thereon. Should the dispute be resolved in the debtor's favor, the suspension will be lifted immediately.

(d) During the review period, interest, penalties, and administrative costs authorized under the Federal Claims Collection Act of 1966, as amended, will continue to accrue.

§ 179.306 Written agreement for repayment.

A debtor who admits liability but elects not to have the debt collected by administrative offset will be afforded an opportunity to negotiate a written agreement for the repayment of the debt. If the financial condition of the debtor does not support the ability to pay in one lump-sum, reasonable installments may be considered. No installment arrangement will be considered unless the debtor submits a financial statement, executed under penalty of perjury, reflecting the debtor's assets, liabilities, income, and expenses. The financial statement must be submitted within 10 business days of OPM's request for the statement. At OPM's option, a confess-judgment note or bond of indemnity with surety may be required for the installment agreement. Notwithstanding the provisions of this section, any reduction or compromise of a claim will be governed by 4 CFR part 103 and 31 U.S.C. 3711.

§ 179.307 Administrative Offset.

(a) If the debtor does not exercise the right to request a review within the time specified in § 179.305 or, if as a result of the review, it is determined that the debt is due and no written agreement is executed, then administrative offset shall be ordered in accordance with these regulations without further notice.

(b) *Request for offset to a Federal agency.* The Director or his or her designee may request that funds due and payable to a debtor by a Federal agency be administratively offset in order to collect a debt owed to OPM by that debtor. In requesting administrative offset OPM, as creditor, will certify in writing to the Federal agency holding funds of the debtor:

(1) That the debtor owes the debt;

(2) The amount and basis of the debt; and

(3) That OPM has complied with the requirements of 31 U.S.C. 3716, its own administrative offset regulations, and the applicable provisions of 4 CFR part 102 with respect to providing the debtor with due process.

(c) *Request for offset from a Federal agency.* When administrative offset is authorized, any Federal creditor agency may request OPM to make an administrative offset from any OPM funds that are due and payable to a creditor agency's debtor. OPM shall initiate the requested administrative offset only upon:

(1) Receipt of written certification from the creditor agency:

(i) That the debtor owes the debt;

(ii) The amount and basis of the debt;

(iii) That the agency has prescribed regulations for the exercise of administrative offset; and

(iv) That the agency has complied with its own administrative offset regulations and with the applicable provisions of 4 CFR part 102, including providing any required hearing or review.

(2) A determination by OPM that collection by offset against funds payable by OPM would not otherwise be contrary to law.

§ 179.308 Accelerated procedures.

OPM may make an administrative offset against a payment to be made to the debtor prior to the completion of the procedures required by § 179.304 and § 179.305 if failure to take the offset would substantially jeopardize OPM's ability to collect the debt, and the time before the payment is to be made does not reasonably permit the completion of those procedures. Such prior offset shall be promptly followed by the completion of those procedures. Amounts recovered by offset but later found not to be owed to OPM shall be promptly refunded.

§ 179.309 Additional administrative procedures.

Nothing contained in this chapter is intended to preclude the use of any other administrative remedy which may be available.

[FR Doc. 93–28410 Filed 11–18–93; 8:45 am]
BILLING CODE 6325–01–M

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5 CFR Part 179

RIN 3206–AF29

Claims Collection Standards; Debt Collection Act of 1982: Salary Offset

AGENCY: Office of Personnel Management.

ACTION: Interim rule with request for comments.

SUMMARY: The Office of Personnel Management (OPM) is issuing interim regulations to govern the collection of debts owed to OPM's administrative accounts by Federal employees. These regulations implement the debt collection procedures provided under section 5 of the Debt Collection Act of 1982 (Act). The Act authorizes the Federal Government to collect debts by means of offset from the salaries of Federal employees without the employee's consent, provided that the employee is properly notified and given the opportunity to exercise certain administrative rights. OPM's collection of debts due the Retirement and Insurance Group for payment to the Civil Service Retirement and Disability Fund, Employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Fund, or the Employees' Health Benefits Fund is governed by other regulatory provisions.

DATES: These regulations are effective November 19, 1993. Comments must be submitted on or before January 18, 1994.

ADDRESSES: Send or deliver written comments to E. John Prebis, Chief Financial Officer (CFO), Office of Personnel Management, room 5489A, 1900 E Street NW., Washington, DC 20415.

FOR FURTHER INFORMATION CONTACT: Anna Wilson, Chief, Financial Policy Division, Office of the CFO, (202) 606–5075.

SUPPLEMENTARY INFORMATION: Section 5 of the Debt Collection Act of 1982 (Act) (Public Law 97–365), codified at 5 U.S.C. 5514, makes several changes in the way Executive and Legislative agencies collect debts owed the Government. The purpose of the Act is to improve the ability of the Government to collect monies owed it.

Under the Act, when the head of an agency determines that an employee of any agency is indebted to the United States, or is notified by the head of another agency that an agency employee is indebted to the United States, the employee's debt may be offset against his/her pay. Before agencies may use the salary offset recovery procedure, certain due process rights must be extended to the debtor.

Under the Act, before the Government may collect a debt by salary offset, an employee-debtor must be provided with notice of the debt and the opportunity to (1) inspect and copy Government records relating to the debt, (2) enter into a written repayment agreement, and (3) request an impartial hearing on the determination of the agency concerning the existence or the amount of the debt. The employee must notify the agency of his or her intent to exercise these rights within the time period prescribed in the regulations.

The Act requires agencies to issue regulations for salary offset. This interim rule establishes the procedures the Office of Personnel Management (OPM) will follow in making a salary offset. OPM has determined that this document is interpretative because it merely implements a definitive statutory scheme and the requirements contained in regulations promulgated by OPM, codified in 5 CFR part 550, subpart K. Accordingly, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(b)(A). In addition, because this rule relates to agency management and personnel, no Notice of Proposed Rulemaking is required pursuant to 5 U.S.C. 553(a)(2). Moreover, for these reasons, a delayed effective date is not required pursuant to 5 U.S.C. 553(d)(2). The Office will, however, consider any public comments before issuing a final rule.

Executive Order (E.O.) 12291, Federal Regulation

OPM has determined that this is not a major rule as defined under Section 1(b) of E.O. 12291, Federal Regulation.

Regulatory Flexibility Act

I certify that these regulations will not have a significant economic impact on a substantial number of small entities because they are regulations that will affect only employees of the Federal Government.

List of Subjects in 5 CFR Part 179

Claims.

U.S. Office of Personnel Management.
Patricia W. Lattimore,
Acting Deputy Director.

Accordingly, OPM is amending title 5, Code of Federal Regulations, part 179 as follows:

PART 179—CLAIMS COLLECTION STANDARDS

1. The authority citation for part 179 is revised to read as follows:

Authority: 31 U.S.C. 952; 5 U.S.C. 1103; Reorganization Plan No. 2 of 1978; 5 U.S.C. 5514; 5 CFR part 550 subpart K.

2. Sections 179.101 and 179.102 are designated "Subpart A—General Provisions and Administration".

3. Section 179.102 of Subpart A is revised to read as follows:

§ 179.102 Delegation of authority.

(a) The Chief Financial Officer and his or her delegatees are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations with the exception of debts arising from the Civil Service Retirement and Disability Fund, the employees' Life Insurance Fund, the Retired Federal Employees Health Benefits Act (74 Stat. 849), and the Employees Health Benefits Fund. However, all claims processed by the Chief Financial Officer and his or her delegatees for compromise, suspension, and termination of collection action in amounts of $2,500 or more must be recommended by the General Counsel or his or her designee.

(b) The Associate Director for Retirement and Insurance and his or her delegatees are designated by the Director and authorized to perform all the duties for which the Director is responsible under the Debt Collection Act of 1982 and Office of Personnel Management regulations on debts caused by payments from the Civil Service Retirement and Disability Fund (subchapter III of chapter 83 or chapter 84), claims under the provisions of the Federal Employees' Life Insurance Fund (chapter 87) the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Employees Health Benefits Fund (chapter 89), the Panama Canal Construction Annuity Act (58 Stat. 257), and the Lighthouse Service Widows' Annuity Act (64 Stat. 465).

3. Subpart B, consisting of §§ 179.201 through 179.218, is added to read as follows:

Subpart B—Salary offset

Sec.
179.201 Purpose.
179.202 Scope.
179.203 Definitions.
179.204 Applicability of regulations.
179.205 Waiver requests and claims to the General Accounting Office.
179.206 Notice requirements before offset.
179.207 Hearing.
179.208 Certification.
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179.210 Special review.
179.211 Notice of salary offset.
179.212 Procedures for salary offset.
179.213 Coordinating salary offset with other agencies.
179.214 Interest, penalties and administrative costs.
179.215 Refunds.
179.216 Request for the services of a hearing official when the creditor agency is not OPM.
179.217 Non-waiver of rights by payments.
179.218 Additional administrative collection action.

Subpart B—Salary Offset

§ 179.201 Purpose.

The purpose of the Debt Collection Act of 1982 (Public Law 97–365), is to provide a comprehensive statutory approach to the collection of debts due the Federal Government. The regulations in this subpart implement section 5 of the Act which authorizes the collection of debts owed by Federal employees to the Federal Government by means of salary offset, except that no claim may be collected by such means if outstanding for more than 10 years after the agency's right to collect the debt first accrued, unless facts material to the Government's right to collect were not known, and could not reasonably have been known, by the official or officials who were charged with the responsibility for discovery and collection of such debts. The regulations in this subpart are consistent with the regulations on salary offset issued by the Office of Personnel Management (OPM) in 5 CFR part 550, subpart K.

§ 179.202 Scope.

(a) The regulations in this subpart provide procedures for the collection of monies from a Federal employee's pay by salary offset to satisfy certain debts owed the Government.

(b) The regulations in this subpart apply to all collections by the Director of OPM except collections involving debts because of payments made from the Civil Service Retirement and Disability Fund, payments made under the Retired Federal Employees Health Benefits Act (74 Stat. 849), the Panama Canal Construction Annuity Act and the Lighthouse Service Widows' Annuity Act and payments or premiums relating to the Federal Employees' Life Insurance Fund or the Federal Employees Health Benefits Funds, from:

(1) Federal employees who owe debts to OPM; and

(2) OPM employees who owe debts to other agencies.

(c) The regulations in this subpart do not apply to debts or claims arising under the Internal Revenue Code of 1954, as amended (26 U.S.C. 1 *et seq.*); the Social Security Act (42 U.S.C. 301 *et seq.*); the tariff laws of the United States; or to any case where collection of a debt by salary offset is explicitly provided for or prohibited by another statute (e.g., travel advances in 5 U.S.C. 5705 and employee training expenses in 5 U.S.C. 4108).

(d) Section 179.207, Notice Requirement, does not apply to any adjustment to pay arising from an employee's election of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less.

(e) Nothing in the regulations in this subpart precludes the compromise, suspension, or termination of collection actions, where appropriate, under the standards implementing the Federal Claims Collection Act (31 U.S.C. 3711 *et seq.*, 4 CFR parts 101 through 105, 38 CFR part 1.

(f) Nothing in the regulations in this subpart precludes an employee from requesting a waiver of the debt under applicable statute; under the standards and procedures specified by the Federal Claims Collection Standards (FCCS); or waiver of salary overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, or 32 U.S.C. 716, by submitting a subsequent claim to the General Accounting Office in accordance with procedures established by the General Accounting Office.

§ 179.203 Definitions.

As used in this part (except where the term is otherwise defined in this part) the following definitions shall apply:

Agency means:

(1) An Executive Agency as defined by section 105 of title 5, United States Code, including the U.S. Postal Service and the U.S. Postal Rate Commission;

(2) A military department as defined by section 102 of title 5, United States Code;

(3) An agency or court of the judicial branch including a court as defined in section 610 of title 28, United States Code, the District Court for the Northern Mariana Islands and the Judicial Panel on Multidistrict Litigation;

(4) An agency of the legislative branch, including the U.S. Senate and the U.S. House of Representatives; and

(5) Other independent establishments that are entities of the Federal Government.

Certification means a written debt claim, as prescribed by § 179.209, that is received from a creditor agency and which requests the paying agency to offset the salary of an employee.

Creditor agency means an agency of the Federal Government to which the debt is owed. For purposes of this part *creditor agency* includes OPM, unless otherwise noted.

Debt or *claim* means money owed by an employee of the Federal Government to an agency of the Federal Government, from sources which include loans insured or guaranteed by the United States and all other amounts due the Government from fees, leases, rents, royalties, services, sales of real or personal property, overpayments, penalties, damages, interests, fines and forfeitures (except those arising under the Uniform Code of Military Justice) and all other similar sources.

Delinquent means the failure to pay an obligation or debt by the date specified in the initial notification or applicable contractual agreement, unless other payment arrangements have been agreed to by OPM and the debtor by that date, or if, at any time thereafter, the debtor fails to satisfy the obligations under a payment agreement with the creditor agency.

Director means the Director of OPM or his or her designee.

Disposable pay means that part of current basic pay, special pay, incentive pay, retired pay, retainer pay, or, in the case of an employee not entitled to basic pay, other authorized pay remaining after the deduction of any amount required by law to be withheld. OPM shall allow the following deductions, and any others required by law to be withheld, in determining disposable pay subject to salary offset;

(1) Federal employment taxes;

(2) Amounts mandatorily withheld for the U.S. Soldiers' and Airmen's Home;

(3) Fines and forfeitures ordered by a court martial or by a commanding officer;

(4) Federal, state or local income taxes no greater than would be the case if the employee claimed all dependents to which he or she is entitled and such additional amounts for which the employee presents evidence of a tax obligation supporting the additional withholding;

(5) Amounts withheld from benefits payable under title II of the Social Security Act where the withholding is required by law;

(6) Amounts deducted for Medicare;

(7) Health insurance premiums;

(8) Normal retirement contributions as explained in 5 CFR 581.105(e) (e.g., Civil Service Retirement deductions, Survivor Benefit Plan or Retired Serviceman's Family Protection Plan);

(9) Normal life insurance premiums (e.g., Serviceman's Group Life Insurance and *basic* Federal Employee's Group Life Insurance premiums) exclusive of optional life insurance premiums; and

(10) Garnishments resulting from a legal process and creating legal obligations in accordance with 5 CFR 581.102(f) and (g).

Employee means a current employee of OPM or other agency, including a current member of the Armed Forces or Reserve of the Armed Forces of the United States.

FCCS means the Federal Claims Collection Standards jointly published by the Department of Justice and the General Accounting Office at 4 CFR part 101.

Hearing official means an individual (including an administrative law judge) responsible for conducting any hearing with respect to the existence or amount of a debt claimed, and rendering a decision on the basis of such hearing. A hearing official may not be under the supervision or control of the Director of OPM when OPM is the creditor agency.

Notice of intent to offset or *notice of intent* means a written notice for a creditor agency to an employee that states the creditor agency's determination that the employee owes a debt to the creditor agency and apprises the employee of certain administrative rights.

Notice of salary offset means a written notice from the paying agency to an employee after a certification has been issued by the creditor agency, informing the employee that salary offset will begin at the next officially established pay interval.

Office means the central and regional offices of the Office of Personnel Management.

Paying agency means the agency of the Federal Government which employs the individual who owes a debt to an agency of the Federal Government. In some cases, OPM may be both the creditor agency and the paying agency.

Payroll office means the payroll office in the paying agency which is primarily responsible for the payroll records and the coordination of pay matters with the appropriate personnel office with respect to an employee. Payroll office, with respect to OPM, means the central payroll office.

Salary offset means an administrative offset to collect a debt under 5 U.S.C. 5514 by deduction(s) at one or more officially established pay intervals from the current pay account of an employee, without his or her consent.

Salary Offset Coordinator means an official, designated by the Director of OPM, who is responsible for coordinating debt collection activities for OPM.

Waiver means the cancellation, remission, forgiveness, or non-recovery of a debt allegedly owed by an employee to OPM or another agency as permitted or required by 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or any other law.

§ 179.204 Applicability of regulations.

The regulations in this subpart are to be followed for all OPM collections except those involving retirement, life, and health insurance debts for recovery by the Associate Director for Retirement and Insurance, in instances where:

(a) OPM is owed a debt by an individual currently employed by another agency;

(b) OPM is owed a debt by an individual who is a current employee of OPM; or

(c) OPM currently employs an individual who owes a debt to another Federal agency. Upon receipt of proper certification from the creditor agency, OPM will offset the debtor-employee's salary in accordance with the regulations in this subpart.

§ 179.205 Waiver requests and claims to the General Accounting Office.

The regulations in this subpart do not preclude an employee from requesting waiver of an overpayment under 5 U.S.C. 5584, 10 U.S.C. 2774, 32 U.S.C. 716, or in any way questioning the amount or validity of a debt by submitting a subsequent claim to the General Accounting Office in accordance with the procedures prescribed by the General Accounting Office. The regulations in this subpart do not preclude an employee from requesting a waiver pursuant to other statutory provisions pertaining to the particular debt being collected.

§ 179.206 Notice requirements before offset.

(a) Deductions under the authority of 5 U.S.C. 5514 shall not be made unless the creditor agency provides the employee with written notice that he/she owes a debt to the Federal Government, a minimum of 30 calendar days before salary offset is initiated. When OPM is the creditor agency, this notice of intent to offset an employee's salary shall be hand-delivered at work,

or sent by registered mail, return receipt requested, to the employee's most current address that is available to the Office and will state:

(1) That the creditor agency has reviewed the records relating to the claim and has determined that a debt is owed, the amount of the debt, and the facts giving rise to the debt;

(2) The creditor agency's intention to collect the debt by means of deduction from the employee's current disposable pay account until the debt and all accumulated interest are paid in full;

(3) The amount, frequency, beginning date, and duration of the intended deductions;

(4) An explanation of OPM's policy concerning interest, penalties and administrative costs including a statement that such assessments must be made unless excused in accordance with the FCCS, 4 CFR part 101;

(5) The employee's right to inspect and copy all records of the office pertaining to the debt claimed, or to request and to receive copies of such records if personal inspection is impractical;

(6) If not previously provided, the opportunity to establish a schedule for the voluntary repayment of the debt through offset or to enter into an agreement to establish a schedule for repayment of the debt in lieu of offset (4 CFR 102.2(e)). The agreement must contain terms agreeable to the Office and must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employee and the creditor agency;

(iii) Specify all the terms of the arrangement for payment; and

(iv) Contain a provision accelerating the debt in the event of a default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to the deduction of a greater amount (5 CFR 550.1104(i)).

(7) The right to a hearing conducted by an impartial hearing official (an administrative law judge, or alternatively, a hearing official not under the supervision or control of the Director) with respect to the existence and amount of the debt claimed, or the repayment schedule (i.e., the percentage of disposable pay to be deducted each pay period), so long as a petition is filed by the employee as prescribed in § 179.207;

(8) The method and time period for requesting a hearing;

(9) The name, address and phone number of an official or employee of the Office who may be contacted concerning procedures for requesting a hearing;

(10) The name and address of the office to which the petition for a hearing should be sent;

(11) That a timely and properly filed petition for hearing will stay the commencement of collection proceedings (a timely filing must be received in the office specified under paragraph (a)(10) of this section within 15 calendar days after receipt of such notice of intent to offset);

(12) That the Office will initiate certification procedures to implement a salary offset (which may not exceed 15 percent of the employee's disposable pay) not less than 30 days from the date of receipt of the notice of debt, unless the employee files a timely petition for a hearing;

(13) That a final decision on the hearing (if a hearing is requested) will be issued at the earliest practical date, but not later than 60 days after the filing of the petition requesting the hearing, unless the employee requests and the hearing official grants a delay in the proceedings;

(14) That any knowingly false or frivolous statements, representations, or evidence may subject the employee to:

(i) Disciplinary procedures appropriate under Chapter 75 of title 5, United States Code, part 752 of title 5, Code of Federal Regulations, or any other applicable statute or regulations;

(ii) Penalties under the False Claims Act, sections 3729 through 3731 of title 31, United States Code, or any other applicable statutory authority; and

(iii) Criminal penalties under sections 286, 287, 1001, and 1002 of title 18, United States Code, or any other applicable statutory authority;

(15) Any other rights and remedies available to the employee under statutes or regulations governing the program for which the collection is being made;

(16) That unless there are applicable contractual or statutory provisions to the contrary, amounts paid on or deducted for the debt, which are later waived or found not owed to the United States, will be promptly refunded to the employee; and

(17) That proceedings with respect to such debt are governed by section 5 of the Debt Collection Act of 1982 (5 U.S.C. 5514).

(b) The Office is not required to comply with paragraph (a) of this section for any adjustment to pay arising from:

(1) An employee's selection of coverage or a change in coverage under a Federal benefits program requiring periodic deductions from pay, if the amount to be recovered was accumulated over four pay periods or less;

(2) An employee's consent to make voluntary withholdings from his or her current pay account.

§ 179.207 Hearing.

(a) *Request for hearing.* Except as provided in paragraph (b) of this section, an employee who desires a hearing concerning the existence or amount of the debt or the proposed offset schedule must send such a request to the office designated in the notice of intent (§ 179.207(a)(10)). The request (or petition) for hearing must be received by the designated office not later than 15 calendar days following the employee's receipt of the notice. The employee's request (or petition) must:

(1) Be signed by the employee;

(2) Fully identify and explain with reasonable specificity all the facts, evidence and witnesses, if any, that the employee believes support his or her position; and

(3) Specify whether an oral or paper hearing is requested. If an oral hearing is desired, the request should explain why the matter cannot be resolved by review of the documentary evidence alone (4 CFR 102.3(c)).

(b) *Failure to timely submit.*

(1) If the employee files a petition for a hearing after the expiration of the 15 calendar day period provided for in paragraph (a) of this section, the Office may accept the request if the employee can show that the delay was the result of circumstances beyond his or her control or failure to receive actual notice of the filing deadline (unless the employee had actual notice of the filing deadline).

(2) An employee waives the right to a hearing, and will have his or her disposable pay offset in accordance with the Office offset schedule, if the employee:

(i) Fails to file a timely request for a hearing unless such failure is excused; or

(ii) Fails to appear at an oral hearing of which he or she was notified unless the hearing official determines that failure to appear was due to circumstances beyond the employee's control.

(c) *Representation at the hearing.* The creditor agency may be represented by legal counsel. The employee may represent himself or herself or may be represented by an individual of his or her choice and at his or her expense.

(d) *Review of Office records related to the debt.*

(1) An employee who intends to inspect or copy creditor agency records

related to the debt, as provided by § 179.207(a)(5), must send a letter to the official designated in the notice of intent to offset stating his or her intention. The letter must be received within 15 calendar days after the employee's receipt of the notice.

(2) In response to a timely request submitted by the debtor, the designated official will notify the employee of the location and time when the employee may inspect and copy records related to the debt.

(3) If personal inspection is impractical, arrangements shall be made to send copies of such records to the employee.

(e) *Hearing official.* The Office may request an administrative law judge to conduct the hearing, or the Office may obtain a hearing official who is not under the supervision or control of the Director of OPM.

(f) *Obtaining the services of a hearing official when OPM is the creditor agency.*

(1) When the debtor is not an OPM employee and in the event that the Office cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement, the Office may contact an agent of the paying agency designated in 5 CFR part 581, appendix A, or other individual designated by the paying agency, and request a hearing official.

(2) When the debtor is an OPM employee, the Office may contact any agent of another agency designated in 5 CFR part 581, appendix A, or otherwise designated by that agency, to request a hearing official.

(g) *Procedure.*

(1) *General.* After the employee requests a hearing, the hearing official shall notify the employee of the form of the hearing to be provided. If the hearing will be oral, the notice shall set forth the date, time and location of the hearing. If the hearing will be paper, the employee shall be notified that he or she should submit arguments in writing to the hearing official by a specified date after which the record shall be closed. This date shall give the employee reasonable time to submit documentation.

(2) *Oral hearing.* An employee who requests an oral hearing shall be provided an oral hearing if the hearing official determines that the matter cannot be resolved by review of documentary evidence alone (e.g., when an issue of credibility or veracity is involved). The hearing is not an adversarial adjudication and need not take the form of an evidentiary hearing. Oral hearings may take the form of, but are not limited to:

(i) Informal conferences with the hearing official, in which the employee and agency representative will be given full opportunity to present evidence, witnesses, and argument;

(ii) Informal meetings with an interview of the employee; or

(iii) Formal written submissions with an opportunity for oral presentation.

(3) *Paper hearing.* If the hearing official determines that an oral hearing is not necessary, he or she will make a determination based upon a review of the available written record (4 CFR 102.3(c) (2) and (3)).

(4) *Record.* The hearing official must maintain a summary record of any hearing provided by this subpart (4 CFR 102.3(c)(1)(ii)). Witnesses who testify in oral hearings will do so under oath or affirmation.

(h) *Date of decision.* The hearing official shall issue a written opinion stating his or her decision, based upon documentary evidence and information developed at the hearing, as soon as practicable after the hearing, but not later than 60 days after the date on which the petition was received by the creditor agency, unless the employee requests a delay in the proceedings. In such case the 60-day decision period shall be extended by the number of days by which the hearing was postponed.

(i) *Content of decision.* The written decision shall include:

(1) A statement of the facts presented to support the origin, nature, and amount of the debt;

(2) The hearing official's findings, analysis, and conclusions including a determination whether the debtor's petition for hearing was baseless and resulted from an intent to delay creditor agency collection activity and whether the office should pursue other actions against the debtor as provided by 5 CFR 550.1104(d)(11); and

(3) The terms of any repayment schedules, if applicable.

(j) *Failure to appear.* In the absence of good cause shown (e.g., illness), an employee who fails to appear at a hearing shall be deemed, for the purpose of this subpart, to admit the existence and amount of the debt as described in the notice of intent. If the representative of the creditor agency fails to appear, the hearing official shall schedule a new hearing date at the request of the agency representative. Both parties shall be given reasonable notice of the time and place of the new hearing.

§ 179.208 Certification.

(a) OPM salary offset coordinator shall provide a certification to the paying agency in all cases where:

(1) The hearing official determines that a debt exists;

(2) The employee fails to contest the existence and amount of the debt by failing to request a hearing; or

(3) The employee fails to contest the existence of the debt by failing to appear at a hearing.

(b) The certification must be in writing and must state:

(1) That the employee owes the debt;

(2) The amount and basis of the debt;

(3) The date the Government's right to collect the debt first accrued;

(4) That the Office's regulations have been approved by OPM pursuant to 5 CFR part 550, subpart K;

(5) The date on which payment(s) is due;

(6) If the collection is to be made in installments, the number of installments to be collected, the amount of each installment or percentage of disposable pay, and the commencement date of the first installment, if a date other than the next officially established pay period is required; and

(7) The date(s) of any action(s) taken under 5 U.S.C. 5514(b).

§ 179.209 Voluntary repayment agreements as alternative to salary offset.

(a)(1) In response to a notice of intent, an employee may purpose to repay the debt by making voluntary installment payments as an alternative to salary offset. An employee who wishes to repay a debt without salary offset shall submit in writing a proposed agreement to repay the debt. The proposal shall admit the existence of the debt, and the agreement must be in such form that it is legally enforceable. The agreement must:

(i) Be in writing;

(ii) Be signed by both the employees and the creditor agency;

(iii) Specify all the terms of the arrangement for repayment;

(iv) Contain a provision accelerating the debt in the event of default by the debtor, but such an increase may not result in a deduction that exceeds 15 percent of the employee's disposable pay unless the employee has agreed in writing to deduction of a greater amount (5 CFR 550.1104(i)).

(2) Any proposal under paragraph (a) of this section must be received by the official designated in the notice of intent within 30 calendar days after receipt of the notice.

(b) The creditor agency will review a timely and properly submitted repayment proposal by the employee

debtor and notify the employee whether the proposed written agreement for repayment is acceptable. It is within the creditor agency's discretion to accept a repayment agreement instead of proceeding by offset.

(c) If the creditor agency decides that the proposed repayment agreement is unacceptable, the employee will have 15 days from the date he or she received notice of that decision to file a petition for a hearing or a special review as provided by § 179.210.

(d) If the creditor agency decides that the proposed repayment agreement is acceptable, the alternative arrangement must be in writing, signed by both the employee and the creditor agency designee and meet the other requirements of this section for a voluntary repayment agreement.

§ 179.210 Special review.

(a) An OPM employee subject to salary offset or a voluntary repayment agreement, may, at any time, request a special review by the Office of the amount of the salary offset or voluntary payment, based on materially changed circumstances such as, but not limited to, catastrophic illness, divorce, death, or disability.

(b)(1) In determining whether an offset would prevent the employee from meeting essential subsistence expenses (food, housing, clothing, transportation and medical care), the employee shall submit a detailed statement and supporting documents for the employee, his or her spouse, and dependents indicating:

(i) Income from all sources;

(ii) Assets;

(iii) Liabilities;

(iv) Number of dependents;

(v) Expenses for food, housing, clothing and transportation;

(vi) Medical expenses; and

(vii) Exceptional expenses, if any.

(2) If an OPM employee requests a special review under this section, the employee shall file an alternative proposed offset or payment schedule and a statement, with supporting documents (§ 179.211(b)), stating why the current salary offset or payments result in an extreme financial hardship to the employee.

(c) The Director shall evaluate the statement and supporting documents, and determine whether the original offset or repayment schedule imposes an extreme financial hardship on the employee. The Director shall notify the employee in writing of such determination, including, if appropriate, a revised offset or repayment schedule.

(d) If the special review results in a revised offset or repayment schedule, the OPM salary offset coordinator shall provide a new certification to the paying agency.

§ 179.211 Notice of salary offset.

(a) Upon receipt of proper certification from a creditor agency, the OPM payroll office will send the OPM employee, identified in the certification as the debtor, a written notice of salary offset. Such notice shall, at a minimum:

(1) State that OPM has received a properly certified debt claim from a creditor agency;

(2) Contain a copy of the certification received from the creditor agency;

(3) Advise the employee that salary offset will be initiated at the next officially established pay interval; and

(4) State the amount of the claim and amount of deductions.

(b) The payroll office shall provide a copy of the notice to the creditor agency and advise such agency of the dollar amount to be offset and the pay period when the offset will begin.

§ 179.212 Procedures for salary offset.

(a) The Director shall coordinate salary deductions under this subpart.

(b) OPM payroll office shall determine the amount of an employee's disposable pay and implement the salary offset.

(c) Deductions shall begin effective the pay period following receipt by OPM's payroll office of proper certification of the debt (§ 179.208).

(d) *Types of collection.*

(1) *Lump-sum payment.* A debt will be collected in a lump sum if possible. If an employee is financially unable to pay in one lump sum or the amount of the debt exceeds 15 percent of disposable pay for an officially established pay interval, collection must be made in installments.

(2) *Installment deductions.* Installment deductions will be made over a period not greater than the anticipated period of employment and, except in rare circumstances, not to exceed 3 years. The size and frequency of installment deductions will bear a reasonable relation to the size of the debt and the employee's ability to pay. The amount deducted for any period will not exceed 15 percent of the disposable pay from which the deduction is made unless the employee has agreed in writing to the deduction of a greater amount.

(3) *Lump-sum deductions from final check.* A lump-sum deduction exceeding the 15 percent disposable pay limitation may be made from any final salary payment pursuant to 31 U.S.C. 3716 in order to liquidate the debt, whether the employee is being separated voluntarily or involuntarily.

(4) *Lump-sum deductions from other sources.* When an employee subject to salary offset is separated from OPM and the balance of the debt cannot be liquidated by offset of the final salary check, the Office, pursuant to 31 U.S.C. 3716, the FCCS and OPM's implementing regulations, may offset the balance of the debt against any financial payment due the employee from the U.S. Government.

(e) *Multiple debts.* In instances where two or more creditor agencies are seeking salary offset, or where two or more debts are owed to a single creditor agency, OPM payroll office may, at its discretion, determine whether one or more debts should be offset simultaneously within the 15 percent limitation.

(f) *Precedence of debts owed to OPM.* For OPM employees, debts owed to the Office generally take precedence over debts owed to other agencies. In the event that a debt to the Office is certified while an employee is subject to a salary offset to repay another agency, the OPM payroll office may decide whether to have that debt repaid in full before collecting its claim or whether changes should be made in the salary deduction being sent to the other agency. If debts owed the Office can be collected in one pay period, the payroll office may suspend the salary offset to the other agency for that pay period in order to liquidate the Office debt.

(g) When an employee owes two or more debts, the best interests of the Government shall be the primary consideration in determining the order of debt collection. The OPM payroll office, in making this determination, will be guided primarily by the statute of limitations that affects the collection of the debt(s).

§ 179.213 Coordinating salary offset with other agencies.

(a) *Responsibility of OPM as the creditor agency.*

(1) The Director shall coordinate debt collections with other agencies and shall, as appropriate:

(i) Arrange for a hearing or special review upon proper petitioning by the employee; and

(ii) Prescribe, upon consultation with the General Counsel, such additional practices and procedures as may be necessary to carry out the intent of this subpart.

(2) The designated salary offset coordinator will be responsible for:

(i) Ensuring that each notice of intent to offset is consistent with the requirements of § 179.206;

(ii) Ensuring that each certification of debt that is sent to a paying agency is

consistent with the requirements of § 179.208;

(iii) Obtaining hearing officials from other agencies pursuant to § 179.207(f); and

(iv) Ensuring that hearings are properly scheduled.

(3) *Requesting recovery from current paying agency.* Upon completion of the procedures established in the regulations in this subpart and pursuant to 5 U.S.C. 5514, the Office must:

(i) Certify, in writing, that the employee owes the debt, the amount and basis of the debt, the date on which payment(s) is due, the date the Government's right to collect the debt first accrued, and that the Office regulations implementing 5 U.S.C. 5514 have been approved by the Office of Personnel Management;

(ii) Advise the paying agency of the amount or percentage of disposable pay to be collected in each installment and the number and commencing date of the installments (if a date other than the next officially established pay period is required);

(iii) Advise the paying agency of the action(s) taken under 5 U.S.C. 5514(b) and give the date(s) the action(s) was taken (unless the employee has consented to the salary offset in writing or signed a statement acknowledging receipt of the required procedures and the written consent or statement is forwarded to the paying agency);

(iv) Except as otherwise provided in this paragraph (a)(3), submit a debt claim certification containing at a minimum the information specified in paragraphs (a)(3)(i), (a)(3)(ii) and (a)(3)(iii) of this section and an installment agreement (or other instruction on the payment schedule), if applicable, to the employee's paying agency.

(v) If the employee is in the process of separating, and the employee has not received a final salary check, or other final payment(s) from the paying agency, submit the debt claim, as provided in § 179.208, to the employee's paying agency for collection. The paying agency must certify the total amount of its collection on the debt and send a copy of the certification to the employee and other copy to the Office. If the paying agency's collection does not fully satisfy the debt, and the paying agency is aware that the debtor is entitled to payments from the Civil Service Retirement and Disability Fund or other similar payments that may be due the debtor employee from other Federal Government sources, the paying agency will provide written notification of the outstanding debt to the agency responsible for making such other payments to the debtor employee. The written notification shall state that the employee owes a debt (including the amount) and that the provisions of this section have been fully complied with. Before the collection can be made by the other paying organization, the Office must submit a properly certified claim to the agency responsible for making such other payment(s).

(vi) If the employee is already separated and all payments due from his or her former paying agency have been paid, the Office may request, unless otherwise prohibited, that money due and payable to the employee from the Civil Service Retirement and Disability Fund (5 CFR part 831) or other similar funds, be administratively offset to collect the debt (31 U.S.C. 3716 and the FCCS).

(4) *Employee transfer.* When an employee transfers from one paying agency to another paying agency, the Office is not required to repeat the due process procedures described in 5 U.S.C. 5514 and this subpart to resume the collection. The Office will submit a properly certified claim to the new paying agency will subsequently review the debt to make sure the collection is resumed by the new paying agency.

(b) *Responsibility of the Office as the paying agency.*

(1) *Complete claim.* When the Office receives a certified claim from a creditor agency, deductions should be scheduled to begin at the next officially established pay interval. Before deductions can begin, the employee must receive written notice from the Office including:

(i) A statement that the Office has received a certified debt claim from the creditor agency;

(ii) The amount of the debt claim;

(iii) The date salary offset deductions will begin, and

(iv) The amount of such deductions.

(2) *Incomplete claim.* When the Office receives an incomplete certification of debt from a creditor agency, the Office must return the debt claim with notice that procedures under 5 U.S.C. 5514 and this subpart must be followed and a properly certified debt claim received before action will be taken to collect from the employee's current pay account.

(3) *Review.* The Office is not authorized to review the merits of the creditor agency's determination with respect to the amount or validity of the debt certified by the creditor agency.

(4) *Employees who transfer from one paying agency to another.* If, after the creditor agency has submitted the debt claim to the Office, the employee transfers from OPM to a different paying agency before the debt is collected in full, the office will certify the total amount collected on the debt. One copy of the certification will be furnished to the employee and one copy to the creditor agency along with notice of the employee's transfer.

§ 179.214 Interest, penalties and administrative costs.

The Office shall assess interest, penalties and administrative costs on debts owed pursuant to 31 U.S.C. 3717 and 4 CFR part 101. Penalties and administrative costs will be assessed on all delinquent debts.

(a) In cases of default on a previous repayment agreement, the Office reserves the right to set a new interest rate which reflects the current value of funds to the Treasury at the time a new repayment agreement is executed.

(b) The Office, on a case-by-case basis, may waive all interest accrued on debts paid in full within 60 days of the due date if there is no indication of fault or lack of good faith on the part of the debtor.

(c) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section under the criteria specified in 4 CFR, Chapter II, part 103 relating to the compromise of claims (without regard to the amount of the debt).

(d) The Office may waive, in whole or in part, the collection of interest, penalties, and/or administrative costs assessed under this section if the Office determines that collection of these charges would be against equity and good conscience or not in the best interests of the United States.

(e) The Office shall waive the accrual of interest pending consideration of a request for reconsideration, administrative review, or waiver of the underlying debt under provisions of a permissive statute providing for such review related to the debt.

(f) The Office shall waive interest on repayment agreements when the amount of interest accruing equals or exceeds the amount of installments the debtor can reasonably afford and there is no indication of fault or lack of good faith on the part of the debtor.

§ 179.215 Refunds.

(a) The Office shall promptly refund any amounts deducted under the authority of 5 U.S.C. 5514 when:

(1) The debt is waived or otherwise found not to be owing the United States (unless expressly prohibited by statute or regulation); or

(2) An administrative or judicial order directs the Office to make a refund.

(b) Unless required or permitted by law or contract, refunds under this subpart shall not bear interest.

§ 179.216 Request for the services of a hearing official when the creditor agency agency is not OPM.

(a) The Office will provide a hearing official upon request of the creditor agency when the debtor is employed by the Office and the creditor agency cannot provide a prompt and appropriate hearing before a hearing official furnished pursuant to another lawful arrangement.

(b) The salary offset coordinator will secure qualified personnel to serve as hearing officials.

(c) Services rendered under this section will be provided on a fully reimbursable basis pursuant to the Economy Act of 1932, *as amended*, 31 U.S.C. 1535.

§ 179.217 Non-waiver of rights by payments.

An employee's involuntary payment of all or any portion of a debt being collected under this subpart must not be construed as a waiver of any rights which the employee may have under 5 U.S.C. 5514 or any other provision of contract or law unless there are statutory or contractual provisions to the contrary.

§ 179.218 Additional administrative collection action.

Nothing contained in this subpart is intended to preclude the use of any other administrative remedy which may be available.

[FR Doc. 93–28411 Filed 11–18–93; 8:45 am]
BILLING CODE 6325–01–M

DEPARTMENT OF AGRICULTURE

Commodity Credit Corporation

7 CFR Part 1430

RIN 0560–AD51

Amendments to the Regulations Governing Reductions in the Price of Milk Marketed by Producers Required by the Omnibus Budget Reconciliation Act of 1993

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule implements a reduction in the price received by producers for milk produced in the United States for all milk marketed by producers for commercial use for the calendar years 1996 and 1997, and a temporary adjustment to the current reduction in the price received by producers if the Food and Drug Administration (FDA) approves an application with respect to the use of bovine growth hormone (BGH). These amendments are required by section 204(h) of the Agricultural Act of 1949 (1949 Act), as amended by section 1105 of the Omnibus Budget Reconciliation Act of 1993 (the 1993 Budget Act), and by free-standing provisions of that section of the 1993 Budget Act. The reduction for the calendar years 1996 and 1997 shall be 10 cents per hundredweight. This reduction rate is subject to an increase each May 1 of those years by the amount needed to compensate for refunds of assessments under section 204 of the 1949 Act to producers of the previous year's reduction. As for BGH, a 10-percent decrease in the current amount of reduction in the price received by producers will be made for the 90-day period after the FDA first approves a BGH application.

EFFECTIVE DATE: November 1, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Shaw, Dairy Analysis Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415; telephone 202–720–6733.

SUPPLEMENTARY INFORMATION:

Background

The Omnibus Budget Reconciliation Act of 1990 added section 204(h) of the 1949 Act requiring the Secretary of Agriculture to provide for reductions in producer proceeds from milk marketed for commercial use, beginning January 1, 1991. The 1949 Act provided reductions of 5 cents per hundredweight for 1991 and 11.25 cents per hundredweight for the calendar years 1992 through 1995. The 1993 Budget Act amended section 204(h) to provide for reductions of 10 cents per hundredweight for the calendar years 1996 and 1997. As with the calendar year 1992 through 1995 reductions, the reductions for 1996 and 1997 will be increased on May 1 of each year to compensate for refunds by the Commodity Credit Corporation (CCC) to qualifying producers of reductions from the previous year. The 1993 Budget Act also provided for a 10-percent decrease in the amount of the current reduction in producer proceeds under section 204 of the 1949 Act for a 90-day period after the FDA first approves an application with respect to the use of BGH. The reductions apply to all milk produced in the area encompassed by the contiguous states of the United States and the District of Columbia.

The regulations governing reductions in the price of milk marketed by producers are amended in this rule to implement the provisions described above and make related conforming amendments and minor technical corrections.

Administrative Procedure Act (5 U.S.C. 553) and Executive Order 12866

Section 101(b) of the Food, Agriculture, Conservation, and Trade Act of 1990 (FACTA) provides that 5 U.S.C. 553 shall not apply to the implementation of milk proceeds reductions under section 204 of the 1949 Act. In addition, the subject matter of this rule is required by statute, with no possibility of divergence from the statutory mandate. Therefore, a notice of proposed rulemaking and opportunity for public comment are not needed.

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this final rule: (1) Would have an annual effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Executive Order 12778

This final rule has been reviewed in accordance with Executive Order 12778, Civil Justice Reform. The provisions of the rule do not preempt state laws, are not retroactive, and do not involve administrative appeals.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372 which requires intergovernmental consultation with State and local officials. See Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act (Pub. L. 96–

354) is not applicable to this rule because the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Environmental Evaluation

It has been determined by an environmental evaluation that this rule will have no significant adverse impact on the quality of the human environment. Therefore, neither an environmental assessment nor environmental impact statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program to which this rule applies, as found in the Catalog of Federal Domestic Assistance are: Commodity Loans and Purchases—10.051.

Paperwork Reduction Act

The purpose of the amendments at 7 CFR part 1430 is to implement new assessment rates. These changes do not impact the content of the reporting requirements, the frequency of reporting, or the method of reporting from those that are currently required by the regulations governing reductions in the price of milk marketed by producers. The Office of Management and Budget (OMB) has approved the information collection requirements contained in the current regulations through June 30, 1994, under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and assigned OMB number 0560–0126.

List of Subjects in 7 CFR Part 1430

Dairy products, Fraud, Penalties, Price support program, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1430 is amended as follows:

PART 1430—DAIRY PRODUCTS

1. The authority citation for 7 CFR part 1430 is revised to read as follows:

Authority: Sec. 1105, Public Law 103–66; 7 U.S.C. 1446; 15 U.S.C. 714b and 714c.

2. The subpart heading which reads "Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991 to December 31, 1995" is revised to read "Regulations Governing Reductions in the Price of Milk Marketed by Producers, January 1, 1991, to December 31, 1997".

3. Section 1430.340 is amended by revising paragraphs (a), (b)(1), (b)(2), (b)(4), (b)(5), and (d) to read as follows:

§ 1430.340 General statement.

(a) *Purpose.* This subpart implements the provisions of section 204 of the Agricultural Act of 1949 as amended and affected by section 1105(g)(3) of the Omnibus Budget Reconciliation Act of 1990 and sections 1105(a)(4) and 1105(c) of the Omnibus Budget Reconciliation Act of 1993, under which the Secretary of Agriculture is required to provide for a reduction in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the calendar years 1991 through 1997.

(b) * * *

(1) The amount of the price reduction shall be 5 cents per hundredweight of milk marketed by producers for commercial use in 1991 and, except as provided by the provisions of paragraph (b)(2) of this section, 11.25 cents per hundredweight of milk marketed by producers for commercial use in the calendar years 1992 through 1995 and 10 cents per hundredweight of milk marketed by producers for commercial use in the calendar years 1996 and 1997.

(2) On or before May 1 of each of the calendar years 1992 through 1997, the amount of reduction per hundredweight for each such year shall be adjusted individually for the remainder of the relevant year to compensate for refunds of price reductions made in the preceding calendar year which were collected by CCC under this subpart. The adjustment shall be announced by the Secretary by the required date.

* * * * *

(4) The reductions provided for in paragraphs (b)(1) and (b)(2) of this section shall be made and remitted to the CCC in the manner prescribed in § 1430.343 of these regulations.

(5) In addition, the CCC may make provision for the refund of monies collected in those cases in which the monies were collected for milk marketings later excluded by statutory amendment from coverage of this subpart for any of the calendar years 1992 through 1997.

* * * * *

(d) *Applicability.* The provisions of this subpart shall apply to all milk produced in the United States that is marketed for commercial use by producers during the calendar years beginning on January 1, 1991, and ending December 31, 1997.

4. Section 1430.341 is amended by:

A. Redesignating paragraph (i) as paragraph (k), and redesignating paragraphs (j) through (w) as paragraphs (m) through (z), respectively,

B. Redesignating paragraphs (d) through (h) as paragraphs (e) through (i), respectively,

C. Adding a new paragraph (d),

D. Adding new paragraphs (j) and (l), and

E. Revising newly designated paragraph (u)(1) and the introductory text of newly redesignated paragraph (x) to read as follows:

§ 1430.341 Definitions.

* * * * *

(d) *Bovine growth hormone* means a synthetic growth hormone produced through the process of recombinant DNA techniques that is intended for use in bovine animals.

* * * * *

(j) *Date of FDA BGH approval* means the date the FDA pursuant to authority under section 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b), first approves an application with respect to the use of BGH.

* * * * *

(l) *FDA* means the Food and Drug Administration.

* * * * *

(u) *Responsible person* means:

(1) Any person who pays, or who is contractually or otherwise required to pay, a producer or producer's successor for milk marketed by a producer for commercial use, except to the extent that the producer of the milk is the responsible person under paragraph (u)(2) of this section; Provided, that the responsible persons under this paragraph shall include, but are not limited to, handlers of milk, including a handler regulated under a Federal milk order to the extent of, but not limited to, milk for which payments are transmitted by the handler to a Market Administrator under such an order for transmittal by the Market Administrator to individual producers; and

* * * * *

(x) United States means, except with respect to paragraphs (k), (v), and (y) of this section, the following:

* * * * *

5. Section 1430.343 is amended by:

A. Revising paragraph (a)(2),

B. Redesignating paragraph (a)(3) as (a)(5) and revising newly designated (a)(5), and

C. Adding paragraphs (a)(3) and (a)(4) to read as follows:

§ 1430.343 Required reductions and remittances.

(a) * * *

(2) Except as provided by the provisions of paragraph (a)(5) of this section, a reduction of eleven and twenty-five hundredths (11.25) cents

per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1992, and ending December 31, 1995.

(3) Except as provided by the provisions of paragraph (a)(5) of this section, a reduction of ten (10.00) cents per hundredweight shall be made in the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1996, and ending December 31, 1997.

(4) The reductions specifically provided for in paragraphs (a)(2), (a)(3) and (a)(5) of this section with respect to the price received by producers for all milk produced in the United States and marketed by producers for commercial use during the period beginning on January 1, 1992, and ending December 31, 1997, shall, as appropriate, be reduced by ten percent during the period beginning on the date of FDA BGH approval and ending 90 days after the date of such approval.

(5) For each of the calendar years 1992 through 1997, the reductions as specifically provided for in paragraphs (a)(2) and (a)(3) of this section, with respect to marketings of milk for commercial use in those respective years, shall be increased on, or before, May 1 of the year for the remainder of the year by an amount per hundredweight of milk that is necessary in order to compensate for refunds made to producers of milk for price reductions collected under this subpart on milk marketed for the immediately preceding calendar year.

* * * * *

6. Section 1430.344(a) is revised to read as follows:

§ 1430.344 Refunds—General provisions for eligibility and other requirements.

(a) A refund of a reduction in producer proceeds made under this subpart may be made only to the extent explicitly provided for in this subpart. Such refunds may be made only for milk marketed by producers in the calendar years 1991 through 1997. The monies that may be refunded to a person shall include only the reductions in proceeds of that person as provided for in § 1430.343(a) pursuant to provisions of the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993.

* * * * *

Signed at Washington DC, on November 12, 1993.

Grant Buntrock,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–28464 Filed 11–18–93; 8:45 am]

BILLING CODE 3410–05–P

Rural Electrification Administration

7 CFR Part 1755

RIN 0572-AA57

Specification for Filled Buried Wires

AGENCY: Rural Electrification Administration, USDA.

ACTION: Final rule.

SUMMARY: The Rural Electrification Administration (REA) amends its regulations on Telecommunications Standards and Specifications for Materials, Equipment and Construction, by rescinding REA Bulletin 345–86, REA Specification for Filled Buried Service Wire, PE–86, and codifying this specification. This revised specification: Allows the use of 24 AWG conductor sizes; allows 3 pair wire design; includes raw material requirements for insulating and jacketing compounds; and establishes end product requirements associated with the options stated above.

EFFECTIVE DATE: December 20, 1993. Incorporation by reference of certain publications listed in this final rule is approved by the Director of the Federal Register as of December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Garnett G. Adams, Chief, Outside Plant Branch, Telecommunications Standards Division, Rural Electrification Administration, room 2844, South Building, U.S. Department of Agriculture, Washington, DC 20250–1500, telephone number (202) 720–0667.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

This final rule has been issued in conformance with Executive Order 12291 and Departmental Regulation 1512–1. This action has been classified as "nonmajor" because it does not meet the criteria for a major regulation as established by the Order.

Executive Order 12778

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. If adopted, this final rule will not:

(1) Preempt any State or local laws, regulations, or policies;

(2) Have any retroactive effect; and

(3) Require administrative proceedings before parties may file suit challenging the provisions of this rule.

Regulatory Flexibility Act Certification

The Administrator of REA has determined that this final rule will not have a significant economic impact on a substantial number of small entities as defined in the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) because most borrowers of REA loan funds do not meet the requirements for small entities. Further, the regulations are applied equally to all borrowers.

Information Collection and Recordkeeping Requirements

In compliance with the Office of Management and Budget (OMB) regulations (5 CFR part 1320) which implements the Paperwork Reduction Act of 1980 (Pub. L. 96–511) and section 3504 of that Act, information collection and recordkeeping requirements contained in this final rule have been approved by OMB under control number 0572–0077 which expires on January 31, 1994. Comments concerning these requirements should be directed to the office of Information and Regulator Affairs of OMB, Attention: Desk Officer for USDA, room 3201, New Executive Office Building, Washington, DC 20503.

National Environmental Policy Act Certification

The Administrator of REA has determined that this final rule will not significantly affect the quality of the human environment as defined by the National Environmental Policy Act of 1969 (42 U.S. C. 4321 *et seq.*). Therefore, this action does not require an environmental impact statement or assessment.

Catalog of Federal Domestic Assistance

The program described by this final rule is listed in the Catalog of Federal Domestic Assistance programs under No. 10.851, Rural Telephone Loans and Loan Guarantees, and No. 10.852, Rural Telephone Bank Loans. This catalog is available on a subscription basis from the Superintendent of Documents, the United States Government Printing Office, Washington, DC 20402.

Executive Order 12372

This final rule is excluded from the scope of Executive Order 12372, Intergovernmental Consultation that requires intergovernmental consulation with state and local officials. A Notice of Final rule titled Department Programs and Activities Excluded from Executive Order 12372 (50 FR 47034) exempts

REA and RTB loans and loan guarantees, and RTB bank loans, to governmental and nongovernmental entities from coverage under this Order.

Background

REA issues publications titled "Bulletin" which serve to guide borrowers regarding already codified policy, procedures, and requirements needed to manage loans, loan guarantee programs, and the security instruments which provide for and secure REA financing. REA issues standards and specifications for the construction of telephone facilities financed with REA loan funds. REA is rescinding Bulletin 345–86, REA Specification for Filled Buried Service Wire, PE–86, and codifying this specification at 7 CFR 1755.860, REA Specification for Filled Buried Wires.

Filled buried service wire is used in outside plant by REA telephone borrowers as a physical transport medium for voice and data. The current specification limits to 2 pair and to 22 gauge the number of pairs and the size conductor of filled buried wire that can be supplied by wire manufacturers for installation by REA borrowers. Limitations are placed on the wire because of a decision by REA to restrict the application of this type wire exclusively to buried subscriber drops, and, thereby, force REA borrowers to install 6 pair cable for all small pair count distribution applications.

The use of 6 pair cables as distribution cables in sparsely populated exchanges has resulted in higher economic costs. The revised specification will allow the use of 24 AWG conductors and 3 pairs of conductors which will permit the revised wire designs to be used both as buried subscriber drops and small pair count distribution wires. This revision should eliminate the high cost associated with 6 pair cables.

The current specification does not include insulation and jacketing requirements, because these requirements were previously covered by REA Bulletins 345–21 and 345–51, both of which have since been rescinded. Therefore, revision of the current specification is necessary to incorporate essential jacketing and insulation requirements. By incorporating the requirements which were formerly found in REA Bulletins 345–21 and 345–51 into 7 CFR 1755.860, a comprehensive document will be published for the manufacture of filled buried wire products.

The current specification includes only end product requirements associated with filled buried wire usage as a buried subscriber drop. Since the revised specification will allow this type of wire to also be used as distribution wire, additional end product requirements have been included to assure a quality product for this application.

This action establishes REA requirements for a wider range of filled buried wires without affecting current designs or manufacturing techniques. This widened selection of wires will afford REA telephone borrowers the opportunity to increase subscriber services in an economical and efficient manner through enhanced wire designs brought about by technological advancements made during the past eleven years.

Comments

On December 31, 1992, REA published a proposed rule (57 FR 62490) to rescind REA Bulletin 345–86, REA Specification for Filled Buried Service Wire, PE-86, and to codify the revised specification at 7 CFR 1755.860, REA Specification for Filled Buried Wires. Comments on this proposed rule were due by February 1, 1993. Comments and recommendations were received from several companies by this due date. The comments, recommendations, and responses are summarized as follows:

One respondent commented that the shielding thickness tolerance for the Copper Alloy 664 shield should be changed from ± 0.00508 mm (± 0.0002 in.) to ± 0.0127 mm (± 0.0005 in.).

Response: The American National Standards Institute/Insulated Cable Engineers Association (ANSI/ICEA) S-86–634–1991, Standard for Buried Distribution and Service Wire, uses the same Copper Alloy 664 shielding material as specified in 7 CFR 1755.860 except that the ANSI/ICEA standard allows the ± 0.0127 mm (± 0.0005 in.) tolerance. If 7 CFR 1755.860 maintains the ± 0.00508 mm (± 0.0002 in.) tolerance limit for the Copper Alloy 664 shield, REA would force shielding tape manufacturers to institute tighter processing controls to assure that the ± 0.00508 mm (± 0.0002 in.) tolerance limit is met and also force manufacturers to maintain two inventories of the Copper Alloy 664 shield material because of the different tolerance limits specified in the two specifications for the identical product. It would also force manufacturers who produce buried wire using this shield type to both the REA specification and the ANSI/ICEA standard to maintain two separate wire inventories for this product based solely on the tolerance differences between the two specifications. All of the above in turn would result in high material prices to wire manufacturers and higher wire prices to REA borrowers. By changing the Copper Alloy 664 shielding tolerance limit from ± 0.00508 mm (± 0.0002 in.) to ± 0.0127 mm (± 0.0005 in.) in 7 CFR 1755.860, REA would reduce the material costs of this wire to wire manufacturers by allowing the Copper Alloy 664 shielding tape suppliers to eliminate the need for special processing controls and the maintain of separate inventories for the same shield material. This change would also reduce the wire costs to REA borrowers by allowing wire manufacturers to reduce their inventory costs for buried wires using the Copper Alloy 664 shielding material because the 7 CFR 1755.860 material requirements would be identical to the ANSI/ICEA standard material requirements for the Copper Alloy 664 shield. Therefore, REA will change the Copper Alloy 664 shielding tolerance limit from ± 0.00508 mm (± 0.0002 in.) to ± 0.0127 mm (± 0.0005 in.) in 7 CFR 1755.860.

Two respondents commented that a 4 mil Copper Alloy 220 (Bronze) tape should be added to the specification as an optional shielding material for buried wires used in nongopher areas.

Response: The 4 mil Copper Alloy 220 (Bronze) shield was allowed as an acceptable buried wire shielding material for nongopher areas in the cancelled REA Specifications PE-50 and PE-54 from 1966 through 1982. During this time period, buried wires using the 4 mil Copper Alloy 220 (Bronze) shielding material provided satisfactory field service to REA borrowers. Because the 4 mil Copper Alloy 220 (Bronze) shield has a proven history of satisfactory field service, REA will add the 4 mil Copper Alloy 220 (Bronze) shield material for nongopher areas to 7 CFR 1755.860.

One respondent commented that the inner jacket now required for all filled buried wires designs specified in 7 CFR 1755.860 should be made optional for filled buried wire designs installed in nongopher areas.

Response: The current issue of REA Bulletin 345–86, which will be replaced by 7 CFR 1755.860, does not require the use of an inner jacket for filled buried service wire designs. It was the decision of REA in 1982 that single jacketed filled buried service wires covered by REA Bulletin 345–86 could withstand the rigors of installation for lengths not to exceed 500 feet. Since 1982 the use of the single jacketed filled buried service wires by REA borrowers for lengths not to exceed 500 feet has been virtually nonexistent because the field

experience of the single jacketed design indicated that the wire could not withstand the rigors of installation. Because of negligible field experience with single jacketed buried service wires over a maximum installation length of 500 feet and the knowledge that 7 CFR 1755.860 would cover filled buried wires for service drop and/or distribution usage over extremely long installation lengths, REA decided that the filled buried wire designs covered by 7 CFR 1755.860 would require a double jacketed design to withstand the rigors of installation over these long lengths. Because the use of an inner jacket will add to the strength of these wire designs to withstand the stresses of installation over long lengths in nongopher and gopher areas, REA will not change 7 CFR 1755.860 to allow the option to provide single jacketed filled buried wires for installation in nongopher areas.

One respondent recommend that the attenuation requirements presently specified at a frequency of 150 kilohertz in 7 CFR 1755.860 be changed to a frequency of 772 kilohertz, and that the attenuation at a frequency of 150 kilohertz be allowed as an alternative test requirement.

Response: The filled buried wires covered by 7 CFR 1755.860 have been designed to provide REA borrowers with voice frequency and subscriber carrier grades of telecommunication transmission. To assure reliable voice frequency transmission, all electrical requirements pertaining to voice frequency transmission in 7 CFR 1755.860 are specified at a frequency of 1 kilohertz. To assure reliable subscriber carrier transmission, all electrical requirements pertaining to subscriber carrier transmission in 7 CFR 1755.860 are specified at a frequency of 150 kilohertz. The subscriber carrier electrical requirements in 7 CFR 1755.860 were specified at a frequency of 150 kilohertz because this is the operational frequency of subscriber carrier systems. Since the attenuation at a frequency of 150 kilohertz is one the important parameters in the designing subscriber carrier systems for use on this wire, REA will not change the 150 kilohertz attenuation requirement presently specified in 7 CFR 1755.860 to 772 kilohertz as recommended by the commentator.

One respondent commented that the print accuracy requirement in 7 CFR 1755.860 be changed from +1 percent, −0 percent to ± .1 foot over a 2 foot length of wire.

Response: The +1 percent, −0 percent print accuracy requirement in 7 CFR 1755.860 is the same print accuracy requirement as specified in REA Bulletin 345–86. Since manufacturers have been producing wires manufactured in accordance with REA Bulletin 345–86 for more than 11 years with a print accuracy requirement of +1 percent, −0 percent without any difficulties, REA will not change the print accuracy requirement specified in 7 CFR 1755.860 to print accuracy requirement recommended by the commentator.

One respondent commented that a 6 mil plastic coated steel tape should be allowed as an optional gopher resistant shield in 7 CFR 1755.860.

Response: REA has used the 6 mil plastic coated steel tape as a gopher resistant shield on filled buried copper and filled buried fiber optic cables for many years with satisfactory field performance, but its use as a gopher resistant shield for filled buried wires of 3 pairs or less would be a new application. In addition, REA accepted shield bond connectors used for bonding and grounding filled buried service wire shields in pedestals and at station protectors have never been tested using the 6 mil plastic coated steel shield to determine compliance with the shield bonding connector requirements specified in REA Bulletin 345–65, REA Specification for Shield Bonding Connectors, PE-33. Until filled buried wires of 3 pairs or less using the 6 mil plastic coated steel shield gains field experience to assure reliable service, and the REA accepted filled buried wire shield bond connectors are tested to determine compliance with the requirements of REA Bulletin 345–65 using the 6 mil plastic coated steel shield, REA will not change 7 CFR 1755.860 to allow its use as an optional gopher resistant shield.

List of Subjects in 7 CFR Part 1755

Incorporation by reference, Loan programs—communications, Reporting and recordkeeping requirements, Rural areas, Telephone.

For reasons set out in the preamble, REA amends 7 CFR part 1755 as follows:

PART 1755—TELECOMMUNICATIONS STANDARDS AND SPECIFICATIONS FOR MATERIALS, EQUIPMENT AND CONSTRUCTION

1. The authority citation for Part 1755 continues to read as follows:

Authority: 7 U.S.C. 901 *et seq.*, 1921 *et seq.*

§ 1755.97 [Amended]

2. Section 1755.97 is amended by removing the entry REA Bulletin 345–86 from the table.

3. Section 1755.860 is added to read as follows:

§ 1755.860 REA specification for filled buried wires.

(a) *Scope.* (1) This section covers the requirements for filled buried wires intended for direct burial as a subscriber drop and/or distribution wire.

(i) The conductors are solid copper, individually insulated with an extruded solid insulating compound.

(ii) The insulated conductors are twisted into pairs (a star-quad configuration is permitted for the two pair wires) which are then stranded or oscillated to form a cylindrical core.

(iii) A moisture resistant filling compound is applied to the stranded conductors completely covering the insulated conductors and filling the interstices between the pairs.

(iv) The wire structure is completed by the application of an optional core wrapping material, an inner jacket, a flooding compound, a shield, a flooding compound, and an overall plastic jacket.

(2) The number of pairs and gauge size of conductors which are used within the REA program are provided in the following table:

American Wire Gauge (AWG)	22	24
Pairs	2	2
	3	3

(3) All wires sold to REA borrowers for projects involving REA loan funds under this section must be accepted by REA Technical Standards Committee "A" (Telephone). For wires manufactured to the specification of this section, all design changes to an accepted design must be submitted for acceptance. REA will be the sole authority on what constitutes a design change.

(4) Materials, manufacturing techniques, or wire designs not specifically addressed by this section may be allowed if accepted by REA. Justification for acceptance of modified materials, manufacturing techniques, or wire designs must be provided to substantiate product utility and long term stability and endurance.

(5) The American National Standards Institute/Electronic Industries Association (ANSI/EIA) 359-A-84, EIA Standard Colors for Color Identification and Coding, referenced in this section is incorporated by reference by REA. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of ANSI/EIA 359-A-84 are available for inspection during normal business hours at REA, room 2845, U.S

Department of Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from EIA, 2001 Pennsylvania Avenue, NW., suite 900, Washington, DC 20006, telephone number (202) 457–4966.

(6) American Society for Testing and Materials specifications (ASTM) A 505–87, Standard Specification for Steel, Sheet and Strip, Alloy, Hot-Rolled and Cold-Rolled, General Requirements for; ASTM B 3–90, Standard Specification for Soft or Annealed Copper Wire; ASTM B 193–87, Standard Test Method for Resistivity of Electrical Conductor Materials; ASTM B 224–91, Standard Classification of Coppers; ASTM B 694–86, Standard Specification for Copper, Copper Alloy, and Copper-Clad Stainless Steel Sheet and Strip for Electrical Cable Shielding; ASTM D 150–87, Standard Test Methods for A-C Loss Characteristics and Permittivity (Dielectric Constant) of Solid Electrical Insulating Materials; ASTM D 257–91, Standard Test Methods for D-C Resistance or Conductance of Insulating Materials; ASTM D 1238–90b, Standard Test Method for Flow Rates of Thermoplastics by Extrusion Plastometer; ASTM D 1248–84(1989), Standard Specification for Polyethylene Plastics Molding and Extrusion Materials; ASTM D 1535–89, Standard Test Method for Specifying Color by the Munsell System; ASTM D 3349–86, Standard Test Method for Absorption Coefficient of Carbon Black Pigmented Ethylene Plastic; ASTM D 4101–82(1988), Standard Specification for Propylene Plastic Injection and Extrusion Materials; ASTM D 4565–90a, Standard Test Methods for Physical and Environmental Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4566–90, Standard Test Methods for Electrical Performance Properties of Insulations and Jackets for Telecommunications Wire and Cable; ASTM D 4568–86, Standard Test Methods for Evaluating Compatibility between Cable Filling and Flooding Compounds and Polyolefin Cable Materials; ASTM D 4872–88, Standard Test Method for Dielectric Testing of Wire and Cable Filling Compounds; ASTM E 8–91, Standard Test Methods of Tension Testing of Metallic Materials; and ASTM E 29–90, Standard Practice for Using Significant Digits in Test Data to Determine Conformance with Specifications, referenced in this section are incorporated by reference by REA. These incorporations by references were approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies of the ASTM standards are available for inspection during normal business hours at REA, room 2845, U.S. Department Agriculture, Washington, DC 20250–1500 or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC. Copies are available from ASTM, 1916 Race Street, Philadelphia, Pennsylvania 19103–1187, telephone number (215) 299–5585.

(b) *Conductors and conductor insulation.* (1) Each conductor must be a solid round wire of commercially pure annealed copper. Conductors must meet the requirements of the American Society for Testing and Materials (ASTM) B 3–90 except that requirements for *Dimensions and Permissible Variations* are waived and elongation requirements are superseded by this section.

(2) The minimum conductor elongation in the final wire must comply with the following limits when tested in accordance with ASTM E 8–91.

Conductor—AWG	Minimum Elongation—Percent
22	20
24	16

(3) Joints made in conductors during the manufacturing process may be brazed, using a silver alloy solder and nonacid flux, or they may be welded using either an electrical or cold welding technique. In joints made in uninsulated conductors, the two conductor ends must be butted. Splices made in insulated conductors need not be butted but may be joined in a manner acceptable to REA.

(4)(i) The tensile strength of any section of a conductor containing a factory joint must not be less than 85 percent of the tensile strength of an adjacent section of the solid conductor of equal length without a joint.

(ii)*Engineering Information:* The sizes of wire used and their nominal diameters shall be as shown in the following table:

AWG	Nominal Diameter	
	Millimeters (mm)	(Inches (in.))
22	0.643	(0.0253)
24	0.511	(0.0201)

(5) Each conductor must be insulated with either a colored, solid, insulating grade, high density polyethylene or crystalline propylene/ethylene copolymer or with a solid natural primary layer and a colored, solid outer skin using one of the insulating materials listed in paragraphs (b)(5)(i) through (b)(5)(ii) of this section.

(i) The polyethylene raw material selected to meet the requirements of this section must be Type III, Class A, Category 4 or 5, Grade E9, in accordance with ASTM D 1248–84(1989).

(ii) The crystalline propylene/ethylene raw material selected to meet the requirements of this section must be Class PP 200B 40003 E11 in accordance with ASTM D 4101–82(1988).

(iii) Raw materials intended as conductor insulation furnished to these requirements must be free from dirt, metallic particles, and other foreign matter.

(iv) All insulating raw materials must be accepted by REA prior to their use.

(6) All conductors in any single length of wire must be insulated with the same type of material.

(7) A permissible overall performance level of faults in conductor insulation must average not greater than one fault per 12,000 conductor meters (40,000 conductor feet) for each gauge of conductor.

(i) All insulated conductors must be continuously tested for insulation faults during the twinning operation with the method of test acceptable to REA. The length count and number of faults must be recorded. The information must be retained for a period of 6 months and be available for review by REA when requested.

(ii) The voltages for determining compliance with the requirements of this section are as follows:

AWG	Direct Current Voltages (Kilovolts)
22	6.0
24	5.0

(8) Repairs to the conductor insulation during manufacturing are permissible. The method of repair must be accepted by REA prior to its use. The repaired insulation must be capable of meeting the relevant electrical requirements of this section.

(9) All repaired sections of insulation must be retested in the same manner as originally tested for compliance with paragraph (b)(7) of this section.

(10) Colored insulating material removed from or tested on the conductor, from a finished wire, must be capable of meeting the following performance requirements:

Property	Polyethylene	Crystalline Propylene/Ethylene Copolymer
Melt Flow Rate Percent increase from raw material, Maximum.		

Property	Polyethylene	Crystalline Propylene/Ethylene Copolymer
<0.5 (Initial Melt Index).	50	—
0.5–2.00 (Initial Melt Index).	25	—
≤5.0 (Initial Melt Index).	—	110
Tensile Strength—Minimum Megapascals (MPa).	16.5	21.0
(Pounds per Square Inch (psi)).	(2,400)	(3,000)
Ultimate Elongation Minimum, Percent.	300	300
Cold Bend Failures, Maximum.	0/10	0/10
Shrinkback Maximum, mm (in.).	10 (0.375)	10 (0.375)
Oxygen Induction Time Minimum, Minutes.	20	20

(11) *Testing procedures.* The procedures for testing the insulation samples for compliance with paragraph (b)(10) of this section must be as follows.

(i) *Melt flow rate.* The melt flow rate must be determined as described in ASTM D 1238–90b. Condition E must be used for polyethylene. Condition L must be used for crystalline propylene/ethylene copolymer. The melt flow test must be conducted prior to the filling operation.

(ii) *Tensile strength and ultimate elongation.* Samples of the insulation material, removed from the conductor, must be tested in accordance with ASTM D 4565–90a using the following conditions. The minimum length of unclamped specimen must be 50 mm (2.0 in.). The minimum speed of jaw separation must be 25 mm (1.0 in.) per minute per 25 mm (1.0 in.) of unclamped specimen. The temperature of specimens and surrounding shall be 23 ± 1°C.

Note: Quality assurance testing at a jaw separation speed of 500 mm/min (20 in./min) is permissible. Failures at this rate must be retested at the 50 mm/min (2 in./min) rate to determine section compliance.

(iii) *Cold bend.* Samples of the insulation material on the conductor must be tested in accordance with ASTM D 4565–90a at a temperature of −40 ± 1°C with a mandrel diameter equal to 3 times the outside diameter of the insulated conductor. There must be no cracks visible to normal or corrected-to-normal vision.

(iv) *Shrinkback.* Samples of insulation must be tested for four hours in accordance with ASTM D 4565–90a. The temperature for the type of material is listed as follows:

Material	Temperature
Polyethylene	115 ± 1°C
Crystalline propylene/ethylene Copolymer	130 ± 1°C

(v) *Oxygen induction time.* Samples of insulation, which have been conditioned in accordance with paragraph 17.3 of ASTM D 4565–90a, must be tested in accordance with the procedures of ASTM D 4565–90a using copper pans and a test temperature of 199 ± 1°C.

(12) Other methods of testing may be used if acceptable to REA.

(c) *Identification of pairs and twisting of pairs.* (1) The insulation must be colored to identify:

(i) The tip and ring conductor of each pair; and

(ii) Each pair in the completed wire.

(2) The colors to be used to provide identification of the tip and ring conductor of each pair are shown in the following table:

Pair No.	Color	
	Tip	Ring
1	White	Blue
2	White	Orange
3	White	Green

(3) *Standards of color.* The colors of the insulated conductors supplied in accordance with this section are specified in terms of the Munsell Color System (ASTM D 1535–89) and must comply with the "Table of Wire and Cable Limit Chips" as defined in ANSI/EIA-359-A-84. (Visual color standards meeting these requirements may be obtained directly from the Munsell Color Company, Inc., 2441 North Calvert Street, Baltimore, Maryland 21218).

(4) Positive identification of the tip and ring conductors of each pair by marking each conductor of a pair with the color of its mate is permissible. The method of marking must be accepted by REA prior to its use.

(5) Other methods of providing positive identification of the tip and ring conductors of each pair may be employed if accepted by REA prior to its use.

(6) The insulated conductors must be twisted into pairs.

(7) In order to provide sufficiently high crosstalk isolation, the pair twists must be designed to enable the wire to meet the capacitance unbalance and the crosstalk loss requirements of paragraphs (m)(2), (m)(3), and (m)(4) of this section.

(8) The average length of pair twists in any pair in the finished wire, when measured on any 3 meter (m) (10 foot(ft)) length, must not exceed 152 mm (6 in.).

(9) An alternative method of forming the two pair wire is the use of a star-quad configuration.

(i) The assembly of the star-quad must be such as to enable the wire to meet the capacitance unbalance and the crosstalk loss requirements of paragraphs (m)(2), (m)(3), and (m)(4) of this section.

(ii) The four individual insulated conductors must be twisted together to form a star-quad configuration with the tip and ring conductors of each pair diagonally opposite each other in the quad.

(iii) The average length of twist for the star-quad in the finished wire, when measured on any 3 m (10 ft) length, must not exceed 152 mm (6 in.).

(iv) The following color scheme must be used to provide identification of the tip and ring conductor of each pair in the star-quad:

Pair No.	Color	
	Tip	Ring
1	White with blue stripe.	Blue
2	White with orange stripe.	Orange

(v) If desired, the blue and orange conductors may contain a white stripe. The stripes in this case must be narrow enough so that the tip and ring identification is obvious.

(d) *Forming of the wire core.* (1) Twisted pairs or star-quad configuration must be assembled in such a way as to form a substantially cylindrical group.

(2) The filling compound must be applied to the wire core in such a way as to provide a completely filled core as is commercially practical.

(3) If desired for manufacturing reasons, white or colored binders of nonhygroscopic and nonwicking material may be applied over the core.

(e) *Filling compound.* (1) After or during the stranding operation and prior to application of the optional core wrap and inner jacket, a homogeneous filling compound free of agglomerates must be applied to the wire core. The compound must be as nearly colorless as is commercially feasible and consistent with the end product requirements and pair identification.

(2) The filling compound must be free from dirt, metallic particles, and other foreign matter. It must be applied in such a way as to fill the space within the wire core.

(3) The filling compound must be nontoxic and present no dermal hazards.

(4) The filling compound must exhibit the following dielectric properties at a temperature of 23 ± 3°C when measured in accordance with ASTM D 150–87 or ASTM D 4872–88.

(i) The dissipation factor must not exceed 0.0015 at a frequency of 1 megahertz (MHz).

(ii) The dielectric constant must not exceed 2.30.

(5) The volume resistivity must not be less than 10^{12} ohm-cm at a temperature of 23 ± 3°C when measured in accordance with ASTM D 257–91 or ASTM D 4872–88.

(6) The individual wire manufacturer must satisfy REA that the filling compound selected for use is suitable for its intended application. The filling compound must be compatible with the wire components when tested in accordance with ASTM D 4568–86 at a temperature of 80°C.

(f) *Core wrap (optional).* (1) When a core wrap is used, it must consist of a layer of nonhygroscopic and nonwicking dielectric material. The wrap must be applied with an overlap.

(2) The core wrap must provide a sufficient heat barrier to prevent visible evidence of conductor insulation deformation or adhesion between conductors, caused by adverse heat transfer during the inner jacketing operation.

(3) If required for manufacturing reasons, white or colored binders of nonhygroscopic and nonwicking material may be applied over the core wrap.

(4) Sufficient filling compound must be applied to the core wrap that voids or air spaces existing between the core and inner side of the core wrap are minimized.

(g) *Inner jacket.* (1) An inner jacket must be applied over the core and/or core wrap.

(2) The jacket must be free from holes, splits, blisters, or other imperfections and must be as smooth and concentric as is consistent with the best commercial practice.

(3) The inner jacket material and test requirements must be as specified for the outer jacket material per paragraphs (j)(3) through (j)(5)(iv) of this section.

(4) The inner jacket thickness at any point must not be less than 0.5 mm (0.020 in.). The thickness must be determined from measurements on 50 mm (2 in.) samples taken not less than 0.3 m (1 ft) from either end of the wire. The average must be determined from 4 readings taken approximately 90° apart on any cross section of the samples. The maximum and minimum points must be determined by exploratory measurements. The maximum thickness minus the minimum thickness at any cross section must not exceed 43 percent of the average thickness at that cross section.

(h) *Flooding compound.* (1) Sufficient flooding compound must be applied on all sheath interfaces so that voids and air spaces in these areas are minimized.

(2) The flooding compound must be compatible with the jacket when tested in accordance with ASTM D 4568–86 at a temperature of 80°C. The floodant must exhibit adhesive properties sufficient to prevent jacket slip when tested in accordance with the requirements of appendix A, paragraph (III)(5), of this section.

(3) The individual wire manufacturer must satisfy REA that the flooding compound selected for use is acceptable for the application.

(i) *Shield.* (1) A shield must be applied either longitudinally or helically over the inner jacket.

(i) If the shield is applied longitudinally, it must be corrugated.

(ii) If the shield is applied helically, it must be smooth.

(2) The overlap for longitudinally applied shields must be a minimum of 2 mm (0.075 in.) The overlap for helically applied shields must be a minimum of 23 percent of the tape width.

(3) General requirements for application of the shielding material are as follows:

(i) Successive lengths of shielding tapes may be joined during the manufacturing process by means of cold weld, electric weld, soldering with a nonacid flux, or other acceptable means;

(ii) Where two ends of a metal shield are to be joined together, care shall be taken to clean the metal surfaces in order to provide for a good mechanical and electrical connection;

(iii) The shields of each length of wire must be tested for continuity. A one meter (3 ft) section of shield containing a factory joint must exhibit not more than 110 percent of the resistance of a shield of equal length without a joint;

(iv) The breaking strength of any section of a shield tape containing a factory joint must not be less than 80 percent of the breaking strength of an adjacent section of the shield of equal length without a joint;

(v) The reduction in thickness of the shielding material due to the corrugating or application process must be kept to a minimum and must not exceed 10 percent at any spot; and

(vi) The shielding material must be applied in such a manner as to enable the wire to pass the bend test as specified in paragraph (n)(3) of this section.

(4) The following materials are acceptable for use as wire shielding:

Standard Wire	Gopher Resistant Wire
Copper Alloy 220 (Bronze).	Copper-Clad Stainless Steel
(0.1016 ± 0.0076 mm) ..	0.1270 ± 0.0127 mm
(0.0040 ± 0.0003 in.)	(0.0050 ± 0.0005 in.)
Copper Alloy 220 (Bronze).	Copper Alloy 664
0.1270 ± 0.0127 mm	0.1397 ± 0.0127 mm
(0.0050 ± 0.0005 in.)	(0.0055 ± 0.0005 in.)
	Copper-Clad Alloy Steel
	0.1270 ± 0.0127 mm
	(0.0050 ± 0.0005 in.)

(i) The copper-clad steels and copper alloy 664 shielding tapes must be capable of meeting the following performance requirements prior to application to the wire:

Property	Requirement
Tensile Strength Minimum, MPa (psi)	379 (55,000)
Tensile Yield Minimum, MPa (psi)	241 (35,000)
Elongation Minimum, percent in 50 mm (2 in.).	15

(ii) *Copper alloy 220.* The shielding material, prior to application to the wire, must be in the fully annealed condition and shall conform to the requirements of ASTM B 694–86 for C22000 commercial bronze.

(iii) *Copper-clad stainless steel.* In addition to meeting the requirements of paragraph (i)(4)(i) of this section, the shielding material, prior to application to the wire, must be in the fully annealed condition and must conform to the requirements of ASTM B 694–86, with a cladding ratio of 16/68/16 and must have a minimum electrical conductivity of 28 percent IACS when measured in accordance with ASTM B 193–87.

(iv) *Copper alloy 664.* In addition to meeting the requirements of paragraph (i)(4)(i) of this section, the shielding material, prior to application to the wire, must be annealed temper and must conform to the requirements of ASTM B 694–86 and must have a minimum electrical conductivity of 28 percent IACS when measured in accordance with ASTM B 193–87.

(v) *Copper-clad alloy steel.* In addition to meeting the requirements of paragraph (i)(4)(i) of this section, the shielding material, prior to application to the wire, must be in the fully annealed condition and the copper component must conform to the requirements of ASTM B 224–91 and the alloy steel component must conform to the requirements of ASTM A 505–87,

with a cladding ratio of 16/68/16, and must have a minimum electrical conductivity of 28 percent IACS when measured in accordance with ASTM B 193–87.

(j) *Outer jacket.* (1) The outer jacket must provide the wire with a tough, flexible, protective covering which can withstand exposure to sunlight, to atmospheric temperatures and stresses reasonably expected in normal installation and service.

(2) The jacket must be free from holes, splits, blisters, or other imperfections and must be as smooth and concentric as is consistent with the best commercial practice.

(3) The raw material used for the outer jacket must be one of the five types listed in paragraphs (j)(3)(i) through (j)(3)(v) of this section. The raw material must contain an antioxidant to provide long term stabilization and the materials must contain a 2.60 ± 0.25 percent concentration of furnace black to provide ultraviolet shielding. Both the antioxidant and furnace black must be compounded into the material by the raw material supplier.

(i) Low density, high molecular weight polyethylene (LDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(ii) Low density, high molecular weight ethylene copolymer (LDHMW) must conform to the requirements of ASTM D 1248–84 (1989), Type I, Class C, Category 4 or 5, Grade J3.

(iii) Linear low density, high molecular weight polyethylene (LLDHMW) must conform to the requirements of ASTM D 1248–84(1989), Type I, Class C, Category 4 or 5, Grade J3.

(iv) High density polyethylene (HD) must conform to the requirements of ASTM D 1248–84(1989), Type III, Class C, Category 4 or 5, Grade J4.

(v) Medium density polyethylene (MD) must conform to the requirements of ASTM D 1248–84(1989), Type II, Class C, Category 4 or 5, Grade J4.

(vi) Particle size of the carbon selected for use must not average greater than 20 nanometers.

(vii) Absorption coefficient must be a minimum of 400 in accordance with the procedures of ASTM D 3349–86.

(4) The outer jacketing material removed from or tested on the wire must be capable of meeting the following performance requirements:

Property	LLDHMW, Ethylene Copolymer	LDHMW Polyethylene	HD or MD Polyethylene
Melt Flow Rate Percent Increase from raw material Maximum			
<0.41 (Initial Melt Index)		50	50
0.41–2.00 (Initial Melt Index)	100	—	—
Tensile Strength Minimum, MPa (psi)	50	—	—
Ultimate Elongation Percent, Minimum	12.0 (1,700)	12.0 (1,700)	16.5 (2,400)
Shrinkback Percent of Length, Maximum	400	400	300
Impact Failures, Maximum	5	5	5
	2/10	2/10	2/10

(5) *Testing procedures.* The procedures for testing the jacket samples for compliance with paragraph (j)(4) of this section must be as follows:

(i) *Melt flow rate.* The melt flow rate must be as determined by ASTM D 1238–90b, Condition E. Jacketing material must be free from flooding and filling compound.

(ii) *Tensile strength and ultimate elongation.* Test in accordance with ASTM D 4565–90a, using a jaw separation speed of 500 mm/min (20 in./min) for low density material and 50 mm/min (2 in./min) for high and medium density materials.

(iii) *Shrinkback.* Test in accordance with the procedures specified in ASTM D 4565–90a using a test temperature of 100 ± 1°C for low density material and a test temperature of 115 ± 1°C for high and medium density materials.

(iv) *Impact.* The test must be performed in accordance with ASTM D 4565–90a using an impact force of 4 newton-meter (3 pound force-foot) at a temperature of −20 ± 2°C. The cylinder must strike the sample at the shield overlap. A crack or split in the jacket constitutes failure.

(6) *Jacket thickness.* The minimum jacket thickness must be 0.64 mm (0.025 in.) except that the minimum thickness over the sheath slitting cord, if present, must be 0.46 mm (0.018 in.). The minimum point must be determined by exploratory measurements. The average thickness at any cross section must be determined from four readings including the minimum point, taken approximately 90° apart. The thickness measurement must exclude any jacket material that has formed into the corrugation. The maximum thickness at any cross section must not be greater than 155 percent of the minimum thickness.

(7) *Eccentricity.* The eccentricity of the jacket must not exceed 43 percent when calculated using the formula as follows:

$$\frac{\text{Maximum Thickness} - \text{Minimum Thickness}}{\text{Average Thickness}} \times 100 \text{ Percent}$$

(k) *Sheath slitting cord (optional).* (1) Sheath slitting cords may be used in the wire structure at the option of the manufacturer.

(2) When a sheath slitting cord is used it must be nonhygroscopic and nonwicking, continuous throughout a length of wire, and of sufficient strength to open the sheath without breaking the cord.

(3) Sheath slitting cords must be capable of consistently slitting the jacket(s) and/or shield for a continuous length of 0.6 m (2 ft) when tested in accordance with the procedure specified in appendix B of this section.

(l) *Identification marker and length marker.* (1) Each length of wire must be permanently identified as to manufacturer and year of manufacture.

(2) The number of conductor pairs and their gauge size must be marked on the jacket.

(3) The marking must be printed on the jacket at regular intervals of not more than 1.5 m (5 ft).

(4) An alternative method of marking may be used if accepted by REA prior to its use.

(5) The completed wire must have sequentially numbered length markers in FEET OR METERS at regular intervals of not more than 1.5 m (5 ft) along the outside of the jacket.

(6) The method of length marking must be such that for any single length of wire, continuous sequential numbering must be employed.

(7) The numbers must be dimensioned and spaced to produce good legibility and must be approximately 3 mm (0.125 in.) in height. An occasional illegible marking is permissible if there is a legible marking located not more than 1.5 m (5 ft) from it.

(8) The method of marking must be by means of suitable surface markings producing a clear, distinguishable, contrasting marking acceptable to REA. Where direct or transverse printing is employed, the characters should be

indented to produce greater durability of marking. Any other method of length marking must be acceptable to REA as producing a marker suitable for the field. Size, shape and spacing of numbers, durability, and overall legibility of the marker will be considered in acceptance of the method.

(9) The accuracy of the length marking must be such that the actual length of any wire section is never less than the length indicated by the marking and never more than one percent greater than the length indicated by the marking.

(10) The color of the initial marking must be white or silver. If the initial marking fails to meet the requirements of the preceding paragraphs, it will be permissible to either remove the defective marking and re-mark with the white or silver color or leave the defective marking on the wire and re-mark with yellow. No further re-marking is permitted. Any re-marking must be on a different portion of the wire circumference than any existing marking when possible and have a numbering sequence differing from any other existing marking by at least 5,000.

(11) Any reel of wire which contains more than one set of sequential markings must be labeled to indicate the color and sequence of marking to be used. The labeling must be applied to the reel and also to the wire.

(m) *Electrical requirements*—(1) *Mutual capacitance and conductance.* (i) The average mutual capacitance (corrected for length) of all pairs in any reel must not exceed 52 ± 4 nanofarad/kilometer (nF/km) (83 ± 7 nanofarad/mile (nF/mile)) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kilohertz (kHz) and a temperature of 23 ± 3°C.

(ii) The mutual conductance (corrected for length and gauge) of any pair must not exceed 2 micromhos/kilometer (micromhos/km) (3.3 micromhos/mile) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kHz and a temperature of 23 ± 3°C.

(2) *Pair-to-pair capacitance unbalance.* The capacitance unbalance between any pair of the completed wire must not exceed 145 picofarad/kilometer (pF/km) (80 picofarad/1000 ft (pF/1000 ft)) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kHz and a temperature of 23 ± 3°C.

(3) *Pair-to-ground capacitance unbalance*—(i) *Pair-to-ground.* The capacitance unbalance as measured on the individual pairs of the completed wire must not exceed 2625 pF/km (800 pF/1000 ft) when tested in accordance with ASTM D 4566–90 at a frequency of 1.0 ± 0.1 kHz and a temperature of 23 ± 3°C.

(ii) When measuring pair-to-ground capacitance unbalance, all pairs, except the pair under test, are grounded to the shield.

(iii) Pair-to-ground capacitance unbalance may vary directly with the length of the wire.

(4) *Far-end crosstalk loss.* (i) The output-to-outputfar-end crosstalk loss (FEXT) between any pair combination of a completed wire when measured in accordance with ASTM D 4566–90 at a test frequency of 150 kHz must not be less than 58 decibel/ kilometer (dB/km) (63 decibel/1000 ft). If the loss K_o at a frequency F_o for length L_o is known, then K_x can be determined for any other frequency F_x or length L_x by:

$$\text{FEXT loss}\,(K_X) = K_O - 20\log 10\frac{F_X}{F_O} - 10\log 10\frac{L_X}{L_O}$$

(5) *Attenuation.* The attenuation of any individual pair on any reel of wire must not exceed the following limits when measured at or corrected to a temperature of 20 ± 1°C and a test frequency of 150 kHz. The test must be conducted in accordance with ASTM D 4566–90.

Conductor AWG	Individual Pair Attenuation dB/km (decibel/mile (dB/mile))	
	Maximum	Minimum
22	6.8 (11.0)	5.0 (8.1)
24	8.7 (14.0)	6.6 (10.7)

(6) *Insulation resistance.* Each insulated conductor in each length of completed wire, when measured with all other insulated conductors and the shield grounded, must have an insulation resistance of not less than 1600 megohm-kilometer (1000 megohm-mile) at 20 ± 1°C. The measurement must be made in accordance with the procedures of ASTM D 4566–90.

(7) *High voltage test.* (i) In each length of completed wire, the insulation between conductors when tested in accordance with ASTM D 4566–90 must withstand for 3 seconds a direct current (dc) potential whose value is not less than:

(A) 5.0 kilovolts for 22-gauge conductors; and

(B) 4.0 kilovolts for 24-gauge conductors.

(ii) In each length of completed wire, the dielectric strength between the shield and all conductors in the core must be tested in accordance with ASTM D 4566–90 and must withstand, for 3 seconds, a dc potential whose value is not less than 20 kilovolts.

(8) *Conductor resistance.* The dc resistance of any conductor must be measured in the completed wire in accordance with ASTM D 4566–90 and must not exceed the following values when measured at or corrected to a temperature of 20 ± 1°C.

AWG	Maximum Resistance	
	ohms/kilometer	(ohms/1000 ft)
22	57.1	(17.4)
24	90.2	(27.5)

(9) *Resistance unbalance.* (i) The difference in dc resistance between the two conductors of any pair in the completed wire must not exceed 5.0 percent when measured in accordance with the procedures of ASTM D 4566–90.

(ii) The resistance unbalance between tip and ring conductors shall be random with respect to the direction of unbalance. That is, the resistance of the tip conductors shall not be consistently higher with respect to the ring conductors and vice versa.

(n) *Mechanical requirements*—(1) *Defective wire.* Pairs in each length of wire will not be permitted to have either a ground, cross, short or open circuit condition.

(2) *Wire breaking strength.* The breaking strength of the completed wire must not be less than 890 newtons (200 pound-force) when tested in accordance with ASTM D 4565–90a using a jaw separation speed of 25 mm/min (1.0 in./min).

(3) *Wire bending test.* The completed wire must be capable of meeting the requirements of ASTM D 4565–90a after conditioning at −20 ± 2°C and at 23 ± 2°C.

(4) *Water penetration test.* (i) A one meter (3 ft) length of completed wire must be stabilized at 23 ± 2°C and tested in accordance with ASTM D 4565–90a using a one meter (3 ft) water head over the sample or placed under the equivalent continuous pressure for one hour.

(ii) After the one hour period, there must be no water leakage in the sheath interfaces, under the core wrap or between any insulated conductors in the core.

(iii) If water leakage is detected in the first sample, one 3 m (10 ft) additional adjacent sample from the same reel of wire must be tested in accordance with paragraph (n)(4)(ii) of this section. If the second sample exhibits water leakage, the entire reel of wire is to be rejected. If the second sample exhibits no

leakage, the entire reel of wire is considered acceptable.

(5) *Compound flow test.* The completed wire must be capable of meeting the compound flow test specified in ASTM D 4565–90a when exposed for a period of 24 hours at a temperature of 80 ± 1°C. At the end of this test period, there must be no evidence of flowing or dripping of compound from either the core or sheath interfaces.

(o) *Acceptance testing and extent of testing.* (1) The tests described in appendix A of this section are intended for acceptance of wire designs and major modifications of accepted designs. REA decides what constitutes a major modification. These tests are intended to show the inherent capability of the manufacturer to produce wire products having long life and stability.

(2) For initial acceptance. the manufacturer must submit:

(i) An original signature certification that the product fully complies with each requirement of this section;

(ii) Qualification Test Data, per appendix A of this section;

(iii) To periodic plant inspections;

(iv) A certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*);

(v) Written user testimonials concerning performance of the product; and

(vi) Other nonproprietary data deemed necessary by the Chief, Outside Plant Branch (Telephone).

(3) For requalification acceptance, the manufacturer must submit an original signature certification that the product fully complies with each section of the specification, excluding the Qualification Section, and a certification that the product does or does not comply with the domestic origin manufacturing provisions of the "Buy American" requirements of the Rural Electrification Act of 1938 (7 U.S.C. 901 *et seq.*) for acceptance by June 30 every three years. The required data and certification must have been gathered within 90 days of the submission.

(4) Initial and requalification acceptance requests should be addressed to: Chairman, Technical Standards, Committee "A" (Telephone), Telecommunications Standards Division, Rural Electrification Administration, Washington, DC 20250–1500.

(5) Tests on 100 percent of completed wire. (i) The shield of each length of wire must be tested for continuity using the procedures of ASTM D 4566–90.

(ii) Dielectric strength between all conductors and the shield must be tested to determine freedom from grounds in accordance with paragraph (m)(7)(ii) of this section.

(iii) Each conductor in the completed wire must be tested for continuity using the procedures of ASTM D 4566–90.

(iv) Dielectric strength between conductors must be tested to ensure freedom from shorts and crosses in accordance with paragraph (m)(7)(i) of this section.

(v) The average mutual capacitance must be measured on all wires.

(6) *Capability tests.* Tests on a quality assurance basis must be made as frequently as is required for each manufacturer to determine and maintain compliance with:

(i) Performance requirements for conductor insulation and jacket material;

(ii) Performance requirements for filling and flooding compounds;

(iii) Sequential marking and lettering;

(iv) Capacitance unbalance and crosstalk;

(v) Insulation resistance;

(vi) Conductor resistance and resistance unbalance;

(vii) Wire bending and wire breaking strength tests;

(viii) Mutual conductance and attenuation; and

(ix) Water penetration and compound flow tests.

(p) *Summary of records of electrical and physical tests.* (1) Each manufacturer must maintain suitable summary of records for a period of at least 3 years for all electrical and physical tests required on completed wire by this section as set forth in paragraphs (o)(5) and (o)(6) of this section. The test data for a particular reel shall be in a form that it may be readily available to the purchaser or to REA upon request.

(2) Measurements and computed values must be rounded off to the number of places of figures specified for the requirement according to ASTM E 29–90.

(q) *Manufacturing irregularities.* (1) Repairs to the inner jacket and shield are not permitted in wire supplied to the end user under this section.

(2) Minor defects in the outer jackets (defects having a dimension of 3 mm (0.125 in.) or less in any direction) may be repaired by means of heat fusing in accordance with good commercial practices utilizing sheath grade compound.

(r) *Preparation for shipment.* (1) The wire must be shipped on reels. The diameter of the drum must be large enough to prevent damage to the wire from reeling or unreeling. The reels must be substantial and so constructed as to prevent damage to the wire during shipment and handling.

(2) The thermal wrap must comply with the requirements of appendix C of this section. When a thermal reel wrap is supplied, the wrap must be applied to the reel and must be suitably secured in place to minimize thermal exposure to the wire during storage and shipment. The use of the thermal reel wrap as a means of reel protection will be at the option of the manufacturer unless specified by the end user.

(3) The outer end of the wire must be securely fastened to the reel head so as to prevent the wire from becoming loose in transit. The inner end of the wire must be securely fastened in such a way as to make it readily available if required for electrical testing. Spikes, staples, or other fastening devices which penetrate the wire jacket must not be used. The method of fastening the wire ends must be accepted by REA prior to it being used.

(4) Each length of wire must be wound on a separate reel unless otherwise specified or agreed to by the purchaser.

(5) Each reel must be plainly marked to indicate the direction in which it should be rolled to prevent loosening of the wire on the reel.

(6) Each reel must be stenciled or labeled on either one or both sides with the name of the manufacturer, year of manufacture, actual shipping length, an inner and outer end sequential length marking, description of the wire, reel number and the REA wire designation:

Wire Designation
BFW
Wire Construction
Pair Count
Conductor Gauge
N = Copper Alloy 220 (Bronze) Shield
Y = Gopher Resistant Shields
Example: BFWY 3–24
Buried Filled Wire, Gopher Resistant Shield, 3 pair, 24 AWG

(7) Both ends of the filled buried wire, manufactured to the requirements of this section, must be equipped with end caps which are acceptable to REA.

(The information and recordkeeping requirements of this section have been approved by the Office of Management and Budget (OMB) under the Control Number 0572–0077.)

Appendix A to 7 CFR 1755.860—Qualification Test Methods

(I) The test procedures described in this appendix are for qualification of initial designs and major modifications of accepted

designs. Included in (V) of this appendix are suggested formats that may be used in submitting test results to REA.

(II) *Sample Selection and Preparation.* (1) All testing must be performed on lengths removed sequentially from the same 3 pair, 22 gauge jacketed wire. This wire must not have been exposed to temperatures in excess of 38°C since its initial cool down after sheathing. The lengths specified are minimum lengths and if desirable from a laboratory testing standpoint longer lengths may be used.

(a) Length A shall be 10 ± 0.2 meters (33 ± 0.5 feet) long and must be maintained at 23 ± 3°C. One length is required.

(b) Length B shall be 12 ± 0.2 meters (40 ± 0.5 feet) long. Prepare the test sample by removing the inner and outer jacket, shield, and core wrap, if present, for a sufficient distance on both ends to allow the insulated conductors to be flared out. Remove sufficient conductor insulation so that appropriate electrical test connections can be made at both ends. Coil the specimen with a diameter of 15 to 20 times its sheath diameter. Three lengths are required.

(c) Length C shall be one meter (3 feet) long. Four lengths are required.

(d) Length D shall be 300 millimeters (1 foot) long. Four lengths are required.

(e) Length E shall be 600 millimeters (2 feet) long. Four lengths are required.

(f) Length F shall be 3 meters (10 feet) long and must be maintained at 23 ± 3°C for the duration of the test. Two lengths are required.

(2) *Data Reference Temperature.* Unless otherwise specified, all measurements shall be made at 23 ± 3°C.

(III) *Environmental Tests*—(1) *Heat Aging Test*—(a) *Test Samples.* Place one sample each of lengths B, C, D, and E in an oven or environmental chamber. The ends of sample B must exit from the chamber or oven for electrical tests. Securely seal the oven exit holes.

(b) *Sequence of Tests.* After conditioning the samples are to be subjected to the following tests:

(i) Water Immersion Test outlined in (III)(2) of this appendix;

(ii) Water Penetration Test outlined in (III)(3) of this appendix; .

(iii) Insulation Compression Test outlined in (III)(4) of this appendix; and

(iv) Jacket Slip Strength Test outlined in (III)(5) of this appendix.

(c) *Initial Measurements.* (i) For sample B, measure the open circuit capacitance and conductance for each pair at 1 and 150 kilohertz and the attenuation at 150 kilohertz after conditioning the sample at the data reference temperature for 24 hours. Calculate the average and standard deviation for the data of the 3 pairs on a per kilometer (per mile) basis.

(ii) The attenuation at 150 kilohertz may be calculated from open circuit admittance (Yoc) and short circuit impedance (Zsc) or may be obtained by direct measurement of attenuation.

(iii) Record on suggested formats attached in (V) of this appendix or on other easily readable formats.

(d) *Heat Conditioning.* (i) Immediately after completing the initial measurements, condition the sample for 14 days at a temperature of 65 ± 2°C.

(ii) At the end of this period note any exudation of filling compound. Measure and calculate the parameters given in (III)(1)(c) of this appendix. Record on suggested formats attached in (V) of this appendix or on other easily readable formats.

(iii) Cut away and discard a one meter (3 foot) section from each end of length B.

(e) *Overall Electrical Deviation.* (i) Calculate the percent change in all average parameters between the final parameters after conditioning with the initial parameters in (III)(1)(c) of this appendix.

(ii) The stability of the electrical parameters after completion of this test must be within the following prescribed limits:

(A) *Capacitance.* The average mutual capacitance must be within 5 percent of its original value;

(B) The change in average mutual capacitance must be less than 5 percent over the frequency range of 1 to 150 kilohertz;

(C) *Conductance.* The average mutual conductance must not exceed 2 micromhos/kilometer (3.3 micromhos/mile) at a frequency of 1 kilohertz; and

(D) *Attenuation.* The attenuation must not have increased by more than 5 percent over its original value.

(2) *Water Immersion Electrical Test*—(a) *Test Sample Selection.* The 10 meter (33 foot) section of length B must be tested.

(b) *Test Sample Preparation.* Prepare the sample by removing the inner and outer jacket, shield, and core wrap, if present, for a sufficient distance to allow one end to be accessed for test connections. Cut out a series of 2.5 millimeter by 13 millimeter (0.1 inch by 0.5 inch) rectangular slots along the test sample, at 300 millimeter (1 foot) intervals progressing successively 90 degrees around the circumference of the wire. Assure that the wire core is exposed at each slot by slitting the inner jacket and core wrap if present. Place the prepared sample in a dry vessel which when filled will maintain a one meter (3 foot) head of water over 6 meters (20 feet) of uncoiled wire. Extend and fasten the ends of the wire so they will be above the water line and the pairs are rigidly held for the duration of the test.

(c) *Capacitance and Conductance Testing.* Measure the initial values of mutual capacitance and conductance of all pairs in each wire at a frequency of 1 kilohertz before filling the vessel with water. Be sure the wire shield is grounded to the test equipment. Fill the vessel until there is a one meter (3 foot) head of water on the wires.

(i) Remeasure the mutual capacitance and conductance after the wires have been submerged for 24 hours and again after 30 days.

(ii) Record each sample separately on the suggested formats attached in (V) of this appendix or on other easily readable formats.

(d) *Overall Electrical Deviation.* (i) Calculate the percent change in all average parameters between the final parameters after conditioning with the initial parameters in (III)(2)(c) of this appendix.

(ii) The stability of the electrical parameters after of the test must be within the following prescribed limits:

(A) *Capacitance.* The average mutual capacitance must be within 5 percent of its original value; and

(B) *Conductance.* The average mutual conductance must not exceed 2 micromhos/kilometer (3.3 micromhos/mile) at a frequency of 1 kilohertz.

(3) *Water Penetration Testing.* (a) A watertight closure must be placed over the jacket of length C. The closure must not be placed over the jacket so tightly that the flow of water through preexisting voids or air spaces is restricted. The other end of the sample must remain open.

(b) Test per Option A or Option B. (i) *Option A.* Weigh the sample and closure prior to testing. Fill the closure with water and place under a continuous pressure of 10 ± 0.7 kilopascals (1.5 ± 0.1 pounds per square inch gauge) for one hour. Collect the water leakage from the end of the test sample during the test and weigh to the nearest 0.1 gram. Immediately after the one hour test, seal the ends of the wire with a thin layer of grease and remove all visible water from the closure, being careful not to remove water that penetrated into the core during the test. Reweigh the sample and determine the weight of water that penetrated into the core. The weight of water that penetrated into the core must not exceed 1 gram.

(ii) *Option B.* Fill the closure with a 0.2 gram sodium fluorscein per liter water solution and apply a continuous pressure of 10 ± 0.7 kilopascals (1.5 ± 0.1 pounds per square inch gauge) for one hour. Catch and weigh any water that leaks from the end of the wire during the one hour period. If no water leaks from the sample, carefully remove the water from the closure. Then carefully remove the outer jacket, shield, inner jacket and core wrap, if present, one at a time, examining with an ultraviolet light source for water penetration. After removal of the inner jacket and core wrap, if present, carefully dissect the core and examine for water penetration within the core. Where water penetration is observed, measure the penetration distance. The distance of water penetration into the core must not exceed 127 millimeters (5.0 inches).

(4) *Insulation Compression Test.* (a) *Test Sample D.* Remove inner and outer jacket, shield, and core wrap, if present, being careful not to damage the conductor insulation. Remove one pair from the core and carefully separate, wipe off core filler and straighten the insulated conductors. Retwist the two insulated conductors together under sufficient tension to form 10 evenly spaced 360 degree twists in a length of 100 millimeters (4 inches).

(b) *Sample Testing.* Center the mid 50 millimeters (2 inches) of the twisted pair between two smooth rigid parallel metal pletes measuring 50 millimeters (2 inches) in length or diameter. Apply a 1.5 volt direct current potential between the conductors, using a light or buzzer to indicate electrical contact between the conductors. Apply a constant load of 67 newtons (15 pound-force) on the sample for one minute and monitor for evidence of contact between the conductors. Record results on suggested formats attached in (V) of this appendix or on other easily readable formats.

(5) *Jacket Slip Strength Test*—(a) *Sample Selection.* Test sample E from (III)(1)(a) of this appendix.

(b) *Sample Preparation.* Prepare test sample in accordance with the procedures specified in ASTM D 4565–90a.

(c) *Sample Conditioning and Testing.* Remove the sample from the tensile tester prior to testing and condition for one hour at 50 ± 2°C. Test immediately in accordance with the procedure specified in ASTM D 4565–90a. A minimum outer jacket slip strength of 67 newtons (15 pound-force) is required. Record the load attained.

(6) *Humidity Exposure.* (a) Repeat steps (III)(1)(a) through (III)(1)(c)(iii) of this appendix for separate set of samples B, C, D and E which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, expose the test sample to 100 temperature cyclings. Relative humidity within the chamber must be maintained at 90 ± 2 percent. One cycle consists of beginning at a stabilized chamber and test sample temperature of 52 ± 1°C, increasing the temperature to 57 ± 1°C, allowing the chamber and test samples to stabilize at this level, then dropping the temperature back to 52 ± 1°C.

(c) Repeat steps (III)(1)(d)(ii) through (III)(5)(c) of this appendix.

(7) *Temperature Cycling.* (a) Repeat steps (III)(1)(a) through (III)(1)(c)(iii) of this appendix for separate set of samples B, C, D and E which have not been subjected to prior environmental conditioning.

(b) Immediately after completing the measurements, subject the test sample to 10 cycles of temperature between −40°C and +60°C. The test sample must be held at each temperature extreme for a minimum of 1 1/2 hours during each cycle of temperature. The air within the temperature cycling chamber must be circulated throughout the duration of the cycling.

(c) Repeat steps (III)(1)(d)(ii) through (III)(5)(c) of this appendix.

(IV) *Control Sample*—(1) *Test Samples.* A separate set of lengths for samples A, C, D, and E must have been maintained at 23 ± 3°C for at least 48 hours before the testing.

(2) Repeat steps (III)(2) through (III)(5)(c) of this appendix except use length A instead of length B.

(3) *Surge Test.* (a) One length of sample F must be used to measure the breakdown between conductors while the other length of F must be used to measure core to shield breakdown.

(b) The samples must be capable of withstanding, without damage, a single surge voltage of 20 kilovolts peak between conductors, and 35 kilovolts peak between conductors and the shield as hereinafter described. The surge voltage must be developed from a capacitor discharge through a forming resistor connected in parallel with the dielectric of the test sample. The surge generator constants must be such as to produce a surge of 1.5 × 40 microseconds wave shape.

(c) The shape of the generated wave must be determined at a reduced voltage by connecting an oscilloscope across the forming resistor with the wire sample connected in parallel with the forming resistor. The capacitor bank is charged to the test voltage and then discharged through the forming resistor and test sample. The test sample will be considered to have passed the test if there is no distinct change in the wave shape obtained with the initial reduced voltage compared to that obtained after the application of the test voltage.

(V) The following suggested formats may be used in submitting the test results to REA:

Environmental Conditioning _____

FREQUENCY 1 KILOHERTZ

PAIR NUMBER	CAPACITANCE		CONDUCTANCE	
	nF/km	(nF/mile)	micromhos/km	(micromhos/mile)
	Initial	Final	Initial	Final
1				
2				
3				
Average $\bar{x}$				

Overall Percent Difference in Average $\bar{x}$ Capacitance:_____ Conductance: _____

Environmental Conditioning _____

FREQUENCY 150 KILOHERTZ

PAIR NUMBER	CAPACITANCE		CONDUCTANCE		ATTENUATION	
	nF/km	(nF/mile)	micromhos/km	(micromhos/mile)	dB/km	(dB/mile)
	Initial	Final	Initial	Final	Initial	Final
1						
2						
3						
Average $\bar{x}$						

Overall Percent Difference in Average $\bar{x}$ Capacitance:_____ Conductance: _____ Attenuation:_____

Environmental Conditioning _____

WATER IMMERSION TEST (1 KILOHERTZ)

PAIR NUMBER	CAPACITANCE			CONDUCTANCE		
	nF/km	(nF/mile)		micromhos/km	(micromhos/mile)	
	Initial	24 hours	Final	Initial	24 hours	Final
1						
2						
3						
Average $\bar{x}$						

Overall Percent Difference in Average $\bar{x}$ Capacitance:_____ Conductance: _____

Water Penetration Test

	Option A		Option B	
	End Leakage grams	Weight Gain grams	End Leakage grams	Penetration mm (in.)
Control				
Heat Age				
Humidity Exposure				
Temperature Cycling				

Insulation Compression

	Failures
Control	
Heat Age	
Humidity Exposure	
Temperature Cycling	

Jacket Slip Strength @ 50°C

	Load in newtons (pound-force)
Control	
Heat Age	
Humidity Exposure	
Temperature Cycling	

Filler Exudation (grams)

Heat Age	
Humidity Exposure	
Temperature Cycle	

Surge Test (kilovolts)

Conductor to Conductor	
Shield to Conductors	

Appendix B to 7 CFR 1755.860—Sheath Slitting Cord Qualification

(I) The test procedures described in this appendix are for qualification of initial and subsequent changes in sheath slitting cords.

(II) *Sample Selection.* All testing must be performed on two 1.2 meters (4 feet) lengths of wire removed sequentially from the same 3 pair, 22 gauge jacketed wire. This wire must not have been exposed to temperatures in excess of 38°C since its initial cool down after sheathing.

(III) *Test Procedure.* (1) Using a suitable tool, expose enough of sheath slitting cord to permit grasping with needle nose pliers.

(2) The prepared test specimens must be maintained at a temperature of 23 ± 1°C for at least 4 hours immediately prior to and during the test.

(3) Wrap the sheath slitting cord around the plier jaws to ensure a good grip.

(4) Grasp and hold the wire in a convenient position while gently and firmly pulling the sheath slitting cord longitudinally in the direction away from the wire end. The angle of pull may vary to any convenient and functional degree. A small starting notch is permissible.

(5) The sheath slitting cord is considered acceptable if the cord can slit the jacket and/or shield for a continuous length of 0.6 meter (2 feet) without breaking the cord.

Appendix C to 7 CFR 1755.860—Thermal Reel Wrap Qualification

(I) The test procedures described in this appendix are for qualification of initial and subsequent changes in thermal reel wraps.

(II) *Sample Selection.* All testing must be performed on two 450 millimeter (18 inch) lengths of wire removed sequentially from the same 3 pair, 22 gauge jacketed wire. This wire must not have been exposed to temperatures in excess of 38°C since its initial cool down after sheathing.

(III) *Test Procedure.* (1) Place the two samples on an insulating material such as wood, etc.

(2) Tape thermocouples to the jackets of each sample to measure the jacket temperature.

(3) Cover one sample with the thermal reel wrap.

(4) Expose the samples to a radiant heat source capable of heating the uncovered jacket sample to a minimum of 71°C. A 600 watt photoflood lamp or an equivalent lamp having the light spectrum approximately that of the sun shall be used.

(5) The height of the lamp above the jacket shall be 380 millimeters (15 inches) or a height that produces the 71°C jacket temperature on the unwrapped sample.

(6) After the samples have stabilized at the temperature, the jacket temperatures of the samples must be recorded after one hour of exposure to the heat source.

(7) Compute the temperature difference between the jackets.

(8) For the thermal reel wrap to be acceptable to REA, the temperature differences between the jacket with the thermal reel wrap and the jacket without the reel wrap must be greater than or equal to 17°C.

Dated: November 3, 1993.

Bob J. Nash,

Under Secretary, Small Community and Rural Development.

[FR Doc 93–27889 Filed 11–18–93; 8:45 am]

BILLING CODE 3410–15–F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–74–AD; Amendment 39–8731; AD 93–22–07]

Airworthiness Directives; Corporate Jets Limited (Formerly British Aerospace) Model BAe 125–800A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Corporate Jets Model BAe 125–800A series airplanes, that requires replacement of the existing forward cabin door retainer catch assembly located in the upper luggage bay shelf with a new, improved assembly. This amendment is prompted by reports which indicate that, under certain conditions, the forward cabin door could be forced to the closed position and held closed. The actions specified by this AD are intended to prevent the forward cabin interior door from closing during takeoff and landing, which could impede or hinder the ability of passengers and crew to exit through the main entrance door during an emergency evacuation.

DATES: Effective December 20, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 20, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton,

Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Corporate Jets Limited Model BAe 125–800A series airplanes was published in the **Federal Register** on July 26, 1993 (58 FR 39689). That action proposed to require replacement of the existing forward cabin door retainer catch assembly located in the upper luggage bay shelf with a new, improved forward cabin door retainer catch assembly.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 5 airplanes of U.S. registry will be affected by this AD, that it will take approximately 2 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. The cost of required parts is expected to be negligible. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $550, or $110 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–22–07 Corporate Jets Limited (Formerly British Aerospace): Amendment 39–8731. Docket 93–NM–74–AD.

Applicability: Model BAe 125–800A series airplanes, as listed in Corporate Jets Limited Service Bulletin SB.25–68–25A440A, dated August 19, 1992; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the forward cabin door from closing during takeoff and landing, which could impede or hinder the ability of passengers and crew to exit through the main entrance door during an emergency evacuation, accomplish the following:

(a) Within 180 days after the effective date of this AD, replace the existing forward cabin door retainer catch assembly located in the upper luggage bay shelf with a new, improved forward cabin door retainer catch assembly, Modification No. 25A440A, in accordance with Corporate Jets Limited Service Bulletin SB.25–68–25A440A, dated August 19, 1992.

(b) As of the effective date of this AD, no person shall install a catch assembly having part number 25–8DP1695 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The replacement shall be done in accordance with Corporate Jets Limited Service Bulletin SB.25–68–25A440A, dated August 19, 1992. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 20, 1993.

Issued in Renton, Washington, on November 2, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–27375 Filed 11–18–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 520

Oral Dosage Form New Animal Drugs; Chlortetracycline Soluble Powder

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a supplemental new animal drug application (NADA) filed by Feed Specialties Co., Inc., that provides for the safe and effective use of chlortetracycline soluble powder in the drinking water of chickens, turkeys, and swine for control and/or treatment of bacterial diseases susceptible to chlortetracycline. The approval reflects compliance with results of the National Academy of Sciences/National Research Council (NAS/NRC), Drug Efficacy Study Group's (DESI) evaluation of the drug's effectiveness and FDA's conclusions concerning that evaluation.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Dianne T. McRae, Center for Veterinary Medicine (HFV–102), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1623.

SUPPLEMENTARY INFORMATION: Feed Specialties Co., Inc., Des Moines, IA

50313, filed a supplement to its approved NADA 65–256 for Chlortet™-Soluble-O (chlortetracycline hydrochloride (CTC HCL) soluble powder). The drug is available in packets containing 25.6 grams of CTC HCL per 7.2 ounces of soluble powder. The drug is used to prepare drinking water containing the following concentrations of CTC HCL: (1) 200 to 400 milligrams per gallon (mg/gal) for control of infectious synovitis in chickens caused by *Mycoplasma synoviae*; (2) 400 to 800 mg/gal for control of chronic respiratory disease and air-sac infections in chickens caused by *M. gallisepticum* and *Escherichia coli*; and (3) 400 mg/gal for control of infectious synovitis in turkeys caused by *M. synoviae*. The drug is also used to medicate drinking water to concentrations producing the following CTC HCL dosages: (1) 25 mg/pound of body weight in turkeys for control of complicating bacterial organisms associated with bluecomb; and (2) 10 mg/pound of body weight in swine for control and treatment of bacterial enteritis caused by *E. coli* and *Salmonella* spp. and bacterial pneumonia associated with *Pasteurella* spp., *Hemophilus* spp., and *Klebsiella* spp. The application was originally approved October 14, 1966.

The drug was the subject of a NAS/NRC DESI evaluation of effectiveness (DESI 0113NV). The findings were published in the **Federal Register** of July 21, 1970 (35 FR 11646). NAS/NRC evaluated the drug as probably effective for growth promotion and feed efficiency and for the treatment of animal diseases caused by pathogens sensitive to chlortetracycline. NAS/NRC stated:

(1) Claims made regarding "for prevention of" or "to prevent" should be replaced with "as an aid in the control of" or "to aid in the control of";

(2) claims for growth promotion or stimulation are disallowed and claims for faster gains and/or feed efficiency should be stated as "may result in faster gains and/or improved feed efficiency under appropriate conditions";

(3) each disease claim should be properly qualified as "appropriate for use in (name of disease) caused by pathogens sensitive to (name of drug)"; if the disease cannot be so qualified the claim must be dropped;

(4) claims pertaining to egg production and hatchability should be changed to "May aid maintaining egg production and hatchability, under appropriate conditions, by controlling pathogenic microorganisms";

(5) the labels should warn that treated animals must actually be consuming enough medicated water or medicated feed to provide a therapeutic dosage under the conditions that prevail and, as a precaution, state the desired oral dose per unit of animal weight per day for each species as a guide to effective usage of the preparation in drinking water or feed; and

(6) effective blood levels are required for each recommended dosage.

FDA concurred with the NAS/NRC findings.

The NAS/NRC evaluation is concerned only with the drug's effectiveness and safety to the treated animal. It does not take into account the safety for food use of food derived from drug-treated animals. Nothing herein will constitute a bar to further proceedings with respect to questions of safety of the drug or its metabolites in food products derived from treated animals.

Feed Specialties Co., Inc., filed a supplemental NADA which revised the labeling of its product in compliance with the results of the NAS/NRC DESI review and FDA's conclusions. The supplemental NADA is approved as of October 15, 1993, and the regulations are amended by revising § 520.445b (21 CFR 520.445b) to reflect the approval. Section 520.445b is further amended by deleting the latter portion of the NAS/NRC statement in paragraph (d)(4) because it has become obsolete since the agency began accepting abbreviated NADA's in 1990 under the Generic Animal Drug and Patent Term Restoration Act of 1988.

The agency has carefully considered the potential environmental effects of this action. FDA has concluded that the action will not have a significant impact on the human environment, and that an environmental impact statement is not required. The agency's finding of no significant impact and the evidence supporting that finding, contained in an environmental assessment, may be seen in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, between 9 a.m. and 4 p.m., Monday through Friday.

Under section 512(c)(2)(F)(iii) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b(c)(2)(F)(iii)), this approval for food producing animals does not qualify for marketing exclusivity because the supplemental application does not contain reports of new clinical or field investigations (other than bioequivalence or residue studies) and new human food safety studies (other than bioequivalence or residue studies) essential to the approval and conducted or sponsored by the applicant.

In accordance with the freedom of information provisions of part 20 (21 CFR part 20) and § 514.11(e)(2)(ii) (21 CFR 514.11(e)(2)(ii)), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management Branch (address above) between 9 a.m. and 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 520

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR part 520 is amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. The authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

2. Section 520.445b is amended in paragraph (b) by revising the heading and by adding the words "; No. 017274 for conditions of use as in paragraphs (d)(4)(i) through (d)(4)(iii) of this section" before the period at the end of the paragraph, and by revising the introductory text of paragraph (d)(4) to read as follows:

§ 520.445b Chlortetracycline powder (chlortetracycline hydrochloride or chlortetracycline bisulfate).

* * * * *

(b) *Sponsors.* * * *

* * * * *

(d) * * *

(4) The following uses of chlortetracycline hydrochloride in drinking water were reviewed by the National Academy of Sciences/National Research Council (NAS/NRC) and found effective:

* * * * *

Dated: November 8, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–28473 Filed 11–18–93; 8:45 am]

BILLING CODE 4160–01–F

21 CFR Parts 520 and 526

Animal Drugs, Feeds, and Related Products; Change of Sponsor

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect a change of sponsor for five new animal drug applications (NADA's) from Solvay

Animal Health, Inc. to Norbrook Laboratories, Ltd.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Benjamin A. Puyot, Center for Veterinary Medicine (HFV–130), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1646.

SUPPLEMENTARY INFORMATION: Solvay Animal Health, Inc., 1201 Northland Dr., Mendota Heights, MN 55120, has informed FDA that it has transferred ownership of, and all rights and interests in, the following approved NADA's to Norbrook Laboratories, Ltd., Station Works, Newry BT 35 6JP, Northern Ireland:

NADA Number	Ingredient	Trade Name
055–036	Ampicillin Trihydrate Capsules	Principlin
055–050	Ampicillin Trihydrate Soluble Powder	Principlin Soluble Powder
055–058	Ampicillin Trihydrate Boluses	Principlin Bolus
055–061	Ampicillin for Oral Suspension	Principlin 125
055–068	Cloxacillin Benzathine	Boviclox

Accordingly, the agency is amending the regulations in 21 CFR parts 520.90c(b), 520.90d(b), 520.90e(b), 520.90f(b) and 526.464b(c) to reflect the change of sponsor.

List of Subjects

21 CFR Part 520

Animal drugs.

21 CFR Part 526

Animal drugs.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs and redelegated to the Center for Veterinary Medicine, 21 CFR Parts 520 and 526 are amended as follows:

PART 520—ORAL DOSAGE FORM NEW ANIMAL DRUGS

1. Authority citation for 21 CFR part 520 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 520.90c [Amended]

2. Section 520.90c *Ampicillin trihydrate capsules* is amended in paragraph (b) by removing "053501" and adding in its place "055529".

§ 520.90d [Amended]

3. Section 520.90d *Ampicillin trihydrate for oral suspension* is amended in paragraph (b) by removing "053501" and adding in its place "055529".

§ 520.90e [Amended]

4. Section 520.90e *Ampicillin trihydrate soluble powder* is amended in paragraph (b) by removing "053501" and adding in its place "055529".

§ 520.90f [Amended]

5. Section 520.90f *Ampicillin trihydrate boluses* is amended in paragraph (b) by removing "053501" and adding in its place "055529".

PART 526—INTRAMAMMARY DOSAGE FORMS

6. The authority citation for 21 CFR part 526 continues to read as follows:

Authority: Sec. 512 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 360b).

§ 526.464b [Amended]

7. Section 526.464b *Cloxacillin benzathine for intramammary infusion, sterile* is amended in the introductory text of paragraph (c) by removing "53501" and adding in its place "055529".

Dated: November 12, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–28474 Filed 11–18–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

24 CFR Part 4

[Docket No. R–93–1491; FR–2805–F–04]

RIN 2501–AB02

Prohibition of Advance Disclosure of Funding Decisions; Amendments

AGENCY: Office of the Secretary, HUD.

ACTION: Final rule.

SUMMARY: This rule finalizes an interim rule to clarify certain of the non-disclosure requirements of section 103 of the Department of Housing and Urban Development Reform Act of 1989, and to further elaborate on the circumstances to which section 103 applies. The purpose of section 103 and the Department's regulations, which implement section 103 is to avoid unfair competition, by controlling the flow and timing of information concerning the competition.

EFFECTIVE DATE: December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Office of Ethics, room 2158, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone number (202) 708–3815 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Section 103 of the Department of Housing and Urban Development Reform Act (42 U.S.C. 3537a) (section 103) proscribes the communication of certain information by Department employees to persons not authorized to receive that information during the selection process for the award of assistance by the Department. The specific information with which section 103 is concerned is addressed in the Department's rule implementing section 103, codified at 24 CFR part 4. This information, referred to as "covered selection information" in part 4, is defined to mean "information: (1) That is required by statute, regulation, or order to be confidential; (2) that is contained in an application or request for assistance; and (3) that is otherwise used in arriving at the Secretary's decision to make assistance available, unless that information is generally available to the public." (See 24 CFR 4.5.) The objective of section 103, and 24 CFR part 4, is to preclude any person from receiving or obtaining information from the Department that would give an applicant an unfair advantage over other applicants who are competing for financial assistance.

In issuing the 24 CFR part 4 final rule published May 13, 1991 (56 FR 22088), the Department believed that the rule's provisions were sufficient to meet the objective of section 103 without inhibiting the exchange of information that serves the purpose of the individual HUD-funded program and the overall objective of the agency. However, during the Federal Fiscal Year 1991 funding cycle, questions about section

103 and the part 4 rule were raised that suggested that the language of part 4 could be misinterpreted to hinder HUD employees in providing or obtaining information necessary to the performance of their responsibilities during the selection process. Additionally, the Department's experience with implementation of certain provisions of part 4 revealed that some disclosures that were clearly intended to be prohibited by section 103 might be interpreted as being permitted. Accordingly, an interim rule was published on August 4, 1992 (57 FR 34246) to address these problems.

This interim rule amended 24 CFR part 4 to clarify that the non-disclosure provisions of section 103 apply to potential applicants for assistance before the deadline for submission of applications. The interim rule also amended 24 CFR part 4 to clarify that providing technical assistance to HUD employees, and obtaining technical assistance from HUD employees, during the selection process are legitimate program functions. Additionally, the August 4, 1992 interim rule addressed two instances when certain restrictions of 24 CFR part 4 do not apply. The first involves the situation in which there is no competitive distribution of funds. The second involves the situation in which there is no competitive advantage to be gained from a disclosure of designated information after a certain stage in the selection process.

Public comments were solicited on the August 4, 1992 interim rule. No comments were received by the expiration of the comment deadline on October 5, 1992. Accordingly, the Department adopts as its final rule and without changes, the interim rule published on August 4, 1992.

Other Matters

Environmental Impact

This rule is categorically excluded from the requirements of the National Environmental Policy Act of 1969 by 24 CFR 50.20(k) because it relates to internal administrative procedures whose content does not constitute a development decision nor affect the physical condition of project areas or building sites.

Executive Order 12866

This final rule was reviewed by the Office of Management and Budget as a significant regulatory action under Executive Order 12866.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and, in so doing, certifies that this rule will not have a significant economic impact on small entities. The focus of 24 CFR part 4, and of the amendments made to part 4 by this rule, is with the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD. Part 4 provides for the imposition of sanctions on HUD employees and applicants for HUD assistance determined to have engaged in prohibited conduct. These sanctions are not directed at small entities *per se*.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the Order. This rule is solely concerned with certain kinds of conduct by HUD employees and by applicants during the selection process for the award of financial assistance by HUD. No change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on States or their political subdivisions, or on their relationship with the Federal government, or on the distribution of power and responsibilities between them and other levels of government. The focus of 24 CFR part 4, and of the amendments made to part 4 by this rule, is with the regulation of certain conduct by HUD employees and by applicants for HUD assistance during the selection process for the award of financial assistance by HUD. The rule primarily will affect HUD employees.

Regulatory Agenda

This rule was listed as sequence number 1462 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56414) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

List of Subjects in 24 CFR Part 4

Administrative practice and procedure, Government employees, Grant programs—housing and community development, Investigations, Loan programs—housing and community development, Penalties, Reporting and recordkeeping requirements.

Accordingly, the Department adopts as final and without change, the interim rule published on August 4, 1992 (57 FR 34246) that amended 24 CFR part 4.

Dated: November 4, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–28386 Filed 11–18–93; 8:45 am]

BILLING CODE 4210-32-P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 208

[Docket No. R–93–1691; FR–3521–I–01]

RIN No. 2502–AG16

Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Interim and final rule.

SUMMARY: This rule requires owners of subsidized multifamily projects to submit certain data electronically to HUD in a HUD prescribed format. Electronic transmission is necessary because the manual submission of HUD forms has become a burden to project owners, managers and HUD.

The final rule portion applies to HUD-administered multifamily subsidized projects under the following programs: the Section 236 Interest Reduction and Rental Assistance Payments program, the Section 8 Housing Assistance Payments Program (except the Section 8 Existing Housing Program or the Moderate Rehabilitation Program), the Section 221(d)(3) Below Market Interest Rate Loan program, and the Section 101 Rent Supplement Payment program.

The interim rule portion applies to projects under the following programs: The Section 202 program (except section 202/8 projects), the Section 811 Supportive Housing for Persons with Disabilities program, and subsidized multifamily projects where State housing finance and development agencies and other Public Housing Agencies are the Contract Administrators.

DATES: Effective Date: This rule is effective May 20, 1994, except for § 208.108(b) which is not effective until March 21, 1994; and § 208.108 (c) and (d) which will become effective only as provided by subsequent Notice published in the **Federal Register.**

Comment due date for the interim portion of the rule (§§ 208.108(c) and 208.108(d)): January 18, 1994.

ADDRESSES: Comments on the interim portion of this rule may be submitted to the Rules Docket Clerk, Office of General Counsel, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Late filed comments will be considered to the extent practicable. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: James J. Tahash, Director, Planning and Procedures Division, Office of Multifamily Housing Management, room 6182, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708–3944. Hearing or speech-impaired individuals may call HUD's TDD number (202) 708–4594. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Burden

The information collection requirements contained in this rule have been submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

The public reporting burden for the collection of information requirements contained in this rule is estimated to include the time for reviewing the instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Information on the estimated public reporting burden is provided under the Preamble heading, *Other Matters.* Send comments regarding this burden estimated or any other aspect of this collection of information, including suggestions for reducing this burden, to the Department of Housing and Urban Development, Rules Docket Clerk, 451 Seventh Street, SW., room 10276, Washington, DC 20410–0500; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Attention: Desk Officer for HUD, Washington, DC 20503.

II. Background

In 1983 and 1985, legislative changes were made that significantly changed and complicated tenant rent calculations. As a result, the Department published a proposed rule on June 6, 1988 (53 FR 20649), which would require owners of some HUD-administered multifamily subsidized projects to electronically submit the following forms: Form HUD–50059, Owner's Certification of Compliance with HUD's Tenant Eligibility and Rent Procedures; Form HUD–50059 Worksheets to Compute Tenant Payment/Rent; Form HUD–52670, Housing Owner's Certification and Application for Housing Assistance Payments; and Form HUD–52670A Part 1, Schedule of Tenant Assistance Payments Due.

These HUD forms have been updated since 1988, and in some cases the information collected in a form has been moved to a new form. Although the information collected has not changed, the HUD form numbers and titles have changed. Accordingly, in this rule, the list of forms covered in this rule also includes: HUD–52670A Part 2, Schedule of Section 8 Special Claims; and HUD–52671A through D, Section 8 Special Claims for Unpaid Rent/Damages, Vacancies During Rent-Up, Regular Vacancies, and Debt Service.

The programs covered in the proposed rule published in June 1988, and in the final portion of today's rule are HUD administered multifamily subsidized projects under: the section 236 Interest Reduction and Rental Assistance Payments Program; the section 8 Housing Assistance Payments Programs, including, but not limited to, section 8 Housing Assistance Payments Program for New Construction (24 CFR part 880), section 8 Housing Assistance Payments Program for Substantial Rehabilitation (24 CFR part 881), section 8 Housing Assistance Payments Program, New Construction Set-Aside for section 515 Rural Rental Housing Projects (24 CFR part 884), Loans for Housing for the Elderly or Handicapped (24 CFR part 885), and section 8 Loan Management and Property Disposition Set-aside program (24 CFR part 886); the section 221(d)(3) Below Market Interest Rate program; and the section 101 Rent Supplement program.

In the proposed rule, the listing of section 8 Housing Assistance Payments Programs did not include the section 8 Housing Assistance Payments Program for New Construction (24 CFR part 880), the section 8 Housing Assistance Payments Program for Substantial Rehabilitation (24 CFR part 881), the section 8 Housing Assistance Payments Program—New Construction Set-Aside for section 515 Rural Rental Housing Projects (24 CFR part 884), and the section 8 Loan Management and Property Disposition Set-aside (24 CFR part 886). The list was not intended to be an exhaustive listing of all section 8 Housing Assistance Payments Programs; however, for clarification, in this rule the list is expanded to specifically reference these programs.

As stated in the proposed rule, this rule changes the way in which the data is transmitted to HUD from a paper mode to an electronic mode. Electronic transmission and processing are necessary because these HUD forms have become a burden both to the project owners and managers, and HUD. Owners and managers have the time consuming task of completing the calculations and computations which are prone to error, and when errors are found by HUD, retroactive changes and subsidy adjustments are required. The burden to HUD results from insufficient HUD staff to perform the time consuming task of reviewing 100 percent of the forms in a timely manner to verify the accuracy and completeness of the information.

One of the primary concerns to HUD and the project owner and manager is the accuracy of the rent computations and the subsidy billings. To address these concerns, several years ago the Department began to develop a computer system to collect all rental assistance data and ensure the accuracy of subsidy payments. This system serves as the basis for the Department's electronic data transmission requirements in lieu of hard copy. The resulting system is called the "Tenant Rental Assistance Certification System," or TRACS.

In June of 1992, the Department implemented a pilot program involving two management agents. In this pilot program the Department began the data collection portion of TRACS. The Department extended the pilot program to project owners and management agents in Region III (Philadelphia) in November of 1992, and Region VIII (Denver) in December of 1992. By July of 1993, the Department extended the pilot program to the remaining regions:

Region IV (Atlanta), Region VI (Fort Worth), Region V (Chicago), Region VII (Kansas City), Region II (New York), Region I (Boston), Region X (Seattle), and Region IX (San Francisco).

In the pilot program, the Department encouraged program participants to begin transmitting data electronically to HUD. Participants in the pilot program in Regions III and VIII were given the option of either sending copies of the certifications to HUD for data entry, or electronically submitting the data. Participants in the remaining regions electronically submit the necessary data. Each program participant continues to submit and correct the changed certifications and recertifications on a monthly basis and builds an accurate database for each project over a one-year timetable. The time spent by participants in initiating electronic transmission and making corrections to the data submissions is offset by future savings in the recertification process and monthly subsidy billings, as well as increased accuracy and speed associated with the certification and recertification process, and the reduced number of HUD adjustments and paperwork required by these adjustments. The Department believes that the implementation of the pilot program on a staged basis prior to this rule will help ensure the development of an orderly, timely and effective national database.

A. Final Rule

In the final portion of this rule, owners and agents covered by the proposed rule who currently use automated software packages to process certifications and recertifications and provide subsidy billings to HUD are required to update their software packages and begin electronic transmission of that information by March 21, 1994. It is important for owners and agents in this group (i.e. those who are already automated) to note that while some software packages currently print on the appropriate HUD forms or facsimiles, these software packages may not allow an electronic transmission in accordance with HUD specifications. An electronic transmission consists of information from those forms which is organized into various categories or actions and transmitted in an ASCII fixed format (not field delimited). These fixed format ASCII files will deliver the data with the field lengths as specified by HUD in a user's guide which has already been provided to each project.

Nonautomated owners and agents (i.e., those who currently prepare the certification, recertification, and subsidy billing manually) should immediately begin to obtain information on the cost of purchasing hardware or software, or both, to determine whether it is financially feasible to purchase these items or whether these project owners and managers should contract out the electronic transmission of certifications, recertifications and subsidy billings to another entity. These owners and agents must: complete the search and either purchase the necessary hardware or software, or sign service contracts, complete their data loading, and begin electronic transmission by May 20, 1994.

Owners and agents subject to the final portion of this rule may voluntarily participate after December 20, 1993 if they so desire. The Department encourages program participants to begin electronic transmission as soon as the capability exists. An earlier transmission will allow time for owners of these projects to correct errors found during the data load into the automated software. These corrections will help minimize the number of errors found when formerly manual certifications enter the Department's TRACS system, as well as help minimize an initial surge of certifications into the TRACS system itself from the number of currently nonautomated projects.

While owners of section 221(d)(3) BMIR projects have not been required to submit a form HUD 50059 for a number of years, this final rule requires those owners to submit an automated form HUD 50059 for all tenants. This final rule implements similar changes for the section 236 program as well. Currently, owners of section 236 projects submit the form HUD 50059 for all tenants receiving assistance payments (i.e., section 8, Rent Supplement, and Rental Assistance Payments). Owners of these projects submit the form HUD 50059 for tenants who do not receive section 8, Rent Supplement, or RAP (i.e., those who pay less than market rent) only if required by the HUD field office or the contract administrator. This final rule requires owners of section 236 projects to submit the form HUD 50059 for tenants paying less than market rent as well as tenants paying an assisted rent under section 8, Rent Supplement or RAP.

Finally, in addition to electronically submitting data to HUD following the effective date of the rule, owners and agents are required by this final rule to electronically transmit tenant data for the 12 months preceding the effective date of the rule. (See paragraph H under "other matters" for the justification for this retroactive implementation.)

B. Interim Rule

The interim portion of this rule applies to all remaining subsidized section 202 projects, which include: Section 202 projects with rent supplement or loan management set aside, section 202 projects with section 162 assistance, and section 202 Supportive Housing for the Elderly. In the case of partially assisted section 202 projects, owners are required to electronically transmit data only for those units receiving Rent Supplement or section 8.

The interim rule also applies to section 811 Supportive Housing for Persons with Disabilities projects, and subsidized multifamily projects where State housing finance and development agencies and other Public Housing Agencies are the Contract Administrators.

The programs covered by the interim portion of this rule are added to this rule today since they are now included in HUD's TRACS system. However, the Department has suspended the effective date of the interim portion of the rule to give these previously uncovered groups enough time to prepare for automation. The Department will in the near future publish a Notice of Effective Date in the **Federal Register** to establish a date for electronic transmission by groups covered by the interim portion of this rule. This effective date will not be before May 20, 1994. However, owners, management agents and contract administrators subject to the interim rule may voluntarily participate after December 20, 1993 if they so desire, and the Department encourages early program participation. An earlier transmission will allow time for these projects to correct errors found during the data load into the automated software. These corrections will help minimize the number of errors found when these groups are later required to begin electronic transmission, as well as help minimize an initial surge of certifications into the TRACS system itself from the number of currently nonautomated projects.

As with the final rule, groups subject to the interim portion of the rule will also be required to transmit tenant data for the 12 months preceding the effective date of the interim rule. (See paragraph H under "other matters" for the justification for this retroactive implementation.)

The Department is seeking comments for the interim portion of today's rule. The Department is particularly interested in comments from contract administrators (State housing finance and development agencies and other

Public Housing Agencies), and will carefully consider these comments in developing the final rule.

Finally, the phasing in of the various categories of project owners in this rule is accomplished by establishing different categories in § 208.104 (entitled "Applicability") and § 208.108 (entitled "Requirements"). When the interim portion of this rule is published as a final rule, the Department will eliminate the categories in §§ 208.104 and 208.108 since they will no longer be necessary or useful.

III. Discussion of Public Comments From Proposed Rule

The Department received 65 public comments and one comment from a HUD Field Office on the proposed rule. The commenters included: the Farmers Home Administration of the Department of Agriculture, information system companies, an association of HUD management agents, a national leased housing association, a State association of homes and services for the aging, and numerous management companies. Most commentators were favorable to the rule, although many expressed concern with some aspect of the rule. As a result of these comments, the Department has made some revisions to the proposed rule which are incorporated in this interim and final rule. The following discussion summarizes the comments and provides HUD's responses to those comments. Every comment was reviewed and considered, although it may not be specifically addressed in this preamble.

A. Timeframe

A large number of commentators asserted that six months was not a reasonable timeframe to enable them to purchase the necessary equipment, have their staff properly trained, and correct the problems that arise with any new computer system. These commentators suggested that HUD extend the timeframe for implementation from a period of 12 to 18 months, with 12 months to test the system and reduce or eliminate errors, and an additional 6 months for full implementation.

The Department has carefully considered these comments, and has decided to give owners who are currently automated four months to update the software, and begin electronic transmission. For project owners who are not currently automated, the rule provides for six months to prepare for electronic transmission. Since 1988 many project owners have acquired computers and become automated. As result of the pilot program and discussions with the industry over the ensuing years since publication of the proposed rule, many project owners are already prepared for electronic transmission. Moreover, the Department is aware of at least four computer vendors with completed software packages designed for electronic transmission of the required data to HUD. While a longer timeframe may have been appropriate five years ago, today it is no longer appropriate.

B. Costs Attributable to This Electronic System

Several commentators criticized the Department's limitation on the costs of automating the electronic transmission of data, including the cost of purchasing and maintaining computer hardware or software, or both, or the cost of contracting for such services, to front line activities of certification, recertification and subsidy billings. This regulation encompasses only certification, recertification and subsidy billings, and, therefore, can only authorize costs for those functions. However, good business practices dictate that Field Offices will authorize other computer costs on a case-by-case basis when processing future rent increase requests.

C. Cost Effectiveness

In response to public comments questioning the point at which automation/electronic transmission is not cost effective, the Department has reconsidered and changed the manner in which we will determine cost effectiveness. The Department anticipates that the large number of vendors competing in the marketplace will cause the cost of automation/electronic transmission to be reasonable, and a greater number of owners will therefore be able to purchase and maintain their own equipment at each project site. However, the decision to purchase and maintain the necessary equipment and services at each project site, or at a central location, or to contract for the automation/electronic transmission function, will only be made by each project owner.

The Department will not establish a formula for owners to follow in their deliberations of choosing between contracting out for automation/electronic transmission versus purchasing hardware and software for automation/electronic transmission.

D. Exemptions to Computer Automation

The proposed rule sought comments on the advisability of granting exceptions to the rule's applicability where a project owner could show it was not cost effective to automate and electronically transmit the required data to HUD. Many commentators recommended that the Department exempt small project owners. The commentators varied on what would be considered a small project owner, with some suggesting fewer than 100 units, some suggesting fewer than 50 units, and some suggesting fewer than 25 units.

The Department has decided not to provide any exemption in the regulations. One of the commentators to the proposed rule stated that based upon its experience, there is no conceivable situation where automation through a service organization is not cost effective, even for smaller projects. For smaller projects and partially assisted projects with few subsidized units, there are several organizations nationwide that prepare the HUD paperwork for many projects on a monthly basis for a per unit fee. These organizations, like software vendors, are completing their system updates to comply with the Department's electronic transmission criteria. Additionally, local management agents, local management associations and management agents with centralized facilities have indicated a desire to act as service organizations for smaller projects and partially assisted projects in their locale. Finally, since 1988, the price of computer hardware has dropped dramatically, making it possible even for smaller project owners and partially assisted project owners to afford computers.

One of HUD's objectives with this rule is to improve overall project management. Another goal of this rule is to assist the Department in maintaining accurate records of all outstanding HUD assistance obligations for future appropriation requests from Congress. These goals cannot be met if the Department exempts smaller project owners.

While the Department would prefer each project to obtain its own hardware and software, owners may elect either to contract out or centralize the electronic transmission function. However, when owners and managers of smaller or partially assisted projects contract out the electronic transmission function, or when owners of multiple projects centralize the transmission function, they are required to continue to retain the ability to monitor the day-to-day operations of the project at the project site and be able to demonstrate that ability to the relevant HUD Field Office.

E. Form of Data Transmittal

Many commentators criticized the proposed rule for requiring transmission

on a 5¼ inch floppy disk. The commentators suggested that the Department accept other forms of data transmittal, including the use of magnetic tape, modems and 3½ inch disks. The Department agrees with these commentators. The Department is now capable of accepting electronic transmission through several media. Actual electronic transmission may be in one of several media types: the electronic network via modem, 5¼ inch or 3½ inch floppy disks, or magnetic tape.

F. Nonconforming Software

Some commentators complained that they had spent considerable amounts of time, money, and effort developing automated programs that do not currently meet the HUD electronic transmission format specifications. The Department cannot tailor its electronic data specifications to the individual needs of project owners and management companies. These programs must be adapted to comply with the HUD electronic transmission format specifications. Owners can design one or more system interfaces, purchase existing software or reprogram their existing systems to comply with the HUD electronic transmission format specifications.

G. Sources of Funds

Many respondents requested the ability to cost out these expenses through releases from the Replacement Reserve Account, as a project expense to be paid out of project income, or as an expense to be reflected in the annual financial statement and ultimately part of a rent increase.

These respondents have legitimate concerns which have been carefully considered by the Department. In response to these concerns, the Department has determined that these expenses may be borne out of project operating costs and paid out of project income, part of a rent increase, released as a loan from the Replacement Reserve Account, or released from the Residual Receipts Account. Should the Replacement Reserve Account become the project's main source of funds in purchasing the hardware or software, or both, these funds are expected to be repaid within a five year period. (See 208.112 (c) and (d)).

H. Miscellaneous

A series of other comments concerned issues such as logistics, potential owner/manager staffing problems, cooperation between owners, managers and vendors, and procedures for granting extensions or waivers. Where it is appropriate, such issues will be discussed in training sessions, or through written instructions in the form of notices or handbook revisions.

I. Withdrawal of the Use of the Term "HUD Approved Vendor"

Due to the significant legislative changes which complicated the tenant rent computations in 1983 and 1985, the Department established procedures for approving systems which automated rent computations and billings and allowed automation costs as eligible project expenses. Because the Department has revised the manner in which the data requirements are transmitted to HUD by owners from a paper mode to an electronic transmission, we are withdrawing the use of the term "HUD approved vendor". That terminology applied to those software vendors who submitted software packages for HUD review of the accuracy and compliance with HUD standards under testing standards in 1983 or 1985. That approval process is no longer in effect. Therefore, the term "HUD Approved Vendor" is no longer authorized.

III. Other Matters

A. Executive Order 12866

This rule was reviewed by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993. Any changes made in this rule subsequent to its submission to OMB are identified in the docket file, which is available for public inspection as provided under the section of this preamble entitled "Addresses."

B. Environmental Impact

In accordance with 40 CFR 1508.4 of the regulations of the Council on Environmental Quality and 24 CFR 50.20(k) of the HUD regulations, the policies and procedures contained in this rule relate only to HUD administrative procedures and, therefore, are categorically excluded from the requirements of the National Environmental Policy Act.

C. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive Order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, this rule is directed to owners of multifamily housing projects, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

D. Executive Order 12606, the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

E. Regulatory Flexibility Act

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)) has reviewed and approved this rule, and in so doing certifies that this rule will not have a significant economic impact on a substantial number of small entities. Because this rule changes the way in which the data is transmitted to HUD, and all costs associated with implementation of the electronic transmission will be considered project operating costs, the rule is not expected to have a significant economic impact.

F. Regulatory Agenda

This rule was not listed in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402) under Executive Order 12866 and the Regulatory Flexibility Act, and therefore was submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

G. Justification for Interim Rulemaking

In general, the Department publishes a rule for public comment before issuing a rule for effect, in accordance with its own regulations on rulemaking, 24 CFR part 10. However, part 10 does provide for exceptions from that general rule where the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is "impracticable, unnecessary, or contrary to the public interest." (24 CFR 10.1) The Department finds that good cause exists to publish

the interim portion of this rule for effect without first soliciting public comment, in that prior public procedure is contrary to public interest because the Department needs a computer tracking system to accurately determine the amount of appropriations necessary to satisfy outstanding federal housing obligations.

H. Justification for Retroactivity

The Department has several compelling reasons to require owners to submit tenant data for the 12 months preceding the effective date of this rule. Collecting tenant data electronically for the 12 months preceding the effective date of the rule will allow the Department to provide Congress with accurate budget estimates, and will allow the Department to accurately forecast its contract needs, thus eliminating the possibility in the future of having to request large increases in amendment money. Under the present manual system, the Department cannot accurately project these needs and, therefore, must rely on sizable, unpredictable amendments to contracts.

The retroactive requirement will also allow field offices to redirect their limited resources through Headquarters' determinations of amendment needs. The Department currently determines its amendment needs each year by requesting field offices to analyze and justify their individual needs. When TRACS is fully operational, it will provide for electronic transfer of tenant data and billing information to Headquarters, and identify amendment needs, thus eliminating this staff intensive analysis by field offices.

Finally, by collecting tenant data retroactively, the Department will be able to implement the cross-check of tenant incomes reported on the tenant certifications and recertifications with data kept by Federal and state agencies, and will be able to assure accurate payments to owners. Under the current system owners prepare vouchers which are manually reviewed by HUD. The HUD Inspector General has identified that some field offices, due to staffing shortages, either cannot perform these reviews or they perform them months after the billings are submitted. The automated system will assure accurate billings and will allow field offices to redirect their resources. This retroactive provision means that when this regulation becomes effective, TRACS will have full data capability, allowing the Department immediately to accurately project budget needs and fully monitor assistance payments. Without this retroactive implementation, these benefits of TRACS will not be fully realized until one year following the effective date of this rule.

I. Paperwork Reduction Act

The information collection requirements contained in section 208.108 in this rule have been submitted to the Office of Management and Budget under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520). In accordance with OMB regulations, the following chart is provided to describe the collection of information requirements.

Description	Number of respondents	Responses per respondent	Total annual response	Minutes per response	Hours per response	Total hours
Electronic transfer of information						
FY '93	2,106,118	1	2,106,118	55	0.916666	1,930,608
	65,138	1	65,138	65	1.083333	70,566
						2,001,174
FY '94	2,127,831	1	2,127,831	55	0.916666	1,950,512
	43,425	1	43,425	65	1.083333	47,043
						1,997,556
FY '95	2,149,543	1	2,149,543	55	0.916666	1,970,414
	21,713	1	21,713	65	1.083333	23,522
						1,997,556
FY '96	2,149,543	1	2,149,543	55	0.916666	1,970,414
	21,713	1	21,713	65	1.083333	23,522
						2,997,556

Average annual burden hours for FY 1993–1996 is: 2,003,634.

The total cost to the respondent based on an average of 2,003,634 annual hours at a manager's pay scale of $10.00 per hour (which includes labor and overhead) is estimated at $20,036,340.

List of Subjects in 24 CFR Part 208

Computer technology: automatic data processing, Data processing, Electronic data processing, Subsidies: grant programs, rent subsidies.

Accordingly, title 24, chapter II, of the Code of Federal Regulations is amended by adding a new part 208 to read as follows:

PART 208—ELECTRONIC TRANSMISSION OF REQUIRED DATA FOR CERTIFICATION AND RECERTIFICATION AND SUBSIDY BILLING PROCEDURES FOR MULTIFAMILY SUBSIDIZED PROJECTS

Sec.

208.101 Purpose.
208.104 Applicability.
208.108 Requirements.
208.112 Cost.

Authority: 12 U.S.C. 1701s, 1715l, 1715z–1; 42 U.S.C. 1437f and 3535(d).

§ 208.101 Purpose.

The purpose of this part is to require owners of subsidized multifamily projects to electronically submit certain data to HUD for the programs listed in § 208.104. This electronically submitted data is required by HUD Forms, Owner's Certification of Compliance with Tenant's Eligibility and Rent Procedure, Worksheets to Compute Tenant Payment/Rent (Form HUD–50059 and 50059 Worksheets), and the Monthly Subsidy Billing Forms, Housing Owner's Certification and Application for Housing Assistance Payments (HUD–52670), Schedule of Tenant Assistance Payments Due (HUD–52670A, Part 1), Schedule of section 8 Special Claims (HUD–52670A, Part 2), and Special Claims Worksheets, HUD–52671 A through D), as applicable.

§ 208.104 Applicability.

(a) This part applies to HUD administered subsidized multifamily projects, either insured or non-insured, under:

(1) The section 236 Interest Reduction and Rental Assistance Payments program;

(2) The section 8 Housing Assistance Payments Programs, including, but not limited to, section 8 Housing Assistance Payments Programs for New Construction (24 CFR part 880), section 8 Housing Assistance Payments Program for Substantial Rehabilitation (24 CFR part 881), section 8 Housing Assistance Payments Program, New Construction Set-Aside for section 515 Rural Rental Housing Projects (24 CFR part 884); Loans for Housing for the Elderly or Handicapped (24 CFR part 885) and section 8 Loan Management and Property Disposition Set-aside program (24 CFR part 886);

(3) The section 221(d)(3) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance program (24 CFR part 221); and

(4) The section 101 Rent Supplement program (24 CFR part 215).

(b) This part applies to those multifamily projects having subsidy contracts, either insured or non-insured, where State housing finance and development agencies and other Public Housing Agencies are the subsidy contract administrator under:

(1) The section 236 Interest Reduction and Rental Assistance Payments program (24 CFR part 236);

(2) The section 8 Housing Assistance Payments Programs, including, but not limited to, section 8 Housing Assistance Payments Program for New Construction (24 CFR part 880), section 8 Housing Assistance Payments Program for Substantial Rehabilitation (24 CFR part 881), and section 8 Housing Assistance Payments Program, New Construction Set-Aside for section 515 Rural Rental Housing Projects (24 CFR part 884);

(3) The section 221(d)(3) Below Market Interest Rate Housing for Low and Moderate Income Mortgage Insurance Program (24 CFR part 221); and

(4) The section 101 Rent Supplement program (24 CFR part 215).

(c) This part applies to all other subsidized section 202 projects, which include: section 202 projects with rent supplement or loan management set aside, section 202 projects with section 162 assistance, and section 202 Supportive Housing for the Elderly. This part also applies to section 811 Supportive Housing for Persons With Disabilities.

(d) This part does not apply to the section 8 Existing Housing Program or the Moderate Rehabilitation program.

§ 208.108 Requirements.

(a) Project owners of applicable projects under § 208.104(a) who currently use an automated software package to process certifications and recertifications and to provide subsidy billings to HUD must update their software packages and begin electronic transmission of that data in a HUD specified format by March 21, 1994. These project owners are required to transmit data collected for the 12 months preceding March 21, 1994, as well as data collected on or after this date.

(b) Nonautomated project owners and agents (those owners and agents that currently prepare the certification, recertification, and subsidy billing forms manually) of applicable projects under § 208.104(a) must:

(1) Complete the search and either obtain the necessary hardware or software, or sign service contracts;

(2) Complete their data loading; and

(3) Begin electronic transmission by May 20, 1994. These project owners are required to transmit data collected for the 12 months preceding May 20, 1994, as well as data collected on or after this date.

(c) Project owners of applicable projects under § 208.104(b) must electronically transmit data for certification, recertification and subsidy billing procedures in a HUD specified format to the contract administrator. State housing finance and development agencies and Public Housing Agencies that serve as the subsidy contract administrator must accept the electronic transmission of the HUD forms listed below in § 208.108(e) from the projects they administer, and electronically transmit that data to HUD in a HUD specified format. These project owners are required to transmit data collected for the 12 months preceding the effective date of the rule, as well as data collected on or after the effective date of the rule.

(d) Project owners of applicable projects under § 208.104(c) must electronically transmit data for certification, recertification and subsidy billing procedures to HUD in a HUD specified format. In the case of partially assisted section 202 projects, owners are required to electronically transmit data only for subsidized units. These project owners are required to transmit data collected for the 12 months preceding the effective date of the rule, as well as data collected on or after the effective date of the rule.

(e) Electronic transmission consists of data transmitted from the HUD–50059, 50059 worksheets, 52670 and 52670A, Parts 1 and 2 and 52671 A through D correctly formatted in accord with the HUD data requirements and in lieu of the hard copy forms.

§ 208.112 Cost.

(a) The costs of the electronic transmission of the correctly formatted data, including either the purchase and maintenance of computer hardware or software, or both, the cost of contracting for those services, or the cost of centralizing the electronic transmission function, shall be considered project operating costs to be paid from project income, and considered project operating costs for the purpose of processing and approving requests for HUD approval of rent increases.

(b) At the owner's option, the cost of the computer software may include service contracts to provide maintenance or training, or both. Regardless of whether an owner obtains service contracts to provide maintenance or training or both, the software must be updated to incorporate changes or revisions in legislation, regulations, handbooks, notices or HUD electronic transmission data format requirements.

(c) The source of funds for the purchase of hardware or software, or contracting for services for electronic transmission, may include current project operating income; an expense item in processing rent increases; a loan from the Reserve for Replacement Account, or a release from the Residual Receipts Account.

(d) A loan from the Reserve for Replacements Account must be repaid within a five year period from the release date.

(e) Owners of smaller projects or partially assisted projects with few subsidized units that determine that the purchase of hardware and/or software is not cost effective may contract out the electronic data transmission function to organizations that provide such services, including, but not limited to the following organizations: local management agents, local management associations and management agents with centralized facilities. Owners of multiple projects may centralize the electronic transmission function. However, owners that contract out or centralize the electronic transmission function are required to retain the ability to monitor the day-to-day operations of the project at the project

site and be able to demonstrate that ability to the relevant HUD field office.

Dated: November 12, 1993.

Nicolas Retsinas,

Assistant Secretary for Housing—Federal Housing Commissioner.

[FR Doc. 93–28388 Filed 11–18–93; 8:45 am]

BILLING CODE 4210–27–M

Office of the Secretary

24 CFR Parts 770, 882, 889, 890, 941

Determination of Areas of Undue Concentration of Poverty-Level Population; and Conforming Amendments

CFR Correction

In Title 24 of the Code of Federal Regulations, parts 700 to 1699, revised as of April 1, 1993, the following corrections should be made:

1. On pages 36 through 39 part 770 is removed.

2. On page 259, in § 882.404, paragraph (b)(3) was incorrectly printed and should read as follows:

§ 882.404 Housing quality standards.

* * * * *

(b) * * *

(3) Promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

* * * * *

3. On page 285, in § 882.708, paragraph (d) was incorrectly printed and should read as follows:

§ 882.708 New construction: Site and neighborhood standards.

* * * * *

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of lower income persons.

* * * * *

4. On page 547, in § 889.230, paragraph (f) is removed.

5. On page 574, in § 890.230, paragraph (h) is removed.

6. On page 917, in § 941.202, paragraph (d) was incorrectly printed and should read as follows:

§ 941.202 Site and neighborhood standards.

* * * * *

(d) The site must promote greater choice of housing opportunities and avoid undue concentration of assisted persons in areas containing a high proportion of low-income persons.

* * * * *

BILLING CODE 1505–01–D

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 154

Department of Defense Personnel Security Program Regulation

AGENCY: Office of the Secretary, DoD.

ACTION: Final rule.

SUMMARY: This document updates policy and procedural changes concerning Department of Defense Personnel Security Program Regulation (DoD 5200.2–R). These changes implement recommendations of a recent General Accounting Office study entitled "Security Clearances: Due Process for Denials and Revocations by Defense, Energy, and State," dated May 6, 1992. Significant changes pertain to written notification and prompt resolution of suspension actions, assistance in obtaining investigative files, entering clearance determinations into the Defense Clearance and Investigations Index (DCII), retention of adjudicative rationales, entering "access" codes into the DCII, and a new report control symbol for management data.

EFFECTIVE DATE: July 14, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Peter R. Nelson, telephone 703–697–3969 or DSN 227–3969.

SUPPLEMENTARY INFORMATION: It has been certified that the regulatory action is not subject to Executive Order 12866, "Regulatory Planning and Review", because the regulatory action does not: (1) Have an annual effect on the economy of $100 million or more or adversely in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety or State, local, or tribal governments or communities; (2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or (4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

It has been certified that the rule is not subject to Public Law 96–354, "Regulatory Flexibility Act", because the rule promulgates policy and procedural changes to DoD 5200.2–R. These changes implement recommendation of a recent General Accounting Office study entitled "Security Clearances: Due Process for Denials and Revocations by Defense, Energy, and State," dated May 6, 1992. Significant changes pertain to written notification and prompt resolution of suspension actions, assistance in obtaining investigative files, entering clearance determinations into the Defense Clearance and Investigations Index (DCII), retention of adjudicative rationales, entering "access" codes into the DCII, and a new report control symbol for management data.

It has been certified that the rule is not subject to Public Law 96–511, "Paperwork Reduction Act", because the rule does not impose any reporting or record keeping requirements under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501–3520).

List of Subjects in 32 CFR Part 154

Classified information, Government employees, Investigations, Security measures.

Accordingly, 32 CFR part 154 is amended to read as follows:

PART 154—[AMENDED]

1. The authority citation for part 154 is revised to read as follows:

Authority: E.O. 10450, 18 FR 2489, 3 CFR, 1949–1953 Comp., p. 936; E.O. 12356, 47 FR 14874 and 15557, 3 CFR, 1982 Comp., p. 166; E.O. 10865, 25 FR 1583, 3 CFR, 1959–1963 Comp., p. 398; E.O. 12333, 46 FR 59941, 3 CFR, 1981 Comp., p. 200.

2. Section 154.2 is amended by revising footnote 1 to read as follows:

§ 154.2 Applicability.

* * * * *

[1] Copies may be obtained, at cost, from the National Technical Information Service, 5285 Port Royal Road, Springfield, VA 22161.

* * * * *

2a. Section 154.3 is amended as follows:

a. Paragraph (o) is removed and paragraphs "(p) through (ee)" are redesignated as "(o) through (dd)".

b. Paragraph (e) and newly redesignated paragraph (q) are revised.

c. Paragraph (f) is amended by revising "organization" to read "Chairman".

d. Paragraph (h) is amended by revising "Chairman," to read "Chairman of".

§ 154.3 Definitions.

* * * * *

(e) *Defense Clearance and Investigative Index (DCII).* The DCII is the single, automated, central DoD repository which identifies investigations conducted by DoD investigative agencies, and personnel security determinations made by DoD adjudicative authorities.

* * * * *

(q) *Periodic Reinvestigation (PR).* An investigation conducted every five years for the purpose of updating a previously completed background investigation, special background investigation, single scope background investigation or PR on persons occupying positions referred to in § 154.19. Investigative requirements are as prescribed in appendix A to part 154, section 5. The period of investigation will not normally exceed the most recent 5-year period.

3. Section 154.43 is revised to read as follows:

§ 154.43 Adjudicative record.

(a) Each adjudicative determinations, whether favorable or unfavorable, shall be entered into the Defense Clearance and Investigations Index (DCII) on a daily basis, but in no case to exceed 5 working days from the date of determination.

(b) The rationale underlying each unfavorable personnel security determination, to include the appeal process, and each favorable personnel security determination where the investigation or information upon which the determination was made included significant derogatory information of the type set forth in § 154.7 and appendix H to part 154, shall be maintained in written or automated form and is subject to the provisions of 32 CFR part 285 and 32 CFR part 310. This information shall be maintained for a minimum of 5 years from the date of determination.

4. Section 154.48 is amended as follows:

a. Paragraph (a) by revising "DSCI" to read "DCII".

b. Paragraph (b) by revising "12" to read "24" and after the word "months" add "and/or".

c. Paragraph (d) by revising "OJCS" to read "Chairman of the Joint Chiefs of Staff".

5. Section 154.49 is amended by revising paragraph (c) to read as follows:

§ 154.49 Granting access.

* * * * *

(c) The access level of cleared individuals will, wherever possible, be entered into the Defense Clearance and Investigations Index (DCII), along with clearance eligibility. However, completion of the DCII Access field is required effective October 1, 1993 in all instances where the adjudicator with a personnel security investigation. Agencies are encouraged to start completing this field as soon as possible.

6. Section 154.55 is amended by revising paragraph (c) and in paragraph (d) by revising "in no way" to read "not".

§ 154.55 Requirements.

* * * * *

(c) *Suspension.*

(1) The commander or head of the organization shall determine whether, on the basis of all facts available upon receipt of the initial derogatory information, it is in the interests of national security to continue subject's security status unchanged or to take interim action to suspend subject's access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), if information exists which raises serious questions as to the individual's ability to intent to protect classified information or execute sensitive duties (or other duties requiring a trustworthiness determination) until a final determination is made by the appropriate authority designated in appendix F to this part.

(2) Whenever a determination is made to suspend a security clearance for access to classified information or assignment to sensitive duties (or other duties requiring a trustworthiness determination), the individual concerned must be notified of the determination in writing by the commander, or head of the component or adjudicative authority, to include a brief statement of the reason(s) for the suspension action consistent with the interests of national security.

(3) Component field elements must promptly report all suspension actions to the appropriate central adjudicative authority, but not later than 10 working days from the date of the suspension action. The adjudicative authority will immediately update the DCII Eligibility and Access fields to alert all users to the individual's changed status.

(4) Every effect shall be made to resolve suspension cases as expeditiously as circumstances permit. Suspension cases exceeding 180 days shall be closely monitored and managed by the DoD Component concerned until finally resolved. Suspension cases pending in excess of 12 months will be reported to the DASD(CI&SCM) for review and appropriate action.

(5) A final security clearance eligibility determination shall be made for all suspension actions and the determination entered in the DCII. If, however, the individual under suspension leaves the jurisdiction of the Department of Defense and no longer requires a clearance (or trustworthiness determination), entry of the "Z" Code (adjudication action incomplete due to loss of jurisdiction) if the clearance eligibility field is appropriate. In no case shall a "suspension" code (Code Y) remain as a permanent record in the DCII.

(6) A clearance or access entry in the DCII shall not be suspended or downgraded based solely on the fact that a periodic reinvestigation was not conducted precisely within the 5 year time period for TOP SECRET/SCI or within the period prevailing for SECRET clearances under departmental policy. While every effort should be made to ensure that PRs are conducted within the prescribed time frame, agencies must be flexible in their administration of this aspect of the personnel security program so as not to undermine the ability of the Department of Defense to accomplish its mission.

7. Section 154.56(b)(1) is amended after the word "permit." by adding a new sentence to read as follows:

§ 154.56 Procedures.

* * * * *

(b) * * *

(1) * * * The statement will also provide the name and address of the agencies (agencies) to which the individual may write to obtain a copy of the investigative file(s) upon which the unfavorable administrative action is being taken. * * *

* * * * *

8. Section 156.60 is amended by revising paragraph (d)(2) as follows:

* * * * *

§ 154.60 Evaluating continued security eligibility.

* * * * *

(d) * * *

(2) Moreover, individuals having access to classified information must report promptly to their security office:

(i) Any form of contact, intentional or otherwise, with individuals of any nationality, whether within or outside the scope of the employee's official activities, in which:

(A) Illegal or unauthorized access is sought to classified or otherwise sensitive information.

(B) The employee is concerned that he or she may be the target of exploitation by a foreign entity.

(ii) Any information of the type referred to in § 154.7 or appendix H to this part.

* * * * *

9. Section 154.61 is amended as follows:

a. Paragraphs (b) (2) and (d) are revised.

b. Paragraph (e) (2) is amended by revising the word "assure" to read "ensure" and "Defense Central Index of Investigations" to read "Defense Clearance and Investigations Index".

§ 154.61 Security education.

* * * * *

(b) * * *

(2) If an individual declines to execute Standard Form 312, "Classified Information Nondisclosure Agreement" (replaced the Standard Form 189), the DoD Component shall initiate action to deny or revoke the security clearance of such person in accordance with § 154.56(b).

* * * * *

(d) Foreign travel briefing. While world events during the past several years have diminished the threat to our national security from traditional cold-war era foreign intelligence services, foreign intelligence service continue to pursue the unauthorized acquisition of classified or otherwise sensitive U.S. Government information, through the recruitment of U.S. Government employees with access to such information. Through security briefings and education, the Department of Defense continues to provide for the protection of information and technology considered vital to the national security interests from illegal or unauthorized acquisition by foreign intelligence services.

(1) DoD Components will establish appropriate internal procedures requiring all personnel possessing a DoD security clearance to report to their security office all contacts with individuals of any nationality, whether within or outside the scope of the employee's official activities, in which:

(i) Illegal or unauthorized access is sought to classified or otherwise sensitive information.

(ii) The employee is concerned that he or she may be the target of exploitation by a foreign entity.

(2) The DoD security manager, security specialist or other qualified individual will review and evaluate the reported information. Any facts or circumstances of a reported contact with a foreign national that appear to:

(i) Indicate an attempt or intention to obtain unauthorized access to proprietary, sensitive, or classified information or technology;

(ii) Offer a reasonable potential for such; or

(iii) Indicate the possibility of continued contact with the foreign national for such purposes, shall be promptly reported to the appropriate counterintelligence agency.

10. Section 154.76 is amended in paragraphs (a) and (c) by revising "Deputy Under Secretary of Defense for Policy" to read "Assistant Secretary of Defense for Command, Control, Communications, and Intelligence (ASD(C31))".

11. Section 154.77 is revised to read as follows:

§ 154.77 Reporting requirements.

(a) The OASD(C31) shall be provided personnel security program management data by the Defense Data Manpower Center (DMDC) by December 31 each year for the preceding fiscal year. To facilitate accurate preparation of this report, all adjudicative determinations must be entered into the DC11 by all DoD central adjudication facilities no later than the end of the fiscal year. The information required below is essential for basic personnel security program management and in responding to requests from the Secretary of Defense and Congress. The report shall cover the preceding fiscal year, broken out by clearance category, according to military (officer or enlisted), civilian or contractor status and by the central adjudication facility that took the action, using the enclosed format:

(1) Number of Top Secret, Secret, and Confidential clearances issued;

(2) Number of Top Secret, Secret, and Confidential clearances denied;

(3) Number of Top Secret, Secret, and Confidential clearances revoked;

(4) Number of SCI access determinations issued;

(5) Number of SCI access determinations denied;

(6) Number of SCI access determinations revoked; and

(7) Total number of personnel holding a clearance for Top Secret, Secret, Confidential and Sensitive Compartmented Information as of the end of the fiscal year.

(b) The Defense Investigative Service (DIS) shall provide the OASD(C3I) a quarterly report that reflects investigative cases opened and closed during the most recent quarter, by case category type, and by major requester. The information provided by DIS is essential for evaluating statistical data regarding investigative workload and the manpower required to perform personnel security investigations. Case category types include National Agency Checks (NACs); Expanded NACs; Single Scope Background Investigations (SSBIs), Periodic Reinvestigations (PRs); Secret Periodic Reinvestigations (SPRs); Post Adjudicative (PA); Special Investigative Inquiries (SIIs); and Limited Inquiries (LIs). This report shall be forwarded to OASD(C3I) within 45 days after the end of each quarter.

(c) The reporting requirement for DMDC and DIS has been assigned Report Control Symbol DD–C3I(A) 1749.

12. Appendix A to part 154 is amended as follows:

a. Section 5.a. is revised.

b. Paragraph "5.b.(8)" is redesignated as "5.b.(10)".

c. New paragraphs b.(8) and b.(9) are added.

Appendix A to Part 154—[Amended]

* * * * *

5. * * *

a. Each DoD military, civilian, consultant and contractor employee (to include non-U.S. citizens (foreign nationals and/or immigrant aliens) holding a limited access authorization) occupying a critical sensitive position, possessing a TOP SECRET clearance, or occupying a special access program position shall be the subject of a PR initiated 5 years from the date of completion of the last investigation. The PR shall cover the period of the last 5 years.

b. * * *

(8) *Neighborhood Investigation.* Conduct a neighborhood investigation to verify subjects' current residence in the United States. Two neighbors who can verify subject's period of residence in that area and who are sufficiently acquainted to comment on the subject's suitability for a position of trust will be interviewed. Neighborhood investigations will be expanded beyond the current residence when unfavorable information arises.

(9) *Ex-spouse interview.* If the subject of investigation is divorced, the ex-spouse will be interviewed when the date of final divorce action is within the period of investigation.

13. Appendix D to part 154, section 3 is amended by revising the words "designated country (Appendix G)" to read "foreign country or foreign intelligence service".

14. Appendix G is removed and reserved.

15. Appendix H to part 154, "Foreign Connections/Vulnerability To Blackmail or Coercion," section 3 introductory text is amended by revising "or in a country designated hostile to the United States (See appendix G)" to read "foreign intelligence services."

Dated: November 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–28437 Filed 11–18–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

32 CFR Part 505

[Department of the Army Pamphlet 25–51]

Army Privacy Program; Correction

AGENCY: Department of the Army, DOD.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to the final rule which was published on July 27, 1992 (57 FR 33125). The final rule related to changing the system identifiers in accordance with the Modern Army Recordkeeping System (MARKS).

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. William Walker at (703) 697–1276.

SUPPLEMENTARY INFORMATION: Executive Order 12866. The Director, Administration and Management, Office of the Secretary of Defense has determined that this Privacy Act rule for the Department of Defense does not constitute 'significant regulatory action'. Analysis of the rule indicates that it does not have an annual effect on the economy of $100 million or more; does not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; does not materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; does not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866 (1993).

Regulatory Flexibility Act of 1980. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense does not have significant economic impact on a substantial number of small entities because it is concerned only with the administration of Privacy Act systems of records within the Department of Defense.

Paperwork Reduction Act. The Director, Administration and Management, Office of the Secretary of Defense certifies that this Privacy Act rule for the Department of Defense imposes no information requirements beyond the Department of Defense and that the information collected within the Department of Defense is necessary and consistent with 5 U.S.C. 552a, known as the Privacy Act of 1974.

List of Subjects in 32 CFR Part 505

Privacy.

Accordingly, 32 CFR part 505 is corrected by making the following correcting amendments:

1. The authority citation for 32 CFR part 505 continues to read as follows:

Authority: Pub. L. 93–579, 88 Stat 1896 (5 U.S.C. 552a).

2. Section 505.5(e) is amended by revising the following introductory paragraphs: a.; b.; c.; d.; e.; f.; g.; h.; i.; k.; l.; m.; n.; o.; p.; q.; r.; t.; u.; w.; x.; y.; z.; aa.; ab.; ac.; ad.; ae.; af.; ag.; ah.; ai.; aj.; and ak.

§ 505.5 Exemptions.

* * * * *

(e) * * *

a. System identifier: A0020–1aSAIG.

* * * * *

b. System identifier: A0020–1bSAIG.

* * * * *

c. System identifier: A0025–55SAIS.

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d. System identifier: A0027–1DAJA.

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e. System identifier: A0027–10aDAJA.

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f. System identifier: A0027–10bDAJA.

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g. System identifier: A0190–5DAMO.

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h. System identifier: A0190–9DAMO.

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i. System identifier: A0190–14DAMO.

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k. System identifier: A0190–30DAMO.

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l. System identifier: A0190–40DAMO.

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m. System identifier: A0190–45DAMO.

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n. System identifier: A0190–47DAMO.

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o. System identifier: A0195–2USACIDC.

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p. System identifier: A0195–2aUSACIDC.

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q. System identifier: A0195b6USACIDC.

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r. System identifier: A0210–7DAMO.

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t. System identifier: A0340JDMSS.

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u. System identifier: A0340–21SAIS.

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w. System identifier: A0350–37TRADOC.

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x. System identifier: A0351–12DAPE.

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y. System identifier: A0351–17aTAPC–USMA.

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z. System identifier: A0351–17bTAPC–USMA.

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aa. System identifier: A0380–13DAMO.

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ab. System identifier: A0380–67DAMI.

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ac. System identifier: A0381–45aDAMI.

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ad. System identifier: A0381–45bDAMI.

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ae. System identifier: A0381–45cDAMI.

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af. System identifier: A0381–100aDAMI.

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ag. System identifier: A0381–100bDAMI.

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ah. System identifier: A0601–141DASG.

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ai. System identifier: A0601–210aUSAREC.

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aj. System identifier: A0601–222USMEPCOM.

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ak. System identifier: A0608–18DASG.

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Dated: November 12, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–28445 Filed 11–18–93; 8:45 am]

BILLING CODE 5000–04–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 55

[FRL–4803–3]

Outer Continental Shelf Air Regulations; Denial of Petition for Reconsideration of Corresponding Onshore Area Designation

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule: Petition for reconsideration.

SUMMARY: This action announces that EPA is denying a petition for reconsideration under provisions of the Clean Air Act ("the Act"), administrative procedures and judicial review related to rulemaking. This action concerns the corresponding onshore area ("COA") designation for the Chevron platform named "Grace" (hereafter referred to as platform Grace), which was established in the Outer Continental Shelf ("OCS") regulations promulgated on September 4, 1992. The COA for this platform is currently the Ventura County Air Pollution Control District ("Ventura County APCD"). The Petition for Reconsideration was filed by the Santa Barbara County Air Pollution Control District ("Santa Barbara County APCD") on February 19, 1993. EPA is denying this petition because it does not meet the standard for reconsideration set forth in the Act. The intended effect of this notice is to designate a COA for platform Grace so that the source can comply with the OCS air regulations by the September 4, 1994 compliance date.

EFFECTIVE DATE: November 19, 1993.

ADDRESSES: Material relevant to the COA designation for the OCS platform listed above can be found in EPA docket A–91–76. This docket is available for public inspection and copying at the following locations:

U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

These locations are open to the public Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105 (415–744–1195).

SUPPLEMENTARY INFORMATION: On September 4, 1992, EPA promulgated the Outer Continental Shelf Air Regulations (40 CFR part 55) in the **Federal Register** (57 FR 40792). The rule was promulgated pursuant to section 328 of the Act, 42 U.S.C. 7627, and established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. The rule applies to all OCS sources located offshore of the United States except for those located in the Gulf of Mexico west of 87.5 degrees longitude.

Section 328 requires that for such sources located within 25 miles of a state's seaward boundary, the requirements must be the same as would be applicable if the sources were located in the COA. The COA is defined in the Act as:

> With respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of subchapter I of this chapter.

42 U.S.C. 7627(a)(4)(B). Section 328 (a)(1) requires new sources (as defined in section 111(a) of the Act) to comply with the OCS rule immediately upon promulgation, and existing sources to comply 24 months thereafter, or by September 4, 1994.

The Administrator designated the COAs for all existing and proposed OCS sources offshore of California in the preamble to the final rule. 57 FR 40796–40797. The Administrator codified those designations in an action published on March 16, 1993 (58 FR 14157). Santa Barbara County APCD has filed a petition for reconsideration with EPA, asking EPA to reconsider the COA designation for the OCS platform Grace. Santa Barbara APCD has also filed a petition for review in the United States Court of Appeals for the District of Columbia; this petition does not challenge EPA's COA designation of platform Grace. *Santa Barbara County Air Pollution Control District* v. *U.S. EPA*, No. 92–1569 (D.C. Cir. Nov. 2, 1992).

In the preamble to the proposed OCS rule, EPA proposed that the nearest onshore area ("NOA") be the COA for all existing and proposed OCS sources offshore of California, including platform Grace. 56 FR 63774, 63780 (December 5, 1991). EPA stated that it planned to finalize these designations on the date of promulgation of the OCS rule, so that sources would "have adequate time to determine the applicable requirements, install necessary controls, and receive the required permits, and the proposed sources will be given early notice of the requirements with which they must comply." *Id.*

No comments were submitted concerning EPA's designation of the Ventura County APCD as the COA for platform Grace. Unlike the Ventura County APCD's petition to EPA for reconsideration of eight (8) COA designations in which the District had to comment and submit a stringency analysis (59 FR 14157), the Santa Barbara County APCD needed only to comment that EPA erred in the identification of the NOA for platform Grace.

Because no comments were received that supported a change in the COA designations, EPA finalized these designations in the preamble to the final rule. 57 FR 40797. EPA neglected, however, to codify these designations in 40 CFR part 55. EPA therefore codified the final action taken on these designations in a new § 55.15 in the March 16, 1993 notice. 59 FR 14157.

On February 19, 1993, the Santa Barbara County APCD filed a petition for reconsideration of the COA designation for platform Grace. Although petitioner cites the Administrative Procedure Act, 5 U.S.C. 553(e), as the basis for its right to petition for reconsideration, the final action at issue here was taken concurrently with the OCS rulemaking, which the Administrator determined to be subject to the requirements of section 307(d) of the Clean Air Act. 56 FR 63774. Section 307(d)(7)(B) provides in part:

> If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time (the period for public comment) or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed. * * * Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

Petitioner does not claim that it did not have enough time to comment on the COA designation within the comment period or that there is an issue that arose after the time for public comment. The Santa Barbara County APCD asserts merely that EPA initially erred in promulgating the COA designation for platform Grace. This assertion is apparently based on a claim

that Santa Barbara County is the NOA rather than Ventura County.

EPA finds that this issue clearly could have been raised during the comment period. Thus the Santa Barbara County APCD has failed to raise any issue that could not have been raised during the comment period or that arose after the time for public comment. Therefore, EPA has determined that the Santa Barbara County APCD's Petition for Reconsideration should be denied.

Since EPA has determined that the Santa Barbara County APCD could have raised its objection during the public comment period yet failed to do so, EPA does not reach the issue of whether the Santa Barbara County APCD's objection is of central relevance to EPA's action.

Based on the above determination, EPA is denying the Santa Barbara County APCD's request to convene a proceeding for reconsideration of EPA's COA designation for platform Grace.

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedures, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Dated: November 10, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93–28450 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 300

[FRL–4804–1]

National Oil and Hazardous Substances Contingency Plan; National Priorities List Update

AGENCY: Environmental Protection Agency.

ACTION: Notice of Deletion of the Plymouth Harbor/Cannons Engineering Corporation Site from the National Priorities List.

SUMMARY: The Environmental Protection Agency (EPA) announces the deletion of the Plymouth Harbor/Cannons Engineering Corporation Site in Plymouth, Massachusetts from the National Priorities List (NPL). The NPL is Appendix B of the National Oil and Hazardous Substances Contingency Plan (NCP), which EPA promulgated pursuant to Section 105 of the Comprehensive Environmental Response, Compensation, and Liability Act of 1980 (CERCLA), as amended. EPA and the Commonwealth of Massachusetts have determined that all appropriate Fund-financed responses under CERCLA have been implemented and that no further cleanup by potentially responsible parties is appropriate. Moreover, EPA and the Commonwealth of Massachusetts have determined that remedial actions conducted at the Plymouth Harbor/Cannons Engineering Corporation Site to date remain protective of public health, welfare, and the environment.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT:

James M. Di Lorenzo, Remedial Project Manager, U.S. Environmental Protection Agency, Waste Management Division, JFK Federal Building (HSN–CAN5), Boston, Massachusetts 02203, (617) 223–5510

or

Harish Panchal, State Project Manager, Massachusetts Department of Environmental Protection, Bureau of Waste Site Cleanup, One Winter Street (fifth floor), Boston, Massachusetts 02108, (617) 556–1118

SUPPLEMENTARY INFORMATION: The site to be deleted from the NPL is:

Plymouth Harbor/Cannons Engineering Corporation Site

A Notice of Intent to Delete for the Site was published in the **Federal Register** on August 25, 1993 (58 FR 44804). The closing date for comments on the Notice of Intent to Delete was October 6, 1993. EPA received no comments.

EPA identifies sites which appear to present a significant risk to public health, welfare, or the environment and it maintains the NPL as the list of those sites. Sites on the NPL may be the subject of the Hazardous Response Trust Fund (Fund-) financed remedial actions. Any site deleted from the NPL remains eligible for Fund-financed remedial actions in the unlikely event that conditions at the site warrant such action. Section 300.425(e)(3) of the NCP states that Fund-financed actions may be taken at sites deleted from the NPL. Deletion of a site from the NPL does not affect potentially responsible party liability or impede agency efforts to recover costs associated with response efforts.

List of Subjects in 40 CFR Part 300

Environmental protection, Air pollution control, Chemicals, Hazardous substances, Hazardous waste, Intergovernmental relations, Penalties, Reporting and recordkeeping requirements, Superfund, Water pollution control, Water supply.

For the reasons set out in the preamble 40 CFR part 300 is amended as follows:

PART 300—[AMENDED]

1. The authority citation for part 300 continues to read as follows:

Authority: 42 U.S.C. 9601–9657; 33 U.S.C. 1321(c)(2); E.O. 12777, 56 FR 54757, 3 CFR, 1991 Comp., p. 351; E.O. 12580, 52 FR 2923, 3 CFR, 1987 Comp., p. 193.

Appendix B—[Amended]

2. Table 1 of Appendix B to part 300 is amended by removing the Site "Plymouth Harbor/Cannons Engineering Corporation in Plymouth, Massachusetts" and by revising the total number of sites from "1,075" to read "1,074".

Dated: Oct. 19, 1993.

Paul Keough,

Acting Regional Administrator, U.S. EPA Region I.

[FR Doc. 93–28509 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–50–P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Public Health Service

42 CFR Part 52c

RIN 0905–AD47

Minority Biomedical Research Support Program

AGENCY: Public Health Service, HHS.

ACTION: Final rule.

SUMMARY: The National Institutes of Health (NIH) is amending regulations governing the Minority Biomedical Research Support Program authorized under section 301(a)(3) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)(3)). The intended effect of these amendments is to simplify the language in the Department's regulations and to minimize the need for future regulatory action.

EFFECTIVE DATE: Effective December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Migliore, NIH Regulations Officer, National Institutes of Health, Building 31, room 3B11, 9000 Rockville Pike, Bethesda, Maryland 20892, or telephone (301) 496–2832 (not a toll-free number).

SUPPLEMENTARY INFORMATION: Regulations at 42 CFR part 52c govern the administration of grants awarded

pursuant to section 301(a)(3) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)(3)). The purpose of those grants is to increase the numbers of ethnic minority faculty, students, and investigators engaged in biomedical research, and to broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators, by providing general support for biomedical research at eligible institutions. The NIH is revising the regulations to incorporate required changes in the authority citation and other HHS regulations and policies currently cited, change the title of part 52c to match the name of the program, revise the definition of "ethnic minorities" in § 52c.2 to correspond to the current operational definition used in administering the program, and revise the language in section 52c.4 in accordance with the Department's effort to simplify the language in its regulations and minimize the need for future regulatory action.

The NIH announced its intention to revise part 52c in the notice of proposed rulemaking which was published in the **Federal Register** on August 20, 1992 (57 FR 37745). The public was given 60 days to comment. One comment was received. That commentor objected to the phrase "* * * but is not limited to * * *" which is used to define "ethnic minorities" in § 52c.2. The commentor stated that the phrase "would seem to open the door for application of grant funds to any ethnic minority group regardless of its representation in biomedical research," and that the definition as stated would allow applicants to target anyone in an ethnic minority group even if this group had sufficient access to biomedical careers. The NIH disagreed with that view and chose not to modify the definition as suggested. The phrase "* * * but is not limited to * * *" has long been part of part 52c and prevents the inadvertent omission of other recognized minority groups. Moreover, the phrase is part of Department of Health and Human Services policy requirements.

Regulatory Impact and Regulatory Flexibility Analyses

Executive Order No. 12291

The Secretary has reviewed this final rule under the requirements of Executive Order No. 12291 (Federal Regulation) and has determined that it is not a major rule as defined in section 1(b) of the Executive Order and, therefore, does not require a regulatory impact analysis.

Regulatory Flexibility Act

The Secretary has reviewed this final rule under the requirements of the Regulatory Flexibility Act of 1980 (5 U.S.C. chapter 6) and has determined that it would not have a significant economic impact on a substantial number of small entities and, therefore, does not require a regulatory flexibility analysis.

Paperwork Reduction Act

This final rule does not contain any information collection requirements which are subject to OMB approval under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35).

Catalog of Federal Domestic Assistance

The Catalog of Federal Domestic Assistance numbered program affected by the proposed regulations is: 93.375.

List of Subjects in 42 CFR Part 52c

Biomedical research, Minority biomedical research support, Grants.

For the reasons specified in the preamble, part 52c subchapter D of chapter 1 of title 42 of the Code of Federal Regulations is amended as set forth below.

Dated: September 7, 1993.
Philip R. Lee,
Assistant Secretary for Health.
Approved: October 14, 1993.
Donna E. Shalala,
Secretary.

PART 52c—MINNORITY BIOMEDICAL RESEARCH SUPPORT PROGRAM

1. The heading of part 52c is revised to read as set forth above.

2. The authority citation for part 52c is revised to read as follows:

Authority: 42 U.S.C. 216, 241(a)(3).

3. Section 52c.1 is revised to read as follows:

§ 52c.1 Applicability.

The regulations in this part apply to grants (under the Minority Biomedical Research Support Program) awarded in accordance with section 301(a)(3) of the Public Health Service (PHS) Act (42 U.S.C. 241(a)(3)) to increase the numbers of ethnic minority faculty, students, and investigators engaged in biomedical research, and to broaden the opportunities for participation in biomedical research of ethnic minority faculty, students, and investigators, by providing general support for biomedical research programs at eligible institutions.

4. Section 52c.2 is revised to read as follows:

§ 52c.2 Definitions.

As used in this part:

Act means the Public Health Service Act, as amended (42 U.S.C. 201 *et seq.*).

Ethnic minorities includes but is not limited to such groups as Black Americans, Hispanic Americans, Asian/Pacific Islanders, and American Indians/Native Alaskans (Native Americans).

HHS means the Department of Health and Human Services.

Nonprofit as applied to any institution means an institution which is a corporation or association no part of the net earnings of which inures or may lawfully inure to the benefit of any private shareholder or individual.

Program director means a single individual, designated in the grant application, who is scientifically trained and has research experience and who is responsible for the overall execution of the program supported under this part at the grantee institution.

Secretary means the Secretary of Health and Human Services and any other officer or employee of the Department of Health and Human Services to whom the authority involved has been delegated.

5. Paragraph (b) of § 52c.3 is revised to read as follows:

§ 52c.3 Eligibility.

* * * * *

(b) Located in a State, the District of Columbia, Puerto Rico, the Virgin Islands, the Canal Zone, Guam, American Samoa, or the successor States of the Trust Territory of the Pacific Islands (the Federated States of Micronesia, the Republic of the Marshall Islands, and the Republic of Palau).

6. Section 52c.4 is revised to read as follows:

§ 52c.4 Application.

An institution interested in applying for a grant under this part must submit an application at the time and in the form and manner that the Secretary may prescribe.

7. Section 52c.5 is amended by revising paragraph (a)(1) to read as follows:

§ 52c.5 Grant awards.

(a) * * *

(1) The benefits that can be expected to accrue to the national effort in biomedical research and in increasing the pool of biomedical researchers;

* * * * *

8. Section 52c.7 is revised to read as follows:

§ 52c.7 Other HHS regulations that apply.

Several other regulations and policies apply to grants under this part. These include, but are not necessarily limited to:

37 CFR Part 401—Rights to inventions made by nonprofit organizations and small business firms under government grants, contracts, and cooperative agreements

42 CFR Part 50, Subpart A—Responsibilities of PHS awardee and applicant institutions for dealing with and reporting possible misconduct in science

42 CFR Part 50, Subpart D—Public Health Service grant appeals procedures

45 CFR Part 16—Procedures of the Departmental Grant Appeals Board

45 CFR Part 46—Protection of human subjects

45 CFR Part 74—Administration of grants

45 CFR Part 75—Informal grant appeals procedures

45 CFR Part 76—Governmentwide debarment and suspension (nonprocurement) and governmentwide requirements for drug-free workplace (grants)

45 CFR Part 80—Nondiscrimination under programs receiving Federal assistance through the Department of Health and Human Services Effectuation of Title VI of the Civil Rights Act of 1964

45 CFR Part 81—Practice and procedure for hearings under Part 80 of this title

45 CFR Part 84—Nondiscrimination on the basis of handicap in programs and activities receiving Federal financial assistance

45 CFR Part 86—Nondiscrimination on the basis of sex in education programs and activities receiving or benefiting from Federal financial assistance

45 CFR Part 91—Nondiscrimination on the basis of age in HHS programs and activities receiving Federal financial assistance

45 CFR Part 92—Uniform administrative requirements for grants and cooperative agreements to State and local governments

45 CFR Part 93—New restrictions on lobbying

51 FR 16958, or successor—NIH Guidelines for Research Involving Recombinant DNA Molecules

"Public Health Service Policy on Humane Care and Use of Laboratory Animals," Office for Protection from Research Risks, NIH (Revised September 1986), or successor

[FR Doc. 93–28491 Filed 11–18–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 675

[Docket No. 920944–2302; I.D. 111293B]

Groundfish Fishery of the Bering Sea and Aleutian Islands Area

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Allocation of Community Development Quota pollock to approved Community Development Plan applicants for 1994 and 1995.

SUMMARY: NMFS announces the approval by the Secretary of Commerce (Secretary) of recommendations made by the Governor of the State of Alaska (Governor) for Community Development Plans (CDPs) during the calendar years 1994 and 1995 under authority of the Community Development Quota (CDQ) program. This action is necessary to publicize the decision of the Secretary to approve the Governor's recommended CDPs, including the percentage of the CDQ reserve for each subarea allocated under the CDPs, and to announce the availability of findings underlying the Secretary's decision. It is intended to further the goals and objectives of the Magnuson Fishery Conservation and Management Act and the Fishery Management Plan (FMP) for the Groundfish Fishery of the Bering Sea and Aleutian Islands Management Area (BSAI).

DATES: Effective January 1, 1994.

ADDRESSES: Copies of the findings made by the Secretary in approving the Governor's recommendation may be obtained from the Fisheries Management Division, Alaska Region, NMFS, P.O. Box 21668, Juneau, AK 99802 (ATTN: Lori Gravel).

FOR FURTHER INFORMATION CONTACT: David C. Ham, Fishery Management Biologist, Alaska Region, NMFS, 907–586–7229.

SUPPLEMENTARY INFORMATION: The CDQ program was developed by the North Pacific Fishery Management Council (Council) and submitted with Amendment 18 to the BSAI FMP which was approved in part by the Secretary (57 FR 23321, June 3, 1992). Federal regulations implementing the CDQ program became effective on November 18, 1992 (57 FR 54936, November 23, 1992).

Eligible western Alaska communities submitted six CDPs requesting allocations of the available CDQ pollock reserve to the Governor under CDQ procedures. The Governor announced a public hearing date of September 8, 1993, in Anchorage, Alaska, and conducted the public hearing during which all interested persons had an opportunity to be heard. The hearing covered the substance and content of the proposed CDPs in such a manner that the general public, and particularly the affected parties, had a reasonable opportunity to understand the impact of each CDP. The Governor made available for public review all State of Alaska materials pertinent to the hearing at the time the hearing was announced. The public hearing held by the Governor satisfied the requirements of § 675.27(a).

On September 22, 1993, the Governor consulted with the Council. After reviewing the Governor's recommendations and considering public testimony, the Council concurred in the Governor's recommendations for CDPs and the percentages of the CDQ reserve for each CDP for the years 1994 and 1995.

On October 1, 1993, the Secretary received the Governor's recommendations to approve the CDPs. The Secretary reviewed the recommendations and the record to determine whether the community eligibility criteria and the evaluation criteria set forth in § 675.27(d) were met. The Secretary determined that the Governor's recommendations are consistent with the eligibility conditions, the evaluation criteria, and other applicable laws and approves the Governor's recommendations.

As required by § 675.27(c)(1), the Secretary publishes this notice of approval of the Governor's recommendations, including the percentage of the CDQ reserve allocated to each approved CDP, and announces the availability of the Secretary's findings regarding this decision (see **ADDRESSES**).

The CDQ reserve for 1994 and 1995 will be 7.5 percent of the pollock total allowable catch specification for each of the three subareas that constitute the BSAI. The Secretary approves the following percentage of CDQ reserve for each CDP recipient for 1994 and 1995:

CDP recipient	CDQ percentage for 1994 and 1995
Aleutian Pribilof Island Community Development Association	18
Bristol Bay Economic Development Association	20
Central Bering Sea Fishermen's Association	8
Coastal Villages Fishing Cooperative	27
Norton Sound Economic Development Corp	20
Yukon Delta Fisheries Development Association	7

Classification

This action is taken under 50 CFR 675.27.

List of Subjects in 50 CFR Part 675

Fisheries, Recordkeeping and reporting requirements.

Authority: 16 U.S.C. 1801 *et seq.*

Dated: November 15, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

[FR Doc. 93–28488 Filed 11–18–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 222
Friday, November 19, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 51

[Docket Number FV-92-301]

Blueberries; Grade Standards

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed rule.

SUMMARY: This proposed action would revise the United States Standards for Grades of Blueberries, to bring them into conformity with current cultural, harvesting and marketing practices. The recommended revisions would: add another species of cultivated blueberries; eliminate size as a requirement of the grade; revise the existing tolerances and the application of tolerances from the number of defective berries to percentages of defective berries; specify allowable amounts for defects caused by scars and well healed broken skins; redefine terms to more clearly reflect current cultural and marketing practices; and, provide a format consistent with other recently revised U.S. grade standards. The Agricultural Marketing Service (AMS), in cooperation with industry, has the responsibility to develop and improve standards of quality, condition, quantity, grade, and packaging. These revisions would result in more uniform standards which more closely reflect current industry practices.

DATES: Comments must be postmarked or courier dated on or before January 18, 1994.

ADDRESSES: Interested parties are invited to submit written comments concerning this proposal. Comments must be sent to the Standardization Section, Fresh Products Branch, Fruit and Vegetable Division, Agricultural Marketing Service, U.S. Department of Agriculture, P.O. Box 96456, room 2056 South Building, Washington, DC 20090-6456. Comments should make reference to the date and page number of this issue of the **Federal Register** and will be made available for public inspection in the above office during regular business hours.

FOR FURTHER INFORMATION CONTACT: Marlene M. Betts, at above address or call (202) 720-2188.

SUPPLEMENTARY INFORMATION: This rule has been reviewed by the Department in accordance with Departmental Regulation 1512-1 and criteria contained in Executive Order 12291 and has been determined to be a "nonmajor" rule.

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have retroactive effect. This proposed rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (5 U.S.C. 601 et. seq.), the Administrator of AMS has determined that this action will not have a significant economic impact on a substantial number of small entities. This proposed rule for the revision of U.S. Standards for Grades of Blueberries will not impose substantial direct economic cost, recordkeeping, or personnel workload changes on small entities, and will not alter the market share or competitive position of these entities relative to large businesses. In addition, under the Agricultural Marketing Act of 1946, the application of these standards is voluntary, so members of the blueberry industry need not have their product certified under these standards, thereby incurring no cost at all.

The United States Standards for Grades of Blueberries were last revised in June 1966. The standards are issued under the Agricultural Marketing Act of 1946 (7 U.S.C. 1621 et seq.). The North American Blueberry Council (NABC), which represents the majority of blueberry growers and packers in the United States and Canada, have requested that the standards be revised in order to bring them into conformity with current cultural, harvesting and marketing practices. The NABC contends that due to changes in harvesting practices, more growers using mechanical harvesters versus hand picking, and new improved varieties, changes are necessary in the current standards. The NABC requests changes in the tolerance section of the standards, changing them from a number of defective specimens to a percentage; changing the species covered by the standard; and, clarification of terminology.

A market survey was drafted by the Fresh Products Branch, and sent to industry personnel, other interested parties, and inspection personnel for comments, on September 8, 1992. There were a total of eighteen comments, thirteen from inspection personnel and five from industry personnel. The comments were reviewed by the Fresh Products Branch and discussed with the NABC. Many of the comments were incorporated into the proposal.

The main purpose of the proposal is set forth in order to bring the standards into conformity with current harvesting and marketing practices. In addition, the standards have been reviewed for need, clarity, and effectiveness as part of a periodic review. Accordingly, we propose to amend the regulations as discussed below.

Presently, the United States Standards for Grades of Blueberries applies to selected and hybrid varieties of the highbush blueberry produced under cultivation, but not to other species of the genus Vaccinium nor to the true huckleberries of the genus Gaylussacia. The NABC recommended that the rabbiteye species, (Vaccinium ashei Reade), be covered by the standards. Since that species is grown in sufficient quantities to warrant inclusion into the standard. Based on NABC's recommendation rabbiteye species is included in this proposal.

Currently, blueberries are required to meet a minimum number of blueberries per two gill cup in order to meet U.S. No. 1 grade. However, since blueberries are generally not sized, and there is usually a difference in the size of berries from variety to variety, it is proposed that no size requirements be associated with the grade. Therefore, blueberries could then meet a U.S. No. 1 grade without meeting any size requirements. The "Size Classification" section would remain in the event an interested party requests a size determination. This would tend to enhance marketing with common terminology.

The unclassified designation in section 51.3477 would be eliminated because it is not a grade and only serves to show that no grade has been applied to the lot. Since this designation is rarely used and may create some confusion in the marketplace, it should be discontinued.

In the "Size Classification" section, the unit of measure in the current standard is a two gill cup. As proposed, the unit of measure would be a cup. Although two gill is equivalent to a cup, a cup is better understood by marketing channels. Also the metric equivalent would be included as a footnote.

It has been suggested by the NABC that the tolerances be changed from the number of berries defective to a percentage of berries defective.

It is also proposed that the tolerances for defects at shipping point and en route or destination be determined based on percentages rather than a specific number of berries defective. The tolerances at shipping point would include a total of eight percent for defects which fail to meet the requirements of the grade, including not more than four percent for defects which cause serious damage (such as, but not limited to mummified berries, insects, unhealed broken skins, crushed split, or leaking berries), including not more than one percent for mold or decay.

The proposed tolerances for en route or at destination are similar to the shipping point tolerances, except for some additional tolerances, due to the perishability of blueberries. Therefore, the proposed en route or destination tolerances are as follows: A total of not more than twelve percent for defects which fail to meet the requirements of the grade, including not more than eight percent permanent defects (defects which are not subject to change during shipment or storage, including but not limited to color and scars), including not more than six percent for defects which cause serious damage, including not more than four percent which may be seriously damaged by permanent defects (for example, serious damage by scarring), including not more than two percent affected by mold or decay.

The NABC feels that attached stems are a problem, in that some varieties of blueberries have stems which adhere more readily to the blueberry. Also, growing conditions may cause the stem to remain attached to the blueberry. Therefore, it is proposed that a separate tolerance of not more than ten percent be included in the standards for blueberries which have any length of stem attached.

The current standard contains the total number of berries permitted in individual samples. However, it is proposed that the tolerances be changed from specific number of defective berries to percentages of defective berries, thereby eliminating the existing table. Therefore, it is proposed that an "Application of Tolerances" section be inserted in the regulations to provide percentage limitations of defective berries in individual samples.

The injury designation in section 51.3485 would be eliminated in order to bring the standard into conformity with current terminology and format. Since this designation may create some confusion in the marketplace, it should be discontinued.

Definitions for "well colored," "overripe," "damage," and "serious damage" would be reworded to better reflect current cultural and marketing conditions. "Broken skins" are currently considered defects when they are identified as "broken skins." However, the NABC feels that this is too restrictive. It is their contention that some varieties of blueberries have stems which adhere more readily to the blueberry, making it more difficult to remove the stems without tearing the adjoining flesh. Therefore, it is proposed that "broken skins" would be considered damage when they are well healed and readily noticeable, except for an allowable area within a ⅛ inch circle centered at the stem scar, and serious damage when not well healed. Currently, "scars" are considered defects when readily noticeable. As proposed, "scars" would be considered damage when affecting more than 20 percent of the surface of the individual berry, and as serious damage when they affect more than 50 percent of the surface of the berry.

Finally, the grade standard format itself would be revised and updated to incorporate all of the above mentioned changes, and provide convenient use to the industry.

List of Subjects in 7 CFR Part 51

Agricultural commodities, Food grades and standards, Fruits, Nuts, Reporting and recordkeeping requirements, Vegetables.

PART 51—[AMENDED]

For reasons set forth in the preamble, it is proposed that 7 CFR part 51 be amended as follows:

1–2. The authority citation for 7 CFR part 51 continues to read as follows:

Authority: 7 U.S.C. 1622, 1624.

Subpart—United States Standards for Grades of Blueberries

3. Section 51.3475 is revised to read as follows:

§ 51.3475 General.

(a) These standards apply only to selected and hybrid varieties of the highbush (Vaccinium australe Small and Vaccinium corymbosum L.) and rabbiteye (Vaccinium ashei Reade) blueberries produced under cultivation, but not to other species of the genus Vaccinium nor to the true huckleberries of the genus Gaylussacia.

(b) Because of the size differences between varieties and the difference in size preference in various markets, there are no size requirements in the grade. Therefore, size will not be determined unless specifically requested by the applicant. If requested, size may be specified as provided in § 51.3477.

4. Section 51.3476 is revised to read as follows:

§ 51.3476 U.S. No. 1.

"U.S. No. 1" consists of blueberries which meet the following requirements:

(a) Basic Requirements:
(1) Similar varietal characteristics;
(2) Clean;
(3) Well colored;
(4) Not overripe;
(5) Not crushed, split, or leaking; and,
(6) Not wet.

(b) Free From:
(1) Attached stems;
(2) Mold;
(3) Decay;
(4) Insects or when there is visible evidence of the presence of insects;
(5) Mummified berries; and,
(6) Clusters.

(c) Free From Damage Caused By:
(1) Shriveling;
(2) Broken skins;
(3) Scars;
(4) Green berries; and,
(5) Other means.

(d) Tolerances as specified in § 51.3478 (a) and (b) and applied pursuant to § 51.3479.

5. Sections 51.3477, 51.3478 and 51.3479 and the undesignated center heading preceding each section are revised to read as follows:

Size Classifications

§ 51.3477 Size classifications.

The following size classifications may be used in specifying size of blueberries:

(a) *Extra large.* Less than 90 berries per cup;[1]

(b) *Large.* 90 to 129 berries per cup;[1]

(c) *Medium.* 130 to 189 berries per cup;[1] and,

[1] Cup equals 237 ml, ½ pint, or 2 gills.

(d) *Small.* 190 to 250 berries per cup.[1]
(e) For tolerances see § 51.3478.

Tolerances

§ 51.3478 Tolerances.

In order to allow for variations incident to proper grading and handling, based on sample inspection, the following tolerances, by count, shall be allowed:

(a) *For defects at shipping point.*[2] Ten percent for blueberries which have attached stems. Additionally, not more than 8 percent of the blueberries may be below the remaining requirements of the grade: *Provided,* That included in this amount not more than 4 percent shall be allowed for defects causing serious damage, including in this latter amount not more than 1 percent for blueberries which are affected by mold or decay.

(b) *For defects en route or at destination.* Ten percent for blueberries which have attached stems. Additionally, not more than 12 percent of the blueberries may be below the remaining requirements of the grade: *Provided,* That included in this amount not more than the following percentages shall be allowed for defects listed:

(1) 8 percent for blueberries which fail to meet the requirements for this grade because of permanent defects; or,

(2) 6 percent for blueberries which are seriously damaged, including therein not more than 4 percent for blueberries which are seriously damaged by permanent defects and not more than 2 percent for blueberries which are affected by mold or decay.

(c) *Off-size.* In order to allow for variations incident to proper sizing not more than 10 percent of the samples in any lot or one sample, whichever is the greater number, may fail to meet the range in count specified for one of the size classifications in § 51.3477.

Application of Tolerances

§ 51.3479 Application of tolerances.

Individual samples are subject to the following limitations: *Provided,* That the averages for the entire lot are within the tolerances specified for the grade:

(a) For tolerances of 10 percent or more, individual samples may contain not more than one and one-half times the specified tolerances.

(b) For a tolerance of less than 10 percent, individual samples may contain not more than double the specified tolerance.

[2] Shipping point, as used in these standards, means the point of origin of the shipment in the producing area or at port of loading for ship stores or overseas shipment, or, in the case of shipments from outside the continental United States, the port of entry into the United States.

6. Sections 51.3482 and 51.3483 are revised to read as follows:

§ 51.3482 Well colored.

Well colored means that more than one-half of the surface of the individual berry is blue, bluish-purple, purple, bluish-red, or bluish-black.

§ 51.3483 Overripe.

Overripe means that the individual berry is dead ripe, the flesh is soft and mushy, and past commercial utility.

§§ 51.3484, 51.3485 [Removed]

§ 51.3486 [Redesignated as § 51.3484]

7. Sections 51.3484 and 51.3485 are removed and § 51.3486 is redesignated § 51.3484 and is revised to read as follows:

§ 51.3484 Damage.

Damage means any specific defect described in this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which materially detracts from the appearance, or the edible or marketing quality of the blueberries. The following specific defects shall be considered as damage:

(a) Wet berries when the individual berry is wet from juice from crushed, leaking, or decayed berries, but not due to condensation;

(b) Clusters when there are three or more joined capstems with at least one berry attached;

(c) Shriveling when the skin is slightly wrinkled;

(d) Broken skins when not well healed or when well healed and readily noticeable, except for an allowable area within a 1/8 (3.2 mm) inch circle centered at the stem scar;

(e) Scars when affecting more than 20 percent of the surface of the individual berry; and,

(f) Green berries when one-half or more of the berry is green.

§ 51.3487 [Redesignated as § 51.3485]

8. Section 51.3487 is redesignated § 51.3485 and is revised to read as follows:

§ 51.3485 Serious damage.

Serious damage means any specific defect described in this section, or an equally objectionable variation of any one of these defects, any other defect, or any combination of defects, which seriously detracts from the appearance, or the edible or marketing quality of the blueberries. The following specific defects shall be considered as serious damage:

(a) Decay;

(b) Moldy berries;

(c) Overripe berries;

(d) Crushed, split, or leaking berries;

(e) Mummified berries when the individual berry is dried up, withered or shrunken;

(f) Insects or when there is any visible evidence of the presence of insects, including but not limited to an insect, insect larva, feeding, webbing or frass;

(g) Broken skins when not well healed; and,

(h) Scars when affecting more than 50 percent of the surface of the individual berry.

Dated: November 8, 1993.

Kenneth C. Clayton,

Deputy Administrator for Marketing Programs.

[FR Doc. 93–28267 Filed 11–18–93; 8:45 am]
BILLING CODE 3410–02–P

FEDERAL RESERVE SYSTEM

12 CFR Part 213

[Regulation M; Docket No. R-0815]

Consumer Leasing

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Board is planning to undertake a review of Regulation M, which carries out the provisions of the Consumer Leasing Act, pursuant to the Board's policy of periodically reviewing its regulations. The Consumer Leasing Act requires lessors to provide uniform cost and other disclosures about consumer lease transactions. The Board plans to review Regulation M to determine whether it can be simplified and clarified to carry out more effectively the purposes of the Consumer Leasing Act without diminishing the consumer protections afforded by the statute. To gather information needed for this review and to ensure the participation of interested parties at the beginning of the process, the Board is soliciting comment generally on revisions to the regulation, while also soliciting comment on several specific issues.

DATES: Comments must be received by January 24, 1994.

ADDRESSES: Comments should refer to Docket No. R-0815, and may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue, NW., Washington, DC 20551. Comments also may be delivered to Room B-2222 of the Eccles Building between 8:45 am and 5:15 pm

weekdays, or to the guard station in the Eccles Building courtyard on 20th Street, NW (between Constitution Avenue and C Street) any time. Comments may be inspected in Room MP-500 of the Martin Building between 9:00 am and 5:00 pm weekdays, except as provided in 12 CFR section 261.8 of the Board's rules regarding the availability of information.

FOR FURTHER INFORMATION CONTACT: Kyung H. Cho or W. Kurt Schumacher, Staff Attorneys (202/452-2412 or 202/452-3667), Division of Consumer and Community Affairs, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Govenrors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background of the Consumer Leasing Act and Regulation M

The Consumer Leasing Act (CLA), 15 U.S.C. 1667-1667e, was enacted into law in 1976 as an amendment to the Truth in Lending Act (TILA). It was based on findings that there was a trend toward leasing as an alternative to purchasing certain consumer items on credit and that consumers were not receiving adequate leasing cost disclosures. The Board was given rulewriting authority, and its Regulation M (12 CFR part 213) implements the CLA. An official staff commentary which interprets the regulation has also been published (12 CFR part 213, Supp. I).

The CLA generally applies to consumer leases of personal property involving less than $25,000 with a term of more than four months. A long-term automobile lease is the most common type of consumer lease covered by the act. Like the credit provisions of the TILA, the CLA requires lessors to provide uniform cost and other disclosures about consumer lease transactions, including in advertising. Prior to entering into a lease agreement, lessors must give consumers approximately 15 to 20 disclosures that include the amount of initial charges to be paid, an identification of leased property, a payment schedule, the liability for maintenance of leased property, and penalties for the early termination of a lease. The law also regulates balloon payments by limiting liability at the end of a lease term to no more than three times the monthly payment.

The Review of Regulation M

The Board's Regulatory Planning and Review Program calls for the periodic review of a regulation with four goals in mind: to clarify and simplify regulatory language; to determine whether regulatory amendments are needed to address technological and other developments; to reduce undue regulatory burden on the industry; and to delete obsolete provisions. The Board plans to begin a review of Regulation M in accordance with the goals of that program. Regulation M has not been substantially revised or reviewed since its inception. The Board is soliciting comments on the provisions of Regulation M and the CLA, including coverage, exempt transactions, and general format and disclosure requirements. The Board requests that commenters include specific suggestions for improvements to the regulation, as well as the rationale for the suggested changes. In addition, the Board has identified the following specific issues on which comment would be helpful:

Disclosure of early termination charges. The CLA and Regulation M require lessors to disclose the amount or method of determining the amount of a charge if the consumer terminates a lease early. Virtually all leases include such a charge and lessors typically disclose the method to determine the charge rather than an amount.

Recently, a United States Court of Appeals held a lessor liable for violating the "reasonably understandable" standard for disclosure under Regulation M by providing an early termination formula that the court found to be overly complex and beyond the understanding of the average consumer. *Lundquist v. Security Pacific*, 993 F.2d 11 (2d Cir. 1993). Though some lessors would generally admit to the complexity of the disclosure, they would insist that, due to the complexity of modern automobile lease transactions, the formula was written as understandably as it could be.

Some representatives of automobile lessors have requested that the Board amend the regulation to allow them to disclose the name of the method to be used in determining the amount of any penalty or other charge for early lease termination, rather than providing a description of the method by giving the precise formula. On the other hand, consumer interest representatives have argued that the formulas used in determining such charges could be made more understandable to consumers, and that simply allowing the disclosure of the name of the method would not allow consumers to determine the cost of an early termination charge--either before or during the performance of the lease. Specific comment is solicited on this issue, including commenters' views on whether the disclosure of the name of the method along with a representative example of a lease termination charge should be considered (as well as any other disclosure alternative) to help inform consumers of the consequences of terminating a lease early.

Broadcast media advertising of leases. Under the regulation, if any advertised lease transaction states certain terms (such as the amount or number of any lease payment) as many as five additional disclosures are required to be given. Due to time and space constraints in television and radio advertisements, some lease disclosures are being provided in small sometimes scrolling print at the bottom of the television screen, or very quickly at the end of the advertisement, arguably with little consumer benefit. Because the oral disclosure of required lease terms is very difficult, there is little radio advertising of leases.

Several representatives of State attorneys general offices have questioned the way that television advertisements for auto leases display the required Regulation M disclosures. They argue that the text is hard to read and appears on the screen only briefly, arguably failing the CLA clear and conspicuous standard. Some leasing representatives have expressed concern about exposure to liability due to the potential for differing State interpretations of what is clear and conspicuous disclosure. They advocate Board action on this issue, offering as an alternative a requirement that a toll-free number be provided in lieu of some or all of the disclosures now required, so consumers could call and obtain them. Comment is specifically solicited on this issue, though this type of change may be more appropriately within the purview of the Congress. Two bills introduced in Congress (S. 1447 and H.R. 3102) would modify the advertising disclosure requirements under the CLA, as well as under the TILA and the Truth in Savings Act, by allowing a toll-free number to be provided in the advertisement instead of the currently required terms. Both bills, however, would only apply to radio advertisements.

Segregation of leasing disclosures from other information. The CLA, unlike most of the consumer credit provisions of the TILA, does not require the segregation of the required disclosures from other terms. In many

lease agreements, a number of the leasing disclosures and the contract terms are one and the same. There is a question whether the absence of a requirement that the consumer leasing disclosures be segregated from general contract or other terms limits the effectiveness of these disclosures in meeting the consumer protection goal of the CLA—to assure meaningful disclosure of lease terms for comparison shopping. The Board solicits comments on whether a segregation requirement should be proposed for adoption in the regulation.

The Board will review the issues and information offered by commenters responding to this notice, and conduct its own research on legal, economic, operational and other issues and data as they relate to Regulation M. Based on the results of its review of Regulation M, including consideration of the comments received on this notice, the Board will decide whether to pursue proposed revisions to the regulation during 1994. The Board contemplates that any proposal to amend the Regulation would be published in the spring of 1994.

By order of the Board of Governors of the Federal Reserve System, November 15, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-28466 Filed 11-18-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–121–AD]

Airworthiness Directives; Airbus Industrie Model A310 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Airbus Industrie Model A310 series airplanes. This proposal would require inspections to detect loose self-locking nuts and damaged cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand main landing gear (MLG), and correction of discrepancies. This proposal is prompted by reports of loose nuts and sheared cotter pins found on in-service airplanes. The actions specified by the proposed AD are intended to prevent an undampened free fall of the left- and right-hand MLG, which subsequently could lead to the inability to retract the MLG and damage to other airplane systems.

DATES: Comments must be received by January 24, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Messier Services, 45635 Willow Pond Plaza, Sterling, Virginia 20164. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket. Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–121–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–121–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on all Airbus Industrie Model A310 series airplanes. The DGAC advises it has received reports of loose nuts and sheared cotter pins found on these in-service airplanes. These nuts attach the drag strut to the actuating cylinder of the left- and right-hand main landing gear (MLG). Investigation revealed that, during operation of the MLG, loads induced by chafing of the actuating cylinder lugs on the anti-warping washer can cause the rotation of the grease duct, nut, and bolt. Such rotation could shear the cotter pin, which could loosen the nut. Loss of the nut could cause the actuator cylinder to disconnect from the drag strut attachment. This condition, if not corrected, could lead to an undampened free fall of the left- and right-hand MLG; this subsequently could lead to the inability to retract the MLG and damage to other airplane systems.

Messier-Bugatti (the manufacturer of the MLG assembly) has issued Messier-Bugatti Airbus A310 Service Bulletin 470–32–744, dated March 31, 1993, that describes procedures for repetitive inspections to detect loose self-locking nuts and damaged cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand MLG. This service bulletin also contains procedures for replacement of loose nuts with new washers and new nuts, and torque tightening the nuts; replacement of damaged cotter pins with new cotter pins; and submission of inspection reports. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 93–039–143(B), dated March 31, 1993 in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral

airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive inspections to detect loose self-locking nuts and damaged cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand MLG. This proposed AD would also require replacement of loose nuts with new washers and new nuts, and torque tightening the nuts; replacement of damaged cotter pins with new cotter pins; and submission of inspection reports. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This is considered to be interim action until final action is identified, at which time the FAA may consider further rulemaking.

The FAA estimates that 21 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed inspection actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $1,155, or $55 per airplane, per inspection cycle. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Airbus Industrie: Docket 93–NM–121–AD.

Applicability: All Model A310 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent an undampened free fall of the left- and right-hand main landing gear (MLG), which subsequently could lead to the inability to retract the MLG and damage to other airplane systems, accomplish the following:

(a) Within 60 days after the effective date of this AD, perform an inspection to detect loose self-locking nuts and damaged (sheared or marked) cotter pins on the actuating cylinder to drag strut attachment of the left- and right-hand MLG, in accordance with Messier Bugatti Airbus A310 Service Bulletin 470–32–744, dated March 31, 1993. Repeat this inspection thereafter at intervals not to exceed 500 landings.

(1) If any nut is loose, prior to further flight, replace the nut with a new washer and a new nut, and torque tighten the nut, in accordance with the service bulletin. After replacement, continue to repeat the inspection at intervals not to exceed 500 landings.

(2) If any cotter pin is damaged (sheared or marked), prior to further flight, replace the cotter pin with a new cotter pin, part number MS24665–357, in accordance with the service bulletin. After replacement, continue to repeat the inspection at intervals not to exceed 500 landings.

(b) Within 5 days after accomplishing the requirements of this AD, report all inspection results, positive or negative, to Messier-Bugatti and Airbus Industrie in accordance with Messier-Bugatti Airbus A310 Service Bulletin 470–32–744, dated March 31, 1993. Information collection requirements contained in this regulation have been approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) and have been assigned OMB Control Number 2120–0056.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28521 Filed 11–18–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–184–AD]

Airworthiness Directives; Aerospatiale Model ATR72 Series Airplanes, Equipped With Dunlop Main Landing Gear Wheels, Part Number AHA1752 Pre Mod 6

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Aerospatiale Model ATR72 series airplanes. This proposal would require inspection to detect cracking in the brake side half hub in the bearing housing area of certain main landing gear (MLG) wheels, and replacement of the MLG wheel, if necessary. This proposal would also require the eventual replacement of certain MLG wheels with other wheels, as terminating action for the repetitive inspections. This proposal is prompted by in-service experience that indicates the possibility of fatigue cracking occurring in the subject area. The actions specified by the proposed AD

are intended to prevent failure of the brake side half hub due to fatigue cracking, which could lead to separation of the MLG wheel and tire from the axle.

DATES: Comments must be received by January 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Dunlop Limited, Aviation Division, Silverton House, Vincent Square, London SW1P 2PL, United Kingdom. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–184–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–184–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on Aerospatiale Model ATR72 series airplanes equipped with Dunlop main landing gear (MLG) wheels, part number AHA1752 Pre Mod 6. The DGAC advises that recent service experience reports have indicated that fatigue cracking can occur in the brake side half hub, part number AHA1750 Mod 1, in the bearing housing area of these MLG wheels. Fatigue cracking, if not detected and corrected in a timely manner, could result in failure of the brake side half hub, which could lead to separation of the MLG wheel and tire from the axle.

Dunlop Limited, Aviation Division, has issued Service Bulletin AHA1752–32–1069, dated June 28, 1993, that describes procedures for conducting an eddy current inspection to detect cracking in the bearing housing of the brake side half hub of Dunlop MLG wheels, part number AHA1752 Pre Mod 6. This service bulletin also contains procedures for replacing the entire MLG wheel if cracked half hub assemblies are detected. If the wheel is replaced with a serviceable like assembly, the eddy current inspections are to be repeated at every tire change. However, if the wheel is replaced with either of two improved assemblies (the hubs of which are not prone to fatigue cracking), the eddy current inspections may be discontinued. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 93–116(B)R1, dated August 18, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require repetitive eddy current inspections to detect cracking in the bearing housing of the brake side half hub of Dunlop MLG wheels, part number AHA1752 Pre Mod 6. This AD would require that, if any cracked half hub assemblies are detected, the complete wheel must be replaced. If certain improved replacement wheels are installed, the repetitive eddy current inspections may be discontinued. This proposed AD would also require the eventual replacement of all MLG wheels having part number AHA1752 Pre Mod 6, with other (improved) wheels, as terminating action for the repetitive inspections. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 16 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed inspection actions, and that the average labor rate is $55 per work hour. Based on these figures, the total cost impact of the proposed inspection actions on U.S. operators is estimated to be $1,760, or $110 per airplane, per inspection. Should a cracked half hub assembly be found, replacement wheel assemblies would be provided by Dunlop at no charge to the operator.

The required wheel replacement action proposed by this action would require approximately 2 work hours to accomplish, at an average labor charge of $55 per work hour. Replacement parts would be provided by Dunlop at no charge to the operators, as part of Dunlop's repair/replacement program. Based on these figures, the total cost impact of the proposed replacement actions on U.S. operators is estimated to be $1,760, or $110 per airplane.

The number of required work hours, as indicated above, is presented as if the accomplishment of the inspections proposed in this AD were to be conducted as "stand alone" actions. However, in actual practice, these actions would be accomplished coincidentally or in combination with normally scheduled tire changes or other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours would be minimal in most instances. Additionally, any costs associated with

special airplane scheduling would be expected to be minimal.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Aerospatiale: Docket 93–NM–184–AD.

Applicability: Model ATR72 airplanes; equipped with Dunlop main landing gear (MLG) wheels, part number AHA1752 Pre Mod 6; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of the brake side half hub due to fatigue cracking, which could lead to separation of the MLG wheel and tire from the axle, accomplish the following:

(a) At the next tire change after the effective date of this AD, or within 60 days after the effective date of this AD, whichever occurs later, conduct an eddy current inspection to detect cracking in the bearing housing of the brake side half hub of Dunlop Main Landing Gear (MLG) wheels, part number AHA1752 Pre Mod 6, in accordance with the Accomplishment Instructions of Dunlop Limited, Aviation Division, Service Bulletin AHA1752–32–1069, dated June 28, 1993.

(b) If no cracking is detected, repeat the inspection specified in paragraph (a) of this AD thereafter at every tire change until the requirements of paragraph (d) of this AD are accomplished.

(c) If any cracking is detected, prior to further flight, accomplish one of the following:

(1) Replace the complete MLG wheel with a serviceable MLG wheel having part number AHA1752 Pre Mod 6. Thereafter, repeat the inspections specified in paragraph (a) of this AD at every tire change. Or

(2) Replace the complete MLG wheel with a MLG wheel having part number AHA1752 Post Mod 6. Such replacement constitutes terminating action for the inspection requirements of this AD. Or

(3) Replace the complete MLG wheel with a MLG wheel having part number AHA1890. Such replacement constitutes terminating action for the inspection requirements of this AD.

(d) Within 6 months after the effective date of this AD, replace all Dunlop MLG wheels having part number AHA1752 Pre Mod 6, with MLG wheels having either part number AHA1752 Post Mod 6 or part number AHA1890. Such replacement constitutes terminating action for the requirements of this AD.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28520 Filed 11–18–93; 8:45 am]

BILLING CODE 4910–13–P

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CT–6–1–6055; A–1–FRL–4803–4]

Approval and Promulgation of Air Quality Implementation Plans; Connecticut; Withdrawal of Proposed Approval of Reasonably Available Control Technology for Non-CTG Processes at Sikorsky Aircraft Division in Bridgeport

AGENCY: Environmental Protection Agency (EPA).

ACTION: Withdrawal of proposed rule.

SUMMARY: EPA is withdrawing a proposed action published on June 24, 1992 (57 FR 28156), to approve a revision to the Connecticut State Implementation Plan (SIP). The Connecticut Department of Environmental (DEP) has formally withdrawn the SIP revision request which would have imposed reasonably available control technology (RACT) on certain processes at the Sikorsky Aircraft Division of the United Technologies Corporation facility in Bridgeport, Connecticut.

FOR FURTHER INFORMATION CONTACT: Steven A. Rapp, (617) 565–9024.

SUPPLEMENTARY INFORMATION: On June 24, 1992, EPA published a notice of proposed rulemaking (57 FR 28156) proposing to approve a request by the Connecticut Department of Environmental Protection (DEP), to revise the Connecticut SIP. The DEP's SIP revision consisted of a plan approval (State Order No. 8015) imposing RACT on volatile organic compound (VOC) emitting operations at Sikorsky Aircraft Division of the United Technologies Corporation facility in Bridgeport that are not otherwise subject to RACT under Connecticut SIP regulations developed pursuant to EPA's Control Technique Guidelines (CTG). The Connecticut SIP includes subsection 22a–174–20(ee) which requires RACT on all stationary sources with potential VOC emissions of 100 tons per year (TPY) or more from non-CTG processes. At the time the DEP originally submitted its RACT plan for Sikorsky Bridgeport, that facility had existing non-CTG processes with potential VOC emissions of more than 100 TPY.

On November 15, 1990, the Clean Air Act Amendments of 1990 (CAAA) were enacted. Section 182(a)(2)((A) of the CAAA required that all states which were required to make corrections to RACT regulations, to revise their VOC

regulations to make them consistent with EPA guidance by May 15, 1991. Connecticut began its efforts to revise its VOC regulations well before enactment, and on October 18, 1991, EPA published a final rule approving Connecticut's revised VOC regulations as part of the SIP. The revised Connecticut VOC regulations include changes which affect the proposed Sikorsky Bridgeport RACT determination. Specifically, Connecticut's revised requirements in subsections 22a–174–20(l), "Metal cleaning" and 22a–174–20(s), "Miscellaneous metal parts and products," now cover the majority of VOC-emitting processes at Sikorsky Bridgeport and therefore supersede portions of State Order No. 8015. Due to these changes, non-CTG operations at this source no longer have potential VOC emissions of 100 TPY or more. Therefore, Sikorsky Bridgeport does not need to have RACT determined for it under Connecticut SIP subsection 22a–174–20(ee). On September 1, 1993, the DEP withdrew its SIP revision. EPA is hereby withdrawing its proposed action published on June 24, 1992 (57 FR 28156) to approve the SIP revision for the Sikorsky Aircraft Division of the United Technologies Corporation facility in Bridgeport, Connecticut.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the State Implementation Plan for the State of Connecticut was approved by the Director of the Federal Register on July 1, 1982.

Dated: November 3, 1993.

Paul G. Keough,

Acting Regional Administrator, Region I.

[FR Doc. 93–28529 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 55

[FRL–4803–2]

Outer Continental Shelf Air Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: This action announces EPA's proposed decision on the reconsideration proceeding convened on March 16, 1993 for the purpose of determining whether the corresponding onshore area ("COA") designations for outer continental shelf ("OCS") platforms Habitat, Henry, Hillhouse, Houchin, Hogan, and Union A, B, and C (collectively, the "OCS platforms") should be changed to the Ventura County Air Pollution Control District ("Ventura County APCD"). The COA for these platforms is currently the Santa Barbara County Air Pollution Control District ("Santa Barbara County APCD"). The intended effect of this notice is to propose the designation of a COA for the OCS platforms so that the sources can comply with the OCS air regulations (40 CFR part 55) by the September 4, 1994 compliance date. EPA will follow the notice and comment procedures of the Clean Air Act ("the Act"), and will consider comments before taking final action.

DATES: Comments must be received on or before December 20, 1993.

ADDRESSES: Comments should be submitted to: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

Material relevant to the COA designations for the OCS platforms listed above can be found in EPA docket A–91–76. This docket is available for public inspection and copying at the following locations:

U.S. Environmental Protection Agency, Region 9, Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105.

U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

These locations are open to the public Monday through Friday, 9 a.m. to 5 p.m., excluding legal holidays. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Christine Vineyard, Rulemaking Section II (A–5–3), Air and Toxics Division, 75 Hawthorne Street, San Francisco, CA 94105, (415) 744–1195.

SUPPLEMENTARY INFORMATION:

I. Background Information

On September 4, 1992, EPA promulgated the Outer Continental Shelf (OCS) rule (40 CFR Part 55) in the **Federal Register** pursuant to section 328 of the Act (57 FR 40792). The OCS rule established requirements to control air pollution from OCS sources in order to attain and maintain federal and state ambient air quality standards and to comply with the provisions of part C of title I of the Act. The rule applies to all OCS sources located offshore of the United States except for those located in the Gulf of Mexico west of 87.5 degrees longitude.

Section 328 requires that for such sources located within 25 miles of a state's seaward boundary, the requirements must be the same as would be applicable if the sources were located in the COA. The COA is defined in the Act as:

> with respect to any OCS source, the onshore attainment or nonattainment area that is closest to the source, unless the Administrator determines that another area with more stringent requirements with respect to the control and abatement of air pollution may reasonably be expected to be affected by such emissions. Such determination shall be based on the potential for air pollutants from the OCS source to reach the other onshore area and the potential of such air pollutants to affect the efforts of the other onshore area to attain or maintain any Federal or State ambient air quality standard or to comply with the provisions of part C of this chapter.

42 U.S.C. 7627. The Act requires new OCS sources (as defined in section 111(a)) to comply with the OCS rule immediately upon promulgation, and existing sources to comply 24 months thereafter, or by September 4, 1994.

The Administrator designated the COAs for all existing and proposed OCS sources offshore of California in the preamble to the final rule. 57 FR 40796–40797. Union Oil Company of California, Pacific Operators, Inc. d.b.a. Pacific Operators Offshore, Inc., and Texaco Exploration and Production Inc. (collectively, "Unocal") and the Ventura County APCD have filed petitions for reconsideration with EPA, asking EPA to reconsider the COA designations for the OCS platforms Habitat, Henry, Hillhouse, Houchin, Hogan, and Union A, B, and C. The Ventura County APCD and Unocal have also filed petitions for review in the Courts of Appeal for the District of Columbia and the Ninth Circuit, but these cases have been stayed pending EPA's review of their petitions for reconsideration. *Ventura County Air Pollution Control District* v. *U.S. EPA*, No. 92–1572 (D.C. Cir. Nov. 3, 1992); *Ventura County Air Pollution Control District* v. *U.S. EPA*, No. 92–70730 (9th Cir. Nov. 3, 1992); *Union Oil Co.* v. *U.S. EPA*, No. 92–1570 (D.C. Cir. Nov. 2, 1992); *Union Oil Co.* v. *U.S. EPA*, No. 70727 (9th Cir. Nov. 3, 1992). In addition, the Santa Barbara County APCD filed a petition for review of the OCS rule in the Court of Appeals for the District of Columbia, *Santa Barbara County Air Pollution Control District* v. *EPA*, No. 92–1569 (D.C. Cir. Nov. 2, 1992), and intervened in the four Unocal and Ventura County APCD actions.

II. Action To Be Reconsidered

On November 2 and 3, 1992, the Ventura County APCD and Unocal, respectively, filed petitions for reconsideration of the COA designations for the OCS platforms identified above. Although petitioners cited the Administrative Procedure Act, 5 U.S.C. 553(e), as the basis for their right to petition for reconsideration, the final action at issue here was taken concurrently with the OCS rulemaking, which the Administrator determined to be subject to the requirements of section 307(d) of the Clean Air Act. 56 FR 63774.

Section 307(d)(7)(B) provides in pertinent part:

> If the person raising an objection can demonstrate to the Administrator that it was impracticable to raise such objection within such time (the period for public comment) or if the grounds for such objection arose after the period for public comment (but within the time specified for judicial review) and if such objection is of central relevance to the outcome of the rule, the Administrator shall convene a proceeding for reconsideration of the rule and provide the same procedural rights as would have been afforded had the information been available at the time the rule was proposed * * *. Such reconsideration shall not postpone the effectiveness of the rule. The effectiveness of the rule may be stayed during such reconsideration, however, by the Administrator or the court for a period not to exceed three months.

42 U.S.C. 7607(d)(7)(B). EPA determined that it was appropriate to convene the proceeding for reconsideration. 58 FR 14157.

III. Evaluation

In this reconsideration proceeding, EPA has examined the material submitted by the Ventura County APCD and the Santa Barbara County APCD regarding EPA's COA designation for the OCS platforms at issue. Pursuant to § 55.5(b), the chief executive officer of an APCD, who believes that the District has more stringent air pollution control requirements than the NOA for a proposed OCS source, may submit a request to EPA for the APCD to be designated as the COA. The Ventura County APCD submitted such a request for the OCS platforms. In order to substantiate its request, the Ventura County APCD, not being the NOA, must make a demonstration that: (1) The Ventura County APCD has more stringent requirements with respect to the control and abatement of air pollution than the Santa Barbara County APCD; (2) the emissions from the OCS platforms are or would be transported to the Ventura County APCD; and (3) the transported emissions would affect the Ventura County APCD's effort to attain or maintain a federal or state ambient air quality standard or to comply with the requirements of part C of title I of the Act, taking into account the effect of air pollution control requirements that would be imposed if the Santa Barbara County APCD were designated as the COA. § 55.5(b)(2). If, and only if, EPA concludes that all three criteria of § 55.5(b)(2) were met, EPA will designate an area other than the NOA as the COA.

A. Stringency Analysis

The parties agreed to a June 15, 1993 deadline for the submittal of a stringency analysis and any other relevant data by the Ventura County APCD and the Santa Barbara County APCD. Rules applicable to OCS sources that were already adopted by both the Ventura and Santa Barbara County APCDs as of September 4, 1992 were to be used for the stringency comparison. EPA encouraged the parties to work together to reach consensus on as many issues as possible. On June 15, 1993, both the Ventura County APCD and the Santa Barbara APCD submitted analyses to EPA.

EPA has evaluated the submittals of the Ventura County and Santa Barbara County APCDs on a rule by rule basis. A copy of this evaluation is contained in the Technical Support Document (TSD dated September 24, 1993). After review of the submitted analyses, EPA has determined that Ventura County did not adequately demonstrate that the Ventura County APCD's requirements are more stringent with respect to the control of air pollutants than those of the Santa Barbara County APCD. (See TSD.) Since the first criterion of § 55.5(b) was not met, EPA has concluded that the Santa Barbara County APCD, the NOA for the OCS platforms at issue, will remain the COA. Given its conclusion regarding the first criterion, EPA has not addressed the adequacy of the Ventura County APCD's demonstration on the second and third criteria under § 55.5(b).

IV. Proposed Decision

For the reason cited above, EPA is hereby proposing not to change the following OCS platform COA designations, which shall remain the COA for the lifetime of each source:

Platform A: Santa Barbara County Air Pollution Control District
Platform B: Santa Barbara County Air Pollution Control District
Platform C: Santa Barbara County Air Pollution Control District
Platform Habitat: Santa Barbara County Air Pollution Control District
Platform Henry: Santa Barbara County Air Pollution Control District
Platform Hillhouse: Santa Barbara County Air Pollution Control District
Platform Hogan: Santa Barbara County Air Pollution Control District
Platform Houchin: Santa Barbara County Air Pollution Control District

List of Subjects in 40 CFR Part 55

Environmental protection, Administrative practice and procedure, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Nitrogen dioxide, Nitrogen oxides, Outer continental shelf, Ozone, Particulate matter, Permits, Reporting and recordkeeping requirements, Sulfur oxides.

Authority: Section 328 of the Clean Air Act (42 U.S.C. 7401 et seq.) as amended by Public Law 101-549.

Dated: November 10, 1993.

Carol M. Browner,

Administrator.

[FR Doc. 93-28449 Filed 11-18-93; 8:45 am]
BILLING CODE 6560-50-P

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. 92-64; Notice 3]

RIN 2127-AE63

Motor Vehicle Content Labeling

AGENCY: National Highway Traffic Safety Administration, DOT. (NHTSA), Department of Transportation (DOT).

ACTION: Notice of Proposed Rulemaking (NPRM).

SUMMARY: Section 210 (also known as the American Automobile Labeling Act) of the Motor Vehicle Information and Cost Savings Act requires all new passenger motor vehicles (this category includes passenger cars, certain small buses, and all trucks and multipurpose passenger vehicles with a gross vehicle weight rating of 8,500 pounds or less), beginning on October 1, 1994, to bear labels providing information about the domestic and foreign content of their equipment. More specifically, the labels must show: The percentage (by value) of the equipment in the vehicle that originated in the United States and Canada; the foreign countries which are the major sources of the vehicle's equipment and the percentage by value of the equipment originating in each of these countries; the countries of origin

of the vehicle's engine and transmission; and the location where the vehicle was assembled. Section 210 requires vehicles to labeled with this information to enable consumers to take that information into account in deciding which new vehicle to purchase.

This document proposes rules and procedures for implementing section 210. Under the proposed regulation (which closely tracks section 210's language), information concerning country of origin of each piece of equipment must be provided by suppliers. The vehicle manufacturer must combine all the information provided by suppliers, record the final percentages and other information on the proper place on the label, and affix the label to each new passenger motor vehicle before shipment. Dealers are responsible for maintaining the label on each vehicle.

DATES: *Comment closing date*: Written comments must be received on or before January 18, 1994.

Proposed effective date: The proposed new part would be added to the Code of Federal Regulations on December 20, 1993.

Proposed compliance date: Outside suppliers would be required to provide specified information to allied suppliers by May 1 of each year and to manufacturers by June 1 of each year, beginning in 1994. Allied suppliers would be required to provide specified information to manufacturers by June 1 of each year, beginning in 1994. Manufacturers would be required to comply with the proposed vehicle labeling requirements for vehicles manufactured on or after October 1, 1994.

ADDRESSES: Written comments must refer to the docket and notice number set forth above and be submitted (preferably in 10 copies) to the Docket Section, National Highway Traffic Safety Administration, room 5109, 400 Seventh Street SW, Washington, DC 20590.

Submissions containing information for which confidential treatment is requested should be submitted (three copies) to Chief Counsel, National Highway Traffic Safety Administration, room 5219, 400 Seventh Street SW, Washington, DC 20590, and seven additional copies from which the purportedly confidential information has been deleted should be sent to the Docket Section.

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Safety Administration, room 5313, 400 Seventh Street SW, Washington, DC 20590 (202–366–4797).

SUPPLEMENTARY INFORMATION:

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I. Background

A. Statutory Requirements

Congress enacted the American Automobile Labeling Act as part of the Department of Transportation and Related Agencies Appropriation Act for Fiscal Year 1993, P.L. 102–388. The Labeling Act amends Title II of the Motor Vehicle Information and Cost Savings Act ("Cost Savings Act"), by adding a new section 210. That section requires that new "passenger motor vehicles" manufactured on or after October 1, 1994, bear labels providing information regarding the domestic and foreign origins of their parts. The purpose of section 210 is to provide information on the U.S./Canadian parts content of passenger automobiles to consumers so that they can take account of that information in deciding which new vehicle to purchase.

The term "passenger motor vehicle," defined in section 2(1) of the Cost Savings Act as a motor vehicle with motive power, designed for carrying 12 persons or less, is amended for purposes of section 210 to include any "multipurpose passenger vehicle" and "light duty truck" that is rated at 8,500 pounds gross vehicle weight rating or less. Thus, the new motor vehicle content labeling requirements apply to passenger cars, light trucks, multipurpose passenger vehicles, and certain small buses. Motorcycles are excluded.

The basic labeling requirement is set forth in section 210(b). That section requires that each manufacturer of a new passenger motor vehicle distributed in commerce for sale in the United States shall annually establish for each model year and cause to be affixed, and each dealer shall cause to be maintained, on each such vehicle manufactured on or after October 1, 1994, in a prominent place, one or more labels indicating the following:

(1) The percentage of the value of the equipment that comprises the vehicle that is considered of U.S./Canadian origin;

(2) The names of the countries (other than the U.S./Canada), if any, that contributed the two highest percentages (at a minimum of 15 percent) to the total value of the equipment that comprises the vehicle and the percentages those countries contributed;

(3) The city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) The country of origin for the engine of the vehicle (*i.e.*, the country that contributed the greatest percentage to the total value of the equipment in that engine); and

(5) The country of origin for the transmission of the vehicle (*i.e.*, the country that contributed the greatest percentage to the total value of the equipment in that transmission).

There are several points to be made concerning these five items. First, under sections 210(b)(1) (A) and (C), items one and two are calculated on a "carline" basis. The term "carline" refers to a group of vehicles which has a degree of commonality in construction, according to section 210(f)(11). Thus, the percentages in items one and two are not calculated for each individual vehicle. Therefore, the figures on the label of every vehicle within a carline would be identical.

Second, under section 210(b)(1), the percentages in items one and two are established once per model year, prior

to the beginning of the model year. There are no changes to the figures in the first two items during a model year. The percentages required to be indicated by this section may be rounded to the nearest five percentage points by the manufacturers.

Third, under section 210(b)(1)(C), item two would only be on the label in the event that one or more countries other than the U.S./Canada are, individually, the source of at least 15 percent of the total value of the parts content of the vehicle carline.

Fourth, items three, four, and five are determined on an individual vehicle basis. Therefore the final assembly point, and countries of origin for engine and transmissions may vary for individual vehicles within a carline.

Finally, for country of origin calculations for engines and transmissions, the U.S. and Canada are considered separately. These are the only calculations in which the U.S. and Canada are not considered one entity.

In order to calculate the information required for the label, the vehicle manufacturer must know certain information about the origin of each item of passenger motor vehicle equipment used to assemble its vehicles. For example, in order to calculate the information for the first item of the label, *i.e.*, the percentage of the value of the motor vehicle equipment installed on passenger motor vehicles within a carline which originated in the U.S./Canada, the manufacturer must know the U.S./Canadian content of each item of motor vehicle equipment. Under section 210(f)(4), passenger motor vehicle equipment is defined to include any system, subassembly, or component (other than minor parts such as attachment hardware) received at the final assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser.

The statute specifies that suppliers of passenger motor vehicle equipment must provide information about the origin of the equipment they supply. For purposes of determining U.S./Canadian origin for the first item of the label, the statute provides different procedures depending on whether equipment is received from an allied supplier (a supplier wholly owned by the manufacturer) or an outside supplier.

For equipment received from outside suppliers, section 210(f)(5)(A) provides that the equipment is considered U.S./Canadian if it contains at least 70 percent value added in the U.S./Canada. Thus, any equipment that is at least 70 percent U.S./Canadian is valued at 100 percent U.S./Canadian, and any equipment under 70 percent is valued at zero percent. For equipment received from allied suppliers, section 210(f)(5)(B) provides that the actual amount of U.S./Canadian content is used.

The Department of Transportation is required to promulgate regulations to implement the content labeling requirements. Section 210(c) requires the promulgation of regulations which specify the form and content of the required labels, and the manner and location in which the labels must be affixed. Section 210(d) requires promulgation of such regulations as may be necessary to carry out the labeling requirements, including regulations to establish a procedure to verify the required labeling information. That section directs also that such regulations provide the ultimate purchaser of a new passenger motor vehicle with the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers. Finally, section 210(d) also specifies that the regulations include provisions requiring suppliers to certify whether their equipment is of U.S., U.S./Canadian, or foreign origin.

Section 210 does not specify a specific date for completing the necessary rulemaking. However, section 210(d) does direct that the regulations be promulgated in time to provide adequate compliance lead time before content labeling becomes mandatory on October 1, 1994.

B. November 1992 Request for Comments

On November 18, 1992, NHTSA published in the **Federal Register** (57 FR 54351) a request for comments in order to obtain information with which to guide the rulemaking to implement section 210. As part of that process, a public meeting was held on December 17, 1992, during which the agency heard nine speakers. More than 20 written comments were subsequently received by the agency, including comments from vehicle manufacturers, and manufacturer and dealer groups.

C. Summary of Comments in Response to Request for Comments

Label. Most commenters stated that the agency should allow manufacturers maximum flexibility to determine the dimensions and the site of the label, whether it be included on the Monroney price label or the fuel economy label, or on its own.

Several Japanese manufacturers, as well as the American International Automobile Dealers Association (AIADA), suggested that additional information regarding label content be required, or at least permitted, by the proposed regulation. Honda recommended including a notice stating that the figures on the label do not reflect actual values of domestic content of an individual vehicle's equipment, but instead reflect averaged figures from the vehicle's carline; nor do they reflect the cost of labor used to assemble the vehicle. The Japan Automobile Manufacturers Association, Inc. (JAMA) stated that it believes a statement should be included on the label explaining that the percentage of U.S. assembly labor is not included in the figures on the label. AIADA recommended that the label indicate whether a vehicle is considered domestic or imported under corporate average fuel economy (CAFE) standards. AIADA also suggested that the label include the value of U.S. assembly labor or make clear to the consumer that the U.S./Canadian content does not include assembly labor, but only the value of equipment. Both AIADA and Honda stated that the label should indicate that the figures represent only "selected vehicle equipment," or "parts content."

AIADA and Mitsubishi recommended that NHTSA publish a "Consumers Guide to the American Automobile Labeling Act." In addition, AIADA suggested that dealers be permitted to remove labels to aid visibility in test driving new vehicles, and replace labels if they become mutilated or illegible.

Suppliers. The UAW stated that it believes that section 210 distinguishes between outside and allied suppliers because manufacturers are in a better position to get information about the parts content provided by their allied suppliers, thus avoiding imposition of an undue administrative burden on vehicle manufacturers. The 70 percent threshold that outside suppliers must meet in order to call their equipment "U.S./Canadian" is necessary, according to the UAW, in order to ensure that only equipment that has a significant level of domestic content is counted as 100 percent domestic. Ford stated that it believes the 70 percent threshold that outside suppliers must meet in order to call their equipment "U.S./Canadian" is intended to allow them to utilize simpler and less burdensome tracking procedures.

Both Ford and Chrysler commented that, for parts from outside suppliers that contain less than 70 percent U.S./Canadian content, the country of origin should be considered as the country (other than the U.S./Canada) that

contributed the greatest percentage of value to the piece of equipment. Chrysler also noted that the 70 percent threshold would not seriously affect domestic content calculations of an entire carline, in light of the fact that the average motor vehicle contains approximately 1,500 pieces of equipment.

GM commented that in a case in which a foreign subsidiary provides equipment to a domestic subsidiary of the same manufacturer, the foreign subsidiary should be considered an allied supplier. It stated that if a foreign subsidiary and the assembly plant are both owned by the same parent company, then the subsidiary should be considered an allied supplier. This view is echoed by Ford's comment that suppliers owned, operated, or controlled by a parent company (*i.e.*, a consolidated subsidiary of the parent company or a joint venture in which the parent holds a majority interest) should be considered allied suppliers. Honda commented that the term "wholly-owned" is insufficiently defined in section 210, and requested that the agency clarify it. According to Honda, a carline can have more than one manufacturer, and an "allied supplier" that is wholly owned by any one of the manufacturers should be deemed an allied supplier of all of the manufacturers for that carline.

Volkswagen, on the other hand, commented that in the situation in which a foreign subsidiary supplies a domestic subsidiary that supplies a U.S. assembly plant, if both subsidiaries are not wholly owned by the manufacturer, the foreign subsidiary should be considered as an outside supplier.

In-house parts & equipment. Almost all commenters stated that in-house produced equipment should be treated as coming from allied suppliers. In order to achieve this treatment, the UAW urged a broad interpretation of the term "final assembly point," defined in section 210(f)(14). It stated that including in-house equipment in allied supplier calculations would provide an incentive for manufacturers to do more parts manufacturing in-house rather than contracting such work to other companies (including foreign manufacturers). GM stated that it believes that final assembly refers to the operations by which the body, chassis, and powertrain components, are integrated, thus producing an operational vehicle.

Ford, in agreeing with the allied supplier treatment for in-house equipment, commented that the price for such equipment should be equivalent to the intra-division transfer price.

Engine and Transmission. The UAW stated that calculations to determine the country of origin for engines and transmissions should include the value of labor performed in assembling the engine and transmission. It believes that the phrasing of the third sentence of section 210(f)(12) is in error, and should have referred to the purchase price of direct materials and assembly costs; and not merely to the purchase price of direct materials.

Toyota recommended that the agency adopt the Customs Service's substantial transformation test for engines and transmissions as the basis by which their country of origin is determined.

NAFTA, CFTA, CAFE. Numerous commenters suggested that NHTSA follow, as closely as possible, the existing trade provisions of the United States-Canada Free-Trade Agreement (CFTA), the regulations in the CAFE program, or the not-yet-ratified North American Free-Trade Agreement (NAFTA). GM and Chrysler, in particular, advised the agency to adopt NAFTA's provisions wherever possible. Ford, however, stated that it does not believe that NAFTA's provisions would sufficiently fulfill the requirements of section 210. Toyota recommended that the agency adopt NAFTA's Annex 403.1 as its list of automotive equipment that needs to be traced. Volkswagen, on the other hand, stated that section 210's provisions, by excluding Mexico, are contrary to the principles and objectives of NAFTA. Nissan, however, indicated its belief that if, and when, NAFTA comes into force in the U.S., Mexico would be treated as the equivalent of Canada. The opposite point of view was put forward by the American Automobile Manufacturers Association (AAMA), which advocates using CAFE and NAFTA regulations to the greatest extent possible in promulgating these proposed regulations, but noted that Mexico would not be included on the same basis as Canada absent legislative modification of section 210's language.

GM recognized that CAFE regulations do not appear compatible with section 210's requirements for U.S./Canadian content calculations. Ford stated that a common data base can be instituted for labeling information among the various regulatory and trade agreement requirements, even if section 210's requirements are unique.

Substantial transformation. Toyota recommended using the Customs Service's substantial transformation test whenever possible, *i.e.*, whenever the 70 percent threshold mandated in section 210(f)(5)(A) for determining country of origin of equipment does not apply. The substantial transformation test holds that the country in which a raw material was transformed into a good, or the last country in which a great deal of value was added to a good, or in which a good was transformed into its finished state, is considered the good's country of origin. the substantial transformation test is used to determine the national origin of goods for customs purposes. Toyota and the Association of International Automobile Manufacturers (AIAM) believe that use of the substantial transformation test would minimize the burden of the major foreign equipment source calculation required by section 210(b)(1)(C).

Carline. The UAW, GM, Ford, Chrysler, and the AAMA commented that the term "carline" cannot encompass divisions by country of manufacture. All of these commenters state that NHTSA should follow the fuel economy definition of the term, which does not allow manufacturers to split carlines by country. The UAW noted that Congress specified two items (total U.S./Canadian content, and major foreign content sources) be calculated on a carline basis, and the remaining three on a per vehicle basis. The UAW and Ford also stated that vans, utility vehicles, and pickups are separate carlines. Ford pointed out that car or truck lines may be subdivided into new nameplates, *i.e.*, different model names, which should give manufacturers enough latitude if they want to subdivide carline product by assembly plants located in different countries, especially because even minor nameplate variations can justify splitting production into different carlines.

Nissan, Toyota, Mitsubishi, and the AIAM commented that manufacturers should have at least the option of splitting carlines into domestic and foreign categories. Honda commented that the original intent of section 210, before its final form was adopted, was to require content computations for each individual vehicle. It believes the purpose of the change to a carline basis was only to ease implementation of the Act, and not to alter the basic intent of the proposal, and that, therefore, the agency should permit manufacturers to divide production into "domestic carlines" and "foreign carlines."

Bulk materials. Ford recommended that bulk materials such as fasteners, sealers, paint, and solvents, and raw materials should not come under the auspices of the proposed regulation. Volkswagen and Chrysler supported this proposed exclusion. The UAW, on the other hand, stated that paint, sealer, raw

materials, fasteners, and general purpose hardware should be included in calculations of U.S./Canadian content.

Toyota stated that it believes the value of sheet steel used in the manufacturing process should be included as in-house supplied equipment, and also recommended that the agency adopt the list of automotive equipment in Annex 403.1 of NAFTA as the list of equipment that must be traced.

GM commented that manufacturers should be permitted to omit items of very low per-unit value from calculations of U.S./Canadian content provided such items do not amount to more than five percent of the vehicle's total purchase price.

Multi-stage or altered vehicles. Ford and Chrysler recommended that first and intermediate-stage manufacturers be considered allied suppliers of final-stage manufacturers. Chrysler also recommended that vehicle modifiers be exempt from section 210.

The Recreation Vehicle Industry Association (RVIA) commented that final-stage manufacturers and van converters should be excluded from the proposed regulation pursuant to the Regulatory Flexibility Act (5 U.S.C. § 601, *et seq.*). The National Truck Equipment Association (NTEA) stated that the agency should exempt multi-stage produced and altered vehicles from the proposed regulation, or permit final-stage manufacturers and alterers to "pass through" information provided by vehicle chassis manufacturers. In a similar vein, Honda suggested that multistage vehicles be required to follow the procedures for multi-stage vehicle certification in 49 CFR Part 568. Volkswagen commented that each stage manufacturer should calculate the applicable information, and the final-stage manufacturer or alterer should affix the appropriate label.

Exclusions from the full requirements of section 210. The RVIA commented that carlines of which fewer than 20,000 vehicles per year are produced, and recreation vehicle manufacturers that are small businesses should be exempt from the proposed regulations, or should only be required to comply with simplified compliance, recordkeeping and reporting requirements.

Several foreign manufacturers, including Lamborghini, Volvo, Volkswagen, and Mitsubishi, as well as the AIAM recommended that if a carline's U.S./Canadian value is under a certain threshold (ranging from 35 percent down to 15 percent), the manufacturer be permitted to simply note on the label that the car was foreign, or contained less than a threshold level of U.S./Canadian content. Volkswagen recommended setting the level at 35 percent, stating that at a lower level, not enough carlines would be covered by the cut-off to matter. GM and the AAMA did not object to this idea, and would set the cut-off level at 15 percent.

Cost. Only Chrysler responded to the Request for Comments with a cost estimate. It estimated a one time compliance cost of 2,000 man-hours for start up, and 100 man-hours per year thereafter, in order to comply with the requirements of section 210.

II. Overview of Proposal

In this notice, NHTSA is proposing regulations to implement section 210. The regulations would establish requirements for (1) manufacturers of passenger motor vehicles; (2) suppliers of motor vehicle equipment used in the assembly of passenger motor vehicles; and (3) dealers of passenger motor vehicles. A summary of those requirements is set forth below.

NHTSA followed the language of section 210 as closely as possible in developing the proposed regulations. The agency notes that, given the level of detail set forth in the statute, it has little or no discretion with respect to many aspects of the labeling scheme. However, the agency necessarily considered a number of issues in developing the proposal, including those raised by the commenters. These issues are addressed below in the "Details of Proposal" section of this notice.

Since much of the proposal is dictated by the language of section 210, commenters should carefully read the text of section 210 while preparing their comments. Doing so should minimize instances in which commenters ask the agency to embark on a course of action that is proscribed by the statute. For example, comments to the effect that labor and assembly costs at the final assembly point should be included, or requests that wholly owned suppliers to allied suppliers also be treated as allied suppliers are specifically ruled out by section 210. Therefore, such comments will not prove very helpful to the agency in preparing a final rule. It will be more helpful if commenters identify such things as areas where they believe the agency has not implemented a statutory mandate or areas where the commenter believes the agency has imposed an unnecessary requirement.

A. Manufacturers of Passenger Motor Vehicles

Beginning on October 1, 1994, vehicle manufacturers would be required to affix to all new passenger motor vehicles (this category includes passenger cars, certain small buses, and all trucks and multipurpose passenger vehicles with a gross vehicle weight rating (GVWR) of 8,500 pounds or less) a label which provides the following information:

(1) *U.S./Canadian Parts Content*—the overall percentage, by value, of U.S./Canadian content of the motor vehicle equipment installed on the carline of which the vehicle is a part;

(2) *Major Sources of Foreign Parts Content*—the names of the two countries, if any, other than the U.S./Canada, which contributed the greatest amount (at least 15 percent), by value, of motor vehicle equipment for the carline, and the percentage, by value, of the equipment originating in each such country;

(3) *Final Assembly Point*—the city, state (where appropriate), and country in which the final assembly of the vehicle occurred;

(4) *Country of Origin for the Engine;*

(5) *Country of Origin for the Transmission.*

The label would also be required to include a statement below this information reading as follows:

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

The information for items (1) and (2) of the label would be calculated, prior to the beginning of the model year, for each carline. The information for items (3), (4) and (5) would be determined for individual vehicles.

Vehicle manufacturers would be able to calculate the information for the label by using information required to be provided to them by suppliers (discussed below). Under the proposed requirements, the vehicle manufacturers would be required to maintain records of the information used to determine the information provided on the labels.

The proposed regulation also would permit manufacturers of carlines with below 35 percent U.S./Canadian content to state the percentage as "minimal," in place of a specific number.

B. Suppliers of Motor Vehicle Equipment

For any equipment that an outside supplier (a supplier not wholly owned by the vehicle manufacturer) supplies to a vehicle manufacturer or to a supplier wholly owned by the vehicle manufacturer (an allied supplier), the outside supplier would be required to provide that manufacturer or allied supplier with the following information:

(1) the price of the equipment to the manufacturer or allied supplier;

(2) whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) for any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin for the equipment, *i.e.*, the country in which the greatest percentage by value (using purchase price) was added to the equipment.

For any equipment that an allied supplier supplies to a vehicle manufacturer, the supplier would be required to provide the manufacturer with the following information:

(1) the price of the equipment to the manufacturer;

(2) the percentage U.S./Canadian content of the equipment;

(3) the country of origin of the equipment, *i.e.*, the country in which the greatest percentage, by value (using purchase price) was added to the equipment.

A supplier of engines and transmissions would be required to provide the vehicle manufacturer with the country of origin for each engine or transmission it supplies to the manufacturer, *i.e.*, the country in which the greatest percentage, by value (using the total cost of *equipment* to the engine or transmission supplier, while excluding the cost of final assembly labor), was added to the engine or transmission.

Both outside and allied suppliers that directly supply equipment to vehicle manufacturers would be required to provide the specified information directly to the vehicle manufacturers, in the form of a certification. Outside suppliers that directly supply to allied suppliers would be required to provide the specified information and certification directly to the allied suppliers. Suppliers would also be required to maintain records of the information used to compile the information provided to the manufacturers and outside suppliers.

The proposed requirements would apply only to suppliers which supply directly to the vehicle manufacturer or to an allied supplier. No requirements would be imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer.

C. Dealers of Passenger Motor Vehicles

Dealers would be required to maintain the label on each vehicle until the vehicle is sold to a consumer.

III. Details of Proposal

A. Information on the Label

1. Item One: Percentage U.S./Canadian Content

The first item required on the label is the percentage (by value) of passenger motor vehicle equipment installed on such vehicle within a carline which originated in the U.S. and Canada. This information is identified as "U.S./Canadian" parts content. In order to calculate this figure, the vehicle manufacturer must know:

(1) the U.S./Canadian content (by value) of each item of motor vehicle equipment used to assemble the vehicles within the carline; and

(2) the total value of each such item of equipment, *i.e.*, the price it will pay for each such item of equipment; and

(3) the unit volume of each such item of equipment for each carline.

In calculating the U.S./Canadian parts content for each carline, the manufacturer must reasonably project the installation rates for all equipment offered on that carline. For example, if a carline with a standard manual transmission is offered with an optional automatic transmission, the manufacturer must project the sales of each transmission in advance of the model year. This would also apply to all other equipment options or choices for the vehicle.

To provide an extremely simplified example (with the assumption that all of the equipment in this example is sourced from allied suppliers that are not subject to the roll-up roll-down provision of the statute, as discussed below), assume a manufacturer offers a carline with a manual transmission (with a per-item value of $400 and with 80 percent U.S./Canadian parts content) and an automatic transmission (with a per-item value of $600 and with 40 percent U.S./Canadian parts content). The "other parts" of each vehicle are valued at $9,000 and 65 percent U.S./Canadian parts content, regardless of engine choice. For the carline in a given model year, the manufacturer expects to sell 250,000 cars in total: 100,000 cars with the manual transmission and 150,000 cars with the automatic transmission. The manufacturer would determine the U.S./Canadian parts content for this carline using the following calculation:
[(100,000×400×0.8) + (150,000×600×0.4) + (250,000×9,000×0.65)] divided by [(100,000×400) + (150,000×600) + (250,000×9,000)], which equals 65 percent U.S./Canadian content for the vehicles in the carline (when rounded to the nearest 5 percent).

Under section 210(f)(4), "passenger motor vehicle equipment" is defined to include any system, subassembly, or component (other than minor parts such as attachment hardware) received at the final vehicle assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser.

Much of the information that manufacturers use to calculate the first item on the label must come from parts suppliers. These calculations are made once for each model year, prior to the model year. As discussed later in this notice, the agency is proposing to require suppliers to provide information to manufacturers concerning the content of the parts they supply.

Determining the U.S./Canadian content of individual items of equipment. Equipment supplied by outside suppliers is considered U.S./Canadian under section 210(f)(5)(A) if the U.S./Canadian value of a type of equipment is 70 percent or greater. Equipment supplied by outside suppliers that does not reach 70 percent threshold of U.S./Canadian content is considered non-U.S./Canadian. Thus, if equipment from an outside supplier has 75 percent U.S./Canadian content, 100 percent of its value is considered U.S./Canadian. However, if equipment has 50 percent U.S./Canadian content, zero percent of its value is considered U.S./Canadian. This statutory provision is sometimes referred to as the "roll-up, roll-down" provision. (This provision, including comments, is further discussed below.)

For equipment supplied by allied suppliers, actual U.S./Canadian content is determined under section 210(f)(5)(B). However, in the determination of that content, equipment that has been delivered to allied suppliers by outside suppliers and has been incorporated into the allied supplier's motor vehicle equipment, is treated in the manner previously described for equipment delivered to manufacturers by outside suppliers. Thus, if the equipment delivered to an allied supplier by an outside supplier has at least 70 percent U.S./Canadian content, the total value of that equipment is considered 100 percent U.S./Canadian. Conversely, if the equipment has less than 70 percent U.S./Canadian content, the entire value of the equipment is considered non-U.S./Canadian.

NHTSA notes that section 210(f)(5)(B) provides a specific formula for determining the U.S./Canadian content of equipment received by manufacturers from allied suppliers. The formula provides first that the foreign content is

determined by adding up the purchase price of all foreign material purchased from outside suppliers that comprise the individual passenger motor vehicle equipment, and then subtracting such purchase price from the total purchase of such equipment. The remainder is the U.S./Canadian content of the equipment.

This formula does not appear to take into account the possibility that an allied supplier may be foreign, since it assumes that everything, except for the foreign value passed through from outside suppliers, is U.S./Canadian. Based on a reading of the statute as a whole, NHTSA does not believe Congress intended to convert the entire value added by allied suppliers located outside the U.S./Canada into domestic content. Therefore, the proposed regulation treats the value added by allied suppliers located outside the U.S. Canada as non-U.S./Canadian. NHTSA specifically requests comments on this issue.

Ford suggested that the agency, in its proposed regulation, need not interpret 210(f)(5)(A) as a roll-up, roll-down provision, and stated that outside suppliers should be permitted the option of reporting the actual U.S./Canadian content in the event that the 70 percent threshold is not met. The agency must disagree, given the statutory language. Section 210(b)(1)(A) requires, in essence, that the label must state the percentage (by value) of parts that meet the definition of "originated in the U.S. and Canada." Under section 210(f)(5)(A), an outside supplied part meets the definition of "originated in the U.S. and Canada" if the part contains 70 percent or more value added in the U.S. and Canada. An outside supplied part does not meet the definition if it contains less than 70 percent value added in the U.S. and Canada. If a part does not meet the definition, then it follows that no part of its value may be reflected in the required percentage (by value) of parts that do satisfy the definition.

The agency also notes that, to allow actual content to be reported from outside suppliers would eliminate the difference in treatment accorded outside and allied suppliers. In interpreting the statute, the agency must assume that Congress, in writing section 210, meant to treat allied suppliers differently than outside suppliers.

Calculating overall U.S./Canadian content. As noted before, in order to determine overall U.S./Canadian content for a carline, the manufacturer must (1) add up the total purchase price it will pay for all items of equipment, (2) add up the U.S./Canadian content (by value) of all items of equipment, and (3) calculate (2) as a percentage of (1).

The total purchase price for all motor vehicle equipment in a carline is based on the total amount that the manufacturer pays to all of its suppliers that deliver such equipment directly to the manufacturer's final assembly point (*i.e.*, the location at which the equipment is assembled into a completed vehicle). Section 210(f)(10)(A), defining the term "value added in the United States and Canada," excludes costs incurred or profits made at the "final assembly point" and beyond (*e.g.*, assembly, labor, advertising, interest payments, etc.). Other post-assembly costs, such as freight, insurance, packing, transportation, duties, taxes, and brokerage fees are similarly excluded. For example, costs associated with shipping completed vehicles from the final assembly point to dealers are excluded from that calculation. Pre-final assembly costs, including such costs as freight to the final assembly plant, are included in calculations of value. The final assembly point is defined in section 210(f)(14) as the plant, factory, or other place at which a new passenger motor vehicle is produced or assembled by a manufacturer and from which a completed vehicle is delivered to a dealer/importer.

It is possible that a manufacturer may conduct some pre-assembly operations, *e.g.*, production of equipment, at the same location as final assembly. In its Request for Comments, NHTSA asked whether equipment produced at the same location as the final assembly plant, *e.g.*, body panels produced in an integrated production plant, be treated as coming from an allied supplier or as part of the final assembly process.

The vast majority of commenters that addressed this question suggested that the pre-final assembly operations performed in-house be treated as operations of an allied supplier. The agency tentatively agrees; final assembly marks a *process* point. This is a significant issue because assembly and labor costs are included in pre-final assembly operations, whether or not performed in-house, but not at the final assembly point. Therefore, to establish consistency among all manufacturers, the agency is proposing to specify a particular phase in the assembly process, for both the body and chassis, that would mark final assembly.

GM stated that final assembly refers to those operations in which the body and chassis (including the power train) are joined or integrated. While the agency generally agrees, there are situations, *e.g.*, unit-body construction, in which such a definition would not apply. For the body of the vehicle, the agency has tentatively selected the moment in the process at which the body leaves the paint shop as the beginning of final assembly. For the chassis, the agency proposes to consider final assembly as beginning the moment prior to attachment of the engine and drive train to the chassis frame or, in the case of unit-body vehicles, on the assembly cradle or jig. All operations such as welding and finishing are completed by then, and the only remaining operations to be performed are assembling the equipment using simple fasteners and adhesives. The agency assumes that in cases in which equipment is not assembled in-house, and is merely shipped to the manufacturer for final assembly, the problem of separating pre-final assembly procedures from final assembly will not arise.

NHTSA specifically requests comments on the proposed definition for when the final assembly begins. The agency notes that labor and other costs associated with assembling the vehicle body and painting it would be counted as parts costs and not excluded as part of the final assembly costs. Depending on the comments, the agency may select a different definition for when final assembly begins for purposes of a final rule.

The agency expects that equipment produced in-house will be priced in accordance with generally accepted accounting principles. In other words, the internal prices between the "allied supplier" and the manufacturer in an in-house situation, must be fair market value prices. If equipment is not priced fairly, consumers would not be receiving the best and most understandable information possible regarding U.S./Canadian content.

The AIAM stated that it was unfair and unprecedented to ignore labor and other assembly costs at the final assembly point, and asked that they be included in the final parts content calculation. NHTSA has no authority to act upon this suggestion positively, because the plain language of section 210 states that costs incurred at or beyond the final assembly point, including labor, advertising, assembly, etc., shall not be included in the final calculations. *See* section 210(f)(10)(A).

However, in order to avoid the possibility that consumers will confuse parts content with overall vehicle content, NHTSA is proposing to require manufacturers to provide an explanatory statement at the bottom of the label. The statement would read:

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

The agency contemplates specifying a single numerical range, representative of typical vehicles for the industry as a whole, in the final rule. The same range would be included on the labels of all vehicles. Since the stated range would not vary depending on actual values for particular carlines or vehicles, manufacturers would not need to make any calculations in order to provide the explanatory statement.

NHTSA believes that the proposed statement would clarify the meaning of "parts content" to consumers, and help them understand the significance of the content information provided on the label. The agency believes that this would be consistent with section 210's requirement that the regulations provide to the ultimate purchaser of a new vehicle the best and most understandable information possible about the foreign and U.S./Canada origin of the equipment of such vehicles.

Since the information will vary for different vehicles, NHTSA believes that it is appropriate to state the information in a range, e.g., 60 to 70 percent, 70 to 80 percent, etc. Since the agency does not currently have this information, it is not proposing a specific range. NHTSA requests that manufacturers provide the information for several specific vehicles, as well as their recommendation for a range to include in a final rule. The agency would prefer that the range not be overly large, since it would be less meaningful to consumers. Since the range would be specified for a typical vehicle, the agency expects that a reasonably narrow range could be established.

Several commenters suggested that more information is needed on the label to explain to consumers that items such as labor and assembly costs at the final assembly point are not included in the content information, that allied suppliers are using the 70 percent roll-up, roll-down rule, etc. The agency is trying to define the point at which enough information is given on the label to aid consumers in understanding the meaning of the information that is provided, but without adding such detail and complexity to the label that it becomes incomprehensible to the average consumer. NHTSA believes that requiring the label to contain details other than those outlined above poses just such a risk. The "note" the agency proposes as part of the label should be sufficient to make consumers aware that the label is not based on the total retail, or even total wholesale, value of the vehicle.

Dealer-installed equipment. Toyota commented that manufacturers should be allowed the option of including individual items of equipment installed after a vehicle leaves the final assembly point based on estimates for each carline at the beginning of the model year. GM agreed with that statement, provided dealer-installed options are obtained from the original manufacturer. On the other hand, the AIADA commented that dealers are not prepared to comply with a regulation that demands that they perform calculations to determine the content of dealer and port-installed options.

NHTSA has tentatively concluded that dealer or port-installed optional equipment should be excluded from content calculations. There are several reasons why the agency believes that the calculation of U.S./Canadian parts content is to be fixed at the time of final assembly, and cannot include options added later by either dealers or importers.

First, and most important, the definition of passenger motor vehicle equipment in section 210(f)(4) is limited to equipment delivered to the manufacturer's final assembly point for installation on, or attachment to, a vehicle at the time of its initial shipment by the manufacturer to a dealer. Equipment sent directly to dealers or ports is never sent to the manufacturer's final assembly point at all, and cannot be installed on, or attached to, a vehicle at the time specified in the statute.

Second, section 210(b)(1) states that the *manufacturer* shall affix the label. The agency has determined that the best time for the manufacturer to affix the label is after final assembly, but before shipment from the plant to the dealer or importer (or port).

Thus, equipment sent directly to the dealer or port for installation or attachment after the manufacturer's initial shipment of a completed vehicle does not qualify as equipment under the statute. The label must be affixed before delivery to the dealer or port, and therefore before any dealer installed or port-installed options are added to the vehicle.

Bulk items of equipment, and raw materials. Section 210(f)(4) provides that the term "passenger motor vehicle equipment" does not include minor parts, such as attachment hardware, and lists as examples nuts, bolts, clips, screws, pins, and braces. It goes on to state that such other similar items may also be excluded. Several commenters expressed opinions as to which items should or should not be considered minor parts.

Ford commented that bulk materials such as fasteners, sealers, paint and solvents, and raw materials should not be traced for purposes of identifying the country of origin content. Chrysler recommended that sealers, paints, and solvents be excluded. The UAW disagreed, stating that paint, sealer, raw materials, fasteners, and general purpose hardware should be included in content calculations.

Toyota commented that the value of sheet steel used in the manufacturing process should be included in the in-house supplied equipment. Toyota also suggested that the agency adopt the list of automotive equipment supplied in NAFTA, as Annex 403.1, as the total universe of the items that require tracing and record keeping. GM requested that NHTSA permit manufacturers to omit items of very low per-unit cost entirely in their content calculations provided that the total value of the equipment does not exceed five percent of the total purchase price.

The agency does not agree that the NAFTA Annex 403.1 should be adopted. The NAFTA annex is not inclusive of all parts (for example, horns and air bags are not included). Further, the list might be amended in the future. That would require NHTSA to amend this regulation each time the NAFTA annex was altered.

The agency has tentatively concluded that all parts, including, paint, sealers, and solvents, are to be included as "equipment" for purposes of section 210, what the narrow exception for minor parts provided in section 210(f)(4), *i.e.*, attachment hardware (nuts, bolts, clips, screws, pins, braces). The agency encourages commenters to suggest other, specific minor parts that should be excluded, and to comment on whether paint, sealers, and solvents should be included as "equipment."

Regarding Toyota's comment that the value of sheet steel used in the manufacturing process should be included in the in-house supplied equipment, the agency notes that the value of the steel when purchased by the manufacturer for in-house production, will be one of the factors that makes up the value of the equipment as supplied to the final assembly point, as discussed above. There is no need for separate consideration of sheet steel in the proposed regulation.

Carline. As indicated above, the percentage overall U.S./Canadian content is determined on a "carline" basis instead of for each individual vehicle. Section 210(f)(11) defines

"carline" as meaning a name denoting a group of vehicles which has a degree of commonality in construction (e.g., body, chassis), and not considering any level of decor or opulence and not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. That section also provides that light duty trucks are considered to be different carlines than passenger cars.

Commenters were split as to whether "carline" should encompass different countries of assembly. At present, there are several carlines that are affected by the question of dual nationality: the Buick Century, Chrysler LeBaron, Dodge Spirit, Dodge Shadow, Ford Escort, Geo Metro, Honda Civic, Honda Accord, Nissan Sentra, Plymouth Acclaim, Plymouth Sundance, Subaru Legacy, Toyota Camry, Toyota Corolla, Toyota Pickup, and Suzuki Sidekick.

The UAW commented that the country in which a vehicle is assembled, and the country in which the engine and transmission are built are items of information that pertain to the specific vehicle, but section 210 requires carline calculations for overall U.S./Canadian vehicle content percentages, and the determination of country/ies that contribute at least 15 percent of the vehicle's value.

The UAW also pointed out, as did GM and Ford, that the definition of carline (section 210(f)(11)) is based on the definition of the same term under the CAFE program. The three commenters pointed to Environmental Protection Agency (EPA) regulations 40 CFR 86.082–2, 40 CFR 600.002–85, and 40 CFR 600.511–80, which do not permit manufacturers any option to split carlines by final assembly locations if the vehicles are of the same type. Nissan, Toyota, Mitsubishi, and AIAM all commented that manufacturers should have the option of splitting the reporting of carlines based on the country of origin, or even, as Toyota argued, by assembly points.

NHTSA has tentatively concluded that country of origin or place of assembly should not be considered in making carline determinations. First, section 210(f)(11) specifies that carline determinations are to be made based on degree of commonality in construction. Determining carlines on the basis of country of origin or place of assembly appears inconsistent with this statutory definition since *identical* cars, *i.e.*, ones with total commonality in construction, could be placed in different carlines. Further, such a result might result in consumer confusion. For example, if a consumer ordered a car identical to one for which he or she had taken a test drive, the consumer would find it very odd if the car he or she received had a label indicating that it was in a different carline.

NHTSA recognizes, however, that additional subdivision of carlines by country of manufacture would result in content labeling information that is more representative of the individually labeled vehicles. The agency notes that section 210(d) provides that regulations shall provide to the ultimate purchaser the best and most understandable information possible about the foreign and U.S./Canadian origin of the equipment of such vehicles without imposing costly and unnecessary burdens on the manufacturers.

NHTSA is therefore considering requiring manufacturers that produce a carline manufactured in more than one country to state that fact on the label. This information would be in addition to, and not instead of, the normal labeling requirement proposed in this notice. The information could possibly take the form of stating the U.S./Canadian parts content, and major foreign sources of that portion of the carline produced in a given country. The agency seeks comment on the issue of requiring such information to be added to the parts content label, including whether such a requirement would result in an information "overload" to the consumer, thereby reducing the value of the other information, the advantages of providing the information, and the costs to manufacturers.

NHTSA also requests comments on the possibility of differentiating carlines by engine type. Commenters should specifically address whether separating carlines by engine type would result in a relevant increase in the accuracy of the carline information on the label. In addition, commenters should comment on whether carline differentiation on this basis would add to manufacturers' or suppliers' reporting burden, and to what degree.

NHTSA asked the EPA to comment on the pre-publication draft of the proposed rule, especially regarding any conflicts the proposal might cause with existing EPA regulations. The EPA responded with several suggestions. Its comment noted that the EPA's fuel economy labeling requirements limit applicability to vehicles up to 8,500 pounds GVWR and having a maximum curb weight of 6000 pounds and a maximum frontal area of 45 square feet, and suggested that NHTSA modify its proposed rule to avoid a situation in which a vehicle without a fuel economy label would still need a parts content label. NHTSA cannot change its proposed rule as the EPA suggests because its statutory mandate specifically covers vehicles up to 8,500 pounds GVWR, and does not permit exceptions.

The EPA commented that there are several special cases which constitute exceptions to normal carline classifications. These include separation of sedans and station wagons into separate carlines for fuel economy purposes, and a split of model type (a combination of carline, basic engine, and transmission class) if a manufacturer wishes to highlight an individual model's fuel economy characteristics. It also allows manufacturers to separate convertibles from hard-top models, if the manufacturer choose. NHTSA believes that these distinctions, which may have relevance in a fuel economy context, are unimportant in a content labeling scheme. In addition, the agency believes they are contrary to the statutory language which says that the term carline does not distinguish by characteristics such as roof line, number of doors, seats, or windows. Therefore, the agency is not inclined to adopt these exceptions to normal carline classifications. NHTSA seeks comment from the public on these classifications, and their applicability to the proposed rule.

The EPA noted that it separated light truck carlines by drive system (i.e., 2 wheel drive (2WD) or 4 wheel drive (4WD)), although that was irrelevant for passenger cars. NHTSA is inclined to permit the separation of 2WD and 4WD light trucks into different carlines, and seeks comment on whether light trucks should be separated into different carlines depending on their drive systems.

2. Item Two: Major Foreign Sources of Equipment

Item two on the label, listing the main foreign sources of a carline's equipment, is necessary only if one or more foreign countries (*i.e.*, countries other than the U.S./Canada) each individually contribute at least 15 percent of the value of the carline's equipment. If there is one such country, the manufacturer must list that country and the percentage by value that originated in that country for the carline. If there are two such countries, the manufacturer must list those countries and the percentage by value that originated in those countries for the carline, in descending order of percentage. Manufacturers need not list more than two such countries.

As with the first item on the label, much of the information that manufacturers would need to calculate the information for the second item must come from parts suppliers. As discussed above, in order to calculate the information required for the first item on the label, manufacturers need to know the U.S./Canadian content of each item of equipment and the total value of each such item. Manufacturers which must list at least one country for the second item on the label need to know the actual country of origin of each item of equipment.

The statute does not specify how country of origin is determined for purposes of item two on the label. NHTSA tentatively concludes that the simplest method is to specify one country of origin for each item of equipment, using the country from which the greatest share of value originated for the item of equipment, and is therefore proposing that method. The agency notes that this is the method that Congress prescribed for the only other country of origin calculation in section 210 *i.e.*, country of origin for engines and transmissions in section 210(f)(12). The "greatest share of value added" method of calculation also avoids some of the pitfalls of the substantial transformation test peculiar to the automotive industry, such as the specific levels of value added under the CFTA, and NAFTA before substantial transformation is considered to have occurred. It also avoids the potential problem of future changes to those levels should the trade agreements be amended. A more detailed discussion of the substantial transformation test occurs below.

Like the information calculated for item one of the label, the determination of major countries of origin for equipment installed on passenger vehicles is made for carlines instead of for individual vehicles. In order to calculate the percentage attributable to each foreign country, the manufacturer would (1) determine the total of the purchase prices it will pay for all items of equipment for the carline, (2) determine the total price paid for items of equipment, by country, for equipment with countries or origin other than the U.S. or Canada, and (3) calculate the percentage attributable to each country by dividing the total determined under (2) for that country by the total determined under (1).

3. Items Three, Four, and Five: Place of Final Assembly; Engine/Transmission Countries of Origin

The third item on the label, the final assembly point by city, state (where appropriate) and country, is self-explanatory. It is the location where a vehicle's final assembly takes place, and is determined separately for each vehicle.

The fourth and fifth items on the label, the countries of origin for the engine and transmission, are also determined separately for each vehicle, instead of on a carline basis. The information needed to make these determinations would come from suppliers.

Section 210(f)(12) states that the "country of origin" of an engine or transmission is the country that contributed the greatest percentage of dollar value to the engine or transmission, based upon the purchase price of direct materials received at the individual engine or transmission plant. It also states that the U.S. and Canada are to be treated separately for determining the country of origin. Thus, the country of origin might be the U.S. or Canada, but could not be U.S./Canada.

The term "direct materials" is not defined in section 210 of the Cost Savings Act. The agency has, therefore, referred to similar terms in the CFTA to assist it in defining the term. Section 202(f)(5) of the CFTA defines the term "materials" as meaning goods, other than those included as part of the direct cost of processing or assembling, used or consumed in the production of other goods. Section 202(f)(3) of the CFTA describes "direct cost of processing or direct cost of assembling" as costs that can be allocated to the production of goods, including labor, inspection, energy, fuel, dies, molds, development, rent or mortgage, depreciation of buildings and machinery, and royalty or licensing fees.

NHTSA tentatively concludes that an appropriate definition of the term "direct materials" can be formed based on the CFTA terms "direct costs" and "materials." The agency believes that the term "direct materials" refers to the items (*i.e.*, the materials) that make up the final good (either an engine or a transmission), but that does not include the "costs" (*i.e.*, those items such as labor, that are listed in section 202(f)(3) of the CFTA) that go into assembling the final good. Those "costs" are not "materials." Further, they are not "*received* at the individual engine or transmission plants." (Emphasis added.)

Thus, NHTSA disagrees with the UAW, which commented that the value of labor performed in building or assembling the engine and transmission should be included. The UAW believes that the third sentence of section 210(f)(12) of the Cost Savings Act is in error. However, in the absence of an error that is demonstrable on the face of the statute, the agency must apply the language as it exists.

Therefore, in calculating the country of origin for engines and transmission, the country to which the engine or transmission is attributed is that country in which the greatest percentage by value was added, based on the purchase price of all equipment that makes up the completed engine or transmission. In addition, the country or origin calculation is based on the purchase price an engine or transmission supplier pays for all equipment it receives at the plant at which the engine or transmission is assembled into a completed unit. Based on the language in section 210(f)(12), costs incurred once the engine or transmission supplier has received the equipment at its engine or transmission assembly plants (*e.g.*, labor costs, depreciation of equipment, insurance, etc.) are not permitted to be taken into account for purposes of determining the country of origin of an engine or transmission.

The agency recognizes that some engine/transmission supplies may produce their own equipment that is integrated into the fully-assembled engine/transmission. NHTSA requests comments on whether such "on-site" production should be treated similarly to on-site production at a manufacturer's final assembly point, *i.e.*, by including all costs related to the production of such components, including labor.

Under such an approach, for engine suppliers, production that occurs on-site prior to the point at which the engine parts are assembled to the engine block would not be considered "engine assembly," and non-parts costs would be taken into account in determining the value of the engine in order to determine its country of origin. After that point in the process, assembly and other non-parts costs would be disallowed. For transmission suppliers, production that occurs on-site prior to the point at which the transmission parts are assembled in the transmission casing (or transmission housing) would not be considered "transmission assembly," and non-parts costs would be taken into account in determining the value of the transmission in order to determine its country of origin. Again, after that point in the process, assembly and other non-parts costs would be disallowed. While this approach is not reflected in the proposed regulatory text, the agency may, depending on the comments, adopt such an approach in the final rule.

NHTSA notes that the country of origin determinations for items four and five of the label, on a per vehicle basis, are separate from the information required by all suppliers, including those supplying engines and transmission, for items one and two of the label, U.S./Canadian content and major foreign sources of parts content, on a carline basis. All suppliers, including engine and transmission suppliers, must supply the information required for items one and two of the label in the manner and time described above, and set out in the regulation. The country of origin determinations for engines and transmissions are an additional obligation for those suppliers.

B. Format/Location for Label

The agency is proposing three options for the format of the label: (1) a stand-alone label that is at least 5 inches wide by 3 inches long, (2) an addition at the end of the Monroney pricing label (15 U.S.C. 1232), or (3) an addition at the end of the fuel economy label (15 U.S.C. 2006). Under all three options, the label would be required to read as follows:

For vehicles in this carline:
U.S./Canadian Parts Content: _____%
Major Source of Foreign Parts Content:
[*fill in country/countries*]: _____%
For this vehicle:
Final Assembly Point: _____
Country of Origin:
Engine: _____
Transmission: _____

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

The second item of the label (*i.e.*, "Major Source of Foreign Parts Content") would be omitted if no individual country other than the U.S./Canada contributed a minimum of 15 percent of the value of a vehicle's equipment.

If the domestic parts content information were provided on the price or fuel economy labels, the content portion of the label would be required to be clearly separated from the price or fuel economy portion, and the words "Parts Content Information" would be required to appear before the information set forth above.

Sections 210(b)(1) and 210(e) place the responsibility for affixing the content label on the manufacturer. Section 210(e) also implies that the label must be affixed before the vehicle is distributed in commerce, *i.e.*, sold to a dealer for retail sale, or to an importer. With that in mind, the agency is proposing to require that the manufacturer affix the content label to the new vehicle before the vehicle is shipped from the final assembly point to the dealer, shipping agent, or importer.

In response to section 210(d) and the views of the vast majority of commenters, the agency is seeking to minimize the costs of compliance and to provide manufacturers with the maximum permissible flexibility regarding the form and content of the label. However, to ease comparisons among various carlines, and to make the information available to consumers in as clear and consistent a manner as possible, the agency believes it is appropriate to specify minimal requirements for label and letter size. The label, whether separate or attached to the price or fuel economy labels, must be large enough for all the content information to be easily read, yet small enough to avoid cluttering the limited window space on the vehicle.

Accordingly, the agency is proposing that a separate label must be rectangular with a minimum dimension of 5.0 inches (125 mm) in width and 3.0 inches (75 mm) in length. The characters for items one through five of the parts content label would be required to be printed at a minimum height of 12 points (one-sixth of an inch) in boldface type. The required explanatory note at the bottom of the label would be required to be printed in characters two points smaller than the information for items one through five.

If the information required by section 210 is attached to the price or fuel economy labels, the information would be required to be separated from the information required to be on those labels by a line that is a minimum of 3 points wide. The words "PARTS CONTENT INFORMATION" would be required to be printed in bold, uppercase letters, centered, and in not less than 12 point type.

C. Requirements for Suppliers

As discussed above, much of the information that manufactures need to calculate the required items for the label must come from suppliers. Section 210(d) specifies that the agency must issue regulations which include provisions applicable to outside and allied suppliers to require such suppliers to certify whether equipment provided by such suppliers is United States, U.S./Canadian or foreign and to provide such other information as may be necessary to enable the manufacturer to reasonably comply with the provisions of section 210 and to rely on such certification and information.

In order to enable manufactures to calculate the information required for items one and two of the label, *i.e.*, the percentage U.S./Canadian content and major foreign sources of equipment, NHTSA is proposing to require outside suppliers to provide the following information for any equipment they supply to a vehicle manufacturer or to an allied supplier:

(1) the price of the equipment to the manufacturer or allied supplier;

(2) whether the equipment has, or does not have, at least 70 percent of its value added in the U.S. and Canada;

(3) for any equipment for which the U.S./Canadian content is less than 70 percent, the country of origin for the equipment.

The agency is proposing to require allied suppliers to provide the following information for any equipment they supply to a vehicle manufacturer:

(1) the price of the equipment to the manufacturer;

(2) the percentage U.S./Canadian content of the equipment;

(3) the country of origin of the equipment, *i.e.*, the country in which the greatest percentage, by value (using purchase price), of value was added to the equipment.

Both outside and allied suppliers that directly supply vehicle manufacturers would be required to provide the specified information directly to the vehicle manufacturer, accompanied by a certification of the information's accuracy. Outside suppliers that directly supply allied suppliers would be required to provide the specified information and certification directly to the allied supplier. Suppliers would also be required to maintain records of the information used to determine the information provided to the manufacturers or allied suppliers.

GM, Ford, Chrysler, Mitsubishi, and the AIAM suggested that the agency limit the tracking and reporting requirements to "first tier" suppliers, *i.e.*, those who deliver equipment to the manufacturer, itself. They maintained that forcing manufacturers to inquire earlier in the chain of suppliers would prove to be overly burdensome and costly, in contravention of section 210(d), and in some cases impossible.

NHTSA agrees with the general premise that requirements should not apply to suppliers earlier in the supply chain. However, since section 210(d)(17) specifically defines "outside supplier" as including suppliers of motor vehicle equipment to a manufacturer's allied supplier, and since there is the need for information from such suppliers in order to calculate some of the information required for the label, the agency believes that requirements must apply to suppliers

which supply directly to an allied supplier as well as to suppliers which directly supply manufacturers. Under the agency's proposal, however, no requirements would be imposed on suppliers earlier in the chain, *e.g.*, a company which supplies an item of equipment to an outside supplier which then supplies it to a vehicle manufacturer. The agency notes, however, that suppliers which are subject to the proposed information requirements may need in some cases to arrange to obtain information from their suppliers.

Since the information required for items one and two of the label must be calculated before the beginning of the model year and provided on labels attached by the manufacturers, it is important that manufacturers and outside suppliers receive the required information in a timely manner. Model changeover typically occurs during July, and production of new models begins soon after that time so that they can be in showrooms by the beginning of October. NHTSA is therefore proposing to require suppliers to provide the above-mentioned information to manufacturers by June 1 of each year. Since allied suppliers need information from their suppliers in order to provide the required information to manufacturers, the agency is proposing to require outside suppliers which provide equipment to allied suppliers to provide the required information to allied suppliers by May 1 of each year.

Since a typical production period for a model year is from August to July, the agency is proposing to require suppliers to base the information they provide on what they expect to supply during that period. However, since manufacturers may establish different model year production periods for particular carlines, the agency is proposing to permit manufacturers and suppliers to conclude agreements specifying alternative production periods and alternative times for providing the information to the manufacturer.

The agency seeks comment on the suitability of the supplier notification dates suggested above. Do they permit sufficient time to allow manufacturers to prepare the labels required by this regulation in a timely manner? Commenters who disagree with the dates above are invited to suggest alternate dates, with detailed reasoning for their suitability. NHTSA requests that commenters consider the supplier notification dates in conjunction with the alternative contractual option proposed by the agency permitting suppliers and manufacturers to establish their own reporting dates.

As discussed above, the information for items four and five of the label, i.e., countries of origin for the engine and transmission, is calculated for individual vehicles rather than on a carline basis. Suppliers of engines and transmissions would be required to provide the vehicle manufacturer with the country of origin for each engine or transmission it supplies to the manufacturer, *i.e.*, the country in which the greatest percentage, by value (using the total cost of equipment to the engine or transmission supplier), of value was added to the engine or transmission. The agency is proposing to require this information to be provided no later than the time the engine or transmission is delivered to the manufacturer.

D. Requirements for Dealers

Under the agency's proposal, dealers would be required to maintain the label on each vehicle, until the vehicle is sold to a consumer. AIADA commented that dealers should be permitted to remove the label from a vehicle if state law requires it, such as when dealers are operating demonstrator vehicles, or when dealers move cars in an intra-dealer exchange. It also recommended that dealers be permitted to affix duplicate labels in the event that the manufacturer-supplied label becomes torn or otherwise mutilated.

NHTSA has tentatively concluded that dealers should not be permitted to remove the label for any reason before sale to a consumer. The agency believes that it is appropriate to treat this label in same manner as Monroney and fuel economy labels, since all three labels are intended to provide information to aid consumers in making their purchase decision. Neither the EPA or Department of Justice permit dealers to remove fuel economy or Monroney labels, even temporarily, prior to sale to a consumer. The Department of Justice has advised that neither the Monroney nor fuel economy labeling statutes contain exceptions for situations in which labels purportedly constitute safety hazards in demonstrator cars (*i.e.*, those cars that dealers allow potential customers to test drive), and went on to state that it was unaware of any judicial interpretations that would create such exceptions. Section 210 is similar to the other two labeling statutes in that it does not grant NHTSA the authority to permit dealers to remove the label. Indeed, section 210(b)(1) states explicitly that each dealer shall cause the label required by this Act to be maintained on the vehicle.

NHTSA is also concerned that, if dealers were permitted to remove labels for demonstrator vehicles, consumers would not have the labeling information available to them at a crucial time in their purchasing decision, *i.e.*, the time they were evaluating a vehicle for purchase. In addition, the labels might be re-attached inadvertently to the wrong vehicle or not re-attached at all.

The Department of Justice has advised that most manufacturers have been applying Monroney and fuel economy labels to the rear left windows of vehicles, and affixing the vehicles with labels that do not easily tear or loosen from the windows to which they are attached. Such placement does not ordinarily interfere with the driver's vision in the event of a test drive or other similar purpose. Additionally, the dealer could not easily remove the label, even for temporary purposes, without tearing or destroying it.

NHTSA will not, therefore, propose to permit dealers to remove labels for any reason prior to a first sale to a consumer, with one exception: the agency agrees with the AIADA that it is necessary for dealers to replace any label that becomes mutilated or otherwise damaged prior to sale to a consumer so that the information is no longer legible.

E. Manufacturers of Foreign Vehicles

Several manufacturers requested more limited labeling requirements for manufacturers of new passenger motor vehicles that contain minimal U.S./Canadian content. In effect, the label would state that the vehicle contained less than a certain percentage of U.S./Canadian content. It would also state the final assembly point, and the country of origin of the engine and transmission.

Volvo suggested the simplified procedure be implemented for imported vehicles containing under 15 percent U.S./Canadian content. The AAMA agreed with the 15 percent level, stating that Congress appeared to indicate that higher percentages of U.S./Canadian content were significant for purposes of labeling. Volkswagen and the AIAM, however, suggested a level of 35 percent, stating that lower levels would not affect enough vehicles to make implementation of the special provisions worthwhile. Lamborghini, in its testimony at the public meeting in December 1992, suggested a cutoff of 20 percent.

As a practical matter, NHTSA agrees that once the domestic content gets below a certain point, the precise amount of that content becomes immaterial, i.e., the vehicle is foreign and small differences in domestic content are not likely to be relevant to consumer purchasing decisions. Therefore, for vehicles with less than 35

percent U.S./Canadian content, the agency is considering providing manufacturers with the option of simply stating that the percentage U.S./Canadian content is "minimal" instead of determining and providing the precise amount of such content.

The primary benefit of this option would be to eliminate manufacturer costs associated with keeping precise records and making precise calculations about the U.S./Canadian content of a vehicle, when the manufacturer knows such content is very low. Under this option, manufacturers would still be required to provide items 2, 3, 4, and 5 of the label, *i.e.*, major foreign sources of vehicle equipment, place of final assembly and countries of origin of the engine/transmission.

NHTSA notes that such an option would represent a limited exclusion from one of section 210's labeling requirements. As part of considering this option, as well as possible special requirements discussed below for multi-stage and low volume manufacturers, the agency is in the process of evaluating its authority to provide limited exclusions from section 210's labeling requirements. NHTSA will complete its evaluation before reaching a final decision about possible exclusions.

F. Multi-Stage Manufacturers

The RVIA, which represents van converters, customizers, and other manufacturers of recreation vehicles (RVs) in the U.S., suggested in its comments that final-stage manufacturers and van converters be excluded from the need to comply with the proposed regulation pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The NTEA stated that multi-stage produced and altered vehicles should be exempt from the proposed regulation, or that intermediate and final stage manufacturers and alterers be permitted to "pass through" information from chassis manufacturers.

GM commented that the initial stage manufacturer should be required to provide certification of content information to the final stage manufacturer, which would, in turn, be able to use that information in preparing the content label. Alterers would be excluded from the proposed regulation. Ford and Chrysler suggested that first and intermediate-stage manufacturers be considered allied suppliers of the final-stage manufacturer. Volkswagen tended to agree, stating that each manufacturer involved in assembly of a multi-stage or altered vehicle would calculate the applicable content values and the final state manufacturer or alterer would apply the appropriate label.

Alterers are not covered by section 210 for reasons similar to those discussed above concerning dealer and port-installed options. Alterers modify completed vehicles, after they have left the manufacturer's final assembly point, thus after the label is required to be affixed to the completed vehicle. The parts they use are not considered equipment by section 210 of the Cost Savings Act, because they are never shipped to the final assembly point, as required by section 210(f)(4). Their modifications cannot affect carline-basis calculations made before the start of the model year, and cannot be known in advance of the model year by the manufacturer.

The concept of carline, itself, is meaningless for many multi-stage manufacturers. Many of the vehicles made in the multi-stage process are highly specialized, often built to order, A "carline" in this instance could consist of ten, five or even one vehicle. The agency does not believe Congress meant to define carline in such a way. If a "carline" consists of so few vehicles, there is virtually no difference between a "carline" determination (such as required for U.S./Canadian content and major foreign sources) and a "per vehicle" determination (as is required for country of origin of engine and transmission, and final assembly point), and no reason to differentiate between them in the statute.

Therefore, recognizing that multi-stage manufacturers, may not have been considered when the statute was written, and that forcing final-stage manufacturers to consider "carlines" would not help in forwarding the purpose of the statute, the agency is proposing to permit multi-stage manufacturers of "carlines" of fewer than 1000 vehicles to provide a label for vehicles in such a carline that states only the final assembly point, and the country of origin of the engine and transmission, which is per vehicle information under section 210 (items 3, 4, and 5 of the label, as listed above). (A sample label is provided at the end of the regulation.) Such multi-stage manufacturers would not be responsible for listing, and their suppliers would not be responsible for supplying and certifying information regarding, the two carline pieces of information, namely the U.S./Canadian content of the vehicle, and the major foreign sources of parts content (items 1 and 2 of the label). The agency is proposing to make final-stage manufacturers responsible for generating the modified label required under section 210, and for affixing it to the completed vehicle before it is shipped to the dealer, importer, or directly to a consumer.

NHTSA notes that this exception would apply only on a carline basis. If a final stage manufacturer produces three carlines, two of which have production runs of over 1000 vehicles annually, and one which has a production run of under 1000 vehicles, the final stage manufacturer would have to prepare and affix normal labels to vehicles in the two carlines in which over 1000 vehicles are produced annually. The simplified label could only be used on vehicles in the carline in which fewer than 1000 vehicles are produced annually.

The proposed requirements for multi-stage manufacturers would represent a limited exclusion from section 210's labeling requirements. As indicated above, as part of considering these requirements, the agency is evaluating its authority to provide limited exclusions from section 210's labeling requirements.

G. Small Businesses

The RVIA commented that their members are mostly small businesses, that only a minuscule percentage of the items they install (*e.g.*, fasteners, hardware and audio equipment) are of foreign origin, and that the cost of determining the percentage of U.S./Canadian content would be extremely burdensome. Therefore, the RVIA requested an exemption for its members, and for carlines composed of fewer than 20,000 vehicles manufactured per year, or at least a simplified version for compliance with section 210.

NHTSA believes that the same arguments made above in the section discussing multi-stage manufacturers, regarding carlines with a minimal number of vehicles produced annually, can be made in a discussion of small businesses. NHTSA has tentatively decided to permit businesses that produce a total of fewer than 1000 passenger motor vehicles for sale in the United States annually to provide the same simplified label as multi-stage manufacturers, *i.e.*, they would not have to list the carline determinations (items 1 and 2 of the label: U.S./Canadian content, and major foreign sources), but are responsible for a label listing the per vehicle items of the label (items 3, 4, and 5: final assembly point, and country of origin for engines and transmissions).

Thus, compliance is likely to be much less burdensome than the RVIA apparently fears. First, as discussed above, vehicle alterers (*e.g.*, those who customize vans, or otherwise modify completed vehicles) are not required to

comply with section 210. Thus, any options added or customizing changes performed at the "alterer" stage are not covered by this regulation. Second, items such as fasteners, and other minor parts are excluded from tracking, reporting, and recordkeeping requirements under section 210(f)(4). Third, those small businesses, whether or not they are final stage manufacturers in a multi-stage manufacturing process, that produce carlines of a minimal number of vehicles would be responsible for a simplified label, as discussed above.

The proposed requirements for low volume manufacturers would represent a limited exclusion from section 210's labeling requirements. As indicated above, as part of considering these requirements, the agency is evaluating its authority to provide limited exclusions from section 210's labeling requirements.

H. Verification of Labeling Information; Recordkeeping

Section 210(d) provides that the agency must promulgate such regulations as may be necessary to carry out section 210, including regulations to establish a procedure to verify the required labeling information. In order to verify the information provided on labels, NHTSA contemplates that it would conduct, on an occasional basis, an audit of the information provided on a label.

Such an audit would involve requiring the vehicle manufacturer to provide the agency with the manufacturer's basis for the information it provided on the label, *e.g.*, all relevant certifications from suppliers, a listing of parts, cost information, and all calculations used by the manufacturer to derive the information provided on the label. NHTSA would check whether the manufacturer's methodology was consistent with agency regulations. The agency would similarly require individual suppliers to provide the basis for the information and certification that they provided manufacturer or allied supplier.

In order to ensure that the agency can conduct such an audit, as well as otherwise enforce the labeling requirements, it is proposing to require manufacturers to maintain all records which provide a basis for the information they provide on labels, and to similarly require suppliers to maintain records providing the basis for the information and certification they provide to manufacturers or allied suppliers.

Several commenters addressed the length of time such records should be kept. GM noted that EPA requires fuel economy records to be retained for five years (40 CFR 600.005–81). The same retention period is required by the CFTA (19 CFR 10.308). GM suggested that NHTSA should impose the same five year retention period for records in order to be consistent with the other two programs. GM also suggested that suppliers, as well as manufacturers, be required to retain their records for five years. Ford agreed with GM.

The agency notes that EPA requires fuel economy records to be retained for five years after the end of the model year to which they relate. NHTSA tentatively concludes that a retention period of that length is adequate to ensure effective enforcement of the proposed regulation, without imposing an unnecessary storage burden on manufacturers and suppliers. Therefore, the agency is proposing to require manufacturers to maintain records for five years after December 31 of the model year to which the records relate.

Suppliers will not necessarily know the model year to which their records relate. Therefore, the agency is proposing to require suppliers to maintain records, which form a basis for the information they provide to manufacturers or allied suppliers, for six years after December 31 of the calendar year set forth in their submissions to manufacturers/allied suppliers. Since suppliers will generally provide information before the beginning of the model year, i.e., during the spring of the calendar year preceding the model year, this requirement would ensure that the information is maintained for five years after the end of the relevant model year.

At the February 10, 1993 meeting at the Department of Treasury, attended by NHTSA, and other government representatives, as well as representatives of the AAMA, GM, Ford, and Chrysler, the AAMA suggested that manufacturers should have the option of maintaining the records pertaining to the proposed regulation (*i.e.*, U.S./Canadian content of equipment received from suppliers, foreign content, etc.) electronically. NHTSA believes that manufacturers and allied suppliers should retain the original copies of information provided by suppliers, but seeks comment on whether to allow them to retain the certifications and other information obtained from suppliers electronically, specifically in the form of electronic images. The records will have to contain the suppliers' certification of the information that they are providing. The agency is proposing to permit manufacturers and suppliers to maintain all other records in either paper or electronic form for purposes of data storage, provided that in every case all of the information contained in the record is retained.

In addition to ensuring that suppliers and manufacturers maintain relevant records, it is also important, in order for the agency to be able to conduct an audit, to have procedures for obtaining the information from suppliers and manufacturers. NHTSA notes that it already has in place a regulation, 49 CFR Part 510, *Information Gathering Powers*, which governs the use of its information gathering powers contained in, among other places, section 204 of the Cost Savings Act. Section 204 provides the agency with various information gathering powers for the purpose of carrying out the provisions of Title II of the Cost Savings Act, of which section 210 is now a part. Since Part 510 is already in place, the agency does not need to establish new regulations concerning information gathering powers for purposes of section 210.

I. Reporting Requirements

Under the proposed regulation, vehicle manufacturers would be required to submit to the agency three copies of the information that will appear on each carline's label. This information would be required to be submitted for each carline not later than the date the first vehicle of the carline is delivered to dealers for that model year.

The agency believes that this reporting requirement is necessary for several reasons. It would provide one central location from which information can be gathered concerning the labels. Inquiries could come from within the agency, or from interested members of the public. In addition, such reporting would aid the agency in deciding whether to initiate any investigations or audits.

J. Other Issues

1. Currency Exchange Rate Calculations

Since currency exchange rates may fluctuate on a day-to-day basis, thereby affecting domestic content valuations, NHTSA is proposing a methodology for determining the exchange rate to be used. Ford recommended, in response to the agency's request for comment on this issue, that NHTSA adopt the CAFE exchange rate methodology established by the EPA. That methodology uses the average of the previous 12 quarterly exchange rates set by the Federal Reserve Bank of New York. Alternatively, Ford suggested the OECD

Purchasing Power Parity Rates (widely known as "PPP"). Toyota and GM also called for the agency to follow the CAFE methodology, which is found in 40 CFR 600.511–80(b)(1). Nissan commented that each manufacturer should be allowed to establish the appropriate currency rate for its carline.

NHTSA believes that, in the interest of consistency, the percentages printed on the labels required by section 210 should be determined using the same basis. Therefore, the agency is proposing a specific procedure for calculating currency exchange rates, similar to that set forth in EPA's CAFE regulation. Manufacturers would be required to take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar ending one year prior to the date that the manufacturer submits information to the agency for a carline. The agency is proposing essentially the same procedure for suppliers, replacing the date the manufacturer submits information to the agency with the date of the information the supplier provides to a manufacturer or allied supplier.

The EPA, in its comments (see above) suggested that NHTSA allow exchange rate calculations based on PPP, provided that a manufacturer was already using an approved PPP calculation for EPA purposes. EPA allows an exemption form the normal exchange rate calculations outlined above, based on a petition. It believes that, by coordinating the fuel economy and content labeling decisions together, consistency between the two agencies will be maintained. NHTSA is considering adopting the EPA suggestion, particularly by requiring a manufacturer to use the same conversation method for content label purposes as was approved by the EPA for fuel economy purposes. The agency seeks suggestions on this proposal.

2. Corporate Relationship

Joint ventures. Several commenters noted that there are carlines manufactured jointly by two manufacturers, and requested that the agency permit the manufacturers to determine between themselves which would be responsible for tracking, record keeping and labeling. NHTSA tentatively agrees that this is an appropriate approach.

Section 210(f)(15), in defining allied supplier, states that such a supplier is wholly owned by the manufacturer, or by one member of a joint venture arrangement. Thus, if companies A and B jointly manufactured a carline, a supplier wholly owned by either A or B would be considered an allied supplier for the carline jointly manufactured.

The agency is also proposing requirements that would permit multiple manufacturers to determine among themselves which of them is to be considered the vehicle manufacturer for purposes of the labeling requirements. Such a determination is necessary in order to aid the agency in the event it must perform an audit, or other verification or enforcement proceedings regarding a particular carline. The determination of such a "manufacturer of record" would allow NHTSA to assign responsibility to one manufacturer in a joint venture arrangement. These requirements would include a provision specifying that such an agreement must be reported to the agency before the beginning of the model year.

NHTSA is also considering whether the final rule should specify a means for determining a single manufacturer in the absence of such a manufacturer agreement, *e.g.*, the manufacturer listed on the certification label for safety standards. The agency requests comments on whether such a provision should be established.

Supplier jointly owned by more than one parent company. Ford asked that NHTSA consider a supplier owned jointly by more than one parent company as an allied supplier of both parents, especially in situations such as those in Canada, in which the Canadian government has laws requiring partial Canadian ownership of share. NHTSA believes that such a situation is akin to the joint venture agreement mentioned in section 210(f)(15) of the Cost Savings Act. The agency has tentatively decided to treat the supplier in such a case as being wholly owned by one of the manufacturers in the joint venture agreement, and therefore an allied supplier for purposes of any carline jointly manufactured.

Supplier owned by parent company of the manufacturer. The agency recognizes that a supplier owned by the parent company of a manufacturer is not strictly wholly owned by the manufacturer. However, if the parent is a holding company that wholly owns both the manufacturer and the supplier, there is no meaningful difference in this situation from that in which the strict definition of "wholly owned" occurs. In other words, there are no outside interests represented (as occurs if there are outside shareholders). The interests of the parent in this situation are identical to those of the manufacturer. Therefore, the agency has tentatively decided to treat a supplier wholly owned by the parent holding company of a manufacturer as an allied supplier, provided that the parent holding company also wholly owns the manufacturer.

This is different from the situation in which a wholly-owned supplier provides equipment to a wholly-owned supplier, which then provides equipment incorporating the elements supplied to it, to the manufacturer that owns them both. GM commented that a foreign subsidiary providing equipment to a domestic subsidiary owned by the same manufacturer should be considered an allied supplier, provided the foreign subsidiary and assembly plant are both owned by the same parent. While the agency appreciates the logic of this comment, it is bound by the statute. As discussed earlier, section 210(f)(17) of the Cost Savings Act makes ownership irrelevant because a supplier, no matter who owns it, that provides equipment to an allied supplier is considered an outside supplier.

3. Consistency of the Proposed Regulations With Various Trade Agreements and Statutory Schemes

Many commenters requested that the agency draft its proposed regulation as closely as possible to the requirements of NAFTA, the CFTA, and the domestic content portion of the EPA fuel economy regulation. NHTSA has sought to do so. Unfortunately, there are major differences of purposes and requirements among the various agreements and schemes that limit the agency's ability in this regard.

NAFTA and the CFTA require information on country of origin for purposes of tariff preferences; goods with a high enough level of value originating in Canada (under both agreements) and Mexico (under NAFTA) are allowed into the U.S. without having customs duties assessed on them. Both agreements differ from each other, and from section 210, in the "cut-off" levels above which a vehicle is considered as domestic. If there is little prospect of reaching the cut-off level, there is no point in determining country of origin for a carline's parts. If the cut-off level of a carline can be reached, there is no need under either agreement for the manufacturer to track country of origin content much beyond the point at which the cut-off is reached. The EPA regulations focus on average fuel economy, and the corporate average fuel economy (CAFE) labels. The information on domestic and foreign content are collected for purposes of determining the CAFEs of domestic and foreign vehicles made by a given manufacturer. The domestic content

results in NAFTA, the CFTA, and CAFE are not placed on the new vehicle, or generally supplied to the public.

Based on the differences in purpose, and tracking requirements of section 210, NAFTA, CFTA, and CAFE schemes, the agency cannot write this regulation with identical provisions to the other three. NHTSA has tried to use similar provisions where possible, but more often has had to craft regulatory text that departs from the other schemes in order to meet the requirements of section 210.

At the February 10, 1993 meeting, the vehicle manufacturers and the AAMA requested the section 210 regulations allow a "unified reporting system" for section 210, NAFTA, the CFTA, and CAFE. Due to the differences in the schemes, the agency does not believe it is possible to establish a "unified reporting system." NHTSA encourages the individual manufacturers and suppliers to set up raw data files from which they can cull and collate the information required for each reporting scheme. The automotive industry can decide on common terms and definitions for purposes of this regulation and the other schemes discussed. Indeed, the AAMA and the U.S. manufacturers are currently working on a "universal content report" for themselves and their suppliers, which they would make available to other manufacturers, for purposes of fulfilling domestic content reporting of section 210 of the Cost Savings Act, NAFTA, CAFE, and other trade agreements (*see Automotive News*, June 28, 1993).

4. The Substantial Transformation Test

Toyota and the AIAM suggested that the agency use the substantial transformation test to determine country of origin of equipment to ease tracking burdens on suppliers and manufacturers. The language of section 210, however, frequently precludes use of the test for determination of country of origin content (*e.g.*, for outside suppliers, when using the 70 percent roll-up, roll-down determination of whether a piece of equipment is U.S./Canadian). At other times, the agency has tentatively determined to use a "greatest value added" approach to determining the country of origin of equipment. NHTSA believes this approach will be easier for manufacturers and suppliers to apply than the substantial transformation test.

As noted above, the substantial transformation test is used to determine the national origin of goods for customs purposes. To simplify, the country in which a raw material is converted into a good is considered the country of origin of the good. In the case of an unfinished good, the country in which the unfinished good is converted into a finished product is considered the country of origin of the good. There are many variations of the substantial transformation test, often based on trade treaties and agreements, such as CFTA, or NAFTA. For instance, a good may not be considered to have come from the country in which it was converted into a final product unless a certain minimum amount of its value (*e.g.*, 33 percent) was added during the conversion process in that country. Under NAFTA and the CFTA, a major factor in determining country of origin is whether a good underwent a final change in tariff classification in a given country. In any event, the full value of the good is considered to have come from the country in which the "substantial transformation" occurred.

Under section 210, different determinations of country of origin must be made. In order to complete section 210(b)(1)(A) of the label, for outside suppliers, the 70 percent roll up-roll down test must be used to answer the question of whether the equipment is to be considered U.S./Canadian. For allied suppliers, the actual dollar values of U.S./Canadian and foreign value are to be supplied to the manufacturer. Section 210(f)(12), which determines the country of origin of engines and transmissions, states that the country that contributed the greatest value is the country of origin of an engine or transmission. In order to complete section 210(b)(1)(C) of the label, which lists the two foreign countries in which at least 15 percent of the value was added to the vehicle's equipment the agency has tentatively decided that the country of origin is to be determined only by the country that was responsible for adding the greatest value to the equipment.

Use of the substantial transformation test would be inconsistent with the different treatment of allied and outside suppliers, and with the 70 percent roll-up, roll-down provisions. It would also be inconsistent with the statutory method of determining the country of origin of engines and transmissions. For purposes of section 210(b)(1)(C), however, although NHTSA could use the substantial transformation test, the agency feels that the "greatest value added" approach will be easier for manufacturers and suppliers to use than the substantial transformation test in determining which countries were major suppliers of equipment value. This avoids several problems, such as which revision of the substantial transformation test to use (*e.g.*, that listed in the CFTA, or that in NAFTA, or various other statutory or judicial interpretations), determining whether enough value was added in the U.S./Canada to justify considering substantial transformation, etc.

5. GATT

JAMA argued that section 210 may be subject to the General Agreement on Tariffs and Trade (GATT). JAMA stated that section 210 does not concern safety, but instead attempts to influence trade, and is therefore a violation of the Preamble (which calls for the reduction of barriers to trade, and elimination of discriminatory treatment in international commerce) and Article I of GATT (which sets out the rules for most-favored-nation treatment, *i.e.*, that trade concessions to one most-favored-nation be granted to all such nations). JAMA added that the U.S. is obligated to give notification of section 210 to the GATT Secretariat and allow concerned nations to make written comments under Article II.5 of GATT. Article II.5, however, pertains to complaints by countries injured by discriminatory trade practices to the injuring country, and not to notification by one country of its prospective laws to other countries.

NHTSA does not believe that section 210 contravenes the spirit or letter of GATT for the simple reason that it is informational in nature, and has no other effect. Violations of GATT occur when barriers to trade are established by raising tariffs on selected countries, or by granting preferences to local goods over foreign goods. Under section 210, no tariffs are levied and no preferences are given to vehicles based on the U.S./Canadian content. No quotas are established, and no vehicle is forbidden to be sold in the U.S. The only effect of section 210 is to advise consumers of the U.S./Canadian content of the equipment in vehicles they are considering purchasing. If a consumer is not concerned with the country of origin of a vehicle's equipment, the label would have no bearing on the purchasing decision whatsoever. If, on the other hand, a purchaser wishes to "buy American," or buy anything-but-American, the label would give that consumer information needed to help make such a decision.

6. Consumer Guide

Mitsubishi commented that a consumer information guide could be supplied at the time of purchase, presumably by the dealer, to give a simple explanation of how the label information was obtained. The agency

has decided not to propose requiring such a guide because it would be an unnecessary expense. Nevertheless, if a manufacturer wishes to supply its dealers with consumer guides, there is nothing about this proposal that would prohibit it from doing so.

IV. Rulemaking Analyses and Notices

A. DOT Regulatory Policies and Procedures

The agency has considered the economic implications of the proposed regulation and determined that the proposal is significant within the meaning of the DOT Regulatory Policies and Procedure, given the degree of public interest and the relationship to other Federal programs and agencies, particularly those related to international trade. The proposed regulation was reviewed by the Office of Management and Budget under provisions of Executive Order 12866.

The proposed regulation is strictly informational. It would not require any product changes. Its costs are, therefore, expected to be modest. Although the cost of the labeling program is uncertain, and start-up costs would be greater than the annual maintenance costs of the program, based on the one estimate the agency has received (from Chrysler), the expected costs are measured in thousands of dollars per manufacturer annually. NHTSA has prepared a Preliminary Regulatory Evaluation for this proposal, and has placed it in the docket.

The cost of each individual label, if separate from the Monroney or fuel economy labels, is estimated to be between $0.06 and $0.11. The total annual cost for labels for the estimated 14 million vehicles sold in the U.S. would be approximately $840,000 to $1,540,000. This total annual cost for labels would be lowered greatly if Parts Content Information were placed on the existing Monroney or fuel economy labels. Adding Parts Content Information to the existing labels would cost an estimated $0.01 per label, or a maximum total of $140,000 per year.

The agency estimates that the one-time compliance cost for programming would total about $80,000 per manufacturer. Therefore, for the approximately thirteen large vehicle manufacturers, the total cost to develop and implement this data system would amount to roughly $1,040,000. Annual costs for compiling and reviewing the data would amount to approximately $4,000 per manufacturer (*i.e.*, a total of $52,000 for the thirteen large manufacturers).

Manufacturers of low-U.S./Canadian parts content passenger motor vehicles that indicate that the U.S./Canadian content of a carline is minimal would incur annual costs for programming and review of content data of approximately $320 per manufacturer. Total cost for the approximately fourteen small and import manufacturers would be roughly $4,480 annually.

B. Regulatory Flexibility Act

Pursuant to the Regulatory Flexibility Act, the agency has considered the impact this rulemaking would have on small entities. I certify that this action would not have a significant economic impact on a substantial number of small entities. Therefore, a regulatory flexibility analysis is not required for this action. Although certain small businesses, such as parts suppliers and some vehicle manufacturers, would be affected by the proposed regulation, the effect on them would be minor. The agency cannot estimate the costs of programming, compilation, and review of the data for the approximately 15,000 equipment suppliers to passenger vehicle manufacturers. Large suppliers producing hundreds of parts could have significant costs, compared with small suppliers. The agency requests comments on costs for equipment suppliers.

C. National Environmental Policy Act

The agency has analyzed the environmental impacts of the proposed regulation in accordance with the National Environmental Policy Act, 42 U.S.C. 4321 *et seq.*, and has concluded that it would not have a significant effect on the quality of the human environment.

D. Executive Order 12612 (Federalism)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rule would not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

E. Paperwork Reduction Act

The reporting and recordkeeping requirements associated with this proposed rule are being submitted to the Office of Management and Budget for approval in accordance with 44 U.S.C. chapter 35. *Administration:* National Highway Traffic Safety Administration; *Title:* Automobile Parts Content Labeling (49 CFR part 583); *Need for Information:* To assess compliance with parts content labeling regulation; *Proposed Use of Information:* To determine if manufacturers and suppliers are complying with parts labeling content regulation; *Frequency:* annually; *Respondents:* 70; *Form(s):* 1; *Average Burden Hours for Respondent:* 100.

F. Executive Order 12778 (Civil Justice Reform)

This proposed rule would not have any retroactive effect. States would be preempted from promulgating laws and regulations contrary to the provisions of the proposed rule. The proposed rule does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Request for Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 583

Motor vehicles, Imports, Labeling, Reporting and recordkeeping requirements.

In consideration of the foregoing, NHTSA proposes to amend chapter V of title 49 of the Code of Federal Regulations as follows:

1. Part 583 would be added to read as follows:

PART 583—AUTOMOBILE PARTS CONTENT LABELING

Sec.

583.1 Scope.
583.2 Purpose.
583.3 Applicability.
583.4 Definitions.
583.5 Label requirements.
583.6 Procedure for determining U.S./Canadian parts content.
583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.
583.8 Procedure for determining country of origin for individual engines and transmissions.
583.9 Attachment and maintenance of label.
583.10 Outside suppliers of passenger motor vehicle equipment.
583.11 Allied suppliers of passenger motor vehicle equipment.
583.12 Suppliers of engines and transmissions.
583.13 Supplier certification.
583.14 Currency conversion rate.
583.15 Joint ownership.
583.16 Maintenance of records.
583.17 Reporting.

Authority: 15 U.S.C. 1950; 49 CFR 1.50, 501.2(f).

§ 583.1 Scope

This part establishes requirements for the disclosure of information relating to the countries of origin of new passenger motor vehicles and their equipment.

§ 583.2 Purpose.

The propose of this part is to aid potential purchasers in the selection of new passenger motor vehicles by providing them with information about the value of the U.S./Canadian and foreign parts content of each vehicle, the countries of origin of the engine and transmission, and the site of the vehicle's final assembly.

§ 583.3 Applicability.

This part applies to manufacturers of new passenger motor vehicles manufactured or imported for sale in the United States, suppliers of passenger motor vehicle equipment, and dealers of new passenger motor vehicles.

§ 583.4 Definitions.

(a) *Statutory terms.* The terms *allied supplier, country of origin, dealer, final assembly point, foreign, foreign content, manufacturer, new passenger motor vehicle of U.S./Canadian origin, originated in the United States and Canada, outside supplier, passenger motor vehicle, percentage (by value), person, Secretary, State, U.S./Canadian, value added in the United States and Canada,* defined in section 210(f) of the Cost Savings Act (15 U.S.C. 1950(f)) as amended, are used in accordance with their statutory meanings except as further defined in paragraph (b) of this section.

(b) *Other terms. (1) Administrator* means the Administrator of the National Highway Traffic Safety Administration.

(2) *Carline* means a name denoting a group of vehicles which as a degree of commonality in construction (*e.g.*, body, chassis). Carline does not consider any level of decor or opulence and is not generally distinguished by such characteristics as roof line, number of doors, seats, or windows, except for light duty trucks. Carline is not distinguished by country of manufacturer or final assembly point. Light duty trucks are considered to be different carlines than passenger cars. A carline includes all motor vehicles of a given nameplate. Two-wheel and four-wheel drive versions of a vehicle type are treated as the same carline, except that two-wheel and four-wheel drive versions of a light truck are treated as separate carlines. Utility vehicles, vans, and pickup trucks are classified as separate carlines.

(3) *Final assembly* means all operations involved in the assembly of a vehicle beginning, with respect to the body, at the point at which the body leaves the paint shop and, with respect to the chassis, at the point where the engine and transmission are placed on the chassis frame or, in the case of unit body vehicles, on the assembly cradle or jig.

(4) *Final assembly point* means the plant, factory, or other place at which a new passenger motor vehicle is produced or assembled by a manufacturer and from which such vehicle is delivered to a dealer or importer in such a condition that all component parts necessary to the mechanical operation of such automobile are included with such vehicle whether or not such component parts are permanently installed in or on such vehicle. For plants and factories where both pre-final-assembly operations (production of items of motor vehicle equipment, painting of the vehicle body, assembly of the chassis) and final assembly operations take place, the meaning of final assembly point is limited to the area where final assembly operations take place.

(5) *Passenger Motor Vehicle Equipment* means any system, subassembly, or component received at the final assembly point for installation on, or attachment to, such vehicle at the time of its initial shipment by the manufacturer to a dealer for sale to an ultimate purchaser. Passenger motor vehicle equipment includes all items for which the manufacturer specifies parts numbers, except attachment hardware such as nuts, bolts, clips, screws, pins, and braces. Passenger motor vehicle equipment also includes any system, subassembly, or component received by an allied supplier from on outside supplier for incorporation into equipment supplied by the allied supplier to the manufacturer with which it is allied.

§ 583.5 Label requirements.

(a) Except as provided in paragraphs (e), (f) and (g) of this section, each manufacturer of new passenger motor vehicles shall cause to be affixed to each passenger motor vehicle manufactured on or after October 1, 1994, a label that provides the following information:

(1) *U.S./Canadian parts content.* The overall percentage, by value, of the passenger motor vehicle equipment that was installed on vehicles within the carline of which the vehicle is part, and that originated in the United States/or Canada (the procedure for determining U.S./Canadian Parts Content is set forth in § 583.6);

(2) *Major sources of foreign parts content.* The names of any countries other than the United States and Canada which contributed at least 15 percent of the average overall percentage, by value, of the passenger motor vehicle equipment installed on vehicles within the carline of which the vehicle is part, and the percentages attributable to each such country (if there are more than two such countries, the manufacturer need only provide the information for the two countries with the highest percentages; the procedure for determining major foreign sources of passenger motor vehicle equipment is set forth in § 583.7);

(3) *Final assembly point.* The city, state (in the case of vehicles assembled in the United States), and country of the final assembly point of the passenger motor vehicle;

(4) *Country of origin for the engine.* The country of origin of the passenger motor vehicle's engine (the procedure for determining the country of origin for the engine is set forth in § 583.8);

(5) *Country of origin for the transmission.* The country of origin of the passenger motor vehicle's transmission (the procedure for determining the country of origin for the transmission is set forth in § 583.8);

(6) *Explanatory note.* A statement which explains that the parts content of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

(b) Except as provided in paragraphs (e), (f) and (g) of this section, the label required under paragraph (a) of this section shall read as follows (except that if there are no major sources of foreign parts content, omit the phrase "Major Sources of Foreign Parts Content"):

For vehicles in this carline:
U.S./Canadian Parts Content: (insert number) %
Major Sources of Foreign Parts Content:
(name of country with highest percentage): (insert number) %
(name of country with second highest percentage): (insert number) %
For this vehicle:
Final Assembly Point: (city, state, country)
Country of Origin:
Engine: (name of country)
Transmission: (name of country)

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in the final rule) percent of the vehicle's total wholesale cost to the dealer.

(c) The percentages required to be provided under paragraph (a) of this section may be rounded by the manufacturer to the nearest 5 percent.

(d) The label required by paragraph (a) of this section shall:

(1) Be placed in a prominent location on each vehicle where it can be read from the exterior of the vehicle, and shall be either a separate label, a part of the Monroney price information label required by 15 U.S.C. 1232, or a part of the fuel economy label required by U.S.C. 2006.

(2)(i) Be printed in letters that have a color that contrasts with the background of the label; and

(ii) Have the information required by paragraphs (a) (1) through (5) of this section vertically centered on the label in boldface capital letters and numerals of 12 point size or larger; and

(iii) Have the information required by paragraph (a)(6) of this section in type that is two points smaller than the information required by paragraphs (a) (1) through (5) of this section.

(3) In the case of a label that is a separate label, be rectangular with a minimum width of 5.0 inches (125 mm) and a minimum length of 3.0 inches (75 mm).

(4) In the case of a label that is included as part of the Monroney price information label or fuel economy label, be separated from all other information on those labels by a solid line that is a minimum of three points in width.

(5) The information required by paragraphs (a) (1) through (6) of this section shall be immediately preceded by the words, "PARTS CONTENT INFORMATION," in boldface, underlined capital letters that are at least 2 point sizes larger than the information required by paragraphs (a) (1) through (5) of this section.

(e) In the case of a passenger motor vehicle for which the U.S./Canadian parts content, as determined under paragraph (a)(1) of this section, is 35 percent or less (without rounding), the manufacturer may specify the U.S./Canadian Parts Content as "Minimal."

(f) A final stage manufacturer of vehicles assembled in multiple stages need not provide the U.S./Canadian Parts Content or Major Foreign Sources items of the label otherwise required under paragraphs (a) (1) and (2) of this section for vehicles in carlines in which the total carline production for a model year is fewer than 1000 vehicles.

(g) A manufacturer that produces a total of fewer than 1000 passenger motor vehicles in a model year is not required to provide the U.S./Canadian Parts Content or Major Foreign Sources items of the label otherwise required under paragraphs (a) (1) and (2) of this section.

§ 583.6 Procedure for determining U.S./Canadian parts content.

(a) Each manufacturer, except as specified in § 583.5(e) through (g) shall determine the percentage U.S./Canadian Parts Content for each carline on a model year basis, before the beginning of each model year. Items of equipment produced at a plant or factory which includes the final assembly point are treated in the same manner as if they were supplied by an allied supplier.

(b) *Determining the value of items of equipment.* (1) The value of each item of equipment, other than a vehicle body or chassis, not produced at the final assembly point, is the price paid by the manufacturer for the equipment as delivered to the final assembly point.

(2) The value of a vehicle body is the price paid for the body, plus the value of the painting of the body and any prepainting operatings such as finishing. The value of a chassis is the price paid for the components comprising the chassis, plus the value of any operations assembling the chassis.

(3) The value of each item of equipment produced at a plant which includes the final assembly point is the fair market price that a manufacturer of similar size and location would pay a supplier for such equipment.

(c) *Determining the U.S./Canadian percentage of the value of items of equipment.* (1) Equipment supplied by an outside supplier to a manufacturer is considered:

(i) 100 percent U.S./Canadian, if 70 percent or more of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(2) The extent to which an item of equipment supplied by an allied supplier is considered U.S./Canadian is determined by dividing the value added in the United States and Canada by the total value of the equipment. The resulting number is multiplied by 100 to determine the percentage U.S./Canadian content of the equipment.

(3) In determining the value added in the United States and Canada of equipment supplied by an allied supplier, any equipment that is delivered to the allied supplier by an outside supplier and is incorporated into the allied supplier's equipment, is considered:

(i) 100 percent U.S./Canadian, if at least 70 percent of its value is added in the United States or Canada; and

(ii) 0 percent U.S./Canadian, if less than 70 percent of its value is added in the United States or Canada.

(d) *Determination of the U.S./Canadian percentage of the total value of a carline's passenger motor vehicle equipment.* The percentage of the value of a carline's passenger motor vehicle equipment that is U.S./Canadian is determined by—

(1) Adding the total value of all of the equipment (regardless of country of origin) to be installed in that carline during the next model year;

(2) Dividing the value of the U.S./Canadian content of such equipment by the amount calculated in paragraph (d)(1) of this section; and

(3) Multiplying the resulting number by 100.

§ 583.7 Procedure for determining major foreign sources of passenger motor vehicle equipment.

(a) Each manufacturer, except as specified in § 583.5(f) and (g), shall determine the countries, if any, which are major foreign sources of passenger motor vehicle equipment and the percentages attributable to each such country for each carline on a model year basis, before the beginning of each

model year. The manufacturer need only determine this information for the two such countries with the highest percentages. Items of equipment produced at a plant or factory which includes the final assembly point are treated in the same manner as if they were supplied by an allied supplier.

(b) *Determining the value of items of equipment.* The value of each item of equipment is determined in the manner specified in § 583.6(b).

(c) *Determining the country of origin of items of equipment.* The country of origin of each item of equipment is the country which contributes the greatest amount of value added to that item.

(d) *Determination of the percentage of the total value of a carline's passenger motor vehicle equipment which is attributable to individual countries other than the U.S. and Canada.* The percentage of the value of a carline's passenger motor vehicle equipment that is attributable to each country other than the U.S. and Canada is determined on a model year basis by—

(1) Adding up the total value of all of the passenger motor vehicle equipment (regardless of country of origin) to be installed in that carline during the next model year;

(2) Adding up the value of such equipment which originated in each country other than the U.S. or Canada;

(3) Dividing the amount calculated in paragraph (d) (2) of this section for each country by the amount calculated in paragraph (d)(1) of this section, and multiplying each result by 100.

(e) A country is a major foreign source of passenger motor vehicle equipment for a carline only if the country is one other than the U.S. or Canada and if 15 or more percent of the total value of the carline's passenger motor vehicle equipment is attributable to the country.

§ 583.8 Procedure for determining country of origin for individual engines and transmissions.

(a) Each supplier of an engine or transmission shall determine the country of origin for each individual engine and transmission. The U.S. and Canada are treated separately in making such determination.

(b) The value of an engine or transmission is determined by adding up the prices paid by the manufacturer of the engine/transmission for each component comprising the engine/transmission, as delivered to the assembly point of the engine/transmission. No other costs, including the costs of assembling the engine/transmission, are included in the value of the engine/transmission.

(c) The country of origin of each engine and the country of origin of each transmission is the country which contributes the greatest amount of value added to that item of equipment.

§ 583.9 Attachment and maintenance of label.

(a) Each manufacturer shall affix the label required by § 583.5 to each new passenger motor vehicle before shipment of the completed vehicle from the final assembly point.

(b) Each dealer shall cause to be maintained each label on the new passenger motor vehicles it receives until after such time as a vehicle has been sold to a consumer for purposes other than resale. If a label becomes damaged so that the information it contains is not legible, the dealer shall replace it with an identical, undamaged label.

§ 583.10 Outside suppliers of passenger motor vehicle equipment.

(a) For each unique type of passenger motor vehicle equipment which an outside supplier supplies to a manufacturer or allied supplier, the outside supplier shall provide the manufacturer/allied supplier with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the unique type of equipment;

(3) The price of the equipment to the manufacturer or allied supplier;

(4) A statement that the equipment has, or does not have, at least 70 percent of its value added in the United States and Canada, determined under § 583.6(c);

(5) For equipment which has less than 70 percent of its value added in the United States and Canada, the country of origin of the equipment, determined under § 583.7(c);

(6) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(b) (1) Except as provided in paragraph (b)(3) of this section, the certification required by paragraph (a) of this section shall be provided to each allied supplier by May 1 of each year and to each manufacturer by June 1 of each year, for all equipment which the allied supplier has a contract to supply during the 12 month period beginning on July 1 of that year.

(2) Except as provided in paragraph (b)(4) of this section, the information provided in the certificate shall be the supplier's best estimates of price, content, and country of origin for the unique type of equipment expected to be supplied during the 12 month period beginning on July 1 of that year. If the unique type of equipment supplied by the supplier is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its estimates on expected averages for these factors.

(3) The dates set forth in paragraph (b)(1) of this section for receipt of the certificate may be altered by contract between the outside supplier and the allied supplier or manufacturer to which the supplier sells its passenger motor vehicle equipment. If the dates are altered by contract, the outside supplier shall provide the certificate by the date set forth in the contract.

(4) The period specified in paragraph (b)(2) of this section for which estimates of price, content, and country of origin are to be based may be altered by contract between the outside supplier and the allied supplier or manufacturer to which the supplier sells its passenger motor vehicle equipment. However, such alteration may only be made if the manufacturer makes a determination that the alteration is not likely to result in less accurate information being provided to consumers on the label required by this part.

§ 583.11 Allied suppliers of passenger motor vehicle equipment.

(a) For each unique type of passenger motor vehicle equipment which an allied supplier supplies to the manufacturer with which it is allied, the allied supplier shall provide the manufacturer with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the unique type of equipment;

(3) The price of the equipment to the manufacturer;

(4) The percentage U.S./Canadian content of the equipment, determined under § 583.6(c);

(5) The country of origin of the equipment, determined under § 583.7(c);

(6) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(b) (1) Except as provided in paragraph (b)(3) of this section, the certification required by paragraph (a) of this section shall be provided to the manufacturer by June 1 of each year, for all equipment which the allied supplier has a contract to supply during the 12 month period beginning on July 1 of that year.

(2) Except as provided in paragraph (b)(4) of this section, the information provided in the certificate shall be the supplier's best estimates of price, content, and country of origin for the unique type of equipment expected to be supplied during the 12 month period beginning on July 1 of that year. If the unique type of equipment supplied by the supplier is expected to vary with respect to price, content, and country of origin during that period, the supplier shall base its estimates on expected averages for these factors.

(3) The dates set forth in paragraph (b)(1) of this section for receipt of the certificate may be altered by contract between the allied supplier and the manufacturer. If the dates are altered by contract, the allied supplier shall provide the certificate by the date set forth in the contract.

(4) The period specified in paragraph (b)(2) of this section for which estimates of price, content, and country of origin are to be based may be altered by contract between the allied supplier and the manufacturer. However, such alteration may only be made if the manufacturer makes a determination that the alteration is not likely to result in less accurate information being provided to consumers on the label required by this part.

§ 583.12 Suppliers of engines and transmissions.

(a) For each engine or transmission which a supplier supplies to a manufacturer or allied supplier, the supplier of such engine or transmission shall provide the manufacturer or allied supplier with a certificate providing the following information:

(1) The name and address of the supplier;

(2) A description of the engine or transmission;

(3) The country of origin of the engine or transmission, determined under § 583.8;

(4) A certification for the information, pursuant to § 583.13, and the date (at least giving the month and year) of the certification.

(b) The certificate required by paragraph (a) of this section shall be provided to the allied supplier or manufacturer no later than the time of the delivery of the engine or transmission.

(c) A single certificate may cover multiple engines or transmissions. If a certificate provided in advance of the delivery of an engine or transmission becomes inaccurate because of changed circumstances, a corrected certificate shall be provided no later than the time of delivery of the engine or transmission.

§ 583.13 Supplier certification.

Each supplier shall certify the information on each certificate provided under §§ 583.10, 583.11, and 583.12 by including the following phrase on the certificate: "This information is certified in accordance with DOT regulations." The phrase shall immediately precede the other information on the certificate.

§ 583.14 Currency conversion rate.

For purposes of calculations of content value under this part, manufacturers and suppliers shall calculate exchange rates using the methodology set forth in this section.

(a) *Manufacturers.* (1) Unless a manufacturer has had a petition approved by the Environmental Protection Agency under 40 CFR 600.511–80(b)(1), for all calculations made by the manufacturer as a basis for the information provided on the label required by § 583.5, manufacturers shall take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar quarter ending one year prior to the date that the manufacturer submits information for a carline under § 583.17.

(2) A manufacturer that has had a petition approved by the Environmental Protection Agency under 40 CFR 600.511–80(b)(1), which provides for a different method of determining exchange rates, shall use the same method as a basis for the information provided on the label required by § 583.5, and shall inform the Administrator of the exchange rate method it is using at the time the information required by § 583.5 is submitted.

(b) *Supplies.* For all calculations underlying the information provided on each certificate required by §§ 583.10, 583.11, and 583.12, suppliers shall take the mean of the exchange rates in effect at the end of each quarter set by the Federal Reserve Bank of New York for twelve calendar quarters prior to and including the calendar quarter ending one year prior to the date of such certificate.

§ 583.15 Joint ownership.

(a) A carline jointly owned and/or produced by more than one manufacturer shall be attributed to the single manufacturer that markets the carline, subject to paragraph (b) of this section.

(b) (1) The joint owners of a carline may designate, by written agreement, one of them to be the manufacturer of record of that carline.

(2) The manufacturer of record is responsible for compliance with all the manufacturer requirements in this part with respect to the jointly owned carline.

(3) A designation under this section of a manufacturer of record is effective beginning with the first model year beginning after the conclusion of the written agreement, or, if the joint owners so agree in writing, with a specified later model year.

(4) Each manufacturer of record shall send to the Administrator written notification of its designation as such not later than 30 days after the conclusion of the written agreement, and state the carline of which it is considered the manufacturer, the names of the other persons which jointly own the carline, and the name of the person, if any, formerly considered to be the manufacturer of record.

(5) The joint owners of a carline may change the manufacturer of record for a future model year by concluding a written agreement before the beginning of that model year.

(6) All new passenger motor vehicles in the jointly owned carline are included in the fleet of the manufacturer of record.

(7) The allied suppliers for the jointly owned carline are the suppliers that are wholly owned by any of the manufacturers of the jointly owned carline.

§ 583.16 Maintenance of records.

(a) *General.* Each manufacturer of new passenger motor vehicles and each supplier of passenger motor vehicle equipment subject to this part shall establish, maintain, and retain in organized and indexed form, records as specified in this section. Manufacturers and allied suppliers shall maintain the original copies of certificates provided to them by suppliers pursuant to §§ 583.10, 583.11, and 538.12. All other records may be converted to other forms (e.g., microfilm, microfiche, punch cards, and electronic storage) for purposes of data storage, provided that in every case all the information contained in the record is retained.

(b) *Manufacturers.* Each manufacturer shall maintain all records which provide a basis for the information it provides on the labels required by § 583.5, including, but not limited to, certificates from suppliers, parts lists, calculations of content, and relevant contracts with suppliers. The records shall be maintained for five years after December 31 of the model year to which the records relate.

(c) *Suppliers.* Each supplier shall maintain all records which form a basis for the information it provides on the certificates required by §§ 583.10, 583.11, and 583.12, including, but not limited to, calculations of content, certificates from suppliers, and relevant contracts with manufacturers and suppliers. The records shall be maintained for six years after December 31 of the calendar year set forth in the date of each certificate.

§ 583.17 Reporting.

For each model year, manufacturers shall submit to the Administrator 3 copies of the information required by § 583.5 (a), (e), (f), or (g) (whichever is applicable) to be placed on a label for each carline. The information for each carline shall be submitted not later than the date the first vehicle of the carline is delivered to dealers for that model year.

Issued: November 15, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Source of Foreign Parts Content:
Japan: 20%
Mexico: 15%

For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The PARTS CONTENT of a typical vehicle makes up about in range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

For vehicles in this carline:
U.S./Canadian Parts Content: Minimal
Major Source of Foreign Parts Content:
Italy: 90%

For this vehicle:
Final Assembly Point: Turin, Italy
Country of Origin:
Engine: Italy
Transmission: Italy

Note: The PARTS CONTENT of a typical vehicle makes up about in range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer

Final Assembly Point for this Vehicle:
Phoenix, AZ

Country of Origin for this Vehicle:
Engine: Mexico
Transmission: U.S.

[FR Doc. 93–28392 Filed 11–18–93; 8:45 am]
BILLING CODE 4910-59-M

Notices

Federal Register
Vol. 58, No. 222
Friday, November 19, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

[Docket No. 93-025N]

FLD Policy Memoranda; Semi-Annual Listing

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Notice.

SUMMARY: This document lists and makes available to the public a memorandum which was issued by the Food Labeling Division (FLD), (formerly the Standards and Labeling Division), Regulatory Programs, Food Safety and Inspection Service (FSIS). This memorandum contains a significant new application or an interpretation of the Federal Meat Inspection Act, the Poultry Products Inspection Act, the regulations promulgated thereunder, or departmental policy concerning labeling.

FOR FURTHER INFORMATION CONTACT: Cheryl Wade, Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2590.

SUPPLEMENTARY INFORMATION: Pursuant to section 7 of the Federal Meat Inspection Act (21 U.S.C. 607 *et seq.*) and section 8 of the Poultry Products Inspection Act (21 U.S.C. 457 *et seq.*), and the regulations promulgated thereunder (9 CFR 301.1 *et seq.* and 9 CFR 381.1 *et seq.*), meat and poultry products which do not bear approved labels or other labeling may not be distributed in commerce for use as human food. Accordingly, FSIS conducts a prior approval program for labels or other labeling (specified in 9 CFR 317.4, 317.5, 381.132 and 381.134) to be used on or in conjunction with federally inspection meat and poultry products.

FSIS's prior labeling approval program is conducted by labeling review experts within FLD. A variety of factors, such as continuing technological innovations in food processing and expanded public concern regarding the presence of various substances in foods, has generated a series of increasingly complex issues which FLD must resolve as part of the prior labeling approval process. In interpreting the Acts and regulations to resolve these issues, FLD may modify its policies on labeling or develop new ones.

Significant or novel interpretations or determinations made by FLD are issued in writing in memorandum form. This document lists one FLD policy memorandum which was issued during the period of April 1, 1993, through October 1, 1993.

Persons interested in obtaining a copy of the FLD policy memorandum, or in being included on a list for automatic distribution of future FLD policy memoranda, may write to: Printing and Distribution Section, Paperwork Management Branch, Administrative Services Division, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

Memo No.	Title and date	Issue	Reference
108B	Water-Misted and Ice-Glazed Meat and Poultry Products, June 24, 1993.	What is the appropriate labeling for meat and poultry products that are protected with a thin layer of water or ice, or treated with a water-mist to prevent shrinkage during freezing?.	9 CFR 319.15; 9 CFR 381.170.

The FLD policy specified in this memorandum will be uniformly applied to all relevant labeling applications unless modified by future memoranda or more formal Agency actions. Applicants retain all rights of appeal regarding decisions based upon these memoranda.

Cheryl Wade,

Director, Food Labeling Division, Regulatory Programs.

[FR Doc. 93-28533 Filed 11-18-93; 8:45 am]

BILLING CODE 3410-DM-M

DEPARTMENT OF COMMERCE

Foreign-Trade Zones Board

[Docket 54-93]

Proposed Foreign-Trade Zone—Jackson County, OR; Application and Public Hearing

An application has been submitted to the Foreign-Trade Zones Board (the Board) by Jackson County, Oregon, an Oregon municipal corporation and Home Rule county, requesting authority to establish a general-purpose foreign-trade zone at sites in the Medford-Jackson County, Oregon area. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 4, 1993. The applicant is authorized to make the proposal under Oregon Revised Statute 307.850. An application is pending with the U.S. Customs Service requesting the designation of the Medford-Jackson County Airport as a Customs user fee port facility.

The proposed foreign-trade zone would consist of 6 sites (528 acres) in the Cities of Medford, White City and Eagle Point (Jackson County), Oregon: *Site 1* (95 acres)—airport site, 3650 Biddle Road in Medford, within the Medford—Jackson County Airport complex; *Site 2* (38 acres)—King Business Center, Lear Way, Cardinal Avenue and Commerce Drive, west of Crater Lake Highway, Medford, adjacent to the Medford-Jackson County Airport; *Site 3* (54 acres)—North Medford Business Center, Bulcrest Drive, Gruman Drive and Kingsley Drive, west of Crater Lake Highway, Medford, one

mile north of the airport; *Site 4* (215 acres)—North Medford Business Center, Avenue H, 11th Street, Avenue A and Pacific Avenue, White City, (Jackson County), four and one-half miles north of the airport; *Site 5* (23 acres)—Light Valley Site, 10440 South Fork Little Butte Creek Road, Eagle Point (Jackson County), including the Oregon Wildlife Center and the Light Valley Tree Farm; and, *Site 6* (103 acres)—KOGAP Business Center, 2080 South Pacific Highway, Medford, 5 miles south of the airport. Site 1 is owned by the County; Sites 2,3 and 4, by Burrill Properties, Inc.; Site 5 by Ralph Wehinger; and Site 6 by KOGAP Manufacturing Company. Ore-Cal Trade Corporation has been designated as the proposed zone operator.

The application contains evidence of the need for zone services in the Medford-Jackson County area. Several firms have indicated an interest in using zone procedures for warehousing/distribution of such items as electronic components, lumber, hardwood products, sports equipment, toys, machinery and equipment, ski industry equipment and household products. Specific manufacturing approvals are not being sought at this time. Requests would be made to the Board on a case-by-case basis.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

As part of the investigation, the Commerce examiner will hold a public hearing on January 6, 1994, at 9 a.m., in the Auditorium of the Jackson County Courthouse, 10 South Oakdale, Medford, Oregon.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 24, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 8, 1994).

A copy of the application and accompanying exhibits will be available during this time for public inspection at the following locations:

County Administrator's Office, Jackson County, Oregon, 10 S. Oakdale, Medford, Oregon 97501.

Office of the Executive Secretary, Foreign-Trade Zones Board, room 3716, U.S. Department of Commerce, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: November 10, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–28539 Filed 11–18–93; 8:45 am]

BILLING CODE 3510–DS–P

[Docket 55–93]

Foreign-Trade Zone 148—Knoxville, TN; Application for Subzone; SmithKline Beecham Pharmaceutical Plant, Bristol, TN

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Industrial Board of Blount County, Tennessee, grantee of FTZ 148, requesting special-purpose subzone status for the pharmaceutical manufacturing facilities of the SmithKline Beecham Corporation (SBC) in Bristol, Tennessee. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 8, 1993.

The SBC plant (40 acres, 286,599 square feet, 1 bldg.) is located at 201 Industrial Drive, Bristol (Sullivan County), some 100 miles northeast of Knoxville. The facilities (310 employees) are used to produce both human and animal health prescription drugs, primarily antibiotics, such as oral semi-synthetic penicillins, including "Augmentin" and "Amoxil" human health products and, "Amoxi-Bol" and "Amoxi-Drops" animal health products.

Currently, foreign-sourced materials account for, on average, 23 percent of the finished product value and include the following specific ingredients: potassium clavulanate/(amoxicillin/Avicel/Syloid) and amoxicillin. The company also may purchase from abroad items in the following general product categories: gums, starches, waxes, vegetable extracts, animal and vegetable oils, glycerine, ethyl alcohol, bran, sharps and other residues, salt, clays, gypsum, talc, oxygen-function amino compounds, antibiotics and medicaments.

Zone procedures would exempt SBC from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 45%, most falling in the 3.7%–6.2% range). The duty rates on foreign-sources items range from duty-free to 49 percent, with most falling in the 3.7–7.4 percent range. The application indicates that zone savings will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designed examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submisions (original and 3 copies) shall be addressed to the Board's Exectuive Secretary at the address below. The closing period for their receipt is January 18, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period to February 2, 1994.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, 301 E. Church Av., Knoxville, TN 37915.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue NW., Washington, DC 20230.

Dated: November 15, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–28540 Filed 11–18–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[C–401–401]

Certain Carbon Steel Products From Sweden; Preliminary Results of Countervailing Duty Administrative Review

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of countervailing duty Administrative Review.

SUMMARY: The Department of Commerce is conducting an administrative review of the countervailing duty order on certain carbon steel products from Sweden. We preliminarily determine the net subsidy to be 4.27 percent *ad valorem* for the period January 1, 1991 through December 31, 1991. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Stephanie Moore or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On October 8, 1992, the Department of Commerce (the Department) published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 46371) of the countervailing duty order on certain carbon steel products from Sweden (50 FR 41547; October 4, 1985). On October 30, 1992 the U.S. Steel Group of USX Corporation, petitioner, requested an administrative review of the order covering the period January 1, 1991 through December 31, 1991 (57 FR 56318). We published the initiation notice on November 27, 1992. The Department is now conducting the review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by this review are shipments from Sweden of cold-rolled carbon steel flat-rolled products, whether or not corrugated or crimped; whether or not pickled, not cut, not pressed and not stamped to non-rectangular shape; not coated or plated with metal and not clad; over 12 inches in width and of any thickness; whether or not in coils. During the period of review this merchandise was classified under item numbers 7209.11.00, 7209.12.00, 7209.13.00, 7209.21.00, 7209.22.00, 7209.23.00, 7209.24.50, 7209.31.00, 7209.32.00, 7209.33.00, 7209.34.00, 7209.41.00, 7209.43.00, 7209.44.00, 7209.90.00, 7211.30.50, 7211.41.70 and 7211.49.50 of the Harmonized Tariff Schedule (HTS). The HTS item numbers are provided for convenience and Customs purposes. The written description remains dispositive.

The review covers the period January 1, 1991 through December 31, 1991 and twelve programs. Svenskt Stal AB (SSAB) was the only Swedish producer and/or exporter of the subject merchandise exported to the United States during the review period.

Analysis of Programs

Privatization

SSAB was partially privatized on two occasions. The first partial privatization took place in 1987 when the Government of Sweden (GOS), which by then had become the sole owner of SSAB, sold one-third of its shares in the company to a consortium of six institutional investors. A second partial privatization followed in 1989 when the GOS and the institutional investors sold part of their shareholdings in a public offer.

In the Final Affirmative Countervailing Duty Determinations: Certain Carbon Steel Products from Sweden (58 FR 37387; July 9, 1993) (Carbon Steel Flat Products), we determined that a portion of the price paid for a formerly government-owned company represents partial repayment of prior subsidies. We calculated the portion of the purchase price attributable to repayment of prior subsidies. We then reduced the benefit streams for each program by the ratio of the repayment amount to the net present value of all remaining benefits at the time of privatization. For a further explanation of the Department's determination on privatization and these calculations, see the Privatization section of the Final Affirmative Countervailing Duty Determination: Certain Steel Products from Austria, 58 FR 37217, July 9, 1993) (General Issues Appendix). The subsidies allocated to the period of review (POR) for SSAB reflect (where appropriate) the application of the privatization methodology.

Spin-offs

Between 1979 and 1991, SSAB sold to unrelated parties, or contributed to various joint ventures, a number of productive units. In Carbon Steel Flat Products, we stated that a portion of the price paid when a "productive unit" is sold is allocable to the value of subsidies received in prior years by the seller of the "productive unit". In accordance with the spin-off methodology described in the Restructuring section of the General Issues Appendix, we have allocated a portion of SSAB's subsidies to these productive units. Accordingly, we reduced the future subsidy benefit streams of SSAB's long-term loans, grants and equity infusions.

SSAB received subsidies which were tied to specific products. The productive units producing these products were sold by the company prior to the POR. Specifically, SSAB received a grant for an engineering workshop which it no longer owns. It also received specific subsidies for various projects at certain mines which it no longer owns.

With regard to the engineering workshop in Carbon Steel Flat Products, the Department concluded that, although the grant SSAB received was tied to the engineering workshop, the activities of the workshop may have benefitted the subject merchandise. Therefore, that grant was included in calculating SSAB's subsidy. However, when the workshop was sold, we allocated a portion of SSAB's subsidies to the engineering workshop according to the spin-off methodology noted above. The future subsidy benefit streams of SSAB have been adjusted to reflect the sale of this productive unit. See Restructuring section of the General Issues Appendix.

The Department also considers the subsidies SSAB received for mines, which it no longer owns, to be tied to the mines. However, because these mines produced an input product for SSAB's production of the subject merchandise, the subject merchandise benefitted from these subsidies. Therefore, these grants have been included in SSAB's subsidy. However, we have not allocated subsidies to the mines that were sold. Because they were "sold" to the GOS, we do not consider this a legitimate "sale" for purposes of allocating subsidies. Therefore, we have not reduced SSAB's subsidies to reflect a payback of subsidies through the sale of its mines. For identical reasons, we have not adjusted SSAB's subsidies for the sale of the TGOJ railway. See Restructuring section of the General Issues Appendix.

(1) Equity Infusions

SSAB received two equity infusions totaling 1.4 million Swedish Kronor (MSEK) from the GOS in 1978. In 1981, when SSAB required additional equity, the GOS provided 575 MSEK in cash and converted 550 MSEK of SSAB's debt to equity.

In addition, in 1981, Granges AB (Granges), a private company, provided 375 MSEK to SSAB in order to maintain its 25 percent share in SSAB. The GOS agreed to purchase all of Granges' shares in SSAB for 875 MSEK in 1991. In Certain Carbon Steel Products from Sweden; Preliminary Results of Countervailing Duty Administrative Review (53 FR 35883; September 15, 1988) (Carbon Steel Preliminary Results) and in Certain Carbon Steel Products from Sweden; Final Results of Countervailing Duty Administrative Review (54 FR 31716; August 1, 1989) (Carbon Steel Final Results), we determined that the GOS's guarantee of a specified sum to Granges in 1991 in return for its investment in SSAB was an equity infusion. Because we determined that SSAB was unequityworthy in both 1978 and 1981, the equity infusions received in those years were found countervailable. In this review the GOS has provided no new information to warrant a reconsideration of this determination. There have been no additional government equity infusions into SSAB since 1981.

For this review, we preliminarily determine that the most appropriate methodology to use in measuring the benefit from equity infusions made or provided on terms inconsistent with commercial considerations is what we call the "grant" approach. (For a full discussion of this issue, see the Equity section of the General Issues Appendix. We calculated the benefit to SSAB from the equity infusions using our declining balance methodology described in the Department's Proposed Rules (see § 355.49(b)(3) of Countervailing Duties; Notice of Proposed Rulemaking and Request for Public Comments, 54 FR 23366, May 31, 1989) (Proposed Regulations). We have used, as the discount rate, SSAB's company-specific interest rate on fixed-rate long-term loans. On this basis, we preliminarily determine the estimated net subsidy rate from equity infusions during the POR to be 1.56 percent ad valorem.

(2) Government Acquisitions of Assets for SSAB

(A) *TGOJ Railway*—In 1978, Granges transferred assets to SSAB at a negotiated value of 700 MSEK, which was lower than the assets' recorded book value. In Bill 1977/78:87, the GOS proposed that Granges losses be covered by SSAB's payment of 480 MSEK to Granges to acquire its railway operation. SSAB took over Granges railway operation, TGOJ, by paying Granges 343.3 MSEK. The payment was effectuated through a promissory note issued by the GOS to SSAB, which SSAB turned over to Granges so that all payments were made directly from GOS to Granges. We previously determined in the Final Affirmative Countervailing Duty Determination; Certain Carbon Steel Products from Sweden (50 FR 33375; August 19, 1985) (Final Affirmative Carbon Steel Products) that the GOS's payment to Granges conferred a countervailable benefit on SSAB because it relieved SSAB of a debt that the company otherwise would have incurred. In this review the GOS has provided no new information to warrant a reconsideration of this determination.

We calculated the benefit using our declining balance methodology described in the Equity section above. On this basis, we preliminarily determine the estimated net subsidy of the TGOJ grant during the POR to be 0.16 percent *ad valorem*.

(B) *The NJA Grant—In connection with the formation of SSAB in 1978, the GOS provided Norrbottens Jarnverk AB (NJA), a state-owned company, with a 530 MSEK grant. We previously determined that this grant was compensation to NJA for having sold its assets to SSAB below book value (Final Affirmative Carbon Steel Products at 33378). The U.S. Court of International Trade (CIT) upheld the Department's decision (see SSAB Svenskt Stal AB* versus *United States*, 764 F. Supp. 650, 656–57 (CIT 1991)). In this review the GOS has provided no new information to warrant a reconsideration of this determination.

We calculated the benefit using our declining balance methodology described above. We determined in Carbon Steel Flat Products that this grant is directly related to SSAB's production activities. Subsidies tied to productive activities benefit only production of merchandise and do not benefit a company's service functions. Therefore, we subtracted the value of services sold by SSAB from SSAB's total sales when calculating the *ad valorem* benefit for this grant. This is consistent with the methodology outlined in the Denominator section of the General Issues Appendix. On this basis, we preliminarily determine the estimated net subsidy of the NJA grant during the POR to be 0.24 percent *ad valorem*.

(3) Reconstruction Loans

The GOS provided reconstruction loans to SSAB between 1979 and 1985. The initial reconstruction loans were intended to cover expected operating losses during the 1978–1982 restructuring period. Subsequent reconstruction loans were granted for employment promotion and investment in certain plants and equipment. These loans were interest free for three years. Pursuant to the loan terms, half of the principal may be written off after the second calendar year following the disbursement. The remainder of the loan may be forgiven entirely at the end of the ninth calendar year after disbursement. Principal and interest payments on the outstanding loans are required only if SSAB pays dividends to its shareholders. Each year that a dividend is declared, SSAB is obligated to make a payment in an equal amount to the government.

Because these loans were authorized by legislation and were given to SSAB on terms inconsistent with commercial considerations, we previously determined that they were countervailable. (See Final Affirmative Carbon Steel Products).

To calculate the benefit, we treated the portions of the reconstruction loans that were written off through 1991 as grants and used our declining balance methodology described above. On this basis, we preliminarily determine the estimated net subsidy during the POR to be 1.90 percent *ad valorem*.

Only two of SSAB's reconstruction loans showed outstanding balances during the POR. Because of the condition linking repayment of the reconstruction loans to dividends, we have treated these loans as contingent liabilities. Our methodology for calculating the benefit of these loans is similar to the one used for the variable-rate structural loans described in the "Structural Loans" section below. We compared the fixed interest rates charged on these two loans (9.5 and 11.5 percent, respectively) to SSAB's company-specific long-term benchmark interest rates. We found that both loans in question conferred countervailable benefits, because the amount paid by SSAB for those loans was less than what the company would have paid on normal commercial terms. To calculate the benefit of these loans, we calculated the difference between the interest SSAB paid on these loans during the POR with what SSAB would have paid during the POR for a benchmark loan. We divided that difference by SSAB's total sales in the POR, reduced by the value of services sold. This is consistent with the methodology outlined in the Denominator section of the General Issues Appendix. On this basis, we preliminarily determine the net benefit from the outstanding reconstruction loans during the POR to be 0.02 percent *ad valorem*.

(4) Structural Loans

Between 1978 and 1983, SSAB received structural loans from the Swedish government for investments in plant and equipment. One loan was partially converted to equity in 1981. During the POR, portions of three loans were outstanding. The terms of these structural loans were interest-free for three years after disbursement. Thereafter, one loan incurred interest at a fixed rate of 5 percent per annum while the other two loans incurred interest at a variable rate which is recalculated every five years. Pursuant to the loan terms, the variable interest rate on these two loans is set based on the rate of long-term government bonds plus a margin of 0.25 percent. For all structural loans, no principal payments are made in the first five years of the loan. Thereafter, the principal is repaid in 20 equal installments.

In Final Affirmative Carbon Steel Products, we determined that because the structural loans were provided specifically to SSAB, they were limited to a specific enterprise or industry. Therefore, the structural loans are countervailable to the extent that they were provided on terms inconsistent with commercial considerations. To

calculate the benefit from the fixed-rate structural loans, we employed our long-term loan methodology as described in § 355.49(c)(1) of the Department's Proposed Regulations.

To calculate the benefit from the two variable-rate loans, we used our variable-rate long-term loan methodology as described in § 355.49(d)(1) of our Proposed Regulations. We have used, as the discount rate for both the fixed-rate and variable-rate structural loans, SSAB's company-specific interest rate on fixed-rate long-term loans. We calculated the difference between what SSAB paid in interest on these loans during the POR and what SSAB would have paid during the POR, had the loans been provided under normal commercial terms. We then divided the resulting difference for both types of loans by SSAB's total sales in the POR. On this basis, we preliminarily determine the estimated net subsidy of both fixed-rate and variable-rate structural loans during the POR to be 0.37 percent *ad valorem*.

(5) Research and Development (R&D) Grants and Loans

The Swedish National Board for Industrial and Technical Development (NUTEK) provides loans to industries for R&D purposes. If the R&D activities lead to a commercial application with a prospect of economic success, the R&D funds granted become repayable. If the R&D support is forgiven, the company is obliged to make the results generally available. The loans were granted in 1990 and previous years, and accrue interest equal to the official discount rate plus 3.75 percent from the date of disbursement. However, no interest or principal payments are due until the projects are completed. The length of the loans is thus not predetermined, but once a research project is completed, the loans must be repaid within five years.

With respect to the outstanding R&D loans, we cannot determine whether SSAB has received a countervailable benefit until the research is completed. This is because, until then, it is unknown (1) whether the loans will have been forgiven (in which case they are not countervailable because the results are publicly available), and (2) whether the accumulated interest on the loans is lower than it would have been had it been provided on normal commercial terms. (Carbon Steel Flat Products).

Therefore, we will examine any potential benefits from the R&D loans in future administrative reviews of this case. If the R&D loans provide a countervailable benefit to SSAB, it will be captured once SSAB starts repaying the loans. On this basis, we preliminarily determine that there were no net subsidies for R&D loans or grants during the POR.

(6) Special Employment Subsidies

The Swedish Parliament passed Government Bill 1976/77:95 in March 1977 in response to a general economic downturn. The bill provided employment grants to companies recognized as being the dominant employers in a particular community. In order to prevent layoffs, these grants were designed to cover 75 percent of the wages and salaries of surplus workers who performed work at the company unrelated to production activities. These benefits were available to all types of industries throughout Sweden until 1978.

In Carbon Steel Preliminary Results and in Carbon Steel Final Results, we determined that, although grants under Bill 1976/77:95 were *de jure* available to all Swedish industries, the GOS had not provided any information showing the distribution of the benefits. Therefore, we found the grants to be *de facto* specific based on the best information available and, thus, countervailable.

In November 1977, the Swedish Parliament passed Bill 1977/78:59 which extended the benefits for an additional year specifically for the steel industry. Since grants pursuant to Bill 1977/78:59 were only available to the steel industry from July 1978 through June 1979, we determined in Final Affirmative Carbon Steel Products that these grants were countervailable. In this review the GOS has provided no new information or evidence of changed circumstances to warrant a reconsideration of this determination.

In the investigation of Carbon Steel Flat Products, SSAB provided the total amount received under this program in 1978 and 1979, but did not show how much it received in each of those years. In this instant review, SSAB did not provide updated data. Therefore, as a reasonable estimate, we allocated the total amount received in 1978 and 1979 (49.6 MSEK) on the basis of publicly available information provided in SSAB's September 29, 1992 public version of the response to the investigation's questionnaire, a copy of which was transferred into the record of this review. We allocated 17.3 MSEK to 1979, which, SSAB states is the total amount of employment promotion grants received by SSAB in that year, and the remainder, 32.3 MSEK, to 1978. (See Carbon Steel Flat Products (58 FR 37389; July 9, 1993).

We calculated the benefit from the grants received using our declining balance methodology. Because the 1979 grant amounted to less than 0.5 percent of the value of SSAB's total sales in that year, we allocated the amount received in 1979 in the year of receipt. (See Proposed Regulations at § 355.49 (a)(3)(A)). On this basis, we preliminarily determine the estimated net subsidy of the 1978 grant during the POR to be 0.01 percent *ad valorem*.

(7) Grants for Temporary Employment for Public Works

These grants were provided by the GOS to companies and government agencies which temporarily hire unemployed people to perform different types of public works, (e.g., construction, road building). SSAB received such grants between 1979 and 1988. We determined that these grants were countervailable because they were limited to a specific enterprise or industry or group of enterprises or industries. (See Carbon Steel Preliminary Results and Carbon Steel Final Results). The GOS has provided no new information or evidence of changed circumstances to warrant a reconsideration of this determination.

We calculated the benefit from the 1979 grants using our declining balance methodology. The amount received by SSAB under this program in all other years was less than 0.5 percent of the value of the company's total sales in each year. Therefore, we allocated all amounts received from 1980 through 1988 to the year of receipt and there are no benefits during the POR. On this basis, we preliminarily determine the net subsidy of the 1979 grant for temporary employment for public works during the POR to be 0.01 percent *ad valorem*.

(8) Other Programs

We also examined the following programs and preliminarily determined that they were not used by SSAB or only benefitted products other than the subject merchandise during the period of review:

(1) Transportation Grants
(2) Location-of-Industry Grants
(3) State Stockpiling Subsidies
(4) Location-of-Industry Loans
(5) Mining Exploration Grants

Preliminary Results of Review

As a result of our review, we preliminarily determine the net subsidy to be 4.27 percent *ad valorem* for all firms for the period January 1, 1991 through December 31, 1991.

The Department intends to instruct the Customs Service to assess countervailing duties of 4.27 percent of the f.o.b. invoice price on all shipments

of this merchandise exported on or after January 1, 1991 and on or before December 31, 1991.

Further, the Department intends to instruct the Customs Service to collect a cash deposit of estimated countervailing duties, as provided by section 751(a)(1) of the Act, of 4.27 percent of the f.o.b. invoice price on all of SSAB's shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the date of publication of the final results of this administrative review.

Parties to the proceeding may request disclosure of the calculation methodology and interested parties may request a hearing not later than 10 days after the date of publication of this notice. In accordance with 19 CFR 355.38(c)(ii), interested parties may submit written arguments in case briefs on these preliminary results within 30 days of the date of publication. Rebuttal briefs may be submitted seven days after the time limit for filing the case brief. Any hearing, if requested, will be held seven days after the scheduled date for submission or rebuttal briefs. Copies of case briefs and rebuttal briefs must be served on interested parties in accordance with 19 CFR 355.38(e). Any request for disclosure under an administrative protective order must be made no later than five days after the date of publication. The Department will publish the final results of its analysis of issues raised in any such written comment or at a hearing.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and 19 CFR 355.22.

Dated: November 10, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-28541 Filed 11-18-93; 8:45 am]

BILLING CODE 3510-DS-P

(C-333-502)

Deformed Steel Concrete Reinforcing Bar From Peru; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration Department of Commerce

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on deformed steel concrete reinforcing bar (rebar) from Peru. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: November 19, 1993

FOR FURTHER INFORMATION CONTACT: Brian Albright or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2305 or 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 27, 1985, the Department of Commerce (the Department) published a countervailing duty order on rebar from Peru (50 FR 48819). The Department has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than thirty days after the publication date of this notice, domestic interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to the Department's notice of opportunity to request administrative review), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-28621 Filed 11-18-93; 8:45 am]

BILLING CODE 3510-DS-P

(C-357-048)

Certain Textiles and Textile Products From Argentina; Intent To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of intent to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its intent to revoke the countervailing duty order on certain textiles and textile products from Argentina, which includes men's and boys' woolen garments. Domestic interested parties who object to this revocation must submit their comments in writing not later than thirty days from the publication date of this notice.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Kelly Parkhill, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482-2305 or 482-2786.

SUPPLEMENTARY INFORMATION:

Background

On November 16, 1978, the Department of Treasury published a countervailing duty order on certain textiles and textile products from Argentina (48 FR 53421). The Department of Commerce (the Department) has not received a request to conduct an administrative review of this countervailing duty order for at least four consecutive annual anniversary months.

In accordance with 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month. Accordingly, as required by § 355.25(d)(4) of the Department's regulations, we are notifying the public of our intent to revoke this order.

Opportunity To Object

Not later than thirty days after the publication date of this notice, domestic interested parties, as defined in § 355.2(i)(3), (i)(4), (i)(5), and (i)(6) of the Department's regulations, may object to the Department's intent to revoke this countervailing duty order.

Seven copies of any such objections should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B-099, U.S. Department of Commerce, Washington, DC 20230.

If no interested parties request an administrative review (pursuant to 19 CFR 355.22(a)), or if no domestic interested parties object to the Department's intent to revoke pursuant to this notice, we shall conclude that the order is no longer of interest to interested parties and shall proceed with the revocation.

This notice is in accordance with 19 CFR 355.25(d)(4)(i).

Dated: November 16, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93-28622 Filed 11-18-93; 8:45 am]

BILLING CODE 3510-DS-P

National Oceanic and Atmospheric Administration

[I.D. 111793C]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: A special subcommittee of the Western Pacific Fishery Management Council's Scientific and Statistical Committee will hold a meeting on November 22, 1993, from 1 p.m. until 5 p.m. and on November 23, 1993, from 8:00 a.m. until noon, at the NMFS Honolulu Laboratory, 2570 Dole Street, Honolulu, Hawaii.

The Hawaii longline limited entry program proposed under Amendment #7 to the Pelagics Fishery Management Plan would require that the fleet-wide harvesting capacity not exceed that which was allowed during the April 1991–April 1994 moratorium. The subcommittee will discuss and possibly make recommendations regarding alternative methods to:

(1) Measure the maximum harvesting capacity of the longline fleet during the 1991–1994 moratorium;

(2) Regulate the harvesting capacity of longline vessels eligible for participation under the proposed limited entry program; and/or

(3) Propose alternative measures to allow controlled upgrading of longline vessels.

The subcommittee will also discuss results of an economic survey of the Northwestern Hawaiian Islands bottomfish limited entry program, and possibly recommend alternative management options to the Council.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 523–1368.

Dated: November 17, 1993.

Alfred J. Bilik,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-28636 Filed 8-18-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 110893C]

Northeast Multispecies Fishery; Public Hearings

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public hearings and request for comments.

SUMMARY: The New England Fishery Management Council (Council) established by section 302 of the Magnuson Act will hold public hearings to receive comments on the revision of a disapproved section of Amendment 5 to the Northeast Multispecies Fishery Management Plan (FMP). The Council submitted Amendment 5 to the National Marine Fisheries Service (NOAA/NMFS) on September 30, 1993. On October 1, NMFS announced its disapproval of two of the measures contained in that amendment: A 5,000-pound haddock possession limit, and an exception to some of the measures in the amendment for vessels fishing for winter flounder in the waters of those states with a winter flounder management plan approved by the Atlantic States Marine Fisheries Commission (ASMFC). This hearing is to receive comment on a revised winter flounder exception.

DATES: Written comments should be sent by December 7, 1993, to the address below. The hearing will be held at 3:30 p.m. on Wednesday, December 8, 1993, at the King's Grant Inn, Danvers, MA, (Route 128 and Trask Lane, (508) 774–6800).

ADDRESSES: Send written comments to Douglas G. Marshall, Executive Director, New England Fishery Management Council, 5 Broadway, Saugus, MA 01906. Copies of the public hearing document may be obtained from this address. Clearly mark the outside of the envelop "Request for Winter Flounder (Amendment 5) public hearing document".

FOR FURTHER INFORMATION CONTACT: Douglas G. Marshall, Executive Director, (617) 231–0422.

SUPPLEMENTARY INFORMATION: The Regional Director of NMFS disapproved the initial winter flounder measure in Amendment 5 on the grounds that it was poorly defined, insufficiently analyzed, and would likely increase the mortality of winter flounder and other groundfish species. The Council is currently modifying the measure to address those concerns. The Multispecies (Groundfish) Committee will be finalizing those changes at its November 23 meeting in anticipation of this hearing and the December 8–9 Council meeting.

The Council staff will prepare the public hearing document after the Groundfish Committee reviews and approves the measures for the hearing. Interested members of the public should contact the Council office for further information.

The purpose of this notice is to alert the interested public of a public hearing and the opportunity for participation in the development of a fishery management plan amendment in compliance with the Magnuson Fishery Conservation and Management Act. These hearings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Douglas G. Marshall by November 22, 1993 (See **ADDRESSES**).

Authority: 16 U.S.C. 18901 et seq.

Dated: November 16, 1993.

Joe P. Clem,

Acting Director of Office Fisheries, Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-28489 Filed 11-18-93; 8:45 am]

BILLING CODE 3510-22-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in the Dominican Republic

November 12, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limit for Categories 338/638 is being increased for special shift, reducing the limit for Categories 339/639 to account for the increase.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 53882, published on November 13, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on November 6, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in the Dominican Republic and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 19, 1993, you are directed to adjust the current limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the Dominican Republic:

Category	Adjusted twelve-month limit [1]
338/638	688,057 dozen.
339/639	701,248 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

The guaranteed access levels for Categories 338/638 and 339/639 remain unchanged.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28534 Filed 11–18–93; 8:45 am]

BILLING CODE 3510–DR–F

Rescission of a Request to Consult on Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in El Salvador

November 12, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has decided to rescind the request made on July 29, 1993 to consult on imports of cotton and man-made fiber coats in Categories 335/635. Should it become necessary to discuss these categories with the Government of El Salvador at a later date, further notice will be published in the **Federal Register**.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 58 FR 42951, published on August 12, 1993.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28536 Filed 11–18–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of an Import Limit for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

November 12, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a limit.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this limit, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated November 8, 1993 between the Governments of the United States and Jamaica, agreement was reached, among other things, to increase the 1993 Designated Consultation Level for Categories 331/631.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60512, published on December 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the

implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 19, 1993, you are directed, pursuant to a Memorandum of Understanding dated November 8, 1993 between the Governments of the United States and Jamaica, to increase the current limit for Categories 331/631 to 500,000 dozen pairs [1].

The guaranteed access level for Categories 331/631 remains unchanged.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28537 Filed 11–18–93; 8:45 am]

BILLING CODE 3510–DR–F

[1] The limit has not been adjusted to account for any imports exported after December 31, 1992.

Deduction of Import Charges for Certain Wool Textile Products Assembled in the Dominican Republic

November 12, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs deducting charges.

EFFECTIVE DATE: November 19, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

CITA has agreed to issue visa waivers for certain textile products in Category 433 which were cut in the Virgin Islands and assembled in the Dominican Republic and exported to the United States. In the letter published below, the Chairman of CITA directs the Commissioner of Customs to deduct 952 dozen from the import charges made to the current limit for Category 433. Additional deductions will be made at a later date.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992).

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: To facilitate implementation of the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement, effected by exchange of notes dated June 11, 1992 and September 23, 1992, between the Governments of the United States and the Dominican Republic, I request that, effective on November 19, 1993, you deduct 952 dozen from the charges made to Category 433 for the period which began on January 1, 1993 and extends through December 31, 1993 (see directive dated November 6, 1992).

This letter will be published in the **Federal Register.**

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28535 Filed 11–18–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List; Proposed Additions and Deletions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to and deletions from procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities, and to delete commodities previously furnished by such agencies.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 20, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

Additions

If the Committee approves the proposed addition, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and service listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action does not appear to have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and service proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and service to the Procurement List for production by the nonprofit agency listed:

Commodities

Floss, Dental
6520–00–935–1007

6520–01–063–7477
6520–01–063–7478
6520–01–063–6875
Nonprofit Agency: J. M. Murray Center, Inc., Cortland, New York

Dispenser, Tape
7520–00–240–2411
Nonprofit Agency: Development Workshop, Inc., Idaho Falls, Idaho

Service

Janitorial/Custodial, Riverside National Nursery, 22495 Van Buren Boulevard, Riverside, California
Nonprofit Agency: Association for Retarded Citizens—Riverside, Inc., Riverside, California

Deletions

It is proposed to delete the following commodities from the Procurement List:

Commodities

Cushion Assembly, Seat Back
2540–01–065–6288

Cushion, Seat, Vehicular
2540–01–074–6363

Cushion, Seat Back, Vehicular
2540–01–065–6289
2540–00–880–3925

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–28514 Filed 11–18–93; 8:45 am]

BILLING CODE 6820–33–P

Procurement List; Additions

AGENCY: Committee for Purchase from People Who Are Blind or Severely Disabled.

ACTION: Additions to procurement list

SUMMARY: This action adds to the Procurement List commodities and a service to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 20, 1993.

ADDRESSES: Committee for Purchase from People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman, (703) 603–7740.

SUPPLEMENTARY INFORMATION: On August 6 and October 1, 1993, the Committee for Purchase from People Who Are Blind or Severely Disabled published notices (58 FR 42055 and 51319) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning capability of qualified nonprofit agencies to provide the commodities and service, fair market price, and impact of the additions on the current or most recent contractors, the Committee has determined that the commodities and service listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.4.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and service to the Government.

2. The action will not have a severe economic impact on current contractors for the commodities and service.

3. The action will result in authorizing small entities to furnish the commodities and service to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46 - 48c) in connection with the commodities and service proposed for addition to the Procurement List. Accordingly, the following commodities and service are hereby added to the Procurement List:

Commodities

Sponge, Chamber Swabbing
1025–01–232–6822

Chair, Rotary, Drafting
7110–00–194–1611
7110–00–281–4469

Planner, Executive Day
7530P902477F
(Requirements for Hill Air Force Base, Utah)

Filler, Executive Day Planner
7530P902476F
(Requirements for Hill Air Force Base, Utah)

Ruff, Parka
8415–01–315–9765 thru –9769

Services

Janitorial/Custodial, Utah Test and Training Range (OASIS), Lakeside, Utah

This action does not affect current contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–28513 Filed 11–18–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF DEFENSE

Office of the Secretary

Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Antitrust Aspects of Defense Industry Consolidation will meet in open session on November 30, 1993 at the Pentagon, room 1E801, and on December 1, 1993 at the Pentagon, room 3E869, Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense.

Persons interested in further information should call Ms. Amy Jeffress at (703) 697–9247.

Dated: November 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–28440 Filed 11–18–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Science Board Task Force on Acquiring Defense Software Commercially

ACTION: Notice of advisory committee meeting.

SUMMARY: The Defense Science Board Task Force on Acquiring Defense Software Commercially will meet in open session on December 16–17, 1993 at Strategic Analysis, Inc., Arlington, Virginia.

The mission of the Defense Science Board is to advise the Secretary of Defense and the Under Secretary of Defense for Acquisition on scientific and technical matters as they affect the perceived needs of the Department of Defense. At this meeting, the Task Force will review current DoD software acquisition regulations, DoD acquisition experiences with selected software-intensive systems, and contractor acquisition experiences with DoD and commercial software-intensive systems.

Persons interested in further information should call Ms. Virginia Castor at (703) 614–0212.

Dated: November 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–28441 Filed 11–18–93; 8:45 am]

BILLING CODE 5000–04–M

Department of Defense Wage Committee; Closed Meetings

Pursuant to the provisions of section 10 of Public Law 92–463, the Federal Advisory Committee Act, notice is hereby given that a meeting of the Department of Defense Wage Committee will be held on Tuesday, December 7, 1993; Tuesday, December 14, 1993; Tuesday, December 21, 1993; and Tuesday, December 28, 1993, at 2 p.m. in room 800, Hoffman Building #1, Alexandria, Virginia.

The Committee's primary responsibility is to consider and submit recommendations to the Assistant Secretary of Defense (Personnel and Readiness) concerning all matters involved in the development and authorization of wage schedules for federal prevailing rate employees pursuant to Public Law 92–392. At this meeting, the Committee will consider wage survey specifications, wage survey data, local wage survey committee reports and recommendations, and wage schedules derived therefrom.

Under the provisions of section 10(d) of Public Law 92–463, meetings may be closed to the public when they are "concerned with matters listed in 5 U.S.C. 552b." Two of the matters so listed are those "related solely to the internal personnel rules and practices of an agency," (5 U.S.C. 552b. (c)(2)), and those involving "trade secrets and commercial or financial information obtained from a person and privileged or confidential" (5 U.S.C. 552b. (c)(4)).

Accordingly, the Deputy Assistant Secretary of Defense (Civilian Personnel Policy/Equal Opportunity) hereby determines that all portions of the meeting will be closed to the public because the matters considered are related to the internal rules and practices of the Department of Defense (5 U.S.C. 552b(c)(2)), and the detailed wage data considered were obtained from officials of private establishments with a guarantee that the data will be held in confidence (5 U.S.C. 552b(c)(4)).

However, members of the public who may wish to do so are invited to submit material in writing to the chairman concerning matters believed to be deserving of the Committee's attention.

Additional information concerning this meeting may be obtained by writing the Chairman, Department of Defense Wage Committee, room 3D264, The Pentagon, Washington, DC 20310.

Dated: November 15, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–28439 Filed 11–18–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Army

Army Science Board; Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following Committee Meeting:

Name of committee: Army Science Board (ASB).

Date of Meeting: 7 & 8 December 1993.

Time of meeting: 0900–1700, 7 December 1993, 0900–1200, 8 December 1993.

Place: Fort Knox, Kentucky.

Agenda: The Army Science Board's Subgroup on "Battle Labs Program" will meet to observe the Third Wave Battle Command Advanced Warfighting Demonstration and discuss the activities of the Mounted Battle Space Battle Lab. Any interested person may attend, appear before, or file statements with the committee at the time and in the manner permitted by the committee. The ASB Administrative Officer, Sally Warner, may be contacted for further information (703) 695–0781.

Sally A. Warner,

Administrative Officer, Army Science Board.

[FR Doc. 93–28446 Filed 11–18–93; 8:45 am]

BILLING CODE 3710–08–M

Defense Logistics Agency

Privacy Act of 1974: Computer Matching Program Between the Social Security Administration and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense (DoD).

ACTION: Notice of a computer matching program between the Social Security Administration (SSA) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act, 5 U.S.C. 552a, requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act, is (1) hereby giving indirect or constructive notice in lieu of direct notice to the record subjects of this computer matching program between the SSA and DoD that their records are being matched to validate an applicant's initial eligibility for, or recipients receiving, Supplemental Security Income (SSI) benefits from the SSA; and (2) announcing to the public the opportunity to comment on the proposed computer matching program.

DATES: This proposed action is effective on November 20, 1993, when the computer matching agreement will become effective and matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comments must be received before the effective date.

ADDRESSES: Please submit written comments to the Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502. Telephone (703) 607–2943 or Autovon 327–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, 5 U.S.C. 552a, the DoD and the SSA has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the computer match is to verify the information furnished to the SSA by applicants and recipients of social security supplemental income benefits who are retired military members or their survivors. By law, the SSA must independently verify the information submitted by applicants and recipients. Computer matching appeared to be the most efficient and economical manner in which this verification process could be accomplished while preserving the due process of the individual concerned. Therefore, it was concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between the SSA and the DoD is available upon request to the public. Requests should be submitted to the address above or to the Chief, Payment Quality Branch, Office of Supplemental Security Income, 3–J–1 Operations Building, 6401 Security Boulevard, Woodlawn, MD 21235.

Set forth below is a notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on Computer Matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement as required by 5 U.S.C. 552a(r) of the Privacy Act,

was submitted on November 5, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget, pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 12, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF DEFENSE AND THE SOCIAL SECURITY ADMINISTRATION FOR VERIFICATION OF ELIGIBILITY FOR SUPPLEMENTAL SECURITY INCOME

A. *PARTICIPATING AGENCIES:* Participants in this computer matching are the Social Security Administration (SSA) of the Department of Health and Human Services (HHS) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The SSA is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *PURPOSE OF THE MATCH:* The purpose of this computer matching program is to verify the information provided to the SSA by applicants and recipients, who are retired military members or their survivors, for Supplemental Security Income (SSI) benefits. By law, the SSA must verify the eligibility information provided by these personnel by independent means and make final determinations as to eligibility of individual applicants or recipients for particular benefits, specific amounts, and any adjustments or recovery thereof for this Federal benefit program. If this operation was not automated, and full reliance were placed solely on manual actions, the costs would be prohibitive. Furthermore, in a fully manual operation, the data could very easily be outdated by the time it was processed.

C. *AUTHORITY FOR CONDUCTING THE MATCH:* The legal authority for the matching program is contained in 42 U.S.C. 1383(e)(1)(B) which requires SSA to verify eligibility factors and other relevant information provided by the SSI applicant from independent or collateral sources and obtain additional information, as necessary, before making SSI determinations of eligibility or payment amount. 42 U.S.C. 1383(f) states that the head of any Federal agency shall provide such information as the Secretary of Health and Human Services needs for purposes of determining eligibility for or amount of benefits, or verifying other information with respect thereto.

D. *RECORDS TO BE MATCHED:* The systems of records maintained by the respective agencies under the Privacy Act, from which records will be disclosed for the proposed computer match are as follows: The Social Security Administration, HHS, will use records from a system identified as 09–60–0103, entitled 'Supplemental Security Income Record, (SSR), HHS/SSA/OSR', last published in the **Federal Register** at 58 FR 35034 on June 30, 1993. The category of records to be used from this system is the SSI eligibility file. DMDC (DoD) will use a record system from the Defense Logistics Agency identified as S322.10 DMDC entitled 'Defense Manpower Data Center Data Base', published in the **Federal Register** at 58 FR 10872 on February 22, 1993. The categories of records utilized are military retirees and/or their survivors. The specific data elements to be used in the match are set forth below under the description of the computer matching program. Both systems of records respectively contain an appropriate routine use disclosure provision permitting the interchange of the affected personal information between SSA and DMDC. These routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record system.

E. *DESCRIPTION OF COMPUTER MATCHING PROGRAM:* A magnetic computer tape (query file), provided by SSA as the source, will contain approximately 5 million records extracted form the Supplemental Security Income Record system of records which is made up of individual record subjects containing the name, social security number and type of beneficiary. The tape will be matched by DMDC, as the recipient matching agency, and matched against the data base category of individuals who are military retirees (Army, Navy, Air Force and Marine Corps) or their survivors. DMDC will match on the social security number and provide the SSA on a reply tape file the following data elements on a match (hit): Name, date of birth, address, payments status, monthly pension amount, date of entitlement, date of any payments stopped and reason. It is estimated that the reply tape file will contain approximately 5,000 records. SSA will be responsible for verifying and determining if the data of the DMDC reply file are consistent with the data of the SSA query file and to resolve any discrepancies or inconsistencies on an individual basis.

F. *PROVIDING DUE PROCESS TO INDIVIDUALS:* Record subjects of the match will be afforded due process procedures.

1. SSA will determine if the data on the DMDC reply file are consistent with the data on the SSA query finder file and resolve any discrepancies or inconsistencies on an individual basis. If the data are not consistent, SSA will contact the individual to confirm the data on the DMDC file.

2. Before taking any adverse action based on the information received from the match, SSA agrees to provide written notice with specific details to each individual for whom SSA decides possible adverse action may be necessary. SSA will inform the individual:

a. That SSA has received information pertaining to receipt of an annuity payment which indicates that an adverse action may be necessary with a description of the conflicting or adverse information.

b. That the individual has 30 days in which to contest and respond to the adverse information.

c. That, unless the individual notifies SSA that the information is not accurate within 30 days from the date of the notice, SSA will conclude that the data provided by DMDC is correct and will make the necessary adjustment to the individual's SSI payment.

d. That failure to respond to the notification will be construed as verification of the data provided by DMDC thereby justifying taking adverse action.

3. After independent verification and notice under subsection (p) of the Privacy Act, SSA will make all determinations as to eligibility of individual applicants for or recipients of particular benefits, specific amounts, and any adjustments or recovery of payments thereof.

G. *INCLUSIVE DATES OF THE MATCHING PROGRAM:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for

comment has expired for this Federal Register notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between SSA and DMDC, the matching program will be in effect and continue for 18 months with an option to extend it for 12 additional months.

H. *ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:* Director, Defense Privacy Office, 1941 Jefferson Davis Highway, Room 920, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 93–28443 Filed 11–18–93; 8:45 am]

BILLING CODE 5000–04–F

Privacy Act of 1974; Computer Matching Program Between the Office of Personnel Management and the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a new computer matching program between the Office of Personnel Management (OPM) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act, is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between OPM and DoD that their records are being matched by computer. The objective is to locate OPM delinquent debtors who are current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by OPM. The match will permit OPM to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective December 20, 1993, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the OPM and DoD has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of obligations owed to the U.S. Government held by OPM. The match will yield the identity and location of those debtors within the Federal government so that OPM can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures under the Debt Collection Act of 1982. Computer matching appeared to be the most efficient and effective manner to accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between OPM and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Quality Assurance Division, Retirement and Insurance Group, 1900 E Street, NW, Washington, DC 20415.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 5, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, "Federal Agency Responsibilities for Maintaining Records about Individuals," dated June 25, 1993 (58 FR 36075, July 2, 1993). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 12, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

COMPUTER MATCHING PROGRAM BETWEEN THE OFFICE OF PERSONNEL MANAGEMENT AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *PARTICIPATING AGENCIES:* Participants in this computer matching program are the Quality Assurance Division, Retirement and Insurance Group, Office of Personnel Management (OPM) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The OPM is the source agency, i.e., the agency disclosing the records for the purpose of the match. The DMDC is the specific recipient agency or matching agency, i.e., the agency that actually performs the computer matching.

B. *PURPOSE OF THE MATCH:* The purpose of the match is to identify and locate OPM delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments that are indebted and delinquent in their repayment of debts to the United States Government under certain programs administered by OPM so as to permit OPM to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *AUTHORITY FOR CONDUCTING THE MATCH:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment deduction for indebtedness (salary offset); 10 U.S.C. 136, Assistant Secretaries of Defense, appointment powers and duties; Section 206 of Executive Order 11222; 4 CFR

Chapter II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 – 550.1108 Collection by Offset from Indebted Government Employees (OPM); 5 CFR part 831, subparts M and N and 5 CFR part 845, subparts B and C, as applicable.

D. *RECORDS TO BE MATCHED:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows:

1. OPM will use the record system identified as OPM/CENTRAL–1, Civil Service Retirement and Insurance Records, last published in the **Federal Register** at 58 FR 19154 on April 12, 1993, and revised at 58 FR 41300 on August 3, 1993.

2. DoD will use the record system identified as S322.11 DMDC, entitled "Federal Creditor Agency Debt Collection Data Base," last published in the **Federal Register** at 58 FR 10875 on February 22, 1993.

The categories of records in the OPM and DoD records are personnel employment records. The categories of individuals in the OPM system consists of active, separated and retired civilian employees. The DMDC database, established under an interagency agreement between DoD, OPM, OMB, and the Department of the Treasury, consists of employment records of Federal employees and military members, active, and retired. Both record systems involved contain an appropriate routine use disclosure provision required by the Privacy Act permitting the interchange of the affected personal information between OPM and DoD. These routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *DESCRIPTION OF COMPUTER MATCHING PROGRAM:* OPM, as the source, will provide DMDC with a magnetic tape of delinquent debtors in programs the OPM administers. The tape will contain data elements of name and SSN on approximately 7 thousand individual debtors. Upon receipt of the computer tape file of debtor accounts, DMDC as the recipient matching agency, will perform a computer match using all nine digits of the SSN of the OPM file against the DMDC computer data base that contains information on approximately 10 million individuals. Matching records, "hits" based on the SSN, will produce the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address. The hits will be furnished to OPM. OPM will be responsible for verifying and determining if the data of the DMDC reply tape file are consistent with OPM's source file and to resolve any discrepancies or inconsistencies on an individual basis. OPM will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match. OPM expects to recover 6.64 million dollars out of the 41.5 million dollars owed. This is based on a 16 percent recovery rate probability.

F. *INCLUSIVE DATES OF THE MATCHING PROGRAM:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data 30 days after the date of this published notice at a mutually agreeable time and will be repeated on an annual basis, unless OMB or the Treasury Department request a match twice a year. Under no circumstances shall the matching program be implemented before this 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between OPM and DoD, the matching program will be in effect and continue for 18 months with an option to extend for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502, Telephone (703) 607–2943.

[FR Doc. 93–28442 Filed 11–18–93; 8:45 am]
BILLING CODE 5000–04–F

Privacy Act of 1974; New Computer Matching Program Between the Department of Education and the Defense Manpower Data Center of the Department of Defense

AGENCY: Defense Manpower Data Center, Defense Logistics Agency, Department of Defense.

ACTION: Notice of a new computer matching program between the Department of Education (ED) and the Department of Defense (DoD) for public comment.

SUMMARY: Subsection (e)(12) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a) requires agencies to publish advance notice of any proposed or revised computer matching program by the matching agency for public comment. The DoD, as the matching agency under the Privacy Act is hereby giving constructive notice in lieu of direct notice to the record subjects of a computer matching program between ED and DoD that their records are being matched by computer. The record subjects are ED delinquent debtors who may be current or former Federal employees or military members receiving Federal salary or benefit payments and indebted and delinquent in their repayment of debts owed to the United States Government under certain programs administered by ED so as to permit ED to pursue and collect the debt by voluntary repayment or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

DATES: This proposed action will become effective November 20, 1993, and the computer matching will proceed accordingly without further notice, unless comments are received which would result in a contrary determination or if the Office of Management and Budget or Congress objects thereto. Any public comment must be received before the effective date.

ADDRESSES: Any interested party may submit written comments to the Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (o) of the Privacy Act of 1974, as amended, (5 U.S.C. 552a), the DoD and ED has concluded an agreement to conduct a computer matching program between the agencies. The purpose of the match is to exchange personal data between the agencies for debt collection from defaulters of student loan obligations held by ED under the Debt Collection Act of 1982. The match will yield the identity and location of the debtors within the Federal government so that ED can pursue recoupment of the debt by voluntary payment or by administrative or salary offset procedures. Computer matching appeared to be the most efficient and effective manner to

accomplish this task with the least amount of intrusion of personal privacy of the individuals concerned. It was therefore concluded and agreed upon that computer matching would be the best and least obtrusive manner and choice for accomplishing this requirement.

A copy of the computer matching agreement between ED and DoD is available upon request to the public. Requests should be submitted to the address caption above or to the Debt Collection and Management Assistance Service (DCMAS), Room 5118, ROB–3, Department of Education, 400 Maryland Avenue, SW, Washington, DC 20202–5320.

Set forth below is the notice of the establishment of a computer matching program required by paragraph 6.c. of the Office of Management and Budget Guidelines on computer matching published in the **Federal Register** at 54 FR 25818 on June 19, 1989.

The matching agreement, as required by 5 U.S.C. 552a(r) of the Privacy Act, and an advance copy of this notice was submitted on November 8, 1993, to the Committee on Government Operations of the House of Representatives, the Committee on Governmental Affairs of the Senate, and the Administrator of the Office of Information and Regulatory Affairs, Office of Management and Budget pursuant to paragraph 4d of Appendix I to OMB Circular No. A–130, 'Federal Agency Responsibilities for Maintaining Records about Individuals,' dated June 25, 1993 (58 FR 36075, July 2, 1993). The matching program is subject to review by OMB and Congress and shall not become effective until that review period has elapsed.

Dated: November 15, 1993.

L. M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

NOTICE OF A COMPUTER MATCHING PROGRAM BETWEEN THE DEPARTMENT OF EDUCATION AND THE DEPARTMENT OF DEFENSE FOR DEBT COLLECTION

A. *PARTICIPATING AGENCIES:* Participants in this computer matching program are the Debt Collection Service (DCS), Department of Education (ED) and the Defense Manpower Data Center (DMDC) of the Department of Defense (DoD). The DCS is the source agency, i.e., the activity disclosing the records for the purpose of the match. The DMDC is the specific recipient activity or matching agency, i.e., the agency that actually performs the computer matching.

B. *PURPOSE OF THE MATCH:* The purpose of the match is to identify and locate ED delinquent debtors who are current or former Federal employees or military members receiving any Federal salary or benefit payments that are indebted and delinquent in their repayment of debts to the United States Government under certain programs administered by ED so as to permit ED to pursue and collect the debt by voluntary repayments or by administrative or salary offset procedures under the provisions of the Debt Collection Act of 1982.

C. *AUTHORITY FOR CONDUCTING THE MATCH:* The legal authority for conducting the matching program is contained in the Debt Collection Act of 1982 (Pub. L. 97–365), 31 U.S.C. Chapter 37, Subchapter I (General) and Subchapter II (Claims of the United States Government), 31 U.S.C. 3711 Collection and Compromise, 31 U.S.C. 3716 Administrative Offset, 5 U.S.C. 5514 Installment deduction for indebtedness (salary offset); 10 U.S.C. 136, Assistant Secretaries of Defense, appointment powers and duties; section 206 of Executive Order 11222; 4 CFR Chapter II, Federal Claims Collection Standards (General Accounting Office - Department of Justice); 5 CFR 550.1101 – 550.1108 Collection by Offset from Indebted Government Employees (OPM); 34 CFR Part 30 - Debt Collection and Part 31 - Salary Offset for Federal Employees who are indebted to the United States Under Programs Administered by the Secretary of Education.

D. *RECORDS TO BE MATCHED:* The systems of records maintained by the respective agencies under the Privacy Act of 1974, as amended, 5 U.S.C. 552a, from which records will be disclosed for the purpose of this computer match are as follows: ED will use records from two systems of records. Record system identified as 18–40–0025, entitled 'NDSL Student Loan Files-ED/OPE/OSFA,' last published in the **Federal Register** at 47 FR 27884 on June 28, 1982, and record system identified as 18–40–0026, entitled 'Guaranteed Loan Program-Paid Claims File ED/OPE/OSFA,' last published in the **Federal Register** at 47 FR 27885 on June 28, 1982. These record systems will be matched against the DoD record system identified as S322.11 DMDC, entitled 'Federal Creditor Agency Debt Collection Data Base,' last published in the **Federal Register** at 58 FR 10875 on February 22, 1993. The categories of records in the ED systems are student loan defaulters. The categories of records in the DoD system consists of active and retired military members, including the reserve, and the OPM government-wide Federal active and retired civilian records. All the record systems involved contain an appropriate routine use disclosure provision required by the Privacy Act permitting the interchange of the affected personal information between ED and DoD. These routine uses are compatible with the purpose for collecting the information and establishing and maintaining the record systems.

E. *DESCRIPTION OF COMPUTER MATCHING PROGRAM:* DCS, as the source, will provide DMDC with a magnetic tape of individuals delinquent in repayment of ED student loans. The tape will contain data elements of name and SSN on approximately 3 million individual debtors. Upon receipt of the computer tape file of debtor accounts, DMDC as the recipient matching agency, will perform a computer match using all nine digits of the SSN of the ED file against a DMDC computer data base. The DMDC computer data base, established under an interagency agreement between DoD, OPM, OMB and the Treasury Department, consists of employment records of approximately 10 million Federal employees and military members, active and retired. Matching records, 'hits' based on the SSN, will produce the member's name, service or agency, category of employee, salary or benefit amounts, and current work or home address. The hits will be furnished to DCS. DCS will be responsible for verifying and determining if the data of the DMDC reply tape file are consistent with DCS's source file and to resolve any discrepancies or inconsistencies on an individual basis. DCS will also be responsible for making final determinations as to positive identification, amount of indebtedness and recovery efforts as a result of the match. DCS expects to obtain current address information on approximately 40,000 Federal employees/retirees or military members having student loan obligations held by ED.

F. *INCLUSIVE DATES OF THE MATCHING PROGRAM:* This computer matching program is subject to review by the Office of Management and Budget and Congress. If no objections are raised by either, and the mandatory 30 day public notice period for comment has expired for this **Federal Register** notice with no significant adverse public comments in receipt resulting in a contrary determination, then this computer matching program becomes effective and the respective agencies may begin the exchange of data

30 days after the date of this published notice at a mutually agreeable time and will be repeated on a six month basis. Under no circumstances shall the matching program be implemented before the 30 day public notice period for comment has elapsed as this time period cannot be waived. By agreement between ED and DoD, the matching program will be in effect and continue for 18 months with an option to renew for 12 additional months unless one of the parties to the agreement advises the other by written request to terminate or modify the agreement.

G. *ADDRESS FOR RECEIPT OF PUBLIC COMMENTS OR INQUIRIES:* Director, Defense Privacy Office, Crystal Mall 4, Room 920, 1941 Jefferson Davis Highway, Arlington, VA 22202–4502. Telephone (703) 607–2943.

[FR Doc. 93–28444 Filed 11–18–93; 8:45 am]
BILLING CODE 5000–04–F

Department of the Navy

Intent To Prepare an Environmental Impact Statement for Establishing the U.S. Navy Mine Warfare Center of Excellence; Corpus Christi/Ingleside Naval Complex, Corpus Christi, TX

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of establishing and operating a Mine Warfare Center of Excellence (Center) at the Corpus Christi/Ingleside Naval Complex, Corpus Christi, Texas.

The Navy proposes to develop the Center by collocating its mine warfare assets in proximity to each other. This will allow for comprehensive air and surface mine warfare training. The concept of the Center was first raised in 1989 by Secretary of the Navy Lawrence Garrett. More recently, as a result of several deployments against actual mine threats, the need for a comprehensive training regimen which includes all phases of mine warfare activities working together was emphasized. The Navy proposed to develop the Center at the Corpus Christi/Ingleside Naval Complex, Texas.

Actions to be addressed in the EIS include both new construction and general operations and training. Proposed actions include: Construction of a Magnetic Silencing Facility (ship degaussing and deperming facilities), construction of an Aviation Mine Counter Measure sled ramp, designation of Mine Warfare Training and Operating Areas (including beach and offshore training areas), and construction of a small craft pier. Also to be included in the EIS are those construction projects necessary to support mine sweeping helicopter squadrons at Naval Air Station Corpus Christi as well as construction of facilities at Naval Station Ingleside.

The objective of the EIS is the collection, analysis and presentation of data in sufficient depth to compare the various alternatives for the proposed Navy actions including the "No Action" alternative. The EIS shall be of sufficient detail and in-depth analysis to assure that primary and secondary potentially significant effects that may result from the action have been identified and discussed, and to identify reasonable mitigation for any adverse effects that cannot be avoided. Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, water quality, wetlands, endangered species, cultural resources, and socioeconomic impacts.

The Navy will initiate a process for the purpose of determining the scope of issues to be addressed and for identifying significant issues relative to this action. The Navy will hold two public scoping meetings: The first, on Tuesday, December 7, 1993, beginning at 7 p.m. at the Flour Bluff ISD Auditorium, 2505 Waldron Road, Flour Bluff, Texas; and the second, on Wednesday, December 8, 1993, beginning at 7 p.m. onboard the USS Lexington Museum on the Bay, located just offshore from the Texas State Aquarium, Corpus Christi, Texas. These meetings will also be advertised in local newspapers in advance of the meetings.

A formal presentation will precede requests for public comment. Navy representatives will be available at this meeting to receive comments from the public regarding issues of concern. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during preparation of the EIS. In the interest of available time, each speaker will be asked to limit oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping and comments should clearly describe specific issues or topics which the EIS should address. Written statements and/or questions regarding the scoping process should be mailed to: Commanding Officer, Southern Division, Naval Facilities Engineering Command, P.O. Box 190010, North Charleston, SC 29429–9010 (Attn: Will Sloger, Code 203WS), telephone (803) 743–0797. All comments must be received no later than December 23, 1993.

Dated: November 16, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–28515 Filed 11–18–93; 8:45 am]
BILLING CODE 3810–AE–M

Intent To Prepare an Environmental Impact Statement for the Proposed Disposal and Reuse of Naval Station Puget Sound, Seattle, WA

Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969, as implemented by the Council on Environmental Quality regulations (40 CFR parts 1500–1508), the Department of the Navy announces its intent to prepare an Environmental Impact Statement (EIS) to evaluate the environmental effects of the disposal and reuse of the Naval Station (NAVSTA) Puget Sound, Seattle, Washington.

In accordance with recommendations of the 1991 Base Closure and Realignment Commission, the Navy plans to disestablish NAVSTA Puget Sound at Sand Point. Operations conducted at NAVSTA Puget Sound are currently relocating to other Naval installations located in the Puget Sound area. The proposed action involves the disposal of land, buildings, and infrastructure of NAVSTA Puget Sound for subsequent reuse.

The reuse of NAVSTA Puget Sound is being studied by an independent Base Reuse Committee (BRC) comprised of the City of Seattle, the Sand Point Community Liaison Committee, other local governmental agencies, and private citizens. The redevelopment/reuse plan to be developed by the BRC will be the basis for the EIS. The draft BRC plan calls for a multipurpose regional center with expanded recreational, educational, and cultural facilities, and affordable housing. The plan includes expansion of Magnuson Park with restoration of an original wetlands area called Mud Lake; a new indoor tennis center; a public park with a sailing center and access to Pontiac Bay; an education and community activities area; an arts center with performing, studio, and classroom spaces; 250 units of housing for homeless families in transition; allowance for future expansion of

University of Washington student family housing; and continuing use of existing facilities by two federal agencies.

Other reuse alternatives will be developed during the scoping process and analyzed to provide facilities and/or building sites for potential users. The Muckleshoot Indian Tribe has proposed an alternative plan that calls for a Native American vocational college (5,000 to 7,000 students); marina with general public recreational access; fisheries enhancement facility; restaurant; light industry spaces; a new "grand entrance" to Magnuson Park; and a handicapped accessible fishing pond. The "no action" alternative, Navy retention of NAVSTA Puget Sound land and infrastructure in caretaker status, will be addressed in the EIS.

However, because of the process mandated by the Base Closure and Realignment Act, selection of the "no action" alternative would be considered outside the jurisdiction of the Navy.

The EIS will address the potential environmental impacts associated with new, non-Federal uses proposed for NAVSTA Puget Sound. The following are known areas of concern: Effects of new development at Sand Point on the natural and socioeconomic environments, effects of future growth on area schools, recreation facilities, and transportation systems. Major environmental issues that will be addressed in the EIS include, but are not limited to, air quality, water quality, wetlands, endangered species, cultural resources, transportation, and socioeconomic impacts.

The Navy and the BRC will initiate a scoping process for the purpose of determining the scope of issues to be addressed and for identifying the significant issues related to the proposed reuse alternatives. A public scoping meeting is scheduled for Thursday, December 9, 1993, beginning at 7 p.m., at the National Oceanic and Atmospheric Administration facility, 7600 Sand Point Way NE., Building 9 Theater, Seattle, Washington. This meeting will be advertised in local newspapers.

A brief presentation will precede request for public comment. Navy representative will be available at this meeting to receive comments from the public regarding issues of concern to the public. It is important that federal, state, and local agencies and interested individuals take this opportunity to identify environmental concerns that should be addressed during the preparation of the EIS. In the interest of available time, each speaker will be asked to limit their oral comments to five minutes.

Agencies and the public are also invited and encouraged to provide written comment in addition to, or in lieu of, oral comments at the public meeting. To be most helpful, scoping comments should clearly describe specific issues or topics which the commentor believes the EIS should address. Written statements and or questions regarding the scoping process should be mailed no later than December 30, 1993, to: Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 NW. Anderson Hill Road, Silverdale, Washington, 98383–9130 (Attn: Mr. Don Morris, Code 232DM), telephone (206) 396–5976.

Dated: November 16, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93–28516 Filed 11–18–93; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

[CFDA Nos. 84.116A; 84.116B]

Fund for the Improvement of Postsecondary Education—Comprehensive Program (Preapplications and Applications) Notice Inviting Applications for New Awards for Fiscal Year (FY) 1994

Purpose of program: To provide grants or enter into cooperative agreements to improve postsecondary education opportunities.

Eligible applicants: Institutions of higher education or combinations of such institutions and other public and private nonprofit educational institutions and agencies.

Deadline for transmittal of preapplications: January 10, 1994.

Deadline for transmittal of final applications: April 19, 1994.

Note: All applicants must submit a preapplication to be eligible to submit a final application.

Deadline for intergovernmental review: June 20, 1994.

Applications available: November 19, 1993.

Available funds: The Fund for the Improvement of Postsecondary Education FY 1994 appropriation is $17,372,000. Of this amount, it is anticipated that approximately $4,500,000 will be available for an estimated 66 new awards under the Comprehensive Program.

Estimated range of awards: $15,000 to $150,000 per year.

Estimated average size of awards: $70,000.

Estimated number of awards: 66.

Note: The Department is not bound by any estimates in this notice.

Project period: Up to 36 months.

Applicable regulations: (a) The Education Department General Administrative Regulations (EDGAR) in 34 CFR Parts 74, 75, 77, 79, 80, 82, 85, and 86, with the exceptions noted in 34 CFR 630.4(b); and (b) The regulations for this program in 34 CFR Part 630.

Priorities

Under 34 CFR 75.105(c)(3), 34 CFR 630.12 and 34 CFR 630.11(a), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Absolute Priority

Projects to improve postsecondary education opportunities. Under 34 CFR 75.105(c)(1) and 34 CFR 630.12, the Secretary is particularly interested in applications that meet one or more of the following invitational priorities. However, an application that meets one or more of these invitational priorities does not receive competitive or absolute preference over other applications:

Invitational Priority 1—Applications to ensure that initial access to higher education is made more meaningful by improving retention and graduation rates without compromising academic standards, including retention of members of underrepresented minority groups at the undergraduate and graduate level.

Invitational Priority 2—Applications to improve the quality, accessibility, and retention rates of colleges and universities by helping them cooperate with elementary and secondary schools in the following areas: (i) the pre-service and in-service education of school teachers and administrators; (ii) articulation of school and postsecondary curricula between schools and colleges; (iii) the strengthening of incentives for schools to offer, and for their students to excel in, sound academic programs.

Invitational Priority 3—Applications to encourage institutions of higher education to join with employers and secondary schools in the development of new models for integrating work and learning.

Invitational Priority 4—Applications to support curriculum reforms at the undergraduate, graduate, and professional levels that will help students combine professional and technical expertise with an understanding of human diversity.

Invitational Priority 5—Applications to make campus culture more conducive to academic progress by all postsecondary students.

Invitational Priority 6—Applications to develop faculty as professionals by: (i) improving the preparation for teaching of Ph.D. candidates planning careers in teaching at the postsecondary level; (ii) recognizing and rewarding effective teaching through appointment, promotion, and compensation policies; (iii) developing more effective methods of postsecondary instruction; and (iv) providing new opportunities for faculty to stay current with developments in the broad range of areas they typically teach.

Invitational Priority 7—Applications to experiment with new ways to maintain the quality and accessibility of education despite shrinking resources.

Invitational Priority 8—Applications to disseminate properly researched and documented solutions to national problems in higher education from their original sites to other institutions.

Selection Criteria

In evaluating applications for grants under this program competition, the Secretary uses the following selection criteria chosen from those listed in 34 CFR 630.32:

(a) *Significance for Postsecondary Education.* The Secretary reviews each proposed project for its significance in improving postsecondary education by determining the extent to which it would—

(1) Address an important problem or need;

(2) Represent an improvement upon, or important departure from, existing practice;

(3) Involve learner-centered improvements;

(4) Achieve far-reaching impact through improvements that will be useful in a variety of ways and in a variety of settings; and

(5) Increase the cost-effectiveness of services.

(b) *Feasibility.* The Secretary reviews each proposed project for its feasibility by determining the extent to which—

(1) The proposed project represents an appropriate response to the problem or need addressed;

(2) The applicant is capable of carrying out the proposed project, as evidenced by, for example—

(i) The applicant's understanding of the problem or need;

(ii) The quality of the project design, including objectives, approaches, and evaluation plan;

(iii) The adequacy of resources, including money, personnel, facilities, equipment, and supplies;

(iv) The qualifications of key personnel who would conduct the project; and

(v) The applicant's relevant prior experience;

(3) The applicant and any other participating organizations are committed to the success of the proposed project, as evidenced by, for example—

(i) Contribution of resources by the applicant and by participating organizations;

(ii) Their prior work in the area; and

(iii) The potential for continuation of the proposed project beyond the period of funding (unless the project would be self-terminating); and

(4) The proposed project demonstrates potential for dissemination to or adaptation by other organizations, and shows evidence of interest by potential users.

(c) *Appropriateness of funding projects.* The Secretary reviews each application to determine whether support of the proposed project by the Secretary is appropriate in terms of availability of other funding sources for the proposed activities.

Under 630.32, the Secretary determines the methods that will be used in applying the selection criteria.

For preapplications (preliminary applications), the Secretary will give greater weight to the selection criteria under *Significance for Postsecondary Education.* The Secretary will give equal weight to *Feasibility,* and *Appropriateness of funding projects.* For final applications (final applications), all criteria are equally important. Within each of these criteria, the Secretary gives equal weight to each of the subcriteria. In applying the criteria, the Secretary first analyzes a preapplication or application in terms of each individual criterion and subcriterion. The Secretary then bases the final judgment of an application on an overall assessment of the degree to which the applicant addresses all selection criteria.

For applications or information contact: Fund for the Improvement of Postsecondary Education (FIPSE), U.S. Department of Education, 400 Maryland Avenue, S.W., Room 3100, ROB–3, Washington, D.C. 20202–5175. Telephone: (202) 205–0104 to order applications; or (202) 708–5750 for information.

Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program authority: 20 U.S.C. 1135–1135a–3.

Dated: November 16, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–28597 Filed 11–18–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Office of Fossil Energy

[Docket No. FE C&E 93–25—Certification Notice—125]

Notice of Filing Certification of Compliance: Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Portland General Electric Company has submitted a coal capability self-certification pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection upon request in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a base load powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owner/operator of a proposed new baseload powerplant has filed a self-certification in accordance with section 201(d).

Owner: Portland General Electric Company

Operator: Portland General Electric Company
Location: Near the City of Boardman, Oregon
Plant Configuration: Combined cycle cogeneration
Capacity: 442 megawatts
Fuel: Natural gas
Purchasing Utilities: Portland General Electric System
Expected In-Service Date: December 31, 1996

Issued in Washington, DC., November 15, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–28512 Filed 11–18–93; 8:45 am]
BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket Nos. QF94–15–000, et al.]

Massachusetts Institute of Technology (MIT), et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 15, 1993.

Take notice that the following filings have been made with the Commission:

1. Massachusetts Institute of Technology (MIT)

[Docket No. QF94–15–000]

On November 8, 1993, Massachusetts Institute of Technology (MIT) of 77 Massachusetts Avenue, Cambridge, Massachusetts 02139–4307, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located on the MIT campus in Cambridge, Massachusetts, and will consist of a combustion turbine generator and a heat recovery boiler equipped with supplemental firing capability. Steam recovered from the facility will be used for heating and cooling campus buildings. The primary energy source will be natural gas. The maximum net electric power production capacity of the facility will be 22 MW. Installation of the facility began in the summer of 1993.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER94–128–000]

Take notice that on November 8, 1993, Boston Edison Company (Edison) tendered for filing a Service Agreement for Reading Municipal Light Department (Reading), under its FERC Electric Tariff, Original Volume No. 2, Firm Transmission Service (the Tariff). The Service Agreement and its accompanying Exhibit C specify the amount and duration of transmission service required by Reading under the Tariff.

Edison requests waiver of the Commission's notice requirements to permit the Service Agreement to become effective as of the commencement date of the transaction to which it relates, November 1, 1993.

Edison states that it has served the filing on Reading and the Massachusetts Department of Public Utilities.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. New York State Electric & Gas Corporation

[Docket No. ER93–942–000]

Take notice that New York State Electric & Gas Corporation (NYSEG) on November 9, 1993, tendered for filing pursuant to § 35.12 of the Federal Energy Regulatory Commission's Rules of Practice and Procedure, 18 CFR 35.12 (1993), an amendment to its initial rate schedule that was filed on September 10, 1993 in the above-referenced docket. NYSEG's filing in this docket pertains to NYSEG's sale of up to 10 MW of energy to Burlington Electric Department (BED). The current filing is being made at Commission Staff's request, and explains various aspects of the agreement and modifies certain provisions of appendices A and B of the agreement. Transactions under the agreement commenced on September 13, 1993 and terminated on October 27, 1993.

NYSEG requests that September 13, 1993 be allowed as the effective date of this filing and requests waiver of the 60-day notice requirement.

NYSEG served copies of the filing upon the New York State Public Service Commission, Vermont Public Service Board, and BED.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. PSI Energy, Inc.

[Docket No. ER93–840–000]

Take notice that PSI Energy, Inc. (PSI) on November 8, 1993, tendered for filing a Attachment to the Third Supplemental Agreement to the Interim Scheduled Power Agreement between Wabash Valley Power Association, Inc. and PSI to the FERC Filing in Docket No. ER93–840–000 to comply with a FERC Staff request.

Copies of the filing were served on Wabash Valley Power Association, Inc. and the Indiana Utility Regulatory Commission.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Co.

[Docket No. ER94–134–000]

Take notice that on November 9, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing a rate schedule change to Rate Schedule FERC No. 79, between PG&E, the Western Area Power Administration (Western), and the Trinity Public Utility District (TPUD).

PG&E's filing submits a Memorandum of Agreement No. 03–SAO–10152, entitled The Memorandum of Agreement Between Trinity County Public Utilities District, and Pacific Gas and Electric Company and United States Department of Energy Western Area Power Administration (Agreement 10152), to the Commission. Agreement 10152 sets forth the mechanism under which TPUD was served while PG&E performed scheduled maintenance on a segment of its transmission system on October 22, 1993. A related Operating Agreement and a related Letter Agreement were filed as well.

PG&E requested the appropriate waivers, seeking to have the rate schedule change become effective on October 22, 1993. The rate schedule is requested to be effective only until the completion of the scheduled maintenance.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Iowa-Illinois Gas and Electric Co.

[Docket No. ER94–131–000]

Take notice that Iowa-Illinois Gas and Electric Company (Iowa-Illinois), 206 East Second Street, P.O. Box 4350, Davenport, Iowa 52808, on November 8, 1993, tendered for filing pursuant to § 35.12 of the Regulations under the Federal Power Act an initial rate schedule consisting of Facilities Schedule No. 5 dated October 25, 1993 (Facilities Schedule) to Facilities Agreement dated October 29, 1973 between Iowa-Illinois and Corn Belt Power Cooperative (Corn Belt).

Iowa-Illinois states that the Facilities Schedule provides for Corn Belt to

deliver energy required at Iowa-Illinois' Substation V to the point of connection between Iowa-Illinois and Corn Belt as described in the Facilities Schedule and for Iowa-Illinois to deliver an equivalent amount of energy including losses on a schedule basis to Corn Belt at Corn Belt's Webster Substation at 161 Kv. The Facilities Schedule also provides for the construction of facilities necessary to provide for these transactions, the wheeling rate to be charged by Corn Belt and a contribution in aid of construction by Iowa-Illinois.

The Facilities Schedule will be effective for a ten (10) year term commencing upon the later of the effective date of the acceptance for filing of the Facilities Schedule by the Commission or the in-service date of certain facilities described in the Facilities Schedule. The Facilities Schedule will continue in effect thereafter subject to termination upon three (3) years notice.

Iowa-Illinois requests the Commission to accept the Facilities Schedule for filing not later than January 15, 1994.

Copies of the filing were served upon the Iowa Utilities Board, the Illinois Commerce Commission and Corn Belt.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Black Hills Corp.

[Docket No. ER94–130–000]

Take notice that Black Hills Corporation, which operates its electric utility business under the assumed name of Black Hills Power and Light Company (Black Hills) on November 8, 1993, tendered for filing an Agreement for Relocation of Lines and Joint Use of Transmission System, dated July 21, 1992 (Agreement), entered into between Black Hills and Tri-County Electric Association, Inc. (Tri-County).

The reasons for the Agreement are to provide for the relocation of certain 69 kV transmission lines of Tri-County to accommodate surface coal mining and to provide for the interconnection of Neil Simpson Unit No. 2, an 80 MW coal-fired electric power plant under construction by Black Hills to what are defined as Joint Use Facilities under the terms of the Agreement. The Agreement further provides for the exchange of breaker positions, the obligation of Black Hills to operate and maintain the Joint Use Facilities and the sharing of costs between Black Hills and Tri-County.

Copies of the filing were provided to Tri-County, Basin Electric Power Cooperative, Rushmore Electric Power Cooperative, Inc., Black Hills Electric Cooperative, Inc., Butte Electric Cooperative, Inc., PacifiCorp, the South Dakota Public Utilities Commission, the Wyoming Public Service Commission, and the Montana Public Service Commission.

Black Hills has requested that further notice requirements be waived and the acceptance of the Agreement for filing be entered forthwith.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Wisconsin Power and Light Co.

[Docket No. ER94–135–000]

Take notice that on November 9, 1993, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission two Letter Agreements between Wisconsin Power and Light Company (WP&L) and Water Works and Lighting Commission (WWLC). Under the Negotiated Capacity Agreement, WP&L will make capacity and associated energy available to WWLC with negotiated degress of firmness, variable capacity charges, and variable time duration. Under the Emergency Energy Agreement, WP&L will make emergency energy available to WWLC in quantities that, in WP&L's sole judgment, it can supply.

Wisconsin Power and Light respectfully requests a Waiver of Notice and an effective date of January 1, 1994, which is the earliest time that the Parties may begin transactions, else an effective date sixty (60) days from the date of filing.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Iowa Southern Utilities Co.

[Docket No. ER94–99–000]

Take notice that Iowa Southern Utilities Company (ISU) on November 1, 1993, tendered for filing an Interconnection Contract, dated August 14, 1989, between ISU and the United States Department of Energy, Western Area Power Administration (WAPA). Iowa Southern requests the Commission, pursuant to the amnesty provisions issued in the Final Order in Docket PL93–2–002, to waive its prior notice requirements and authorize an effective date for the Agreement of August 14, 1989.

A copy of the filing was served upon Iowa State Utilities Board and WAPA.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Montaup Electric Co.

[Docket No. ER94–96–000]

Take notice that on November 1, 1993, Montaup Electric Company (Montaup or the Company) tendered for filing rate schedule revisions incorporating the 1994 forecast billing rate for its purchased capacity adjustment clause (PCAC) for all-requirements service to Montaup's affiliates Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) in Rhode Island and contract demand service to one affiliate Newport Electric Corporation and two non-affiliated customers: The Town of Middleborough in Massachusetts and the Pascoag Fire District in Rhode Island. The new forecase billing rate is $14,00231/kW-Mo. Montaup requests that the new rate become effective January, 1994 in accordance with the PCAC.

Montaup's filing was served on the affected customers, the Attorneys General of Massachusetts and Rhode Island, the Rhode Island Public Utilities Commission and the Massachusetts Department of Public Utilities.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Pacific Gas and Electric Co.

[Docket No. ER94–132–000]

Take notice that on November 8, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing an Enabling Agreement between Western Area Power Administration, Sacramento Area Office (Western) and PG&E. This Enabling Agreement documents that Western has under contract with PG&E control area services as necessary to allow its participation in the Western Systems Power Pool (WSPP), and explains how WSPP transactions will be integrated into the existing Western-PG&E contractual relationships. This Enabling Agreement also specifies that participation in the WSPP does not change the rights and obligations contained within the pre-existing PG&E-Western Agreement.

Copies of this filing have been served upon Western, WSPP and the California Public Utility Commission.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Massachusetts Electric Co.

[Docket No. ER94–129–000]

Take notice that Massachusetts Electric Company (Mass. Electric), on November 8, 1993, tendered for filing a proposed distribution agreement with

the Massachusetts Bay Transportation Authority (MBTA). The agreement would provide firm distribution service to the MBTA over Mass. Electric's primary distribution system.

Mass. Electric requests that the proposed agreement be permitted to become effective on January 15, 1994.

A copy of the filing has been served upon the MBTA and the Massachusetts Department of Public Utilities.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. Montaup Electric Co.

[Docket No. ER94-97-000]

Take notice that on November 1, 1993, Montaup Electric Company (Montaup or the Company) filed, as an informational filing, a report titled Conservation and Load Management Annual Report Information Filing, and Projected Revenue Requirements—October 29, 1993—describing the activities performed by Montaup in designing, implementing, monitoring and evaluating Conservation and Load Management (C&LM) programs as part of a cooperative effort at the state level in Massachusetts and Rhode Island. This informational filing is required under the revised C&LM clause which was approved by the Commission in Docket No. ER93-080 on May 4, 1993, and which is contained in Montaup's wholesale rate schedules for services to its affiliates, Eastern Edison Company (Eastern Edison) in Massachusetts and Blackstone Valley Electric Company (Blackstone) and Newport Electric Corporation (Newport) in Rhode Island. The informational filing establishes estimated C&LM costs to be used under the adjustment mechanism effective January 1, 1994, subject to subsequent true-up.

Under the C&LM mechanism, the adjustments becomes final unless protests are filed or an investigation ordered within 90 days of the filing of the report. The 90-day period allows time for any issues to be resolved. Accordingly, the time for filing protests is set at January 31, 1994.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. Pacific Gas and Electric Co.

[Docket No. ER94-154-000]

Take notice that on November 9, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing a supplement to its November 17, 1992 filing in this docket pursuant to FERC staff's December 22, 1992 request for supplemental information for Agreement Nos. 7, 10, 11, 13, 14, 15, 16, 17, 18, 19, 28, 29, 30 and 31.

Copies of this filing have been served upon the parties on the service list including the California Public Utilities Commission.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28469 Filed 11-18-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. ER94-138-000, et al.]

Portland General Electric Co., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 12, 1993.

Take notice that the following filings have been made with the Commission:

1. Portland General Electric Co.

[Docket No. ER94-138-000]

Take notice that on November 10, 1993, Portland General Electric Company (PGE) tendered for filing the One Year Share-the-Shortage Agreement (the Agreement) among the following parties: Idaho Power Company; The Montana Power Company; PacifiCorp; Portland General Electric Company; Puget Sound Power & Light Company; The Washington Water Power Company; Bonneville Power Administration; Public Utility District No. 1 of Chelan County; Public Utility District No. 1 of Cowlitz County; Public Utility District No. 1 of Douglas County; Public Utility District No. 2 of Grant County; Public Utility District No. 1 of Pend Oreille County; The Eugene Water & Electric Board; City of Seattle acting by and through its City Light Department; City of Tacoma acting by and through its Public Utilities Department.

PGE states that the Agreement relates to service for the purpose of alleviating energy shortages of one or more of the parties to the agreement and to help ensure that all of the parties can meet their obligations to serve their respective retail customer loads. PGE further states that a copy of the filing was served upon the parties to the Agreement. PGE states that under the provisions of 18 CFR 35.11, the parties request that the Commission grant waiver of the notice requirements of 18 CFR 35.3 to allow the agreement to take effect as early as December 1, 1993.

Comment date: November 22, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northeast Utilities Service

[Docket Nos. ER93-867-000 ER93-884-000 ER93-901-000 ER93-913-000]

Take notice that on November 1, 1993, Northeast Utilities Service Company (NUSCO) tendered for filing a response to a deficiency letter issued by the Commission Staff and Amendments to four Service Agreements provide for transmission to the NU System Companies for their power sales to South Hadley Electric Light Department, Georgetown Municipal Light Department, Middleton Municipal Electric Department and Vermont Public Power Supply Authority. NUSCO does not foresee the incurrence of Out of Rate Costs associated with this transmission service. NUSCO states that this filing is in accordance with the Commission's filing requirements and that copies of the filing have been mailed to South Hadley, Georgetown, Middletown and Vermont Public Power Supply Authority.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Southern California Edison Co.

[Docket No. ER91-201-003]

Take notice that on October 29, 1993, Southern California Edison Company tendered for filing its compliance filing tin the above-referenced docket.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Arizona Public Service Co.

[Docket No. ER93-656-000]

Take notice that on November 5, 1993, Arizona Public Service Company (APS) tendered for filing information in response to Staff's request for clarification related to APS' filings in this Docket.

Copies of this filing have been served upon the Yuma Cogeneration Associates and the Arizona Corporation Commission.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. WestPlains Energy, a division of UtiliCorp United, Inc.

[Docket No. ER94–127–000]

Take notice that on November 5, 1993, WestPlains Energy, a division of UtiliCorp United, Inc. (WestPlains) tendered for filing revised full requirements contracts between WestPlains and the cities of Cimarron, Holyrood and Montezuma Kansas. Each of these cities currently takes full requirements service pursuant to Service Schedule 88–MWH–5. Under the new agreements, each city will take service pursuant to existing Service Schedule 89–MWH–5.

Given the impending expiration dates for the existing contracts with each of the cities, WestPlains requests that the subject agreements be made effective as soon as practicable, but in no event later than 60 days from the date of this filing.

A copy of the filing was served upon each of the cities and the Kansas Corporation Commission.

Comment date: November 29, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28471 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP93–258–001, et al.]

Mojave Pipeline Company, et al. Natural Gas Certificate Filings

November 12, 1993.

Take notice that the following filings have been made with the Commission:

1. Mojave Pipeline Co.

[Docket No. CP93–258–001]

Take notice that on November 8, 1993, Mojave Pipeline Company (Mojave) filed in Docket No. CP93–258–001, pursuant to section 7(c) of the Natural Gas Act (NGA) and Rule 215 of the Rules of Practice and Procedure of the Federal Energy Regulatory Commission (Commission), an amendment to its initial application for a certificate of public convenience and necessity, filed March 17, 1993, in Docket No. CP93–258–000, all as more fully set forth in the amendment to the application on file with the Commission and open for public inspection.

On March 17, 1993, Mojave filed an application for an optional certificate of public convenience and necessity to construct, install, and operate certain pipeline, compression and related facilities for the purpose of extending its pipeline into central and northern California (the Northward Expansion). To facilitate the transportation of gas to these new markets, Mojave's application also proposed to expand Mojave's existing mainline through the addition of looping and compression. Mojave requested the Commission issue a certificate prior to April 1, 1994, in order to meet the projected in-service date of April 1, 1995.

In its initial application, Mojave submitted for Commission review two alternative designs for the Northward Expansion facilities. Under the first alternative (Case 1), Mojave proposed to construct a 475 MMcf/d expansion on a stand-alone basis, requiring the construction of new mainline and related facilities and additional looping on Mojave's existing facilities, as well as a number of additional meter stations. Under the second alternative (Case 2), Mojave's proposed 475 MMcf/d expansion would be built in conjunction with a proposed expansion by Kern River Gas Transmission Company (Kern River) of 452 MMcf/d. Kern River's proposal is currently pending review at Docket No. CP92–198–000.

Mojave states that five categories of modifications are being made by this amendment. The first category concerns modifications to three exhibits that result from a change in Mojave's ownership. The second category concerns certain modifications to the Construction, Operation and Maintenance Agreement (CO&M) between Kern River and Mojave.

Mojave states that the third category concerns modifications that are being made to reflect Mojave's decision to consolidate and relocate certain compression facilities required for expansion, which results in additional looping of existing facilities. Specifically, Mojave states that it modifies its Case 1 to replace the two separate gas turbine compressor stations with a single compressor station having three electric motor-driven compressors located on the Common Facilities immediately downstream of Daggett. Mojave states that there are environmental benefits associated with this modification. Mojave also proposes to increase its looping under Case 1 by 31.2 miles and by approximately 37.1 miles under Case 2.

Mojave states that the fourth category of modifications concerns certain minor facilities changes that are being made to meet customer's stated needs. Specifically, Mojave's amendment eliminates two segments which were originally proposed: the Benecia and Fairfield segments. Mojave states that these modifications also should further optimize and reduce the environmental impacts of Mojave's proposal. The modifications result in the relocation and elimination, and some resizing, of a limited number of facilities. In addition, certain meter stations are being relocated, added or eliminated.

The final category of changes concerns certain amendments of Mojave's proposed tariff. Mojave states that these changes reflect recent changes Mojave has made to its existing tariff as a result of Order No. 636, as well as a few minor changes made to respond to the market and one additional provision necessitated by Mojave's proposal to construct a compressor station with electric-driven motors. Specifically, Mojave proposes a new emergency curtailment provision and a new tariff provision to account for the cost of electric power that will be incurred to operate the electric motor-driven compression facilities near Daggett. Mojave states that none of the modifications affect Mojave's proposed rates.

Comment date: December 1, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. North Country Gas Pipeline

[Docket Nos. CP89–362–004, CP89–363–004]

Take notice that on November 3, 1993, North Country Gas Pipeline Corporation (North Country), Five Post

Oak Park, Suite 1400, Houston, Texas 77027, filed in Docket Nos. CP89–362–004 and CP89–363–004, a request for amendment of its authorization under section 3 of the Natural Gas Act and Presidential Permit [1] to provide for the construction of a gas odorization station and related facilities near the United States/Canada border, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

North Country proposes to amend its authorization to site, construct, operate and maintain natural gas pipeline facilities at the United States/Canada border near Champlain, New York, as part of a pipeline to be constructed by North Country to transport gas from an interconnection with TransCanada Pipelines Limited (TransCanada) to customers in Clinton County, New York. North Country proposes to install a gas odorization station and related facilities near the international border.

North Country is proposing to construct such an odorization station, which would be located approximately 20 feet south of the international boundary. The current odorization station under construction is considered to be too far from the origin of the North Country pipeline system because one and one-half miles of the pipeline would contain gas that is not odorized. North Country expects that the Public Service Commission of the State of New York, (NYPSC) would not permit it to operate the pipeline unless it agrees to construct an odorization station substantially closer to the border.

The proposed station would consist of a building approximately 12 by 20 feet containing odorization equipment. The building would be surrounded by a small fenced-in yard to prevent public access. Additionally, North Country would construct an access road approximately two-thirds of a mile in length to connect the station with existing roads.

North Country respectfully requests that the Commission approves the amendment requested herein on an expedited basis. North Country understands that the NYPSC staff desires the proposed odorization station be constructed and placed in service as soon as possible. The NYPSC staff is permitting North Country to commence operation of its intrastate pipeline prior to the completion of the new station on the premise that North Country will proceed to install such a station promptly, hopefully within three to six months.

[1] 55 FERC ¶61,011 (April 3, 1991); 55 FERC ¶61,262 (June 3, 1992).

Comment date: November 22, 1993, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28470 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. RP93–186–000]

Carnegie Natural Gas Co.; Technical Conference

November 15, 1993.

In the Commission's order issued on September 30, 1993, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Tuesday, December 7, 1993, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28462 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RS92–15–008 and RP93–62–000]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

November 15, 1993.

Take notice that on November 10, 1993, Equitrans, Inc. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheets.

Substitute Original Sheet No. 5
Substitute Original Sheet No. 6
Substitute Original Sheet No. 7
Substitute Original Sheet No. 8
Substitute First Revised Sheet No. 5
Substitute First Revised Sheet No. 6
Substitute First Revised Sheet No. 8

The proposed substitute original sheets contain an effective date of September 1, 1993. The proposed substitute revised sheets contain an effective date of October 1, 1993. Equitrans respectfully requests the Commission to waive all necessary rules and regulations to accept the substitute original sheets retroactive to September 1, 1993, the date on which the original sheets implementing Equitrans' Order No. 636 restructuring took effect, and to accept the substitute revised sheets retroactive to October 1, 1993, the date on which Equitrans' first revised sheets reflecting the increase in the Commission's ACA charge took effect.

Equitrans states that this filing is made to correct an inadvertent error in the calculation of transportation rates which is related to the change in the definition of billing demand for Equitrans' storage transportation customers which the Commission approved in Docket No. RS92–15. Prior to Order No. 636 a discrepancy existed between the manner in which Equitrans' contract storage customers were permitted to utilize transportation service related to storage, and the manner in which they were billed for storage transportation. This billing practice undervalued the rights of contract storage customers to demand

transportation related to storage injections and withdrawals and resulted in a misallocation of costs between storage and non-storage transportation customers. Equitrans proposed as part of its Order No. 636 compliance filings to change the basis for calculating billing demand for existing storage transportation customers under Rate Schedules STS–1 and FTS in order to make the billing calculation for the storage transportation demand charge consistent with the actual rights of storage customers to call upon storage transportation service. The Commission approved these tariff sheets in its Orders on August 2, 1993 and October 29, 1993. See Equitrans Inc., 64 FERC ¶ 61,155 (1993); 65 FERC ¶ 61,132 (1993).

Equitrans states that in calculating the rates for its transportation services for the period beginning on September 1, 1993, Equitrans inadvertently based its rates forward on the lower historical demand billing units for storage transportation customers, thus resulting in an overstated rate for all transportation service. Equitrans is making this filing to correct the error in rate calculation, and to comport the method of calculating transportation rates with the tariff definition of billing demand for storage transportation service approved by the Commission. This filing results in a reduction in the demand component of all firm transportation rates and a reduction in the commodity component of Equitrans' ITS rates. Workpapers supporting the calculation of rates is included with this filing.

The miscalculated transportation rates were in effect for the months of September and October. Upon approval of these tariff sheets by the Commission, Equitrans will calculate the level of overcollection for these months from each transportation customer, and will provide a billing credit for the amount of the overcollection, plus interest at the FERC-approved interest rate, on the November billing statements to trans portation customers.

Accordingly, Equitrans requests that the enclosed sheets reflecting these corrections be accepted for filing, and that the Commission grant all waivers necessary to give the substitute original and substitute revised sheets an effective date of September 1, 1993 and October 1, 1993, respectively, to correspond with the effective date of the original and revised tariff sheets.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28458 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–187–005]

Equitrans, Inc.; Proposed Changes in FERC Gas Tariff

November 15, 1993.

Take notice that on November 10, 1993, Equitrans, Inc. (Equitrans) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, the following proposed tariff sheets, with a proposed effective date of March 1, 1994:

2nd Substitute Second Revised Sheet No. 5
2nd Substitute Second Revised Sheet No. 6
2nd Substitute First Revised Sheet No. 7
2nd Substitute Second Revised Sheet No. 8
2nd Substitute First Revised Sheet No. 203

Equitrans states that it has discovered that an error appears on Sheet No. 203 included with the September 2 filing. Equitrans inadvertently omitted language from Section 1.22 of the General Terms and Conditions concerning the definition of billing demand in Section 1.22 of the General Terms and Conditions which is part of its currently effective tariff and which Equitrans intended to retain. Equitrans is including for filing 2nd Substitute First Revised Sheet No. 203 which corrects the error, and comports with the language which is currently in Equitrans' tariff.

Equitrans states that the change in the definition of billing demand was approved by the Commission in Equitrans' restructuring proceeding in Docket No. RS92–15, and results in higher demand billing units for certain storage transportation customers under Equitrans' Rate Schedules STS–1 and FTS. The utilization of higher demand billing units in developing rates for Rate Schedules STS–1 and FTS results in a lower unit demand charge for those services. The reduced rates for Rate Schedule FTS also reduces Equitrans' rates for Rate Schedules NOFT and ITS, which are derived from its FTS rates. However, Equitrans states that in calculating the rates for these services, Equitrans inadvertently based its filed rates in this proceeding on the lower historical demand billing units for storage transportation customers, thus resulting in an overstated rate for all transportation services. Equitrans is filing revised rate sheets herein to correct the error in rate calculation, and to comport the method of calculating transportation rates with the tariff definition of billing demand for storage transportation service approved by the Commission. Equitrans states that this filing results in a reduction in the demand component of all firm transportation rates and a reduction in the commodity component of Equitrans' ITS rates, over the rates included in the September 2 filing.

Accordingly, Equitrans requests that the enclosed sheets reflecting these corrections be accepted for filing, and that the sheets be given an effective date of March 1, 1994, to correspond with the effective date of the rate filing.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 22, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28459 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TX94–3–000]

Minnesota Municipal Power Agency; Filing

November 12, 1993.

Take notice that on November 9, 1993, the Minnesota Municipal Power Agency (MMPA) filed an Application for Order requiring Transmission Service to be provided by the Southern Minnesota Municipal Power Agency (SMMPA). The application and complaint has been filed pursuant to section 211 of the Federal Power Act, as amended by the Energy Policy Act of 1992 (16 U.S.C. 824j).

The Applicant is a Minnesota political subdivision formed to sell electric energy at wholesale to its member and customers who are the Cities of Anoka, Arlington, Brownton, Chaska, Le Sueur, North Saint Paul,

Olivia, Shakopee, and Winthrop, Minnesota. The Applicant alleges that SMMPA has offered MMPA a "point to point" transmission service agreement that contains unjust and unreasonable terms and conditions, and a transmission service rate that is unreasonable.

A copy of the filing was served on SMMPA, the City of Rochester, Minnesota, Northern States Power Company, and United Power Association.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 9, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28460 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP94–26–000]

Transcontinental Gas Pipe Line Corp.; Technical Conference

November 15, 1993.

In the Commission's order issued on October 29, 1993, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Thursday, December 2, 1993, at 10 a.m., in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28461 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP92–149–001 and 002]

Transcontinental Gas Pipe Line Corp.; Filing

November 12, 1993.

Take notice that on October 28, 1993, Transcontinental Gas Pipe Line Corporation (Transco) and Columbia Gas Transmission Corporation (Columbia) jointly filed a letter with the Commission's Secretary advising the Commission that they had resolved between themselves the remaining issues in the above-captioned proceedings. They ask that the Commission accept and approve this agreed-upon resolution, and cancel the technical conference it had previously ordered be conducted.

The letter recites that Transco and Columbia have agreed that, in resolution of all issues in the above-captioned Order No. 94 proceedings, Transco will refund to Columbia the amount of $1,426,820.97, inclusive of principal and interest, within ten (10) days after such time as (i) the Commission has approved without material alteration Transco's and Columbia's agreed resolution of all issues herein, and (ii) the United States Court of Appeals for the District of Columbia Circuit has granted the Commission's pending motion for leave to issue its August 6, 1993, order in these proceedings. Such payment shall constitute full and final resolution of all issues herein, and neither Transco nor Columbia shall be entitled to any further payments or refunds, or to any interest thereon, in connection with these or any other proceedings concerning Transco's collection from or refund to Columbia of amounts related to Transco's payment of Order No. 94 allowances to its gas suppliers. Transco and Columbia believe that this agreed resolution of all issues obviates the need for a technical conference to be held.

Take further notice that this proposed resolution between Transco and Columbia shall be treated as an offer of settlement. As such, the provisions of Rule 602 of the Commission's Rules of Practice and Procedure, 18 CFR 385.602 (1993), shall apply.

Any person desiring to comment upon this filing should file comments with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. Comments are due on or before November 29, 1993, with reply comments due within 10 days thereafter.

Linwood A. Watson, Jr.,

Acting Secretary.

[FR Doc. 93–28463 Filed 11–18–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4803–7]

Acid Rain Permits

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final permits.

SUMMARY: The U.S. Environmental Protection Agency (EPA) is issuing five-year Acid Rain permits, according to the Acid Rain Program regulations (40 CFR part 72), to the following 5 utility plants: Gen J M Gavin in Ohio; Armstrong and Portland in Pennsylvania; and Fort Martin and Harrison in West Virginia.

FOR FURTHER INFORMATION CONTACT: For Armstrong and Portland: David Campbell at (215) 597–9781; for Fort Martin and Harrison: James Topsale at (215) 597–6553. Air, Radiation and Toxics Division, EPA Region 3 (3AT–22), 841 Chestnut Bldg., Philadelphia, PA 19107.

For Gen J M Gavin: Allan Batka at (312) 353–7316. Air and Radiation Division, EPA Region 5, 77 West Jackson Blvd. (A–18J), Chicago, IL 60604.

Dated: November 15, 1993.

Renee Rico,

Acting Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–28530 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–50–P

[FRL–4803–6]

Public Water System Supervision Program Revision for the State of New York

AGENCY: United States Environmental Protection Agency (USEPA).

ACTION: Notice.

SUMMARY: The purpose of this notice is to inform the public of the scheduling of a Public Hearing regarding the United States Environmental Protection Agency's (EPA) Determination to approve the State of New York's requested revision to its Public Water System Supervision Primacy Program for compliance with the National Primary Drinking Water Regulations for the Surface Water Treatment Rule. The State of New York has adopted drinking water regulations that satisfy the National Primary Drinking Water Regulations (NPDWR), (40 CFR 142.10) to the federal Safe Drinking Water Act (SDWA), (42 U.S.C. 300 *et seq*), for the Surface Water Treatment Rule (SWTR)

(40 CFR part 141, subpart H), promulgated by USEPA on June 29, 1989 (54 FR 27486). The New York State regulations are contained in the Public Water Supplies Section of the Drinking Water Supplies Law (New York Code of Rules and Regulations Title 10 (Health), Chapter I, Part 5, Subpart 5–1): 5–1.1, 5–1.22, 5–1.30 (definitions); 5–1.52 (maximum contaminant levels for turbidity); 5–1.1, 5–1.30, 5–1.77, 5–1.78 (public notification); 5–1.30, 5–1.72, 5–4.2 (treatment requirements); 5–1.1, 5–1.20, 5–1.52 (criteria for avoiding filtration); 5–1.30, 5–1.52 (disinfection); 5–1.30, 5–1.52, 5–1.72, 5–1.74, 5–1.77 (monitoring and analysis); and 5–1.91, 5–1.92 (variances and exemptions).

The USEPA has determined that New York's SWTR regulations are no less stringent than the corresponding Federal regulations and that New York continues to meet all requirements for primary enforcement responsibility as specified in 40 CFR 142.10. Therefore, the USEPA has determined to approve the State of New York's requested revision to its Public Water System Supervision Primacy Program for compliance with the NPDWR for the SWTR.

Public Hearing

EPA has scheduled the public hearing on the Determination for Tuesday, December 7, 1993 at 6 p.m. in the New York State Legislative Office Building, Hearing Room B, Empire State Plaza, Albany, New York. The purpose of the public hearing is to offer interested persons the opportunity to comment on EPA's determination. To accommodate all persons wishing to speak, oral presentations may be limited to ten minutes per speaker and should only address EPA's determination and the information on which the determination is based. Written comments may also be submitted up until the completion of the Public Hearing.

All documents relating to this determination may be inspected and copied at a charge of $0.15 per copy sheet between the hours of 9 a.m. and 4:30 p.m., Monday through Friday, at the following offices:

New York State Department of Health, Bureau of Public Water Supply Protection, room 406, 2 University Plaza/Western Avenue, Albany, New York 12203–3399.

U.S. Environmental Protection Agency—Region II, Public Water System Supervision Section, room 853, Jacob K. Javits Federal Building, 26 Federal Plaza, New York, New York 10278.

For further information, you may contact: Walter E. Andrews, Chief, Drinking and Groundwater Protection Branch, U.S. Environmental Protection Agency—Region II, (212) 264–1800.

Authority: Section 1413 of the Safe Drinking Water Act, as amended, and 40 CFR 142.10 of the NPDWR.

Dated: October 25, 1993.

Kathleen C. Callahan,

Acting Regional Administrator, EPA, Region II.

[FR Doc. 93–28532 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–60–M

[ER–FRL–4705–7]

Environmental Impact Statements and Regulations; Availability of EPA Comments

Availability of EPA comments prepared November 1, 1993 through November 5, 1993 pursuant to the Environmental Review Process (ERP), under section 309 of the Clean Air Act and section 102(2)(c) of the National Environmental Policy Act as amended. Requests for copies of EPA comments can be directed to the Office of Federal Activities at (202) 260–5076.

An explanation of the ratings assigned to draft environmental impact statements (EISs) was published in FR dated April 10, 1993 (58 FR 18392).

Draft EISs

ERP No. D–AFS–K65152–CA Rating EO2, Hamm-Hasloe Reforestation Project, Implementation, Stanislaus National Forest, Groveland Ranger District, Tuolume and Mariposa Counties, CA.

SUMMARY: EPA expressed environmental objections because of potential adverse impacts to human health, fisheries and riparian ecosystems due to the use of herbicides including a highly mobile chemical (hexazinone). EPA stated that the cumulative impacts of herbicide applications were not sufficiently examined in the DEIS and that mitigation measures were not clearly identified. EPA requested that the final EIS include a full discussion of cumulative impacts of herbicide applications and mitigation measures.

ERP No. D–COE–E40749–NC Rating EC2, Fairfield Bridge Replacement Project, Implementation, Atlantic Intracoastal Waterway, Hyde County, NC.

SUMMARY: EPA expressed a degree of environmental concerns about mitigating the unavoidable losses associated with constructing the Fairfield Bridge. While the mitigation plan seems satisfactory, additional explanation/verification should be provided in the final document.

ERP No. D–FHW–F40334–WI Rating EU3, Lake Arterial Extension, WI–TH–31 to Layton Avenue, Funding and Possible COE Section 404 Permit, Kenosha, Racine and Milwaukee Counties, WI.

SUMMARY: EPA determined that two of the build alternatives were environmentally unacceptable due to adverse impacts to high quality advanced identification wetlands. EPA also determined that the document was inadequate since it lacks information concerning the location of the advanced identification wetlands. EPA expressed environmental objections and concerns regarding two other build alternatives that impacted fewer wetlands. EPA has no objections to the no build alternative which FHWA has indicated will be selected in the final EIS.

ERP No. D–FHW–F40335–OH Rating EC2, OH–129/Princeton Road Transportation Improvements, from OH–129 to OH–4 in the City of Hamilton and I–75, Funding, NPDES Permit and COE Section 404 Permit, Butler County, OH.

SUMMARY: EPA expressed environmental concerns regarding the relocation alternative and stated that the upgrade alternative was environmentally preferable.

ERP No. D–FHW–F40336–IL Rating EC2, IL–13 (FAP–331) Transportation Improvements from west of the Illinois Central Railroad to US 45 east of Harrisburg, Funding, COE Section 404 and NPDES Permits, Williamson and Saline Counties, IL.

SUMMARY: EPA expressed environmental concerns regarding wetland delineation and wetland compensation. EPA requested additional discussions on these issues be included in the final EIS.

ERP No. D–FHW–G40138–TX Rating LO1, US 82 Highway (East-West Freeway in the City of Lubbock) Transportation Improvements from South of Loop 289 to East of I–27 and Relocation of the Seagraves, Whiteface and Lubbock Railroad, Funding and Right-of-Way Grant, Lubbock County, TX.

SUMMARY: EPA had no objections to the proposed project.

ERP No. D–UAF–K11102–AZ Rating EC2, Williams Air Force Base (AFB) Disposal and Reuse, Implementation and Permit Approval, City of Mesa, Maricopa County, AZ.

SUMMARY: EPA expressed environmental concerns regarding the interaction of the base reuse and installation restoration programs, the analysis of cumulative environmental impacts, air quality impacts, and the maintenance of biodiversity. EPA

encouraged the Air Force to take a leadership role in promoting pollution prevention and waste minimization, and in protecting sensitive natural resources at Williams AFB.

ERP No. DS–FHW–D40260–PA Rating EC1, Mon/Fayette Transportation Project, I–70 in Fallowfield Township to PA–51 in Jefferson Borough Updated Information concerning the addition of the Green Alignment Alternative, Funding, COE Section 404 and NPDES Permits, Mon Valley, Washington and Allegheny Cos., PA.

SUMMARY: EPA expressed environmental concerns regarding potential impacts to wetlands, streams and residences. EPA requested additional discussions and ways to minimize these impacts be included in the final EIS.

Final EISs

ERP No. F–COE–F35040–OH Cleveland Harbor Dike 14 Confined Disposal Facility (CDF) for Dredged Material, Modifications Cuyahoga County, OH.

Summary: EPA expressed environmental concerns regarding sedimentation from land erosion, possible resuspension of contaminated sediments and airborne sediments. EPA recommended that native flora and trees be planted once the CDF is filled to capacity.

Dated: November 16, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–28527 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–50–U

[ER–FRL–4705–6]

Environmental Impact Statements; Availability

Responsible agency: Office of Federal Activities, General Information (202) 260–5076 or (202) 260–5075.

Weekly receipt of Environmental Impact Statements Filed November 8, 1993 through November 12, 1993 pursuant to 40 CFR 1506.9.

EIS No. 930396, Final EIS, NPS, WY, Fort Laramie National Historic Site, General Management Plan and Development Concept Plan, Implementation, Fort Laramie, Goshen County, WY, Due: December 20, 1993, Contact: Gary Candelaria (307) 837–2221.

EIS No. 930397, Revised Draft EIS, FAA, MN, Minneapolis-St. Paul International Airport, Runway 4–22 Extension, Revised Information and Funding, Wold-Chamberlain Field, Hennepin County, MN, Due: January 3, 1994, Contact: Glen Orcutt (612) 725–4221.

EIS No. 930398, Draft EIS, AFS, WA, Dry Smith Timber Sale, Implementation, Gifford Pinchot National Forest, Packwood and Randle Ranger Districts, Lewis County, WA, Due: January 10, 1994, Contact: Randy Shepard (206) 494–5515.

EIS No. 930399, Final EIS, MMS, AL, LA, MS, TX, 1994 Central and Western Gulf of Mexico Outer Continental Shelf (OCS) Oil and Gas Sales 147 (March 1994) and 150 (August 1994), Lease Offering, AL, MS, LA and TX, Due: December 20, 1993, Contact: Richard H. Miller (703) 787–1665.

EIS No. 930400, Draft EIS, UAF, FL, Homestead Air Force Base (AFB) Disposal and Reuse, Implementation, Dade County, FL, Due: January 3, 1994, Contact: Ltc. Gary Baumgartel (210) 536–3869.

EIS No. 930401, Final EIS, AFS, CA, Lowell Hill Area, Nevada City Ranger District and near Brandy City, Downieville Ranger District, Long-Term Soil Productivity Study, Implementation, Tahoe National Forest, Nevada and Sierra Counties, CA, Due: December 20, 1993, Contact: Martha Twarkin (916) 478–6293.

EIS No. 930402, Draft EIS, AFS, CO, Boulder Hydro Gravity Line Land Use Authorization, Special-Use-Permit, Roosevelt National Forest, Boulder County, CO, Due: January 3, 1994, Contact: Jean Thomas (303) 498–1267.

EIS No. 930403, Draft EIS, AFS, CO, Long Draw Reservoir and Dam Land Use Authorization, Special-Use-Permit, Roosevelt National Forest, Larimer County, CO, Due: January 3, 1994, Contact: Jean Thomas (303) 498–1267.

EIS No. 930404, Draft EIS, AFS, CO, Joe Wright Reservoir and Dam Land Use Authorization, Special Use Permit, Roosevelt National Forest, City of Fort Collins, Larimer County, CO, Due: January 3, 1994, Contact: Jean Thomas (303) 498–1267.

EIS No. 930405, Draft EIS, BPA, WA, Puget Power Northwest Washington Electric Transmission Project; Construction and Operation, Whatcom and Skagit Counties, WA, Due: January 14, 1994, Contact: John Taves 1 (800) 622–4520.

EIS No. 930406, Final Supplement, USN, WA, Puget Sound Area Carrier Battle Group, Updated Information concerning Element II Breakwater Pier Construction and Operation, Everett Naval Station, Snohomish, King and Pierce Counties, WA, Due: December 20, 1993, Contact: Don Morris (206) 396–5976.

Amended Notices

EIS No. 930166, Draft EIS, AFS, OR, Upper Wahoo Timber Sale and Road Construction, Implementation, Deer Creek Watershed, Wallowa-Whitman National Forest, Baker Ranger District, Baker County, OR, Due: July 6, 1993, Contact: Joanne Britton (503) 523–4476. Published FR 05–21–93—Environmental Analysis Process Terminated by Preparing Agency.

Dated: November 15, 1993.

William D. Dickerson,

Deputy Director, Office of Federal Activities.

[FR Doc. 93–28528 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–50–U

[FRL–4803–8]

Missouri; Adequacy Determination of State/Tribal Municipal Solid Waste Landfill Permit Program

AGENCY: Environmental Protection Agency.

ACTION: Notice of tentative determination on application of Missouri for full program adequacy determination, public hearing comment period.

SUMMARY: Section 4005(c)(1)(B) of the Resource Conservation and Recovery Act (RCRA,) as amended by the Hazardous and Solid Waste Amendments (HWSA) of 1984, requires States to develop and implement permit programs to ensure that municipal solid waste landfills (MSWLFs) which may receive hazardous household waste or small quantity generator waste will comply with the revised Federal MSWLF Criteria, 56 FR 50978–51119, also referred to as 40 CFR part 258. RCRA section 4004(c)(1)(C) requires the Environmental Protection Agency (EPA) to determine whether States have adequate "permit" programs for MSWLFs, but does not mandate issuance of a rule for such determinations. EPA has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR) that will provide procedures by which EPA will appro e, or partially approve, State/Tribal landfill permit programs. The Agency intends to approve adequate State/Tribal MSWLF permit programs as applications are submitted. Thus, these approvals are not dependent on final promulgation of the STIR. Prior to promulgation of the STIR, adequacy determinations will be based on the statutory authorities and requirements. In addition, State/Tribes may use the

draft STIR as an aid in interpreting these requirements. The Agency believes that early approvals have an important benefit. Approved State/Tribal permit programs provide for interaction between the State/Tribe and the owner/operator regarding site-specific permit conditions. Only those owners/operators located in State/Tribes with approved permit programs can use the site specific flexibility provided by 40 CFR part 258 to the extent the State/Tribal permit program allows such flexibility. EPA notes that regardless of the approval status of a State/Tribe and the permit status of any facility, 40 CFR part 258 will apply to all permitted and unpermitted MSWLF facilities.

Missouri applied for a determination of adequacy under section 4005 of RCRA. EPA has reviewed Missouri's MSWLF application and made a tentative determination that all portions of Missouri's MSWLF permit program are adequate to ensure compliance with 40 CFR part 258. Missouri's application for program adequacy determination is available for public review and comment.

Although RCRA does not require EPA to hold a public hearing on a determination to approve any State/Tribe's MSWLF program, the Region has tentatively scheduled a public hearing on this determination. If a sufficient number of people express interest in participating in a hearing by writing the Region or calling the contact given below by December 20, 1993, the Region will hold a hearing on the date given below in the "DATES" section. The Region will notify all persons who submit comments on this notice if it decides to hold the hearing. In addition, anyone who wishes to learn whether the hearing will be held may call the person listed in the "CONTACTS" section.

DATES: All comments on Missouri's application for a determination of adequacy must be received by the close of business on December 20, 1993, or, if a public hearing is scheduled, at the close of the public hearing. If the Region holds a public hearing, it will be held on January 4, 1994, at 1:30 p.m., at the Harry S. Truman State Office Building, room 492, 301 West High Street, Jefferson, City, Missouri. Representatives of the State of Missouri will participate in the public hearing held by EPA on this subject.

ADDRESSES: Written comments should be sent to Ms. Altheà M. Moses, Mail Code WSTM/RCRA/STPG, EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101.

Copies of Missouri's application for adequacy determination are available from 8 a.m. to 4:30 p.m. at the following addresses for inspection and copying: Missouri State Information Center, 600 West Main, Jefferson City, Missouri 65102, Attn: Mr. Harold T. Morton, telephone 314–751–5401; and U.S. EPA Region VII Library, 726 Minnesota Avenue, Kansas City, Kansas 66101, telephone 913–551–7000.

FOR FURTHER INFORMATION CONTACT: EPA Region VII, 726 Minnesota Avenue, Kansas City, Kansas 66101, Attn: Ms. Altheà M. Moses, Mail Code WSTM/RCRA/STPG, telephone 913–551–7055.

SUPPLEMENTARY INFORMATION:

A. Background

On October 9, 1991, EPA promulgated 40 CFR part 258. Subtitle D of RCRA, as amended by the Hazardous and Solid Waste Amendments of 1984 (HSWA), requires States to develop permitting programs to ensure that MSWLFs comply with 40 CFR part 258. Subtitle D also requires in section 4005 that EPA determine the adequacy of State municipal solid waste landfill permit programs to ensure that facilities comply with 40 CFR part 258. To fulfill this requirement, the Agency has drafted and is in the process of proposing a State/Tribal Implementation Rule (STIR). The rule will specify the requirements which State/Tribal programs must satisfy to be determined adequate.

EPA intends to approve State/Tribe MSWLF permit programs prior to the promulgation of STIR. EPA interprets the requirements for the States or Tribes to develop "adequate" programs for permits or other forms of prior approval to impose several minimum requirements. First, each State/Tribe must have enforceable standards for new and existing MSWLFs that are technically comparable to 40 CFR part 258. Next, the State/Tribe must have the authority to issue a permit or other notice of approval to all new and existing MSWLFs in its jurisdiction. The State/Tribe also must provide for public participation in permit issuance and enforcement as required in section 7004(b) of RCRA. Finally, EPA believes that the State/Tribe must show that it has sufficient compliance monitoring and enforcement authorities to take specific action against any owner or operator that fails to comply with an approved MSWLF program. EPA Regions will determine whether a State/Tribe has submitted an "Adequate" program based on the interpretation outlined above. EPA plans to provide more specific criteria for evaluation when it proposes the State/Tribal Implementation Rule. EPA expects States/Tribes to meet all of these requirements for all elements of a MSWLF program before it gives full approval to a MSWLF program.

B. The State of Missouri

On September 17, 1993, Missouri submitted an application for adequacy determination. EPA reviewed Missouri's application and tentatively determined that all portions of the Missouri Subtitle D program will ensure compliance with 40 CFR part 258.

The public may submit written comments on EPA's tentative determination until December 20, 1993, or, if a public hearing occurs, until the conclusion of the public hearing. Copies of Missouri's application are available for inspection and copying at the locations indicated in the "ADDRESSES" section of this notice.

Region VII will hold a public hearing, if significant requests are received within 30 days of the date of publication of this notice, on its tentative decision on January 4, 1994, at 1:30 p.m. at Harry S. Truman State Office Building, room 492, 301 West High Street, Jefferson City, Missouri.

The State of Missouri recognized the advantage to landfill owners and operators of having only one set of regulations with which to comply. Therefore, in order to have State regulations which Missouri believes to be consistent with 40 CFR part 258 in place on the initial effective date of 40 CFR part 258, Missouri placed emergency regulation, 10 Code of State Regulations (CSR) 80, in effect from October 9, 1993 through February 6, 1994. The emergency regulations are in effect during the rule-making process for the final rule, 10 CSR 80, which is expected to be final by January 31, 1993. The emergency regulations were initiated in order that municipal solid waste landfills in Missouri need only comply with one set of regulations which will render them technically in compliance with both state and Federal regulations.

EPA will consider all public comments on its tentative determination. Issues raised by those comments may be the basis for a determination of inadequacy for Missouri's program. EPA will make a final decision on whether or not to approve Missouri's program by January 31, 1994 and will give notice of it in the **Federal Register**. The notice will include a summary of the reasons for the final determination and a response to all significant comments.

Section 4005(a) of RCRA provides that citizens may use the citizen suit provisions of section 7002 of RCRA to

enforce 40 CFR part 258 independent of any State/Tribal enforcement program. As EPA explained in the preamble to 40 CFR part 258, EPA expects that any owner or operator complying with provisions in a State/Tribal program approved by EPA should be considered to be in compliance with the Federal Criteria. See 56 FR 50978, 50995 (October 9, 1991).

Compliance With Executive Order 12866

The Office of Management and Budget has exempted this notice from the requirements of section 6 of Executive Order 12866.

Certification Under The Regulatory Flexibility Act

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this approval will not have a significant economic impact on a substantial number of small entities. It does not impose any new burdens on small entities. This notice, therefore, does not require a regulatory flexibility analysis.

Authority: This notice is issued under the authority of section 4005 of the Solid Waste Disposal Act as amended; 42 U.S.C. 6946.

Ronald R. Ritter,

Acting Regional Administrator.

[FR Doc. 93–28531 Filed 11–18–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL DEPOSIT INSURANCE CORPORATION

Information Collection Submitted to OMB for Review

AGENCY: Federal Deposit Insurance Corporation.

ACTION: Notice of information collection submitted to OMB for review and approval under the Paperwork Reduction Act of 1980.

SUMMARY: In accordance with requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35), the FDIC hereby gives notice that it has submitted to the Office of Management and Budget a request for OMB review of the information collection system described below.

Type of Review: New collection.

Title: Affordable Housing—Income Certification.

Form Number: None.

OMB Number: Not applicable.

Expiration Date of OMB Clearance: Not applicable.

Respondents: Potential purchasers or renters of properties in the FDIC's affordable housing program.

Frequency of Response: On occasion.

Number of Respondents: 1,500.

Number of Responses per Respondent: 1

Total Annual Responses: 1,500.

Average Number of Hours per Response: 1.

Total Annual Burden Hours: 1,500.

OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, Paperwork Reduction Project 3064–0000, Washington, DC 20503.

FDIC Contact: Steven F. Hanft, (202) 898–3907, Office of the Executive Secretary, room F–400, Federal Deposit Insurance Corporation, 550 17th Street NW., Washington, DC 20429.

Comments: Comments on this collection of information are welcome and should be submitted before January 18, 1994.

ADDRESSES: A copy of the submission may be obtained by calling or writing the FDIC contact listed above. Comments regarding the submission should be addressed to both the OMB reviewer and the FDIC contact listed above.

SUPPLEMENTARY INFORMATION: Section 241 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA) requires the FDIC to provide home ownership and rental housing opportunities for low-income families. This collection will permit the FDIC to determine the eligibility of applicants to participate in the affordable housing program.

Dated: November 16, 1993.

Federal Deposit Insurance Corporation.

Hoyle L. Robinson,

Executive Secretary.

[FR Doc. 93–28495 Filed 11–18–93; 8:45 am]

BILLING CODE 6714–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Public Information Collection Requirements Submitted to OMB for Review

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA) has submitted to the Office of Management and Budget the following public information collection requirements for review and clearance in accordance with the Paperwork Reduction Act of 1980, 44 U.S.C. chapter 35.

DATES: Comments on this information collection must be submitted on or before January 18, 1994.

ADDRESSES: Direct comments regarding the burden estimate or any aspect of this information collection, including suggestions for reducing this burden to: the FEMA Information Collections Clearance Officer at the address below; and to Gary Waxman, Office of Management and Budget, 3235 New Executive Office Building, Washington, DC 20503, (202) 395–7340, within 60 days of this notice.

FOR FURTHER INFORMATION CONTACT: Copies of the above information collection request and supporting documentation can be obtained by calling or writing Linda Borror, FEMA Information Collections Clearance Officer, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472, (202) 646–2624.

Type: Revision of 3067–0225.

Title: Community Based Anti-Arson Program.

Abstract: The Community Based Anti-Arson Program has been developed to provide grants to community based organizations (CBO's) interested in mitigating the arson problem in their local jurisdictions. The program is administered by the U.S. Fire Administration, FEMA. The data collection requirements of the program include the application for a grant, quarterly reporting on approved projects, and quarterly evaluation of each CBO. The data is used to evaluate the effectiveness of the program and the need for continued funding, and to report to Congress when requested.

Type of Respondents: Non-profit institutions.

Estimate of Total Annual Reporting and Recordkeeping Burden: 530 hours.

Number of Respondents: 30.

Estimated Average Burden Time per Response: 1.33 hours.

Frequency of Response: Annually, Quarterly.

Dated: November 12, 1993.

Wesley C. Moore,

Director, Office of Administrative Support.

[FR Doc. 93–28492 Filed 11–18–93; 8:45 am]

BILLING CODE 6718–01–M

FEDERAL MARITIME COMMISSION

[Petition Nos. P90–93, P91–93, P92–93]

World Tariff Services Inc., et al.; Petition for Temporary Exemption From Electronic Tariff Filing Requirements

In the matter of Petition of World Tariff Services, Inc. on behalf of Frontier Liner Services, Inc., Petition of Lalandia, Incorporated on behalf of Antilles Freight Corp., Petition of Effective Tariff Management Corp.

Notice is hereby given of the filing of petitions by the above-named

petitioners, pursuant to 46 CFR 514.8(a), for temporary exemption from electronic tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petitions, interested persons are requested to reply to the petitions no later than November 26, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served as follows: P90–93—Mr. Robert Hadow, Director, World Tariff Services, Inc., 14 Commerce Drive, Cranford, NJ 07016; P91–93—Mr. Peter Sorensen, President, Lalandia, Incorporated, 123 N.W. 13th Street, Suite 313, Boca Raton, Florida 33432–1624; and P92–93—Ms. Tanga S. FitzGibbon, Executive Vice President, Effective Tariff Management Corp., 4000 Mitchellville Road, Suite 326–B, Bowie, Maryland 20716.

Copies of the petitions are available for examination at the Washington, DC office of the Secretary of the Commission, 800 N. Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–28493 Filed 11–18–93; 8:45 am]

BILLING CODE 6730–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 90F–0443]

Hoechst Celanese Corp.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Hoechst Celanese Corp., to indicate that the petitioner has requested that the food additive regulations be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in baked goods and baking mixes, and also in icings, frostings, toppings, and fillings for baked goods. The previous filing notice indicated that the petitioner's request was for use of the additive in baked goods and baking mixes.

DATES: Written comments on the petitioner's environmental assessment by December 20, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of October 30, 1990 (55 FR 45657), FDA announced that a food additive petition (FAP 0A4225) had been filed by Hoechst Celanese Corp., Route 202–206 North, Somerville, NJ 08876. In the notice of filing, FDA announced that the petitioner had proposed that the food additive regulations in § 172.800 *Acesulfame potassium* (21 CFR 172.800) be amended to provide for the safe use of acesulfame potassium in baked goods and baking mixes. The petition was filed under section 409 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 348).

Upon further review of the petition, the agency notes that the petitioner had also requested that the use of acesulfame potassium be permitted in icings, frostings, toppings, and fillings for baked goods. This additional portion of the petitioner's request was inadvertently omitted from the original filing notice.

Therefore, FDA is amending the filing notice of October 30, 1990, to state that the petitioner has proposed that § 172.800 *Acesulfame potassium* be amended to provide for the safe use of acesulfame potassium as a nonnutritive sweetener in baked goods and baking mixes, and in icings, frostings, toppings, and fillings for baked goods.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 20, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–28435 Filed 11–18–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93F–0384]

National Aeronautics and Space Administration; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that the National Aeronautics and Space Administration (NASA) has filed a petition proposing that the food additive regulations be amended to provide for the safe use of sources of radiation to process certain prepackaged meats for use by NASA in its space flight programs.

DATES: Written comments on the petitioner's environmental assessment by December 20, 1993.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Patricia A. Hansen, Center for Food Safety and Applied Nutrition (HFS–206), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9523.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5), (21 U.S.C. 348(b)(5))), notice is given that a food additive petition (FAP 3M4394) has been filed by NASA, Lyndon B. Johnson Space Center, Houston, TX 77058. The petition proposes to amend the food additive regulations to provide for the safe use of sources of radiation to process prepackaged meats for use by NASA in its space flight programs. It is further

proposed that the packaging materials used in this application be exempt from the requirements of § 179.25(c), provided that their use is otherwise permitted by applicable regulations in parts 174 through 186 (21 CFR parts 174 through 186).

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before December 20, 1993, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 9, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–28472 Filed 11–18–93; 8:45 am]

BILLING CODE 4160–01–F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–58]

Federal Property Suitable as Facilities to Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

EFFECTIVE DATE: November 19, 1993.

ADDRESS: For further information, contact Mark Johnston, Department of Housing and Urban Development, room 7262, 451 Seventh Street SW, Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565, (these telephone numbers are not toll-free), or call the toll-free Title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with the December 12, 1988 court order in *National Coalition for the Homeless* v. *Veterans Administration*, No. 88–2503–OG (D.D.C.), HUD publishes a Notice, on a weekly basis, identifying unutilized, underutilized, excess and surplus Federal buildings and real property that HUD has reviewed for suitability for use to assist the homeless. Today's Notice is for the purpose of announcing that no additional properties have been determined suitable or unsuitable this week.

Dated: November 12, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

[FR Doc. 93–28385 Filed 11–18–93; 8:45 am]

Billing Code 4210–29–F

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Availability of a Draft Habitat Conservation Plan, Environmental Assessment, and Receipt of an Application for an Incidental Take Permit for the Proposed Hell Canyon Quarry, Salt Lake City, Salt Lake County, UT

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of availability of documents.

SUMMARY: Allan Flandro (Applicant) has applied to the Fish and Wildlife Service (Service) for an incidental take permit pursuant to section 10(a) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*). The Applicant has been assigned Permit Number PRT–784336. The requested permit, which is for a period not to exceed 20 years, would authorize the incidental take of the endangered peregrine falcon (*Falco peregrinus anatum*). The proposed take would occur as a result of the operation of a quarry on a 30-acre tract at 1020 North Victory Road in Salt Lake City, Utah. This area has been a source of construction aggregates (i.e., limestone, sand, and gravel) since about 1900.

The Service has prepared an environmental assessment for the incidental take permit application. A determination of jeopardy to the species or a finding of no significant impact will not be made before 30 days from the date of publication of this notice. This notice is provided pursuant to section 10(c) of the Act and National Environmental Policy Act regulations (40 CFR 1506.6).

DATES: Written comments on the draft habitat conservation plan and draft environmental assessment should be received within 30 days of the date of this notice.

ADDRESSES: Persons wishing to review the application may obtain a copy by writing to the Field Supervisor, Utah Field Office, U.S. Fish and Wildlife Service, 2060 Administration Building, 1745 West 1700 South, Salt Lake City, Utah 84104, telephone (801) 975–3630, facsimile number (801) 975–3626. Persons wishing to review the draft environmental assessment may obtain a copy by contacting the Field Supervisor at the above address. Documents will be available by written request for public inspection, by appointment, during normal business hours at the Utah Field Office (7:30 a.m. to 4 p.m.). Written data or comments concerning the application and the draft environmental assessment should be submitted to the Field Supervisor, Utah State Office, at the above address. Please refer to Permit Number PRT–784336.

FOR FURTHER INFORMATION CONTACT: Robert Williams, Assistant Field Supervisor, at the above address or telephone 801/975–3630.

SUPPLEMENTARY INFORMATION: Section 9 of the Act prohibits the "taking" of any endangered species, including the peregrine falcon. However, the Service, under limited circumstances, may issue permits to take endangered wildlife species if such taking is incidental to, and not the purpose of, otherwise lawful activities. Regulations governing permits for endangered species are at 50 CFR 17.22.

Peregrine falcons first appeared in downtown Salt Lake City in 1984, the result of the peregrine falcon release program conducted by the Utah Division of Wildlife. A pair nested on the Hotel Utah from 1986 through 1989. In 1990 the pair relocated to a nearby quarry in Hell Canyon where they

nested on a cliff site from 1990–1993. This site is located less than 2 miles from the center of Salt Lake City and faces an industrial area that consists of oil refineries, gravel pits, and a railroad maintenance facility. Residential growth is taking place both south and east of the current nest location.

The Applicant plans to reactivate the 30-acre quarry currently being used by the peregrine falcons. Previous operations in the quarry created the vertical cliff wall where the nest is located. The proposed activity will destroy the cliff and the eyrie site. The Applicant also owns an addition 18.3 acres contiguous to the north end of Hell Canyon on which a smaller quarry is located. This site is about 1,200 feet from the present eyrie, higher in elevation, and about 1,100 feet from the planned excavation. The Applicant proposes to mitigate the incidental take of the peregrine nest site by attaching an artificial nesting box at the top of a cliff in this area. The nest box will be similar to the nesting boxes used by the pair in downtown Salt Lake City. The Applicant considered three alternatives but rejected them because they were not economically viable.

Dated: November 12, 1993.

John L. Spinks, Jr.,

Regional Director.

[FR Doc. 93–28465 Filed 11–18–93; 8:45 am]

BILLING CODE 4310–55–M

INTERSTATE COMMERCE COMMISSION

Procedural Change in Insurance Cancellation Process

AGENCY: Interstate Commerce Commission.

ACTION: Notice of a procedural change.

SUMMARY: The Commission will discontinue sending an interim letter, which is not required by statute, currently used in its insurance cancellation procedures for processing the revocation of authority of motor carriers, household goods freight forwarders, and property brokers that fail to renew their security in a timely manner. The interim letter is unnecessary because the holder is issued an initial 30-day notice and two subsequent 60-day notices to comply with 49 U.S.C. 10925. The objective of the revised procedure is to streamline the insurance cancellation process and to enhance the use of limited Commission resources without affecting either the rights of present carriers, household goods freight forwarders or brokers, or the regulations prescribed by the Commission.

This minor change in our insurance cancellation process is strictly procedural and does not involve any change of the Commission's regulations. Therefore, comments are not being sought.

EFFECTIVE DATE: Procedural change will be effective December 20, 1993.

FOR FURTHER INFORMATION CONTACT: Charles E. Wagner, (202) 927- 5530, or John W. Fristoe, (202) 927–5520. Assistance for the hearing impaired is available through TDD services, (202) 927 5721.

SUPPLEMENTARY INFORMATION:

Subsections (b) and (c) of 49 U.S.C. 10925 provide for the revocation of a motor carrier, household goods freight forwarder, or broker's authority within a period of not less than 30 days from the issuance of an order compelling compliance, where it is found that the holder of the authority has willfully failed to comply with a regulation or Commission order. Under the Commission's current insurance cancellation process, when the Commission receives a 30-day advance notice from an insurer canceling the insurance of a carrier, household good freight forwarder, or broker's security:

(1) The agency immediately issues a letter, stating "in 30 days revocation proceedings will begin unless evidence of replacement insurance is filed with the Commission;"

(2) Approximately 14 days following the initial 30-day letter, if evidence of replacement insurance is not filed, the agency issues a second letter (14-day letter) reiterating the date and intent of the initial letter;

(3) Unless the agency receives notification that the holder's insurance or security is being renewed by the end of the 30-day period and evidence of such insurance is filed, the agency institutes revocation proceedings (1st decision);

(4) Enforcement action is taken after the 30-day period to prevent the holder from operating unless the holder signs a voluntary revocation form and/or a consent agreement promising not to operate.

(5) The first decision requires compliance within 60 days;

(6) After 60 days, if the agency has not received notification of renewal, a second decision is issued and a second 60-day compliance requirement period is given; and

(7) If the agency has not received notification of insurance at the end of the second 60-day period, the authority stands revoked.

The interim letter is not required by statute and does not provide any new or additional information. Therefore, to conserve agency resources it is being discontinued.

Authority: 49 U.S.C. 10925, 10927 and 49 CFR Part 1043.

Decided: November 10, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28522 Filed 11–18–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32310]

The Alabama Great Southern Railroad Co.—Purchase of Line—Southrail Corp.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission, under 49 U.S.C. 10505, exempts from the prior approval requirements of 49 U.S.C. 11343 the purchase and operation by The Alabama Great Southern Railroad Company of a 4.43-mile line of railroad of Southrail Corporation extending from Milepost GG–110.77 to Milepost GG–115.2 in Laurel, Jones County, Mississippi, subject to standard labor protective conditions.

DATES: The exemption is effective on December 19, 1993. Petitions to stay must be filed by November 29, 1993. Petitions to reopen must be filed by December 9, 1993.

ADDRESSES: Send pleading referring to Finance Docket No. 32310 to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, D.C. 20423; and (2) Petitioner's representatives, Robert J. Cooney, Senior General Attorney, Norfolk Southern Corporation, 3 Commercial Place, Norfolk, Virginia 23510–2191 and Laurence R. Latourette, Preston Gates Ellis & Rouvelas Meeds, Suite 500, 1735 New York Avenue, NW, Washington, DC 20006–4759.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION:

Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building,

Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: November 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28524 Filed 11–18–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–55 (Sub-No. 464X)]

CSX Transportation, Inc.—Abandonment Exemption—In Vermillion and Vigo Counties, IN

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–04 the abandonment by CSX Transportation, Inc., of a 8.52-mile rail line between milepost ZB–0.00 at Clinton and the end of the line at milepost ZB–8.52 near Universal, in Vermillion and Vigo Counties, IN, subject to interim trail use/rail banking, public use, and standard labor protective conditions.

DATES: The exemption will be effective on December 19, 1993, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by November 29, 1993; petitions to stay must be filed by December 6, 1993; requests for a public use condition must be filed by December 9, 1993; and petitions to reopen must be filed by December 14, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–55 (Sub-No. 464X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Charles M. Rosenberger, 500 Water Street, Jacksonville, FL 32202.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired: (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927–5271.]

Decided: October 26, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28525 Filed 11–18–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–290; Sub-No. 135X]

Norfolk And Western Railway Co.—Abandonment Exemption—In Wyoming County, WV

Norfolk and Western Railway Co. has filed a notice of exemption under 49 CFR part 1152 subpart F—Exempt Abandonments to abandon its 1.01-mile line of railroad between milepost MY–0.00 at Milam Junction and milepost MY–1.01 at Catherine, in Wyoming County, WV.

Applicant has certified that: (1) No local traffic has moved over the line for at least two years; (2) there is no overhead traffic on the line; (3) no formal complaint filed by a user of rail service on the line (or a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (service of environmental report on agencies); 49 CFR 1105.8 (service of historic report on State Historic Preservation Officer); 49 CFR 1105.12 (newspaper publication); and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee affected by the abandonment shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen,* 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 19, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by November 29, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 9, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any petition filed with the Commission should be sent to applicant's representative: James R. Paschall, Norfolk Southern Corporation, Three Commercial Place, Norfolk, VA 23510.

If the notice of exemption contains false or misleading information, use of the exemption is void ab initio.

Applicant has filed an environmental report which addresses the abandonment's effects, if any, on the environment and historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 24, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28526 Filed 11–18–93; 8:45 am]

BILLING CODE 7035–01–P

[Ex Parte No. 519]

National Grain Car Supply—Conference of Interested Parties

AGENCY: Interstate Commerce Commission.

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[1] See *Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines,* 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.,* 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

ACTION: Institution of proceeding.

SUMMARY: The Commission is instituting a proceeding to gather information from railroads, grain shippers, rail car owners, and other interested parties regarding the supply of rail cars for the transportation of grain, and to provide a forum for discussion of any problems which may exist among directly affected parties. It is intended that the Conference will lead to a more complete understanding of the grain car supply situation by all concerned, including the Commission, and that it will assist the parties in resolving any problems that may exist. Vice-Chairman J.J. Simmons, III, will preside over the Conference and all related meetings.

DATES: Notice of intent to participate in the Conference, which it is anticipated will be held early in 1994, should be filed within 10 days of publication of this Notice. A Docket Management Conference, to be presided over by Vice-Chairman Simmons, will be held on December 21, 1993.

FOR FURTHER INFORMATION CONTACT: Ricky L. Crawford, Office of Vice-Chairman Simmons: (202) 927–6057; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision served this date. To obtain a copy of the full decision, write to, call, or pick up in person from: Office of the Secretary, room 2215, Interstate Commerce Commission, Washington, DC 20423. Telephone: (202) 927–7428 [Assistance for the hearing impaired is available through TDD services (202) 927–5721).]

I initially conclude that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

I also initially conclude that the holding of this Conference will not have a significant economic impact on a substantial number of small entities. The purpose of this action is simply to provide, to all those desiring voluntarily to participate, a forum for assembling information about, and discussion of, any problems associated with the car supply for rail transportation of grain. No substantive regulatory decisions are contemplated. Accordingly, the economic impact on small entities, if any, is not likely to be significant within the meaning of the Regulatory Flexibility Act.

Authority: 49 U.S.C. 10321 and 49 CFR 1011.4(b)(1).

Decided: November 15, 1993.

By the Commission, Chairman Gail C. McDonald.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28523 Filed 11–18–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

Importer of Controlled Substances; Registration

By Notice dated May 19, 1993, and published in the **Federal Register** on May 26, 1993, (58 FR 30184), Roberts Laboratories Inc., Meridan Center III, 6 Industrial Way West, Eatontown, New Jersey 07724, made application to the Drug Enforcement Administration to be registered as an importer of Propiram (9649) a basic class of controlled substance listed in Schedule I.

No comments or objections have been received. Therefore, pursuant to section 1008(a) of the Controlled Substances Import and Export Act and in accordance with title 21, Code of Federal Regulations § 1311.42, the above firm is granted registration as an importer of the basic class of controlled substance listed above.

Dated: November 9, 1993.

Gene R. Haislip,

Director, Office of Diversion Control, Drug Enforcement Administration.

[FR Doc. 93–28451 Filed 11–10–93; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Labor Research Advisory Council; Notice of Meetings and Agenda

The Fall meetings of committees of the Labor Research Advisory Council will be held on November 30, December 7 and 8, 1993. All of the meetings will be held in the Conference Center of the Postal Square Building (PSB), 2 Massachusetts Avenue NE., Washington, DC.

The Labor Research Advisory Council and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs. Membership consists of union research directors and staff members. The schedule and agenda of the meetings are as follows: Tuesday, November 30, 1993

9:30 a.m.—Committee on Wages and Industrial Relations, Rooms 9 and 10, PSB

1. Review of activities in progress
2. Preview of summary of fast food restaurant surveys
3. Summary of report on Occupational Compensation Survey Program benefits model
4. Employer-provided parental leave
5. Update on training subcommittee

1 p.m—Committee on Occupational Safety and Health Statistics—Rooms 9 and 10, PSB

1. 1992 Survey of Occupational Injuries and Illnesses
2. Lost workday measures
3. Table formats for worker demographic and case characteristics data
4. Availability of State data
5. Department of Labor report to House Appropriations Committee on data needs; Title VIII, OSHA Reform Act (proposed)
6. 1992 Census of Fatal Occupational Injuries—availability of State data
7. Other business

Tuesday, December 7, 1993

9:30 a.m.—Committee on Employment and Unemployment Statistics—Rooms 9 and 10, PSB

1. Overview of Office of Employment and Unemployment Statistics developments
2. Current Population Survey Redesign
3. Employment in foreign-owned establishments: findings and program plans
4. Occupational experience of unemployed during the recent recession and recovery

Wednesday, December 8, 1993

10 a.m.—Committee on Prices and Living Conditions Rooms 9 and 10, PSB

1. Status Reports
   a. Consumer Prices
   b. Producer Prices
   c. Internal Prices
2. Other business

1 p.m.—Committee on Productivity, Technology and Growth Committee on Foreign Labor Statistics Rooms 9 and 10, PSB

1. Briefing on the new BLS 1992–2005 projections
2. Discussion on the uses made of BLS productivity data:
   —for major sectors
   —for industries
3. Report on BLS international technical assistance activities
4. BLS work on international comparisons of Gross Domestic

Product per capita and per employed person.

The meetings are open to the public. Persons planning to attend these meetings as observers may want to contact Wilhelmina Abner on (Area Code 202) 606–5904.

Signed at Washington, DC, this 12th day of November 1993.

Katharine G. Abraham,

Commissioner.

[FR Doc. 93–28505 Filed 11–18–93; 8:45 am]

BILLING CODE 4510-24-M

Employment Standards Administration, Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedes decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Virginia
- VA930090 (Nov. 19, 1993)
- VA930091 (Nov. 19, 1993)
- VA930092 (Nov. 19, 1993)
- VA930093 (Nov. 19, 1993)
- VA930094 (Nov. 19, 1993)
- VA930095 (Nov. 19, 1993)
- VA930096 (Nov. 19, 1993)
- VA930097 (Nov. 19, 1993)
- VA930098 (Nov. 19, 1993)
- VA930099 (Nov. 19, 1993)
- VA930100 (Nov. 19, 1993)
- VA930101 (Nov. 19, 1993)
- VA930102 (Nov. 19, 1993)

Volume II

Wisconsin
- W1930028 (Nov. 19, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis—Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT930001 (Feb. 19, 1993)
- CT930003 (Feb. 19, 1993)
- CT930004 (Feb. 19, 1993)

District of Col.
- DC930001 (Feb. 19, 1993)

Georgia
- GA930003 (Feb. 19, 1993)
- GA930011 (Feb. 19, 1993)
- GA930021 (Feb. 19, 1993)
- GA930022 (Feb. 19, 1993)
- GA930031 (Feb. 19, 1993)
- GA930032 (Feb. 19, 1993)
- GA930033 (Feb. 19, 1993)
- GA930035 (Feb. 19, 1993)
- GA930040 (Feb. 19, 1993)
- GA930050 (June 4, 1993)
- GA930058 (June 4, 1993)
- GA930062 (June 4, 1993)
- GA930065 (June 4, 1993)
- GA930066 (June 4, 1993)
- GA930073 (June 4, 1993)

Hawaii
- HI930001 (Feb. 19, 1993)

Kentucky
- KY930001 (Feb. 19, 1993)
- KY930002 (Feb. 19, 1993)
- KY930003 (Feb. 19, 1993)
- KY930004 (Feb. 19, 1993)
- KY930006 (Feb. 19, 1993)
- KY930007 (Feb. 19, 1993)
- KY930025 (Feb. 19, 1993)
- KY930027 (Feb. 19, 1993)
- KY930028 (Feb. 19, 1993)
- KY930029 (Feb. 19, 1993)
- KY930035 (Feb. 19, 1993)

Massachusetts
- MA930001 (Feb. 19, 1993)
- MA930002 (Feb. 19, 1993)
- MA930003 (Feb. 19, 1993)
- MA930005 (Feb. 19, 1993)
- MA930007 (Feb. 19, 1993)
- MA930013 (Sept. 9, 1993)
- MA930014 (Sept. 9, 1993)
- MA930015 (Sept. 9, 1993)

New York
- NY930015 (Feb. 19, 1993)
- NY930018 (Feb. 19, 1993)

Pennsylvania
- PA930004 (Feb. 19, 1993)
- PA930005 (Feb. 19, 1993)
- PA930013 (Feb. 19, 1993)
- PA930025 (Feb. 19, 1993)

Virginia
- VA930001 (Feb. 19, 1993)
- VA930007 (Feb. 19, 1993)

VA930088 (Nov. 12, 1993)

Volume II

Iowa
IA930005 (Feb. 19, 1993)
IA930010 (Feb. 19, 1993)
Kansas
KS930012 (Feb. 19, 1993)
KS930047 (Oct. 22, 1993)
Michigan
MI930056 (Oct. 1, 1993)
Minnesota
MN930003 (Feb. 19, 1993)
MN930007 (Feb. 19, 1993)
MN930008 (Feb. 19, 1993)
MN930015 (Feb. 19, 1993)
New Mexico
NM930001 (Feb. 19, 1993)
NM930005 (Feb. 19, 1993)
Oklahoma
OK930020 (Feb. 19, 1993)
Texas
TX930007 (Feb. 19, 1993)
TX930074 (July 9, 1993)
Texas
TX930087 (Nov. 12, 1993)
Wisconsin
WI930003 (Feb. 19, 1993)
WI930017 (Feb. 19, 1993)

Volume III

California
CA930003 (Feb. 19, 1993)
CA930005 (Feb. 19, 1993)
CA930007 (Feb. 19, 1993)
CA930009 (June 11, 1993)
CA930010 (June 11, 1993)
CA930015 (June 11, 1993)
CA930026 (July 9, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts". This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be order for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC, this 12th day of November 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–28236 Filed 11–18–93; 8:45 am]

BILLING CODE 4510–27–M

Employment and Training Administration

[TA–W–28, 832, et al.]

Chuska Energy Co., et al.; Revised Determinations on Reconsideration

In the matter of TA–W–28,832 Chuska Energy Co., Denver, Colorado, TA–W–28,833 Sunfield Energy Co., Denver, Colorado.

On October 27, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for former workers of Chuska Energy and Sunfield Energy companies in Denver, Colorado. The notice was published in the **Federal Register** on November 4, 1993 (58 FR 58879).

Counsel for the petitioners states that the Department did not address the worker separations which occurred in mid-1992, six months before the merger with Harken Energy Corporation.

The findings show that the workers at the Denver facility of Chuska Energy and Sunfield Energy performed exploration activities mainly for crude oil.

Crude oil and natural gas revenues for the subject firm decreased in 1992 compared to 1991.

U.S. aggregate imports of crude oil increased in 1992 compared to 1991.

Exploration and drilling activity in the crude oil and natural gas industry is particularly sensitive to the level of imports and changes in the price level of crude oil. The impact of crude oil imports and reduced price levels has resulted in sharply declining U.S. exploration and drilling activity.

In January 1993, Chuska Energy and its affiliate Sunfield Energy were acquired by Harken Energy Corporation whose workers are certified eligible under TA–W–28,484 and TA–W–28,485.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with crude oil and natural gas contributed importantly to the decline in sales and to the total or partial separation of workers at Chuska Energy Company and its affiliate, Sunfield Energy Company, both in Denver, Colorado. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers of Chuska Energy Company and Sunfield Energy Company, Denver, Colorado who became totally or partially separated from employment on or after June 10, 1992 and before January 1, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 9th day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–28503 Filed 11–18–93; 8:45 am]

BILLING CODE 4510–30–M

[TA–W–28,733, et al.]

Wang Laboratories, Inc.; Revised Determination on Reopening

In the matter of TA–W–28,733 INDUSTRIAL AVENUE PLANT, LOWELL, MA, TA–W–28,733A REGIONAL SUPPORT CENTER, DALLAS, TX, TA–W–28,733B PAWTUCKET BOULEVARD HQS, LOWELL, MA, TA–W–28,733C METHUEN, MA, TA–W–28,733D TEWKSBURY, MA.

On November 5, 1993, the Department, at the request of the company, reopened its investigation for workers and former workers of the subject firm. The initial investigation resulted in a certification for workers in Lowell, Massachusetts and Dallas, Texas. The certification notice was published in the **Federal Register** on October 29, 1993 (58 FR 58188).

New investigation findings on reopening show that Methuen and Tewksbury production was integrated with that of Lowell and that their sales and employment data was combined with Lowell's.

The findings show that worker separations occurred both at Methuen and Tewksbury in 1992 and in 1993. Both facilities experienced a reduction in orders from Lowell. The findings also show that Methuen produced the printed circuit boards (PCBs) for the computers produced at Lowell. The Tewksbury facility was a distribution and repair center.

Other findings show that Wang Laboratories has two locations in Lowell, Massachusetts—the Industrial Avenue and Pawtucket Boulevard sites both of which had worker separations in 1992 and in 1993. The termination date of October 7, 1993 is removed for the Massachusetts locations since worker separations continue to occur. The Dallas facility closed in April, 1993.

Conclusion

After careful consideration of the new facts obtained on reopening, it is concluded that increased imports of articles like or directly competitive with computers produced by Wang Laboratories, Inc., in Lowell, Massachusetts contributed importantly to the decline in sales and production and to the total or partial separation of workers at Lowell, Methuen, and Tewksbury, Massachusetts and Dallas, Texas.

In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

All workers and former workers of Wang Laboratories, Inc., at the Industrial Avenue plant and the Pawtucket Boulevard headquarters both in Lowell, Massachusetts; in Methuen, Massachusetts and Tewksbury, Massachusetts who became totally or partially separated from employment on or after May 21, 1992 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974 and all former workers of the Regional Support Center of Wang Laboratories, Inc., in Dallas, Texas who became totally or partially separated from employment on or after May 21, 1992 and before October 7, 1993 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 8th day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Service, Unemployment Insurance Service.

[FR Doc. 93-28504 Filed 11-18-93; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Interstate Thermal Energy Conversion Corp. (ITEC)

[Docket No. M-93-298-C]

Interstate Thermal Energy Conversion Corporation (ITEC), P.O. Drawer 1187, Uniontown, Pennsylvania 15401 has filed a petition to modify the application of 30 CFR 75.380(d)(3) (escapeways; bituminous and lignite mines) to its Clyde Mine (I.D. No. 36-00967) located in Washington County, Pennsylvania. Due to deteriorating roof conditions in the 2 West Return Escapeway at intersections from #5 entry 5+55.30 to #2 entry 2+40.51 2 West Drain Entries and the overcast in Hawkins North air courses, the petition proposes to have an escapeway clearance height of 4 feet 6 inches instead of the required 5 feet. The petitioner states that mining equipment cannot be brought in to clean up the area due to the location and soft bottoms, that additional roof supports such as cribs, posts, and timbers have been installed in the return escapeway, and that clean up work which would have to be done by hand in order to remove the supports would be dangerous to the workers. In addition, the petitioner asserts that the proposed alternate method would not adversely affect the health or safety of the miners.

2. Clinchfield Coal Co.

[Docket No. M-93-299-C]

Clinchfield Coal Company, P.O. Box 4000, Lebanon, Virginia 24266 has filed a petition to modify the application of 30 CFR 75.1710-1(a) (canopies or cabs; self-propelled electric face equipment; installation requirements) to its Camp Branch No. 1 Mine (I.D. No. 44-00280) located in Dickenson County, Virginia. Due to seam and equipment heights, the petitioner proposes to operate Joy 21SC center-driven shuttle cars and 488 S & S scoops without canopies. The petitioner states that the use of canopies on the electric face equipment would result in a diminution of safety to the equipment operator.

3. Windsor Coal Co.

[Docket No. M-93-300-C]

Windsor Coal Company, P.O. Box 39, West Liberty, West Virginia 26074 has filed a petition to modify the application of 30 CFR 75.364(b) (1) & (2) (weekly examination) to its Windsor Mine (I.D. No. 46-01286) located in Brooke County, West Virginia. Due to deteriorating roof conditions in the East Mains from the #8 entry of 1 South to the Mouth of the East Mains of the return air course, the petitioner proposes to establish three check points at specific locations to monitor for methane and the quantity and quality of air entering the affected area on a weekly basis and record the test results in a book that would be kept on the surface. The petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

4. Levisa Coal, Inc.

[Docket No. M-93-301-C]

Levisa Coal, Inc., HC 65, Box 50, Regina, Kentucky 41559 has filed a petition to modify the application of 30 CFR 75.1710-1 (canopies or cabs; self-propelled electric face equipment; installation requirements) to its No. 3 Mine (I.D. No. 15-11276) located in Pike County, Kentucky. Due to descending grades and dips in the coal bed, the petitioner proposes to operate the four 21SC shuttle cars, three Joy miners, and Galis roof bolting machines without canopies. The petitioner states that the use of canopies on the electric face equipment would limit the operator's visibility and create a hazard to the equipment operator and other employees. As a result, the installation of canopies could be a contributing factor in any accidents that may arise.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 20, 1993. Copies of these petitions are available for inspection at that address.

Dated: November 10, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93-28494 Filed 11-18-93; 8:45 am]

BILLING CODE 4510-43-P

Occupational Safety and Health Administration

[Docket No. NRTL-1-88]

MET Laboratories, Inc., Notice of Expansion of Current Recognition

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of Expansion of Current Recognition as a Nationally Recognized Testing Laboratory.

SUMMARY: This notice announces the Agency's final decision on the MET Laboratories, Inc. application for expansion of its recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7.

FOR FURTHER INFORMATION CONTACT:

Office of Variance Determination, NRTL Recognition Program, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Final Decision

MET Laboratories, Inc. (MET), (formerly MET Electrical Testing Company, Inc.), previously made application pursuant to section 6(b) of the Occupational Safety and health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7, for recognition as a Nationally Recognized Testing Laboratory (see 53 FR 49258, 12/6/88), and was so recognized (see 54 FR 21136, 5/16/89).

MET initially applied for expansion of its current recognition as a Nationally Recognized Testing Laboratory for two test standards pursuant to 29 CFR 1910.7 which was granted as published in the **Federal Register** on June 7, 1990 (55 FR 23311–12). (See Exhibit 9.).

Subsequent to that, MET again applied for an expansion of its recognition for twelve standards pursuant to 29 CFR 1910.7 which was granted as published in the **Federal Register** on May 31, 1991 (56 *FR* 24845–46). (See Exhibit 12.).

Following both of these expansions, MET applied for an expansion of its recognition for additional three standards. [See **Federal Register** notice dated July 13, 1993 (58 *FR* 37752, Exhibit 13.)]

Notice is hereby given that MET's recognition as a Nationally Recognized Testing Laboratory has been expanded to include the three test standards (product categories) listed below.

Copies of all pertinent documents (Docket No. NRTL–1–88), are available for inspection and duplication at the Docket Office, Room N–2634, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. The address of the concerned laboratory is: MET Laboratories, Inc., 914 West Patapsco Avenue, Baltimore, Maryland 21230.

Final Decision and Order

Based upon the facts found as part of the MET Laboratories, Inc. original recognition, including details of necessary test equipment, procedures, and special apparatus or facilities needed, adequacy of staff, the application(s) and documentation submitted by the applicant (see Exhibit 14. A.), the OSHA staff finding including the original On-Site Review Report, and previous on-site audits, as well as the evaluation of the current request (see Exhibit 14. B.), OSHA finds that MET Laboratories, Inc. has met the requirements of 29 CFR 1910.7 for expansion of its present recognition to test and certify certain equipment or materials.

Pursuant to the authority in 29 CFR 1910.7, the MET Laboratories, Inc. recognition is hereby expanded to include the three additional test standards (product categories) cited below, subject to the conditions listed below. This recognition is limited to equipment or materials which, under 29 CFR part 1910, require testing, listing, labeling, approval, acceptance, or certification by a Nationally Recognized Testing Laboratory. This recognition is limited to the use of the following three additional test standards for the testing and certification of equipment or materials included within the scope of these standards.

MET has stated that these standards are used to test equipment or materials which can be used in environments under OSHA's jurisdiction, and OSHA has determined that they are appropriate within the meaning of 29 CFR 1910.7(c).

UL 763—Motor-Operated Commercial Food Preparing Machines
ANSI/UL 859—Personal Grooming Appliances
ANSI/UL 1409—Low-Voltage Video Products Without Cathode-Ray-Tube Displays

MET Laboratories, Inc., must also abide by the following conditions of this expansion of its recognition, in addition to those already required by 29 CFR 1910.7:

This recognition does not apply to any aspect of any program which is available only to qualified manufacturers and is based upon the NRTL's evaluation and accreditation of the manufacturer's quality assurance program;

The Occupational Safety and Health Administration shall be allowed access to MET's facilities and records for purposes of ascertaining continuing compliance with the terms of its recognition and to investigate as OSHA deems necessary;

If MET has reason to doubt the efficacy of any test standard it is using under this program, it shall promptly inform the test standard developing organization of this fact and provide that organization with appropriate relevant information upon which its concerns are based;

MET shall not engage in or permit others to engage in any misrepresentation of the scope or conditions of its recognition. As part of this condition, MET agrees that it will allow no representation that it is either a recognized or an accredited Nationally Recognized Testing Laboratory (NRTL) without clearly indicating the specific equipment or material to which this recognition is tied, or that its recognition is limited to certain products;

MET shall inform OSHA as soon as possible, in writing, of any change of ownership or key personnel, including details;

MET will continue to meet the requirements for recognition in all areas where it has been recognized; and

MET will always cooperate with OSHA to assure compliance with the letter as well as the spirit of its recognition and 29 CFR 1910.7.

EFFECTIVE DATE. This recognition will become effective on November 19, 1993, and will be valid until May 16, 1994, (a period of five years from the date of the original recognition, May 16, 1989), unless terminated prior to that date, in accordance with 29 CFR 1910.7.

Signed at Washington, DC this 5th day of November, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–28506 Filed 11–18–93; 8:45 am]

BILLING CODE 4510–26–M

[Docket No. NRTL–3–92]

TUV Rheinland of North America, Inc.

AGENCY: Occupational Safety and Health Administration, Department of Labor.

ACTION: Notice of application for recognition as a Nationally Recognized Testing Laboratory, and preliminary finding.

SUMMARY: This notice announces the application of TUV Rheinland of North America for recognition as a Nationally Recognized Testing Laboratory (NRTL) under 29 CFR 1910.7, and presents the Agency's preliminary finding.

DATES: The last date for interested parties to submit comments is January 18, 1994.

ADDRESSES: Send comments to: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, 3NW., Room N3653, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: NRTL Recognition Program, Office of Variance Determination, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Room N3653, Washington, DC 20210.

SUPPLEMENTARY INFORMATION:

Notice of Application

Notice is hereby given that TUV Rheinland of North America, Inc. (TUV) has made application pursuant to section 6(b) of the Occupational Safety and Health Act of 1970, (84 Stat. 1593, 29 U.S.C. 655), Secretary of Labor's Order No. 1–90 (55 FR 9033), and 29 CFR 1910.7 for recognition as a Nationally Recognized Testing Laboratory.

The address of the laboratory covered by this application is: TUV Rheinland of North America, Inc., 12 Commerce Road, Newtown, Connecticut 06470.

Regarding the merits of the application, the applicant contends that it meets the requirements of 29 CFR 1910.7 for recognition to certify products in the areas of testing which it has specified.

TUV Rheinland of North America, Inc. believes that for each item of equipment or material to be certified, it has the capability (including proper testing equipment and facilities, trained staff, written testing procedures, and calibration and quality control programs) to perform testing and examination of equipment and materials for workplace safety purposes to determine conformance with appropriate test standards. Exhibit 2. A., Att. 10, Quality Manual, Rev. B, dated May 1991, has been revised several times since the submittal of the original application. The most recent revision of the Quality Manual, Exhibit 2. G., Rev. 1.0, dated 06–1993, contains sections dealing with organization; documentation control; equipment, testing and measuring; maintenance; calibration and checking; test methods and procedures; test records and reports; verification of results; quality records; and internal quality audits, among other items. The applicant also submitted a copy of its Procedure Manual, Exhibit 2. E., Att. 6, dated March 1992, including sections pertaining to complaints (PM 260) and follow-up procedures (PM 124). OSHA suggested (Exhibit 2. F.) other sections be added to the Quality Manual, which was subsequently done (see Exhibit 2. G.). The Procedure Manual (and the additional sections found in Exhibit 2. G.) includes, among other things, written procedures for those items covered in the Quality Manual, such as: Instrument calibration and checking; test records and reports; file construction, procedure, and review; internal quality audits; handling of samples; verification of results; first and follow-up factory inspections, and field audits.

TUV owns a 13,200 square foot building located in an industrial park. The laboratory moved to its present location in 1990. More than half of the floor space in the building is used for product testing, engineers' offices, and storage. The product testing laboratory includes some 1800 square feet of floor space. TUV states that it is its policy to maintain and monitor environmental conditions of the test area. Access to the test area is restricted to authorized TUV personnel, and all test equipment is maintained in such a manner as to protect them for deterioration. Further, in addition to the installation of a sprinkler system installed throughout the building, the applicant has a security and fire alarm system monitored by a contracted security service and the local police.

According to the applicant, TUV Rheinland of North America, Inc. is an independent testing laboratory. Further, it maintains that it is a 100% owned subsidiary of TUV Rheinland e.V., Cologne, Germany, and that the NRTL program will be independently carried out by TUV Rheinland of North America, Inc., only at its Newtown, Connecticut facility (see Exhibit 2. C., p 2 of cover letter, and Attachments 2, 3, and 4). According to a statement in Exhibit 2. E., Att. 5, TUV Rheinland of North America, Inc., was incorporated in the state of Delaware in 1983.

The applicant claims to maintain effective procedures for producing creditable findings or reports that are objective and without bias. The TUV Quality Manual, Example 2. G., Rev. 1.0, dated 06–1993, outlines operational procedures for all testing performed at the facility. It also contains pertinent information on maintenance and calibration of testing and measuring equipment.

TUV states that it maintains effective procedures for handling complaints and disputes under a fair and reasonable system. The Procedure Manual states that all complaints by clients and any interested parties, whether in writing or by phone, are to be handled by its Complaint Review Board in a timely manner.

The internal complaint procedure is outlined in this Manual.

The applicant maintains that it provides for the implementation of control procedures for identifying the listed and labeled equipment or materials, inspection of the production runs of such items as factories for product evaluation purposes to assure conformance with applicable test standards, and the conducting of field inspections to monitor and to assure the proper use of its identifying mark or labels on products. The applicant states that it has pertinent experience in third-party testing and certification inasmuch as it has been testing and certifying electrical products to EN 60 950/IEC 950 since that standard's inception. The UL 1950 test standard, for which TUV has requested accreditation from OSHA, was derived directly from this EN/IEC standard to achieve harmony in domestic and European safety requirements. TUV further states that it has over one thousand products "licensed" (certified) to these (EN 60 950/IEC 950) standards. As part of the EN 60 950/IEC 950 certification, TUV has performed services including plant inspections, authorization of identification label or mark application, follow-up inspections, and a publication of a list of tested/licensed equipment to the EN 60 950 standard. The applicant has also stated that it has applied and is awaiting final approval of its registered certification mark, and has enclosed a copy of what was submitted to the U.S. Patent and Trademark Office (see Ex. 2. E., and Att. 1). Appendix A of the Quality Manual in Exhibit 2. G. details the TUV Follow-Up Inspection Procedure (NRTL), including the required four unannounced follow-up inspections to be conducted annually. The latest version of the Quality Manual (Exhibit 2. G., Appendix A) also specifies a minimum annual random sampling of a unit in the field and specifies subjecting it to normal follow-up inspections at the Newtown facility (see Ex. 2. G.)

Background

TUV Rheinland of North America, Inc. maintains that it is a privately held Product Safety and Quality Assurance Testing firm with offices throughout the United States and Canada. However, only the Newtown facility will be involved in the NRTL program. TUV claims further that it is 100% owned by TUV Rheinland e.V. in Cologne, Germany. The only facility for which TUV has requested recognition is its North American Headquarters located in Newtown, Connecticut (see Exhibit 2. C., p 2 of cover letter, and Attachments 2, 3, and 4). TUV Rheinland of North America, Inc. is a U.S. corporation incorporated in the state of Delaware in 1983 (See Ex. 2. E., Att. 5).

TUV states that it has 12 employees at the laboratory site currently involved in testing and evaluation, all of whom are considered key personnel (Exhibit 2. E.). They include an Executive Vice President who is the senior manager responsible for the NRTL program; an Engineering (Technical) Manager responsible for NRTL activities at the

Connecticut facility; a Division Manager of QA Services responsible for ISO 9000 services and external quality assurance; a Manager of the Follow-Up Department responsible for NRTL activities of the program; a Lab Supervisor responsible for testing laboratory activities; a Senior Technician responsible for testing NRTL product submittals; two Senior Engineers (project engineer), and an additional Engineer responsible for evaluating NRTL products; a QA Administer who administers the follow-up program; a Follow-up Inspector for the NRTL program; and a QA Certification Officer responsible for compliance to TUV Rheinland internal quality assurance standards. Resumes are included in the application for all of these individuals (Example 2. E., Att. 2).

The applicant has also identified more than 60 pieces of test equipment it uses to perform the testing required by the standards. Test equipment is available in the laboratory to perform the testing specified in the standard for which recognition has been requested.

TUV Rheinland of North America, Inc., desires recognition for testing and certification of products when tested for compliance with the following test standard, which is appropriate within the meaning of 29 CFR 1910.7(c).

ANSI/UL 1950—Information Technology Equipment Including Electrical Business Equipment

Preliminary Finding

TUV Rheinland of North America, Inc., addressed all of the criteria which must be met for recognition as an NRTL in its initial application and in its supplemental correspondence. For example, the applicant submitted a list of its test equipment and instrumentation; a roster of its personnel including resumes of those in key positions and copies of position descriptions; copies of a typical test report, a factory inspection form and an inspection summary; a summary of its listing, labeling, and follow-up services; a statement of its independence as a testing laboratory; and a copy of its Quality Manual including a description of its documentation, calibration system, appeals procedure, recordkeeping and operational procedures, internal quality audits, first factory and follow-up factory inspections, and verification of results. Nine major areas were examined in depth during the on-site laboratory evaluation: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel evaluation: facility; test equipment; calibration program; test and evaluation procedures; test reports; records; quality assurance program; follow-up listing program; and personnel.

The discrepancies noted during the evaluation [Ex. 3. A.(1)] were adequately responded to prior to the preparation of the survey report and are included as attached to the survey report [Ex. 3. B. and C.].

With the preparation of the final report concerning the Newtown facility of TUV Rheinland of North America, Inc., the survey team was satisfied that the testing facility appeared to meet the necessary criteria required by 29 CFR 1910.7, and so noted this in the On-Site Review Report (Survey). (See Ex. 3. A.).

Following a review of the application file and the on-site survey report of the TUV Newtown facility, the NRTL Recognition Program staff concluded that the applicant appeared to have met the requirements for recognition as a Nationally Recognized Testing Laboratory and, therefore, recommended to the Assistant Secretary that the application be preliminarily approved.

Based upon a review of the completed application file and the recommendation of the staff, the Assistant Secretary has made a preliminary finding that the Newtown facility of TUV Rheinland of North America, Inc., can meet the requirements for recognition as set forth in 29 CFR 1910.7.

All interested members of the public are invited to supply detailed reasons and evidence supporting or challenging the sufficiency of the applicant's having met the requirements for recognition as a Nationally Recognized Testing Laboratory, as well as Appendix A, of 29 CFR 1910.7. Submission of pertinent written documents and exhibits shall be made no later than January 18, 1994 and must be addressed to the NRTL Recognition Program, Office of Variance Determination, Room N 3653, Occupational Safety and Health Administration, U.S. Department of Labor, Third Street and Constitution Avenue, NW., Washington, DC 20210. Copies of the TUV application, the laboratory survey report, and all submitted comments, as received, (Docket No. NRTL–3–92), are available for inspection and duplication at the Docket Office, room N 2634, Occupational Safety and Health Administration, U.S. Department of Labor, at the above address.

The Assistant Secretary's final decision on whether the applicant satisfies the requirements for recognition as an NRTL will be made on the basis of the entire record including the public submissions and any further proceedings that the Assistant Secretary may consider appropriate in accordance with Appendix A of § 1910.7.

Signed at Washington, DC. this 5th day of November, 1993.

David C. Zeigler,

Acting Assistant Secretary.

[FR Doc. 93–28507 Filed 11–18–93; 8:45 am]

BILLING CODE 4510–25–M

Pension and Welfare Benefits Administration

[Application Numbers D–9395, D–9396]

Proposed Amendment to Prohibited Transaction Exemption 93–33 (PTE 93–33) for the Receipt of Certain Services by Individuals for Whose Benefit Individual Retirement Accounts or Retirement Plans for Self-Employed Individuals Have Been Established or Maintained

AGENCY: Pension and Welfare Benefits Administration, U.S. Department of Labor.

ACTION: Notice of proposed amendment to PTE 93–33.

SUMMARY: This document contains a notice of pendency before the Department of Labor of a proposed amendment to PTE 93–33. PTE 93–33 is a class exemption that permits the receipt of services at reduced or no cost by an individual for whose benefit an individual retirement account (IRA) or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank, provided the conditions of the exemption are met. The proposed amendment, if adopted, would affect individuals with a beneficial interest in the IRAs and Keogh Plans who receive such services as well as the banks that provide such services.

DATES: If adopted, the proposed amendment would be effective as of May 11, 1993, the effective date of PTE 93–33. Written comments and requests for a public hearing should be received by the Department on or before January 3, 1994.

ADDRESSES: All written comments and requests for a public hearing (preferably three copies) should be addressed to the U.S. Department of Labor, Office of Exemption Determinations, Pension and Welfare Benefits Administration, room N–5649, 200 Constitution Avenue NW., Washington, DC 20210. (ATTN: D–9395 and D–9396).

FOR FURTHER INFORMATION CONTACT: Ms. Allison K. Padams, Office of Exemption Determinations, Pension and Welfare

Benefits Administration, U.S. Department of Labor, (202) 219–8971 (this is not a toll-free number); or Ms. Susan E. Rees, Plan Benefits Security Division, Office of the Solicitor, U.S. Department of Labor, (202) 219–9141 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Notice is hereby given of the pendency before the Department of a proposed amendment to PTE 93–33 (58 FR 31053, May 28, 1993). PTE 93–33 provides relief from the restrictions of sections 406(a)(1)(D) and 406(b) of the Employee Retirement Income Security Act of 1974 (ERISA) and the sanctions resulting from the application of sections 4975 (a) and (b), 4975(c)(3) and 408(e)(2) of the Internal Revenue Code of 1986 (the Code) by reason of section 4975(c)(1) (D), (E), and (F) of the Code.[1] The amendment to PTE 93–33 proposed herein was requested in an exemption application dated April 19, 1993 filed on behalf of Citibank, N.A., (Citibank) and the Chase National Bank, N.A., (Chase) (the Applicants). The Applicants are national banks regulated by the Office of the Comptroller of the Currency. As of January 1993, the Applicants were trustees for approximately 650,000 IRA and Keogh Plans with approximately $65 billion in assets.

The Department is proposing the amendment to PTE 93–33 pursuant to section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR Part 2570, subpart B (55 FR 32836, August 10, 1990).

PTE 93–33 permits the receipt of services at reduced or no cost by an individual for whose benefit an IRA or Keogh Plan is established or maintained or by members of his or her family, from a bank pursuant to an arrangement in which the deposit balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided the conditions of the exemption are met.

The Applicants have requested an amendment to section III(d) of PTE 93–33 that would expand the definition of deposit to include IRA and Keogh Plan investments in securities for which market quotations are readily available. In this regard, section III(d) of PTE 93–33 defines the term deposit balance to mean deposits as that term is defined under 29 CFR 2550.408(b)–4(c)(3).[2]

According to the Applicants, IRA and Keogh Plan assets are currently invested in a variety of investment products including bank deposits, stocks and mutual funds. The Applicants argue that the amendment is appropriate because it would permit individuals to consider a broader range of investment options when making investment decisions with respect to their IRA or Keogh Plans and still take advantage of PTE 93–33 for purposes of receiving reduced or no cost services. In addition, the Applicants state that the current limitation on investments that may be taken into account under PTE 93–33 may cause an individual to consider an investment in a deposit account rather than a common stock mutual fund in order to receive reduced or no cost services. Furthermore, the Applicants argue that IRA and Keogh Plan investors may interpret PTE 93–33 as suggesting that investments in bank deposits are appropriate investments for IRAs and Keogh Plans. Accordingly, the Applicants believe that the amendment would encourage individuals to consider a broad range of investment alternatives for their IRAs and Keogh Plans without regard to whether they receive reduced or no cost services.

In addition, the Applicants state that the rate of return earned on an IRA or Keogh Plan investment in securities for which relief has been requested can be readily determined through the use of market quotations.[3] According to the Applicants, market quotations can be obtained from sources such as broker-dealers, trading or quotation systems, newspapers, and in the case of redeemable shares in an investment company, from the issuer or principle underwriter. Consequently, the requirement that the securities taken into account are those for which there are readily available market quotations assures that there is an independent basis for determining that the conditions of section II(e) have been satisfied.[4]

Based on the arguments presented by the Applicants and the additional protections already embodied in PTE 93–33, it appears to the Department that the safeguards contained in PTE 93–33 would not be diminished by the proposed amendment. IRA and Keogh Plan assets would continue to be well protected under the terms of the exemption. Therefore, the Department has decided to propose relief that modifies section III(d) to include investments in securities for which market quotations are readily available.[5] Thus, under this proposed modification, the bank could not take into account, for purposes of this exemption investments in, among other things, non-publicly traded limited partnerships and real estate investment trusts, foreign currency, futures, commodities and real estate.

Further, the Department notes that the exemption does not provide relief for investments in securities, including the acquisition of interests in collective investment funds, that are offered exclusively to IRA or Keogh Plans by the bank (or its affiliate).[6] Accordingly, the definition of account balance specifically excludes investments in securities offered by the bank exclusively to IRAs and Keogh Plans.

In this regard, the Department requests that interested persons, in addition to other comments, describe how a relationship banking program would operate with respect to investments in securities for which market quotations are readily available, and whether additional safeguards are necessary in order to protect the interests of the participants and beneficiaries of IRA and Keogh Plans.

Notice to Interested Persons

Because many participants ~~in~~ IRAs and Keogh Plans and financial institutions could conceivably be considered interested persons, the only practical form of notice is publication in the **Federal Register**.

General Information

The attention of interested persons is directed to the following:

(1) Before an exemption may be granted under section 408(a) of ERISA and section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the IRAs and Keogh Plans, and their participants and beneficiaries and protective of the rights

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[1] Section 102 of Reorganization Plan No. 4 of 1978 (42 FR 47713, October 17, 1978) generally transferred the authority of the Secretary of the Treasury to issue administrative exemptions under section 4975(c)(2) of the Code to the Secretary of Labor.

[2] 29 CFR 2550.408b–4(c)(3) provides that deposits are any account upon which a reasonable rate of interest is paid, including a certificate of deposit issued by a bank or similar financial institution.

[3] The Department notes that the proposed amendment does not provide relief for any prohibited transactions that may occur in connection with the acquisition or sale by the IRA or Keogh Plan of securities or shares of a mutual fund.

[4] Section II(e) requires that the rate of return on the IRA or Keogh Plan investment is no less favorable than the rate of return on an identical investment that could have been made at the same time at the same branch of the bank by a customer of the bank who is not eligible for (or who does not receive) reduced or no cost services.

[5] For purposes of this exemption, the term "securities for which market quotations are readily available" is derived from Federal securities law, in particular, the Investment Company Act of 1940 and regulations issued thereunder. See *e.g.*, 17 CFR §§ 270.2a–4, 270.17a–7 (1992).

[6] The Department notes that the Applicants have not requested such relief.

of participants and beneficiaries of such plans.

(2) The proposed amendment, if granted, will be supplemental to, and not in derogation of, any other provisions of ERISA and the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction.

(3) If granted, the proposed amendment will be applicable to a transaction only if the conditions specified in the class exemption are met.

Written Comments and Hearing Request

All interested persons are invited to submit written comments or requests for a public hearing on the proposed exemption to the address and within the time period set forth above. All comments will be made a part of the record. Comments and requests for a hearing should state the reasons for the writer's interest in the proposed exemption. Comments received will be available for public inspection with the referenced application numbers at the above address.

Proposed Amendment

Under section 408(a) of ERISA and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B, the Department proposes to amend PTE 93–33 as set forth below:

(1) Section I is amended to read: "Effective May 11, 1993, the restrictions of sections 406(a)(1)(D) and 406(b) of ERISA and the sanctions resulting from the application of section 4975 of the Code, including the loss of exemption of an individual retirement account (IRA) pursuant to section 408(e)(2)(A) of the Code, by reason of section 4975(c)(1)(D), (E) and (F) of the Code, shall not apply to the receipt of services at reduced or no cost by an individual for whose benefit an IRA or, if self-employed, a Keogh Plan, is established or maintained, or by members of his or her family, from a bank pursuant to an arrangement in which the account balance in the IRA or Keogh Plan is taken into account for purposes of determining eligibility to receive such services, provided that each condition of Section II of this exemption is satisfied."

(2) Section II(a) is amended to read: "The IRA or Keogh Plan, the account balance of which is taken into account for purposes of determining eligibility to receive services at reduced or no cost, is established and maintained for the exclusive benefit of the participant covered under the IRA or Keogh Plan, his or her spouse or their beneficiaries."

(3) Section II(d) is amended to read: "For the purpose of determining eligibility to receive services at reduced or no cost, the account balance required by the bank for the IRA or Keogh Plan is equal to the lowest balance required for any other type of account which the bank includes to determine eligibility to receive reduced or no cost services."

(4) Section III(d) is amended to read: "The term account balance means deposits as that term is defined under 29 CFR 2550.408b–4(c)(3), or investments in securities for which market quotations are readily available. For purposes of this exemption, the term account balance shall not include investments in securities offered by the bank (or its affiliate) exclusively to IRAs and Keogh Plans."

Signed at Washington, DC, this 15th day of November 1993.

Alan D. Lebowitz,

Deputy Assistant Secretary of Program Operations, Pension and Welfare Benefits, Administration, U.S. Department of Labor.

[FR Doc. 93–28511 Filed 11–18–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meetings

AGENCY: National Endowment for the Humanities, NFAH.

ACTION: Notice of meetings.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, as amended), notice is hereby given that the following meetings of the Humanities Panel will be held at the Old Post Office, 1100 Pennsylvania Avenue NW., Washington, DC 20506.

FOR FURTHER INFORMATION CONTACT: David C. Fisher, Advisory Committee Management Officer, National Endowment for the Humanities, Washington, DC 20506; telephone (202) 606–8322. Hearing-impaired individuals are advised that information on this matter may be obtained by contacting the Endowment's TDD terminal on (202) 606–8282.

SUPPLEMENTARY INFORMATION: The proposed meetings are for the purpose of panel review, discussion, evaluation and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in confidence to the agency grant applicants. Because the proposed meetings will consider information that is likely to disclose: (1) Trade secrets and commercial or financial information obtained from a person and privileged or confidential; or (2) information of a personal nature the disclosure of which would constitute a clearly unwarranted invasion of personal privacy, pursuant to authority granted me by the Chairman's Delegation of Authority to Close Advisory Committee meetings, dated July 19, 1993, I have determined that these meetings will be closed to the public pursuant to subsections (c) (4), and (6) of section 552b of title 5, United States Code.

1. *Date:* December 6, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications for projects in Prehistoric Archaeology in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.
2. *Date:* December 9, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications for projects in Historic Archaeology in Interpretive Research, submitted to the Division of Research, for projects beginning after April 1, 1994.
3. *Date:* December 14, 1993
   Time: 9 a.m. to 5 p.m.
   Room: 415
   Program: This meeting will review applications for projects in Archaeology Publication in Interpretive Research, submitted to the Division of Research Programs, for projects beginning after April 1, 1994.

David C. Fisher,

Advisory Committee, Management Officer.

[FR Doc. 93–28490 Filed 11–18–93; 8:45 am]

BILLING CODE 7536–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Education and Human Resources; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Education and Human Resources

Date and time: December 9–10, 1993, 8:30 a.m.–5:30 p.m.

Place: Room #365, 4201 Wilson Blvd., Arlington, VA

Type of meeting: Closed

Contact person: Arturo Bronson, Program Director, RIMI, Human Resource Development, room 815, National Science Foundation, 4201 Wilson Blvd., Arlington, VA Telephone: (703) 306–1634.

Purpose of meeting: To carry out Committee of Visitors (COV) review, including examination of decisions on proposals, reviewer comments, and other privileged materials.

Agenda: To provide oversight review of the Research Improvement In Minority Institutions (RIMI) Program.

Reason for closing: The meeting is closed to the public because the Committee is reviewing proposal actions that will include privileged intellectual property and personal information that could harm individuals if they were disclosed. If discussions were open to the public, these matters that are exempt under 5 U.S.C. 552b(c) (4) and (6) of the Government in the Sunshine Act would be improperly disclosed.

Dated: November 16, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28508 Filed 11–18–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 51–344]

Portland General Electric Co. et al., Trojan Nuclear Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption for 10 CFR 50.120. This exemption would be granted to the Portland General Electric Company (the licensee) for the Trojan Nuclear Plant (Trojan) located in Columbia County, Oregon.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training program establishment, implementation, and maintenance requirements of 10 CFR 50.120. By letters dated August 10, October 14, and October 21, 1993, the licensee requested this exemption.

The Need for the Proposed Action

The purpose of 10 CFR 50.120 is to ensure that civilian nuclear power plant operating personnel are trained and qualified to safely operate and maintain the facility commensurate with the safety status of the plant. The proposed action would grant an exemption from the training requirements of 10 CFR 50.120 for the Trojan plant. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel. The licensee requested this exemption in letters dated August 10, October 14, and October 21, 1993.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

The licensee stated in their submittal of October 14, 1993, that there are no credible accident scenarios at Trojan that could result in offsite doses greater than a small fraction of the U.S. Environmental Protection Agency Protective Action Guidelines. Furthermore, the level of personnnel activity at Trojan is low compared to an operating reactor facility and the existing training programs are deemed acceptable, given the low level of activity at the site and the shutdown and defueled status of the plant.

Based on our review of the August 10, October 14, and October 21, 1993, submittals, the staff concludes that accidents which may potentially result in a radiological release are greatly decreased given the permanently shutdown and defueled status of Trojan.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluent and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the final environmental statement for the Trojan Nuclear Plant, dated August 1973.

Agencies and Persons Consulted

The NRC staff consulted with representatives of the State of Oregon Department of Energy regarding the environmental impact of the proposed action. The State representative contacted had no comment.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment. The Commission has determined not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee submittals dated August 10, October 14, and October 21, 1993, which are available for public inspection at the Commission at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local Public Document Room for the Trojan Nuclear Plant at the Branford Price Millar Library, Portland State University, Portland, Oregon 97207.

Dated at Rockville, Maryland, this 12th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28501 Filed 11–18–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–206]

Southern California Edison Co., San Onofre Nuclear Generating Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from 10 CFR 50.120. The exemption would be granted to the Southern California Edison Company (the licensee) for the San Onofre Nuclear Generating Station, Unit 1 located in San Clemente, California.

Environmental Assessment

Identification of Proposed Action

The NRC, on its own motion, is considering granting an exemption from the training program establishment, implementation, and maintenance requirements of 10 CFR 50.120. The licensee in its letter dated August 2, 1993, provided information supporting this action.

The Need for the Proposed Action

San Onofre Nuclear Generating Station, Unit 1 permanently ceased power operation in November 1992, fuel has been moved from the reactor to the spent fuel pool, and the licensee has developed detailed plans to decomission the facility. The proposed exemption would relieve the licensee from the training requirements of 10 CFR 50.120. However, it would not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

The licensee submitted a safety analysis in their letter of August 2, 1993, which analyzed the most credible accidents with the fuel stored in the spent fuel pool. The licensee noted that the only accidents in Chapter 15 of the Updated Final Safety Analysis Report which remain credible for this facility are a fuel handing accident and a loss of offsite electrical power event. The licensee noted the likelihood of the fuel handling accident is much less than if the plant were operational, since fuel movement will probably occur only one more time in the next 20 years, as compared to approximately every 18 months when the plant was operating. The licensee in its letter dated November 5, 1993, requesting approval to remove SONGS 1 from the site offsite emergency plan, provided the results of a fuel handling accident based on current plant conditions. The results of this new analysis are a two-hour dose to the thyroid of 0.5 mrem and a two-hour whole body dose of 1.3 mrem, at the exclusion area boundary. Thus, the consequences of the limiting design basis accident for the SONGS 1 facility are significantly less than 10 CFR Part 100, and significantly less than the EPA protection action guidelines of 1 to 5 rem. Further, the licensee stated that the consequences of a loss of offsite power are minimal since electrical power will not be needed to prevent boiling in the spent fuel pool.

Based on the staff review of the licensee submittals, the staff concludes that the environmental and safety consequences of accidents which may potentially result in a radiological release are greatly decreased given the permanently shutdown and defueled status of the San Onofre Nuclear Generating Station, Unit 1. In addition, the level of personnel activity at San Onofre Nuclear Generating Station, Unit 1 is low compared to an operating reactor facility and the existing training programs are deemed acceptable, given the low level of activity at the site and the shutdown and defueled status of the plant.

The continuation of the existing training program requirements and commitments is sufficient to assure safety of a permanently defueled facility and does not increase the probability or consequences of any accidents. No changes are being made in the types of any effluents that may be released offsite and there is not significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that the proposed action would result in no significant radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the San Onofre Nuclear Generating Station, Unit 1.

Agencies and Persons Consulted

The NRC staff consulted with the State of California regarding the environmental impacts of the proposed action.

Finding of No Significant Impact

Based upon the foregoing environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Accordingly, the NRC has determined, pursuant to 10 CFR 51.31, not to prepare an environmental impact statement for the proposed action.

For further details with respect to this action, see the licensee letter dated August 2, 1993, which is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the Local Public Document Room at the Main Library, University of California, Post Office Box 19557, Irvine, California 92713.

Dated at Rockville, Maryland, this 12th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28499 Filed 11–18–93; 8:45 am]

BILLING CODE 7590–01–M

Docket No. 50–029

Yankee Atomic Electric Co., Yankee Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of an exemption from CFR 50.54(y) for the Yankee Nuclear Power Station (YNPS or the plant). This exemption would be granted to the Yankee Atomic Electric Company (Yankee or the licensee) for YBNPS which is located in Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the requirements of 10 CFR 50.54(y) to Yankee in response to the licensee request of September 24, 1993. This regulation states that, as a minimum, a licensed senior operator may approve any emergency action that departs from either a license condition or technical specification when permitted by 10 CFR 50.54(x).

The Need for the Proposed Action

The YAEC letter of September 24, 1993, stated that the plant has

permanently ceased power operation and that all nuclear fuel has been removed from the containment to the spent fuel pool and that the licensed operator positions have been eliminated at Yankee through an NRC license amendment dated July 22, 1992. The licensee requested that 10 CFR 50.54(y) exemption so that the certified fuel handler (CFH) position could replace the licensed senior operator in regard to the authority to take the requisite emergency actions under 10 CFR 50.54(x). The NRC approved the CFH position in a letter dated June 16, 1992.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

In a request for an exemption from an emergency plan exercise dated May 22, 1992, the licensee submitted a safety analysis which analyzed the most credible accident concerning the fuel in the spent fuel pool. This event was the drop of a fuel bundle and subsequent release of all gaseous radioactive gap activity which is the only remaining design basis accident at the plant. The staff reviewed the YAEC analysis and found the consequences acceptable; our review was conducted as part of our exemption of July 24, 1992; however, the review is also pertinent to this proposed action. In addition, the fuel has now decayed for an additional period of time which further lessens the accident consequences considered in our July 24 exemption.

Based on our review of the September 24, 1993 submittal and our July 24, 1992 exemption, we have concluded that the environmental and safety consequences of accidents which may potentially result in a radiological release are greatly decreased given the plant's permanently shutdown and defueled status and over two years of decay in the fuel.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluents that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the action. This would not reduce environmental impacts of plant operation and would not enhance the protection of the environment nor public health and safety.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in previous reviews for the Yankee Nuclear Power Station.

Agencies and Persons Consulted

The staff consulted with the Commonwealth of Massachusetts regarding the environmental impact of the proposed exemption. The state representative contacted had no comment on the proposed exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action. Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated September 24, 1993, which is available for public inspection at the Commission Public Document Room, 2120 L Street, NW., Washington, DC 20555, and at the local public document room at the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 12th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley, Jr.,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28497 Filed 11–18–93; 8:45 am]

BILLING CODE 7590–01–M

Docket No. 50–29

Yankee Atomic Electric Co.; Yankee Nuclear Power Station; Environment Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (NRC) is considering issuance of a partial exemption to the Training Rule, 10 CFR 50.120. The exemption would be granted to the Yankee Atomic Electric Company (the licensee) for the Yankee Nuclear Power Station (YNPS) located in Franklin County, Massachusetts.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant a partial exemption from the training program establishment, implementation, and maintenance requirements of 10 CFR 50.120. The licensee requested the proposed exemption by letter dated July 28, 1993.

The Need for the Proposed Action

The licensee in its letter of July 28, 1993, stated that it has evaluated its training requirements under 10 CFR 50.120 in light of the permanently defueled status of the plant and determined that the category of Shift Technical Advisor (STA) should be exempted from the requirements of the rule as applied to the YNPS, because the requirement for a STA is no longer applicable to YNPS. License Amendment No. 141 to Facility License DPR–3, dated July 22, 1992, eliminated the requirement for a STA at the plant.

The proposed exemption would relieve the licensee from the training program establishment, implementation, and maintenance requirements for the STA position in 10 CFR 50.120. However, it would not relieve the licensee from previous requirements or commitments to train and qualify facility personnel or from the remaining 10 CFR 50.120 requirements.

Environmental Impacts of the Proposed Action

Based on the staff review of the July 28, 1993 submittal, the staff concludes that the environmental and safety consequences of accidents which may result in a radiological release due to the proposed exemption are non-existent. This conclusion is based on the fact that the STA position is required only at an operating nuclear plant and the STA has no function at a permanently defueled facility.

Therefore, the proposed action does not increase the probability or consequences of any accidents, no

changes are being made in the types of any effluents that may be released offsite, and there is no increase in the allowable individual or cumulative occupational radiation exposure onsite.

Accordingly, the Commission concludes that the proposed action would result in no additional radiological environmental impact.

With regard to potential nonradiological impacts, the proposed action does not affect nonradiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no nonradiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed exemption, the staff considered denial of the exemption. Denial of the request would result in no change in current environmental impacts. Therefore, denial of the proposed exemption or the granting of the exemption would have identical non-existent environmental impacts.

Alternative Use of Resources

This action does not involve the use of any resources not considered in previous reviews for the Yankee Nuclear Power Station. The plant was licensed prior to the requirement for issuance of a Final Environmental Statement.

Agencies and Persons Consulted

The staff consulted with the Commonwealth of Massachusetts regarding the environmental impact of the proposed action. The State representative contacted had no comment on the proposed exemption.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed action. Based upon the foregoing environmental assessment, the staff concludes that the proposed action will not have any effect on the quality of the human environment.

For further details with respect to this action, see the application for exemption dated July 28, 1993, which is available for public inspection at the Commission Public Document Room, 2120 L Street, NW, Washington, DC 20555, and at the local public document room located in the library of the Greenfield Community College, 1 College Drive, Greenfield, Massachusetts 01301.

Dated at Rockville, Maryland, this 12th day of November 1993.

For the Nuclear Regulatory Commission.

Richard F. Dudley,

Acting Director, Non-Power Reactors and Decommissioning Project Directorate, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28498 Filed 11–18–93; 8:45 am]

BILLING CODE 7590–01–M

Nuclear Safety Research Review Committee Meeting of Waste Subcommittee

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of meeting.

The NSRRC Waste Subcommittee will hold a meeting on December 16–17, 1993, in the Main Conference Room of the Center for Nuclear Waste Regulatory Analyses, Building 189, Southwest Research Institute, 6220 Culebra Road, San Antonio, Texas.

The entire meeting will be open to public attendance.

The review to be conducted by the Subcommittee will be a periodic review of accomplishments, status, and plans for research programs in the area of high level waste management safety. The agenda will be as follows:

December 16:

8 a.m.–11:45 a.m.: Introductory remarks; program overview; status of the Department of Energy program; organization of the Center for Nuclear Waste Regulatory Analyses; prioritization of research programs. Repository geologic setting: volcanology of the Basin and Range; field studies of volcanism.

1 p.m.–5:30 p.m.: Repository geologic setting (continued): tectonics and geochemistry. Repository and engineered barrier systems: seismic rock mechanics and integrated waste package experiments.

December 17:

8 a.m.–11:45 a.m.: Geochemical analogs of transport. Repository performance assessment. Hydrology: field and theoretical studies.

1 p.m.–2:30 p.m.: Laboratory visits and thermohydrology.

In Building 57:

2:30 p.m.–5 p.m.: Summary perspective.

Back in Building 189: Committee discussion.

The Subcommittee will report to the full Committee on the facts and analyses discussed at the meeting.

A detailed agenda will be made available at the meeting.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Subcommittee. Questions may be asked only by members of the Committee and the staff. Persons desiring to make oral statements should notify the Nuclear Regulatory Commission staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee may exchange preliminary views regarding matters to be considered during the balance of the meeting. The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff regarding this review.

Further information regarding topics to be discussed, the scheduling of sessions, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by a prepaid telephone class to Mr. George Sege (telephone 301/492–3904) between 8 a.m. and 4:30 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual one or two days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 12, 1993.

George Sege,

Technical Assistant to the Director, Office of Nuclear Regulatory Research.

[FR Doc. 93–28496 Filed 11–18–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF MANAGEMENT AND BUDGET

Management of Federal Information Resources

AGENCY: Office of Management and Budget, Executive Office of the President.

ACTION: Notice.

SUMMARY: The Office of Management and Budget, together with the Information Policy Committee of the Information Infrastructure Task Force, is promoting the establishment of an agency-based Government Information Locator Service (GILS). Comments are requested concerning a draft design concept for the proposed GILS. In addition, a public meeting will be held to solicit views on the proposed GILS. To receive a paper copy of the draft document, or to request an opportunity to speak at the public meeting, please

call the information contact shown below. Persons wishing to attend the public meeting but not be scheduled to speak need not identify themselves in advance.

DATES: Comments on the draft design concept should be received by December 15, 1993. The public meeting will begin at 2:00 p.m. on December 13, 1993, and run until 4:00.

ADDRESSES: Written comments on paper should be sent to Barbara Banks, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3235, New Executive Office Building, Washington, DC 20503. The public meeting will be held in the auditorium at the Department of the Interior, 1849 C Street, NW., Washington, DC.

ELECTRONIC AVAILABILITY AND COMMENTS: In addition to paper copy, the draft design concept will be available on the FedWorld bulletin board. FedWorld can be accessed by using a modem to dial 703/321–8020. No parity, one stop bit and eight data bits. Set terminal emulation to ANSI or connect to fed world. gov by using Internet telnet command. For further instructions to access FedWorld, call 703/487–4608. The document will also be available on the Internet via anonymous File Transfer Protocol (FTC) from 130.11.48.107 as /pub/gils.doc (Microsoft Word for Windows format) or /pub/gils.txt [ASCII text format]. Electronic comments on the draft may be submitted via electronic mail to the following OMB X.400 mail address: /s=gils/c=us/admd=telemail/prmd=gov+eop. (Internet users should add /@sprint.com at the end of the address.)

FOR FURTHER INFORMATION CONTACT: Barbara Banks, Information Policy Branch, Office of Information and Regulatory Affairs, Office of Management and Budget, room 3235, New Executive Office Building, Washington, DC 20503. Telephone: (202) 395–4814.

SUPPLEMENTARY INFORMATION: The Office of Management and Budget, together with the Information Policy Committee of the Information Infrastructure Task Force, is promoting establishment of an agency-based Government Information Locator Service (GILS). OMB Circular A–130 encourages agencies to use new technologies to make government information available to the public in a timely and equitable manner, via a diverse array of sources, both public and private. The Circular states as policy that agencies shall: maintain inventories of all agency information dissemination products; provide information on how the public may access information resources; and, develop aids to locating agency information, included catalogs and directories.

GILS would identify public information resources throughout the Federal Government, describe the information available in those resources and provide assistance in how to obtain the information. It would consist of a decentralized collection of agency-based information locators and associated information services. While GILS would encompass a very wide range of information sources and many mechanisms for finding and delivering information, a "GILS Core" would be specifically defined to be a definitive locator of agency information resources. The GILS Core would be accessible on public networks without charge to direct users.

GILS would be implemented with full protection of individual rights of privacy and intellectual property rights. An evaluation program would also be established to determine the degree to which GILS meets user information needs, including accessibility, ease of use, accuracy and timeliness of information, and completeness of coverage.

The public comment would be served by GILS directly or through intermediaries. Central disseminating agencies such as the Government Printing Office and the National Technical Information Service would act as intermediaries to GILS, as would public libraries and private sector information services offering GILS contents through kiasks, 800 numbers, electronic mail, bulletin boards, FAX, and off-line media such as floppy disks, CD–ROM, and printed works. GILS would supplement, but not necessarily supplant, other agency information dissemination mechanisms and commercial information sources.

GILS would use network technology and the ANSI Z39.50 standard for information search and retrieval, so that information can be retrieved in a variety of ways and so that GILS users can gain access to many other major Federal and non-Federal information resources. The proposed design anticipates that various automated linkages will be used to facilitate electronic delivery of off-the-shelf information products, as well as to guide users to data systems that support analysis and synthesis of information.

Sally Katzen,

Administrator, Office of Information and Regulatory Affairs.

[FR Doc. 93–28570 Filed 11–18–93; 8:45 am]

BILLING CODE 3110–01–M

PHYSICIAN PAYMENT REVIEW COMMISSION

Commission Meeting

AGENCY: Physician Payment Review Commission.

ACTION: Notice of meeting.

SUMMARY: The Commission will hold its next public meeting on Wednesday, December 8 through Friday, December 10, 1993 at the Embassy Suites Downtown Hotel, 1250 22nd Street NW., Washington, DC, in the Consulate Room. The meetings are expected to begin at 9 a.m. each day. Much of the meeting will be devoted to reviewing such areas as cost containment, risk adjustment, the roles of health alliances, establishing fee schedules, ensuring quality, coverage decisions for new technologies, ensuring access for the underserved, graduate medical education, and provisions affecting the Medicare program.

ADDRESSES: The Commission is located at 2120 L Street, NW. in Suite 510, Washington, DC. The telephone number is 202/653–7220.

FOR FURTHER INFORMATION CONTACT: Lauren LeRoy, Deputy Director, or Annette Hennessey, Executive Assistant, at 202/653–7220.

SUPPLEMENTARY INFORMATION: Agendas for the meeting will be available on Thursday, December 2, 1993 and will be mailed out at that time. To receive an agenda, please direct all requests to the receptionist at 202/653–7220.

Paul B. Ginsburg,

Executive Director.

[FR Doc. 93–28476 Filed 11–18–93; 8:45 am]

BILLING CODE 6820–SE–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane, (202) 272–3900.

Upon written request copy available from: Securities and Exchange Commission, Office of Filings, Information and Consumer Services, Washington, DC 20549.

Proposed Revisions:

Form F–1; File No. 270–249
Form F–2; File No. 270–250
Form F–3; File No. 270–251
Form F–4; File No. 270–288
Form 20–F; File No. 270–156
Form 6–K; File No. 270–107
Form 8–K; File No. 270–50

Notice is hereby given pursuant to the Paperwork Reduction Act of 1980 (44

U.S.C. 3501 *et seq.*), that the Securities and Exchange Commission ("Commission") has submitted the following proposed rule revisions for OMB approval.

Forms F–1, F–2, F–3, and F–4 are used to register securities of certain foreign private issuers under the Securities Act of 1933. It is estimated that if the proposed amendments are adopted, approximately 13 respondents would file Form F–1 annually at an estimated 2,205 burden hours per response with a total annual burden of 28,665 hours; 3 respondents would file Form F–2 annually at an estimated 779 burden hours per response with a total annual burden of 2,337 hours; 5 respondents would file Form F–3 annually at an estimated 229 burden hours per response with a total annual burden of 1,145 hours; and 2 respondents would file Form F–4 annually at an estimated 1,324 burden hours per response with a total annual burden of 2,648 hours.

Form 20–F is used to register securities of foreign private issuers under the Securities Exchange Act of 1934 and as an annual report. It is estimated that 133 respondents would file Form 20–F annually at an estimated 2,010 burden hours per response with a total annual burden of 267,330 hours.

Form 6–K is used to file reports of foreign issuers under the Exchange Act. It is estimated that 990 respondents would file Form 6–K annually at an estimated 8 burden hours per response with a total annual burden of 7,920 hours.

Form 8–K is used to disclose current reports under the Exchange Act. It is estimated that 12,150 respondents would file Form 8–K annually at an estimated 5 burden hours per response with a total annual burden of 60,750 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget (Project Nos. 3235–0258; 3235–0257; 3235–0256; 3235–0325; 3235–0288; 3235–0116; 3235–0060), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 9, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28454 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33194; International Series Release No. 611; File No. SR–Amex–91–26]

Self-Regulatory Organizations; Order Granting Partial Approval of Amendment No. 2 to a Proposed Rule Change by the American Stock Exchange Inc., Relating to Listing Options on a Certain Specific American Depositary Receipt

November 12, 1993.

I. Introduction

On August 21, 1992, the American Stock Exchange, Inc. ("Amex" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] Amendment No. 2 to a proposed rule change (File No. SR–Amex–91–26), which requests Commission approval to list and trade options on American Depositary Receipts ("ADRs") representing the shares of Empresas ICA Sociedad Controladora S.A. de C.V. ("Empresas").[3]

Amendment No. 2 to the proposed rule change was published for comment in Securities Exchange Act Release No. 31117 (August 28, 1992), 57 FR 40703 (September 4, 1992). No comments were received on this amendment.[4]

II. Description

On November 27, 1992, the Commission approved a Amex proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[5] First, the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the Amex must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the Amex's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three-month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the Amex rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve-month period, and a minimum price of $5 on a majority of the business days during the preceding six-month period. Additionally, the ADR Approval Order requires the Amex to make reasonable

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[1] 15 U.S.C. 78s(b) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] On October 8, 1991, and May 27, 1992, the Amex submitted to the Commission a proposed rule change, and Amendment No. 1 to the proposed rule change, to provide for the listing and trading of options on ADRs and preferred stock. On November 27, 1992, the Commission granted partial approval of this proposal to permit the listing of options on ADRs where there is a comprehensive surveillance sharing agreement in place between the Amex and the primary exchange on which the foreign security underlying the ADR is listed. *See* Securities Exchange Act Release No. 31529 (November 27, 1992), 57 FR 57248 (December 3, 1992) ("ADR Approval Order"). Amendment No. 2 to the proposed rule change requested, among other things, Commission approval to trade options on ADRs representing shares of Empresas, Sony Corporation ("Sony"), Toyota Motor Corporation ("Toyota"), and Vitro Sociedad Anonima ("Vitro"), all of which primarily trade on exchanges that have not entered into surveillance sharing agreements with the Amex. With respect to ADRs overlying shares of Sony, Toyota, and Vitro, less than 50% of the world-wide volume of the shares and ADRs of these issuers trade in the U.S. ADR market. See letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division of Market Regulation ("Division"), Commission, dated November 2, 1993 ("November 2nd Letter"). Because the primary home markets for trading in shares of these issuers are foreign exchanges with which the Amex has not entered into surveillance sharing agreements covering these products, the Commission cannot at this time give the Amex the authority to list options on ADRs representing the shares of Sony, Toyota, or Vitro. See discussion at *infra* notes 16 through 18, accompanying text.

[4] The Commission did not receive any comments on the Amex's proposal to list options on ADRs and preferred stock. The proposal originally was published for comment in Securities Exchange Act Release No. 29839 (October 18, 1991), 56 FR 55356 (October 25, 1991). Amendment No. 1 was published for comment in Securities Act Release No. 31117 (August 28, 1992), 57 FR 40703 (September 4, 1992). Amendment No. 3 was withdrawn and replaced by Amendment No. 4, which was published for comment in the ADR Approval Order, *supra* note 3.

[5] ADR Approval Order, *supra* note 3. A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the Amex options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

The current proposal would authorize the Amex to list and trade options on ADRs representing the shares of Empresas, even though the Amex does not have a surveillance sharing agreement with the primary exchange on which the foreign securities underlying the ADRs trade. The foreign securities underlying Empresas ADRs trade primarily on the Mexican Stock Exchange, while the ADRs trade primarily on the New York Stock Exchange ("NYSE").[6]

Although the Amex does not have a surveillance sharing agreement with the Mexican Stock Exchange, the Amex does not believe that this will impair its ability to detect or deter potential manipulations of the market in Empresas ADR options because the dominant underlying market for the ADR options is the U.S. ADR market, rather than the Mexican Stock Exchange.[7] Since the Amex, the NASD, and the U.S. exchanges on which Empresas ADRs trade are members of the Intermarket Surveillance Group ("ISG"), the Amex believes that it has the ability to conduct adequate surveillance of trading in Empresas ADR options.[8]

III. Discussion

The Commission finds the portions of the proposed rule change related to the listing of options on ADRS representing shares of Empresas are consistent with the requirements of the Act and rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[9] Specifically, the Commission finds that allowing options to trade on ADRs representing the shares of Empresas, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[10] Further, the pricing of the ADRs underlying Empresas ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[11] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[12]

The Commission also believes that it is appropriate to permit the Amex to list and trade options on Empresas ADRs given that these options will be subject to specific requirements related to the protection of investors. First, Amex rules require that the ADRs underlying these options meet the Amex's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation. Second, the ADR Approval Order requires that the Amex make a reasonable inquiry to evaluate Empresas securities to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the Amex standard. The Commission believes, however, that requiring the Amex to review the securities underlying Empresas ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[13]

Third, the Amex has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving Empresas ADR options. Although the Amex does not have an effective surveillance sharing agreement with the Mexican Stock Exchange, the Commission believes that this does not impair the ability of the Amex to detect or deter manipulation since the majority of the trading activity in these Mexican securities occurs in the U.S. ADR market. The Commission notes that the Amex, the U.S. exchanges on which Empresas ADRs trade, and the NASD are members of the ISG, which will provide for the exchange of necessary surveillance information concerning trading activity in the

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[6] Although the NYSE is the primary market for Empresas ADRs, the ADRs also trade in the United States on the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Pacific Stock Exchange, Inc. ("PSE"), the Philadelphia Stock Exchange, Inc. ("Phlx"), and through the National Association of Securities Dealers, Inc., ("NASD") Automatic Quotation System ("NASDAQ").

[7] The Amex represents that for the three month period ending September 30, 1993, 50% or more of the world-wide trading volume (on a share equivalent basis) in Empresas occurred in the U.S. ADR market. The Amex further represents that if the trading volume in the U.S. market for Empresas ADRs falls below 30% of the world-wide trading volume for Empresas ADRs and stock in any subsequent three month period, the Exchange will not open for trading any additional series of options on Empresas ADRs unless the Amex has in place a comprehensive surveillance sharing agreement with the primary exchange in the home country where the foreign security underlying the ADR is traded or the Commission otherwise authorizes the listing. *See* November 2nd Letter, *supra* note 3.

[8] ISG was formed on July 14, 1993 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. *See* Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. *See* Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the Amex, the BSE, the CBOE, the CHS, the CSE, the NASD, the NYSE, the PSE, and the Phlx.

[9] 15 U.S.C. 78f(b)(5) (1988).

[10] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[11] See *e.g.* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[12] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[13] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

Empreasas ADR options, and the respective underlying ADR market.[14]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option, such as options on Empresas ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace.[15] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchases and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

In the present case, however, the Commission finds that the market for Empresas ADRs is larger than the market for the underlying foreign securities. Specifically, approximately 53% of the world-wide trading volume in Empresas stock and ADRs occurs in the U.S. ADR market, which consists of the NYSE, the BSE, the CHX, the CSE, the PSE, the Phlx, and NASDAQ.[16] The Commission believes that the U.S. market for Empresas ADRs operates as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that Empresas ADRs trade primarily on one U.S. exchange, the NYSE, and all of the markets on which or through which these ADRs cold trade are linked together by the Intermarket Trading System ("ITS").[17] Accordingly, the Commission believes that the U.S. ADR market for Empresas is substantially the price-discovery market for Empresas securities (*i.e.*, stocks and ADRs) and, therefore, is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market.[18] Since both the Amex, the U.S. exchanges on which Empresas ADRs trade, and the NASD are members of the ISG, the Commission believes that there is an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission also notes that the Amex will review the world-wide trading volume for Empresas stock and ADRs to ensure that the primary market for Empresas securities continues to be the U.S. ADR market. Specifically, the Amex has agreed to continue reviewing the percentage of world-wide trading volume in Empresas securities that occurs in the U.S. ADR market. If the average daily trading volume in Empresas stock and ADRs occurring in the U.S. ADR market falls below 30% of world-wide volume, the Amex represents that it will not open for trading any additional series of options on Empresas ADRs unless it has in place a comprehensive surveillance sharing agreement with the Mexican Stock Exchange.[19] Accordingly, the Commission believes that these requirements ensure that if the U.S. ADR market ceases to be the primary market for Empresas securities, the Amex will either obtain the necessary surveillance sharing agreements or "wind down" trading in the product.[20]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[21] that portions of the proposed rule change (File No. SR–Amex-91–26) related to the listing of options on ADRs representing the shares of Empresas are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28479 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

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[14] See supra note 8.

[15] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by comprehensive surveillance sharing agreements. In particular, 78% of the weight of the Index was covered by comprehensive surveillance sharing agreements. For the remaining 22% of the Index, the Commission further recommended that the Amex obtain comprehensive surveillance agreements with the exchanges on which the foreign securities underlying the ADRs trade.

[16] From July, 1993 through September, 1993, the average daily trading volume on the Mexican Stock Exchange for the common shares of Empresas was 129,767 shares (46.87%) and the ADR average daily trading volume was 147,109 ADRs (53.13%). *See* letter from Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, to Richard Zack, Branch Chief, Division, Commission, dated November 8, 1993. The Amex further represents that the Mexican Stock Exchange and the U.S. ADR market are the predominate markets for Empresas securities. Telephone conversation between Claire P. McGrath, Managing Director and Special Counsel, Derivative Securities, Amex, and Monica Michelizzi, Staff Attorney, Division, Commission, on November 5, 1993.

[17] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply-traded securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NASD market makers, for order routing and execution purposes to ITS for Empresas ADRs.

[18] Although the Amex has requested the approval to list and trade options on ADRs representing the shares of Sony, Toyota, and Vitro, the Amex does not have in place surveillance sharing agreements, covering these products, with either the Tokyo Stock Exchange, which is the primary market for trading in Sony or Toyota securities, or the Mexican Stock Exchange, which is the primary market for trading in Vitro securities. See *supra* note 3. Accordingly, the Commission cannot at this time approve proposals to list options on Sony, Toyota, or Vitro ADRs.

[19] November 2nd Letter, *supra* note 3.

[20] *Id.*

[21] 15 U.S.C. 78s(b) (1988).

[22] 17 CFR 200.30–3(a)(12) (1993).

[Release No. 34–33190 ; File No. SR–AMEX–93–35]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Proposed Amendment to the Listing Guidelines Applicable to Equity Linked Term Notes ("ELNs")

November 12, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on November 12, 1993, the American Stock Exchange, Inc. ("AMEX" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the AMEX. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend section 107B ("Equity Linked Term Notes") of the AMEX Company Guide ("Guide") to provide alternative criteria with respect to the market capitalization and trading volume standards applicable to underlying linked securities. The text of the proposed rule change is available at the Office of the Secretary, the AMEX, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the AMEX included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The AMEX has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

On May 20, 1993, the Commission approved the Exchange's proposed amendments to section 107 of the Guide to provide for the listing and trading of Equity Linked Term Notes ("ELNs").[1]

ELNs are intermediate term (two to seven years), non-convertible, hybrid debt securities, the value of which is linked to the performance of a highly capitalized, actively traded common stock. ELNs may provide for periodic interest payments to holders based on fixed or floating rates, or they may be structured as "zero coupon" instruments with no payments to holders prior to maturity.[2] ELNs may be subject to a "cap" on the maximum principal amount to be repaid to holders upon maturity, and they may feature a "floor" on the minimum principal amount paid to holders upon maturity. A specific issue of ELNs, for example, may provide holders with a fixed semi-annual interest payment, a cap of 135% of the issuance price on the maximum amount to be paid upon maturity, and no minimum floor on the principal to be repaid at maturity. Another issue of ELNs might offer lower annual payments based upon a floating rate and a minimum floor principal repayment of 75% of the issuance price. As may be seen, the flexibility available to an issuer of ELNs permits the creation of securities which offers investors the opportunity to more precisely focus on a specific investment strategy. The Exchange currently lists four ELNs issues.[3]

ELNs conform to the general listing criteria under Section 107A of the Guide, which provide that issues have: (1) A minimum public distribution of one million trading units and a minimum of 400 holders; (2) an aggregate market value of at least $20 million; (3) cash settlement in U.S. dollars and a redemption price of at least three dollars where the instrument contains such provisions; and (4) assets of at least $100 million, stockholders' equity of at least $10 million, and pre-tax income of at least $750,000 in the last fiscal year or in two of the three prior fiscal years.[4] ELNs also conform to the special listing criteria of Section 107B of the Guide which provide that: (1) Each issuer have a tangible net worth of at least $150 milion; (2) the total original issue price of the particular issue of ELNs combined with all of the issuer's other ELNs listed on a national securities exchange or traded through the National Association of Securities Dealers, Inc. Automated Quotation system not be greater than 25% of the issuer's tangible net worth at the time of issuance; (3) each underlying linked stock must have a market capitalization of at least $3 billion, and a trading volume in the 12-month period preceding listing (in all markets in which the underlying security is traded) of at least 2.5 million shares; (4) the issuer of the underlying linked stock must be a U.S. reporting company under the Act; and (5) the issuance of ELNs relating to an underlying linked stock may not exceed 5% of the total outstanding shares of such stock.

The Exchange now proposes to amend Section 107B of the Guide to provide alternative criteria with respect to the market capitalization and trading volume standards applicable to an underlying linked security. The Exchange proposes that the underlying linked security either: (1) Have a market capitalization of at least $1.5 billion and a trading volume of 20 million or more shares over the 12-month period prior to listing; or (2) meet the current standard of at least $3 billion in market capitalization and trading volume of at least 2.5 million shares over the 12-month period prior to listing.

The Exchange believes that the proposed amendment will benefit investors by expanding the number of securities that may be linked to ELNs, thereby providing investors with enhanced investment flexibility. The Exchange further believes that the proposed alternative standard for the market capitalization and trading volume guideline applicable to underlying linked securities is a relatively minor change to the ELNs listing criteria which will not affect the market for the underlying linked stocks. The underlying linked stocks will continue to be extremely liquid securities issued by large, well capitalized corporations. Moreover, the remaining guidelines of Section 107B of the Guide with respect to ELNs and underlying linked securities will be unaffected by the proposed amendment. The Exchange therefore believes, that the establishment of an alternative market capitalization and enhanced trading volume standard should not have any adverse impact upon the market for the stocks that are linked to ELNs listed under the new criteria.

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative

[1] See Securities Exchange Act Release No. 32343 (May 20, 1993), 58 FR 30833.

[2] The Exchange has agreed to notify the Commission if an issuer of ELNs provides for periodic interest payments to holders based on a floating rate. *ID.*

[3] The Exchange presently lists two issues of ELNs linked to the common stock of Oracle Systems, Inc., and one each linked to the common stock of Digital Equipment Corporation and Microsoft Corporation.

[4] Issuers not meeting these financial criteria must have assets in excess of $200 million and stockholders' equity of in excess of $10 million, or, alternatively, assets in excess of $100 million and stockholders' equity of at least $20 million.

acts and practices, to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers and dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The AMEX does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the AMEX. All submissions should refer to File No. SR–AMEX–93–35 and should be submitted by December 10, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28480 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33196; International Series Release No. 613; File No. SR–CBOE–92–15]

Self-Regulatory Organizations; Order Granting Partial Approval of a Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to Listing Options on a Certain Specific American Depositary Receipt

November 12, 1993.

I. Introduction

The Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission"), on August 10, 1992, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule changes to list and trade options on American Depositary Receipts ("ADRs") representing the shares of Empresas ICA Sociedad Controladora S.A. de C.V ("Empresas").[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 31122 (August 28, 1992), 57 FR 40707 (September 4, 1992). No comments were received on the proposed rule change.

II. Description

On November 27, 1992, the Commission approved a CBOE proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[4] First, the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the CBOE must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the CBOE's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the CBOE rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period. Additionally, the ADR Approval Order requires the CBOE to make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the CBOE options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities

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[5] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b) (1988).

[2] 17 CFR 240.19b–4(1993).

[3] The CBOE also requested approval to list and trade options on ADRs representing the shares of British Telecommunications PLC ("BT"), Societe Nationale Elf Aquitane ("Elf"), TOTAL, Waste Management International PLC ("WMI"), Wellcome PLC ("Wellcome"), and Vitro Sociedad Anonima ("Vitro"). With respect to ADR options overlying shares of BT, Elf, WMI, and Wellcome, the underlying foreign securities primarily trade on foreign exchanges with which the CBOE has in place comprehensive surveillance sharing agreements. Under current Exchange rules, the CBOE has the authority to list and trade ADR options where the option meets Exchange options listing standards and the CBOE has a comprehensive surveillance sharing agreement with the primary exchange trading the underlying foreign security. Accordingly, the CBOE does not need additional authority to list these ADR options. *See* Securities Exchange Releases No. 31531 (November 27, 1992), 57 FR 57250 (December 3, 1992) ("ADR Approval Order"). With respect to ADR options overlying shares of Vitro, seventy percent of the world-wide trading volume in the foreign securities underlying Vitro ADRs occurs on the Bolsa Mexicana de Valores ("Mexican Stock Exchange"). *See* Letter from Joseph Levin, Vice President, Research and Development, CBOE, to Monica C. Michelizzi, Staff Attorney, Division of Market Regulation ("Division"), Commission, dated September 23, 1993 ("September 23rd Letter"). Because the Mexican Stock Exchange is the primary home market for trading in shares of Vitro and there is not a surveillance sharing agreement between the Mexican Stock Exchange and the CBOE, the Commission cannot at this time given the CBOE the authority to list options on ADRs representing the shares of Vitro. See discussion at *infra* notes 15 through 17 and accompanying text.

[4] ADR Approval order, *supra* note 3. A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

The current proposal would authorize the CBOE to list and trade options on ADRs representing the shares of Empresas, even though the CBOE does not have a surveillance sharing agreement with the primary exchange on which the foreign securities underlying the ADRs trade. The foreign securities underlying Empresas ADRs trade primarily on the Mexican Stock Exchange, while the ADRs trade primarily on the New York Stock Exchange ("NYSE").[5]

Although the CBOE does not have a surveillance sharing agreement with the Mexican Stock Exchange, the CBOE does not believe that this will impair its ability to detect or deter any potential manipulations of the market in Empresas ADR options because the dominant underlying market for the ADR options is the U.S. ADR market, rather than the Mexican Stock Exchange.[6] Since the CBOE, the NASD, and the U.S. exchanges on which Empresas ADRs trade are members of the Intermarket Surveillance Group ("ISG"), the CBOE believes that it has the ability to conduct adequate surveillance of trading in Empresas ADR options.[7]

[5] Although the NYSE is the primary market for Empresas ADRs, the ADRs also trade in the United States on the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Pacific Stock Exchange, Inc. ("PSE"), the Philadelphia Stock Exchange, Inc. ("Phlx"), and through the National Association of Securities Dealers, Inc. ("NASD"), Automatic Quotation System ("NASDAQ").

[6] The CBOE represents that for the three month period ending August 31, 1993, 50% or more of the world-wide trading volume (on a share equivalent basis) in Empresas occurred in the U.S. ADR market. The CBOE further represents that if the trading volume in the U.S. market for Empresas ADRs falls below 30% of the world-wide trading volume for Empresas ADRs and stock in any subsequent three month period, the Exchange will not open for trading any additional series of options on Empresas ADRs unless the CBOE has in place a comprehensive surveillance sharing agreement with the primary exchange in the home country where the foreign security underlying the ADR is traded or the Commission otherwise authorizes the listing. *See* September 23rd Letter, *supra* note 3.

[7] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc. ("Amex"), the BSE, the CBOE, the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx.

III. Discussion

The Commission finds the portions of the proposed rule change related to the listing of options on ADRs representing shares of Empresas are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[8] Specifically, the Commission finds that allowing options to trade on ADRs representing the shares of Empresas, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[9] Further, the pricing of the ADRs underlying Empresas ADR options may become more efficient and market makers in these ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[10] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[11]

The Commission also believes that it is appropriate to permit the CBOE to list and trade options on Empresas ADRs given that these options will be subject to specific requirements related to the protection of investors. First, CBOE rules require that the ADRs underlying these options meet the CBOE's uniform options listing standards in all respects. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

Second, the ADR Approval Order requires that the CBOE make a reasonable inquiry to evaluate Empresas securities to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the Commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the CBOE standard. The Commission believes, however, that requiring the CBOE to review the securities underlying Empresas ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[12]

Third, the CBOE has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving Empresas ADR options. Although the CBOE does not have an comprehensive surveillance sharing agreement with the Mexican Stock Exchange, the Commission believes that this does not impair the ability of the CBOE to detect or deter manipulation since the majority of the trading activity in these Mexican securities occurs in the U.S. ADR market. The Commission notes that the CBOE, the U.S. exchanges on which Empresas ADRs trade, and the NASD are members of the ISG, which will provide for the exchange of necessary surveillance information concerning trading activity in the Empresas ADR options, and the respective underlying ADR market.[13]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option, such as options on Empresas ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and

[8] 15 U.S.C. 78f(b)(5) (1988).

[9] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[10] See *e.g.* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[11] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new products is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[12] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[13] See *supra* note 7.

other trading abuses. In particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the marketplace.[14] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of sec rities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

In the present case, however, the Commission finds that the market for Empresas ADRs is larger than the market for the underlying foreign securities. Specifically, approximately 53% of the world-wide trading volume in Empresas stock and ADRs occurs in the U.S. ADR market, which consists of the NYSE, the BSE, the CHX, the CSE, the PSE, the Phlx, and NASDAQ.[15] The Commission believes that the U.S. market for Empresas ADRs operates as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that Empresas ADRs trade primarily on one U.S. exchange, the NYSE, and all of the markets on which or through which these ADRs could trade are linked together by the Intermarket Trading System ("ITS").[16] Accordingly, the Commission believes that the U.S. ADR market for Empresas is substantially the price-discovery market for Empresas securities (*i.e.*, stocks and ADRs) and, therefore, is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlyng ADR options market.[17] Since both the CBOE, the U.S. exchanges on which Empresas ADRs trade, and the NASD are members of the ISG, the Commission believes that there is an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission also notes that the CBOE will review the world-wide trading volume for Empresas stock and ADRs to ensure that the primary market for Empresas securities continues to be the U.S. ADR market. Specifically, the CBOE has agreed to continue reviewing the percentage of world-wide trading volume in Empresas securities that occurs in the U.S. ADR market. If the average daily trading volume in Empresas stock and ADRs occurring in the U.S. ADR market falls below 30% of world-wide trading volume, the CBOE represents that its will not open for trading any additional series of options on Empresas ADRs unless it has in place a comprehensive surveillance sharing agreement with the Mexican Stock Exchange.[18] Accordingly, these requirements ensure that if the U.S. ADR market ceases to be the primary market for Empresas securities, the CBOE will either obtain the necessary surveillance sharing agreements or "wind down" trading in the product.[19]

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[20] that portions of the proposed rule change (File No. SR–CBOE–92–15) related to the listing of options on ADRs representing the shares of Empresas are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[21]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28478 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33192; File No. SR–CBOE–93–36]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Options on the S&P/Barra Growth Index and the S&P/Barra Value Index

November 12, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 9, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

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[14] See also Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the Untied States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the American Stock Exchange ("Amex") and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by comprehensive surveillance sharing agreements. In particular, 78% of the weight of the Index was covered by comprehensive surveillance sharing agreements. For the remaining 22% of the Index, the Commission further recommended that the Amex obtain comprehensive surveillance agreements with the exchanges on which the foreign securities underlying the ADRs trade.

[15] From June, 1993 through August, 1993, the average daily trading volume on the Mexican Stock Exchange for the common shares of Empresas was 136,121 shares (46.61% and the ADR average daily trading volume was 155,923 ADRs (53.39%). See September 23rd Letter, *supra* note 3. The CBOE further represents that the Mexican Stock Exchange and the U.S. ADR market are the predominate markets for Empresas securities. Telephone conversation between Joseph Levin, Vice President, Research and Development, CBOE, and Monica Michelizzi, Staff Attorney, Division, Commission, on October 22, 1993.

[16] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NADs market makers, for order routing and execution purposes, to ITS for Empresas ADRs.

[17] Although the CBOE has requested the approval to list and trade options on ADRs representing the shares of Vitro, the CBOE does not have in place a surveillance sharing agreement with the Mexican Stock Exchange, which is the primary market for trading in Vitro securities. In addition, the U.S. ADR market for Vitro Securities. See *supra* note 3. Accordingly, the Commission cannot at this time approve proposals to list Vitro ADR options.

[18] September 23rd Letter, *supra* note 1.

[19] *Id.*

[20] 15 U.S.C. 78s(b)(2) (1988).

[21] 17 CFR 200.30–3(a)(12) (1993).

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to list and trade options on the S&P/Barra Growth Index ("Growth Index") and the S&P/Barra Value Index ("Value Index"). (The Growth Index and Value Index are sometimes hereinafter referred to as the "Indexes".) The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to permit the Exchange to list and trade options based on the Value Index and the Growth Index (sometimes hereinafter referred to as "Value options" and "Growth options"). The Indexes are maintained by Barra, Inc. ("Barra") pursuant to a license agreement between Barra and Standard & Poor's ("S&P"). As further described below, the Value Index and Growth Index represent a partition of the S&P 500 Stock Index ("S&P 500") and, like options on the S&P 500 ("SPX options"), Value options and Growth options will be cash-settled, European-style [1] and A.M.-settled.

A. Index Design, Maintenance and Calculation

The Indexes are constructed by sorting the stocks in the S&P 500 on the basis of their book-to-price ratios as determined by Barra. The sort is performed twice per year, based on end-of-day information for November 30 and May 31. Starting with the company with the highest book-to-price ratio, companies are added to the Value Index until that Index contains 50 percent of the market capitalization of the S&P 500. The Growth Index is composed of the remaining companies in the S&P 500. The partition of the S&P 500 using November 30 information becomes effective as of January 1 of the following year; the partition of the S&P 500 using May 31 information becomes effective July 1 of the same year.

The Indexes are updated on an ongoing basis to reflect changes in the composition of the S&P 500 and adjustments to stocks in the S&P 500. A stock that is added to the S&P 500 is assigned to the Growth Index if its book-to-price ratio is less than the cutoff ratio determined at the most recent semi-annual resorting of the Indexes; otherwise, the stock is added to the Value Index. To maintain continuity in either Index following the addition of a new component stock or an adjustment of existing component stock, the divisor of the Index is adjusted.

Like the S&P 500, the Indexes are capitalization-weighted, and the methodology used to calculate them is identical to the methodology used to calculate the S&P 500. The level of each Index is calculated as follows:

$$\text{Index Level} = \frac{\text{Current Market Value}}{\text{Adjusted Base Period Market Value}} \times 10$$

$$\text{Adjusted Base Period Market Value} = \frac{\text{Current Market Value After Adjustments}}{\text{Current Market Value Before Adjustments}} \times \text{Previous Base Period Market Value}$$

The numeric value of each Index was established at 10 as of the close of the market on December 31, 1974, and the Growth Index is currently at about 60 and the Value Index is currently at about 70.

The Indexes are calculated continuously by S&P or its designee, and their values will be disseminated by the Options Price Reporting Authority no less often than every fifteen seconds. S&P will also calculate the exercise settlement value for each expiring series of Value options and Growth options, and will make these values available to CBOE for use by the Options Clearing Corporation in effecting settlement of exercises and assignments of the options. Value options and Growth options will be A.M.-settled. Each exercise settlement value will therefore be an "opening" settlement, i.e., a value derived from first reported sale (opening) prices of the securities in the applicable Index on the last day of trading in the securities prior to expiration, or from the last reported sale prices of any securities that do not open for trading on that day.

B. Growth and Value Option Trading

The Exchange is proposing in this proposed rule change to trade "regular" Growth and Value options and full-value and reduced-value LEAPS on the Growth and Value Indexes. Chapter XXIV of the CBOE's Rules, as modified by this rule change, will govern trading of Growth and Value options.

(1) *Reporting Authority.* The existing Interpretation to Rule 24.1 that identifies the "reporting authority" for each index underlying options traded on the Exchange is amended to specify that the reporting authority for the Indexes is S&P.[2]

(2) *Current Index Value.* The "current index value" for regular Growth and Value options, and for full-value LEAPS on the Indexes, will be equal to the levels of the respective Indexes.[3] The "current index value" for reduced-value LEAPS Growth and Value options will be one-tenth of the value of the related regular options.

[1] European-style options may only be exercised during some specified period immediately prior to expiration.

[2] The Interpretation is also amended to reflect that S&P recently began to operate as a division rather than as a subsidiary of McGraw-Hill.

[3] The "current index value" is defined in CBOE Rule 24.1(g) (as amended by File No. SR-CBOE-93-05) for regular options to mean "the level of the underlying index reported by the reporting authority for the index, or any multiple or fraction of such reported level specified by the Exchange."

(3) *Exercise and Settlement.* Rule 24.9 will specify that Growth and Value options will have European-style exercise and will be "A.M.-settled index options." As with other non-Flexible Exchange options and non-Quarterly Index Expiration ("QIX") options, regular and LEAPS Growth and Value options will expire on the Saturday following the third Friday of the expiration month, and the last day for trading in an expiring series will be the second business day (ordinarily a Thursday) preceding the expiration date.

(4) *Position Limits.* The Exchange is proposing to establish position limits for Growth and Value options equal to 125,000 contracts on the same side of the market, with no more than 75,000 contracts in the series with the nearest expiration date. These limits are roughly equivalent, in dollar terms, to the basic limits[4] applicable to options on the S&P 500 index and the S&P 100 index (25,000 contracts on the same side of the market, with no more than 15,000 contracts in the series with the nearest expiration date) and to the limits applicable to options on the Russell 2000 index (50,000 contracts on the same side of the market, with no more than 30,000 contracts in the series with the nearest expiration date).[5] Similarly, the Exchange is proposing to establish 375,000 contracts on the same side of the market as the maximum position size that will be eligible for treatment under the CBOE's hedge exemption rule provisions.[6] Paragraph 24.4(a) and Interpretation .01 to Rule 24.4 are amended to reflect these proposals.

(5) *Strike Prices.* Interpretations .01 and .05 to Rule 24.9, which describe the procedures for adding and deleting strike prices for index options, will apply to Growth and Value options. Paragraph (a) of Interpretation .01 is amended to provide that the minimum interval between strike prices for Growth and Value options will be $2.50, as it is for other index options with strike prices less than $200.00.

(6) *Expiration Cycle.* Existing Rule 24.9(a)(2), which describes the expiration months for regular index options, will apply to regular Growth and Value options, and regular Growth and Value options will have up to three near-term consecutive expiration months plus up to three farther-out expiration months at three-month intervals. Existing Rule 24.9(b), which describes the expiration months for LEAPS index options, will apply to LEAPS Growth and Value options.

C. Inclusion of Rules Revised Disclaimer of Liability on Behalf of S&P and Barra

The CBOE has agreed with S&P to revise the disclaimer of liability on behalf of S&P that is currently in the CBOE's Rules so that it covers Barra as well as S&P, and the Growth Index and Value Index as well as the S&P 500 and S&P 100 indexes.

D. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it will permit trading in Growth and Value options and LEAPS pursuant to rules designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and thereby will provide investors with the ability to invest in options based on two additional indexes.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–36 and should be submitted by December 10, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[7]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28481 Filed 11–18–93; 8:45 am]

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[Release No. 34–33195; International Series Release No. 612; File No. SR–NYSE–92–26]

Self-Regulatory Organizations; Notice of Filing and Order Granting Partial Accelerated Approval to Proposed Rule Change by the New York Stock Exchange, Inc., Relating to the Listing of Options on a Certain Specific American Depositary Receipt

November 12, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on September 23, 1992, the New York Stock Exchange ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule

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[4] The CBOE's rules set out somewhat higher position limits for A.M.-settled options on the S&P 500 index and for QIXs on the S&P 500 index and the S&P 100 index.

[5] The S&P 500 index level is currently at about 460 and the S&P 100 at about 425, so that a position of 25,000 option contracts overlying either of these indexes would have a dollar value somewhat greater than a position of 125,000 option contracts overlying either the Growth Index or the Value Index. The Russell 2000 index level is currently at about 245, so that a position of 50,000 option contracts overlying that index would also have a dollar value somewhat greater than a position of 125,000 option contracts overlying either the Growth Index or the Value Index.

[6] The maximum position that is eligible for hedge exemption treatment under the CBOE's rules (other than positions in SPX options, which are subject to a higher exemption limit) is 75,000 contracts on the same side of the market. In dollar terms, a position of 75,000 option contracts on the S&P 100 index would have a value somewhat higher than the value of 375,000 option contracts on either the Growth Index or the Value Index.

[7] 17 CFR 200.30–3(a)(12) (1992).

change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Rule Change

The NYSE requests Commission authorization to list and trade options on American Depositary Receipts ("ADRs") representing the shares of Empresas ICA Sociedad Controladora S.A. de C.V. ("Empresas").[1]

The text of the proposal is available at the Office of the Secretary, NYSE and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections (A), (B) and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

The NYSE is requesting Commission authorization to list and trade options on ADRs representing the shares of Empresas.

On November 27, 1992, the Commission approved a NYSE proposal to list and trade ADR options where the underlying foreign security is subject to a comprehensive surveillance sharing agreement and the underlying ADR meets or exceeds the Exchange's established uniform options listing standards.[2] First the ADR Approval Order provides that for ADR options to be eligible for listing and continued trading, the NYSE must have comprehensive surveillance sharing agreements in place with the foreign exchanges that serve as the primary markets for the foreign securities underlying the ADRs, unless the Commission otherwise approves the options' listing without an agreement. Second, the NYSE's initial listing standards require that the ADRs underlying the Exchange-listed options have a "float" of 7,000,000 ADRs outstanding, 2,000 shareholders, trading volume of at least 2,400,000 over the prior twelve month period, and a minimum price of $7½ for a majority of the business days during the preceding three month period. Moreover, options on ADRs must meet or exceed the maintenance criteria for continued listing under the NYSE rules. Those criteria require that the ADRs underlying Exchange-listed options maintain a "float" of 6,300,000 ADRs, 1,600 shareholders, trading volume of at least 1,800,000 over the prior twelve month period, and a minimum price of $5 on a majority of the business days during the preceding six month period. Additionally, the ADR Approval Order requires the NYSE to make reasonable inquiry to evaluate the securities underlying the ADRs to ensure that these securities are generally consistent with the above-noted listing requirements.

Furthermore, the NYSE options initial listing standards require that the ADR underlying an ADR option be registered and listed on a national securities exchange or traded through the facilities of a national securities association and be reported as a national market system security. The issuers of the ADRs also must be in compliance with any other applicable requirements of the Act.

The current proposal would authorize the NYSE to list and trade options on ADRs representing the shares of Empresas, even though the NYSE does not have a surveillance sharing agreement with the primary exchange on which the foreign securities underlying the ADRs trade. The foreign securities underlying Empresas ADRs trade primarily on the Mexican Stock Exchange, while the ADRs trade primarily on the NYSE.[3]

Although NYSE does not have a surveillance sharing agreement with the Mexican Stock Exchange, the NYSE does not believe that this will impair its ability to detect or deter any potential manipulations of the market in Empresas ADR options because the dominant underlying market of the ADR options in the U.S. ADR market, rather than the Mexican Stock Exchange.[4] The NYSE believes it has the ability to conduct adequate surveillance of trading in Empresas ADR options because the NYSE is the primary market on which Empresas ADRs trade.[5] In addition, the other U.S. exchanges on which Empresas ADRs trade, the NYSE and the NASD are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of necessary surveillance information concerning trading activity in the Empresas ADR options, and the respective underlying ADR market.[6]

The Exchange believes that the proposed rule change is consistent with

[1] The NYSE also requested approval to list and trade options on ADRs representing the shares of Vitro Sociedad Anonima ("Vitro"). The Commission notes that less than 50% of the world-wide volume of the shares and ADRs of Vitro trade in the U.S. ADR market. *See* Letter from James E. Buck, Senior Vice President and Secretary, NYSE, to Richard L. Zack, Branch Chief, Division of Market Regulation, Commission, dated October 22, 1993 ("October 22nd Letter"). Because the primary home market for trading in shares of Vitro is the Bolsa Mexicana de Valores ("Mexican Stock Exchange") and the NYSE does not have in place a surveillance sharing agreement with that exchange, the Commission cannot at this time give the NYSE the authority to list options on ADRs representing the shares of Vitro. *See* discussion at *infra* notes 16 through 18, and accompanying text.

[2] Securities Exchange Act Release No. 31528 (November 27, 1992), 57 FR 57256 (December 3, 1992) ("ADR Approval Order"). A comprehensive surveillance sharing agreement provides, among other things, for the exchange of market trading activity, clearing activity, and the identity of the ultimate purchaser or seller of the securities traded.

[3] Although the NYSE is the primary market for Empresas ADRs, the ADRs also trade in the United States on the Boston Stock Exchange, Inc. ("BSE"), the Chicago Stock Exchange, Inc. ("CHX"), the Cincinnati Stock Exchange, Inc. ("CSE"), the Pacific Stock Exchange, Inc., ("PSE"), the Philadelphia Stock Exchange, Inc. ("Phlx"), and through the National Association of Securities Dealers, Inc. ("NASD"), Automatic Quotation System ("NASDAQ").

[4] The NYSE represents that for the three month period ending August 31, 1993, 50% or more of the world-wide trading volume (on a share equivalent basis) in Empresas occurred in the U.S. ADR market. The NYSE further represents that if the trading volume in the U.S. market for Empresas ADRs falls below 30% of the world-wide trading volume for Empresas ADRs and stock in any subsequent three month period, the Exchange will not open for trading any additional series of options on Empresas ADRs unless the NYSE has in place a comprehensive surveillance sharing agreement with the primary exchange in the home country where the foreign security underlying the ADR is traded or the Commission otherwise authorizes the listing. See October 22nd Letter, *supra* note 1.

[5] NYSE Rule 4 defines ADRs as "stock" for purpose of Exchange rules. Thus, the same "chinese wall" procedures that are applicable to the trading of options overlying stock listed on the NYSE also would apply to the trading of Empresas ADR options.

[6] ISG was formed on July 14, 1993 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1993. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990. The members of the ISG are: the American Stock Exchange, Inc. ("Amex"), the BSE, the Chicago Board Options Exchange, Inc. ("CBOE"), the CHX, the CSE, the NASD, the NYSE, the PSE, and the Phlx.

Section 6(b) of the Act,[7] in general, and furthers the objectives of Section 6(b)(5), in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The NYSE believes that the proposed rule change will not impose a burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

Written comments on the proposed rule change were neither solicited nor received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The Exchange has requested that the proposed rule change be given accelerated effectiveness pursuant to Section 19(b)(2) of the Act.[8]

The Commission finds the portions of the proposed rule change related to the listing of options on ADRs representing shares of Empresas are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[9] Specifically, the Commission finds that allowing options to trade on ADRs representing the shares of Empresas, among other things, gives investors a better means to hedge their positions in the ADRs, as well as enhanced market timing opportunities.[10] Further, the pricing of the ADRs underlying Empresas ADR options may become more efficient and market makers in the ADRs, by virtue of enhanced hedging opportunities, may be able to provide deeper and more liquid markets.[11] In sum, options on ADRs likely engender the same benefits to investors and the market place that exist with respect to options on common stock.[12]

The Commission also believes that it is appropriate to permit the NYSE to list and trade options on Empresas ADRs given that these options will be subject to specific requirements related to the protection of investors. First, NYSE rules require that the ADRs underlying these options meet the NYSE's uniform options listing standards in all respect. As described above, this would include the initial and maintenance criteria. These criteria ensure, among other things, that the underlying ADRs will maintain adequate price and float to prevent the ADR options from being readily susceptible to manipulation.

Second, the ADR Approval Order requires that the NYSE make a reasonable inquiry to evaluate Empresas securities to ensure that these securities are generally consistent with the requirements set forth in the Exchange's options listing standards. In the ADR Approval Order, the commission recognized that in some cases, an ADR underlying an option could meet the options listing standards while the foreign security on which the ADR is based may not meet these standards in every respect. For example, in the case of ADRs overlying certain foreign securities, one ADR could represent several shares of a specific stock. For this reason, it is possible that the price of the ADR will meet exchange listing standards even though the market price of the foreign security underlying the ADR may be less than the NYSE standard. The Commission believes, however, that requiring the NYSE to review the securities underlying Empresas ADRs to ensure that they are generally consistent with the Exchange's options listing standards, along with other market safeguards, will adequately protect investors from the possibility that these ADR options can be potentially manipulated.[13]

Third, the NYSE has in place an adequate mechanism for providing for the exchange of the surveillance information necessary to adequately detect and deter market manipulation or trading abuses involving Empresas ADR options. Although the NYSE does not have a comprehensive surveillance sharing agreement with the Mexican Stock Exchange, the Commission believes that this does not impair the ability of the NYSE to detect or deter manipulation since the majority of the trading activity in these Mexican securities occurs in the U.S. ADR market. The Commission notes that the primary market on which Empresas ADRs trade is the NYSE. Further, the other U.S. exchanges on which Empresas ADRs trade, the NYSE, and the NASD are members of the ISG, which will provide for the exchange of necessary surveillance information concerning trading activity in the Empresas ADR options, and the respective underlying ADR market.[14]

As a general matter, the Commission believes that the existence of a surveillance sharing agreement that effectively permits the sharing of information between an exchange proposing to list an equity option, such as options on Empresas ADRs, and the exchange trading the stock underlying the equity option is necessary to detect and deter market manipulation and other trading abuses. In particular, the Commission notes that surveillance sharing agreements provide an important deterrent to manipulation because they facilitate the availability of information needed to fully investigate a potential manipulation if it were to occur. These agreements are especially important in the context of derivative products based on foreign securities because they facilitate the collection of necessary regulatory, surveillance and other information from foreign jurisdictions.

In the context of ADRs, the Commission believes that, in most cases, the relevant underlying equity market is the primary market on which the security underlying the ADR trades. This is because, in most cases, the market for the security underlying the ADR generally is larger in comparison to the ADR market, both in terms of share volume and the value of trading. Because of the additional leverage provided by an option on an ADR, the Commission generally believes that having a comprehensive surveillance sharing agreement in place, between the exchange where the ADR option trades and the exchange where the foreign security underlying the ADR primarily trades, will ensure the integrity of the

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[7] 15 U.S.C. 78f (1988).

[8] 15 U.S.C. 78s(b)(2) (1988).

[9] U.S.C. 78f(b)(5) (1988).

[10] For example, if an investor wants to invest in ADRs but does not have sufficient cash available until a future date, he can purchase an ADR option now for less money and exercise the option to purchase the ADRs at a later date.

[11] See *e.g.* Report of the Special Study of the Options Markets to the Securities and Exchange Commission, 96th Cong., 1st Sess. (Comm. Print No. 96–IFC3, December 22, 1978).

[12] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new securities product upon a finding that the introduction of such new product is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[13] For example, we would expect the Exchange to consider delisting an option on an ADR if the price and public float of the underlying security did not meet trading or size maintenance standards, or if the security underlying the ADR failed to meet other standards that raised manipulative concerns.

[14] See *supra* note 6.

marketplace.[15] The Commission further believes that the ability to obtain relevant surveillance information, including, among other things, the identity of the ultimate purchasers and sellers of securities, is an essential and necessary component of a comprehensive surveillance sharing agreement.

In the present case, however, the Commission finds that the market for Empresas ADRs is larger than the market for the underlying foreign securities. Specifically, approximately 53% of the world-wide trading volume in Empresas stock and ADRs occurs in the U.S. ADR market, which consists of the NYSE, the BSE, the CHX, the CSE, the PSE, the Phlx, and NASDAQ.[16] The Commission believes that the U.S. market for Empresas ADRs operates as a single market even though it is made up of several national securities exchanges and the NASD. The Commission notes that Empresas ADRs trade primarily on one U.S. exchange, the NYSE, and all of the markets on which or through which these ADRs could trade are linked together by the Intermarket Trading System ("ITS").[17]

Accordingly, the Commission believes that the U.S. ADR market for Empresas is substantially the price-discovery market for Empresas securities (*i.e.*, stocks and ADRs) and, therefore, is the instrumental market for purposes of deterring and detecting potential manipulation or other abusive trading strategies in conjunction with transactions in the overlying ADR options market.[18]

Because Empresas ADRs primarily trade on the NYSE, the Commission notes that the NYSE can adequately obtain surveillance information regarding trading in the ADRs occurring on the Exchange. Further, the Commission believes that, as members of the ISG, the NYSE, the other U.S. exchanges on which Empresas ADRs trade, and the NASD have in place an effective surveillance sharing arrangement to permit the exchanges and the NASD to adequately investigate any potential manipulations of the ADR options or their underlying securities.

The Commission also notes that the NYSE will review the world-wide trading volume for Empresas stock and ADRs to ensure that the primary market for Empresas securities continues to be the U.S. ADR market. Specifically, the NYSE has agreed to continue reviewing the percentage of world-wide trading volume in Empresas securities that occurs in the U.S. ADR market. If the average daily trading volume in Empresas stock and ADRs occurring in the U.S. ADR market falls below 30% of world-wide trading volume, the NYSE represents that it will not open for trading any additional series of options on Empresas ADRs unless it has in place a comprehensive surveillance sharing agreement with the Mexican Stock Exchange.[19] Accordingly, these requirements ensure that if the U.S. ADR market ceases to be the primary market for Empresas securities, the NYSE will either obtain the necessary surveillance sharing agreements or "wind down" trading in the product.[20]

The Commission finds good cause for approving the portions of the proposed rule change relating to the listing of options on Empresas ADRs prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The NYSE proposal to list and trade options on Empresas ADRs is identical to proposals by the CBOE and the Amex to list and trade options on Empresas ADR options.[21] The CBOE and the Amex proposals were subject to a full notice and comment period. The Commission did not receive any comments on those proposals. Further, the Commission believes that approving the NYSE proposal to list Empresas ADR options on an accelerated basis will permit the NYSE to compete on an equal basis with the CBOE and the Amex for orders in these options. Accordingly, since the Commission finds that the current proposal involves the exact same issues as the above-noted proposals, the Commission believes it is consistent with sections 19(b)(2) and 6(b)(5) of the Act[22] to approve the NYSE's proposal to list Empresas ADR options on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the proposed rule change. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to the file number in the caption above and should be submitted by December 10, 1993.

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[15] See *also* Securities Exchange Act Release No. 26653 (March 21, 1989), 54 FR 12705 (order approving the trading of options on the International Market Index ("IMI"), an index comprised of ADRs traded in the United States based on foreign securities). In this approval order, the Commission specifically required that there be comprehensive surveillance sharing agreements in place between the Amex and the foreign exchanges on which the securities underlying the ADRs trade so that a substantial percentage of the Index was covered by comprehensive surveillance sharing agreements. In particular, 78% of the weight of the Index was covered by comprehensive surveillance sharing agreements. For the remaining 22% of the Index, the Commission further recommended that the Amex obtain comprehensive surveillance agreements with the exchanges on which the foreign securities underlying the ADRs trade.

[16] From July, 1993 through September, 1993, the average daily trading volume on the Mexican Stock Exchange for the common shares of Empresas was 128,600 shares (46.64%) and the ADR average daily trading volume was 147,100 ADRs (53.36%). See October 22nd Letter, *supra* note 1. The NYSE further represents that the Mexican Stock Exchange and the U.S. ADR market are the predominate markets for Empresas securities. Telephone conversation between Gary Katz, NYSE, and Monica Michelizzi, Staff Attorney, Division, Commission, on October 28, 1993.

[17] ITS is a communications system designed to facilitate trading among competing markets by providing each market with order routing capabilities based on current quotation information. The system links the participant markets and provides facilities and procedures for: (1) The display of composite quotation information at each participant market, so that brokers are able to determine readily the best bid and offer available from any participant for multiply trading securities; (2) efficient routing of orders and sending administrative messages (on the functioning of the system) to all participating markets; (3) participation, under certain conditions, by members of all participating markets in opening transactions in those markets; and (4) routing orders from a participating market to a participating market with a better price. The exchanges on which Empresas ADRs trade are ITS participant markets. The NASD's Computer Assisted Execution System links NASD market makers, for order routing and execution purposes, to ITS for Empresas ADRs.

[18] Although the NYSE has requested the approval to list and trade options on ADRs representing the shares of Vitro, the NYSE does not have in place a surveillance sharing agreement with the Mexican Stock Exchange, which is the primary market for trading in Vitro securities. In addition, the U.S. ADR market for Vitro is not substantially the price discovery market for Vitro Securities. *See supra* note 1. Accordingly, the Commission cannot at this time approve proposals to list Vitro ADR options.

[19] October 22nd Letter, *supra* note 1.

[20] *Id.*

[21] Securities Exchange Act Release Nos. 31122 (August 28, 1992), 57 FR 40707 (September 4, 1992) (File No. SR-CBOE-92-15), and 31117 (August 28, 1992), 57 FR 40703 (September 4, 1992) (Amendment No. 2 to File No. SR-Amex-91-26).

[22] 15 U.S.C. 78s(b)(2) and 78f(b)(5) (1988).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[23] that the portions of the proposed rule change (SR–NYSE–92–26) related to the listing of options on ADRs representing shares of Empresas are approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28477 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Philadelphia Stock Exchange Inc.

November 12, 1993.

The above named national securities exchange has filed an application with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following security:

Chelsea GCA Realty Inc.
Common Stock, $.01 Par Value (File No. 7–11496)

This security is listed and registered on one or more other national securities exchanges and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 2, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–28455 Filed 11–18–93; 8:45 am]

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[23] 15 U.S.C. 78s(b)(2) (1988).

[24] 17 CFR 200.30–3(a)(12) (1993).

[Release No. IC–19868; 812–8286]

AmSouth Mutual Funds, et al.; Notice of Application

November 15, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: AmSouth Mutual Funds, The Parkstone Group of Funds, BB&T Mutual Funds Group, Conestoga Family of Funds, American Performance Funds, The Society Funds, The Highmark Group, and Praxis Mutual Funds, on behalf of themselves and all other registered investment companies for which The Winsbary Company or any persons directly controlling, controlled by, or under common control with The Winsbury Company may in the future serve as principal underwriter (the "Funds"); AmSouth Bank N.A., First of America Investment Corporation, Branch Banking and Trust Company Meridian Investment Company, BancOklahoma Trust Company, AMR Investment Services, Inc., Society Asset Management, Inc., Clay Finlay Inc., The Bank of California, N.A., and MMA Capital Management (the "Advisers"); and The Winsbury Company ("Winsbury").

RELEVANT ACT SECTIONS: Order requested pursuant to section 6(c) from the provisions of sections 2(a)(32), 2(a)(35), 22(c), and 22(d) and rule 22c–1, and to amend a previous order (the "Prior Order")[1] that granted applicants exemptive relief from the provisions of sections 18(f), 18(g), and 18(i).

SUMMARY OF APPLICATION: Applicants seek to amend the Prior Order that permitted the Funds to offer up to four classes of shares. As amended, the order would permit the Funds to issue up to five classes of shares, assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares of one class, and waive the CDSC in certain cases.

FILING DATES: The application was filed on February 24, 1993, and amended on July 28, 1993 and November 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 10, 1993, and should be accompanied by proof of service on applicants, in the form or an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants, c/o Winsbury, 1900 East Dublin-Granville Road, Columbus, Ohio 43229.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027 or C. David Messman, Branch Chief, at (202) 272–3018 (Office of Investment Company Regulation, Division of Investment Management).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. AmSouth Mutual Funds ("Amsouth") is a registered open-end management investment company organized as a Massachusetts business trust. AmSouth currently offers shares in nine series. Each series of AmSouth currently offers one class of shares. AmSouth Bank, N.A. is the investment adviser for each of the AmSouth series.

2. The Parkstone Group of Funds ("Parkstone") is a registered open-end management investment company organized as a Massachusetts business trust. Parkstone offers shares in fourteen series. Parkstone currently offers two classes of shares pursuant to the Prior Order. Shares of one class are held mostly through fiduciary, agency, custodial, and similar accounts of First of America Bank-Michigan N.A. and are sold without any sales charge or rule 12b–1 fee. The other class is sold subject to a front-end sales charge and a rule 12b–1 fee of up to .25% of the average annual net assets attributable to that class. First of America Investment Corporation is the investment adviser for each of the Parkstone series. Ivory & Sime International, Inc. and Ivory & Sime plc are sub-investment advisers for the Parkstone International Discovery Fund series.

3. BB&T Mutual Funds Group ("BB&T") is a registered open-end management investment company organized as a Massachusetts business trust. BB&T offers shares in six series. BB&T currently offers two classes of shares pursuant to the Prior Order. One

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[1] The ASO Outlook Group, *et al.*, Investment Company Act Release Nos. 19177 (Dec. 22, 1992) (notice) and 19217 (Jan. 19, 1993) (order).

class is sold without any sales charge or rule 12b–1 fee. The other class is subject to a rule 12b–1 distribution fee at an annual rate of up to .50% of the average daily net assets attributable to such class, and in certain cases, a front-end sales charge. Branch Banking and Trust Company is the investment adviser for each of the BB&T series.

4. Conestoga Family of Funds ("Conestoga") is a registered open-end management investment company organized as a Massachusetts business trust. Conestoga offers shares in seven series. Each series of Conestoga currently offers one class of shares. Conestoga has not adopted a rule 12b–1 plan, but purchases of certain series of Conestoga are subject to a front-end sales charge. Meridian Investment Company is the investment adviser for each of the Conestoga series.

5. American Performance Funds ("American") is a registered open-end management investment company organized as a Massachusetts business trust. American offers shares in seven series. Each series of American currently offers one class of shares. Purchases of certain series are subject to a front-end sales charge and American has adopted a rule 12b–1 plan pursuant to which shareholders pay a distribution fee at an annual rate of up to .25% of the average daily net assets of the series. BancOklahoma Trust Company and AMR Investment Services each serve as the investment adviser for certain series of American.

6. The Society Funds ("Society") is a registered open-end management investment company organized as a Massachusetts business trust. Society currently offers shares in ten series. Each series of Society currently offers one class of shares. Society has not adopted a rule 12b–1 plan, but certain series are subject to a front-end sales charge. Society Asset Management, Inc. and Clay Finlay, Inc. each serve as investment adviser to certain series of Society.

7. The Highmark Group ("Highmark") is a registered open-end management investment company organized as a Massachusetts business trust. Highmark offers shares in eight series. Pursuant to the Prior Order, Highmark currently offers two classes of shares in its money market series. Class A shareholders pay a distribution fee pursuant to a rule 12b–1 plan at an annual rate of up to .25% of average annual net assets. Class B shareholders pay no rule 12b–1 fees. Purchases of shares of Highmark are not subject to a sales charge. The Bank of California, N.A. is the investment adviser for each of Highmark's series.

8. Praxis Mutual Funds ("Praxis") is a registered open-end management investment company organized as a Delaware business trust. Praxis plans to offer two series of shares. When their registration statements are declared effective, both series of Praxis will offer one class of shares. Praxis shareholders will pay a distribution and services fee pursuant to rule 12b–1 at an annual rate of up to 1% of the average daily net assets attributable to each series. Certain series of Praxis will be subject to a front-end sales charge. MMA Capital Management will be the investment adviser for each series of Praxis.

9. Winsbury, a broker-dealer registered under the Securities Exchange Act of 1934, is the principal underwriter and administrator for each of the Funds.

10. Under the Prior Order, the Funds are permitted to offer up to four separate classes of shares. Class A shares are offered to individual investors through broker-dealers or directly by Winsbury. Class B shares are offered to qualified accounts through correspondent banks, financial institutions, and other organizations. Class C shares are offered for monies that are held in a fiduciary, agency, custodial or similar capacity by a bank. Class C shares may also be purchased by certain other limited categories of investors, including employees and retired employees of the Advisers and Winsbury, trustees of the Funds, the spouses and children of each of the foregoing, and participants in payroll deduction plans, 401(k) plans or 403(b) plans invested in the Funds. Class D shareholders consist solely of those investors who, as of the day immediately preceding the date on which a Fund implements the multiple class structure, own shares in the Fund but who are not eligible to purchase Class C shares.

11. Under the Prior Order, Funds may offer Class A and Class B shares in connection with plans adopted pursuant to rule 12b–1. Class A and Class B rule 12b–1 plans may provide for the payment of a distribution fee to Winsbury not to exceed an annual rate of .40% and .25%, respectively, of the average daily net assets attributable to a Fund's Class A or Class B shares. Winsbury may reallocate part or all of the fee as compensation to broker-dealers (in the case of Class A) or to correspondent banks, financial institutions, and other organizations (in the case of Class B). Class C and Class D shareholders may not adopt a rule 12b–1 plan.

12. Applicants propose to amend the Prior Order to alter the categories of investors that are eligible to purchase Class C shares. The Funds intend to offer Class C shares through the trust department of any bank for monies that are held in a fiduciary, agency, custodial, or similar capacity. Employees, retired employees, trustees, family members, and plan participants described above will be eligible to purchase Class C shares, but will be eligible to purchase Class A shares without the imposition of a sales load. Class C shareholders will not be charged a sales load nor incur any rule 12b–1 fees.

13. Applicants also propose to amend the Prior Order to permit the Funds to offer a new Class E. Class E shares will be offered for purchase directly from Winsbury and through broker-dealers that have entered into shareholder servicing and/or distribution agreements with Winsbury. The initial shareholders of Class E will adopt a rule 12b–1 plan providing that the Funds will pay a distribution fee to Winsbury at a maximum annual rate of up to .75% of the average daily net assets attributable to Class E shares. The Funds also will pay a servicing fee to Winsbury pursuant to either a rule 12b–1 plan or a non-rule 12b–1 shareholder servicing plan at an annual rate of up to .25% of the average daily net assets attributable to Class E shares.

14. Investors purchasing Class E shares will not be subject to a sales charge at the time of purchase. However, an investor's proceeds from a redemption of Class E shares made within a specified period (not to exceed 4 years) from the time of purchase may be subject to a CDSC. The amount of the CDSC will be calculated as a percentage of the lower of the net asset value of the shares at the time of purchase or redemption. Class E shares will not be subject to a CDSC to the extent that the value of such shares represents capital appreciation or reinvestment of dividends.

15. No CDSC will be imposed on exchanges of Class E shares of any series of a Fund for Class E shares of other series of that Fund. If the shares acquired in the exchange are redeemed within four years following the original investment, however, an appropriate CDSC will be charged. Applicants will comply with rule 11a–3 with respect to all exchanges of shares.

16. Applicants intend to waive the CDSC on redemptions in connection with: (1) The death or disability of a shareholder, as defined in section 72(a)(7) of the Internal Revenue Code (the "Code"), if redemption is made within one year of the death or disability; (b) distributions from retirement plans qualified under Code

section 401(a) when such redemptions are necessary to make distributions to plan participants; and (c) distributions from a custodial account under Code section 403(b)(7) or an individual retirement account due to a shareholder's attainment of age 70½.

17. If a shareholder has not redeemed his or her Class E shares at the end of the eighth year after the date of their acquisition, his or her Class E shares will automatically convert into Class A shares at the relative net asset values of each of the classes. Shares purchased through the reinvestment of dividends and other distributions paid with respect to Class E shares will convert to Class A in direct proportion to the ratio that the shareholder's Class E shares converting to Class A bears to the shareholder's total Class E shares not acquired through dividends and distributions. If a shareholder who owns both Class A shares and Class E shares redeems less than his or her entire investment, then shares will be redeemed in the following order: (a) Any Class E shares that are not subject to a CDSC; (b) Class A shares; and (c) Class E shares subject to a CDSC, unless the shareholder has made a specific election otherwise.

18. The Prior Order authorized classes that will be offered in conjunction with rule 12b–1 plans. The Funds now seek the flexibility to offer some or all of the classes in conjunction with a shareholder service plan in addition to or in lieu of a rule 12b–1 plan. Each shareholder service plan will limit the service fee payable to Winsbury to a maximum annual rate of .25% of the average daily net assets attributable to shares of that class. Each shareholder service plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b)–(f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not possess the voting rights specified in rule 12b–1.

Applicants' Legal Analysis

1. Applicants request an exemptive order under section 6(c) of the Act to the extent that the proposed issuance and sale of shares representing interests in the same investment portfolio might be deemed: (1) To result in a "senior security" within the meaning of section 18(g) and to be prohibited by section 18(f)(1); or (2) to violate the equal voting provisions of section 18(i).

2. Applicants assert that the proposed allocation of expenses and voting rights in the manner described below is equitable and would not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a rule 12–1 plan would bear the costs associated with services rendered pursuant to the 12b–1 plan and would possess exclusive shareholder voting rights with respect to matters affecting such 12b–1 plan, while investors purchasing shares that are not covered by such 12b–1 plan would not bear such expenses or possess such voting rights.

3. Applicants state that the proposed arrangement does not involve borrowing and will not affect a Fund's existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares in a series since all shares will participate in all of the series' income and expenses (except for the 12b–1 fees and expenses assessed to a particular class). Applicants submit that the requested exemption is appropriate, in the public interest, and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

4. Applicants submit that the requested exemption to permit the Funds to implement the proposed Class E CDSC is appropriate in the public interest, consistent with the protection of investors, and consistent with the purposes fairly intended by the policy and provisions of the Act. The proposed CDSC arrangement will provide shareholders the option of having their full payment invested for them at the time of their purchase of shares of the Funds with no deduction of a sales charge.

Applicants' Conditions

Applicants agree that any order granting the requested relief shall be subject to the following conditions:

1. The classes each will represent interests in the same portfolio of investments of a Fund and be identical in all respects except for certain differences related to (a) the method of financing certain expenses ("Class Expenses"), which are limited to: (i) Transfer agent fees as identified by the Fund's transfer agent as being attributable to a specific class; (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, prospectuses, and proxies to current shareholders; (iii) Blue Sky registration fees incurred by a class of shares; (iv) SEC registration fees incurred by a class of shares; (v) the expense of administrative personnel and services as required to support the shareholders of a specific class; (vi) litigation or other legal expenses relating solely to one class of shares; and (vii) trustees/directors' fees incurred as a result of issues relating to one class of shares; (b) expenses assessed to a class pursuant to a rule 12b–1 plan; (c) the related voting rights as to matters exclusively affecting one class of shares; (d) exchange privileges; (e) the conversion feature of Class E shares; and (f) class designation differences. Any additional incremental expenses not specifically identified above that are subsequently identified and determined to be properly allocated to one class of shares shall no be so allocated until approved by the SEC pursuant to an amended order.

2. The board of trustees/directors of a Fund, including a majority of the independent trustees or directors, will approve the offering of different classes of shares of the Fund (the "Multi-Class System") prior to the implementation of the Multi-Class System. The minutes of the meetings of the board of trustees/directors of a Fund regarding the deliberations of the trustees or directors with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the trustees' or directors' determination that the proposed Multi-Class System is in the best interests of both the Fund and its shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees/directors of a Fund including a majority of the trustees/directors who are not interested persons of such Fund. Any person authorized to direct the allocation and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the board of trustees/directors, and the trustees/directors shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the trustees or directors of a Fund, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor the Fund for the existence of any material conflicts among the interests of the various classes of shares. The trustees or directors, including a majority of the independent trustees or directors, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Fund's adviser and distributor will be responsible for reporting any potential or existing conflicts to the trustees or directors. If a conflict arises, the adviser and the distributor, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

5. The distributor of a Fund will adopt compliance standards as to when each class of shares may be sold to particular investors. Applicants will require all persons selling shares of the Funds to agree to conform to such standards.

6. The board of trustees/directors of a Fund will receive quarterly and annual statements concerning distribution and shareholder servicing expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as it may be amended from time to time. In the statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any fee charged to that class. Expenditures not related to the sale or servicing of a particular class will not be presented to the board of trustees/directors to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the independent trustees/directors in the exercise of their fiduciary duties.

7. Dividends paid by a Fund with respect to a class of shares in a series, to the extent that dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by a Fund with respect to each other class of shares in the same series, except that Class Expenses and payments made pursuant to a rule 12b–1 plan or shareholder servicing plan will be allocated exclusively to that class.

8. The methodology and procedures for calculating the net asset value and dividend/distributions of the various classes and the proper allocation of expenses among the classes will be reviewed by an expert (the "Expert") who has rendered a report to applicants, which has been provided to the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an on-going basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by a Fund (which each Fund agrees to provide), will be available for inspection by the SEC staff upon the written request to a Fund for such work papers by a senior member of the Division of Investment Management, limited to the Director, an Associate Director, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Regional Administrators. The initial report of the Expert will be a "Special Purpose" report on the "Design of a System" and ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 44 (respecting the initial report) and No. 70 (respecting ongoing reports) of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

9. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends/distributions of the various classes of shares and the proper allocation of expenses among the classes of shares. This representation will be concurred with by the Expert in the initial report referred to in Condition 8 above and will be concurred with by the Expert or an appropriate substitute Expert on an ongoing basis at least annually in the on-going reports referred to in that condition. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the on-going reports.

10. The prospectus of each class of a Fund will contain a statement to the effect that any person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

11. The conditions pursuant to which an exemptive order requested by the application may be granted and the duties and responsibilities of the board of trustees/directors of a Fund with respect to the Multi-Class System described in the application will be set forth in guidelines which will be furnished to the board of trustees/directors of the Fund.

12. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales loads, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. Each Fund will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report. The shareholder reports will contain in the statement of assets and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will also disclose the respective expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of a Fund's net asset value and public offering price will present each class of shares separately.

13. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply SEC approval, authorization or acquiescence in any particular level of payments that a Fund may make pursuant to a rule 12b–1 plan or shareholder services plan in reliance on the exemptive order.

14. Class E shares will convert into Class A shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Class A shares under the plan, existing Class E shares will stop converting into Class A shares unless the Class E shareholders, voting separately as a class, approve the proposal. The directors/trustees shall take such action as is necessary to ensure that existing Class E shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to the Class A as it existed prior to implementation of the proposal, no later than such shares previously were scheduled to convert into Class A. If deemed advisable by the directors/trustees to implement the foregoing, such action may include the exchange of all existing Class E shares for a new class ("New Class E"), identical to existing Class E in all

material respects except that New Class E will convert into New Class A. New Class A or New Class E may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in any manner that the directors/trustees reasonably believe will not be subject to federal taxation. Any additional cost associated with the creation, exchange, or conversion of New Class A or New Class E shall be borne solely by Winsbury. Class E shares sold after the implementation of the proposal may convert into Class A shares subject to the higher maximum payment, provided that the material features of the Class A plan and the relationship of such plan to Class E are disclosed in an effective registration statement.

16. If any class will be subject to a shareholder service plan, such shareholder service plan will be adopted and operated in accordance with the procedures set forth in rule 12b–1 (b) through (f) as if the expenditures made thereunder were subject to rule 12b–1, except that shareholders will not possess the voting rights specified in rule 12b–1.

17. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16169 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28482 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel No. IC–19864; 812–8454]

The First Trust Special Situations Trust, Series 69

November 12, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: The First Trust Special Situations Trust, Series 69.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3).

SUMMARY OF APPLICATION: Applicant seeks a conditional order on behalf of itself and certain subsequent series to permit each series to invest up to ten percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on June 17, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 7, 1993, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Nike Securities L.P., 1001 Warrenville Road, Lisle, Illinois 60532, Attn.: Robert Bredemeier.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant and certain subsequent series (each a "Series"), will be a series of The First Trust Special Situations Trust, a unit investment trust registered under the Act. Nike Securities L.P., is the depositor for applicant (the "Sponsor").

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. Each Series will invest approximately ten percent, but in no event more than 10.5 percent,[1] of the value of its total assets in each of the ten common stocks in the Dow Jones Industrial Average ("DJIA") with the highest dividend yields as of its initial date of deposit, and hold those stocks for approximately one year.

3. The DJIA comprises 30 widely-held common stocks listed on the New York Stock Exchange which are chosen by the editors of The Wall Street Journal. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with any Series or the Sponsor and does not participate in any way in the creation of any Series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Series, and to supervise each Series' portfolio. The Sponsor does not have any discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the ten highest dividend yielding stocks.

6. The Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Series and at termination of the Series on a date specified a year in advance. The Sponsor does not have discretion as to when securities will be sold except that the Sponsor is authorized to sell securities in extremely limited circumstances (such as in connection with a public tender, merger, or acquisition affecting the security). The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 121(d)(3), with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker,

[1] The Sponsor will attempt to purchase equal values of each of the ten common stocks in a Series' portfolio. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, applicant and each Series may purchase securities of a securities related issuer which represent over ten percent, but in no event more than 10.5 percent, of a Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

dealer, underwriter, or investment adviser. Rule 12d3–1(b) exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3–1 prohibits any registered investment company from acquiring any security issued by that company's investment adviser, promoter, or principal underwriter or any affiliated person of such investment adviser, promoter, or principal underwriter that is a securities related business, with certain limited exceptions.

2. Applicant seeks an exemption from the provisions of section 12(d)(3) to permit any Series to invest up to approximately ten percent, but in no event more than 10.5 percent, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all of the provisions of rule 12d3–1, except for the five percent limitation on the amount of assets that may be invested in securities of issuers that derived more than fifteen percent of their gross revenues from securities related activities in their most recent fiscal year.

3. Applicants assert that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses.

4. One potential conflict discussed by applicant could occur if an investment company purchases securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in connection with its application because neither the applicant nor any Sponsor has discretion in choosing the securities or amount purchased. The security must first be included in the DJIA, which is unaffiliated with the Sponsors and the applicant, and must also qualify as one of the ten highest dividend yielding securities as calculated by the objective formula described above.

5. Applicant also states that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. According to applicant, it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market value of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the Series' portfolio nor any affiliate thereof will act as broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant states that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the Series' portfolio, nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28483 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19863; 812–8434]

Great Hall Value Trust—Series 1

November 12, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Great Hall Value Trust—Series 1.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3).

SUMMARY OF APPLICATION: Applicant seeks a conditional order on behalf of itself and certain subsequent series to permit each series to invest up to ten percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on June 14, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 7, 1993, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Insight Investment Management, Inc., 60 South Sixth Street, Minneapolis, Minnesota 55402–4422. Attn: Lee Erickson.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant and certain subsequent series (each a "Series") will be a series of Great Hall Value Trust, a unit investment trust registered under the Act. Insight Investment Management, Inc. is the depositor for applicant (the "Sponsor").

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. Each Series will invest approximately ten percent, but in no event more than 10.5 percent,[1] of the

[1] The Sponsor will attempt to purchase equal values of each of the ten common stocks in a Series'

value of its total assets in each of the ten common stocks in the Dow Jones Industrial Average ("DJIA") with the highest dividend yields as of its initial date of deposit, and hold those stocks for approximately one year.

3. The DJIA comprises 30 widely-held common stocks listed on the New York Stock Exchange which are chosen by the editors of The Wall Street Journal. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with any Series or the Sponsor and does not participate in any way in the creation of any Series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor is authorized to determine the date of deposit, to purchase securities for deposit in the Series, and to supervise each Series' portfolio. The Sponsor does not have any discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the ten highest dividend yielding stocks.

6. The Series' portfolios will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Series and at termination of the Series on a date specified a year in advance. The Sponsor does not have discretion as to when securities will be sold except that the Sponsor is authorized to sell securities in extremely limited circumstances (such as in connection with a public tender, merger, or acquisition affecting the security). The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3), with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3–1(b) exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities, provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3–1 prohibits any registered investment company from acquiring any security issued by that company's investment adviser, promoter, or principal underwriter or any affiliated person of such investment adviser, promoter, or principal underwriter that is a securities related business, with certain limited exceptions.

2. Applicant seeks an exemption from the provisions of section 12(d)(3) to permit any Series to invest up to approximately ten percent, but in no event more than 10.5 percent, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all of the provisions of rule 12d3–1, except for the five percent limitation on the amount of assets that may be invested in securities of issuers that derived more than fifteen percent of their gross revenues from securities related activities in their most recent fiscal year.

3. Applicants assert that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses.

4. One potential conflict discussed by applicant could occur if an investment company purchases securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in connection with its application because neither the applicant nor any Sponsor has discretion in choosing the securities or amount purchased. The security must first be included in the DJIA, which is unaffiliated with the Sponsors and the applicant, and must also qualify as one of the ten highest dividend yielding securities as calculated by the objective formula described above.

5. Applicant also states that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applciant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. According to applicant, it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market value of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the Series' portfolio nor any affiliate thereof will act as a broker for any Series in the purchase or sale or any security for its portfolio.

7. Applicant states that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the Series' portfolio, nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28484 Filed 11–18–93; 8:45 am]

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portfolio. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, applicant and each Series may purchase securities of a securities related issuer which represent over ten percent, but in no event more than 10.5 percent, of a Series' assets on the initial date of deposit to the extent necessary to enable the Sponsor to meet its purchase requirements and to obtain the best price for the securities.

[Rel. No. IC—19862; 812–8378]

Pasadena Investment Trust, et al.; Application

November 12, 1993.

AGENCY: Securities and Exchange Commission (the "SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pasadena Investment Trust (the "Trust"); Roger Engemann Management Co., Inc. (the "Adviser"); and Pasadena Funds Services (the "Distributor").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of sections 2(a) (32), 2(a) (35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order permitting them to issue multiple classes of shares representing interests in the same portfolio of securities, assess a contingent deferred sales charge ("CDSC") on certain redemptions of shares, and waive the CDSC in certain instances.

FILING DATES: The application was filed on April 30, 1993, and amended on July 29, 1993, October 6, 1993, and October 25, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 8, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 600 North Rosemead Boulevard, Pasadena, California 91107–2102.

FOR FURTHER INFORMATION CONTACT: Marc Duffy, Staff Attorney, (202) 272–2511, or C. David Messman, Branch Chief, (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Trust is an open-end management investment company registered under the Act and consisting of the following four series: Pasadena Growth Fund, Pasadena Nifty Fifty Fund, Pasadena Balanced Return Fund, and Pasadena Global Growth Fund (the "Portfolios"). The Adviser serves as the investment adviser to each Portfolio. The Distributor acts as the distributor and principal underwriter of shares of the Portfolios.

2. Applicants also request relief to permit any open-end management investment company that now or in the future is in the same "group of investment companies" with the Trust, as defined in rule 11a–3 under the Act, to issue multiple classes of shares in accordance with the application.

3. Currently, the Portfolios offer their shares to the public at net asset value plus a front-end sales charge. The Portfolios do not have a plan of distribution in effect pursuant to rule 12b–1 under the Act (a "12b–1 Plan"). Pursuant to service agreements ("Service Agreements"), the Portfolios pay a continuing service fee ("Service Fee") to service providers, including the Adviser, for providing certain ongoing services to clients owning shares of the Portfolios. None of the Portfolios currently imposes a CDSC.

4. Applicants propose to offer a multiple distribution plan (the Multi-Class Plan"). Applicants will implement the Multi-Class Plan by designating three classes of shares in a Portfolio. Each Portfolio may offer some or all of the three classes. In addition, other classes of shares may be offered from time to time, each in connection with one or more 12b–1 Plans or Service Agreements, which may differ from the 12b–1 Plans, Service Agreements and payments described in the application, or with no distribution plans or service agreements or distribution or service fees at all. Any such classes will comply with all of the conditions contained in the application.

5. The existing class of shares of each Portfolio will be Class A shares. Class A shares will continue to be sold at net asset value plus a front-end sales charge of up to 5.50%. The sales charge will continue to be subject to reductions for larger purchases, under a quantity discount, under a right of accumulation, or under a letter of intent. The sales load will be subject to certain other reductions permitted by section 22(d) of the Act and set forth in the registration statement of the Trust. Pursuant to Services Agreements, payments of Service Fees will continue to be made with respect to Class A Shares in an amount equal to 0.25% of the average daily net asset value of a Portfolio's shares.

6. Class B Shares will be offered to investors at net asset value. Each Portfolio will pay to the Distributor a rule 12b–1 distribution fee calculated at an annual rate of up to 0.75% of the average daily net asset value of its Class B shares. Each Portfolio also will pay a continuing Service Fee to service providers pursuant to the existing Services Agreements in an amount equal to 0.25% of the average daily net asset value of the Class B shares held by clients of the service provider. Class B shares also will be subject to a conversion feature as described below. In addition, an investor's proceeds from a redemption of Class B shares made within a specified period after purchase generally will be subject to a CDSC as described below.

7. Class C shares will be sold at net asset value with no front-end sales charge or CDSC. Class C shares will be subject to a rule 12b–1 distribution fee of up to 0.75% of the average daily net asset value of the Class C shares. Pursuant to a Service Agreement, Class C shares also will be subject to a continuing Service Fee of 0.25% of the average daily net asset value of a Portfolio's Class C shares.

8. The Portfolio's will have a conversion feature whereby Class B shares of a Portfolio, other than those purchased through the reinvestment of dividends and distributions, automatically will convert to Class A shares of that Portfolio at net asset value on the first business day of the month following the specified anniversary of the purchase of the Class B Shares. Shares purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares also will be Class B shares. For purposes of conversion to Class A shares, however, all Class B shares in a shareholder's account that were purchased through the reinvestment of dividends and other distributions paid in respect of Class B shares will be considered to be held in a separate sub-account. Each time Class B shares in the shareholder's account (other than Class B shares in the sub-account referred to in the preceding sentence) convert to Class A shares, a pro rata portion of the Class B shares in the sub-account also will convert to Class A shares. Such portion will be determined by the ratio that the shareholder's Class B shares converting to Class A shares bears to the shareholder's total Class B shares not

acquired through dividends and distributions. No class of shares (including any future classes), other than Class B shares, will have a conversion feature.

9. The conversion of Class B shared to Class A shares is subject to the continuing availability of a ruling of the Internal Revenue Service or an opinion of counsel that payment of different dividends on Class A and Class B shares by a Portfolio does not result in the Portfolio's dividends or distributions constituting "preferential dividends" under the Internal Revenue Code of 1986, as amended (the "Code"), and that such conversion does not constitute a taxable event under the Code. The conversion of Class B shares to Class A shares may be suspended if such a ruling or opinion or counsel is no longer available. In the event that conversions of Class B shares do not occur, Class B shares will continue to be subject to the distribution fee applicable to Class B shares and any incrementally higher class expenses applicable to Class B shares for an indefinite period.

10. Applicants will comply with the recent amendments to Article III, Section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD's Rules of Fair Practice") regarding asset-based sales charges and service fees. See Securities Exchange Act Release No. 30897 (July 7, 1992).

11. Under the proposed Multi-Class Plan, each share of a particular Portfolio, regardless of class, will represent an equal pro rata interest in the Portfolio and will have identical voting, dividend, liquidation and other rights, except for (i) the amount and type of fees permitted by different 12b–1 Plan provisions and any Service Agreements adopted in the future, or any amendments to existing Service Agreements, that impose different levels of Service Fees among classes; (ii) voting rights on matters pertaining to 12b–1 Plans; (iii) the effect of any incremental expenses which the Board of Trustees ("Trustees"), including a majority of the Trustees who are not "interested persons" of the Trust, as defined in section 2(a)(19) of the Act (the "Independent Trustees"), determine should be allocated or charged on a class basis, which expenses are limited to any litigation expenses and any tax liens relating solely to the class (together with the fees payable pursuant to the class-specific 12b–1 Plans) and any disproportionate fees payable pursuant to the class-specific Service Agreements ("Class Expenses"); (iv) exchange privileges; and (v) the designation of such classes.

12. Each class of shares of a Portfolio will bear *pro rata* with every other class of shares of such Portfolio all Portfolio expenses other than class expenses (which other expenses will be comprised of the fees of the Portfolio's investment adviser and administrator). The Adviser may choose to reimburse or waive Class Expenses on certain classes on a voluntary, temporary basis. The amount of Class Expenses waived or reimbursed by the Adviser may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or waive Class Expenses at different levels for different classes of the same Portfolio.

13. In addition, the Adviser may waive or reimburse Trust expenses and/or Portfolio Expenses (with or without a waiver or reimbursement of Class Expenses) but only if the same proportionate amount of Trust Expenses and/or Portfolio Expenses are waived or reimbursed for each class. Thus, any Trust Expenses that are waived or reimbursed would be credited to each class of each Portfolio based on the relative net assets of the classes. Similarly, any Portfolio Expenses that are waived or reimbursed would be credited to each class of that portfolio according to the relative net assets of the classes. Trust Expenses and Portfolio Expenses apply equally to all classes of a given Portfolio. Accordingly, it may not be appropriate to waive or reimburse Trust Expenses or Portfolio Expenses at different levels for different classes of the same Portfolio.

14. Applicants also are requesting an exemption from sections 2(a)(32), 2(a)(35), 22(c) and 22(d) of the Act and rule 22c–1 thereunder, to permit the Portfolios to assess a CDSC on certain redemptions of Class B shares of the Portfolios, and to waive the CDSC with respect to certain types of redemptions. In no event will the aggregate amount of the CDSC exceed 5.00% of the aggregate purchase payments made by an investor for Class B shares of a Portfolio.

15. The CDSC will not be imposed on any redemption of Class B shares that were purchased more than four years prior to such redemption (the "CDSC Period"), or on any redemption of Class B shares derived from reinvestment of distributions. Furthermore, no CDSC will be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the Class B shares purchased during the CDSC Period. As a result, the amount of the CDSC will be calculated as the lesser of the amount that represents a specified percentage of the net asset value of the Class B shares at the time of purchase, or the amount that represents such percentage of the net asset value of the Class B shares at the time of redemption. In determining the applicability and rate of the CDSC, it will be assumed that a redemption is made first of Class B shares representing capital appreciation, next to Class B shares representing reinvestment of dividends and capital gain distributions, and finally of other Class B shares held by the shareholder for the longest period of time. This will result in a CDSC, if any, being imposed at the lowest possible rate.

16. Applicants are requesting the ability to waive or reduce the CDSC in some or all of the following circumstances: (a) following the death or disability of a shareholder, as defined in Section 72(m)(7) of the Code, if redemption is made within one year of death or disability; (b) in connection with a minimum required distribution from an Individual Retirement Account, or other qualified retirement plan to a shareholder who has attained the age of 70 and one-half; (c) in connection with redemptions made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Portfolio; and (d) in connection with redemptions by tax-exempt employee benefit plans resulting from the enactment of any law or the promulgation by the Internal Revenue Service or the Department of Labor of any regulation pursuant to which continuation of the investment in such shares would be improper.

17. In addition, the Distributor may provide a pro rata refund out of its own assets of any CDSC paid in connection with a redemption of Class B shares of a Portfolio followed by a reinvestment in such shares effected within 365 days, or a shorter specified period, or such redemption. Upon any such reinvestment, the amount reinvested will be subject to the same CDSC to which such amount was subject prior to the redemption, and the CDSC Period with respect to such amount will continue to run from the original investment date but will be extended by the number of days between the redemption and reinvestment dates.

18. If the Trustees determine that a Portfolio that has been waiving or reducing its CDSC pursuant to any of the items set forth above should not continue to waive or reduce such CDSC, the disclosure in that Portfolio's prospectus will be appropriately revised. Also, any Class B shares

purchased prior to the termination of such waiver or reduction will be able to have the CDSC waived or reduced as provided in the Portfolio's prospectus effective at the time of the purchase of such shares.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(f), 18(g), and 18(i) of the Act to the extent the Multi-Class Plan may result in a senior security, the issuance and sale of which will be prohibited by section 18(f)(1) of the Act, and to the extent the allocation of voting rights under the Multi-Class Play may violate the equal voting provisions of section 18(i).

2. Applicants believe that the proposed Multi-Class Plan does not raise any of the legislative concerns that section 18 of the Act is designed to ameliorate. The proposal does not involve borrowings and does not affect the Portfolios' existing assets or reserves. In addition, the proposed arrangement will not increase the speculative character of the shares of the Portfolios because all such shares will participate pro rata in all of a Portfolio's income and expenses with the exception of the class expenses incurred by each class.

3. Applicants believe that the Multi-Class Plan will both facilitate the distribution of shares by a Portfolio and provide investors with a broader choice as to the method of purchasing shares. Applicants also believe that the proposed Multi-Class Plan will benefit the Portfolios' beneficial owners, irrespective of class, because the proposed arrangement will permit the Trust to save the organizational and other continuing costs that will be incurred if the Trust was required to establish a separate Portfolio for each class of shares, and therefore the larger pool of assets in each Portfolio will better enable the Portfolio's investment manager to achieve the investment objectives of that Portfolio, including diversification.

4. Applicants believe that the proposed imposition of the CDSC on the Class B shares of the Portfolios is fair and in the best interests of the Portfolios' shareholders. By electing to purchase their shares subject to a CDSC, shareholders have the advantage of greater investment dollars working for them from the time of their purchase than if a sales load were imposed at the time of purchase. Furthermore, the CDSC is fair to such shareholders because it applies only to amounts representing purchase payments and does not apply to amounts representing increases in the value of an investor's account through capital appreciation, or to amounts representing reinvestment of distributions.

Applicants' Conditions

Applicants agree that the following conditions may be imposed in any order of the SEC granting the requested relief:

1. Each class of shares will represent interests in the same portfolio of investments of a Portfolio and will be identical in all respects, except as set forth below. The only differences among classes of shares of the same Portfolio will relate to: (i) The existence of 12b-1 Plans and Service Agreements and the impact of the disproportionate payments made under the applicable 12b-1 Plans, and the impact of any disproportionate Service Fees payable pursuant to the class-specific Service Agreements, any incremental expenses which the Trustees, including a majority of the Independent Trustees, determine should be allocated or charged on a class basis, which expenses are limited to any litigation or charged on a class basis, which expenses are limited to any litigation expenses and any tax liens relating solely to the class (together with fees payable pursuant to the class-specific 12b-1 Plans and any disproportionate Service Fees payable pursuant to the class-specific Service Agreements, ("Class Expenses"); and any other incremental expenses subsequently identified that should be properly allocated or charged to one class which shall be approved by the SEC pursuant to any amended order, (ii) voting rights on matters that pertain to 12b-1 Plans, (iii) exchange privileges, (iv) the designation of each class of shares of a Portfolio, and (v) the conversion feature applicable to Class B shares only.

2. The Trustees, including a majority of the Independent Trustees, have approved the offering of different classes of shares, the assessment of the CDSC, and the adoption of the 12b-1 Plans and Services Agreements covering the Class B and Class C shares (the "Multi-Class System"). The minutes of the meetings of the Trustees regarding the deliberations of the Trustees with respect to the approvals necessary to implement the Multi-Class System will reflect in detail the reasons for the Trustees' determination that the proposed Multi-Class System is in the best interests of the Portfolios and their shareholders.

3. The initial determination of the Class Expenses that will be allocated to a particular class has been reviewed and approved by a vote of the Trustees, including a majority of the Independent Trustees, and any subsequent changes to such allocation also will be reviewed and approved in the same manner. Any person authorized to direct the allocation and disposition of monies paid or payable by any Portfolio to meet Class Expenses shall provide to the Trustees, and the Trustees shall review, at least quarterly, a written report of the amounts of such expenses and the purposes for which such expenditures were made.

4. On an ongoing basis the Trustees, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Portfolio for the existence of any material conflicts among the interests of the various classes of shares. The Trustees, including a majority of the Independent Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. If a conflict arises, the Adviser and/or the Distributor at their own cost will take such steps as are necessary to remedy such conflict up to and including establishing a new registered management investment company.

5. The Trustees will receive quarterly and annual statements concerning the distribution and shareholder servicing expenditures. In such statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class. Expenditures not related to the sale or servicing of a particular class of shares will not be presented to the Trustees to justify any fee attributable to that class. Such statements, including the allocations upon which they are based, will be subject to the review and approval of the Independent Trustees in the exercise of their fiduciary duties.

6. Dividends paid by each Portfolio with respect to a class of shares of a Portfolio will be calculated in the same manner, at the same time, on the same day, and will be in the same amount as dividends paid by the Portfolio with respect to each other class of shares in the same Portfolio, except that each particular class will bear exclusively its own Class Expenses (which shall consist exclusively of any class-specific litigation expenses, any class-specific tax liens, class-specific fees payable pursuant to the class-specific 12b-1 Plan, and any disproportionate Service Fees payable pursuant to the class-specific Service Agreements).

7. The methodology and procedures for calculating the net asset value, dividends and distributions of the various classes and the proper

allocation of expenses among the classes has been reviewed by an expert (the "Expert") who has rendered a report to the applicants, which report has been provided to the staff of the SEC, that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render, at least annually, a report to the Portfolios that the calculations and allocations are being made properly. The reports of the Expert will be filed as part of the periodic reports filed with the SEC pursuant to sections 30(a) and 30(b)(1) of the Act and the work papers of the Expert with respect to such reports, following request by the Trust, which the Trust agrees to provide, will be available for inspection by the staff of the SEC upon written request by a senior member of the SEC's Division of Investment Management limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrator. The initial report of the Expert is a "report on policies and procedures placed in operation" and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in Statement of Auditing Standards No. 70 of the American Institute of Certified Public Accountants ("AICPA"), as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

8. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among the classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 7 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in that condition. Applicants will take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

9. Each prospectus pursuant to which one or more classes of shares of a Portfolio are offered will include a statement to the effect that a salesperson or any other person entitled to receive compensation for selling or servicing shares may receive different compensation with respect to one particular class of shares over another class in the same Portfolio.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees with respect to the Multi-Class System will be set forth in guidelines to be furnished to the Trustees.

11. The Trust will disclose the respective expenses, performance data, distribution arrangements, services, fees, front-end sales loads, deferred sales loads, and exchange privileges applicable to each class of a Portfolio in every prospectus for shares of such Portfolio, regardless of whether all classes of such Portfolio are offered through such prospectus. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to a Portfolio as a whole generally and not on a per class basis. Each Portfolio's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Protfolio. The Trust will disclose the respective expenses and performance data applicable to all classes of each Portfolio in every shareholder report of such Portfolio. To the extent that any advertisement or sales literature describes the expenses or performance data applicable to any class of a Portfolio, it also will disclose the respective expenses and/or performance data applicable to all classes of such Portfolio. The information provided by applicants for publication in any newspaper or similar listing of a Portfolio's net asset value or public offering price will separately present this information for each class of shares of such Portfolio.

12. Applicants will comply with proposed rule 6c–10 under the Act, as such rule is currently proposed, and as it may be reproposed, adopted, or amended.

13. Applicant acknowledge that the grant of the requested exemptive order does not imply SEC approval, authorization of, or acquiescence in any particular level of payments that applicants may make pursuant to the Portfolios' 12b–1 Plans or Service Agreements in reliance on this exemptive order.

14. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of a Portfolio to agree to conform to such standards.

15. Class B shares of each Portfolio will convert into Class A shares of such Portfolio on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the combined asset-based sales charge and service fee, if any, to which such shares were subject prior to their conversion.

16. If a Portfolio adopts and implements a 12b–1 Plan for its Class A shares (or, if presented to shareholders, implements any amendment to a 12b–1 Plan previously adopted, or any amendment to its Services Agreement, that will increase materially the amount that may be borne by the Class A shares under such 12b–1 Plan or Services Agreement), existing Class B shares of that Portfolio will stop converting into such Class A shares unless the Class B shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Class B shares are exchanged or converted into a new class of shares ("New Class A"), identical in all material respects to Class A as it existed prior to implementation of such proposal, no later than the date such Class B shares previously were scheduled to convert into Class A shares. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Class B shares for a new class of shares ("New Class B"), identical to existing Class B shares in all material respects except that New Class B shares will convert into New Class A shares. New Class A or New Class B may be established and issued without further exemptive relief. The exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to federal taxation. In accordance with condition 4 above, any additional cost associated with the establishment, exchange or conversion of New Class A shares or New Class B shares shall be borne solely by the Adviser and the Distributor. Class B shares sold after the implementation of any such proposal may convert into Class A shares subject to the higher maximum fees, provided that the material features of the Class A fee arrangements and the relationship of such fee arrangements are disclosed in an effective registration statement.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28452 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25925]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 12, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 6, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Entergy Corporation, et al. (70–7561)

Entergy Corporation ("Entergy"), 225 Baronne Street, New Orleans, Louisiana 70112, a registered holding company, and its subsidiaries, System Energy Resources, Inc. ("SERI"), 1340 Echelon Parkway, Jackson, Mississippi 39213, Arkansas Power & Light Company ("AP&L"), 425 West Capitol Street, Little Rock, Arkansas 72201, Louisiana Power & Light Company ("LP&L"), 639 Loyola Avenue, New Orleans, Louisiana 70113, Mississippi Power and Light Company ("MP&L"), 308 East Pearl Street, Jackson, Mississippi 39201, and New Orleans Public Service Inc. ("NOPSI"), 639 Loyola Avenue, New Orleans, Louisiana 70113, (collectively, "Applicants") have filed a post-effective amendment to their declaration under Sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50 thereunder.

By order dated December 23, 1988 (HCAR No. 24791), in connection with the equity funding of the sale and leaseback of Grand Gulf Nuclear Generating Station, Unit I ("Grand Gulf I") ("Lease"), consummated by SERI on December 28, 1988, the Applicants were authorized, among other things, to obtain financial support in the form of a letter of credit ("LOC"), which was provided by the Fuji Bank, Limited ("LOC Bank") to secure the payment to the owner-lessor ("Owner") of the net casualty value ("Net Casualty Value"), as defined in the Lease, which might be payable from time-to-time by SERI under the Lease. Upon the occurrence of certain events, the Owner would be entitled to draw on the LOC in amounts equal to amounts owed by SERI under the Lease for the Net Casualty Value. Pursuant to the Reimbursement Agreement, dated as of December 1, 1988 ("Reimbursement Agreement"), SERI was also authorized to reimburse the LOC Bank at its prime rate, certificate of deposit rate of the LIBOR, at SERI's option, for amounts drawn under the LOC. SERI was further authorized to assign, for the benefit of the LOC Bank, an administrating bank ("Administrating Bank") and the participating banks ("Participating Banks"), its rights under: (1) An Availability Agreement, dated as of June 21, 1974 ("Availability Agreement"), among itself, AP&L, LP&L, MP&L and NOPSI, consented to and joined in by AP&L, LP&L, MP&L and NOPSI; and (2) a Capital Funds Agreement, dated as of June 21, 1974, ("Capital Funds Agreement"), between itself and Entergy, consented to and joined in by Entergy. The initial LOC was scheduled to terminate on December 28, 1991.

On January 14, 1991, pursuant to a further order of the Commission dated January 11, 1991 (HCAR No. 25241) ("1991 Order"), the original LOC was cancelled and replaced by a new LOC issued by Bank of Tokyo, LTD., Los Angeles Agency ("Bank of Tokyo"), in an aggregate amount of $145,751,800, pursuant to the original Reimbursement Agreement as amended by a first amendment and agreement among SERI, Bank of Tokyo, Chemical Bank, and certain other participating banks. In connection with the new LOC, SERI further assigned, for the benefit of the banks, its rights under the Availability Agreement and the Capital Funds Agreement. The new LOC is scheduled to expire on January 15, 1994. The Applicants propose to cancel the current LOC and replace it with a new LOC ("Replacement LOC"), in compliance with the parameters established in the 1991 Order. The Replacement LOC will expire on January 15, 1997.

Arkansas Power & Light Company (70–7834)

Arkansas Power & Light Company ("AP&L"), 425 West Capitol, 40th Floor, Little Rock, Arkansas 72201, an electric public-utility subsidiary company of Entergy Corporation, a registered holding company, has filed a post-effective amendment to its application-declaration filed with this Commission under Sections 9(a), 10, and 12(c) of the Act and Rule 42 thereunder

By orders dated March 20, 1991 and September 3, 1992 (HCAR Nos. 25278 and 25619, respectively ("Orders"), the Commission, among other things, authorized AP&L, for the period during which any shares of the new preferred stock [1] are outstanding to: (1) Redeem shares of its outstanding New Preferred Stock to be issued under the exemptive provisions of Rule 52, in accordance with any mandatory or optional redemption provisions established at the time of the New Preferred Stock's initial issuance; (2) redeem (or purchase in lieu of redemption) outstanding New Preferred Stock, in accordance with the sinking fund provisions established at the time of the New Preferred Stock's initial issuance. These redemption provisions applied to the New Preferred Stock that was to be issued through December 31, 1993.

AP&L now intends to issue $270 million of New Preferred Stock, through December 31, 1995, under the exemptive provisions of Rule 52 ("Additional Stock"). For the period during which any share of the Additional Stock are outstanding, AP&L proposes to: (1) Redeem shares of its Additional Stock, in accordance with any mandatory or optional redemption provisions established at the time of the Additional Stock's initial issuance; and (2) redeem (or purchase in lieu of redemption) outstanding Additional Stock, in accordance with the sinking

[1] AP&L was authorized to issue and sell shares of its preferred stock, $.01 par value ("Class A Preferred"). The Class A Preferred has an aggregate price payable in the event of involuntary liquidation ("Liquidation Value") not to exceed: (1) $100 million, and/or (2) four million shares of AP&L's preferred stock, cumulative, par value $25; and/ or (3) one million shares of AP&L's preferred stock, cumulative, par value $100; provided, however, that the aggregate of the Liquidation Value of the Class A Preferred issued, together with the total par value of the other classes issued, shall not exceed $100 million (collectively, "New Preferred Stock").

fund provisions established at the time of the Additional Stock's initial issuance.

In addition, AP&L was authorized by the Orders to acquire from time-to-time prior to December 31, 1993, in whole or in part, prior to their respective maturities, certain of AP&L's outstanding securities, up to and including: (1) $350 million aggregate principal amount of one or more series of AP&L's outstanding first mortgage bonds ("First Mortgage Bonds"); (2) $175 million aggregate principal amount of one or more series of the outstanding pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's outstanding preferred stock. AP&L has acquired approximately $151.18 million of the First Mortgage Bonds leaving a balance of approximately $198.82 million of First Mortgage Bonds to be acquired.

AP&L now proposes to extend its authorization, from December 31, 1993 to December 31, 1995 to acquire not to exceed: (1) Approximately $198.82 million aggregate principal amount of the outstanding First Mortgage Bonds; (2) $175 million aggregate principal amount of one or more series of the outstanding pollution control revenue bonds and/or solid waste disposal bonds issued for AP&L's benefit; and (3) $150 million aggregate par value of one or more series of AP&L's outstanding preferred stock.

UNITIL Corporation (70–8090)

UNITIL Corporation ("UNITIL"), 216 Epping Road, Exeter, New Hampshire 03833, a registered holding company, has filed an application-declaration under Sections 6(a), 7, 9(a), 10, and 12(c) of the Act and Rules 42 and 50(a)(5) thereunder.

UNITIL seeks authorization for its management performance compensation program ("Program") through December 31, 1998. Under the Program, key employees, approximately 21 in number but which may increase, will be eligible to receive awards of common stock and cash. To implement the Plan, UNITIL proposes to distribute up to 83,400 shares of its common stock, no par value, to be acquired on the open market, or alternatively, to distribute up to 83,400 authorized but unissued shares of UNITIL's common stock. In addition, UNITIL proposes to distribute 1,818 shares of currently available common stock.

The UNITIL performance committee ("Committee"), comprised of the Chief Executive Officer, President, and Executive Vice President of UNITIL, administers the Program. The Committee selects which eligible employees will participate in the Program and calculates the amount of each award based on the performance of UNITIL and the performance of the employee measured against certain defined criteria. Committee members are eligible to receive awards under the program.

The criterion for measuring each participating employee's performance is the employee's achievement of annual individual performance goals set by the head of that employee's division and the Committee. The maximum annual award payable under the Program ranges from 15% to 37.5% of a participant's base salary range midpoint.

UNITIL states that approximately 70% of each years's annual award is paid on a cash basis while the remaining portion of the award is paid through a distribution of common stock. UNITIL anticipates that the Program will be fully funded by income provided from operating activities and that external borrowing will not be used to meet the requirements of the Program. According to UNITIL, the costs of the Program awards are paid directly by the UNITIL system company that pays each participant's base salary during the performance period.

UNITIL states that the common stock distributed as awards is generally purchased from time to time by UNITIL on the open market, with the value of the award based on the stock price at the time of purchase by UNITIL, but may also consist of authorized but unissued shares of common stock. At the present time, UNITIL plans to continue to make open market purchases to meet the requirements of the Program because of the relatively small size of the stock purchases and the negligible impact the market purchases of common stock have on UNITIL's trading volume, price per share, and capital structure. However, should UNITIL decide to issue authorized but unissued shares of its common stock, UNITIL requests an exception from the competitive bidding requirements of Rule 50(a)(5).

Jersey Central Power & Light Company, et al. (70–8289)

Jersey Central Power & Light Company ("JCP&L"), 300 Madison Avenue, Morristown, New Jersey 07960; Metropolitan Edison Company ("Met-Ed"), 2800 Pottsville Pike, Reading, Pennsylvania 19605 and Pennsylvania Electric Company ("Penelec"), 1001 Broad Street, Johnstown, Pennsylvania 15907, all public-utility subsidiary companies of General Public Utilities Corporation ("GPU"), a registered holding company, have filed an application under sections 9(a) and 10 of the Act.

JCP&L, Met-Ed and Penelec ("GPU Subsidiaries") propose from time to time to enter into operation and maintenance agreements ("O&M Agreements") with non-utility generation facilities ("NUGs"), (i) with which a GPU Subsidiary, has entered into a power purchase agreement, or (ii) which are otherwise located either within the service territory of one of the GPU Subsidiaries or that of an adjacent utility. The fees and other terms and conditions of each O&M Agreement will be negotiated between the GPU Subsidiary and the NUG facility owner, and are expected to be market-based.

Since the enactment of the Public Utility Regulatory Policies Act of 1978 ("PURPA"), the GPU Subsidiaries have entered into a number of long-term power purchase agreements with developers of NUGs. These NUGs are "qualifying facilities" under PURPA and the regulations thereunder of the Federal Energy Regulatory Commission or, more recently, "exempt wholesale generators" as defined in section 32 of the Act. The majority of these facilities are located within the service territory of the GPU Subsidiary which has executed the related power purchase agreement, and the remaining facilities are located within the service territory of an adjacent utility which has entered into a wheeling agreement to transmit the facilities' energy to the GPU Subsidiary.

The GPU Subsidiaries have from time to time been offered the opportunity, and anticipate future requests, to enter into O&M Agreements to provide, for a fee, operation and maintenance services ("O&M Services") to NUGs with which they have a power purchase agreement. The GPU Subsidiaries also anticipate the opportunity to enter into O&M Agreements with other NUG facilities within their service territories or adjacent electric utility service territories.

O&M Services might typically consist of one or more of the following: pre-start-up service, operation staff development and long-term operation, maintenance and administration. The GPU Subsidiaries expect that O&M Services for NUGs would be undertaken by available personnel and would involve the use of only a limited amount of such resources.

American Electric Power Company, Inc., et al. (70–8293)

American Electric Power Company, Inc. ("AEP"), a registered holding

company, 1 Riverside Plaza, Columbus, Ohio 43215, and its subsidiaries, AEP Generating Company ("Generating"), 1 Riverside Plaza, Columbus, Ohio 43215, Appalachian Power Company ("Appalachian"), 40 Franklyn Road, S.W., Roanoke, Virginia 24011, Columbus Southern Power Company ("Columbus"), 215 North Front Street, Columbus, Ohio 43215, Indiana Michigan Power Company ("Indiana Michigan"), One Summit Square, P.O. Box 60, Fort Wayne, Indiana 46801, Kanawha Valley Power Company ("Kanawha"), 301 Virginia Street East, Charleston, West Virginia 25327, Kentucky Power Company ("Kentucky Power"), 1701 Central Avenue, Ashland, Kentucky 41101, Kingsport Power Company ("Kingsport"), 40 Franklyn Road, S.W., Roanoke, Virginia 24011, Ohio Power Company ("Ohio Power"), 301 Cleveland Avenue, SW., Canton, Ohio 44701, and Wheeling Power Company ("Wheeling"), 51 Sixteenth Street, Wheeling, West Virginia 26003, have filed a declaration under Sections 6(a), 7 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

During the period beginning January 1, 1994 and ending December 31, 1995: (i) AEP, Application, Columbus, Indiana Michigan, Kentucky Power and Ohio Power propose to issue, sell and renew short-term notes to banks and commercial paper to dealers in aggregate principal amounts not to exceed $150 million, $250 million, $200 million, $200 million, $100 million and $250 million, respectively, outstanding at any one time; and (ii) Generating, Kanawha, Kingsport and Wheeling propose to issue, sell and renew short-term notes to banks in aggregate principal amounts not to exceed $50 million, $10 million, $20 million and $20 million, respectively, outstanding at any one time.

All bank notes will mature not more than 270 days after the date of issuance or renewal and none will mature later than June 30, 1996. The companies may be required to maintain balances of up to 10% of the line of credit and to pay fees of up to ⅛ of 1% of the line of credit. The effective annual interest cost, assuming full use of the line of credit, will not exceed 125% of the prime commercial rate in effect from time to time.

The commercial paper notes to be sold by AEP, Appalachian, Columbus, Indiana Michigan, Kentucky Power and Ohio Power will not be prepayable, will have varying maturities not in excess of 270 days after the date of issue, and will be sold directly to a dealer at a discount rate not in excess of the discount rate per annum prevailing at the time of issuance for commercial paper of comparable quality and maturity. The commercial paper dealers will reoffer the commercial paper to investors, generally at a discount rate of up to ⅛ of 1% per annum less than the discount rate at which such commercial paper notes were purchased from the companies. The companies request an exception from the competitive bidding requirements of Rule 50 pursuant to subsection (a)(5) thereunder and authorization to begin negotiations with dealers with respect to the sale and issuance of commercial paper. It may do so.

By orders dated December 7, 1990 (HCAR No. 25201), April 3, 1992 (HCAR No. 25509) and May 23, 1993 (HCAR No. 25817), the Commission, among other things, authorized AEP to make cash contributions of up to $25 million to Appalachian and up to $30 million to Indiana Michigan through December 31, 1993. To date, AEP has not made such contributions. AEP proposes to extend its authority through December 21, 1995 and to increase such authorization by an additional $50 million to Appalachian. AEP expects to make a $15 million capital contribution to Indiana Michigan on or prior to December 31, 1993 and proposes to extend such authorization through December 31, 1995 to make the remaining $15 million contribution and to increase such authorization by an additional $20 million. In addition, AEP proposes to make cash capital contributions from time to time through December 31, 1995 to Columbus, Kentucky Power, Ohio Power, Kingsport and Wheeling up to $15 million, $35 million, $50 million, $5 million and $5 million, respectively.

The proceeds from the borrowings by the companies will be used to pay their general obligations including expenditures incurred in their various construction projects and for other corporate purposes.

National Fuel Gas Company (70–8297)

National Fuel Gas Company ("National"), 30 Rockefeller Plaza, Suite 4545, New York, New York 10112, a registered holding company, and all its wholly owned subsidiary companies, National Fuel Gas Distribution Corporation ("Distribution"), National Fuel Gas Supply Corporation ("Supply"), Empire Exploration, Inc. ("Empire"), Penn-York Energy Corporation ("Penn-York"), Seneca Resources Corporation ("Seneca"), Highland Land & Minerals, Inc. ("Highland"), Enerop Corporation ("Enerop"), Data-Track Account Services, Inc. ("Data-Track"), National Fuel Resources, Inc.("NFR"), all at 10 Lafayette Square, Buffalo, New York 14203, and Utility Constructors, Inc. ("UCI"), East Erie Extension, Linesville, Pennsylvania 16424, ("Subsidiaries") have filed an application-declaration under sections 6(a), 7, 9(a), 10, 12(b) and 12(f) of the Act and rules 43, 45 and 50(a)(5) thereunder.

Applicant-declarants propose that National be authorized to issue and sell commercial paper and/or incur borrowings under short-term credit facilities with banks or other financial institutions and loan the proceeds to its Subsidiaries through December 31, 1995. In addition, authorization is requested to continue a money pool arrangement among National and its Subsidiaries. National also proposes to enter into interest rate and currency exchange agreements in order to achieve interest rate protection with respect to a portion of its short-term indebtedness which may be outstanding from time to time.

National and its Subsidiaries propose to issue and sell short-term securities in amounts up to the following through December 31, 1995:

Company	Amount
National	$10,000,000
Distribution	265,000,000
Supply	120,000,000
Empire	50,000,000
Penn-York	[2] 47,000,000
Seneca	120,000,000
UCI	15,000,000
Highland	5,000,000
Enerop	5,000,000
Data-Track	1,000,000
NFR	20,000,000

[2] Pursuant to a pending application-declaration in File No. 70–8135, National proposes to merge Penn-York into Supply. Upon the consummation of such merger, it is proposed that this borrowing limit be added to the limit of Supply.

Previously, the Commission has authorized short-term loans of surplus funds generated by National and the Subsidiaries between certain subsidiaries participating in a money-pool arrangement (See *e.g.*, HCAR No. 25439, December 23, 1991). National proposes that such intra-system borrowing arrangements be authorized to continue. National will administer the money pool and coordinate its own and the Subsidiaries' short-term borrowings. Money pool funds will be derived from the following sources: (1) Surplus funds of National and the Subsidiaries; (2) proceeds from National's sale of commercial paper; (3) borrowings by National from banks or other financial institutions.

National will not make borrowings from any of the Subsidiaries through the money pool. National's borrowings, if any, will be directly from commercial paper issuances and/or borrowings under its facilities with banks or other financial institutions.

If only internal funds (surplus funds of National and certain Subsidiaries) make up the funds available in the money pool, the interest rate applicable and payable to or by Subsidiaries for all loans of such internal funds will be the lower of the following two rates: (1) The rate for dealer issued 30-day commercial paper quoted in The Wall Street Journal, or (2) the prime rate at Chase Manhattan Bank, N.A.

If only external funds (funds borrowed by National either through commercial paper or loans from banks or other financial institutions) make up the funds available in the money pool, the interest rate applicable to such borrowings and payable by Subsidiaries will be equal to National's net cost for such external borrowings.

In cases where both surplus funds from other participating Subsidiaries and external funds are concurrently borrowed through the money pool, the interest rate payable to the participating Subsidiaries that contributed surplus funds to the money pool will be equal to either: (1) The rate for 30-day commercial paper issued by National having the same issue date as of the date of contribution of the surplus funds, or (2) if National does not issue commercial paper on the date that surplus funds are contributed to the money pool, the lower of: (a) The rate for dealer issued 30-day commercial paper quoted in The Wall Street Journal, or (b) the prime rate at Chase Manhattan Bank, N.A.

The rate applicable to all funds borrowed will be a composite rate, equal to the weighted average of the net cost of funds borrowed externally, and the cost of all surplus funds contributed by the money pool participants. Interest on all borrowings through the money pool will be payable monthly by the Subsidiaries until the principal amount borrowed is fully repaid.

If intra-system sources of funds are insufficient to meet short-term loan requests, National proposes to issue and sell its commercial paper in an aggregate principal amount at any one time outstanding of up to $150 million during the period from January 1, 1994, through December 31, 1995. National will make the proceeds therefrom available to its Subsidiaries through the money pool.

National expects to sell the commercial paper in minimum sales amounts of not less than $50,000 and note denominations of not less than $25,000 with varying maturities not to exceed nine months. The commercial paper will not be prepayable prior to maturity. No commission will be payable in connection with the issuance and sale of the commercial paper; however, the dealer/placement agent will reoffer and sell the commercial paper at a discount rate of ⅛ of 1% per annum less than the prevailing discount rate granted by the dealer/placement agent to National.

National proposes to establish credit facilities with various banks and/or other financial institutions and to issue and sell from time to time during the period from January 1, 1994 through December 31, 1995, short-term unsecured notes in an aggregate principal amount not to exceed $400 million. These proceeds will be made available to the Subsidiaries through the money pool. The notes issued and sold will bear interest at the prime or base rate of interest in effect at each individual bank. In addition to prime or base rate loans, each of these banks may have amounts of funds available, which they will lend to National at fixed rates below the existing prime rate or base rate, for short periods of time (one day to two hundred seventy days) depending upon market conditions. National may find it beneficial to repay outstanding notes at the prime or base rate with funds borrowed at this lower fixed rate. The fixed rate notes may not be prepayable. Therefore, National will not utilize such notes unless it anticipates the need for the funds for at least the maturity of such notes.

National's aggregate principal amount of external short-term unsecured notes and commercial paper (which is subject to a limit of $150 million) outstanding at any one time shall never exceed $400 million.

In addition to the credit facilities noted above, National has obtained a committed credit facility of $113 million which is shared among various banks and is administered by Chase Manhattan Bank, N.A., as their agent. This committed facility acts as a back-up for National's commercial paper facilities.

In addition to the commercial paper and credit facilities discussed above, National proposes to enter into interest rate and currency exchange agreements ("Swap Agreement(s)") with one or more parties ("Counterparty") on or before December 31, 1995. The term of each Swap Agreement could range from one month up to thirty years. National proposes that the maximum principal amount of outstanding debt that would be covered under the Swap Agreements would not exceed $200,000,000.

From time to time, National may be obligated to pay arrangement fees and/or legal fees and other expenses in connection with these Swap Agreements. National requests authority to allocate all such fees and expenses together with the payments made to a Counterparty or received from a Counterparty among all applicant-declarants based upon their weighted average amount of borrowings outstanding during the period when such amounts are paid or received.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28453 Filed 11–18–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

Office of the Secretary

[Public Notice 1903]

Extension of the Restriction on the Use of the United States Passport for Travel To, In, or Through Libya

On December 11, 1981, pursuant to the authority of 22 U.S.C. 211a and Executive Order 11295 (31 FR 10603), and in accordance with 22 CFR 51.73(a)(3), all United States passports were declared invalid for travel to, in, or through Libya unless specifically validated for such travel. This restriction has been renewed yearly because of the unsettled relations between the United States and the Government of Libya and the threats of hostile acts against Americans in Libya.

The Government of Libya still maintains a decidedly anti-American stance and continues to emphasize its willingness to direct hostile acts against the United States and its nationals. The American Embassy in Tripoli remains closed, thus preventing the United States from providing routine diplomatic protection or consular assistance to Americans who may travel to Libya.

In light of these events and circumstances, I have determined that Libya continues to be an area "* * * where there is imminent danger to the public health or physical safety of United States travelers."

Accordingly, all United States passports shall remain invalid for use in travel to, in, or through Libya unless specifically validated for such travel under the authority of the Secretary of State.

The Public Notice shall be effective upon publication in the **Federal Register** and shall expire at the end of one year unless sooner extended or revoked by Public Notice.

Dated: November 11, 1993.

Warren Christopher,

Secretary of State.

[FR Doc. 93–28447 Filed 11–18–93; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Research and Development Programs Meeting

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Notice.

SUMMARY: This notice announces a public meeting at which NHTSA will describe and discuss specific research and development projects.

DATES AND TERMS: The National Highway Traffic Safety Administration will hold a public meeting devoted primarily to presentations of specific research and development projects on December 15, 1993, beginning at 1 p.m. and ending at approximately 4:30 p.m. Questions may be submitted in advance regarding the Agency's research and development projects. They must be submitted in writing by December 8, 1993 to the address given below. If sufficient time is available, questions received by the December 8 date will be answered at the meeting in the discussion period. The individual, group or company asking a question does not have to be present for the question to be answered. A consolidated list of the questions submitted by December 8 will be available at the meeting and will be mailed to requesters after the meeting.

ADDRESSES: The meeting will be held at Department of Transportation Building, 400 7th Street SW, Washington, DC, in room 2230 (in the southeast corner). Questions for the December 15, 1993 meeting relating to the Agency's research and development programs should be submitted to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, room 6206, 400 Seventh St. SW., Washington, DC 20590. The fax number is 202–366–5930.

SUPPLEMENTARY INFORMATION: NHTSA intends to provide detailed presentations about its research and development programs in a series of quarterly public meetings. The purpose is to make available more complete and timely information regarding the Agency's research and development programs. At the first meeting, on April 6, 1993, NHTSA officials from the Office of Research and Development provided a summary overview of research and development projects in the areas of crashworthiness and crash avoidance. At the second meeting, held on June 23, 1993, NHTSA staff gave detailed presentations about the agency's frontal and rollover crash protection research projects, including the topics of structural integrity, door latch integrity, and glass-plastic glazing. At the third meeting, held on October 12, 1993, NHTSA staff made presentations about biomechanics research on head, neck and thorax injury mechanisms, crash casual analysis, and driver workload assessment.

The agenda for the meeting on December 15, 1993 follows:

Critical Outcome Data Evaluation System (CODES)—Linkage of databases on police accident reporting and medical outcomes.

Special crash investigations program regarding air bag performance.

Highway traffic injury studies.

Update on improved frontal crash protection.

Upgrade fuel system integrity.

Electric vehicle safety.

Drowsy driver monitoring.

Vehicle motion environment.

Responses to written questions.

Each of these topics will be addressed for approximately 15 to 30 minutes. NHTSA has based its decisions about the agenda, in part, on the suggestions previously received prior to the second and third public meetings. On the next day, the regular quarterly NHTSA Technical Industry Meeting will follow this meeting; it is announced in a separate notice.

Questions regarding research projects that have been submitted in writing in advance will be answered as time permits. A transcript of the meeting and copies of materials handed out at the meeting will be available for public inspection in the NHTSA Technical Reference Section, room 5108, 400 Seventh Street, SW, Washington, DC 20590. Copies of the transcript will then be available at 10 cents a page, upon request to NHTSA Technical Reference Section. The Technical Reference Section is open to the public from 9:30 a.m. to 4 p.m.

NHTSA will provide technical aids to participants as necessary, during the NHTSA Industry Research and Development Meeting. Thus any person desiring assistance of "auxiliary aids" (e.g. sign-language interpreter, telecommunication devices for deaf persons (TTDs), readers, taped texts, braille materials, or large print materials and/or a magnifying device), please contact Barbara Coleman on 202/366–1537 by COB December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, Office of Research and Development, 400 Seventh Street, SW, Washington, DC 20590. Telephone: 202–366–4730. Fax number: 202–366–5930.

George L. Parker,

Associate Administrator for Research and Development.

[FR Doc. 93–28485 Filed 11–18–93; 8:45 am]

BILLING CODE 4910–59–M

Research and Special Programs Administration

Advisory Bulletin Number ADB–93–04

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Advisory to owners and operators of gas and hazardous liquid pipeline facilities.

SUMMARY: This advisory bulletin requests that persons seeking interpretations of pipeline safety regulations include certain information.

Advisory

RSPA requests that owners and operators of gas and hazardous liquid pipelines and other persons requesting interpretation of regulations from the Office of Pipeline Safety (OPS) Washington Office include the following information in the request:

- Specify the regulations to be interpreted and provide adequate information on the circumstances regarding the interpretation requested.
- Specify whether there is a current or past OPS or State interpretation compliance action on the regulation(s) relating to the interpretation requested; and, if so, provide to the State enforcement office or OPS Regional Office a copy of the letter sent to OPS requesting an interpretation.

Background

RSPA often receives requests for interpretations of regulations from operators that have been cited for violation of the regulation(s) involved, and against whom enforcement actions have been initiated. Including information on existing compliance actions with operator requests for

interpretations will help prevent inconsistencies between interpretations given and decisions on compliance or enforcement cases that are in process.

Issued in Washington, DC, on November 16, 1993.

George W. Tenley, Jr.,

Associate Administrator for Pipeline Safety.

[FR Doc. 93–28542 Filed 11–18–93; 8:45 am]

BILLING CODE 4910–60–P

International Standards on the Transport of Dangerous Goods; Public Meeting

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of public meeting.

SUMMARY: This notice is to advise interested persons that RSPA will conduct a public meeting to report the results of the eighth session of the United Nations' Sub-Committee of Experts on the Transport of Dangerous Goods.

DATES: December 7, 1993 at 9:30 a.m.

ADDRESSES: Room 6200–6204, Nassif Building, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Frits Wybenga, International Standards Coordinator, Office of Hazardous Materials Transportation, Department of Transportation, Washington, DC 20590; (202) 366–0656.

SUPPLEMENTARY INFORMATION: This meeting will be held to describe the outcome of the eighth session of the Sub-Committee of Experts on the Transport of Dangerous Goods to be held November 22 through December 1, 1993, in Geneva, Switzerland and to discuss the U.S. delegation's plans for participating in the ninth session of the Sub-Committee to be held from July 4 through 15, 1994. Topics to be covered include: revision of the manual for tests and criteria, packaging requirements for explosives, classification criteria for environmentally hazardous substances, requirements for infectious substances, requirements for multimodal tanks, matters related to Classes 2 (compressed gases) and 8 (corrosives), general packaging and intermediate bulk container requirements, segregation requirements, classification issues related to specific dangerous goods, requirements for dangerous goods in limited quantities, incorporation of a systematic list of entries, international activities related to harmonization of chemical classification and labeling requirements and other proposed amendments to the United Nations Recommendations on the Transport of Dangerous Goods.

The public is invited to attend without prior notification.

Documents

Copies of documents submitted to the eighth session of the UN Sub-Committee meeting may be obtained from RSPA. A listing of these documents is available on the Hazardous Materials Information Exchange (HMIX), RSPA's computer bulletin board. Documents may be ordered by filling out an on-line request form on the HMIX or by contacting RSPA's Dockets Unit (202–366–4453).

For more information on the use of the HMIX system, contact the HMIX information center: 1–800–PLANFOR (752–6367); in Illinois, 1–800–367–9592; Monday through Friday, 8:30 a.m. to 5 p.m. Central time.

After the meeting, a summary of the public meeting will also be available from the Hazardous Materials Advisory Council, Suite 250, 1110 Vermont Ave., NW., Washington, DC 20005; telephone number (202) 728–1460.

Issued in Washington, DC, on November 15, 1993.

Robert A. McGuire,

Acting Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–28502 Filed 11–18–93; 8:45 am]

BILLING CODE 4910–60–M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Former Prisoners of War; Charter Renewal

This gives notice under the Federal Advisory Committee Act (Pub. L. 92–463) of October 6, 1972, that the Department of Veterans Affairs' Advisory Committee on Former Prisoners of War has been renewed for a 2-year period beginning September 29, 1993, through September 29, 1995.

Dated: November 4, 1993.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–28438 Filed 11–18–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 222
Friday, November 19, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

DEPARTMENT OF ENERGY

FEDERAL ENERGY REGULATORY COMMISSION

The following notice of meeting is published pursuant to Section 3(a) of the Government in the Sunshine Act (Pub. L. No. 94–409), U.S.C. 552b:

DATE AND TIME: November 23, 1993, 10:00 a.m.

PLACE: 825 North Capitol Street, N.E., Room 9306, Washington, D.C. 20426.

STATUS: Open.

MATTERS TO BE CONSIDERED: Agenda.

Note—Items listed on the agenda may be deleted without further notice.

CONTACT PERSON FOR MORE INFORMATION: Lois D. Cashell, Secretary; Telephone (202) 208–0400. For a recording listing items stricken from or added to the meeting, call (202) 208–1627.

This is a list of matters to be considered by the Commission. It does not include a listing of all papers relevant to the items on the agenda; however, all public documents may be examined in the Reference and Information Center.

Consent Agenda—Hydro, 990th Meeting—November 23, 1993, Regular Meeting (10 a.m.)

CAH–1.
Project No. 2742–019, Alaska Energy Authority
CAH–2.
Project Nos. 9202–071 and 072, Upper Yampa Water Conservancy District
CAH–3.
Project No. 10047–002, Northern Haydro Consultants, Inc.
Project No. 10514–001, C&A Wallscoverings, Inc.
CAH–4.
Omitted
CAH–5.
Project No. 9042–036, Gallia Hydro Partners

Consent Agenda—Electric

CAE–1.
Docket No. ER94–8–000, Philadelphia Electric Company and Susquehanna Electric Company
CAE–2.
Docket No. ER94–23–000, Northwestern Wisconsin Electric Company
CAE–3.
Docket No. ER94–24–000, Enron Power Marketing, Inc.
CAE–4.
Docket No. ER93–412–000, Northern States Power Company
CAE–5.
Docket Nos. ER93–507–000 and ER93–465–000, Florida Power & Light Company
CAE–6.
Docket No. ER93–734–000, Westmoreland-LG&E Partners
CAE–7.
Docket No. ER93–777–000, Commonwealth Edison Company
CAE–8.
Docket Nos. ER93–984–000, ER93–876–000 and ER93–907–000, Pennsylvania Electric Company
CAE–9.
Docket No. ER93–940–000, Boston Edison Company
CAE–10.
Docket No. ER91–457–000, Central Maine Power Company
Docket Nos. ER92–286–004, ER92–484–003, ER92–512–003, ER92–817–003 and ER93–130–003, New England Power Company
CAE–11.
Docket No. ER93–465–001, Florida Power & Light Company
CAE–12.
Omitted
CAE–13.
Docket No. ER93–413–001, Pacific Gas and Electric Company
CAE–14.
Docket Nos. ER93–150–001 and EL93–10–001, Boston Edison Company
CAE–15.
Docket No. RM93–10–001, New Reporting Requirement Implementing Section 123(b) of the Federal Power Act and Supporting Expanded Regulatory Responsibilities Under the Energy Policy Act of 1992, and Conforming and Other Changes to Form No. FERC–714
CAE–16.
Docket No. RM94–5–000, Treatment of Responses to FERC Form No. 580 Interrogatories
CAE–17.
Omitted
CAE–18.
Docket No. EL93–14–000, Western Resources, Inc.

Consent Agenda—Oil and Gas

CAG–1.
Docket No. RP94–31–000, CNG Transmission Corporation
CAG–2.
Docket Nos. RP94–34–000 and 001, Colorado Interstate Gas Company
CAG–3.
Docket No. RP94–36–000, Texas Eastern Transmission Corporation
CAG–4.
Docket No. RP94–37–000, Alabama Tennessee Natural Gas Company
CAG–5.
Docket Nos. RP94–38–000 and 001, Texas Gas Transmission Corporation
CAG–6.
Docket No. RP94–39–000, Tennessee Gas Pipeline Company
CAG–7.
Docket No. RP94–34–000, National Fuel Gas Supply Corporation
CAG–8.
Docket Nos. TM94–2–17–000 and 001, Texas Eastern Transmission Corporation
CAG–9.
Docket No. TM94–2–22–000, CNG Transmission Corporation
CAG–10.
Docket No. RP94–34–000, Algonquin Gas Transmission Company
CAG–11.
Docket No. RP94–43–000, ANR Pipeline Company
CAG–12.
Docket No. RP94–44–000, National Fuel Gas Supply Corporation
CAG–13.
Docket No. RP94–14–000, Algonquin Gas Transmission Company
CAG–14.
Docket Nos. RP93–17–002, 001 and RP86–119–020, Tennessee Gas Pipeline Company
CAG–15.
Docket No. RP93–6–000, Dow Pipeline Company
CAG–16.
Omitted
CAG–17.
Docket Nos. RP93–109–007 and 008, Williams Natural Gas Company
CAG–18.
Docket No. RP94–42–000, Gulf States Transmission Corporation
CAG–19.
Docket No. RP93–175–000, Williston Basin Interstate Pipeline Company
CAG–20.
Docket Nos. RP91–161–016, RP92–3–009, RP90–108–022, RP91–82–013 and RS92–5–009, Columbia Gas Transmission Corporation
Docket Nos. RP91–160–013, RP92–2–009, RP90–107–019 and RS92–6–009, Columbia Gulf Transmission Company
CAG–21.
Docket No. RP93–192–003, Texas Eastern Transmission Corporation
CAG–22.
Docket No. FA91–34–002, Tennessee Gas Pipeline Company
CAG–23.
Docket No. RP93–189–001, Texas Gas Transmission Corporation
CAG–24.
Docket Nos. RP93–181–001 and RP93–125–003, Texas Eastern Transmission Corporation
CAG–25.

Docket Nos. RP93–175–000, 002 and RS92–13–007, Williston Basin Interstate Pipeline Company

CAG–26.
Docket Nos. RP93–187–003, CP88–546–006 and RP93–62–007, Equitrans, Inc.

CAG–27.
Docket No. RP93–186–002, Carnegie Natural Gas Company

CAG–28.
Docket Nos. RP93–125–000 and 001, Texas Eastern Transmission Corporation

CAG–29.
Docket Nos. RP91–203–029, RP92–132–030, RP92–160–002, CP89–629–028, CP90–639–017, CP91–2206–007 and RS92–23–009, Tennessee Gas Pipeline Company

CAG–30.
Docket No. RP93–161–001, Columbia Gas Transmission Corporation

CAG–31.
Docket No. RP93–172–002, Panhandle Eastern Pipe Line Company

CAG–32.
Docket No. RP93–162–002, Transcontinental Gas Pipe Line Company

CAG–33.
Docket No. RP92–215–003, Columbia Gas Transmission Corporation

CAG–34.
Docket No. AI93–4–001, Accounting for Postretirement Benefits Other Than Pensions

CAG–35.
Docket Nos. IS93–22–000, IS93–24–000 and IS93–39–000, Kock Pipelines, Inc.

CAG–36.
Docket Nos. IS93–36–000, Exxon Pipeline Company

CAG–37.
Docket Nos. RP90–2–001, McWhirter Distributing Company, Inc.

CAG–38.
Docket No. RP87–2–000, RFB Petroleum, Inc.

CAG–39.
Docket No. RO88–8–000, Elk Trading Company and Neal Davis

CAG–40.
Docket Nos. GP83–11–002 and RI83–9–003, Colorado Interstate Gas Company

CAG–41.
Docket No. RS92–36–003, Mobil Bay Pipeline Company

CAG–42.
Docket No. RS92–24–011, Texas Gas Transmission Corporation

CAG–43.
Docket No. RS92–46–007, Pacific Gas Transmission Company

CAG–44.
Docket Nos. RS92–5–008, RP90–108–021, RP91–82–012, RP91–161–015, RP92–3–008, RP93–66–002 and RP93–115–002, Columbia Gas Transmission Corporation
Docket Nos. RS92–6–008, R5P90–107–018, RP91–160–012, RP92–2–008, and CP93–736–001, Columbia Gulf Transmission Company

CAG–45.
Docket Nos. RS92–28–000, 013, RP93–14–015, and CP93–77–003, Algonquin Gas Transmission Company

CAG–46.
Docket No. RS92–57–004, Canyon Creek Compression Company

CAG–47.
Docket No. RS92–63–007, Great Lakes Gas Transmission Limited Partnership

CAG–48.
Docket Nos. RS92–81–004, and RP91–212–010, Stingray Pipeline Company

CAG–49.
Docket No. RS92–85–004, Trailblazer Pipeline Company

CAG–50.
Docket Nos. RS92–86–011, RP92–108–009, and RP–92–137–019, Transcontinental Gas Pipe Line Corporation

CAG–51.
Docket No. CP92–668–003, Southern Natural Gas Company and South Georgia Natural Gas Company

CAG–52.
Docket No. CP93–117–001, San Diego Gas & Electric Company
Docket No. CP93–119–001, Southern California Gas Company and San Diego Gas & Electric Company
Docket No. CP93–98–001, Gas Company of New Mexico, a Division of Public Service Company of New Mexico

CAG–53.
Docket No. CP93–64–000, Texas Gas Transmission Corporation

CAG–54.
Docket Nos. CP92–580–000, 001, CP92–581–000, 001, CP93–252–000 and CP93–253–000, El Paso Natural Gas Company

CAG–55.
Docket No. CP92–595–000, Great Lakes Gas Transmission Limited Partnership

CAG–56.
Docket No. CP92–606–000, Great Lakes Gas Transmission Limited Partnership

CAG–57.
Omitted

CAG–58.
Omitted

CAG–59.
Docket No. RP94–22–000, Overthrust Pipeline Company

CAG–60.
Docket No. CP93–333–000, Meridian Oil, Inc. v. Southern California Gas Company and Pacific Gas and Electric Company
Docket No. RS92–60–000, El Paso Natural Gas Company
Docket No. RS92–87–000, Transwestern Pipeline Company

CAG–61.
Docket Nos. RS92–86–013, RP92–108–010 and RP92–137–020, Transcontinental Gas Pipe Line Corporation

Hydro Agenda

H–1.
Omitted

Electric Agenda

E–1.
Reserved

Oil and Gas Agenda

I. Pipeline Rate Matters

PR–1.
Reserved

II. Restructuring Matters

RS–1.
Docket Nos. RS92–49–003, RS92–74–009, and RP92–204–002 and CP92–668–002, South Georgia Natural Gas Company. Order on compliance and rehearing.

RS–2.
Docket Nos. RS92–4–004, 005, 006, and 007, Colorado Interstate Gas Company. Order on compliance and rehearing.

RS–3.
Docket Nos. RS92–19–003, 004, 007, 008, RP92–104–000 and RP92–131–000, K N Energy, Inc. Order on compliance, clarification and rehearing.

RS–4.
Docket Nos. RS92–20–004 and 005, Mid Louisiana Gas Company. Order on compliance, clarification and rehearing.

RS–5.
Omitted

RS–6.
Docket Nos. RS92–9–004, 006, 007, 005, 008, 002, 003, RP 93–18–000, 002 and 001, Questar Pipeline Company. Order on compliance and rehearing.

III. Pipeline Certificate Matters

PC–1.
Omitted

Dated: November 16, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28603 Filed 11–17–93; 11:43 am]

BILLING CODE 6717–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b(e)(2)), notice is hereby given that at 10:22 a.m. on Tuesday, November 16, 1993, the Board of Directors of the Federal Deposit Insurance Corporation met in closed session to consider the following:

Recommendation concerning an administrative enforcement proceeding.

Application of Branch Banking and Trust Company, Wilson, North Carolina, requesting permission to acquire a minority interest in a subsidiary which will be engaging as principal in an activity that is not permissible for a subsidiary of a national bank.

Application of Magna Bank of Illinois, Belleville, Illinois, a State nonmember bank and Bank Insurance Fund member, for consent to purchase certain assets and assume certain liabilities of Community Bank of Greater Peoria, Peoria, Illinois, a State nonmember bank and Bank Insurance Fund member, and for consent to establish the seven offices of Community Bank of Greater Peoria as branches of Magna Bank of Illinois.

In calling the meeting, the Board determined, on motion of Director Eugene A. Ludwig (Comptroller of the Currency), seconded by Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), concurred in by Acting Chairman Andrew C. Hove, Jr., that Corporation business required

its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B) of the "Government in the Sunshine Act" (5 U.S.C. 552b(c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9)(B)).

The meeting was held in the Board Room of the FDIC Building located at 550–17th Street, NW., Washington, DC.

Dated: November 16, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–28618 Filed 11–17–93; 2:13 pm]

BILLING CODE 6714–01–M

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Special Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), of the special meeting of the Farm Credit Administration Board (Board).

DATE AND TIME: The special meeting of the Board will be held at the offices of the Farm Credit Administration in McLean, Virginia, on November 18, 1993, from 10:00 a.m. until such time as the Board concludes its business.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESS: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Parts of this meeting of the Board will be open to the public (limited space available), and parts of this meeting will be closed to the public. The matters to be considered at the meeting are:

Open Session

A. Approval of Minutes

B. New Business

1. Regulations

a. Distressed Borrower Notification (Final).

b. Director and Senior Officer Compensation (Proposed).

c. Investments (Final).

Closed Session*

A. Reports

1. Office of Secondary Market Oversight Quarterly Report

Dated: November 17, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–28653 Filed 11–17–93; 3:32 pm]

BILLING CODE 6705–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, November 24, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW., Washington, DC 20551.

STATUS: Open.

MATTERS TO BE CONSIDERED:

Summary Agenda

Because of its routine nature, no substantive discussion of the following item is anticipated. This matter will be voted on without discussion unless a member of the Board requests that the item be moved to the discussion agenda.

1. Publication for comment of proposed modifications to the Fedwire funds transfer format.

Discussion Agenda

2. Publication for comment of proposed amendments to Regulation L (Management Official Interlocks) to create a new exception from the prohibitions of the Depository Institution Management Interlocks Act for depository organizations controlling a de minimis amount of deposits in a community or metropolitan statistical area.

3. Proposed 1994 Federal Reserve Board budget.

4. Proposed 1994 budget for the Office of Inspector General.

5. Any items carried forward from a previously announced meeting.

Note: This meeting will be recorded for the benefit of those unable to attend. Cassettes will be available for listening in the Board's Freedom of Information Office, and copies may be ordered for $5 per cassette by calling (202) 452–3684 or by writing to: Freedom of Information Office, Board of Governors of the Federal Reserve System, Washington, DC 20551.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204.

Dated: November 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28579 Filed 11–17–93; 10:53 am]

BILLING CODE 6210–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: Approximately 11:30 a.m., Wednesday, November 24, 1993, following a recess at the conclusion of the open meeting.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, NW, Washington, DC. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.

2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28580 Filed 11–17–93; 10:53 am]

BILLING CODE 6210–01–P

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* Session Closed—Exempt pursuant to 5 U.S.C. 552b(c) (8) and (9).

Corrections

Federal Register
Vol. 58, No. 222
Friday, November 19, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF DEFENSE

Office of the Secretary

Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); DRG Revised rates

Correction

In notice document 93-26097 beginning on page 55047 in the issue of Monday, October 25, 1993, make the following corrections:

1. On page 55049, in the table, in the entry for DRG No. 42, in the second column, "petina" should read "retina".

2. On page 55050, in the table, in the first column, the second "64" should read "65".

3. On the same page, in the entry for DRG No. 73, in the third column, "9.6877" should read "0.6877".

4. On the same page, in the entry for DRG No. 93, in the third column, "0.6154" should read "0.6145".

5. On page 55060, in the table, in the entry for DRG No. 614, in the third column, "1.32985" should read "1.3295".

6. On the same page, in the entries for DRG No. 622 and 623, in the second column, in the first line, "W/O" should read "W".

7. On the same page, in the entry for DRG No. 630, in the fifth and sixth columns, "1" should read "2.1" and "2.1" should read "1" respectively.

8. On the same page, in the entry for DRG No. 900, in the second column, in the second line, "<" should read "≤".

BILLING CODE 1505-01-D

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[OH-43-1-5911; FRL-4784-6]

Approval and Promulgation of Implementation Plans; Ohio

Correction

In rule document 93-26018 beginning on page 54513 in the issue of Friday, October 22, 1993, make the following correction:

On page 54516, in the first column, in the last paragraph, in the fifth and sixth lines, "[insert date 60 days from publication]." should read "December 21, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 157

[CGD 91-045]
RIN 2115-AE01

Structural and Operational Measures To Reduce Oil Spills From Existing Tank Vessels Without Double Hulls

Correction

In proposed rule document 93-26074 beginning on page 54870 in the issue of Friday, October 22, 1993, make the following corrections:

1. On page 54871, in the first column, in the first full paragraph, in the eighth line from the bottom, "alternative" should read "alternate".

2. On page 54872, in the third column, in the fifth full paragraph, the sixth and seventh lines should read "provide as substantial protection to the environment as is economically and".

3. On page 54873, in the first column, in the third full paragraph, in the second line from the bottom, "not" should read "no".

4. On the same page, in the 3rd column, in the 18th line from the top, "96" should read "95".

5. On page 54874, in the first column, in the third full paragraph, in the eighth line, "and" should read "an".

6. On the same page, in the second column, in the second full paragraph, in the seventh line, remove the comma after "reducers".

7. On page 54876, in the third column, in the last line, "1977" should read "1997".

8. On page 54877, in the first column, in the first full paragraph, in the eighth line, insert "not" after "are".

9. On page 54878, in the table, in footnote 1, in the first line, insert "date" after "compliance".

BILLING CODE 1505-01-D

federal register

Friday
November 19, 1993

Part II

Environmental Protection Agency

Water Pollution Control, NPDES General Permits and Fact Sheets: Storm Water Discharges From Industrial Activity; Notice

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4797-7]

Fact Sheet For the Multi-Sector Stormwater General Permit

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: The following provides notice for draft NPDES general permits and accompanying fact sheets for storm water discharges associated with industrial activity in the following Regions:

Region I—for the States of Maine, Massachusetts, and New Hampshire; for Indian lands located in Connecticut, Massachusetts, New Hampshire, Maine, Rhode Island, and Vermont; and for Federal facilities in Vermont.

Region II—for the Commonwealth of Puerto Rico; for Indian lands located in New York; and for Federal facilities in the U.S. Virgin Islands.

Region III—for the District of Columbia and for Federal facilities in Delaware.

Region IV—for the State of Florida; and for Indian lands located in Alabama, Florida, Mississippi, and North Carolina.

Region VI—for the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—for the State of South Dakota; for Indian lands located in Colorado, Montana, North Dakota, South Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for the portion of the Pine Ridge Reservation located in Nebraska; for the Ute Mountain Reservation in Colorado and New Mexico; and for Federal facilities in Colorado.

Region IX—for the State of Arizona; for the Territories of American Samoa, Guam, Johnston Atoll, and Midway and Wake Island; for the Commonwealth of the Northern Mariana Islands; for the Republic of Palau (Trust Territory of the Pacific Islands); and for Indian lands located in California and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho; and the Fort McDermitt Reservation in Oregon and Nevada.

Region X—for the State of Alaska, and Idaho; for Indian lands located in Alaska, Oregon (except for Fort McDermitt Reservation lands), Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

The proposed permit is intended to cover storm water discharges associated with industrial activity to waters of the United States, including discharges through large and medium municipal separate storm sewer systems, and through other municipal separate storm sewer systems. The proposed permit is intended to cover discharges from the following types of industrial activities: lumber and wood products facilities; paper and allied products manufacturing facilities; chemical and allied products manufacturing facilities; asphalt paving and roofing materials manufacturers and lubricants; stone, clay, glass and concrete products facilities; primary metals facilities; metal mines (ore mining and dressing); coal mines; oil and gas extraction facilities; nonmetallic mines and quarries; hazardous waste treatment, storage or disposal facilities; landfills, land application sites and open dumps; automobile salvage yards; scrap and waste material processing and recycling facilities; steam electric power generating facilities; railroad transportation facilities, local and suburban transit and interurban highway passenger transportation facilities, petroleum bulk oil stations and terminals, motor freight transportation facilities and U.S. Postal Service facilities; water transportation facilities; ship or boat building/repair facilities; airports; wastewater treatment plants; food and kindred products facilities; textile mills, apparel and other fabric manufacturing facilities; furniture and fixture manufacturing facilities; printing and publishing facilities; rubber and miscellaneous plastic product manufacturing facilities; leather tanning and finishing facilities; facilities that manufacture fabricated metal products, jewelry, silverware, and plated ware; facilities that manufacture transportation equipment, industrial, or commercial machinery; and facilities that manufacture electronic equipment and components, photographic and optical goods. Publication of these draft general permits and fact sheets is designed to comply with the requirements of 40 Code of Federal Regulations (CFR) 124.10 simultaneously for all draft general permits being noticed today.

The language of the proposed permit is provided as an appendix to the preamble of this notice. Most conditions of the draft general permits are intended to apply to all of the general permits indicated above. Where conditions in different permits vary by State, these differences are indicated in the appendix.

DATES: Comments on the proposed permit must be received on or before February 17, 1994. See supplementary information for scheduled public hearings.

ADDRESSES: The public should send an original and two copies of their comments addressing any aspect of this notice to proposed NPDES general permit comment clerk; Water Docket MC-4101; Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. To ensure that EPA can read, understand, and therefore properly respond to comments, the Agency requests commentors to type or print in ink any comments. Each comment should cite the page number and, where possible, the section(s) and/or paragraph(s) in the proposed permit to which the comment relates. Commentors should use a separate paragraph for each issue discussed. The complete administrative record is available through the Water Docket MC-4101, Environmental Protection Agency, 401 M Street SW., Washington DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information on the proposed NPDES storm water general permit, contact the NPDES Storm Water Hotline at (703) 821-4823 or the appropriate EPA Regional Office. The name, address and phone number of the EPA Regional Storm Water Coordinators are provided in Part VI.G. of the fact sheet.

SUPPLEMENTARY INFORMATION:

Hearings

Public hearings and public meetings to discuss the multi-sector storm water general permit are scheduled as follows:

Region I

January 12, 1994, 1–4 p.m., and
January 13, 1994, 7–10 p.m.
Location (for both hearings), Thomas P. O'Neill Jr. Federal Building, Auditorium (1st Floor), 10 Causeway Street, Boston, Massachusetts

Region II

January 18, 1994, 1:30–5 p.m. and 7–9 p.m.,
Location, Puerto Rico Water Quality Board, National Bank Plaza Building, 431 Ponce De Leon Avenue, Hato Rey, Puerto Rico 00917

Region IV

January 10, 1994, 1–4 p.m. Public Meeting, 7–10 p.m. Public Meeting

Location, Holiday Inn—Ashley Plaza, Convention Center, 111 West Fortune Street, Tampa, Florida 33602
January 13, 1994, 1–4 p.m. Public Meeting, 7–10 p.m. Public Meeting
Location, Tallahassee-Leon County Civic Center, 505 West Pensacola Street, Tallahassee, Florida 32302

Region VI

January 10, 1994 2 p.m. (public meeting) and 7 p.m. (public hearing)
Location, Maynard Ketcham Bldg., room 326, Adjacent to the LSEQ Building, 7220 Bluebonnet, Baton Rouge, Louisiana, (afternoon/evening)
January 12, 1994 9 a.m. (public meeting and 2 p.m. (public hearing)
Location, Sequoyah Auditorium, 2400 N. Lincoln (in tunnel), Oklahoma City, Oklahoma (morning/afternoon)
January 18, 1994 2 p.m. (public meeting) and 7 p.m. (public hearing)
Location, EPA Conference Center, 12th Floor, First Interstate Bank Building, 1445 Ross Ave., Dallas, Texas (morning/afternoon)
January 19, 1994 2 p.m. (public meeting) and 7 p.m. (public hearing)
Location, North Ballroom, Student Union Building, University of New Mexico, Albuquerque, New Mexico

Region IX

January 13, 1994 1–5 p.m.
Location, Arizona Department of Environmental Quality, Public Meeting Room, 3033 North Central Avenue, Phoenix, Arizona.

Persons wishing to make an oral presentation must restrict themselves to 15 minutes and are encouraged to have written copies of their comments for inclusion in official record.

State Certification

EPA is providing copies of today's proposed permit to States and Indian tribes where the proposed permit will be effective. The States and Tribes will review the permit to insure that the permit will not result in a violation of water quality criteria. EPA will work with the States and Tribes to obtain their certification in accordance with section 401 of the Clean Water Act. EPA will prepare certification for Indian lands where there is no approved Tribe or where the approved tribes has not established water quality standards.

Organization of Today's Proposed Permit

Today's proposed permit covers storm water discharges from a wide variety of industrial activities. Because the conditions which affect the presence of pollutants in storm water discharges vary among industries, today's proposed permit contains industry-specific sections that describe the storm water pollution prevention plan requirements, the numeric effluent limitation requirements and the monitoring requirements for that industry. These industry-specific sections are contained in part XI of today's proposed permit and are described in part VIII of this fact sheet. There are also a number of permit requirements which do not vary from industry to industry. These requirements include the general eligibility discussion, the Notice of Intent requirements and standard permit conditions. These requirements are common to all industries covered by today's proposed permit and may be found in parts I through X. Parts I through VII of this fact sheet describe these common requirements. The following is an outline of this fact sheet.

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I. Background

In 1972, the Federal Water Pollution Control Act (also referred to as the Clean Water Act (CWA)) was amended to provide that the discharge of any pollutant to waters of the United States from any point source is unlawful, except if the discharge is in compliance with a National Pollutant Discharge Elimination System (NPDES) permit.

For a number of reasons, EPA and authorized NPDES States have failed to issue NPDES permits for the majority of point source discharges of storm water. Recognizing this, Congress added Section 402(p) to the CWA in 1987 to establish a comprehensive framework for addressing storm water discharges under the NPDES program. Section 402(p)(4) of the CWA clarifies the requirements for EPA to issue NPDES permits for storm water discharges associated with industrial activity. On November 16, 1990 (55 FR 47990), EPA published final regulations which define the term "storm water discharge associated with industrial activity." These regulations also set forth NPDES permit application requirements for storm water discharges associated with industrial activity and storm water discharges from certain municipal separate storm sewer systems. The regulations presented three permit application options for storm water discharges associated with industrial activity. The first option was to submit an individual application consisting of Forms 1 and 2F. The second option was to become a participant in a group application. The third option was to file a Notice of Intent (NOI) to be covered under a general permit in accordance with the requirements of an issued general permit.

The proposal of today's general permit is in response to the second of these three options. Group applications were submitted in two parts. Part 1 of the application was due by September 30, 1991, and part 2 of the application

was due by October 1, 1992. In part 1 of the application, all participants were identified and information on each facility was included, such as industrial activities, significant materials exposed to storm water, and material management activities. For part 1 of the application, groups also identified sampling subgroups to submit sampling data for part 2. Over 1,200 groups with over 60,000 member facilities submitted part 1 applications. Upon review of the part 1 application, if the EPA determined that the application was an appropriate grouping of facilities with complete information provided on each participant, and a suitable sampling subgroup was proposed, the application was approved.

Part 2 of the application consisted of sampling data from each member of the sampling subgroup identified in part 1 of the application. In drafting today's proposed general permit, EPA reviewed both parts of the applications and formulated the proposed permit language noticed today. NPDES authorized States were provided the data from the group applications. Authorized NPDES States may propose and finalize either individual permits for each facility included in the application located in the State, or general permits, if the State has general permit authority.[1] If the State feels additional information is needed from the applicants, the State may ask each or any of the applicants for more information on their facility and/or discharge.

EPA estimates that about 100,000 facilities nationwide discharge storm water associated with industrial activity (not including oil and gas exploration and production operations). The large number of facilities addressed by the regulatory definition of "storm water discharge associated with industrial activity" has placed a tremendous administrative burdens on EPA and States with authorized NPDES programs to issue and administer permits for these discharges.

To provide a reasonable and rational approach to addressing this permitting task, the Agency has developed a strategy for issuing permits for storm water discharges associated with industrial activity. In developing this strategy, the Agency recognized that the CWA provides flexibility in the manner in which NPDES permits are issued,[2] and has used this flexibility to design a workable permitting system. In accordance with these considerations, the permitting strategy (described in more detail in 57 FR 11394) describes a four-tier set of priorities for issuing permits for these discharges:

- *Tier I—Baseline Permitting*—One or more general permits will be developed to initially cover the majority of storm water discharges associated with industrial activity.
- *Tier II—Watershed Permitting*—Facilities within watersheds shown to be adversely impacted by storm water discharges associated with industrial activity will be targeted for individual or watershed-specific general permits.
- *Tier III—Industry-Specific Permitting*—Specific industry categories will be targeted for individual or industry-specific general permits.
- *Tier IV—Facility-Specific Permitting*—A variety of factors will be used to target specific facilities for individual permits.

The proposed general permit accompanying this fact sheet will continue Tier I activities for storm water discharges associated with industrial activity in Alaska, Arizona, Florida, Idaho, Louisiana, Massachusetts, Maine, New Hampshire, New Mexico, Oklahoma, South Dakota, Texas, the District of Columbia, the Commonwealth of Puerto Rico, Guam, American Samoa, the Commonwealth of the Northern Mariana Islands, and the Trust Territory of the Pacific Islands; for Federal facilities and Indian lands in Colorado and Washington, and for Indian lands in Alabama, California, Michigan, Minnesota, Mississippi, Montana, New York, Nevada, North Dakota, New York, Utah, Wisconsin, and Wyoming, the portion of the Pine Ridge Reservation located in Nebraska, and for Federal facilities in Delaware and U.S. Virgin Islands[3] by proposing an industry-specific general permit for group applicants in these States.

II. Types of Discharges Covered

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharge associated with industrial activity" which addresses point source discharges of storm water from eleven major categories of industrial activities. Industrial activities from all of these categories with the exception of construction activities participated in the group application process. The information contained in the group applications indicates that type and amount of pollutants discharged in storm water varies from industrial activity to industrial activity because of the variety of potential pollutant sources present in different industrial activities, as well as the variety of pollution prevention measures commonly practiced by each of the regulated industries. To facilitate the process of developing permit conditions for each of the 1200 group applications submitted, EPA classified groups into 29 industrial sectors where the nature of industrial activity, type of materials handled and material management practices employed were sufficiently similar for the purposes of developing permit conditions. Each of the industrial sectors were represented by one or more groups which participated in the group application process. Table 1 lists each of the industrial activities covered by today's proposed permit, and the corresponding sections of today's fact sheet and permit which discuss the specific requirements proposed for that industry. EPA requests comment upon the proposed grouping of industrial activities into the 29 industry sectors in today's proposed permit.

Coverage under today's proposed general permit is available to storm water discharges from industrial activities represented by the group application process. However, coverage under this proposed permit is not restricted to participants in the group application process. Likewise, group members are not precluded from seeking coverage under other available storm water permits such as EPA's "baseline" general permits for Storm Water Discharges Associated with Industrial Activity, (57 FR 41175 and 57 FR 44412). Group members must consider that the deadlines for preparing and implementing of the pollution prevention plan required under the baseline permit have already expired for existing facilities. Therefore, group members that submit NOIs after October 1, 1993, must have a pollution prevention plan developed and implemented prior to NOI submittal.

[1] As of October 1993, 37 of the 39 NPDES authorized State permitting programs had the authority to issue general permits.

[2] The court in *NRDC* v. *Train*, 396 F.Supp. 1393 (D.D.C. 1975) *aff'd*, *NRDC* v. *Costle*, 568 F.2d 1369 (D.C.Cir. 1977), has acknowledged the administrative burden placed on the Agency by requiring permits for a large number of storm water discharges. The courts have recognized EPA's discretion to use certain administrative devices, such as area permits or general permits, to help manage its workload. In addition, the courts have recognized flexibility in the type of permit conditions that can be established, including the use of requirements for best management practices.

[3] In 6 of the 39 States that are authorized to issue NPDES permits for municipal and industrial sources, EPA issues permits for discharges from Federal facilities. State programs do not generally address permitting of discharges from Indian lands, as EPA retains this responsibility. However, this fact sheet only addresses general permits as indicated above. Where EPA is the permit issuing authority for other storm water discharges, either individual permits or a different general permit will be issued.

Unlike the baseline general permits, today's proposed permit does not exclude all storm water discharges subject to effluent limitation guidelines. Four types of discharges subject to effluent limitation guidelines may be covered under today's permit if they are not already subject to an existing or expired NPDES permit. These discharges include contaminated storm water runoff from phosphate fertilizer manufacturing facilities, runoff associated with asphalt paving or roofing emulsion production, runoff from material storage piles at cement manufacturing facilities and coal pile runoff at steam electric generating facilities. The proposed permit does not, however authorize all storm water discharges subject to effluent guidelines. Storm water discharges subject to effluent guidelines for mine drainage under 40 CFR part 440 are not covered under today's permit nor are discharges subject to effluent guidelines for acid or alkaline mine drainage under 40 CFR part 434.

TABLE 1.—Industrial Activities Covered by Today's General Permit

Industrial activity	Fact sheet section describing discharges covered	Permit section describing discharges covered
Timber Products Facilities	VIII.A	XI.A
Paper and Allied Products Manufacturing Facilities	VIII.B	XI.B
Chemical and Allied Products Manufacturing Facilities	VIII.C	XI.C
Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers	VIII.D	XI.D
Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities	VIII.E	XI.E
Primary Metals Facilities	VIII.F	XI.F
Metal Mining (Ore Mining and Dressing) Facilities	VIII.G	XI.G
Coal Mines and Coal Mining-Related Facilities	VIII.H	XI.H
Oil and Gas Extraction Facilities	VIII.I	XI.I
Mineral Mining and Processing Facilities	VIII.J	XI.J
Hazardous Waste Treatment, Storage, or Disposal Facilities	VIII.K	XI.K
Landfills and Land Application Sites	VIII.L	XI.L
Automobile Salvage Yards	VIII.M	XI.M
Scrap and Waste Material Processing and Recycling Facilities	VIII.N	XI.N
Steam Electric Power Generating Facilities, Including Coal Handling Areas	VIII.O	XI.O
Vehicle Maintenance or Equipment Cleaning Areas at Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and the United States Postal Service.	VIII.P	XI.P
Vehicle Maintenance Areas and/or Equipment Cleaning Operations at Water Transportation Facilities	VIII.Q	XI.Q
Ship and Boat Building or Repairing Yards	VIII.R	XI.R
Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Area located at Air Transportation Facilities	VIII.S	XI.S
Treatment Works	VIII.T	XI.T
Food and Kindred Products Facilities	VIII.U	XI.U
Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities	VIII.V	XI.V
Wood and Metal Furniture and Fixture Manufacturing Facilities	VIII.W	XI.W
Printing and Publishing Facilities	VIII.X	XI.X
Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	VIII.Y	XI.Y
Leather Tanning and Finishing Facilities	VIII.Z	XI.Z
Fabricated Metal Products Industry	VIII.AA	XI.AA
Facilities That Manufacture Transportation Equipment, Industrial, or Commercial Machinery	VIII.AB	XI.AB
Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods.	VIII.AC	XI.AC

A. Limitations on Coverage

Because of the broad scope of today's proposed permit, most industrial activities currently regulated under the storm water program could be covered by the permit. There are, however, several types of storm water discharges which are not eligible. Storm water discharges subject to an existing NPDES permit are not eligible for coverage under today's proposed permit, except facilities which are currently subject to the baseline general permit. EPA believes that in most cases these discharges are more appropriately covered under terms and conditions of their existing permit. These discharges may be covered under today's proposed permit only when the existing permit has expired and only when the expired permit did not contain numeric effluent limitations more stringent than those in today's proposed permit. Storm water discharges that were subject to an NPDES permit that was terminated are not eligible for coverage under today's proposed permit unless the permit was terminated as a result of the permittee's request. Storm water discharges from industrial activities that are not addressed in the appropriate section of Part XI. (see Table 1) of the proposed permit are not eligible for coverage under this permit. These types of industrial activities were not represented in the group application process. Therefore, EPA has no additional information with which to develop permit requirements beyond those developed for the baseline general permit.

(1) Storm Water Discharges Subject to New Source Performance Standards

Section 306 of the Clean Water Act requires EPA to develop Performance Standards for all New Sources described in that section. These standards apply to all facilities which go into operation after the date the standards are promulgated. Section 511(c) of the Clean Water Act requires the Agency to review all facilities defined as a new source under Section 306 for compliance with the National Environmental Policy Act prior to issuance of a permit under the authority of Section 402 of the CWA. It is the

intent of EPA to comply with this requirement of the ACT.

Facilities which are subject to the performance standards for new sources as described in this section of the fact sheet must provide the Federal Permitting Agency with an Environmental Information Document pursuant to 40 CFR 6.101. This information shall be used by the Agency to evaluate the facility under the requirements of the National Environmental Policy Act (NEPA) in an Environmental Review. The Agency will make a final decision regarding the direct or indirect impact of the discharge. The Agency will follow all administrative procedures required in this process. The permittee must obtain a copy of the Agency's final finding prior to the submittal of a Notice of Intent to be covered by this general permit. In order to maintain eligibility, the permittee must implement any mitigation required of the facility as a result of the NEPA review process. Failure to implement mitigation measures upon which the Agency's NEPA finding is based is grounds for termination of permit coverage. In this way, EPA has established a procedure which allows for the appropriate review procedures to be completed by this Agency prior to the issuance of a permit under Section 402 of the CWA to an operator of a facility subject to the new source performance standards of Section 306 of the CWA. EPA believes that it has fulfilled its requirements under NEPA for this federal action under Section 402 of the CWA.

EPA is requesting comments on this procedure to provide "New Source" facilities with general permit coverage in order to provide as many facilities as possible with permit coverage in light of EPA's diminishing resources and increasing mandate to protect our natural resources and environment.

(2) Historic Preservation

The National Historic Preservation Act prohibits Federal actions that would impact a site that either is listed on or is eligible for listing on the National Historic Register. EPA therefore cannot issue permits to discharges that may impact historic sites unless measures will be taken to prevent or mitigate any adverse impact. Therefore, under today's proposed permit a storm water discharge may be covered only if the discharge will not disturb a site that is listed or is eligible to be listed in the National Historic Register, or the operator has obtained and is in compliance with a written agreement signed by the State Historic Preservation Officer (SHPO) that outlines measures to be taken to mitigate or prevent adverse effects to the historic site. EPA has initiated discussions with American Commission on Historic Preservation (ACHP) on this issue.

(3) Endangered Species

The Endangered Species Act (ESA) of 1973, as amended, essentially prohibits actions that would jeopardize the continued existence of an endangered species. ESA regulations also requires the Agency to ensure that any actions authorized, funded, or carried out by the agency (e.g., NPDES permits authorizing discharges to waters of the United States) are not likely to jeopardize the continued existence of any listed or proposed endangered or threatened species or adversely modify or destroy critical habitat of such species (see 50 CFR 402 and 40 CFR 122.49(c)). The "effects of the action" is measured from the "environmental baseline" (see 50 CFR 402.2).

Under ESA Section 10, the U.S. Fish and Wildlife Service and the National Marine Fisheries Service (the Services) are authorized to issue incidental take permits for actions that would result in an adverse effect ("take"), but would not jeopardize the continued existence of the endangered species. The Section 10 permitting process involves a comprehensive evaluation of the effects of the action, and limits the adverse impacts of the activity. EPA believes these Section 10 permits would provide the necessary level of protection of endangered species under the ESA. A Section 10 permit issued to a facility, would also set the environmental baseline from which to measure the impacts of NPDES permit issuance. If there is "no effect," a Section 10 permit is not necessary.

To fulfill our responsibility to protect endangered species, the Agency will only allow coverage under this multi-sector general permit for facilities which either (1) have no effect on a species listed or proposed to be listed as threatened or endangered, or (2) those facilities for which a Section 10 permit has been issued by the U.S. Fish and Wildlife Service or the National Marine Fisheries Service. By allowing coverage under this general permit for those facilities which are covered for incidental "takes" by a Section 10 permit from U.S. Fish and Wildlife, EPA has provided a permitting option for those facilities which may operate in the habitat area of an endangered species but have taken all the appropriate steps to mitigate adverse impacts of the permitted activity.

To further ensure that dischargers with endangered species impacts do not inadvertently submit NOIs, the applicant will be required to certify they have read and understand the eligibility requirements of the permit, including those applicable to ESA. This certification will serve to focus the applicant's attention on the eligibility requirements and additional responsibilities which must be satisfied for coverage under this general permit.

(4) Region-specific Permit Coverage Limitations

Addendum G of today's proposed permit contains the following limitation on coverage for facilties located in Oklahoma.

This permit will not cover discharges to Oklahoma Outstanding Resource Waters and Scenic Rivers. This limitation applies to "new" point source discharges of storm water associated with industrial activity (those commencing after the June 25, 1992, effective date of the Oklahoma Water Quality Standards—Oklahoma Annotated Code Title 785, Chapter 45) to the following waters:

(a) Waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards;

(b) Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards; and

(c) Waterbodies located within the boundaries of Oklahoma Water Quality Standards Appendix B areas which are specifically designated as "Outstanding Resource Waters" in Appendix A of the Oklahoma Water Quality Standards.

This limitation is necessary to include the more stringent "no new sources" requirements of the Oklahoma Water Quality Standards for these waters.

III. Pollutants in Storm Water Discharges Associated With Industrial Activities in General

The volume and quality of storm water discharges associated with industrial activity will depend on a number of factors, including the industrial activities occurring at the facility, the nature of precipitation, and the degree of surface imperviousness. Rain water may pick up pollutants from structures and other surfaces as it drains from the land. In addition, sources of pollutants other than storm water, such as illicit connections[4], spills, and other improperly dumped materials may

[4] Illicit connections are point source discharges of pollutants that are not composed entirely of storm water, that are not covered by an existing NPDES permit, and which are discharged through separate storm sewers to waters of the United States.

increase the pollutant loads discharged from separate storm sewers. The sources which contribute pollutants to storm water discharges differ with the type of industry operation and facility-specific features. For example, air emissions may be a significant source of pollutants at some facilities, material storage operations may be important at different operations, while other facilities may discharge storm water associated with industrial activity with relatively low levels of pollutants.

The most extensively studied storm water discharges have been those from residential and commercial areas (urban runoff). Evaluating these discharges will provide a starting point for understanding the pollutants that can be expected in storm water discharges associated with industrial activity. Many storm water discharges are expected to contain the pollutants typically associated with urban runoff, along with additional pollutants that result from the specific industrial operations of the facility.

From 1978 through 1983, EPA provided funding and guidance to the Nationwide Urban Runoff Program (NURP) to study the nature of runoff from commercial and residential areas. The NURP program included 28 projects across the Nation, conducted separately at the local level but centrally reviewed, coordinated, and guided.

One focus of the NURP program was to characterize the water quality of discharges from separate storm sewers which drain residential, commercial, and light industrial (industrial parks) sites. The majority of samples collected in the NURP study were analyzed for seven conventional pollutants and three metals. The results of this study are presented in Table 2 for these 10 constituents and fecal coliform. Data collected in NURP indicated that on an annual loading basis, suspended solids in discharges from separate storm sewers draining runoff from residential, commercial and light industrial areas are around an order of magnitude greater than effluent from sewage treatment plants receiving secondary treatment. The study also indicated that annual loadings of chemical oxygen demand (COD) are comparable to effluent from sewage treatment plants receiving secondary treatment. When analyzing annual loadings associated with urban runoff, it is important to recognize that discharges of urban runoff are highly intermittent, and that the short-term loadings associated with individual events will be high and may have shock loading effects on receiving water such as sag in dissolved oxygen levels.

TABLE 2.—QUALITY CHARACTERISTICS OF RUNOFF FROM RESIDENTIAL AND COMMERCIAL AREAS

Constituent	Average residential or commercial site concentration	Weighted mean residential or commercial site concentration	Average recommendations for load estimates
TSS	239 mg/L	180 mg/L	180–548 mg/L
BOD	12 mg/L	12 mg/L	12–19 mg/L
COD	94 mg/L	82 mg/L	82–178 mg/L
Total Phosphorus	0.5 mg/L	0.42 mg/L	0.42–0.88 mg/L
Soluble Phosphorus	0.15 mg/L	0.15 mg/L	0.15–0.28 mg/L
Total Kjeldahl Nitrogen	2.3 mg/L	1.90 mg/L	1.90–4.18 mg/L
Nitrate-Nitrite	1.37 mg/L	0.86 mg/L	0.86–2.21 mg/L
Total Copper	53 µg/L	43 µg/L	43–118 µg/L
Total Lead	238 µg/L	182 µg/L	182–443 µg/L
Total Zinc	353 µg/L	202 µg/L	202–633 µg/L
Fecal Coliform.			
Warm Weather	50,240 counts/100 ml.	27,605 counts/100 ml.	
Cold Weather	22,918 counts/100 ml.	7,075 counts/100 ml.	

Source: Developed from "Results of the Nationwide Urban Runoff Program, Vol. 1—Final Report," EPA 1983.

The NURP program also involved monitoring 120 priority pollutants. Seventy-seven priority pollutants were detected in samples of storm water discharges from residential, commercial, and light industrial lands taken during the NURP study, including 14 inorganic and 63 organic pollutants. Table 3 shows the priority pollutants that were detected in at least ten percent of the discharge samples that were sampled for priority pollutants. The NURP data also showed a significant number of these samples exceeded various freshwater water quality criteria.

Although NURP did not evaluate oil and grease, other studies have demonstrated that urban runoff is an extremely significant source of oil pollution to receiving waters, with hydrocarbon levels in urban runoff typically being reported at a range of 2 mg/L to 10 mg/L. These hydrocarbons tend to accumulate in bottom sediments where they may persist for long periods of time, and exert adverse impacts on benthic organisms.

TABLE 3.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10 PERCENT OF NURP SAMPLES

	Frequency of detection
Metals and Inorganics:	
Antimony	13
Arsenic	52
Beryllium	12
Cadmium	48
Chromium	58
Copper	91
Cyanides	23
Lead	94

TABLE 3.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10 PERCENT OF NURP SAMPLES—Continued

	Frequency of detection
Nickel	43
Selenium	11
Zinc	94
Pesticides:	
Alpha-hexachlorocyclohexane	20
Alpha-endosulfan	19
Chlordane	17
Lindane	15
Halogenated Aliphatics:	
Methane, dichloro-	11
Phenols and Cresols:	
Phenol	14
Phenol, pentachloro-	19
Phenol, 4-nitro	10

TABLE 3.—PRIORITY POLLUTANTS DETECTED IN AT LEAST 10 PERCENT OF NURP SAMPLES—Continued

	Frequency of detection
Phthalate Esters:	
Phthalate, bis(2-ethylhexyl)	22
Polycyclic Aromatic Hydrocarbons:	
Chrysene	10
Fluoranthene	16
Phenanthrene	12
Pyrene	15

Other studies have shown that many storm sewers contain illicit discharges of non-storm water, and that large amounts of wastes are disposed improperly in storm sewers. Removal of these discharges present opportunities for dramatic improvements in the quality of storm water discharges. Storm water discharges from industrial facilities may contain, in addition to illicit connections and improperly disposed wastes, toxics and conventional pollutants when material management practices allow exposure to storm water.

In some municipalities, illicit connections of sanitary, commercial, and industrial discharges to storm sewer systems have had a significant impact on the water quality of receiving waters. Although the NURP study did not characterize illicit connections to storm sewers other than to ensure that monitoring sites used in the study were free from sanitary sewage contamination, the study concluded that illicit connections can result in high bacterial counts and dangers to public health.

Studies have shown that illicit connections to storm sewers can create severe, widespread contamination problems. For example, the Huron River Pollution Abatement Program inspected 660 businesses, homes, and other buildings located in Washtenaw County, Michigan. The program identified that 14 percent of the buildings had improper storm drain connections. Illicit discharges were detected at a higher rate of 60 percent for automobile-related businesses, including service stations, automobile dealerships, car washes, body shops, and light industrial facilities. While some of the problems discovered were due to improper plumbing or illegal connections, a majority were approved connections at the time they were built, but have since become unlawful discharges.

The NURP study and other studies of urban runoff provide insight on what can be considered background levels of pollutants for urban runoff, as these studies have focused primarily on monitoring runoff from residential, commercial, and light industrial areas. However, NURP concluded that the quality of urban runoff can be impacted adversely by several sources of pollutants that were not evaluated directly in the study and which are generally not reflected in the NURP data, such as illicit connections, construction site runoff, industrial site runoff and illegal dumping.

For some industrial facilities, the types and concentrations of pollutants in storm water discharges will be similar to the types and concentrations of pollutants generally found in storm water discharges from residential and commercial areas. However, storm water discharges from other industrial facilities will have a significant potential for higher pollutant levels. Under the regulations at 40 CFR 122.26(c)(2), facilities participating in the group application process were required to complete a two part application. The groups provided the following for Part 1: A list of participants by name, location, and precipitation zone; a summary of each participant's industrial activities; an explanation of why the participants are similar; a list of significant materials stored outside and materials management practices; and, a list of representative dischargers that will submit test data in Part 2. Part 2 requires quantitative testing data from the representative sampling facilities. All representative samplers analyzed their storm water discharges for the basic parameters including, BOD_5, COD, oil and grease, TKN, nitrite + nitrate as nitrogen, pH, and total phosphorus. In addition to these parameters, sampling facilities analyzed their discharges for any pollutant they believed to be present. Many groups were unable to complete the required sampling in time to meet the October 1, 1992, deadline for part 2 of the application. Most were, however, able to submit data for some of their designated sampling facilities prior to the deadline, and have completed their applications as expeditiously as practicable. EPA requests comment as to how the Agency might provide a credit in the permit requirements for facilities that were members of groups that submitted fully completed part 1 and part 2 applications.

EPA consolidated the groups into similar industrial sectors. The data received were categorized by sector and input into a computer database. The data were statistically analyzed and the mean, minimum, maximum, median, 95th percentile, and 99th percentile concentrations were calculated for each parameter on a sector by sector basis. Some of the statistical results are in Part VII. of this fact sheet. Overall, the data indicate a wide variation in the level of pollutants discharged from the facilities within each sector. However, in general, the data do show that there is a significant amount of conventional, toxic, and other pollutants being discharged into waters of the U.S. in storm water discharges associated with industrial activity. For a general discussion of pollutants found in the storm water discharges of facilities covered by today's permit, see the section of this fact sheet indicated in Table 1.

Six activities can be identified as major potential sources of pollutants in storm water discharges associated with industrial activity for the types of facilities covered by today's proposed permit: (1) Loading or unloading of dry bulk materials or liquids; (2) outdoor storage of raw materials or products; (3) outdoor process activities; (4) dust or particulate generating processes; (5) illicit connections or management practices; and (6) waste disposal practices. The potential for pollution from many of these activities may be influenced by the use and presence of toxic chemicals. These activities are discussed in more detail below.

1. Loading and Unloading Operations

Loading and unloading operations typically are performed along facility access roads, railways, and at loading/unloading docks and terminals. These operations include pumping of liquids or gases from truck or rail car to a storage facility or vice versa, pneumatic transfer of dry chemicals to or from the loading or unloading vehicle, transfer by mechanical conveyor systems, and transfer of bags, boxes, drums, or other containers from vehicle by forklift trucks or other materials handling equipment. Material spills or losses in areas can discharge directly to the storm drainage systems, or may accumulate in soils or on surfaces, and be washed away during a storm event or facility washdown.

2. Outdoor Storage

Outdoor storage activities include the storage of fuels, raw materials, by-products, intermediate products, final products, and process residuals. Materials may be stored in containers (e.g., drums or tanks), on platforms or pads, in bins, silos, boxes, or as piles. Materials, containers, and material storage areas that are exposed to rainfall, and/or runoff can contribute pollutants to storm water when solid materials

wash off or materials dissolve into solution.

3. Other Outdoor Activities

Other outdoor activities include certain types of manufacturing and commercial operations and land-disturbing operations. Although many manufacturing activities are performed indoors, some activities, such as timber processing, rock crushing, and concrete mixing, typically occur outdoors. Processing operations can result in liquid spillage and losses of material solids to the drainage system or surrounding surfaces, or in the creation of dusts or aerosols, which can be deposited locally. Some outdoor industrial activities cause substantial physical disturbance of land surfaces that result in soil erosion by storm water. (Examples where disturbed land occurs include construction and mining.) Disturbed land can result in soil losses and other pollutant loadings associated with increased runoff rates. Facilities whose major process activities are conducted indoors may still apply chemicals such as herbicides, pesticides, and fertilizer outdoors for a variety of purposes.

4. Dust or Particulate Generating Processes

Dust or particulate generating processes include industrial activities with stack emissions or process dusts that settle on plant surfaces. Localized atmospheric deposition is a particular concern with heavy manufacturing industries. For example, monitoring of areas surrounding smelting industries has shown much higher levels of metals at sites nearest the smelter (Bearington 1977). Other industrial sites, such as mines, cement manufacturing, and refractories, will generate significant levels of dusts.

5. Illicit Connections

Illicit connections or inappropriate management practices result in improper non-storm water discharges to storm sewer systems. The likelihood of illicit discharges to storm water collection systems is expected to increase for older facilities as well as for those facilities that use high volumes of process water or that dispose of significant amounts of liquid wastes, including process waste waters, cooling waters, and rinse waters.

Sources of pollution from non-storm water discharges to separate storm sewer systems are typically a combination of improper connections, spills, improper dumping, and a belief that the absence of visible solids in a discharge is equivalent to the absence of pollution. Illicit connections between floor drains and separate storm sewers are a common source of non-storm water discharges. For example, rinse waters used in cleaning or cooling may be discharged to a floor drain that is connected to a separate storm sewer system. Significant amounts of rinse waters may originate from industries that use regular wash down procedures. Rinse waters may be used to cool materials by dipping, washing, or spraying objects with cool water. Rinse water is sometimes sprayed over the final products of metal plating facilities for cooling purposes. In addition, condensate return lines of heat exchangers often discharge to floor drains. Heat exchangers, particularly those used under stressed conditions such as in the metal finishing and electroplating industry, typically develop pin-hole leaks, which may result in contamination of condensate by process wastes. These and other non-storm water discharges to a storm sewer may be intentional, based on the belief that the discharge (condensate in the example previously discussed), does not contain pollutants, or it may be inadvertent, as the operator may be unaware that a floor drain is connected to the storm sewer.

6. Waste Management

Waste management practices include operating landfills, waste piles, and land application sites that involve land disposal. Outdoor waste treatment operations also include waste water and solid waste treatment and disposal processes, such as waste pumping, additions of treatment chemicals, mixing, aeration, clarification, and solids dewatering. Facilities often conduct some waste management onsite.

IV. Summary of Options for Controlling Pollutants

Options for controlling pollutants in storm water discharges associated with industrial activities will be discussed in terms of two major pollutant sources: (1) Materials discharged to waters of the U.S. via illicit connections; and (2) pollutants associated with storm water runoff.

A. Non-storm Water Discharges

As discussed earlier, in some cases, a substantial portion of the pollutant load from separate storm sewers is associated with non-storm water discharges. Non-storm water discharges through separate storm sewers include a wide variety of sources, including illicit connections, improper dumping, spills, or leakage from storage tanks and transfer areas. Measures to control spills and visible leakage must be incorporated into storm water pollution prevention plans (see below).

Operators of industrial facilities may be unaware of illicit discharges or leakage from underground storage tanks or other nonvisible systems to storm sewers. In many cases, non-storm water discharges to separate sewer systems have been occurring at facilities prior to their legal prohibition. In all cases, facilities are obligated to identify and prevent unauthorized non-storm discharges from entering separate storm sewer systems.

1. Methods to Identify Non-storm Water Discharges to Separate Storm Sewers

Several methods for identifying the presence of non-storm water discharges are discussed below[5]. A comprehensive evaluation of the storm sewers at a facility may incorporate several methods.

- *Schematics*—Where they exist, accurate piping schematics can be inspected as a first step in evaluating the integrity of the separate storm sewer system. The use of schematics is limited because schematics usually reflect the design of the piping system and may not reflect the actual configuration constructed. Schematics should be updated or corrected based on additional information found during inspections.
- *Evaluation of Drainage Map and Inspections*—Drainage maps should identify the key features of the drainage system: Each of the inlet and discharge structures, the drainage area of each inlet structure, and units such as storage or disposal units or material loading areas, which may be the source of an illicit discharge or improper dumping. In addition, floor drains and other water disposal inlets that are thought to be connected to the sanitary sewer can be identified. A site inspection can be used to augment and verify map development. These inspections, along with the use of the drainage map, can be coordinated with other best management practices discussed below.
- *End-of-Pipe Screening*—Discharge points or other access points such as manhole covers can be inspected for the presence of dry weather discharges and other signs of non-storm water discharges. Dry weather flows can be screened by a variety of methods. Inexpensive onsite tests include measuring pH; observing for oil sheens,

[5] A more complete discussion of methods to identify illicit connections can be found in the draft "Manual of Practice: Identification of Illicit Connections," EPA, Sept. 1990.

scums and discoloration of pipes and other structures; as well as colormetric detection tests for chlorine, detergents, metals and other parameters. In some cases, it may be appropriate to collect samples for more expensive analysis in a laboratory for fecal coliform, fecal streptococcus, conventional pollutants, volatile organic carbon, or other appropriate parameters.

- *Water Balance*—Many sewage treatment plants require that industrial discharges measure the volume of effluent discharged to the sanitary sewer system. Similarly, the volume of water supplied to a facility is generally measured. A significantly higher volume of water supplied to the facility relative to that discharged to the sanitary sewer and other consumptive uses may be an indication of illicit connections. This method is limited by the accuracy of the flow meters used.
- *Dry Weather Testing*—Where storm sewers do not discharge during dry weather conditions, water can be introduced into floor drains, toilets and other points where non-storm water discharges are collected. Storm drain outlets are then observed for possible discharges.
- *Dye Testing*—Dry weather discharges from storm sewers can occur for a number of legitimate reasons, including ground water infiltration or the presence of a continuous discharge subject to an NPDES permit. Where storm sewers do have a discharge during dry weather conditions, dye testing for illicit connections can be used. Dye testing involves introducing fluorometric or other types of dyes into floor drains, toilets and other points where non-storm water discharges are collected. Storm drain outlets are then observed for possible discharges.
- *Manhole and Internal TV Inspection*—Physical inspection of manholes and internal inspection of storm sewers either physically or by television are used to identify potential entry points for illicit connections. Dry weather flows, material deposits, and stains are often indicators of illicit connections. TV inspections are relatively expensive and generally should be used only after a storm sewer has been identified as having illicit connections.

B. Options for Preventing Pollutants in Storm Water

The following five categories describe options for reducing pollutants in storm water discharges from industrial plants:

- Eliminating pollution sources.
- Implementing Best Management Practices to prevent pollution.
- Using traditional storm water management practices.
- Diverting storm water discharges to municipal sewage treatment plants.
- Providing end-of-pipe treatment.

A comprehensive storm water management program for a given plant may include controls from each of these categories. Development of comprehensive control strategies should be based on a consideration of plant characteristics.

1. Elimination of Pollution Sources

In some cases, the elimination of a pollution source may be the most cost-effective way to control pollutants in storm water discharges associated with industrial activity. Options for eliminating pollution sources include reducing onsite air emissions affecting runoff quality, changing chemicals used at the facility, and modification of material management practices such as moving storage or processing areas into buildings or under other cover.

2. Best Management Practices

The term best management practices (BMPs) can describe a wide range of management procedures, schedules of activities, prohibitions on practices, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include operating procedures, treatment requirements and practices to control plant site runoff, drainage from raw materials storage, spills or leaks. BMPs can be established in two ways: BMP plans and site or pollutant-specific BMPs.

a. BMP plans. EPA has worked with industry to identify the generic BMPs which most well-operated facilities use for pollution control, fire prevention, occupational safety and health, or product loss prevention. EPA often establishes NPDES permit conditions that require generic BMPs to be identified and implemented through BMP plans. Many of the BMPs in a typical BMP plan involve planning, reporting, training, preventive maintenance, and good housekeeping. Many industrial facilities currently employ BMPs as part of normal plant operation. For example, preventive maintenance and good housekeeping are routinely used in the chemical and related industries to reduce equipment downtime and to promote a safe work environment for employees. Good housekeeping BMPs generally are aimed at preventing spills and similar environmental incidents by stressing the importance of proper management and employee awareness. Experience has shown that many spills of hazardous chemicals can be attributed, in one way or another, to human error. Improper procedures, lack of training, and poor engineering are among the major causes of spills. Experience has shown that BMPs can be used appropriately and BMP plans can effectively reduce pollutant discharges in a cost-effective manner. BMP plans should reflect requirements for Spill Prevention Control and Countermeasure (SPCC) plans required under Section 311 of the CWA, and may incorporate any part of the SPCC plan into the BMP plan by reference. BMP plans should also ensure that solid and hazardous waste is managed in accordance with requirements established under the Resource Conservation and Recovery Act (RCRA). Management practices required under RCRA should be expressly incorporated into the BMP plan.

In addition, each of the following nine specific requirements should be addressed in the BMP plan to reduce pollutants in runoff from the plant:

- Pollution Prevention Team.
- Material inventory.
- Material compatibility.
- Employee training.
- Visual Inspections.
- Preventive maintenance.
- Reporting and notification procedures.
- Sediment and erosion control.
- Spill Prevention and response.
- Good housekeeping.
- Facility security.

Additional technical information on BMPs and the elements of a storm water pollution prevention plan is contained in the publication entitled "Storm Water Management for Industrial Activities," EPA, September 1992. Contact the Storm Water Hotline (703) 821–4823 for information on how to obtain this document.

b. Site or pollutant-specific best management practices. In addition to the requirements of BMP plans discussed above, more advanced site or pollutant-specific BMP requirements may be developed. The following four categories describe these site or pollutant-specific BMPs:

- Prevention.
- Containment.
- Mitigation.
- Ultimate Disposition.

Table 4 lists BMPs associated with each category. Requirements for SPCC plans for oil pollution prevention (see 40 CFR part 112) illustrate how pollutant-specific BMPs can be implemented.

TABLE 4.—ADVANCED BMP ALTERNATIVES

Prevention	Containment	Mitigation		Waste disposal
		Cleanup	Treatment	
Monitoring	Secondary containment	Physical	Liquid-solids separation.	Landfill.
Nondestructive	Flow diversion to secondary containment.	Mechanical	Volatilization	Land treatment.
Labeling	Vapor control	Chemical	Coagulation/precipitation.	Reclamation.
Covering	Dust control		Neutralization	Discharge to surface water.
Pneumatic and vacuum conveying	Sealing		Ion exchange	Deep well injection.
Vehicle positioning			Chemical oxidation	Discharge to POTW.
Dry cleanup			Biological treatment	Offsite disposal.
			Thermal oxidation	

3. Traditional Storm Water Management Practices

In some situations, traditional storm water management practices such as grass swales, catch basin design and maintenance, infiltration devices, unlined retention or detention basins, water reuse, and oil and grit separators can be applied to an industrial setting. However, care must be taken to evaluate the potential of many of these traditional devices for ground water contamination. In some cases, it is appropriate to limit traditional storm water management practices to those areas of the drainage system that generate storm water discharges with relatively low levels of pollutants (e.g., many rooftops, parking lots, etc.). At facilities located in northern areas of the country, snow removal activities may play an important role in a storm water management program. In addition, other types of controls such as spill prevention measures can be considered to prevent catastrophic events that can lead to surface or ground water contamination.

4. Diversion of Discharge to Sewage Treatment Plant

Where storm water discharges contain significant amounts of pollutants that can be removed by a sewage treatment plant, the storm water discharge can be discharged to the sanitary sewage system. Such diversions must be coordinated with the operators of the sewage treatment plant and the collection system to avoid worsening problems with either combined sewer overflows (CSOs), basement flooding or wet weather operation of the treatment plant. Where CSO discharges, flooding or plant operation problems can result, onsite storage followed by a controlled release during dry weather conditions may be considered.

5. End-of-Pipe Treatment

End-of-pipe treatment requirements are typically imposed through numeric effluent limitations, which provide the discharger with flexibility to design the most cost effective type of treatment for the given facility.

At many types of industrial facilities, it may be appropriate to collect and treat the runoff from targeted areas of the facility. This approach was taken with 10 industrial categories with national effluent guideline limitations for storm water discharges. There are several basic similarities among the national effluent guideline limitations for storm water discharges:

- To meet the numeric effluent limitation, most, if not all, facilities must collect and temporarily store onsite runoff from targeted areas of the plant.
- The effluent guideline limitations do not apply to discharges whenever rainfall events, either chronic or catastrophic, cause an overflow of storage devices designed, constructed, and operated to contain a design storm. The 10-year, 24-hour storm, or the 25-year, 24-hour storm commonly are used as the design storm in the effluent guideline limitations.
- Most technology-based treatment standards are based on relatively simple technologies such as settling of solids, neutralization, and drum filtration. Potential ground water impacts should also be considered by operators when designing storage devices.

V. The Federal/Municipal Partnership: The Role of Municipal Operators of Large and Medium Municipal Separate Storm Sewer Systems

A key issue in developing a workable regulatory program for controlling pollutants in storm water discharges associated with industrial activity is the proper use and coordination of limited regulatory resources. This is especially important when addressing the appropriate role of municipal operators of large and medium municipal separate storm sewer systems in the control of pollutants in storm water associated with industrial activity which discharge through municipal separate storm sewer systems.

Several key policy factors arise when considering the appropriate strategy for regulating storm water discharges associated with industrial activity through municipal separate storm sewer systems. These factors include the following:

- The role and responsibilities of municipalities to control pollutants from nonmunicipal facilities which are discharged through a storm sewer owned or operated by the municipality.
- The large number of storm water discharges through municipal systems (the Agency anticipates that the majority of storm water discharges associated with industrial activity from many industrial classes discharge through municipal separate storm sewer systems).
- The ability of municipalities to recognize and represent local concerns and considerations.
- The ability of municipal operators to assist EPA and authorized NPDES States in identifying local priorities for controlling storm water discharges associated with industrial activity through specific municipal systems.
- The ability of municipal operators to assist EPA and authorized NPDES States to oversee effectively the development of appropriate site-specific controls for storm water discharges associated with industrial activity through municipal systems and to effectively require compliance with such controls.
- The authorities provided by the CWA (including those provided to the public) to review information developed

under the NPDES program and to enforce NPDES permits.

• The requirements of the CWA to develop and implement the NPDES permit program.

On November 16, 1990 (55 FR 47990), EPA promulgated a permitting scheme where controls for storm water discharges associated with industrial activity through large and medium municipal separate storm sewer systems may be addressed by two permits issued in a coordinated manner. This complementary permit approach envisions cooperative efforts by the permit issuing agency and municipal operators of large and medium municipal separate storm sewer systems to develop programs that will result in controls on pollutants in storm water discharges associated with industrial activity which discharge through municipal systems.

Under the complementary permit approach, storm water discharges associated with industrial activity which discharge through large and medium municipal separate storm sewer systems are required to obtain permit coverage. Permits for these discharges will establish requirements (such as controls or monitoring) for industrial operators of the discharge into the municipal system. In addition, these permits provide a basis for enforcement actions directly against the owner or operator of storm water discharges associated with industrial activity.

A second permit, issued to the operator of the large or medium municipal separate storm sewer, establishes the responsibilities of the municipal operators in controlling pollutants from storm water associated with industrial activity which discharges through their system. The framework for permits for discharges from large and medium municipal separate storm sewer systems has been developed to establish the responsibilities of the municipal operator to control pollutants discharged through these municipal systems. At the heart of the permit program for discharges from municipal separate storm sewer systems serving a population of 100,000 or more are requirements that municipal applicants develop and implement municipal storm water management programs. The municipal storm water management programs that will be incorporated into NPDES permits for discharges from municipal separate storm sewer systems will generally address (in addition to other possible requirements) the following three major components:

• Reducing pollutants in storm water discharges from municipal landfills; hazardous waste treatment, storage and disposal facilities; facilities subject to the Emergency Planning and Community Right-to-Know Act (EPCRA), section 313; and other priority industrial facilities through municipal separate storm sewers.

• Reducing pollutants in construction site runoff through municipal separate storm sewers.

• Identifying and controlling non-storm water discharges to municipal separate storm sewer systems.

These components of a municipal program can initiate the role of the municipality in assisting EPA and authorized NPDES States in implementing controls to reduce pollutants in storm water discharges associated with industrial activity which discharge through large and medium municipal separate storm sewer systems. Municipal programs to reduce pollutants in industrial site runoff and construction site runoff through municipal separate storm sewer systems specifically will address municipal responsibilities in controlling pollutants from industrial facilities. In addition, programs to identify and control non-storm water discharges to municipal separate storm sewer systems will in many cases focus on industrial areas because these areas often have a high potential for illicit connections, spills or improper dumping.

Consistent with the final permit application regulations published on November 16, 1990, (55 FR 47990), the proposed general permit accompanying this fact sheet have been developed to assist in establishing a cooperative approach between EPA and municipal operators of large and medium municipal separate storm sewer systems for controlling pollutants from storm water discharges associated with industrial activity which discharge through large and medium municipal separate storm sewer systems. These requirements will be coordinated with requirements in permits for discharges from large and medium municipal separate storm sewer systems. Major features of the proposed general permit that establish the framework for this cooperative approach include:

• Operators of storm water discharges associated with industrial activity which discharge through a large or medium municipal separate storm sewer system may be required to submit a copy of the notice of intent to the municipal operators of large or medium municipal system receiving the discharge.

• Requirements to monitor and reduce pollutants in discharges will be established for storm water discharges associated with industrial activity which discharge through large and medium municipal separate storm sewer systems (as well as other storm water discharges associated with industrial activity). Any records, reports, or information obtained by the Director as part of the permit implementation process, including site-specific storm water pollution prevention programs that are developed pursuant to the proposed general permit, are available to municipalities under section 308(b) of the CWA. This will assist municipalities in reviewing the adequacy of such requirements and developing priorities among industrial storm water sources.

• Industrial permittees with discharges through large and medium municipal systems may be required to submit discharge monitoring reports to municipal operators of these systems (as well as to the permitting issuing agency) or other monitoring results as required by the operator of the municipal separate storm sewer to assist the municipal operator in identifying priorities.

These permit conditions, along with appropriate conditions in permits for discharges from large and medium municipal separate storm sewer systems, will allow municipal operators of these systems to assist EPA in:

• Identifying priority storm water discharges associated with industrial activity to their system

• Reviewing and evaluating storm water pollution prevention plans

• Compliance efforts regarding storm water discharges associated with industrial activity to their municipal systems.

VI. Summary of Common Permit Conditions

The following section describes the permit conditions common to discharges from all the industrial activities covered by today's permit. These conditions reflect the baseline permit requirements established for most regulated industries in EPA's General Permits for Storm Water Discharges Associated with Industrial Activity (57 FR 41344–41356 September 9, 1992, and 57 FR 44438–44470 September 25, 1992). Permit requirements which vary from industry to industry are discussed in part VIII of this fact sheet.

A. Notification Requirement

General permits for storm water discharges associated with industrial

activity require the submittal of an NOI prior to the authorization of such discharges (see 40 CFR 122.28(b)(2)(i), April 2, 1992 (57 FR 11394)). Consistent with these regulatory requirements, today's proposed general permit establishes NOI requirements that operate in addition to the part 1 and part 2 group application requirements. To be covered under this permit, facilities, including members of an approved group, must submit an NOI within 90 days of the effective date of this permit. Dischargers submitting an NOI must use the form that will be provided in Addendum B of the final notice of this permit.

1. Contents of NOIs

- The type of permit under which the applicant wishes to be covered.
- The operator's name, address, telephone number, and status as Federal, State, private, public, or other entity.
- Street address of the facility for which the notification is submitted. Where a street address for the site is not available, the location can be described in terms of the latitude and longitude of the facility to the nearest 15 seconds, or the quarter, section, township, and range (to the nearest quarter section) of the approximate center of the site.
- An indication of whether the facility is located on Indian lands.
- Up to two 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products or activities provided by the facility. For hazardous waste treatment, storage, or disposal facilities, land disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage, a 2-character code must provided.
- The permit number of any NPDES permit for any discharge (including non-storm water discharges) from the site that is currently authorized by an NPDES permit.
- The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the receiving water(s) for the discharge through the municipal separate storm sewer.
- The monitoring status of the facility.
- For a co-permittee, if a storm water general permit number has been issued, it should be included.
- A certification that the operator of the facility has read and understands the eligibility requirements for the permit, and that the operator believes the facility to be in compliance with those requirements.
- For any facility that begins to discharge storm water associated with industrial activity after [insert date 270 days after permit finalization], a certification that a storm water pollution prevention plan has been prepared for the facility in accordance with part IV of this permit. (A copy of the plan should not be included with the NOI submission.) EPA requests comment as to whether submittal of this certification should be required for new facilities.

An NOI form will be provided in Addendum B of the final permit. The NOI must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements will be provided in the instructions accompanying the NOI. Completed NOI forms must be submitted to the Director of the NPDES program in care of the address that will be provided in the Final Notice of the permit.

2. Deadlines

Except for the special circumstances discussed below, dischargers who intend to obtain coverage under the proposed permit for a storm water discharge from an industrial activity that is in existence prior to the date 90 days after permit issuance must submit an NOI on or before the date 90 days after permit issuance, and facilities that begin industrial activities after the date 90 days after permit issuance are required to submit an NOI at least 2 days prior to the commencement of the new industrial activity.

A discharger is not precluded from submitting an NOI at a later date. However, in such instances, EPA may bring appropriate enforcement actions.

The storm water regulations (40 CFR 122.27) require that facilities that discharge storm water associated with an industrial activity submit an application for permit coverage on or before October 1, 1992, except industrial activities owned or operated by a medium municipality, which had until May 17, 1993. Today's proposed permit does not extend that application deadline. EPA intends that most of the facilities that will seek coverage under the final version of today's proposed permit are: members of groups with approved applications; facilities that submitted a Notice of Intent to be covered by EPA's baseline general permit; or have submitted a complete individual application but have not yet received an individual permit.

EPA may deny coverage under this permit and require submittal of an individual NPDES permit application based on a review of the completeness and/or content of the NOI or other information (e.g., water quality information, compliance history, history of spills, etc.). Where EPA requires a discharger authorized under these industry general permits to apply for an individual NPDES permit or suggest an alternative general permit, EPA will notify the discharger in writing that a permit application is required. Coverage under these industry general permits will automatically terminate if the discharger fails to submit the required permit application in a timely manner. Where the discharger does submit a requested permit application, coverage under this general permit will automatically terminate on the effective date of the issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee.

3. Municipal Separate Storm Sewer System Operator Notification

Operators of storm water discharges associated with industrial activity that discharge through a large or medium municipal separate storm sewer system or a municipal system designated by the Director,[6] must notify the municipal operator of the system receiving the discharge and submit a copy of their NOI to the municipal operator.

4. Notice of Termination

Where a discharger is able to eliminate the storm water discharges associated with industrial activity from a facility, the discharger may submit a Notice of Termination (NOT) form (or photocopy thereof) provided by the Director.

A copy of the NOT and instructions for completing the NOT will be provided with the permit upon finalization. The NOT form requires the following information:

- Name, mailing address, and location of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter;
- The name, address and telephone number of the operator addressed by the Notice of Termination;

[6] The terms large and medium municipal separate storm sewer systems (systems serving a population of 100,000 or more) are defined at 40 CFR 122.26(b)(4) and (7). Some of the cities and counties in which these systems are found are listed in Appendices F, G, H, and I to 40 CFR part 122. Other municipal systems have been designated by EPA on a case-by-case basis.

- The NPDES permit number for the storm water discharge associated with industrial activity identified by the NOT;
- An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and
- The following certification:

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the industrial activity. I understand that by submitting this Notice of Termination I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

NOTs are to be sent to the Director of the NPDES program in care of the address to be provided in the Final Notice of the permit.

The NOT must be signed in accordance with the signatory requirements of 40 CFR 122.22. A complete description of these signatory requirements will be provided in the instructions accompanying the NOT.

B. Special Conditions

The conditions of this proposed permit have been designed to comply with the technology-based standards of the CWA (BAT/BCT). Based on a consideration of the appropriate factors for BAT and BCT requirements, and a consideration of the factors and options discussed in this fact sheet for controlling pollutants in storm water discharges associated with industrial activity, the proposed general permit proposes a set of tailored requirements for developing and implementing storm water pollution prevention plans, and for selected discharges, effluent limitations.[7]

Parts IV. and VIII. of this fact sheet summarizes the options for controlling pollutants in storm water discharges associated with industrial activity. The proposed permit includes numeric effluent limitations for coal pile runoff, contaminated runoff from fertilizer manufacturing facilities, runoff from asphalt emulsion manufacturing facilities, and material storage pile runoff located at cement manufacturing facilities or cement kilns.

For other discharges covered by the permit, the proposed permit conditions reflect EPA's decision to select a number of best management practices and traditional storm water management practices which prevent pollution in storm water discharges as the BAT/BCT level of control for the majority of storm water discharges covered by this permit. The proposed permit conditions applicable to these discharges are not numeric effluent limitations, but rather are flexible requirements for developing and implementing site specific plans to minimize and control pollutants in storm water discharges associated with industrial activity. This approach is consistent with the approach used in the baseline general permits finalized on September 9, 1992 (57 FR 41236) and September 25, 1992 (57 FR 44438). In addition, today's proposed general permit reflects information received through the group application process.

EPA is authorized under 40 CFR 122.44(k)(2) to impose BMPs in lieu of numeric effluent limitations in NPDES permits when the Agency finds numeric effluent limitations to be infeasible. EPA may also impose BMPs which are "reasonably necessary * * * to carry out the purposes of the Act" under 40 CFR 122.44(k)(3). Both of these standards for imposing BMPs were recognized in *NRDC* v. *Costle*, 568 F.2d 1369, 1380 (D.C. Cir. 1977). The conditions in the proposed permit are proposed under the authority of both of these regulatory provisions. The pollution prevention or BMP requirements in this permit operate as limitations on effluent discharges that reflect the application of BAT/BCT. This is because the BMPs identified require the use of source control technologies which, in the context of these general permits, are the best available of the technologies economically achievable (or the equivalent BCT finding). See, e.g., *NRDC* v. *EPA*, 822 F.2d 104, 122–23 (D.C. Cir. 1987) (EPA has substantial discretion to impose nonquantitative permit requirements pursuant to section 402(a)(1)).

1. Prohibition of Non-storm Water Discharges.

Today's proposed general permit does not authorize non-storm water discharges that are mixed with storm water except as provided below. Non-storm water discharges that are intended to be authorized under today's proposed permit include discharges from fire fighting activities; fire hydrant flushings; potable water sources, including waterline flushings; irrigation drainage; lawn watering; routine external building washdown without detergents; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents that are combined with storm water discharges associated with industrial activity.

To be authorized under the proposed general permit, these sources of non-storm water (except flows from fire fighting activities) must be identified in the storm water pollution prevention plan prepared for the facility. (Plans and other plan requirements are discussed in more detail below). Where such discharges occur, the plan must also identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge. For example, to reduce pollutants in irrigation drainage, a plan could identify low maintenance lawn areas that do not require the use of fertilizers or herbicides; for higher maintenance lawn areas, a plan could identify measures such as limiting fertilizer use based on seasonal and agronomic considerations, decreasing herbicide use with an integrated pest management program, introducing natural vegetation or more hardy species, and reducing water use (thereby reducing the volume of irrigation drainage).

Today's proposed permit does not require pollution prevention measures to be identified and implemented for non-storm water flows from fire-fighting activities because these flows will generally be unplanned emergency situations where it is necessary to take immediate action to protect the public.

The prohibition of unpermitted non-storm water discharges in this proposed permit ensures that non-storm water discharges (except for those classes of non-storm water discharges that are conditionally authorized in part III.A.2.b.) are not inadvertently authorized by this permit. Where a storm water discharge is mixed with non-storm water that is not authorized by today's proposed general permit or another NPDES permit, the discharger

[7] Part I.C.2 of the proposed general permit provide that facilities with storm water discharges associated with industrial activity which, based on an evaluation of site specific conditions, believe that the appropriate conditions of this permit do not adequately represent BAT and BCT requirements for the facility may request to be excluded from the coverage of the general permit by submitting to the Director an individual application (Form 1 and Form 2F) with a detailed explanation of the reasons supporting the request, including any supporting documentation showing that certain permit conditions are not appropriate.

should submit the appropriate application forms (Forms 1, 2C, and/or 2E) to gain permit coverage of the non-storm water portion of the discharge.

2. Releases of Reportable Quantities of Hazardous Substances and Oil

This proposed general permit provide that the discharge of hazardous substances or oil from a facility must be eliminated or minimized in accordance with the storm water pollution plan developed for the facility. Where a permitted storm water discharge contains a hazardous substance or oil in an amount equal to or in excess of a reporting quantity established under 40 CFR part 117, or 40 CFR Part 302 during a 24-hour period, the following actions must be taken:

- Any person in charge of the facility is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC, metropolitan area, 202–426 2675) in accordance with the requirements of 40 CFR part 117, and 40 CFR part 302 as soon as they have knowledge of the discharge.
- The storm water pollution prevention plan for the facility must be modified within 14 calendar days of knowledge of the release to provide a description of the release, an account of the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and it must be modified where appropriate.
- The permittee must also submit to EPA within 14 calendar days of knowledge of the release a written description of the release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken to modify the pollution prevention plan for the facility.

Anticipated discharges containing a hazardous substance in an amount equal to or in excess of reporting quantities are those caused by events occurring within the scope of the relevant operating system. Facilities that have more than 1 anticipated discharge per year containing a hazardous substance in an amount equal to or in excess of a reportable quantity are required to:

- Submit notifications for the first release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and
- Provide a written description in the storm water pollution prevention plan of the dates on which such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the release. In addition, the pollution prevention plan must address measures to minimize such releases.

Where a discharge of a hazardous substance or oil in excess of reporting quantities is caused by a non-storm water discharge (e.g., a spill of oil into a separate storm sewer), that discharge is not authorized by this permit and the discharger must report the discharge as required under 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302. In the event of a spill, the requirements of Section 311 of the CWA and other applicable provisions of Sections 301 and 402 of the CWA continue to apply. This approach is consistent with the requirements for reporting releases of hazardous substances and oil that make a clear distinction between hazardous substances typically found in storm water discharges and those associated with spills that are not considered part of a normal storm water discharge (see 40 CFR 117.12(d)(2)(i)).

3. Co-located Industrial Facilities

Today's proposed general permit addresses storm water discharges from industrial activities co-located at an industrial facility described in the eligibility section of the permit. Co-located industrial activities are activities at an industrial facility that support the facility's primary industrial activity (e.g., a landfill at a wood treatment facility or a vehicle maintenance garage at a food manufacturer). Co-located industrial activities are authorized under today's proposed general permit provided that the industrial facility complies with the pollution prevention plan and monitoring requirements for each co-located activity as well as the pollution prevention plan and monitoring requirements for its primary industrial activity.

Authorizing co-located discharges allows industrial facilities to develop pollution prevention plans that full address all industrial activities at the site. For example, if a wood treatment facility has a landfill, the pollution prevention plan requirements for the wood treatment facility will differ greatly from those needed for a landfill. Therefore, by authorizing co-located industrial activities, the wood treatment facility will develop a pollution prevention plan to meet the requirements addressing the storm water discharges from the wood treatment facility and the landfill. The facility is also subject to monitoring requirements for both types of industrial activities as described in each applicable section of the permit. By monitoring the discharges from the different industrial activities, the facility can better determine the effectiveness of the pollution prevention plan requirements for controlling storm water discharges from all activities.

C. Common Pollution Prevention Plan Requirements

All facilities intended to be covered by today's proposed general permit for storm water discharges associated with industrial activity must prepare and implement a storm water pollution prevention plan. The storm water permit addresses pollution prevention plan requirements for a number of categories of industries. The following is a discussion of the baseline requirements for all industries; special requirements for storm water discharges associated with industrial activity through large and medium municipal separate storm sewer systems; special requirements for facilities subject to EPCRA Section 313 Reporting Requirements; and special requirements for facilities with outdoor salt storage piles. These are the permit requirements which apply to discharges associated with any of the industrial activities covered by today's permit. These common requirements may be amended or further clarified in the industry-specific pollution prevention plan requirements. Table 5 indicates the location of the industry-specific pollution prevention plans. These industry-specific requirements are additive for facilities where co-located industrial activities occur. For example, if a facility has both a sand and gravel mining operation and a ready mix concrete manufacturing operation, then that facility is subject to the pollution prevention plan requirements in both Part XI.E.3. and Part XI.J.3. of the proposed permit.

TABLE 5.—STORM WATER POLLUTION PREVENTION PLAN REQUIREMENTS

Industrial activity	Fact sheet section describing PPP requirements	Permit section describing PPP requirements
Timber Products Facilities	VIII.A.7	XI.A.3
Paper and Allied Products Manufacturing Facilities	VIII.B.5	XI.B.3
Chemical and Allied Products Manufacturing Facilities	VIII.C.6	XI.C.4
Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers	VIII.D.4	XI.D.3
Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities	VIII.E.5	XI.E.3
Primary Metals Facilities	VIII.F.6	XI.F.3
Metal Mining (Ore Mining and Dressing) Facilities	VIII.G.5	XI.G.3
Coal Mines and Coal Mining-Related Facilities	VIII.H.4	XI.H.3
Oil and Gas Extraction Facilities	VIII.I.5	XI.I.3
Mineral Mining and Processing Facilities	VIII.J.4	XI.J.3
Hazardous Waste Treatment, Storage, or Disposal Facilities	VIII.K.5	XI.K.3
Landfills and Land Application Sites	VIII.L.5	XI.L.3
Automobile Salvage Yards	VIII.M.5	XI.M.3
Scrap and Waste Material Processing and Recycling Facilities	VIII.N.5	XI.N.3
Steam Electric Power Generating Facilities, Including Coal Handling Areas	VIII.O.5	XI.O.3
Vehicle Maintenance or Equipment Cleaning Areas at Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and the United States Postal Service Transportation Facilities.	VIII.P.5	XI.P.3
Vehicle Maintenance Areas and/or Equipment Cleaning Operations at Water Transportation Facilities	VIII.Q.5	XI.Q.3
Ship and Boat Building or Repairing Yards	VIII.R.6	XI.R.3
Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas Located at Air Transportation Facilities.	VIII.S.4	XI.S.3
Treatment Works	VIII.T.5	XI.T.3
Food and Kindred Products Facilities	VIII.U.4	XI.U.3
Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities	VIII.V.5	XI.V.3
Wood and Metal Furniture and Fixture Manufacturing Facilities	VIII.W.4	XI.W.3
Printing and Publishing Facilities	VIII.X.5	XI.X.3
Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	VIII.Y.4	XI.Y.3
Leather Tanning and Finishing Facilities	VIII.Z.5	XI.Z.3
Fabricated Metal Products Industry	VIII.AA.3	XI.AA.3
Facilities That Manufacture Transportation Equipment, Industrial, or Commercial Machinery	VIII.AB.5	XI.AB.3
Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods.	VIII.AC.5	XI.AC.3

The pollution prevention approach in today's proposed general permit focuses on two major objectives: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from the facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from the facility and to ensure compliance with the terms and conditions of this permit.

The storm water pollution prevention plan requirements in the proposed general permit are intended to facilitate a process whereby the operator of the industrial facility thoroughly evaluates potential pollution sources at the site and selects and implements appropriate measures designed to prevent or control the discharge of pollutants in storm water runoff. The process involves the following four steps: (1) Formation of a team of qualified plant personnel who will be responsible for preparing the plan and assisting the plant manager in its implementation; (2) assessment of potential storm water pollution sources; (3) selection and implementation of appropriate management practices and controls; and (4) periodic evaluation of the effectiveness of the plan to prevent storm water contamination and comply with the terms and conditions of this permit.

EPA believes the pollution prevention approach is the most environmentally sound and cost-effective way to control the discharge of pollutants in storm water runoff from industrial facilities. This position is supported by the results of a comprehensive technical survey EPA completed in 1979.[8] The survey found that two classes of management practices are generally employed at industries to control the nonroutine discharge of pollutants from sources such as storm water runoff, drainage from raw material storage and waste disposal areas, and discharges from places where spills or leaks have occurred. The first class of management practices includes those that are low in cost, applicable to a broad class of industries and substances, and widely considered essential to a good pollution control program. Some examples of practices in this class are good housekeeping, employee training, and spill response and prevention procedures. The second class includes management practices that provide a second line of defense against the release of pollutants. This class addresses containment, mitigation, and cleanup. Since publication of the 1979 survey, EPA has imposed management practices and controls in NPDES permits on a case-by-case basis. The Agency also has continued to review the appropriateness and effectiveness of such practices,[9] as well as the techniques used to prevent and contain

[8] See "Storm Water Management for Industrial Activities," EPA, September 1992, EPA–832–R–92–006.

[9] For example, see "Best Management Practices: Useful Tools for Cleaning Up," Thron, H., Rogoshewski, P., 1982, Proceedings of the 1982 Hazardous Material Spills Conference; "The Chemical Industries' Approach to Spill Prevention," Thompson, C., Goodier, J. 1980, Proceedings of the 1980 National Conference of Control of Hazardous Materials Spills; a series of EPA memorandum entitled "Best Management Practices in NPDES Permits—Information Memorandum," 1983, 1985, 1986, 1987, 1988; Review of Emergency Systems: Report to Congress," EPA, 1988; and "Analysis of Implementing Permitting Activities for Storm Water Discharges Associated with Industrial Activity," EPA, 1991.

oil spills.[10] Experience with these practices and controls has shown that they can be used in permits to reduce pollutants in storm water discharges in a cost-effective manner. EPA has developed guidance entitled "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," September 1992, to assist permittees in developing and implementing pollution prevention measures.

1. Pollution Prevention Team

As a first step in the process of developing and implementing a storm water pollution prevention plan, permittees would be required to identify a qualified individual or team of individuals to be responsible for developing the plan and assisting the facility or plant manager in its implementation. When selecting members of the team, the plant manager should draw on the expertise of all relevant departments within the plant to ensure that all aspects of plant operations are considered when the plan is developed. The plan must clearly describe the responsibilities of each team member as they relate to specific components of the plan. In addition to enhancing the quality of communication between team members and other personnel, clear delineation of responsibilities will ensure that every aspect of the plan is addressed by a specified individual or group of individuals. Pollution Prevention Teams may consist of one individual where appropriate (e.g., in certain small businesses with limited storm water pollution potential).

2. Description of Potential Pollution Sources

Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute significant amounts of pollutants to storm water runoff or, during periods of dry weather, result in pollutant discharges through the separate storm sewers or storm water drainage systems that drain the facility. This assessment of storm water pollution risk will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. The permit proposes that plans must describe the following elements:

a. Drainage. The plan must contain a map of the site that shows the pattern of storm water drainage, structural features that control pollutants in runoff,[11] surface water bodies (including wetlands), places where significant materials[12] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map also must show areas where the following activities take place: fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal. For areas of the facility that generate storm water discharges with a reasonable potential to contain significant amounts of pollutants, the map must indicate the probable direction of storm water flow and the pollutants likely to be in the discharge. Flows with a significant potential to cause soil erosion also must be identified.

EPA requests comment on whether the permit should require that the site map indicate the outfall locations, sampling locations, and types of discharges contained in the outfalls (e.g., storm water and air conditioner condensate).

b. Inventory of exposed materials. Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must address materials that within 3 years prior to the effective date of the permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in runoff; and any treatment the runoff receives before it is discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

c. Significant spills and leaks. The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of CWA (see 40 CFR 110.10 and 40 CFR 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

The listing should include a description of the causes of each spill or leak, the actions taken to respond to each release, and the actions taken to prevent similar such spills or leaks in the future. This effort will aid the facility operator as she or he examines existing spill prevention and response procedures and develops any additional procedures necessary to fulfill the requirements of Part XI. of this permit.

d. Non-storm water discharges. Each pollution prevention plan must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water discharges. The certification must describe possible significant sources of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the onsite drainage points directly observed during the test or evaluation. Acceptable test or evaluation techniques include dye tests, television surveillance, observation of outfalls or other appropriate locations during dry weather, water balance calculations, and analysis of piping and drainage schematics.[13]

[10] See for example, "The Oil Spill Prevention, Control and Countermeasures Program Task Force Report," EPA, 1988; and "Guidance Manual for the Development of an Accidental Spill Prevention Program," prepared by SAIC for EPA, 1986.

[11] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[12] Significant materials include, but are not limited to the following: raw materials; fuels; solvents, detergents, and plastic pellets; finished materials, such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA); any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products, such as ashes, slag, and sludge that have the potential to be released with storm water discharges. (See 40 CFR 122.26(b)(8)).

[13] In general, smoke tests should not be used for evaluating the discharge of non-storm water to a separate storm sewer as many sources of non-storm water typically pass through a trap that would limit the effectiveness of the smoke test.

Except for flows that originate from fire fighting activities, sources of non-storm water that are specifically identified in the permit as being eligible for authorization under the general permit must be identified in the plan. Pollution prevention plans must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water discharge.

EPA recognizes that certification may not be feasible where facility personnel do not have access to an outfall, manhole, or other point of access to the conduit that ultimately receives the discharge. In such cases, the plan must describe why certification was not feasible. Permittees who are not able to certify that discharges have been tested or evaluated must notify the Director in accordance with Part XI. of the permit.

EPA requests comment as to whether the permit should require facilities to prepare an inventory of outfalls that indicates the types of non-storm water discharges contained in the outfall (e.g., process wastewater, air conditioner condensate, boiler blowdown, etc.) and the numbers of the NPDES permits to which the outfall is subject.

e. Sampling data. Any existing data on the quality or quantity of storm water discharges from the facility must be described in the plan, including data collected for part 2 of the group application process. These data may be useful for locating areas that have contributed pollutants to storm water. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

f. Summary of potential pollutant sources. The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (i.e., biochemical oxygen demand, suspended solids, etc.) associated with each source.

3. Measures and Controls

Following completion of the source identification and assessment phase, the permit proposes that the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

EPA emphasizes the implementation of pollution prevention measures and BMPs that reduce possible pollutant discharges at the source. Source reduction measures include, among others, preventive maintenance, chemical substitution, spill prevention, good housekeeping, training, and proper materials management. Where such practices are not appropriate to a particular source or do not effectively reduce pollutant discharges, EPA supports the use of source control measures and BMPs such as material segregation or covering, water diversion, and dust control. Like source reduction measures, source control measures and BMPs are intended to keep pollutants out of storm water. The remaining classes of BMPs, which involve recycling or treatment of storm water, allow the reuse of storm water or attempt to lower pollutant concentrations prior to discharge.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address one or more of the potential pollution sources identified in the plan. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems. The permit proposes that the portion of the plan that describes the measures and controls must address the following minimum components.

a. Good housekeeping. Good housekeeping involves using common sense to identify ways to maintain a clean and orderly facility and keep contaminants out of separate storm sewers. It includes establishing protocols to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. These protocols must be described in the plan and communicated to appropriate plant personnel.

b. Preventive maintenance. Permittees must develop a preventive maintenance program that involves regular inspection and maintenance of storm water management devices and other equipment and systems. The program description should identify the devices, equipment, and systems that will be inspected; provide a schedule for inspections and tests; and address appropriate adjustment, cleaning, repair, or replacement of devices, equipment, and systems. For storm water management devices such as catch basins and oil/water separators, the preventive maintenance program should provide for periodic removal of debris to ensure that the devices are operating efficiently. For other equipment and systems, the program should reveal and enable the correction of conditions that could cause breakdowns or failures that may result in the release of pollutants.

c. Spill prevention and response procedures. Based on an assessment of possible spill scenarios, permittees must specify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and in the event of a spill enable proper and timely response. Areas and activities that typically pose a high risk for spills include loading and unloading areas, storage areas, process activities, and waste disposal activities. These activities and areas, and their accompanying drainage points, must be described in the plan. For a spill prevention and response program to be effective, employees should clearly understand the proper procedures and requirements and have the equipment necessary to respond to spills.

d. Inspections. In addition to or as part of the comprehensive site evaluation, qualified facility personnel must be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained.

e. Employee training. The pollution prevention plan must describe a program for informing personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. The training program should address topics

such as good housekeeping, materials management, and spill response procedures. A schedule for conducting training must be provided in the plan. Where appropriate, contractor personnel also must be trained in relevant aspects of storm water pollution prevention. Several sections in Part XI. of today's permit specify a minimum frequency for training. Others indicate that training is to be conducted at an appropriate interval. EPA requests comment as to whether a minimum training frequency of once per year should be specified for all industry sectors.

f. Recordkeeping and internal reporting procedures. The pollution prevention plan must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. At a minimum, records must address spills, monitoring, and inspection and maintenance activities. The plan also must describe a system that enables timely reporting of storm water management-related information to appropriate plant personnel.

g. Sediment and erosion control. The pollution prevention plan must identify areas that, due to topography, activities, soils, cover materials, or other factors have a high potential for significant soil erosion. The plan must identify measures that will be implemented to limit erosion in these areas.

h. Management of runoff. The plan must contain a narrative evaluation of the appropriateness of traditional storm water management practices (i.e., practices other than those that control pollutant sources) that divert, infiltrate, reuse, or otherwise manage storm water runoff so as to reduce the discharge of pollutants. Appropriate measures may include, among others, vegetative swales, collection and reuse of storm water, inlet controls, snow management, infiltration devices, and wet detention/retention basins.

Based on the results of the evaluation, the plan must identify practices that the permittee determines are reasonable and appropriate for the facility. The plan also should describe the particular pollutant source area or activity to be controlled by each storm water management practice. Reasonable and appropriate practices must be implemented and maintained according to the provisions prescribed in the plan.

In selecting storm water management measures, it is important to consider the potential effects of each method on other water resources, such as ground water. Although storm water pollution prevention plans primarily focus on storm water management, facilities must also consider potential ground water pollution problems and take appropriate steps to avoid adversely impacting ground water quality. For example, if the water table is unusually high in an area, an infiltration pond may contaminate a ground water source unless special preventive measures are taken. Under EPA's July 1991 Ground Water Protection Strategy, States are encouraged to develop Comprehensive State Ground Water Protection Programs (CSGWPP). Efforts to control storm water should be compatible with State ground water objectives as reflected in CSGWPPs.

4. Comprehensive Site Compliance Evaluation

The permit proposes that storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of the permit. The plan must indicate the frequency of such evaluations which in most cases must be at least once a year.[14] The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Material handling and storage areas and other potential sources of pollution must be visually inspected for evidence of actual or potential pollutant discharges to the drainage system. Inspectors also must observe erosion controls and structural storm water management devices to ensure that each is operating correctly. Equipment needed to implement the pollution prevention plan, such as that used during spill response activities, must be inspected to confirm that it is in proper working order.

The results of each site inspection must be documented in a report signed by an authorized company official. The report must describe the scope of the inspection, the personnel making the inspection, the date(s) of the inspection, and any major observations relating to implementation of the storm water pollution prevention plan. Inspection reports must be retained for at least 3 years after the date that the permit expires. Based on the results of each inspection, the description in the plan of potential pollution sources and measures and controls must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

D. Special Requirements

1. Special Requirements for Storm Water Discharges Associated With Industrial Activity Through Large and Medium Municipal Separate Storm Sewer Systems

Permittees that discharge storm water associated with industrial activity through large or medium municipal separate storm sewer systems[15] are required to submit notification of the discharge to the operator of the municipal separate storm sewer system. A list of these systems is provided in Addendum D of the permit.

Facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions. In addition, permittees that discharge storm water associated with industrial activity through a large or medium municipal separate storm sewer system must make their pollution prevention plans available to the municipal operator of the system upon request by the municipal operator.

2. Special Requirements for Storm Water Discharges Associated With Industrial Activity From Facilities Subject to EPCRA Section 313 Requirements

Today's permit proposes special requirements for certain permittees subject to reporting requirements under Section 313 of the EPCRA (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA)). EPCRA Section 313 requires operators of certain facilities that manufacture (including import), process, or otherwise use listed toxic chemicals to report annually their releases of those chemicals to any

[14] Where annual site inspections are shown in the plan to be impractical for inactive mining sites, due to remote location and inaccessibility, site inspections must be conducted at least once every 3 years. However, at least one inspection must take place before October 1, 1994. For mining sites that become inactive after October 1, 1994, the first site inspection must take place on the date 2 years after such a site becomes inactive.

[15] Large and medium municipal separate storm sewer systems are systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system (see 40 CFR 122.26(b) (4) and (7) and Appendices F through I to Part 122). A list of these municipalities is provided in Addendum D to the permit.

environmental media. Listed toxic chemicals include more than 300 chemicals listed at 40 CFR part 372.

The criteria for facilities that must report under Section 313 are given at 40 CFR 372.22. A facility is subject to the annual reporting provisions of Section 313 if it meets all three of the following criteria for a calendar year:

- It is included in SIC codes 20 through 39;
- It has 10 or more full-time employees; and
- It manufactures (including imports), processes, or otherwise uses a chemical listed in 40 CFR 372.65 in amounts greater than the "threshold" quantities specified in 40 CFR 372.25.

There are more than 300 individually listed Section 313 chemicals, as well as 20 categories of Toxic Release Inventory (TRI) chemicals for which reporting is required. EPA has the authority to add to and delete from this list. The Agency has identified approximately 175 chemicals that it is classifying for the purposes of this general permit as "Section 313 water priority chemicals." For the purposes of this proposed permit, Section 313 water priority chemicals are defined as chemicals or chemical categories that (1) are listed at 40 CFR 372.65 pursuant to EPCRA Section 313; (2) are manufactured, processed, or otherwise used at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (3) meet at least one of the following criteria: (i) Are listed in Appendix D of 40 CFR Part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols), or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to Section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic toxicity criteria. A list of the water priority chemicals is provided in Addendum F to the permit.

EPA requests comment as to whether it would be appropriate to extend these special requirements to all facilities that store liquid chemicals in above-ground tanks, or handle liquid chemicals in areas exposed to precipitation.

a. Summary of special requirements. The special requirements in today's permit for facilities subject to reporting requirements under EPCRA Section 313 for a water priority chemical state that storm water pollution prevention plans, in addition to the baseline requirements for plans, must contain special provisions addressing areas where Section 313 water priority chemicals are stored, processed, or otherwise handled. These requirements reflect the Best Available Technology for controlling discharges of water priority chemicals in storm water. The permit provides that appropriate containment, drainage control, and/or diversionary structures must be provided for such areas. At a minimum, one of the following preventive systems or its equivalent must be used:

- Curbing, culverting, gutters, sewers, or other forms of drainage control to prevent or minimize the potential for storm water runon to come into contact with significant sources of pollutants; or
- Roofs, covers, or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

In addition, the permit establishes requirements for priority areas of the facility. Priority areas of the facility include the following:

- Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals;
- Material storage areas for Section 313 water priority chemicals other than liquids;
- Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals; and
- Areas where Section 313 water priority chemicals are transferred, processed, or otherwise handled.

The permit provides that site runoff from other industrial areas of the facility that may contain Section 313 water priority chemicals or spills of Section 313 water priority chemicals must incorporate the necessary drainage or other control features to prevent the discharge of spilled or improperly disposed material and to ensure the mitigation of pollutants in runoff or leachate. The permit also establishes special requirements for preventive maintenance and good housekeeping, facility security, and employee training.

Storm water pollution prevention plans for facilities subject to these special requirements must be reviewed and certified by a Registered Professional Engineer (PE). The PE must be able to certify that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. The PE must personally examine the facility and be familiar with the requirements of today's permit before making a certification. The permit requires that a certification be made every 3 years. Where significant modifications are made to the facility, such as the addition of material handling areas or chemical storage units, permittees are required to obtain an additional PE certification as soon as practicable. The certifications do not relieve the discharger of the duty to prepare and implement fully a storm water pollution prevention plan that is in accordance with the permit. EPA requests comment on whether individuals other than Professional Engineers should be allowed to certify storm water pollution prevention plans; for example, individuals who have completed approved courses in storm water pollution prevention.

b. Requirements for priority areas. The permit provides that drainage from priority areas should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these must be manually activated. Flapper-type drain valves must not be used to drain containment areas, as these will not effectively control spills. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design. If facility drainage does not meet these requirements, the final discharge conveyance of all in-facility storm sewers must be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material or contaminated storm water to the facility. Records must be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

Additional special requirements are related to the types of industrial activities that occur within the priority area. These requirements are summarized below:

- *Liquid Storage Areas*—Where storm water comes into contact with any equipment, tank, container, or other vessel used for Section 313 water priority chemicals, the material and construction of tanks or containers used for the storage of a Section 313 water priority chemical must be compatible with the material stored and conditions of storage, such as pressure and temperature. Liquid storage areas for Section 313 water priority chemicals must be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent

measures. A strong spill contingency plan would typically contain, at a minimum, a description of response plans, personnel needs, and methods of mechanical containment (such as use of sorbents, booms, collection devices, etc.), steps to take for removal of spill chemicals or materials, and procedures to ensure access to and availability of sorbents and other equipment. The testing component of the plan would provide for conducting integrity testing of storage tanks at set intervals such as once every 5 years, and conducting integrity and leak testing of valves and piping at a minimum frequency, such as once per year. In addition, a strong plan would include a written and actual commitment of manpower, equipment and materials required to comply with the permit and to expeditiously control and remove any quantity of spilled or leaked chemicals that may result in a toxic discharge.

- *Other Material Storage Areas*—Material storage areas for Section 313 water priority chemicals other than liquids that are subject to runoff, leaching, or wind must incorporate drainage or other control features to minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

- *Truck and Rail Car Loading and Unloading Areas*—Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals must be operated to minimize discharges of Section 313 water priority chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels, and filler nozzles) when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

- *Other Transfer, Process, or Handling Areas*—Processing equipment and materials handling equipment must be operated to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment must be compatible with the substances handled. Drainage from process and materials handling areas must minimize storm water contact with Section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents to prevent a discharge of Section 313 water priority chemicals to the drainage system, and overhangs or door skirts to enclose trailer ends at truck loading/unloading docks must be provided as appropriate. Visual inspections or leak tests must be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

3. Special Requirements for Storm Water Discharges Associated with Industrial Activity from Salt Storage Facilities

Today's general permit contains special requirements for storm water discharges associated with industrial activity from salt storage facilities. Storage piles of salt used for deicing or other commercial or industrial purposes must be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. This requirement only applies to runoff from storage piles discharged to waters of the United States. Facilities that collect all of the runoff from their salt piles and reuse it in their processes or discharge it subject to a separate NPDES permit do not need to enclose or cover their piles. Permittees must comply with this requirement as expeditiously as practicable, but in no event later than 3 years from the date of permit issuance.

4. Consistency With Other Plans

Storm water pollution prevention plans may reference the existence of other plans for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under Section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

E. Monitoring and Reporting Requirements

1. Overview of Multi-sector Permit Monitoring Conditions

Today's permit proposes analytical discharge monitoring requirements for discharges from certain classes of industrial facilities. EPA believes that industries may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan, the proposed permit requires certain industries to collect and analyze samples of their storm water discharges for the pollutants. Industries not subject to analytical monitoring requirements under today's proposed permit will be required to perform quarterly visual examinations of storm water discharges unless the Director provides written notice that analytical monitoring is necessary. EPA believes these visual inspections will assist with the evaluation of the pollution prevention plan. This section provides a general description of the monitoring and reporting requirements under today's proposed permit. Table 6 lists the sections in today's fact sheet and permit where industry-specific monitoring and reporting requirements may be found.

TABLE 6.—STORM WATER MONITORING REQUIREMENTS

Industrial activity	Section of fact sheet describing monitoring requirements	Permit section describing monitoring requirements
Timber Products Facilities	VIII.A.8	XI.A.5
Paper and Allied Products Manufacturing Facilities	VIII.B.7	XI B.5
Chemical and Allied Products Manufacturing Facilities	VIII.C.8	XI C.5
Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers	VIII.D.5	XI D.5
Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities	VIII.E.7	XI E.5
Primary Metals Facilities	VIII.F.7	XI.F.5
Metal Mining (Ore Mining and Dressing) Facilities	VIII.G.8	XI.G.5
Coal Mines and Coal Mining-Related Facilities	VIII.H.6	XI.H.5
Oil and Gas Extraction Facilities	VIII.I.7	XI.I.5
Mineral Mining and Processing Facilities	VIII.J.6	XI.J.5

TABLE 6.—STORM WATER MONITORING REQUIREMENTS—Continued

Industrial activity	Section of fact sheet describing monitoring requirements	Permit section describing monitoring requirements
Hazardous Waste Treatment, Storage, or Disposal Facilities	VIII.K.7	XI.K.5
Landfills and Land Application Sites	VIII.L.6	XI.L.5
Automobile Salvage Yards	VIII.M.6	XI.M.5
Scrap and Waste Material Processing and Recycling Facilities	VIII.N.6	XI.N.5
Steam Electric Power Generating Facilities, Including Coal Handling Areas	VIII.O.6	XI.O.5
Vehicle Maintenance or Equipment Cleaning Areas at Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and the United States Postal Service Transportation Facilities.	VIII.P.6	XI.P.5
Vehicle Maintenance Areas and/or Equipment Cleaning Operations at Water Transportation Facilities	VIII.Q.6	XI.Q.5
Ship and Boat Building or Repairing Yards	VIII.R.6	XI.R.5
Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas Located at Air Transportation Facilities.	VIII.S.6	XI.S.5
Treatment Works	VIII.T.6	XI.T.5
Food and Kindred Products Facilities	VIII.U.5	XI.U.5
Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities	VIII.V.6	XI.V.5
Wood and Metal Furniture and Fixture Manufacturing Facilities	VIII.W.5	XI.W.5
Printing and Publishing Facilities	VIII.X.7	XI.X.5
Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries	VIII.Y.7	XI.Y.5
Leather Tanning and Finishing Facilities	VIII.Z.7	XI.Z.5
Fabricated Metal Products Industry	VIII.AA.7	XI.AA.5
Facilities That Manufacture Transportation Equipment, Industrial, or Commercial Machinery	VIII.AB.7	XI.AB.5
Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods.	VIII.AC.7	XI.AC.5

After Part 2 monitoring data were entered, EPA conducted statistical analyses of the group Part 2 data for each parameter within every industrial sector. Each pollutant with three or more observations, within an industrial sector, was identified as a pollutant of potential concern. For each pollutant of concern, EPA established bench mark values to which the pollutant statistics would be compared for each industrial sector. The primary source of the bench mark values are NURP (National Urban Runoff Program) median values for Form 2–F, Part VII, Part A pollutant parameters and Gold Book Values for Form 2–F, Section VII, Parts B and C pollutant parameters. The pollutants, bench mark values, and source of the bench mark values are indicated below in Table 7. EPA requests comments on the bench mark levels and the sources used to determine the bench mark values.

TABLE 7.—POLLUTANT BENCH MARK VALUES

Pollutant name	Bench mark level	Source
Biological Oxygen Demand(5)	9 mg/L	7
Chemical Oxygen Demand	65 mg/L	7
Total Suspended Solids	100 mg/L	7
Total Kjeldahl Nitrogen	105 mg/L	7
Nitrate+Nitrite Nitrogen	0.68 mg/L	7
Total Phosphorus	0.33 mg/L	7
pH	6.5–9 s.u.	8
1,1,1-Trichloroethane	3.1 mg/L	3
Acrylonitrile (c)	7.55 mg/L	2
Aluminum, Total (pH 6.5–9)	0.75 mg/L	1
Ammonia (as Nitrogen, un-ionized)	19 mg/L	1
Antimony, Total	0.088 mg/L	1
Arsenic, Total (c)	0.000018 mg/L	3
Barium, Total	1.0 mg/L	4
Benzene (c,s)	5.3 mg/L	2
Beryllium, Total (c)	0.13 mg/L	2
Butylbenzyl Phthalate	3 mg/L	3
Cadmium, Total (H)	0.0018 mg/L	1
Chloride	860 mg/L	1
Copper, Total (H)	0.009 mg/L	1
Dimethyl Phthalate	313 mg/L	3
Ethylbenzene	32 mg/L	2
Fluoranthene	3.98 mg/L	2
Iron, Total	0.3 mg/L	3
Lead, Total (H)	0.0337 mg/L	1
Manganese	0.05 mg/L	3
Mercury, Total	0.0024 mg/L	1
Methylene Chloride	0.0047 mg/L	3
Naphthalene	2.3 mg/L	2

TABLE 7.—POLLUTANT BENCH MARK VALUES—Continued

Pollutant name	Bench mark level	Source
Nickel, Total (H)	0.7884 mg/L	1
PCB–1016 (c)	0.00000044 mg/L	3
PCB–1221 (c)	0.00000044 mg/L	3
PCB–1232 (c)	0.00000044 mg/L	3
PCB–1242 (c)	0.00000044 mg/L	3
PCB–1248 (c)	0.00000044 mg/L	3
PCB–1254 (c)	0.00000044 mg/L	3
PCB–1260 (c)	0.00000044 mg/L	3
Phenanthrene (PAH,c)	0.03 mg/L	1
Phenols, Total	10.2 mg/L	2
Pyrene (PAH,c)	0.0000028 mg/L	3
Selenium, Total	0.02 mg/L	1
Silver, Total (H)	0.0009 mg/L	1
Toluene	17.5 mg/L	2
Trichloroethylene (c)	45 mg/L	2
Zinc, Total (H)	0.065 mg/L	1

Sources:
1. "EPA Recommended Ambient Water Quality Criteria." Acute Aquatic Life Freshwater
2. "EPA Recommended Ambient Water Quality Criteria." LOEL Acute Freshwater
3. "EPA Recommended Ambient Water Quality Criteria." Human Health Criteria for Consumption of Water and Organisms
4. "EPA Recommended Ambient Water Quality Criteria." Human Health Criteria for Consumption of Organisms Only
5. "EPA Recommended Ambient Water Quality Criteria." Acute Aquatic Life Marine
6. "EPA Recommended Ambient Water Quality Criteria." LOEL Acute Marine
7. NURP
8. "EPA Recommended Ambient Water Quality Criteria." Chronic Aquatic Life Freshwater NA. Bench mark value was not available.

Notes:
(c) carcinogen
(H) hardness dependent
(PAH) Polynuclear Aromatic Hydrocarbon
(s) Displayed standard is for Total Aromatic Hydrocarbons, which supersedes the criteria for Benzene.
(y) Storm water effluent limitations guidelines are not appropriate.

Assumptions:
Receiving water temperature—20 C
Receiving water pH—7
Receiving water hardness mg/L $CaCO_3$—50
Receiving water salinity g/kg—20
Acute to Chronic Ratio (ACR)—10

In determining industry-specific monitor requirements, EPA conducted statistical analyses for all pollutants submitted by facilities within an industrial sector. For each pollutant with three or more observations, EPA compared the industry's median values with the bench mark values indicated in Table 7. Comparisons were not conducted for pollutants with two or less observations within a sector. Median values were used for comparison purposes because the median indicates the 50th percentile of all the observations submitted for a particular pollutant. EPA did not select the mean, or average, industrial value for comparison purposes because this value is more susceptible to outliers.

Almost all industry sectors had at least one pollutant with a median concentration higher than the benchmark level. However, EPA believes that analytical monitoring requirements on all industrial activities may be excessive. Therefore, EPA proposes to require monitoring only for "priority" industrial activities. EPA has selected five pollutants with median concentrations above benchmark levels as one criterion for selection as a priority sector. Therefore, if the sector had median values greater than bench mark values for five, or more, parameters the industry was identified for analytical monitoring. If the sector had median values greater than bench mark values for four, or less, parameters the industry would only need to conduct visual inspections of storm water discharges. There was no consideration of type of parameter (toxic, carcinogenic, or conventional) when identifying the industries that would be required to sample their storm water discharges. All pollutants bore equal weight. EPA requests comments for selecting five pollutants greater than bench mark values as the determination for whether or not all facilities within an industry would be required to conduct storm water discharge monitoring.

Discharges from the following industries were identified as requiring analytical monitoring as a result of the prioritization analysis: Facilities engaged in wood preserving or wood surface treatment, chemical and allied products manufacturing facilities, concrete and clay products manufacturing facilities, primary metals facilities, ore mining and dressing facilities, landfills and land application sites, scrap and waste material processing and recycling facilities, steam electric generating facilities, ship and boat building and repair yards, waste water treatment works, food and kindred products facilities, leather tanning and finishing facilities, and fabricated metal products facilities.

In addition to the facilities listed above, EPA determined, based upon a review of the degree of exposure, types of materials exposed, and in some cases inadequate sampling data in the group applications, that the following industries' storm water discharges also warranted prioritization for monitoring: hazardous waste treatment storage and disposal facilities, water transportation facilities, automobile salvage yards, and airports which use more than 100,000 gallons per year of ethylene glycol or 25 tons of urea for deicing. EPA requests comment upon the inclusion of these industries in the priority list for analytical monitoring requirements.

All facilities within an industry identified for analytical monitoring must, at a minimum, monitor their storm water discharges during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter for which the facility is required to monitor. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed. Monitoring must be conducted for the same storm water discharge outfall in each sampling period. Where a given storm water discharge is addressed by more than one class of monitoring requirements, then the monitoring requirements for the applicable classes of activities are cumulative. Therefore, if a particular discharge fits under more than one set of monitoring requirements, the facility must comply with both sets of sampling requirements. Monitoring requirements must be evaluated on an outfall-by-outfall basis.

If the average concentration for a parameter is less than or equal to the bench mark value, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the bench mark value, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

Several sections of today's proposed permit require monitoring for total recoverable metals. The toxicity of metals is affected in part by pH. However, not all sectors require monitoring for pH. EPA requests comment as to whether it would be appropriate to add pH to the list of parameters for all sectors where monitoring of a total recoverable metal is required.

2. Compliance Monitoring

In addition to the analytical monitoring proposed for the high-priority industries, today's permit contains monitoring requirements for discharges which are subject to effluent limitation guidelines. These discharges must be sampled annually and tested for the parameters which are limited by the permit. Discharges subject to compliance monitoring include: coal pile runoff, contaminated runoff from phosphate fertilizer manufacturing facilities, runoff from asphalt paving and roofing emulsion production areas, and material storage pile runoff from cement manufacturing facilities. EPA request comment upon the adequacy of the proposed annual sampling requirements to ensure compliance with the numeric effluent limitations.

3. Alternate Certification

Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities which do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements provided the discharger makes a certification for a given outfall, that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Discharges subject to numeric effluent limitations are not eligible for the alternative certification. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA prior to the sampling periods. EPA requests comment on whether a facility that fails to have an average concentration below benchmark value in year 2 should be allowed to exercise the Alternative Certification provision in year 4.

4. Reporting and Retention Requirements

Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within three months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

The permittee must include a measurement or estimate of the total rainfall, volume of runoff, and peak flow rate of runoff for the storm event sampled. Facilities subject to the requirements of Part XI.C. (Chemical and Allied Products) of today's permit must install a rain gauge at their facility for the purpose of ensuring an accurate estimate. EPA requests comment as to whether all facilities subject to monitoring requirements should be required to install a rain gauge.

The location for submittal of all reports is contained in the permit. Consistent with Office of Management and Budget Circular A–105, facilities located on certain Indian Lands in Arizona, Utah, New Mexico, Idaho, Nevada, and Colorado should note that permitting authority has been consolidated in one EPA Region where a reservation crosses the boundaries between the Regions. For example, all NPDES permitting for Navajo lands is handled by EPA Region IX. The proposed permit requires dischargers that must submit monitoring information annually to provide copies to receiving large or medium municipal separate storm sewer systems and States that have requested this information.

The proposed permit requires retention of monitoring records for 6 years, since not all facilities that monitor will be required to submit the results annually. In addition, pollution prevention plans must be kept for the life of the permit.

5. Sample Type

Grab samples may be used for all monitoring. Unless otherwise stated, all such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample must be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger must submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. A minimum of one grab is required. Where the discharge to be sampled contains both storm water and non-storm water, the facility shall sample the storm water component of the discharge at a point upstream of the location where the non-storm water mixes with the storm water, if practicable.

EPA recognizes that in some instances it may not be practicable to sample the storm water component of a mixed stream discharge. EPA requests comment as to whether these discharges should be sampled in both dry weather conditions and wet weather conditions in order to characterize the non-storm water components of the discharge. EPA also requests comment on whether these types of discharges should be covered by the permit.

6. Representative Discharge

The proposed permit allows the use of substantially identical outfalls to reduce the monitoring burden on a facility. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Facilities that select and sample a representative discharge are prohibited from changing the selected discharge in future monitoring periods unless the selected discharge ceases to be representative or is eliminated.

7. Sampling Waiver

The proposed permit allows for temporary waivers from sampling based on adverse climatic conditions. This temporary sampling waiver is only intended to apply to insurmountable weather conditions such as drought or dangerous conditions such as lightning, flash flooding, or hurricanes. These events tend to be isolated incidents and should not be used as an excuse for not conducting sampling under more favorable conditions associated with other storm events. The sampling waiver is not intended to apply to difficult logistical conditions, such as remote facilities with few employees or discharge locations which are difficult to access. Permittees are precluded from exercising this waiver more than once during a 2-year period.

8. Visual Examination of Storm Water Quality

All facilities covered under today's proposed permit are required to conduct visual inspections of storm water discharges. The visual inspection of storm water outfalls include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. No analytical tests are required to be performed on these samples. Visual examinations are required on a monthly or quarterly basis, depending upon the type of industry.

The examination of the sample must be made in well lit areas. The visual examination is not required if there is insufficient rainfall or snow-melt to runoff or if hazardous conditions prevent sampling. Whenever practicable the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible in recording observations. Grab samples for the examination shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained on site with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands on inspection will enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

9. SARA Title III, Section 313 Facilities

Today's proposed permit does not contain special monitoring requirements for facilities subject to the Toxic Release Inventory (TRI) reporting requirements under Section 313 of the EPCRA. EPA has reviewed data submitted by facilities in the group application and determined that storm water monitoring requirements are more appropriately based upon the industrial activity or significant material exposed than upon a facility's status as a TRI reporter under Section 313 of EPCRA. This determination is based upon a comparison of the data submitted by TRI facilities included in the group application process to data from group application sampling facilities that were not found on the TRI list. Table 8 summarizes the data comparison. The data indicate that there are no consistent differences in the level of water priority chemicals present in samples from TRI facilities.

EPA requests comment on whether the monitoring requirements in the baseline general permit should be included in today's proposed permit.

TABLE 8.—COMPARISON OF POLLUTANT CONCENTRATION IN GRAB SAMPLES

Pollutant	Non-TRI facility median concentration (mg/L)	TRI facility median concentration (mg/L)	Non-TRI facility mean concentration (mg/L)	TRI facility mean concentration (mg/L)	Non-TRI facility 95th percentile concentration (mg/L)	TRI facility 95th percentile concentration (mg/L)
Acrylonitrile	0.100	0.000	0.085	0.000	0.100	0.000
Aluminum	0.922	0.819	12.061	28.893	58.000	12.000
Ammonia	0.640	0.000	10.507	23.231	9.500	17.200
Antimony	0.000	0.000	0.603	0.014	2.095	0.078
Arsenic	0.000	0.000	0.231	0.005	0.170	0.033
Benzene	0.000	0.000	0.001	0.000	0.001	0.000
Beryllium	0.001	0.000	0.002	0.080	0.007	0.400
Butylbenzyl phthalate	0.000	0.000	0.007	0.000	0.018	0.000
Cadmium	0.000	0.000	0.014	0.030	0.050	0.028
Chlorine	0.000	0.000	1.590	0.052	11.000	0.300
Chloroform	0.000	0.000	0.083	0.001	0.022	0.006
Chromium	0.006	0.000	1.236	0.109	0.250	0.270
Copper	0.047	0.028	1.430	0.344	2.200	1.300
Cyanide	0.000	0.000	0.021	0.007	0.008	0.020
Di-n-butyl phthalate	0.000	0.000	0.005	0.168	0.014	1.595
Dimethyl phthalate	0.000	0.000	0.005	0.000	0.016	0.000
Ethylbenzene	0.000	0.000	0.000	0.000	0.001	0.005
Hexavalent chromium	0.000	0.000	0.001	0.003	0.002	0.011
Lead	0.020	0.005	0.556	0.480	1.900	1.100
Manganese	0.150	0.090	2.015	0.273	9.550	1.244
Mercury	0.000	0.000	0.530	0.006	0.001	0.005
Naphthalene	0.000	0.000	2.998	0.001	24.000	0.013
Nickel	0.020	0.000	0.087	0.311	0.390	0.458
Phenols	0.000	0.000	0.053	0.019	0.100	0.075
Selenium	0.000	0.000	0.262	0.000	0.020	0.001
Silver	0.000	0.000	0.034	0.001	0.006	0.010
Toluene	0.000	0.000	0.052	0.011	0.037	0.009
Trichloroethylene	0.000	0.000	0.004	0.040	0.001	0.030
1,1,1-Trichloroethane	0.000	0.000	0.004	0.460	0.015	6.000
Xylene	0.000	0.000	0.000	0.004	0.003	0.037
Zinc	0.320	0.250	3.761	1.720	8.800	5.140

10. Compliance Monitoring

Several types of discharges (coal pile runoff, contaminated storm water at phosphate fertilizer manufacturing facilities, runoff from asphalt emulsion manufacturing facilities, and material storage pile runoff at cement manufacturing facilities) covered under today's permit are subject to numeric effluent limitations. Special monitoring requirements are included in today's proposed permit for these types of discharges. These requirements are in addition to any analytical monitoring or visual examination requirements specified elsewhere in the permit.

Discharges subject to numeric effluent limitations under the permit must be sampled annually. All samples are to be grabs taken within the first 30 minutes of discharge where practicable, but in no case later than the first 60 minutes of discharge. Where practicable, the samples shall be taken from the discharges subject to the numeric effluent limitations prior to mixing with other discharges.

Monitoring for these discharges is required to determine compliance with numeric effluent limitations. Facilities must submit the results of the compliance monitoring each year on the 28th day of the month following the anniversary of permit issuance. EPA requests comment as to whether the annual monitoring requirements are adequate to evaluate such compliance.

F. Numeric Effluent Limitations

1. Industry-specific Limitations

Part XI. of today's permit contains numeric effluent limitations for phosphate fertilizer manufacturing facilities, asphalt emulsion manufacturers, and cement manufacturers. Parts VIII.C.6., VIII.D.5., and VIII.E.6. of this fact sheet discuss these limitations.

2. Coal Pile Runoff

The following description of coal pile runoff is summarized from the "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category" (EPA–440/1–82/029), EPA, November 1982. A more complete description of coal pile runoff can be found in the development document.

The pollutants in coal pile runoff can be classified into specific types according to chemical characteristics. Each type relates to the pH of the coal pile drainage. The pH tends to be of an acidic nature, primarily as a result of the oxidation of iron sulfide in the presence of oxygen and water. The potential influence of pH on the ability of toxic and heavy metals to leach from coal piles is of particular concern. Many of the metals are amphoteric with regard to their solubility behavior. These factors affect acidity, pH, and the subsequent leaching of trace metals:

- Concentration and form of pyritic sulfur in coal;
- Size of the coal pile;
- Method of coal preparation and clearing prior to storage;
- Climatic conditions, including rainfall and temperature;
- Concentrations of calcium carbonate and other neutralizing substances in the coal;
- Concentration and form of trace metals in the coal; and
- The residence time of water in the coal pile.

Coal piles can generate runoff with low pH values, with the acid values

being quite variable. The suspended solids levels can be significant, with levels of 2,500 mg/L not uncommon. Metals present in the greatest concentrations are copper, iron, aluminum, nickel, and zinc. Others present in trace amounts include chromium, cadmium, mercury, arsenic, selenium, and beryllium.[16]

Today's proposed permit establishes effluent limitations of 50 mg/L total suspended solids and a pH range of 6.0–9.0 for coal pile runoff. Any untreated overflow from facilities designed, constructed, and operated to treat the volume of coal pile runoff associated with a 10-year, 24-hour rainfall event is not subject to the 50 mg/L limitation for total suspended solids. Steam electric generating facilities must comply with these limitations upon submittal of the NOI. All other types of facilities must comply with this requirement as expeditiously as practicable, but in no event later than 3 years from the date of permit issuance.

G. Regional Offices

1. Notice of Intent Address

Notices of Intent to be authorized to discharge under this permit should be sent to:

Address will be provided when permit is issued in final.

2. Address for Other Submittals

Other submittals of information required under this permit or individual permit applications should be sent to the appropriate EPA Regional Office:

a. CT, MA, ME, NH, RI, VT
EPA, Region I, Water Management Division, (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203

b. NJ, NY, PR, VI
EPA, Region II, Water Management Division, (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278

c. DE, DC, MD, PA, VA, WVa
EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107

d. FL and Indian Lands in AL, FL, MS, and NC
EPA, Region IV, Water Management Division, Permits Section (WPEB–7), 345 Courtland Street, NE, Atlanta, GA 30365

e. AR, LA, NM (except see Region IX for Navajo lands, and see Region VIII for Ute Mountain Reservation lands), OK, TX
EPA, Region VI, Water Management Division, (6W–EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202

f. CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands) and Portions of Pine Ridge Reservation in Nebraska
EPA, Region VIII, NPDES Branch (8WM–C), 999 18th Street, Suite 500, Denver, CO 80202–2466

NOTE—For Montana Indian Lands, please use the following address:
EPA, Region VIII, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620–0026

g. AZ, CA, NV, Guam, American Samoa, Johnston Atoll, Midway and Wake Islands, Commonwealth of the Northern Mariana Islands, the Republic of Palau, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID
EPA, Region IX, Water Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105

h. AK, ID (except see Region IX for Duck Valley Reservation lands), OR (except see Region IX for Fort McDermitt Reservation lands), WA
EPA, Region X, Water Division, (WD–134), Storm Water Staff, 1200 Sixth Avenue, Seattle, WA 98101

H. Compliance Deadlines

For most permittees, today's permit proposes a deadline of 270 days following final issuance for development of pollution prevention plans and for compliance with the terms of the plan.

Today's proposed general permit provides additional time if constructing structural best management practices is called for in the plan. The portions of a plan addressing these BMP construction requirements must provide for compliance with the plan as soon as practicable, but in no case later than 3 years from the effective date of the permit. However, storm water pollution prevention plans for facilities subject to these additional requirements must be prepared within 270 days of permit finalization and provide for compliance with the baseline terms and conditions of the permit (other than the numeric effluent limitation) as expeditiously as practicable, but in no case later than 270 days after permit finalization.

Facilities are not required to submit the pollution prevention plans for review unless they are requested by EPA or by the operator of a large or medium municipal separate storm sewer system. When a plan is reviewed by EPA, the Director can require the permitted to amend the plan if it does not meet the minimum permit requirements. Facilities which are subject to the requirements listed in Part XI.C. (Chemical and Allied Product Manufacturing) of today's proposed permit are required to submit certification to EPA which states that the pollution prevention plan has been prepared and implemented in accordance with the terms and conditions of the permit. EPA requests comment as to whether the permit should require all permittees to submit such certification.

VII. Cost Estimates for Common Permit Requirements

The conditions of today's general permit reflect the baseline permit requirements established in EPA's NPDES permits for Storm Water Discharges Associated With Industrial Activity (57 FR 41175 and 57 FR 44412). The requirements found under today's permit are more specific to the conditions found in the industries. EPA does not consider these requirements to be more costly than the pollution prevention plan requirements established in the baseline general permit. The following section contains the estimates of the cost of compliance with the baseline permit requirements.

A. Pollution Prevention Plan Implementation

Storm water pollution prevention plans for the majority of facilities will include relatively low cost baseline controls. EPA's analysis of storm water pollution prevention plans indicates that the cost of developing and implementing of these plans is variable and will depend on a number of the following factors: The size of the facility, the type and amount of significant materials stored or used at a facility, the nature of the plant operations, the plant designs (e.g., the processes used and layout of a plan), and the extent to which housekeeping measures are already employed. Table 9 provides estimates of the range of costs for preparing and implementing the common requirements for a storm water pollution prevention plan. It is expected that the low cost estimates provided in Table 9 are appropriate for the majority

[16] A more complete description of pollutants in coal pile runoff is provided in the "Final Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category," (EPA–440/1–82/029), EPA, November 1982.

of smaller facilities. The high cost estimates in Table 9 are more applicable to larger, more complex facilities with more potential sources of pollutants. Please note that the costs in this table exclude special requirements, such as EPCRA 313 requirements.

TABLE 9.—SUMMARY OF ESTIMATED RANGES OF COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS WITH BASELINE REQUIREMENTS

	Low costs		High costs	
	First year costs	Annual costs	First year costs	Annual costs
Submittal of NOI	$14	.....	$14	
Notification of Municipality	14	.....	14	
Plan Preparation	1,518	.....	76,153	
Plan Implementation	90	$294	35,400	$9,371
Comprehensive Site Compliance Evaluation/Plan Revision	.....	267	.....	8,875
Reportable Quantities	(1)	(1)	8,501	.....
Total	1,636	561	120,082	18,246

This table identifies estimated low and high costs (in 1992 dollars) to develop and implement storm water pollution prevention plans.
Low costs of implementing program components are zero where existing programs or procedures is assumed adequate.
The estimated costs for plan preparation and plan revisions includes costs of preparing/revising plan to address baseline requirements and any applicable special requirements, such as EPCRA Section 313 coal pile requirements. However, the costs of implementing special requirements, such as those for EPCRA Section 313 facilities coal piles and salt piles are not otherwise addressed in this table.
[1] No Cost.

B. Cost Estimates for EPCRA Section 313

Table 10 provides estimates of the range of costs of preparing and implementing a storm water pollution prevention plan for facilities subject to the special requirements for facilities subject to EPCRA Section 313 reporting requirements for chemicals classified as "Section 313 water priority chemicals." EPA expects the majority of facilities to have existing containment systems that meet the majority of the requirements of this permit. High cost estimates correspond to facilities that are expected to be required to undertake some actions to upgrade existing containment systems to meet the requirements of this permit.

TABLE 10.—SUMMARY OF ESTIMATED ADDITIONAL COSTS FOR COMPLIANCE WITH STORM WATER POLLUTION PREVENTION PLANS FOR FACILITIES SUBJECT TO SECTION 313 OF EPCRA FOR WATER PRIORITY CHEMICALS

	Low costs		High costs	
	Costs during first 3 years	Annual costs	Costs during first 3 years	Annual costs
Plan Preparation	$630	.....	$0	.....
Liquid Storage Areas	.....	.....	11,200	.....
Material Storage Areas	.....	.....	560	.....
Loading Areas	.....	.....	21,000	.....
Process Areas	.....	.....	11,190	.....
Drainage/Runoff	.....	.....	7,750	.....
Housekeeping/Maintenance	.....	.....	.....	$5,957
Facility Security	.....	.....	3,240	.....
Employee Training	.....	.....	.....	1,403
PE Certification	.....	$53	.....	1,000
Monitoring Costs	.....	2,424	.....	4,847
Toxicity Reduction	.....	.....	.....	3,046
Totals	630	2,477	54,940	16,253

This table identifies estimated additional low and high costs to develop and implement storm water pollution prevention plans for EPCRA Section 313 facilities subject to special conditions.
Low costs of implementing program components are zero where existing programs, procedures or security is assumed adequate.
The high costs for preparing pollution prevention plans to include EPCRA Section 313 additional requirement were addressed as part of the estimated high costs for preparation of baseline pollution prevention plans (see Table 9).
PE Certification is only required once every 3 years. Cost shown if averaged over 3-year period.

C. Cost Estimates for Coal Piles

The effluent limitations for coal pile runoff in the proposed permit can be achieved by these two primary methods: limiting exposure to coal by use of covers or tarpaulins and collecting and treating the runoff. In some cases, coal pile runoff may be in compliance with the effluent limitations without covering of the pile or collection or treatment of the runoff. In these cases, the operator of the discharge would not have a control cost.

The use of covers or tarpaulins to prevent or minimize exposure of the coal pile to storm water is generally expected to be practical only for relatively small piles. Coal pile covers or tarpaulins are anticipated to have a fixed cost of $400 and annual cost of $160.

Table 11 provides estimates of the costs of treating coal pile runoff.[17] These costs are based on a consideration of a treatment train requiring equalization, pH adjustment, and settling, including the costs for impoundment (for equalization), a lime feed system and mixing tanks for pH adjustment, and a clarifier for settling. The costs for the impoundment area include diking and containment around each coal pile and associated sumps and pumps and piping from runoff areas to the impoundment area. The costs for land are not included. The lime feed system employed for pH adjustment includes a storage silo, shaker, feeder, and lime slurry storage tank, instrumentation, electrical connections, piping, and controls.

Additional costs may be incurred if a polymer system is needed. In this case, costs would include impoundment for equalization, a lime feed system, mixing tank, and polymer feed system for chemical precipitation, a clarifier for settling, and an acid feeder and mixing tank to readjust the pH within the range of 6 to 9. The equipment and system design, with the exception of the polymer feeder, acid feeder, and final mixing tank, are essentially the same as shown in Table 11. Two tanks are required for a treatment train with a polymer system, one for precipitation and another for final pH adjustment with acid. The cost of mixing is therefore twice that shown in Table 11. The polymer feed system includes storage hoppers, chemical feeder, solution tanks, solution pumps, interconnecting piping, electrical connections, and instrumentation. The costs of clarification are identical to that of Table 11. A treatment train with a polymer system requires the use of an acid addition system to readjust the pH within the range of 6 to 9. The components of this system include a lined acid storage tank, two feed pumps, an acid pH control loop, and associated piping, electrical connections, and instrumentation.

Additional information regarding the cost of these technologies can be found in "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category," (EPA–440/182/029), November 1982, EPA.

TABLE 11.—SUMMARY OF ESTIMATED COSTS FOR TREATMENT OF COAL PILE RUNOFF

	30,000 cubic meter coal pile	120,000 cubic meter coal pile
Impoundment:		
Installed Capital Cost ($)	6,850	6,850
Operation and Maintenance ($/year)	negligible	negligible
Lime Feed System:		
Installed Capital Cost ($)	138,800	255,700
Operation and Maintenance ($/year)	5,780	10,655
Energy Requirements (kwh/yr)	3.6 x 10**4	3.6 x 10**4
Land Requirements (ft**2)	5,000	5,000
Mixing Equipment:		
Installed Capital Cost ($)	65,750	91,320
Operation and Maintenance ($/year)	2,280	2,430
Energy Requirements (kwh/yr)	1.3 x 10**3	3.3 x 10**3
Land Requirements (ft**2)	2,000	2,000
Clarification:		
Installed Capital Cost ($)	182,650	237,450
Operation and Maintenance ($/year)	3,200	3,650
Energy Requirements (kwh/yr)	1.3 x 10**3	3.3 x 10**3
Land Requirements (acres)	0.1	0.1

Source: "Development Document for Effluent Limitations Guidelines and Standards and Pretreatment Standards for the Steam Electric Point Source Category" (EPA–440/182/029), November 1982, EPA). Costs estimates are in 1992 dollars.

D. Cost Estimates for Salt Piles

Salt pile covers or tarpaulins are anticipated to have a fixed cost of $400 and an annual cost of $160 for medium-sized piles and a fixed cost of $4,000 and an annual cost of $2,000 for very large piles. Structures such as salt domes are generally expected to have a fixed cost of between $30,000 for small piles ($70 to $80 per cubic yard) and $100,000 for larger piles ($18 per cubic yard) with costs depending on size and other construction parameters.

VIII. Special Requirements for Discharges Associated With Specific Industrial Activities

The industry-specific requirements allow the implementation of site-specific measures that address features, activities, or priorities for control associated with the identified storm water discharges. This framework provides the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with the different types of industrial activity addressed by this permit. This approach also assures that facilities have the opportunity to identify procedures to prevent storm water pollution at a particular site that are appropriate, given processes employed, engineering aspects, functions, costs of controls, location, and age of the facility (as contemplated by 40 CFR 125.3). The approach taken also allows the flexibility to establish controls that can appropriately address different sources of pollutants at different facilities.

A. Storm Water Discharges Associated With Industrial Activity From Timber Products Facilities

1. Background

EPA has identified those group applicants whose facilities are most appropriately categorized under Standard Industrial Classification (SIC) Major Group 24—Lumber and Wood

[17] The type and degree of treatment required to meet the effluent limitations of this permit vary depending on factors such as the amount of sulfur in the coal. This section describes a modal treatment scheme for estimating costs for compliance with the effluent limitations. Dischargers may implement other less expensive treatment approaches to enable them to discharge in accordance with these limits where appropriate.

Products, Except Furniture, as Timber Products Facilities to be covered under this section of today's proposed permit. SIC Major Group 24 represents those "establishments engaged in cutting timber and pulpwood, merchant sawmills, lath mills, shingle mills, cooperage stock mills, planing mills, and plywood and veneer mills engaged in producing lumber and wood basic materials; and establishments engaged in wood preserving or in manufacturing finished articles made entirely of wood or related materials." [18] Storm water discharges associated with industrial activity are defined in 40 CFR 122.26(b)(14) as discharges "from any conveyance which is used for collecting and conveying storm water and which is directly related to manufacturing, processing or raw materials storage areas at an industrial plant." In general, discharges of storm water from timber products facilities will include all discharges where precipitation or storm water runon come into contact with significant materials including, but not limited to: industrial plant areas; immediate access roads and rail lines used or traveled by carriers of materials (raw, manufactured, or waste); material handling sites; refuse sites; sites used for the application or disposal of process waste waters; sites used for the storage and maintenance of materials handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; storage areas for raw, intermediate, and finished products; manufacturing buildings; and any areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water.

2. Coverage Under This Section

Coverage under this section will be limited to those facilities with similar industry-specific activities. EPA is defining the eligibility for coverage under this section to those facilities whose primary SIC Major Group is 24, except SIC Code 2434 (wood kitchen cabinets manufacturers). Permit conditions for facilities identified by SIC Code 2434 are discussed elsewhere in today's proposed permit. EPA believes that limiting the coverage under this section to facilities classified as SIC Major Group 24, except SIC Code 2434, is a plausible approach to permitting because many of the industrial activities conducted under the above SIC Codes are similar as are many of the materials that would be exposed to storm water.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

Facilities under SIC Code 2434 (wood kitchen cabinets) are excluded from coverage under this section because EPA believes it is more appropriate to cover manufacturers of wood cabinets with furniture manufacturing facilities under SIC Major group 25. As indicated in the November 16, 1990, **Federal Register** (55 FR 48008), "Facilities under SIC Code 2434 and 25 are establishments engaged in furniture making." EPA believes that this grouping is more appropriate due to the typical use by cabinet makers of wood treating solutions such as mineral spirits and propenyl butyl.[19] This practice is common to wood furniture manufacturing, but is atypical of the other industrial operations performed under SIC Major group 24.

Certain silvicultural activities are exempted from the requirement to be covered under National Pollutant Discharge Elimination System (NPDES) storm water permits (40 CFR 122.27). In accordance with 40 CFR 122.27(b), point sources that must be covered by an NPDES permit are "any discernible, confined and discrete conveyance related to rock crushing, gravel washing, log sorting, or log storage facilities, which are operated in connection with silvicultural activities and from which pollutants are discharged into waters of the United States." Exemptions are granted for nonpoint source silvicultural activities, including harvesting operations (see 40 CFR 122.27).

It is EPA's determination that harvesting activities include: the felling, skidding, preparation (e.g., delimbing and trimming), loading and initial transport of forest products from an active harvest site. An active harvest site is considered to be an area where harvesting operations are actually on-going. EPA also interprets the definition of harvesting operations to include incidental stacking and temporary storage of harvested timber on the harvest site prior to its initial transport to either an intermediate storage area or other processing site. EPA considers this activity to be an inherent part of harvesting operations. However, EPA does not intend the definition of active harvesting operations to include sites that are processing, sorting, or storing harvested timber which has been transported there from one or more active harvesting sites. Consequently, EPA considers these site activities a point source under 40 CFR 122.27(b)(1) and operators of these sites must seek an NPDES permit for discharges of storm water.

Effluent guidelines have been promulgated for the Timber Products Processing Point Source Category at 40 CFR part 429 (46 FR 8260; January 26, 1981). Under these regulations, effluent limitations and standards were set for process wastewaters from any timber products processing operation, and any plant producing insulation board with wood as the major raw material. The definition of process wastewater excluded "noncontact cooling water, material storage yard runoff (either raw material or processed wood storage) and boiler blowdown. For the dry process hardboard, veneer, finishing, particleboard, and sawmills and planing mills subcategories, fire control water is excluded from the definition." Any discharge subject to an effluent limitation guideline is not eligible for coverage under this section. Even though discharges of boiler blowdown and noncontact cooling water are not considered "process water discharges," they do not fall under the definition of storm water discharges. As such, this section does not provide for their coverage. In addition, contact cooling waters and water treatment wastewater discharges from steam operated sawmills will not be covered. Finally, material storage yard runoff, exempted

[18] "Handbook of Standard Industrial Classifications," Office of Management and Budget, 1987.

[19] Part 1 Storm Water Group Permit Applications. Summaries from individual applicant descriptions including Applicant No. 1156 (Westvaco), Applicant No. 92 (Bowater), and Applicant No. 866 (Louisiana-Pacific).

from coverage under the effluent limitation guidelines, is eligible to be covered in accordance with the terms and conditions of this section.

In addition, it should be noted that certain wood preserving wastes have been listed under 40 CFR 261.31 as hazardous wastes from nonspecific sources (55 FR 50450; December 6, 1990). Wastes from wood surface protection have also been proposed for listing under this subpart (53 FR 53282; December 30, 1988, and 58 FR 25706; April 27, 1993). Wastewaters, process residuals, preservative or protectant drippage, and spent formulations from wood preserving processes that use chlorophenolic formulations, creosote formulations, or arsenic and chromium formulations have been listed as hazardous wastes. Proposed regulations for wood surface protection identify wastewaters, process residuals, protectant drippage, and discarded spent formulation at facilities that use in-process formulations with pentachlorophenol concentrations of greater than 0.1 mg/L as hazardous wastes. Pentachlorophenol concentrations of greater than 0.1 mg/L may be found at facilities that currently use chlorophenolic formulations for surface protection and at facilities that have used them in the past. Storm water discharges that come in contact and/or commingle with these wastes will be considered a hazardous waste and will not be authorized for discharge under this section. Despite the listing of these wastes, however, there remains a potential for storm water to become contaminated through incidental activities such as tracking of materials, fugitive emissions, and miscellaneous other activities. These discharges are covered under this section.

3. Industry Profile/Description of Industrial Activities

Facilities engaged in activities classified under SIC Major Group 24 use wood as their primary raw material. Although there is diversity among the types of final products that are produced at timber products facilities, there are common industrial activities performed among them. These activities are broadly classified for ease of discussion and include the following:

- Log storage and handling
- Untreated wood lumber and residue generation activities, and untreated wood materials storage
- Wood surface protection activities, and chemicals and surface protected materials storage
- Wood preservation activities, and chemicals and preserved wood material storage
- Wood assembly/fabrication activities and final fabricated wood product storage
- Equipment/vehicle maintenance, repair and storage.

In many cases, more than one of these activities may be conducted at a single facility location.

a. Log storage and handling. Log storage and handling activities may occur onsite at many types of facilities covered under this section of today's proposed permit, such as wood collection yards and lumber processing and veneer manufacturing facilities. However, facilities that are primarily engaged in these activities (e.g., wood collection yards) are most appropriately classified under SIC Code 2411.

Typical industrial activities performed include loading and unloading of logs onto trucks or railroad cars for transport to other facilities, log sorting, and storage of logs. In addition, some cutting may be performed such as chopping off tree branches and sectioning of tree trunks for easier handling during transport. Although not typically performed at wood collection facilities, chipping may be performed at facilities serving pulp industries. Residues generated at these sites may include bark, coarse sawdust, and wood chunks.

Significant materials that have the potential to come in contact with storm water discharges at facilities practicing these activities include: uncut logs (hardwood and softwoods), wood bark, wood chips, coarse saw dust, other waste wood material, petroleum and other products for equipment maintenance (fuels, motor oils, hydraulic oils, lubricant fluids, brake fluids, and antifreeze), herbicides, pesticides, and fertilizers, material handling equipment (forklifts, loaders, vehicles, chippers, debarkers, cranes, etc.).

These log storage and handling activities described above have the potential to discharge pollutants including bark and wood debris, total suspended solids (TSS), and leachates.[20] The leachate generated from these operations from the decay of wood products can contain high levels of TSS and biochemical oxygen demand (BOD_5).[21]

b. Untreated wood lumber and residue generation activities and untreated wood materials storage. The primary product from sawmills and other cutting activities is lumber. However, residues such as debarked wood chips; whole tree chips and slab wood; bark; and sawdust constitutes approximately 25 percent of the total wood production.[22] At large saw mills, approximately 2,500 lbs of residue is generated for each 1,000 board feet of lumber derived.[23]

Facilities that produce untreated lumber and residues can be classified under most of the SIC Codes in Major group 24. These facilities include saw mill and planing mill facilities classified in groups 242; millwork, veneer, plywood and structural wood member manufacturing facilities classified in group 243; wood container manufacturing facilities in group 244; wood building and mobile home manufacturing facilities in group 245; and miscellaneous wood product manufacturers in group 249.

These facilities may engage in one or more activities such as log washing, bark removal, milling, sawing, resawing edging, trimming, planing, machining, air drying, and kiln drying. In addition, there may be associated boiler operations, loading and unloading activities and storage activates.

Effluent guidelines have been established at 40 CFR part 429 subparts A, I, and J for discharges from log washing, debarking and wet storage, respectively. These discharges are considered process waters and are subject to the effluent limits of each subpart.

Some facilities generate residue as a product, in lieu of lumber or other finished products, while other facilities may generate residues as a waste product. In most cases, there are markets for these residues. For example, chips and sawdust are used in the production of pulp and paper and wood products manufacturing. A summary of the residues generated and their potential uses include:

- Bark: Landscaping, compost, recreational applications (trails), energy recovery
- Wood chips: Pulp and paper mill feed, landscaping, recreational applications, fire logs, energy recovery
- Planer shavings: Particle board, livestock bedding, compost, fire logs, domestic pet litter, energy recovery

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[20] "NPDES Docket No. 1065–07–22–402, NPDES Appeal No. 86–14: In the Matter of Shoe Atika, Incorporated," January 21, 1988.

[21] "Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.

[22] "Using Best Management Practices to Prevent and Control Pollution from Hardwood Residue Storage Sites," Pennsylvania Hardwoods Development Council, May 15, 1992.

[23] "Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.

• Sawdust: Particle board, livestock bedding, compost, fire logs, domestic pet litter, energy recovery.[24]

Storage activities at these sites include wet and dry storage of logs and storage of residuals. Wet storage, called "wet decking," is a process used when logs are to be stored for an extended period of time. Wet storage retards decaying and infestation by insects. The logs may be stored under water in ponds or may be placed in areas where water is continuously sprayed over them. Residuals are typically stored dry.

Storm water discharges from lumber and residue generation and storage may come in contact with the following types of wastes at the facility which can then contribute pollutants to the storm water: uncut logs (hardwood and softwoods), wood bark, wood chips, wood shavings, sawdust, green lumber, rough and finished lumber, other waste wood material, nonhazardous wood ash, above and below ground fuel storage tanks for diesel, gasoline, propane and fuel oil, finishing chemicals (stain, lacquer, varnish, paints, water repellant, sealants), solvents and cleaners, petroleum and other products for equipment maintenance (fuels, motor oils, hydraulic oils, lubricant fluids, brake fluids, and antifreeze), herbicides, pesticides, and fertilizers, sawmill equipment, material handling equipment (Forklifts, loaders, vehicles, chippers, debarkers, cranes, etc.), boiler water treatment chemicals, scrap metals, scrap equipment and plastics, boiler blowdown water, and leachate from decaying organic matter.

Pollutants resulting from lumber and residue generation and storage activities are typically conventional in nature. Low pH levels can result from the leachate of decaying organic materials. TSS and BOD_5 may be elevated in this leachate.[25] In addition to leachate, washed away residue particles contribute to TSS loadings. Equipment and machinery at the facility site may result in the discharge of oil and grease.

c. Wood surface protection activities, chemicals and surface protected materials storage. At many hardwood saw mills, wood surface protection is conducted to prevent sap stain. Sap stain is the unsightly discoloration of lumber products caused by fungus.[26] Surface protection is a cosmetic fix only and differs from wood preservation which is a practice designed to enhance the wood's structural integrity.

Surface protection is accomplished by one of three methods:

• Spraying, ranging from manual spraying with a garden hose to more sophisticated on-line high pressure spray boxes

• Dipping, a batch process where lumber is immersed then removed from the formulation

• Green chain operations, a continuous immersion operation where lumber is pulled through the protection tanks by conveyer.[27]

Historically, the primary chemical used in surface protection has been commercial pentachlorophenate. Concentrated chemicals are diluted to 0.5 to 1 percent pentachlorophenol for surface protection. This concentration is lower than the 2 percent to 9 percent pentachlorophenol used in wood preserving. Producers of chlorophenolic formulations used in surface protection have recently discontinued the product due to the pending hazardous waste regulations and it is expected that stocks will soon be exhausted. Alternatives to pentachlorophenate solutions which have been developed and are currently used include:

• Iodo-prophenyl butyl carbamate, dimethyl sulfoxide, didecyl dimethyl ammonium chloride mixtures

• Sodium azide mixtures

• Iodo-prophenyl butyl carbamate, didecyl dimethyl ammonium chloride mixture

• 8-quinolinol, copper (II) chelate mixtures

• Iodo-prophenyl butyl carbamate mixtures

• Sodium ortho-phenylphenate mixtures

• 2-(thiocyanomethylthio)-benzothiozole (TCMTB) and methylene bis (thiocyanate) mixture

• Zinc naphthenate mixtures.[28]

Industrial activities at saw mills with the potential to contaminate storm water include spills from surface protection areas, storage and mixing tank areas, treated wood drippage, transport or storage areas, maintenance and shop areas, and areas used for treatment/disposal of wastes. Fugitive emissions from negative pressure spraying activities and hand spraying surface protection formulations may also result in the contamination of storm water.[29]

Significant materials that have the potential to come in contact with storm water discharges at facilities practicing these activities include: all of the materials stated in 3.b. above (under untreated wood lumber and residue generation activities and untreated materials storage) plus treated lumber, treatment chemicals, and treatment equipment (dipping tanks, green chain, material handling equipment, etc.).

Pollutants which result from these types of surface protection operations may include the constituents of those surface protection chemicals listed above, as well as aggregate parameters such as BOD_5, COD, and TSS.

d. Wood preservation activities, and chemicals and preserved wood material storage. Wood preserving is the application of chemicals to wood and wood products to preserve the structural integrity of the wood. Wood preserving is designed to prevent/delay the deterioration/decay of wood through the addition of flame retardants, water repellents, and chemicals. Wood preserving differs from wood surface protection which is generally performed for aesthetic reasons.[30]

Wood preserving is accomplished by two steps. First, the moisture content of wood is reduced to increase its permeability (this is referred to as conditioning). Conditioning may be accomplished by: (1) Allowing wood to dry at ambient temperatures; (2) kiln drying; (3) steaming the wood, then applying a vacuum; (4) dipping the wood in a heated salt bath; or (5) vapor drying, and immersing the wood in a solvent (usually naphtha or Stoddard solvent). After conditioning, wood is impregnated with a preservative for fire retardency, insecticidal resistance, and/or fungicidal resistance. Preservation may be accomplished by either nonpressurized and pressurized methods. The nonpressurized method involves dipping stock in a bath containing the preservatives (either heated or at ambient temperatures), while pressurized methods involve subjecting the wood to the preservative when under pressure. After treatment, the wood stock is often subject to cleaning in order to remove excess

[24] "Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.

[25] "Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.

[26] "Background Document Supporting the Proposed Listing of Wastes From Surface Protection Processes, Part One Final Engineering Analysis Volume 1," EPA Office of Solid Wastes, February 1993.

[27] "Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.

[28] "Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.

[29] "Background Document Support the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.

[30] "Background Document Supporting the Proposed Listing of Wastes From Surface Protection Processes, Part One Final Engineering Analysis Volume 1," EPA Office of Solid Wastes, February 1993.

preservative prior to stacking treated lumber products outside.[31]

There are a number of different avenues by which wood preserving wastes may contaminate storm water. These may include:

- Drippage of condensate or preservative after pressurized treatment
- Washing after preservation to remove excess preservative, which usually occurs either in the treatment or storage areas
- Spills and leaks from process equipment and preservative tanks
- Fugitive emissions from vapors in the process, as well as blow outs and emergency pressure releases
- Kick-back (phenomenon where preservative leaks as it returns to normal pressure) from the lumber.[32]

A wide variety of chemicals are used in the preservation of wood, the most common are creosote, pentachlorophenol and inorganics.

Creosote-based preservatives are mixtures of coal-tar derivatives and creosote solutions (creosotes fortified with insecticide additives such as pentachlorophenol, arsenic trioxide, copper compounds or malathion). Pentachlorophenol preservatives are typically formulations using petroleum solvents and 5 percent total pentachlorophenol. Waxes and resins may also be added.[33] Inorganic preservatives consist of arsenical and chromate salts and fluorides dissolved in water. The most commonly used inorganic preservatives include:[34]

- Chromated Copper Arsenate (CCA)
- Ammoniacal Copper Arsenate (ACA)
- Acid Copper Chromate (ACC)
- Chromated Zinc Chloride (CZC)
- Fluor-Chrome-Arsenate-Phenol (FCAP).

Significant materials that have the potential to come in contact with storm water discharges at facilities practicing wood preservation include: all of the materials stated in 3.b. (untreated wood lumber and residue generation activities and untreated wood materials storage) plus treated lumber, treatment chemicals, and treatment equipment (preservative, tanks, preservative contaminated material handling equipment.

Pollutants expected to be discharged from wood preserving facilities typically include conventional pollutants such as BOD_5, TSS and oil and grease, as well as toxics which are dependent upon the preserving formulations used. Organic solvent components such as benzene, toluene, xylene, and ethylbenzene can be found at pentachlorophenol preservation operations. Phenolic compounds such as phenol, chlorophenols, nitrophenols can be found at plants using pentachlorophenol and creosote preservatives. The polynuclear aromatic hydrocarbons of creosote, including anthracene, pyrene, and phenanthrene are often contained in the entrained oils. High phenolic, COD, and oil and grease concentrations have been noted to result from creosote and pentachlorophenol operations. Traces of copper, chromium, arsenic, zinc, and boron often can be found in the wastewaters of plants which use waterborne salt preservatives.[35]

e. Wood assembly/fabrication activities and final fabricated wood product storage. The industrial activities conducted as part of the assembly and fabrication process are very diverse. For the most part, industrial activities that have the potential to come in contact with precipitation are similar to those described under lumber and residue generation (see Section A.3.b). However, there are a number of additional industrial activities that differ. For example, the fabrication of fiberboard, insulation board, and hardboard may involve the use of wax emulsions, paraffin, aluminum sulfate, melamine formaldehyde, and miscellaneous thermosetting resins. These chemicals may be introduced as part of the board formation process or as a coating to maintain the board's integrity. Generally, these additives account for less than 20 percent of the board. In the formation of fiberboard/insulation board/hardboards, the digestion of pulp and fiber by mechanical, thermal, and sometimes chemical means takes place.[36] Another operation which involves resinous agents is the formation of veneer. In this process, veneer is placed in hot ponds or vats to soften the wood. Veneer strips are removed and often bound by glue or a resinous agent. Glues are also used in the assembly of wood components.[37] Other types of activities include the finishing of wood products. Stains, paints, lacquers, varnish, water repellents and sealants, etc. may be applied to some of the wood products. Many of these materials may not have the potential to come in contact with precipitation as most of these processes are performed within a covered area or building.

Pollutants expected to be found in storm water discharges at facilities that perform these types of industrial activities include BOD_5 and TSS. Oil and grease may be present due to material handling equipment and transport vehicles.

f. Equipment/vehicle maintenance, repair and storage. Many of the facilities included in the SIC Major group 24 employ the use of material handling equipment, vehicles and other machinery. These facilities store the equipment onsite and may also engage in maintenance and repair activities on them. These types of activities are performed in either covered or outdoor areas of the facility. Associated with these activities is the storage of significant materials such as petroleum products and other maintenance fluids such as fuels, motor oil, hydraulic oils, lubricant fluids, brake fluids, solvents, cleaners and antifreeze.

4. Pollutants Contributing to Storm Water Contamination

It is expected that pollutants entering storm water discharges from timber product facilities will be variable because of the fact that the facilities may practice different types of industrial activities, and will have different amounts and types of significant materials exposed onsite. The concentrations are also expected to be variable because of the types and efficiencies of best management practices that may already be employed at the sites. Because of similarities among the activities described above, there are pollutants of concern that will be present at all facilities.

Because of the variables discussed above, it is generally appropriate to discuss the potential pollutants at timber product facilities as a whole and

[31] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

[32] "Background Document Support the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.

[33] "Background Document Support the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.

[34] "Background Document Support the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.

[35] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

[36] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

[37] Part 1 Storm Water Group Permit Applications. Summaries from individual applicant descriptions including Applicant No. 1156 (Westvaco), Applicant No. 92 (Bowater), and Applicant No. 866 (Louisiana-Pacific).

not separate them out according to specific activities. Table A–1 provides the pollutant data provided in part 2 storm water group applications for all the timber product facilities that submitted sampling data. The only industrial activity that will be discussed separately is wood preservation, as facilities engaged in this activity most certainly manage materials that are specific to this activity. These industrial activities could be separated out in the data collected for part 2 of the group applications because wood preservation facilities have their own SIC Code of 2491. Table A–2 provides the part 2 storm water group application pollutant data from wood preservation facilities that classified themselves under SIC Code 2491. Facilities that practice wood surface protection could not be singled out because this type of activity may occur at many types of facilities that produce lumber or wood products.

The group application part 2 data was analyzed for relative pollutant concentrations to aid in the determination of pollutants of concern for this industry. In addition, the existing literature was consulted to determine which pollutants have the potential to be present based on the activities at the sites. This information can assist in providing an indication of what is present and which pollutants are of concern. Most of the facilities utilize some best management practices (BMPs) to limit the pollutant concentrations in storm water discharges.

TABLE A–1.—STATISTICS FOR PART VII.A. OF FORM 2F POLLUTANTS FOR ALL TIMBER PRODUCT FACILITIES SUBMITTING DATA[1] (MG/L)

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	198	200	39.6	45.4	0.0	0.0	580.0	1925.0	13.0	17.0	193.0	135.5	440.0	544.0
COD	198	198	297.6	242.5	0.00	0.000	3315.0	1804.0	131.0	122.5	1500.0	1080.0	2156.0	1700.0
Nitrate + Nitrite Nitrogen	189	188	0.95	0.75	0.00	0.000	66.0	22.50	0.320	0.335	2.20	1.79	14.30	13.00
Total Kjeldahl Nitrogen	188	188	2.57	2.32	0.00	0.000	21.00	27.00	1.620	1.500	9.26	7.50	14.70	12.50
Oil & Grease	207	N/A	15.2	N/A	0.00	N/A	591.7	N/A	2.2	N/A	55.0	N/A	347.5	N/A
pH	211	N/A	N/A	N/A	3.6	N/A	16.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	198	199	23.91	6.29	0.00	0.000	3000.00	1160.00	0.287	0.300	2.66	1.72	1610.00	3.97
Tot. Suspended Solids	198	198	1108	575	0	0	18000	6480	242	230	4800	2286	17000	5192
Arsenic	27	22	.025	.028	0	0	.2	.18	.009	.01	.13	.14	.2	.18
Copper	28	25	.047	.041	0	0	.16	.15	.026	.034	.16	.123	.16	.15
Total Phenols	35	10	.02	.007	0	0	.399	.062	0	0	.211	.062	.394	.062

[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

TABLE A–2.—STATISTICS FOR PART VII.A. OF FORM 2F POLLUTANTS FOR ALL WOOD PRESERVING ACTIVITIES [1] (MG/L)

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	13	13	14.5	14.3	2.4	2.1	39.0	32.0	13.7	12.4	39.0	32.0	39.0	32.0
COD	13	13	115.2	99.7	36.0	31.0	274.0	191.0	100.0	98.0	274.0	191.0	274.0	191.0
Nitrate + Nitrite Nitrogen	13	13	1.05	1.48	0.30	0.20	2.20	5.20	0.90	1.10	2.20	5.20	2.20	5.20
Total Kjeldahl Nitrogen	13	13	2.20	2.25	1.00	0.80	4.00	3.60	2.20	2.20	4.00	3.60	4.00	3.60
Oil & Grease	10	N/A	13.0	N/A	1.0	N/A	80.0	N/A	5.0	N/A	80.0	N/A	80.0	N/A
Total Phosphorus	13	13	0.44	0.26	0.06	0.06	1.57	0.90	0.25	0.19	1.57	0.90	1.57	0.90
Total Suspended Solids	13	13	242	107	11	12	916	260	50	99	916	260	916	260

Results of summarized grab samples revealed the pH minimum was 6.0 standard units and the maximum was 7.9 standard units.
[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

The following discussion describes those pollutants expected to be present and provides a rudimentary analysis of whether they have the potential to be present at benchmark levels in the storm water discharges from timber product facilities.

• *Arsenic*—Arsenic may be found in storm water discharges from wood preservation facilities that use waterborne organic salts containing arsenic such as CCA. There are a number of different avenues by which wood preserving wastes may contaminate storm water. These may include spills, leaks, and drips from equipment and tanks; lumber washing to remove excess preservative; fugitive emissions and emergency releases from the process; and kick back from the lumber being stored.

The analysis performed on part 2 storm water group permit application data included results from 27 grab and 22 composite samples. The maximum concentration of these samples was 0.2 mg/L. These data were the analytical results primarily from wood preserving facilities. The lack of data for this pollutant requires that additional monitoring be performed at wood preserving facilities with chromium-copper-arsenic formulations.

• *Biochemical Oxygen Demand (5–Day)*—BOD_5 is the measure of the oxygen demand caused over 5 days by the biochemical degradation of organic material and the oxidation of forms of nitrogen.[38] BOD_5 is expected to be discharged from all timber processing facilities due to the potential for leachate generation in wood residuals, discharge of organic wood residuals themselves, and the discharge of other organic wastes and pollutants.

The analysis performed on part 2 storm water group permit application data included results from 198 grab and 200 composite samples. Storm water discharges from timber product facilities showed relatively high levels of BOD_5. Sample results showed 28 percent of the composite and 25 percent of the grab sample were above a concentration of 30 mg/L. The data indicate that BOD_5 is a parameter of concern.

• *Benzene, Toluene, and Xylene*—Volatile organic solvents, principally naphtha and Stoddard solvent are expected to be found at facilities using pentachlorophenol as a preservative. Wood preserving facilities using pentachlorophenol most often use pentachlorophenol and solvent formulations.[39] Generally, these solvents are composed of benzene, toluene, and xylene.[40] Other solvents are also used onsite for equipment maintenance and for finished products.

Timber product facilities in general did not report these pollutants as expected to be in their discharge. Analytical results with concentrations of 0.037 mg/L and 0.038 mg/L were submitted for a grab and a composite sample for toluene, respectively. Analytical results for xylene, with concentrations of 0.055 mg/L and 0.051 mg/L, were submitted for a grab and a composite sample, respectively.[41] No data were submitted for benzene. Although these pollutants may be present, pentachlorophenol is a better indication of pollution problems at these sites. Therefore, monitoring of these specific pollutants will not be required.

• *Chemical Oxygen Demand (COD)*—COD is the measure of the content of organic matter which will oxidize in a strong acid (purportedly 95–100 percent).[42] High COD concentrations have been found to result from creosote and pentachlorophenol operations.[43] Part 2 storm water group permit application data included results from 198 grab and 198 composite samples. Storm water discharges from timber product facilities were found to have relatively high concentrations of COD. Forty-three percent of the composite and 44 percent of the grab sample results were above 150 mg/L. These data indicate that COD is a parameter of concern throughout the timber product industry.

• *Copper*—Copper is commonly found at wood preserving facilities which use inorganic salts such as CCA, ACC, ACA. Part 2 storm water group permit application data included results from 28 grab and 25 composite samples. The maximum concentration of these samples was 0.16 mg/L. Primarily these data, including the maximum concentration, were reported by wood preserving facilities. Additional monitoring will be required to characterize storm water discharges from wood preserving sites that use chromium-copper-arsenate formulations.

• *Total Kjeldahl (Ammonia and Organic) Nitrogen and Total Oxidized (nitrate and nitrite) Nitrogen*—Nitrogenous components may also be found in the storm water from facilities classified under SIC Major Code 24. For example, ammonia may be found in storm water discharges from wood preserving activities, as it is a component of ammonium copper arsenate (ACA). Nitrogen is also a pollutant associated with the use of fertilizers which are also used on these sites.

[38] "Standard Methods for the Examination of Water and Wastewater, 17th Edition," APHA/AWWA/WPCF, 1989.

[39] "Background Document Support the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.

[40] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

[41] Part 2 Storm Water Group Permit Application Data Summaries.

[42] "Standard Methods for the Examination of Water and Wastewater, 17th Edition," APHA/AWWA/WPCF, 1989.

[43] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

Out of 188 composite samples used in this analysis for TKN, 95 percent had concentrations of TKN less than 7.5 mg/L. Out of 188 grab samples, 95 percent had concentrations less than 9.26 mg/L. Concentrations from total oxidized nitrogen were found to be relatively low. A review of the data contained in part 2 storm water group permit applications for timber product facilities revealed that only 15 percent of these data were above concentrations of 1 mg/L.[44] Monitoring for these parameters will not be required, as nitrogenous compounds are not expected to be a problem at timber product facilities.

• *Oil and Grease*—Oil and grease is an aggregate compound that includes thousands of compounds of varying toxicities and toxic modes.[45] High oil and grease concentrations result from creosote and pentachlorophenol operations. However, oil and grease can be found at virtually all operations under SIC Major Code 24 as a result of the use of petroleum products from the utilization, maintenance and storage for equipment and vehicles.

A review of the data contained in part 2 storm water group permit applications for timber product facilities revealed that only 13 percent of these data were above concentrations of 15 mg/L.[46] The high levels experienced by several of these facilities were considered by EPA to be atypical of those experienced by the majority of timber product facilities.

• *Pentachlorophenol/Phenolic Compounds*—Pentachlorophenol is the primary wood preserving chemical in the U.S. today. In the past, pentachlorophenol was also the primary component of surface protection chemicals. However, due to proposed waste listing of surface protection pentachlorophenol wastes at surface protection facilities, alternatives to pentachlorophenol are currently more predominant.

No data were submitted in part 2 storm water group permit applications for the parameter pentachlorophenol, however, data were submitted for the phenolic compounds. Phenol, chlorophenols, nitrophenols, and pentachlorophenol can be measured as the aggregate compound—phenols (also known as phenolic compounds). These chemicals can be found at plants using pentachlorophenol and creosote wood preservatives and from plants using a commercial pentachlorophenol mixture as part of surface protection.[47]

The analysis performed on part 2 storm water group permit application included results for 10 composite samples and 35 grab samples. The maximum concentration of these samples was 0.399 mg/L. Data for individual phenolic compounds were not submitted to EPA. Monitoring for this pollutant should be continued in order to characterize sites using these formulations.

• *pH*—pH is a measure of the acidity or alkalinity of a discharge. The pH parameter can be impacted as a result of most every operation conducted under SIC Major Code 24. For example, discharges of storm water from decaying wood and wood residues, and in some cases decomposing wood products will result in low pH concentrations. Spills, drips, and leaks of chemicals associated with wood surface protection and preserving operations may also lower pH. EPA studies indicate that pH concentrations in process solutions typically range from 4.1 to 6.0 s.u. at wood preserving facilities.[48]

The analysis performed on part 2 storm water group permit application data revealed that only 16 percent of these data are outside the range of the typically imposed technology-based pH range of 6.0 s.u. to 9.0 s.u. The levels falling outside this range are considered by EPA to be atypical of those experienced by the majority of the timber product facilities.

• *Phosphorus*—One of the key causes of eutrophication in lakes and estuaries is phosphorus. Contamination of storm water with phosphorus is often associated with use of fertilizers on facility grounds and with the use of detergents for clean up.

A review of the data contained in part 2 storm water group permit applications for timber process facilities revealed that 95 percent of the 199 composite samples taken were below 1.72 mg/L and 95 percent of the 198 grab samples were 2.66 mg/L or below. Only 10 percent of the composite samples and 19 percent of the grab samples have analytical values above 1.0 mg/L. The high levels experienced by these facilities are considered by EPA to be atypical of those experienced by the majority of the timber product facilities and therefore monitoring will not be required.

• *Total Suspended Solids*—TSS is the measure of organic and inorganic suspended materials within water.[49] TSS may result from every operation conducted under SIC Major Code 24. Wood fibers, wood particulates, and eroded sediment potentially are the greatest contributors to TSS for timber processing facilities.

The analysis performed on part 2 storm water group permit application data included TSS results from 198 grab and 198 composite samples. EPA has determined that storm water discharges from timber product facilities have benchmark levels for TSS. Sixty-seven percent of the composite and 67 percent of the grab sample results were above a concentration of 100 mg/L; 55 percent of the composite and 53 percent of the grab sample results were above a concentration of 200 mg/L. Monitoring for this parameter will be conducted at all facilities performing wood preservation and/or surface protection.

• *Zinc*—Zinc may be found at wood preserving plants as a result of the use of CZC inorganic salt preservatives. CZC is used at 3 percent of the facilities which conduct inorganic salt wood preservation.[50]

Part 2 storm water group permit application data included results for 16 grab and 15 composite samples. No data for zinc were provided specifically by wood preserving facilities. Monitoring, therefore, will not be required.

5. Options for Controlling Pollutants

There are three options for controlling pollutants at timber products facilities: source reduction, best management practices (BMPs), and/or end-of-pipe treatment. In evaluating the options for controlling pollutants in discharges of storm water associated with industrial activity, EPA must provide for compliance with the Best Available Technology Economically Achievable (BAT) and Best Conventional Pollutant Control Technology (BCT) requirements of Section 402(p)(3) of the Clean Water Act. The variabilities in both the industrial activities performed on a specific site and the storm water discharges from timber product facilities, coupled with the lack of sufficient characterization data make it

[44] Part 2 Storm Water Group Permit Application Data Summaries.

[45] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

[46] Part 2 Storm Water Group Permit Application Data Summaries.

[47] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

[48] "Development Document for Effluent Limitations Guidelines and Standards for the Timber Products Point Source Category, Final (EPA 440/1–81/023)," EPA, Effluent Guidelines Division, January 1981.

[49] "Standard Methods for the Examination of Water and Wastewater, 17th Edition," APHA/AWWA/WPCF, 1989.

[50] "Background Document Support the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.

infeasible to develop effluent limitations at this point in time. EPA believes that enabling the owner/operator of the facility to develop BMPs based on site-specific factors such as facility size, industrial activities performed, climate, geographic location, geology/hydrology and the environmental setting of each facility will provide the flexibility needed to address appropriate controls to meet the BAT/BCT requirements. Development of a storm water pollution prevention plan that addresses exposure minimization BMPs, will be required for all facilities that discharge storm water from timber product facilities. EPA believes that exposure minimization BMPs will provide appropriate levels of control for pollutants in storm water discharges while allowing relatively inexpensive BMPs to be implemented. In some instances, however, more labor and resource intensive structural controls such as sedimentation ponds may be appropriate. EPA believes that the BMPs discussed below will help provide a sufficient level of control for the types of pollutants found in discharges associated with timber product facilities.

In developing these industry-specific BMPs both the part 1 application data for facilities that sampled were reviewed, as well as industry-specific literature sources. The BMPs provided are separated into those most appropriate for certain areas of a site where pollutants may be released such as: log, lumber, and other wood product storage areas; residue storage areas; loading and unloading and material handling areas; chemical storage areas; and equipment/vehicle maintenance, storage and repair areas. These types of activities can be found at all types of timber product facilities. Table A–3 provides a summary of the effective practices for the control of pollutants for all timber product facilities.

TABLE A–3.—EFFECTIVE POLLUTANT CONTROL OPTIONS FOR ALL TIMBER PRODUCT FACILITIES

Activity	Associated BMPs
Log, Lumber, and Other Wood Product Storage Areas	Divert storm water around storage areas with ditches, swales and/or berms. Locate storage areas on stable, well-drained soils with slopes of 2–5 percent. Line storage areas with crushed rock or gravel or porous pavement to promote infiltration, minimize discharge and provide sediment and erosion control. Stack materials to minimize surface areas of materials exposed to precipitation. Practice good housekeeping measures such as frequent removal of debris. Provide collection and treatment of runoff with containment basins, sedimentation ponds and infiltration basins. Use ponds for collection, containment and recycle for log spraying operations.
Residue Storage Areas	Locate stored residues away from drainage pathways and surface waters. Avoid contamination of residues with oil, solvents, chemically treated wood, trash, etc. Limit storage time of residues to prevent degradation and generation of leachates. Divert storm water around residue storage areas with ditches, swales and/or berms. Assemble piles to minimize surface areas exposed to precipitation. Spray surfaces to reduce windblown dust and residue particles. Place materials on raised pads of compacted earth, clay, shale, or stone to collect and drain runoff. Cover and/or enclose stored residues to prevent contact with precipitation using silos, van trailers, sheds, roofs, buildings or tarps. Limit slopes of storage areas to minimize velocities of runoff which may transport residues. Provide collection and treatment of runoff with containment basins, sedimentation ponds and infiltration basins.
Loading and Unloading and Material Handling Areas	Provide diversion berms and dikes to limit runon. Cover loading and unloading areas. Enclose material handling systems for wood wastes. Cover materials entering and leaving areas. Provide good housekeeping measures to limit debris and to provide dust control.
Chemical Storage Areas	Provide paved areas to enable easy collection of spilled materials. Provide secondary containment around chemical storage areas. Provide fluid level indicators. Inventory of fluids to identify leakage. Locate storage areas away from high traffic areas and surface waters. Develop spill prevention, containment and countermeasure (SPCC) plans and implement. Cover and/or enclose chemical storage areas. Provide drip pads to allow for recycling of spills and leaks.

Sources:
NPDES Storm Water Group Application—Part 1. Received by EPA March 18, 1991, through December 31, 1992.
"Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.

"Background Document Supporting the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.
"Chlorophenate Wood Protection, Recommendations for Design and Operation," Environment Canada, December 1983.
Wood Preserving; Identification and Listing of Hazardous Wastes; Final Rule, "Federal Register," Volume 55, No. 235, December 6, 1990.
Selected pages from "Texas Best Management Practices for Silviculture," Texas Forestry Association, 1989. Submitted for inclusion by American Pulpwood Association, Washington, D.C.

Wood surface protection and preserving facilities should consider additional controls for their storm water discharges because of the types of pollutants which may contaminate the discharges. Therefore, Table A–4 contains a summary of effective practices for the control of pollutants from timber product facilities that treat their wood. These BMPs to be used in conjunction with those BMPs in Table A–3.

TABLE A–4.—ADDITIONAL EFFECTIVE POLLUTANT CONTROL OPTIONS FOR TIMBER PRODUCT FACILITIES THAT SURFACE PROTECT OR PRESERVE

Activity	Associated BMPs
Wood surface protection and preserving activities	Extend drip time in process areas before moving to storage areas. Pave and berm areas used by equipment that has come in contact with treatment chemicals. Dedicate equipment that is used for treatment activities to that specific purpose only to prevent the tracking of treatment chemicals to other areas on the site. Locate treatment chemical loading and unloading areas away from high traffic areas where tracking of the chemical may occur. Provide drip pads under conveyance equipment from treatment process areas. Provide frequent visual inspections of treatment chemical loading and unloading areas during and after activities occur to identify any spills or leaks needing clean-up. Cover and/or enclose treatment areas. Provide containment in treated wood storage areas. Cover storage areas to prevent contact of treated wood products with precipitation. Elevate stored, treated wood products to prevent contact with runon/runoff.

Sources:
NPDES Storm Water Group Application—Part 1. Received by EPA March 18, 1991 through December 31, 1992.
"Regulatory Guidance and Waste Reduction Manual for United States Sawmills (Draft)," EPA Office of Solid Waste, January 12, 1993.
"Background Document Supporting the Proposed Listing of Wastes From Wood Preservation and Surface Protection Processes," EPA Office of Solid Waste, July 1987.
"Chlorophenate Wood Protection, Recommendations for Design and Operation," Environment Canada, December 1983.
Wood Preserving; Identification and Listing of Hazardous Wastes; Final Rule, "Federal Register," Volume 55, No. 235, December 6, 1990.
Selected pages from "Texas Best Management Practices for Silviculture," Texas Forestry Association, 1989. Submitted for inclusion by American Pulpwood Association, Washington, D.C.

Control of sediments leaving the site should also be considered by timber product facilities as sediments contribute to the total suspended solids in the storm water discharges. There are several areas of the site that may be prone to erosion due to intense industrial activities. These areas are: Loading and unloading areas, access roads, material handling areas, storage areas, and any other areas where heavy equipment and vehicle use is prevalent. Specific erosion and sediment controls should be implemented to minimize the discharge of sediments from the site. Measurements that timber facilities may consider include, but are not limited to: stabilization measures such as seeding, mulching, chemical stabilization, sodding, soil retaining measures and dust control and structural measures such as sediment traps, contouring, sediment basins, check dams and silt fences.

6. Special Conditions

a. Prohibition of non-storm water discharges. This permit authorizes an additional non-storm water discharge specific to the timber products industry that, when combined with storm water, is authorized to be discharged under this permit. To be authorized under the permit, the sources of non-storm water must be identified in the storm water pollution prevention plan prepared for the facility. Where these discharges occur, the plan must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water components of the discharge. Authorized discharges include the following: spray down of lumber and wood product storage yards.

Spray down of lumber and wood product in storage yards is intermittently performed for fire control and pest control. Discharges from spray down activities are not storm water discharges; however, resulting discharges created as a result of spray down of raw lumber and wood product storage yards are authorized under this section where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage. EPA believes that this practice, when performed in compliance with the terms and conditions of this section, will not pose any additional risks to human health and the environment because it is an industrial activity which is performed intermittently and within the confines of an area that should already contain controls for pollutants in storm water discharges.

It should be noted that the following discharges are not authorized under this section:

- Noncontact cooling wastewater.
- Contact cooling wastewater.
- Boiler blowdown and water treatment wastewater.

• Storm water from areas of surface protection hand spraying activities.

This prohibition of unpermitted non-storm water discharges ensures that these discharges are not inadvertently covered under this section and requires the permittee to submit the appropriate applications to gain coverage for the non-storm water portion of the discharge.

7. Storm Water Pollution Prevention Plan Requirements

Several additional storm water pollution prevention plan requirements are added in the section of today's proposed permit for the timber products industry. These deal with the identification and description of potential pollutant sources, and requirements to meet specific good housekeeping, inspection, and sediment/erosion control measures. EPA is also recommending that several criteria be considered during the development of the storm water pollution prevention plan.

a. Contents of the Plan

(1) *Description of Potential Pollutant Sources. (a) Drainage*—There are no additional requirements beyond those described in Part VI.C.2.a. of this fact sheet.

(*b*) *Inventory of exposed materials*—This section will require those facilities that have conduced activities associated with wood preserving and wood surface protection with pentachlorophenol formulations, creosote formulations, or arsenic/chromium formulations in the past to identify: areas where soils are contaminated, treatment equipment, and/or stored materials which remain as a result of these operations. This section will also require the identification of any management practices being employed to minimize the contact of these materials with storm water runoff.

EPA has added these requirements because it is aware through studies performed for the hazardous waste listing process that sites where wood surface protection and wood preserving chemicals have been used in the past continue to contribute pollutants to the storm water discharges that come in contact with them, even once the industrial activity has ceased.[51] In particular, soils that have been contaminated with the formulation, equipment such as dipping tanks and those used for material handling, and wastes and materials that are still stored on the site may continue to release pollutants. EPA is requiring the facility to identify these pollutant sources so that appropriate controls can be implemented.

During the EPA process to list wastes from wood preservation and surface protection processes, data were gathered that showed that the concentration of constituents (of the treatment chemicals) in storm water runoff, in some instances, were equivalent to those concentrations found in process wastewaters. These studies also found high concentrations of phenolic compounds, pentachlorodifluron and phenanthrenes, and metals in soils contaminated with process residuals at several sites. These concentrations were attributed to treated wood drippage and precipitation washoff of treated woods.[52]

For facilities that have operated wood preserving and chlorophenolic surface protection activities in the past, EPA is requiring a complete evaluation of the history of operations since the facility's inception. EPA is requiring this evaluation because soils that are contaminated by treatment chemicals and wastes continue to be a source of pollutants and can contribute to the contamination of storm water runoff indefinitely.

(*c*) *Non-storm water discharges*—There are no additional requirements beyond those described in Part VI.B.2.d. of this fact sheet.

(*d*) *Risk identification and summary of potential pollutant Sources*—There are not additional requirements beyond those described in Part VI.C.2.f. of this fact sheet.

(*2*) *Measures and controls.* As contained in Part VIII.A.5. of this fact sheet, EPA has set forth a number of options which are effective in controlling releases of pollutants to storm water discharges associated with industrial activity. Due to the success of BMPs as a cost effective method of pollution control, EPA is requiring that all facilities consider the implementation of BMPs in the following areas of the site: log, lumber and other wood product storage areas; residue storage areas, loading and unloading areas; material handling areas; chemical storage areas; and equipment/vehicle maintenance, storage and repair areas. The conditions of this section also require facilities that surface protect and/or preserve wood products to address specific BMPs for wood surface protection and preserving activities.

EPA believes it is appropriate to require that permittees indicate in their storm water pollution prevention plan all potential sources of pollution. Effective pollution control measures are currently being implemented at timber product facilities and/or are identified in literature sources specific to timber products facilities. Additional practices may also be found in the "Storm Water Management for Industrial Activities, Developing Pollution Prevention and Best Management Practices" (EPA 832–R–92–006), EPA, September 1992. The determination of the appropriateness or inappropriateness of a measure must be indicated in the facility's storm water management plan.

(*a*) *Good housekeeping*—In addition to typical good housekeeping measures that require the maintenance of areas which may contribute pollutants to storm water in a clean and orderly manner, the pollution prevention plan must specifically address good housekeeping measures and the specific frequency of performance of these measures which are designed to: (1) Limit the discharge of wood debris; (2) Minimize the leachate generated from decaying wood materials; and (3) minimize the generation of dust.

EPA has specified that BMPs limit the discharge of solids because storm water discharges containing TSS and BOD_5 are prevalent at timber products facilities and can often be controlled by good housekeeping measures.

(*b*) *Preventative maintenance*—This section requires periodic removal of debris from ditches, swales, diversion, containment basins, and infiltration measures. The discharge of solids at timber product facilities may inhibit the performance of storm water controls if they are not maintained properly.

(*c*) *Spill prevention and response procedures*—This section requires the development of schedules for response procedures to limit the tracking of spilled materials to other areas of the site. Specifically, this section requires that leaks or spills of wood surface protection or preservation chemicals be cleaned up immediately.

Requirements have been placed in this section to limit the tracking of significant materials that have been leaked or spilled on the site from containers, facility equipment, or onsite vehicles. Of particular concern is the tracking of leaks or spills of treatment chemicals outside near where storm water controls are in place. This may occur, for example, during the filling of storage tanks. Vehicles or equipment used to transfer materials may come into

[51] "Background Document Supporting the Proposed Listing of Wastes from Surface Protection Processes, Part One Final Engineering Analysis Volume 1," EPA Office of Solid Wastes, February 1993.

[52] "Background Document Supporting the Proposed Listing of Wastes from Surface Protection Processes, Part One Final Engineering Analysis Volume 1," EPA Office of Solid Wastes, February 1993.

contact with any materials spilled during the filling or emptying of tanks. As the vehicles move to other locations at the site, such material may be tracked and eventually lead to contamination of storm water discharges.

(*d*) *Inspections*—Inspections must be performed monthly at processing areas, transport areas, and treated wood storage areas of facilities performing wood surface protection and preservation activities. Monthly inspections are designed to assess the usefulness of practices in minimizing drippage of treatment chemicals on unprotected soils and in areas that will come in contact with storm water discharges. BMPs and all other areas of the facility must be visually inspected once per quarter. In addition, all timber products facilities must conduct daily inspections of material handling activities and unloading and loading areas whenever industrial activities occur in those areas.

(*e*) *Employee training*—There are no additional requirements beyond those listed in Part VI.C.3.e. of this fact sheet.

(*f*) *Sediment and erosion control*—This section requires that the following areas of the plant be considered for sediment and erosion controls: loading and unloading areas, access roads, material handling areas, storage areas, and any other areas where heavy equipment and vehicle use is prevalent. Sediment and erosion controls include: Stabilization measures such as seeding, mulching, chemical stabilization, sodding, soil retaining measures; and dust control and structural measures such as sediment traps, contouring, sediment basins, check dams, and silt fences. This requirement is added because part 2 storm water group permit application data showed that many of the sites were discharging high TSS concentrations in their storm water discharges. Identifying those areas of the site where erosion occurs will aid the permittee in determining appropriate BMPs that will achieve a reduction in TSS loadings.

(*g*) *Storm water management*—There are no additional requirements beyond those described in Part VI.C.3.h. of this fact sheet.

(*3*) *Comprehensive site compliance evaluation.* There are no additional requirements beyond those described in Part VI.C.4. of this fact sheet.

8. Monitoring and Reporting Requirements

a. Analytical monitoring requirements for all facilities performing wood preservation and/or surface protection activities. EPA believes that facilities engaged in wood preservation and surface protection may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires facilities engaged in wood preservation and surface protection to collect and analyze grab samples of their storm water discharges for the pollutants listed in Tables A–5, A–6, and A–7. The pollutants listed in Tables A–5, A–6, and A–7 were found to be above benchmark levels for a significant portion of facilities engaged in wood preservation and surface protection that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from facilities engaged in wood preservation and surface protection, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from facilities engaged in wood preservation and surface protection must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Tables A–5, A–6, and A–7. If the permittee collects more than four grab samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE A–5.—MONITORING REQUIREMENTS FOR ALL FACILITIES PERFORMING WOOD PRESERVATION AND/OR SURFACE PROTECTION

Pollutant of concern	Cut-off concentration
Chemical Oxygen Demand (COD)	65.0 mg/L
Total Suspended Solids (TSS)	100 mg/L
Biochemical Oxygen Demand	9.0 mg/L

In addition, those facilities that currently use chlorophenolic formulations for wood preserving or surface protection, or that have used chlorophenolic formulations for surface protection in the past, must monitor for the following parameters:

TABLE A–6.—ADDITIONAL MONITORING REQUIREMENTS FOR FACILITIES PERFORMING WOOD PRESERVATION WITH CHLOROPHENOLIC FORMULATIONS

Parameter of concern	Cut-off concentration
Pentachlorophenol	Detection limit.

Facilities that use chromium-copper-arsenic formulations for the preservation of wood, must monitor storm water discharges associated with the wood preservation, and chemicals and preserved wood product storage for the following additional parameters:

TABLE A–7.—ADDITIONAL MONITORING REQUIREMENTS FOR FACILITIES PERFORMING WOOD PRESERVATION WITH CHROMIUM-COPPER-ARSENIC FORMULATIONS

Parameter of concern	Cut-off concentration
Arsenic, total recoverable	0.000018 mg/L
Copper, total recoverable	0.009 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Tables A–5, A–6, and A–7, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Tables A–5, A–6, and A–7, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE A–8.—SCHEDULE OF MONITORING

2nd year of permit coverage	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in tables A–5, A–6, and A–7, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in tables A–5, A–6, and A–7, then no further sampling is required for that parameter.
4th year of permit coverage	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in tables A–5, A–6, and A–7. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

The monitoring cut off concentrations listed in Tables A–5, A–6, and A–7 are not numerical effluent limitations. These values represent a level of pollutant discharge which facilities may achieve through the implementation of pollution prevention plans. At least half of the facilities which submitted Part 2 data, reported concentrations less than or equal to the values listed in Tables A–5, A–6, and A–7. Facilities that achieve average discharge concentrations which are less than or equal to the values in Tables A–5, A–6, and A–7 are not relieved from the pollution prevention plan requirements or any other requirements of the permit.

b Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, and significant materials from past industrial activity that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required at all timber products facilities. The inspection must be a grab sample

collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the final NPDES general permits for storm water discharges. These notices set out requirements for semiannual monitoring for several parameters from wood product facilities involved in wood preserving and surface protection. These notices specifically required that facilities with storm water discharges associated with industrial activity from areas that are used for wood treatment, wood surface application or storage of treated or surface protected wood at any wood preserving or wood surface facilities were required to monitor their storm water discharges for oil and grease, pH, COD, and TSS. Facilities engaged in the use of chlorophenolic formulations were required to additionally monitor for pentachlorophenol and acute toxicity. Those engaged in the use of creosote formulation were required to additionally monitor for acute toxicity. Those engaged in the use of waterborne salt formulations, specifically chromium-arsenic formulations, were required to additionally monitor for total recoverable arsenic, total recoverable chromium, and total recoverable copper. Today's proposed permit contains similar monitoring requirements. EPA requests comment on the proposed changes in monitoring requirements for facilities engaged in wood preservation and surface protection.

9. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.A.8. of this fact sheet.

a. Semiannual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in paragraph VIII.A.9.a.(1) must monitor those storm water discharges identified below at least semiannually (2 times per year) except as provided in VI.C.3. of the permit (Sampling Waiver) and VI.C.4. (Representative Discharge). Permittees with facilities identified in paragraph VIII.A.9.a.(1) (below) must report in accordance with Part VI.B. of the permit (Reporting: Where to Submit) and paragraph VIII.A.9.c.(2) (Reporting: When to Submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) Facilities with storm water discharges associated with industrial activity from areas that are used for wood preserving treatment, wood surface protection, storage of treated or surface protected wood and/or residues, treatment equipment storage or treatment chemical storage at any wood preserving or wood surface protection facilities are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L), pH, COD (mg/L), and TSS (mg/L). In addition, facilities that use chlorophenolic formulations shall measure pentachlorophenol (mg/L); facilities that use creosote formulations shall measure acute whole effluent toxicity; and facilities that use chromium-copper-arsenic formulations shall measure total recoverable arsenic (mg/L), total recoverable chromium (mg/L), total recoverable copper (mg/L).

b. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in paragraph XI.A.9.b.(1) (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.C.3. (Sampling Waiver), and VI.C.4. (Representative Discharge). Permittees with facilities identified in paragraph XI.A.9.b.(1) (below) are not required to submit monitoring results, unless required in writing by the Director However, such permittees must retain monitoring results in accordance with Part VII.P.2. of the permit (Retention of Records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) Facilities with storm water discharges associated with industrial activity from areas that are used for log, lumber, and other wood product storage, residue storage areas, loading

and unloading, material handling and chemical storage at timber product facilities that are not wood preserving or wood surface protection facilities are required to monitor such storm water that is discharged from the facility for BOD_5 (mg/L), COD (mg/L), and TSS (mg/L).

(2) Sample type. For all discharges, data shall be reported for a grab sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

c. Reporting: When to submit. (1) Permittees that are required to conduct sampling pursuant to part VIII.A.9.a.(1) (Semiannual Monitoring) shall monitor samples collected during the sampling periods running from January to June and during the sampling period from July to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than 12 months of information.

d. Permittees with facilities identified in part XI.A.9.b.(1) (Annual Monitoring) are not required to submit monitoring results, unless required in writing by the Director.

B Storm Water Discharges Associated With Industrial Activity From Paper and Allied Products Manufacturing Facilities

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition included point source discharges of storm water from 11 categories of facilities, including paper and allied product manufacturing facilities that are commonly identified by Standard Industrial Classification (SIC) Major Group 26. Today's proposed permit establishes special conditions for the storm water discharges associated with industrial activities at paper and allied product manufacturing facilities. Based on an evaluation of part 1 and part 2 group application data, these facilities were determined to perform similar operations, use similar raw materials, and employ similar material handling and storage practices. In light of the available information, it was determined that the storm water discharge characteristics would be similar for facilities covered by this section.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

SIC Major Group 26, the production of pulp, paper, and paperboard, is a highly diversified industry group which manufactures a variety of products. Products include newsprint, printing and writing papers, bleached and unbleached packaging paper, glassine, tissue papers, vegetable parchment, greaseproof papers, bleached and unbleached paperboard, special industrial papers, and pulp. Pulp, paper, and paperboard is produced from wood and nonwood products such as jute, hemp, rags, cotton linters, bagasse, and esparto. Secondary fibers, or wastepaper, is also used to produce paper and paperboard. Four standard manufacturing processes are involved in the production of pulp, paper, and paperboard: (1) Raw material preparation, (2) pulping, (3) bleaching, and (4) papermaking.

a. Raw material preparation. Wood is the most widely used raw material for manufacturing pulp and paper products. Wood must be prepared for pulping by log washing, bark removal, and chipping/sawing. These activities are usually conducted outdoors and produce large amounts of wood chips, sawdust, and other wood debris. If exposed to storm water, these activities may contribute TSS and BOD_5 to the storm water discharge.

b. Pulping. Pulping involves reducing a cellulosic raw material into a form that may be further processed to produce paper or paperboard, or into a form that may be chemically converted. Two pulping methods are used to reduce the raw material: mechanical pulping and chemical pulping.

Mechanical pulping, also known as groundwood pulping, uses two processes to produce pulp, stone groundwood and refiner groundwood. Stone groundwood uses a grindstone to tear fiber from the side of short logs. Refiner groundwood passes wood chips through a disc refiner. In both processes, wood may be softened with chemicals or heat to reduce the amount of energy required for grinding. Mechanical pulp is very suitable for use in newspapers, catalogs, tissues, and one-time publications.

Chemical pulping, using cooking chemicals under controlled conditions, produces a variety of pulps for multipurposes. This process generally produces high quality paper products. Three types of chemical pulping are used: alkaline, sulfite, and semichemical.

Alkaline pulping, more commonly known as the kraft process, produces a very strong pulp and is adaptable to almost all wood species. The pulp is formed by boiling wood chips in an alkaline solution usually containing sodium sulfate. Alkaline pulping also provides for the successful recovery of chemicals used in the process. This pulping technique is the most highly used pulping process worldwide.

Sulfite pulps are generally prepared from softwoods and produce various types of paper including tissue paper and writing paper. Wood chips are boiled with calcium-based chemicals, magnesium-based chemicals, or ammonia-based chemicals. Calcium was the original the sulfite liquor base, however the spent liquor from this base was difficult and expensive to recover. Many sulfite mills have now been converted to the kraft process or have been shut down because of the problems of chemical recovery and the reduced availability of softwoods.

Semichemical pulping involves the cooking of wood chips from hardwoods with a neutral or slightly alkaline

sodium sulfite solution. Both sodium and ammonia-based chemicals are used in this process. Pulps produced from semichemical pulping are used in the manufacture of corrugated paperboard. Semichemical pulping mills practice chemical recovery from the waste liquor by balancing the pH of the waste liquor. Spent liquor is then burned in a furnace.

Some facilities use secondary fibers to produce the paper products. Secondary fibers are wastepapers and may be used with little or no preparation depending on their condition. The wastepaper may be blended directly with the virgin pulps or may have to be screened and filtered to remove dirt before being added to the pulp.

Some secondary fibers must be deinked before use. In order to reclaim a useful pulp, all noncellulosic materials, such as ink, fillers, and coatings, must be removed. This process uses detergents and solvents to remove these materials. The detergents and solvents may be stored in an area exposed to storm water.

c. Bleaching. After pulping, the pulp is brown or deeply colored. The color results from the presence of lignins and resins or residue from spent cooking liquor. The pulp must be bleached to produce a light colored or white product.

A brightness scale ranging up to 100 (the brightest) is used to determine the degree of bleaching needed. For example, newspaper and food containers do not need a high degree of brightness so semibleached pulps are used. For white paper products, fully-bleached pulps are used. A bleaching sequence is followed in which specific chemicals are sequentially added. The following sequence may be used in bleaching:

- Chlorination and washing.
- Alkaline extraction and washing.
- Chlorine dioxide addition and washing.
- Alkaline extraction and washing.
- Chlorine dioxide addition and washing.

The sequence may be modified to meet specific bleaching requirements. In general, less bleaching is required for mechanical pulps because they contain all of the wood substrate and would require massive amounts of bleaching. Therefore, mechanical pulps are used to produce lower quality paper products, such as telephone directories, newsprint, and disposable products. Chemical pulps may be brightened to a higher degree. Hydrosulfite, hypochlorite, chlorine, oxygen, and peroxides are used in bleaching and may be stored in areas exposed to storm water.

d. Papermaking. After pulps have been bleached, further mixing and blending may be necessary and noncellulosic materials may be added to prepare the pulp for the papermaking stage. Different types of pulp may be blended for desired effects. Softwood pulps are very strong and are used to make high strength, tear resistant paper. These pulps may be blended with hardwood pulps which add porosity, opacity, and printability qualities to the paper. Other materials may be added to the pulp such as clay, talc, or calcium carbonate to improve the texture, brightness, or opacity of the paper. By adding resin or starch, the paper becomes more ink or water resistant. Each of these additives may be a source of contamination for storm water if stored outdoors.

After noncellulosic materials have been blended with the pulp, it is ready for papermaking. The mixture of pulp and additives is called a pulp furnish. In making paper, fiber from a dilute pulp furnish is placed on a fine screen, called a wire. The water is drained through, and the fiber layer is removed, pressed and dried.

Two basic types of processes are used in papermaking: the cylinder machine and the Fourdrinier. The cylinder machine has wire cylinders which rotate in the dilute pulp furnish and collect fibers. The cylinders deposit the collected fibers on a moving felt to form a fibrous sheet. In the Fourdrinier process, the dilute pulp furnish is placed on a continuous wire belt where the fibrous sheet is formed. The cylinder machine is usually associated with the manufacturing of heavy grades of paper and paperboard; the Fourdrinier process is mostly used for producing paper, but may also be used to make paperboard.

The pressing and drying operations are similar for the two processes. After the fibrous sheet is formed, it is transferred to two or more presses to remove water and enhance smoothness and density. The sheet is then dried by being passed through heated hollow iron or steel cylinders. For a smoother finish, the sheet may be passed through a series of rollers (calendaring) used to produce high density paper.

After the sheet is dry, coatings may be applied to increase appearance, printability, water resistance, or texture. Coatings consist of a high density water slurry of pigments and adhesives that are blended together. Mixtures of starches, latices, polyvinylacetate, and recoverable solvents are used depending on the purpose of the coating. The coating is applied using rolls, air knives, blades, or metering rods. High gloss and smoothness is achieved by using high speed rollers with alternating steel and fabric-filled rolls. The coatings, when stored exposed to storm water discharges may be a source of contamination.

e. Wastewater treatment. Most pulp, paper, and paperboard facilities have onsite wastewater treatment systems for treating process wastewater, although some facilities may discharge to a POTW. To reduce BOD_5 and TSS loads, many facilities use biological treatment. The most common treatment process is aerated stabilization. At nonintegrated facilities (facilities that do not produce pulp) and secondary fibers facilities, however, primary treatment may be the only method used. At these facilities, primary treatment is usually very effective in reducing BOD_5.

f. Activities contributing to storm water contamination. Although there is diversity among the types of final products produced at pulp, paper, and paperboard facilities, several industrial activities are common to all. These activities are presented in Table B–1 below.

TABLE B–1.—COMMON INDUSTRIAL ACTIVITIES AT PAPER AND ALLIED PRODUCT MANUFACTURING FACILITIES

Industrial activities
Bactericide use
Baghouse, cyclone, dust collectors
Coating
Corrugate
Creasing
Cutting
Equipment storage
Vehicle fueling
Gluing
Rail and Truck loading areas
Material handling sites
Printing
Access Railroads
Scoring
Stitching
Storage areas
Taping

Typical activities performed at pulp, paper, and paperboard facilities include log washing, chipping and cutting of logs, log sorting, log storage, and loading and unloading of logs onto trucks or railroad cars for transport to other facilities. These log storage and handling activities may contribute bark and wood debris, TSS, and leachates to a storm water discharge. Leachates from the decay of wood products may contain high levels of TSS and BOD_5.

Many of the facilities in SIC Major group 26 employ the use of material handling equipment (forklifts, loaders, vehicles, chippers, debarkers, cranes,

etc.), vehicles, and other machinery. These facilities store the equipment onsite and may also engage in equipment maintenance and repair activities. These types of activities are performed in either covered or outdoor areas of the facility. Associated with these activities is the storage of significant materials such as petroleum products and other maintenance fluids such as fuels, motor oils, hydraulic oils, lubricant fluids, brake fluids, and antifreeze. When exposed to storm water, these materials may cause contamination of a storm water discharge.

The manufacturing processes at paper and allied product manufacturing facilities are not typically exposed to storm water. Because of the lack of industrial activities occurring outdoors, the primary sources of storm water pollutants originate from materials handling, storage of materials, and waste management or disposal activities. Sources of pollutant are most often from spills and leaks of materials at loading and unloading areas, storage areas, and waste disposal areas. Table B–2 lists the materials that may be exposed to storm water at paper and allied product manufacturing facilities.

TABLE B–2.—COMMON SIGNIFICANT MATERIALS AT PAPER AND ALLIED PRODUCT MANUFACTURING FACILITIES

Significant materials onsite
Solvents
Glues
Fuels
Oils
Lubricants
Alcohol
Starch
Wooden pallets
Paper rollstock
Waxes
Air emissions from solvent recovery processes
Baled waste paper
Dyes
Inks
Ammonia
Biocides
Miscellaneous materials removed during pulping
Final products
Adhesives
Paper wastes
Dust and particulates from cyclones used in paper trim activities, resins/polymers
Clay slurries

2. Pollutants in Storm Water Discharges Associated With Industrial Activity From Paper and Allied Product Manufacturing Facilities

Few pollutants are expected in storm water discharges from the manufacturing of paper and allied products because the majority of industrial activities occur indoors. Pollutants may be present in storm water as a result of outdoor activities associated with the industry such as discharges which come into contact with the following areas of the site: Loading or unloading of materials; outdoor storage of raw materials or unpackaged products; outdoor process activities; dust or particulate generating processes; and illicit connections or inappropriate management practices.

The volume and quantity of storm water discharges associated with industrial activity depend upon a number of factors, including the nature of the industrial activities occurring at the facility, the nature of the precipitation, and the degree of surface imperviousness. Storm water may pick up pollutants from structures and other surfaces as it drains from the facility. Even within a group of facilities with similar activities and materials used, handled, stored, or produced, the quality of the storm water can vary greatly.

The regulatory deadline for submission of the part 2 data was October 1, 1992. Many part 2 data submittals remain incomplete and many of those that did submit data did not identify the significant material or industrial activity that may have contributed the pollutants to the storm water discharge. Tables B–3 and B–4 indicate the statistically summarized sampling data from part 2 group applications. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of data submittals for the parameters required. The data showed that variations occur amongst the sites covered under SIC Code 26. This is due in fact to the different combinations of industrial activities occurring at each facility.

TABLE B–3.—PART 2 DATA STATISTICS FOR GRAB SAMPLES[1]

Pollutant	Samples	Detects	Mean	Min	Max	Median	95%	99%
BOD_5	121	111	34.7	0.0	1000.0	8.0	115.0	446.0
COD	121	117	191.7	0.0	2200.0	61.0	740.0	1720.0
Nitrate/nitrite Nitrogen	121	115	0.95	0.0	5.2	0.5	3.93	4.97
Total Kjeldahl Nitrogen	121	111	3.8	0.0	89.6	1.76	10.2	38.7
Oil and Grease	120	72	3.7	0.0	61.0	1.0	15.0	35.0
pH	121	121	N/A	3.8	N/A	N/A	N/A	N/A
Total Phosphorus	120	112	0.4	0.0	10.3	0.18	1.1	2.58
TSS	121	112	153	0.0	3390	41	520	2340

[1] All Pollutant values in mg/L, except pH which is in standard units.

TABLE B–4.—PART 2 DATA STATISTICS FOR COMPOSITE SAMPLES[1]

Pollutant	Samples	Detects	Mean	Min	Max	Median	95%	99%
BOD_5	111	100	24.25	0.0	367.0	8.0	93.0	306.0
COD	112	107	133.9	0.0	1486.0	51.0	530.0	1400.0
Nitrate/nitrite Nitrogen	111	106	0.76	0.0	5.6	0.470	2.44	4.08
Total Kjeldahl Nitrogen	112	99	3.17	0.0	64.9	1.770	10.10	23.10
Total Phosphorus	111	104	0.36	0.0	10.8	0.160	0.91	1.25

TABLE B–4.—PART 2 DATA STATISTICS FOR COMPOSITE SAMPLES[1]—Continued

Pollutant	Samples	Detects	Mean	Min	Max	Median	95%	99%
TSS	111	96	44	0.0	761	13	198	550

[1] All pollutant values in mg/L.

The following 5 pollutants: 5-Day Biochemical Oxygen Demand (BOD_5), Chemical Oxygen Demand (COD), pH, Total Suspended Solids, and oil and grease and their potential source are discussed in more detail below.

• *Total Suspended Solids (TSS)*—TSS is a measure of the organic and inorganic solid material suspended in the storm water. TSS may be introduced to storm water in many of the industrial activities performed onsite of paper and allied product manufacturing facilities. The part 2 group applications showed median TSS concentrations of 13 mg/L for composite samples and 42 for grab samples. The fact that the composite samples show a level below the commonly used value in effluent guidelines of below 50 mg/L may indicate that the storm water discharges are not of general concern to this industry as a whole. Implementation of best management practices to limit the discharge of solids at the facilities which show concentrations greater than that level should be sufficient to bring TSS concentrations down to that level. The fact that concentrations in the grab samples were high may be due to the variability that often results during the collection of samples for the TSS analysis.

• *Five-Day Biochemical Oxygen Demand* (BOD_5)—BOD_5 is a measure of the oxygen demand caused over 5 days by the biochemical degradation of organic material and the oxidation of forms of nitrogen. The part 2 group applications showed median BOD_5 concentrations of 8.0 mg/L for composite samples and 8.0 mg/L for grab samples. Potential sources of BOD_5 at these facilities could be leaks and spills of oil and grease, fuels, lubricants, organic chemicals or storage of wood products, waste and final paper products exposed to precipitation. Typical values for BOD_5 show attainable levels below 30 mg/L. The values observed in the applications are relatively low, and are therefore not of concern at the facilities covered under this section.

• *Chemical Oxygen Demand (COD)*—COD is a measure of the content of organic matter which will oxidize in a strong acid. The potential sources of COD in storm water runoff from facilities covered under this section are leaked or spilled fuel, oil or grease from vehicles and other equipment utilized in the material handling and processing facilities, and spilled or leaked solvents and other chemicals. The part 2 group applications showed medium COD concentrations of 51 mg/L for composite samples and 61 mg/L for grab samples. It is expected that these levels may be reduced by the implementation of BMPs such as good housekeeping, inspection, covering of storage areas and loading and unloading areas and other practices.

• *pH*—pH is a measure of a discharge's acidity or alkalinity. The pH of storm water discharges from facilities under this section may be either lowered or increased due to contact with caustic or acidic compounds. Typically, discharges that range between 6 and 9 s.u. are considered protective of aquatic environments. Because few samples had pH values less than 6.0 s.u., pH was determined not to be a pollutant of concern for this industry as a whole.

• *Oil and Grease*—Oil and grease is a gross measure of the amount of petroleum hydrocarbons within a sample. The potential sources of oil and grease at facilities covered under this section may be from leak or spills of fuel, oils, lubricants and other petroleum products used in conjunction with vehicle and equipment maintenance and storage activities. The part 2 group applications used in the evaluations showed median oil and grease concentrations of 1.0 mg/L and a 95 percentile value of 15 mg/L for grab samples. In comparison to the effluent guideline for oil and grease of 15 mg/L applicable to the petroleum refinery point source category [40 Code of Federal Regulations (CFR) part 419], this parameter is not considered to be a pollutant of concern at the facilities covered under this section.

Few toxic pollutants were identified in the part 2 applications as being present in the storm water discharges from paper and allied products. Only four facilities provided data for any toxics and no two facilities reported for the same pollutant. The pollutants reported were metals (copper, lead, iron, manganese, and zinc), 2-butanone, and acetonitrile. It is not expected that these pollutants represent significant contributions to storm water discharges from this industry as a whole.

3. Options for Controlling Pollutants

There are two options for reducing pollutants in storm water discharge; end-of-pipe treatment, and implementing best management practices (BMPs) to prevent and/or eliminate the contact between significant materials and storm water. A comprehensive storm water management program for a given plant may include controls from each of these categories and should be based on a consideration of site and facility plant characteristics. End-of-pipe treatment is effective for the control of process waters when the types of pollutants and the volume of water to be treated is known. However, storm water discharges from any industry, including the paper and allied product manufacturing industry, can be numerous, intermittent, and of various volumes. Therefore, the channelization of storm water that comes into contact with significant materials into a single treatment facility, or construction of numerous treatment devices for each discharge, may be burdensome and ineffective for treating pollutants contained in storm water from these types of facilities. EPA believes that the most appropriate means of storm water management at paper and allied product manufacturing facilities can be sufficiently determined by the operator of the facility.

EPA believes that the most effective storm water management control for limiting the offsite discharge of pollutants in storm water is a combination of passive and active BMPs. Passive BMPs are methods by which discharges of contaminants are controlled with basic maintenance Examples of these types of controls include source reduction diversion dikes, vegetative covers, and berms. Passive practices are typically (but not always) low in cost and relatively easy to implement. Active BMPs may be as simple as good housekeeping or conducting all loading and unloading activities in a designated area. In some instances, more resource intensive types of active BMPs, including sedimentation ponds, may be necessary.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/

hydrology and the environmental setting of each facility, volume and type of discharge generated, and number of outfalls. Each facility will be unique in that the source, type and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with the paper and allied product manufacturing industry.

As part of the group application review process, a review of the part 1 data was analyzed. The applications indicated that numerous BMPs were already being implemented at many of the representative sites. Table B–5 provides the most common practices presently being employed and the relative percentage of facilities who are implementing them. Table B–6 provides an additional list of BMPs that may be appropriate for the industry. Many of the BMPs identified are examples of practices intended to limit the exposure of significant materials and industrial activities to storm water. Facility operators should review their current operations and consider implementing these BMPs if they are applicable to the site and are expected to reduce the discharge of pollutants from the site in storm water.

TABLE B–5.—BEST MANAGEMENT PRACTICES DISCUSSED IN PART 1 GROUP APPLICATIONS [1]

BMP	Percent of facilities
Catch Basins	22.2
Diversion structures around potential contaminants	43.8
Spill Control Procedures, Contingency Plans (SPCC)	67.4
Swales, ditches, trench or graded surfaces	51.4
Employee training	62.5

[1] Material Management Practices were identified in over 20 percent of the 144 facilities in the sampling subset.

TABLE B–6.—SUGGESTED BEST MANAGEMENT PRACTICES AT PULP AND ALLIED PRODUCTS MANUFACTURING FACILITIES

Activity	Suggested BMPs
Outdoor Loading and Unloading	•Confine loading/unloading activities to a designated response and control area. •Avoid loading/unloading materials in the rain. •Cover loading/unloading area/or conduct these activities indoors. •Develop and implement spill plans. •Use berms or dikes around area. •Inspect containers for leaks or damage prior to loading. •Use catch buckets, drop cloths, and other spill prevention measures where liquid materials are loaded/unloaded.
Raw and/or Waste Material Storage Areas	Provide paved areas to enable easy collection of spilled materials. Confine storage to a designated area. •Store materials inside. •Cover storage areas with a roof or tarp. •Use dikes or berms for storage tanks and drum storage. •Cover dumpsters used for waste paper and other materials. •Store materials on concrete pads to allow for recycling and spills or leaks. •Expedite recycling process for exposed scrap paper. •Develop and implement spill plans. •Provide paved areas to enable easy collection of spilled materials. •Provide good housekeeping (i.e., dust and debris collection) where cyclones are utilized.
Log, Lumber and Other Wood Product Storage Areas	•Divert storm water around storage areas with ditches, swales, and/or berms. •Practice good housekeeping measures such as frequent removal of debris. •Line storage areas with crushed rock or gravel or porous pavement to promote infiltration, minimize discharge and provide sediment and erosion control. •Use ponds for collection, containment and recycle for log spraying operations.

4. Special Conditions

There are no requirements beyond those described in Part VI.B. of this fact sheet.

5. Storm Water Pollution Prevention Plan Requirements

There are no requirements beyond those described in Part VI.C. of this fact sheet.

a. Description of potential pollutant sources. There are no requirements beyond those described in Part VI.C. of this fact sheet.

b. Measures and controls. There are no requirements beyond those described in Part VI.C. of this fact sheet.

c. Comprehensive site compliance evaluation. There are no requirements

beyond those described in Part VI.C. of this fact sheet.

6. Numeric Effluent Limitation

There are no effluent limits beyond those described in part VI.F. of this fact sheet.

7. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at paper and allied products manufacturing facilities. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required at paper and allied products manufacturing facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for paper and allied products manufacturing facilities. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in part 2 group applications.

8. Alternative Monitoring

a. Limitations on monitoring requirements. (1) Except as required by paragraph (2) below, there are no requirements for monitoring for storm water discharges associated with the paper and allied products manufacturing industry.

(2) The Director can provide written notice to any facility, otherwise exempt from sampling requirements, that it shall conduct sampling as specified. The Director can provide written notice to require any facility to change the frequency or parameters.

C. Storm Water Discharges Associated With Industrial Activity From Chemical and Allied Products Manufacturing Facilities

EPA regulations define "storm water discharges associated with industrial activity" at 40 CFR 122.26(b)(14) in order to specify those discharges that are required to be permitted under the NPDES program. Category (ii) of this definition includes facilities classified as Standard Industrial Classification (SIC) code 28, Chemical and Allied Products Manufacturing, with the exception of facilities classified as SIC code 285—Paints, Varnishes, Lacquers, Enamels, and Allied Products Manufacturing, which are included in category (xi) of the definition. EPA did not receive any group applications from facilities with primary SIC code 283 (Drugs Manufacturing). Therefore, as EPA had no data on such facilities, they are not eligible for coverage under this section of today's permit. The following section describes facilities covered by part XI.C. of today's proposed permit and the conditions and requirements of facilities covered by part XI.C.

For additional information on the subsectors and their industrial activities, please see the following documents:

- "Development Document for Effluent Limitations Guidelines and Standards for the Paint Formulating Point Source Category." EPA–440/1–79/049–b. 1979.
- "Development Document for Interim Final Effluent Limitations Guidelines for the Pesticide Chemicals Manufacturing Point Source Category." EPA–440/1–75/060d. 1976.
- "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Major Organic Products Segment of the Organic Chemicals Manufacturing Point Source Category." EPA–440/1–74–009a. 1974.
- "Development Document for Effluent Limitations Guidelines, New

Source Performance Standards and Pretreatment Standards for Organic Chemicals and the Plastics and Synthetic Fibers Point Source Category." EPA–440/1–87/009. 1987.

• "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Basic Fertilizer Chemicals Segment of the Fertilizer Manufacturing Point Source Category." 1974.

• "Development Document for Final Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Pharmaceutical Manufacturing Point Source Category." EPA–440/1–83/084. 1983.

• "Development Document for Effluent Limitations Guidelines, New Source Performance Standards and Pretreatment Standards for the Inorganic Chemicals Manufacturing Point Source Category, Phase 2." EPA–440/1–84/007. 1984.

1. Discharges Covered Under This Section

Part XI.C. of today's proposed permit has been developed for storm water discharges at facilities primarily engaged in the manufacture of chemicals and allied products. This sector of industry includes facilities which manufacture a broad range of products including plastic and synthetic materials, detergents, paints and varnishes, drugs, fertilizers and pesticides, adhesives, inks, explosives, artist's inks and paints, and organic and inorganic chemicals used for industrial purposes. Specifically, Part XI.C. of today's proposed permit applies to establishments primarily engaged in manufacturing:

a. Industrial inorganic chemicals (SIC 281).

b. Plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other manmade fibers (SIC 282).

c. Soaps and detergents; specialty cleaning, polishing, and sanitation preparations; surface active preparations used as emulsifiers, wetting agents, and finishing agents, including sulfonated oils; perfumes, cosmetics, and other toilet preparations; glycerin made from vegetable and animal fats and oils (SIC 284).

d. Paints (in paste and ready-mixed form), varnishes, lacquers, enamels, shellac, putties, wood fillers, and sealers, paint and varnish removers, paint brush cleaners, and allied paint products (SIC 285).

e. Industrial organic chemicals (SIC 286).

f. Nitrogenous fertilizers; phosphatic fertilizers; fertilizers, mixing only; pesticides; and other agricultural chemicals, not elsewhere classified (SIC 287).

g. Industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile, and rubber cements from vegetable, animal, or synthetic plastics materials (SIC 2891).

h. Explosives (SIC 2892).

i. Printing ink, including gravure, screen process, and lithographic ink, and carbon black (SIC 2893 and 2894); and, due to the nature of manufacturing activities, EPA has included industrial facilities represented by SIC 3952 in this category, but only those primarily engaged in the manufacturing of ink and paints, including china painting enamels, india and drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors.

j. Miscellaneous that are not in Sections a. through i. of this part, such as fatty acids, essentials oils, nonvegetable gelatin, sizes, bluing, laundry sours, writing and stamp pad ink, industrial compounds, such as boiler and heat insulating compounds, metal, oil, and water treatment compounds, waterproofing compounds, and chemical supplies for foundries (SIC 2899).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Pollutants Found in Storm Water Discharges

Water quality impacts caused by storm water discharges associated with an industrial activity from Chemical and Allied Products Manufacturing facilities are expected to vary depending on several factors. Such factors include the geographic location and hydrology of the site, the type of manufacturing and/or industrial activities, the amount and type of operations and material storage occurring outside, imperviousness of surfaces at the site, and the impact of a given precipitation event. In addition, sources of pollutants from non-storm water discharges such as washwaters from industrial areas, illicit connections, and spills may increase the pollutant loading to waters of the United States. Because there is a wide variety of products and manufacturing activities in this sector of today's proposed permit, EPA has subdivided the chemicals and allied products manufacturing industry into "subsectors."

Part 1 of the group application required a summary of industrial activities and the significant materials stored exposed to precipitation. This provided useful qualitative information to EPA, but information that is not possible to quantify reliably due to differences in terminology and thoroughness. For the summary of industrial activities, some participants reported their industrial activity as "manufacture of product X," rather than listing the components of that main activity. Other participants listed some or all general industrial actions, e.g., "shredding" or "wastewater treatment." Products listed represent most of the industrial classifications which are subject to this section of today's proposed permit). Table C.1. lists the general industrial actions occurring at facilities according to part 1 of their group applications.

TABLE C–1.—INDUSTRIAL ACTIVITIES OCCURRING AT CHEMICAL AND ALLIED PRODUCT MANUFACTURERS

[As reported in Part 1 of Group Applications]

1. Storage of materials in tanks, either below or above ground
2. Wastewater treatment, use of activated sludge process, or land application of wastewaters
3. Bagging of materials/products
4. Blending and mixing of chemicals
5. Packaging of chemicals
6. Cooling towers
7. Crushing, Milling, Shredding, Granulation and Grinding of materials
8. Storage of cylinders used to contain industrial gases

TABLE C–1.—INDUSTRIAL ACTIVITIES OCCURRING AT CHEMICAL AND ALLIED PRODUCT MANUFACTURERS—Continued

[As reported in Part 1 of Group Applications]

9. Distribution of products
10. Storage of empty or full drums
11 Equipment storage and maintenance, including vehicles
12. Application of fertilizers or pesticides
13. Operation of a foundry
14. Fueling of vehicles
15. Hazardous waste temporary storage or operation of RCRA treatment, storage, or disposal facility
16. Hot oil system for cooling/heat exchange
17. Landfills or temporary refuse site
18. Application of lime
19. Loading/Unloading
20. Use of machinery to process materials
21. Material handling and warehousing
22. Plant yard and areas of past industrial activity
23. Access roads and rail tracks
24. Steam boilers
25. Thermal oxidation of lead

TABLE C–1.—INDUSTRIAL ACTIVITIES OCCURRING AT CHEMICAL AND ALLIED PRODUCT MANUFACTURERS—Continued

[As reported in Part 1 of Group Applications]

26. Washing of drums
27. Waste dumpster or compactor

Table C–2 shows the subsectors and their corresponding SIC codes and letters (from discharges covered under this section in this fact sheet).

Part 2 of the storm water group application required that quantitative data be submitted by a representative sampling subgroup. Tables C–3 and C–4 indicate the pollutants identified in Form 2F in Section VII, Part A. Part A includes the following pollutants: oil and grease, BOD_5, COD, TSS, total kjeldahl nitrogen, nitrate plus nitrite nitrogen, total phosphorus, and pH. Table C–3 presents information collected using grab samples and Table C–4 presents information collected using composite samples. For each of the pollutants included in these tables, concentrations were categorized and analyzed by "subsector."

TABLE C–2.—SUBSECTOR INDEX

Subsector	Discharge(s) covered	SIC code(s)
1	a	281.
2	b	282.
3	c	284.
4	d	285.
5	e	286.
6	f	287.
7	g, h, i, and j	2891, 2892, 2893, 2894, 2899, 3952.
8	Miscellaneous.	28[1].

[1] Subsector 8 includes those facilities that indicated their SIC code only as 28, without the following 1 or 2 digits.

The first column of Table C–3 identifies the subsector.

TABLE C–3.—SUMMARY OF GRAB SAMPLES REPORTED FOR CONVENTIONAL AND NONCONVENTIONAL POLLUTANTS IN STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM THE CHEMICAL AND ALLIED PRODUCT MANUFACTURING INDUSTRY[1]

[2]	Pollutant name	Total samples	Total ND	Total detects	Mean	Min.	Max.	Median	95th perc.	99 perc.
1	BOD_5	16	3	13	12.1	0.0	67.0	7.0	67.0	67.0
	COD	16	0	16	101.4	20.0	350.0	80.0	350.0	350.0
	Nitrate + Nitrite Nitrogen	16	0	16	2.8	0.1	7.3	2.4	7.3	7.3
	Total Kjeldahl Nitrogen	16	2	14	18.7	0.0	132.0	4.1	132.0	132.0
	Oil and Grease	15	4	11	1.9	0.0	18.0	0.1	18.0	18.0
	pH	15	0	15	N/A	5.4	10.4	N/A	N/A	N/A
	Total Phosphorus	16	2	14	1.0	0.0	6.6	0.3	6.6	6.6
	TSS	16	0	16	156	6	790	99	790	790
2	BOD_5	41	3	38	11.5	0.0	66.0	5.0	35.0	66.0
	COD	42	3	39	58.1	0.0	162.0	38.5	157.0	162.0
	Nitrate Plus Nitrate Nitrogen	43	4	39	4.3	0.0	140.3	0.8	3.8	140.3
	Nitrogen, Total Kjeldahl	42	0	42	3.5	0.2	47.2	1.5	9.0	47.2
	Oil and Grease	42	26	16	2.0	0.0	15.0	0.0	12.0	15.0
	pH	42	0	42	N/A	3.6	7.7	N/A	N/A	N/A
	Total Phosphorus	43	8	35	0.4	0.0	4.2	0.1	1.9	4.2
	TSS	42	6	36	157	0	2708	40	658	2708
3	BOD_5	9	2	17	53.2	0.0	340.0	16.0	340.0	340.0
	COD	19	0	19	245.3	26.0	1200.0	120.0	1200.0	1200.0
	Nitrate Plus Nitrate Nitrogen	19	1	18	1.4	0.0	5.0	1.2	5.0	5.0
	Nitrogen, Total Kjeldahl	19	0	19	3.5	0.5	11.4	2.6	11.4	11.4
	Oil and Grease	19	11	8	4.6	0.0	40.0	0.0	40.0	40.0
	pH	19	0	19	N/A	3.5	8.0	N/A	N/A	N/A
	Total Phosphorus	19	0	19	1.6	0.0	9.0	0.4	9.0	9.0
	TSS	20	0	20	313	5	1522	74	1499	1522
4	BOD_5	3	1	2	4.7	0.0	11.0	3.0	11.0	11.0
	COD	3	1	2	50.3	0.0	84.0	67.0	84.0	84.0
	Nitrate Plus Nitrate Nitrogen	3	1	2	0.4	0.0	1.2	0.1	1.2	1.2
	Nitrogen, Total Kjeldahl	3	0	3	1.3	0.3	1.9	1.6	1.9	1.9
	Oil and Grease	3	1	2	4.7	0.0	9.6	4.6	9.6	9.6
	pH	3	0	3	N/A	6.7	7.7	N/A	N/A	N/A
	Total Phosphorus	3	0	3	0.2	0.2	0.3	0.2	0.3	0.3
	TSS	3	0	3	433	4	824	470	824	824
5	BOD	8	0	8	8.7	2.0	16.0	8.8	16.0	16.0
	COD	8	0	8	161.8	25.0	290.0	175.0	290.0	290.0
	Nitrate Plus Nitrate Nitrogen	8	2	6	0.3	0.0	0.7	0.1	0.7	0.7
	Nitrogen, Total Kjeldahl	8	0	8	4.1	0.6	19.0	1.8	19.0	19.0
	Oil and Grease	8	6	2	0.3	0.0	1.3	0.0	1.3	1.3
	pH	8	0	8	N/A	6.3	8.8	N/A	N/A	N/A
	Total Phosphorus	8	0	8	0.6	0.0	1.4	0.3	1.4	1.4

TABLE C–3.—SUMMARY OF GRAB SAMPLES REPORTED FOR CONVENTIONAL AND NONCONVENTIONAL POLLUTANTS IN STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM THE CHEMICAL AND ALLIED PRODUCT MANUFACTURING INDUSTRY[1]—Continued

[2]	Pollutant name	Total samples	Total ND	Total detects	Mean	Min.	Max.	Median	95th perc.	99 perc.
6	TSS	8	0	8	157	13	650	61	650	650
	BOD_5	22	6	16	4.4	0.0	13.0	4.3	10.6	13.0
	COD	22	2	20	72.5	0.0	400.0	52.9	190.0	400.0
	Nitrate Plus Nitrate Nitrogen	17	1	16	35.9	0.0	315.0	3.8	315.0	315.0
	Nitrogen, Total Kjeldahl	22	0	22	84.4	0.0	1020.0	7.4	520.0	1020.0
	Oil and Grease	23	12	11	6.0	0.0	95.0	0.0	9.9	95.0
	pH	20	0	20	N/A	5.3	7.8	N/A	N/A	N/A
	Total Phosphorus	22	0	22	17.8	0.1	110.0	5.0	97.3	110.0
7	TSS	22	1	21	493	0	5182	77	2332	5182
	BOD_5	26	2	24	143.2	0.0	3420.0	9.0	47.0	3420.0
	COD	28	1	27	70.4	0.0	394.0	42.5	149.0	394.0
	Nitrate Plus Nitrate Nitrogen	28	3	25	1.0	0.0	4.9	0.6	2.8	4.9
	Nitrogen (Total)	4	0	4	1.3	0.2	1.8	1.6	1.8	1.8
	Nitrogen, Total Kjeldahl	27	2	25	1.7	0.0	5.5	1.3	5.4	5.5
	Oil and Grease	29	11	18	4.4	0.0	23.0	2.0	17.1	23.0
	pH	29	0	29	N/A	4.6	9.3	N/A	N/A	N/A
	Total Phosphorus	29	11	18	0.2	0.0	1.6	0.1	0.7	1.6
	TSS	28	9	19	50	0	415	13	396	415
8	BOD_5	30	2	28	14.3	0.0	67.0	8.0	63.0	67.0
	COD	30	0	30	80.5	11.0	450.0	59.5	250.0	450.0
	Nitrate Plus Nitrate Nitrogen	30	0	30	2.0	0.1	30.1	0.8	4.8	30.1
	Nitrogen, Total Kjeldahl	27	0	27	3.4	0.3	22.5	1.8	12.3	22.5
	Oil and Grease	30	6	24	5.1	0.0	40.0	3.0	19.0	40.0
	pH	30	0	30	N/A	4.9	8.3	N/A	N/A	N/A
	Total Phosphorus	30	0	30	0.4	0.0	2.5	0.2	1.9	2.5
	TSS	30	1	29	124	0	590	35	583	590

[1] All units are in mg/L, except for pH which is in SU.
[2] Subsector.

Table C–4.—Summary of Composite Samples Reported for Conventional and Nonconventional Pollutants in Storm Water Discharges Associated With Industrial Activity From the Chemical and Allied Product Manufacturing Industry[1]

[2]	Pollutant name	Total samples	Total ND	Total detects	Mean	Min.	Max.	Median	95th perc.	99th perc.
1	BOD_5	16	3	13	8.9	0.0	26.0	7.5	26.0	26.0
	COD	16	2	14	63.6	0.0	320.0	36.5	320.0	320.0
	Nitrate Plus Nitrite Nitrogen	16	0	16	1.9	0.1	7.1	1.3	7.1	7.1
	Nitrogen, Total Kjeldahl	16	3	13	7.1	0.0	19.4	3.2	19.4	19.4
	Total Phosphorus	16	2	14	0.8	0.0	6.1	0.4	6.1	6.1
	TSS	16	0	16	80	1	320	22	320	320
2	BOD_5	36	0	36	11.4	1.0	66.0	6.6	34.0	66.0
	COD	35	0	35	52.6	0.0	169.0	35.5	159.0	169.0
	Nitrate Plus Nitrite Nitrogen	39	1	38	5.3	0.0	158.0	1.0	8.0	158.0
	Nitrogen, Total Kjeldahl	38	2	36	4.0	0.0	56.8	1.4	18.3	56.8
	Total Phosphorus	39	9	30	0.4	0.0	4.4	0.10	3.6	4.4
	TSS	38	3	35	95	0	816	27	359	816
3	BOD_5	20	1	19	23.2	0.0	108.0	6.5	96.0	108.0
	COD	19	2	17	132.5	0.0	530.0	60.0	530.0	530.0
	Nitrate Plus Nitrite Nitrogen	19	1	18	1.0	0.0	4.20	0.8	4.2	4.2
	Nitrogen, Total Kjeldahl	19	3	16	2.3	0.0	9.0	1.4	9.0	9.0
	Total Phosphorus	19	2	17	0.6	0.0	1.9	0.4	1.9	1.9
	TSS	20	1	19	154	0	880	39	760	880
4	BOD_5	3	0	3	20.7	12.0	36.0	14.0	36.0	36.0
	COD	3	1	2	42.3	0.0	72.0	55.0	72.0	72.0
	Nitrate Plus Nitrite Nitrogen	3	1	2	0.5	0.0	1.30	0.3	1.3	1.3
	Nitrogen, Total Kjeldahl	3	0	3	1.6	0.6	2.8	1.3	2.8	2.8
	Total Phosphorus	3	0	3	0.2	0.1	0.3	0.3	0.3	0.3
	TSS	3	0	3	47	2	130	9	130	130
5	BOD_5	8	0	8	7.8	2.0	19.0	6.9	19.0	19.0
	COD	8	0	8	181.5	26.0	640.0	92.5	640.0	640.0
	Nitrate Plus Nitrite Nitrogen	8	2	6	0.8	0.0	3.4	0.4	4.0	4.0
	Nitrogen, Total Kjeldahl	8	0	8	2.3	0.8	7.2	1.4	7.2	7.2

[a]	Pollutant name	Total samples	Total ND	Total detects	Mean	Min.	Max.	Median	95th perc.	99th perc.
	Total Phosphorus	8	0	8	0.6	0.0	2.2	0.4	2.2	2.2
	TSS	8	0	8	282	13	1100	61	1100	1100
6	BOD_5	22	5	17	6.8	0.0	43.5	4.7	13.0	43.5
	COD	22	3	19	42.6	0.0	138.0	33.5	125.0	138.0
	Nitrate Plus Nitrite Nitrogen	17	1	16	19.3	0.0	85.0	3.5	85.0	85.0
	Nitrogen, Total Kjeldahl	22	0	22	108.9	0.8	1460.0	11.9	642.0	1460.0
	Total Phosphorus	22	0	22	65.7	0.2	982.0	11.8	137.0	982.0
	TSS	20	1	19	118	0	593	50	523	593
7	BOD_5	21	3	18	11.3	0.0	98.0	6.0	19.0	98.0
	COD	23	0	23	63.3	19.0	382.0	41.0	150.0	382.0
	Nitrate Plus Nitrite Nitrogen	22	1	21	1.0	0.0	3.1	0.6	3.1	3.1
	Nitrogen (Total)	2	0	2	0.8	0.6	0.9	0.8	0.9	0.9
	Nitrogen, Total Kjeldahl	21	3	18	1.4	0.0	4.1	1.2	3.7	4.1
	Total Phosphorus	23	10	13	0.1	0.0	0.4	0.1	0.4	0.4
	TSS	23	7	16	48	0	350	8	295	350
8	BOD_5	30	2	28	10.1	0.0	84.0	4.0	51.0	84.0
	COD	30	1	29	92.4	0.0	1500.0	35.0	130.0	1500.0
	Nitrate Plus Nitrite Nitrogen	30	0	30	1.5	0.0	20.2	0.7	5.1	20.2
	Nitrogen, Total Kjeldahl	27	0	27	2.3	0.5	11.8	1.3	7.0	11.8
	Total Phosphorus	28	0	28	0.3	0.0	1.2	0.2	1.2	1.2
	TSS	30	1	29	35	0	300	12	128	300

[a] All units are in mg/L, except for pH which is in SU.
[a] Subsector.

Part 2 group application data that were statistically summarized indicated variations in the minimum and maximum values reported for each of the eight conventional pollutants monitored:

Subsector 1

- Oil and grease samples ranged from 0.0 mg/L to 18.0 mg/L.
- Grab sample values for Total Suspended Solids (TSS) ranged from 6 mg/L to 790 mg/L.
- Grab sample values for Chemical Oxygen Demand (COD) ranged from 20.0 mg/L to 350.0 mg/L.

Subsector 2

- Oil and grease samples ranged from 0.0 mg/L to 15.0 mg/L.
- Grab sample values for TSS ranged from 0 mg/L to 2,708 mg/L.
- Grab sample values for COD ranged from 0.0 mg/L to 162.0 mg/L.

Subsector 3

- Oil and grease samples ranged from 0.0 mg/L to 40.0 mg/L.
- Grab sample values for TSS ranged from 6 mg/L to 1,522 mg/L.
- Grab sample values for COD ranged from 28.0 mg/L to 1,200.0 mg/L.

Subsector 4

- Oil and grease samples ranged from 0.0 mg/L to 9.6 mg/L.
- Grab sample values for TSS ranged from 4 mg/L to 824 mg/L.
- Grab sample values for COD ranged from 0.0 mg/L to 84.0 mg/L.

Subsector 5

- Oil and grease samples ranged from 0.0 mg/L to 1.3 mg/L.
- Grab sample values for TSS ranged from 13 mg/L to 650 mg/L.
- Grab sample values for COD ranged from 25.0 mg/L to 290.0 mg/L.

Subsector 6

- Oil and grease samples ranged from 0.0 mg/L to 95.0 mg/L.
- Grab sample values for TSS ranged from 0 mg/L to 5,182 mg/L.
- Grab sample values for COD ranged from 0.0 mg/L to 400.0 mg/L.

Subsector 7

- Oil and grease samples ranged from 0.0 mg/L to 23.0 mg/L.
- Grab sample values for TSS ranged from 0 mg/L to 415 mg/L.
- Grab sample values for COD ranged from 0.0 mg/L to 394.0 mg/L.

Subsector 8

- Oil and grease samples ranged from 0.0 mg/L to 40.0 mg/L.
- Grab sample values for TSS ranged from 0 mg/L to 590 mg/L.
- Grab sample values for COD ranged from 11.0 mg/L to 450 mg/L.

The remaining conventional pollutants sampled also varied in their minimum and maximum values. Part 2 data indicates that the high levels of pollutants at some facilities are atypical to those experienced by the majority of chemical and allied products manufacturing facilities. Tables C–3 and C–4 indicate sampling results for the conventional pollutants that were statistically analyzed by EPA. The tables indicate the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of samples analyzed for each of the conventional pollutants. Table C–5 indicates values for some nonconventional pollutants statistically summarized for this section.

TABLE C–5.—STATISTICS FOR NONCONVENTIONAL POLLUTANTS IN STORM WATER (MG/L)

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
Ammonia	21	15	73.22	40.45	0.12	0.27	964.0	1460.0	0.52	0.65	496.0	1460.0	964.0	1460.0
Aluminum	28	27	1.78	1.20	0.0	0.0	7.82	7.87	0.94	0.41	6.9	5.5	7.82	7.87
Copper	50	45	0.19	0.12	0.0	0.0	4.97	2.9	0.01	0.0	0.21	0.19	4.97	2.9
Manganese	18	18	0.71	0.56	0.0	0.01	3.5	2.57	0.11	0.33	3.5	2.57	3.5	2.57
Zinc	75	70	2.11	1.74	0.0	0.0	63.4	42.8	0.24	0.24	7.7	4.2	63.4	42.8
Iron	29	29	3.52	2.24	0.24	0.07	22.0	11.0	1.3	0.98	10.5	8.14	22.0	11.0

Table C–6, below, shows all pollutants detected in each subsector, as reported in part 2 of the group applications. In addition, some of these pollutants were included based on research during the development of effluent limitation guidelines for the industry.

TABLE C–6.—POTENTIAL POLLUTANTS IN STORM WATER DISCHARGES ASSOCIATED WITH INDUSTRIAL ACTIVITY FROM THE CHEMICAL AND ALLIED PRODUCTS MANUFACTURING INDUSTRY

Subsector	Potential pollutants
1	BOD_5, COD, Nitrogen, Oil and Grease, pH, Phosphorus, TSS, Aluminum, Boron, Chromium, Iron, Magnesium, Sulfate, 1,1,1-Trichloroethane, Ammonia, Calcium, and Chlorine.
2	BOD_5, COD, Nitrogen, Oil and Grease, pH, Phosphorus, Chlorine, Cyanide, Fecal Coliform, Formaldehyde, TSS, Aluminum, Antimony, Bromide, Chromium, Color, Copper, Lead, Magnesium, Nickel, Styrene, Sulfate, Sulfite, TTO, Zinc, and Tetrachloroethane.
3	BOD_5, COD, Nitrogen, Oil and Grease, pH, Phosphorus, TSS, Aluminum, Barium, Color, Copper, Di-n-butyl Phthalate, Diethyl phthalate, Manganese, Mercury, Sulfate, Surfactants, Titanium, Toluene, Zinc and Chlorine.
4	BOD_5, COD, Nitrogen, Oil and Grease, pH, Phosphorus, TSS, Barium, Cadmium, Chromium, Copper, Iron, Lead, Magnesium, Manganese, Molybdenum, Nickel, Silver, Thallium, Tin, Zinc, 2-Heptanone, Toluene, Xylene, Aluminum, Ethyl Benzene, and Beryllium.
5	BOD_5, COD, Nitrogen, Oil and Grease, pH, Phosphorus, TSS, 1,2-dichloroethane, Copper, Formaldehyde, Lead, Phenols, TTO, and Zinc.
6	BOD_5, COD, Nitrogen, Oil and Grease, pH, Phosphorus, TSS, 2,4-D (2,4-dichlorophenoxyacetic acid), Aluminum, Ammonia, Boron, Cadmium, Copper, Fluoride, Iron, Lead, Magnesium, Manganese, Sulfate, Sulfide, Surfactants, Zinc and Methyl Chloride.
7	BOD_5, COD, Nitrogen, Oil and Grease, pH, Phosphorus, TSS, 1,1,1-Trichloroethane, Aluminum, Ammonia, Color, Iron, Nitrogen, Zinc.

3. Options for Controlling Pollutants

As required in part 1 of the storm water group permit application, participants were required to provide information regarding existing storm water management practices and controls. Table C–7 below identifies the material management practices for the identified sampling facilities.

TABLE C–7.—CURRENT STORM WATER MANAGEMENT PRACTICES USED BY THE CHEMICAL AND ALLIED PRODUCTS MANUFACTURING INDUSTRY

[As reported in Part 1 of the group applications][1]

Subsector	Current management practices
1	Unloading Boot, Catch Basin, Containment, Covering, Curbing, Dike Diversion, Housekeeping, Inspection of Equipment, Infiltration, Oil/Water Separator, Roof, SPCC, Sump, Storm Water Collector for Water Reuse, Training, Indoor Storage.
2	Catch Basin, Covering, Dike, Indoor Storage, Pond, SPCC, Swale, Vegetation Strip.
3	Caps on Tank Vents, Concrete Pad, Containment, Covering, Curbing, Dike, Diversion, Drain, Hazardous Waste Management, Hazardous Waste Pad, Holding Tank, Indoor Storage, Infiltration, Pond, Roof, Sealed Drums, SPCC, Storm Water Collector, Tarp, Vaulted.
4	Containment, Covering, Dike, Holding Tank, Infiltration, Pond, Roof Drain, Site Inspection, SPCC, Swale, Training, Waste Minimization.
5	Curbing, Dike, Pond, SPCC.
6	Catch Basin, Covering, Dike, Housekeeping, Indoor Storage, Infiltration, Oil/Water Separator, Pond, Roof, Site Inspection, SPCC, Sump, Swale, Sweep, Valves.
7	Absorbent Materials, BMP Plan, Catch Basin, Concrete Pad, Containment, Covering, Curbing, Dike, Drain, Drip Pan, Housekeeping, Indoor Storage, Infiltration, Oil/Water Separator, Pond, Roof, Inspection, Sloped Containment, SPCC, Sump, Swale, Training, Valves.
8	Catch basin, Containment, Covering, Dike, Indoor Storage, Pond, Roof, Site Inspection, SPCC, Swale, Training.

[1] The information presented in this table was received from part 1 group applications for Sector 3.

In order to develop achievable storm water management practices and controls, EPA has evaluated all existing management practices as well as practices developed and implemented under the September 9, 1992, storm water general permit. For a detailed explanation regarding specific storm water controls and management practices, the reader may refer to the pollution prevention plan requirements section below.

4. Special Conditions

a. Prohibition of non-storm water discharges. In addition to Part III.A of today's proposed permit, EPA has specified that the following types of discharges are not authorized by this section:

- Inks, paints or substances (hazardous, nonhazardous, etc.) resulting from an onsite spill including materials collected in drip pans.
- Washwaters from material handling and processing areas. This includes areas where containers, equipment and industrial machinery are exposed to storm water.
- Washwaters from areas where raw materials, intermediate products, final products, waste materials, by-products and significant materials from past industrial activity are exposed to storm water.
- Washwaters from drum, tank or container rinsing and cleaning.

EPA has included these prohibitions in order to emphasize that spilled materials should be cleaned up and properly disposed, and that washwaters constitute process wastewater and not storm water. These types of discharges contribute excessive amounts of pollutants to water bodies and must be permitted by an NPDES permit for process wastewater, as they are not authorized by this section.

b. Rain gauge installation and precipitation log. As part of the monitoring and reporting requirements of today's proposed permit, EPA is requiring that permittees install a rain gauge. For permittees that are required to sample under Part C.7., the rain gauge shall be installed no later than [270 days after permit issuance], and shall maintain the rain gauge for the extent of the four sampling periods. In addition, permittees must keep daily records of precipitation indicating the date and amount of precipitation. These records shall be signed by qualified facility personnel and shall be retained onsite.

Permittees that are required to conduct monitoring must provide information regarding the storm event, including: the date and duration (in hours) of the storm event sampled; rainfall measurements of the storm event sampled; the duration between

the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and the total volume (in gallons) of the discharge sampled.

c. Pollution prevention plan certifications. EPA is establishing additional notification requirements for pollution prevention plan development and implementation. As explained elsewhere in today's proposed permit, EPA is focusing on and expending a great deal of effort in the development and implementation of pollution prevention programs as preventive pollution controls rather than end-of-pipe treatment.

In order to make sure that permittees comply with the plan's requirements and deadlines, EPA is proposing to require that permittees certify that plans are developed and implemented in accordance with the permit conditions. A certification signed by the person who fulfills the signatory requirements of the permit shall be submitted to EPA 5 days after the plan implementation deadline.

5. Storm Water Pollution Prevention Plan Requirements

a. Contents of the plan. Today's proposed permit requires that all facilities covered under this section prepare a Drainage and Site Plan. Based on the information contained in the part 1 application, EPA has identified and specified areas where materials are commonly handled. EPA is requiring that the site plan detail the drainage patterns of the runoff and identify the outfall and receiving water body.

(1) Description of potential pollutant sources. The Inventory of Exposed Materials as well as Risk Identification and Summary of Potential Pollutants Sources requirements were further defined to avoid confusion. In addition, EPA is requiring that the information submitted in the group application regarding pollutant sources and current management practices be evaluated and considered when developing the plan.

(2) Measures and controls. EPA has divided this section of the permit into two parts. The first part addresses nonstructural pollution prevention controls, while the second part addresses structural controls.

The following requirements were established by EPA under the nonstructural conditions to identify specific practices that must be implemented by all permittees:

(a) Good housekeeping—EPA conducted a series of inspections to identify areas of concern, materials exposed to storm water and current management practices used by the chemicals and allied products manufacturing industry. In addition, EPA reviewed a series of existing pollution prevention plans that were developed under the requirements of the September 25, 1992, general permit. Based on this review, EPA is requiring that at a minimum, permittees shall establish the following good housekeeping practices:

(i) Schedule regular pickup and disposal of garbage and waste materials. This schedule shall be included in the plan. Individuals responsible for waste management and disposal shall be informed of the procedures established under the plan,

(ii) Routinely inspect for leaks and conditions of drums, tanks and containers. Ensure that spill cleanup procedures are understood by employees,

(iii) Keep an up-to-date inventory of all materials present at the facility. While preparing the inventory, all containers should be clearly labeled. Hazardous containers that require special handling, storage, use and disposal considerations shall be clearly marked,

(iv) Maintain clean ground surfaces by using brooms, shovels, vacuum cleaners or cleaning machines.

(b) Employee training—Training should also address procedures for equipment and containers cleaning and washing. The training should emphasize the human hazards and the potential environmental impacts from the discharges of washwaters. In addition, today's proposed permit requires that the pollution prevention plan identify periodic dates for such training of at least once per year.

(c) Facility security—During site inspections, EPA found facilities with poor security systems. Facilities must evaluate existing security systems such as fencing, lighting, vehicular traffic control, and securing of equipment and buildings and should include existing and new system into the plan to prevent accidental or intentional entry which could cause a discharge of pollutants to waters of the United States.

Under the structural conditions, EPA has identified specific practices that must be implemented by all permittees. These structural practices are divided into four activities/areas: Material handling and storage; management of runoff; sediment and erosion control; and sampling.

(i) Under material handling and storage, EPA is requiring a series of management practices to minimize materials exposed to precipitation. These areas were selected after evaluation of part 1 data and current practices used by the group participants. For areas where liquid or powdered materials are stored, facilities shall provide either diking, curbing, or berms. For all other outside storage areas including storage of used containers, machinery, scrap and construction materials, and pallets, facilities shall prevent or minimize storm water runon to the storage area by using curbing, culverting, gutters, sewers or other forms of drainage control. For all storage areas, roofs, covers or other forms of appropriate protection shall be used to prevent exposure to weather. In areas where liquid or powdered materials are transferred in bulk from truck or rail cars, permittees shall provide appropriate measures to minimize contact of material with precipitation. Hose connection points at storage containers shall be inside containment areas. Drip pans shall be used in areas which are not in a containment area, where spillage may occur (e.g., hose reels, connection points with rail cars or trucks). Material collected in drip pans shall not be discharged to waters of the U.S. In areas of transfer of contained or packaged materials and loading/unloading areas, permittees shall provide appropriate protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks.

In order to prevent facilities from discharging contaminated storm water from areas where precipitation is contained, contained areas must be restrained by valves or other positive means to prevent the discharge of a spill or leak. Containment units may be emptied by pumps or ejectors; however, these shall be manually activated. Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design. If facility drainage is not engineered as above, the final discharge of all in-facility sewers shall be equipped with a diversion system that could, in the event of an uncontrolled spill of materials, return the spilled material to the facility.

(ii) Under management of runoff conditions, EPA is requiring that the plan contain a description of storm water management practices used and/or to be used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site.

(iii) For areas with a potential for significant soil erosion, EPA is requiring that permanent stabilization practices be described and that the plan ensure that disturbed areas are stabilized. The

measures will minimize the amount of sediment materials in the discharge.

(iv) Finally, the structural controls require that the facility provide for an appropriate sampling point. Sampling points should be identified by January 1, 1995. This requirement will ensure that permittees prepare a representative and adequate storm water outfall and that the selected sampling meets the requirements of this section of today's proposed permit.

b. Comprehensive site compliance evaluation. In accordance with 40 CFR 122.24(i)(4)(i), EPA has established that comprehensive site compliance evaluation inspections be conducted at least once every quarter. Members of the pollution prevention team or a qualified professional designated by the team must conduct the inspections.

A wet weather evaluation (during a rainfall event) shall be conducted in the second (April to June) and third quarters (July to September) of the year. A dry weather evaluation (no precipitation) shall be conducted in the first (January to April) and fourth quarters (October to December).

However, where a seasonal arid period is sustained for more than 3 months, a dry weather inspection will satisfy the wet weather comprehensive compliance evaluation inspection requirement. This requirement will assure that permittees conduct at least one comprehensive site compliance evaluation inspection every quarter.

EPA believes that this requirement will satisfy the requirements of this section by measuring the effectiveness of the pollution prevention plan during dry and wet weather conditions. These inspections will increase awareness and responsibility for storm water pollution. Moreover, conducting these dry and wet weather inspecting on a quarterly basis will provide permittees with a tool for evaluating best management practices, structural and nonstructural measures, good housekeeping and spill cleaning procedures, among other pollution prevention activities.

6. Numeric Effluent Limitations

a. Phosphate fertilizer manufacturing runoff. Part XI.C.5.a. of today's proposed permit establishes numeric effluent limitations for storm water discharges from facilities identified by SIC 287, the Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category, are subject to effluent limitations guidelines at 40 CFR part 418. The term contaminated storm water runoff shall mean precipitation runoff, which during manufacturing or processing, comes into accidental contact with any raw materials, intermediate product, finished product, by-products or waste product. The concentration of pollutants in storm water discharges shall not exceed the following effluent limitations included in Table C–8 below:

TABLE C–8

Effluent characteristics	Effluent limitations (mg/L)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Total Phosphorus (as P)	105.0	35.0
Fluoride	75.0	25.0

Facilities with discharges as described above must be in compliance with these effluent limitations upon commencement of coverage and for the entire term of this permit. Discharges that are associated with industrial activities that do not contain runoff from the areas or activities specified above are not subject to the effluent limitation as noted in Table C–8 above.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that chemical manufacturing facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires chemical manufacturing facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table C–9. The pollutants listed in Table C–9 were found to be above benchmark levels for a significant portion of chemical manufacturing facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from chemical manufacturing facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from chemical manufacturing facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table C–9. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE C–9.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Total Recoverable Aluminum.	0.75 mg/L
Total Recoverable Ammonia.	0.093 mg/L
Total Recoverable Copper.	0.009 mg/L
Total Recoverable Manganese.	0.05 mg/L
Total Recoverable Zinc.	0.065 mg/L
Total Recoverable Iron.	0.3 mg/L
Total Kjeldahl Nitrogen (TKN).	1.5 mg/L
Nitrate plus Nitrite Nitrogen.	0.68 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table C–9, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table C–9, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE C–10.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage	• Conduct quarterly monitoring.

TABLE C–10.—SCHEDULE OF MONITORING—Continued

4th Year of Permit Coverage	• Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table C–9, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table C–9, then no further sampling is required for that parameter. • Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table C–9. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will be used to reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, and that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with part VI.C. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge of both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Compliance monitoring requirements. Today's proposed permit requires permittees with phosphate fertilizer manufacturing facilities with contaminated storm water discharges to monitor for the presence of phosphorus and fluoride. These monitoring requirements are necessary to evaluate compliance with the numeric effluent limitation proposed for these discharges. EPA requests comment upon the appropriateness of proposed monitoring frequency for these discharges. Monitoring shall be performed upon a minimum of one grab sample. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. When a

facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls. The permittee shall include a description of the location of the outfalls, an explanation of why outfalls are expected to discharge substantially identical effluents, an and estimate of the size of the drainage area and runoff coefficient with the monitoring results. Monitoring results shall be submitted Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the month following collection of the sample. Facilities which discharge through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system.

g. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required at chemical and allied products manufacturing facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

h. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from chemical and allied product facilities. These notices specifically require that facilities with storm water discharges that come into contact with solid chemical storage piles that are associated with chemical and allied products are required to monitor their storm water discharges for oil and grease, COD, TSS, and pH. Today's proposed permit contains different monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for chemical and allied product facilities in the September 1992 General Permits and those required in today's proposed permit.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.C.6. of today's proposed permit.

a. Analytical monitoring requirements. Permittees shall monitor for the pollutants noted in Table C–11 at least one measurable rain event for each outfall comprised of storm water discharges associated with industrial activity in each of the sampling periods except as provided in paragraphs XI.C.8.b. (Lack of Measurable Storm Event) and Part VI. (Sampling Waiver and Representative Discharge). Permittees shall report in accordance with Part VI.C. (Reporting: Where to Submit) and paragraph XI.C.8.e. (Reporting: When to Submit). The following are the sampling periods:

- First sampling period begins on January 1, 1995, and ends on June 30, 1995;
- Second sampling period begins on July 1, 1995, and ends on December 31, 1995;
- First sampling period begins on January 1, 1996, and ends on June 30, 1996; and
- Second sampling period begins on July 1, 1996, and ends on December 31, 1996.

Permittees that are required to sample under Part C.8.c. shall install a rain gauge no later 6 months after the effective date of this general permit, and shall maintain the rain gauge for the extent of the permit. In addition, permittees must keep daily records of precipitation indicating the date and amount of precipitation. These records shall be signed by qualified facility personnel and shall be retained onsite.

In addition to sample data for the parameters listed in Table C–11 below, the permittee shall provide the date and duration (in minutes) of the storm event sampled, total rainfall of the storm event (in inches), the time between the storm water event that is sampled and the end of the previous measurable storm event (greater than 0.1 inch rainfall), the maximum flow rate during rain event (specify units), and the total volume (in gallons) of the discharge sampled.

TABLE C–11.—MONITORING REQUIREMENTS FOR THE CHEMICAL AND ALLIED PRODUCTS MANUFACTURING INDUSTRY

Industry sector(s)	Monitoring is required	Monitoring is required if the pollutant(s) are used at the industrial site
281	Oil and Grease, Chemical Oxygen Demand, pH, Total Suspended Solids, Total and Hexavalent Chromium, Sulfate, and Magnesium.	Monitoring is Required for Any Other Pollutants Limited by an Effluent Limitation Guideline for Which the Facility is Subject To.
282	Oil and Grease, pH, Chemical Oxygen Demand, Total Suspended Solids, Phosphorus, Copper, Zinc, Aluminum, Chromium, Lead, and Nickel.	Styrene, Tetrachloroethene, and Any Other Solvents.
284	5-Day Biochemical Oxygen Demand, Chemical Oxygen Demand, Total Suspended Solids, pH, Oil and Grease, and Surfactants.	Copper, Total Chlorine, Di-N Butyl Phthalate, Zinc, And Any Other Solvents.
285	Chemical Oxygen Demand, Total Suspended Solids, Oil and Grease, Lead, Zinc, Copper, Chromium, Xylene, and Toluene.	Nickel, Thallium, Silver, Ethyl Benzene, Naphthalene.
2893		
3952		
286	Chemical Oxygen Demand, Total Suspended Solids, pH, Oil and Grease, Total Toxic Organic, Copper, Lead, Phenols, and Zinc.	N/A.
2879		
287	5-Day Biochemical Oxygen Demand, Total Suspended Solids, pH, Oil and Grease, Phosphorus, Total Kjeldahl Nitrogen, Nitrate Plus Nitrite Nitrogen, Manganese, Sulfate, Zinc.	In addition to the sampling requirements of this sub sector (SIC 287), facilities identified by SIC 2874 Shall Test For Fluoride.
Except		
2879		
289	Chemical Oxygen Demand, Total Suspended Solids, pH, Oil and Grease, Zinc and Any Solvents.	Monitoring is Required for Any Other Pollutants Limited by an Effluent Limitation Guideline for Which the Facility is Subject To.
Except		
2893		

b. Lack of measurable storm event. In the event that the permittee is unable to sample during a sampling period due to a seasonal dry period, the permittee shall attempt to monitor two measurable events in the following sampling period. These two measurable shall be taken with at least 72 hours apart. Monitoring results obtained under this paragraph shall be reported in accordance with part VI.C. (Reporting: Where to Submit) and paragraph XI.C.8.e. (Reporting: When to Submit). This paragraph is applicable to paragraphs XI.C.8.a. and XI.C.8.c.

c. Monitoring for discharges with numeric effluent limitations. In addition to the requirements of paragraph XI.C.8.a., during the period beginning on the effective date and lasting through the expiration date of the permit, permittees with coal pile runoff discharges or from the phosphate fertilizer manufacturing runoff discharges, shall monitor those storm water discharges at least semiannually (2 times per year) for the pollutants limited in parts XI.C.6.a. and XI.C.6.b., respectively. Permittees shall report in accordance with part VI.C. (Reporting: Where to Submit) and paragraph XI.C.8.e. (Reporting: When to Submit).

d. Monitoring of discharges from contained areas. Each time there is a discharge of storm water from contained areas where liquid or powdered materials are stored outside, it should be recorded. The permittee shall record the date of the discharge, whether the discharge resulted from an overflow of the area or by opening a valve or operating pump, and the material(s) that is (are) stored in the contained area. Prior to discharge, the storm water should be visibly inspected for visible solids, discoloration, and oil sheen. Records of these discharges should be maintained with the pollution prevention plan and in accordance with part VI.D. (Retention of Records) of the permit.

e. Reporting: When to submit. (1) Except for facilities with storm water discharges identified in part IX.C.8.c. (Monitoring for Discharges with Numeric Limitations), permittees are required to submit monitoring results obtained during the specified sampling periods. The permittee shall provide information regarding facility's NPDES permit number, SIC code, outfall number, existing data, and the mean and standard deviation for the monitoring results. Such monitoring results should be included in the following tables, signed in accordance with part VII.G., and submitted no later than December 31, 1997. In addition, the permittee shall attach to the tables the following information:

(a) How many regulated storm water outfalls?

(b) For each time the permittee sampled, how many regulated outfalls were tested? (Provide separately for the four sampling events).

(c) Rain Gauge Information:

(i) Number of precipitation days per sampling period—(Provide separately for the four sampling periods).

(ii) Total precipitation in inches per sampling period—(Provide separately for the four sampling periods).

(2) Permittees identified in part XI.C.8.c. (Monitoring for Discharges with Numeric Effluent Limitations) shall monitor during the sampling period running from January to June and during the sampling period running from July to December. Permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report (DMR) Form(s), or on Table C–12, postmarked no later than the 28th day of the following January. A separate DMR Form is required for each sampling period. The first report may include less than 12 months of information.

TABLE C–12.—REPORTING TABLES FOR THE CHEMICAL AND ALLIED PRODUCTS MANUFACTURING INDUSTRY

[Permit # _____ SIC # _____ Outfall # _____]

Pollutant name	Existing data	1st period	2nd period	3rd period	4th period	Effluent limitation	Mean	Std. dev.

TABLE C–12.—REPORTING TABLES FOR THE CHEMICAL AND ALLIED PRODUCTS MANUFACTURING INDUSTRY—Continued

[Permit # _____ SIC # _____ Outfall # _____]

Pollutant name	Existing data	1st period	2nd period	3rd period	4th period	Effluent limitation	Mean	Std. dev.

Date of storm event	Duration of storm event (in minutes)	Total rainfall during storm event (in inches)	Number of hours between measurable events	Maximum flow rate during rain event (specify units)	Total Volume from rain event (specify units)

[1] Provide a description of the method of flow measurement.

f. Sample type. Permittees should sample the discharge during normal business hours. In the event that the discharge commences during normal business hours, the permittee shall attempt to meet the sampling requirements specified in this section even if this requires sampling after normal business hours. Permittees shall attempt to meet the above protocol and collect samples beginning on the first day of the sampling period in order to ensure compliance with the specified sampling protocol and requirements. One grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

9. Cost Estimates

The cost of rain gauges varies from $25.00 to $7,200.00 depending on the type of equipment that facilities may purchase (manual or automatic, rain gauge included with automatic sampler, etc.). EPA estimates that the installation time of the rain gauge varies from 1 to 12 hours. EPA estimates that facility personnel will have to spend about 15 minutes in compiling the rain gauge measurements.

With the exception of the numeric effluent limitations in part XI.C.6.a., the requirements for industries covered under this part do not require expenditures beyond those estimates in parts VII. and VIII.B.

D. Storm Water Discharges Associated With Industrial Activity From Asphalt Paving and Roofing Materials Manufacturers and Lubricant Manufacturers

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with an industrial activity." This definition includes point source discharges of storm water from eleven major categories of facilities, including facilities commonly identified by Standard Industrial Classification (SIC) 29. Today's proposed permit only covers storm water discharges associated with industrial activities at facilities with a primary SIC code of 2951 (Asphalt Paving Mixtures and Blocks), 2952 (Asphalt Felts and Coatings), and 2992 (Lubricating Oils and Greases). Hereinafter, facilities with primary SIC codes 2951 or 2952 will be referred to as 'Asphalt Facilities,' and facilities with primary SIC code 2992 as 'Lubricant Manufacturers.'

Storm water discharges covered by this section include all discharges where precipitation and storm water runon come into contact with significant materials including, but not limited to, aggregate piles, other raw materials, waste products, byproducts, finished products, stored materials, and fuels. This includes storm water discharges from access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or byproducts created by the facility.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the

facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

This section is applicable to storm water discharges from portable plants. Portable plants were not included in the group application process due to their often frequent changes of location. Part 1 of the group application required location information for each facility, which was difficult to obtain or record for portable plants which may change locations several times per year. This section, however, is applicable to storm water discharges from portable plants, with the condition that a new Notice of Intent (NOI) be submitted for each location and the pollution prevention plan be revised accordingly with each change in location.

1. Industry Profile

Presented below are brief descriptions of the industrial activities associated with asphalt facilities and lubricant manufacturers. Table D–1 shows some common significant materials exposed at these types of facilities.

TABLE D–1.—ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS[i ii]

Activity	Pollutant source	Pollutant
Asphalt Facilities:		
Material Storage and Handling	Additives, asphalt, asphalt cement, asphalt concrete, asphalt felt, asphalt products, asphalt release agents, asphalt shingles, crushed stone, fuel, granite, granules, gravel, limestone, lubricants, mineral spirits, oil, quartzite rock, reclaimed asphalt pavement (RAP), sand, sandstone, slag.	TSS, Oil and Grease, pH, COD.
Lubricant Manufacturers:		
Material Storage and Handling	Oils, waste solvents, petroleum distillates, lubricants, chemical additives.	Oil and Grease, pH, TSS.

[i] Storm water group applications, parts 1 and 2.
[ii] EPA. Development Document on Paving and Roofing Materials (EPA 440/1–74/049).

Facilities manufacturing asphaltic concrete, paving materials, or block, are classified as SIC code 2951. Facilities primarily engaged in manufacturing asphalt roofing products, such as asphalt felts, shingles, and other products including tars, pitch, and roofing cements, are identified as SIC 2952. Facilities primarily engaged in manufacturing oils and lubricants are identified as SIC 2992.

a. Manufacturers of asphalt paving mixtures and blocks. Manufacturers classified in SIC 2951 store purchased asphalt in above ground tanks. They stockpile a variety of raw materials such as sand, gravel, crushed limestone, and Recycled Asphalt Products (RAP). These facilities produce asphalt concrete, and may also mold and cure asphalt concrete products such as asphalt blocks. There are two types of facilities associated with these activities, batch plants and drum plants.

Batch plants receive aggregate (sand, stone, limestone, gravel, etc.) in bulk by rail or truck. The aggregate is usually stockpiled outside. It is then transported by a conveyor or front-end loader to a rotary drier. When dried and heated the aggregate is transported to a screening unit which separates the aggregate into various sizes and deposits the graded aggregate into hot storage bins. Aggregate and mineral filler are then weighed and transported to a mixing unit or pug mill where they are mixed with heated asphalt cement to produce asphalt concrete. The resulting asphalt concrete is either stored in a heated silo or loaded directly onto trucks for transport to the job site.

At drum (cold feed) plants a measured amount of aggregate is placed in the drum where it is dried and heated. Heated asphalt cement is added to the same drum and mixed with the aggregate to produce asphalt concrete. The hot asphalt concrete produced by this process then goes to a surge bin or silo for storage until it is loaded onto trucks for delivery.

Hot-mix asphalt plants are often portable. There are three types of portable plants: portable, permanent, and semipermanent. Portable plants move from site to site, and the significant materials and equipment are removed upon completion of the job or project. Portable plants remain at a site anywhere from several days to several months. Permanent portable plants remain at a site on a permanent basis.

Like portable plants, semipermanent plants move from site to site. They differ, however, in that they return to locations on a recurring basis. Significant materials such as aggregate piles remain at the site while the plant is operating elsewhere. For the purposes of this section, semipermanent plants will be referred to as permanent plants, given that the effect on runoff from significant materials will essentially be the same at both sites. "Asphalt facilities" includes both permanent and portable plants unless specified otherwise.

Facilities which manufacture asphalt concrete block feed the asphalt/aggregate mixture into a block molding machine where the mix is rammed, pressed or vibrated into its final form. The product is then stacked and allowed to cure.

b. Manufacturers of roofing materials. Manufacturers classified in standard industrial code 2952 typically produce roofing felts, and impregnated roofing felts (shingles) and other products, such as tar papers, impregnated asphalt siding, expansion joints, roofing cements, tars and pitches. Many of the roofing products consist of materials coated with asphalt purchased from a vendor and then cured and stored out of doors until shipped.

c. Manufacturers of lubricating oils and greases. Facilities primarily engaged in blending, compounding, and re-refining lubricating oils and greases from purchased mineral, animal, and vegetable materials are identified as SIC code 2992. SIC code 2992 includes manufacturers of metalworking fluids, cutting oils, gear oils, hydraulic brake fluid, transmission fluid, and other automotive and industrial oil and greases.

Raw materials for SIC code 2992 facilities are typically petroleum or synthetic based stocks and various additives. The majority of lubricating manufacturers store base stocks and

chemical additives in tank farms or 55-gallon drums. SIC code 2992 facilities do not manufacture these raw materials, but rather blend and compound them to produce the product. Raw materials are proportioned according to the type of lubricant being produced.

"Batch processing" is the common production method relying on the same piece of equipment in manufacturing a variety of products. For example, in one "batch" a facility may combine the petroleum base stock with additive X in a 10,000 gallon blending tank to produce product "A." Using the same blending tank, the next "batch" is a mixture of the base stock and additive Y to produce product "B." Batch processing allows facilities to manufacture a variety of products. Some facilities, however, tend to specialize in producing a particular type of lubricant (e.g., solid, synthetic, or water based), often to meet the demands of a specific industry.

Finished products are packaged in containers or stored for bulk shipment. Almost all facilities have shipping and receiving areas and are involved with marketing and interstate distribution of their products. Most facilities have immediate access roads or rail lines at their facility sites.

2. Pollutants in Storm Water Discharges Associated With Asphalt Facilities and Lubricant Manufacturers

Impacts caused by storm water discharges from asphalt facilities and lubricant manufacturers will vary. Several factors influence to what extent significant materials from these types of facilities and processing operations may affect water quality. Such factors include: geographic location; hydrology/geology; the type of industrial activity occurring outside (e.g., material storage, loading and unloading); the type of material stored outside (e.g., asphalt, aggregate, limestone, oil, etc.); the size of the operation; and type, duration, and intensity of precipitation events. These and other factors will interact to influence the quantity and quality of storm water runoff. For example, air emissions (i.e., settled dust) may be a significant source of pollutants at some facilities, while materials storage is a primary source at others. In addition, sources of pollutants other than storm water, such as illicit connections,[53] spills, and other improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

Based on group application information and data, EPA has identified the storm water pollutants and sources resulting from asphalt facilities and lubricant manufacturers in Table D–1.

Table D–2 indicates the statistically summarized sampling data results for part 2 data submitted to EPA. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of data submittals for each of the conventional pollutants. As Table D–2 indicates, large variations in the minimum and maximum values were often found for each of the eight conventional pollutants monitored. For example:

- Composite samples of TSS ranged from 1 mg/L to 2130 mg/L.
- Grab samples of COD ranged from 0 mg/L to 2740 mg/L.
- Oil and grease values ranged from 0 mg/L to 78 mg/L.

TABLE D–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[1] (MG/L, EXCEPT AS NOTED)

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	81	51	39.9	10.9	0.0	0.0	1220.0	161.0	7.0	4.0	47.0	22.0	1220.0	161.0
COD	64	53	151.6	86.9	0.0	0.0	2740.0	610.0	48.0	50.0	485.0	375.0	2740.0	610.0
Nitrate + Nitrite Nitrogen	62	52	0.97	0.8	0.0	0.0	19.0	12.0	0.3	0.3	2.6	2.4	19.0	12.0
Total Kjeldahl Nitrogen	63	51	2.13	1.6	0.0	0.0	19.0	16.0	1.1	1.0	7.2	6.3	19.0	16.0
Oil & Grease	64	N/A	5.9	N/A	0.0	N/A	78.0	N/A	1.3	N/A	28.0	N/A	78.0	N/A
pH (s.u.)	59	N/A	N/A	N/A	4.4	N/A	9.5	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	63	54	0.4	0.3	0.0	0.0	3.7	1.8	0.1	0.2	1.7	1.3	3.7	1.8
Total Suspended Solids	63	54	287	165	0.0	1	3870	2130	93	46	1330	860	3870	2130

[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

The remaining conventional pollutants sampled also varied in their minimum and maximum values. However, the values were generally low.

The Agency believes that TSS (only at asphalt facilities), COD, and oil and grease may be parameters of concern at asphalt facilities and lubricant manufacturers:

- *Total Suspended Solids (TSS)*—Outdoor storage of piles of aggregate or asphalt may contribute a high concentration of TSS to storm water discharges. The inorganic components of TSS may include sand, silt, and clay. A fraction of organic TSS, in the form of oil and grease, may result from asphalt piles and vehicle maintenance. Because suspended solids increase the turbidity of water, less light is able to penetrate the water, reducing photosynthetic activity of aquatic vegetation. Over time, total suspended solids settle out to form deposits that can be detrimental to stream environments. These deposits may destroy fauna that breed and grow in or near the bottoms of streams and serve as food for fish and other aquatic life. The deposits may also blanket and destroy spawning grounds for fish. The limited data submitted with part 2 of the application process indicate a wide range of minimum and maximum TSS values (0.0 to 3,870 mg/L for grab samples and 1.0 to 2,130 mg/L for flow-weighted composite samples).

The raw materials and finished products potentially exposed at lubricant manufacturers do not typically contain high levels of TSS. In addition, activities which can contribute high levels of TSS to storm water discharges, such as soil disturbing activities or outdoor stockpiling of aggregate, are not common at lubricant manufacturing facilities.

- *Chemical Oxygen Demand (COD)*—COD measures the total amount of oxygen necessary to oxidize compounds in water. The data submitted with the part 2 group applications indicated relatively high levels of COD in storm water runoff. The mean value for 64 grab samples was 152 mg/L, for 53 composite samples, 87 mg/L.

[53] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at mineral mining

At asphalt facilities significant levels of COD in the storm water discharges may result from contact with asphalt piles or other asphalt products.

At lubricating manufacturing facilities, handling of oils and other lubricants may lead to spills which can come into contact with storm water. There is also a potential for materials such as waste oils and waste solvents to be exposed to storm water, in turn contributing significant levels of COD to storm water discharges.

• *Oil and Grease*—Statistically summarized grab samples of oil and grease indicated a mean of 5.9 mg/L and a range of minimum and maximum oil and grease values from 0 to 78 mg/L. Although the mean value for oil and grease is not extremely high, EPA believes that the nature of industrial activities and potential significant materials exposed at asphalt facilities and lubricant manufacturers warrants special consideration of sources of oil and grease at these facilities.

For example, sources of oil and grease from asphalt facilities include vehicle maintenance activities and stockpiles of asphalt materials. At lubricant manufacturing facilities, potential sources include spills of oils and lubricants during loading and unloading, and storage of raw materials and finished products outside.

Water impacted by oil and grease from onsite machinery and materials may exhibit an oxygen demand. Oil and grease emulsions are also detrimental to aquatic organisms and inhabitants because: (1) Deposition of oil and grease in bottom sediments can serve to inhibit normal benthic growths, impacting the aquatic food chain; (2) oil and grease emulsion may destroy algae or other plankton; (3) oil and grease emulsions may adhere to the gills of fish exerting a toxic effect to fish; and (4) water insoluble components damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. In addition to environmental impacts, oil and grease impact the aesthetic qualities of water by forming unsightly surface slicks that affect water beaches and shorelines.

3. Options for Controlling Pollutants

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology (BCT)]. This section establishes requirements for the development and implementation of a site-specific storm water pollution prevention plan consisting of a set of BMPs that are sufficiently flexible to address different sources of pollutants at different sites.

Two types of BMPs which may be implemented to prevent, reduce or eliminate pollutants in storm water discharges are those which minimize exposure (e.g., covering, curbing, or diking) and treatment type BMPs which are used to reduce or remove pollutants in storm water discharges (e.g., oil/water separators, sediment basins, or detention ponds). EPA believes exposure minimization is an effective practice for reducing pollutants in storm water discharges from asphalt facilities and lubricant manufacturers. Exposure minimization practices lessen the potential for storm water to come in contact with pollutants. These methods are often uncomplicated and inexpensive. They can be easy to implement and require little or no maintenance. EPA also believes that in some instances more resource intensive treatment type BMPs are appropriate to reduce pollutant levels such as suspended solids and oil/grease in storm water discharges associated with asphalt facilities or lubricant manufacturers. Though these BMPs are somewhat more resource intensive, they can be effective in reducing pollutant loads and may be necessary depending on the type of discharge, types and concentrations of contaminants, and volume of flow.

Table D–3 lists some BMPs which may be effective in limiting the amount of pollutants in storm water discharges from asphalt facilities and lubricant manufacturers. Based on part 1 information, several of the BMPs suggested are already in place at many of the facilities. Part 1 submittals indicate that diking, curbing, or other types of diversion occur at approximately 57 percent of the facilities. 25 percent of the facilities noted that they use some form of covering as a BMP, and detention ponds are in place at 19 percent of the facilities. In addition, 38 percent of the facilities submitting part 1 information reported they had a Spill Prevention Control and Countermeasure Plan in place.

TABLE D–3.—MEASURES TO CONTROL POLLUTANTS IN STORM WATER DISCHARGES FROM ASPHALT FACILITIES AND LUBRICANT MANUFACTURERS

Activity	Suggested BMPs
Asphalt Facilities and Lubricant Manufacturers	
Material Storage, Handling, and Processing	Cover material storage and handling areas with an awning, tarp or roof. Practice good stockpiling practices such as: storing materials on concrete or asphalt pads; surrounding stockpiles with diversion dikes or curbs; and revegetating areas used for stockpiling in order to slow runoff.
	Use curbing, diking or channelization around material storage, handling and processing areas to divert runon around areas where it can come into contact with material stored or spilled on the ground.
	Utilize secondary containment measures such as dikes or berms around asphalt storage tanks and fuel oil tanks.
	Use dust collection systems (i.e., baghouses) to collect airborne particles generated as a result of material handling operations or aggregate drying.
	Properly dispose of waste materials from dust collection systems and other operations.
	Remove spilled material and dust from paved portions of the facility by shoveling and sweeping on a regular basis.
	Utilize catch basins to collect potentially contaminated storm water.
	Implement spill plans to prevent contact of runoff with spills of significant materials.

TABLE D-3.—MEASURES TO CONTROL POLLUTANTS IN STORM WATER DISCHARGES FROM ASPHALT FACILITIES AND LUBRICANT MANUFACTURERS—Continued

Activity	Suggested BMPs
	Clean material handling equipment and vehicles to remove accumulated dust and residue. Use a detention pond or sedimentation basin to reduce suspended solids. Use an oil/water separator to reduce oil/grease.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with facilities in this category.

4. Storm Water Pollution Prevention Plan Requirements

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from asphalt facilities and lubricant manufacturers. Pollution prevention plans allow the operator of a facility to select BMPs based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology, the environmental setting of each facility, and volume and type of discharge generated. This flexibility is necessary because each facility will be unique in that the source, type and volume of contaminated surface water discharges will differ from site to site.

All facilities subject to this section must prepare and implement a storm water pollution prevention plan. The establishment of a pollution prevention plan requirement reflects EPA's decision to allow operators of asphalt facilities and lubricant manufacturers to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The requirements included in pollution prevention plans provide a flexible framework for the development and implementation of site specific controls to minimize pollutants in storm water discharges. This is consistent with the approach in EPA's storm water baseline general permits finalized on September 9, 1992 (57 FR 41236).

There are two major objectives to a pollution prevention plan: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility. Specific requirements for a pollution prevention plan for asphalt facilities and lubricant manufacturers are described below. These requirements must be implemented in addition to the baseline pollution prevention plan provisions discussed previously.

(1) Description of potential pollution sources. There are no additional requirements beyond those described in Part VI.C.2. of this fact sheet.

(2) Measures and controls. There are no additional requirements beyond those described in Part VI.C.3. of this fact sheet.

(3) Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to: (1) Confirm the accuracy of the description of potential pollution sources contained in the plan; (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of today's proposed permit. Comprehensive site compliance evaluations should be conducted twice a year for asphalt facilities and lubricant manufacturers. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

Comprehensive site compliance evaluations should be conducted at least once at portable plant locations.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

For portable plants, the plan must be revised as appropriate as soon as possible, but no more than 2 weeks after each inspection.

5. Numeric Effluent Limitations

Part XI.D.4 of today's proposed permit established numeric effluent limitations for storm water discharges resulting from the production of asphalt paving and roofing emulsions. Discharges from areas where production of asphalt paving and roofing emulsions occurs may not exceed a TSS concentration of 23.0 mg/L of runoff for any one day, nor shall the average of daily values for 30 consecutive days exceed a TSS concentration of 15.0 mg/L of runoff. Oil and grease concentrations in storm water discharges from these areas may not exceed 15.0 mg/L of runoff for any 1 day, nor should the average daily values for 30 consecutive days exceed an oil and grease concentration of 10.0 mg/L of runoff. The pH of these discharges must be within the range of 6.0 to 9.0. Facilities with such discharges must be in compliance with these effluent limitations upon commencement of coverage and for the entire term of the permit. These effluent limitations are in accordance with 40 CFR 443.12 and 40 CFR 443.13, Effluent Guidelines and Standards, Paving and Roofing Materials Point Source Category, Asphalt Emulsion Subcategory. These limitations represent the degree of effluent reduction attainable by the application of best practicable control technology and best available technology.

6. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the

industrial activities and materials exposed to precipitation, does not support sampling (except for those parameters that have numeric effluent limitations—Parts VIII.D.5. and VIII.D.6.b.) at asphalt paving and roofing materials manufacturers and lubricant manufacturers. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized.

Quarterly visual inspections of a storm water discharge from each outfall are required at asphalt facilities and lubricant manufacturers. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

b. Compliance monitoring requirements. Today's proposed permit requires permittees with storm water discharges associated with the production of asphalt paving or roofing emulsions to monitor for the presence of total suspended solids, oil and grease, and for pH. These monitoring requirements are necessary to evaluate compliance with the numeric effluent limitation proposed for these discharges. EPA requests comment upon the appropriateness of proposed monitoring frequency for these discharges. Monitoring shall be performed upon a minimum of one grab sample. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls. The permittee shall include a description of the location of the outfalls, an explanation of why outfalls are expected to discharge substantially identical effluents, and an estimate of the size of the drainage area and runoff coefficient with the monitoring results. Monitoring results shall be submitted Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the month following collection of the sample. Facilities which discharge through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system.

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.D.5. of today's proposed permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, asphalt facilities and lubricant manufacturers must monitor their storm water discharges at least annually (1 time per year) except as provided in Part VI.A.7. (Sampling Waiver). Portable plant facilities which are located at a site 3 months or more are required to monitor their storm water discharges.

Asphalt facilities must monifor storm water discharges for Total Suspended Solids (TSS), Chemical Oxygen Demand (COD), pH, and oil and grease. These monitoring requirements are summarized in Table D–4 below.

TABLE D–4.—MONITORING REQUIREMENTS FOR ASPHALT FACILITIES

Parameter	Unit	Frequency	Sample/ type
Total Flow	MG	Annual	Estimate.
Total Suspended Solids (TSS)	mg/L	Annual	Grab.
Chemical Oxygen Demand (COD)	mg/L	Annual	Grab.
pH	s.u	Annual	Grab.
Oil and Grease	mg/L	Annual	Grab.
Duration	Hrs	Annual	Estimate.
Rainfall Measurements	inches	Annual	Estimate.
Duration Between Storm Events	Hrs	Annual	Estimate.
Total Volume of Discharge	Gallons	Annual	Estimate.

Lubricant manufacturers must monitor storm water discharges for COD, pH, and oil and grease. These monitoring requirements are summarized in Table D–5 below.

TABLE D–5.—MONITORING REQUIREMENTS FOR LUBRICANT MANUFACTURERS

Parameter	Unit	Frequency	Sample/ type
Total Flow	MG	Annual	Estimate.
Chemical Oxygen Demand (COD)	mg/L	Annual	Grab.
pH	s.u	Annual	Grab.
Oil and Grease	mg/L	Annual	Grab

The facilities identified above are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E.4 (Retention of Records). In addition to the parameters listed below, the permittee shall record the following:

- Estimate of the flow of the discharge sampled;
- Date and duration (in hours) of the storm event(s) sampled;
- Rainfall measurements (in inches) of the storm event which generated the sampled runoff;
- Duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event;
- Estimate of the total volume (in gallons) of the each discharge sampled.

b. Sample type. Facilities covered by this permit must only collect and analyze a grab sample from their storm water discharges. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

c. Visual inspection requirements. All asphalt facilities will be required to conduct quarterly visual inspections of their discharges for sediment, oil and grease, and other visible signs of contamination. The facility will establish a record of visual observations that will be kept with the pollution prevention plan. In the event a facility observes a discharge with oil and grease or other reportable hazardous substance in excess of a reportable quantity (see 40 CFR parts 110, 117, or 302), the facility will document preventative and corrective actions taken to minimize the potential for recurrence. This permit does not relieve permittees of the reporting requirements of 40 CFR part 117 and 40 CFR part 302.

E. Storm Water Discharges Associated With Industrial Activity From Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition included point source discharges of storm water from eleven categories of facilities. Category (ii) identifies facilities classified as Standard Industrial Classification (SIC) code 32, as having storm water discharges associated with an industrial activity.

The following section describes the industrial activities and proposed permit conditions for storm water discharges associated with industrial activity classified under Major SIC Group 32. The discussion focuses on the industries covered by today's proposed permit. There are industries in Major SIC Group 32 beyond those discussed below; however, representatives of these industries did not choose to participate in the group application process on which this section is based.

1. Discharges Covered Under This Section.

This section only covers storm water discharges associated with industrial activities from facilities engaged in gypsum, cement, clay, glass, and concrete products manufacturing.[54] Facilities subject to the requirements of this section include the following types of manufacturing operations:

- Flat Glass, (SIC Code 3211);
- Glass Containers, (SIC Code 3221);
- Pressed and Blown Glass, Not Elsewhere Classified, (SIC Code 3229);
- Hydraulic Cement, (SIC Code 3241)
- Brick and Structural Clay Tile, (SIC Code 3251);
- Ceramic Wall and Floor Tile, (SIC Code 3253);
- Clay Refractories, (SIC Code 3255);

[54] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings.

- Porcelain Electrical Supplies, (SIC Code 3264);
- Pottery Products, (SIC Code 3269);
- Concrete Block and Brick, (SIC Code 3271);
- Concrete Products, Except Block and Brick (SIC Code 3272);
- Ready-Mix Concrete, (SIC Code 3273);
- Gypsum Products, (SIC Code 3275);
- Minerals and Earths, Ground or Otherwise Treated, (SIC Code 3295);
- Nonclay Refractories, (SIC Code 3297).

Storm water discharges covered by this section are discharges where precipitation and storm water runon come into contact with significant materials including, but not limited to, raw materials, waste products, by-products, stored materials, fuels, and areas used for bagging and packaging operations. This includes storm water discharges from access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by the facility. Wash waters from vehicle and equipment cleaning areas are process wastewaters. This section does not cover any storm water that combines with process wastewater, unless the process wastewater is in compliance with another NPDES permit. This section does not cover any discharge subject to an existing or expired NPDES general permit. The section may cover runoff which derives from the storage of materials used in or derived from the cement manufacturing process,[55] unless storm water discharges are already subject to an existing or expired NPDES permit.

Discharges from several industrial activities in Major SIC Group 32 are not covered by this section. These activities are:

- Lime manufacturing (SIC 3274)
- Cut stone and stone products (SIC 3281)
- Abrasive Products (SIC 3291)
- Asbestos Products (SIC 3292)
- Mineral Wool and Mineral Wool Insulation Products (SIC 3297).

These types of facilities are not covered by this (or any other) section of today's proposed permit, because these types of industrial activities were not represented in the group application process nor are they believed to be sufficiently similar to industrial activities that were included in the group application process. Because these facilities were not included in the group application process there is no additional information with which to develop industry-specific permit language.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

a. Industry profile. Part XI.E. of today's proposed permit has been developed for storm water discharges from glass, clay, cement, concrete, and gypsum products manufacturers. As stated above, these facilities are regulated under category (ii) of the definition of storm water discharges associated with industrial activity. Part XI.E. of today's proposed permit addresses the industry-specific proposed permit requirements for storm water discharges from these industries.

There are a variety of industrial processes that occur at manufacturing facilities covered under this section. The following descriptions summarize basic operations occurring at each type of industry.

(*1*) *Glass product manufacturing.* Facilities primarily engaged in the manufacturing of glass and glassware, or manufacturing glass products from purchased glass are classified under standard industrial groups 321–323. Facilities covered by these SIC codes share several similar steps in the manufacturing process. Such processes include the storage of raw materials, weighing the materials, charging, melting and forming. Although the forming processes vary greatly, the steps with a potential exposure to storm water are somewhat homogeneous.

The first step in the glass manufacturing process is batch preparation. This involves the selection and storage of the raw materials that will be used in the process. Such materials may include silica sand, limestones, feldspars, borates, soda ash, boric acid, potash and barium carbonate. Once the desired characteristics of the final product are assessed, the composition of the batch is determined and the raw materials are mixed together. The batch is then conveyed to the furnaces.

Furnaces are used to melt the batch to produce glass. Most of the furnaces in the glass manufacturing industry are fueled by natural gas or oil. The batch is placed in the furnace and allowed to melt. Once the glass has been melted and conditioned it is channeled to a forming machine.

Forming operations consist of up to four major steps, the first of which involves a further conditioning process to prepare the glass for primary forming. Primary forming, which may include drawing, blowing, pressing, or casting, is the second step in the forming operation. This operation is usually followed by an annealing step. Annealing is the process of subjecting the glass to heat and slow cooling in order to toughen the product. The final process in the forming operation may include one or more secondary operations. Operations such as grinding and polishing, laminating, sealing and coating of glass are common secondary operations. Materials used for secondary operations vary, examples are the resins used to laminate glass to produce safety glass products, such as car windows.

(*2*) *Cement manufacturing.* Facilities primarily engaged in manufacturing hydraulic cement (e.g., portland, natural, masonry, and pozzolana cements) are identified as SIC code 3241. The manufacturing process is generally the same for all facilities classified as SIC 3241. The three basic steps in cement manufacturing are: (1) Proportioning, grinding, and blending raw materials; (2) heating raw materials to produce a hard, stony substance known as "clinker"; and (3) combining the clinker with other materials and grinding the mixture into a fine powdery form.

The first step in cement manufacturing is proportioning, grinding and blending raw materials. The primary raw material is lime. Lime is typically obtained from limestone, cement rock, oyster shell marl, and chalk. Other ingredients in cement manufacturing may include silica, alumina, and iron. The blending and grinding of these raw materials is

[55] These discharges are subject to effluent limitation guidelines under 40 CFR 412.11.

achieved through either "wet" processing or "dry" processing. Wet processing operations use water when grinding and blending raw materials, and dry processing operations grind and blend raw materials in a dried state. Until they are fed into kilns for clinker production, materials ground from wet processing are stored in slurry tanks, while dry processing materials are stored in silos.

Kilns typically are coal, gas, or oil fired. In the kiln raw materials are commonly heated to a temperature of 1600 degrees Celsius (2900 degrees Fahrenheit). At these extreme temperatures, clinker is formed as raw materials begin to fuse and harden. Air is then used to cool clinker emerging from the kiln.

The final stage of the process involves adding small amounts of gypsum or stone (used to control setting times) to the clinker and grinding the mixture into a fine powdery form. The powdery product is then cooled before storage, bagging, and shipping.

There are facilities classified as SIC 3241 with industrial activities focussed only on producing cement as a final product. These facilities do not have kilns to heat raw materials, and so obtain clinker from manufacturing plants. Once in possession of the clinker, these facilities follow the final stage of cement manufacturing, as described above.

(3) *Clay product manufacturing.* Facilities primarily engaged in manufacturing clay products, including brick, tile (clay or ceramic), or pottery products are classified as standard industrial groups 325 and 326. Although clay product manufacturing facilities produce a wide variety of final products, there are several similar processing steps shared by most facilities in this industry: (1) storage and preparation of raw materials; (2) forming; (3) drying; (4) firing; and (5) cooling.

Manufacturers classified as standard industrial groups 325 and 326 typically use clay (common, silt, kaolin and/or phyllite) and shale (mud, red, blue and/or common) as their primary raw materials. However, some industries supplement these materials with slag (cinders), cement and lime. Raw materials are generally stored outside.

Raw materials are crushed and ground prior to manufacturing. Stones are removed, and particles of raw materials are screened to ensure they are the correct size. Water is then added to raw materials in mixing chambers and "mud" is formed. The mud is molded into the desired product during the forming stage. Depending on the final product, one of several different methods will be used when forming mud into the desired shape. The most common methods use pressure or hydraulic machines to shape products.

Following the forming process, products are left to dry. Drying is necessary to reduce the moisture content prior to firing. A common method for reducing moisture content is air drying clay products in a controlled environment (e.g., a drying chamber). When the drying process is complete, the clay is ready for firing in kilns.

There are two basic types of kilns: the periodic kiln and the tunnel kiln. With a periodic kiln, products are fired for a specified period of time and then promptly removed. With a tunnel kiln, products pass through the kiln on conveyor belts, and by the time the clay reaches the end of the kiln, the firing process is complete. The primary source of energy for most firing kilns is natural gas. Natural gas is typically supplemented with coal, sawdust, or oil. Fired products may then be glazed with salt or other materials for special applications.

(4) *Concrete products.* Facilities primarily engaged in manufacturing concrete products, including ready-mixed concrete, are identified as SIC group 327. Although concrete product facilities in SIC group 327 produce a variety of final products, they all have common raw materials and activities.

Concrete products manufacturers combine cement, aggregate, and water to form concrete. Aggregate generally consists of: sand, gravel, crushed stone, cinder, shale, slag, clay, slate, pumice, vermiculite, scoria, perlite, diatomite, barite, limonite, magnetite, or ilmenite. Admixtures including fly ash, calcium chloride, triethanolamine, calcium salt, lignosulfunic acid, vinosol, saponin, keratin, sulfonated hydrocarbon, fatty acid glyceride, vinyl acetate, and styrene copolymer of vinyl acetate may be added to obtain desired characteristics, such as slower or more rapid curing times.

Typically, aggregate is received in bulk quantities by rail, truck, or barge. It is stored outside, and kept moist, until it is conveyed to distribution bins. The first stage in the manufacturing process is proportioning cement, aggregate, admixtures and water, and then transporting the product to a rotary drum, or pan mixer.

To form concrete block and brick, the mixture is then fed into an automatic block molding machine that rams, presses, or vibrates the mixture into its final form. The final product is then stacked on iron framework cars where it cures for 4 hours. Decorative blocks may be produced by adding colors to the mix, or splitting the surface into desired shapes.

Precast concrete products, may contain steel structural members for increased strength. These products include transformer pads, meter boxes, pilings, utility vaults, steps, cattle guards, and balconies. After being mixed in a central mixer, concrete is poured into forms or molded in the same manner as concrete block and brick. Forms are often coated with a release oil to aid stripping. The concrete "sets" or cures in the forms for a number of hours (depending upon the type of admixtures used). When the concrete has cured, the forms are removed. Forms are washed for reuse, and the concrete products are stored until they can be shipped.

In addition to the permanent concrete product facilities, there are a number of portable ready mix concrete operations which operate on a temporary basis. The portable plants are typically dedicated to providing ready mix concrete to one construction project. Portable plants have the same significant materials and industrial activities as permanent facilities. Therefore, portable concrete plants are eligible for coverage under Part XI.E. of today's proposed permit.

(5) *Gypsum products manufacturing.* Facilities primarily engaged in manufacturing plaster, wallboard, and other products composed wholly or partially of gypsum (except plaster of paris and papier-mâché) are classified as SIC code 3275.

The gypsum product manufacturing process begins with calcining the gypsum: finely ground raw gypsum (referred to as "land plaster") is fed into imp mills or calcining kettles where extreme heat removes 75 percent of the gypsum's molecular moisture. The result is a dry powder called stucco, which is cooled and conveyed to storage bins.

To produce wallboard, stucco is fed into pin mixers where it is blended with water and other additives to produce a slurry. The slurry is then applied to continuous sheets of paper to form wallboard. In addition to producing wallboard, some facilities may combine stucco with additives (excluding water) to produce plaster. Plaster is then bagged or bulked and shipped off site for purchase.

EPA considers calcining the first step in gypsum product manufacturing. Many facilities with a primary SIC code of 3275 may have mining/quarry and crushing activities at their sites. Please note, however, that because these activities are not considered part of the manufacturing operations, storm water

discharges from mining/quarry and crushing are not covered under Part XI.E. of today's proposed permit. Discharges associated with gypsum mining activities are addressed under Part XI.J. of today's proposed permit and VIII.J. of the fact sheet.

2. Pollutants in Storm Water Discharges Associated With Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing

Impacts caused by storm water discharges from gypsum, concrete, clay, glass, and concrete manufacturing operations will vary. Several factors influence to what extent industrial activities and significant materials from these types of facilities and processing operations can affect water quality. Such factors include: geographic location; hydrogeology; the type of industrial activity occurring outside (e.g., material storage, loading and unloading, or vehicle maintenance); the type of material stored outside (e.g., aggregate, limestone, clay, concrete, etc.); the size of the operation; and type, duration, and intensity of precipitation events. These and other factors will interact to influence the quantity and quality of storm water runoff. For example, air emissions (i.e., settled dust) may be a significant source of pollutants at some facilities, while material storage is a primary source at others. In addition, sources of pollutants other than storm water, such as illicit connections,[56] spills, and other improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

Table E–1, Potential Sources of Pollutants in Storm Water Discharges Associated with Glass, Clay, Cement, Concrete, and Gypsum Manufacturing, summarizes the industrial activities indicated in the part 1 group applications for facilities covered under this section of today's proposed permit. Table E–1 also lists the likely sources of contamination of storm water that are associated with this activity. The third column of the table lists the pollutants or the indicator parameters for the pollutants which may be present in the storm water discharges associated with the industrial activity. The table is limited to the industrial activities which are commonly exposed to storm water. Industrial activities which predominantly occur indoors, such as glass forming, are not listed in Table E–1.

TABLE E–1.—POTENTIAL SOURCES OF POLLUTANTS IN STORM WATER DISCHARGES ASSOCIATED WITH GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM MANUFACTURING

Activity	Pollutant source	Pollutants/Indicators
Material Storage at Glass Manufacturing Facilities.	Exposed: sand, soda ash, limestone, cullet, and petroleum products.	TSS, COD, oil and grease, pH, lead.
Material Handling at Glass Manufacturing Facilities.	Spilled: sand, soda ash, limestone, cullet, and petroleum products.	TSS, pH, COD, oil and grease, lead.
Materials Storage at Clay Products Manufacturing Facilities.	Exposed: ceramic parts, pryophyllite ore, shale, ball clay, fire clay, kaolin, tile, silica, graphite, coke, coal, brick, sawdust, waste oil, and used solvents.	TSS, pH, COD, oil and grease, aluminum, lead, zinc.
Material Handling at Clay Products Manufacturing Facilities Including: Loading/Unloading.	Exposed: ceramic parts, liquid chemicals, ammonia, waste oil, used solvents, pryophyllite ore, shale, ball clay, fire clay, kaolin, tile, alumina, silica, graphite, coke, coal, olivine, magnesite magnesium carbonate, brick, sawdust, and wooden pallets.	TSS, pH, oil and grease, TKN, COD, BOD, aluminum, lead, zinc.
Forming/Drying Clay Products	Clay, shale, slag, cement, and lime	TSS, pH.
Material Storage at Cement Manufacturing Facilities.	Exposed: kiln dust, limestone, shale, coal, clinker, gypsum, clay, slag, and sand.	TSS, pH, COD, potassium, sulfate.
Material Handling at Cement Manufacturing Facilities.	Exposed: kiln dust, limestone, shale, coal, clinker, gypsum, clay, slag, anhydrite, and sand.	TSS, pH, COD, potassium, sulfate, oil and grease.
Crushing/Grinding at Cement Manufacturing Facilities.	Settled dust and ground limestone, cement, oyster shell, chalk, and clinker.	TSS, pH.
Material Storage at Concrete Product Manufacturing Facilities.	Exposed: aggregate (sand and gravel), concrete, shale, clay, limestone, slate, slag, and pumice.	TSS, COD, pH.
Material Handling at Concrete Product Manufacturing Facilities.	Exposed: aggregate, concrete, shale, clay, slate, slag, pumice, and limestone as well as spills or leaks of cement, fly ash, admixtures and baghouse settled dust.	TSS, COD, pH, lead, iron, zinc.
Mixing Concrete	Spilled: aggregate, cement, and admixture	TSS, pH, COD, lead, iron zinc.
Casting/Forming Concrete Products	Concrete, aggregate, form release agents, reinforcing steel, latex sealants, and bitumastic coatings.	TSS, pH, oil and grease, COD, BOD.
Vehicle and Equipment Washing at Concrete Product Manufacturing Facilities.	Residual: aggregate, concrete, admixture, oil and grease.	TSS, pH, COD, oil and grease.
Crushing/Grinding of Gypsum Rock	Exposed or spilled: gypsum rock and dust	TSS, pH.
Material Storage at Gypsum Manufacturing Facilities.	Exposed: gypsum rock, synthetic gypsum, recycled gypsum and wallboard, stucco, perlite ore/expanded perlite, and coal.	TSS, COD, pH.

[56] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings.

TABLE E–1.—POTENTIAL SOURCES OF POLLUTANTS IN STORM WATER DISCHARGES ASSOCIATED WITH GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM MANUFACTURING—Continued

Activity	Pollutant source	Pollutants/indicators
Material Handling at Gypsum Manufacturing Facilities (including bagging and packaging).	Exposed or spilled: gypsum rock, synthetic gypsum, recycled gypsum and wallboard, stucco, perlite ore/expanded perlite, and coal.	TSS, pH, COD.
Equipment/Vehicle Maintenance	Gasoline, diesel, fuel, and fuel oil	Oil and grease, BOD, COD.
	Parts cleaning	COD, BOD, oil and grease, pH.
	Waste disposal of solvents, oily rags, oil and gas filters, batteries, coolants, and degreasers.	Oil and grease, lead, iron, zinc, aluminum, COD, pH.
	Fluid replacement including lubricating fluids, hydraulic fluid, oil, transmission fluid, radiator fluids, solvents, and grease.	Oil and grease, arsenic, lead, cadmium, chromium, COD, and benzene.

The activities common to the facilities covered under Part XI.E. of today's proposed permit are material storage and material handling operations. All facilities covered under this section handle and store nonmetallic minerals. These minerals are typically loaded and unloaded in areas of the site that are exposed to storm water. The minerals are often stored outdoors until they are utilized in the industrial processes. Handling and storing these minerals outdoors may result in the discharge of a portion of the materials in storm water runoff. The presence of the nonmetallic minerals in the storm water is measured by the total suspended solids (TSS) test. Many of the minerals processed by the facilities are calcareous, such as limestone or chalk. The presence of these materials can elevate the pH of the storm water discharged from the site.

Vehicle fueling, repair, maintenance and cleaning occurs at many facilities covered under this section. Facilities will fuel, repair and maintain vehicles used to transport significant materials to, from or around the facility. Facilities may also perform maintenance on process or material handling equipment such as mixers or conveyors. The fueling, maintenance and repair activities may result in leaks or spills of oil from the vehicles and equipment. The spilled material may be carried off of the site in the storm water discharge.

Ready mix concrete facilities will frequently wash out the mixers of the trucks after concrete has been delivered to a job site. The wash out water contains unhardened concrete. Facilities will often wash down the exterior of their vehicles. The wash off water may contain cement, sand, gravel, clay, or other materials. The wash water from the vehicles should be either treated and discharged from the site through a sanitary sewer or NPDES permitted discharge or collected in a recycle pond where the heavy solids settle out and the water is recycled back to be used in the plant. Pollutants from the wash water may settle out on the site before it is treated or recycled. These pollutants may come into contact with storm water and be discharged from the site.

Table E–2 indicates the statistically summarized conventional pollutant sampling data for the glass, cement, clay, concrete, and gypsum manufacturing facilities that submitted part 2 data to EPA prior to January 1, 1993. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of data submittals for each of the conventional pollutants. Large variations in the minimum and maximum values were often found for each of the eight conventional pollutants monitored.

Based upon a review of the data contained in applications, EPA has concluded that there are several pollutant parameters of concern for the storm water discharges associated with the industrial activities covered under this section of today's proposed permit. The pollutants of concern are: total suspended solids, aluminum, copper, iron, and zinc.

TABLE E–2.—SUMMARY OF POLLUTANTS IN STORM WATER DISCHARGES FROM GLASS, CEMENT, CLAY CONCRETE, AND GYPSUM PRODUCT MANUFACTURING FACILITIES[i, ii]

(mg/L, except as noted)

Pollutant	No. of samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample type	Grab	Comp[iii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	310	300	14.3	7.3	0.0	0.0	1300.0	120.0	5.0	4.2	32.0	25.0	96.0	66.5
COD	313	302	107.5	77.5	0.0	0.0	2230.0	911.0	51.3	43.2	317.0	240.0	955.0	512.0
Nitrate + Nitrite Nitrogen	303	292	2.0	1.4	0.0	0.0	280.0	145.0	0.6	0.8	3.03	3.0	11.7	17.5
Total Kjeldahl Nitrogen	304	292	3.81	2.37	0.0	0.0	450.0	250.0	1.15	1.0	7.0	5.0	25.0	17.3
Oil & Grease	315	N/A	4.7	N/A	0.0	N/A	130.0	N/A	1.4	N/A	17.1	N/A	59.4	N/A
pH (s.u.)	297	N/A	N/A	N/A	2.0	N/A	12.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	313	300	1.21	0.87	0.00	0.00	34.50	20.40	0.28	0.25	4.96	3.24	18.0	13.8
Total Suspended Solids	311	302	1067	366	0.0	0.0	61000	13400	200	149	2620	1440	17085	2510
Aluminum	13	12	72.6	96.87	.15	0.0	900	1100	3.1	1.6	900	1100	900	1100
Copper	6	5	.131	.16	0.0	0.0	.4	.4	.019	.041	.4	.4	.4	.4
Iron	11	11	7.57	5.216	.118	.13	29	14	3.48	4.1	29	14	29	14
Zinc	8	7	.354	.389	.02	.021	1.17	1.12	.137	.18	1.17	1.12	1.17	1.12

[i] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[ii] All parameters reported as nondetect (ND) were assumed to be 0.0.
[iii] Composite samples.

• *Total Suspended Solids (TSS)*—TSS is a measure of the solid material suspended in the storm water. As indicated in Table E–1, TSS can be introduced to storm water by all of the exposed industrial activities which occur at facilities covered under this section of today's proposed permit. The significant materials utilized by this industry are primarily dry granular or powder-like materials that can be washed away by storm water runoff. The median concentration for grab samples collected from discharges associated with the type of facilities covered by this section was 200 mg/L. The median concentration for composite samples was 149 mg/L. These discharge concentrations are about three to four times higher than the 50 mg/L effluent limitation guidelines established by EPA for runoff from material storage piles at cement manufacturing facilities.[57]

• *Chemical Oxygen Demand (COD)*—COD is a measure of the content of organic matter which will oxidize in a strong acid. The potential sources of the COD in storm water runoff from facilities covered under this section are leaked or spilled fuel, oil or grease from the vehicles and other equipment utilized in the material handling and processing activities. The other potential source of pollutants are leaked or spilled admixtures used in the production of ready mix concrete. The median concentration of COD in storm water grab samples collected from facilities covered under this section of today's proposed permit was 51.3 mg/L. The median concentration in storm water composite samples was 43.2 mg/L.

• *pH*—pH is a measure of the degree to which a solution is acidic or basic. The pH of storm water discharges from facilities covered under this section can be increased by contact with calcareous materials such as limestone. Thirty percent of the grab samples collected from storm water discharges had a pH that was higher than 9.0, which is the upper effluent limitation guideline established by EPA for runoff from material storage piles at cement manufacturing facilities.[58] The highest observed pH was 12.3.

The remaining conventional pollutants are not believed to be of concern for storm water discharges from this industry. Biochemical Oxygen Demand (BOD), the measure of the oxygen required by microorganisms to break down pollutants, is not a parameter of concern because the significant materials used in these industries are not biodegradable. The median concentrations of 5-day BOD were 5.0 mg/L in grab samples and 4.2 mg/L in composite samples. Based upon the data provided in the group application process nutrients, nitrogen and phosphorus, are not pollutants of concern in storm water discharges from glass, clay, cement, concrete or gypsum manufacturing facilities. The significant materials handled at these facilities do not contain a high amount of nitrogen or phosphorus. As indicated in Table E–2, the concentration of Total Kjeldahl nitrogen, nitrate plus nitrite nitrogen, and phosphorus are low. The mean concentration of these parameters in composite samples of storm water discharges from Major SIC Group 32 facilities is similar to the average concentration of samples collected from storm water discharges from residential or commercial areas.[59]

Based upon the data provided, oil and grease is not a pollutant of concern for this industry. Oil and grease is a method used to determine the amount of material within a sample that is soluble in an organic extracting solvent. The test measures the amount of petroleum hydrocarbons within a sample, but it can also measure the presence of chlorophyll, organic dyes or certain sulfur compounds.[60] The expected sources of oil and grease at facilities covered under this section of today's proposed permit are leaks and spills from process equipment and vehicles, and from form releasing agents.

Potassium and sulfate are pollutants found in the storm water discharges from the cement manufacturing industries. These pollutants are present in the raw materials used in cement manufacturing and are found in the kiln dust. Several facilities submitted sampling data for sulfate. The concentration of sulfate in the composite samples ranged from 12.1 mg/L to 1,340 mg/L. The concentration of sulfate in grab samples ranged from 0 mg/L to 1,450 mg/L. Sampling data on the concentration of potassium in storm water discharges was not submitted by the group participants. Potassium and sulfate are not considered to be parameters of concern for the entire industry sector. The data submitted indicate that most facilities do not have reason to believe these parameters are present in their storm water discharges.

The remaining pollutants found in storm water discharges from glass, clay, cement, concrete, or gypsum manufacturing facilities are the metals: aluminum, iron, lead and zinc. A small portion of the facilities did submit data for these parameters, and the metals listed above were found in a few storm water discharges in concentrations greater than the respective acute fresh water quality criteria.[61] There are a number of potential sources for these metals including: the raw materials such as clay, slag, cinders, and fly ash; and the vehicle maintenance areas.

The discharge information data presented in Table E–2 is based upon incomplete application data. A large portion of the groups were unable to submit the required sampling data to EPA by October 1, 1992. Table E–2 does not distinguish between data collected from the distinct types of industrial activities included in Major SIC Group 32.

Because of the variety of industrial activities which are classified under Major SIC Group 32, EPA has grouped and examined the data submitted by industry sub-sector. One sub-sector, the glass product manufacturing sub-sector, demonstrated a significantly smaller potential for contamination of storm water than the other industries in Major SIC Group 32. Storm water discharges from the glass manufacturing segment have generally lower concentrations of TSS and COD. The pH of the storm water discharges for the glass manufacturing industry tended to be lower than the sector as a whole. EPA believes this is due to the lower amount of industrial activity exposed to storm water for the glass industry in comparison to the other industries under Major SIC Group 32.

3. Options for Controlling Pollutants

There are a number of options for eliminating or minimizing the presence of pollutants in storm water discharges from glass, clay, cement or concrete product manufacturing facilities. In evaluating the options for controlling pollutants in the storm water discharges associated with the industrial activities covered under this section, EPA must comply with the requirements of Section 402(p)(3) of the Clean Water Act which require the compliance with the Best Available Technology (BAT) and Best Conventional Technology (BCT).

EPA believes that it is infeasible to develop effluent limitations for storm

[57] 40 CFR part 412. "Effluent Guidelines and Standards, Cement Manufacturing Point Source Category."

[58] 40 CFR part 412 "Effluent Guidelines and Standards, Cement Manufacturing Point Source Category."

[59] From "Results of the Nationwide Urban Runoff Program, Vol. 1- Final Report," EPA 1983.

[60] "Standard Methods for the Examination of Water and Wastewater," 18th ed., APHA, AWWA, and WEF, 1992.

[61] "Quality Criteria for Water," 1986 (EPA 440/5–86–001) EPA Office of Water, May 1987.

water discharges associated with glass, clay, cement, or concrete manufacturing beyond those already established in the Effluent Limitation Guidelines. There are significant variations from site to site on the industrial activity and significant materials exposed to storm water. The data collected to date is inadequate to characterize these variations. Therefore, EPA believes that the requirement for a facility operator to develop a pollution prevention plan which considers the specific conditions at his or her site satisfies the BAT/BCT requirements. The pollution prevention plan will call for the implementation of best management practices that minimize contact between the storm water and pollutant sources or which remove pollutants from the storm water before it is discharged from the site. Table E–3 lists the pollution prevention measures or best management practices which are most applicable to facilities classified in major SIC Group 32. The table is organized by the specific industrial activities which may introduce pollutants to storm water. The right column lists corresponding BMPs which may be introduced.

TABLE E–3.—MEASURES TO CONTROL POLLUTANTS IN STORM WATER DISCHARGES FROM GLASS, CLAY, CEMENT, CONCRETE, AND GYPSUM FACILITIES[1]

Activity	Associated BMPs
Storing dry bulk materials including: sand, gravel, clay, cement, fly ash, kiln dust, and gypsum.	Store materials in an enclosed silo or building. Cover material storage piles with a tarp or awning. Divert runon around storage areas using curbs, dikes, diversion swales or positive drainage away from the storage piles. Only store washed sand and gravel outdoors.
Handling bulk materials including: sand, gravel, clay, cement, fly ash, kiln dust, and gypsum.	Use dust collection systems (e.g., bag houses) to collect airborne particles generated as a result of handling operations. Remove spilled material and settled dust from paved portions of the facility by shoveling and sweeping on a regular basis. Periodically clean material handling equipment and vehicles to remove accumulated dust and residue.
Mixing operations	Use dust collection systems (e.g., bag houses) to collect airborne particles generated as a result of mixing operations. Remove spilled material and settled dust from the mixing area by shoveling and sweeping on a regular basis. Clean exposed mixing equipment after mixing operations are complete.
Vehicle and equipment washing	Designate vehicle and equipment wash areas that drain to recycle ponds or process wastewater treatment systems. Train employees on proper procedure for washing vehicles and equipment including a discussion of the appropriate location for vehicle washing. Conduct vehicle washing operation indoors or in a covered area. Clean wash water residue from portions of the site that drain to storm water discharges.
Dust collection	Maintain dust collection system and baghouse. Properly remove and recycle or dispose of collected dust to minimize exposure of collected dust to.
Pouring and curing pre-cast concrete products	Pour and cure precast products in a covered area. Clean forms before storing outdoors.

[1] From "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," (EPA 832–R–92–006) EPA, 1992, and proposed pollution prevention plans submitted by group applicants.

In addition to the activity-specific best management practices listed in Table E–3 above, there are structural practices that may be effective in reducing the pollutants found in the storm water discharges from facilities in Major SIC Group 32. This section does not specifically require that these structural measures be installed; however, the permittee must consider measures such as these at the facility. The structural measures include: vegetative filter strips, grassed swales, detention ponds, retention ponds or recycle ponds. These structural measures remove pollutants from the storm water which is carrying them off site. The measures listed above are effective in removing the heavy suspended solids which are common in the storm water discharges from clay, cement, concrete, and gypsum facilities.

Vegetated filter strips are gently sloped areas covered with either natural or planted vegetation. Vegetated filter strips remove pollutants from storm water by a filtering action. Vegetated filter strips can be located along the down slope perimeter of the industrial activity but not in areas of concentrated flow. Grassed swales are similar to vegetated filter strips. Within Major SIC Group 32, four percent of the designated sampling facilities indicated in their part 1 group applications that they had vegetated filter strips at their facilities. Grassed swales also remove pollutants from storm water flows by a filtering action. A grassed swale consists of a broad, grass lined ditch or swale with gradual slopes or check dams to reduce the velocity of flow. Unlike vegetated filter strips, grassed swales can remove pollutants from concentrated storm water runoff. Over 13 percent of the designated samplers in Major SIC Group 32 indicated that there were grass lined swales at their facility.

Retention ponds and detention ponds are storm water management measures used to control the quantity and quality of storm water discharged from a site. A detention pond is a pond which temporarily detains the storm water discharged from an area. While detained in the pond, the heavy suspended particles in the storm water settle to the bottom of the pond. The result is a discharge from the detention pond with a TSS concentration which is lower than the influent concentration to the pond. Retention ponds retain the storm water within the pond with no discharge except for when extreme rainfall events occur. The water collected in the retention pond either evaporates, infiltrates, or is used as process water on site. Twenty-seven

percent of the designated samplers in Major SIC Group 32 indicated that there was a pond on their site which was used as a storm water management measure.

4. Special Conditions

a. Prohibition of non-storm water discharges. The prohibited non-storm water discharges under this section are the same as those prohibited under the September 9, 1992, baseline general permit with one exception. Part XI.E.2. of today's proposed permit clarifies that the discharges of pavement washwaters from facilities covered under Part XI.E. of the permit are authorized under this section after the accumulated fly ash, cement, aggregate, kiln dust, clay, concrete or other dry significant materials handled at the facility have been removed from the pavement by sweeping or other equivalent measures. Where practicable pavement washwater shall be directed to process wastewater treatment or recycling systems. The clarification is made for this sector because EPA believes that a primary source of pollutants in the storm water discharges from facilities covered under this sector are spilled materials or settled dust from material handling processes. A primary focus of the pollution prevention plan requirements for these industries are good housekeeping measures, in particular, sweeping the paved portions of the site surrounding the material handling areas. Washing the paved areas without first sweeping or otherwise removing the accumulated solids may result in the discharge of these pollutants in the washwater unless the washwater is contained onsite or otherwise collected without discharge.

5. Storm Water Pollution Prevention Plan Requirements

a. Contents of the plan. (1) Description of potential pollutant sources. All facilities covered by today's proposed permit must prepare a description of the potential pollutant sources at the facility which complies with the common requirements described in Part VI.C.2. of this fact sheet. In addition to these requirements, facilities covered by this section must provide the following additional information in their pollution prevention plan.

Facilities covered under Part XI.E. of today's proposed permit must identify on the site map the location of any: Bag house or other air pollution control device; any sedimentation or process waste water recycling pond and the areas which drain to the pond. The location of the bag house or air pollution control equipment is required because this equipment stores the particulates or dust that are removed from the air in and around the material handling equipment. There is a potential that the collected dust or particulates could come into contact with storm water. Therefore the site map must indicate the location of this potential source. The site map for the facility must clearly indicate the portion of the facility which drains to sedimentation or recycle ponds that receive process wastewater. This information is necessary to illustrate the portion of the site where runoff is already controlled. The site map for these facilities must also indicate the portion of the site where regular sweeping or other equivalent good housekeeping measures will be implemented to prevent the accumulation of spilled materials or settled dust.

(2) Measures and controls. Part VI.C.3. of today's fact sheet describes a number of measures and controls which are effective in controlling the discharge of pollutants in storm water discharged from a number of types of industrial activities including those facilities in Major SIC Group 32. The following section describes BMPs which EPA believes are particularly effective in controlling the pollutants discharged from glass, clay, cement, concrete or gypsum manufacturing facilities. Facilities covered under Part XI.E. are required to address each of these BMPs in their pollution prevention plan.

(a) Good housekeeping—Today's proposed permit requires that the pollution prevention plans for facilities covered under this section must specifically address measures to minimize the discharge of spilled cement, sand, kiln dust, fly ash, settled dust other significant materials in storm water from paved portions of the site that are exposed to storm water. Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The plan shall indicate the frequency of sweeping or other measures. The frequency shall be determined based upon consideration of the amount of industrial activity occurring in the area and frequency of precipitation. This requirement is established in an effort to minimize the discharge of solids from these types of facilities. Sweeping to prevent the discharge of solids must be considered in the pollution prevention plan because it is a cost effective measure well suited to the dry, granular, and powder-like materials used at the facilities covered under this section.

This section also requires that facilities minimize the exposure of fine solids such as cement, fly ash, baghouse dust, and kiln dust to storm water. The pollution prevention plan shall consider storing these materials in enclosed silos, hoppers, or other containers, in buildings, or in covered areas of the facility. Fine solids are a particular concern because the small particles are readily suspended by storm water and carried off of the site.

(b) Preventative maintenance—This section requires that the storm water pollution prevention plan address the maintenance requirements for dust control systems. The facilities are required to insure that dust collection systems are properly maintained and remain in working order. There are two reasons for this requirement. The first is that poorly maintained dust collection systems are more likely to malfunction or breakdown resulting in a higher volume of discharge of airborne dust particles from the material handling and processing areas. A portion of these airborne particles may settle on the facility grounds where they potentially could be washed away during the next rain storm. A well maintained dust collection system is more likely to trap these particles before they are discharged to the air. The second reason is that the bag house or other storage device for the collected dust can overflow or spill if not adequately maintained. This spilled material may be washed off of the site in the storm water discharge from the facility. Inspection and maintenance of air pollution control equipment can improve storm water quality as well as air quality. The accumulated dust must be removed regularly.

(c) Spill prevention and response—There are no additional spill prevention and response requirements for facilities in the glass, clay, cement, concrete or gypsum products industries beyond those described in Part VI.C.3.c. of this fact sheet.

(d) Inspections—Facilities in the glass, clay, cement, concrete, and gypsum products industries are required to conduct self inspections at a frequency which they determine to be adequate to ensure proper implementation of their pollution prevention plan, but not less frequently than once per month. Monthly inspections are necessary for the facility to be able to assess the effectiveness of the pollution prevention plan. Less frequent inspections may allow facilities to delay inspections until after periods of high activity when the greatest potential for exposure of materials occurs. This section requires that the inspections take place while the facility is in operation because this is the only

time when potential pollutant sources (such as malfunctioning dust control equipment or non-storm water discharges from equipment washing operations) may be evident. The inspectors must observe several portions of the site which EPA believes are potential sources of pollutants in storm water including: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, vehicle washing, and equipment cleaning areas.

(e) Employee training—In addition to the requirements described in Part VI.C.3.e. of this fact sheet, the pollution prevention plan training requirements for facilities in the glass, clay, cement, concrete, and gypsum industries require that the employee training program address procedures for equipment and vehicle washing. This is because these are common activities in these industries which result in process wastewater which may be discharged into the storm water conveyance system. Training programs should focus on where and how equipment should be cleaned at the facility so that there will be no unpermitted discharge of wash water to the storm water conveyance system.

(f) Recordkeeping and internal reporting procedures—There are no additional recordkeeping and internal reporting procedure requirements for facilities in the stone, clay, glass or concrete products industries beyond those described in Part VI.C.3.f. of this fact sheet.

(g) Non-storm water discharges—There are no additional non-storm water discharge certification requirements for facilities in the stone, clay, glass or concrete products industries beyond those described in Part VI.C.2.d. of this fact sheet with the exception of facilities engaged in production of concrete products. These facilities must include in the certification a description of measures which insure that process wastewater which results from washing of trucks, mixers, transport buckets, forms or other equipment are discharged in accordance with NPDES requirements or are recycled. These nonprocess wastewater discharges are common to this industry. However, these discharges are not eligible for coverage under this section and it is necessary to assess the facility for the presence of these discharges so that steps may be taken to eliminate the discharges or to cover the process discharges with a separate permit.

A number of facilities in the concrete products industry maintain wash water recycle/retention ponds which receive the process wastewater from equipment cleaning and other operations. These ponds may also receive a portion or all of the runoff from the industrial site. These facilities are required to provide an estimate of the depth of the 24-hour duration storm event that would be required to cause the recycle/retention pond to overflow and discharge to the waters of the U.S. Methods to make this estimate can include but are not limited to the original design calculations for the recycle/retention pond or historical observation.

(h) Sediment and erosion control—There are no additional sediment and erosion control requirements for facilities in the stone, clay, glass, or concrete products industries beyond those described in Part VI.C.3.g. of this fact sheet.

(i) Management of runoff—There are no additional requirements for management of runoff at facilities in the stone, clay, glass, or concrete products industries beyond those described in Part VI.C.3.h. of this fact sheet.

(3) Comprehensive site compliance evaluation. Facilities in the glass, clay, cement, concrete, and gypsum product sector must perform an annual site compliance evaluation as described in Part VI.C.4. of this fact sheet. For facilities in the concrete product manufacturing industries, the evaluation must specifically address the following portions of the site: above ground storage tanks, hoppers or silos; dust collection/containment systems; truck wash down; and equipment cleaning areas. These portions of the site must be thoroughly evaluated to determine the potential for contamination of storm water which comes into contact with these areas.

6. Numeric Effluent Limitations

Part XI.E.4. of today's proposed permit establishes numeric effluent limitations for storm water discharges from storage areas for materials used or produced at cement manufacturing facilities. Discharges from these areas may not exceed a maximum TSS concentration of 50 mg/L. The pH of the discharges from these areas must be within the range of 6.0 to 9.0. Untreated discharges from the facility which are a result of a storm with a rainfall depth greater than the 10-year, 24-hour storm event are not subject to this limitation. These effluent limitations are in accordance with 40 CFR 411.32 and 40 CFR 411.37. Effluent Guidelines and Standards, Cement Manufacturing Point Source Category, Materials Storage Piles Runoff Subcategory. These limitations represent the degree of effluent reduction attainable by the application of best practicable control technology and best conventional pollutant control technology. Dischargers subject to these numeric effluent limitations must be in compliance with the limits upon commencement of and for the entire term of this permit. Discharges that are associated with industrial activities that do not contain runoff from material storage areas at cement manufacturing facilities are not subject to the effluent limitation described above.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that glass, clay, cement, concrete, and gypsum product manufacturing may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan, the proposed permit requires glass, clay, cement, concrete, and gypsum product manufacturing to collect and analyze samples of their storm water discharges for the pollutants listed in Table E–4. Note that only a portion of the facilities addressed under Part VIII.E. are subject to analytical monitoring requirements. The pollutants listed in Table E–4 were found to be present in the storm water discharges or are believed to be present based upon the description of industrial activities and significant materials exposed at the types of facilities specified for monitoring. The pollutants listed in Table E–4 were found to be above benchmark levels for significant portions of glass, clay, cement, concrete, and gypsum product manufacturing that submitted quantitative data in the group application process. Because these pollutants have been reported at benchmark levels from glass, clay, cement, concrete, and gypsum product manufacturing, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from glass, clay, cement, concrete, and gypsum product manufacturing must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table E–4. If the permittee collects more than four samples in this period,

then they must calculate an average concentration for all parameters analyzed, not simply a minimum of four selected analyses.

TABLE E–4.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Total Suspended Solids (TSS).	100 mg/L
Total Recoverable Aluminum.	0.75 mg/L
Total Recoverable Copper ..	0.009 mg/L
Total Recoverable Iron	0.3 mg/L
Total Recoverable Zinc	0.65 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table E–4, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table E–4, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE E–5.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table E–4, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table E–4, then no further sampling is required for that parameter.
4th Year of Permit Coverage	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table E–4. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. of the permit (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA as described in Part VI.E.4. of this fact sheet.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the

effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required. Note that this requirement applies to all facilities and not just those subject to the analytical monitoring requirements under Part VI.E.7. of this fact sheet. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

g. Compliance monitoring requirements. Today's proposed permit requires permittees with discharges of runoff from material storage at cement manufacturing facilities to monitor for the presence of TSS and pH. These monitoring requirements are necessary to evaluate compliance with the numeric effluent limitation proposed for these discharges. EPA requests comment upon the appropriateness of proposed monitoring frequency for these discharges. Monitoring shall be performed upon a minimum of one grab sample. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls. The permittee shall include a description of the location of the outfalls, an explanation of why outfalls are expected to discharge substantially identical effluents, an and estimate of the size of the drainage area and runoff coefficient with the monitoring results. Monitoring results shall be submitted Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the month following collection of the sample. Facilities which discharge through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must also submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system.

h. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from glass, clay, cement, and gypsum manufacturing facilities. These notices specifically require that facilities with storm water discharges that are associated with glass, clay, cement, and gypsum manufacturing facilities are required to monitor their storm water discharges for oil and grease, COD, TSS, and pH. Today's proposed permit contains slightly different monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for glass, clay cement, concrete, and gypsum manufacturing facilities in the September 1992 General Permits and those required in today's proposed permit.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.E. of today's proposed permit.

(1) Quarterly visual examination of storm water quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (b), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the

purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to January.

(b) Examinations shall be made of grab samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

9. Cost Estimates

With the exception of the numeric effluent limitation in Part XI.E.4, today's proposed permit requirements for industries covered under Part XI.E. do not require expenditures beyond those estimated in the Part VII of this fact sheet.

E. Storm Water Discharges Associated With Industrial Activity From Primary Metals Facilities

On November 16, 1990 (55 FR 47990), the U.S. Environmental Protection Agency (EPA) promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition included point source discharges of storm water from 11 categories of industrial facilities. This section of today's proposed permit includes storm water discharges associated with industrial activity from primary metals facilities. These facilities are commonly identified by Standard Industrial Classification (SIC) code 33. The SIC codes eligible for coverage under this section of today's proposed permit include the following:

- SIC 331—Steel works, blast furnaces, and rolling and finishing mills.
  - —3312—Steel works, blast furnaces, and rolling mills.
  - —3315—Steel wiredrawing and steel nails and spikes.
  - —3316—Cold-rolled steel sheet, strip, and bars.
  - —3317—Steel pipes and tubes.
- SIC 332—Iron and steel foundries.
  - —3321—Gray and ductile iron foundries.
  - —3322—Malleable iron foundries.
  - —3324—Steel investment foundries.
  - —3325—Steel foundries, not elsewhere classified.
- SIC 333—Primary smelting and refining of nonferrous metals.
  - —3331—Primary smelting and refining of copper.
  - —3334—Primary production of aluminum.
- SIC 334—Secondary smelting and refining of nonferrous metals.
  - —3341—Secondary smelting and refining of nonferrous metals.
- SIC 335—Rolling, drawing, and extruding of nonferrous metals.
  - —3351—Rolling, drawing, and extruding of copper.
  - —3354—Aluminum extruded products.
  - —3356—Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum.
  - —3357—Drawing and insulating of nonferrous wire.
- SIC 336—Nonferrous foundries (castings).
  - —3363—Aluminum die-castings.
  - —3364—Nonferrous die-castings, except aluminum.
  - —3365—Aluminum foundries.
  - —3366—Copper foundries.
  - —3369—Nonferrous foundries, except copper and aluminum.
- SIC 339—Miscellaneous primary metal products, not elsewhere classified.
  - —3398—Metal heat treating.
  - —3399—Primary metal products, not elsewhere classified.

Group applications were received from facilities representing each of the categories of industry eligible for coverage under this section. A large number of group applications also included facilities identified by other SIC codes. These facilities may be covered in whole, or in part, by other sections of today's proposed permit. In other cases, SIC codes may have been assigned improperly. The special conditions reflected in this section of today's proposed permit are related to specific operations taking place at a facility. These operations should be used as the basis for determining permit requirements appropriate for that particular facility.

Although there are many activities common to some or all of the facilities covered by this section, some of the operations discussed are unique to a particular industry group. Due to the broad range of activities conducted by facilities in this category, it would be impossible to identify all activities occurring at facilities covered by this section. This fact sheet attempts to describe the major activities representative of many of the facilities addressed by this section and provides examples of concerns associated with storm water discharges from primary metals facilities. All materials present and industrial activities taking place at a facility that have a potential impact on storm water discharges must be addressed by the facility's pollution prevention plan, whether or not the material or activity is specifically addressed by this section.

This fact sheet discusses industrial activities and the pollutants of concern potentially associated with each. Due to the complex nature of this industry, many facilities will undoubtedly be involved in operations addressed by other sections of today's proposed permit. In some cases these activities will be referenced in this section, however all possibilities can not be anticipated and the permittee should examine all aspects of their operations to determine which sections of today's proposed permit are applicable to each.

When an industrial facility, described by the above eligibility provisions of

this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

Facilities in the primary metals industry conduct a wide range of activities. The SIC manual lists seven industry groups (three-digit SIC codes), and 27 industry numbers (four-digit SIC codes) within the sector. Of these, facilities representing 21 four-digit SIC codes submitted group applications.

Due to the large number of alternate processes available for many activities conducted within the primary metals industry it is very difficult to characterize "typical" facilities. Facilities within the same industry can employ quite dissimilar processes to arrive at a similar product. Differences can be found in the types of raw materials, furnaces or ovens, casting processes, the degree of mechanization, and any finishing operations which may be employed by a particular facility. Considerable differences can also be seen between facilities based on their customers needs. Some facilities may operate as a job shop, providing finished parts to other companies. Other facilities could conduct more limited operations and pass the product on to other facilities that provide finishing operations exclusively.

These differences in specific processes, as well as in the general scale and scope of individual operations can make facilities with the same or similar SIC codes quite different. Due to the difficulty in subdividing the industry into distinct facility types, the following discussion briefly describes the full range of activities potentially employed by members of this industry. Despite the substantial diversity within the industry group, there are a number of general operations which characterize the majority of industrial processes.

Facilities in the primary metals industry are typically involved in one or more of the following general operations: raw material storage and handling; furnace and oven related processes; preparation of molds, casts, or dies; metal cleaning, treating and finishing; and waste handling and disposal.

a. Raw material storage and handling activities. Due to the nature of the primary metals industry, large quantities of raw materials are required for many operations. The extent to which these materials are stored outside exposed to precipitation will depend on the specific operations taking place at a facility, the size of the operation, as well as the storage space available that is covered. Some of the most common materials used are metals, fuels, fluxes, refractories, sand, and an assortment of solvents, acids, and other chemicals.

The primary raw material for all facilities in the industry is the source of metal to be used or processed. For steel works, smelters, and blast furnaces, the raw material could be metallic ores, scrap, dross, or foundry returns. Foundries may use scrap materials, borings, turnings, metal ingots, pigs or a mixture of these and other materials. Rolling mills, heat treaters, and metal finishing operations will generally use billets, slabs, blooms, bars, pigs or other cast metal pieces as their primary raw material. These may be produced at another part of the same facility, or purchased from another source. Some of these materials may arrive with protective or incidental coatings of oil, oxides, or other impurities. Due to the large size and volume of some of these materials they may be stored outside.

Energy sources for facilities within the industry are also quite varied. While steel mills with coking operations may use coal as the fuel for firing coke ovens, coal would also be the raw material that would be converted to coke. Some iron and steel foundries or mini-mills may use coke as a fuel only, or may use electric arc furnaces for melting. Smaller foundries (ferrous or nonferrous) may use gas-fired or electric induction furnaces.

A variety of fluxes are often added to the molten metal to allow impurities to be removed as slag or dross. In the iron and steel industry, limestone is probably the most common flux used. Others include dolomite, soda ash, fluorspar, and calcium carbide. Nonferrous operations may use other fluxing agents or none at all.

During the melting process, refractories are used to line and protect the furnaces. These refractories have limited lives and must be replaced periodically. The life of the refractory will depend on the type of furnace as well as the material being melted. Some large furnaces require almost constant patching of the refractory materials and thus large quantities may be stored for future use.

Another common material used in casting operations is sand. Many foundries will use sands of different types to produce the molds and cores for the production of castings. Although some facilities are able to recycle their sand, others must dispose of some or all of the used sand and thus require large amounts of fresh sand as a raw material. There are also a large number of sand additives and binders which may be used to control the properties of the mold produced. "Wet" sand may contain clay, seacoal, bentonite, wood flour, phenol, iron oxide, and numerous other acids and chemicals, some of which may be toxic.

Other processes related to finishing operations can require a wide variety of solvents, chemicals, and acids. Many facilities involved in cleaning, treating, painting, or other finishing operations may store these products in tanks or drums which may be exposed to precipitation.

b. Furnace, rolling, and finishing operations. The majority of processes within the primary metals industry are conducted inside. These activities include all types of furnace operations, rolling operations, as well as all kinds of metal finishing activities. Many of these operations, however, generate significant quantities of particulate matter which, if not properly controlled, can result in exposure to precipitation.

There are many different types of furnaces. Each has advantages and limitations and are used for different types of metals. Facilities may use coal, coke, or gas fired furnaces as well as electric arc or induction furnaces.

Coke ovens, or batteries, generally use coal fired furnaces to heat coal in the absence of oxygen to drive off volatiles. The resultant product is coke which is subsequently used in other furnace operations. Blast furnaces are usually operated on a continuous basis with coke, iron ore, and fluxes charged at the top of a vertical shaft while molten pig iron and slag are tapped at different levels below.

Sintering plants burn coke breeze (particles too small to use for charging

in cupola or blast furnaces) mixed with iron ore, flue dust, or other products to fuse them into materials that can then be charged with regular coke in a furnace. Cupola furnaces are used by ferrous foundries and operate in essentially the same manner as blast furnaces, allowing a range of scrap steel and iron to be charged with coke and fluxes at the top of the furnace.

Basic oxygen process furnaces use a mixture of molten iron and scrap as the charge. High-purity oxygen is injected into the furnace where it combines with impurities in the charge materials and provides heat to melt the charge of scrap.

There are two types of electric furnaces in use. Electric arc furnaces operate in a batch fashion and are often used by steel mini-mills. Scrap metal is placed in the furnace along with three electrodes which provide the energy to melt the charge. Electric induction furnaces are generally smaller than other types described above and require that cleaner metals be used.

Gas-fired furnaces are often used by nonferrous foundries. They are generally small and require relatively clean metals for melting.

One trait that all types of furnaces share is the generation of significant emissions, including particulate emissions. Blast furnaces, sintering plants, and cupola furnaces, all fired by coke, have particularly high particulate emissions. These furnaces are capable of handling a relatively "dirty" charge, with significant impurities which can lead to a variety of emissions problems. For these reasons, these types of furnaces will have emissions controls such as baghouses, wet scrubbers, or electrostatic precipitators. Electric arc furnaces are also able to melt fairly "dirty" scrap and can also have significant levels of particulate emissions.

At the other end of the spectrum are smaller electric induction and gas fired furnaces which generally require a very clean charge. Although this reduces the volume of emissions concerns significantly, they are also less likely to have as extensive pollution control and thus fugitive emissions of particulates may be significant.

The effectiveness of emissions control equipment in controlling particulate generation will depend on the furnace operation, the raw materials used, the type of control equipment in place, and the degree to which it is operating properly. Fugitive emissions, faulty or improperly maintained equipment, and "dirty" raw materials can all contribute to particulate emissions that may not be captured by pollution control equipment, and may be exposed to precipitation.

Another category of operations are rolling, drawing, and extruding operations. Facilities involved in these operations will often use furnaces similar to those described above. The metal will often be heated, and then passed through a series of rollers which alter its dimensions, making it longer, flatter, etc. This process generally involves large amounts of contact cooling water which can contain high levels of suspended solids and oil and grease.

c. Preparation of molds, pouring, cooling, and shakeout. Foundry operations and die-casters will generally prepare the molds, casts, or dies that will determine the ultimate shape of the product to be produced. There are a number of possible operations with significant differences between them. These include sand casting, investment casting, and die casting.

Sand casting operations involve a number of possible steps and a range of materials. Casts are shaped in two sections which form the outside of the part to be produced. Cores can also be used to form inner surfaces of the parts. A variety of sands may be used and can be combined with clay and a number of other additives to give the mold the desired properties. Once the casting has cooled, it is placed on a vibrating screen which shakes loose the majority of the sand. The casting is then ready for cleaning and finishing operations. At some facilities the used sand may be recycled or some or all of the sand may need to be disposed of and replaced.

Investment casting involves the formation of a wax replica of the part to be produced, usually in a metal die. A series of wax parts may be attached to a "tree." Once a tree is completed, it is coated with a ceramic cast in a series of dipping operations. The wax may then be removed from the cast in a furnace or the metal can be poured in directly. As in sand casting, the casting is allowed to cool before the cast is removed. A separate wax form and ceramic shell must be made for each part to be produced.

Die-castings employ a more direct route from molten metal to finished part. A metal die is produced and molten metal is injected under pressure into it. Once it has cooled, the casting is removed and is ready for finishing operations. Unlike sand casting or investment casting, the die can be used over and over to produce more parts.

Like most foundry operations, molds are generally prepared indoors. There are, however, particulate emissions associated with the pouring and cooling of molten metal.

d. Metal cleaning, treating, and finishing. Almost all operations in the primary metals industry result in metal products which require some degree of finishing. The type of finishing activities undertaken depend on the material being treated, as well as the properties desired in the final part and can include both mechanical and chemical operations.

Castings generally come out of their molds with metal sprues and other imperfections which must be removed. This can be done through grinding, cutting, or blasting with sand, shot, or grit. Other possible operations include drilling, threading, or dimensioning. A combination of these operations is often necessary.

Some facilities such as rolling mills will use a descaling process to remove oxides and other residues which can form on the surfaces of metallic products. Typical operations include blasting with water or sand. This produces large quantities of scale and other particulate matter which may contain other residual products such as oil.

Heat treating is another operation which can involve furnaces for controlled heating and cooling of large quantities of metal. A variety of media may be used to cool metals at different rates. Oil, water, and liquid salt baths may all be used depending on the properties desired in the finished product. Acid pickling may be used to remove unwanted material from the surface of metal. Other cleaning and finishing operations may involve a wide range of solvents, acids, or other chemicals. All of these processes can generate toxic wastes in the form of sludges, particulates, or spent baths. In addition, residuals from these operations left on the metal surface may become exposed to storm water if materials are transported or stored outside.

e. Waste handling and disposal. Wastes are generated from numerous sources within the primary metals industry. Some types of waste are found at a majority of facilities while others may be specific to a particular activity. Some of the common waste products include used sand, cores, butts, refractory rubble, machining and finishing wastes, slag, dross, and collected particulates such as baghouse dust.

Sand casting operations which are not able to fully recycle their sand may generate large volumes of waste or "burnt" sand. "Wet" sands may contain any one of a number of additives,

depending on the specific type of casting being produced. Other related wastes include the cores and butts used in the sand casing process.

Most casting operations will produce a product which requires some degree of machining and finishing. The wastes produced will depend mainly on the material being finished and whether a mechanical or chemical process is used. Machining waste can include fines, turnings, or cuttings as well as shot, grit, and scale from blasting operations. Chemical finishing can result in waste solvents, acids, and pickling sludges and baths which contain metal wastes.

The metal melting process results in the production of slag from ferrous, or dross from nonferrous materials. The content and volume of these wastes produced will vary depending on the charge material, and any fluxing agents or additives that may be used. In general, slag is produced in greater quantities and will be more likely to be stored outside, however there is the possibility of exposure of both types of waste to precipitation.

Particulate matter generated in furnaces and during machining is another source of waste with significant potential for storm water contamination. These waste streams may be segregated at larger facilities or combined, but the concerns are essentially the same. The dusts are collected in baghouses, electrostatic precipitators, wet scrubbers, or in cyclones and disposed of. If the pollution control equipment is inadequate, or not operating effectively, there is potential for storm water contamination from these types of waste.

2. Pollutants Found in Storm Water Discharges –1

Impacts caused by storm water discharges from primary metals facilities will vary. A number of factors will influence to what extent the activities at a particular facility will affect water quality. These include: geographic location, hydrogeology, the amounts and types of materials stored outside, the types of processes taking place outside, the size of the operation, as well as the characteristics of a particular storm event. These and other factors will interact to affect the quantity and quality of storm water runoff. For example, particulate emissions from furnaces or ovens may be a significant source of pollutants at some facilities, while outdoor material storage such as scrap piles may be a primary source at others. In addition, sources of pollution other than storm water, such as illicit connections,[62] spills, and other improperly dumped materials, may contribute significant levels of pollutants into waters of the United States.

A summary of industrial activities conducted by primary metals facilities in the group application process is listed in Table F–1. The table also lists the sources of pollutants related to the activity and what the specific pollutants of concern are. The table is limited to those activities which are generally conducted outside, or that have potential to contribute pollutants to storm water discharges. Many processes in the primary metals industry are conducted inside and are therefore not represented in Table F–1.

TABLE F–1.—POLLUTANTS OF CONCERN FOR MAJOR ACTIVITIES WITHIN THE PRIMARY METALS INDUSTRY

Activity	Source	Pollutants of concern
Raw material storage and handling	Metal product stored outside such as foundry returns, scrap metal, turnings, fines, ingots, bars, pigs, wire.	Residual or protective Oil & Grease, Metals, TSS, COD, TSS.
	Outdoor storage or handling of fluxes	pH (limestone).
	Storage piles, bins, or material handling of coke or coal	TSS, pH, metals.
	Storage or handling of casting sand or refractory	TSS.
Vehicle Maintenance	Vehicle fueling and maintenance or outdoor storage tanks and drums of gas, diesel, kerosene, lubricants, solvents.	Oil and grease.
Waste materials—handling, storage, and disposal.	Slag or dross stored or disposed of outside in piles or drums.	Metals, pH.
	Fly ash, particulate emissions, dust collector sludges and solids, baghouse waste.	TSS.
	Storage and disposal of waste sand or refractory rubble in piles outside.	TSS, metals, misc. "wet" sand additives.
	Machining waste—fines, turnings, oil, borings, gates, sprues, scale.	TSS, metals, oil & grease.
	Obsolete equipment stored outside	Oil & grease.
	Landfilling or open pit disposal of wastes onsite	See Part VIII.L.
Furnace operations and pollution control equipment.	Losses during charging of coke ovens or sintering plants and from particulate emissions.	TSS, particulates, metals, volatiles, pH.
	Particulate emissions from blast furnaces, electric arc furnaces, induction furnaces.	TSS, metals.
	Fugitive emissions from poorly maintained or malfunctioning baghouses, scrubbers, electrostatic precipitators, cyclones.	TSS, metals.
	Wastewater treatment operations exposed to precipitation.	See Part VIII.T.
Rolling, casting, and finishing operations	Exposure of wastewater used for cooling or descaling related to rolling.	Oil and grease, pH, TSS, metals, COD.
	Storage of products outside after painting, pickling, or cleaning operations.	pH, solvents, metals.

[62] Illicit connections are contributions of unpermitted non-storm water discharges into storm sewers from any number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings.

TABLE F–1.—POLLUTANTS OF CONCERN FOR MAJOR ACTIVITIES WITHIN THE PRIMARY METALS INDUSTRY—Continued

Activity	Source	Pollutants of concern
	Casting cooling or shakeout exposed to precipitation or wind.	TSS, metals.
	Losses of particulate matter from machining operations (grinding, drilling, boring, cutting) through deposition or storage of products outside.	Metals, TSS.
Plant yards	Areas of the facility with unstabilized soils subject to erosion.	TSS.
Illicit discharges	Improper connection of floor, sink, or process wastewater drains.	Dependent on source.

Although operations at primary metals facilities may vary considerably, the elements with potential impact on storm water discharges are fairly uniform and consistent. Facilities may include considerable areas of raw and waste material storage such as coal, coke, metal, ores, sand, scale, scrap, and slag. Processes generally involve furnaces for heating and melting metals or for producing coke, any of which may result in significant particulate emissions. Due to the nature of their operations some facilities will have large areas of exposed soil and heavy vehicle traffic which can lead to erosion.

a. Raw material storage and handling activities. Raw materials with potential effects on storm water discharges fall into a number of distinct categories.

Sands used for the production of molds or cores can contribute to TSS loadings. Piles of materials may be washed away directly, or spills and windblown losses may occur during handling and process related activities.

Metal raw materials can come in numerous forms including billet, slab, pig, bar. These materials have the potential to corrode which can result in the loss of metal to a solution, i.e., water. The following metals are referred to as the galvanic (or electromotive) series and have a tendency to corrode and become soluble in water: magnesium, aluminum, cadmium, zinc, steel or iron, cast iron, chromium, tin, lead, nickel, soft and silver solder, copper, stainless steel, silver, gold, platinum, brass and bronze. For some metals, the extent and rate of corrosion is dependent on whether it occurs in an oxygen-starved or oxygen-abundant atmosphere. If materials are coated in oil to prevent corrosion, or residual chemicals used to clean or treat the metal are present, these can also be a source of pollution easily picked up by storm water runoff.

Scrap metals come in a variety of forms including machining waste such as turnings, shavings, filings, borings or as post consumer waste in a variety of forms. These materials can contribute metals, oil and grease, suspended solids, and other pollutants to storm water runoff depending on their makeup and origin.

Runoff related to storage and handling of coal and coke can contribute suspended solids, metals, as well as oil and grease to runoff. These can be released from piles, hoppers, or bins through handling or wind-blown losses. Significant losses can also occur during handling with conveyors, trucks, or while preparing charges for the furnace or sintering operations.

Fluxes such as limestone may be stored in piles, bins, or hoppers outside or become exposed to precipitation during unloading and handling activities. Limestone can increase the pH of storm water. Fluxes can also contribute to loadings of suspended solids (TSS) or have other effects depending on their makeup.

A variety of acids and solvents may be stored in drums or tanks for use in metal treating and cleaning operations. Leaks and spills from tanks and drums or during handling can result in discharges with storm water. These materials can affect pH of storm water and may be toxic.

b. Process activities. Many processes can contribute pollutants to storm water discharges. These can include all types of furnaces, metal finishing activities, as well as material handling equipment.

Furnaces of all types can generate particulate emissions. The quantity and character of these emissions can vary greatly depending on the type of furnace, the material being melted, the fuel used, and any pollution control equipment that may be in place. In general, large coke-fired and electric arc furnaces capable of handling fairly dirty charge products will have higher emissions, but are also more likely to have sophisticated pollution control such as wet scrubbers, baghouses, and electrostatic precipitators. Smaller gas fired or electric induction furnaces generally require a fairly clean charge and have less emissions, but might also have less sophisticated controls. Settling of these emissions on roofs and plant yards are very likely to be washed away in storm water runoff. These particulates can contain a wide range of constituents which can contribute metals and suspended solids to discharges.

Material handling equipment such as conveyors, trucks, and forklifts can all contribute drippings of oil and grease as well as hydraulic fluids. This equipment may also generate or release particulate matter related to the materials being handled. Pallets, hoppers, drums, and storage bins may all contain residual materials which may become exposed to storm water.

Metal finishing operations can be divided in two general types. Mechanical operations such as grinding, blasting, boring, chipping, cutting, and descaling can all produce metal fines, chips, and turnings which may contribute metals and suspended solids to discharges. Residuals of oil or other materials on the finished goods or waste products can also contribute pollutants. Other finishing operations include acid pickling, solvent cleaning, and all types of heat treating activities. Materials that have been treated or finished may have residual chemicals on them such as pickling baths, oil or liquid salt quench media, or solvents. Exposure of these materials could contribute to pH, metals, or oil and grease in storm water discharges.

Stationary process equipment may also produce a substantial amount of residual particulate material that tends to accumulate on and around the equipment. Many materials used for primary metals production are conducive to this type of buildup. This will typically occur around rotating machinery, moving parts, bearings, conveyors and at the output of the equipment, e.g., storage containers. Particulate material that accumulates can become a source of contamination if it comes in contact with either precipitation or storm water runoff.

c. Waste material storage, handling, and disposal. Waste materials are generated in large volume from many of the facilities in this industry. These wastes can include used sand, cores and butts, refractories, slag and dross, baghouse or cyclone dusts, scrubber dusts and sludges, machining wastes, and obsolete equipment. There is potential for pollution from many of these sources if not properly stored, handled, and disposed of.

Used sands, cores, butts, and refractory rubble are all potential sources of TSS. Due to the large volumes potentially generated and their generally benign nature, these materials are often stored outside. The exposure of these materials to molten metal also presents the possibility of contamination with metals which may also get washed away with storm water.

Wastes related to pollution control equipment are particularly susceptible to being discharged with storm water if not properly controlled. These wastes could originate from baghouses, cyclones, electrostatic precipitators or scrubbers. These may be in place to control emissions from a large variety of ovens and furnaces, as well as mechanical or chemical metal finishing operations. These dusts and sludges typically contain an assortment of metals, metal oxides, and other particulate matter. The size of particulates that are able to be captured will vary from one type of equipment to the next and will depend on proper operation and maintenance.

Machining and finishing waste which is not collected as described above may also be generated in significant quantities. This material is typically metallic fines and particulate matter but may contain cutting oil or other materials as well. If stored outside in piles, drums, hoppers, or other containers these materials can contribute metals, TSS, or oil to precipitation and storm water runoff.

d. Erosion and sediment loss. Erosion from plant yards is another potential source of storm water contamination from primary metals facilities. Areas of vehicle traffic related to material handling, loading, unloading, material storage areas etc. may all have exposed soils with the potential for erosion. These soils can contribute to TSS loadings in storm water discharges. Exposed surfaces also limit the potential for housekeeping measures such as sweeping, making spills of other materials (particulate or liquid) harder to clean up and more likely to be washed away with storm water. For example: one group application consists of 5 facilities with a total land area of 623 acres. Of this, approximately 105 acres (16.9 percent) were impervious surfaces (buildings, paved areas), leaving 83 percent of the total area potentially susceptible to erosion. Vehicle traffic, material handling, and storage activities taking place in unstabilized areas can all lead to erosion.

e. Tables F–2 and F–3 show results of the monitoring data. Table F–2 contains the data for conventional pollutants; Biochemical Oxygen Demand (BOD_5), Chemical Oxygen Demand (COD), Nitrate/Nitrite Nitrogen, Total Kjeldahl Nitrogen (TKN), Oil and Grease, pH, Total Phosphorus, and Total Suspended Solids (TSS). Table F–3 contains data submitted under Parts B and C for pollutants which were believed to be potentially present in discharges. The data presented reflects pollutants for which a significant number of samples were taken, and concentrations above detection levels were observed. These included aluminum, cadmium, chromium, copper, iron, lead, magnesium, manganese, nickel, zinc, ammonia, phenols, and sulfate.

TABLE F–2.—DATA SUMMARY FOR CONVENTIONAL POLLUTANTS (MG/L)[1]

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	163	140	32.2	34.1	0.0	0.0	1200.0	2500.0	11.0	8.3	83.0	61.5	840.0	210.0
COD	162	151	221.3	109.8	0.0	0.0	3600.0	1000.0	70.5	60.0	870.0	420.0	2610.0	690.0
Nitrate+Nitrite Nitrogen	148	135	1.17	1.39	0.0	0.0	15.30	19.10	0.680	0.770	3.60	4.30	6.20	15.60
Total Kjeldahl Nitrogen	157	146	3.56	3.05	0.0	0.0	41.00	42.00	1.980	1.595	13.00	9.70	30.00	42.00
Oil & grease	163	N/A	8.88	N/A	0.0	N/A	220.0	N/A	1.0	N/A	47.0	N/A	182.0	N/A
pH(s.u.)	163	N/A	N/A	N/A	2.6	N/A	10.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	163	149	1.25	0.52	0.00	0.00	78.00	36.00	0.170	.0140	1.80	0.96	37.00	4.00
Total suspended solids	162	149	368	162	0	0	6300	1220	72	69	1700	717	5700	1200

[1] Part 2 data submittals that did not report the units of measurement for the reported values of pollutants were not incided in these statistics.
[2] Composite samples.

TABLE F–3.—DATA SUMMARY FOR CONVENTIONAL POLLUTANTS (MG/L)[1]

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
Aluminum	65	64	4.80	2.60	0.0	0.0	60.40	21.40	1.40	0.83	22.50	9.90	60.40	21.40
Copper	140	129	3.33	2.28	0.0	0.0	210.0	140.0	.097	.068	3.80	3.10	150.0	67.0
Iron	27	25	45.97	32.30	0.06	0.0	1080.0	677.0	1.70	1.85	36.5	34.2	1080.0	677.0
Lead	134	121	.79	.19	0.0	0.0	67.0	5.0	.02	.02	1.41	1.0	11.0	2.50
Manganese	19	19	.68	.59	0.04	0	3.58	3.46	.26	.25	3.58	3.46	3.58	3.460
Zinc	143	131	8.90	6.80	0.0	0.0	430.0	330.0	0.45	0.43	11.80	9.67	380.0	290.0
Ammonia	18	18	.85	.55	0.0	0.0	3.0	2.0	.75	.36	3.0	2.0	3.0	2.0
Pyrene	7	7	0.06	0.01	0.0	0.0	0.29	0.07	0.01	0.0	0.29	0.07	0.29	0.07

[1] Part 2 data submittals that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

From the data presented in these two tables, a number of pollutants of concern have been identified. These included oil and grease, pH, TSS, and a number of metals.

• *Oil and Grease*—Sources of oil and grease from primary metals facilities include degreasing processes, cutting oils, as well as oils used in rolling and extruding operations. Oil and grease emulsions are detrimental to aquatic organisms and inhabitants because depositions of oil and grease can impact the aquatic food chain by inhibiting normal benthic growths; destroy algae

or other plankton; adhere to the gills of fish; and damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. Part 2 data indicate that oil and grease varied in grab samples from 0 to 220.0 milligram per liter (mg/L).

• *pH*—The hydrogen ion concentration in an aqueous solution is represented by pH. The pH scale ranges from 0 to 14 standard units. Values of pH less than seven represent acidic conditions; values greater than seven represent basic conditions. The pH level is easily measured and is an indication of potential environmental impacts. Data submitted for part 2 of the application indicate that pH varied from 2.6 to 10.3 standard units. Some of the samples were outside the permitted range for wastewater discharges under the effluent limitation guidelines (pH 6–9), however, most samples submitted to EPA were within the 6.0 to 9.0 range.

• *Total Suspended Solids*—Suspended solids include both organic and inorganic materials. The inorganic compounds can include sand, silt, clay, and metals. The organic fraction includes such materials as grease, oil, animal and vegetable waste products, and adsorbed toxic organic pollutants. Solids may be inert, slowly biodegradable materials, or rapidly decomposable substances. Materials which may contribute to TSS at primary metals facilities include sand, machining waste and scrap, particulate emissions, coal, coke, fluxes, slag, dross, and erosion of soils from unstabilized areas. Part 2 application data for TSS show a wide range of 0 to 1,220 mg/L for the composite samples with a mean value of 162 mg/L and a range of 0 to 6,300 mg/L for grab samples with a mean of 368 mg/L. As a comparison, TSS values observed under NURP for average residential or commercial site concentrations were 239 mg/L.

• *Metals*—These results were highly variable but included some extremely high values. Due to the wide range of metals used by facilities in the primary metals industry, and the correspondingly large number of samplers who detected metals in their monitoring, metals are considered a pollutant of concern. Due to the wide variety of metals detected in many samples, another concern is the potential for additive, cumulative, and synergistic effects that these metals may have, and the potential for toxic effects on receiving waters.

The comparison of sampling results for metals to "Goldbook" values indicates that storm water discharges originating from these facilities were substantially higher than the acute freshwater criterion. Although in some cases average values are heavily influenced by extreme values, the frequency with which these metals were reported in storm water discharges leads to the conclusion that metals are of concern. Another principal concern is the synergistic and additive effects that these constituents may have on water quality. When taken in whole, storm water discharges from these facilities are often a complex matrix of a number of metals, suspended solids, and other compounds.

TABLE F–4. COMPARISON OF SAMPLING DATA FOR SELECTED PARAMETERS VERSUS NURP VALUES, EFFLUENT LIMITATIONS GUIDELINES, AND THE EPA "GOLDBOOK"

Pollutant	Mean		Maximum		Median		"Goldbook" [i]	Storm water effluent limitations guidelines	NURP
Sample Type	Grab	Comp	Grab	Comp	Grab	Comp	N/A	Daily max./ 30 day avg.	Avg. conc
pH (s.u.)	7.07	7.03	10.3	10.3	7.3	7.4	N/A	6–9	N/A
TSS	371	162	6300	1200	72	69	N/A	N/A	239
Oil & Grease	10.11	4.95	220	44	2.1	1	note [iii]	N/A	N/A
Aluminum	4.8	2.599	60	21.4	1.4	.83	N/A	2.0/1.0	N/A
Iron	44	31.44	1080	677	2.35	1.965	N/A	1.0/0.5	N/A
Lead	0.79	0.189	67	5	0.024	0.015	0.082 [ii]	N/A	0.238
Cadmium	0.074	0.015	3.7	0.39	0	0	0.0039 [ii]	N/A	N/A
Copper	3.5	2.28	210	140	0.097	0.068	0.0167 [ii]	N/A	0.053
Zinc	8.9	6.59	430	330	0.45	0.43	0.0507 [ii]	N/A	0.353
Chromium	5.053	2.2	396	124	.006	0	note [iv]	N/A	N/A
Nickel	0.7	0.75	35	42	0	0	1.4 [ii]	0.2/0.1	N/A

[i] Based on aquatic life criteria.
[ii] At freshwater acute concentration (aquatic life) at hardness of 100 mg/L. Toxicity decreases as hardness increases.
[iii] Oil & Grease (aquatic life) 0.01 of the lowest continuous flow 96-hour LC50.
[iv] Varies depending on chemical speciation.

3. Options for Controlling Pollutants.

There are five main areas of concern related to primary metals facilities. These are raw material storage and handling; waste material storage, handling, and disposal; furnace, oven, and related pollution control activities; rolling, extruding, casting, and finishing operations; plant yards; and illicit connections.

Table F–5 summarizes the primary sources of pollution in each of these categories and potential Best Management Practices (BMPs) associated with each.

TABLE F–5.—POTENTIAL BEST MANAGEMENT PRACTICES FOR SOURCES WITHIN THE PRIMARY METALS INDUSTRY

Source	Potential best management practices
Metal product stored outside such as foundry returns, scrap metal, turnings, fines, ingots, bars, pigs, wire.	Store all wastes indoors or in sealed drums, covered dumpsters, etc. Minimize raw material storage through effective inventory control. Minimize runon from adjacent properties and stabilized areas to areas with exposed soil with diversion dikes, berms, curbing, concrete pads, etc.
Outdoor storage or handling of fluxes.	Store fluxes in covered hoppers, silos, or indoors and protect from wind-blown losses. Stabilize areas surrounding storage and material handling areas and establish schedule for sweeping.
Storage piles, bins, or material handling of coke or coal.	Where possible store coke and coal under cover or indoors and protect from wind-blown losses. Prevent or divert runon from adjacent areas with swales, dikes, or curbs. Minimize quantities of coke or coal stored onsite through implementation of effective inventory control. Trap particulates originating in coke or coal storage or handling areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.
Storage or handling of casting sand.	Store raw sand in silos, covered hoppers, or indoors whenever possible. Prevent or divert runon from adjacent areas with swales, dikes, or curbs. Minimize quantities of sand stored onsite through implementation of effective inventory control. Tarp or otherwise cover piles. Trap particulates originating in coke or coal storage or handling areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.
Vehicle fueling and maintenance.	See Part VIII.P.
Outdoor storage tanks or drums of gas, diesel, kerosene, lubricants, solvents.	Store tanks and drums inside when possible. Establish regular inspection of all tanks and drums for leaks, spills, corrosion, damage, etc. Utilize effective inventory control to reduce the volume of chemicals stored onsite.
Fly ash, particulate emissions, dust collector sludges and solids, baghouse dust.	Prevent runon to and runoff from tank and drum storage areas, provide adequate containment to hold spills and leaks. Prepare and train employees in dealing with spills and leaks properly, use dry clean-up methods when possible. Collect waste waters used for granulation of slag—these are not allowed under this section. Store slag and dross indoors, under cover, or in sealed containers. Establish regular disposal of slag or dross to minimize quantities stored and handled onsite. Minimize runon to slag storage areas with diversion dikes, berms, curbing, vegetated swales. Trap particulates originating in slag storage areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent. Store all dusts and sludges indoors to prevent contact with storm water or losses due to wind. Establish regular disposal schedule to minimize quantities of pollutants stored and handled onsite.
Storage and disposal of waste sand or refractory rubble in piles outside.	Move piles under cover or tarps whenever possible. Establish regular disposal schedule to minimize quantities stored onsite. Stabilize areas of waste product storage and perform regular sweeping of area.
Slag or dross stored or disposed of outside in piles or drums.	Prevent runon to and runoff from tank and drum storage areas, provide adequate containment to hold spills and leaks. Prepare and train employees in dealing with spills and leaks properly, use dry clean-up methods when possible. Collect waste waters used for granulation of slag—these are not allowed under this section. Store slag and dross indoors, under cover, or in sealed containers. Establish regular disposal of slag or dross to minimize quantities stored and handled onsite. Minimize runon to slag storage areas with diversion dikes, berms, curbing, vegetated swales. Trap particulates originating in slag storage areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent. Store all dusts and sludges indoors to prevent contact with storm water or losses due to wind. Establish regular disposal schedule to minimize quantities of pollutants stored and handled onsite. Move piles under cover or tarps whenever possible. Establish regular disposal schedule to minimize quantities stored onsite. Stabilize areas of waste product storage and perform regular sweeping of area.

TABLE F–5.—POTENTIAL BEST MANAGEMENT PRACTICES FOR SOURCES WITHIN THE PRIMARY METALS INDUSTRY—Continued

Source	Potential best management practices
Scrap processing activities (shredding etc.).	See Part VIII.N.
Machining waste stored outside or exposed to storm water—fines, turnings, oil, borings, gates, sprues, scale.	Store all wastes indoors or in sealed drums, covered dumpsters, etc. Stabilize areas of waste product storage and perform regular sweeping and cleaning of any residues. Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present. Minimize runon from adjacent properties and stabilized areas to areas with exposed soil with diversion dikes, berms, curbing, concrete pads, etc.
Obsolete equipment stored outside.	Where possible, dispose of unused equipment properly, or move indoors. Cover obsolete equipment with a tarp or roof. Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present. Minimize runoff coming into contact with old equipment through berms, curbs, or placement on a concrete pad.
Material losses from handling equipment such as conveyors, trucks, pallets, hoppers, etc.	Schedule frequent inspections of equipment for spills or leakage of fluids, oil, or fuel. Inspect for collection of particulate matter on and around equipment and clean. Where possible cover these areas to prevent losses to wind and precipitation.
	Store pallets, hoppers, etc. which have residual materials on them under cover, with tarps, or inside.
Losses during charging of coke ovens or sintering plants.	Cover any exposed areas related to furnace charging/material handling activities. Stabilize areas around all material handling areas and establish regular sweeping. Route runoff from particulate generating operations to sediment traps, vegetated swales, buffer strips of vegetation, catchbasin filters, retention/detention basins or equivalent.
Particulate emissions from blast furnaces, electric arc furnaces, induction furnaces and fugitive emissions from poorly maintained or malfunctioning baghouses, scrubbers, electrostatic precipitators, cyclones.	Establish schedule for inspection and maintenance of all pollution control equipment—check for any particulate deposition from leaks, spills, or improper operation of equipment and remedy. Route runoff from particulate generating operations to sediment traps, vegetated swales, buffer strips of vegetation, catchbasin filters, retention/detention basins or equivalent.
Storage of products outside after painting, pickling, or cleaning operations.	Store all materials inside or under cover whenever possible. Prevent runon to product storage areas through curbs, berms, dikes, etc. Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present.
Casting cooling or shakeout operations exposed to precipitation or wind.	Remove residual chemicals from intermediate or finished products before storage or transport outside. Perform all pouring, cooling, and shakeout operations indoors in areas with roof vents to trap fugitive particulate emissions Recycle into process as much casting sand as possible.
Landfilling or open pit disposal of wastes onsite.	See Part VIII.L.
Losses of particulate matter from machining operations (grinding, drilling, boring, cutting) through deposition or storage of products outside.	Store all intermediate and finished products inside or under cover. Consider using booms, oil/water separators, sand filters, etc. for outfalls draining areas where oil is potentially present. Clean products of residual materials before storage outside.
Areas of the facility with unstabilized soils subject to erosion.	Stabilize storage areas and establish sweeping schedule. Minimize runon from adjacent properties and stabilized areas to areas with exposed soil with diversion dikes, berms, vegetated swales, etc. Stabilize all high traffic areas including all vehicle entrances, exits, loading, unloading, and vehicle storage areas. Conduct periodic sweeping of all traffic areas

TABLE F–5.—POTENTIAL BEST MANAGEMENT PRACTICES FOR SOURCES WITHIN THE PRIMARY METALS INDUSTRY—Continued

Source	Potential best management practices
	Trap sediment originating in unstabilized areas with filter fabric fences, gravel outlet protection, sediment traps, vegetated swales, buffer strips of vegetation, catch-basin filters, retention/detention basins or equivalent.
	Inspect and maintain all BMPs on a regular basis.
	Provide employee training on proper installation and maintenance of sediment and erosion controls.
Improper connection of floor, sink, or process wastewater drains.	Inspect and test all floor, sink, and process wastewater drains for proper connection to sanitary sewer and remove any improper connections to storm sewer or waters of the U.S.

4. Discharges Covered Under This Section

Storm water discharges covered by this section include all discharges where precipitation and storm water runoff come into contact with industrial activity including such things as: Raw materials, intermediate products, finished products, waste products, by-products, stored materials, plant buildings, material handling equipment, and fuels. This includes storm water discharges from haul roads, access roads, industrial plant yards, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by the facility.

This section does not cover any discharge subject to process wastewater effluent limitation guidelines, including storm water that combines with process wastewater. Storm water that does not come into contact with any raw materials, intermediate products, finished products, waste products, by-products, stored materials, plant buildings, material handling equipment, or fuels.

5. Special Conditions

The following section identifies special conditions that are applicable to permittees applying for coverage under Part XI.F. of today's proposed permit.

a. Prohibition of non-storm water discharges. This section requires primary metals facilities to certify that certain non-storm water discharges are not occurring at their facilities. A list of non-storm water discharges that are not authorized by this section has been identified. These discharges are prohibited due to the likelihood these discharges will contain substantial pollutant concentrations. The following non-storm water discharges are not authorized by this section:

- Waste discharges to floor drains or sinks connected to the facilities storm sewer or storm drainage system.
- Water originating from vehicle and equipment washing.
- Steam cleaning wastewater.
- Process wastewater.
- Wash-water originating from cleaning plant floor areas; or material receiving areas.
- Wastewater from wet scrubbers.
- Boiler blowdown.
- Contact or noncontact cooling water.
- Discharges originating from dust control spray water.
- Discharges from oil/water separators and sumps.
- Discharges originating from the cleaning out of oil/water separators or sumps.
- Discharges from bermed areas with a visible oily sheen or other visible signs of contamination.
- Discharges resulting from casting cleaning or casting quench operations.
- Discharges from slag quench or slag rinsing operations.
- Discharges from wet sand reclamation operations.

The operators of non-storm water discharges must seek coverage under a separate NPDES permit if discharging to either a municipal separate storm sewer system or to waters of the United States. If such a permit has been issued, a copy of the NPDES permit must be attached to the applicant's storm water pollution prevention plan (the plan). If a permit application has been submitted for a non-storm water discharge, a copy of the application must be attached to the plan.

Facilities that have prohibited discharges identified under this section and which discharge to a sanitary sewer system, the facility operator are required to notify the operator of the sanitary sewer system in writing. The notification should be attached to the plan. Facilities that have been issued an industrial user permit under the pretreatment program for discharges prohibited under this section, a copy of the permit must be attached to the plan. In all instances, the permit applicant must document how non-storm water discharges are disposed and provide the pertinent documentation of that disposal practice within the plan.

6. Storm Water Pollution Prevention Plan Requirements

a. Contents of the plan. All facilities covered by this section must identify a pollution prevention team, prepare a description of all potential pollutant sources at the facility, and identify measures and controls appropriate for the facility. These items must comply with the common requirements described in Part VI.C. of this fact sheet. In addition to these requirements, facilities covered by Part XI.F. of today's proposed permit must provide the following additional information in their pollution prevention plan.

(1) Description of potential pollutant sources. Facilities must identify on the site map the location of any and all pollution control equipment such as baghouses, wet scrubbers, electrostatic precipitators, etc. as well as any uncontrolled stack emissions which may be located onsite. The map should also identify the outfalls to which these areas drain. Due to the hazardous nature of pollutants generated in this industry, and the potential for deposition of particulate matter from emissions, these emissions can be a significant contributor to pollutants at a facility and should be identified.

(2) Measures and controls. There are typically five types of activity and materials present at facilities in the primary metals industry with potential impacts on storm water discharges. These have been discussed in today's fact sheet and include: raw materials storage and handling; process activities related to furnace operations, casting, rolling, and extruding; waste material storage, handling, and disposal; erosion from unstabilized plant areas; and illicit discharges, spills, and leaks. Each of these areas that is applicable to a facility must be identified in the pollution prevention plan and evaluated with regard to the BMPs discussed.

(a) Good housekeeping—This section requires that facilities implement measures to limit the amount of spilled, settled, and leaked materials which are washed away by storm water. These materials include coal dust or coke breeze, metal fines from finishing operations, particulate emissions from furnaces and ovens, as well as dust and

dirt from plant yards. In paved or other impervious areas sweeping is an easy and effective way to reduce these pollutants. Sweeping frequency should be determined based on the rates of accumulation of a particular material and its' potential impact on storm water discharges. Where significant particulates are generated in unstabilized areas of the plant, other measures may be necessary.

The large number of particulate generating processes and the makeup of these pollutants makes this an especially important aspect of pollution prevention at many facilities. Permittees must consider the storage of all such products under roof, in silos or covered hoppers, or under tarps to minimize exposure of particulates to precipitation and wind-blown losses.

Unstabilized areas at a site which may be related to material handling and storage or vehicle and equipment traffic should be considered for paving. These areas can build up significant levels of particulates from materials and material handling as well as soil and dust particles. Paving these areas allow good housekeeping measures to be practiced and make spills easier to clean up.

(b) Source controls—Permittees must consider preventative measures to minimize the exposure of significant materials to storm water. Due to the large volumes of materials used in the primary metals industry, they are a significant potential source of pollutants in storm water discharges. Storage of a wide range of materials outside is common among many facilities and measures should be taken to reduce the potential for contamination of storm water.

Measures include moving materials inside, under roof or cover, removing waste materials from the premises, and establishing scheduled removal of wastes to minimize storage onsite. Other measures to prevent runoff from contacting materials include swales, berms, dikes, or curbs to divert runoff away from significant materials or processes.

Source controls offer the most effective way to reduce pollutants in storm water discharges and are generally easier to implement than treatment measures.

(c) Preventive maintenance—Facilities must incorporate into their plan the inspection and maintenance of all equipment which could lead to releases of pollutants. This includes all particulate emissions control equipment, storage tanks and piping systems, and any other material handling equipment which could fail and release pollutants.

All particulate pollution control equipment must be maintained to operate properly and effectively to control settling of particulate matter. The inspection of emissions control is particularly important as failures may not be immediately obvious and could lead to significant releases of particulate matter. Leaks or blockage in ducts, overflows of dust collection systems, or mechanical breakdown of scrubbers could all lead to heavy particulate emission which can be easily washed away by storm water discharges. Other potential losses include leaking tanks or valves which could contain a variety of acids, solvents, or other chemicals.

(d) Spill prevention and response—There are no additional requirements beyond those described in Part VI.C. of this fact sheet.

(e) Inspections—Primary metals facilities are required to conduct self inspections of all storage, process, and plant yard areas at least once per month. These inspections will allow the effectiveness of the pollution prevention plan to be monitored. The potential for problems which could affect storm water are extremely varied and can have significant impacts over a short time period. These inspections are necessary to ensure that problems are identified and remedied as quickly as possible. Points of particular importance include pollution control equipment, material handling areas, and waste collection and disposal areas. Tanks, drums, silos, bins, and hoppers are other areas of potential concern.

(f) Employee training—There are no additional requirements beyond those described in Part VI.C. of this fact sheet.

(g) Record keeping and internal reporting procedures—There are no additional requirements beyond those described in Part VI.C. of this fact sheet.

(h) Non-storm water discharges—There are no additional requirements beyond those described in Part VI.C. of this fact sheet.

(i) Sediment and erosion control—There are no additional requirements beyond those described in Part VI.C. of this fact sheet.

(j) Management of runoff—Facilities shall consider implementation of a range of management practices to control or treat storm water runoff. These include vegetative buffer strips or swales, filter fences and other types of filters, oil/water separators, and all types of settling basins and ponds. These practices allow the capture of pollutants from storm water before it leaves the site.

Due to the large size of many primary metals facilities, source controls may not be practical. In some cases, it may not be feasible to cover or otherwise protect large areas of material storage or exposed plant yards. Deposition of particulates from furnace or other process emissions may be relatively diffuse over a large area of the facility, and very difficult to control. In these cases management practices such as settling basins, retention or detention ponds, or recycle ponds can provide effective treatment of runoff. For smaller areas, filter fabric, booms, or other types of filters may be appropriate. In areas where oil and grease is a concern, oil/water separators may be appropriate and should be considered.

b. Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of the permit. Comprehensive site compliance evaluations should be conducted at least 4 times a year. The individual or individuals that will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that primary metals facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires primary metals facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table F–6. The pollutants listed in Table F–6 were found to be above benchmark levels for

a significant portion of the primary metals facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from primary metals facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from primary metals facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table F–6. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE F–6.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of Concern	Cut-off concentration
Nitrate+Nitrite Nitrogen	0.68 mg/L
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L
Total Recoverable Aluminum	0.75 mg/L
Total Recoverable Copper	0.009 mg/L
Total Recoverable Manganese	0.05 mg/L
Total Recoverable Iron	0.3 mg/L
Ammonia	0.0925 mg/L
Total Recoverable Zinc	0.065 mg/L
Pyrene	0.0000028 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table F–6, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table F–6, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE F–7.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table F–6, then quarterly sampling is required during the fourth year of the permit.
4th Year of Permit Coverage.	• If average concentration is less than or equal to the value listed in Table F–6, then no further sampling is required for that parameter. • Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table F–6. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

The monitoring cut off concentrations listed in Table F–6 are not numerical effluent limitations. These values represent a level of pollutant discharge which facilities may achieve through the implementation of pollution prevention plans. At least half of the facilities which submitted Part 2 data, reported concentrations less than or equal to the values listed in Table F–6. Facilities that achieve average discharge concentrations which are less than or equal to the values in Table F–6 are not relieved from the pollution prevention plan requirements or any other requirements of the permit.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. of the pursuit (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification

period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of a storm water discharge from each outfall are required at primary metals facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring or several parameters for discharges from primary metals facilities. These notices specifically require that facilities with storm water discharges from primary metals facilities are required to monitor their storm water discharges for oil and grease, chemical oxygen demand, total suspended solids, pH, acute whole effluent toxicity, total recoverable lead, total recoverable cadmium, total recoverable copper, total recoverable arsenic, total recoverable chromium, and any pollutant limited in an effluent guideline to which the facility is subject. Today's proposed permit contains fewer monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for primary metals facilities in the September 1992 General Permits and those required in today's proposed permit.

8. Alternative Monitoring Requirements

In addition, EPA requests comments on the following monitoring and reporting requirements in lieu of those listed in part XI.F. of today's proposed permit.

a. Semiannual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in paragraphs XI.F.8.a.(1) through XI.F.8.a.(2) must monitor those storm water discharges identified below at least semiannually (2 times per year) except as provided in VI.C.3. (Sampling Waiver), VI.C.4. (Representative

Discharge), and XI.F.8.d. (Toxicity Testing). Permittees with facilities identified in parts XI.F.8.a.(1) through XI.F.8.a.(3) (below) must report in accordance with part VI.B. of the permit (Reporting: Where to Submit) and paragraph XI.F.8.c. (Reporting: When to Submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

(1) Facilities with storm water discharges associated with industrial activity classified as SIC 33 (Primary Metals Industry) are required to monitor such storm water that is discharged from the facility for: oil and grease (mg/L); TSS (mg/L); pH (s.u.); acute whole effluent toxicity; and any pollutant limited in an effluent guideline to which the facility is subject.

(2) A facility which observes no statistically significant mortality in a Whole Effluent Toxicity test for 100 percent effluent (runoff) in four consecutive samples (2 years) may cease monitoring for Whole Effluent Toxicity as well as any pollutants limited in an effluent guideline to which the facility is subject, for the remainder of the term of the permit.

(3) Facilities that are classified as SIC 33 only because they manufacture pure silicon and/or semiconductor grade silicon are not required to monitor for acute whole effluent toxicity, but must monitor for other parameters listed under paragraph XI.F.8.a.(1) above.

b. Sample type. All sampling to be performed will be taken by grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

c. Reporting: when to submit. Permittees that are required to conduct sampling pursuant to Part XI.F.8.a. of this section shall monitor samples collected during the sampling period running from March to August and during the sampling period running from September to February. Such permittees shall submit monitoring results obtained during the reporting period running from April to March on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following April. A separate Discharge Monitoring Report Form is required for each event sampling period. The first report may include less than 12 months of information.

d. Toxicity testing

(1) Test Procedures

(a) The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1). Freshwater species must be used for discharges to freshwater bodies. Due to the nonsaline nature of rainwater, freshwater should also be used for discharges to estuarine, marine, or other naturally saline waterbodies.

(b) All test organisms, procedures and quality assurance criteria used shall be in accordance with "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms," EPA/600/4–90/027, or the most current edition. The control water used will be moderately hard water as described in EPA/600/4–90/027, Table 6, or the most current edition.

(c) Tests shall be conducted annually (once per year) on a grab sample of the discharge. Test shall be conducted using 100 percent effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–27 (or the most current edition), Section 12, Report Preparation, and the report submitted to EPA with the Discharge Monitoring Reports (DMRs). On the DMR, the permittee shall report "0" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

(2) If acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and the control) is detected in the storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the sources of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

G. Storm Water Discharges Associated With Industrial Activity From Metal Mining (Ore Mining and Dressing)[63] Facilities

On November 16, 1990 (55 FR 47990), the U.S. Environmental Protection Agency (EPA) promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition included point source discharges of storm water from eleven major categories of facilities, including: "(i) facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR subchapter N * * * ." and "* * * (iii) facilities classified as Standard Industrial Classifications 10 through 14 (metal mining industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations."

This section of today's proposed general permit only applies to the portions of categories (i) and (iii) identified by 40 CFR part 440 and Standard Industrial Classification (SIC) code 10, metal mining. SIC code 10 includes establishments primarily engaged in mining, developing mines, or exploring for metallic minerals (ores). This group also includes all ore dressing and beneficiating operations, whether performed at mills operated in conjunction with the mines served or at mills, such as custom mills, operated separately. Common activities at these mills include: crushing, grinding, and separation by gravity concentration, magnetic separation, electrostatic separation, flotation, or leaching.[64] The

[63] For the purposes of this part of the fact sheet, the term "metal mining" includes all ore mining and/or dressing and beneficiating operations, whether performed at mills operated in conjunction with the mines served or at mills, such as custom mills, operated separately.

[64] For more information on metal mines/mills see EPA, Effluent Guidelines Division. November 1982.

following is a listing of the types of mining/milling facilities that are covered under SIC code 10:

- Iron Ores (SIC Code 1011);
- Copper Ores (SIC Code 1021);
- Lead and Zinc Ores (SIC Code 1031);
- Gold Ores (SIC Code 1041);
- Silver Ores (SIC Code 1044);
- Ferroalloy Ores, Except Vanadium (SIC Code 1061);
- Metal Mining Services (SIC Code 1081);
- Uranium-Radium-Vanadium Ores (SIC Code 1094); and
- Miscellaneous Metal Ores, Not Elsewhere Classified (SIC Code 1099).

This section does not cover any discharge subject to effluent limitation guidelines, including storm water that combines with process wastewater and mine drainage. Storm water that does not come into contact with any overburden, raw material, intermediate product, finished product, by-product, or waste product located on the site of the operation is not subject to permitting under this section according to section 402(l)(2) of the Clean Water Act. This section also does not apply to discharges from sites on Federal lands on which a claim has been established under the General Mining Laws but where no mining activities have been undertaken other than nominal claim-holding activities required by the Mining Law and applicable regulations.

This section is applicable to all phases of mining operations, whether active or inactive, as long as there is exposure to significant materials. This includes land disturbance activities such as the expansion of current extraction sites, active and inactive mining stages, and reclamation activities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industrial Profile

There are typically three phases to a mining operation: the exploration and construction phase; the active phase; and the reclamation phase. The exploration and construction phase entails exploration and a certain amount of land disturbance to determine the financial viability of a site. Construction includes building of site access roads, and removal of overburden and waste rock to expose minable ore. These land-disturbing activities are significant potential sources of storm water contaminants. The active phase includes each step from extraction through production of a saleable product. The active phase may include periods of inactivity due to the seasonal nature of these metal mining activities. The final phase of reclamation is intended to return the land to its pre-mining state.

Because of the land-disturbing nature of the ore mining and dressing industry, contaminants of concern generated by industrial activities in this industry include total suspended solids (TSS), total dissolved solids (TDS), turbidity, pH, and heavy metals. Table G–1 lists potential pollutant source activities, and related pollutants associated with ore mining and dressing facilities.

TABLE G–1.—ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS

Activity	Pollutant source	Pollutant
Site Preparation	Road Construction	Dust, TSS, TDS, turbidity.
	Removal of Overburden	Dust, TSS, TDS, turbidity.
	Removal of waste rock to expose the metal	Dust, TSS, TDS, turbidity.
Mineral Extraction	Blasting activities	Dust, TSS, nitrate/nitrite.
Beneficiation Activities	Milling	Dust, TSS, TDS, pH, turbidity, fines, heavy metals.
	Flotation	Dust, TSS, TDS, pH, turbidity, fines, chemical reagents, acids, heavy metals.
	Gravity Concentration	TSS, TDS, pH, turbidity, heavy metals.
	Amalgamation	Dust, TSS, TDS, pH, turbidity, heavy metals, mercury.
	Waste Rock Storage	Dust, TSS, TDS, turbidity, pH, heavy metals.
	Raw Material Loading	Dust, TSS, TDS, turbidity, heavy metals.
	Processing materials unloading	Diesel fuel, oil, gasoline, chemical reagents.
	Raw or Waste Material Transportation	Dust, TSS, TDS, turbidity, heavy metals.
Other Activities	Sedimentation pond upsets	TSS, TDS, turbidity, pH, heavy metals.
	Sedimentation pond sludge removal and disposal.	Dust, TSS, TDS, turbidity, pH, heavy metals.
	Air emission control device cleaning	Dust, TSS, TDS, turbidity.
Equipment/Vehicle Maintenance	Fueling activities	Diesel fuel, gasoline, oil.
	Parts cleaning	Solvents, oil, heavy metals, acid/alkaline wastes.
	Waste disposal of oily rags, oil and gas filters, batteries, coolants, degreasers.	Oil, heavy metals, solvents, acids.

"Development Document for Effluent Limitations Guidelines and Standards for the Ore Mining and Dressing Point Source Category." EPA 440/1–82/061.

TABLE G–1.—ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS—Continued

Activity	Pollutant source	Pollutant
	Fluid replacement including hydraulic fluid, oil, transmission fluid, radiator fluids, and grease.	Oil, arsenic, lead, cadmium, chromium, benzene, TCA, TCE, PAHs, solvents.
Reclamation Activities	Site preparation for stabilization	Dust, TSS, TDS, turbidity, heavy metals.

Sources: Storm Water Group Applications, Parts 1 and 2 and EPA. "Development Document for Effluent Limitations Guidelines and Standards for the Ore Mining and Dressing Point Source Category." (EPA 440/1–82/061) November 1982.

Industrial activities, significant materials, and material management practices associated with ore mining and dressing methods are typically similar, varying only in the type of rock being mined. Examples of mineral commodities obtained from ore mining and dressing facilities include: Iron; copper; lead; zinc; gold; silver; ferroally ores such as molybdenum, manganese, chromium, cobalt, nickel, and tungsten; uranium; radium; vanadium; aluminum; antimony; bauxite; platinum; tin; and titanium. Industrial activities include, "* * * but [are] not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials and intermediate and finished materials; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water" (40 CFR 122.26(b)(14)). The most common industrial activities at metallic mine sites include extraction of the metal, material crushing, and product separation. While all of these industrial activities can occur at metal mines, storm water discharges from some of the areas listed cannot be covered by this permit (see Part VIII.G.4. Discharges Covered Under This Section).

Significant materials include, "* * * but [are] not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under Section 101(14) of CERCLA; any chemical facilities required to report pursuant to Section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharge" (40 CFR 122.26(b)(12)). Significant materials commonly found at mining facilities include: Overburden; waste rock; sub-ore piles; tailings; petroleum-based products; solvents and detergents; manufactured products; and other waste materials.

Materials management practices are defined as those practices employed to diminish contact by significant materials with precipitation and storm water runon, or practices utilized to reduce the offsite discharge of contaminants. To this end, sediment ponds, discharge diversion techniques, as well as methods of dispersion, are used to minimize impacts of significant materials on storm water. For mine sites requiring additional sources of water for processing operations, rainfall events as well as storm water runon will be managed for use in dust suppression, processing, and washing activities. Many mine sites are already equipped with sedimentation ponds and other established process wastewater treatment methods in order to meet effluent limitation guidelines. Additional storm water management practices used at mineral mining facilities include: discharge diversions; drainage/storm water conveyances; runoff dispersion; sediment control and collection practices; vegetation/soil stabilization; capping contaminated sources; and treatment.

Metals are recovered by three basic extraction techniques: surface mining; underground mining; and placer mining. Each type of extraction method may be followed by varying methods of beneficiation and processing. Presented below are brief descriptions of the industrial activities, significant materials, and materials management practices associated with these four extraction processes and associated beneficiation activities. Due to similarities in mining operations for many of the minerals within this sector, industrial activities, significant materials, and materials management practices are fairly uniform across this sector. Unique practices are noted.

a. Surface mining. Many mining facilities access metal deposits using surface extraction techniques such as strip mining, open-pit, open-cut, and open-cast. Surface mining is more economical than underground especially when the ore body is large and near the surface.

(1) Industrial activities. Extraction activities include removal of overburden and waste rock to access metal deposits. These land-disturbing activities generate piles of topsoil and other overburden as well as waste rock, which are typically stored beside, or within, the pit or quarry. In addition, land disturbance, drilling, blasting, stripping, and materials handling activities create large amounts of dust that are either dispersed by local wind patterns or collected in air pollution control mechanisms. At closure, overburden and waste rock may or may not be used to reclaim the pit or quarry depending on Federal, State, and local requirements. In addition, access roads and rail spurs, and associated loading and unloading areas, are found onsite.

Following extraction, the mined materials may be transferred to a nearby beneficiation/processing facility. At an ore beneficiation facility, the valuable metals are separated from the less valuable rock to yield a produce which is higher in metal content. To accomplish this, the ore must be crushed and ground small enough so that each particle contains mostly the mineral to be recovered or mostly the less valuable, or gangue, material. Valuable minerals are separated from the gangue by gravity concentration, magnetic separation, electrostatic separation, flotation, and leaching.

(2) Significant materials. Significant materials generated by most extraction activities at surface mines include overburden piles, waste rock piles, ore and subore piles, and materials spilled from loading and unloading activities. Other exposed materials that can be generated at these types of operations (as well as other metal mines), include: tailings from flotation and other separation stages; soils impacted by fugitive dust emissions; settling ponds that receive process wastewaters;

dredged sediment disposal areas; as well as raw material and product storage. Dust and particulate matter collected in air pollution control mechanisms may also be disposed of in onsite waste piles.

(3) Materials management practices. Materials management practices at surface mines are typically designed to control dust emissions and soil erosion from extraction activities, and offsite transport of significant materials. Settling ponds and impoundments are commonly used to reduce total suspended solids (TSS), total dissolved solids (TDS), and other contaminants in process generated wastewaters. These controls may also be used to manage storm water runoff and runon with potentially few alterations to onsite drainage systems. Few sampling facilities indicated the presence of traditional BMPs. Only 29 percent of the sampling facilities have ponds or impoundments as a storm water control.

Tailings impoundments are used to manage tailings generated at facilities engaged in flotation or heavy media separation operations. These impoundments are used to manage beneficiation/processing wastewaters generated at the facility and may also be used to manage storm water runoff.

b. Underground mining. Underground mining techniques are used to access metals located too far underground to access economically from the surface. Though typically a more expensive form of extraction, advantages to underground mining operations include year-round operation, less noise (applicable to facilities located near residential areas), and less surface land disturbance. The two main underground mining methods are stoping and caving. Both of these methods can be used in several variations depending on the characteristics of the ore body. Common stoping methods include cut-and-fill, square cut (timbered), shrinkage, and open. Caving methods include undercut, block, and sub-level. Underground mining is usually independent of surface mining, but sometimes proceeds or follows it. Tungsten, gold, lead, and zinc are some of the metals extracted using caving.

(1) Industrial activities/significant materials. Industrial activities that may be associated with storm water discharges include: loading/unloading activities; haul roads; products and materials storage; waste piles; and processing activities. Exposed materials associated with surface beneficiation and processing facilities at underground mines are similar to those associated with surface mining facilities.

(2) Materials management practices. Materials management practices for significant materials at the surface of underground mining facilities are similar to those materials management practices used at surface mining operations. However, waste rock or mill tailings are in some cases being returned to the mine as fill for the mined-out areas or may be directed to a disposal basin.

c. Placer mining. Placer mining is used to mine alluvial sands and gravels containing valuable metallic minerals. Placer deposits are usually mined exclusively for gold material but smaller amounts of platinum, tin, and tungsten may also be recovered. There are three main placer mining techniques including dredging, hydraulicking, and open cut.

(1) Industrial activities. The industrial activities at dredging placer mines excavate underwater gold deposits by bucketline, dragline, or by suction. The excavation devices dig, wash, and screen gold values which are then recovered using gravity concentration methods. Hydraulicking placer mines characteristically use high pressure water jets to excavate value-laden gravel banks. The most commonly used placer mining extraction method is the open cut. It involves stripping away topsoil and overburden to expose the auriferous gravels. The gold bearing gravels are excavated in sections and pushed to a placer wash plant for processing. Gravitational concentration is the common beneficiating technique at placer mines.

(2) Significant materials. Significant materials generated at placer operations include overburden, mine development rock, ore, sub-ore piles, mine waste dumps, tailings ponds and piles. Potential natural constituents include mercury, arsenic, bismuth, antimony, thallium, pyrite, and pyrrhotite. After settling, the liquid portion of the slurry is returned to the mill as process water and the remaining slurried waste is pumped to tailings. In placer operations, however, tailings are disposed of in streams or on land.

(3) Materials management practices. Settling ponds are used to manage process wastewaters and are in some cases being used to manage contaminated storm water runoff. Few materials management practices were indicated in the part 1 group applications.

d. Inactive mine sites. Inactive ore mining and dressing operations are those where industrial activities are no longer occurring. When active, mineral extraction could have occurred from surface mines, solution mines, placer operations, or underground mines. These sites are included in this section because significant materials may remain onsite. These materials, if exposed, are potential sources of storm water contamination. Until an inactive metals mine and/or beneficiation operation has been reclaimed under applicable State or Federal laws after December 17, 1990, the site is considered associated with an "industrial activity" and is subject to the conditions of this section. Due to the seasonal nature of this industry, mine sites can become temporarily inactive for extended periods of time. Temporarily inactive sites are not viewed the same as permanently inactive sites.

2. Pollutants Found in Storm Water Discharges From Metal Mining

The volume of storm water discharges and the type and concentrations of pollutants found in storm water discharges from active and inactive metal mining facilities will vary according to several factors. Such factors include: Geographic location; hydrogeology; the physical and chemical characteristics of the ores extracted; the physical and chemical characteristics of the waste rock and overburden removed; how the ore was extracted (e.g., open pit, underground, solution or dredging); the type of industrial activities occurring onsite (e.g., extraction, crushing, washing, milling, reclamation, etc.); the size of the operation; type, duration, and intensity of precipitation events; temperature ranges and variations; and the types of pollutant control measures used at the site. Each of these, and other, factors will interact to influence the quantity and quality of storm water runoff. For example, air emissions (i.e., settled dust) may be a significant source of pollutants at some facilities, while roads constructed of waste rock may be a primary source at others. In addition, sources of pollutants other than storm water, such as illicit connections, spills, and other improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

Seven (7) separate part 1 metal mining group applications were received by EPA. These groups were required to collect and submit quantitative data from a representative sampling subgroup. EPA has yet to receive storm water quantitative data from all the designated sampling facilities.

After reviewing the quantitative data that was submitted, it is difficult to identify specific site characteristics which may be responsible for elevated

or insignificant pollutant loadings. In addition, the limited or lack of response from facilities in specific metal mining subsectors did not allow for a subsector analysis of the sampling data. Therefore, EPA analyzed the data in aggregate while trying to make some qualitative judgments based on the ores mined at each facility, and the status of mining operations reporting the data.

A review of the compiled data indicates large variations in minimum and maximum values for each of the eight conventional pollutants monitored and for the multitude of other pollutants reported, as required by part 2 of the application. Table G–2 presents a statistical summary of the quantitative data submitted, including the mean, maximum, minimum, median, 95th and 99th percentile values for both grab and flow-weighted composite samples.

TABLE G–2.—STATISTICS FOR POLLUTANTS IN STORM WATER[1]

[mg/L, except as noted]

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD	18	12	10.0	10.6	0.0	1.0	27.0	44.0	9.0	6.0	27.0	44.0	27.0	44.0
COD	18	15	144.5	195.1	0.0	36.0	630.0	740.0	71.10	160.0	630.0	740.0	630.0	740.0
Nitrite+Nitrate as N	16	13	1.10	0.90	0.00	0.070	5.30	2.10	0.750	0.860	5.30	2.10	5.3	2.1
TKN	15	11	3.27	3.39	0.00	0.00	9.40	11.80	2.6	3.2	9.4	11.80	9.4	11.8
Oil & Grease	16	N/A	2.36	N/A	0.00	N/A	22.00	N/A	0.000	N/A	22.00	N/A	22.0	8.4
pH (s.u.)	24	N/A	N/A	N/A	4.5	N/A	8.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	21	15	1.83	1.06	0.00	0.000	14.00	7.00	0.300	0.380	11.0	7.0	14.0	7.0
Total Suspended Solids	17	15	6996	623	0.0	47	100000	3050	403	330	100000	3050	100000	3050
Arsenic	21	11	.85	.33	0.0	0.0	10.2	2.6	.004	.009	6.4	2.6	10.2	2.6
Cadmium	21	14	.015	0.25	0.0	0.0	0.19	0.20	0.0	0.0	.06	.2	.19	.2
Copper	18	13	3.88	.59	0.0	0.0	46.8	3.4	0.14	.09	46.8	3.4	46.8	3.4
Iron	8	4	176.44	48.81	0.0	3.55	581.0	144.0	47.3	23.85	581	144	581	144
Lead	22	13	.93	6.07	0.0	0.0	17.4	65.0	0.0	.05	1.2	65	17.4	65
Zinc	13	8	3.04	3.87	0.0	0.0	16.3	20.9	.59	.663	16.3	20.9	16.3	20.9
Sulfate	5	5	185.8	126.40	16	16	412	386.0	53	36	412	368	412	386

[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in the statistics.
[2] Composite samples.

TSS grab samples ranged from a minimum value of 0 mg/L to a maximum of 100,000 mg/L and a flow-weighted composite sample ranged from a minimum of 47 mg/L to a maximum of 3,050 mg/L. The median grab sample TSS concentration is 403 mg/L. The results indicate a lack of effective storm water sediment and erosion controls for these facilities and warrants further evaluation of TSS. The remaining conventional pollutants analyzed for in the storm water discharges displayed typically low concentrations.

Cyanide concentrations were reported for four gold mining and milling facilities. All quantitative data reported are less than 10 mg/L for those analyses.

One or more heavy metal concentrations were reported for each outfall. Unfortunately, the limited data prevents EPA from making definitive statements about the concentration of metals in storm water from metal mining operations. In general, elevated concentrations of metals coincided with elevated total suspended solids levels.

The quantitative data submitted for the metal mines in these group applications identifies the need to limit discharges of total suspended solids. EPA believes that if total suspended solids loadings are reduced there will also be a reduction in total metal loadings. For discharges that are low in pH, the heavy metals will tend to be in the dissolved phase, and may require additional treatment.

3. Options for Controlling Pollutants From Metal Mines

There are two options for reducing pollutants in storm water discharges; end-of-pipe treatment and implementing Best Management Practices to prevent and/or eliminate pollution. Discharges from mining operations are in some ways dissimilar to other types of industrial facilities. Mining facilities are often in remote locations and may operate only seasonally or intermittently, yet need year-round controls because significant materials remain exposed to precipitation when reclamation is not completed. These characteristics make resource intensive end-of-pipe management controls less desirable. A comprehensive storm water management program for a given plant may include controls from each of these categories. Development of comprehensive control strategies should be based on a consideration of site and facility plant characteristics.

a. End-of-pipe treatment. At many ore mining and dressing facilities, it may be appropriate to collect and treat the runoff from targeted areas of the facility. This approach was taken with 11 industrial subcategories within the ore mining and dressing industry, subject to national effluent limitation guidelines mill process wastewater and mine drainage. There are several areas where effluent limitation guidelines influence the permitting strategy for storm water discharges:

- Whenever storm water and mill process wastewater and mine drainage combine, the storm water discharge is also subject to effluent limitation guidelines;
- To meet the numeric effluent limitation guidelines, most, if not all, facilities must collect and temporarily store onsite runoff from targeted areas of the plant;
- The effluent limitation guidelines do not apply to discharges whenever rainfall events, either chronic or catastrophic, cause an overflow of storage devices designed, constructed, and maintained to contain a 10-year, 24-hour storm; and
- Most technology-based treatment standards, used for treating discharges subject to effluent limitation guidelines, are based on relatively simple technologies such as settling of solids, neutralization, and drum filtration.

End-of-pipe treatments are effective means to control mill process wastewater and mine drainage whenever the types of pollutants and the volume of water to be treated are known. However, storm water discharges from ore mining and dressing facilities can be numerous, intermittent, and of various volumes. Channelization of all storm water that comes into contact with significant materials into a single treatment facility, or construction of numerous treatment devices for each

discharge, may be burdensome for the regulated community. An appropriate means of storm water management at ore mining and dressing facilities are BMPs. BMPs allow the mine site operator to choose a particular BMP that is best for the characteristics of a particular site and to control parameters of concern. In cases of poor quality stormwater discharge (e.g., low pH, high metals, etc.), treatment may be necessary to protect receiving waters.

b. Best management practices. Effective storm water management controls for limiting the offsite discharge of storm water pollutants from ore mining and dressing facilities are source reduction BMPs. Source reduction BMPs are methods by which discharges of contaminants are controlled with little or no required maintenance. Examples of these types of controls include source reduction diversion dikes, vegetative covers, and berms. Source reduction practices are typically (but not always) low in cost and relatively easy to implement. In some instances, more resource intensive treatment BMPs, including sedimentation ponds, may be necessary depending upon the type of discharge, types and concentrations of contaminants, and volume of flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. The management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with mining activity.

The following four categories describe best management practice options for reducing pollutants in storm water discharges from ore mining and dressing facilities:

- Discharge diversions.
- Sediment and erosion control.
- Capping of contaminated sources.
- Treatment.

Because ore mining and dressing is largely a land disturbance activity, BMPs that minimize erosion and sedimentation will be most effective if installed at the inception of operations and maintained throughout active operations and reclamation of the site. From the construction of access and haul roads, to closure and reclamation activities, implementation of BMPs is often essential to minimizing long-term environmental impacts to an area.

Part 1 group application data indicates that few storm water BMPs have been implemented at sampling facilities. The group application process did not require a description of BMP locations, and did not require applicants to describe the number of identical BMPs implemented at each site. As a result, the effectiveness of BMPs, for storm water management, at these facilities cannot be evaluated.

Many BMPs were not listed by facilities because they have been implemented to treat waters subject to effluent limitation guidelines, and are not exclusively used for storm water management. For instance, 29 percent of the sampling subgroup reported using ponds for sediment control and collection. Since some facilities classified as SIC Code 10 are subject to effluent limitation guidelines, sedimentation ponds may be implemented at greater proportions than indicated in part 1 of the group applications.

Because BMPs described in the part 1 data are limited, EPA is providing an overview of supplementary BMPs for use at ore mining and dressing facilities. However, due to the site-specific nature of facilities within this sector, BMPs cited do not preclude the use of other viable BMP options. Table G–3 summarizes BMP options as they apply to land disturbance activities at ore mining and dressing facilities. Sources of BMP information include: "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990; "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, September, 1992, (EPA 832–R–92–006); "Best Management Practices for Mining in Idaho," Idaho Department of Lands, November 1992; and "Erosion & Sediment Control Handbook," Goldman et al., McGraw-Hill Book Company, 1986.

TABLE G–3.—SUMMARY OF MINE AREAS AND APPLICABLE BEST MANAGEMENT PRACTICES

Land-disturbed area	Discharge diversions	Conveyance systems	Runoff dispersion	Sediment control & collection	Vegetation	Containment	Treatment
Haul Roads and Access Roads.	Dikes, Curbs, Berms.	Channels, Gutters, Culverts, Rolling Dips, Road Sloping, Roadway Water Deflectors.	Check Dams, Rock Outlet Protection, Level Spreaders, Stream Alteration, Drop Structures.	Gabions, Riprap, Native Rock Retaining Walls, Straw Bale Barriers, Sediment Traps/Catch Basins, Vegetated Buffer Strips.	Seeding, Willow Cutting Establishment.	.....	
Pits/Quarries or Underground Mines.	Dikes, Curbs, Berms.	Channels, Gutters.	Serrated Slopes, Benched Slopes, Contouring, Stream Alteration.	Sediment Settling Ponds, Straw Bale Barrier, Siltation Berms.	Seeding	Plugging and Grouting.	Chemical/Physical Treatment.

TABLE G-3.—SUMMARY OF MINE AREAS AND APPLICABLE BEST MANAGEMENT PRACTICES—Continued

Land-disturbed area	Discharge diversions	Conveyance systems	Runoff dispersion	Sediment control & collection	Vegetation	Containment	Treatment
Overburden, Waste Rock and Raw Material Piles.	Dikes, Curbs, Berms.	Channels, Gutters.	Serrated Slopes, Benched Slopes, Contouring, Stream Alteration.	Plastic Matting, Plastic Netting, Erosion Control Blankets, Mulch-straw, Compaction, Sediment/ Settling Ponds, Silt Fences, Siltation Berms.	Topsoiling, Seedbed Preparation, Seeding.	Capping	Chemical/Physical Treatment, Artificial Wetlands.
Reclamation	Dikes, Curbs, Berms.	Channels, Gutters.	Check Dams, Rock Outlet Protection, Level Spreaders, Serrated Slopes, Benched Slopes, Contouring, Drain Fields, Stream Alteration, Drop Structures.	Gabions, Riprap, and Native Rock Retaining Walls, Biotechnical Stabilization, Straw Bale Barriers, Sediment Traps/Catch Basins, Vegetative Buffer Strips, Silt Fences, Siltation Berms, Brush Sediment Barriers.	Topsoiling, Seedbed Preparation, Seeding, Willow Cutting Establishment.	Capping, Plugging and Grouting.	Chemical/Physical Treatment, Wetlands.

• *Haul Roads and Access Roads*—Placement of haul roads or access roads should occur as far as possible from natural drainage areas, lakes, ponds, wetlands or floodplains where soil will naturally be less stable for heavy vehicle traffic. If a haul road must be constructed near water, as little vegetation as possible should be removed from between the road and the waterway, as vegetation is a useful buffer against erosion and is an efficient sediment collection mechanism. The width and grade of haul or access roads should be minimal and should be designed to match natural contours of the area. Construction of haul roads should be supplemented by BMPs that divert runoff from road surfaces, minimize erosion, and direct flow to appropriate channels for discharge to treatment areas.

• *Pits or Quarries*—Excavation of a pit or quarry must be accompanied by BMPs to minimize impacts to area surface waters. As discussed in construction of haul roads, as little vegetation as possible should be removed from these areas during excavation activities to minimize exposed soils. In addition, stream channels and other sources of water that may discharge into a pit or quarry should be diverted around that area to prevent contamination.

BMPs can be used to control total suspended solids levels in runoff from unvegetated areas. These can include sediment/settling ponds, check dams, silt fences, and straw bale barriers.

• *Overburden, Waste Rock, and Raw Material Piles*—Overburden, topsoil, and waste rock, as well as raw material and intermediate and final product stockpiles should be located away from surface waters and other sources of water, and from geologically unstable areas. If this is not practicable, surface water should be diverted around the piles. As many piles as possible should be revegetated (even if only on a temporary basis). At closure, remaining units should be reclaimed.

• *Reclamation Activities*—When a mineral deposit is depleted and operations cease, a mine site must be reclaimed according to appropriate State or Federal standards. Closure activities typically include restabilization of any disturbed areas such as access or haul roads, pits or quarries, sedimentation ponds or work-out pits, and any remaining waste piles. Overburden and topsoil stockpiles may be used to fill in a pit or quarry (where practical). Recontouring and revegetation should be performed to stabilize soils and prevent erosion.

Major reclamation activities such as recontouring roads and filling in a pit or quarry can only be performed after operations have ceased. However, reclamation activities such as stabilization of banks, and reseeding and revegetation should be implemented in mined out portions, or inactive areas of a site as active mining moves to new areas.

EPA recognizes that quarries are frequently converted into reservoirs, or recreational areas, after the mineral deposit is depleted. However, this does not preclude the reclamation of disturbed areas above the quarry rim.

(1) Discharge diversions. Discharge diversions provide the first line of defense in preventing the contamination of discharges, and subsequent contamination of receiving waters of the United States. Discharge diversions are temporary or permanent structures installed to divert flow, store flow, or limit storm water runon and runoff.

These diversion practices have several objectives. First, diversion structures can be designed to prevent otherwise uncontaminated (or less contaminated) water from crossing disturbed areas or areas containing significant amounts of contaminated materials, where contact may occur between runon and

significant materials. These source reduction measures may be particularly effective for metal mining facilities to prevent runon of uncontaminated discharges from contacting exposed materials and/or reduce the flow across disturbed areas, thereby lessening the potential for erosion. Second, diversion structures can be used to collect or divert waters for later treatment, if necessary. The usefulness of these control measures are limited by such factors as the size of the area to be controlled and the type and nature of materials exposed and precipitation events.

Diversion dikes, curbs, and berms are temporary or permanent diversion structures that prevent runoff from passing beyond a certain point, and divert runoff away from its intended path. Dikes, curbs or berms may be used to surround and isolate areas of concern at metal mining sites, diverting flow around piles of overburden, waste rock, and storage areas, to minimize discharge contact with contaminated materials and to limit discharges of contaminated water from confined areas. The BMPs described below may be useful for storm water diversion at metal mining sites.

• *Channels or Gutters*—Channels or gutters collect storm water runoff and direct its flow. Channels or gutters may act to divert runoff away from a potential source of contamination, but may also be used to channel runoff to a collection and/or treatment area including settling ponds, basins or work-out pits.

• *Open Top Box Culverts, and Waterbars*—These structures are temporary or permanent structures that divert water from a roadway surface. Open top box culverts may be used on steeply graded, unpaved roads in place of pipe culverts to divert surface runoff and flow from inside ditches onto the downhill slope of a road. These structures are typically made of wood and should periodically be monitored and repaired if necessary.

• *Rolling Dips and Road Sloping*—Rolling dips and road sloping are permanent water diversion techniques installed using natural contours of the land during road construction. These BMPs prevent water accumulation on road surfaces and divert surface runoff toward road ditches, which then convey the storm water to ponds or other management areas.

• *Roadway Surface Water Deflector*—A roadway surface water deflector is another technique to prevent accumulation of water on road surfaces. The structure uses a conveyor belt sandwiched between two pieces of treated wood and placed within the road to deflect water. This is a useful technique for steeply graded, unpaved roads.

• *Culverts*—Culverts are permanent surface water diversion mechanisms used to convey water off of, or underneath a road. Made of corrugated metal, they must extend across the entire width of the road, and beyond the fill slope. Additional erosion control mechanisms may need to be installed at the discharge end of the culvert.

Drainage systems are most effective when used in conjunction with runoff dispersion devices designed to slow the flow of water discharged from a site. These devices also aid storm water infiltration into the soil and flow attenuation. Some examples of velocity dissipation devices include check dams, rock outlet protection, level spreaders, and serrated and benched slopes.

• *Check Dams*—Check dams are small temporary dams constructed across swales or drainage ditches to reduce the velocity of runoff flows, thereby reducing erosion and failure of the swale or ditch. This slowing reduces erosion and gullying in the channel and allows sediments to settle.

• *Rock Outlet Protection*—Rock protection placed at the outlet end of culverts, channels, or ditches reduces the depth, velocity, and destructive energy of water such that the flow will not erode the downstream reach.

• *Level Spreaders*—Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders diffuse storm water point sources and release it onto areas stabilized by existing vegetation.

• *Serrated Slopes and Benched Slopes*—These runoff dispersion methods break up flow of runoff from a slope, decreasing its ability to erode. Serrated and benched slopes provide flat areas that allow water to infiltrate, and space for vegetation to grow and reinforce soils.

• *Contouring*—Surface contouring is the establishment of a rough soil surface amenable to revegetation, through creating horizontal grooves, depressions, or steps that run with the contour of the land. Surface roughening aids in the establishment of vegetative cover by reducing runoff velocity and giving seed an opportunity to take hold and grow.

• *Drain Fields*—Drain fields are used to prevent the accumulation of water and/or ground water at a site, by diverting infiltrating sources through gravity flow or pumping.

• *Stream Alteration*—Altering or channelizing the path of a stream to bypass all or some disturbed areas on a site, allows additional mining activities, and avoids contamination of stream water by disturbed lands. This practice is complicated, however, by the need to restore the channel when mining operations end.

• *Drop Structures*—Drop structures are large angular rocks placed in a V-shaped pattern to slow the velocity of storm water runoff. These structures are typically reinforced by logs or large rocks imbedded in the streambanks.

(2) Erosion and sediment controls. Erosion and sediment controls limit movement and retain sediments from being transported offsite. Several structural collection devices have been developed to remove sediment from runoff before it leaves the site. Several methods of removing sediment from site runoff involve diversion mechanisms previously discussed, supplemented by a trapping or storage device.

Structural practices typically involve filtering diffuse storm water flows through temporary structures such as straw bale dikes, silt fences, brush barriers or vegetated areas.

Structural practices are typically low in cost. However, structural practices require periodic removal of sediment to remain functional. As such, they may not be appropriate for permanent use at inactive mines. However, these practices may be effectively used as temporary measures during active operation and/or prior to the final implementation of permanent measures.

(a) Structural Practices

• *Sediment/Settling Ponds*—Sediment ponds function as sediment traps by containing runoff for long periods of time, allowing suspended solids to settle. These structures can achieve a high removal rate of sediment for both process wastewater and storm water discharges.

Discharge ponds may also be designed to act as surge ponds which are designed to contain storm surges and then completely drain in about 24 to 40 hours, and remain dry during times of no rainfall. They can provide pollutant removal efficiencies that are similar to those of detention ponds.[65]

• *Gabions, Riprap, and Native Rock Retaining Walls*—These BMPs are all forms of slope stabilization. Gabions consist of rocks (riprap) contained by rectangular wire boxes or baskets for use as permanent erosion control structures. Riprap consists of loose rocks placed along embankments to prevent erosion.

• *Biotechnical Stabilization*—Biotechnical stabilization uses live

[65] "Urban Targeting and BMP Selection," EPA, Region V, November 1990.

brush imbedded in the soils of a steep slope to prevent erosion. This method relies on the premise that the imbedded vegetation will eventually root and help stabilize the slope.

• *Straw Bale Barrier*—Straw bales may be used as temporary berms, barriers, or diversions, capturing sediments, filtering runoff. When installed and maintained properly, these barriers remove approximately 67 percent of the sediment load.[66]

• *Sediment Traps or Catch Basins*—These temporary or permanent structures are useful for catching and storing sediment laden storm water runoff and are particularly useful during construction activities to contain runoff. The effectiveness of these BMPs is better in smaller drainage basin areas. Sediment traps are less than 50 percent effective in removing sediment from storm water runoff.[67]

• *Vegetated Buffer Strips*—The installation of vegetated buffer strips will reduce runoff and prevent erosion at a removal efficiency rate of 75 to 99 percent depending upon the ground cover.[68]

• *Silt Fence/Filter Fence*—A low fence made of filter fabric, wire and steel posts, should be used on small ephemeral drainage areas where storm water collects or leaves a mine site. Silt fences remove 97 percent of the sediment load and are easier to maintain and remove without creating lasting impacts to the environment.[69]

• *Siltation Berms*—Siltation berms are typically placed on the downslope side of a disturbed area to act as an impermeable barrier for the capture and retention of sediments in surface water runoff. Plastic sheeting is typically used to cover the berm. The berm and the plastic sheeting may require periodic maintenance and repair.

• *Brush Sediment Barriers*—Brush barriers are temporary sediment barriers composed of tree limbs, weeds, vines, root mat, soil, rock and other cleared materials placed at the toe of a slope. A brush barrier is effective only for small drainage areas, usually less than ¼ acre, where the slope is minimal.

(*b*) *Stabilization*—Stabilization practices involve establishing a sustainable ground cover by permanent seeding, mulching, sodding, and other such practices. A vegetative cover reduces the potential for erosion of a site by: absorbing the kinetic energy of raindrops which would otherwise impact soil; intercepting water so it can infiltrate into the ground instead of running off and carrying contaminated discharges; and by slowing the velocity of runoff to promote onsite deposition of sediment. Stabilization controls are often the most important measures taken to prevent offsite sediment movement, and can provide a six-fold reduction in the discharge of suspended sediment levels.[70] Permanent seeding has been found to be 99 percent effective in controlling erosion for disturbed land areas.[71] Many states require that topsoil be segregated from other overburden for use during reclamation. While stored, topsoil stockpiles should be vegetated. This temporary form of vegetation can often be used for other piles of stored materials and for intermittent/seasonal operations.

Typically, the costs of stabilization controls are low relative to other discharge mitigation practices. Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, stabilization controls should typically be used in combination with other management practices. These measures have been documented as particularly appropriate for mining sites.

• *Topsoiling, Seedbed Preparation*—The addition of a layer of topsoil or plant growth material provides an improved soil medium for plant growth. Seedbed preparation may include the addition of topsoil ingredients to be mixed in with soils used for seedbed preparation.

• *Broadcast Seeding and Drill Seeding*—Seeding and vegetative planting are methods used to revegetate an area. Broadcast seeding spreads seeds uniformly, by hand or machine, to steep sloped or rocky areas, flat surfaces, and areas with limited access.

• *Willow Cutting Establishment*—Willow cutting establishment describes a method of soil stabilization useful for stream banks and other areas located adjacent to water. Similar to biotechnical stabilization, willow cuttings are used to promote growth in an area needing stabilization. Willow cuttings are typically used to reinforce a streambank or other moist area.

• *Plastic Matting, Plastic Netting, and Erosion Control Blankets*—These BMPs are used to protect bare soils to control dust and erosion. Mats and blankets help to promote vegetative growth by maintaining moisture and heat within the soil.

• *Mulch-straw or Wood Chips*—Mulches and wood chips are useful temporary covers for bare or seeded soils, with an erosion control effectiveness rating of 75 to 98 percent.[72] Like matting, mulch-straw or wood chips help soils retain moisture and warmth to promote vegetative growth.

• *Compaction*—Soil compaction using a roller or other heavy equipment increases soil "strength" by increasing its density. More dense soil is less prone to erosion and long-term soil settlement.

(*3*) *Capping*. In some cases, the elimination of a pollution source through capping contaminant sources may be the most cost effective control measure for discharges from inactive ore mining and dressing facilities. Depending on the type of management practices chosen the cost to eliminate the pollutant source may be very high. Once completed, however, maintenance costs will range from low to nonexistent.

Capping or sealing of waste materials is designed to prevent infiltration, as well as to limit contact between discharges and potential sources of contamination. Ultimately, capping should reduce or eliminate the contaminants in discharges. In addition, by reducing infiltration, the potential for seepage and leachate generation may also be lessened.

EPA has identified a wide variety of best management practices (BMPs) that may be used to mitigate discharges of contaminants at active and inactive metal mines. Many of the practices focus on sediment and erosion control and are similar to BMPs used in the construction industry. These controls to prevent erosion and control sedimentation are the most effective if they are installed at the inception of operations and maintained throughout active operations and reclamation of the site. For more details on the use and implementation of these practices the reader is encouraged to obtain a copy of one or more of the many good sediment and erosion control books available on the market.[73] In some cases (e.g., low

[66] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–14.

[67] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–26.

[68] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–7.

[69] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–15.

[70] "Performance of Current Sediment Control Measures at Maryland Construction Sites," January 1990, Metropolitan Washington Council of Governments, page X.

[71] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–4.

[72] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990.

[73] "Best Management Practices for Mining in Idaho," Idaho Department of State Lands.

pH and/or high metals concentrations), BMPs, and sediment and erosion controls may not be adequate to produce an acceptable quality of storm water discharge. Under those circumstances additional physical or chemical treatment systems may be necessary to protect the receiving waters.

(4) *Treatment.* Treatment practices are those methods of control which normally are thought of as being applied at the "end of the pipe" to reduce the concentration of pollutants in water before it is discharged. This is in contrast to many BMPs, where the emphasis is on keeping the water from becoming contaminated. Treatment practices may be required where flows are currently being affected by exposed materials and other BMPs are insufficient to meet discharge goals. These practices are usually the most resource intensive, as they often require significant construction costs, and monitoring and maintenance on a frequent and regular basis. Treatment options may range from high maintenance controls to low maintenance controls. High maintenance treatment techniques require manpower to operate and maintain the BMP. Low maintenance cost techniques have initial capital costs but operate with low long-term maintenance after implemented. At a few sites, treatment measures other than high maintenance measures may be appropriate to address specific pollutants.

- *Chemical/Physical Treatment*—An example of a high maintenance technology that is found at many active metal mining facilities is chemical/physical treatment. The most common type of chemical/physical treatment involves the addition of lime or other such caustics to neutralize the discharges and/or precipitate metals. Metals may be removed from wastewater by raising the pH of the wastewater to precipitate them out as hydroxides.
- *Oil/Water Separators*—Another example of a high maintenance treatment technology is an oil/water separator. An American Petroleum Institute (API) oil/water separator or similar type of treatment device which acts to skim oil and settle sludge can be used to remove oil from water.
- *Artificial Wetlands*—This type of BMP system can be an effective system for improving water quality either alone or in conjunction with other treatment practices. Wetland processes are able to filter sediments, and absorb and retain chemical and heavy metal pollutants through biological degradation, transformation, and plant uptake.

Natural wetlands should not be considered as part of the treatment system because they are considered to be waters of the United States. The necessary controls, or BMPs, must be provided prior to discharging the storm water runoff to natural wetlands or other receiving waters.

In summary, a wide variety of BMPs are available for use at active and inactive metallic mining and milling facilities. These measures range from simple low cost, low maintenance source reduction practices such as diversion structures to high cost, maintenance intensive practices such as wetlands treatment. Clearly, the selection of a practice or group of practices will be site-specific depending on conditions and potential impacts as well as the resources available at each site. A specific best available technology (or technologies) cannot be determined because of the differences between sites and the quantities and characteristics of their discharges.

4. Discharges Covered Under This Section

Coverage under this section of today's proposed permit is limited to all storm water discharges from inactive metal mining facilities and storm water discharges from the following areas of active metal mining facilities:

- Topsoil piles;
- Offsite haul/access roads if off active area;
- Onsite haul roads if not constructed of waste rock or spent ore, and mine water is not used for dust control;
- Runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present;
- Concentration building, if no contact with material piles;
- Mill site, if no contact with material piles;
- Chemical storage area;
- Docking facility, if no excessive contact with waste product;
- Explosive storage;
- Reclaimed areas released from reclamation bonds prior to December 17, 1990; and
- Partially/inadequately reclaimed areas or areas not released from reclamation bonds.

Storm water discharges, or mine drainage discharges, which are subject to existing effluent limitations guidelines addressing storm water (or a combination of storm water and non-storm water) cannot be covered by this section. The effluent limitations guidelines that apply to active metal mining operations are contained in 40 CFR part 440, Ore Mining and Dressing Point Source Category. These effluent guidelines include specific numeric limitations for mine drainage and discharges from mills, or "no discharge" requirements. Table G–4 identifies the discharge and source of the discharge from active metal mining facilities, that are subject to process wastewater limitations, mine drainage limitations, and storm water reporting requirements. Those discharges/sources of discharges that have "SW" in the second column (Applicable ELG), may be covered under this section of today's permit. At all metal mining facilities, coverage under this section does not include adit drainage or contaminated springs or seeps.

TABLE G–4.—APPLICABILITY OF 40 CFR PART 440 EFFLUENT LIMITATIONS GUIDELINES TO STORM WATER RUNOFF FROM ACTIVE ORE (METAL) MINING AND DRESSING SITES

Discharge/source of discharge	Applicable ELG, if any (see key)	Note/comment
Land application area runoff	MD	PW—if Process fluids present.
Crusher area	MD	PW—if Process fluids present.
Piles (seepage and/or runoff):		
Spent ore	MD	PW—if Process fluids present.
Surge/Ore	MD	PW—if Process fluids present.
Waste rock/overburden	MD	
Topsoil	SW	

November 1992; "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, September 1992, (EPA 832–R–92–005); and "Erosion & Sediment Control Handbook," Goldman et al., McGraw-Hill Book Company, 1986.

TABLE G–4.—APPLICABILITY OF 40 CFR PART 440 EFFLUENT LIMITATIONS GUIDELINES TO STORM WATER RUNOFF FROM ACTIVE ORE (METAL) MINING AND DRESSING SITES—Continued

Discharge/source of discharge	Applicable ELG, if any (see key)	Note/comment
Drainage:		
Pit drainage (unpumped)	MD	
Pit drainage (removed by pumping)	MD	
Mine water from underground mines (unpumped), adit discharges.	MD	
Mine water from underground mines (pumped)		
Seepe/French drains	MD	PW—if Process fluids present.
Roads constructed of waste rock or spent ore:		
Onsite haul roads	MD	
Offsite haul/access roads	SW	(if off Active Area)
Roads not constructed of waste rock or spent ore:		
Onsite haul roads	SW	MD—if dust control with MD water.
Offsite haul/access roads	SW	
Milling/concentrating:		
Tailings impoundment/pile	PW	
Runoff from tailings dams/dikes when constructed of waste rock/tailings.	MD	PW—if Process fluids present.
Runoff from tailings dams/dikes when not constructed of waste rock/tailings.	SW	PW—if Process fluids present.
Heap leach pile runoff/seepage	PW.	
Pregnant pond (barren and surge ponds also)	PW	
Polishing pond	PW	
Concentration building	SW	
Concentrate pile (product storage)	PW	If storm water only, and no contact with piles.
Mill site	SW	Same as concentration bldg.
Ancillary areas:		
Office/administrative building and housing	UC	
Chemical storage area	SW	Unless mixed with SW from industrial area, then SW.
Docking facility	SW	
Explosive storage	SW	Excessive contact with waste product could constitute MD.
Fuel storage (oil tanks/coal piles)	SW	
Vehicle/equipment maintenance area/building	SW	
Parking areas	SW	UC if only employee and visitor type parking.
Power plant	SW	
Truck wash area	SW	Excessive contact with waste product could constitute MD.
Reclamation-related areas:		
Any disturbed area (unreclaimed)	MD	
Reclaimed areas released from reclamation bonds after Dec. 17 1990.	UC	SW if inactive area.
Reclaimed areas released from reclamation bonds prior to Dec. 17 1990.	SW	
Partially/inadequately reclaimed areas or areas not released from reclamation bond.	SW	

KEY:
UC—Unclassified; Not Subject to Storm Water Program or 40 CFR Part 440 Effluent Limitations Guidelines (ELG).
MD—Subject to 40 CFR Part 440 ELG for mine drainage.
PW—Subject to 40 CFR Part 440 ELG for mill discharge or process (including zero discharge ELG).
SW—Storm water runoff from these sources are subject to the Storm Water Program, but are not subject to 40 CFR 440 ELG unless mixed with discharges subject to the 440 CFR 440 ELG that are not regulated by another permit prior to mixing. Non-storm water discharges from these sources are subject to NPDES permitting and may be subject to the effluent limitation guidelines under 40 CFR 440.

Temporarily inactive (e.g., winter closure, and portions of active mines that are no longer being mined, and where reclamation has not begun) mines will be permitted as an active mine. The following definitions apply to this section and are intended to provide clarification as to what is considered active, inactive, and temporarily inactive:

The following definitions are only for this section of today's proposed permit and are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii):

Active Metal Mining Facility" is a place where work or other related activity to the extraction, removal, or recovery of metal ore is being conducted. With respect to surface mines, an "active metal mining facility" does not include any area of land on or in which grading has been completed to return the earth to a desired contour and reclamation work has begun.

"*Inactive Metal Mining and Dressing Facility*" means a site where metal mining and/or milling activities occurred in the past but is not an active metal mining facility, as defined in this section. The term means a site where reclamation subject to applicable State or Federal reclamation requirements has begun but has not been completed and/or the reclamation bond has not been released. The term also includes a site where the mining and/or milling activities occurred prior to the establishment of applicable State and/or Federal reclamation requirements or where there has been no mining or milling activities in the 10 years prior to the effective date of today's proposed permit. This definition also includes storm water discharges associated with industrial activity from inactive mine

sites occurring on non-Federal lands where an operator cannot be identified.

"Temporarily Inactive Metal Mining Facility" means a site where metal mining and/or milling activities occurred in the past, but are not being actively undertaken and the criteria for being considered an inactive metal mining facility are not met.

Operators of storm water discharges from mining related industrial activities such as vehicle maintenance, or power plants should refer to the appropriate sections of today's proposed permit for specific guidance or requirements. Clearing, grading, and excavation activity that disturbs 5 or more acres during the exploration or preparation for beginning active mining operations cannot be covered by this section. Coverage for this type of pre-mining activity can be covered by EPA's general permit for storm water discharges from construction activities or an applicable State-issued permit. Land disturbance activities associated with the active mining operations such as expansion of existing pits, can be covered by this section.

5. Storm Water Pollution Prevention Plan Requirements. All facilities subject to this section must prepare and implement a storm water pollution prevention plan. The establishment of a pollution prevention plan requirement reflects EPA's decision to allow operators of ore mining and dressing facilities to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The requirements included in pollution prevention plans provide a flexible framework for the development and implementation of site specific controls to minimize pollutants in storm water discharges. This approach is consistent with the approach used in the baseline general permits finalized on September 9, 1992 (57 FR 41236).

Pollution prevention can be an effective approach for controlling contaminated storm water discharges from metal mining facilities. Pollution prevention plans allow the operator of a facility to select BMPs based on site-specific considerations such as: facility size; climate; geographic location; geology/hydrology; the environmental setting of each facility; and volume and type of discharge generated. This flexibility is necessary because each facility will be unique in that the source, type, and volume of contaminated surface water discharges will differ from site to site. In addition, EPA believes that the adoption of BMPs reduces environmental impacts by minimizing land disturbed areas susceptible to storm water runoff. Early implementation and maintenance of BMPs facilitates ongoing reclamation activities, reducing final reclamation costs associated with site closure. BMPs are also effective at temporarily or permanently inactive mine sites.

There are two major objectives to a pollution prevention plan: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility.

Specific requirements for a pollution prevention plan for ore mining and dressing facilities are described below. These requirements must be implemented in addition to the baseline pollution prevention plan provisions discussed previously.

a. Active and temporarily inactive metal mining facilities

(1) Description of mining activities. The storm water pollution prevention plan shall provide a narrative description of the mining and associated activities taking place at the site which affect or may affect storm water runoff intended to be covered by this section. The narrative description shall report the total acreage within the mine site, an estimate of the acreage of land currently disturbed, and an estimate of the total acreage that will be disturbed throughout the life of the mine. A general description of the mining site relative to major transportation routes and communities shall also be provided.

(2) Description of potential pollution sources. Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather, result in dry weather flows and mine pumpout. This assessment of storm water pollution will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. In addition to the baseline general requirements storm water pollution prevention plans must describe the following elements:

(a) Drainage—The plan must contain a map of the site that shows the pattern of storm water drainage, structural features that control pollutants in storm water runoff[74] and process wastewater discharges (including mine drainage), surface water bodies (including wetlands), places where significant materials[75] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of today's proposed permit. The map also must show areas where the following activities take place: fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, waste disposal, haul roads, access roads, and rail spurs. In addition, the site map must identify monitoring locations.

(b) Inventory of exposed materials—Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must address materials that within 3 years prior to the effective date of today's proposed permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in storm water runoff; existing structural controls that limit process wastewater discharges; and any treatment the runoff receives before it is discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

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[74] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[75] Significant materials include, "* * * but [are] not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under section 101(14) of CERCLA; any chemical facilities required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharge" (40 CFR 122.26(b)(12)). Significant materials commonly found at mining facilities include: overburden; raw materials; waste rock piles; tailings; petroleum based products; solvents and detergents; heap leach pads; tailings piles/ponds, both proposed and existing; and manufactured products, waste materials or by-products used or created by the facility.

In addition, any existing ore or waste rock/overburden characterization data, including results of testing for acid rock generation potential must be included in the pollution prevention plan. The intent is to get an idea of the pollutants (e.g., heavy metals) that may be present in the ore and waste rock/overburden.

(3) Measures and controls. Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. The permittee must assess the applicability of the following BMPs for their site: discharge diversions, drainage/storm water conveyance systems, runoff dispersions, sediment control and collection mechanisms, vegetation/soil stabilization, capping of contaminated sources, and treatment of storm water discharges. In addition, BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address the potential sources of storm water pollution. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems.

Under the inspection requirements of the pollution prevention plan, operators of active facilities are required to conduct monthly visual inspections of BMPs and storm water quality of each discharge associated with an industrial activity. Owner/operators of temporarily inactive mining sites are required to conduct annual visual monitoring. If weather conditions make the mine site inaccessible, the quarterly inspection will not be required. Active mining sites have frequent inspection periods because members of the pollution prevention team will be onsite, and the fact that they are active means there is a greater potential for pollution. The inspections shall include: (1) An assessment of the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems, and containment structures; (2) visual inspections of vegetative BMPs, serrated slopes, and benched slopes to determine if soil erosion has occurred; and (3) visual inspections of material handling and storage areas and other potential sources of pollution for evidence of actual or potential pollutant discharges of contaminated storm water.

Under the employee training requirements of the pollution prevention plan, facility operators are required to conduct employee training programs at least semiannually. The intent of this frequency is to provide a reminder to the employees of the requirements of the storm water pollution prevention plan.

(4) Non-storm water discharges. Each pollution prevention plan must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water discharges, including discharges that are subject to 40 CFR part 440. The certification must describe possible significant sources of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the onsite drainage points directly observed during the test or evaluation. Pollution prevention plans must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water discharge.

Under the non-storm water discharge section of the pollution prevention plan, EPA will allow non-storm water discharges that mix with storm water under this section provided that the plan includes a certification that any non-storm water discharge which mixes with storm water is subject to a separate NPDES permit that applies applicable effluent limitations prior to the mixing of non-storm water and storm water. In such cases, the certification shall identify the non-storm water discharge(s), the applicable NPDES permit(s), the effluent limitations placed on the non-storm water discharge by the NPDES permit(s), and the point(s) at which the limitations are applied.

b. Inactive metal mining facilities

(1) Pollution prevention team. The storm water pollution prevention plan must identify specific individual(s) who are responsible for the development, implementation, maintenance, and revision of the pollution prevention plan. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the storm water pollution prevention plan at the inactive facility. Members of the pollution prevention team do not have to be permanently located at the inactive facility, such as the requirement for any active facility.

(2) Description of mining activities. The storm water pollution prevention plan shall provide a narrative description of the mining and associated activities that took place at the site. The narrative description shall report the approximate dates of operation, total acreage within the mine site and/or processing site, an estimate of the total acreage disturbed, and the activities (reclamation etc.) that are currently taking place at the facility. A general description of the mining site relative to major transportation routes and communities shall also be provided.

(3) Description of potential pollution sources. Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather, result in dry weather flows. This assessment of storm water pollution will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. In addition to the baseline general requirements storm water pollution prevention plans must describe the following elements:

(a) Drainage—The plan must contain a map of the site that shows the pattern of storm water drainage, structural features that control pollutants in storm water runoff[76] and process wastewater discharges (including mine drainage), surface water bodies (including wetlands), places where significant materials[77] are exposed to rainfall and runoff. The map also must show the location of the following: any remaining equipment storage, fueling, and maintenance areas; areas used for

[76] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[77] Significant materials include, "* * * but [are] not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under section 101(14) of CERCLA; any chemical facilities required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharge" (40 CFR 122.26(b)(12)). Significant materials commonly found at mining facilities include: overburden; raw materials; waste rock piles; tailings; petroleum based products; solvents and detergents; heap leach pads; tailings piles/ponds, both proposed and existing; and manufactured products, waste materials or by-products used or created by the facility.

outdoor manufacturing, storage, or disposal of materials; the boundaries of former mining and milling sites; the location of each storm water outfall and an outline of the portions of the drainage area that are within the facility boundaries; tailings piles and ponds; mine drainage or any other process water discharge point; and an estimate of the direction of flow.

(*b*) *Inventory of exposed materials*—The storm water pollution prevention plan shall include, for each outfall, an inventory and narrative description of any significant materials that may still be at the site. The description and locations of the significant materials should be consistent with those shown on the site map. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in storm water runoff; existing structural controls that limit process wastewater discharges; and any treatment the runoff receives before it is discharged to surface waters or a separate storm sewer system.

(*c*) *Risk identification and summary of potential pollutant sources*—The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (i.e., total suspended solids, arsenic, etc.) associated with each source.

(*4*) *Measures and controls.* Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. The permittee must assess the applicability of the following BMPs for their site: discharge diversions, drainage/storm water conveyance systems, runoff dispersions, sediment control and collection mechanisms, vegetation/soil stabilization, capping of contaminated sources, and treatment of storm water discharges. In addition, BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff. EPA recognizes that inactive mine sites and abandoned mine sites will most likely require different storm water controls because the sources and types of contamination may vary.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address the potential sources of storm water pollution. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems.

(*5*) *Comprehensive site compliance evaluation.* Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part shall be conducted at appropriate intervals specified in the plan, but, in no case less than once in 3 years.

6. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that active metal mining facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires active ore mining and dressing facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table G–5. The pollutants listed in Table G–5 were found to be above levels of concern for a significant portion of active ore mining and dressing facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at levels of concern from active ore mining and dressing facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

Today's proposed permit only requires active ore mining and dressing facilities to monitor their storm water discharges. EPA requests comment as to whether monitoring requirements should be expanded to temporarily inactive or inactive facilities. EPA also requests comment as to whether the scope of the discharges which must be monitored could be focused on particular discharges of stormwater from active metal mining facilities.

At a minimum, storm water discharges from active metal mining facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table G–5. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE G–5.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Chemical Oxygen Demand (COD).	65 mg/L
Total Suspended Solids (TSS).	100 mg/L
Total Kjeldahl Nitrogen (TKN).	1.5 mg/L
Nitrate plus Nitrite Nitrogen.	0.68 mg/L
Total Phosphorus	0.33 mg/L
Ammonia	0.093 mg/L
Total Recoverable Antimony.	0.088 mg/L
Total Recoverable Arsenic.	.000018 mg/L
Total Recoverable Copper.	0.009 mg/L
Total Recoverable Iron.	0.3 mg/L
Total Recoverable Lead.	0.0337 mg/L
Total Recoverable Manganese.	0.05 mg/L
Total Recoverable Zinc.	0.065 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table G–5, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table G–5, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit

coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE G–6.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table G–5, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table G–5, then no further sampling is required for that parameter.
4th Year of Permit Coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table G–5. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

The monitoring cut off concentrations listed in Table G–5 are not numerical effluent limitations. These values represent a level of pollutant discharge which facilities may achieve through the implementation of pollution prevention plans. At least half of the facilities which submitted Part 2 data, reported concentrations less than or equal to the values listed in Table G–5. Facilities that achieve average discharge concentrations which are less than or equal to the values in Table G–5 are not relieved from the pollution prevention plan requirements or any other requirements of the permit.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. of the permit (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Visual examination of storm water quality. The inspection must be of a grab sample collected from each storm water outfall. Visual inspections of storm water discharges from each outfall at active and temporarily inactive mining facilities are required. The examination of storm water quality at active mining facilities must be conducted at least once a month. Temporarily inactive mining facilities must make the examination at least once a year (consistent with the Comprehensive Site Compliance Evaluation). Visual examination of storm water quality at inactive mining facilities is not required. EPA requests comment on the frequency requirements for the examination of storm water

quality at active, temporarily inactive, and inactive mining facilities. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.G. of today's proposed permit.

a. Monitoring Requirements for Active and Temporarily Inactive Metal Mining Facilities. During the period beginning 1 year after the effective date and lasting through the expiration date of this permit, permittees must monitor all storm water discharges (each outfall at the facility for the parameters identified below) at least quarterly (4 times per year) except as provided in VI.E. (Sampling Waiver and Representative Discharge). A grab sample may be collected. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. In addition to analyzing the discharge for the parameters listed below, the permittee shall record the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the total volume (in gallons) of the discharge sampled; an estimate of the runoff coefficient of the drainage area; and the status of the facility (active, temporarily inactive, permanently inactive, or undergoing reclamation). Table G–7 indicates the parameters to be monitored and frequency for all facilities in the metal mining section.

TABLE G–7.—ORE MINING AND DRESSING: MONITORING REQUIREMENTS

Parameter	Unit	Frequency [1]	Sample type
Total Flow	MG	Quarterly	Estimate.
pH	s.u.	Quarterly	Grab.
Total Settleable Solids	ml/L	Quarterly	Grab
Total Suspended Solids	mg/L	Quarterly	Grab.
Nitrate and Nitrite as N	mg/L	Quarterly	Grab.

[1] The quarters are defined as December to February, March to May, June to August, and September to November.

b. Monitoring requirements for inactive metal mining facilities. There are no monitoring requirements for storm water discharges from inactive metal mining facilities unless notified by the permit issuing authority.

c. *Reporting: when to submit.* The permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than 12 months of information.

8. Numeric Effluent Limitations

There are no numeric effluent limitations beyond those described in Part VI.F. of this fact sheet.

H. Storm Water Discharges Associated With Industrial Activity From Coal Mines and Coal Mining-Related Facilities

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water associated with industrial activity." This definition includes point source discharges of storm water from eleven major categories of facilities, including: "* * * (iii) facilities classified as Standard Industrial Classification (SIC) codes 10 through 14 including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations

which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or storm water contaminated by contact with any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations."

This section only covers storm water discharges associated with industrial activities from inactive[78] coal mines and from access roads, haul roads, and rail lines at active coal mines. Coal mines and coal mining facilities subject to requirements under this section include the following types of operations:

- Bituminous Coal and Lignite Surface Mining (SIC 1221).
- Bituminous Coal Underground Mining (SIC 1222).
- Anthracite Mining (SIC 1231).
- Coal Mining Services (SIC 1241).

Storm water discharges authorized by this section include storm water discharges at inactive coal mines where precipitation and storm water runon come into contact with significant materials including, but not limited to, raw materials, waste products, and by-products, overburden, and stored materials. This section also authorizes storm water discharges from haul roads, access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by active coal mining facilities. The following activities are covered under this section:

- *Haul Roads*—Nonpublic roads on which coal or coal refuse is conveyed.
- *Access Roads*—Nonpublic roads providing light vehicular traffic within the facility property and to public roadways.
- *Railroad Spurs, Sidings, and Internal Haulage Lines*—Rail lines used for hauling coal within the facility property and to offsite commercial railroad lines or loading areas.
- *Conveyor Belts, Chutes, and Aerial Tramway Haulage Areas*—Areas under and around coal or refuse conveyor areas, including transfer stations.
- *Equipment Storage and Maintenance Yards*—
- *Coal Handling Buildings and Structures*—
- *Inactive Coal Mines and Related Areas*—Abandoned and other inactive mines, refuse disposal sites and other mining-related areas. This includes abandoned mine sites being reclaimed under Title IV of the Surface Mining Control and Reclamation Act. Not covered by this section are discharges from sites, or parts of sites, which are determined to cause or contribute to water quality standards violations.

This section does not cover any discharge subject to effluent limitation guidelines. Discharges from active facilities and those under reclamation are subject to NPDES permits and require treatment to meet specific effluent guideline limits as specified in 40 CFR Part 434 for pH, iron, manganese, suspended solids, and settleable solids. Storm water that does not come into contact with any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation are not subject to permitting under this section according to Section 402(l)(2) of the Clean Water Act. This section also does not apply to discharges for sites on Federal lands on which a claim has been established under the General Mining Laws but where no mining activities have been undertaken other than nominal claim-holding activities required by the Mining Law and applicable regulations.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

Industry Profile

Coal is a black, primarily organic substance formed from compressed layers of decaying organic matter millions of years ago.[79] Factors such as the fixed carbon content, volatile matter fraction, and heating value, determine whether coal is classified as lignite, subbituminous, bituminous, or anthracite. The coal mining and related facilities industry extracts and processes coal. There are two methods of coal mining: surface mining and underground mining. Surface mining is a method utilized when the coal is close to the earth's surface and it is economically viable to remove and store the overburden, which can later be used for reclamation. Underground mining occurs when coal is too deep to be surface mined or environmental restrictions prohibit surface mining.

Coal preparation activities increase the value of coal by removing impurities through size reduction, screening, gravity separation, dewatering, and drying. After this step, coal is ready to be shipped for further processing. The impurities, including shales, clays, low reject coal, and possibly some acidic materials, are then conveyed to refuse disposal facilities.

These mining methods and coal preparation activities occur during the active phase of mining and are not authorized by this section nor are they included in the storm water regulation. Most areas at active mine sites are covered by the Surface Mining Control and Reclamation Act (SMCRA). Discharges from these areas are considered process wastewaters and are covered under a separate NPDES permit. Today's proposed permit only addresses storm water discharges from coal mines and related areas that are not already subject to effluent limitation guidelines under 40 CFR part 434. Storm water discharges not subject to the effluent limitation guidelines may include discharges from the following areas:

A. Access roads, haul roads, and rail lines. Access roads, haul roads, and rail lines are used for the transportation of coal, refuse (waste materials, old equipment, etc.), and overburden away from the mine workings. To build access and haul roads, common land disturbing activities such as vegetation clearing and soil grading are necessary. Refuse coal and overburden may be used as a road base material. Road building activities increase the potential for the offsite discharge of sediment in storm water runoff. In addition, coal, overburden, and refuse materials may be spilled during loading and unloading operations and during the transport of

[78] Inactive mining operations are mining sites that are not being actively mined, but which have an identifiable owner/operator.

[79] "Development Document for Final Effluent Limitations Guideline, New Source Performance Standards, and Pretreatment Standards for the Coal Mining Point Source Category." EPA. 1982.

such materials along access roads, haul roads, and rail spurs.

b. Inactive mine sites. Although industrial processes have ended at inactive mine sites, the significant materials associated with those industrial processes may remain at the site and contaminate storm water discharges. The areas at inactive surface or underground coal mines which are included in the storm water regulation include former locations of: Conveyor belts, chutes, and aerial tramways; equipment storage and maintenance yards; coal preparation plants; and coal handling buildings and storage areas.

Inactive mine sites are regulated because significant materials remain onsite. The significant materials include, but are not limited to: Coal piles, including coal refuse piles; used and old equipment, including boneyards; overburden; solvents; cleaning agents; contaminated soils and sediments; waste disposal sites; waste materials; tailings; and sludges. These materials are typically stored outdoors and are exposed to storm water discharges.

2. Pollutants Found in Storm Water Discharges

Impacts caused by storm water discharges from active haul roads, access roads and rail lines and inactive coal mine and coal mining-related facilities will vary. Several factors influence to what extent significant materials from coal mines and coal mining-related facilities may affect water quality. Such factors include: geographic location; hydrogeology; the type of coal extracted; the mineralogy of the extracted resource and the surrounding rock; how the coal was extracted; the type of industrial activities occurring onsite; the size of the operation; and type, duration, and intensity of precipitation events. Each of these, and other, factors will interact to influence the quantity and quality of storm water runoff. For example, overburden may be a significant source of pollutants at some facilities, while storage areas are a primary source at others. In addition, sources of pollutants other than storm water, such as illicit connections,[80] spills, and other improperly dumped materials, may increase the pollutant loads discharged into waters of the United States.

Storm water discharges from haul roads of active sites and inactive mine sites may include many of the pollutants common to active coal mining operations. These pollutants may include acids, suspended solids, dissolved solids, iron, manganese, and traces of other metals. Table H–1 indicates the pollutant sources and pollutants for a number of industrial activities for coal mines authorized by this section.

Another problem at coal mines is acid mine drainage. In general, the problems of acid mine drainage is confined to western Maryland, northern West Virginia, Pennsylvania, western Kentucky, and along the Illinois-Indiana border. Acid mine drainage is not a problem in the West because the coals and overburden contain little pyrite, the precursor for acid mine drainage, and because of low annual precipitation.

TABLE H–1.—ACTIVITIES, POLLUTANT SOURCES, POLLUTANTS

Activity	Pollutant source	Pollutants
Road and Rail Construction and Maintenance—Active Sites.	Surface grading and exposure of soils	Dust, TSS, TDS, turbidity, pH.
Raw or Waste Material Transportation	Material spills	Dust, TSS, TDS, turbidity, pH, sulfates, iron.
Location of Mining and Processing Activities at Inactive Coal Mines.	Raw Material Storage	Dust, TSS, TDS, turbidity, pH sulfates, iron.
	Waste Rock Storage	Dust, TSS, TDS, turbidity, sulfates, iron, pH.
	Disposal Areas	Dust, TSS, TDS, turbidity, pH, oil & grease.
	Surface and Underground Mines	Dust, TSS, TDS, turbidity, pH, sulfates, iron.
	Materials Handling and Loading/Unloading	Dust, TSS, TDS, turbidity, pH, sulfates, iron.
Equipment/Vehicle Maintenance	Fueling Activities	Diesel fuel, gasoline, oil, COD.
	Parts Cleaning	Solvents, oil, heavy metals, acid/alkaline wastes.
	Waste disposal of oily rags, oil and gas filters, batteries, coolants, degreasers.	Oil, heavy metals, solvents, acids, COD.
Reclamation Activities	Site preparation for stabilization	Dust, TSS, TDS, turbidity.

Sampling data was submitted jointly by the American Mining Congress and the National Coal Association for the group permit. The AMC/NCA group sampling effort was representative of applicants and activities in several key areas. For example, 75 percent are located in EPA storm water rainfall district no. 2 (KY, WV, IN, ILL, TN area); 70 percent operate alkaline mines, 30 percent acidic mines; 88 percent use haul roads onsite; 80 percent transport coal over haul roads; 70 percent transport refuse; and, for sediment and erosion control, 78 percent include sediment traps and 51 percent use straw bale barriers and channel protection. The samples taken reflected these locations and activities.

Less than 35 percent of the designated sampling facilities have submitted part 2 data, which is less than four percent of the coal mines participating in the group application process. In addition, a number of data submittals did not submit data for flow-weighted composite samples. A summary of the sampling data analyzed for conventional mining pollutants is listed in Table H–2. Median concentrations for suspended solids (TSS) and iron concentrations merit attention. The few settleable solids samples collected by the applicants indicate levels more than 20 times larger than the 0.5 mg/L limit for storm water discharges from surface mines sedimentation ponds. Sampling data on acid, other metals, oil and grease, and other pollutants revealed relatively low concentrations. The pH values appear to be in the neutral range.

[80] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at coal mines and coal mining related facilities is low yet it still may be applicable at some operations.

TABLE H–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[1]

[mg/L, Except as Noted]

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	7	4	3.6	6.6	0.2	1.0	9.0	17.4	1.8	3.9	9.0	17.4	9.0	17.4
COD	13	8	16.5	26.9	0.0	0.0	83.9	115.0	6.0	135.0	83.9	115.0	83.9	115.0
Nitrate + Nitrite Nitrogen	8	6	0.8	1.0	0.0	0.0	3.1	3.1	0.4	0.6	3.1	3.1	3.1	3.1
Total Kjeldahl Nitrogen	9	8	2.6	2.6	0.0	0.2	5.2	7.4	2.6	1.2	5.2	7.4	5.2	7.4
Oil & Grease	19	N/A	2.2	N/A	0.0	N/A	13.9	N/A	1.2	N/A	13.9	N/A	13.9	N/A
pH (s.u.)	21	N/A	N/A	N/A	5.9	N/A	8.9	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	8	5	0.1	0.1	0.0	0.0	0.7	5.8	0.04	0.0	0.7	0.6	0.7	0.6
Tot. Suspended Solids	10	8	5,607	689	4	106	33,420	3,880	150	251	33,420	3,880	33,420	3,880
Iron	13	10	193.9	53.3	0.6	1.1	930	294	9.2	11.0	930.0	294.0	930.0	294.0

[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

Storm water discharges from inactive and abandoned coal mines, preparation, refuse disposal sites, haul roads and other inactive mining-related areas may contain substantial amounts of pollutants without the benefits of sediment and erosion control measures. Sampling data in the EPA 1982 "Development Document for Effluent Guidelines and Standards for Coal Mining" reveal typical ranges for untreated mine drainage and are indicated in Table H–3. The data are based on untreated surface and underground drainage and may not be typical of inactive sites subject only to storm water runoff. For example, a high proportion of underground mines in the survey may have resulted in the relatively low median levels of suspended solids. However, it does indicate the potential array of conventional mining pollutants which could be present in abandoned mine drainage.

3. Options for Controlling Pollutants

Mining facilities are often dissimilar to other types of industrial facilities because they may be situated in remote locations, operate only seasonally or intermittently, yet need year-round storm water management controls. EPA believes that the most effective storm water management controls for limiting the offsite discharge of storm water pollutants from active and inactive coal mines are source reduction BMPs. Source reduction BMPs are methods by which discharges of contaminants are controlled with little or no required maintenance. Examples of these types of controls include source reduction diversion dikes, vegetative covers, and berms. Source reduction practices are typically (but not always) low in cost and relatively easy to implement. In some instances, more resource intensive treatment BMPs, including sedimentation ponds and infiltration trenches, may be necessary depending upon the type of discharge, types and concentrations of contaminants, and volume of flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with active and inactive coal mines.

The following seven categories describe best management practice options for reducing pollutants in storm water discharges from haul and access roads for active coal mines and for inactive mines:

- Discharge Diversions.
- Drainage/Storm Water Conveyance Systems.
- Runoff Dispersion.
- Sediment Control and Collection.
- Vegetation/Soil Stabilization.
- Capping of Contaminated Sources.
- Treatment.

BMPs that minimize erosion and sedimentation are effective for areas along haul and access roads, and for inactive mines. Many BMPs were not listed by part 1 group application participants because the major application submitted by the National Coal Association and the American Mining Congress was comprised of only active mine sites. The only portions of an active mine site to which this section of today's permit applies are haul roads, railways, and conveyor belts, chutes, and aerial tramway haulage areas. Because the scope of storm water program, as it applies to active coal mining sites, is limited, the applicants were not required to provide EPA with BMP data for process wastewater discharges. Furthermore, active surface mines are subject to 30 CFR Part 816 and active underground mines are subject to 30 CFR Part 817, both which require the implementation of BMPs.

TABLE H—3. WASTEWATER CHARACTERIZATION SUMMARY FOR RAW WASTEWATER

[mg/L, except as noted]

Compound	Total detects	Minimum	Median	Mean	Maximum
TSS	97	0.5	57.5	10,160	240,000
pH	100	2.4	7.5	6.9	9.4
Iron	104	0.1	2.2	257	9,000
Manganese (Total)	94	0.003	1.08	5.19	80
Asbestos (fibers/liter)	9	3,500,000	1,090,000,000	9,372,000,000	41,000,000,000
COD	52	40	34	10,090	222,000
TDS	38	71	730	1,130	3,200
Total Volatile Solids	41	10	222	6,968	80,510
Volatile Suspended Solids	22	1	4.8	1,416	26,000
Settleable Solids	53	0	0.7	0.12	1.8
Total Organic Carbon	49	0.2	14.1	1,322	28,470
Free Acidity	6	19	41	181	740
MO Alkalinity	33	0.01	190	392	5,400
Phenolics	11	0.002	0.02	0.033	0.155
Sulfate	6	130	503	659	1,530
Total Acidity	1	10.5	10.5	10.5	10.5
Total Solids	35	180	1,326	11,800	190,000

Source: "Development Document for Final Effluent Limitations Guideline, New Source Performance Standards, and Pretreatment Standards for the Coal Mining Point Source Category." EPA. 1982.

Since many coal facilities are required to have BMPs, the data presented in part 1 of the application may underestimate the percentage of facilities with storm water BMPs.

Because BMPs described in the part I data are limited, EPA is providing an overview of supplementary BMPs for use by facility operators to determine appropriate BMPs for haul and access roads at active coal mines and for inactive coal mines. However, due to the site-specific nature of facilities within this sector, BMPs cited do not preclude the use of other viable BMP

options. Table H–4 summarizes BMP options as they apply to land disturbance activities at active and inactive coal mining facilities. Sources of BMP information include: "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990; "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, September, 1992, (EPA 832–R–92–006); "Best Management Practices for Mining in Idaho," Idaho Department of Lands, November 1992; and "Erosion & Sediment Control Handbook," Goldman et al., McGraw-Hill Book Company, 1986.

TABLE H–4.—SUMMARY OF MINE AREAS AND APPLICABLE BEST MANAGEMENT PRACTICES

Land-disturbed area	Discharge diversions	Conveyance systems	Runoff dispersion	Sediment control & collection	Vegetation	Containment
Haul Roads and Access Roads.	Dikes, Curbs, Berms.	Channels, Gutters, Culverts, Rolling Dips, Road Sloping, Roadway Water Deflectors.	Check Dams, Rock Outlet Protection, Level Spreaders, Stream Alteration, Drop Structures.	Gabions, Riprap, Native Rock Retaining Walls, Straw Bale Barriers, Sediment Traps/Catch Basins, Vegetated Buffer Strips.	Seeding, Willow Cutting Establishment.	
Pits/Quarries or Underground Mines.	Dikes, Curbs, Berms.	Channels, Gutters	Serrated Slopes, Benched Slopes, Contouring, Stream Alteration.	Sediment Settling Ponds, Straw Bale Barrier, Siltation Berms.	Seeding	Plugging and Grouting.
Overburden, Waste Rock and Raw Material Piles.	Dikes, Curbs, Berms.	Channels, Gutters	Serrated Slopes, Benched Slopes, Contouring, Stream Alteration.	Plastic Matting, Plastic Netting, Erosion Control Blankets, Mulch-straw, Compaction, Sediment/Settling Ponds, Silt Fences, Siltation Berms.	Topsoiling, Seedbed Preparation, Seeding.	Capping.
Reclamation	Dikes, Curbs, Berms.	Channels, Gutters,.	Check Dams, Rock Outlet Protection, Level Spreaders, Serrated Slopes, Benched Slopes, Contouring, Drain Fields, Stream Alteration, Drop Structures.	Gabions, Riprap, and Native Rock Retaining Walls, Biotechnical Stabilization, Straw Bale Barriers, Sediment Traps/Catch Basins, Vegetative Buffer Strips, Silt Fences, Siltation Berms, Brush Sediment Barriers.	Topsoiling, Seedbed Preparation, Seeding, Willow Cutting Establishment.	Capping, Plugging and Grouting.

• *Haul Roads and Access Roads*—Placement of haul roads or access roads should occur as far as possible from natural drainage areas, lakes, ponds, wetlands or floodplains where soil will naturally be less stable for heavy vehicle traffic. If a haul road must be constructed near water, as little vegetation as possible should be removed from between the road and the waterway, as vegetation is a useful buffer against erosion and is an efficient sediment collection mechanism. The width and grade of haul or access roads should be minimal and should be designed to match natural contours of the area. Construction of haul roads should be supplemented by BMPs that divert runoff from road surfaces, minimize erosion, and direct flow to appropriate channels for discharge to treatment areas. Existing haul roads and nearby ditches, without BMPs, can be altered or modified to accommodate the construction of BMPs.

• *Surface Mines*—BMPs can be used to control total suspended solids levels in runoff from unvegetated areas. These can include sediment/settling ponds, check dams, silt fences, and straw bale barriers.

• *Overburden, Waste Rock, and Raw Material Piles*—Overburden, topsoil, and waste rock should be stabilized, recontoured if necessary, and vegetated. In addition surface waters and other sources of water should be diverted around the piles. As many piles as possible should be revegetated (even if only on a temporary basis).

• *Reclamation Activities*—When a coal seam is depleted and operations cease, a mine site must be reclaimed according to appropriate State or Federal standards. Closure activities typically include restabilization of any disturbed areas such as access or haul roads, pits or quarries, sedimentation ponds or work-out pits, and any remaining waste piles. Overburden and topsoil stockpiles may be used to fill in a pit or quarry (where practical.) Recontouring and vegetation should be performed to stabilize soils and prevent erosion.

Major reclamation activities such as recontouring roads and filling in a pit or

quarry can only be performed after operations have ceased. However, reclamation activities such as stabilization of banks, and reseeding and revegetation should be implemented in mined out portions, or inactive areas of a site as active mining moves to new areas.

a. Discharge diversions. Discharge diversions provide the first line of defense in preventing the contamination of discharges, and subsequent contamination of receiving waters of the United States. Discharge diversions are temporary or permanent structures installed to divert flow, store flow, or limit storm water runon and runoff.

These diversion practices have several objectives. First, diversion structures can be designed to prevent otherwise uncontaminated (or less contaminated) water from crossing disturbed areas or areas containing significant amounts of contaminated materials, where contact may occur between runon and significant materials. These source reduction measures may be particularly effective for inactive coal mine sites because they prevent runon of uncontaminated discharges from contacting exposed materials and/or reduce the flow across disturbed areas, thereby lessening the potential for erosion. Second, diversion structures can be used to collect or divert waters for later treatment, if necessary. The usefulness of these control measures are limited by such factors as the size of the area to be controlled and the type and nature of materials exposed and precipitation events.

Diversion dikes, curbs, and berms are temporary or permanent diversion structures that prevent runoff from passing beyond a certain point, and divert runoff away from its intended path. Dikes, curbs or berms may be used to surround and isolate areas of concern at ore mining and dressing sites, diverting flow around piles of overburden, waste rock, and storage areas, to minimize discharge contact with contaminated materials and to limit discharges of contaminated water from confined areas.

b. Drainage/storm water conveyance systems. Drainage or storm water conveyance systems can provide either a temporary or a permanent management practice which functions to channel water away from eroded or unstabilized areas, convey runoff without causing erosion, and/or carry discharges to more stabilized areas. The use of drainage systems as a permanent measure may be most appropriate in areas with extreme slopes, areas subject to high velocity runoff, and other areas where the establishment of substantial vegetation is infeasible or impractical. For instance, several BMPs described below may be useful storm water and erosion control methods applicable to haul roads and access roads.

- *Channels or Gutters*—Channels or gutters collect storm water runoff and direct its flow. Like diversion systems, channels or gutters may act to divert runoff away from a potential source of contamination, but may also be used to channel runoff to a collection and/or treatment area including settling ponds, basins or work-out pits.
- *Open Top Box Culverts, and Waterbars*—These structures are temporary or permanent structures that divert water from a roadway surface. Open top box culverts may be used on steeply graded, unpaved roads in place of pipe culverts to divert surface runoff and flow from inside ditches onto the downhill slope of a road. These structures are typically made of wood and should periodically be monitored and repaired if necessary.

Waterbars are berms built by a dozer, or by hand, to a one to two foot height. They serve to extend the entire width of the road, with a downslope angle between 30 and 40 percent. Waterbars are kept open at a discharge end to allow water to flow away from the road, and require little maintenance. These berms may be used as temporary or permanent structures.

- *Rolling Dips and Road Sloping*—Rolling dips and road sloping are permanent water diversion techniques installed using natural contours of the land during road construction. These BMPs prevent water accumulation on road surfaces and divert surface runoff toward road ditches, which then convey the storm water to ponds or other management areas.
- *Roadway Surface Water Deflector*—A roadway surface water deflector is another technique to prevent accumulation of water on road surfaces. The structure uses a conveyor belt sandwiched between two pieces of treated wood and placed within the road to deflect water. This is a useful technique for steeply graded, unpaved roads.
- *Culverts*—Culverts are permanent surface water diversion mechanisms used to convey water off of, or underneath a road. Made of corrugated metal, they must extend across the entire width of the road, and beyond the fill slope. Additional erosion control mechanisms may need to be installed at the discharge end of the culvert.

c. Runoff dispersion. Drainage systems are most effective when used in conjunction with runoff dispersion devices designed to slow the flow of water discharged from a site. These devices also aid storm water infiltration into the soil and flow attenuation. Some examples of velocity dissipation devices include check dams, rock outlet protection, level spreaders, and serrated and benched slopes.

- *Check Dams*—Check dams are small temporary dams constructed across swales or drainage ditches to reduce the velocity of runoff flows, thereby reducing erosion and failure of the swale or ditch. This slowing reduces erosion and gullying in the channel and allows sediments to settle.

Check dams may be installed in small temporary or permanent channels where vegetation of the channel lining is not feasible and where there is danger of erosion. These may be areas where installation of nonerosive liners are not cost effective.

Check dams diminish the need for more stringent erosion control practices in the drainage ditch since they decrease runoff velocity. When constructing check dams, the use of overburden or waste rock should be avoided where there is the potential for contamination.

- *Rock Outlet Protection*—Rock protection placed at the outlet end of culverts, channels, or ditches reduces the depth, velocity, and destructive energy of water such that the flow will not erode the downstream reach. The use of some materials (e.g., mine waste rock or ore) should be avoided where contamination may occur. As with check dams, rock outlet protection may also be used as a source reduction treatment mechanism by using rocks containing limestone or other alkaline materials to neutralize acidic discharges.
- *Level Spreaders*—Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders diffuse storm water point sources and release it onto areas stabilized by existing vegetation.
- *Serrated Slopes and Benched Slopes*—These runoff dispersion methods break up flow of runoff from a slope, decreasing its ability to erode. Serrated and benched slopes provide flat areas that allow water to infiltrate, and space for vegetation to grow and reinforce soils. Serrated slopes are equipped with small steps, from one to two feet of horizontal surface exposed on each step. Benched slopes have larger steps, with vertical cuts between two and four feet high.
- *Contouring*—Surface contouring is the establishment of a rough soil surface amenable to revegetation, through creating horizontal grooves,

depressions, or steps that run with the contour of the land. Slopes may also be left in a roughened condition to reduce discharge flow and promote infiltration. Surface roughening aids in the establishment of vegetative cover by reducing runoff velocity and giving seed an opportunity to take hold and grow. This technique is appropriate for all slopes steeper than 3:1 in order to facilitate stabilization of the slope and promote the growth of a vegetative cover. Once areas have been contoured, they should be seeded as quickly as possible.

• *Drain Fields*—Drain fields are used to prevent the accumulation of water and/or ground water at a site, by diverting infiltrating sources through gravity flow or pumping. Typically filled with porous, permeable materials such as graded rock, or perforated pipe, and lined with geotextile fabric, these mechanisms are useful underneath significant materials, reducing the amount of water that ultimately comes into contact with significant materials.

• *Stream Alteration*—Altering or channelizing the path of a stream to bypass all or some disturbed areas on a site, allows additional mining activities, and avoids contamination of stream water by disturbed lands. This practice is complicated, however, by the need to restore the channel when mining operations end.

• *Drop Structures*—Drop structures are large angular rocks placed in a V-shaped pattern to slow the velocity of storm water runoff. These structures are typically reinforced by logs or large rocks imbedded in the streambanks.

d. Sediment control and collection. Sediment control and collection limits movement and retains sediments from being transported offsite. Several structural collection devices have been developed to remove sediment from runoff before it leaves the site. Several methods of removing sediment from site runoff involve diversion mechanisms previously discussed, supplemented by a trapping or storage device. Structural practices typically involve filtering diffuse storm water flows through temporary structures such as straw bale dikes, silt fences, brush barriers or vegetated areas.

Structural practices are typically low in cost. However, structural practices require periodic removal of sediment to remain functional. As such, they may not be appropriate for permanent use at inactive mines. However, these practices may be effectively used as temporary measures along haul roads and access roads.

• *Plastic Matting, Plastic Netting, and Erosion Control Blankets*—These BMPs are used to protect bare soils to control dust and erosion. Mats and blankets help to promote vegetative growth by maintaining moisture and heat within the soil. Plastic matting and netting improve slope stabilization and may be used as a permanent treatment to encourage grass growth. Plastic netting is a more effective material to use while promoting growth of vegetation as it permits sunlight to penetrate through to the soils. Erosion control blankets also stabilize slopes, and control erosion. These blankets may be made of jute, or plastic netting, but are more expensive than straw.

• *Mulch-straw or Wood Chips*—Mulches and wood chips are useful temporary covers for bare or seeded soils, with an erosion control effectiveness rating of 75 to 98 percent.[81] Like matting, mulch-straw or wood chips help soils retain moisture and warmth to promote vegetative growth. Used on slopes and/or in combination with nylon netting, these materials may prevent erosion by wind and water. Over time, however, the mulch cover will decrease in effectiveness.

• *Compaction*—Soil compaction using a roller or other heavy equipment increases soil "strength" by increasing its density. More dense soil is less prone to erosion and long-term soil settlement. The surface of compacted soils should be roughed and seeded or vegetated to increase its durability.

• *Sediment/Settling Ponds*—Sediment ponds function as sediment traps by containing runoff for long periods of time, allowing suspended solids to settle. These structures can achieve a high removal rate of sediment for both process wastewater and storm water discharges. Sediment/settling ponds are easily constructed and require minimal maintenance. Their flexibility to treat both process wastewater and storm water makes the use of ponds a desirable treatment for discharges from ore mining and dressing facilities. Of course, site characteristics must be such that some or all discharges can be practically channeled to a centralized area for treatment. Where this is not practical, the cost of constructing multiple sediment ponds may become prohibitive. In addition, periodic dredging may be required in order to maintain the capacity of these ponds.

Discharge ponds may also be designed to act as surge ponds which are designed to contain storm surges and then completely drain in about 24 to 40 hours, and remain dry during times of no rainfall. They can provide pollutant removal efficiencies that are similar to those of detention ponds.[82] Storm surge ponds are typically designed to provide both water quality and water quantity (flood control) benefits.[83]

• *Gabions, Riprap, and Native Rock Retaining Walls*—These BMPs are all forms of slope stabilization. Gabions consist of rocks (riprap) contained by rectangular wire boxes or baskets for use as permanent erosion control structures. Riprap consists of loose rocks placed along embankments to prevent erosion. Native rock retaining walls are another form of slope stabilization, with walls up to five feet in height, constructed from native rock to reinforce a steep slope.

• *Biotechnical Stabilization*—Biotechnical stabilization uses live brush imbedded in the soils of a steep slope to prevent erosion. This method relies on the premise that the imbedded vegetation will eventually root and help stabilize the slope.

• *Straw Bale Barrier*—Straw bales may be used as temporary berms, barriers, or diversions, capturing sediments and filtering runoff. When installed and maintained properly, these barriers remove approximately 67 percent of the sediment load.[84] These barriers are applicable across small swales, in ditches, and at the toe of bare slopes where there is a temporary, large volume of sediment laden runoff.

• *Sediment Traps or Catch Basins*—These temporary or permanent structures are useful for catching and storing sediment laden storm water runoff and are particularly useful during construction activities to contain runoff. The effectiveness of these BMPs is better in smaller drainage basin areas. Sediment traps are less than 50 percent effective in removing sediment from storm water runoff.[85]

• *Vegetated Buffer Strips*—The installation of vegetated buffer strips will reduce runoff and prevent erosion at a removal efficiency rate of 75 to 99 percent depending upon the ground cover.[86] In addition, vegetated buffer strips catch and settle sediment

[81] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990.

[82] "Urban Targeting and BMP Selection," EPA, Region V, November 1990.

[83] "Urban Surface Water Management," Walesh, S.G., Wiley, 1989.

[84] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–74.

[85] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–26.

[86] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–7.

contained in the storm water runoff prior to reaching receiving waters.

• *Silt Fence/Filter Fence*—A low fence made of filter fabric, wire and steel posts, should be used on small ephemeral drainage areas where storm water collects or leaves a mine site. Silt fences remove 97 percent of the sediment load and are easier to maintain and remove without creating lasting impacts to the environment.[87] Silt and filter fences need to be inspected periodically, and may not be as effective as straw bales, since fabric may become clogged with fine particles preventing water flow.

Silt fences may have limited applicability for large areas: they are most effective for use in small drainage areas. These fences may also be used in conjunction with nonstructural practices to maintain the integrity of soil prior to the establishment of vegetation.

• *Siltation Berms*—Siltation berms are typically placed on the downslope side of a disturbed area to act as an impermeable barrier for the capture and retention of sediments in surface water runoff. Plastic sheeting is typically used to cover the berm. The berm and the plastic sheeting may require periodic maintenance and repair.

• *Brush Sediment Barriers*—Brush barriers are temporary sediment barriers composed of tree limbs, weeds, vines, root mat, soil, rock and other cleared materials placed at the toe of a slope. A brush barrier is effective only for small drainage areas, usually less than ¼ acre, where the slope is minimal.

Brush barriers do not function as permanent barriers since over time the barrier itself will degrade. This BMP is most effective when located at the toe of a slope of an area in which vegetation is being grown or during temporary operations. The brush barriers remove any excessive sediment which is generated by erosion prior to the establishment of vegetation.

e. Vegetation practices. Vegetation practices involve establishing a sustainable ground cover by permanent seeding, mulching, sodding, and other such practices. A vegetative cover reduces the potential for erosion of a site by: absorbing the kinetic energy of raindrops which would otherwise impact soil; intercepting water so it can infiltrate into the ground instead of running off and carrying contaminated discharges; and by slowing the velocity of runoff to promote onsite deposition of sediment. Vegetative controls are often the most important measures taken to prevent offsite sediment movement, and can provide a six-fold reduction in the discharge of suspended sediment levels.[88] Permanent seeding has been found to be 99 percent effective in controlling erosion for disturbed land areas.[89]

Typically, the costs of vegetative controls are low relative to other discharge mitigation practices. Given the limited capacity to accept large volumes of runoff, and potential erosion problems associated with large concentrated flows, vegetative controls should typically be used in combination with other management practices. These measures have been documented as particularly appropriate for mining sites.

• *Topsoiling, Seedbed Preparation*—The addition of a layer of topsoil or plant growth material provides an improved soil medium for plant growth. Seedbed preparation may include the addition of topsoil ingredients to be mixed in with soils used for seedbed preparation. Ripping, dicing, and mixing soils promotes weed control and aerates the soil, encouraging seedling growth.

• *Broadcast Seeding and Drill Seeding*—Seeding and vegetative planting are methods used to revegetate an area. Broadcast seeding spreads seeds uniformly, by hand or machine, to steep sloped or rocky areas, flat surfaces, and areas with limited access. Drill seeding is performed using a rangeland drill seeder and may not be used on rocky surfaces. Drill seeding is more suitably performed on flat, nonrocky surfaces, where the machine can insert seeds into the soil.

• *Willow Cutting Establishment*—Willow cutting establishment describes a method of soil stabilization useful for stream banks and other areas located adjacent to water. Similar to biotechnical stabilization, willow cuttings are used to promote growth in an area needing stabilization. Willow cuttings are typically used to reinforce a streambank or other moist area. Willow cuttings require a great deal of moisture and must be planted in areas that remain moist for long periods in order to take hold and grow.

f. Capping. In some cases, the elimination of a pollution source through capping contaminant sources may be the most cost effective control measure for some discharges from inactive coal mines. Depending on the type of management practices chosen the cost to eliminate the pollutant source may be very high. Once completed, however, maintenance costs will range from low to nonexistent.

Capping or sealing of waste materials is designed to prevent infiltration, as well as to limit contact between discharges and potential sources of contamination. Ultimately, capping should reduce or eliminate the contaminants in discharges. In addition, by reducing infiltration, the potential for seepage and leachate generation may also be lessened.

The use of this practice depends on the level of control desired, the materials available, and cost considerations. Many common liners may be effective including common soil, clay, and/or synthetic liners. Generally, soil liners will provide appreciable control for the lowest cost. Synthetic or clay liners may be appropriate to cover materials known to have a significant potential to impact water quality.

EPA has identified a wide variety of best management practices (BMPs) that may be used to mitigate discharges of contaminants at coal mines. Many of the practices focus on sediment and erosion control and are similar to BMPs used in the construction industry. For more details on the use and implementation of these practices the reader is encouraged to obtain a copy of one or more of the many good sediment and erosion control books available on the market.[90] In some cases (e.g., low pH and/or high metals concentrations), BMPs, and sediment and erosion controls may not be adequate to produce an acceptable quality of storm water discharge. Under those circumstances additional physical or chemical treatment systems may be necessary to protect the receiving waters.

g. Treatment. Treatment practices are those methods of control which are normally used to reduce the concentration of pollutants in water before it is discharged. This is in contrast to many BMPs where the emphasis is on keeping the water from becoming contaminated. Treatment practices may be required where flows are currently being affected by exposed materials and where other BMPs are insufficient to meet discharge goals. These practices are usually the most

[87] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–75.

[88] "Performance of Current Sediment Control Measures at Maryland Construction Sites," January 1990, Metropolitan Washington Council of Governments, page X.

[89] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–4.

[90] "Best Management Practices for Mining in Idaho," Idaho Department of State Lands, November 1992; "Storm Water Management for Construction Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, September 1992, (EPA 832–R–92–005); and "Erosion & Sediment Control Handbook," Goldman et al., McGraw-Hill Book Company, 1988.

resource intensive as they often entail significant construction costs and require monitoring and maintenance on a frequent and regular basis. Treatment options may range from high maintenance controls to low maintenance. High maintenance treatment techniques require periodic manpower to operate and maintain the BMP. Low maintenance cost techniques have initial capital costs but operate with little long-term maintenance after they are implemented. At a few sites, treatment measures other than high maintenance measures may be appropriate to address specific pollutants.

• *Chemical/Physical Treatment*—An example of a high maintenance technology that is found at coal mining facilities is chemical/physical treatment. The most common type of chemical/physical treatment involves the addition of limestone to lessen the acidity of the discharge and/or precipitate metals. Metals may be removed from wastewater by raising the pH of the wastewater to precipitate them out as hydroxides. Typically, the pH of the wastewater must be raised to 9 to 12 standard units in order to achieve the desired precipitation of metals. After metals precipitation, the addition of some form of acid or carbon dioxide may be required to reduce the pH to acceptable levels. Polymer addition may be required to enhance the settling characteristics of the metal hydroxide precipitate. In general, this practice requires significant operator participation to ensure proper neutralization and/or precipitation and thus may not be cost effective for most storm water discharges.

• *Artificial Wetlands*—This type of BMP system is gaining popularity as a method of treating process wastewater from inactive coal mines. They can be an effective system for improving water quality either alone or in conjunction with other treatment practices. The complex hydrologic, biological, physical, and chemical interactions that take place within a wetland result in a natural reduction and cleansing of influent pollutants. Wetland processes are able to filter sediments, and absorb and retain chemical and heavy metal pollutants through biological degradation, transformation, and plant uptake.

Artificial wetlands are designed to maintain a permanent pool of water. Properly installed and maintained retention structures (also known as wet ponds) and artificial wetlands will be most cost-effective when used to control runoff from larger, intensively developed sites. These artificial wetlands are created to provide treatment but also provide a wildlife habitat, and enhance recreation and landscape amenities. Artificial wetlands are being intensely researched by the Bureau of Mines as a means of mitigating acid mine drainage.

Natural wetlands should not be considered as part of the treatment system because they are considered to be waters of the United States. The necessary controls, or BMPs, must be provided prior to discharging the storm water runoff to natural wetlands or other receiving waters.

In summary, a wide variety of BMPs are available for inactive coal mines and for use along haul roads and access roads at active coal mines. These measures range from simple low cost, low maintenance source reduction practices such as diversion structures to high cost, maintenance intensive practices such as wetlands treatment. Clearly, the selection of a practice or group of practices will be site-specific depending on conditions and potential impacts as well as the resources available at each site. A specific best available technology (or technologies) cannot be determined because of the differences between sites and the quantities and characteristics of their discharges.

4. Storm Water Pollution Prevention Plan Requirements

a. Contents of the plan. Under the description of potential pollutant sources section, all coal mining and related facilities are required to describe all potential pollutant sources and provide the locations of these sources. A site map, such as a drainage map required for SMCRA permits, must indicate drainage areas and storm water outfalls from the potential pollutant sources as indicated in item 1 above. The map should provide, but not be limited to, the following information:

• Drainage direction and discharge points from all applicable mining-related areas, including culvert and sump discharges from roads and rail beds and also from equipment and vehicle maintenance areas, lubricants and other potentially harmful liquids

• Location of each existing erosion and sedimentation control structure and other control measures for reducing pollutants in storm water runoff

• Receiving streams or other surface water bodies

• Locations exposed to precipitation which contain acidic or metal ladened spoil, refuse, or unreclaimed disturbed areas

• Locations where major spills or leaks of toxic or hazardous pollutants have occurred

• Locations where liquid storage tanks containing potential pollutants, such as caustics, hydraulic fluids and lubricants, are exposed to precipitation

• Locations where fueling stations, vehicle and equipment maintenance areas are exposed to precipitation

Under the measures and controls section, operators of the inactive and active coal mines are required to describe storm water management controls for coal mining-related facilities, including the following:

(1) Compliance with SMCRA requirements. The Surface Mining Control and Reclamation Act (SMCRA) regulations require sediment and erosion control measures and practices for haul roads and most of the other active mining-related areas covered by this section. All such SMCRA requirements are also requirements of the pollution prevention plan and other applicable conditions of this section.

(2) Good housekeeping practices. The purpose of good housekeeping practices is to remove or lessen the potential pollution sources before they come into contact with storm water. This includes collection and removal of waste oils collected in traps; cleaning up exposed maintenance areas of spilled lubricants and fuels, and similar measures; and preventing the offsite movement of dust by sweeping or by road watering.

(3) Preventive maintenance. A timely maintenance program should include: inspections for preventing breakdowns, corrosion of tanks and deterioration of pressure fuel or slurry pressure lines; periodic removal and disposal of accumulated solids in sediment traps; and replacement of straw bales and other control measures subject to weathering and deterioration.

(4) Inspections. For all SMCRA regulated active mining-related sites, which include most of the active facilities under this section, SMCRA authorities are required to conduct regular inspections. Coordinated inspections by the facility representative would be expected to take place either before, during or after the complete SMCRA inspections. Therefore, inspections by the facility representative would not be placing an undue burden on the facility. In addition, sediment and erosion control measures should be evaluated at least once yearly during a storm period of at least 0.1 inch rainfall where effectiveness can be evaluated first hand. Observations should also be made at this time of resulting impact of any settled solids in the receiving stream.

Inactive coal mines should be inspected at least once yearly, except where very remote, to maintain an appraisal of sediment and erosion control measures, determine outstanding problem areas, and plan for improved measures.

(5) Prohibition of non-storm water discharges. Many inactive mines and portions of inactive mines are abandoned underground mines which have seeps or other discharges which are not in response to storm events. These type discharges from inactive mines are not covered by this section. In addition, floor drains from maintenance buildings and other similar drains in mining and preparation plant areas may contain contaminants and are prohibited from inclusion in this section.

(6) Sediment, erosion and flow management controls. The plan must describe all sediment, erosion, and flow management controls used to control storm water discharges. The plan should also address the reasonableness and appropriateness of each sediment, erosion, and flow management control, and identified when they are required by State or Federal SMCRA regulations. For the most part, these measures are best management practices expected of construction and other activities which are subject to storm runoff. However, construction activities are usually much more short term that mining activities, so greater emphasis must be placed on implementing long-term measures for haul roads and other mining-related facilities.

Under the comprehensive site compliance evaluation the inspection requirements outlined in the plan must be implemented and, where erosion control and pollution prevention measures described in the plan are found deficient, the plan must be revised to include reasonable and appropriate control measures. Reports including observations and incidences of noncompliance should be prepared and kept on file for possible review.

5. Numeric Effluent Limitation

Based on the lack of sampling data, it is infeasible for EPA to calculate effluent limitations at this time. The main pollutant concern is excess solids runoff and discharge, but there are no widely accepted solids limits which could be expected from the recommended sediment and erosion control measures. The 0.5 ml/L settleable solids limit, as required by 40 CFR part 434 for storm discharges from surface mine settling ponds, can be considered a goal but not a requirement for control measures, which for the most part, consist of sediment ditches, straw bales and similar structures normally used for haul roads. The permit does not cover facilities that are in violation of water quality standards and where water quality-based effluent limits should apply.

6. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels because of the industrial activities and materials exposed to precipitation, does not support sampling at coal mining and coal mining-related facilities. Based on a consideration of the BMPs typically used at these facilities and of the generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure that storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

b. Quarterly visual examination of storm water quality. Quarterly visual inspections of a storm water discharge from each outfall are required. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for coal mining and coal mining-related facilities. EPA believes that between quarterly visual inspections and site compliance evaluations, potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.8.a. of today's proposed permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with haul roads for active mines, preparation plants, and refuse disposal sites must monitor storm water discharges from those haul roads during rainfall periods at least annually except as provided in VI.E.7. (Sampling Waiver), and VI.E.6. (Representative Discharge). Permittees are required to obtain samples from at least 10 percent of the haul road discharge outlets. The samples must be representative of all haul road discharges to the extent possible. For sites with less than 10 haul road discharge outlets, at least one outlet must be sampled. Permittees shall provide identification of the outlets sampled; the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; an estimate of the total volume (in gallons) of the discharge sampled; and a description of any visual impact on the receiving stream.

b. Sample type. The samples shall be grab samples and analyzed for settleable solids. The samples shall be collected from discharges resulting from storm events greater than 0.1 inches in magnitude and occurring at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm events. The grab samples shall be taken during the first hour of the discharge if possible.

c. Reporting. Permittees are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E. (Retention of Records).

8. Cost Estimates

Costs for sediment and erosion control measures for inactive mines and other facilities not covered by SMCRA regulations would be similar to costs for storm water management of the construction industry. These costs are described in Tables 1 and 2 of the **Federal Register** of September 9, 1992, "Final NPDES General Permits For Storm Water Discharges from Construction Sites; Fact Sheet."

Best management practices, including sediment and erosion control measures, required by the pollution prevention plan for active mining-related areas are mostly conventional practices required by State and Federal SMCRA regulations. No significant additional expenses for implementing these measures are likely necessary. Where such additional measures are required, the costs would be similar to those described in the September 9, 1992, baseline general permit for construction activities.

I. Storm Water Discharges Associated With Industrial Activity From Oil and Gas Extraction Facilities

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with an industrial activity." This definition includes point source discharges of storm water from eleven major categories of facilities, including: "* * * (iii) facilities classified as Standard Industrial Classification (SIC) 10 through 14 (mineral industry) including * * * oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, by-products, or waste products located on the site of such operations."

As stated above and at 40 CFR 122.26(b)(14)(iii), only those oil and gas facilities that discharge "contaminated" storm water are required to submit permit applications under the November 16, 1990, storm water rule. For oil and gas facilities, contamination means that there has been a release of a Reportable Quantity (RQ) of oil or hazardous substances in storm water since November 16, 1987 (hereinafter referred to as "an RQ release"). Only those facilities that have had an RQ release are required to submit a storm water permit application.

This section of today's proposed permit only covers storm water discharges associated with industrial activities from oil and gas exploration, production, processing, or treatment operations, or transmission facilities. Hereinafter, the facilities listed above will be referred to as "oil and gas facilities." Oil and gas facilities eligible to seek coverage under this section include the following types of operations:

- Crude Petroleum and Natural Gas (SIC Code 1311).
- Natural Gas Liquids (SIC Code 1321).
- Drilling Oil and Gas Wells (SIC Code 1381).
- Oil and Gas Field Exploration Services (SIC Code 1382).
- Oil and Gas Field Services, Not Elsewhere Classified (SIC Code 1389).

These industries include the extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oil field service, supply and repair industries. Many of the oil field service facilities may also manufacture oil field equipment. Discharges associated with these manufacturing activities shall be covered by this section if the primary activity of the facility is grouped under Major SIC Group 13.

Pursuant to Section 311 of the Clean Water Act and Section 102 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), RQs were established for oil and hazardous substances. As defined at 40 CFR part 110, an RQ is "the amount of oil that violates applicable water quality standards or causes a film or sheen upon or a discoloration of the surface of the water or adjoining shorelines or causes a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines." The RQs for other substances are listed in 40 CFR 117.3 and 302.4 in terms of pounds released over any 24-hour period.

Discharges covered by this section include all storm water discharges from facilities which have had an RQ release where precipitation and storm water runon come into contact with significant materials including, but not limited to, drilling and production equipment and other machinery, raw materials, waste products, by-products, finished products, stored materials, and fuels. This includes storm water discharges from access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by the facility.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for

industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

Oil and gas exploration and production includes all activities related to the search for, and extraction of, liquid and gas petroleum from beneath the Earth's surface. Found almost exclusively in sedimentary rocks, oil and natural gas accumulate in geologic confinements called traps which, by virtue of an impermeable overlying layer, have stopped the migration of the fluid. The volume of petroleum contained in a trap can vary from negligible to billions of barrels.

Though at one time such traps may have been close enough to the surface to allow easy detection (i.e., surface seepage), modern exploration relies on sophisticated geophysical testing techniques to locate potentially producible formations. Gravitational and seismic surveys of subsurface geology provide indirect indications of the likelihood of finding promising geological formations. This process is complicated by the fact that, at least in the U.S., the average depth at which one may reasonably expect to find oil is increasing since many of the largest shallow formations are assumed to have been found already.

Drilling operations require construction of access roads, drill pads, mud pits, and possibly work camps or temporary trailers. Drill pads are areas used to stage the drilling operation and generally range from 2 to 5 acres. The pad accommodates the drilling rig and associated operations including pumps, reserve pits, and mud tanks.

Modern well drilling involves the use of a rotary drill to bore through soil and rock to the desired well depth. The drill bit is constantly washed with a circulating drilling fluid, or "mud," which serves to cool and lubricate the bit and remove the cuttings to the surface. The drilling mud also serves to prevent "blowouts" from overpressured water and gas bearing formations. If the drill reaches the desired depth and fails to locate a producible deposit of oil or gas, the well must be plugged and the site abandoned. Even if oil and/or gas is found the well may not be producible. If the formation fails to exhibit the right combination of expected volume, porosity, and permeability, the costs of extraction would be prohibitive.

After a well has been drilled, it is "completed" if well logging data indicate that the well is capable of producing commercial quantities of oil or gas. Completion includes a number of operations that may be necessary to allow the well to produce oil or gas. These include installing and cementing casing, installing the production tubing and downhole equipment, repairing damage that drilling may have caused to the formation, and possibly stimulating the well. During a well's active life, periodic "workovers" are necessary. Workovers can include a number of procedures intended to maintain or enhance production. These can include repairing or replacing downhole equipment, removing accumulated scale or paraffin from tubing or casing, and stimulating the formation to restore or enhance production. Wells are stimulated, whether by treating with acid or fracturing, during completion or workover or both: it is common for wells to be stimulated at completion and then periodically throughout their lives.

Acid stimulation involves introducing an acid solution to the formation. The acid dissolves the rock, thus creating or enlarging flow path openings. Acids are also used to repair damage to formations caused by drilling or other operations. In addition, they may be used for scale removal and other purposes. Fracturing by hydraulic pressure is achieved by pumping fluids at high pressure (i.e., at high rates) into the well, thereby causing material failure of the rock in the formation of interest (i.e., fractures). Fracturing is also done using explosive devices to fire projectiles into the formation of interest. The fractures induced in the formations serve as flow paths for hydrocarbons.

In instances where the reservoir is sufficiently large, "delineation" wells are drilled to determine the boundary of the reservoir and additional "development" wells are drilled to increase the rate of production from the "field." Because few new wells in the U.S. have sufficient energy (pressure) to force oil all the way to the surface, surface or submersible pumps are placed at the wells and production begins.

This first phase of production, primary production, may continue for several to many years, requiring only routine maintenance to the wells as they channel oil to the surface for delivery to refineries. However, as the oil is removed from the formation the formation pressure decreases until the wells will no longer produce. Because 70 percent of the total recoverable oil may remain in the formation, additional energy may be supplied by the controlled injection of water from the surface into the formation. The injected water acts to push the oil toward the well bores. Such secondary recovery or "water flooding" projects may employ hundreds of injection wells throughout a field to extend the life of the wells. Much of the water used for injection is pumped along with oil from the producing well, separated from the oil, and then reinjected.

Produced fluid, as pumped from a well, is sent through one or more process units to separate the waste fractions (e.g., produced water, emulsions, scale, and produced sand) from the salable hydrocarbon.

As oil and gas are recovered from wells, they are collected or gathered in pipelines for transport to produced fluid treatment facilities. These facilities separate marketable gas and crude oil from water and sand.

Often, service companies are hired by the oil company to perform many of the activities described above. Typically these contractors drill the wells and perform other specific tasks such as installing casing, conducting formation tests, and managing wastes, etc. When a well or field ceases to produce oil or gas at an economically feasible rate, the field must be abandoned and reclaimed.

2. Pollutants in Storm Water Discharges Associated with Oil and Gas Facilities

Exploration and production techniques will vary depending on the type and characteristics of formations, pollutants present, and waste management controls. Therefore, impacts associated with storm water discharges from oil and gas facilities will vary. Several other factors influence to what extent significant materials from these types of facilities and processing operations can affect water quality. Such factors include: hydrology/geology; the types of chemical additives and lubricating fluids used; the procedure for waste management; the nature and size of the RQ release; the amount of contamination remaining after the RQ release; the size of the operation; and type, duration, and intensity of precipitation events. These and other factors will interact to influence the quantity and quality of storm water runoff. In addition, sources

of pollutants other than storm water, such as illicit connections,[9] spills, and other improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

Based on information submitted with the group applications and other documents, EPA has identified some storm water pollutants and sources typically associated with oil and gas facilities in table I–1. Due to distinct industrial activities and materials used at facilities, however, sources and associated pollutants will vary from site to site. The pollutants listed in table I–1 are not meant to be a comprehensive listing of all potential storm water pollutants at oil and gas facilities.

TABLE I–1.—ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS

Activity	Pollutant source	Pollutant
Construction of: —Access Roads —Drill Pads —Reserve Pits —Personnel Quarters —Surface Impoundments	Soil/dirt, leaking equipment and vehicles	TSS, TDS, oil and grease.
Well Drilling	Drilling fluid,[1] lubricants, mud, cuttings, produced water.	TSS, TDS, oil and grease, COD, chlorides, barium, naphthalene, phenanthrene, benzene, lead, arsenic, fluoride.
Well Completion/Stimulation	Fluids (used to control pressure in well), cement, residual oil, acids, surfactants, solvents, produced water, sand.	TSS, TDS, oil and grease, COD, pH, acetone, toluene, ethanol xylenes.
Production	Produced water, oil, waste sludge, tank bottoms, acids, oily debris, emulsions.	Chlorides, TDS, oil and grease, TSS, pH, benzene, phenanthrene, barium, arsenic, lead, antimony.
Equipment Cleaning and Repairing	Cleaning solvents, lubricants, chemical additives.	TSS, TDS, oil and grease, pH.
Site Closures	Residual muds, oily debris	TSS, TDS, oil and grease.

[1] The potential contaminants to be found in drilling fluid varies from site to site, depending on the components of the fluid and any pollutants added due to use of the fluid. Storm water discharges that come into contact with used drilling fluids may include the following pollutants, among others: toluene, ethyl benzene, phenol, benzene, and phenanthrene. Used drilling fluids may also contain inorganic pollutants from additives or downhole exposure, such as arsenic, chromium, lead, aluminum, sulfur, and various sulfates.

Table I–2 indicates the sampling data results for part 2 data submitted to EPA. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of data submittals for each of the conventional pollutants. As Table I–2 indicates, large variations in the minimum and maximum values were often found for each of the eight conventional pollutants monitored. For example:

- Composite samples of TSS ranged from 1 mg/L to 4186 mg/L.
- Grab samples of COD ranged from 14 mg/L to 1050 mg/L.
- Oil and grease values ranged from 3 mg/L to 189 mg/L.

TABLE I–2.—STATISTICAL ANALYSIS OF OIL AND GAS FACILITIES SAMPLING DATA

[mg/L unless otherwise noted]

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	35	33	13.7	10.6	0.0	0.0	116.0	90.0	9.7	7.0	44.0	21.8	116.0	90.0
COD	36	31	140.12	115.9	14.0	0.0	1050.0	450.00	82.0	92	352.00	445.0	1050.0	450.0
Nitrate + Nitrite Nitrogen	35	31	0.52	0.80	0.00	0.00	5.50	9.90	0.15	0.12	4.10	3.30	5.50	9.90
Total Kjeldahl Nitrogen	36	30	1.39	1.69	0.00	0.00	9.00	14.50	0.76	0.925	5.20	5.67	9.00	14.50
Oil & Grease	36	N/A	10.18	N/A	0.00	N/A	189.00	N/A	3.0	N/A	49.00	N/A	189.00	N/A
pH (s.u.)	36	N/A	N/A	N/A	5.89	N/A	11.27	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	36	33	15.82	3.41	0.00	0.00	149.72	50.74	0.18	0.07	144.90	19.46	149.72	50.74
Total Suspended Solids	37	30	353	413	3	1	1657	4186	75	48	1520	2056	1657	4186

The pollutants most commonly found in storm water discharges from onshore oil and gas facilities and their service industries are the following conventional pollutants: BOD_5, COD, oil and grease, phosphorus and suspended solids. Of these conventional pollutants, COD, oil and grease, and phosphorus were present in concentrations that potentially may affect water quality during high flow situations. COD levels are high in all categories of oil and gas facilities. Phosphorus levels were particularly high at those facilities where washing of oil field equipment and trucks is a major activity.

Sources of pollutants of concern and the effects on water bodies from these pollutants are summarized as follows:

(1) Total suspended solids (TSS). Potential sources of TSS in storm water discharges from oil and gas facilities include, among others, drill cuttings, drilling muds and fluids, backfill material, earthen material disturbed during construction, produced water, and tank bottoms. The inorganic components of TSS may include sand, silt, and clay, as well as drilling fluid

[9] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at mineral mining and processing facilities is low yet it still may be applicable at some operations.

components including arsenic, chromium, lead, aluminum, sulfur, and various sulfates. Organic compounds, such as naphthalene, toluene, ethyl benzene, phenol, benzene, and phenanthrene, may also result from components in the drilling fluid.

Because suspended solids increase the turbidity of water, less light is able to penetrate the water, reducing photosynthetic activity of aquatic vegetation. Over time, total suspended solids settle out to form deposits that can be detrimental to stream environments. These deposits may destroy fauna that breed and grow in or near the bottoms of streams and serve as food for fish and other aquatic life. The deposits can also blanket and destroy spawning grounds for fish.

(2) Chemical oxygen demand (COD). COD measures the total amount of oxygen necessary to oxidize compounds in water. At oil and gas facilities, significant levels of COD in the storm water discharges may result from contact with produced water, drilling fluids, lubricants and petroleum products.

(3) pH. The hydrogen ion concentration in an aqueous solution is represented by pH, which is defined as the negative logarithm of the hydrogen ion concentration in a solution. On the pH scale ranging from 0 to 14, a value of 7 represents neutral conditions in which the concentrations of hydrogen and hydroxyl ions are equal. Values of pH less than seven represent acidic conditions; values greater than seven represent basic conditions.

Certain wastes such as produced water and acids used in the well workover process, may affect pH levels in storm water discharges. Storm water discharges with pH values markedly different from the pH values of the receiving stream are potentially detrimental to the environment. At outfalls and prior to complete mixing of storm water discharges with receiving waters, a zone of sudden pH change can damage or kill biota engulfed in the zone of change.

(4) Oil and grease. Water impacted by oil and grease from onsite machinery and materials may exhibit an oxygen demand. Oil and grease emulsions are also detrimental to aquatic organisms and inhabitants because: (1) Deposition of oil and grease in bottom sediments can serve to inhibit normal benthic growths, impacting the aquatic food chain; (2) oil and grease emulsion may destroy algae or other plankton; (3) oil and grease emulsions may adhere to the gills of fish exerting a toxic effect to fish; and (4) water insoluble components damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. In addition to environmental impacts, oil and grease impact the aesthetic qualities of water by forming unsightly surface slicks that affect water beaches and shorelines.

Potential sources of oil and grease from oil and gas facilities include spills of oils and lubricants, as well as petroleum components in drill cuttings, produced water, and drilling fluids.

In addition to the conventional pollutants, sampling data for barium and the organic solvent naphthalene were submitted by the permittees. These pollutants appear to be of concern at oil servicing facilities where well servicing equipment is washed and repaired. The pollution prevention plan to be developed by an oil and gas facility must consider methods of reducing the potential exposure of these activities to storm water.

3. Options for Controlling Pollutants

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology (BCT)]. The Agency does not believe it is necessary to establish specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from oil and gas facilities to meet the BAT/BCT standards of the Clean Water Act. Rather than setting limits, this section establishes requirements for the development and implementation of a site-specific storm water pollution prevention plan consisting of a set of BMPs that are sufficiently flexible to address different sources of pollutants at different sites.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with facilities in this category.

Two types of BMPs which may be implemented to prevent, reduce or eliminate pollutants in storm water discharges are those which minimize exposure (e.g., covering, curbing, or diking) and treatment type BMPs which are used to reduce or remove pollutants in storm water discharges (e.g., oil/water separators, sediment basins, or detention ponds). EPA believes exposure minimization is an effective practice for reducing pollutants in storm water discharges from oil and gas facilities. Exposure minimization practices lessen the potential for storm water to come in contact with pollutants. These methods are often uncomplicated and inexpensive. They can be easy to implement and require little or no maintenance. EPA also believes that in some instances more resource intensive treatment type BMPs are appropriate to reduce pollutants such as suspended solids and oil/grease in storm water discharges associated with oil and gas facilities. Though these BMPs are somewhat more resource intensive, they can be effective in reducing pollutant loads and may be necessary depending on the type of discharge, types and concentrations of contaminants, and volume of flow.

The types of BMPs used may depend upon the methods of waste management utilized at a facility. Waste management and disposal practices at oil and gas facilities may vary significantly. For example, techniques for disposal of produced water and associated wastes include the following:

- Landfarming/spreading: Spreading wastes on land surfaces to stimulate biological degradation.
- Backfilling: Wastes are stored in a pit and then covered with dirt or other materials.
- Evaporation: In more arid parts of the country, liquid wastes are left exposed and eventually evaporate or percolate into the ground.
- Discharged: Wastes, sometimes treated, are discharged to waters of the U.S. NPDES permits are required for such discharges in some parts of the U.S.
- Injection: Wastes are injected back into the ground for disposal.
- Offsite disposal: Wastes are taken offsite to a commercial facility for disposal.

The pollutants of concern and the BMPs employed at an oil and gas facility depend upon which, if any, of the disposal techniques listed above are utilized. Where wastes are used for onsite road application, for example, all pollutant constituents of that waste need to be considered a potential contributor to contaminated storm water

discharges. In addition, the areas at the facility where road application occurs must also be considered when BMPs are being implemented. In contrast, if all waste is taken to an offsite disposal facility, the waste will most likely not affect the storm water discharges and the areas of concern will not be expanded.

Table I–3 lists some BMPs which may be effective in limiting the amount of pollutants in storm water discharges from oil and gas facilities. The BMPs listed are not necessarily required to be implemented. Rather, BMPs should be chosen based on the specific nature of the storm water discharges at each oil and gas facility and implemented as appropriate. Some of these BMPs involve reducing the amount of waste produced and stored onsite which can potentially contaminate storm water. Based on part 1 information, several of the BMPs suggested are already in place at many of the facilities. Part 1 submittals indicate that diking or other types of diversion occur at approximately 57 percent of the sampling facilities. Thirty percent of the sampling facilities noted that they use some form of covering as a BMP, and catch basins are in place at 12 percent of the sampling facilities. In addition, 11 percent of the facilities designated as samplers in part 1 information reported they had a Spill Prevention Control and Countermeasure Plan in place, and 16 percent had a material management plan.

TABLE I–3.—SUGGESTED BMPS FOR OIL AND GAS FACILITIES

Suggested BMPs
• Utilize diking and other forms of containment and diversion around storage tanks, drums of oil, acid, production chemicals, and liquids, reserve pits, and impoundments.
• Use diking and other forms of containment and diversion around material handling and processing areas.
• Use porous pads under drum and tank storage areas.
• Use covers and/or lining for waste reserve and sludge pits to avoid overflows and leaks.
• Use drip pans, catch basins, or liners during handling of materials such as tank bottoms.
• Reinject or treat produced water instead of discharging it.
• Limit the amount of land disturbed during construction of access roads and facilities.
• Employ spill plans for pipelines, tanks, drums, etc.
• Recycle oily wastes, drilling fluids and other materials onsite, or dispose of properly.

TABLE I–3.—SUGGESTED BMPS FOR OIL AND GAS FACILITIES—Continued

Suggested BMPs
• Take wastes offsite to be disposed of instead of burying them.
• Use oil water separators.

4. Special Conditions

There are no additional requirements beyond those listed in Part VI.B. of this fact sheet.

5. Storm Water Pollution Prevention Plan Requirements

a. Contents of the plan—(1) Description of potential pollutant sources. Facilities under this section cover a broad range of oil field activities and service industries.

Drilling sites have large disturbed areas which will contribute additional sediments and suspended solids to the storm water runoff. Well drilling includes the use of many hazardous chemicals and materials. These include drilling muds, well casing cement, fractionating gels, and well treatments. The storage, mixing, and handling of these materials are potential pollutant sources.

Oil field service industries provide a variety of services for exploration and production activities. These service industries often store and mix chemicals for drilling muds, well casing cement, fractionating gels, and well treatments at the facility. The storage and mixing areas are potential pollutant sources. Often, mixing areas and equipment are exposed to storm water. Many oil field service facilities manufacture some oil field equipment components. The exposed raw materials, intermediate products, finished products, and waste products are potential sources of pollutants in storm water.

In its description of potential pollutant sources, a facility must include information about the RQ release which triggered the permit application requirements. Such information must include: the nature of the release (e.g., spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (e.g., poor handling techniques as well as lack of containment in area); area affected by release, including land and waters; procedure to cleanup release; and remaining potential contamination of storm water from release.

(2) *Measures and Controls.*

(a) *RQ releases*—The permittee must describe the measures taken to clean up RQ releases or related spills of materials, as well as measures proposed to avoid future releases of Rqs. Such measures may include, among others: improved handling or storage techniques; containment around handling areas of liquid materials; and use of improved spill cleanup materials and techniques.

(b) *Vehicle and equipment storage areas*—Vehicles and equipment associated with oil field activity are often coated with oil, oil field drilling muds, and the chemicals associated with drilling. These vehicles and equipment are a significant source of pollutants. The permittee must address these areas, and institute practices to minimize pollutant runoff from this area.

(c) *Vehicle and equipment cleaning and maintenance areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment cleaning. The facility may consider performing all cleaning operations indoors, covering the cleaning operation, and/or collecting the storm water runoff from the cleaning area and providing treatment or recycling. These cleaning and maintenance activities can result in the exposure of cleaning solvents, detergents, oil and grease and other chemicals to storm water runoff. The use of drip pans, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting the practice of hosing down the shop floor where the practice would result in the exposure of pollutants to storm water, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment or recycling may reduce the pollutants discharged in storm water runoff.

(d) *Materials storage areas*—Storage units of all chemicals and materials (e.g., fuels, oils, used filters, spent solvents, paint wastes, radiator fluids, transmission fluids, hydraulic fluids, detergents drilling mud components, acids, organic additives) may result in the contamination of storm water discharges. Labeling of all storage containers helps facility personnel to respond effectively to spills or leaks. Additionally, covered storage of the materials and/or installation of berming and diking at the area can also be effective BMPs.

(e) *Chemical mixing areas*—Chemical mixing (e.g., the mixing of drilling muds, fractionating gels, mixing well casing cement, and well treatment acids and solvents) at both well sites and at

facilities with service drilling activities have significant potential to contaminate storm water runoff. The facility should consider covering the mixing area, using spill and overflow protection, minimizing runon of storm water to the mixing area, using dry cleanup methods, and/or collecting the storm water runoff and providing treatment or recycling. The facility should consider installation of berming and diking of the area. The waste water pollutants associated with produced waters, drilling muds, drill cuttings and produced sand from any source associated with onshore oil and gas production, field exploration, drilling, well completion, or well treatment are prohibited from being discharged (40 CFR 435.32).

(*f*) *Preventive maintenance*—The preventive maintenance program must include the inspection of all onsite and offsite mixing tanks and equipment, and inspection of all vehicles which carry supplies and chemicals to oil field activities. These mixing tanks and vehicles carry large volumes of fractionating chemicals and gels, cements, drilling muds, and well treatment chemicals and acids that potentially may contaminate waters of the United States if leaks or spills occur.

(*g*) *Inspection frequency*—All equipment and areas addressed in the pollution prevention plan shall be inspected semiannually. Equipment and vehicles which store, mix or transport hazardous materials will be inspected quarterly. Inspections shall also include the inspection of all onsite and offsite mixing tanks and equipment, and inspection of all vehicles which carry supplies and chemicals to oil field activities. These mixing tanks and vehicles carry large volumes of fractionating chemicals and gels, cements, drilling muds, and well treatment chemicals and acids that potentially may contaminate waters of the United States if leaks or spills occur.

6. Numeric Effluent Limitation

There are no additional requirements beyond those listed in Part VI.F. of this fact sheet.

7. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at oil and gas facilities. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required at oil and gas facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to produce a runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for oil and gas facilities. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.I.5. of today's proposed permit.

a. Semiannual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in paragraphs XI.I.8.a.(1) through XI.I.8.a.(3) must monitor those storm water discharges identified below at least semiannually (2 times per year) except as provided in VI.E.7. (Sampling Waiver) and VI.E.6. (Representative Discharge). Permittees with facilities identified in Part XI.I.8.a. (below) must report in accordance with Part VI.B. of the permit (Reporting: Where to Submit) and paragraph XI.I.8.d. (Reporting: When to Submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in

hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) Discharges of storm water associated with oil and gas well drilling activities;

(2) Discharges of storm water runoff associated with chemical, drilling mud, fractionating gel, cement, and well treatment mixing activities;

(3) Discharges of storm water associated with areas where a reportable quantity spill has occurred.

TABLE I–4

Parameter	Unit	Frequency	Sample type [1]
Total Flow	MG	2/year	Estimate.
Oil & Grease	mg/L	2/year	Grab.
Total Suspended Solids (TSS)	mg/L	2/year	Grab.
Chemical Oxygen Demand (COD)	mg/L	2/year	Grab.
Detergents (MBAS)[2]	mg/L	2/year	Grab.
pH	Standard	2/year	Grab.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.
[2] Required only for storm water discharges from vehicle or equipment cleaning areas.

b. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities identified in paragraphs XI.I.8.b.(1) (below) must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.E.7. (Sampling Waiver) and VI.E.6. (Representative Discharge). Permittees with facilities identified in Part XI.I.8.b. are not required to submit monitoring results, unless required in writing by the Director. However, such permittees must retain monitoring results in accordance with Part VI.E.4. (Reporting and Retention of Records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) Discharges of storm water from facilities with significant materials exposed to storm water.

TABLE I–5

Parameter	Unit	Frequency	Sample type [1]
Total Flow	MG	1/year	Estimate.
Oil & Grease	mg/L	1/year	Grab.
Total Suspended Solids (TSS)	mg/L	1/year	Grab.
Chemical Oxygen Demand (COD)	mg/L	1/year	Grab.
Detergents (MBAS)[2]	mg/L	1/year	Grab.
pH	Standard	1/year	Grab.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.
[2] Required only for storm water discharges from vehicle or equipment cleaning areas.

c. Sample type. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for both a grab sample and a composite sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquot taken in each hour of discharge for the entire discharge or for the first 3 hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes. Grab samples only must be collected and analyzed for the determination of pH, cyanide, whole effluent toxicity, fecal coliform, and oil and grease.

d. Reporting: when to submit. Permittees that are required to conduct sampling pursuant to Part 8.a. shall monitor samples collected during the sampling periods running from January to June and during the sampling period from July to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than 12 months of information.

e. Other facilities with annual monitoring requirements. Permittees with facilities identified in Part XI.I.8.b. (Annual Monitoring) are not required to

submit monitoring results, unless required in writing by the Director.

J. Storm Water Discharges Associated With Industrial Activity From Mineral Mining and Processing Facilities

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition included point source discharges of storm water from eleven major categories of facilities, including: "* * * (iii) facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations which have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or storm water contaminated by contact with, any overburden, raw material, intermediate products, finished products, by-products or waste products located on the site of such operations."

This section only covers storm water discharges associated with industrial activities from active and inactive mineral mining and processing facilities. Mineral mining and processing facilities eligible to seek coverage under this section include the following types of operations:

- Dimension Stone (SIC Code 1411).
- Crushed and Broken Limestone (SIC Code 1422).
- Crushed and Broken Granite (SIC Code 1423).
- Crushed and Broken Stone (SIC Code 1429).
- Construction Sand and Gravel (SIC Code 1442).
- Industrial Sand and Gravel (SIC Code 1446).
- Kaolin and Ball Clay (SIC Code 1455).
- Clay, Ceramic, and Refractory Minerals (SIC Code 1459).
- Potash, Soda, and Borate Minerals (SIC Code 1474).
- Phosphate Rock (SIC Code 1475).
- Chemical and Fertilizer Mineral Mining (SIC Code 1479).
- Miscellaneous Nonmetallic Minerals, Except Fuels (SIC Code 1499).

Storm water discharges covered by this section include all discharges where precipitation and storm water runon come into contact with significant materials including, but not limited to, raw materials, waste products, by-products, overburden, stored materials, and fuels. This includes storm water discharges from haul roads, access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by the facility.

This permit may authorize storm water discharges associated with industrial activity that are mixed with storm water discharges associated with industrial activity from construction activities, provided that the storm water discharge from the construction activity is in compliance with the terms, including applicable Notice of Intent (NOI) or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

This section does not cover any discharge subject to effluent limitation guidelines, including storm water that combines with process wastewater. Storm water that does not come into contact with any overburden, raw material, intermediate product, finished product, by-product, or waste product located on the site of the operation are not subject to permitting under this section according to Section 402(l)(2) of the Clean Water Act. This section also does not apply to discharges from sites on Federal lands on which a claim has been established under the General Mining Laws but where no mining activities have been undertaken other than nominal claim-holding activities required by the Mining Law and applicable regulations.

This section is applicable to all phases of mining operations, whether active or inactive, as long as there is exposure to significant materials. This includes land disturbance activities such as the expansion of current extraction sites, active and inactive mining stages, and reclamation activities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

There are typically three phases to a mining operation: the exploration and construction phase; the active phase; and the reclamation phase. The exploration and construction phase entails exploration and a certain amount of land disturbance to determine the financial viability of a site. Construction includes building of site access roads, and removal of overburden and waste rock to expose minable ore. These land-disturbing activities are significant potential sources of storm water contaminants. The active phase includes each step from extraction through production of a saleable product. The active phase may include periods of inactivity due to the seasonal nature of these mineral mining activities. The final phase of reclamation is intended to return the land to its pre-mining state.

Because of the land-disturbing nature of the mineral mining and processing industry, contaminants of concern generated by industrial activities in this industry include total suspended solids (TSS), total dissolved solids (TDS), turbidity, and pH. Table J–1 lists potential pollutant source activities, and related pollutants associated with mineral mining and processing facilities.

Industrial activities, significant materials, and material management practices associated with mineral mining and processing methods are typically similar, varying only in the type of rock being mined. Examples of mineral commodities obtained from mineral mining and processing facilities include: Crushed stone; construction sand and gravel; industrial sand; gypsum; asphaltic minerals; asbestos and wollastonite; lightweight aggregates; mica and sericite; barite; fluorspar; salines from brine lakes; borax minerals; potash; sodium sulfate; trona; rock salt; phosphate rock; frasch sulfur; mineral pigments; lithium; bentonite; magnesite; diatomite; jade; novaculite; fire clay; attapulite and montmorillonite; kyanite;

shale and common clay; aplite; tripoli; kaolin; ball clay; feldspar; talc, steatite, soapstone and pyrophylite; garnet; and graphite.

Industrial activities include, "* * * but [are] not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials and intermediate and finished materials; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water" (40 CFR 122.26(b)(14)). The most common industrial activities at mineral mine sites include extraction of the mineral, material sizing by crushers, material sorting, and product washing.

TABLE J–1.—ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS

Activity	Pollutant source	Pollutant
Site Preparation	Road Construction	Dust, TSS, TDS, turbidity.
	Removal of Overburden	Dust, TSS, TDS, turbidity.
	Removal of waste rock to expose the mineral body.	Dust, TSS, TDS, turbidity.
Mineral Extraction	Blasting activities	Dust, TSS.
Mineral Processing Activities	Rock Sorting	Dust, TSS, TDS, turbidity, fines.
	Rock Crushing	Dust, TSS, TDS, turbidity, fines.
	Rock Washing	TSS, TDS, turbidity, pH.
	Raw Material Storage	Dust, TSS, TDS, turbidity.
	Waste Rock Storage	Dust, TSS, TDS, turbidity, pH.
	Raw Material Loading	Dust, TSS, TDS, turbidity.
	Processing materials unloading	Diesel fuel, gasoline, oil, lime.
	Raw or Waste Material Transportation	Dust, TSS, TDS, turbidity.
Other Activities	Sedimentation pond upsets	TSS, TDS, turbidity, pH.
	Sedimentation pond sludge removal and disposal.	Dust, TSS, TDS, turbidity, pH.
	Air emission control cleaning	Dust, TSS, TDS, turbidity.
Equipment/Vehicle Maintenance	Fueling activities	Diesel fuel, gasoline, oil.
	Parts cleaning	Solvents, oil, heavy metals, acid/alkaline wastes.
	Waste disposal of oily rags, oil and gas filters, batteries, coolants, degreasers.	Oil, heavy metals, solvents, acids.
	Fluid replacement including hydraulic fluid, oil, transmission fluid, radiator fluids, and grease.	Oil, arsenic, lead, cadmium, chromium, benzene, TCA, TCE, PAHs, solvents.
Reclamation Activities	Site preparation for stabilization	Dust, TSS, TDS, turbidity.

Sources: Storm water group applications, Part 1 and 2 and EPA. "Development Document on the Mineral Mining and Processing Point Source Category." (EPA 440/1–76/059b). July 1979.

Significant materials include, "* * * but [are] not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under Section 101(14) of CERCLA; any chemical facilities required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharge" (40 CFR 122.26(b)(12)). Significant materials commonly found at mining facilities include: overburden; waste rock; sub-ore piles; tailings; petroleum-based products; solvents and detergents; manufactured products; and other waste materials.

Materials management practices are defined as those practices employed to diminish contact by significant materials with precipitation and storm water runon, or practices utilized to reduce the offsite discharge of contaminants. To this end, sediment ponds, discharge diversion techniques, as well as methods of dispersion, are used to minimize impacts of significant materials on storm water. For mine sites requiring additional sources of water for processing operations, rainfall events as well as storm water runon will be managed for use in dust suppression, processing, and washing activities. Many mine sites are already equipped with sedimentation ponds and other established process wastewater treatment methods in order to meet effluent limitation guidelines. Additional storm water management practices used at mineral mining facilities include: discharge diversions; drainage/storm water conveyances; runoff dispersion; sediment control and collection practices; vegetation/soil stabilization; and capping contaminated sources.

Nonmetallic minerals are recovered using four basic forms of extraction techniques: open pit, open face or quarry mining; dredging; solution mining; and underground mining. Each type of extraction method may be followed by varying methods of beneficiation and processing. Presented below are brief descriptions of the industrial activities, significant materials, and materials management practices associated with these four extraction processes and associated beneficiation activities. Due to similarities in mining operations for many of the minerals within this sector, industrial activities, significant materials, and materials management practices are fairly uniform across this sector. Unique practices are noted.

a. Open pit, open face, or quarry mining. Many mineral mining and processing industries access mineral deposits using open pit, open face or quarrying extraction techniques. For

facilities producing dimension stone, crushed and broken stone, construction and industrial sand and gravel, clays, as well as other minerals (borate, phosphate, potash), surface mining is generally the most economical form of extraction.

(1) Industrial activities. Extraction activities include removal of overburden and waste rock to access mineral deposits. These land-disturbing activities generate piles of topsoil and other overburden as well as waste rock, which are typically stored beside, or within, the pit or quarry. In addition, land disturbance, blasting, crushing, and materials handling activities create large amounts of dust that are either dispersed by local wind patterns or collected in air pollution control mechanisms. At closure, overburden and waste rock may or may not be used to reclaim the pit or quarry depending on Federal, State and local requirements. In addition, access roads and rail spurs, and associated loading and unloading areas, are found onsite.

Following extraction, the mined materials may be transferred to a nearby beneficiation/processing facility or may be beneficiated within the pit or quarry. At a beneficiation/processing facility, unfinished materials may be subjected to dry or wet processing methods. Dry forms of processing include crushing, grinding, sawing, and splitting of the mined material. Wet processing may include simple washing, flotation, or heavy media separation.

(2) Significant materials. Significant materials generated by most extraction activities at open pit, open face, and quarry mines include overburden piles, waste rock piles, ore and subore piles, and materials spilled from loading and unloading activities. Other exposed materials that can be generated at these types of operations (as well as other mineral mines), include: Tailings from flotation and other separation stages; soils impacted by fugitive dust emissions; other process wastes such as clays from phosphate mines; settling ponds that receive process wastewaters; dredged sediment disposal areas; as well as raw material and product storage. Dust and particulate matter collected in air pollution control mechanisms may also be disposed of in onsite waste piles.

(3) Materials management practices. Materials management practices at open pit or quarry mining facilities are typically designed to control dust emissions and soil erosion from extraction activities, and offsite transport of significant materials. At many facilities structural Best Management Practices (BMPs) may have already been implemented to manage process wastewaters subject to effluent limitation guidelines. Settling ponds and impoundments are commonly used to reduce Total Suspended Solids (TSS), Total Dissolved Solids (TDS), and other contaminants in process generated wastewaters. These controls may also be used to manage storm water runoff and runon with potentially few alterations to onsite drainage systems. Some facilities included in part 1 of the group applications reported the use of storm water diversions to divert storm water away from pits and quarries, raw material piles, overburden, and waste rock piles.

Tailings impoundments are used to manage tailings generated at facilities engaged in flotation or heavy media separation operations. These impoundments are used to manage beneficiation/processing wastewaters generated at the facility and may also be used to manage storm water runoff.

b. Dredging. Dredging is an extraction method used to access nonmetallic mineral deposits located in quarries or pits (where completely or partially below the water table); in rivers; or estuaries; or offshore, in open bays or sounds. For these types of operations, ore is recovered using scooping devices and suction dredges. Minerals commonly excavated by dredging include sand and gravel, and calcium carbonate.

(1) Industrial activities. The industrial activities at dredging facilities include excavation of ore from underwater deposits (e.g., in stream beds of perennial or ephemeral streams) by dredges. Processing operations may occur on the dredge barges or at adjacent facilities. On-board processing activities may include: Screening; crushing of oversized material; washing; sand classification with hydraulic classifying tanks; gravel sizing; heavy media separation; and product loading/unloading.

Dredges that do not perform on-board processing operations load raw material on a tow-barge for transport to a land-based processing facility. Processing at land facilities typically includes washing to remove clay and other impurities; screening; sizing; crushing; classifying; and heavy media separation.

(2) Significant materials. Significant materials generated at dredging facilities include ore material piles, waste material piles of oversized, or otherwise unusable materials, and float waste from heavy media separation. Clays and undersized fines are dredging waste by-products that may be returned to the water but may also be stored in piles. Sand fines from gravel crushing operations that cannot be sold, are a major source of exposed waste material at land-based processing facilities. In addition, land-based facilities may also manage dredged sediments removed from onsite settling ponds. Haul roads, storage piles, on-land waste piles, processing operations, and loading/unloading operations are other potential sources of storm water pollutants at these facilities.

(3) Materials management practices. Hydraulic dredging operations in open pits or quarries, or land-based processing facilities, use settling ponds for the removal of clay particles, fines, and impurities from process wastewaters. These ponds may also be used to manage contaminated storm water runoff. Water from the settling ponds or basins may be returned to the wet pit to maintain water levels in the pit, or may be discharged offsite. Worked out pits may also be used to contain solid wastes such as fines and oversized materials. These pits are another potential source of storm water contamination in the event of heavy precipitation and subsequent overflow.

Dredging operations in open waters typically discharge process wastewater containing fines to the water body without treatment under the operator's Clean Water Act Section 404 permit.

c. Solution mining. Solution mining extracts minerals from hard rock mineral or natural brine sources by underground injection of a lixiviant into the ore zone. Minerals are recovered from solution, after the solution is brought to the surface, through evaporation or flotation. Since most solution mining extraction activities occur underground using water to extract values, the potential for these mineral deposits to be exposed to storm water is minimal. However, at the surface of solution mining operations, industrial activities and significant materials, such as haul roads, chemical storage areas, and raw material piles, are common to most sites. These industrial activities and significant materials are all susceptible to storm water exposure and require appropriate storm water management controls.

Descriptions of industrial activities performed by each type of solution mining are provided below. Since the mineral deposits are not exposed to storm water for this type of mining, "industrial activities" describes the type of extraction method used to obtain minerals, not activities susceptible to storm water exposure. Significant materials, and materials management practices do refer to those materials exposed to storm water, and to the

subsequent management practices used to control storm water.

Some of the minerals extracted using solution mining include: potash; soda; rock salt; borate minerals; chemical and fertilizer minerals such as barite, fluorspar, salines from lake brines; lithium; and mineral pigments. Many of these minerals may also be recovered using surface and/or underground extraction methods.

(1) Solution mining—injection—(a) Industrial activities—Rock salt and potash minerals may be recovered by injecting water into subsurface deposits and removing minerals in solution. Water is injected through a cased pipe drilled into a deposit. Saturated solution is then pumped to the surface for processing or storage. Processing may include evaporation, and/or flotation to separate the final product.

(b) Significant materials—Significant materials at an injection solution mining site may include product storage piles, chemical storage areas, and haul roads. Very little extracted solution remains onsite, since it is often re-injected into the formation.

(c) Materials management practices—Solution mining facilities typically operate in arid regions, and are able to use solar evaporation ponds to recover minerals from solution. Due to typically low precipitation and high evaporation rates in these areas, storm water materials management practices may not be prevalent.

(2) Solution mining—frasch sulfur—(a) Industrial activities—Sulfur is recovered from deposits using the Frasch sulfur process, which injects hot, purified, water into the subsurface to melt the mineral. Molten sulfur is pumped directly to heated tanks at the surface to maintain a saleable product in liquid form.

(b) Significant materials—Significant materials generated from Frasch sulfur mining include elemental sulfur, scrap sulfur, tank bottoms, water treatment sludge, bleedwater produced from bleed wells used to remove excess injection water, and drilling wastes such as muds, acidizing fluids and well workover fluids. Since molten sulfur product is piped directly from underground to enclosed storage tanks on the surface, it is not exposed to storm water.

(c) Materials management practices—Solid wastes such as elemental and scrap sulfur, tank bottoms, and water treatment sludge may be disposed of in onsite piles. Liquid wastes such as bleedwater, drilling muds, acidizing fluids and workover fluids are typically disposed of in reserve pits and/or workover pits. At the completion of drilling, pit contents may be dried prior to being covered by a liner and buried. Accumulated solids from these pits may also be mixed with clay for use as an additive in drilling muds.

Rainfall runoff and boiler blowdown may be discharged offsite without treatment. Other waste generated at these facilities include power plant wastes and wastewaters, wastewater from sealing wells, sanitary wastes, and miscellaneous other wastewaters collected in drips and drains.

(3) Solution mining—evaporation—(a) Industrial activities—Another form of solution mining uses evaporation and crystallization of saline waters to produce minerals. Potash, soda, borate, and other minerals, are produced from naturally occurring fluids such as sea water, or from evaporite mineral deposits such as western lake brines. Brines are typically pumped from beneath the crystallized surface of a lake and processed by evaporation and crystallization. Recovered salts are washed, dried and packaged for shipment.

(b) Significant materials/materials management practices—Significant materials associated with these facilities include raw material piles, evaporation ponds, and residual brines consisting of salts and end liquors, including various added process wastewaters. Residual brines generated may be left in solar evaporation ponds or dissolved and returned to the lake or injection wells.

d. Underground mining. Underground mining techniques are used to access mineral deposits located too far underground to access economically from the surface. Though typically a more expensive form of extraction, advantages to underground mining operations include year-round operation, less noise (applicable to facilities located near residential areas), and less surface land disturbance. While most nonmetallic minerals are extracted from surface operations, some minerals existing in bedded or other sedimentary deposits may be accessed by underground extraction techniques. Potash, salt, soda, and borate minerals, as well as chemical and fertilizer minerals, are some of the minerals extracted using this mining method.

(1) Industrial activities/significant materials. Industrial activities that may be associated with storm water discharges include: Loading/unloading activities; haul roads; products and materials storage; waste piles; and processing activities. Exposed materials associated with surface beneficiation and processing facilities at underground mines are similar to those associated with open pit, open face, and quarrying facilities.

(2) Materials management practices. Materials management practices for significant materials at the surface of underground mining facilities are similar to those materials management practices used at open pit, open face, and quarrying operations.

e. Inactive mine sites. Inactive mineral mining and processing operations are those where industrial activities are no longer occurring. When active, mineral extraction could have occurred from open pits or open face mines, solution mines, dredging operations, or underground mines. These sites are included in this section because significant materials may remain onsite. These materials, if exposed, are potential sources of storm water pollutants. Until an inactive mineral mining and processing facility has been reclaimed under applicable State or Federal laws, the site is considered associated with an "industrial activity" and is subject to this section. Due to the seasonal nature of this industry, many mine sites can become temporarily inactive for extended periods.

2. Pollutants in Storm Water Discharges Associated with Mineral Mining and Processing Facilities

Impacts caused by storm water discharges from active and inactive mineral mining and processing operations will vary. Several factors influence to what extent significant materials from mineral mining and processing operations may affect water quality. Such factors include: geographic location; hydrogeology; the type of mineral extracted; the mineralogy of the extracted resource and the surrounding rock; how the mineral was extracted (e.g., quarrying/open face, dredging, solution, or underground mining operations); the type of industrial activities occurring onsite (e.g., extraction, crushing, washing, processing, reclamation etc.); the size of the operation; and type, duration, and intensity of precipitation events. Each of these and other factors will interact to influence the quantity and quality of storm water runoff. For example, air emissions (i.e., settled dust) may be a significant source of pollutants at some facilities while materials storage is a primary source at others. In addition, sources of pollutants other than storm water, such as illicit connections,[92] spills, and other

[92] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at mineral mining

improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

The part 2 group application data requirements did not identify individual site characteristics which may be responsible for elevated or insignificant conventional pollutant loadings. In addition, the poor response from sampling facilities did not allow for a subsector analysis of the sampling data. Therefore, the only option available to EPA was to use the data in the aggregate.

EPA has found that some group organizers submitting part 2 sampling data sampled at improper locations, did not conduct both grab and flow-weighted composite samples, or sampled process wastewater discharges instead of storm water discharges. Information in the part 2 submissions made it clear that many facilities have sampled impoundments of commingled process wastewater and storm water. Therefore, facilities sampling discharges from process wastewater impoundments do not represent offsite storm water discharges. It is important to note that under 40 CFR part 436 commingled process wastewater and storm water is permitted as a process wastewater.

Although many of the part 2 data submittals were incomplete and did not identify the sources of pollutants as required in Form 2F, EPA has identified the storm water pollutants and sources resulting from various mineral mining and processing activities in Table J–1. Table J–1 identifies total suspended solids (TSS), total dissolved solids (TDS), turbidity, total phosphorus, and pH as the parameters of concern at mining facilities:

• Total Suspended Solids (TSS) in storm water discharges from mineral mining and processing facilities will primarily consist of inorganic materials such as sand, silt, and clay. A relatively minor fraction of organic TSS, in the form of oil and grease, may result from contact with equipment. Because suspended solids increase the turbidity of water, less light is able to penetrate the water, reducing photosynthetic activity of aquatic vegetation. Over time, total suspended solids settle out to form deposits that may be detrimental to stream environments. These deposits may destroy fauna that breed and grow in or near the bottoms of streams and serve as food for fish and other aquatic life. The deposits can also blanket and destroy spawning grounds for fish.

Mining facilities typically involve large areas of land denuded of vegetation and direct exposure of significant materials to precipitation. The nature of active and temporarily inactive mining operations will always have areas of the site susceptible to the offsite transport of sediments.

• pH represents the hydrogen-ion concentration in an aqueous solution. It is defined as the negative logarithm of the hydrogen-ion concentration in a solution. On the pH scale ranging from zero to fourteen, a value of seven represents neutral conditions in which the concentrations of hydrogen and hydroxyl ions are equal. Values of pH less than seven represent acidic conditions; values greater than seven represent basic conditions. pH is the most commonly limited parameter in effluent limitation guidelines for the mineral mining and processing category (40 CFR Part 436). See Table J–3. Data submitted for part 2 of the application indicate that pH varies from a minimum of 2.7 to a high of 10.0. These values are outside the permitted range for wastewater discharges under effluent limitation guidelines. However, most samples submitted to EPA were within the 6.0 to 9.0 range.

Storm water discharges with pH values markedly different from the pH values of the receiving stream are potentially detrimental to the environment. At outfalls and prior to complete mixing of storm water discharges with receiving waters, a zone of sudden pH change can damage or kill biota engulfed in the zone of change.

• Total Phosphorus is comprised of dissolved and suspended phosphorus. Phosphorus occurs in natural waters and wastewaters almost exclusively as phosphates. Phosphates are found in bottom sediments and in biological sludge. Phosphorus is essential to the growth of organisms and may be the nutrient that limits the primary productivity of a body of water. In instances where phosphate is a growth limiting nutrient, the discharge of raw or untreated wastewater, agricultural drainage, or certain industrial wastes to that water may stimulate the growth of photosynthetic aquatic organisms in nuisance quantities.

Total phosphorus is a pollutant of concern because of the presence of phosphate mines in the sector and because of the usage of fertilizer to assist revegetation of reclaimed areas. Fertilizer spread on recently planted areas, or applied in too large of quantities, is susceptible to offsite transportation via storm water discharges.

• Total Dissolved Solids (TDS) are a gross measure of the amount of soluble pollutants in the storm water. It is an important parameter in drinking water supplies and water used for irrigation. Waters containing more than 4,000 mg/L of total salts are generally considered unfit for human consumption. Generally, palatable water for human consumption should not exceed 500 mg/L. Water with a total dissolved solid content greater than 500 mg/L has little or no value for irrigation. Dissolved solids are found in significant quantities in rock salt, brine, and trona operations. Monitoring data for total dissolved solids, was not required for part 2 of the group application process. Visual observations of storm water will help facility operators and EPA understand to what extent TDS arises from storm water discharges from mineral mining and processing facilities.

• Biochemical Oxygen Demand (BOD_5), Chemical Oxygen Demand (COD), Nitrate+Nitrite Nitrogen, and Total Kjeldahl Nitrogen (TKN) are not considered to be pollutants of concern for mineral mining and processing facilities. The data included in part 2 of the application and EPA's Mineral Mining and Processing Development Document do not support continued chemical monitoring for these pollutants. Therefore, storm water monitoring will not be required for BOD_5, COD, Nitrate+Nitrite Nitrogen or TKN.

• Heavy metals are not a concern for this industry, based on the data received with part 2 of the application, EPA's Mineral Mining and Processing Development Document, and an understanding of the processes. Only one facility submitted data for heavy metals. The metals for which data was submitted include copper, lead, zinc, and cadmium. Heavy metals were measured to be less than 10 mg/L. All other facilities did not sample because no evidence was found to indicate that heavy metal loadings were greater than 10 ppb.

• Oil and grease sources from mineral mining and processing facilities include vehicle maintenance activities and onsite processing equipment and conveyors. Water impacted by oil and grease from onsite machinery may exhibit an oxygen demand. Oil and grease emulsions are also detrimental to aquatic organisms and inhabitants because: (1) Deposition of oil and grease in bottom sediments can serve to inhibit normal benthic growths, impacting the aquatic food chain; (2) oil and grease emulsion may destroy algae or other plankton; (3) oil and grease emulsions may adhere to the gills of fish exerting

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and processing facilities is low yet it still may be applicable at some operations.

a toxic effect to fish; and (4) water insoluble components damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. In addition to environmental impacts, oil and grease impact the aesthetic qualities of water by forming unsightly surface slicks that affect water beaches and shorelines.

Monitoring for oil and grease is not necessary for mineral mining and processing facilities. The data submitted with part 2 of the application indicated a range of minimum and maximum oil and grease values from 0.5 to 10.0 mg/L.

The part 2 data analyzed by EPA showed large variations in the minimum and maximum values for each of the eight conventional pollutants monitored. This is especially true for total suspended solids where grab sample values ranged from 0 mg/L to 27,100 mg/L, and flow-weighted composite sample values ranged from 0 mg/L to 10,680 mg/L. Group application sampling facilities were not required to monitor for TDS and turbidity. However, EPA's development document for the mineral mining and processing industry, as well as other literature concerned with land-disturbing activities, indicates that TDS and turbidity levels increase with an increase in TSS loadings.

The remaining conventional pollutants sampled also varied in their minimum and maximum values. However, the values were typically low. Table J–2 indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the number of data points analyzed for each of the conventional pollutants.

Part 2 data submissions identify the need to limit offsite discharge of TSS. EPA believes that if TSS loadings are reduced there will also be a reduction in TDS loadings and turbidity. Therefore, EPA is requiring all permittees to consider management practices that limit the contact between storm water and significant materials and to control the offsite discharge of contaminated storm water.

3. Options for Controlling Pollutants

There are two options for reducing pollutants in storm water discharges: end-of-pipe treatment and implementing Best Management Practices to prevent and/or eliminate pollution. Discharges from mining operations are in some ways dissimilar to other types of industrial facilities. Mining facilities are often in remote locations and may operate only seasonally or intermittently, yet need year-round controls because significant materials remain exposed to precipitation when reclamation is not completed. These characteristics make resource intensive end-of-pipe management controls less desirable.

TABLE J–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[i]

[mg/L, except as noted]

Pollutant	No. of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	55	51	7.1	6.9	0	0	35.0	19.0	5.0	5	24.0	17.0	35.0	19.0
COD	56	51	58.8	56.2	0	0	404.0	537.0	33	37	247.0	185.0	404.0	537.0
Nitrate+Nitrite Nitrogen	50	45	.96	1.3	0	0	9.0	8.6	.65	.76	3.0	4.2	9.0	8.6
Total Kjeldahl Nitrogen	49	44	1.74	2.41	0	0	10.0	49.0	1.05	.84	8.0	6	10.0	49.0
Oil and Grease	50	N/A	1.1	N/A	0	N/A	10.0	N/A	0	N/A	5.5	N/A	10.0	N/A
pH (s.u.)	58	N/A	N/A	N/A	2.7	N/A	10.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	46	46	.84	1.13	0.0	0.0	7.06	18.0	.2	.24	4.7	2.6	7.1	18.0
Total Suspended Solids	51	50	1848	1576	0	0	27100	13300	181	296	11120	10080	27100	13300

[i] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[ii] Composite samples.

A comprehensive storm water management program for a given plant may include controls from each of these categories. Development of comprehensive control strategies should be based on a consideration of site and facility plant characteristics.

a. End-of-pipe treatment. At many mineral mining and processing operations, it may be appropriate to collect and treat the runoff from targeted areas of the facility. This approach was taken with 12 industrial categories within the mineral mining and processing industry, subject to national effluent limitation guidelines for process water. Table J–3 identifies the effluent limitation guidelines for process water and for the mineral mining and processing sector. There are several areas where process wastewater guidelines influence the permitting strategy for storm water discharges:

- Whenever storm water and process wastewater combine, the storm water is treated as process wastewater
- To meet the numeric effluent limitation for process water, most, if not all, facilities must collect and temporarily store onsite runoff from targeted areas of the plant
- The effluent limitation guidelines do not apply to discharges whenever rainfall events, either chronic or catastrophic, cause an overflow of storage devices designed, constructed, and maintained to contain a 10-year, 24-hour storm
- Most technology-based treatment standards, used for treating process waters, are based on relatively simple technologies such as settling of solids, neutralization, and drum filtration.

End-of-pipe treatments are effective means to control process wastewaters because the types of pollutants and the volume of water to be treated are known. However, storm water discharges from mineral mining and processing facilities can be numerous, intermittent, and of various volumes. Channelization of all storm water that comes into contact with significant materials into a single treatment facility, or construction of numerous treatment devices for each discharge is too burdensome for the regulated community. Therefore, EPA believes that the most appropriate means of storm water management at mineral mining and processing facilities are BMPs. BMPs allow the mine site operator to choose a particular BMP that is best for the characteristics of a particular site and to control parameters of concern.

b. Best management practices. EPA believes that the most effective storm water management controls for limiting the offsite discharge of storm water pollutants from mineral mining and processing facilities are source reduction BMPs. Source reduction BMPs are methods by which discharges of contaminants are controlled with little or no required maintenance. Examples of these types of controls include source reduction diversion

dikes, vegetative covers, and berms. Source reduction practices are typically (but not always) low in cost and relatively easy to implement. In some instances, more resource intensive treatment BMPs, including sedimentation ponds, may be necessary depending upon the type of discharge, types and concentrations of contaminants, and volume of flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with mining activity.

The following six categories describe best management practice options for reducing pollutants in storm water discharges from mineral mining and processing operations:

- Discharge Diversions.
- Drainage/Storm Water Conveyance Systems.
- Runoff Dispersion.
- Sediment Control and Collection.
- Vegetation/Soil Stabilization.
- Capping of Contaminated Sources.

TABLE J–3.—MINERAL MINING AND PROCESSING: EFFLUENT LIMITATION GUIDELINES

SIC code	Category	Subcategory	Effluent guidelines
1411 ..	Dimension Stone	N/A	Reserved.
1422 ..	Crushed and Broken Limestone	N/A	For facilities that recycle process waste water: pH 6.0–9.0. Mine dewatering discharges: pH 6.0–9.0. In no case shall a pH limitation outside the range of 5.0–9.0 be permitted.
1423 ..	Crushed and Broken Granite		
1429 ..	Crushed and Broken Stone, Not Elsewhere Classified		
1442 ..	Construction Sand and Gravel	N/A	For facilities that recycle process waste water: pH 6.0–9.0. Mine dewatering discharges: pH 6.0–9.0. In no case shall a pH limitation outside the range of 5.0–9.0 be permitted.
1446 ..	Industrial Sand	N/A	All operations except HF flotation: TSS Not to exceed 45mg/L maximum for any 1 day; average over 30 days not to exceed 25 mg/L. pH Within range 6.0–9.0. For facilities using HF flotation: TSS Not to exceed 0.046 mg/L maximum for any 1 day; average over 30 days not to exceed 0.023 mg/L. Total Fluoride—Maximum for 1 day: 0.006 mg/L; average over 30 days: 0.003 mg/L. pH Within range 6.0–9.0. Mine dewatering discharges: TSS Maximum for 1 day: 45 mg/L; average over 30 days: 25 mg/L. pH Within range 6.0–9.0.
1455 ..	Kaolin and Ball Clay	Ball Clay Kaolin	Reserved.
1459 ..	Clay, Ceramic, and Refractory Minerals, Not Elsewhere Classified.	Bentonite, Magnesite	No Discharge.
		Feldspar, Fire Clay, Attapulgite and Montmovillonite, Kyanite, Shale and Common Clay, Aplite.	Reserved.
1474 ..	Potash, Soda, and Borate Minerals	Borax, Potash, Sodium Sulfate	No Discharge.
		Trona, Rock Salt	Reserved.
1475 ..	Phosphate Rock	N/A	Existing Sources. TSS Maximum for any 1 day: 60 mg/L; average over 30 days: 30 mg/L. pH Within range 6.0–9.0. New sources, process generated wastewater and mine dewatering discharges: TSS Maximum for any 1 day: 60 mg/L; average over 30 days: 30 mg/L. pH Within range 6.0–9.0.
1479 ..	Chemical and Fertilizer Mineral Mining, Not Elsewhere Classified.	Barite, Fluorspar, Salines from Brine, Lakes, Frasch Sulfur.	No Discharge.
		Mineral Pigments, Lithium	Reserved.
1499 ..	Miscellaneous Nonmetallic Minerals, Except Fuels.	Graphite	Process waste water and mine drainage subject to ELG: TSS Maximum for any 1 day: 20 mg/L; average over 30 days: 10 mg/L.

TABLE J–3.—MINERAL MINING AND PROCESSING: EFFLUENT LIMITATION GUIDELINES—Continued

SIC code	Category	Subcategory	Effluent guidelines
			Total Fe Maximum for any 1 day: 2 mg/L; average over 30 days: 1 mg/L. pH Within range 6.0–9.0 No discharge.
		Gypsum, Asphaltic Minerals, Asbestos and, Wollastonite, Diatomite, Jade, Tripoli (Dry Processes Only). Garnet, Talc, Steatite, Soapstone, Pyrophyllite, Mica and Sericite.	Reserved.

Typical land disturbance activities at mineral mining and processing sites include roads, open pits and quarries, topsoil, overburden, waste rock, subore, ore and product piles; materials storage, mill tailings, ponds and piles, as well as vehicle maintenance and storage areas. Because mineral mining and processing is largely a land disturbance activity, BMPs that minimize erosion and sedimentation will be most effective if installed at the inception of operations and maintained throughout active operations and reclamation of the site. From the construction of access and haul roads to closure and reclamation activities, implementation of BMPs is often essential to minimizing long-term environmental impacts to an area.

Part 1 group application data indicate that several types of BMPs have been implemented at sampling facilities. Commonly used BMPs were sediment control and collection and discharge diversion devices. However, the group application process did not require a description of BMP locations and did not require applicants to describe the number of identical BMPs implemented at each site. As a result, the effectiveness of BMPs for storm water management, at these facilities cannot be evaluated.

In addition, many of the BMPs listed by facilities may have been implemented as process wastewater treatment mechanisms and are not exclusively used for storm water management. For instance, 43 percent of the sampling subgroup reported using ponds for sediment control and collection. Since some facilities classified as SIC Code 14 are subject to process water effluent limitation guidelines, sedimentation ponds may have been implemented to meet the limit.

Because BMPs described in the part 1 data are limited, EPA is providing an overview of supplementary BMPs for use at mineral mining and processing facilities. However, due to the site-specific nature of facilities within this sector, BMPs cited do not preclude the use of other viable BMP options. Table J–4 summarizes BMP options as they apply to land disturbance activities at mineral mining and processing facilities. Sources of BMP information include: "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990; "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, September, 1992 (EPA 832–R–92–006); "Best Management Practices for Mining in Idaho," Idaho Department of Lands, November 1992; and "Erosion & Sediment Control Handbook," Goldman et al., McGraw-Hill Book Company, 1986.

• *Haul Roads and Access Roads*—Placement of haul roads or access roads should occur as far as possible from natural drainage areas, lakes, ponds, wetlands or floodplains where soil will naturally be less stable for heavy vehicle traffic. If a haul road must be constructed near water, as little vegetation as possible should be removed from between the road and the waterway, as vegetation is a useful buffer against erosion and is an efficient sediment collection mechanism. The width and grade of haul or access roads should be minimal and should be designed to match natural contours of the area. Construction of haul roads should be supplemented by BMPs that divert runoff from road surfaces, minimize erosion, and direct flow to appropriate channels for discharge to treatment areas.

• *Pits or Quarries*—Excavation of a pit or quarry must be accompanied by BMPs to minimize impacts to area surface waters. As discussed in construction of haul roads, as little vegetation as possible should be removed from these areas during excavation activities to minimize exposed soils. In addition, stream channels and other sources of water that may discharge into a pit or quarry should be diverted around that area to prevent contamination.

TABLE J–4.—SUMMARY OF MINE AREAS AND APPLICABLE BEST MANAGEMENT PRACTICES

Land-disturbed area	Discharge diversions	Conveyance systems	Runoff dispersion	Sediment control & collection	Vegetation	Containment
Haul Roads and Access Roads.	Dikes, Curbs, Berms.	Channels, Gutters, Culverts, Rolling Dips, Road Sloping, Roadway Water Deflectors.	Check Dams, Rock Outlet Protection, Level Spreaders, Stream Alteration, Drop Structures.	Gabions, Riprap, Native Rock Retaining Walls, Straw Bale Barriers, Sediment Traps/Catch Basins, Vegetated Buffer Strips.	Seeding, Willow Cutting Establishment.	

TABLE J–4.—SUMMARY OF MINE AREAS AND APPLICABLE BEST MANAGEMENT PRACTICES—Continued

Land-disturbed area	Discharge diversions	Conveyance systems	Runoff dispersion	Sediment control & collection	Vegetation	Containment
Pits/Quarries or Underground Mines.	Dikes, Curbs, Berms.	Channels, Gutters	Serrated Slopes, Benched Slopes, Contouring, Stream Alteration.	Sediment Settling Ponds, Straw Bale Barrier, Siltation Berms.	Seeding	Plugging and Grouting.
Overburden, Waste Rock and Raw Material Piles.	Dikes, Curbs, Berms.	Channels, Gutters	Serrated Slopes, Benched Slopes, Contouring, Stream Alteration.	Plastic Matting, Plastic Netting, Erosion Control Blankets, Mulch-straw, Compaction, Sediment/Settling Ponds, Silt Fences, Siltation Berms.	Topsoiling, Seedbed Preparation, Seeding.	Capping.
Reclamation	Dikes, Curbs, Berms.	Channels, Gutters	Check Dams, Rock Outlet Protection, Level Spreaders, Serrated Slopes, Benched Slopes, Contouring, Drain Fields, Stream Alteration, Drop Structures.	Gabions, Riprap, and Native Rock Retaining Walls, Biotechnical Stabilization, Straw Bale Barriers, Sediment Traps/Catch Basins, Vegetative Buffer Strips, Silt Fences, Siltation Berms, Brush Sediment Barriers.	Topsoiling, Seedbed Preparation, Seeding, Willow Cutting Establishment.	Capping, Plugging and Grouting.

BMPs can be used to control total suspended solids levels in runoff from unvegetated areas. These can include sediment/settling ponds, check dams, silt fences, and straw bale barriers.

• *Overburden, Waste Rock, and Raw Material Piles*—Overburden, topsoil, and waste rock, as well as raw material and intermediate and final product stockpiles should be located away from surface waters and other sources of water, and from geologically unstable areas. If this is not practicable, surface water should be diverted around the piles. As many piles as possible should be revegetated (even if only on a temporary basis). At closure, remaining units should be reclaimed.

• *Reclamation Activities*—When a mineral deposit is depleted and operations cease, a mine site must be reclaimed according to appropriate State or Federal standards. Closure activities typically include restabilization of any disturbed areas such as access or haul roads, pits or quarries, sedimentation ponds or work-out pits, and any remaining waste piles. Overburden and topsoil stockpiles may be used to fill in a pit or quarry (where practical). Recontouring and vegetation should be performed to stabilize soils, and prevent erosion.

Major reclamation activities such as recontouring roads and filling in a pit or quarry can only be performed after operations have ceased. However, reclamation activities such as stabilization of banks and reseeding and revegetation should be implemented in mined out portions, or inactive areas of a site as active mining moves to new areas.

EPA recognizes that quarries are frequently converted into reservoirs or recreational areas, after the mineral deposit is depleted. However, this does not preclude the reclamation of disturbed areas above the quarry rim.

(1) Discharge diversions. Discharge diversions provide the first line of defense in preventing the contamination of discharges and the subsequent contamination of receiving waters of the United States. Discharge diversions are temporary or permanent structures installed to divert flow, store flow, or limit storm water runon and runoff.

These diversion practices have several objectives. First, diversion structures can be designed to prevent otherwise uncontaminated (or less contaminated) water from crossing disturbed areas or areas containing significant amounts of contaminated materials, where contact may occur between runon and significant materials. These source reduction measures may be particularly effective for mineral mining and processing operations to prevent runon of uncontaminated discharges from contacting exposed materials and/or reduce the flow across disturbed areas, thereby lessening the potential for erosion. Second, diversion structures can be used to collect or divert waters for later treatment if necessary. The usefulness of these control measures are limited by such factors as the size of the area to be controlled and the type and nature of materials exposed and precipitation events.

Diversion dikes, curbs, and berms are temporary or permanent diversion structures that prevent runoff from passing beyond a certain point, and divert runoff away from its intended path. Dikes, curbs or berms may be used to surround and isolate areas of concern at mineral mining and processing sites, diverting flow around piles of overburden, waste rock, and storage areas, to minimize discharge contact with contaminated materials and to limit discharges of contaminated water from confined areas.

(2) Drainage/storm water conveyance systems. Drainage or storm water conveyance systems can provide either a temporary or a permanent management practice which functions

to channel water away from eroded or unstabilized areas, convey runoff without causing erosion, and/or carry discharges to more stabilized areas. The use of drainage systems as a permanent measure may be most appropriate in areas with extreme slopes, areas subject to high velocity runoff, and other areas where the establishment of substantial vegetation is infeasible or impractical. For instance, several BMPs described below may be useful storm water and erosion control methods applicable to road construction and maintenance activities.

• *Channels or gutters*—Channels or gutters collect storm water runoff and direct its flow. Like diversion systems, channels or gutters may act to divert runoff away from a potential source of contamination, but may also be used to channel runoff to a collection and/or treatment area including settling ponds, basins or work-out pits.

• *Open top box culverts, and waterbars*—These structures are temporary or permanent structures that divert water from a roadway surface. Open top box culverts may be used on steeply graded, unpaved roads in place of pipe culverts to divert surface runoff and flow from inside ditches onto the downhill slope of a road. These structures are typically made of wood and should periodically be monitored and repaired if necessary.

Waterbars are berms built by a dozer or by hand to a one to two foot height. They serve to extend the entire width of the road, with a downslope angle between 30 and 40 percent. Waterbars are kept open at a discharge end to allow water to flow away from the road and require little maintenance. These berms may be used as temporary or permanent structures.

• *Rolling Dips and Road Sloping*—Rolling dips and road sloping are permanent water diversion techniques installed using natural contours of the land during road construction. These BMPs prevent water accumulation on road surfaces and divert surface runoff toward road ditches which then convey the storm water to ponds or other management areas.

• *Roadway Surface Water Deflector*—A roadway surface water deflector is another technique to prevent accumulation of water on road surfaces. The structure uses a conveyor belt sandwiched between two pieces of treated wood and placed within the road to deflect water. This is a useful technique for steeply graded, unpaved roads.

• *Culverts*—Culverts are permanent surface water diversion mechanisms used to convey water off of, or underneath a road. Made of corrugated metal, they must extend across the entire width of the road and beyond the fill slope. Additional erosion control mechanisms may need to be installed at the discharge end of the culvert.

(3) Runoff dispersion. Drainage systems are most effective when used in conjunction with runoff dispersion devices designed to slow the flow of water discharged from a site. These devices also aid storm water infiltration into the soil and flow attenuation. Some examples of velocity dissipation devices include check dams, rock outlet protection, level spreaders, and serrated and benched slopes.

• *Check Dams*—Check dams are small temporary dams constructed across swales or drainage ditches to reduce the velocity of runoff flows thereby reducing erosion and failure of the swale or ditch. This slowing reduces erosion and gullying in the channel and allows sediments to settle.

Check dams may be installed in small temporary or permanent channels where vegetation of the channel lining is not feasible and where there is danger of erosion. These may be areas where installation of nonerosive liners are not cost effective.

Check dams diminish the need for more stringent erosion control practices in the drainage ditch since they decrease runoff velocity. When constructing check dams, the use of overburden or waste rock should be avoided where there is the potential for contamination.

• *Rock Outlet Protection*—Rock protection placed at the outlet end of culverts, channels, or ditches reduces the depth, velocity, and destructive energy of water such that the flow will not erode the downstream reach. The use of some materials (e.g., mine waste rock or ore) should be avoided where contamination may occur. As with check dams, rock outlet protection may also be used as a source reduction treatment mechanism by using rocks containing limestone or other alkaline materials to neutralize acidic discharges.

• *Level Spreaders*—Level spreaders are outlets for dikes and diversions consisting of an excavated depression constructed at zero grade across a slope. Level spreaders diffuse storm water point sources and release it onto areas stabilized by existing vegetation.

• *Serrated Slopes and Benched Slopes*—These runoff dispersion methods break up flow of runoff from a slope, decreasing its ability to erode. Serrated and benched slopes provide flat areas that allow water to infiltrate, and space for vegetation to grow and reinforce soils. Serrated slopes are equipped with small steps, from one to two feet of horizontal surface exposed on each step. Benched slopes have larger steps with vertical cuts between two and four feet high.

• *Contouring*—Surface contouring is the establishment of a rough soil surface amenable to revegetation through creating horizontal grooves, depressions, or steps that run with the contour of the land. Slopes may also be left in a roughened condition to reduce discharge flow and promote infiltration. Surface roughening aids in the establishment of vegetative cover by reducing runoff velocity and giving seed an opportunity to take hold and grow.

This technique is appropriate for all slopes steeper than 3:1 in order to facilitate stabilization of the slope and promote the growth of a vegetative cover. Once areas have been contoured, they should be seeded as quickly as possible.

• *Drain Fields*—Drain fields are used to prevent the accumulation of water and/or ground water at a site by diverting infiltrating sources through gravity flow or pumping. Typically filled with porous, permeable materials such as graded rock, or perforated pipe, and lined with geotextile fabric, these mechanisms are useful underneath significant materials, reducing the amount of water that ultimately comes into contact with significant materials.

• *Stream Alteration*—Altering or channelizing the path of a stream to bypass all or some disturbed areas on a site, allows additional mining activities and avoids contamination of stream water by disturbed lands. This practice is complicated, however, by the need to restore the channel when mining operations end.

• *Drop Structures*—Drop structures are large angular rocks placed in a V-shaped pattern to slow the velocity of storm water runoff. These structures are typically reinforced by logs or large rocks imbedded in the streambanks.

(4) Sediment control and collection. Sediment control and collection limits movement and retains sediments from being transported offsite. Several structural collection devices have been developed to remove sediment from runoff before it leaves the site. Several methods of removing sediment from site runoff involve diversion mechanisms previously discussed, supplemented by a trapping or storage device. Structural practices typically involve filtering diffuse storm water flows through temporary structures such as straw bale dikes, silt fences, brush barriers or vegetated areas.

Structural practices are typically low in cost. However, structural practices require periodic removal of sediment to remain functional. As such, they serve as more active-type practices which may not be appropriate for permanent use at inactive mines. However, these practices may be effectively used as temporary measures during active operation and/or prior to the final implementation of permanent measures.

a. Temporary Treatments.

• *Plastic Matting, Plastic Netting, and Erosion Control Blankets*—These BMPs are used to protect bare soils and control dust and erosion. Mats and blankets help to promote vegetative growth by maintaining moisture and heat within the soil. Plastic matting and netting improve slope stabilization and may be used as a permanent treatment to encourage grass growth. Plastic netting is a more effective material to use while promoting growth of vegetation as it permits sunlight to penetrate through to the soils. Erosion control blankets also stabilize slopes and control erosion. These blankets may be made of jute or plastic netting which are more expensive than straw.

• *Mulch-straw or Wood Chips*—Mulches and wood chips are useful temporary covers for bare or seeded soils with an erosion control effectiveness rating of 75 to 98 percent.[93] Like matting, mulch-straw or wood chips help soils retain moisture and warmth to promote vegetative growth. Used on slopes and/or in combination with nylon netting, these materials may prevent erosion by wind and water. Over time, however, the mulch cover will decrease in effectiveness.

• *Compaction*—Soil compaction using a roller or other heavy equipment increases soil "strength" by increasing its density. More dense soil is less prone to erosion and long-term soil settlement. The surface of compacted soils should be roughed and seeded or vegetated to increase its durability.

(b) Permanent Treatments.

• *Sediment/Settling Ponds*—Sediment ponds function as sediment traps by containing runoff for long periods of time, allowing suspended solids to settle. These structures can achieve a high removal rate of sediment for both process wastewater and storm water discharges. Sediment/settling ponds are easily constructed and require minimal maintenance. Their flexibility to treat both process wastewater and storm water makes the use of ponds a desirable treatment for discharges from mineral mining and processing facilities. Of course, site characteristics must be such that some or all discharges can be practically channeled to a centralized area for treatment. Where this is not practical, the cost of constructing multiple sediment ponds may become prohibitive. In addition, periodic dredging may be required in order to maintain the capacity of these ponds.

Discharge ponds may also be designed to act as surge ponds which are designed to contain storm surges and then completely drain in about 24 to 40 hours, and remain dry during times of no rainfall. They can provide pollutant removal efficiencies that are similar to those of detention ponds.[94] Storm surge ponds are typically designed to provide both water quality and water quantity (flood control) benefits.[95]

• *Gabions, Riprap, and Native Rock Retaining Walls*—These BMPs are all forms of slope stabilization. Gabions consist of rocks (riprap) contained by rectangular wire boxes or baskets for use as permanent erosion control structures. Riprap consists of loose rocks placed along embankments to prevent erosion. Native rock retaining walls are another form of slope stabilization, with walls up to five feet in height, constructed from native rock to reinforce a steep slope.

• *Biotechnical Stabilization*—Biotechnical stabilization uses live brush imbedded in the soils of a steep slope to prevent erosion. This method relies on the premise that the imbedded vegetation will eventually root and help stabilize the slope.

• *Straw Bale Barrier*—Straw bales may be used as temporary berms, barriers, or diversions; capturing sediments, filtering runoff. When installed and maintained properly, these barriers remove approximately 67 percent of the sediment load.[96] These barriers are applicable across small swales, in ditches, and at the toe of bare slopes where there is a temporary large volume of sediment laden runoff.

• *Sediment Traps or Catch Basins*—These temporary or permanent structures are useful for catching and storing sediment laden storm water runoff and are particularly useful during construction activities to contain runoff. The effectiveness of these BMPs is better in smaller drainage basin areas. Sediment traps are less than 50 percent effective in removing sediment from storm water runoff.[97]

• *Vegetated Buffer Strips*—The installation of vegetated buffer strips will reduce runoff and prevent erosion at a removal efficiency rate of 75 to 99 percent depending upon the ground cover.[98] In addition, vegetated buffer strips catch and settle sediment contained in the storm water runoff prior to reaching receiving waters.

• *Silt Fence/Filter Fence*—A low fence made of filter fabric, wire and steel posts, should be used on small ephemeral drainage areas where storm water collects or leaves a mine site. Silt fences remove 97 percent of the sediment load and are easier to maintain and remove without creating lasting impacts to the environment.[99] Silt and filter fences need to be inspected periodically and may not be as effective as straw bales, since fabric may become clogged with fine particles preventing water flow.

Silt fences may have limited applicability for large areas. They are most effective for use in a small drainage areas. These fences may also be used in conjunction with nonstructural practices to maintain the integrity of soil prior to the establishment of vegetation.

• *Siltation Berms*—Siltation berms are typically placed on the downslope side of a disturbed area to act as an impermeable barrier for the capture and retention of sediments in surface water runoff. Plastic sheeting is typically used to cover the berm. The berm and the plastic sheeting may require periodic maintenance and repair.

• *Brush Sediment Barriers*—Brush barriers are temporary sediment barriers composed of tree limbs, weeds, vines, root mat, soil, rock and other cleared materials placed at the toe of a slope. A brush barrier is effective only for small drainage areas, usually less than ¼ acre, where the slope is minimal.

Brush barriers do not function as permanent barriers since over time the barrier itself will degrade. This BMP is most effective when located at the toe of a slope of an area in which vegetation is being grown or during temporary operations. The brush barriers remove any excessive sediment generated by erosion prior to the establishment of vegetation.

(5) Vegetation Practices. Vegetation practices involve establishing a

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[93] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990.

[94] "Urban Targeting and BMP Selection," EPA, Region V, November 1990.

[95] "Urban Surface Water Management," Walesh, S.G., Wiley, 1989.

[96] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–14.

[97] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–26.

[98] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–7.

[99] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–15.

sustainable ground cover by permanent seeding, mulching, sodding, and other such practices. A vegetative cover reduces the potential for erosion of a site by: absorbing the kinetic energy of raindrops which would otherwise impact soil; intercepting water so it can infiltrate into the ground instead of running off and carrying contaminated discharges; and by slowing the velocity of runoff to promote onsite deposition of sediment. Vegetative controls are often the most important measures taken to prevent offsite sediment movement and can provide a six-fold reduction in the discharge of suspended sediment levels.[100] Permanent seeding has been found to be 99 percent effective in controlling erosion for disturbed land areas.[101] Many States require that topsoil be segregated from other overburden for use during reclamation. While stored, topsoil stockpiles should be vegetated. This temporary form of vegetation can often be used for other piles of stored materials and for intermittent/seasonal operations.

Typically, the costs of vegetative controls are low relative to other discharge mitigation practices. Given the limited capacity to accept large volumes of runoff and potential erosion problems associated with large concentrated flows, vegetative controls should typically be used in combination with other management practices. These measures have been documented as particularly appropriate for mining sites.

- *Topsoiling, Seedbed Preparation*—The addition of a layer of topsoil or plant growth material provides an improved soil medium for plant growth. Seedbed preparation may include the addition of topsoil ingredients to be mixed in with soils used for seedbed preparation. Ripping, dicing, and mixing soils promotes weed control and aerates the soil, encouraging seedling growth.
- *Broadcast Seeding and Drill Seeding*—Seeding and vegetative planting are methods used to revegetate an area. Broadcast seeding spreads seeds uniformly, by hand or machine, to steep sloped or rocky areas, flat surfaces, and areas with limited access. Drill seeding is performed using a rangeland drill seeder and may not be used on rocky surfaces. Drill seeding is more suitably performed on flat, nonrocky surfaces, where the machine can insert seeds into the soil.
- *Willow Cutting Establishment*—Willow cutting establishment describes a method of soil stabilization useful for stream banks and other areas located adjacent to water. Similar to biotechnical stabilization, willow cuttings are used to promote growth in an area needing stabilization. Willow cuttings are typically used to reinforce a streambank or other moist area. Willow cuttings require a great deal of moisture and must be planted in areas that remain moist for long periods in order to take hold and grow.

6. Capping. In some cases, the elimination of a pollution source through capping contaminant sources may be the most cost effective control measure for discharges from inactive mineral mining and processing operations. Depending on the type of management practices chosen, the cost to eliminate the pollutant source may be very high. Once completed, however, maintenance costs will range from low to nonexistent.

Capping or sealing of waste materials is designed to prevent infiltration, as well as to limit contact between discharges and potential sources of contamination. Ultimately, capping should reduce or eliminate the contaminants in discharges. In addition, by reducing infiltration, the potential for seepage and leachate generation may also be lessened.

The use of this practice depends on the level of control desired, the materials available, and cost considerations. Many common liners may be effective including common soil, clay, and/or synthetic liners. Generally, soil liners will provide appreciable control for the lowest cost. Synthetic or clay liners may be appropriate to cover materials known to have a significant potential to impact water quality.

4. Storm Water Pollution Prevention Plan Requirements

Specific requirements for a pollution prevention plan for mineral mining and processing facilities are described below. These requirements must be implemented in addition to the baseline pollution prevention plan provisions discussed previously.

Under the description of potential pollution services, each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather, result in dry weather flows and mine pumpout. This assessment of storm water pollution will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Plans must describe the following elements:

The plan must contain a map of the site that shows the pattern of storm water drainage, structural features that control pollutants in storm water runoff[102] and process wastewater discharges, surface water bodies (including wetlands), places where significant materials[103] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of today's proposed permit. The map also must show areas where the following activities take place: fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal, haul roads, access roads, and rail spurs. In addition, the site map must also identify monitoring locations.

Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must address materials that within 3 years prior to the effective date of today's proposed permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in storm water runoff; existing structural controls that limit process wastewater discharges; and any treatment the runoff receives before it is

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[100] "Performance of Current Sediment Control Measures at Maryland Construction Sites," January 1990, Metropolitan Washington Council of Governments, page X.

[101] "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990, page IV–4.

[102] Nonstructural features such as grass swales and vegetative buffer strips also should be shown.

[103] Significant materials include, "* * * but [are] not limited to: Raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under section 101(14) of CERCLA; any chemical facilities required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharge." (40 CFR 122.26(b)(12)) Significant materials commonly found at mining facilities include: Overburden; raw materials; waste rock piles; tailings; petroleum based products; solvents and detergents; and manufactured products, waste materials or by-products used or created by the facility.

discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

The description of potential pollution sources culminates in a narrative assessment of the risk potential that those sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: Loading and unloading operations; outdoor storage activities; outdoor processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (i.e., total suspended solids, total dissolved solids, etc.) associated with each source.

Under the measures and controls section of the pollution prevention plan, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. The permittee must assess the applicability of the following BMPs for their site: discharge diversions, drainage/storm water conveyance systems, runoff dispersions, sediment control and collection mechanisms, vegetation/soil stabilization, and capping of contaminated sources. In addition, BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address the potential sources of storm water pollution. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems.

Under the preventive maintenance requirements of the pollution prevention plan, permittees are required to develop a preventive maintenance program that includes regular inspections and maintenance of storm water BMPs. The maintenance program requires periodic removal of debris from discharge diversions and conveyance systems. These activities should be conducted in the spring, after snowmelt, and during the fall season. Permittees already controlling their storm water runoff frequently use impoundments or sedimentation ponds. Maintenance schedules for these ponds must be provided in the pollution prevention plant.

Under the inspection requirements of the pollution prevention plan, operators of active facilities are required to conduct quarterly visual inspections of BMPs. Temporary and permanently inactive operations are required to perform annual inspections. Active sites have more frequent inspections than inactive sites because members of the pollution prevention team will be onsite, and the fact that they are active means there is a greater potential for pollution. The inspections shall include: (1) An assessment of the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems, and containment structures; (2) visual inspections of vegetative BMPs, serrated slopes, and benched slopes to determine if soil erosion has occurred; and (3) visual inspections of material handling and storage areas and other potential sources of pollution for evidence of actual or potential pollutant discharges of contaminated storm water.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to produce a runoff event. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

EPA believes that this quick and simple description will allow the permittee to assess the effectiveness of his/her plan on a regular basis at very little cost. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or followup procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by facility staff. This hands-on inspection will also enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

Under the recordkeeping and internal reporting procedures of the pollution prevention plan, the permittee must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. The plan must address spills, monitoring, and BMP inspection and maintenance activities. Ineffective BMPs must be reported and the date of their corrective action noted.

Under the sediment and erosion control requirements of the pollution prevention plan, permittees must indicate the location and design for proposed BMPs to be implemented prior to land disturbance activities. For sites already disturbed but without BMPs, the permittee must indicate the location and design of BMPs that will be implemented. The permittee is required to indicate plans for grading, contouring, stabilization, and establishment of vegetative cover for all disturbed areas, including road banks. Reclamation activities must continue until final closure notice has been issued.

According to the pollution prevention runoff requirements, the permittee must evaluate the appropriateness of each storm water BMP that diverts, infiltrates, reuses, or otherwise reduces the discharge of contaminated storm water. In addition, the permittee must describe the storm water pollutant source area or activity (i.e., loading and unloading operations, raw material storage piles etc.) to be controlled by each storm water management practice.

a. Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of this section. Comprehensive site compliance evaluations should be conducted twice a year for active facilities and once a year for temporary and permanently inactive sites. The individual or individuals who will conduct the inspections must be identified in the

plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the expiration of the permit.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

5. Numeric Effluent Limitation

There are no additional requirements under this section other than those stated in the general fact sheet language.

6. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at facilities with mineral mining and processing facilities. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) from when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

As discussed above, EPA does not believe that chemical monitoring is necessary for mineral mining and processing facilities. EPA believes that between quarterly visual inspections and site compliance evaluations, potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites and performed a review of data provided in Part 2 group applications.

7. Alternative Monitoring Requirements

a. EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.J.6.a. of today's permit.

During the period beginning on the effective date and lasting through the expiration date of this permit, all mineral mining and processing facilities will be required to conduct quarterly monitoring for their storm water discharges. Permittees must monitor storm water discharges for total suspended solids (TSS), total dissolved solids (TDS), total phosphorus, pH, and flow. All samples are to be collected as grab samples, rather than flow or time weighted composite samples. These monitoring requirements are summarized in the table below.

TABLE J–5.—MONITORING REQUIREMENTS

Parameter	Unit	Frequency	Sample type
Total Flow	MG	Quarterly	Estimate.
pH	s.u	Quarterly	Grab.
Total Phosphorus	mg/L	Quarterly	Grab.
Total Suspended Solids	mg/L	Quarterly	Grab.
Total Dissolved Solids	mg/L	Quarterly	Grab.

In addition, to the parameters listed in the above table, the permittee shall record the following:

- Date and duration (in hours) of the storm event(s) sampled.
- Rainfall measurements (in inches) of the storm event which generated the sampled runoff.
- Duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.
- Estimate of the total volume (in gallons) of the each discharge sampled.
- Description of the significant materials stored exposed and a list of the best management practices utilized in the drainage area for each discharge sampled.
- Facility status (active, temporarily inactive, permanently inactive, or undergoing reclamation).
- The permittee is required to conduct quarterly monitoring for heavy metals if the permittee suspects that the heavy metal will be in a concentration greater than 10 ppb, or if the parameter is limited in their process wastewater permit.

Monitoring must be conducted at least once in each designated period unless there is insufficient rainfall or snow-melt to produce a runoff event. Sampling shall be conducted in each of the following periods for the purposes of meeting the monitoring requirements of this permit: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

b. Retention of records. The permittee shall retain records of all inspections and monitoring information, including certification reports, noncompliance reports, calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports, and supporting data, requested by the permitting authority for at least 3 years after the date that the permit expires.

c. Notice of termination. The permitting authority shall be notified, by the permittee, when discharges authorized under this permit have permanently ceased, reclamation of disturbed areas is complete, and when the conditions of termination have been completed. Termination of coverage under this permit will only be granted when reclamation activities are complete and when storm water discharges do not exceed background values for the indicator pollutants for three consecutive monitoring periods. Where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with the signatory requirements of this permit.

8. Permitting of Mine Dewatering and Storm Water Discharges

EPA is requesting comments on whether or not facilities should be allowed to submit applications for mine dewatering discharges and storm water discharges under this section of today's permit. EPA will allow combined discharges; however, the discharge must be in compliance with the effluent guideline to which it is subject for mine dewatering. Table J–3 identifies the effluent limitations for mineral mining and processing facilities.

9. Definitions

"Overburden" means any material of any nature, consolidated or unconsolidated, that overlies a mineral deposit, excluding topsoil or similar naturally occurring surface materials that are not disturbed by mining operations.

"Overflow" means a precipitation induced overflow of a facility that is designed, constructed, and maintained to contain, or treat, the volume of wastewater which would result from 10-year, 24-hour precipitation event.

10. Region-specific Permit Conditions

Addendum G of today's proposed permit contains the following additional provisions for mineral mining and processing facilities located in Region VI (the States of Louisiana, New Mexico, Oklahoma, and Texas).

Section 301 of the CWA prohibits issuance of a permit authorizing discharges subject to a national effluent guideline unless limitations based applicable guidelines are included. In order to offer permit coverage for mine dewatering discharges at Construction Sand and Gravel, Industrial Sand, and Crushed Stone mines, the following numeric limits have been developed. EPA Region VI is proposing to allow such discharges under this permit, provided the discharge is composed of storm water or ground water seepage and does not contain process waste water. Inclusion of these numeric limitations allows eligible facilities to obtain coverage for all storm water discharges from the facilities under one permit, rather than having to obtain coverage under an individual permit for mine dewater discharges subject to effluent guidelines. In deciding to offer this permitting option, Region VI considered the administrative burden of issuing individual permits and the nature of pollutants contained in mine dewatering discharges from these three types of mines.

a. *Limitations for storm water discharges associated with industrial activity composed of mine dewatering of construction sand and gravel, industrial sand, and crushed stone mines.* The following limitations apply only to mine dewatering discharges composed entirely of storm water or ground water seepage, and not commingled with any process waste water.

TABLE J–6

Effluent characteristics	Effluent limitations (mg/L)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Total Suspended Solids (TSS)	45 mg/L	25 mg/l.
pH	Within the range 6.0 to 9.0	Within the range 6.0 to 9.0.

Any untreated overflow from facilities designed, constructed, and operated to treat the volume of storm water (including ground water seepage) associated with a 10-year, 24-hour rainfall event is not subject to these limitations. Compliance with effluent limitations established on the basis of promulgated BPT guidelines was required in July 1980. Permittees in the Construction Sand Gravel and Crushed Stone subcategories must comply with the limitations for TSS as expeditiously as practicable, but in no event later than three years from the date of permit issuance.

The effluent limitations for mine dewatering of storm water in the draft

permits can be achieved by the technologies discussed above. The technologies used to reduce suspended solids are well developed, widely accepted and include practices such as settling basins (which may be incorporated into the mine itself as a sump area), filtration, and control of mine run-on, through the use of berms or trenches to route surface runoff away from the mine.

The timing of mine dewatering discharges (as opposed to surface runoff) is typically at the discretion of the operator, and thus allows the operator the opportunity to allow natural settling of suspended solids even if no active clarification technology is employed. The limitations for pH are based on best practicable control technology currently available (BPT) for mine dewatering at 40 CFR 436.22(a)(2), 436.32(a)(2), and 436.42(a)(2). The effluent limitations for TSS have been adopted from the BPT guidelines for mine dewatering for the Industrial Sand Subcategory (40 CFR 436.42(a)(2). The TSS limitations have also been applied to the construction sand and gravel mines and crushed stone mines on a Best Professional Judgement (BPJ) basis as a technology-based limitation to protect receiving water quality. Note that this permit does not authorize the discharge of process-generated wastewater and therefore the mine dewatering discharges subject to the permit would be composed of storm water and ground water seepage only.

The original economic analysis for construction of the basic technology was done when the BPT requirements for the national effluent guidelines (40 CFR 436) were published on July 12, 1977 (42 FR 35843). In some cases, storm water removed from the mine may be in compliance with the effluent limitations without treatment of the runoff (e.g., the operator allows settling to occur within the mine prior to discharge or the storm water that collects in the mine is naturally low in suspended solids). In these cases, the operator of the discharge would not have a control cost.

The following description of mine dewatering is summarized from Mineral Mining and Processing Point Source Category at 40 CFR part 436. A more complete description of mine drainage associated with storm water runoff can be found in the "Development Document for Interim Final Effluent Limitations Guidelines and New Source Performance Standards for the Minerals for the Construction Industry, Volume 1, Mineral Mining and Processing Industry Point Source Category" (EPA–440/1–75/059), EPA, October 1975.)

As defined at 40 CFR 436.21 (Crushed Stone Subcategory), 436.31 (Construction Sand and Gravel Subcategory), and 436.41 (Industrial Sand Subcategory), the term "mine dewatering" includes any water that is impounded or collects in the mine and is pumped, drained, or otherwise removed from the mine though the efforts of the mine operator. For the Construction Sand and Gravel and Industrial Sand Subcategories, the term includes wet pit overflows caused solely by direct rainfall and ground water seepage. However, if a mine is also used for the treatment of process generated waste water, all three subcategories require the commingled storm water and process waste water be treated as process waste water, subject to the applicable effluent guidelines for process waste water. With regard to mine dewatering, today's permit only authorizes the discharge of storm water and ground water that has collected in the mine.

b. Monitoring and reporting requirements for storm water discharges associated with industrial activity composed of mine dewatering of construction sand and gravel, industrial sand, and crushed stone mines. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at mineral mining and processing facilities (other than mine dewatering discharges at Construction Sand and Gravel, Industrial Sand, and Crushed Stone mines). Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required. The visual inspection of storm water outfalls shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

As discussed above, EPA does not believe that chemical monitoring is necessary for mineral mining and processing facilities. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. However, in order to insure compliance with numeric limitations, mine dewatering discharges at Construction Sand and

Gravel, Industrial Sand, and Crushed Stone mines subject to numeric limitations described above will be required to monitor mine dewatering discharges once per quarter. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in part 2 group applications.

TABLE J–7.—MONITORING REQUIREMENTS FOR CRUSHED STONE, CONSTRUCTION SAND AND GRAVEL, AND INDUSTRIAL SAND MINE DEWATERING DISCHARGES

Parameter	Unit	Frequency	Sample type
Total Flow	MG	Quarterly	Estimate.
pH	s.u.	Quarterly	Grab.
Total Suspended Solids	mg/L	Quarterly	Grab.

K. Storm Water Discharges Associated With Industrial Activity From Hazardous Waste Treatment, Storage, or Disposal Facilities

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharge associated with industrial activity." This definition includes point source discharges of storm water from 11 categories of facilities, including "* * * (iv) hazardous waste treatment, storage, or disposal facilities, including those that are operating under Subtitle C of RCRA * * *." Part XI.K. of today's proposed permit only covers storm water discharges from facilities that treat, store, or dispose of hazardous wastes.

This section is not applicable to any unpermitted discharges of non-storm water other than those listed in Part VI.B.1. (Prohibition of Non-storm Water Discharges) of this fact sheet.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

Some industrial facilities that generate hazardous waste have onsite capacity to store, treat, and even dispose of their waste. Many hazardous waste generators, however, send their waste offsite to a TSDF. Generators of hazardous waste must arrange for a transporter who has obtained an EPA ID number to transport the generator's waste to a designated facility (i.e., a facility that is permitted under RCRA to receive and treat, store, or dispose of hazardous waste).

Once wastes are accepted by the TSDF, any number of activities may follow. For example, some wastes are disposed without any intervening storage or treatment, while other wastes are held in storage prior to treatment or disposal. Hazardous wastes are generally stored in containers and tanks, which are enclosed by a bermed area to prevent any releases to the environment from the storage units.

The processes for treating hazardous wastes can be divided into two major categories based on whether the waste is organic or inorganic in nature. Organic wastes are treated by destructive technologies, like incineration, whereas inorganic wastes are treated using fixation technologies, like stabilization, in which the hazardous constituents are immobilized in the residual matrix. Residuals from fixation processes are usually land-disposed and the stabilized constituents are much less likely to leach into the environment.

As mentioned above, some wastes are treated prior to disposal while others are disposed as-generated. Hazardous waste disposal units include landfills, surface impoundments, waste piles, and land treatment units. Wastes are also disposed by being burned in incinerators. Some liquid hazardous wastes are underground-injected into deep wells regulated under the Underground Injection Control (UIC) program in 40 CFR parts 144 to 148. The RCRA regulations governing the different types of hazardous waste treatment, storage, and disposal units are located in 40 CFR part 264, subparts I through O and subpart W.

Hazardous wastes are also recycled at TSDFs. Recycling is considered a form of treatment, however, the recycling process itself is not generally regulated under RCRA. Recycling activities include reclamation, regeneration, reuse, burning for energy or materials recovery, and use in a manner constituting disposal (i.e., land application of hazardous waste or products containing hazardous waste).

2. Pollutants in Storm Water Discharges Associated With Hazardous Waste Treatment, Storage, or Disposal Facilities

Given the diversity and amount of hazardous wastes handled at TSDFs, pollutants in storm water discharges may vary considerably. Contaminated storm water discharges may result from precipitation coming in contact with spills or leaks of hazardous waste. TSDFs regulated under RCRA Subtitle C, however, are required to control much of their storm water runoff through secondary containment (e.g., secondary containment for tank systems; 40 CFR 264.193). When a spill of a listed hazardous waste occurs, for example, the spilled material and any storm water that comes into contact with the material is a hazardous waste under RCRA and must be cleaned up and managed in accordance with all applicable regulations.

In addition to the types of hazardous materials handled and the procedures for controlling runoff at a particular TSDF, several other factors influence to what extent significant materials from these types of facilities and processing operations can affect water quality. Such factors include: Hydrology/geology; volume of wastes handled; extent of industrial activities at a TSDF (i.e., only storage, or storage plus treatment and disposal); and type, duration, and intensity of precipitation

events. These and other factors will interact to influence the quantity and quality of storm water runoff. In addition, sources of pollutants other than storm water, such as illicit connections,[104] spills, and other improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

Pollutants in storm water discharges from TSDFs may consist of, in the case of spills or leaks which are not properly contained or cleaned up, hazardous wastes and/or their constituents. 40 CFR part 261 subpart D contains the lists of hazardous wastes, and Appendix VII to part 261 is a list of the hazardous constituents for which each of these wastes is listed.

Storm water discharges from TSDFs may also contain significant concentrations of the conventional pollutants. Table K–1 indicates the sampling data results analyzed for conventional pollutants from part 2 data submitted to EPA. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of data submittals for each of the conventional pollutants. As Table K–1 indicates, large variations in the minimum and maximum values were often found for each of the eight conventional pollutants monitored. For example:

- Grab samples of COD range from 12 mg/L to 500 mg/L.
- Grab samples of oil and grease range from 0 mg/L to 74 mg/L.

TABLE K–1.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[1]

[In mg/L unless otherwise indicated]

Pollutant	No. of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample Type	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	5	9	17.8	9.4	0.0	0.0	45.0	45.0	11.5	7.0	45.0	45.0	45.0	45.0
COD	7	8	117.4	48.9	12.0	10.0	500.0	131.0	41.0	34.0	500.0	131.0	500.0	131.0
Nitrate+Nitrite Nitrogen	9	9	0.5	0.4	0.2	0.1	0.8	0.7	0.5	0.3	0.8	0.7	0.8	0.7
Total Kjeldahl Nitrogen	9	9	1.4	1.1	0.6	0.3	0.3	3.9	1.3	0.9	3.0	3.9	3.0	3.9
Oil and Grease	9	N/A	9.3	N/A	0.0	N/A	74.0	N/A	0.0	N/A	74.0	N/A	74.0	N/A
pH (s.u.)	7	N/A	N/A	N/A	5.6	N/A	7.8	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	8	9	0.2	0.1	0.0	0.0	1.6	0.3	0.1	0.1	1.6	0.3	1.6	0.3
Total Suspended Solids	8	9	338	83	4	5	1100	304	128	32	1100	304	1100	304

[1] Mean, Maximum, Minimum, Median, and Percentiles include all detects and nondetects.
[2] The number of samples reported included only those samples that were not reported as a nondetect or at the detection limit of the methodology.
[3] Composite samples.

3. Pollutant Control Measures Required Through Other EPA Programs

As part of the RCRA program, 40 CFR part 264 sets standards for treatment, storage and disposal facilities. EPA realizes that some of the conditions of this section are already addressed by the requirements set forth in part 264. Under the RCRA program, for example, secondary containment is required for tank systems in order to prevent the release of hazardous waste or hazardous constituents to the environment. Such secondary containment must either be capable of preventing storm water runon from entering the system, or have the capacity to contain the volume of the tank plus precipitation from a 25-year, 24-hour rainfall event (40 CFR 264.193).

Conditions such as those set forth for secondary containment at TSDFs are pertinent because they may overlap with aspects of the pollution prevention plan (PPP) required as part of this section. Therefore, in developing a storm water pollution prevention plan, a TSDF must include as Best Management Practices (BMPs) any controls relevant to storm water that have already been implemented under 40 CFR Part 264. To comply with the storm water pollution prevention plan, when the two programs address the same requirement, permittees must meet the more stringent of the two conditions, and incorporate such conditions into the plan.

Other areas where RCRA requirements may overlap with the conditions set forth in this section include inspections and employee training. Daily and weekly inspections of tank systems and containers are required, respectively, under part 264. Therefore, these inspections will be incorporated into the pollution prevention plan for this storm water permit. Similarly, employee training, required under 40 CFR 264.16, does not need to be repeated as part of implementation of the pollution prevention plan, but rather expanded as necessary to include issues concerning storm water management.

4. Options for Controlling Pollutants

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology (BCT)]. The Agency does not believe that it is feasible to establish specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from hazardous waste treatment, storage, and disposal facilities to meet BAT/BCT standards of the Clean Water Act. Instead, this section establishes requirements for the development and implementation of site-specific storm water pollution prevention plans consisting of a set of Best Management Practices (BMPs) that are sufficiently flexible to address different sources of pollutants at different sites.

Generally, BMPs are implemented to prevent and/or minimize exposure of pollutants from industrial activities to storm water discharges. EPA believes the most effective BMPs for reducing pollutants in storm water discharges are exposure minimization practices. Exposure minimization practices lessen the potential for storm water to come into contact with pollutants. Good housekeeping practices ensure that facilities are sensitive to routine and nonroutine activities which may increase pollutants in storm water discharges. The BMPs which address good housekeeping and exposure minimization are easily implemented, inexpensive, and require little, if any, maintenance. BMP expenses may include construction of roofs for storage areas or other forms of permanent cover

[104] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at mineral mining and processing facilities is low yet it still may be applicable at some operations.

and the installation of berms/dikes. Other BMPs such as detention/retention ponds and filtering devices may be needed at these facilities because of the contaminant level in the storm water discharges.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with hazardous waste treatment, storage, or disposal facilities that are not already addressed by RCRA subtitle C.

Facilities covered under this section must already be in compliance with the standards for operating a hazardous waste treatment, storage, or disposal facility as established by 40 CFR part 264. As discussed in greater detail in the previous section (Pollutant Control Measures Required Through Other EPA Programs), EPA believes that because of the requirements previously imposed on hazardous waste treatment, storage, or disposal facilities, storm water BMPs are already employed at most TSDFs. This belief is supported by part 1 group application data, which indicated that 97 percent of the representative sampling facilities already have SPCC plans in place at their sites.

Because of the potential for spills of hazardous materials during loading and unloading operations, and the absence of an individual discussion of these operations in 40 CFR part 264, Table K–2 is provided to identify BMPs associated with these activities at hazardous waste treatment, storage, or disposal facilities.

TABLE K–2.—GENERAL LOADING AND UNLOADING STORM WATER BMPS FOR HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES

Activity	Best management practices (BMPs)
Outdoor Unloading and Loading.	Confine loading/unloading activities to a designated area. Consider performing loading/unloading activities indoors or in a covered area.

TABLE K–2.—GENERAL LOADING AND UNLOADING STORM WATER BMPS FOR HAZARDOUS WASTE TREATMENT, STORAGE, OR DISPOSAL FACILITIES—Continued

Activity	Best management practices (BMPs)
	Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps). Close storm drains during loading/unloading activities in surrounding areas. Avoid loading/unloading materials in the rain. Inspect the unloading/loading areas to detect problems before they occur. Inspect all containers prior to loading/unloading of any raw or spent materials. Consider berming, curbing, or diking loading/unloading areas. Use dry clean-up methods instead of washing the areas down. Train employees on proper loading/unloading techniques.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA, March 18, 1991 through December 31,1992.

EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

5. Storm Water Pollution Prevention Plan Requirements

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from hazardous waste treatment, storage, or disposal facilities. The requirements included in the pollution prevention plans provide a flexible framework for the development and implementation of site-specific controls to minimize the pollutants in storm water discharges. This flexibility is necessary because each facility is unique in that the source, type, and volume of contaminated storm water discharge will vary from site to site.

There are two major objectives to a pollution prevention plan: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility.

The pollution prevention plan requirement reflects EPA's decision to allow hazardous waste treatment, storage, or disposal facilities to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The pollution prevention plan requirements in this section are consistent with EPA's storm water general permits finalized on September 9, 1992 (57 FR 41236), and September 25, 1992 (57 FR 44438), for discharges in nonauthorized NPDES States.

As previously discussed, many of the storm water pollution prevention plan requirements discussed in this section of today's proposed permit and fact sheet are already addressed by the RCRA program and employed at hazardous waste treatment, storage, or disposal facilities. To comply with the storm water pollution prevention plan, when the two programs address the same requirement, permittees must meet the more stringent of the two conditions, and incorporate such conditions into the plan. Please note that if RCRA does not address a particular condition which is stipulated in the storm water pollution prevention plan, the facility still must comply with that requirement of the plan.

6. Numeric Effluent Limitations

There are no additional requirements under this section other than those stated in Part V of the permit.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that treatment, storage, or disposal facilities (TSDFs) may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires TSDFs to collect and analyze samples of their storm water discharges for the pollutants listed in Table K–3. The pollutants listed in Table K–3 were found to be above benchmark levels for a significant portion of TSDFs that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from TSDFs, EPA is

requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from TSDFs must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table K–3. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE K–3.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Ammonia	0.093 mg/L
Total Kjeldahl Nitrogen (TKN).	1.5 mg/L
Total Recoverable Magnesium.	Detection limit.
Chemical Oxygen Demand (COD).	65 mg/L
Arsenic	0.000018 mg/L
Total Recoverable Barium.	1.0 mg/L
Total Recoverable Cadmium.	0.0018 mg/L
Cyanide	Detection limit.
Total Recoverable Lead.	0.0337 mg/L
Mercury	0.0024 mg/L
Total Recoverable Selenium.	0.02 mg/L
Total Recoverable Silver.	0.0009 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table K–3, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table K–3, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE K–4.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table K–3, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table K–3, then no further sampling is required for that parameter.
4th Year of Permit Coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table K–3. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.B. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharges before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and

management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required at TSDFs. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from hazardous waste treatment, storage, or disposal facilities (TSDFs). These notices specifically require that facilities with storm water discharges that are associated with TSDFs are required to monitor their storm water discharges for ammonia, magnesium, magnesium (dissolved), TKN, COD, TDS, TOC, oil and grease, pH, arsenic, barium, cadmium, chromium, cyanide, lead, mercury, selenium, silver, and WET. Today's proposed permit contains different monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for TSDFs in the September 1992 General Permits and those required in today's proposed permit.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.K.7. of today's proposed permit.

a. Semiannual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, facilities identified in paragraph 8.a.(1) must monitor those storm water discharges identified below at least semiannually (2 times per year). Permittees with facilities identified in Parts XI.K.8.1. (below) must report in accordance with Part VI.B. (Reporting: Where to Submit) and paragraph XI.K.8.c. (Reporting: When to Submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

(1) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA are required to conduct semiannual monitoring for the following parameters:

- Ammonia
- Total Recoverable Magnesium
- Magnesium (dissolved)
- Total Kjeldahl Nitrogen
- COD
- TDS
- TOC
- Oil and Grease
- pH
- Total Recoverable Arsenic
- Total Recoverable Barium
- Total Recoverable Cadmium
- Total Recoverable Chromium
- Total Cyanide
- Total Recoverable Lead
- Total Mercury
- Total Recoverable Selenium
- Total Recoverable Silver
- Acute Whole Effluent Toxicity.

b. Sample type. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for a grab sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab

sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

c. Reporting: when to submit. (1) Permittees that are required to conduct sampling pursuant to Part 6.a. shall monitor samples collected during the sampling periods running from January to June and during the sampling period from July to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than 12 months of information.

9. Region-specific Conditions

Region VI does not anticipate allowing coverage for Hazardous Waste Treatment Storage or Disposal Facilities (TSDF) in the permits issued by EPA Region VI for Louisiana (LAR05*###), New Mexico (NMR05*###), Oklahoma (OKR05*###), Texas (TXR05*###), and Indian Lands in these States (LAR05*##F, NMR05*##F, OKR05*##F, or TXR05*##F).

L. Storm Water Discharges Associated With Industrial Activity From Landfills and Land Application Sites

This section of today's proposed permit addresses special requirements for storm water discharges associated with industrial activity from landfill and land application sites. Pursuant to 40 CFR 122.26, storm water discharges from landfills, land application sites, and open dumps that receive or have received industrial waste, including sites subject to regulation under Subtitle D of the Resource Conservation and Recovery Act (RCRA), are required to seek permit coverage. Under this section, industrial waste is defined as waste generated by any of the industrial activities described at 40 CFR 122.26(b)(14).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

Special conditions contained in this section apply to land disposal sites that meet the definition of a landfill under RCRA Subtitle D contained at 40 CFR part 257, which establishes criteria for the classification of solid waste disposal facilities and practices. Part 257 defines landfills as areas of land or excavation in which wastes are placed for permanent disposal, and that are not land application units, surface impoundments, injection wells, or waste piles. Included in this definition are municipal solid waste landfills (MSWLFs) and industrial solid nonhazardous waste landfills. (Many of the 1,410 landfill facilities participating in the group application process are classified as MSWLFs). Therefore, the special conditions in this section apply to both MSWLFs and industrial landfills as defined under part 257. This section also applies to industrial waste land application sites. Land application sites are defined as facilities at which wastes are applied onto or incorporated into the soil surface for the purpose of beneficial use or waste treatment and disposal. No open dumps were included in the facilities participating in the group application process (open dumps are defined as solid waste disposal units not in compliance with State/Federal criteria established under RCRA Subtitle D) and operation of an open dump is prohibited under RCRA Section 4004. Therefore, storm water discharges from open dumps are not addressed by this section.

The following sections describe industrial and municipal solid waste landfills and industrial waste land application sites.

a. Municipal solid waste landfills. In 1988, EPA estimated that there were approximately 9,300 MSWLFs in the U.S. The wastes which are disposed in MSWLF landfills are highly variable. Examples include household waste (including household hazardous waste which is excluded from RCRA hazardous waste regulation), nonhazardous incinerator ashes, commercial wastes, yard wastes, tires, white goods, construction wastes, municipal and industrial sludges, asbestos, and other industrial wastes. Only a small percentage of all wastes disposed of in MSWLFs are industrial wastes. In 1988, EPA's Report to Congress on solid waste generation indicated that nearly 90 percent of wastes disposed of in all MSWLFs were household or commercial (office) wastes. Industrial process wastes represented only 2.73 percent of the total wastestream (although most MSWLFs currently or have previously accepted industrial wastes and are therefore subject to storm water permitting requirements). The Report also indicated that about half of the total number of MSWLFs received small quantity generator hazardous wastes. In addition, MSWLFs that operated prior to the implementation of RCRA hazardous waste management requirements in 1980 may have received wastes that before that date that would have been classified as hazardous wastes under current RCRA requirements.

A typical MSWLF is a constantly evolving facility which is constructed over its operating life as received wastes are spread, compacted, and covered. Most modern landfills contain one or more separate "units," planned final waste containment areas. Active units continue to receive wastes until they have reached disposal capacity. When capacity is reached, a unit is capped with a final cover, and additional wastes must be placed in other active units. As a result, a landfill may consist of multiple inactive and active units at various stages of completion.

Within each unit, wastes are added in layers referred to as lifts. Received wastes are spread across the working face of the landfill to a depth of six to twenty feet and then compacted. At the end of each working day a thin layer of soil (daily cover) is spread on top of the added wastes and compacted. A large unit may consist of multiple lifts, depending on the planned final depth.

Historically, landfills have been constructed according to one of two generic designs, the trench method and the area method, or a combination of these. The trench method requires the excavation of a trench into which wastes will be placed. Soil from the excavation provides the cover material as disposal continues. In the area method, wastes are placed directly on

the ground surface and disposal follows the natural contours of the land. Some landfills use combinations of the two methods at different times depending on the location of the active unit.

MSWLF construction creates constant changes in the contours of the facility resulting in changing patterns of storm water runon and runoff. Controlling erosion of landfill slopes is among the primary concerns of the landfill operator. Current practices generally include a combination of temporary controls (straw bales, silt fences, etc.), in active disposal areas, and permanent controls (recontouring, revegetation, etc.), in areas where waste disposal has been completed.

Daily and intermediate covers serve primarily to protect against disease vectors and to prevent fires and the blowing of refuse. Typically, daily covers consist of the minimum amount of soil excavated from the site needed to cover exposed wastes in the active areas of the landfill. After spreading, the cover is usually compacted to reduce loss from erosion. Intermediate covers, which are also typically soil excavated from the site, are often applied to areas of a unit which will be inactive for periods of 30 days or more. Deeper than daily covers, intermediate covers may be applied in conjunction with runoff control measures to minimize pooling and high-velocity flow patterns. Both daily and intermediate covers promote infiltration to some extent, depending on depth and soil material.

When a landfill (or landfill unit) has reached disposal capacity, a final cover is applied. Final covers generally provide a relatively impermeable cap over which topsoil is placed and vegetation is established. Permanent runoff controls (diversion channels, recontouring, terracing, etc.) may be constructed to minimize erosion and ponding. Final cover materials in older landfills, which are generally subject to limited regulatory requirements, often consist of a single layer of natural soils. However, at newer landfills subject to more stringent regulatory requirements, other cover materials (polymers, sand and gravel, sewage sludge, etc.) are frequently combined with soil in multiple layers.[105]

b. Industrial landfills. Industrial landfills only receive wastes from industrial facilities such as factories, processing plants, and manufacturing sites. These facilities may also receive hazardous wastes from very small quantity hazardous waste generators (less than 100 kilograms per month), as defined in RCRA Subtitle C. Included in these waste streams are some PCB-contaminated wastes. The Toxic Substances Control Act PCB disposal regulations allow limited categories of PCB materials to be disposed of in RCRA Subtitle D landfills.[106] In 1988, EPA estimated that there were at least 3,511 industrial Subtitle D landfills (this would presumably be the maximum number of non-MSWLF facilities regulated by the storm water program). The specific number of these units that are onsite and offsite facilities (i.e., centralized waste management units) was not available. Because wastes generated by industrial facilities vary considerably, both between and within industries, the wastes disposed of at industrial landfills can be highly variable. For example, the industrial nonhazardous waste category includes wastes from the pulp and paper industry, the organic chemical industry, the textile manufacturing industry, and a variety of other industries. Consequently, these waste streams may vary in chemical composition and/or physical form. Most industrial landfills are privately owned.[107]

Currently, there are limited data available on industrial landfills. Specific industrial waste streams have not been well characterized and little is known about the hazards they may pose. Limited data are also available regarding the design, operation, and location of these facilities. It has been documented, however, that there has been only sporadic application of design and operating controls at industrial landfills. In 1988, only about 12 percent of industrial landfills (including both onsite and offsite facilities) had any type of liner, and fewer than 35 percent employed runon/runoff controls.[108] The use of these controls (including runon and runoff controls) at industrial waste landfills is likely to increase as State industrial waste programs continue to evolve.

c. Land application sites. In 1988, EPA estimated that there were approximately 5,605 land application sites in the U.S. These sites receive wastes (primarily wastewaters and sludges) from facilities in virtually every major industrial category. More than half of all land application sites cover less than 50 acres and receive less than 50 tons of waste annually. The largest number of active land application sites in 1988 were observed in the food and kindred products industry, however the pulp and paper industry managed the largest gross quantity of waste using this practice. Similar to landfills, the variability in types of waste that are land applied precludes any general characterization of the materials that may be exposed to storm water. Typically, individual land applications will only dispose of wastes with specific characteristics. However, the criteria for selection are site-specific depending on type of process used and the soil characteristics. Waste application techniques are dependent on waste characteristics.

In 1988, EPA found that 68.5 percent of all industrial waste land application units had runon and runoff controls. No information was available on the extent of closure requirements applicable to land application units.

2. Potential Pollutant Sources at Landfill and Land Application Sites

a. Landfills. At landfill sites, runoff carrying suspended sediments and commingling of runoff with uncontrolled leachate are the two primary sources of pollutants that this section is intended to address. Other potential sources of pollutants at landfills, those from ancillary areas of the landfill and which are not directly associated with landfill activities (i.e., vehicle maintenance, truck washing, composting, transfer station activities, etc.) may be subject to requirements in other sections of today's proposed permit.

(1) Total suspended solids. Storm water discharges from landfill sites often contain high TSS levels because of the extensive land disturbance activities associated with landfill operations. Suspended solids can adversely affect fisheries by covering the bottom of a stream or lake with a blanket of material that destroys the fish food bottom fauna or spawning grounds. In addition, while they remain in suspension, suspended solids can increase turbidity, reduce light penetration, and impair the photosynthetic activity of aquatic plants.[109] Specific sources of TSS loadings from landfill operations and typical Best Management Practices (BMPs) used to control TSS levels in storm water runoff are shown in Table L–1. The listed BMPs are consistent with the BMPs identified in part 1 of the permit applications submitted by landfill group applicants.

[105] "Report to Congress: Solid Waste Disposal in the United States," Vol. II, Office of Solid Waste and Emergency Response, Oct. 1988.

[106] Ibid.

[107] Ibid.

[108] Ibid.

[109] EPA. 1974 (October). "Development Document for the Effluent Limitations Guidelines and New Source Performance Standards for the Steam Electric Power Point Source Category."

TABLE L–1.—SOURCES OF TSS LOADINGS AND TYPICAL BMPS USED FOR EROSION CONTROL AT LANDFILLS

Potential pollutant sources	BMPs
Erosion from:	
• Exposed soil from excavating cells/trenches.	
• Exposed stockpiles of cover materials.	
• Inactive cells with final cover but not yet finally stabilized.	
• Daily or intermediate cover placed on cells or trenches.	Stabilize soils with temporary seeding, mulching, and geotextiles; leave vegetative filter strips along streams. Implement structural controls such as dikes, swales, silt fences, filter berms, sediment traps and ponds, outlet protection, pipe slope drains, check dams, and terraces to convey runoff, to divert storm water flows away from areas susceptible to erosion, and to prevent sediments from entering water bodies. Frequently inspect all stabilization and structural erosion control measures and perform all necessary maintenance and repairs.
• Erosion from haul roads (including vehicle tracking of sediments).	Stabilize haul roads and entrances to landfill with gravel or stone. Construct vegetated swales along road. Clean wheels and body of trucks or other equipment as necessary to minimize sediment tracking (but contain any wash waters [process wastewaters]). Frequently inspect all stabilization and structural erosion control measures and perform all necessary maintenance and repairs.

Landfill group applicants were required to submit storm water sampling data under part 2 of their group applications. There were a total of 1,410 facilities in the landfill group applications. Part 2 data revealed that TSS concentrations were extremely variable. Statistically summarized part 2 data indicated a wide range of TSS concentrations ranging from 0 mg/L to 39,900 mg/L for grab samples, with a mean of 2,976 mg/L. For statistically summarized part 2 composite samples, the concentrations ranged between 0 mg/L and 18,220 mg/L, with a mean of 1,850 mg/L. Additional part 2 data fell within the ranges, and generally below the mean concentrations, that are stated above.

(2) Other pollutants. Table L–2 presents potential sources of other pollutants in storm water discharges from landfill operations. The specific pollutants associated with each of these sources are highly variable, depending upon individual site operations and waste types received. Table L–2 also lists BMPs that would be expected to be used in these areas to minimize potential pollutant loadings. Several of these BMPs were identified in the group permit applications submitted by landfill operators.

TABLE L–2.—SOURCES AND BMP CONTROLS OF POTENTIAL POLLUTANTS (OTHER THAN TSS)

Potential pollutant source	BMPs
Application of fertilizers, pesticides, and herbicides.	Observe all applicable Federal, State, and local regulations when using these products. Strictly follow recommended application rates and methods (i.e., do not apply in excess of vegetative requirements).
Exposure of chemical material storage areas to precipitation (including pesticides, fertilizers, and herbicides).	Have materials such as absorbent pads easily accessible to clean up spills. Provide barriers such as dikes to contain spills. Provide cover for outside storage areas.
Exposure of waste at open face	Have materials such as absorbent pads easily accessible to clean up spills. Minimize the area of exposed open face as much as is practicable. Divert flows around open face using structural measures such as dikes, berms, swales, and pipe slope drains. Frequently inspect erosion and sedimentation controls.
Waste tracking onsite and haul roads, solids transport on wheels and exterior of trucks or other equipment (common with incinerator ash).	Clean wheels and exterior of trucks or other equipment as necessary to minimize waste tracking (but contain any wash waters [process wastewaters]).
Uncontrolled leachate (commingling of leachate with runoff or runon).	Frequently inspect leachate collection system and landfill for leachate leaks. Maintain landfill cover and vegetation. Maintain leachate collection system.

Table L–3 summarizes the group applicant data that was analyzed for the seven conventional and nonconventional pollutants (other than TSS) required to be sampled for by all landfills submitting part 2 data. Similar to the results for TSS described above, these data indicate that there was great variability in pollutant concentrations at the various landfills. Generally, pollutant concentrations for BOD_5, COD, Nitrate plus Nitrite Nitrogen, TKN, and pH exhibit variability with the minimum and maximum reported concentrations, often ranging over several orders of magnitude. As shown in Table L–3, the concentrations of these constituents are generally low in comparison to discharges from other sectors. Elevated levels of these pollutants would not be anticipated in runoff from waste management units unless there was direct contact with waste materials and/or commingling with leachate. Additional part 2 information received is generally consistent with the values reported below.

TABLE L–3.—SUMMARY OF LANDFILL/LAND APPLICATION SITE STORM WATER DATA (EXCEPT TSS)

Parameter	Data summary	
	Grab samples	Composite samples
BOD_5	78% of BOD levels 10 mg/L or less	73% of BOD levels 10 mg/L or less.
COD	78% of COD levels less than 100 mg/L	77% of COD levels less than 100 mg/L.
Nitrate plus Nitrite Nitrogen	71% of nitrate plus nitrogen levels one mg/L or less	65% of nitrate plus nitrogen levels less than 1 mg/L.
Nitrogen, Total Kjeldahl	74% of TKN levels less than 2 mg/L	85% of TKN levels less than 2 mg/L.
Oil and Grease	83% of Oil and Grease levels 5 mg/L or less	Not Applicable.
pH	96% of pH levels between 6.49 and 8.86	96% of pH levels between 6.49 and 8.88.
Total Phosphorus	85% of phosphorus levels less than 2 mg/L	75% of phosphorus levels less than 2 mg/L.

Only two groups submitted sampling for toxic pollutants expected to be present in their storm water discharges. Data were submitted for five facilities. These data are evaluated and summarized in Table L–4. While the data suggest that some toxic pollutants could be present (at highly variable levels) in storm water discharges from landfills, the amount of data is inadequate to be considered representative of storm water discharges from landfill sites. In addition, there is little or no additional data available from other sources to characterize the levels of toxic pollutants in discharges of runoff from industrial and municipal solid waste landfills. Additional part 2 data for toxic pollutants were within the grab sample ranges listed in Table L–4.

TABLE L–4.—SUMMARY OF TOXIC POLLUTANT GRAB SAMPLING DATA

[Data submitted by only two groups]

Parameter	Grab samples				Composite samples			
	Number of groups	Number of sites	Number of outfalls	Range (mg/L)	Number of groups	Number of sites	Number of outfalls	Range (mg/L)
Ammonia	1	4	7	.4–160	1	2	3	.17–.29
Arsenic	2	4	4	.006–9.49	1	2	3	.05–.09
Barium	2	4	7	.065–2.14	1	2	3	.21–.32
Cadmium	1	1	1	0.645	1	1	1	0
Chromium	1	4	6	.006–.204	0	0	0	N/A
Iron	2	5	8	.036–210	1	2	3	49.6–90.5
Lead	1	4	6	.079–83.7	1	2	3	.02
Mercury	2	4	5	.0002–51.5	0	0	0	N/A
Selenium	1	3	4	.005–16.5	0	0	0	N/A
Silver	1	1	1	.006	0	0	0	N/A
TOC	2	5	7	.54–128	0	0	0	N/A

b. Land application sites. At land application sites, TSS would also be expected to be found at elevated levels in storm water discharges (because of the extensive soil disturbance). The occurrence and levels of other pollutants in storm water discharges are dependent on the types of wastes applied and facility design and operation (including use of storm water management/treatment practices. No part 2 data for TSS or any other pollutants was submitted for land application sites nor was such data available from other sources.

There are no Federal criteria for industrial landfill or land application unit design, operation, closure or post-closure care. State programs that address industrial landfills and land application sites vary considerably. As noted above, only 35 percent of all industrial landfills currently have runon/runoff controls. However, many are subject to closure requirements.

3. Pollutant Control Measures Required by Other EPA Programs

EPA recognizes that requirements under other Federal and State programs currently address reclamation/closure of and storm water management at landfill and land application sites. In developing requirements under this section, the Agency has considered how these other program requirements affect the characteristics of storm water discharges (e.g., by limiting contact with potential pollutant sources). Of specific note are recently imposed RCRA criteria at 40 CFR parts 257 and 258 that address the design, operation, and closure of MSWLFs. These regulations are summarized below.

Regulations at 40 CFR part 257 classify solid waste disposal facilities and practices. Regulations at 40 CFR part 258 establish criteria for municipal solid waste landfills. The types of criteria required include: location restrictions, operating criteria, design criteria, ground water monitoring and corrective action, closure and postclosure care, and financial assurance criteria. All States must implement the Federal MSWLF criteria primarily through State solid waste management plans.

As part of the operating criteria, part 258 requires that all discrete units within MSWLFs receiving waste provide for the following by October 1993 (it should be noted that EPA has proposed an extension of this deadline to April 1994):

(a) Owners or operators of all MSWLF units must design, construct, and maintain:

(1) A runon control system to prevent flow onto the active portion of the landfill during the peak discharge from a 25-year storm:

(2) A runoff control system from the active portion of the landfill to collect and control at least the water volume resulting from a 24-hour, 25-year storm event.

In addition, all MSWLF units that received wastes after October 1991 are required to meet specific closure standards (see 40 CFR 258.60). These standards include installation of a final cover consisting of a minimum of 6 inches of topsoil over a minimum of 18 inches of clay. The cover must be no more permeable than the unit's liner.

The criteria also imply, but do not explicitly require, that revegetation should be performed.

These criteria indicate that for all but the most severe storm events (i.e., greater than the 24-hour, 25-year storm event), new units within MSWLFs will be required to separate storm water discharges from active and inactive areas. (Active areas are defined as those that have not yet received a final cover [as required under 258.60].) Further, the closure/final cover criteria described above are intended to prevent contact with waste materials and minimize erosion.

4. Options for Controlling Pollutants

a. Overview of section requirements. This section establishes separate requirements for municipal solid waste landfills (MSWLFs) and industrial landfills. These requirements are discussed below.

(1) MSWLFs. The Agency believes that the MSWLF criteria in 40 CFR 258.60 will effectively separate runoff from active and inactive areas at newer landfills. As a result, separate requirements have been established for active and inactive areas at MSWLF sites.

For discharges from active landfill areas, the Agency believes that there is reasonable potential for runoff to contact waste materials. In these areas, runoff may also become commingled with leachate. In fact, a significant percentage of landfill facilities that submitted group applications, identified leachate and wastes as "exposed materials." The nature of exposed waste materials as well as the extensive data available for leachate characteristics suggest that the composition of runoff from MSWLFs will be highly site-specific. Existing data (see RCRA docket materials for the development and implementation of the 40 CFR part 258 criteria) show a wide range of inorganic and organic pollutants can be found in landfill leachate. In addition, total suspended solids (TSS) levels are also likely to be elevated where contact occurs with wastes, disturbed areas, and daily/intermediate cover materials.

At this time, the Agency does not believe that there are sufficient data available to establish numeric limits based on best available technology for storm water discharges from active MSWLF areas. The data submitted in the part 2 applications, as well as leachate data from available literature, suggest that a variety of constituents may be present at levels that are highly site-specific depending on the types and extent of contact with exposed wastes and extent of commingling with leachate. Furthermore, the volumes of runoff generated will be dependent on the frequency and intensity of precipitation events. For TSS, little or no data are available to characterize the TSS levels in active landfill area runoff and to assess the performance of treatment technologies/best management practices currently in use.

Therefore, in this section, EPA is requiring that landfill operators develop storm water pollution prevention plans. For active landfill areas, these plans should be tailored toward minimizing contact of storm water with waste materials. The plans should also include design and implementation of best management practices and/or treatment methods to control the pollutants likely to be found in runoff at the site. For the active portion of the landfill, this section also requires quarterly monitoring for TSS and semiannual monitoring for other pollutants (see below) to determine pollutant loadings and quantify the performance of BMPs/treatment measures. These data may be used in the future in the development of individual and/or general permits to establish numeric limitations based on best available technology. It should also be noted that EPA is currently in the process of developing effluent limitation guidelines for discharges of leachate from waste management facilities (including MSWLFs). Where these effluent guidelines apply to discharges from active areas, facilities will be required to comply with these requirements on the effective date.

For units/areas that ceased receiving wastes after October 1991, EPA believes that closure criteria under 40 CFR 258.60 will minimize or eliminate pollutant loadings from waste materials to storm water. For MSWLF units closed in accordance with these criteria, TSS should be the only pollutant of concern. Again, EPA does not believe that adequate data are currently available to establish a numeric limitation based on best available technology (BAT) for TSS in storm water discharges from inactive areas. TSS concentrations in untreated storm water discharges have not been sufficiently well characterized to address the site-specific variability arising from local geology and topography along with individual cover materials and reclamation practices. Furthermore, the available data do not support an assessment of the relative performance of specific BMPs/treatment measures. Therefore, for inactive areas that were closed in accordance with 40 CFR 258.60 criteria, this section requires operators to include in their pollution prevention plans specific measures to control TSS in discharges. TSS monitoring will be required to provide additional data on loadings and to evaluate the effectiveness of specific control measures.

The Agency is uncertain whether all MSWLF units which ceased receiving wastes prior to October 1991 will have been closed in such a manner to ensure long term stability and minimize the potential for runoff to contact wastes and leachate. Therefore, operators of units that were closed prior to October 1991 are required to conduct the same monitoring as required for active areas. This monitoring is intended to evaluate the integrity and performance of final cover materials in minimizing pollutant loadings to storm water discharges. Based on the results of this monitoring, the permitting authority may elect to continue/modify or terminate the required monitoring, provide for additional permit conditions (including specific BMPs and/or numeric limitations), or terminate coverage under the permit, as appropriate.

An exception from most monitoring requirements is provided for older landfill areas closed prior to October 1991 in accordance with State requirements that meet or exceed the final cover criteria in 40 CFR 258.60. Similar to newer units, TSS should be the only pollutant of concern at these sites and only quarterly TSS monitoring is required.

(2) Industrial landfills. As discussed above, minimal data are available to characterize storm water discharges or management practices for industrial solid waste landfills. EPA recognizes that onsite landfills are likely to be dedicated waste management units. However, the 1988 Report to Congress indicates that these onsite units can be found at sites in virtually every major industrial category. Offsite landfills can receive industrial wastes from almost any sources. Further, there are no current or planned Federal minimum requirements for runon/runoff control and closure of these onsite and offsite facilities. As a result, existing State programs vary. Some States have extensive permitting and design standard requirements for industrial landfills, often for specific waste types. In contrast, other States have much more limited industrial solid waste programs.

Because of the variability between sites, the need for representative runoff characterization data, and the lack of information on BMP/treatment method performance, this section does not establish effluent limitations for storm water discharges from industrial landfills. At this time, best available technology shall consist of development

and implementation of pollution prevention plans. In addition, to ensure protection of water quality, the Agency has established monitoring requirements based on the concern that runoff from industrial landfills may contact waste materials and/or leachate. The monitoring requirements for active MSWLF areas are based on existing leachate characterization data which show the potential for virtually all priority pollutants to be present. Since this is also likely to be true for industrial landfills, similar monitoring requirements (including toxicity testing) are being required for industrial landfills.

(3) *Land application sites.* This section includes the same requirements for land application sites as for industrial landfills (as described above). The Agency does not currently have sufficient data to identify specific pollutants common to land application sites and develop numeric limitations. Therefore, the Agency believes that requiring implementation of pollution prevention plans along with a broad range of monitoring requirements is appropriate.

5. Storm Water Pollution Prevention Plans Requirements

The requirements for storm water pollution prevention plans under this section build upon the requirements included in EPA's storm water general permit published on September 9 and 25, 1992 (57 FR 41236 and 57 FR 44438). As such, the following discussion focuses on the plan requirements that are specific to landfills and land application sites. The rationale for the common requirements applicable to all types of facilities covered under today's proposed permit (including landfills) is provided in Part VI of this fact sheet.

a. Description of potential pollutant sources. The first step in preventing pollution of storm water from landfills is to identify potential sources of storm water contamination. Consequently, EPA is requiring that landfill and land application site operators include, in their pollution prevention plan, a narrative description of activities at their facilities. The Agency is also requiring landfill permittees to identify on a site map the locations of active and closed cells or trenches, any known leachate springs or other areas where leachate may commingle with runoff, the locations of any leachate collection and handling systems, and the locations of stockpiles of landfill cover material. The Agency is requiring land application site permittees to identify on their site maps the locations of active and inactive land application areas and the types of wastes applied in those areas, any known leachate springs or other areas where leachate may commingle with runoff, the locations of any leachate collection and handling systems, and the locations of temporary waste storage areas. EPA believes these requirements will, in the event contamination is detected in storm water, facilitate the identification of any source of contamination.

EPA is also requiring owners or operators to summarize all available sampling data for storm water and leachate generated at the site because the Agency believes these data will help to determine whether storm water is commingling with any leachate produced at the site. Finally, operators must identify any current NPDES-permitted discharges at their sites.

b. Measures and controls. EPA is requiring good housekeeping practices for materials storage areas exposed to precipitation and for vehicle tracking of sediment and waste. EPA believes good housekeeping practices provide a simple and inexpensive means of controlling pollutants from entering storm water and therefore will not be overly burdensome to regulated facilities.

EPA believes that frequent and thorough inspections are necessary to ensure adequate functioning of: sediment and erosion controls, leachate collection systems, intermediate and final covers, and significant materials storage containers. Failure of any of the aforementioned items could cause contamination of storm water with sediment, leachate, or significant materials stored onsite. EPA believes it is necessary to conduct inspections both during storm events and during dry weather. Inspections during dry periods allow facilities to identify and address any problems prior to a storm event, thereby minimizing the chance for storm water contamination. Inspections during significant storm events ensure that measures are functioning as originally intended and provide an opportunity for facilities to observe what materials and/or activities are exposed to storm water. Pollution prevention plans must address the specific inspection requirements for active and inactive landfills and land application sites described in Part XI.L.3.a.(3).(d) of today's proposed permit.

Failures of significant materials storage containers, leachate collection and treatment systems, cover materials, and sedimentation and erosion controls can result in storm water contamination. EPA believes it is necessary to maintain these items in good working order to prevent storm water contamination. Consequently, EPA is requiring (in pollution prevention plans) that owners or operators ensure the maintenance of material storage areas to prevent leaking or rupture and all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water. Pollution prevention plans must also describe measures to be taken to protect the integrity and effectiveness of any intermediate and final covers.

Analyzed part 2 data submitted by landfill group applicants demonstrate elevated TSS concentrations (mean TSS grab sample concentration of 3,360 mg/L) in storm water discharges. EPA believes controls are needed to reduce potential TSS contamination of storm water and to reduce suspended solids which have been carried by storm water before the discharge leaves the site. Therefore, EPA has chosen to require that pollution prevention plans address both stabilization and structural controls to reduce potential TSS loadings to surface waters.

Monitoring and Reporting Requirements

Analytical monitoring requirements. EPA believes that landfill/land application sites may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires landfill/land application sites (except those that are closed in accordance with 40 CFR 256.60) to collect and analyze samples of their storm water discharges for the pollutants listed in Table L–5. The pollutants listed in Table L–5 were found to be above benchmark levels for a significant portion of landfill/land application sites that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at levels of concern from landfill/land application sites, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from landfill/land

application sites must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table L–5. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE L–5.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Total Suspended Solids (TSS)[1]	100
Total Phosphorus[2]	0.33
Total Recoverable Iron[2]	0.3
Total Recoverable Lead[2]	0.0337

[1] Applicable to all landfill and land application sites.
[2] Applicable to all facilities except MSWLF areas closed in accordance with 40 CFR 258.60 requirements.

If the average concentration for a parameter is less than or equal to the value listed in Table L–5, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table L–5, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE L–6.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table L–5, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table L–5, then no further sampling is required for that parameter.
4th Year of Permit Coverage	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table L–5. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

The monitoring cut off concentrations listed in Table L–5 are not numerical effluent limitations. These values represent a level of pollutant discharge which facilities may achieve through the implementation of pollution prevention plans. At least half of the facilities which submitted Part 2 data, reported concentrations less than or equal to the values listed in Table L–5. Facilities that achieve average discharge concentrations which are less than or equal to the values in Table L–5 are not relieved from the pollution prevention plan requirements or any other requirements of the permit.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then

where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of a storm water discharge from each outfall are required at landfills and land application sites. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from landfills and land application sites. These notices specifically require that facilities with storm water discharges that are associated with landfills and land application sites are required to monitor their storm water discharges for ammonia, magnesium, magnesium (dissolved), TKN, COD, TDS, TOC, oils and grease, pH, arsenic, barium, cadmium, chromium, total cyanide, lead (total), mercury, iron, selenium, and silver. Today's proposed permit contains slightly different monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for landfills and land application sites facilities in the September 1992 General Permits and those required in today's proposed permit.

TSS monitoring is being required at all landfill and land application sites because available sampling data as well as the nature of these operations (significant land disturbance) indicate that TSS is likely to be present at elevated levels (greater than 500 mg/L) in storm water discharges. This monitoring requirement will provide a measure to determine the effectiveness of the pollution prevention plans, particularly BMPs, in controlling erosion and to further assess potential impacts on receiving water quality.

Monitoring is being required for other parameters (except at sites closed in compliance with 40 CFR 258.60) that could be present in storm water discharges from landfills and land application facilities at individual sites where leachate commingles with runoff and/or contacts waste materials. This monitoring will allow EPA to determine whether prohibited commingling of leachate is occurring. Further, as noted previously, exposed materials and potential storm water pollutants (other than TSS) are highly site-specific because they depend upon current and past waste and materials management practices. Therefore, the required monitoring will allow the permitting authority to define and control specific pollutant sources at individual landfills.

Many of the required monitoring parameters, other than TSS, are similar to the parameters addressed by the ground water monitoring requirements for municipal solid waste landfills established under subtitle D of RCRA (see October 9, 1991 (56 FR 50978)) and are the same as the monitoring required under the storm water general permit published on September 9 and 25, 1992 (57 FR 41236 and 57 FR 44438). Based on landfill leachate data reviewed by EPA, monitoring for these parameters should indicate whether leachate is commingling with storm water and/or contamination is resulting from direct contact with waste materials.[110] [111]

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[110] "Landfill Leachate: A Survey of Chemical and Toxicity Characteristics and Evaluations of Receiving Stream Biological Impacts," Draft. West Virginia Department of Natural Resources, 1987.

[111] "Leachate Baseline Report: Determination of Municipal Landfill Leachate Characteristics," NUS Corporation, prepared for EPA, Date unknown.

Other parameters, such as total phosphorus, total aluminum, and total iron, also must be monitored because the median values for the industry are greater than levels of concern. The levels of concern are established from the most stringent storm water effluent limitations, Gold Book values, or NURP medians. The median values for these parameters, as submitted in part 2 of the applications, are: 0.50 mg/L; 9.49 mg/L; 0.840 mg/L; and 25.0 mg/L, respectively.

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.L.6 of today's proposed permit.

a. Quarterly monitoring requirement. During the period beginning on the effective date and lasting through the expiration date of this permit, all permittees under this section must conduct quarterly monitoring for total suspended solids in all storm water discharges authorized by this section. Permittees must report in accordance with Part VI.B. of the permit (Reporting: Where to Submit) and paragraph XI.L.7.d. (Reporting: When to Submit). In addition, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

b. Semiannual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with landfill and land application units identified in paragraphs XI.L.7.b.(1) through XI.L.7.b.(4) must monitor all storm water discharges from those sites at least semiannually (twice per year) for the following parameters, except as provided in VI.E.7. (Sampling Waiver), VI.E.6. (Representative Discharge), and XI.L.7. (Toxicity Testing). The permittees sample for the following parameters:

- pH
- Magnesium (total recoverable and dissolved)
- Total Kjeldahl nitrogen
- Chemical oxygen demand
- Total dissolved solids
- Total organic carbon
- Oil and grease
- Total recoverable arsenic
- Total recoverable barium
- Total recoverable cadmium
- Total recoverable chromium
- Total recoverable cyanide
- Total recoverable lead
- Total recoverable mercury
- Total recoverable selenium
- Total recoverable silver
- Acute whole effluent toxicity

Landfill facilities which receive sewage sludge must also monitor semiannually for fecal coliform.

In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) All active disposal areas at municipal solid waste landfills. Active areas are defined as those areas that have not yet received a final cover.

(2) All inactive MSWLF areas that ceased receiving wastes before October 1991, unless these areas were closed in accordance with the closure/final cover requirements at 40 CFR 258.60.

(3) All active and inactive areas at industrial solid waste landfills.

(4) All areas where wastes have been applied at active and inactive land application sites.

c. Sample type. For all required monitoring, data shall be reported for grab samples.

d. Reporting: when to submit. Permittees shall collect quarterly samples during the sampling periods running from January to March, April to June, July to September, and October to December. Permittees that are required to conduct sampling pursuant to Part XI.L.5.b., shall collect semiannual samples during the sampling periods running from January to June and July to December. Permittees shall annually submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. A separate Discharge Monitoring Report Form is required for each sampling period. The first report may include less than 12 months of information.

e. Toxicity Testing—*(1)* Test Procedures. (*a*) The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1). Freshwater species must be used for discharges to freshwater bodies. Due to the nonsaline nature of rainwater, freshwater should also be used for discharges to estuarine, marine, or other naturally saline waterbodies.

(b) All test organisms, procedures, and quality assurance criteria used shall be in accordance with "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms," EPA/600/4–90–027, or the most current edition. The control water used will be moderately hard water as described in EPA/600/4–90–027, Table 6, or the most current edition.

(c.) Tests shall be conducted annually (once per year) on a grab sample of the discharge. Test shall be conducted using 100 percent effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–027 (or the most current edition), Section 12, Report Preparation, and the report submitted to EPA with the Discharge Monitoring Reports (DMRs). On the DMR, the permittee shall report "0" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

(2) If acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and the control) is detected in the storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the sources of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

M. Storm Water Discharges Associated With Industrial Activity From Automobile Salvage Yards

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition included point source discharges of storm water from eleven categories of facilities, including "* * * battery reclaimers, salvage yards, and automobile recyclers, including but limited to those classified as Standard Industrial Classification 5015 * * *."

This section establishes special conditions for the storm water discharges associated with industrial activities at automobile salvage yards. Storm water discharges covered by this section are discharges where precipitation and storm water runon come into contact with significant materials including, but are not limited

to parts storage and cleaning, storage of junked vehicles, waste products, by-products, stored materials, fuels, and areas used for dismantling operations. This includes storm water discharges from access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by the facility. Washwaters from vehicle, equipment, and parts cleaning areas are process wastewaters. Discharges of process wastewater or discharges subject to process wastewater effluent limitation guidelines are not eligible for coverage under this section.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

This section has been developed for storm water discharges associated with activities related to dismantling of used motor vehicles for the purpose of selling parts. As stated above, category (vi) of the definition of storm water discharges associated with industrial activity includes facilities primarily engaged in the wholesale or retail distribution of used motor vehicle parts and classified as SIC code 5015. Dismantlers are a major source for replacement parts for motor vehicles in service.

The following description summarizes operations that might occur at a typical automobile dismantling facility. The primary activity involves the dismantling or wrecking of used motor vehicles. Some facilities, however, perform vehicle maintenance and may rebuild vehicles for resale.

Typically, automobile dismantling facilities receive vehicles that are either uneconomical to run or wrecks that are uneconomical to repair. The nature of operations generally depends on the size and location of the facility. In urban areas where land is more valuable, vehicles are typically dismantled upon arrival, parts are segregated, cleaned, and stored. Remaining hulks are generally sold to scrap dealers rather than stored onsite due to limited space. In more rural areas, discarded vehicles are typically stored on the lot and parts removed as necessary. Remaining hulks are sold to scrap dealers less frequently.

Once a used vehicle is brought to the site, fluids may be drained and the tires, gas tank, radiator, engine and seats may be removed. The dismantler may separate and clean parts. Such cleaning may include steam cleaning of the engine and transmission as well as the use of solvents to remove oil and grease and other residues. Usable parts are then inventoried and stored for resale. The remaining car and/or truck bodies are stored onsite for future sale of the sheet metal and glass. Stripped vehicles and parts that have no resale value are typically crushed and sold to a steel scrapper. Some operations may, however, convert used vehicles and parts into steel scrap as a secondary operation. This is accomplished by incineration, shearing (bale shearer), shredding, or baling.

According to the 1987 census, 6,075 establishments reported SIC code 5015 as their primary SIC code, although some estimates indicate that there may be as many as 11,000 to 12,000 of these facilities.[112] Vehicle wreckers and dismantlers are generally small, privately owned businesses. Most facilities employ 10 or fewer employees and derive the majority of their profits from the sale of usable parts. Only a small percentage of this universe consists of large establishments with fleets of trucks, cranes, mobile balers and computers to maintain inventories of parts.[113]

Table M–1 below lists potential pollutant sources from activities that commonly take place at automobile salvage yards.

TABLE M–1.—COMMON POLLUTANT SOURCES

Activity	Pollutant source	Pollutants
Vehicle Dismantling	Oil, anti-freeze, batteries, gasoline, diesel fuel, hydraulic fluids.	Oil and grease, ethylene glycol, heavy metals.
Used Parts Storage	Batteries, chrome bumpers, wheel balance weights, tires, rims, filters, radiators, catalytic converters, engine blocks, hub caps, doors, drivelines, galvanized metals, mufflers.	Sulfuric acid, galvanized metals, heavy metals, petroleum hydrocarbons, suspended solids.
Outdoor Vehicle and Equipment Storage.	Leaking engines, chipping/corroding bumpers, chipping paint, galvanized metal.	Oil and grease, arsenic, organics, heavy metals, TSS.
Vehicle and Equipment Maintenance.	Parts cleaning	Chlorinated solvents, oil and grease, heavy metals, acid/alkaline wastes.
	Waste disposal of greasy rags, oil filters, air filters, batteries, hydraulic fluids, transmission fluids, radiator fluids, degreasers.	Oil, heavy metals, chlorinated solvents, acid/alkaline wastes oil, heavy metals, chlorinated solvents, acid/alkaline wastes, ethylene glycol.
	Spills of oil, degreasers, hydraulic fluids, transmission fluid, and radiator fluids.	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol.
	Fluids replacement, including oil, hydraulic fluids, transmission fluid, and radiator fluids.	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol.
Vehicle, Equipment, and Parts Washing Areas.	Washing and steam cleaning waters	Oil and grease, detergents, heavy metals, chlorinated solvents, phosphorus, salts, suspended solids.

[112] "The Automobile Scrap Processing Industry," Howard Ness, P.E., 1984.

[113] Ibid.

TABLE M–1.—COMMON POLLUTANT SOURCES—Continued

Activity	Pollutant source	Pollutants
Liquid Storage in Above Ground Storage Tanks.	External corrosion and structural failure	Fuel, oil and grease, heavy metals, materials being stored.
	Installation problems	Fuel, oil and grease, heavy metals, materials being stored.
	Spills and overfills due to operator error	Fuel, oil and grease, heavy metals, materials being stored.
Illicit Connection to Storm Sewer.	Process wastewater	Dependent on operations.
	Sanitary water	Bacteria, biochemical oxygen demand (BOD), suspended solids.
	Floor drain	Oil and grease, heavy metals, chlorinated solvents, fuel, ethylene glycol.
	Vehicle washwaters	Oil and grease, detergents, metals, chlorinated solvents, phosphorus, suspended solids.
	Radiator flushing wastewater	Ethylene glycol.
	Leaking underground storage tanks	Materials stored or previously stored.

Sources:
NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991 through December 31, 1992.
Alabama Department of Environmental Management. September 30, 1992. "Best Management Plan for Automobile Salvage Yards—Final Report."
EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Refinishing Industry." EPA/625/7–91/016.
EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Repair Industry." EPA/625/7–91/013.
EPA, Office of Research and Development. May 1992. "Facilities Pollution Prevention Guide." EPA/600/R–92/088.
EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

2. Pollutants in Storm Water Discharges Associated With Automobile Salvage Yards

Impacts caused by storm water discharges from automobile salvage yards will vary. Several factors influence to what extent operations at the site can affect water quality. Such factors include: geographic location; hydrogeology; the types of industrial activity occurring outside (e.g., dismantling, vehicle and parts storage, or steam cleaning); the size of the operation; and the type, duration, and intensity of precipitation events. Each of these, and other factors, will interact to influence the quantity and quality of storm water runoff. For example, outdoor storage of leaking engine blocks may be a significant source of pollutants at some facilities, while dismantling operations is the primary source at others. In addition, sources of pollutants other than storm water, such as illicit connections,[114] spills, and other improperly dumped materials, may increase the pollutant loading discharged into waters of the United States.

EPA has identified the storm water pollutants and sources resulting from various automobile salvage yard activities in Table M–1. Table M–1 identifies oil, heavy metals, acids, and ethylene glycol as some of the parameters of concern at automobile salvage yards.

Part 2 group application data that was statistically summarized indicated, large variations in the minimum and maximum values were found for each of the eight conventional pollutants monitored:

- Grab sample values for total suspended solids ranged from 0 mg/L to 2300 mg/L respectively, and flow-weighted composite sample values ranged from 7.0 mg/L to 8565 mg/L.
- Chemical oxygen demand (COD) grab samples at monitoring facilities ranged from 12 mg/L to 1660 mg/L.
- Oil and grease samples at sampling facilities ranged from 0 mg/L to 50 mg/L.

The remaining conventional pollutants sampled also varied in their minimum and maximum values. Table M–2 indicates the sampling results for all data statistically summarized by EPA. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of data submittals for each of the conventional pollutants. Part 2 data which has not undergone statistical analysis is generally consistent with the values reported in Table M–2.

TABLE M–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[1]

[In mg/L unless otherwise indicated]

Pollutant	No. of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	13	28	7.15	12.61	2.00	1.00	16.00	62.00	6.00	6.50	16.00	48.00	16.00	62.00
COD	30	13	135.00	66.23	12.00	34.00	1660.00	155.00	61.00	50.00	250.00	155.00	1660.00	155.00
Nitrate + Nitrite Nitrogen	13	30	1.70	1.62	0.17	0.09	5.65	5.23	0.83	1.32	5.65	4.87	5.65	5.23

[1] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any number of sources including improper connections, dumping or spills from industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at used motor vehicle parts facilities is low yet it may be applicable at some operations.

TABLE M–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[i]—Continued

[In mg/L unless otherwise indicated]

Pollutant	No. of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
Total Kjeldahl Nitrogen	13	30	2.17	2.27	0.54	0.04	4.87	6.80	1.90	1.76	4.87	6.53	4.87	6.80
Oil & Grease	31	N/A	5.35	N/A	0.00	N/A	50.00	N/A	3.0	N/A	32.00	N/A	50.00	N/A
pH (s.u)	29	N/A	N/A	N/A	6.40	N/A	8.30	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	13	22	0.19	3.05	0.01	0.01	1.08	45.00	0.05	0.26	1.08	15.70	1.08	45.00
Total Suspended Solids	13	30	474.38	639.07	0.0	7.00	2300.00	8565.00	183.00	226.00	2300.00	5100.00	2300.00	8565.00

[i] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[ii] Composite samples.

TABLE M–3.—STORM WATER BMPS FOR AUTOMOBILE SALVAGE YARDS

Activity	BMPs
Dismantling and vehicle maintenance	Drain all fluids from vehicles upon arrival at the site. Segregate the fluids and properly store or dispose of them.
	Maintain an organized inventory of materials used in the maintenance shop.
	Keep waste streams separate (e.g., waste oil and mineral spirits). Nonhazardous substances that are contaminated with a hazardous substance is considered a hazardous substance.
	Recycle anti-freeze, gasoline, used oil, mineral spirits, and solvents.
	Dispose of greasy rags, oil filters, air filters, batteries, spent coolant, and degreasers properly.
	Label and track the recycling of waste material (e.g., used oil, spent solvents, batteries).
	Drain oil filters before disposal or recycling.
	Store cracked batteries in a nonleaking secondary container.
	Promptly transfer used fluids to the proper container. Do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
	Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
	Plug floor drains that are connected to the storm or sanitary sewer. If necessary, install a sump that is pumped regularly.
Dismantling and vehicle maintenance	Inspect the maintenance area regularly for proper implementation of control measures.
	Filtering storm water discharges with devices such as oil water separators.
	Train employees on proper waste control and disposal procedures.
Outdoor vehicle, equipment, and parts storage	Use drip pans under all vehicles and equipment waiting for maintenance and during maintenance.
	Store batteries on impervious surfaces. Curb, dike or berm this area.
	Confine storage of parts, equipment and vehicles to designated areas.
	Cover all storage areas with a permanent cover (e.g., roofs) or temporary cover (e.g., canvas tarps).
	Install curbing, berms or dikes around storage areas.
	Inspect the storage yard for filling drip pans and other problems regularly.
	Train employees on procedures for storage and inspection items.
Vehicle, equipment and parts washing areas	Avoid washing parts or equipment outside.
	Use phosphate-free biodegradable detergents.
	Consider using detergent-based or water-based cleaning systems in place of organic solvent degreasers.
	Designate an area for cleaning activities.
	Contain steam cleaning washwaters or discharge under an applicable NPDES permit.
	Ensure that washwaters drain well.
	Inspect cleaning area regularly.
	Install curbing, berms or dikes around cleaning areas.
	Train employees on proper washing procedures.
Liquid storage in above ground containers	Maintain good integrity of all storage containers.
	Install safeguards (such as diking or berming) against accidental releases at the storage area.
	Inspect storage tanks to detect potential leaks and perform preventive maintenance.
Liquid storage in above ground containers	Inspect piping systems (pipes, pumps, flanges, couplings, hoses, and valves) for failures or leaks.
	Train employees on proper filling and transfer procedures.
Improper connection with storm sewers	Plug all floor drains if it is unknown whether the connection is to storm sewer or sanitary sewer systems. Alternatively, install a sump that is pumped regularly.
	Perform dye testing to determine if interconnections exist between sanitary water system and storm sewer system.
	Update facility schematics to accurately reflect all plumbing connections.
	Install a safeguard against vehicle washwaters and parts cleaning waters entering the storm sewer unless permitted.
	Maintain and inspect the integrity of all underground storage tanks; replace when necessary.
	Train employees on proper disposal practices for all materials.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991 through December 31, 1992.

EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Refinishing Industry." EPA/625/7–91/0.
EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Repair Industry." EPA/625/7–91/013.
EPA, Office of Research and Development. May 1992. "Facility Pollution Prevention Guide." EPA/600/R–92/088.
EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.
Minnesota Technical Assistance Program. September 1988. "Waste minimization—Auto Salvage Yards."

A number of facilities reported nondetects or values below detection limits: Nine facilities reported nondetects for oil and grease grab samples; one sampling facility reported a value below the detection limit for total suspended solids in a grab sample; and seven facilities reported nondetects for total phosphorus composite samples.

The condition of vehicles and the activities that occur at automobile salvage yards frequently result in significant losses of fluids which release toxic metals, oil and grease and polychlorinated aromatic hydrocarbons to storm water runoff. In addition, the weathering of plated and nonplated metal surfaces (e.g., bumpers) may contribute toxic metals to storm water runoff. The selection of pollutant parameters for continued monitoring are based upon the nature of automobile salvage yard activities, exposed materials at these sites, and a review of the data submitted for part 2 of the group application process. The following is a discussion of pollutants associated with the industrial activity of automobile salvage yards:

- *Total Suspended Solids (TSS)*—Permittees are required to sample for TSS because salvage yards are typically sparsely vegetated or have a low percentage of impervious land areas and, therefore, are unstabilized. Total suspended solids in storm water discharges from automobile salvage yards will primarily consist of inorganic materials such as sand, silt, and clay. Because suspended solids increase the turbidity of water, less light is able to penetrate the water, reducing photosynthetic activity of aquatic vegetation. Over time, total suspended solids settle out to form deposits that can be detrimental to stream environments. These deposits may destroy fauna that breed and grow in or near the bottoms of streams and serve as food for fish and other aquatic life. The deposits can also blanket and destroy spawning grounds for fish. The part 2 data statistically summarized showed a wide range of minimum and maximum TSS values (0.0 mg/L to 2,300 mg/L for grab samples and 7 mg/L to 8,565 mg/L for flow-weighted composite samples).
- *Oil and Grease*—There are several sources of oil and grease at automobile salvage yards. Typically these sources include: Dismantling activities; vehicle and equipment maintenance; outdoor storage of vehicles, equipment and parts; and cleaning operations. Oil and grease emulsions are also detrimental to aquatic organisms and inhabitants because: (1) Deposition of oil and grease in bottom sediments can serve to inhibit normal benthic growths, impacting the aquatic food chain; (2) oil and grease emulsion may destroy algae or other plankton; (3) oil and grease emulsions may adhere to the gills of fish exerting a toxic effect to fish; and (4) water insoluble components damage the plumage and coats of aquatic animals and fowl. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. In addition to environmental impacts, oil and grease impact the aesthetic qualities of water by forming unsightly surface slicks that affect water beaches and shorelines. Statistically summarized part 2 data indicated a wide range of minimum and maximum oil and grease values from 0.0 mg/L to 50 mg/L. Additional part 2 data revealed a higher maximum value for oil and grease.
- *pH*—The pH level is easily measured and is an indication of potential environmental impacts. Storm water discharges with pH values markedly different from the pH values of the receiving stream are potentially detrimental to the environment. At outfalls and prior to complete mixing of storm water discharges with receiving waters, a zone of sudden pH change can damage or kill biota engulfed in the zone of change. Statistically summarized part 2 data indicated that pH varies from a minimum of 6.4 to a high of 8.3.
- *Chemical Oxygen Demand (COD)*—COD measures the total amount of oxygen necessary for oxidation. The statistically summarized part 2 indicated a wide range in the 30 grab sample values from 12 mg/L to 1,660 mg/L, while the 13 composite samples varied from 34 mg/L to 155 mg/L. The higher COD levels may be attributed to the presence of biologically resistant organics, such as oil and grease. Further supporting EPA's belief that COD is a pollutant of concern at automobile salvage yards, a review of additional part 2 data revealed grab and composite sample values above the mean and median concentrations listed in Table M–2.

3. Options for Controlling Pollutants

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology (BCT)]. The Agency does not believe that it is appropriate to establish specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from automobile salvage yard operations to meet the BAT/BCT standards of the Clean Water Act. Because of the diversity of operations at automobile salvage yards and the lack of sufficient storm water water quality data currently available to EPA, establishing numeric effluent limitations is not feasible at this time. Rather, this section establishes requirements for the development and implementation of a site-specific storm water pollution prevention plan consisting of a set of Best Management Practices that are sufficiently flexible to address different sources of pollutants at different sites.

Best Management Practices (BMPs) are implemented to prevent and/or eliminate pollutants in storm water discharges. EPA believes the most effective BMPs for reducing pollutants in storm water discharges from automobile salvage yards is through exposure minimization practices. Exposure minimization practices minimize the potential for storm water to come in contact with pollutants. These BMP methods are generally uncomplicated and inexpensive practices. They are easy to implement, and require little or no maintenance. In some instances, more resources intensive BMPs, including detention ponds or filtering devices, may be necessary depending on the type of discharge, types and concentrations of contaminants, and volume of flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: Facility size, climate, geographic location, geology/hydrology and the environmental

setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with automobile salvage yards.

Part 1 group application data indicate that BMPs have not been widely implemented at the representative sampling facilities. Less than 5 percent of the sampling subgroup list indoor storage as a material management practice. Less than 8 percent of the representative sampling facilities use covering at their storage areas. Less than 3 percent of the representative facilities utilize waste minimization practices. The most commonly listed (approximately 20 percent) material management practice is draining fluids from vehicles prior to storage. Because BMPs described in part 1 data are limited, Table M–3 is provided to identify BMPs associated with activities that may be employed at automobile salvage yards.

4. Pollutant Control Measures Required Through Other EPA Programs

Because hazardous substances including oil, gasoline, and lead are commonly found at automobile salvage yards, such facilities may be subject to other State or Federal environmental protection programs. In particular, as described below, the Resource Conservation and Recovery Act (RCRA) and the Underground Storage Tank (UST) programs require careful management of materials used onsite which decreases the probability that storm water from such areas will be contaminated by these materials.

Under the RCRA program, on September 10, 1992, EPA promulgated standards in 40 CFR part 279 for the management of used oils that are recycled (57 FR 41566). These standards include requirements for used oil generators, transporters, processors/re-refiners, and burners. The standards for used oil generators apply to all generators, regardless of the amount of used oil they generate. Do-it-yourself (DIY) generators which generate used oil from the maintenance of their personal vehicles, however, are not subject to the management standards in 40 CFR 279.20(a)(1)).

The requirements for used oil generators were designed to impose a minimal burden on generators while protecting human health and the environment from the risks associated with managing used oil. Under subpart C of 40 CFR part 279, used oil generators must not store used oil in units other than tanks, containers, or units subject to regulation under 40 CFR parts 264/265 (Section 279.22(a)). In other words, generators may store used oil in tanks or containers that are not subject to Subpart J (hazardous waste tanks) or Subpart I (containers) of 40 CFR parts 264/265, as long as such tanks or containers are maintained in compliance with the used oil management standards. This does not preclude generators from storing used oil in Subpart J tanks or Subpart I containers or other units, such as surface impoundments (Subpart K), that are subject to regulation under 40 CFR part 264 or 265.

Storage units at generator facilities must be maintained in good condition and labeled with the words "used oil." Upon detection of a release of used oil to the environment, a generator must take steps to stop the release, contain the released used oil, and properly manage the released used oil and other materials [40 CFR 279.22 (b) to (d)]. Generators storing used oil in underground storage tanks are subject to the UST regulations in 40 CFR part 280.

If used oil generators ship used oil offsite for recycling, they must use a transporter who has notified EPA and obtained an EPA identification number [40 CFR 279.24].

The technical standards for USTs at 40 CFR part 280 require that new UST systems (defined as systems for which installation commenced after December 12, 1988) use overfill prevention equipment that will: (1) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or (2) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm. The preceding requirements do not apply to systems that are filled by transfers of no more than 25 gallons at one time. Existing UST systems (defined as systems for which installation has commenced on or before December 12, 1988) are required to have installed the described overfill prevention equipment by December 12, 1998.

5. Storm Water Pollution Prevention Plan Requirements

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from automobile salvage yards. Pollution prevention plans allow the operator of a facility to select BMPs based on site-specific considerations such as: facility size; climate; geographic location; geology/hydrology; the environmental setting of each facility; and volume and type of discharge generated. This flexibility is necessary because each facility will be unique in that the source, type, and volume of contaminated surface water discharges will differ from site to site.

Under today's proposed general permit, all facilities must prepare and implement a storm water pollution prevention plan. The establishment of a pollution prevention plan requirement reflects EPA's decision to allow operators of automobile salvage yards to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The requirements included in pollution prevention plans provide a flexible framework for the development and implementation of site specific controls to minimize pollutants in storm water discharges. This approach and associated deadlines are consistent with EPA's storm water general permits finalized on September 9, 1992 and September 25, 1992 for discharges in nonauthorized NPDES States (57 FR 41236).

There are two major objectives to a pollution prevention plan: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility.

Specific requirements for a pollution prevention plan for automobile salvage yards are described below. These requirements must be implemented in addition to the baseline pollution prevention plan provisions discussed previously.

a. Contents of the plan. Storm water pollution prevention plans are intended to aid operators of automobile salvage yards to evaluate all potential pollution sources at a site, and assist in the selection and implementation of appropriate measures designed to prevent, or control, the discharge of pollutants in storm water runoff. EPA has developed guidance entitled "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, 1992, (EPA 832–R–92–006) to assist permittees in developing and implementing pollution prevention measures.

(1) Description of potential pollution sources. There are no requirements

beyond those described in Part VI.C.2 of this fact sheet.

(2) Measures and controls. Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. For the following areas at the site, the permittee must assess the applicability of the corresponding BMPs:

- *Vehicle Dismantling and Maintenance Areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle dismantling and maintenance. The facility must consider draining and segregating all fluids from vehicles upon arrival at the site, or as soon as feasible thereafter. The facility must consider performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts fluids prior to disposal, prohibiting the practice of hosing down the shop floor, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment. Where dismantling and maintenance activities can not take place indoors, facilities may consider methods for containing oil or other fluid spillage during parts removal. Drip pans, large plastic sheets, or canvas may be considered for placement under vehicles or equipment during maintenance and dismantling activities. Where drip pans are used, they should not be left unattended to prevent accidental spills.
- *Vehicle, Parts, and Equipment Storage Areas*—The storage of vehicles, parts, and equipment must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize contamination of the storm water runoff from these areas. The facility must consider the use of drip pans, large sheets of plastic, canvas (or equivalent measures) under vehicles, parts, and equipment. Canvas or sheets of plastic may be used as temporary coverage of storage areas. Indoor storage of vehicles, parts and equipment, as well as the installation of roofs, curbing, berming and diking of these areas must be considered. Large plastic or metal bins with secure lids should be used to store oily parts (e.g., small engine parts). Used batteries should be stored within nonleaking secondary containment or by other equivalent means to prevent leaks of acid into storm water discharges.
- *Material Storage Areas*—As part of a good housekeeping program, consider labelling storage units of all materials (e.g., used oil, used oil filters, spent solvents, paint wastes, radiator fluids, transmission fluids, hydraulic fluids). Maintain such containers and units in good condition, so as to prevent contamination of storm water. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility may consider indoor storage of the materials and/or installation of berming and diking of the area.
- *Vehicle, Equipment, and Parts Cleaning Areas*—The plan must describe measures that prevent or minimize contamination of storm water from all areas used for vehicle, equipment, and parts cleaning. The facility must consider performing all cleaning operations indoors. In addition, the facility must consider covering or berming the cleaning operation area. Washwaters from vehicle, equipment, and parts cleaning areas are process wastewaters that are not authorized discharges under this section.

These four areas are sources of pollutants in storm water from automobile salvage yards. EPA believes that the incorporation of BMPs such as those suggested, in conjunction with a pollution prevention plan, will substantially reduce the potential of storm water contamination from these areas. In addition, EPA believes that these requirements continue to provide the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with different facilities.

(a) Preventive Maintenance—Permittees are required to develop a preventive maintenance program that includes regular inspections and maintenance of storm water BMPs. The purpose of the inspections is check on the effectiveness of the storm water pollution prevention plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis. The use of an inspection checklist should be considered. The checklist will ensure that all required areas are inspected, as well as help to meet the recordkeeping requirements.

(b) Inspections—This section proposes that in addition to the comprehensive site evaluation required under Part XI.M.3.a. of today's proposed permit, qualified facility personnel shall be identified to inspect: Upon arrival, or as soon as feasible thereafter, all vehicles for leaks; any equipment containing oily parts, hydraulic fluids, or any other fluids, at least quarterly for leaks; and any outdoor storage containers for liquids, including, but not limited to, brake fluid, transmission fluid, radiator water, and anti-freeze, at least quarterly for leaks.

In addition, qualified facility personnel are required to conduct, at a minimum, quarterly visual inspections of BMPs. The inspections shall include: (1) An assessment of the integrity of any flow diversion or source minimization systems; and (2) visual inspections of dismantling areas; outdoor vehicle, equipment, and parts storage area; vehicle and equipment maintenance areas; vehicle, equipment, and parts washing areas; and liquid storage in above ground containers. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections.

The quarterly visual inspections must be made at least once in each of the following designated periods during daylight hours: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff). Records of inspections shall be maintained as part of the plan.

(c) Employee training—Permittees are required to identify annual dates for such training. Employee training must, at a minimum, address the following areas when applicable to a facility: used oil management; spill prevention and response; good housekeeping practices; used battery management; and proper handling (i.e., collection, storage, and disposal) of all fluids. Unlike some industrial operations, the industrial activities associated with automobile salvage yards that may affect storm water quality require the cooperation of all employees, not just one or two people. EPA, therefore, is proposing to require that employee training take place at least annually to serve as: (1) Training for new employees; (2) a refresher course for existing employees; and (3) training for all employees on any storm water pollution prevention techniques recently incorporated into the plan.

(d) Recordkeeping and internal reporting—Permittees must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. The plan must address spills, monitoring, and BMP inspection and maintenance activities. Ineffective BMPs must be reported and the date of their corrective action noted. Employees must report incidents of leaking fluids to facility management

and these reports must be incorporated into the plan.

In addition, the facility must maintain records (gallons per month) of drained waste oil, anti-freeze, and gasoline; identify by name and EPA or State identification number (if any) all transporters, recyclers, and disposal facilities of used waste oil, antifreeze, batteries, scrap and tires; maintain records (gallons per month) of waste oil, anti-freeze, gasoline, freon, batteries, scrap materials, and tires that are sent to recyclers; and maintain records of the number of batteries removed from cars and sold or recycled per month. These materials are all significant sources of pollutants in storm water discharges. By maintaining such records, which for the most part should be readily accessible, the pollution prevention team will be able to more accurately track the potential for these materials to contribute to storm water pollution.

(e) Storm water management—The permittee must evaluate the appropriateness of each storm water BMP that diverts, infiltrates, reuses, or otherwise reduces the discharge of contaminated storm water. In addition, the permittee must describe the storm water pollutant source area or activity (i.e., loading and unloading operations, raw material storage piles etc.) to be controlled by each storm water management practice.

(3) Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to: (1) Confirm the accuracy of the description of potential pollution sources contained in the plan; (2) determine the effectiveness of the plan; and (3) assess compliance with the terms and conditions of this section. Comprehensive site compliance evaluations should be conducted twice a year for automobile salvage yards. These inspections are intended to be more in depth than the quarterly visual inspections. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

6. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that automobile salvage yards may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires automobile yards to collect and analyze samples of their storm water discharges for the pollutants listed in Table M–4. The pollutants listed in Table M–4 were found to be above benchmark levels for a significant portion of sampling facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from automobile salvage yards, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from automobile salvage yards must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table M–4. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE M–4.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Chemical Oxygen Demand (COD).	65 mg/L.
pH	6 to 9 s.u.
Total Suspended Solids	100 mg/L.
Total Kjeldahl Nitrogen	1.5 mg/L.
Nitrate plus Nitrite as Nitrogen.	0.68 mg/L.

If the average concentration for a parameter is less than or equal to the value listed in Table M–4, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table M–4, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE M–5.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table M–4, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table M–4, then no further sampling is required for that parameter.
4th Year of Permit Coverage	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table M–4. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required at automobile salvage yards. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples. The inspections must be of a grab sample collected from each storm water outfall.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

g. Baseline general permit variance. On September 9, 1992, and September

25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring of several parameters for discharges from automobile salvage yard facilities. These notices specifically require that facilities with storm water discharges that are associated with automobile salvage yards are required to monitor their storm water discharges for oil and grease, COD, TSS, and pH. Today's proposed permit contains similar monitoring requirements. There has been a change in the schedule for monitoring. EPA requests comment upon the difference between the monitoring requirements set out for automobile salvage yard facilities in the September 1992 General Permits and those required in today's proposed permit.

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.M.6 of today's proposed permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, annual monitoring of storm water discharges associated with industrial activity is required for automobile salvage yards with any of the following: (1) Over 250 auto/truck bodies with drivelines (engine, transmission, axles, and wheels), 250 drivelines, or any combination thereof (in whole or in parts) are exposed to storm water; (2) over 500 auto/truck units (bodies with or without drivelines in whole or in parts) are stored exposed to storm water; or (3) over 100 units per year are dismantled and drainage or storage of automotive fluids occurs in areas exposed to storm water. These facilities must monitor their storm water discharges for Chemical Oxygen Demand (COD); oil and grease; Total Suspended Solids (TSS); pH; and any pollutant limited in an effluent guideline to which the facility is subject.

Permittees must only collect and analyze a grab sample for these parameters. Permittees are not required to submit monitoring results, unless required in writing by the Director. These monitoring requirements are summarized in the table below.

TABLE M–6.—MONITORING REQUIREMENTS

Parameter	Unit	Frequency	Sample type
Total flow	gallons	Annual	estimate.
Chemical oxygen demand	mg/L	Annual	grab.
Oil and grease	mg/L	Annual	grab.
pH	s.u.	Annual	grab.
Total suspended solids	mg/L	Annual	grab.

In addition to the parameters listed in the above table, the permittee shall record the following:

- Date and duration (in hours) of the storm event(s) sampled
- Rainfall measurements (in inches) of the storm event which generated the sampled runoff
- Duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event
- Estimate of the total volume (in gallons) of the each discharge sampled.

b. Quarterly visual examination of storm water quality. (1) Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity from vehicle dismantling areas, vehicle and equipment maintenance areas and parts and equipment cleaning areas. If there are numerous points of discharge from one area, one representative sample may be observed. The examination must be made at least once in each designated period (described in (2) below) during daylight hours unless there is insufficient rainfall or snow melt to produce flow.

(2) Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

(3) Examinations shall be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of flow. The examinations shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. No analytical tests are required to be performed on these samples. Examinations shall be conducted so as to provide a reasonable representation of the nature of a typical storm water discharge at that site during that time of year.

(4) Information must be maintained onsite and include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination.

N. Storm Water Discharges Associated With Industrial Activity From Scrap and Waste Material Processing and Recycling Facilities

Specific requirements have been established for those facilities that are engaged in the processing, reclaiming and wholesale distribution of scrap and recyclable waste materials. As background, the storm water regulations define 11 categories of storm water discharges associated with industrial activity in 40 CFR 122.26(b)(14). Category (vi) includes facilities that are engaged in the recycling of materials, including metal scrapyards, battery reclaimers, and salvage yards, including but limited to those classified Standard Industrial Classification (SIC) 5093. For purposes of this section, special conditions have been proposed for those facilities engaged in the reclaiming and retail/wholesale distribution of used motor vehicle parts identified as SIC 5015 in Part XI.M.

SIC 5093 includes establishments engaged in assembling, breaking up, sorting and the wholesale distribution of scrap and recyclable waste materials including bag, bottle and box wastes, fur cuttings, iron and steel scrap, metal and nonferrous metal scrap, oil, plastics, rags, rubber, textiles, waste paper and rag wastes. This section establishes conditions that are also applicable to those activities that are typically associated with SIC 5093 that are engaged in the recycling and/or reclamation of liquid wastes including, but not limited to, used solvents, oil, mineral spirits, and ethylene glycol (antifreeze). This section, including Best Management Practices (BMPs), monitoring requirements, and pollution prevention plan requirements, is organized by facilities that process and

recycle nonliquid wastes versus those that reclaim and recycle liquid wastes. Facilities that participated in U.S. Environmental Protection Agency (EPA) Group Permit Applications 195, 274, 467, 647 (except facilities identified as SIC 4212), 826, 1035, 1145 and 1204 are eligible for coverage under this section.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Pollutants Found in Storm Water Discharges

This fact sheet is organized into two major subsections, those industrial activities engaged in the processing and recycling of scrap and waste materials (nonliquid recyclable wastes) and those industrial activities engaged in reclaiming and recycling liquid materials, e.g., used oils, solvents, mineral spirits and antifreeze. Industrial operations and BMPs associated with these two groups are largely dissimilar. Therefore, conditions for each of these two groups are identified separately.

a. Scrap and waste recycling facilities (SIC 5093) (nonliquid recyclable wastes). The scrap and waste recycling industry reclaims, processes and provides wholesale distribution of a diversity of materials and products. Typical recyclable materials include ferrous and nonferrous metals, paper, cardboard, glass and plastic. Inbound recyclable materials are processed onsite in order to achieve a uniform grade product that meets a particular manufacturer's specifications. A significant inventory of processing equipment is frequently required to process the recyclable waste material into a uniform grade. Processing equipment typically employ enormous physical forces such as shearing, shredding, and compacting in the process of eventually achieving a desired uniform grade product.

Individual scrap and waste recycling facilities may process one or more types of recyclable materials at a single site. Depending on the requirements of a manufacturer, recyclable waste materials, e.g., paper and cardboard, may need to be stored under cover to prevent deterioration. The bulk size of the recyclable waste materials and the processing equipment associated with these facilities frequently necessitates stockpiling materials and equipment outdoors. Consequently, there is significant opportunity for exposure of storm water runoff to pollutants. The extent of material potentially exposed to storm water runoff is illustrated in the following table based on information provided from one group application consisting of approximately 1100 members.

TABLE N–1.—PERCENTAGE OF APPLICANTS IN ONE GROUP APPLICATION THAT PROVIDE COVER OVER MATERIALS OR PROCESSES

Material/processes	Percent of applicants
Ferrous Materials	5.6
Nonferrous Materials	53
Glass/plastic/paper	14
Other Materials	1.7
Material Processing Equipment	43

There are at least four types of activities that are common to most scrap and waste recycling facilities, they include: scrap waste material stockpiling, material processing, segregating processed materials into uniform grades, and collecting nonrecyclable materials for disposal. This fact sheet outlines pollutants of concern associated with each of these types of activities. Other operations of concern, including vehicle and equipment maintenance, are also discussed in this fact sheet.

(1) *Pollutants associated with material stockpiling.* During material stockpiling, including unloading and loading areas, the potential exists for some types of inbound recyclable materials to deposit residual fluids on the ground. Used automotive engines, radiators, brake fluid reservoirs, transmission housings, and lead-acid from batteries may contain residual fluids that, if not properly managed, can eventually come in contact with storm water runoff. For example, sampling data from two group applications indicated the presence of oil and grease in 103 individual grab samples. In response to other Federal and State environmental regulations, such as the Resource Conservation and Recovery Act (RCRA), many scrap and waste material facilities have instituted inspection and supplier education programs to minimize or eliminate the amount of inbound recyclable materials containing fluids and other potentially hazardous materials prior to their acceptance. Part XI.N.3.c.(1)(a) of today's proposed permit imposes conditions that will make an inbound recyclable materials inspection program part of the pollution prevention plan.

Another concern of outdoor stockpiling, including unloading and loading areas, is associated with deterioration of materials. Metal surfaces that are stockpiled for extended periods may be subject to corrosion. Corrosion is the deterioration of metal surfaces that typically results in the loss of metal to a solution, i.e., water. The following metals are referred to as the galvanic (or electromotive) series and have a tendency to corrode and become soluble in water; magnesium, aluminum, cadmium, zinc, steel or iron, cast iron, chromium, tin, lead, nickel, soft and silver solder, copper, stainless steel, silver, gold, platinum, brass and bronze. For some metals, the extent and rate of corrosion is dependent on

whether it occurs in an oxygen-starved or oxygen-abundant atmosphere.

Corrosion of stockpiled materials at scrap recycling facilities is a potential source of pollutants given that metals such as copper, lead, nickel, zinc, chromium and cadmium were frequently detected in sampling data. In addition, the majority of these metals are associated with recyclable materials handled by the scrap recycling industry. Part XI.N.3.a.(3) of today's proposed permit identifies BMP options to address these sources.

Another significant material of concern is the reclaiming of scrap lead acid batteries from automotive vehicles and equipment. If a battery casing becomes cracked or damaged, special precautions are necessary to ensure that the contents do not come in contact with storm water runoff. This includes battery terminals with visible corrosion. In all cases, used batteries shall be handled and stored in such a manner as to prevent exposure to either precipitation or runoff. Part XI.N.3.a.(3) addresses proposed conditions for these sources.

The following table presents a list of typical materials that may be received and processed at a scrap and waste recycling facility and which may be potential pollutant sources if they are not managed properly.

TABLE N–2.—SIGNIFICANT MATERIALS POTENTIALLY EXPOSED TO STORM WATER RUNOFF AT SCRAP AND WASTE RECYCLING FACILITIES[1]

Significant materials	Potential sources	Pollutants of concern
White goods (appliances)	Leaking oil-filled capacitors, ballasts, leaking compressors, pumps, leaking pressure vessels, reservoirs, sealed electrical components and chipped or deteriorated painted surfaces.	PCBs, oil, lubricants, paint pigments or additives such as lead, and other heavy metals.
Ferrous and nonferrous turnings and cuttings	Cutting oil residue, metallic fines	Oil, heavy metals.
Materials from demolition projects	Deteriorated/damaged insulation, chipped painted surfaces, lead, copper, and steel pipes.	Asbestos fibers, lead, copper, zinc, cadmium, other metals, TKN.
Electrical components, transformers, switch gear, mercury float switches, sensors.	Leaking oil-filled transformer casings, oil-filled switch, float switches, radioactive materials in gauges, sensors.	PCBs, oils, mercury, ionizing radioactive isotopes.
Fluorescent lights, light fixtures	Leaking ballasts	PCBs, oil.
Food/beverage dispensing equipment	Leaking fluorescent light ballasts, chipped painted surfaces.	PCBs, oil, heavy metals from paint pigments and additives.
Hospital and dental waste and equipment	Drums/containers of hospital waste, shielding from diagnostic and other medical equipment, radioactive materials from gauges, sensors and diagnostic equipment.	Infectious/bacterial contamination, lead, ionizing radioactive isotopes.
Instruments	Radioactive material from thickness gages	Ionizing radioactive isotopes.
Insulated wire	Insulation and other coatings, wire	Lead, zinc, copper.
Lawnmowers, snowmobiles, motorcycles	Leaking engines, transmissions, fuel, oil reservoirs,leaking batteries.	Oils, transmission and brake fluids, fuel, grease, battery acid, lead acid.
Light gage materials	Deteriorating insulation, painted surfaces and other coatings.	Asbestos, lead, chromium.
Locomotives, rail cars	Leaking fuel reservoirs, fittings, hydraulic components, engines, bearings, compressors, oil reservoirs, worn brake pads, damaged insulation.	PCBs, diesel fuel, hydraulic oil, oil, brake fluid, grease from fittings, asbestos.
Motor vehicle bodies, engines, transmissions, exhaust systems.	Leaking fuel tanks, oil reservoirs, transmission housings, brake fluid reservoir and lines, brake cylinders, shock absorber casing, engine coolant, wheel weights, leaking battery casings/housings and corroded terminals, painted surfaces and corrosion inhibitors, exhaust system, catalytic converters.	Fuel, benzene, oil, hydraulic oil, transmission fluids, brake fluids, ethylene glycol (antifreeze), lead, lead acid, lead oxides, cadmium, zinc, other heavy metals.
Miscellaneous machinery and obsolete equipment.	Leaking reservoirs, damaged or chipped painted surfaces/coatings.	Fuel, oil, lubricants, lead, cadmium, zinc.
Pipes/materials from chemical and industrial plants.	Chemical residue, insulation, lead piping, chipped or damaged painted surfaces and protective coatings.	Chemical residue, oil, lubricants, damaged insulation (asbestos), lead, cadmium, zinc, copper.
Sealed containers, hydraulic cylinders	Leaking liquid reservoirs, containers, cylinders, miscellaneous chemicals.	Oil, PCBs, solvents, chemical residue.
Salvaged construction materials	Chemical residues, oils, solvents, lubricants, damaged insulation, chipped painted surfaces and protective coatings.	Chemical residue, oily wastes, asbestos, lead, cadmium, zinc.
Tanks, containers, vessels, cans, drums	Leaking or damaged containers	Chemical residue, oily wastes, petroleum products, heating oil.
Transformers (oil filled)	Leaking transformer housings	PCBs, oil.

[1] Institute of Scrap Recycling Industries, Inc.'s "Environmental Operating Guidelines." (April 1992).

(2) *Material processing.* The type of processes employed at a particular facility depends on the type of recyclable and waste material. Typical processes include: torch cutting, shredding, baling, briquetting, wire stripping and chopping, and compacting. Processes such as shredding and shearing reduce the bulk

size of recyclable scrap and waste into a size that is more easily transportable and which allows separation into uniform grades based on manufacturer specifications. Processes such as shredding of automotive bodies include a means of segregating materials into their ferrous and nonferrous fractions.

Process equipment at scrap and waste recycling facilities are also potential sources of pollutants in storm water runoff. The sources of concern will be discussed separately. Scrap process equipment such as shearers are often actuated by a hydraulic system. Components such as hydraulic reservoirs, hydraulic pumps, motors, cylinders, control valves, accumulators, filters, and fittings are prone to leaking hydraulic fluid. Some hydraulic machinery also require frequent lubrication of cutting and wear surfaces. Storm water runoff exposure to hydraulic fluids and other lubricants is very likely unless adequate source control measures such as good housekeeping, preventive maintenance, diversion and/or containment are provided.

Stationary process equipment also produce a substantial amount of residual particulate material that tends to accumulate on and around the equipment, particularly rotating machinery, moving parts, bearings, conveyors and at the output of the equipment, e.g., storage containers. Particulate material that accumulates can become a source of contamination if it comes in contact with both precipitation and storm water runoff. Other sources of residual particulate and waste material include air pollution equipment, material handling equipment and processing equipment. In the case of shredding equipment, there are typically three (3) separate material streams produced. Shredded material is ultimately separated into its ferrous and nonferrous fractions, and a third stream referred to as fluff. The fluff material consists of a heterogeneous mix of materials including, but not limited to, small metal fragments, plastics, rubber, wood and textiles. After the material exits the shredder (hammermill), it typically enters an air classification system that separates the lightweight fraction, e.g., particulates, from the more dense fraction. The ferrous metal fraction is then separated from the nonferrous fraction and fluff by the use of a magnetic separator (typically a belt- or drum-type magnetic separator). The separated material may be collected in a hopper or it may accumulate on the ground. If recyclable and nonrecyclable waste material is allowed to accumulate on the ground, a greater potential exists for this material to come in contact with either precipitation or storm water runoff.

The scrap and recycling industry uses a diversity of processes to reclaim and recycle materials that can contribute pollutants to storm water runoff. The following table presents a list of typical scrap equipment operations which are potential pollutant sources.

TABLE N–3.—TYPICAL PROCESS AND EQUIPMENT OPERATIONS THAT ARE LIKELY SOURCES OF POLLUTANTS[1]

Activity	Potential sources	Pollutants of concern
Air Pollution Equipment (including incinerators, furnaces, wet scrubbers, filter houses, bag houses).	Normal equipment operations that include the collection and disposal of filter bag material and ash, process wastewater from scrubbers, accumulation of particulate matter around leaking joint connections, malfunctioning pumps and motors, e.g., leaking gaskets, seals or pipe connections, leaking oil-filled transformer casings.	Hydraulic fluids, oils, fuels, grease and other lubricants, accumulated particulate matter, chemical additives, PCBs from oil-filled electrical equipment.
Combustion Engines	Spills and/or leaks from fueling tanks, spills/leaks from oil/hydraulic fuel reservoirs, faulty/leaking hose connections, worn gaskets, leaking transmission crankcases and brake systems (if applicable), leaking battery casings and/or corroded terminals.	Accumulated particulate matter, oil/lubricants, fuel (gas/diesel), fuel additives, antifreeze (ethylene glycol), battery acid, products of incomplete combustion.
Material Handling Systems (forklifts, cranes, conveyors).	Normal operations including spills and leaks from fuel tanks, hydraulic and oil reservoirs due to malfunction parts, e.g., worn gaskets and parts, leaking hose connections, and faulty seals. Damaged or faulty electrical switches (mercury filled) Damaged or leaking battery casings, including exposed corroded battery terminals. Damaged or worn bearing housings.	Hydraulic fluids, oils, fuels and fuel additives, grease and other lubricants, accumulated particulate matter, chemical additives, mercury, lead, battery fluids.
Stationary Scrap Processing Facilities (balers, briquetters, shredders, shearers, compactors, engine block/cast iron breakers, wire chopper, turnings crusher).	Normal equipment operations including leaks from hydraulic reservoirs, hose and fitting connections, worn gaskets, spills or leaks from fuel tanks, particulates/residue from scrap processing, malfunctioning pumps and motors, e.g., leaking gaskets, seals or pipe connections, leaking oil-filled transformer casings.	Heavy metals, e.g., zinc, copper, lead, cadmium, chromium, hydraulic fluids.
Hydraulic equipment and systems, balers/briquetter, shredders, shearers, compactors, engine block/cast iron breaker, wire chopper, turnings crusher.	Particulate/residue from material processing, spills and/or leaks from fueling tanks, spills/leaks from oil/hydraulic fuel reservoirs, faulty/leaking hose connections/fittings, leaking gaskets.	Hydraulic fluids/oils, lubricants, particulate matter from combustion engines, PCBs (oil-filled electrical equipment components), heavy metals (nonferrous, ferrous).
Electrical Control Systems (transformers, electrical switch gear, motor starters).	Oil leakage from transformers, leakage from mercury float switches, faulty detection devices.	PCBs, mercury (float switches), ionizing radioactive material (fire/smoke detection systems).

TABLE N–3.—TYPICAL PROCESS AND EQUIPMENT OPERATIONS THAT ARE LIKELY SOURCES OF POLLUTANTS[1]—Continued

Activity	Potential sources	Pollutants of concern
Torch cutting	Residual/accumulated particulates	Heavy metal fragments, fines.

[1] Institute of Scrap Recycling Industries, Inc.'s "Environmental Operating Guidelines." (April 1992).

(3) *Segregation of processed materials into uniform grades.* Processing, e.g., shearing, shredding, baling, etc., of recyclable materials is followed by its segregation into uniform grades to meet a particular manufacturer's specifications. If segregated recyclable material remains exposed to precipitation, the potential still exists for storm water contamination.

(4) *Disposal of nonrecyclable waste materials.* During recycling of scrap and waste materials, a significant fraction is nonrecyclable waste materials and must be disposed. The volume or quantity of material that remains unrecyclable may be too large to permit covered storage prior to shipment. Consequently, unrecyclable waste materials may be left exposed to both precipitation and runoff and, therefore, they are a likely source of storm water pollutants.

(5) *Other operations of concern.* There are a number of activities that frequently occur at scrap and waste recycling facilities including, heavy vehicle traffic over unstabilized areas, vehicle maintenance and fueling, and material handling operations. Operations associated with the receipt, handling, and processing of scrap and waste material frequently occur over areas that are not stabilized to prevent erosion. Unless specific measures or controls are provided to either prevent erosion or trap the sediment, this material will be carried away in storm water runoff and eventually exit the site. Suspended solids are of significant concern given the potential amount of unstabilized area and the significant amount of particulate matter that is often produced at these facilities. Both organic and inorganic pollutants can become bound up or absorbed to suspended solids in runoff. For this reason, today's proposed permit identifies conditions to minimize the contribution of suspended solid loadings from these facilities.

Some scrap and waste recycling facilities may also conduct vehicle maintenance onsite. Although many of these activities frequently occur indoors, there are specific activities which could contribute pollutants to storm water. This includes washdown of vehicle maintenance areas, leaks or spills of fuel, hydraulic fluids and oil and outdoor storage of lubricants, fluids, oils and oily rags. Fueling stations are also frequently conducted outdoors without any roof cover. Activities such as topping off fuel tanks, or overfilling storage tanks (without high-level alarms) are also activities that can cause contamination of runoff. One last activity of concern is vehicle washing which can result in accumulated residue material being discharged to a storm sewer system.

The following table highlights activities associated with vehicle maintenance and material handling that are potential sources of storm water contamination.

TABLE N–4.— OTHER POTENTIAL POLLUTANT SOURCE ACTIVITIES

Activity	Potential sources	Pollutants of concern
Material Handling Systems (forklifts, cranes, conveyors).	Spills and/or leaks from fueling tanks, spills/leaks from oil/hydraulic fuel reservoirs, faulty/leaking hose connections/fittings, leaking gaskets.	Accumulated particulate matter (ferrous and nonferrous metals, plastics, rubber, other), oil/lubricants, PCBs (electrical equipment), mercury (electrical controls), lead/battery acids.
Vehicle Maintenance	Parts cleaning, waste disposal of rags, oil filters, air filters, batteries, hydraulic fluids, transmission fluids, brake fluids, coolants, lubricants, degreasers, spent solvents.	Fuel (gas/diesel), fuel additives, oil/lubricants, heavy metals, brake fluids, transmission fluids, chlorinated solvents, arsenic.
Fueling Stations	Spills and leaks during fuel transfer, spills due to "topping off" tanks, runoff from fueling areas, washdown of fueling areas, leaking storage tanks, spills of oils, brake fluids, transmission fluids, engine coolants.	Gas/diesel fuel, fuel additives, oil, lubricants, heavy metals.
Vehicle and Equipment Cleaning and Washing	Washing and steam cleaning	Solvent cleaners, oil/lubricants/additives, antifreeze (ethylene glycol).

(6) Pollutants found in storm water discharges. Sampling data provided in part 2 of the group application process revealed that storm water discharges from scrap and waste recycling facilities contain pollutants such as heavy metals, Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), TSS, nutrients and oil and grease. The following table summarizes the statistical analysis of sampling data provided in part 2 group applications.

Table N–6 provides a comparison of a selected subset of these pollutants to freshwater acute criterion provided in EPA's "Gold Book."

TABLE N–5.— SUMMARY STATISTICS FOR SCRAP AND WASTE RECYCLING FACILITIES[1] (SIC 5093) (NONLIQUID RECYCLABLE WASTE MATERIALS.) ALL UNITS IN MG/L UNLESS OTHERWISE NOTED

Pollutant	# of Samples		Mean		Minimum		Maximum		Median		99th Percentile	
Sample type	Grab	Comp[ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
pH (std units)	136	N/A	N/A	N/A	4.93	N/A	10.2	N/A	N/A	N/A	9.56	N/A
BOD_5	131	120	23.49	24	0.00	0.00	330.0	360	9.0	9.0	330.0	330.0
COD	131	117	251.33	204	0.00	0.00	1588.0	2400	120.0	110.0	1323	1014
TSS	131	116	437.11	375	0.00	0.00	3894	6042	148.0	84.5	3100	4860
Nitrate + Nitrite N	130	117	1.76	5.9	0.00	0.00	84.0	220.0	0.61	0.80	28	129.0
TKN	132	114	3.44	3.4	0.00	0.00	43.0	39.0	2.05	2.20	25	22.0
Oil and grease	136	N/A	6.95	N/A	0.00	N/A	85.0	N/A	5.0	N/A	69	N/A
Total P	133	114	0.81	0.77	0.00	0.00	36.0	29.0	0.29	0.26	4.7	10.0
Total Pb	103	100	0.85	0.64	0.00	0.00	8.70	13.00	0.205	0.215	4.9	11.00
Total Cd	75	73	0.02	0.02	0.000	0.000	0.10	0.65	0.0074	0.005	0.069	.65
Total Cu	102	99	0.77	0.60	0.000	0.000	12.0	8.20	0.26	0.22	5.98	8.2
Total Zn	97	94	3.16	3.2	0.026	0.000	22.0	38.0	1.50	1.4	22.0	36.0
Total Cr	103	100	0.08	0.122	0.000	0.000	2.10	2.60	0.03	0.02	0.547	2.3
Total Ni	94	93	0.202	0.21	0.001	0.000	5.80	7.30	0.05	0.040	5.8	7.3
Arsenic	9	8	0.038	0.019	0.00	0.00	0.170	0.90	0.005	0.005	0.170	0.090
Total Al	5	3	4.86	3.327	.68	.66	10.0	7.6	4.0	1.70	10.0	7.6
PCB–1016	27	26	0.001	0.051	0.001	0.001	0.010	1.30	0.001	0.001	0.010	1.3
PCB–1221	26	24	0.001	0.001	0.001	0.000	0.010	0.001	0.001	0.001	0.010	0.001
PBC–1232	28	26	0.001	0.001	0.001	0.000	0.010	0.001	0.001	0.001	0.010	0.001
PCB–1242	27	26	0.001	0.047	0.000	0.000	0.010	1.30	0.001	0.001	0.010	1.3
PCB–1248	26	24	0.003	0.005	0.000	0.000	0.025	0.078	0.001	0.001	0.025	0.078
PCB–1254	28	26	0.001	0.001	0.000	0.000	0.010	0.006	0.001	0.001	0.010	0.006
PCB–1260	28	26	0.002	0.049	0.001	0.000	0.011	1.30	0.001	0.001	0.011	1.3

[1] Applicants that did not report the units of measurement for the reported values were not included in these statistics.
[ii] Composite samples.

TABLE N–6.—COMPARISON SAMPLING DATA FOR SELECTED PARAMETERS VERSUS NURP VALUES AND THE EPA "GOLDBOOK"

Pollutant	Mean		Maximum		Median		"Goldbook"[i]	NURP
Sample type	Grab	Comp	Grab	Comp	Grab	Comp	N/A	Avg. conc
COD	251	204	1588	2400	120	110	N/A	94
TSS	437	375	3894	6042	148	84.5	N/A	239
TKN	3.44	3.47	43.0	39.0	39.0	2.05	N/A	2.3
Oil and Grease	6.95	N/A	85.0	N/A	5.0	N/A	note 3	N/A
Total Pb	0.85	0.64	8.70	13.00	0.205	0.215	[ii]0.082	0.236
Total Cd	0.02	0.02	0.10	0.65	0.0074	0.005	[ii]0.0039	.....
Total Cu	0.77	0.60	12.0	8.20	0.26	0.22	[ii]0.0167	0.053
Total Zn	N/A	3.2	22.0	38.0	1.5	1.4	[ii]0.0507	0.353
Total Cr	0.08	0.122	2.10	2.60	0.03	0.020	note [iv]	
Total Ni	0.202	0.21	5.80	7.30	0.05	0.04	[ii]1.4	

[i] Based on aquatic life criteria.
[ii] At freshwater acute concentration (aquatic life) at hardness of 100 mg/L. Toxicity decreases as hardness increases.
[iii] Oil and Grease (aquatic life) 0.01 of the lowest continuous flow 96-hour LC50.
[iv] Varies depending on chemical speciation.

The comparison of sampling results for metals to "goldbook" values indicates that storm water discharges originating from these facilities were substantively higher than the acute freshwater criterion. Given the frequency that these metals were reported in storm water discharges, another principal concern is the synergistic, additive and antagonistic effects that all these constituents may have on water quality. In addition, sampling data also indicates the presence of several congeners of PCBs, polycyclic aromatic hydrocarbons and phthalate esters. When taken in whole, storm water discharges from these facilities are often a complex matrix of metals, suspended solids, and organic compounds.

b. Waste recycling facilities (SIC 5093)—(liquid recyclable wastes). This subsection applies to those facilities engaged in the reclaiming and recycling of liquid wastes such as "spent solvents," "used oil," and "used ethylene glycol" typically identified under SIC 5093. This subsection is particularly applicable to those facilities that participated in EPA group application number 195. EPA received a single group application in this category of waste recycling facilities. The following is a profile of industrial activities and the types of significant materials associated with facilities participating in this group activity.

Group application number 195 included 220 facilities of which 214 were classified as service centers. Service centers accumulate spent solvent, used oil and antifreeze, filter cartridges and still bottoms contaminated with dry cleaning solvents (typically perchloroethylene), and used lacquer thinner from paint gun cleaning machines. The typical service center has a total storage capacity

limited to approximately 10,000 gallons in individual containers and tanks with a maximum storage capacity of 20,000 gallons each. Service centers are typically limited to a maximum of 6 tanks (a total of 120,000 gallons). Twenty (20) of the service centers also function as accumulation centers where they have a maximum storage capacity of 70,000 gallons of liquid materials in containers. None of the containers are opened except under conditions where a container begins to leak or is damaged.

The group application also included four (4) facilities that operated only as container transfer stations and do not operate storage tanks. These facilities are largely enclosed warehouses that provide secondarily contained storage areas. Three (3) facilities were identified as used oil depots where only oily water and/or used oil are accumulated in storage tanks. Storage tanks are limited to a maximum capacity of 20,000 gallons each. Used oil is transported to the facility in tanker trucks (3,500 gallons) and shipped out in tanker trucks (7,500 gallons). The used oil is ultimately transported to a processing or re-refining facility (not covered under this section). The following table summarizes the percentage of facilities with significant materials stored.

TABLE N–7.—SIGNIFICANT MATERIALS REPORTED IN GROUP APPLICATION NUMBER 195

Significant materials	Percent of facilities
Mineral spirits	98
Immersion cleaner	98
Dry cleaner solvents	96
Paint solvents	83
Industrial solvents	81
Spent antifreeze	59
Used oil	57
Allied products	98

The types of materials identified in Table N–7 are potential sources of storm water runoff contamination. Since these materials are stored and transported in individual drums and bulk storage tanks, the potential exists for spills and/or leaks during all phases of waste transport, waste transfer, container/drum handling and shipping.

There are a number of operations at these facilities that have significant potential to release pollutants to the environment if recyclable waste materials are not managed properly. Potential sources of pollutants are discussed in Part N.2.a.1 of today's proposed permit. However, in response to other Federal and State environmental regulations, such as RCRA and 40 CFR part 112 (Oil Pollution Prevention), facilities in this group application currently employ a range of the BMPs and structural controls that also benefit storm water quality. Typical measures and controls for controlling pollutants for facilities in this subsection are presented in Part N.2.b.

(1) Waste material handling and storage. Given the nature and type of materials stored and handled at these facilities, the potential exists for accidental spills and leaks. Consequently, the types of activities that occur at these facilities which could potentially result in contamination of storm water runoff is also of concern to EPA. The following table is a list of activities which may result in a release of pollutants.

TABLE N–8.—TYPES OF POTENTIAL POLLUTANT-CAUSING ACTIVITIES AT WASTE RECYCLING FACILITIES THAT HANDLE LIQUID RECYCLABLE WASTES

Activity	Potential sources of pollutants	Pollutants of concern
Drum/Individual container storage and handling	Leaks or spills due to faulty container/drum integrity, e.g., leaking seals or ports. Container materials incompatible with waste material. Improper stacking and storage of containers.	Mineral spirits, industrial solvents, immersion cleaners, dry cleaner solvents, paint solvents, spent antifreeze.
Return and fill stations	Leaks, spills, or overflows from tanker truck transfer of wastes and hose drainage. Leaking pipes, valves, pumps, worn or deteriorated gaskets or seals.	Mineral spirits, industrial solvents, immersion cleaners, dry cleaner solvents, paint solvents, spent antifreeze.
Individual container/drum storage improper stacking and storage of containers.	Leaks or spills due to faulty container/drum integrity, e.g., leaking seals or ports.	Mineral spirits, industrial solvents, immersion cleaners, dry cleaner solvents, paint solvents, spent antifreeze.
Storage tank operations	Overfill of storage tanks, leaking pipes, valves, worn or deteriorated pumps seals. Leaking underground storage tanks.	Mineral spirits, industrial solvents, immersion cleaners, dry cleaner solvents, paint solvents, spent antifreeze.
Material handling equipment	Leaking fuel lines, worn gaskets, leaking hydraulic lines and connections.	Fuel, hydraulic fluid, oil and grease.

(2) Other activities of concern. The following table highlights other types of activities that are potential sources of storm water contamination.

TABLE N–9.—OTHER POTENTIAL SOURCES OF STORM WATER CONTAMINATION

Activity	Potential sources of pollutants	Pollutants of concern
Vehicle and equipment maintenance (if applicable).	Replacement of fluids such as transmission and brake fluids, antifreeze, oil and other lubricants, washdown of maintenance areas, dumping fluids down floor drains connected to storm sewer system, outside storage of fluids and oily rags and waste material.	Oil and grease, fuel, accumulated particulate matter, antifreeze.
Vehicle or equipment washing (if applicable)	Wash water or steam cleaning	Oil, detergents, chlorinated solvents, suspended solids and accumulated particulate matter.

(3) Pollutants found in storm water discharges. Based on data provided in group application sampling information, pollutants that were most frequently reported included TSS, BOD, COD, nitrite plus nitrate, oil and grease. The following table provides a statistical summary of data.

TABLE N–10.—SUMMARY STATISTICS FOR WASTE RECYCLING FACILITIES[1] (SIC 5093)—(RECYCLABLE LIQUID WASTES). ALL VALUES IN MG/L

Parameter	Number of samples		Mean		Min		Max		Median		99th Percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	22	17	18	9	2	2	94	46	5	5	79	38
COD	22	17	133	83	12	5	660	400	45	45	449	320
TSS	21	16	51	28	5	5	500	84	28	20	68	59
Nitrite + Nitrate	22	17	0.90	0.78	0.05	0.05	3.70	3.50	0.61	0.38	3.45	3.29
TKN	22	17	3.1	2.0	1.0	1.0	11.0	6.0	1.5	1.0	9.9	5.7
Oil and grease	22	N/A	1.8	N/A	1.0	N/A	5.0	N/A	1.5	N/A	4.0	N/A

[1] Applicants that did not report the units of measurement for the reported values were not included in these statistics.
[2] Composite samples.

Table N–10 indicates that, with the exception of BOD and COD, average concentrations in grab and composite samples were comparable with average values reported in the NURP study (NURP did not measure oil and grease). The data also indicates that pollutants such as industrial solvents were all below detection limits (without values). In the case of oil and grease, all concentration values were below the reportable concentration of 10 mg/L (see 40 CFR 110.10 and 117.21).

2. Options for Controlling Pollutants

a. Scrap and waste recycling facilities (SIC 5093) (nonliquid recyclable waste materials). This section addresses source control measures, BMPs and structural controls that are specifically applicable to the scrap waste and recycling facilities (SIC 5093) and which are engaged in the reclaiming and recycling of solid materials such as ferrous and nonferrous metals, plastics, paper, glass and cardboard and automotive parts. Part XI.N.2.b. of the permit addresses waste recycling facilities (SIC 5093) that are engaged in the reclaiming and recycling of liquid wastes such as used oils, industrial solvents and ethylene glycol.

The BMPs described in this subsection are specifically applicable to scrap and waste recycling facilities. Scrap and waste recycling facilities applying for coverage under Part XI.N. of today's proposed permit shall employ a broad and comprehensive range of BMPs and source control measures to minimize and/or eliminate the diversity of pollutants associated with scrap processing operations and inbound recyclable materials. In instances where facilities conduct certain operations indoors or under cover, a determination will be made by the owner/operator of the facility as to the applicability of these BMPs and source control measures to these particular activities.

The following table summarizes alternative source control measures, nonstructural BMPs (BMPs), and structural controls that are associated with and applicable to scrap and waste processing facilities (SIC 5093) (nonliquid recyclable materials).

TABLE N–11.—Summary of Alternative BMP Options for Scrap and Waste Recycling Processing Facilities

Activity	BMP alternatives
Inbound recyclable and waste material control:	Establish program to encourage suppliers of scrap, waste and other salvageable materials to drain residual fluids prior to arrival at the facility. Establish acceptance program for handling, storage and disposal of lead-acid batteries. Establish procedures for rejecting or handling, storing and disposal of hazardous wastes and other nonhazardous residual fluids Establish procedures to properly handle industrial turnings and cuttings and prohibiting cutting oils and metallic fines from coming in contact with runoff. Identify inspector training requirements.
Outside Scrap Material Storage: (liquids)	Conduct inspections for fluids, e.g., oils, transmission fluids, antifreeze, brake fluid, and fuels. Establish handling/ storage/disposal procedures for these materials.

TABLE N–11.—Summary of Alternative BMP Options for Scrap and Waste Recycling Processing Facilities—Continued

Activity	BMP alternatives
Outside Scrap Material Storage: (bulk solid materials).	Drain and collect liquids in a designated area. Provide covered storage or impervious areas with curbing/berms or other appropriate containment. Stored liquid materials in covered areas or impervious areas with curbing/berms or other appropriate measure. Establish spill prevention procedures. Provide adequate supply of materials for dry clean up of spills or leaks. Prevent runoff into liquid storage areas. Store liquid wastes in materially compatible containers. Minimize/eliminate the accumulation of liquid wastes. Establish procedures if hazardous wastes are discovered after material accepted. Conduct periodic inspections of storage areas. Conduct preventative maintenance of BMPs as necessary. Minimize runoff from coming into areas where significant materials are stored, e.g., diversion structures such as curbing, berms, containment trenches, surface grading, and elevated concrete pads or other equivalent measure. Use adsorbents to collect leaking or spills of oil, fuel, transmission and brake fluids, e.g., dry absorbent, drip pans. Install media filters such as catch basin filters and sand filters. Install oil/water separator in storage areas with vehicle transmissions and engines. Locate spill plans under stored vehicles. Provide nonrecyclable waste storage bins and containers. Conduct periodic inspections. Conduct preventative maintenance as necessary.
Storage Other: (lightweight materials)	Provide equipment operator training to minimize damage to controls, e.g., curbing and berms. Identify/provide supplier training or information bulletins on requirements for acceptance of lightweight materials. Encourage supplier participation in program to minimize/eliminate, as practicable, volume of semisolid and liquid residues in recyclable materials, e.g., residual fluids in aluminum and plastic containers. Provide covered storage, container bins or equivalent for lighter-weight materials such as glass, plastics, aluminum cans, paper, cardboard. Minimize/eliminate residue from bottles, containers, etc. from coming in contact with runoff. Establish dry clean up methods. Establish procedures and employee training for the handling, storage and disposal of residual fluids from small containers. Prohibit washdown of tipping floor areas. Provide good housekeeping to eliminate particulate and residual materials buildup. Establish cleaning schedule for high traffic areas. Provide covered disposal containers or equivalent for residual waste materials. Eliminate floor drains discharging to storm sewer.
Scrap processing operations:	Provide training to equipment operators on how to minimize exposure of runoff to scrap processing areas. Schedule frequent cleaning of accumulated fluids and particulate residue around all scrap processing equipment. Schedule frequent inspections of equipment for spills or leakage of fluids, oil, fuel, hydraulic fluids. Conduct routine preventive maintenance of equipment per original manufacturer's equipment (OME) recommendations. Replace worn or malfunctioning parts. Site process equipment on elevated concrete pads or provide runoff diversion structures around process equipment, berms, containment trenches or surface grading or other equivalent measure. Discharge runoff from within bermed areas to a sump, oil/water separator, media filter or discharge to sanitary sewer. Conduct periodic maintenance and clean out of all sumps, oil/water separators, media filters. Dispose of residual waste materials properly, e.g., according to RCRA. Provide curbing, dikes, and berms around scrap processing equipment to prevent contact with runoff. Where practicable, locate process equipment e.g., balers, briquetters, small compactors, under an appropriate cover. Provide cover over hydraulic equipment and combustion engines. Provide dry-clean up materials, e.g., dry-adsorbents, drip pans, absorbent booms, etc. to prevent contact of hydraulic fluids, oils, fuels, etc., with storm water runoff. Provide alarm, pump shutoff, or sufficient containment for hydraulic reservoirs in the event of a line break. Stabilize high traffic areas, e.g., concrete pads, gravel, pavement, around processing equipment, where practicable. Provide site gages or overfill protection devices for all liquid and fuel storage reservoirs and tanks. Establish spill prevention and response procedures, including employee training. Provide containment bins or equivalent for shredded material, especially lightweight materials such as fluff (preferably at the discharge of these materials from the air classification system).
Suppres for Process Equipment	Locate storage drums containing liquids, including oils and lubricants indoors. Alternatively, site palletized drums and containers on an impervious surface and provide sufficient containment around the materials. Provide sumps, oil/water separators, if necessary. Conduct periodic inspections of containment areas and containers/drums for corrosion. Perform preventive maintenance of BMPs, as necessary. Instruct employees on proper material handling and storage procedures.
Scrap lead acid battery Program	Establish inspection and acceptance procedures for scrap lead-acid batteries.

TABLE N–11.—Summary of Alternative BMP Options for Scrap and Waste Recycling Processing Facilities—Continued

Activity	BMP alternatives
	Provide supplier training on acceptance practices for scrap batteries.
	Provide employee training on the safe handling, storage and disposition of scrap batteries.
	Separate all scrap batteries from other scrap materials.
	Store scrap batteries under cover or equivalent.
	Establish procedures for the storage, handling, disposition of cracked or broken batteries in accordance with applicable Federal regulations, e.g., RCRA.
	Establish procedures to collect and dispose of leaking battery acid according to Federal regulations, e.g., RCRA.
	Provide covered storage or equivalent to prevent exposure to either precipitation or runoff.
Vehicle and equipment maintenance	Establish an inventory of materials used in the maintenance shop that could become a potential pollutant source with storm water runoff, e.g., fuels, solvents, oils, lubricants.
	Store and dispose of oily rags, filters (oil and air), batteries, engine coolant, transmission fluid, use oil, brake fluid, and solvents in a manner that minimizes potential contact with runoff and in compliance with State and Federal regulations.
	Label and track recycling of waste materials, e.g., batteries, solvent, used oil.
	Drain oil filters before disposal or recycling.
	Drain all fluids from all parts or components that will become scrap material or secondhand parts.
	Store liquid waste materials in compatible containers.
	Store and dispose used batteries in accordance with scrap lead acid battery program.
	Disconnect all floor drains connected to storm sewer system.
	Prohibit non-storm water discharges, e.g., dumping of used liquids down floor drains and washdown of maintenance areas.
	Provide employee training on appropriate storage and disposal of waste materials.
	Provide good housekeeping measures.
Fueling	Conduct inspections of work areas for compliance with BMPs.
	Use spill and overflow protection devices.
	Provide high level alarm on fuel storage tanks.
	Minimize/eliminate runoff onto fueling areas.
	Reduce exposure of fueling areas to precipitation by covering the fueling area.
	Provide dry adsorbents to clean up fuel spills.
	Conduct periodic inspections of fueling areas.
	Instruct personnel on proper fueling procedures.
	Provide curbing or posts around fuel pumps to prevent collisions during vehicle ingress and egress.
Vehicle and equipment washing	Avoid washing vehicles and equipment outdoors
	Use biodegradable, phosphate free detergents.
	Recycle wash water.
	Provide vehicle wash rack with dedicated sediment trap.
Outdoor vehicle parking and storage	Use autoshut-off valves on washing equipment.
	Use drip pans under all equipment and vehicles waiting maintenance.
	Cover vehicle and equipment storage areas.
	Conduct inspections of storage and parking areas for leaks and filled drip pans.
	Provide employee training.
Vehicle and equipment painting (where applicable).	Keep paint and solvents away from traffic areas. Conduct sanding and painting in nonexposed areas, e.g., under cover, in accordance with OSHA standards.
	Cleanup accumulated particulate matter.
	Minimize overspraying parts.
	Dispose or recycle paint, solvents and thinner properly.
	Provide training to employees
	Conduct periodic inspections of paint spraying areas.
Erosion and sediment control	Minimize runon from adjacent properties, e.g., diversion dikes, berms, or equivalent.
	Trap sediment at downgradient locations and outlets serving unstabilized areas. This may include filter fabric fences, gravel outlet protection, sediment traps, vegetated or riprap swales, vegetated strips, diversion structures, catch-basin filters, retention/detention basins or equivalent.
	Runoff containing oil and grease may include the use of absorbent booms or sand filters in front of outlet structures or other equivalent measures.
	Stabilize all high traffic areas, including all vehicle entrances and exit points.
	Conduct periodic sweeping of all traffic areas.
	Conduct inspections of BMPs.
	Perform preventative maintenance as needed on BMPs.
	Provide employee training on the proper installation and maintenance of erosion and sediment controls.

b. Waste recycling facilities (SIC 5093)—(recyclable liquid wastes). This section addresses source control measures, BMPs, and structural controls that are specifically applicable to waste recycling facilities (SIC 5093) which are engaged in such activities as reclaiming and recycling of liquid wastes such as spent solvents, used oil, and used antifreeze (ethylene glycol). Waste recycling facilities applying for coverage under Part XI.N. of today's proposed permit will be required to employ a comprehensive range of BMPs and source control measures to minimize contact of pollutants with storm water runoff and precipitation. In instances where facilities conduct certain

operations indoors or under cover, a determination will be made by the owner/operator of the facility as to the applicability of these BMPs and source control measures to their particular facility. The following table summarizes the percent breakdown of BMPs that were reported by applicants participating in group application number 195.

TABLE N–12.—TYPES OF BMPS REPORTED IN EPA GROUP APPLICATION NUMBER 195

BMP	Percent of facilities
Secondary Containment (includes tanks, piping, and return/fill stations)	70
Containment Trench (includes closed loop containment trenches with sumps, sloped floors, and/or berms)	91
Roof (includes canvass tent roofs and enclosed structures)	7
Contingency Plan (serves as Spill Prevention and Countermeasures Control Plan)	100
Prevention and Preparedness Plan (includes inspection information and general housekeeping procedures)	100

The following table summarizes types of BMPs, and structural control options that are applicable to waste recycling facilities.

TABLE N–13.—TYPES OF BMP OPTIONS APPLICABLE TO LIQUID WASTE RECYCLING FACILITIES

Activity	BMP alternatives
Individual drum/container storage	Ensure container/drums are in good condition. Store waste materials in materially compatible drums. Use containers that meet National Fire Protection Association (NFPA) guidelines.
	Put individual containers on pallets. Limit stack height of individual containers/drums. Provide straps, plastic wrap, or equivalent around stacked containers to provided stability.
	Label/mark drums. Segregate hazardous and flammable wastes. Comply with NFPA guidelines for segregation of flammable wastes.
	Provide adequate clearance to allow material movement and access by material handling equipment.
	Provide semipermanent or permanent cover over wastes.
	Provide adequate clearance between stored materials to allow movement and handling.
	Establish clean up procedures, including the use of dry adsorbents, in the event of spills or leaks.
	Prohibit washing down of material storage areas. Disconnect or seal all floor drains from storm sewer system.
	Develop spill prevention, countermeasures and control (SPCC) procedures for all liquid container storage areas. Ensure employees are familiar with SPCC procedures. Schedule/ conduct periodic employee training.
	Provide secondary containment, dikes, berms, containment trench, sumps, or other equivalent measure, in all storage areas.
Bulk liquid storage	Use welded pipe connections versus flange connections. Inspect all flange gaskets for deterioration.
	Apply corrosion inhibitors to exposed metal surfaces.
	Provide high level alarms for storage tanks.
	Provide redundant piping, valves, pumps, motors, as necessary, at all pumping stations. Provide manually activated shutoff valves in the event of spill. Install visible and/or audible alarms in the event of a spill.
	Install manually activated drainage values, or equivalent, versus flapper-type drain values. Provide adequate security against vandalism and tampering.
	Provide secondary containment around all bulk storage tanks, including berms, dikes, surface impoundments or equivalent. Ensure surfaces of secondary containment areas are adequately sealed to prevent leaks.
	Provide stationary boxes around all return and fill stations to eliminate/minimize hose drainage and minor waste transfer spills.
Waste transfer areas	Provide secondary containment or equivalent measures around all liquid waste transfer facilities.
	Provide cover over liquid waste transfer areas.
	Establish clean up procedures for minor spills including the use of dry adsorbents.
Inspections	Conduct inspections of all material storage, handling and transfer areas.
	Document signs of corrosion, worn parts or components on pumps and motors, leaking seals and gaskets.
	Conduct periodic nondestructive testing (NDT) of all bulk storage tanks for signs of deteriorating structural integrity.
Preventive maintenance	Conduct periodic preventive maintenance of all structural controls, replace worn parts on components on valves, pumps, motors per manufacturer's recommendations.
Vehicle maintenance (if applicable)	Establish an inventory of materials used in the maintenance shop that could become a potential pollutant source with storm water runoff, e.g., fuels, solvents, oils, lubricants.
	Store and dispose of oily rags, filters (oil and air), batteries, engine coolant, transmission fluid, use oil, brake fluid, and solvents in a manner that minimizes potential contact with runoff and in compliance with State and Federal regulations.
	Label and track recycling of waste materials, e.g., batteries, solvent, used oil.
	Drain oil filters before disposal or recycling.
	Drain all fluids from all parts or components that will become scrap material or secondhand parts.
	Store liquid waste materials in compatible containers.
	Store and dispose used batteries in accordance with scrap lead acid battery program.

TABLE N–13.—TYPES OF BMP OPTIONS APPLICABLE TO LIQUID WASTE RECYCLING FACILITIES—Continued

Activity	BMP alternatives
	Disconnect all floor drains connected to storm sewer system.
	Prohibit non-storm water discharges, e.g., dumping of used liquids down floor drains and washdown of maintenance areas.
	Provide employee training on appropriate storage and disposal of waste materials.
	Provide good housekeeping measures.
	Conduct inspections of work areas for compliance with BMPs.
Vehicle cleaning (if applicable)	Avoid washing vehicles and equipment outdoors.
	Use biodegradable, phosphate free detergents.
	Recycle wash water.
	Provide vehicle wash rack with dedicated sediment trap.
	Use autoshut-off valves on washing equipment.
Training	Provide employee training on proper material handling and storage procedures. Require familiarization with applicable SPCC measures.

3. Discharges Covered Under This Section

The requirements listed under this section are applicable to storm water discharges from the following activities: facilities that are engaged in the processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, glass. These types of activities are typically identified in SIC 5093. Facilities that engaged in reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits and industrial solvents and which are classified SIC 5093 are also covered under this section.

4. Special Conditions

The following section identifies special conditions that are applicable to permittees applying for coverage under Part XI.N. of today's proposed permit.

a. Prohibition of non-storm water discharges. This section requires scrap and waste recycling facilities that are typically classified in SIC 5093 to certify that certain non-storm water discharges are not occurring at their facilities. A list of non-storm water discharges that are not authorized by this section has been identified. These discharges are prohibited due to the likelihood these discharges will contain substantial pollutant concentrations. The following non-storm water discharges are not autl orized by this section:

- Waste discharges to floor drains or sinks connected to the facilities storm sewer or storm drainage system
- Water originating from vehicle and equipment washing
- Steam cleaning wastewater
- Process wastewaters
- Washwater originating from cleaning tipping floor areas or material receiving areas
- Wastewater from wet scrubbers
- Boiler blowdown
- Noncontact and contact cooling water
- Discharges originating from dust control spray water
- Discharges from oil/water separators and sumps
- Discharges originating from the cleaning out of oil/water separators or sumps
- Discharges from bermed areas with a visible oily sheen or other visible signs of contamination.

The operators of non-storm water discharges must seek coverage for these discharges under a separate National Pollutant Discharge Elimination System (NPDES) permit if discharging to either a municipal separate storm sewer system or to waters of the United States. If such a permit has been issued, a copy of the NPDES permit must be attached to the applicant's storm water pollution prevention plan (the plan). If a permit application has been submitted for a non-storm water discharge, a copy of the application must be attached to the plan.

For facilities that have prohibited discharges identified under this section and which discharge to a sanitary sewer system, the facility operator is required to notify the operator of the sanitary sewer system in writing. The notification should be attached to the plan. However, for facilities that have been issued an industrial user permit under the pretreatment program for discharges prohibited under this section, a copy of the permit must be attached to the plan. In all instances, the permit applicant must document how non-storm water discharges are disposed and provide the pertinent documentation of that disposal practice within the plan.

5. Storm Water Pollution Prevention Plan Requirements

a. Contents of the plan. In addition to the supplemental information requirements identified in Part VI.C., scrap and waste recycling facilities in SIC 5093 are required to provide the additional information applicable to their industrial sector. Each subsection of the storm water pollution prevention plan is broken out into two subcategories; scrap and waste recycling facilities (nonliquid materials) and waste recycling facilities (liquid materials).

(1) Description of potential pollutant sources.—(a) Scrap and Waste Recycling Facilities (nonliquid recyclable wastes).—Under description of potential pollutant sources, this section proposes that scrap and waste recycling facilities will provide a description of potential pollutant sources in areas with stockpiled scrap and waste materials, bulk liquid storage or containerized liquids, scrap and waste processing equipment, material loading and unloading, air pollution control equipment, waste treatment, storage, and disposal, processed scrap material, and metal particulates. Metal cuttings and turnings should be segregated from other scrap materials and should be stored in an appropriately covered area. The plan should also address measures to collect any residual fluids. Due to the tendency for these materials to contain residual cutting fluids, runoff or precipitation that comes in from these turnings and cuttings shall be discharged into a sump, sanitary sewer, oil/water separator or other equivalent measure to prevent the discharge of significant quantities of oil.

(i) Scrap and waste material stockpiles (outdoors).—The plan will address areas where significant materials are exposed to either storm water runoff or precipitation. The plan must describe those measures and controls used to minimize contact of storm water runoff with stockpiled materials. The plan should include measures to minimize the extent of storm water contamination from these

areas. The following types of BMPs shall be considered within the plan:

• Promoting the diversion of runoff away from these areas through such practices as dikes, berms, containment trenches, culverts and/or surface grading;

• Permanent or semipermanent covers, or other similar forms of protection over stockpiled materials. This may include the use of containment bins, covered containers and dumpsters for processed scrap and other recyclable and nonrecyclable waste materials;

• Retention and detention basins, ponds, sediment traps and/or vegetate swales and strips, to facilitate settling and/or filtering out of pollutants in runoff from material stockpile areas;

• Media filtration such as catch basin filters and sand filters; and

• Oil/water separators and dry adsorbents in stockpile areas that are potential sources of residual petroleum-based fluids.

(ii) Scrap and waste material stockpiles (indoors)—The plan will address, at a minimum, measures and controls to minimize and, whenever feasible, eliminate residual liquids and particulate matter from materials stored indoors from coming in contact with surface runoff. This will include good housekeeping measures to collect residual liquids from aluminum, glass and plastic containers and prohibiting the practice of washing down tipping floors or other material processing areas. Material stockpile areas with existing floor drains will be inspected to ensure that they are no longer connected to the storm sewer system or storm drain conveyance. Any floor drains connected to the storm drainage system will be plugged or sealed.

(iii) Scrap processing equipment—The plan will address areas where scrap and waste processing equipment are sited. This includes measures and controls to minimize surface runoff from coming in contact with scrap processing equipment. The plan will specifically address measures to prevent the release of liquids, e.g., hydraulic fluids, fuel, oils, lubricants and accumulated particulate matter. At a minimum, this will include provisions to conduct periodic inspections and preventive maintenance of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment. In the case of processing equipment that generate visible amounts of particulate residue, e.g., shredding facilities, the plan will describe measures to minimize contact of runoff with residual fluids and particulate matter. In the case of shredded material, the plan shall address measures to minimize fluff material from coming in contact with storm water runoff or precipitation. The plan should consider the use of containment bins or other suitable containers to collect shredded material exiting the shredder facility. At a minimum, the plan shall include the following:

• A schedule of periodic inspections of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment;

• Preventive maintenance program to repair and/or maintain processing equipment according to manufacturer's recommendations;

• Measures to minimize the exposure of precipitation or runoff to processed materials, e.g., shredded scrap, fluff;

• High level alarms or other equivalent protection devices on unattended hydraulic reservoirs over 150 gallons in capacity;

• In addition to the requirements identified above, the plan shall consider the use of one or a combination of the following BMPs or other equivalent practice (note: the permittee may identify BMPs that mutually satisfy requirements for this paragraph and this section that address other sources of pollutants, e.g., outdoor material stockpiles): diversion structures such as dikes, berms, culverts, containment trenches, elevated concrete pads, grading to minimize contact of storm water runoff with outdoor processing equipment; oil/water separators, sumps, or dry adsorbents in processing areas that are potential sources of residual petroleum-based compounds and grease; permanent or semipermanent covers, or other similar measures; retention and detention basins, ponds, sediment traps or vegetated swales and strips, to facilitate settling or filtering out of pollutants in runoff from scrap and recyclable waste processing areas; and/or media filtration such as catch basin filters and sand filters.

(iv) Scrap lead-acid battery program—The plan will address measures and controls for the proper receipt, handling, storage and disposition of scrap lead-acid batteries. This includes procedures for accepting scrap batteries and how they will be segregated from other scrap materials. The plan will specifically address procedures for managing battery casings that may be cracked or leaking, including the proper handling and disposal of residual fluids. The plan will identify measures to minimize and, whenever possible, eliminate exposure of scrap batteries to either runoff or precipitation. The plan should also address the schedule for conducting periodic inspections of scrap battery storage areas and applicable source control measures. The plan will describe measures to provide employee training on the management of scrap batteries.

(v) Erosion and sediment control—The plan must identify all areas associated with industrial activity that have a high potential for soil erosion. Appropriate stabilization measures, nonstructural and structural controls must be provided in these areas. The plan must also contain a narrative consideration of the appropriateness for selected erosion and sediment controls. In addition, the plan shall identify nonstructural and structural controls necessary to address suspended loadings from those areas that tend to experience a buildup of visible amounts of particulate matter. At a minimum, the plan will include at least one of the following measures:

• Filtering or diversion practices, such as filter fabric fence, sediment filter boom, earthen or gravel berms, curbing or other equivalent measure, placed around exposed significant materials, scrap processing equipment and inlets or catch basins;

• Catch basin filters, filter fabric fence, or equivalent measure, place in or around inlets or catch basins that receive runoff from scrap and waste storage areas, and processing equipment;

• Sediment traps, vegetative buffer strips, or equivalent, that effectively trap or remove sediment prior to discharge through an inlet or catch basin.

In instances where significant erosion and suspended solids loadings continue after installation of nonstructural controls, the plan shall provide a detention or retention basin or other equivalent structural control. All structural controls shall be designed using good engineering practice. All structural controls and outlets that are likely to receive discharges containing oil and grease must include appropriate measures to minimize the discharge of oil and grease through the outlet riser. This may include the use of an absorbent boom.

(vi) Spill prevention and response procedures—Spills are most likely to occur during processing or loading and unloading of materials. For this reason, it is important that facilities establish standard safe practices for these operations. Common causes of spills or leaks include container failures, equipment leaks, and materials handling. Frequent inspections of storage areas and equipment will reduce the likelihood that faulty containers and equipment will go unnoticed. Employee education and training described below

should also reduce the chance of spills occurring. The plan shall include the following practices:

• The plan shall describe spill prevention and response measures to address areas that are potential sources of leaks or spills of fluids;

• All visible leaks and spills shall be contained and cleaned up as soon as possible. If malfunctioning equipment is responsible for the spill or leak, repairs shall also be conducted as soon as possible;

• Cleanup procedures shall be identified in the plan, including the use of dry absorbent materials. The plan shall provide that an adequate supply of dry absorbent material shall be maintained onsite, and used absorbent material shall be cleaned up and disposed of properly;

• Drums containing liquids, including oil and lubricants, shall be stored indoors; or in a bermed area; or in overpack containers or spill pallets; or in similar containment devices;

• Overfill prevention devices shall be installed on all fuel pumps and tanks;

• Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans must be inspected for leaks and checked for potential overflow. They will be emptied regularly to prevent overflow and all liquids will be disposed of in accordance with all requirements under RCRA.

• An alarm and/or pump shut off system shall be installed and maintained on all outside equipment with hydraulic reservoirs exceeding 150 gallons in order to prevent draining the tank contents if a line breaks, provided all parts of the hydraulic system are not visible to the operator of the processing equipment. As an alternative, such equipment may have a secondary containment system capable of containing the contents of the hydraulic reservoir plus adequate freeboard for precipitation.

(vii) Monthly inspection program—The monthly inspection will include all designated areas of the facility and equipment identified in the plan. The inspection will include a means of tracking and conducting follow up actions based on the results of the inspection. The inspections will be conducted by members of the Storm Water Pollution Prevention team. At a minimum, the visual inspection shall include the following areas:

• All outdoor scrap processing areas;

• All material unloading and loading areas (including rail sidings) that are exposed to either precipitation or storm water runoff;

• Areas where structural BMPs have been installed;

• All erosion and sediment BMPs;

• Outdoor vehicle and equipment maintenance areas;

• Vehicle and equipment fueling areas; and

• All areas where waste is generated, received, stored, treated, or disposed and which are exposed to either precipitation or storm water runoff.

If exposed to precipitation or storm water runoff, the inspection will identify corroded or leaking containers, corroded or leaking pipes, leaking or improperly closed valves and valve fittings, leaking pumps and/or hose connections, and deterioration in diversionary or containment structures. Any spills or leaks will be immediately addressed according to the facilities. A record of inspections will be maintained with the plan.

The BMPs identified above have been employed by scrap and waste recycling facilities and are believed to be appropriate given the types of pollutants found in storm water discharges from these facilities. In addition, the diversity of options allows permittees to select those BMPs that are most applicable to the extent of the risk that exists at a particular facility. In instances where nonstructural measures are not sufficient, the conditions direct the permittee to more stringent requirements such as structural controls.

(b) Waste recycling facilities (recyclable liquid wastes)—In addition to the baseline requirements for plans, all permittees seeking coverage under Part XI.N. of today's proposed permit must specifically address the following areas within their plan.

(i) Waste material storage (indoors)—The plan will address measures and controls to minimize residual liquids from waste materials stored indoors from coming in contact with surface runoff. The plan must also include a sufficient supply of dry-absorbent materials or a wet vacuum system or other equivalent measure to promptly respond to minor leaks or spills. This includes measures for secondary containment or its equivalent, procedures for proper material handling (including labeling and marking) and storage of containerized materials. Drainage from bermed areas shall be discharged to an appropriate treatment facility or sanitary sewer system. Discharges from bermed areas shall be covered by a separate NPDES permit or industrial user permit under the pretreatment program. The drainage system, where applicable, should include appropriate appurtenances such as pumps or ejectors and manually-operated valves of the open-and-close design.

(ii) Waste material storage (outdoors)—The plan will address areas where significant materials are exposed to either storm water runoff or precipitation. The plan must include measures to provide appropriate containment, drainage control and/or other appropriate diversionary structures. The plan must describe those measures and controls used to minimize contact of storm water runoff with stored materials. The plan shall also include the following preventative measures or its equivalent:

• An appropriate containment structure such as dikes, berms, curbing or pits, or other equivalent measure;

• The containment shall be sufficient to store the volume of the largest single tank and shall include sufficient freeboard for precipitation; and

• A sufficient supply of dry-absorbent materials or a wet vacuum system, or other equivalent measure, to collect liquids from minor spills and leaks in contained areas.

(iii) Truck and rail car waste transfer areas—The plan will describe measures and controls for truck and rail car loading and unloading areas. This includes appropriate containment and diversionary structures to minimize contact with precipitation and/or storm water runoff. The plan will also address measures to clean up minor spills and/or leaks originating from the transfer of liquid wastes. This may include dry-clean up methods, roof coverings, and other runoff controls.

(iv) Spill prevention and response procedures—The plan will address measures and procedures to address potential spill scenarios that could occur at the facility. This includes all applicable handling and storage procedures, containment, diversion controls and clean-up procedures. The plan will specifically address all outdoor and indoor storage areas, waste transfer areas, material receiving areas (loading and unloading), and waste disposal areas.

(v) Monthly site inspections—The facility will conduct monthly visual inspections by a member or members of the storm water pollution prevention team. The monthly inspection will include all designated areas of the facility and equipment identified in the plan. The inspection will include a means of tracking and conducting follow up actions based on the results of the inspection. At a minimum, the monthly site inspection shall include the following areas:

• Material storage areas;

- Material unloading and loading areas (including rail sidings) that are exposed to either precipitation or storm water runoff;
- Areas where structural BMPs have been installed;
- All erosion and sediment BMPs;
- Outdoor vehicle and equipment maintenance areas (if applicable);
- Vehicle and equipment fueling areas (if applicable); and
- All areas where waste is generated, received, stored, treated, or disposed and which are exposed to either precipitation or storm water runoff.

If exposed to precipitation or storm water runoff, the inspection will identify corroded or leaking containers, corroded or leaking pipes, leaking or improperly closed valves and valve fittings, leaking pumps and/or hose connections, and deterioration in diversionary or containment structures. Any spills or leaks will be immediately addressed according to the facility's spill prevention and response procedures.

6. Monitoring and Reporting Requirements

a. *Analytical monitoring requirements.* EPA believes that scrap and waste material processing and recycling facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires scrap and waste material processing and recycling facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table N–13. The pollutants listed in Table N–13 were found to be above benchmark levels for a significant portion of scrap and waste material processing and recycling facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from scrap and waste material processing and recycling facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from scrap and waste material processing and recycling facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table N–13. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE N–13.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Chemical Oxygen Demand (COD)	65.0
Total Kjeldahl Nitrogen (TKN)	1.5
Total Recoverable Aluminum	0.75
Total Recoverable Cadmium	0.0018
Total Recoverable Copper	0.009
Total Recoverable Iron	0.3
Total Recoverable Lead	0.0337
PCBs	0.00000044
Total Recoverable Zinc	0.065
Nitrate + Nitrite Nitrogen	0.68
Total Recoverable Arsenic	0.000018

If the average concentration for a parameter is less than or equal to the value listed in Table N–13, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table N–13, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE N–14.—SCHEDULE OF MONITORING

2nd year of permit coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table N–13, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table N–13, then no further sampling is required for that parameter.
4th year of permit coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table N–13. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall

be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: The examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from areas for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation. These notices specifically require that facilities with storm water discharges that are associated with areas for storage of lead acid batteries, reclamation products, or waste products, and areas used for lead acid battery reclamation are required to monitor their storm water discharges for oil and grease, COD, total suspended solids, pH, total recoverable copper, and total recoverable lead. Today's proposed permit contains increased monitoring requirements for battery reclaimers. EPA requests comment upon the difference between the monitoring requirements set out for battery reclaimers in the September 1992 General Permits and those required in today's proposed permit.

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those proposed in Part XI.N.5. of today's proposed permit.

a. Monitoring requirements for scrap and waste recycling facilities (non-liquid recyclable wastes). During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with storm water discharges from scrap and waste recycling facilities that are primarily engaged in the processing, reclaiming and wholesale distribution of nonliquid recyclable materials, but limited to those activities classified SIC 5093, shall monitor for TSS, oil and grease, pH, and semiannual acute Whole Effluent Toxicity (WET) beginning no later than 3 years from date of permit issuance except as provided below in paragraphs XI.N.7.b. (Sampling Waiver), XI.N.7.c. (Representative Discharge), and XI.N.7.d. (Alternative Certification). Permittees identified in this part must report in accordance with Part VI.B. (Reporting: Where to Submit) and paragraph XI.N.7.f. (Reporting: When to Submit).

In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

b. Sampling waiver. When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a 2-year period.

c. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Permittees required to submit monitoring information under Parts XI.N.6. a. or c. of this permit shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report (DMR).

d. Alternative certification. A discharger is not subject to the monitoring requirements of Part XI.N. of this permit for a given outfall provided the discharger makes a certification, on an annual basis for discharges identified under Part XI.N.1., under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and was not exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to the U.S.

Environmental Protection Agency (EPA) in accordance with Part VI.C. of this permit.

e. Toxicity testing. Permittees and new discharges that are required to monitor for acute whole effluent toxicity shall initiate the series of tests described below no later than 3 years from permit issuance.

(1) The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev 9/91), Section 6.1). Freshwater species must be used for discharges to freshwater waterbodies. Due to the nonsaline nature of rainwater, freshwater test species should also be used for discharges to estuarine, marine or other naturally saline waterbodies.

(2) All test organism, procedures and quality assurance criteria used shall be in accordance with "Methods for Measuring the Acute Toxicity of Effluents and Receiving Waters to Freshwater Marine Organisms," EPA/600/4–90–027 (Rev. September 1991). EPA has proposed to establish regulations regarding these test methods (December 4, 1989, 53 FR 50216).

(3) Tests shall be conducted semiannually on a grab sample of the discharge. Tests shall be conducted using 100 percent effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–027 (Rev. September 1991), Section 12, Report Preparation, and the report submitted to EPA with the DMRs. On the DMR, the permittee shall report "0" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

(4) If acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and the control) is detected, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the source(s) of toxicity and to reduce the toxicity of their storm water discharges. The permittee shall continue to conduct semiannual whole effluent toxicity testing until such time that acute whole effluent toxicity is no longer detected.

(5) Type of sample. The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes. Sampling locations shall be limited to those outfalls servicing portions of the facility engaged in industrial activity.

(6) Table N–1 summarizes sampling parameters, type and frequency information for permittees required to monitor under this part of the permit:

TABLE N–1

Parameter	Unit	Frequency[1]	Sample type
pH	std. units	2/permit term	Grab.
TSS	mg/L	2/permit term	Grab.
Oil and Grease	mg/L	2/permit term	Grab.
Acute whole effluent toxicity	N/A	2/permit term	Grab.

[1] Monitoring requirements for all parameters listed in Table N–1 shall begin no later than 3 years from the date of issuance of the final permit. Monitoring for, pH, oil and grease, and TSS shall continue on a semiannual basis for the remainder of the permit term.

(7) Visual monitoring requirements. All scrap and waste recycling facilities (nonliquid recyclable wastes) shall be required to conduct semiannual visual inspections of their discharges for sediment, oil and grease, and other visible signs of contamination. The facility shall establish a record of visual observations that shall be kept with the pollution prevention plan. In the event a facility observes a discharge with oil and grease or other reportable hazardous substance in excess of a reportable quantity (see 40 CFR part 110, 40 CFR part 117, or 40 CFR part 302), the facility shall document preventative and corrective actions taken to minimize the potential for reoccurrence. This permit does not relieve permittees of the reporting requirements of 40 CFR part 117 and 40 CFR part 302.

f. Reporting: when to submit.

(1) Permittees that are required to conduct sampling under this part of the permit shall submit monitoring results obtained during the reporting period on DMR Form(s) postmarked no later than the 30 days after the completion of the sampling event.

g. Retention of records. (1) The permittee shall retain records of all inspections and monitoring information, including certification reports, noncompliance reports, calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports, and supporting data, requested by the permitting authority for at least 3 years after the date that the permit expires.

h. Waste recycling facilities (liquid recyclable wastes) reporting under section 313 of SARA Title III. (1) Facilities reporting under Section 313 of SARA Title III must monitor their storm water discharges according to the requirements listed at Part VI.A.

O. Storm Water Discharges Associated With Industrial Activity From Steam Electric Power Generating Facilities, Including Coal Handling Areas

The conditions proposed in this section apply to storm water discharges from steam electric power generating facilities. The steam electric power generating category includes facilities which are coal, oil, gas, or nuclear fired. Heat captured co-generation facilities are not covered under the definition of storm water discharge associated with industrial activity, however, dual fuel co-generation facilities are included in the definition. When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit

apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

Storm water discharges from coal piles are eligible for coverage under this permit, where these discharges are not already subject to an existing NPDES permit.

1. Industrial Profile

The production of electrical energy always involves the conversion of some other form of energy. The two most important sources of energy which are converted to steam electric energy are the chemical energy of fossil fuels and the atomic energy of nuclear fuels. Current uses of fossil fuels are based on a combustion process, followed by steam generation to convert the heat first into mechanical energy and then to convert the mechanical energy into electrical energy. Nuclear power plants utilize a cycle similar to that used in fossil fueled power plants except that the source of heat is atomic interactions rather than the combustion of fossil fuel.

The steam electric power generating process for fossil fuel systems are typically enclosed and subject to effluent limitations guidelines [40 Code of Federal Regulations (CFR) part 423], as is coal pile runoff. However, the unloading and transport of coal within the facility is subject to the conditions set forth in this section of today's proposed permit. Likewise, the unloading and storage areas for liquid fuels and chemicals are subject to the conditions in this section of today's proposed permit. Fossil fuel combustion waste disposal areas are subject to storm water regulations but are discussed in the landfill and industrial waste disposal sector of today's proposed permit.

Industrial activities occurring at steam electric power generating facilities that pertain to the storm water rule include, "* * * but [are] not limited to, storm water discharges from industrial plant yards; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials and intermediate and finished materials; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water" (40 CFR 122.26(b)(14)). Common industrial activities at steam electric power generating facilities include the unloading, transport, and storage of raw materials, and the disposal of waste materials.

Significant materials include, "* * * but [are] not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under Section 101(14) of CERCLA; any chemical facilities required to report pursuant to section 313 of title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges" (40 CFR 122.26(b)(12)). Significant materials commonly found at steam electric power generating facilities include: coal; diesel fuel; and waste materials.

Historically, steam electric power generating facilities were categorized in accordance with the type of fuel they burned. Recently, however, steam electric power generating facilities have modified their equipment to enable them to use more than one fuel. Presented below are brief descriptions of the industrial activities and significant materials associated with the production of steam electric power. Due to the increase in facilities burning multiple fuels the industrial activities and significant materials are discussed together. However, the industrial activities and significant materials for nuclear powered facilities are discussed separately. Unique practices are noted.

a. Industrial activities: fossil fuel powered plants. Steam electric power generation can be divided into four stages. In the first operation, fossil fuel (coal, oil, or natural gas) is burned in a boiler furnace. The evolving heat is used to produce pressurized and superheated steam. This steam is conveyed to the second stage, the turbine, where it gives energy to the rotating blades and, in the process, loses pressure and increases in volume. The rotating blades of the turbine act to drive an electric generator or alternator to convert the imparted mechanical energy into electrical energy. The steam leaving the turbine enters the third state, the condenser, where it is condensed to water. The liberated heat is transferred to a cooling medium which is normally water. Finally, the condensed steam is reintroduced into the boiler by a pump to complete the cycle.

Features unique to coal-fired plants include coal storage and preparation (transport, beneficiation, pulverization, drying), coal-fired boiler, ash handling and disposal systems, and flue gas cleaning, and desulfurization.

b. Significant materials: fossil fuel powered plants. The type of fuel (coal, oil, gas, nuclear) used to fire power plant boilers most directly influences the number of waste streams. The influence comes principally from the effect of fuel on the volume of ash generated. Stations using heavy or residual oils generate fly ash in large quantities and may generate some bottom ash. Stations which burn coal create both fly ash and bottom ash. Bottom ash is the residue which accumulates on the furnace bottom, and fly ash is the lighter material which is carried over in the flue gas stream.

c. Industrial activities: nuclear powered plants. Nuclear power plants utilize a cycle similar to that used in fossil fueled power plants except that the source of heat is atomic interactions rather than the combustion of fossil fuel. Water serves as both moderator and coolant as it passes through the nuclear reactor core. In a pressurized water reactor, the heated water then passes through a separate heat exchanger where steam is produced on the secondary side. This steam, which contains radioactive materials, drives the turbines. In a boiling water reactor, steam is generated directly in the reactor core and is then piped directly to the turbine. This arrangement produces some radioactivity in the steam and therefore requires some shielding of the turbine and condenser.

d. Significant materials: nuclear powered plants. Few if any significant materials are exposed to storm water at nuclear powered steam electric facilities. Materials that are potentially exposed do not involve steam electric generating equipment, raw materials, or waste products. The materials that are exposed to storm water are office wastes and ground maintenance equipment and tools.

2. Pollutants in Storm Water Discharges Associated With Steam Electric Power Generating Facilities

Steam electric generating facilities are subject to effluent limitations guidelines that limit the number and variety of industrial activities that are included in the storm water program. Pollutants may be present in storm water as a result of outdoor activities associated steam electric power generating facilities such as: material handling and transport operations; waste disposal; and deposition of airborne particulate matter. In addition, sources of pollutants other than storm water, such

as illicit connections,[115] spills, and other improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

Many of the part 2 group application data submittals did not identify individual site characteristics or sources of storm water pollutants which may be responsible for pollutant loadings. In addition, because the industry has been moving toward combined fuel generating facilities, the part 2 sampling data was reviewed in the aggregate.

Table O–1 lists potential pollutant source activities and related pollutants associated with steam electric power generating facilities. The primary and largest potential source of storm water pollutants from fossil-fueled steam electric generating facilities is ash refuse piles.

TABLE O–1.—INDUSTRIAL ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS FOR STEAM ELECTRIC POWER GENERATING FACILITIES

Activity	Pollutant source	Pollutant
Above ground liquid storage tank ..	External corrosion and structural failure	Fuel, oil, heavy metals, ammonia, chlorine, sulfuric acid, sodium hydroxide, and other materials being stored.
	Installation problems	Fuel, oil, heavy metals, ammonia, chlorine, sulfuric acid, sodium hydroxide, and other materials being stored.
	Spills due to operator error	Fuel, oil heavy metals, ammonia, chlorine, sulfuric acid, sodium hydroxide, and other materials being stored.
	Failure of piping systems	Fuel, oil, heavy metals, ammonia, chlorine, sulfuric acid, sodium hydroxide, and other materials being stored.
	Leaks or spills during pumping of liquids from barges, trucks, rail cars to a storage facility.	Fuel, oil, heavy metals, ammonia, chlorine, sulfuric acid, sodium hydroxide, and other materials being stored.
Vehicle and equipment maintenance.	Parts cleaning	Oil, heavy metals, chlorinated solvents, acid/alkaline wastes, ethylene glycol.
	Spills of oil, degreasers, hydraulic fluids, transmission fluid, radiator fluids.	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol.
	Fluids replacement	Oil, arsenic, heavy metals, organics, fuel.
Fueling operations	Spills & leaks during fuel delivery	Fuel, oil, heavy metals.
	Spills caused by "topping off" fuel tanks	Fuel, oil, heavy metal.
	Leaking storage tanks	Fuel, oil, heavy metals.
	Allowing rainfall on the fuel area or storm water to run onto the fuel area.	Fuel, oil, heavy metals.
Coal handling areas	Fugitive dust emissions from coal handling	Suspended solids, copper, iron, aluminum, nickel, and trace metals
	Spills during delivery	Suspended solids, copper, iron, aluminum, nickel, and trace metals.
	Offsite tracking of coal dust	Suspended solids, copper, iron, aluminum, nickel, and trace metals.
Ash handling areas, ash landfills	Spills during transfer of ash to landfills	Suspended solids, chromium, copper, iron, zinc, oil and grease, aluminum.
	Offsite tracking of ash	Suspended solids, chromium, copper, iron, zinc, oil and grease, aluminum.
Scrapyards, reuse sites	Discarded material	Fuel, oils, heavy metals.

The ash composition from oil, on a weight percent basis, is much lower than that of coal. Oil ash rarely exceeds 0.3 percent of the input oil whereas coal ash comprises from 3 to 30 percent of the coal. In general, the ash content increases with increasing asphaltic constituents in which the sulfur acts largely as a bridge between aromatic rings.

The many elements which may appear in oil ash deposits include vanadium, sodium, and sulfur. Compounds containing these elements are found in almost every deposit in boilers fired by residual fuel oil and often constitute the major portion of these deposits. Oil ash, especially from plants using Venezuelan and certain Middle Eastern oil can contain significant amounts of nickel.

Some of the ash-forming constituents in the crude oil had their origin in animal and vegetable matter from which the oil was derived. The remainder is extraneous material resulting from contact of the crude oil with rock structures and salt brines or picked up during refining processes, storage, and transportation. Vanadium, iron, sodium, nickel, and calcium in fuel oil are common in rock strata, but elements including vanadium, nickel, zinc, and copper are believed to come from organic matter from which the petroleum was created.

The ash residue resulting from the combustion of coal is primarily derived from the inorganic matter in the coal. The chemical composition of dry bottom ash and fly ash are quite similar. The major constituents present in coal ash are silica, alumina, ferric oxide, calcium oxide, magnesium oxide, and minor amounts of sodium and potassium oxides. Other parameters which may be present include sulfur trioxide, carbon, boron, phosphorus,

[115] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any of a number of sources including sanitary sewers, industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at steam electric facilities is low yet it still may be applicable at some operations.

uranium, and thorium. The concentration differences can vary considerably from one site to another.[116]

When conducting their data analysis for their 1980 Development Document, the U.S. Environmental Protection Agency (EPA) found that there was no correlation between arsenic, nickel, zinc, copper, and selenium and total suspended solids, whenever their value was 30 mg/L or less.[117]

The quality of storm water runoff from coal handling areas is dependent on pH, as pH influences the release of toxic and heavy metals. Suspended solids levels result when storm water suspends coal particulates. Most of the total dissolved solids concentrations are a consequence of enhanced pyritic oxidation.

Storm water runoff from exposed sources of coal tends to be of an acid nature, primarily as a result of the oxidation of iron sulfide in the presence of oxygen and water.[118] The presence of certain acidophilic, chemoautotrophic bacteria, and a pH of 2.0 to 4.5 generally indicates storm water runoff high in iron, manganese, and total dissolved solids.[119]

Table O–2 and Table O–3 indicates the sampling data results from the part 2 group application submissions. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of outfalls sampled for each of the pollutants. Variations in the minimum and maximum values were found to be small, relative to other industrial sectors in today's proposed permit for the eight conventional pollutants. The range in values, means, and medians for the conventional pollutants sampled were typically low, except for mean total suspended solids. Less than 50 percent of the sampling facilities have submitted sampling data for part 2 of the application.

TABLE O–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER,[1] (mg/L, Except as Noted)

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	76	78	5.7	5.7	0.0	0.0	46.0	37.0	4.3	4.0	20.0	20.0	45.0	37.0
COD	76	77	104.0	69.5	0.0	0.0	1410.0	540.0	32.5	39.5	360.0	280.0	1410.0	540.0
Nitrate+nitrite nitrogen	76	77	5.6	0.6	0.0	0.0	350.0	3.9	0.4	0.5	3.7	3.2	350.0	3.9
Total Kjeldahl nitrogen	76	78	2.4	1.9	0.0	0.0	22.3	19.1	1.3	1.0	5.6	10.0	22.3	19.1
Oil & grease	68	N/A	1.4	N/A	0.0	N/A	20.0	N/A	0.0	N/A	5.0	N/A	20.0	N/A
pH (s.u.)	70	N/A	N/A	N/A	3.8	N/A	9.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total phosphorus	75	78	0.6	0.6	0.0	0.0	8.0	7.2	0.3	0.3	3.1	3.1	8.0	7.2
Tot. suspended solids	76	77	516.3	212.4	0.0	0.0	22790.0	5554.0	44.0	40.0	1200.0	810.0	22790.0	5554.0

[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

TABLE O–3.—Statistics for Toxic Pollutants in Storm Water,[1] (mg/L, Except as Noted)

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
Copper	55	71	0.083	0.029	0.00	0.00	2.62	.370	0.004	0.015	2.62	0.370
Arsenic	34	33	0.168	0.180	0.0	0.00	5.1	5.4	0.005	0.003	5.10	5.4
Iron	55	71	7.228	6.45	0.020	0.040	67.0	191	1.85	1.5	67.00	191.0
Lead	20	17	0.019	0.019	0.0	0.00	0.099	0.073	0.003	0.007	0.099	0.073
Manganese	6	9	0.50	0.185	0.03	0.000	2.1	0.630	0.066	0.050	2.10	0.630

Below is a discussion of data submitted by group applicants:

• *Chemical Oxygen Demand (COD)*—COD measures the total amount of oxygen necessary for oxidation. COD is an effective indicator of levels of biologically resistant organic substances. Higher COD levels, for example, may be attributed to the presence of biologically resistant organics, such as oil and grease. COD data submitted in the part 2 applications from steam electric power generating facilities indicate the following:

—The mean concentrations for grab and composite samples were 104.0 mg/L and 69.5 mg/L, respectively.
—The median concentrations for grab and composite samples were 32.5 mg/L and 39.5 mg/L, respectively.
—The 95th percentile concentration (i.e., 95 percent of the values are below) for grab and composite samples were approximately 360 mg/L and 280 mg/L, respectively.
—The 99th percentile concentration (i.e., 99 percent of the values are below) for grab and composite samples were 1,410 mg/L and 540 mg/L, respectively.

These mean and median COD concentrations are within the recommended load estimates for storm water runoff from residential and commercial areas.[120] However, the maximum COD level exceeds the NURP recommendations for load estimates.

[116] EPA. Effluent Guidelines Division. "Development Document for Effluent Limitations Guidelines and Standards for the Steam Electric Point Source Category." September 1980. (EPA 440/1–80/029-b). Page 131.

[117] EPA. Effluent Guidelines Division. "Development Document for Effluent Limitations Guidelines and Standards for the Steam Electric Point Source Category." September 1980. (EPA 440/1–80/029-b). Page 138.

[118] EPA. Effluent Guidelines Division. "Development Document for Effluent Limitations Guidelines and Standards for the Steam Electric Point Source Category." September 1980. (EPA 440/1–80/029-b). Page 138.

[119] EPA. Effluent Guidelines Division. "Development Document for Effluent Limitations Guidelines and Standards for the Steam Electric Point Source Category." September 1980. (EPA 440/1–80/029-b). Page 138.

[120] EPA. December 1983. "Results of the National Urban Runoff Program."

• *Oil and Grease*—There are several sources of oil and grease from steam electric power generating facilities. These sources include unloading/loading areas; vehicle/equipment maintenance and cleaning; and outdoor storage of vehicles, equipment and castings. Oil and grease emulsions are detrimental to aquatic organisms and inhabitants because: (1) Deposition of oil and grease in bottom sediments can serve to inhibit normal benthic growths, impacting the aquatic food chain; (2) oil and grease emulsion may destroy algae or other plankton; (3) oil and grease emulsions may adhere to the gills of fish exerting a toxic effect to fish; and (4) water insoluble components damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. In addition to environmental impacts, oil and grease impact the aesthetic qualities of water by forming unsightly surface slicks that affect water beaches and shorelines.

Oil and grease data submitted in part 2 applications for steam electric power generating facilities indicate the following:

—The mean concentration was 1.4 mg/L
—The median concentration was 0.0 mg/L
—The 95th percentile concentration (i.e., 95 percent of the values are below) was 6.0 mg/L
—The 99th percentile concentration (i.e., 99 percent of the values are below) was 20.0 mg/L.

• *pH*—pH is a measure of the acidity or alkalinity of a discharge. On the pH scale ranging from zero to fourteen, a value of seven represents neutral conditions in which the concentrations of hydrogen and hydroxyl ions are equal. Values of pH less than seven represent acidic conditions; values greater than seven represent basic conditions.

The pH level is easily measured and is an indication of potential environmental impacts. Storm water discharges with pH values markedly different from the pH values of the receiving stream are potentially detrimental to the environment. At outfalls and prior to complete mixing of storm water discharges with receiving waters, a zone of sudden pH change can damage or kill biota engulfed in the zone of change. Part 2 applications from steam electric power generating facilities indicated that the minimum pH value was 3.8 standard units.

• *Total Suspended Solids (TSS)*—TSS is associated with steam electric power generating facilities because sites have exposure to significant materials like coal and refuse piles. Part 2 of the applications indicated high TSS levels. Suspended solids increase the turbidity of water allowing less light to penetrate the water, thereby reducing photosynthetic activity of aquatic vegetation. Over time, total suspended solids settle out to form deposits that can be detrimental to stream environments.

These deposits may destroy fauna that breed and grow in or near the bottoms of streams and serve as food for fish and other aquatic life. The deposits can also blanket and destroy spawning grounds for fish. TSS data submitted in the part 2 applications for steam electric power generating facilities indicate the following:

—The mean concentrations for grab and composite samples were 516.3 mg/L and 212.4 mg/L, respectively
—The median concentrations for grab and composite samples were 44.0 mg/L and 40.0 mg/L, respectively
—The 95th percentile concentration (i.e., 95 percent of the values are below) for grab and composite samples were 1,200 and 810, respectively
—The 99th percentile concentration (i.e., 99 percent of the values are below) for grab and composite samples were 22,790 mg/L and 5,554 mg/L, respectively.

Storm Water Pollution Prevention Plan Requirements

The conditions that apply to steam electric power generating facilities are founded on the requirements set forth in the baseline general permit for storm water discharges from industrial activities finalized on September 9, 1992 (57 FR 41236). The discussion that follows only addresses conditions that differ from those required in the baseline permit. There are no additional pollution prevention requirements beyond the baseline for nuclear powered steam electric generating facilities.

a. Description of pollutant sources. Under the description of pollutant sources in the storm water pollution prevention plan requirements, permittees are required to include a site map of the facility. The areas required to be identified on the site map now also include the following: Landfills, treatment ponds, scrap yards, general refuse areas, locations of short and long term storage of general materials, and the location of stock pile areas. EPA believes this is appropriate since these areas may potentially be significant sources of pollutants to storm water.

b. Measures and controls. Under the description of measures and controls in the storm water pollution prevention plan requirements, this section proposes that all areas that may contribute pollutants to storm water discharges shall be maintained in a clean, orderly manner. This section also proposes that the following areas must be specifically addressed:

(1) Fugitive dust emissions. The plan must describe measures that prevent or minimize fugitive dust emissions from coal handling areas. The facility shall establish procedures to minimize offsite tracking of coal dust. To prevent offsite tracking the facility may consider specially designed tires, or washing vehicles in a designated area before they leave the site, and controlling the wash water.

(2) Delivery vehicles. The plan must describe measures that prevent or minimize contamination of storm water runoff from delivery vehicles arriving on the plant site. At a minimum the facility must:

• Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container.
• Develop procedures to control leakage or spillage from vehicles or containers, and ensure that proper protective measures are available for personnel and environment.

(3) Fuel oil unloading areas. The plan must describe measures that prevent or minimize contamination of storm water runoff from fuel oil unloading areas. At a minimum the facility must use the following measures or their equivalent:

• Use containment curbs in unloading areas.
• During deliveries station personnel familiar with spill prevention and response procedures must be present to ensure that any leaks or spills are immediately contained and cleaned up.
• Use spill and overflow protection (drip pans, drip diapers, and/or other containment devices shall be placed beneath fuel oil connectors to contain any spillage that may occur during deliveries or due to leaks at such connectors).

(4) Chemical loading/unloading areas. The plan must describe measures that prevent or minimize the contamination of storm water runoff from chemical loading/unloading areas. At a minimum the permittee must use the following measures or their equivalent:

• Use containment curbs at chemical loading/unloading areas to contain spills.
• During deliveries station personnel familiar with spill prevention and response procedures must be present to

ensure that any leaks or spills are immediately contained and cleaned up.

Where practicable chemical loading/unloading areas should be covered, and chemicals should be stored indoors.

(5) Miscellaneous loading/unloading areas. The plan must describe measures that prevent or minimize the contamination of storm water runoff from loading and unloading areas. The facility may consider covering the loading area, minimizing storm water runon to the loading area by grading, berming, or curbing the area around the loading area to direct storm water away from the area, or locate the loading/unloading equipment and vehicles so that leaks can be controlled in existing containment and flow diversion systems.

(6) Liquid storage tanks. The plan must describe measures that prevent or minimize contamination of storm water runoff from above ground liquid storage tanks. At a minimum the facility must employ the following measures or their equivalent:

- Use protective guards around tanks.
- Use containment curbs.
- Use spill and overflow protection (drip pans, drip diapers, and/or other containment devices shall be placed beneath chemical connectors to contain any spillage that may occur during deliveries or due to leaks at such connectors)
- Use dry cleanup methods.

(7) Large bulk fuel storage tanks. The plan must describe measures that prevent or minimize contamination of storm water runoff from liquid storage tanks. At a minimum the facility must employ the following measures or their equivalent:

- Comply with applicable State and Federal laws, including Spill Prevention Control and Countermeasures (SPCC)
- Containment berms.

(8) The plan must describe measures to reduce the potential for an oil or chemical spill, or reference the appropriate section of their SPCC plan. At a minimum the structural integrity of all above ground tanks, pipelines, pumps and other related equipment shall be visually inspected on a weekly basis. All repairs deemed necessary based on the findings of the inspections will be completed immediately to reduce the incidence of spills and leaks occurring from such faulty equipment.

(9) Oil bearing equipment in switchyards. The plan must describe measures to reduce the potential for storm water contamination from oil bearing equipment in switchyard areas. The facility may consider level grades and gravel surfaces to retard flows and limit the spread of spills; collection of storm water runoff in perimeter ditches.

(10) Residue hauling vehicles. All residue hauling vehicles shall be inspected for proper covering over the load, adequate gate sealing and overall integrity of the body or container. Vehicles without load covers or adequate gate sealing, or with poor body or container conditions must be repaired as soon as practicable.

(11) Ash loading areas. Plant procedures shall be established to reduce and/or control the tracking of ash or residue from ash loading areas including, where practicable, requirements to clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before each loaded vehicle departs.

(12) Areas adjacent to disposal ponds or landfills. The plan must describe measures that prevent or minimize contamination of storm water runoff from areas adjacent to disposal ponds or landfills. The facility must develop procedures to:

- Reduce ash residue which may be tracked on to access roads traveled by residue trucks or residue handling vehicles.
- Reduce ash residue on exit roads leading into and out of residue handling areas.

(13) Landfills, scrapyard, general refuse sites. For landfills, scrapyards, and general refuse sites, the permittee shall use the applicable Best Management Practices outlined in Parts XI.L. and XL.N. of today's proposed (Storm Water Discharges From Landfills, Land Application Sites, and Open Dumps and Scrap and Waste Material Processing and Recycling Facilities, respectively).

(14) Maintenance activities. For vehicle maintenance activities performed on the plant site, the permittee shall use the applicable Best Management Practices outlined in Part XI.Q. of today's proposed permit (Storm Water Discharges From Vehicle Maintenance or Equipment Cleaning Operations at Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, or the United States Postal Service).

(15) Material storage areas. The plan must describe measures that prevent or minimize contamination of storm water from material storage areas (including areas used for temporary storage of miscellaneous products and construction materials stored in lay down areas). The facility may consider flat yard grades, runoff collection in graded swales or ditches, erosion protection measures at steep outfall sites (e.g., concrete chutes, riprap, stilling basins), covering lay down areas, storing the materials indoors, covering the material with a temporary covering made of polyethylene, polyurethane, polypropylene, or hypalon. Storm water runon may be minimized by constructing an enclosure or building a berm around the area.

Based on information provided in part 1 of the group application process, the proposed management practices are commonly used at many steam electric power generating facilities. EPA believes that the incorporation of management practices to accomplish the objectives described above, in conjunction with the baseline requirements, will substantially reduce the potential for these activities and areas to significantly contribute to the pollution of storm water discharges. EPA believes that these requirements provide the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with different facilities.

(16) Inspections. Under the inspection requirements of the storm water pollution prevention plan elements, this section proposes that in addition to the comprehensive site evaluation required under Part VIII.C.4. of today's proposed permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in the inspection: coal handling areas, fueling areas, loading/unloading areas, switchyards, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks and long term and short term material storage areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained onsite.

The purpose of the inspections is to check on the implementation of the storm water pollution prevention plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis.

4. Pollutant Control Measures Required Through Other EPA Programs. The Agency recognizes that other EPA programs address pollution prevention at steam electric power generating facilities. The Oil Pollution Prevention Program (40 CFR part 112) has established procedures to prevent the discharge of oil from nontransportation related onshore and offshore facilities. This program requires owners or operators of onshore and offshore facilities to prepare a Spill Prevention

Control and Countermeasure Plan (SPCC Plan) for their facility if they could reasonably be expected to discharge oil, into or upon the navigable waters of the United States or adjoining shorelines, in quantities that:

- Violate applicable water quality standards, or;
- Cause a film or sheen upon or discoloration of the surface of the water or adjoining shorelines or cause a sludge or emulsion to be deposited beneath the surface of the water or upon adjoining shorelines.

Some major requirements of the SPCC plan include the following:

- A description of spill and corrective actions taken.
- Appropriate containment and/or diversionary structures or equipment to prevent discharged oil from reaching a navigable water course. If installation of structures to prevent discharged oil from reaching the navigable waters is not practicable, the owner or operator should clearly demonstrate such impracticability and provide a spill contingency plan and a written commitment of manpower, equipment, and materials required to expeditiously control and remove oil.
- Drainage from diked storage areas should be restrained by valves or other positive means to prevent a spill or excessive leakage of oil into the drainage system or in-plant effluent treatment system.
- Flapper type drain valves should not be used to drain diked areas.
- Plant drainage systems from undiked areas should, if possible, flow into ponds, lagoons or catchment basins designed to retain oil or return it to the facility.
- If plant drainage is not engineered as above, the final discharge of all in-plant ditches should be equipped with a diversion system that could, in the event of an uncontrolled spill, return the oil to the plant.
- Requirements for bulk storage tanks include, but are not limited to, the following:

—Material and construction of tanks need to be compatible with the material stored and conditions of storage such as pressure, temperature, etc.
—Secondary containment should be provided for the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation.
—Drainage of rainwater from the diked area into a storm drain or an effluent discharge that empties into an open in-plant water course, lake or pond and bypassing the in-plant treatment system may be acceptable if: bypass valve is normally sealed closed; inspection of runoff rain water ensures compliance with applicable water quality standards and will not cause a harmful discharge and adequate records are kept.
—Above-ground tanks should be subject to periodic integrity testing.
—New and old tank installations should, as practicable, be fail safe engineered

Under the Resource Conservation and Recovery Act (RCRA) specific requirements have been established which address generators of hazardous wastes. Regulations have been developed which address the accumulation of hazardous waste onsite prior to transport to a hazardous waste disposal facility. These regulations address proper storage of hazardous wastes, emergency planning, and training personnel in proper handling procedures for hazardous wastes.

5. Numeric Effluent Limitations

Coal pile runoff is subject to the effluent guidelines described in Part VI.F. of this factsheet. However, steam electric generating facilities must comply with the requirement of Part VI.F. immediately upon permit issuance. Steam electric generating facilities are not permitted to take 3 years to meet this requirement.

6. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that steam electric power generating facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires steam electric power generating facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table O–4. The pollutants listed in Table O–4 were found to be above levels of concern for a significant portion of steam electric power generating facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at levels of concern from steam electric power generating facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from steam electric power generating facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table O–4. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE O–4.—MONITORING REQUIREMENTS FOR STEAM ELECTRIC POWER GENERATING FACILITIES

Pollutants of concern	Cut-off concentration
Total recoverable copper	0.009 mg/L
Total recoverable aluminum.	0.75 mg/L
Total recoverable arsenic	0.00018 mg/L
Total recoverable iron	0.3 mg/L
Total recoverable lead	0.0337 mg/L
Total recoverable manganese.	0.05 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table O–4, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table O–4, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE O–5.—SCHEDULE OF MONITORING

2nd year of permit coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table O–4, then quarterly sampling is required during the fourth year of the permit • If average concentration is less than or equal to the value listed in Table O–4, then no further sampling is required for that parameter.
4th year of permit coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year two of the permit is greater than the value listed in Table O–4. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

The monitoring cut off concentrations listed in Table O–4 are not numerical effluent limitations. These values represent a level of pollutant discharge which facilities may achieve through the implementation of pollution prevention plans. At least half of the facilities which submitted Part 2 data, reported concentrations less than or equal to the values listed in Table O–4. Facilities which achieve average discharge concentrations which are less than or equal to the values in Table O–4 are not relieved from the pollution prevention plan requirements or any other requirements of the permit.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities which do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within three months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first thirty minutes of the discharge. If the collection of a grab sample during the first thirty minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first thirty minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required at steam electric generating facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that whenever practicable the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: The

examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained on site with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands on inspection will enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated with Industrial Activity. These notices set out requirements for annual monitoring for several parameters for discharges from steam electric power generating facilities. These notices specifically require coal-fired steam electric facilities to monitor their storm water discharges for oil and grease, pH, total suspended solids, total recoverable copper, total recoverable nickel, and total recoverable zinc. In addition, the baseline general permit established monitoring requirements for oil-fired steam electric power generating facilities. The baseline specifically requires oil-fired steam electric facilities to monitor their storm water discharges for oil and grease, chemical oxygen demand, total suspended solids, pH, and any pollutant limited in an effluent guideline to which the facility is subject. Today's proposed permit contains monitoring requirements different than those in the baseline permit. EPA requests comment upon the difference between the monitoring requirements set out for steam electric power generating facilities in the September 1992, General Permits and those required in today's proposed permit.

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.O.6 of today's proposed fact sheet.

a. Monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittee with facilities identified in Parts XI.O.5.a.(1) through XI.O.5.a.(2) below must monitor storm water discharges for the listed parameters on a frequency identified in the applicable paragraph, except as provided in VI.C. (Sampling Waiver and Representative Discharge). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

(1) Storm water discharges from the industrial portions of coal-fired, and coal/oil-fired steam electric power generating facilities shall monitor for the following parameters (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 Code of Federal Regulations (CFR) part 423—which are not eligible for coverage under this permit):

TABLE O–6.—MONITORING REQUIREMENTS FOR COAL-FIRED AND COAL/OIL-FIRED STEAM ELECTRIC POWER GENERATING FACILITIES

Parameter	Units	Frequency	Sample Type[1]
Total flow	mg	Quarterly	Estimate.
Oil and grease	mg/L	Quarterly	Grab.
pH	s.u.	Quarterly	Grab.
Total suspended solids (TSS)	mg/L	Quarterly	Grab & Composite.
Total recoverable nickel[ii]	mgL	Quarterly	Grab & Composite.
Total recoverable zinc[ii]	mg/L	Quarterly	Grab & Composite.
Total recoverable copper[ii]	mg/L	Quarterly	Grab & Composite.
Chemical oxygen demand[iii] (COD)	mg/L	Quarterly	Grab & Composite.

[1] For discharges from holding ponds or other impoundments with a retention period greater than 24 hours (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected), a minimum of one grab sample may be taken in lieu of a grab sample and a composite sample.

[ii] In addition to monitoring for flow, oil and grease, and TSS, storm water discharges which drain from coal handling sites (other than discharges in whole or in part from coal piles subject to storm water effluent guidelines at 40 CFR Part 423—which are not eligible for coverage under this permit) shall be monitored for total recoverable copper, total recoverable nickel, and total recoverable zinc.

[iii] Chemical Oxygen Demand shall be monitored at Steam Electric Power Generating Facilities which utilize coal and oil in their production process.

In addition to the above sampling parameters the permittee is required to monitor storm water discharges for any pollutant limited in an effluent guideline to which the facility is subject. Sampling frequency shall be quarterly, and sample type shall be grab and composite.

Monitoring must be conducted at least once in each designated period unless there is insufficient rainfall or snowmelt to produce a runoff event.

Sampling shall be conducted in each of the following periods for the purposes of meeting the monitoring requirements of this permit: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

(2) Storm water discharges from the industrial portions of oil-fired, gas-fired, or oil/gas-fired steam electric power generating facilities shall monitor for the following parameters:

TABLE O–7.—MONITORING REQUIREMENTS FOR OIL-FIRED, GAS-FIRED, AND OIL/GAS-FIRED STEAM ELECTRIC POWER GENERATING FACILITIES

Parameter	Units	Frequency	Sample type[1]
Total flow	MG	Quarterly	Estimate.
Oil & grease	mg/L	Quarterly	Grab.
pH	mg/L	Quarterly	Grab.
Total suspended solids (TSS)	mg/L	Quarterly	Grab & Composite.
Chemical oxygen demand (COD)	mg/L	Quarterly	Grab & Composite.

[1] For discharges from holding ponds or other impoundments with a retention period greater than 24 hours (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected), a minimum of one grab sample may be taken in lieu of a grab sample and a composite sample.

In addition to the above sampling parameters, the permittee is required to monitor storm water discharges for any pollutant limited in an effluent guideline to which the facility is subject. Sampling frequency shall be quarterly, and sample type shall be grab and composite.

Monitoring must be conducted at least once in each designated period unless there is insufficient rainfall or snow-melt to produce a runoff event. Sampling shall be conducted in each of the following periods for the purposes of meeting the monitoring requirements of this permit: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

b. Sample type—(1) All samples shall be collected from a discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 48 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 60 minutes of the discharge. If the collection of a grab sample during the first 60 minutes is impracticable, a grab sample can be taken during the first 3 hours of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 60 minutes was impracticable.

(2) The composite sample shall either be flow-weighted or time-weighted. Composite samples may be taken with a continuous sampler or as a combination of a minimum of three sample aliquot taken in each hour of discharge for the entire discharge or for the first 3 hours of the discharge, with each aliquot being separated by a minimum period of 15 minutes.

c. Permittee with facilities identified in Part XI.O.7.a. (Monitoring Requirements) are not required to submit monitoring results, unless required in writing by the Director.

However, permittee must retain monitoring results in accordance with Part VI.E.4. (Retention of Records).

Quarterly visual inspections of a storm water discharge from each outfall are required. The visual inspection of storm water outfalls shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

P. Storm Water Discharges Associated With Industrial Activity From Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and United States Postal Service Transportation Facilities

1. Discharges Covered Under This Section

Special conditions have been developed for ground transportation facilities and rail transportation facilities that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) and equipment cleaning operations. Vehicle and equipment maintenance is a broad term used to include the following activities: vehicle and equipment fluid changes, mechanical repairs, parts cleaning, sanding, refinishing, painting, fueling, locomotive sanding (loading sand for traction), storage of vehicles and equipment waiting for repair or maintenance, and storage of the related materials and waste materials, such as oil, fuel, batteries, tires, or oil filters. Equipment cleaning operations include areas where the following types of activities take place: vehicle exterior wash down, interior trailer washouts,

tank washouts, and rinsing of transfer equipment. Any storm water discharges from facilities where such activities take place are subject to the special conditions described in Part XI.P. of today's proposed permit.

The conditions proposed in this section apply to storm water discharges from vehicle and equipment maintenance shops or cleaning operations located on any of the industrial facilities covered under the storm water application regulations (40 CFR 122.26) and applying for coverage under this permit.

As background, the storm water application regulations define storm water discharge associated with industrial activity at 40 CFR 122.26(b)(14). Category (viii) of this definition includes transportation facilities classified as Standard Industrial Classification (SIC) codes 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 that have vehicle and equipment maintenance shops, equipment cleaning operations, or airport deicing operations. The category further states that only those portions of the facility that are either involved in vehicle and equipment maintenance (including vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations are associated with industrial activity. The facilities that would potentially be covered by this section of today's proposed permit are commonly assigned SIC codes 40, 41, 42, 43, and 5171, or any other SIC code described in the eligibility section of today's proposed permit.

SIC code 40 includes facilities primarily engaged in furnishing transportation by line-haul railroad, and switching and terminal establishments. The following types of facilities are examples of those covered under SIC code 40: Electric railroad line-haul operation, railroad line-haul operation, interurban railways, beltline railroads, logging railroads, railroad terminals, and stations operated by railroad terminal companies.

SIC code 41 includes facilities primarily engaged in furnishing local and suburban transportation, such as those providing transportation in and around a municipality by bus, rail, or subway. The following types of facilities are examples of those covered under SIC code 41: bus line operation, airport transportation service (road or rail), cable car operation, subway operation, ambulance service, sightseeing buses, van pool operation, limousine rental with drivers, taxicab operation, and school buses not operated by the educational institution.

SIC code 42 includes facilities providing local or long-distance trucking, transfer, and/or storage services. The following types of facilities are examples of those covered under SIC code 42: hauling by dump truck, trucking timber, contract mail carriers, furniture moving, garbage collection without disposal, over-the-road trucking, long distance trucking, and freight trucking terminal.

SIC code 43 includes all establishments of the United States Postal Service.

SIC code 5171 includes establishments engaged in the wholesale distribution of crude petroleum and petroleum products from bulk liquid storage facilities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Pollutants Found in Storm Water Discharges From Vehicle and Equipment Maintenance and Cleaning Operations

The following table lists potential pollutant source activities that commonly take place at vehicle and equipment maintenance and equipment cleaning operations.

TABLE P–1.—POTENTIAL POLLUTANT SOURCE ACTIVITIES AT VEHICLE AND EQUIPMENT MAINTENANCE

Activity	Pollutant source	Pollutant
Fueling	Spills and leaks during fuel delivery	Fuel, oil, heavy metals.
	Spills caused by "topping off" fuel tanks	Fuel, oil, heavy metals.
	Rainfall falling on the fuel area or storm water running onto the fuel area.	Fuel, oil, heavy metals.
	Hosing or washing down fuel area	Fuel, oil, heavy metals.
	Leaking storage tanks	Fuel, oil, heavy metals.
Vehicle and equipment maintenance.	Parts cleaning	Chlorinated solvents, oil, heavy metals, acid/alkaline wastes.
	Waste disposal of greasy rags, oil filters, air filters, batteries, hydraulic fluids, transmission fluid, radiator fluids, degreasers.	Oil, heavy metals, chlorinated solvents, acid/alkaline wastes, ethylene glycol.
	Spills of oil, degreasers, hydraulic fluids, transmission fluid, radiator fluids.	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol.
	Fluids replacement, including oil, hydraulic fluids, transmission fluid, radiator fluids.	Oil, arsenic, heavy metals, organics, chlorinated solvents, ethylene glycol.
Outdoor vehicle and equipment storage and parking.	Leaking vehicle fluids including hydraulic lines and radiators, leaking or improperly maintained locomotive on-board drip collection systems, brake dust.	Oil, hydraulic fluids, arsenic, heavy metals, organics, fuel.
Painting areas	Paint and paint thinner spills	Paint, spent chlorinated solvents, heavy metals.
	Spray painting	Paint solids, heavy metals.
	Sanding or paint stripping	Dust, paint solids, heavy metals.

TABLE P–1.—POTENTIAL POLLUTANT SOURCE ACTIVITIES AT VEHICLE AND EQUIPMENT MAINTENANCE—Continued

Activity	Pollutant source	Pollutant
	Paint clean-up	Paint, spent chlorinated solvents, heavy metals.
Railroad locomotive sanding	Loading traction sand on locomotives	Sediment.
Vehicle or equipment washing areas.	Washing or steam cleaning	Oil, detergents, heavy metals, chlorinated solvents, phosphorus, salts, suspended solids.
Liquid storage in above ground storage.	External corrosion and structural failure	Fuel, oil, heavy metals, materials being stored.
	Installation problems	Fuel, oil, heavy metals, materials being stored.
	Spills and overfills due to operator error	Fuel, oil, heavy metals, materials being stored.
	Failure of piping systems (pipes, pumps, flanges, couplings, hoses, and valves).	Fuel, oil, heavy metals, materials being stored.
	Leaks or spills during pumping of liquids from barges, trucks, or rail cars to a storage facility.	Fuel, oil, heavy metals, materials being stored.
Cold weather activities	Salt application	Sodium chloride.
	Dirt/ash application	Suspended solids, heavy metals.
Improper connections to storm sewer.	Process wastewater	Dependent on operations.
	Sanitary water	Bacteria, biochemical oxygen demand (BOD), suspended solids.
	Floor drains	Oil, heavy metals, chlorinated solvents, fuel, ethylene glycol.
	Vehicle washwaters	Oil, detergents, metals, chlorinated solvents, phosphorus, suspended solids.
	Radiator flushing wastewater	Ethylene glycol.
	Leaky underground storage tanks	Materials stored or previously stored.

Sources: EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Refinishing Industry." EPA/625/7–91/016.

EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Repair Industry." EPA/625/7–91/013.

EPA, Office of Research and Development. May 1992. "Facility Pollution Prevention Guide." EPA/600/R–92/088.

EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

U.S. Postal Service. May 1992. "NPDES/Storm Water Guide." AS–554.

The part 2 group application data were examined based on SIC code classification. Tables P–2 through P–7 present summary statistics on each of the SIC code groupings.

TABLE P–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS, MG/L FOR FACILITIES ASSIGNED SIC MAJOR GROUP 40[1]

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	116	105	11.3	9.3	0.0	0.0	193.0	155.0	5.0	5.0	34.0	26.0	85.0	50.0
COD	117	102	318.1	189.5	0.0	0.0	11,800.0	5,470.0	118.0	89.0	781.0	489.0	1,840.0	759.0
Nitrate + Nitrite Nitrogen	118	102	1.59	1.41	0.00	0.000	19.50	18.00	0.920	0.775	5.07	4.26	9.76	7.19
Total Kjeldahl Nitrogen	118	102	3.75	2.48	0.00	0.000	72.00	18.30	1.500	1.400	13.40	8.60	44.00	13.00
Oil & Grease	118	N/A	9.6	N/A	0.0	N/A	460.0	N/A	0.0	N/A	27.0	N/A	160.0	N/A
pH	114	N/A	N/A	N/A	3.6	N/A	10.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	118	102	1.47	0.92	0.00	0.000	23.30	8.52	0.540	0.450	5.10	3.05	13.20	5.02
Total Suspended Solids	118	102	517	249	0	0	4,680	2,620	172	90	2,800	917	3,910	1,780

[1] Applicants that did not report the units of measurements for the reported values were not included in these statistics.
[2] Composite samples.

TABLE P–3.—STATISTICS FOR CONVENTIONAL POLLUTANTS, MG/L FOR FACILITIES ASSIGNED SIC MAJOR GROUP 41[1]

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	50	50	15.9	12.3	0.0	0.0	235.3	104.8	5.5	5.3	48.0	58.0	235.3	104.8
COD	51	50	51.4	39.2	0.0	0.0	376.0	216.0	18.5	18.4	261.0	139.0	376.0	216.0
Nitrate + Nitrite Nitrogen	50	48	14.39	7.66	0.000	0.10	181.4	104.00	1.79	1.30	71.00	39.00	181.40	104.00
Total Kjeldahl Nitrogen	49	49	4.22	2.37	0.00	0.00	81.26	15.74	1.82	1.20	9.00	5.10	81.26	15.74
Oil & Grease	59	N/A	47.1	N/A	0.0	N/A	771.0	N/A	6.0	N/A	252.0	N/A	771.0	N/A
pH	58	N/A	N/A	N/A	4.7	N/A	9.4	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	52	50	0.92	0.65	0.00	0.00	7.50	7.00	0.33	0.32	3.90	2.91	7.50	7.00

TABLE P–3.—STATISTICS FOR CONVENTIONAL POLLUTANTS, MG/L FOR FACILITIES ASSIGNED SIC MAJOR GROUP 41 [i]—Continued

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp [ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
Total Suspended Solids	50	51	246	137	0	0	2320	802	70	41	998	600	2320	802

[i] Applicants that did not report the units of measurements for the reported values were not included in these statistics.
[ii] Composite samples.

TABLE P–4.—STATISTICS FOR CONVENTIONAL POLLUTANTS, MG/L FOR FACILITIES ASSIGNED SIC MAJOR GROUP 42 [i]

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp [ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	236	211	16.5	9.1	0.0	0.0	510	66.0	7.0	5.6	60.0	30.0	180.0	56.0
COD	242	210	146.1	82.0	0.0	0.0	1800.0	600.0	79.0	50.5	580.0	230.0	1074.0	509.0
Nitrate+Nitrite Nitrogen	234	210	1.47	0.72	0.00	0.00	90.80	50.50	0.61	0.49	3.96	4.64	13.40	15.65
Total Kjeldahl Nitrogen	241	210	2.26	1.47	0.00	0.00	24.00	15.00	1.40	1.10	6.80	3.60	17.10	6.70
Oil & Grease	245	N/A	14.0	N/A	0.0	N/A	1340.0	N/A	2.8	N/A	29.0	N/A	110.0	N/A
pH	215	N/A	N/A	N/A	2.6	N/A	9.5	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	238	208	1.09	0.61	0.00	0.00	37.40	6.80	0.32	0.29	2.80	1.90	14.00	6.16
Total Suspended Solids	242	210	466	360	0	0	4700	20900	159	N/A	1890	1200	3400	1800

[i] Applicants that did not report the units of measurements for the reported values were not included in these statistics.
[ii] Composite samples.

TABLE P–5.—STATISTICS FOR CONVENTIONAL POLLUTANTS, MG/L FOR FACILITIES ASSIGNED SIC MAJOR GROUP 42 [i]

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp [ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	22	22	8.1	9.2	0.0	0.0	25.0	52.0	5.5	4.8	20.0	32.0	25.0	62.0
COD	22	22	51.4	33.8	5.6	0.0	350.0	190.0	26.5	19.5	200.0	80.0	350.0	190.0
Nitrate+Nitrite Nitrogen	22	22	0.52	0.75	0.11	0.07	1.30	1.80	0.40	0.61	1.20	1.60	1.30	1.80
Total Kjeldahl Nitrogen	20	22	1.80	1.91	0.0	0.0	11.00	11.00	1.05	0.97	5.10	6.00	11.00	11.00
Oil & Grease	22	N/A	5.4	N/A	0.0	N/A	21.0	N/A	4.4	N/A	19.0	N/A	21.00	N/A
pH	22	N/A	N/A	N/A	0.1	N/A	8.4	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	22	22	0.46	0.47	0.00	0.00	2.50	3.40	0.28	0.20	2.10	3.00	2.50	3.40
Total Suspended Solids	21	22	16	13	0	0	77	86	41	59	72	77	86	

[i] Applicants that did not report the units of measurements for the reported values were not included in these statistics.
[ii] Composite samples.

TABLE P–6.—STATISTICS FOR CONVENTIONAL POLLUTANTS, MG/L FOR FACILITIES CLASSIFIED AS SIC MAJOR GROUP 5171 [i]

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp [ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	11	10	27.7	10.2	1.3	0.0	120.0	31.0	8.0	9.0	120.0	31.0	120.0	31.0
COD	11	10	118.3	75.9	15.0	9.3	390.0	200.0	94.0	60.5	390.0	200.0	390.0	200.0
Nitrate + Nitrite Nitrogen	11	10	1.07	0.74	0.0	0.0	5.1	2.9	0.35	0.39	5.10	2.90	5.10	2.90
Total Kjeldahl Nitrogen	10	9	2.60	2.02	0.00	0.00	5.80	4.60	2.80	2.00	5.80	4.60	5.80	4.60
Oil & Grease	11	N/A	8.8	N/A	0.0	N/A	28.0	N/A	5.4	N/A	28.0	N/A	28.0	N/A
pH	10	N/A	N/A	N/A	6.0	N/A	9.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	11	10	0.61	0.45	0.00	0.04	4.60	2.00	0.12	0.27	4.60	2.00	4.60	2.00
Total Suspended Solids	11	10	253	151	6	0	1090	560	106	93	1090	560	1090	560

[i] Applicants that did not report the units of measurements for the reported values were not included in these statistics.
[ii] Composite samples.

TABLE P–7.—STATISTICS FOR CONVENTIONAL POLLUTANTS, MG/L FOR FACILITIES CLASSIFIED AS ANY SIC MAJOR GROUPS OTHER THAN 40, 41, 42, 43, OR 5171[i]

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	400	375	17.1	11.1	0.0	0.0	510.0	123.0	8.0	6.0	60.5	41.0	150.0	78.0
COD	406	374	135.2	85.6	0.0	0.0	2360.0	2640.00	64.0	48.0	496.0	250.0	1074.0	600.0
Nitrate + Nitrite Nitrogen	399	372	2.99	1.99	0.00	0.000	181.40	104.00	0.610	0.515	9.00	5.10	71.00	39.00
Total Kjeldahl Nitrogen	404	372	2.69	2.05	0.00	0.000	81.26	100.00	1.400	1.140	7.70	6.30	23.50	15.00
Oil & Grease	418	N/A	16.4	N/A	0.0	N/A	1340.0	N/A	2.8	N/A	41.0	N/A	252.0	N/A
pH	380	N/A	N/A	N/A	0.1	N/A	9.5	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	405	372	1.12	0.73	0.00	0.000	37.40	26.20	0.330	0.295	3.90	2.91	14.20	6.80
Total Suspended Solids	406	375	503	454	0	0	34367	65733	104	67	1890	1100	3550	2433

[i] Applicants that did not report the units of measurements for the reported values were not included in these statistics.
[ii] Composite samples.

In comparing the data with existing State NPDES storm water permit limitations and storm water effluent guidelines (see Table P–8), EPA found the following pollutants to be of concern for all SIC code groupings: chemical oxygen demand, oil and grease, pH, and total suspended solids.

TABLE P–8.—STORM WATER POLLUTANTS OF CONCERN COMPARISONS

[all values in mg/L except where noted]

Parameter	MO permit[i] (daily max/monthly avg)	AL permit[ii] (daily max/monthly avg)	OR permit[iii] (Daily Max)	Louisiana storm water quality standard (Daily Max)	NURP—residential or commercial land use	Storm Water Effluent Guidelines (daily max/monthly avg)
BOD	.....	.....	.....	.....	12	.....
COD	.....	.....	.....	[iv]100	82	[v]200/100
NO2 + NO3	.....	.....	.....	.....	0.66	.....
TKN	.....	.....	.....	.....	1.90	.....
O & G	15/10	15/10	10	[vi]15	.....	.....
pH	.....	.....	6-9 s.u.	.....	.....	[vii]6-9 s.u.
Total P	.....	1.0	.....	.....	0.42	[viii]105/35
TSS	100/50	50/30	.....	.....	180	[ix]20/10
BETX	.....	200/200µg/L	.....	.....	.....	.....

[i] Draft NPDES permit by the State of Missouri Department of Natural Resources for firms engaged in motor freight transportation and warehousing (permit No. MO–S240000).
[ii] Draft NPDES permit by Alabama Department of Environmental Management for storm water discharges associated with vehicle and equipment storage, maintenance, repair, and washing (permit no. ALG140000).
[iii] Final NPDES permit issued by the State of Oregon, Department of Environmental Quality for transportation facilities classified as SIC codes 40, 41, 42 (except 4221–4225), 43, 44, 45, and 5171 (permit no. 1200–T)
[iv] Standard for COD applies to runoff from Oil & Gas Exploration and Production Facilities (LAC 33:IX.708).
[v] Ore Mining and dressing (40 CFR Part 440, Subpart C).
[vi] Standard applies to all storm water discharges (LAC 33:IV.708).
[vii] Cement Manufacturing (40 CFR Part 411); Fertilizer Manufacturing (40 CFR Subpart B); Petroleum Refining (40 CFR Part 419); Steam Electric Power Generating (40 CFR Part 423); Coal Mining (40 CFR Part 434); Mineral Mining (40 CFR Part 436); Ore Mining and Dressing (40 CFR Part 440); and Paving and Roofing Materials (40 CFR Part 443).
[viii] Fertilizer Manufacturing 40 CFR Part 418 Subpart A.
[ix] Mineral Mining (40 CFR Part 436, Subpart AL).

Table P–9 lists the pollutant sources for each of the main pollutants of concern.

TABLE P–9.—PARAMETER/SOURCE RELATIONSHIPS

Parameter	Pollutant Sources
Chemical oxygen demand (COD).	Ethylene glycol, fuels, paints, solvents, degreasers.
Oil & grease ..	Used oil, fuels, lubricating fluids, fuel oil, transmission fluid.

TABLE P–9.—PARAMETER/SOURCE RELATIONSHIPS—Continued

Parameter	Pollutant Sources
pH	Battery acids, detergents, other acidic or alkaline materials.
Total suspended solids (TSS).	Bare soils, tracked sediment, vehicle washwaters.
MBAs (surfactants).	Washwaters, leaking detergent storage.

The mean and median pollutant levels associated with facilities providing trucking, transfer, and/or storage services (SIC 42) and U.S. Postal Service facilities (SIC 43) were lower than those associated with the other ground transportation groups. However, there were significant differences between the mean and the median for most parameters, indicating a high variability in the data. On the whole, these three groups, in their part 1 group applications, described more storm water management practices at their facilities than the other ground transportation groups.

3. Options for Controlling Pollutants.

The measures commonly implemented to reduce pollutants in storm water associated with vehicle and equipment maintenance and equipment cleaning operations are generally uncomplicated practices. The following table identifies best management practices (BMPs) associated with different activities that routinely take place at vehicle and equipment maintenance and equipment cleaning operations.

TABLE P–10.—COMMON STORM WATER BEST MANAGEMENT PRACTICES FOR ACTIVITIES AT VEHICLE AND EQUIPMENT MAINTENANCE

Activity	BMPs
Fueling	Use spill and overflow protection. Minimize runon of storm water into the fueling area by grading the area such that storm water only runs off. Reduce exposure of the fuel area to storm water by covering the area. Use dry cleanup methods for fuel area rather than hosing the fuel area down. Use proper petroleum spill control. Perform preventive maintenance on storage tanks to detect potential leaks before they occur. Inspect the fueling area to detect problems before they occur. Train employees on proper fueling techniques.
Vehicle and equipment maintenance	Maintain an organized inventory of materials used in the maintenance shop. Dispose of greasy rags, oil filters, air filters, batteries, spent coolant, and degreasers properly. Label and track the recycling of waste material (e.g., used oil, spent solvents, batteries). Drain oil filters before disposal or recycling. Drain and contain all fluids from wrecked vehicles and "parts" cars. Store cracked batteries in a nonleaking secondary container. Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers. Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets. Plug floor drains that are connected to the storm or sanitary sewer; if necessary, install a sump that is pumped regularly. Inspect the maintenance area regularly for proper implementation of control measures. Train employees on proper waste control and disposal procedures.
Outdoor vehicle and equipment storage and parking.	Use drip pans under all vehicles and equipment waiting for maintenance. Cover the storage area with a roof. Inspect the storage yard for filling drip pans and other problems regularly. Train employees on procedures for storage and inspection items.
Locomotive sanding areas	Cover sand storage piles. Install sediment traps. Install curbs or dikes around storage piles to minimize storm water runon.
Painting areas	Keep paint and paint thinner away from traffic areas to avoid spills. Spray paint in an Occupational Safety and Health Act (OSHA) approved hood. Use effective spray equipment that delivers more paint to the target and less over-spray. Avoid sanding in windy weather and collect and dispose of waste properly. Recycle paint, paint thinner, and solvents. Inspect painting procedures to ensure that they are conducted properly. Train employees on proper sanding, painting, and spraying techniques.
Vehicle or equipment washing areas	Avoid washing parts or equipment outside. Use phosphate-free biodegradable detergents. Designate an area for cleaning activities. Contain and recycle washwaters. Ensure that washwaters drain well. Inspect cleaning area regularly. Train employees on proper washing procedures.
Liquid storage in above ground storage	Maintain good integrity of all storage containers. Install safeguards (such as diking or berming) against accidental releases at the storage area. Inspect storage tanks to detect potential leaks and perform preventive maintenance. Inspect piping systems (pipes, pumps, flanges, couplings, hoses, and valves) for failures or leaks. Train employees on proper filling and transfer procedures.
Cold weather activities	Minimize salt application. Use uncontaminated dirt or ash, if use is necessary. Train employees on proper salt, dirt, sand, or ash application.

TABLE P–10.—COMMON STORM WATER BEST MANAGEMENT PRACTICES FOR ACTIVITIES AT VEHICLE AND EQUIPMENT MAINTENANCE—Continued

Activity	BMPs
Improper connections to storm sewer	Plug all floor drains connected to sanitary or storm sewer or if connection is unknown. Alternatively, install a sump that is pumped regularly. Perform smoke or dye testing to determine if interconnections exist between sanitary water system and storm sewer system. Update facility schematics to accurately reflect all plumbing connections. Install a safeguard against vehicle washwaters entering the storm sewer unless permitted. Maintain and inspect the integrity of all underground storage tanks; replace when necessary. Train employees on proper disposal practices for all materials.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991, through December 31, 1992.
EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Refinishing Industry." EPA/625/7–91/016.
EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Repair Industry." EPA/625/7–91/013.
EPA, Office of Research and Development. May 1992. "Facility Pollution Prevention Guide." EPA/600/R–92/088.
EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.
U.S. Postal Service. May 1992. "NPDES/Storm Water Guide." AS–554.

4. Pollutant Control Measures Required Through Other EPA Programs

EPA recognizes that other programs address the operation of vehicle and equipment maintenance and equipment cleaning operations. In particular, as described below, the Resource Conservation and Recovery Act (RCRA) and the Underground Storage Tank (UST) programs require careful management of materials used onsite which decreases the probability that storm water from such areas will be contaminated by these materials.

Under the RCRA program, on September 10, 1992, EPA promulgated standards in 40 CFR Part 279 for the management of used oils that are recycled (57 FR 41566). These standards include requirements for used oil generators, transporters, processors/re-refiners, and burners. The standards for used oil generators apply to all generators, regardless of the amount of used oil they generate. Do-it-yourself (DIY) generators which generate used oil from the maintenance of their personal vehicles, however, are not subject to the management standards (Section 279.20(a)(1)).

The requirements for used oil generators were designed to impose a minimal burden on generators while protecting human health and the environment from the risks associated with managing used oil. Under Subpart C of 40 CFR Part 279, used oil generators must not store used oil in units other than tanks, containers, or units subject to regulation under Part 264 or 265 of 40 CFR (Section 279.22(a)). In other words, generators may store used oil in tanks or containers that are not subject to Subpart J (Hazardous Waste Tanks) or Subpart I (Containers) of Parts 264/265, as long as such tanks or containers are maintained in compliance with the used oil management standards. This does not preclude generators from storing used oil in Subpart J tanks or Subpart I containers or other units, such as surface impoundments (Subpart K), that are subject to regulation under Part 264 or 265.

Storage units at generator facilities must be maintained in good condition and labeled with the words "used oil." Upon detection of a release of used oil to the environment, a generator must take steps to stop the release, contain the released used oil, and properly manage the released used oil and other materials (Sections 279.22(b) to (d)). Generators storing used oil in underground storage tanks are subject to the UST regulations in 40 CFR Part 280.

If used oil generators ship used oil offsite for recycling, they must use a transporter who has notified EPA and obtained an EPA identification number (Section 279.24).

The technical standards for USTs at 40 CFR Part 280 require that new UST systems (defined as systems for which installation commenced after December 12, 1988) use overfill prevention equipment that will: (1) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or (2) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm. The preceding requirements do not apply to systems that are filled by transfers of no more than 25 gallons at one time. Existing UST systems (defined as systems for which installation has commenced on or before December 12, 1988) are required to have installed the described overfill prevention equipment by December 12, 1998.

5. Special Conditions

The permit conditions that apply to ground transportation facilities build upon the requirements set forth in the baseline general permit for storm water discharges from industrial activities finalized on September 9, 1992 (57 FR 41236). The discussion that follows, therefore, only addresses conditions that differ from those required in the baseline permit.

Due to concern that many non-storm water discharges may be present at vehicle and equipment cleaning and maintenance facilities, EPA is requiring that all facilities provide proof that these discharges are not commingled and are appropriately controlled so as to protect all receiving waters.

Today's proposed permit clarifies in Part III.A. (Prohibition of Non-storm Water Discharges) that non-storm water discharges, including vehicle and equipment-washwaters, are not authorized by this permit. The operators of such non-storm water discharges must obtain coverage under a separate NPDES permit if discharged to waters of the U.S. or through a municipal separate storm sewer system or comply with applicable industrial pretreatment requirements if discharged to a municipal sanitary sewer system. In a related requirement under the storm water pollution prevention plan requirements, the permittee is required to attach a copy of the NPDES permit issued for vehicle washwaters or, if an NPDES permit has not yet been issued, a copy of pending application to the plan. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. A copy of the notification letter must be

attached to the plan. If an industrial user permit is issued under a pretreatment program, a copy of that permit must be attached in the plan as does any other permit to which the facility is subject. Some facilities may use other methods of disposal, such as collecting and hauling the wash water offsite. In these cases, the facility must document how the wash water is disposed and attach all pertinent documentation of that disposal practice to the plan.

6. Storm Water Pollution Prevention Plan Requirements

a. Description of potential pollutant sources. Under the description of potential pollutant sources in the storm water pollution prevention plan requirements, permittees are required to include storage areas for vehicles and equipment awaiting maintenance on their facility site map. EPA believes that this is appropriate since this area may potentially be a significant source of pollutants to storm water.

b. Measures and controls. Under the description of measures and controls in the storm water pollution prevention plan requirements, this section proposes that all areas that may contribute pollutants to storm waters discharges shall be maintained in a clean, orderly manner. This section also proposes that the following areas must be specifically addressed:

(1) Vehicle and equipment storage areas. The storage of vehicles and equipment awaiting maintenance must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize contamination of the storm water runoff from these areas. The facility shall consider the use of drip pans under vehicles and equipment, indoor storage of the vehicles and equipment, installation of berming and diking of this area, use of absorbents, roofing or covering storage areas, cleaning pavement surface to remove oil and grease, or other equivalent methods.

(2) Fueling areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from fueling areas. The facility shall consider covering the fueling area, using spill and overflow protection and cleanup equipment, minimizing runon of storm water to the fueling area, using dry cleanup methods, collecting the storm water runoff and providing treatment or recycling, or other equivalent measures.

(3) Material storage areas. Storage units of all materials (e.g., used oil, used oil filters, spent solvents, paint wastes, radiator fluids, transmission fluids, hydraulic fluids) must be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil," "spent solvents," etc.). The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility shall consider indoor storage of the materials, installation of berming and diking of the area or other equivalent methods.

(4) Vehicle and equipment cleaning areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment cleaning. The facility shall consider performing all cleaning operations indoors, covering the cleaning operation, ensuring that all washwaters drain to the intended collection system (i.e., not the storm water drainage system unless NPDES permitted), collecting the storm water runoff from the cleaning area and providing treatment or recycling, or other equivalent measures. The discharge of vehicle and equipment wash waters, including tank cleaning operations, are not authorized by this section and must be covered under a separate NPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

(5) Vehicle and equipment maintenance areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment maintenance. The facility shall consider performing all maintenance activities indoors, using drip pans, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting the practice of hosing down the shop floor where the practice would result in the exposure of pollutants to storm water, using dry cleanup methods, collecting the storm water runoff from the maintenance area and providing treatment or recycling, or other equivalent measures.

(6) Locomotive sanding (loading sand for traction) areas. The plan must describe measures that prevent or minimize contamination of the storm water runoff from areas used for locomotive sanding (including locomotive sanding). The facility shall consider covering sanding areas, minimizing storm water runon/runoff, appropriate sediment removal practices to minimize the offsite transport of sanding material by storm water, or other equivalent measures.

As documented earlier, these six areas are the common sources of pollutants in storm water from vehicle and equipment cleaning and maintenance activities. Based upon the information provided in part 1 of the group application process, the suggested management measures are commonly used at ground transportation facilities. EPA believes that the incorporation of management practices such as those suggested, in conjunction with the baseline requirements, will substantially reduce the potential that these activities and areas will significantly contribute to the pollution of storm water discharges. In addition, EPA believes that these requirements continue to provide the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with different facilities. Further, many facilities will find that management measures that they have already incorporated into the facility's operation, such as the installation of overfill protection equipment and labelling and maintenance of used oil storage units, that are already required under existing EPA programs will meet the requirements of this section.

Under the inspection requirements of the storm water pollution prevention plan elements, this section proposes that in addition to the comprehensive site evaluation required under Part XI of today's proposal, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility, at a minimum, on a monthly basis. The following areas shall be included in all inspections: storage areas for vehicles and equipment awaiting maintenance, fueling areas, vehicle and equipment maintenance areas (both indoors and outdoors), material storage areas, vehicle and equipment cleaning areas, and loading and unloading areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of all inspections shall be maintained.

The purpose of the inspections is to check on the implementation of the storm water pollution prevention plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis. The use of an inspection checklist is recommended. The checklist will ensure that all required areas are inspected, as well as help to meet the recordkeeping requirements.

Under the employee training component of the storm water pollution prevention plan requirements, the permittee is required to identify semiannual (twice per year) dates for such training. Employee training must,

at a minimum, address the following areas when applicable to a facility: Used oil management; spent solvent management; spill prevention and control; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management. Unlike some industrial operations, the industrial activities associated with vehicle and equipment maintenance that may affect storm water quality require the cooperation of all employees, not just one or two people. EPA, therefore, is proposing to require that employee training take place at least twice a year to serve as:

(1) Training for new employees;

(2) A refresher course for existing employees; and

(3) Training for all employees on any storm water pollution prevention techniques recently incorporated into the plan.

7. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at facilities in this section of today's proposed permit. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required at ground transportation facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for facilities in this section of today's proposed permit. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.P.5. of today's permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees must monitor those storm water discharges identified below at least annually (1 time per year) except as provided in VI.E.7. (Sampling Waiver) and VI.E.6. (Representative Discharge). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE P–11—REQUIRED MONITORING PARAMETERS FOR STORM WATER DISCHARGES

Parameter	Unit	Frequency	Sample type[i]
Total Flow	Gallons.	1/year	Estimate.
Oil and Grease	mg/L ..	1/year	Grab.
Total Suspended Solids (TSS).	mg/L ..	1/year	Grab.
Chemical Oxygen Demand (COD).	mg/L ..	1/year	Grab.
Surfactants (MBAS)[ii].	mg/L ..	1/year	Grab.
pH	Standard.	1/year	Grab.

[i] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.

[ii] Required only for storm water discharges from vehicle or equipment cleaning areas.

b. Quarterly visual examination of storm water quality—(1) Facilities shall

perform and document a visual examination of storm water quality of each storm water discharge associated with industrial activity from vehicle and equipment maintenance activities and equipment cleaning operations. If the storm water from such operations flows such that there are numerous small points of discharge, one examination may be conducted as representative of the adjacent flows. The examination must be made at least once in each designated period (described in Part (2) below) during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(2) Examinations shall be conducted at least once in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

(3) Examinations shall be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. The examinations shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. No analytical tests are required to be performed on these samples. Examinations shall be conducted so as to provide a reasonable representation of the nature of a typical storm water discharge at that site during that time of year.

(4) Information from the examination must be maintained onsite and must include: The examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. Based on information collected in the visual inspection the description of potential pollutant sources identified in the plan in accordance with Part XI.P.3.b.(2) (Description of Potential Pollutant Sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.P.3.b.(3) (Measures and Controls) of this permit shall be revised as appropriate within 2 weeks of such examination and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the evaluation. Records shall be kept for the entire permit term of such changes to the plan.

O. Storm Water Discharges Associated With Industrial Activity From Water Transportation Facilities That Have Vehicle Maintenance Shops and/or Equipment Cleaning Operations

1. Discharges Covered Under This Section

Special conditions have been developed for water transportation facilities that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, and lubrication) and equipment cleaning operations. Vehicle and equipment maintenance is a broad term used to include the following activities: vessel and equipment fluid changes, mechanical repairs, parts cleaning, sanding, blasting, welding, refinishing, painting, fueling, and storage of the related materials and waste materials, such as oil, fuel, batteries, or oil filters. Equipment cleaning operations include areas where vessel and vehicle exterior washdown takes place. The conditions proposed in this section apply to storm water discharges from vehicle and equipment maintenance shops or cleaning operations located at water transportation facilities covered under the storm water application regulations (40 CFR 122.26) and applying for coverage under today's proposed permit.

The storm water application regulations define storm water discharges associated with industrial activity at 40 CFR 122.26(b)(14). Category (viii) of this definition includes transportation facilities classified as Standard Industrial Classification (SIC) codes 40, 41, 42 (except 4221–25), 43, 44, 45, and 5171 that have vehicle and equipment maintenance shops, equipment cleaning operations, or airport deicing operations. The category further states that only those portions of the facility that are either involved in vehicle and equipment maintenance (including vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations are associated with industrial activity. The conditions proposed in this section only apply to the water transportation facilities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

The facilities that would potentially be covered by this section of today's proposed permit may be assigned SIC code 44.

SIC code 44 includes facilities primarily engaged in furnishing water transportation services. The following types of facilities are examples of those covered under SIC code 44:

- Deep Sea Foreign Transportation of Freight (SIC 4412)
- Deep Sea Domestic Transportation of Freight (SIC 4424)
- Freight Transportation on the Great Lakes—St. Lawrence Seaway (SIC 4432)
- Water Transportation of Freight, Not Elsewhere Classified (SIC 4449). Including:

—Canal barge operations
—Canal freight transportation
—Intracoastal freight transportation
—Lake freight transportation, except on the Great Lakes
—Log rafting and towing
—River freight transportation, except on the St. Lawrence Seaway
—Transportation of freight on bays and sounds of the oceans

- Deep Sea Transportation of Passengers, Except by Ferry (SIC 4481)
- Ferries (SIC 4482). Including:

—Car lighters (ferries)
—Railroad ferries

- Water Transportation of Passengers, Not Elsewhere Classified (SIC 4489). Including:

—Airboats (swamp buggy rides)
—Excursion boat operations
—Passenger water transportation on rivers and canals
—Sightseeing boats
—Water Taxis

- Marine Cargo Handling (SIC 4491). Including:

—Docks, including buildings and facilities

—Loading vessels
—Marine cargo handling
—Piers, including buildings and facilities
—Ship hold cleaning
—Stevedoring
—Unloading vessels
—Waterfront terminal operation

• Towing and Tugboat Services (SIC 4492). Including:
—Docking of ocean vessels
—Shifting of floating equipment within harbors
—Towing services, marine
—Tugboat service
—Undocking of ocean vessels

• Marinas (SIC 4493).[12] Including:
—Boat yards, storage and incidental repair
—Yacht basins

• Water Transportation Services, Not Elsewhere Classified (SIC 4499). Including:
—Boat cleaning
—Boat hiring, except pleasure
—Boat livery, except pleasure
—Boat rental, commercial
—Canal operation
—Cargo salvaging, from distressed vessels
—Chartering of commercial boats
—Dismantling ships
—Lighterage
—Marine railways for drydocks
—Marine salvaging
—Marine surveyors, except cargo
—Marine wrecking, ships for scrap
—Piloting vessels in and out of harbors
—Ship cleaning, except hold cleaning
—Ship registers: survey and classification of ships and marine equipment
—Steamship leasing.

2. Pollutants Found in Storm Water Discharges

Table Q–1 lists potential pollutant source activities that commonly take place at water transportation vehicle maintenance and equipment cleaning operations.

TABLE Q–1.—INDUSTRIAL ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS

Activity	Pollutant source	Pollutant
Pressure Washing	Wash water	Paint solids, heavy metals, suspended solids.
Surface Preparation Paint Removal Sanding.	Sanding; mechanical grinding; abrasive blasting; paint stripping.	Spent abrasives, paint solids, heavy metals, solvents, dust.
Painting	Paint and paint thinner spills; spray painting; paint stripping; sanding; paint cleanup.	Paint solids, spent solvents, heavy metals, dust.
Engine Maintenance and Repairs.	Parts cleaning; waste disposal of greasy rags, used fluids, and batteries; use of cleaners & degreasers; fluid spills; fluid replacement.	Spent solvents, oil, heavy metals, ethylene glycol, acid/alkaline wastes, detergents.
Material Handling: Transfer Storage Disposal.	Fueling: spills; leaks; and hosing area	Fuel, oil, heavy metals.
	Liquid Storage in Above Ground Storage: spills and overfills; external corrosion; failure of piping systems.	Fuel, oil, heavy metals, material being stored.
	Waste Material Storage and Disposal: paint solids; solvents; trash; spent abrasives, petroleum products.	Paint solids, heavy metals, spent solvents, oil.
Shipboard Processes improperly discharged to storm sewer or into receiving water.	Process & cooling water; sanitary waste; bilge & ballast water.	Biochemical oxygen demand (BOD), bacteria, suspended solids, oil, fuel.

Sources: EPA, Office of Water and Hazardous Materials. December 1979. "Draft Development Document for Proposed Effluent Limitations Guidelines and Standards for the Shipbuilding and Repair Industry." EPA/440/1–79/076–b.

University of South Alabama, College of Engineering. September 1992. "Best Management Practices for the Shipbuilding and Repair Industry and for Bridge Maintenance Activities." College of Engineering Report No. 92–2.

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EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention—The Automotive Refinishing Industry." EPA/625/7–91/016.

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U.S. Postal Service. May 1992. "NPDES/Storm Water Guide." AS–554.

Table Q–2 presents summary statistics on facilities primarily engaged in water transportation activities having vehicle maintenance and/or equipment cleaning operations.

[12] "Guidelines for the Determination of Regulatory Status of Marinas and Related Operations." Facilities that are "primarily engaged" in operating marinas are best classified as SIC 4493—marinas. These facilities rent boat skips, store boats and generally perform a range of other marine services including boat cleaning and incidental boat repair. They frequently sell food, fuel, fishing supplies and may sell boats. For facilities classified as 4493 that are involved in vehicle (vessel) maintenance activities (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication) or equipment cleaning operations, those portions of the facility that are involved in such vehicle maintenance activities are considered to be associated with industrial activity and are covered under the storm water regulations.

Facilities classified as 4493 that are not involved in equipment cleaning or vessel maintenance activities (including vehicle rehabilitation, mechanical repairs, painting, and lubrication) are not intended to be covered under 40 CFR Section 122.26(b)(14)(viii) of the storm water permit application regulations. The retail sale of fuel alone at marinas, without any other vessel maintenance or equipment cleaning operations, is not considered to be grounds for coverage under the storm water regulations.

Table Q–2.—Statistics for Conventional Pollutants and Storm Water[1]

[In mg/L unless otherwise indicated]

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		99th percentile	
Sample type	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	15	14	8.6	6.0	0.0	0.0	39.0	11.0	7.0	6.0	39.0	11.0
COD	15	14	130.9	75.8	0.0	10.0	500.0	203.0	93.0	50.5	500.0	203.0
Nitrate + Nitrite Nitrogen	15	14	4.23	0.65	0.00	0.00	54.00	1.61	0.60	0.65	54.00	1.61
Total Kjeldahl Nitrogen	15	14	2.64	9.41	0.00	0.00	16.00	118.00	1.60	0.75	16.00	118.00
Oil & Grease	15	N/A	11.9	N/A	0.0	N/A	96.0	N/A	2.0	N/A	96.0	N/A
pH (s.u)	15	N/A	N/A	N/A	4.1	N/A	8.8	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	15	14	0.27	0.15	0.00	0.00	1.20	0.32	0.10	0.17	1.20	0.32
Total Suspended Solids	15	14	634	224	3	5	4330	944	135	68	4330	944
Aluminum	4	3	3.1	2.2	0.2	0.2	6.3	5.4	3.0	1.0	6.3	5.4
Iron	4	3	26.7	5.0	0.2	0.4	94.0	8.9	6.3	5.7	94.0	8.9
Lead	4	3	0.2	0.1	0.0	0.0	0.7	0.1	0.1	0.1	0.7	0.1
Zinc	4	3	0.7	0.4	0.1	0.2	2.2	0.9	0.2	0.2	2.2	0.9

[1] Mean, Maximum, Minimum, Median, and Percentiles include all detects and nondetects.
[2] Composite samples.
Note: There is no information for 95th percentile columns.

EPA compared the data with the EPA, Office of Water Regulations and Standards, Criteria and Standards Division, "Quality Criteria for Water 1986," otherwise known as the "Gold Book Standards." As shown in Table Q–3, EPA found the following parameters to be of concern for Water Transportation Facilities which have repair and maintenance activities and/or equipment cleaning activities: oil & grease, chemical oxygen demand (COD), total suspended solids (TSS), pH, aluminum, iron, and zinc. In addition, part 2 data contained aluminum, iron, and zinc concentrations which exceed toxic levels. The acute fresh water criteria and part 2 mean data are presented below in Table Q–3.

TABLE Q–3

Pollutant	Acute fresh water criteria (mg/L)	Part 2 data mean (mg/L)
Aluminum	0.750	3.12
Iron	1.0	26.68
Zinc	0.12	0.6775

3. Options for Controlling Pollutants

The measures commonly implemented to reduce pollutants in storm water associated with water transportation vehicle maintenance and/or equipment cleaning operations are generally simple to implement and are uncomplicated practices. Table Q–4 identifies Best Management Practices (BMPs) associated with different activities that routinely take place at water transportation facilities with vehicle maintenance and equipment cleaning operations.

TABLE Q–4.—INDUSTRIAL ACTIVITIES AND POTENTIAL BEST MANAGEMENT PRACTICES

Activity	BMPs
Pressure washing	Collect discharge water and remove all visible solids before discharging to a sewer system, or where permitted, to a drainage system, or receiving water.
	Perform pressure washing only in designated areas where wash water containment can be effectively achieved.
	Use no detergents or additives in the pressure wash water.
	Direct deck drainage to a collection system sump for settling and/or additional treatment.
	Implement diagonal trenches or berms and sumps to contain and collect wash water at marine railways.
	Use solid decking, gutters, and sumps at lift platforms to contain and collect wash water for possible reuse.
Surface preparation, sanding, and paint removal.	Enclose, cover, or contain blasting and sanding activities to the extent practical to prevent abrasives, dust, and paint chips from reaching storm sewers or receiving water.
	Where feasible, cover drains, trenches, and drainage channels to prevent entry of blasting debris to the system.
	Prohibit uncontained blasting or sanding activities performed over open water.
	Prohibit blasting or sanding activities performed during windy conditions which render containment ineffective.
	Inspect and clean sediment traps to ensure the interception and retention of solids prior to entering the drainage system.
	Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
	Collect spent abrasives routinely and store under a cover to await proper disposal
Painting	Enclose, cover, or contain painting activities to the maximum extent practical to prevent overspray from reaching the receiving water.
	Prohibit uncontained spray painting activities over open water.
	Prohibit spray painting activities during windy conditions which render containment ineffective.
	Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters, preferably indoors or under cover.

TABLE Q–4.—INDUSTRIAL ACTIVITIES AND POTENTIAL BEST MANAGEMENT PRACTICES—Continued

Activity	BMPs
	Have absorbent and other cleanup items readily available for immediate cleanup of spills.
	Allow empty paint cans to dry before disposal.
	Keep paint and paint thinner away from traffic areas to avoid spills.
	Recycle paint, paint thinner, and solvents.
	Train employees on proper painting and spraying techniques, and use effective spray equipment that delivers more paint to the target and less overspray.
Drydock maintenance	Clean and maintain drydock on a regular basis to minimize the potential for pollutants in the storm water runoff.
	Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
	If hosing must be used as a removal method, collect wash water to remove solids and potential metals.
	Clean the remaining areas of the dock after a vessel has been removed and the dock raised.
	Remove and properly dispose of floatable and other low-density waste (wood, plastic, insulations, etc.).
Drydocking	Use plastic barriers beneath the hull, between the hull and drydock walls for containment.
	Use plastic barriers hung from the flying bridge of the drydock, from the bow or stern of the vessel, or from temporary structures for containment.
	Weight the bottom edge of the containment tarpaulins or plastic sheeting during a light breeze.
	Use plywood and/or plastic sheeting to cover open areas between decks when sandblasting (scuppers, railings, freeing ports, ladders, and doorways).
	Install tie rings or cleats, cable suspension systems, or scaffolding to make implementation containment easier.
Nondrydock containment	Hang tarpaulin from the boat, fixed, or floating platforms to reduce pollutants transported by wind.
	Pave or tarp surfaces under marine railways.
	Clean railways before the incoming tide.
	Haul vessels beyond the high tide zone before work commences or halt work during high tide.
	Place plastic sheeting or tarpaulin underneath boats to contain and collect waste and spent materials and clean and sweep regularly to remove debris.
	Use fixed or floating platforms with appropriate plastic or tarpaulin barriers as work surfaces and for containment when work is performed on a vessel in the water to prevent blast material or paint overspray from contacting storm water or the receiving water.
	Sweep, rather than hose, debris present on the dock.
Engine maintenance and repairs	Maintain an organized inventory of materials used in the maintenance shop.
	Dispose of greasy rag, oil filters, air filters, batteries, spent coolant, and degreasers properly.
	Label and track the recycling of waste material (i.e., used oil, spent solvents, batteries).
	Drain oil filters before disposal or recycling.
	Store cracked batteries in a nonleaking secondary container.
	Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
	Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
	Plug floor drains that are connected to the storm or sanitary sewer; if necessary, install a sump that is pumped regularly.
	Inspect the maintenance area regularly for proper implementation of control measures.
	Train employees on proper waste control and disposal procedures.
Material Handling: Bulk liquid storage and containment.	Store permanent tanks in a paved area surrounded by a dike system which provides sufficient containment for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
	Maintain good integrity of all storage tanks.
	Inspect storage tanks to detect potential leaks and perform preventive maintenance.
	Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks.
	Train employees on proper filling and transfer procedures.
Material Handling: Containerized material storage.	Store containerized materials (fuels, paints, solvents, etc.) in a protected, secure location and away from drains.
	Store reactive, ignitable, or flammable liquids in compliance with the local fire code.
	Identify potentially hazardous materials, their characteristics, and use.
	Control excessive purchasing, storage, and handling of potentially hazardous materials.
	Keep records to identify quantity, receipt date, service life, users, and disposal routes.
	Secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials.
	Educate personnel for proper storage, use, cleanup, and disposal of materials.
	Provide sufficient containment for outdoor storage areas for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
	Use temporary containment where required by portable drip pans.
	Use spill troughs for drums with taps
Material Handling: Designated material mixing areas.	Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters. Locate designated areas preferably indoors or under a shed.

TABLE Q–4.—INDUSTRIAL ACTIVITIES AND POTENTIAL BEST MANAGEMENT PRACTICES—Continued

Activity	BMPs
	If spills occur, • Stop the source of the spill immediately. • Contain the liquid until cleanup is complete. • Deploy oil containment booms if the spill may reach the water. • Cover the spill with absorbent material. • Keep the area well ventilated. • Dispose of cleanup materials properly. • Do not use emulsifier or dispersant.
Shipboard process water handling	Keep process and cooling water used aboard ships separate from sanitary wastes to minimize disposal costs for the sanitary wastes. Keep process and cooling water from contact with spent abrasives and paint to avoid discharging these pollutants.
Shipboard sanitary waste disposal	Inspect connecting hoses for leaks. Discharge sanitary wastes from the ship being repaired to the yard's sanitary system or dispose of by a commercial waste disposal company.
Bilge and Ballast water	Use appropriate material transfer procedures, including spill prevention and containment activities. Collect and dispose of bilge and ballast waters which contain oils, solvents, detergents, or other additives to a licensed waste disposal company.

Sources: University of South Alabama, College of Engineering. September 1992. "Best Management Practices for the Shipbuilding and Repair Industry and for Bridge Maintenance Activities." College of Engineering Report No. 92–2.
NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991 through December 31, 1992.
EPA, Office of Water. January 1993. "Guidance Specifying Management Measures for Sources of Nonpoint Pollution in Coastal Waters." 840–B–92–002.

4. Pollutant Control Measures Required Through Other EPA Programs

EPA recognizes that the Resource Conservation and Recovery Act (RCRA) and the Underground Storage Tank (UST) programs require careful management of materials used at Water Transportation Facilities and Boat Building & Repairing Facilities.

Under the RCRA program, on September 10, 1992, EPA promulgated standards in 40 CFR Part 279 for the management of used oils that are recycled (57 FR 41566). These standards include requirements for used oil generators, transporters, processors/re-refiners, and burners. The standards for used oil generators apply to all generators, regardless of the amount of used oil they generate. Do-it-yourself (DIY) generators which generate used oil from the maintenance of their personal vehicles, however, are not subject to the management standards (Section 279.20(a)(1)).

The requirements for used oil generators were designed to impose a minimal burden on generators while protecting human health and the environment from the risks associated with managing used oil. Under Subpart C of 40 CFR Part 279, used oil generators must not store used oil in units other than tanks, container, or units subject to regulation under Part 264 or 265 of 40 CFR (Section 279.22(a)). In other words, generators may store used oil in tanks or containers that are not subject to Subpart J (Hazardous Waste Tanks) or Subpart I (Containers) of Parts 264/265, as long as such tanks or containers are maintained in compliance with the used oil management standards. This does not preclude generators from storing used oil in Subpart J tanks or Subpart I containers or other units, such as surface impoundments (Subpart K), that are subject to regulation under Part 264 or 265.

Storage units at generator facilities must be maintained in good condition and labeled with the words "used oil." Upon detection of a release of used oil to the environment, a generator must take steps to stop the release, contain the released used oil, and properly manage the released used oil and other materials (Section 279.22(b) to (d)). Generators storing used oil in underground storage tanks are subject to the UST regulations (40 CFR Part 280).

If used oil generators ship used oil offsite for recycling, they must use a transporter who has notified EPA and obtained an EPA identification number (Section 279.24).

The technical standards for USTs at 40 CFR Part 280 require that new UST systems (defined as systems for which installation commenced after December 12, 1988) use overfill prevention equipment that will: (1) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or (2) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm. The preceding requirements do no apply to systems that are filled by transfers of no more than 25 gallons at one time. Existing UST systems (defined as systems for which installation has commenced on or before December 12, 1988) are required to have installed the described overfill prevention equipment by December 12, 1998.

5. Special Conditions

a. Prohibition of non-storm water discharges. Prohibited non-storm water discharges including bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels are not authorized by this section. The operators of such discharges must obtain coverage under a separate NPDES permit if discharged to waters of the U.S. or through a municipal separate storm sewer system.

This section does not authorize the non-storm water discharge of pressure wash water. Pressure washing is used to remove marine growth from vessels. EPA has found that unpermitted releases of pressure wash water is a habitual problem at water transportation facilities. Marine growths and paint debris found in the wash water can contain significant quantities of heavy metals, and this water cannot be discharged.

6. Storm Water Pollution Prevention Plan Requirements

The conditions that apply to water transportation facilities with vehicle maintenance and/or equipment cleaning operations build upon the requirements set forth in the baseline general permit for storm water discharges from

industrial activities which was finalized on September 9, 1992 (57 FR 41236).

Contents of the plan—(1) Description of potential pollutant sources—Under the description of potential pollutant sources in the storm water pollution prevention plan requirements, permittees are required to include the location(s) on their facility site map where engine maintenance and repair work, vessel maintenance and repair work, and pressure washing are performed. This requirement is the same as the baseline general permit of September 9, 1992, but here it is expressed in more appropriate terms for the water transportation industry. The baseline general permit includes "vehicle and equipment maintenance and/or cleaning areas." The location of "processing areas" at the facility included under the baseline general permit was replaced with the more specific language of painting, blasting, welding, and metal fabrication for this section. EPA believes that this specificity is appropriate for the water transportation industry and that these areas may potentially be a significant source of pollutants to storm water. Rather than requiring the location of "storage areas" as in the baseline general permit, this storm water pollution prevention plan specifies that the location of liquid storage areas (i.e., paint, solvents, resins) and material storage areas (i.e., blasting media, aluminum, steel) be shown. This again is the same requirement, but it is expressed in more specific terms for this industry.

(2) Measures and controls—Under the description of measures and controls in the storm water pollution prevention plan requirements, this section proposes that all areas that may contribute pollutants to storm waters discharges shall be maintained in a clean, orderly manner. This section also proposes that the following areas must be specifically addressed:

(a) Pressure washing area—When pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by an NPDES permit. The plan must describe the measures to collect or contain the discharge from the pressure washing area, detail the method for the removal of the visible solids, describe the method of disposal of the collected solids, and identify where the discharge will be released (i.e., the receiving waterbody, storm sewer system, sanitary sewer system).

(b) Blasting and painting areas—The facility must consider containing all blasting and painting activities to prevent abrasives, paint chips, and overspray from reaching the receiving water or the storm sewer system. The plan must describe measures taken at the facility to prevent or minimize the discharge of spent abrasive, paint chips, and paint into the receiving waterbody and storm sewer system. The facility may consider hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. Where required, a schedule for cleaning storm systems to remove deposits of abrasive blasting debris and paint chips should be addressed within the plan. The plan should include any standard operating practices with regard to blasting and painting activities. Such included items may be the prohibition of performing uncontained blasting and painting over open water or blasting and painting during windy conditions which can render containment ineffective.

(c) Material storage areas—All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be stored in a protected, secure location away from drains and plainly labeled. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility must specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. Above ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills. The facility must consider implementing an inventory control plan to prevent excessive purchasing, storage, and handling of potentially hazardous materials. Those facilities where abrasive blasting is performed must specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(d) Engine maintenance and repair areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for engine maintenance and repair. The facility may consider performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting the practice of hosing down the shop floor, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(e) Material handling areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (i.e., fueling, paint & solvent mixing, disposal of process wastewater streams from vessels). The facility may consider covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area, preferably indoors or under a shed; and minimizing runon of storm water to material handling areas. Where applicable, the plan must address the replacement or repair of leaking connections, valves, pipes, hoses, and soil chutes carrying wastewater from vessels.

(f) Drydock activities—The plan must address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan must describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock must also be included within the plan. The facility should consider items such as sweeping rather than hosing off debris and spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to contain and cleanup any spills.

(g) General yard area—The plan must include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., must be routinely removed from the general yard area. The facility may consider such measures as providing covered trash receptacles in each yard, on each pier, and on board each vessel being repaired.

These seven areas are the common sources of pollutants in storm water runoff from water transportation facilities which have vehicle maintenance and/or equipment cleaning activities. Based upon the September 1992 "Best Management Practices for the Shipbuilding and Repair Industry and for Bridge Maintenance Activities" prepared by the College of Engineering at the University of South Alabama, the suggested management measures are commonly used at water transportation facilities. EPA believes that the incorporation of management practices such as those suggested will substantially reduce the potential that these activities and areas will significantly contribute to the pollution of storm water discharges. In addition, EPA believes that these requirements continue to provide the necessary flexibility to address the variable risk for pollutants in storm water discharges

associated with different facilities. Further, many facilities will find that management measures that they have already incorporated into the facility's operation, such as the installation of overfill protection equipment and labelling and maintenance of used oil storage units, that are already required under existing EPA programs will meet the requirements of this section.

Under the preventive maintenance requirements of the storm water pollution prevention plan elements, the plan specifically includes the routine inspection of sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system. Because of the nature of operations such as abrasive blasting which occur at water transportation facilities, specific routine attention needs to be placed on the collection and proper disposal of spent abrasive materials, paint chips, and other solids.

Under the inspection requirements of the storm water pollution prevention plan elements, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility, at a minimum, on a monthly basis. The following areas shall be included in all inspections: pressure washing area, blasting and painting areas, material storage areas, engine maintenance and repair areas, material handling areas, drydock area, and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records shall be maintained.

The purpose of the inspections is to check on the implementation of the storm water pollution prevent plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis. The use of an inspection checklist is highly encouraged. The checklist will ensure that all required areas are inspected, as well as help to meet the recordkeeping requirements.

Under the employee training component of the storm water pollution prevention plan requirements, the permittee is required to identify at least semiannual (twice per year) dates for such training. Employee training must, at a minimum address the following areas when applicable to a facility: used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management. Employees, independent contractors, and customers must be informed about BMPs and be required to perform in accordance with these practices. The facility must consider posting easy to read descriptions or graphic depictions of BMPs and emergency phone numbers in the work areas. Unlike some industrial operations, the industrial activities associated with water transportation facilities that may affect storm water quality require the cooperation of all employees. EPA, therefore, is proposing to require that employee training take place at least twice a year to serve as: (1) training for new employees; (2) a refresher course for existing employees; (3) training for all employees on any storm water pollution prevention techniques recently incorporated into the plan; and (4) a forum for the facility to invite independent contractors and customers to inform them on pollution prevention procedures and requirements.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that water transportation facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan, the proposed permit requires water transportation facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table Q–5. The pollutants listed in Table Q–5 were found to be above benchmark levels for a significant portion of water transportation facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. EPA is requiring monitoring after the pollution prevention plan has been implemented to ensure a reduction of pollutants is realized.

At a minimum, storm water discharges from water transportation facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table Q–5. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE Q–5.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Total Recoverable Aluminum	0.75
Total Recoverable Iron	0.3
Total Recoverable Lead	0.0337
Total Recoverable Zinc	0.065
Chemical Oxygen Demand	65
Total Suspended Solids	100

If the average concentration for a parameter is less than or equal to the value listed in Table Q–5, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table Q–5, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE Q–6.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table Q–5, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table Q–5, then no further sampling is required for that parameter.

TABLE Q–6.—SCHEDULE OF MONITORING—Continued

4th Year of Permit Coverage	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table Q–5. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.E. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample Type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly Visual Examination of Storm Water Quality. Monthly visual inspections of storm water discharges from each outfall are required at water transportation facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the

effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.Q.7. of today's proposed permit.

a. Storm water discharges. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees must monitor all storm water discharges associated with vehicle, equipment, or vessel maintenance or cleaning for those parameters identified in Table Q–7 at least annually (1 time per year) except as provided in VI.A. (Sampling Waiver and Representative Discharge). In addition to the parameters listed, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE Q–7.—STORM WATER DISCHARGE PARAMETERS

Parameter	Unit	Frequency	Sample Type[1]
Total Flow	MGD	1/year	Estimate.
Oil & Grease	mg/L	1/year	Grab.
Chemical Oxygen Demand (COD)	mg/L	1/year	Grab.
Total Suspended Solids (TSS)	mg/L	1/year	Grab.
pH	standard	1/year	Grab.
Total Recoverable Aluminum	mg/L	1/year	Grab.
Total Recoverable Iron	mg/L	1/year	Grab.
Total Recoverable Zinc	mg/L	1/year	Grab.
Acute whole effluent toxicity[2]		1/year	Grab.

[1] The grab. sample shall be collected in the first 30 minutes of the discharge of as soon thereafter as practical, but not to exceed 60 minutes.
[2] The acute whole effluent toxicity shall be performed in accordance with Part XI.Q.7.c. of this section.

b. Toxicity Testing—(1.) Test Procedures (a) The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1). Freshwater species must be used for discharges to freshwater bodies. Due to the nonsaline nature of rainwater, freshwater should also be used for discharges to estuarine, marine, or other naturally saline waterbodies.

(b) All test organisms, procedures and quality assurance criteria used shall be in accordance with "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms," EPA/600/4–90/027, or the most current edition. The control water used will be moderately hard water as described in EPA/600/4–90/027, Table 6, or the most current edition.

(c) Tests shall be conducted annually (once per year) on a grab sample of the discharge. Test shall be conducted using 100 percent effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–27 (or the most current edition), Section 12, Report Preparation, and the report submitted to EPA with the Discharge Monitoring Reports (DMRs). On the DMR, the permittee shall report "0" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

(2) If acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and the control) is detected in the storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the sources of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

9. Cost Estimates

This section does not include numeric effluent limits. The BMPs described within this section are designed to prevent or minimize pollutants in the storm water runoff. Facilities choose and implement the BMPs which best fit site specific requirements. Because this section does not contain numeric effluent limits or requirements to implement specific, predetermined BMPs, an economic achievable analysis is not required.

References used:

EPA, Office of Water and Hazardous Materials. December 1979. "Draft Development Document for Proposed Effluent Limitations Guidelines and Standards for the Shipbuilding and Repair Industry." EPA/440/1–79/076-b.

University of South Alabama, College of Engineering. September 1992. "Best Management Practices for the Shipbuilding and Repair Industry and for Bridge Maintenance Activities." College of Engineering Report No. 92–2.

EPA Multi-sector Section P, Storm Water Discharges from Vehicle and Equipment Maintenance and Cleaning Operations.

NPDES Storm Water Group Applications—Part 1 and Part 2. Received by EPA March 18, 1991 through December 31, 1992.

Executive Office of the President, Office of Management and Budget, 1987. "Standard Industrial Classification Manual 1987." National Technical Information Service Order no. PB 87–100012.

R. Storm Water Discharges Associated With Industrial Activity From Ship and Boat Building or Repairing Yards

1. Discharges Covered Under This Section

The storm water application regulations define storm water discharges associated with industrial activity at 40 CFR 122.26(b)(14). Category (ii) of this definition includes facilities commonly identified by Standard Industrial Classification (SIC) codes 24 (except 2434), 26 (except 265 and 267), 28 (except 283 and 285), 29, 311, 32 (except 323), 33, 3441, and 373. The conditions proposed in this section apply to those facilities that may be assigned SIC code 373.

SIC code 373 includes facilities primarily engaged in ship and boat building and repairing services. The following facilities are covered under SIC code 373:

- *Ship Building and Repairing (SIC code 3731)*—These are establishments primarily engaged in building and repairing ships, barges, and lighters, whether self-propelled or towed by other crafts. The industry also includes the conversion and alteration of ships and the manufacture of off-shore oil and gas well drilling and production platforms (whether or not self-propelled). Examples include building and repairing of barges, cargo vessels, combat ships, crew boats, dredges, ferryboats, fishing vessels, lighthouse tenders, naval ships, offshore supply boats, passenger-cargo vessels, patrol boats, sailing vessels, towboats, trawlers, and tugboats.
- *Boat Building and Repairing (SIC code 3732)*—These facilities are primarily engaged in building and repairing boats. Examples include building and repairing of fiberglass boats, motor-boats, sailboats, rowboats, canoes, dinghies, dories, small fishing boats, houseboats, kayaks, lifeboats, pontoons, and skiffs.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Pollutants Found in Storm Water Discharges

Special conditions have been developed for boat and ship building and repairing operations. Common activities at ship and boat yards include: vessel and equipment cleaning fluid changes, mechanical repairs, parts cleaning, sanding, blasting, welding, refinishing, painting, fueling, and storage of the related materials and waste materials, such as oil, fuel, batteries, or oil filters. All of these areas are potential sources of pollutants to storm water discharges. Table R–1 lists pollutants associated with activities that commonly take place at Ship Building and Repairing Facilities (SIC 3731) and Boat Building and Repairing Facilities (SIC 3732).

TABLE R–1.—COMMON POLLUTANT SOURCES AT SHIP AND BOAT BUILDING AND REPAIRING FACILITIES

Activity	Pollutant source	Pollutant
Pressure Washing	Wash water	Paint solids, heavy metals, suspended solids.
Surface Preparation, Paint Removal, Sanding.	Sanding; mechanical grinding; abrasive blasting; paint stripping	Spent abrasives, paint solids, heavy metals, solvents, dust.
Painting	Paint and paint thinner spills; spray painting; paint stripping; sanding; paint cleanup.	Paint solids, spent solvents, heavy metals, dust.
Engine Maintenance and Repairs	Parts cleaning; waste disposal of greasy rags, used fluids, and batteries; use of cleaners and degreasers; fluid spills; fluid replacement.	Spent solvents, oil, heavy metals, ethylene glycol, acid/alkaline wastes, detergents.
Material Handling: Transfer Storage Disposal.	Fueling: spills; leaks; and hosing area	Fuel, oil, heavy metals.
	Liquid Storage in Above Ground Storage: spills and overfills; external corrosion; failure of piping systems.	Fuel, oil, heavy metals, material being stored.
	Waste Material Storage and Disposal: paint solids; solvents; trash; spent abrasives, petroleum products.	Paint solids, heavy metals, spent solvents, oil.
Shipboard Processes improperly discharged to storm sewer or into receiving water.	Process and cooling water; sanitary waste; bilge and ballast water	Biochemical oxygen demand (BOD), bacteria, suspended solids, oil, fuel.

Sources: Executive Office of the President, Office of Management and Budget, 1987. Standard Industrial Classification Manual 1987. National Technical Information Service Order no. PB 87–100012.

NPDES Storm Water Group Applications—Part 1 and Part 2. Received by EPA March 18, 1991 through December 31, 1992.

EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention the Automotive Refinishing Industry." EPA/625/7–91/016.

EPA, Office of Research and Development. October 1991. "Guides to Pollution Prevention the Automotive Repair Industry." EPA/625/7–91/016.

EPA, Office of Research and Development. May 1992. "Facility Pollution Prevention Guide." EPA/600/R–92/088.

EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

EPA, Office of Water and Hazardous Materials. December 1979. "Draft Development Document for Proposed Effluent Limitations Guidelines and Standards for the Shipbuilding and Repair Industry." EPA/440/1–79/076-b.

University of South Alabama, College of Engineering. September 1992. "Best Management Practices for the Shipbuilding and Repair Industry and for Bridge Maintenance Activities." College of Engineering Report No. 92–2.

Part 2 data revealed that boat repair facilities that have repair and maintenance activities exposed to storm water (including engine repair and maintenance, vessel repair and maintenance, painting, blasting, sanding and welding) and boat building facilities which have building activities exposed to storm water (including cutting, routing, forming, assembling, painting, varnishing, sanding and welding) have mean and median pollutant concentrations at the levels of ship building and repair facilities.

Those boat building and repair facilities that have manufacturing and repair operations enclosed indoors show significantly lower levels in each reported parameter and are not required to monitor their storm water discharges under this section. Part 2 storm water data showed that these enclosed facilities did not report data on metals. As required by 40 CFR 122.21(g)(ii) and (iii), group applicants were only required to sample for metals if the facility knew or had reason to believe it would be expected in the discharge.

Table R–2 presents summary statistics on facilities primarily engaged in boat and ship building and repair activities.

TABLE R–2.—STATISTICS FOR STORM WATER POLLUTANTS

TABLE R–2.—STATISTICS FOR STORM WATER POLLUTANTS[1]
[In mg/L unless otherwise indicated]

Pollutant	No. of Samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample Type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	44	37	5.0	7.4	0.0	0.0	23.0	138.0	2.8	0.9	15.0	23.0	23.0	138.0
COD	51	43	73.2	68.8	0.0	0.0	450.0	810.0	53.0	28.0	260.0	240.0	450.0	810.0
Nitrate + Nitrite Nitrogen	51	43	0.79	0.85	0.0	0.0	6.0	5.0	0.72	0.72	1.60	1.80	6 00	5.00
Total Kjeldahl Nitrogen	51	43	1.19	2.36	0.0	0.0	3.4	48.0	1.00	0.97	2.40	3.90	3.40	48.00
Oil & Grease	52	N/A	1.0	N/A	0.0	N/A	14.0	N/A	0.0	N/A	5.0	N/A	14.0	N/A
pH (s.u)	43	N/A	N/A	N/A	0.7	N/A	8.7	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	51	45	0.21	0 88	0.0	0.0	2.2	32.0	0 00	0.00	0.91	0.76	2.20	32.0
Total suspended solids	51	45	92	39	0.0	0.0	1200	300	17	8.0	505	200	1200	300
Arsenic	3	2	0.05	0.02	0.0	0.0	0.14	0.03	0.0	0.02	0.135	0.03	0.14	0.03
Copper	5	5	0.16	0.08	0.01	0.01	0.32	0.13	0 15	0.09	0.320	0.13	0.32	0.13
Iron	4	2	3.69	3 43	0.18	0.64	13.0	6 22	0.80	3.43	13.0	6.22	13.0	6.22
Lead	6	4	0.75	0.11	0.0	0.0	4.24	0.33	0.04	0.06	4.24	0.33	4.24	0.33
Zinc	2	1	0.31	0.33	0.25	0.33	0.36	0.33	0.31	0.33	0.36	0.33	0.36	0.33

[1] Mean, Maximum, Minimum, Median, and Percentiles include all detects and non detects.
[2] Composite samples.

EPA compared the data with the EPA, Office of Water Regulations and Standards, Criteria and Standards Division, "Quality Criteria for Water 1986," otherwise known as the "Gold Book Standards." The monitoring requirements under this permit build upon those requirements set forth in the baseline general permit for storm water discharges from industrial activities finalized on September 9, 1992 (57 FR 41236). EPA found the following parameters to be of concern for ship building and repair activities; boat repair activities that have repair and maintenance activities exposed to storm water (including engine repair and maintenance, vessel repair and maintenance, painting, blasting, sanding and welding); and boat building activities that have building activities exposed to storm water (including cutting, routing, forming, assembling, painting, varnishing, sanding and welding): copper, lead, and zinc. In addition, part 2 data revealed copper, lead, and zinc concentrations which exceed toxic levels as presented in Table R–3. Table R–3.

COMPARISON OF PART 2 DATA WITH ACUTE FRESH WATER CRITERIA

Pollutant	Acute fresh water criteria	Part 2 data mean
Copper	0.018 mg/L	0.046 mg/L
Lead	0.082 mg/L	1.49 mg/L
Zinc	0.120 mg/L	0.65 mg/L

3. Options for Controlling Pollutants

The measures commonly implemented to reduce pollutants in storm water discharges from boat and ship building and repairing facilities are generally uncomplicated and simple to implement. Table R–4 identifies Best Management Practices (BMPs) associated with various activities that routinely occur at boat and ship building and repair facilities.

TABLE R–4.—COMMON MANAGEMENT PRACTICES FOR STORM WATER POLLUTION PREVENTION AT SHIP AND BOAT BUILDING AND REPAIRING FACILITIES

Activity	BMPs
Pressure washing	Collect discharge water and remove all visible solids before discharging to a sewer system, or where permitted by an individual NPDES permit, to a drainage system, or receiving water.
	Perform pressure washing only in designated areas where wash water containment can be effectively achieved.
	Use no detergents or additives in the pressure wash water.
	Direct deck drainage to a collection system sump for settling and/or additional treatment.
	Implement diagonal trenches or berms and sumps to contain and collect wash water at marine railways.
	Use solid decking, gutters, and sumps at lift platforms to contain and collect wash water for possible reuse.
Surface preparation, sanding, and paint removal.	Enclose, cover, or contain blasting and sanding activities to the maximum extent practical to prevent abrasives, dust, and paint chips from reaching storm sewers or receiving water.
	Where feasible, cover drains, trenches, and drainage channels to prevent entry of blasting debris to the system.
	Prohibit uncontained blasting or sanding activities over open water.
	Prohibit blasting or sanding activities during windy conditions which render containment ineffective.
	Inspect and clean sediment traps to ensure the interception and retention of solids prior to entering the drainage system.
	Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
	Collect spent abrasives routinely and store under a cover to await proper disposal
Painting	Enclose, cover, or contain painting activities to the maximum extent practical to prevent overspray from reaching the receiving water.
	Prohibit uncontained spray painting activities over open water.
	Prohibit spray painting activities during windy conditions which render containment ineffective.
	Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters, preferably indoors or under a shed.
	Have absorbent and other cleanup items readily available for immediate cleanup of spills.
	Allow empty paint cans to dry before disposal.
	Keep paint and paint thinner away from traffic areas to avoid spills.
	Recycle paint, paint thinner, and solvents.
	Train employees on proper painting and spraying techniques, and use effective spray equipment that delivers more paint to the target and less overspray.
Drydock maintenance	Clean and maintain drydock on a regular basis to minimize the potential for pollutants in the storm water runoff.
	Sweep accessible areas of the drydock to remove debris and spent sandblasting material prior to flooding.
	If hosing must be used as a removal method, collect wash water to remove solids and potential metals.
	Clean the remaining areas of the dock after a vessel has been removed and the dock raised.
	Remove and properly dispose of floatable and other low-density waste (wood, plastic, insulations, etc.).
Drydock activities	Use plastic barriers beneath the hull, between the hull and drydock walls for containment.
	Use plastic barriers hung from the flying bridge of the drydock, from the bow or stern of the vessel, or from temporary structures for containment.
	Weight the bottom edge of the containment tarpaulins or plastic sheeting during a light breeze.
	Use plywood and/or plastic sheeting to cover open areas between decks when sandblasting (scuppers, railings, freeing ports, ladders, and doorways).
	Install tie rings or cleats, cable suspension systems, or scaffolding to make implementation containment easier.
Nondrydock activities	Hang tarpaulin from the boat, fixed, or floating platforms to reduce pollutants transported by wind.
	Pave or tarp surfaces under marine railways.

TABLE R–4.—COMMON MANAGEMENT PRACTICES FOR STORM WATER POLLUTION PREVENTION AT SHIP AND BOAT BUILDING AND REPAIRING FACILITIES—Continued

Activity	BMPs
	Clean railways before the incoming tide
	Haul vessels beyond the high tide zone before work commences or halt work during high tide.
	Place plastic sheeting or tarpaulin underneath boats to contain and collect waste and spent materials and clean and sweep regularly to remove debris.
	Use fixed or floating platforms with appropriate plastic or tarpaulin barriers as work surfaces and for containment when work is performed on a vessel in the water to prevent blast material or paint overspray from contacting storm water or the receiving water.
	Sweep rather than hose debris present on the dock.
Engine maintenance and repairs.	Maintain an organized inventory of materials used in the maintenance shop.
	Dispose of greasy rag, oil filters, air filters, batteries, spent coolant, and degreasers properly.
	Label and track the recycling of waste material (i.e., used oil, spent solvents, batteries).
	Drain oil filters before disposal or recycling.
	Store cracked batteries in a nonleaking secondary container.
	Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers.
	Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets.
	Plug floor drains that are connected to the storm or sanitary sewer; if necessary, install a sump that is pumped regularly.
	Inspect the maintenance area regularly for proper implementation of control measures.
	Train employees on proper waste control and disposal procedures.
Material Handling	Store permanent tanks in a paved area surrounded by a dike system which provides sufficient containment for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
Bulk liquid storage and containment.	Maintain good integrity of all storage tanks.
	Inspect storage tanks to detect potential leaks and perform preventive maintenance.
	Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks.
	Train employees on proper filling and transfer procedures.
Material Handling	Store containerized materials (fuels, paints, solvents, etc.) in a protected, secure location and away from drains.
Containerized material storage.	Store reactive, ignitable, or flammable liquids in compliance with the local fire code.
	Identify potentially hazardous materials, their characteristics, and use.
	Control excessive purchasing, storage, and handling of potentially hazardous materials.
	Keep records to identify quantity, receipt date, service life, users, and disposal routes.
	Secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials.
	Educate personnel for proper storage, use, cleanup, and disposal of materials.
	Provide sufficient containment for outdoor storage areas for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.
	Use temporary containment where required by portable drip pans.
	Use spill troughs for drums with taps.
Material Handling	Mix paints and solvents in designated areas away from drains, ditches, piers, and surface waters. Locate designated areas preferably indoors or under a shed.
Designated material mixing areas.	
	If spills occur,
	• Stop the source of the spill immediately.
	• Contain the liquid until cleanup is complete.
	• Deploy oil containment booms if the spill may reach the water.
	• Cover the spill with absorbent material.
	• Keep the area well ventilated.
	• Dispose of cleanup materials properly.
	• Do not use emulsifier or dispersant.
Shipboard process water handling.	Keep process and cooling water used aboard ships separate from sanitary wastes to minimize disposal costs for the sanitary wastes.
	Keep process and cooling water from contact with spent abrasives and paint to avoid pollution of the receiving water.
	Inspect connecting hoses for leaks.
Shipboard sanitary waste disposal.	Discharge sanitary wastes from the ship being repaired to the yard's sanitary system or dispose of by a commercial waste disposal company.
	Use appropriate material transfer procedures, including spill prevention and containment activities.
Bilge and Ballast water	Collect and dispose of bilge and ballast waters which contain oils, solvents, detergents, or other additives to a licensed waste disposal company.

Sources: EPA, Office of Water. 1993. "Guidance Specifying Management Measures for Survey of Nonpoint Pollution in Coastal Waters." 840–B–92–002.

University of South Alabama, College of Engineering. September 1992. Best Management Practices for the Shipbuilding and Repair Industry and for Bridge Maintenance Activities. College of Engineering Report No. 92–2.

NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991 through December 31, 1992.

4. Pollutant Control Measures Required Through Other EPA Programs

EPA recognizes that the Resource Conservation and Recovery Act (RCRA) and the Underground Storage Tank (UST) programs require careful management of materials used at Ship Building and Repairing Facilities and Boat Building and Repairing Facilities.

Under the RCRA program, on September 10, 1992, EPA promulgated standards in 40 CFR part 279 for the management of used oils that are recycled (57 FR 41566). These standards include requirements for used oil generators, transporters, processors/re-refiners, and burners. The standards for used oil generators apply to all generators, regardless of the amount of used oil they generate. Do-it-yourself (DIY) generators which generate used oil from the maintenance of their personal vehicles, however, are not subject to the management standards (Subsection 279.20(a)(1)).

The requirements for used oil generators were designed to impose minimal burden on generators while protecting human health and the environment from the risks associated with managing used oil. Under Subpart C of 40 CFR part 279, used oil generators must not store used oil in units other than tanks, containers, or units subject to regulation under Part 264 or 265 of 40 CFR 279.22(a). In other words, generators may store used oil in tanks or containers that are not subject to Subpart J (Hazardous Waste Tanks) or Subpart I (Containers) of Parts 264/265, as long as such tanks or containers are maintained in compliance with the used oil management standards. This does not preclude generators from storing used oil in Subpart J tanks or Subpart I containers or other units, such as surface impoundments (Subpart K), that are subject to regulation under Part 264 or 265.

Storage units at generator facilities must be maintained in good condition and labeled with the words "used oil." Upon detection of a release of used oil to the environment, a generator must take steps to stop the release, contain the released used oil, and properly manage the released used oil and other materials (Sections 279.22 (b)–(d)). Generators storing used oil in underground storage tanks are subject to the UST regulations (40 CFR part 280).

If used oil generators ship used oil offsite for recycling, they must use a transporter who has notified EPA and obtained an EPA identification number (Section 279.24).

The technical standards for USTs at 40 CFR part 280 require that new UST systems (defined as systems for which installation commenced after December 12, 1988) use overfill prevention equipment that will: (1) Automatically shut off flow into the tank when the tank is no more than 95 percent full; or (2) alert the transfer operator when the tank is no more than 90 percent full by restricting the flow into the tank or triggering a high level alarm. The preceding requirements do not apply to systems that are filled by transfers of no more than 25 gallons at one time. Existing UST systems (defined as systems for which installation has commenced on or before December 12, 1988) are required to have installed the described overfill prevention equipment by December 12, 1998.

5. Special Conditions

a. Prohibition of non-storm water discharges. This section of today's proposed permit does not authorize prohibited non-storm water discharges of wastewaters, such as bilge and ballast water, sanitary wastes, pressure washwater, and cooling water originating from vessels. The operators of such discharges must obtain coverage under a separate NPDES permit if discharged to waters of the U.S. or through a municipal separate storm sewer system.

6. Storm Water Pollution Prevention Plan Requirements

The conditions that apply to ship and boat building and repairing facilities build upon the requirements set forth in the baseline general permit for storm water discharges from industrial activities which was finalized on September 9, 1992 (57 FR 41236). The discussion which follows, therefore, only addresses conditions that differ from those required in the baseline permit.

a. Contents of the plan—(1) Description of potential pollutant sources. Under the description of potential pollutant sources in the storm water pollution prevention plan requirements, permittees are required to include the location(s) on their facility site map where engine maintenance and repair work, vessel maintenance and repair work, and pressure washing are performed. This requirement is the same as the baseline general permit, but here it is expressed in more appropriate terms for the ship and boat industry. Rather than requiring the location of "storage areas" as in the baseline general permit, this storm water pollution prevention plan specifies that the location of liquid storage areas (i.e., paint, solvents, resins) and material storage areas (i.e., blasting media, aluminum, steel) be shown.

(2) Measures and controls. Under the description of measures and controls in the storm water pollution prevention plan requirements, this section proposes that all areas that may contribute pollutants to storm waters discharges shall be maintained in a clean and orderly manner. This section of today's proposed permit also proposes that the following areas be specifically addressed:

(a) Pressure washing area—When pressure washing is used to remove marine growth from vessels, the discharge water must be collected or contained and disposed of as required by the NPDES permit for this process water, if the discharge is to waters of the U.S. or through a municipal separate storm sewer. The plan must describe the measures to collect or contain the discharge from the pressure washing area, detail the method for the removal of the visible solids, describe the method of disposal of the collected solids, and identify where the discharge will be released (i.e., the receiving waterbody, storm sewer system, sanitary sewer system).

(b) Blasting and painting areas—To the maximum extent practical, all blasting and painting activities must be sufficiently contained to prevent abrasives, paint chips, and overspray from reaching a receiving waterbody or storm sewer system. The plan must describe measures taken at the facility to prevent or minimize the discharge of spent abrasive, paint chips, and paint into the receiving waterbody and storm sewer system. The facility may consider hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. Where required, a schedule for cleaning storm systems to remove deposits of abrasive blasting debris and paint chips should be addressed within the plan. The plan should include any standard operating practices with regard to blasting and painting activities. Such items may include the prohibition of performing uncontained blasting and painting over open water or blasting and painting during windy conditions which can render containment ineffective.

(c) Material storage areas—All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be stored in a protected, secure location away from drains and plainly labeled. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility must specify which materials are stored indoors and consider containment or

cover for materials that are stored outdoors. Above ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills. The facility must consider implementing an inventory control plan to prevent excessive purchasing, storage, and handling of potentially hazardous materials. Those facilities where abrasive blasting is performed must specifically include within the plan discussion on the storage and proper disposal of spent abrasive generated at the facility.

(d) Engine maintenance and repair areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for engine maintenance and repair. The facility must consider performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting the practice of hosing down the shop floor where the practice would result in the exposure of pollutants to storm water, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(e) Material handling areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (i.e., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The facility must consider covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area, preferably indoors or under a shed; and minimizing runon of storm water to material handling areas. Where applicable, the plan must address the replacement or repair of leaking connections, valves, pipes, hoses, and soil chutes carrying wastewater from vessels.

(f) Drydock activities—The plan must address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in storm water runoff. The facility must describe the procedures for cleaning the accessible areas of the drydock prior to flooding and the final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock must also be included within the plan. The facility must consider items such as sweeping rather than hosing off debris and spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to contain and cleanup any spills.

(g) General yard area—The plan must include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., must be routinely removed from the general yard area. The facility must consider such measures as providing covered trash receptacles in each yard, on each pier, and on board each vessel being repaired.

These seven areas are the common sources of pollutants in storm water from ship building and repairing and boat building and repairing activities. Based upon Best Management Practices for the Shipbuilding and Repair Industry and for Bridge Maintenance Activities prepared by the College of Engineering at the University of South Alabama, the suggested management measures are commonly used at ship and boat facilities. EPA believes that the incorporation of management practices such as those suggested will substantially reduce the potential for these activities and areas to contribute pollutants to storm water discharges. In addition, EPA believes that these requirements will continue to provide the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with different facilities. Many facilities will find that appropriate management measures are already employed at the facility because they have been required under an existing EPA program.

The preventive maintenance requirements specifically include the routine inspection of sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system. Because of the nature of operations occurring at ship and boat facilities, routine attention needs to be placed on the collection and proper disposal of spent abrasive, paint chips, and other solids.

In addition to the comprehensive site evaluation required under Part XI.R.3.a.(4) of today's proposed permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility, at a minimum, on a monthly basis. The following areas shall be included in all inspections: pressure washing area, blasting and painting areas, material storage areas, engine maintenance and repair areas, material handling areas, drydock area, and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records shall be maintained.

The purpose of the inspections is to check on the implementation and effectiveness of the storm water pollution prevention plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis. The use of an inspection checklist is encouraged. The checklist will ensure that all required areas are inspected, as well as help to meet the record keeping requirements.

The permittee is required to identify semiannual (twice per year) dates for employee training. Employee training must, at a minimum address the following areas when applicable to a facility: Used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management. Employees, independent contractors, and customers must be informed about BMPs and be required to perform in accordance with these practices. The permittee is required to consider posting easy to read or graphic depictions of BMPs that are included in the plan as well as emergency phone numbers in the work areas. This practice will enhance employees understanding the pollutant control measures. Unlike some industrial operations, the industrial activities associated with ship and boat building and repair facilities that may affect storm water quality require the cooperation of all employees. EPA, therefore, is proposing to require that employee training take place at least twice a year to serve as:

(1) Training for new employees;

(2) A refresher course for existing employees;

(3) Training for all employees on any storm water pollution prevention techniques recently incorporated into the plan; and

(4) A forum for the facility to invite independent contractors and customers to inform them on pollution prevention procedures and requirements.

7. Numeric Effluent Limitation

There are no additional numeric effluent limitations beyond those described in Part VI. of this fact sheet.

8. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that ship and boat building and repairing

facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires ship and boat building and repairing facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table R–5. The pollutants listed in Table R–5 were found to be above benchmark levels for a significant portion of ship and boat building and repairing facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from ship and boat building and repairing, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from ship and boat building and repairing facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table R–5. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE R–5.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Total Recoverable Copper .	0.009 mg/L
Total Recoverable Zinc	0.65 mg/L
Total Recoverable Arsenic .	0.000018 mg/L
Total Recoverable Iron	0.3 mg/L
Total Recoverable Lead	0.0337 mg/L
Nitrate+Nitrite as Nitrogen ..	0.68 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table R–5, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table R–5, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE R–6.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table R–5, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table R–5, then no further sampling is required for that parameter.
4th Year of Permit Coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table R–5. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification.—Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges

before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required at ship and boatbuilding or repair yard facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from ship and boat building and repair facilities. These notices specifically require that facilities with storm water discharges that are associated with ship and boat building and repair are required to monitor their storm water discharges for oil and grease, COD, TSS, and pH. Today's proposed permit contains different monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for ship and boat building and repairing facilities in the September 1992 General Permits and those required in today's proposed permit.

9. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in part IX.R.8 of today's proposed permit.

a. Storm water discharges. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with activities identified in paragraphs XI.R.9.a.(1) and XI.R.9.a.(2) must monitor storm water discharges associated with industrial activity for the parameters identified in Table R–7 at least annually (1 time per year) except as provided in VI.A. (Sampling Waiver and Representative Discharge). In addition to the parameters listed, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

(1) Storm water discharges from boat building (including cutting, routing, forming, assembling, painting, varnishing, sanding and welding) or boat repairing (including engine repair and maintenance, vessel repair and maintenance, painting, blasting, sanding and welding) activities that are exposed to storm water; [122]

(2) Storm water discharges from ship building or repairing activities.[123]

TABLE R–7.—STORM WATER DISCHARGE PARAMETERS

Parameter	Unit	Frequency	Sample type[1]
Total Flow	MGD	1/year	Estimate.
Oil & Grease	mg/L	1/year	Grab.

[122] According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship, and a vessel smaller than 65 feet is a boat.

[123] According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship, and a vessel smaller than 65 feet is a boat.

TABLE R–7.—STORM WATER DISCHARGE PARAMETERS—Continued

Parameter	Unit	Frequency	Sample type[1]
Chemical Oxygen Demand (COD)	mg/L	1/year	Grab.
Total Suspended Solids (TSS)	mg/L	1/year	Grab.
pH	standard	1/year	Grab.
Total Recoverable Copper	mg/L	1/year	Grab.
Total Recoverable Lead	mg/L	1/year	Grab.
Total Recoverable Zinc	mg/L	1/year	Grab.
Acute whole effluent toxicity[2]		1/year	Grab.
Any pollutant limited in an effluent guideline to which the facility is subject		1/year	Grab.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.
[2] The acute whole effluent toxicity shall be performed in accordance with Part XI.R.9.b. of this section.

b. Toxicity testing—(1) Test procedures—(a) The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1). Freshwater species must be used for discharges to freshwater bodies. Due to the nonsaline nature of rainwater, freshwater should also be used for discharges to estuarine, marine, or other naturally saline waterbodies.

(b) All test organisms, procedures and quality assurance criteria used shall be in accordance with "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms," EPA/600/4–90/027, or the most current edition. The control water used will be moderately hard water as described in EPA/600/4–90/027, Table 6, or the most current edition.

(c) Tests shall be conducted annually (once per year) on a grab sample of the discharge. Test shall be conducted using 100 percent effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–27 (or the most current edition), Section 12, Report Preparation, and the report submitted to EPA with the Discharge Monitoring Reports (DMRs). On the DMR, the permittee shall report "0" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

(2) If acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and the control) is detected in the storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the sources of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

10. Cost Estimates

This section which covers ship building and repairing facilities and boat building and repairing facilities, does not include numeric effluent limits. The BMPs described within this section are designed to prevent or minimize pollutants in the storm water runoff. Facilities choose and implement the BMPs which best fit site specific requirements. Because this section does not contain numeric effluent limits or requirements to implement specific, predetermined BMPs, an economic achievable analysis is not required.

S. Storm Water Discharges Associated With Industrial Activity From Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas Located at Air Transportation Facilities

1. Discharges Covered Under This Section

The storm water application regulations define "storm water discharges associated with industrial activity" in terms of eleven categories of industrial activities at 40 CFR 122.26(b)(14). Category (viii) of this definition includes transportation facilities classified as Standard Industrial Classifications (SIC) 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 that have vehicle and equipment maintenance shops, equipment cleaning operations, or airport deicing operations. The category further states that only those portions of the facility that are either involved in vehicle and equipment maintenance (including vehicle and equipment rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or airport deicing operations are associated with industrial activity. The conditions proposed in this section apply to facilities generally classified as SIC code 45 (airports, airport terminals and flying fields) which conduct the above described activities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

a. Responsible parties. Airports typically operate under a single management organization known as the airport "authority" which in most cases is a public agency. As the operator of the facility, the airport authority is responsible for applying for an NPDES storm water permit. Airline companies and fixed base operators (e.g., fueling companies and maintenance shops) that have contracts with the airport authority to conduct business on airport property are referred to as "tenants" of the airport. Operations conducted by tenants, if described as industrial activities at 40 CFR 122.26(b)(14)(viii), must be in compliance with the conditions of this section. As such, a storm water pollution prevention plan developed in accordance with the requirements of Part XI.S.3. shall be

prepared for areas occupied by tenants of the airport facility who conduct industrial activities as described in Part XI. of today's proposed permit. Plans developed for areas of the airport facility occupied by tenants of the airport shall be integrated into the storm water pollution prevention plan for the entire airport facility.

While the case could be made that each tenant is responsible for the discharge of pollutants in storm water runoff from their areas of operations, it is the operator of the facility, the airport authority, that is responsible for the storm water discharges from the site. Thus, the airport authority is responsible for developing a storm water pollution prevention plan for the airport facility as well as ensuring that the facility as a whole is in compliance with the conditions of this section.

2. Pollutants Found in Storm Water Discharges

In general, the quantitative data submitted thus far has not raised any particular areas of concern with respect to discharges of pollutants resulting from vehicle maintenance and/or deicing operations conducted at airport facilities. However, EPA believes that the part 2 sampling data does not provide justification that discharges resulting from deicing operations are not a significant source of pollutants. The sampling requirements for part 2 of the group application did not specify that facilities must sample storm water discharges from areas where deicing activities occur and/or during times when such operations were being conducted. As a result, only one facility indicated that the sampling data submitted was collected from areas where deicing activities were being conducted. After reviewing recent case studies on the effects of glycol discharges to receiving waters, EPA reports and the results of FAA surveys, EPA believes that additional information on the discharges of deicing chemicals to receiving waters as a result of aircraft and runway deicing operations is warranted and necessary.

Both ethylene and propylene glycols exert high oxygen demands when released into receiving waters. As such, this section requires that facilities report both the Biochemical Oxygen Demand (BOD) and Chemical Oxygen Demand (COD) of discharges sampled at facilities that use at least 100,000 gallons or more of glycol-based deicing chemicals. The concentration of nitrogen and possibly ammonia are the concern with respect to deicing operations where urea is used. Therefore, this section requires that facilities subject to the monitoring requirements in Part XI.S.5. of the permit also report the concentration of Total Kjeldahl Nitrogen (TKN) in discharges sampled.

The results of the storm water survey conducted by FAA (June 1992) showed that 10 percent of the respondents who conduct deicing activities used more than 100,000 gallons of glycol based deicing chemicals during winter seasons. In addition, those facilities using more than 100,000 gallons of glycol based deicing chemicals accounted for 71 percent of the total amount of glycol based deicing chemicals reported in the survey. In a similar survey conducted by the American Association of Airport Executives, 4 percent of the airports conducting deicing activities used more than 100,000 gallons of ethylene glycol which represented approximately 76 percent of the total amount of ethylene glycol used by all airports surveyed.

3. Special Conditions

Today's proposed permit clarifies in Part XI.S.2. (Prohibition of Non-storm Water Discharges) that non-storm water discharges, including discharges from aircraft, ground vehicle and equipment washwaters, dry weather discharges from airport deicing/anti-icing operations, and dry weather discharges resulting from runway maintenance are not authorized under this section. The operators of such discharges must obtain coverage under a separate NPDES permit if discharged to waters of the U.S. or through a municipal separate storm sewer system. In a related requirement, the permittee is required to attach a copy of the NPDES permit issued for the discharge of non-storm water runoff or, if an NPDES permit has not yet been issued, a copy of the pending application to the plan. For facilities that discharge the waters mentioned above to a sanitary sewer system, the operator of the sanitary sewer system must be notified. A copy of the notification letter must be attached to the plan. If an industrial user permit has been issued under a pretreatment program, a copy of the permit must be attached to the plan as does any other permit to which the facility's discharge waters are subject.

4. Storm Water Pollution Prevention Plan Requirements

a. Contents of the plan. The pollution prevention plan requirements described below are in addition to those found under Part VI.C.

(1) Description of potential pollutant sources. In addition to the common pollution prevention plan requirements discussed in Part VI.C.2. (Drainage), the site map developed for an entire airport facility shall identify and indicate the location of each tenant of the facility conducting industrial activities as described in this section.

In addition to the pollution prevention requirements discussed in Part VI.C.2. (Summary of Potential Pollutant Sources), airport facilities, including areas operated by tenants of the facility that conduct industrial activities, must address the following specific operations and areas where the operations occur:

- *Aircraft deicing*—Includes both deicing to remove frost, snow or ice, and anti-icing which prevents the accumulation of frost, snow or ice. Deicing of an airplane is accomplished through the application of a freezing point depressant fluid, commonly ethylene glycol or propylene glycol, to the exterior surface of an airplane. Both ethylene and propylene glycol have high biochemical oxygen demands (BOD) when discharged to receiving waters. Environmental impacts on surface waters due to glycol discharges includes glycol odors and glycol contaminated surface water and ground water systems, diminished dissolved oxygen levels and fish kills.

The Federal Aviation Administration (FAA) recently conducted a survey which focused on aircraft and runway deicing operations being conducted at U.S. airports. Ninety-six airports responded to the survey and results are summarized in a final report dated June 1, 1992. In summary, 65 airports indicated the amounts of ethylene glycol used for aircraft deicing for the winter periods of 1989–90 and 1990–91 and the volumes used by each airport ranged significantly, from a few gallons to 520,000 gallons. The average annual volume of ethylene glycol used by all respondents for the winter periods of 1989–90 and 1990–91 was approximately 2,159,426 gallons.

The majority of aircraft deicing operations occur on the apron adjacent to the passenger terminal and runoff generally drains to a nearby storm water inlet. In fact, 31 of the respondents to the FAA survey indicated that 75 percent or more of the spent deicing chemicals were discharged to the storm sewer system. In general, the remainder of spent chemical resulting from aircraft deicing operations drained to ditches or open areas.

All aspects of aircraft deicing/anti-icing operations, including quantities used and stored, as well as application, handling and storage procedures are required to be addressed under the conditions of this section.

• *Runway deicing/anti-icing*—Includes deicing/anti-icing operations conducted on runways, taxiways and ramps. Runway deicing/anti-icing commonly involves either the application of chemical fluids such as ethylene glycol or propylene glycol, or solid constituents such as pelletized urea. Urea has a high nitrogen content, therefore degradation of urea in a receiving water causes an increase in nutrient loadings resulting in an accelerated growth of algae and eutrophic conditions. Under certain ambient conditions, the degradation of urea in receiving waters can also result in ammonia concentrations toxic to aquatic life.

The FAA's storm water survey indicated that, of the facilities that indicated using urea for runway deicing for the winter periods of 1989–90 and 1990–91, the amount of urea used during a single winter period ranged from 100 pounds to 1,450,000 pounds (715 tons). With regard to disposal of spent deicing chemicals from runways, taxiways and ramps, 20 airports directly discharged 50 percent or more of runoff from deicing areas to storm sewers. In response to question concerning collection and treatment of spent deicing chemicals from runway deicing activities, sixty facilities responded and only five facilities indicated that runoff from runway deicing operations was collected and treated.

All aspects of runway deicing/anti-icing operations, including quantities used and stored, as well as application, handling and storage procedures are required to be addressed under the conditions of this section.

• *Aircraft servicing*—Typically conducted on the apron area adjacent to the passenger terminal, the servicing of aircraft could potentially contribute pollutants to storm water. As a result of spills or leaks during the servicing of airplanes, fluids such as engine oil, hydraulic fluid, fuel and lavatory waste could potentially enter the storm water system and/or be discharged to receiving waters. All spillage other than potable water should be prevented from entering the storm sewer system.

• *Aircraft, ground vehicle and equipment maintenance and washing*—Maintenance activities included in this section include both minor and major operations conducted either on the apron adjacent to the passenger terminal, or at dedicated maintenance facilities. Potential pollutant sources from all types of maintenance activities includes spills and leaks of engine oils, hydraulic fluids, transmission oil, radiator fluids, and chemical solvents used for parts cleaning. In addition the disposal of waste parts, batteries, oil and fuel filters, and oily rags also have a potential for contaminating storm water runoff from maintenance areas unless proper management practices and operating procedures are implemented. The spent wash water from aircraft and ground vehicle washing activities could potentially be contaminated with surface dirt, metals, and fluids (fuel, hydraulic fluid, oil, lavatory waste).

• *Runway maintenance*—Over time, materials such as tire rubber, oil and grease, paint chips, and jet fuel can buildup on the surface of a runway causing a reduction in the friction of the pavement surface. When the friction level of the runway falls below a specific level, then maintenance on the runway must be performed. The Federal Aviation Administration (FAA) recommends several methods for removing rubber deposits and other contaminants from a runway surface including high pressure water, chemical solvents, high velocity particle impact, and mechanical grinding. If not properly managed, the materials removed from the runway surface could be discharged into nearby surface waters. Similarly, if chemical solvents are used in the maintenance operation, improper management practices could result in discharges of the chemical solvents in the storm water runoff from runway areas to nearby surface waters.

(*2*) *Measures and controls.* In addition to the common pollution prevention plan requirements discussed in Part VI.C.3. (Measures and Controls), this section specifies that permittees must address particular Best Management Practices (BMP) for specific areas and operations identified as potential sources of pollutants. This section further specifies that a schedule for implementation shall be provided for each BMP selected. The BMPs specified in this section are not intended to be the only alternative management practices considered by operators, simply the minimum to be considered. In most cases, the BMPs specified are common sense practices that are already in common practice at many airport facilities. As such, operators may only need to include the information in their storm water pollution prevention plan. Specific areas and industrial operations mentioned in this section and the corresponding BMPs for such areas are the following:

(*a*) *Aircraft, ground vehicle and equipment maintenance areas (including aircraft service areas)*—The plan must describe measures that prevent or minimize the contamination of storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance and servicing. Management practices such as performing all maintenance activities indoors, maintaining an organized inventory of materials used, draining all parts of fluids prior to disposal, prohibiting the practice of hosing down the apron or hangar floor, using dry cleanup methods in the event of spills, and/or collecting the storm water runoff from maintenance and/or service areas and providing treatment, or recycling should be considered.

(*b*) *Aircraft, ground vehicle, and equipment cleaning areas*—The plan must describe measures that prevent or minimize the contamination of the storm water runoff from all areas used for aircraft, ground vehicle, and equipment maintenance. Management practices such as performing all cleaning operations indoors, and/or collecting the storm water runoff from the area and providing treatment or recycling should be considered.

(*c*) *Aircraft, ground vehicle, and equipment storage areas*—The storage of aircraft, ground vehicles, and equipment awaiting maintenance must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize the contamination of storm water runoff from these areas. Management practices such as indoor storage of aircraft and ground vehicles, the use of drip pans for the collection of fluid leaks, and perimeter drains, dikes or berms surrounding storage areas should be considered.

(*d*) *Material storage areas*—Storage units of all materials (e.g., used oils, hydraulic fluids, spent solvents and waste aircraft fuel) must be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil," "Contaminated Jet-A," etc.). The plan must describe measures that prevent or minimize contamination of the storm water runoff from storage areas. Management practices such as indoor storage of materials, centralized storage areas for waste materials, and/or installation of berming and diking around storage areas should be considered for implementation.

(*e*) *Airport fuel system and fueling areas*—The plan must describe measures that prevent or minimize the discharge of fuels to the storm sewer resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. Where the discharge of fuels into the storm sewer cannot be prevented, the plan shall indicate measures that will be employed to prevent or minimize the discharge of

the contaminated runoff into receiving surface waters.

(f) Source reduction—This section specifies that facilities which conduct aircraft and/or runway (including taxiways and ramps) deicing/anti-icing operations shall evaluate present operating procedures to consider alternative practices which would reduce the overall amount of deicing/anti-icing chemical used and/or lessen the environmental impact of the pollutant source.

With regard to runway deicing/anti-icing operations, operators should begin by evaluating present chemical application rates to ensure against excessive over application. Devices which meter the amount of chemical being applied to runways help to prevent over application. Operators should also emphasize anti-icing operations which would preclude the need to deice; less chemical is required to keep ice off a runway than is required to remove ice from a runway. To further assist in implementing anti-icing procedures, operators should also consider installing runway ice detection systems (RID) otherwise known as "pavement sensors" which monitor runway temperatures. Pavement sensors provide an indication of when runway temperatures are approaching freezing conditions, thus alerting operators of the need to anti-ice. Deicing chemicals applied during extremely cold, dry conditions, are often ineffective since they do not adhere to the ice surface and may be scattered as a result of windy conditions or aircraft movement. In an effort to improve the efficiency of the application, operators should consider pre-wetting the deicing chemical to improve the adhesion to the iced surface.

With regard to substitute deicing/anti-icing chemicals for runway use, operators should consider using chemicals which have less of an environmental impact on receiving waters. Potassium acetate, has a lower oxygen demand than glycol, is nontoxic to aquatic habitat or humans, and was approved by the FAA for runway deicing operations in November, 1991 (AC No. 150/5200–30A CHG 1).

In considering alternative management practices for aircraft deicing/anti-icing operations, operators should evaluate present application rates to ensure against excessive over application. In addition, operators may consider pretreating aircraft with hot water or forced air prior to the application of chemical deicer. The goal of this management practice is to reduce the amount of chemical deicer used during the operation. This management practice alone is not sufficient since discharges of small concentrations of glycol can have significant effects on receiving waters. It is, however, an effective measure to reduce the amount of glycol needed per operation.

(g) Management of runoff—A number of reports developed for EPA (Guidance For Issuing NPDES Storm Water Permits For Airports, September 28, 1991) and Federal Aviation Administration (FAA) Advisory Circulars (AC 150–5320–15) indicate that the most common location for deicing/anti-icing aircraft at U.S. airports is along the apron areas where mobile deicing vehicles operate from gate to gate. In a recent FAA survey of deicing operations at U.S. airports (June 1992), the majority of respondents indicated that spent deicer chemicals from aircraft deicing operations either drain to the storm sewer system, open areas, or are left to evaporate on the ramp.

This section specifies that facilities shall provide a narrative description of BMPs to control or manage storm water runoff from areas where deicing/anti-icing operations occur in an effort to minimize or reduce the amount of pollutants being discharged from the site. For example, when deicing operations are conducted on aircraft during periods of dry weather, operators should ensure that storm water inlets are blocked to prevent the discharge of deicing chemical in the storm sewer system. Mechanical vacuum systems or other similar devices can then be used to collect the spent deicing chemical from the apron surface for proper disposal. Establishing a centralized deicing station would also provide better control over aircraft deicing operations in that it enables operators to readily collect spent deicing chemicals.

Once spent deicer chemicals are collected, operators can then select from various methods of disposal such as:

(i) Disposal to sanitary sewage facility—Because glycols are readily biodegradable, runoff can be treated along with sanitary sewage. The receiving treatment plant would, however, have to have the capacity to handle the hydraulic load as well as the additional biochemical oxygen demand associated with the deicing chemical. Measurements have shown that the average oxygen demand for glycol is between 400,000 and 600,000 mg O_2/L even if diluted per fluid manufacturers specifications (FAA AC 150–5320–15 CHG 1, 1991). To lessen both the increased hydraulic and pollutant loads due to runoff from airport deicing operations, retention basins may be located at the airport facility.

(ii) Retention and detention ponds—Conversion of suitable unused airport land into retention or detention basins allows for collection of large volumes of glycol waste from pavement surface runoff. The design capacity for such basins should at least handle surface runoffs for winter months noting the decreased microbial activity during the winter season which is needed for biodegradation, plus additional capacity for runoff during thawing periods. Continuous aeration would supply required oxygen and allow for faster biodegradation and release of glycol waste, which may reduce capacity requirements. Metering the discharge of flow from an onsite basin allows the operator to better control the rate of flow during peak flight hours and to avoid BOD shock loadings to a sanitary treatment facility or a surface water.

(iii) Recycling—Glycol recycling provides operators with a chemical cost savings since recaptured glycol can be sold or reused for other nonaircraft applications (FAA AC 150–5320–15, February 1991). Studies indicate that collected deicing chemicals which have glycol concentrations ranging from 15 to 25 percent can be cost effectively recycled. The optimal conditions for collecting the highest concentration of glycol in spent deicing fluid is directly from the apron or centralized deicing station when deicing operations are conducted during dry weather or light precipitation events. Deicing chemicals discharged to retention basins which are then allowed to mix with additional surface runoff typically result in glycol concentrations well below the acceptable range for recycling. There are, however, methods of physical separation presently available which increase the concentration of glycol and allow operators to recover a relatively reusable product.

(h) Inspections—In addition to the common pollution prevention plan requirements discussed in Part VI.C.3. (Inspections), airport authorities shall inspect (1) designated equipment and areas of the facility occupied by tenants who conduct industrial activities as described in this section on a quarterly basis, and (2) equipment and areas involved in deicing/anti-icing operations on a weekly basis during periods when deicing/anti-icing operations are being conducted.

(i) Pollution prevention training—Pollution Prevention training programs shall inform airport management and tenant personnel responsible for implementing activities identified in the storm water pollution prevention plan, as well as tenants of the airport facility, of the components and goals of the plan.

Training should address topics such as spill response, good housekeeping, material management practices and deicing procedures. The pollution prevention plan shall identify periodic dates for such training.

(3) Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to: (1) Confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of today's proposed permit. Comprehensive site compliance evaluations must be conducted at least annually. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

5. Numeric Effluent Limitation

There are no additional numerical limitations beyond those in Part VI.F. of this fact sheet.

6. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that airports may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires airport facilities that use 100,000 gallons or more of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis to collect and analyze samples of their storm water discharges from areas where deicing/anti-icing activities occur for the pollutants listed in Table S–1. The pollutants listed in Table S–1 were found to be above benchmark levels for a significant portion of airport facilities that use 100,000 gallons or more of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from airport facilities that use 100,000 gallons or more of glycol-based deicing chemicals and/or 100 tons or more of urea on an average basis, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from airport facilities that use 100,000 gallons or more of glycol-based deicing chemicals and/or 100 tons or more of urea on an average basis must be monitored four times during the second year of permit coverage when deicing/anti-icing activities are occurring and from outfalls that receive storm water runoff from those areas. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table S–1. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE S–1.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Biochemical Oxygen Demand (BOD_5).	9 mg/L
Chemical Oxygen Demand (COD).	65 mg/L
Total Kjeldahl Nitrogen (TKN).	1.50 mg/L
pH	6.5 to 9 s.u.

If the average concentration for a parameter is less than or equal to the value listed in Table S–1, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table S–1, then the permittee is required to conduct monitoring four times for that parameter while deicing operations are occurring in the fourth year of the permit. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE S–2.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period.
4th Year of Permit Coverage	• If average concentration is greater than the value listed in Table S–1, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table S–1, then no further sampling is required for that parameter. • Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table S–1. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water

discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

In determining if the airport is subject to the monitoring requirements, operators must determine the "average annual usage rate" of deicing/anti-icing chemicals at their particular facility. The "average annual usage rate" is determined by averaging the total amounts of deicing/anti-icing chemicals used at the facility in the 3 previous calendar years. The total amount of deicing chemicals used at an airport facility is the cumulative amount used by the airport authority and each tenant of the airport facility.

Airport facilities which use less than 100,000 gallons of glycol based deicing chemicals and/or less than 100 tons of urea on an average annual basis are not required to monitor discharges resulting from deicing activities. The objective in establishing a minimum glycol usage cutoff from monitoring requirements is to prevent overly burdensome monitoring requirements on smaller airports that may use smaller amounts of deicing chemicals and do not have the operating budget to support monitoring and reporting requirements. In addition, a survey conducted by the American Association of Airport Executives (AAAE) of association members, revealed that airports which use less than 20,000 gallons of deicing chemicals account for less than 6 percent of the total amount of deicing chemicals used nationwide.

All facilities that conduct aircraft and/or runway deicing/anti-icing operations shall prepare estimates for annual pollutant loadings resulting from discharges of spent deicing chemicals from the facility. The loading estimates shall reflect the amounts of deicing chemicals discharged to separate storm sewer systems or surface waters, prior to and after implementation of the facility's storm water pollution prevention plan. The purpose of these estimates is to calculate the net reduction in deicing chemicals loadings to receiving streams. Such estimates shall be reviewed by a Registered Professional Engineer, and certified by such engineer. By means of the certification, the engineer, having examined the facility's, deicing procedures, and proposed control measures described in the storm water pollution prevention plan, shall attest that the loading estimates have been prepared in accordance with good engineering practices. Pollutant loading estimates developed during the life of the permit (before, during and after plan implementation) will enable the operator as well as the permitting authority to evaluate the effectiveness of control measures outlined in the facilities storm water pollution prevention plan in reducing or eliminating discharges of deicing chemical from the site.

f. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from airports with over 50,000 flights per year. These notices specifically require that facilities with storm water discharges that are associated with airports are required to monitor their storm water discharges from aircraft or airport deicing areas for oil and grease, BOD, COD, TSS, pH, and the primary

ingredient used in the deicing material. Today's proposed permit contains slightly different monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for airports in the September 1992 General Permits and those required in today's proposed permit.

7. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.S.5. of today's proposed permit.

a. During the period beginning on the effective date and lasting through the expiration date of this permit, facilities which conduct aircraft and/or runway deicing/anti-icing operations and use:

(1) Less than 100,000 gallons of glycol based deicing chemicals and/or less than 100 tons of urea on an average annual basis, shall prepare annual pollutant loading estimates for discharges of spent deicing chemicals from the facility. The loading estimates shall reflect the amounts of deicing chemicals discharged to separate storm sewer systems or surface waters, prior to and after implementation of the facility's storm water pollution prevention plan. Such estimates shall be reviewed by a Registered Professional Engineer, and certified by such engineer. By means of the certification, the engineer, having examined the facility's, deicing procedures, and proposed control measures described in the storm water pollution prevention plan, shall attest that the loading estimates have been prepared in accordance with good engineering practices. Certified loading estimates are to be retained at the airport facility and attached to the storm water pollution prevention plan.

(2) 20,000 gallons or more but less than 100,000 gallons of glycol based deicing chemicals and/or 25 tons or more but less than 100 tons of urea on an average annual basis, in addition to the complying with the requirements listed in part XI.S.7., shall monitor outfalls from the facility which collect runoff from areas where deicing/anti-icing activities occur at least once annually (1 time per year). Permittees shall monitor such discharges when the highest concentration of deicing chemicals is expected to be discharged from the site.

(3) 100,000 gallons or more of glycol based deicing chemicals and/or 25 tons or more of urea on an average annual basis, shall monitor outfalls from the facility which collect runoff from areas where deicing/anti-icing activities occur. Such outfalls shall be monitored on a weekly basis during the months of December, January, and February as discharges containing deicing chemicals occur.

For the purposes of today's permit, the "average annual" usage rate of deicing/anti-icing chemicals is determined by averaging the amounts of deicing/anti-icing chemicals used at the facility in the 3 previous calendar years.

b. In addition to the parameters listed in Table S–3, the permittee shall provide the date the sample was taken; the amount (in gallons) of deicing/anti-icing chemicals used during the monitoring period; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE S–3.

Parameter	Unit	Frequency	Sample
Biochemical Oxygen Demand (BOD_5)	mg/L	Annual	Grab.
Chemical Oxygen Demand (COD)	mg/L	Annual	Grab.
Total Kjeldahl Nitrogen (TKN)	mg/L	Annual	Grab.
pH	Standard	Annual	Grab.

c. Sample type. Data shall be reported for a Grab. sample.

d. Reporting: when to submit—(1) Facilities identified in Parts XI.S.7.a. (2) and (3) are not required to submit monitoring results, unless required in writing by the Director. Monitoring results shall be recorded on Discharge Monitoring Report (DMR) form(s). DMR form(s) shall be retained with the pollution prevention plan.

This section of today's proposed permit requests public input on alternative strategies to the monitoring requirements discussed above. Alternatives, whether modifications to the proposed monitoring requirements or completely different approaches, should reflect the overall objectives of this section, mainly to evaluate the effectiveness of the storm water pollution prevention plan, and to characterize the pollutant loadings on receiving waters due to runoff from areas where deicing operations are conducted.

T. Storm Water Discharges Associated With Industrial Activity From Treatment Works

1. Discharges Covered Under This Section

On November 16, 1990 (55 FR 47990), the U.S. Environmental Protection Agency (EPA) promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition includes point source discharges of storm water from eleven categories of facilities, including "* * * (ix) treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more or required to have an approved pretreatment program under 40 CFR part 403."

This section establishes special conditions for storm water discharges associated with industrial activity from treatment works treating domestic sewage with a design flow of 1.0 mgd or more, or for treatment works that are required to have an approved pretreatment program under 40 CFR Part 403, or for those having land dedicated to the disposal of sewage sludge within the confines of the facility. Please note that storm water discharges from farm lands, domestic gardens, or lands used for sludge management where sludge is beneficially reused and which are not physically located in the confines of the facility, or areas that are in compliance with Section 405 of the Clean Water Act (CWA), are not currently regulated under the Federal storm water regulations.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the

other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Industry Profile

Wastewater treatment plants remove organic and inorganic contaminants from domestic sewage and sludge. This section provides a description of the treatment processes for reducing pollutants in domestic sewage. The operations are basically the same at all treatment plants and may be categorized by three general processes: primary treatment, secondary treatment, and tertiary treatment.

- *Primary Treatment*—The objective of primary treatment is the removal of suspended organic pollutants. This typically involves at least one of the following operations: screening, grit removal, and sedimentation. Chemical processes, such as disinfection, may also occur during primary treatment operations.
- *Secondary Treatment*—The objective of secondary treatment is further removal of settleable solids and soluble organic matter. The operations employed during secondary treatment include biological oxidation via suspended growth or fixed film processes, such as activated sludge, rotating biological contractors or trickling filters.
- *Tertiary Treatment*—The objectives of tertiary treatment include further treatment of wastewater, such as removal of suspended solids by filtration; removal of nutrients, such as phosphorus and nitrogen, typically through chemical additions and biological processes, or by selective ion exchange; and further removal of pollutants through activated carbon treatment.

Prior to discharge into a receiving water body, treated wastewater is disinfected using chlorination followed by dechlorination. Sludge produced during primary and secondary treatment is commonly combined, thickened, stabilized, and then mechanically dewatered. Sludge is aerobically or anaerobically stabilized by adjusting the pH with lime. This is followed by dewatering process where a polymer is added to condition the sludge for dewatering. Sludge is often stored onsite in piles exposed to weather, until final disposal (e.g., surface disposal, or incineration). When sludge is to be land applied, sludge drying beds or composting piles may be exposed to precipitation. In cases where sludge is incinerated onsite of the treatment plant, ash piles or impoundments may be exposed to precipitation.

3. Pollutants Found in Storm Water Discharges From Treatment Works

The impact of industrial activities at treatment works on storm water discharges will vary. Factors at a site which influence the water quality include geographic location, hydrogeology, the industrial activities exposed to storm water discharges, the facility's size, the types of pollution prevention measures/best management practices in place, and the type, duration, and intensity of storm events. Taken together or separately, these factors determine how polluted the storm water discharges will be at a given facility. For example, caustic soda may be significant source of pollutants at some facilities, while incinerator ash may be the primary pollutant source at others. Additionally, pollutant sources other than storm water, such as illicit connections, spills, and other improperly dumped materials, may increase the pollutant loading discharged into Waters of the United States.

Table T–1 lists industrial activities that commonly occur at treatment works, common pollutant sources at these facilities, and pollutants that are associated with these sources. Table T–1 identifies parameters as potential pollutants of concern associated with facilities covered by this section.

TABLE T–1.—DESCRIPTION OF INDUSTRIAL ACTIVITIES, POTENTIAL POLLUTANT SOURCES, AND POSSIBLE POLLUTANTS

Activity	Pollutant source	Pollutant
Preparation of biological and physical treatment processes.	Spills and leaks of process chemicals ..	Disinfectants, polymers and coagulants, alum, ferric chloride, soda ash, lime, sodium aluminate, sodium hypochlorite, caustic soda.
Soil amending and grass fertilizing	Over fertilizing	Commercial brands of balance fertilizers (6–6–6, 8–8–8 or 12–12–12), commercial sludge based products, nitrogen, other nutrients, phosphorous, ammonia.
Liquid storage in above ground storage ..	External corrosion and structural failure	Aluminum sulfate, liquid chlorine, liquid polymer, fuel, oil.
	Installation problems	Aluminum sulfate, liquid chlorine, liquid polymer, fuel, oil.
	Spills and overfills due to operator error	Aluminum sulfate, liquid chlorine, liquid polymer, fuel, oil.
	Failure of piping systems (pipes, pumps, flanges, couplings, hoses, and valves).	Aluminum sulfate, liquid chlorine, liquid polymer, fuel, oil.
	Leaks or spills during pumping of liquids from barges, trucks, or rail cars to a storage facility.	Aluminum sulfate, liquid chlorine, liquid polymer, fuel, oil.
Pest control	Large quantities of pesticide application, pesticide storage.	Diazanon, malathion, amdro, dimethylphthalate, diethyl phthalate, dichlorvos, carbaryl, skeetal, batex, liquid copper.
Sludge drying beds	Sludge	Nitrate, TDS, TSS, ammonia.
Sludge storage piles	Sludge	Nitrate, TDS, TSS, ammonia.
Sludge transfer	Sludge, vehicles, transfer equipment	Nitrate, TDS, TSS, oil, fuel, hydraulic fluids, ammonia.
Incineration	Ash impoundments/piles	Heavy metals, TDS, TSS.

TABLE T–1.—DESCRIPTION OF INDUSTRIAL ACTIVITIES, POTENTIAL POLLUTANT SOURCES, AND POSSIBLE POLLUTANTS—Continued

Activity	Pollutant source	Pollutant
Miscellaneous	Grit and scum piles from clarifiers, screens, exposed soil.	TSS, heavy metals, fecal coliform, nitrate, TSS.

Sources: EPA, Risk Reduction Engineering Lab, Cincinnati, OH, and U.S. of America National Committee for Representation of the United States to the International Association of Water Pollution Research and Control. November 1989. "Developments at International Conference on Water Pollution Research (14th)." EPA/600/2–89/059.

EPA, Office of Water Program Operations. June 1983. "Need Survey, 1982. Conveyance, Treatment, and Control of Municipal Wastewater, Combined Sewer Overflows, and Storm water Runoff: Summaries of Technical Data." EPA/430/9–83/002.

EPA, Office of Research and Development. May 1992. "Facility Pollution Prevention Guide." EPA/600/R–92/088.

EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

Part 2 group application data that was statistically summarized indicated large variations in the minimum and maximum values reported for each of the eight conventional pollutants monitored:

- Grab sample values for nitrate plus nitrite nitrogen ranged from 0.0 mg/L to 427 mg/L.
- Grab and flow weighted composite samples for BOD both ranged from 0.0 mg/L to 1300 mg/L.
- Oil and grease values ranged from 0.0 mg/L to 1210 mg/L.
- Grab sample values for Total Suspended Solids (TSS) ranged from 0.0 mg/L to 1836 mg/L, and flow-weighted composite sample values ranged from 3.0 mg/L to 844 mg/L.

The remaining conventional pollutants sampled also varied in their minimum and maximum values. However, the values were typically low relative to other sectors in today's proposed permit. EPA believes that Nitrate plus Nitrite Nitrogen and phosphorous are parameters of concern at treatment works. Less than 20 percent of the sampling facilities reported fecal coliform above the most stringent storm water effluent guideline limitation, and therefore, EPA has concluded that fecal coliform is not a pollutant of concern at treatment works. Table T–2 indicates the sampling results for the conventional and toxic pollutants that were statistically analyzed by EPA. This table indicates the minimum and maximum values, means, medians, 99th percentiles, and the total number of samples analyzed for each of the conventional pollutants.

TABLE T–2.—STATISTICS FOR STORM WATER POLLUTANTS, MG/L FOR TREATMENT WORKS

Pollutant	No. of Samples[1]		Mean		Minimum		Maximum		Median		99th Percentile	
Sample Type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	90	89	33.26	46.11	0.00	0.000	1300.00	1300.00	11.500	8.000	1300.00	1300.00
COD	84	82	133.03	157.95	0.65	0.000	1900.00	2000.00	68.650	61.685	1900.00	2000.00
Nitrate plus nitrite nitrogen	84	83	20.86	20.50	0.00	0.670	427.00	396.78	1.090	0.870	427.00	396.78
Nitrogen, total kjeldahl	79	78	8.10	4.74	0.00	0.000	213.00	150.00	1.520	1.330	213.00	150.00
Oil & grease	89	N/A	24.24	N/A	0.00	N/A	1210.00	N/A	0.900	N/A	1210.00	N/A
pH	82	N/A	N/A	N/A	0.37	N/A	8.85	N/A	N/A	N/A	8.85	N/A
Total phosphorus	86	84	0.95	0.68	0.00	0.000	9.50	5.92	0.500	0.445	9.50	5.92
Total suspended solids	90	88	160.17	114.44	0.00	3.000	1836.00	844.69	68.100	55.500	1836.00	844.69
Ammonia	25	25	1.162	1.252	0.00	0.00	6.2	6.1	0.810	0.69	6.2	6.1
Copper	27	26	0.072	0.053	0.00	0.00	0.78	0.56	0.013	0.021	0.78	0.56
Iron	7	7	1.108	1.41	0.00	0.300	0.385	2.7	0.385	0.501	2.7	4.8
Manganese	6	6	0.187	0.146	0.03	0.00	0.44	0.36	0.14	0.082	0.44	0.36
Zinc	22	21	0.238	0.12	0.00	0.00	1.4	0.48	0.067	0.062	1.4	0.48

[1] The number of samples reported include only those samples that were not reported as a nondetect or at the detection limit of the methodology.
[2] Composite samples.

4. Options for Controlling Pollutants

Part 1 group application data indicate that BMPs have not been widely implemented at the representative sampling facilities. Less than 3 percent of the sampling subgroup reported that they cover loading areas, storage areas, or material handling areas; approximately 10 percent reported that they use containment; less than 4 percent of the representative facilities use concrete pads. The most commonly listed (approximately 15 percent) material management practice is catch basins. Because BMPs described in part 1 data are limited, the following table is provided to identify BMPs associated with activities that routinely occur at treatment works.

TABLE T–3.—GENERAL STORM WATER BMPS FOR TREATMENT WORKS

Activity	BMPs
Preparation of biological and physical treatment process.	Use drip pans under drums and equipment where feasible.
	Store process chemicals inside buildings.
	Inspect the storage yard for filling drip pans and other problems regularly.
	Train employees on procedures for storing and inspecting chemicals.
Soil amending and grass fertilizing ..	Use the appropriate amount of fertilizer.
	Do not over fertilize.
	Train employee on proper fertilizing techniques.
Liquid storage in above ground storage containers.	Maintain good integrity of all storage containers.
	Install safeguards (such as diking or berming) against accidental releases at the storage area.
	Inspect storage tanks to detect potential leaks and perform preventive maintenance.
	Inspect piping systems (pipes, pumps, flanges, couplings, hoses, and valves) for failures or leaks.
	Train employees on proper filling and transfer procedures.
Pest control	Minimize pesticide application.
	Only apply pesticide if needed.
	Train employees on proper pesticide application.
Sludge drying beds	Ensure drying bed is draining properly (e.g., check for clogging); avoid overfilling drying bed; grade the land to divert flow around drying bed; berm, dike, or curb drying bed areas; cover drying beds.
Sludge storage piles	Confine storage of sludge to a designated area as far from any receiving water body as possible; store sludge on an impervious surface (e.g., concrete pad); grade the land to divert flow around storage piles; berm, dike, or curb sludge storage piles; cover sludge storage piles.
Sludge transfer	Promptly remove any sludge spilled during transfer; conduct transfer operations over an impervious surface; avoid transferring sludge during rain events; grade the land to divert flow around transfer areas; berm, curb, or dike transfer areas; avoid locating transfer operations near receiving water bodies.
Incineration—ash impoundments/piles.	Line ash impoundments with clay (or other type of impervious material); ensure ash impoundments will hold maximum volume of ash and a 10-year, 24-hour rain event; curb, berm, or dike ash storage areas; avoid locating ash storage areas near receiving water bodies.
Miscellaneous	Properly dispose of grit/scum; properly dispose of screens on a daily basis; maximize vegetative cover to stabilize soil and reduce erosion.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991 through December 31, 1992.
EPA, Office of Research and Development. May 1992. "Facility Pollution Prevention Guide." EPA/600/R–92/088.
EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.
U.S. Postal Service. May 1992. "NPDES/Storm Water Guide." AS–554.

5. Special Conditions

There are no additional requirements under this section other than those stated in the general fact sheet language.

6. Storm Water Pollution Prevention Plan Requirements

There are no additional requirements under this section other than those described in Part VI.C. of this fact sheet.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that treatment works may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires treatment works to collect and analyze samples of their storm water discharges for the pollutants listed in Table T–4. The pollutants listed in Table T–4 were found to be above benchmark levels for a significant portion of treatment works that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from facilities covered under this section, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from treatment works must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table T–4. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE T–4.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Total phosphorus	0.33 mg/L
Nitrate + nitrite nitrogen	0.68 mg/L

TABLE T–4.—INDUSTRY MONITORING REQUIREMENTS—Continued

Pollutants of concern	Cut-off concentration
Ammonia	0.0925 mg/L
Total recoverable copper	0.009 mg/L
Total recoverable iron	0.3 mg/L
Total recoverable manganese	0.05 mg/L
Total recoverable zinc	0.065 mg/L

If the average concentration for a parameter is less than or equal to the value listed in Table T–4, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table T–4, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE T–5.—SCHEDULE OF MONITORING

2nd year of permit coverage	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table T–4, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table T–4, then no further sampling is required for that parameter.
4th year of permit coverage	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table T–4. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will be used to reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, and significant materials from past industrial activity that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each sampling year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual

inspections are required of a storm water discharge from each outfall at the treatment works. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan. The pollutants selected for consideration and the associated rationale are as follows:

• *Nitrate plus nitrite nitrogen*—Nitrates plus nitrites are produced as a result of the oxidation, via-biodegradation, of ammonia nitrogen and organic nitrogen. Nitrates are considered to be poisonous substances in mineralized water. Nitrates and nitrites have been found to contribute to methemoglobinemia in infants. Concentrations of more than 10 mg/L of nitrates in water should not be ingested by infants.

Nitrate plus nitrite nitrogen is considered to be a pollutant of concern for treatment works. Nitrate plus nitrite nitrogen data submitted in part 2 storm water permit applications for treatment works indicate the following:

—The mean concentrations for grab and composite samples were 20.86 mg/L and 20.50 mg/L, respectively;
—The median concentrations for grab and composite samples were 1.09 mg/L and 0.87 mg/L, respectively;
—The 99th percentile concentrations (i.e., 99 percent of the values are below) for grab and composite samples were 213 mg/L and 150 mg/L, respectively.

• *Heavy metals*—As required by 40 CFR 122.26(g)(ii) and (iii), group applicants were only required to sample for metals if the facility knew or had reason to believe they would be expected in the discharge. Of the part 2 data which was statistically summarized, less than 20 percent of the facilities submitting data reported on heavy metals. EPA is requiring permittees to monitor for ammonia, total copper, total iron, manganese, and total zinc. The median grab sample values for these parameters submitted for part 2 of the application are: 0.810 mg/L; 0.013 mg/L; 0.385 mg/L; 0.14 mg/L; and 0.067 mg/L, respectively.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.T.5. of today's proposed permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees covered by this section, as defined by paragraph XI.T.1. must monitor for the parameters identified in Table T–6. Monitoring should occur at least annually (once per year) except as provided in VI.E.7. (Sampling Waiver) and VI.E.6. (Representative Discharge). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE T–6.

Parameter	Unit	Frequency	Sample type[1]
Total flow	mg	1/year	Estimate.
Oil & grease	mg/L	1/year	Grab.
Total Suspended Solids (TSS)	mg/L	1/year	Grab.
Biochemical Oxygen Demand (BOD5)	mg/L	1/year	Grab.
pH	standard	1/year	Grab.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.

b. Quarterly visual examination of storm water quality—(1) Facilities shall perform and document a visual examination of storm water quality of each storm water discharge associated with industrial activity from the site. If the storm water flows such that there are numerous small points of discharge, one sample may be collected as a

representative of the adjacent flows. The examination must be made at least once in each designated period (described in Part (2) below) during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(2) Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

(3) Examinations shall be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. The examinations shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. No analytical tests are required to be performed on these samples. Examinations shall be conducted so as to provide a reasonable representation of the nature of a typical storm water discharge at that site during that time of year.

(4) Information must be maintained onsite and include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination.

U. Storm Water Discharges Associated With Industrial Activity From Food and Kindred Products Facilities

1. Discharges Covered Under This Section

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharges associated with industrial activity." This definition included point source discharges of storm water from 11 major categories of facilities, including: "* * * (xi) Facilities under Standard Industrial Classifications 20, 21 * * *."

This section covers storm water discharges associated with industrial activities from establishments manufacturing or processing foods and beverages for human consumption, and related products, and prepared feeds for animals and fowls. This section also covers establishments engaged in manufacturing cigarettes, cigars, and other tobacco products. Food and kindred products processing facilities subject to requirements under this section include the following types of operations (i.e., subsectors):

- Meat Products (SIC Codes 2011, 2013, and 2015)
- Dairy Products (SIC Codes 2021, 2022, 2023, 2024, and 2026)
- Canned, Frozen, and Preserved Fruits, Vegetables, and Food Specialties (SIC Codes 2032, 2033, 2034, 2035, 2037, and 2038)
- Grain Mill Products (SIC Codes 2041, 2043, 2044, 2045, 2046, 2047, and 2048)
- Bakery Products (SIC Codes 2051, 2052, and 2053)
- Sugar and Confectionery Products (SIC Codes 2061, 2062, 2063, 2064, 2066, 2067, and 2068)
- Fats and Oils (SIC Codes 2074, 2075, 2076, 2077, and 2079)
- Beverages (SIC Codes 2082, 2083, 2084, 2085, 2086, and 2087)
- Miscellaneous Food Preparations and Kindred Products (SIC Codes 2091, 2092, 2095, 2096, 2097, 2098, and 2099)
- Tobacco Products (SIC Codes 2111, 2121, 2131, and 2141).

Storm water discharges covered by this section include discharges from industrial plant yards; material handling sites; refuse sites; sites used for application or disposal of process wastewaters; sites used for storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas for raw materials and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and where the aforementioned areas are exposed to storm water.

This section does not cover any discharges subject to effluent limitations guidelines, including storm water that combines with process wastewater. Also, storm water that does not come into contact with any raw material, intermediate product, finished product, by-product, or waste product located on the site of the operation are not subject to permitting under this section according to 40 CFR 122.26(b)(14).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Industry Profile

From subsectors comprising the Food and Kindred Products Sector, as of January 1, 1993, 26 Part 2 Group Storm Water Applications were received from 9 of the 10 industrial subsectors (excluding tobacco products) and 31 different primary SIC Codes. Subsector descriptions for all facilities within the Food and Kindred Products sector are as follows:

a. Meat products subsector (SIC Code 201X). The Meat Products subsector is separated into three segments. These include meat packing plants (SIC 2011); sausages and other prepared meat products (SIC 2013); and poultry slaughtering and processing (SIC 2015). All three of the industrial segments submitted group application information. Production related activities for these segments include stockyards, slaughtering (killing, blood processing, viscera handling, and hide processing), cutting and deboning, meat processing, rendering, and materials recovery.

b. Dairy products subsector (SIC Code 202X). The Dairy Products subsector is separated into five segments. These segments include creamery butter; natural, processed, and imitation cheese; dry, condensed, and evaporated dairy products; ice cream and frozen desserts; and fluid milk. All five of the industrial segments submitted group application information. Although a variety of operations are encountered in the Dairy Products subsector, the initial operations (e.g., receiving stations, clarification, separation, and pasteurization) are common to most dairy plants and products. However, after these initial operations, the processes and equipment become highly dependent on the product segments. These operations may include: culturing, churning, pressing, curing, blending, condensing, sweetening, drying, milling, and packaging.

c. Canned frozen and preserved fruits, vegetables, and frozen specialties subsector (SIC code 203X). The Canned Frozen and Preserved Fruits, Vegetables,

and Frozen Specialties subsector is separated into six segments. They include canned specialties; canned fruits, vegetables, preserves, jams, and jellies; dried and dehydrated fruits, vegetables, and soup mixes; pickled fruits and vegetables, vegetable sauces and seasonings, and salad dressings; frozen fruits, fruit juices, and vegetables; and other frozen specialties. Five of the six segments are represented in the part 2 application information with the pickled fruits and vegetables, vegetable sauces and seasonings, and salad dressings being the lone segment not represented in the part 2 data by a primary SIC Code (although this segment is represented as a secondary SIC Code). All of the facilities use various fruits or vegetables as the primary raw material. Sweeteners, such as sugar and corn syrup, are used as secondary raw materials. Typically, fruits and vegetables are washed, cut, blanched, and cooked prior to being classified as finished product. Additional operations may include drying, dehydrating, and freezing.

d. Grain mills subsector (SIC code 204X). The Grain Mills subsector is separated into seven segments. These include flour and other grain mill products; cereal breakfast foods; rice milling; prepared flour mixes and doughs; wet corn milling; dog and cat food; and prepared feeds and feed ingredients for animals and fowls, except dogs and cats. Six of the seven segments are represented in the part 2 application information with the rice milling segment being the lone segment not represented in the part 2 data by a primary SIC Code. Process operations performed in the grain mill subsector include: washing, milling, debranning, heat treatment (i.e., steeping, parboiling, drying and cooking), screening, shaping (i.e., extruding, grinding, molding, and flaking), and vitamin and mineral supplementing.

e. Bakery products subsector (SIC code 205X). The Bakery Products subsector is separated into three segments. These include the following industrial activities: Bread and other bakery products, except cookies and crackers; cookies and crackers; and frozen bakery products, except bread. All three segments are represented in the part 2 application information by a primary SIC Code. Process operations in this subsector include mixing, shaping of dough, cooling, and decorating.

f. Sugar and confectionery subsector (SIC Code 206X). The Sugar and Confectionery subsector is separated into seven segments. These include the following industrial activities: Cane sugar, except refining; Cane sugar refining; beet sugar; candy and other confectionery products; chocolate and cocoa products; chewing gum; and salted and roasted nuts and seeds. Only two of the seven segments are represented in the part 2 application information (i.e., candy and other confectionery products and chocolate and other cocoa products). The primary raw materials include sugar, flavorings (including chocolate), flour, nuts, and milk, which are then mixed together, cooked, and then formed using various techniques into specified product shapes. The manufacture of chocolate products requires shelling, roasting, and grinding of the cocoa beans followed by the typical sugar processing operations identified above.

g. Fats and oils subsector (SIC code 207X). The Fats and Oils subsector is separated into five segments. These include the cottonseed oil mills; soybean oil mills; vegetable oil mills, except corn, cottonseed, and soybean; animal and marine fats and oils; and shortening, table oils, margarine, and other edible fats and oils, not elsewhere classified. Only two of the five segments are represented in the part 2 application information (i.e., animal and marine fats and oils and shortening, table oils, margarine, and other edible fats and oils, not elsewhere classified). Typical process operations at an animal and marine fats and oils facility include cooking of inedible fats and oils from butcher shops, supermarkets, food manufacturing facilities, restaurants, and slaughterhouses, tallow and grease separation from proteinaceous solids. The solids are then ground to produce meat and bone meal. Operations at an edible oils manufacturer include refining, bleaching, hydrogenation, fractionation, emulsification, deodorization, filtration, and blending of the crude oils into edible products.

h. Beverages subsector (SIC code 208X). The Beverages subsector is separated into six segments. These include the malt beverages; malt; wines, brandy, and brandy spirits; distilled and blended liquors; bottled and canned soft drinks and carbonated waters; and flavoring extracts and flavoring syrups, not elsewhere classified segments. Four of the six segments are represented by the part 2 application with malt and wines, brandy, and brandy spirits being the two segments not represented by the part 2 application information. Process operations may include brewing, distilling, fermentation, blending, and packaging (i.e., bottling, canning, or bulk packaging).

i. Miscellaneous food preparation and kindred products subsector (SIC code 209X). The Miscellaneous Food Preparation and Kindred Products subsector is separated into seven industrial segments. These include canned and cured fish and seafood; prepared fresh or frozen fish and seafoods; roasted coffee; potato chips, corn chips, and similar snacks; manufactured ice; macaroni, spaghetti, vermicelli, and noodles; and food preparations, not elsewhere classified segments. Three of the seven segments are represented by the part 2 application information (i.e., prepared fresh or frozen fish and seafoods; potato chips, corn chips, and similar snacks; and macaroni, spaghetti, vermicelli, and noodles). Process operations may include shelling, washing, drying, shaping, baking, frying, and seasoning.

j. Tobacco products subsector (SIC code 21XX). The tobacco products subsector is separated into four segments. These include cigarettes, cigars, chewing and smoking tobacco and snuff, and tobacco stemming and redrying. None of these four segments submitted part 2 application information. Typical process operations may include drying, blending, shaping, cutting and rolling.

3. Pollutants in Storm Water Discharges Associated with Food and Kindred Products Processing Facilities

Typical food and kindred products processing facilities do not conduct many processing operations outdoors. The nature of the business, and the required sanitary conditions, require that the raw materials through final product be protected from storm water. As such, the contamination of storm water from this sector is primarily from the loading and unloading of products and raw materials, spillage and leaks from tanks and containers stored outdoors, waste management practices, pest control, and improper connections to the storm sewer. Table U–1 lists potential pollutant sources from activities that commonly take place at food and kindred products processing facilities.

TABLE U–1.—DESCRIPTION OF POTENTIAL POLLUTANT SOURCES [i, ii, iii]

Activity	Pollutant source	Pollutant(s)
A. Raw material:		
Unloading/product	• Container defects (bags, drums, bottles, crates)	BOD, TSS, O&G, pH, TKN[1]
Loading	• Spills and leaks during unloading/ loading (tanks, rail cars).	
	• Failed connections (hoses and couplings).	
	• Washdown of unloading/loading area.	
B. Storage containers:		
Liquid Storage (i.e., above ground storage tanks).	• Failed piping and connections (couplings, flanges, hoses, and valves).	BOD, TSS, O&G, pH
	• External corrosion and structural failure.	
	• Spills and overflows due to operator error.	
Liquid Storage (drums, carboys, and gallon jugs).	• Outside containers	BOD, TSS, O&G, pH
	• Open containers.	
	• External corrosion of the containers.	
	• Operator handling and transporting.	
	• Spills and leaks from damaged containers.	
Solid Storage (silos, holding bins, fiber drums, etc.).	• Dust and particulates	BOD, TSS, O&G, pH
	• Operator handling and transporting.	
	• Spills and leaks.	
C. Waste management:		
Air Emissions	• Oven emissions	BOD, TSS, O&G, pH
	• Vents.	
	• Fine solids handling.	
Solid Waste	• Dumpsters and trash cans	BOD, TSS, O&G, pH, copper, manganese
	• Spent equipment, scraps, etc.	
Wastewater	• Treatment processes (e.g., hydraulic overflow)	BOD, TSS, O&G, pH, fecal coliform
	• Outside piping and connections (couplings, flanges, hoses, valves, and pumps).	
D. Pest control:		
Pesticides, Rodenticides, Insecticides.	• Outside areas of applications	Miscellaneous insecticides, rodenticides, pesticides, etc., TKN
E. Improper: Connections to the storm sewer	• Process wastewaters	BOD, TSS, O&G, pH
	• Process floor drains.	
	• Sanitary sewers.	
	• USTs.	

[i] "Standard Handbook of Environmental Engineering," Corbitt, Robert A., McGraw-Hill, Inc., 1990.
[ii] Air Pollution Engineering Manual, Air and Waste Management Association, Edited by Anthony J. Buonicore and Wayne T. Davis, Van Nostrand Reinhold, New York, 1992.
[iii] "Environmental Engineering and Sanitation," Fourth Edition, Salvato, Joseph A., John Wiley & Sons, Inc., 1992.

Impacts caused by storm water discharges from food and kindred products processing facilities will vary from facility to facility. Several factors influence to what extent operations at the site can affect water quality. Such factors include: geographic location; hydrogeology; the types of industrial activities exposed to storm water; the size of the operation; the nature of storm water control measures in place; and the type, duration, and intensity of precipitation events. Each of these factors interact to influence the quantity and quality of storm water runoff. For example, flour/oil particulate emissions from vents (e.g., from baking operations) may be a significant source of pollutants at some facilities, while material storage may be a primary source at others. Similarly, a facility with all storm water from exposed industrial activity diverted to the sanitary sewer would have less of an impact than a facility not practicing this control option. In addition, sources of pollutants other than storm water, such as illicit connections, spills, and improperly dumped materials, may increase the pollutant loadings discharged in the receiving stream.

EPA reviewed Part 1 Group Storm Water Applications for facilities identified as sampling facilities to determine the types of significant materials from food and kindred products processing that are exposed to storm water. A list of these significant materials is presented in Table U–2. Note that significant materials related to vehicle maintenance (e.g., diesel fuel) and other miscellaneous nonprocessing materials (e.g., lumber) are not included in Table U–2.

TABLE U–2.—SIGNIFICANT MATERIALS EXPOSED TO STORM WATER

Acids (phosphoric, sulfuric).	Feathers
Activated carbon	Feed
Ammonia	Ferric chloride
Animal cages	Fruits, vegetables, coffee beans
Bleach	Gel bone
Blood	Grain (Flour, oats, wheat)
Bone meal	Hides
Brewing residuals	Lard
Calcium oxide	Manure
Carbon dioxide	Milk
Caustic soda	Salts (brine)
Chlorine	Skim powder
Cheese	Starch
Coke oven tar	Sugar (sweetener, honey, fructose syrup)
Detergent	Tallow
Eggs	Wastes (off-spec product, sludge)

TABLE U–2.—SIGNIFICANT MATERIALS EXPOSED TO STORM WATER—Continued

Ethyl alcohol	Whey
Fats, greases, shortening, oils.	Yeast

EPA analyzed data for both the sector as a whole and for each of the nine subsectors reporting analytical data. While examination of the data for each subsector did not identify any significant variation across the subsectors, the limited amount of available data for some of the subsectors failed to provide for meaningful statistical comparisons. As such, except for the few exceptions noted in Section H.6. (Monitoring and Reporting Requirements), EPA aggregated the data for purposes of conducting a sector analysis. The aggregate sampling data for the food and kindred products processing sector, received by EPA as of January 1, 1993, is presented in Table U–3.

TABLE U–3.—FOOD AND KINDRED PRODUCTS SECTOR STATISTICS FOR POLLUTANTS; MG/L

TABLE U–3.—FOOD AND KINDRED PRODUCTS SECTOR STATISTICS FOR POLLUTANTS,[i] MG/L

Pollutant	No. of samples		Mean[ii]		Minimum[iii]		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[iv]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	298	287	51.2	42.5	0	0	1550	1360	13.9	11	206	180	1160	968
COD	296	286	192.5	141.7	0	0	3810	2820	77	63	745	463	2000	2040
$NO_3 + NO_2$	301	289	1.17	.98	0	0	44.9	17.7	.56	.55	3.7	3.6	12.9	9.6
TKN	300	290	4.95	4.07	0	0	78	75	2.35	2	18	17	43	32.4
O & G	300	N/A	5.4	N/A	0	N/A	93	N/A	1.1	N/A	21	N/A	43.5	N/A
Phosphorus	298	287	5.13	1.32	0	0	970	19.7	.56	.48	9.06	5.96	24.4	10.2
TSS	298	286	252	200	0	0	3300	4530	72.5	53.5	1320	900	2667	2240
Copper	17	17	.075	.046	0	0	.27	.24	.04	.03	.27	.24	.27	.24
Manganese	16	16	.23	.19	0	0	1.49	1.35	.16	.08	1.49	1.35	1.49	1.35
Iron	11	9	2.15	.45	.09	.09	18	1.9	.54	.2	18	1.9	18	1.9
Zinc	33	31	.781	.792	0	0	13.5	7.35	.21	.24	2.1	5.83	13.5	7.35

[i] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics. Results presented as "not detected" were set at one-half the detection limit for statistical comparison purposes.

[ii] The mean is calculated using the value "zero" for all concentrations identified as below detection levels.

[iii] All parameters had at least one sample reported as below detection level (i.e., not detected (ND)).

[iv] Composite samples.

The selection of parameters for monitoring is based on the nature of operations and exposed materials at food and kindred products processing facilities, the data provided in the part 2 storm water group applications, and review of EPA's "Development Documents" for the food processing sector. In addition, effluent limitations guidelines currently in effect for process wastewaters were reviewed to identify the types of pollutants that may reasonably be expected to be present at food processing facilities. A list of these pollutants for all food processing activities regulated by effluent limitations guidelines is presented in Table U–4.

TABLE U–4.—FOOD AND KINDRED PRODUCTS PROCESSING: EFFLUENT LIMITATIONS GUIDELINES

40 CFR Part	BPT/ BCT	BAT	NSPS	PSES	PSNS
405 (Dairy)	BOD .... TSS ..... pH	N/A	BOD .... TSS. pH.	N/A ..	N/A
406 (Grain Mills)	BOD .... TSS ..... pH ..... (1)	'	BOD .... TSS. pH. (1).	N/A ..	N/A
407 (Fruits and Vegetables)	BOD .... TSS ..... O&G .... pH.	N/A	BOD .... TSS. pH.	N/A ..	N/A
408 (Seafood Processing)	BOD .... TSS ..... O&G .... pH ..... Size	N/A	BOD .... TSS. O&G. pH. Size.	N/A ..	N/A
409 (Sugar Processing)	BOD .... TSS .... Fecal ... Heat ..... pH.	Heat	BOD .... TSS. pH. (1).	N/A ..	N/A
432 (Meat Products)	BOD .... TSS ..... O&G .... Fecal ... pH	N/A	BOD .... TSS. O&G .... Fecal. pH ..... Ammo- nia	N/A .. N/A ..	N/A N/A

(1) Provides for zero discharge of process wastewater from at least one process operation.

Below is a discussion of the part 2 data.

a. Five-day biochemical oxygen demand. Five-day biochemical oxygen demand (BOD_5) is a measure of the oxygen consuming capabilities of organic matter (i.e., aerobic decomposition) in wastewater over a 5-day period. High BOD_5 concentrations may deplete dissolved oxygen in the receiving waters which could cause anaerobic conditions in the stream, potentially killing all inhabitants of the affected area. $BOD5_5$ is generally considered to be the primary pollutant of concern for most types of food processing facilities due to the fact that food items (e.g., sugars, grains, fruits, miscellaneous food refuse) are highly biodegradable, thus exerting a high oxygen demand. BOD_5 data submitted in the part 2 storm water permit applications for the food and kindred products sector indicate the following:

- The mean concentrations for grabs and composites were approximately 51 mg/L and 43 mg/L, respectively.
- The median concentrations for grabs and composites were approximately 14 mg/L and 11 mg/L, respectively.
- The 95th percentile concentration (i.e., 95 percent of the values are below) for grabs and composites were approximately 206 mg/L and 180 mg/L, respectively.
- The 99th percentile concentration (i.e., 99 percent of the values are below) for grabs and composites were approximately 1160 mg/L and 968 mg/L, respectively.

The data submitted in the part 2 applications clearly show the wide variation in BOD_5 values within the sector. While median concentrations are consistent with concentrations for storm water from residential areas, higher concentrations of BOD_5 are apparent.

b. Total kjeldahl nitrogen, ammonia nitrogen, and nitrate plus nitrite nitrogen. Total Kjeldahl nitrogen (TKN) is a measure of the amount of ammonia nitrogen plus organic nitrogen in the water. Under septic conditions, organic nitrogen decomposes to form ammonia nitrogen. Ammonia nitrogen can add to eutrophication by supplying nitrogen through its decomposition products. Nitrates plus nitrites are produced as a result of the oxidation, via biodegradation, of ammonia nitrogen and organic nitrogen. Thus, ammonia nitrogen will consume the oxygen supply in a receiving stream. Nitrates are considered to be poisonous substances in mineralized water. Nitrates and nitrites have been found to contribute to methemoglobinemia in infants. Concentrations of over 10 mg/L of nitrates in water should not be ingested by infants.

Sources of nitrogen in storm water from food and kindred products processing facilities include: decomposing animal parts, leaking ammonia refrigeration, ammonia disinfectant, detergents, and meat processing (i.e., curing, pickling, and other processing). Kjeldahl nitrogen is a good indicator of the crude protein in the water, hence, a measure of the quantity of potentially valuable product being lost in the storm water.

TKN data submitted in the part 2 storm water permit applications for the food and kindred products sector indicate the following:

- The mean concentrations for grabs and composites were approximately 5 mg/L and 4 mg/L, respectively.
- The median concentrations for grabs and composites were approximately 2.4 mg/L and 2.0 mg/L, respectively.
- The 95th percentile concentration (i.e., 95 percent of the values are below) for grabs and composites were approximately 18 mg/L and 17 mg/L, respectively.
- The 99th percentile concentration (i.e., 99 percent of the values are below) for grabs and composites were approximately 43 mg/L and 32 mg/L, respectively.

EPA proposes monitoring requirements for TKN because of the high potential for nitrogen releases to the environment from food processing facilities. TKN is used as the indicator for nitrogen in the storm water because it is a good indicator of the crude protein content in the discharge and thus an indication to the permittee of the product being lost via the storm water.

Nitrate plus nitrite nitrogen data submitted in the part 2 storm water permit applications for the food and kindred products sector indicate the following:

- The mean concentrations for grabs and composites were approximately 1.2 mg/L and 1.0 mg/L, respectively.
- The median concentrations for grabs and composites were approximately 0.6 mg/L and 0.6 mg/L, respectively.
- The 95th percentile concentration (i.e., 95 percent of the values are below) for grabs and composites were approximately 3.7 mg/L and 3.6 mg/L, respectively.
- The 99th percentile concentration (i.e., 99 percent of the values are below) for grabs and composites were approximately 12.9 mg/L and 9.6 mg/L, respectively.

Nitrate plus nitrite nitrogen is not considered to be a pollutant of concern for food and kindred products processing facilities. The data provided in the part 2 group applications do not support continued monitoring for these pollutants.

c. Total phosphorus. Total phosphorus is comprised of both dissolved and suspended phosphorus. Phosphorus occurs in natural wastes and wastewaters almost exclusively as phosphates. Phosphorus is a nutrient for aquatic plant life and one of the leading causes of eutrophication in receiving streams. Concentrations above 25 µg/L may lead to growth of excessive algae and other nuisance plants. A concentration of 1.0 mg/L phosphorus is commonly established at wastewater treatment plants discharging to receiving streams where phosphorus poses a problem.

Phosphorus data submitted in the part 2 storm water permit applications for the food and kindred products sector indicate the following:

- The mean concentrations for grabs and composites were approximately 5.1 mg/L and 1.3 mg/L, respectively.
- The median concentrations for grabs and composites were approximately 0.56 mg/L and 0.48 mg/L, respectively.
- The 95th percentile concentration (i.e., 95 percent of the values are below) for grabs and composites were approximately 9.1 mg/L and 6.0 mg/L, respectively.
- The 99th percentile concentration (i.e., 99 percent of the values are below) for grabs and composites were approximately 24.4 mg/L and 10.2 mg/L, respectively.

The data submitted in the part 2 applications indicate a variation in phosphorus concentrations across the sector. The nature of potential pollutant sources to runoff from food and kindred processing facilities, including detergents and animal feces, can contribute high levels of phosphorus to waterways.

d. Total copper and manganese. EPA is requiring all facilities in this industry to conduct sampling for total copper and manganese. The median grab sample value for total copper is 0.04 mg/L. This is greater than the benchmark level from the "Gold Book: Acute Aquatic Life Freshwater Criteria." The median grab sample for manganese is 0.160 mg/L as compared to a level of concern of 0.05 mg/L as found in the "Gold Book: Human Health Criteria for Consumption of Water Organisms." Because both of the individual values are greater than their corresponding benchmark levels, EPA is requiring all facilities to conduct sampling for these pollutants.

4. Notice of Termination.

The permittee shall notify the permitting authority when discharges authorized under this section of today's proposed permit have permanently ceased or where the operator of storm water discharges associated with industrial activity at a facility changes. Termination of coverage under this section of today's proposed permit will only be granted when all storm water discharges from material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery that are exposed to storm water are eliminated.

5. Options for Controlling Pollutants

One option for controlling pollutants in storm water is to set effluent limitations for these discharges. EPA does not consider this to be feasible because of the lack of performance data necessary to develop limitations.

Pursuant to 40 CFR 122.44(k), permits may contain Best Management Practices (BMPs) to control or abate the discharge of pollutants in storm water, when applicable (and where numeric effluent limitations are infeasible). EPA believes that the most effective BMPs for reducing pollutants in storm water discharges from food and kindred products processing facilities is through exposure minimization and good housekeeping practices. Exposure minimization practices reduce the potential for storm water to come in contact with pollutants. Good housekeeping practices ensure that the facility is responsive to routine and non-routine activities that may increase exposure of pollutants to storm water. The BMPs necessary to address these two concerns are generally uncomplicated and inexpensive practices. They are easy to implement, and require little or no maintenance. Minor capital expenses, such as construction of cement pads or berms/dikes, may be necessary in some cases, although these types of control structures already exist at many food and kindred products processing facilities. In a few instances, more intensive BMPs, such as detention ponds or filtering devices, may be necessary depending on the type of discharge, types and concentrations of contaminants, and volume of flow, although these occurrences are expected to be very low for the sector as a whole. The types of material management practices identified in the storm water group applications for the food and kindred products processing sector, for sampling facilities only, are identified in Table U–5. In fact, part 1 group application data indicate that BMPs are widely implemented at food and kindred products processing facilities.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrogeology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of

contaminated storm water will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with food and kindred products processing facilities.

Table U–6.1 identifies general BMPs that are applicable to a variety of food and kindred products processing subsectors, while Table U–6.2 identifies BMPs for specific processing operations.

6. Storm Water Pollution Prevention Plan Requirements

All facilities included in this section of today's proposed permit must prepare and implement a storm water pollution prevention plan. The establishment of a pollution prevention plan requirement reflects EPA's decision to allow operators of food and kindred products processing facilities to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The requirements included in pollution prevention plans provides a flexible framework for the development and implementation of site-specific controls to minimize pollution in storm water discharges. This approach is consistent with the approach used in the baseline general permits finalized on September 9, 1992 (57 FR 41236).

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from food and kindred products processing facilities. Pollution prevention plans allow the operator of a facility to select BMPs based on site-specific considerations such as: Facility size; climate; geographic location; hydrogeology; the environmental setting of each facility; and volume and type of discharge generated. This flexibility is necessary because each facility will be unique in that the source, type and volume of contaminated surface water discharges will differ from site to site.

There are two major objectives to a pollution prevention plan: (1) to identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility, and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility.

TABLE U–5.—MATERIAL MANAGEMENT PRACTICES [i,ii]

Absorbent mats	Preventative maintenance
Baghouse	Retaining wall
BMPs	Roof drains
Catch basin	Sealed tanks
Concrete pad	Shoveling
Containment	Site inspection
Cover (drums, holding pen, loading, storage)	Spill prevention plan
Curbing	Spillstoppers
Diking	Stone filters
Diversion	Sumps
Drains	Swales
Dust control	Sweeping
Housekeeping	Tarps (i.e., temporary covers)
Indoor storage	Training
Infiltration	V-Strips
Mopping	Vacuuming
Oil interceptor	Valves
Oil/water separators	Vinyl socks
Overfill protection	Waste minimization procedures
Ponds	Wetland

[i] NPDES Storm Water Group Applications—Part 2. Application Nos. 12, 13, 37, 81, 125, 159, 178, 179, 312, 436, 437, 446, 541, 557, 583, 584, 599, 630, 730, 789, 811, 819, 935, 936, 1006, 1096, 1147, and 1159.

[ii] NPDES Storm Water Group Applications—Part 1. Application Nos. 12, 13, 37, 60, 81, 125, 144, 159, 178, 179, 312, 436, 437, 446, 533, 541, 545, 557, 583, 584, 599, 630, 680, 730, 733, 789, 811, 819, 932, 935, 936, 1006, 1096, 1147, 1159, and 1217.

Specific requirements for a pollution prevention plan for food and kindred products processing facilities are described below. These requirements must be implemented in addition to the baseline pollution prevention plan provisions discussed previously.

a. Contents of the plan. Storm water pollution prevention plans are intended to aid operators of food and kindred products processing facilities to evaluate all potential pollution prevention sources at a site, and assist in the selection and implementation of appropriate measures designed to prevent, or control, the discharge of pollutants in storm water runoff. EPA has developed guidance entitled "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, 1992 (EPA 832–R–92–006), to assist permittees in developing and implementing pollution prevention measures.

(1) Pollution prevention team. As a first step in the process of developing and implementing a storm water pollution prevention plan, permittees must identify a qualified individual or team of individuals to be responsible for developing the plan and assisting the facility or plant manager in its implementation. When selecting members of the team, the plant manager should draw on the expertise of all relevant departments within the plant to ensure that all aspects of plant operations are considered when the plan is developed. The plan must clearly describe the responsibilities of each team member as they relate to specific components of the plan. In addition to enhancing the quality of communication between team members and other personnel, clear delineation of responsibilities will ensure that every aspect of the plan is addressed by a specified individual of group of individuals. Pollution Prevention Teams may consist of one individual where appropriate (e.g., in certain small businesses with limited storm water pollution potential).

(2) Description of potential pollutant sources. Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather, result in dry weather flows. This assessment of storm water pollution prevention will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Plans must describe the following elements:

TABLE U–6.1.—GENERAL STORM WATER BMPS FOR THE FOOD AND KINDRED PRODUCTS PROCESSING SECTOR [i, ii, iii, iv]

Activity	BMPs
A. Raw material unloading/product loading:	• Ensure that a facility representative is present during unloading/loading activities.
Shipping and Receiving.	• Inspect the unloading/loading areas to detect problems before they occur. • Close storm drains during loading/unloading activities in surrounding area. • Inspect all containers prior to unloading/loading of any raw or spent materials. • Install backflow prevention devices on liquid transfer equipment.

TABLE U–6.1.—GENERAL STORM WATER BMPS FOR THE FOOD AND KINDRED PRODUCTS PROCESSING SECTOR i, ii, iii, iv—Continued

Activity	BMPs
	• Inspect all connection equipment (e.g., hoses and couplings), and replace when necessary, before performing unloading/loading activities. • Perform all unloading/loading activities in a covered and/or enclosed areas. • Use drip pans when loading/unloading liquid product. • Situate loading/unloading areas indoors or in a covered area. • Use rubber seals in truck loading dock areas to contain spills indoors. • Drain hoses back into truck, railcar, etc. after loading/unloading materials. • Install high level alarm on tanks to prevent overfilling. • Ensure that berms and dikes are built around the unloading/loading areas, if applicable. • If outside or in covered areas, minimize runon of storm water into the unloading/loading areas by grading the areas to ensure that storm water runs off. • Use dry cleanup methods for unloading/loading areas rather than washing the areas down. • Train employees on proper unloading/loading techniques. • Initiate an inventory control for all raw and spent materials.
B. Storage containers: Liquid storage	• Inspect the external condition (corrosion, leaks) of the containers.

TABLE U–6.1.—GENERAL STORM WATER BMPS FOR THE FOOD AND KINDRED PRODUCTS PROCESSING SECTOR i, ii, iii, iv—Continued

Activity	BMPs
	• Inspect the general area around the containers. • Ensure that beams and dikes are built around the containers. • Cover and/or enclose. • Bulkhead liquid storage tanks indoors (i.e., tank outlets located inside buildings). • Ensure that all containers are closed (e.g., valves shut, lids and manways sealed, caps closed). • Wash containers indoors before storing empty containers outdoors. • If outside or in a covered area, minimize runon of storm water into a storage area by grading area to ensure that storm water runs "off" and not "on". • Train employees on proper storage techniques (e.g., filling and transferring contents). • Maintain employee training on proper handling and transportation of materials. • Maintain an inventory control of all raw and spent materials. • Employ measures to protect against spillage from the overflows (e.g., high level sensors, alarms). • Consider vacuum emission control systems for airborne dust and particulate matter.
Liquid storage (drums, carboys, and gallon jugs).	
Solid storage (silos, holding bins, fiber drums, etc.).	
C. Waste management: Wastewater	• Perform treatment processes in-house, if possible.

TABLE U–6.1.—GENERAL STORM WATER BMPS FOR THE FOOD AND KINDRED PRODUCTS PROCESSING SECTOR i, ii, iii, iv—Continued

Activity	BMPs
Solid waste (paper, wood pellets, scrap metals, refuse, etc.).	• Inspect the outside pipe connections (couplings, valve seals and gaskets, flanges, etc.) of the treatment system for leaks, corrosion, and poor maintenance upkeep. • Inspect the general area around the solid waste (e.g., look for signs of leaching). • Store waste so that it is physically contained (dumpsters, drums, bags). • Store waste in an enclosed/covered area. • If outside or in a covered area, minimize exposure to storm water by grading the area to ensure that storm water runs "off" and not "on". • Ensure hazardous waste disposal practices are performed in accordance with Federal, State, and local requirements. • Route trash compactor leakage to treatment system or sanitary sewer.
Air emissions	• Clean around vents and stacks to atmosphere from process and storage areas. • Place tubs around vents and stacks for easy collection of settling particles. • Inspect air emission control systems (e.g., baghouses) regularly and repair and replace as necessary. • Route overflows/condensates from process vents to onsite treatment system or to the sanitary sewer.

TABLE U–6.1.—GENERAL STORM WATER BMPS FOR THE FOOD AND KINDRED PRODUCTS PROCESSING SECTOR [i, ii, iii, iv]—Continued

Activity	BMPs
D. Pest control:	• Follow manufacturers directions for application of pest control materials to site. • Time application for dry weather conditions. • Store partially full containers indoors or undercover. • Apply insecticides during breeding months. • Protect rat bait houses from storm water.
E. Improper connections to the storm sewer:	• Perform smoke or dye testing to determine if interconnections exist between the sanitary and storm sewers. • Plug all floor drains leading to storm sewers. • Update facility schematics to accurately reflect all plumbing connections. • Offer employee incentives so that employees will develop cost effective, worker efficient BMPs. • Request outside firm to conduct a storm water inspection/audit.
F. General	• Inspect material transfer lines/connections for leaks or signs of wear and repair or replace as necessary.

[i] "Standard Handbook of Environmental Engineering," Corbitt, Robert A., McGraw-Hill, Inc., 1990.

[ii] Air Pollution Engineering Manual, Air and Waste Management Association, Edited by Anthony J. Buonicore and Wayne T. Davis, Van Nostrand Reinhold, New York, 1992.

[iii] "Environmental Engineering and Sanitation," Fourth Edition, Salvato, Joseph A., John Wiley & Sons, Inc., 1992.

[iv] Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA 832–R–92–006), EPA, Office of Water, September 1992.

TABLE U–6.2.—SPECIFIC STORM WATER BMPS FOR THE FOOD AND KINDRED PRODUCTS PROCESSING SECTOR [i, ii, iii, iv]

Activity	BMPs
A. Meat Products:	
• Animal holding pens (beef, chicken)	• Inspect area around animal holding pens. • Enclose/cover fowl hanging area. • Enclose/cover the animal holding pens. • Grade the areas around the animal holding pens to ensure storm water "runs off" and not "on" to the holding pen. • Train employees on proper material (i.e., hide, hair, feathers, animal parts) clean-up procedures around and within the animal holding pens. • Store animal manure and other materials from clean-up activities in appropriate containers in an enclosed/covered area. • Area for trailers holding empty bird cages should have storm water runon/runoff controls in place. • Use mechanical sweepers around site to clean up fugitive feathers, dust, and manure.
B. Dairy Products:	
• Packaged dairy products (spoiled and broken product containers).	• Inspect area around aged/spoiled dairy products. • Store aged/spoiled dairy products in enclosed area. • Train employees on proper disposal methods for all aged/spoiled dairy products. • Ensure that all aged/spoiled product (e.g., bottles, cartons, plastic containers) are disposed of in a proper manner (bagged, covered).
C. Canned Frozen and Preserved Fruits, Vegetables, and Frozen Specialties:	
• Fruit and vegetable storage and disposal	• Inspect all fruit and vegetable storage areas. • Store all fruits and vegetables in appropriate containers (e.g., bins, bushels, baskets, buckets) and in enclosed/covered areas. • Store empty fruit and vegetable containers in an enclosed/covered area. • Train employees on proper handling/disposal methods for fresh/rotten fruits and vegetables. • Consider air emission control systems for all cooking processes to reduce particulate matter. • Minimize fruit and vegetable storage time outdoors.
D. Grain Mills:	
• Grain handling, storage and mixing	• Inspect the general area around the grain storage. • Store all grain in appropriate containers (e.g., silos, hoppers) in an enclosed/covered area. • Train employees on grain handling procedures. • Consider a vacuum control system in all grain mixing areas.
E. Bakery Products:	
• Ingredient storage and mixing	• Inspect ingredient storage areas. • Store all ingredients (e.g., corn sweeteners, flour, shortening, syrup, vegetable oils) in appropriate containers (e.g., tanks, drums, bags) in an enclosed/covered area.
• Baking process	• Remove flour/oil dust accumulation around ventilation exhaust systems.

TABLE U–6.2.—SPECIFIC STORM WATER BMPS FOR THE FOOD AND KINDRED PRODUCTS PROCESSING SECTOR[i, ii, iii, iv]—Continued

Activity	BMPs
F. Sugar and Confectionery:	• Install an air emission control system for all baking processes to reduce particulate matter.
• Sugar handling.	• Consider a vacuum control system in all granular and powdered processing areas.
G. Fats & Oils:	
• Fats and oils storage and disposal	• Inspect all fats and oils storage areas. • Store all fats and oils, (e.g., butcher shop materials, hair, hide, tallow, bone meal, and offal) in enclosed/covered areas. • Ensure all fats and oils are physically contained.
H. Beverages:	
• Material storage and mixing	• Ensure grain is stored in enclosed/covered area. • Consider an air emission control system for all grain handling and brewing processes. • Protect reusable beverage containers that are stored outdoors from storm water contact.

[i] "Standard Handbook of Environmental Engineering," Corbitt, Robert A., McGraw-Hill, Inc., 1990.
[ii] Air Pollution Engineering Manual, Air and Waste Management Association, Edited by Anthony J. Buonicore and Wayne T. Davis, Van Nostrand Reinhold, New York, 1992.
[iii] "Environmental Engineering and Sanitation," Fourth Edition, Salvato, Joseph A., John Wiley & Sons, Inc., 1992.
[iv] Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices (EPA 832–R–92–006), EPA, Office of Water, September 1992.

(a) Drainage—The plan must contain a map of the site that shows the pattern of storm water drainage, structural and nonstructural features that control pollutants in storm water runoff, and process wastewater discharges, surface water bodies (including wetlands), places where significant materials are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this section of today's proposed permit. The map must also show areas where the following general activities take place: loading/unloading areas; vehicle fueling; vehicle and equipment maintenance and/or cleaning areas; waste treatment, storage, and disposal locations; and liquid storage tanks. In addition, as identified in the Part 1 Storm Water Group Applications, the following areas are also potential sources of pollutants in storm water from food and kindred products processing facilities: vents and stacks from cooking and drying operations and dry product vacuum transfer lines; animal holding pens; spoiled product and broken product container storage areas; and significant dust or particulate generating areas. In addition, the site map must identify all monitoring locations that must be sampled as part of the monitoring requirements identified in Section H.5. (Monitoring and Reporting Requirements). This will allow for a direct comparison of the industrial activities exposed to storm water with the analytical data for storm water discharges from these areas.

(b) Inventory of exposed materials—Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must address materials that within 3 years prior to the effective date of the permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in storm water runoff; existing structural controls that limit process wastewater discharges; and any treatment that the runoff receives before it is discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

(c) Significant spills and leaks—The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of CWA (see 40 CFR 110.10 and 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

(d) Non-storm water discharges—Each pollution prevention plan must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water discharges. The certification must describe possible significant sources of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the onsite drainage points directly observed during the test or evaluation. Pollution prevention plans must identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water discharge.

(e) Sampling data—Any existing data on the quality or quantity of storm water discharges from the facility must be described in the plan. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map. Also, the plan should identify the types of storm water discharges (i.e., applicable sectors) being sampled at each outfall.

(f) Summary of potential pollutant sources—The description of potential pollutant sources culminates in a narrative assessment of the risk potential that the industrial activities, materials, and physical features of the site pose to storm water quality. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the

following activities: loading/unloading areas; vehicle fueling; vehicle and equipment maintenance and/or cleaning areas; waste treatment, storage, and disposal locations; liquid storage tanks; vents and stacks from cooking and drying operations and dry product vacuum transfer lines; animal holding pens; out-of-date/spoiled product storage areas; and significant dust or particulate generating areas. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (e.g., biochemical oxygen demand, oil and grease, etc.) associated with each source.

In addition to food and kindred products processing related industrial activities, the plan must also describe application and storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides, etc.) used at the facility, including a discussion of application and storage procedures.

(3) Measures and controls. The permittee must evaluate, select, and describe the pollution prevention measures, BMPs, and other controls that will be implemented at the facility. EPA emphasizes the implementation of pollution prevention measures and BMPs that reduce possible pollutant discharges at the source. Source reduction measures include, among others, preventative maintenance, chemical substitution, spill prevention, good housekeeping, training, and proper materials management. Where source reduction is not appropriate, EPA supports the use of source control measures and BMPs such as material segregation or covering, water diversion, and dust control. If source reduction or source control are not possible, recycling or treatment are the remaining alternatives. Recycling allows the reuse of storm water while treatment lowers pollutant concentrations prior to discharge. Since the majority of food and kindred products processing is conducted indoors, the activities identified above are geared towards only those activities that may contribute pollutants to storm water. Also because of the relatively few activities that are conducted outdoors within this sector, pollution prevention measures, BMPs, and other controls should be relatively few and easy for any given permittee. Also, these measures are the most appropriate means to reduce pollutant loadings to storm water (as opposed to pollutant limitations) because of the relative ease and the significant reductions in pollutant loads that can be realized. The permittee should consider the general storm water BMPs for the food and kindred products processing sector identified in Table U–6.1 and the subsector specific BMPs provided in Table U–6.2 when assessing the need for storm water measures and controls.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each of the potential pollutant sources will be addressed. The plan must also identify the times during which each control or practice will be implemented. Also, the plan should summarize the effects that the controls or practices will have on storm water discharges from the site. At a minimum, the measures and controls must address the following components:

(a) Good housekeeping—Permittees must describe protocols established to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. Specifics of this plan must be communicated to appropriate plant personnel.

(b) Preventative maintenance—Permittees are required to develop a preventative maintenance program that includes regular inspections and maintenance of storm water BMPs. The purpose of the inspections is to assess the effectiveness of the storm water pollution prevention plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis. The use of an inspection checklist should be considered. A checklist ensures that all required areas are inspected, as well as providing documentation for the recordkeeping requirement.

(c) Spill prevention and response procedures—Permittees are required to identify appropriate material handling procedures, storage requirements, containment or diversion equipment, and spill cleanup procedures that will minimize the potential for spills and in the event of a spill enable proper and timely response. Areas and activities that typically pose a high risk for spills at food and kindred products processing facilities include raw material unloading and product loading areas, material storage areas, and waste management areas (e.g., dumpsters, compactors). These activities and areas, and their accompanying drainage points, must be described in the plan.

(d) Inspections—In addition to, or as part of, the comprehensive site evaluation required under XI.U.6.b. (Comprehensive Site Compliance Evaluation) of this section of today's proposed permit, qualified personnel must inspect designated equipment and areas of the facility at appropriate intervals as specified in the plan. Areas that are found to possibly contribute pollutants to storm water are identified in this section of today's proposed permit as requisite areas for periodic scheduled inspections. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections must be maintained. Inspections shall be carried out by qualified facility personnel at least once each year.

(e) Employee training—Permittees must describe a program for informing personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as good housekeeping, materials management, and spill response procedures. A schedule for conducting this training must be provided in the plan. Where appropriate, contractor personnel also must be trained in relevant aspects of storm water pollution prevention.

(f) Recordkeeping and internal reporting procedures—Permittees must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. The plan must address spills, monitoring, and BMP inspection and maintenance activities. Ineffective BMPs must be reported and the date of their corrective action noted.

(g) Sediment and erosion control—Permittees must identify areas that, due to topography, activities, soils, cover materials, or other factors have a high potential for significant soil erosion. Measures to limit erosion in these areas must be identified.

(h) Management of runoff—Permittees must provide a narrative assessment of traditional storm water management practices that divert, infiltrate, reuse, or otherwise manage storm water runoff so as to reduce the discharge of pollutants. Based on the assessment, the permittee must identify practices that are reasonable and appropriate for the facility and must describe the particular pollutant source area or activity to be controlled by each storm water management practice. Reasonable and appropriate practices must be implemented and maintained.

b. Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of this section of

today's proposed permit. Comprehensive site compliance evaluations must be conducted at least annually for food and kindred products processing facilities. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that food and kindred products facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires food and kindred products facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table U–7. The pollutants listed in Table U–7 were found to be above benchmark levels for a significant portion of food and kindred products facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at benchmark levels from food and kindred products facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from food and kindred product facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table U–7, and applicable to that industrial sector. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE U–7.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Five-day Biochemical Oxygen Demand (BOD)	9.0
Ammonia	0.093
Total Kjeldahl Nitrogen (TKN)	1.5
Total Phosphorus	0.33
Total Recoverable Copper	0.009
Total Recoverable Manganese	0.05
Total Recoverable Iron	0.3
Total Recoverable Zinc	0.065

If the average concentration for a parameter is less than or equal to the value listed in Table U–7, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table U–7, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE U–8.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table U–8, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table U–8, then no further sampling is required for that parameter.
4th Year of Permit Coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table U–8. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C. of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of a storm water discharge from each outfall are required. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

g. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils. These notices specifically require that facilities with storm water discharges that are associated with meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils are required to monitor their storm water discharges for $BOD_{(5)}$, oil and grease, COD, total suspended solids, total Kjeldahl nitrogen, total phosphorus, pH, and fecal coliform. Today's proposed permit contains monitoring requirements for $BOD_{(5)}$, total Kjeldahl nitrogen, total phosphorus, total copper, manganese, ammonia, total iron, and total zinc. EPA requests comment upon the difference between the monitoring requirements set out for meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils facilities in the September 1992 General Permits and those required in today's proposed permit.

8. Alternative Monitoring Requirements

In addition, EPA requests comment upon the following monitoring and reporting requirements in lieu of those in Part XI.U.6. of today's proposed permit.

a. Annual monitoring requirements. Beginning on the effective date and lasting through the expiration date of this permit, all food and kindred products processing facilities regulated under this section must monitor storm water discharges annually (1 time per year) except as provided in VI.A. (Sampling Waiver and Representative Discharge) of the baseline general permit, for each outfall discharging storm water meeting the conditions of section XI.U.1. (Eligibility) of this

section. Permittees must monitor for the following storm water pollutants:

TABLE U–9.—MONITORING REQUIREMENTS

Parameter	Units	Frequency	Sample type
Total Flow	MGD	1/year	estimate.
BOD_5	mg/L	do	grab.
TSS	mg/L	do	Do.
Oil and Grease	mg/L	do	Do.
Total Kjeldahl Nitrogen[1]	mg/L	do	Do.
Total Phosphorus[1,2]	mg/L	do	Do.
Fecal Coliform[1]	col/ml	do	Do.
pH	s.u	do	Do.

[1] Applicable to facilities with storm water discharges associated with industrial activity from animal handling areas, manure management (or storage) areas, and production waste management (or storage) areas that are exposed to precipitation at meat packing plants, poultry packing plants, and facilities that manufacture animal and marine fats and oils.

[2] Applicable to facilities in SIC Codes 204 (i.e., grain mills) and other facilities that store, use, or manage chemicals containing phosphorus (excluding phosphoric acid) exposed to storm water.

In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total flows (in gallons) of the discharge sampled; estimate of the total flows (in gallons) of the discharge sampled;

b. Sample type. For all discharges, data shall be reported for one grab sample only. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall retain with the monitoring results a description of why a grab sample during the first 30 minutes was impracticable. If the storm water from such operation flows such that there are numerous small points of discharge, one sample may be collected to represent the adjacent flows.

c. Quarterly visual examination of storm water quality. Facilities shall perform and document a visual examination of storm water quality of each storm water discharge associated with industrial activity exposed to storm water. The inspection must be of a grab sample collected from each storm water outfall. The examination must be made at least once in each designated period (described in XI.U.8.c.(1) below) during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(2) Examinations shall be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. One of the four quarterly samples must be used for the annual monitoring requirements specified in Part XI.U.8.a. above. No analytical tests are required to be performed on the remaining three samples. Examinations shall be conducted so as to provide a reasonable representation of the nature of a typical storm water discharge at that site during that time of year.

(3) Information must be maintained onsite and include: the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge, and probable sources of any observed storm water contamination.

(4) Based on the results of the quarterly visual inspection, the description of potential pollutant sources and pollution prevention measures and controls identified in the pollution prevention plan shall be revised as appropriate within 2 weeks of such inspection and shall provide implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

d. Retention of records—(1) The permittee shall retain the pollution prevention plan developed in accordance with Parts VI. and XI.U.3. (Storm Water Pollution Prevention Plans) of this permit until at least 1 year after coverage under this permit terminates. The permittee shall retain all records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the Notice of Intent to be covered by this permit, until at least 3 years after coverage under this permit terminates. This period may be explicitly modified by alternative provisions of this permit (see paragraph XI.U.8.d.(2) (below) of this permit) or extended by request of the Director at any time.

(2) Permittees must submit monitoring results as required in Part VI.A. (Monitoring Requirements) to the Director upon the request of the Director.

V. Storm Water Discharges Associated With Industrial Activity From Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities

1. Discharges Covered Under this Section

Special permit conditions have been developed for textile mills, apparel, and other fabric product manufacturing facilities. The conditions proposed in this section apply to storm water discharges from textile related operations located on any of the facilities covered under the storm water application regulations [40 Code of Federal Regulations (CFR) 122.26] and applying for coverage under this section.

The storm water application regulations define storm water discharges associated with industrial activity at 40 CFR 122.26(b)(14).

Category (xi) of this definition includes facilities under Standard Industrial Classifications 22 and 23. The conditions proposed in this section apply to storm water discharges from the following activities under major industrial groups 22 and 23: Textile Mill Products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broadwoven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel; the integrated manufacturing of knit apparel and other finished articles of yarn; the manufacturing of felt goods (wool), lace goods, nonwoven fabrics, miscellaneous textiles, and other apparel products.

Facilities in Major Group 22 typically receive and prepare fibers, transform these materials into fabric or related products, and finish the materials before packaging. Facilities in Major Group 23 typically receive woven or knitted fabric for cutting, sewing, and packaging. For more information on the industrial activities at textile facilities, consult EPA's "Development Document for Effluent Limitations Guidelines and Standards for the Textile Mills" (Document EPA 440/1–79/0226, October 1979).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

Pollutants in Storm Water Discharges Associated with the Manufacture of Textile Products

The Agency has conducted a careful examination of the data submitted by the group, including a review of supplementary information regarding the textile industry. Based on a review of this information, the following pollutants and/or pollutant parameters may be present in storm water discharges associated with textile products manufacturing:

- *Conventional Pollutants*—Biochemical Oxygen Demand (BOD_5), Total Suspended Solids (TSS), pH
- *Toxic Pollutants*—Total chromium, total aluminum, total copper, total lead, total zinc
- *Nonconventional Pollutants*—Chemical Oxygen Demand (COD), phenols, sulfides.

Based on group application information and data, and the "Development Document for Effluent Limitation Guidelines and Standards for the Textile Mills," EPA has identified the storm water pollutants and sources resulting from textile manufacturers in Table V–1.

TABLE V–1

Activity	Pollutant source	Pollutant
Raw material storage and handling	wool, cotton, synthetics, rayon, other fibers, coal/wood piles, fuels, oil, lubricants	TSS, pH, oil and grease, COD, BOD_5, lead, chromium, benzene.
Storage and handling of materials for dyeing	Dyes, dye preservatives, pigments	Copper, phenols, lead, chromium, zinc, aluminum, acids.
Storage and handling of materials for scouring and cleaning	wool, scouring agents, detergents	BOD_5, COD, TSS, oil and grease, sulfides, phenols, pH, chromium.
Storage and handling of materials for bleaching, printing, finishing, and other activities	Dyes, bleaches, detergents, finishing agents, printing products	BOD_5, COD, TSS, oil and grease, sulfides, phenols, pH, chromium, hydrogen peroxide, acids.

Table V–2 indicates the sampling data results for part 2 conventional pollutant data submitted to EPA. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of data submittals for each of the conventional pollutants. As Table V–2 indicates, large variations in the minimum and maximum values were often found for each of the eight conventional pollutants monitored. For example:

- Composite samples of TSS ranged from 0 mg/L to 1,675 mg/L
- Grab samples of COD ranged from 0 mg/L to 306 mg/L
- Oil and grease values ranged from 0 mg/L to 42 mg/L.

TABLE V–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER, [mg/L, except as noted]

TABLE V–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER,[1]
[mg/L, except as noted]

Pollutant	# of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample Type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	110	107	11.4	9.8	0.0	0.0	50.0	50.2	7.8	7.0	38.0	29.0	44.0	41.4
COD	110	107	69.2	48.1	0.0	0.0	306.0	212.0	44.0	37.0	228.0	111.0	287.0	174.3
Nitrate+Nitrite Nitrogen	110	107	1.3	1.1	0.0	0.0	71.0	65.0	0.4	0.4	2.5	1.9	5.5	3.1
Total Kjeldahl Nitrogen	106	103	2.7	1.9	0.0	0.0	44.8	10.3	1.7	1.5	6.5	5.4	25.1	9.6
Oil and Grease	111	N/A	2.9	N/A	0.0	N/A	42.0	N/A	0.0	N/A	14.0	N/A	34.0	N/A
pH (s.u.)	105	N/A	N/A	N/A	3.8	N/A	10.2	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	109	106	0.4	0.3	0.0	0.0	11.0	11.0	0.1	0.1	0.7	0.6	6.7	2.6
Total Suspended Solids	110	107	126	80	0	0	1888	1675	36	22	410	380	1860	683

[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

Options for Controlling Pollutants

Table V–3 lists some BMPs which may be effective in limiting the amount of pollutants in storm water discharges from textile facilities. Many of the BMPs suggested focus on the process aspect of textile manufacturing. Although processes are typically conducted indoors, EPA believes that changes in the manufacturing process, such as a switch to less toxic chemicals, can lessen the amount of contamination in storm water discharges. The BMPs listed are not necessarily required to be implemented. Rather, BMPs should be chosen based on the specific nature of the storm water discharges at each textile facility and implemented as appropriate. Based on part 1 information, several of the BMPs suggested are already in place at many of the facilities. Part 1 submittals indicate that diking or other types of diversion occur at 55 percent of the sampling facilities. Nineteen percent of the sampling facilities noted that they use some form of covering as a BMP, and catch basins are in place at 45 percent. In addition, 64 percent of the facilities designated as samplers in part 1 information reported they had a Spill Prevention Control and Countermeasure Plan in place, while 56 percent used swales, 29 percent had vegetation strips, and 12 percent utilized ponds to collect storm water.

TABLE V–3

Activity	BMPs
Preparation (e.g., Desizing and Scouring)	Waste stream reuse for typical bleach unit processing; recycle J-box or kier drain wastes to saturator. Make use of countercurrent washing. Use washer waste from scour operation for batch scouring.
Dyeing	Perform analysis of spent dye baths for residual materials. Where feasible, obtain background information and data necessary before making product substitutions. This includes OSHA form 20 data and technical data. Be aware of potential problem chemicals, such as aryl phenol ethoxylates, chlorinated aromatics, chlorinated aromatics, and metals. Employ pad batch dyeing to eliminate the need for salts and chemical specialties from the dyebath, with associated reduction in cost and pollution source reduction.
Finishing	Reuse residual portions of finish mixes as much as possible by adding back to them the required components to make up the next mix.
General Water Conservation Techniques	Return noncontact cooling water and stream condensates to either a hot water holding tank or a clear well. If neither is available, segregate waste streams from sources which do not generally require treatment from other waste streams that do require treatment. Use "low liquor ratio" dyeing machines where practicable. Use of foam processing (mercerizing, bleaching, dyeing, finishing) where practicable as a water conservation process.
Chemical Screening and Inventory Control	Employ prescreening practices to evaluate and consider chemicals on a wide range of environmental and health impact criteria. Develop and perform a routine raw material quality control program. Review and develop procedures for source reduction of metals.
Material Handling: Bulk Liquid Storage and Containment	Promptly transfer used fluids to the proper container; do not leave full drip pans or other open containers around the shop. Empty and clean drip pans and containers. Do not pour liquid waste down floor drains, sinks, or outdoor storm drain inlets. Plug floor drains that are connected to the storm or sanitary sewer; if necessary, install a sump that is pumped regularly. Inspect the maintenance area regularly for proper implementation of control measures. Train employees on proper waste control and disposal procedures. Store permanent tanks in a paved area surrounded by a dike system which provides sufficient containment for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank. Maintain good integrity of all storage tanks. Inspect storage tanks to detect potential leaks and perform preventive maintenance. Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks.
Material Handling: Containerized Material Storage	Train employees on proper filling and transfer procedures. Store containerized materials (fuels, paints, solvents, etc.) in a protected, secure location and away from drains. Store reactive, ignitable, or flammable liquids in compliance with the local fire code. Label all materials clearly. Identify potentially hazardous materials, their characteristics, and use. Control excessive purchasing, storage, and handling of potentially hazardous materials. Keep records to identify quantity, receipt date, service life, users, and disposal routes. Secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials. Educate personnel for proper storage, use, cleanup, and disposal of materials.

TABLE V–3—Continued

Activity	BMPs
Material handling: designated material mixing areas	Provide sufficient containment for outdoor storage areas for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank. Use temporary containment where required by portable drip pans. Use spill troughs for drums with taps. Mix solvents in designated areas away from drains, ditches, and surface waters. If spills occur: • Stop the source of the spill immediately. • Contain the liquid until cleanup is complete. • Deploy oil containment booms if the spill may reach the water. • Cover the spill with absorbent material. • Keep the area well ventilated. • Dispose of cleanup materials properly. • Do not use emulsifier or dispersant.

Sources: Smith, Brent, "Identification and Reduction of Pollution Sources in Textile Wet Processing." Department of Textile Chemistry, North Carolina State University, Raleigh, NC, 1986.
Smith, Brent, "Identification and Reduction of Toxic Pollutants in Textile Mill Effluent." Department of Textile Chemistry, North Carolina State University, Raleigh, NC, 1992.
NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991 through December 31, 1992.

4. Special Conditions

There are no additional requirements beyond those described in Part VI.B of this fact sheet.

5. Storm Water Pollution Prevention Plan Requirements

The permit conditions that apply to storm water discharges from textile mills, apparel and other fabric product manufacturing facilities are, in part, established upon the basic requirements in the baseline general permit for storm water discharges from industrial activities, finalized on September 9, 1992 (57 FR 41236). The following discussion addresses only those conditions that may differ from conditions required in the baseline permit.

a. Contents of the plan—(1) Description of potential pollutant sources. Under the description of potential pollutant sources in the storm water pollution prevention plan requirements, permittees are required to include processing areas, loading/unloading areas, treatment, storage, and waste disposal areas, liquid storage tanks, fueling areas, on a site facility map. EPA believes that this is appropriate since these areas may potentially be a significant source of pollutants to storm water.

(2) Measures and controls. Under the description of measures and controls in the storm water pollution prevention plan requirements, this section proposes that all areas that may contribute pollutants to storm water discharges shall be maintained in a clean, orderly manner. This section also proposes that the following areas must be specifically addressed:

(a) Material storage areas—All stored and containerized materials (fuels, petroleum products, solvents, dyes, etc.) must be stored in a protected area, away from drains and clearly labeled. The plan must describe measures that prevent or minimize contamination of storm water runoff from such storage areas. The facility should specify which materials are stored indoors and must provide a description of the contaminant area or enclosure for those materials which are stored outdoors. Above ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the appropriated containment measures in place to prevent leaks and spills. The facility may consider an inventory control plan to prevent excessive purchasing, storage, and handling of potentially hazardous substances. In the case of storage of empty chemical drums and containers, facilities should employ such practices as triple-rinsing containers. The discharge waters from such washings must be collected, contained, or treated, and facilities should identify where the discharge will be released.

(b) Material handling area—The plan must describe measures that prevent or minimize contamination of the storm water runoff from materials handling operations and areas. The facility may consider the use of spill and overflow protection; covering fuel areas; covering and enclosing areas where the transfer of materials may occur. Where applicable, the plan must address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes, or wastewater.

(c) Fueling areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from fueling areas. The facility may consider covering the fueling area, using spill and overflow protection, minimizing runon of storm water to the fueling area, using dry cleanup methods, and/or collecting the storm water runoff and providing treatment or recycling.

(d) Above ground storage tank areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from above ground storage tank areas. The facility must consider storage tanks and their associated piping and valves. The facility may consider: regular cleanup of these areas, preparation of a spill prevention control and countermeasure program, providing spill and overflow protection, minimizing runon of storm water from adjacent facilities and properties, restricting access to the area, inserting filters in adjacent catch basins, providing absorbent booms in unbermed fueling areas, using dry cleanup methods, permanently sealing drains within critical areas that may discharge to a storm drain.

(3) Comprehensive site compliance evaluation. EPA believes that the incorporation of management practices such as those suggested will substantially reduce the potential for these activities and areas to significantly contribute pollutants to storm water discharges. In addition, EPA believes that these requirements continue to provide the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with different facilities. Further, many facilities will find that management

measures that have already been incorporated into the facility's operation, such as the installation of overfill protection equipment and labelling and maintenance of used oil storage units, are already required under existing EPA programs and will meet the requirements of this section.

Under the preventive maintenance requirements, the plan specifically includes the routine inspection of sediment traps to ensure that solids will be intercepted and retained prior to entering the storm drainage system. Because of the nature of operations which occur at textile facilities, specific routine attention needs to be placed on the collection of solids.

Under the inspection requirements this section requires that, in addition to the comprehensive site evaluation required under Part IV of today's proposed permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility, at a minimum, on a monthly basis.

The purpose of the inspections is to check on the implementation and effectiveness of the storm water pollution prevention plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis. The use of an inspection checklist is highly encouraged. The checklist will ensure that all required areas are inspected, as well as help to meet the record keeping requirements.

The permittee is required to identify at least 6-month interval (twice per year) dates for employee training. Employee training must, at a minimum, address the following areas when applicable to a facility: Use of reused/recycled waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; general good housekeeping practices. Employees, independent contractors, and customers must be informed about BMPs and be required to perform in accordance with these practices. Copies of BMPs and any specific management plans, including emergency phone numbers, shall be posted in the work areas. EPA, therefore, is proposing to require that employee training take place at least twice a year to serve as: (1) Training for new employees; (2) a refresher course for existing employees; and (3) training for all employees on any storm water pollution prevention techniques recently incorporated into the plan.

6. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at facilities covered by this section of today's permit. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required at textile manufacturing facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for textile mills, apparel, and other fabric product manufacturing facilities. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

7. Alternative monitoring requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.V.5. of today's proposed permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the

expiration date of this permit, permittees must monitor the storm water discharges identified below at least annually (1 time per year). In addition to the parameters listed in Table V–4 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE V–4.—STORM WATER MONITORING PARAMETERS

Parameter	Unit	Frequency	Sample type [1]
Total Flow	gallons	1/year	estimate.
Biochemical Oxygen Demand (BOD_5)	mg/L	do	grab.
Oil & Grease	mg/L	do	Do.
Chemical Oxygen Demand (COD)	mg/L	do	Do.
Total Suspended Solids (TSS)	mg/L	do	Do.
pH	standard	do	Do.
Total Recoverable Aluminum	mg/L	do	Do.
Total Recoverable Copper	mg/L	do	Do.
Total Recoverable Zinc	mg/L	do	Do.
Total Recoverable Chromium	mg/L	do	Do.
Total Recoverable Lead	mg/L	do	Do.
Sulfide	mg/L	do	Do.
Phenols	mg/L	do	Do.
Acute whole effluent toxicity [2]	mg/L	do	Do.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.
[2] The acute whole effluent toxicity shall be performed in accordance with Part XI.V.5.d. of this section.

b. Semiannual and reporting requirements. During the period beginning on the effective date of this permit, textile facilities with activities identified in either Tables V–5 and V–6 must monitor those storm water discharges identified below at least semiannually (2 times per year). Permittees with textile facilities engaging in activities identified in Tables V–5 and V–6 below shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sample runoff; the duration between the storm event sampled and the previous measurable (greater than 0.1 inch rainfall) storm event; and estimate of the total volume (in gallons) of the discharge sampled.

TABLE V–5.—DISCHARGES FROM COAL AND/OR WOOD CHIP STORAGE AREAS

Parameter	Unit	Frequency	Sample type
Flow	gallons	semiannual	estimate.
pH	standard	do	grab.
Total suspended solids.	mg/L	do	Do.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.

[2] The resultant runoff should contain no visible sheen and no visible discharge of oil, floating solids, or foam other than in trace amounts.

TABLE V–6.—STORM WATER RUNOFF FROM PETROLEUM STORAGE AND HANDLING AREAS

Parameter	Unit	Frequency	Sample type
Flow	gallons	semi-annual.	estimate.
pH	standard	do	grab.
Benzene	µg/L	do	Do.
Oil and Grease.	mg/L	do	Do.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.

c. Sample type. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours, (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected) a minimum of one grab sample may be taken. For all other discharges, data shall be reported for a grab sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

d. Toxicity testing—(1) Test procedures—(a) The permittee shall conduct acute 24-hour static toxicity tests on both an appropriate invertebrate and an appropriate fish (vertebrate) test species (EPA/600/4–90–027 Rev. 9/91, Section 6.1). Freshwater species must be used for discharges to freshwater bodies. Due to the nonsaline nature of rainwater, freshwater should also be used for discharges to estuarine, marine, or other naturally saline waterbodies.

(b) All test organisms, procedures, and quality assurance criteria used shall be in accordance with "Methods for Measuring the Acute Toxicity of Effluents to Freshwater and Marine Organisms," EPA/600/4–90–027, or the most current edition. The control water used will be moderately hard water as described in EPA/600/4–90–027, Table 6, or the most current edition.

(c) Tests shall be conducted annually (once per year) on a grab sample of the discharge. Test shall be conducted using 100 percent effluent (no dilution) and a control consisting of synthetic dilution water. Results of all tests conducted with any species shall be reported according to EPA/600/4–90–027 (or the most current edition), Section 12, Report Preparation, and the report submitted to EPA with the Discharge

Monitoring Reports (DMRs). On the DMR, the permittee shall report "0" if there is no statistical difference between the control mortality and the effluent mortality for each dilution. If there is statistical difference (exhibits toxicity), the permittee shall report "1" on the DMR.

(2) If acute whole effluent toxicity (statistically significant difference between the 100 percent dilution and the control) is detected in the storm water discharges, the permittee shall review the storm water pollution prevention plan and make appropriate modifications to assist in identifying the sources of toxicity and to reduce the toxicity of their storm water discharges. A summary of the review and the resulting modifications shall be provided in the plan.

e. Reporting: when to submit—(1) Permittees that are required to conduct sampling pursuant to Section 7.a. shall monitor samples collected during the sampling period running from January to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January.

(2) Permittees that are required to conduct sampling pursuant to Part XI.V.7.b. shall monitor samples collected during the sampling period from July to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following required for each sampling period. The first report may include less than 12 months of information.

8. Cost Estimates

This section, which covers textile mills, apparel and other fabric product manufacturing facilities, does not include numeric effluent limits. The BMPs described within today's proposed permit and fact sheet are designed to prevent or minimize pollutants in the storm water runoff. Facilities choose and implement the BMPs which best fit site specific requirements. Because this section does not contain numeric effluent limits or requirements to implement specific, predetermined BMPs, an economic achievable analysis is not required.

W. Storm Water Discharges Associated With Industrial Activity From Wood and Metal Furniture and Fixture Manufacturing Facilities

1. Discharges Covered Under This Section.

On November 16, 1990 (55 FR 47990), the U.S. Environmental Protection Agency (EPA) promulgated the regulatory definition of "storm water discharges associated with an industrial activity." This definition included point source discharges of storm water from eleven major categories of facilities, including facilities under Standard Industrial Classification (SIC) codes 2434 and 25. Part XI.W. of today's proposed permit only covers storm water discharges associated with industrial activities from furniture and fixture manufacturing facilities. Furniture and fixture manufacturing facilities eligible for coverage under this section include facilities identified by the following SIC codes:

- Wood Kitchen Cabinets (SIC Code 2434).
- Household Furniture (SIC Code 251).
- Office Furniture (SIC Code 252).
- Public Buildings and Related Furniture (SIC Code 253).
- Partitions, Shelving, Lockers, and Office and Store Fixtures (SIC Code 254).
- Miscellaneous Furniture and Fixtures (SIC Code 259).

Storm water discharges covered by this section include all discharges where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to precipitation and storm water runon. Storm water that does not come into contact with an industrial activity or a significant material are not subject to permitting according to 40 CFR 122.26. This section is not applicable to any discharge subject to effluent limitation guidelines. However, the storm water component of the unpermitted discharge may be included under this section.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Industry Profile

The manufacturing processes for furniture and fixture manufacturing facilities are not typically exposed to storm water. However, unloading operations and the storage of some raw materials, and waste products, may be exposed to precipitation. Because of the lack of industrial activities occurring outdoors and the necessity of keeping many of the raw materials dry, the primary sources of storm water pollutants originate from materials handling and waste management or disposal activities. Table W–1 lists potential pollutant source activities, and related pollutants associated with furniture and fixture manufacturing facilities. There are two primary types of furniture and fixture manufacturing facilities. The distinction is based on the primary raw material, wood or metal. The manufacturing processes and significant materials to produce wood and metal furniture or fixtures are not similar. However, the manufacturing activities and wood resources are not typically exposed to precipitation.

TABLE W–1.—ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS

Activity	Pollutant source	Pollutant
Wood drying	Coal	TSS, pH, cadmium, arsenic.
	Saw dust	TSS, COD, BOD_5, pH.
	Ash	TSS, pH.
Furniture manufacturing.	Sizing operations.	TSS, BOD_5, pH.
	Painting operations	Lead, cadmium, COD.
	Gluing operations.	Solvents, COD, oil and grease.

TABLE W–1.—ACTIVITIES, POLLUTANT SOURCES, AND POLLUTANTS—Continued

Activity	Pollutant source	Pollutant
	Used rags	Solvents, COD, oil and grease.
	Processing materials unloading.	Diesel fuel, gasoline, oil, TSS.
	Waste material transportation.	TSS, BOD_5, pH.
	Treatment facilities.	Solvents, COD, oil & grease.
	Open dumps .	TSS, BOD_5, oil & grease, COD.
Other activities.	Air emission control cleaning.	TSS, pH, cadmium, lead, copper, zinc.

Source: Storm Water Group Applications, Parts 1 and 2.

Industrial activities occurring at furniture and fixture manufacturing facilities that pertain to the storm water rule include, "* * * but [are] not limited to, storm water discharges from industrial plant yards; material handling sites; refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials and intermediate and finished materials; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water" (40 CFR 122.26(b)(14)). The most common industrial activities at furniture and fixture manufacturing facilities include material handling sites and raw material storage areas.

Significant materials include, ". . . but [are] not limited to: Raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under Section 101(14) of CERCLA; any chemical facilities required to report pursuant to Section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharges" (40 CFR 122.26(b)(12)). Significant materials commonly found at furniture and fixture manufacturing facilities include: Wood; saw dust; metals; petroleum-based products; solvents; detergents; and waste materials.

Manufacturers of furniture and fixtures are separated by the primary raw material (i.e., wood and metal). The primary raw materials, industrial processes, waste and by-products, and final products differ for the production of wood furniture and metal furniture. Within each subsector the number of industrial activities and corresponding significant materials and waste products may also vary. Presented below are brief descriptions of the industrial activities and significant materials associated with the manufacturing of wood and metal furniture and fixtures. Due to similarities in the production of furniture and fixtures within subsectors, industrial activities and significant materials are fairly uniform across this sector. Unique practices are noted.

a. Manufacturing of wood furniture and fixtures. The process of manufacturing wood furniture begins with the delivery and storage of wood. There are three different raw wood materials; lumber, veneer, and particle board. Since the manufacturing processes are not typically exposed to storm water for this industry, some of the "industrial activities" described below may not be susceptible to storm water exposure. Significant materials and materials management practices do refer to those materials exposed to storm water, and to the subsequent management practices used to control storm water. Variations on exposure to industrial activities and significant materials are site-specific.

(1) Industrial activities. Once delivered, raw lumber is allowed to air dry up to 1 year. After the lumber is sufficiently air dried it is then transported to a dry kiln for further drying. The lumber is kiln dried anywhere from 7 to 150 days. Once the lumber has been dried to a desired moisture content, the dried lumber is taken to the processing area. The remaining furniture manufacturing processes are all completed indoors. Manufacturers may also receive lumber that is already dried. Therefore, the manufacturers may not need to air or kiln dry the wood and proceed directly into the processing stage.

The dried lumber is run through planers, to create a smooth, preliminary working surface, and then cut to specified dimensions depending on the end use. The sized lumber is then taken through sanding and machining operations. Sanding produces a smooth, fine working surface. Machining can include boring, routing, lathe operations, mitre cutting, and finish cuts. From this point, each piece of wood is dedicated to a specific product.

Veneer is another raw material used in the production of furniture. In this process logs are placed in a steam vat to increase the moisture content of a log. The logs are turned on a lathe to peel off the veneer. The resulting veneer sheets are layered into stacks or "hacks." Moisture is removed from the hacks by kiln drying. After a desired moisture content has been achieved the hacks are disassembled. Veneer is frequently hot or cold pressed onto particle board or solid wood by utilizing adhesives.

Particle board is the third raw material incorporated into the manufacturing of wood furniture. The board is received, cut to size, and banded on all four edges with solid wood. The banding is accomplished in continuous, steam heated units utilizing adhesives. The panels are allowed to cool and then they are sanded. Particle board is frequently coated with veneer.

The products from the three raw materials may be combined during the machining and sanding step or during the final assembly of a furniture piece. The machining and sanding step may include: initial sizing of particle board, veneer, and lumber; laminating operations; and surface printing. Once all the pieces of a particular furniture item are manufactured and sized, assembly can begin. This process generally involves an assembly line routing with many different individuals and machines working together to build the unit.

The final step in creating an unupholstered piece of furniture involves surface finishing. This process may involve many separate coats of stains, lacquers, sealers, and finishes to a single unit. This is the step where a uniform wood color and texture are given to each piece of furniture or furniture grouping.

Facilities that manufacture upholstered furniture may have all of the previously mentioned activities, or may purchase dried or sized materials from a manufacturer. Upholstered furniture manufacturers will transport, handle, store, and process natural and synthetic fibers used for the upholstery. After the wood component of an upholstered piece of furniture is assembled, the upholstery materials are cut, sized, stretched, and then attached to the frame. After the final inspection of a furniture piece, the unit is packaged and either stored temporarily onsite or immediately shipped to an offsite location.

(2) Significant materials. The significant materials identified, in part 1

of the group applications, as exposed to storm water at wood furniture and fixture manufacturing facilities include: Raw wood; sawdust; coal; kiln ash; solvent-based finishing materials and waste products; used rags; raw glue and waste materials; and petroleum-based products. While most of the raw wood material is stored outside, more valuable wood products (e.g., sheets of veneer, mahogany, etc.) and some composite wood products (e.g., particle board) may be stored inside or under cover.

b. Manufacturing of metal furniture and fixtures. Many furniture and fixture manufacturing facilities build their furniture with metal as the primary raw material. However, some manufacturers combine wood and upholstered materials with a metal frame. Metal furniture manufacturing facilities may purchase wood pieces ready for assembly or they may have all the industrial activities of wood manufacturing facilities in addition to the metal manufacturing facilities. The industrial activities at metal furniture manufacturing facilities will be site-specific and depend upon the level of work necessary to shape and treat the delivered metal into a furniture piece.

(1) Industrial activities. Facilities that manufacture metal household furniture maintain all operations including: Machining and assembly; finishing; and temporary storage of finished products within an enclosed building. Cold roll steel is initially received and temporarily stored within the manufacturing building. However, steel may be stored outside prior to use. The steel is cut to size, bent, and welded to design specifications to fabricate raw metal household furniture. Final grinding, sanding, finishing, spot welding, and painting are then completed. After the final inspection of a furniture piece, the unit is packaged and either stored temporarily onsite or immediately shipped to an offsite location.

(2) Significant materials. The significant materials identified as exposed to storm water, in part 1 of the group applications, at metal furniture and fixture facilities include: Metals; sawdust; solvent-based finishing materials and waste products; electroplating solutions and sludges; used rags; raw glue and waste materials; and petroleum-based products. The raw metal may be stored outside, exposed to storm water prior to manufacturing, but will be brought indoors for manufacturing.

3. Pollutants in Storm Water Discharges Associated With Furniture and Fixtures Manufacturing Facilities

Few pollutants are expected in storm water discharges from the manufacturing of wood and metal furniture and fixtures because the majority of the industrial activities occur indoors. Pollutants may be present in storm water as a result of outdoor activities associated with the manufacturing of wood and metal furniture and fixture such as: Material handling operations; waste disposal; raw material storage; and deposition of airborne particulate matter. In addition, sources of pollutants other than storm water, such as illicit connections, spills, and other improperly dumped materials, may increase the pollutant loadings discharged into waters of the United States.

Many of the part 2 group application data submittals did not identify individual site characteristics or sources of storm water pollutants which may be responsible for pollutant loadings. In addition, the limited response from sampling facilities did not allow for a separation of sampling data submitted by wood and metal manufacturing facilities. Therefore, the only option available to EPA was to use the data in the aggregate.

EPA has identified the storm water pollutants and sources resulting from furniture and fixture manufacturing facilities in Table W–1. Table W–1 identified several pollutants including total suspended solids (TSS), oil and grease, and chemical oxygen demand (COD) as pollutants of concern at furniture and fixture manufacturing facilities.

Table W–2 indicates the sampling data results, for Section VII–A of Form 2F, from 18 of the sampling facilities required to submit data. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of outfalls sampled for each of the pollutants. Variations in the minimum and maximum values were found to be small, relative to other industrial sectors in today's proposed permit for the eight conventional pollutants. The range in values, means, and medians for the conventional pollutants sampled were typically low. However, upon review of additional sampling data submitted to EPA after Table W–2 was compiled, EPA has found the additional data not to be outside the values listed in Table W–2.

Data submitted for arsenic, cadmium, copper, lead, nickel, and zinc were measured at less than 10 ppb for those facilities submitting data. Few facilities submitted sampling data for these constituents, indicating that facility operators did not anticipate loadings greater than 10 ppb.

TABLE W–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[1] (mg/L, except as noted)

Pollutant	No. of samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	25	24	12.2	8.8	0.0	0.0	46.0	32.0	9.0	6.0	44.0	26.0	46.0	32.0
COD	25	24	96.0	76.3	0.0	0.0	300.0	240.0	83.0	72.5	230.0	180.0	300.0	240.0
Nitrate + nitrite nitrogen	25	24	1.73	1.51	0.0	0.0	12.0	10.0	0.9	0.675	6.2	5.6	12.0	10.0
Total kjeldahl nitrogen	25	24	4.37	4.4	0.0	0.6	46.0	55.0	1.7	1.350	15.0	13.0	46.0	55.0
Oil & grease	25	N/A	3.8	N/A	0.0	N/A	33.0	N/A	0.0	N/A	14.0	N/A	33.0	N/A
pH (s.u.)	23	N/A	N/A	N/A	4.2	N/A	9.3	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total phosphorus	25	24	0.27	0.26	0.0	0.0	1.1	1.3	0.2	0.185	0.89	0.71	1.1	1.3
Total suspended solids	25	24	188	143	3	2	891	900	130	91	440	550	891	900

[1] Applications that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

Below is a discussion of the pollutants of concern:

• Chemical oxygen demand (COD)—COD measures the total amount of oxygen necessary for oxidation. COD is an effective indicator of levels of biologically resistant organic substances. Higher COD levels, for example, may be attributed to the presence of biologically resistant organics, such as oil and grease. COD data submitted in the part 2 applications from wood and metal furniture and metal manufacturing facilities indicate the following:

—The mean concentrations for grab and composite samples were 96.0 mg/L and 76.3 mg/L, respectively
—The median concentrations for grab and composite samples were 83.0 mg/L and 72.5 mg/L, respectively
—The 95th percentile concentration (i.e., 95 percent of the values are below) for grab and composite samples were approximately 230 mg/L and 180 mg/L, respectively.
—The 99th percentile concentration (i.e., 99 percent of the values are below) for grab and composite samples were 300 mg/L and 240 mg/L, respectively.

These mean and median COD concentrations are within the recommended load estimates storm water runoff from residential and commercial areas.[124] Therefore, EPA does not believe it is necessary to impose continued monitoring of COD.

• Oil and grease—There are several sources of oil and grease from wood and metal furniture and fixture manufacturing facilities. These sources include unloading/loading areas; vehicle/equipment maintenance and cleaning; and outdoor storage of vehicles, equipment and castings. Oil and grease emulsions are detrimental to aquatic organisms and inhabitants because: (1) deposition of oil and grease in bottom sediments can serve to inhibit normal benthic growths, impacting the aquatic food chain; (2) oil and grease emulsion may destroy algae or other plankton; (3) oil and grease emulsions may adhere to the gills of fish exerting a toxic effect to fish; and (4) water insoluble components damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. In addition to environmental impacts, oil and grease impact the aesthetic qualities of water by forming unsightly surface slicks that affect water beaches and shorelines.

Oil and grease data submitted in part 2 applications for wood and metal furniture and fixture manufacturing facilities indicate the following:

—The mean concentration was 3.8 mg/L
—The median concentration was 0.0 mg/L
—The 95th percentile concentration (i.e., 95 percent of the values are below) was 14 mg/L
—The 99th percentile concentration (i.e., 99 percent of the values are below) was 33 mg/L.

The most stringent storm water effluent guidelines establish a limit of 15 mg/L of oil and grease in a discharge.[125] The part 2 data indicates that the mean and median concentration of oil and grease are below this limit and, therefore, EPA does not believe it is necessary to impose continued monitoring for oil and grease.

• *pH*—pH is a measure of the acidity or alkalinity of a discharge. On the pH scale ranging from zero to fourteen, a value of seven represents neutral conditions in which the concentrations of hydrogen and hydroxyl ions are equal. Values of pH less than seven represent acidic conditions; values greater than seven represent basic conditions.

The pH level is easily measured and is an indication of potential environmental impacts. Storm water discharges with pH values markedly different from the pH values of the receiving stream are potentially detrimental to the environment. At outfalls and prior to complete mixing of storm water discharges with receiving waters, a zone of sudden pH change can damage or kill biota engulfed in the zone of change. Part 2 applications from wood and metal furniture and fixture manufacturing facilities indicated that less than 5 percent of the sampling facilities reported a pH below 6 standard units.

Data submitted for part 2 of the application indicate that pH levels are generally inside the permitted range for wastewater discharges under effluent limitation guidelines. Therefore, EPA does not believe continued monitoring for pH is justified.

• *Total Suspended Solids (TSS)*—TSS is associated with wood and metal furniture and fixture manufacturing facilities because some sites have exposure to significant materials like coal piles and refuse piles. Many part 2 applications have indicated the source of high TSS levels to be coal pile runoff and runoff from refuse piles. Suspended solids increase the turbidity of water allowing less light to penetrate the water, thereby reducing photosynthetic activity of aquatic vegetation. Over time, total suspended solids settle out to form deposits that can be detrimental to stream environments. These deposits may destroy fauna that breed and grow in or near the bottoms of streams and serve as food for fish and other aquatic life. The deposits can also blanket and destroy spawning grounds for fish. TSS data submitted in the part 2 applications for wood and metal furniture and fixture manufacturing facilities indicate the following:

—Approximately 4 percent of the sampling facilities reported TSS levels above 450 mg/L
—The mean concentrations for grab and composite samples were 188 mg/L and 143 mg/L, respectively
—The median concentrations for grab and composite samples were 130 mg/L and 91 mg/L, respectively
—The 95th percentile concentration (i.e., 95 percent of the values are below) for grab and composite samples were 440 and 550, respectively
—The 99th percentile concentration (i.e., 99 percent of the values are below) for grab and composite samples were 891 mg/L and 900 mg/L, respectively.

The mean and median concentrations for TSS are inside the recommended load estimates for runoff from residential and commercial areas.[126] The high TSS levels have been found to be associated with facilities that indicated the primary source of TSS to be coal pile runoff and runoff from refuse piles. Since these sources of storm water contamination are addressed elsewhere in today's permit, the primary source of high TSS levels will be controlled regardless of the conditions within this section of today's permit. Therefore, EPA does not believe that continued monitoring for TSS is necessary.

• *Heavy metals*—EPA is not proposing to require monitoring of metals by facilities covered under today's proposed permit. As required by 40 CFR 122.26(g) (ii) and (iii), group applicants were only required to sample for metals if the facility knew or had reason to believe it would be expected in the discharge. Few facilities submitted data on heavy metals even though the discharges were less than 10 ppb. EPA considers any high heavy metals values to be atypical of those

[124] EPA. December 1983. "Results of the National Urban Runoff Program."

[125] Per 40 CFR Part 419.

[126] EPA. December 1983. "Results of the Nationwide Urban Runoff Program."

experienced by the majority of wood and metal furniture and fixture manufacturing facilities. Therefore, EPA does not believe it is necessary to impose monitoring conditions for heavy metals.

4. Options for Controlling Storm Water Pollutants

Certain BMPs are implemented to prevent and/or minimize exposure of pollutants from industrial activities to storm water discharges. EPA believes the most effective BMPs for reducing pollutants in storm water discharges are exposure minimization practices. Exposure minimization practices lessen the potential for storm water to come into contact with pollutants. Good housekeeping practices ensure that facilities are sensitive to routine and nonroutine activities which may increase pollutants in storm water discharges. The BMPs which address good housekeeping and exposure minimization are easily implemented, inexpensive, and require little, if any, maintenance. BMP expenses may include construction of roofs for storage areas or other forms of permanent cover and the installation of berms/dikes. Other BMPs such as detention/retention ponds and filtering devices may be needed at these facilities because of the contaminant level in the storm water discharges.

Part 1 group application data indicate that few BMPs have been implemented at wood and metal furniture and fixture manufacturing facilities. The only BMPs identified in the part 1 applications include: closed tanks, drums, and metal boxes; and partial covering. The part 1 data submissions did not indicate the presence of any traditional BMPs, such as sedimentation and retention ponds, or diversion dikes. However, the group application process did not require a description, or identification, of traditional BMPs, only the identification of material management practices that limit the contact between storm water and significant materials.

Because BMPs described in the part 1 data are limited, EPA is providing an overview of supplementary BMPs for use at furniture and fixture manufacturing facilities. However, inclusion of a BMP cited does not preclude the use of other viable BMP options. Table W–3 summarizes BMP options as they apply to wood and metal furniture and fixture manufacturing facilities. Sources of BMP information include: "Sediment and Erosion Control: An Inventory of Current Practices—Draft," EPA, April 20, 1990; "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, September 1992 (EPA 832–R–92–006); and "Erosion & Sediment Control Handbook," Goldman et al., McGraw-Hill Book Company, 1986.

TABLE W–3.—STORM WATER BMPS FOR FURNITURE AND FIXTURE MANUFACTURING FACILITIES

Activity	Best management practices (BMPs)
Outdoor unloading and loading	Confine loading/unloading activities to a designated area. Perform all loading/unloading activities in a covered or enclosed area. Close storm drains during loading/unloading activities in surrounding areas. Avoid loading/unloading materials in the rain. Inspect all containers prior to loading/unloading of any raw or spent materials. Berm, curb, or dike loading/unloading areas. Use dry clean-up methods instead of washing the areas down. Train employees on proper loading/unloading techniques.
Outdoor material storage (including waste and particulate emission management).	Confine storage of raw materials, parts, and equipment to designated areas. Train employees on proper waste control and disposal. Berm, curb, or dike any areas around tanks. Ensure that all containers are properly sealed and valves closed. Inventory all raw and spent materials. Inspect air emission control systems regularly, and repair or replace when necessary. Store wastes in covered, leakproof containers (e.g., dumpsters, drums). Store wastes in enclosed and/or covered areas. Ensure hazardous and solid waste disposal practices are performed in accordance with applicable Federal, State, and local requirements. Ship all wastes to offsite landfills or treatment facilities.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA, March 18, 1991, through December 31, 1992, and EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

Many of the BMPs identified in Table W–3 are reminders of good or preferred operating procedures that are intended to limit the exposure of significant materials and industrial activities to storm water. Facility operators should review their current operations and consider implementing these BMPs if they are applicable to the site and reduce storm water contamination.

Since none of the facilities within the wood and metal furniture and fixture manufacturing sector indicated the presence of traditional storm water management practices, EPA is requiring the participants of this sector to consider the implementation of storm water diversions and sediment control and collection structures.

Discharge diversions provide the first line of defense in preventing the contamination of discharges, and subsequent contamination of receiving waters of the United States. Discharge diversions are temporary or permanent structures installed to divert flow, store flow, or limit storm water runon and runoff.

These diversion practices have several objectives. First, diversion structures can be designed to prevent otherwise uncontaminated (or less contaminated) water from crossing disturbed areas or areas containing significant amounts of contaminated materials, where contact may occur between runon and significant materials. These source reduction measures may be particularly effective for preventing uncontaminated discharges from contacting exposed materials and/or reduce the flow across disturbed areas, thereby lessening the potential for erosion. Second, diversion structures can be used to collect or divert waters for later treatment, if

necessary. The usefulness of these control measures are limited by such factors as the size of the area to be controlled and the type and nature of materials exposed and precipitation events.

Diversion dikes, curbs, and berms are temporary or permanent diversion structures that prevent runoff from passing beyond a certain point, and divert runoff away from its intended path. Dikes, curbs or berms may be used to surround and isolate areas of concern at wood and metal furniture manufacturing facilities, and divert flow around piles of significant materials in order to minimize or limit offsite discharges of contaminated storm water.

Sediment control and collection limits movement and retains sediments from being transported offsite. Several structural collection devices have been developed to remove sediment from runoff before it leaves the site. Several methods of removing sediment from site runoff involve diversion mechanisms previously discussed, supplemented by a trapping or storage device. Structural practices typically involve filtering diffuse storm water flows through temporary structures such as straw bale dikes, silt fences, brush barriers or vegetated areas.

However, structural practices require periodic removal of sediment to remain functional, for both temporary and permanent structures. As such, they serve as more active-type practices which may not be appropriate for permanent use at inactive mines. However, these practices may be effectively used as temporary measures during active operation and/or prior to the final implementation of permanent measures. Temporary structures include: plastic matting, plastic netting, and erosion control blankets; mulch-straw or wood chips; and compaction. Permanent sediment control and collection structures include: sediment/settling ponds; sediment traps or catch basins; and vegetated buffer strips.

5. Storm Water Pollution Prevention Plan Requirements

All facilities subject to this section must prepare and implement a storm water pollution prevention plan. The establishment of a pollution prevention plan requirement reflects EPA's decision to allow operators of furniture and fixture manufacturing facilities to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The requirements included in pollution prevention plans provide a flexible framework for the development and implementation of site-specific controls to minimize pollutants in storm water discharges. This approach is consistent with the approach used in the baseline general permits finalized on September 9, 1992 (57 FR 41236). EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from furniture and fixture manufacturing facilities. Pollution prevention plans allow the operator of a facility to select BMPs based on site-specific considerations such as: facility size; climate; geographic location; geology/hydrology; the environmental setting of each facility; volume and type of discharge generated, and current BMPs. This flexibility is necessary because each facility will be unique in that the source, type, and volume of contaminated surface water discharges will differ from site to site.

There are two major objectives to a pollution prevention plan: (1) to identify sources of pollution potentially affecting the quality of storm water discharges associated with an industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility. Specific requirements for a pollution prevention plan for furniture and fixture manufacturing facilities are described below. These requirements must be implemented in addition to the pollution prevention plan provisions discussed previously, or any other industry-specific requirements to which the facility is subject. For example, facilities with coal piles must comply with the provisions for coal pile runoff, as well as the pollution prevention requirements for the furniture and fixture manufacturing industry.

a. *Description of potential pollution sources.* Under the drainage requirements, the site map must show areas where the following activities, if applicable, take place: Fueling; vehicle and equipment maintenance and/or cleaning; loading and unloading; material storage (including tanks or other vessels used for liquid or waste storage); outdoor material processing; waste treatment, storage, or disposal; haul roads; access roads; and rail spurs.

b. *Measures and controls.* Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, BMPs, and other controls that will be implemented at the facility. The permittee must assess the applicability of the following categories of BMPs for their site: discharge diversions, drainage/storm water conveyance systems, runoff dispersions, and good housekeeping measures. In addition, BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

The pollution prevention plan must discuss the reasons each selected structural control or BMP is appropriate for the facility and how each will address the potential sources of storm water pollution. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems.

Under the preventive maintenance requirements of the pollution prevention plan, permittees are required to develop a preventive maintenance program that includes regular inspections and maintenance of storm water BMPs. The maintenance program requires periodic removal of debris from discharge diversions and conveyance systems. These activities should be conducted in the spring, after snowmelt, and during the fall season. Permittees already controlling their storm water runoff with impoundments or sedimentation ponds must include the maintenance schedules for these ponds in the pollution prevention plan.

Under the inspection requirements of the pollution prevention plan, operators of furniture and fixture manufacturing facilities are required to conduct quarterly visual inspections of BMPs and materials loading/unloading areas. The inspections shall include: (1) An assessment of the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems, and containment structures; (2) visual inspections of vegetative BMPs to determine if soil erosion has occurred; and (3) visual inspections of material handling and storage areas and other potential sources of pollution for evidence of actual or potential pollutant discharges of contaminated storm water.

The visual inspections of BMPs and loading/unloading areas must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event. Visual inspections shall be conducted in each of the following periods: December to February (storm water runoff or snow

melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt). Visual inspections shall be conducted within the first 60 minutes of when the runoff begins discharging. Results from the visual inspection must be maintained onsite and include the examination date, time, and the name of personnel conducting the visual inspection.

EPA believes that this quick and simple description will allow the permittee to assess the effectiveness of his/her plan on a regular basis at very little cost. The examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the pollution prevention plan. If a BMP is found to be ineffective, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by facility staff. This hands on inspection will also enhance the staff's understanding of the storm water problems on that site and effects on the management practices that are included in the plan.

Under the recordkeeping and internal reporting procedures of the pollution prevention plan, the permittee must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. The plan must address spills, monitoring (if applicable), and BMP inspection and maintenance activities. Ineffective BMPs must be recorded and the date of their corrective action noted. According to the pollution prevention plan requirements, the permittee must evaluate the appropriateness of each storm water BMP that diverts, infiltrates, reuses, or otherwise reduces the discharge of contaminated storm water. In addition, the permittee must describe the storm water pollutant source area or activity (i.e., loading and unloading operations, raw material storage piles etc.) to be controlled by each storm water management practice.

6. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44 (i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at facilities covered by this section of today's permit. Based on a consideration of the nature of BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required at wood and metal furniture and fixture manufacturing facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow melt to runoff. EPA expects that, whenever practicable, the same individual will carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands on inspection will enhance the staff's understanding of the storm water problems on that site and effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that monitoring is necessary for wood and metal furniture and fixture manufacturing facilities. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in part 2 group applications.

X. Storm Water Discharges Associated With Industrial Activity From Printing and Publishing Facilities

On November 16, 1990 (55 FR 47990) EPA promulgated the regulatory definition of "storm water discharge associated with industrial activity." This definition includes point source discharges of storm water from eleven categories of facilities, including ". . . category (xi) facilities classified as Standard Industrial Classification (SIC) code . . . 27." Under this SIC code, facilities eligible for coverage under this section include:

- Book Printing (SIC Code 2732).
- Commercial Printing, Lithographic (SIC Code 2752).
- Commercial Printing, Gravure (SIC Code 2754).

• Commercial Printing, Not Elsewhere Classified (SIC Code 2759).
• Platemaking and Related Services (SIC Code 2796).

This section establishes special condition for storm water discharges associated with industrial activities at printing and publishing facilities. The SIC codes of these facilities are in category (xi) of the definition of storm water discharges associated with industrial activity. Storm water discharges from facilities in this category are only regulated where precipitation and storm water runon come into contact with areas associated with industrial activities, and significant materials. Significant materials include, but are not limited to, raw materials, waste products, finished products, intermediate products, by-products, and other materials associated with industrial activities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

The printing and publishing industry is composed of a heterogeneous collection of over 38,000 companies that range in size from a few employees to several thousand.[127] Some companies are involved in both printing and publishing, while others are exclusively one or the other. The industrial activities of these facilities are similar, but the finished products vary. The finished products include magazines, newspapers, books, and labels. The printing activities covered under this section occur strictly indoors, and are separated into distinct operations. They include book printing, commercial printing (lithographic and gravure), and platemaking for printing purposes. The lithographic printing operation, which is based on the premise that grease and water do not mix, consists of a printing plate or cylinder, ink, a blanket and paper. Areas on the printing plate which will be transferred are coated with grease, and the rest of the plate is kept moist with water. The ink adheres to the grease and is repelled by the water. The printing image is then transferred to a blanket, which is transferred to paper. The gravure printing process uses printing plates or cylinders, ink, and paper. In the gravure process, the image is engraved on the printing plate or cylinder, the ink is then picked up by the engraved cells and directly transferred to paper. Other printing methods include screen, letter press, and flexographic printing. In the platemaking process, plates are cut from metal (usually steel), formed, engraved with the image, and coated with copper sulfate or chromic acid. The plates are later used in the printing processes described above.

Aside from the specific printing activities, other types of industrial activities are shared by facilities covered under this section. For example, the majority of these facilities have outdoor material handling and storage activities, and share the same types of raw and waste materials.

The primary raw materials utilized by this industry group include paper (including wax paper and card stock at some facilities), printing inks (hydrocarbon based, solvent based), and solvents. Other raw materials include steel (for facilities which manufacture printing plates), toner, paints, lubricating fluids, fuels, coating materials, and adhesives/glues. The paper products are stored indoors because exposure to precipitation would destroy the quality. The other raw materials arrive at the facilities in drums and either remain in the drums or are stored in aboveground or underground tanks, depending on the facilities' space and primary activity. The outdoor storage areas for drums are sometimes covered, but when the drums are directly exposed to precipitation, the storage areas are diked. Within the facilities, drums are stored on wooden pallets or skids, which may become contaminated from spills of the stored materials. After use the pallets and skids are stored outside for disposal and have the potential to contaminate storm water discharges.

The wastes produced from the printing process are both nonhazardous and hazardous. Hazardous wastes including ink wastes, solvent wastes, and waste chromic and sulfuric acid. These wastes are generated in small quantities at some of the facilities within this industrial group. Solvent wastes results from cleaning of printing plates and metal cutting operations. Ink wastes are generated from the cleaning of printing plates and from excess ink used in printing. Chromic and sulfuric acid wastes are generated from facilities which manufacture and coat rotogravure printing plates.

Nonhazardous wastes from this industry group include waste paper, paper dust, scrap steel, and used wooden pallets. All of these waste materials have the potential to pollute storm water discharges.

Significant materials exposed to storm water at these facilities consist of raw materials and waste materials. They include solvents (toluene, xylene, acetone, 1,1,1-trichloroethane), fuels (gasoline and diesel), inks, metal, lubricating oils, pallets, copper, chromium, acids (sulfuric and chromic), oil and grease, and waste paper. Some of these materials are directly exposed to storm water, while others are potentially exposed due to covering. Pollutants of concern include TSS, pH, heavy metals, oil and grease, and COD.

Material handling activities such as loading and unloading areas, and liquid transfer (solvents from outdoor storage tanks to facility) may be exposed to storm water discharges. Exposure of these areas to storm water may be minimized by covering of the shipping/receiving and liquid transfer areas.

For those facilities engaged in fueling and vehicle maintenance, gasoline and diesel fuel are frequently stored outdoors in aboveground storage tanks and drums. Most vehicles and equipment require oil, hydraulic fluids, antifreeze, and other fluids that may leak and contaminate storm water discharges.

2. Pollutants Found in Storm Water Discharges From Printing and Publishing Facilities

The impact of industrial activities on storm water discharges at printing and publishing facilities will vary. Factors at a site which influence the water quality include geographic location, hydrogeology, the industrial activities exposed to storm water discharges, the facility's size, the types of pollution

[127] "Economic Analysis of Proposed Effluent Guidelines, Printing Industry." Office of Planning and Evaluation, EPA. August 1974.

prevention measures/best management practices in place, and the type, duration, and intensity of storm events. Taken together or separately, these factors determine how polluted the storm water discharges will be at a given facility. Additionally, pollutant sources other than storm water, such as illicit connections,[128] spills, and other improperly dumped materials, may increase the pollutant loading discharged into Waters of the United States. Table X–1 lists industrial activities that commonly occur at printing and publishing facilities, the pollutant sources at these facilities, and the pollutants associated with these activities. Table X–1 identifies heavy metals, oil and other parameters as potential pollutants of concern associated with printing and publishing facilities.

TABLE X–1.—DESCRIPTION OF INDUSTRIAL ACTIVITIES, POTENTIAL POLLUTANT SOURCES, AND ASSOCIATED POLLUTANTS [i, ii, iii]

Activity	Pollutant source	Pollutant
Plate preparation	Using ink (lithography, letterpress, screen printing, flexography), etch baths, applying lacquer.	Solvent, Heavy metal, toxic waste ink with solvents chromium, lead.
Printing	Using ink (lithography, letterpress, screen printing, flexography), gravure.	Heavy metal waste (dust and sludge), ink—sludges with chromium or lead, ink—toxic wastes with metals, solvents.
Clean up	Used plates: type, die, press blankets and rollers	Ink—toxic wastes with metals, solvents.
Stencil preparation for screen printing.	Lacquer stencil film, photoemulsion, blockout (screen filler).	Solvents, photographic processing wastes.
Material handling: Transfer, storage, disposal.	Spills and leaks from material handling equipment	Fuel, oil, heavy metals.
	Spills and leaks from aboveground tanks	Fuel, oil, heavy metals, material being stored.
	Solvents; trash; petroleum products	Heavy metals, spent solvents, oil.
Photoprocessing	Developing negatives and prints	Heavy metals, spent solvents.

[i] EPA, Pollution Prevention Programs, Opportunities in Printing. Philadelphia, PA. October 1990.
[ii] University of Pittsburgh Trust, Center for Hazardous Materials Research Fact Sheet, Pollution Prevention: Strategies for the Printing Industry.
[iii] EPA, Resource Conservation and Recovery Act (RCRA) document, Does Your Business Produce Hazardous Waste as Many Small Businesses Do. Printing and Allied Industries, EPA/530–SW–90–027g, April 15, 1990.

Part 2 group application data that was statistically summarized indicated large variations in the minimum and maximum values reported for each of the eight conventional pollutants monitored:

- Oil and grease samples ranged from 0.0 mg/l to 98 mg/L.
- Grab sample values for Total Suspended Solids (TSS) ranged from 0.0 mg/l to 660 mg/L.
- Grab samples for Chemical Oxygen Demand (COD) ranged from 0.0 mg/l to 231 mg/L.

The remaining conventional pollutants sampled also varied in their minimum and maximum values; however, the values were typically low relative to other sectors in today's proposed permit. EPA believes that the high levels of pollutants at some facilities are atypical to those experienced by the majority of printing and publishing facilities. Table X–2 shows the sampling results for the conventional pollutants that were statistically analyzed by EPA. This table lists the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of samples analyzed for each of the conventional pollutants.

[128] Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers from any number of sources including improper connections, dumping or spills from industrial facilities, commercial establishments, or residential dwellings. The probability of illicit connections at facilities manufacturing transportation equipment, industrial or commercial machinery is low but it may be applicable at some operations.

TABLE X–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[i] (mg/L, except as noted)

Pollutant	# of Samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample Type	Grab	Comp[ii]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	27	27	11	7.0	0.0	0.0	61.8	24.0	9.0	6.4	49.0	22.2	61.8	24.0
COD	27	27	57.2	42.4	0.0	0.0	231.0	156.0	49.0	39.0	176.0	119.0	231.0	156.0
Nitrate + nitrite nitrogen	20	20	1.27	1.35	0.0	0.0	5.8	5.3	.823	1.045	4.0	4.49	5.8	5.3
Total kjeldahl nitrogen	27	27	3.13	1.57	0.0	0.0	10.0	6.7	1.5	.84	10.0	4.6	10.0	6.7
Oil and grease	27	N/A	12.6	N/A	0.0	N/A	98.0	N/A	2.5	N/A	56.0	N/A	98.0	N/A
pH (s.u.)	20	N/A	N/A	N/A	5.5	N/A	8.6	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total phosphorus	27	27	.37	.35	0.0	0.0	1.8	2.1	.14	.13	1.5	1.3	1.8	2.1
Total suspended solids	27	27	92	31	0	0	660	104	30	28	433	82	660	104

[i] Applicants that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[ii] Composite samples.

3. Options for Controlling Pollutants.

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology)]. The Agency does not believe that it is appropriate to establish specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from facilities which manufacture transportation equipment, industrial or commercial machinery to meet BAT/BCT standards of the Clean Water Act. Instead, this section establishes requirements for the development and implementation of site-specific storm water pollution prevention plans consisting of a set of Best Management Practices (BMPs) that are sufficiently flexible to address different sources of pollutants at different sites.

Certain BMPs are implemented to prevent and/or minimize exposure of pollutants from industrial activities to storm water discharges. EPA believes the most effective BMPs for reducing pollutants in storm water discharges are exposure minimization practices. Exposure minimization practices lessen the potential for storm water to come into contact with pollutants. Good housekeeping practices ensure that facilities are sensitive to routine and nonroutine activities which may increase pollutants in storm water discharges. The BMPs which address good housekeeping and exposure minimization are easily implemented, inexpensive, and require little, if any, maintenance. BMP expenses may include construction of roofs for storage areas or other forms of permanent cover and the installation of berms/dikes. Other BMPs such as detention/retention ponds and filtering devices may be needed at these facilities because of the contaminant level in the storm water discharges. The types of BMPs implemented will depend on the type of discharge, types and concentrations of contaminants, and the volume of the flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: Facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with printing and publishing facilities.

Part 1 group application data indicate that BMPs have not been widely implemented at the representative sampling facilities. Less than 10 percent of the sampling subgroup reported that they store some materials indoors; less than 10 percent store hazardous wastes under roof; and less than 5 percent cover drums or have sealed drums. However, 45 percent of the subgroup utilize some type of covering; 45 percent implement good housekeeping practices; and over 40 percent have training on pollution prevention.

The measures commonly used to reduce pollutants in storm water discharges associated with printing and publishing facilities are generally simple and easy to implement. Table X–3 identifies best management practices (BMPs) associated with different activities that routinely occur at printing and publishing facilities.

TABLE X–3.—GENERAL STORM WATER BMPS FOR PRINTING AND PUBLISHING FACILITIES i, ii, iii, iv

Activity	Best management practices (BMPs)
Plate preparation	Use aqueous-developed lithographic plates or wipe-on plates.
Printing	Use press wipes as long as possible before discarding or laundering; dirty ones for the first pass, clean ones for the second pass.
	Squeeze or centrifuge solvent out of dirty rags.
	Set up an in-house dirty rag cleaning operation if warranted or sent to approved industrial laundries, if available.
	Dedicated press for inks with hazardous pigments/solvents.
	Segregate used oil from solvents or other materials.
	Use water-based inks in gravure and flexographic printing process.
Clean up	Label sinks as to proper disposal of liquids.
	Keep equipment in good condition.
	Use doctor blades and squeegees to remove as much ink as possible prior to cleaning with solvent and rags.
	Control solvent use during equipment cleaning, use only what you need.
	Designate special areas for draining or replacing fluids.
	Substitute nontoxic or less toxic cleaning solvents.
	Recover waste solvents onsite with batch distillation if warranted or utilize professional solvent recyclers.
	Centralized liquid solvent cleaning in one location.
	Have refresher courses in operating and safety procedures.
Stencil preparation for screen printing.	Recapture excess ink from silkscreen process before washing the screen to decrease amount of ink used and cleaning emulsion used.
Material Handling and Storage Areas.	Store containerized materials (fuels, paints, inks, solvents, etc.) in a protected, secure location and away from drains.
	Store reactive, ignitable, or flammable liquids in compliance with the local fire code.
	Identify potentially hazardous materials, their characteristics, and use.
	Eliminate/reduce exposure to storm water.
	Control excessive purchasing, storage, and handling of potentially hazardous materials.
	Keep records to identify quantity, receipt date, service life, users, and disposal routes.
	Secure and carefully monitor hazardous materials to prevent theft, vandalism, and misuse of materials.
	Educate personnel for proper storage, use, cleanup, and disposal of materials.
	Maintain good integrity of all storage tanks.
	Inspect storage tanks to detect potential leaks and perform preventive maintenance.
	Provide sufficient containment for outdoor storage areas for the larger of either 10 percent of the volume of all containers or 110 percent of the volume of the largest tank.

TABLE X–3.—GENERAL STORM WATER BMPS FOR PRINTING AND PUBLISHING FACILITIES [i, ii, iii, iv]—Continued

Activity	Best management practices (BMPs)
	Use temporary containment where required by portable drip pans. Use spill troughs for drums with taps. Train employees on proper filling and transfer procedures. Inspect piping systems (pipes, pumps, flanges, couplings, hoses, valves) for failures or leaks. Handle solvents in designated areas away from drains, ditches, and surface waters. Locate designated areas preferably indoors or under a shed. If spills occur, • Stop the source of the spill immediately. • Contain the liquid until cleanup is complete. • Deploy oil containment booms if the spill may reach the water. • Cover the spill with absorbent material. • Keep the area well ventilated. • Dispose of cleanup materials properly. • Do not use emulsifier or dispersant.

[i] EPA, Pollution Prevention Programs, Opportunities in Printing. Philadelphia, PA. October 1990.
[ii] University of Pittsburgh Trust, Center for Hazardous Materials Research Fact Sheet, Pollution Prevention: Strategies for the Printing Industry.
[iii] EPA, Resource Conservation and Recovery Act (RCRA) document, Does Your Business Produce Hazardous Waste as Many Small Businesses Do. Printing and Allied Industries, EPA/530–SW–90–027g, April 15, 1990.
[iv] NPDES Storm Water Group Applications—Part 1. Received by EPA March 18, 1991 through December 31, 1992.

4. Special Conditions

There are no additional requirements under this section other than those stated in VLB. of today's fact sheet.

5. Storm Water Pollution Prevention Plan Requirements

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from printing and publishing facilities. The requirements included in the pollution prevention plans provide a flexible framework for the development and implementation of site-specific controls to minimize the pollutants in storm water discharges. This flexibility is necessary because each facility is unique in that the source, type, and volume of contaminated storm water discharge will vary from site to site.

Under today's proposed permit, all facilities must prepare and implement a storm water pollution prevention plan. The pollution prevention plan requirement reflects EPA's decision to allow operators of printing and publishing facilities to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The pollution prevention plan requirements in this section are consistent with EPA's storm water general permits finalized on September 9, 1992 (57 FR 41236), and September 25, 1992 (57 FR 44438), for discharges in nonauthorized NPDES States.

There are two major objectives to a pollution prevention plan: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility.

Specific requirements for a pollution prevention plan for printing and publishing facilities are described below. These requirements must be implemented in addition to the baseline pollution prevention plan provisions discussed previously.

a. Contents of the plan. Storm water pollution prevention plans are intended to aid operators of printing and publishing facilities to evaluate all potential prevention sources at a site, and assist in the selection and implementation of appropriate measures designed to prevent, or control, the discharge of pollutants in storm water runoff. EPA has developed guidance entitled Storm Water Management for Industrial Activities: "Developing Pollution Prevention Plans and Best Management Practices," EPA, 1992, (EPA 832–R–92–006) to assist permittees in developing and implementing pollution prevention measures.

(1) Description of potential pollutant sources. Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute pollutants to storm water runoff or, during periods of dry weather, result in dry weather flows. This assessment of potential storm water pollutant source will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Plans must describe the following elements:

(a) Site map—The plan must contain a map of the site that shows the pattern of storm water drainage, structural and nonstructural features that control pollutants in storm water runoff and process wastewater discharges, surface water bodies (including wetlands), places where significant materials [129] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map must also indicate the direction of storm water flow. An outline of the drainage area for each outfall must be provided; and the location of each outfall and monitoring points must be indicated. An estimation of the total site acreage utilized for each industrial activity (e.g., storage of raw materials, waste materials, and used equipment) must be provided. These areas include liquid storage tanks, stockpiles, holding bins, used equipment, and empty drum storage. These areas are considered to be significant potential sources of pollutants at printing and publishing facilities.

[129] Significant materials include, "* * * but [are] not limited to: raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; * * * hazardous substances designated under section 101(14) of CERCLA; any chemical facilities are required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharge." (40 CFR 122.26(b)(12)). Significant materials commonly found at transportation equipment, industrial or commercial machinery manufacturing facilities include raw and scrap metals; solvents; used equipment; petroleum based products; waste materials or by-products used or created by the facility.

(b) Inventory of exposed materials—Facility operators are required to carefully conduct an inspection of the site to identify significant materials that are or may be exposed to storm water discharges. The inventory must address materials that within 3 years prior to the effective date of this permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with precipitation and runoff; existing structural and nonstructural controls that reduce pollutants in storm water; existing structural controls that limit process wastewater discharges; and any treatment the runoff receives before it is discharged to surface waters or through a separate storm sewer system. The description must be updated whenever there is a significant change in the type or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

(c) Significant spills and leaks—The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of CWA (see 40 CFR 110.10 and 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

(d) Non-storm water discharges—Each pollution plan must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the onsite drainage points directly observed during the test or evaluation. Pollution prevention plans must identify and ensure the implementation of appropriate pollution prevention measures for any non-storm water discharges.

(e) Sampling data—Any existing data describing the quality or quantity of storm water discharges from the facility must be summarized in the plan. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

(f) Summary of potential pollutant sources—The description of potential pollutant sources should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: raw materials (liquid storage tanks, stockpiles, holding bins), waste materials (empty drum storage), and used equipment storage areas. The assessment must list any significant pollutant parameter(s) (i.e., total suspended solids, oil and grease, etc.) associated with each source.

(2) Measures and controls. Permittees must select, describe, and evaluate the pollution prevention measures, BMPs, and other controls that will be implemented at the facility. Source reduction measures include preventive maintenance, spill prevention, good housekeeping, training, and proper materials management. If source reduction is not an option, EPA supports the use of source control measures. These include BMPs such as material covering, water diversion, and dust control. If source reduction or source control are not available, then recycling or waste treatment are other alternatives. Recycling allows the reuse of storm water, while treatment lowers pollutant concentrations prior to discharge. Since the majority of printing and publishing activities occurs indoors, the BMPs identified above are geared towards only those activities occurring outdoors or otherwise have a potential to contribute pollutants to storm water discharges.

Pollution prevention plans must discuss the reasons each selected control or practice is appropriate for the facility and how each of the potential pollutant sources will be addressed. Plans must identify the time during which controls or practices will be implemented, as well the effect the controls or practices will have on storm water discharges from the site. At a minimum, the measures and controls must address the following components:

(a) Good housekeeping—Permittees must describe protocols established to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. Specifics of this plan must be communicated to appropriate plant personnel.

(b) Preventive maintenance—Permittees are required to develop a preventive maintenance program that includes regular inspections and maintenance of storm water BMPs. Inspections should assess the effectiveness of the storm water pollution prevention plan. They allow facility personnel to monitor the components of the plan on a regular basis. The use of a checklist is encouraged, as it will ensure that all of the appropriate areas are inspected and provide documentation for recordkeeping purposes.

(c) Spill prevention and response procedures—Permittees are required to identify proper material handling procedures, storage requirements, containment or diversion equipment, and spill removal procedures to reduce exposure of spills to storm water discharges. Areas and activities which are high risks for spills at printing and publishing facilities include raw material unloading and product loading areas, material storage areas, and waste management areas. These activities and areas and their drainage points must be described in the plan.

(d) Inspections—Qualified personnel must inspect designated equipment and areas of the facility at the proper intervals specified in the plan. The plan should identify areas which have the potential to pollute storm water for periodic inspections. Records of inspections must be maintained o site.

(e) Employee training—Permittees must describe a program for informing and educating personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. A schedule for conducting this training should be provided in the plan. Where appropriate, contractor personnel must also be trained in relevant aspects of storm water pollution prevention. Topics for employee training should include good housekeeping, materials management, and spill response procedures.

(f) Recordkeeping and internal reporting procedures—Permittees must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. This includes the success and failure of BMPs implemented at the facility.

(g) Sediment and erosion control—Permittees must identify areas, due to topography, activities, soils, cover materials, or other factors that have a

high potential for soil erosion. Measures to eliminate erosion must be identified in the plan.

(h) Management of runoff—Permittees must provide an assessment of traditional storm water management practices that divert, infiltrate, reuse, or otherwise manage storm water so as to reduce the discharge of pollutants. Based on this assessment, practices to control runoff from these areas must be identified and implemented as required by the plan.

(3) Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to: (1) Confirm the accuracy of the description of potential sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of this section. Comprehensive site compliance evaluations must be conducted once a year for printing and publishing facilities. The individual(s) who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, never more than 12 weeks after completion of the inspection.

6. Numeric Effluent Limitation

There are no additional requirements under this section other than those stated in Part VI.F. of today's fact sheet.

7. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44 (i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at printing and publishing facilities. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help permittees to determine the effectiveness of their plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for printing and publishing facilities. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.X.7. of today's proposed permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, permittees covered by this section must monitor for the storm water parameters identified in Table X–4. Monitoring should occur at least annually (once per year) except as provided in VI.E.7. (Sampling Waiver) and VI.E.6. (Representative Discharge). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE X–4.—STORM WATER DISCHARGE MONITORING REQUIREMENTS INCLUDING PARAMETERS, UNITS, FREQUENCY, AND SAMPLE TYPE

Parameter	Unit	Frequency	Sample type [1]
Total Flow	MGD	1/year	Estimate.
Oil & Grease	mg/L	do	Grab.
Total Recoverable Zinc	mg/L	do	Do.
Total Suspended Solids (TSS)	mg/L	do	Do.
pH	Standard units	do	Do.
Total Recoverable Copper	mg/L	do	Do.

[1] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.

b. Sample type. All samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

c. Reporting: when to submit. Permittees that are required to conduct sampling pursuant to XI.X.7.a. shall monitor samples collected during the sampling period from January to December. Such permittees shall submit monitoring results obtained during the reporting period running from January to December on Discharge Monitoring Report Form(s) postmarked no later than the 28th day of the following January. The first report may include less than 12 months of information.

Y. Storm Water Discharges Associated With Industrial Activity From Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries

1. Discharges Covered Under This Section

This section covers storm water discharges associated with industrial activity from facilities commonly identified by Standard Industrial Classification (SIC) major groups 30 and 39 (except 391—jewelry, silverware, and plateware).

Major SIC group 30 includes rubber and miscellaneous plastic products. Specifically, this SIC group includes manufacturers of tires and inner tubes, rubber and plastic footwear, rubber and plastic hose and belting, gaskets, packing and sealing devices, and miscellaneous fabricated rubber products. This SIC group also includes miscellaneous plastic products such as unsupported plastic film, sheet, rods and tubes, laminated plastic plate, sheet and profile shapes, plastic pipe and bottles, plastic foam products such as cups, ice chests and packaging materials, plastic plumbing fixtures, and miscellaneous plastic products.

Major SIC group 39 includes miscellaneous manufacturing industries. Specifically, this group includes manufacturers of jewelry and silverware, musical instruments, games, toys and athletic goods, pens, pencils and artists' supplies, buttons, pins and needles, and a wide variety of products not classified elsewhere.

The SIC codes of the facilities covered by this section are in category (xi) of the definition of storm water discharges associated with industrial activity. Storm water discharges from facilities in this category are only regulated where precipitation and storm water runon come into contact with areas associated with industrial activities, and significant materials. Significant materials include, but are not limited to, raw materials, waste products, fuels, finished products, intermediate products, by-products, and other materials associated with industrial activities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Pollutants Found in Storm Water Discharges

a. Sources of pollutants. As discussed above, the SICs of the facilities in this sector fall into category (xi) of the definition of "storm water associated with industrial activity" found at 40 Code of Federal Regulations (CFR) 122.26(b)(14). As noted in the preamble to the final storm water regulations of November 16, 1990, most of the actual manufacturing and processing activity at these types of facilities normally occurs indoors (55 FR 48008).

Additional information concerning these manufacturing processes and the industrial sector itself can be found in the following documents:

- "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Tire and Synthetic Rubber Processing Point Source Category," EPA 440/1–74–013a
- "Development Document for Effluent Limitations Guidelines and New Source Performance Standards for the Fabricated and Reclaimed Rubber Segment of the Rubber Processing Point Source Category," EPA 440/1–74/030a
- "Development Document and Effluent Limitations Guidelines and Standards for the Plastics Molding and Forming Point Source Category," EPA 440/1–84/069.

The types of activities at these facilities where exposure to storm water may occur consist primarily of loading/unloading activities, and the storage and handling of raw materials, by-products, final products or waste products. A wide variety of materials are used at the facilities including solvents, acids and caustic, carbon black, plasticizers, paint, processing oils, resins, rubber compounds and solutions, fuels such as

diesel or gasoline, adhesives, zinc and miscellaneous chemicals. Tanks, drums or bags of these materials may be exposed to storm water during loading/unloading operations, or through outdoor storage or handling at some facilities.

Other items which may be exposed to storm water include surplus processing machinery, scrap metal, scrap plastic and rubber, plastic pellets, PVC pipe and rags. Table Y–1 lists potential pollutant sources from activities that commonly take place at rubber, miscellaneous plastic products, and miscellaneous manufacturing industries.

TABLE Y–1.—COMMON POLLUTANT SOURCES

Activity	Pollutant source	Pollutants
Outdoor material loading/unloading.	wooden pallets, spills/leaks from material handling equipment, solvents, resins.	TSS, oil and grease, organics.
Outdoor material and equipment storage.	solvents, acids and caustic, plasticizers, paint, lubricating oils, processing oils, resins, rubber compounds, mineral spirits, zinc, scrap metal, scrap plastic and rubber, plastic pellets, PVC pipe, and rags.	organics, zinc, hydrocarbons, oil and grease, acids, alkalinity.

b. Storm water monitoring results. Tables Y–2 and Y–3 summarize the storm water monitoring results for the conventional parameters which were reported by facilities in this sector. Table Y–2 provides composite sample data and Table Y–3 provides the grab sample results.

TABLE Y–2.—COMPOSITE SAMPLE RESULTS

Pollutant	Units	No. of samples	Mean	Min	Max	Median	95th perc.	99th perc.
BOD_5	mg/L	89	11.21	0.00	144.0	7.0	34.0	144.0
COD	mg/L	87	72.08	0.00	640.0	43.0	240.0	640.0
$NO_3 + NO_2$ Nitrogen	mg/L	86	1.26	0.00	32.0	0.67	3.56	32.0
Total Kjeldahl Nitrogen	mg/L	85	1.55	0.00	6.54	1.24	4.70	6.54
Total Phosphorus	mg/L	85	0.34	0.00	8.65	0.16	0.83	8.65
TSS	mg/L	87	119.32	0.00	2100.0	30.0	476.0	2100.0

TABLE Y–3.—GRAB SAMPLE RESULTS

Pollutant	Unit	Number of samples	Mean	Min	Max	Median	95th perc.	99th perc.
BOD_5	mg/L	90	13.92	0.000	160.0	7.15	51.0	160.0
COD	mg/L	90	100.0	0.000	812.0	53.0	330.0	812.0
$NO_3 + NO_2$ Nitrogen.	mg/L	89	0.86	0.000	5.23	0.58	2.93	5.23
Total Kjeldahl Nitrogen.	mg/L	89	2.34	0.000	25.0	1.36	6.0	25.0
Oil and grease	mg/L	94	4.26	0.000	91.0	0.50	18.0	91.0
pH	s.u	86	7.17	2.56	10.1	N/A	N/A	N/A
Total phosphorus	mg/L	89	0.41	0.0	6.7	0.190	1.61	6.7
TSS	mg/L	90	188.55	0.000	2008.0	44.0	893.0	2008.0

For most pollutants, the grab samples are somewhat higher than the composite results indicating a moderate "first flush" effect. Overall, the monitoring results indicate wide variability in pollutant concentrations.

EPA also reviewed the monitoring results for nonconventional and priority toxic pollutants required by Parts B and C of Form 2F. Table Y–4 below summarizes the results for parameters where at least some of the reported values exceeded NURP averages and may be a result of industrial activities at the facilities.

TABLE Y–4.—RESULTS FOR NONCONVENTIONAL AND PRIORITY TOXIC POLLUTANTS

Pollutant	Unit	No. of obs./ detects grab samples	Range grab samples	No. of obs./ detects composite samples	Range composite samples	Range NURP
1,1,1 Tri-chloroethane	mg/L	5/1	0.00–0.38	50/0	0	.016–1.0
Methylene Chloride	mg/L	9/4	0.00–13.0	9/5	0.00–11.0	.05–.145
Toluene	mg/L	11/1	0.00–0.70	12/1	00.0–3.8	.03–.09
Zinc	mg/L	32/32	0.027–7.60	32/32	0.011–7.49	.1–24

EPA contacted certain group members to try to determine more specifically the possible sources of the pollutants reported above. The elevated levels of zinc were detected primarily from storm water samples taken at rubber manufacturing facilities which use large amounts of zinc oxide in the production of rubber. Zinc oxide is used as a vulcanization accelerator and also retards the aging of rubber. Zinc stearate is also used at some facilities as a coating material to prevent sticking between rubber materials.

The elevated levels of methylene chloride were reported by certain manufacturers of polyurethane plastic foam products. Methylene chloride is widely used in this industry as a substitute blowing agent for freon. This material is handled and stored outside at some facilities, and the sampling results would appear to be related to these activities.

The elevated readings for 1,1,1 trichloroethane were also reported by a manufacturer of polyurethane plastic foam products. These results were obtained from storm water samples taken at an outfall downstream from off-loading areas for this material and from areas where tanks of the material are stored outdoors.

Elevated levels of toluene were reported by a manufacturer of the laminated film products. For this case, the results were thought to stem from leaks or drips from the carbon adsorption system which is used to remove toluene from solvent laden air. A rubber manufacturer also reported a detection of toluene in storm water runoff. For this case, the result was thought to be associated with the outdoor handling of containers of toluene which is used in the rubber manufacturing process.

Facilities in this sector utilize and conducted sampling for a wide variety of nonconventional and priority toxic pollutants in addition than those listed above. While the sampling results did not indicate any special concerns with regards to other pollutants, it should be noted that the above results are based on the limited sampling activity required by the group application regulations (40 CFR 122.26(c)(2)). Therefore, it would be premature to conclude that the above pollutants are the only pollutants which could ever be present at or above benchmark levels in the storm water discharges from facilities in this sector.

3. Options for Controlling Pollutants

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology)]. The Agency does not believe that it is appropriate to establish specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from rubber, miscellaneous plastic products and miscellaneous manufacturing industries to meet BAT/BCT standards of the Clean Water Act. Instead, this section establishes requirements for the development and implementation of site specific storm water pollution prevention plans consisting of a set of Best Management Practices (BMPs) that are sufficiently flexible to address different sources of pollutants at different sites.

Certain BMPs are implemented to prevent and/or minimize exposure of pollutants from industrial activities to storm water discharges. EPA believes the most effective BMPs for reducing pollutants in storm water discharges are exposure minimization practices. Exposure minimization practices lessen the potential for storm water to come into contact with pollutants. Good housekeeping practices ensure that facilities are sensitive to routine and nonroutine activities which may increase pollutants in storm water discharges. The BMPs which address good housekeeping and exposure minimization are easily implemented, inexpensive, and require little, if any, maintenance. BMP expenses may include construction of roofs for storage areas or other forms of permanent cover and the installation of berms/dikes. Other BMPs such as detention/retention ponds and filtering devices may be needed at these facilities because of the contaminant level in the storm water discharges. The types of BMPs implemented will depend on the type of discharge, types and concentrations of contaminants, and the volume of the flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with rubber, miscellaneous plastic products and miscellaneous manufacturing industries.

Part 1 group application data indicated that the most widely implemented BMP, used by approximately 36 percent of the sampling facilities, are dikes. Less than 10 percent of the sampling subgroup reported that they cover their storage or loading areas; approximately 12 percent have roofs over their raw materials; and less than 5 percent store raw materials indoors. Because BMPs described in part 1 data are limited, the Table Y–5 is provided to identify BMPs associated with activities that routinely occur at rubber, miscellaneous plastic products and miscellaneous manufacturing industries.

TABLE Y–5.—GENERAL STORM WATER BMPS FOR RUBBER, MISCELLANEOUS PLASTIC PRODUCTS, AND MISCELLANEOUS MANUFACTURING INDUSTRIES

Activity	Best management practices (BMPs)
Outdoor unloading and loading.	Confine loading/unloading activities to a designated area. Consider performing loading/unloading activities indoors or in a covered area. Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps). Close storm drains during loading/unloading activities in surrounding areas. Avoid loading/unloading materials in the rain. Inspect the unloading/loading areas to detect problems before they occur. Inspect all containers prior to loading/unloading of any raw or spent materials. Consider berming, curbing, or diking loading/unloading areas. Dead-end sump where spilled materials could be directed. Drip pans under hoses. Use dry clean-up methods instead of washing the areas down. Train employees on proper loading/unloading techniques and spill prevention and response.
Outdoor Material Storage (including waste, and particulate emission management).	Confine storage of materials, parts, and equipment to designated areas. Consider secondary containment using curbing, berming, or diking all liquid storage areas. Train employees on proper waste control and disposal. Train employees in spill prevention and response. Consider covering tanks. Ensure that all containers are closed (e.g., valves shut, lids sealed, caps closed). Wash and rinse containers indoors before storing them outdoors. If outside or in covered areas, minimize runon of storm water by grading the land to divert flow away from containers. Leak detection and container integrity testing. Direct runoff to onsite retention pond. Inventory all raw and spent materials. Clean around vents and stacks. Place tubs around vents and stacks to collect particulate. Inspect air emission control systems (e.g., baghouses) regularly, and repair or replace when necessary. Store wastes in covered, leak proof containers (e.g., dumpsters, drums). Consider shipping all wastes to offsite landfills or treatment facilities. Ensure hazardous waste disposal practices are performed in accordance Federal, State, and local requirements.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA, March 18, 1991, through December 31, 1992.

EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

There are three major types of facilities in this sector: (1) Rubber manufacturers, (2) manufacturers of miscellaneous plastic products, and (3) miscellaneous industries. In discussions with the rubber industry, the BMPs found in Table Y–6 were identified for rubber manufacturing to control discharges of zinc which was the most frequently reported toxic pollutant in the storm water sampling data:

TABLE Y–6.—BMPS FOR THE CONTROL OF ZINC AT RUBBER MANUFACTURERS

Zinc source	BMPs
Poor housekeeping, bags of zinc stored outside, zinc spilled from trucks during unloading, spillage during emptying for plant use.	Employee training, spill cleanup, indoor storage, use of special large volume sacks with less potential for releases of zinc.
Zinc containers, rubber products, rags contaminated with zinc stearate discarded in outdoor dumpsters.	Cover the dumpsters, use linked dumpsters which do not leak or move dumpster inside.
Malfunctioning baghouses for dust collection.	Repair or replace the baghouse, regular maintenance.
Grinding operations from which zinc dust may be released.	Use dust collection system or reduce the amount of dust generated.
Drips of zinc stearate during coating operations.	Spill prevention/response, use of alternate compounds.

4. Special Conditions

There are no additional requirements under this section other than those stated in the general fact sheet language.

5. Storm Water Pollution Prevention Plan Requirements

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from rubber, miscellaneous plastic products, and miscellaneous manufacturing industries. The requirements included in the pollution prevention plans provide a flexible framework for the development and implementation of site-specific controls to minimize the pollutants in storm water discharges. This flexibility is necessary because each facility is unique in that the source, type, and volume of contaminated storm water discharge will vary from site to site.

Under today's proposed permit, all facilities must prepare and implement a storm water pollution prevention plan. The pollution prevention plan requirement reflects EPA's decision to allow operators of rubber, miscellaneous plastic products, and miscellaneous manufacturing industries to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The pollution prevention plan requirements in this section are consistent with EPA's storm water general permits finalized on September 9, 1992 (57 FR 41236), and September 25, 1992 (57 FR 44438), for discharges in nonauthorized NPDES States.

There are two major objectives to a pollution prevention plan: (1) to identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges

associated with industrial activity from a facility.

Section 313 of EPCRA requires operators of manufacturing facilities that handle toxic chemicals in amounts exceeding threshold levels (listed at 40 CFR 372.25) to report to the Government on an annual basis. Because these types of facilities handle large amounts of toxic chemicals, EPA concluded that they have the increased potential to degrade the water quality of receiving streams. Consistent with Part VII.B. of this permit, Section 313 reporting facilities must fulfill specific requirements.

Except for the special controls discussed below for rubber manufacturers, there are no additional Pollution Prevention Plan requirements other than those stated in the multi-sector fact sheet language in Part VI.C.

a. Special measures and controls for rubber manufacturing facilities. For rubber manufacturers, this section also requires permittees to develop specific BMPs to control discharges of zinc in storm water runoff. The principal sources of zinc in storm water runoff at these facilities were identified above in Section 3. This section requires that rubber manufacturers review the possible sources of zinc listed below at their facilities and include as appropriate the accompanying BMPs in their storm water pollution prevention plans:

(1) Inadequate housekeeping. Permittees are required to review the handling and storage of zinc bags at their facilities. The following BMPs must be considered in developing the storm water pollution prevention plan: employee training regarding the handling and emptying of zinc bags, indoor storage of zinc bags, thorough cleanup of zinc spills without washing the zinc into a storm drain. Facilities must also consider the use of 2,500 pound sacks (from which spills are less likely) rather than 50 to 100 pound sacks.

(2) Zinc in dumpsters. The following BMPs must be considered to reduce this potential source of zinc: provide a cover for the dumpster or move the dumpster inside; provide a lining for the dumpster.

(3) Malfunctioning dust collectors or baghouses. Permittees must review dust collectors and baghouses as possible sources of zinc. Improperly operating dust collectors or baghouses must be replaced or repaired as appropriate; the plan must also provide for regular maintenance of these facilities.

(4) Grinding operations. Permittees must review dust generation from rubber grinding operations at their facility and as appropriate, install a dust collection system.

(5) Zinc stearate coating operations. The plan must include measures to prevent and/or clean up drips or spills of zinc stearate slurry which may be released to a storm drain. Alternate compounds to zinc stearate must also be considered.

6. Numeric Effluent Limitations

There are no additional numeric effluent limitations beyond those described in Part VI.F.

7. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44 (i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at rubber, miscellaneous plastic products, and miscellaneous manufacturing industries. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for rubber, miscellaneous plastic products, and miscellaneous manufacturing industries. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring

requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

b. Baseline general permit variance. On September 9, 1992, and September 25, 1992, EPA published the Final NPDES General Permits for Storm Water Discharges Associated With Industrial Activity. These notices set out requirements for semiannual monitoring for several parameters for discharges from rubber, miscellaneous plastic products, and miscellaneous manufacturing facilities. These notices specifically require that facilities with storm water discharges that are associated with rubber, miscellaneous plastic products, and miscellaneous manufacturing industries are required to monitor certain storm water discharges for oil and grease, COD, TSS, and pH. Today's proposed permit contains different monitoring requirements. EPA requests comment upon the difference between the monitoring requirements set out for rubber, miscellaneous plastic products, and miscellaneous manufacturing facilities in the September 1992 General Permits and those required in today's proposed permit.

8. Alternative Monitoring Requirements

EPA also requests comment upon the following monitoring and reporting requirements in lieu of those discussed above in Part VIII.Y.7.a. of today's proposed fact sheet.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit and except as provided under Section VI.E.3., 6, or 7. (Sampling Waiver, Representative Discharge, and Alternative Certification) of the permit or Section VIII.Y.8.d. below, permittees with facilities covered under this section of the permit shall monitor storm water discharges associated with industrial activity once per year for the following pollutants:

- Zinc (for rubber manufacturers only)
- Oil and grease, COD, TSS, pH; and
- Any additional water priority chemical which the permittee, upon review of the Description of Potential Pollutant Sources (Section VI.C.2. above), may be present in storm water discharges in significant quantities.

Permittees must retain monitoring results in accordance with Part VI.E. (Retention of Records). In addition to the parameters specified above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

b. Sample type. All samples shall be collected as grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

c. Exemptions from storm water monitoring. Storm water monitoring may be discontinued on a pollutant-by-pollutant basis for the pollutants specified in Section VIII.Y.8.a. above if two successive samples indicate that a particular pollutant is not present in significant quantities. Monitoring may be discontinued entirely if two successive samples indicate that no pollutants are found in significant quantities.

d. Quarterly visual examination of storm water runoff. (1) On a quarterly basis, permittees shall conduct a visual examination of storm water discharges from each outfall which discharges storm water associated with industrial activity. If the facility has two or more outfalls with substantially identical effluents (based on a consideration of industrial activity, significant materials, and management practices and activities in the area drained by the outfall), the visual examination may be conducted on only one such outfall.

(2) The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to produce a runoff event. Examinations shall be conducted in each of the following periods for purposes of inspecting storm water quality associated with storm water runoff and snow-melt: December to February (storm water runoff or snow-melt); March to May (storm water runoff); June to August (storm runoff); and September to November (storm water runoff or snow-melt). February (storm water runoff or snow-melt; March to May (storm water runoff); June to August (storm runoff); and September to November (storm water runoff or snow-melt).

(3) Examinations shall be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. The examinations shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen or other obvious indications of storm water pollution. No analytical tests are required to be performed. Examinations shall be conducted so as to provide a reasonable representation of the nature of a typical storm water discharge at that site during that time of year.

(4) Information must be maintained on site and include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination.

Z. Storm Water Discharges Associated With Industrial Activity From Leather Tanning and Finishing Facilities

1. Discharges Covered Under This Section

Storm water discharges covered by this section include all discharges from leather tanning facilities, commonly identified by Standard Industrial Classification (SIC) code 3111 and facilities which make fertilizer solely from leather scraps and leather dust where precipitation and storm water runon come into contact with significant materials including, but not limited to, raw materials, waste products, by-products, stored materials, and fuels. This includes storm water discharges from access roads, and rail lines used or traveled by carriers of raw materials, manufactured products, waste materials, or by-products created by the facility. This section does not cover any discharge subject to process wastewater effluent limitation guidelines, including storm water that combines with process wastewater. Storm water that does not come into contact with any overburden, raw material, intermediate product, finished product, by-product or waste product located on the site of the operation are not subject to permitting under this section according to 402(1)(2) of the Clean Water Act (CWA).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the

other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

a. Industry profile. The storm water permit application regulations define storm water discharge associated with industrial activity at 40 Code of Federal Regulations (CFR) 122.26(b)(14). Category (ii) of this definition includes facilities identified by SIC code 3111, establishments primarily engaged in tanning, currying, and finishing hides and skins into leather. Most tanneries are small family operations, although several are divisions of larger corporations. The leather tanning and finishing industry currently includes approximately one hundred fifty facilities. There are effluent limitations guidelines for the leather tanning industry based on 9 subcategories, as described in the "Development Document for Effluent Limitations Guidelines and Standards for Leather Tanning and Finishing Point Source Category." (The subcategories were based on distinct combinations of raw materials and leather processing operations.)

Leather tanning or finishing is the conversion of animal hides or skins into leather. Leather is made from the inner layer of the animal skin, which consists primarily of the protein collagen. Tanning is the reaction of the collagen fibers with tannins, chromium, alum or other tanning agents. Tanning processes use sodium dichromate, sulfuric acid and detergents and a variety of raw and intermediate materials.

There are three major processes required to make finished leather. These are beamhouse operations, tanyard processes and retanning and finishing processes. In general, most tanneries perform the entire tanning process, from beamhouse to wet finishing operations. A smaller number perform only beamhouse and tanyard operations and sell their unfinished product (wet "blue" stock) to other tanneries. These processes are described below:

- *Beamhouse Operations*—These consist of four activities: side and trim; soak and wash; fleshing and unhairing. Side and trim is the cutting of the hide into two sides and trimming of areas which do not produce good leather. In soak and wash processes, the hides are soaked in water to restore moisture lost during curing. Washing removes dirt, salt, blood, manure, and nonfibrous proteins. Fleshing is a mechanical operation which removes excess flesh. The removed matter is normally recovered and sold for conversion to glue. Unhairing involves using calcium hydroxide, sodium sulfhydrate, and sodium sulfide to destroy the hair (hair pulp process) or remove hair roots. A mechanical unhairing machine can also be used to remove hair loosened by chemicals (hair save process). Beamhouse processes can account for approximately 60 percent of the pollutant load (except chromium) from a complete tannery. Pollutants that may be produced are proteinaceous organic and inorganic pollutants characterized by a high pH (10–12) and substantial amounts of Biochemical Oxygen Demand (BOD), Chemical Oxygen Demand (COD), Total Suspended Solids (TSS), Total Kjeldahl Nitrogen (TKN), and sulfides.
- *Tanyard Processes*—These consist of bating, pickling, tanning, wringing, splitting, and shaving. Bating involves the addition of salts of ammonium sulfate or ammonium chloride used to convert the residual alkaline chemicals present from the unhairing process into soluble compounds which can be washed from the hides or skins. "Pickling" the hide with sulfuric acid provides the acid environment necessary for chromium tanning. In the tanning process, tanning agents such as trivalent chromium and vegetable tannins convert the hide into a stable product which resists decomposition. Wringing of the "blue hides" (hides tanned with chromium) removes excess moisture with a machine similar to a clothes wringer. Splitting adjusts the thickness of the tanned hide to the requirements of the finished product and produces a "split" from the flesh side of the hide. The hide is then shaved to remove any remaining fleshy matter. Wastewater from tanyard operations contain inorganic chemical salts, small amounts of proteinaceous hair and waste, and large amounts of ammonia from the bating process. Pickling generates a highly acidic waste (pH of 2.5–3.5) which contains salt. Spent chromium liquors contain high concentrations of trivalent chromium in acid solution with low concentrations of BOD and TSS. Vegetable tanning vat discharges are highly colored, and contain significant amounts of BOD, COD, and dissolved solids.
- *Retanning and Wet Finishing Processes*—These include retanning, bleaching, coloring, fatliquoring, and finishing. The most common retanning agents are chromium, vegetable extracts and syntans (based upon naphthalene and phenol). Sodium bicarbonate and sulfuric acid are sometimes used to bleach leather. Coloring involves the use of dyes (usually aniline based) on the tanned skin. Animal or vegetable fatliquors are added to replace the natural oils lost in the beamhouse and tanyard processes. Finishing includes all operations performed on the hide after fatliquoring, and includes finishing to enhance color and resistance to stains and abrasions, smoothing and stretching of the skin, drying, conditioning, staking, dry milling, buffing and plating. These processes generate wastes with additional quantities of trivalent chromium, tannins, sulfonated oils, and spent dyes, which are low in BOD and TSS, and high in COD.

Table Z–1 lists potential storm water pollutant source activities that may take place at leather tanning facilities.

TABLE Z–1.—POLLUTANTS POTENTIALLY FOUND IN STORM WATER DISCHARGES AT LEATHER TANNING FACILITIES

Activity	Pollutant source	Pollutant
Outdoor storage of fresh and brine cured hides	fresh and brine cured hides	salt, organic materials (manure), biochemical oxygen demand.
Beamhouse processes (trimming, soak and wash, fleshing, unhairing).	chemical storage (drums or bags).	depilatory chemicals.
	empty containers of lime, depilatory chemicals.	calcium hydroxide, sodium sulfhydrate, or sodium sulfide.
	trim scraps, hair	BOD, COD, TSS.

TABLE Z–1.—POLLUTANTS POTENTIALLY FOUND IN STORM WATER DISCHARGES AT LEATHER TANNING FACILITIES—Continued

Activity	Pollutant source	Pollutant
Tanyards (bating, pickling, tanning, wringing, splitting, shaving).	empty chemical containers	trivalent chromium, vegetable tannins, enzymes, pickling acids (sulfuric acid), alum, syntans, chemical deliming agents, formaldehyde, gluteraldehyde, heavy oils.
	"blue" hides, splits, trimmings, shavings.	trivalent chromium, leather fiber and dust, suspended solids.
Retan and wet finishing (retanning, bleaching and coloring, fatliquoring, buffing).	empty chemical containers	chromium tanning agents, vegetable extract, dyes, pigments, animal or vegetable based oils, synthetic oils made from modified mineral based oils.
	leather dust containing chromium.	leather fiber, chromium, suspended solids.
Dry finishing (Application of pigment to leather surface with water-based or solvent based finishes).	emissions from spray booths and spent solvents.	pigments, solvents-acetone, pylene, glycol ether.
Receiving and unloading areas	hides	chromium, salt.
	chemical supplies	depilatory chemicals, trivalent chromium, vegetable tannins, enzymes, pickling acids (sulfuric acid), alum, syntans, chemical deliming agents, formaldehyde, gluteraldehyde, heavy oils, dyes, pigments, animal or vegetable based oils, synthetic oils, solvents and biocides.
	leaking truck	Soil and grease and waste materials.
	accidental spills	chemicals listed for supplies above.
Improper connections to storm sewer	floor drains-process wastewater, cleaning and washdown of process equipment and process areas.	dependent on operations.
Outdoor bulk chemical storage	above ground tanks	sulfuric acid, ferric chloride, finishing solvents (mineral spirits), hydrated lime, surfactant.
Outdoor storage of coal	coal piles	oil and grease, TSS, copper, nickel, zinc.
Waste management	hoppers	leather dust, scraps.
	dumpsters	empty bags and chemical containers.
	sludge (wastewater treatment sludge stored in containers to diminish storm water contact, awaiting offsite disposal).	lime, pieces of leather, hair, protein-like substances, floor sweepings, trivalent chromium, biochemical oxygen demand.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA May 22, 1991—February 18, 1992.
EPA, Office of Water. November 1982. "Development Document for Effluent Limitations Guidelines and Standards for the Leather Tanning and Finishing Point Source Category." EPA/440/1–82/016.
EPA, Office of Water Regulations and Standards and Office of Water Enforcement and Permits. September 1986. "Guidance Manual for Leather Tanning and Finishing Pretreatment Standards."
EPA, Office of Solid Waste Management Programs, SCS Engineers, Reston, VA. 1976. "Assessment of Industrial Hazardous Waste Practices. Leather Tanning and Finishing Industry." EPA–68–01–3261.

2. Special Conditions

There are no additional requirements beyond those described in Part VI.B. of this fact sheet.

3. Pollutants Found in Storm Water Discharges From Leather Tanning Operations

The impacts caused by storm water discharges from leather tanning facilities will depend on the geographic location of the facility, the types of industrial activities occurring onsite (e.g., beamhouse, tanyard, retan and wet finishing, dry finishing); the types of significant materials exposed to storm water (e.g., chromium tanned leather shavings, chemical containers etc.), the size of the operation; and the type, duration, and intensity of precipitation events. Other factors such as air emissions (i.e., settled dust), materials storage, spills, improperly dumped materials, and illicit conditions may also impact receiving waters. (Illicit connections are contributions of unpermitted non-storm water discharges to storm sewers.)

Part 1 group application information indicates that the industrial activities occurring at leather tanning facilities include leather tanning plant yards; unhairing (76.9 percent of samplers); chromium tanning (69.2 percent of samplers); splitting and shaving (76.9 percent) retanning (69.2 percent); wet hide finishing-buffing (76.9 percent); dry finishing; vegetable tanning (30.8 percent); immediate access roads and rail lines used or traveled by carriers of raw materials (38.5 percent of samplers), manufactured products, waste management (36.8 percent); material handling sites (23.1 percent); refuse sites; sites used for the application or disposal of process wastewaters (as defined at 40 CFR part 401) sites used for residual treatment, storage or disposal (waste water treatment (30.8 percent); shipping and receiving areas (69.2 percent of samplers); finished materials; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. (40 CFR 122.26(b)(14).

Significant materials include raw materials, brine or salt cured hides and skins (7.7 percent), fuels (15.4 percent), materials such as solvents, detergents, finished materials; hazardous substances designated under Section 101(14) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), any chemical required to be reported pursuant to Section 313 of Title III of the Superfund Amendments and Reauthorization Act; fertilizers; pesticides; and waste products such as sludge (7.7 percent) that have the

potential to be released with storm water discharge. (40 CFR 122.26(b)(12)). Other significant materials found at leather tanning facilities include leather shavings and dust (46.2 percent), leather scrap (30.8 percent), blue hides and splits (46.2 percent), empty chemical containers, spent solvents, emissions from spray booths, and wastes in dumpsters. Significant materials produced from various industrial activities occurring at leather tanning facilities are summarized in Table Z–1.

EPA has received part 2 storm water discharge data from all of the 12 designated samplers under part 2 of the group application process. All part 2 data submittals list roof/pavement runoff as the pollutant source. After review of part 1 information and the Development Document for Effluent Limitation Guidelines, EPA has identified potential storm water pollutants and sources resulting from various leather tanning activities. BOD, COD, TSS, and chromium are pollutants of concern.

When all the part 2 data was compiled, large variations in the minimum and maximum values were found for each of the conventional pollutants.

- Grab sample values for total suspended solids ranged from 0 milligrams per liter (mg/L) to 4,000 mg/L and flow weighted composite samples ranged from 0 mg/L to 670 mg/L.
- Grab sample values for COD ranged from 0 mg/L to 2,100 mg/L and flow weighted composite samples ranged from 0 mg/L to 460 mg/L.
- Grab samples for oil and grease ranged from 0 mg/L to 130 mg/L.

Table Z–2 indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles and the total number of data submittals for each of the conventional pollutants. In most cases the mean values for the grab samples were higher than the mean values for composite samples.

TABLE Z-2.—STATISTICS FOR CONVENTIONAL AND NONCONVENTIONAL POLLUTANTS FOR LEATHER TANNING FACILITIES[1] (MG/L EXCEPT AS NOTED)

Pollutant	Number of samples		Mean		Minimum		Maximum		Median		95th percentile		99th percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	31	31	33.1	22.3	0.0	0.0	320.0	92.0	11.0	10.0	140.0	77.0	320.0	92.0
COD	31	31	205.5	91.9	0.0	0.0	2100.0	460.0	82.0	50.0	900.0	340.0	2100.0	460.0
Nitrate Nitrite Nitrogen	31	31	1.86	1.88	0.05	0.300	11.00	9.60	1.200	0.900	4.70	9.10	11.00	9.60
Total Kjeldahl Nitrogen	31	31	7.70	6.22	0.70	0.900	46.00	38.00	4.300	3.500	22.00	15.00	46.00	38.00
Oil and grease	31	3	13.87	N/A	0.00	N/A	130.00	N/A	0.000	N/A	120.00	N/A	130.00	N/A
pH (s.u.)	31	N/A	N/A	N/A	4.60	N/A	9.00	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	31	31	0.36	0.83	0.00	0.030	3.00	18.00	0.160	0.180	1.60	1.30	3.00	18.00
Total suspended solids	31	31	310	114.81	0	0.00	04000	670.00	49	86.000	1300	460.00	4000	670.00
Aluminum	7	7	2.2	0.3	0.31	0.8	4.9	6.2	2.2	2.3	4.9	6.2	4.9	6.2
Manganese	5	5	0.05	0.09	0.0	0.0	0.15	0.18	0.0	0.09	0.15	0.18	0.15	0.18

[1] Applicants that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

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All facilities submitted data for chromium, indicating that facilities expect chromium to be present. Concentrations of chromium ranged from .0100 mg/L to 5.7 mg/L.

Materials management practices are used to reduce the contact of precipitation and storm water runon with significant materials, or to reduce the offsite discharge of contaminants. Part 1 group application data indicate that storm water management practices currently used at leather tanning facilities include berms/dikes (23.1 percent of samplers), drums, containers, roofing/covers, indoor storage of equipment and treatment (detention ponds (15.4 percent)).

Sources of pollutants of concern and effects on water bodies from these pollutants are summarized as follows:

• *Total Chromium*—Chromium compounds are used extensively throughout the leather tanning industry and is the most prevalent toxic pollutant found in wastewaters in this industry. At least 80 percent of all leather is chromium tanned. The chemistry of chromium is very complex, with interferences from complexing mechanisms, such as chelation by organic matter and dissolution due to presence of carbonates. The limited data submitted with part 2 of the application process indicate a range of 0.011 mg/L to 0.9600 mg/L for the composite samples and a wider range of 0.0100 mg/L to 5.7 mg/L for grab samples. As a comparison, values for chromium from National Urban Runoff Program (NURP) data ranged from 1–190 micrograms per liter (μg/L). EPA Water Quality Criteria for trivalent chromium are 1700 μg/L for fresh water aquatic life and 170,000 μg/L for human health. When the human health water quality criteria were recalculated using Integrated Risk Information System data, this value became 33,000 μg/L.

• *Biochemical Oxygen Demand*—BOD is the quantity of oxygen required for the biological and chemical oxidation of waterborne substances under ambient conditions. The BOD test is used widely to estimate the oxygen requirements of discharged domestic and industrial wastes. Specific chemical test methods are not readily available for measuring the quantity of many degradable substances and their reaction products. In such cases, testing relies on the collective parameter, Five-day BOD (BOD_5). The BOD_5 of a waste adversely affects the dissolved oxygen resources of a body of water by reducing the oxygen available to fish, plant life, and other aquatic species. Water with a high BOD indicates the presence of decomposing organic matter and associated increased bacterial concentrations that degrade its quality and potential uses. In most leather tanning facilities, the storm water runoff BOD_5 will result from organic materials, such as dissolved or pulped hair and other extraneous hide substances, and from ammonia which is derived from residual bating chemicals and from hydrolytic deamination of proteinaceous hair and hide substance. Part 2 data for BOD showed ranges of 0 to 92.0 mg/L for composite samples and 0.0 to 320 mg/L for grab samples. As a comparison NURP BOD values, for average residential or commercial site concentrations were 12 mg/L.

• *Total Suspended Solids*—Suspended solids include both organic and inorganic materials. The inorganic compounds include sand, silt, clay, and toxic metals. The organic fraction includes such materials as grease, oil, animal and vegetable waste products, and adsorbed toxic organic pollutants. Solids may be inert, slowly biodegradable materials, or rapidly decomposable substances. While in suspension they increase the turbidity of the water, reduce light penetration, and impair the photosynthetic activity of aquatic plants. Aside from any toxic effect attributable to substances leached out by water, suspended solids may kill fish and shellfish by causing abrasive injuries, clogging gills and respiratory passages, screening out light, and by promoting and maintaining the development of noxious conditions through oxygen depletion. Suspended solids also reduce the recreational value of the water. Materials which may contribute to TSS are leather scraps and dust, and hair. Part 2 data for TSS show a wide range of 0–670 mg/L for the composite samples and 0–4000 mg/L for grab samples. As a comparison NURP TSS values, for average residential or commercial site concentrations were 239 mg/L.

• *Chemical Oxygen Demand*—The COD test measures those pollutants resistant to biological oxidation in addition to the ones measured by the BOD_5 test. COD is therefore a more inclusive measure of oxygen demand than is BOD_5 and results in higher oxygen demand values than the BOD_5 test. The compounds which are more resistant to biological oxidation are becoming of greater concern, not only because of their slow but continuing oxygen demand on the resources of the receiving water, but also because of their potential health effects on aquatic and human life. Concern about these compounds has increased as a result of demonstrations that their long life in receiving waters allows them to contaminate downstream water intakes. Substances which could contribute to high COD concentrations in storm water discharges are extraneous hide substances, complex organic and inorganic process chemicals, dyes, and vegetable tannins. Part 2 COD data shows wide ranges of 0 to 460 mg/L for the composite sample and 0 to 2100 mg/L for the grab samples. As a comparison NURP COD values, for average residential or commercial site concentrations were 94 mg/L.

• *Nitrate Plus Nitrite Nitrogen*—Ammonia in the presence of dissolved oxygen, is converted to nitrate (NO_3) by nitrifying bacteria. EPA considers nitrates to be among the objectionable components of mineralized waters. Excess nitrates irritate the gastrointestinal tract, causing diarrhea and diuresis. Methemoglobinemia, a condition characterized by cyanosis and resulting in infant and animal deaths, can be caused by high nitrate concentrations in drinking waters. Nitrite (NO_2) which is an intermediate product between ammonia and nitrate, sometimes occurs in quantity when depressed oxygen conditions permit. Part 2 data showed values for nitrate plus nitrite nitrogen which ranged from 0.3 to 9.60 mg/L for composite samples and .06 to 11 mg/L for the grab samples. As a comparison NURP values, for average residential or commercial site concentrations were 1.37 mg/L.

• *Total Kjeldahl Nitrogen*—TKN is a measure of the ammonia nitrogen plus organic nitrogen in wastewater. Organic nitrogen (as measured approximately by TKN minus ammonia) is derived primarily from dissolved or pulped proteinaceous hair removed from hides. Biological deamination and hydrolysis of this organic nitrogen during biological treatment yields another significant source of ammonia. Hence, TKN measures the major nitrogen impact upon a receiving water and is an important measure, in addition to ammonia of the potential environmental impact of nitrogen contained in tannery storm water. Part 2 TKN data showed a range of 0.9 to 38.0 mg/L for composite samples and 0.7 to 46.0 mg/L for grab samples. As a comparison NURP TKN values, for average residential or commercial site concentrations were 2.3 mg/L.

• *pH*—The hydrogen ion concentration in an aqueous solution is represented by pH. The pH scale ranges from zero to fourteen. Values of pH less than seven represent acidic conditions; values greater than seven represent basic conditions. The pH level is easily measured and is an indication of potential environmental impacts. Storm water discharges with pH values

markedly different from the pH values of the receiving stream are potentially detrimental to the environment. At outfalls and prior to complete mixing of storm water discharges with receiving waters, a zone of sudden pH change can damage or kill biota engulfed in the zone of change. Data submitted for part 2 of the application indicate that pH varies from 4.8 to 9.1 standard units. Some of the samples were outside the permitted range for wastewater discharges under the effluent limitation guidelines (pH 6–9), however, most samples submitted to EPA were within the 6.0 to 9.0 range.

• *Oil and Grease*—Sources of oil and grease from leather tanning facilities include degreasing processes, vehicle maintenance and oils used in leather processing (fatliquoring). Oil and grease emulsions are detrimental to aquatic organisms and inhabitants because depositions of oil and grease can impact the aquatic food chain by inhibiting normal benthic growths; destroy algae or other plankton; adhere to the gills of fish; and damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. Part 2 data indicate that oil and grease varies in grab samples from 0.0 to 130.0 mg/L.

• *Total Phosphorus*—Total phosphorus is comprised of dissolved and suspended phosphorus. Phosphorus occurs in natural waters and wastewaters almost exclusively as phosphates. Phosphates are found in bottom sediments and in biological sludge. Phosphorus is essential to the growth of organisms and can be the nutrient that limits the primary productivity of a body of water. In instances were phosphate is a growth limiting nutrient, the discharge of raw or untreated wastewater, agricultural drainage, or certain industrial wastes to that water may stimulate the growth of photosynthetic aquatic organisms in nuisance quantities. Values for phosphorus ranged from a minimum of 0 mg/L to 3.0 mg/L for grab samples and 0.030 mg/L to 18.0 mg/L for composite samples. As a comparison NURP phosphorus values, for average residential or commercial site concentrations were 0.5 mg/L.

Table Z–3 lists the potential pollutant sources for each of the parameters discussed.

TABLE Z–3.—LIST OF POTENTIAL POLLUTANT SOURCES

Parameter	Pollutant sources
Oil and Grease.	Degreasing processes, oils used in leather processing (fatliquoring).
COD	Complex organic and inorganic process chemicals, dyes, vegetable tannins, extraneous hide substances.
BOD_5	Carbonaceous organic materials such as dissolved or pulped hair and other extraneous hide substances, nitrites, ammonia from residual bating chemicals and from hydrolytic deamination of proteinaceous hair and hide substances.
pH	Acidic or alkaline materials.
TSS	Leather dust, scraps, hair.
Total phosphorus.	Detergents.
Nitrate nitrite nitrogen.	Spent bating liquors and breakdown of organic proteins (dissolved hair and dermal matter).
Total Kjeldahl nitrogen.	Dissolved or pulped proteinaceous hair.
Chromium	Blue hides, leather scraps and dust, waste materials such as empty containers, sludge.

4. Options for Controlling Pollutants

The measures implemented to reduce pollutants in storm water associated with leather tanning operations are generally uncomplicated practices. The following table identifies Best Management Practices (BMPs) associated with different activities that take place at leather tanning facilities. The most effective BMPs will be selected on the basis of site-specific considerations (e.g., facility size, industrial processes performed geographic location, significant materials, volume and type of discharge generated). Because of the industrial processes involved in leather tanning, BMPs that concentrate on source reduction, recycling and containment/diversion will be the most helpful for reducing pollution in storm water runoff.

Source reduction BMPs include good housekeeping, materials management practices, preventive maintenance, spill prevention and response activities and employee training. Activities associated with good housekeeping include:

• *Operation and Maintenance*—Keep floors clean and dry, regularly pick up garbage and waste materials, make sure equipment is working properly, routinely inspect for leaks or conditions that could lead to discharges of chemicals or contact of storm water with raw materials, intermediate materials, waste materials etc., reduce chemical spills resulting from carelessness and prepare program to control spills and carry out cleanups. Ensure that spill cleanup procedures are understood by employees. Eliminate unnecessary uses of water such as leaving hoses running.

• *Materials Storage and Maintenance*—Store containers away from direct traffic routes to prevent accidental spills, stack containers according to manufacturers instructions to avoid damaging containers, store containers on pallets to prevent corrosion of containers, assign responsibility of hazardous material inventories to a limited number of people who are trained to handle hazardous materials.

• *Material Inventory Procedures*—Identify all chemical substances present in the work place, label all containers, clearly mark on the inventory hazardous materials that require special handling, storage or use.

• *Preventive Maintenance*—Identify equipment, systems and facility areas that should be inspected, schedule periodic inspections of the equipment and systems, timely adjustments, repair, or replacement of equipment and systems. Maintain complete records on inspections, equipment, and systems. Install automatic monitoring devices to detect abnormal discharge of gases and hazardous substances.

Containment/diversion BMPs involve segregating areas of concern by covering or berming the activity and controlling dust. Diversion dikes, curbs and berms are temporary or permanent diversion structures that prevent runoff from passing beyond a certain point, and divert runoff away from its intended path. Dikes, curbs and berms are already in use at some leather tanning facilities.

Part 1 group application data indicate that BMPs have not been widely implemented at the representative sampling facilities. The most commonly listed material management practice is roofing and covers. Table Z–4 lists BMPs associated with different activities that take place at leather tanning facilities.

TABLE Z–4.—LIST OF BEST MANAGEMENT PRACTICES

Activity	Best management practices
Temporary outdoor storage of fresh or brine cured hides.	Store hides indoors if possible.
	Cover the hides with a roof or temporary covering (e.g., polyethylene, tarpaulin etc.).
	Minimize storm water runon by enclosing the area or building a berm around the area.
	Inspect area regularly for proper implementation of good housekeeping and control measures.
Beamhouse operations	Store chemical drums and bags and empty lime and depilatory chemical containers indoors if possible, preventive maintenance.
	Cover chemical drums and bags, empty lime and depilatory chemical containers and leather scraps with roof or temporary covering (e.g., tarpaulins, polyethylene) and store on elevated impermeable surface.
	Curbing, containment dikes around chemical storage, empty lime and depilatory chemical containers and leather scrap storage area.
	Inspect area regularly for leaking drums, broken bags, proper implementation of good housekeeping and control measures (broken cracked dikes), material inventory, material storage and operation and maintenance.
	Clean up leaks and spills quickly and completely, use drip pans for leaking equipment.
	Good Housekeeping—all paved areas should be swept regularly, eliminate unnecessary flushing with water and label chemical drums and containers.
	Employee training on good housekeeping, proper handling of chemicals.
Tanyards	BMPs for Tanyards (empty chemical containers and hides, leather dust, shavings) are the same as those listed above for Beamhouse Activities.
Retan and wet finish	Dust reduction through frequent inspection of vacuum, collector (bag & cyclone), and filter systems.
	Dust reduction through enclosure and covering.
	Preventive maintenance/inspection of dust collection systems.
	Good Housekeeping-regular sweeping of paved areas, eliminate unnecessary flushing with water and label chemical drums and containers.
	Employee training on good housekeeping, proper handling of chemicals.
Dry Finish	Preventive maintenance, inspection of spray booths.
	Employee training on proper disposal of spent solvents.
Receiving and shipping	Cover shipping and receiving area.
	Cover trucks.
	Vehicle positioning—locating trucks while transferring materials to prevent spills onto the ground surface.
	Grade berm or curb area to prevent storm water runon contamination, divert rain gutters away from loading area.
	Clean spills immediately.
	Inspect trucks for leaks.
	Employee training in spill prevention.
Liquid storage in above ground tanks	Clearly tag valves to avoid human error.
	Install overflow protection devices on tank systems to warn operator or to automatically shut down transfer pumps when tanks reach full capacity.
	Secondary containment around tanks.
	Employee training.
	Inspection of tank foundations, connections, coatings, valves and piping systems.
	Comply with existing spill prevention, cleanup and countermeasure plans (SPCC plan) and State and Federal laws.
	Integrity testing by qualified professional.
Improper connections to storm sewers	Plug all floor drains connected to sanitary or storm sewer.
	Perform smoke or dye testing to determine if interconnections exist between sanitary water system and storm sewer system.
	Update facility schematics to accurately reflect all plumbing connections.
	Install a safeguard against washwaters from processing areas entering the storm sewer unless permitted.
	Train employees on proper disposal practices for all materials.
Waste management	Conduct waste reduction assessment—develop guidelines for the elimination of waste generation emissions.
	Institute industrial waste source reduction and recycling BMPs.
	Move waste management activities indoors (after safety concerns are addressed) and cover waste piles, dumpsters, hoppers, place on impermeable elevated surfaces.
	Prevent storm water runon by curbing, building berms.
	Cover trucks and inspect for leaking wastes.
	Inspection of waste management areas for leaking containers, spills, damaged containers, uncovered waste piles, dumpsters, hoppers.
	Inspection of roof areas and outside equipment.
	Develop and maintain proper erosion control or site stabilization measures.
	Train employees on proper disposal practices for all materials.

Sources: NPDES Storm Water Group Applications—Part 1.
EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities—Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

EPA, Office of Research and Development. January 1993. "Investigation of Inappropriate Pollutant Entries into Storm Drainage Systems. A User's Guide." EPA/600/R-92/238.

5. Storm Water Pollution Prevention Plan Requirements

All facilities covered by this section must prepare and implement a storm water pollution prevention plan. The establishment of a pollution prevention plan requirement reflects EPA's decision to allow operators of leather tanning facilities to select BMPs as the Best Available Technology/Best Control Technology (BAT/BCT) level of control for the storm water discharges covered by this section. The requirements included in pollution prevention plans provide a flexible framework for the development and implementation of site specific controls to minimize pollutants in storm water discharges. This approach is consistent with the approach used in the baseline general permits finalized on September 9, 1992 (57 FR 41236).

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from leather tanning facilities. Pollution prevention plans allow the operator of a facility to select BMPs based on site-specific considerations such as facility size, climate, geographic location, the environmental setting of the facility, and volume and type of discharge generated. This flexibility is necessary because each facility will be unique in that the source, type, and volume of contaminated surface water discharges will differ from site to site.

There are two major objectives to a pollution prevention plan (1) to identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility. Specific requirements for a pollution prevention plan for leather tanning facilities and facilities which make fertilizer solely from leather scraps and dust are described below.

a. Contents of the plan. Storm water pollution prevention plans are intended to help leather tanners evaluate all potential pollution sources at a site, and assist in the selection and implementation of appropriate measures designed to prevent, or control the discharge of pollutants in storm water runoff. EPA has developed guidance entitled "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, 1992 (EPA 832-R-92-006), to assist permittees in developing and implementing pollution prevention measures.

(1) Description of potential pollutant sources. Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather result in dry weather flows. This assessment of storm water pollution will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Plans must describe the following elements:

(a) Drainage—The plan must contain a map of the site that shows the pattern of storm water drainage, structural features that control pollutants in storm water runoff and process wastewater discharges, surface water bodies (including wetlands), places where significant materials are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map also must show areas where the following activities take place: Fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal, haul roads, access roads, and rail spurs. In addition the site map must also identify monitoring locations.

(b) Inventory of exposed materials—Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must addresses materials that within 3 years prior to the effective date of the permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in storm water runoff; existing structural controls that limit process wastewater discharges; and any treatment the runoff receives before it is discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may effect the exposure of materials to storm water.

(c) Significant spills and leaks—The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant pills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of CWA (see 40 CFR 110.0 and 40 CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4). Significant spill may also include releases of oil or hazardous substances that are not in excess of reporting requirements and release of materials that are not classified as oil or a hazardous substance. The list shall be updated as appropriate during the term of the permit.

(d) Sampling data—Any existing data on the quality or quantity of storm water discharges from the facility must described in the plan. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

(e) Risk identification and summary of potential pollutant sources—The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the operator of the facility must consider the following activities: loading and unloading operations; outdoor storage activities; outdoor processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (i.e., total suspended solids,

biochemical oxygen demand, etc.) associated with each source.

(2) Measures and controls. Under the description of measures and controls in the storm water pollution prevention plan requirements, this section proposes that all areas that may contribute pollutants to storm water discharges shall be maintained in a clean, orderly manner. This section also proposes that the following areas must be specifically addressed:

(a) Storage areas for raw, semiprocessed, or finished tannery by-products—Pallets and/or bales of raw, semiprocessed, or finished tannery by-products (e.g., splits, trimmings, shavings, etc.) that are stored where there is potential storm water contact, must be stored indoors or protected by polyethylene wrapping, tarpaulins, roofed storage area or other suitable means. Materials should be placed on an impermeable surface, the area should be enclosed or bermed or other equivalent measures should be employed to prevent runon or runoff of storm water.

(b) Material storage areas—Label storage units of all materials (e.g., specific chemicals, hazardous materials, spent solvents, waste materials). Maintain such containers and units in good condition. Describe measures that prevent or minimize contact with storm water. The facility must consider indoor storage and/or installation of berming and diking around the area to prevent runon or runoff of storm water.

(c) Buffing/shaving areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff with leather dust from buffing/shaving areas. The facility may consider dust collection enclosures, preventive inspection/maintenance programs or other appropriate preventive measures.

(d) Receiving, loading, and storage areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from receiving, unloading, and storage areas. Exposed receiving, unloading and storage areas for hides and chemical supplies should be protected by a suitable cover, diversion of drainage to the process sewer, directing rain gutters away from loading/receiving areas, grade berming or curbing area to prevent runon of storm water or other appropriate preventive measures.

(e) Outdoor storage of contaminated equipment—The plan must describe measures that minimize contact of storm water with contaminated equipment. Equipment should be protected by suitable cover, diversion of drainage to the process sewer, thorough cleaning prior to storage or other appropriate preventive measures.

(f) Waste management—The plan must describe measures that prevent or minimize contamination of the storm water runoff from waste storage areas. The facility may consider inspection/maintenance programs for leaking containers or spills, covering dumpsters, moving waste management activities indoors, covering waste piles with temporary covering material such as tarpaulin or polyethylene, and minimizing storm water runon by enclosing the area or building berms around the area.

(g) Vehicle maintenance and fueling—Permittees must follow all applicable requirements described in Part XI.P. for controlling storm water discharges from vehicle maintenance and refueling areas.

(h) Improper connections to storm sewers—The plan must describe measures which prevent and prohibit washwaters from processing areas from entering storm sewers. The facility must install safeguards against wash waters entering storm sewers and train employees on proper disposal practices for disposal of all process waste materials.

These areas are sources of pollutants in storm water from leather tanning facilities. EPA believes that the incorporation of BMPs such as those suggested, in conjunction with the pollution prevention plan, will substantially reduce the potential of storm water contamination from these areas. Based upon the information provided in part 1 of the group application process, some of the suggested management processes are being used at leather tanning facilities. In addition, EPA believes that these requirements continue to provide the necessary flexibility to address the variable risk for pollutants in storm water discharges associated with different facilities. Further, many facilities will find that management measures that they have already incorporated into the facilities operation, such as the use of covers and roofing, containers, and berms and dikes will meet the requirements of this section.

• *Preventive Maintenance*—Under the preventive maintenance requirements of the pollution prevention plan, permittees are required to develop a preventive maintenance program that includes regular inspections and maintenance of storm water BMPs. The maintenance program requires periodic removal of debris from discharge diversions. Permittees using ponds to control their effluent limitation frequently use impoundments or sedimentation ponds as their BAT/BCT.

Maintenance schedules and maintenance measures for these ponds must be provided in the pollution prevention plan.

The purpose of the inspections is to check on the accuracy of the description of potential pollution sources contained in the plan, determine the effectiveness of the plan and implementation of the storm water pollution prevention plan. The inspections allow facility personnel to monitor the success or failure of elements of the plan on a regular basis. The use of an inspection checklist is recommended. The checklist will ensure that all required areas are inspected, as well as help to meet the record keeping requirements. Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

• *Inspections*—Under the inspection requirements of the storm water pollution prevention plan elements, qualified facility personnel shall be identified to inspect designated areas of the facility, at a minimum of every 3 months. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. The following areas shall be included in all inspections: storage areas for equipment and vehicles awaiting maintenance, facility yard area where outdoor storage occurs, receiving and unloading areas and waste management areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained and the pollution prevention plan modified where necessary.

In addition, qualified personnel must conduct quarterly visual inspections of all BMPs. The inspections shall include an assessment of the effectiveness and need for maintenance of storm water roofing and covers, dikes and curbs, discharge diversions, sediment control and collection systems and all other BMPs.

Quarterly visual inspections must be made at least once in each of the following designated periods during daylight hours. December–February (storm water runoff or snow melt), March–May (storm water runoff), June–

August (storm water runoff), and September–November (snow melt runoff). Records shall be maintained as part of the pollution prevention plan.

• *Employee Training*—Under the employee training component of the storm water pollution prevention plan requirements, the permittee is required to identify annual (once per year) dates for training. Employee training must, at a minimum, address the following areas when applicable to a facility: General good housekeeping practices, spill prevention and control, waste management, inspections, preventive maintenance, detection of non-storm water discharges and other areas.

• *Record Keeping and Internal Reporting*—Permittees must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. The plan must address spills, monitoring, and BMP inspection and maintenance activities. Ineffective BMPs must be reported and the date of their corrective action recorded. Employees must report incidents of leaking fluids to facility management and these reports must be incorporated into the plan.

• *Storm Water Management*—The permittee must evaluate the appropriateness of each storm water BMP that diverts, infiltrates, reuses, or otherwise reduces the discharge of contaminated storm water. In addition, the permittee must describe the storm water pollutant source or activity (i.e., loading and unloading operations, raw material storage piles, waste piles, etc.) to be controlled by each storm water management practice.

(3) Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to: (1) Confirm the accuracy of the description of potential pollution sources contained in the plan; (2) determine the effectiveness of the plan; and (3) assess compliance with the terms and conditions of this section. Comprehensive site compliance evaluations should be conducted twice a year for leather tanning facilities. These inspections are intended to be more in depth than the quarterly visual inspections. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires. Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

6. Numeric Effluent Limitations

There are no numeric effluent limitations for storm water discharges from leather tanning facilities beyond those described in Part VI.E. of the fact sheet.

7. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that leather tanning and finishing facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires leather tanning and finishing facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table Z–5. The pollutants listed in Table Z–5 were found to be above levels of concern for a significant portion of leather tanning and finishing facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at levels of concern from leather tanning and finishing facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from leather tanning and finishing facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table Z–5. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE Z–5.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Biochemical Oxygen Demand (BOD_5)	9.0
Total Kjeldahl Nitrogen (TKN)	1.5
Nitrate and Nitrite Nitrogen	0.68
Total Recoverable Aluminum	0.75
Total Recoverable Manganese	0.05

If the average concentration for a parameter is less than or equal to the value listed in Table Z–5, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table Z–5, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit. Table Z–6 provides a schedule of monitoring requirements.

TABLE Z–6.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table Z–5, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table Z–5, then no further sampling is required for that parameter.

TABLE Z–6.—SCHEDULE OF MONITORING—Continued

4th Year of Permit Coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table Z–5. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

The monitoring cut off concentrations listed in Table Z–5 are not numerical effluent limitations. These values represent a level of pollutant discharge which facilities may achieve through the implementation of pollution prevention plans. At least half of the facilities which submitted Part 2 data, reported concentrations less than or equal to the values listed in Table Z–5. Facilities that achieve average discharge concentrations which are less than or equal to the values in Table Z–5 are not relieved from the pollution prevention plan requirements or any other requirements of the permit.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, and deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.D of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of a storm water discharge from each outfall are required for leather tanning and finishing facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well-lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: The examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds,

hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.Z.7 of today's proposed permit.

a. Leather tanning facilities not reporting under section 313 of SARA title III. (1) During the period beginning on the effective date and lasting through the expiration date of this permit, permittees would be required to monitor those storm water discharges identified in Table Z–7 below at least annually.

Table Z–7

Parameter	Unit	Frequency[1]	Sample Type[2]
BOD5	mg/L	annually ...	grab.
COD	mg/L	..... do	Do.
Total Kjeldahl Nitrogen	mg/L	..... do	Do.
Oil and Grease	mg/L	..... do	Do.
pH	s.u. ..	..... do	Do.
Total Phosphorus	mg/L	..... do	Do.
Total Suspended Solids	mg/L	..... do	Do.
Chromium, Total	mg/L	..... do	Do.

In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

[1] Samples shall be taken annually over the term of the permit.
[2] The grab sample shall be collected in the first 30 minutes of the discharge or as soon thereafter as practical, but not to exceed 60 minutes.

b. Leather tanning facilities reporting under section 313 of SARA title III. (1) Facilities reporting under Section 313 would monitor their storm water discharges according to the requirements listed at Part VI.

c. Quarterly visual examination of storm water quality. (1) Facilities shall perform and document a visual examination of storm water quality of all storm water discharges associated with industrial activity including but not limited to loading and unloading areas, chemical storage areas, vehicle and equipment maintenance activities, equipment cleaning operations, refuse areas and waste management areas. If the storm water from such operations flows such that there are numerous small points of discharge, one visual examination of one representative discharge may be conducted as a representation of the adjacent flows. The examination must be made at least once in each designated period [described in Part (2) (below)] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(2) Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); and September to November (storm water runoff or snow melt).

(3) Visual examinations shall be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. The examinations shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. No analytical tests are required to be performed on these samples. Examinations shall be conducted so as to provide a reasonable representation of the nature of a typical storm water discharge at that site during that time of year.

(4) Information must be maintained on site and include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination.

(5) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

d. Reporting: When to submit. (1) Permittees with facilities identified in Part XI.Z.8.a. [Leather Tanning Facilities Not Reporting Under Section 313 of Superfund Amendments and Reauthorization Act (SARA) Title III] are not required to submit monitoring results, unless required in writing by the Director.

(2) Permittees with facilities identified in Part XI.Z. (Leather Tanning Facilities Reporting Under Section 313 of SARA Title III) must conduct monitoring and submit the results according to the requirements listed at Part VI.

9. Retention of Records

a. The permittee shall retain records of all inspections and monitoring

information, including certification reports, noncompliance reports, calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports, and supporting data, requested by the permitting authority for at least 3 years after the date that the permit expires.

AA. Storm Water Discharges Associated With Industrial Activity From Fabricated Metal Products Industry

1. Discharges Covered Under This Section

On November 16, 1990 [55 **Federal Register** (FR) 47990], the U.S. Environmental Protection Agency (EPA) promulgated the regulatory definition of "storm water discharges associated with industrial activity." This section of today's proposed permit covers storm water discharges associated with industrial activities from metal fabrication processes and operations. Fabricated metal and processing facilities eligible for coverage under this section include the following types of operations:

- Fabricated Metal Products, Except Machinery and Transportation Equipment, Standard Industrial Classification (SIC) code 34 (3429, 3441, 3442, 3443, 3444, 3451, 3452, 3462, 3465, 3471, 3479, 3494, 3496, 3499)
- Jewelry, Silverware, and Plated Ware, SIC code 391.

This section covers establishments engaged in fabricating ferrous and nonferrous metal products, such as metal cans, tinware, general hardware, automotive parts, tanks, road mesh, structural metal products, nonelectrical equipment, and a variety of metal and wire products from purchased iron or steel rods, bars, or wire materials. This section does not cover discharges from establishments engaged in manufacturing and rolling of ferrous and nonferrous metals, forgings or stampings, electrolytic or other processes for refining copper from ore. These establishments are addressed in a separate section of today's proposed permit. Therefore, if a given storm water discharge is addressed by more than one set of industry specific conditions, the requirements for the applicable classes of activities apply.

Storm water discharges covered by this section include all discharges where precipitation and storm water runoff come into contact with industrial activity including such things as: raw materials, waste products, by-products, overburden, stored materials, and fuels. This includes storm water discharges from haul roads, access roads, industrial plant yards, and rail lines used or traveled by carriers of raw materials, manufactured product, waste materials, or by-products created by the facility.

Impacts caused by storm water discharges from fabricating operations will vary from one facility to the next. Several factors influence to what extent significant materials from fabricators will affect water quality. Specifically, the use of indoor operations as opposed to outdoor storage facilities; discharges to Publicly Owned Treatment Works (POTWs); recycling programs; product choice in the various operations; and the number of operations that take place at a given facility based on customer needs; and use of storm water controls.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

This section does not cover any discharge subject to process wastewater effluent limitation guidelines, including storm water that combines with process wastewater.

2. Industrial Profile

These facilities are engaged in the manufacturing of a variety of products that are constructed primarily by using metals. The operations performed usually begin with materials in the form of raw rods, bars, sheet, castings, forgings, and other related materials and can progress to the most sophisticated surface finishing operations. There are typically several operations that take place at a fabrication facility: machining operations, grinding, cleaning and stripping, surface treatment and plating, painting, and assembly. The machining operation involves turning, drilling, milling, reaming threading, broaching, grinding, polishing, cutting and shaping, and planing. Grinding is the process using abrasive grains such as aluminum oxide, silicon carbide, and diamond to remove stock from a workpiece. Cleaning and stripping is a preparatory process involving solvents for the removal of oil, grease and dirt. Both alkaline and acid cleaning are employed. Surface treatment and plating is a major component that involves batching operations to increase corrosion or abrasion resistance. This is generally in the form of galvanizing. Painting is generally practiced at most facilities to provide decoration and protection to the product or item. Assembly is the fitting together of previously manufactured parts into a complete unit or structure.

Industrial activities and storm water management practices are typically similar in the fabricating industry, varying mostly in the type of chemicals used in the processes and the final product. Examples of products being fabricated in this industry include: aircraft engines, screws, nuts, bolts, automotive parts (drive shafts, struts, gears, rods), tanks, hand tools, doors, and bridge grates.

Many of the operations in this industry take place indoors. The major activities evaluated for purposes of storm water contamination and control measures include: waste storage, outside product storage, use of pickling acids, storage of cutoff scrap metal, aluminum scraps, hazardous materials, galvanized steel components, solvent storage, waste paper storage, machinery storage, and maintenance of existing Best Management Practices (BMPs). The table below lists the most likely wastes to be generated at a steel fabricating facility.

TABLE AA–1.—WASTES GENERATED FROM FABRICATED METALS INDUSTRIES

Type of waste	Activity	Source
Used metal working fluid with fine metal dust.	Tool workpiece interface/shaving, chipping.	Metal working fluid
Spent solvents	Parts/tools cleaning, sand blasting, metal surface cleaning, removal of applied chemicals.	Solvent cleaners, abrasive cleaners, alkaline cleaners, acid cleaners, rinse waters.
Cuttings, scraps, turnings, fines	Making structural components	Raw metals.
Paint, spent stripping solutions	Painting operations	Paints, solvents, and painting equipment.

3. Storm Water Sampling Results

Table AA–2 summarizes the storm water monitoring results for the pollutants required by Part A of form 2F that were reported by facilities in this sector. Table AA–2 provides composite sample data and grab sample results.

TABLE AA–2.—STATISTICS FOR CONVENTIONAL AND NONCONVENTIONAL POLLUTANTS FOR THE FABRICATED METAL PRODUCTS INDUSTRY (MG/L EXCEPT AS NOTED)[1]

Pollutant	# of Samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD_5	115	111	28.3	10.0	0.0	0.0	524.0	57.0	7.6	7.0	81.0	40.0	503.0	53.1
COD	115	114	118.2	86.2	0.0	0.0	1380.0	962.0	56.0	47.5	440.0	249.0	1200.0	716.0
Nitrate Nitrite Nitrogen	115	114	1.48	1.27	0.0	0.0	14.9	14.4	0.74	0.765	7.0	3.5	14.0	12.54
Total Kjeldahl Nitrogen	115	114	2.61	1.78	0.0	0.0	29.3	9.12	1.37	1.2	7.2	5.75	26.5	8.1
Oil & grease	114	N/A	6.1	N/A	0.0	N/A	86.0	N/A	2.0	N/A	21.0	N/A	72.3	N/A
pH (s.u.)	103	N/A	N/A	N/A	3.3	N/A	9.0	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	113	114	1.03	0.84	0.0	0.0	16.0	12.0	0.22	0.205	9.8	4.8	11.0	10.8
Total Suspended Solids	115	114	187.0	125	0.0	0.0	2340	3235	76	32	758	423	1700	1078
Aluminum	13	13	110.20	12.51	0.0	0.0	1400.0	130.0	1.2	1.0	N/A	N/A	1400.0	130.0
Copper	36	33	0.63	0.46	0.0	0.0	13.90	13.0	0.03	0.02	N/A	N/A	13.90	13.0
Iron	35	34	4.46	2.71	0.0	0.0	25.10	26.0	1.42	0.57	N/A	N/A	25.1	26.0
Manganese	23	22	0.12	0.07	0.0	0.0	0.39	0.37	0.06	0.02	N/A	N/A	0.39	0.37
Zinc	60	58	4.20	2.17	0.0	0.0	157.0	22.8	0.36	0.21	N/A	N/A	157.0	22.80

[1] Mean, Minimum, Maximum, and Percentiles include all detects and nondetects.
[2] Composite samples.

EPA also reviewed the monitoring results for nonconventional and priority toxic pollutants required by Parts B and C of Form 2F. Table AA–3 summarizes the results for parameters where some of the reported values exceeded Effluent Guideline Limitations or "Gold Book" values and may be the result of industrial activities performed by the metal fabricating industry. The toxics information is limited by the few samples received for this sector. Therefore, it is difficult to conclude that these toxic pollutants are or are not pollutants of concern in the storm water discharges from facilities in this sector. Additional monitoring is warranted to further characterize these pollutants.

TABLE AA–3.—RESULTS OF PRIORITY TOXIC POLLUTANTS

Pollutant	Unit	Range—grab samples	Range—composite samples	Effluent guideline limits/CFR
Zinc	mg/L	.021–157.	0.12–22.8	1.0 (440)
Iron	mg/L	0.06–25.1	0.06–26.0	7.0 (434)
Lead	mg/L	0.04–0.16	0.018–0.22	.6 (440)

[1] Gold book value for acute fresh water.

a. Summary of pollutants of concern. More than 50 percent of the facilities in the sector reported concentrations for TSS to be above 76 milligrams per liter (mg/L), which is above the effluent limitation guideline for coal pile runoff of 50 mg/L. The minimum grab TSS concentration was 0 mg/L and the mean grab concentration was 187 mg/L. In comparison to other industry sectors in today's proposed permit, these levels warrant concern. About 80 percent of the facilities in this sector indicated that most of the facilities are devoid of vegetation and ground surfaces were barren. EPA believes that this condition and the use of heavy equipment causing erosion and conveyances for storm water runoff, along with any pollutants collected in the soil can contribute to the high levels of Total Suspended Solids reported in the analytical data. In addition, concentrations of aluminum, zinc, iron, copper, and manganese varied widely, but in some cases, exceeded "Gold Book" values.

4. Options for Controlling Pollutants

The measures to control pollutants at metal fabricating operations should focus primarily on the storage of waste and raw materials; chemical storage areas; and equipment storage and service areas. Since most of the operations occur indoors, procedures are necessary in the handling and transporting of materials to minimize exposure of pollutants to storm water runoff. Of primary importance is the control of activities and use of chemicals that have been identified as potential sources of pollutants. The most effective discharge controls for these facilities are BMPs targeted toward source control. This includes utilizing inside storage as much as possible; and implementing programs for recycling scrap materials. Many of these practices require the use of covers, indoor storage, and indoor operations. Some structural measures would provide an additional control to reduce the potential for exposure at these facilities. These include source reduction diversion dikes, grass swales, vegetative covers, and sedimentation ponds. Preventive controls are typically low in cost and relatively easy to implement, as the majority of the facilities in this industry already employ these practices. In addition, directing flows to privately owned treatment works or retention ponds will be the most effective measure. The industry also must give consideration to the non-storm water discharges associated with improper disposal of materials from the indoor processes due to the extensive use of chemicals in the preparation and finishing phases of metal preparation and fabrication. The industry also involves grinding, welding, and sanding operations that will require special consideration to control potential pollutants that could accumulate and be subject to storm water runoff. Most of the measures commonly implemented to reduce pollutants in storm water associated with the fabricated metals industry are generally uncomplicated practices. Some of the practices may be predicated on the size of the operation, the types of processes that are exercised from a full-scale plant operation to a more specialized company that conducts only a portion of the operations usually found in the fabricating industry. Table AA–4 below is an outline of the most common activities and sources that may produce pollutants associated with different activities that routinely take place at fabricated metal industries. Following the table is a brief list of BMPs that EPA believes will help reduce and control the potential pollutant sources at fabricating facilities from contaminating storm water.

Table AA–4.—POLLUTANTS POTENTIALLY FOUND IN STORM WATER DISCHARGES ASSOCIATED WITH THE FABRICATED METAL INDUSTRY

Activity	Pollutant source	Pollutant
Metal preparation	Grinding, welding, sawing, shaving, brazing, bending, cutting, etching.	Steel scraps, aluminum scraps, brass, copper, dust, chips and borings, steel scale, teflon, manganese.
Parts cleaning	Solvents, cold and hot dips, cleaning parts, degreasing.	Acid, coolants, clean composition, degreaser, mineral spirits, pickle liquor, spent caustic, sludge.
Surface Treatment	Finishing, plating, case hardening, chemical coating, coating, polishing, rinsing, abrasive cleaning, electroplating.	Acid, aromatic solvent, corn cob, lubricants, sand, oil, pH, nitrates, nitrites, carbon, phosphates, borates, nitrogen, oily sludge, nickel, chromium, hydrofluoric acid.
Galvanizing	Spills, leaks, transporting materials	Acid solution, phosphates, zinc chromate hexavalent chromium, nickel.
Painting	Empty containers, paint application wastes, spills, over spraying, storage areas.	Paint wastes, thinner, varnish, heavy metals, spent chlorinated solvents.

Table AA–4.—Pollutants Potentially Found in Storm Water Discharges Associated With the Fabricated Metal Industry—Continued

Activity	Pollutant source	Pollutant
Heavy equipment use and storage	Leaking fluids, fluids replacement, washing equipment, use on poor surface area, soil disturbance.	Oil, heavy metals, organics, fuels, TSS, hydraulic oil, diesel fuel, gasoline.
Equipment maintenance	Leaking fluids, fluids replacement, washing equipment.	Oil, grease.
Storage of uncoated structural steel	Stored on porous pavement	Aluminum, lead, zinc, copper, iron, oxide, oil, nickel, manganese.
Storing galvanized steel directly on the ground.	Galvanizing material drippage or leaching	Metals: zinc, nickel, cadmium, chromium.
Vehicle/equipment traffic	Soil disturbance and erosion	TSS from erosion, hydraulic fluid loss/spillage.
Cleaning equipment/vehicles	Chemicals disposed improperly, spillage	Oil, grease, surfactants, chromates, acid, hydroxide, nitric acid.
Storage areas	Unidentifiable drums, extended exposure to weather conditions, tank corrosion, open containers.	Benzene, toluene, xylene, pyrene, and other volatile organics, solvents.
Equipment usage	Malfunctioning equipment, stockpiled obsolete equipment.	Oil, grease, lead.
Above ground storage tanks	Installation problems, spills, external corrosion and structural failure.	Fuel oil and various chemicals.

Table AA–4 above shows the potential pollutants that could end up in storm water runoff if the activities typically found at a fabricating facility are not handled properly. Many of the fabricating facilities in the group application indicated several of the activities listed as a part of the normal operations carried out at the facility. Many of the pollutants involved in these activities are potentially of concern if exposed to precipitation and storm water runoff. Consideration of control measures is needed to assure that the activities minimize exposure to the potential pollutants of concern as it relates to each activity identified and control the potential sources that may generate pollutants as part of the management practices used.

5. Special Conditions

The permit conditions that apply to the fabricated metals industry build upon the requirements set forth in the general baseline permit for storm water discharges from industrial activities finalized on September 9, 1992 (57 FR 41236). The discussion that follows, therefore, only addresses conditions that differ from those required in the baseline permit.

Due to the concern that many non-storm water discharges may be present at metal fabricators, EPA is requiring that all facilities provide proof that these discharges are not commingled and are appropriately controlled so as to protect all receiving waters.

Today's proposed permit clarifies in Part XI.AA.2. (Prohibition of Non-storm Water Discharges) that non-storm water discharges, including metal fabricator operations, are not authorized by this section. The operators of such non-storm water discharges must obtain coverage under a separate National Pollutant Discharge Elimination System (NPDES) permit if discharged to waters of the United States or through a municipal separate storm sewer system. In a related requirement under the storm water pollution prevention plan requirements, the permittee is required to attach a copy of the NPDES permit issued for metal acid baths, sludge disposal, scrap disposal or recycling or, if an NPDES permit has not yet been issued, a copy of the pending application plan. Facilities that pretreat and discharge the waste water into a POTW system must notify the operator and a copy of the notification must be attached to the plan. With regard to all the acid baths, wash waters, and any other non-storm water discharges must be considered in the plan. Some facilities may use retention ponds, recycling, collecting and hauling as methods of disposal. Other facilities discharge into separate storm sewer systems. In these instances, the facility is required to attach the disposal plans and operations to the plan.

6. Storm Water Pollution Prevention Plan Requirements

Each storm water pollution prevention plan must stipulate activities, materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather, result in dry weather flows. The metals fabricating industry plan will need to focus primarily on storage areas, unloading and loading areas, and any other areas where outside operations occur.

Under the description of measures and controls in the storm water pollution prevention plan requirements, this section proposes that all areas that may contribute pollutants to storm water discharges shall be maintained in a clean, orderly manner. This section also proposes that the following areas must be specifically addressed:

a. Potential best management practices in relationship to various activities at fabricating facilities. (1) Metal fabricating areas. These areas should be kept clean by frequent sweeping to avoid heavy accumulation of steel ingots, fines, and scrap. Dust is a byproduct of many processes in the fabricating areas and therefore should be absorbed through a vacuum system to avoid accumulation on roof tops and onto the ground. Tracking of metal dusts and metal fines outdoors can be minimized by employing these management practices.

- Sweep on a regular basis all accessible paved areas.
- Maintain floors in a clean and dry condition.
- Remove waste and dispose of regularly.
- Remove obsolete equipment expeditiously.
- Sweep fabrication areas.
- Train employees on good housekeeping measures.

(2) Storage areas for raw metal. The storage of raw materials should be under a covered area whenever possible and protected from contact with the ground. The amount of material stored should be minimized to avoid corrosive activity from long-term exposed materials. Diking or berming the area to prevent or minimize run-on may be considered. Long-term exposure to weather conditions results in oxidation of the metals. Also, dirt, oil, and grease buildup on the metal are potential sources of pollutants.

• Check raw metals for corrosive activity.
• Keep area neat and orderly, stack neatly on pallets or off the ground.
• Cover exposed materials.

(3) Receiving, unloading, and loading areas. These areas should be enclosed where feasible using either curbing, berming, diking or other accepted containment systems in case of spills during delivery of chemicals such as lubricants, coolants, rust preventatives, solvents, oil, sodium hydroxide, hydrochloric acid, calcium chloride, polymers, sulfuric acid, and other chemicals used in the metal fabricating processes. Directing roof down spouts away from loading sites and equipment and onto grassy or vegetated areas should help prevent storm water contamination by pollutants that have accumulated in these areas.
• Clean up spills immediately.
• Check for leaks and remedy problems regularly.
• Unload under covered areas when possible.

(4) Storage of heavy equipment. Vehicles should be stored indoors when possible. If stored outdoors the use of gravel, concrete or other porous surfaces should be considered to minimize or prevent heavy equipment from creating ditches or other conveyances that would cause sedimentation runoff and increase TSS loadings. Also directing the flow toward the area by the use of grass swales or filter strips will reduce the runoff of materials. Directing drainage systems away from high traffic areas into collection systems will help to reduce the TSS loadings caused by exposed and eroding open areas.
• Clean prior to storage or store under cover.
• Store indoors.
• Divert drainage to the grass swales, filter strips, retention ponds, or holding tanks.

(5) Metal working fluid areas. Due to the toxicity of metal working fluids as well as the contamination of fluids by metal fines and dusts, spillage and loss of metal working fluids used to cleanse or prepare the steel components should be controlled throughout the process. Collection systems and storage areas need special consideration.
• Store used metal working fluid with fine metal dust indoors.
• Use tight sealing lids on all fluid containers.
• Use straw, clay absorbents, sawdust, or synthetic absorbents to confine or contain any spills, or other absorbent material.
• Establish recycling programs for used fluids when possible.

(6) Unprotected liquid storage tanks. Storing these tanks (this does not include products that are gaseous at atmospheric pressure) indoors will reduce potential waste or spills from contaminating storm water. Berming outdoor areas when unable to store inside will contain potential pollutants. Cleaning up spills is essential to minimizing buildup in these areas. EPA believes that this will significantly reduce the potential for major discharges into the water of the United States during storm runoff.
• Cover all tanks whenever possible.
• Berm tanks whenever possible.
• Dike area or install grass filters to contain spills.
• Keep area clean.
• Check piping, valves and other related equipment on a regular basis.

(7) Chemical cleaners and rinse water. Proper disposal and use of cleaners in various activities will minimize the amount of liquid exposed to storm water by reducing the need to store contaminated liquids for an extended period of time. Controlling potential contamination of pollutants by employing simple control devices during the activity will prevent potential contamination in storm water runoff. Recycling or reuse of these materials whenever possible serves as a source reduction by reducing the necessary amount of new materials.
• Use drip pans and other spill devices to collect spills or solvents and other liquid cleaners.
• Recycle waste water.
• Store recyclable waste indoors or in covered containers.
• Substitute nontoxic cleaning agents when possible.

(8) Raw steel collection areas. The collection areas must be kept clean. Materials should be kept in a covered storage bin or kept inside until pickup. The use of pitched-structures should be considered.
• Collect scrap metals, fines, iron dust and store under cover.
• Recycle.

(9) Paints and painting equipment. Facilities using tarps, drip pans, or other spill collection devices to contain and collect spills of paints, solvents or other liquid material. Blasting in windy weather increases the potential for runoff. Enclosing outdoor sanding areas with tarps or plastic sheeting contains the finds of metal. Immediate collection of any waste and proper disposal may significantly contribute to the reduction of storm water runoff. Training employees to use the spray equipment properly may reduce waste and decrease the likelihood of accidents, as well as, reduce the amount of solvents needed to complete the job.
• Paint and sand indoors when possible.
• Avoid painting and sandblasting operations outdoors in windy weather conditions.
• If done outside, enclose sanding and painting areas with tarps or plastic sheeting.
• Use water-based paints when possible to decrease.

(10) Vehicle and equipment maintenance areas. Changing fluids or parts should be done indoors when possible. If maintenance is performed outdoors, fluids used in maintaining these vehicles should be contained in the area by using drip pans, large plastic sheets, canvas or other similar controls under the vehicles, or berming the area. Hydraulic fluids should be properly stored to prevent leakage and storm water contamination.
• Berm area or use other containment device to control spills.
• Use drip pans, plastic sheeting and other similar controls.
• Discard fluids properly or recycle if possible.

(11) Hazardous waste storage areas. All hazardous waste must be stored in sealed drums. Establishing centralized drum-storage satellite areas throughout the complex to store these materials will decrease the potential for mishandling drums. Berming the enclosed structures is added protection in case of spills. Spills or leaks that are contained within an area are easier to contain and prevent storm water contamination or runoff. Checks for corrosion and leakage of storage containers is important. Proper labelling for proper handling might be considered. All other applicable Federal, State, and local regulations must be followed.
• Store indoors.
• Label materials clearly.
• Check for corrosive activity and leaking.
• Properly dispose of outdated materials.
• Dike or use grass swales, ditches or other containment to prevent runon or runoff in case of spills.
• Post notices prohibiting dumping of materials into storm drains.
• Store containers, drums, and bags away from direct traffic routes.
• Do not stack containers in such a way as to cause leaks or damage to the containers.
• Use pallets to store containers when possible.
• Store materials with adequate space for traffic without disturbing drums.
• Maintain low inventory level of chemicals based on need.

(12) Transporting chemicals to storage areas. Proper handling of drums is

needed to avoid damaging drums and causing leaks. Storage areas should be as close as possible to operational buildings.

- Forklift operators should be trained to avoid puncturing drums.
- Store drums as close to operational building as possible.
- Label all drums with proper warning and handling instructions.

(13) Finished products (galvanized) storage. Improper storage of finished products can cause a significant amount of erosion and contribute to the TSS levels. Also transporting these materials to the storage areas by the use of heavy equipment increases the possibility of conveyances for storm water runoff of soil and other contaminates from the finished products such as various lubricants and residual traces of metal.

- Use wooden pallets to decrease erosion of soil.
- Store on a concrete pad, gravel surface, or other impervious surface.

(14) Wooden pallets and empty drums. Empty drums must be thoroughly cleaned of materials to avoid contamination. Contaminated wooden pallets and empty drums stored outdoors should be stored on concrete pads. Uncovered storage outdoors of uncontaminated wooden pallets is acceptable.

- Clean contaminated wooden pallets.
- Cover empty drums.
- Cover contaminated wooden pallets.
- Store drums and pallets indoors.

(15) Retention ponds (lagoon). Creating and maintaining retention ponds as a treatment system for settling out TSS would help to reduce the concentrations of these pollutants in storm water runoff.

- Provide routine maintenance.
- Remove excess sludge periodically.
- Aerate periodically to maintain pond's aerobic character and ecological balance is important.

b. Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential pollution sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of this section. Comprehensive site compliance evaluations should be conducted at least once a year. The individual or individuals that will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

7. Numeric Effluent Limitations

There are no additional numeric effluent limitations beyond those described in Part VI of the fact sheet.

8. Monitoring and Reporting Requirements

a. Analytical monitoring requirements. EPA believes that fabricated metal and processing facilities may reduce the level of pollutants in storm water runoff from their sites through the development and proper implementation of the storm water pollution prevention plan requirements discussed in today's proposed permit. In order to provide a tool for evaluating the effectiveness of the pollution prevention plan and to characterize the discharge for potential environmental impacts, the proposed permit requires fabricated metal and processing facilities to collect and analyze samples of their storm water discharges for the pollutants listed in Table AA–5. The pollutants listed in Table AA–5 were found to be above levels of concern for a significant portion of fabricating facilities that submitted quantitative data in the group application process, or are believed to be present based upon the description of industrial activities and significant materials exposed. Because these pollutants have been reported at levels of concern from fabricated metal and processing facilities, EPA is requiring monitoring after the pollution prevention plan has been implemented to assess the effectiveness of the pollution prevention plan and to help ensure that a reduction of pollutants is realized.

At a minimum, storm water discharges from fabricated metal and processing facilities must be monitored quarterly during the second year of permit coverage. At the end of the second year of permit coverage, a facility must calculate the average concentration for each parameter listed in Table AA–5. If the permittee collects more than four samples in this period, then they must calculate an average concentration for each pollutant of concern for all samples analyzed.

TABLE AA–5.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Total Recoverable Aluminum	0.75
Total Recoverable Copper	0.009
Total Recoverable Manganese	0.05
Nitrate+Nitrite Nitrogen	0.68
Total Recoverable Zinc	0.065
Total Recoverable Iron	0.3

If the average concentration for a parameter is less than or equal to the value listed in Table AA–5, then the permittee is not required to conduct quantitative analysis for that parameter during the fourth year of the permit. If, however, the average concentration for a parameter is greater than the cut-off concentration listed in Table AA–5, then the permittee is required to conduct quarterly monitoring for that parameter during the fourth year of permit coverage. Monitoring is not required during the first, third, and fifth year of the permit. The exclusion from monitoring in the fourth year of the permit is conditional on the facility maintaining industrial operations and BMPs that will ensure a quality of storm water discharges consistent with the average concentrations recorded during the second year of the permit.

TABLE AA–6.—SCHEDULE OF MONITORING

2nd Year of Permit Coverage.	• Conduct quarterly monitoring. • Calculate the average concentration for all parameters analyzed during this period. • If average concentration is greater than the value listed in Table AA–5, then quarterly sampling is required during the fourth year of the permit. • If average concentration is less than or equal to the value listed in Table AA–5, then no further sampling is required for that parameter.

TABLE AA–6.—SCHEDULE OF MONITORING—Continued

4th Year of Permit Coverage.	• Conduct quarterly monitoring for any parameter where the average concentration in year 2 of the permit is greater than the value listed in Table AA–5. • If industrial activities or the pollution prevention plan have been altered such that storm water discharges may be adversely affected, quarterly monitoring is required for all parameters of concern.

In cases where the average concentration of a parameter exceeds the cut-off concentration, EPA expects permittees to place special emphasis on methods for reducing the presence of those parameters in storm water discharges. Quarterly monitoring in the fourth year of the permit will reassess the effectiveness of the adjusted pollution prevention plan.

The monitoring cut off concentrations listed in Table AA–5 are not numerical effluent limitations. These values represent a level of pollutant discharge which facilities may achieve through the implementation of pollution prevention plans. At least half of the facilities which submitted Part 2 data, reported concentrations less than or equal to the values listed in Table AA–5. Facilities that achieve average discharge concentrations which are less than or equal to the values in Table AA–5 are not relieved from the pollution prevention plan requirements or any other requirements of the permit.

b. Alternative certification. Throughout today's permit, EPA has proposed monitoring requirements for facilities which the Agency believes have the potential for contributing significant levels of pollutants to storm water discharges. The alternative described below is necessary to ensure that monitoring requirements are only imposed on those facilities that do, in fact, have storm water discharges containing pollutants at concentrations of concern. EPA has determined that if materials and activities are not exposed to storm water at the site, then the potential for pollutants to contaminate storm water discharges does not warrant monitoring.

Therefore, a discharger is not subject to the monitoring requirements of this Part provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and will not be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan and submitted to EPA in accordance with Part VI.C of this permit.

c. Reporting requirements. Permittees are required to submit all monitoring results obtained during the second and fourth year of permit coverage within 3 months of the conclusion of each year. Such permittees must submit monitoring results on four separately signed Discharge Monitoring Report Forms to the Director. For facilities conducting monitoring beyond the minimum quarterly requirements an additional Discharge Monitoring Report Form must be filed for each analysis.

d. Sample type. All discharge data shall be reported for grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

e. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluent. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)) shall be provided in the plan.

f. Monthly visual examination of storm water quality. Monthly visual inspections of storm water discharges from each outfall are required at fabricated metal products facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each month of the permit during daylight unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: The examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds,

hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

EPA believes that this quick and simple assessment will allow the permittee to approximate the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

9. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.AA. of today's proposed permit.

a. Fabricated metal facilities are required under this permit to conduct annual monitoring of their storm water discharges for total suspended solids the first year the permit is issued and annually throughout the life of the permit if the limit exceeds the maximum allowable discharge prescribed under this permit. Permittees are also required to monitor annually for zinc, iron, chromium, cadmium and lead for the term of the permit. In addition, any pollutant limited by an effluent limitation guideline to which the facility is subject must be monitored annually throughout the life of the permit. Permittees must also estimate flows. These monitoring requirements are summarized in Table AA–7.

Visual inspections of all storm water discharges associated with industrial activity are required quarterly. These visual inspections shall include observations for color, odor, turbidity, floating solids, foam, scum, and oil sheen. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); and September to November (storm water runoff or snow melt).

Visual inspections must be made during daylight hours during precipitation events unless there is insufficient rainfall to produce a runoff event. Examinations are to be made within the first 30 minutes but not more than 60 minutes of flow. Reports of the inspection must be maintained onsite and include: the date, time, name of personnel conducting the inspection, visual quality of the storm water discharge, and any probable source of any observed storm water contamination. Based on the results, the pollution prevention plan must be modified to control sources.

TABLE AA–7.—MONITORING REQUIREMENTS

Parameter	Unit	Frequency	Sample type
Total flow	gallons	Annual	Estimate.
Total Suspended Solids (TSS)	mg/L	Annual (unless TSS is 50 mg/L; no monitoring if less than 50 mg/L)	Grab.
Zinc	mg/L	Annual	Do.
Iron	mg/L	do	Do.
Chromium	mg/L	do	Do.
Cadmium	mg/L	do	Do.
Lead	mg/L	do	Do.
Nickel	mg/L	do	Do.

In addition, the permittee shall record the following:
- Date and duration (in hours) of the storm event(s) sampled.
- Rainfall measurements (in inches) of the storm event.
- Duration between storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event.
- Estimate the total flow (in gallons) of each discharge sampled.

AB. Storm Water Discharges Associated With Industrial Activity From Facilities That Manufacture Transportation Equipment, Industrial, or Commercial Machinery

On November 16, 1990 (55 FR 47990), EPA promulgated the regulatory definition of "storm water discharge associated with industrial activity." This definition includes point source discharges of storm water from eleven categories of facilities, including "* * * (xi) facilities classified as Standard Industrial Classification (SIC) codes * * * 35 (except SIC 357), 37 (except SIC 373), * * * ." Facilities eligible for coverage under this section of today's permit are commonly identified by the following SIC codes:

- Engines and Turbines (SIC Code 351).
- Farm and Garden Machinery and Equipment (SIC Code 352).
- Construction, Mining, and Materials Handling Machinery and Equipment (SIC Code 353).
- Metalworking Machinery and Equipment (SIC Code 354).
- Special Industry Machinery, Except Metalworking Machinery (SIC Code 355).
- General Industrial Machinery and Equipment (SIC Code 356).
- Refrigeration and Service Industry Machinery (SIC Code 358).
- Miscellaneous Industrial and Commercial Machinery and Equipment (SIC Code 359).
- Motor Vehicles and Motor Vehicle Equipment (SIC Code 371).
- Aircraft and Parts (SIC Code 372).
- Motorcycles, Bicycles, and Parts (SIC Code 375).
- Guided Missiles and Space Vehicles and Parts (SIC Code 376).
- Miscellaneous Transportation Equipment (SIC Code 379).

This section establishes special conditions for storm water discharges associated with industrial activities at facilities which manufacture transportation equipment, industrial or commercial machinery. The SIC codes of these facilities are in category (xi) of the definition of storm water discharges associated with industrial activity. Storm water discharges from facilities in this category are only regulated where

precipitation and storm water runon come into contact with areas associated with industrial activities, and significant materials. Significant materials include, but are not limited to, raw materials, waste products, fuels, finished products, intermediate products, by-products, and other materials associated with industrial activities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

1. Industry Profile

There are approximately 14,000 facilities which handle and process ferrous and nonferrous metals to manufacture transportation equipment, industrial or commercial machinery. These facilities vary in size, age, number of employees and the types of operations performed. The manufacturing processes for these facilities are similar, although the finished products may vary. The general manufacturing process is conducted indoors, and includes activities such as cutting, shaping, grinding, cleaning, coating, forming, and finishing. Specific processes are referred to as "unit operations," and there are approximately 45 unit operations utilized by facilities that manufacture transportation equipment, industrial, or commercial machinery. Since these operations occur predominately indoors, contamination of storm water discharges from the manufacturing process is unlikely. Unit operations include the following: electroplating, electroless plating, anodizing, chemical conversion coating, etching and chemical milling, cleaning, machining, grinding, polishing, barrel finishing, burnishing, impact deformation, pressure deformation, shearing, heat treating, thermal cutting, welding, brazing, soldering, flame spraying, sand blasting, abrasive jet machining, electrical discharge machining, electrochemical machining, electron beam machining, laser beam machining, plasma arc machining, ultrasonic machining, sintering, laminating, hot dip coating, sputtering, vapor plating, thermal infusion, salt bath descaling, solvent degreasing, paint stripping, painting, electrostatic painting, electropainting, vacuum metalizing, assembly, calibration, testing, and mechanical plating.

Facilities which manufacture transportation equipment, industrial and commercial machinery will utilize many of the same unit operations listed above. Aside from the specific unit operations, other types of industrial activity are shared by facilities covered by this section. For example, the majority of these facilities have outdoor material handling and storage activities, and share the same types of raw, scrap, and waste materials.

The primary raw materials utilized by this industry group include ferrous and nonferrous metals, such as aluminum, copper, iron, steel and alloys of these metals; either in raw form or as intermediate products. These metals are typically received at loading/unloading docks and are taken to outdoor storage areas (e.g., stockpiles, holding bins) before manufacturing.

Besides metals, other raw materials are utilized in the manufacturing process. These materials include paints, solvents (e.g., paint thinners, degreasers), chemicals (e.g., acids, bases, liquid gases), fuels (e.g., gasoline and diesel fuel), lubricating and cutting oils, and plastics. These materials are typically stored in bins, tanks, and/or 55 gallon drums outdoors on wooden pallets or concrete pads. They are used during the unit operations to cool and lubricate the metals (oils), clean metal parts (solvents, acids, bases), and coat metal parts before shipment (plastics, paints). Intermediate products are also sometimes stored outdoors before shipment or further manufacturing. These products may have residues of oils, solvents and metal particles, which are potential sources of pollutants to storm water discharges. Similarly, scrap metal will have the same residues, and is almost always stored outdoors in bins before being sold to scrap metal recyclers.

The manufacturing process produces several types of hazardous and nonhazardous wastes. Hazardous wastes including paint wastes, solvent wastes, and sludge wastes are generated in small quantities at the facilities within this industrial group. Paint wastes result from painting operations and consist of paints and paint thinners. Solvent wastes result from metal cutting, shaping, and cleaning operations. As the metals are manufactured into different parts and treated with various chemicals, the different assembly parts must be cleaned with solvents to remove any chemical residues and rinsed with water. The metal parts are subject to more cleaning with detergents to remove the solvents and chemical residues and rinsed again with water to remove the detergents. Sludge wastes are generated when wastewater discharges from painting, plating, finishing and parts cleaning operations are treated, and is generally shipped offsite for disposal. Hazardous wastes are stored in 55 gallon drums outdoors before shipment and may be exposed to storm water discharges.

Nonhazardous wastes from this industry group include glass, tires, used wooden pallets, used equipment and machinery, as well as plastics and rubber wastes. All of these waste materials are stored outdoors and have the potential to pollute storm water discharges. Storm water runoff from these materials could include solids, oils, solvents and other pollutants generated in the manufacturing process.

Air emissions from stacks and ventilation systems are potential areas for exposure of materials to storm water discharges. Facilities which have high levels of engine exhaust from the manufacturing equipment, paint residue, and particulates in fumes from metal processing activities such as cutting, grinding, shaping, and welding, are subject to having particulate in the air emissions that may pollute storm water discharges.

Material handling activities such as loading and unloading areas may be exposed to storm water discharges. These are areas where significant materials are received and shipped at the facilities. Exposure of these materials to storm water may be minimized by having shipping/receiving areas under cover.

For those facilities engaged in fueling and vehicle maintenance, gasoline and diesel fuel are frequently stored outdoors in aboveground storage tanks and 55 gallon drums. Most vehicles and equipment also require oil, hydraulic

fluids, antifreeze, and other fluids that may leak and contaminate storm water discharges. The discharges from these areas are addressed elsewhere in today's proposed permit.

2. Pollutants Found in Storm Water Discharges From Facilities Which Manufacture Transportation Equipment, Industrial or Commercial Machinery

The impact of industrial activities at facilities which manufacture transportation equipment, industrial or commercial machinery on storm water discharges will vary. Factors at a site which influence the water quality include geographic location, hydrogeology, the industrial activities exposed to storm water discharges, the facility's size, the types of pollution prevention measures/best management practices in place, and the type, duration, and intensity of storm events. Taken together or separately, these factors determine how polluted the storm water discharges will be at a given facility. For example, scrap piles may be a significant source of pollutants at some facilities, while particulate stack emissions may be the primary pollutant source at others. Additionally, pollutant sources other than storm water, such as illicit connections, spills, and other improperly dumped materials, may increase the pollutant loading discharged into Waters of the United States.

Table AB–1 lists industrial activities that commonly occur at transportation equipment, industrial or commercial machinery manufacturers, the pollutant sources at these facilities, and pollutants that are associated with these activities. Table AB–1 identifies oil and grease, TSS, organics, and other parameters as potential pollutants of concern associated with facilities covered by this section.

TABLE AB–1.—DESCRIPTION OF INDUSTRIAL ACTIVITIES, POTENTIAL POLLUTANT SOURCES, AND POSSIBLE POLLUTANTS

Activity	Pollutant source	Pollutants
Outdoor Material Loading/Unloading .	Wooden pallets, castings, foundry sand, limestone, spills/leaks from material handling equipment, solvents.	TSS, turbidity, dust, oil and grease, organics.
Outdoor Material and Equipment Storage.	Foundry sand, limestone, used equipment, above ground tanks, scrap metal, oil and grease, raw materials (e.g., aluminum, steel, iron, copper), castings, solvents, acids, and paints.	TSS, turbidity, dust, oil and grease, heavy metals, and organics.

Source: NPDES Storm Water Group Applications—Part 1. Received by EPA, March 18, 1991 through December 31, 1992.

Part 2 group application data that was statistically summarized indicated large variations in the minimum and maximum values reported for each of the eight conventional pollutants monitored:

- Oil and grease samples ranged from 0 mg/L to 233 mg/L.
- Grab sample values for Total Suspended Solids (TSS) ranged from 0 mg/L to 6,453 mg/L, and flow-weighted composite sample values ranged from 0 mg/L to 3,600 mg/L.
- Grab samples for Chemical Oxygen Demand (COD) ranged from 0 mg/L to 940 mg/L.

The remaining conventional pollutants sampled also varied in their minimum and maximum values. However, the values were typically low relative to other sectors in today's proposed permit. As discussed in greater detail in the monitoring section of this section, part 2 data indicates that the high levels of pollutants at some facilities are atypical to those experienced by the majority of facilities which manufacture transportation equipment, industrial or commercial machinery. Table AB–2 indicates the sampling results for the conventional pollutants that were statistically analyzed by EPA. This table indicates the minimum and maximum values, means, medians, 95th percentiles, 99th percentiles, and the total number of samples analyzed for each of the conventional pollutants. Part 2 data which has not been statistically summarized is generally consistent with the values reported in Table AB–2.

Group applicants were only required to sample for metals if the facility knew or had reason to believe they would be present in the discharge. Part 2 data indicated that facilities which sampled for metals generally reported low values compared to the most stringent storm water effluent guideline limitations.

TABLE AB–2.—STATISTICS FOR CONVENTIONAL POLLUTANTS IN STORM WATER[1]
[mg/L, except as noted]

Pollutant	# of Samples		Mean		Minimum		Maximum		Median		95th Percentile		99th Percentile	
Sample Type	Grab	Comp[2]	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp	Grab	Comp
BOD5	182	179	13.0	7.3	0.0	0.0	513.0	226.0	6.0	5.0	32.0	19.0	194.0	76.0
COD	174	169	66.9	46.6	0.0	0.0	940.0	610.0	36.0	29.0	310.0	149.2	570.0	334.0
Nitrate+Nitrite Nitrogen	184	174	1.20	1.28	0.0	0.0	19.2	28.0	0.575	0.450	5.0	4.5	8.80	25.6
Total Kjeldahl Nitrogen	170	165	2.47	1.81	0.00	0.0	55.0	30.0	1.3	1.1	5.8	4.75	41.0	20.0
Oil and Grease	189	N/A	7.8	N/A	0.0	N/A	223.0	N/A	0.0	N/A	34.0	N/A	190.0	N/A
pH (s.u.)	179	N/A	N/A	N/A	4.1	N/A	9.1	N/A	N/A	N/A	N/A	N/A	N/A	N/A
Total Phosphorus	176	172	0.29	0.4	0.0	00.0	4.3	13.0	0.14	0.13	1.0	1.12	2.8	11.5
Tot. Suspended Solids	173	169	163	100	0	0	6453	3600	30	17	576	319	3700	1888

[1] Applicants that did not report the units of measurement for the reported values of pollutants were not included in these statistics.
[2] Composite samples.

Oil and Grease, Total Suspended Solids, pH, Total Phosphorus, and Total Kjeldahl Nitrogen. The Agency considers these conventional pollutants appropriate for storm water discharges from industrial facilities. The Agency has also considered the appropriateness of controlling these pollutants for storm water discharges from construction activities. The Agency has concluded that the levels of BOD5, COD, oil and grease, and pH in storm water discharges from construction activities are not significantly different from the levels found in storm water discharges from industrial facilities. Therefore, the Agency has concluded that the application of BAT limitations for these pollutants is appropriate for storm water discharges from construction activities. The Agency has also concluded that the levels of total suspended solids, nitrate+nitrite nitrogen, total kjeldahl nitrogen, and total phosphorus in storm water discharges from construction activities are not significantly different from the levels found in storm water discharges from industrial facilities. However, the Agency has concluded that the application of BAT limitations for these pollutants is not appropriate for storm water discharges from construction activities. The Agency has concluded that the application of BAT limitations for these pollutants is not appropriate for storm water discharges from construction activities because the

Chemical Oxygen Demand (COD), pH, Oil and grease, and Total Suspended Solids (TSS) are conventional pollutants commonly associated with the industrial activities and materials used onsite at these manufacturing facilities. The data included in part 2 of the application indicate that the potential for discharges to contain significant levels of pollutants does not justify analytical analysis of storm water discharges under this permit from transportation equipment, industrial and commercial machinery manufacturers.

• Chemical Oxygen Demand (COD)—COD measures the total amount of oxygen necessary for oxidation. COD is an effective indicator of levels of biologically resistant organic substances. Higher COD levels, for example, may be attributed to the presence of biologically resistant organics, such as oil and grease. The statistically summarized part 2 data indicated the following results concerning COD at facilities which manufacture transportation equipment, industrial, or commercial machinery:

• Approximately 6 percent of the sampling facilities reported COD higher than 150 mg/L.

• The mean concentrations for grabs and composites were approximately 66.9 mg/L and 46.6 mg/L, respectively.

• The median concentrations for grabs and composites were approximately 36 mg/L and 29 mg/L, respectively.

• The 95th percentile concentration (i.e., 95 percent of the values are below) for grabs and composites were approximately 310 mg/L and 149.2 mg/L, respectively.

• The 99th percentile concentration (i.e., 99 percent of the values are below) for grabs and composite were 570 mg/L and 334 mg/L, respectively.

A review of additional part 2 data also revealed COD levels frequently below the most stringent storm water effluent guideline limitations. Therefore, EPA does not believe it is necessary to impose monitoring of COD.

• *Oil and Grease*—There are several sources of oil and grease from transportation equipment, industrial or commercial machinery manufacturing facilities. These sources include unloading/loading areas; vehicle/equipment maintenance and cleaning; and outdoor storage of vehicles, equipment and castings. Oil and grease emulsions are detrimental to aquatic organisms and inhabitants because: (1) deposition of oil and grease in bottom sediments can serve to inhibit normal benthic growths, impacting the aquatic food chain; (2) oil and grease emulsion may destroy algae or other plankton; (3) oil and grease emulsions may adhere to the gills of fish exerting a toxic effect to fish; and (4) water insoluble components damage the plumage and coats of aquatic animals and fowls. Floating oil may reduce the re-aeration of the water surface, and in conjunction with emulsified oil, may interfere with photosynthesis. In addition to environmental impacts, oil and grease impact the aesthetic qualities of water by forming unsightly surface slicks that affect water beaches and shorelines.

Part 2 oil and grease data that was statistically summarized for facilities which manufacture transportation equipment, industrial or commercial machinery indicate the following:

• The mean concentration was 7.5 mg/L.

• The 95th percentile concentration (i.e., 95 percent of the values are below) was 34 mg/L.

• The 99th percentile concentration (i.e., 99 percent of the values are below) was 190 mg/L.

The most stringent storm water effluent guidelines establish a limit of 15 mg/L of oil and grease in a discharge.[130] The statistically summarized part 2 data indicates that the mean and median concentration of oil and grease are below this limit and, therefore, EPA does not believe it is necessary to impose continued monitoring for oil and grease. Further supporting EPA's belief that oil and grease are not a pollutant of concern, a review of additional part 2 data revealed oil and grease values typically below the 15 mg/L limit established by the most stringent storm water effluent guideline limitations.

• *pH*—pH is a measure of the acidity or alkalinity of a discharge. On the pH scale ranging from zero to fourteen, a value of seven represents neutral conditions in which the concentrations of hydrogen and hydroxyl ions are equal. Values of pH less than seven represent acidic conditions; values greater than seven represent basic conditions.

The pH level is easily measured and is an indication of potential environmental impacts. Storm water discharges with pH values markedly different from the pH values of the receiving stream are potentially detrimental to the environment. At outfalls and prior to complete mixing of storm water discharges with receiving waters, a zone of sudden pH change can damage or kill biota engulfed in the zone of change.

[130] Per 40 CFR part 419.

Statistically summarized part 2 data indicate that approximately 5 percent of the sampling facilities reported a pH below 6.

The part 2 data indicates that pH concentration levels are inside the permitted range for wastewater discharges under effluent limitation guidelines. Additional part 2 data revealed a high frequency of pH values within the permitted range of wastewater discharges. Therefore, EPA does not believe monitoring for pH is justified.

• *Total Suspended Solids (TSS)*—TSS is associated with facilities which manufacture transportation equipment, industrial or commercial machinery because their sites are sparsely vegetated, and have a low percentage of impervious land areas and, therefore, are unstabilized. TSS in storm water discharges from these types of manufacturing facilities primarily consists of inorganic materials such as sand, silt, and limestone. Because suspended solids increase the turbidity of water, less light is able to penetrate the water, reducing photosynthetic activity of aquatic vegetation. Over time, total suspended solids settle out to form deposits that can be detrimental to stream environments. These deposits may destroy fauna that breed and grow in or near the bottoms of streams and serve as food for fish and other aquatic life. The deposits can also blanket and destroy spawning grounds for fish. The statistically summarized part 2 data indicated the following results concerning TSS from facilities which manufacture transportation equipment, industrial or commercial machinery:

• Approximately 5 percent of the sampling facilities reported TSS levels above 548 mg/L.

• The mean concentrations for grabs and composites were approximately 163 mg/L and 100 mg/L, respectively.

• The median concentrations for grabs and composites were approximately 30 mg/L and 17 mg/L, respectively.

• The 95th percentile concentration (i.e., 95 percent of the values are below) for grabs and composites were approximately 576 and 319, respectively.

• The 99th percentile concentration (i.e., 99 percent of the values are below) for grabs and composite were 3,700 mg/L and 1,868 mg/L, respectively.

A review of additional part 2 data showed TSS values generally below the 168 mg/L grab sample mean concentration. Therefore, data submitted in part 2 applications does not support continued monitoring of TSS.

• *Heavy Metals*—EPA is not proposing to require monitoring of metals by facilities covered under this section of today's proposed permit. As required by 40 CFR 122.26 (g)(ii) and (iii), group applicants were only required to sample for metals if the facility knew or had reason to believe they would be expected in the discharge. Of the part 2 data which was statistically summarized, less than 10 percent of the facilities submitting data reported on heavy metals.

EPA considers the high levels of heavy metals reported by certain facilities to be atypical of those experienced by the majority of facilities which manufacture transportation equipment, industrial or commercial machinery. Part 2 data indicated that facilities sampling for heavy metals typically reported concentrations below the most stringent storm water effluent guideline limitations. Therefore, EPA does not believe it is necessary to impose monitoring for heavy metals.

3. Options for Controlling Pollutants

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology)]. The Agency does not believe that it is appropriate to establish specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from facilities which manufacture transportation equipment, industrial or commercial machinery to meet BAT/BCT standards of the Clean Water Act. Instead, this section establishes requirements for the development and implementation of site-specific storm water pollution prevention plans consisting of a set of Best Management Practices (BMPs) that are sufficiently flexible to address different sources of pollutants at different sites.

Certain BMPs are implemented to prevent and/or minimize exposure of pollutants from industrial activities to storm water discharges. EPA believes the most effective BMPs for reducing pollutants in storm water discharges are exposure minimization practices. Exposure minimization practices lessen the potential for storm water to come into contact with pollutants. Good housekeeping practices ensure that facilities are sensitive to routine and nonroutine activities which may increase pollutants in storm water discharges. The BMPs which address good housekeeping and exposure minimization are easily implemented, inexpensive, and require little, if any, maintenance. BMP expenses may include construction of roofs for storage areas or other forms of permanent cover and the installation of berms/dikes. Other BMPs such as detention/retention ponds and filtering devices may be needed at these facilities because of the contaminant level in the storm water discharges. The types of BMPs implemented will depend on the type of discharge, types and concentrations of contaminants, and the volume of the flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with transportation equipment, industrial or commercial machinery manufacturers.

Part 1 group application data indicate that BMPs have not been widely implemented at the representative sampling facilities. Less than 25 percent of the sampling subgroup reported that they store some materials indoors; less than 10 percent cover loading areas, dumpsters, drums, or above ground tanks; less than 5 percent of the representative facilities utilize waste minimization practices (e.g., recycling or reusing materials).[131] Because BMPs described in part 1 data are limited, the following table is provided to identify BMPs associated with activities that routinely occur at facilities which manufacture transportation equipment, industrial or commercial machinery.

TABLE AB–3.—GENERAL STORM WATER BMPS FOR FACILITIES WHICH MANUFACTURE TRANSPORTATION EQUIPMENT, INDUSTRIAL, OR COMMERCIAL MACHINERY

Activity	Best management practices (BMPs)
Outdoor unloading and loading	Confine loading/unloading activities to a designated area. Consider performing loading/unloading activities indoors or in a covered area. Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps). Close storm drains during loading/unloading activities in surrounding areas. Avoid loading/unloading materials in the rain. Inspect the unloading/loading areas to detect problems before they occur. Inspect all containers prior to loading/unloading of any raw or spent materials. Consider berming, curbing, or diking loading/unloading areas. Use dry clean-up methods instead of washing the areas down. Train employees on proper loading/unloading techniques.
Outdoor material storage (including waste, and particulate emission management).	Confine storage of materials, parts, and equipment to designated areas. Consider curbing, berming, or diking all liquid storage areas. Train employees on proper waste control and disposal. Consider covering tanks. Ensure that all containers are closed (e.g., valves shut, lids sealed, caps closed). Wash and rinse containers indoors before storing them outdoors. If outside or in covered areas, minimize runon of storm water by grading the land to divert flow away from containers. Inventory all raw and spent materials. Clean around vents and stacks.

[131] These percentages were based on the information reported in the Part 1 group applications. However, some facilities which utilize these BMPs as part of their daily activities may not recognize these practices as BMPs and as a result did not report this information in their applications.

TABLE AB–3.—GENERAL STORM WATER BMPS FOR FACILITIES WHICH MANUFACTURE TRANSPORTATION EQUIPMENT, INDUSTRIAL, OR COMMERCIAL MACHINERY—Continued

Activity	Best management practices (BMPs)
	Place tubs around vents and stacks to collect particulate. Inspect air emission control systems (e.g., baghouses) regularly, and repair or replace when necessary. Store wastes in covered, leak proof containers (e.g., dumpsters, drums). Consider shipping all wastes to offsite landfills or treatment facilities. Ensure hazardous waste disposal practices are performed in accordance with Federal, State, and local requirements.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA, March 18, 1991 through December 31,1992.
EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

4. Special Conditions

There are no additional requirements under this section other than those stated in the general fact sheet language.

5. Storm Water Pollution Prevention Plan Requirements

EPA believes that pollution prevention is the most effective approach for controlling contaminated storm water discharges from facilities which manufacture transportation equipment, industrial or commercial machinery. The requirements included in the pollution prevention plans provide a flexible framework for the development and implementation of site-specific controls to minimize the pollutants in storm water discharges. This flexibility is necessary because each facility is unique in that the source, type, and volume of contaminated storm water discharge will vary from site to site.

Under today's proposed permit, all facilities must prepare and implement a storm water pollution prevention plan. The pollution prevention plan requirement reflects EPA's decision to allow operators of transportation equipment, industrial or commercial machinery manufacturing facilities to utilize BMPs as the BAT/BCT level of control for the storm water discharges covered by this section. The pollution prevention plan requirements in this section are consistent with EPA's storm water general permits finalized on September 9, 1992 (57 FR 41236), and September 25, 1992 (57 FR 44438), for discharges in nonauthorized NPDES States.

There are two major objectives to a pollution prevention plan: (1) To identify sources of pollution potentially affecting the quality of storm water discharges associated with industrial activity from a facility; and (2) to describe and ensure implementation of practices to minimize and control pollutants in storm water discharges associated with industrial activity from a facility.

Specific requirements for a pollution prevention plan for transportation equipment, industrial or commercial machinery manufacturing facilities are described below. These requirements must be implemented in addition to the baseline pollution prevention plan provisions discussed previously.

a. Contents of the plan. Storm water pollution prevention plans are intended to aid operators of transportation equipment, industrial or commercial machinery manufacturing facilities to evaluate all potential prevention sources at a site, and assist in the selection and implementation of appropriate measures designed to prevent, or control, the discharge of pollutants in storm water runoff. EPA has developed guidance entitled "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices," EPA, 1992, (EPA 832–R–92–006) to assist permittees in developing and implementing pollution prevention measures.

(1) Description of potential pollutant sources. Each storm water pollution prevention plan must describe activities, materials, and physical features of the facility that may contribute pollutants to storm water runoff or, during periods of dry weather, result in dry weather flows. This assessment of potential storm water pollutant source will support subsequent efforts to identify and set priorities for necessary changes in materials, materials management practices, or site features, as well as aid in the selection of appropriate structural and nonstructural control techniques. Plans must describe the following elements:

(a) Site map—The plan must contain a map of the site that shows the pattern of storm water drainage, structural and nonstructural features that control pollutants in storm water runoff and process wastewater discharges, surface water bodies (including wetlands), places where significant materials [12] are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map must also indicate the direction of storm water flow. An outline of the drainage area for each outfall must be provided; and the location of each outfall and monitoring points must be indicated. An estimation of the total site acreage utilized for each industrial activity (e.g., storage of raw materials, waste materials, and used equipment) must be provided. These areas include liquid storage tanks, stockpiles, holding bins, used equipment, and empty drum storage. These areas are considered to be significant potential sources of pollutants at facilities which manufacture transportation equipment, industrial or commercial machinery.

(b) Inventory of exposed materials—Facility operators are required to carefully conduct an inspection of the site to identify significant materials that are or may be exposed to storm water discharges. The inventory must address materials that within 3 years prior to the effective date of this permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or

[12] Significant materials include, "* * * but [are] not limited to: Raw materials, fuels, materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; . . . hazardous substances designated under section 101(14) of CERCLA; any chemical facilities are required to report pursuant to section 313 of Title III of SARA; fertilizers; pesticides; and waste products such as ashes, slag, and sludge that have the potential to be released with storm water discharge." (40 CFR 122.26(b)(12)). Significant materials commonly found at transportation equipment, industrial or commercial machinery manufacturing facilities include raw and scrap metals; solvents; used equipment; petroleum based products; waste materials or by-products used or created by the facility.

disposal; practices used to minimize contact of materials with precipitation and runoff; existing structural and nonstructural controls that reduce pollutants in storm water; existing structural controls that limit process wastewater discharges; and any treatment the runoff receives before it is discharged to surface waters or through a separate storm sewer system. The description must be updated whenever there is a significant change in the type or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

(c) Significant spills and leaks—The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of reportable quantities under Section 311 of CWA (see 40 CFR Section 110.10 and Section 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR Section 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

(d) Non-storm water discharges—Each pollution plan must include a certification, signed by an authorized individual, that discharges from the site have been tested or evaluated for the presence of non-storm water, the results of any test and/or evaluation conducted to detect such discharges, the test method or evaluation criteria used, the dates on which tests or evaluations were performed, and the onsite drainage points directly observed during the test or evaluation. Pollution prevention plans must identify and ensure the implementation of appropriate pollution prevention measures for any non-storm water discharges.

(e) Sampling data—Any existing data describing the quality or quantity of storm water discharges from the facility must be summarized in the plan. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

(f) Summary of potential pollutant sources—The description of potential pollutant sources should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such activities, materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: raw materials (liquid storage tanks, stockpiles, holding bins), waste materials (empty drum storage), and used equipment storage areas. The assessment must list any significant pollutant parameter(s) (i.e., total suspended solids, oil and grease, etc.) associated with each source.

(2) Measures and controls. Permittees must select, describe, and evaluate the pollution prevention measures, BMPs, and other controls that will be implemented at the facility. Source reduction measures include preventive maintenance, spill prevention, good housekeeping, training, and proper materials management. If source reduction is not an option, EPA supports the use of source control measures. These include BMPs such as material covering, water diversion, and dust control. If source reduction or source control are not available, then recycling or waste treatment are other alternatives. Recycling allows the reuse of storm water, while treatment lowers pollutant concentrations prior to discharge. Since the majority of transportation equipment, industrial or commercial machinery manufacturing occurs indoors, the BMPs identified above are geared towards only those activities occurring outdoors or otherwise have a potential to contribute pollutants to storm water discharges.

Pollution prevention plans must discuss the reasons each selected control or practice is appropriate for the facility and how each of the potential pollutant sources will be addressed. Plans must identify the time during which controls or practices will be implemented, as well the effect the controls or practices will have on storm water discharges from the site. At a minimum, the measures and controls must address the following components:

(a) Good housekeeping—Permittees must describe protocols established to reduce the possibility of mishandling chemicals or equipment and training employees in good housekeeping techniques. Specifics of this plan must be communicated to appropriate plant personnel.

(b) Preventive maintenance—Permittees are required to develop a preventive maintenance program that includes regular inspections and maintenance of storm water BMPs. Inspections should assess the effectiveness of the storm water pollution prevention plan. They allow facility personnel to monitor the components of the plan on a regular basis. The use of a checklist is encouraged, as it will ensure that all of the appropriate areas are inspected and provide documentation for recordkeeping purposes.

(c) Spill prevention and response procedures—Permittees are required to identify proper material handling procedures, storage requirements, containment or diversion equipment, and spill removal procedures to reduce exposure of spills to storm water discharges. Areas and activities which are high risks for spills at transportation equipment, industrial or commercial machinery manufacturing facilities include raw material unloading and product loading areas, material storage areas, and waste management areas. These activities and areas and their drainage points must be described in the plan.

(d) Inspections—Qualified personnel must inspect designated equipment and areas of the facility at the proper intervals specified in the plan. The plan should identify areas which have the potential to pollute storm water for periodic inspections. Records of inspections must be maintained onsite.

(e) Employee training—Permittees must describe a program for informing and educating personnel at all levels of responsibility of the components and goals of the storm water pollution prevention plan. A schedule for conducting this training should be provided in the plan. Where appropriate, contractor personnel must also be trained in relevant aspects of storm water pollution prevention. Topics for employee training should include good housekeeping, materials management, and spill response procedures.

(f) Recordkeeping and internal reporting procedures—Permittees must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. This includes the success and failure of BMPs implemented at the facility.

(g) Sediment and erosion control—Permittees must identify areas, due to topography, activities, soils, cover materials, or other factors that have a high potential for soil erosion. Measures to eliminate erosion must be identified in the plan.

(h) Management of runoff—Permittees must provide an assessment of traditional storm water management practices that divert, infiltrate, reuse, or otherwise manage storm water so as to reduce the discharge of pollutants. Based on this assessment, practices to control runoff from these areas must be

identified and implemented as required by the plan.

(3) Comprehensive site compliance evaluation. The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to: (1) confirm the accuracy of the description of potential sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of this section. Comprehensive site compliance evaluations must be conducted once a year for transportation equipment, industrial or commercial machinery manufacturing facilities. The individual(s) who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, never more than 12 weeks after completion of the inspection.

6. Numeric Effluent Limitation

There are no additional requirements under this section other than those stated in the general fact sheet language.

7. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44 (i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at facilities that manufacture transportation equipment, industrial, or commercial machinery. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspections of a storm water discharge from each outfall are required at transportation equipment, industrial, or commercial machinery manufacturing facilities. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspections must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for facilities that manufacture transportation equipment, industrial, or commercial machinery. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs. In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

8. Cost Estimates

There are no additional requirements under this section other than those stated in the general fact sheet language.

AC. Storm Water Discharges Associated With Industrial Activity From Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods

1. Discharges Covered Under This Section

This sector covers storm water discharges associated with industrial activity from facilities in major Standard Industrial Classification (SIC) groups 36 and 38, and industrial group 357.

Major SIC group 36 includes manufacturers of a broad range of electronic and electrical equipment and components, not including computer equipment. Specifically, this group includes manufacturers of electricity distribution equipment such as transformers and switch-gear, electrical industrial equipment such as motors and generators, household appliances, electric lighting and wiring equipment such as light bulbs and lighting fixtures, and audio and video equipment including phonograph records and audio tapes and disks. Also included are manufacturers of communication

equipment including telephone and telegraph equipment, radio and television equipment, electronic components such as printed circuit boards and semiconductors and related devices, and miscellaneous electrical items such as batteries and electrical equipment for automobiles.

Major SIC group 38 includes manufacturers of measuring, analyzing, and controlling instruments, photographic, medical and optical goods, and watches and clocks. Specifically, this group includes facilities which manufacture search, detection, navigation, or guidance systems such as radar and sonar equipment, measurement and control instruments and laboratory apparatus, surgical, medical and dental instruments and supplies, photographic equipment and supplies, and watches and clocks.

Computer and office equipment is included in industrial SIC group 357. This group includes manufacturers of computers, computer storage devices, and peripheral equipment for computers such as printers and plotters. Manufacturers of miscellaneous office machines are also included in this group.

The SIC codes of the facilities covered by this section are in category (xi) of the definition of storm water discharges associated with industrial activity. Storm water discharges from facilities in this category are only regulated where precipitation and storm water runon come into contact with areas associated with industrial activities, and significant materials. Significant materials include, but are not limited to, raw materials, waste products, fuels, finished products, intermediate products, by-products, and other materials associated with industrial activities.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Pollutants Found in Storm Water Discharges

a. Sources of pollutants. As discussed above, the SICs of the facilities in this sector fall into category (xi) of the definition of "storm water associated with industrial activity" found at 40 Code of Federal Regulations (CFR) 122.26(b)(14). As noted in the preamble to the final storm water regulations of November 16, 1990, most of the actual manufacturing and processing activity at these types of facilities normally occurs indoors (55 FR 48008).

Additional information concerning these manufacturing processes and the industrial sector itself can be found in the following documents:

- "Development Document for Effluent Limitations Guidelines and Standards for the Electrical and Electronics Components Point Source Category, Phase I," EPA 440/1–83/075.
- "Development Document for Effluent Limitations Guidelines and Standards for the Electrical and Electronic Components Point Source Category, Phase II," EPA 440/1–84/075.
- "Development Document for Existing Source Pretreatment Standards for the Electroplating Point Source Category," EPA 440/1–79/003.
- "Development Document for Effluent Limitations Guidelines and Standards for the Metal Finishing Point Source Category," EPA 440/1–83/091.

The types of activities at these facilities where exposure to storm water may occur consist primarily of loading/unloading activities, and the storage and handling of raw materials, by-products, final products or waste products. A wide variety of materials are used at these facilities including metals, acids used for chemical etching, alkaline solutions, solvents, various oils and fuels and miscellaneous chemicals. Tanks or drums of these materials may be exposed to storm water during loading/unloading operations, or through outdoor storage or handling at some facilities.

Liquid wastes which may be exposed at least temporarily include spent solvents and acids, miscellaneous chemicals and oily wastes. These wastes may be contaminated with a variety of heavy metals and chlorinated hydrocarbons. Used equipment, scrap metal and wire, soiled rags and sanding materials may also be exposed to storm water and constitute a potential source of pollutants. In addition, some facilities reported that dumpsters containing non-hazardous wastes or manufacturing debris may be exposed to storm water.

Table AC–1 lists potential pollutant sources from activities that commonly take place at facilities which manufacture electronic and electrical equipment and components, photographic and optical goods.

TABLE AC–1.—COMMON POLLUTANT SOURCES

Activity	Pollutant source	Pollutants
Outdoor Material Loading/Unloading	Wooden pallets, spills/leaks from material handling equipment, raw materials, finished products, solvents.	TSS, oil and grease, organics.
Outdoor Material and Equipment Storage.	Sulfuric acid, alkaline solutions, solvents, miscellaneous chemicals, oily wastes, lead, silver, copper, zinc, spent solvents and acids, scrap metal and wire, oily rags.	Organics, oil and grease, acids, alkalinity, heavy metals.

b. Storm water sampling results. Tables AC–2 and AC–3 summarize the storm water monitoring results for the basic parameters which were reported by facilities in this sector. Table AC–2 provides composite sample data and Table AC–3 provides the grab sample results.

TABLE AC–2.—COMPOSITE SAMPLE RESULTS

Pollutant	Units	Number of Samples	Mean	Min	Max	Median	95th Perc.	99th Perc.
BOD_5	mg/L	64	8.81	1.0	139.0	5.5	14.0	54.0
COD	mg/L	65	59.18	4.0	220.0	46.0	200.0	450.0
$NO_3 + NO_2$ nitrogen	mg/L	64	0.83	0.16	2.54	0.512	1.43	6.97
Total Kjeldahl nitrogen	mg/L	62	1.46	0.06	13.6	1.050	3.70	10.20
Oil and grease	mg/L	N/A	N/A	N/A	N/A	N/A	N/A	N/A
pH	s.u. ..	69	N/A	5.5	8.3	N/A	N/A	N/A
Total phosphorus	mg/L	64	7.43	0.01	44.4	0.132	1.2	80.10
TSS	mg/L	63	89.21	1.0	716.0	29.0	370.0	610.0

TABLE AC–3.—GRAB SAMPLE RESULTS

Pollutant	Units	Number of samples	Mean	Min	Max	Median	95th Perc.	99th Perc.
BOD_5	mg/L	64	8.81	0.0	54.0	5.50	32.0	54.0
COD	mg/L	65	59.18	0.0	450.0	46.0	170.0	450.0
$NO_3 + NO_2$ nitrogen	mg/L	64	0.83	0.00	6.97	0.512	2.8	6.97
Total Kjeldahl nitrogen	mg/L	62	1.46	0.0	10.2	1.05	4.29	10.20
Oil and grease	mg/L	69	0.58	0.00	9.0	0.0	5.0	9.0
pH	s.u ...	69	N/A	5.04	8.8	N/A	N/A	N/A
Total phosphorus	mg/L	64	1.50	0.01	80.1	0.132	1.1	80.10
TSS	mg/L	63	89.21	1.0	610.0	29.00	348.0	610.0

For the majority of the pollutants, the grab sample results are somewhat higher than the composite results indicating a moderate "first flush" effect. Overall, the results summarized in Table AC–3 do not differ substantially from the NURP results. As with the NURP results, these data indicate wide variability in the monitoring results.

EPA has also reviewed the monitoring results for nonconventional and priority toxic pollutants required by Parts B and C of Form 2F. Table AC–4 summarizes the results for parameters where at least some of the reported values exceeded NURP averages and may be a result of industrial activities at the facilities.

TABLE AC–4.—RESULTS FOR NONCONVENTIONAL AND PRIORITY TOXIC POLLUTANTS

Pollutant	Unit	Number of obs./detects grab samples	Range grab samples	Number of obs./detects comp. samples	Range composite samples	Range NURP
Copper	mg/L	54/24	0.00–1.00	50/14	0.00–.06	.001–.1
Lead	mg/L	60/24	0.00–.57	56/13	0.00–.17	0.006–.46
Silver	mg/L	52/4	0.00–0.01	48/3	0.00–0.01	0.0002–0.0008
Zinc	mg/L	51/38	0.00–1.1	48/37	0.00–1.2	.01–2.4

EPA contacted certain group members to try to determine more specifically the possible sources of the pollutants reported above. Copper is widely used in the manufacture of electrical products and was commonly detected in storm water samples. However, only one grab sample (10 mg/L) exceeded by a wide margin the weighted mean for copper (.43 mg/L) in Table AC–3 reported by the NURP study. In this case the cooper was thought to be a result of leaks associated with the maintenance of a waste tank containing copper. Other readings for copper which exceeded the NURP average were thought to result from factors such as the leaching of old pipes or from soils naturally high in copper.

One grab sample was reported in which lead was detected at a level (0.57 mg/L) which exceeded the range reported in the NURP study. However, the facility in question could not explain the result and indicated that minimal amounts of lead are used at the facility. Facilities which reported elevated levels in zinc were also uncertain as to the source; however, leaching of old pipes was suggested as a possibility.

One facility reported a concentration of 0.01 mg/L for silver in storm water runoff. Although a special silver based solder is used onsite, the facility could still not explain the monitoring result.

Facilities in this sector utilize and also conducted sampling for a wide variety of nonconventional and priority toxic pollutants in addition to those listed above. While the sampling results did not indicate any special concerns with regards to other pollutants, it should be noted that the above results are based on the limited sampling activity required by the group application regulations (40 CFR 122.26(c)(2)). Therefore, it would be premature to conclude that the above pollutants are the only pollutants that could ever be present at benchmark levels in the storm water discharges from facilities in this sector.

3. Options for Controlling Pollutants

In evaluating options for controlling pollutants in storm water discharges, EPA must achieve compliance with the technology-based standards of the Clean Water Act [Best Available Technology (BAT) and Best Conventional Technology)]. The Agency does not believe that it is appropriate to establish

specific numeric effluent limitations or a specific design or performance standard in this section for storm water discharges associated with industrial activity from facilities which manufacture electronic and electrical equipment and components, and photographic and optical goods to meet BAT/BCT standards of the Clean Water Act. Instead, this section establishes requirements for the development and implementation of site-specific storm water pollution prevention plans consisting of a set of Best Management Practices (BMPs) that are sufficiently flexible to address different sources of pollutants at different sites.

Certain BMPs are implemented to prevent and/or minimize exposure of pollutants from industrial activities to storm water discharges. EPA believes the most effective BMPs for reducing pollutants in storm water discharges are exposure minimization practices. Exposure minimization practices lessen the potential for storm water to come into contact with pollutants. Good housekeeping practices ensure that facilities are sensitive to routine and nonroutine activities which may increase pollutants in storm water discharges. The BMPs which address good housekeeping and exposure minimization are easily implemented, inexpensive, and require little, if any, maintenance. BMP expenses may include construction of roofs for storage areas or other forms of permanent cover and the installation of berms/dikes. Other BMPs such as detention/retention ponds and filtering devices may be needed at these facilities because of the contaminant level in the storm water discharges. The types of BMPs implemented will depend on the type of discharge, types and concentrations of contaminants, and the volume of the flow.

The selection of the most effective BMPs will be based on site-specific considerations such as: facility size, climate, geographic location, geology/hydrology and the environmental setting of each facility, and volume and type of discharge generated. Each facility will be unique in that the source, type, and volume of contaminated storm water discharges will differ. In addition, the fate and transport of pollutants in these discharges will vary. EPA believes that the management practices discussed herein are well suited mechanisms to prevent or control the contamination of storm water discharges associated with manufacturers of electronic and electrical equipment and components, and photographic and optical goods.

Part 1 group application data indicated that the most widely implemented BMPs are spill prevention and response techniques (used by approximately 68 percent of the sampling facilities) and waste minimization practices (employed by approximately 54 percent of the sampling facilities). However, less than 30 percent of the sampling subgroup reported that they use covering; approximately 3 percent have roofs over their raw materials; and less than 3 percent store raw materials indoors.[133] Because BMPs described in part 1 data are generally limited, Table AC–5 is provided to identify BMPs associated with activities that routinely occur at manufacturers of electronic and electrical equipment and components, and photographic and optical goods.

TABLE AC–5.—GENERAL STORM WATER BMPS FOR MANUFACTURERS OF ELECTRONIC AND ELECTRICAL EQUIPMENT AND COMPONENTS, PHOTOGRAPHIC AND OPTICAL GOODS

Activity	Best management practices (BMPs)
Outdoor Unloading and Loading	Confine loading/unloading activities to a designated area. Consider performing loading/unloading activities indoors or in a covered area. Consider covering loading/unloading area with permanent cover (e.g., roofs) or temporary cover (e.g., tarps). Close storm drains during loading/unloading activities in surrounding areas. Avoid loading/unloading materials in the rain. Inspect the unloading/loading areas to detect problems before they occur. Inspect all containers prior to loading/unloading of any raw or spent materials. Consider berming, curbing, or diking loading/unloading areas. Dead-end sump where spilled materials could be directed. Drip pans under hoses. Use dry clean-up methods instead of washing the areas down. Train employees on proper loading/unloading techniques and spill prevention and response.

[133] These percentages were based on the information reported in the Part 1 group applications. However, some facilities which utilize these BMPs as part of their daily activities may not recognize these practices as BMPs and as a result did not report this information in their applications.

TABLE AC–5.—GENERAL STORM WATER BMPS FOR MANUFACTURERS OF ELECTRONIC AND ELECTRICAL EQUIPMENT AND COMPONENTS, PHOTOGRAPHIC AND OPTICAL GOODS—Continued

Activity	Best management practices (BMPs)
Outdoor Material Storage (including waste, and particulate emission management).	Confine storage of materials, parts, and equipment to designated areas. Consider secondary containment using curbing, berming, or diking all liquid storage areas. Train employees in spill prevention and response techniques. Train employees on proper waste control and disposal. Consider covering tanks. Ensure that all containers are closed (e.g., valves shut, lids sealed, caps closed). Wash and rinse containers indoors before storing them outdoors. If outside or in covered areas, minimize runon of storm water by grading the land to divert flow away from containers. Leak detection and container integrity testing Direct runoff to onsite retention pond. Inventory all raw and spent materials. Clean around vents and stacks. Place tubs around vents and stacks to collect particulate. Inspect air emission control systems (e.g., baghouses) regularly, and repair or replace when necessary. Store wastes in covered, leak proof containers (e.g., dumpsters, drums). Consider shipping all wastes to offsite landfills or treatment facilities. Ensure hazardous waste disposal practices are performed in accordance with Federal, State, and local requirements.

Sources: NPDES Storm Water Group Applications—Part 1. Received by EPA, March 18, 1991, through December 31, 1992.
EPA, Office of Water. September 1992. "Storm Water Management for Industrial Activities: Developing Pollution Prevention Plans and Best Management Practices." EPA 832–R–92–006.

4. Special Conditions

There are no additional requirements under this section other than those stated in Part VI.B of this fact sheet.

5. Storm Water Pollution Prevention Plan Requirements

There are no additional requirements beyond those described in Part VI.C. of this fact sheet.

6. Numeric Effluent Limitations

No numeric effluent limitations are proposed for facilities in this sector, beyond those described in Part VI.F. of this fact sheet.

7. Monitoring and Reporting Requirements

a. Monitoring requirements. The regulatory modifications at 40 CFR 122.44(i)(2) established on April 2, 1992, grant permit writers the flexibility to reduce monitoring requirements in storm water discharge permits. EPA has determined that the potential for storm water discharges to contain pollutants above benchmark levels, because of the industrial activities and materials exposed to precipitation, does not support sampling at facilities that manufacture electronic and electrical equipment and components, photographic, and optical goods. Based on a consideration of the BMPs typically used at these facilities, and generally low pollutant values from the application data, EPA believes that the pollution prevention plan with visual observations of storm water discharges will help to ensure storm water contamination is minimized. Because permittees are not required to conduct sampling, they will be able to focus their resources on developing and implementing the pollution prevention plan.

Quarterly visual inspection of a storm water discharge from each outfall are required. The inspection must be of a grab sample collected from each storm water outfall. The examination of storm water grab samples shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen, or other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on these samples.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to runoff. EPA expects that, whenever practicable, the same individual should carry out the collection and examination of discharges throughout the life of the permit to ensure the greatest degree of consistency possible. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February; March to May; June to August; September to November. Grab samples shall be collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. Reports of the visual observation include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination. The visual observation reports must be maintained onsite with the pollution prevention plan.

EPA believes that this quick and simple assessment will help the permittee to determine the effectiveness of his/her plan on a regular basis at very little cost. Although the visual examination cannot assess the chemical properties of the storm water discharged from the site, the examination will provide meaningful results upon which the facility may act quickly. The frequency of this visual inspection will also allow for timely adjustments to be made to the plan. If BMPs are performing ineffectively, corrective action must be implemented. A set of tracking or follow-up procedures must be used to ensure that appropriate actions are taken in response to the inspections. The visual examination is intended to be performed by members of the pollution prevention team. This hands-on inspection will enhance the staff's understanding of the storm water problems on that site and the effects of the management practices that are included in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include

weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

As discussed above, EPA does not believe that chemical monitoring is necessary for facilities that manufacture electronic and electrical equipment and components, photographic, and optical goods. EPA believes that between quarterly visual inspections and site compliance evaluations potential sources of contaminants can be recognized, addressed, and then controlled with BMPs In determining the monitoring requirements, EPA considered the nature of the industrial activities and significant materials exposed at these sites, and performed a review of data provided in Part 2 group applications.

8. Alternative Monitoring Requirements

EPA requests comment upon the following monitoring and reporting requirements in lieu of those listed in Part XI.AC. of today's proposed permit.

a. Annual monitoring requirements. During the period beginning on the effective date and lasting through the expiration date of this permit, and except as provided in VI.E.3., 6. and 7. (Sampling Waiver, Representative Discharge, and Alternative Certification), or VIII.AC.8.c. (Exemptions From Storm Water Monitoring), facilities covered under this section of the permit shall monitor storm water discharges associated with industrial activity once per year for the following pollutants:

- Oil and grease, COD, TSS, and pH;, and
- Any additional toxic pollutants that the permittee finds in the Description of Potential Pollutant Sources [Section VI.C.2 above] and may be present in storm water discharges in significant quantities.

Permittees must retain monitoring results in accordance with Part VI.E.4. (Retention of Records). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

b. Sample type. All samples shall be collected as grab samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

c. Exemptions from storm water monitoring. Storm water monitoring may be discontinued on a pollutant-by-pollutant basis for the pollutants specified in VIII.AC.8. above if two successive samples indicate that a particular pollutant is not present in significant quantities. Monitoring may be discontinued entirely if two successive samples indicate that no pollutants are found in significant quantities.

d. Quarterly visual examination of storm water runoff. (1) On a quarterly basis, permittees shall conduct a visual examination of storm water discharges from each outfall which discharges storm water associated with industrial activity. If the facility has two or more outfalls with substantially identical effluents (based on a consideration of industrial activity, significant materials, and management practices and activities in the area drained by the outfall), the visual examination may be conducted on only one such outfall.

(2) The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to produce a runoff event. Examinations shall be conducted in each of the following periods for purposes of inspecting storm water quality associated with storm water runoff and snow-melt: December to February (storm water runoff or snow-melt); March to May (storm water runoff); June to August (storm water runoff); and September to November (storm water runoff or snow-melt).

(3) Examinations shall be conducted within the first 30 minutes (or as soon thereafter as practical, but not to exceed 60 minutes) of when the runoff begins discharging. The examinations shall include any observations of color, odor, turbidity, floating solids, foam, oil sheen or other obvious indications of storm water pollution. No analytical tests are required to be performed. Examinations shall be conducted so as to provide a reasonable representation of the nature of a typical storm water discharge at that site during that time of year.

(4) Information must be maintained onsite and include: the examination date and time, examination personnel, visual quality of the storm water discharge, and probable sources of any observed storm water contamination.

IX. Paperwork Reduction Act

EPA has reviewed the requirements imposed on regulated facilities in this proposed multi-sector general permit under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq. The information collection requirements in today's permit have already been approved by the Office of Management and Budget (OMB) in previous submissions made for the NPDES permit program under the provisions of the Clean Water Act.

X. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, 5 U.S.C. 601 et seq., EPA is required to prepare a Regulatory Flexibility Analysis to assess the impact of rules on small entities. Under 5 U.S.C. 605(b), no Regulatory Flexibility Analysis is required, however, where the head of the Agency certifies that the rule will not have a significant economic impact on a substantial number of small entities.

Today's proposed permit will provide any small entity the opportunity to obtain storm water permit coverage as a result of the group application process. Group applications provided small entities a mechanism to reduce their permit application burden by grouping together with other industrial facilities and submitting a common permit application with reduced monitoring requirements and shared costs. The group application information submitted to EPA provided a basis for the development of storm water permit conditions tailored specifically for each industry. The permit requirements have been designed to minimize significant administrative and economic impacts on small entities and should not have a significant impact on industry in general. In addition, small entities and other industrial facilities are encouraged to review and comment on the terms and conditions of the proposed permit and assess the feasibility of permit compliance. Moreover, the proposed permit reduces a significant burden on regulated sources of applying for individual permits.

Accordingly, I hereby certify pursuant to 5 U.S.C. 605(b) that this permit will not have a significant impact on a substantial number of small entities.

Authority: Clean Water Act, 33 U.S.C. 1251 *et seq.*

Dated: October 19, 1993.

Paul G. Keough,

Acting Regional Administrator, Region I.

Dated: October 27, 1993.

Kathleen Callahan,

Acting Regional Administrator, Region II.

Dated: October 28, 1993.

Alvin R. Morris,

Acting Regional Administrator, Region 3.

Dated: October 26, 1993.

Patrick M. Tobin,

Acting Regional Administrator, Region 4.

Dated: October 27, 1993.

Joe D. Winkle,

Acting Regional Administrator, Region 6.

Dated: October 27, 1993.

Jack W. McGraw,

Acting Regional Administrator, Region 8.

Dated: October 28, 1993.

John Wise,

Regional Administrator, Region 9.

Dated: October 29, 1993.

Gerald A. Emison,

Regional Administrator, Region 10.

Authorization to Discharge Under the National Pollution Discharge Elimination System

In compliance with the provisions of the Clean Water Act, as amended, (33 U.S.C. 1251 et seq., the "Act") except as provided in part I.B.3. of this storm water multi-sector general permit, operators of point source discharges of storm water associated with industrial activity that discharge into waters of the United States, represented by the industry sectors identified in part XI. of this permit, are authorized to discharge in the areas of coverage listed below in accordance with the conditions and requirements set forth herein.

Operators of storm water discharges from the industrial activities covered under this permit who intend to be authorized by this permit must submit an Notice of Intent (NOI) in accordance with part II.B. of this permit. Operators of storm water discharges associated with industrial activity who fail to submit an NOI with part II.B. of this permit are not authorized under this general multi-sector permit.

This permit shall become effective on *[leave blank]*, and shall expire at midnight on *[enter five years from effective date]*.

Region I

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
Connecticut Indian Lands ..	CTR05*##F
Maine	MER05*###
Indian Lands	MER05*##F
Massachusetts	MAR05*###
Indian Lands	MAR05*##F
New Hampshire	NHR05*###
Indian Lands	NHR05*##F
Rhode Island Indian Lands	RIR05*##F
Vermont Indian Lands	VTR05*##F
Vermont Federal Facilities	VTR05*###

Region II

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
New York Indian Lands	NYR05*##F
Puerto Rico	PRR05*###
Virgin Islands Federal Facilities.	VIR05*##F

Region III

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
District of Columbia	DCR05*###
Delaware Federal Facilities	DER05*##F

Region IV

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
Alabama Indian Lands	ALR05*##F
Florida	FLR05*###
Indian Lands	FLR05*##F
Mississippi Indian Lands	MSR05*##F
North Carolina Indian Lands.	NCR05*##F

Region VI

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
Louisiana	LAR05*###
Indian Lands	LAR05*##F
New Mexico	NMR05*###
Indian Lands (except Navajo lands and (Ute Mountain Reservation lands).	NMR05*###
Oklahoma	OKR05*###
Indian Lands	OKR05*##F
Texas	TXR05*###
Indian Lands	TXR05*##

Region VIII

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
Colorado Indian Lands	COR05*##F
Colorado Federal Facilities	COR05*##F
Montana Indian Lands	MTR05*##F
Nebraska Pine Ridge Reservation.	SDR05*###
New Mexico	
Ute Mountain Reservation.	COR05*##F
North Dakota Indian Lands except Lake Traverse Reservation (Sisseton Reservation).	NDR05*##F
Lake Traverse Reservation (Sisseton Reservation).	SDR05*##F
South Dakota	
All of South Dakota except for Standing Rock Reservation.	SDR05*###
Standing Rock Reservation.	NDR05*###
Utah Indian Lands (except Goshute Reservation and Navajo Reservation lands).	UTR05*##F
Wyoming Indian Lands	WYR5*##F

Region IX:

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
Arizona	AZR05*###
Indian Lands	AZR05*##F
California	
Indian Lands	CAR05*##F
Idaho	
Duck Valley Reservation	NVR05*##F
New Mexico	
Navajo Reservation	AZR05*##F
Oregon	
Fort McDermitt Reservation.	NVR05*##F
Utah	
Goshute Reservation	NVR05*##F
Navajo Reservation	AZR05*##F
American Samoa	ASR05*###
Guam	GUR05*###
Johnston Atoll	JAR05*###
Midway Island and Wake Island.	MWR05*###
Commonwealth of the Northern Mariana Islands.	NIR05*###
Republic of Palau	TTR05*###

Region X:

Signed this ___ day of ___, 1994.
[To Be Signed When Final]
Water Management Division Director

Areas of coverage	Permit No.
Alaska	AKR05*###
Indian Lands	AKR05*##F
Federal Facilities	AKR05*###
Idaho	IDR05*###
Indian Lands (except Duck Valley Reservation lands).	IDR05*##F

Areas of coverage	Permit No.
Federal Facilities	IDR05*###
Oregon Indian Lands (except for Fort McDermitt Reservation lands).	ORR05*##F
Washington Indian Lands	WAR05*##I
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NPDES General Permit for Storm Water Discharges From Industrial Activities

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3. Storm Water Pollution Prevention Plan Requirements
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2. Special Conditions
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1. Discharges Covered Under This Section
2. Special Conditions
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5. Monitoring and Reporting Requirements
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1. Discharges Covered Under This Section
2. Special Conditions
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1. Discharges Covered Under This Section
2. Special Conditions
3. Storm Water Pollution Prevention Plan Requirements
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1. Discharges Covered Under This Section
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3. Storm Water Pollution Prevention Plan Requirements
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W. Storm Water Discharges Associated With Industrial Activity From Wood and Metal Furniture and Fixture Manufacturing Facilities
1. Discharges Covered Under This Section
2. Special Conditions
3. Storm Water Pollution Prevention Plan Requirements
4. Numeric Effluent Limitations
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1. Discharges Covered Under This Section
2. Special Conditions
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4. Numeric Effluent Limitations
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1. Discharges Covered Under This Section
2. Special Conditions
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1. Discharges Covered Under This Section
2. Special Conditions
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4. Numeric Effluent Limitations
5. Monitoring and Reporting Requirements
AA. Storm Water Discharges Associated With Industrial Activity From Fabricated Metal Products Industry
1. Discharges Covered Under This Section
2. Special Conditions
3. Storm Water Pollution Prevention Plan Requirements
4. Numeric Effluent Limitations
5. Monitoring and Reporting Requirements
AB. Storm Water Discharges Associated With Industrial Activity From Facilities That Manufacture Transportation Equipment, Industrial, or Commercial Machinery
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2. Special Conditions
3. Storm Water Pollution Prevention Plan Requirements
4. Numeric Effluent Limitations
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Addenda

Addendum A—Pollutants Identified in Tables II and III of Appendix D of 40 CFR part 122

Addendum B—Notice of Intent (NOI) Form (an NOI will not appear in today's proposed permit but will be included in the final rule)
Addendum C—Notice of Termination (NOT) Form (an NOT will not appear in today's proposed permit but will be included in the final rule)
Addendum D—Large, Medium, and Designated Municipalities
Addendum E—Basic Format for Environmental Assessment
Addendum F—Section 313 Water Priority Chemicals
Addendum G—Region-Specific Permit Conditions

I. Coverage Under This Permit

A. Permit Area

The permit covers all areas of:

Region I—for the States of Maine, Massachusetts, and New Hampshire; for Indian lands located in Connecticut, Massachusetts, New Hampshire, Maine, Rhode Island, and Vermont; and for Federal facilities in Vermont.

Region II—for the Commonwealth of Puerto Rico; for Indian lands located in New York; and for Federal facilities in the U.S. Virgin Islands.

Region III—for the District of Columbia and for Federal facilities in Delaware.

Region IV—for the State of Florida; and for Indian lands located in Alabama, Florida, Mississippi, and North Carolina.

Region VI—for the States of Louisiana, New Mexico, Oklahoma, and Texas; and for Indian lands located in Louisiana, New Mexico (except Navajo lands and Ute Mountain Reservation lands), Oklahoma, and Texas.

Region VIII—for the State of South Dakota; for Indian lands located in Colorado, Montana, North Dakota, South Dakota, Utah (except Goshute Reservation and Navajo Reservation lands), and Wyoming; for the portion of the Pine Ridge Reservation located in Nebraska; for the Ute Mountain Reservation in Colorado and New Mexico; and for Federal facilities in Colorado.

Region IX—for the State of Arizona; for the Territories of American Samoa, Guam, Johnston Atoll, and Midway and Wake Island; for the Commonwealth of the Northern Mariana Islands; for the Republic of Palau (Trust Territory of the Pacific Islands); and for Indian lands located in California and Nevada; and for the Goshute Reservation in Utah and Nevada, the Navajo Reservation in Utah, New Mexico, and Arizona, the Duck Valley Reservation in Nevada and Idaho; and the Fort McDermitt Reservation in Oregon and Nevada.

Region X—for the State of Alaska, and Idaho; for Indian lands located in Alaska, Oregon (except for Fort McDermitt Reservation lands), Idaho (except Duck Valley Reservation lands), and Washington; and for Federal facilities in Washington.

B. Eligibility

1. Discharges covered. Except for storm water discharges identified under paragraph I.B.3., this permit may cover all new and existing point source discharges of storm water to waters of the United States that are associated with industrial activity identified under the eligibility sections contained in Part XI. (see Table 1).

TABLE 1

Storm water discharges from	Are eligible for coverage if listed in part
Timber Products Facilities	XI.A.1.
Paper and Allied Products Manufacturing Facilities	XI.B.1.
Chemical and Allied Products Manufacturing Facilities	XI.C.1.
Asphalt Paving, Roofing Materials, and Lubricant Manufacturing Facilities	XI.D.1.
Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities	XI.E.1.
Primary Metals Facilities	XI.F.1.
Metal Mines (Ore Mining and Dressing)	XI.G.1.
Coal Mines and Coal Mine-Related Facilities	XI.H.1.
Oil or Gas Extraction Facilities	XI.I.1.
Mineral Mining and Processing Facilities	XI.J.1.
Hazardous Waste Treatment Storage or Disposal Facilities	XI.K.1.
Landfills and Land Application Sites	XI.L.1.
Automobile Salvage Yards	XI.M.1.
Scrap and Waste Material Processing and Recycling Facilities	XI.N.1.
Steam Electric Power Generating Facilities	XI.O.1.
Vehicle Maintenance or Equipment Cleaning areas at Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, the United States Postal Service, or Railroad Transportation Facilities.	XI.P.1.
Vehicle Maintenance Areas and Equipment Cleaning Areas of Water Transportation Facilities	XI.Q.1.
Ship or Boat Building and Repair Yards	XI.R.1.
Vehicle Maintenance Areas, Equipment Cleaning Areas or From Airport Deicing Operations located at Air Transportation Facilities.	XI.S.1.
Wastewater Treatment Works	XI.T.1.
Food and Kindred Products Facilities	XI.U.1.
Textile Mills, Apparel and other Fabric Product Manufacturing Facilities	XI.V.1.
Furniture and Fixture Manufacturing Facilities	XI.W.1.
Printing and Publishing Facilities	XI.X.1.
Rubber and Miscellaneous Plastic Product Manufacturing Facilities	XI.Y.1.
Leather Tanning and Finishing Facilities	XI.Z.1.
Facilities That Manufacture Metal Products including Jewelry, Silverware and Plated Ware	XI.AA.1.
Facilities That Manufacture Transportation Equipment, Industrial or Commercial Machinery	XI.AB.1.
Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods	XI.AC.1.

2. Construction. This permit may authorize storm water discharges associated with industrial activity that are mixed with storm water discharges associated with industrial activity from construction activities provided that the storm water discharge from the construction activity is authorized by and in compliance with the terms of a

different NPDES general permit or individual permit authorizing such discharges.

3. Limitations on coverage. The following storm water discharges associated with industrial activity are not authorized by this permit:

a. Storm water discharges associated with industrial activities that are not listed under the eligibility sections contained in Part XI. (see Table 1).

b. Storm water discharges subject to New Source Performance Standards except as provided in Part I.B.7. below.

c. Storm water discharges associated with industrial activity that are mixed with sources of non-storm water other than non-storm water discharges that are:

(1) In compliance with a different NPDES permit; or

(2) Identified by and in compliance with Part III.A. (Prohibition of Non-storm Water Discharges) of this permit.

d. Storm water discharges associated with industrial activity that are subject to an existing NPDES individual or general permit (except storm water discharges subject to the NPDES General Permit for Storm Water Discharges Associated With Industrial Activity published September 9, 1992 [57 FR 41297], or September 25, 1992 [57 FR 44438]), are located at a facility where an NPDES permit has been terminated (other than at the request of the permittee) or denied, or that are issued a permit in accordance with Part VII.M (Requirements for Individual or Alternative General Permits) of this permit;

e. Storm water discharges associated with industrial activity that the Director [U.S. Environmental Protection Agency (EPA)] has determined to be or may reasonably be expected to be contributing to a violation of a water quality standard;

4. Storm water not associated with industrial activity. Storm water discharges associated with industrial activity that are authorized by this permit may be combined with other sources of storm water that are not classified as associated with industrial activity pursuant to 40 CFR 122.26(b)(14).

5. Endangered species protection. In order to be eligible for coverage under this permit, the applicant must ensure compliance with the Endangered Species Act. A discharge of storm water associated with industrial activity may be covered under this permit only if either:

(i) The storm water discharge has no direct or indirect effect on a listed endangered or threatened species or its designated critical habitat, or

(ii) The applicant has obtained and is in compliance with an effective incidental take permit issued by either the U.S. Fish and Wildlife Service or National Marine Fisheries Service pursuant to Section 10(a) of the Endangered Species Act.

6. National Historic Preservation Act. In order to be eligible for coverage under this permit, the applicant must ensure compliance with the National Historic Preservation Act. A discharge of storm water associated with industrial activity may be covered under this permit only if either:

(i) The storm water discharge will not disturb a site that is listed or is eligible for listing in the National Historic Register maintained by the Secretary of Interior, or

(ii) The applicant has obtained and is in compliance with a written agreement between the applicant and the State Historic Preservation Officer (SHPO) that is signed by the SHPO and that outlines all measures to be undertaken by the applicant to mitigate or prevent adverse effects to the historic site.

7. Discharges subject to new source performance standards. Operators of facilities with storm water discharges subject to New Source Performance Standards [1] shall have documentation of a final Agency decision indicating that the Agency has determined that the storm water discharge has no direct or indirect impact. This documentation shall be obtained and retained on site prior to the submittal of the Notice of Intent. Operators of these facilities shall not be authorized under the terms and conditions of this permit until the submittal of a Notice of Intent to gain coverage under this permit. Where documentation of the Agency's decision has not been obtained for a facility subject to New Source Performance Standards, the operator must obtain such documentation prior to submitting an NOI. The permittee may use the format in Addendum E to submit information to EPA to initiate the process of the environmental review. The information shall be sent to the appropriate address listed in Part VI.B. of this permit. In order to maintain eligibility, the permittee must implement any mitigation required of the facility as a result of the NEPA review process. Failure to implement mitigation measures upon which the Agency's NEPA finding is based is grounds for termination of permit coverage.

C. Authorization

Dischargers of storm water associated with industrial activity must submit an NOI in accordance with the requirements of Part II of this permit, using an NOI form as found in Addendum C (or photocopy thereof), to be authorized to discharge under this general permit.[2] Unless notified by the Director to the contrary, owners or operators who submit such notification are authorized to discharge storm water associated with industrial activity under the terms and conditions of this permit 2 days after the date that the NOI is postmarked. The Director may deny coverage under this permit and require submittal of an application for an individual NPDES permit based on a review of the NOI or other information.

II. Notice of Intent Requirements

A. Deadlines for Notification

1. Existing facility. Except as provided in paragraphs II.A.4. (New Operator), and II.A.5. (Late Notification), individuals who intend to obtain coverage for an existing storm water discharge associated with industrial activity under this general permit shall submit an NOI in accordance with the requirements of this part on or before [insert date 90 days after permit finalization];

2. New facility. Except as provided in paragraphs II.A.3. (Oil and Gas Operations), II.A.4. (New Operator), and II.A.5. (Late Notification), operators of facilities that begin industrial activity after [insert date 90 days after permit finalization] shall submit an NOI in accordance with the requirements of this part at least 2 days prior to the commencement of the industrial activity at the facility;

3. Oil and gas operations. Operators of oil and gas exploration, production, processing, or treatment operations or transmission facilities, that are not required to submit a permit application as of [insert date 90 days after permit finalization] in accordance with 40 CFR

[1] Storm water discharges subject to New Source Performance Standards (NSPS) and that may be covered under this permit include: runoff from material storage piles at cement manufacturing facilities [40 CFR Part 411 Subpart C (established February 23, 1977)]; contaminated runoff from phosphate fertilizer manufacturing facilities [40 CFR Part 418 Subpart A (established April 8, 1974)]; coal pile runoff at steam electric generating facilities [40 CFR Part 423 (established November 19, 1982)]; and runoff from asphalt emulsion facilities [40 CFR Part 443 Subpart A (established July 24, 1975)]. NSPS apply only to discharges from those facilities or installations that were constructed after the promulgation of NSPS. For example, storm water discharges from areas where the production of asphalt paving and roofing emulsions occurs are subject to NSPS only if the asphalt emulsion facility was constructed after July 24, 1975.

[2] A copy of the approved NOI form is not provided in today's proposed permit; however, it will be included in Addendum C of the final notice.

122.26(c)(1)(iii), but that after [insert date 90 days after permit finalization] have a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6, 40 CFR 117.21, or 40 CFR 302.6, must submit an NOI in accordance with the requirements of Part II.C. of this permit within 14 calendar days of the first knowledge of such release.

4. New operator. Where the operator of a facility with a storm water discharge associated with industrial activity that is covered by this permit changes, the new operator of the facility must submit an NOI in accordance with the requirements of this part at least 2 days prior to the change.

5. Late notification. An operator of a storm water discharge associated with industrial activity is not precluded from submitting an NOI in accordance with the requirements of this part after the dates provided in Parts II.A.1., 2., 3., or 4. (above) of this permit. In such instances, EPA may bring appropriate enforcement actions.

B. Contents of Notice of Intent

The NOI shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit and shall include the following information:

1. Permit. An indication of which NPDES storm water general permit is being applied for;

2. Name. The operator's name, address, telephone number, and status as Federal, State, private, public, or other entity;

3. Location. The street address of the facility for which the notification is submitted. Where a street address for the site is not available, the location of the approximate center of the facility must be described in terms of the latitude and longitude to the nearest 15 seconds, or the quarter section, township and range (to the nearest quarter section);

4. Indian lands. An indication of whether the facility is located on Indian Lands;

5. Receiving water. The name of the receiving water(s), or if the discharge is through a municipal separate storm sewer, the name of the municipal operator of the storm sewer and the ultimate receiving water(s) for the discharge through the municipal separate storm sewer;

6. Co-permittee. The storm water general permit number if such a number has been issued to a co-permittee;

7. Monitoring. The monitoring status of the facility;

8. SIC code. Up to four 4-digit Standard Industrial Classification (SIC) codes that best represent the principal products produced or services rendered, or for hazardous waste treatment, storage or disposal facilities, land/disposal facilities that receive or have received any industrial waste, steam electric power generating facilities, or treatment works treating domestic sewage, a narrative identification of those activities;

9. Other permits. The permit number(s) of additional NPDES permit(s) for any discharge(s) (including non-storm water discharges) from the site that are currently authorized by an NPDES permit;

10. Eligibility certification. The following certification shall be signed in accordance with Part VII.G.

> I certify under penalty of law that I have read and understand the Part I.B. Eligibility requirements for coverage under the general NPDES Multi-sector storm water permit for which this Notice of Intent is being submitted, including those eligibility requirements relating to protection of; endangered or threatened species under the Endangered Species Act, and sites that are either listed or eligible for listing in the National Historic Register under the National Historic Preservation Act. To the best of my knowledge the discharges covered under this Notice are eligible for coverage. I further certify that I understand that continued authorization to discharge under this permit is contingent on maintaining eligibility as provided in Part I.B.;

11. Pollution prevention plan certification. For any facility that begins to discharge storm water associated with industrial activity after [insert date 270 days after permit finalization], a certification that a storm water pollution prevention plan has been prepared for the facility in accordance with Part IV. of this permit. (Do not include a copy of the plan with the NOI submission.)

C. Where to Submit

Facilities that discharge storm water associated with industrial activity must use an NOI form provided by the Director (or photocopy thereof). NOIs must be signed in accordance with Part VII.G. (Signatory Requirements) of this permit. NOIs are to be submitted to the Director of the NPDES program in care of the following address:

[Address to be provided in Final Notice.]

D. Additional Notification

Facilities that discharge storm water associated with industrial activity through large or medium municipal separate storm sewer systems (systems located in an incorporated city with a population of 100,000 or more, or in a county identified as having a large or medium system (see definition in Part X. of this permit and Addendum D of this notice)), or into a municipal separate storm sewer that has been designated by the permitting authority shall, in addition to filing copies of the NOI in accordance with paragraph II.C., submit signed copies of the NOI to the operator of the municipal separate storm sewer through which they discharge in accordance with the deadlines in Part II.A. (Deadlines for Notification) of this permit.

III. Special Conditions

A. Prohibition of Non-storm Water Discharges

1. Storm water discharges. Except as provided in paragraph III.A.2 (below), all discharges covered by this permit shall be composed entirely of storm water.

2. Non-storm water discharges. a. Except as provided in paragraph III.A.2.b (below), discharges of material other than storm water must be in compliance with an NPDES permit (other than this permit) issued for the discharge.

b. The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with Part IV. discharges from fire fighting activities; fire hydrant flushings; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown that does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled material has been removed) and where detergents are not used; air conditioning condensate; uncontaminated springs; uncontaminated ground water; and foundation or footing drains where flows are not contaminated with process materials such as solvents.

B. Releases in Excess of Reportable Quantities

1. Hazardous substances or oil. The discharge of hazardous substances or oil in the storm water discharge(s) from a facility shall be prevented or minimized in accordance with the applicable storm water pollution prevention plan for the facility. This permit does not relieve the permittee of the reporting requirements of 40 CFR Part 117 and 40 CFR Part 302. Except as provided in paragraph III.B.2 (Multiple Anticipated Discharges) of this permit, where a release containing a hazardous substance in an amount equal to or in excess of a reporting quantity established under either 40

CFR Part 117 or 40 CFR Part 302, occurs during a 24-hour period:

a. The discharger is required to notify the National Response Center (NRC) (800–424–8802; in the Washington, DC metropolitan area 202–426–2675) in accordance with the requirements of 40 CFR Part 117 and 40 CFR Part 302 as soon as he or she has knowledge of the discharge;

b. The storm water pollution prevention plan required under Part IV. (Storm Water Pollution Prevention Plans) of this permit must be modified within 14 calendar days of knowledge of the release to: Provide a description of the release, the circumstances leading to the release, and the date of the release. In addition, the plan must be reviewed by the permittee to identify measures to prevent the reoccurrence of such releases and to respond to such releases, and the plan must be modified where appropriate; and

c. The permittee shall submit within 14 calendar days of knowledge of the release a written description of: The release (including the type and estimate of the amount of material released), the date that such release occurred, the circumstances leading to the release, and steps to be taken in accordance with paragraph III.B.1.b. (above) of this permit to the appropriate EPA Regional Office at the address provided in Part VI.B. (Reporting: Where to Submit) of this permit.

2. Multiple anticipated discharges. Facilities that have more than one anticipated discharge per year containing the same hazardous substance in an amount equal to or in excess of a reportable quantity established under either 40 CFR Part 117 or 40 CFR Part 302, that occurs during a 24-hour period, where the discharge is caused by events occurring within the scope of the relevant operating system shall:

a. Submit notifications in accordance with Part III.B.1.b. (above) of this permit for the first such release that occurs during a calendar year (or for the first year of this permit, after submittal of an NOI); and

b. Shall provide in the storm water pollution prevention plan required under Part IV. (Storm Water Pollution Prevention Plan) a written description of the dates on which all such releases occurred, the type and estimate of the amount of material released, and the circumstances leading to the release. In addition, the plan must be reviewed to identify measures to prevent or minimize such releases and the plan must be modified where appropriate.

3. Spills. This permit does not authorize the discharge of hazardous substances or oil resulting from an onsite spill.

C. Co-located Industrial Activity

Co-located industrial activities located at facilities described in Part XI. of this permit are those activities that support the primary industrial activity of the facility. Storm water discharges from co-located industrial activities are authorized by this permit, provided that the industrial facility complies with the additive pollution prevention plan and monitoring requirements applicable to the co-located industrial activity. The operator of the facility shall determine which additional pollution prevention plan and monitoring requirements are applicable to the co-located industrial activity by examining the narrative descriptions of the sections in Part XI. of this permit.

IV. Storm Water Pollution Prevention Plans

A storm water pollution prevention plan shall be developed for each facility covered by this permit. Storm water pollution prevention plans shall be prepared in accordance with good engineering practices and in accordance with the factors outlined in 40 CFR 125.3(d)(2) or (3) as appropriate. The plan shall identify potential sources of pollution that may reasonably be expected to affect the quality of storm water discharges associated with industrial activity from the facility. In addition, the plan shall describe and ensure the implementation of practices that are to be used to reduce the pollutants in storm water discharges associated with industrial activity at the facility and to assure compliance with the terms and conditions of this permit. Facilities must implement the provisions of the storm water pollution prevention plan required under this part as a condition of this permit.

A. Deadlines for Plan Preparation and Compliance

1. Existing facilities. Except as provided in paragraphs 3., 4., and 5. (below), all existing facilities and new facilities that begin operation on or before [insert date 270 days after permit finalization] shall prepare and implement the plan by [insert date 270 days after permit finalization].

2. New facilities. Facilities that begin operation after [insert date 270 days after permit finalization] shall prepare and implement the plan prior to submitting the Notice of Intent.

3. Oil and gas facilities. Oil and gas exploration, production, processing or treatment facilities that are not required to submit a permit application on or before [insert date 90 days after permit finalization] in accordance with 40 CFR 122.26(c)(1)(iii), but after [insert date 270 days after permit finalization] have a discharge of a reportable quantity of oil or a hazardous substance for which notification is required pursuant to either 40 CFR 110.6 or 40 CFR 302.6, shall prepare and implement the plan on or before the date 60 calendar days after first knowledge of such release.

4. Facilities previously subject to the baseline general permit. Facilities previously subject to the NPDES General Permit for Storm Water Discharges Associated With Industrial Activity (57 FR 41297 or 57 FR 44438) shall continue to implement the storm water pollution prevention plan required by that permit. The plan shall be revised as necessary to address requirements under Part XI. of this permit no later than [insert date 270 days after permit finalization]. The revisions made to the plan shall be implemented on or before [insert date 270 days after permit finalization].

5. Measures that require construction. In cases where construction is necessary to implement measures required by the plan, the plan shall contain a schedule that provides compliance with the plan as expeditiously as practicable, but no later [insert date 3 years after permit finalization].

6. Extensions. Upon a showing of good cause, the Director may establish a later date in writing for preparing and compliance with a plan for a storm water discharge associated with industrial activity.

B. Signature and Plan Review

1. Signature/location. The plan shall be signed in accordance with Part VII.G. (Signatory Requirements), and be retained onsite at the facility that generates the storm water discharge in accordance with Part VII.P.2. (Retention of Records) of this permit. For inactive facilities, the plan may be kept at the nearest office of the permittee.

2. Availability. The permittee shall make plans available upon request to the Director, or authorized representative, or in the case of a storm water discharge associated with industrial activity that discharges through a municipal separate storm sewer system, to the operator of the municipal system.

3. Required modifications. The Director, or authorized representative, may notify the permittee at any time that the plan does not meet one or more of the minimum requirements of this part. Such notification shall identify those provisions of the permit that are not being met by the plan, and identify

which provisions of the plan requires modifications in order to meet the minimum requirements of this part. Within 30 days of such notification from the Director, (or as otherwise provided by the Director), or authorized representative, the permittee shall make the required changes to the plan and shall submit to the Director a written certification that the requested changes have been made.

C. Keeping Plans Current

The permittee shall amend the plan whenever there is a change in design, construction, operation, or maintenance, that has a significant effect on the potential for the discharge of pollutants to the waters of the United States or if the storm water pollution prevention plan proves to be ineffective in eliminating or significantly minimizing pollutants from sources identified under Part IV.D. (Contents of the Plan) of this permit, or in otherwise achieving the general objectives of controlling pollutants in storm water discharges associated with industrial activity. Amendments to the plan may be reviewed by EPA in the same manner as Part IV.B. (above).

D. Contents of the Plan

The contents of the pollution prevention plan shall comply with the requirements listed in the appropriate section of Part XI. (Specific Requirements for Industrial Activities). Table 2 lists the location of the plan requirements for the respective industrial activities. These requirements are cumulative. If a facility has co-located activities that are covered in more than one section of Part XI., that facility's pollution prevention plan must comply with the requirements listed in all applicable sections of this permit.

TABLE 2.—POLLUTION PREVENTION PLAN REQUIREMENTS

Storm water discharges from	Are subject to pollution prevention plan requirements listed in part
Timber Products Facilities	XI.A.3.
Paper and Allied Products Manufacturing Facilities	XI.B.3.
Chemical and Allied Products Manufacturing Facilities	XI.C.4.
Asphalt Paving, Roofing Materials, and Lubricant Manufacturing Facilities	XI.D.3.
Glass, Clay, Cement Concrete and Gypsum Product Manufacturing Facilities	XI.E.3.
Primary Metals Facilities	XI.F.3.
Metal Mines (Ore Mining and Dressing)	XI.G.3.
Coal Mines and Coal Mine-Related Facilities	XI.H.3.
Oil or Gas Extraction Facilities	XI.I.3.
Mineral Mining and Processing Facilities	XI.J.3.
Hazardous Waste Treatment Storage or Disposal Facilities	XI.K.3.
Landfills and Land Application Sites	XI.L.3.
Automobile Salvage Yards	XI.M.3.
Scrap and Waste Material Processing and Recycling Facilities	XI.N.3.
Steam Electric Power Generating Facilities	XI.O.3.
Vehicle Maintenance or Equipment Cleaning areas at Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, the United States Postal Service, or Railroad Transportation Facilities.	XI.P.3.
Vehicle Maintenance Areas and Equipment Cleaning Areas of Water Transportation Facilities	XI.Q.3.
Ship or Boat Building and Repair Yards	XI.R.3.
Vehicle Maintenance Areas, Equipment Cleaning Areas or From Airport Deicing Operations located at Air Transportation Facilities.	XI.S.3.
Wastewater Treatment Works	XI.T.3.
Food and Kindred Products Facilities	XI.U.3.
Textile Mills, Apparel and other Fabric Product Manufacturing Facilities	XI.V.3.
Furniture and Fixture Manufacturing Facilities	XI.W.3.
Printing and Publishing Facilities	XI.X.3.
Rubber and Miscellaneous Plastic Product Manufacturing Facilities	XI.Y.3.
Leather Tanning and Finishing Facilities	XI.Z.3.
Facilities That Manufacture Metal Products including Jewelry, Silverware and Plated Ware	XI.AA.3.
Facilities That Manufacture Transportation Equipment, Industrial or Commercial Machinery	XI.AB.3.
Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods	XI.AC.3.

E. Special Pollution Prevention Plan Requirements

In addition to the minimum standards listed in Part XI. of this permit (Special Requirements for Discharges Associated With Specific Industrial Activities), the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable State rules, regulations and guidelines:

1. Additional requirements for storm water discharges associated with industrial activity through municipal separate storm sewer systems serving a population of 100,000 or more—a. In addition to the applicable requirements of this permit, facilities covered by this permit must comply with applicable requirements in municipal storm water management programs developed under NPDES permits issued for the discharge of the municipal separate storm sewer system that receives the facility's discharge, provided the discharger has been notified of such conditions.

b. Permittees that discharge storm water associated with industrial activity through a municipal separate storm sewer system serving a population of 100,000 or more, or a municipal system designated by the Director shall make plans available to the municipal operator of the system upon request.

2. Additional requirements for storm water discharges associated with industrial activity from facilities subject to EPCRA section 313 requirements. In

addition to the requirements of Part XI. of this permit and other applicable conditions of this permit, storm water pollution prevention plans for facilities subject to reporting requirements under EPCRA Section 313 for chemicals that are classified as "Section 313 water priority chemicals" in accordance with the definition in Part X. of this permit shall describe and ensure the implementation of practices that are necessary to provide for conformance with the following guidelines:

a. In areas where Section 313 water priority chemicals are stored, processed or otherwise handled, appropriate containment, drainage control and/or diversionary structures shall be provided. At a minimum, one of the following preventive systems or its equivalent shall be used:

(1) Curbing, culverting, gutters, sewers, or other forms of drainage control to prevent or minimize the potential for storm water runon to come into contact with significant sources of pollutants; or

(2) Roofs, covers or other forms of appropriate protection to prevent storage piles from exposure to storm water and wind.

b. In addition to the minimum standards listed under Part IV.E.1.a. (above) of this permit, the storm water pollution prevention plan shall include a complete discussion of measures taken to conform with the following applicable guidelines, other effective storm water pollution prevention procedures, and applicable State rules, regulations, and guidelines:

(1) Liquid storage areas where storm water comes into contact with any equipment, tank, container, or other vessel used for section 313 water priority chemicals—(a) No tank or container shall be used for the storage of a Section 313 water priority chemical unless its material and construction are compatible with the material stored and conditions of storage such as pressure and temperature, etc.

(b) Liquid storage areas for Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 chemicals. Appropriate measures to minimize discharges of Section 313 chemicals may include secondary containment provided for at least the entire contents of the largest single tank plus sufficient freeboard to allow for precipitation, a strong spill contingency and integrity testing plan, and/or other equivalent measures.

(2) Material storage areas for section 313 water priority chemicals other than liquids. Material storage areas for Section 313 water priority chemicals other than liquids that are subject to runoff, leaching, or wind shall incorporate drainage or other control features that will minimize the discharge of Section 313 water priority chemicals by reducing storm water contact with Section 313 water priority chemicals.

(3) Truck and rail car loading and unloading areas for liquid section 313 water priority chemicals. Truck and rail car loading and unloading areas for liquid Section 313 water priority chemicals shall be operated to minimize discharges of Section 313 water priority chemicals. Protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks shall be provided as appropriate. Appropriate measures to minimize discharges of Section 313 chemicals may include: the placement and maintenance of drip pans (including the proper disposal of materials collected in the drip pans) where spillage may occur (such as hose connections, hose reels and filler nozzles) for use when making and breaking hose connections; a strong spill contingency and integrity testing plan; and/or other equivalent measures.

(4) Areas where section 313 water priority chemicals are transferred, processed, or otherwise handled. Processing equipment and materials handling equipment shall be operated so as to minimize discharges of Section 313 water priority chemicals. Materials used in piping and equipment shall be compatible with the substances handled. Drainage from process and materials handling areas shall minimize storm water contact with Section 313 water priority chemicals. Additional protection such as covers or guards to prevent exposure to wind, spraying or releases from pressure relief vents from causing a discharge of Section 313 water priority chemicals to the drainage system shall be provided as appropriate. Visual inspections or leak tests shall be provided for overhead piping conveying Section 313 water priority chemicals without secondary containment.

(5) Discharges from areas covered by paragraphs (1), (2), (3), or (4)—(a) Drainage from areas covered by paragraphs (1), (2), (3), or (4) of this part should be restrained by valves or other positive means to prevent the discharge of a spill or other excessive leakage of Section 313 water priority chemicals. Where containment units are employed, such units may be emptied by pumps or ejectors; however, these shall be manually activated.

(b) Flapper-type drain valves shall not be used to drain containment areas. Valves used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

(c) If facility drainage is not engineered as above, the final discharge of all in-facility storm sewers shall be equipped to be equivalent with a diversion system that could, in the event of an uncontrolled spill of Section 313 water priority chemicals, return the spilled material to the facility.

(d) Records shall be kept of the frequency and estimated volume (in gallons) of discharges from containment areas.

(6) Facility site runoff other than from areas covered by (1), (2), (3), or (4). Other areas of the facility (those not addressed in paragraphs (1), (2), (3), or (4)), from which runoff that may contain Section 313 water priority chemicals or spills of Section 313 water priority chemicals could cause a discharge shall incorporate the necessary drainage or other control features to prevent discharge of spilled or improperly disposed material and ensure the mitigation of pollutants in runoff or leachate.

(7) Preventive maintenance and housekeeping. All areas of the facility shall be inspected at specific intervals identified in the plan for leaks or conditions that could lead to discharges of Section 313 water priority chemicals or direct contact of storm water with raw materials, intermediate materials, waste materials or products. In particular, facility piping, pumps, storage tanks and bins, pressure vessels, process and material handling equipment, and material bulk storage areas shall be examined for any conditions or failures that could cause a discharge. Inspection shall include examination for leaks, wind blowing, corrosion, support or foundation failure, or other forms of deterioration or noncontainment. Inspection intervals shall be specified in the plan and shall be based on design and operational experience. Different areas may require different inspection intervals. Where a leak or other condition is discovered that may result in significant releases of Section 313 water priority chemicals to waters of the United States, action to stop the leak or otherwise prevent the significant release of Section 313 water priority chemicals to waters of the United States shall be immediately taken or the unit or process shut down until such action can be taken. When a leak or noncontainment of a Section 313 water priority chemical has occurred, contaminated soil, debris, or other material must be promptly removed and disposed in accordance with Federal, State, and local requirements and as described in the plan.

(8) Facility security. Facilities shall have the necessary security systems to prevent accidental or intentional entry that could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(9) Training. Facility employees and contractor personnel that work in areas where Section 313 water priority chemicals are use or stored shall be trained in and informed of preventive measures at the facility. Employee training shall be conducted at intervals specified in the plan, but not less than once per year, in matters of pollution control laws and regulations, and in the storm water pollution prevention plan and the particular features of the facility and its operation that are designed to minimize discharges of Section 313 water priority chemicals. The plan shall designate a person who is accountable for spill prevention at the facility and who will set up the necessary spill emergency procedures and reporting requirements so that spills and emergency releases of Section 313 water priority chemicals can be isolated and contained before a discharge of a Section 313 water priority chemical can occur. Contractor or temporary personnel shall be informed of facility operation and design features in order to prevent discharges or spills from occurring.

(10) Engineering certification. The storm water pollution prevention plan for a facility subject to EPCRA Section 313 requirements for chemicals that are classified as Section 313 water priority chemicals shall be reviewed and certified by a Registered Professional Engineer. The Registered Professional Engineer authorized to conduct the certification shall recertify the plan every 3 years thereafter or as soon as practicable after significant modifications are made to the facility. By means of these certifications, the Registered Professional Engineer, having examined the facility and being familiar with the provisions of this part, shall attest that the storm water pollution prevention plan has been prepared in accordance with good engineering practices. Such certifications shall in no way relieve the owner or operator of a facility covered by the plan of their duty to prepare and fully implement such plan.

3. Additional requirements for salt storage. Storage piles of salt used for deicing or other commercial or industrial purposes and that generate a storm water discharge associated with industrial activity that is discharged to waters of the United States shall be enclosed or covered to prevent exposure to precipitation, except for exposure resulting from adding or removing materials from the pile. Dischargers shall demonstrate compliance with this provision as expeditiously as practicable, but in no event later than [insert date 3 years after permit finalization]. Piles do not need to be enclosed or covered where storm water from the pile is not discharged to waters of the United States.

4. Consistency with other plans. Storm water pollution prevention plans may reference the existence of other plans for Spill Prevention Control and Countermeasure (SPCC) plans developed for the facility under Section 311 of the CWA or Best Management Practices (BMP) Programs otherwise required by an NPDES permit for the facility as long as such requirement is incorporated into the storm water pollution prevention plan.

V. Numeric Effluent Limitations

A. Discharges Associated With Specific Industrial Activity

Numeric effluent limitations for storm water discharges associated with a specific industrial activity are described in Part XI. of this permit.

B. Coal Pile Runoff

Any discharge composed of coal pile runoff shall not exceed a maximum concentration for any time of 50 mg/L total suspended solids. Coal pile runoff shall not be diluted with storm water or other flows in order to meet this limitation. The pH of such discharges shall be within the range of 6.0 to 9.0. Runoff from coal piles located at steam electric generating facilities shall be in compliance with these limits upon submittal of the Notice of Intent (NOI). Runoff from coal piles at all other types of facilities shall comply with these limitations as expeditiously as practicable, but in no case later than [insert date 3 years after permit finalization]. Any untreated overflow from facilities designed, constructed and operated to treat the volume of coal pile runoff that is associated with a 10-year, 24-hour rainfall event shall not be subject to the 50 mg/L limitation for total suspended solids.

VI. Monitoring and Reporting Requirements

A. Monitoring Requirements

1. Limitations on Monitoring Requirements—a. Except as required by paragraph b., only those facilities with discharges or activities identified in Part VI.C. and Part XI. are required to conduct sampling of their storm water discharges associated with industrial activity. Monitoring requirements under parts VI.C. and XI. are additive. Facilities with discharges or activities described in more than one monitoring section are subject to all applicable monitoring requirements.

b. The Director can provide written notice to any facility otherwise exempt from the sampling requirements of Parts VI.C. and XI. that it shall conduct discharge sampling for a specific monitoring frequency for specific parameters.

B. Reporting: Where to Submit

1. Location. Signed copies of discharge monitoring reports required under Parts XI. and VI.C., individual permit applications, and all other reports required herein, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office:

a. CT, MA, ME, NH, RI, VT, EPA, Region I, Water Management Division, (WCP–2109), Storm Water Staff, John F. Kennedy Federal Building, Room 2209, Boston, MA 02203.

b. NJ, NY, PR, VI, EPA, Region II, Water Management Division, (2WM–WPC), Storm Water Staff, 26 Federal Plaza, New York, NY 10278.

c. DE, DC, MD, PA, VA, WV, EPA, Region III, Water Management Division, (3WM55), Storm Water Staff, 841 Chestnut Building, Philadelphia, PA 19107.

d. FL and Indian Lands in AL, FL, MS, and NC, EPA, Region IV, Water Management Division, Permits Section (WPEB–7), 345 Courtland Street, NE, Atlanta, GA 30365.

e. AR, LA, NM (except see Region IX for Navajo lands, and see Region VIII for Ute Mountain Reservation lands), OK, TX, EPA, Region VI, Water Management Division, (6W–EA), Storm Water Staff, First Interstate Bank Tower at Fountain Place, 1445 Ross Avenue, 12th Floor, Suite 1200, Dallas, TX 75202.

f. CO, MT, ND, SD, WY, UT (except see Region IX for Goshute Reservation and Navajo Reservation lands) and Portions of Pine Ridge Reservation in Nebraska, EPA, Region VIII, NPDES Branch (8WM–C), 999 18th Street, Suite 500, Denver, CO 80202–2466.

Note—For Montana Indian Lands, please use the following address: EPA, Region VIII, Montana Operations Office, Federal Office Building, Drawer 10096, 301 South Park, Helena, MT 59620–0026.

g. AZ, CA, HI, NV, Guam, American Samoa, the Goshute Reservation in UT and NV, the Navajo Reservation in UT, NM, and AZ, the Duck Valley Reservation in NV and ID, EPA, Region

IX, Water Management Division, (W–5–1), Storm Water Staff, 75 Hawthorne Street, San Francisco, CA 94105.

b. AK, ID (except see Region IX for Duck Valley Reservation lands), OR (except see Region IX for Fort McDermitt Reservation lands), WA, EPA, Region X, Water Division, (WD–134), Storm Water Staff, 1200 Sixth Avenue, Seattle, WA 98101.

2. Additional notification. In addition to filing copies of discharge monitoring reports in accordance with Part VI.B. (Reporting: Where to Submit), facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) or a municipal system designated by the Director must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in Part XI. Facilities not required to report monitoring data under Part XI. and facilities that are not otherwise required to monitor their discharges, need not comply with this provision.

C. Special Monitoring Requirements

During the period beginning on the effective date and lasting through the expiration date of this permit, permittees with facilities and activities identified in Parts VI.C.1. (below) must monitor those storm water discharges identified below at least annually (1 time per year). Permittees with facilities identified in Parts VI.C.1. (below) must report in accordance with Part VI.B. (Reporting: Where to Submit). In addition to the parameters listed below, the permittee shall provide the date and duration (in hours) of the storm event(s) samples: rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event samples and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge samples.

1. Coal pile runoff. In addition to any monitoring required by Part XI., facilities with coal piles exposed to storm water shall monitor such storm water for: pH and TSS (mg/L).

2. Sample type. For discharges from holding ponds or other impoundments with a retention period greater than 24 hours (estimated by dividing the volume of the detention pond by the estimated volume of water discharged during the 24 hours previous to the time that the sample is collected), a minimum of one grab sample may be taken. For all other discharges, data shall be reported for a grab sample. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

3. Sampling waiver. When a discharger is unable to collect samples due to adverse climatic conditions, the discharger must submit in lieu of sampling data a description of why samples could not be collected, including available documentation of the event. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.). Dischargers are precluded from exercising this waiver more than once during a 2-year period.

4. Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, and the permittee reasonably believes substantially identical effluents are discharged, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. Permittees required to submit monitoring information under Part VIII. of this permit shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report. Permittees who received approval from the Environmental Protection Agency of a substantially identical outfall petition prior to submitting their application may submit a copy of the petition and the letter from the Permits Division of the NPDES Program Branch in lieu of the above information.

5. Alternative certification. A discharger is not subject to the monitoring requirements of Part VI. of this permit provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that coal piles that are located in areas of the facility that are within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.B. of this permit.

6. When to submit. Permittees subject to monitoring requirements under Part VI.A. shall submit monitoring results annually no later than the 28th day of [insert month following permit finalization].

VII. Standard Permit Conditions

A. Duty to Comply

1. *Permittee's duty to comply.* The permittee must comply with all conditions of this permit. Any permit noncompliance constitutes a violation of Clear Water Act and is grounds for enforcement action; for permit termination, revocation and reissuance, or modification; or for denial of a permit renewal application.

2. Penalties for violations of permit conditions a. Criminal—(1) Negligent violations. The CWA provides that any person who negligently violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $2,500 nor more than $25,000 per day of violation, or by imprisonment for not more than 1 year, or both.

(2) Knowing violations. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a fine of not less than $5,000 nor more than $50,000 per day of violation, or by imprisonment for not more than 3 years, or both.

(3) Knowing endangerment. The CWA provides that any person who knowingly violates permit conditions implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act and who knows at that time that he is placing another person in imminent danger of death or serious bodily injury is subject to a fine of not more than $250,000, or by imprisonment for not more than 15 years, or both.

(4) False statement. The CWA provides that any person who knowingly makes any false material statement, representation, or certification in any application, record, report, plan, or other document filed or required to be maintained under the Act or who knowingly falsifies, tampers with, or renders inaccurate, any monitoring device or method required to be maintained under the Act, shall upon conviction, be punished by a fine of not more than $10,000 or by imprisonment for not more than 2 years, or by both. If a conviction is for a violation committed after a first conviction of such person under this paragraph, punishment shall be by a fine of not more than $20,000 per day of violation, or by imprisonment of not more than 4 years, or by both. (See Section 309(c)(4) of the Clean Water Act).

b. Civil penalties. The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to a civil penalty not to exceed $25,000 per day for each violation.

c. Administrative penalties. The CWA provides that any person who violates a permit condition implementing Sections 301, 302, 306, 307, 308, 318, or 405 of the Act is subject to an administrative penalty, as follows:

(1) Class I penalty. Not to exceed $10,000 per violation nor shall the maximum amount exceed $25,000.

(2) Class II penalty. Not to exceed $10,000 per day for each day during which the violation continues nor shall the maximum amount exceed $125,000.

B. Continuation of the Expired General Permit

This permit expires on [insert date 5 years after permit finalization]. However, an expired general permit continues in force and effect until a new general permit is issued. Permittees that choose or are required, to obtain an individual permit must submit an application (Forms 1 and 2F and any other applicable forms) 180 days prior to expiration of this permit. Permittees that are eligible and choose to be covered by a new general permit must submit an NOI by the date specified in that permit.

C. Need to Halt or Reduce Activity Not a Defense

It shall not be a defense for a permittee in an enforcement action that it would have been necessary to halt or reduce the permitted activity in order to maintain compliance with the conditions of this permit.

D. Duty to Mitigate

The permittee shall take all reasonable steps to minimize or prevent any discharge in violation of this permit that has a reasonable likelihood of adversely affecting human health or the environment.

E. Duty to Provide Information

The permittee shall furnish to the Director, within a time specified by the Director, any information that the Director may request to determine compliance with this permit. The permittee shall also furnish to the Director upon request copies of records required to be kept by this permit.

F. Other Information

When the permittee becomes aware that he or she failed to submit any relevant facts or submitted incorrect information in the NOI or in any other report to the Director, he or she shall promptly submit such facts or information.

G. Signatory Requirements

All Notices of Intent, Notices of Termination, storm water pollution prevention plans, reports, certifications or information either submitted to the Director (and/or the operator of a large or medium municipal separate storm sewer system), or that this permit requires be maintained by the permittee, shall be signed.

1. Signature. All reports required by the permit and other information requested by the Director shall be signed as follows:

a. For a corporation: by a responsible corporate officer. For the purpose of this section, a responsible corporate officer means: (1) a president, secretary, treasurer, or vice-president of the corporation in charge of a principal business function, or any other person who performs similar policy or decision-making functions for the corporation; or (2) the manager of one or more manufacturing, production or operating facilities employing more than 250 persons or having gross annual sales or expenditures exceeding $25,000,000 (in second-quarter 1980 dollars) if authority to sign documents has been assigned or delegated to the manager in accordance with corporate procedures;

b. For a partnership or sole proprietorship: by a general partner or the proprietor, respectively; or

c. For a municipality: State, Federal, or other public facility: by either a principal executive officer or ranking elected official. For purposes of this section, a principal executive officer of a Federal agency includes (1) the chief executive officer of the agency, or (2) a senior executive officer having responsibility for the overall operations of a principal geographic unit of the agency (e.g., Regional Administrators of EPA).

2. Authorized representative. All reports required by the permit and other information requested by the Director shall be signed by a person described in Section VII.G.1. above or be signed by a duly authorized representative of that person. A person is a duly authorized representative only if:

a. The authorization is made in writing by a person described above and submitted to the Director.

b. The authorization specifies either an individual or a position having responsibility for the overall operation of the regulated facility or activity, such as the position of manager, operator, superintendent, or position of equivalent responsibility or an individual or position having overall responsibility for environmental matters for the company. (A duly authorized representative may thus be either a named individual or any individual occupying a named position).

c. Changes to authorization. If an authorization under paragraph VII.G.2. is no longer accurate because a different individual or position has responsibility for the overall operation of the facility, a new NOI satisfying the requirements of paragraph II.B. (Contents of NOI) must be submitted to the Director prior to or together with any reports, information, or applications to be signed by an authorized representative.

d. Certification. Any person signing documents under this section shall make the following certification:

I certify under penalty of law that this document and all attachments were prepared under my direction or supervision in accordance with a system designed to assure that qualified personnel properly gathered and evaluated the information submitted. Based on my inquiry of the person or persons who manage the system, or those persons directly responsible for gathering the information, the information submitted is, to the best of my knowledge and belief, true, accurate, and complete. I am aware that there are significant penalties for submitting false information, including the possibility of fine and imprisonment for knowing violations.

H. Penalties for Falsification of Reports

Section 309(c)(4) of the Clean Water Act provides that any person who knowingly makes any false material statement, representation, or certification in any record or other document submitted or required to be maintained under this permit, including reports of compliance or noncompliance shall, upon conviction, be punished by a fine of not more than $10,000, or by imprisonment for not more than 2 years, or by both.

I. Penalties for Falsification of Monitoring Systems

The CWA provides that any person who falsifies, tampers with, or knowingly renders inaccurate any monitoring device or method required to be maintained under this permit shall, upon conviction, be punished by fines and imprisonment described in Section 309 of the CWA.

J. Oil and Hazardous Substance Liability

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties to which the permittee is or may be subject under Section 311 of the CWA or Section 106 of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA).

K. Property Rights

The issuance of this permit does not convey any property rights of any sort, nor any exclusive privileges, nor does it authorize any injury to private property nor any invasion of personal rights, nor any infringement of Federal, State, or local laws or regulations.

L. Severability

The provisions of this permit are severable, and if any provision of this permit, or the application of any provision of this permit to any circumstance, is held invalid, the application of such provision to other circumstances, and the remainder of this permit shall not be affected thereby.

M. Requiring an Individual Permit or an Alternative General Permit

1. Director designation. The Director may require any person authorized by this permit to apply for and/or obtain either an individual NPDES permit or an alternative NPDES general permit. Any interested person may petition the Director to take action under this paragraph. The Director may require any owner or operator authorized to discharge under this permit to apply for an individual NPDES permit only if the owner or operator has been notified in writing that a permit application is required. This notice shall include a brief statement of the reasons for this decision, an application form, a statement setting a deadline for the owner or operator to file the application, and a statement that on the effective date of issuance or denial of the individual NPDES permit or the alternative general permit as it applies to the individual permittee, coverage under this general permit shall automatically terminate. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part VI.B. (Reporting: Where to Submit) of this permit. The Director may grant additional time to submit the application upon request of the applicant. If an owner or operator fails to submit in a timely manner an individual NPDES permit application as required by the Director, then the applicability of this permit to the individual NPDES permittee is automatically terminated at the end of the day specified for application submittal.

2. Individual permit application. Any owner or operator authorized by this permit may request to be excluded from the coverage of this permit by applying for an individual permit. The owner or operator shall submit an individual application (Form 1 and Form 2F) with reasons supporting the request to the Director. Individual permit applications shall be submitted to the address of the appropriate Regional Office shown in Part VI.B. of this permit. The request may be granted by the issuance of any individual permit or an alternative general permit if the reasons cited by the owner or operator are adequate to support the request.

3. Individual/alternative general permit issuance. When an individual NPDES permit is issued to an owner or operator otherwise subject to this permit, or the owner or operator is authorized for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the effective date of the individual permit or the date of authorization of coverage under the alternative general permit, whichever the case may be. When an individual NPDES permit is denied to an owner or operator otherwise subject to this permit, or the owner or operator is denied for coverage under an alternative NPDES general permit, the applicability of this permit to the individual NPDES permittee is automatically terminated on the date of such denial, unless otherwise specified by the Director.

N. State/Environmental Laws

Nothing in this permit shall be construed to preclude the institution of any legal action or relieve the permittee from any responsibilities, liabilities, or penalties established pursuant to any applicable State law or regulation under authority preserved by Section 510 of the Act.

No condition of this permit shall release the permittee from any responsibility or requirements under other environmental statutes or regulations.

O. Proper Operation and Maintenance

The permittee shall at all times properly operate and maintain all facilities and systems of treatment and control (and related appurtenances) that are installed or used by the permittee to achieve compliance with the conditions of this permit and with the requirements of storm water pollution prevention plans. Proper operation and maintenance also includes adequate laboratory controls and appropriate quality assurance procedures. Proper operation and maintenance requires the operation of backup or auxiliary facilities or similar systems, installed by a permittee only when necessary to achieve compliance with the conditions of the permit.

P. Monitoring and Records

1. Representative samples/ measurements. Samples and measurements taken for the purpose of monitoring shall be representative of the monitored activity.

2. Retention of records—a. The permittee shall retain the pollution prevention plan developed in accordance with Parts IV. and XI. of this permit until at least 1 year after coverage under this permit terminates. The permittee shall retain all records of all monitoring information, copies of all reports required by this permit, and records of all data used to complete the NOI to be covered by this permit, until at least 1 year after coverage under this permit terminates. This period may be explicitly modified by specific provisions of this permit or extended by request of the Director at any time.

b. For discharges subject to monitoring requirements pursuant to Parts VI. and XI. of this permit, in addition to the requirements of paragraph VII.P.2.a. (above), permittees are required to retain for a 6-year period from the date of sample collection or for the term of this permit, whichever is greater, records of all monitoring

information collected during the term of this permit. Permittees must submit such monitoring results to the Director upon request.

3. Records contents. Records of monitoring information shall include:

a. The date, exact place, and time of sampling or measurements;

b. The initials or name(s) of the individual(s) who performed the sampling or measurements;

c. The date(s) analyses were performed;

d. The time(s) analyses were initiated;

e. The initials or name(s) of the individual(s) who performed the analyses;

f. References and written procedures, when available, for the analytical techniques or methods used; and

g. The results of such analyses, including the bench sheets, instrument readouts, computer disks or tapes, etc., used to determine these results.

4. Approved monitoring methods. Monitoring must be conducted according to test procedures approved under 40 CFR Part 136, unless other test procedures have been specified in this permit.

Q. Inspection and Entry

The permittee shall allow the Director or an authorized representative of EPA, the State environmental agency, or, in the case of a facility that discharges through a municipal separate storm sewer, an authorized representative of the municipal operator or the separate storm sewer receiving the discharge, upon the presentation of credentials and other documents as may be required by law, to: Enter upon the permittee's premises where a regulated facility or activity is located or conducted or where records must be kept under the conditions of this permit; have access to and copy at reasonable times, any records that must be kept under the conditions of this permit; and inspect at reasonable times any facilities or equipment (including monitoring and control equipment).

R. Permit Actions

This permit may be modified, revoked and reissued, or terminated for cause. The filing of a request by the permittee for a permit modification, revocation and reissuance, or termination, or a notification of planned changes or anticipated noncompliance does not stay any permit condition.

S. Bypass of Treatment Facility

1. Notice—a. Anticipated bypass. If a permittee subject to the numeric effluent limitation of Parts V. and XI. of this permit knows in advance of the need for a bypass, he or she shall submit prior notice, if possible, at least 10 days before the date of the bypass; including an evaluation of the anticipated quality and effect of the bypass.

b. Unanticipated bypass. The permittee subject to the numeric effluent limitation of Parts V. and XI. of this permit shall submit notice of an unanticipated bypass. Any information regarding the unanticipated bypass shall be provided orally within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the bypass and its cause; the period of the bypass; including exact dates and times, and if the bypass has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the bypass.

2. Prohibition of bypass—a. Bypass is prohibited and the Director may take enforcement action against a permittee for a bypass. Unless:

(*1*) The bypass was unavoidable to prevent loss of life, personal injury, or severe property damage;

(*2*) There were no feasible alternatives to the bypass, such as the use of auxiliary facilities, retention of untreated wastes, or maintenance during normal periods of equipment downtime. This condition is not satisfied if the permittee should, in the exercise of reasonable engineering judgement, have installed adequate backup equipment to prevent a bypass that occurred during normal periods of equipment downtime or preventive maintenance; and

(*3*) The permittee submitted notices of the bypass.

b. The Director may approve an anticipated bypass after considering its adverse effects, if the Director determines that it will meet the three conditions listed in Part VII.S.2.a.

T. Upset Conditions

1. Affirmative defense. An upset constitutes an affirmative defense to an action brought for noncompliance with technology-based numeric effluent limitations in Parts V. and XI. of this permit if the requirements of paragraph 2 below are met. No determination made during administrative review of claims that noncompliance was caused by upset, and before an action for noncompliance, if final administrative action subject to judicial review.

2. Required defense. A permittee who wishes to establish the affirmative defense of an upset shall demonstrate, through properly signed, contemporaneous operating logs, or other relevant evidence, that:

a. An upset occurred and that the permittee can identify the specific cause(s) of the upset;

b. The permitted facility was at the time being properly operated; and

c. The permittee provided oral notice of the upset to EPA within 24 hours from the time the permittee became aware of the circumstances. A written submission shall also be provided within 5 days of the time the permittee became aware of the circumstances. The written submission shall contain a description of the upset and its cause; the period of the upset; including exact dates and times, and if the upset has not been corrected, the anticipated time it is expected to continue; and steps taken or planned to reduce, eliminate, and prevent reoccurrence of the upset.

3. Burden of proof. In any enforcement proceeding the permittee seeking to establish the occurrence of an upset has the burden of proof.

VIII. Reopener Clause

A. Potential or Realized Impacts on Water Quality

If there is evidence indicating potential or realized impacts on water quality due to any storm water discharge associated with industrial activity covered by this permit, the owner or operator of such discharge may be required to obtain an individual permit or an alternative general permit in accordance with Part VII.M. (Requiring an Individual Permit or Alternative General Permit) of this permit or the permit may be modified to include different limitations and/or requirements.

B. Applicable Regulations

Permit modification or revocation will be conducted according to 40 CFR 122.62, 122.63, 122.64, and 124.5.

IX. Termination of Coverage

A. Notice of Termination

Where all storm water discharges associated with industrial activity that are authorized by this permit are eliminated, or where the operator of storm water discharges associated with industrial activity at a facility changes, the operator of the facility may submit a Notice of Termination that is signed in accordance with Part VII.G. (Signatory Requirements) of this permit. The Notice of Termination shall include the following information:

1. Facility information. Name, mailing address, and location of the facility for which the notification is submitted.

Where a street address for the site is not available, the location of the approximate center of the site must be described in terms of the latitude and longitude to the nearest 15 seconds, or the section, township and range to the nearest quarter section;

2. Operator information. The name, address, and telephone number of the operator addressed by the Notice of Termination;

3. Permit number. The NPDES permit number for the storm water discharge associated with industrial activity identified by the Notice of Termination;

4. Reason for termination. An indication of whether the storm water discharges associated with industrial activity have been eliminated or the operator of the discharges has changed; and

5. Certification. The following certification signed in accordance with Part VII.G. (Signatory Requirements) of this permit:

I certify under penalty of law that all storm water discharges associated with industrial activity from the identified facility that are authorized by an NPDES general permit have been eliminated or that I am no longer the operator of the industrial activity. I understand that by submitting this notice of termination, that I am no longer authorized to discharge storm water associated with industrial activity under this general permit, and that discharging pollutants in storm water associated with industrial activity to waters of the United States is unlawful under the Clean Water Act where the discharge is not authorized by an NPDES permit. I also understand that the submittal of this notice of termination does not release an operator from liability for any violations of this permit or the Clean Water Act.

B. Addresses

All Notices of Termination are to be sent, using the form provided by the Director (or a photocopy thereof),[3] to the Director of the NPDES program in care of the address that will be provided in the final permit notice.

X. Definitions

Best Management Practices ("BMPs") means schedules of activities, prohibitions of practices, maintenance procedures, and other management practices to prevent or reduce the pollution of waters of the United States. BMPs also include treatment requirements, operating procedures, and practices to control facility site runoff, spillage or leaks, sludge or waste disposal, or drainage from raw material storage.

Bypass means the intentional diversion of waste streams from any portion of a treatment facility.

Coal pile runoff means the rainfall runoff from or through any coal storage pile.

Co-located industrial activity means when an industrial facility has industrial activities being conducted onsite that meet the description of industrial activities in another section of the permit, that industrial facility shall comply with all applicable monitoring and pollution prevention plan requirements of the other section in addition to its applicable requirements.

CWA means Clean Water Act (formerly referred to as the Federal Water Pollution Control Act or Federal Water Pollution Control Act Amendments of 1972).

Director means the Regional Administrator or an authorized representative.

Flow-weighted composite sample means a composite sample consisting of a mixture of aliquots collected at a constant time interval, where the volume of each aliquot is proportional to the flow rate of the discharge.

Landfill means an area of land or an excavation in which wastes are placed for permanent disposal, and that is not a land application unit, surface impoundment, injection well, or waste pile.

Land application unit means an area where wastes are applied onto or incorporated into the soil surface (excluding manure spreading operations) for treatment or disposal.

Large and medium municipal separate storm sewer system means all municipal separate storm sewers that are either:

(i) Located in an incorporated place (city) with a population of 100,000 or more as determined by the latest Decennial Census by the Bureau of Census (these cities are listed in Appendices F and G of 40 CFR Part 122); or

(ii) Located in the counties with unincorporated urbanized populations of 100,000 or more, except municipal separate storm sewers that are located in the incorporated places, townships or towns within such counties (these counties are listed in Appendices H and I of 40 CFR Part 122); or

(iii) Owned or operated by a municipality other than those described in paragraph (i) or (ii) and that are designated by the Director as part of the large or medium municipal separate storm sewer system.

NOT means notice of termination (see Part IX.A. of this permit.)

Point source means any discernible, confined, and discrete conveyance, including but not limited to, any pipe, ditch, channel, tunnel, conduit, well, discrete fissure, container, rolling stock, concentrated animal feeding operation, landfill leachate collection system, vessel or other floating craft from which pollutants are or may be discharges. This term does not include return flows from irrigated agriculture or agricultural storm water runoff.

Section 313 water priority chemical means a chemical or chemical categories that are: (1) are listed at 40 CFR 372.65 pursuant to Section 313 of the Emergency Planning and Community Right-to-Know Act (EPCRA) (also known as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986); (2) are present at or above threshold levels at a facility subject to EPCRA Section 313 reporting requirements; and (3) that meet at least one of the following criteria: (i) are listed in Appendix D of 40 CFR Part 122 on either Table II (organic priority pollutants), Table III (certain metals, cyanides, and phenols) or Table V (certain toxic pollutants and hazardous substances); (ii) are listed as a hazardous substance pursuant to Section 311(b)(2)(A) of the CWA at 40 CFR 116.4; or (iii) are pollutants for which EPA has published acute or chronic water quality criteria. See Addendum A of this permit.

Significant materials includes, but is not limited to: raw materials; fuels; materials such as solvents, detergents, and plastic pellets; finished materials such as metallic products; raw materials used in food processing or production; hazardous substances designated under Section 101(14) of CERCLA; any chemical the facility is required to report pursuant to EPCRA Section 313; fertilizers; pesticides; and waste products such as ashes, slag and sludge that have the potential to be released with storm water discharges.

Significant spills includes, but is not limited to: releases of oil or hazardous substances in excess of reportable quantities under Section 311 of the Clean Water Act (see 40 CFR 110.10 and CFR 117.21) or Section 102 of CERCLA (see 40 CFR 302.4).

Storm water means storm water runoff, snow melt runoff, and surface runoff and drainage.

Storm water associated with industrial activity means the discharge from any conveyance that is used for collecting and conveying storm water and that is directly related to manufacturing, processing or raw materials storage areas at an industrial plant. The term does not include

[3] A copy of the approved NOT form is provided in Addendum D of this notice.

discharges from facilities or activities excluded from the NPDES program. For the categories of industries identified in paragraphs (i) through (x) of this definition, the term includes, but is not limited to, storm water discharges from industrial plant yards; immediate access roads and rail lines used or traveled by carriers of raw materials, manufactured products, waste material, or by-products used or created by the facility; material handling sites; refuse sites; sites used for the application or disposal of process waste waters (as defined at 40 CFR Part 401); sites used for the storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas (including tank farms) for raw materials, and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water. For the categories of industries identified in paragraph (xi) of this definition, the term includes only storm water discharges from all areas (except access roads and rail lines) listed in the previous sentence where material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, or industrial machinery are exposed to storm water. For the purposes of this paragraph, material handling activities include the: storage, loading and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product or waste product. The term excludes areas located on plant lands separate from the plant's industrial activities, such as office buildings and accompanying parking lots as long as the drainage from the excluded areas is not mixed with storm water drained from the above described areas. Industrial facilities (including industrial facilities that are Federally, State, or municipally owned or operated that meet the description of the facilities listed in this paragraphs (i) to (xi) of this definition) include those facilities designated under 122.26(a)(1)(v). The following categories of facilities are considered to be engaging in "industrial activity" for purposes of this subsection:

(i) Facilities subject to storm water effluent limitations guidelines, new source performance standards, or toxic pollutant effluent standards under 40 CFR Subchapter N (except facilities with toxic pollutant effluent standards that are exempted under category (xi) of this definition);

(ii) Facilities classified as Standard Industrial Classifications 24 (except 2434), 26 (except 265 and 267), 28 (except 283), 29, 311, 32 (except 323), 33, 3441, 373;

(iii) Facilities classified as Standard Industrial Classifications 10 through 14 (mineral industry) including active or inactive mining operations (except for areas of coal mining operations no longer meeting the definition of a reclamation area under 40 CFR 434.11(l) because the performance bond issued to the facility by the appropriate SMCRA authority has been released, or except for areas of noncoal mining operations that have been released from applicable State or Federal reclamation requirements after December 17, 1990) and oil and gas exploration, production, processing, or treatment operations, or transmission facilities that discharge storm water contaminated by contact with or that has come into contact with, any overburden, raw material, intermediate products, finished products, byproducts or waste products located on the site of such operations; inactive mining operations are mining sites that are not being actively mined, but that have an identifiable owner/operator;

(iv) Hazardous waste treatment, storage, or disposal facilities, including those that are operating under interim status or a permit under Subtitle C of RCRA;

(v) Landfills, land application sites, and open dumps that have received any industrial wastes (waste that is received from any of the facilities described under this subsection) including those that are subject to regulation under Subtitle D of RCRA;

(vi) Facilities involved in the recycling of materials, including metal scrapyards, battery reclaimers, salvage yards, and automobile junkyards, including but limited to those classified as Standard Industrial Classification 5015 and 5093;

(vii) Steam electric power generating facilities, including coal handling sites;

(viii) Transportation facilities classified as Standard Industrial Classifications 40, 41, 42 (except 4221–25), 43, 44, 45 and 5171 that have vehicle maintenance shops, equipment cleaning operations, or airport deicing operations. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, airport deicing operations, or that are otherwise identified under paragraphs (i) to (vii) or (ix) to (xi) of this subsection are associated with industrial activity;

(ix) Treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage treatment, recycling, and reclamation of municipal or domestic sewage, including land dedicated to the disposal of sewage sludge that are located within the confines of the facility, with a design flow of 1.0 mgd or more, or required to have an approved pretreatment program under 40 CFR Part 403. Not included are farm lands, domestic gardens or lands used for sludge management where sludge is beneficially reused and that are not physically located in the confines of the facility, or areas that are in compliance with 40 CFR Part 503;

(x) Construction activity including clearing, grading and excavation activities except: operations that result in the disturbance of less than 5 acres of total land area that are not part of a larger common plan of development or sale;

(xi) Facilities under Standard Industrial Classifications 20, 21, 22, 23, 2434, 25, 265, 267, 27, 283, 285, 30, 31 (except 311), 323, 34 (except 3441), 35, 36, 37 (except 373), 38, 39, 4221–25, (and that are not otherwise included within categories (i) to (x)).[4]

Time-weighted composite means a composite sample consisting of a mixture of equal volume aliquots collected at a constant time interval.

Upset means an exceptional incident in which there is unintentional and temporary noncompliance with the numeric effluent limitations of Parts V. and XI. of this permit because of factors beyond the reasonable control of the permittee. An upset does not include noncompliance to the extent caused by operational error, improperly designed treatment facilities, inadequate treatment facilities, lack of preventive maintenance, or careless or improper operation.

Waste pile means any noncontainerized accumulation of solid, nonflowing waste that is used for treatment or storage.

Waters of the United States means:

(a) All waters that are currently used, were used in the past, or may be susceptible to use in interstate or foreign commerce, including all waters that are subject to the ebb and flow of the tide;

(b) All interstate waters, including interstate "wetlands";

(c) All other waters such as interstate lakes, rivers, streams (including

[4] On June 4, 1992, the United States Court of Appeals for the Ninth Circuit remanded the exclusion for manufacturing facilities in category (xi) that do not have materials or activities exposed to storm water to the EPA for further rulemaking. (Nos. 90–70671 and 91–70200.)

intermittent streams), mudflats, sandflats, wetlands, sloughs, prairie potholes, wet meadows, playa lakes, or natural ponds the use, degradation, or destruction of which would affect or could affect interstate or foreign commerce including any such waters:

(1) That are or could be used by interstate or foreign travelers for recreational or other purposes;

(2) From which fish or shellfish are or could be taken and sold in interstate or foreign commerce; or

(3) That are used or could be used for industrial purposes by industries in interstate commerce;

(d) All impoundments of waters otherwise defined as waters of the United States under this definition;

(e) Tributaries of waters identified in paragraphs (a) through (d) of this definition;

(f) The territorial sea; and

(g) Wetlands adjacent to waters (other than waters that are themselves wetlands) identified in paragraphs (a) through (f) of this definition.

Waste treatment systems, including treatment ponds or lagoons designed to meet the requirements of CWA are not waters of the United States.

XI. Specific Requirements for Industrial Activities

A. Storm Water Discharges Associated With Industrial Activity From Timber Products Facilities

1. Discharges covered under this section. The requirements listed under this section shall apply to storm water discharges from the following activities: establishments (generally classified under Standard Industrial Classification (SIC) Major Group 24) that are engaged in cutting timber and pulpwood, merchant sawmills, lath mills, shingle mills, cooperage stock mills, planing mills, and plywood and veneer mills engaged in producing lumber and wood basic materials; and establishments engaged in wood preserving or in manufacturing finished articles made entirely of wood or related materials, except for wood kitchen cabinet manufacturers classified under SIC Code 2434.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions—a. Prohibition of non-storm water discharges—(1) Discharges of boiler blowdown and water treatment wastewaters, noncontact and contact cooling waters, wash down waters from treatment equipment, and storm water that has come in contact with areas where spraying of chemical formulations designed to provide surface protection, to waters of the United States, or through municipal separate storm sewer systems are not authorized by this permit. The operators of such discharges must obtain coverage under a separate NPDES discharge permit.

(2) The following non-storm water discharges may be authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph XI.A.3.a.(3)(g)(i) (Measures and Controls for Non-storm Water Discharges): discharges from the spray down of lumber and wood product storage yards where no chemical additives are used in the spray down waters and no chemicals are applied to the wood during storage.

3. Storm water pollution prevention plan requirements—a. Contents of plan. The plan shall include, at a minimum, the following items:

(1) Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of potential pollutant Sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage—(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.A.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; material handling areas; locations used for the treatment, storage, or disposal of wastes; liquid storage tanks; processing areas; treatment chemical storage areas; treated wood and residue storage areas; wet decking areas; dry decking areas; untreated wood and residue storage areas; and treatment equipment storage areas.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemicals; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of exposed materials— An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance

of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives. The inventory of exposed materials shall include, but shall not be limited to the significant materials stored exposed to storm water and material management practices employed that were listed for the facility in the approved group application. Where information is available, facilities that have used chlorophenolic, creosote, or chromium-copper-arsenic formulations for wood surface protection or wood preserving activities onsite in the past should identify in the inventory the following: Areas where contaminated soils, treatment equipment, and stored materials still remain and management practices employed to minimize the contact of these materials with storm water runoff.

(c) Spills and leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk identification and summary of potential pollutant sources—A narrative description of the potential pollutant sources from the following activities: Loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any specific pollutant or pollutant parameter (e.g., total suspended solids, biochemical oxygen demand, chemical oxygen demand, oil and grease, arsenic, copper, chromium, pentachlorophenol, other specific metals, toxicity, etc.) of concern shall be identified.

(3) Measures and controls. Each facility covered by this permit shall develop a description of storm water best management practices (BMPs) and controls appropriate for the facility, and the implementation of such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following areas of the site: Log, lumber and other wood product storage areas; residue storage areas, loading and unloading areas; material handling areas; chemical storage areas; and equipment/vehicle maintenance, storage and repair areas. Facilities that surface protect and/or preserve wood products should address specific BMPs for wood surface protection and preserving activities. The pollution prevention plan should address the following minimum components, including a schedule for implementing such controls:

(a) Good housekeeping—Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. Good housekeeping measures in storage areas, loading and unloading areas, and material handling areas should be designed to: (1) limit the discharge of wood debris; (2) minimize the leachate generated from decaying wood materials; and (3) minimize the generation of dust.

(b) Preventive maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems. Periodic removal of debris from ditches, swales, diversions, containment basins, sediment ponds and infiltration measures should be performed to limit discharges of solids and to maintain the effectiveness of the controls.

(c) Spill prevention and response procedures—Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel. Response schedules should be developed to limit tracking of spilled materials to other areas of the site. Leaks or spills of wood surface protection or preservation chemicals shall be cleaned up immediately in accordance with applicable RCRA regulations at 40 CFR Part 264 and 40 CFR Part 265.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under paragraph XI.A.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. Operators of facilities are required to conduct quarterly visual inspections of BMPs. The inspections shall include:

(1) An assessment of the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems, and containment structures;

(2) Visual inspection of sediment and erosion BMPs to determine if soil erosion has occurred; and

(3) Visual inspections of storage areas and other potential sources of pollution for evidence of actual or potential pollutant discharges of contaminated storm water.

Material handling, and unloading and loading areas should be inspected daily whenever industrial activities occur in those areas. Good housekeeping measures and/or spill response measures should be implemented as appropriate to minimize contact of significant materials with storm water discharges

Inspections at processing areas, transport areas, and treated wood storage areas of facilities performing wood surface protection and preservation activities should be performed monthly to assess the usefulness of practices in minimizing drippage of treatment chemicals on unprotected soils and in areas that will come in contact with storm water discharges.

A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm

water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and internal reporting procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm water discharges—(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit that receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.A.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2.b. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [Insert date of permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: The procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and erosion control—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion. When developing the plan, the following areas of the site should be considered: Loading and unloading areas, access roads, material handling areas, storage areas, and any other areas where heavy equipment and vehicle use is prevalent. The following erosion and sediment controls shall be considered to minimize the discharge of sediments from the site: Stabilization measures such as seeding, mulching, contouring, porous pavement, paving and sodding and structural measures such as sediment traps and silt fences.

(i) Management of runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.A.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: Vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall include the following:

(a) Areas contributing to a storm water discharge associated with industrial activity such as loading/unloading areas, material handling areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas, treatment chemical storage areas, treated wood and residue storage areas, wet decking areas, dry decking areas, untreated wood and residue storage areas, and treatment equipment storage areas shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.A.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.A.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.A.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not

identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric effluent limitations—There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and reporting requirements—a. Analytical monitoring requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with facilities engaged in wood preservation and/or surface protection must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Facilities engaged in wood preservation and/or surface protection are required to monitor their storm water discharges for the pollutants of concern listed in Table A–1 below. Facilities currently using chlorophenolic formulations for wood preservation or surface protection, or that have used chlorophenolic formulations in the past, shall monitor storm water discharges for the parameters of concern listed in Table A–2 in addition to the parameters listed in Table A–1. Facilities that use copper-chromium-arsenic formulations for the preservation of wood shall monitor discharges for the presence of the pollutants of concern listed in Table A–3 in addition to the pollutants in Table A–1. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Tables A–1, A–2, and A–3 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE A–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration(mg/L)
Chemical Oxygen Demand	85.0
Total Suspended Solids	100.0
Biochemical Oxygen Demand	9.0

TABLE A–2.—ADDITIONAL MONITORING FOR FACILITIES PERFORMING WOOD PRESERVATION WITH CHLOROPHENOLIC FORMULATIONS

Pollutant of concern	Monitoring cut-off concentration
Pentachlorophenol	Detection Limit.

TABLE A–3.—ADDITIONAL MONITORING FOR FACILITIES PERFORMING WOOD PRESERVATION WITH CHROMIUM-COPPER-ARSENIC FORMULATIONS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Total Recoverable Arsenic	0.000018
Total Recoverable Copper	0.009

(1) Monitoring periods. Facilities engaged in wood preservation and/or surface protection shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling waiver—(a) Adverse conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph 5.a.(1) (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low concentration waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Tables A–1, A–2, or A–3 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility that drains to the outfall for which sampling was waived.

(4) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be

provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with facilities engaged in wood preservation and/or surface protection shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet to this permit.

(1) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), facilities engaged in wood preservation and/or surface protection with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly visual examination of storm water quality. All timber products facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

B. Storm Water Discharges Associated With Industrial Activity From Paper and Allied Products Manufacturing Facilities

1. Discharges covered under this section. The requirements listed under this section shall apply to storm water discharges from the following activities: Facilities engaged in the manufacture of pulps from wood and other cellulose fibers and from rags; the manufacture of paper and paperboard into converted products, such as paper coated off the paper machine, paper bags, paper boxes and envelopes; and establishments primarily engaged in manufacturing bags of plastic film and sheet. These facilities are commonly identified by Standard Industrial Classification (SIC) Major Group 26.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located

industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions—*a.* Prohibition of Non-storm Water Discharges. There are no additional requirements beyond those in Part III.A. of this permit.

3. Storm water pollution prevention plan requirements—*a. Contents of plan.* The plan shall include, at a minimum, the following items:

1. Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of potential pollutant sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(*a*) *Drainage*—(*i*) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.B.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes and wastewaters, locations used for the treatment, filtration, or storage of water supplies, liquid storage tanks, processing areas, and storage areas.

(*ii*) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(*b*) *Inventory of exposed materials*—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives. The inventory of exposed materials shall include, but shall not be limited to the significant materials stored exposed to storm water and material management practices employed that were listed for the facility in the approved group application.

(*c*) *Spills and leaks*—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(*d*) *Sampling data*—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(*e*) *Risk identification and summary of potential pollutant sources*—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices, and wastewater treatment activities to include sludge drying, storage, application or disposal activities. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(*3*) *Measures and controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(*a*) *Good housekeeping*—Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. The plan shall describe procedures performed to minimize contact of materials with storm water runoff. Examples include cleaning of lots and roofs that collect debris; routine cleaning of wastewater treatment, and other waste disposal (such as sludge handling) locations.

(*b*) *Preventive maintenance*—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(*c*) *Spill prevention and response procedures*—Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage

requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a cleanup should be available to personnel.

(*d*) *Inspections*—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(*e*) *Employee training*—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(*f*) *Recordkeeping and internal reporting procedures*—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(*g*) *Non-storm water discharges*—(*i*) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit that receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph (iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [Insert date of permit issuance], 270 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(*h*) *Sediment and erosion control*—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(*i*) *Management of runoff*—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see Part XI.B.3.a.(2) of this permit (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices; reuse of collected storm water (such as for a process or as an irrigation source); inlet controls (such as oil/water separators); snow management activities; infiltration devices, and wet detention/retention devices; screens or fences used to protect dust and particulate collection activities from wind or to minimize the effects of wind on material loading and storage, and processing activities to eliminate or reduce wind-blown or airborne pollutants; secondary containment of storage areas such as berms and dikes; diversionary structures to direct storm water away from areas of potential contamination; and tarpaulins, roofs, or other coverings of outdoor storage or industrial activities.

(*4*) *Comprehensive site compliance evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity such as material storage, handling, and disposal activities shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part XI.B.3.a.(2) of this permit (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with Part XI.B.3.a.(3) of this permit (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the

implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph (4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric effluent limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and reporting requirements—a. Monitoring requirements—(1) Quarterly visual examination of storm water quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent) shall be provided in the plan.

C. Storm Water Discharges Associated With Industrial Activity From Chemical and Allied Products Manufacturing Facilities

1. Discharges covered under this section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity represented by Standard Industrial Classification (SIC) codes from the following activities:

a. SIC 281 (industrial inorganic chemicals). This industry group includes establishments primarily engaged in manufacturing basic industrial inorganic chemicals.

b. SIC 282 (plastic materials and synthetic resins, synthetic rubber, cellulosic and other manmade fibers, except glass). This group includes chemical establishments primarily engaged in manufacturing plastic materials and synthetic resins, synthetic rubbers, and cellulosic and other manmade fibers.

c. SIC 284 (soap, detergents, and cleaning preparations; perfumes, cosmetics, and other toilet preparations). This industry group includes establishments primarily engaged in manufacturing soap and other detergents and in producing glycerin from vegetable and animal fats and oils; specialty cleaning, polishing, and sanitation preparations; surface active preparations used as emulsifiers, wetting agents, and finishing agents, including sulfonated oils; and perfumes, cosmetics, and other toilet preparations.

d. SIC 285 (paints, varnishes, lacquers, enamels, and allied products). Establishments primarily engaged in manufacturing paints (in paste and ready-mixed form); varnishes; lacquers; enamels and shellac; putties, wood fillers, and sealers; paint and varnish removers; paint brush cleaners; and allied paint products.

e. SIC 286 (industrial organic chemicals). Establishments primarily engaged in manufacturing industrial organic chemicals.

f. SIC 287 (agricultural chemicals). This group includes establishments primarily engaged in manufacturing nitrogenous and phosphatic basic fertilizers, mixed fertilizer, pesticides, and other agricultural chemicals.

g. SIC 289 (miscellaneous chemical products). Establishments primarily engaged in manufacturing industrial and household adhesives, glues, caulking compounds, sealants, and linoleum, tile, and rubber cements from vegetable, animal, or synthetic plastics materials, purchased or produced in the same establishment; establishments primarily engaged in manufacturing explosives; establishments primarily engaged in manufacturing printing ink, including gravure ink, screen process ink, and lithographic; establishments primarily engaged in manufacturing miscellaneous chemical preparations, not elsewhere classified, such as fatty acids, essentials oils, gelatin (except vegetable), sizes, bluing, laundry sours, writing and stamp pad ink, industrial

compounds, such as boiler and heat insulating compounds, metal, oil, and water treatment compounds, waterproofing compounds, and chemical supplies for foundries.

h. Facilities represented by SIC 3952 (lead pencils, crayons, and artist's materials), but only those primarily engaged in the manufacturing of ink and paints, including china painting enamels, india ink, drawing ink, platinum paints for burnt wood or leather work, paints for china painting, artists' paints and artists' water colors.

i. Co-located industrial activities. When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Discharges not covered by this section—a. Storm water discharges from drug manufacturing facilities and other establishments classified as SIC Code 283.

3. Special conditions—a. Prohibition of non-storm water discharges. This permit does not authorize the discharge of:

(1) Inks, paints, or substances (hazardous, nonhazardous, etc.) resulting from an onsite spill, including materials collected in drip pans.

(2) Washwaters from material handling and processing areas. This includes areas where containers, equipment, and industrial machinery are exposed to storm water.

(3) Washwaters from areas where raw materials, intermediate products, final products, waste materials, by-products, and significant materials from past industrial activity are exposed to storm water.

(4) Washwaters from drum, tank, or container rinsing and cleaning.

b. Rain gauge installation and precipitation log—(1) Permittees that are required to sample under Part XI.C.6.a. shall install a rain gauge no later than [insert date 270 days after permit issuance] and shall maintain the rain gauge for the extent of the four sampling periods.

(2) After installation of the rain gauge, the permittee shall keep daily records of precipitation indicating the date and amount of precipitation. These records shall be signed by qualified facility personnel and shall be retained onsite in accordance with Part VI.D. (Retention of Records) of this permit.

c. Pollution prevention plan certification. By [insert date 270 days following permit finalization], the permittee shall submit to the appropriate Regional Office, as indicated in Part VI.B., a statement of certification stating that a pollution prevention plan has been developed and implemented in accordance with all conditions and requirements established in this permit. This certification shall include the language and meet the signatory requirements of Part VII.G. of this permit.

4. Storm water pollution prevention plan requirements—a. Contents of plan. The plan shall include, at a minimum, the following items:

(1) Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team. The team will be responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's plan.

(2) Description of potential pollutant sources. Each plan shall provide a description of potential sources of pollutants to storm water discharges and sources of discharges of pollutants during dry weather. Each plan shall identify all activities and materials that may be pollutant sources. Each plan shall include, at a minimum:

(a) Drainage and site plan—A site map shall be developed for the facility. This map shall include, at a minimum: the location of all structures (manufacturing buildings, garages, etc.), impervious areas, the location of each storm water outfall and/or connection to municipal storm sewer; an outline of the portions of the drainage area of each outfall within the facility boundaries and a prediction of the direction of flow in each area; each existing structural control measure to reduce pollutants in storm water runoff; surface water bodies; locations where materials are exposed to precipitation; and locations where major spills or leaks identified under Part XI.C.4.a.(2)(c) (below) of this permit have occurred. The map shall also indicate the locations of the following outdoor activities: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading/unloading areas; locations used for the treatment, storage or disposal of wastes; storage tanks and other containers; processing and storage areas; access roads, rail cars and tracks; the location of transfer of substances in bulk; and machinery.

(b) Inventory of exposed materials and management practices—An inventory of the types of materials handled at the site that may be exposed to precipitation shall be collected. Such inventory shall include: a narrative description of materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and leaks—A list of significant spills and leaks of material that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance after the date of 3 years prior to the effective date of this permit. The list shall be updated as appropriate to include any significant spills and leaks during the term of the permit.

(d) Sampling data—A summary of existing storm water sampling data describing pollutants discharged from the facility, including a summary of sampling data collected during the term of this permit. In addition, the report of monitoring data that is submitted to EPA pursuant to Part VI. of this permit shall be maintained with the pollution prevention plan.

(e) Risk identification and summary of potential pollutant sources— (i) A narrative description of the potential pollutant sources from the following:

loading, unloading, and transfer of chemicals; outdoor storage of salt, pallets, coal, drums, containers, fuels, or other materials; outdoor manufacturing or processing activities; significant dust or particulate generating processes; fueling stations; vehicle and equipment maintenance and/or cleaning areas; locations used for the treatment, storage or disposal (on or off site) of wastes and wastewaters; storage tanks and other containers; processing and storage areas; access roads, rail cars and tracks; the location of transfer of substances in bulk; and machinery.

(ii) The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., chemical oxygen demand, etc.) of concern shall be identified.

(iii) Factors to consider include: quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills. In addition, flows with a significant potential for causing erosion shall be identified.

(3) Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a reasonable schedule for implementing such controls:

(a) Nonstructural controls—(i) Good housekeeping—Good housekeeping requires that areas that may contribute pollutants to storm water discharges are maintained in a clean, orderly manner. At a minimum, the permittee shall:

- Schedule regular pickup and disposal of garbage and waste materials. This schedule shall be included in the plan. Individuals responsible for waste management and disposal shall be informed of the procedures established under the plan.
- Routinely inspect for leaks and the condition of drums, tanks and containers. Ensure that spill cleanup procedures are understood by employees.
- Keep an up-to-date inventory of all materials present at the facility. While preparing the inventory, all containers should be clearly labeled. Hazardous containers that requires special handling, storage, use and disposal shall be clearly marked.
- Maintain clean ground surfaces.

(ii) Preventive maintenance—A preventive maintenance program shall be developed and shall involve timely inspection and maintenance of storm water management devices (e.g., oil/water separators, catch basins, dikes, storm sewer, basins, pipes). Also, preventive maintenance includes inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures, and ensuring appropriate maintenance of such equipment and systems.

(iii) Spill prevention and response procedures—Spill prevention and response procedures shall be developed. Areas where potential spills (that can contribute pollutants to storm water discharges) can occur and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a cleanup (e.g., absorbent materials) should be available to personnel.

(iv) Employee training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, material management practices and procedures for equipment and container cleaning and washing. A pollution prevention plan shall identify periodic dates for such training of at least once per year.

(v) Recordkeeping and internal reporting procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(vi) Facility security—Facilities shall have the necessary security systems to prevent accidental or intentional entry that could cause a discharge. Security systems described in the plan shall address fencing, lighting, vehicular traffic control, and securing of equipment and buildings.

(b) Structural practices—The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see Part XI.C.4.a.(2) (Description of Potential Pollutant Sources) of this permit] shall be considered when determining reasonable and appropriate structural measures. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained.

(i) Practices for material handling and storage areas—Permittees shall ensure the implementation of practices that conform with the following:

- In areas where liquid or powdered materials are stored, facilities shall provide either diking, curbing, or berms.
- In all other outside storage areas including storage of used containers, machinery, scrap and construction materials, and pallets, facilities shall prevent or minimize storm water runon to the storage area by using curbing, culverting, gutters, sewers or other forms of drainage control.
- In all storage areas, roofs, covers or other forms of appropriate protection shall be used to prevent storage areas from exposure to storm water and wind. For the purpose of this paragraph, tanks would be considered to be appropriate protection.
- In areas where liquid or powdered materials are transferred in bulk from truck or rail cars, permittees shall provide appropriate measures to minimize contact of material with precipitation. Hose connection points at storage containers shall be inside containment areas. Drip pans shall be used in areas that are not in a containment area, where spillage may occur (e.g., hose reels, connection points with rail cars or trucks). Material collected in drip pans shall not be discharged to waters of the United States.
- In areas of transfer of contained or packaged materials and loading/unloading areas, permittee shall provide appropriate protection such as overhangs or door skirts to enclose trailer ends at truck loading/unloading docks.

Drainage from areas covered by paragraph XI.C.4.a.(3)(b)(i) of this section should be restrained by valves or other positive means to prevent the discharge of a spill or leak. Containment units may be emptied by pumps or ejectors; however, these shall be manually activated.

Flapper-type drain valves shall not be used to drain containment areas. Valves

used for the drainage of containment areas should, as far as is practical, be of manual, open-and-closed design.

If facility drainage is not engineered as above, the final discharge of all in-facility sewers shall be equipped with a diversion system that could, in the event of an uncontrolled spill of materials, return the spilled material to the facility.

(c) Management of runoff—Plan shall contain a description of storm water management practices used and/or to be used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. Appropriate measures may include: vegetative swales, ripraps, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, use of porous pavements, and wet detention/retention devices.

(d) Sediment and erosion control—The plan shall identify areas that, due to topography, activities, or other factors, have a potential for significant soil erosion. Plans shall describe permanent stabilization practices and shall ensure that disturbed portions of the site are stabilized. Stabilization practices may include: permanent seeding, mulching, geotextiles, sod stabilization, vegetative buffer strips, protection of trees, preservation of mature vegetation, and other appropriate measures.

(e) Non-storm water discharges—(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit that receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph (iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [insert date 270 days after permit issuance] 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(4) Comprehensive site compliance evaluation. A member(s) of the pollution prevention team or a qualified professional designated by the team shall conduct site compliance evaluations.

(a) Evaluations shall be conducted at least four times each year—A wet weather evaluation (during a rainfall event) shall be conducted in the second (April to June) and third quarters (July to September) of the year. A dry weather evaluation (no precipitation) shall be conducted in the first (January to April) and fourth quarters (October to December).

(*b*) When a seasonal dry period is sustained for more than 3 months, a dry weather inspection will satisfy the wet weather comprehensive compliance evaluation inspection requirement.

(*c*) All areas exposed to precipitation at the facilities shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented or whether additional control measures are needed. Structural storm water management measures (diking, berming, curbing, sediment and erosion control measures, stabilization controls, etc.) required under this section shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(*d*) Based on the results of the inspection, the description of potential pollutant sources (see Part XI.C.4.a.(2)) and pollution prevention measures and controls (see Part XI.C.4.a.(3)) identified in the plan shall be revised as appropriate within 2 weeks of such inspection. In addition, it shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(*e*) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, observations relating to the implementation of the plan, and actions taken in accordance with paragraph XI.C.4.a.(4)(d) (above) shall be made and retained as part of the plan for at least 1 year after coverage under this permit terminates. The report shall also identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

5. Numeric effluent limitations. In addition to the numeric effluent limitations described by Part V. of this permit, the following effluent limitations shall be met by existing and new discharges with:

a. Phosphate fertilizer manufacturing runoff. The provisions of this paragraph are applicable to storm water discharges from the Phosphate Subcategory of the Fertilizer Manufacturing Point Source Category (40 CFR 418.10). The term contaminated storm water runoff shall mean precipitation runoff, that during manufacturing or processing, comes into contact with any raw materials, intermediate product, finished product, by-products or waste product (40 CFR 418.11(c)). The concentration of pollutants in storm water discharges shall not exceed the effluent limitations in Table C–1.

TABLE C–1.—NUMERIC EFFLUENT LIMITATIONS

Effluent characteristics	Effluent Limitations (mg/L)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Total Phosphorus (as P)	105.0	35.0
Fluoride	75.0	25.0

6. Monitoring and reporting requirements—a. Analytical monitoring requirements—During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with chemical manufacturing facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 6.a.(3) (Sampling Waiver), 6.a.(4) (Representative Discharge), and 6.a.(5) (Alternative Certification). Chemical manufacturing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table C–2 below. Facilities must report in accordance with 6.b. (Reporting). In addition to the parameters listed in Table C–2 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE C–2.—MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Total recoverable aluminum	0.75
Ammonia	0.093
Total recoverable copper	0.009
Total recoverable manganese	0.05
Total recoverable zinc	0.065
Total recoverable iron	0.3
Total kjeldahl nitrogen (TKN)	1.5
Nitrate plus nitrite nitrogen	0.68

(1) Monitoring periods. Chemical manufacturing facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver—(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low concentration waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table C–2 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility that drains to the outfall for which sampling was waived.

(4) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with chemical manufacturing facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), chemical manufacturing facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Compliance monitoring requirements. In addition to the monitoring required in paragraph b. (above), permittees with contaminated storm water runoff from phosphate fertilizer manufacturing facilities must monitor their contaminated storm water discharges for the presence of phosphorus and fluoride at least annually (one time per year) except as provided in Part XI.C.6.c.(2) (Representative Discharge). Facilities must report in accordance with Part XI.C.6.c.(3) (Reporting). In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

(2) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(3) Reporting. Permittees with phosphate fertilizer manufacturing facilities shall submit monitoring results obtained during the reporting period beginning [insert date of permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following [insert month after permit issuance date]. Signed copies of Discharge Monitoring Reports shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office indicated in Part VI.B. of this permit.

(4) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph (3) (above), permittees that discharge through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph (3) (above).

d. Monthly visual examination of storm water quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable

(greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

D. Storm Water Discharges Associated With Industrial Activity From Asphalt Paving and Roofing Materials and Lubricant Manufacturers

1. Discharges covered under this section—a. Eligibility—(1) This permit covers all existing point source discharges of storm water associated with industrial activity to waters of the United States from facilities engaged in manufacturing asphalt paving and roofing materials, including those facilities commonly identified by Standard Industrial Classification (SIC) codes 2951 and 2952.

(2) This permit covers all existing point source discharges of storm water associated with industrial activity to waters of the United States from portable asphalt plant facilities.

(3) This permit covers all existing point source discharges of storm water associated with industrial activity to waters of the United States from facilities engaged in manufacturing lubricating oils and greases, including those facilities classified as SIC code 2992.

(4) When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

b. Limitations on coverage. The following storm water discharges associated with industrial activity are not authorized by this section of the permit:

(1) Storm water discharges from petroleum refining facilities, including those that manufacture asphalt or asphalt products and that are classified as SIC code 2911.

2. Special conditions—a. Prohibition of non-storm water discharges—(1) Discharges of material other than storm water, including vehicle wash water, must be in compliance with an NPDES permit (other than this permit) issued for the discharge.

3. Storm water pollution prevention plan requirements—a. Contents of plan. The plan shall include, at a minimum, the following items:

(1) Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of potential pollutant sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage—(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under XI.D.3.a.(2)(c) (spills and leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas including areas where raw materials, finished products and drums are stored.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of a chemical; quantity of chemicals used, produced or discharged; the likelihood

of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of exposed materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk identification and summary of potential pollutant sources—A narrative description of the potential pollutant sources from the following activities: Loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good housekeeping—Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. Particular attention should be paid to areas where raw materials are stockpiled, material handling areas, storage areas, liquid storage tanks, material handling areas, and loading/unloading areas.

(b) Preventive maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under XI.D.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. Material storage and handling areas, liquid storage tanks, hoppers or silos, vehicle and equipment maintenance, cleaning, and fueling areas, material handling vehicles, equipment and processing areas shall be inspected at least once per month as part of the maintenance program. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and internal reporting procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm water discharges—*(i)* The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit that receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.D.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to certify—Any facility that is unable to provide the certification required (testing for non-

storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(*h*) *Sediment and erosion control*—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(*i*) *Management of runoff*—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see paragraph XI.D.3.a.(2) of this section (Description of Potential Pollutant Sources)) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(*4*) *Comprehensive site compliance evaluation.* Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Evaluations should be conducted at least once at portable plant locations. Such evaluations shall provide:

(*a*) Areas contributing to a storm water discharge associated with industrial activity including; material storage and handling areas, liquid storage tanks, hoppers or silos, vehicle and equipment maintenance, cleaning, and fueling areas, material handling vehicles, equipment and processing areas, and areas where aggregate is stockpiled outdoors shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, (e.g., oil/water separators, detention ponds, sedimentation basins) sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as dust collection equipment and spill response equipment, shall be made.

(*b*) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with XI.D.3.a.(2) of this section (description of potential pollutant sources) and pollution prevention measures and controls identified in the plan in accordance with XI.D.3.a.(3) of this section (measures and controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(*c*) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph (4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(*d*) Where compliance evaluation schedules overlap with inspections required under XI.D.3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric effluent limitations. The following numeric effluent limitations are in addition to those in Part V. of this permit. Discharges from areas where production of asphalt paving and roofing emulsions occurs may not exceed a TSS concentration of 23.0 mg/L of runoff for any 1 day, nor shall the average of daily values for 30 executive days exceed a TSS concentration of 15.0 mg/L of runoff. Oil and grease concentrations in storm water discharges from these areas may not exceed 15.0 mg/L of runoff for any 1 day, nor should the average daily values for 30 consecutive days exceed an oil and grease concentration of 10.0 mg/L of runoff. The pH of these discharges must be within the range of 6.0 to 9.0.

5. Monitoring and reporting requirements—a. Monitoring requirements—(1) Quarterly visual examination of storm water quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)) shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

b. Compliance monitoring requirements. Permittees with facilities that produce asphalt paving or roofing emulsions must monitor their storm water discharges associated with these activities for the presence of TSS, oil and grease, and for pH at least annually (one time per year) except as provided in paragraph 5.b.(2) (representative discharge). Facilities must report in accordance with 5.b.(1) (reporting). In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

(2) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(3) Reporting. Permittees with asphalt paving or roofing emulsion production facilities shall submit monitoring results obtained during the reporting period beginning [insert date of permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following [insert month after permit issuance date]. Signed copies of Discharge Monitoring Reports shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office indicated in Part VI.B. of this permit.

(4) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph (3) (above), permittees that discharge through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph (3) (above).

E. Storm Water Discharges Associated With Industrial Activity From Glass, Clay, Cement, Concrete, and Gypsum Product Manufacturing Facilities

1. Discharges covered under this section. The requirements listed under this section shall apply to storm water discharges from the following activities: Manufacturing flat, pressed, or blown glass or glass containers; manufacturing hydraulic cement; manufacturing clay products including tile and brick; manufacturing of pottery and porcelain electrical supplies; manufacturing concrete products; manufacturing gypsum products; nonclay refractories; and grinding or otherwise treating minerals and earths. This section generally includes the following types of manufacturing operations:

- Flat Glass, (SIC Code 3211);
- Glass Containers, (SIC Code 3221);
- Pressed and Blown Glass, Not Elsewhere Classified, (SIC Code 3229);
- Hydraulic Cement, (SIC Code 3241)
- Brick and Structural Clay Tile, (SIC Code 3251);
- Ceramic Wall and Floor Tile, (SIC Code 3253);
- Clay Refractories, (SIC Code 3255);
- Porcelain Electrical Supplies, (SIC Code 3264);
- Pottery Products, (SIC Code 3269);
- Concrete Block and Brick, (SIC Code 3271);
- Concrete Products, Except Block and Brick (SIC Code 3272);
- Ready-Mix Concrete, (SIC Code 3273);
- Gypsum Products, (SIC Code 3275);
- Minerals and Earths, Ground or Otherwise Treated, (SIC Code 3295);
- Nonclay Refractories, (SIC Code 3297).

Facilities engaged in the following activities are not eligible for coverage under this section:

- Lime manufacturing (SIC 3274)

- Cut stone and stone products (SIC 3281)
- Abrasive Products (SIC 3291)
- Asbestos Products (SIC 3292)
- Mineral Wool and Mineral Wool Insulation Products (SIC 3297).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2 Special conditions—a. Prohibition of non-storm water discharges. The discharge of pavement washwaters are only authorized where the discharge is in compliance with Part III.A.2.b.

3 Storm water pollution prevention plan requirements—a. Contents of plan. The plan shall include, at a minimum, the following items:

(1) Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of potential pollutant sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage—(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.E.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation. fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas. Facilities shall also identify, on the site map, the location of any: Bag house or other dust control device; recycle/sedimentation pond, clarifier or other device used for the treatment of process wastewater and the areas that drain to the treatment device.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical, quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of exposed materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present, method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(C) Spills and leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk identification and summary of potential pollutant sources—A narrative description of the potential pollutant sources from the following activities: Loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., Total Suspended Solids (TSS), etc.) of concern shall be identified.

(3) Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

Good housekeeping—Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner.

(i) Facilities shall prevent or minimize the discharge of spilled cement, aggregate (including sand or gravel), kiln dust, fly ash, settled dust other significant materials in storm water from paved portions of the site that are exposed to storm water Measures used to minimize the presence of these materials may include regular sweeping, or other equivalent measures. The plan shall indicate the frequency of sweeping

or other measures. The frequency shall be determined based upon consideration of the amount of industrial activity occurring in the area and frequency of precipitation, but shall not be less than once per week when cement, aggregate, kiln dust or fly ash are being handled or otherwise processed in the area.

(ii) Facilities shall prevent the exposure of fine granular solids such as cement, fly ash, and kiln dust to storm water. Where practicable, these materials shall be stored in enclosed silos, hoppers or buildings, in covered areas, or under covering.

(b) Preventive maintenance—A preventive maintenance program shall involve routine inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(i) Facilities shall insure that any existing dust collection systems are properly operated and maintained.

(c) Spill prevention and response procedures—Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility specified in the plan. The inspection frequency shall be specified in the plan based upon a consideration of the level of industrial activity at the facility, but shall be a minimum of once per month while the facility is in operation. The inspection shall take place while the facility is in operation and shall at a minimum include all of the following areas that are exposed to storm water at the site: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down and equipment cleaning areas. Tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, truck wash out procedures, equipment wash down procedures and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and internal reporting procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm water discharges—(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit that receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.E.3.a.(3)(g)(iii) (below).

Facilities engaged in production of ready-mix concrete, concrete block, brick or other products shall include in the certification a description of measures that insure that process waste water that results from washing of trucks, mixers, transport buckets, forms or other equipment are discharged in accordance with NPDES requirements or are recycled. Facilities with wash water recycle ponds shall include an estimate of the amount of rainfall (in inches) required to cause the recycle pond to overflow in a 24-hour period.

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and erosion control—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm

water discharges associated with industrial activity [see paragraph XI.E.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity including but not limited to: material handling areas, above ground storage tanks, hoppers or silos, dust collection/containment systems, truck wash down and equipment cleaning areas shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures such as recycle ponds, identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.E.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.E.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.E.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4 Numeric effluent limitations. In addition to the numeric effluent limitations described by Part V., the following limitations shall be met by existing and new dischargers.

a. Cement manufacturing facility, material storage runoff. Any discharge composed of runoff that derives from the storage of materials including raw materials, intermediate products, finished products, and waste materials that are used in or derived from the manufacture of cement shall not exceed a maximum concentration for any time of 50 mg/L Total Suspended Solids (TSS) nor the 6.0 to 9.0 range limitation for pH. Runoff from the storage piles shall not be diluted with other storm water runoff or flows to meet this limitation. Any untreated overflow from facilities designed, constructed and operated to treat the volume of material storage pile runoff that is associated with a 10-year, 24-hour rainfall event shall not be subject to the TSS or pH limitations. Dischargers subject to these numeric effluent limitations must be in compliance with these limits upon commencement of coverage and for the entire term of this permit.

5 Monitoring and reporting requirements—a. Analytical monitoring requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with brick and structural clay tile (SIC Code 3251), ceramic wall and floor tile (SIC Code 3253), clay refractories (SIC Code 3255), porcelain electrical supplies (SIC Code 3264), pottery products (SIC Code 3269), concrete block and brick (SIC Code 3271), concrete products except block and brick (SIC Code 3272), and ready-mix concrete (SIC Code 3273) facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Such facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table E–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table E–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE E–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Total Suspended Solids (TSS)	100
Total Recoverable Aluminum	0.75
Total Recoverable Copper	0.009
Total Recoverable Iron	0.3
Total Recoverable Zinc	0.065

(1) Monitoring periods. Brick and structural clay tile (SIC Code 3251), ceramic wall and floor tile (SIC Code 3253), clay refractories (SIC Code 3255), porcelain electrical supplies (SIC Code 3264), pottery products (SIC Code 3269), concrete block and brick (SIC Code 3271), concrete products except block and brick (SIC Code 3272), and ready-mix concrete (SIC Code 3273) shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be

taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge

(3) Sampling waiver—(a) Adverse conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph 5.a.(1) (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low concentration waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table E–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility that drains to the outfall for which sampling was waived.

(4) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with monitoring requirements under Part XI.E.5.a. shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet to this permit.

(1) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), facilities with monitoring requirements under Part XI.E.5.a. with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly visual examination of storm water quality. Glass, clay, cement, concrete, and gypsum manufacturing facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. Note that this requirement applies to all facilities and not just those subject to the analytical monitoring requirements under Part XI.E.5.a. of this permit. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of grab samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of

color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

d. Compliance monitoring requirements. Permittees with cement manufacturing facilities must monitor runoff from material storage for the presence of TSS and pH at least annually (one time per year) except as provided in paragraph 5.d.(2) below (representative discharge). Facilities must report in accordance with 5.d.(3) below (reporting). In addition to the parameters listed above, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

(1) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable.

(2) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(3) Reporting. Permittees with material storage runoff from cement manufacturing facilities shall submit monitoring results obtained during the reporting period beginning [insert date of permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following [insert month after permit issuance date]. Signed copies of Discharge Monitoring Reports shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office indicated in Part VI.B. of this permit.

(4) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph (3) (above), permittees with discharges of material storage runoff from cement manufacturing facilities through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph 5.d.(3) (above).

F. Storm Water Discharges Associated With Industrial Activity From Primary Metals Facilities

1. Discharges covered under this section. The requirements listed under this section of today's permit shall apply to storm water discharges from the primary metal industry. This industry is commonly identified by Standard Industrial Classification (SIC) Major Group 33, that includes the following:

- SIC 331—Steel works, blast furnaces, and rolling and finishing mills

—3312—Steel works, blast furnaces, and rolling mills
—3315—Steel wiredrawing and steel nails and spikes
—3316—Cold-rolled steel sheet, strip, and bars
—3317—Steel pipes and tubes.

- SIC 332—Iron and steel foundries

—3321—Gray and ductile iron foundries
—3322—Malleable iron foundries
—3324—Steel investment foundries
—3325—Steel foundries, not elsewhere classified.

- SIC 333—Primary smelting and refining of nonferrous metals

—3331—Primary smelting and refining of copper
—3334—Primary production of aluminum

- SIC 334—Secondary smelting and refining of nonferrous metals
- SIC 335—Rolling, drawing, and extruding of nonferrous metals

—3351—Rolling, drawing, and extruding of copper
—3356—Rolling, drawing, and extruding of nonferrous metals, except copper and aluminum
—3357—Drawing and insulating of nonferrous wire.

- SIC 336—Nonferrous foundries (castings)

—3363—Aluminum die-castings
—3364—Nonferrous die-castings, except aluminum
—3365—Aluminum foundries
—3366—Copper foundries
—3369—Nonferrous foundries, except copper and aluminum.

• SIC 339—Miscellaneous primary metal products, not elsewhere classified
—3398—Metal heat treating
—3399—Primary metal products, not elsewhere classified.

Activities covered include, but are not limited to, storm water discharges associated with coking operations, sintering plants, blast furnaces, smelting operations, rolling mills, casting operations, heat treating, extruding, drawing, or forging of all types of ferrous and nonferrous metals, scrap, and ore.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special conditions—a. Prohibition of non-storm water discharges. There are no additional requirements beyond those described in Part III. of this permit.

3. Storm water pollution prevention plan requirements—a. Contents of plan. The plan shall include, at a minimum, the following items:

(1) Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of potential pollutant sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage—(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.F.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes such as spent solvents or baths, sand, slag or dross, liquid storage tanks or drums, processing areas including pollution control equipment such as baghouses, and storage areas of raw materials such as coal, coke, scrap, sand, fluxes, refractories, or metal in any form. This list shall also include a description of areas of the facility where settling or deposition of particulate matter from processing operations such as furnace or oven emissions is likely.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants that are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of a chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of exposed materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives. This description should also include areas with the potential for deposition of particulate matter from process air emissions or losses during material handling activities. The description shall be updated whenever there is a significant change in the type or quantity of exposed materials, or material management practices, that may affect the exposure of materials to storm water.

(c) Spills and leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk identification and summary of potential pollutant sources—A narrative description of the potential pollutant sources from the following activities: Loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes occurring indoors or out, with or without pollution control equipment in place to trap particulates; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., chemical oxygen demand, oil and grease, copper, lead, zinc, etc.) of concern shall be identified.

(3) Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for

the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good housekeeping—Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. The pollution prevention plan should consider implementation of the following measures where applicable.

(i) Establish a cleaning or maintenance program for all impervious areas of the facility where particulate matter, dust, or debris may accumulate, particularly areas of material loading/unloading, material storage and handling, and processing.

(ii) Pave areas of vehicle traffic or material storage where vegetative or other stabilization methods are not practical. Institute sweeping programs in these areas as well.

(iii) For unstabilized areas of the facility where sweeping is not practical, storm water management devices such as sediment traps, vegetative buffer strips, filter fabric fence, sediment filtering boom, gravel outlet protection, or other equivalent measures, that effectively trap or remove sediment should be considered.

(b) Source controls—The permittee shall consider preventive measures to minimize the potential exposure of all significant materials (as described in Part XI.F.3.a.(3) of this section) to precipitation and storm water runoff. The permittee should consider in a narrative description the implementation of the following measures to reduce the exposure of all materials to storm water:

(i) Relocating all materials, including raw materials, intermediate products, material handling equipment, obsolete equipment, and wastes currently stored outside to inside locations.

(ii) Establishment of a schedule for removal of wastes and obsolete equipment to minimize the volume of these materials stored onsite that may be exposed to storm water.

(iii) Substitution of less hazardous materials, or materials less likely to contaminate storm water, or substitution of recyclable materials for nonrecyclables wherever possible.

(iv) Constructing permanent or semipermanent covers, or other similar forms of protection over stockpiled materials, material handling and processing equipment. Options include roofs, tarps, and covers. This may also include the use of containment bins or covered dumpsters for raw materials, waste materials and nonrecyclable waste materials.

(v) Dikes, berms, curbs, trenches, or other equivalent measures to divert runon from material storage, processing, or waste disposal areas.

(c) Preventive maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(i) A schedule for inspection and maintenance of all particulate emissions control equipment should be established to ensure proper operation. Inspections should be conducted as described in Section XI.F.3.a.(3)(e) below. Detection of any leaks or defects that could lead to excessive emissions shall be repaired as soon as practicable.

(ii) Structural Best Management Practices (BMPs) will be visually inspected for signs of washout, excessive sedimentation, deterioration, damage, or overflowing, and shall be repaired or maintained as soon as practicable.

(d) Spill prevention and response procedures—Areas where potential spills that can contribute pollutants to storm water discharges may occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(e) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals, but no less frequently than once per month. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. Inspections shall be conducted on a monthly basis and address, at a minimum, the following areas where applicable:

(i) Air pollution control equipment such as baghouses, electrostatic precipitators, scrubbers, and cyclones, should be inspected on a routine basis for any signs of disrepair such as leaks, corrosion, or improper operation that could limit their efficiency and lead to excessive emissions. The permittee should consider monitoring air flow at inlets and outlets, or equivalent measures, to check for leaks or blockage in ducts. Visual inspections shall be made for corrosion, leaks, or signs of particulate deposition or visible emissions that could indicate leaks.

(ii) All process or material handling equipment such as conveyors, cranes, and vehicles should be inspected for leaks, drips, etc. or for the potential losses of materials.

(iii) Material storage areas such as piles, bins or hoppers for storing coke, coal, scrap, or slag, as well as chemicals stored in tanks or drums, should be examined for signs of material losses due to wind or storm water runoff.

(f) Employee training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(g) Recordkeeping and internal reporting procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(h) Non-storm water discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not

be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit that receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.F.3.a.(3)(h)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [Insert 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: The procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(i) Sediment and erosion control—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion. The plan shall also contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see paragraph XI.F.3.a.(2) of this section (Description of Potential Pollutant Sources) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(j) Management of runoff—Facilities shall consider implementation of the following storm water management practices to address pollutants of concern:

(i) Vegetative buffer strips, filter fabric fence, sediment filtering boom, or other equivalent measures, that effectively trap or remove sediment prior to discharge through an inlet or catch basin.

(ii) Media filtration such as catch basin filters and sand filters.

(iii) Oil/water separators or the equivalent.

(iv) Structural BMPs such as settling basins, sediment traps, retention or detention ponds, recycling ponds or other equivalent measures.

(4) Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity such as material storage and handling, loading and unloading, process activities, and plant yards shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, other structural pollution prevention measures identified in the plan, as well as process related pollution control equipment shall be observed or tested to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.F.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.F.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.F.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(i) Where significant settling or deposition from process emissions are observed during proper operation of existing equipment, the permittee shall consider ways to reduce these emissions including but not limited to: Upgrading or replacing existing equipment; collecting runoff from areas of deposition for treatment or recycling; or changes in materials or processes to reduce the generation of particulate matter.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(e), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric effluent limitations. There are no additional effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and reporting requirements—a. Analytical monitoring requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years

after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with primary metals facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Primary metals facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table F–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table F–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE F–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Nitrate + Nitrite Nitrogen	0.68
Total Kjeldahl Nitrogen (TKN)	1.5
Total Recoverable Aluminum	0.75
Total Recoverable Copper .	0.009
Total Recoverable Manganese	0.05
Total Recoverable Iron	0.3
Ammonia	0.0925
Total Recoverable Zinc	0.065
Pyrene	0.0000028

(1) Monitoring periods. Primary metals facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling waiver—(a) Adverse conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low concentration waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table F–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility that drains to the outfall for which sampling was waived.

(4) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with primary metals facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional

Office listed in Part VI.G. of the fact sheet.

(1) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), primary metals facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly visual examination of storm water quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

G. Storm Water Discharges Associated With Industrial Activity From Metal Mining (Ore Mining and Dressing) Facilities

1. Discharges covered under this section—a. Eligibility. The requirements listed under this section shall apply to storm water discharges from active and inactive metal mining and ore dressing facilities that come under Standard Industrial Classification (SIC) Major Group 10 if the storm water has come into contact with, or is contaminated by, any overburden, raw material, intermediate product, finished product, byproduct, or waste product located on the site of the operation. SIC Major Group 10 includes establishments primarily engaged in mining, developing mines, or exploring for metallic minerals (ores) and also includes all ore dressing and beneficiating operations, whether performed at mills operated in conjunction with the mines served or at mills, such as custom mills, operated separately. For the purposes of this part of the permit, the term "metal mining" includes all ore mining and/or dressing and beneficiating operations, whether performed at mills operated in conjunction with the mines served or at mills, such as custom mills, operated separately. All storm water discharges from inactive metal mining facilities and the storm water discharges from the following areas of active, and temporarily inactive, metal mining facilities are the only discharges covered by this section of the permit: topsoil piles; offsite haul/access roads if off active area; onsite haul roads if not constructed of waste rock or if spent ore and mine water is not used for dust control; runoff from tailings dams/dikes when not constructed of waste rock/tailings and no process fluids are present; concentration building, if no contact with material piles; mill site, if no contact with material piles; chemical storage area; docking facility, if no excessive contact with waste product; explosive storage; reclaimed areas released from reclamation bonds prior to December 17, 1990; and partially/inadequately reclaimed areas or areas not released from reclamation bonds.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

Limitations on coverage. The following storm water discharges associated with industrial activity are not authorized by this permit:

(1) Discharges from active metal mining facilities that are subject to the effluent limitation guidelines for the Ore Mining and Dressing Point Source Point Source Category (40 CFR part 440). Coverage under this permit does not

include adit drainage or contaminated springs or seeps at active facilities, temporarily inactive facilities, or inactive facilities. Also see Limitations on Coverage, Part I.B.3.

(2) Storm water discharges associated with an industrial activity that the Director (EPA) has determined to be, or may reasonably be expected to be, contributing to a violation of a water quality standard.

(3) Storm water discharges associated with industrial activity from inactive mining operations occurring on Federal lands where an operator cannot be identified.

2. Special definitions. The following definitions are only for this section of today's permit and are not intended to supersede the definitions of active and inactive mining facilities established by 40 CFR 122.26(b)(14)(iii):

"Active metal mining facility" is a place where work or other related activity to the extraction, removal, or recovery of metal ore is being conducted. With respect to surface mines, an "active metal mining facility" does not include any area of land on or in which grading has been completed to return the earth to a desired contour and reclamation work has begun.

"Inactive metal mining and dressing facility" means a site where metal mining and/or milling activities occurred in the past but is not an active metal mining facility, as defined in this permit. The term means a site where reclamation subject to applicable State or Federal reclamation requirements has begun but has not been completed and/or the reclamation bond has not been released. The term also includes a site where the mining and/or milling activities occurred prior to the establishment of applicable State and/or Federal reclamation requirements or where there has been no mining or milling activities in the 10 years prior to the effective date of this permit. This definition also includes storm water discharges associated with industrial activity from inactive mine sites occurring on non-Federal lands where an operator cannot be identified.

"Temporarily inactive metal mining facility" means a site where metal mining and/or milling activities occurred in the past, but are not being actively undertaken and the criteria for being considered an inactive metal mining facility are not met.

3. Storm water pollution prevention plan requirements—a. Contents of plan for active and temporarily inactive metal mining facilities. The plan shall include, at a minimum, the following items:

(1) Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of mining activities The plan shall provide a narrative description of the mining and associated activities taking place at the site that affect or may affect storm water runoff intended to be covered by this permit. The narrative description shall report the total acreage within the mine site, an estimate of the number of acres of disturbed land and an estimate of the total amount of land proposed to be disturbed throughout the life of the mine. A general description of the location of the mining site relative to major transportation routes and communities shall also be provided.

(3) Description of potential pollutant sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants (including sediment) to storm water discharges or that may result in the discharge of pollutants during dry weather. Each plan shall identify all activities and significant materials that may potentially be significant storm water pollutant sources from the active mining activity (see Part XI.G.1.). Each plan shall include, at a minimum:

a. Drainage—(i) A site topographic map shall be included in the plan that indicates, at a minimum: Mining/milling site boundaries and access and haul roads; the location of each storm water outfall and an outline of the portions of the drainage area that are within the facility boundaries; equipment storage, fueling and maintenance areas; materials handling areas; storage areas for chemicals and explosives; areas used for storage of overburden, materials, soils or wastes; location of mine drainage (where water leaves mine) or any other process water; tailings piles/ponds, both proposed and existing; heap leach pads; points of discharge from the property for mine drainage or any other process water; springs, streams, wetlands and other surface waters; and boundary of area that contributes runoff to outfalls that are subject to effluent limitations guidelines.

(ii) For each area of the mine/mill site that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants (e.g., heavy metals) that are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the mineralogy of the ore and waste rock (e.g., acid forming), toxicity and quantity of chemical(s) used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of exposed materials— For each storm water outfall that may be covered under this permit (see Part XI.G.1.), an inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives. The inventory of exposed materials shall include, but shall not be limited to the significant materials stored exposed to storm water and material management practices employed that were listed for the facility in the approved group application.

A summary of any existing ore or waste rock/overburden characterization data, including results of testing for acid rock generation potential. If the ore or waste rock/overburden characterization data is updated due to a change in the ore type being mined, the storm water pollution prevention plan shall be updated with the new data.

*(c) Spills and leaks—*A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list

shall be updated as appropriate during the term of the permit.

(d) Sampling data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk identification and summary of potential pollutant sources—A narrative description of the potential pollutant sources from the following activities associated with metal mining: Loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., heavy metals, etc.) of concern shall be identified.

(4) Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good housekeeping—Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. (For suggested measures for vehicle maintenance operations, see good housekeeping measures specified in Part XI.P. for transportation facilities.)

(b) Preventive maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems. Particular attention shall be given to erosion control and sediment control systems and devices.

(c) Spill prevention and response procedures—Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—The plan shall identify qualified personnel that shall inspect designated equipment and mine areas at least on a monthly basis for active sites. The monthly inspections can be done by any time during the month and do not have to be done immediately following a precipitation event. For temporarily inactive sites, the inspections should be quarterly; however, inspections are not required when adverse weather conditions (e.g., snow) make the site inaccessible. All material handling areas shall be inspected for evidence of, or the potential for, pollutants entering the drainage system. Erosion control systems and sediment control devices shall also be inspected to determine if they are working properly. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. The use of a checklist developed by the facility is encouraged.

(e) Employee training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, and material management practices. The pollution prevention plan shall specify how often training shall take place, but in all cases training must be held at least semiannually.

(f) Recordkeeping and internal reporting procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

Non-storm water discharges—(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges, such as seeps or adit discharges or discharges subject to effluent limitation guidelines (e.g., 40 CFR Part 440), such as mine drainage or process water of any kind. The certification shall include the identification of potential significant sources of non-storm water or water subject to effluent limitation guidelines at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit that receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.G.3.a.(4)(g)(iii) (below).

Alternatively, the plan may include a certification that any non-storm water discharge that mixes with storm water is subject to a separate NPDES permit that applies applicable effluent limitations prior to the mixing of non-storm water and storm water. In such cases, the certification shall identify the non-storm water discharge(s), the applicable NPDES permit(s), the effluent limitations placed on the non-storm water discharge by the NPDES permit(s), and the point(s) at which the limitations are applied.

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after

[Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and erosion control—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant erosion of soil and/or other materials, and identify measures to be used to limit erosion and/or remove sediment from storm water runoff. The measures to consider include diversion of flow away from areas susceptible to erosion, stabilization methods to prevent or minimize erosion, and structural methods for controlling sediment. These can include the following:

Diversion practices include the following: Interceptor dikes and swales; diversion dikes curbs and berms; pipe slope drains; subsurface drains; and drainage/storm water conveyance systems (channels or gutters; open top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector; and culverts).

Stabilization practices include the following: Temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting; netting; or blankets); riprap; gabions; and retaining walls.

Structural practices include the use of the following: Check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; and other controls such as entrance stabilization, waterway crossings or wind breaks.

(i) Management of runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.G.3.a.(3) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices, or impoundments.

(j) Capping—In some cases, the elimination of a pollution source through capping contaminant sources may be the most effective control measure for discharges from inactive ore mining and dressing facilities. If capping of a contaminant source is necessary, the plan must identify which source is being capped and materials and procedures used to cap the contaminant source.

(k) Treatment—If treatment of a storm water discharge is necessary, the plan must describe how storm water will be treated prior to discharging to waters of the United States. Storm water treatments include the following: chemical/physical treatment; oil/water separators; and artificial wetlands.

(5) Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.G.3.a.(3) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.G.3.a.(4) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.G.3.a.(5)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under XI.G.3.a.(4)(d), the compliance evaluation may be conducted in place of one such inspection.

b. Contents of plan for inactive metal mining facilities. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals that are responsible for the development, implementation, maintenance, and revision of the storm water pollution prevention plan. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the storm water pollution prevention plan at the inactive facility.

(2) Description of Mining Activities. The plan shall provide a narrative description of the mining and associated activities that took place at the site. The narrative description shall report the approximate dates of operation, the total acreage within the mine and/or processing site, an estimate of the number of acres of disturbed area, and the current activities (e.g., reclamation) that are taking place at the facility. A general description of the location of the mining site relative to major

transportation routes and communities shall also be provided.

(3) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants (including sediment) to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant storm water pollutant sources from the inactive mining site. Each plan shall include, at a minimum:

(a) Site Map—A generalized site map or maps that indicate any of the following that may be applicable: mining/milling site boundaries and access and haul roads; the location of each storm water outfall and an outline of the portions of the drainage area that are within the facility boundaries; areas used for storage of overburden, materials, soils, tailings, or wastes; areas used for outdoor manufacturing, storage, or disposal of materials; any remaining equipment storage, fueling, and maintenance areas; tailings piles/ponds; mine drainage or any other process water discharge points; an estimate of the direction(s) of flow; existing structural controls to reduce pollutants in storm water runoff; and springs, streams, wetlands, and other surface waters.

(b) Inventory of exposed materials—The plan shall include for each outfall an inventory and narrative description of any significant materials that may still be at the site. This description of sources should agree with sources identified on the map.

(c) Sampling data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(d) Risk identification and summary of potential pollutant sources—For each potential pollutant source at the site the pollutants of concern (e.g., heavy metals) shall be identified and an assessment made of the potential of these pollutant sources to contribute pollutants to storm water discharges.

(4) Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Storm water diversion—Describe how and where storm water will be diverted away from potential pollutant sources to prevent storm water contamination. Storm water diversions include the following: interceptor dikes and swales; diversion dikes curbs and berms; pipe slope drains; subsurface drains; and drainage/storm water conveyance systems (channels or gutters; open top box culverts, and waterbars; rolling dips and road sloping; roadway surface water deflector; and culverts).

(b) Sediment and erosion control—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant erosion of soil and/or other materials, and identify measures to be used to limit erosion and/or remove sediment from storm water runoff. The measures to consider include diversion of flow away from areas susceptible to erosion, stabilization methods to prevent or minimize erosion, and structural methods for controlling sediment. These can include the following:

Stabilization practices include the following: Temporary or permanent seeding; vegetative buffer strips; protection of trees; topsoiling; soil conditioning; contouring; mulching; geotextiles (matting; netting; or blankets); riprap; gabions; and retaining walls.

Structural practices include the use of the following: check dams; rock outlet protection; level spreaders; gradient terraces; straw bale barriers; silt fences; gravel or stone filter berms; brush barriers; sediment traps; grass swales; pipe slope drains; earth dikes; and other controls such as entrance stabilization, waterway crossings or wind breaks.

(c) Management of runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those that control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.G.3.b.(3) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls, snow management activities, infiltration devices, and wet detention/retention devices, or impoundments.

(d) Capping—In some cases, the elimination of a pollution source through capping contaminant sources may be the most effective control measure for discharges from inactive ore mining and dressing facilities. If capping of a contaminant source is necessary, the plan must identify which source is being capped and materials and procedures used to cap the contaminant source.

(e) Treatment—If treatment of a storm water discharge is necessary, the plan must describe how storm water will be treated prior to discharging to waters of the United States. Storm water treatments include the following: chemical/physical treatment; oil/water separators; and artificial wetlands.

(f) Recordkeeping and internal reporting procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(5) Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, except as provided in paragraph XI.G.3.b.(5)(d) (below), in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.G.3.b.(3) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.G.3.b.(4) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.G.3.b.(5)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part shall be conducted at appropriate intervals specified in the plan, but, in no case less than once in 3 years.

4. Numeric effluent limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and reporting requirements—a. Analytical monitoring requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], metal mining and dressing facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Active ore mining and dressing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table G–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table G–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE G–1.—MONITORING REQUIREMENTS FOR ACTIVE FACILITIES

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Chemical Oxygen Demand (COD)	65
Total Suspended Solids (TSS)	100
Total Kjeldahl Nitrogen (TKN)	1.5
Nitrate plus Nitrite Nitrogen	0.68
Total Phosphorus	0.33
Ammonia	0.093
Total Recoverable Antimony	0.088
Total Recoverable Arsenic	0.000018
Total Recoverable Copper	0.009
Total Recoverable Iron	0.3
Total Recoverable Lead	0.0337
Total Recoverable Manganese	0.05
Total Recoverable Zinc	0.065

(1) Monitoring periods. Active ore mining and dressing facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling waiver—(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph 5.a.(1) (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low concentration waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table G–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility that drains to the outfall for which sampling was waived.

(4) Representative discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an

estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with active ore mining and dressing facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet to this permit.

(1) Additional notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), active ore mining and dressing facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Visual examination of storm water quality. Active and temporarily inactive mining facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event. Active mining facilities must examine storm water quality at least once in each month. The examination for temporarily inactive mining facilities must be made at least once a year (the same frequency as the Comprehensive Site Compliance Evaluation). Visual examination of Storm Water Quality at inactive mining facilities is not required.

(1) Examinations shall be made of grab samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

H. Storm Water Discharges Associated With Industrial Activity From Coal Mines and Coal Mining-Related Facilities

1. Discharges covered under this section. The requirements listed under this section shall apply to storm water discharges from coal mining-related areas if they are not subject to effluent limitations guidelines under 40 CFR Part 434. Coal mines are commonly identified by Standard Identical Classification (SIC) Major Group 12. Storm water discharges from the following portions of coal mines may be eligible for this permit:

- Haul Roads—Nonpublic roads on which coal or coal refuse is conveyed.
- Access Roads—Nonpublic roads providing light vehicular traffic within the facility property and to public roadways.
- Railroad Spurs, Sidings, and Internal Haulage Lines—Rail lines used for hauling coal within the facility

property and to offsite commercial railroad lines or loading areas.

• Conveyor Belts, Chutes, and Aerial Tramway Haulage Areas—Areas under and around coal or refuse conveyor areas, including transfer stations.

• Equipment Storage and Maintenance Yards.

• Coal Handling Buildings and Structures.

• Inactive Coal Mines and Related Areas—Abandoned and other inactive mines, refuse disposal sites and other mining-related areas.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special conditions—a. Prohibition of non-storm water discharges. Excluded from coverage under this permit are point source discharges of pollutant seeps or underground drainage from inactive coal mines and refuse disposal areas that do not occur as storm water discharges in response to precipitation events.

3. Storm water pollution prevention plan requirements. Most of the active coal mining-related areas described in paragraph XI.H.1. above, are subject to sediment and erosion control regulations of the U.S. Office of Surface Mining (OSM) that enforces the Surface Mining Control and Reclamation Act (SMCRA). OSM has granted authority to most coal states to implement SMCRA through State SMCRA regulations. All SMCRA requirements regarding control of erosion, siltation and other pollutants resulting from storm water runoff, including road dust resulting from erosion, shall be minimum requirements of the pollution prevention plan and shall be included in the contents of the plan directly, or by reference.

a. Contents of plan. The plan shall include at a minimum, the following items:

(1) Pollution prevention team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of potential pollutant sources. Each plan shall provide a description of potential sources that may reasonably be expected to add significant amounts of pollutants to storm water discharges or that may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials that may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage—(i) A site map, such as a drainage map required for SMCRA permit applications, that indicate drainage areas and storm water outfalls. These shall include but not be limited to the following:

• Drainage direction and discharge points from all applicable mining-related areas described in Section XI.H.1.a. (discharges covered under this section) above, including culvert and sump discharges from roads and rail beds and also from equipment and maintenance areas subject to storm runoff of fuel, lubricants and other potentially harmful liquids.

• Location of each existing erosion and sedimentation control structure or other control measures for reducing pollutants in storm water runoff.

• Receiving streams or other surface water bodies.

• Locations exposed to precipitation that contain acidic spoil, refuse or unreclaimed disturbed areas.

• Locations where major spills or leaks of toxic or hazardous pollutants have occurred.

• Locations where liquid storage tanks containing potential pollutants, such as caustics, hydraulic fluids and lubricants, are exposed to precipitation.

• Locations where fueling stations, vehicle and equipment maintenance areas are exposed to precipitation.

(ii) For each area of the facility that generates storm water discharges associated with the mining-related activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants that are likely to be present in storm water discharges associated with the activity. Factors to consider include the toxicity of the pollutant; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of exposed materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and leaks—A list of significant spills and leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling data—A summary of any existing discharge sampling data describing pollutants in storm water discharges from the portions of the facility covered by this permit, including a summary of any sampling data collected during the term of this permit.

(e) Risk identification and summary of potential pollutant sources—A narrative description of the potential pollutant sources from the following activities: truck traffic on haul roads and resulting generation of sediment subject to runoff and dust generation; fuel or

other liquid storage; pressure lines containing slurry, hydraulic fluid or other potential harmful liquids; and loading or temporary storage of acidic refuse or spoil. Specific potential pollutants shall be identified, where known.

(3) Measures and controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls.

(a) Good housekeeping—Good housekeeping requires the maintenance of areas that may contribute pollutants to storm water discharges in a clean, orderly manner. These would be practices that would minimize the generation of pollutants at the source or before it would be necessary to employ sediment ponds or other control measures at the discharge outlets. Where applicable, such measures would include the following:

- Sweepers and covered storage to minimize dust generation and storm runoff
- Conservation of vegetation where possible to minimize erosion
- Watering of haul roads to minimize dust generation
- Collection, removal, and proper disposal of waste oils and other fluids resulting from vehicle and equipment maintenance.

(b) Preventive maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems. Where applicable, such measures would include the following:

- Removal and proper disposal of settled solids in catch basins to allow sufficient retention capacity
- Periodic replacement of siltation control measures subject to deterioration such as straw bales
- Inspections of storage tanks and pressure lines for fuels, lubricants, hydraulic fluid or slurry to prevent leaks due to deterioration or faulty connections.

(c) Spill prevention and response procedures—Areas where potential spills that can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under paragraph XI.H.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated areas of the facility at appropriate intervals specified in the plan. The following shall be included in the plan:

- *Active mining-related areas and those inactive areas under SMCRA bond authority*—The plan shall require quarterly inspections by the facility personnel for areas of the facility covered by pollution prevention plan requirements. This inspection interval corresponds with the quarterly inspections for the entire facility required to be provided by SMCRA authority inspectors for all mining-related areas under SMCRA authority, including sediment and erosion control measures. Inspections by the facility representative may be done at the same time as the mandatory inspections performed by SMCRA inspectors. At least one inspection shall be performed during a storm period of at least 0.1 inch rainfall where the effectiveness of the sediment and erosion control measures can be observed. During that inspection, a narrative evaluation of the control measures under storm conditions shall be made as well as visual impacts on the receiving stream. Records of inspections of the SMCRA authority facility representative shall be maintained.
- *Inactive mining-related areas not under SMCRA bond*—The plan shall require annual inspections by the facility representative except in situations referred to in paragraph XI.H.3.a.(4)(d) below.
- *Inspection records*—The plan shall require that inspection records of the facility representative and those of the SMCRA authority inspector shall be maintained. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections.

(e) Employee training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and internal reporting procedures—A description of incidents (such as spills or other discharges) along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm water discharges—(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges such as drainage from underground portions of inactive mines or floor drains from maintenance or coal handling buildings. The certification shall include the identification of potential significant sources of non-storm water discharges at the site, a description of the results of any test and/or evaluation, a description of the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit.

(ii) Except for flows from fire fighting activities, authorized sources of non-storm water listed in Part III.A.2. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Any facility that is unable to provide the certification required (testing or other evaluation for non-storm water discharges) must notify the Director by [270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform

adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water to the storm discharge lines; and why adequate tests for such storm discharge lines were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and erosion control—The plan shall identify areas that, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion and reduce sediment concentrations in storm water discharges. As indicated in paragraph XI.H.3.a.(3) above, SMCRA requirements regarding sediment and erosion control measures are minimum requirements of the pollution prevention plan for mining-related areas subject to SMCRA authority. The following sediment and erosion control measures should be included in the plan where reasonable and appropriate for all areas subject to storm water runoff:

- *Stabilization measures*—Interim and permanent stabilization measures to minimize erosion and lessen amount of structural sediment control measures needed, including: Mature vegetation preservation; temporary seeding; permanent seeding and planting; temporary mulching, matting, and netting; sod stabilization; vegetative buffer strips; temporary chemical mulch, soil binders, and soil palliatives; nonacidic roadsurfacing material; and protective trees.
- *Structural measures*—Structural measures to lessen erosion and reduce sediment discharges, including: Silt fences; earth dikes; straw dikes; gradient terraces; drainage swales; sediment traps; pipe slope drains; porous rock check dams; sedimentation ponds; riprap channel protection; capping of contaminated sources; and physical/chemical treatment of storm water.

(i) Management of flow—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (other than those as sediment and erosion control measures listed above) used to manage storm water runoff in a manner that reduces pollutants in storm water runoff from the site. The plan shall provide that the measures, which the permittee determines to be reasonable and appropriate, shall be implemented and maintained. Appropriate measures may include: discharge diversions; drainage/storm water conveyances; runoff dispersion; sediment control and collection; vegetation/soil stabilization; capping of contaminated sources; and treatment.

(4) Comprehensive site compliance evaluation. Qualified personnel shall conduct site compliance evaluations at intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with coal mining-related areas shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. These areas include haul and access roads; railroad spurs, sidings, and internal haulage lines; conveyor belts, chutes and aerial tramways; equipment storage and maintenance yards; coal handling buildings and structures; and inactive mines and related areas. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures, as indicated in paragraphs XI.H.3.a.(3)(h) and XI.H.3.a.(3)(i) above and where identified in the plan, shall be observed to ensure that they are operating correctly. A visual inspection of any equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan, in accordance with paragraph XI.H.3.a.(2) of this section, and pollution prevention measures and controls identified in the plan, in accordance with paragraph XI.H.3.a.(3) of this section, shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner. For inactive mines, such revisions may be extended to a maximum of 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.H.3.a.(4)(b) above shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection. Where annual site inspections are shown in the plan to be impractical for inactive mining sites due to the remote location and inaccessibility of the site, site inspections required under this part shall be conducted at appropriate intervals specified in the plan, but, in no case less than once in 3 years.

4. Numeric effluent limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and reporting requirements—a. Monitoring requirements—(1) Quarterly visual examination of storm water quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm

event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

I. Storm Water Discharges Associated With Industrial Activity From Oil and Gas Extraction Facilities

1. Discharges Covered Under This Section—a. Eligibility. This permit covers all existing point source discharges of storm water associated with industrial activity to waters of the United States from oil and gas facilities listed under Standard Industrial Classification (SIC) Major Group 13 which are required to be permitted under 40 CFR 122.26. Those industries in SIC Major Group 13 include the extraction and production of crude oil, natural gas, oil sands and shale; the production of hydrocarbon liquids and natural gas from coal; and associated oil field service, supply and repair industries.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

There are no additional requirements beyond those listed in Part III. of this permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage.

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part IX.I.3.a.(1)(c) (Spills and Leaks) of this permit have occurred, location of the area where the RQ release occurred; and the locations of the following activities where such activities are exposed to precipitation: Fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas, chemical mixing areas, construction and drilling areas. The site map will indicate all areas subject to the effluent guidelines requirement of "No Discharge" in accordance with 40 CFR 435.32 and the existing structural controls to achieve compliance with the "No Discharge" requirement.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to

consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. The permittee should consider the cause of RQ releases, the materials used to contain and remediate releases, and any other aspect of releases or clean-up which could potentially contribute pollutants to a storm water discharge. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: Loading and unloading operations; outdoor storage activities; chemical, cement, mud or gel mixing activities; outdoor manufacturing or processing activities; drilling or mining activities; significant dust or particulate generating processes; and onsite waste disposal practices, equipment cleaning and rehabilitation activities. List any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

In its description of potential pollutant sources, a facility must include information about the RQ release which triggered the permit application requirements. Such information must include: the nature of the release(e.g., spill of oil from a drum storage area); the amount of oil or hazardous substance released; amount of substance recovered; date of the release; cause of the release (e.g., poor handling techniques as well as lack of containment in area); area affected by release, including land and waters; procedure to cleanup release; actions or procedures implemented to prevent or better respond to a release; and remaining potential contamination of storm water from release. The analysis shall take into account human health risks, the control of drinking water intakes, and the designated uses of the receiving stream.

(3) Measures and Controls. Each facility covered by this permit shall develop and implement storm water management controls appropriate for the facility. The controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such measures:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems. The preventative maintenance program shall also include the inspection of all on site and off site mixing tanks and equipment, and all vehicles which carry supplies and chemicals to oil field activities.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Materials shall be stored indoors where possible, and drainage systems designed to discharge downstream from drinking water intakes. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under paragraph XI.I.3.a.(4) of this section, qualified facility or plant personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. All equipment and areas addressed in the pollution prevention plan shall be inspected at a minimum of 6-month intervals. Equipment and vehicles which store, mix or transport hazardous materials will be inspected routinely, but not less than quarterly. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. All records shall be kept for a period of not less than 3 years.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test

and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.I.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion. Unless covered by the General Permit for Construction Activity (57 FR 41209), the additional erosion control requirement for well drillings oil, sand, and shale mining areas are as follows:

(i) Site Description—Each plan shall provide a description of the following: 1) a description of the nature of the exploration activity; 2) estimates of the total area of the site and the area of the site that is expected to be disturbed due to the exploration activity; 3) an estimate of the runoff coefficient of the site; 4) a site map indicating drainage patterns and approximate slopes, the location of major control structures identified in the plan, and surface waters; and 5) the name of the receiving water(s) and the ultimate receiving water(s) of the runoff.

(ii) Controls—The pollution prevention plan shall include a description of controls appropriate for the activity and implement such controls. The description of controls shall address the following minimum components:

- A description of vegetative practices designed to preserve existing vegetation where attainable and revegetate open areas as soon as practicable after grade drilling. Such practices may include: temporary seeding, permanent seeding, mulching, sod stabilization, vegetative buffer strips, and protection of trees. The operator shall initiate appropriate vegetative practices on all disturbed areas within 14 calendar days of the last activity at that area.
- A description of structural practices to the degree attainable divert flows from exposed soils, store flows or otherwise limit runoff from exposed areas of the site. Such practices may include straw bale dikes, silt fences, earth dikes, brush barriers, drainage swales, check dams, subsurface drain, pipe slope drain, level spreaders storm drain inlet protection, rock outlet protection, sediment traps, and temporary sediment basins.

(iii) Offsite vehicle tracking of sediments shall be minimized.

(iv) Procedures in a plan shall provide that all erosion controls on the site are inspected at least once every 7 calendar days.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide the measures that the permittee determines to be reasonable and appropriate which shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(j) RQ Release—The permittee must describe the measures taken to clean up RQ releases or related spills of materials, as well as measures proposed to avoid future releases of RQs. Such measures may include, among others: improved handling or storage techniques; containment around handling areas of liquid materials; and use of improved spill cleanup materials and techniques.

(k) Vehicle and Equipment Storage Areas—The storage of vehicles and equipment awaiting or having completed maintenance must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize contamination of the storm water runoff from these areas. The facility may consider the use of drip pans under vehicles and equipment, indoor storage of the vehicles and equipment, and/or installation of berming and diking of this area.

(l) Vehicle and Equipment Cleaning and Maintenance Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment cleaning. The facility may consider performing all cleaning operations indoors, covering the cleaning operation, ensuring that all washwaters drain to a sanitary sewer, and/or collecting the storm water runoff from the cleaning area and providing treatment or recycling. The discharge of vehicle and equipment wash waters, including tank cleaning operations, are not authorized by this permit and must be authorized under a separate NPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment maintenance and rehabilitation. The facility may consider performing all

maintenance activities indoors, use of drip pans, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting the practice of hosing down the shop floor where the practice would result in the exposure of pollutants to storm water, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(m) Materials and Chemical Storage Areas—Storage units of all chemicals and materials (e.g., fuels, oils, used filters, spent solvents, paint wastes, radiator fluids, transmission fluids, hydraulic fluids, detergents drilling mud components, acids, organic additives) must be maintained in good condition so as to prevent contamination of storm water. Hazardous materials must be plainly labeled. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility may consider indoor storage of the materials and/or installation of berming and diking at the area.

(n) Chemical Mixing Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from chemical mixing areas. The facility may consider covering the mixing area, using spill and overflow protection, minimizing runon of storm water to the mixing area, using dry cleanup methods, and/or collecting the storm water runoff and providing treatment or recycling. The facility may consider installation of berming and diking of the area.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity (e.g., materials and chemical storage areas, vehicle and equipment cleaning and maintenance areas, vehicle and equipment storage areas, chemical mixing areas, and areas of materials handling at the drill site areas) shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.I.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.I.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, and major observations relating to the implementation of the storm water pollution prevention plan the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional requirements beyond those listed in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements.

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

J. Storm Water Discharges Associated With Industrial Activity From Mineral Mining and Processing Facilities

1. Discharges Covered Under This Section

a. Eligibility.

(1) This permit covers all existing point source discharges of storm water associated with industrial activity to waters of the United States from active and inactive mineral mining and processing facilities, generally identified by Standard Industrial Classification (SIC) Major Group 14, except for storm water discharges identified under paragraph XI.J.1.b.

(2) This permit may authorize storm water discharges associated with industrial activity that are mixed with storm water discharges associated with industrial activity from construction activities, provided that the storm water discharge from the construction activity is in compliance with the terms, including applicable Notice of Intent (NOI) or application requirements, of a different NPDES general permit or individual permit authorizing such discharges.

(b) Limitations on Coverage. The following storm water discharges associated with industrial activity are not authorized by this permit:

(1) Storm water discharges associated with industrial activity which are subject to an existing effluent limitation guideline, 40 CFR Part 436.

(2) Co-located Industrial Activities: When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. This section of today's proposed permit does not cover any discharge subject to process wastewater effluent limitation guidelines, including storm water that combines with process wastewater.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each storm water pollution prevention plan must describe industrial activities, significant materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather, result in dry weather flows and mine pumpout. Plans must describe the following elements:

(a) Drainage—The plan must contain a map of the site that shows the pattern of storm water drainage, structural or nonstructural features that control pollutants in storm water runoff and process wastewater discharges, surface water bodies (including wetlands), places where significant materials are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map also must show areas where the following activities take place: fueling, vehicle and equipment maintenance and/or cleaning, loading and unloading, material storage (including tanks or other vessels used for liquid or waste storage), material processing, and waste disposal, haul roads, access roads, and rail spurs. In addition, the site map must also identify monitoring locations, if monitoring is required for the facility.

(b) Inventory of Exposed Materials—Facility operators are required to carefully conduct an inspection of the site and related records to identify significant materials that are or may be exposed to storm water. The inventory must address materials that within 3 years prior to the effective date of the permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in storm water runoff; existing structural controls that limit process wastewater discharges; and any treatment the runoff receives before it is discharged to surface waters or a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

(c) Significant Spills and Leaks—The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of CWA (see 40 CFR 110.10 and 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance.

(d) Sampling Data—Any existing data on the quality or quantity of storm water discharges from the facility must be described in the plan. The description should include a discussion of the methods used to collect and analyze the

data. Sample collection points should be identified in the plan and shown on the site map.

(e) Risk Identification and Summary of Potential Pollutant Sources—The description of potential pollution sources culminates in a narrative assessment of the risk potential that sources of pollution pose to storm water quality. This assessment should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water. Any such industrial activities, significant materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the following activities: loading and unloading operations; outdoor storage activities; outdoor processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The assessment must list any significant pollution sources at the site and identify the pollutant parameter or parameters (i.e., total suspended solids, total dissolved solids, etc.) associated with each source.

(3) Measures and Controls. Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. The permittee must assess the applicability of the following BMPs for their site: discharge diversions, drainage/storm water conveyance systems, runoff dispersions, sediment control and collection mechanisms, vegetation/soil stabilization, and capping of contaminated sources. In addition, BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address the potential sources of storm water pollution. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems.

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

(b) Preventive Maintenance—The maintenance program requires periodic removal of debris from discharge diversions and conveyance systems. These activities should be conducted in the spring, after snowmelt, and during the fall season. Permittees using ponds to control their effluents frequently use impoundments or sedimentation ponds as their BAT/BCT. Maintenance schedules for these ponds must be provided in the pollution prevention plan.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Operators of active facilities are required to conduct quarterly visual inspections of all BMPs. Temporarily and permanently inactive operations are required to perform annual inspections. The inspections shall include: (1) an assessment of the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems, and containment structures; (2) visual inspections of vegetative BMPs, serrated slopes, and benched slopes to determine if soil erosion has occurred; and (3) visual inspections of material handling and storage areas and other potential sources of pollution for evidence of actual or potential pollutant discharges of contaminated storm water.

The examination must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to produce a runoff event. Examinations shall be conducted in each of the following periods for the purposes of inspecting storm water quality associated with storm water runoff and snow melt: December to February (storm water runoff or snow melt); March to May (storm water runoff); June to August (storm water runoff); September to November (storm water runoff or snow melt).

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. The pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents such as spills or other discharges along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. The permittee must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. The plan must address spills, monitoring, and BMP inspection and maintenance activities. Ineffective BMPs must be recorded and the date of their corrective action noted.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with part XI.J.3.a.(g)(iii) (Failure to Certify) of this permit.

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water

discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify.—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe the procedure of any test conducted for the presence of non-storm water discharges to the storm sewer and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

Permittees must indicate the location and design for proposed BMPs to be implemented prior to land disturbance activities. For sites already disturbed but without BMPs, the permittee must indicate the location and design of BMPs that will be implemented. The permittee is required to indicate plans for grading, contouring, stabilization, and establishment of vegetative cover for all disturbed areas, including road banks. Reclamation activities must continue until final closure notice has been issued.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see Part XI.J.3.a.(2) (Description of Potential Pollutant Sources) of this permit] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. In addition, the permittee must describe the storm water pollutant source area or activity (i.e., loading and unloading operations, raw material storage piles etc.) to be controlled by each storm water management practice.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part XI.J.3.a.(2) (Description of Potential Pollutant Sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.J.3.a.(3) (Measures and Controls) of this permit shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.J.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to 1) confirm the accuracy of the description of potential pollution sources contained in the plan, 2) determine the effectiveness of the plan, and 3) assess compliance with the terms and conditions of the permit. Comprehensive site compliance evaluations should be conducted twice a year for active facilities and once a year for temporary and permanently inactive sites. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires. Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

4. Numeric Effluent Limitations

There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements.

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

K. Storm Water Discharges Associated With Industrial Activity From Hazardous Waste Treatment, Storage, or Disposal Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from facilities that treat, store, or dispose of hazardous wastes, including those that are operating under interim status or a permit under subtitle C of RCRA.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. There are no additional requirements under this section other than those stated in Part III.A.

3. Storm Water Pollution Prevention Plan Requirements. Where a requirement under this section of the permit is similar to a requirement which the facility is subject to under RCRA, the facility must comply with the more stringent of the two conditions and report such conditions in the applicable section of the storm water pollution prevention plan.

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

a. Drainage.

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under part IV.D.3.c. (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and

an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., chemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., berms, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under paragraph XI.K.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph (iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit

issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.K.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.K.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.K.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph (4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations

There are no additional numeric effluent limitations beyond those in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with hazardous waste treatment, storage, or disposal facilities (TSDFs) must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). TSDFs are required to monitor their storm water discharges for the pollutants of concern listed in Table K–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table K–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE K–1.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration
Ammonia	.093 mg/L.
Total Kjeldahl Nitrogen (TKN)	1.5 mg/L.
Total Recoverable Magnesium.	detection limit.
Chemical Oxygen Demand (COD).	65 mg/L.
Arsenic	0.000018 mg/L.
Total Recoverable Barium	1.0 mg/L.
Total Recoverable Cadmium	0.0018 mg/L.
Cyanide	detection limit.
Total Recoverable Lead	0.0337 mg/L.
Mercury	0.0024 mg/L.
Total Recoverable Selenium	0.02 mg/L.
Total Recoverable Silver	0.0009 mg/L.

(1) Monitoring Periods. TSDFs shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab

sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table K–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.B. of this permit.

b. Reporting. Permittees with TSDFs shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), TSDFs with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

L. Storm Water Discharges Associated With Industrial Activity From Landfills and Land Application Sites

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from waste disposal at landfills and land application sites that receive or have received industrial wastes. Landfill and land application operators which have storm water discharges from other types of industrial activities such as vehicle maintenance, truck washing, composting, and/or recycling may be subject to additional requirements specified elsewhere in this permit.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. The discharge of leachate and vehicle and equipment washwaters to waters of the United States or a municipal separate storm sewer system is not authorized by this permit. The operators of such discharges must obtain coverage under a separate NDPES permit (other than this permit). Discharges from open dumps as defined under RCRA are also not authorized under this permit (e.g., leachate, runoff).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutant to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations of active and closed landfill cells or trenches, locations of active and closed land application areas, locations of any known leachate springs or other areas where uncontrolled leachate may commingle with runoff, locations of any leachate collection and handling systems, locations where major spills or leaks identified under Part XI.L.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and locations of the following activities where such activities are exposed to precipitation: fueling station, vehicle and equipment maintenance and/or cleaning areas, and waste and other significant material loading/unloading and storage areas.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemicals; quantities of chemicals used, produced or discharged; the likelihood of contact with storm water; and the history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, or disposed of in a manner to allow exposure to storm water between the time of the exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives. The inventory of exposed materials

shall include, but shall not be limited to the significant material management practices employed.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water of sampling data collected during the term of this permit. Permittees shall also provide all available sampling data for leachate generated at the site.

(e) Risk Identification and Summary of Potential Pollutant Sources—Include a narrative description of potential pollutant sources associated with any of the following, providing they occur at the facility: fertilizer, herbicide and pesticide application; earth/soil moving; waste hauling and loading/unloading; outdoor storage of significant materials including daily, interim and final cover material stockpiles as well as temporary waste storage areas; exposure of active and inactive landfill and land application areas; uncontrolled leachate flows; failure or leaks from leachate collection and treatment systems haul roads; and vehicle tracking of sediments. The description shall specifically list any significant potential sources of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. Permittees shall consider providing protected materials storage areas for pesticides, herbicides, fertilizers, and other significant materials.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

Where applicable, permittees addressed by this section shall also: (1) maintain containers used for outdoor chemical and significant materials storage to prevent leaking or rupture; (2) maintain all elements of leachate collection and treatment systems to prevent commingling of leachate with storm water; and (3) maintain the integrity and effectiveness of any intermediate or final cover, including making repairs to the cover as necessary to minimize the effects of settlement, sinking, and erosion.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan.

(i) For operating landfills and land application sites, inspections shall be conducted at least once every 7 days and within 24 hours of a storm event. Qualified personnel shall inspect areas of landfills that have not yet been finally stabilized, active land application areas, areas used for storage of materials/wastes that are exposed to precipitation, stabilization and structural control measures, leachate collection and treatment systems, and locations where equipment and waste trucks enter and exit the site. Where landfill areas have been finally stabilized and where land application has been completed, or during seasonal arid periods in arid areas (areas with an average annual rainfall of 0 to 10 inches) and semiarid areas (areas with an average annual rainfall of 10 to 20 inches), inspections will be conducted at least once every month. Erosion and sediment control measures shall be observed to ensure they are operating correctly.

(ii) For inactive landfills and land application sites, inspections shall be conducted at least semiannually and at least 5 months apart, and qualified personnel shall inspect: landfill stabilization and structural erosion control measures and leachate collection and treatment systems, and all closed land application areas.

A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. The pollution prevention plan shall be revised to address any problems found during inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as conducting inspections, spill response, good housekeeping, conducting inspections and material management practices. The pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. Landfill operators shall provide for a tracking system for the types of wastes disposed of in each cell or trench of a landfill. Land application site operators shall track the types and quantities of wastes applied in specific areas.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges including leachate and vehicle wash waters. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed

during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.L.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 180 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date of permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

Landfill operators shall provide for temporary stabilization of materials stockpiled for daily, intermediate and final cover. Stabilization practices to consider include but are not limited to temporary seeding, mulching, and placing geotextiles on the inactive portions of the stockpiles.

Landfill operators shall provide for temporary stabilization of inactive areas of the landfill which have an intermediate cover but no final cover.

Landfill operators shall provide for temporary stabilization of any landfill areas which have received a final cover until vegetation has established itself. Land application site operators shall also stabilize areas where waste application has been completed until vegetation has been established.

Landfill operators shall provide for temporary stabilization of any landfill areas which have received a final cover until vegetation has established itself. Land application site operators shall also stabilize areas where waste application has been completed until vegetation has been established.

(i) Management of Runoff—The plan shall also contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.L.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: silt fences, earth dikes, gradient terraces, drainage swales, sediment traps, check dams, pipe slope drains, level spreaders, storm drain inlet protection, rock outlet protection, reinforced soil retaining systems, gabions and temporary or permanent sediment basins. Structural practices should be placed on upland soils as practicable.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity at landfill and land application sites shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.L.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.L.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations

There are no additional numeric effluent limitations beyond those in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit

issuance], permittees with landfill/land application sites (except those that are closed in accordance with 40 CFR 258.60) must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Landfill/land application sites are required to monitor their storm water discharges for the pollutants of concern listed in Table L–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table L–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE L–1.—INDUSTRY MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Total Suspended Solids (TSS)[i]	100
Total Phosphorus[ii]	0.33
Total Recoverable Iron[ii]	0.3
Total Recoverable Lead[ii]	0.0337

[i] Applicable to all landfill and land application sites.
[ii] Applicable to all facilities except MSWLF areas closed in accordance with 40 CFR 258.60 requirements.

(1) Monitoring Periods. Landfill/land application sites shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable, permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph 5.a.(1) (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (e.g., drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table L–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity, that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of the fact sheet to this permit.

b. Reporting. Permittees with landfill/land application sites shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained

during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet to this permit.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above) landfill/land application sites, with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

6. Definition

"Inactive Landfill"—For the purposes of this permit, a landfill is considered inactive when, on a permanent basis, it will no longer receive waste and has completed closing in accordance with any applicable Federal, State, and/or local requirements.

M. Storm Water Discharges Associated With Industrial Activity From Automobile Salvage Yards

1. Discharges Covered Under This Section

The requirements of this section apply to point source discharges of storm water associated with industrial activity from facilities engaged in dismantling or wrecking used motor vehicles for parts recycling or resale and for scrap, including those facilities classified as Standard Industrial Classification (SIC) Code 5015.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall

address all aspects of the facility's storm water pollution prevention plan.

(2) *Description of Potential Pollutant Sources.* Each storm water pollution prevention plan must describe industrial activities, significant materials, and physical features of the facility that may contribute to storm water runoff or, during periods of dry weather, result in dry weather flows. Plans must include the following elements:

(a) *Site Map*—The plan must contain a map of the site that shows structural features that control pollutants in storm water runoff[5] and process wastewater discharges, surface water bodies (including wetlands), places where significant materials are exposed to rainfall and runoff, and locations of major spills and leaks that occurred in the 3 years prior to the effective date of this permit. The map must also indicate the flow direction of storm water runoff. The location of each storm water outfall associated with an industrial activity, as well as an outline of the drainage area for each storm water outfall must be indicated. The map must indicate the location of each monitoring point. The map must include an estimation (in acres) of the total area used for industrial activity including, but not limited to, dismantling, storage, and maintenance of used motor vehicles and motor vehicle parts. The map must also indicate the location of the following activities where such activities are exposed to precipitation: vehicle storage areas; dismantling areas; parts storage areas, including engine blocks, tires, hub caps, batteries, hoods, and mufflers; fueling stations; vehicle and equipment maintenance areas; cleaning areas (parts, vehicles, and/or equipment); loading and unloading areas; locations used for the treatment, storage, and disposal of wastes; and liquid storage tanks and drums for fuel and other fluids.

(b) *Inventory of Potential Pollutant Sources*—Facility operators are required to carefully conduct an inspection of the site to identify significant materials exposed to precipitation that may contribute pollutants to storm water discharges. The inventory must address materials that within 3 years prior to the effective date of the permit have been handled, stored, processed, treated, or disposed of in a manner to allow exposure to storm water. Findings of the inventory must be documented in detail in the pollution prevention plan. At a minimum, the plan must describe the method and location of onsite storage or disposal; practices used to minimize contact of materials with rainfall and runoff; existing structural and nonstructural controls that reduce pollutants in storm water runoff; existing structural controls that prohibit/control process wastewater discharges; and any treatment the runoff receives before it is discharged to surface waters or through a separate storm sewer system. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

(c) *Significant Spills and Leaks*—The plan must include a list of any significant spills and leaks of toxic or hazardous pollutants that occurred in the 3 years prior to the effective date of the permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of CWA (see 40 CFR 110.10 and 40 CFR 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance. Such list shall be updated as appropriate during the term of the permit.

(d) *Sampling Data*—Any existing data or data collected during the term of this permit describing the quality or quantity of storm water discharges from the facility must be summarized in the plan. The description should include a discussion of the methods used to collect and analyze the data. Sample collection points should be identified in the plan and shown on the site map.

(e) *Summary of Potential Pollutant Sources*—The description of potential pollution sources should clearly point to activities, materials, and physical features of the facility that have a reasonable potential to contribute significant amounts of pollutants to storm water discharges. Any such industrial activities, significant materials, or features must be addressed by the measures and controls subsequently described in the plan. In conducting the assessment, the facility operator must consider the potential for the following activities to contribute pollutants: vehicle storage areas; dismantling areas; parts storage areas, including engine blocks, tires, hub caps, batteries, and hoods; fueling stations; vehicle and equipment maintenance areas; cleaning areas (parts and vehicles and/or equipment); loading/unloading areas; locations used for the treatment, storage, and disposal of wastes; and liquid storage tanks and drums for fuel and other fluids.

The assessment must identify the pollutant parameter or parameters (i.e., copper, iron, lead, oil and grease, total suspended solids, etc.) associated with each pollutant source.

(3) *Measures and Controls.* Following completion of the source identification and assessment phase, the permittee must evaluate, select, and describe the pollution prevention measures, best management practices (BMPs), and other controls that will be implemented at the facility. BMPs include processes, procedures, schedules of activities, prohibitions on practices, and other management practices that prevent or reduce the discharge of pollutants in storm water runoff.

The pollution prevention plan must discuss the reasons each selected control or practice is appropriate for the facility and how each will address the potential sources of storm water pollution. The plan also must include a schedule specifying the time or times during which each control or practice will be implemented. In addition, the plan should discuss ways in which the controls and practices relate to one another and, when taken as a whole, produce an integrated and consistent approach for preventing or controlling potential storm water contamination problems.

(a) *Good Housekeeping*—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

(b) *Preventive Maintenance*—The preventive maintenance program shall schedule periodic inspections and ensure appropriate maintenance of storm water management devices and facility equipment and systems. This program will address conditions that could cause breakdowns or failures resulting in the discharge of pollutants to surface waters. The maintenance program shall include periodic removal of debris from discharge diversions, conveyance systems, and impoundments/ponds. These activities should be conducted in the spring, after snow melt, and during the fall season. Maintenance schedules for sedimentation/impoundments must be provided in the pollution prevention plan.

(c) *Spill and Leak Prevention and Response Procedures*—Areas where potential spills which can contribute pollutants to storm water discharges can

[5] Features such as grass swales and vegetative buffer strips also should be shown.

occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel. After clean up from a spill, absorbants must be promptly placed in containers for proper disposal. All vehicles that are intended to be dismantled must be properly drained of all fluids upon arrival at the site, or as soon as feasible thereafter, or other equivalent means must be taken to prevent leaks or spills of such fluids.

(*d*) *Inspections*—Upon arrival at the site, or as soon as feasible thereafter, vehicles must be inspected for leaks. Any equipment containing oily parts, hydraulic fluids, or any other types of fluids shall be inspected at least quarterly (four times per year) for signs of leaks. Any outdoor storage of fluids including, but not limited to, brake fluid, transmission fluid, radiator water, and antifreeze, must be inspected at least quarterly for leaks. All outdoor liquid storage containers (e.g., tanks, drums) must be inspected at least quarterly for leaks.

Qualified facility personnel are required to conduct quarterly visual inspections of BMPs. The inspections shall include: 1) an assessment of the integrity of storm water flow diversion and source minimization systems; 2) visual inspections of dismantling areas, vehicle and equipment maintenance areas, vehicle, equipment, and parts cleaning and storage areas, and other potential sources of pollution for evidence of actual or potential pollutant discharges of contaminated storm water.

Examinations shall be conducted in each of the following periods: December to February; March to May; June to August; and September to November.

Reports of the quarterly inspections (or more frequent if appropriate) shall be retained as part of the plan. Based on the results of each inspection the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

(*e*) *Employee Training*—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. The pollution prevention plan shall identify how often training will take place, but in all cases, training must be held at least twice a year. Employee training must, at a minimum, address the following areas when applicable to a facility: propar handling (collection, storage, and disposal) of oil, used mineral spirits, anti-freeze, and solvents; spill prevention and response; fueling procedures; good housekeeping practices; and used battery management.

(*f*) *Recordkeeping and Internal Reporting Procedures*—A description of incidents such as spills, or other discharges, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. The permittee must describe procedures for developing and retaining records on the status and effectiveness of plan implementation. The plan must address monitoring, and BMP inspection and maintenance activities. Ineffective BMPs must be reported and the date of their corrective action noted. Employees must report incidents of leaking fluids to facility management and document such leaks in the plan. The facility must also:

- Maintain records (gallons per month) of drained waste oil, anti-freeze, mineral spirits, and gasoline
- Identify by name and EPA or State identification number (if any) all transporters, recyclers, and disposal facilities of used waste oil, antifreeze, mineral spirits, batteries, scrap metal, and tires
- Maintain records (gallons per month) of waste oil, anti-freeze, gasoline, freon, batteries, scrap materials, and tires that are sent to recyclers
- Maintain records of the number of batteries removed from cars and sold or recycled per month.

(*g*) *Non-storm Water Discharges*

(*i*) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part XI.M.2.b.(3)(g)(iii) (Failure to Certify) of this permit.

(*ii*) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(*iii*) *Failure to Certify*—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(*h*) *Sediment and Erosion Control*—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion. Permittees must consider measures to maximize stabilization of industrial areas using vegetative cover, gravel, impervious surfaces or other appropriate measures.

(*i*) *Management of Runoff*—The plan shall contain a narrative consideration of the appropriateness of traditional

storm water management practices (practices other than those which control the ge. eration or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide measures that the permittee determines to be reasonable and appropriate and shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Part XI.M.2.a.(2) (Description of Potential Pollutant Sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. In addition, the permittee must describe the storm water pollutant source area or activity (e.g., dismantling area, storage area, cleaning operations) to be controlled by each storm water management practice.

The plan must consider management practices, such as berms or drainage ditches on the property line, that may be used to prevent runon from neighboring properties. Berms must be considered for uncovered outdoor storage of oily parts, engine blocks, and above ground liquid storage. The installation of detention ponds must also be considered. The permittee shall consider the installation of a filtering device to receive runoff from industrial areas. The installation of oil/water separators must also be considered.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan in no case less than twice a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part XI.M.2.a.(2) (Description of Potential Pollutant Sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.M.2.a.(3) (Measures and Controls) of this permit shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.M.2.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 3 years after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to 1) confirm the accuracy of the description of potential pollution sources contained in the plan, 2) determine the effectiveness of the plan, and 3) assess compliance with the terms and conditions of the permit. Comprehensive site compliance evaluations should be conducted twice a year. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

(e) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

Based on the results of each inspection, the description of potential pollution sources, and measures and controls, the plan must be revised as appropriate within 2 weeks after each inspection. Changes in the measures and controls must be implemented on the site in a timely manner, and never more than 12 weeks after completion of the inspection.

3. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

4. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees operating automobile salvage yards must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 4.a.(3) (Sampling Waiver), 4.a.(4) (Representative Discharge), and 4.a.(5) (Alternative Certification). Automobile salvage yards are required to monitor their storm water discharges for the pollutants of concern listed in Table M–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table M–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE M–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration
Chemical oxygen demand	65 mg/L.
pH	6 to 9 s.u.
Total Suspended Solids	100 mg/L.
Total Kjeldahl Nitrogen	1.5 mg/L.
Nitrate plus Nitrite as Nitrogen	0.68 mg/L.

(1) Monitoring Periods. Automobile salvage yards shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such

samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

EPA requests comments upon a condition of today's proposed permit that would require permittees who are unable to sample storm water discharges before they commingle with non-storm water discharges to sample the combined discharge both during dry and wet weather and submit both sets of data to the permitting authority.

(3) *Sampling Waiver*

(a) *Adverse Conditions*—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (e.g., drought, extended frozen conditions, etc.).

(b) *Low Concentration Waiver*—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table M–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in the area of the facility which drains to the outfall for which sampling was waived.

(4) *Representative Discharge.* When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) *Alternative Certification.* A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity, that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with automobile salvage yards shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.C. of the fact sheet.

(1) *Additional Notification.* In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), automobile salvage yards with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72

hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (e.g., drought, extended frozen conditions, etc.).

5. Retention of Records

The permittee shall retain records of all inspections and monitoring information, including certification reports, noncompliance reports, calibration and maintenance records and all original strip chart recordings for continuous monitoring instrumentation, copies of all reports, and supporting data, requested by the permitting authority for at least 3 years after the date that the permit expires.

N. Storm Water Discharges Associated With Industrial Activity From Scrap and Waste Material Processing and Recycling Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from the following activities: facilities that are engaged in the processing, reclaiming and wholesale distribution of scrap and waste materials such as ferrous and nonferrous metals, paper, plastic, cardboard, and glass. These types of activities are typically identified by Standard Industrial Classification (SIC) 5093. Facilities that are engaged in reclaiming and recycling liquid wastes such as used oil, antifreeze, mineral spirits and industrial solvents and which are classified under SIC 5093 are also covered under this section.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges

(1) Except as provided in paragraph XI.N.2.b., all discharges covered by this permit shall be composed entirely of storm water.

(a) Except as provided in paragraph XI.N.2.b. (below), discharges of material other than storm water to waters of the United States, or through municipal separate storm sewer systems, are not authorized by this permit. The operators of such discharges must obtain coverage under a separate National Pollutant Discharge Elimination System (NPDES) permit (other than this permit) issued for the discharge.

(b) The following non-storm water discharges are authorized by this permit provided the non-storm water component of the discharge is in compliance with paragraph XI.N.3.a.(3) (Measures and Controls for Storm Water Discharges): discharges from fire fighting activities; fire hydrant flushing; potable water sources including waterline flushings; irrigation drainage; lawn watering; routine external building washdown which does not use detergents or other compounds; pavement washwaters where spills or leaks of toxic or hazardous materials have not occurred (unless all spilled materials have been removed) and where detergents are not used; air conditioning condensate; springs; and uncontaminated ground water.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The following general requirements for the storm water pollution prevention plan are applicable to activities which reclaim and recycle either recyclable nonliquid and liquid waste materials. In addition to the general requirements, Paragraph XI.N.3.a.(3)(a) (below) identifies special requirements for scrap and waste recycling facilities that handle nonliquid wastes and paragraph XI.N.3.a.(3)(b) (below) identifies special requirements for waste recycling facilities that handle only liquid wastes. The plan shall include, at a minimum, the following items:

(1) *Pollution Prevention Team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add

significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources or, during periods of dry weather, result in dry weather flows. Each plan shall include, at a minimum:

(*a*) *Drainage*

(*i*) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies (including wetlands), locations where significant materials are exposed to precipitation including scrap and waste material storage and outdoor scrap and waste processing equipment, locations where major spills or leaks identified in paragraph XI.N.3.a.(2)(c) of this section have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, material storage (including tanks or other vessels used for liquid or waste storage). The site map must also identify monitoring locations.

(*ii*) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of a chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(*b*) *Inventory of Exposed Materials*—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(*c*) *Spills and Leaks*—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of the Clean Water Act (CWA) (see 40 CFR 110.10 and 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance. Such a list shall be updated as appropriate during the term of the permit.

(*d*) *Sampling Data*—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(*e*) *Risk Identification and Summary of Potential Pollutant Sources*—A narrative description of potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities, outdoor processing activities; significant dust or particulate generating processes and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., Chemical Oxygen Demand (COD), oil and grease, Total Suspended Solids (TSS), zinc, lead, copper, etc.) of concern shall be identified.

(*3*) *Measures and Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls for scrap and waste recycling facilities (nonliquid recyclable wastes) and waste recycling facilities (recyclable liquid wastes) are identified in Parts XI.N.3.a.(3)(a) and XI.N.3.a.(3)(b), respectively. At a minimum, the description shall also include a schedule for implementing such controls:

(a) Scrap and Waste Recycling Facilities (nonliquid recyclable wastes)—The following special conditions have been established for the pollution prevention plan for those scrap and waste recycling facilities that receive, process and provide wholesale distribution of nonliquid recyclable wastes, (e.g., ferrous and nonferrous metals, plastics, glass, cardboard, and paper). Under the description of measures and controls in the storm water pollution prevention plan, the plan will address all areas that have a reasonable potential to contribute pollutants to storm water discharges and will be maintained in a clean and orderly manner. At a minimum, the plan will address the following activities and areas within the plan:

(i) Inbound Recyclable and Waste Material Control Program—The plan shall include a recyclable and waste material inspection program to minimize the likelihood of receiving materials that may be significant pollutant sources to storm water discharges. At a minimum, the plan shall address the following:

- Measures to encourage suppliers of scrap and recyclable waste materials to drain residual fluids, whenever applicable, prior to its arrival at the facility. This includes vehicles and equipment engines, radiators, and transmissions, oil-filled transformers, white goods (appliances) and individual containers or drums;
- Activities which accept scrap and materials that may contain residual fluids, e.g., automotive engines containing used oil, transmission fluids, etc., shall describe procedures to minimize the potential for these fluids from coming in contact with either precipitation or runoff. The description shall also identify measures or procedures to properly store, handle and dispose of these residual fluids;
- Procedures pertaining to the acceptance of scrap lead-acid batteries. Additional requirements for the handling, storage and disposal or recycling of batteries shall be in conformance with conditions for a scrap lead-acid battery program, see paragraph XI.N.3.a.(3)(a)(v) (below);
- A description of training requirements for those personnel engaged in the inspection and acceptance of inbound recyclable materials.

• Liquid wastes, including used oil, shall be stored in materially compatible and nonleaking containers and disposed or recycled in accordance with all requirements under the Resource Recovery and Conservation Act (RCRA), and other State or local requirements.

• All industrial turnings and cuttings shall be handled in such a manner as to prevent exposure to either precipitation or storm water runoff. Runoff or precipitation that comes in contact with turnings and cuttings shall be discharged into a sump, sanitary sewer, oil/water separator or other equivalent measure to prevent the discharge of reportable quantities of oil.

(ii) Scrap and Waste Material Stockpiles/Storage (outdoors)—The plan shall address all areas where significant materials are exposed to either storm water runoff or precipitation. The plan shall describe those measures and controls used to minimize contact of storm water runoff and precipitation with those areas where scrap and recyclable wastes are stockpiled. The plan shall also describe additional measures and controls that are appropriate to minimize contact of any scrap and waste materials that have undergone further processing, (e.g., shredding, baling and compacting, from coming in contact with precipitation or storm water runoff). This includes procedures for the storage and disposal of nonrecyclable wastes and labeling or marking of containerized wastes. The plan shall consider the use, either individually or in combination, of the following Best Management Practices (BMPs) or their equivalent to minimize contact with storm water runoff:

• Diversion devices or structures such as dikes, berms, culverts, containment trenches, elevated concrete pads and/or grading around stockpile areas;

• Permanent or semipermanent covers, or other similar forms of protection over stockpiled materials. This may also include the use of containment bins or covered dumpsters for processed scrap and recyclable waste materials and nonrecyclable waste materials;

• Retention and detention basins, ponds, sediment traps and/or vegetate swales and strips, to facilitate settling and/or filtering out of pollutants in runoff from material stockpile areas.

• Media filtration such as catch basin filters and sand filters; and

• Oil/water separators and dry absorbents in stockpile areas that are potential sources of residual petroleum-based fluids.

(iii) Scrap and Waste Material Stockpiles/Storage (covered or indoor storage)—The plan shall address measures and controls to minimize residual liquids and accumulated particulate matter, originating from scrap and recyclable waste materials stored indoors or under cover, from coming in contact with surface runoff. This portion of the plan shall include the following:

• Good housekeeping measures, including the use of dry absorbent clean up methods, to collect, handle, store and dispose or recycle residual liquids originating from recyclable containers, e.g., beverage containers, paint cans, household cleaning products containers, etc.;

• Prohibiting the practice of washing down tipping floors or other material processing areas;

• Disconnecting or sealing off all existing floor drains connected to any portion of the storm sewer system.

(iv) Scrap and Recyclable Waste Processing Equipment—The plan shall address all areas where scrap and recyclable waste processing equipment are sited. This includes measures and controls to minimize surface runoff from coming in contact with scrap and recyclable waste processing equipment. The plan will specifically address measures to minimize and, wherever feasible, eliminate contact of liquids, e.g., hydraulic fluids, fuel, oils, lubricants and accumulated particulate matter with storm water runoff and precipitation. At a minimum, the plan shall include the following:

• A schedule of periodic inspections of equipment for leaks, spills, malfunctioning, worn or corroded parts or equipment;

• Preventive maintenance program to repair and/or maintain processing equipment according to manufacturer's recommendations;

• Measures to minimize the exposure of precipitation or runoff to processed materials (e.g., shredded scrap, fluff);

• High level alarms or other equivalent protection devices on unattended hydraulic reservoirs over 150 gallons in capacity; and

• In addition to the requirements identified above, the plan shall consider the use of one, or a combination, of the following BMPs or other equivalent practices (note: the permittee may identify BMPs that mutually satisfy requirements for this paragraph and other sections of this permit that address other sources of pollutants, e.g., outdoor material stockpiles): diversion structures such as dikes, berms, culverts, containment trenches, elevated concrete pads, grading to minimize contact of storm water runoff with outdoor processing equipment; oil/water separators, sumps, or dry absorbents in processing areas that are potential sources of residual petroleum-based compounds and grease; permanent or semipermanent covers, or other similar measures; retention and detention basins, ponds, sediment traps or vegetated swales and strips, to facilitate settling or filtering out of pollutants in runoff from scrap and recyclable waste processing areas; and/or media filtration such as catch basin filters and sand filters.

(v) Scrap Lead-Acid Battery Program—The plan shall address measures and controls for the proper handling, storage and disposition of scrap lead-acid batteries. The plan shall include the following:

• All scrap lead-acid batteries shall be segregated from other scrap materials;

• Description of procedures and/or measures for the handling, storage and proper disposal of cracked or broken batteries;

• Description of measures to collect and dispose of leaking battery fluid (lead-acid);

• Description of measures to minimize and, whenever possible, eliminate exposure of scrap lead-acid batteries to precipitation or runoff; and

• Description of employee training for the management of scrap batteries.

(vi) Erosion and Sediment Control—The plan shall identify all areas associated with industrial activity that have a high potential for soil erosion. Appropriate stabilization measures, nonstructural and structural controls shall be provided in these areas. The plan shall contain a narrative consideration of the appropriateness for selected erosion and sediment controls. In addition, the plan shall identify nonstructural and structural controls necessary to minimize TSS loadings from those areas that tend to experience a buildup of visible amounts of particulate matter. The plan shall consider the use of one or a combination of the following BMPs:

• Filtering or diversion practices, such as filter fabric fence, sediment filter boom, earthen or gravel berms, curbing or other equivalent measure, placed around exposed significant materials, scrap processing equipment and inlets or catch basins;

• Inlet or catch basin filters or equivalent, place in, or around, inlets or catch basins that receive runoff from scrap and waste storage areas, and processing equipment; and

• Sediment traps, vegetative buffer strips or swales, or equivalent, that effectively trap or remove sediment prior to discharge through an inlet or catch basin. Grassy swales or strips may

also include additional enhancements such as check dams.

(vii) Structural Controls for Sediment and Erosion Control—In instances where significant erosion and suspended solids loadings continue after installation of one or more of the BMPs identified in paragraph XI.N.3.a.(3)(a)(vi) (above), the plan shall include a detention or retention basin or other equivalent measure. All structural controls shall be designed using good engineering practice. All structural controls and outlets that are likely to receive discharges containing oil and grease shall include measures to minimize discharge of oil and grease through the outlet riser.

(viii) Spill Prevention and Response Procedures—Spills are most likely to occur during processing or loading and unloading of materials. Common causes of spills or leaks include container failures, equipment leaks, and materials handling. Frequent inspections of storage areas and processing equipment will reduce the likelihood that faulty containers and processing equipment will go unnoticed. Employee education and training described below should also reduce the chance of spills occurring. The plan shall include the following practices:

- The plan shall describe spill prevention and response measures to address areas that are potential sources of leaks or spills of fluids;
- All visible leaks and spills shall be contained and cleaned up as soon as possible. If malfunctioning equipment is responsible for the spill or leak, repairs shall also be conducted as soon as possible;
- Cleanup procedures shall be identified in the plan, including the use of dry absorbent materials. The plan shall provide that an adequate supply of dry absorbent material shall be maintained onsite, and used absorbent material shall be cleaned up and disposed of properly;
- Drums containing liquids, including oil and lubricants, shall be stored indoors; or in a bermed area; or in overpack containers or spill pallets; or in similar containment devices;
- Overfill prevention devices shall be installed on all fuel pumps and tanks;
- Drip pans or equivalent measures shall be placed under any leaking piece of stationary equipment until the leak is repaired. The drip pans must be inspected for leaks and checked for potential overflow. They will be emptied regularly to prevent overflow and all liquids will be disposed of in accordance with all requirements under RCRA, and other State and local requirements.
- An alarm and/or pump shut off system shall be installed and maintained on all outside equipment with hydraulic reservoirs exceeding 150 gallons in order to prevent draining the tank contents if a line breaks, provided all parts of the hydraulic system are not visible to the operator of the processing equipment. As an alternative, such equipment may have a secondary containment system capable of containing the contents of the hydraulic reservoir.

(ix) Monthly Inspection Program—Aside from the annual site compliance inspection, monthly visual inspections shall be conducted by a member or members of the storm water pollution prevention team. The monthly inspection will include all designated areas of the facility and equipment identified in the plan. The inspection will include a means of tracking and conducting follow up actions based on the results of the inspection. At a minimum, the visual inspection shall include the following areas:

- All outdoor scrap processing areas;
- All material unloading and loading areas (including rail sidings) that are exposed to either precipitation or storm water runoff;
- Areas where structural BMPs have been installed;
- Areas where spills and leaks have occurred in the past;
- All erosion and sediment BMPs;
- Outdoor vehicle and equipment maintenance areas, if applicable;
- Vehicle and equipment fueling areas;
- All areas where waste is generated, received, stored, treated, or disposed and which are exposed to either precipitation or storm water runoff.
- The inspection will include identification of the following if potentially exposed to storm water, corroded and leaking containers, corroded or leaking pipes, leaking or improperly closed valves and valve fittings, leaking pumps and/or hose connections, and breaks in physical barriers used to prevent storm water from reaching stored materials.
- Any spills or leaks identified during the visual inspection will be immediately addressed using the procedures identified in Part XI.N.3.a.(3)(a)(viii) (Spill Prevention and Response Procedures). Structural BMPs will be visually inspected for signs of washout, breakage, deterioration, damage, or overflowing and breaks will be repaired or replaced as expeditiously as possible.

(x) Employee Training—At a minimum, training appropriate to their job function shall be provided for truck drivers, scale operators, supervisors, buyers and operating personnel. The plan shall include a proposed schedule for the training. The employee training program shall address: BMPs and other requirements of the plan; proper scrap inspection, handling and storage procedures; procedures to follow in the event of a spill, leak, or break in any structural BMP. A training and education program shall be developed for employees and for suppliers for implementing activities identified in the storm water pollution prevention plan.

(xi) Supplier Notification—The plan shall include a supplier notification program that will be applicable to major suppliers and shall include: description of scrap materials that will not be accepted at the facility or that are accepted only under certain conditions; and the potential liability for future onsite and offsite cleanup costs if hazardous substances are contained in scrap that is delivered to the facility.

(b) Waste Recycling Facilities (liquid recyclable wastes)—The following special conditions have been established for the pollution prevention plan for those facilities that reclaim and recycle liquid wastes (e.g., used oil, antifreeze, mineral spirits, and industrial solvents). For these facilities, the storm water pollution prevention plan will address all areas that have a reasonable potential to contribute pollutants to storm water discharges and will be maintained in a clean and orderly manner. At a minimum, the plan will address the following activities and areas within the plan:

(i) Waste Material Storage (indoors)—The plan shall address measures and controls to minimize/eliminate residual liquids from waste materials stored indoors from coming in contact with surface runoff. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112. At a minimum, the plan shall include the following:

- Procedures for material handling (including labeling and marking);
- A sufficient supply of dry-absorbent materials or a wet vacuum system to collect spilled or leaked materials;
- An appropriate containment structure, such as trenches, curbing, gutters or other equivalent measures; and
- Drainage system to handle discharges from diked or bermed areas. The drainage system shall include appurtenances, (e.g., pumps or ejectors, manually operated valves). Drainage shall be discharged to an appropriate treatment facility, sanitary sewer system, or otherwise disposed of properly. Discharges from these areas

shall be covered by a separate NPDES permit or industrial user permit under the pretreatment program.

(ii) Waste Material Storage (outdoors)—The plan shall address areas where significant materials are exposed to either storm water runoff or precipitation. The plan shall include measures to provides appropriate containment, drainage control and other appropriate diversionary structures. The plan may refer to applicable portions of other existing plans such as SPCC plans required under 40 CFR Part 112. At a minimum, the plan shall describe those measures and controls used to minimize contact of storm water runoff with stored materials. The plan shall also include the following preventative measures or the equivalent:

- An appropriate containment structure such as dikes, berms, curbing or pits, or other equivalent measures;
- The containment shall be sufficient to store the volume of the largest single tank and shall include sufficient freeboard for precipitation;
- A sufficient supply of dry-absorbent materials or a wet vacuum system, or other equivalent measure, to collect liquids from minor spills and leaks in contained areas; and
- Discharges of precipitation from contained areas containing used oil shall be in accordance with applicable sections of 40 CFR Part 112.

(iii) Truck and Rail Car Waste Transfer Areas—The plan shall describe measures and controls for truck and rail car loading and unloading areas. This includes appropriate containment and diversionary structures to minimize contact with precipitation or storm water runoff. The plan shall also address measures to clean up minor spills and/or leaks originating from the transfer of liquid wastes. This may include the use of dry-clean up methods, roof coverings, runoff controls, or other equivalent measures.

(iv) Erosion and Sediment Control—The plan shall identify all areas associated with industrial activity that have a high potential for soil erosion. Appropriate stabilization measures, nonstructural and structural controls shall be provided in these areas. The plan shall contain a narrative consideration of the appropriateness for selected erosion and sediment controls. Where applicable, the facility shall consider the use of the following types of preventive measures: sediment traps; vegetative buffer strips; filter fabric fence; sediment filtering boom; gravel outlet protection; or other equivalent measures that effectively trap or remove sediment prior to discharge through an inlet or catch basin.

(v) Spill Prevention and Response Procedures—The plan shall address measures and procedures to address potential spill scenarios that could occur at the facility. This includes all applicable handling and storage procedures, containment and/or diversion equipment, and clean-up procedures. The plan shall specifically address all outdoor and indoor storage areas, waste transfer areas, material receiving areas (loading and unloading), and waste disposal areas.

(vi) Monthly Site Inspections—In addition to the annual site compliance evaluation, the facility shall conduct monthly visual inspections by a member or members of the storm water pollution prevention team. The monthly inspection shall include all designated areas of the facility and equipment identified in the plan. The inspection shall include a means of tracking and conducting follow up actions based on the results of the inspection. At a minimum, the visual inspection shall include the following areas:

- Material storage areas;
- Material unloading and loading areas (including rail sidings) that are exposed to either precipitation or storm water runoff;
- Areas where structural BMPs have been installed;
- All erosion and sediment BMPs;
- Outdoor vehicle and equipment maintenance areas (if applicable);
- Vehicle and equipment fueling areas (if applicable);
- All areas where waste is generated, received, stored, treated, or disposed and which are exposed to either precipitation or storm water runoff; and
- If exposed to precipitation or storm water runoff, the inspection shall identify corroded or leaking containers, corroded or leaking pipes, leaking or improperly closed valves and valve fittings, leaking pumps and/or hose connections, and deterioration in diversionary or containment structures. Any spills or leaks shall be immediately addressed according to the facility's spill prevention and response procedures.

(c) Recordkeeping and Internal Reporting Procedures—The following record and internal reporting procedures are applicable to all discharges seeking coverage under this permit. The plan shall include a description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. The plan must address spills, monitoring, and BMP inspection and maintenance activities. BMPs which are ineffective must be reported and the date of their corrective action noted. Employees must report incidents of leaking fluids to facility management and these reports must be incorporated into the plan.

(d) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.N.3.a.(3)(d)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test

conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.N.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.N.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.N.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel shall conduct to 1) confirm the accuracy of the description of potential pollution sources contained in the plan, 2) determine the effectiveness of the plan, and 3) assess compliance with the terms and conditions of the permit. Comprehensive site compliance evaluations should be conducted once per year. The individual or individuals who shall conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with scrap and waste material processing and recycling facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Scrap and waste material processing and recycling facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table N–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table N–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE N–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Chemical Oxygen Demand (COD)	65
Total Kjeldahl Nitrogen (TKN)	1.5
Nitrate + Nitrite Nitrogen	0.68
Total Recoverable Aluminum	0.75
Total Recoverable Cadmium	0.0018
Total Recoverable Copper	0.009
Total Recoverable Iron	0.3
Total Recoverable Lead	0.0337
PCBs	0.00000044
Total Recoverable Zinc	0.065
Total Recoverable Arsenic	0.000018

(1) Monitoring Periods. Scrap and waste material processing and recycling facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable, permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver.

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph 5.a.(1). (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel

(such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (e.g., drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table N–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in the area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity, that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with scrap and waste material processing and recycling facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), scrap and waste material processing and recycling facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

(c) Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for the entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

3. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or

high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

O. Storm Water Discharges Associated With Industrial Activity From Steam Electric Power Generating Facilities, Including Coal Handling Areas

1. Discharges Covered Under This Section

2. Eligibility. The requirements listed under this section shall apply to storm water discharges from steam electric power generating facilities, including coal handling areas. Non-storm water discharges subject to effluent limitations guidelines are not covered by this permit. Storm water discharges from coal pile runoff subject to numeric limitations are eligible for coverage under this permit, but are subject to the limitations established by 40 CFR 423.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

b. Limitations on Coverage. Storm water discharges from ancillary facilities such as fleet centers, gas turbine stations, and substations that are not contiguous to a steam electric power generating facility are not covered by this permit. Heat capture co-generation facilities are not covered by this permit; however, dual fuel co-generation facilities are included.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. Except as provided under Part III.A. of this permit, non-storm water discharges are not authorized by this permit. The operators of such discharges must obtain coverage under a separate National Pollutant Discharge Elimination System (NPDES) permit if discharged to waters of the United States or through a municipal separate storm sewer system. Storm water discharges associated with industrial activities that are mixed with sources of non-storm water are not authorized by this permit, except if mixed with non-storm water discharges that are in compliance with a different NPDES permit or identified by and in compliance with Part III.A. (Prohibition of Non-storm Water Discharges) of this permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage.

(i) A site map which clearly outlines the locations of the following, as they apply to the facility: Each point of discharge of storm water associated with industrial activity, and an outline of the drainage area of each storm water outfall that is within the facility boundaries (and indicating the direction of storm water flow); processing areas and buildings; treatment ponds; locations where significant materials are exposed to precipitation; storage tanks; scrap yards, and general refuse areas; fuel storage and distribution areas; vehicle and equipment maintenance and storage areas; loading/unloading areas; locations used for treatment, storage or disposal of wastes; location of short and long term storage of general materials (including but not limited to: supplies, construction materials, plant equipment, oils, fuels, used and unused solvents, cleaning materials, paint, water treatment chemicals, fertilizers, and pesticides); landfills; location of construction sites; locations of stock pile areas (such as coal piles and limestone piles); locations where major spills or leaks identified under Part XI.O.3.a.(2)(c) (Spills and Leaks) of this permit have occurred; surface water bodies; and existing structural control measures to reduce pollutants in storm water runoff (such as bermed areas, grassy swales, etc.).

(ii) For each storm water outfall identify the types of pollutants which are likely to be present in the storm water discharges. Factors to consider include the toxicity of a chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff;

and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., total suspended solids, copper, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. The following areas must be specifically addressed:

(i) Fugitive Dust Emissions—The plan must describe measures that prevent or minimize fugitive dust emissions from coal handling areas. The facility shall establish procedures to minimize offsite tracking of coal dust. To prevent offsite tracking the facility may consider specially designed tires, or washing vehicles in a designated area before they leave the site, and controlling the wash water.

(ii) Delivery Vehicles—The plan must describe measures that prevent or minimize contamination of storm water runoff from delivery vehicles arriving on the plant site. At a minimum the facility must:

- Develop procedures for the inspection of delivery vehicles arriving on the plant site, and ensure overall integrity of the body or container; and
- Develop procedures to deal with leakage or spillage from vehicles or containers, and ensure that proper protective measures are available for personnel and environment.

(iii) Fuel Oil Unloading Areas—The plan must describe measures that prevent or minimize contamination of storm water runoff from fuel oil unloading areas. At a minimum the facility must use the following measures or their equivalent:

- Use containment curbs in unloading areas;
- During deliveries station personnel familiar with spill prevention and response procedures must be present to ensure that any leaks or spills are immediately contained and cleaned up; and
- Use spill and overflow protection (drip pans, drip diapers, and/or other containment devices shall be placed beneath fuel oil connectors to contain any spillage that may occur during deliveries or due to leaks at such connectors).

(iv) Chemical Loading/Unloading Areas—The plan must describe measures that prevent or minimize the contamination of storm water runoff from chemical loading/unloading areas. At a minimum the permittee must use the following measures or their equivalent:

- Use containment curbs at chemical loading/unloading areas to contain spills; and
- During deliveries station personnel familiar with spill prevention and response procedures must be present to ensure that any leaks or spills are immediately contained and cleaned up.

Where practicable, chemical loading/unloading areas should be covered, and chemicals should be stored indoors.

(v) Miscellaneous Loading/Unloading Areas—The plan must describe measures that prevent or minimizes the contamination of storm water runoff from loading and unloading areas. The facility may consider covering the loading area, minimizing storm water runon to the loading area by grading, berming, or curbing the area around the loading area to direct storm water away from the area, or locate the loading/unloading equipment and vehicles so that leaks can be contained in existing containment and flow diversion systems.

(vi) Liquid Storage Tanks—The plan must describe measures that prevent or minimize contamination of storm water runoff from above ground liquid storage tanks. At a minimum the facility must employ the following measures or their equivalent:

- Use protective guards around tanks;
- Use containment curbs;
- Use spill and overflow protection (drip pans, drip diapers, and/or other containment devices shall be placed beneath chemical connectors to contain any spillage that may occur during deliveries or due to leaks at such connectors); and
- Use dry cleanup methods.

(vii) Large Bulk Fuel Storage Tanks—The plan must describe measures that prevent or minimize contamination of storm water runoff from liquid storage tanks. At a minimum the facility must employ the following measures or their equivalent:

- Comply with applicable State and Federal laws, including Spill Prevention Control and Countermeasures (SPCC); and
- Containment berms.

(viii) The plan must describe measures to reduce the potential for an oil spill, or a chemical spill. At a minimum the structural integrity of all above ground tanks, pipelines, pumps and other related equipment shall be visually inspected on a weekly basis. All repairs deemed necessary based on the findings of the inspections will be completed immediately to reduce the incidence of spills and leaks occurring from such faulty equipment.

(ix) Oil Bearing Equipment in Switchyards—The plan must describe measures to reduce the potential for storm water contamination from oil bearing equipment in switchyard areas. The facility may consider level grades and gravel surfaces to retard flows and limit the spread of spills; collection of storm water runoff in perimeter ditches.

(x) Residue Hauling Vehicles—All residue hauling vehicles shall be inspected for proper covering over the load, adequate gate sealing and overall integrity of the body or container. Vehicles without load coverings or adequate gate sealing, or with leaking containers or beds must be repaired as soon as practicable.

(xi) Ash Loading Areas—Plant procedures shall be established to reduce and/or control the tracking of ash or residue from ash loading areas including, where practicable, requirements to clear the ash building floor and immediately adjacent roadways of spillage, debris and excess water before each loaded vehicle departs.

(xii) Areas Adjacent to Disposal Ponds or Landfills—The plan must

describe measures that prevent or minimize contamination of storm water runoff from areas adjacent to disposal ponds or landfills. The facility must develop procedures to:

- Reduce ash residue which may be tracked on to access roads traveled by residue trucks or residue handling vehicles; and
- Reduce ash residue on exit roads leading into and out of residue handling areas.

(xiii) Landfills, Scrapyard, General Refuse Sites—For landfills, scrapyards, and general refuse sites the permittee shall use the applicable Best Management Practices (BMPs) outlined in Part XI.L. of the permit (Storm Water Discharges Associated With Industrial Activity From Landfills and Land Application Sites).

(xiv) Maintenance Activities—For vehicle maintenance activities performed on the plant site, the permittee shall use the applicable BMPs outlined in Part XI.P. of the permit (Storm Water Discharges Associated With Industrial Activity From Motor Freight Transportation Facilities, Passenger Transportation Facilities, Rail Transportation Facilities, and United States Postal Service Transportation Facilities).

(xv) Material Storage Areas—The plan must describe measures that prevent or minimize contamination of storm water from material storage areas (including areas used for temporary storage of miscellaneous products, and construction materials stored in lay down areas). The facility may consider flat yard grades, runoff collection in graded swales or ditches, erosion protection measures at steep outfall sites (e.g., concrete chutes, riprap, stilling basins), covering lay down areas, storing the materials indoors, covering the material with a temporary covering made of polyethylene, polyurethane, polypropylene, or hypalon. Storm water runon may be minimized by constructing an enclosure or building a berm around the area.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under Part XI.O.3.a.(4) of this section, qualified facility personnel shall be identified to inspect the following areas on a monthly basis: coal handling areas, loading/unloading areas, switchyards, fueling areas, bulk storage areas, ash handling areas, areas adjacent to disposal ponds and landfills, maintenance areas, liquid storage tanks, and long term and short term material storage areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained onsite. Such records are subject to review by the U.S. Environmental Protection Agency, and State, and local agencies with jurisdiction, and must be retained onsite a minimum of 1 year after coverage under this permit expires.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as goals of the pollution prevention plan, spill prevention and control, proper handling procedures for hazardous wastes, good housekeeping and material management practices, and storm water sampling techniques. The pollution prevention plan shall identify periodic dates for such training, but in all cases training must be held at least annually.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.O.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and, why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are

not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Construction Activities—For storm water discharges from construction activities which disturb greater than 5 acres, the permittee shall submit a Notice of Intent (NOI) to be covered under the NPDES General Permit for Storm Water Discharges From Construction Sites.

(j) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Part XI.O.3.a.(2)) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part XI.O.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with Part XI.O.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.O.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations

Coal pile runoff is subject to the effluent guidelines described in Part VI.F. of this fact sheet. However, steam electric generating facilities must comply with the requirement of Part VI.F. immediately upon permit issuance. Steam electric generating facilities are not permitted to take 3 years to meet this requirement.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with steam electric power generating facilities must monitor their storm water discharges associate with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3). (sampling waiver), 5.a.(4). (representative discharge), and 5.a.(5).(alternative certification), steam electric power generating facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table O–1 below. Facilities must report in accordance with 5.b.(reporting). In addition to the parameters listed in Table O–1 (below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event which generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled;

TABLE O–1.—MONITORING REQUIREMENTS FOR STEAM ELECTRIC POWER GENERATING FACILITIES

Pollutants of concern	Cut-off concentration (mg/L)
Total Recoverable Copper	0.009
Total Recoverable Aluminum	0.75
Total Recoverable Arsenic	0.000018
Total Recoverable Iron	0.3
Total Recoverable Lead	0.0337
Total Recoverable Manganese	0.05

(1) Monitoring Periods. Steam electric power generating facilities shall monitor samples collected during the sampling periods of; January to March, April to June, July to September, and October to December for the years specified in paragraph a (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated

with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver.

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (monitoring periods) due to adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table O–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has 2 or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (signatory requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, significant materials from past industrial activity, or, in the case of airports, deicing activities, that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with steam electric power generating facilities shall submit monitoring results, or a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived, obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results, or a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived, obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on. Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in VI.G. of the fact sheet to this permit.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above) steam electric power generating facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained on-site in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution, and probable

sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g. low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)) shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

P. Storm Water Discharges Associated With Industrial Activity From Motor Freight Transportation Facilities, Passenger Transportation Facilities, Petroleum Bulk Oil Stations and Terminals, Rail Transportation Facilities, and United States Postal Service Transportation Facilities

1. Discharges Covered Under This Section. Storm water discharges from ground transportation facilities and rail transportation facilities that have vehicle and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) and/or equipment cleaning operations are eligible for coverage under this section. The facilities covered by this section of today's proposed permit are commonly identified by standard Industrial Classification (SIC) codes 40, 41, 42, 43, and 5171 or any other facility with vehicle and equipment maintenance shops or cleaning operations.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions. Prohibition of Non-storm Water Discharges. Prohibited non-storm water discharges, including vehicle and equipment washwaters, are not authorized by this permit. The operators of such discharges must obtain coverage under a separate National Pollutant Discharge Elimination System (NPDES) permit if discharged to waters of the U.S. or through a municipal separate storm sewer system or comply with applicable industrial pretreatment requirements if discharged to a municipal sanitary sewer system.

3. Storm Water Pollution Prevention Plan Requirements

a. Deadlines for Plan Preparation and Compliance. There are no additional deadlines for plan preparation and compliance, other than those stated in Part IV.A.

b. Contents of the Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team who are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage—A site map indicating the location of each point of discharge of storm water associated with industrial activity, an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries (with a prediction of the direction of flow), each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.P.3.b.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities: fueling stations, vehicle and equipment maintenance and/or cleaning areas, storage areas for vehicles and equipment awaiting maintenance, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas, storage areas, and all monitoring locations.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; dirt or gravel parking areas for storage of vehicles to be maintained; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) *Sampling Data*—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities associated with vehicle and equipment maintenance and equipment cleaning: fueling stations; maintenance shops; equipment or vehicle cleaning areas; paved dirt or gravel parking areas for vehicles to be maintained; loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., oil and grease, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) *Good Housekeeping*—All areas that may contribute pollutants to storm water discharges shall be maintained in a clean, orderly manner. The following areas must be specifically addressed:

(i) *Vehicle and Equipment Storage Areas*—The storage of vehicles and equipment awaiting maintenance must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize contamination of the storm water runoff from these areas. The facility shall consider the use of drip pans under vehicles and equipment, indoor storage of the vehicles and equipment, installation of berming and diking of this area, use of absorbents, roofing or covering storage areas, cleaning pavement surface to remove oil and grease, or other equivalent methods.

(ii) *Fueling Areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from fueling areas. The facility shall consider covering the fueling area, using spill and overflow protection and cleanup equipment, minimizing runon/runoff of storm water to the fueling area, using dry cleanup methods, collecting the storm water runoff and providing treatment or recycling, or other equivalent measures.

(iii) *Material Storage Areas*—Storage units of all materials (e.g., used oil, used oil filters, spent solvents, paint wastes, radiator fluids, transmission fluids, hydraulic fluids) must be maintained in good condition, so as to prevent contamination of storm water, and plainly labeled (e.g., "used oil," "spent solvents," etc.). The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility shall consider indoor storage of the materials, installation of berming and diking of the area, minimizing runon/runoff of storm water to the areas, using dry cleanup methods, collecting the storm water runoff and providing treatment, or other equivalent methods.

(iv) *Vehicle and Equipment Cleaning Areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment cleaning. The facility shall consider performing all cleaning operations indoors, covering the cleaning operation, ensuring that all washwaters drain to the intended collection system (i.e., not the storm water drainage system unless NPDES permitted), collecting the storm water runoff from the cleaning area and providing treatment or recycling, or other equivalent measures. The discharge of vehicle and equipment wash waters, including tank cleaning operations, are not authorized by this permit and must be covered under a separate NPDES permit or discharged to a sanitary sewer in accordance with applicable industrial pretreatment requirements.

(v) *Vehicle and Equipment Maintenance Areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for vehicle and equipment maintenance. The facility shall consider performing all maintenance activities indoors, using drip pans, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting wet clean up practices where the practices would result in the discharge of pollutants to storm water drainage systems, using dry cleanup methods, collecting the storm water runoff from the maintenance area and providing treatment or recycling, minimizing runon/runoff of storm water areas or other equivalent measures.

(vi) *Locomotive Sanding (loading sand for traction) Areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from areas used for locomotive sanding. The facility shall consider covering sanding areas, minimizing storm water runon/runoff, appropriate sediment removal practices to minimize the offsite transport of sanding material by storm water, or other equivalent measures.

(b) *Preventive Maintenance*—A preventive maintenance program shall include timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins, drip pans, vehicle-mounted drip containment devices) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills could contribute pollutants to storm water discharges, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures and equipment for cleaning up spills shall be identified in the plan and made available to the appropriate personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: storage area for vehicles and equipment awaiting maintenance, fueling areas, vehicle and equipment maintenance areas (both indoors and outdoors), material storage areas, vehicle and equipment cleaning areas, and loading and unloading areas. Follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. The use of a checklist should be considered by the facility.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. The pollution prevention plan shall identify how often training will take place; at a minimum, training must be held at least semiannually (twice per calendar year). Employee training must, at a minimum, address the following areas when applicable to a facility: summary of the facility's pollution prevention plan requirements; used oil management; spent solvent management; spill prevention, response and control; fueling procedures; general good housekeeping practices; proper painting procedures; and used battery management.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit. Such certification may not be practical if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not practical, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part XI.P.3.b.(3)(iv) (Failure to Certify) of this permit.

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) A copy of the NPDES permit issued for vehicle and equipment washwaters or, if an NPDES permit has not yet been issued, a copy of the pending application must be attached to or referenced in the plan. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter must be attached to the plan. If an industrial user permit is issued under a pretreatment program, a copy of that permit must be attached in the plan. In all cases, any permit conditions or pretreatment requirements must be considered in the plan. If the washwaters are handled in another manner (e.g., hauled offsite), the disposal method must be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) must be attached to the plan.

(iv) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide for the implementation and maintenance of measures that the permittee determines to be reasonable and appropriate. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see XI.P.3.b.(2) (description of potential pollutant sources) of this permit] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. If a facility determines that other management measures can attain the same water quality in the storm water discharges as an oil/water separator, the justification must be included in the plan.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct comprehensive site compliance evaluations at appropriate intervals specified in the plan, but, in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential

pollutant sources identified in the plan in accordance with Part XI.P.3.b.(2) (Description of Potential Pollutant Sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.P.3.b.(3) (Measures and Controls) of this permit shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.P.3.b.(3)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements.

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

O. Storm Water Discharges Associated With Industrial Activity From Water Transportation Facilities That Have Vehicle Maintenance Shops and/or Equipment Cleaning Operations

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from water transportation facilities that have vehicle (vessel) maintenance shops and/or equipment cleaning operations. The water transportation industry includes facilities engaged in foreign or domestic transport of freight or passengers in deep sea or inland waters; marine cargo handling operations; ferry operations; towing and tugboat services; and marinas. These facilities are commonly identified by Standard Industrial Classification (SIC) code Major Group 44.

Storm water discharges from water transportation facilities that have vehicle (vessel) and equipment maintenance shops (vehicle and equipment rehabilitation, mechanical repairs, painting, fueling and lubrication) and/or equipment cleaning operations.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and

pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. Prohibited non-storm water discharges of wastewaters, such as bilge and ballast water, sanitary wastes, and cooling water originating from vessels, are not authorized by this permit. The operators of such discharges must obtain coverage under a separate NPDES permit if discharged to waters of the U.S. or through a municipal separate storm sewer system.

b. Authorized Non-storm Water Discharges. Unless more restrictive State or local regulations prohibit such releases, this permit authorizes the discharge of non-storm water from routine external vessel washdown occurring over a containment area on land where appropriate pollution prevention measures have been implemented to ensure that the discharge released contains no visible sheen of oil or grease, detergents or visible solids such as paint particles, barnacles, and algae. Appropriate pollution prevention measures may include the practice of using no detergents or additives in the pressure washing operations and having a filtering screen at the discharge point of the containment or bermed area to remove solids.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team who are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage.

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.Q.3.a.(2)(c) (Spills and Leaks) of this section have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling, engine maintenance and repair, vessel maintenance and repair, pressure washing, painting, sanding, blasting, welding, metal fabrication, loading/unloading areas, locations used for the treatment, storage or disposal of wastes; liquid storage tanks, liquid storage areas (i.e., paint, solvents, resins), and material storage areas (i.e., blasting media, aluminum, steel, scrap iron).

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities if applicable: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities (i.e., welding, metal fabricating); significant dust or particulate generating processes (i.e., abrasive blasting, sanding, painting); loading/unloading areas; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. The following areas must be specifically addressed, when applicable at a facility:

(i) Pressure Washing Area—When pressure washing is used to remove marine growth from vessels, the discharge water must be permitted by an NPDES permit. The pollution prevention plan must describe the measures to collect or contain the discharge from the pressure washing area, detail the method for the removal of the visible solids, describe the method of disposal of the collected solids, and identify where the discharge will be released (i.e., the receiving

waterbody, storm sewer system, sanitary sewer system).

(ii) Blasting and Painting Areas—The facility must consider containing all blasting and painting activities to prevent abrasives, paint chips, and overspray from reaching the receiving water or the storm sewer system. The plan must describe measures taken at the facility to prevent or minimize the discharge of spent abrasive, paint chips, and paint into the receiving waterbody and storm sewer system. The facility may consider hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. Where required, a schedule for cleaning storm systems to remove deposits of abrasive blasting debris and paint chips should be addressed within the plan. The plan should include any standard operating practices with regard to blasting and painting activities. Such included items may be the prohibition of performing uncontained blasting and painting over open water or blasting and painting during windy conditions which can render containment ineffective.

(iii) Material Storage Areas—All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be stored in a protected, secure location away from drains and plainly labeled. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility must specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. Above ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills. The facility must consider implementing an inventory control plan to prevent excessive purchasing, storage, and handling of potentially hazardous materials. Those facilities where abrasive blasting is performed must specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(iv) Engine Maintenance and Repair Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for engine maintenance and repair. The facility may consider performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting the practice of hosing down the shop floor, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(v) Material Handling Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from material handling operations and areas (i.e., fueling, paint and solvent mixing, disposal of process wastewater streams from vessels). The facility may consider covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area, preferably indoors or under a shed; and minimizing runon of storm water to material handling areas. Where applicable, the plan must address the replacement or repair of leaking connections, valves, pipes, hoses, and soil chutes carrying wastewater from vessels.

(vi) Drydock Activities—The plan must address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan must describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock must also be included within the plan. The facility should consider items such as sweeping rather than hosing off debris and spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to contain and cleanup any spills.

(vii) General Yard Area—The plan must include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., must be routinely removed from the general yard area. The facility may consider such measures as providing covered trash receptacles in each yard, on each pier, and on board each vessel being repaired.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. The pollution prevention plan shall identify how often training will take place, but in all cases training must be held at least semiannually (twice per calendar year). Employee training must, at a minimum, address the following areas when applicable to a facility: used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management. Employees, independent contractors, and customers must be informed about BMPs and be required to perform in accordance with these practices. The facility must consider posting instructions, easy to read descriptions or graphic depictions of BMPs, spill control/clean-up

equipment and emergency phone numbers in the work areas.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.Q.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge. Non-storm water discharges authorized under Part XI.Q.2.b. may be released independently of storm water discharges.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.Q.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity (pressure washing area, blasting and sanding areas, painting areas, material storage areas, engine maintenance and repair areas, material handling areas, and drydock area) shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.Q.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.Q.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.Q.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with water transportation facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Water transportation facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table Q–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table Q–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE Q–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Total Recoverable Aluminum	0.75
Total Recoverable Iron	0.3
Total Recoverable Lead	0.0337
Total Recoverable Zinc	0.065
Chemical Oxygen Demand	65
Total Suspended Solids	100

(1) Monitoring Periods. Water transportation facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver.

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table Q–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with water transportation facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of

Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), water transportation facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inch in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

R. Storm Water Discharges Associated With Industrial Activity From Ship and Boat Building or Repairing Yards

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from ship building and repairing and boat building and repairing.[6]

a. Eligibility. Storm water discharges from ship building and repair facilities and boat building and repair facilities under Standard Industrial Classification (SIC) code 373.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. Prohibited non-storm water discharges of wastewaters, such as bilge and ballast water, pressure wash water, sanitary wastes, and cooling water originating from vessels, are not authorized by this permit. The operators of such discharges must obtain coverage under a separate NPDES permit if discharged to waters of the United States or through a municipal separate storm sewer system.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan

[6] According to the U.S. Coast Guard, a vessel 65 feet or greater in length is referred to as a ship, and a vessel smaller than 65 feet is a boat.

shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage.

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.R.3.a.(2)(c) (Spills and Leaks) of this section have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling, engine maintenance and repair, vessel maintenance and repair, pressure washing, painting, sanding, blasting, welding, metal fabrication, loading/unloading areas, locations used for the treatment, storage or disposal of wastes; liquid storage tanks, liquid storage areas (i.e., paint, solvents, resins), and material storage areas (i.e., blasting media, aluminum, steel, scrap iron).

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of a chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities if applicable: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities (i.e., welding, metal fabricating); significant dust or particulate generating processes (i.e., abrasive blasting, sanding, painting); loading/unloading areas; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. The following areas must be specifically addressed, when applicable at a facility:

(i) Pressure Washing Area—When pressure washing is used to remove marine growth from vessels, the discharge water must be permitted as a process wastewater by an NPDES permit.

(ii) Blasting and Painting Areas—The facility must consider containing all blasting and painting activities to prevent abrasives, paint chips, and overspray from reaching the receiving water or the storm sewer system. The plan must describe measures taken at the facility to prevent or minimize the discharge of spent abrasive, paint chips, and paint into the receiving waterbody and storm sewer system. The facility may consider hanging plastic barriers or tarpaulins during blasting or painting operations to contain debris. Where required, a schedule for cleaning storm systems to remove deposits of abrasive blasting debris and paint chips should be addressed within the plan. The plan should include any standard operating practices with regard to blasting and painting activities. Such included items may be the prohibition of performing uncontained blasting and painting over open water or blasting and painting during windy conditions which can render containment ineffective.

(ii) Material Storage Areas—All stored and containerized materials (fuels, paints, solvents, waste oil, antifreeze, batteries) must be stored in a protected, secure location away from drains and plainly labeled. The plan must describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility must specify which materials are stored indoors and consider containment or enclosure for materials that are stored outdoors. Above ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the containment measures in place to prevent leaks and spills. The facility must consider implementing an inventory control plan to prevent excessive purchasing, storage, and handling of potentially hazardous materials. Those facilities where abrasive blasting is performed must specifically include a discussion on the storage and disposal of spent abrasive materials generated at the facility.

(iv) Engine Maintenance and Repair Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from all areas used for engine maintenance and repair. The facility must consider performing all maintenance activities indoors, maintaining an organized inventory of materials used in the shop, draining all parts of fluids prior to disposal, prohibiting wet clean up practice where the practice would result in the exposure of pollutants to storm water, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment or recycling.

(v) Material Handling Areas—The plan must describe measures that prevent or minimize contamination of

the storm water runoff from material handling operations and areas (i.e., fueling, paint & solvent mixing, disposal of process wastewater streams from vessels). The facility must consider covering fueling areas; using spill and overflow protection; mixing paints and solvents in a designated area, preferably indoors or under a shed; and minimizing runon of storm water to material handling areas. Where applicable, the plan must address the replacement or repair of leaking connections, valves, pipes, hoses, and soil chutes carrying wastewater from vessels.

(vi) Drydock Activities—The plan must address the routine maintenance and cleaning of the drydock to minimize the potential for pollutants in the storm water runoff. The plan must describe the procedures for cleaning the accessible areas of the drydock prior to flooding and final cleanup after the vessel is removed and the dock is raised. Cleanup procedures for oil, grease, or fuel spills occurring on the drydock must also be included within the plan. The facility must consider items such as sweeping rather than hosing off debris and spent blasting material from the accessible areas of the drydock prior to flooding and having absorbent materials and oil containment booms readily available to contain and cleanup any spills.

(vii) General Yard Area—The plan must include a schedule for routine yard maintenance and cleanup. Scrap metal, wood, plastic, miscellaneous trash, paper, glass, industrial scrap, insulation, welding rods, packaging, etc., must be routinely removed from the general yard area. The facility must consider such measures as providing covered trash receptacles in each yard, on each pier, and on board each vessel being repaired.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, sediment traps to ensure that spent abrasives, paint chips, and solids will be intercepted and retained prior to entering the storm drainage system) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: pressure washing area; blasting, sanding, and painting areas; material storage areas; engine maintenance and repair areas; material handling areas; drydock area; and general yard area. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. The pollution prevention plan shall identify how often training will take place, but in all cases training must be held at least semiannually (twice per calendar year). Employee training must, at a minimum, address the following areas when applicable to a facility: used oil management; spent solvent management; proper disposal of spent abrasives; proper disposal of vessel wastewaters, spill prevention and control; fueling procedures; general good housekeeping practices; proper painting and blasting procedures; and used battery management. Employees, independent contractors, and customers must be informed about BMPs and be required to perform in accordance with these practices. The facility should consider posting easy to read descriptions or graphic depictions of BMPs and emergency phone numbers in the work areas.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.R.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate

tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.R.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity including, but not limited to, pressure washing area, blasting and sanding areas, painting areas, material storage areas, engine maintenance and repair areas, material handling areas, and drydock area, shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.R.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.R.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.R.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with ship and boat building and repair facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Ship and boat building and repair facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table R–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table R–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE R–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Total Recoverable Copper ...	.009
Total Recoverable Zinc	.065
Total Recoverable Iron	.3
Total Recoverable Lead	.0337
Total Recoverable Arsenic ...	.000018
Nitrate + Nitrite as N	0.68

(1) Monitoring Periods. Ship and boat building and repair facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non storm water discharge.

(3) Sampling Waiver.

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table R–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with ship and boat building and repair facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), Ship and boat building and repair facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the

permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

S. Storm Water Discharges Associated With Industrial Activity From Vehicle Maintenance Areas, Equipment Cleaning Areas, or Deicing Areas Located at Air Transportation Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from airports, air terminals and flying fields generally classified under Standard Industrial Classification (SIC) code 45 which have vehicle maintenance shops, material handling facilities, equipment cleaning operations or airport deicing operations.

a. Eligibility. Only those portions of the facility that are either involved in vehicle maintenance (including vehicle rehabilitation, mechanical repairs, painting, fueling, and lubrication), equipment cleaning operations, or deicing operations are addressed under this section.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. Non-storm water discharges including aircraft, ground vehicle, runway and equipment washwaters, and dry weather discharges of deicing/anti-icing chemicals are not authorized by this permit. Operators of such discharges must obtain coverage under a separate National Pollutant Discharge Elimination System (NPDES) permit if discharged to waters of the U.S. or through a municipal separate storm sewer system.

3. Storm Water Pollution Prevention Plan Requirements. The permittee (Airport authority) shall ensure that storm water pollution prevention plans are developed and implemented for areas of the facility occupied by tenants of the airport who conduct operations which result in storm water discharges associated with industrial activity. For the purposes of today's permit, tenants of the airport facility includes airline companies, fixed based operators and other parties which have contracts with the airport authority to conduct business operations on airport property which result in storm water discharges associated with industrial activity as described in paragraph 1 of this section. Plans developed for areas occupied by tenants shall include the requirements specified in this section, and be integrated with the storm water pollution prevention plan for the entire airport. Plan should be developed in accordance with Part IV.A.

a. Contents of Plan. Each plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals as member(s) of a storm water Pollution Prevention Team who are responsible for developing the storm water pollution prevention plan and assisting the facility management in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage.

(i) A site map indicating an outline of the drainage area of each storm water outfall within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under paragraph XI.S.3.a.(2)(c) (Spills and Leaks) of this section have occurred, and the locations of the following activities where such activities are exposed to precipitation: aircraft and runway deicing/anti-icing operations; fueling stations; aircraft, ground vehicle and equipment maintenance and/or cleaning areas; storage areas for aircraft, ground vehicles and equipment awaiting maintenance; loading/unloading areas; locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(iii) The site map developed for the entire airport shall indicate the location of each tenant of the facility that conducts industrial activities as described in Part XI.S.1.a., and incorporate information from the tenants site map (including a description of industrial activities,

significant materials exposed, and existing management practices).

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment of storm water runoff.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: aircraft, runway, ground vehicle and equipment maintenance and cleaning; aircraft and runway deicing/anti-icing operations (including apron and centralized aircraft deicing stations, runways, taxiways and ramps); outdoor storage activities; loading and unloading operations; and onsite waste disposal. The description shall specifically list any significant potential source of pollutants at the facility and for each potential source, any pollutant or pollutant parameter [e.g., biochemical oxygen demand (BOD_5), oil and grease, etc.] of concern shall be identified.

Facilities which conduct deicing operations shall maintain a record of the types [including the Material Safety Data Sheets (MSDS)] and monthly quantities of deicing/anti-icing chemicals used by all parties conducting deicing operations at the airport facility.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The priority in selecting controls shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

(i) Aircraft, Ground Vehicle and Equipment Maintenance Areas—The permittee should ensure the maintenance of equipment is conducted in designated areas only and clearly identify these areas on the ground and delineate them on the site map. The plan must describe measures that prevent or minimize the contamination of the storm water runoff from all areas used for aircraft, ground vehicle and equipment maintenance (including the maintenance conducted on the terminal apron and in dedicated hangars). Management practices such as performing maintenance activities indoors, maintaining an organized inventory of materials used in the maintenance areas, draining all parts of fluids prior to disposal, preventing the practice of hosing down the apron or hangar floor, using dry cleanup methods, and/or collecting the storm water runoff from the maintenance area and providing treatment or recycling should be considered.

(ii) Aircraft, Ground Vehicle and Equipment Cleaning Areas—The permittee should ensure that cleaning of equipment is conducted in designated areas only and clearly identify these areas on the ground and delineate them on the site map. The plan must describe measures that prevent or minimize the contamination of the storm water runoff from all areas used for aircraft, ground vehicle and equipment cleaning. Management practices such as performing cleaning operations indoors, and/or collecting the storm water runoff from the cleaning area and providing treatment or recycling should be considered.

(iii) Aircraft, Ground Vehicle and Equipment Storage Areas—The storage of aircraft, ground vehicles and equipment awaiting maintenance must be confined to designated areas (delineated on the site map). The plan must describe measures that prevent or minimize the contamination of the storm water runoff from these areas. Management practices such as indoor storage of aircraft and ground vehicles, the use of drip pans for the collection of fluid leaks, and perimeter drains, dikes or berms surrounding storage areas should be considered.

(iv) Material Storage Areas—Storage units of all materials (e.g., used oils, hydraulic fluids, spent solvents, and waste aircraft fuel) must be maintained in good condition, so as to prevent or minimize contamination of storm water, and plainly labeled (e.g., "used oil," "Contaminated Jet A," etc.). The plan must describe measures that prevent or minimize contamination of the storm water runoff from storage areas. Management practices such as indoor storage of materials, centralized storage areas for waste materials, and/or installation of berming and diking around storage areas should be considered for implementation.

(v) Airport Fuel System and Fueling Areas—The plan must describe measures that prevent or minimize the discharge of fuels to the storm sewer resulting from fuel servicing activities or other operations conducted in support of the airport fuel system. Where the discharge of fuels into the storm sewer cannot be prevented, the plan shall indicate measures that will be employed to prevent or minimize the discharge of the contaminated runoff into receiving surface waters. Management practices such as implementing spill and overflow practices (e.g., placing sorptive materials beneath aircraft during fueling operations), using dry cleanup methods, and/or collecting the storm water runoff should be considered.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, removing debris from catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. The plan shall describe material handling procedures, storage requirements, and consider the use of equipment such as diversion valves. Procedures for cleaning up spills shall be identified in

the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Source Reduction—Facilities which conduct aircraft and/or runway (including taxiways and ramps) deicing/anti-icing operations shall evaluate present operating procedures to consider alternative practices to reduce the overall amount of deicing/anti-icing chemicals used and/or lessen the environmental impact of the pollutant source.

(i) With regard to runway deicing/anti-icing operations, facilities, at a minimum, shall evaluate: present application rates to ensure against excessive over application; metered application of deicing/anti-icing chemical; pre-wetting dry chemical constituents prior to application; installation of runway ice detection systems; implementing anti-icing operations as a preventive measure against ice buildup; and the use of substitute deicing compounds such as potassium acetate in lieu of ethylene glycol and/or urea.

(ii) In considering alternative management practices for aircraft deicing operations, facilities should evaluate current application rates and practices to ensure against excessive over application, and pretreating aircraft with hot water prior to the application of a deicing chemical, thus reducing the overall amount of chemical used per operation.

Source reduction measures that the facility determines to be reasonable and appropriate shall be implemented and maintained. The plan shall provide a narrative explanation of the options considered and the reasoning for whether or not to implement them.

(e) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which prevent or reduce source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.S.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered. Appropriate measures may include: vegetative swales, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. Measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained.

(i) Facilities which conduct aircraft and/or runway deicing/anti-icing operations shall also provide a narrative consideration of management practices to control or manage contaminated runoff from areas where deicing/anti-icing operations occur to reduce the amount of pollutants being discharged from the site. Structural controls such as establishing a centralized aircraft deicing facility, and/or collection of contaminated runoff for treatment or recycling should be considered. Collection and treatment alternatives include, but are not limited to, retention basins, detention basins with metered controlled release, Underground Storage Tanks (USTs) and/or disposal to Publicly Owned Treatment Works (POTW) by way of sanitary sewer or hauling tankers. Runoff management controls that the facility determines to be reasonable and appropriate shall be implemented and maintained. The plan should consider the recovery of deicing/anti-icing materials when these materials are applied during non-precipitation events. The plan shall provide a narrative explanation of the controls considered and the reasoning for whether or not to implement them.

(f) Inspections—In addition to or as part of the comprehensive site evaluation required under paragraph XI.S.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility specified in the plan. The inspection frequency shall be specified in the plan, but at a minimum be conducted once per week during deicing/anti-icing application periods for areas where deicing/anti-icing operations are being conducted. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. The use of a checklist developed by the pollution prevention team is encouraged.

(g) Pollution Prevention Training—Pollution prevention training programs shall be developed to inform airport management and tenant personnel responsible for implementing activities identified in the storm water pollution prevention plan of the components and goals of the plan. Training should address topics such as spill response, good housekeeping, aircraft and runway deicing/anti-icing procedures, and material management practices. The pollution prevention plan shall identify periodic dates for such training.

(h) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan. Inspections and maintenance activities shall be documented and records shall be incorporated into the plan.

(i) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge points have been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.S.3.a.(3)(iii) (below).

(ii) Except for flows from fire fighting activities, other sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting a

notice of intent to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(j) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations during periods of deicing/anti-icing operations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.S.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.S.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.S.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(f), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. During the period beginning on the effective date and lasting through the expiration date of this permit, facilities which conduct aircraft and/or runway deicing/anti-icing operations:

(1) Shall prepare estimates for annual pollutant loadings resulting from discharges of spent deicing chemicals from the facility. The loading estimates shall reflect the amounts of deicing chemicals discharged to separate storm sewer systems or surface waters, prior to and after implementation of the facility's storm water pollution prevention plan. Such estimates shall be reviewed by a Registered Professional Engineer, and certified by such engineer. By means of the certification, the engineer, having examined the facility's, deicing procedures, and proposed control measures described in the storm water pollution prevention plan, shall attest that the loading estimates have been prepared in accordance with good engineering practices. Certified loading estimates are to be retained at the airport facility and attached to the storm water pollution prevention plan.

b. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], airports that use more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis shall monitor outfalls from the facility that collect runoff from areas where deicing/anti-icing activities occur 4 times during months of deicing (November to March), except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Airports which are subject to these monitoring requirements must sample their storm water discharges for the pollutants of concern listed in Table S–1 below. Such facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table S–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE S–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration
Biochemical Oxygen Demand (BOD_5).	9 mg/L.
Chemical Oxygen Demand (COD).	65 mg/L.
Total Kjeldahl Nitrogen (TKN).	1.50 mg/L.
pH	6.5 to 9 s.u.

For the purposes of today's permit, the "average annual" usage rate of deicing/anti-icing chemicals is determined by averaging the amounts of deicing/anti-icing chemicals used at the facility in the 3 previous calendar years.

(1) Monitoring Periods. Airports that use more than 100,000 gallons of glycol-based deicing chemicals and/or 100 tons or more of urea on an average annual basis shall monitor outfalls from the facility that collect runoff from areas where deicing/anti-icing activities occur four times per year during periods when deicing/anti-icing activities occur (November to March), in the years specified in paragraph n. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in

magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver.

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table S–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

c. Reporting. Airports shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

T. Storm Water Discharges Associated With Industrial Activity From Treatment Works

1. Discharges Covered Under This Section

a. Eligibility. This permit covers all existing point source discharges of storm water from treatment works treating domestic sewage or any other sewage sludge or wastewater treatment device or system, used in the storage, treatment, recycling, and reclamation of municipal or domestic sewage, including lands dedicated to the disposal of sewage sludge that are located within the confines of the facility with a design flow of 1.0 MGD or more, or required to have an approved pretreatment program under 40 CFR Part 403. When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. Prohibited non-storm water discharges including sanitary and industrial wastewater, and equipment and vehicle washwaters are not authorized by this permit. The operators of such discharges must obtain coverage under a separate NPDES permit if discharged to waters of the U.S. or through a municipal separate storm sewer system.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of the Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team who are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage—A site map indicating the location of each point of discharge of storm water associated with industrial activity, an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries (with a prediction of the direction of flow), each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part III.B. (Spills and Leaks) of this permit have occurred, and the locations of the following activities: fueling areas; vehicle and equipment maintenance and/or cleaning areas; locations used for treatment, storage and disposal areas for wastes, liquid storage tanks, processing areas and storage areas for process chemicals, petroleum products, solvents, fertilizers, herbicides and pesticides; and loading/unloading areas.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities associated with treatment works: access roads/rail lines; loading and unloading operations; outdoor storage activities; material handling sites; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., acid, bases, and solvents, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—All areas that may contribute pollutants to storm waters discharges shall be maintained in a clean, orderly manner.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points, shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures and equipment for cleaning up spills shall be identified in the plan and made available to the appropriate personnel.

(d) Inspections—In addition to the comprehensive site evaluation required under Part XI.T.3.a.(4) of this permit, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on a monthly basis. The following areas shall be included in all inspections: access roads/rail lines, equipment storage and maintenance areas (both indoor and outdoor areas); fueling; material handling areas, residual treatment, storage, and disposal areas; and wastewater treatment areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. The use of a checklist developed by the facility is encouraged.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. The pollution prevention plan shall identify how often training will take place, but in all cases training must be held at least semiannually (twice per calendar year). Employee training must, at a minimum, address the following areas when applicable to a facility: petroleum product management; process chemical management; spill prevention and control; fueling procedures; general good housekeeping practices; proper procedures for using fertilizers, herbicides and pesticides.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be practical if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not practical, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part XI.T.3.a.(3)(g)(iv) (Failure to Certify) of this permit.

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) A copy of all the current NPDES permit issued for wastewater, industrial, vehicle and equipment washwater discharges or, if an NPDES permit has not yet been issued, a copy of the pending application must be attached to the plan. For facilities that discharge vehicle and equipment washwaters to the sanitary sewer system, the operator of the sanitary system and associated treatment plant must be notified. In such cases, a copy of the notification letter must be attached to the plan. If an industrial user permit is issued under a pretreatment program, a copy of that permit must be attached in the plan. In all cases, any permit conditions must be considered in the plan. If the washwaters are handled in another manner (e.g., hauled offsite), the disposal method must be described and all pertinent documentation (e.g., frequency, volume, destination, etc.) must be attached to the plan.

(iv) Failure to Certify. Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [insert date 270 days after permit issuance] or, for facilities that begin to discharge storm water associated with industrial activity after [insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notifications shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States that are not authorized by an NPDES permit are unlawful and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see Part XI.T.3.a.(2) (Description of Potential Pollutant Sources) of this permit] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. If a facility determines that other management measures can attain the same water quality in the storm water discharges as an oil/water separator, the justification must be included in the plan.

(4) Comprehensive Site Compliance Evaluation—Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part XI.T.3.a.(2) (Description of Potential Pollutant

Sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.T.3.a.(3) (Measures and Controls) of this permit shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.T.3.a.(4)(b) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no numeric effluent limitations beyond those in Part V.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], treatment works must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Treatment works are required to monitor their storm water discharges for the pollutants of concern listed in Table T–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table T–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE T–1.— MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Total Phosphorus	0.33
Nitrate + Nitrite Nitrogen	0.68
Ammonia	0.0925
Total Recoverable Copper	0.009
Total Recoverable Iron	0.3
Total Recoverable Manganese	0.05
Total Recoverable Zinc	0.065

(1) Monitoring Periods. Treatment works shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver.

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table T–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law,

signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.A. of this permit.

b. Reporting. Permittees with treatment works shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), treatment works with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

U. Storm Water Discharges Associated With Industrial Activity From Food and Kindred Products Facilities

1. Discharges Covered Under This Section. This section covers all storm water discharges from food and kindred products processing facilities commonly identified by Standard Industrial Classification (SIC) code 20 (including meat products; dairy products; canned, frozen and preserved fruits, vegetables, and food specialties; grain mill products; bakery products; sugar and confectionery products; fats and oils; beverages; and miscellaneous food preparations and kindred products) and SIC Code 21 (tobacco products manufacturing), except for storm water discharges identified under paragraph I.B.3. where industrial plant yards; material handling sites; refuse sites; sites used for application or disposal of process wastewaters; sites used for storage and maintenance of material handling equipment; sites used for residential treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; and storage areas for raw material and intermediate and finished products are exposed to storm water and areas where industrial activity has taken place in the past and significant materials remain. For the purposes of this paragraph, material handling activities include the storage, loading, and unloading, transportation, or conveyance of any raw material, intermediate product, finished product, by-product, or waste product.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for

industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges.

(*1*) Discharges of non-storm water, including boiler blowdown, cooling tower overflow and blowdown, ammonia refrigeration purging, and vehicle washing/clean-out operations, to waters of the United States, or through municipal separate storm sewer systems, are not authorized by this permit. The operators of such discharges must obtain coverage under a separate NPDES wastewater discharge permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(*1*) *Pollution Prevention Team.* Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(*2*) *Description of Potential Pollutant Sources.* Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(*a*) *Drainage*—A site map indicating the pattern of storm water drainage, existing structural control measures to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, and locations where major spills or leaks identified under Part XI.U.3.a.(2)(c) (Spills and Leaks) of this permit have occurred since 3 years prior to the effective date of this permit. The map must also indicate the locations of all industrial activities that are exposed to precipitation, including, but not limited to: loading/unloading areas; vehicle fueling; vehicle and equipment maintenance and/or cleaning areas; waste treatment, storage and disposal locations; liquid storage tanks; vents and stacks from cooking, drying, and similar operations, dry product vacuum transfer lines; animal holding pens; spoiled product and broken product container storage areas; significant dust or particulate generating areas; and any other processing and storage areas exposed to storm water. Flows with a significant potential for causing erosion shall also be identified. In addition, the site map must identify monitoring locations.

(*b*) *Inventory of Exposed Materials*—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(*c*) *Spills and Leaks*—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(*d*) *Sampling Data*—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(*e*) *Summary of Potential Pollutant Sources*—The description of potential pollutant sources culminates in a narrative assessment of the risk potential that the industrial activities, materials, and physical features of the site, as identified in XI.U.3.a.(2)(a) (drainage), pose to storm water quality. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, oil and grease, etc.) of concern shall be identified.

In addition to food and kindred products processing-related industrial activities, the plan must also describe application/storage of pest control chemicals (e.g., rodenticides, insecticides, fungicides, and others) used on plant grounds, including a description of pest control application and chemical storage practices.

(*3*) *Measures and Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(*a*) *Good Housekeeping*—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner.

(*b*) *Preventive Maintenance*—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(*c*) *Spill Prevention and Response Procedures*—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Areas that must be identified should include loading/unloading stations, outdoor storage areas, and waste management areas exposed to storm water. Where

appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—As part of the comprehensive site evaluation required under Part XI.U.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at least once each year. At a minimum, the following areas, where the potential for exposure to storm water exists, must be inspected on a regularly scheduled basis: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; vents and stacks emanating from industrial activities; spoiled product and broken product container holding areas; animal holding pens; staging areas; and air pollution control equipment. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained. Based on the results of the inspection, the description of potential pollutant sources and pollution prevention measures and controls identified in the plan shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, material management practices, unloading/loading practices, outdoor storage areas, waste management practices, pest control, and improper connections to the storm sewer. At a minimum, this training must be provided annually. The pollution prevention plan shall identify frequencies and approximate dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. Ineffective BMPs must be recorded and the date of their corrective actions noted in the plan.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part XI.U.3.a.(3)(g)(iv) (Failure to Certify) of this permit.

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) If the facility discharges wastewater, other than storm water via an existing NPDES permit, a copy of the NPDES permit authorizing the discharge must be attached to the plan. Similarly, if the facility submitted an application for an NPDES permit for non-storm water discharges, but has not yet received that permit, a copy of the permit application must be attached. Upon issuance or reissuance of an NPDES permit, the facility must modify its plan to include a copy of that permit. For facilities that discharge wastewater, other than solely domestic wastewater, to a Publicly Owned Treatment Works (POTW), the facility must notify the POTW of its discharge. Proof of this notification should be attached to the plan in the form of either: (1) a copy of the permit issued by the treatment plant to the facility, or (2) a copy of a notification letter to the POTW. Notification should identify, in general, the types of wastewater discharged to the POTW, including any storm water discharges. Whether or not the POTW issues a permit to the facility, storm water discharges to the POTW must be considered in the plan.

(iv) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see Part XI.U.3.a.(2) (Description of Potential Pollutant Sources) of this

permit] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Where compliance evaluation schedules overlap with inspections required under XI.U.3.a.(3)(d) of this section, the compliance evaluation may be conducted in place of one such inspection. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part XI.U.3.a.(2) (Description of Potential Pollutant Sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.U.3.a.(3) (Measures and Controls) of this permit shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.U.3.a.(4)(d) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) The storm water pollution prevention plan must describe the scope and content of the comprehensive site inspections that qualified personnel will conduct to (1) confirm the accuracy of the description of potential sources contained in the plan, (2) determine the effectiveness of the plan, and (3) assess compliance with the terms and conditions of the permit. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team, as identified in Part XI.U.3.a.(1) (Pollution Prevention Team). Inspection reports must be retained for at least 3 years after the date that the permit expires.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with food and kindred products facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Food and kindred products facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table U–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table U–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE U–1.—MONITORING REQUIREMENTS

Pollutants of concern	Cut-off concentration (mg/L)
Five-Day Biochemical Oxygen Demand (BOD_5)	9
Ammonia	0.093
Total Kjeldahl Nitrogen (TKN)	1.5
Total Phosphorus	0.33
Total Recoverable Copper	0.009
Total Recoverable Manganese	0.05
Total Recoverable Iron	0.3
Total Recoverable Zinc	0.065

(1) Monitoring Periods. Food and kindred products facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver.

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms

etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table U–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity, that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with part VI.C. of this permit.

b. Reporting. Permittees with food and kindred products facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in part VI.G. of the fact sheet to this permit.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above) food and kindred products, facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of a grab sample collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(a) When a discharger is unable to collect samples over the course of the

monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

V. Storm Water Discharges Associated With Industrial Activity From Textile Mills, Apparel, and Other Fabric Product Manufacturing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from the following activities: Textile Mill Products, of and regarding facilities and establishments engaged in the preparation of fiber and subsequent manufacturing of yarn, thread, braids, twine, and cordage, the manufacturing of broadwoven fabrics, narrow woven fabrics, knit fabrics, and carpets and rugs from yarn; processes involved in the dyeing and finishing of fibers, yarn fabrics, and knit apparel; the integrated manufacturing of knit apparel and other finished articles of yarn; the manufacturing of felt goods (wool), lace goods, nonwoven fabrics, miscellaneous textiles, and other apparel products.

The following standard industrial classification (SIC) codes from the 1987 manual, are typical of the types of industrial activities included for coverage under this section: 2211, broadwoven fabric mills, cotton; 2221, broadwoven fabric Mills, Manmade fibers and silk; 2231, broadwoven fabric mills, wool; 2241, narrow fabric mills; 2251, women's hosiery, except socks; 2252, hosiery; 2257, weft knit fabric mills; 2258, lace and warp knit fabric mills; 2259, knitting mills; 2260, textile finishing, except wool; 2261, finishing plants, cotton; 2262, finishing plant, man-made ; 2269, finishing plants; 2273, carpets and rugs; 2281, yarn spinning mills; 2282, throwing and winding mills; 2283, thread mills; 2294, textile goods; 2295, coated fabrics, not rubberized; 2297, nonwoven fabrics; 2299, textile goods; curtains and draperies; and SIC Group 23.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges.

(1) Prohibited non-storm water includes, but is not limited to discharges of wastewater, such as wastewater as a result of wet processing, wastewaters resulting from any processes relating to the production process, reused or recycled water, and waters used in cooling towers. Operators of such discharges to waters of the United States, must obtain coverage under a separate NPDES permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team who are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage.

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.V.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks or silos, bulk storage areas that may exist, processing areas and storage areas, fueling stations, vehicle and equipment maintenance and/or cleaning areas.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) *Spills and Leaks*—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) *Sampling Data*—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) *Risk Identification and Summary of Potential Pollutant Sources*—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; onsite waste disposal practices; industry-specific significant materials and industrial activities (e.g., backwinding, beaming, bleaching, backing, bonding carbonizing, carding, cut and sew operations, desizing, drawing, dyeing flocking, fulling, knitting, mercerizing, opening, packing, plying, scouring, slashing, spinning, synthetic-felt processing, textile waste processing, tufting, turning, weaving, web forming, winging, yarn spinning, and yarn texturing). The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) *Measures and Controls.* Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) *Good Housekeeping*—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. The following areas must be specifically addressed, when applicable at the facility:

(i) *Material Storage Areas*—All stored and containerized materials (fuels, petroleum products, solvents, dyes, etc.) must be stored in a protected area, away from drains and clearly labeled. The plan must describe measures that prevent or minimize contamination of storm water runoff from such storage areas. The facility should specify which materials are stored indoors and must provide a description of the containment area or enclosure for those materials which are stored outdoors. Above ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map with a description of the appropriated containment measures in place to prevent leaks and spills. The facility may consider an inventory control plan to prevent excessive purchasing, storage, and handling of potentially hazardous substances. In the case of storage of empty chemical drums and containers, facilities should employ practices which ensure that barrels are clean and residuals are not subject to contact with storm water, such practices may include triple-rinsing containers. The discharge waters from such washings must be collected and disposed of properly.

(ii) *Material Handling Area*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from materials handling operations and areas. The facility may consider the use of spill and overflow protection; covering fueling areas; covering and enclosing areas where the transfer of materials may occur. Where applicable, the plan must address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, dyes, or wastewater.

(iii) *Fueling Areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from fueling areas. The facility may consider covering the fueling area, using spill and overflow protection, minimizing runon of storm water to the fueling area, using dry cleanup methods, and/or collecting the storm water runoff and providing treatment or recycling.

(iv) *Above Ground Storage Tank Areas*—The plan must describe measures that prevent or minimize contamination of the storm water runoff from above ground storage tank areas. The facility must consider storage tanks and their associated piping and valves. The facility may consider regular cleanup of these areas, preparation of a spill prevention control and countermeasure program, provide spill and overflow protection, minimizing runon of storm water from adjacent areas, restrict access to the area, insertion of filters in adjacent catch basins, provide absorbent booms in unbermed fueling areas, use of dry cleanup methods, and permanently sealing drains within critical areas that may discharge to a storm drain.

(b) *Preventive Maintenance*—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, sediment traps, catch basins, infiltration devices, ponds) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) *Spill Prevention and Response Procedures*—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) *Inspections*—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. Inspection intervals are to occur on a monthly basis. Inspections of this nature shall include, but not be limited to, the following areas: all containment and storage areas, transfer and transmission lines, spill prevention, good housekeeping practices, management of process waste products, all structural and nonstructural management practices. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) *Employee Training*—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. The pollution prevention plan shall identify periodic dates for such training to take place at least semiannually. Employee

training must, at a minimum address the following areas when applicable to a facility: use of reused/recycled waters; solvents management; proper disposal of dyes; proper disposal of petroleum products and spent lubricants; spill prevention and control; fueling procedures; and general good housekeeping practices. Employees, independent contractors, and customers must be informed about BMPs and be required to perform in accordance with these practices. Copies of BMPs and any specific management plans, including emergency phone numbers, shall be posted in the work areas.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.V.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2. of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.V.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity (storage tank areas, waste disposal and storage areas, dumpsters and open containers stored outside, materials storage areas, engine maintenance and repair areas, material handling areas, and loading dock areas) shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.V.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.V.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.V.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections

required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and an explanation in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

W. Storm Water Discharges Associated With Industrial Activity From Wood and Metal Furniture and Fixture Manufacturing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activities from facilities involved in the manufacturing of:

- Wood Kitchen Cabinets (SIC Code 2434)
- Household Furniture (SIC Code 251)
- Office Furniture (SIC Code 252)
- Public Buildings and Related Furniture (SIC Code 253)
- Partitions, Shelving, Lockers, and Office and Store Fixtures (SIC Code 254)
- Miscellaneous Furniture and Fixtures (SIC Code 259).

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. This section does not cover any discharge subject to process wastewater effluent limitation guidelines, including storm water that combines with process wastewater.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.W.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations; vehicle and equipment maintenance and/or cleaning areas; loading and unloading areas; material storage (including tanks or other vessels used for liquid or waste storage) areas; outdoor material processing areas; areas where wastes are treated, stored, or disposed; access roads; and rail spurs.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste treatment, storage, or disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect: the integrity of storm water discharge diversions, conveyance systems, sediment control and collection systems, and containment structures; visual inspections of vegetative BMPs to determine if soil erosion has occurred; and visual inspections of material handling and storage areas and other potential sources of pollution for evidence of actual or potential pollutant discharges of contaminated storm water. Visual inspections shall be conducted in each of the following periods: December to February (*storm water runoff or snow melt*); March to May (*storm water runoff*); June to August (*storm water runoff*); September to November (*storm water runoff or snow melt*). Examinations shall be conducted within the first 30 minutes of when the runoff begins discharging. The visual inspections of BMPs and loading/unloading areas must be made at least once in each designated period during daylight hours unless there is insufficient rainfall or snow-melt to produce a runoff event. Information must be maintained onsite and include the examination date and time and the name of personnel conducting the visual inspection. The pollution prevention plan must be updated based on the results of each inspection. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), BMP inspection and maintenance activities, along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under

this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. Ineffective BMPs must be reported and the date of their corrective action noted.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.W.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A.2. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.W.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate semiannual intervals. The comprehensive site evaluation must be conducted during the March to May and September to November reporting periods. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity including, but not limited to, coal piles, ash disposal areas, loading/unloading operations, and waste treatment, storage, or disposal locations shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.W.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.W.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.W.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under XI.W.3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements.

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at

least once in each designated period (described in (a), below) during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g. low (under 40 percent), medium (40 to 65 percent) or high (above 65 percent)] shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

X. Storm Water Discharges Associated With Industrial Activity From Printing and Publishing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from facilities commonly identified by the following Standard Industrial Classification (SIC) codes:

- Book Printing (SIC Code 2732);
- Commercial Printing, Lithographic (SIC Code 2752);
- Commercial Printing, Gravure (SIC Code 2754);
- Commercial Printing, Not Elsewhere Classified (SIC Code 2759);
- Platemaking and Related Services (SIC Code 2796)

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions. There are no additional special conditions beyond those found in Part III. of today's permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.X.3.a.(2)(c) (Spills and Leaks) of this

section have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas. Above ground storage tanks, drums, and barrels permanently stored outside must be delineated on the site map.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of the chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities associated with printing, publishing and allied facilities: loading and unloading operations; outdoor storage activities; significant dust or particulate generating processes; and onsite waste disposal practices (i.e., blanket wash). The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., oil and grease, scrap metal, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. Areas where good housekeeping should be implemented include:

(i) Material Storage Areas—All stored and containerized materials (skids, pallets, solvents, bulk inks, and hazardous waste, empty drums, portable/mobile containers of plant debris, wood crates, steel racks, fuel oil, etc.) should be stored in a protected area, away from drains and properly labeled. The plan should describe measures that prevent or minimize contamination of the storm water runoff from such storage areas. The facility should specify which materials are stored indoors and must provide a description of the containment area or enclosure for those materials which are stored outdoors. The facility may consider an inventory control plan to prevent excessive purchasing, storage, and handling of potentially hazardous substances. The facility may consider indoor storage of the materials and/or installation of berming and diking of the area.

(ii) Material Handling Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from materials handling operations and areas (i.e., blanket wash, mixing solvents, loading/unloading materials). The facility may consider the use of spill and overflow protection; covering fuel areas; covering and enclosing areas where the transfer of materials may occur. Where applicable, the plan must address the replacement or repair of leaking connections, valves, transfer lines and pipes that may carry chemicals, or wastewater.

(iii) Fueling Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from fueling areas. The facility may consider covering the fueling area, using spill and overflow protection, minimizing runon of storm water to the fueling area, using dry cleanup methods, and/or collecting the storm water runoff and providing treatment or recycling.

(iv) Above Ground Storage Tank Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from above ground storage tanks and their associated piping and valves. The facility may consider regular cleanup of these areas, preparation of a spill prevention control and countermeasure program, provide spill and overflow protection, minimizing runon of storm water from adjacent facilities and properties, restrict access to the area, insertion of filters in adjacent catch basins, provide absorbent booms in unbermed fueling areas, use of dry cleanup methods, and permanently sealing drains within critical areas that may discharge to a storm drain.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, vegetative swales, secondary containment, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary

equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility on an annual basis. The following areas shall be included in, but not limited to, all inspections: all containment and material storage areas, fueling areas, loading and unloading areas, equipment cleaning areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. The pollution prevention plan shall identify how often training will take place, but in all cases, training should be provided annually. Employee training must, at a minimum, address the following areas when applicable to a facility: spent solvent management; spill prevention and control; used oil management; fueling procedures; and general good housekeeping practices. The pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.X.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.X.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity (including, but not limited to, material handling areas, material storage areas, waste disposal and storage areas, loading/unloading areas) shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.X.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.X.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the

implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.X.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of a grab sample collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

Y. Storm Water Discharges Associated With Industrial Activity From Rubber, Miscellaneous Plastic Products, and Miscellaneous Manufacturing Industries

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to all storm water discharges associated with industrial activity from facilities in major SIC groups 30 and 39 (except SIC 391 Jewelry, Silverware, and Plated Ware). Major group 30 includes rubber and miscellaneous plastic products manufacturing facilities. Major group 39 includes miscellaneous manufacturing industries. This section does not apply to storm water discharges from co-located facilities, such as vehicle maintenance areas which are addressed in a separate section of this permit.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. Other than as provided in Part III.A. of this permit, non-storm water discharges are not authorized by this section.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall

address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. All rubber manufacturers shall in particular review the use of zinc at their facilities and the possible pathways through which zinc may be discharged in storm water runoff. Each plan shall include, at a minimum:

(a) Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.Y.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of a chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. Facilities subject to EPCRA Section 313 should note that the special requirements of Part IV.E. of this permit also apply to their facilities. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under paragraph XI.Y.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been

tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.Y.3.a.(3)(g)(iii) (below).

(II) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.Y.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(i) Special Requirements for All Rubber Manufacturers—All rubber manufacturing facilities shall include specific measures and controls to minimize the discharge of zinc in their storm water discharges. The following possible sources of zinc shall be reviewed and the accompanying BMPs shall be included as appropriate in the storm water pollution prevention plan:

(i) Inadequate Housekeeping—All permittees shall review the handling and storage of zinc bags at their facilities and consider the following BMPs for the pollution prevention plan: employee training regarding the handling and storage of zinc bags, indoor storage of zinc bags, thorough cleanup of zinc spills without washing the zinc into the storm drain, and the use of 2,500-pound sacks of zinc rather than 50- to 100-pound sacks.

(ii) Zinc in Dumpsters—The following BMPs shall be considered to reduce discharges of zinc from dumpsters: providing a cover for the dumpster; move the dumpster to an indoors location; or provide a lining for the dumpster.

(iii) Malfunctioning Dust Collectors or Baghouses—Permittees shall review dust collectors and baghouses as possible sources in zinc in storm water runoff. Improperly operating dust collectors or baghouses shall be replaced or repaired as appropriate. The pollution prevention plan shall also provide for regular maintenance of these facilities.

(iv) Grinding Operations—Permittees shall review dust generation from rubber grinding operations at their facility and, as appropriate, install a dust collection system.

(v) Zinc Stearate Coating Operations—Permittees shall include in the pollution prevention plan appropriate measures to prevent and/or clean up drips or spills of zinc stearate slurry which may be released to the storm drain. Alternate compounds to zinc stearate shall also be considered.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.Y.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.Y.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water

pollution prevention plan, and actions taken in accordance with paragraph XI.Y.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(e) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

Z. Storm Water Discharges Associated With Industrial Activity From Leather Tanning and Finishing Facilities

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges from the following activities: leather tanning, currying and finishing, facilities commonly identified by Standard Industrial Classification (SIC) code 3111. Discharges from facilities which make fertilizer solely from leather scraps and leather dust are also covered under this section. When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

There are no special conditions for this section beyond those in Part III. of this permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may

result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources or, during periods of dry weather, result in dry weather flows. Each plan shall include, at a minimum:

(a) Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies (including wetlands), locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.Z.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, material storage (including tanks or other vessels used for liquid or waste storage), processing and storage areas for activities associated with beamhouse, tanyard, retan-wet finishing and dry finishing operations, and haul roads, access roads and rail spurs. The site map must also identify monitoring locations.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of a chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives. The description must be updated whenever there is a significant change in the types or amounts of materials, or material management practices, that may affect the exposure of materials to storm water.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Significant spills include but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of the Clean Water Act (CWA) (see 40 CFR 110.10 and 40 CFR 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not in excess of reporting requirements and releases of materials that are not classified as oil or a hazardous substance. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of potential pollutant sources including but not limited to the following activities: loading and unloading operations; outdoor storage activities, including but not limited to: temporary or permanent storage of fresh and brine cured hides, chemical drums, bags, containers and above ground tanks, leather dust, scraps, trimmings and shavings, spent solvents, extraneous hide substances and hair, and empty chemical containers and bags; floor sweepings and washings; refuse and waste piles and sludge; outdoor manufacturing or processing activities; significant dust or particulate generating processes including buffing; vehicle maintenance, washing and fueling and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, total suspended solids, chromium, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. The following areas must be specifically addressed:

(i) Storage Areas for Raw, Semiprocessed, or Finished Tannery By-products—Pallets and/or bales of raw, semiprocessed or finished tannery by-products (e.g., splits, trimmings, shavings, etc.) should be stored indoors or protected by polyethylene wrapping, tarpaulins, roofed storage area or other suitable means. Materials should be placed on an impermeable surface, the area should be enclosed or bermed or other equivalent measures should be employed to prevent runon and runoff of storm water.

(ii) Material Storage Areas—Label storage units of all materials (e.g., specific chemicals, hazardous materials, spent solvents, waste materials). Maintain such containers and units in good condition. Describe measures that prevent or minimize contact with storm water. The facility must consider indoor storage, installation of berming and diking around the area, and/or other equivalent measures to prevent runon and runoff of storm water.

Buffing/Shaving Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff with leather dust from buffing/shaving areas. The facility may consider dust collection enclosures, preventive inspection/maintenance programs or other appropriate preventive measures.

(iv) Receiving, Unloading, and Storage Areas—The plan must describe measures that prevent or minimize contamination of the storm water runoff from receiving, unloading, and storage areas. Exposed receiving, unloading and storage areas for hides and chemical supplies should be protected by a

suitable cover, diversion of drainage to the process sewer, grade berming or curbing area to prevent runon of storm water or other appropriate preventive measures. Materials must be plainly labelled and maintained in good condition.

(v) Outdoor Storage of Contaminated Equipment—The plan must describe measures that minimize contact of storm water with contaminated equipment. Equipment should be protected by suitable cover, diversion of drainage to the process sewer, thorough cleaning prior to storage or other appropriate preventive measures.

(vi) Waste Management—The plan must describe measures that prevent contamination of the storm water runoff from waste storage areas. The facility may consider inspection/maintenance programs for leaking containers or spills, covering dumpsters, moving waste management activities indoors, covering waste piles with temporary covering material such as tarpaulins or polyethylene, and minimizing storm water runon by enclosing the area or building berms around the area.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at least on a quarterly basis. The following areas shall be included in all inspections: leather processing areas, storage areas for chemicals, including but not limited to above ground tanks, fueling areas, vehicle and equipment maintenance areas, material storage areas, loading and unloading areas, waste management areas and other potential sources of pollution for evidence of actual or potential discharges of contaminated storm water. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections and that the pollution prevention plan is appropriately modified. Records of inspections shall be maintained as part of the pollution prevention plan.

Qualified personnel are required to conduct quarterly visual inspections of all Best Management Practices (BMPs). The inspections shall include an assessment of the effectiveness and need for maintenance of storm water roofing and covers, dikes and curbs, discharge diversions, sediment control and collection systems and all other BMPs.

Quarterly visual inspections must be made at least once in each of the following designated periods during daylight hours. December to February (storm water runoff or snow melt), March to May (storm water runoff), June to August (storm water runoff), and September to November (snow melt runoff). Records shall be maintained as part of the pollution prevention plan.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. The pollution prevention plan shall identify how often training will take place, but in all cases, training must be held at least annually. Employee training must, at a minimum, address the following areas when applicable to a facility: general good housekeeping practices, spill prevention and control, waste management, inspections, preventive maintenance, detection of non-storm water discharges and other areas.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as leaks, spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. The plan must address spills, monitoring, and BMP inspection and maintenance activities. BMPs which were ineffective must be reported and the date of their corrective action recorded. Employees must report incidents of leaking fluids to facility management and these reports must be incorporated into the plan.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.Z.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not

feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.Z.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. In addition, the permittee must describe the storm water pollutant source area or activity (e.g., storage areas, loading and unloading areas, above ground storage of chemicals) to be controlled by each storm water management practice.

The plan must consider management practices, such as berms for uncovered storage areas, uncovered loading and unloading areas, above ground liquid storage and waste management areas. The installation of detention ponds must also be considered.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.Z.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.Z.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.Z.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) The storm water pollution prevention plan must describe the scope and content of comprehensive site inspections that qualified personnel will conduct to 1) confirm the accuracy of the description of potential pollution sources contained in the plan, 2) determine the effectiveness of the plan, and 3) assess compliance with the terms and conditions of the permit. Comprehensive site compliance evaluations should be conducted twice a year. The individual or individuals who will conduct the inspections must be identified in the plan and should be members of the pollution prevention team. Inspection reports must be retained for at least 3 years after the date that the permit expires.

(e) Where compliance evaluation schedules overlap with inspections required under XI.Z.3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with leather tanning and finishing facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Leather tanning and finishing facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table Z-1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table Z-1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE Z–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Five-Day Biological Oxygen Demand (BOD_5)	9.0
Total Kjeldahl Nitrogen (TKN)	1.5
Nitrate and Nitrite Nitrogen	0.68
Total Recoverable Aluminum	0.75
Total Recoverable Manganese	0.05

(1) *Monitoring Periods.* Leather tanning and finishing facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) *Sample Type.* A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or non-process water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) *Sampling Waiver*

(a) *Adverse Conditions*—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table Z–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with leather tanning and finishing facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), leathering tanning and finishing facilities with at least one

storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(4) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricanes, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

AA. Storm Water Discharges Associated With Industrial Activity From Fabricated Metal Products Industry

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to storm water discharges associated with industrial activity from the fabricated metals industry, Standard Industrial Classification (SIC) Codes listed below, except for electrical related industries:

- SIC Major Group 34 Fabricated Metal Products
- SIC 391 Jewelry, Silverware, and Plated Ware.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges

(1) This permit does not authorize the discharge of process wastewater. Discharges of storm water commingled with process wastewater are not authorized under this permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all industrial activities and significant materials which may potentially be significant pollutant sources. Each plan shall specifically identify the physical features of the facility that may contribute to storm water runoff. Each plan shall include, at a minimum:

(a) Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part

IX.AA.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: raw metal storage areas, finished metal storage areas, scrap disposal collection sites, equipment storage areas, retention and detention basins, temporary diversion dikes or berms, permanent diversion dikes or berms, right-of-way or perimeter diversion devices, any sediment traps or barriers, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas including outside painting areas, wood preparation, recycling and raw material storage.

(ii) For each area of the facilities that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. A prediction of the direction of flow and identity of the types of pollutants which are likely to be present in storm water discharges, in particular, flows with a significant potential for causing erosion shall be identified such as heavy equipment use areas, drainage from roofs, parking lots, etc.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Significant spills that should be considered for the fabricated metals industry includes but are not limited to chromium, toluene, pickle liquor, sulfuric acid, zinc and other water priority chemicals and hazardous chemicals and wastes. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit. The data collected as a representative sampling protocol for the approved facilities in the group should be made a part of the sampling data for these facilities.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations for paints, chemicals and raw materials; outdoor storage activities for raw materials, paints, empty containers, corn cob, chemicals, scrap metals; outdoor manufacturing or processing activities such as grinding, cutting, degreasing, buffing, brazing, etc; significant dust or particulate generating processes; and onsite waste disposal practices for spent solvents, sludge, pickling baths, shavings, ingots pieces, refuse and waste piles. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical or chemical oxygen demand, chromium, total suspended solids, oil and grease, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner. The description of storm water management controls shall at a minimum address the following components of the plan, including a schedule for implementing the plan that shall not exceed the stipulated timeframe identified in this permit.

(i) Good Housekeeping—Fabricating industries shall include the following best management practices in their storm water pollution prevention plan:

- *Metal Fabricating Areas*—Measures for maintaining clean, dry, orderly conditions in these areas. Use of dry clean-up techniques should be considered in the plan.
- *Storage Areas for Raw Metal*—Measures to keep these areas free of conditions that could cause spills or leakage of materials. Storage areas should be maintained for easy access in case spill clean up is necessary. Stored materials should be able to be identified correctly and quickly.
- *Receiving, Unloading, and Storage Areas*—Measures to prevent spills and leaks; plan for quick remedial clean up and instruct employees on the use of clean-up techniques.
- *Storage of Equipment*—The plan should provide measures for preparing equipment for storage and the proper method to store equipment including protecting with covers, storing indoors. The plan should include clean-up measures for equipment that will be stored outdoors to remove potential pollutants.

(b) Preventive Maintenance—Preventive maintenance measures shall include timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems. In particular for the fabricated metal industries special consideration should be given to the following areas for preventive maintenance:

- *Metal Working Fluid Areas*—The plan should include measures that identify controls particularly for storage of metal working fluids.
- *Cleaners and Rinse Water*—Measures should be included to control and cleanup spills of solvents and other liquid cleaners; control sand buildup and disbursement from sand-blasting operations, preventing exposure of recyclable wastes; and employ substitute cleaners when possible.
- *Raw Steel Handling Storage*—The plan should include measures controlling or recovering scrap metals.

fines, and iron dust, including measures for containing materials within storage handling areas.

• *Paints and Painting Equipment*—The plan should consider control measures to prevent or minimize exposure of paint and painting equipment from exposure to storm water.

• *Lubricating Oil and Hydraulic Fluid Operations*—The plan should include using devices or monitoring equipment to determine and control leaks and overflows, including the installation of perimeter controls such as dikes, curbs, grass filter strips, or other equivalent measure.

• *Chemical Storage Areas*—The plan should clearly identify materials, proper storage that prevents storm water contamination and prevents accidental spillage. The plan should include a program to inspect containers, and identify proper disposal and spill controls.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. Metal fabricators shall at a minimum include the following areas for inspection: raw metal storage areas, finished product storage areas, material and chemical storage areas, recycling areas, loading and unloading areas, equipment storage areas, paint areas, fueling and maintenance areas, and waste management areas. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.AA.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting a notice of intent to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion. The plan shall identify structural, vegetative, and/or stabilization measures to be used to limit erosion. These shall include but not be limited to grass swales, filter strips, treatment works, or other equivalent measures. Metal fabricators must include in their plan measures to minimize erosion caused by the high volume of traffic from heavy equipment for delivery to and from the facility and for equipment operating at the facility on a daily basis such as forklifts, cranes, etc.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutant(s) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activities under the SIC codes identified under paragraph XI.AA.1. of this section shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at

least twice a year, once annually during wet weather and once during dry weather as specified in the plan. Such evaluations shall include:

(a) Areas contributing to a storm water discharge associated with storage of raw metals, storage of spent solvents and chemicals, outdoor paint areas, drainage from roof, unloading and loading areas, equipment storage areas, recycling areas, and retention ponds (sludge); included but not limited to chromium, zinc, lubricating oil, solvents, aluminum, oil and grease, methyl ethyl ketone, steel, and other related materials shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, such as detention basins and channels, gutters or drains to direct discharge flow, oil/water separators in storm drains, containment structures, concrete pads, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment and containment drums, shall be made to determine if the equipment is functioning properly and that drums are not in a corrosive or deteriorating state.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.AA.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.AA.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.AA.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Analytical Monitoring Requirements. During the period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] and the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance], permittees with metal fabricating facilities must monitor their storm water discharges associated with industrial activity at least quarterly (4 times per year) except as provided in paragraphs 5.a.(3) (Sampling Waiver), 5.a.(4) (Representative Discharge), and 5.a.(5) (Alternative Certification). Metal fabricating facilities are required to monitor their storm water discharges for the pollutants of concern listed in Table AA–1 below. Facilities must report in accordance with 5.b. (Reporting). In addition to the parameters listed in Table AA–1 below, the permittee shall provide the date and duration (in hours) of the storm event(s) sampled; rainfall measurements or estimates (in inches) of the storm event that generated the sampled runoff; the duration between the storm event sampled and the end of the previous measurable (greater than 0.1 inch rainfall) storm event; and an estimate of the total volume (in gallons) of the discharge sampled.

TABLE AA–1.—MONITORING REQUIREMENTS

Pollutants of concern	Monitoring cut-off concentration (mg/L)
Total Recoverable Aluminum	0.75
Total Recoverable Copper	0.009
Total Recoverable Iron	0.3
Total Recoverable Manganese	0.05
Total Recoverable Zinc	0.055
Nitrate + Nitrite Nitrogen	0.68

(1) Monitoring Periods. Metal fabricating facilities shall monitor samples collected during the sampling periods of: January to March, April to June, July to September, and October to December for the years specified in paragraph a. (above).

(2) Sample Type. A minimum of one grab sample shall be taken. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. The grab sample shall be taken during the first 30 minutes of the discharge. If the collection of a grab sample during the first 30 minutes is impracticable, a grab sample can be taken during the first hour of the discharge, and the discharger shall submit with the monitoring report a description of why a grab sample during the first 30 minutes was impracticable. If storm water discharges associated with industrial activity commingle with process or nonprocess water, then where practicable permittees must attempt to sample the storm water discharge before it mixes with the non-storm water discharge.

(3) Sampling Waiver

(a) Adverse Conditions—When a discharger is unable to collect samples during one of the monitoring periods specified in paragraph b. (Monitoring Periods) because of adverse climatic

conditions, the discharger may collect two samples from the two separate qualifying events in the next monitoring period and submit this data. Adverse weather conditions that may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(b) Low Concentration Waiver—When the average concentration for a pollutant calculated from all monitoring data collected from an outfall during the monitoring period [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] is less than the corresponding value for that pollutant listed in Table AA–1 under the column Monitoring Cut-off Concentration, a facility may waive monitoring and reporting requirements in the monitoring period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance]. The facility must submit to the Director, in lieu of the monitoring data, a certification that there has not been a significant change in industrial activity or the pollution prevention measures in area of the facility which drains to the outfall for which sampling was waived.

(4) Representative Discharge. When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may test the effluent of one of such outfalls and report that the quantitative data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan. The permittee shall include the description of the location of the outfalls, explanation of why outfalls are expected to discharge substantially identical effluents, and estimate of the size of the drainage area and runoff coefficient with the Discharge Monitoring Report.

(5) Alternative Certification. A discharger is not subject to the monitoring requirements of this section provided the discharger makes a certification for a given outfall, on an annual basis, under penalty of law, signed in accordance with Part VII.G. (Signatory Requirements), that material handling equipment or activities, raw materials, intermediate products, final products, waste materials, by-products, industrial machinery or operations, or significant materials from past industrial activity that are located in areas of the facility within the drainage area of the outfall are not presently exposed to storm water and are not expected to be exposed to storm water for the certification period. Such certification must be retained in the storm water pollution prevention plan, and submitted to EPA in accordance with Part VI.C. of this permit.

b. Reporting. Permittees with metal fabricating facilities shall submit monitoring results for each outfall associated with industrial activity [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the reporting period beginning [insert date 1 year after permit issuance] lasting through [insert date 2 years after permit issuance] on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March [insert the date 2 years after permit issuance]. Monitoring results [or a certification in accordance with Sections (3), (4), or (5) above] obtained during the period beginning [insert date 3 years after permit issuance] lasting through [insert date 4 years after permit issuance] shall be submitted on Discharge Monitoring Report Form(s) postmarked no later than the 31st day of the following March. A separate Discharge Monitoring Report Form is required for each quarterly sampling period. Signed copies of Discharge Monitoring Reports, or said certifications, shall be submitted to the Director of the NPDES program at the address of the appropriate Regional Office listed in Part VI.G. of the fact sheet.

(1) Additional Notification. In addition to filing copies of discharge monitoring reports in accordance with paragraph b (above), metal fabricating facilities with at least one storm water discharge associated with industrial activity through a large or medium municipal separate storm sewer system (systems serving a population of 100,000 or more) must submit signed copies of discharge monitoring reports to the operator of the municipal separate storm sewer system in accordance with the dates provided in paragraph b (above).

c. Monthly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each month during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(1) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed 1 hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. Where practicable, the same individual should carry out the collection and examination of discharges for entire permit term.

(2) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(3) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfall(s) provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explains in detail why the outfalls are expected to discharge substantially

identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)) shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

AB. Storm Water Discharges Associated With Industrial Activity From Facilities That Manufacture Transportation Equipment, Industrial, or Commercial Machinery

1. Discharges Covered Under This Section

a. This section covers storm water discharges associated with industrial activity transportation equipment, industrial or commercial machinery manufacturing facilities including: Industrial and Commercial Machinery and Computer Equipment Standard Industrial Classification (SIC) Major Group 35 except SIC 357, and Transportation Equipment (SIC Major Group 37, except SIC 373). Facilities with industrial plant yards; material handling sites; refuse sites; sites used for application or disposal of process wastewaters; sites used for storage and maintenance of material handling equipment; sites used for residual treatment, storage, or disposal; shipping and receiving areas; manufacturing buildings; storage areas for raw material and intermediate and finished products; and areas where industrial activity has taken place in the past and significant materials remain and are exposed to storm water are covered for by this permit.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions. There are no additional requirements other than those in Part III. of the permit.

3. Storm Water Pollution Prevention Plan Requirements

a. *Contents of Plan.* The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify the specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Site Map—A site map indicating the pattern of storm water drainage, existing structural control measures to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, and locations where major spills or leaks identified under Part XI.AB.3.a.(2)(c) (Spills and Leaks) of this permit have occurred since 3 years prior to the effective date of this permit. The map must also indicate the locations of all industrial activities that are exposed to precipitation, including, but not limited to: Loading/unloading areas; waste treatment; storage and disposal locations; liquid storage tanks; vents and stacks from metal processing and similar operations; significant dust or particulate generating areas; and any other processing and storage areas exposed to storm water. Flows with a significant potential for causing erosion shall also be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Significant spills include, but are not limited to, releases of oil or hazardous substances in excess of quantities that are reportable under Section 311 of CWA (see 40 CFR 110.10 and 117.21) or Section 102 of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (see 40 CFR 302.4). Significant spills may also include releases of oil or hazardous substances that are not excess of reporting requirements and releases of materials that are not classified as oil or hazardous substance. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: Loading and unloading operations; outdoor storage activities; significant dust or particulate generating processing activities; and onsite waste disposal. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., oil and grease, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm waters discharges in a clean, orderly manner. Areas where good housekeeping practices should be implemented are storage areas for raw materials, waste materials and finished products; loading/unloading areas; and waste disposal areas for hazardous and nonhazardous wastes. Examples of good housekeeping measures include sweeping; labelling drums containing hazardous materials; and preventive monitoring practices (e.g., routine observation of manufacturing processes).

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Areas to be identified should include loading/unloading areas, outdoor storage areas, and waste management areas exposed to storm water. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a cleanup should be available to personnel.

(d) Inspections—Qualified facility personnel shall be identified to inspect designated equipment and areas of the facility annually. At a minimum, the following areas, where the potential for exposure to storm water exists, must be inspected on a regularly scheduled basis: loading and unloading areas for all significant materials; storage areas, including associated containment areas; waste management units; and vents and stacks from industrial activities. For any problems identified during inspections, the plan shall be revised to include measures to address these problems. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping, material management practices, unloading/loading practices, outdoor storage areas, waste management practices, proper handling procedures of hazardous waste, and improper connections to the storm sewer. At a minimum, this training should be provided annually. The pollution prevention plan shall identify frequencies and approximate dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan. Ineffective BMPs should be reported and the date of their corrective actions noted.

(g) Non-storm Water Discharges.

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges as identified in Part III.A.2.a. of this permit. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with Part XI.AB.3.a.(3)(g)(iv) (Failure to Certify) of this permit.

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) If the facility discharges wastewater, other than storm water via an existing NPDES permit, a copy of the NPDES permit authorizing the discharge must be attached to the plan. Similarly, if the facility submitted an application for an NPDES permit for non-storm water discharges, but has not yet received that permit, a copy of the permit application must be attached. Upon issuance or reissuance of an NPDES permit, the facility must modify its plan to include a copy of that permit. For facilities that discharge wastewater, other than solely domestic wastewater, to a Publicly Owned Treatment Works (POTW), the facility must notify the POTW of its discharge. Proof of this notification should be attached to the plan in the form of either (1) a copy of the permit issued by the treatment plant to the facility or (2) a copy of a notification letter to the POTW. Notification should identify, in general, the types of wastewater discharged to the POTW, including any storm water

discharges. In any of these cases, specific permit conditions must be considered in the plan.

(iv) *Failure to Certify*—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) *Sediment and Erosion Control*—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) *Management of Runoff*—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity (see paragraph XI.AB.3.a.(2) (Description of Potential Pollutant Sources) of this permit) shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices. In addition, the permittee must describe the storm water pollutant source area or activity (storage areas, loading/unloading) to be controlled by each storm water management practice.

(4) *Comprehensive Site Compliance Evaluation*. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with Part XI.AB.3.a.(2) (Description of Potential Pollutant Sources) of this permit and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.AB.3.a.(3) (Measures and Controls) of this permit shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.AB.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

4. *Numeric Effluent Limitations*. There are no additional numeric limitations beyond those described in Part V. of this permit.

5. *Monitoring and Reporting Requirements*

a. *Monitoring Requirements*

(1) *Quarterly Visual Examination of Storm Water Quality*. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period (described in (a), below) during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November.

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area [e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)] shall be provided in the plan.

(e) When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

AC. Storm Water Discharges Associated With Industrial Activity From Facilities That Manufacture Electronic and Electrical Equipment and Components, Photographic and Optical Goods

1. Discharges Covered Under This Section. The requirements listed under this section shall apply to all storm water discharges associated with industrial activity from facilities commonly identified by Standard Industrial Classification (SIC) major groups 36 and 38 and industrial SIC group 357. Major group 36 includes electronic and other electrical equipment and components, except computer equipment. Major group 38 includes measuring, analyzing, and controlling instruments; photographic, medical and optical goods; watches and clocks. Industrial group 357 includes computer and office equipment.

When an industrial facility, described by the above eligibility provisions of this section, has industrial activities being conducted onsite that meet the description(s) of industrial activities in another section(s), that industrial facility shall comply with any and all applicable monitoring and pollution prevention plan requirements of the other section(s) in addition to all applicable requirements in this section. The monitoring and pollution prevention plan terms and conditions of this multi-sector permit are additive for industrial activities being conducted at the same industrial facility (co-located industrial activities). The operator of the facility shall determine which other monitoring and pollution prevention plan section(s) of this permit (if any) are applicable to the facility.

If monitoring and pollution prevention plan requirements of another industrial activity section of this permit apply to co-located industrial activities at an industrial facility, the eligibility provisions of that industrial activity section shall not preclude the operator of the industrial facility from complying with the applicable monitoring and pollution prevention plan requirements of that section.

2. Special Conditions

a. Prohibition of Non-storm Water Discharges. Other than as provided in use this Section III.A. of this permit, non-storm water discharges are not authorized by this permit.

3. Storm Water Pollution Prevention Plan Requirements

a. Contents of Plan. The plan shall include, at a minimum, the following items:

(1) Pollution Prevention Team. Each plan shall identify a specific individual or individuals within the facility organization as members of a storm water Pollution Prevention Team that are responsible for developing the storm water pollution prevention plan and assisting the facility or plant manager in its implementation, maintenance, and revision. The plan shall clearly identify the responsibilities of each team member. The activities and responsibilities of the team shall address all aspects of the facility's storm water pollution prevention plan.

(2) Description of Potential Pollutant Sources. Each plan shall provide a description of potential sources which may reasonably be expected to add significant amounts of pollutants to storm water discharges or which may result in the discharge of pollutants during dry weather from separate storm sewers draining the facility. Each plan shall identify all activities and significant materials which may potentially be significant pollutant sources. Each plan shall include, at a minimum:

(a) Drainage

(i) A site map indicating an outline of the portions of the drainage area of each storm water outfall that are within the facility boundaries, each existing structural control measure to reduce pollutants in storm water runoff, surface water bodies, locations where significant materials are exposed to precipitation, locations where major spills or leaks identified under Part XI.AC.3.a.(2)(c) (Spills and Leaks) of this permit have occurred, and the locations of the following activities where such activities are exposed to precipitation: fueling stations, vehicle and equipment maintenance and/or cleaning areas, loading/unloading areas, locations used for the treatment, storage or disposal of wastes, liquid storage tanks, processing areas and storage areas.

(ii) For each area of the facility that generates storm water discharges associated with industrial activity with a reasonable potential for containing significant amounts of pollutants, a prediction of the direction of flow, and an identification of the types of pollutants which are likely to be present in storm water discharges associated with industrial activity. Factors to consider include the toxicity of chemical; quantity of chemicals used, produced or discharged; the likelihood of contact with storm water; and history of significant leaks or spills of toxic or hazardous pollutants. Flows with a significant potential for causing erosion shall be identified.

(b) Inventory of Exposed Materials—An inventory of the types of materials handled at the site that potentially may be exposed to precipitation. Such inventory shall include a narrative description of significant materials that have been handled, treated, stored or disposed in a manner to allow exposure to storm water between the time of 3 years prior to the date of the issuance of this permit and the present; method and location of onsite storage or disposal; materials management practices employed to minimize contact of materials with storm water runoff

between the time of 3 years prior to the date of the issuance of this permit and the present; the location and a description of existing structural and nonstructural control measures to reduce pollutants in storm water runoff; and a description of any treatment the storm water receives.

(c) Spills and Leaks—A list of significant spills and significant leaks of toxic or hazardous pollutants that occurred at areas that are exposed to precipitation or that otherwise drain to a storm water conveyance at the facility after the date of 3 years prior to the effective date of this permit. Such list shall be updated as appropriate during the term of the permit.

(d) Sampling Data—A summary of existing discharge sampling data describing pollutants in storm water discharges from the facility, including a summary of sampling data collected during the term of this permit.

(e) Risk Identification and Summary of Potential Pollutant Sources—A narrative description of the potential pollutant sources from the following activities: loading and unloading operations; outdoor storage activities; outdoor manufacturing or processing activities; significant dust or particulate generating processes; and onsite waste disposal practices. The description shall specifically list any significant potential source of pollutants at the site and for each potential source, any pollutant or pollutant parameter (e.g., biochemical oxygen demand, etc.) of concern shall be identified.

(3) Measures and Controls. Each facility covered by this permit shall develop a description of storm water management controls appropriate for the facility, and implement such controls. The appropriateness and priorities of controls in a plan shall reflect identified potential sources of pollutants at the facility. The description of storm water management controls shall address the following minimum components, including a schedule for implementing such controls:

(a) Good Housekeeping—Good housekeeping requires the maintenance of areas which may contribute pollutants to storm water discharges in a clean, orderly manner.

(b) Preventive Maintenance—A preventive maintenance program shall involve timely inspection and maintenance of storm water management devices (e.g., cleaning oil/water separators, catch basins) as well as inspecting and testing facility equipment and systems to uncover conditions that could cause breakdowns or failures resulting in discharges of pollutants to surface waters, and ensuring appropriate maintenance of such equipment and systems.

(c) Spill Prevention and Response Procedures—Areas where potential spills which can contribute pollutants to storm water discharges can occur, and their accompanying drainage points shall be identified clearly in the storm water pollution prevention plan. Where appropriate, specifying material handling procedures, storage requirements, and use of equipment such as diversion valves in the plan should be considered. Procedures for cleaning up spills shall be identified in the plan and made available to the appropriate personnel. The necessary equipment to implement a clean up should be available to personnel.

(d) Inspections—In addition to or as part of the comprehensive site evaluation required under paragraph XI.AC.3.a.(4) of this section, qualified facility personnel shall be identified to inspect designated equipment and areas of the facility at appropriate intervals specified in the plan. A set of tracking or follow-up procedures shall be used to ensure that appropriate actions are taken in response to the inspections. Records of inspections shall be maintained.

(e) Employee Training—Employee training programs shall inform personnel responsible for implementing activities identified in the storm water pollution prevention plan or otherwise responsible for storm water management at all levels of responsibility of the components and goals of the storm water pollution prevention plan. Training should address topics such as spill response, good housekeeping and material management practices. A pollution prevention plan shall identify periodic dates for such training.

(f) Recordkeeping and Internal Reporting Procedures—A description of incidents (such as spills, or other discharges), along with other information describing the quality and quantity of storm water discharges shall be included in the plan required under this part. Inspections and maintenance activities shall be documented and records of such activities shall be incorporated into the plan.

(g) Non-storm Water Discharges

(i) The plan shall include a certification that the discharge has been tested or evaluated for the presence of non-storm water discharges. The certification shall include the identification of potential significant sources of non-storm water at the site, a description of the results of any test and/or evaluation for the presence of non-storm water discharges, the evaluation criteria or testing method used, the date of any testing and/or evaluation, and the onsite drainage points that were directly observed during the test. Certifications shall be signed in accordance with Part VII.G. of this permit. Such certification may not be feasible if the facility operating the storm water discharge associated with industrial activity does not have access to an outfall, manhole, or other point of access to the ultimate conduit which receives the discharge. In such cases, the source identification section of the storm water pollution plan shall indicate why the certification required by this part was not feasible, along with the identification of potential significant sources of non-storm water at the site. A discharger that is unable to provide the certification required by this paragraph must notify the Director in accordance with paragraph XI.AC.3.a.(3)(g)(iii) (below).

(ii) Except for flows from fire fighting activities, sources of non-storm water listed in Part III.A. (Prohibition of Non-storm Water Discharges) of this permit that are combined with storm water discharges associated with industrial activity must be identified in the plan. The plan shall identify and ensure the implementation of appropriate pollution prevention measures for the non-storm water component(s) of the discharge.

(iii) Failure to Certify—Any facility that is unable to provide the certification required (testing for non-storm water discharges), must notify the Director by [Insert date 270 days after permit issuance] or, for facilities which begin to discharge storm water associated with industrial activity after [Insert date 270 days after permit issuance], 180 days after submitting an NOI to be covered by this permit. If the failure to certify is caused by the inability to perform adequate tests or evaluations, such notification shall describe: the procedure of any test conducted for the presence of non-storm water discharges; the results of such test or other relevant observations; potential sources of non-storm water discharges to the storm sewer; and why adequate tests for such storm sewers were not feasible. Non-storm water discharges to waters of the United States which are not authorized by an NPDES permit are unlawful, and must be terminated.

(h) Sediment and Erosion Control—The plan shall identify areas which, due to topography, activities, or other factors, have a high potential for significant soil erosion, and identify structural, vegetative, and/or stabilization measures to be used to limit erosion.

(i) Management of Runoff—The plan shall contain a narrative consideration of the appropriateness of traditional storm water management practices (practices other than those which control the generation or source(s) of pollutants) used to divert, infiltrate, reuse, or otherwise manage storm water runoff in a manner that reduces pollutants in storm water discharges from the site. The plan shall provide that measures that the permittee determines to be reasonable and appropriate shall be implemented and maintained. The potential of various sources at the facility to contribute pollutants to storm water discharges associated with industrial activity [see paragraph XI.AC.3.a.(2) of this section (Description of Potential Pollutant Sources)] shall be considered when determining reasonable and appropriate measures. Appropriate measures may include: vegetative swales and practices, reuse of collected storm water (such as for a process or as an irrigation source), inlet controls (such as oil/water separators), snow management activities, infiltration devices, and wet detention/retention devices.

(4) Comprehensive Site Compliance Evaluation. Qualified personnel shall conduct site compliance evaluations at appropriate intervals specified in the plan, but in no case less than once a year. Such evaluations shall provide:

(a) Areas contributing to a storm water discharge associated with industrial activity shall be visually inspected for evidence of, or the potential for, pollutants entering the drainage system. Measures to reduce pollutant loadings shall be evaluated to determine whether they are adequate and properly implemented in accordance with the terms of the permit or whether additional control measures are needed. Structural storm water management measures, sediment and erosion control measures, and other structural pollution prevention measures identified in the plan shall be observed to ensure that they are operating correctly. A visual inspection of equipment needed to implement the plan, such as spill response equipment, shall be made.

(b) Based on the results of the inspection, the description of potential pollutant sources identified in the plan in accordance with paragraph XI.AC.3.a.(2) of this section (Description of Potential Pollutant Sources) and pollution prevention measures and controls identified in the plan in accordance with paragraph XI.AC.3.a.(3) of this section (Measures and Controls) shall be revised as appropriate within 2 weeks of such inspection and shall provide for implementation of any changes to the plan in a timely manner, but in no case more than 12 weeks after the inspection.

(c) A report summarizing the scope of the inspection, personnel making the inspection, the date(s) of the inspection, major observations relating to the implementation of the storm water pollution prevention plan, and actions taken in accordance with paragraph XI.AC.3.a.(4)(b) (above) of the permit shall be made and retained as part of the storm water pollution prevention plan for at least 1 year after coverage under this permit terminates. The report shall identify any incidents of noncompliance. Where a report does not identify any incidents of noncompliance, the report shall contain a certification that the facility is in compliance with the storm water pollution prevention plan and this permit. The report shall be signed in accordance with Part VII.G. (Signatory Requirements) of this permit.

(d) Where compliance evaluation schedules overlap with inspections required under 3.a.(3)(d), the compliance evaluation may be conducted in place of one such inspection.

(4) Numeric Effluent Limitations. There are no additional numeric effluent limitations beyond those described in Part V. of this permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements

(1) Quarterly Visual Examination of Storm Water Quality. Facilities shall perform and document a visual examination of a representative storm water discharge associated with industrial activity exposed to storm water. The examination must be made at least once in each designated period [described in (a), below] during daylight hours unless there is insufficient rainfall or snow melt to produce a runoff event.

(a) Examinations shall be conducted in each of the following periods for the purposes of visually inspecting storm water quality associated with storm water runoff or snow melt: December to February; March to May; June to August; and September to November

(b) Examinations shall be made of samples collected within the first 30 minutes (or as soon thereafter as practical, but not to exceed one hour) of when the runoff or snowmelt begins discharging. The examinations shall document observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution. The inspection must be conducted in a well lit area. No analytical tests are required to be performed on the samples. All such samples shall be collected from the discharge resulting from a storm event that is greater than 0.1 inches in magnitude and that occurs at least 72 hours from the previously measurable (greater than 0.1 inch rainfall) storm event. EPA expects that whenever practicable the same individual will carry out the collection and examination of discharges for the life of the permit.

(c) Visual observation reports must be maintained onsite in the pollution prevention plan. The report shall include the examination date and time, examination personnel, the nature of the discharge (i.e., runoff or snow melt), visual quality of the storm water discharge (including observations of color, odor, clarity, floating solids, settled solids, suspended solids, foam, oil sheen, and other obvious indicators of storm water pollution), and probable sources of any observed storm water contamination.

(d) When a facility has two or more outfalls that, based on a consideration of industrial activity, significant materials, and management practices and activities within the area drained by the outfall, the permittee reasonably believes discharge substantially identical effluents, the permittee may collect a sample of effluent of one of such outfalls and report that the observation data also applies to the substantially identical outfalls provided that the permittee includes in the storm water pollution prevention plan a description of the location of the outfalls and explaining in detail why the outfalls are expected to discharge substantially identical effluents. In addition, for each outfall that the permittee believes is representative, an estimate of the size of the drainage area (in square feet) and an estimate of the runoff coefficient of the drainage area (e.g., low (under 40 percent), medium (40 to 65 percent), or high (above 65 percent)) shall be provided in the plan.

When a discharger is unable to collect samples over the course of the monitoring period as a result of adverse climatic conditions, the discharger must document the reason for not performing the visual examination. Adverse weather conditions which may prohibit the collection of samples include weather conditions that create dangerous conditions for personnel (such as local flooding, high winds, hurricane, tornadoes, electrical storms, etc.) or otherwise make the collection of a sample impracticable (drought, extended frozen conditions, etc.).

Addendum A

Pollutants Identified in Tables II and III of Appendix D of 40 CFR Part 122

TABLE II.—ORGANIC TOXIC POLLUTANTS IN EACH OF FOUR FRACTIONS IN ANALYSIS BY GAS CHROMATOGRAPHY/MASS SPECTROSCOPY (GS/MS)

Volatiles:	
1V	acrolein
2V	acrylonitrile
3V	benzene
5V	bromoform
6V	carbon tetrachloride
7V	chlorobenzene
8V	chlorodibromomethane
9V	chloroethane
10V	2-chloroethylvinyl ether
11V	chloroform
12V	dichlorobromomethane
14V	1,1-dichloroethane
15V	1,2-dichloroethane
16V	1,1-dichloroethylene
17V	1,2-dichloropropene
18V	1,3-dichloropropylene
19V	ethylbenzene
20V	methyl bromide
21V	methyl chloride
22V	methylene chloride
23V	1,1,2,2-tetrachloroethane
24V	tetrachloroethylene
25V	toluene
26V	1,2-trans-dichloroethylene
27V	1,1,1-trichloroethane
28V	1,1,2-trichloroethane
29V	trichloroethylene
31V	vinyl chloride
Acid Compounds:	
1A	2-chlorophenol
2A	2,4-dichlorophenol
3A	2,4-dimethylphenol
4A	4,6-dinitro-o-cresol
5A	2,4-dinitrophenol
6A	2-nitrophenol
7A	4-nitrophenol
8A	p-chloro-m-cresol
9A	pentachlorophenol
10A	phenol
11A	2,4,6-trichlorophenol
Pesticides:	
1P	aldrin
2P	alpha-BHC
3P	beta-BHC
4P	gamma-BHC
5P	delta-BHC
6P	chlordane
7P	4,4'-DDT
8P	4,4'-DDE
9P	4,4'-DDD
10P	dieldrin
11P	alpha-endosulfan
12P	beta-endosulfan
13P	endosulfan sulfate
14P	endrin
15P	endrin aldehyde
16P	heptachlor
17P	heptachlor epoxide
18P	PCB–1242
19P	PCB–1254
20P	PCB–1221
21P	PCB–1232
22P	PCB–1248
23P	PCB–1260
24P	PCB–1016
25P	toxaphene
Base/Neutral:	
1B	acenaphthene
2B	acenaphthylene
3B	anthracene
4B	benzidine
5B	benzo(a)anthracene
6B	benzo(a)pyrene
7B	3,4-benzofluoranthene
8B	benzo(ghi)perylene
9B	benzo(k)fluoranthene
10B	bis(2-chloroethoxy)methane
11B	bis(2-chloroethyl)ether
12B	bis(2-chloroisopropyl)ether
13B	bis (2-ethylhexyl)phthalate
14B	4-bromophenyl phenyl ether
15B	butylbenzyl phthalate
16B	2-chloronaphthalene
17B	4-chlorophenyl phenyl ether
18B	chrysene
19B	dibenzo(a,h)anthracene
20B	1,2-dichlorobenzene
21B	1,3-dichlorobenzene
22B	1,4-dichlorobenzene
23B	3,3-dichlorobenzidine
24B	diethyl phthalate
25B	dimethyl phthalate
26B	di-n-butyl phthalate
27B	2,4-dinitrotoluene
28B	2,6-dinitrotoluene
29B	di-n-octyl phthalate
30B	1,2-diphenylhydra-zine (as azobenzene)
31B	fluoranthene
32B	fluorene
33B	hexachlorobenzene
34B	hexachlorobutadiene
35B	hexachlorocyclopentadiene
36B	hexachloroethane
37B	indeno(1,2,3-cd)pyrene
38B	isophorone
39B	napthalene
40B	nitrobenzene
41B	N-nitrosodimethylamine
42B	N-nitrosodi-n-propylamine
43B	N-nitrosodiphenylamine
44B	phenanthrene
45B	pyrene
46B	1,2,4-trichlorobenzene

TABLE III.—OTHER TOXIC POLLUTANTS (METALS AND CYANIDE) AND TOTAL PHENOLS

Antimony, Total
Arsenic, Total
Beryllium, Total
Cadmium, Total
Chromium, Total
Copper, Total
Lead, Total
Mercury, Total
Nickel, Total
Selenium, Total
Silver, Total
Thallium, Total
Zinc, Total
Cyanide, Total
Phenols, Total

TABLE V.—TOXIC POLLUTANTS AND HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY EXISTING DISCHARGERS IF EXPECTED TO BE PRESENT

Toxic Pollutants:
Asbestos
Hazardous Substances:
Acetaldehyde
Allyl alcohol
Allyl chloride
Amyl acetate
Aniline
Benzonitrile
Benzyl chloride
Butyl acetate
Butylamine
Captan
Carbaryl
Carbofuran
Carbon disulfide
Chlorpyrifos
Coumaphos
Cresol
Crotonaldehyde
Cyclohexane
2,4–D (2,4–Dichlorophenoxy acetic acid)
Diazinon
Dicamba
Dichlobenil
Dichlone
2,2–Dichloropropionic acid
Dichlorvos
Diethyl amine
Dimethyl amine
Dinitrobenzene
Diquat
Disulfoton
Diuron
Epichlorohydrin
Ethion
Ethylene diamine
Ethylene dibromide
Formaldehyde
Furfural
Guthion
Isoprene
Isopropanolamine Dodecylbenzenesulfonate
Kelthane
Kepone
Malathion
Mercaptodimethur
Methoxychlor
Methyl mercaptan
Methyl methacrylate
Methyl parathion
Mevinphos
Mexacarbate
Monoethyl amine
Monomethyl amine
Naled
Napthenic acid
Nitrotoluene
Parathion
Phenosulfanate
Phosgene
Propargite
Propylene oxide
Pyrethrins
Quinoline
Resorcinol
Strontium
Strychnine
Styrene
2,4,5–T (2,4,5–Trichlorophenoxy acetic acid)

TABLE V.—TOXIC POLLUTANTS AND HAZARDOUS SUBSTANCES REQUIRED TO BE IDENTIFIED BY EXISTING DISCHARGERS IF EXPECTED TO BE PRESENT—Continued

TDE (Tetrachlorodiphenylethane)
2,4,5–TP [2-(2,4,5–Trichlorophenoxy) propanoic acid]
Trichlorofan
Triethanolamine dodecylbenzenesulfonate
Triethylamine
Trimethylamine
Uranium
Vanadium
Vinyl acetate
Xylene
Xylenol
Zirconium

Addendum B

Notice of Intent (NOI) Form (an NOI will not appear in today's proposed permit but will be included in the final rule)

Addendum C

Notice of Termination (NOT) Form (an NOT will not appear in today's proposed permit but will be included in the final rule)

Addendum D

Large, Medium, and Designated Municipalities (Incorporated Places)

State and Place Name

Alaska
- Anchorage city*

Alabama
- Adamsville city
- Alabaster city
- Bessemer city
- Birmingham city*
- Brighton city
- Brookside town
- Chickasaw city
- Creola city
- Daphne city
- Fairfield city
- Fairhope city
- Fultondale city
- Gardendale city
- Graysville city
- Helena city
- Homewood city
- Hoover city
- Hueytown city
- Huntsville city*
- Indian Springs
- Irondale city
- Leeds city
- Lipscomb city
- Madison city
- Maytown town
- Midfield city
- Mobile city*
- Montgomery city*
- Moody town
- Mountain Brook city
- Mulga town
- Pelham city
- Pleasant Grove city
- Prichard city
- Saraland city
- Satsuma city
- Tarrant city
- Trussville city
- Vestavia Hills city

Arkansas
- Little Rock city*

Arizona
- Glendale city†
- Mesa city*
- Phoenix city*
- Scottsdale city†
- Tempe city*
- Tucson city*

California
- Agoura Hills city
- Alameda city
- Albany city
- Alhambra city
- Anaheim city*
- Arcadia city
- Artesia city
- Atherton town
- Azusa city
- Bakersfield city*
- Baldwin Park city
- Bell city
- Bellflower city
- Bell Gardens city
- Belmont city
- Berkeley city*
- Beverly Hills city
- Big Bear Lake city
- Bradbury city
- Brentwood city
- Brisbane city
- Burbank city
- Burlingame city
- Camarillo city
- Campbell city
- Carlsbad city
- Carson city
- Cerritos city
- Chula Vista city†
- Claremont city
- Clayton city
- Colma town
- Commerce city
- Compton city
- Concord city
- Contra Costa county (15 cities)
- Coronado city
- Covina city
- Cudahy city
- Culver City city
- Cupertino city
- Daly City city
- Del Mar city
- Diamond Bar city
- Downey city
- Duarte city
- Dublin city
- East Palo Alto city
- El Cajon city
- El Monte city†
- El Segundo city
- Emeryville city
- Encinitas city
- Escondido city†
- Fairfield city
- Fillmore city
- Folsom city
- Foster City city
- Fremont city*
- Fresno city*
- Fullerton city*
- Galt city
- Gardena city
- Garden Grove city*
- Gilroy city
- Glendale city*
- Glendora city
- Half Moon Bay city
- Hawaiian Gardens city
- Hawthorne city
- Hayward city†
- Hermosa Beach city
- Hidden Hills city
- Hillsborough town
- Huntington Beach city*
- Huntington Park city
- Imperial Beach city
- Industry city
- Inglewood city†
- Irvine city†
- Irwindale city
- La Canada Flintridge city
- Laguna Beach city
- Lake Tahoe Basin (1 city)
- Lakewood city
- La Mesa city
- La Mirada city
- La Palma city
- La Puente city
- La Verne city
- Lawndale city
- Lemon Grove city
- Livermore city
- Lomita city
- Long Beach city*
- Los Alamitos city
- Los Altos city
- Los Altos Hills town
- Los Angeles city*
- Los Gatos town
- Lynwood city
- Manhattan Beach city
- Maywood city
- Menlo Park city
- Millbrae city
- Milpitas city
- Modesto city*
- Monrovia city
- Montebello city
- Monterey Park city
- Monte Sereno city
- Moorpark city
- Moreno Valley city†
- Mountain View city

Note: Unless indicated otherwise, municipalities have been designated.

* Identified in November 1990 rule.

† 1990 Census population increased to over 100,000.

National City city
Newark city
Norwalk city
Oakland city*
Oceanside city†
Ojai city
Ontario city†
Orange city†
Orange county (17 cities)
Oxnard city*
Pacifica city
Palo Alto city
Palos Verdes Estates city
Paramount city
Pasadena city*
Pico Rivera city
Piedmont city
Pleasanton city
Pomona city†
Port Hueneme city
Poway city
Rancho Cucamonga city†
Rancho Palos Verdes city
Redondo Beach city
Redwood City city
Riverside city*
Riverside county (10 cities)
Rolling Hills city
Rolling Hills Estates city
Rosemead city
Sacramento city*
Salinas city†
San Bernardino city*
San Bernardino county (13 cities)
San Bruno city
San Carlos city
San Diego city*
San Dimas city
San Fernando city
San Gabriel city
San Jose city*
San Leandro city
San Marcos city
San Marino city
San Mateo city
Santa Ana city*
Santa Clara
Santa Clarita city†
Santa Fe Springs city
Santa Monica city
Santa Paula city
Santa Rosa city†
Santee city
Saratoga city
Seal Beach city
Sierra Madre city
Signal Hill city
Simi Valley city†
Solana Beach city
South El Monte city
South Gate city
South Pasadena city
South San Francisco city
Stockton city*
Suisun City city
Sunnyvale city*
Temple City city
Thousand Oaks city†
Torrance city*
Union City city
Vallejo city†
Vernon city
Vista city
Walnut city
West Covina city
West Hollywood city
Westlake Village city
Whittier city
Woodside town

Colorado
Aurora city*
Colorado Springs city*
Denver city*
Englewood city
Lakewood city*
Pueblo city

Connecticut
Stamford city*

District of Columbia
Washington city*

Delaware
Arden village
Ardencroft village
Ardentown village
Bellefonte town
Delaware City city
Elsmere town
Middletown town
Newark city
New Castle city
Newport town
Odessa town
Townsend town
Wilmington city

Florida
Apopka city
Atlantic Beach city
Atlantis city
Auburndale city
Bal Harbour village
Bartow city
Bay Harbor Islands town
Bay Lake city
Belleair town
Belleair Beach city
Belleair Bluffs city
Belle Glade city
Belle Isle city
Boca Raton city
Boynton Beach city
Briny Breezes town
Century town
Clearwater city
Cloud Lake town
Coconut Creek city
Cooper City city
Coral Gables city
Coral Springs city
Dania city
Davenport city
Davie town
Deerfield Beach city
Delray Beach city
Dundee town
Dunedin city
Eagle Lake city
Eatonville town
Edgewood city
Fort Lauderdale city*
Fort Meade city
Frostproof city
Glen Ridge town
Golden Beach town
Golf village
Golfview town
Greenacres City city
Gulfport city
Gulf Stream town
Haines City city
Hallandale city
Haverhill town
Hialeah city*
Hialeah Gardens city
Highland Beach town
Highland Park village
Hillcrest Heights town
Hollywood city*
Homestead city
Hypoluxo town
Indian Creek village
Indian Rocks Beach city
Jacksonville Beach city
Jacksonville city*
Juno Beach town
Jupiter town
Jupiter Inlet Colony town
Key Biscayne village
Kenneth City town
Lake Alfred city
Lake Buena Vista city
Lake Clarke Shores town
Lake Hamilton town
Lakeland city
Lake Park town
Lake Wales city
Lake Worth city
Lantana town
Largo city
Lauderdale-by-the-Sea town
Lauderdale Lakes city
Lauderhill city
Lighthouse Point city
Longboat Key town
Madeira Beach city
Maitland city
Manalapan town
Mangonia Park town
Margate city
Medley town
Miami city*
Miami Beach city
Miami Shores village
Miami Springs city
Miramar city
Mulberry city
Neptune Beach city
North Bay Village city
North Lauderdale city
North Miami city
North Miami Beach city
North Palm Beach village
North Port city
North Redington Beach town
Oakland Park city
Ocean Ridge town
Ocoee city
Oldsmar city

Opa-locka city
Orlando city*
Pahokee city
Palm Beach town
Palm Beach Gardens city
Palm Beach Shores town
Palm Springs village
Parkland city
Pembroke Park town
Pembroke Pines city
Pennsuee
Pensacola city
Pinellas Park city
Plantation city
Plant City city
Polk City town
Pompano Beach city
Redington Beach town
Redington Shores town
Riviera Beach city
Royal Palm Beach village
Safety Harbor city
St. Petersburg Beach city
St. Petersburg city*
Sarasota city
Sea Ranch Lakes village
Seminole city
South Bay city
South Miami city
South Palm Beach town
South Pasadena city
Sunrise city
Surfside town
Sweetwater city
Tallahassee city†
Tamarac city
Tampa city*
Tarpon Springs city
Temple Terrace city
Tequesta village
Treasure Island city
Venice city
West Miami city
West Palm Beach city
Wilton Manors city
Winter Garden city
Winter Haven city
Winter Park city

Georgia
Acworth city
Alpharetta city
Atlanta city*
Austell city
Bloomingdale city
Buford city
Chamblee city
Clarkston city
College Park city
Columbus city*
Decatur city
Doraville city
Duluth city
East Point city
Fairburn city
Forest Park city
Garden City city
Hapeville city
Jonesboro city
Kennesaw city
Lawrenceville city
Lilburn city
Lithonia city
Macon city*
Marietta city
Morrow city
Norcross city
Palmetto city
Payne city
Pooler city
Powder Springs city
Riverdale city
Roswell city
Savannah city*
Smyrna city
Snellville city
Stone Mountain city
Sugar Hill city
Suwanee city
Thunderbolt town
Union City city

Iowa
Cedar Rapids city*
Davenport city
Des Moines city*

Idaho
Boise City city*
Garden City city

Illinois
Rockford city*
Springfield city†

Indiana
Fort Wayne city*
Indianapolis city*

Kansas
Kansas City city*
Overland Park city'
Topeka city*
Wichita city*

Kentucky
Lexington-Fayette*
Louisville city*

Louisiana
Baton Rouge city*
New Orleans city*
Shreveport city*

Massachusetts
Boston city*
Worcester city*

Maryland
Baltimore city*

Michigan
Ann Arbor city*
Flint city*
Grand Rapids city*
Sterling Heights city*
Warren city*

Minnesota
Minneapolis city*
St. Louis Park city
St. Paul city*

Missouri
Independence city*
Kansas City city*
Springfield city*

Mississippi
Jackson city*

Nebraska
Lincoln city*
Omaha city*

New Mexico
Albuquerque city*

Nevada
Henderson city
Las Vegas city*
North Las Vegas city
Reno city*
Sparks city

New York
New York city*
(Bronx Borough)
(Brooklyn Borough)
(Manhattan Borough)
(Queens Borough)
(Staten Island Borough)

North Carolina
Charlotte city*
Durham city*
Fayetteville city
Greensboro city*
Raleigh city*
Winston-Salem city*

Ohio
Akron city*
Cincinnati city*
Cleveland city*
Columbus city*
Dayton city*
Toledo city*

Oklahoma
Oklahoma City city*
Tulsa city*

Oregon
Banks city
Barlow city
Beaverton city
Canby city
Cornelius city
Durham city
Estacada city
Eugene city*
Fairview city
Forest Grove city
Gaston city
Gladstone city
Gresham city
Happy Valley city
Hillsboro city
Johnson City city
King City city
Lake Oswego city
Milwaukie city
Molalla city
North Plains city
Oregon City city
Portland city*
Rivergrove city
Salem city†
Sandy city
Sherwood city
Tigard city
Tualatin city
West Linn city
Wilsonville city

Pennsylvania
Allentown city*
Philadelphia city*

South Dakota

Sioux Falls City
Tennessee
Bartlett town
Belle Meade city
Berry Hill city
Chattanooga city*
Collierville town
East Ridge city
Forest Hills city
Germantown city
Goodlettsville city
Knoxville city*
Lakewood city
Memphis city*
Nashville-Davidson*
Oak Hill city
Red Bank city
Ridgetop town
Texas
Abilene city†
Amarillo city*
Arlington city*
Austin city*
Beaumont city*
Corpus Christi city*
Dallas city*
El Paso city*
Fort Worth city*
Garland city*
Houston city*
Irving city*
Laredo city†
Lubbock city*
Mesquite city†
Pasadena city*
Plano city†
San Antonio city*
Waco city*
Utah
Salt Lake City city*
Virginia
Chesapeake city*
Hampton city*
Newport News city*
Norfolk city*
Portsmouth city*
Richmond city*
Roanoke city
Virginia Beach city*
Washington
Seattle city*
Tacoma city*
Wisconsin
Madison city*
Milwaukee city*

Large, Medium, and Designated Municipalities (Counties)

State and County

Alabama
Baldwin county [1]
Jefferson county [7]
Mobile county [8]
Shelby county [9]
St. Clair county [10]
Arizona
Pima County *
California
Alameda County*
Contra Costa County*
Kern County*
Lake Tahoe Basin (2 counties)*
Los Angeles County*
Orange County*
Riverside County*
Sacramento County
San Bernardino County*
San Diego County*
San Mateo County
Santa Clara County
Ventura County
Colorado
Arapahoe County†
Delaware
New Castle County*
Florida
Broward County*
Dade County*
Escambia County*
Hillsborough County*
Lee County†
Manatee County†
Orange County*
Palm Beach County*
Pasco County†
Pinellas County*
Polk County*
Sarasota County*
Seminole County†
Georgia
Bibb County
Chatham County
Clayton County*
Cobb County*
DeKalb County*
Fulton County†
Gwinnett County†
Muscogee County
Richmond County*
Hawaii
Honolulu County*
Kentucky
Jefferson County*
Louisiana
East Baton Rouge Parish†
Jefferson Parish*
Maryland
Anne Arundel County*
Baltimore County*
Carroll County
Charles County
Frederick County
Harford County
Howard County†
Montgomery County*
Prince George's County*
Washington County
North Carolina
Cumberland County*
Nevada
Clark County*
Washoe County
Oregon
Clackamas County
Multnomah County
Washington County*
South Carolina
Greenville County*
Richland County*
Texas
Harris County*
Utah
Salt Lake County*
Virginia
Arlington County*
Chesterfield County*
Fairfax County*
Henrico County*
Prince William County†
Washington
Clark County†
King County*
Pierce County*
Snohomish County*
Spokane County†

Large, Medium, and Designated Municipalities (Boundaries Not Defined by Census)

State and Municipal Separate Storm Sewer System

Alaska
DOT [2]
University of Alaska
Alabama
Highway Department
Arizona
DOT
California
Alameda County Flood Control District
Zone 7 of the Alameda County Flood Control District
DOT
Coachella Valley Area
Contra Costa County Flood Control District
Orange County Flood Control District
Riverside Flood Control District
San Bernardino Flood Control District
San Diego Unified Port District
Santa Clara Valley Water District
Colorado
DOT
Highway Department
Delaware

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[7] County was listed in regulation; however, population dropped below 100,000 in 1990 census.

[8] Unincorporated areas defined as: beginning at the mouth of the South Fork Deer River and extending west to SW corner Section 18, Township 6 South, Range 2 West, thence north to NW corner, Section 6, Township 2 South, Range 2 West, thence east to the Mobile County line, thence south along the county line to U.S. Highway 90 bridge.

[9] All unincorporated areas of Shelby County within the drainage basin of the Cahaba River upstream of the confluence of Shoal Creek and the Cahaba River.

[10] Unincorporated areas of St. Clair County within the drainage basin of the Cahaba River.

* Identified November 1990 rule.

† 1990 Census unincorporated, urbanized population increased to more than 100,000.

[2] Department of Transportation

DOT
Florida
DOT
Urban Water Control Districts
Hawaii
DOT
Idaho
DOT
Illinois
DOT
Indiana
DOT
Kansas
Fairfax Drainage District
Kaw Valley Drainage District
Louisiana
DOT
Maryland
State Highway Administration
Michigan
University of Michigan
DOT
Minnesota
DOT
North Carolina
DOT
Nevada
Clark County Flood Control District
DOT
New Mexico
Albuquerque Metropolitan Flood Control Authority
DOT
Ohio
DOT
Oklahoma
DOT
Oregon
DOT
Port of Portland
Pennsylvania
DOT
South Carolina
Harbor of Charleston
Tennessee
DOT
Texas
Harris County Flood Control District
DOT
Utah
DOT
Wisconsin
DOT
University of Wisconsin

Addendum E

Basic Format for Environmental Assessment

This is the basic format for the Environmental Assessment prepared by EPA from the review of the applicant's Environmental Information Document (EID) required for new source NPDES permits. Comprehensive information should be provided for those items or issues that are affected; the greater the impact, the more detailed information needed. The EID should contain a brief statement addressing each item listed below, even if the item is not applicable. The statement should at least explain why the item is not applicable.

A. General Information
1. Name of applicant
2. Type of facility
3. Location of facility
4. Product manufactured

B. Description Summaries
1. Describe the proposed facility and construction activity
2. Describe all ancillary construction not directly involved with the production processes
3. Describe briefly the manufacturing processes and procedures
4. Describe the plant site, its history, and the general area

C. Environmental Concerns
1. Historical and Archeological (include a statement from the State Historical Preservation Officer)
2. Wetlands Protection and 100-year Floodplain Management (the Army Corps of Engineers must be contacted if any wetland area of floodplain is affected)
3. Agricultural Lands (a prime farmland statement from the Soil Conservation Service must be included
4. Coastal Zone Management and Wild and Scenic Rivers
5. Endangered Species Protection and Fish and Wildlife Protection (a statement from the U.S. Fish and Wildlife Service must be included)
6. Air, Water, and Land Issues: quality, effects, usage levels, municipal services used, discharges and emissions, runoff and wastewater control, geology and soils involved, land-use compatibility, solid and hazardous waste disposal, natural and man-made hazards involved.
7. Biota concerns: floral, faunal, aquatic resources, inventories, and effects
8. Community Infrastructures available and resulting effects: social, economic, health, safety, educational, recreational, housing, transportation, and road resources

Basic Environmental Information Document Guidelines for New Source Category Industries

I. General Information

A. Name of Applicant and Proposed Facility: _____

B. Description of Site and Location: _____

C. Description of Project, Product, and Process: _____

Addendum F

Section 313 Water Priority Chemicals

CAS No.	Common name
75-07-0	Acetaldehyde.
107-02-8	Acrolein.
107-13-1	Acrylonitrile.
309-00-2	Aldrin[1,4:5,8-Dimethanonaphthalene,1,2,3,4,10,10-hexachloro-1,4,4a,5,8,8a hexahydro-(1.alpha.,4.alpha.,4a.beta.,5.alpha.,8.alpha.,8a.beta.)-].
107-05-1	Allyl Chloride.
7429-90-5	Aluminum (fume or dust).
7664-41-7	Ammonia.
62-53-3	Aniline.
120-12-7	Anthracene.
7440-36-0	Antimony.
7647189	Antimony pentachloride.
28300745	Antimony potassium tartrate.
7789619	Antimony tribromide.
10025919	Antimony trichloride.

CAS No.	Common name
7783564	Antimony trifluoride.
1309644	Antimony trioxide.
7440-38-2	Arsenic.
1303328	Arsenic disulfide.
1303282	Arsenic pentoxide.
7784341	Arsenic trichloride.
1327533	Arsenic trioxide.
1303339	Arsenic trisulfide.
1332-21-4	Asbestos (friable).
542621	Barium cyanide.
71-43-2	Benzene.
92-87-5	Benzidine.
100470	Benzonitrile.
100-44-7	Benzyl chloride.
7440-41-7	Beryllium.
7787475	Beryllium chloride.
7787497	Beryllium fluoride.
7787555	Beryllium nitrate.
111-44-4	Bis(2-chloroethyl) ether.
75-25-2	Bromoform.
74-83-9	Bromomethane (Methyl bromide).
85-68-7	Butyl benzyl phthalate.
7440-43-9	Cadmium.
543908	Cadmium acetate.
7789426	Cadmium bromide.
10108642	Cadmium chloride.
7778441	Calcium arsenate.
52740166	Calcium arsenite.
13765190	Calcium chromate.
592018	Calcium cyanide.
133-06-2	Captan [1H-Isoindole-1,3(2H)-dione,3a,4,7,7a-tetrahydro-2-[(trichloromethyl)thio]-].
63-25-2	Carbaryl [1-Naphthalenol, methylcarbamate].
75-15-0	Carbon disulfide.
56-23-5	Carbon tetrachloride.
57-74-9	Chlordane [4,7-Methanoindan,1,2,4,5,6,7,8,8- octachloro-2,3,3a,4,7,7a-hexahydro-].
7782-50-5	Chlorine.
59-50-7	4-Chloro 3-methyl phenol *p*-Chloro-*m*-cresol.
108-90-7	Chlorobenzene.
75-00-3	Chloroethane (Ethyl chloride).
67-66-3	Chloroform.
74-87-3	Chloromethane (Methyl chloride).
95-57-8	2-Chlorophenol.
106-48-9	4-Chlorophenol.
1066304	Chromic acetate.
11115745	Chromic acid.
10101538	Chromic sulfate.
7440-47-3	Chromium.
1306-14-1	Chromium (Tri).
10049055	Chromous chloride.
7789437	Cobaltous bromide.
544183	Cobaltous formate.
14017415	Cobaltous sulfamate.
7440-50-8	Copper.
108-39-4	*m*-Cresol.
9548-7	*o*-Cresol.
106-44-5	*p*-Cresol.
1319-77-3	Cresol (mixed isomers).
142712	Cupric acetate.
12002038	Cupric acetoarsenite.
7447394	Cupric chloride.
3251238	Cupric nitrate.
5893663	Cupric oxalate.
7758987	Cupric sulfate.
10380297	Cupric sulfate, ammoniated.
815827	Cupric tartrate.
57-12-5	Cyanide.
506774	Cyanogen chloride.
94-75-7	2,4-D [Acetic acid, (2,4-dichlorophenoxy)-].
106-93-4	1,2-Dibromoethane (Ethylene dibromide).
84-74-2	Dibutyl phthalate.
95-50-1	1,2-Dichlorobenzene.
541-73-1	1,3-Dichlorobenzene.
106-46-7	1,4-Dichlorobenzene.
91-94-1	3,3'-Dichlorobenzidine.

CAS No.	Common name
75-27-4	Dichlorobromomethane.
107-06-2	1,2-Dichloroethane (Ethylene dichloride).
540-59-0	1,2-Dichloroethylene.
120-83-2	2,4-Dichlorophenol.
78-87-5	1,2-Dichloropropane.
542-75-6	1,3-Dichloropropylene.
62-73-7	Dichlorvos [Phosphoric acid, 2,2- dichloroethenyl dimethyl ester].
115-32-2	Dicofol [Benzenemethanol, 4-chloro-.alpha.-(4-chlorophenyl)-.alpha.-(trichloromethyl)-].
177-81-7	Di-(2-ethylhexyl) phthalate (DEHP).
84-66-2	Diethyl phthalate.
105-67-9	2,4-Dimethylphenol.
131-11-3	Dimethyl phthalate.
534-52-1	4,6-Dinitro-*o*-cresol.
51-28-5	2,4-Dinitrophenol.
121-14-2	2,4-Dinitrotoluene.
606-20-2	2,6-Dinitrotoluene.
117-84-0	*n*-Dioctyl phthalate.
122-66-7	1,2-Diphenylhydrazine (Hydrazobenzene).
106-89-8	Epichlorohydrin.
100-41-4	Ethylbenzene.
106934	Ethylene dibromide.
50-00-0	Formaldehyde.
76-44-8	Heptachlor [1,4,5,6,7,8,8-Heptachloro-3a,4,7,7a-tetrahydro-4,7-methano-1H-indene].
118-74-1	Hexachlorobenzene.
87-68-3	Hexachloro-1,3-butadiene.
77-47-4	Hexachlorocyclopentadiene.
67-72-1	Hexachloroethane.
7647-01-0	Hydrochloric acid.
74-90-8	Hydrogen cyanide.
7664-39-3	Hydrogen fluoride.
7439-92-1	Lead.
301042	Lead acetate.
7784409	Lead arsenate.
7645252	Lead arsenate.
10102484	Lead arsenate.
7758954	Lead chloride.
13814965	Lead fluoborate.
7783462	Lead fluoride.
10101630	Lead iodide.
10099748	Lead nitrate.
7428480	Lead stearate.
1072351	Lead arsenate.
52652592	Lead arsenate.
7446142	Lead sulfate.
1314870	Lead sulfide.
592870	Lead thiocyanate.
58-89-9	Lindane [Cyclohexane, 1,2,3,4,5,6-hexachloro-(1.alpha.,3.beta.,4.alpha.,5.alpha.,6.beta.)-].
14307258	Lithium chromate.
108-31-6	Maleic anhydride.
592041	Mercuric cyanide.
10045940	Mercuric nitrate.
7783359	Mercuric sulfate.
592858	Mercuric thiocyanate.
7782867	Mercurous nitrate.
7439-97-6	Mercury.
72-43-5	Methoxychlor [Benzene, 1,1'-(2,2,2-trichloroethylidene)bis[4-methoxy-].
80-62-6	Methyl methacrylate.
91-20-3	Naphthalene.
7440-02-0	Nickel.
15699180	Nickel ammonium sulfate.
37211055	Nickel chloride.
7718549	Nickel chloride.
12054487	Nickel hydroxide.
14216752	Nickel nitrate.
7786814	Nickel sulfate.
7697-37-2	Nitric acid.
98-95-3	Nitrobenzene.
88-75-5	2-Nitrophenol.
100-02-7	4-Nitrophenol.
62-75-9	*N*-Nitrosodimethylamine.
86-30-6	*N*-Nitrosodiphenylamine.
621-64-7	*N*-Nitrosodi-*n*-propylamine.
56-38-2	Parathion [Phosphorothioic acid, O,O-diethyl-O-(4-nitrophenyl) ester].
87-86-5	Pentachlorophenol (PCP).

CAS No.	Common name
108-95-2	Phenol.
7664-38-2	Phosphoric acid.
7723-14-0	Phosphorus (yellow or white).
1336-36-3	Polychlorinated biphenyls (PCBs).
7784410	Potassium arsenate.
10124502	Potassium arsenite.
7778509	Potassium bichromate.
7789006	Potassium chromate.
151508	Potassium cyanide.
75-56-9	Propylene oxide.
91-22-5	Quinoline.
7782-49-2	Selenium.
7446084	Selenium oxide.
7440-22-4	Silver.
7761888	Silver nitrate.
7631892	Sodium arsenate.
7784465	Sodium arsenite.
10588019	Sodium bichromate.
7775113	Sodium chromate.
143339	Sodium cyanide.
10102188	Sodium selenite.
7782823	Sodium selenite.
7789062	Strontium chromate.
100-42-5	Styrene.
7664-93-9	Sulfuric acid.
79-34-5	1,1,2,2-Tetrachloroethane.
127-18-4	Tetrachloroethylene (Perchloroethylene).
935-95-5	2,3,5,6-Tetrachlorophenol.
78002	Tetraethyl lead.
7440-28-0	Thallium.
10031591	Thallium sulfate.
108-88-3	Toluene.
8001-35-2	Toxaphene.
52-68-6	Trichlorfon [Phosphonic acid, (2,2,2-trichloro-1-hydroxyethyl)-dimethylester].
120-82-1	1,2,4-Trichlorobenzene.
71-55-6	1,1,1-Trichloroethane (Methyl chloroform).
79-00-5	1,1,2-Trichloroethane.
79-01-6	Trichloroethylene.
95-95-4	2,4,5-Trichlorophenol.
88-06-2	2,4,6-Trichlorophenol.
7440-62-2	Vanadium (fume or dust).
108-05-4	Vinyl acetate.
75-01-4	Vinyl chloride.
75-35-4	Vinylidene chloride.
108-38-3	*m*-Xylene.
95-47-6	*o*-Xylene.
106-42-3	*p*-Xylene.
1330-20-7	Xylene (mixed isomers).
7440-66-6	Zinc (fume or dust).
557346	Zinc acetate.
14639975	Zinc ammonium chloride.
14639986	Zinc ammonium chloride.
52628258	Zinc ammonium chloride.
1332076	Zinc borate.
7699458	Zinc bromide.
3486359	Zinc carbonate.
7646857	Zinc chloride.
557211	Zinc cyanide.
7783495	Zinc fluoride.
557415	Zinc formate.
7779864	Zinc hydrosulfite.
7779886	Zinc nitrate.
127822	Zinc phenolsulfonate.
1314847	Zinc phosphide.
16871719	Zinc silicofluoride.
7733020	Zinc sulfate.

Addendum G

Region-Specific Permit Conditions

Region VI—Permits for Louisiana, New Mexico, Oklahoma, and Texas

Unless otherwise specified, the following Region-specific permit requirements apply to the permits for Louisiana (LAR05*###), New Mexico (NMR05*###), Oklahoma (OKR05*###), Texas (TXR05*###), and Indian Lands in these states (LAR05*##F, NMR05*##F, OKR05*##F, or TXR05*##F). Language should be substituted or deleted as indicated.

Part I.B.3. Limitations on Coverage. <Insert the following paragraph for the Oklahoma Permit—OKR05*###>

f. Discharges to Oklahoma Outstanding Resource Waters and Scenic Rivers. "New" point source discharges of storm water associated with industrial activity (those commencing after the June 25, 1992, effective date of the Oklahoma Water Quality Standards—Oklahoma Annotated Code Title 785, Chapter 45) to the following waters:

(1) waterbodies designated as "Outstanding Resource Waters" and/or "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards;

(2) Oklahoma waterbodies located within the watersheds of waterbodies designated as "Scenic Rivers" in Appendix A of the Oklahoma Water Quality Standards; and

(3) waterbodies located within the boundaries of Oklahoma Water Quality Standards Appendix B areas which are specifically designated as "Outstanding Resource Waters" in Appendix A of the Oklahoma Water Quality Standards.

Part XI.J. Storm Water Discharges Associated With Industrial Activity From Mineral Mining and Processing Facilities

1. Discharges Covered Under This Section <The following paragraphs replace or are in addition to the corresponding paragraphs of the generic permit language.>

b. Limitations on Coverage. The following storm water discharges associated with industrial activity are not authorized by this permit:

(1) Storm water discharges associated with industrial activity which are subject to an existing effluent limitation guideline, except for mine dewatering discharges subject to 40 CFR Part 436, Subparts B, C, and D which are composed of storm water or groundwater seepage only.

4. Numeric Effluent Limitations. In addition to the numeric effluent limitations described by Part V., the following effluent limitations shall be met by existing and new mine dewatering discharges composed entirely of storm water or groundwater seepage from Crushed Stone, Construction Sand and Gravel, and Industrial Sand mines. The provisions of this paragraph are applicable to mine dewatering discharges from the Crushed Stone, Construction Sand and Gravel, and Industrial Sand Subcategories of the Mineral Mining and Processing Point Source Categories (40 CFR 436.20, 436.30 and 436.40) where the discharge is composed entirely of storm water or groundwater seepage. The concentration of pollutants in storm water or mined watering discharges shall not exceed the following effluent limitations:

Effluent characteristics	Effluent limitations (mg/L)	
	Maximum for any 1 day	Average of daily values for 30 consecutive days shall not exceed
Total Suspended Solids (TSS)	45 mg/L	25 mg/L.
pH	Within the range 6.0 to 9.0.	Within the range 6.0 to 9.0.

However, if a mine is also used for treatment of process generated waste water, discharges of commingled water from the mine shall be deemed discharges of process generated waste water and this permit does not authorize its discharge. Discharges of storm water commingled with process wastewater must be permitted by a separate NPDES process wastewater discharge permit.

5. Monitoring and Reporting Requirements

a. Monitoring Requirements

(2) Mine Dewatering Discharges from Crushed Stone, Construction Sand and Gravel, and Industrial Sand Mines. During the period beginning on the effective date and lasting through the expiration date of this permit, all Crushed Stone, Construction Sand and Gravel, and Industrial Sand mining facilities will be required to conduct monitoring for their mine dewatering discharges as specified below:

Parameter	Unit	Frequency	Sample Type
Total Flow.	MG	Quarterly	Estimate.
pH	s.u	Quarterly	Grab.
Total Suspended Solids.	mg/L	Quarterly	Grab.

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federal register

Friday
November 19, 1993

Part III

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 20

Public Information; Communications With Foreign Government Officials; Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 20

[Docket No. 92N–0072]

Public Information; Communications With Foreign Government Officials

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is issuing a final rule amending the regulation governing communications with foreign government officials. This final rule allows the agency to disclose nonpublic safety, effectiveness, or quality information concerning FDA regulated products to foreign government officials who perform counterpart functions without compelling the public disclosure of such information. On June 26, 1992, FDA issued a proposed rule on this subject and invited public comments. This final rule retains and strengthens the requirements set forth in the proposal to protect the confidentiality of the information that is shared. FDA invites interested persons to submit additional comments on the final rule and to suggest changes that would further the agency's public health protection mission through improved sharing of information with foreign government officials.

DATES: This rule becomes effective December 20, 1993. Written comments by March 21, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Edwin V. Dutra, Jr., Regulations Policy and Management Staff (HF–26), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–3480.

SUPPLEMENTARY INFORMATION:

I. Background

The existing regulation governing the exchange of information between FDA and foreign government officials in § 20.89 *Communications with foreign government officials* (21 CFR 20.89), provides that FDA may receive confidential commercial information from foreign government officials who perform counterpart functions to FDA and that such information will be exempt from public disclosure. However, under the existing regulation, the agency may not provide such information in its own files to foreign government counterparts even when there is a domestic or global public health need and even when the foreign government offers assurances that the information will be protected from further disclosure.

In the **Federal Register** of June 26, 1992 (57 FR 28648), FDA published a notice of proposed rulemaking to enhance communications with foreign government officials and remove restrictions on international cooperation on new product review and approval. Interested persons were invited to submit written comments by August 25, 1992. In the **Federal Register** of August 14, 1992 (57 FR 36617), FDA extended the period for submission of comments to September 24, 1992, in response to a request for an extension of the comment period. A total of 22 written comments were received. The comments were from the following sources: 15 were from manufacturers, 3 were from foreign governments, 3 were from manufacturers' associations, and 1 was from a law firm.

Many of the comments strongly supported FDA's efforts to harmonize international regulatory requirements, and several recognized the benefits in the United States, as well as in foreign countries, that may be derived from international cooperation on individual product reviews. However, many of the comments also expressed the view that the proposal contained inadequate safeguards to prevent redisclosures of proprietary information.

After review and consideration of all comments, FDA continues to believe that the agency will be better able to accomplish its public health mission if it may, under certain circumstances, share with foreign government counterparts nonpublic data provided by sponsors, expert evaluations by FDA reviewing scientists, and confidential commercial information contained in investigatory records. Therefore, FDA is now amending § 20.89. In response to the comments received, the agency has described more explicitly the safeguards that apply to authorized disclosures of confidential information to foreign government officials.

The amended rule will facilitate approval-related decision-making on FDA regulated articles, and it is expected to be of greatest value in expediting the review of products intended to diagnose or treat serious or life-threatening diseases.

This final rule amending § 20.89 does not change the existing regulatory authority for the agency to disclose to foreign government officials investigatory records compiled for law enforcement purposes.

FDA invites comments on this final rule and on other issues surrounding the disclosure to foreign government officials of nonpublic information that would be important to global public health or to further harmonization of regulatory requirements. The agency recognizes that there are numerous situations where public health interests, both domestic and global, would be better served if the agency could disclose other types of predecisional documents (e.g., draft health hazard alerts or draft regulations) to foreign government officials without invoking the requirement in § 20.21 *Uniform access to records* (21 CFR 20.21). Disclosures of predecisional documents might be limited to announcements of health hazards or to situations where FDA and a foreign counterpart have in place, or are negotiating, an agreement such as a memorandum of understanding, or where the other country is a partner with the United States under free trade agreements.

This final rule amending § 20.89 does not address these broader information disclosure issues encountered in efforts to harmonize regulatory approaches or to cooperate in addressing global public health matters. These other international information disclosure issues may be the subject of future regulatory proposals. The agency is now soliciting comments to help guide the future rulemaking.

FDA's regulations governing public information in part 20 (21 CFR part 20) implement the Freedom of Information Act (FOIA), 5 U.S.C. 552, and other laws that affect public access to government records and information (e.g., 18 U.S.C. 1905 and 21 U.S.C. 331(j)). Section 20.21 of FDA's regulations implementing these laws provides a general rule that any record of the agency that is disclosed in an authorized manner to any member of the public is available for disclosure to all members of the public. In general, communications with foreign government officials currently have the same status as communications with any member of the public. For this reason, and in accordance with FDA's rule on uniform access (§ 20.21), the disclosure of agency records to foreign government officials ordinarily constitutes disclosure to the public and obligates FDA to make the same records available to any person who requests them under the FOIA.

Subpart E of part 20 identifies several categories of people or institutions to whom disclosure of FDA records may be

made without requiring uniform access under § 20.21. One such category consists of foreign government officials who perform counterpart functions to FDA in a foreign country (§ 20.89). Under § 20.89(a), however, although confidential commercial information obtained by such officials and voluntarily disclosed to FDA as part of cooperative law enforcement and regulatory efforts is protected from disclosure under § 20.61. *Trade secrets and commercial or financial information which is privileged or confidential* (21 CFR 20.61), FDA may not disclose to those officials confidential commercial information submitted to, or incorporated into, records prepared by FDA. Under current regulations, disclosure of such information by FDA would invoke the requirement in § 20.21 of uniform access to records.

In 1974, when FDA promulgated the public information regulations now codified at part 20, the agency considered the exchange of confidential commercial information with foreign governments and decided not to make such an exchange an exception to § 20.21.

> * * * Foreign governments have discussed with the Food and Drug Administration the possibility of exchanging data and information on the safety and effectiveness of investigational and marketed drugs.
>
> The Commissioner concludes that the same rules will apply with respect to disclosure of such information to foreign governments as apply to disclosure to the public. This will permit the Food and Drug Administration to provide full summaries of all safety and effectiveness data for all approved NDA's and selected summaries for IND's and pending NDA's of which the existence of an IND has been publicly disclosed or acknowledged. The Commissioner concludes that this will adequately satisfy the need for international exchange of important regulatory information of this type.

(39 FR 44602 at 44636, December 24, 1974).

This rulemaking was undertaken because of FDA's conclusion that its inability under the public information regulations to disclose to foreign government officials confidential commercial information submitted to FDA or incorporated into agency-prepared records is impeding its efforts to meet the current need for international exchange of important regulatory information.

Changed circumstances since 1974 make the restrictions in current § 20.89 undesirable. In the 19 years that have passed since FDA promulgated § 20.89, agency scientists have become increasingly aware of the benefits to consumers in the United States, as well as in foreign countries, of not only reviewing data in the files of foreign government officials, but also sharing with counterpart foreign government officials the results of FDA's scientific evaluations and its investigative activities relating to products that have been or are intended to be manufactured and marketed throughout the world. In addition, increasing harmonization of technical product approval standards throughout the world has diminished earlier differences between the approval processes of various countries and the United States. Furthermore, growing numbers of clinical trials undertaken to support product approval applications in the United States are now conducted in foreign countries as well as in the United States.

Cooperative efforts with government scientists in other countries are particularly important to comprehensive and timely review of products that are being developed to diagnose, cure, mitigate, treat, or prevent life-threatening illnesses. In the case of didanosine (ddI), for example, a drug intended for use in the treatment of acquired immunodeficiency syndrome (AIDS), FDA and its Canadian counterparts received simultaneous submissions of marketing applications from the sponsor, Bristol-Myers Squibb. Thereafter, a joint review by Canadian and FDA authorities facilitated the expeditious approval of the drug. In order to accomplish this joint review in accordance with the current public information regulations, a variety of cumbersome arrangements were undertaken to ensure that the data in the application did not become subject to inappropriate public disclosure. One of the purposes of amending § 20.89 is to clarify and standardize the arrangements needed each time the review of a product stands to benefit from cooperative review by FDA scientists and foreign government counterparts, whether that review is in the context of approving a product, finding that a product is nonapprovable, or withdrawing approval of an already marketed product.

II. Analysis of Comments on the Proposed Rule

1. Several comments from manufacturers suggested that information could best be submitted directly by the firm or individual to the foreign government.

FDA points out that, in the typical case, the foreign government already has the nonpublic information in its files. However, one achievement of this rulemaking is the ability to share and consult on agency-prepared records (e.g., draft and final evaluations by FDA review scientists) that incorporate or refer to nonpublic confidential commercial information. The firm would not be in a position to submit to the foreign government such evaluations by FDA scientists.

2. Comments also asserted that the original proposal was overbroad and unnecessary, and might actually impede approvals.

The agency never intended disclosure to foreign government officials to be a routine occurrence. FDA believes that the preamble to the original proposal made clear that the agency intends to engage in the nonpublic exchange of confidential commercial information with foreign counterparts only when certain conditions are met. In every case, assurances must be provided by the foreign agency that the information will be held in confidence. The final rule expressly establishes that, in addition, before such confidential exchanges may occur, there must be either authorization by the sponsor or a regulatory benefit to FDA in its own review of products or implementation of its mission.

Thus, in addition to foreign governmental confidentiality assurances, any one of three additional conditions must be met: (a) Written authorization by the submitter of the information; (b) a finding that disclosure is in the interest of public health by reason of the foreign government's possessing information concerning the safety, efficacy, or quality of the product or information concerning an investigation; or (c) the disclosure is to a foreign scientist visiting FDA as part of a joint review or long-term cooperative training effort that furthers FDA's regulatory mission.

The first condition provides the mechanism by which the submitter of information authorizes its disclosure to the foreign government. The second condition provides an enhancement of FDA review functions through facilitating consultation with foreign government officials who already are in possession of relevant information on the subject and can contribute to FDA's evaluation. The third condition makes explicit in § 20.89 a longstanding implementation of section 708 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 379) and § 20.90 *Disclosure to contractors* (21 CFR 20.90) in the human drugs and biologics regulatory programs. This criterion also clarifies that there is no need to compel visiting foreign officials to become special Government employees of the United States, as long as specified safeguards concerning physical security,

confidentiality, and financial conflict of interest are met.

FDA emphasizes that the agency will deny requests to share information with officials of foreign governments that lack scientific data or regulatory expertise to contribute to a product review or laboratory or clinical investigation unless the foreign government intends to use the information for law enforcement purposes. Furthermore, under all circumstances, and regardless of the information and expertise in the possession of a foreign government official, the decision to share information is a discretionary one that FDA will make on a case-by-case basis. The disclosure of confidential commercial information to foreign government officials will be administered by designated officials in FDA's respective centers.

In reviewing comments stating that FDA's proposal to amend § 20.89 was unnecessary, agency scientists and investigators provided the following examples of situations in which the ability to share confidential commercial information with foreign governments would have allowed more timely review of significant product applications subject to FDA approval or would have enhanced effective regulatory activities:

a. FDA's centers reported that the current restrictions on disclosure to foreign government authorities have limited the centers' ability to communicate with other countries about adverse effects reports for regulated products.

b. FDA's Center for Veterinary Medicine believes that the current restrictions have hampered investigations of counterfeit bulk animal drugs in international commerce. Although investigatory records related to counterfeiting compiled for law enforcement purposes can be exchanged with foreign government counterparts and protected under the current terms of § 20.89, scientific information concerning the authentic products is often confidential commercial data that cannot be disclosed to foreign governments without triggering the uniform disclosure provision of FDA's public information regulations. The ability to share such information is important to FDA's scientific review and surveillance activities that may precede law enforcement efforts and, in particular, to the development of international profiles for those authentic products that are the object of counterfeiting.

c. The approval times in Europe and in the United States for the therapeutic biological products Neupogen and Proleukin varied significantly because of constraints on sharing data across national boundaries.

d. FDA's Center for Devices and Radiological Health was constrained from sharing confidential commercial information in product applications and inspection reports with foreign government officials during the FDA's call for data on silicone gel-filled breast implants and during the moratorium on the sale and use of those products in this country. Enhanced ability to share information with other governments would have enabled the public health aspects of FDA's actions to be better understood in other countries, and would have eliminated some of the public health concerns and consumer confusion that resulted from inconsistent regulation of these products by different national authorities.

3. A number of comments suggested that definitions of "confidential commercial" and "trade secret" be included in the regulation.

The agency believes that encumbering this regulation with lengthy definitions of trade secret or confidential commercial information is unnecessary. As they are relevant to disclosure of information contained in agency records, those terms have been defined by Federal statute, judicial opinions, and agency practice over many years. The proposal to amend § 20.89 set forth a detailed discussion of the way the agency has in the past, and intends to continue, to interpret these terms. That discussion is being expanded in this document.

Trade secret information has been defined by the courts as information relating to the making, preparing, compounding, or processing of trade commodities (*Public Citizen Health Research Group* v. *FDA*, 704 F.2d 1280, 1288 (D.C. Cir. 1983)). This definition, which requires a "direct relationship" between the trade secret and the productive process, applies to a relatively narrow category of information that coincides with information prohibited from disclosure by section 301(j) of the act (21 U.S.C. 331(j)). The agency is aware that the definition of "trade secret" promulgated in § 20.61(a) in the 1970's is a broader and more inclusive one. Section 20.61(a), however, has since been narrowed by judicial opinions interpreting the FOIA (see *Public Citizen Health Research Group* v. *FDA*; *Anderson* v. *HHS*, 907 F.2d 936, 944 (10th Cir. 1990)), and FDA is in the process of amending § 20.61 to reflect the current legal scope of the trade secret definition. That amendment to § 20.61 is part of an update of the FOIA regulations that reflects changes that were required by the 1986 amendments to the FOIA and which have already been put into practice by the agency.

The amended definition of "trade secret" that will be published in FDA's updating of its part 20 regulations is a restatement of the standard established by *Public Citizen*, and will put the definition in conformity with applicable case law and with the Department of Health and Human Services' FOIA regulations. Because FDA's practice has been in accordance with the judicial standards that resulted from *Public Citizen*, and the definitions promulgated by the Department, the amendment to § 20.61 will not alter the agency's practice in any way or the expectations the public and regulated industry have concerning FDA's treatment of particular types of information.

In any case, the present amendment to § 20.89 does not alter FDA's practice with respect to the narrow category of information that can be considered "trade secret" because, except as discussed below, the proposed amendment to § 20.89 expressly excludes the exchange of information that would fall into that category to foreign officials outside FDA, without the express authorization of the submitter of the information.

The focus of this rulemaking is the sharing of "confidential commercial information," agency-prepared reviews of such information, and investigatory records that include such information. The focus of this rulemaking is not on the nonpublic exchange of trade secret information, the other category of information covered by exemption 4 of the FOIA. The sharing of confidential information, including trade secret information, with visiting foreign scientists insofar as that access is authorized under confidentiality agreements for a training or joint review activity pursuant to section 708 of the act and § 20.90 has been a longstanding agency practice. This final rule (§ 20.89(c)(1)(ii)(C)) codifies the procedures for providing access to such information in the rule on sharing information with foreign officials rather than continuing this practice in the more general § 20.90 procedures.

Commercial or financial information that a person is required to provide FDA is "confidential" for purposes of exemption 4 if disclosure of the information is likely to (1) Impair the Government's ability to obtain necessary information in the future or (2) cause substantial harm to the competitive position of the person from whom the information was obtained. (See *Critical*

Mass Energy Project v. *NRC*, 975 F.2d 871, 877–880 (D.C. Cir. 1992) (en banc), *cert. denied*, 113 S.Ct. 1579 (1993); *National Parks & Conservation Ass'n* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974)). Commercial or financial information that is provided to FDA on a voluntary basis is "confidential" if it is of a kind that the provider would not customarily release to the public. (See *Critical Mass* at 880.) The types of information that may be exempt from public disclosure pursuant to this section of the FOIA include: Business sales statistics, customer and supplier lists, research data, profit and loss data, and overhead and operating costs. Under many circumstances, FDA treats data supporting product approval applications as confidential commercial information that is entitled to be protected from public disclosure. Thus, under the amended regulation, confidential commercial information submitted to the agency that could be shared with foreign governments would include: Information (other than trade secret information protected from disclosure under section 301(j) of the act) in pending and approved applications for permission to perform studies on or to market regulated articles, such as new drugs, new animal drugs, medical devices, biological products, and food or color additives, and information in agency-prepared reviews of such applications.

FDA has taken the position in the past that it has authority to share confidential commercial information in records compiled for law enforcement purposes by FDA with foreign government officials who perform counterpart functions to FDA in a foreign country as part of cooperative law enforcement efforts. § 20.89(b). Such disclosure does not invoke the uniform access rule established by § 20.21. FDA believes that, after this final rule amends § 20.89, the agency, in its discretion and subject to the conditions imposed by this amended rule, will be able to share confidential commercial information (whether provided by sponsor or found in investigatory records) with foreign governments for use in foreign government regulatory efforts or in cooperative law enforcement efforts. After this rule is amended, FDA will be able to share with foreign governments confidential commercial information contained in applications, in agency-prepared reviews of such applications, and in agency-prepared investigatory records without invoking the rule established in § 20.21.

4. Five comments argued that the June 26, 1992 proposal would violate provisions of the Freedom of Information Act and the Trade Secrets Act. Some also suggested it was contrary to the intent of Congress and traditional FDA policy on new product innovation.

FDA disagrees with the view that it is contrary to law to disclose confidential commercial information to counterpart foreign officials under the conditions set forth in this final rule amending § 20.89.

In the first place, any disclosure pursuant to the amended regulation would not be a public disclosure. Under all circumstances, the disclosure will be on a case-by-case basis to foreign government officials under assurances of continuing confidentiality. Furthermore, the amendment establishes that FDA will not treat any disclosure made under the conditions set forth in the regulation as a public disclosure that will trigger availability of the information to a FOIA requester.

Second, it is the intention and expectation of the agency that, in most circumstances, disclosure will be made with the written authorization of the submitter of the information. FDA will consider such written authorization, once granted by the submitter for specified information, to be irrevocable for that information. FDA believes that, in most cases, sponsors will authorize these disclosures because the exchange of information is likely to facilitate review of product applications in both countries. After all, if a sponsor's product is under review in two countries, the sponsor benefits from expedited decisions that can result when reviewers can communicate with each other on confidential commercial information.

The final rule specifically references permission of the sponsor as a precondition for disclosure, except where there is a finding by the agency that disclosure is in the interest of public health by reason of the foreign government's possessing information concerning the safety, efficacy, or quality of the product or information concerning an investigation, or the disclosure is to a visiting foreign official as part of a joint review or long-term cooperative training effort, where the individual is subjected to conflict of interest safeguards and provides a written assurance of confidentiality, and the information is retained on FDA premises where document security precautions are in place.

There are situations in which it might be inappropriate to seek a sponsor's consent. For example, if communications and consultation with the submitters of the information have not resolved agency concerns, there may be circumstances in which FDA reviewers and investigators will wish to consult with foreign government counterparts who are in the possession of similar submissions by the sponsor. It may even be that, during the course of an application review, FDA employees may discover problems with studies that raise the possibility that a sponsor or his employee had engaged in deliberate fraud or misrepresentation. Similarly, there are circumstances in which FDA investigators may wish to share with foreign counterparts confidential commercial information obtained through an FDA investigation for the foreign counterparts' use in their own regulatory efforts. This could include, for example, information in an open investigation concerning customer-supplier relationships or marketing plans. This type of information is customarily held in close confidence by businesses and therefore usually protected from public disclosure by FDA in response to a FOIA request. Disclosure of this information to foreign government counterparts, however, may facilitate efforts to keep unapproved, adulterated, counterfeit, or misbranded products off world markets as well as American markets.

As the agency stated in the proposal to amend § 20.89, a disclosure to foreign officials pursuant to § 20.89 would be an "authorized" disclosure, and thus no FDA employee engaged in such a nonpublic exchange of confidential commercial information would be in violation of 18 U.S.C. 1905 (the Trade Secrets Act). That statute makes it a crime for a Federal employee to make an unauthorized disclosure of certain types of business and financial information.

5. Several comments stated that an amendment to § 20.89 would not provide legal "authorization" to prevent violation of the Trade Secrets Act because such authorization must be based on specific statutory authority.

The agency disagrees with this view. In the first place, as discussed above, the agency believes that this limited nonpublic exchange of information with foreign government counterparts does not constitute a public disclosure prohibited by the Trade Secrets Act. Second, the agency believes that a variety of provisions of the Act, as well as other statutes enforced by the agency, provide authority for such a regulation. Sections 701 and 903 of the Act (21 U.S.C. 371 and 393), e.g., give the Commissioner of Food and Drugs authority to promulgate regulations that will allow for the efficient enforcement of the Act, including determining if applicants meet approval criteria for products and protecting the public from adulterated or misbranded products,

and responsibility for research relating to food, drugs, cosmetics, and devices. Section 708 of the Act (21 U.S.C. 379) specifically authorizes sharing of nonpublic information under contractual arrangements that include security precautions. This provision has previously been implemented in § 20.90 and also forms a legal basis for § 20.89 as now amended. In implementing § 20.89, with respect to foreign visiting scientists, the agency will implement safeguards that include security precautions similar to those in place under § 20.90. A disclosure by FDA of trade secrets to visiting foreign scientists, pursuant to section 708 of the Act as implemented in the amended rule with its strict safeguards, would not violate either section 301(j) of the Act or the Trade Secrets Act.

In addition, sections 301 and 307 of the Public Health Service Act (42 U.S.C. 241 and 2421), which set forth certain general powers and duties of the Secretary of Health and Human Services, also authorize this regulation. Section 301 gives the agency a mandate to encourage, cooperate, and render assistance to other appropriate public authorities, including making available through appropriate means information relating to research and investigation. Section 307 establishes a responsibility to participate with other countries in cooperative endeavors that may advance the health of the American people. These general grants of authority, in combination with specific sections of the statutes enforced by FDA, e.g., section 301 of the Act (21 U.S.C. 331), prohibiting, inter alia, the introduction of adulterated or misbranded products into commerce between any State or Territory and any place outside that State or Territory, provide ample authorization for the promulgation of the proposed amendment to § 20.89. Finally, it should be reemphasized that this rulemaking does not affect the prohibition on disclosure of trade secret information protected by 21 U.S.C. 331(j) and in fact it contains an express provision excluding such information, except where disclosure is authorized under section 708 of the Act.

6. Nine comments stated that sponsors should have an opportunity to review information to be shared with foreign officials, and five said any disclosure of confidential commercial information should be made only with the consent of the sponsor.

The agency believes that, in most situations in which information sharing is contemplated, the written consent of sponsors should and will be obtained. As explained above, in the majority of cases, the cooperative exchange of nonpublic information with foreign government scientists will benefit individual companies as well as the public health, by permitting more timely review of pending product applications in both countries. These are situations in which sponsors would willingly consent to the limited disclosures the regulation permits. However, as discussed earlier, FDA also anticipates that regulatory activity may precede law enforcement situations requiring the disclosure of confidential commercial information, and in these cases it might be inappropriate for FDA to seek a sponsor's consent.

Also, as noted above, the final rule codifies longstanding FDA implementation of section 708 of the Act and § 21.90 with respect to cooperative training activities involving visiting foreign scientists on FDA premises in which FDA requires that such officials sign confidentiality agreements to assure that they do not disclose any nonpublic information to which they are exposed as part of their training, which may include product review activities. FDA is unaware of the occurrence of any inappropriate disclosures by individuals involved in these highly successful activities and FDA is codifying these procedures in § 20.89. The safeguards applicable to visiting foreign scientists have been continued, and FDA has strengthened them by applying certain conflict of interest prohibitions to such officials.

7. Several comments expressed concern about any further disclosure of confidential commercial information by foreign governments, based on the written permission of FDA. One comment suggested that there should be no authorization at all for further disclosure, and three comments argued that only the sponsor should be able to permit further disclosure.

FDA agrees that, in general, the sponsor needs to authorize further disclosure of confidential information. However, the agency recognizes that sponsors frequently release information concerning product applications, thereby placing such information in the public domain. There is also the possibility that information once protected from public disclosure may become legally available under FDA's FOIA regulations at some point in time. For example, summary basis of approval documents, including reviews by agency scientists, would not be available to a FOIA requester before the sponsor of a new drug application receives an approval letter from FDA. However, these summaries lose their confidential status under the agency's regulations once the application is approved. (See 21 CFR 314.430.)

In order to clarify the intent of the proposal, the final rule provides for further disclosure by the foreign government only upon receipt of the written permission of the sponsor or written confirmation by FDA that the information no longer has confidential status.

8. Several comments urged that more explicit conditions be established for the sharing of information with foreign counterparts. One comment suggested that confidential commercial information be shared only with countries with similar product approval processes. Another suggested that FDA establish lists of foreign governments that have been designated as appropriate for the sharing of confidential information. One comment expressed concern that foreign agency requests might be listed in a publicly available log.

With respect to publicly available information, FDA does not include in its FOIA log the information requests the agency receives from foreign governments. FDA views any sharing of confidential commercial information with foreign government officials as an activity that must be carried out in a confidential manner and believes that listing in a public log would be inappropriate.

FDA does not believe a list of countries that have been designated acceptable for such information exchanges would be useful. As discussed above, the exchange of information with foreign government officials will be authorized on a case-by-case basis. Although the conditions set forth in the amendment must be met before any disclosure will occur, in every case disclosure is at the discretion of the agency and cannot be automatic for any country.

With respect to the information that would be the subject of the exchange, FDA believes that concerns about continued protection of this information are adequately addressed by the foreign government's written statement of authority to protect confidential commercial information from public disclosure and its commitment not to further disclose the information except with the sponsor's permission or FDA's confirmation that the information no longer needs to be treated as confidential. In order to address concerns about the protection of such information, however, new language in the revised regulation would require, prior to the sharing of any information, either a sponsor's authorization for the disclosure or a finding by FDA that the

foreign government possesses information concerning the safety, efficacy, or quality of a product or concerning an investigation. As discussed above in response to comment 6 of section II of this document, other strict safeguards apply to visiting foreign scientists on FDA's premises.

9. Several comments suggested that FDA should require the posting of bonds, establish penalties for foreign governments that do not preserve confidentiality, or bar governments that do not protect information from receiving information in the future. One comment stated that there is no practical remedy to deal with unauthorized further disclosure.

Although FDA appreciates the difficulties of finding a practical remedy for the sponsor whose information has been the subject of an unauthorized disclosure, the agency is committed to whatever actions are appropriate. FDA is unlikely to undertake further cooperative ventures with governments that fail to live up to their written commitments.

III. The Amended Regulation

In summary, in order to facilitate the approval of products that are shown to be safe and effective, to expedite the withdrawal of approval of products that are found not to be safe and effective, and to enhance the efficiency of its enforcement efforts, FDA is issuing this final rule to amend § 20.89 to permit disclosure to foreign government officials, in the circumstances in the rule, of confidential commercial information submitted to FDA or incorporated into agency-prepared records. The Commissioner, or his or her designee, would be authorized to disclose the information after making appropriate determinations as to safeguards of confidentiality.

The amended regulation would not permit the disclosure of trade secret information that relates to manufacturing methods and processes and is entitled to protection under section 301(j) of the act, except as authorized under section 708 of the act. Circumstances might arise, however, when FDA determines that the exchange of information relating to manufacturing methods and processes would enhance the agency's ability to review an application for product approval or clinical investigation, or examine regulatory issues that have arisen with respect to a marketed product or one that is under investigation. In such circumstances, FDA would seek the permission of the submitter of the trade secret information prior to disclosing that information to foreign government officials in foreign countries.

IV. Environmental Impact

The agency has determined under 21 CFR 25.24(a)(8) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

V. Economic Impact

In accordance with Executive Order 12866, FDA has carefully analyzed the economic effects of this final rule and has determined that this final rule is not a significant regulatory action as defined by the order. FDA, in accordance with the Regulatory Flexibility Act, has considered the effect that this final rule has on small entities, including small businesses, and has determined that no significant impact on a substantial number of small entities would derive from this action.

VI. Effective Date

This rule becomes effective December 20, 1993.

VII. Comments

Interested persons may, on or before March 21, 1994 submit to the Dockets Management Branch (address above) written comments regarding this rule or other issues involving disclosure of information to foreign government officials for broader purposes, such as cooperation on global public health issues and harmonization of regulatory requirements. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. to 4 p.m., Monday through Friday.

List of Subjects in 21 CFR Part 20

Confidential business information, Courts, Freedom of information, Government employees.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 20 is amended as follows:

PART 20—PUBLIC INFORMATION

1. The authority citation of 21 CFR part 20 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–393); secs. 301, 302, 303, 307, 310, 311, 351, 352, 354–360F, 361, 362, 1701–1706, 2101 of the Public Health Service Act (42 U.S.C. 241, 242, 242a, 242l, 242n, 243, 262, 263, 263b–263n, 264, 265, 300u–300u–5, 300aa–1); 5 U.S.C. 552; 18 U.S.C. 1905.

2. Section 20.89 is amended by adding new paragraph (c) to read as follows:

§ 20.89 Communications with foreign government officials.

* * * * *

(c)(1) The Commissioner of Food and Drugs, or any other officer or employee of the Food and Drug Administration whom the Commissioner may designate to act on his or her behalf for the purpose, may authorize the disclosure of confidential commercial information submitted to the Food and Drug Administration, or incorporated into agency-prepared records, to foreign government officials who perform counterpart functions to the Food and Drug Administration as part of cooperative law enforcement or regulatory efforts, provided that:

(i) The foreign government agency has provided both a written statement establishing its authority to protect confidential commercial information from public disclosure and a written commitment not to disclose any such information provided without the written permission of the sponsor or written confirmation by the Food and Drug Administration that the information no longer has confidential status; and

(ii) The Commissioner of Food and Drugs or the Commissioner's designee makes one or more of the following determinations:

(A) The sponsor of the product application has provided written authorization for the disclosure;

(B) Disclosure would be in the interest of public health by reason of the foreign government's possessing information concerning the safety, efficacy, or quality of a product or information concerning an investigation; or

(C) The disclosure is to a foreign scientist visiting the Food and Drug Administration on the agency's premises as part of a joint review or long-term cooperative training effort authorized under section 708 of the act, the review is in the interest of public health, the Food and Drug Administration retains physical control over the information, the Food and Drug Administration requires the visiting foreign scientist to sign a written commitment to protect the confidentiality of the information, and the scientist provides a written assurance that he or she has no financial interest in the regulated industry of the type that would preclude participation

in the review of the matter if the individual were subject to the conflict of interest rules applicable to the Food and Drug Administration advisory committee members under § 14.80(b)(1) of this chapter. Subject to all of the foregoing conditions, visiting foreign scientists may have access to trade secret information, entitled to protection under section 301(j) of the Federal Food, Drug, and Cosmetic Act (the act), in those cases where such disclosures would be a necessary part of the joint review or training.

(2) Except as provided under paragraph (c)(1)(ii)(C) of this section, this provision does not authorize the disclosure to foreign government officials of other countries of trade secret information concerning manufacturing methods and processes prohibited from disclosure by section 301(j) of the act, unless pursuant to an express written authorization provided by the submitter of the information.

(3) Any disclosure under this section of information submitted to the Food and Drug Administration or incorporated into agency-prepared records does not invoke the rule established in § 20.21 that such records shall be made available to all members of the public.

Dated: November 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–28467 Filed 11–16–93; 12:06 pm]

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federal register

Friday
November 19, 1993

Part IV

The President

Proclamation 6624—National Farm-City Week, 1993

Proclamation 6625—Thanksgiving Day, 1993

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Title 3—

The President

Proclamation 6624 of November 16, 1993

National Farm-City Week, 1993

By the President of the United States of America

A Proclamation

The efficiency with which a nation produces and distributes its agricultural products largely determines the vitality, health, well-being, and economic strength of that nation. One of our Nation's great strengths is the tremendous productivity of its agricultural sector. The food and fiber that grow on our country's farms feed us, sustain us, and allow our Nation to thrive.

More than 20 million Americans—from farms to cities—are engaged in producing, processing, and marketing our agricultural supplies. They are a highly efficient team made up of farm families, people in rural communities, agribusiness industries, scientists, and retail distributors. This farm-city team is the most productive and effective in the world, demonstrating the strength and interdependence of our farms, rural areas, and cities in our economic system.

This remarkable farm-city system provides our people with produce for the smallest portion of consumers' average disposable income of any Nation. As consumers, we can use the remaining, much larger portion of our incomes for other goods, services, education, recreation, and comforts. This adds greatly to our choices in life and to our well-being, making us a more diversified, well-served people.

In addition, this farm-city team produces enough food in surplus of our own needs to enable the United States to be the breadbasket of the world, exporting more agricultural products than any other country. Each $1 billion of farm exports provides an additional $1.4 billion of off-farm economic activity and provides jobs for about 22,000 people on farms and in small towns and cities. Our highly competitive agricultural exports also provide the largest positive balance of trade of any U.S. industry. This, too, adds to our opportunities, our well-being, and the vitality of our economy.

Our agricultural team's unmatched productivity also makes it possible for the United States to carry out its international role as a world leader. As a strong, concerned Nation, with abundant agricultural reserves, the United States is the world's No. 1 donor of food aid in response to the needs of distressed people in other nations.

We all are indebted to the performance of the United States agricultural team. Each year since 1956, the Nation has set aside the week ending on Thanksgiving Day as "National Farm-City Week" to pay tribute to the people who put food on our tables and to give prayerful thanks for our individual blessings and the blessings of the United States of America.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 19–25, 1993, as National Farm-City Week. I encourage all Americans, in rural and urban communities alike, to join in recognizing the accomplishments of our farmers and all those hardworking individuals who cooperate in producing the abundance of agricultural goods that strengthen and enrich the United States.

IN WITNESS WHEREOF, I have hereunto set my hand this sixteenth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-28683
Filed 11-18-93; 10:03 am]
Billing code 3195-01-P

Presidential Documents

Proclamation 6625 of November 17, 1993

Thanksgiving Day, 1993

By the President of the United States of America

A Proclamation

From the beginnings of our Nation, we have sought to recognize the providence and mercy of God with words and acts of gratitude, indeed with effort and energy toward helping others wherever need occurred. In the colorful days and weeks when the autumn of the year brings ripe and fruitful harvest across our land, Americans give thanks for many blessings. It is a time of bounty and generosity, a time to come together in peace.

This is the true spirit of Thanksgiving: acknowledging God's graciousness, and in response, reaching out in service to others. This spirit was apparent in Plymouth, Massachusetts, in 1621, when Pilgrim immigrants sat down with Native Americans and celebrated their common harvest.

This same spirit of Thanksgiving inspires our great Nation and our people to act with justice and concern toward all the peoples of the world and toward one another here at home. We are grateful for the dramatic progress made towards a comprehensive peace in the Middle East and for the Agreement signed in our United States; we are thankful for the relief efforts that our Nation and others have undertaken where natural disasters have struck unmercifully.

Still, in this final decade of the twentieth century, we face great challenges. The troubled areas of our world continue to challenge our ability to find peaceful and equitable solutions. On this Thanksgiving Day, the hospitality and harmony of loved ones, friends, and neighbors, remind each of us that we belong to the larger family of mankind.

As we gather together during this sacred and cherished time, let us pledge to build a new America where everyone will have a place at the table, and no one will be left out. In this way we will truly maintain the spirit of Thanksgiving that has enriched our country since its beginnings. While recognizing the importance of individual responsibility, we will continue to place the strength and benevolence of this great Nation at the service of all its people, indeed of all the peoples of the earth. Then, in these richer years, we will reap a true and fruitful harvest.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim Thursday, November 25, 1993, as a National Day of Thanksgiving. I encourage the citizens of this great Nation to gather in their homes, places of worship, or wherever they may choose to express heartfelt thanks for the abundance bestowed on us throughout our history.

IN WITNESS WHEREOF, I have hereunto set my hand this seventeenth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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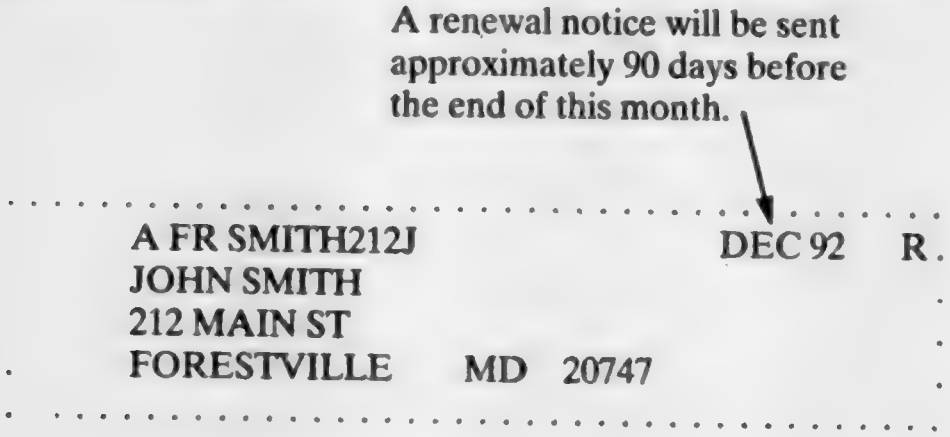

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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

MERIT SYSTEMS PROTECTION BOARD

5 CFR Part 1208

National Security Information Procedures

AGENCY: Merit Systems Protection Board.

ACTION: Final rule.

SUMMARY: The Merit Systems Protection Board is amending Chapter II of Title 5 Code of Federal Regulations by removing part 1208. This action is taken in accordance with the policy announced in Executive Order 12866 of September 30, 1993, requiring agencies to insure that regulations are effective, consistent, sensible, and understandable.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Robert E. Taylor, Clerk of the Board (202) 653–7200.

SUPPLEMENTARY INFORMATION: The Board has reviewed its regulations and determined that part 1208 merely restates policies and procedures in Executive Order 12356, ISOO Directive 1 and MSPB Order 1550.1, October 18, 1993, and is, therefore, duplicative. In addition, the Board does not have original classification authority, and only occasionally receives information classified by other agencies, and has thus concluded that National Security Information regulations are not necessary.

The Board is publishing this rule as a final rule pursuant to 5 U.S.C. 1204(h).

List of Subjects in 5 CFR Part 1208

Administrative practice and procedure; Classified information.

Accordingly, under the authority of 5 U.S.C. 1204(h), chapter II of title 5 Code of Federal Regulations is amended by removing part 1208.

Dated: November 16, 1993.

Robert E. Taylor,

Clerk of the Board.

[FR Doc. 93–28568 Filed 11–19–93; 8:45 am]
BILLING CODE 7400–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–13–AD; Amendment 39–8707; AD 93–19–08]

Airworthiness Directives; Aerospatiale Model ATR42–200 and –300 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to all Aerospatiale Model ATR–42 series airplanes, that currently requires repetitive inspections to detect corrosion and/or fatigue cracking of the main landing gear (MLG) side brace lower arms, and replacement of discrepant parts. This amendment limits the applicability of the rule, revises the inspection procedure, and requires replacement of both MLG side brace lower arms as terminating action for the repetitive inspections. This amendment is prompted by a report of a failure of a MLG side brace lower arm. The actions specified by this AD are intended to prevent inadvertent retraction of the MLG.

DATES: Effective December 22, 1993.

The incorporation by reference of Aerospatiale Service Bulletin ATR42–32–0036, Revision 3, dated December 12, 1991; Aerospatiale Service Bulletin ATR42–32–0040, dated February 24, 1992; and Aerospatiale Service Bulletin ATR42–32–0040, Revision 1, dated January 18, 1993; as listed in the regulations, is approved by the Director of the Federal Register as of December 22, 1993.

The incorporation by reference of certain other publications listed in the regulations was approved previously by the Director of the Federal Register as of May 6, 1991 (56 FR 14462, April 10, 1991).

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 91–08–10, Amendment 39–6953 (56 FR 14462, April 10, 1991), which is applicable to all Aerospatiale Model ATR–42 series airplanes, was published in the **Federal Register** on May 18, 1993 (58 FR 28939). That action proposed to limit the applicability of the rule, to require the use of an improved repetitive inspection procedure, and to require replacement of both main landing gear (MLG) side brace lower arms as terminating action for the repetitive inspections.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposed rule.

Another commenter requests that the final rule be revised to exempt airplanes on which the MLG side brace lower arms have been modified previously in accordance with Aerospatiale Service Bulletin ATR42–32–0040, Revision 1, dated January 18, 1993, from the inspection requirements proposed in paragraph (c). The FAA has determined that the commenter's request is already satisfied. The applicability of the final rule excludes any Model ATR42–200 and –300 series airplane on which Modification 03226 has been installed, as described in Aerospatiale Service Bulletin ATR42–32–0040, dated February 24, 1992, or Revision 1, dated January 18, 1993. This modification is the same one to which the commenter has referred. The requirements of paragraph (c) of the final rule do not apply to airplanes that have been

modified previously in accordance with Revision 1 of Aerospatiale Service Bulletin ATR42–32–0040.

Aerospatiale has issued Revision 1 of Service Bulletin ATR42–32–0040. This revision of the service bulletin is essentially identical to the original issue, but clarifies procedures for installation of Modification 03226. Paragraph (e) of the final rule has been revised to include Revision 1 of the service bulletin as an additional source of service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 100 airplanes of U.S. registry will be affected by this AD, that it will take approximately 3 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $16,500, or $165 per airplane.

The FAA has been advised that 25 U.S.-registered airplanes have been modified previously in accordance with the requirements of this AD. Therefore, the future economic cost impact of this rule on U.S. operators is now only $12,375.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "major rule" under Executive Order 12291; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6953 (56 FR 14462, April 10, 1991), and by adding a new airworthiness directive (AD), amendment 39–8707, to read as follows:

93–19–08 Aerospatiale: Amendment 39–8707. Docket 93–NM–13–AD. Supersedes AD 91–08–10, Amendment 39–6953.

Applicability: Model ATR42–200 and –300 series airplanes on which Modification 03226 (as described in Aerospatiale Service Bulletin ATR42–32–0040, dated February 24, 1992, and Revision 1, dated January 18, 1993) has not been accomplished; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraphs (a), (a)(1), and (a)(2) of this AD restate the initial and repetitive inspection requirements of AD 91–08–10, Amendment 39–6953, paragraphs A., A.1., and A.2. As allowed by the phrase, "unless accomplished previously," if the initial and repetitive inspections required by AD 91–08–10 have been accomplished previously, paragraphs (a), (a)(1), and (a)(2) of this AD do not require that those inspections be repeated.

To prevent inadvertent retraction of the main landing gear (MLG), accomplish the following:

(a) Perform an ultrasonic inspection of the MLG side brace lower arm in accordance with Aerospatiale Service Bulletin ATR42–32–0036, Revision 1, dated February 15, 1991, and Messier-Bugatti Service Bulletin 631–32–070, Revision 1, dated February 12, 1991, at the thresholds given in paragraphs (a)(1) and (a)(2) of this AD. Repeat the ultrasonic inspections thereafter at intervals not to exceed 1,000 landings until the inspection required by paragraph (b) of this AD is accomplished.

(1) For airplanes that have accumulated 6,000 or more total landings on either the left or right MLG side brace lower arms as of May 6, 1991 (the effective date of AD 91–08–10, Amendment 39–6953): Perform the initial inspection prior to the accumulation of 8,000 total landings on either the left or right MLG side brace lower arms, or within 14 days after May 6, 1991 (the effective date of AD 91–08–10, Amendment 39–6953), whichever occurs later.

(2) For airplanes that have accumulated less than 6,000 total landings on either the left or right MLG side brace lower arms as of May 6, 1991 (the effective date of AD 91–08–10, Amendment 39–6953): Perform the initial inspection prior to the accumulation of 6,000 total landings on either the left or right MLG side brace lower arms, or within 90 days after May 6, 1991 (the effective date of AD 91–08–10, Amendment 39–6953), whichever occurs later.

(b) For those airplanes that previously have accomplished the ultrasonic inspections in accordance with paragraph (a) of this AD: Within 1,000 landings after the last inspection required by paragraph (a) of this AD, or within 90 days after the effective date of this AD, whichever occurs later, perform the ultrasonic inspection procedure in accordance with Aerospatiale Service Bulletin ATR42–32–0036, Revision 3, dated December 12, 1991. Repeat this inspection thereafter at intervals not to exceed 1,000 landings. Accomplishment of the requirements of this paragraph constitutes terminating action for the repetitive ultrasonic inspections in accordance with Revision 1 of that service bulletin required by paragraph (a) of this AD.

(c) For those airplanes that have not previously accomplished the ultrasonic inspections in accordance with paragraph (a) of this AD: Prior to the accumulation of 6,000 total landings on either the left or right MLG side brace lower arms, or within 90 days after the effective date of this AD, whichever occurs later, perform an ultrasonic inspection of the MLG side brace lower arm in accordance with Aerospatiale Service Bulletin ATR42–32–0036, Revision 3, dated December 12, 1991. Repeat this inspection thereafter at intervals not to exceed 1,000 landings.

(d) If any ultrasonic inspection result exceeds the acceptance criteria specified in Aerospatiale Service Bulletin ATR42–32–0036, Revision 1, dated February 15, 1991, or Revision 3, dated December 12, 1991, prior to further flight, replace the discrepant MLG side brace lower arm with a new or serviceable part, in accordance with either service bulletin. Following replacement of discrepant parts, continue to repeat the ultrasonic inspection procedure in accordance with Aerospatiale Service Bulletin ATR42–32–0036, Revision 3, dated December 12, 1991, at intervals not to exceed 1,000 landings.

(e) Prior to the accumulation of 15,000 total landings, or within 12 months after the effective date of this AD, whichever occurs later, install Modification 03226, in accordance with Aerospatiale Service Bulletin ATR42–32–0040, dated February 24, 1992, or Revision 1, dated January 18, 1993. Installation of Modification 03226 constitutes terminating action for the repetitive ultrasonic inspections of the MLG side brace lower arm required by this AD.

(f) An alternative method of compliance or adjustment of the compliance time that

provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(h) The actions shall be done in accordance with Aerospatiale Service Bulletin ATR42–32–0036, Revision 1, dated February 15, 1991; Aerospatiale Service Bulletin ATR42–32–0036, Revision 3, dated December 12, 1991; Aerospatiale Service Bulletin ATR42–32–0040, dated February 24, 1992; Aerospatiale Service Bulletin ATR42–32–0040, Revision 1, dated January 18, 1993; and Messier-Bugatti Service Bulletin 631–32–070, Revision 1, dated February 12, 1991. The incorporation by reference of Aerospatiale Service Bulletin ATR42–32–0036, Revision 1, dated February 15, 1991, and Messier-Bugatti Service Bulletin 631–32–070, Revision 1, dated February 12, 1991, was approved previously by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51 as of May 6, 1991 (56 FR 14462, April 10, 1991). The incorporation by reference of the remainder of the service documents listed above is approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective on December 22, 1993.

Issued in Renton, Washington, on September 29, 1993.

David G. Hmiel,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28558 Filed 11–19–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–17–AD; Amendment 39–8734; AD 93–22–10]

Airworthiness Directives; Aerospatiale Model ATR42 and ATR72 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment supersedes an existing airworthiness directive (AD), applicable to Aerospatiale Model ATR42 and ATR72 series airplanes, that currently requires inspections to detect defects in the aileron control system, and a revision to the Airplane Flight Manual (AFM) and installation of a warning placard to prohibit use of roll trim in certain situations. This amendment requires replacement of the automatic flight control system (AFCS) computer with a new AFCS computer and modification of its wiring, as terminating action for the AFM revision and warning placard. This amendment is prompted by the development of a new AFCS computer that improves roll out-of-trim indications and eliminates the risk of roll trim command. The actions specified by this AD are intended to prevent severely reduced controllability of the airplane.

DATES: Effective December 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Gary Lium, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–1112; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations by superseding AD 90–26–52, Amendment 39–6880 (56 FR 4532, February 5, 1991), which is applicable to Aerospatiale Model ATR42 and ATR72 series airplanes, was published in the **Federal Register** on May 24, 1993 (58 FR 29800). The action proposed to require replacement of the automatic flight control system (AFCS) computer with a new AFCS computer and modification of its wiring; when accomplished, these actions would constitute terminating action for the current requirements for an Airplane Flight Manual (AFM) revision and warning placard to prohibit use of roll trim in certain situations.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

Another commenter requests that the proposed rule be revised to extend the compliance time for the installation of the new AFCS computer and modification of its wiring, so that the required installation and modification can be accomplished without schedule interruption. This commenter, a U.S. operator, indicates that it is currently performing the required modifications on its affected fleet whenever an airplane is taken out of service for a scheduled "C" check. The scheduled "C" checks in this operator's program are accomplished at intervals longer than the proposed compliance time of 12 months, however. This commenter states that the adoption of the proposed compliance time of 12 months would require that it schedule special times for the accomplishment of these actions, at considerable additional expense. The FAA concurs with the commenter's request to extend the compliance time for the installation and modification requirements. Extending the compliance time to 24 months will not adversely affect safety, and will allow the modification to be performed at a base during regularly scheduled maintenance where special equipment and trained maintenance personnel will be available if necessary. In the interim, the currently required AFM revision and warning placard will provide an acceptable level of safety until the installation of the AFCS computer and modification of its wiring are accomplished. The final rule has been revised to specify a compliance time of 24 months.

This same commenter requests that the proposed rule be revised to eliminate the current requirement to submit written reports to the FAA describing any defects found during the required inspections. This commenter states that it has been submitting these reports regularly, and notes that no failures of consequence have been discovered during the inspections. Additionally, this commenter states that it has received no feedback from either the manufacturer or the FAA as to whether there are any concerns about what has been reported. The FAA concurs that the reporting requirement may be suspended. The manufacturer has advised, and the FAA agrees, that the submitted reports have been of little value in helping in the development of a modification or other action that could

serve as terminating action for the currently required inspections. In light of this, the FAA has revised the final rule to delete the requirement for submission of reports.

Since the issuance of the notice, the manufacturer has revised two of the referenced service bulletins: Aerospatiale Service Bulletin ATR42–22–0015, Revision 2, dated July 29, 1993; and Aerospatiale Service Bulletin ATR42–27–0058, Revision 2, dated July 5, 1993. These revisions are essentially identical to the earlier versions, which describe procedures for replacing the AFCS computer and modifying the wiring on Model ATR42 series airplanes. However, these revisions do contain certain minor editorial corrections and changes. The FAA has revised the final rule to include both of these revised service bulletins as alternative sources of appropriate service information.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule with the changes previously described. The FAA has determined that these changes will neither increase the economic burden on any operator nor increase the scope of the AD.

The FAA estimates that 99 airplanes of U.S. registry will be affected by this AD.

The inspections that were previously required by AD 90–26–52, and retained in this AD, take approximately 30 workhours per airplane to accomplish, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of this inspection requirement of this AD on U.S. operators is estimated to be $163,350, or $1,650 per airplane, per inspection cycle.

The AFM revision and warning placard installation that were previously required by AD 90–26–52, and retained in this AD, take approximately 1 work hour per airplane to accomplish, at an average labor rate of $55 per work hour. The cost of required parts (local manufacture of a placard) is negligible. Based on these figures, the total cost impact of these requirements of this AD on U.S. operators is estimated to be $5,445, or $55 per airplane. The FAA can arguably assume that almost all affected U.S. operators have previously accomplished these requirements; therefore, the future cost impact of these requirements is expected to be minimal.

The installation of the AFCS computer, as required by this AD, will take approximately 4 work hours to accomplish, at an average labor rate of $55 per work hour. The required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the installation requirements of this AD on U.S. operators is estimated to be $21,780, or $220 per airplane. However, the FAA has been advised by one operator that the required AFCS computer has been installed on five of the airplanes of its affected fleet. Therefore, the future total cost impact of this AD on U.S. operators with regard to this requirement is now $20,680.

The wiring modification required by this AD will take approximately 64 work hours per airplane to accomplish, at an average labor rate of $55 per work hour. Required parts will be provided by the manufacturer at no cost to the operator. Based on these figures, the total cost impact of the wiring modification requirements of this AD on U.S. operators is estimated to be $193,600, or $3,520 per airplane. However, the FAA has been advised by one operator that the required wiring modification has been accomplished on five of the airplanes of its affected fleet. Therefore, the future total cost impact of this AD on U.S. operators with regard to this requirement is now $176,000.

The number of required work hours for each requirement of this AD, as indicated above, is presented as if the accomplishment of the actions were to be conducted as "stand alone" actions. However, in actual practice, these actions for the most part would be accomplished coincidentally or in combination with normally scheduled airplane inspections and other maintenance program tasks. Therefore, the actual number of necessary "additional" work hours will be minimal in many instances. Additionally, any costs associated with special airplane scheduling are expected to be minimal.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing amendment 39–6880 (56 FR 4532, February 5, 1991), and by adding a new airworthiness directive (AD), to read as follows:

93–22–10 Aerospatiale: Docket 93–NM–17–AD. Supersedes AD 90–26–52, Amendment 39–6880, which superseded Telegraphic AD T90–24–51, issued on November 16, 1990.

Applicability: All Model ATR42 and ATR72 series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

Note 1: Paragraph (b) of this AD restates the requirement for repetitive inspections contained in paragraph b. of AD 90–26–52. The first inspection required by this AD must be performed within the specified repetitive inspection interval after the last inspection performed in accordance with paragraph b. of AD 90–26–52.

Note 2: Paragraphs (a), (c), and (d) of this AD restate the requirements of paragraphs a., c., and d. of AD 90–26–52. As allowed by the phrase, "unless accomplished previously," if the requirements of paragraphs a., c., and d. of AD 90–26–52 have been accomplished previously, this AD does not require that they be repeated.

To prevent severely reduced controllability of the airplane, accomplish the following:

(a) Within 48 hours after February 19, 1991 (the effective date of AD 90–26–52, Amendment 39–6880), accomplish the following:

(1) Add the following to the Limitations Section of the FAA-approved Airplane Flight

Manual (AFM) and notify all crew members. This may be accomplished by inserting a copy of this AD in the AFM.

"Use of roll trim in excess of plus or minus one unit (one dot) with the autopilot engaged is prohibited except for an engine failure condition."

(2) Install a warning placard in the cockpit in full view of the pilot and co-pilot, which states:

"Warning—Do not exceed plus or minus one unit (one Dot) of roll trim with the autopilot engaged except for an engine failure condition."

(b) Prior to the accumulation of 1,000 total hours time-in-service on the airplane, or within 50 hours time-in-service after February 19, 1991 (the effective date of AD 90–26–52, Amendment 39–6880), whichever occurs later, and thereafter at intervals not to exceed 1,000 hours time-in-service, accomplish the following:

(1) Open all inspection plates in the wing which provide access to the aileron control system; perform a detailed inspection of the aileron control system in accordance with the manufacturer's Maintenance Manual and verify that there is freedom of movement without binding; and, for the Model ATR42, verify, in accordance with Aerospatiale Service Bulletin ATR42–27–0022, Revision 1, dated April 14, 1988, that there is no free play in excess of tolerances specified in the service bulletin.

(2) Perform a detailed visual inspection of all bearings of the aileron control system located in the wings for proper operation and the absence of physical defects.

(3) If any discrepancy is found, prior to further flight, repair or replace any defective part with a serviceable part, or otherwise correct the discrepancy, in accordance with the manufacturer's Maintenance Manual.

(c) For airplanes on which the rudder and/or elevator tab rods have been replaced in accordance with Aerospatiale Service Bulletin ATR42–27–0046, dated June 11, 1990, or ATR42–27–0049, dated September 14, 1990 (for Model ATR42 series airplanes); or Aerospatiale Service Bulletin ATR72–27–1008, dated June 11, 1990, or ATR72–27–1012, dated October 29, 1990 (for Model ATR72 series airplanes); accomplish the following:

(1) If either of the conditions specified in paragraph (c)(1)(i) or (c)(1)(ii) of this AD apply, within 15 days after February 19, 1991 (the effective date of AD 90–26–52, Amendment 39–6880), perform a flight check in accordance with Paragraph C. of Aerospatiale Service Bulletin ATR42–27–0050 (for Model ATR42 series airplanes) or ATR72–27–1013 (for Model ATR72 series airplanes), both dated November 22, 1990. The flight check must not be performed during commercial flight.

(i) If, as a result of the flight check required by telegraphic AD T90–24–51 (issued November 16, 1990), the trim settings were determined to be outside the acceptable values specified in the telegraphic AD; or

(ii) If that flight check has not been accomplished as of February 19, 1991 (the effective date of AD 90–26–52, Amendment 39–6880).

(2) If one or more of the trim indications are out of tolerance, prior to further flight, repair in accordance with a method approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate.

(3) If the flight check required by paragraph C. of telegraphic AD T90–24–51 has been performed, and the trim settings were within the acceptable values specified in that telegraphic AD, no further action is required by this paragraph.

(d) For airplanes on which the rudder tab rods have been replaced in accordance with Aerospatiale Service Bulletin ATR42–27–0046, dated June 11, 1990, or ATR42–27–0049, dated September 14, 1990 (for Model ATR42 series airplanes); or replaced in accordance with Aerospatiale Service Bulletin ATR72–27–1008, dated June 11, 1990, or ATR72–27–1012, dated October 29, 1990 (for Model ATR72 series airplanes); accomplish the following:

(1) Within 7 days after February 19, 1991 (the effective date of AD 90–26–52, Amendment 39–6880), perform a ground inspection to detect incorrect rudder and trim tab settings, in accordance with Aerospatiale Service Bulletins ATR42–27–0051 (for Model ATR42 series airplanes) or AT72–27–1014 (for Model ATR72 series airplanes), both dated November 22, 1990.

(2) If any discrepancy is found, prior to further flight, repair or replace the defective part in accordance with the applicable service bulletin.

(e) Within 24 months after the effective date of this AD, accomplish the following:

(1) Replace the automatic flight control system (AFCS) computer with a new AFCS computer in accordance with Aerospatiale Service Bulletin ATR42–22–0015, Revision 1, dated March 6, 1992, or Revision 2, dated July 29, 1993 (for Model ATR42 series airplanes); or Aerospatiale Service Bulletin ATR72–22–1004, Revision 1, dated March 6, 1992 (for Model ATR72 series airplanes); and

(2) Modify the wiring in accordance with Aerospatiale Service Bulletin ATR42–27–0058, Revision 1, dated February 27, 1992, or Revision 2, dated July 5, 1993 (for Model ATR42 series airplanes); or Aerospatiale Service Bulletin ATR72–27–1019, Revision 1, dated March 20, 1992 (for Model ATR72 series airplanes).

(f) Following accomplishment of the replacement of the AFCS computer and the modification of the wiring, required by paragraph (e) of this AD, the changes to the flight manual and the placard required by paragraph (a) of this AD may be removed.

(g) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note 3: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(h) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(i) The verification, flight check, ground inspection, replacement, and modification shall be accomplished in accordance with the following applicable Aerospatiale service bulletins, which contain the indicated list of effective pages:

Service bulletin and issue date	Page No.	Revision level indicated on page	Date indicated on page
ATR42–27–0022, Revision 1, April 14, 1988	1	1	Apr. 14, 1988.
	2–13	(Original)	Jan. 12, 1988.
ATR42–27–0050, November 22, 1990	1–5	(Original)	Nov. 22, 1990.
ATR72–27–1013, November 22, 1990	1–5	(Original)	Nov. 22, 1990.
ATR42–27–0051, November 22, 1990	1–6	(Original)	Nov. 22, 1990.
AT72–27–1014, November 22, 1990	1–6	(Original)	Nov. 22, 1990.
ATR42–22–0015, Revision 1, March 6, 1992	1–4	1	Mar. 6, 1992.
	5–9	(Original)	Oct. 10, 1991.
ATR42–22–0015, Revision 2, July 29, 1993	1–3	2	July 29, 1993.
	4	1	Mar. 6, 1992.
	5–9	(Original)	Oct. 10, 1991.
ATR72–22–1004, Revision 1, March 6, 1992	1–2	1	Mar. 6, 1992.
	3–8	(Original)	Oct. 10, 1991.
ATR42–27–0058, Revision 1, February 27, 1992	1–5, 14, 16–20, 39–42, 49–56, 60	1	Feb. 27, 1992.
	6–13, 15, 21–38, 43–48, 57–59	(Original)	Nov. 4, 1991.
ATR42–27–0058, Revision 2, July 5, 1993	1, 3, 7, 11–12, 34–35, 37–42, 49–50	2	July 5, 1993.

Service bulletin and issue, date	Page No.	Revision level indicated on page	Date indicated on page
ATR72-27-1019, Revision 1, March 20, 1992	2, 4-5, 14, 16-20, 51-56, 60	1	Feb. 27, 1992.
	6, 8-10, 13, 15, 21-33, 36, 43-48, 57-59	(Original)	Nov. 4, 1991.
	1-4, 6, 11-14, 23-29	1	Mar. 20, 1992.
	5, 7-10, 15-22	(Original)	Nov. 4, 1991.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51.

Copies may be obtained from Aerospatiale, 316 Route de Bayonne, 31060 Toulouse, Cedex 03, France. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(j) This amendment becomes effective on December 22, 1993.

Issued in Renton, Washington, on November 9, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-28140 Filed 11-19-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-NM-39-AD; Amendment 39-8737; AD 93-23-03]

Airworthiness Directives; McDonnell Douglas Model DC-9 and Model DC-9-80 Series Airplanes, Equipped With BFGoodrich Evacuation Slides

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain McDonnell Douglas Model DC-9 and Model DC-9-80 series airplanes, that requires modification of certain regulators on evacuation slides on the forward entry/service, aft service, and tailcone exit doors. This amendment is prompted by reports indicating that, under certain conditions, some evacuation slides could fail to inflate immediately. The actions specified by this AD are intended to prevent delayed inflation of an evacuation slide, which could delay or impede the evacuation of passengers during an emergency.

DATES: Effective December 22, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 22, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from BFGoodrich, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Andrew Gfrerer, Aerospace Engineer, Systems and Equipment Branch, ANM-130L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806-2425; telephone (310) 988-5338; fax (310) 988-5210.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC-9 and Model DC-9-80 series airplanes, equipped with BFGoodrich evacuation slides, was published in the **Federal Register** on May 25, 1993 (58 FR 30003). That action proposed to require modification of certain regulators on evacuation slides located at the forward entry/service, aft service, and tailcone exit doors.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the comments received.

One commenter supports the proposal.

One commenter requests that the proposed compliance time of 12 months be shortened to 6 months, due to the degree of urgency of the unsafe condition addressed. The FAA does not concur. In developing an appropriate compliance time for this action, the FAA considered not only the safety implications, but parts availability and normal maintenance schedules for timely accomplishment of the modification in the fleet. In consideration of these items, the FAA has determined that one year represents the maximum interval of time allowable wherein the modifications can reasonably be accomplished and an acceptable level of safety can be maintained.

Further, to reduce the compliance time of the proposal would necessitate (under the provisions of the Administrative Procedure Act) reissuing the notice, reopening the period for public comment, considering additional comments received, and eventually issuing a final rule; the time required for that procedure may be as long as four additional months. In comparing the actual compliance date of the final rule after completing such a procedure to the compliance date of this final rule as issued, the increment in time is minimal. In light of this, and in consideration of the amount of time that has already elapsed since issuance of the original notice, the FAA has determined that further delay of this final rule action is not appropriate. However, if additional data is presented that would justify a shorter compliance time, the FAA may consider further rulemaking on this issue.

Several other commenters request that the proposed compliance time of 12 months be extended to 36 months. These commenters state that mandating a compliance time of 12 months will have a significant adverse impact on costs to affected operators, since it will require that the slides be removed and overhauled "prematurely" (prior to regular overhaul schedules). These commenters consider their requested extension is justified, since the slides have been in use for over 10 years and there have been no in-service incidents of the delayed slide inflation problem. The FAA does not concur with the commenters' request. First, although there have been no in-service reports of delayed slide inflation, sufficient data exist to indicate that the potential for this problem still exists when the subject regulator valve is installed in a slide. This AD action addresses that potential unsafe condition. Second, as explained previously, the compliance time, as proposed, was determined to be appropriate in consideration of the safety implications, the average utilization rate of the affected fleet, the

practical aspects of an orderly modification of the fleet during regular maintenance periods, and the availability of required modification parts. The 12-month compliance time should allow ample time for the modification to be accomplished coincidentally with scheduled major airplane inspection and maintenance activities, thereby minimizing the costs associated with special airplane scheduling. However, under the provisions of paragraph (b) of the final rule, the FAA may approve requests for adjustments to the compliance time if data are submitted to substantiate that such an adjustment would provide an acceptable level of safety.

One commenter questions why the proposed AD is applicable to McDonnell Douglas airplanes rather than to BFGoodrich slides, since it clearly addresses a problem associated with the slides and not specifically with the airplanes. This commenter contends that it is "unfair for the FAA to issue AD's of this nature against the aircraft model manufacturer, as AD's serve to blemish the reputation of a given aircraft (hence possibly affecting salability and marketability of the aircraft)." The FAA responds by noting that its general policy is that, when an unsafe condition results from the installation of an appliance or other item that is installed in only one particular make and model of aircraft, the AD is issued so that it is applicable to the aircraft, rather than the item. The reason for this is simple: Making the AD applicable to the airplane model on which the item is installed ensures that operators of those airplanes will be notified directly of the unsafe condition and the action required to correct it. While it is assumed that an operator will know the models of airplanes that it operates, there is a potential that the operator will not know or be aware of specific items that are installed on its airplanes. Therefore, calling out the airplane model as the subject of the AD prevents "unknowing non-compliance" on the part of the operator. The FAA recognizes that there are situations when an unsafe condition exists in an item that is installed in many different aircraft. In those cases, the FAA considers it impractical to issue AD's against each aircraft; in fact, many times, the exact models and numbers of aircraft on which the item is installed may not be known. Therefore, in those situations, the AD is issued so that it is applicable to the item; furthermore, those AD's usually indicate that the item is known to be installed on, but not limited to, various aircraft models.

As for an AD acting as a "blemish" to the salability and marketability of the airplane towards which it is applicable, the FAA responds by noting that the "blemish" is the unsafe condition addressed, regardless of where it is or what it is caused by. The purpose of an AD is to correct that unsafe condition. In essence, the AD serves to protect the flying public from the consequences of the unsafe condition. The AD also serves to protect the manufacturer from the liability that would be faced should the unsafe condition not be corrected. Given the fact that all transport category airplanes worldwide have had AD's issued applicable to them, it is unrealistic to think that any transport would be "immune" from the kinds of unsafe conditions that warrant AD's.

After careful review of the available data, including the comments noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

There are approximately 400 BFGoodrich evacuation slides installed on McDonnell Douglas Model DC–9 and Model DC–9–80 series airplanes of the affected design in the worldwide fleet. The FAA estimates that 240 evacuation slides are installed on airplanes of U.S. registry that are affected by proposed AD. It will take approximately 3 work hours per slide to accomplish the required modification actions, at an average labor rate of $55 per work hour. Required parts are expected to cost approximately $660 per slide. Based on these figures, the total cost impact of this AD on U.S. operators is estimated to be $198,000, or $825 per slide. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–23–03 McDonnell Douglas: Amendment 39–8737. Docket 93–NM–39–AD.

Applicability: Model DC–9 and Model DC–9–80 series airplanes; equipped with BFGoodrich evacuation slides, as listed in BFGoodrich Service Bulletin 4A3106/4A3153–25–258, dated March 29, 1993, having regulator part number 4A3106–1, –2, or 4A3153; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent delayed inflation of the evacuation slide, which could delay or impede the evacuation of passengers during an emergency, accomplish the following:

(a) Within 12 months after the effective date of this AD, modify BFGoodrich evacuation slides having regulator part number (P/N) 4A3106–1, –2, or 4A3153, installed on forward entry/service, aft service, and tailcone exit doors, in accordance with BFGoodrich Service Bulletin 4A3106/4A3153–25–258, dated March 29, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Manager, Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to

operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The modification shall be done in accordance with BFGoodrich Service Bulletin 4A3106/4A3153–25–258, dated March 29, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from BFGoodrich, Aircraft Evacuation Systems, 3414 South 5th Street, Phoenix, Arizona 85040. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 22, 1993.

Issued in Renton, Washington, on November 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28518 Filed 11–19–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–181–AD; Amendment 39–8735; AD 93–23–01]

Airworthiness Directives; Nordskog Water Heaters and Coffee Makers as Installed in Various Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Nordskog water heaters and coffee makers. This action requires an inspection to determine whether certain discrepant pressure relief valves have been installed in certain galley water heaters and coffee makers; and either replacement of the discrepant valves, or discontinued use and installation of placards. This amendment is prompted by reports of injuries to cabin crew members that resulted from explosions of galley water heaters. The actions specified in this AD are intended to prevent explosions of galley water heaters and coffee makers, and subsequent injuries to passengers or cabin crew members.

DATES: Effective December 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–181–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Nordskog Industries, Inc., 16000 Strathern Street, Van Nuys, California 91406. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles Aircraft Certification Office (ACO), 3229 E. Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Walter Eierman, Systems and Equipment Branch, ANM–131L, FAA, Transport Airplane Directorate, Los Angeles ACO, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5336; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION: The FAA recently has received reports of injuries to cabin crew members that resulted from explosions of galley water heaters. One report stemmed from an incident in which a water heater exploded in the galley, tore a hole through the galley wall, and landed in the cockpit, resulting in injuries to two flight attendants. In another incident, a flight attendant received second degree burns from a water heater explosion. Investigation of one of these occurrences has revealed that the "O" ring jammed the poppet of the pressure relief valve, resulting in overpressurization. The cause of the overpressurization of the pressure relief valve has been attributed to a design problem. Both of these incidents involved water heaters of the design addressed by Nordskog Industries, Inc., Service Bulletin SB–93–34, dated October 21, 1993. This condition, if not corrected, could result in explosions of galley water heaters and coffee makers and subsequent injuries to passengers or cabin crew members.

The subject relief valve is also used in other Nordskog water heaters and coffee makers that are addressed by Nordskog Industries, Inc., Service Bulletin SB–93–35, dated October 21, 1993. The FAA is evaluating the need for AD action to address these additional installations and any other installations that use the same pressure relief valve design.

The FAA has reviewed and approved Nordskog Industries, Inc., Service Bulletin SB–93–34, dated October 21, 1993, that describes procedures for an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers; and replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves. The manufacturer has advised that the discrepant pressure relief valve has been installed in certain Nordskog galley water heaters and coffee makers that either were manufactured between January 1990 and July 1991, or that have been serviced since January 1990. The manufacturer has also advised the FAA that this problem has been corrected on the new model number pressure relief valves installed by Nordskog since July 1991.

Since an unsafe condition has been identified that is likely to exist or develop on other components of the same type design installed on airplanes, this AD is being issued to prevent explosions of galley water heaters and coffee makers and subsequent injuries to passengers or cabin crew members. This AD requires an inspection to determine whether certain NUPRO pressure relief valves have been installed in certain Nordskog galley water heaters and coffee makers. This AD also requires either replacement of those NUPRO pressure relief valves with new, improved NUPRO pressure relief valves, or discontinued use of certain Nordskog galley water heaters and coffee makers and installation of placards stating, "Not to be used." The replacement action, if accomplished, is required to be performed in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before

the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–181–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–23–01 Nordskog Industries, Inc.: Amendment 39–8735. Docket 93–NM–181–AD.

Applicability: Nordskog water heaters and coffee makers, as listed in Nordskog Industries, Inc., Service Bulletin SB–93–34, dated October 21, 1993; as installed in, but not limited to Boeing Model 727, 737, 747, 757, and 767 series airplanes; McDonnell Douglas Model DC–9, DC–9–80, and DC–10 series airplanes, and MD–11 airplanes; Lockheed Model L–1011 series airplanes; Airbus Industrie Model A300, A310, and A320 series airplanes; Gulfstream Model G–1159 series airplanes and Model G–IV airplanes; de Havilland, Inc., Model DHC–8 series airplanes; Dassault-Aviation Model Mystere-Falcon 50 and 900 series airplanes; Canadair Model CL–600–1A11 (CL–600), CL–600–2A12 (CL–601), and CL–600–2B16 (CL–601–3A and –3R) and CL–600–2B19 series airplanes; and Fokker Model F27 and F28 series airplanes; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent explosions of galley water heaters and coffee makers and subsequent injuries to passengers or cabin crew members, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a one-time inspection to determine whether a NUPRO pressure relief valve having part number (P/N) SS–2C4–65 has been installed, in accordance with Nordskog Industries, Inc., Service Bulletin SB–93–34, dated October 21, 1993. If any NUPRO pressure relief valve having P/N SS–2C4–65 has been installed, prior to further flight, accomplish either paragraph (a)(1) or (a)(2) of this AD.

(1) Remove the NUPRO pressure relief valve having P/N SS–2C4–65 and install a new, improved NUPRO pressure relief valve having P/N SS–CHF2–65, in accordance with the service bulletin. Or

(2) Deactivate any Nordskog water heater or coffee maker listed in the service bulletin on which a NUPRO pressure relief valve having P/N SS–2C4–65 has been installed, and install a placard stating, "Not to be used."

(b) As of the effective date of this AD, no person shall install a NUPRO pressure relief valve having P/N SS–2C4–65 on any airplane.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO), FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The inspection and replacement shall be done in accordance with Nordskog Industries, Inc., Service Bulletin SB–93–34, dated October 21, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Nordskog Industries, Inc., 16000 Strathern Street, Van Nuys, California 91406. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Los Angeles ACO, 3229 E. Spring Street, Long Beach, California 90806–2425; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 7, 1993.

Issued in Renton, Washington, on November 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28519 Filed 11–19–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–180–AD; Amendment 39–8736; AD 93–23–02]

Airworthiness Directives; Jetstream Aircraft Limited Model 4101 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Jetstream Aircraft Limited Model 4101 airplanes. This action requires an inspection to detect damage of the electrical loom in the main entrance door, replacement of any damaged loom, and modification of the loom routing and support. This amendment is prompted by a report that the electrical loom in the main entrance

door became trapped between the inner skin of the door and the speedlock solenoid. The actions specified in this AD are intended to prevent the inability of passengers to evacuate the airplane through the main entrance door in an emergency.

DATES: Effective December 7, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 7, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 21, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–180–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Bud Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Aircraft Limited Model 4101 airplanes. The CAA advises that the electrical loom in the main entrance door became trapped between the inner skin of the door and the speedlock solenoid on a Model 4101 airplane. This condition caused the speedlock solenoid to jam in the locked position. This condition, if not corrected, could result in the inability of passengers to evacuate the airplane through the main entrance door in an emergency.

Jetstream Aircraft Limited has issued Alert Service Bulletin J41–A52–021, dated August 24, 1993, that describes procedures for a detailed visual inspection to detect damage of the electrical loom in the main entrance door, and replacement of any damaged loom with a new loom. The alert service bulletin also describes procedures for modification of the loom routing and support. The modification involves re-routing the electrical loom clear of the speedlock solenoid and the inner skin of the door, an operational test of the main entrance door warning system, and a functional test of the main entrance door. During the functional test, the clearance between the speedlock solenoid and the door inner skin is examined to ensure that the electrical loom cannot become trapped between those parts. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, this AD is being issued to prevent the inability of passengers to evacuate the airplane through the main entrance door in an emergency. This AD requires a detailed visual inspection to detect damage of the electrical loom in the main entrance door, replacement of any damaged loom, and modification of the loom routing and support. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–180–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "**ADDRESSES.**"

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-23-02 Jetstream Aircraft Limited: Amendment 39-8736. Docket 93-NM-180-AD.

Applicability: Model 4101 airplanes; as listed in Jetstream Aircraft Limited Alert Service Bulletin J41-A52-021, dated August 24, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the inability of passengers to evacuate the airplane through the main entrance door in an emergency, accomplish the following:

(a) Within 30 days after the effective date of this AD, perform a detailed visual inspection to detect damage of the electrical loom in the main entrance door in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41-A52-021, dated August 24, 1993.

(b) If any damage is found during the inspection required by paragraph (a) of this AD, prior to further flight: Replace the loom with a new loom; modify the electrical loom routing and support by re-routing the loom and support clear of the speedlock solenoid and the inner skin of the door; perform an operational test of the main entrance door warning system; and perform a functional test of the main entrance door, examining the clearance between the speedlock solenoid and the door inner skin to ensure that the electrical loom cannot become trapped between those parts; in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41-A52-021, dated August 24, 1993.

(c) If no damage is found during the inspection required by paragraph (a) of this AD, prior to further flight, modify the electrical loom routing and support by re-routing the loom and support clear of the speedlock solenoid and the inner skin of the door; perform an operational test of the main entrance door warning system; and perform a functional test of the main entrance door, examining the clearance between the speedlock solenoid and the door inner skin to ensure that the electrical loom cannot become trapped between those parts; in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41-A52-021, dated August 24, 1993.

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(f) The inspection, replacement, modification, and tests shall be done in accordance with Jetstream Aircraft Limited Alert Service Bulletin J41-A52-021, dated August 24, 1993. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041-6029. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(g) This amendment becomes effective on December 7, 1993.

Issued in Renton, Washington, on November 15, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-28547 Filed 11-19-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 71

[Airspace Docket No. 91-AWA-6]

Alteration of Long Island MacArthur Airport Class C Airspace Area; Islip, NY

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action alters the Long Island MacArthur Airport, Islip, NY, Class C airspace area by removing areas of regulatory airspace north, east, and west of the Long Island MacArthur Airport. This action will reduce the Class C airspace area along the northern shore of Long Island, increase that airspace allocated for ingress/egress to/from the Brookhaven Airport, and realign the airspace west of MacArthur Airport to coincide with prominent landmarks. This action also clarifies that the effective dates and times of operation for the Class C airspace area will coincide with the hours of operation of the Long Island MacArthur Airport tower.

EFFECTIVE DATE: 0901 UTC, December 9, 1993.

FOR FURTHER INFORMATION CONTACT: Patricia P. Crawford, Airspace and Obstruction Evaluation Branch (ATP-240), Airspace-Rules and Aeronautical Information Division, Air Traffic Rules and Procedures Service, Federal Aviation Administratien, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-9255.

SUPPLEMENTARY INFORMATION:

History

On December 8, 1992, the FAA published a Notice of Proposed Rulemaking (NPRM) proposing to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to alter the Long Island MacArthur Airport, Airport Radar Service Area (57 FR 58116). The Airspace Reclassification Final Rule, effective September 16, 1993, redesignated airport radar service areas as Class C airspace areas.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. The coordinates for this airspace docket are based on North American Datum 83. Class C airspace area designations are published in Paragraph 4000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class C airspace area listed in this document will be published subsequently in the Order.

Discussion of Comments

The Federal Aviation Administration received five written comments supporting the proposed action. Furthermore, two of the commenters, Long Island Pilots Association (LIPA) and Aircraft Owners and Pilots Association (AOPA) provided the following recommendations:

LIPA and AOPA recommended raising the floor from 1,500 feet to 2,000 feet mean sea level (MSL) between the 5- and 10-mile radius of the Long Island MacArthur Airport. Both organizations stated that raising the floor would provide additional altitude for obstacle clearance for non-participating aircraft. LIPA further stated that raising the floor would reduce radio communications and prevent interference with traffic in the Class C airspace area. In lieu of

raising the floor, AOPA recommended that FAA establish letters of agreement with the Islip training schools to allow training in the area south of the Class C airspace area. AOPA also suggested that a special transponder code and frequency could be utilized by pilots conducting training in that area.

The FAA has decided that the floor between the 5- and 10-mile radius of MacArthur Airport will remain at 1,500 feet MSL. A thorough analysis of this recommendation has concluded that raising the floor of the outer core would lead to unrealistic descent profiles for aircraft operating under these conditions. In addition, the 1,500 feet MSL floor will ensure that safety is not compromised because of the close proximity of arrival aircraft descending into MacArthur Airport and aircraft operating under visual flight rules (VFR) outside or below that airspace.

The FAA believes that modifying the Islip Class C airspace area will meet the users' needs as well as serve the area's training schools. Letters of agreement will not be necessary because the modifications to the airspace will allow a sufficient area for training activity. Due to the high level of traffic and the limitation of available air traffic control frequencies, we are unable to accommodate AOPA's recommendation for a special transponder code and frequency in that area.

The Rule

This amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) alters the Class C airspace area at the Long Island MacArthur Airport, Islip, NY. The Long Island MacArthur Airport is a public airport with an operating control tower serviced by the New York Terminal Radar Approach Control facility. The Class C airspace area at MacArthur Airport will be reduced to the north, along the northern shore of Long Island; to the east, to increase that airspace allotted for ingress and egress for the Brookhaven Airport; and to the west, to realign the airspace west of MacArthur Airport to coincide with prominent landmarks.

The airspace designation in the NPRM contained an error identifying the point of beginning for the outer boundary along the 10-mile radius. This point should have been 1.5 miles northwest of the Runway 24 localizer course instead of northeast of the course. This change is reflected in this final rule. Also, this action clarifies that the effective dates and times of operation for the Class C airspace area will coincide with the hours of operation of the Long Island MacArthur tower.

I find that good cause exists, pursuant to 5 U.S.C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

Regulatory Evaluation Summary

The FAA has determined that this rulemaking is not a "significant regulatory action" as defined by Executive Order 12866 and a regulatory impact analysis has not been performed. The FAA has also determined that this regulation is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). The FAA has evaluated the anticipated costs and benefits which are summarized below. (A detailed discussion of costs and benefits is contained in the full evaluation in the docket for this final rule).

Costs

The FAA estimates that the total cost of implementing this final rule will be zero. The Long Island MacArthur Class C airspace area alteration is cost-relieving in nature. It will neither impose any additional costs on the FAA for either personnel or equipment nor on aircraft operators for additional avionics equipment or circumnavigation.

Contracting the Class C airspace area around Long Island MacArthur Airport will not result in a reduction in air safety in terms of an increased risk of a midair collision. The FAA has determined that it can provide the same level of safety and aircraft separation in the modified Class C airspace area as it does under the existing airspace area.

Benefits

This final rule will produce potential benefits primarily in the forms of both increased operational and navigational efficiency for aircraft operators. Specifically, the benefits include:

- Enhanced operational efficiency by increasing accessibility to the Brookhaven Airport;
- Enhanced operational efficiency for pilots operating in the vicinity of Port Jefferson and Stony Brook who wish to remain clear of the Class C airspace area; and
- Class C airspace area boundaries that are aligned with discernable landmarks (the Sagtikos State and Sunken Meadow State Parkways) for easier navigation.

Comparison of Costs and Benefits

This final rule will not impose any costs on aircraft operators in the vicinity of Long Island MacArthur Airport since it will reduce the amount of Class B airspace. However, there will be no reduction in aviation safety for aircraft operators or the flying public. The potential benefits of this final rule will be increased operational and navigational efficiency for aircraft operators. Consequently, the FAA has determined that this final rule is cost beneficial.

Final Regulatory Flexibility Determination

The Regulatory Flexibility Act of 1980 (RFA) was enacted by Congress to ensure that small entities are not unnecessarily and disproportionately burdened by government regulations. The RFA requires government agencies to determine whether rules would have "a significant economic impact on a substantial number of small entities" and, in cases where they would, to conduct a regulatory flexibility analysis.

The FAA has determined that this final rule will not have a significant economic impact on a substantial number of small entities. This determination is based on the expectation that none of the small entities, such as air taxi operators, will incur additional equipment or operating costs. In addition, this final rule is cost-relieving in nature and will not increase costs to operators.

International Trade Impact Assessment

This final rule will only affect U.S. terminal airspace operating procedures in the vicinity of Islip, NY. This final rule will not impose a competitive trade disadvantage on foreign firms in the sale of either foreign aviation products or services in the United States. In addition, domestic firms will not incur a competitive trade disadvantage in either the sale of U.S. aviation products or services in foreign countries.

Federalism Implications

The regulation adopted will not have a substantial direct effect on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, preparation of a Federalism assessment is not warranted.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71, as follows:

PART 71—[AMENDED]

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 4000—Subpart C-Class C Airspace

* * * * *

AEA NY C Long Island MacArthur Airport, Islip, NY [Revised]

Long Island MacArthur Airport
(lat. 40°47'44" N., long. 73°05'59" W.)
Bayport Aerodrome
(lat. 40°45'30" N., long. 73°03'13" W.)
Brookhaven Airport
(lat. 40°49'00" N., long. 72°51'43" W.)

That airspace extending upward from the surface to and including 4,100 feet MSL within a 5-mile radius of the Long Island MacArthur Airport, excluding that airspace from the surface to but not including 700 feet MSL within 1 mile west of Bayport Aerodrome and parallel to Runway 18/36 from south of the Sunrise Highway southbound to the 5-mile radius of the Long Island MacArthur Airport, counterclockwise to south of Nichols Road thence northbound along Nichols Road to south of and parallel to the Sunrise Highway westbound to the beginning point; and that airspace extending upward from 1,500 feet MSL to 4,100 feet MSL within a 10-mile radius of the Long Island MacArthur Airport beginning clockwise from a point along the 10-mile radius 1.5 miles northwest of the Long Island MacArthur Airport Runway 24 localizer course (lat. 40°55'53" N., long. 72°58'20" W.) then clockwise along the 10-mile radius to intersect the 3-mile arc northwest of the Brookhaven Airport then counterclockwise along the 3-mile arc to intersect the 10-mile radius of the Long Island MacArthur Airport then clockwise along the 10-mile radius to intersect the north shore of Fire Island then west along the north shore to intersect the 10-mile radius then clockwise to the Sagtikos State Parkway north along the Sagtikos and the Sunken Meadow State Parkway to intersect the 10-mile radius at the north shore of Long Island then a straight line east to the point of origin, excluding that airspace overlying Long Island Sound. This Class C airspace area is effective during the specific days and hours of operation of the Long Island MacArthur Tower as established in advance by a Notice to Airmen. The effective dates and times will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Washington, DC, on November 9, 1993.

Harold W. Becker,

Manager, Airspace—Rules and Aeronautical Information Division.

BILLING CODE 4910-13-M

ISLIP, NY CLASS C AIRSPACE
LONG ISLAND MacARTHUR AIRPORT
AIRPORT ELEVATION 99 FEET
(NOT TO BE USED FOR NAVIGATION)

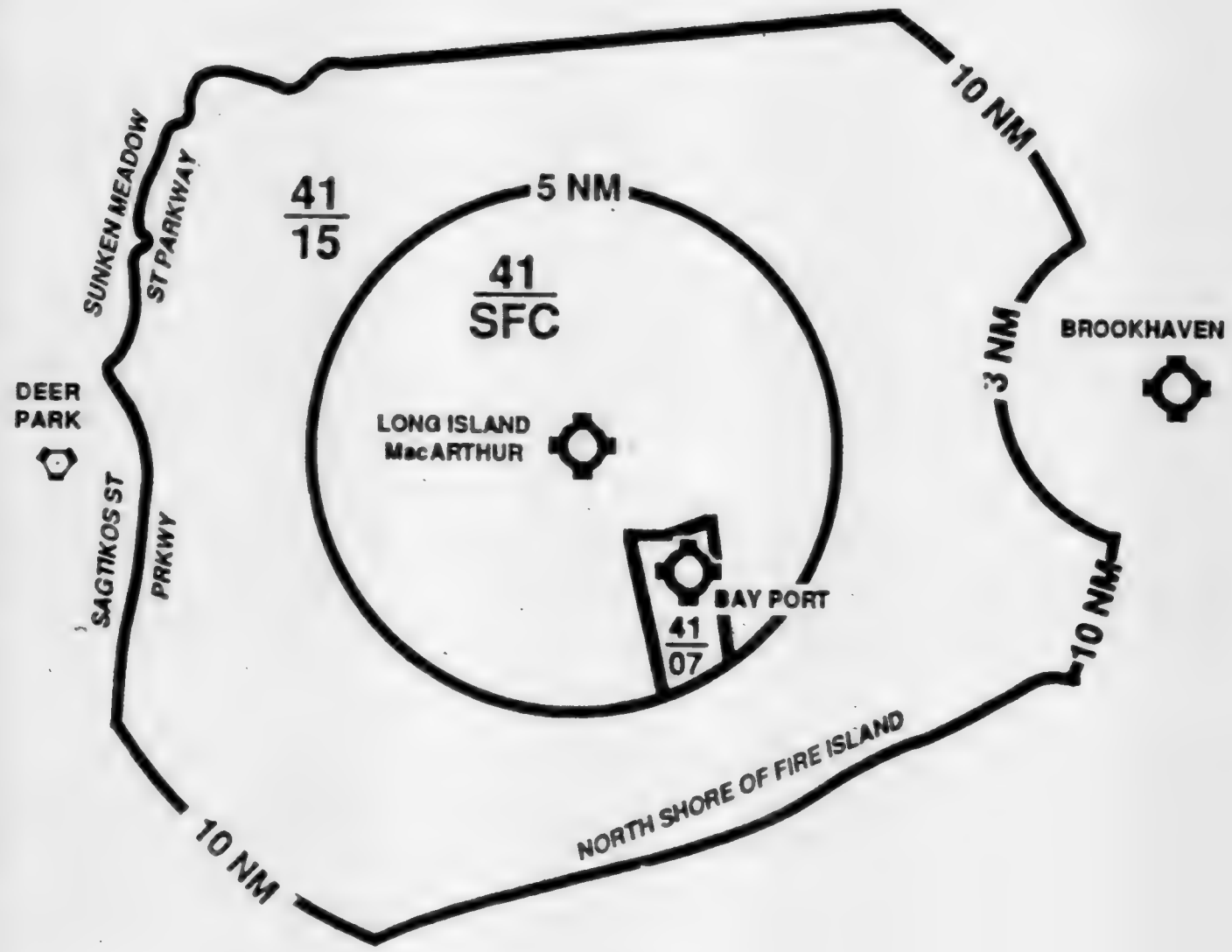

Prepared by the
FEDERAL AVIATION ADMINISTRATION
Cartographic Standards Branch
ATP-220

[FR Doc. 93-28269 Filed 11-19-93; 8:45 am]
BILLING CODE 4910-13-C

DEPARTMENT OF ENERGY

48 CFR Part 970

RIN 1991–AA73

Acquisition Regulation; Implementation of Requirements of Major Fraud Act of 1988

AGENCY: Department of Energy (DOE).

ACTION: Final rule.

SUMMARY: The Department of Energy (DOE) is issuing regulations amending its Acquisition Regulation to implement the requirements of the Major Fraud Act of 1988, enacted November 19, 1988, hereafter referred to as the "Act." The intended effect of this rulemaking is to establish, for incorporation in all of DOE management and operating (M&O) contracts, awarded or extended after November 19, 1988, mandatory contract provisions prohibiting, in specified circumstances, the reimbursement of certain costs related to legal and other proceedings. This Final Rule amends the Department of Energy Acquisition Regulation (DEAR) to formally establish policies, procedures and contract provisions to apply the Act's provisions in cases where a criminal, civil or administrative proceeding is brought by a Federal, State, local or foreign government against a M&O contractor.

EFFECTIVE DATE: This rule will be effective December 22, 1993.

FOR FURTHER INFORMATION CONTACT:

Michael L. Righi, Business and Financial Policy Division (PR–122), U.S. Department of Energy, Washington, DC 20585, (202) 586–8175

Laura Fullerton, Office of the Assistant General Counsel for Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1900

SUPPLEMENTARY INFORMATION:

I. Background
II. Discussion of Comments Received
III. Procedural Requirements
A. Regulatory Review
B. Review Under the Regulatory Flexibility Act
C. Review Under the Paperwork Reduction Act
D. Review Under Executive Order 12612
E. National Environmental Policy Act
F. Review Under Executive Order 12778

I. Background

On January 13, 1993, DOE published a Notice of Proposed Rulemaking (NOPR) addressing the applicability of the Major Fraud Act of 1988 (Pub. L. 100–700) (the Act) to its management and operating contracts (58 FR 4141). The NOPR provided an opportunity for comment. Nine sets of comments were received, reviewed and considered by DOE.

The purpose of today's notice is to respond to the comments received and to make minor adjustments to the language of the proposed rule. These changes do not substantively alter the proposed text.

This Final Rule amends the DEAR to establish polices, procedures and contract provisions to apply the Act's provisions where a criminal, civil or administrative proceeding is brought by a Federal, State, local or foreign government against an M&O contractor. The DEAR amendments include provisions for determining the allowability of an M&O contractor's costs incurred in connection with such a proceeding.

II. Discussion of Comments Received

Following is a summary of the comments received and DOE response to the issues and concerns raised by the commenters.

Retroactive Effect

Six commenters stated that DOE could not unilaterally change its contract provisions and that the contracts awarded prior to the issuance of these regulations must be renegotiated before the regulations would be applicable.

Response: Section 8(e) of the Major Fraud Act provides that the amendments to the Federal Property and Administrative Services Act "shall take effect with respect to contracts awarded after the date of the enactment of this Act." The statute was enacted on November 19, 1988, and, consequently, is effective for any contract awarded after that date. No contractual provision is necessary for implementation or effectiveness of the Act's requirements. Since, for the most part, the regulations proposed today simply restate statutory requirements, DOE is not proposing "retroactive" application of a regulation to existing contracts. A management and operating contract entered into after November 19, 1988, is subject to the requirements of the Major Fraud Act whether or not the contract contains a specific reference to the Act's applicability.

Nevertheless, DOE has determined that two of the provisions contained in the proposed regulation, and not contained in the statute, will only affect contracts entered into after the effective date of this Final Rule. This exception will apply to costs related to a proceeding brought by a local or foreign government under a contract entered into before the effective date of this Final Rule. This exception will also apply to paragraph (f) of the new DEAR 970.5204–61, which prohibits reimbursement of contractor costs incurred in connection with the defense of a suit brought under the whistleblower protection provisions of section 2 of the Act.

Five commenters stated that DOE M&O contract extension procedures did not legally result in the award of a new contract, but instead resulted in an execution of a contract modification. Under this reasoning, commenters take the position that the Act is not applicable to most M&O contracts since these contracts have merely been modified to extend the time period of the existing M&O contract.

Response: The Department does not agree with the opinion expressed that contracts extended under DOE extend/compete process are not new contracts for purposes of Major Fraud Act coverage. As is set forth below, the Department's position is based on application of the statute to specific contract provisions, governmentwide and Departmental regulations, and agency practice.

Each M&O contract contains a specified period for performance in the Statement of Work, which typically is for a period of five years or less. Similarly, under the terms of the contract, a contract termination clause generally indicates that the contract is set to expire after a stated period of time, unless sooner terminated. Thus, a new contract is required before a mutually binding legal relationship will exist requiring contract performance after the stated terminal date, except of course for residual obligations stemming from the completed period of performance.

Federal Acquisition Regulation (FAR) 17.605 and DEAR 917.605, both entitled "Award, renewal and extension," describe the management and operating contractor extend/compete procedures and use the terms renewal and extension synonymously. The DEAR describes in some detail the process necessary to support a decision to "extend or compete" a management and operating contract. A decision to "extend" the current contract simply means that DOE will not solicit proposals that might yield a new contractor, but instead will attempt to negotiate a new contract with the current contractor to continue to operate and manage the site or facility for a specified contract period. Neither party is obliged to enter into an extension of the contract. If negotiations for an extension are unsuccessful, the

incumbent M&O is left with no contractual rights or obligations to continue contract performance—the contract expires by its own terms. If the negotiations are successful, the M&O may assert contractual rights based on the new contract, not on the old contract. Consistent with FAR 17.602(a), the extension decision is supported by the appropriate justification for contracting without full and open competition. FAR 17.605(b) specifies that each M&O contract must be reviewed at least once every five years and an extension or renewal must be authorized at a level within the agency no lower than the level the "original contract" was authorized consistent with FAR 17.602(a) (i.e., the head of the agency).

Once the "extend/compete" decision is made, the contracting officer is authorized to "negotiate an extension to the contract." The contracting officer is then required to "submit the negotiated contract to Headquarters for the approval of the Procurement Executive prior to execution." DEAR 917.605(d). The proposed contract document, when submitted for Headquarters' approval, must be accompanied by several items, including a list of any significant changes from the "existing contract." Clearly, the regulations contemplate two contract instruments: An existing contract and the newly negotiated contract.

The level of approval required for both the "extend or compete" decision and the renewed contract can be contrasted with the annual negotiations which are conducted during the term of the existing, original contract. These annual negotiations (which cover matters like the award fee pool and statement of work for the upcoming year) are executed in the form of contract modifications, but they are within the term of the original contract. These annual negotiations do not require the high level of approval or documentation required for the renewal contract.

For administrative reasons, renewals or extensions of M&O contracts are often designated as modifications rather than new contracts, and some contracts still bear contract numbers originally assigned thirty or forty years ago. However, substantively and legally, these contract actions constitute an award of a new contract and, as a matter of agency practice, new legislation enacted during the prior period of performance which affects newly awarded contracts is implemented in the extended contract.

Local or Foreign Government Proceeding Costs

Nine commenters felt that the terms of the regulation should not include "local or foreign governments" in describing proceeding costs which will be disallowed, since this goes beyond statutory requirements.

Response: Commenters have taken issue with the extension of the Act's coverage in the cost principle to a proceeding commenced by local or foreign government with regard to violation of a local or foreign statute or regulation. Section 8 of the Act addressed only proceedings commenced by a Federal or a State government with regard to a federal or state statute or regulation. DOE has decided to retain the prohibition against reimbursement of proceeding costs related to violations of local and foreign laws and regulations. Inclusion of these terms is consistent with a DOE related statute covering reimbursement of fines and penalties which prohibits "[p]ayments of fines and penalties resulting from violations of, or failure to comply with, Federal, State, local, or foreign laws and regulations * * *." 42 U.S.C. 7256a(a)(4).

However, DOE has decided to amend the DEAR to permit a determination to provide for more than 80 percent cost reimbursement for a proceeding commenced by a State, local, or foreign government, if the determination explicitly considers the 80 percent limitation. This amendment results in equal treatment for determinations regarding proceedings commenced by State, local, or foreign governments and agreements regarding proceedings commenced by the Federal Government.

Whistleblower Protection

Three commenters stated that it was improper to extend the coverage of unallowable costs to include costs incurred by a contractor in connection with the defense of a suit brought by an employee under section 2 of the Act. Section 2 of the Act contains whistleblower protection provisions.

Response: Inclusion of this provision is a logical implementation of Congressional intent to protect whistleblowers reporting contracting fraud. Disallowing contractor costs for defense of suits brought by employees for redress from retaliation, where the contractor is found liable or settled, provides an incentive to contractors to refrain from retaliation and to settle such claims on an informal basis at a level where the cost could still be reimbursed.

Other Issues

One commenter felt the Accountability Rule liability cap and ceiling should apply to costs disallowed under this rulemaking but not specifically addressed in the original statute.

Response: DEAR 970.5204–55(c) excludes Major Fraud Act proceedings costs from inclusion under the liability cap or calculation of the ceiling. There is no policy or legal justification for different treatment of a subset of those costs in implementing the provisions of the Accountability Rule.

Some flexibility is provided under the terms of the new clause because costs arising from proceedings by local or foreign governments may receive the same treatment as unallowable costs resulting from a State government's proceedings. The new DEAR 970.5204–61(d) provides that "the Contracting Officer may allow the costs incurred in such proceeding, provided the Procurement Executive determines that the costs were incurred as a result of compliance with a specific term or condition of the contract, or specific written direction of the Contracting Officer."

Additional flexibility is provided in proposed DEAR 970.5204–61, paragraph (e)(4), to include determinations made under paragraph (d) in the exclusion from the 80 percent reimbursement limitation for allowable proceeding costs.

One commenter stated that the limitation on reimbursement of allowable proceeding costs to 80 percent was illegal.

Response: This provision is mandated by the Act and is not a new requirement created under DOE proposed rule.

Two commenters stated that the extension of proceeding costs to "the costs of the services of accountants, consultants, or others retained by the contractor to assist it" was improper.

Response: This is not a substantive change from the terms of the Act and this provision has been retained.

One commenter stated it was improper to extend covered dispositions, where proceedings costs would be unallowable, in the proposed DEAR 970.5204–61(b)(6), to include other actions where the "underlying alleged contractor misconduct was the same."

Response: This language is not a substantive addition to the Act's requirements since it is already contained in section 306(e)(3) of the Federal Property and Administrative Services Act.

Two commenters expressed concern about the M&O non-profit contractors'

ability to pay costs made unallowable under this regulation.

Response: The Act contained no distinction in treatment between for-profit contractors and non-profit contractors, and, therefore, both are covered by the Act.

Procedural Issues

Two commenters stated that Executive Order 12778, section 2, requires the agency to specify how existing regulations will be affected. Commenters were particularly concerned about the role of the Accountability Rule in combination with this proposed rule.

Response: The Accountability Rule amending 48 CFR part 970 appearing in the **Federal Register** on February 7, 1991 (56 FR 5064) already stated DOE position on this issue. Relevant language from the preamble follows:

> Statutorily mandated nonreimbursable costs cannot be limited by an administratively established ceiling. To permit any costs which are otherwise unallowable to be included in the calculation of a liability ceiling, the purpose of which was to limit exposure resulting from this rule, would subvert that policy. Only those unallowable Avoidable Costs created by this Interim Final Rule will be included in and subject to the liability cap. All other unallowable costs, whether mandated by statute, such as the Major Fraud Act of 1988 or the Price Anderson Amendments Act of 1988, or regulations not resulting from this Final Rule, will not be included in determining when the liability ceiling has been reached.

One commenter stated that DOE must issue other regulations and cited the need for a new contract clause for a new accounting system.

Response: DOE is not persuaded that "other regulations" are necessary for implementation of these proposed provisions. This rulemaking is intended to clarify Major Fraud Act requirements as they apply to M&O contracts rather than impose new or additional requirements not already in effect. Additionally, a new accounting system is not required since M&O contractors are already required to segregate unallowable costs.

A number of commenters also felt that Paperwork Reduction Act issues had not been adequately addressed and expressed concern that cost records would have to be reconstructed if there is retroactive application of these provisions. Additionally, commenters stated that the cost segregation requirements for compliance with these provisions would be difficult and impractical.

Response: As discussed previously, DOE is not proposing to apply the Act's requirements retroactively. The prohibitions and requirements in the proposed rule are mandated by statute. While compliance with the law may cause some inconvenience or additional expense, this does not relieve DOE of its obligation to carry out the law or the contractor of its obligation to comply with the law. Additionally, new cost segregation requirements are not required since M&O contractors are already required to segregate unallowable costs.

III. Procedural Requirements

A. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

B. Review Under the Regulatory Flexibility Act

This rule was reviewed under the Regulatory Flexibility Act of 1980, Public Law 96–354, which requires preparation of a regulatory flexibility analysis for any rule that is likely to have a significant economic impact on a substantial number of small entities. This rule will have no impact on interest rates, tax policies or liabilities, the cost of goods or services, or other direct economic factors. It will also not have any indirect economic consequences such as changed construction rates. DOE certifies that this rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

C. Review Under the Paperwork Reduction Act

No new information collection or recordkeeping requirements are imposed by this rule. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

D. Review Under Executive Order 12612

Executive Order 12612, entitled "Federalism," 52 FR 41685 (October 30, 1987), requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on states, on the relationship between the Federal government and the states, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. This rule will apply to state agencies that contract with DOE; however, none of the revisions is substantive in nature.

E. National Environmental Policy Act

DOE has concluded that this rule would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.*) (1976) or the Council on Environmental Quality Regulations (40 CFR parts 1500–1508) and, therefore, does not require an environmental impact statement or an environmental assessment pursuant to NEPA.

F. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2 (a) and (b), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

List of Subjects in 48 CFR Part 970

Government procurement.

For the reasons set out in the preamble, part 970 of chapter 9 of title 48 of the Code of Federal Regulations is amended as set forth below.

Issued in Washington, DC on October 8, 1993.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistance Management.

PART 970—DOE MANAGEMENT AND OPERATING CONTRACTS

1. The authority citation for part 970 continues to read as follows:

Authority: Sec. 161 of the Atomic Energy Act of 1954 (42 U.S.C. 2201); sec. 644 of the Department of Energy Organization Act, Public Law 95–91 (42 U.S.C. 7254); sec. 201 of the Federal Civilian Employee and Contractor Travel Expenses Act of 1985 (41 U.S.C. 420); and sec. 1534 of the Department of Defense Authorization Act, 1986, Public Law 99–145 (42 U.S.C. 7256a), as amended.

2. Section 970.3102–20 is revised to read as follows:

970.3102–20 Cost prohibitions related to legal and other proceedings.

(a) Contractor costs incurred in connection with a criminal, civil or administrative proceeding involving contractor violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation are subject to the allowable costs limitations established in section 8 of the Major Fraud Act of 1988, Public Law 100–700 (see 41 U.S.C. 256).

(b) Implementation of the Major Fraud Act's contract cost limitations is specified in the applicable cost principles clauses at 970.5204–13(e)(33) or 970.5204–14(e)(31). Definitive cost principle criteria for determining the allowability of an M&O contractor's costs incurred in connection with a criminal, civil or administrative proceeding are set forth in the contract clause at 970.5204–61. Any change made to the cost principle criteria specified therein constitutes a deviation requiring Procurement Executive approval pursuant to 970.3100–3.

3. Section 970.3103, Contract clauses, is amended by adding paragraph (c) to read as follows:

970.3103 Contract clauses.

* * * * *

(c) The clause setting forth cost prohibitions related to legal and other proceedings at 970.5204–61 shall be included in all M&O contracts.

4. Section 970.5204–13, Allowable costs and fixed-fee (management and operating contracts), is amended by revising paragraph (e)(33) to read as follows:

970.5204–13 Allowable costs and fixed-fee (management and operating contracts).

* * * * *

(e) * * *

(33) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local or foreign government, as provided in the clause titled "Cost prohibitions related to legal and other proceedings" incorporated elsewhere in this contract.

* * * * *

5. Section 970.5204–14, Allowable costs and fixed-fee (support contracts), is amended by revising paragraph (e)(31) to read as follows:

970.5204–14 Allowable costs and fixed-fee (support contracts).

* * * * *

(e) * * *

(31) Costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government or a State, local or foreign government, as provided in the clause titled "Cost prohibitions related to legal and other proceedings" incorporated elsewhere in this contract.

* * * * *

6. Section 970.5204–61, Cost prohibitions related to legal and other proceedings, is added as follows:

970.5204–61 Cost prohibitions related to legal and other proceedings.

(a) *Definitions.*

Conviction, as used in this section, means a judgment or conviction of a criminal offense by any court of competent jurisdiction, whether entered upon a verdict or a plea, including a conviction due to a plea of *nolo contendere*.

Costs include, but are not limited to, administrative and clerical expenses; the cost of legal services, whether performed by in-house or private counsel; the costs of the services of accountants, consultants, or others retained by the contractor to assist it; all elements of compensation, related costs, and expenses of employees, officers and directors; and any similar costs incurred before, during, and after commencement of a proceeding which bears a direct relationship to the proceeding.

Fraud, as used herein, means

(i) Acts of fraud or corruption or attempts to defraud the Government or to corrupt its agents,

(ii) Acts which constitute a cause for debarment or suspension under FAR 9.406-(2)(a) and FAR 9.407–(2)(a), and

(iii) Acts which violate the False Claims Act, 31 U.S.C. 3729–3731, or the Anti-kickback Act, 41 U.S.C. 51 and 54.

Penalty does not include restitution, reimbursement, or compensatory damages.

Proceeding includes an investigation.

(b) Except as otherwise described in this section, costs incurred in connection with any criminal, civil or administrative proceeding commenced by the Federal Government, or a State, local or foreign government, are not allowable if the proceeding relates to a violation of, or failure to comply with, a Federal, State, local or foreign statute or regulation by the contractor, and results in any of the following dispositions:

(1) In a criminal proceeding, conviction.

(2) In a civil or administrative proceeding involving an allegation of fraud or similar misconduct, a determination of contractor liability.

(3) In the case of any civil or administrative proceeding, the imposition of a monetary penalty.

(4) A final decision by an appropriate Federal official to debar or suspend the contractor, to rescind or void a contract, or to terminate a contract for default by reason of a violation of or failure to comply with a law or regulation.

(5) A disposition by consent or compromise, if the action could have resulted in any of the dispositions described in paragraphs (b) (1), (2), (3) or (4) of this section.

(6) Not covered by paragraphs (b)(1) through (5) of this section, but where the underlying alleged contractor misconduct was the same as that which led to a different proceeding whose costs are unallowable by reason of paragraphs (b)(1) through (5) of this section.

(c) If a proceeding referred to in paragraph (b) of this section is commenced by the Federal Government and is resolved by consent or compromise pursuant to an agreement entered into by the contractor and the Federal Government, then the costs incurred by the contractor in connection with such proceeding that are otherwise unallowable under paragraph (b) of this section may be allowed to the extent specifically provided in such agreement.

(d) If a proceeding referred to in paragraph (b) of this section is commenced by a State, local or foreign government, the Contracting Officer may allow the costs incurred in such proceeding, provided the Procurement Executive determines that the costs were incurred as a result of compliance with a specific term or condition of the contract, or specific written direction of the Contracting Officer.

(e) Costs incurred in connection with a proceeding described in paragraph (b) of this section, but which are not made unallowable by that paragraph, may be allowed by the Contracting Officer only to the extent that:

(1) The total costs incurred are reasonable in relation to the activities required to deal with the proceeding and the underlying cause of action;

(2) Payment of the costs incurred, as allowable and allocable contract costs, is not prohibited by any other provision(s) of this contract;

(3) The costs are not otherwise recovered from the Federal Government or a third party, either directly as a

result of the proceeding or otherwise; and

(4) The amount of costs allowed does not exceed 80 percent of the total costs incurred and otherwise allowable under the contract. Such amount that may be allowed (up to the 80 percent limit) shall not exceed the percentage determined by the Contracting Officer to be appropriate, considering the complexity of procurement litigation, generally accepted principles governing the award of legal fees in civil actions involving the United States as a party, and such other factors as may be appropriate. However, where an agreement reached under paragraph (c) of this section, or a determination made under paragraph (d) of this section, explicitly considered this 80 percent limitation, then an amount up to the full amount of costs specifically provided in such agreement or determination may be allowed.

(f) Contractor costs incurred in connection with the defense of suits brought by employees or ex-employees of the contractor under section 2 of the Major Fraud Act of 1988, including the cost of all relief necessary to make such employee whole, where the contractor was found liable or settled, are unallowable.

(g) Costs which may be unallowable under this clause, including directly associated costs, shall be differentiated and accounted for by the contractor so as to be separately identifiable. During the pendency of any proceeding covered by paragraphs (b) and (f) of this section, the Contracting Officer shall generally withhold payment and not authorize the use of funds advanced under the contract for the payment of such costs. However, the Contracting Officer may, in appropriate circumstances, provide for conditional payment upon provision of adequate security, or other adequate assurance, and agreements by the contractor to repay all unallowable costs, plus interest, if the costs are subsequently determined to be unallowable.

[FR Doc. 93–28510 Filed 11–19–93; 8:45 am]
BILLING CODE 6450–01–P

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 1807, 1815, 1852, and 1870

Acquisition Streamlining Techniques

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Interim rule with request for comments.

SUMMARY: NASA has amended the NASA FAR Supplement to incorporate a number of techniques that will streamline the acquisition planning and competitive source selection processes.

DATES: This interim rule is effective upon publication. Comments are due no later than January 6, 1994.

ADDRESSES: Comments should be addressed to Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, Telephone: (202) 358–0482.

SUPPLEMENTARY INFORMATION:

Background

On February 16, 1990, NASA identified a number of techniques and initiatives designed to shorten and improve the acquisition process, and issued them in the Streamlined Acquisition Handbook (SAH). To ensure that all NASA procurement policy is in the appropriate regulation, the more successful of these techniques are now being incorporated into the NASA FAR Supplement. Once this is accomplished, the SAH will be rescinded. Included among these streamlining techniques are internal acquisition planning improvements, greater delegation of authority to NASA field installations, 120 day source selection schedules, streamlined proposal evaluation procedures, and limitations on solicitation and proposal pages, evaluation factors, NASA proposal evaluators, and field pricing requests.

These revisions are issued as an interim rule to ensure immediate improvement in NASA acquisition leadtimes and also to standardize existing practices.

Availability of NASA FAR Supplement

The NASA FAR Supplement, of which this proposed coverage will become a part, is codified in 48 CFR, chapter 18, and is available in its entirety on a subscription basis from the Superintendent of Documents, Government Printing Office, Washington, DC 20402. Cite GPO Subscription Stock Number 933–003–00000–1. It is not distributed to the public, either in whole or in part, directly by NASA.

Impact

NASA certifies that this regulation will not have a significant economic effect on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. *et seq.*). This rule does not impose any reporting or recordkeeping requirements subject to the Paperwork Reduction Act.

List of Subjects in 48 CFR Parts 1807, 1815, 1852, 1870

Government procurement.

Deidre A. Lee,

Associate Administrator for Procurement.

Accordingly, 48 CFR Parts 1807, 1815, 1852, and 1870 are amended as follows:

1. The authority citation for 48 CFR parts 1807, 1815, 1852, and 1870 continues to read as follows:

Authority: 42 U.S.C. 2473(c)(1).

PART 1807—ACQUISITION PLANNING

1807.103 [Amended]

2. In section 1807.103 paragraphs (a)(1) and (b) are revised to read as follows:

1807.103 Agency-head responsibilities.

(a) *Requirement for preparation of procurement plans.*

(1) Except as otherwise authorized by paragraph (a)(2) of this section and 1807.170–4(a), the contracting officer shall prepare a procurement plan, with the advice and assistance of the cognizant technical division, for each negotiated procurement expected to exceed $2,500,000. The estimated dollar amounts shall include all options and later phases contemplated for the same program or project. The plan shall be prepared before soliciting proposals for the initial phase or increment of the program or project.

(2) * * *

(b) *Approval of procurement plans.*

(1) For procurements selected for Headquarters review and approval in accordance with the Master Buy Plan procedure, the procurement plan shall be submitted for the signature of the head of the installation after reviews and written concurrences by the director or assistant director of the cognizant technical directorate, the cognizant program/project manager (or the cognizant staff official, as applicable, reporting directly to the head of the installation), and by the procurement officer. The procurement plan shall be submitted in original and five copies to the Associate Administrator for Procurement (Attention: Code HS) for approval.

(2) For procurements not selected for Headquarters review and approval, and for procurements within the installation's Master Buy Plan limitations, the procurement plan shall be approved in accordance with installation procedures.

(3) The position title shall be shown for each individual signing a procurement plan.

(4) Approval of a procurement plan does not constitute approval of any special conditions, or special clauses that may be required unless the plan so specifies, and the individual having approval authority is a signatory of the plan. All required deviations shall be approved through the procedures described in FAR subpart 1.4 and NFS subpart 1801.4.

3. In section 1807.170–1, paragraph (b)(11) is amended by adding text at the end of the paragraph to read as follows:

1807.170–1 Procurement plans requiring approval by NASA Headquarters.

* * * * *

(b) * * *

(11) * * * Normally, the goal of all competitive procurements should be to complete activities from receipt of proposal to contract award in not more than 120 calendar days. There may be instances when this goal cannot be attained even when all applicable streamlining techniques are used, for example, in procurements of unusual complexity or when a large number of proposals is anticipated. In these cases, a schedule longer than the 120-day goal should be planned, consistent with the exercise of good judgement.

4. In section 1807.170–1, paragraph (d)(1)(i) is revised to read as follows:

1807.170–1 Procurement plans requiring approval by NASA Headquarters.

* * * * *

(d) Additional pages.

(1) * * *

(i) Identify any deviations from the FAR or NFS (see 1807.103(b)(4));

* * * * *

5. Section 1807.170–4 is added to read as follows:

1807.170–4 Acquisition Strategy Meeting (ASM).

(a) The ASM is a meeting in which all NASA offices with an interest in the procurement come together to discuss its significant aspects, resolve major issues, and agree on the acquisition strategy. When an ASM is conducted, formal written minutes shall be prepared to summarize the decisions, actions, and conclusions of the ASM members. The approved minutes serve as the formal procurement plan required by 1807.103(a).

(b) ASMs may be held at Headquarters or field installations. Headquarters ASMs will be selected through the Master Buy Plan procedure. the Code HS analyst responsible for the procurement will schedule the meeting and will coordinate attendance with the installation's procurement office. The following offices will normally participate:

(1) Headquarters: cognizant program office; procurement; comptroller; safety and mission assurance; general counsel; management systems and facilities; and small disadvantaged business utilization.

(2) Installation: project office; procurement; and other offices as determined by the installation.

(c) Headquarters ASMs will be chaired by the Associate Administrator for Procurement or his/her designee. The Code HS analyst will prepare the minutes of Headquarters ASMs and distribute them to all attendees for review prior to approval by the ASM chairperson.

(d) For procurements within field installation approval levels, or for which procurement plan approval authority has been delegated from Headquarters, ASMs may be held at the installation and the minutes approved in accordance with installation procedures.

(e) ASMs, whether held at Headquarters or field installations, shall address the mandatory procurement plan topics specified in 1807.170. The briefing charts discussing these topics shall be appended to the approved ASM minutes and included in the contract file to serve as a record of satisfaction of the formal procurement plan requirement.

(f) Use of an ASM in lieu of a formal procurement plan does not in itself constitute approval of any deviations, special conditions, or special clauses that may be required, unless these items are specifically discussed at the ASM, agreed to by the individual having approval authority, and included in the ASM minutes. For deviations to be approved through the ASM process, all the information required by subpart 1801.4 must be presented and discussed.

1807.7102 [Amended]

6. In section 1807.7102, paragraph (a) is amended by removing the parenthetical reference "(see 1807.103(b)(1))" in the first sentence.

1807.7103–1 and 1807.7103–2 [Amended]

7. In section 1807.7103–1, paragraph (b), and in 1807.7103–2, paragraph (a), the reference "1807.7107" is revised to read "1807.7106" in each instance.

1807.7105 [Removed]

8. Section 1807.7105 is removed.

1807.7106 and 1807.7107 [Redesignated]

9. Sections 1807.1706 and 1807.7107 are redesignated 1807.7105 and 1807.7106, respectively.

10. Newly redesignated section 1807.7105 is revised to read as follows:

1807.7105 Procurement documents not selected for Headquarters review and approval.

(a) Procurement documents or actions not selected for Headquarters review and approval shall be processed at the installation level and approved in accordance with installation procedures.

(b) Procurement documents authorized to be processed at the installation level will be subject to after-the-fact reviews by Headquarters during normal procurement management surveys or other special reviews. Procurement delegations may subsequently be rescinded if a Headquarters review is deemed appropriate.

PART 1815—CONTRACTING BY NEGOTIATION

11. Section 1815.406 is amended by adding paragraphs (c) and (d) to read as follows:

1815.406 Preparing requests for proposals (RFPs) and requests for quotations (RFQs).

* * * * *

(c) Technical and contracting personnel will mutually agree on page limitations for their respective portions of an RFP. Unless approved in writing by the Procurement Officer, the page limitation for the contracting portion of an RFP (all sections except section C, Description/specifications/work statement) shall not exceed 150 pages, and the page limitation for the technical portion (Section C) shall not exceed 200 pages. Attachments to the RFP count as part of the section to which they relate. In determining page counts, a page is defined as one side of a sheet, 8½" x 11", with at least one inch margins on all asides, using not less than 12 characters per inch or equivalent type. Foldouts count as an equivalent number of 8½" x 11" pages. The metric standard format most closely approximating the described standard 8½" x 11" size may also be used.

(d) Page limitations shall also be established for proposals submitted in competitive procurements. Accordingly, technical and contracting personnel will mutually agree on page limitations for each portion of the proposal. Unless a different limitation is approved in writing by the Procurement Officer, the total initial proposal, excluding title pages, tables of content, and cost/price

information, shall not exceed 500 pages using the page definition of 1815.406(c). Firm page limitations shall also be established for Best and Final Offers (BAFOs), if requested. The appropriate BAFO page limitations should be determined by considering the complexity of the procurement and the extent of any written or oral discussions. The same BAFO page limitations shall apply to all offerors. Pages submitted in excess of the specified limitations for the initial proposal and BAFO will not be evaluated by the Government and will be returned to the offeror.

12. Section 1815.407–70 is amended by adding paragraphs (j) and (k) to read as follows:

1815.407–70 NASA solicitation provisions.

* * * * *

(j) The contracting officer shall insert the provision at 1852.215–81, Proposal Page Limitations, in all competitive requests for proposals.

(k) The contracting officer shall insert the provision at 1852.215–82, Offeror Oral Presentations, in competitive requests for proposals when the Government intends to allow offerors to make oral presentations prior to commencement of the Government's formal evaluation.

13. In section 1815.613–71, paragraph (b)(4) is revised to read as follows:

1815.613–71 Evaluation and negotiation of procurements conducted in accordance with source evaluation board (SEB) procedures.

* * * * *

(b) * * *

(4) Initial evaluation, scoring, and determination of competitive range.

(i) After initial identification of proposals not considered acceptable per 1815.613–71(b)(3), the SEB shall conduct an initial evaluation of all remaining proposals. This process is accomplished through either of two procedures. In the standard method, the SEB will complete its initial evaluation of the entire proposal in accordance with the evaluation factors, subfactors, and elements, and determine strong and weak points. This evaluation will be fully documented, including scoring or ranking proposals in accordance with the numerical and adjectival standards identified in the RFP and this handbook, except cost which is neither scored nor ranked. After this evaluation and scoring is completed, the proposals shall be reviewed to determine which are within the competitive range; namely those having a reasonable chance of being selected for final award. In making this determination, the SEB, together with the contracting officer, shall evaluate the potential for offerors to improve the competitive position of their proposals by written or oral discussions conducted in accordance with paragraph (b)(5) of this section. For those offerors remaining in the competitive range, the SEB will then develop questions for written and oral discussions.

(ii) An alternate method of initial evaluation dispenses with initial scoring: Although its use is a option reserved by NASA on all SEBs, the determination to use it on a given procurement cannot be pre-planned. It normally may only be used when two conditions exist: (A) relatively few (e.g., two or three) proposals are received; and (B) a full scoring or ranking of proposals is not required to make the determination that all offerors are in the competitive range. Whether a procurement satisfies the first qualification is obvious. To determine the second, however, the SEB must begin to evaluate the entire proposal against the evaluation factors, subfactors, and elements just as in the standard method. If during this evaluation process it becomes apparent that all offerors will be in the competitive range, the SEB may then elect to use the alternate method of initial evaluation by making this competitive range determination without formally scoring or ranking the proposals or generating the extensive documentation required to support this scoring or ranking. Once the alternate method is chosen, the initial evaluation is completed when the SEB determines strong and weak points for all proposals and develops questions for written and oral discussions. The SEB will then proceed directly to the discussion phase of the evaluation process. Only the BAFO is fully scored and ranked, and the results of this scoring or ranking are presented to the SSO to assist the selection decision. The principal benefit in using the alternate scoring method is the reduced time and resources associated with not performing two separate and complete proposal scorings along with the attendant documentation.

(iii) Regardless of which evaluation method is used, the competitive range consists of the proposals with a reasonable chance of being selected for award, considering mission suitability, cost or price, relevant experience and past performance, and other considerations. When there is doubt as to whether a proposal is within the competitive range, that doubt shall be resolved by including it.

(iv) The initial number of offerors whose proposals are considered as being within the competitive range may be narrowed as a result of the written or oral discussions. However, a proposal initially included in the competitive range should not be rejected without giving the offeror an opportunity to submit a revised proposal to serve as the basis for establishing the new competitive range, unless the discussions relating to an ambiguity or omission make it clear that the proposal should not have been included in the competitive range.

* * * * *

14. Section 1815.613–72 is amended by revising the section heading, designating the existing paragraph as paragraph (a), and adding paragraph (b) to read as follows:

1815.613–72 NASA solicitation provisions.

(a) * * *

(b) The contracting officer shall insert the provision at 1852.215–83, Alternate Method of Scoring Proposals, in all solicitations using formal SEB procedures.

PART 1852—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1852.215–70 [Amended]

15. Section 1852.215–70 is amended by revising the prescription reference "1815.613–72" to read "1815.613–72(a)".

1852.215–81, 1852.215–82, 1852.215–83 [Added]

16. Sections 1852.215–81, 1852.215–82, and 1852.215–83 are added to read as follows:

1852.215–81 Proposal Page Limitations.

As prescribed in 1815.407–70(j), insert the following provision:

Proposal Page Limitations

(October 1993)

(a) The following page limitations are established for each portion of the proposal submitted in response to this solicitation.

Proposal section	Page limit
(List each volume or section)	(Specify limit)

(b) A page is defined as one side of a sheet, 8½" x 11", with at least one inch margins on

all sides, using not less than 12 characters per inch (or equivalent) type. Foldouts count as an equivalent number of 8½" x 11" pages. The metric standard format most closely approximately the described standard 8½" x 11" size may also be used.

(c) Title pages and tables of contents are excluded from the page counts specified in paragraph (a) of this provision. In addition, the Cost section of your proposal is not page limited. However, this section is to be strictly limited to cost and price information. Information that can be construed as belonging in one of the other sections of the proposal will be so construed and counted against that section's page limitation.

(d) If Best and Final Offers (BAFOs) are requested, separate page limitations will be specified in the Government's request for that submission.

(e) Pages submitted in excess of the limitations specified in this provision will not be evaluated by the Government and will be returned to the offeror.

(End of provision)

1852.215–82 Offeror Oral Presentations.

As prescribed in 1815.407–70(k), insert the following provision:

Offeror Oral Presentations

(November 1993)

(a) Offerors are invited to give an oral presentation to the Government on the structure and general content of their proposals. These presentations are intended to assist Government evaluation by providing a "roadmap" to understanding proposals, i.e., an overview of the proposed organization and layout, and where required information and elements are located. Although the offeror's basic approach to satisfying solicitation requirements may be explained, it is to be done so only in general terms and only to expedite the Government's formal evaluation.

(b) The Government will not engage in any discussions during the oral presentation, and no proposal revisions will be accepted as part of the presentation. The Government's evaluation of offeror proposals will be based on the contents of the initial proposal, and any information not included in the initial proposal that is provided at the oral presentation will not be evaluated.

(c) Offerors should indicate in their proposals if they wish to give an oral presentation. These presentations are not mandatory, and electing not to give a presentation will not, in itself, affect proposal evaluation.

(d) Because the presentations are intended to assist the Government's evaluation, they will be scheduled to take place prior to commencement of the formal initial evaluation, normally within three days after proposal receipt. Offerors unable to accommodate this schedule forfeit their opportunity to provide a presentation.

(e) The presentations will consist of an offeror briefing not to exceed *[insert 1 or 2]* hours to be followed by a question and answer period. The order of offeror presentations will be determined at random. The exact time and place of the presentation, along with any other guidance, will be provided to the offeror by the contracting officer or his/her representative.

(f) Presentation materials are not required, but if used, the Government will retain one copy in its official file as a historical record of the presentation even though these materials will not be used in the Government's evaluation process.

(End of provision)

1852.215–83 Alternate Method of Scoring Proposals.

As prescribed in 1815.613–72(b), insert the following provision:

Alternate Method of Scoring Proposals

(November 1993)

NASA reserves the right to evaluate proposals received in response to this solicitation under either of the two scoring methods described in NASA FAR Supplement 1815.613–71(b)(4) and 1870.303, App. I, paragraph 407.6.d. Under the standard method, proposals are scored at the completion of initial evaluations and again upon completion of evaluations of Best and Final Offers (BAFOs). Under the alternate method, proposals are scored only after completion of BAFO evaluation.

(End of provision)

PART 1870—NASA SUPPLEMENTARY REGULATIONS

1870.303, Appendix I [Amended]

17. In section 1870.303, Appendix I, chapter 1, paragraph 101 is amended by adding paragraph 4.k. to read as follows:

Appendix I to 1870.303 NASA SOURCE EVALUATION BOARD PROCEDURES (HANDBOOK)

* * * * *

Chapter 1—Key Participants in the Source Evaluation Board Process

* * * * *

101 *Cognizant Management Responsibilities*

* * * * *

4. * * *

(k) Ensure that the activities of the SEB are carefully planned, all key events identified and scheduled, and progress monitored. Normally, the goal of all SEBs should be to complete activities from receipt of proposal to contract award in not more than 120 calendar days. Realization of this goal can be furthered through the synergism of acquisition streamlining techniques such as RFP and proposal page limitations, reduced SEB memberships, and limitation of evaluation sub-factors and elements to key discriminators. However, there may be instances when this goal cannot be attained even when these streamlining techniques are used, for example, in procurements of unusual complexity or when a large number of proposals is anticipated. In these cases, a schedule longer than the 120-day goal should be planned, consistent with the exercise of good judgment.

* * * * *

18. In section 1870.303, Appendix I, chapter 1, paragraph 102 is amended by adding text at the end of paragraph 102.1 to read as follows:

* * * * *

102 *Source Selection Official*

1. * * * When source selection official authority is at the installation level, either by delegation from Headquarters or by virtue of a procurement value under the installation Master Buy Plan limitation, the head of the installation may further delegate this authority to the lowest reasonable level.

* * * * *

19. In section 1870.303, Appendix I, chapter 2, paragraph 201 is amended by revising paragraph 201.1.f., redesignating the old paragraph 201.1.g. as paragraph 201.1.h., and adding a new paragraph 201.1.g to read as follows:

Chapter 2—Membership, Organization, and Responsibilities

* * * * *

201 *Membership*

1. *Composition*

* * * * *

f. SEB membership shall be limited to a maximum of 7 voting individuals. Wherever feasible, an assignment to SEB membership as a voting member shall be on a full-time basis. Where this is not feasible, SEB membership shall take precedence over other duties.

g. If additional support is needed, committees and panels may be used to assist in the evaluation. The total of all such evaluators (committees, panels, etc., excluding SEB voting members and ex officio members) shall be limited to a maximum of 20 individuals, unless approved in writing by the Procurement Officer.

h. The number of nonvoting ex officio (advisory) members shall be kept as small as the nature of the procurement allows. Ex officio members should be selected for the experience and expertise they can provide to the SEB. Since their advisory role may require access to highly sensitive SEB material and findings, ex officio membership for persons other than those identified in paragraph 3.b. should be carefully considered.

* * * * *

20. In section 1870.303, Appendix I, chapter 3, paragraph 301 is amended by revising paragraph 301.1.e.(1) to read as follows:

Chapter 3—Evaluation Factors, Subfactors and Elements

* * * * *

301 *Mission Suitability*

1. *Evaluation Subfactors*

* * * * *

e. (1) In structuring evaluation subfactors and elements, emphasis should be placed on identification of significant discriminators, or "key swingers"—the essential information required to support a source selection decision. Too many subfactors and elements are detrimental to effective evaluation of proposals and may result in a leveling or averaging out of scores over all proposals. To avoid this negative effect, the number of subfactors under Mission Suitability shall be no more than 4 and the number of elements no more than 8. Other evaluation factors shall also be limited to only essential subfactors and elements. Further, care should be taken to avoid overlap and redundancy by clearly defining each evaluation subfactor and element. Avoiding such overlap assures an offeror is not scored in two or more areas for the same work.

* * * * *

21. In section 1870.303, Appendix I, chapter 3, paragraph 302 is amended by revising the introductory paragraph of 302.2 to read as follows:

* * * * *

302 *Cost*

* * * * *

2. In the Cost factor evaluation, the SEB shall analyze the proposed costs or prices of all offerors in accordance with the criteria in FAR 15.805. The SEB may use any or all tools available in performing these analyses, including information in the Armed Services Pricing Manual (ASPM). If field pricing/audit support is requested, the request should be tailored to reduce the time required for the support and still enable the SEB to properly review proposals. Whenever possible and appropriate, pricing/audit support should be limited to that information specifically required for the SEB deliberation process. All pricing/audit support requests should specifically identify the limited areas for which pricing assistance is required and should also specify the response date required for timely accomplishment of SEB proceedings. At the conclusion of its analyses, the SEB shall advise the SSO concerning—

* * * * *

22. In section 1870.303, Appendix I, chapter 4, paragraph 404 is amended by adding text at the end of paragraph 404.1, revising paragraph 404.2.m, and adding paragraph 404.2.n, to read as follows:

Chapter 4—SEB Operating Procedures for Solicitation and Evaluation

* * * * *

404 *Request for Proposals (RFPs)—Review and Approval*

1. * * * To streamline the solicitation review cycle, use of the Solicitation Review Board (SRB) technique, or its functional equivalent, is encouraged as an alternative to the traditional procedure of serial or sequential coordination of the solicitation with reviewing offices. The SRB is a meeting in which all offices having review and approval responsibilities meet to discuss the solicitation and their concerns. Individual reviewers should be given a reasonable amount of time to review the document prior to the meeting. At the conclusion of the meeting, recommendations for changes are made and the solicitation is formally approved or disapproved. Afterwards, formal written minutes reflecting the agreement of the SRB members shall be prepared and included in the contract file. Use of this technique not only expedites the review and approval process, but it also encourages the synergism of a number of acquisition professionals discussing their concerns in one forum.

* * * * *

2. * * *

m. Limitations on pages and the number of copies of offerors' initial proposals shall be included in accordance with NFS 1815.406(d). In no case shall the total proposal, excluding cost/price information, exceed 500 pages using the page definition of 1815.406(c), unless a different limitation is approved in writing by the Procurement Officer. Firm page limitation shall also be established for BAFOs, if requested. The appropriate BAFO page limitations should be determined by considering the complexity of the procurement and the extent of any written or oral discussions. The same BAFO page limitations shall apply to all offerors. Proposal pages exceeding the specified maximums shall be removed from the proposal or BAFO and not evaluated. One copy of these pages shall be retained for the official contract file and the remaining copies returned to the offeror. When excess pages are returned to the offeror, cite the Proposal Page Limitations provision of the solicitation.

n. When applicable, a notice is included that offerors are invited to give oral presentations after receipt of proposals but before initial evaluation.

* * * * *

23. In section 1870.303, Appendix I, chapter 4, paragraph 405 is amended by revising paragraphs 405.1 and 405.2 to read as follows:

* * * * *

405 *Preproposal Conference*

1. A preproposal conference to brief prospective offerors may be conducted after a solicitation has been issued but before proposals are received, in accordance with FAR 15.409. The contracting officer, in conjunction with the SEB, shall make a determination prior to issuance of the solicitation whether a preproposal conference will be held. Conferences should be held only when their value to the Government and prospective offerors is apparent, and the specifics of any given procurement should be carefully considered in assessing this value. Generally, these conferences are of most value in complex acquisitions where it is necessary to ensure that complicated specifications or requirements are fully and clearly understood. These conferences can also be of value in major on-site service contracts to familiarize offerors with the center organization and its physical layout, as well as the specific contract tasks. (In these latter cases site visits and observation of on-going operations should also be considered). In more routine, less complex procurements, however, the preproposal conference offers far less value and should normally not be used.

2. When a preproposal conference is held, the solicitation shall include the Preproposal/Pre-Bid Conference provision at 1852.215–77, indicating the time and place of the conference. The conference shall be scheduled to permit prospective offerors sufficient time after the issuance of the solicitation to become familiar with its requirements but not too late to allow meaningful use of the information obtained at the conference.

* * * * *

24. Section 1870.303, Appendix I, chapter 4, is amended by redesignating paragraphs 406 and 407 as paragraphs 407 and 408, respectively; adding a new paragraph 406; and adding paragraph

6.d. to newly designated paragraph 407 to read as follows:

* * * * *

406 *Offeror Oral Presentations*

1. In some cases, offeror oral presentations may expedite the evaluation and provide insight into the proposals. These presentations are of particular value in procurements when the proposal content is expected to be complex or when the proposal will include an unusually large number of volumes. The SEB should consider the specifics of a given procurement in assessing the value of offeror oral presentations, and should utilize them only when their value is apparent.

2. If offeror oral presentations are held, they should be conducted before commencement of initial evaluation of proposals, normally not more than three days after receipt. The offerors should be instructed that the presentations are to be a "roadmap" to understanding their proposals, i.e., a discussion of the proposal organization and layout, and where required information and elements are located. Although the offeror's basic approach to satisfying solicitation requirements may be explained, it is to be done so only in general terms and only to expedite the Government's formal evaluation. The presentation is not intended for the offerors to provide additional information or supporting rationale that was not included in the proposal, nor is it to be a forum to "market" the proposal. Government attendees shall not engage in any discussions during the oral presentation, and no proposal revisions may be accepted as part of the presentation. The Government's evaluation of offeror proposals is be based on the contents of the initial proposal, and any information not included in the initial proposal that is provided at the oral presentation shall not be evaluated.

3. A typical presentation consists of a strictly enforced one to two hour briefing period followed by a question and answer period. Government evaluators may ask questions about the proposal "roadmap" only and should not engage in detailed discussions over the value or validity of the offeror's proposed approach to satisfying solicitation requirements. All offerors must be afforded the same opportunity to brief and the same briefing groundrules. If considered appropriate, limitations may be placed on the number of offeror and Government attendees to ensure the presentation meets its intended purpose. The order of presentation should be determined at random.

4. The SEB may determine which of the Government participants in the evaluation may attend the offeror oral presentations. However, to eliminate bias and to ensure objectivity during the evaluation process, any individual who attends one presentation must attend all presentations, unless prevented from doing so by emergency or other unforeseen event. The SEB shall retain one copy of all briefing materials (if any) used in the presentation, as well as SEB-prepared minutes of the meeting, as historical records for the official contract file. However, the briefing materials and minutes shall not be used in the formal evaluation process.

407 *Initial Evaluation*

* * * * *

6. SEB Findings

* * * * *

d. Proposals may also be evaluated and scored under an alternate method that does not require scoring after initial evaluation of proposals. It normally may only be used when two conditions exist: (1) relatively few (e.g., two or three) proposals are received; and (2) a full scoring or ranking of proposals is not required to make the determination that all offerors are in the competitive range. If during the initial evaluation of proposals, it becomes apparent that all offerors will be in the competitive range, the SEB may then elect to use the alternate method of initial evaluation by making this competitive range determination without formally scoring or ranking the proposals or generating the extensive documentation required to support this scoring or ranking. Once the alternate method is chosen, the initial evaluation is completed when the SEB determines strong and weak points for all proposals and develops questions for written and oral discussions. The SEB will then proceed directly to the discussion phase of the evaluation process. Only the BAFO is fully scored and ranked, and the results of this scoring or ranking are presented to the SSO to assist the selection decision. The principal benefit in using the alternate scoring method is the reduced time and resources associated with not performing two separate and complete proposal scorings along with the attendant documentation.

* * * * *

[FR Doc. 93–28544 Filed 11–19–93; 8:45 am]

BILLING CODE 7510–01–M

Proposed Rules

Federal Register
Vol. 58, No. 223
Monday, November 22, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–166–AD]

Airworthiness Directives; Jetstream Aircraft Limited Model ATP Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Jetstream Model ATP airplanes. This proposal would require replacement of certain circuit breakers on the left- and right-hand AC generator panel assemblies with new circuit breakers. This proposal is prompted by reports of failures due to localized overheating of the electric power circuit for the air conditioning recirculation fan in the environmental control system (ECS). The actions specified by the proposed AD are intended to prevent the recirculation fan circuit from overheating, which could lead to smoke and/or flame in the fuselage.

DATES: Comments must be received by January 24, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Jetstream Aircraft, Inc., P.O. Box 16029, Dulles International Airport, Washington, DC 20041–6029. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–166–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–166–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on certain Jetstream Model ATP airplanes. The CAA advises that reports have been received of failures of the electric power circuit for the air conditioning recirculation fan in the environmental control system (ECS). Investigation revealed that these failures were caused by localized overheating of the recirculation fan circuit. This localized overheating has been attributed to certain Texas Instrument circuit breakers that fail to protect the electrical power circuit properly when a recirculation fan electrical circuit overload condition exists. Circuit breaker failure and resultant recirculation fan circuit overheating could lead to smoke and/or flame in the fuselage.

Jetstream has issued Service Bulletin ATP–21–24–10306A, dated July 30, 1993, that describes procedures for replacement of Texas Instrument circuit breakers 1HG3 and 2HG3 having part number (P/N) 6TC4–10, on the left- and right-hand AC generator panel assemblies at zones 131–05–00 and 132–05–00, respectively. The service bulletin recommends replacement with Genelco circuit breakers having P/N 4330–014–10, which incorporate design features that will assure opening of the circuit breaker under all expected excessive current conditions. Such opening will prevent overheating of the recirculation fan circuit. The service bulletin recommends that the replacement of the circuit breakers be accomplished within 1,500 hours time-in-service. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of certain Texas Instrument circuit breakers on the left- and right-hand AC generator panel assemblies

with certain Genelco circuit breakers. The actions would be required to be accomplished in accordance with the service bulletin described previously. However, based upon the potential for smoke/flame in fuselage and the adverse consequences of such a condition, the FAA has determined that the proposed replacement must be accomplished within a more timely time frame than 1,500 hours time-in-service, as is recommended in the referenced service bulletin. Therefore, this action proposes that the replacement be accomplished within 600 hours time-in-service.

The replacement circuit breakers have been installed during production on airplanes beginning with serial number 2066. Therefore, this proposed rule would be applicable only to airplanes having serial numbers 2002 through 2065 inclusive.

The FAA estimates that 10 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 2 work hours per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $225 per airplane. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $3,350, or $335 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Jetstream Aircraft Limited (Formerly British Aerospace): Docket 93–NM–166–AD.

Applicability: Model ATP airplanes, serial numbers 2002 through 2065 inclusive, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent the recirculation fan circuit from overheating, which could lead to smoke and/or flame in the fuselage, accomplish the following:

(a) Within 600 hours time-in-service after the effective date of this AD, replace Texas Instrument circuit breakers 1HG3 and 2HG3 having part number (P/N) 6TC4–10, on the left- and right-hand AC generator panel assemblies at zones 131–05–00 and 132–05–00, respectively, with Genelco circuit breakers having P/N 4330–014–10, in accordance with Jetstream Service Bulletin ATP–21–24–10306A, dated July 30, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28575 Filed 11–19–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 39

[Docket No. 93–NM–159–AD]

Airworthiness Directives; Dassault Aviation Model Mystere-Falcon 50 Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain Dassault Aviation Model Mystere-Falcon 50 series airplanes. This proposal would require replacement of certain attachment clamps installed on the engine exhaust ducts with improved clamps. This proposal is prompted by reports of failures of certain attachment clamps due to fatigue cracking. The actions specified by the proposed AD are intended to prevent such failures, which could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm.

DATES: Comments must be received by Janaury 24, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Falcon Jet Corporation, Customer Support Department, Teterboro Airport, Teterboro, New Jersey 07608. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–159–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–159–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Direction Générale de l'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the FAA that an unsafe condition may exist on certain Dassault Aviation Model Mystere-Falcon 50 series airplanes. The DGAC advises that there have been numerous reports of failures of certain attachment clamps installed on the engine exhaust ducts. Subsequent to some of these incidents, exhaust gas leaked from the engine exhaust duct and triggered a false engine fire alarm. A false engine fire alarm could prompt the flight crew to unnecessarily deploy fire extinguishing agent. Such action may reduce the concentration of the agent to levels below that required to extinguish an engine fire. Subsequent investigation revealed that these clamps (v-band clamps), which connect the engine exhaust duct to the aft body of the airplane, failed due to fatigue cracking. This condition, if not corrected, could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm. (However, there have been no reports of any engine fire occurring in service that has been due to the failure of these attachment clamps.)

Dassault Aviation has issued Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993, that describes procedures for replacing certain attachment clamps installed on the engine exhaust ducts with improved attachment clamps. Because the improved clamps have a larger and thicker band, they are less susceptible to fatigue cracking. The DGAC classified this service bulletin as mandatory and issued French Airworthiness Directive 93–113–013(B), dated July 21, 1993, in order to assure the continued airworthiness of these airplanes in France.

This airplane model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of certain attachment clamps installed on the engine exhaust ducts with improved clamps. The replacement would be required to be accomplished in accordance with the service bulletin described previously.

The proposed AD also would require inspections of certain other attachment clamps installed on the engine exhaust ducts to verify if the clamp screw is straight, to verify if the tightening torque value of the clamp screw is accurately marked on the attachment clamp, and to verify that the clamp screw is tightened to the correct torque value. If any discrepancy is detected, the proposed AD also would require replacement of the clamp, correction of the marking, or tightening of the clamp screw.

The FAA estimates that 133 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be provided by the manufacturer at no cost to operators. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $7,315, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Dassault Aviation: Docket 93–NM–159–AD.

Applicability: Model Mystere-Falcon 50 series airplanes, serial numbers 2 through 216 inclusive; equipped with exhaust duct attachment clamps, part number (P/N) NH1002299–10 or P/N NH1007763–10; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent failure of attachment clamps installed on the engine exhaust ducts, which could cause exhaust gas to leak and, subsequently, could trigger a false engine fire alarm, accomplish the following:

(a) For airplanes equipped with exhaust duct attachment clamps having P/N NH1002299–10: Within 300 flight hours after the effective date of this AD, or within 6 months after the effective date of this AD, whichever occurs first, replace attachment clamps having P/N NH1002299–10 with attachment clamps having P/N NH1007763–10, in accordance with Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(b) For airplanes equipped with exhaust duct attachment clamps having P/N NH1007763–10: Within 1,400 flight hours after the effective date of this AD, inspect the attachment clamps installed on the engine exhaust ducts to verify if the clamp screw is straight (not bent).

(1) If the clamp screw is straight, prior to further flight, verify if the tightening torque value of the screw is marked on the attachment clamp as follows: "Normal Net Torque 100–120 IN-LBS."

(i) If the marking is as specified in paragraph (b)(1) of this AD, no further action is required.

(ii) If the marking is not as specified in paragraph (b)(1) of this AD, prior to further flight, erase the incorrect marking and replace it with the correct tightening torque value.

(iii) After correcting the marking, prior to further flight, ensure that the clamp screw is secured to the tightening torque value specified in paragraph (b)(1) of this AD.

(2) If the clamp screw is bent, prior to further flight, replace the discrepant attachment clamp with a new attachment clamp having the same part number, in accordance with the Accomplishment Instructions of Dassault Aviation Service Bulletin F50–229 (F50–54–13), Revision 1, dated July 21, 1993.

(c) As of the effective date of this AD, no person shall install an exhaust duct attachment clamp having P/N NH1007763–10 on any airplane, unless that attachment clamp is marked "Normal Net Torque 100–120 IN-LBS."

(d) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 16, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28576 Filed 11–19–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 784, and 817

RIN 1029–AB69

Permanent Regulatory Program; Underground Mining Permit Application Requirements; Underground Mining Performance Standards

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of public comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) extends until January 24, 1994, the public comment period on the proposed rule published in the September 24, 1993, **Federal Register** (58 FR 50174). This will provide more time in which to comment on the proposed rule.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on January 24, 1994.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Nancy R. Broderick, Branch of Federal and Indian Programs, Office of Surface Mining Reclamation and Enforcement, U.S. Department of the Interior, 1951 Constitution Avenue, NW., Washington, DC 20240; telephone (202) 208–2564.

SUPPLEMENTARY INFORMATION: On September 24, 1993 (58 FR 50174), OSM published a proposed rule which would require all underground coal mining operations conducted after October 24, 1992, to promptly repair or compensate for material damage to non-commercial buildings and occupied residential dwellings and related structures as a result of subsidence due to underground coal mining operations; rehabilitate, restore, or replace identified structures and compensate owners in the full amount of the diminution in value resulting from the subsidence; replace water supplies which have been adversely affected by underground coal mining operations; perform a pre-subsidence survey and repair or compensate for subsidence-related damage caused by underground mining activities to structures or facilities; and provide, when necessary, an additional performance bond to cover subsidence-related material damage. The proposed rule provides for broader protection of structures by removing the provision that imposes a State law limitation on an underground coal mine operator's liability for damage to structures. Performance standards required by the Energy Policy Act of 1992 would be enforceable nationwide immediately upon the effective date of the final rule.

The comment period for the proposed rule was scheduled to close on November 23, 1993. However, an extension was requested in order to provide more time in which to comment on the proposed rule. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on January 24, 1994.

Dated: November 16, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–28605 Filed 11–19–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 16

[FRL–4804–6]

Privacy Act of 1974; Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA proposes to amend its regulations implementing the Privacy Act of 1974, as amended, by exempting a new system of records from compliance with certain subsections of the Act. The new EPA–30 system of records, which was published recently

in the **Federal Register**, is called "OIG Hotline Allegation System—EPA/OIG" and is maintained by the Office of Inspector General (OIG). The proposed rule will add this new system of records to the other systems of records for which EPA has already claimed a specific exemption under the Privacy Act. This amendment is made to maintain the efficiency and integrity of OIG investigations, audits, or referrals that result from complaints concerning the possible existence of activities constituting a violation of law, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety.

DATES: Comments must be submitted on or before December 22, 1993.

ADDRESSES: Interested persons may submit written comments to: John C. Jones, Assistant Inspector General for Management, Office of Inspector General (A–109), Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Comments received on this proposed rule will be available for reviewing and copying from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays, in Rm. NE314, Environmental Protection Agency, 401 M Street, SW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: John C. Jones, (202) 260–4912.

SUPPLEMENTARY INFORMATION: On July 2, 1986, EPA's final rule exempting several systems of records from compliance with certain subsections of the Privacy Act of 1974 was published in the **Federal Register** (51 FR 24145). EPA claimed a specific exemption for four systems of records under the authority of 5 U.S.C. 552a(k)(2). The exempted systems of records are identified at 51 FR 24146 and 24148 and are codified at 40 CFR 16.14(a)(1).

EPA has proposed to add a new system of records to those systems of records for which exemptions have already been claimed. This new EPA–30 system of records is called "OIG Hotline Allegation System—EPA/OIG." A notice describing that system of records was published in the **Federal Register** recently.

Under the Inspector General Act of 1978, as amended, 5 U.S.C. app., EPA's Inspector General has the duty to recommend policies for and to conduct, supervise, and coordinate activities in EPA and between EPA and other Federal, State, and local governmental agencies with respect to: (1) The prevention and detection of fraud in programs and operations administered or financed by EPA, and (2) the identification and prosecution of participants in such fraud. In addition, whenever the Inspector General has reasonable grounds to believe there has been a violation of Federal criminal law, the Inspector General must report the matter expeditiously to the Attorney General.

The OIG Hotline Allegation System, which is operated and maintained by the OIG, Office of Management, Program Management Division, contains complaints and allegations received from employees of EPA, employees of other Federal agencies, employees of State and local agencies, and private citizens concerning the possible existence of fraud relating to Agency programs and operations. The system has been created in major part to support the criminal law enforcement activities assigned by the Inspector General to the Assistant Inspector General for Investigations.

In addition to its principal function pertaining to the enforcement of criminal laws, the OIG Hotline Allegation System contains complaints and allegations received from various sources concerning the possible existence of activities constituting a noncriminal violation of law, rules, or regulations, mismanagement, gross waste of funds, abuse of authority, or a substantial and specific danger to the public health or safety. Such complaints and allegations are referred to investigators or auditors in the OIG, to other components of EPA, or to other Federal, State, or local governmental agencies, as appropriate.

Under 5 U.S.C. 552a(k)(2), the head of any agency may exempt a system of records from certain subsections of the Privacy Act of 1974 if it contains investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), subject to certain restrictions.

Accordingly, EPA proposes to exempt this system of records to the extent that it contains investigatory material compiled for law enforcement purposes, other than material within the scope of 5 U.S.C. 552a(j)(2), from the following subsections of the Privacy Act of 1974, as permitted by 5 U.S.C. 552a(k)(2): 5 U.S.C. 552a(c)(3), (d), (e)(1), (e)(4)(G), (H), and (I), and (f).

Reasons for exemptions: EPA proposes to exempt this system of records from the above requirements of the Privacy Act of 1974 to accomplish the law enforcement functions of the OIG (e.g., to prevent subjects of investigations from frustrating the investigatory process by discovering the scope and progress of an investigation; to prevent the disclosure of investigative techniques; to fulfill commitments made to protect confidentiality of sources; to maintain access to sources of information; and to avoid endangering these sources and law enforcement personnel). Additional reasons for exempting this system of records are set forth in EPA's final rule pertaining to Privacy Act exemptions published in the **Federal Register** of July 2, 1986 (51 FR 24145).

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely effect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

It has been determined that this rule is not a "significant regulatory action" under the terms of Executive Order 12866.

However, OMB will review this rule during the public comment period and provide EPA with any comments.

Paperwork Reduction Act

This proposed rule does not constitute an information collection request within the meaning of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* Therefore, this proposed rule is not subject to the requirements of the Paperwork Reduction Act of 1980.

Regulatory Flexibility Act

Section 603 of the Regulatory Flexibility Act, 5 U.S.C. 603, requires EPA to prepare and make available for comment an initial regulatory flexibility analysis in connection with any rulemaking for which EPA must publish a general notice of proposed rulemaking. The initial regulatory flexibility analysis must describe the

impact of the proposed rule on small business entities.

Section 605(b) of the Act, however, provides that section 603 of the Act "shall not apply to any proposed or final rule if the head of the Agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities." Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), EPA certifies that this rule will not have a significant economic impact on a substantial number of small entities. This rule, which exempts the OIG Hotline Allegation System from certain provisions of the Privacy Act of 1974, will not have any economic impact on small entities.

List of Subjects in 40 CFR Part 16

Environmental protection, Privacy.

Dated: October 22, 1993.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 16 be amended as follows:

PART 16—[AMENDED]

1. The authority citation for part 16 continues to read as follows:

Authority: 5 U.S.C. 552a.

2. Section 16.14 is amended by revising paragraph (a)(1) to read as follows:

§ 16.14 Specific exemptions.

(a) *Exemptions under 5 U.S C. 552a(k)(2).*—(1) *Systems of records affected.*

EPA–2 General Personnel Records—EPA.
EPA–4 OIG Criminal Investigative Index and Files—EPA/OIG.
EPA–5 OIG Personnel Security Files—EPA/OIG.
EPA–17 NEIC Criminal Investigative Index and Files—EPA/NEIC/OCI.
EPA–30 OIG Hotline Allegation System—EPA/OIG.

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[FR Doc. 93–28620 Filed 11–19–93; 8:45 am]
BILLING CODE 6560–50–P

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40 CFR Part 51

[AD-FRL–4516–3]

Preparation, Adoption, and Submittal of State Implementation Plans: Methods for Measurement of Visible Emissions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and notice of public hearing.

SUMMARY: EPA is today proposing three methods for State Implementation Plan (SIP) applications. The three proposed methods are visible emission test procedures that are to be included as Methods 203A, 203B, and 203C in appendix M. The data reduction procedures in existing visible emission methods are not sufficient for all SIP applications. This action provides States with an expanded array of data reduction procedures to determine compliance with various types of State implementation plan (SIP) opacity regulations. These data reduction procedures constitute the primary difference between the existing method, Method 9 of appendix A of 40 CFR part 60 (Standards of Performance for New Stationary Sources) and Methods 203A, 203B, and 203C of appendix M of part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). This action is necessary because SIP opacity regulations may have certain opacity data reduction provisions that are not consistent with the data averaging procedures specified in Method 9 of part 60.

DATES: *Comments:* Comments must be received on or before January 21, 1994.

Public Hearing. If anyone contacts EPA requesting to speak at a public hearing by December 13, 1993, a public hearing will be held on December 22, 1993, beginning at 10 a.m. Persons interested in attending the hearing should contact Ms. Shelby Journigan of EPA at (919) 541–5543 to verify that a hearing will be held. If a hearing is held, a verbatim transcript will be placed in the docket.

Request to Speak at Hearing. Persons wishing to present oral testimony must contact the Branch secretary at (919) 541–5543 by December 13, 1993.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate if possible) to: Air Docket Section (LE–131), Attention, Docket No. A–84–22, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Public Hearing. If anyone contacts EPA requesting a public hearing, it will be held at EPA's Emission Measurement Laboratory Building, Research Triangle Park, North Carolina 27711. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Shelby Journigan, Emission Measurement Branch (MD–19), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, (919) 541–5543.

Background Information Documents. The Background Information Document (BID) for the proposed standard may be obtained from the docket or from the U.S. EPA library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777.

Docket. Docket No. A–84–22, containing supporting information used in developing the proposed methods, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, room 1500, 1st Floor, 401 M Street SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For further information concerning the proposed rule, contact Mr. Roy Huntley at (919) 541–1060 or Mr. Peter Westlin at (919) 541–1058, Emission Measurement Branch (MD–19), Technical Support Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background
  A. Introduction
  B. Summary of the 1986 Proposal
  C. Comments on the 1986 Proposal
  D. 1990 Promulgation of Part 51, Appendix M
  E. Additional Technical Work Since the 1986 Proposal
  F. Accuracy of Methods
II. Proposed Revisions to the 1986 Proposal
  A. Summary of Proposed Revisions
  B. Rationale for Revisions to Proposed Method F–1
  C. Rationale for Proposal as a Recommended Method in 40 CFR Part 51
  D. Rationale for Proposed Procedures for Fugitive Emissions Applications
III. Administrative Requirements
  A. Docket
  B. Office of Management and Budget Reviews
  C. Regulatory Flexibility Act Compliance

I. Background

A. Introduction

Section 110 of the Clean Air Act (CAA), as amended (42 U.S.C. 7410), specifies that States are to submit plans for the approval of EPA that provide for the attainment and maintenance of air quality standards through control programs directed at sources of air pollutants. Many SIP's include regulations limiting pollutant emissions by limiting opacity (i.e., visible emissions).

The only general visible emission observation test procedure in 40 CFR part 60 is Method 9 of appendix A. Method 9 contains procedures for the training and certification of observers,

field procedures for the determination of plume opacity, and a data reduction procedure.

The EPA revised Method 9 on November 12, 1974 (39 FR 39872). In the preamble to that revision, EPA recognized that the Method 9 data reduction techniques were not appropriate for some types of SIP opacity regulations. The preamble also stated EPA's intent to propose procedures to enforce SIP limitations that were not adequately addressed by Method 9. Such SIP limitations include those with time-exception provisions (a limit incorporating an allowance of a specified number of minutes in an hour in which the opacity limit may be exceeded), as well as those that specify averaging times other than 6 minutes. Also, Method 9 did not address data reduction procedures for instantaneous limitations (sometimes called caps) on visible emissions which are included in some SIP's.

A 1983 report, "Opacity Regulations: Summary of State Regulations and Rulemaking Status" (Docket No. A–84–22), indicated that State regulations incorporating opacity limits include a variety of types of opacity limits. The limits generally specify a maximum opacity that a source is allowed to emit, as determined by a trained observer. Some regulations limit opacity for a specified number of minutes in an hour (time exception), others limit opacity levels as averaged over a specified number of minutes (time averaged), and others specify limits that are never to be exceeded (instantaneous limitation).

In order to provide appropriate data reduction procedures for opacity limits that are inconsistent with Method 9, EPA proposed new visible emission test procedures for evaluating compliance with opacity standards on August 29, 1986 (51 FR 31076).

B. Summary of the 1986 Proposal

The 1986 **Federal Register** notice proposed to incorporate a new method, Method F–1, into a new appendix F (51 FR 31076, August 29, 1986). Part 52 of 40 CFR provides regulations for various SIP requirements, such as the Federal prevention of significant deterioration (PSD) program, and other control program elements. Proposed Method F–1 contained field and observer certification procedures identical to those of Method 9. Proposed Method F–1 and Method 9 differed only in data reduction procedures for determining compliance with SIP regulations that contain time-exception, time-averaged (2 minutes or greater), and instantaneous limitations. The data reduction procedures in proposed Method F–1 were based on a number of method studies. The 1986 notice also discussed the accuracy of each of the new procedures (51 FR 31079, August 29, 1986).

The 1986 proposal indicated EPA would select the visible emission test method and data reduction procedures in part 52 that best ensured enforcement of the SIP visible emission standard in a manner consistent with the original language in the Federally-approved or promulgated SIP. Further, EPA would assume that a State intended a 6-minute averaging time for SIP opacity regulations with no specific reference to time-exception, time-averaged, or instantaneous limitations.

C. Comments on the 1986 Proposal

The EPA solicited public comments on proposed Method F–1 and received 24 comment letters from parties representing industry, utilities, trade associations, State and local air pollution control agencies, and one Federal agency. Commenters addressed many different issues, some of which have contributed to the changes incorporated in today's proposed methods. All comments addressing either the originally-proposed Method F–1 or today's action will be addressed at the time of promulgation, and only those comments directly related to the changes made to proposed Method F–1 for incorporation into Methods 203A, 203B, and 203C are summarized in this section.

Proposed Use of Method F–1 Affecting Existing State Implementation Plans

Some commenters on proposed Method F–1 argued that using a new method in determining compliance with existing opacity standards would constitute a change in the standards themselves. Therefore, they argued that incorporation of the new method constituted improper rulemaking procedures, since previously-approved SIP's would be amended without adequate notice and hearings. The commenters further argued that because existing SIP's either specified a test method or assumed the use of Method 9, the new test method, if applied to existing SIP's, could render existing SIP opacity standards more stringent than originally intended. Several commenters expressed particular concern that the application of the proposed Method F–1 would make compliance with time-exception regulations more difficult than intended by the SIP's.

Data Reduction Techniques

Some commenters stated that for time-exception standards, Method F–1 would eliminate the intended leniency afforded by Method 9's 6-minute averaging. Other commenters stated that for instantaneous standards, the 2-minute averaging time called for in Method F–1 would be inadequate for enforcement, and a shorter averaging time was recommended.

Admissibility of Evidence

The Method F–1 proposal stated that promulgation of test methods in part 52 or 60 of 40 CFR is not intended to alter the conditions of admissibility of evidence to prove violation. Two commenters stated that including the statement on admissibility of evidence was inappropriate. The commenters stated that decisions on admissibility of evidence must be made by the courts.

Nonprocess Fugitive Dust Emissions

One-third of the Method F–1 commenters stated that the application of the proposed method to nonprocess fugitive dust emissions was premature. The commenters recommended further evaluation of the accuracy of Method F–1 for these emissions, modification of observation procedures, and averaged rather than aggregated data reduction procedures. Commenters referred to the difference in the character of the fugitive emissions plume and the increased complexity of taking visual observations for fugitive emissions.

D. 1990 Promulgation of Part 51, Appendix M

In a separate action, on April 17, 1990 (55 FR 14246), EPA promulgated Methods 201 and 201A for the measurement of stack particulate matter with an aerodynamic diameter of a nominal 10 micrometers (μm) (0.000393 inches (in.)) or less (PM_{10}). These methods were included in the new appendix M of 40 CFR part 51. The new appendix M was designated as a repository for recommended test methods for SIP's. Under the same action, EPA also revised subpart K, 40 CFR part 51, to direct States to appendix M for recommended test methods, and to emphasize the requirement that States must include enforceable test methods with each emission limit in the SIP.

Appendix M is entitled "Recommended Test Methods for State Implementation Plans" and contains recommended test methods for inclusion in SIP's. Recommended test methods are methods that are not specifically required by Federal regulations but are promulgated by EPA and are available for use by States. States may incorporate appropriate appendix M test methods into their

SIP's, or they may choose an alternate method, subject to review and approval by the Administrator, as stated in 40 CFR 51.212(c). States may also use any appropriate method in appendix A of 40 CFR part 60 (40 CFR 51.212(c)).

E. Additional Technical Work Since the 1986 Proposal

During the interim between the proposal of Method F–1 and proposal of Methods 203A, 203B and 203C, technical work has continued in several areas. First, the technical analysis of fugitive dust procedures, underway at the time of the initial proposal, was completed, and these procedures are included in Methods 203A, 203B, and 203C. Second, EPA completed a collaborative study of the effect of shorter observation intervals begun in 1986, and a report of the study's conclusions was added to the docket (Docket No. A–84–22). Finally, EPA has developed several implementation tools, including, a revised sample visible emissions observation (VEO) form, to assist States in specifying the appropriate test method for the opacity limit proposed in the SIP or SIP revision.

F. Accuracy of Methods

The data reduction procedures included in Methods 203A, 203B, and 203C differ from Method 9; therefore, EPA has evaluated field studies and other information to determine the accuracy of the test procedures for time-averaged, time-exception, and instantaneous limitation regulations. A characterization of the error associated with each method and discussions of the consideration of error in establishing opacity regulations are included in Docket No. A–84–22.

Accuracy of Method 203A (Time-Averaged Regulations)

The accuracy of test procedures for time-averaged regulations was evaluated through field studies and other information. The results indicated that both positive and negative error may occur while using Method 203A test procedures to read plumes under contrasting conditions.

To evaluate potential positive error, EPA conducted a series of field experiments under controlled field conditions, using light and dark visible plumes generated by a smoke generator and a transmissometer meeting the specifications of Method 9. During these evaluation tests, panels of qualified observers (who had been certified by Method 9 procedures) read the generated plumes in 5-percent opacity increments and at 15-second intervals, except for one test that included only 5-second intervals. The data were reduced by averaging over varying lengths of time. Data from earlier field trials, conducted in developing Method 9, were also evaluated. Observer measurements were then compared to the reference values measured by the smoke generator transmissometer. These data are included in Docket No. A–84–22.

The field experiments indicate a range of observer errors in determining duration of visible emissions for time-exception test procedures. Error was derived by comparing observed opacity with transmissometer readings.

No positive error occurred in 70 percent of the data reduced using Method 203B procedures, i.e., 70 percent of the data sets matched or underestimated the total time of excess opacity compared to the aggregated time of excess opacity recorded by the transmissometer. Overall, visual determination of opacity of emissions was shown to have a negative bias (i.e., certified observers are more likely to assign opacity values that are below actual opacity than above actual opacity). Because of this negative bias of visual determination, the reported period of exceedance is more likely to be shorter, not longer, than the actual period of exceedance. States are advised to take into consideration both the potential for some positive error and the overall negative bias of the procedure when setting opacity standards and establishing time-exception intervals in their SIP's.

Accuracy of Method 203B (Time-Exception Regulations)

Field studies to determine the accuracy of the test procedures for time-exception regulations indicated that both positive and negative error may occur while using the test procedures of Method 203B to read plumes under contrasting conditions.

To evaluate potential positive error, EPA conducted a series of field experiments under controlled field conditions using light and dark visible plumes generated by a smoke generator and a transmissometer meeting the specifications of Method 9. During these evaluation tests, panels of qualified observers (who had been certified by Method 9 procedures) read the generated plumes in 5-percent opacity increments and at 15-second intervals. The data were reduced for time-exception provisions by aggregating the readings above a given opacity within the time period. Observer measurements were then compared to the reference values measured by the smoke generator transmissometer. These data are included in Docket No. A–84–22.

The field experiments indicate a range of observer errors in determining duration of visible emissions for time-exception test procedures. Error was derived by comparing observed opacity with transmissometer readings.

No positive error occurred in 70 percent of the data reduced using Method 203B procedures, i.e., 70 percent of the data sets matched or underestimated the total time of excess opacity compared to the aggregated time of excess opacity recorded by the transmissometer. Overall, visual determination of opacity of emissions was shown to have a negative bias (i.e., certified observers are more likely to assign opacity values that are below actual opacity than above actual opacity). Because of this negative bias of visual determination, the reported period of exceedance is more likely to be shorter, not longer, than the actual period of exceedance. States are advised to take into consideration both the potential for some positive error and the overall negative bias of the procedure when setting opacity standards and establishing time-exception intervals in their SIP's.

Accuracy of Method 203C (Instantaneous Regulations)

The evaluation of field studies and other information to determine the accuracy of the test procedure for instantaneous limitation regulations indicated that both positive and negative error may occur while using the test procedures of Method 203C to read plumes under contrasting conditions.

For an instantaneous limitation, observations are taken over a shorter time period and may also be taken at shorter intervals. The method proposes a 1-minute averaging period to balance the desired short time period implied by an instantaneous limitation with the improved accuracy achieved by multiple readings. Further, the shorter, 5-second interval between observations has been shown to maintain comparable accuracy.

Data from 5-second observation intervals have been assembled since 1986 when EPA proposed Method F–1. The EPA used positive error evaluation data for sets of 12 observations at 5-second intervals to assess observation error for instantaneous opacity measurement. An analysis of the field test data indicates that error for Method 203C is nearly identical to that of Method 9 and strongly indicates that no significant difference exists between observation of opacity at 5- and 15-

second intervals over a 1-minute averaging period. Results of studies conducted by EPA indicate that error increases by only 2 percent when four rather than 12 observations are averaged. The EPA considers these data to be adequate for assessing the positive error associated with Method 203C.

Data, reduced according to the procedures provided in Method 203C, will reflect an overall negative bias (i.e., observers are more likely to assign opacity values that are below the actual opacity value rather than above the actual opacity value). States are advised to take into consideration both the potential for some positive error and the overall negative bias of the procedure when setting opacity standards and establishing instantaneous limitation regulations in their SIP's.

II. Proposed Revisions to the 1986 Proposal

In response to the comments discussed above and the decisions regarding test methods for visible emissions made by EPA since the 1986 proposal, EPA is today proposing visible emission test procedures slightly modified from those introduced in proposed Method F–1. Today's procedures are proposed Methods 203A, 203B, and 203C for inclusion in appendix M of 40 CFR part 51. Other revisions, based on the additional technical work discussed above, are discussed in the following text.

A. Summary of Proposed Revisions

Revisions to Method F–1

Today's proposal divides the procedures proposed as Method F–1 in 1986 into three distinct methods. This will allow a State to specify the exact data reduction procedures to be used in compliance determinations. The three methods incorporate the certification procedures for observers from Method 9 of appendix A of 40 CFR part 60 without change. The only procedural differences between Methods 203A, 203B, and 203C and Method 9 are in the provisions for recording observations and data reduction and the inclusion of fugitive emissions applications in the newly proposed methods. The addition of procedures for fugitive emission applications is described in the section entitled, "Additional Procedures for Fugitive Emissions."

The procedures for recording observations have been revised to: (a) Reflect recording intervals appropriate to each method individually, and (b) indicate that the overall time span for recording observations must be appropriate to the time span specified in the State regulation. For example, Method 203B specifies that, in order to determine that a source is in compliance with a time-exception regulation in which 10 percent opacity may be exceeded for no more than 3 minutes per hour, collection of readings for an entire hour is indicated. However, more than twelve 15-second readings above 10 percent opacity in less than 1 hour, either consecutive or nonconsecutive, would indicate a violation of the time-exception limit. In such a case, a State may elect not to require collection of additional data after a violation is indicated.

The data reduction procedures in proposed Method 203C specify a 1-minute averaging period and require the recording of opacity observations at either 15-second or 5-second intervals.

Summary of Proposal as a Recommended Method in Part 51

In addition to the revisions to the previously proposed Method F–1 discussed earlier, today's proposed methods will be included in appendix M of part 51, rather than part 52, as originally proposed. Under today's proposal, a State would specify the appropriate method when needed in a SIP revision. Also, the language concerning "rules of evidence," which was proposed in 1986 for § 52.23, has been deleted.

Additional Procedures for Fugitive Emissions

EPA added procedures for determining opacity of fugitive emissions to Method 203A. These procedures are also cited in Methods 203B and 203C. By the addition of these procedures, EPA is expanding the guidance available to visible emissions observers, as well as State and local regulators, regarding the observation of visible emissions from sources of fugitive emissions. Procedures, based on State agency studies and current State and Federal regulations, were compiled and incorporated into the proposed methods.

Inclusion of an Implementation Tool

Included with the proposed test methods is a revised sample Visible Emissions Observation (VEO) form for opacity observations. This form is appended to Method 203A and is included to assist States in effectively using the proposed methods in enforcing SIP opacity limits. The sample form is intended to help States to establish a consistent recording and reporting format, thereby, improving program effectiveness.

The sample VEO form will help ensure that all necessary compliance information is recorded during opacity observations. This includes information other than the actual readings, such as time of day, approximate wind speed and direction, and presence and color of clouds.

A memorandum that considers error, associated with opacity observations, has been placed in Docket No. A–84–22. The memorandum includes a discussion of the effect of observation error on compliance determinations for each method. EPA considers that this information would be useful to the States in setting and enforcing opacity standards.

B. Rationale for Revisions to Proposed Method F–1

Proposal as Three Distinct Methods

Three distinct methods for determination of opacity of emissions are being proposed in order to provide data reduction procedures that are consistent with various types of opacity regulations included in SIP's. Opacity regulations fall into three general categories: Time-averaged regulations, time-exception regulations, and instantaneous limitation regulations. The existing available method, Method 9 of 40 CFR part 60, appendix A, calls for averaging 24 consecutive 15-second interval observations for a 6-minute average. These specifications are sometimes inconsistent with the requirements in SIP opacity regulations. The proposed array of methods enables States to specify methods that are consistent with actual SIP regulations and appropriate for accurate compliance determination.

Proposed Method 203A for visual determination of opacity of emissions for time-averaged regulations calls for opacity readings at 15-second intervals, averaged over a time period of 2 minutes or more as specified by the State regulation. This proposed method allows States to specify averaging periods other than 6 minutes.

Method 203B for visual determination of opacity of emissions for time-exception regulations also calls for opacity readings at 15-second intervals. However, the data are reduced by aggregating all observations above the level of the opacity standard. This proposed method allows States to specify a method consistent with time-exception regulations.

Method 203C for visual determination of opacity of emissions for instantaneous limitation regulations allows a State to specify either 15- or 5-second observation intervals with a 1-

minute averaging period. This proposed method uses a shorter averaging period consistent with the intent of an instantaneous limit. If a 5-second interval is not specified by the State, the 15-second interval will be used. The selection of the observation interval allows the State to either increase the number of observations averaged for the period or maintain the same observation interval used for other opacity standards. This proposed method allows States to specify a method developed specifically for instantaneous limitation regulations.

Proposed Changes to Data Reduction Procedures

Only two technical changes have been made to the data reduction procedures of the proposed methods.

First, the State has flexibility in specifying the interval between observations for Method 203C (for instantaneous limitation regulations) and the overall time period for which observations are averaged has also been reduced to 1 minute. This approximates more closely a truly "instantaneous" determination of opacity, while maintaining accuracy at about the level provided by the typical 6-minute average. EPA has received information from various States, since the proposal of Method F–1, which indicates that several visible emissions observation methods, developed at the State level, include a 5-second observation interval. Accordingly, EPA evaluated the accuracy of observations recorded at 5-second intervals. A collaborative study performed with a group of certified observers, demonstrated that an average of 12 observations, taken at 5-second intervals, has about the same level of accuracy as an average of 24 observations taken at 15-second intervals. The results of the study are presented in "Collaborative Study of Opacity Observations at Five-Second Intervals by Certified Observers" (Docket No. A–84–22).

Some States may, however, prefer to avoid specifying a different observation interval than is already in use in many SIP's, even though the shorter averaging period is warranted. For this reason, EPA considered the effect of averaging only four observations. Further analysis of earlier data indicates that the accuracy of the averaging of four 15-second observations is comparable to that of twelve 15-second observations. States are advised to consider the relative accuracy of the two observation intervals when specifying Method 203C and indicate which interval will be required.

C. Rationale for Proposal as a Recommended Method in 40 CFR Part 51

Method F–1 was first proposed for inclusion in appendix F of part 52 (51 FR 31076, August 29, 1986). Since that time, the new appendix M of part 51 was promulgated. As described in section II.D of this preamble, appendix M is the designated repository for recommended test methods for use in SIP's.

Methods in appendix M are available for States to specify in their SIP's without further review by EPA. EPA revised subpart K of 40 CFR part 51 to emphasize that States must include enforceable test methods in their SIP's for each emission limit and directed States to appendix M for recommended test methods for use in determining compliance (55 FR 14249, April 17, 1990). States are expected to specify a test method for each standard in their SIP's. All new or revised SIP's should include compliance test methods. The test method and the associated error can affect the implementation and stringency of any SIP-specified regulation. The specification of test methods within SIP regulations will ensure that test method procedures and accuracy are fully considered.

Because part 52 addresses Federal approval of proposed SIP's, while part 51 addresses development of SIP's, recommended test methods are most appropriately included in part 51. Today's proposed Methods 203A, 203B, and 203C are recommended test methods intended for use in SIP's and, therefore, clearly should be included in appendix M.

D. Rationale for Proposed Procedures for Fugitive Emissions Applications

Fugitive emissions are those emissions that are emitted directly into the air from unenclosed sources such as stockpiles, roadways, and open railcars or truckbeds, or those which leak into the atmosphere from industrial sources or buildings. Another source of fugitive emissions is open burning. Typical industrial sources of fugitive emissions include loading and transfer operations, coke oven pushing, sizing, crushing, milling, and sandblasting operations. Silvaculture contributes to fugitive emissions through both cutting and clearing activities.

Fugitive emissions may not always be in the form of a distinct plume, but instead, may be in the form of a cloud or cover a broad area. In some instances, fugitive emissions may represent only a part of a facility's overall emissions, as would be the case for a large petrochemical complex. Many situations exist in which fugitive emissions are the dominant source of air pollution. Examples include quarries, sawmills, and roadways or parking lots.

Many SIP's include opacity limits for various industrial and commercial operations that include sources of fugitive emissions. For example, regulations in Ohio require that visible emissions be observed and recorded at coke oven doors during pushing operations; regulations in Tennessee require that industrial roads and parking lots meet an opacity limit of 10 percent in any area previously designated nonattainment for particulate matter. In some cases, as in the Ohio coke oven regulation, the opacity limit serves to indicate good operation and maintenance procedures, or to highlight equipment deterioration. In others, such as the Tennessee road/parking lot regulation, the opacity limit serves to accomplish a specific air quality goal, such as conforming to national ambient air quality standards or reversing visibility impairment near an historic or scenic site. The inclusion of guidance and procedures for reading visible emissions from fugitive sources in Methods 203A, 203B and 203C will assist States in achieving many of these goals.

The procedures for fugitive emissions, included in Method 203A, 203B, and 203C, have been assembled from current State regulations (e.g., Ohio and Tennessee), national standards, and studies conducted in Florida and elsewhere. Since the promulgation of Method 9, understanding of the special considerations, necessary when observing visible emissions from fugitive sources, has grown. Currently, efforts are underway in several States, such as Illinois, to develop opacity methods that are applicable to specific source types or local concerns. These efforts may be time and resource intensive, and EPA hopes to reduce some of this burden through promulgation of these recommended methods.

The principal studies and regulations that EPA considered are summarized below, followed by a summary of general principles based on these and other studies.

Data, Information and Analyses

Tennessee visible emission evaluation Method 1. The State of Tennessee developed a visible emissions reading technique for roads and parking lots in 1982 as part of an effort to bring a total suspended particulate (TSP), nonattainment area, into compliance through the use of a stringent opacity

standard of 10 percent. Field studies were conducted by the Tennessee Division of Air Pollution Control to determine what modifications to Method 9 would be necessary. These field studies resulted in the promulgation of Tennessee Visible Emissions Evaluation Method 1. The 15-second reading interval and many other procedures from Method 9 were retained, but the averaging period was shortened to 2 minutes. Also, additional procedural guidance for visible emissions observations from short-term sporadic or intermittent emission sources was provided.

Nonmetallic mineral processing plants new source performance standard. This new source performance standard (NSPS) requires the use of Method 9 procedures with the following additional provisions:

1. Observations should be made at a minimum of 5 meters (m) (15 feet (ft)) from the source;

2. The position of the observer should be selected to minimize interference from other emission sources; and

3. When water mist is present in the plume, the observation should be made at a point in the plume where the mist is no longer visible.

1989 Draft Ohio method for roads and parking lots. This draft method borrows heavily from the Tennessee method above, but adds two additional conditions: (1) Observations should be made at the point of highest opacity within the plume, usually immediately above or downwind of the source; and (2) observers are to be certified for a period of 6 months, rather than 6 months as is the case for both Method 9 and Tennessee Method 1.

Collaborative study of opacity observations of fugitive emissions from unpaved roads by certified observers. This study by Eastern Technical Associates (ETA) involved visible observations of opacity of fugitive emissions, specifically, fugitive emissions from unpaved roads, using Method 9 procedures over averaging periods of 15 seconds to 8 minutes. Opacity observations, taken by visible emission observers, were compared to measurements taken by a transmissometer. The purpose of the study was to compare the accuracy of opacity observations of fugitive emissions to the accuracy of opacity observations of stationary source emissions.

The study found that, depending on averaging time, from 74 to 80 percent of all averages had either no positive error or had positive error of less than 5 percent opacity, and from 90 to 98 percent had 10 percent or less positive opacity error. These results represented error only marginally above that seen when using Method 9 procedures on stack emissions. A second analysis was performed in this study to consider the accuracy of Method 9 certified observers in reading opacity for time-exception regulations. In this analysis, time above the level of the standard, reported by the observer, was compared to that of the transmissometer. The analysis showed that from 58 to 88 percent of the time, the observer either matched the time above the level of the standard, as determined by the transmissometer, or understated the time above the level of the standard. Stated another way, the study demonstrated a strong negative bias.

Principles of Observation of Fugitive Emission Sources

Fugitive emissions present special conditions for observers. Fugitive emissions may be generated by multiple sources in close proximity to one another. These emissions may be less distinguishable from the background than are point-source emissions. Since the overall purpose of visible opacity observation is to determine the effect of the emission on the observer's view of the background, the observer must stand at a distance and in a position that provides a clear view of the background, both through the emission, and beside the emission. The provisions, incorporated in the nonmetallic mineral processing plants NSPS, are intended to ensure that the observer clearly distinguishes the plume from other emission sources and, in the case of water mist, includes only the portion of concern. Often, even for roadways and parking lots, when fugitive emissions are plentiful or generated by multiple sources or source types in close proximity to one another, the contrast between a given plume or the emissions, due to a specific source and the background opacity, is diminished.

While the minimum distance of 5 m (15 ft) ensures the observer can adequately segregate the emission from the background, care should be taken to select a distance from the source relative to the size of the emission.

When visibility at the specified observation interval is momentarily blocked (e.g., by a passing vehicle, etc.), the recording sheet should be so marked, and the set of observations extended to include an appropriate number of data points for averaging. In some cases, an extended length of time, for which visibility is blocked, may render the set unusable. Discretion must be used to decide when an averaging set should be repeated because of a long interruption.

Storage piles. When making observations across storage piles, the observer should look across a specific point in the pile and not follow a moving plume. In the case of a continuously-generated dust plume, where vigorous wind activity is continuously adding to the upward movement of dust, observations should continue at the same point and height above the pile as initially read.

A second caution involves the situation where water spray is used for dust suppression. The observer should assure that, while reading at the densest portion of the plume, the opacity recorded is not from the water spray.

Roads and parking areas. The Tennessee and Ohio methods include a condition requiring that a series of opacity readings may include only plumes generated by vehicles traveling in the same direction. The observer is to select a target area for viewing and is to read the opacity at that area for the entire averaging period, even when multiple vehicles pass through the area traveling in the same direction. In some cases, a vehicle will be in the line of sight when a given reading is to be taken. For these rules, the observation is suspended for any interval in which a vehicle is directly in the line of sight. The space for recording that observation is marked with a "V." Observations are to be resumed at the next interval as if following the last recorded observation, so long as the vehicle is traveling in the same direction as the vehicle which initiated the fugitive emissions.

If another vehicle passes through the area in the opposite direction, readings must be suspended. A new set of readings can begin after the plume, generated by the vehicle moving in the opposite direction, has settled and a new plume is generated. The disrupted set is then discarded.

An additional concern for Tennessee is that the series of readings be representative of the roadway or parking lot conditions. Therefore, readings are not to be taken during a period of time or in an area which is not representative because of highly unusual circumstances (e.g., a broken bag of cement or bale of hay on the roadway). Highly unusual circumstances must not only be atypical of operation conditions, they must also be infrequent. Therefore, a State might require that all readings be recorded and that agency discretion be used in deciding whether all readings are to be included in the average for purposes of compliance.

III. Administrative Requirements

A. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by EPA in the development of this proposed rulemaking. The docket is a dynamic file since material is added throughout the rulemaking development. The docketing system is intended to allow members of the public and industries involved to identify and locate documents so that they can effectively participate in the rulemaking process. Along with the statement of basis and purpose of the proposed and promulgated standards and EPA responses to significant comments in the **Federal Register** notices and background documents, the contents of the docket, except for interagency review materials, will serve as the record in case of judicial review (section 307(d)(7)(A)).

B. Executive Order 12291

Under Executive Order 12291, EPA was required to judge whether a regulation was "major" and therefore subject to the requirement of a Regulatory Impact Analysis (RIA).

This action did not require any revision to existing SIPs or changes to any SIP regulation. This proposed regulation was not a major rule under E.O. 12291 because it will neither have an effect on the economy of $100 million or more, nor will it result in an increase in costs or prices to industry. There will be no adverse impact on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets. Because this amendment was not a major regulation, no RIA was conducted. This regulation was submitted to the Office of Management and Budget (OMB) for review under Executive Order 12291.

C. Regulatory Flexibility Act Compliance

Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), whenever an agency is required to publish a general notice of rulemaking for any proposed or final rule, it must prepare and make available for public comment a Regulatory Flexibility Analysis (RFA) which requires EPA to consider potential impacts of proposed regulations on small entities (i.e., small businesses, small organizations, and small governmental jurisdictions). The Administrator may certify, however, that the rule will not have a significant economic impact on a substantial number of small entities.

These methods will have no adverse economic impact on small entities. No new SIP regulations are being proposed. Since this proposal does not significantly change the status quo for such entities, I hereby certify that this proposed regulation will not have a significant economic impact on a substantial number of small entities. This proposed regulation therefore does not require an RFA.

List of Subjects in 40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

Dated: November 11, 1993.

Carol Browner,

Administrator.

EPA proposes to amend title 40, chapter I, part 51 of the Code of Federal Regulations as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7410(a)(2), 7475(e), 7502(a) and (b), 7503, 7601(a)(1) and 7620, unless otherwise noted.

2. Appendix M is amended by adding Methods 203A, 203B and 203C and by adding the following method titles to the table of contents to read as follows:

Appendix M to Part 51—Recommended Test Methods for State Implementation Plans

* * * * *

Method 203A—Visual Determination of Opacity of Emissions From Stationary Sources for Time-Averaged Regulations.

Method 203B—Visual Determination of Opacity of Emissions From Stationary Sources for Time-Exception Regulations.

Method 203C—Visual Determination of Opacity of Emissions From Stationary Sources for Instantaneous Limitation Regulations

* * * * *

Method 203A—Visual Determination of Opacity of Emissions From Stationary Sources for Time-Averaged Regulations

Method 203A is virtually identical to EPA's Method 9 except for the data-reduction procedures, which provide for averaging times other than 6 minutes. That is, using Method 203A with a 6-minute averaging time would be the same as following EPA Method 9. Additionally, Method 203A provides procedures for fugitive dust applications. The certification procedures provided in section 3 are virtually identical to Method 9 and are provided here, in full, for clarity and convenience. A sample visible emission observation form and instructions for its use are appended to this method.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for time-averaged regulations. A time-averaged regulation is any regulation that requires averaging visible emission data to determine the opacity of visible emissions over a specific time period.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by an observer qualified according to the procedures of section 3.

2. Procedures

An observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions from Stationary Sources. These procedures are applicable for visually determining the opacity of stack emissions by a qualified observer. The qualified observer should do the following:

2.1.1 Position. Stand at a distance sufficient to provide a clear view of the emissions with the sun oriented in the 140-degree sector to the observer's back. Consistent with maintaining the above requirement as much as possible, make opacity observations from a position such that the line of vision is approximately perpendicular to the plume direction, and when observing opacity of emissions from rectangular outlets (e.g., roof monitors, open baghouses, noncircular stacks), approximately perpendicular to the longer axis of the outlet. Do not include more than one plume in the line of sight at a time when multiple plumes are involved and, in any case, make opacity observations with the line of sight perpendicular to the longer axis of such a set of multiple stacks (e.g., stub stacks on baghouses).

2.1.2 Field Records. Record the name of the plant, emission location, type of facility, observer's name and affiliation, a sketch of the observer's position relative to the source, and the date on a field data sheet. A sample visible emission observation form is included in appendix 1 of Method 203A. Record the time, estimated distance to the emission location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), and plume background on the field data sheet at the time opacity readings are initiated and completed.

2.1.3 Observations. Make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present.

Do not look continuously at the plume but, instead, observe the plume momentarily at 15-second intervals.

2.1.3.1 Attached Steam Plumes. When condensed water vapor is present within the plume as it emerges from the emission outlet, make opacity observations beyond the point in the plume at which condensed water vapor is no longer visible. Record the approximate distance from the emission

outlet to the point in the plume at which the observations are made.

2.1.3.2 Detached Steam Plumes. When water vapor in the plume condenses and becomes visible at a distinct distance from the emission outlet, evaluate the opacity of emissions at the emission outlet prior to the condensation of water vapor and the formation of the steam plume.

2.2 Procedures for Fugitive Process Dust Emissions. These procedures are applicable for the determination of the opacity of fugitive emissions by a qualified observer. The qualified observer should do the following:

2.2.1 Position. Stand at a position at least 5 meters from the fugitive source in order to provide a clear view of the emissions with the sun oriented in the 140-degree sector to the back. Consistent as much as possible with maintaining the above requirements, make opacity observations from a position such that the line of vision is approximately perpendicular to the plume and wind direction. As much as possible, if multiple plumes are involved, do not include more than one plume in the line of sight at one time.

2.2.2 Field Records. Record the name of the plant or site, fugitive source location, source type (pile, stack industrial process unit, incinerator, open burning operation, activity, material handling (transfer, loading, sorting, etc.)), method of control used, if any, observer's name, certification date and affiliation, a sketch of the observer's position relative to the fugitive source, and date on a field data sheet, such as the sample visible emission observation form included in appendix 1. Also, record the time, estimated distance to the fugitive source location, approximate wind direction, estimated wind speed, description of the sky condition (presence and color of clouds), observer's position relative to the fugitive source, and color of the plume and type of background on the visible emission observation form when opacity readings are initiated and completed. For roads, storage piles, parking lots, record a description of the surface conditions (presence of moisture).

2.2.3 Observations. Make opacity observations, to the extent possible, using a contrasting background that is perpendicular to the line of vision. For roads, storage piles, and parking lots, make opacity observations approximately 1 meter above the surface from which the plume is generated. For other fugitive sources, make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present. For intermittent sources, the initial observation should begin immediately after a plume has been created above the surface involved. Do not look continuously at the plume but, instead, observe the plume momentarily at 15-second intervals.

2.3 Recording Observations. Record the opacity observations to the nearest 5 percent every 15 seconds on an observational record sheet such as the visible emission observation form included in appendix 1. Each momentary observation recorded represents the average opacity of emissions for a 15-second period. The overall length of time for which observations are recorded shall be appropriate to the averaging time specified in the State regulation.

2.4 Data Reduction for Time-Averaged Regulations. A set of observations is composed of an appropriate number of consecutive observations determined by the averaging time specified. Divide the recorded observations into sets of appropriate time lengths for the specified averaging time. Sets must consist of consecutive observations; however, observations immediately preceding and following interrupted observations shall be deemed consecutive. Sets need not be consecutive in time and in no case shall two sets overlap, resulting in multiple violations. For each set of observations, calculate the appropriate average opacity.

3. Qualification and Testing

3.1 Certification Requirements. To receive certification as a qualified observer, a candidate must be tested and demonstrate the ability to assign opacity readings in 5 percent increments to 25 different black plumes and 25 different white plumes, with an error not to exceed 15 percent opacity on any one reading and an average error not to exceed 7.5 percent opacity in each category. Candidates shall be tested according to the procedures described in paragraph 3.2. Any smoke generator used pursuant to paragraph 3.2 shall be equipped with a smoke meter which meets the requirements of paragraph 3.3. Certification tests that do not meet the requirements of paragraphs 3.2 and 3.3 are not valid.

The certification shall be valid for a period of 6 months, and after each 6-month period, the qualification procedures must be repeated by an observer in order to retain certification.

3.2 Certification Procedure. The certification test consists of showing the candidate a complete run of 50 plumes, 25 black plumes and 25 white plumes, generated by a smoke generator. Plumes shall be presented in random order within each set of 25 black and 25 white plumes. The candidate assigns an opacity value to each plume and records the observation on a suitable form. At the completion of each run of 50 readings, the score of the candidate is determined. If a candidate fails to qualify, the complete run of 50 readings must be repeated in any retest. The smoke test may be administered as part of a smoke school or training program, and may be preceded by training or familiarization runs of the smoke generator during which candidates are shown black and white plumes of known opacity.

3.3 Smoke Generator Specifications. Any smoke generator used for the purpose of paragraph 3.2 shall be equipped with a smoke meter installed to measure opacity across the diameter of the smoke generator stack. The smoke meter output shall display in-stack opacity, based upon a path length equal to the stack exit diameter on a full 0 to 100 percent chart recorder scale. The smoke meter optical design and performance shall meet the specifications shown in Table 1. The smoke meter shall be calibrated as prescribed in paragraph 3.3.1 prior to conducting each smoke reading test. At the completion of each test, the zero and span drift, shall be checked, and if the drift exceeds ±1 percent opacity, the condition shall be corrected prior to conducting any subsequent test runs. The smoke meter shall be demonstrated at the time of installation to meet the specifications listed in Table 1. This demonstration shall be repeated following any subsequent repair or replacement of the photocell or associated electronic circuitry including the chart recorder or output meter, or every 6 months, whichever occurs first.

3.3.1 Calibration. The smoke meter is calibrated after allowing a minimum of 30 minutes warm-up by alternately producing simulated opacity of 0 percent and 100 percent. When stable response at 0 percent or 100 percent is noted, the smoke meter is adjusted to produce an output of 0 percent or 100 percent, as appropriate. This calibration shall be repeated until stable 0 percent and 100 percent readings are produced without adjustment. Simulated 0 percent and 100 percent opacity values may be produced by alternately switching the power to the light source on and off while the smoke generator is not producing smoke.

3.3.2 Smoke Meter Evaluation. The smoke meter design and performance are to be evaluated as follows:

3.3.2.1 Light Source. Verify from manufacturer's data and from voltage measurements made at the lamp, as installed, that the lamp is operated within ±5 percent of the nominal rated voltage.

3.3.2.2 Spectral Response of Photocell. Verify from manufacturer's data that the photocell has a photopic response; i.e., the spectral sensitivity of the cell shall closely approximate the standard spectral-luminosity curve for photopic vision which is referenced in (b) of Table 1.

3.3.2.3 Angle of View. Check construction geometry to ensure that the total angle of view of the smoke plume, as seen by the photocell, does not exceed 15 degrees. Calculate the total angle of view as follows:

$\phi v = 2 \tan^{-1} d/2L$,

where:

ϕv=total angle of view;
d=the photocell diameter + the diameter of the limiting aperture; and
L=distance from the photocell to the limiting aperture.

The limiting aperture is the point in the path between the photocell and the smoke plume where the angle of view is most restricted. In smoke generator smoke meters, this is normally an orifice plate.

3.3.2.4 Angle of Projection. Check construction geometry to ensure that the total angle of projection of the lamp on the smoke plume does not exceed 15 degrees. Calculate the total angle of projection as follows:

$\phi p = 2 \tan^{-1} d/2L$

where:

ϕp=total angle of projection;
d=the sum of the length of the lamp filament + the diameter of the limiting aperture, and
L=the distance from the lamp to the limiting aperture.

3.3.2.5 Calibration Error. Using neutral-density filters of known opacity, check the error between the actual response and the theoretical linear response of the smoke

meter. This check is accomplished by first calibrating the smoke meter according to 3.3.1 and then inserting a series of three neutral-density filters of nominal opacity of 20, 50, and 75 percent in the smoke meter path length. Use filters calibrated within ±2 percent. Care should be taken when inserting the filters to prevent stray light from affecting the meter. Make a total of five nonconsecutive readings for each filter. The maximum opacity error on any one reading shall be ±3 percent.

3.3.2.6 Zero and Span Drift. Determine the zero and span drift by calibrating and operating the smoke generator in a normal manner over a 1-hour period. The drift is measured by checking the zero and span at the end of this period.

3.3.2.7 Response Time. Determine the response time by producing the series of five simulated 0 percent and 100 percent opacity values and observing the time required to reach stable response. Opacity values of 0 percent and 100 percent may be simulated by alternately switching the power to the light source off and on while the smoke generator is not operating.

4. References

1. U.S. Environmental Protection Agency. Standards of Performance for New Stationary Sources; appendix A; Method 9 for Visual Determination of the Opacity of Emissions from Stationary Sources. Final Rule. 39 FR 219. Washington, DC. U.S. Government Printing Office. November 12, 1974.

2. Office of Air and Radiation. "Quality Assurance Guideline for Visible Emission Training Programs." EPA–600/S4–83–011. Quality Assurance Division. Research Triangle Park, N.C. May 1982.

3. "Method 9—Visible Determination of the Opacity of Emissions from Stationary Sources." February 1984. Quality Assurance Handbook for Air Pollution Measurement Systems. Volume III, section 3.1.2. Stationary Source Specific Methods. EPA–600–4–77–027b. August 1977. Office of Research and Development Publications, 26 West Clair Street, Cincinnati, OH.

4. Office of Air Quality Planning and Standards. "Opacity Error for Averaging and Nonaveraging Data Reduction and Reporting Techniques." Final Report SR–1–6–85. Emission Measurement Branch, Research Triangle Park, N.C. June 1985.

5. The U.S. Environmental Protection Agency. Preparation, Adoption, and Submittal of State Implementation Plans. Methods for Measurement of PM_{10} Emissions from Stationary Sources. Final Rule. **Federal Register**. Washington, DC. U.S. Government Printing Office. Volumes 55. No. 74. pps. 14246–14279. April 17, 1990.

Method 203B—Visual Determination of Opacity of Emissions From Stationary Sources for Time-Exception Regulations

Method 203B is virtually identical to EPA's Method 9, except for the data-reduction procedures, which have been modified for application to time-exception regulations. Additionally, Method 203B provides procedures for fugitive dust applications which were unavailable when Method 9 was promulgated. The certification procedures in section 3 are identical to those in Method 9 and are provided in Method 203A as well. Therefore, the certification procedures have not been repeated within this method. As an additional aid for observers, a sample visible emission observation form has been appended to Method 203A.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for time-exception regulations. A time-exception regulation means any regulation that allows predefined periods of opacity above the otherwise applicable opacity limit.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by a qualified observer.

2. Procedures

The observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions From Stationary Sources. Same as in 2.1, Method 203A.

2.2 Procedures For Fugitive Process Dust Emissions. Same as 2.2, Method 203A.

2.3 Recording Observations. Record opacity observations to the nearest 5 percent at 15-second intervals on an observational record sheet. Each momentary observation recorded represents the average opacity of emissions for a 15-second period. The overall length of time for which observations are recorded shall be appropriate to the applicable regulation for which opacity is being measured.

2.4 Data Reduction for Time-Exception Regulations. For a time-exception regulation, reduce opacity observations as follows: count the number of observations above the applicable standard and multiply that number by 0.25 to determine the minutes of emissions above the target opacity.

3. Qualification and Testing. Same as section 3, Method 203A.

4. References. Same as Section 4, Method 203A.

Method 203C—Visual Determination of Opacity of Emissions From Stationary Sources for Instantaneous Limitation Regulations

Method 203C is virtually identical to EPA's Method 9, except for the data-reduction procedures, which have been modified for application to instantaneous limitation regulations. Additionally, Method 203C provides procedures for fugitive dust applications, which were unavailable when Method 9 was promulgated. The certification procedures in section 3 are identical to Method 9. These certification procedures are provided in Method 203A as well, and, therefore, have not been repeated in this method. As an additional aid for observers, a sample visible emission observation form has been appended to Method 203A.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for instantaneous limitations. An instantaneous limitation regulation is an opacity limit which is never to be exceeded.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by a qualified observer.

2. Procedures

The observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions From Stationary Sources. Same as 2.1, Method 203A.

2.1.1 Position. Same as 2.1.1, Method 203A.

2.1.2 Field Records. Same as 2.1.2, Method 203A.

2.1.3 Observations. Make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present.

Do not look continuously at the plume, instead, observe the plume momentarily at the interval specified in the subject regulation. Unless otherwise specified, a 15-second observation interval is assumed.

2.1.3.1 Attached Steam Plumes. Same as 2.1.3.1, Method 203A.

2.1.3.2 Detached Steam Plumes. Same as 2.1.3.1, Method 203A.

2.2 Procedures for Fugitive Process Dust Emissions.

2.2.1 Position. Same as section 2.2.1, Method 203A.

2.2.2 Field Records. Same as section 2.2.2, Method 203A.

2.2.3 Observations.

2.2.3.1 Observations for 15-second Observation Interval Regulations. Same as section 2.2.3, Method 203A.

2.2.3.2 Observations for 5-second Observation Internal Regulations. Same as section 2.2.3, Method 203A, except, observe the plume momentarily at 5-second intervals.

2.3 Recording Observations. Record opacity observations to the nearest 5 percent at the prescribed interval on an observational record sheet. Each momentary observation recorded represents the average of emissions for the prescribed period. If a 5-second observation period is not specified in the applicable regulation, a 15-second interval is assumed. The overall time for which recordings are made shall be of a length appropriate to the regulation for which opacity is being measured.

2.3.1 Recording Observations for 15-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 15-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for a 15-second period.

2.3.2 Recording Observations for 5-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 5-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for 5-second period.

2.4 Data Reduction for Instantaneous Limitation Regulations. For an instantaneous limitation regulation, a 1-minute averaging time will be used. Divide the observations

recorded on the record sheet into sets of consecutive observations. A set is composed of the consecutive observations made in 1 minute. Sets need not be consecutive in time, and in no case shall two sets overlap. Reduce opacity observations by dividing the sum of all observations recorded in a set by the number of observations recorded in each set.

2.4.1 Data Reduction for 15-second Observation Intervals. Reduce opacity observations by averaging four consecutive observations recorded at 15-second intervals. Divide the observations recorded on the record sheet into sets of four consecutive observations. For each set of four observations, calculate the average by summing the opacity of the four observations and dividing this sum by four.

2.4.2 Data Reduction for 5-second Observation Intervals. Reduce opacity observations by averaging 12 consecutive observations recorded at 5-second intervals. Divide the observations recorded on the record sheet into sets of 12 consecutive observations. For each set of 12 observations, calculate the average by summing the opacity of the 12 observations and dividing this sum by 12.

3. Qualification and Testing

Same as section 3, Method 203A.

4. References

Same as section 4, Method 203A.

Method 203C—Visual Determination of Opacity of Emissions From Stationary Sources for Instantaneous Limitation Regulations

Method 203C is virtually identical to EPA's Method 9, except for the data-reduction procedures, which have been modified for application to instantaneous limitation regulations. Additionally, Method 203C provides procedures for fugitive dust applications, which were unavailable when Method 9 was promulgated. The certification procedures in section 3 are identical to Method 9. These certification procedures are provided in Method 203A as well, and, therefore, have not been repeated in this method. As an additional aid for observers, a sample visible emission observation form has been appended to Method 203A as well.

1. Applicability and Principle

1.1 Applicability. This method is applicable for the determination of the opacity of emissions from sources of visible emissions for instantaneous limitations. An instantaneous limitation regulation is an opacity limit which is never to be exceeded.

1.2 Principle. The opacity of emissions from sources of visible emissions is determined visually by a qualified observer.

2. Procedures

The observer qualified in accordance with section 3 of this method shall use the following procedures for visually determining the opacity of emissions.

2.1 Procedures for Emissions From Stationary Sources. Same as 2.1, Method 203A.

2.1.1 Position. Same as 2.1.1, Method 203A.

2.1.2 Field Records. Same as 2.1.2, Method 203A.

2.1.3 Observations. Make opacity observations at the point of greatest opacity in that portion of the plume where condensed water vapor is not present.

Do not look continuously at the plume, instead, observe the plume momentarily at the interval specified in the subject regulation. Unless otherwise specified, a 15-second observation interval is assumed.

2.1.3.1 Attached Steam Plumes. Same as 2.1.3.1, Method 203A.

2.1.3.2 Detached Steam Plumes. Same as 2.1.3.2, Method 203A.

2.2 Procedures for Fugitive Process Dust Emissions. 2.2.1 Position. Same as section 2.2.1, Method 203A.

2.2.2 Field Records. Same as section 2.2.2, Method 203A.

2.2.3 Observations.

2.2.3.1 Observations for 15-second Observation Interval Regulations. Same as section 2.2.3, Method 203A.

2.2.3.2 Observations for 5-second Observation Interval Regulations. Same as section 2.2.3, Method 203A, except, observe the plume momentarily at 5-second intervals.

2.3 Recording Observations. Record opacity observations to the nearest 5 percent at the prescribed interval on an observational record sheet. Each momentary observation recorded represents the average of emissions for the prescribed period. If a 5-second observation period is not specified in the applicable regulation, a 15-second interval is assumed. The overall time for which recordings are made shall be of a length appropriate to the regulation for which opacity is being measured.

2.3.1 Recording Observations for 15-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 15-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for a 15-second period.

2.3.2 Recording Observations for 5-second Observation Interval Regulations. Record opacity observations to the nearest 5 percent at 5-second intervals on an observational record sheet. Each momentary observation recorded represents the average of emissions for a 5-second period.

2.4 Data Reduction for Instantaneous Limitation Regulations. For an instantaneous limitation regulation, a 1-minute averaging time will be used. Divide the observations recorded on the record sheet into sets of consecutive observations. A set is composed of the consecutive observations made in 1 minute. Sets need not be consecutive in time, and in no case shall two sets overlap. Reduce opacity observations by dividing the sum of all observations recorded in a set by the number of observations recorded in each set.

2.4.1 Data Reduction for 15-second Observation Intervals. Reduce opacity observations by averaging four consecutive observations recorded at 15-second intervals. Divide the observations recorded on the record sheet into sets of four consecutive observations. For each set of four observations, calculate the average by summing the opacity of the four observations and dividing this sum by four.

2.4.2 Data Reduction for 5-second Observation Intervals. Reduce opacity observations by averaging 12 consecutive observations recorded at 5-second intervals. Divide the observations recorded on the record sheet into sets of 12 consecutive observations. For each set of 12 observations, calculate the average by summing the opacity of the 12 observations and dividing this sum by 12.

3. Qualification and Testing

Same as section 3, Method 203A.

4. References

Same as section 4, Method 203A.

TABLE 1.—SMOKE METER DESIGN AND PERFORMANCE SPECIFICATIONS

Parameter	Specification
a. Light source	Incandescent lamp operated at nominal rated voltage.
b. Spectral response of photocell.	Photopic (daylight spectral response of the human eye—Reference 4.1 of section 4).
c. Angle of view	15 degrees maximum total angle.
d. Angle of projection	15 degrees maximum total angle.
e. Calibration error	±3-percent opacity, maximum.
f. Zero and span drift	±1-percent opacity, 30 minutes.
g. Response time	≤5 seconds.

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40 CFR Part 721

[OPPTS–50610; FRL–4186–2]

RIN 2070–AB27

Significant New Uses of Certain Acrylate Esters

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a significant new use rule (SNUR) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for all acrylate esters falling within the definition proposed in this rule (acrylate substances). Persons wishing to manufacture, or import such substances, not appearing upon the TSCA Chemical Substances Inventory (the Inventory) as of the proposed date of this rule, for a significant new use, would be able to submit a combined Premanufacture (PMN) and Significant New Use Notice (SNUN). These persons wishing to manufacture, import, or process, for a significant new use, an acrylate substance subsequently placed

on the Inventory and subject to this SNUR would be required to submit only a SNUN. EPA has determined that these substances may be hazardous and that the uses described in this proposed rule may result in significant human exposure. This proposed rule would require persons who intend to manufacture, import, or process any of these substances to notify EPA at least 90 days before commencing the manufacturing, importing, or processing of the substance for uses designated by the SNUR as a significant new use. The required notice would provide EPA with the opportunity to evaluate the intended use, and if necessary, to prohibit or limit that activity before it occurs.

DATES: Written comments must be received by December 22, 1993.

ADDRESSES: All comments must be sent in triplicate to: TSCA Document Receipt Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. Comments that are confidential must be clearly marked confidential business information (CBI). If CBI is claimed, three additional sanitized copies must also be submitted. Nonconfidential versions of comments on this proposed rule will be placed in the rulemaking record and will be available for public inspection. Comments should include the docket control number. The docket control number for the chemical substance in this SNUR is OPPTS–50610. Unit XII. of this preamble contains additional information on submitting comments containing CBI.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics Environmental Protection Agency, Rm. E–543B, 401 M St., SW., Washington, DC 20460, Telephone: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 5(a)(2) of TSCA (15 U.S.C. 2604(a)(2)) authorizes EPA to determine that a use of a chemical substance is a "significant new use." EPA must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the substance for that use. The mechanism for reporting under this requirement is established under 40 CFR 721.25.

II. Applicability of General Provisions

General provisions for SNURs appear under subpart A of 40 CFR part 721. These provisions describe persons subject to the rule, recordkeeping requirements, exemptions to reporting requirements, and applicability of the rule to uses occurring before the effective date of the final rule. Rules on user fees appear at 40 CFR part 700. Persons subject to this SNUR would comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and 5(d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. Once EPA receives a SNUN, EPA may take regulatory action under section 5(e), 5(f), 6, or 7 as appropriate to control the activities for which it has received the SNUN. If EPA does not take action, EPA is required under section 5(g) to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a substance identified in a proposed or final SNUR are subject to the export notification provisions of TSCA section 12(b). The regulations that interpret section 12(b) appear at 40 CFR part 707. Persons who intend to import a chemical substance identified in a final SNUR are subject to the TSCA section 13 import certification requirements, which are codified at 19 CFR 12.118 through 12.127 and 127.28. Such persons must certify that they are in compliance with the SNUR requirements. The EPA policy in support of the import certification appears at 40 CFR part 707.

III. Summary of This Proposed Rule

The chemical substances which are the subject of this proposed rule are identified generically as acrylate esters having an estimated or measured number-average molecular weight of 1,000 amu (amu is the unified atomic mass unit referenced to the mass of Carbon 12) or less, or having an estimated or measured number average molecular weight of over 1,000 amu but containing more than 2 percent by weight acrylate esters with a molecular weight of 500 amu or less. Any substance meeting these criteria and not on the Inventory as of the original proposed date of this rule is intended to be included within this definition.

A person wishing to manufacture or import an acrylate substance within the scope of this proposed rule and not on the Inventory, would be required to submit a Premanufacture Notice (PMN) because all acrylates not appearing on the Inventory are new chemical substances and would remain subject to PMN reporting requirements. Persons wishing to manufacture or import for a significant new use of a new acrylate substance, which would be subject to this proposed SNUR and not on the TSCA inventory, would be required to submit a combined PMN and SNUN. A combined PMN and SNUN would contain the same information typically found or required in a PMN. The combined notice would also identify the significant new use and any additional pertinent information that could be used to evaluate the significant new use. Those persons wishing to manufacture, import, or process for a significant new use of an acrylate substance placed on the Inventory and subject to this SNUR would be required to submit only a SNUN.

In addition, any acrylate substance not on the Inventory before the date of the proposed rule that is not subject to the rule because it falls outside the molecular weight definition, may at any time in the future become subject to this SNUR, if its molecular weight changes and falls within the molecular weight definition. As TSCA Inventory listings of substances are not defined by molecular weight, persons manufacturing, importing, and processing an acrylate substance whose molecular weight may vary should note that the SNUR's applicability to the substance would depend on the molecular weight of the substance as manufactured or imported. EPA is proposing to designate the following as significant new uses of the substances:

1. Consumer use.

2. Any manner or method of manufacturing, importing, or processing associated with any use without establishing a program whereby:

a. Persons who may be dermally exposed wear impervious gloves, chemical safety goggles or equivalent eye protection, and clothing which covers any other exposed areas of the arms, legs, and torso.

b. Persons who may be exposed to dust, mist, or smoke shall, in addition to the above dermal protection, wear a category 23C air purifying respirator as described in 40 CFR 721.63(a)(5)(xi).

c. Persons who may be exposed are provided with information on the substance, in writing and through training, at the time of their initial assignment to work areas where the substance is present, and whenever the

substance is introduced into their work area.

d. The substances are labeled both for the workplace and for distribution in commerce, as described in 40 CFR 721.72(b).

e. A material safety data sheet (MSDS) is obtained or developed as described in 40 CFR 721.72(c).

IV. Background

Subsequent to the enactment of TSCA and the initiation of the PMN review process, EPA began to assemble a subset of data on certain acrylates. These data increasingly pointed toward the possibility that acrylates, as a class, possess certain toxicologic properties. By 1983, EPA believed that under certain conditions of use and exposure, specific acrylates might pose an unreasonable risk to human health. EPA began systematically negotiating consent orders under section 5(e) of TSCA for certain new acrylates for which a PMN was required under section 5(a) of TSCA. Since 1983, EPA has negotiated section 5(e) consent orders or the PMN submitters have withdrawn their notices in the face of potential Agency action under section 5(e) for these substances. Since 1990, consistent with its policy to link SNURs to section 5(e) consent orders, SNURs for these acrylate substances have been promulgated by EPA.

As a result of EPA's experience in regulating acrylates over this 10–year period, and by virtue of the issuance of these section 5(e) consent orders and individual chemical SNURs governing reporting for specified significant new uses of certain acrylates, the terms of such regulation have been standardized. Thus, EPA already routinely regulates on a case-by-case basis the acrylate chemicals defined in this proposed rule. The Agency has yet to acquire sufficient test data to enable it to make a reasoned evaluation of the potential risks associated with exposure to acrylate substances as a class. However, the Agency believes that those data currently available are sufficient to warrant regulation including the promulgation of a category SNUR based on the potential unreasonable risk of cancer from uncontrolled exposure to acrylates. In addition, EPA's finding for acrylates is consistent with section 26(c) of TSCA which provides that any action authorized or required by TSCA for a chemical substance may also apply to a category of chemical substances.

This proposed rule would establish uniform notification criteria for all persons wishing to manufacture, import, or process a subject acrylate substance not appearing on the Inventory as of the proposed date of this rule. EPA believes this approach is advantageous to both the affected industry and to the Agency. Persons wishing to introduce a new acrylate into commerce would be apprised of the Agency's concerns prior to submission of a PMN. It is likely that these persons, given this knowledge, would be able to avoid delays incurred through the negotiation of section 5(e) consent orders. Absent any additional concerns presented by a new acrylate substance, PMN submitters utilizing the worker exposure controls specified in the SNUR would be free to commence their manufacturing or importation activities immediately upon the conclusion of the 90–day PMN review period. Subsequent to the addition of a substance to the Inventory, and provided that EPA has not imposed any further regulations, other persons would be free to commence activities consistent with the SNUR, and could do so without delay if they complied with control measures specified in the SNUR. Unless there were additional concerns presented by a new acrylate substance, EPA would be relieved of the obligation to negotiate section 5(e) orders and promulgate chemical specific SNURs.

An additional advantage to this proposed category SNUR would be the relative uniformity of compliance programs for all future acrylate substances. Because EPA is currently, and is proposing in this rule to continue regulating acrylates uniformly, persons in compliance with the SNUR for one substance would be assured of being in compliance with regard to the manufacture, importation, and processing of most future acrylates if they employ the same processes and controls. There would normally be no need to vary the control measures, established recordkeeping procedures, employee training programs, or any other aspect of the generic acrylate SNUR compliance program established for a prior substance.

V. Category Definition

The Agency considered several category definitions prior to selecting that which appears in proposed § 721.340(a)(1) and (b)(3)(A) of the regulatory text. In arriving at the proposed definition, the Agency considered not only the data available relative to toxicity and exposure, but also took into consideration the regulatory history of acrylates and the role of a SNUR within that regulatory history.

The proposed definition includes only acrylates although EPA has also regulated methacrylates in TSCA section 5(e) consent orders and SNURs. EPA is not proposing to generically regulate methacrylates at this time for several reasons. First, EPA regulates only a few methacrylate substances per year. In addition, there is an ongoing acrylates testing program sponsored by a group of specialty acrylate manufacturers, and as a result, triethylene glycol diacrylate and triethylene glycol dimethacrylate are currently being tested in long-term dermal bioassays. After the testing results of this methacrylate/ acrylate pair are submitted to and evaluated by EPA, the Agency will consider appropriate generic regulation, if any, for methacrylates.

The proposed category establishes two critera for inclusion based upon number-average molecular weight. Throughout the PMN screening process, molecular weight has been one of the determinants dictating whether or not the Agency initiated regulatory action for acrylates under sections 5(e) or 5(a)(2) of TSCA. The Agency has utilized molecular weight as a surrogate measure of the absorption potential of a given acrylate and hence, its potential for causing adverse health effects as a result of dermal and inhalation exposure.

In selecting the molecular weight ranges for its proposed category, EPA considered several criteria. EPA believes that its proposed first criterion of a number-average molecular weight less than 1,000 amu reflects a reasoned consideration of available data and generally accepted scientific principles. In general, lower molecular weight species are more readily absorbed and, hence, pose the greatest potential for causing adverse health effects. The Agency believes that, in a related series of analogous substances, such as acrylates, a sufficient increase in molecular weight of a molecule decreases the flux, or rate of dermal penetration to an insignificant level.

The second criterion of the proposed definition would encompass any substance of a number-average molecular weight greater than 1,000 amu but containing 2 percent or more of an acrylate ester having a number-average molecular weight of less than 500 amu. In the absence of definitive data, the Agency selected a molecular weight of 500 amu for an upper bound, reasoning that the potential for absorption would be mitigated by the selected concentration factor of less than 2 percent.

A more complete discussion of the Agency's evaluation of available absorption and metabolism data may be obtained from EPA's toxicity support document which can be found in the

public record established for this proposed rule. The Agency encourages public comment on this proposed acrylate category definition as well as the significant new uses described under paragraph (a)(2) of the proposed § 721.340.

VI. Summary of Health and Exposure Concerns

As stated in Unit IV., EPA routinely makes a may present an unreasonable risk to health finding when regulating new acrylate chemicals under section 5(e) of TSCA. This finding is based on toxicity data on structurally similar chemicals that indicate potential health effects and that the Agency has insufficient data to make a reasoned evaluation of those health effects. The Agency has concluded that certain acrylates may present a risk of cancer. This conclusion is based primarily upon data available for a subset of acrylates (one gavage and four dermal bioassays on acrylates) which have demonstrated positive results. (NTP 1983, USEPA 1979, and USEPA 1982). Based upon these data and upon the criteria established in the EPA carcinogenicity assessment guidelines (USEPA 1987), the Agency has determined that for mono-, di-, and triacrylates there is sufficient information to raise a carcinogenicity hazard concern.

An epidemiology study on workers exposed to ethyl acrylate and methyl methacrylate also appears to indicate an increased incidence of colorectal cancer (Rohm and Haas 1987). Based upon this limited epidemiology data and positive results in certain of the available bioassays on the mono-, di-, and triacrylates (discussed in detail in the toxicity support document available in the public record for this proposed rulemaking) and the lack of correlation between structure and oncogenicity of acrylates that can be derived from the currently available data, EPA has concluded that all acrylate chemicals may present a human carcinogenicity hazard.

The potential for dermal and inhalation exposure to acrylates exists during their manufacture, processing, and use. Dermal exposure may reach 3,900 mg/day in the absence of protective equipment, in particular, impervious gloves. Inhalation exposure is limited to particulates (mist) during use of coating via spray application, and to vapors from low molecular weight acrylates. Inhalation exposure to mist is expected to be in the tens of milligrams per day depending on the concentration of the acrylate in the product and the total mist level. Based on previous PMNs, inhalation exposure to vapors has been estimated to be negligible for the majority of acrylates, although for several acrylates (with vapor pressures above 0.001 mm Hg) exposures of 1–2 mg/day have been estimated.

VII. Determination of Proposed Significant New Uses

To determine what would constitute significant new uses of these chemical substances, EPA considered relevant information about the toxicity of the substances, likely exposures/releases associated with possible uses, and the four factors listed in section 5(a)(2) of TSCA.

Section 5(a)(2) of TSCA provides that EPA's determination that a use of a chemical substance is a significant new use must be made after a consideration of all relevant factors including:

1. The projected volume of manufacturing and processing of a chemical substance.

2. The extent to which a use changes the type or form of exposure of human beings or the environment to a chemical substance.

3. The extent to which a use increases the magnitude and duration of exposure of human beings or the environment to a chemical substance.

4. The reasonably anticipated manner and methods of manufacturing, processing, distribution in commerce, and disposal of a chemical substance.

EPA construes the statute to allow consideration of any other relevant factors, in addition to those enumerated in section 5(a)(2)(A) through (D).

When designating a significant new use of an acrylate substance to be any manufacturing, importing, or processing without the hazard communication program specified in § 721.340 (a)(2)(ii) of the proposed SNUR, EPA considered that an effective hazard communication program, that includes such provisions as warning statements on the label and MSDS and worker training, addresses such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

When designating a significant new use of a new acrylate substance to be any manufacturing, importing, or processing, without the protective equipment specified in § 721.340(a)(2)(i) of the proposed SNUR, EPA considered that an effective program that includes provisions for personal protective equipment for persons who are exposed to a new acrylate substance, addresses such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure as well as methods of manufacturing, processing, and use.

When designating a significant new use of an acrylate substance to be consumer use, EPA considered that consumer use of a new acrylate substance addresses such factors in section 5(a)(2) as type, form, duration, and magnitude of exposure.

Based on these considerations, EPA proposes to define the significant new uses of acrylate substances falling within the category definition as set forth in paragraph (a)(2) of the proposed § 721.340.

VIII. Specific Issues

Although EPA is seeking public comment on all aspects of this proposed rulemaking, it is soliciting comment more specifically on issues which are unique to the proposed acrylate SNUR. These issues are discussed below.

The proposed acrylate category purposefully excludes acrylates on the Inventory prior to the proposed date of this rule. Although the Agency still has concerns for these substances and could expand the scope of the proposed definition to include existing acrylates meeting the category definition, as a matter of policy, the Agency is choosing to focus on new acrylate substances. Thus, the Agency is proposing to develop a more comprehensive understanding of the hazards and risks of both new and existing acrylate substances via a series of activities focused on new chemical acrylates. Consult Unit V. of this proposed rule and the public docket established for this rule for further information on ongoing testing and assessment of acrylate and methacrylate substances. The Agency specifically requests comments on this and other issues related to the acrylate category definition.

IX. Determining When a Substance is the Subject of This Rule

Unlike most previous SNURS in which specific chemical substances were masked by generic names due to associated TSCA CBI claims, this SNUR defines a category. Persons wishing to manufacture, import, or process any acrylate ester falling within the defined category should know whether or not the substance meets the technical definition, thereby making it potentially subject to this rule. However, it may be difficult to discern whether or not a specific acrylate ester was listed on the Inventory prior to the proposed date of this SNUR due to the significant number of substances listed with generic chemical identities.

All acrylates not appearing on the Inventory remain subject to PMN reporting requirements. All acrylate

substances which have previously been the subject of SNURs promulgated by the Agency remain subject to those requirements as established in the original SNURs.

Acrylate esters meeting the category definition will be added to the Inventory and will be flagged denoting they appear in the SNUR appendix to the Inventory where manufacturers, importers, and processors can find out that the substance is subject to this rule. The specific chemical identity of many acrylate substances listed both prior and subsequent to the date of this proposed rule will be confidential. Any person who proposes to manufacture or import one of these substances is unlikely to know that the substance is on the Inventory and, therefore, would need to submit a bona fide request under either 40 CFR 710.7(g) or 720.25(b) to determine whether the substance is on the Inventory. If EPA determines that the person has a bona fide intent to manufacture or import the substance and that the substance the person proposes to manufacture or import is both on the Inventory and the subject of this proposed rule, EPA will inform the person that the substance is subject to this rule.

X. Test Data and Other Information

EPA recognizes that section 5 of TSCA does not require the development of any particular test data before submission of a SNUN. Persons are required only to submit test data in their possession or control and to describe any other data known to or reasonably ascertainable by them. However, EPA recommends a 2–year, two-species bioassay according to the guidelines in 40 CFR 798.3300 to address the potential carcinogenicity associated with acrylates. EPA is currently involved in a research initiative with certain acrylate manufacturers affected by the regulation of acrylates as a category. The goal of the research initiative is to conduct toxicity testing and develop greater understanding of metabolism and mechanisms of action of acrylates so that the potential risks of specific acrylates can be better characterized.

EPA will be better able to evaluate SNUNs which provide detailed information on:

1. Human exposure and environmental release that may result from the significant new use of the chemical substance.
2. Potential benefits of the substance.
3. Information on risks posed by the substance compared to risks posed by potential substitutes.

Data on potential exposures to or releases of the substance, testing other than that specified for the substance, or studies on analogous substances, which may demonstrate that the significant new uses being reported are unlikely to present an unreasonable risk, may be included with a SNUN. Persons submitting a SNUN must comply with the same notice requirements and EPA regulatory procedures as submitters of PMNs as stated in 40 CFR 721.1(c), including submission of test data on health and environmental effects as described in 40 CFR 720.50.

XI. Economic Analysis

EPA has evaluated the potential costs of establishing significant new use notice requirements for potential manufacturers, importers, and processors of the chemical substance subject to this rule. EPA's complete economic analysis is available in the public record for this rule (OPPTS–50610).

XII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–50610) which includes information considered by EPA in developing this rule. The record includes the following information:

1. The economic analysis of this rule.
2. The toxicity support document.
3. A reference to the TSCA section 4 test rules docket number 42091 for acrylates which contains an extensive history of EPA's existing chemical assessment, public meetings, public comments, and regulation of acrylates.

A public version of the record, without any CBI, is available in the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office, from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC 20460.

Any person who submits comments claimed as CBI must mark the comments as "confidential", "trade secret", or other appropriate designation. Comments not claimed as confidential at the time of submission will be placed in the public file. Any comments marked as confidential will be treated in accordance with the procedures in 40 CFR part 2. Any person submitting comments claimed to be confidential must prepare and submit a nonconfidential public version of the comments in triplicate that EPA can place in the public file.

XIII. References

(1) NTP. 1983. National Toxicology Program. NTP Technical Report on the carcinogenisis bioassay of ethyl acrylate in F344/N rats and B6C3F1 mice (gavage study). HHS.PHS. National Institutes of Health NTP Publication Number 82–2515. NTP82–077.

(2) Rohm and Haas 1987. Mortality Study of Bristol Plant Employees Hired Prior to 1946. Unpublished Report. Rohm and Haas Corporation.

(3) USEPA. 1979. Carnegie-Mellon Institute of Research. 1979. Evaluation of the dermal carcinogenic potential of neopentyl glycol diacrylate. Union Carbide Corporation. TSCA section 8(e) submission. 8EHQ–1179–0029 to USEPA.

(4) USEPA 1982. Celanese. 1982. Chronic mouse dermal studies with pentaerythritol triacrylate, tetraethylene glycol diacrylate, and triethyleneglycol diacrylate. Kettering Lab. TSCA 8(e) submission 8EHQ–0882–0454 and 8EHQ–0882–0410/0411 to USEPA.

(5) USEPA 1987. The Risk Assessment Guidelines of 1986. EPA Office of Research and Development. EPA/600/8–87/045. August 1987.

XIV. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. While there is no precise way to calculate the total annual cost of compliance with this rule, EPA estimates that the cost for submitting a significant new use notice would be between $7,198 to $8,170, including a $2,500 user fee payable to EPA to offset EPA costs in processing the notice. EPA believes that, because of the nature of the rule and the substances involved, there will be few SNUR notices submitted.

This proposed regulation was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this rule would not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by this rule would likely be small

businesses. However, EPA expects to receive few SNUNs for the substances. Therefore, EPA believes that the number of small businesses affected by this rule would not be substantial, even if all of the SNUN submitters were small firms.

C. Paperwork Reduction Act.

The information collection requirements contained in this rule have been approved by OMB under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and have been assigned OMB control number 2070–0012.

Public reporting burden for this collection of information is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, (2131), U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0012), Washington, DC 20503.

List of Subjects in 40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: November 15, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR part 721 be amended as follows:

PART 721—[AMENDED]

1. The authority citation for part 721 would continue to read as follows:

Authority: 15 U.S.C. 2604, 2607, and 2625(c)

2. By adding new § 721.340 to subpart E to read as follows:

§ 721.340 Acrylate esters.

(a) *Chemical substances and significant new uses subject to reporting.* (1) Chemical substances falling within the acrylate ester category definition and not on the TSCA Inventory as of [Insert proposed date of this rule] are subject to reporting under this section for the significant new uses described in paragraph (a)(2) of this section. The acrylate ester category shall include any ester of an acrylate, as defined in paragraph (b)(3)(i) of this section having:

(i) A measured number-average molecular weight of 1,000 amu (amu is the unified atomic mass unit referenced to the mass of Carbon 12) or less.

(ii) A measured number-average molecular weight of over 1,000 amu and containing more than 2 percent by weight of any acrylate ester with a molecular weight of 500 amu or less.

(2) The significant new uses are:

(i) *Protection in the workplace.* Requirements as specified in § 721.63(a)(1), (a)(2)(i), (a)(2)(iii), (a)(2)(iv), (a)(3), (a)(4), (a)(5)(xi), (a)(6)(i), (a)(6)(ii), (a)(6)(iv), (b) (concentration set at 0.1 percent), and (c).

(ii) *Hazard communication program.* Requirements as specified in § 721.72(a), (b), (c), (d), (e) (concentration set at 0.1 percent), (f), (h)(1)(i)(A), (h)(1)(i)(B), (h)(1)(i)(C), (h)(1)(iii)(A), (h)(1)(vi), (h)(2)(i)(B), (h)(2)(i)(C), and (h)(2)(i)(D).

(iii) *Industrial, commercial, and consumer activities.* Requirements as specified in § 721.80(o).

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping requirements.* Recordkeeping requirements as specified in § 721.125(a) through (i) are applicable to manufacturers, importers, and processors of these substances.

(2) *Limitations or revocation of certain notification requirements.* The provisions of § 721.185 apply to this section.

(3) *Definitions.* (i) *Acrylate* means those chemical substances (including combinations of chemical substances that are not mixtures) whose structures contain one or more covalently bound substructures which are described as terminal or pendant acrylate groups. Such chemical substances are considered to contain a functional acrylate moiety. The functional nature of these chemical substances is attributed to the conjugated carbon to carbon double bond present in the acrylate. Functional acrylate substructures may be produced from several types of reactions. Regardless of the synthetic route, the unsaturated bond of the acrylate group(s) remains present and unreacted. Functional acrylate substructures are typically but not always produced from reactions between mono- or polyhydric alcohols and acrylic acid in which the –OH radical(s) from the alcohol combines with the –COOH radical of the acrylic acid to form acrylate esters. This reaction mechanism ensures that the double bond remains intact. The substructures produced from the possible chemical reaction types are diagramed below; the free valence is the location of covalent linkage to the rest of the molecule:

$$-O-(-C{=}O)CH{=}CH_2$$

Acrylate Group (2-Propenoate Group)

(ii) [Reserved]

[FR Doc. 93–28611 Filed 11–19–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 799

[OPPTS–42150, FRL 4610–2]

RIN No. 2070–AB07

Acetophenone, Phenol, N,N-Dimethylaniline, Ethyl Acetate, and 2,6-Dimethylphenol; Proposed Test Rule, Notice of Opportunity to Initiate Negotiations for TSCA Section 4 Testing Consent Agreements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a test rule under section 4(a) of the Toxic Substances Control Act (TSCA) that would require manufacturers and processors of five chemicals (acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol) to conduct testing for certain chemical fate, health and environmental effects. This rule would require that testing be conducted to develop data with respect to chemical fate and health and environmental effects for which there is an insufficiency of data and experience and which are relevant to a determination that the manufacture, distribution in commerce, processing, use, or disposal of such chemicals, or that any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment. In addition to the proposed test rule, EPA has negotiated a testing consent agreement development program under TSCA section 4 to allow the Agency to make greater use of enforceable consent agreements (ECAs). Therefore, EPA is soliciting interested parties for participation in or monitoring of consent agreement negotiations for the chemicals that are proposed for testing in this rulemaking. EPA is also inviting manufacturers and/or processors of chemical substances who wish to participate in consent agreement negotiations for the chemicals proposed for testing to develop and submit testing consent agreement proposals to EPA.

DATES: Written comments on the proposed rule must be received by EPA on or before January 21, 1994. If persons request an opportunity to submit oral comments by January 6, 1994, EPA will hold a public meeting on this proposed rule in Washington, DC. For further information on arranging to speak at the meeting see Unit VII of this preamble. Written ECA testing proposals must be received by January 21, 1994. Written notice of interest in being designated an "interested party" to the consent agreement negotiations for the chemicals proposed for testing in this rulemaking must be received by January 21, 1994. Those submitting written testing proposals will be considered "interested parties" and do not have to submit separate written notice of interest in being designated. EPA will contact all "interested parties" and advise them of meeting dates.

ADDRESSES: Submit written comments, identified by the document control number (OPPTS–42150) and the chemical-specific docket number, in triplicate to: TSCA Nonconfidential Information Center (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, East Tower, Rm. G-99, 401 M St., SW., Washington, DC, 20460. A public version of the administrative record supporting this action, without confidential business information (CBI), is available for inspection at the above address in Room G-102, from 8 a.m. to 12 noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: This notice proposes a test rule under TSCA section 4(a)(1)(A) and (B) to require certain health, environmental, and chemical fate tests for acetophenone (CAS No. 98–86–2), phenol (CAS No. 108–95–2), *N,N*-dimethylaniline (CAS No. 121–69–7), ethyl acetate (CAS No. 141–78–6), and 2,6-dimethylphenol (CAS No. 576–26–1).

I. Introduction

A. ITC Recommendation

At the request of EPA, the ITC reviewed a subset of chemicals included on EPA's Integrated Risk Information System (IRIS) data base for which the Agency believed there is inadequate data. EPA brought these chemicals to the ITC to foster interagency coordination and cooperation on testing needs. The ITC designated six chemicals included in IRIS [acrylic acid (addressed in a separate rulemaking at 57 FR 7656, March 4, 1992), acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol] for priority consideration as candidates for chemical fate, health effects and environmental effects testing.

IRIS is an electronic database, prepared and maintained by EPA, containing both cancer and non-cancer chronic health hazard information on specific chemicals. IRIS provides hazard identification and dose-response assessment information. This information, when combined with specific exposure information, can be used to help characterize the public health risks posed by a chemical in a particular situation (Ref. 7).

In addition, as other agencies brought their testing needs and concerns for the chemicals to bear on the ITC deliberations, the ITC's testing recommendations expanded to include additional endpoints such as mutagenicity and neurotoxicity testing.

Besides health effects data, the ITC also recommended additional data to better characterize the environmental effects and chemical fate of two of these chemicals. The reasons for these particular testing recommendations by the ITC are further discussed in the **Federal Register** of March 6, 1991 (56 FR 9534), and in the chemical-specific sections of this notice.

B. Test Rule Development Under TSCA

Under section 4(a) of TSCA, EPA shall, by rule, require testing of a chemical to develop appropriate test data if the Administrator makes certain findings as described in TSCA section 4(a)(1)(A) or (B). Discussions of the statutory section 4 findings are provided in EPA's first and second proposed test rules, which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300). EPA also proposed its policy for making findings under TSCA section 4(a)(1)(B) in the **Federal Register** of July 15, 1991 (55 FR 32294) and finalized this policy in the **Federal Register** of May 14, 1993 (58 FR 28736). This is referred to in this test rule as the "B policy." For further discussion of EPA's interpretation of its authority under sections 4(a)(1)(A) and (B) of TSCA, see Unit III of this preamble.

In evaluating the ITC's testing recommendations for these chemicals, EPA considered the information provided by the ITC, the on-line IRIS data base, and supplemental information developed by EPA. In developing the testing requirements for this rule, EPA has also considered the status of acetophenone and phenol under the Clean Air Act Amendments of 1990 (Ref. 51). These considerations have influenced the proposed testing and routes of administration selected. From this evaluation, EPA is proposing health effects testing for five of these chemicals, and chemical fate and environmental effects testing for two of these chemicals under TSCA section 4(a)(1)(A) and/or (B). Either finding alone is sufficient to support a test rule EPA has entered into an enforceable testing Consent Order for the sixth chemical–acrylic acid.

EPA did not require reporting for these chemicals under sections 8(a) or 8(d) of TSCA because production, use and exposure information and toxicity data for these chemical substances are available in the general literature and EPA expects that any unpublished studies will be submitted in response to the proposed rule. Where less is known about the toxicity and exposures to the chemical, section 8(a) and 8(d) information is needed and routinely required before EPA proposes a section 4 test rule.

This action constitutes EPA's response to the ITC as required by TSCA section 4(e)(1)(B).

II. Proposed Testing and Reporting Requirements

A. Test Standards and Reporting Requirements

EPA is proposing that health effects, environmental effects, and/or chemical fate testing be conducted on acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol according to the specific test guidelines set forth in § 799.4450.

Data developed under the final rule must be reported in accordance with TSCA Good Laboratory Practice (GLP) Standards, 40 CFR part 792.

As required by section 4(b)(1) of TSCA, EPA is proposing specific testing and reporting requirements for each of the proposed tests for the five IRIS chemicals as specified in the following Table 1:

TABLE 1.—TESTING AND REPORTING FOR FIVE IRIS CHEMICALS

Chemical Name (CAS No.)	Test (Route of Administration)	Guideline	Minimum Percent Purity	Deadline for Final Report[1] (months)	Docket No.
Acetophenone (98–86–2).	.....	.....	.....	.....	42150/42151
	Health effects testing:				
	Subchronic toxicity, Inhalation	§ 798.2450	99.0	18	
	Toxicokinetics[2], Oral	OECD 417	99.0	15	
	Toxicokinetics[2], Inhalation	OECD 417	99.0	15	
	Neurotoxicity, Acute and Subchronic, Inhalation.	§ 798.6050 and 798.6200	99.0	21	
	Neurotoxicity, Subchronic, Inhalation	§ 798.6400	99.0	21	
	Reproductive toxicity, Gavage	§ 798.4700	99.0	29	
	Developmental toxicity, Inhalation	§ 798.4900	99.0	12	
	Salmonella assay	§ 798.5265	99.0	9	
	In vitro gene mutation assay	§ 798.5300	99.0	10	
	In vivo cytogenetics assay	§ 798.5385 or 798.5395	99.0	14	
Phenol (108–95–2)	.....	.....	.....	.....	42150/42152
	Health effects testing:				
	Subchronic toxicity, Inhalation	§ 798.2450	99.0	18	
	Toxicokinetics[2], Oral	OECD 417	99.0	15	
	Toxicokinetics[2], Inhalation	OECD 417	99.0	15	
	Neurotoxicity, Acute and Subchronic, Inhalation.	§ 798.6050 and 798.6200	99.0	21	
	Neurotoxicity, Subchronic, Inhalation	§ 798.6400	99.0	21	
	Reproductive toxicity, Inhalation	§ 798.4700	99.0	29	
	Developmental neurotoxicity, Gavage	§ 795.250	99.0	21	
N,N-Dimethylaniline (121–69–7).	.....	.....	.....	.....	42150/42153
	Health effects testing:				
	Subchronic toxicity, Inhalation	§ 798.2450	99.0	18	
	Toxicokinetics[2], Oral	OECD 417	99.0	15	
	Toxicokinetics[2], Inhalation	OECD 417	99.0	15	
	Neurotoxicity, Acute and Subchronic, Inhalation.	§ 798.6050 and 798.6200	99.0	21	
	Neurotoxicity, Subchronic, Inhalation	§ 798.6400	99.0	21	
	Reproductive toxicity, Gavage	§ 798.4700	99.0	29	
	Developmental toxicity, Gavage	§ 798.4900	99.0	12	
	In vivo cytogenetics assay	§ 798.5385 or 798.5395	99.0	14	
	Environmental Effects Testing:.				
	Algal test	§ 797.1050	99.0	12	
	Daphnid acute test	§ 797.1300	99.0	12	
	Mysid shrimp acute test	§ 797.1930	99.0	12	
	Fathead minnow life stage test	§ 797.1600	99.0	12	
	Sheepshead minnow life stage test	§ 797.1600	99.0	12	
	Daphnid chronic test	§ 797.1330	99.0	18	
	Mysid shrimp chronic test	§ 797.1950	99.0	18	
	Chemical Fate Testing:.				
	Activated sludge testing	§ 796.3340	99.0	12	
	Anaerobic biodegradation testing	§ 796.3140	99.0	12	
Ethyl Acetate (141–78–6).	.....	.....	.....	.....	42150/42141A
	Health effects testing:				

TABLE 1.—TESTING AND REPORTING FOR FIVE IRIS CHEMICALS—Continued

Chemical Name (CAS No.)	Test (Route of Administration)	Guideline	Minimum Percent Purity	Deadline for Final Report[1] (months)	Docket No.
	Reproductive toxicity, Gavage	§ 798.4700	99.0	29	
	Developmental toxicity, Gavage	§ 798.4900	99.0	12	
	In vitro gene mutation assay	§ 798.5300	99.0	10	
2,6-Dimethylphenol (576–26–1).					42150/42154
	Health effects testing:				
	Toxicokinetics[2], Oral	OECD 417	99.0	15	
	Toxicokinetics[2], Inhalation	OECD 417	99.0	15	
	Neurotoxicity, Acute and Subchronic, Gavage.	§ 798.6050 and 798.6200	99.0	21	
	Neurotoxicity, Subchronic, Gavage	§ 798.6400	99.0	21	
	Reproductive toxicity, Gavage	§ 798.4700	99.0	29	
	Developmental toxicity, Gavage	§ 798.4900	99.0	12	
	In vitro gene mutation assay	§ 798.5300	99.0	10	
	In vivo cytogenetics assay	§ 798.5385 or 798.5395	99.0	14	
	Environmental Effects Testing:.				
	Algal test	§ 797.1050	99.0	12	
	Fathead minnow life stage test	§ 797.1600	99.0	12	
	Daphnid chronic test	§ 797.1330	99.0	18	
	Chemical Fate Testing:.				
	River die-away testing	(incorporated by reference) ????	99.0	12	
	Anaerobic biodegradation testing	§ 796.3140	99.0	12	
	Aqueous photolysis testing	§ 795.70	99.0	12	

[1] Figure indicates the reporting deadline in months calculated from the effective date of the final rule or from the date of test sponsor notification by certified letter to initiate test where such notification is specified.

[2] The toxicokinetics (pharmacokinetics and metabolism) guideline was developed by the European Organization for Economic Cooperation and Development (OECD) and is proposed to be incorporated by reference in this rule.

All of the guidelines referenced in Table 1 are intended to be used as currently published in Title 40 of the Code of Federal Regulations, except for the neurotoxicity test guidelines, which are modified in the codified section of this rule. The neurotoxicity guideline modifications specify the duration and frequency of exposure and specify that lower exposure levels shall show a graded neurotoxic response or no neurotoxicity. Exceptions also are the toxicokinetics and biodegradation in natural surface water guidelines, which are proposed to be incorporated by reference and are available in the docket for this rule.

B. Interim Mutagenicity Testing Policy

The proposed health effects testing in this rule reflects EPA's current thinking in the area of mutagenicity testing, both as an endpoint and as it leads to oncogenicity testing. The science of mutagenicity testing has undergone considerable change since EPA first required mutagenicity testing in a section 4 test rule (50 FR 20662, May 17, 1985). This new information, particularly data from EPA's Gene-tox Program related to the ability of short term tests to predict mutagenicity (Ref. 105), the National Toxicology Program's study of the ability of short term tests to predict carcinogenic potential (Ref. 90), and expert meetings, such as the 1987 Williamsburg conference, has led EPA to revise the TSCA section 4 mutagenicity testing scheme. This includes how EPA requires additional mutagenicity testing based on results from lower-tier mutagenicity tests and also how it requires oncogenicity testing based on mutagenicity test results. EPA believes the flexibility and opportunity to apply professional scientific judgment offered by the new approach afford considerable advantages over the prior scheme. EPA's rationale for these changes is discussed in the technical literature (Ref. 19) and will not be discussed here.

For purposes of this rule, in which only Tier I testing is being proposed, the changes are relatively minor. First, Tier I is redefined as a battery of two *in vitro* tests and one *in vivo* test. There is no longer a distinction as to gene mutations or chromosomal aberrations in Tier I, and the previously utilized *in vitro* cytogenetics test would be eliminated. The purpose of Tier I testing, however, continues to be to determine intrinsic mutagenic potential.

Subsequent mutagenicity testing, including Tier II testing, is not being proposed at this time. The test guidelines for several of the Tier II tests are still undergoing refinement. Thus, rather than delaying the Agency's response to the ITC until all of the details of the mutagenicity testing scheme have been completed, EPA has decided to propose only Tier I of the new mutagenicity testing scheme at this time. If appropriate, further mutagenicity testing, including triggers to oncogenicity testing, will be

addressed in a subsequent rulemaking after review of the Tier I results.

C. Persons Required to Test

Because of the findings in Unit III of this preamble, EPA is proposing that persons who manufacture (including import) or process, or who intend to manufacture or process, acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, or 2,6-dimethylphenol, other than as an impurity, at any time from the effective date of the final test rule to the end of the reimbursement period, be subject to the testing requirements in this rule. Byproduct manufacturers and importers of acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, and/or 2,6-dimethylphenol are considered manufacturers under this rule. As explained in 40 CFR 790.42, manufacturers of these substances would be required to submit letters of intent to conduct testing or exemption applications. However, small quantity manufacturers, research and development manufacturers and processors would not be required to submit letters of intent or exemption applications unless directed to do so in a subsequent notice as described in § 790.48(b).

EPA has specified relatively pure substances for testing (99 percent, or higher). EPA is not proposing to require submission of equivalence data as a condition for exemption from testing, since EPA is interested in evaluating the effects attributable to the substances themselves.

III. Findings

EPA interprets TSCA section 4(a) to mean that EPA's authority to require testing under TSCA section 4(a)(1)(A) and (B) is related to the "data insufficiency" and "testing is necessary" findings under TSCA section 4(a)(1)(A)(ii) and (iii) and (B)(ii) and (iii). Thus, once the Administrator has made a finding under TSCA section 4(a)(1)(A)(i) that a chemical may present an unreasonable risk, or under TSCA section 4(a)(1)(B)(i) that a chemical is or will be produced in substantial quantities and may either be released to the environment in substantial quantities or that there may be substantial or significant human exposure to the chemical, the Administrator may require any type of testing necessary to address unanswered questions about the effects of the chemical. EPA need not limit the scope of testing required to the factual bases for the section 4(a)(1)(A)(i) or (B)(i) findings. For a more detailed discussion of this interpretation, see EPA's final "B-policy" rule (58 FR 28736, May 14, 1993).

The proposed chemical fate, health and environmental effects testing is based on the authority of section 4(a)(1)(A) and (B) of TSCA. EPA finds that available data indicate that three of the chemicals may present an unreasonable risk of injury to human health or the environment; all five of these chemicals are produced in substantial quantities; there is or may be significant or substantial human exposure to all five of these chemicals; there is or may be substantial environmental release of one of these chemicals; there are insufficient data and experience to determine or predict the effects from manufacturing, distribution, processing, use, and disposal of all of these chemicals; and testing is necessary to develop these data.

As noted earlier, a general discussion of the statutory section 4 findings is provided in EPA's first and second proposed test rules, which were published in the **Federal Register** of July 18, 1980 (45 FR 48510) and June 5, 1981 (46 FR 30300), in EPA's final "B" policy, published in the **Federal Register** of May 4, 1993 (58 FR 28736), and in Unit II. C. of this preamble.

A. Acetophenone

EPA is proposing testing of acetophenone under the authority of section 4(a)(1)(B) of TSCA.

1. *Substantial quantities produced finding.* EPA believes that acetophenone is or will be produced in substantial quantities. According to records available to EPA, acetophenone production exceeds 1 million pounds per year; actual production volumes are CBI. EPA believes that production of 1 million pounds or greater constitutes substantial production under TSCA section 4(a)(1)(B)(i).

2. *Substantial human exposure finding.* EPA believes that there is or may be substantial human exposure to acetophenone. This assessment is based on a National Occupational Exposure Survey (NOES) which indicates that 39,880 workers were potentially exposed to acetophenone in various industrial applications (Refs. 70 and 109). Of these workers, 97 percent were potentially exposed during the use of trade name products containing acetophenone. As explained in EPA's "B" policy, EPA believes that the potential exposure of 39,880 workers to acetophenone constitutes substantial human exposure under section 4(a)(1)(B) of TSCA. Acetophenone is used as a perfume base in the fragrance industry, as a process solvent for gums, resins, and dyestuffs, as an intermediate for the synthesis of pharmaceuticals, in corrosion inhibitors, in rubber chemicals, in flavorings, as a polymerization catalyst, and as a photoinitiator (Refs. 14 and 81). The use of acetophenone as a fragrance in soaps and detergents also gives rise to widespread consumer exposure. EPA estimates an exposure of individual persons up to 3,783 mg/yr from use of hand soaps (Ref. 96).

EPA also believes that there is or may be general population exposure to acetophenone. Acetophenone has been detected in U.S. drinking water supplies. In a survey of 10 U.S. cities between 1969 and 1972, acetophenone was found in Philadelphia's drinking water, on 7 different occasions, at a concentration of approximately 1.0 µg/L (Refs. 54 and 89). This may result in the exposure of millions of people. For the reasons set forth in EPA's "B" policy, EPA believes that the potential exposure of 100,000 or more people in the general population to acetophenone constitutes substantial human exposure under TSCA section 4(a)(1)(B)(i).

3. *Insufficient data and experience finding.* EPA believes that there are insufficient data and experience to determine or predict the effects on human health or the environment from manufacturing, processing, distribution, use, and/or disposal of acetophenone. EPA believes that available studies are insufficient and other data are lacking to sufficiently evaluate the effects of acetophenone.

Inhalation data to assess the subchronic effects of exposure to acetophenone do not adequately address the concentration-response relationship for the portal-of-entry effects via the inhalation route. The primary study cited as providing the baseline RfC (for inhalation) indicated a no observed effect level (NOEL) of 0.007 mg/m^3 and a lowest observed effect level (LOEL) of 0.07 mg/m^3 based on congestion of cardiac vessels, liver dystrophy and changes in the ratios of blood proteins and muscle chronaxie (Ref. 49). This study exposed groups of 15 white male rats continuously to acetophenone vapor at 0, 0.007, or 0.07 mg/ m^3 for 70 days. While a NOEL and LOEL were reported, this study is inadequate because only one sex of animals was examined, only five animals per group were used to study cholinesterase activity, and serum protein levels and the number of animals which underwent histopathological examination were unreported (Ref. 51).

Another inhalation study reported a specific pattern of degeneration of the olfactory bulb in groups of four Wistar

rats continuously exposed to acetophenone vapors from 1 week to 3 months (Ref. 78). However, other parameters of toxicity were not evaluated in this study.

EPA is also aware of two oral subchronic studies. These studies failed to identify adverse effects in groups of five male and five female albino rats fed diets containing acetophenone at levels of 0.003, 0.05, 0.125, or 0.2 percent for 30 days (Ref. 85) or in groups of 10 male and 10 female Osborne-Mendel rats fed diets containing 1,000, 2,500, or 10,000 ppm acetophenone for 17 weeks (Ref. 40). These studies were judged adequate to predict oral toxicity, but only marginally so, because no LOAEL was established (Ref. 51).

Developmental toxicity data on acetophenone are limited to a study that reported no effects on length of gestation or postnatal development in the offspring of rats exposed dermally at 0.48 mg/kg on days 10 – 15 of gestation (Ref. 57). The data are insufficient because key study parameters were not reported, apparently only a single dose was administered, and the critical period of organogenesis may have been missed.

Available mutagenicity data in *Salmonella* (Ames testing) are insufficient because only three strains of the test organism were used, rather than the usual four or five that EPA considers necessary to establish a negative response in this assay. EPA's mutagenicity testing scheme (described in more detail in Unit II.B. of this preamble) also includes *in vitro* gene mutation and *in vivo* cytogenetics in the lowest tier. As neither study is available for acetophenone, additional mutagenicity testing is necessary to assess acetophenone's mutagenic potential.

Available *in vitro* and *in vivo* pharmacokinetics and metabolism studies are inadequate because quantitative data on acetophenone's rates of absorption, distribution, and excretion are lacking in these studies (Refs. 33, 58, 60, 91, 92, 84 and 55).

Finally, no data were found for reproductive effects or neurotoxicity.

4. *Testing is necessary to develop data finding.* EPA believes that testing of acetophenone is necessary to develop data for subchronic effects, neurotoxicity, pharmacokinetics and metabolism, reproductive effects, developmental effects and mutagenic effects. EPA believes that these testing data are needed to determine if the manufacturing, processing, distribution, use, or disposal of acetophenone or any combination of such activities does or does not present an unreasonable risk of injury to human health.

B. Phenol

EPA is proposing testing of phenol under the authority of section 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

1. *Unreasonble risk of injury to human health or environment finding.* EPA believes that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities for phenol may present an unreasonable risk of injury to health or the environment. This finding is based on several studies that indicate that phenol is neurotoxic. After 20 exposures by inhalation to 100–200 mg/m^3, hind limb paralysis was reported for guinea pigs (Ref. 23). Continuous exposure to phenol vapors at 100 mg/m^3 for 15 days affected the performance of rats in a test assessing central nervous system (CNS) effects (Ref. 18). A developmental toxicity screening test with a single gavage dose of 100, 333, 667 or 1,000 mg/kg given to groups of 12–13 Sprague-Dawley rats on day 11 of gestation (Ref. 53), produced a syndrome of effects involving the limbs, tail, and urogenital system, which provides evidence of developmental neurotoxicity. The limb effects consisted of paralysis and/or palsy. Although the effect is not evident in newborns, limb function matures postnatally and requires a week to 10 days for effects to appear. This delayed effect was seen in 21.4 percent and 27.3 percent of the litters at 667 and 1,000 mg/kg, respectively.

As discussed further below, over 320,000 workers may be exposed to phenol in numerous industrial settings, and the wide variety of uses of phenol may result in more widespread worker and consumer exposure. Furthermore, phenol is produced and released into the environment in substantial quantities which may result in general population exposures. Because of these concerns, EPA believes that phenol may present an unreasonable risk of injury to health.

2. *Substantial quantities produced finding.* EPA believes that phenol is or will be produced in substantial quantities. EPA records indicate that phenol is produced in excess of 1 million pounds per year. In 1989, 13 facilities were listed as manufacturing this compound (Ref. 86). EPA estimates the annual production for 1989 to be 3,512,000,000 pounds for 10 manufacturers at 11 sites. As explained in the "B" policy, EPA believes that production of 1 million pounds or greater of phenol constitutes substantial production under section 4(a)(1)(B)(i) of TSCA.

3. *Substantial human exposure finding.* EPA believes that there is or will be substantial human exposure to phenol. This assessment is based on worker, general population and consumer exposure to phenol. The NOES conducted during 1981–1983 by NIOSH estimated that 320,914 workers were potentially exposed to phenol in 35 different industrial categories (Refs. 70 and 109). For the reasons set forth in the "B" policy, EPA believes that the potential exposure of 341,516 workers to phenol is sufficient to qualify as substantial human exposure under section 4(a)(1)(B)(i) of TSCA.

Phenol is used in a variety of commercial applications including phenolic resins - 38 percent; synthesis of bisphenol A - 23 percent; synthesis of caprolactam - 17 percent; synthesis of alkylphenols - 4 percent; synthesis of aniline - 3 percent; miscellaneous uses - 5 percent; exports - 6 percent (Ref. 16). The miscellaneous uses of phenol include: (1) The synthesis of adipic acid, salicylic acid, phenolphthalein, pentachlorophenol, acetophenetidine, picric acid, and pharmaceuticals; (2) as a selective solvent for refining lubricating oils, germicidal paints, laboratory reagent, dyes and indicators, slimicide, biocide, and (3) as a general disinfectant (Ref. 81). Many of these are uses that can lead to worker and consumer exposure.

In a compilation of air monitoring data collected between 1970 and 1987, the mean concentration of phenol in suburban and urban areas was reported as 0.015 and 6.883 ppb, respectively (Ref. 83). The concentration of phenol in the air of Portland, OR, during seven rain events in 1984 was 56 to 105 ppt, while the concentration of phenol in the rain ranged from 75 to 1,200 ppt (Ref. 61). It has also been detected in U.S. drinking water supplies (Refs. 29 and 69).

Phenol is used in numerous consumer products indicating a potential for exposure to consumers (Ref. 100).

4. *Release to environment in substantial quantities finding.* EPA believes that phenol is released to the environment in substantial quantities. Over 1 million pounds of phenol is released into the environment each year. The Toxics Release Inventory (TRI) for 1987, indicates that 8,100,731 pounds of phenol was released to the air, 402,579 pounds to water, and 1,098,624 pounds to land (Ref. 93). For 1988, the TRI indicates that 10,155,101 pounds was released to air, 262,127 pounds to water, and 2,162,250 pounds to land (Ref. 93). As explained in EPA's "B" policy, EPA

believes that 1 million pounds of release to the environment each year is a sufficiently large amount of release for making a finding of substantial environmental release under section 4(a)(1)(B) of TSCA.

Phenol was detected in 738 samples obtained from 33 industries and publicly owned treatment works (POTWs) at a maximum concentration range of 7.5 ppb to 530 ppm (Ref. 82). Data from the STORET database indicate that phenol was found in 42.1 percent of industrial effluent samples obtained from 1980–83, at a median concentration of 10 ppb (Ref. 87). The STORET database also indicates that phenol was found in 13 percent of ambient surface water samples, and 9 percent of sediment samples (Ref. 87), and also in groundwater samples (Ref. 88). Phenol was detected in 4 percent of 86 samples obtained during the National Urban Runoff Program of 1982, at concentrations ranging from 3 to 10 ppb (Ref. 17).

5. *Insufficient data and experience finding.* EPA believes that there are insufficient data and experience to determine or predict the effects on human health or the environment from manufacturing, processing, distribution, use, and/or disposal of phenol. EPA believes that there are insufficient data and experience to reasonably determine or predict the potential subchronic effects, neurotoxicity, pharmacokinetics and metabolism, reproductive toxicity, and developmental neurotoxicity from the manufacturing, processing, distribution, use, and/or disposal of phenol. Although a number of studies describe the metabolism and pharmacokinetics of phenol (Refs. 13, 20, 22, 52, 62, 65, and 66), the information is insufficient to make comparisons and assumptions that would allow full use of the existing database for regulatory purposes. The Chemical Manufacturers Association's Phenol Panel is conducting pharmacokinetic studies and has consulted EPA on study design (Refs. 113, 114, and 115).

A number of subchronic and chronic tests have been conducted with phenol by the oral and inhalation routes (Refs. 6, 21, 23, 27, 67, and 80). None of these studies are adequate to characterize portal-of-entry effects via the inhalation route. Several of the inhalation subchronic studies did not use controls and tested too few animals of unspecified sex (Ref. 23). A one-dose-level study determined a NOEL of 19 mg/m^3 (Ref. 80), but the design of this study did not include establishing an effect level for phenol. In addition, the information available shows phenol to be more toxic by inhalation exposure than by oral exposure, thereby precluding a high degree of reliance on conclusions based on route-to-route extrapolation. For these reasons, EPA is proposing to require testing to develop data on the effects of phenol by the inhalation route.

Anger and Johnson (1985), summarizing known neurotoxic effects of a number of chemicals, indicate motor and mental disturbances for phenol (Ref. 2). EPA has insufficient information to evaluate these effects. Deichmann et al. (1944) reported hind-limb paralysis in guinea pigs after 20 exposures by inhalation to 100–200 mg/m^3 phenol (Ref. 23). In addition, Dalin and Kristoffersson (1974) found that continuous exposure to phenol vapors at 100 mg/m^3 for 15 days adversely affected the performance of rats in a test assessing CNS effects (Ref. 18). Furthermore, Kavlock (1990) noted neurologically significant effects in the pups of dams exposed to phenol in a screening test for developmental effects (Ref. 53). However, these studies did not extend long enough to adequately characterize these effects. Furthermore, the Deichmann et al. study (Ref. 23) did not include control animals, and the Dalin and Kristoffersson study (Ref. 18) did not establish a NOAEL for the observed CNS effects.

The Kavlock study (Ref. 53) also supports concern for developmental neurotoxicity. When pregnant rats were given a single gavage dose of phenol, their offspring showed developmental toxicity affecting the limbs, tail, and urogenital systems. This study was a screening test, designed to help identify substances which may need additional developmental toxicity testing, and was not adequate to characterize these effects. In order to address the inadequacy of the data developed by these studies, EPA proposes to require both neurotoxicity and developmental neurotoxicity testing for phenol.

No additional testing for developmental effects is being proposed because NTP studies (Refs. 71 and 112) are adequate for this endpoint. Although these studies were conducted by the oral route, EPA expects that additional reproductive effects testing, which will be conducted by the inhalation route, will be an adequate complement to the existing database.

EPA believes a reproductive effects study on phenol by Heller and Pursell (1938) is inadequate for risk assessment purposes because the experimental methodology and test results reporting are inadequate and unreliable (Ref. 44). EPA is proposing to require reproductive effects testing. The inhalation route was selected because information indicates that animals are more sensitive to phenol when exposed by the inhalation route.

6. *Testing is necessary to develop data findings.* EPA believes that the testing of phenol is necessary to develop data for oral and inhalation pharmacokinetics and metabolism, inhalation subchronic effects, reproductive effects, developmental neurotoxicity, and neurotoxicity. EPA believes that these testing data are needed to determine if the manufacture, distribution in commerce, processing, use, or disposal of phenol, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

C. N,N-Dimethylaniline

EPA is proposing testing of *N,N*-dimethylaniline under the authority of sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

1. *Unreasonable risk of injury to health or the environment finding.* EPA believes that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities for *N,N*-dimethylaniline, may present an unreasonable risk of injury to health or the environment.

a. *Evidence of potential for adverse human health effects.* The health portion of this assessment is based on *N,N*-dimethylaniline's toxicity in subchronic (13–week), chronic, oncogenicity, and mutagenicity studies.

A 2–year chronic toxicity-oncogenicity gavage study in groups of 50 male and 50 female F344/N rats treated with 3 or 30 mg/kg 5 days per week and similarly sized groups of B6C3F1 mice treated with 15 or 30 mg/kg 5 days per week reported some evidence of carcinogenicity in male rats (sarcomas and osteosarcomas of the spleen) and equivocal evidence of carcinogenicity in female mice (squamous cell papillomas of the forestomach) (Ref. 72). Mutagenicity data were negative for reverse mutation in four strains of *Salmonella*, but were positive for forward mutation in mouse lymphoma L5178Y cells and for sister chromatid exchange and chromosomal aberrations in Chinese hamster ovary cells (Ref. 72).

A 13–week gavage study (that included comprehensive histopathological examination) in groups of 10 male and 10 female F344/N rats and B6C3F1 mice treated with 31.25, 62.5, 125, 250, or 500 mg/kg for 5 days per week identified the erythrocytes and the spleen as the most sensitive targets in both species (Refs. 1 and 72). Compound-related clinical

signs included lethargy in rats and mice and cyanosis in rats. The National Toxicology Program (NTP) study identified the rat as more sensitive than the mouse to the noncarcinogenic effects of *N,N*-dimethylaniline on erythrocytes and the spleen; these effects were seen in rats even at the lowest dose level tested, while an NOAEL of 31.25 mg/kg was seen for the mice (Ref. 72). An inhalation study reported altered muscle chronaxie and evidence of hemolytic anemia in the high dose group of rats continuously exposed for 100 days to 0.04 or 0.3 mg/m³ (Ref. 64). Anger and Johnson (1985), summarizing known neurotoxic effects of *N,N*-dimethylaniline, indicate vision disturbances and central nervous system depression (Ref. 2).

As discussed further elsewhere in this preamble, over 28,000 workers may be exposed to *N,N*-dimethylaniline in various industrial settings and there is also evidence of general population exposure.

b. *Evidence of potential environmental toxicity.* This assessment is based on probabilistic dilution modelling indicating that *N,N*-dimethylaniline is present in the environment at levels within a factor of 100 of its known acute toxicity to environmental organisms. EPA believes that there may be an unreasonable risk of injury to the environment from chronic effects when acute toxicity is observed at levels within a factor of 100 of predicted stream concentrations. Specifically, EPA has determined a concentration of concern of 300 ppb (based on *N,N*-dimethylaniline's predicted chronic toxicity to daphnids) and has estimated that this concentration is exceeded 144 to 198 days of the year in receiving streams (Ref. 108).

Furthermore, *N,N*-dimethylaniline, which is produced in substantial quantities, has been detected in soil and water. According to the TRI, 147,692 pounds of *N,N*-dimethylaniline were released to the environment in 1987 (Ref. 93). For 1988, the TRI indicates that 119,122 pounds were released (Ref. 93). The TRI also indicates that some of these releases would be to the marine or estuarine environment (Ref. 116).

From these concerns, EPA believes that *N,N*-dimethylaniline may present an unreasonable risk of injury to health and the environment.

2. *Substantial quantities produced finding.* EPA believes that *N,N*-dimethylaniline is or will be produced in substantial quantities. EPA records indicate that domestic production of *N,N*-dimethylaniline in 1979 was 13.7 million pounds (Ref. 102). Information on current production volumes is CBI, but production is substantial (1 million pounds or greater). For the reasons set forth above, EPA believes that production of 1 million pounds or more per year of *N,N*-dimethylaniline is substantial production under section 4(a)(1)(B)(i) of TSCA.

3. *Substantial human exposure finding.* EPA believes that there is or may be substantial human exposure to *N,N*-dimethylaniline. This assessment is based on an NOES survey which estimated that 27,895 workers were potentially exposed to *N,N*-dimethylaniline in 9 different industrial classifications (Refs. 70 and 109). Of these workers, 39 percent were potentially exposed during the use of trade name products containing this compound. *N,N*-Dimethylaniline is used in dyes, as a synthetic intermediate for vanillin, pharmaceuticals, and other compounds, and as a solvent, stabilizer, and polymerization catalyst (Refs. 59, 81 and 99). For the reasons set forth in the "B" policy, EPA believes that the potential exposure of 28,048 workers to *N,N*-dimethylaniline constitutes substantial human exposure under TSCA section 4(a)(1)(B)(i).

Furthermore, there is or may be general population exposure to *N,N*-dimethylaniline. *N,N*-Dimethylaniline was detected in 8 samples obtained from three industries and POTWs at a maximum concentration of 3.1 ppm (Ref. 82). According to the TRI, 129,829 pounds of *N,N*-dimethylaniline was released to the air, 17,613 pounds to water, and 250 pounds to land in 1987 (Ref. 93). For 1988, the TRI indicates that 98,905 pounds was released to air, 19,967 pounds to water, and 250 pounds to land (Ref. 93). *N,N*-Dimethylaniline was detected in soil samples obtained near the bank of the Buffalo River, NY, at concentrations of 10 to 40 ppm (Ref. 68). *N,N*-Dimethylaniline was reported as being detected (no levels given) in water from Lake Ontario (Ref. 39).

4. *Insufficient data and experience finding.* EPA believes that there are insufficient data and experience to determine or predict the effects on human health or the environment from manufacturing, processing, distribution, use, and/or disposal of *N,N*-dimethylaniline. EPA believes that available studies are insufficient and other data are lacking to sufficiently evaluate the effects of *N,N*-dimethylaniline.

Data assessing the potential subchronic effects of inhalation exposure to *N,N*-dimethylaniline were not found in the literature. Available oral data are inadequate to estimate inhalation risk because the dose levels selected did not give a NOAEL (for rats) and there are no data on comparative pharmacokinetics or portal-of-entry effects (Refs. 1 and 72). The only inhalation study report available was a brief abstract that indicated altered muscle chronaxie and evidence of hemolytic anemia in the high dose group (0.3 mg/m³ of rats continuously exposed for 100 days to 0.04 or 0.3 mg/m³) (Ref. 64). This study cannot be used for risk assessment because it was reported in limited detail and histopathologic effects were not examined. Anger and Johnson (1985), summarizing known neurotoxic effects of a number of chemicals, cited visual disturbances and CNS depression for *N,N*-dimethylaniline (Ref. 2). EPA has insufficient information to evaluate these observations.

Developmental toxicity testing for *N,N*-dimethylaniline is limited to a screening study in 50 CD-1 albino mice treated with *N,N*-dimethylaniline in corn oil at 365 mg per kg per day on gestation days 7 to 14; maternal mortality, but no effects on body weight or viability of the neonatal offspring, was reported (Ref. 77). Although the test results are negative, EPA considers this test inadequate for risk assessment purposes because the exposure period did not cover the full period of major organogenesis (days 6 to 15 for the mouse), nor were sufficient dose groups used (only one versus the three required by EPA). EPA also specifies that two animal species be tested for a definitive developmental toxicity assessment. Therefore, developmental toxicity by gavage is proposed for two species, a rat and a non-rodent.

The available (negative) *Salmonella* Ames data are adequate, as are the (positive) data in mouse lymphoma L51784 cells (Ref. 72). Available data also include positive results for sister chromatid exchange and chromosomal aberrations in Chinese hamster ovary cells (Ref. 72). Given these data, EPA believes that gene mutation data are adequate but that the chromosomal toxicity of *N,N*-dimethylaniline is insufficiently characterized.

Although numerous metabolism studies have been conducted for *N,N*-dimethylaniline, these are inadequate because quantitative pharmacokinetics data for absorption, distribution, or excretion are lacking (Refs. 5, 10, 11, 25, 26, 28, 37, 38, 41, 43, 45, 46, 47, 56, 73, 74, 75, 76, 79, 95 and 106).

No reproductive effects data were found for *N,N*-dimethylaniline.

Environmental effects data for *N,N*-dimethylaniline are limited. Algal toxicity data include a toxicity test in

bluegreen algae (Ref. 9) and a study on energy metabolism enzymes in marine algae (Ref. 4). The study by Batterton et al. (Ref. 9) is inadequate because the Agency needs data for a sensitive species of green algae such as *Selenastrum capricornutum*. Blue-green algae are not an acceptable substitute for green algae. The study by Armstrong et al. (Ref. 4) is inadequate because a rigorous measurement of growth inhibition such as a 96–hour EC50 value was not determined. The Agency believes that the 96–hour EC50 value for growth will be a more sensitive measure of effects on energy metabolism enzymes and will have more relevance in an environmental risk assessment. Acute aquatic toxicity studies are available for a ciliated protozoan and several species of fish (Ref. 3). While the acute toxicity studies for fish appear adequate, no chronic toxicity data for fish were found, nor were any relevant data found for the acute or chronic effects of *N,N*-dimethylaniline on aquatic invertebrates. The toxicity data for the ciliated protozoan are of unknown utility because little is known about how representative protozoa are as surrogate species for other aquatic invertebrates.

EPA found no data to determine anaerobic biodegradation or the biodegradation of *N,N*-dimethylaniline in systems which simulate *in situ* wastewater treatment.

5. *Testing is necessary to develop data finding.* EPA believes that testing of *N,N*-dimethylaniline is necessary to develop data for subchronic effects, neurotoxicity, pharmacokinetics and metabolism, reproductive effects, developmental effects, mutagenic effects, algal toxicity, daphnid acute and chronic toxicity, mysid shrimp acute and chronic toxicity, fathead minnow chronic toxicity, sheepshead minnow chronic toxicity, anaerobic biodegradation, and activated sludge biodegradation. EPA believes that this testing is needed to determine if the manufacturing, processing, distribution, use, or disposal of *N,N*-dimethylaniline or any combination of such activities does or does not present an unreasonable risk of injury to health or the environment.

D. Ethyl Acetate

EPA is proposing testing of ethyl acetate under the authority of sections 4(a)(1)(A) and 4(a)(1)(B) of TSCA.

1. *Unreasonable risk of injury to health or the environment.* EPA believes that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities for ethyl acetate may present an unreasonable risk of injury to health or the environment.

a. *Evidence of potential for adverse human health effects.* This finding is based on ethyl acetate's neurotoxic effects, as outlined and supported in previous rule-making for the testing of this chemical [cite *final multi-substance rule for the testing of neurotoxicity*].

1. *Substantial quanitities produced finding.*. EPA believes that ethyl acetate is or will be produced in substantial quantities. In 1988, 254.2 million pounds of ethyl acetate was produced in the United States (Ref. 103). EPA estimates the annual U.S. production for 1989 to be 292 million pounds for three manufacturers at five production sites (Ref.101). For the reasons set forth in the "B" policy, EPA believes that production of l million pounds or greater of ethyl acetate constitutes substantial production under section 4(a)(1)(B)(i) of TSCA.

2. *Substantial human exposure finding.* EPA believes that there is or will be substantial human exposure to ethyl acetate. The NOES survey estimated that 419,180 workers were potentially exposed to ethyl acetate (Refs. 70 and 109). Of these workers, 87 percent were potentially exposed during the use of trade name products containing this compound. Potential exposure to ethyl acetate was associated with 34 different industrial classifications (Ref. 70). Ethyl acetate has the following uses: coatings—41 percent; exports—36 percent; solvents—13 percent; plastics—8 percent; chemical synthesis—2 percent (Ref. 15). In addition, ethyl acetate is used as a solvent in numerous consumer applications. For the reasons explained in the "B" policy, EPA believes that the potential exposure of 419,180 workers to ethyl acetate is substantial human exposure under TSCA section 4(a)(1)(B)(i).

Ethyl acetate is found in numerous consumer products including lacquers, varnishes, coatings, detergents and soaps. EPA estimates the highest exposure levels occur by the dermal (4,680 mg/yr from use of latex paints) and inhalation (901 mg/yr from use of lacquer thinner) routes (Ref. 98).

There may also be widespread general population exposure. Ethyl acetate was detected in 66 samples obtained from 17 industries and POTWs at a maximum concentration of 7.7 ppm (Ref. 82). In a compilation of air monitoring data collected between 1970 and 1987, the median concentration of ethyl acetate in urban sites was 0.733 ppb (Ref. 83). Ethyl acetate was also detected in industrialized and urban sites in Virginia and West Virginia at concentrations ranging from <0.012 to 1.9 ppb (Ref. 30). The STORET database indicates that ethyl acetate has also been detected in groundwater (Ref. 88).

3. *Insufficient data and experience finding.* EPA believes that there are insufficient data and experience to determine or predict the effects on human health or the environment from manufacturing, processing, distribution, use, and/or disposal of ethyl acetate. Under section 4(a)(1)(B)(ii), EPA believes that there are insufficient data and experience to determine or predict the potential reproductive toxicity, developmental toxicity, and mutagenicity from the manufacturing, processing, distribution, use, and/or disposal of ethyl acetate.

EPA is proposing to test ethyl acetate for reproductive effects and developmental toxicity. EPA found no data for these effects.

EPA is also proposing mutagenicity testing for ethyl acetate. Ethyl acetate was negative for induction of reverse mutation in *Salmonella* when tested with and without metabolic activation (Refs. 24 and 50). Positive results were observed for mitotic aneuploidy but negative results were observed for point mutations and recombinations in yeast (Ref. 107).

In mammalian test systems, a positive response was reported for chromosomal aberrations in Chinese hamster fibroblasts *in vitro* (Ref. 50); however, these results do not support a concern or a finding for chromosomal effects under TSCA section 4 (a)(1)(A) because, in a more definitive *in vivo* test system, a negative response was reported for micronucleus formation in Chinese hamsters (Ref. 8).

EPA considers the existing *Salmonella* data (negative) on ethyl acetate to be acceptable. However, these data in bacteria alone are insufficient to adequately characterize the gene mutation effects of ethyl acetate, and EPA is proposing an *in vitro* gene mutation assay for ethyl acetate in mammalian cells in culture.

4. *Testing is necessary to develop data finding.* EPA believes that the testing of ethyl acetate is necessary to develop data for reproductive effects, developmental toxicity, and mutagenicity. EPA believes that this testing is needed to determine if the manufacture, distribution in commerce, processing, use, or disposal of ethyl acetate, or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

E. 2,6-Dimethylphenol

EPA is proposing to test 2,6-dimethylphenol under the authority of sections 4(a)(1)(A) and (B) of TSCA.

1. *Unreasonable risk of injury to human health and environment finding.* EPA believes that the manufacture, processing, distribution in commerce, use, or disposal, or any combination of such activities for 2,6-dimethylphenol may present an unreasonable risk of injury to health or the environment.

a. *Evidence of potential for adverse human health effects.* This assessment is based on 2,6-dimethylphenol's toxicity in an 8–month rat gavage study, that showed histopathological changes in the liver, spleen, and kidneys and changes in body weight, blood pressure and levels of protein sulfhydryl groups in blood serum and internal organs in 53 male rats treated with 6 mg/kg/day (Refs. 63 and 104). Effects were not seen in rats dosed with 0.06 mg/kg/day. In another study, increased relative liver and spleen weights, decreased body weight gain and marked atrophy and parenchymatous dystrophy of liver cells were observed in 10 male albino rats treated by gavage with 29.5 mg/kg/day for 10 weeks (Ref. 63).

b. *Evidence of potential for environmental toxicity.* This assessment is based on probabilistic dilution modelling indicating that 2,6-dimethylphenol is present in the environment at levels within a factor of 100 of its known acute toxicity to environmental organisms (Ref. 108). EPA believes that there may be an unreasonable risk of injury to the environment from chronic effects when acute toxicity is observed at levels within a factor of 100 of predicted stream concentrations. Specifically, EPA has preliminarily determined a concentration of concern of 100 ppb (based on 2,6-dimethylphenol's predicted chronic toxicity to daphnids) and has estimated that this concentration is exceeded 260 days of the year in receiving streams (Ref. 108).

As discussed further below, over 1,900 workers may be exposed to 2,6-dimethylphenol in a variety of commercial applications. Furthermore, 2,6-dimethylphenol, which is produced in substantial quantities, has been detected in air, rain, wastewater, and groundwater samples, which may indicate general population and environmental exposures (Refs. 34, 36, 42, 61, 81 and 83). Because of these concerns, EPA believes that 2,6-dimethylphenol may present an unreasonable risk of injury to health and the environment.

2. *Substantial quantities produced finding.* EPA believes that 2,6-dimethylphenol is or will be produced in substantial quantities. Information available to EPA indicates that in 1977, from 2 to 20 million pounds of 2,6-dimethylphenol was produced at six different facilities in the United States (Ref. 94). There were two facilities that manufactured 2,6-dimethylphenol in the United States in 1989 (Ref. 86). EPA estimates production in 1989 to have been 130 million pounds (Ref. 101). For the reasons set forth in the "B" policy, EPA believes that production of 1 million pounds or greater of 2,6-dimethylphenol constitutes substantial production under section 4(a)(1)(B)(i) of TSCA.

3. *Substantial human exposure finding.* EPA believes that there is or may be substantial human exposure to 2,6-dimethylphenol. EPA finds that 2,6-dimethylphenol is used in a variety of commercial applications, many of which can lead to worker exposure. The NOES survey estimated that 1,941 workers were potentially exposed to 2,6-dimethylphenol (Refs. 70 and 109). Of these workers, 95 percent were potentially exposed during the use of trade name products containing this chemical. 2,6-Dimethylphenol is used primarily in the production of poly(phenylene oxide) resins (Ref. 31). 2,6-Dimethylphenol is also used in the manufacture of tetramethylbisphenol A, 2,6-dimethylaniline, bis(4-hydroxy-2,5-dimethylphenyl)methane, dyes, pharmaceuticals and fragrances, and as a mixture with other xylenols, in disinfectants, solvents, pharmaceuticals, insecticides, fungicides, plasticizers, rubber chemicals, lubricant and gasoline additives, and wetting agents (Ref. 81). As explained in the "B" policy, EPA believes that the potential exposure of 1,941 workers to 2,6-dimethylphenol is substantial human exposure under section 4(a)(1)(B)(i) of TSCA.

Furthermore, general population exposure to 2,6-dimethylphenol is also indicated. 2,6-Dimethylphenol was detected in 64 samples obtained from 33 industries and POTWs at a maximum concentration of 2,895 ppm (Ref. 81). Monitoring data indicate trace quantities of 2,6-dimethylphenol in air and rain (Refs. 61 and 83). 2,6-Dimethylphenol was detected in shale oil wastewater in the range 0.75 to 1.7 µg/L (Ref. 42) and at 12 mg/L in the wastewater from the gasification of coal (Ref. 34). In addition, it was detected in groundwater samples from a wood preserving facility in Florida at a concentration of 0.90 mg/L, while the concentration of 2,6-dimethylphenol in groundwater 330 meters from the site was 0.29 mg/L (Ref. 36).

4. *Insufficient data and experience finding.* EPA believes that there are insufficient data and experience to determine or predict the effects on human health or the environment from manufacturing, processing, distribution, use, and/or disposal of 2,6-dimethylphenol. This assessment is based on the following information. EPA has adequate negative data evaluating the gene mutation effects of 2,6-dimethylphenol in *Salmonella* (Refs. 24 and 32). However, EPA has no data evaluating this chemical's potential as a gene toxicant in mammalian cells or as a chromosomal toxin. EPA found no data for neurotoxicity, pharmacokinetics and metabolism, reproductive effects, or developmental toxicity.

For environmental effects, acute aquatic toxicity studies are available for green algae, duckweed, daphnids, sea urchins, fathead minnows and Atlantic cod (Ref. 3). The study for green algae is inadequate because it lacks a rigorous measurement of growth inhibition as a 96–hour EC50 value. The effect measured was inhibition of chlorophyll synthesis and the lowest-observed-effect concentration (LOEC) was the only effective concentration reported. The Agency believes that the 96–hour EC50 value for growth will be a more sensitive effect than inhibition of chlorophyll synthesis and will be more relevant in an environmental risk assessment. While fish and invertebrate acute toxicity data are adequate, EPA found no available data for aquatic invertebrate chronic toxicity. An available 8–day study on fathead minnows for 2,6-dimethylphenol is of too short duration to be considered a chronic effects study, nor did it evaluate sensitive life stages, and, thus, this study is inadequate (Ref. 3).

Available chemical fate screening data for 2,6-dimethylphenol indicate that it may undergo substantial degradation under aerobic conditions; however, EPA found no available data to determine or reliably predict the half-life for the removal of 2,6-dimethylphenol by this process (Ref. 12). Data on the anaerobic degradation of 2,6-dimethylphenol are likewise limited. One screening study indicates that 2,6-dimethylphenol may not degrade under anaerobic conditions; another study indicated that this chemical undergoes anaerobic biodegradation in ground water and laboratory digestors (Refs. 12 and 35). These (contradictory) data are insufficient to adequately characterize this removal process. EPA also believes that the aqueous photolysis of 2,6-dimethylphenol is inadequately

characterized, with no data available which simulates this process under natural conditions (Ref. 12).

5. *Testing necessary to develp data finding.* EPA believes that testing of 2,6-dimethylphenol is necessary to develop data for neurotoxicity, pharmacokinetics and metabolism, reproductive effects, developmental effects, mutagenic effects, algal toxicity, fathead minnow chronic toxicity, daphnid chronic toxicity, aerobic biodegradation, anaerobic biodegradation, and aqueous photolysis. EPA believes that these testing data are needed to determine if the manufacturing, processing, distribution, use, or disposal of 2,6-dimethylphenol or any combination of such activities, does or does not present an unreasonable risk of injury to health or the environment.

IV. Issues for Comment

In addition to any relevant, general comments on the chemicals and proposed testing in this rulemaking, EPA would appreciate comments on the following specific issues:

1. EPA is proposing subchronic testing of acetophenone by the inhalation route of exposure. EPA is soliciting comment on the feasibility of inhalation testing given acetophenone's known irritant properties. If inhalation testing is not feasible, should EPA require subchronic testing by the oral route given the, at best, marginally acceptable nature of the existing oral studies?

2. In this rule, EPA is only proposing to require first tier mutagenicity testing at this time. For purposes of this rulemaking, EPA solicits comments on the appropriateness of these tests and its decision to defer higher tier mutagenicity testing and oncogenicity testing pending the receipt of first tier results.

3. EPA is also soliciting comments on the proposed toxicokinetics and biodegradation in natural surface water guidelines, which are proposed to be incorporated by reference.

V. Economic Analysis of the Proposed Rule

EPA has prepared an economic analysis that evaluates the potential for significant economic impacts as a result of the testing proposed in this notice (Ref. 101). Total costs of testing, including both laboratory costs and administrative costs, are as follows: acetophenone—$1.3 to 2.0 million; phenol—$1.5 to 2.4 million; *N,N*-dimethylaniline—$1.4 to 2.2 million; ethyl acetate—$0.8 to 1.2 million; and 2,6-dimethylphenol—$1.2 to 1.7 million.

Total costs of testing for each chemical have been annualized and compared with annual revenues as an indication of potential economic impact. Annualized costs, calculated over 15 years using a 7 percent discount rate, represent the equivalent constant costs which would have to be recouped each year of the payback period to finance the testing expenditure in the first year.

On the basis of these calculations, EPA believes that for phenol, ethyl acetate and 2,6-dimethylphenol there is no potential for adverse economic impact. Because these three chemicals have relatively large production volumes, the annualized costs of testing, expressed as a percentage of annual revenue, are very small—ranging from 0.2- to 0.13 percent. Costs of testing are therefore found to be insignificant relative to revenues for these three chemicals.

For the remaining two chemicals—acetophenone and *N,N*-dimethylaniline—there may be some potential for adverse economic impacts due to the proposed testing. Because these two chemicals are produced in smaller quantities than the other three chemicals subject to this proposed rule, costs of testing as a percentage of revenues are higher—ranging from approximately 2- to 4 percent. Costs of testing may therefore be significant relative to revenues for acetophenone and *N,N*-dimethylaniline.

VI. Availability of Test Facilities and Personnel

EPA believes that test facilities and personnel are available to perform the testing specified in this proposed rule. (Ref. 111).

VII. Public Meeting

If requested, EPA will hold a public meeting in Washington, DC after the close of the public comment period. Persons who wish to attend or to present comments at the meeting should contact Mary Louise Hewlett, Chemical Testing Branch (202) 260–8162 by January 6, 1994. The meeting will be open to the public, but active participation will be limited to those who requested to comment and EPA representatives. Participants are requested to submit copies of their statements by the meeting date. These statements and a transcript of the meeting will become part of EPA's rulemaking record.

VIII. Comments Containing Confidential Business Information

All comments will be placed in the public file unless they are clearly labeled as Confidential Business Information (CBI) when they are submitted. While a part of the record, CBI comments will be treated in accordance with 40 CFR part 2. A sanitized version of all CBI comments must be submitted to EPA for inclusion in the public file.

It is the responsibility of the commenter to comply with 40 CFR part 2 in order that all materials claimed as confidential may be properly protected. This includes, but is not limited to, clearly indicating on the face of the comment (as well as on any associated correspondence) that information claimed as CBI is included, and marking "CONFIDENTIAL", "TSCA CBI" or similar designation on the face of each document or attachment in the comment which contains information claimed as CBI. Should information be put into the public file because of failure to clearly designate its confidential status on the face of the comment, EPA will presume any such information which has been in the public file for more than 30 days to be in the public domain.

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPPTS–42150). This record contains the basic information considered by EPA in developing this proposal and appropriate **Federal Register** notices. EPA will supplement this record as necessary.

A public version of the record, from which all information claimed as CBI has been deleted, is available for inspection in the TSCA Nonconfidential Information Center, also known as the TSCA Public Docket Office, East Tower, Rm. G–102, 401 M St., SW., Washington, DC. 20460, from 8 a.m. to noon, and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays.

The record includes the following information:

A. Supporting Documentation

(1) Notice containing the ITC designation.

(2) **Federal Register** notices pertaining to this rule consisting of:

(a) "Twenty-seventh Report of the Interagency Testing Committee to the Administrator; receipt of report and request for comments regarding priority list of chemicals." (March 6, 1991, 56 FR 9534).

(b) Notice of final rule on EPA's TSCA Good Laboratory Practice Standards (54 FR 34034, August 17, 1989).

(c) Notice of final rule on data reimbursement policy and procedures (48 FR 31786, July 11, 1983).

(d) Notice of proposed test rule on chloromethane and chlorinated benzenes (45 FR 48524, July 18, 1980).

(e) Notice of proposed test rule on dichloromethane, nitrobenzene and 1,1,1 trichloroethane (46 FR 30300, June 5, 1981).

(f) Notice of final test rule on the C9 aromatic hydrocarbon fraction (50 FR 20662, May 17, 1985).

(g) Notice of proposed TSCA section 4(a)(1)(B) statement of policy (56 FR 32294, July 15, 1991).

(h) Notice of final TSCA section 4(a)(1)(B) statement of policy (58 FR 28736, May 14, 1993).

(i) Notice of proposed test rule on glycidol and its derivatives category (56 FR 57144, November 7, 1991).

(j) Notice of testing consent order for acrylic acid (57 FR 7656, March 4, 1992).

(3) TSCA test guidelines cited as test standards for this rule.

(4) Communications consisting of:

(a) Written letters.

(b) Contact reports of telephone conversations

(c) Meeting summaries.

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X. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore subject to the requirement of a Regulatory Impact Analysis. EPA has determined that this proposed test rule would not be major because it does not meet any of the criteria set forth in section 1(b) of the Order; i.e., it would not have an annual effect on the economy of at least $100 million, would not cause a major increase in prices, and would not have a significant adverse effect on competition or the ability of U. S. enterprises to compete with foreign enterprises.

This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291. Any written comments from OMB to EPA, and any EPA response to those comments, are included in the rulemaking record.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 601 et seq.) EPA is certifying that this test rule, if promulgated, would not have a significant impact on a substantial number of small businesses because: (1) They would not be expected to perform testing themselves, or to participate in the organization of the testing effort; (2) they would experience only very minor costs, if any, in securing exemption from testing requirements; and (3) they are unlikely to be affected by reimbursement requirements.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 et seq., and has assigned OMB Control number 2070–0033.

Public reporting burden for this collection of information is estimated to average 10,100 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. The total public reporting burden is estimated to be 222,000 hours for all responses. Send comments regarding the burden estimate or any other aspect of this collection of information,

including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington DC 20503. The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Hazardous substances, Reporting and recordkeeping requirements, Testing, Incorporation by reference.

Dated: November 15, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, it is proposed that 40 CFR, chapter I, subchapter R, part 799 be amended as follows:

PART 799—[AMENDED]

a. The authority citation for part 799 would continue to read as follows:

Authority: 15 U.S.C. 2601, 2603, 2611, 2625.

b. By adding § 799.4450 to subpart B to read as follows:

§ 799.4450 Designated IRIS chemicals.

(a) *Identification of test substances.* (1) The IRIS chemicals subject to this test guideline were designated in the Twenty-Seventh ITC report. These chemicals include acetophenone (CAS No. 98–86–2), phenol (CAS No. 108–95–2), *N,N*-dimethylaniline (CAS No. 121–69–7), ethyl acetate (CAS No. 141–78–6), and 2,6-dimethylphenol (CAS No. 576–26–1).

(2) Acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol of at least 99 percent purity shall be used as the test substance.

(b) *Persons required to submit study plans, conduct tests and submit data.* All persons who manufacture (including import) or process or intend to manufacture or process acetophenone, phenol, *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol other than as an impurity, after January 5, 1994, to the end of the reimbursement period shall submit letters of intent to conduct testing, submit study plans, conduct tests, and submit data, or submit exemption applications as specified in this section, subpart A of this part and parts 790 and 792 of this chapter for single-phase rulemaking, for the substances they manufacture subject to exclusions contained in § 790.42(a)(2), (a)(4) and (a)(5). These sections provide that processors, persons who manufacture less than 500 kg (1,100 lbs) annually, or persons who manufacture small quantities of the chemical solely for research and development as defined in § 790.42(a)(5) shall not be required to submit study plans, conduct tests and submit data, or submit exemption applications as specified in this section unless directed to do so in a subsequent notice as set forth in § 790.48(b).

(c) *Health effects*—(1) *Subchronic toxicity*—(i) *Required testing.* Subchronic toxicity testing shall be conducted by inhalation with acetophenone, phenol, and *N,N*-dimethylaniline in accordance with § 798.2450 of this chapter.

(ii) *Reporting requirements.* (A) The required subchronic toxicity test shall be completed and the final reports submitted to EPA within 18 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(2) *Pharmacokinetics and metabolism*—(i) *Required testing.* (A) Pharmacokinetics and metabolism studies shall be conducted with acetophenone, phenol, *N,N*-dimethylaniline, and 2,6-dimethylphenol by the oral route of administration in accordance with OECD test guideline 417 "Toxicokinetics", which is incorporated by reference. Copies of this guideline are available in the TSCA Nonconfidential Information Center, East Tower, Rm. G–102, 401 M St., SW., Washington, DC 20460. This guideline is also available for public inspection at the Office of the Federal Register, 800 North Capital St., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This guideline is incorporated as it exists on the date of approval and a notice of any changes to the guideline will be published in the Federal Register.

(B) Pharmacokinetics and metabolism studies shall be conducted with acetophenone, phenol, *N,N*-dimethylaniline, and 2,6-dimethylphenol by the inhalation route of administration in accordance with OECD test guideline 417 "Toxicokinetics", which is incorporated by reference. Copies of this guideline are available in the TSCA Nonconfidential Information Center, East Tower, Rm. G–102, 401 M St., SW., Washington, DC 20460. This guideline is available for public inspection at the Office of the Federal Register, 800 North Capital St., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This guideline is incorporated as it exists on the date of approval and a notice of any changes to the guideline will be published in the Federal Register.

(ii) *Reporting requirements.* (A) The required pharmacokinetics and metabolism studies shall be completed and the final reports submitted to EPA within 15 months after the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(3) *Neurotoxicity (Inhalation)*—(i) *Required testing*—(A) *Functional observational battery.* (1) Functional observational battery tests shall be conducted with acetophenone, phenol, and *N,N*-dimethylaniline in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6050.

(2) For the purpose of paragraph (c)(3)(i)(A) of this section, the following provisions also apply:

(*i*) *Lower doses.* Either the data from the lower doses shall show graded dose-dependent effects or there shall be no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be exposed for 6 hours per day for 1 day. For the subchronic testing, animals shall be exposed for 6 hours per day 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to acetophenone, phenol, and *N,N*-dimethylaniline by inhalation administration.

(B) *Motor activity.* (1) Motor activity testing shall be conducted with acetophenone, phenol, and *N,N*-dimethylaniline in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6200.

(2) For the purpose of paragraph (c)(3)(i)(B) of this section, the following provisions also apply:

(*i*) *Lower doses.* Either the data from the lower doses shall show graded dose-dependent effects or there shall be no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be treated for 6 hours per day for 1 day. For the subchronic testing, animals shall be exposed 6 hours per day 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to acetophenone, phenol, and *N,N*-dimethylaniline by inhalation administration.

(C) *Neuropathology.* (*1*) Neuropathology testing shall be conducted with acetophenone, phenol, and *N,N*-dimethylaniline in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), (d)(6) and (d)(8)(iv)(C) of § 798.6400.

(*2*) For the purpose of paragraph (c)(3)(i)(C) of this section, the following provisions also apply:

(*i*) *Lower doses.* Either the data from the lower doses shall show graded dose-dependent effects or there shall be no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be exposed for 6 hours per day for 1 day. For the subchronic testing, animals shall be exposed for 6 hours per day 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to acetophenone, phenol, and *N,N*-dimethylaniline by inhalation administration.

(*iv*) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in wax or plastic medium, except for the sural nerve, which should be embedded in plastic. Multiple tissue specimens (e.g. brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labelled to provide unequivocal identification. Plastic embedding should follow the method described by Spencer, et al., in § 798.6400(f) of this chapter, or an equivalent method.

(ii) *Reporting requirements.* (A) The functional observational battery, motor activity, and neuropathology testing with acetophenone, phenol, and *N,N*-dimethylaniline shall be completed and the final reports submitted to EPA within 21 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(4) *Neurotoxicity (Gavage)*—(i) *Required testing*—(A) *Functional observational battery.* (*1*) A functional observational battery test shall be conducted with 2,6-dimethylphenol in accordance with § 798.6050 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6050.

(*2*) For the purpose of paragraph (c)(4)(i)(A) of this section the following provisions also apply:

(*i*) *Lower doses.* Either the data from the lower doses shall show graded dose-dependent effects or there shall be no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing, animals shall be treated 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to 2,6-dimethylphenol by gavage administration.

(B) *Motor activity.* (*1*) Motor activity testing shall be conducted with 2,6-dimethylphenol in accordance with § 798.6200 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), and (d)(6) of § 798.6200.

(*2*) For the purpose of paragraph (c)(4)(i)(B) of this section, the following provisions also apply:

(*i*) *Lower doses.* Either the data from the lower doses shall show graded dose-dependent effects or there shall be no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing, animals shall be treated 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to 2,6-dimethylphenol by gavage administration.

(C) *Neuropathology.* (*1*) Neuropathology testing shall be conducted with 2,6-dimethylphenol in accordance with § 798.6400 of this chapter except for the provisions in paragraphs (d)(4)(ii), (d)(5), (d)(6) and (d)(8)(iv)(C) of § 798.6400.

(*2*) For the purpose of paragraph (c)(4)(i)(C) of this section, the following provisions also apply:

(*i*) *Lower doses.* Either the data from the lower doses shall show graded dose-dependent effects or there shall be no neurotoxic (behavioral) effects at any dose tested.

(*ii*) *Duration and frequency of exposure.* For the acute testing, animals shall be treated once. For the subchronic testing animals shall be treated 5 consecutive days per week for a 90–day period.

(*iii*) *Route of exposure.* Animals shall be exposed to 2,6-dimethylphenol by gavage administration.

(*iv*) *Clearing and embedding.* After dehydration, tissue specimens shall be cleared with xylene and embedded in wax or plastic medium, except for the sural nerve, which should be embedded in plastic. Multiple tissue specimens (e.g. brain, cord, ganglia) may be embedded together in one single block for sectioning. All tissue blocks shall be labelled to provide unequivocal identification. Plastic embedding should follow the method described by Spencer, et al., in paragraph (f) of § 798.6400 of this chapter, or an equivalent method.

(ii) *Reporting requirements.* (A) The functional observational battery, motor activity, and neuropathology testing with 2,6-dimethylphenol shall be completed and the final reports submitted to EPA within 21 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(5) *Reproductive toxicity*—(i) *Required testing.* Reproductive toxicity testing shall be conducted with acetophenone, *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol by gavage, and phenol by inhalation in accordance with § 798.4700 of this chapter.

(ii) *Reporting requirements.* (A) The reproductive toxicity tests shall be completed and the final reports submitted to EPA within 29 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section.

(6) *Developmental toxicity*—(i) *Required testing.* Developmental toxicity testing in two species, a rat and a non-rodent, shall be conducted with acetophenone by inhalation, and *N,N*-dimethylaniline, ethyl acetate, and 2,6-dimethylphenol by gavage in accordance with § 798.4900 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final reports submitted to EPA within 12 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(7) *Developmental neurotoxicity*—(i) *Required testing.* Developmental neurotoxicity testing in the rat shall be

conducted with phenol by gavage administration in accordance with § 795.250 of this chapter.

(ii) *Reporting requirements.* (A) The developmental toxicity testing shall be completed and the final report submitted to EPA within 21 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(8) *Mutagenic effects—gene mutation*—(i) *Required testing.* (A) Gene mutation assays in the *Salmonella typhimurium* histidine reversion system shall be conducted with acetophenone in accordance with § 798.5265 of this chapter.

(B) Gene mutation assays in somatic cells in culture shall be conducted with acetophenone, ethyl acetate, and 2,6-dimethylphenol in accordance with § 798.5300 of this chapter.

(ii) *Reporting requirements.* Mutagenic effects—gene mutation tests shall be conducted and the final reports submitted to EPA as follows:

(A) Gene mutation in *Salmonella*, 9 months after the effective date in paragraph (f) of this section.

(B) Gene mutation in somatic cells in culture, 10 months after the effective date in paragraph (f) of this section.

(9) *Mutagenic effects—chromosomal aberrations* — (i) *Required testing. In vivo* cytogenetic assays shall be conducted by gavage with acetophenone, *N,N*-dimethylaniline, and 2,6-dimethylphenol in accordance with § § 798.5385 or 798.5395 of this chapter.

(ii) *Reporting requirements.* (A) Mutagenic effects - *In vivo* cytogenetics testing shall be completed and the final reports submitted to EPA within 14 months after the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section.

(d) *Environmental effects* —(1) *Algal toxicity testing* — (i) *Required testing.* Algal toxicity testing shall be conducted with *N,N*-dimethylaniline and 2,6-dimethylphenol in accordance with § 797.1050 of this chapter.

(ii) *Reporting requirements.* (A) The algal toxicity test for *N,N*-dimethylaniline and 2,6-dimethylphenol shall be completed and the final reports submitted to EPA within 12 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(2) *Invertebrate acute toxicity* — (i) *Required testing.* (A) Daphnid acute toxicity tests shall be conducted with *N,N*-dimethyaniline and 2,6-dimethylphenol in accordance with § 797.1300 of this chapter.

(B) Mysid shrimp acute toxicity tests shall be conducted with *N,N*-dimethylaniline in accordance with § 797.1930 of this chapter.

(ii) *Reporting requirements.* (A) Invertebrate acute toxicity testing shall be conducted and the final reports submitted to EPA within 12 months after the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(3) *Invertebrate chronic toxicity testing* —(i) Required testing. (A) Daphnid chronic toxicity tests shall be conducted with *N,N*-dimethylaniline and 2,6-dimethylphenol in accordance with § 797.1330 of this chapter.

(B) Mysid shrimp chronic toxicity tests shall be conducted with *N,N*-dimethylaniline in accordance with § 797.1950 of this chapter.

(ii) *Reporting requirements.* (A) Invertebrate chronic toxicity testing shall be conducted and the final reports submitted to EPA within 24 months after the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(4) *Fish chronic toxicity* —(i) *Required testing.* Fish early life stage toxicity tests shall be conducted with fathead minnows with *N,N*-dimethylaniline and 2,6-dimethylphenol, and sheepshead minnows with *N,N*-dimethylaniline, in accordance with § 797.1600 of this chapter.

(ii) *Reporting requirements.* (A) Fish early life stage toxicity tests shall be completed and the final reports submitted to EPA within 12 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(e) *Chemical fate*—(1) *Biodegradation in natural surface waters* —(i) *Required testing.* (A) Biodegradation testing in natural surface waters shall be conducted with 2,6-dimethylphenol.

(B) The testing shall be conducted in accordance with the test procedure specified in the American Society for Testing and Materials (ASTM) test method, entitled "Standard Test Method for Biodegradation By a Shake-Flask DieAway Method, Designation: E 1279–89," published in the Annual Book of ASTM Standards, March 1989, Philadelphia, Pa., which is incorporated by reference. Copies of this test method are available in the TSCA Nonconfidential Information Center, East Tower, Rm. G–102, 401 M St., SW., Washington, DC 20460. This test method is also available for inspection at the Office of the Federal Register, 800 North Capital St., Suite 700, Washington, DC. This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. This method is incorporated as it exists on the date of approval and a notice of any changes to the method will be published in the **Federal Register**.

(ii) *Reporting requirements.* (A) The biodegradation test in natural surface waters shall be completed and the final reports submitted to EPA within 12 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(2) *Biodegradation in activated sludge* — (i) *Required testing.* Biodegradation testing in activated sludge shall be conducted with *N,N*-dimethylaniline in accordance with § 796.3340 of this chapter.

(ii) *Reporting requirements.* (A) The biodegradation test in activated sludge shall be completed and the final report submitted to EPA within 12 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(3) *Anaerobic biodegradation* — (i) *Required testing.* Anaerobic biodegradation testing shall be conducted with *N,N*-dimethylaniline and 2,6-dimethylphenol in accordance with § 796.3140 of this chapter.

(ii) *Reporting requirements.* (A) The required anaerobic biodegradation testing shall be completed and the final report submitted to EPA within 12 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in

paragraph (f) of this section until the final report is submitted.

(4) *Photolysis*—(i) *Required testing.* Aqueous photolysis testing shall be conducted on 2,6-dimethylphenol in accordance with § 795.70 of this chapter.

(ii) *Reporting requirements.* (A) The required aqueous photolysis testing shall be completed and the final report submitted to EPA within 12 months of the effective date in paragraph (f) of this section.

(B) Progress reports shall be submitted to EPA every 6 months beginning 6 months after the effective date in paragraph (f) of this section until the final report is submitted.

(f) *Effective date.* This test guideline is effective (44 days after publication of the final rule in the Federal Register).

[FR Doc. 93–28614 Filed 11–19–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–279, RM–8368]

Radio Broadcasting Services; Cal-Nev-Ari, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Richard W. Myers seeking the allotment of Channel 285A to Cal-Nev-Ari, Nevada, as its first local aural transmission service. Channel 285A can be allotted to Cal-Nev-Ari in compliance with the Commission's minimum distance separation requirements with a site restriction of 2.6 kilometers (1.6 miles) southeast, at coordinates North Latitude 35–17–12 and West Longitude 114–51–57, to avoid a short-spacing to Station KJUL, Channel 282C, North Las Vegas, Nevada. The petitioner is requested to provide further information to demonstrate that Cal-Nev-Ari is a community for allotment purposes. Concurrence by the Mexican Government is required because Cal-Nev-Ari is located within 320 kilometers (199 miles) of the U.S.-Mexican border.

DATES: Comments must be filed on or before January 3, 1994, and reply comments on or before January 18, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Peter Tannenwald, Esq., Kathleen L. Franco, Esq., Arent Fox Kintner Plotkin & Kahn, 1050 Connecticut Avenue NW., Washington, DC 20036–5339 (Counsel to petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–279, adopted October 20, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28546 Filed 11–19–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 651

[Docket No. 931076–3276; I.D. 100193A]

RIN 0648–AD33

Northeast Multispecies Fishery; Correction

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Proposed rule; request for comments; correction.

SUMMARY: This document corrects a proposed rule published on October 27, 1993 (58 FR 57774), which is related to Amendment 5 to the Fishery Management Plan for the Northeast Multispecies Fishery (FMP). This document corrects Figure 2 of the proposed rule to depict Closed Areas properly.

EFFECTIVE DATES: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: John G. Terrill, Fishery Policy Analyst, Northeast Regional Office, 508–281–9252.

The publication on October 27, 1993, of the proposed rule, which was the subject of FR Doc. 93–26251, is corrected as follows:

On page 57801, in Figure 2: Closed Areas, "Closed Area I" should read "Closed Area II", and "Closed Area II" should read "Closed Area I". A corrected Figure 2 appears below.

Dated: November 16, 1993.

Samuel W. McKeen,

Acting Assistant Administrator for Fisheries, National Marine Fisheries Service.

BILLING CODE 3510–22–M

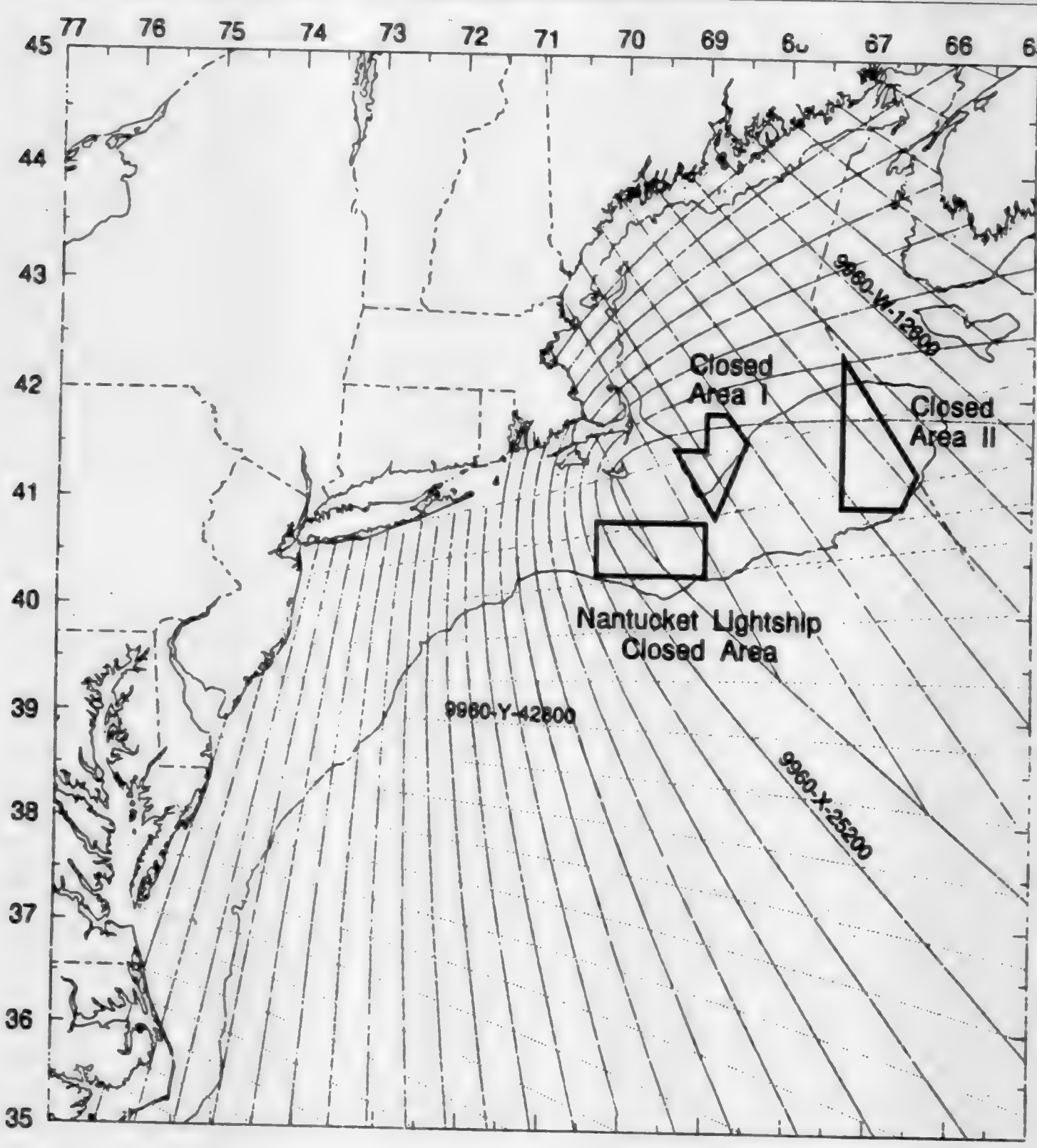

Figure 2: Closed Areas

[FR Doc. 93–28567 Filed 11–19–93; 8:45 am]
BILLING CODE 3510–22–C

Notices

Federal Register
Vol. 58, No. 223
Monday, November 22, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Rural Telephone Bank

Determination of the 1993 Fiscal Year; Interest Rates on Rural Telephone Bank Loans; Correction

AGENCY: Rural Telephone Bank, USDA.

ACTION: Correction.

SUMMARY: In notice document 93–27189 beginning on page 58835 in the issue of Thursday, November 4, 1993, make the following correction:

On page 58837 in Table 1b.—Financing Account Rural Telephone Bank Cost of Money Rate—Continued, under Source of bank funds, the first line previously read "Excess of total advances over 1992 issuances". This should be changed to read "Excess of total advances over FY 1993 issuances".

Dated: November 17, 1993.

Robert Peters,

Acting Governor, Rural Telephone Bank.

[FR Doc 93–28625 Filed 11–19–93; 8:45 am]

BILLING CODE 3410–15–F

U.S. COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the Arizona, California, New Mexico, and Texas Advisory Committees

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the Chairpersons of the Arizona, California, New Mexico and Texas Advisory Committees to the Commission will convene at 9 a.m. and adjourn 2 p.m. on Saturday, December 18, 1993 at the Hyatt Regency Hotel, 330 Tierjas, Albuquerque, New Mexico 87102. The purpose of the meeting is to discuss the four-state immigration project with State Advisory Chairs.

Persons desiring additional information, or planning a presentation to the Committee, should contact Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 12, 1993.

Carol-Lee Hurley

Chief, Regional Programs Coordination Unit

[FR Doc. 93–28574 Filed 11–19–93; 8:45 am]

BILLING CODE 6335–01–F

DEPARTMENT OF COMMERCE

Bureau of Export Administration

Sensors Technical Advisory Committee; Partially Closed Meeting

A meeting of the Sensors Technical Advisory Committee will be held December 10, 1993, 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street & Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis with respect to technical questions that affect the level of export controls applicable to sensors and related equipment and technology.

Agenda

General Session

1. Opening remarks by the Chairman.
2. Presentation of papers or comments by the public.
3. Discussion of export controls affecting sensors & lasers.

Executive Session

4. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto.

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meeting date to the following address: Ms. Lee Ann Carpenter, EA/OAS—Room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on February 5, 1992, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C., 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10(a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC 20230. For further information or copies of the minutes, contact Lee Ann Carpenter on (202) 482–2583.

Dated: November 16, 1993.

Betty A. Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–28631 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

[C–508–064]

Roses From Israel; Determination not to Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on roses from Israel.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Albright or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 46629) its intent to revoke the countervailing duty order on roses from Israel (45 FR 58516; September 4, 1980). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On September 28, 1993, The Floral Trade Council and Roses, Inc., petitioners in the original investigation, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: November 16, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–28632 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DS–P

[C–614–601]

Steel Wire From New Zealand; Determination Not To Revoke Countervailing Duty Order

AGENCY: International Trade Administration/Import Administration, Department of Commerce.

ACTION: Notice of determination not to revoke countervailing duty order.

SUMMARY: The Department of Commerce is notifying the public of its determination not to revoke the countervailing duty order on steel wire from New Zealand.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Sarah Givens or Maria MacKay, Office of Countervailing Compliance, International Trade Administration, U.S. Department of Commerce, Washington, DC 20230; telephone: (202) 482–4406 or 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On September 2, 1993, the Department of Commerce (the Department) published in the **Federal Register** (58 FR 46629) its intent to revoke the countervailing duty order on steel wire from New Zealand (51 FR 31156; September 2, 1986). Under 19 CFR 355.25(d)(4)(iii), the Secretary of Commerce will conclude that an order is no longer of interest to interested parties and will revoke the order if no domestic interested party objects to revocation or no interested party requests an administrative review by the last day of the fifth anniversary month.

On October 1, 1993, Davis Wire Corporation and Leggett & Platt, Inc., domestic producers, objected to our intent to revoke the order. Because the requirements of 19 CFR 355.25(d)(4)(iii) have not been met, we will not revoke the order.

This determination is in accordance with 19 CFR 355.25(d)(4).

Dated: November 16, 1993.

Roland L. MacDonald,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–28633 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DS–P

Export Trade Certificate of Review

AGENCY: International Trade Administration, Commerce.

ACTION: Notice of initiation of process to revoke export trade certificate of review No. 84–00011.

SUMMARY: The Secretary of Commerce issued an export trade certificate of review to Watsand International Ltd. Because this certificate holder has failed to file an annual report as required by law, the Department is initiating proceedings to revoke the certificate. This notice summarizes the notification letter sent to Watsand International Ltd.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, International Trade Administration, 202/482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: Title III of the Export Trading Company Act of 1982 ("the Act") [15 U.S.C. 4011–21] authorized the Secretary of Commerce to issue export trade certificates of review. The regulations implementing Title III ["the Regulations"] are found at 15 CFR part 325. Pursuant to this authority, a certificate of review was issued on May 25, 1984 to Watsand International Ltd.

A certificate holder is required by law (Section 308 of the Act, 15 U.S.C. 4018) to submit to the Department of Commerce annual reports that update financial and other information relating to business activities covered by its certificate. The annual report is due within 45 days after the anniversary date of the issuance of the certificate of review [§§ 325.14 (a) and (b) of the Regulations]. Failure to submit a complete annual report may be the basis for revocation. [§§ 325.10(a) and 325.14(c) of the Regulations].

The Department of Commerce sent to Watsand International Ltd. on May 14, 1993, a letter containing annual report questions with a reminder that its annual report was due on July 9, 1993. Additional reminders were sent on July 13, 1993, and on August 13, 1993. The Department has received no written response to any of these letters.

On November 17, 1993, and in accordance with § 325.10 (c)(2) of the Regulations, a letter was sent by certified mail to notify Watsand International Ltd. that the Department was formally initiating the process to revoke its certificate. The letter stated that this action is being taken for the certificate holder's failure to file an annual report.

In accordance with § 325.10(c)(2) of the Regulations, each certificate holder has thirty days from the day after its receipt of the notification letter in which to respond. The certificate holder is deemed to have received this letter as of the date on which this notice is published in the **Federal Register**. For good cause shown, the Department of Commerce can, at its discretion, grant a thirty-day extension for a response.

If the certificate holder decides to respond, it must specifically address the Department's statement in the notification letter that it has failed to file an annual report. It should state in detail why the facts, conduct, or circumstances described in the notification letter are not true, or if they are, why they do not warrant revoking the certificate. If the certificate holder does not respond within the specified period, it will be considered an admission of the statements contained in the notification letter (§ 325.10(c)(2) of the Regulations).

If the answer demonstrates that the material facts are in dispute, the Department of Commerce and the Department of Justice shall, upon request, meet informally with the certificate holder. Either Department may require the certificate holder to provide the documents or information that are necessary to support its

contentions (§ 325.10(c)(3) of the Regulations).

The Department shall publish a notice in the **Federal Register** of the revocation or modification or a decision not to revoke or modify (§ 325.10(c)(4) of the Regulations). If there is a determination to revoke a certificate, any person aggrieved by such final decision may appeal to an appropriate U.S. district court within 30 days from the date on which the Department's final determination is published in the **Federal Register** (§§ 325.10(c)(4) and 325.11 of the Regulations).

Dated: November 17, 1993.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–28634 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DR–P

U.S. Department of Agriculture, et al.; Notice of Consolidated Decision on Applications for Duty-Free Entry of Electron Microscopes

This is a decision consolidated pursuant to Section 6(c) of the Educational, Scientific, and Cultural Materials Importation Act of 1966 (Pub. L. 89–651, 80 Stat. 897; 15 CFR 301). Related records can be viewed between 8:30 a.m. and 5 p.m. in room 4211, U.S. Department of Commerce, 14th and Constitution Avenue, NW., Washington, DC.

Docket Number: 93–106. *Applicant:* U.S. Department of Agriculture, Delaware, OH 43015. *Instrument:* Electron Microscope, Model JEM-1010. *Manufacturer:* JEOL Ltd., Japan. *Intended Use:* See notice at 58 FR 49023, September 21, 1993. *Order Date:* June 29, 1993.

Docket Number: 93–110. *Applicant:* University of Pennsylvania, Philadelphia, PA 19104–4268. *Instrument:* Electron Microscope, Model CM 100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 58 FR 49024, September 21, 1993. *Order Date:* July 1, 1993.

Docket Number: 93–111. *Applicant:* Medical College of Georgia, Augusta, GA 30912. *Instrument:* Electron Microscope, Model CM 100. *Manufacturer:* Philips, The Netherlands. *Intended Use:* See notice at 58 FR 49024, September 21, 1993. *Order Date:* May 24, 1993.

Comments: None received. *Decision:* Approved. No instrument of equivalent scientific value to the foreign instrument, for such purposes as these instruments are intended to be used, was being manufactured in the United States at the time the instruments were ordered. *Reasons:* Each foreign instrument is a conventional transmission electron microscope (CTEM) and is intended for research or scientific educational uses requiring a CTEM. We know of no CTEM, or any other instrument suited to these purposes, which was being manufactured in the United States either at the time of order of each instrument or at the time of receipt of application by the U.S. Customs Service.

Frank W. Creel

Director, Statutory Import Programs Staff

[FR Doc. 93–28635 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DS–F

Minority Business Development Agency

Business Development Center Applications: Cincinnati, Ohio—Kentucky—Indiana MSA (Service Area)

AGENCY: Minority Business Development Agency, DOC.

ACTION: Notice.

SUMMARY: In accordance with Executive Order 11625 and 15 U.S.C. 1512, the Minority Business Development Agency (MBDA) is soliciting competitive applications under its Minority Business Development Center (MBDC) program. The total cost of performance for the first budget period (12 months) from May 1, 1994 to April 30, 1995 is estimated at $198,971. The application must include a minimum cost-share of 15% of the total project cost through non-Federal contributions. Cost-sharing contributions may be in the form of cash contributions, client fees, in-kind contributions or combinations thereof. The MBDC will operate in the Cincinnati, Ohio—Kentucky—Indiana geographic service area. The award number of this MBDC will be 05–10–94005–01.

The funding instrument for this project will be a cooperative agreement. Competition is open to individuals, non-profit and for-profit organizations, state and local governments, American Indian tribes and educational institutions.

The MBDC program provides business development services to the minority business community to help establish and maintain viable minority businesses. To this end, MBDA funds organizations to identify and coordinate public and private sector resources on behalf of minority individuals and firms; to offer a full range of management and technical assistance to minority entrepreneurs; and to serve as a conduit of information and assistance regarding minority business.

Applications will be evaluated on the following criteria: the experience and capabilities of the firm and its staff in addressing the needs of the business community in general and, specifically, the special needs of minority businesses, individuals and organizations (50 points); the resources available to the firm in providing business development services (10 points); the firm's approach (techniques and methodologies) to performing the work requirements included in the application (20 points); and the firm's estimated cost for providing such assistance (20 points). An application must receive at least 70% of the points assigned to each evaluation criteria category to be considered programmatically acceptable and responsive. Those applications determined to be acceptable and responsive will then be evaluated by the Director of MBDA. Final award selections shall be based on the number of points received, the demonstrated responsibility of the applicant, and the determination of those most likely to further the purpose of the MBDA program. Negative audit findings and recommendations and unsatisfactory performance under prior Federal awards may result in an applicant not being considered for award. The applicant with the highest point score will not necessarily receive the award.

MBDCs shall be required to contribute at least 15% of the total project cost through non-Federal contributions. To assist in this effort, the MBDCs may charge client fees for management and technical assistance (M&TA) rendered. Based on a standard rate of $50 per hour, the MBDC will charge client fees at 20% of the total cost for firms with gross sales of $500,000 or less, and 35% of the total cost for firms with gross sales of over $500,000.

Quarterly reviews culminating in year-to-date evaluations will be conducted to determine if funding for the project should continue. Continued funding will be at the total discretion of MBDA based on such factors as the MBDC's performance, the availability of funds and Agency priorities.

DATES: The closing date for applications is January 3, 1994. Applications must be postmarked on or before January 3, 1994.

ADDRESSES: Chicago Regional Office, 55 E. Monroe Street, Suite 1440, Chicago, Illinois 60603, (312) 353–0182.

FOR FURTHER INFORMATION CONTACT: David Vega, Regional Director, Chicago

Regional Office, telephone (312) 353–0182.

SUPPLEMENTARY INFORMATION: Anticipated processing time of this award is 120 days. Executive order 12372, "Intergovernmental Review of Federal Programs," is not applicable to this program. The collection of information requirements for this project have been approved by the Office of Management and Budget (OMB) and assigned OMB control number 0640–0006. A pre-bid conference will be held on December 10, 1993, at 10 a.m. at the Chicago Regional Office. Questions concerning the preceding information can be answered by the contact person indicated above, and copies of application kits and applicable regulations can be obtained at the above address.

Pre-Award Costs

Applicants are hereby notified that if they incur any costs prior to an award being made, they do so solely at their own risk of not being reimbursed by the Government.

Notwithstanding any verbal assurance that an applicant may have received, there is no obligation on the part of the Department of Commerce to cover pre-award cost. Awards under this program shall be subject to all Federal laws, and Federal and Departmental regulations, policies, and procedures applicable to Federal financial assistance awards.

Outstanding Account Receivable

No award of Federal funds shall be made to an applicant who has an outstanding delinquent Federal debt until either the delinquent account is paid in full, repayment schedule is established and at least one payment is received, or other arrangements satisfactory to the Department of Commerce are made.

Name Check Policy

All non-profit and for-profit applicants are subject to a name check review process. Name checks are intended to reveal if any key individuals associated with the applicant have been convicted of or are presently facing charges such as fraud, theft, perjury or other matters which significantly reflect on the applicant's management honesty or financial integrity.

Award Termination

The Departmental Grants Officer may terminate any grant/cooperative agreement in whole or in part at any time before the date of completion whenever it is determined that the award recipient has failed to comply with the conditions of the grant/cooperative agreement. Examples of some of the conditions which may cause termination are failure to meet cost-sharing requirements; unsatisfactory performance of the MBDC work requirements; and reporting inaccurate or inflated claims of client assistance. Such inaccurate or inflated claims may be deemed illegal or punishable by law.

False Statements

A false statement on an application for Federal financial assistance is grounds for denial or termination of funds, and grounds for possible punishment by a fine or imprisonment as provided in 18 U.S.C. 1001.

Primary Applicant Certifications

All primary applicants must submit a completed Form CD–511, "Certifications Regarding Debarment, Suspension and Other Responsibility Matters; Drug-Free Workplace Requirements and Lobbying."

Nonprocurement Debarment and Suspension

Prospective participants (as defined at 15 CFR part 26, section 105) are subject to 15 CFR part 26, "Nonprocurement Debarment and Suspension" and the related section of the certification form prescribed above applies.

Drug Free Workplace

Grantees (as defined at 15 CFR part 26, section 605) are subject to 15 CFR part 26, subpart F, "Governmentwide Requirements for Drug-Free Workplace (Grants)" and the related section of the certification form prescribed above applies.

Anti-Lobbying

Persons (as defined at 15 CFR part 28, section 105) are subject to the lobbying provisions of 31 U.S.C. 1352, "Limitation on use of appropriated funds to influence certain Federal contracting and financial transactions," and the lobbying section of the certification from prescribed above applies to applications/bids for grants, cooperative agreements, and contracts for more than $100,000.

Anti-Lobbying Disclosures

Any applicant that has paid or will pay for lobbying using any funds must submit an SF–LLL, "Disclosure of Lobbying Activities," as required under 15 CFR part 28, appendix B.

Lower Tier Certifications

Recipients shall require applications/bidders for subgrants, contracts, subcontracts, or other lower tier covered transactions at any tier under the award to submit, if applicable, a completed Form CD–512, "Certifications Regarding Debarment, Suspension, Ineligibility and Voluntary Exclusion-Lower Tier Covered Transactions and Lobbying" and disclosure form, SF–LLL, "Disclosure of Lobbying Activities." Form CD–512 is intended for the use of recipients and should not be transmitted to DOC. SF–LLL submitted by any tier recipient or subrecipient should be submitted to DOC in accordance with the instructions contained in the award document.

11.800 Minority Business Development

(Catalog of Federal Domestic Assistance)

Dated: November 16, 1993.

David Vega,

Regional Director, Chicago Regional Office.

[FR Doc. 93–28587 Filed 11–19–93; 8:45 am]

BILLING CODE 3510-21-M

National Oceanic and Atmospheric Administration

Marine Mammals

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Modification to permit No. 625 (P407).

SUMMARY: Notice is hereby given that Permit No. 625, issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, has been modified.

ADDRESSES: Documents submitted in connection with the above modification are available for review by appointment in the following offices:

Office of Protected Resources, NMFS, 1315 East-West Highway, room 13130, Silver Spring, MD 20910 (301/713–2289); and

Director, Southwest Region, NMFS, 501 West Ocean Boulevard, suite 4200, Long Beach, CA 90802–4213 (310/980–4015).

SUPPLEMENTARY INFORMATION: Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), public display permit No. 625, issued to the Hyatt Regency Waikoloa Resort, Waikoloa, Hawaii, is modified by deleting the first paragraph and substituting the following:

Subject to the provisions of the Marine Mammal Protection Act of 1972 (16 U.S.C. 1361–1407), the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216) and the conditions hereinafter set out, the Hyatt Regency Waikoloa Resort, Waikoloa, HI 96743, and Dolphin Quest,

Inc., 20 West 1st Street #208, Mesa, AZ 85201, are hereby authorized to maintain the indefinite care and custody for public display purposes of the marine mammals currently held in the facility operated by Dolphin Quest at the Hilton Waikoloa Village.

All general and special conditions currently contained in the permit remain in effect. This modification becomes effective upon publication in the Federal Register.

Dated: November 15, 1993.

William W. Fox, Jr.,

Director, Office of Protected Resources, National Marine Fisheries Service.

[FR Doc. 93–28577 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–22–M

Patent and Trademark Office

[Docket No. 931194–3294]

Request for Information Regarding Process Patent Amendments Made by the Omnibus Trade and Competitiveness Act of 1988

AGENCY: Patent and Trademark Office, Commerce.

ACTION: Notice.

SUMMARY: The Patent and Trademark Office is requesting information from domestic industries regarding possible adverse affects of the process patent amendments made by the Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418). This information will be useful in preparing a report to Congress as required by the Act.

DATES: Comments must be received on or before January 31, 1994.

FOR FURTHER INFORMATION CONTACT: Documents and questions should be submitted to H. Dieter Hoinkes, Office of Legislation and International Affairs, Box 4, Patent and Trademark Office, Washington, DC 20231. Telephone at (703) 305–9300.

SUPPLEMENTARY INFORMATION: The Omnibus Trade and Competitiveness Act of 1988 (Pub. L. 100–418) was enacted on August 23, 1988. Among other things, the Act amended title 35, United States Code, to extend the protection of a process patented in the United States also to products made by that process. As a consequence, whoever without authority imports into the United States, or sells or uses in this country, a product made by a patented process shall be liable as an infringer, if the importation, sale or use occurs during the term of the process patent. (Sections 9002 and 9003 of Pub. L. 100–418). The effective date of that amendment was February 23, 1989.

Section 9007 of the Act requires the Secretary of Commerce to report to the Congress, at the end of each one-year period from the effective date of the above amendments, on the effect of these amendments on those domestic industries that submitted complaints during such period, alleging that their legitimate sources of supply have been adversely affected. Such reports must be submitted for five successive years.

The fifth and last report from the Secretary of Commerce to the Congress will be submitted on February 23, 1994, covering the preceding one-year period. Accordingly, it is requested that domestic industries wishing their complaints reflected in the Secretary's report ensure that any submission on this subject is received by the Department of Commerce not later than January 31, 1994.

Dated: November 5, 1993.

Michael K. Kirk,

Acting Assistant Secretary of Commerce and Acting Commissioner of Patents and Trademarks.

[FR Doc. 93–28556 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–16–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in China

November 16, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs adjusting limits.

EFFECTIVE DATE: November 17, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–6703. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being adjusted for swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 62304, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 23, 1992, by the Acting Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in China and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 17, 1993, you are directed to amend further the directive dated December 23, 1992 to adjust the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and the People's Republic of China:

Category	Adjusted twelve-month limit [1]
Levels not in a group	
200	631,163 kilograms.
219	1,446,517 square meters.
300/301	2,873,910 kilograms.
317/326	19,465,235 square meters.
333	35,511 dozen.
345	136,691 dozen.
350	152,771 dozen.
359–C [2]	316,527 kilograms.
363	30,553,231 numbers.
369–D [3]	4,480,022 kilograms.
369–H [4]	3,091,941 kilograms.
410	1,758,533 square meters of which not more than 1,569,975 square meters shall be in Category 410–A [5] and not more than 1,569,975 square meters shall be in Category 410–B [6].

Category	Adjusted twelve-month limit [1]
434	13,392 dozen.
440	39,361 dozen of which not more than 22,491 dozen shall be in Category 440–M [7].
631	1,206,258 dozen pairs.
636	526,465 dozen.
638/639	2,434,499 dozen.
640	1,453,233 dozen.
641	1,044,944 dozen.
645/646	857,721 dozen.
647	1,111,437 dozen.
648	940,118 dozen.
651	722,902 dozen of which not more than 124,619 dozen shall be in Category 651–B [8].
652	1,796,529 dozen.
659–C [9]	309,733 kilograms.
669–P [10]	1,892,957 kilograms.
842	195,851 dozen.
846	86,956 dozen.
847	1,156,617 dozen.
Group III	
201, 220, 222–225, 227, 229, 362, 369–O [11], 400, 414, 464–469, 600, 603, 604–O [12], 606, 618–622, 624–627, 628, 629, 665, 666, 669–O [13], 670–O [14], as a group.	354,451,524 square meters equivalent.
Group IV	
832, 834, 836–839, 644/844, 850–852, 858 and 859, as a group.	28,196,961 square meters equivalent.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1992.

[2] Category 359–C: only HTS numbers 6103.42.2025, 6103.49.3034, 6104.62.1020, 6104.69.3010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010.

[3] Category 369–D: only HTS numbers 6302.60.0010, 6302.91.0005 and 6302.91.0045.

[4] Category 369–H: only HTS numbers 4202.22.4020, 4202.22.4500 and 4202.22.8030.

[5] Category 410–A: only HTS numbers 5111.11.3000, 5111.11.7030, 5111.11.7060, 5111.19.2000, 5111.19.6020, 5111.19.6040, 5111.19.6060, 5111.19.6080, 5111.20.9000, 5111.30.9000, 5111.90.3000, 5111.90.9000, 5212.11.1010, 5212.12.1010, 5212.13.1010, 5212.14.1010, 5212.15.1010, 5212.21.1010, 5212.22.1010, 5212.23.1010, 5212.24.1010, 5212.25.1010, 5311.00.2000, 5407.91.0510, 5407.92.0510, 5407.93.0510, 5407.94.0510, 5408.31.0510, 5408.32.0510, 5408.33.0510, 5408.34.0510, 5515.13.0510, 5515.22.0510, 5515.92.0510, 5516.31.0510, 5516.32.0510, 5516.33.0510, 5516.34.0510 and 6301.20.0020.

[6] Category 410–B: only HTS numbers 5007.10.6030, 5007.90.6030, 5112.11.2030, 5112.11.2060, 5112.19.9010, 5112.19.9020, 5112.19.9030, 5112.19.9040, 5112.19.9050, 5112.19.9060, 5112.20.3000, 5112.30.3000, 5112.90.3000, 5112.90.9010, 5112.90.9090, 5212.11.1020, 5212.12.1020, 5212.13.1020, 5212.14.1020, 5212.15.1020, 5212.21.1020, 5212.22.1020, 5212.23.1020, 5212.24.1020, 5212.25.1020, 5309.21.2000, 5309.29.2000, 5407.91.0520, 5407.92.0520, 5407.93.0520, 5407.94.0520, 5408.31.0520, 5408.32.0520, 5408.33.0520, 5408.34.0520, 5515.13.0520, 5515.92.0520, 5515.22.0520, 5516.31.0520, 5516.32.0520, 5516.33.0520 and 5516.34.0520.

[7] Category 440–M: HTS numbers 6203.21.0030, 6203.23.0030, 6205.10.1000, 6205.10.2010, 6205.10.2020, 6205.30.1510, 6205.30.1520, 6205.90.2020, 6295.90.4020 and 6211.31.0030.

[8] Category 651–B: only HTS numbers 6107.22.0015 and 6108.32.0015.

[9] Category 659–C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.3038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.3014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.4015, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

[10] Category 669–P: only HTS numbers 6305.31.0010, 6305.31.0020 and 6305.39.0000.

[11] Category 369–O: all HTS numbers except 6302.60.0010, 6302.91.0005 and 6302.91.0045 (Category 369–D); 4202.22.4020, 4202.22.4500, 4202.22.8030 (Category 369–H); 4202.12.4000, 4202.12.8020, 4202.12.8060, 4202.92.1500, 4202.92.3015, 4202.92.6090 (Category 369–L); and 6307.10.2005 (Category 369–S).

[12] Category 604–O: all HTS numbers except 5509.32.0000 (Category 604–A).

[13] Category 669–O: all HTS numbers except 6305.31.0010, 6305.31.0020 and 6305.39.0000 (Category 669–P).

[14] Category 670–O: only HTS numbers 4202.22.4030, 4202.22.8050 and 4202.32.9550.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28626 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DR–F

Increase of Guaranteed Access Levels for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Guatemala

November 16, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing guaranteed access levels.

EFFECTIVE DATE: November 23, 1993.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these levels, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The United States Government has agreed to increase the 1993 Guaranteed Access Levels (GALs) for Categories 340/640 and 347/348.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 59334, published on December 15, 1992; and 57 FR 62306, published on December 30, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directives issued to you on December 9, 1992 and December 23, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. Those directives concern imports of certain cotton, wool and man-made fiber textile products, produced or manufactured in Guatemala and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 23, 1993, you are directed to increase the current Guaranteed Access Levels (GALs) for the following categories:

Category	Guaranteed access level
340/640	820,000 dozen.
347/348	1,500,000 dozen.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28628 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton Textile Products Produced or Manufactured in Guatemala

November 12, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing import limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Nicole Bivens Collinson, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement of July 20, 1993, as amended, between the Governments of the United States and Guatemala establishes limits and guaranteed access levels for certain cotton, wool and man-made fiber textile products for the period beginning on January 1, 1994 and extending through December 31, 1994.

A copy of the current bilateral agreement is available from the Textiles Division, Bureau of Economic and Business Affairs, U.S. Department of State (202) 647-3889.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the 1994 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notice 51 FR 21208, published on June 11, 1986; 52 FR 26057, published on July 10, 1987; 54 FR 50425, published on December 6, 1989; and 55 FR 3079, published on January 30, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 12, 1993.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Textile Agreement of July 20, 1993, as amended, between the Governments of the United States and Guatemala; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Guatemala and exported during the period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following restraint limits:

Category	Twelve-month limit
340/640	1,000,004 dozen.
347/348	1,179,780 dozen.
351/651	212,000 dozen.
448	42,292 dozen.

Imports charged to the category limits for the periods May 28, 1993 through September 30, 1993 and October 1, 1993 through December 31, 1993 (Categories 351/651) and January 1, 1993 through December 31, 1993, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for those periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the current bilateral agreement between the Governments of the United States and Guatemala.

Additionally, pursuant to the Bilateral Textile Agreement of July 20, 1993, as amended, between the Governments of the United States and Guatemala; and the terms of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), effective on January 1, 1994, guaranteed access levels are being established for properly certified textile products assembled in Guatemala from fabric formed and cut in the United States in the following categories which are re-exported to the United States from Guatemala during the period January 1, 1994 through December 31, 1994:

Category	Guaranteed Access Level
340/640	520,000 dozen.
347/348	1,000,000 dozen.
351/651	200,000 dozen.
448	42,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of January 24, 1990, as amended, shall be denied entry unless the Government of Guatemala authorizes the entry and any charges to the appropriate specific limit. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28627 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Lesotho

November 16, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or

call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Memorandum of Understanding (MOU) dated July 30, 1993 between the Governments of the United States and the Kingdom of Lesotho establishes limits for the period beginning on December 1, 1993 and extending through November 30, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the 1994 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Memorandum of Understanding (MOU) dated July 30, 1993 between the Governments of the United States and the Kingdom of Lesotho; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on December 1, 1993, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton and man-made fiber textile products in the following categories, produced or manufactured in Lesotho and exported during the twelve-month period beginning on December 1, 1993 and extending through November 30, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
338–B/339–B/638–B/639–B [1].	805,600 dozen.
347/348	397,500 dozen.

[1] Category 338–B: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2065, 6110.90.0068 and 6114.20.0005; Category 339–B: only HTS numbers 6104.22.0060, 6104.29.2049, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2075, 6110.90.0070, 6114.20.0010 and 6117.90.0022; Category 638–B: only HTS numbers 6103.23.0075, 6103.29.1050, 6105.20.2010, 6105.20.2030, 6105.90.3030, 6109.90.1049, 6110.30.1050, 6110.30.2050, 6110.30.3050, 6110.90.0076, and 6114.30.1010; Category 639–B: only HTS numbers 6104.23.0036, 6104.29.1050, 6104.29.2055, 6106.20.2010, 6106.20.2030, 6106.90.2030, 6106.90.3030, 6109.90.1090, 6110.30.1060, 6110.30.2060, 6110.30.3055, 6110.90.0078, 6114.30.1020 and 6117.90.0026.

Imports charged to these category limits for the period December 1, 1992 through November 30, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future pursuant to the provisions of the MOU dated July 30, 1993 between the Governments of the United States and the Kingdom of Lesotho.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28629 Filed 11–19–93; 8:45 am]
BILLING CODE 3510–DR–F

Announcement of Import Restraint Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in Poland

November 16, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist; Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated October 5, 1993, the Governments of the United States and the Republic of Poland agreed to extend their current bilateral textile agreement for two consecutive one-year periods, beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits for the 1994 agreement period. The limit for Category 443 has been reduced for carryforward used during the previous agreement period.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the 1994 CORRELATION will be published in the **Federal Register** at a later date.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 16, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Memorandum of Understanding dated October 5, 1993, between the Governments of the United States and the Republic of Poland; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended; you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from

warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Poland and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
335	146,068 dozen.
338/339	1,573,040 dozen.
410	2,550,250 square meters.
433	18,010 dozen.
434	9,823 dozen.
435	12,853 dozen.
443	201,495 numbers.
611	4,496,085 square meters.
645/646	230,338 dozen.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

D. Michael Hutchinson,

Acting Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–28630 Filed 11–19–93; 8:45 am]

BILLING CODE 3510–DR–F

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 92–3–DART]

Digital Audio Recording Technology Act; Implementation

AGENCY: Copyright Royalty Tribunal.

ACTION: Notice.

SUMMARY: On November 3, 1993, The American Society of Composers, Authors and Publishers, Broadcast Music, Inc., and SESAC, Inc., ("Performing Rights Organizations"), filed a petition to reopen for reconsideration the rulemaking proceeding which resulted in the Notice Adopting Final Regulations to implement the Audio Home Recording Act of 1992 (AHRA), issued by the Copyright Royalty Tribunal ("Tribunal") on October 18, 1993. 58 FR 53822. The Tribunal invites comments from the interested parties.

DATES: Comments are due by December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Cindy Daub, Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue NW., suite 918, Washington, DC 20009. (1993).

SUPPLEMENTARY INFORMATION: The Audio Home Recording Act of 1992 (AHRA), 17 U.S.C. 1001–1010 (Supp. IV 1992), became effective on October 28, 1992.

AHRA authorizes the Tribunal to prescribe the "form and manner" for filing claims. *Id.* The Tribunal, in an Advance Notice of Rule Making, invited comments concerning the filing of claims to royalties. 57 FR 54542 (1992). Thereafter, on January 29, 1993, the Tribunal, issued Interim Regulations, with a request for public comment. 58 FR 6441 (1993). The Interim Regulations also directed the parties to file a report, on or before June 1, 1993, commenting on the issue of whether performing rights societies need separate, specific, and written authorization to represent members and affiliates. 58 FR 6441, 6444 (1992). Having considered all the facts and comments before the Tribunal, final regulations were published October 18, 1993. 58 FR 53822.

In filing the petition to reopen for reconsideration of the final regulations on November 3, 1993, the Performing Rights Organizations objected to the provision in the Tribunal's final regulations requiring the performing rights societies to obtain separate, specific, and written authorizations, signed by their respective members and affiliates or their representatives in order to file claims on behalf of those members and affiliates under the Act. 58 FR at 53826; 37 CFR 311.2.

The Performing Rights Organizations contend that:

I. The Tribunal's final regulations as promulgated will disenfranchise many writers and publishers who are otherwise qualified to receive royalties under the Act; that due to the Tribunal October 18, 1993 publishing date of its regulation, and the filing of claims to 1993 royalties by February 28, 1994, the Tribunal's determination has left the performing rights organizations with little time to obtain the required authorizations for claims to 1993 royalties should the final regulation stand as adopted; and that the rights of claimants who want to file on their own behalf, or have others file for them, will not be impaired by adoption of a permanent rebuttable inference of an agency relationship between the performing rights societies and their respective members and affiliates. Moreover, because the Tribunal has adopted their proposal that lists of all individuals represented by joint claimants must be made available upon request to the other parties and the Tribunal, there can be no possibility of confusion about which organization is representing a particular writer or publisher in a given proceeding.

II. The Tribunal erred in concluding that the holding in *National Broadcasting Company, Inc.* v. *Copyright Royalty Tribunal*, 848 F.2d 1289 (D.C. Cir. 1988), precludes adoption of the rebuttable inference of agency for performing rights organization. They argue that the court in *NBC* v. *CRT*, held that the Tribunal's decision to award royalties to Worldvision, the syndicator, instead of NBC, the program owner, did not constitute a final adjudication of the rights of the parties under the syndication agreement. Similarly, they are not seeking a final judgment or interpretation of their membership and affiliation agreements. They are merely seeking a rebuttable inference for valid procedural, administrative and policy reasons. The rule that they are seeking will not be a binding judgment on any party in a DART distribution proceeding.

III. Even if the Tribunal rejects the concept of a permanent rebuttable inference, that the Tribunal's final ruling adopting a requirement that performing rights societies must obtain separate, specific and written authorizations signed by their respective members and affiliates should not be applied to the 1993 distribution proceeding because of the short turn around time before 1993 royalty claims have to be filed.

They further contend that the prejudice that will otherwise result to their members and affiliates is compounded by the fact that they have entered into a settlement with all joint claimant groups and all but one of the individual claimants (James Cannings) to the Musical Works Fund that links the distribution of 1992 DART royalties, for which they have the rebuttable inference of agency, to the outcome of the 1993 proceeding, for which they would not have the rebuttable inference if the Tribunal's final regulations stand.

Dated: November 16, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–28557 Filed 11–19–93; 8:45 am]

BILLING CODE 1410–09–M

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 22, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue, SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g., new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recordkeeping burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the requests are available from Cary Green at the address specified above.

Dated: November 17, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Applications for New and Continuation Grants Under the Chapter 1 Migrant Education Coordination Program for State Educational Agencies
Frequency: Annually
Affected Public: State or local governments
Reporting Burden:
Responses: 10
Burden Hours: 400
Recordkeeping Burden:
Recordkeepers: 10
Burden Hours: 50
Abstract: The U.S. Department of Education will use the requested information to judge the merits of proposed and continuing projects under the Chapter 1 Migrant Education Coordination Program for State Educational Agencies.

Office of Elementary and Secondary Education

Type of Review: Revision
Title: Final Performance Report for the High School Equivalency Program and the College Assistance Migrant Program
Frequency: At the end of the five year grant cycle
Affected Public: Non-profit institutions
Reporting Burden:
Responses: 30
Burden Hours: 60
Recordkeeping Burden:
Recordkeepers: 30
Burden Hours: 90
Abstract: Grantees under the High School Equivalency Program and the College Assistance Migrant Program are required to file a final performance report 90 days after the termination of Federal financial support. This generally occurs at the end of the five year grant cycle.

Office of Educational Research and Improvement

Type of Review: New
Title: Dwight D. Eisenhower National Clearinghouse for Mathematics and Science Education
Frequency: On occasion
Affected Public: Individuals or households; State or local governments; Federal agencies or employees; Non-profit institutions
Reporting Burden:
Responses: 21,000
Burden Hours: 2,100
Recordkeeping Burden:
Recordkeepers: 1
Burden Hours: 1,040
Abstract: This submission contains a suite of eight instruments to be used in general data collection for the Eisenhower National Clearinghouse. All responses are voluntary. Subjects will be obtained as a sample of convenience at Clearinghouse workshops, demonstrations and presentations, and from recipients of Clearinghouse publications. Instruments are designed to provide general information for planning and evaluation purposes.

Office of Policy and Planning

Type of Review: New
Title: Study of Education for Homeless Children and Youth
Frequency: One time
Affected Public: State or local governments; non-profit institutions
Reporting Burden:
Responses: 166
Burden Hours: 166
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0
Abstract: This study is designed to (1) describe state plans to serve the educational needs of homeless children and youth, (2) assess the quality of state plans and measure state progress in overcoming barriers to enrollment, attendance, and school success for homeless children and youth, (3) identify innovative state level policies and programs that serve the educational needs of homeless children, and (4) identify lessons that will help the Department of Education and Congressional legislators design future legislation and education programs for homeless children and youth.

[FR Doc. 93–28610 Filed 11–19–93; 8:45 am]
BILLING CODE 4000–01–M

Office of Postsecondary Education

Federal Perkins Loan, Federal Work-Study, and Federal Supplemental Educational Opportunity Grant Programs

AGENCY: Department of Education.

ACTION: Notice of the closing date for institutions to file an "Application for Institutional Eligibility and Certification" (ED Form E–40–34P, OMB #1840–0098) to participate in the Federal Perkins Loan, Federal Work-Study, and Federal Supplemental

Educational Opportunity Grant programs for the 1994–95 award year.

SUMMARY: The Secretary invites currently ineligible institutions of higher education that filed a Fiscal Operations Report and Application to Participate (FISAP) (ED Form 646–1) in one or more of the "campus-based programs" for the 1994–95 award year to submit to the Secretary an "Application for Institutional Eligibility and Certification" and all documents required for an eligibility determination.

The campus-based programs are the Federal Perkins Loan Program, the Federal Work-Study Program, and the Federal Supplemental Educational Opportunity Grant Program and are authorized by Title IV of the Higher Education Act of 1965, as amended. The 1994–95 award year is July 1, 1994, through June 30, 1995.

DATES: *Closing Date for Filing Application and Required Documents.* To participate in the campus-based programs in the 1994–95 award year, a currently ineligible institution must mail or hand-deliver its "Application for Institutional Eligibility and Certification" on or before January 11, 1994. The application along with all documents required for an eligibility determination must be submitted to the Institutional Participation Division at one of the addresses indicated below.

ADDRESSES: Applications and Required Documents Delivered by Mail. An institutional eligibility application and required documents delivered by mail must be addressed to the U.S. Department of Education, Application Control Center, Attention: IPD/IPOS/OPE, room 3633, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–4725.

An applicant must show proof of mailing consisting of one of the following: (1) A legibly dated U.S. Postal Service postmark; (2) a legible mail receipt with the date of mailing stamped by the U.S. Postal Service; (3) a dated shipping label, invoice or receipt from a commercial carrier; or (4) any other proof of mailing acceptable to the Secretary of Education.

If an application is sent through the U.S. Postal Service, the Secretary does not accept either of the following as proof of mailing: (1) A private metered postmark, or (2) a mail receipt that is not dated by the U.S. Postal Service.

An applicant should note that the U.S. Postal Service does not uniformly provide a dated postmark. Before relying on this method, an applicant should check with its local post office.

An applicant is encouraged to use registered or at least first class mail.

Institutions that submit eligibility applications and required documents after the closing date will not be considered for funding under the campus-based programs for award year 1994–95.

Applications and Required Documents Delivered by Hand. An institutional eligibility application and required documents delivered by hand must be taken to the U.S. Department of Education, Application Control Center, room 3633, Regional Office Building 3, 7th and D Streets, SW., Washington, DC. The Application Control Center will accept hand-delivered applications between 8 a.m. and 4:30 p.m. (Eastern time) daily, except Saturdays, Sundays, and Federal holidays. An application for eligibility for the 1994–95 award year that is delivered by hand will not be accepted after 4:30 p.m. on the closing date.

SUPPLEMENTARY INFORMATION: Under the three campus-based programs, the Secretary allocates funds to eligible institutions of higher education. The Secretary will not allocate funds under the campus-based programs for award year 1994–95 to any currently ineligible institution unless the institution files its "Application for Institutional Eligibility and Certification" and other required documents by the closing date. If the institution submits its institutional eligibility and certification application or other required documents after the closing date, the Secretary will use this application in determining the institution's eligibility to participate in the campus-based programs beginning with the 1995–96 award year.

For purposes of this notice, ineligible institutions only include:

(1) An institution that has not been designated as an eligible institution by the Secretary but has previously filed a FISAP;

(2) An off-campus site of an eligible institution that is currently not included in the Department's eligibility certification for that eligible institution but has been included in the institution's 1994–95 FISAP; or

(3) A branch campus that is currently part of an eligible institution but has filed its own FISAP and is seeking eligibility as a separate institution of higher education.

The Secretary wishes to advise institutions that the institutional eligibility form, "Application for Institutional Eligibility and Certification," should not be confused with the FISAP form that institutions were required to submit electronically by October 1, 1993, in order to be considered for funds under the campus-based programs for the 1994–95 award year.

Applicable Regulations

The following regulations apply to the campus-based programs:

(1) Student Assistance General Provisions, 34 CFR Part 668.

(2) Federal Perkins Loan Program, 34 CFR Part 674.

(3) Federal Work-Study Program, 34 CFR Part 675.

(4) Federal Supplemental Educational Opportunity Grant Program, 34 CFR Part 676.

(5) Institutional Eligibility Under the Higher Education Act of 1965, as amended, 34 CFR Part 600.

(6) New Restrictions on Lobbying, 34 CFR Part 82.

(7) Governmentwide Debarment and Suspension (Nonprocurement) and Governmentwide Requirements for Drug-Free Workplace (Grants), 34 CFR Part 85.

(8) Drug-Free Schools and Campuses, 34 CFR Part 86.

FOR FURTHER INFORMATION CONTACT: For information concerning designation of eligibility, contact: Robert Jamroz, Acting Director, Institutional Participation Division, Office of Postsecondary Education, U.S. Department of Education, room 3030, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5242. Telephone: (202) 708–4906.

For technical assistance concerning the FISAP or other operational procedures of the campus-based programs, contact: Robert R. Coates, Director, Campus-Based Programs Financial Management Division, room 4621, Regional Office Building 3, 400 Maryland Avenue, SW., Washington, DC 20202–5347. Telephone: (202) 708–9711. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Program Authority: 20 U.S.C. 1087aa *et seq.*; 42 U.S.C. 2751 *et seq.*; and 20 U.S.C. 1070b *et seq.*

(Catalog of Federal Domestic Assistance Numbers: 84.007 Federal Supplemental Educational Opportunity Grant Program; 84.033 Federal Work-Study Program; 84.036 Federal Perkins Loan Program)

Dated: November 15, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–28609 Filed 11–19–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Pittsburgh Energy Technology Center; Grant Award

AGENCY: Bartlesville Project Office, Energy.

ACTION: Determination of noncompetitive financial assistance renewal with New Mexico Institute of Mining and Technology (NMIMT).

SUMMARY: The U.S. Department of Energy (DOE), Bartlesville Project Office (BPO) announces that pursuant to 10 CFR 600.7(b)(2)(i) criteria (A) and (D), it intends to award a Grant through the Pittsburgh Energy Technology Center (PETC) to the NMIMT for the continuation of it's effort entitled "Improved Efficiency of Miscible CO_2 Floods and Enhanced Prospects for CO_2 Flooding Heterogeneous Reservoirs".

ADDRESSES: Department of Energy, Pittsburgh Energy Technology Center, Acquisition and Assistance Division, P.O. Box 10940, MS 921–118, Pittsburgh, PA 15236.

FOR FURTHER INFORMATION CONTACT: Dona G. Sheehan, Contract Specialist, (412) 892–5918.

SUPPLEMENTARY INFORMATION:

Grant No.

DE–FG22–94BC14977

Title of Research Effort

"Improved Efficiency of Miscible CO_2 and Enhanced Prospects for CO_2 Flooding Heterogeneous Reservoirs"

Awardee

New Mexico Institute of Mining and Technology

Term of Assistance Effort

Thirty-six (36) months

Cost of Assistance Effort

The total estimated value is $1,956,718.

The DOE share of funding for this program study is $978,359.00.

Objective

The objective of this effort is to continue research in the area of recovery of oil by CO_2 flooding. This objective will be accomplished by extending the ongoing experimental research in three areas: (1) foams for selective mobility control in heterogeneous reservoirs, (2) reduction in the amount of CO_2 required in CO_2 floods, and, (3) miscible CO_2 flooding in fractured reservoirs.

This grant is a continuation of an activity presently being funded by DOE and for which competition for support would have a significant adverse effect on continuity or completion of the activity. The applicant has an exclusive domestic capability to perform the activity successfully, based upon unique technical expertise and equipment.

Carroll A. Lambton,

Director, Acquisition & Assistance Division.

[FR Doc. 93–28615 Filed 11–19–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. RM93–19–000]

Inquiry Concerning the Commission's Pricing Policy for Transmission Services Provided by Public Utilities Under the Federal Power Act; Extension of Time for Reply Comments

November 16, 1993.

AGENCY: Federal Energy Regulatory Commission, DOE.

ACTION: Notice of technical conference and request for comments; extension of time for reply comments.

SUMMARY: On June 30, 1993, the Commission issued a Notice of Technical Conference and Request for Comments regarding its pricing policy for transmission services provided by public utilities under the Federal Power Act (58 FR 36400, July 7, 1993). The date for filing reply comments is being extended at the request of various interested commenters.

DATES: The date for filing reply comments is extended to and including January 24, 1994.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT: Lois D. Cashell, Secretary, (202) 208–0400.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28601 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–50–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 16, 1993.

Take notice that on November 10, 1993, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 1, 1993:

Fourth Revised Sheet No. 20A
Original Sheet No. 99

Algonquin states that the purpose of this filing is to provide for the recovery of transition costs to be paid by Algonquin to CNG Transmission Corporation (CNG) pursuant to CNG's direct bill of Account Nos. 186 and 191 transition costs filed on October 29, 1993. Algonquin requests that the Commission waive § 154.22 of the Commission's regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426 in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 23, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28600 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–953–000]

Allegheny Power Service Corp.; Filing

November 16, 1993.

Take notice that on November 5, 1993, Allegheny Power Service Corporation tendered for filing an amendment to its September 15, 1993, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the

Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28595 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–66–000]

East Tennessee Natural Gas Co., Request Under Blanket Authorization

November 16, 1993.

Take notice that on November 8, 1993, East Tennessee Natural Gas Company (East Tennessee), P.O. Box 2511, Houston, Texas 77252, filed in Docket No. CP94–66–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a delivery point for deliveries of natural gas for the account of its firm transportation customer, Roanoke Gas Company (Roanoke), under East Tennessee's blanket certificate issued in Docket No. CP82–412–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

It is said that pursuant to Roanoke's request, East Tennessee has agreed to establish a temporary delivery point in Roanoke County, Virginia under the terms and provisions of its Rate Schedule FTA and a gas transportation agreement between East Tennessee and Roanoke. The new delivery point, it is said, would increase East Tennessee's flexibility and reduce the likelihood of having to curtail gas during the 1993–94 heating season.

East Tennessee states that there will be no increase or decrease in the total quantities it is authorized to deliver to Roanoke. East Tennessee states further that it has sufficient capacity to accomplish the deliveries at the new delivery point without detriment to any of East Tennessee's existing customers.

Any person on the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28589 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. ER93–950–000 and AC93–214–000]

Electric Energy Inc.; Filing

November 16, 1993.

Take notice that on November 10, 1993, Electric Energy, Inc. tendered for filing a Revised Appendix reflecting a change to the Appendix reflecting a change to the Appendix to its contract with the Department of Energy of the United States of America (the "Department of Energy") and the October 7, 1992, Letter Supplement to the Power Supply Agreement between (EEInc. on the one hand, and Kentucky Utilities Company, Union Electric Company, Illinois Power Company and Central Illinois Public Service Company (collectively, the "Sponsoring Companies") on the other, as modified. The Revised Appendix provides for an increase to the annual cap on total charges for Permanent Power and Excess Energy by EEInc. under its Agreements with the Department of Energy and the Sponsoring Companies to allow for the recovery of the transition obligation and accrual amounts required to comply with SFAS 106. The Revised Appendix reflects annual cap levels for the years 1993 through 1998 and thereafter.

Copies of the Revised Appendix were served on the Department of Energy of the United States of America, Kentucky Utilities Company, Union Electric Company, Illinois Power Company and Central Illinois Public Service Company.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before November 29, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28593 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–63–000]

K N Interstate Gas Transmission Co.; Application

November 16, 1993.

Take notice that on November 5, 1993, K N Interstate Gas Transmission Co. (K N), P.O. 281304, Lakewood, Colorado 80228, filed in Docket No. CP94–63–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a sales and exchange service with Northern Natural Gas Company (Northern) which was authorized in Docket No. G–10588, all as more fully set forth in the application on file with the Commission and open to public inspection.

K N proposes to abandon a sales and exchange service with Northern which is provided pursuant to K N's Rate Schedule X–1. It is stated that K N and Northern have agreed to terminate their agreement for the service effective April 1, 1992.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 7, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene if filed within the time required herein, if the Commission on its own review of

the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for K N to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28588 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER94–126–000]

Montenay Montgomery Limited Partnership; Filing

November 16, 1993.

Take notice that on November 4, 1993, Montenay Montgomery Limited Partnership (MMLP) tendered for filing a Notice of Termination of MMLP's Rate Schedule FERC No. 1 and Supplement No. 1.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determing the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28596 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–951–000]

Montenay Montgomery Limited Partnership; Filing

November 16, 1993.

Take notice that on November 5, 1993, Montenay Montgomery Limited Partnership tendered for filing an amendment to its September 14, 1993, filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28594 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–73–000]

Northern Natural Gas Co.; Request Under Blanket Authorization

November 16, 1993.

Take notice that on November 12, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000 filed, in Docket No. CP94–73–000, a request pursuant to § 157.205(b) and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205(b) and 157.212) for authorization to install and operate a delivery point to accommodate natural gas deliveries to Northern States Power Company (NSP), under Northern's blanket certificate granted September 1, 1982 at Docket No. CP82–401–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

Northern states that it requests authority to install a delivery point to accommodate natural gas deliveries under Northern's existing service agreement(s). It is further stated that NSP has requested a new delivery point for Northern to service NSP Minnesota's Pathfinder Power Plant, a peaking power plant in Lincoln County, northeast of Sioux Falls, South Dakota. The estimated total volumes proposed to be delivered to NSP at the Pathfinder town border station is expected to result in an increase in Northern's peak day deliveries of 92,800 Mcf/day and 3,144,000 Mcf on an annual basis.

Northern states that the estimated cost to install the delivery point is $325,000.

Northern further states that a copy of this filing has been mailed to each of the affected state commissions.

Any person of the Commission's staff may, within 45 days after issuance of the instant notice by the Commission's file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28590 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–166–000]

Panhandle Eastern Pipe Line Co.; Informal Settlement Conference

November 16, 1993.

Take notice that an informal settlement conference will be convened in this proceeding on Wednesday, December 1, 1993, at 10 a.m., at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC, for the purpose of exploring the possible settlement of the above-referenced docket.

Any party, as defined by 18 CFR 385.102(c), or any participant, as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214) (1993).

For additional information, contact Carmen Gastilo at (202) 208–2182 or Joanne Leveque at (202) 208–5705.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28599 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. OR94–2–000]

Trans Alaska Pipeline System; Petition for Declaratory Order

November 16, 1993.

The Federal Energy Regulatory Commission (Commission) gives notice that, on November 2, 1993, the Trans

Alaska Pipeline System carriers (Amerada Hess Pipeline Corporation; ARCO Transportation Alaska, Inc.; BP Pipelines (Alaska) Inc.; Exxon Pipeline Company; Mobil Alaska Pipeline Company; Phillips Alaska Pipeline Corporation, and Unocal Pipeline Company, collectively, TAPS Carriers) filed a petition seeking a declaratory order stating that the TAPS Carriers may accrue funds to pay for post-employment benefits other than pensions (PBOPs) in a manner consistent with the accounting treatment accorded such costs brought about by Statement 106 of the Financial Accounting Standards Board (SFAS 106) as implemented by the Commission's Statement of Policy on PBOPs, issued December 17, 1992. Post-Employment Benefits Other Than Pensions, 61 FERC ¶ 61,330 (1992). In particular, the TAPS Carriers seek permission to include the amount of such accruals in their rates under the TAPS Settlement Methodology (TSM), which was approved by the Commission as part of the TAPS Settlement Agreement [Trans Alaska Pipeline System, 33 FERC ¶ 61,425 (1968)], without adhering to the external fund or deferred income tax accounting requirements set forth in the Commission's Statement of Policy on PBOPs.

The Commission's Statement of Policy provided oil pipelines with an option either to continue to provide for PBOPs on a "pay-as-you-go" basis or to accrue funds under SFAS 106 subject to the conditions set forth in the Statement of Policy. Further, the Commission recognized that exceptions to its Policy Statement may be warranted in particular circumstances. The TAPS Carriers allege such particular circumstances and seek an exception to the Policy Statement, as more fully set forth in their petition.

A copy of The TAPS Carrier's petition for declaratory order is available for copying and public inspection in the Commission Office of Public Information, room 3203, 941 North Capitol Street NE., Washington, DC 20426. The Commission invites interested persons to submit comments on the TAPS Carriers' petition for declaratory order. The original and 14 copies of such comments should be submitted to the Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426 and should refer to Docket No. OR94–2–000, not later than 30 days after publication in the Federal Register.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28598 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–77–000]

Trunkline Gas Co., CNG Transmission Corp.; Application

November 16, 1993.

Take notice that on November 12, 1993, Trunkline Gas Company (Trunkline), P.O. Box 1642, Houston, Texas 77251–1642, and CNG Transmission Corporation (CNG), P.O. Box 2511, Houston, Texas 77252–2511, filed in Docket No. CP94–77–000 a joint application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange and transportation service, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Trunkline and CNG state that they were authorized in Docket No. CP78–479–000 to transport and/or exchange up to 12,500 Mcf of natural gas per day on a firm basis. Trunkline and CNG have been providing the service under their Rate Schedules TE–4 and X–26, respectively. Trunkline and CNG have, by letter dated July 30, 1993, mutually agreed to terminate the exchange and transportation service, effective September 1, 1993, it is stated.

Trunkline and CNG further state that no facilities will be abandoned in conjunction with the abandonment of this service.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 7, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426 a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its on review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Trunkline and CNG to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28591 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. ER93–3–001]

United Illuminating Co., Filing

November 16, 1993.

Take notice that on November 5, 1993, United Illuminating Company (UI) tendered for filing revised copies of its compliance filing in the above-referenced docket.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28592 Filed 11–19–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92-88-005]

U-T Offshore System; Compliance Filing

November 16, 1993

Take notice that on November 8, 1993, U-T Offshore System ("U-TOS") filed, pursuant to section 4 of the Natural Gas Act, a compliance filing to implement the line pack gas settlement that was approved in the captioned proceeding by the Federal Energy Regulatory Commission by Letter Order dated October 12, 1993. Consistent with the approved settlement, the compliance filing is to be effective November 1, 1993. U-TOS' filing reflects a line pack surcharge amount of $0.0006 per Mcf to be applicable to all throughput until such time as the line pack costs have been recovered.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214. Any such protests and motions to intervened should be filed on or before November 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28602 Filed 11-19-93; 8:45 am]

BILLING CODE 6717-01-M

ENVIRONMENTAL PROTECTION AGENCY

[FRL-4804-5]

Acid Rain Program: Notice of Final Retired Unit Exemptions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final retired unit exemptions.

SUMMARY: The U.S. Environmental Protection Agency is issuing five-year retired unit exemptions, according to the Acid Rain Program regulations (40 CFR part 72), to the following 4 utility units in Iowa: Des Moines units 5, 10, and 11; and Maynard unit 1.

FOR FURTHER INFORMATION CONTACT: Jon Knodel at (913) 551-7622. Air and Toxics Division, EPA Region 7 (ARTX), 726 Minnesota Ave., Kansas City, KS 66101.

Dated: November 10, 1993.

Brian McLean,

Director, Acid Rain Division, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93-28617 Filed 11-19-93; 8:45 am]

BILLING CODE 6560-50-M

[FRL-4804-2]

Draft Guidance Document on Indirect Exposure Assessment

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of availability of draft guidance document for review and comment.

SUMMARY: The U.S. Environmental Protection Agency (EPA or Agency) announces the availability of an external review draft of a guidance document entitled, Addendum to the Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions. This draft Addendum provides revisions and updates to the Agency's 1990 interim final document, Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions. The draft Addendum is being prepared in part to assist in appropriately applying the guidance found in the Agency's Draft Strategy on Hazardous Waste Minimization and Combustion, which was released on May 18, 1993. The Draft Strategy suggests that site-specific risk assessments, including risks from indirect exposures, be conducted, as appropriate, for all hazardous waste combustion facilities in the context of actions on their combustion permits.

DATES: The Agency will make the draft Addendum available for public review and comment on or about November 22, 1993. Comments must be in writing and postmarked by January 6, 1994.

ADDRESSES: To obtain a copy of the draft Addendum or the 1990 interim final Methodology, interested parties should contact the ORD Publications Center, CERI-FRN, U.S. Environmental Protection Agency, 26 West Martin Luther King Drive, Cincinnati, OH 45268; telephone 513-569-7562; facsimile 513-569-7566. Please provide your name, mailing address, the document title, and the EPA number. The titles are as follows: external review draft of the Addendum to the Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions (EPA/600/AP-93/003); Methodology for Assessing Health Risks Associated with Indirect Exposure to Combuster Emissions: Interim Final (EPA/600/6-90/003).

The draft Addendum and the interim final Methodology document will also be available for inspection at the RCRA Docket, the ORD Public Information Shelf/EPA Headquarters Library, and all of the EPA Regional and Laboratory libraries. The EPA Headquarters Library is located in room M2904, 401 M Street, SW., Washington, DC 20460, and is open between the hours of 10 a.m. and 4 p.m., Monday through Friday, excluding Federal holidays.

Commenters must send an original and two copies of their comments to: Docket Clerk, Office of Solid Waste (5305), Docket Number F-93-AMCA-FFFFF, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Comments should include the docket number F-93-AMCA-FFFFF. The RCRA docket is located in room M2616 at EPA Headquarters and is available for viewing from 9 a.m. to 4 p.m., Monday through Friday, excluding Federal holidays. Appointments may be made by calling 202-260-9327. Copies cost $0.15 per page; charges under $25.000 are waived.

FOR FURTHER INFORMATION CONTACT: For general information, contact the RCRA/Superfund Hotline, Office of Solid Waste, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460; telephone 800-424-9346; TDD 800-553-7672 hearing impaired); in the Washington, DC, metropolitan area, the number is 703-412-9810; TDD 703-412-3323. For technical information, the Hotline will provide a specific contact person, depending on the particular subject matter.

SUPPLEMENTARY INFORMATION: The draft Addendum is intended to be used in conjunction with the 1990 Methodology and provides revisions and updates to the 1990 Methodology in the following areas:

1. Human exposure scenarios
2. Air dispersion and deposition of emitted pollutants
3. Calculating soil concentrations
4. Determining exposure through the terrestrial food chain.
5. Determining exposure from soil ingestion
6. Determining exposure from dermal absorption via soil
7. Dust resuspension
8. Calculating water concentrations
9. Determining exposure from fish intake
10. Determining exposure from dermal absorption from water

11. Risk characterization.

The draft Addendum also contains recommendations for long-term improvement of multimedia risk modeling.

The Agency is soliciting comment on all aspects of the draft Addendum, including recommendations on topics that have not been addressed but which the reviewers believe should be addressed.

The EPA Science Advisory Board's Indoor Air Quality/Total Human Exposure Committee will review the draft Addendum at a meeting that will be announced in a separate Federal Register notice.

Dated: November 15, 1993.

Carl R. Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–28623 Filed 11–19–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4805–5]

Science Advisory Board; Notification of Public Advisory Committee Meetings

Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that various committees of the Science Advisory Board (SAB) will meet on the dates and times described below. All meetings are open to the public. Due to limited space, seating at all meetings will be on a first-come basis. For further information concerning each meeting, please contact the individuals listed below. Documents that are the subject of SAB reviews are normally available from the originating EPA office and are not available from the SAB staff. Many of the meetings listed below include discussion of issues relevant to the SAB's Environmental Futures Project. The Environmental Futures effort is described in 58 FR 48063, dated September 14, 1993.

Environmental Engineering Committee

The Environmental Engineering Committee (EEC) will meet by conference call December 1, 1993; January 5, 1994; and February 2, 1994. All conference calls will be from 12 noon until 2 p.m. Eastern Time and are open to the public. The Committee will be discussing the Science Advisory Board's Environmental Futures project and the development of Environmental Engineering Committee input to that project. The Committee plans to prepare a draft report for discussion at an open meeting of the EEC tentatively scheduled for March 2–3, 1994 (this will be announced in a subsequent Federal Register notice).

For additional information concerning these teleconference meetings or to obtain an agenda, please contact Mrs. Dorothy Clark, Staff Secretary, Environmental Engineering Committee, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Phone: (202) 260–6552; Fax: (202) 260–7118. Anyone wishing to provide written public comment for the teleconferences should forward thirty-five copies to Mrs. Clark no later than 12 noon on Wednesday the week before the respective teleconference. Individuals wishing to participate in the meetings as audience or commenters should call the Designated Federal Official (DFO) for the EEC, Mrs. Kathleen Conway at 202/260–2558 as soon as possible as the number of available conference lines is limited.

Drinking Water Committee (DWC)

The Drinking Water Committee (DWC) will meet on Thursday, December 16, 1993, from 9 a.m. to 5 p.m. At this meeting, the Committee will continue its discussions concerning the Science Advisory Board's ongoing Environmental Futures Project. The meeting will be held at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22314.

For additional information, including a draft agenda, please contact Mr. Manuel R. Gomez, Designated Federal Official, Science Advisory Board (Mail Code 1400F), US Environmental Protection Agency, Washington, DC 20460. Phone: (202) 260–2563; FAX: (202) 260–7118. Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Gomez no later than Wednesday, December 8, 1993 in order to be included on the Agenda.

Indoor Air Quality and Total Human Exposure Committee (IAQC)

The Indoor Air Quality/Total Human Exposure Committee (IAQC) will meet on Thursday and Friday, December 2–3, 1993 at the Quality Hotel Capitol Hill, 415 New Jersey Avenue, NW., Washington, DC 20001. The Committee will meet from 9 a.m. to 5 p.m. on December 2nd and from 9 a.m. until 4:30 p.m. on December 3rd. At this meeting, the Committee will: (a) continue its discussions concerning the Science Advisory Board's ongoing Environmental Futures Project; (b) conduct a review of the Agency's Indirect Exposure Documents (see below for titles); and (c) consider revisions to the Committees draft working paper on its September 1993 review of the Agency's Indoor Air Research Program. There are no publicly available materials for issues (a) and (c). For issue (b), copies of the "Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions" (EPA/600/6–90/003) and "Addendum to Methodology for Assessing Health Risks Associated with Indirect Exposure to Combustor Emissions" (EPA/600/11–93/003) are available from EPA's Center for Environmental Research Information (CERI). Phone (513) 569–7562. Please use the above titles and publication numbers when requesting copies.

For additional information, including a draft agenda, please contact Mr. Manuel R. Gomez, Designated Federal Official, Science Advisory Board (Mail Code 1400F), US Environmental Protection Agency, Washington, DC 20460. Telephone: 202–260–2563; FAX: 202–260–7118. Members of the public who wish to make a brief oral presentation to the Committee must contact Mr. Gomez no later than close of business on Wednesday, November 24, 1993, in order to be included on the Agenda.

Radiation Advisory Committee (RAC)

(a) The Radiation Advisory Committee will meet by conference call on Friday, December 17, 1993 from 11 a.m. to 1 p.m. Eastern Time. The topic will be the RAC's review of the Agency's draft scoping study on naturally occurring radioactive materials (NORM), entitled "Diffuse NORM—Waste Characterization and Preliminary Risk Assessment." The document is available from EPA's Air Docket at 401 M Street, SW., Washington, DC 20460 (202/260–7548). The Docket Number is R–82–01, and the Item Number is 11A–38 (by the time this notice is published, there may be a newer draft document with a different docket and item number). For technical information on the NORM Draft Document, please contact Mr. William E. Russo of EPA's Office of Radiation and Indoor Air (ORIA) at (202/233–9215). The Committee may also discuss scheduling of upcoming FY94 reviews, if time permits.

For additional information, including a draft agenda, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana Pozun, Staff Secretary, Radiation Advisory Committee (RAC), Science Advisory Board (Mail Code 1400F), US Environmental Protection Agency, Washington, DC 20460. Phone: 202–260–6552 or FAX: 202–260–7118. Anyone wishing to provide written

public comment for the teleconference should forward thirty-five copies to Mrs. Pozun no later than 12 noon on Wednesday the week before the teleconference. Individuals wishing to participate in the meetings as audience or commenters should call the Designated Federal Official (DFO) for the RAC, Dr. Kooyoomjian at 202/260–2560 as soon as possible as the number of available conference lines is limited.

(b) The Environmental Futures Subcommittee of the Radiation Advisory Committee (RAC) will meet on Friday and Saturday, December 3–4, 1993. The meeting will be held at the Old Colony Inn, 625 First Street, Alexandria, Virginia 22314. At this meeting, the Subcommittee will discuss its contributions to the ongoing Environmental Futures Project of the SAB.

For additional information, including a draft agenda, please contact Dr. K. Jack Kooyoomjian, Designated Federal Official, or Mrs. Diana Pozun, Staff Secretary, Radiation Advisory Committee (RAC), Science Advisory Board (Mail Code 1400F), US Environmental Protection Agency, Washington, DC 20460. Phone: 202–260–6552 or FAX: 202–260–7118. Members of the public who wish to make a brief oral presentation must contact Dr. Kooyoomjian no later than Wednesday, November 24, 1993, in order to be included on the agenda.

Providing Oral or Written Comments at SAB Meetings

The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. For conference call meetings, opportunities for oral comment will be limited to no more than five minutes per speaker and no more than fifteen minutes total. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to a meeting date, may be mailed to the relevant SAB committee or subcommittee prior to its meeting; comments received too close to the meeting date will normally be provided to the committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: November 9, 1993.

Donald G. Barnes,

Staff Director, Science Advisory Board.

[FR Doc. 93–28739 Filed 11–19–93; 8:45 am]

BILLING CODE 6560–60–P

FEDERAL RESERVE SYSTEM

Jason Leon Collins, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Jason Leon Collins; Jeffery David Collins, Portland, Tennessee; Jonathan Ray Collins, Portland, Tennessee; Larry Joe Collins, Jr., and Jaska Ann Collins Sheucraft, Portland, Tennessee, as partners of C & C Construction Company, Portland, Tennessee, to retain 10.65 percent of the voting shares of Volunteer State Bancshares, Inc., Portland, Tennessee, and thereby indirectly acquire Volunteer State Bank, Portland, Tennessee.

Board of Governors of the Federal Reserve System, November 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28581 Filed 11–19–93; 8:45 am]

BILLING CODE 6210–01–F

First Bank System, Inc., et al.; Formation of, Acquisition by, or Merger of Bank Holding Companies; and Acquisition of Nonbanking Company

The company listed in this notice has applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed company has also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1993.

A. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. First Bank System, Inc., Minneapolis, Minnesota; to merge with American Bancshares of Mankato, Inc., Mankato, Minnesota, and thereby indirectly acquire American Bank Mankato, Mankato, Minnesota.

In connection with this application, Applicant also proposes to acquire Eagle Insurance Agency, Inc., Amboy, Minnesota, and thereby engage in general insurance agency activities (including the sale of annuities and property, casualty, life, health and accident, hail and multi-peril insurance) pursuant to § 225.25(b)(8)(vii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28582 Filed 11–19–93; 8:45 am]

BILLING CODE 6210–01–F

Mercantile Bancorporation Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorporation, Inc., St. Louis, Missouri; to acquire United Postal Bancorp, Inc., St. Louis, Missouri, and thereby indirectly acquire United Postal Savings Association, St. Louis, Missouri, and thereby engage in operating a savings association pursuant to § 225.25(b)(9) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28583 Filed 11–19–93; 8:45 am]

BILLING CODE 6210–01–F

Powhatan Point Community Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 16, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Powhatan Point Community Bancshares, Inc., Powhatan Point, Ohio; to become a bank holding company by acquiring 100 percent of the voting shares of The First National Bank of Powhatan Point, Powhatan Point, Ohio.

B. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Lincolnland Bancshares, Inc., Casey, Illinois; to acquire 100 percent of the voting shares of Westfield State Bank, Westfield, Illinois.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Norwest Corporation, Minneapolis, Minnesota; to acquire 100 percent of the voting shares of D. L. Bancshares, Inc., Detroit Lakes, Minnesota, and thereby indirectly acquire First National Bank of Detroit Lakes, Detroit Lakes, Minnesota.

2. Randall Holding Co. Inc., Randall, Minnesota; to become a bank holding company by acquiring 90 percent of the voting shares of Randall State Bank, Randall, Minnesota.

Board of Governors of the Federal Reserve System, November 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28584 Filed 11–19–93; 8:45 am]

BILLING CODE 6210–01–F

Society Corporation, et al.; Formations of, Acquisitions by, and Mergers of Bank Holding Companies; and Acquisitions of Nonbanking Companies

The companies listed in this notice have applied under § 225.14 of the Board's Regulation Y (12 CFR 225.14) for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) to become a bank holding company or to acquire voting securities of a bank or bank holding company. The listed companies have also applied under § 225.23(a)(2) of Regulation Y (12 CFR 225.23(a)(2)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies, or to engage in such an activity. Unless otherwise noted, these activities will be conducted throughout the United States.

The applications are available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition,

conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 16, 1993.

A. Federal Reserve Bank of Cleveland (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Society Corporation, Cleveland, Ohio; to merge with KeyCorp, Albany, New York, and Key Bancshares of New York, Inc., and thereby indirectly acquire Key Bank of New York, Albany, New York, and Key Bank, USA, N.A., Albany, New York; and Key Bancshares of Alaska, Inc., Anchorage, Alaska, and thereby indirectly acquire Key Bank of Alaska, Anchorage, Alaska, and Key Bank of Oregon, Portland, Oregon; and Key Bancshares of Idaho, Inc., Boise, Idaho, and thereby indirectly acquire Key Bank of Idaho, Boise, Idaho; and Key Bancshares of Maine, Inc., Portland, Maine, and thereby indirectly acquire Key Bank of Maine, Portland, Maine; and Key Bancshares of Washington, Inc., Tacoma, Washington, and thereby indirectly acquire Key Bank of Washington, Tacoma, Washington, and Key Savings Bank, Tacoma, Washington; and Key Bancshares of Utah, Inc., Salt Lake City, Utah, and thereby indirectly acquire Key Bank of Utah, Salt Lake City, Utah; and Key Bancshares, Inc., Cheyenne, Wyoming, and thereby indirectly acquire Key Bank of Wyoming, Cheyenne, Wyoming, and Key Bank of Colorado, Fort Collins, Colorado.

Society Corporation also proposes to acquire Key Life Insurance, Ltd., Phoenix, Arizona, and thereby engage in underwriting and sale of credit related insurance pursuant to § 225.25(b)(8)(i); Key Trust Company, Albany, New York, Key Trust of Florida, N.A., Orlando, Florida, Key Trust of Maine, Bangor, Maine, and Key Trust of Northwest, Seattle, Washington, and thereby engage in trust company activities pursuant to § 225.25(b)(3); Key Pacific Mortgage Company, Anchorage, Alaska, and thereby engage in mortgage servicing activities pursuant to § 225.25(b)(1)(iii); Key Trust Company of the West, Cheyenne, Wyoming, and thereby engage in trust company activities pursuant to § 225.25(b)(3); and The Tacoma Partnership, Federal Way, Wasnington, and thereby engage in community development activities pursuant to § 225.25(b)(6) of the Board's Regulation Y.

In connection with Society Corporation's proposed merger with KeyCorp, both Society Corporation and KeyCorp have each separately requested Board approval under §§ 3 and 4 of the Bank Holding Company Act to acquire an option to purchase up to 19.90 percent of the outstanding shares of the other company.

2. KeyCorp, Albany, New York; to acquire 19.19 percent of the voting shares of Society Corporation, Cleveland, Ohio, and thereby indirectly acquire Society National Bank, Cleveland, Ohio, and Society Bancorp of Michigan, Inc., Ann Arbor, Michigan, and thereby indirectly acquire Society Bank, Michigan, Ann Arbor, Michigan, and Society National Bank, Indiana, South Bend, Indiana.

In connection with this application, Applicant also proposes to acquire AmeriTrust Petroleum Corporation, Cleveland, Ohio, and thereby engage in investment advising activities pursuant to § 225.25(b)(4) and personal property appraisal activities pursuant to § 225.25(b)(13); Electronic Payment Services, Inc., Cleveland, Ohio; BUYPASS Corporation, Atlanta, Georgia; MAC New England, Manchester, New Hampshire; Metroteller Systems Incorporated, Buffalo, New York; MONEY ACCESS SERVICE CORP., New Holmsted, Ohio; Money Station, Inc., Cleveland, Ohio,; NetOps Corp., Philadelphia, Pennsylvania, and TRI-State Network Corporation, Pittsburgh, Pennsylvania, and thereby engage, as joint venture, in ATM and POS transactions pursuant to § 225.25(b)(7); St Joseph Insurance Agency, Inc., Elkhart, Indiana, and thereby engage in insurance activities pursuant to section 4(c)(8)(D) of the BHC Act; Seagate Community Development Corporation, Cleveland, Ohio, and Society Community Development Corporation, Cleveland, Ohio, and thereby engage in lending activities pursuant to § 225.25(b)(1) and community development activities pursuant to § 225.25(b)(6); Society Equipment Leasing Company, Cleveland, Ohio, and thereby engage in equipment leasing activities pursuant to § 225.25(b)(5); First Appraisal, Inc., Fort Myers, Florida, and thereby engage in real estate appraisal services pursuant to § 225.25(b)(13); Society First Federal Savings Bank, Fort Myers, Florida, and thereby engage in the operation of a savings and loan association pursuant to § 225.25(b)(9); Society Life Insurance Company, Cleveland, Ohio, and thereby engage in underwriting credit related insurance activities pursuant to § 225.25(b)(8); Society National Trust Company, Naples, Florida, and thereby engage in trust activities pursuant to § 225.25(b)(3) and investment advisory services pursuant to § 225.25(b)(4); and Society Trust Company of New York, New York, New York, and thereby engage in trust company activities pursuant to § 225.25(b)(3) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 16, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28585 Filed 11-19-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

[MB-38-PN]

RIN 0938-AG10

Medicaid Program; Revised Medicaid Management Information Systems (MMIS) Functional Requirements

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice.

SUMMARY: This proposed notice sets forth for public comment a restatement of existing functional requirements for Medicaid Management Information Systems (MMIS). The MMIS consists of software and hardware used to process Medicaid claims and to retrieve and produce utilization and management information about services that is required by the Medicaid agency or Federal Government for administrative and audit purposes. Section 1903(r) of the Social Security Act (the Act) requires initial approval and periodic reapproval of State systems, and reductions in Federal financial participation (FFP) for failure to meet deadlines for operating such a system or failure to meet requirements for reapproval. The proposed functional requirements contained in this notice would replace existing systems requirements that are found in the State Medicaid Manual, part 11. The proposed notice also incorporates system functions and objectives previously found in the MMIS-General Systems Design (GSD).

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 21, 1994.

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: MB–38–PN, P.O. Box 7518, Baltimore, Maryland 21207–0518. If you prefer, you may deliver your written comments (1 original and 3 copies) to one of the following addresses:

Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington DC 20201, or

Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

Because of staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code MB–038–PN. Comments received timely will be available for public inspection as they are received, beginning approximately three weeks after publication of this document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: Richard Friedman, (410) 966–3292.

SUPPLEMENTARY INFORMATION:

I. Background

Section 1903(a)(3) of the Social Security Act (the Act) provides for the improvement of title XIX (Medicaid) programs by offering enhanced Federal funding for the design, development, installation and operation of mechanized claims processing and information retrieval systems. These systems are ones which the Secretary determines are likely to provide more efficient, economical and effective administration of Medicaid State plans and are compatible with the claims processing and information retrieval systems utilized in the administration of the Medicare program (title XVIII of the Act). Our regulations at 42 CFR 433.111 define a mechanized claims processing and information retrieval system as a system of software and hardware used to process Medicaid claims from providers of medical care and services furnished to recipients under the medical assistance program, and to retrieve and produce service utilization and management information required by the Medicaid single State agency and Federal Government for program administration and audit purposes. (See 54 FR 41973, October 13, 1989.) Section 1903(r) of the Act mandates the use of these systems for most States, establishes deadlines for their implementation and approval, and initiates a requirement for periodic reapproval of systems. The regulations governing the approval and reapproval of systems for which enhanced funding is available are found at 42 CFR part 433, subpart C.

We propose to use the requirements outlined in this document as the standard for evaluation of systems for which funding is requested under section 1903(a)(3) of the Act. They will be included in the State Medicaid Manual (SMM), part 11, chapter 3.

This version of the MMIS requirements maintains the intent of section 1903(a)(3) of the Act and at the same time allows States more flexibility to exercise variations in the expression and/or implementation of systems concepts without prescribing a particular systems design, implementation technique, or solution.

Previous versions of part 11, chapter 3, of the SMM, reflected the HCFA policy of utilizing the Medicaid Management Information System—General System Design (MMIS–GSD) as the standard for evaluation of systems for which funding was requested under section 1903(a)(3) of the Act. The MMIS–GSD was developed in the early 1970's to aid States in developing automated claims processing and information retrieval systems by providing a model GSD. The MMIS–GSD prescribed a systems design and general specifications for four front-end claims processing subsystems and two reporting subsystems; Recipient, Provider, Claims Processing, Reference File, Surveillance and Utilization Review, and Management and Administrative Reporting Systems respectively. The specifications included both functional specifications describing what the system should do, and implementation techniques describing how the system might actually be implemented. HCFA required that, among other things, to receive approval for funding under 42 CFR part 433, subpart C, an existing or proposed system must include or encompass all mandatory MMIS–GSD subsystems and conform in concept with each subsystem described. (State systems conforming to the MMIS–GSD are commonly referred to as MMIS.)

The MMIS–GSD proved to be a valuable resource to States during initial systems development particularly during the 1970's. The functional specifications were valid and implementation techniques appropriate for the time. However, the MMIS–GSD does not reflect many of the features, functions, capabilities and technologies found in today's systems. In June 1990, HCFA issued a revision to part 11, chapter 3, that eliminated all previous references to the MMIS–GSD.

II. Provisions of this Notice

With the above in mind, HCFA will no longer prescribe the MMIS–GSD as a model for new systems or as a measure of existing systems. Instead, HCFA is adopting the general functional requirements outlined in this document which do not incorporate, prescribe or recommend a particular systems design or implementation technique. HCFA will be further guided by the principles of: (1) Avoiding duplicate systems design and development costs whenever possible by requiring the transfer of existing approved systems in situations where feasibility of a successful transfer is assured; and (2) maximizing mechanization of these systems to the degree that it is cost effective to do so.

Therefore, to receive HCFA approval for funding under 42 CFR part 433, subpart C, an existing or proposed system will not be required to include or encompass MMIS–GSD subsystems but must meet the general functional requirements set forth in this document. These functional requirements are organized under General Requirements, Claims Processing Requirements, Information Retrieval Requirements and System File Requirements. Such systems will, however, continue to be referred to as MMIS.

The restated functional requirements contained in this proposed notice reflect existing operational guidelines, and therefore will continue in effect during the notice and comment process. The new requirements in this proposed notice have been distinguished from the restatement of existing requirements and are identified as follows: Proposed mandatory "PM" requirements. We intend that the effective date of these functional requirements be 60 days after publication of a final notice. A State with an approved MMIS would be required to implement the new MMIS functional requirements at the time of its first system replacement after the effective date of the final notice, or within 5 years of the effective date of the final notice, whichever is sooner.

A. General Requirements. To receive HCFA approval for funding under 42 CFR part 433, subpart C, at a minimum, an existing or proposed system must:

- Be a highly automated claims processing and information retrieval system, consisting of software and hardware, and related manual

procedures, that is used to process all Medicaid claims, including claims for home and community-based services under an approved waiver, claims for early and periodic screening, diagnosis, and treatment (EPSDT) services, and claims for services rendered under each demonstration project, and to retrieve and produce utilization and management information about services that are required by the Medicaid agency or Federal Government;

- Provide security from anticipated threats or hazards to its data (45 CFR 95.621);
- Maintain records for 3 years from the starting date of the retention period (45 CFR 74.20–74.24 and 42 CFR 431.17); and
- Meet the requirements outlined in this document.

1. Systems Standardization Requirements

An approved MMIS must accommodate standardization in the area of claims forms, electronic data sets and coding systems. It must:

- Accept and accommodate a unique identification number for all Medicaid recipients;
- Accept and accommodate a unique identification number for all Medicaid providers;
- Accept and use exclusively a common claim form for inpatient and outpatient hospital billing (The current form is Standard Form HCFA–1450);
- Accept the same provider electronic billing data set required by the Medicare program (applies only to hospital claims);
- Accept and use a uniform diagnostic coding system (The International Classification of Disease, 9th edition, clinical modification (ICD–9–CM and subsequent editions)), whenever diagnostic coding is used;
- Accept and use exclusively a uniform procedure coding system (HCFA Common Procedure Coding System—HCPCS) except that surgical procedures on inpatient billing may be coded with ICD–9–CM, volume III. Levels 1 and 2 codes of HCPCS are required; and
- Accept and use exclusively the common claim form for non-institutional providers (physicians, durable medical equipment suppliers, laboratories, chiropractors, and podiatrists). The current form is the Health Insurance Claim Form, HCFA–1500.

2. Data Requirements

An approved MMIS must include and retain sufficient data to insure support of both regulatory and State plan record maintenance requirements and other specific information requirements defined in the information retrieval section of this chapter. Other requirements include the following:

- Data entered into, maintained, or generated by an approved MMIS must be retained and accessible according to Federal requirements at 42 CFR 431.17 and 45 CFR 74.20–74.24;
- Substitution of microfilm or comparable media format may be made for original records if the format is legible, clearly reflects data and signatures, and copies are of sufficient quality to ensure admissability as legal evidence according to Federal requirements at 42 CFR 431.17(d); and
- The system must contain and utilize the data elements described in section D, System File Requirements, of these requirements.

3. Systems Documentation Requirements

An approved MMIS must be sufficiently documented to provide for its uninterrupted operation, to support system security requirements, and to validate that system software changes have been made according to management controls and priorities. Specific documentation requirements for an approved MMIS follow. Documentation must:

- Reflect actual operation;
- Include procedure requests and system change requests;
- Be internally consistent; i.e., the various types of documentation must agree with one another;
- Be current; i.e., updated on an ongoing basis, as changes are approved and made, and according to the system's documentation updating procedure; and
- Be complete and comprehensive, fully documenting the following components of the system, the details of which are described in Appendix I, Detail Systems Documentation Requirements:

+Systems Design Documentation
+Programming Documentation
+Computer Operations Documentation
+User Documentation
+Organizational Documentation.

B. Claims Processing Requirements

The overall objective of the MMIS claims processing function is to process and pay each enrolled provider for every valid claim for a covered service provided to any eligible recipient including claims for services as defined in sections 1905(a) and 1915(c) of the Act for home and community-based waivers. Toward this end, an approved MMIS must satisfy claims processing support information requirements, input validation and control requirements, edit and audit requirements, adjudication and payment requirements and audit trail requirements.

The timeliness of claims payment is addressed in our regulations at 42 CFR 447.45(d). In achieving these requirements, an approved MMIS must employ an efficient and controlled means to suspend claims and other transactions for manual review and corrective action, transmitting them to clerical and professional staff for subsequent reentry of data.

The claims processing requirements discussed in this section apply to all Medicaid provider claims, including claims for home and community-based waiver services, claims for EPSDT services, claims for services rendered under each demonstration project, and other transactions. A claim is any submission to the approved MMIS that has been processed to final disposition that results in either a payment or denial of payment.

(PM) For all claims not paid through an approved MMIS, for example home and community-based services claims, an individual claims record must be substituted for an actual claim. (section 1915(c) of the Act and 42 CFR 441.303). For purposes of the MMIS, a claims record is any submission to an approved MMIS that contains all the necessary data elements for a claim but does not result in a payment being made to an enrolled provider. This assumes that the enrolled provider has already been paid, or will be paid, and that payment is instead due to an intermediate Governmental agency through an enrolled provider's voluntary reassignment of its claim in accordance with 42 CFR 447.10. The claims record must be subject to the same edit and audit requirements as claims submitted for payment.

Transactions include adjustments, returned documents providing additional claim data for suspended claims, verifications of prior authorizations, claims inquiries, updates to claims processing support information and internally initiated transactions such as exception resolution actions and overrides.

1. Claims Processing Support Information Requirements

An approved MMIS must include appropriate manual and automated procedures necessary to accept and maintain all adjudicated claims, recipient, provider and reference related data and otherwise include information to: (1) insure the accuracy, reasonableness, and integrity of the claims processing function; and (2) meet

all operational, management and program analysis and monitoring requirements of the information retrieval function outlined in this document. (Data maintenance includes add, change and delete functions and data verification and correction of all data maintenance prior to updating the system).

At a minimum, an approved MMIS must: Accept, control, utilize and maintain current and historical reference data necessary to support all aspects of the claims processing function as well as the information retrieval functions outlined in this document. These reference data must include:

+ICD–9–CM diagnosis/procedure code data;
+Drug data;
+HCPCS procedure code data;
+Pricing data (pricing information used to update the files);
+Policy criteria data; e.g., setting limits on procedures or practices that are aberrant (Lock-In);
+Claims processing edit and audit criteria;

• Accept, control, input, and maintain current and historical data pertaining to all providers enrolled in the Medicaid program necessary to support all aspects of the claims processing function as well as the information retrieval requirements outlined in this document;

• Uniquely identify each provider; and where multiple identifiers are assigned to a single provider, cross-reference them; e.g., providers practicing out of several offices may have a different provider number for each office;

• Uniquely identify providers practicing in a group setting and have the capability to link the individual's number to a unique number assigned to any group(s) with which the individual may be practicing;

• Identify, control and maintain current and historical data concerning all recipients eligible for home- and community-based services, EPSDT services, and services rendered under each demonstration project.

• Reconcile provider data with State licensure and certification data and State renewal requirements on a continuing basis to ensure that providers continue to meet eligibility requirements; (Time frame for reconciliation is determined by State Licensure Board updates.)

• Identify, control and maintain current and historical data concerning all recipients eligible for Medicaid benefits from a variety of internal and external sources. These sources may include provider claims, separately maintained State eligibility systems, Medicare Buy-in, State Data Exchange, BEST File, BENDEX, third party payor information and any other source that supports all aspects of the claims processing function as well as the information retrieval requirements outlined in this document;

• Periodically reconcile recipient eligibility data with other sources of eligibility data;

• Uniquely identify providers who furnish services on a capitated basis, as well as providers who furnish services on both a capitated and FFS basis.

• Establish, maintain identification, and follow up on all individuals eligible for EPSDT services;

• Provide a mechanism for furnishing to providers appropriate recipient eligibility, coverage limitations, third party liability (TPL) and all other information the provider needs to ascertain the extent of Medicaid payment responsibility and all information needed to properly prepare a claim before furnishing services to the recipient. This requirement could be met via a traditional Medicaid ID card issued periodically, and/or by granting provider access to other media or data sources. However, if the latter option is followed, it must be proven to be cost beneficial before HCFA will provide Federal funding for this option;

• Store and retrieve TPL information (See 42 CFR part 433, subpart D and part 3, chapter 10, section 3900 of the SMM) such as Medicare entitlement, veterans' benefits, workers' compensation, court orders, Office of Civilian Health and Medical Program for the Uniformed Services, and casualty and private health insurances; and

• (PM) Provide a mechanism for the electronic receipt and transfer of medical support information as specified in part 3, chapter 10, section 3900 of the SMM. (section 1902(a)(25) of the Act and 42 CFR 433.138, 147, and 151.)

2. Input Validation and Control Requirements

An approved MMIS must capture, control, translate, uniquely identify, locate and track all claims, claims records, and other transactions. It must:

• Identify and locate all claims, claims records, and adjustments by its unique identification number that includes the date of receipt;

• (PM) Identify all eligibles enrolled in a managed care plan and the identity of the plan (Sections 1903(m)(1)(A) and 1902(a)(4) of the Act and 42 CFR 434.4 and 434.6);

• Accept and process claims, claims records, and other transactions submitted via hard copy and electronic media;

• Capture and/or translate all claims, claims records, and other transaction data into machine-readable form;

• Control all claims, claims records, and other transactions on the day of receipt to insure that they are processed to completion;

• (PM) Capture an image of all claims, claims records, attachments to claims, and adjustment claims (42 CFR 431.17);

• Control and track the status of all claims, claims records, and other transactions during their entire processing cycle and identify and account for suspensions; and

• Establish balancing routines that are fully documented to insure control within processing cycles from start to finish.

3. Edit and Audit Requirements

For purposes of the MMIS, an edit is the automated process of determining whether a transaction conforms to requirements, usually by: (a) Comparing data elements from that transaction with pre-defined criteria; and/or (b) validating data elements from that transaction with independent information maintained by the system; e.g., recipient eligibility validation. An audit is a similar process that involves the added dimension of combining like data elements from other current or past transactions to determine whether the transaction being processed, in combination with other transactions, constitutes a departure from agency requirements; e.g., exceeding service limitations.

An approved MMIS must include highly automated and comprehensive claims edit and audit capabilities to:

• Verify that the claims, claims records, and transactions include only valid data;

• Check recipient and provider eligibility;

• Verify that services delivered are logically consistent with the recipient's characteristics and circumstances in accordance with 42 CFR 447.45(f)(ii);

• Verify that the Medicaid program is the payer of last resort in accordance with 42 CFR part 433, subpart D; and

• Verify that the service does not duplicate or conflict with another claim previously or currently being adjudicated (42 CFR 447.45(f)(iii). In addition, an approved system must be structured in such a manner that edit and audit criteria can be readily changed in response to ongoing program and operational needs.

In addition, to the extent practical, PM—edits and audits must be sequenced to ensure that as many error conditions as possible are identified before the claim or transaction is accepted for manual review or returned to a provider (section 1902(a)(37) of the Act and 42 CFR 447.54).

At a minimum, an approved MMIS must include appropriate edits and audits to ensure that:

- All data elements and combinations of data elements, both current and historical, are checked to maximize accuracy, consistency, conformance to Federal and State regulations and policies, and to ensure proper claims processing;
- All dates are valid and reasonable (e.g., no future service dates are present);
- All data items that can be obtained by arithmetic manipulation of other data items must agree with the results of the manipulation (e.g., items cross foot and total);
- All coded data items consist of only valid codes;
- All data items containing self-checking digits (e.g., Recipient ID No.) pass appropriate check-digit tests;
- All numeric items with definitive upper and/or lower bounds are within the proper range; e.g., months of the year cannot exceed 12, dates of birth cannot exceed the current date, etc.;
- All mandatory data items are present including required attachments such as medical certifications, consent forms, evidence of third party billing, etc.;
- All providers submitting input are properly licensed, enrolled, and authorized to perform the service during the time the service was furnished according to accurate provider enrollment information maintained by the system;
- All recipients for whom a claim or claim record is submitted were eligible for and authorized to receive the billed service during the time the service was furnished according to accurate recipient eligibility information maintained by the system;
- All procedure codes are valid and represent a service covered by the State plan;
- All drug codes are valid and represent a service covered by the State plan;
- The procedure is consistent with the diagnosis, the recipient's age, sex, other relevant recipient data, place of service and the category of service;
- The procedure is compatible with other procedures within and across claim and provider type;
- The diagnosis code is valid and consistent with the recipient's age, sex and other relevant recipient data;
- The provider type and specialty is consistent with the diagnosis and procedures or service rendered;
- Services conform to service limitation restrictions, prior authorization requirements, medical policy, logical procedure specific limitations (e.g., once in a lifetime procedures), Federal regulations and State plan requirements;
- Every claim or claim record that indicates there is a potential liable third party is checked to identify whether cost avoidance or post-payment recovery should be employed;
- Every claim is checked against all current and previously processed claims for which duplicate payment could exist whether submitted by the same or different providers, or across and among different claim types. One of the most significant claims edit and audit requirement involves the examination of each claim prior to payment against all previously adjudicated and currently in-process claims. An approved system must support a comprehensive duplicate checking feature which employs accepted and effective techniques and criteria for hierarchical editing of all claim and claims record types to prevent payment of any duplicate bills. These criteria must support at a minimum, both exact duplicate and suspected duplicate checking. Exact duplicates would result in denial of the current claim; suspected duplicates would require the use of comprehensive claim investigation, resolution and reporting procedures. Pended claims that are reentered for processing must also be checked against the claims history.

4. Adjudication and Payment Requirements

At a minimum, an approved MMIS must adjudicate claims and adjustments to payment or denial, accommodating necessary recoupment actions and producing a variety of records to document the process. It must:

- Determine the approved amount of payment based on claim data and information maintained by the system;
- Ensure that claims for out-of-plan services, e.g., managed care plans are paid, and that claims for services covered by a managed care plan are not paid;
- Accommodate mechanisms employed by the State to ensure that amounts approved for payment are in accordance with State plan requirements;
- Process claims for payments in accordance with 42 CFR 447.45(d), Timely Processing of Claims;
- Accept and process both provider submitted and system generated (retroactive rate) debit and credit adjustments to previously adjudicated claims:

+Maintaining a record of each and every adjustment transaction;
+Maintaining the integrity of the original claim in its entirety;
+Maintaining a record of the result of each and every adjustment transaction in its entirety;
+Maintaining a record of the result of each and every crossover claim; and
+Readily linking each of the preceding four items to each other for information retrieval purposes;

- Create appropriate payment instruments and remittance statements to providers detailing claims and services paid or denied;
- Update provider financial information maintained by the system;
- Provide individual Explanation of Benefits notices to all or a sample group of recipients who received services in accordance with 42 CFR 433.116 (e) and (f);
- (PM) Establish dollar and/or frequency thresholds for key procedures or services and identify any recipient or provider whose activity exceeds the threshold during the history audit cycle and suspend the claim for medical or policy review prior to payment (section 1902(a)(37) of the Act and 42 CFR 447.54);
- Create and maintain provider recoupment accounts and apply approved claim payments to account balances;
- Suspend claims, withhold payments and offset monies from selected providers when appropriate;
- Create and maintain a historical record of each adjudicated claim reflecting all data elements necessary to fully document the transaction including the ability to link all institutional bills for the same stay. The period of time for which historical records are maintained must be sufficient to satisfy all claims processing edit and audit requirements as well as all information retrieval requirements;
- Check all claims against the existence of recipient TPL coverage data to determine if the service is covered by the third party policy (42 CFR part 433, subpart D) and if the date of service is within the coverage period, and cost avoid the claim whenever it is appropriate;
- Match any verified third party resource against a paid claims history and identify and offset receivable funds;

• Accumulate claims for purposes of seeking reimbursement from third parties in accordance with the threshold amount specified in the State plan; and

• Identify paid claims that contain specific diagnosis or trauma procedure codes for follow-up for purposes of identifying potentially liable third parties.

5. Audit Trail Requirements

At a minimum, an approved MMIS must include appropriate manual or automated procedures necessary to readily establish and maintain audit trails of all processing. The system must:

• Maintain a record of every query directed against an individual's (i.e., provider's and recipient's) payment and provider enrollment data record that results in an outside referral or update/change of data, including the identity of the person or organization requesting that query;

• Produce appropriate information to establish an audit trail to link all program management and financial reports, documents and information sources with adjudicated claims and transactions;

• Produce appropriate information to establish an audit trail of all systems edits and audits in force for any period of time.

This information must include, at a minimum, a description of the edit or audit, the computer logic employed, the transactions to which it applied, the disposition status as a result of the edit or audit and the effective date, transaction date and authorization date applicable to any changes to systems edits and audits;

• Provide an audit trail for every claim, claim record, and adjustment which identifies all edits and audits failed by the claim, claim record, and adjustment from the time of input into the system through the adjudication process as well as the resolution and disposition associated with each edit and audit failure;

• Produce appropriate information to establish an audit trail of instances where suspended claims with failed edit and/or audit conditions are automatically overridden (i.e., claims released for further processing or claims released for payment or denial status) based on management's authority to make such decisions; and

• Produce appropriate audit trails of data maintenance functions that are consistent with data security requirements and include for each data maintenance transaction:

+Transaction date;
+Effective date;
+Record of authorization; and
+Status of data prior to and subsequent to the data maintenance transaction.

C. Information Retrieval Requirements

The objective of the MMIS information retrieval function is improved Medicaid management through automated data consolidation, organization, and information presentation. (PM) Whenever a Medicaid financial payment is made, the data required to support that payment must be in the system (42 CFR 433.111, 433.112 (a) and (b) and 433.116(a) and 45 CFR 201.5). (PM) All claims processing and claims support functions must provide all data and information required for information retrieval processing in a single comprehensive reporting system unless specifically waived by HCFA (42 CFR 433.111, 433.112 (a) and (b) and 433.116(a) and 42 CFR 201.5). Integration must be done at least quarterly for Federal reporting, and more often at a frequency required for State reporting, if necessary to support claims processing functions. The information retrieval requirements discussed in this section are organized into three categories: Operational Information Requirements, Program Management Information Requirements and Surveillance and Utilization Review (SUR) Requirements. These three categories are for discussion purposes only and do not imply that these requirements need be broken down into these categories. These categories are described in the following sections.

Characteristics—The information retrieval requirements discussed in this section share the following general characteristics:

• Information may be presented in a variety of ways, including pre-designed or ad hoc paper reports, on-line reports for data, graphs and charts;

• Requirements need not necessarily be achieved exclusively through the use of traditional integrated hardware, software and related procedures. States may wish to augment their information retrieval capabilities via the flexible use of resources such as personal computers and related software;

• Many MMIS data sources may be accessed to meet a single requirement. Conversely, a single requirement may be met through a variety of reports and other information of the MMIS;

• The level of detail of the information produced may vary, depending on the user of the information and the specific requirement. An approved MMIS may provide multiple levels of information to meet the same requirement;

• The frequency with which the information is produced or accessed may vary, depending upon the requirement and the performance of the operation at any given time. However, States must also achieve applicable frequency requirements that may be called for as part of the MMIS reapproval process;

• The period(s) of time reflected in the information, or used for comparative purposes, may vary. The State should use whatever time frames it would find useful to determine trends, based on its knowledge of the factors affecting the operation, such as changes in fiscal agent or significant legislated program changes. In any case, sufficient data must be retained to accommodate the State's selected time frames; and

• Comparisons or trends and projections may be reflected through a variety of calculations or indicators, such as percents, medians, graphs, etc.

Information Base—At a minimum, an approved MMIS must include the capability of providing an information base which meets all operational, management, and SUR processing requirements.

The information base must meet the following requirements. It must:

• Contain all data elements and linkages between data elements capable of supporting data analysis and report output requirements of the Medicaid program, the overall administration of program policy, the analysis of actual program experience, and the monitoring of provider and recipient compliance with program rules and regulations, consistent with State and Federal laws;

• Include data contained within MMIS and the data sources required to support claims processing including recipient, provider, claims and reference information;

• Be structured to facilitate ease of access by the end user and to accommodate rapid and efficient processing of requests for information;

• Support the primary agency functions of claims processing, program operation, management, analysis and monitoring, utilization review, and Federal reporting requirements;

• Support requirements of the State plan for data analysis for: all provider types, all reimbursement methodologies, all types of benefits, and all categories of recipients;

• (PM) Support analysis of all alternative delivery systems and waiver programs contained in the State plan (Sections 1929 and 1930 of the Act); and

• Keep in step with changes to the Medicaid program. As new provider types are added (e.g., primary care physician case manager, midwives,

home and community-based services providers, community mental health providers, etc.), the information base must promptly be expanded to contain the new data values and/or data elements.

1. Operational Information Requirements

An approved MMIS must produce operational information needed to administer, operate, and improve the performance of claims and transaction processing functions. For purposes of these requirements, transactions include adjustments, returned documents providing additional claim data for suspended claims, verifications of prior authorization approval, updates to claims processing support information, internally initiated transactions such as suspended/pended resolution actions and overrides, and, if applicable, encounter data associated with non-fee-for-service providers and waiver program providers.

The system must provide information sufficient to enable State program managers and data processing personnel to effectively:

- Plan and control claims processing operations;
- Assess throughput efficiency;
- Identify potential processing problems, prevent and manage backlogs;
- Avoid and reduce excessive error rates;
- Identify the nature and source of problems; and
- Monitor trends and determine whether non-routine action is necessary to control processes.

At a minimum, an approved MMIS system must:

- Provide information to allow management to identify, control, balance and reconcile claims and transactions in the system, by type of claim and transaction;
- Provide information concerning the volume of claims and adjustments in suspense and provide information about error source, type and frequency;
- Provide information to determine whether claims and transactions are being processed within the timeframes specified in State and Federal regulations, and in fiscal agent contracts if applicable;
- Provide information to determine over time the volume of claims received, claims returned to providers, errors detected, payments approved and denials;
- Provide information to monitor trends over time in the volume of claims received, the volume of claims returned to providers, including returned documents providing additional data for suspended claims, errors detected, payments approved and denials;
- Provide information to monitor the actions taken to resolve errors on claims and transactions, the frequency with which various resolution methods are used and by whom;
- Provide information to analyze the flow of claims and transactions from receipt through final disposition;
- Provide information to monitor the application of edits and audits by claim category and processing cycle;
- Provide information to identify, rank and analyze the reasons for claim denials and returns to providers;
- Provide information to monitor trends over time in the volume of adjustments received and their disposition;
- Provide information to identify additions, deletions, and changes to edit and audit criteria;
- Provide information to monitor the volume of claim status inquiries received, the frequency with which various types of inquiries are received, and the manner in which they are responded to or resolved; and
- Provide information to monitor the occurrence and accuracy of claims processing support information updates.

2. Program Management Information Requirements

An approved MMIS must develop, maintain and provide information that supports major program management functions and activities such as fiscal planning and policy development, and provide information on both provider and recipient participation and service delivery. This information must be organized and structured into functional information areas and into levels specific to the user's needs. The functional information areas are: Administration, including financial management; Provider Relations; and Recipient Relations.

At a minimum, an approved MMIS must provide sufficient and timely Medicaid information to analyze the information functional areas, and to support internal and external reviews. It must:

- Provide claims processing related expenditure information to allow management to monitor and compare program expenditures and budgeted amounts periodically, including comparison of actual and budgeted funds, projections of expenditures, and calculation of budget variances. This information projects cost of program services for future periods from past experience. Information produced must be in a manner compatible with the State's budgetary process and be organized by appropriate budget elements such as category of service and aid category;
- Provide information to support financial planning and policy development, such as comparisons of past, current and future financial trends. Information must be presented by appropriate categorizations, such as aid category within category of service, and include trends of both current and anticipated expenditures in relation to use of services. Information must, at a minimum, include current payments to providers, average cost per eligible recipient and historical trends of payments and average costs to make projections of funds needed in future periods;
- Provide managed care-related expenditure information to allow management to generate financial reports on the per capita payments made to managed care entities;
- Provide periodic information on the extent of financial liability against the program, taking into consideration the value of in-process claims and the value of retroactive adjustments, including those involving TPL and cost-settlement activities;
- Provide Medicare participation information on the level of Medicaid expenditures for recipients who also have Medicare coverage. Recipient and payment information must describe the financial relationship between Medicare and Medicaid including: number of Medicaid eligibles bought-in for Medicare coverage; number of eligibles not yet accreted by the Social Security Administration; cost of part A and part B premiums paid by Medicaid; and Medicaid payments for Medicare claims deductibles and coinsurance. Related data on qualified Medicare beneficiaries (QMBs) also must be included;
- Provide information showing the extent that providers who are enrolled in the program are actually providing services. The information must allow analysis of the provider participation through the examination of payments, services furnished and recipients serviced by category of service, and must be presented by time periods to establish service distribution and participation trends for planning and control;
- Provide third party information for management to effectively plan, control and manage the operation of the TPL function, including information on dollars recovered and costs avoided;
- Provide claim filing information to assist financial management and provider relations staff in determining those areas of provider services which have delays between the dates of service

and the dates claims are received for processing;

• Provide prescription drug use information to assist in program planning and control by presenting a drug usage frequency analysis which reflects the most commonly used drugs and ranking of expenditures by drug classification codes, and by recipient aid category. Information must be organized in a manner to allow for analysis of both cost and potential abuse;

• Provide information showing recipient participation and utilization of services indicating both payments and number of recipients by aid category. Information must be presented by time periods and show trends of activity;

• Provide information showing the geographic distribution of expenditures and recipient participation at the county or other level to enable program management to monitor the Statewide availability, comparability and use of services;

• Provide information on the usage of services compared to any service limitations, showing the number of recipients and service units by aid category and category of service;

• Provide information to support Federal reporting requirements as contained in the SMM; and

• Provide information to support institutional and capitation fee setting.

3. Surveillance and Utilization Review (SUR) Information Processing Capabilities

The SUR information processing capability of an approved MMIS draws upon data from the information base and must utilize a variety of processing methodologies to identify potential fraud and abuse (42 CFR part 455), trends in utilization and payment, edit and audit failure, and patterns of payments and utilization inconsistent with program policy. Cases identified by the Surveillance and Utilization Review Section (SURS) that have a potential for provider fraud and abuse should be referred to the Medicaid Fraud Control Unit (MFCU) in those States which have such units. The referral should be in accordance with the memorandum of understanding in effect between the Units and the single State agency.

SUR information capabilities are organized according to the following processing methodologies and techniques: Statistical Analysis Requirements; Exception Processing Requirements; Retrospective Detection of Edit/Audit or Policy Failure Requirements; Sampling Requirements; General Access Features; General Processing Features; and Output Requirements.

a. Statistical Analysis Requirements. An approved MMIS must have the ability to support general overall analysis of the Medicaid program, both in pre-defined reports, and in ad hoc reports. Specifically, an approved MMIS, at a minimum, must be able to:

• Compute program-wide statistics by areas, such as benefit type, provider type, recipient category, and special program category;

• Focus on specific benefit, provider, or recipient categories at the request of program management.

b. Exception Processing Requirements. An approved MMIS must be capable of supporting user requests for exception reporting. Exception processing refers to the process of collecting data for a group of program participants (providers, recipients, contractors, group practices, case managers, etc.), defined by a common set of attributes (location, size, specialty, age, sex, amount paid, etc.), for the purpose of detecting exceptions or outliers to the group's statistical norms.

It should be emphasized that the exception reporting characteristics and requirements described in this section represent MMIS capabilities to support Utilization Control regulations at 42 CFR part 456, subpart B. The systems requirements set forth here are not intended to specify or mandate the frequency or scope of exception processing. Operational requirements of this nature must be in accordance with the State plan and MMIS reapproval requirements.

At a minimum, an approved MMIS must be able to:

• Perform exception processing for the purpose of detecting potential fraud and abuse (42 CFR part 455) for all provider types who are directly reimbursed for their services and for all recipients who receive directly reimbursed services;

• Associate individual participants (providers, recipients, case managers, etc.) with peer groups for comparative analysis, using provider, recipient, and other program participant data elements, as well as claims (and pseudo-claims or non-paid transactions where available) data elements, and combinations of participant demographics and claims data;

• Create class groups for all different types of entities authorized by the State program; e.g., recipients, servicing providers, group practice (billing ID) providers, case managers, health plans, and primary care providers;

• Calculate norms for participant groups using average and standard deviation (or other statistical calculations such as percentiles) to compute upper and lower limits. Users must be able to specify upper or lower limits;

• Calculate and produce frequency distribution reports on user requested report items;

• Compare individual participants to their group norms, averages, means, percentiles, and other constants;

• (PM) Apply weighting and ranking to the exception report items so that individuals with high potential for exception are identified and ranked accordingly (Section 1902(a)(30) of the Act and 42 CFR 433.116, 455.21, and 456.21);

• Identify individual participant exception to group norms and produce summary profiles displaying their activity and identifying the utilization and cost factors which exceed group norms;

• Retrieve from the information base all services associated with members of the user-defined groups, at the user's request, and according to data selection parameters established by the user; and

• Report both individual and class group summary statistics so that the individual exception case can be easily compared to the group norms;

Appendix II sets forth guidelines concerning the following components of the exception processing function:

• Categories of program users subject to exception processing;

• Criteria for establishing peer groupings within the various categories of program users;

• Utilization target areas on which exception processing must focus;

• Report item data sets for each category of Program User (organized by utilization target areas); and

• Service displays to be available on profiles and class group level reports.

c. Retrospective Detection of Edit/Audit or Policy Failure Requirements. An approved MMIS must be able to detect retrospectively cases where claims processing edits and audits, or provider, recipient, or reference file maintenance edits and audits may have failed, been improperly installed, or may not have been installed at all. The system must also be able to detect cases where program policies have been overridden or bypassed. This capability need not be achieved by means of special reports or processing but can be achieved as a by-product of the analysis of a variety of systems generated reports such as analysis of summary profile reports of exceptional providers or recipients.

At a minimum, an approved MMIS system must be able to use SUR information processing capabilities to:

• Detect individual cases or patterns in which Medicaid policy appears not to be correctly implemented in the claims processing function; and

• Identify front-end claims edit and audit, and provider, recipient, and reference maintenance failures and errors.

d. Sampling Requirements. An approved MMIS must be able to support sampling of data in the information base for a variety of purposes such as provider audits and recoupment of funds. PM—At a minimum, an approved MMIS must have the capability to randomly select and extract samples of adjudicated claims using each or a combination of the following selection parameters:

• Provider type;
• Provider ID number;
• Invoice type;
• Aid category;
• Recipient ID number;
• Procedure code;
• Date of service;
• Date of payment; and
• Geographic area (Section 1902(a)(30) of the Act and 42 CFR 455.13 and 455.17).

(PM) The output associated with this process must include appropriate totals, such as number and dollar value of claims in the universe from which the sample was selected, as well as totals applicable to the sample items selected (42 CFR 455.13 and 455.17).

(PM) In addition, an approved MMIS must have the capability to extrapolate sample results to the population from which it is drawn using generally accepted statistical techniques (Sections 1902(a)(30) and 1903(r)(5)(A) of the Act and 42 CFR 433.116, and part 456 subpart B). This capability must include the ability to extrapolate, at various levels of confidence; (1) instances of attributes or occurrences in the sample; e.g., number of claims with errors; and (2) value of variables in the sample; e.g., dollar overpayments.

e. General Access Features. Although each Medicaid agency's program differs from all others, all share a common set of "entity relationships"; i.e., every Medicaid program maintains associations between itself, providers, recipients, benefits, claims, etc. These associations can be specified as a series of business rules which translate agency policy into processes executed by the system. The information base must incorporate these relationships and provide access to them.

At a minimum, an approved MMIS must provide access to the information base by:

• Supporting analysis of State program cost and utilization, both in periodic reports, and in ad hoc, focused reports;

• Supporting user access to the information base such that user requests for information related to statistical analysis, exception processing, feedback to operations, and data sampling are met in a reasonable time frame and are efficiently executed;

• (PM) Providing end users (i.e., staff who use the data) with easy access to a parameter driven information base (Sections 1902(a)(30) and 1903(r)(5)(A) of the Act and 42 CFR 433.116, 455.21, and 456.21).

• (PM) Providing flexible methods of access (i.e., the user, using the syntax and vocabulary of the system access methodology, can specify what data are to be selected and how they are to be processed) (Sections 1902(a)(30) and 1903(r)(5)(A) of the Act and 42 CFR 433.116, 455.21, and 456.21).

• (PM) Allowing the user to specify which data elements and data element associations are to be extracted from the information base and what calculations and processes are to be applied to these selected data elements and what format is to be used for the output (screen, paper, electronic media) (Sections 1902(a)(30) and 1903(r)(5)(A) of the Act and 42 CFR 433.116, 455.21, and 456.21).

• Supporting efficient linkages or associations between key data elements by requiring at a minimum:

+Association of all referred services to the referring/admitting/prescribing provider;
+Association of diagnosis to procedure;
+Association of individual providers to their group practice;
+Association of periods of eligibility with recipient service activity (i.e., the system must be able to match the eligibility and enrollment status of the recipient at a point in time with the service rendered at that same time. The system must be able to connect eligibility and service data, as in reporting how many pregnant women, continuously eligible for Medicaid during the pregnancy, received prenatal care during the 9 to 10 month period);
—Linkage of all services to a single recipient ID regardless of the number of historical changes in ID;
—Cross-referencing all provider IDs to a single ID and to report separately and collectively on provider utilization;
—Association of services furnished in a clinic setting to both the clinic and the servicing provider; and
—Linkage of interim and final hospital bills into a single, merged record of the complete hospital stay;

f. General Processing Features. To support the above functions, an approved MMIS must include a range of processing features which the user can call upon to perform the basic SUR requirements of exception processing, program analysis, identification of failed policies and edits, and sampling of historical data. These processing features may be accessed through user commands as in a Control File, Parameter Data Base, or automated "encyclopedia of user instructions".

(PM) The range of processing features must demonstrate at a minimum the ability to:

• Unduplicate and count recipient IDs;
• Unduplicate and count Case IDs;
• Unduplicate provider IDs (of all types, e.g., referring provider, servicing provider, group practice, rendering provider);
• Count and unduplicate procedures and associated modifiers (section 1902(a)(30) of the Act);
• (PM) Compute unduplicated counts at the individual participant level and any designated group level, based on user parameter input; for example, if one individual goes to doctors *A* and *B* and another individual goes to doctors *B* and *C*, do not count as four doctors, but unduplicate and count as three doctors (Section 1902(a)(30) of the Act);
• Total units of service; e.g., days, quantity, days supply;
• Unduplicate and count drug codes; for example, certain prescriptions with the same specific National Drug Code may be prescribed in varying strengths (30mg, 50mg)—unduplicate and count the prescriptions separately. Although they are the same drug type, do not combine them;
• Total all dollar amounts;
• (PM) Associate provider and recipient characteristics with claim level data, e.g., provider specialty associated with procedure codes (Section 1902(a)(30) of the Act);
• (PM) Compute summary totals of information by major entity (provider, recipient, health plan, case manager, etc., and their associated attributes; e.g., type of provider, type of recipient) (section 1902(a)(30) of the Act);
• Perform association of summary totals; e.g., add, multiply, divide, and/or use Boolean logic; and
• Compute frequency distributions on user selected items.

g. Output Requirements. The system must produce output consistent with the type of request for information. There are no specified formats or media,

however, output must meet industry standards for legibility, timeliness, and appropriateness of the presentation to the purpose. State performance must achieve at least minimum output requirements in accordance with MMIS reapproval requirements. Where appropriate, English language descriptions must be printed in association with the value/information codes appearing in the report.

At a minimum, an approved MMIS must have the capability to produce the following outputs:

- Reports summarizing program-wide statistics on cost and utilization of services over user-specified time periods;
- Group profiles containing aggregation of data for groupings of program participants; e.g., servicing providers and recipients;
- Summary total reports displaying summary statistics for all requested data;
- Reports showing comparative statistics resulting from exception processing;
- Frequency distribution reports;
- (PM) Displays of report items by frequency, payment, ID of recipient or provider (section 1902(a)(30) of the Act);
- (PM) Individual summary profiles of providers, recipients (also contractors, case managers, etc.) are subject to exception processing (section 1902(a)(30) of the Act);
- Claims detail reports selected by a variety of data elements and sorted by user-selected options (selectable data elements must include servicing provider ID, referring provider ID, billing provider ID, recipient ID, case ID, as well as procedure and diagnosis codes, date of service ranges or date of payment;
- (PM) Exception logs listing individual participants in order of severity of exception (section 1902(a)(30) of the Act); and
- (PM) Lists of top designated number of diagnoses, procedure codes, drug codes for groups of participants and individuals (section 1902(a)(30) of the Act).

D. System File Requirements

The following data elements contained in the systems files are minimal and not exclusive requirements for source and use within an approved MMIS. These data elements are derived from State plan and Federal reporting requirements. Data elements related to services not covered in the State plan need not be included. The Uniform Hospital Discharge Data Set (UHDDS), developed through the National Committee on Vital and Health Statistics (NCVHS) and required by HHS departmental policy, effective January 1, 1975 revised July 31, 1985 (50 FR 31038), and which meets current Peer Review Organization requirements of section 11205 the State Medicaid Manual (SMM), contains, for hospital service only, discharge data as a file requirement and is identified in this section as:

*UHDDS as well as MMIS requirement

**UHDDS requirement only

At a minimum, an approved MMIS must include the following data elements:

1. Recipient Identification Number;

(A number that uniquely identifies an individual eligible for Medicaid benefits.)

2. *Recipient Social Security Number (SSN);

(The number used by the Social Security Administration (SSA) throughout a wage earner's lifetime to identify earnings under the Social Security Program.)

For newborns and children not having a SSN but covered under Medicaid, use No. 1 above to identify these eligible.

3. Recipient Social Security Claim Number;

(The number assigned to an individual by the SSA under which cash benefits (and Medicare benefits) are paid or eligibility is established.)

4. Recipient's Name;

(The name of the recipient.)

5. *Recipient's Residence Address;

(The resident address of the recipient, including zip code.)

6. *Recipient's Date of Birth;

(The date of birth of the recipient.)

7. **(a) The ethnic origin of the recipient;

(For example, White, Black, Hispanic, Asian/Pacific Islander, American Indian/Eskimo/Aleutian, and Other.)

8. *Recipient's Sex Code;

(The sex of the recipient.)

9. Recipient's Aid Category;

(A unique code indicating the Federal aid category(s) under which a recipient is eligible for Medicaid benefits and used for Federal reporting as specified in 42 CFR part 435 and covered under each State's Medicaid State plan.)

10. Gross Family Income;

(The monthly gross income for the family of which this recipient is a member.)

11. Family Size;

(The number of persons in the family of which this recipient is a member.)

12. Eligibility Beginning Date;

(A date that begins a period in which a recipient was certified as eligible to receive Medicaid benefits.)

13. Eligibility Ending Date;

(A date concluding a period in which a recipient is eligible to receive Medicaid benefits.)

14. (a) Third Party Liability Code;

(A code indicating the presence of third party resources.)

**(b) Expected Principal Source of Payment; (A code identifying the single major source that the patient expects will pay for his or her bill. Major sources are:

- Self-pay
- Workers' Compensation
- Medicare
- Medicaid
- Maternal and Child Health
- Other Government Payments
- Blue Cross
- Insurance Companies
- No charge (free, charity, special research or teaching)
- Other.)

15. Insurer Name;

(The name of the liable or potentially liable health insurance company.)

16. Insurer Address;

(The address of the liable or potentially liable health insurance company.)

17. Policyholder Name;

(The name of the policyholder or entity to whom the policy was issued.)

18. Policyholder/Recipient Relationship;

(The policyholder's relationship to the eligible recipient.)

19. Policy Number;

(The number assigned to the insurance contract.)

20. Insurance Coverage Begin Date;

(The date insurance coverage begins.)

21. Insurance Coverage End Date;

(The date insurance coverage ends.)

22. Insurance Resource Type;

(A code which identifies the type(s) of coverage, such as major medical, dental, vision or combinations thereof.)

23. SSN of an Absent Parent;

(See 42 CFR 433.138 for the conditions under which this piece of information must be captured.)

24. Health Maintenance Organization (HMO)/Capitated Plan Enrollment;

(A flag indicating whether a recipient is enrolled in an HMO or capitated plan which delivers services based on premium amounts.)

25. HMO/Capitated Plan Enrollment Date;

(A recipient's date of enrollment in an HMO/capitated plan.)

26. Recipient On-Review Indicator;

(A code indicating that all claims for a given recipient are to be manually reviewed prior to payment.)

27. Recipient Lock-In Indicator;

(An indicator which shows that a recipient is restricted to a specific provider for medical services.)

28. Lock-In Provider Number;

(The provider number associated with the capitated plan, lock-in, or other restricted service.)

29. Cash Grant Indicator;

(A code indicating whether or not the recipient is currently receiving cash assistance.)

30. Medicare Type Code;

(A code indicating whether the recipient is covered by Medicare, and, if so, whether s/he has Hospital Insurance Benefits (Part A) and/or Supplementary Medical Insurance Benefits (Part B).

31. Buy-In Status Code;

((a) The code indicating a recipient's status with respect to the State "buying in" and paying any Medicare Part A and Part B premiums.
(b) The code indicating a recipient's status respect to the State "buying in" and paying any Medicare Part A and Part B premiums for qualified Medicare beneficiaries (QMBs).)

32. Buy-In Eligibility Date;

(The beginning date from which the recipient is eligible for the Medicare Buy-In Program.)

33. Buy-In Premium Date;

(The date associated with Medicare Part A and Part B Buy-In premium amounts.)

34. Buy-In Premium Amount;

(The amount of money the State pays to HCFA each month per recipient for Medicare Part A and/or Part B Buy-In coverage.)

35. SSA-Information Exchange Code;

(A code scheme consisting of various numerical codes which describe situations that can occur at SSA or at the State level.)

36. Recipient's Eligibility Certification Date;

(The date the State certifies an individual meets all requirements of eligibility for public assistance, supplemental security income (SSI) or State supplemental benefits, or Medicaid benefits.)

37. Recipient's Location Code;

(The geographic or geopolitical subdivision of a State in which the recipient resides (such as, region, county, or district).)

38. Date of Death;

(The date of a recipient's death as indicated in the Social Services or SSI file after an official notice of death has been received.)

39. Provider Number (State);

(A unique number assigned by the State to each participating provider of services such as, capitated plans, primary care physicians, case managers, home- and community-based services providers, community mental health providers.)

40. Provider Name;

(The name of the provider of Medicaid services as used on official State records.)

41. Provider Address;

(The mailing address of the provider.)

42. Provider Pay to Address;

(The address to which Medicaid payments to a provider are sent.)

43. Pay to Provider Number;

(The provider number of the individual or group that is to receive payment if different from the number of the provider that provided the service.)

44. Provider Type;

(A code indicating the classification of the provider furnishing health and medical services as approved under the State Medicaid plan.)

45. Provider Beginning Date of Service;

(A date beginning a period in which the provider was authorized to receive Medicaid payments.)

46. Provider Ending Date of Service;

(A date concluding a period in which the provider is authorized Medicaid payments for services furnished.)

47. Provider Federal Identification Number;

(The number assigned to an employer for Federal reporting purposes; either the Employer Identification Number (EIN) or the SSN.)

48. *Medicare Provider Number;

(The identification number assigned by HCFA to a Medicare provider, any individual or entity furnishing Medicaid services under a provider agreement with the Medicaid agency (see 42 CFR 400.203).

49. Provider Year End Date;

(The calendar date on which the institutional provider's fiscal year ends.)

50. Provider Specialty Code;

(A code used to indicate the certified medical specialty(ies) of a physician, such as neurology and podiatry.)

51. Provider Credit Balance Amount;

(The amount of money the Medicaid program owes a provider.)

52. Provider Credit Balance Date;

(The processing date on which the last amount was entered in the Provider Credit Balance amount.)

53. Out-of-State Provider Code;

(A code indicating that the provider is located out of State.)

54. Per Diem Rate;

(The payment amount for each day of care in an institution reimbursed on a per diem basis.)

55. Percent-of-Charges Factor;

(The percent of a provider's charges that constitutes payment for certain categories of service.)

56. Rate Effective Date;

(The effective date of the accompanying per diem rate or percent-of-charges factor.)

57. Capitation Fee;

(The monthly payment made to a capitated plan for services provided to enrolled recipients by specified aid categories.)

58. Provider Location Code;

(The geographic or geopolitical subdivision in which the provider's place of business is located.)

59. Provider Enrolled Status Code;

(A code indicating a provider's certification status with respect to the Medicaid program.)

60. Provider Enrollment Status Date;

(The effective date of the accompanying provider enrollment status code.)

61. Provider Group Name and Address;

(The name and mailing address of the provider group.)

62. Provider Group Number;

(The number assigned to the group practice of which an individual provider is a member.)

63. Transaction Control Number;

(A unique number identifying each claim transaction received including the date the claim was received.)

64. Total Claim Charge;

(The sum of all charges associated with an individual claim.)

65. Medicaid Amount Paid;

(The amount paid by Medicaid to a provider on a claim or adjustment.)

66. Third Party Payment Amount;

(The amount of payment applied toward a claim by third party resources.)

67. Date of Adjudication;

(The date a claim is approved for partial or full payment or disapproved for payment.)

68. Claim Exception Code;

(A code indicating the nature of a failure of an edit/audit during claim adjudication processing.)

69. Payment Date;

(The date a payment instrument was generated for a claim transaction.)

70. Date Claim Entered Suspense;

(The date a claim transaction was initially suspended.)

71. Claim Category of Service;

(A code defining the category of service furnished (e.g., general inpatient, pharmacy, physician, home health).)

72. Laboratory, Medicare Certified Indicator;

(A code indicating that a laboratory is approved as meeting the requirements for participation in Medicare.)

73. Laboratory Service Authorized Code;

(A code indicating the services/procedures that a laboratory which meets the requirements for participation in Medicare is authorized to perform.)

74. *Physician Identification;

a. Attending Physician Number
(The provider number of the physician attending an inpatient in a hospital, nursing home, or other institution. This is the physician primarily responsible for the care of the patient from the beginning of this institutional episode.)

**b. Operating Physician
(This is the physician who performed the principal significant procedure. See Data Element No. 99 below, for definition of principal procedure.)

75. Referring Physician Number;

(The provider number of the physician referring a recipient to another practitioner or provider.)

76. Prescribing Physician Number;

(The unique identification number of the physician ordering a procedure or prescribing a drug.)

77. Diagnosis Name;

(The generally accepted nomenclature for a diagnosis consistent with the diagnosis code.)

78. Diagnosis Code;

(A table of codes identifying diagnosed medical conditions, as defined by the International Classification of Diseases, Version 9, Clinical Modification; i.e., ICD–9–CM and subsequent editions.)

79. *Principal Diagnosis Code;

(The diagnosis code for the principal condition requiring medical attention. **The condition established after study to be chiefly responsible for causing the patient's admission to the hospital for care for the current hospital stay. (HCFA requires the acceptance of ICD–9–CM coding.))

80. Other Diagnosis Code;

(The diagnosis code of any condition other than the principal condition which requires supplementary medical treatment. **Conditions other than the principal condition that coexisted at the time of admission, or developed subsequently, which affected the treatment received and/or the length of stay. Exclude diagnoses that relate to an earlier episode which have no bearing on the current hospital stay. (HCFA requires the acceptance of HCPCS coding.))

81. Diagnosis Related Group Code;

(A code identifying the diagnosis related group.)

82. Institutional Admission Date;

(The date a recipient was admitted to a medical institution.)

83. Beginning Date of Service;

(The date upon which the first service covered by a claim was furnished.)

84. Ending Date of Service;

(The date upon which the last service covered by a claim was furnished.)

85. *Discharge Date;

(The date an inpatient was discharged from an institution.)

86. Place of Service;

(A code indicating where a service was furnished by a provider.)

87. *Patient Number;

(Any number assigned by a provider to a recipient or claim for reference purposes, such as a medical record number.)

88. Patient Status;

(A code indicating the patient's status on the last date of service covered by an institutional claim.)

89. Units of Service;

(A quantitative measure of the services furnished to or for a recipient (e.g., day, visits, miles, injections).)

90. Medicare Cash Deductible Amount;

(The unmet Medicare deductible subject to payment by Medicaid.)

91. Medicare Coinsurance Charge;

(The Medicare coinsurance amount subject to payment by Medicaid.)

92. Medicare Reasonable Charge;

(Payment amount recognized as the reasonable charge for Medicare.)

93. Medicaid CoPayment Amount;

(The portion of the claim charge which the recipient must pay, called coinsurance when expressed as a percentage of the payment amount.)

94. Prior Authorization Control Number;

(A number that uniquely identifies the authorization for payment prior to the delivery of a service.)

95. Allowable Procedure Payment;

(The maximum allowed amount payable for a particular medical procedure, treatment, or service item.)

96. Prescription Dispensing Fee;

(The amount allowed to a dispenser of drugs as compensation for his/her professional services.)

97. Prescription Number;

(The number assigned by a pharmacist to a prescription at the time it is filled.)

98. Procedure Names;

(The generally accepted nomenclature for medical, surgical, dental, etc. procedure.)

99. Procedure Codes;

(Codes identifying medical procedures. In a physician or outpatient setting accept and use exclusively the HCPCS; for an inpatient setting, ICD–9–CM Volume 3 is recommended.)

**a. Significant procedures

(A significant procedure is one that is: surgical in nature; or carries a procedural risk; or carries an anesthetic risk; or requires specialized training.)

**b. Principal significant procedures

(When more than one procedure is reported, designate the principal procedure applying the following criteria:

- The principal procedure is the one which was performed for definitive treatment rather than performed for diagnostic or exploratory purposes, or was necessary to take care of a complication.
- The principal procedure is that procedure most closely related to the principal diagnosis or the complications that arise during other treatments.)

100. Drug Code;

- (Codes identifying particular drugs; e.g.; National Drug Code, drug tables.)

101. Drug Name;

(The generally accepted nomenclature for a particular drug.)

102. Drug Therapeutic Classification;

(The therapeutic group in to which a drug is categorized.)

103. Maximum Days Supply of Drugs;

(The maximum units of a drug prescription eligible for a particular drug.)

104. Unit of Measure;

(The unit in which a drug is dispensed (e.g., cc, capsule, tablet.)

105. Drug Allowable Cost;

(The generally accepted wholesale acquisition cost of a drug.)

106. Drug Charge;

(The charge submitted by a provider for a given drug prescription.)

107. Drug Cancellation Date;

(The date after which a particular drug is no longer covered under the State Medicaid program.)

108. *Discharged Patient's Destination;

(A code indicating a recipient's destination upon discharge from a medical institution. Codes must identify:

- Discharged to home or self care (routine discharge)
- Left against medical advice
- Discharged/Transferred to another short term general hospital
- Discharged/Transferred to a long term care institution
- Discharged/Transferred to home under care or organized home health service organization
- Discharged/Transferred to a mental health center
- Died
- Other.)

109. Procedure Charge;

(The charge for an individual procedure, treatment, or service item as submitted by the provider.)

110. Adjustment Amount;

(The amount (plus or minus) by which a provider's account is to be changed.)

111. Date of Surgery;

(The date on which a surgical procedure(s) was performed on an inpatient.)

112. Valid Sex Indicator;

(A code which indicated when a procedure or diagnosis is limited to one sex only.)

113. Age Range Indicator;

(A code which specifies an age range when a procedure or diagnosis is limited to a particular age group.)

114. Screening Results Code;

(A code indicating the outcome of the various screening tests performed.)

115. Screening Referral Code;

(A code indicating the nature of any referrals made as a result of screening.)

116. Screening Related Treatment;

(A code identifying procedures or services received as result of screening.)

117. Family Planning Code;

(A code indicating whether any diagnosis, treatment, drugs, supplies, devices, counseling service, or other billed services or materials are for the purposes of family planning.)

118. Certification Review Indicator;

(Indicator showing that review was made by certification of a recipient who has been admitted to institutional care including approval status.)

119. Certification/Recertification Date;

(The date of certification/recertification of a recipient who has been admitted to institutional care.)

120. Certification Status;

(An indication of initial certification status of a patient in an institution.)

121. Number of Requests for Extension;

(The number of times an extension of certification of stay was requested for a patient in an institution.)

122. Days Certified Initially;

(The number of days of stay certified initially for a patient in an institution.)

123. Total Days Certified;

(The total number of days of stay certified for a patient in an institution.)

124. Date of Application;

(The date that a recipient applied for eligibility status in the Medicaid program.)

125. Budgeted Amount;

(The planned expenditures for various Medicaid services over a given period of time.)

126. Case Number;

(The number assigned by a State agency that links together family members.)

Appendix I—Detail Systems Documentation Requirements

Systems Design Documentation

The system design documentation is used to present an overview of system features, function and processes. It must include information sufficient to provide an understanding of how system components interact and how the system relates to user and computer operations. It must contain:

- Descriptions of inputs and outputs
- Data definitions
- File/data base descriptions
- System inventories
- Functional and system flow descriptions and/or representations
- System narratives.

Programming Documentation

Programming documentation must provide sufficient commentary and information to enable program problems resolution, maintenance activities, and enhancements. It must contain:

- Program codes
- Source code compilations
- Program definitions
- Report and screen layouts
- Program cross references and linkages
- A program change log
- A data element dictionary cross referenced to the data elements defined in section D of these requirements, System File Requirements.

Computer Operations Documentation

Computer operations documentation consists of written procedures needed to

operate the system, i.e., to run, control and balance jobs.

It must include:

- A production run book
- Job control language
- Hardware and system software configurations
- Data communications protocols
- Backup and recovery procedures
- Maintenance procedures and schedules for all applicable operating system software and equipment.

User Documentation

User documentation consists of written procedures and instructions needed by the end users (States, fiscal agents, providers to successfully interact with the system. It must include:

- Administrative procedures
- Work flow diagrams
- Control and balancing procedures
- Report and screen layouts
- Data entry/input instructions
- Medical and program policy
- A comprehensive claims processing and suspense resolution manual that complements the suspended claim system requirement in the Claims Adjudication and Payment Requirements section of these requirements
- Financial operations procedures for adjustments, recoupments, returned checks
- File/database maintenance and use procedures
- Reports interpretation and use descriptions
- Descriptions of system audit trails
- Provider billing manuals.

Organizational Documentation

Organizational documentation consists of information for management activities, such as planning and budgeting. It must include:

- Organization charts
- Job descriptions
- Systems resources and equipment necessary to operate the system.

Appendix II—Suggested Exception Processing Guidelines

The material described in this supplement represents the suggested scope of exception processing of an approved Medicaid Management Information System (MMIS). It is expected to appear in the SMM.

The following sections identify eleven categories of program users that should be accommodated in the exception processing function of an approved MMIS. States may expand and/or refine these categories to meet their unique exception processing objectives. For each category of program user, States also should:

- Organize program users into appropriate peer groupings;
- Define various utilization target areas (e.g., Physician prescribing patterns, referral practices, etc.);
- Develop appropriate report item data sets which focus on each target area; and
- Develop appropriate service displays to be available on individual profiles and class group level reports. States may use the same, equivalent or expanded versions of the peer group criteria, utilization target areas, report item data sets and service displays identified in the eleven categories of program users. Where States elect to make substitutions based on equivalence, they should be able to demonstrate that substitutions achieve the same objective of the items or concept being substituted.

States that utilize MMIS to manage their capitation or other non-fee-for-service programs may employ the same exception processing guidelines as they logically apply to these programs. For example, individual health plans may encompass a wide range of program users whose services could be profiled by the same categories listed below. States may wish to modify or expand utilization target areas and upper and lower limits to accommodate the different practice patterns that occur in non-fee-for-service environments.

All exception items must be used in conjunction with volume thresholds to avoid exception on individuals who exceed a limit but whose volume of practice is small. This can be done by exception pattern linkage, denominator specification, master control logic or other State specific volume threshold mechanisms.

Minimum service (data element) displays must be available on profiles and on the class group level:

- Displays of procedure, diagnoses, drug and revenue codes must have English language descriptions.
- For each displayed value the ranking element, e.g., dollars, recipients, etc., should also reflect the percentage it represents of the total; i.e., if paid amount is shown it should have a corresponding percentage depicting those dollars as a percent of all dollars.
- The "N" (number) display should be at least 10, but States can expand the number of displayed values as they wish.
- All recipient, case, and provider counts should be unduplicated.

In addition to exception items, reports should include key information such as:

- Total dollars Medicaid Paid
- Total dollars Medicare Paid (where appropriate)
- Total Unduplicated Recipients
- Percent Recipients in Long Term Care
- *Percent of Services Rendered in Class Group
- *Percent of All Recipients Seen in Class Group
- *Percent of All Dollars Paid in Class Group
- *These may also be used as exception criteria in any report.

Category 1: Physician (Includes Medical Doctor, Osteopath, Physician Clinics)

Peer Grouping Criteria: Specialty, Type of Practice (Sole or Group Practice), Geographical Location.

Target Areas/Report Items: The exception report items for physician focus on the following target utilization areas: (A) Drug prescribing patterns; (B) referral practices; (C) direct services practices; and (D) recipient/case overutilization. Upper or lower exception indicators are noted. The items are identified in sets of items that should be linked together in evaluating an exception. Actual limits should be State/Program specific.

	Type of Limit
(A) Drug Prescribing Patterns	
Set 1:	
Percent of recipients receiving prescription only	Upper.
Ratio office visits for recipients with prescription drugs to recipients with prescription drugs	Lower.
Set 2:	
Percent of recipients receiving controlled drugs	Upper.
Average number controlled drugs per recipients with controlled drugs	Upper.
Number of different pharmacies dispensing	Lower.

	Type of Limit
(B) Referral Practices	
Set 1:	
Percent of recipients referred to other practitioners	Upper.
Average number referrals per recipient with referrals	Upper.
Number of different practitioners referring 'To'	Lower/Upper.
Set 2:	
Percent of services referrals 'from' other practitioners	Upper.
Number of different referring 'From' practitioners	Lower/Upper.
Percent of payments resulting 'From' other providers	Upper.
Set 3:	
Percent of recipients with referred laboratory/X-ray/diagnostic tests	Upper.
Average number referred laboratory/X-ray/diagnostic tests per recipient with referred tests	Upper.
Number of different laboratory X-ray/diagnostic test providers referring 'to'	Lower/Upper.
Total dollars generated by referred laboratory/X-ray/diagnostic tests providers	Upper.
Percent of all dollars paid to laboratory/X-ray diagnostic test providers resulting from providers' referrals	Upper.
Set 4:	
Percent referrals to own group member (The group(s) to which the physician being analyzed is also a member)	Upper.
Percent recipients referred to own group member	Upper.
Average number referrals to own group per recipient	Upper
Amount paid to own group for referrals to group	Upper
(C) Direct Services Practices Type of Limit	
Average number visits (all types) per Day (of Service)	Upper.
Percent of service days with over N visits	Upper.
Average number of visits per recipient	Upper.
Average number diagnostic services per recipient	Upper (also lower if pre-paid).
Average number direct referred diagnostic services per recipient	Upper (also lower if pre-paid).
Ratio all diagnostic services to visits	Upper (also lower if pre-paid).
Average number all services (direct and referred) billed per recipient	Upper.
Average paid (valued) per recipient	Upper.
Percent of services high cost services (Includes visits and diagnostics)	Upper.
(D) Recipient/Case Overutilization	
Average services per case ID	Upper.
Average services for case per service day	Upper.
Average number of recipients seen per case	Upper.

Service Displays (Profiles and Class Group)

Top N Diagnosis reported on direct billings by dollars, recipients and frequency.
Top N Procedures on direct billings by dollars, recipients and frequency.
Top N Drugs Prescribed by dollars, recipients and frequency. This should be based on first 9 digits of NDC or formulary code (e.g., without package size).
Top N Referred Laboratory/X-Ray/Diagnostic tests by dollars, recipients and frequency.
Top N Procedures Done by Referred 'to' Practitioners by dollars.
Top N Outpatient Surgical Procedures Reported by dollars, recipients, and frequency.
Top N Recipients Seen (Non Ambulatory/Surgery) by frequency and dollars.
Top N Revenue Codes billed by dollars, recipients and frequency.
Top N (Non-Ambulatory Surgical) Procedures reported by dollars, recipients and frequency.
Category 2: Inpatient Hospital (Includes all Acute Inpatient Services)
Peer Grouping Criteria: Teaching Facility, Tertiary Service Facility, Geographic Location and/or Bed Size.
Target Areas/Report Items: The exception items for hospitals focus on the following target utilization areas: (A) Diagnosis Related Group (DRG) cycling (for states that use DRGs); (B) length of stay/ancillary charges; and (C) critical care/tertiary services usage. Items are identified in sets.

	Type of limit
(A) DRG Cycling	
Percent recipients with readmissions	Upper.
Average number readmissions per recipient with admission	Upper.
Percent recipients readmitted within a range of days	Upper. (N–N is range).
Percent of days less, at, or below DRG average length of stay	Upper.
Percent of recipients with admissions for more than one DRG	Upper.
Number of recipients with DRG optimizing	Upper.
(B) Length of Stay/Ancillary Charges	
Set 1:	
Average length of stay per admission	Lower/upper.

	Type of limit
Room and board charge as percent of all charges	Lower/upper.
Average payment per day of stay	Lower/upper.
Set 2:	
Percent admissions—emergency (non-obstetric)	Upper.
Percent admissions through emergency/outpatient department (non-obstetric)	Upper.
Percent admissions—Weekends Admission/Discharge (non-obstetric)	Upper.
Set 3:	
Total admissions	Upper.
Average paid per admission	Upper.
Average number admissions per day	Upper.
Average discharges per day	Upper.
(C) Critical Care/Tertiary Services	
Percent admissions with critical care days (includes neonatal)	Upper.
Average critical care days per Admissions	Lower/upper.
Percent admissions with high level/revenue/procedures code e.g., cardiac catheterization charges	Upper.

Service Displays

Top N DRGs by dollars, recipients, admissions.
Top N diagnosis by dollars, recipients, admissions.
Top N Recipients by admissions, dollars.
Recipients with admissions for suspected DRG optimizing by admissions and dollars. Include DRGs for each admission.

Category 3: Outpatient (Includes Outpatient Facilities, Clinics Billing on UB–82, (HCFA 1450) Ambulatory Surgical Centers)

Peer Grouping Criteria: Hospital-based, Freestanding and Geographic Location.

Target Areas/Report Items: The items for outpatient focus on the following utilization target areas: (A) admissions to acute care; (B) ambulatory surgery; (C) service/recipient volume; and (D) recipient case overutilization. The items are identified in sets indicating linkage for exception analysis.

	Type of Limit
(A) Admissions to Acute Care	
Percent recipients admitted to acute care (includes obstetric admissions but not false labor. Any admission from outpatient date of service through three days after the outpatient date of service should be counted).	Upper.
Average laboratory/X-ray/diagnostic tests per recipient admitted	Upper.
Average outpatient paid for services to recipients admitted	Upper.
Average length of stay per admission for recipients admitted	Lower.
(B) Ambulatory Surgery (Note: Users may wish to exclude obstetric deliveries)	
Percent dollars paid for ambulatory surgery	Upper.
Average paid for ambulatory surgery case (include any follow-up services within N days of service)	Upper.
Average ancillary (diagnostic) charges per ambulatory case (include any follow-up services within N days of service)	Upper.
Percent all recipients receiving ambulatory surgery	Upper.
Percent ambulatory surgery billed on weekend	Upper.
Average number ambulatory surgeries billed per day	Upper.
(C) Recipient/Service Volume	
Set 1:	
Average number of services per recipient seen	Upper.
Percent recipients with multiple visits	Upper.
Average laboratory/X-ray/diagnostic test per recipient seen	Upper.
Set 2:	
Average pharmacy charges per recipient seen	Upper.
Percent of pharmacy charges of all ancillary charges	Upper.
Percent of recipients with pharmacy charges and medicaid visit only on a single day	Upper.
Set 3:	
Average number recipients seen per week-day (non-emergency room)	Upper.
Percent of services on weekend	Upper.
(D) Recipient/Case Overutilization	
Set 1:	
Average services per case ID	Upper.
Average services for case per service day	Upper.
Average number of recipients seen per case	Upper.

Service Displays

Top N Diagnoses reported by dollars, recipients, and frequency.
Top N Outpatient Surgical Procedures Reported by dollars, recipients, and frequency.
Top N Recipients Seen (Non-Ambulatory/Surgery) by frequency and dollars.
Top N Revenue Codes Billed by dollars, recipients and frequency.
Top N (Non-Ambulatory Surgical) Procedures Reported by dollars, recipients and frequency.

Category 4: Pharmacy.

Peer Grouping Criteria: Hospital Based, Chain, Community, Long Term Care.

Target Areas/Report Items: The exception items for pharmacy focus on the following utilization review target areas: (A) brand name drugs; (B) control drugs; (C) maintenance drugs; (D) prescribes, (E) long term care dispensing; and (F) recipient/case overutilization. They are depicted in sets indicating necessary linkage for exception analysis.

	Type of limit
(A) Brand Name Drugs	
Percent of drugs dispensed for brand names	Upper.
Average number brand name prescription drugs per recipient with brand name prescription drugs	Upper.
Average paid per brand name prescription drug	Upper.
Percent of dollars paid for brand name prescription drugs	Upper.
(B) Controlled Drugs	
Percent of prescription drugs for controlled drugs	Upper.
Percent recipients with controlled drugs	Upper.
Average control prescription drugs dispensed per recipient with controlled drugs	Upper.
Average days supply dispensed per controlled drug prescription	Upper.
Average days supply dispensed per recipient with controlled drugs	Upper.
(C) Maintenance Drugs	
Average days supply for maintenance prescription drugs	Lower.
Average number refills per maintenance prescription drug	Upper.
Dispensing fee as percent of payments for prescription drugs	Upper.
Total paid for maintenance prescription drugs	Upper.
(D) Prescribes	
Number different prescribes (non-long term lower care prescription drugs)	Lower.
Average drug payments generated per prescriber	Upper.
Average number prescription drugs per prescriber	Upper.
(E) Long Term Care	
Set 1:	
Percent prescription drugs for long term care recipients	Upper.
Average paid per long term care prescription drug	Upper.
Average days supply per long term care prescription drug	Upper.
Number of different long term care prescriber	Lower.
Set 2:	
Percent prescription drugs maintenance prescription drugs	Upper.
Average days supply for maintenance prescription drugs	Lower.
Set 3:	
Percent prescription drugs bulk purchase type prescription drugs (e.g., ASA, antacids)	Upper.
Average paid per bulk purchase type prescription drugs	Upper.
Set 4:	
Percent prescription drugs for sedatives and tranquilizers	Upper.
Average days supply per recipient sedatives and tranquilizers	Upper.
Set 5:	
Percent prescription drugs for supplies (e.g., syringes)	Upper.
Percent prescription drug dollars for supplies	Upper.
Average paid per supply prescription drug	Upper.
(F) Recipient/Case Overutilization	
Average services per case ID	Upper.
Average services for case per service day	Upper.
Average number of recipients seen per case	Upper.

Service Display

Top N Prescribes by dollars, frequency (number of Prescription Drugs) and recipients.
Top N Recipients for Controlled Drugs by days supply, Prescription Drugs, dollars.
Top N Non-Long Term Care Recipients for Prescription Drugs by dollars, Prescription Drugs.
Top N Long Term Care Recipients for Prescription Drugs by dollars, Prescription Drugs.
Top N Long Term Care Prescribes by dollars, frequency (Prescription Drugs) and recipients.
* Top N Prescription Drugs (Non-Long Term Care) by dollars, frequency and recipients.
* Top N LTC Prescription Drugs by dollars, frequency and recipients.

* Note: Users may opt to do this display by nine digit NDC code eliminating package size.

Category 5: Dentists.

Peer Grouping Criteria: Specialty, Type of Practice (Sole or Group Practice), Geographic Location.

Target Areas/Report Items: The exception items for Dentists focus on the following utilization review target areas: (A) Drugs prescribed; (B) referred services; (C) split billing; (D) service/recipient volume; and (E) recipient case overutilization. The items are depicted in sets relevant to exception analysis.

	Type of limit
(A) Prescribed Drugs (Includes all Dental Specialties and Clinics)	
Percent recipients with analgesics (and controlled prescription drugs)	Upper.
Average days supply for analgesics (per controlled prescription drugs)	Upper.

	Type of limit
Number different dispensing pharmacies	Lower.
(B) Referred Services	
Percent recipients with referrals to other practitioners	Upper.
Number different practitioners referring "To"	Lower/Upper.
Average number referrals per recipients with referrals	Upper.
Percent referrals to members of own group	Upper.
(C) Split Billings	
Ratio of Single Surface restorations to multi-surface restorations	Upper.
Ratio of single or unilateral X-rays to full mouth X-rays	Lower/Upper.
(D) Service/Recipient Volume	
Set 1:	
Average paid per recipient	Upper.
Average paid services per recipient	Upper.
Average services (non-diagnostic) billed per service day	Upper.
Average recipients seen per service day	Upper.
Average number diagnostic services per recipient	Upper.
Set 2:	
Average number restorations per recipient with restorations	Upper.
Average number extractions per recipient	Upper.
Percent endodontics on deciduous teeth	Upper.
Set 3:	
Percent services to long-term care recipients	Upper.
Percent payments for long-term care recipients	Upper.
(E) Recipient/Case Overutilization	
Average services per case ID	Upper.
Average services for case per service day	Upper.
Average number of recipients seen per case	Upper.

Service Display

Top N Procedures Billed by dollars, frequency and recipients.
Top N Recipients by dollars and frequency.
Top N Referred "to" Practitioners by dollars, frequency and recipients.
Top N Prescribed Prescription Drugs by dollars, frequency, and recipients.
Top N Pharmacies Dispensing Prescription Drugs by dollars, frequency and recipients.
Category 6: Independent Laboratories/Radiology.
Peer Grouping Criteria: Hospital-Based, Chain, Physician Owned, Geographic Location, Volume.
Target Areas/Report Items: The exception items for independent laboratories/radiology focus on the following utilization target areas: (A) Referring practitioners; (B) panel splitting; (C) high cost testing; and (D) service/recipient volume. They are depicted in sets reflecting linkage necessary to evaluate exceptions.

	Type of Limit
(A) Referring Practitioners	
Number different referring practitioners including clinics	Lower.
Average paid to the independent laboratory per referring practitioner	Upper.
Number different referring practitioners for high cost tests	Lower/Upper.
(B) Panel Test Splitting	
Ratio single tests to panel tests (includes tests normally billable in panel)	Upper.
Percent of tests single tests	Upper.
Percent of recipients with panel test	Lower.
Percent of recipients with single tests only	Upper.
(C) High Cost Tests	
Percent of high cost tests (high cost test to be defined by State)	Upper.
Percent of payments for high cost tests	Upper.
Percent of recipients with high costs tests	Upper.
Average number high cost tests per recipient with high cost tests	Upper.
(D) Service/Recipient Volume	
Average payment per test	Upper.
Average payment per recipient	Upper.
Average number tests per recipient	Upper.

Service Displays

Top N Referring Practitioners by dollars, frequency, recipients.
Top N Recipients by dollars and frequency.
Top N Tests by dollars, frequency and recipients.
Category 7: Long Term Care Facilities (Includes Nursing Facilities, Intermediate Care Facilities for the Mentally Retarded).

Peer Grouping Criteria: Community Freestanding, Hospital-Based, Chain, Physician Owned, Bed Size, Geographic Location.

Target Areas/Report Items: The exception items focus on services provided to the recipient while in the facility: (A) drug and supply utilization; (B) physician services; and (C) inpatient admissions. The items are depicted in sets that are relevant to exception analysis.

	Type of limit
(A) Drugs and Supplies	
Set 1:	
Percent recipients on tranquilizers and sedatives	Upper.
Average daily dosage of tranquilizers and sedatives per recipient with tranquilizers and sedatives	Upper.
Average days supply of tranquilizers and sedatives per recipient with tranquilizers and sedatives	Lower/Upper.
Set 2:	
Average days supply of maintenance prescription drugs per recipient with prescription drugs	Lower.
Average number maintenance prescription drugs per recipient with prescription drugs	Upper.
Average days supply of bulk prescription drugs per recipient with prescription drugs	Lower/Upper.
Set 3:	
Average supplies (e.g., syringe) per recipient	Upper.
Average paid for supplies per recipient	Upper.
Set 4:	
Average paid for prescription drugs per recipient	Upper.
Percent of brand name prescription drugs	Upper.
Number different dispensing pharmacies	Lower.
(B) Physician Services and Testing	
Set 1:	
Average paid per physician seeing patients in facility	Lower/Upper.
Ratio medical doctor visits to long term care days	Lower.
Number different physicians seeing patients	Lower.
Set 2:	
Average diagnostic test per recipient	Lower/Upper.
Average rehabilitation/ancillary service per recipient	Lower/upper.
Average independent laboratory/X-ray service per recipient	Upper.
Average paid for independent laboratory/X-ray per recipient	Upper.
Number different independent laboratory/X-ray providers	Lower.
Average paid to independent laboratory/X-ray provider for recipients in long-term care facilities	Upper.
(C) Inpatient Admissions	
Percent of recipients with more than one hospital admission	Upper.
Average number hospital admissions per recipient admitted	Upper.
Average number inpatient bed hold days per month	Upper.
Percent admissions to inpatient for suspect quality of care diagnosis	Upper.
Ratio long-term care days billed (include bed hold) to recipients per month	Upper.

Service Display

Display Top N Recipients by length of stay, dollars.
Display Top N Diagnosis by length of stay, dollars, recipients.
Display Top N Physicians Drug Prescribed by dollars (paid to pharmacies), frequency and recipients.
Display Top N Physicians Seeing Recipients by visits, dollars (paid to physicians), recipients.
Display Top N Independent Laboratory/X-Ray Provider by dollars, frequency and recipients.

Category 8: Transportation (Ambulance, Taxi, Van, Etc.)

Peer Grouping Criteria: Ambulance, Van, Taxi, Chain, Hospital Based, Geographic Location.

Target Areas/Report Items: The exception items for transportation providers focus on service frequency. They should be reviewed with consideration as to the type of transportation the provider is authorized to render.

	Type of limit
(A) Recipient/Service Value	
Average payment per trip	Upper.
Average number of miles per trip	Upper.
Average paid per mile	Upper.
Average number trips per recipient	Upper.
Average additional charges per trip	Upper.
Percent trips with additional charges	Upper.
Percent of trips—emergency	Upper.
Percent of trips from home to doctor's office and office to home	Upper.
Ratio round trips to one way trips	Upper.

Service Display

Display Top N Recipients by trips, dollars. Include percents each ranked value represents.

Category 9: Durable medical equipment (DME) Supplies.

Peer Grouping Criteria: Chain, Hospital Based, Community, Pharmacy.

Target Areas/Report Items: The exception items for DME focus on the following utilization review target areas: (A) Rental/purchase; (B) prescribes; and (C) high cost DME.

	Type of limit
(A) Rental/Purchase	
Ratio rentals to purchase billing	Lower/Upper.
Average days rental per service rental	Upper.
Average days rental per purchasable item	Upper.
Average days rental per Recipient with rental equipment	Upper.
Percent recipients with multiple rentals Average paid per rental	Upper.
Average paid per recipient with rental	Upper.
Average Paid per purchasable item	Upper.
(B) Prescribes	
Number different prescribes of DME supplies	Lower.
Average dollar Amount Generated per prescriber	Upper.
(C) High Cost DME	
Percent of Services for Higher Cost Items (e.g., more expensive wheel chair)	Upper.
Percent of Recipients with Higher Cost Items	Upper.

Service Display

Top N Services by dollars, days rental, recipients. Each ranking value should include percent of total.
Top N Services by dollars, and days rental.
Top N Prescribes of DME by dollars, days rental and recipients.
Category 10: All Other Provider Types.
The items suggested are general and provide broad general service/volume indicators. States can develop Program specific items for these providers where appropriate.

	Type of limit
Average services per recipient	Upper.
Average paid per service	Upper.
Average paid per recipient	Upper.
Average services billed per service day	Upper.

Service Display

Top N services by dollars, frequency and recipient.
Top N Recipients by Dollars, and frequency.
Category 11: Recipient.
Peer Grouping Criteria: Age, Eligibility/Aid Category, Diagnosis, Long Term Care Status, Geographic Location.
Target Areas/Report Items: The exception items for recipients focus on the following utilization review target areas: (A) Drug utilization; and (B) ambulatory services utilization. They are described in sets appropriate for exception evaluation.

	Type of limit
(A) Drug Utilization	
Total prescription drugs	Upper.
Total payments to provider for prescription drugs	Upper.
Average number prescription drugs per month	Upper.
Total controlled and abused prescription drugs	Upper.
Total days supply of controlled drugs	Upper.
Average days supply of controlled drugs per month	Upper.
Number different prescribes for controlled drugs	Upper.
Number different pharmacies for controlled drugs	Upper.
(B) Ambulatory Services	
Number medical doctor/outpatient/clinic/emergency room visits	Upper
Number different outpatient/clinic/emergency room providers	Upper
Number medical doctor visits	Lower/Upper.
Number outpatient/clinic/emergency room visits with pharmacy charges	Upper.

Service Displays

Top N Prescriber ID's ranked by number of prescriptions and dollars paid to pharmacies for prescriptions.

Top N Physician ID's ranked by number of services and dollars paid to physicians for services.

Top N Emergency Room/Outpatient/Clinic ID's ranked by number of services and dollars paid to Emergency Room/Outpatient/Clinic providers.

Top N Prescriber ID's Ranked by Number of Prescriptions and dollars paid to pharmacies for prescriptions.

Top N Physician ID's Ranked by number of services and dollars paid to physicians for services.

Top N Emergency Room/Outpatient/Clinic ID's Ranked by number of services and dollars paid to emergency room/outpatient/clinic providers.

III. Response to Comments

Because of the large number of comments we receive on proposed notices, we cannot acknowledge or respond to them individually. However, in preparing the final notice, we will consider all comments and respond to them in that notice.

IV. Regulatory Impact Statement

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a proposed notice would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, States are not considered to be small entities.

Previous versions of the State Medicaid Manual, part 11, chapter 3, reflected HCFA's policy of utilizing the MMIS-GSD as the standard for evaluation of systems for which funding was requested under section 1903(a)(3) of the Act. Though the MMIS-GSD proved to be a valuable resource to States during initial systems development during the 1970's, the MMIS-GSD does not reflect many of the features, functions, capabilities and technologies found in today's systems. Therefore, HCFA would no longer prescribe the MMIS-GSD as a model for new systems or as a measure of existing systems. Instead, HCFA would adopt the general functional requirements outlined in this proposed notice for States to receive HCFA approval for funding.

As previously mentioned, these functional requirements are restatements of existing systems requirements. They have been restated to more accurately reflect the functional capabilities of state of the art technology States currently employ. Also, while developing the restatements, we have identified additional requirements that most States currently perform or have the systems capability to perform. However, these requirements have never been issued in part 11, chapter 3, of the SMM. We are taking this opportunity to publish these additional functional requirements in this proposed notice.

Each of these functional requirements stands on its own statutory or regulatory authority and implements program requirements resulting from existing legislation and recently enacted legislation, as is referenced in the notice, for which States would receive 50 percent FFP for administrative costs.

Except for minor enhancements that may result in negligible costs, the costs for these functional requirements have already been incurred by States: (1) To implement these requirements for which 90 percent Federal funding has already been paid, and (2) to operate them as part of MMIS for which 75 percent FFP is being paid.

For those States that may require minor enhancements, we estimate negligible additional costs for implementing and maintaining revisions to the MMIS.

Section 1902(a)(30) of the Act serves as the primary program authority to implement these additional requirements.

A State plan for medical assistance must provide such methods and procedures relating to the utilization of, and the payment for, care and services available under the plan * * * as may be necessary to safeguard against unnecessary utilization of such care and services and to assure that payments are consistent with efficiency, economy, and quality of care * * *.

These requirements will provide the following program benefits:

1. Facilitate the implementation of new statutory and regulatory program requirements;

2. Allow for more accurate and timely payment of claims;

3. Reduce the instances of returning claims to providers;

4. Allow for easier recovery of misspent program dollars;

5. Further refine program data to more efficiently and effectively detect potential fraud and abuse which will facilitate more referrals to Medicaid Fraud Control Units; and

6. Improve communications between the State and the Federal Government.

Since States are not considered small entities, we have determined and the Secretary certifies that this proposed notice would not have a significant effect on a substantial number of small entities. Thus, a regulatory flexibility analysis under the RFA is not required.

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a proposed notice may have a significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital which is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this proposed notice would not have a significant economic impact on the operations of a substantial number of small rural hospitals.

V. Information Collection Requirements

This notice contains information collection requirements that are subject to Office of Management and Budget review under the Paperwork Reduction Act of 1980. The reporting and recordkeeping sections identified are currently approved under OMB approval number 0938–0247.

(Catalog of Federal Domestic Assistance Program No. 93.778, Medical Assistance Program)

Dated: July 30, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–28379 Filed 11–19–93; 8:45 am]

BILLING CODE 4120–01–P

Food and Drug Administration

[Docket No. 93N–0425]

Animal Drug Export; Adequan® Canine (Polysulfated Glycosaminoglycan Sterile Injection)

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Luitpold Pharmaceuticals, Inc., has filed an application requesting approval for export to Canada of the animal drug Adequan® Canine (polysulfated glycosaminoglycan sterile injection). The drug is administered intramuscularly to dogs for the treatment of arthritis.

ADDRESSES: Relevant information on this application may be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857, and to the contact person identified below. Any future inquiries concerning the export of nonfood animal drugs under the Drug Export Amendments of 1986 should also be directed to the contact person.

FOR FURTHER INFORMATION CONTACT: Gregory S. Gates, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–1617.

SUPPLEMENTARY INFORMATION: The drug export provisions in section 802 of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 382) provide that FDA may approve applications for the export of drugs that are not currently approved in the United States. Section 802(b)(3)(B) of the act sets forth the

requirements that must be met in an application for approval. Section 802(b)(3)(C) of the act requires that the agency review the application within 30 days of its filing to determine whether the requirements of section 802(b)(3)(B) have been satisfied. Section 802(b)(3)(A) of the act requires that the agency publish a notice in the **Federal Register** within 10 days of the filing of an application for export to facilitate public participation in its review of the application. To meet this requirement, the agency is providing notice that Luitpold Pharmaceuticals, Inc., Animal Health Division, Shirley, NY 11967, has filed an application requesting approval for the export of the animal drug Adequan® Canine (polysulfated glycosaminoglycan sterile injection) to Canada. The drug is administered intramuscularly for the treatment of noninfectious degenerative and/or traumatic arthritis and associated lameness of canine synovial joints. The application was received and filed in the Center for Veterinary Medicine on October 28, 1993, which shall be considered the filing date for purposes of the act.

Interested persons may submit relevant information on the application to the Dockets Management Branch (address above) in two copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. These submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

The agency encourages any person who submits relevant information on the application to do so by December 2, 1993, and to provide an additional copy of the submission directly to the contact person identified above, to facilitate consideration of the information during the 30-day period.

This notice is issued under the Federal Food, Drug, and Cosmetic Act (sec. 802 (21 U.S.C. 382)) and under authority delegated to the Commissioner of Food and Drugs (21 CFR 5.10) and redelegated to the Center for Veterinary Medicine (21 CFR 5.44).

Dated: November 4, 1993.

Robert C. Livingston,

Director, Office of New Animal Drug Evaluation, Center for Veterinary Medicine.

[FR Doc. 93–28553 Filed 11–19–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0434]

Lyphomed, Division of Fujisawa USA, Inc.; Withdrawal of Approval of a New Drug Application

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of a new drug application (NDA) held by Lyphomed, Division of Fujisawa USA, Inc., 2045 North Cornell Ave., Melrose Park, IL 60160–1002 (Lyphomed). FDA is withdrawing approval of this application because of questions raised about the reliability of the data and information submitted to FDA in support of the application. Marketing of the drug has been discontinued, and Lyphomed has voluntarily requested withdrawal of approval of the application and waived its opportunity for a hearing.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Tamar Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies concerning the data used to support approval of the following NDA held by Lyphomed:

NDA 19–539, M.V.C. 9+4 (Pediatric).

Lyphomed has identified discrepancies in data submitted to obtain approval of the application listed above, which have raised questions about the reliability of the data. Subsequently, in a letter dated August 12, 1992, Lyphomed requested withdrawal of this NDA.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the NDA listed above, and all amendments and supplements thereto, is hereby withdrawn, effective November 22, 1993. Distribution of a new drug in interstate commerce without an approved application is unlawful.

Dated: November 8, 1993.

Murray M. Lumpkin,

Deputy Director for Review Management, Center for Drug Evaluation and Research.

[FR Doc. 93–28555 Filed 11–19–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

National Heart, Lung, and Blood Institute; Meeting of Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Heart, Lung, and Blood Institute on December 9 and 10, 1993, National Institutes of Health, 9000 Rockville Pike, Building 10, room 7N234, Bethesda, Maryland 20892.

This meeting will be open to the public from 9 a.m. to 5 p.m. on December 9 and from 9 a.m. to 1 p.m. on December 10 for discussion of the general trends in research relating to cardiovascular, pulmonary and certain hematologic diseases. Attendance by the public will be limited to space available.

In accordance with the provision set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public from 1 p.m. to adjournment on December 10, 1993 for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, phone (301) 496–4236, will provide a summary of the meeting and a roster of the Board members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Executive Secretary in advance of the meeting.

Substantive program information may be obtained from Dr. Edward D. Korn, Executive Secretary and Director, Division of Intramural Research, NHLBI, NIH, Building 10, room 7N214, phone (301) 496–2116.

Dated: November 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28559 Filed 11–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the following Heart, Lung, and Blood Special Emphasis Panel.

The meeting will be closed in accordance with the provisions set forth in section 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications, contract proposals, and/or cooperative agreements. These applications and/or proposals and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications and/or proposals, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Name of Panel: NHLBI SEP of RFA for Monoenergetic X-ray Systems for Cardiovascular Imaging.

Dates of Meeting: December 7, 1993.

Time of Meeting: 8:30 a.m.

Place of Meeting: Holiday Inn, Bethesda, Maryland.

Agenda: To evaluate and review grant applications.

Contact Person: Dr. Andre Premen, 5333 Westbard Avenue, room 5A10, Bethesda, Maryland 20892, (301) 594–7480.

(Catalog of Federal Domestic Assistance Programs Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; and 93.839, Blood Diseases and Resources Research, National Institutes of Health)

Dated: November 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28562 Filed 11–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee B

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee B, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 2 and 3, 1993 at the Holiday Inn Chevy Chase, Maryland 20815.

This meeting will be open to the public on December 2, from 8 a.m. to approximately 9 a.m. to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, United States Code, and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 2, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on December 3, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which could constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A21, National Institutes of Health, Bethesda, Maryland 20892, (301) 496–4236 will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Jeffrey H. Hurst, Scientific Review Administrator, Heart, Lung, and Blood Research Review Committee B, Westwood Building, room 555, National Institutes of Health, Bethesda, Maryland 20892, (301) 594–7418, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research, National Institutes of Health)

Dated: November 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28563 Filed 11–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Heart, Lung, and Blood Institute; Meeting of Heart, Lung, and Blood Research Review Committee A

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Heart, Lung, and Blood Research Review Committee A, National Heart, Lung, and Blood Institute, National Institutes of Health, on December 2 and 3, 1993, at the Holiday Inn Chevy Chase, the Palladium Center Conference Room, 5520 Wisconsin Avenue, Chevy Chase, Maryland 20815.

This meeting will be open to the public on December 2, from 8 a.m. to approximately 9 a.m., to discuss administrative details and to hear reports concerning the current status of the National Heart, Lung, and Blood Institute. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, United States Code, and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 2, from approximately 9 a.m. until recess, and from 9 a.m. until adjournment on December 3, for the review, discussion, and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Terry Long, Chief, Communications and Public Information Branch, National Heart, Lung, and Blood Institute, Building 31, room 4A–21, National Institutes of Health, Bethesda, Maryland 20892, 301–496–4236, will provide a summary of the meeting and a roster of the committee members.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact the Scientific Review Administrator in advance of the meeting.

Dr. Deborah P. Beebe, Scientific Review Administrator (Acting), Heart, Lung, and Blood Research Review Committee A, Westwood Building, room 555, National Institutes of Health, Bethesda, Maryland 20892, 301–594–7418, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos. 93.837, Heart and Vascular Diseases Research; 93.838, Lung Diseases Research; National Institutes of Health)

Dated: November 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28564 Filed 11–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Allergy and Infectious Diseases; Meeting: Board of Scientific Counselors

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors,

National Institute of Allergy and Infectious Diseases, on December 6–8, 1993. The meeting will be held in Building 4, room 233, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public on December 6 from 9 a.m. to 12 p.m. and from 1 p.m. to 2 p.m. On December 7 the meeting will be open from 8 a.m. until 10 a.m. During the open sessions, the permanent staff of the Laboratory of Molecular Microbiology and the Laboratory of Viral Diseases will present and discuss their immediate, past and present research activities.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 6 from 8:30 a.m. until 9 a.m., from 12 p.m. until 1 p.m., and from 2 p.m. until recess; on December 7 from 10 a.m. until recess; and on December 8 from 8 a.m. until adjournment, for the review, discussion, and evaluation of individual intramural programs and projects conducted by the National Institute of Allergy and Infectious Diseases, including consideration of personal qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Claudia Goad, Committee Management Officer, National Institute of Allergy and Infectious Diseases, Solar Building, room 3C26, National Institutes of Health, Bethesda, Maryland 20892, 301–496–7601, will provide a summary of the meeting and a roster of committee members upon request. Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Goad in advance of the meeting.

Dr. John I. Gallin, Executive Secretary, Board of Scientific Counselors, NIAID, National Institutes of Health, Building 10, room 4A31, telephone 301–496–3006, will provide substantive program information.

(Catalog of Federal Domestic Assistance Program No. 93–301, National Institutes of Health)

Dated: November 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28560 Filed 11–19–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute of Child Health and Human Development; Meeting of the Board of Scientific Counselors, NICHD

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Board of Scientific Counselors, National Institute of Child Health and Human Development, December 3, 1993, in Building 31, room 2A52.

This meeting will be open to the public from 9 a.m. to 12 noon on December 3 for the review of the Intramural Research Program and scientific presentations. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in section 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 3 from 1 p.m. to adjournment for the review, discussion, and evaluation of individual programs and projects conducted by the National Institutes of Health, including consideration of personnel qualifications and performance, the competence of individual investigators, and similar items, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Ms. Mary Plummer, Committee Management Officer, NICHD, 6100 Executive Boulevard, room 5E03, National Institutes of Health, Bethesda, Maryland, Area Code 301, 496–1485, will provide a summary of the meeting and a roster of Board members, and substantive program information upon request. Individuals who plan to attend the open session and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Ms. Plummer in advance of the meeting.

Dated: November 12, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28561 Filed 11–19–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–04; N–57877, CACA32685]

Realty Action; Exchange of Public Lands in Clark County, Nevada, for Private Lands in Washoe, Lyon, and Storey Counties, Nevada and San Bernardino County, California; Correction

November 8, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Correction notice.

SUMMARY: This notice corrects errors in the legal description in the Notice of Realty Action published in the **Federal Register** on October 22, 1993, on pages 54600 and 54601.

1. Page 54600, column 3, line 61: Change T. 11 N., R. 3 E. to read T. 11 N., R. 3 W.
2. Page 54600, column 3, line 65: Change T. 12 N., R. 3 E. to read T. 12 N., R. 3 W.
3. Page 54601, column 1, line 50: Change Sec. 16: SE¼NE¼S½NW¼ to read Sec. 16, SE¼NE¼, S½NW¼.
4. Page 54601, column 2, line 18: Change Sec. 20: N½NW¼S½NW¼, E½SW¼ to read Sec. 20, NW¼, E½SW¼.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–28548 Filed 11–19–93; 8:45 am]

BILLING CODE 4310–HC–M

[NV–930–04–4210–05; N–57141]

Realty Action; Non-Competitive Sale of Public Lands in Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Amendment of NORA.

SUMMARY: The Notice of Realty Action (NORA) published in the **Federal Register** on April 16, 1993 (58 FR 19840; FR Doc. 93–8889), amended by a NORA published in the **Federal Register** on July 9, 1993 (58 FR 36986, FR Doc. 93–16276), is further amended to change the legal description of the proposed Indian Springs and Overton/Logandale solid waste transfer station sites to.

T. 16 S., R. 56 E. (Indian Springs), sec. 08: NE¼NE¼SE¼SW¼

T. 16 S., R. 68 E. (Overton/Logandale), sec. 06: E½SW¼NW¼SE¼

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all forms of appropriation under the public land

laws, including the general mining laws, except for recreation and public purposes, leasing under the mineral leasing laws and disposal of mineral materials.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

All of the other terms and conditions of the original NORA continue to apply.

Dated: November 9, 1993.

Colin P. Christensen,

(Acting District Manager, Las Vegas, NV).

[FR Doc. 93-28552 Filed 11-19-93; 8:45 am]

BILLING CODE 4310-HC-M

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32382]

Soo Line Railroad Company—Trackage Rights Exemption— Chicago and North Western Transportation Co.; Exemption

Chicago and North Western Transportation Company has agreed to grant overhead trackage rights to Soo Line Railroad Company (Soo) over 2.5 miles of its Hopkins-to-Cedar Lake, MN rail line. The trackage rights extend from the Soo connection at milepost 16.2, West St. Louis Park, to the Burlington Northern Railroad Company connection at milepost 13.7, in Minneapolis, MN. The trackage rights were to become effective November 12, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Wayne C. Serkland, 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in Mendocino Coast Ry., *Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 15, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28586 Filed 11-19-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF JUSTICE

Information Collections Under Review

The Office of Management and Budget (OMB) has been sent the following collection(s) of information proposals for review under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) and the Paperwork Reduction Reauthorization Act since the last list was published. Entries are grouped into submission categories, with each entry containing the following information:

(1) The title of the form/collection;
(2) The agency form number, if any, and the applicable component of the Department sponsoring the collection;
(3) How often the form must be filled out or the information is collected;
(4) Who will be asked or required to respond, as well as a brief abstract;
(5) An estimate of the total number of respondents and the amount of time estimated for an average respondent to respond;
(6) An estimate of the total public burden (in hours) associated with the collection; and,
(7) An indication as to whether section 3504(h) of Public Law 96-511 applies.

Comments and/or suggestions regarding the item(s) contained in this notice, especially regarding the estimated public burden and associated response time, should be directed to the OMB reviewer, Mr. Jeff Hill on (202) 395-7340 and to the Department of Justice's Clearance Officer, Mr. Lewis Arnold, on (202) 514-4305. If you anticipate commenting on a form/collection, but find that time to prepare such comments will prevent you from prompt submission, you should notify the OMB reviewer and the DOJ Clearance Officer of your intent as soon as possible. Written comments regarding the burden estimate or any other aspect of the collection may be submitted to Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, and to Mr. Lewis Arnold, DOJ Clearance Officer, SPS/JMD/5031 CAB, Department of Justice, Washington, DC 20530.

Revision of a Currently Approved Collection

(1) INSPASS Application
(2) I-833. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. This form is used to facilitate entry into the United States by frequent travelers from the United States, Canada, Bermuda, and Visa Waiver Pilot Program (VWPP) countries through an automated inspections processing. The system, called INSPASS, combines an enrollment process with biometrics technology (hand geometry) to be used for the accelerated inspections processing.
(5) 250,000 annual respondents at .166 hours per response
(6) 41,500 annual burden hours
(7) Not applicable under section 3504(h)

Extension of the Expiration Date of a Currently Approved Collection Without Any Change in the Substance or in the Method of Collection

(1) Petition for a Nonimmigrant Worker
(2) I-129. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. This form is used to petition for temporary workers and for the admission of Treaty Traders and Investors. It is also used in the processes of an extension of stay or for a change of status to the nonimmigrant classes.
(5) 110,000 annual respondents at 1.41 hours per response
(6) 155,100 annual burden hours
(7) Not applicable under section 3504(h)

(1) Application of Waiver of Grounds of Excludability
(2) I-601. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. The information provided on this form will be used to determine an applicant's eligibility for a waiver of excludability from the United States under Section 212 (g), (h), or (i) of the Act.
(5) 3,000 annual respondents at .50 hours per response
(6) 1,500 annual burden hours
(7) Not applicable under section 3504(h)

(1) Application for Advance Permission to Return to Unrelinquished Domicile
(2) I-191. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. Information collected on this form will be used by the Service to determine whether an applicant is eligible for status under section 212(c) of the Act.
(5) 300 annual respondent at .25 hours per response

(6) 75 annual burden hours
(7) Not applicable under section 3504(h)
(1) Petition for Alien Fiance(e)
(2) I–129F. Immigration and Naturalization Service
(3) On occasion
(4) Individuals or households. Through the filing of this form, a United States citizen may facilitate the entry of his/her fiance(e) into the United States so that a marriage may be concluded within 90 days between the U.S. citizen and the beneficiary of the petition.
(5) 20,000 annual respondents at .50 hours per response
(6) 10,000 annual burden hours
(7) Not applicable under section 3504(h)
(1) Petition for Alien Relative
(2) I–130. Immigration and Naturalization Service
(3) On occasion
(4) Individuals and households. The information collected on this form will be used to determine eligibility for benefits sought for relatives of U.S. citizens and lawful permanent residents.
(5) 825,000 annual respondents at .50 hours per response
(6) 412,500 annual burden hours
(7) Not applicable under section 3504(h).

Public comment on these items is encouraged.

Dated: November 16, 1993.

Lewis Arnold,

Department Clearance Officer, Department of Justice.

[FR Doc. 93–28569 Filed 11–19–93; 8:45 am]

BILLING CODE 4410–01–M

Antitrust Division

Notice Pursuant to the National Cooperative Research and Production Act of 1993—The Frame Relay Forum

Notice is hereby given that, on September 28, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), The Frame Relay Forum ("FRF") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing changes in its membership.

The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, the identities of the additional members of FRF are: NETLINK, Ltd., Raleigh, NC; OKI America, Inc., New York, NY; and Premisys Communications, Palo Alto, CA.

KDD, Inc., a member of FRF, has changed its name to KDD America, Inc.

The following are no longer members of FRF: Advanced Computer Communications; Convex Computer Corporation; GN Navtel; Newport Systems Solutions; SynOptics Communications; and Transwitch Corporation.

No other changes have been made in either the membership or planned activities of the FRF. Membership remains open, and FRF intends to file additional written notifications disclosing all changes in membership.

On April 10, 1992, FRF filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on July 2, 1992 (57 FR 29537).

The last notification was filed with the Department on July 1, 1993. A notice was published in the **Federal Register** pursuant to Section 6(b) of the Act on August 30, 1993 (58 Fed. Reg. 45532).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–28549 Filed 11–19–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993—Petroleum Environmental Research Forum Project No. 92–09

Notice is hereby given that, on October 21, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the participants in the Petroleum Environmental Research Forum ("PERF") Project No. 92—09, titled "Evaluation of Toxicity of Hydrogen Fluoride at Short Exposure Times," filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing membership changes in the project. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Specifically, Amoco Corporation, Chicago, IL and Elf Aquitaine, Inc., King of Prussia, PA have become members of the project.

No other changes have been made in either the membership or planned activity of the group research project. Membership in the venture remains open, and the parties intend to file additional written notification disclosing all changes in membership. Information regarding participation in the project may be obtained from: Dr. P.A. Naro, Environmental and Health Sciences Laboratory; Mobil Oil Corporation, P.O. Box 1026, Princetown, NJ 08543–1029.

On April 12, 1993, the participants in PERF Project No. 92–09 filed the original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on June 2, 1993 (58 FR 31416).

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–28551 Filed 11–19–93; 8:45 am]

BILLING CODE 4410–01–M

Notice Pursuant to the National Cooperative Research and Production Act of 1993; Research into Field Emission Display Technology

Notice is hereby given that, on September 28, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), Pixel International S.A. has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing (1) the identities of the parties and (2) the nature and objectives of a cooperative research venture entitled the FED Alliance (the "venture"). The notifications were filed for the purpose of invoking the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. Pursuant to section 6(b) of the Act, the identities of the parties are Pixel International S.A., Rousset, FRANCE; and Texas Instruments Incorporated, Dallas, TX. The objective of the venture is to conduct research in the area of Field Emission Displays ("FED"), an enabling technology for flat panel displays, and specifically to investigate and promote advancements and improvements to the FED technology owned or controlled by Pixel and licensed to each of the members of the venture. It is anticipated that the members of the venture will develop multiple applications of FED technology including, without limitation, applications relating to computers, consumer electronic products, aviation and aerospace, telecommunications, automotive and industrial uses.

Additional members are expected to join the venture, and the parties intend

to file additional written notification disclosing all changes in membership.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93-28550 Filed 11-19-93; 8:45 am]

BILLING CODE 4410-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 030-30082; License No. 49-26888-01; EA 93-033]

N.V. Enterprises, Evanston, Wyoming 82601; Issuance of Confirmatory Order

The Nuclear Regulatory Commission is publishing the attached Confirmatory Order that restricts N.V. Enterprises and Neal A. Cox from owning, managing or acting as Radiation Safety Officer of any entity engaged in NRC licensed activities for a period of three years. The purpose of this action is to provide public notice of a significant enforcement action.

Dated at Rockville, Maryland this 16th day of November 1993.

For The Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

I

N.V. Enterprises (NV) formerly held NRC Byproduct Material License No. 49-26888-01 (License), issued on July 19, 1988 by the Nuclear Regulatory Commission. The License authorized the possession and use of sealed sources in industrial radiography. The license expired on July 31, 1993. An application for renewal of the License was not filed.

II

An inspection by the Nuclear Regulatory Commission (NRC) was conducted on October 22, 1991, at the Licensee's facility in Casper, Wyoming. This inspection and a subsequent investigation identified one violation of NRC requirements, a failure to wear alarm ratemeters during the performance of industrial radiography. The investigation determined this violation to have been willful on the part of the owner and president of NV, Mr. Neal A. Cox. On May 7, 1993, the NRC issued an Enforcement Action (EA 93-033) against NV consisting of a Notice of Violation and Proposed Imposition of Civil Penalty—$4,000 (Notice). On June 1, 1993, the Licensee filed an Answer and a Reply to the Notice and requested that the NRC permit NV to terminate its license in lieu of paying the civil penalty. In telephone conversations on June 14, 1993 and September 21, 1993, Neal A. Cox advised the NRC, Region IV office that he would not own, manage, or act as Radiation Safety Officer (RSO) of any entity engaged in NRC licensed activities for a period of three years if the NRC would withdraw the civil penalty. On July 27, 1993, the Licensee submitted a Certificate of Disposition of Materials and a request for termination of its License. Based on the information submitted by NV and NRC confirmation of receipt of the devices containing the licensed radioactive material by the transferee, the NRC is satisfied that NV has transferred all of its licensed materials.

III

The Notice proposed a $4,000 civil penalty and the Licensee filed an Answer and a Reply to the Notice. In telephone conversations on June 14, 1993 and September 21, 1993, with Charles Cain of the NRC, Region IV, Neal A. Cox agreed that he would not own, manage, or act as RSO of any entity engaged in NRC licensed activities for three years and would terminate his license, if the NRC would withdraw the civil penalty. As the parties desire to resolve all matters pending between them, Neal A. Cox agrees, for a period of three years from the date that he signs this Confirmatory Order, that he will not own, manage, or act as Radiation Safety Officer, of any entity engaged in licensed activities within the jurisdiction of the NRC for that same period of time.

IV

Accordingly, pursuant to section 81, 161b, 161i, 186, and 234 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202, 2.205, and 10 CFR Parts 30, 34, and 150, it is hereby ordered, stipulated and agreed between the NRC and Neal A. Cox as follows:

1. The NRC withdraws the civil penalty of $4,000 as proposed in the Notice dated May 7, 1993 (EA 93-033).

2. For a period of three years from the date Neal A. Cox signs this Confirmatory Order, Neal A. Cox, will not own, manage, or act as Radiation Safety Officer of any entity engaged in licensed activities within NRC jurisdiction, including an Agreement State licensee working under reciprocity, for that same period of time.

3. This Confirmatory Order constitutes settlement without payment of a civil penalty proposed in the Notice dated May 7, 1993 (EA 93-033). However, if Neal A. Cox violates paragraph 2 of this Section, then the civil penalty of $4,000 will be reinstated by an Order Imposing Civil Penalty and the civil penalty of $4,000 will be due in full within 30 days of the date of that Order Imposing Civil Penalty.

4. Neal A. Cox, NV, and their successors and assigns waive the right to contest this Order in any manner, including requesting a hearing on this Order or the Order Imposing Civil Penalty, should one be issued as provided in paragraph 3 of this Section.

5. NRC License No. 49-26888-01 is terminated by attached Amendment No. 2.

Dated: November 5, 1993.

For the Nuclear Regulatory Commission.

James Lieberman.

Dated: November 2, 1993.

For N.V. Enterprises.

Neal A. Cox.

[FR Doc. 93-28604 Filed 11-19-93; 8:45 am]

BILLING CODE 7590-01-M

POSTAL SERVICE

Privacy Act of 1974; System of Records

AGENCY: Postal Service.

ACTION: Notice of new routine use for existing system of records.

SUMMARY: The purpose of this notice is to provide information for public comment on the Postal Service's proposal to add a new routine use to USPS Privacy Act System 050.020—Finance Records—Payroll System. The new routine use will permit disclosure of certain employee payroll information, through computer matching efforts, regarding wages, expenses, compensation, reimbursement and taxes withheld to the Internal Revenue Service. This notice complies with subsection (e)(11) of the Privacy Act, which requires agencies to publish advance notice of any new use of information in a system of records.

DATES: Any interested party may submit written comments on the proposed new routine use. This proposal will become effective without further notice 30 days from the date of this publication (December 22, 1993), unless comments are received on or before that date which result in a contrary determination.

ADDRESSES: Comments may be mailed to Records Office, U.S. Postal Service, 475 L'Enfant Plaza SW., room 8831, Washington, DC 20260-5240 or delivered to room 8831 at the above address between 8:15 a.m. and 4:45 p.m., where they will be available for inspection during those hours.

FOR FURTHER INFORMATION CONTACT:

Sheila Allen, Records Office, (202) 268–4869.

SUPPLEMENTARY INFORMATION: The Postal Service (USPS) is proposing a new routine use for its Privacy Act System of Records, USPS 050.020, Finance Records—Payroll System. Routine Use No. 2 of this system of records provides for disclosure of name, address, social security number, wages and taxes withheld to federal, state, and local government agencies having taxing authority. Routine Use No. 27 of this system provides for disclosure of those data elements relevant to identifying individuals who owe delinquent federal taxes or returns to the IRS under computer matching efforts. The proposed Routine Use No. 30 will permit the USPS to provide information about specified categories of employees' wages, expenses, compensation, reimbursement, and taxes withheld to the IRS, also through computer matching. This information will enable the IRS to determine whether employees in specified categories properly reported information on their tax returns, and whether corrective action is warranted.

For example, the IRS has requested information to determine whether rural carriers who receive business expense reimbursement from the USPS are properly reporting this as income on their tax returns. The proposed routine use would enable the USPS to supply the requested information to the IRS.

Since information disclosed under this new routine use will assist in the administration of federal tax laws, the proposed routine use is clearly compatible with the purposes for which records are maintained in USPS 050.020. Accordingly, the Postal Service is adding Routine Use No. 30 to USPS 050.020, as shown below. A full description of this system of records last appeared at 57 FR 57515, dated December 4, 1992.

USPS 050.020

SYSTEM NAME:

Finance Records—Payroll System.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES.

* * * * *

30. Disclosure of information about current or former postal employees may be made to the Internal Revenue Service under computer matching efforts, but limited only to those data elements relevant to making a determination as to the proper reporting for income tax purposes of an employee's wages, expenses, compensation, reimbursement, and taxes withheld, and to taking corrective action as warranted.

Stanley F. Mires,

Chief Counsel, Legislative Division.

[FR Doc. 93–28608 Filed 11–19–93; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33191; File No. SR–Amex–93–25]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the American Stock Exchange, Inc. Relating to the Trading of Options on the North American Telecommunications Index and Long-Term Options on the Full-Value and Reduced-Value North American Telecommunications Index

November 12, 1993.

I. Introduction

On September 8, 1993, the American Stock Exchange ("Amex" or "Exchange") submitted to the Securities and Exchange Commission ("Commission" or "SEC"), pursuant to section 19(b)(1) of the Securities and Exchange Act of 1934 ("the Act")[1] and rule 19b–4 thereunder,[2] a proposal to list and trade index options on the North American Telecommunications Index ("Telecommunications Index" or "Index").

Notice of the proposed rule changes was published for comment and appeared in the **Federal Register** on October 18, 1993.[3] No comments were received on the proposed rule change. This order approves the proposal.

II. Description of the Proposal

A. Introduction

The Exchange is proposing to list and trade options on the Telecommunications Index. The Index is a new index developed by the Exchange and comprised of either stocks or American Depositary Receipts ("ADRs") traded on the New York Stock Exchange, Inc. ("NYSE"), Amex, or through the National Market System ("NMS") tier of the National Association of Securities Dealers, Inc. ("NASD") Automated Quotation ("NASDAQ") system.[4] The Amex also proposes to list and trade either long-term options on the full-value of the Index or long-term options on a reduced-value of the Index that will be computed at one-tenth of such value ("LEAPS" or "Index LEAPS").[5] Index LEAPS will trade independently of and in addition to the regular options on the Telecommunications Index.

B. Composition of the Index

The Index contains securities of highly-capitalized companies in the North American telecommunications industry.[6] The telecommunications industry in North America includes U.S., Canadian, and Mexican companies that provide telephone, long distance, cellular phone, paging, or other telecommunications related services; supply telecommunications equipment; or which otherwise are involved in the telecommunications industry. The Exchange will use an "equal" dollar-weighted method to calculate the Index.[7] As of August 9, 1993, the Index level was 321.88.

As of August 9, 1993, the market capitalizations of the individual stocks in the Index ranged from a high of $84.6 billion to a low of $5 billion, with the mean and median being $22.9 billion and $19.6 billion, respectively. The market capitalization of all the stocks in the Index was $344.3 billion. The total number of shares outstanding for the stocks in the Index ranged from a high of 1.3 billion shares to a low of 186.9 million shares. The average price per share of the stocks in the Index, for a six-month period between February and July 1993, ranged from a high of $86.13 to a low of $25.07. In addition, the average daily trading volume of the stocks in the Index, for the same six-month period, ranged from a high of 3.01 million shares per day to a low of 180,100 shares per day, with the mean and median being 812,270 and 539,046 shares, respectively. Lastly, as of August 9, 1993, no one stock comprised more

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1993).

[3] See Securities Exchange Act Release No. 33035 (October 8, 1993), 58 FR 53750 (October 18, 1993).

[4] Currently, the Index consists of 13 stocks and one ADR traded on the NYSE and one stock traded NASDAQ/NMS. In addition, should the index contain component securities listed on the Amex, none of the components will be Emerging Company Marketplace companies (as defined in the Amex Company Guide). Telephone conversation between Richard Zack, Branch Chief, Branch of Derivatives Regulation, SEC, and Nathan Most, Senior Vice President, New Products Planning, Amex, on November 10, 1993.

[5] LEAPS is an acronym for Long Term Equity Anticipation Securities.

[6] The current component securities of the Index are stocks or ADRs of Ameritech Corp., ALLTEL Corp., BCE Inc., Bell Atlantic Corp., BellSouth Corp., Spirit Corp., GTE Corp., MCI Communications Corp., Northern Telecom Ltd., NYNEX Corp., Pacific Telesis Group, Southwestern Bell Corp., American Telephone and Telegraph Corp., Telefonos De Mexico (ADR), and US West Inc.

[7] See infra section E entitled "Calculation of the Index" for a description of this calculation method.

than 7.05% of the Index's total value and the percentage weighting of the three largest issues in the Index accounted for 20.97% of the Index's value.

C. Maintenance

The Index will be maintained by the Amex. The Amex may change the composition of the Index at any time to reflect the conditions in the North American telecommunications sector and to ensure that the component securities continue to represent the telecommunications industry. At any time when it is necessary to replace a stock or stocks in the Index, the Exchange represents that it will make every effort to add new stocks that are representative of the telecommunications sector and will take into account a stock's capitalization, liquidity, volatility and name recognition. Further, stocks may be replaced in the event of certain corporate events, such as takeovers or mergers, that change the nature of the security. If, however, the Exchange determines to increase the number of Index component stocks to greater than twenty or reduce the number of component stocks to fewer than ten, the Amex will submit a rule filing with the Commission pursuant to section 19(b) of the Act.

D. Eligibility Standards for the Inclusion of Component Stocks in the Index

Exchange Rule 901C specifies criteria for the inclusion of stocks in an index on which options will be traded on the Exchange. Specifically, Rule 901C states that an index must have a minimum of five stocks, and any index with less than 25 component stocks may not include stocks traded on the Amex.[8] In addition, the Exchange will require, as reflected in amended Commentary .01 to Exchange Rule 901C, that at least 90% of the Index's numerical value, at the time the Index is listed and after the Index's quarterly rebalancing, be accounted for by stocks that meet the Exchange's options listing standards pursuant to Exchange Rule 915.[9]

In choosing among North American telecommunications industry stocks that meet the minimum criteria set forth in Rule 901C, the Exchange will focus only on stocks that are traded on either the NYSE, Amex (subject to the limitations of Rule 901C) or traded through NASDAQ/NMS. In addition, the proposal requires that the stocks included in the Index have an average monthly trading volume of not less than one million shares (or ADRs) in the U.S. market over the previous six-month period. Further, the Exchange intends, as an additional listing criteria standard, to include stocks that have a minimum market value (in U.S. dollars) of at least $75 million.[10]

E. Calculation of the Index

The Index will be calculated using an "equal-dollar weighting" methodology designed to ensure that each of the component securities are represented in approximately "equal" dollar amounts in the Index. The Exchange believes that this method of calculation is important since even among the largest companies in the telecommunications industry there is a great disparity in size. For example, although the stocks included in the Index represent many of the most highly capitalized companies in the retail industry, American Telephone and Telegraph (AT&T), currently represents over 24% of the aggregate market value of the Index. In addition, it has been the Exchange's experience that options on market value-weighted indexes dominated by one component stock are less useful to investors, since the index will tend to represent the one component and not the industry as a whole.

The following is a description of how the equal-dollar weighting calculation method works. As of the market close on January 18, 1993, the Amex selected a portfolio of telecommunications stocks representing an investment of $66,667 in the stock (rounded to the nearest whole share) of each of the companies in the Index. The value of the Telecommunications Index equals the current market value (based on the U.S. primary market share) of the sum of the assigned number of shares of each of the stocks in the Index portfolio divided by the Index divisor. The Index divisor was initially determined to yield the benchmark value of 300.00 at the close of trading on January 18, 1993. Each quarter thereafter, following the close of trading on the third Friday of January, April, July, and October, the Index portfolios will be adjusted by changing the number of whole shares of each component stock so that each company is again represented in "equal" dollar amounts. The Exchange has chosen to rebalance the Index following the close of trading on the quarterly expiration cycle because it allows an option contract to be held for up to three months without a change in the Index portfolio while at the same time, maintaining the equal-dollar weighting feature of the Index. If necessary, a divisor adjustment is made when rebalancing occurs to ensure continuity of the Index's value. The newly adjusted portfolio then becomes the basis for the Index's value on the first trading day following the quarterly adjustment.

The Amex has had experience making regular quarterly adjustments to a number of its indexes (such as the Biotechnology and Retail Indexes) and has not encountered investor confusion regarding the adjustments, since they are done on a regular and timely basis, with adequate notice. An information circular is distributed to all Exchange members notifying them of the quarterly changes. This circular is also sent by facsimile to the Exchange's contacts at the major options firms, mailed to recipients of the Exchange's options related information circulars, and made available to subscribers of the Options News Network. In addition, the Exchange will include in its promotional and marketing materials for the Telecommunications Index a description of the "equal-dollar" weighting methodology.

As noted above, the number of shares of each component stock in the Index portfolio remain fixed between quarterly reviews except in the event of certain types of corporate actions such as the payment of a dividend (other than an ordinary cash dividend), stock distribution, stock split, reverse stock split, rights offering, distribution, reorganization, recapitalization, or similar event with respect to the component stocks. In a merger or consolidation of an issuer of a component stock, if the stock remains in the Index, the number of shares of that security in the portfolio may be adjusted, to the nearest whole share, to maintain the component's relative weight in the Index at the level

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[8] Accordingly, the North American Telecommunications Index as currently constituted does not include Amex-traded stocks. The Amex, however, has submitted a proposal, that, among other things, revises Amex Rule 901C to remove the limitation on the number of Amex stocks that can be included in an index which underlies a stock index option traded on the Exchange. Specifically, the proposal would allow, among other things, Amex-listed stocks to be included in Amex-traded index options that are comprised of less than 25 stocks. See Securities Exchange Act Release No. 30356 (February 10, 1992), 57 FR 5497 (February 14, 1992) (notice of File No. SR-Amex-91-35).

[9] The Amex's options listing standards, found in Rule 915, which are uniform among the options exchanges, provide that a security underlying an option must, among other things, meet the following requirements: (1) The public float must be at least 7,000,000; (2) there must be a minimum of 2,000 stockholders; (3) trading volume must have been at least 2.4 million over the preceding twelve months; and (4) the market price must have been at least $7.50 for a majority of the business days during the preceding three calendar months.

[10] Telephone conversations between Richard Zack, Branch Chief, Branch of Derivatives Regulation, SEC, and Nathan Most, Senior Vice President, New Products Planning, Amex, on November 10, 1993.

immediately prior to the merger or consolidation. In the event of a stock replacement, the average dollar value of the remaining portfolio components will be calculated and that amount invested in the stock of the new component, to the nearest whole share. In all cases, the divisor will be adjusted, if necessary, to ensure Index continuity.

Similar to other stock index values published by the Exchange, the value of the Index will be calculated continuously and disseminated every 15 seconds over the Consolidated Tape Association's Network B.

The Index value for purposes of settling outstanding Index options contracts upon expiration will be calculated based upon the regular way opening sale prices for each of the Index's component stocks in their primary market on the last trading day prior to expiration.[11] In the case of securities traded through the NASDAQ/NMS system, the first reported sale price will be used. Once all of the component stocks have opened, the value of the Index will be determined and that value will be used as the final settlement value for expiring Index options contracts. If any of the component stocks do not open for trading on the last trading day before expiration, then the prior trading day's (i.e., Thursday's) last sale price will be used in the Index calculation. In this regard, before deciding to use Thursday's closing value of a component stock for purposes of determining the settlement value of the Index, the Amex will wait until the end of the trading day on expiration Friday.[12]

F. Contract Specifications

The proposed options on the Index will be cashed-settled, European-style options.[13] Standard options trading hours (9:30 a.m. to 4:10 p.m. New York time) will apply to the contracts. Under Amex Rule 903C, the Exchange intends to list up to three near-term calendar months and two additional calendar months in three month intervals in the January cycle. The Exchange also intends to list long-term options series, having up to thirty-six months to expiration, on either the full-value Telecommunications Index or on a reduced-value Telecommunications Index. Strike price interval, bid/ask differential and price continuity rules will not apply to the trading of Telecommunication Leaps until their time to expiration is less than twelve months.[14]

The options on the Index will expire on the Saturday following the third Friday of the expiration month ("Expiration Friday"). Since options on the Index will settle based upon the opening prices of the component stocks on the last trading day before expiration (normally a Friday), the last trading day for an expiring Index option series will normally be the second to the last business day before expiration (normally a Thursday).

G. Listing of Long-Term Options on the Full-Value or Reduced-Value Retail Index

The proposal provides that the Exchange may list long-term index options that expire from 12 to 36 months from listing on the full-value Telecommunications Index, or a reduced-value Telecommunications Index that will be computed at one-tenth the value of the full-value Index. The current and closing Index value for reduced-value Telecommunications LEAPS will be computed by dividing the value of the full-value Index by 10 and rounding the resulting figure to the nearest one-hundredth. For example, an Index value of 185.46 would be 18.55 for the Index LEAPS and 185.43 would become 18.54. The reduced-value LEAPS will have a European-style exercise and will be subject to the same rules that govern the trading of all the Exchange's index options, including sales practice rules, margin requirements and floor trading procedures. The strike price interval for the reduced-value Index LEAPS will be no less than $2.50 instead of $5.00.

In addition, the proposal provides that full-value or reduced-value North American Telecommunication LEAPS will be issued at no less than six month intervals and that new strike prices will either be near or bracketing the current Index value.

H. Position and Exercise Limits, Margin Requirements, and Trading Halts

Because the Index is a Stock Index Option under Amex Rule 901C(a) and a Stock Index Industry Group under Rule 900C(b)(1), the proposal provides that Exchange rules that are applicable to the trading of narrow-based index options will apply to the trading of options on the Index. Specifically, Exchange rules governing margin requirements,[15] position and exercise limits,[16] and trading halt procedures[17] that are applicable to the trading of narrow-based index options will apply to options traded on the Index. The proposal further provides that positions in full-value and reduced-value Index options will be aggregated for position and exercise limit purposes. Specifically, under the proposal, ten reduced-value contracts will equal one full-value contract.

I. Surveillance.

Surveillance procedures currently used to monitor trading in each of the Exchange's other index options will also be used to monitor trading in full-value and reduced-value Index options. These procedures include complete access to trading activity in the underlying securities. Further, the Intermarket Surveillance Group Agreement, dated July 14, 1983, as amended on January 29, 1990, will be applicable to the trading of options on the Index.[18]

III. Findings and Conclusions

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[19] Specifically, the Commission finds that the trading of North American Telecommunications options, including full-value and reduced-value North American Telecommunications LEAPS,

[11] See Securities Exchange Act Release No. 31330 (October 16, 1992), 57 FR 48408 (October 23, 1992).

[12] For purposes of the daily dissemination of the Index value, if a stock included in the Index has not opened for trading, the Amex will use the closing value of that stock on the prior trading day when calculating the value of the Index, until the stock opens for trading.

[13] A European-style option can be exercised only during a specified period before the option expires.

[14] See Securities Exchange Act Release No. 25041 (October 16, 1987), 52 FR 40008 (October 26, 1987) (order approving SR–Amex–87–22).

[15] Pursuant to Amex Rule 462(d)(2)(D)(iv), the margin requirements for the Index options will be: (1) For each short options positions, 100% of the current market value of the options contract plus 20% of the underlying aggregate Index value, less any out-of-the-money amount, with a minimum requirement of the options premium plus 10% of the underlying Index value; and (2) for long options positions, 100% of the options premium paid.

[16] Pursuant to Amex Rules 904C and 905C, respectively, the position and exercise limits for the Index options will be 8,000 contracts, unless the Exchange determines, pursuant to Rules 904C and 905C, that a lower limit is warranted.

[17] Pursuant to Amex Rule 918C, the trading of Index options will be halted or suspended whenever trading in underlying securities whose weighted value represents more than 20% of the Index value are halted or suspended.

[18] ISG was formed on July 14, 1983 to, among other things, coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets. See Intermarket Surveillance Group Agreement, July 14, 1983. The most recent amendment to the ISG Agreement, which incorporates the original agreement and all amendments made thereafter, was signed by ISG members on January 29, 1990. See Second Amendment to the Intermarket Surveillance Group Agreement, January 29, 1990.

[19] 15 U.S.C. 78f(b)(5) (1988).

will serve to promote the public interest and help to remove impediments to a free and open securities market by providing investors with a means to hedge exposure to market risk associated with securities in the telecommunications industry.[20]

The trading of options on the Telecommunications Index and on a reduced-value Telecommunications Index, however, raises several concerns, namely issues related to index design, customer protection, surveillance, and market impact. The Commission believes, for the reasons discussed below, that the Amex adequately has addressed these concerns.

A. Index Design and Structure

The Commission finds that the Telecommunications Index and reduced-value Telecommunications Index are narrow-based indexes. The Index is comprised of only fifteen stocks, all of which are within one industry—the telecommunications industry. In addition, the basic character of the reduced-value Telecommunications Index, which is comprised of the same component securities as the Telecommunications Index and calculated by dividing the Index value by ten, is essentially identical to the full-value Telecommunications Index.[21]

Accordingly, the Commission believes it is appropriate for the Amex to apply its rules governing narrow-based index options to trading in the Index options.[22]

The Commission also finds that the large capitalizations, liquid markets, and relative weightings of the Index's component stocks significantly minimize the potential for manipulation of the Index. First, the overwhelming majority of the stocks that comprise the Index are actively traded, with a mean and median average daily trading volume on August 9, 1993, of 812,270 and 539,046 shares, respectively.[23] Second, the market capitalizations of the stocks in the Index are very large, ranging from a high of $84.6 billion to a low of $5 billion as of August 9, 1993, with the mean and median being $22.9 billion and $19.6 billion, respectively.[24] Third, although the Index is only comprised of fifteen stocks, no one particular stock or group of stocks dominates the Index. Specifically, as of August 9, 1993, no one stock comprised more than 7.05% of the Index's total value and the percentage weighting of the three largest issues in the Index accounted for 20.97% of the Index's value. Fourth, all of the component stocks in the Index currently are eligible for options trading and at no point after a quarterly rebalancing, will the Index contain less than 90% option eligible component stocks. Fifth, the Amex, prior to increasing the number of component stocks to more than twenty or decreasing that number to less than ten, will be required to seek Commission approval pursuant to section 19(b)(2) of the Act before effecting such change. This will help protect against material changes in the composition and design of the Index that might adversely affect the Amex's obligations to protect investors and to maintain fair and orderly markets in Telecommunications Index options.

In addition, the Commission does not believe that the fact that the Index is equal dollar-weighted instead of market-weighted or price-weighted results in the Index being readily susceptible to manipulation. Because the use of an equal dollar-weighting method, however, could give securities with relatively small floats or prices a greater weight in the Index than if the Index were capitalization weighted or price weighted, the Commission is concerned that this calculation method could make the Index more readily susceptible to manipulation. The Amex, however, has developed several composition and maintenance criteria for the Index that the Commission believes will minimize the possibility that the Index could be manipulated through trading in less actively traded securities or securities with smaller prices or floats. First, the Amex proposal requires that 90% of the weighting of the Index be accounted for by stocks that are eligible for standardized options trading. The Commission believes that this requirement will ensure that the Index will be almost entirely made up of stocks with large public floats that are actively traded, thus reducing the likelihood that the Index could be manipulated by abusive trading in the smaller stocks contained in the Index. Second, the proposal provides that only stocks with an average monthly trading volume of not less than one million shares over the previous six months will be eligible for inclusion in the Index. This trading volume requirement is considerably higher than the requirement contained in the options listing standards for individual equity options. Third, the Commission believes that the quarterly rebalancing of the Index will further serve to reduce the susceptibility of the Index to manipulation. Through the quarterly rebalancing, any "overweight stock" [25] will be brought back into line with the other stocks, thus ensuring that less capitalized stocks do not become excessively weighted. Fourth, because the Index is narrow-based, the applicable position and exercise limits and margin requirements will further reduce the susceptibility of the Index to manipulation. Lastly, the Amex represents that it will make every effort to add new stocks to the Index that are representative of the North American telecommunications sector and will take into account a stock's capitalization, liquidity, and volatility.[26]

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[20] Pursuant to section 6(b)(5) of the Act, the Commission must predicate approval of any new option proposal upon a finding that the introduction of such new derivative instrument is in the public interest. Such a finding would be difficult for a derivative instrument that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns. In this regard, the trading of listed options on the Telecommunications Index will provide investors with a hedging vehicle that should reflect the overall movement of the stocks comprising the telecommunications industry in the U.S., Canada, and Mexico stock markets. The Commission also believes that these Index options will provide investors with a means by which to make investment decisions in the telecommunications industry sector of the U.S., Canadian, and Mexican stock markets, allowing them to establish positions or increase existing positions in such markets in a cost effective manner. The Commission also believes that the trading of the Index options and Index LEAPS will allow investors holding positions in some or all of the underlying securities in the Index to hedge the risks associated with their portfolios more efficiently and effectively. Moreover, the Commission believes that the reduced-value Index LEAPS, that will be traded on an index computed at one-tenth the value of the Retail Index, will serve the needs of retail investors by providing them with the opportunity to use a long-term option to hedge their portfolios from long-term market moves at a reduced cost.

[21] See generally Securities Exchange Act Release No. 32875 (September 13, 1993), 58 FR 48906 (September 20, 1993) (order designating the Morgan Stanley Cyclical and Consumer Indexes as a broad-based index rather than a narrow-based index).

[22] See supra notes 15 through 17, and accompanying text.

[23] In addition, for the six-month period between February and July 1993, all of companies within the Index had an average daily trading volume greater than 180,000 shares per day.

[24] The Exchange, pursuant to its eligibility criteria for the Index, requires that component securities have a market capitalization (in U.S. dollars) of at least $75 million.

[25] A stock would be "overweight" if its weight in the Index were greater than the average weight of all of the stocks in the Index. This would occur, for example, if the price of a component stock significantly increased relative to the other stocks in the Index during a particular quarter and prior to the rebalancing.

[26] Components added to the Index are limited to those stocks or ADRs traded on the Amex (subject to the restrictions of Amex Rule 901C), NYSE, and through NASDAQ/NMS.

B. Customer Protection

The Commission believes that a regulatory system designed to protect public customers must be in place before the trading of sophisticated financial instruments, such as Telecommunications Index options (including full-value and reduced-value Index LEAPS), can commence on a national securities exchange. The Commission notes that the trading of standardized exchange-traded options occurs in an environment that is designed to ensure, among other things, that: (1) The special risks of options are disclosed to public customers; (2) only investors capable of evaluating and bearing the risks of options trading are engaged in such trading; and (3) special compliance procedures are applicable to options accounts. Accordingly, because the Index options and the Index LEAPS will be subject to the same regulatory regime as the other standardized options currently traded on the Amex, the Commission believes that adequate safeguards are in place to ensure the protection of investors in Telecommunications Index options and Index LEAPS.

The Commission also has some concern that the quarterly rebalancing of the Index could result in investor confusion because the number of shares of each issuer in the Index could fluctuate each quarter. Such fluctuation, among other things, could make it difficult for investors to maintain any corresponding cash positions in the stocks underlying the Index. The Commission does not believe that the quarterly rebalancing will result in dramatic changes in the weightings of the component securities. Moreover, the Commission believes the benefits to be derived from using a quarterly rebalancing will more than offset the potential confusion for investors. Specifically, the Commission believes the quarterly rebalancing will ensure that no stock or group of stocks will have a disproportionate impact on the Index.

Finally, the Amex has developed procedures to ensure that investors are adequately notified of any changes due to the quarterly rebalancing of the Index. In particular, the Amex represents that it will send informational circulars to its members notifying them of any changes to the Index as a result of the quarterly rebalancing.[27] In addition, the Amex has stated that it will include a description of the equal dollar weighting methodology in all its promotional and marketing materials for the Index. The Commission believes these procedures should help to avoid any investor confusion, while providing important information about the special characteristics of the Index.

C. Surveillance

The Commission believes that a surveillance sharing agreement between an exchange proposing to list a stock index derivative product and the exchange(s) trading the stocks underlying the derivative product is an important measure for surveillance of the derivative and underlying securities markets. Such agreements ensure the availability of information necessary to detect and deter potential manipulations and other trading abuses, thereby making the stock index product less readily susceptible to manipulation.[28] In this regard, the NYSE and NASDAQ/NMS, which are the primary markets for all of the Index's component stocks, are members of the Intermarket Surveillance Group ("ISG"), which provides for the exchange of all necessary surveillance information.[29]

D. Market Impact

The Commission believes that the listing and trading of Telecommunications Index options, including full-value and reduced-value LEAPS on the Amex will not adversely impact the underlying securities markets.[30] First, as described above, due to the "equal-dollar" weighting method, no one stock or group of socks dominates the Index. Second, because 90% of the numerical value of the Index must be accounted for by stocks that meet the options listing standards, the component securities generally will be actively-traded, highly-capitalized stocks. Third, the 8,000 contract position and exercise limits will serve to minimize potential manipulation and market impact concerns.[31] Fourth, the risk to investors of contra-party non-performance will be minimized because the Index options and Index LEAPS will be issued and guaranteed by the Options Clearing Corporation("OCC") just like any other standardized option traded in the United States.

Lastly, the Commission believes that settling expiring Telecommunications Index options (including full-value and reduced-value Index LEAPS) based on the opening prices of component securities is reasonable and consistent with the Act. As noted in other contexts, valuing options for exercise settlement on expiration based on opening prices rather than closing prices may help reduce adverse effects on markets for securities underlying options on the Index.[32]

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the Act and section 6(b)(5) of the Act, in particular.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[33] that the proposed rule change (SR–Amex–93–25) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[34]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28565 Filed 11–19–93; 8:45 am]

BILLING CODE 8010–01–M

[27] See supra section II.E. entitled "Calculation of the Index" for the Exchange's notice provisions in connection with rebalancing of the Index.

[28] See Securities Exchange Act Release No. 32237 (April 29, 1993), 58 FR 26992 (May 6, 1993).

[29] See supra note 18.

[30] See supra note 9.

[31] See supra note 16.

[32] See supra note 11.

[33] 15 U.S.C. 78s(b)(2) (1988).

[34] 17 CFR 200.30–3(a)(12) (1993).

Self-Regulatory Organizations; Chicago Stock Exchange, Inc.; Application for Unlisted Trading Privileges in an Over-the-Counter Issue and To Withdraw Unlisted Privileges in an Over-the-Counter Issue

November 15, 1993.

On November 10, 1993, the Chicago Stock Exchange, Inc. ("CHX"), submitted an application for unlisted trading privileges ("UTP") pursuant to section 12(f)(1)(C) of the Securities Exchange Act of 1934 ("Act") in the following over-the-counter ("OTC") security, i.e., a security not registered under section 12(b) of the Act.

File No.	Symbol	Issuer
7–11494	BOST	Boston Chicken, Common Stock, No par value.

The above-referenced issue is being applied for as a replacement for the following security, which forms a portion of the Exchange's program in which OTC securities are being traded pursuant to the granting of UTP.

The CHX also applied to withdraw UTP pursuant to section 12(f)(4) of the Act for the following issue:

File No.	Symbol	Issuer
7–11495	GNSA	Gensia, Inc. Common Stock $.01 par value.

A replacement issue is being requested due to lack of trading activity.

Comments

Interested persons are invited to submit, on or before December 6, 1993, written comments, data, views and arguments concerning this application. Persons desiring to make written comments should file three copies with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549.

Commentators are asked to address whether they believe the requested grant of UTP as well as the withdrawal of UTP would be consistent with section 12(f)(2), which requires that, in considering an application for extension or withdrawal of UTP in an OTC security, the Commission consider, among other matters, the public trading activity in such security, the character of such trading, the impact of such extension on the existing markets for such security, and the desirability of removing impediments to and the progress that has been made toward the development of a national market system.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28566 Filed 11–19–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1902]

Study Group 7 of the U.S. Organization for the International Radio Consultative Committee; Meeting

The Department of State announces that Study Group 7 of the U.S. Organization for the International Radio Consultative Committee (CCIR) will hold an open meeting December 2, 1993 in the suite 950 of the ARC Professional Services Group, 500 E Street, SW., Washington, DC commencing at 10 a.m.

Study Group 7 deals with matters relating to the space research systems and standard frequency and time systems. The purpose of the meeting is to receive status reports from the Working Parties and Task Groups, to review the Study Group's Questions and to review work plans for the technical preparations for the 1995 World Radiocommunication Conference. Members of the general public may attend the meeting and join in the discussions subject to instructions of the Chairman. Those planning to attend the meeting should contact Mr. Roger Andrews, (703) 834–5600 for further information.

Dated: November 4, 1993.

Warren G. Richards,

Chairman, U.S. CCIR National Committee.

[FR Doc. 93–28573 Filed 11–19–93; 8:45 am]

BILLING CODE 4710–45–M

[Public Notice 1901]

Shipping Coordinating Committee, Subcommittee on Safety of Life at Sea; Working Group on Carriage of Dangerous Goods; Meeting

The Working Group on Carriage of Dangerous Goods of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on December 8, 1993, in room 4315, at U.S. Coast Guard Headquarters, 2100 2nd Street, SW., Washington, DC 20593–0001. The purpose of the meeting is to finalize preparations for the 45th Session of the Subcommittee on the Carriage of Dangerous Goods of the International Maritime Organization (IMO) which is scheduled for January 10–14, 1994, at the IMO Headquarters in London.

The agenda items of particular interest are:

a. Amendments to the International Maritime Dangerous Goods (IMDG) Code.

b. Amendments to the IMDG Code for harmonization with The United Nations Recommendations on the Transport of Dangerous Goods.

c. Amendments to section 13 of the General Introduction to the IMDG Code.

d. Implementation of the IMDG Code.

e. Development of criteria for the hermetic sealing of receptacles, packages and Intermediate Bulk Containers.

f. Development of new glossary and illustrations of packagings for Annex I to the IMDG Code.

g. Amendments to the Emergency Procedures for Ships Carrying Dangerous Goods (EmS) and the Medical First Aid Guide for Use in Accidents Involving Dangerous Goods (MFAG).

h. Implementation of Annex III of the Marine Pollution Convention (MARPOL 73/78), as amended, and amendments to the IMDG Code to cover pollution aspects.

i. Risk analysis of on-deck stowage of marine pollutants and recommendations for the revision of relevant stowage provisions in the IMDG Code.

j. Matters relating to SOLAS regulations II–2/53 and 54.

k. Ships' stores of a hazardous nature.

l. Guidelines for the development of shipboard emergency plans for marine pollutants.

m. Relations with other organizations.

n. Reports on incidents involving dangerous goods or marine pollutants in packaged form on board ships or in port areas.

o. Revision of the Recommendations on the Safe Transport, Handling and Storage of Dangerous Substances in Port Areas.

p. Review of existing ships' safety standards.

q. Role of the human element in maritime casualties.

r. Use of radio beacons on containers and packages.

s. Review of open-top containership provisional recommendations.

t. Review of the INF Code.

u. Criteria for immersion testing of packages containing marine pollutants for the purposes of Annex III of MARPOL 73/78.

Members of the public may attend this meeting up to the seating capacity of the room. Interested persons may seek information by writing: CDR K. J. Eldridge, U.S. Coast Guard (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001 or by calling (202) 267–1577.

Dated: November 8, 1993.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–28571 Filed 11–19–93; 8:45 am]

BILLING CODE 4710–07–M

[Public Notice 1900]

Shipping Coordinating Committee Subcommittee on Safety of Life at Sea, Working Group on Lifesaving, Search and Rescue; Meeting

The Working Group on Lifesaving, Search and Rescue of the Subcommittee on Safety of Life at Sea (SOLAS) will conduct an open meeting at 9:30 a.m. on December 8, 1993 in room 5303 at Coast Guard Headquarters, 2100 Second Street SW., Washington, DC.

The purpose of the meeting is to prepare U.S. positions for the 25th Session of the International Maritime Organization (IMO) Sub-Committee on Lifesaving, Search and Rescue (LSR), scheduled for April 11–15, 1994, at the IMO Headquarters in London. Items of particular interest are:

—Complete work on review and amendment of SOLAS chapter III, to

clarify the intent of the chapter and to cover more specifically various lifesaving arrangements (such as free-fall lifeboats and marine evacuation systems) which are recently gaining wider application
—Application of SOLAS amendments to existing ships
—International approval of life-saving appliances
—Shipboard Safety Emergency Plans and emergency escape arrangements for passenger ships
—Role of the human element in maritime causalities (including on board communication problems)
—Harmonization of aeronautical and maritime Search and Rescue (SAR) plans and procedures
—Implementation of the IMO SAR Plan and the Global Marine Distress and Safety System (GMDSS)

The IMO LSR Sub-Committee works to develop international agreements, guidelines, and standards for Search and Rescue and for lifesaving equipment installed on commercial ships. In many cases, the work of the Sub-Committee forms the basis for national standards and regulations and classification society rules. The U.S. SOLAS Working Group supports the U.S. Representative to the LSR Sub-Committee in developing U.S. positions on issues raised at those meetings. Because of the potential impact of the Sub-Committee's work on U.S. regulations and standards, the U.S. SOLAS Working Group serves as an excellent forum for the U.S. maritime industry to express their ideas in the areas under the Sub-Committee's purview. Since these meeting are open to the public, anyone may attend up to the seating capacity of the room.

For further information contact Mr. Kurt J. Heniz at (202) 276–1444, U.S. Coast Guard Headquarters, (G–MVI–3/1404), 2100 Second Street SW., Washington, DC 20593–0001.

Dated: November 5, 1993.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–28572 Filed 11–19–93; 8:45 am]

BILLING CODE 4710–07–M

THRIFT DEPOSITOR PROTECTION OVERSIGHT BOARD

National Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app., announcement is hereby published for a meeting of the National Advisory Board. The meeting is open to the public. Please note that elsewhere in this issue of the **Federal Register** is a meeting notice for the National Housing Advisory Board, which will meet in the afternoon following the National Advisory Board meeting.

DATES: The National Advisory Board meeting is scheduled for Wednesday, December 15, 1993, 9 a.m. to 12 noon.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, Board room 6010, 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: Pursuant to section 21A (d) of the Federal Home Loan Bank Act, the Thrift Depositor Protection Oversight Board had established a National Advisory Board and six Regional Advisory Boards to advise the Oversight Board and the Resolution Trust Corporation (RTC) on the disposition of real property assets of the Corporation.

Agenda

A detailed agenda will be available at the meeting. The meeting will include briefings from the chairs of the six regional advisory boards on their respective meetings held throughout the country from November 2 to December 2. Discussion will focus on the key topics from the regional meetings: The impact of RTC activities on local real estate market conditions; an update on Secretary Bentsen's Management Reforms; and reviews of RTC's Small Investor Program, RTC's Environmentally Significant Property Program and RTC's overall asset sales strategies.

Statements

Interested persons may submit, in writing, data, information or views on the issues pending before the National Advisory Board prior to or at the meeting. Seating is available on a first come first served basis for this open meeting.

Dated: November 17, 1993.

Jill Nevius,

Committee Management Officer.

[FR Doc. 93–28606 Filed 11–19–93; 8:45 am]

BILLING CODE 2222–01–M

National Housing Advisory Board Meeting

AGENCY: Thrift Depositor Protection Oversight Board.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act 5 U.S.C. app., announcement is hereby published for a meeting of the National Housing Advisory Board. The meeting is open to the public. Please note that elsewhere in this issue of the **Federal Register** is a meeting notice for the National Advisory Board, which will meet in the morning prior to the National Housing Advisory Board meeting.

DATES: The National Housing Advisory Board meeting is scheduled for Wednesday, December 15, 1993, from 1 to 3 p.m.

ADDRESSES: The meeting will be held at the Federal Deposit Insurance Corporation, Board Room 6010, 550 17th Street NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT:

Jill Nevius, Committee Management Officer, Thrift Depositor Protection Oversight Board, 1777 F Street NW., Washington, DC 20232, 202/786–9675.

SUPPLEMENTARY INFORMATION: In accordance with section 21A(d)(2) of the Federal Home Loan Bank Act, as amended by the Resolution Trust Corporation (RTC) Thrift Depositor Protection Reform Act of 1991, the Thrift Depositor Protection Oversight Board established a National Housing Advisory Board to advise the Oversight Board on policies and programs related to the provision of affordable housing. The National Housing Advisory Board consists of the Secretary of the Department of Housing and Urban Development and the chairs of the regional advisory boards established under section 21A (d)(3) of the Federal Home Loan Bank Act.

Agenda

A detailed agenda will be available at the meeting. The meeting will include briefings from the Board's chair and from the chairs of the six regional advisory boards on their respective meetings held throughout the country from November 2 to December 2, 1993. Discussions will focus on the RTC's single-and multi-family housing dispositions programs.

Statements

Interested persons may submit, in writing, data, information, or views on the issues pending before the National Housing Advisory Board prior to or at the meeting. Seating for the open meeting is available on a first come first served basis.

Dated: November 17, 1993.

Jill Nevius,

Committee Management Officer.

[FR Doc. 93–28607 Filed 11–19–93; 8:45 am]

BILLING CODE 2222–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 223

Monday, November 22, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

U.S. NATIONAL COMMISSION ON LIBRARIES AND INFORMATION SCIENCE

Open Forum on Children and Youth Services: Redefining the Federal Role for Libraries

DATE AND TIME: December 3, 1993; 9 a.m.–3 p.m.

PLACE: Wallace Building Auditorium, 502 E. 9th Street, Des Moines, Iowa 50391.

STATUS: Open.

PURPOSE OF THE FORUM: Open forum on the changing role of the Federal government in support of library and information services and literacy programs for children and youth. The forum provides an opportunity for elected officials, representatives from community advocacy groups and organizations, school library media centers, public libraries, academic libraries, educational, literacy and information services organizations, companies, associations, and institutions to offer comments, observations, and suggestions related to Federal roles and responsibilities for library and information services, and literacy programs offered to children and youth.

Parties interested in presenting oral statements should notify Jan Irving, State Library of Iowa, East 9th and Grand, Des Moines, Iowa, 50391 (Telephone number 515–281–7572. written statements should be received at the NCLIS office by December 17, 1993.

To request further information or to make special arrangements for physically challenged persons, contact Kim Miller, NCLIS, no later than one week in advance of the forum.

Dated: November 15, 1993.

Peter R. Young,

NCLIS Executive Director.

[FR Doc. 93–28773 Filed 11–18–93; 3:08 pm]

BILLING CODE 7527–01–M

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 22, 29, December 6, and 13, 1993.

PLACE: Commissioners' Conference Room 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and Closed.

MATTERS TO BE CONSIDERED:

Week of November 22

Wednesday, November 24

9:00 a.m.
Briefing by NUMARC on Thermo-Lag (Public Meeting)
(Contact: Bill Rasin, 202–872–1280)

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting)
a. Advanced Medical Systems, Inc.'s and NRC Staff's Petitions for Reconsideration of CLI–93–22 (Tentative)
(Contact: Margaret Doane, 301–504–2001)

Week of November 29—Tentative

Friday, December 3

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 6—Tentative

Tuesday, December 7

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301–492–4665)

Thursday, December 9

10:00 a.m.
Briefing on Status of TVA Nuclear Programs (Public Meeting)
(Contact: Gus Lainas, 301–504–1435)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

2:00 p.m.
Briefing by Northeast Utilities (Public Meeting)
(Contact: Jose Calvo, 301–504–1404)

Friday, December 10

10: a.m.
Briefing by IG on Fee Audit (Public Meeting)
(Contact: Thomas Barchi, 301–492–7301)

Week of December 13—Tentative

Tuesday, December 14

10:00 a.m.
Briefing on Result of Operator Licensing Program Recentralization Study (Public Meeting)
(Contact: Robert Gallo, 301–504–1031)

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

ADDITIONAL INFORMATION: Affirmation of "Final Rule, 10 CFR Parts 30, 40, 50, 70, and 72, 'Self-Guarantee as an Additional Financial Assurance Mechanism'" (Public Meeting) scheduled for November 17 was *postponed.*

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (Recording)—(202 504–1292.

CONTACT PERSON FOR MORE INFORMATION: William Hill, (301) 504–1661.

Dated: November 17, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93–28722 Filed 11–18–93; 12:45 pm]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [58 FR 60493 November 16, 1993]

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Wednesday, November 10, 1993.

CHANGE IN THE MEETING: Additional meeting.

The following item will be considered at a closed meeting scheduled for Tuesday, November 23, 1993, at 10:00 a.m.:

Institution of administrative proceedings of an enforcement nature.
Institution of injunctive actions.
Settlement of injunctive actions.
Consideration of *amicus* participation.
Opinion.

Commissioner Beese, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Holly Smith at (202) 272–2000.

Dated: November 18, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–28786 Filed 11–18–93; 3:47 pm]

BILLING CODE 8010–01–M

POSTAL RATE COMMISSION

TIME AND DATE: 2:30 p.m., November 30, 1993.

PLACE: Conference Room, 1333 H Street, NW., Suite 300, Washington, DC 20268.

STATUS: Closed.

MATTERS TO BE CONSIDERED: Personnel Matters.

CONTACT PERSON FOR MORE INFORMATION: Charles L. Clapp, Secretary, Postal Rate Commission, Suite 300, 1333 H Street, NW., Washington, DC 20268–0001, Telephone (202) 789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–28668 Filed 11–17–93; 4:55 pm]

BILLING CODE 7710–FW–P

Corrections

Federal Register

Vol. 58, No. 223

Monday, November 22, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket Nos. RP93-14-000, et al., RP93-126-000, et al., RP87-14-000, et al., RP86-41-000, et al.]

Algonquin Gas Transmission Co.; Informal Settlement Conference

Correction

In notice document 93-27214 appearing on page 59025 in the issue of Friday, November 5, 1993, the second docket number should appear as set forth above.

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-ANM-5]

Amendment of Class E Airspace; Denver, CO

Correction

In rule document 93-21976 beginning on page 47373 in the issue of Thursday, September 9, 1993, make the following correction:

§ 71.1 [Corrected]

On page 47374, in the 2d column, in § 71.1, under the heading **ANM CO E5 Denver, CO [Revised]**, in the paragraphed text, in the 11th line, "40°00'00" N.," should read "40°30'00" N.," and in the 12th line, "41°30'00"" should read "41°00'00"".

BILLING CODE 1505-01-D

UNITED STATES INFORMATION AGENCY

22 CFR Part 503

Freedom of Information Act Regulations

Correction

In proposed rule document 93-27950 beginning on page 60416 in the issue of Tuesday November 16, 1993 make the following correction:

On page 60416, in the second column, under **DATES:**, in the second line, "November 16, 1993." should read "December 16, 1993."

BILLING CODE 1505-01-D

federal register

Monday
November 22, 1993

Part II

Securities and Exchange Commission

17 CFR Part 201, et al.
Rules of Practice; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 201, 202, 229, and 240

[Release No. 34–33163; File No. S7–40–92]

RIN 3235–AF91

Rules of Practice

AGENCY: Securities and Exchange Commission.

ACTION: Proposed rules and request for comment.

SUMMARY: The Securities and Exchange Commission is proposing to adopt revisions to its Rules of Practice. These rules govern Commission administrative proceedings including, among others, evidentiary hearings before administrative law judges, appeals of self-regulatory organization disciplinary actions and administrative law judge initial decisions and certain rulemaking proceedings. The Commission is also proposing revisions to conform rules 19d–2 and 19d–3 (concerning disciplinary sanctions imposed by self-regulatory organizations) under the Securities Exchange Act of 1934, 17 CFR 202.8 (procedures for summary suspensions pursuant to section 12(k) of the Act) and Regulation S–K (standard instructions for filling certain forms) to the proposed Rules of Practice.

The proposed rule changes are an outgrowth of the report of Commission's Task Force on Administrative Proceedings, "Fair and Efficient Administrative Proceedings," issued on March 15, 1993. Specifically, the proposal would implement two of the Report's recommendations: that the Commission make comprehensive revisions to the Rules of Practice to improve the efficiency of the administrative process, and that the Commission implement the authority granted to it by the Securities Enforcement Remedies and Penny Stock Reform Act including the authority to issue temporary cease-and-desist and disgorgement orders.

DATES: Comments must be submitted on or before January 6, 1994.

ADDRESSES: Comments should be addressed to File No. S7–40–92, Attention: Jonathan G. Katz, Secretary; U.S. Securities and Exchange Commission; 450 Fifth Street, NW.; Stop 6–9; Washington, DC 20549. All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Andrew Z. Glickman or Daniel O. Hirsch, Office of the General Counsel at (202) 272–2428; U.S. Securities and Exchange Commission; 450 Fifth Street, NW.; Stop 6–6; Washington, DC 20549.

SUPPLEMENTARY INFORMATION:

I. Overview of Proposals

The Securities and Exchange Commission ("Commission") is proposing for comment revisions to its Rules of Practice (17 CFR 201.1–201.29) and related procedural rules including rules 19d–2 and 19d–3 under the Securities Exchange Act of 1934 ("Exchange Act") (17 CFR 240.19d–2 and 240.19d–3) concerning disciplinary sanctions imposed by self-regulatory organizations. Included in this proposal are: (1) The proposed Rules of Practice; (2) a topical index including a timetable to the proposed rules; and (3) cross-reference tables indexing the location of existing rules to proposed rules and vice versa.

In order to implement these proposals, a number of conforming changes must also be made to other rules. The proposed Rules of Practice would exclude the provisions concerning "incorporation by reference" which related to the making of disclosure or regulatory filings. This provision would be moved to Regulation S–K (17 CFR 229.10 through 229.915). Conforming changes would also be made to the Commission procedures concerning summary suspensions under section 12(k) of the Exchange Act (17 CFR 202.8).

In order to number consecutively the Rules of Practice in the Code of Federal Regulations ("CFR"), the Commission's regulations pertaining to the Equal Access to Justice Act ("EAJA") (17 CFR 201.31–201.60) and the Commission's procedures pertaining to the payment of bounties pursuant to subsection 21A(e) of the Exchange Act (17 CFR 201.61–201.68) would be renumbered. No other changes are being proposed in relation to the EAJA rules or the bounty rules. In addition, adoption of this proposal would require existing cross-references to the Rules of Practice in all other rules and forms used by the Commission to be renumbered.

This proposal is the first comprehensive revision to the Rules of Practice in over 30 years. Certain provisions of the Rules are now out-of-date or, due to intervening amendments, inconsistent with other provisions. Similarly, practices of the administrative law judges and the Commission which have evolved over time are not reflected in the Rules. Further, there are opportunities to streamline the Rules to incorporate widely accepted changes in litigation practice and to reflect the availability of new services and technologies, such as next day air express for service of documents. Adoption of the proposed Rules will ensure greater consistency and efficiency in the administrative process by providing the Commission with a uniform and reliable set of administrative procedures and rules. In addition, the proposed rules and procedures implement the authority granted to the Commission by the Securities Enforcement Remedies and Penny Stock Reform Act ("Remedies Act") with respect to temporary cease-and-desist proceedings and delineate procedures to be used with respect to disgorgement in Commission initiated administrative enforcement proceedings.

A. Proposed Changes to Current Procedures

The proposed rules provide for:

1. An expanded role for prehearing conferences and more active case management by administrative law judges;

2. Production of documents, pursuant to subpoena, prior to the start of a hearing;

3. A streamlined discovery process codifying the existing unwritten practice, generally followed by the Division of Enforcement, of making available to respondents all non-privileged, relevant investigative files; and

4. Summary disposition of matters of law at any time after institution of proceedings, based on stipulated facts and the pleadings.

B. Proposed Additions to the Rules to Implement New Authority

1. Procedures would be adopted for the conduct of temporary cease-and-desist order proceedings and proceedings to suspend temporarily the registration of a broker, dealer, investment adviser or other Commission-registered entity.

Under the proposals with regard to temporary cease-and-desist orders:

a. The staff would file an application for a temporary cease-and-desist order simultaneously with or after the commencement of proceedings seeking a permanent order with respect to a registered entity or associated person. Prior to filing an application for temporary relief, the staff would, in all cases, have to obtain authority to seek a temporary order from the Commission. As with any other decision to initiate enforcement action prior to the institution of proceedings, Commission deliberations and discussions with the

staff concerning the decision whether to authorize an application for temporary relief would be nonpublic, privileged and not ordinarily reviewable by a court.

b. Upon institution of proceedings, the staff would file an application for a temporary cease-and-desist order including, unless specifically waived by the Commission, a supporting declaration of facts, a memorandum of law, a proposed order to show cause and a proposed temporary order.

c. Unless the statutorily specified conditions warranting issuance of an *ex parte* order were met, the respondent would be served with the application and supporting papers and a hearing on the application would be scheduled. If an order were issued *ex parte*, a hearing would normally be held within 48 hours upon request of the respondent. Hearings with regard to the grant, denial or modification of a temporary cease-and-desist order ordinarily would take place before the Commission and not an administrative law judge.

d. If a temporary cease-and-desist order were granted, or if an *ex parte* order were sustained, after a Commission hearing, the order could be appealed to a federal district court. If not modified by a court, it would remain in effect pending the hearing on the need for a permanent cease-and-desist order before an administrative law judge. After issuance of an initial decision by the administrative law judge on the need for a permanent order, however, the duration of the temporary cease- and-desist order pending Commission review would be limited.

2. Rules governing the collection and distribution of disgorgement funds and the payment of penalties required by Commission order would be adopted. Under the proposals:

a. Prejudgment interest would be assessed on all disgorgement ordered. Disgorgement would be due promptly upon entry of a final order.

b. Disgorgement funds would be distributed, where feasible, to injured investors; otherwise, funds would be paid to the U.S. Treasury. Where deemed appropriate by the Commission, disgorged funds could be turned over to a court for distribution in a private civil litigation based on the same operative facts underlying the Commission's administrative enforcement action.

c. Where necessary, a disgorgement fund administrator, selected from either the private sector or the Commission staff, would oversee processing of proofs of claims and distribution of monies from fund.

II. Discussion of Proposed Rules of Practice

Each of the proposed rules appears individually below. Commentary follows each rule or, where relevant, a paragraph of a rule. The proposal renumbers many of the Commissions rules to follow the chronological flow of events from service of papers to institution of a hearing before a hearing officer to Commission review. Rules pertaining to temporary sanctions, including temporary cease-and-desist orders, and disgorgement and penalty payments appear separately. In addition, rules relating to review of self-regulatory organization determinations also appear separately.

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Exchange Act Rule 19d–2 Applications for Stays of Disciplinary Sanctions or Summary Suspensions by a Self-Regulatory Organization.
Exchange Act Rule 19d–3 Applications for Review of Final Disciplinary Sanctions, Denials of Membership, Participation or Association, or Prohibitions or Limitations of Access to Services Imposed by Self-Regulatory Organizations.

Notes to the Rules of Practice

1. *Numbering*: Generally, the rules follow the chronological flow of events from institution, hearing before a hearing officer, and Commission review. Separate provisions with respect to temporary sanctions (including temporary cease-and-desist proceedings), disgorgement, and review of self-regulatory organization determinations follow the rest of the rules.

2. *Headings*: Each rule and each major paragraph within a rule have descriptive headings which are intended to guide a reader in searching for information on particular requirements.[1]

3. *Topical index including timetable*: A topical index has been provided to assist persons consulting the Rules of Practice. It is structured alphabetically by subject matter and contains cross-references to the rule numbers. The index is provided as a guide only. Its contents are not dispositive and do not form any portion of the rules.

Proposed Rules of Practice

(ER 1)

Rule 1. Scope, Rules of Construction and Definitions

(a) *Scope of the Rules of Practice.* These Rules of Practice govern proceedings before the Commission under the statutes which it administers. They shall be construed to secure the just, speedy, and inexpensive determination of every proceeding. These rules do not apply to investigations, except where made specifically applicable by the Rules Relating to Investigations, part 203 of this chapter (17 CFR part 203), or to rulemaking, except where made applicable by Commission order. In connection with any particular matter, reference should be made to any special requirements of procedure that may be contained in the particular statute involved or the rules and forms adopted by the Commission thereunder. Any such special requirements control to the extent that they conflict with the provisions herein.

Comment: By their terms, the existing Rules of Practice are generally applicable to "proceedings before the Commission under the statutes it administers." Investigations are excluded from the scope of the Rules except where made specifically applicable. A majority of both the existing and proposed rules address procedures in those matters where the Commission has ordered an evidentiary hearing pursuant to an order instituting proceedings. Where the Rules are silent as to the procedures to be used in a particular type of proceeding, such as notice and comment rulemaking, the Commission specifies procedures by order. In practice, only a small proportion of administrative proceedings involve hearings: Commission rulemaking is ordinarily conducted without hearings. Most adjudicatory matters involve regulatory decisions, such as whether to register an entity as a broker or dealer, which are resolved by exercise of delegated authority by the staff. Proceedings in which hearings are most often held by the Commission are enforcement proceedings. An even greater number of proceedings subject to the Rules arise from appeals to the Commission of decisions made after hearings by self-regulatory organizations.

The existing statement of the scope of the Rules sought to reflect these facts by distinguishing proceedings to which the Rules were "generally" or "particularly" applicable. The existing rule also emphasizes the distinction between proceedings with "hearings or opportunity for hearing" and other proceedings. The distinction between proceedings which are required to have "on the record" hearings, those that require a hearing, but not that the hearing be "on the record," and those in which no hearing is required, are very important. However, the Rules of Practice do not govern whether a hearing is or is not "on the record" or if a hearing is held at all. Reference to these different types of hearings and the special provisions of Rule 27 was unnecessary, and accordingly was deleted.

Individual rules have been modified to indicate whether they apply generally to all proceedings, or only to a proceeding in which an order instituting proceedings has been entered. Rules dealing with formalities, such as the hours the Commission is open for business, requirements for briefs or the requirements of Commission orders, apply to all proceedings. Other rules, such as those requiring service of filings, apply only if the Commission has issued an order instituting proceedings.

The language in the second sentence of Proposed Rule 1(a) is modeled on the language in Rule 1 of the Federal Rules of Civil Procedure.

The Task Force received comments indicating uncertainty with respect to the applicability of the Rules to proceedings pursuant to Exchange Act section 19(d)(2) to review disciplinary actions taken by self-regulatory organizations and proceedings pursuant to Exchange Act section 19(b)(2) to disapprove a self-regulatory organization rule. The Rules of Practice apply to both types of proceedings. The Task Force has recommended that the substantive requirements of Exchange Act Rules 19d–2 and 19d–3, which contain specific procedures governing certain aspects of proceedings under section 19(d)(2), be incorporated into the Rules of Practice, so that persons seeking review of self-regulatory organization disciplinary decisions can consult a single source with respect to all procedural requirements.

The specific reference to the rules' inapplicability to investigations has been retained. To codify what has been Commission practice, Proposed Rule 1(a) now states that the rules are not applicable to rulemaking proceedings, unless the Commission orders otherwise.

(b) *Rules of Construction.* For purposes of these rules:

(1) Any term in the singular includes the plural, and any term in the plural includes the singular, if such use would be appropriate;

(2) Any use of a masculine, feminine, or neuter gender encompasses all three, if such use would be appropriate; and

(3) Unless the context requires otherwise, counsel, if any, may take any action required or permitted to be taken by a party.

(c) *Definitions.* For purposes of these rules, unless explicitly stated to the contrary:

(1) "*Commission*" means the United States Securities and Exchange Commission, including a quorum of the Commission or the duty officer, as provided for at 17 CFR 200.42;

(2) "*Counsel*" means any lawyer representing a party, in accord with Rule 2(b) (§ 201.2(b), or a non-lawyer representative, to the extent permissible under Rule 2(a) (§ 201.2(a));

(3) "*Enforcement proceeding*" means a proceeding, initiated by an order instituting proceedings entered by the Commission, held for the purpose of determining whether or not a person has violated or caused a violation of the federal securities laws and the rules thereunder;

(4) "*Hearing officer*" means an administrative law judge, a panel of Commissioners constituting less than a quorum of the Commission, an individual Commissioner, or any other person duly authorized to preside at a hearing;

(5) "*Interested division*" means the division or office assigned responsibility by the Commission to participate in a particular proceeding;

(6) "*Party*" means the interested division, any person named as a

[1] The headings include at the far left margin the existing rule number, abbreviated "ER ____" and the proposed rule number, labeled "Rule ____."

respondent or party in the order instituting proceedings, persons entitled to notice as set forth in Rule 8(f) (§ 201.8(f)) or any person seeking Commission review of a decision;

(7) "*Registered entity*" means a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent;

(8) "*Secretary*" means the Secretary of the Commission; and

(9) "*Temporary sanction*" means a temporary cease-and-desist order or a temporary suspension of the registration of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer, or transfer agent.

Comment: Rules of construction and definitions have been included in order to clarify terms used throughout the rules. It was suggested that instead of using the term "hearing officer," the rules should refer to "administrative law judge." While administrative law judges do preside at most hearings at which the Commission itself does not preside, a duty officer or other persons may preside. *See* Securities Exchange Act section 4A; Administrative Procedure Act 5 U.S.C. 556(b). Accordingly, the proposed rules continue to use the term "hearing officer" throughout.

(ER 2)

Rule 2. Appearance and Practice Before the Commission.

A person shall not be represented at any hearing before the Commission or a hearing officer except as stated in paragraphs (a) and (b) of this rule or as otherwise permitted by the Commission or a hearing officer.

(a) *By non-lawyers.* In any proceeding, a person may appear on his or her own behalf; a member of a partnership may represent the partnership; a bona fide officer of a corporation, trust or association may represent the corporation, trust or association; and an officer or employee of a state commission or of a department or political subdivision of a state may represent the state commission or the department or political subdivision of the state.

(b) *By lawyers.* In any proceeding, a person may be represented by an attorney at law admitted to practice before the Supreme Court of the United States or the highest court of any State (as defined in section 3(a)(16) of the Exchange Act).

Comment: The proposed rule has been amended to conform with the definition of "State" contained in section 3(a)(16) of the Exchange Act. The phrase "or the Court of Appeals or the District Court of the United States for the District of Columbia" in the existing rule was unnecessary. The Court of Appeals for the District of Columbia is the District's highest court. Lawyers admitted to practice before the United States District Court for the District of Columbia or the Court of Appeals for the District of Columbia Circuit must be admitted before the court of a state or territory, so it was redundant to include admission before these two courts as separate criteria for practice before the Commission.

(c) *Former Commission employees.* Former employees of the Commission must comply with the restrictions on practice contained in the Commission's Conduct Regulation, subpart M, 17 CFR 220.735.

(d) *Notice of appearance; designation for service; power of attorney.* (1) When a person first appears on his or her own behalf before the Commission or a hearing officer in a proceeding in which an order instituting proceedings has been entered, or a notice of intention to file a petition for review pursuant to Rule 30 or an application pursuant to Rule 56 for review of a self-regulatory organization determination has been filed, he or she shall file with the Commission, or otherwise state on the record, an address at which any notice or other written communication required to be served upon him or her or furnished to him or her may be sent and a telephone number where he or she may be reached during business hours.

(2) When an attorney first appears in a representative capacity before the Commission or a hearing officer in a proceeding in which an order instituting proceedings has been entered, or a petition for review or an application pursuant to Rule 56 for review of a self-regulatory organization determination has been filed, he or she shall file a written notice of such appearance, which shall state the name of the proceeding in which he or she is appearing, his or her name, address and business telephone number and the name and address of the person or persons on whose behalf he or she appears.

(3) Any person appearing or practicing before the Commission in a representative capacity may be required to file a power of attorney with the Commission showing his or her authority to act in such capacity.

Comment: The provisions dealing with service have been moved to Proposed Rule 5 and made consistent with the norms of professional conduct, which require that when persons are represented by counsel, communications by opposing parties be made to counsel. *See, e.g.*, Rule 1.4 of the Rules of Conduct of the District of Columbia Bar (1992).

(e) *Suspension and disbarment.*—(1) *Generally.* The Commission may censure or deny, temporarily or permanently, the privilege of appearing or practicing before it in any way to any person who is found by the Commission after notice and opportunity for hearing in the matter:

(i) Not to possess the requisite qualifications to represent others; or

(ii) To be lacking in character or integrity or to have engaged in unethical or improper professional conduct; or

(iii) To have willfully violated, or willfully aided and abetted the violation of any provision of the Federal securities laws or the rules and regulations thereunder.

Comment: The Commission has, in litigated as well as settled actions, sanctioned individuals by imposing a "censure" in proceedings brought under Rule 2(e)(1). *See, e.g., In re Ernst & Ernst*, ASR 248 (1937–1982 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶ 72,270 (May 31, 1978) (litigated proceeding; audit firm censured); *In re Epstein*, AAER 384, 51 SEC Docket 1044 (May 21, 1992) (settlement; individual censured and temporarily suspended). Existing Rule 2(e)(1), by its terms, only allows the Commission to "deny, temporarily or permanently," the privilege of appearing or practicing before the Commission. The proposed rule would reflect the Commission's established practice in appropriate cases of imposing only a "censure" as a sanction for violations of Rule 2(e)(1).

(2) *Certain professionals and convicted persons.* Any attorney who has been suspended or disbarred by a Court of the United States or in any State, or any person whose license to practice as an accountant, engineer, or other professional or other expert has been revoked or suspended in any State, or any person who has been convicted of a felony or a misdemeanor involving moral turpitude shall be forthwith suspended from appearing or practicing before the Commission. A disbarment, suspension, revocation, or conviction within the meaning of this rule shall be deemed to have occurred when the disbarring, suspending, revoking or convicting agency or tribunal enters its judgment or order, including a judgment or order on a plea of nolo contendere, regardless of whether appeal is pending or could be taken.

(3) *Temporary suspensions.* (i) The Commission, with due regard to the public interest and without preliminary hearing, may, by order, temporarily suspend from appearing or practicing before it any attorney, accountant, engineer, or other professional or expert who has been by name:

(A) Permanently enjoined by any court of competent jurisdiction, by

reason of his or her misconduct in an action brought by the Commission, from violation or aiding and abetting the violation of any provision of the Federal securities laws or of the rules and regulations thereunder; or

(B) Found by any court of competent jurisdiction in an action brought by the Commission to which he or she is a party or found by this Commission in any administrative proceeding to which he or she is a party to have violated (unless the violation was found not to have been willful) or aided and abetted the violation of any provision of the Federal securities laws or of the rules and regulations thereunder.

An order of temporary suspension shall become effective upon service upon the respondent. No order of temporary suspension shall be entered by the Commission pursuant to this paragraph (e)(3)(i) more than 90 days after the final judgment or order entered in a judicial or administrative proceeding described in paragraph (e)(3)(i)(A) or (e)(3)(i)(B) has become effective upon completion of review or appeal procedures or because further review or appeal procedures are no longer available.

(ii) Any person temporarily suspended from appearing and practicing before the Commission in accordance with paragraph (e)(3)(i) may, within 30 days after service upon him or her of the order of temporary suspension, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent.

(iii) Within 30 days after the filing of a petition in accordance with paragraph (e)(3)(ii), the Commission shall lift the temporary suspension or set the matter down for hearing at a time and place to be designated by the Commission or both, and, after opportunity for hearing, may censure the petitioner or disqualify the petitioner from appearing or practicing before the Commission for a period of time or permanently. In every case in which the temporary suspension has not been lifted, every hearing held and other action taken pursuant to this paragraph (e)(3) shall be expedited in accordance with the standards of Rule 38. If the hearing is held before a hearing officer, the time limits set forth in Rule 44 will govern review of the hearing officer's initial decision.

(iv) In any hearing held on a petition filed in accordance with paragraph (e)(3)(ii), the staff of the Commission shall show either that the petitioner has been enjoined as described in paragraph (e)(3)(i)(A) or that the petitioner has been found to have committed or aided and abetted violations as described in paragraph (e)(3)(i)(B) and that showing, without more, may be the basis for censure or disqualification. Once that showing has been made, the burden shall be upon the petitioner to show cause why he or she should not be censured or temporarily or permanently disqualified from appearing and practicing before the Commission. In any such hearing, the petitioner shall not be heard to contest any finding made against him or her or fact admitted by him or her in the judicial or administrative proceeding upon which the proceeding under this paragraph (e)(3) is predicated. A person who has consented to the entry of a permanent injunction as described in paragraph (e)(3)(i)(A) without admitting the facts set forth in the complaint shall be presumed for all purposes under this paragraph (e)(3) to have been enjoined by reason of the misconduct alleged in the complaint.

(4) *Filing of prior orders.* Any person appearing or practicing before the Commission who has been the subject of an order, judgment, decree, or finding as set forth above shall promptly file with the Secretary a copy thereof (together with any related opinion or statement of the agency or tribunal involved). Failure to file any such paper, order, judgment, decree, or finding shall not impair the operation of any other provision of this rule.

(5) *Reinstatement.* (i) An application for reinstatement of a person permanently suspended or disqualified under paragraph (e)(1) or (e)(3) of this rule may be made at any time, and the applicant may, in the Commission's discretion, be afforded a hearing; however, the suspension or disqualification shall continue unless and until the applicant has been reinstated by the Commission for good cause shown.

(ii) Any person suspended under paragraph (e)(2) of this rule shall be reinstated by the Commission, upon appropriate application, if all the grounds for application of the provisions of that paragraph are subsequently removed by a reversal of the conviction or termination of the suspension, disbarment, or revocation. An application for reinstatement on any other grounds by any person suspended under paragraph (e)(2) of this rule may be filed at any time and the applicant shall be accorded an opportunity for a hearing in the matter; however, such suspension shall continue unless and until the applicant has been reinstated by order of the Commission for good cause shown.

(6) Any proceeding brought under Rule 2(e) shall not preclude a proceeding under any other paragraph.

(7) All hearings held under Rule 2(e) shall be public unless otherwise ordered by the Commission on its own motion or after considering the motion of a party.

Comment: Paragraph (f) has been made a part of a rule on misconduct and sanctions, Proposed Rule 3.

(f) *Practice defined.* For the purposes of these rules, practicing before the Commission shall include, but shall not be limited to:

(1) Transacting any business with the Commission; and

(2) The preparation of any statement, opinion or other paper by any attorney, accountant, engineer or other expert, filed with the Commission in any registration statement, notification, application, report or other document with the consent of such attorney, accountant, engineer or other expert.

Comment: The existing rules contain provisions with respect to service in various rules. These provisions would be combined into one proposed rule on service, Proposed Rule 5, which governs service on attorneys as well as others. Rule 2(h) would therefore be deleted.

(ER 2(f))

Rule 3. Sanctions.

(a) *Conduct.* Dilatory, disruptive, contemptuous, or contumacious conduct by any person before the Commission or a hearing officer during a hearing or conference shall be grounds for the Commission or the hearing officer to exclude that person from such hearing or conference. Further, dilatory, disruptive, contemptuous, or contumacious conduct by any counsel at any time before the Commission or a hearing officer shall be grounds for summary suspension from practice for the duration or any portion of the proceeding in which such conduct occurred. Such conduct by counsel may also be grounds for the institution of proceedings under Rule 2(e) of these rules. Any person excluded from a hearing or conference, or counsel summarily suspended from practice for the duration or any portion of a proceeding, may seek review of the exclusion or suspension by filing with the Commission, within three days of the exclusion or suspension order, a petition to lift such order. The Commission shall consider the petition pursuant to Rule 2(e)(3)(iii).

Comment: Resort to sanctions for disruptive conduct during the course of a proceeding rarely has been necessary. However, anecdotal evidence presented to

the Task Force suggested a need to delineate more clearly a hearing officer's authority to impose such sanctions. The provisions for sanctions against persons engaging in dilatory, contemptuous, or contumacious conduct are based on Existing Rule 2(f). That rule applies only to attorneys. Under the proposed rule, any person, not just attorneys or representatives, could be excluded from a hearing or conference for misconduct. As before, summary suspensions could be directed only at attorneys or non-attorney representatives. The proposed rule expressly limits summary suspensions to appearances in connection with the proceeding in which the dilatory, contemptuous, or contumacious conduct took place. Any broader prohibition would be difficult to justify since the circumstances which triggered the misconduct would be unlikely to be present in an entirely different matter.

The proposed rule adds a mechanism for timely appeal of a summary suspension. The proposed rule does not include an explicit provision for appeal of an order excluding a person from all or a portion of the hearing or conference. A person subject to such an exclusion order by a hearing officer could seek interlocutory review of the order by the Commission, pursuant to Proposed Rule 18 (ER 12(a)). If interlocutory review was not allowed, the matter could be reviewed when, and if, the entire case was appealed. Exclusion by the Commission could ultimately be reviewed by a court on a similar basis.

(b) *Deficient filings and failure to file.* The Commission or the hearing officer may reject, in whole or in part, any filing that fails to comply with the requirements of these rules or any order. The Commission or hearing officer may prescribe new time limits, grant extensions of time limits pursuant to Rule 17 or direct that deficiencies of form or content be cured and the filing resubmitted within a certain time period. In the event a required filing is not made or is rejected, in whole or in part, without being cured within the time period authorized, the party failing to make the filing may be deemed in default and the proceedings may be dismissed or determined against such party on the basis of the record then existing, including the order instituting proceedings, the allegations of which may be deemed to be true.

Comment: This paragraph has been added to make clear that the Commission or a hearing officer has authority to reject a deficient filing. *See In the Matter of Fischbach*, Adm. Pro. File No. 3–7384 (June 18, 1991). A filing may be rejected if it fails to meet the requirements of any rule or order. For example, filings which are not served as required by Proposed Rule 5, which fail to cite to the record as required by Proposed Rule 27, which are longer than permitted by Proposed Rule 31, or which fail to comply with a prehearing order pursuant to proposed Rule 12 could be found to be deficient. (ER 6(e))

(c) *Failure to appear: Default.* Any person who is named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed and who fails to appear at a hearing or prehearing conference of which he or she has been duly notified, or fails to file a notice of appearance when ordered to do so, may be deemed in default and the proceedings may be determined against such person upon consideration of the record then existing, including the order instituting proceedings, the allegations of which may be deemed to be true. For the purpose of this paragraph, an answer shall constitute a notice of appearance.

Comment: This paragraph is based on Existing Rule 6(e), which provides that a respondent's failure to appear in response to, or file an answer to, an order instituting proceedings can be grounds for entry, by default, of an order making findings against the respondent. The proposed rule further provides for dismissal of the proceedings or entry of findings against the respondent for failure to appear at any hearing or prehearing conference.

(ER 11(c)–(d))

Rule 4. Authority of Hearing Officer.

The hearing officer shall conduct proceedings in a fair, impartial, and expeditious manner. The hearing officer shall have the authority to do all things necessary and appropriate to discharge his or her duties. No provision of these rules shall be construed to limit the powers of the hearing officer provided by the Administrative Procedure Act, 5 U.S.C. 556, 557. The powers of the hearing officer include, but are not limited to, the power:

(a) To regulate, through the date of issuance of an initial decision, the course of a proceeding and the conduct of the parties and their counsel;

(b) To hold prehearing conferences as set forth in Rule 12(a) ;

(c) To issue subpoenas authorized by law and to revoke, quash, or modify any such subpoena;

(d) To recuse himself or herself upon motion made by a party or upon his or her own motion;

(e) To administer oaths and affirmations;

(f) To receive relevant evidence and to rule upon the admission of evidence and offers of proof;

(g) To order, in his or her discretion, the interested division, in a proceeding involving more than one respondent, to indicate, on the record, at least one day prior to the presentation of any evidence, each respondent against whom that evidence will be offered;

(h) Subject to any limitations set forth elsewhere in these rules, to consider and rule upon all procedural and other motions;

(i) To prepare and file with the Secretary an initial decision as provided in Rule 24; and

(j) Upon notice to all parties, to reopen any hearing prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission.

Comment: The existing rules list the powers of the hearing officer in a number of places. At times the powers enumerated are so specific and so detailed as to suggest that the hearing officer's inherent powers are limited. The proposed rule lists in one place the most prominent powers of the hearing officer, and clearly defines the broad inherent powers the hearing officer has to conduct the proceedings assigned to him or her. The list of powers is illustrative, not exhaustive. The hearing officer is permitted to take any action necessary and appropriate to discharge his or her duties as a presiding officer.

(ERs as to service: 2(d); 2(e)(3)(i)(*b*); 2(h); 6(b); 14(b)(3); 22(a); as to filing: ER 23)

Rule 5. Service and Filing of Papers.

(a) *Required.* In every proceeding in which an order instituting proceedings has been issued or an application pursuant to Rule 56 for review of a self-regulatory organization determination has been granted, every notice of appearance, written motion, brief, proposed conclusion of fact or law, and similar paper shall be served upon each of the parties and any other participants in the proceedings pursuant to Rule 5(b); provided, however, that absent an order to the contrary, no service on other parties or participants shall be required of motions which may be heard *ex parte*, requests for confidential treatment of information, or requests for the issuance of a subpoena.

Comment: References to the requirements for service are currently located in several places in the existing rules (*e.g.*, Existing Rules 2(d), 2(h) and 23(a)–(d)). To some degree, these requirements are inconsistent with each other and with professional standards governing contacts with a party represented by an attorney. The proposed rule establishes a separate rule on service which sets forth the general requirements for service and filing. Statutory provisions which dictate special service requirements in particular types of proceedings are incorporated in the rules dealing with those types of proceedings. The proposed rule is modeled on Rule 5 of the Federal Rules of Civil Procedure and Existing Rule 23.

Once an order instituting proceedings is issued, service of essentially all documents

filed in connection with the proceeding must be made on all other parties or other participants admitted to the proceeding pursuant to Proposed Rule 13 (ER 9). Under the existing rules, requests for issuance of subpoenas are not always made in writing and are not served on other parties. The proposed rules require subpoena requests to be in writing. *See* Proposed Rule 19(b) (ER 14(b)). As drafted, Proposed Rule 5 would not require service of a subpoena request on other parties. Comment is requested as to whether other parties should be served with a copy of a request for issuance of a subpoena.

As a general matter, Proposed Rule 5 would not require service on other parties or participants of a request pursuant to Proposed Rule 33 (ER 25) for confidential treatment, although notice of the request could be ordered by the Commission. Where confidential treatment is sought with respect to financial disclosure statements made by a respondent claiming an inability to pay fines or disgorgement, a copy of the disclosure statement must be served on the interested division, and notice that a financial disclosure statement was filed must be served on all other parties. *See* Proposed Rule 55. Comment is requested as to whether a party making a request for confidential treatment should always be required to serve the request, or notice that a request has been made, on other parties or participants.

(b) *To whom and how made.* Whenever service is required or permitted to be made upon a person represented by counsel who has filed a notice of appearance pursuant to Rule 2, service shall be made upon the counsel; provided, however, that a copy of any paper served may also be served directly upon the person represented. Service shall be made by delivering a copy to the counsel or the person represented. Delivery means:

(1) Personal service, by handing a copy to the counsel or person or leaving a copy at the counsel's or person's office with a clerk or other person in charge thereof; or if there is no one in charge, leaving it in a conspicuous place therein; or if the office is closed, or the person being served has no office, leaving it at the person's house or usual place of abode with someone of suitable age and discretion;

(2) Sending the papers through a commercial courier service or overnight delivery service that obtains a receipt or other proof of delivery; or

(3) Mailing the papers through the U.S. Postal Service by first class or registered or certified mail or by Express Mail delivery. Service by mail is complete upon mailing.

Comment: The proposed rule refers to "person" being served instead of "party" being served because there may be persons who are neither parties nor non-party participants entitled to service. *See* Proposed Rule 13 (ER 9).

The existing rules do not provide for service by private, commercial overnight delivery services. The proposed rule would permit use of such services. The Task Force considered also permitting service by facsimile machine if all parties to a proceeding agree, and if receipt of the fax is confirmed with fax return of a manually signed receipt. Comment is requested as to whether service by fax should be permitted under these conditions. The rule as proposed would not prohibit persons from serving papers by facsimile machine, electronic mail, etc. if allowed by specific order of the hearing officer or the Commission.

Consistent with the existing rules, *e.g.*, Rule 2(h), the proposed rule does not prohibit service directly on a party represented by counsel, provided that counsel is also served. Comment is requested as to whether service upon a represented party should only be allowed when specifically authorized by the Commission or a hearing officer.

(ER 23(c))

(c) *Proof of service.* Proof of service shall be made by filing, simultaneously with the filing of the required number of copies with the Commission, an affidavit of service or, in the case of any attorney, a certificate.

Comment: The proposed rule is taken from Existing Rule 23(c).

(d) *Filing with the Commission.* All papers required to be served by a party upon any person shall be filed with the Commission before service or promptly thereafter. Papers required to be filed with the Commission must be received within the time limit, if any, for such filing.

Comment: This paragraph is modeled on Existing Rule 22(a) and Rule 5(d) of the Federal Rules of Civil Procedure.

(ER 22(a))

(e) *Filing With the Commission or Hearing Officer.* Filing of papers with the Commission shall be made by filing them with the Secretary. When a case is assigned to a hearing officer, a person making a filing with the Secretary shall promptly provide to the hearing officer a copy of any such filing. The hearing officer may direct or permit filings to be made with the hearing officer, in which event the hearing officer shall promptly provide the Director of the Office of Filings, Information and Consumer Services with copies of such filings.

Comment: This paragraph is based on Existing Rule 22(a) and on Rule 5(e) of the Federal Rules of Civil Procedure. Responsibility for receipt of filings and maintenance of an official case docket for each proceeding is currently fragmented between several offices within the Commission; the result is that case dockets are not as well maintained as they might be. The Task Force has recommended the hiring of an administrative proceedings clerk to assist in maintenance of administrative proceedings records. The Office of Filings, Information and Consumer Services, ("OFICS") is the Commission's records custodian. 17 CFR 200.20c. Because hearing officers frequently preside at locations away from the Commission's Headquarters in Washington, D.C., where the Office of Filings, Information and Consumer Services is located, the Proposed Rules permit filings to be made with the hearing officer and forwarded by him or her to the Office of Filings, Information and Consumer Services. Rule 29(b) establishes additional procedures for the transmittal of items from the hearing officer to the Director of the Office of Filings, Information and Consumer Services.

(ER 22(c))

(f) *Number of copies.* An original and three copies of all papers filed with the Commission or hearing officer shall be filed.

Comment: This paragraph was taken from Existing Rule 22(c). The number of copies to be filed was reduced from seven to three based on the recommendation of the Secretary.

(ERs 22(j)–(k), 23(b))

Rule 6. Computation of Time.

(ER 22(j))

(a) *Computation.* In computing any period of time prescribed or allowed by these rules or by order of the Commission, the day of the act, event, or default from which the designated period of time begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a legal holiday (as defined in Rule 7), in which event the period runs until the end of the next day that is neither a Saturday, a Sunday, nor a legal holiday. Intermediate Saturdays, Sundays, and legal holidays shall be excluded from the computation when the period of time prescribed or allowed is seven days or less, not including any additional time allowed for service by mail in Rule 6(b). If on the day a filing is to be made, weather or other conditions have made the Secretary's office or other designated filing location inaccessible, the filing deadline shall be extended to the end of the next day which is neither a Saturday, a Sunday, nor a legal holiday.

Comment: The new language at the end of this paragraph is taken from Rule 6(a) of the Federal Rules of Civil Procedure.

(b) *Additional time for service by mail.* Whenever a person has the right to or is required to do some act or make a filing within a prescribed period after the service of a notice or other paper upon that person and service of the notice or other paper is made by mail,

three days shall be added to the prescribed period.

Comment: This paragraph is based on Existing Rule 23(b) and Rule 6(e) of the Federal Rules of Civil Procedure. Pursuant to Proposed Rule 5(b)(3) service by mail is complete upon mailing. Accordingly, some additional time must be allowed for delivery when service is by regular mail. Existing Rule 23(b) allowed two days additional time. The proposed rule would allow three additional days. This change conforms to Rule 6(e) of the Federal Rules of Civil Procedure, and is a more realistic approximation of the time taken for delivery by regular mail. Service by overnight courier service is complete upon receipt, so no additional time is warranted for service by that method.

(ER 22(k))

(c) *Date of entry of orders.* In computing any period of time involving the date of the entry of an order by the Commission, the date of the entry shall be:

(1) The date of the adoption of the order by the Commission, as reflected in the caption of the order; or

(2) In the case of orders reflecting action taken pursuant to delegated authority, the date when such action is taken, as reflected in the caption of the order.

Comment: The deleted provisions of this paragraph which are located in Existing Rule 22(k) have been moved to Proposed Rule 32(c).

(ER 5)

Rule 7. Business Hours.

The Headquarters office of the Commission, at 450 Fifth St., NW., Washington, DC 20549, is open each day, except Saturdays, Sundays, and federal legal holidays, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight-savings Time, whichever is currently in effect in Washington, DC. Federal legal holidays consist of New Year's Day, Birthday of Martin Luther King, Jr., Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday in Washington, DC, by the President or the Congress of the United States.

(ER 6)

Rule 8. Notice of Proceedings and Hearings.

(a) *Notice of proceedings; order instituting proceedings.* Whenever an order instituting proceedings is issued by the Commission, appropriate notice thereof shall be given by the Secretary or other duly designated officer of the Commission to each party to the proceeding or to the person designated by any such party as being authorized to receive on his or her behalf notices issued by the Commission. The order shall state:

(1) The nature of any hearing;

(2) The legal authority and jurisdiction under which the hearing is to be held; and

(3) A short and simple statement of the matters of fact and law to be considered and determined. In proceedings in which an answer is directed pursuant to Rule 9, the order instituting proceedings shall set forth the factual and legal basis alleged therefor in such detail as will permit a specific response thereto.

Comment: The phrase "persons entitled to notice" has been deleted because the term "party" is now defined at Proposed Rule 1(c) to include such persons.

(b) *Service of order instituting proceedings.* Service of an order instituting proceedings may be given pursuant to Rule 5(b)(1), 5(b)(2), or 5(b)(3); provided, however, that in proceedings pursuant to section 8 or 10 of the Securities Act of 1933 or section 305 or 307 of the Trust Indenture Act of 1939, service shall be by personal service or confirmed telegraphic notice; provided, further, that in proceedings pursuant to provisions of the Investment Company Act of 1940 and the Investment Advisers Act of 1940, service shall be given by personal service upon each party or by registered mail or certified mail or confirmed telegraphic notice to the party's last known business address.

Comment: Existing Rule 6(b) has been divided into Proposed Rules 8 (b) and (c). Service of an order instituting proceedings will generally be made pursuant to the provisions of Rule 5. The special provisions for service, including the references to service by "confirmed telegraphic notice," enumerated in the proposed rule are required by statute. *See,* Securities Act sections 8 (b), (d), and 10(b); Investment Company Act section 40(a); Investment Advisers Act section 211(c).

(c) *Time and place of hearing.* Each party shall be given notice of the hearing within a time reasonable in light of the circumstances, in advance of the hearing; provided, however, that in a proceeding in which a temporary *ex parte* sanction is sought, the Commission may direct that notice of the hearing shall be delayed. The time and place for any hearing in a proceeding shall be fixed with due regard for the public interest and the convenience and necessity of the parties, the participants, or their representatives. It is the policy of the Commission that in a proceeding under any provision of the Public Utility Holding Company Act of 1935, the Investment Company Act of 1940 (except section 9(b) thereof), section 206A of the Investment Advisers Act of 1940, section 8 of the Securities Act of 1933, sections 305 or 307 of the Trust Indenture Act of 1939, or any proceeding in which a temporary sanction is sought, the hearing should ordinarily be held in the District of Columbia.

Comment: The rule has been amended to provide for delayed notice when an *ex parte* sanction is sought. The requirement that notice be given at a time "reasonable in light of the circumstances" was added because in emergency cases, for example, where a temporary cease-and-desist order is not sought *ex parte*, the hearing may be scheduled with only very brief notice.

The Commission has had a long-standing practice of holding hearings outside of Washington, DC. In a substantial number of cases, hearings are held in multiple cities. This practice was begun prior to the advent of jet travel, when it was substantially more difficult and expensive for private parties or their witnesses to travel to a hearing. Data reviewed by the Task Force revealed that cases with hearings held in multiple cities take disproportionately more time to complete than do cases with hearings held in one location. Although other factors may contribute to the protracted nature of hearings held in multiple cities, it may still be more efficient, and no more costly for the Commission, to pay the parties' or witnesses' expenses for travel to Washington, DC, than to pay for a law judge and Commission staff to travel to hearing locations away from Washington. Comment is requested as to whether the practice of holding hearings in multiple cities should be discontinued, except in extraordinary cases. Comment is also requested as to whether, absent extraordinary circumstances, the Commission should adopt a policy either that all hearings be held in Washington, DC, or that hearings be held only in Washington and those cities where the Commission maintains Regional Offices.

(d) *Publication of notice of hearing.* Unless otherwise ordered by the Commission, notice of any public hearing shall be given general circulation by release to the public, by publication in the Securities and Exchange Commission News Digest and, where directed, by publication in the **Federal Register**.

Comment: The reference to the Commission's News Digest was added to conform this rule to the other rules which require publication of notices, Proposed Rule 24 (ER 16(f)) and Proposed Rule 25 (ER 17(f)). By publishing all notices in one source, information about pending proceedings is more readily available to the public. The SEC News Digest was chosen as a vehicle for publication because it is published daily and is available on electronic databases, assuring wide dissemination.

(e) *Amendment to order instituting proceedings.* In any proceeding, motions for amendments to the matters of fact and law to be considered may be granted by the hearing officer at any time prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission, upon a showing that the amendment is appropriate and within the scope of the order instituting proceedings. An amendment to the matters of fact and law to be considered may be granted by the Commission at any time.

Comment: Existing Rule 6(d) authorizes the hearing officer to make amendments to the matters of fact or law at any time prior to issuance of an initial decision. This rule has posed difficulties for the hearing officer because it is potentially at odds with the Commission's view that the Commission itself should determine the scope of charges that will be brought or the scope of regulatory issues that will be considered when hearings are to be held pursuant to an order instituting proceedings.

Typically, the issue of amending an order instituting proceedings arises in an enforcement proceeding when the evidence presented at hearing either does not conform to the violations alleged in the order instituting proceedings or establishes violations of statutory provisions or rules not enumerated in the order instituting proceedings. If no evidence or insufficient evidence is offered on an allegation, the charge of violations will not be sustained. In such a case, the hearing officer clearly is authorized to deny relief; an amendment of the order instituting proceedings could be made, but would usually be unnecessary.

However, if the evidence likely to be adduced or actually adduced at hearing establishes violations not specifically alleged in the order instituting proceedings, the issue is more difficult. In practice, hearing officers have allowed amendments to the order instituting proceedings to conform the order to the evidence to be presented where the amendments are within the scope of the order approved by the Commission. Amendments which would introduce entirely new allegations have generally not been allowed without Commission authorization.

The Task Force believes this approach is appropriate, and it has been codified in the rules. In any particular case, the question of whether a proposed amendment to the order instituting proceedings requires Commission approval must be decided on the particular facts of the case. Parties who disagree with a ruling on the amendment of an order instituting proceedings will have an opportunity for Commission review either through interlocutory review or after issuance of an initial decision.

(f) *Persons entitled to notice.* Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to section 8(d) of the Securities Act of 1933 shall be sent to or served on the issuer; or, in case of a foreign government or political subdivision thereof, to or on the underwriter; or, in the case of a foreign or Territorial person, to or on its duly authorized representative in the United States named in the registration statement, properly directed in each case of telegraphic notice to the address given in such statement. In addition, if such proceeding is commenced within 90 days after the registration statement became effective, notice of the proceeding shall be given to the agent for service named on the facing sheet of the registration statement and to each other person designated on the facing sheet of the registration statement as a person to whom copies of communications to such agent are to be sent.

Comment: The existing rule references section 8(f) of the Securities Act, which contains a list of persons entitled to notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to section 8(d) of the Securities Act. In general, the Task Force attempted to make the rules of practice self-contained. Therefore, the provisions of section 8(f) have been incorporated into the rule.

(ER 6(e), 7, 12(d))

Rule 9. Answers; Defaults.

(a) *When answer required.* In any order instituting proceedings issued by the Commission, the Commission may direct that any party shall file an answer to the allegations contained in the order instituting proceedings. Any party in any proceeding may elect to file an answer, if not so ordered.

(b) *Time to file answer.* Except where a different period is provided by rule or by order, a party directed to file an answer as provided in paragraph (a) shall do so within 20 days after service upon him or her of the order instituting proceedings. Any other person granted leave to participate on a limited basis in such proceedings pursuant to Rule 13(c) may be required to file an answer within a reasonable time, as determined by the Commission or the hearing officer. Where amendments to the matters of fact and law to be considered in such proceedings are authorized, the parties may be required by the Commission or the hearing officer to answer within a reasonable time the amended matters of fact and law to be considered.

Comment: The time allowed to file an answer was changed to 20 days. The 20-day period provides a more realistic amount of time to respond to allegations. This period conforms to the time for answers under Rule 12 of the Federal Rules of Civil Procedure. The new language with respect to a "person granted leave to participate* * *," reflects changes in Proposed Rule 13 (ER 9) with respect to the classification of non-party participants.

(c) *Contents of answer; effect of failure to deny.* Unless otherwise directed by the hearing officer or the Commission, an answer shall specifically admit, deny, or state that the party does not have and is unable to obtain sufficient information to admit or deny each allegation in the order instituting proceedings. Any allegation not denied shall be deemed to be admitted. When a party intends in good faith to deny only a part or a qualification of an allegation, the party shall specify so much of it as is true and shall deny only the remainder. A statement of a lack of information shall have the effect of a denial.

(d) *Motion for more definite statement.* A party may file with an answer, a motion for a more definite statement of specified matters of fact or law to be considered or determined. Such motion shall state the respects in which, and the reasons why, each such matter of fact or law should be required to be made more definite. If the motion is granted, the order granting such motion will set the periods in which such statement, and any answer thereto, shall be filed.

(e) *Effect of failure to file answer: Default.* If a party respondent fails to file an answer required by this rule within the time provided, such person shall be deemed in default, and the proceedings may be determined against such person by the hearing officer or the Commission upon consideration of the order instituting proceedings, the allegations of which may be deemed to be true.

(ER 6(e))

(f) *Effect of failure to appear: Default.* Any person who is named in an order instituting proceedings as a person against whom findings may be made or sanctions imposed in the proceedings and who fails to appear at a hearing or at a prehearing conference of which he or she has been duly notified, or fails to file a notice of appearance when specifically ordered to do so, may be sanctioned as provided in Rule 3.

Comment: Proposed Rule 9(f) is derived from Existing Rule 6(e). The existing rule addresses the possibility of a regulatory proceeding where persons are named in the order instituting proceedings but are not directed to file an answer. The existing rule requires such persons to file a notice of appearance within 15 days of being served with the order instituting proceedings.

Failure to do so can be grounds for a default. While a default pursuant to this provision has been rarely, if ever, ordered in recent years, the Task Force concluded that it was a potential source of unfairness. The requirement to file a notice of appearance in lieu of an answer is too obscure, particularly with respect to persons represented *pro se*, to warrant a default. The proposed rule permits the Commission in specific cases to order a named party to file a notice of appearance by way of response to an order instituting proceedings. However, the proposed rule eliminates the general requirement to file a notice of appearance in lieu of an answer in cases where no answer is required. Failure to appear and failure to file a notice of appearance specifically required by an order remain grounds for a default and for sanctions, as provided in Proposed Rule 3.

(ER 12(d))

(g) *Motions to set aside defaults.* In order to prevent injustice and on such conditions as may be appropriate, the hearing officer, at any time prior to the filing of his or her initial decision or the Commission at any time, may for good cause set aside a default. Any motion to set aside a default shall be made within a reasonable time, state the reasons for the failure to file or appear, and specify the nature of the proposed defense in the proceedings.

Comment: The existing provision for motions to set aside defaults was moved to this rule so that it would be together with the other provisions governing defaults.

(ER 7(f))

Rule 10. Signature; Requirement and Effect Generally.

(a) *General requirements.* Every submission following the issuance of an order instituting proceedings of a party represented by counsel shall be signed by at least one counsel of record in his or her name and shall state that counsel's address and telephone number. A party or other participant who acts as his or her own counsel shall sign his or her individual name and state his or her address and telephone number on every submission.

(b) Effect of Signature. (1) The signature of a counsel, party, or other participant shall constitute a certification that: the person signing the submission has read the submission; to the best of his or her knowledge, information, and belief, formed after reasonable inquiry, the argument for the extension, modification, or reversal of existing law; and the submission are not made for any improper purpose, such as to harass or to cause unnecessary delay or needless increase in the cost of adjudication.

(2) If a submission is not signed, the hearing officer or the Commission shall strike the submission, unless it is signed promptly after the omission is called to the attention of the person making the submission.

Comment: A signature requirement is contained in Existing Rule 7(f) but applies only to answers. The proposed signature requirement would be made a separate rule in order to emphasize its importance. The rule, which is modeled on Rule 11 of the Federal Rules of Civil Procedure, expands upon the existing rule to require a signature on every submission and to impose on the person signing a submission personal responsibility for the contents of the submission. If a submission is signed in violation of this rule, the party violating the rule could be subject to sanctions under Rule 3.

(ER 8(a))

Rule 11. Settlements.

(a) *Offers of settlement.* Persons who are notified that proceedings may or will be instituted against them or a party to a proceeding already instituted, may, at any time, propose in writing offers of settlement. Such offers must be signed by the person making the offer and submitted to the interested division of the Commission.

(b) *Consideration of offers of settlement.* (1) Offers of settlement shall be considered by the division to which the offer is made when time, the nature of the proceedings, and the public interest permit.

(2) Where a hearing officer is assigned to a matter, the hearing officer may, upon the agreement and request of the persons to be party to the proposed settlement, in his or her discretion, express views regarding the appropriateness of any offer of settlement. The request for the hearing officer to express his or her views constitutes a waiver by the persons making the request of any right to claim prejudgment by the hearing officer based on the views expressed. If an offer of settlement is to be presented to the Commission, the hearing officer may, at his or her discretion, determine whether to delay any portion of the proceedings pending a decision by the Commission.

(3) The interested division shall present the offer of settlement to the Commission with its recommendation, except that, if the division's recommendation is unfavorable, the offer shall not be presented to the Commission unless the proposed party or party making the offer so requests.

(4) In submitting any offer of settlement, a proposed party or party agrees that if the offer is accepted the proposed party or party waives:

(i) All hearings pursuant to the statutory provisions under which the proceeding is to be or has been instituted;

(ii) The filing of proposed findings of fact and conclusions of law;

(iii) Proceedings before and an initial decision by a hearing officer;

(iv) All posthearing procedures;

(v) Judicial review by any court;

(vi) Such provisions of these rules or other requirements of law as may be construed to prevent any member of the Commission's staff from participating in the preparation of, or advising the Commission as to, any order, opinion, finding of fact, or conclusion of law to be entered pursuant to the offer; and

(vii) Any right to claim bias or prejudgment by the Commission based on the consideration of or discussions concerning settlement of all or any part of the matter.

(5) If the Commission rejects the offer of settlement, the proposed party or party making the offer shall be notified of the Commission's action and the offer of settlement shall be deemed withdrawn and such offer and any documents relating thereto shall not constitute a part of the record in any proceeding against that proposed party or party, provided, however, that rejection of an offer of settlement does not affect the continuing validity of waivers pursuant to (b)(4)(vi) and (b)(4)(vii) of this rule with respect to any discussions concerning the rejected offer of settlement.

(6) Final acceptance by the Commission of any offer of settlement will be only by the issuance of findings and an order.

Comment: The Administrative Procedure Act, 5 U.S.C. 554(c), requires that in formal, "on the record" proceedings administrative agencies give persons the opportunity for the submission and consideration of offers of settlement when time, the nature of the proceeding, and the public interest permit. The Commission specifically authorizes the staff to enter into settlement negotiations prior to the institution of proceedings with proposed respondents in virtually all cases, whether or not the proceedings would be formal, "on the record" proceedings. If proceedings are not settled prior to institution, the staff is authorized to participate in settlement negotiations any time after institution without obtaining specific Commission authorization.

The existing rule deals only with settlement offers made after proceedings have been instituted. The proposed rule conforms to current practice by addressing offers of settlement made both prior to and after the institution of proceedings.

Under the existing rule, a request for the hearing officer to express his or her views on a settlement offer triggers an automatic waiver by the person making the request of future claims of prejudgment by the hearing officer. When the Commission itself

considers an offer of settlement it requires, in addition to a prejudgment waiver, that the person making the offer sign the offer of settlement and that the offer explicitly waive each right described in paragraphs (b)(4)(i) through (vii). The proposed rule includes a requirement that all offers be signed. In addition, by operation of the proposed rule, every offer of settlement will be deemed to incorporate these waivers. This eliminates the inconsistency of having one waiver, but not others, in the rules and assures uniformity in the form of offers of settlement. The Task Force recommends that offers of settlement still recite each waiver, particularly where a person is represented *pro se*.

Two of the waivers are of particular note. First, waiver (vi), which permits *ex parte* communications between the staff involved in a particular case and the Commission, reflects the Commission's position that it is necessary in all cases for the litigation staff to have an opportunity to talk to the Commission about an offer of settlement. *See In the Matter of The Stuart-James Co., Inc.*, Exchange Act Release No. 28810, 48 S.E.C. Docket 22 (January 23, 1991) (certain facts necessary for the Commission to make a reasoned judgment as to whether settlement offer is in the public interest are often available only to the staff that negotiated the proposed settlement).

Second, waiver (vii), involving a waiver of claims of bias or prejudgment arising from the Commission's consideration of an offer, is a logically necessary precondition to the making of an offer. If it were otherwise, rejection of an offer, no matter how unrealistic, would allow a respondent or proposed respondent to raise collateral challenges to the Commission's authority to later decide the case on the merits.

(ER 8(b)–(d))

Rule 12. Prehearing Conferences; Submissions; Specification of Procedures.

(a) *Prehearing Conferences.— (1) Procedures.* On his or her own motion or at the request of a party or other participant, the hearing officer may, in his or her discretion, direct counsel, any party, or any other participant to meet with him or her or to meet outside his or her presence for a prehearing conference or conferences. Such conferences may be held with one or more persons participating by telephone or other remote means. Where such a conference is held outside the presence of the hearing officer, the hearing officer shall be advised promptly by the parties of any agreements reached. The purposes of such conferences may include, but are not limited to:

(i) Expediting the disposition of the proceeding;

(ii) Establishing early and continuing control of the proceeding by the hearing officer; and

(iii) Improving the quality of the hearing through more thorough preparation.

(2) *Final prehearing conference.* Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, a final prehearing conference should be held. Any such conference shall be held as close to the start of the hearing as reasonable under the circumstances.

(3) *Subjects to be discussed at prehearing conferences.* At prehearing conferences consideration may be given and action taken with respect to any or all of the following:

(i) Simplification and clarification of the issues;

(ii) Exchange of witness and exhibit lists, and copies of exhibits;

(iii) Stipulations, admissions of fact, and stipulations concerning the contents, authenticity, or admissibility into evidence of documents;

(iv) Matters of which official notice may be taken;

(v) The need and schedule for exchanging prehearing briefs;

(vi) Summary disposition of any or all issues;

(vii) Settlement of any or all issues;

(viii) Determination of hearing dates;

(ix) Amendments to the order instituting proceedings or answers thereto;

(x) Production of documents as set forth in Rule 20, and prehearing production of documents in response to subpoenas duces tecum as set forth in Rule 19(b);

(xi) Specification of procedures as set forth in paragraph (d) of this rule; and

(xii) Such other matters as may aid in the orderly and expeditious disposition of the proceeding.

(b) *Prehearing submissions.* At a prehearing conference or otherwise, the hearing officer, on his or her own motion, or at the request of a party or other participant, may order any party, including the interested division, to furnish such information as deemed appropriate including any or all of the following:

(1) An outline or narrative summary of its case or defense;

(2) The legal theories upon which it will rely;

(3) Copies and a list of documents which it intends to introduce at the hearing; and

(4) A list of witnesses, who will testify on its behalf, including the witnesses' names, occupations, addresses and a brief summary of their expected testimony.

(c) *Prehearing orders.* At or following the conclusion of any conference held pursuant to this rule the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer.

Comment: Under the existing Rules, provisions concerning prehearing conferences are included in the same rule which deals with settlements. Because prehearing procedures are a logically distinct topic and because of the importance of prehearing conferences as a case management tool, under the proposed Rules the provisions with respect to prehearing conferences would be placed in a separate rule. The proposed rule is modeled on Rule 16 of the Federal Rules of Civil Procedure.

Anecdotal evidence presented to the Task Force indicated that when properly managed, prehearing conferences are an effective mechanism for eliminating unnecessary delay and improving the quality of justice by sharpening the preparation of cases, facilitating the prehearing exchange of documents, and promoting settlements. The rule is intended to give the hearing officer or the Commission discretion to order one or more prehearing conferences at any point prior to hearing, depending on the subject matter and circumstances of a case.

The list of topics to be discussed at a prehearing conference explicitly includes a number of matters addressed by other rules: exchange of exhibit copies and other documents (Proposed Rule 20); the summary disposition of any or all issues (Proposed Rule 16(b)); settlement of any issue (Proposed Rule 11); and amendments to the order instituting proceedings (Proposed Rule 8(e)).

An initial conference, while encouraged, is not mandatory. Unless the emergency nature of a hearing makes it clearly inappropriate to do so, a final conference should be held shortly before the hearing in all cases except those where exigent circumstances could make it clearly inappropriate to do so. The final prehearing conference should be held at a time close to the start of the hearing. In most cases this should be ten days to two weeks prior to the hearing. At that point the parties should have completed their hearing preparation and, with only a short period of time between the final conference and the start of the hearing, circumstances should not change such that any agreements reached with respect to scheduling, the admission of evidence or other matters would have to be amended. This schedule is consistent with the guidelines established in Rule 16(d) of the Federal Rules of Civil Procedure.

Comment is requested as to whether or not initial prehearing conferences should be mandatory in non-emergency cases. If there are to be initial conferences, should the rule state that an initial conference should be held within a certain time, for example, within 15 days of the filing of the answer?

The existing rule is too restrictive as to the permissible scope of prehearing submissions. The proposed rule would allow prehearing submissions as to any matter determined to be appropriate. If a party believes that any order by a hearing officer, whether with regard to a prehearing submission or otherwise, would be unduly inconvenient or inappropriate, an objection or request for

reconsideration can be filed. The specific provision in the existing rule that a hearing officer shall not order inappropriate procedures is deleted from the proposed rule.

This provision is taken from Existing Rule 8(d). Prehearing orders should be realistic and firm guides to the course of the proceeding. While flexibility is necessary in appropriate circumstances, prehearing orders should be amended only for good cause. Hearing officers must not permit prehearing case management procedures to become a source of collateral challenges or delay.

(d) *Specification of procedures.* (1) In any proceeding other than an enforcement proceeding, a party may, at any time up to 20 days prior to the start of a hearing, make a motion to specify the procedures necessary or appropriate for the proceeding, with particular reference to:

(i) Whether there should be an initial decision by a hearing officer;

(ii) Whether any interested division of the Commission may assist in the preparation of the Commission's decision; and

(iii) Whether there should be a 30-day waiting period between the issuance of the Commission's order and the date it is to become effective.

Any other party may object to the procedure so specified, and such party may specify such additional procedures as he or she considers necessary or appropriate; in the absence of such objection or specification of additional procedures, such party may be deemed to have waived objection to the specified procedures.

(2) Any proposal as to the procedural matters enumerated in paragraph (d)(1) of this rule, even if not objected to by any party, shall be subject to the approval of the hearing officer and be embodied in an appropriate stipulation. If the hearing officer agrees to a specification of procedures that would waive an initial decision, the hearing officer shall notify the Secretary and, unless the Commission directs otherwise within 14 days, no initial decision shall be issued.

Comment: Proposed paragraph (d) is based on Existing Rules 8(b) and (c). Specification of procedures by the parties, under the supervision of a hearing officer, has been an effective mechanism for managing certain hearings. Such flexibility is appropriate with respect to proceedings concerning regulatory matters, particularly where there may be numerous parties. The Task Force concluded, however, that because of the distinct issues raised by enforcement proceedings, in which the government is seeking to impose sanctions on named persons, the basic procedures used in enforcement proceedings should not be subject to negotiation by the parties. Accordingly, the proposed Rule excludes enforcement proceedings from the provisions of this rule. Consistent with the expectation that a final prehearing conference will be held ten days to two weeks prior to a hearing, the proposed Rule restricts motions to specify procedures to twenty days prior to the hearing. Any such motions can thereby be timely answered and resolved.

(ER 9)

Rule 13. Parties, Limited Participants and Amicus Curiae.

(a) *Parties in enforcement proceedings.* In enforcement proceedings, the interested division and the respondent or respondents named in the order instituting proceedings and any amendments thereto shall be the only parties to the proceeding, and no one else shall be granted leave to become a party or participate on a limited basis; provided, however, that by order, persons may be granted leave to file claims or state their views with respect to a proposed plan of disgorgement.

(b) *Intervention as a party.* (1) In any proceeding other than an enforcement proceeding, any person may seek leave to intervene as a party by filing a motion setting forth the person's interest in the proceeding. In regard to proceedings under the Public Utility Holding Company Act of 1935, any representative of interested consumers or security holders, or any other person whose participation in the proceedings may be in the public interest or for the protection of investors or consumers may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding. In regard to proceedings under the Investment Company Act of 1940, any representative of interested security holders, or any other person whose participation in the proceeding may be in the public interest or for the protection of investors may be admitted as a party upon the filing of a written motion setting forth the person's interest in the proceeding. No person shall be admitted as a party to a proceeding by intervention unless it is determined that leave to participate pursuant to paragraph (c) hereof would be inadequate for the protection of his or her interests.

(2) In proceedings under the Public Utility Holding Company Act of 1935, any interested representative, agency, authority or instrumentality of the United States or any interested state, state commission, municipality or other political subdivision of a state shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

(3) In proceedings under the Investment Company Act of 1940, any interested state or state agency shall be admitted as a party to any proceeding upon the filing of a written motion requesting leave to be admitted.

Comment: Section 19 of the Public Utility Holding Company Act of 1935 and section 40(c) of the Investment Company Act of 1940 mandate the provisions in paragraphs (b)(2) and (3). The last sentence of this section has been deleted because "party" is now defined at Proposed Rule 1(c) to include the interested division.

(c) *Leave to participate.* In proceedings other than enforcement proceedings, any person may move to be given leave to participate on a limited basis as a nonparty participant as to any matter affecting his or her interests.

(1) *Procedure.* Motions for leave to participate shall be in writing, shall set forth the nature and extent of the movant's interest in the proceeding, and, except where good cause for late filing is shown, shall be filed not later than 20 days prior to the date fixed for the commencement of the hearing. Leave to participate pursuant to this paragraph may include such rights of a party as the hearing officer may deem appropriate. Persons granted leave to participate shall be served in accordance with Rule 5(a); provided, however, that a party to the proceeding may move that the extent of notice of filings or other papers to be provided to persons granted leave to participate be limited, or may move that the person granted leave to participate bear the cost of being provided copies of any or all filings or other papers. Persons granted leave to participate shall be bound, except as may be otherwise determined by the hearing officer, by any stipulation between the parties to the proceeding with respect to procedure, including submission of evidence, substitution of exhibits, corrections of the record, the time within which briefs or exceptions may be filed or proposed findings and conclusions may be submitted, the filing of initial decisions, the procedure to be followed in the preparation of decisions and the effective date of the Commission's order in the case. Where the filing of briefs or exceptions or the submission of proposed findings and conclusions are waived by the parties to the proceedings, a person granted leave to participate pursuant to this paragraph shall not be permitted to file a brief or exceptions or submit proposed findings and conclusions except by leave of the Commission or of the hearing officer, if one is assigned.

(2) *Certain persons entitled to leave to participate.* The hearing officer is directed to grant leave to participate under this paragraph to any person to whom it is proposed to issue any

security in exchange for one or more bona fide outstanding securities, claims or property interests, or partly in such exchange and partly for cash, where the Commission is authorized to approve the terms and conditions of such issuance and exchange after a hearing upon the fairness of such terms and conditions.

Comment: Proposed paragraph (c) is based on Existing Rule 9(c), (d) and (g). The time limit for seeking leave to become a participant has been changed from two days to 20 days before the hearing. This change conforms with the expectation under Proposed Rule 12 that a final prehearing conference will be held prior to each hearing, at which all foreseeable procedural matters will be resolved. A request to participate in a hearing filed 48 hours before the hearing is to begin would disrupt the schedule established in prehearing conferences.

Because the cost of furnishing documents to non-party participants may be burdensome, the Rule contemplates that a party may seek to limit the distribution of documents or seek reimbursement for costs from the non-party participants.

(d) *Amicus participation.* A brief of an amicus curiae may be filed only:

(1) If accompanied by written consent of all parties;

(2) With leave, granted on motion; or

(3) At the request of the hearing officer, if one is assigned, and otherwise, the Commission; provided, however, that consent or leave shall not be required when the brief is presented by the United States or an officer or agency thereof, or by a State, Territory or Commonwealth.

The brief may be filed conditionally with the motion for leave. A motion for leave shall identify the interest of the movant and shall state the reasons why a brief of an amicus curiae is desirable. Except as all parties otherwise consent, any amicus curiae shall file its brief within the time allowed the party whose position as to affirmance or reversal the amicus brief will support, unless the hearing officer for cause shown shall grant leave for later filing, in which event the hearing officer shall specify within what period an opposing party may reply. A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons.

Comment: Existing Rule 9 creates three categories of participants in Commission proceedings. Persons can participate as a party, they can seek leave to participate as a non-party, or can seek simply to state their views, without ongoing participation. While continuing to permit these different levels of participation, Proposed Rule 13 recognizes as a separate category, participation as an amicus.

The provisions for amicus participation are based on Rule 29 of the Federal Rules of Appellate Procedure. Amicus participation contemplates the limited action of filing a brief setting forth the filing person's views on particular legal or policy issues in the proceeding. By contrast, leave to participate contemplates participation that is concerned primarily with the facts of a particular case. Also, an amicus brief may be filed upon written consent of all parties. Leave to participate does not require written consent of all parties, nor will written consent of all parties alone be sufficient to obtain leave to participate.

Any person may seek leave to intervene as a party in non-enforcement proceedings. Persons granted leave to participate as a non-party participant would have an interest in the specific facts at issue in the proceeding. Such a person ordinarily would not be named directly in any final order and would have fewer rights at a hearing than a party. However, within this category, the degree of participation may vary greatly depending on the extent of that person's interest and the facts of each case. See In the Matter of Narragansett Capital Corporation, et al., Adm. Pro. File No. 3–6539 (Oct. 4, 1985) (person granted leave to participate on a limited basis may cross-examine witnesses). An amicus would participate in the traditional role of an amicus curiae, directing arguments to matters of law or policy, more than to the particular facts of a case.

The Public Utility Holding Company Act and Investment Company Act both provide for the admission of certain persons as parties to specified proceedings. In other proceedings of a regulatory nature it may also be appropriate to grant interested persons official status at a proceeding. The Task Force concluded, however, that because of the distinct issues raised by enforcement proceedings, in which the government seeks to impose sanctions upon named persons, the only parties should be those specified by the Commission in the order instituting proceedings, and no one else should be granted status as a limited or non-party participant. A person may seek to participate in enforcement proceedings as an amicus or, if they have knowledge of specific facts relevant to the proceeding, as a witness. In addition, in proceedings where findings of violation have been made, and a plan of disgorgement will be or has been proposed, persons will have an opportunity to comment on the proposed plan of disgorgement and, as appropriate under the plan, to file a claim against the disgorgement pool. See Proposed Rule 51.

In addition to these three methods of participation, the proposed rules take into account that from time to time persons, particularly individual security holders or members of the public, who do not otherwise wish to participate in a matter will seek to make written or oral statements of their views in a letter or by appearing at a hearing. As does the existing rule, the proposed rule allows such statements to be made.

(e) *Modification of participation provisions.* The Commission may, by order in any case, modify the provisions of this rule which would otherwise be applicable, and may impose such terms and conditions on the participation of any person in any proceeding as it may deem necessary or appropriate in the public interest.

Comment: The first sentence was deleted because its provisions were duplicative of Proposed Rule 18 (ER 12(a)), which states that the Commission may on its own motion review rulings by the hearing officer at any time.

(f) *Permission to state views.* Any person may seek leave to file a memorandum or make an oral statement of his or her views. Any such communication may be included in the record; provided, however, that unless offered and admitted as evidence of the truth of the statements therein made, the communications submitted pursuant to the provisions of this paragraph will be considered only to the extent that the statements therein made are otherwise supported by the record.

Comment: This paragraph allows for the submission of a statement of views with less formality than required for an amicus brief or to participate on an ongoing basis as a non-party. Comment is requested as to whether provisions allowing for both "amicus participation" and "permission to state views" are necessary, or whether a provision allowing for "permission to state views" is adequate.

Additionally, Rule 9(b) was deleted because it was intended to apply only to cases instituted prior to August 20, 1964. Proposed Rule 13(c) includes substantial portions of Existing Rule 9(c) and (d). Portions of Rule 9(e) have been included in Proposed Rule 13(b).

(ER 10)

Rule 14. Consolidation.

By order of the Commission, proceedings involving a common question of law or fact may be joined for hearing of any or all the matters in issue in such proceedings or such proceedings may be consolidated. The Commission may make such orders concerning the conduct of such proceedings as it deems appropriate.

Comment: Under the existing rule, the Commission may issue orders regarding the conduct of consolidated proceedings in order to avoid unnecessary cost or delay. Under the proposed rule, such orders could be issued any time the Commission deems it appropriate.

(ER 11)

Rule 15. Hearings.

(a) *Held on order of Commission.* Hearings shall be held only as ordered by the Commission. The hearings shall be conducted in a fair, impartial, and expeditious manner.

Comment: Proposed Rule 15 broadens the coverage of Rule 11 of the existing Rules of

Practice by including all Commission hearings, evidentiary or otherwise. The second sentence of the proposed rule is derived from Existing Rule 11(b).

(b) *Before whom held.* All hearings shall be held before the Commission or a hearing officer.

Comment: The deleted language in the first sentence is no longer necessary because "hearing officer" is now defined at Proposed Rule 1(c). The requirement that hearings shall be conducted in an impartial manner is now included in paragraph (a) of this rule.

(c) *Hearings to be public.* All hearings, except hearings on applications for confidential treatment filed pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933, section 24(b) of the Securities Exchange Act of 1934, section 22(b) of the Public Utility Holding Company Act of 1935, section 45(a) of the Investment Company Act of 1940, section 210(a) of the Investment Advisers Act of 1940, or the rules and regulations promulgated under such sections, shall be public unless otherwise ordered by the Commission on its own motion or the motion of a party. No hearing shall be nonpublic where all respondents request that the hearing be made public.

Comment: Under the Proposed Rules, Existing Rule 11(b) has been separated into paragraphs (b) and (c) of Proposed Rule 15. The added language in the penultimate sentence of Proposed Rule 15(c) conforms to the revised language in Proposed Rule 2(e)(7).

(d) *Disqualification of hearing officer.* At any time a hearing officer believes himself or herself to be disqualified from considering a matter, the hearing officer shall issue a notice stating that he or she is withdrawing from the matter and setting forth the reasons therefor. Any party or person granted leave to participate on a limited basis pursuant to Rule 13 who has a reasonable, good faith basis to believe that a hearing officer has a personal bias, or is otherwise disqualified from hearing a case, may make a motion to the hearing officer that the hearing officer withdraw. The motion shall be accompanied by an affidavit setting forth in detail the facts alleged to constitute grounds for disqualification. If the hearing officer finds himself or herself not disqualified, he or she shall so rule and proceed with the hearing.

Comment: Under the proposed rule, the standard for making a motion to disqualify has been modified to require a "reasonable" good faith basis. Under the existing rule only a good faith basis is required. This change is intended to emphasize that there must be objective reasons to seek a disqualification, not just a subjective, though sincerely held, belief. The proposed rule also deletes the statements that a hearing officer "may file" a response to a motion to disqualify prior to ruling on the motion, and that the Commission may rule on the motion with or without oral argument. The normal procedure when a hearing officer is confronted with a motion to withdraw simply should be to rule on the motion. A "response" might be necessary only if the matter is argued before the Commission. The Commission already has the power to determine when oral argument will be held, *see* Proposed Rule 16; there is no need to restate it. The record of the case includes all motions and rulings; there is no need to specify that motions to disqualify are a part of the record. Consistent with the changes to Rule 18, the provisions for mandatory interlocutory review have been deleted from the proposed rule.

Additionally, the substance of Existing Rule 11(d) is now included at Proposed Rule 4, "Authority of a Hearing Officer." The substance of this Rule 11(e) is included at Proposed Rule 16(a)–(c).

(e) *Transcript of hearings.* Except as otherwise ordered by the hearing officer or the Commission, hearings shall be recorded or transcribed verbatim by shorthand, mechanical means, electronic sound recording, or any other method approved by the hearing officer. A transcript thereof shall be made unless the Commission, by order, determines otherwise.

Comment: The proposed rule incorporates revisions to account for technological changes in the recording of hearings. It is modeled upon 28 U.S.C. 753.

(ERs 11(e), 12(b)–(c))

Rule 16. Motions; Objections to Evidence; Exceptions to Rulings; Stays.

(ER 11 (e))

(a) *Procedures for motions.* Unless made during the hearing, a motion shall be in writing, shall state with particularity the grounds therefore, shall set forth the relief or order sought, and shall be accompanied by a written brief of the points and authorities relied upon in support of the same. The rules applicable to captions and other matters with respect to the form of papers filed with the Commission apply to all motions. All motions shall be signed in accordance with Rule 10. Briefs in opposition to a motion shall be filed within 10 days after service of the motion.

Reply briefs shall be filed within five days after service of the opposition. No oral argument will be heard unless the Commission or the assigned hearing officer otherwise directs.

Comment: Proposed Rule 16 is based on Existing Rules 11 and 12 and Rule 7(b) of the Federal Rules of Civil Procedure.

(ER 11(e))

(b) *Dispositive motions.* Any party may make a motion for an order that would dispose of the proceeding in whole or in part. Any such motion made prior to the start of the hearing shall be filed no later than 30 days prior to the commencement of the hearing, or at such earlier time in advance of the final prehearing conference as the hearing officer may order. For purposes of a motion for a dispositive ruling prior to the conclusion of the interested division's case, the facts of the pleadings of the party against whom the motion is made shall be taken as true, except as modified by stipulations made by that party. The hearing officer shall promptly grant or deny the motion or shall defer decision on the motion until after the conclusion of the interested division's case.

Comment: By its terms, Existing Rule 11(e) appears to prohibit the making, as well as the consideration, of a dispositive motion prior to the completion of the case put on by the interested division. The apparent reason for these limitations on dispositive motions is that they are a necessary corollary of the principle that it is the Commission's sole prerogative to determine what matters will be subject to hearing. *See* Proposed Rule 15(a) (ER 11) (hearings to be held only as ordered by the Commission).

In this view, if a hearing officer grants a dispositive motion prior to hearing the interested division's case, he or she is, in effect, overruling the Commission's determination that allegations by the staff warrant a hearing. Moreover, as a practical matter, it would be inefficient to allow such motions prior to the conclusion of the staff's case since, if the Commission acted consistently with its original decision, it would presumably reverse the hearing officer's decision anyway.

The Task Force believes that the underlying premise of Existing Rule 11(e) is no longer entirely valid. Even prior to hearing, a hearing officer may have different information than the Commission did when it authorized an order instituting proceedings. At the authorization stage, a proposed respondent is not present before the Commission to argue his or her case. Not all respondents even submit a "Wells Statement" setting forth legal or policy reasons in opposition to a proposed recommendation to bring an enforcement action. As a result of prehearing procedures, including the filing of an answer, motions for more specific statements, document exchanges and prehearing conferences, matters of law may be clarified, new, undisputed facts may be discovered or prior disputes as to some facts may be resolved and facts stipulated to. Accordingly, a decision by a hearing officer to grant a dispositive motion prior to hearing does not necessarily reflect on the Commission's judgment to authorize proceedings, based on the information then available to the Commission.

As a result of prehearing procedures, in some cases there may be issues ripe for decision on undisputed facts prior to hearing. Under the present rule, respondents and the Commission may be forced to the time and expense of a hearing on issues where prehearing procedures permit agreement as to the facts, and where no hearing is necessary. In addition, the consideration of dispositive motions and supporting memoranda should assist in bringing into focus the remaining issues in dispute for the hearing.

The Task Force concluded that, on balance, the opportunity to dispose of portions of a case based on facts established by the pleadings, or stipulated by the parties prior to hearing, will improve the efficiency and the fairness of the administrative process. Under the proposed rule, therefore, parties may file motions to dispose of all or part of a proceeding prior to the commencement of the hearing as well as at later stages.

At the same time, the Task Force recognizes that, if not controlled by the hearing officer, the opportunity to make a dispositive motion prior to hearing can be used by the parties as a tactic for delay, or to increase the costs of prehearing preparation. The hearing officer must set firm schedules for the submission of dispositive motions. While prehearing procedures will help to focus issues, in many cases there will simply be basic disagreement as to the material facts. In these or similar circumstances, the hearing officer must promptly deny or defer ruling on dispositive motions until after the interested division has completed its case. The Task Force recommends that if this proposed change is adopted, the Commission monitor the effects of the change for a two-year period and determine the rule's effect on efficiency or the quality of justice.

The Task Force gave extended and careful consideration to suggestions that the rules should allow for a summary judgment procedure, similar to the procedure of Rule 56 of the Federal Rules of Civil Procedure. Summary judgment practice under the Federal Rules is premised on the right of each party to take pretrial discovery and to make summary judgment motions based on deposition transcripts, affidavits and other evidence. By contrast, the Proposed Rules of Practice do not permit discovery depositions and do not contemplate the submission of prehearing affidavits. The Task Force concluded that summary judgment practice under the Federal Rules should not be a model for prehearing practice in the wholly different context of administrative proceedings.

The existing Rules of Practice already allow dispositive motions prior to completion of the hearing. The proposed rule is intended only to make a modest change to that practice by allowing such motions to be made before and to be considered as early as, the time of a prehearing conference.

(ER 11(e))

(c) *Motions to be made to hearing officer.* Except as otherwise directed by the Commission, or where these rules specifically provide otherwise, all motions, objections, applications or other filings made during a proceeding prior to the filing of an initial decision therein, or, if no initial decision is to be filed, prior to the time fixed for the filing of briefs with the Commission, shall be directed to and decided by the hearing officer. Unless otherwise ordered by the Commission or the hearing officer, if a motion is properly made to the Commission concerning a proceeding to which a hearing officer is assigned, the proceeding before the hearing officer shall continue pending the determination of the motion by the Commission.

Comment: Proposed Rule 5(e) requires that filings shall be physically made with the Secretary or, if the hearing officer allows, directly with the hearing officer. Proposed Rule 16(c) requires that the person making a motion in a proceeding in which a hearing officer is presiding direct the content of his or her requests and arguments to the hearing officer, not the Commission, in every case in which a hearing officer is assigned. If a motion is directed to the Commission in a case in which a hearing officer is assigned, the Secretary must refer the motion to the hearing officer unless a motion directly to the Commission is authorized. In those unusual circumstances where a motion is properly directed to the Commission, the proceeding before the hearing officer should continue, unless otherwise ordered.

The provisions in this paragraph of the existing rule which deal with dispositive motions have been included in paragraph (b), above.

(ER 11(e))

(d) *Objections.* Objections to the admission or exclusion of evidence must be made on the record and shall be in short form, stating the grounds of objections relied upon. Exceptions to any ruling thereon by the hearing officer need not be noted at the time of the ruling in order to be preserved for appeal before the Commission. Such exceptions will be deemed waived, however, unless raised:

(1) In accordance with Rule 18;

(2) In the manner of a proposed finding in accordance with Rule 25; or

(3) In a petition for Commission review of an initial decision in accordance with Rule 26.

Comment: The deleted portions were inconsistent with or duplicative of proposed changes elsewhere in the Rules. The requirements for service are included in Proposed Rule 5; the complete hearing, including argument on objections should be transcribed, as required by Proposed Rule 15(e); finally, the contents of the record are described in Proposed Rule 29, and include all motions and rulings.

(ER 12(c))

(e) *Motions for stays.* A request for a stay shall be made by motion, filed pursuant to Rule 5(d) and (e), and served on all parties pursuant to Rule 5(b).

(1) *Time for filing motions for stays.* (i) A motion seeking a stay of the effectiveness of an order of the Commission pending review of the order by a court shall be made to the Commission prior to or at the same time as the filing of a petition for review in the appropriate court.

(ii) A motion seeking a stay of effectiveness of a final disciplinary sanction, summary suspension, prohibition or limitation of access by a self-regulatory organization in connection with an application pursuant to section 19(d)(2) of the Exchange Act, or any other motion for a stay, may be made to the Commission at any time.

(2) *Contents.* The motion for a stay shall state the reasons for the relief requested and the facts relied upon, and if the facts are subject to dispute, the motion shall be supported by affidavits or other sworn statements or copies thereof. Such parts of the record as are relevant to the relief sought shall be filed with the motion.

(3) *Opposition to a stay.* If the sanction or action complained of has already taken effect, or will, by its terms, take effect within four days, parties opposing a motion for a stay shall file a statement in opposition within two days of service of the motion. If the sanction or action complained of has not already taken effect, opposition to the motion shall be filed within five days.

(4) *Expedited consideration.* Where the sanction complained of has already taken effect, and the respondent promptly has sought relief upon notice of the sanction, the consideration and decision of a motion for a stay shall be expedited in every way, consistent with the Commission's other responsibilities. Normally, a decision in such a case as to whether or not to grant a stay should be issued within five days of the date set for filing of the opposition to a motion for a stay. If the sanction has not taken effect, the decision should be issued within 30 days.

(5) *Scope of relief.* The Commission may grant a stay in whole or in part, and may condition relief under this rule upon such terms or upon the implementation of procedures as it deems appropriate.

Comment: The proposed rule is based on Existing Rule 12(c), Exchange Act Rule 19d–2 and Rule 18 of the Federal Rules of Appellate Procedure. A motion for a stay would likely be made in three situations: to stay a Commission order pending review by a court of appeals; to stay a self-regulatory

organization's decision pending review by the Commission, *see, e.g.*, Exchange Act section 19(d)(2); or to stay a temporary cease-and-desist order pending review by a federal district court, *see, e.g.*, Exchange Act section 21C(d)(2).

The proposed rule requires that a motion for a stay of a Commission order pending review by a court be made prior to, or at the time of, the filing of a petition for review with the court. The Commission loses jurisdiction to grant a stay after the record is filed in the court of appeals. *See* Exchange Act section 25(c)(2) and Rule 18 of the Federal Rules of Appellate Procedure. Judicial economy requires a similar rule with respect to temporary cease-and-desist orders, even if arguably the Commission retains jurisdiction to stay its order pending district court review. Motions with respect to the stay of a determination by a self-regulatory organization or any other decisions may be filed at any time.

The reference to section 15A(b)(4) in the existing rule is obsolete as a result of amendments to the Exchange Act. The appropriate statutory reference, Exchange Act section 19(d)(2), has been substituted.

The first sentence, stating that requests for a stay must be by motion and cross-referencing Proposed Rule 5, is included particularly for the benefit of pro se respondents seeking a stay of a determination by a self-regulatory organization, who may not otherwise be familiar with the service requirements of the rules.

Section 19(d)(2) of the Exchange Act requires that the Commission establish an expedited procedure for consideration and determination of the question of a stay for "appropriate cases." The Commission has never published rules with respect to an expedited procedure. In practice, requests for stays are handled by staff in the Office of the General Counsel, which has been delegated the authority to decide whether a stay should be granted. *See* 17 CFR 200.30–14(g)(5), (6). In fiscal year 1991, the Commission received 13 requests for stays from determinations by self-regulatory organizations. None of the 13 requests for stays was granted. The median amount of time to decide whether to grant or deny a stay request was 48 days.

The proposed rule also includes a guideline that, in the ordinary case, if a sanction has already taken effect, a decision as to whether or not to grant a stay should be issued within five days of the date set for the filing of any opposition to the motion. Otherwise, the Commission should issue a decision within 30 days. This guideline imposes no affirmative obligations on the Commission and confers on respondents or other persons no right to a decision within a particular time.

Under Existing Rule 26, a decision by the General Counsel to grant a stay, pursuant to delegated authority, would itself automatically be stayed if the decision was appealed to the Commission. Under the proposed rule, the General Counsel's decision to grant a stay would remain in effect pending Commission determination of the matter.

Typically, self-regulatory organization suspensions and fines are not enforced by the self-regulatory organization pending Commission appeal. A permanent bar, however, ordinarily will be enforced. When an order is not enforced by the self-regulatory organization, the right to seek a stay from the Commission may be of little practical value if the motion is not briefed and adjudicated on an expedited basis. Under the proposed rule, in those cases where a sanction takes effect within four days of notice of the sanction, and a respondent promptly seeks a stay, the time for submission of an opposition brief by the self-regulatory organization would be reduced from five days to two. In exceptional circumstances the Commission may provide for longer or shorter periods for the filing of opposition briefs.

The proposed rule also provides that the grant of relief may be conditioned as the Commission deems appropriate. For example, the Commission may allow a firm to operate if it immediately implements certain procedures, makes certain disclosures to its customers concerning the self-regulatory organization finding, or agrees to account for and relinquish profits earned during the pendency of the stay if it does not prevail on the merits.

(ER 13)

Rule 17. Extensions of Time and Adjournments.

(a) *By Commission or hearing officer.* Except as otherwise provided by law, the Commission at any time, or the hearing officer at any time prior to the filing of his or her initial decision or, if no initial decision is to be filed, at any time prior to the closing of the record, for good cause shown, may extend or shorten any time limits prescribed by these rules for the filing of any papers and may, consistent with paragraph (b), postpone or adjourn any hearing.

(b) *Limitations on postponements and adjournments.* A hearing before a hearing officer shall begin at the time and place ordered by the hearing officer, provided that, within the limits provided by statute, the hearing officer may for good cause postpone the commencement of the hearing for a reasonable period of time or change the place of hearing. Any convened hearing may be adjourned to such time and place as may be ordered by the Commission or by the hearing officer. In considering a request for postponement of the start of a hearing, adjournment once a hearing has begun, or extensions of time for filing papers, the hearing officer or the Commission shall consider, in addition to those arguments advanced for a delay by the party requesting a postponement, adjournment or extension:

(1) The length of the proceeding to date;

(2) The number of postponements, adjournments or extensions already granted;

(3) The stage of the proceedings when the request is made; and

(4) Any other such matters as justice may require.

Postponements or adjournments should normally not exceed 21 days. If the hearing officer orders a postponement or an adjournment for a period exceeding 21 days, the reasons for so doing shall be stated on the record or set forth in a written order.

Comment: Research done by the Task Force suggested that there were a disproportionate number of postponements or adjournments in some cases. The proposed rule includes mandatory factors which a hearing officer must consider in determining whether to grant a request for postponement or adjournment. The Task Force recognizes that postponements or adjournments are often fully justified. However, the proposed rule would require the hearing officer to consider explicitly the efficient and timely administration of justice when determining whether to grant a request for an extension of time. The need for an extension of time must be balanced against the need to bring each case to a timely conclusion, consistent with the public interest. The factors listed in the proposed rule build on existing standards applied by the administrative law judges. For example, contrary to past practice in some proceedings, after a hearing date has been set, counsel should not assume that the Commission hearing will be postponed to accommodate matters that arise subsequently on behalf of other clients or before courts or other agencies.

The period during which a delay in the start or resumption of a hearing may be ordered without explanation would be decreased from 30 days to 21 days.

(ER 12(a))

Rule 18. Interlocutory Review.

(a) *Certification of hearing officer's rulings.* The Commission will not review a ruling of the hearing officer prior to its consideration of the entire proceeding in the absence of extraordinary circumstances. A hearing officer shall not certify a ruling for interlocutory review by the Commission unless a party so requests within five days of the hearing officer's ruling and:

(1) The hearing officer is of the opinion that:

(i) The ruling involves a controlling question of law as to which there is substantial ground for difference of opinion, and

(ii) An immediate review of the order may materially advance the ultimate termination of the proceeding; or

(2) His or her ruling would compel testimony of Commission members, officers or employees or the production of documentary evidence in their custody.

The certification by the hearing officer shall be in writing and shall specify the

material relevant to the ruling involved. The Commission may decline to consider the ruling that has been certified, if it determines that interlocutory review is not warranted or appropriate under the circumstances. The Commission may, at any time, on its own motion, direct that any matter be submitted to it for review. Unless otherwise ordered by the Commission or the hearing officer, the hearing shall continue pending interlocutory review.

Comment: The proposed rule is modeled on the procedures for interlocutory review in federal district courts under 28 U.S.C. 1292(b). In contrast to the federal court model, under the existing rules, the hearing officer's decision not to certify a question for interlocutory review can itself be subject to interlocutory review if the person seeking review files a motion with the Commission. This procedure undermines the authority of the hearing officer and is inconsistent with reasonable standards of judicial economy. The hearing officer's decision on the matter as to which certification is sought will ultimately be reviewable by the Commission after proceedings before the hearing officer are completed.

In federal court, a writ of mandamus may be used to obtain interlocutory review in some circumstances, even when a district court judge refuses to certify a matter for interlocutory review. Under the proposed rule, Commission procedure would not allow similar relief. However, the Commission may take up a matter on its own motion at any time, even if a hearing officer did not certify it for interlocutory review. Comment is requested, as to whether the hearing officer's decision not to certify a question should be subject to a less extraordinary review procedure, such as that included in the existing rule.

(b) *Priority of review.* The Commission's interlocutory review of a hearing officer's ruling shall be expedited in every way, consistent with the Commission's other responsibilities. Normally, review of interlocutory matters should be completed within 30 days of the date set for filing the final brief on the matter submitted for interlocutory review.

Comment: The existing rules did not contain a standard with respect to the priority to be accorded interlocutory appeals. The requirement that interlocutory review be "expedited in every way, consistent with the Commission's other responsibilities," conforms to the standard for review in Proposed Rules 2(e)(3)(iii) and 38. Interlocutory matters must be promptly resolved in order to allow for the timely completion of the entire case.

(ER 14)

Rule 19. Evidence; Subpoenas.[2]

(a) *Presentation and admission of evidence.* Any witness at a hearing shall testify under oath or affirmation, which shall be administered by the hearing officer. The hearing officer shall receive relevant and material evidence, and shall exclude all evidence that is irrelevant, immaterial or unduly repetitious.

Comment: The second sentence in the existing rule is taken from section 556(d) of the Administrative Procedure Act ("APA"). That section contains other standards of equal importance that were not singled out for inclusion in the existing rule. Moreover, under the APA, the proposition that parties have the right to present evidence and cross-examine witnesses may be applied differently, depending, among other things, upon whether a proceeding is "on the record" and therefore subject to the requirements of section 556, or whether the proceeding involves "informal" adjudication, not directly subject to the requirements of section 556. The right to present evidence and to conduct cross-examination applies to Commission adjudicatory proceedings through the APA. Repetition of the APA requirement, out of context, is unnecessary, and is a source of potential confusion. Accordingly, it is deleted from the proposed rule.

The reference to offers of proof has been deleted because Proposed Rule 4 provides a hearing officer with the authority to rule upon offers of proof.

(b) *Official Notice.* In any proceeding, official notice may be taken of any material fact which might be judicially noticed by a district court of the United States, any matter in the public official records of the Commission, or any matter which is peculiarly within the knowledge of the Commission as an expert body. If official notice is requested or taken of a material fact not appearing in the evidence in the record, the parties, upon timely request, shall be afforded an opportunity to establish the contrary.

(ER 14(b)(1))

(c) *Subpoenas.—(1) Issuance of subpoenas.* In connection with any hearing ordered by the Commission, subpoenas requiring the attendance and testimony of witnesses at a designated time and place of the hearing, and subpoenas requiring the production of documentary or other tangible evidence returnable at any designated time or place may be sought from, and issued by, the hearing officer, if one is assigned to the proceeding, and otherwise sought from and issued by the Commission. Unless made on the record at a hearing, requests for issuance of a subpoena shall be made in writing. A person whose request for a subpoena has been denied or modified may not request any other person to issue the subpoena.

(2) *Unavailability of hearing officer.* In the event that the hearing officer assigned to a proceeding is unavailable, the party seeking issuance of the subpoena may seek its issuance, in order, from the first available of the following persons: the chief administrative law judge, the law judge most senior in service as a law judge, the duty officer, any other member of the Commission, or any other person designated by the Commission to issue subpoenas. Requests for issuance of a subpoena made to the Commission, or any member thereof, must be submitted to the Secretary, not to an individual Commissioner. A hearing officer may authorize issuance of a subpoena, and delegate the manual signing of the subpoena to any other person authorized to issue subpoenas.

Comment: The revised rule represents a significant departure from current policy. Under the existing rule, subpoenas are returnable only at the time and place of the hearing. While parties often agree to exchange documents in advance of the hearing, the practice is not universal. As a result, hearings may be delayed while each side reviews the other side's document production and arranges for suitable copies of documents to be introduced into evidence. The revised rule permits subpoenas *duces tecum* to be returnable in advance of the hearing. The Task Force spent considerable time debating whether subpoenas *ad testificandum* should also be returnable in advance of a hearing, as allowed in litigation under the Federal Rules of Civil Procedure. The current procedures appear to be adequate and fair, particularly in light of the provisions for prehearing return of subpoenas *duces tecum* and the document-turn-over provisions of Proposed Rule 20(a).

The proposed rule includes a requirement that, unless made on the record at a hearing, subpoena requests must be in writing. *Ex parte*, oral communication with the hearing officer concerning the need for issuance of a subpoena should be avoided because it creates the opportunity for unintended, and potentially improper, *ex parte* discussion of the merits of a case. Moreover, the requirement that subpoena requests be in writing provides the hearing officer with the best opportunity to review the basis for the

[2] The Task Force recommends deleting from the Rules of Practice the provisions relating to incorporation by reference (existing Rule 24) because they relate to the making of disclosure or regulatory filings with the Commission. See Securities Act Release No. 3867 (Dec. 2, 1957); Securities Act Release No. 4665 (Feb. 7, 1964). Few practitioners are aware that these provisions are to be found in the Rules of Practice. If the proposed rules are adopted, the substantive requirements of this rule would be moved to an item in Regulation S–K which includes the rules directly related to the making of disclosure or regulatory filings. See Proposed 17 CFR § 229.703.

request. Since requests for subpoenas may be submitted by fax with the permission of the hearing officer, the requirement for a written request need not cause delay in transmitting a subpoena request.

Currently, the chief administrative law judge is authorized to issue subpoenas if the administrative law judge assigned to a matter is unavailable. *See* 17 CFR 200.30–10(a)(7). The revised rule provides additional alternatives for issuance of a subpoena in the event the chief administrative law judge is also unavailable. The revised rule also addresses a recurring situation in which an administrative law judge is at a hearing away from the Commission's offices in Washington, DC. While the administrative law judge is able to review a fax of a subpoena and authorize its issuance, he or she is physically unavailable to sign the actual subpoena. Following current practice, the proposed rule authorizes another administrative law judge or other authorized person in such a case to sign the subpoena in the name of the authorizing official.

(ER 14(b)(1))

(3) *Criteria for issuance.* Where it appears to the person requested to issue the subpoena that the subpoena sought may be unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may, in his or her discretion, as a condition precedent to the issuance of the subpoena, require the person seeking the subpoena to show the general relevance and reasonable scope of the testimony or other evidence sought. If the person requested to issue the subpoena, after consideration of all the circumstances, determines that the subpoena or any of its terms is unreasonable, oppressive, excessive in scope, or unduly burdensome, he or she may refuse to issue the subpoena, or issue it only upon such conditions as fairness requires. In making the foregoing determination, the person issuing the subpoena may, if possible without causing undue inconvenience to the participants in the proceeding, inquire of the other participants whether they will concede the facts sought to be proved, provided, however, that, except with permission of the person seeking the subpoena, the identity of the person sought to be subpoenaed shall not be disclosed.

Comment: Under the current rules, the fact that a subpoena is sought, as well as the identity of the person subpoenaed, is not disclosed. Under Proposed Rule 5(a), which governs when service of filings is required, requests for subpoenas do not have to be served on opposing parties. Comment is requested as to whether the identity of the persons subpoenaed should be disclosed to other parties. If disclosure is appropriate, should it take place at the time a subpoena is requested, or at some other time? If issuance of a subpoena is not disclosed to all parties and the recipient of a subpoena applies to quash, should notice of the application to quash be given to all parties, or only the party requesting the subpoena?

The current rules appear to allow an appeal of a hearing officer's decision to deny or modify a subpoena, without requiring that the procedures for interlocutory review, Proposed Rule 18 (ER 12(a)), be followed. The question of whether issuance or modification of a subpoena is warranted is usually a highly fact-intensive inquiry. Consistent with the view reflected in Proposed Rule 18 that interlocutory review should be limited, the provision allowing automatic appeal to the Commission of the denial or modification of a subpoena to persons not members of or employed by the Commission would be deleted.

By contrast, under the standards of Proposed Rule 18, a subpoena requiring a Commission member, officer or employee to testify or turn over documents would have to be certified for interlocutory review if there was an objection to the testimony or document production. These provisions reflect a judgment that, in order to fulfill its statutory responsibilities, the Commission should not delegate to a hearing officer the power to compel the production of Commission information that, however related to the hearing of a particular case, may adversely affect unrelated Commission programs. In addition, particular scrutiny of subpoenas to Commission members, officers and employees is necessary to prevent a respondent from unduly interrupting the Commission's ordinary business. In the event of an irreconcilable conflict between a respondent's need to pursue particular testimony or documents from the Commission and the Commission's desire to protect that testimony or documents, the Commission itself should decide whether, or on what terms, the proceedings should continue.

(ER 14(b)(3) (i)–(iii))

(4) *Service.* Service shall be made pursuant to Rule 5. When a subpoena is issued at the instance of anyone other than an officer or agency of the United States, service is valid only if the subpoena is accompanied by a tender to the subpoenaed person of the fees for one day's attendance and the mileage as specified by paragraph (e) of this rule. The provisions of this paragraph shall apply to the issuance of subpoenas for purposes of investigations as well as hearings.

Comment: The deleted first sentence of Rule 14(b)(3) concerning service of subpoenas is now covered by Proposed Rule 5.

(ER 14(b)(2))

(d) *Applications to quash.* Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoena, request that the subpoena be quashed or modified. Such request shall be made by application, filed with the Secretary, and shall be served only upon the person on whose behalf the subpoena was issued. The person on whose behalf the subpoena was issued may, within five days of service of the application, file a brief in opposition to the application. If a hearing officer has been assigned to the proceeding, the application to quash shall be directed to that hearing officer, even if the subpoena was issued by another person. If compliance with the subpoena would be unreasonable, oppressive or unduly burdensome, the hearing officer or the Commission shall quash or modify the subpoena, or may order return of the subpoena only upon specified conditions. These conditions may include a requirement that a person on whose behalf the subpoena was issued shall make reasonable compensation to the person to whom the subpoena was addressed for the costs of copying or transporting evidence to the place for return of the subpoena.

Comment: This paragraph is based on Existing Rule 14(b)(2). Under the existing rule, requests for subpoenas are made *ex parte*. Consistent with this requirement, only the party requesting a subpoena would receive notice of an application to quash. Comment is requested as to whether notice that a subpoena has been sought or challenged should be given to all parties. *See* Comment to Proposed Rule 19(c), *supra*.

A request to have a subpoena quashed or modified is made by application, instead of motion, to emphasize that the normal requirements of service and replies to motions do not apply. Under the proposed rule, the recipient of a subpoena could seek to quash within ten days of service, or up to the time for compliance, whichever was shorter. Under the existing rule, only five days is allowed. This is too short a period for third parties, who may be subpoenaed without prior notice, to obtain assistance of counsel and to respond. Under Rule 45(c) of the Federal Rules of Civil Procedure, a person receiving a subpoena *duces tecum* has up to 14 days to seek to quash. The Task Force viewed such a period as longer than necessary in the context of an administrative proceeding where subpoenas are issued only upon the approval of a hearing officer.

The rule has been revised to provide that an application to quash will be decided by the hearing officer assigned to a proceeding, if any, even if that hearing officer did not issue the subpoena. The last clause of the existing paragraph has been modified to conform to paragraph (b), which allows subpoenas for the production of documents or other evidence to be returnable at any designated time or place.

(e) *Witness fees and mileage.* Witnesses summoned before the Commission shall be paid the same fees and mileage that are paid to witnesses in the courts of the United States, and

witnesses whose depositions are taken and the persons taking the same shall severally be entitled to the same fees as are paid for like services in the courts of the United States. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear.

(ER None)

Rule 20. Production of Relevant Investigative Documents in Enforcement Proceedings.

(a) *Production.* At a time agreed upon by the parties or ordered by the hearing officer, the interested division shall make available to the other parties for inspection and copying all documents, including transcripts of testimony, relevant to any allegation in the order instituting proceedings, and not subject to a valid claim of privilege or work product. The interested division, however, may withhold documents if:

(1) Disclosure would result in an unwarranted invasion of personal privacy given the level of relevance of the documents in question;

(2) Disclosure would tend to reveal the identity of a confidential informant;

(3) The documents were obtained during the course of a pending nonpublic investigation, unless the documents will be relied upon by the interested division during the course of the hearing; or

(4) The interests of justice otherwise require that particular documents be withheld. The interested division shall state whether any material being withheld under this subparagraph is directly relevant to the culpability of any respondent. The hearing officer, upon his or her own motion or that of a respondent, shall review the withheld material and determine whether it should be produced.

(b) *Failure to produce—harmless error.* In the event that a document required to be turned over to a respondent is not turned over by the interested division, no rehearing or redecision of a matter already heard or decided shall be required, unless the respondent shall establish that the failure to turn over the document was not harmless error.

(c) *Privileged/work product document list.* The interested division shall maintain a list of documents withheld under a claim of privilege or work product and the specific privilege or work product being claimed and shall submit the list to the hearing officer, if directed by the hearing officer.

(d) *Copying costs.* The respondents shall be responsible for the costs of copying documents turned over by the interested division. Unless otherwise ordered, charges for copies will be at the rate charged for copies in the Commission's public reference room.

Comment: Although not required to do so by rule, in most enforcement proceedings, the staff voluntarily turns over to the respondents relevant investigative documents prior to the commencement of the hearing. The reasons for doing so vary. Some staff members believe that such a practice is the simplest way to discharge obligations under the Commission's "Jencks Rule," Existing Rule 11–1, while others believe that the practice promotes a fairer, more efficient hearing. While some document production occurs in all cases, the policy as to the scope of voluntary production varies significantly in different offices. This proposed rule is intended to codify the practice of the majority of the offices.

Requiring parties to turn over documents is a concept which has received growing interest from scholars and judges. *See, e.g.,* Pelham, *Panel Flips, OKs Discovery Reform, Legal Times,* Apr. 20, 1992, at 6 (discussing the July 1992 Proposed Amendments to Fed. R. Civ. P. 26 by the Advisory Comm. on Civil Rules requiring significant *voluntary* disclosure of information). Comment is requested as to whether the concept should be codified in the Rules of Practice and, if so, whether the proposed formulation is appropriate. While we are interested in alternative formulations, as discussed in the Task Force report, the Task Force has concluded after lengthy consideration that discovery rules comparable to those in the current Federal Rules of Civil Procedure are not appropriate in administrative proceedings where the government has already undertaken a detailed investigation of the conduct which is the subject of the proceeding. In particular, the Task Force does not recommend allowing parties to issue their own discovery subpoenas or to compel depositions for the purpose of discovery. *Cf.* Rule 45(a) of the Federal Rules of Civil Procedure (allowing issuance by the court clerk of blank subpoenas to a party requesting them).

Specific rule provisions. The opening text of the rule ("At a time agreed upon by the parties or ordered by the hearing officer * * *") signifies that production of documents under this rule is mandatory. Production will occur, regardless of whether respondent asks for production.

In codifying the current practice of voluntarily turning over most documents, it is essential to reflect a balance between the needs of respondents, the rights of those who have submitted documents, and the Commission's legitimate interests in maintaining effective law enforcement. Consequently, the proposed rule provides exceptions to disclosure of certain classes of documents. The rule assumes that production of relevant investigative documents will be made; the staff has the burden of justifying the exceptions.

Proposed exception (1) shields production of confidential questionnaires, credit card statements of individuals, personal telephone records and the like. The term "unwarranted" and the reference to relevance are intended to make clear that a balancing of interests must take place. Proposed exception (2) protects the identity of confidential informants or information that would tend to reveal the identity of a confidential informant. *See* 5 U.S.C. 552(b)(7)(C) and (D).

Proposed exception (3) addresses concerns that disclosure of documents when an investigation is still pending could jeopardize further law enforcement efforts. The reference to "pending nonpublic investigation" refers to an investigation in which there is a staff inquiry under way and that inquiry is not the subject of public proceedings. Of course, where particular documents will be used by the staff during the hearing, production is appropriate regardless of whether there is a pending investigation.

Proposed exception (4) provides flexibility to allow for exceptions that are not specifically enumerated. For example, the staff may believe that physical harm will befall an individual if particular documents are produced. Since these situations will presumably be quite varied and not frequent, the exception is worded broadly.

The hearing officer may, in his or her discretion, override any exception claimed by the staff and order the staff to produce disputed items.

Work product of the staff is not encompassed within the description of the documents that must be turned over. A respondent's claim that work product should be turned over would have to be evaluated on a case-by-case basis. *See* S. Rep. No. 1277, 93d Cong., 2d Sess. (1974), U.S. Code Cong. & Admin. News 1974, p. 7051. The principals enunciated in *Brady* v. *Maryland,* 373 U.S. 83 (1963), are not directly applicable to Commission administrative proceedings. Nonetheless, if the interested division discloses under Proposed Rule 20(a) that it has withheld material directly relevant to the culpability of any respondent, the hearing officer shall, upon his or her own motion or that of a respondent, review the material and determine whether, after balancing the concerns addressed in this rule, the material should be produced to the respondents.

(ER 11–1)

Rule 21. Production of Witnesses' Statements in Enforcement Proceedings.

(a) *Production.* Any respondent in an enforcement proceeding may move that the interested division produce for inspection and copying any statement of any person called or to be called as a witness by the division which pertains or is expected to pertain to his or her direct testimony that would be required to be produced pursuant to the Jencks Act, 18 U.S.C. 3500. Such production shall be made at a time and place fixed by the hearing officer and shall be made available to any party, provided, however, that the production shall be made under conditions intended to preserve the items to be inspected or copied.

(b) *Failure to produce—harmless error.* In the event that a statement required to be turned over to a respondent is not turned over by the interested division, no rehearing or redecision of a matter already heard or decided shall be required unless the respondent shall establish that the failure to turn over the statement was not harmless error.

Comment: Although the Commission, as an administrative agency, is not directly subject to the Jencks Act, which by its terms applies only to criminal judicial proceedings, the Commission requires its staff to turn over prior witness statements to respondents. Consistent with the Jencks Act itself, the existing rule required that witness statements were to be turned over to the respondent only after the witness had been called to testify. In practice, however, Enforcement staff in most cases turns over "Jencks Rule" statements prior to the commencement of a hearing.

The Proposed Rule conforms to current practice so that Jencks statements will be turned over either before or during a hearing, as directed by the hearing officer. This change is consistent with, and in some instances will be duplicative of, the production required under Proposed Rule 19 allowing for the return of subpoenas prior to the start of a hearing, and Proposed Rule 20 placing an affirmative obligation on the interested division to turn over relevant documents to respondents.

Prior statements by witnesses taken in the form of transcripts during the investigative phase of a case, before the institution of proceedings, appear to fall squarely within the scope of the existing and proposed rule, and would probably be turned over as a result of the document production requirements of Proposed Rule 20, or, in rare cases, a subpoena. More difficult are staff notes of witness interviews, particularly those conducted after institution of the proceedings, or even the hearing itself. Where the staff believes a statement falls outside the purview of the rule, the hearing officer may require that the documents in question be turned over for *in camera* inspection. *See, e.g., In the Matter of Thomas J. Fittin, Jr.*, 48 S.E.C. Docket 1474, 1483 (1991); *In the Matter of Robert Iles, Sr.*, Adm. Pro. File No. 3–7261 (Apr. 19, 1990) (order on *Brady* and Jencks Act issues). The revised rule should not change that practice.

It was suggested to the Task Force that the early submission of prior witness statements could provide a motive for intimidation of witnesses or improper contact by respondents with witnesses. These risks appear remote in most cases. The proposed rule provides that the time for delivery of witness statements is to be determined by the hearing officer, so a case-by-case determination of such risks can be made. Upon a proper showing that there is substantial risk of improper use of a witness' prior statement, the hearing officer may order that the turning over of a witness statement be delayed. Parties could also be prohibited from communicating with particular witnesses or, if warranted, other protective measures could be devised.

Paragraph (b) reflects the Task Force's belief that an inadvertent or harmless error in failing to discover or turn over a prior statement should not invalidate an otherwise proper hearing and decision. The obligation to turn over prior statements requires the staff of the interested division to make a good faith effort to conduct a reasonable search of the files reasonably accessible to them, or, to turn over all prior statements within the scope of the rule. For example, ordinarily, the staff should check the Commission's computerized database of witness transcripts to determine if a witness has testified in other proceedings or investigations. Because of limitations in the database, all such prior testimony will not necessarily be found in a properly conducted database search. Further, there is no general obligation for the staff to search or request searches of all Commission files in all Commission offices.

Even where a statement might be known to exist, or might have been discovered with greater effort, the failure to turn over a statement which would not likely have affected the results of the hearing, should not be a basis to require a new hearing or a new decision.

(ER 15)

Rule 22. Depositions Upon Oral Examination.

(a) *Persons before whom depositions may be taken.* Depositions shall be taken before a deposition officer, designated by the hearing officer or, if no hearing officer is assigned, by the Commission. A deposition officer so designated may be any person authorized to administer oaths by the laws of the United States or of the place where the examination is held. The hearing officer may designate himself or herself as the deposition officer.

Comment: Existing Rule 15 concerns both "depositions" and "interrogatories." As used in Rule 15, the term "deposition" corresponds to what is termed a "deposition upon oral examination" in Rule 30 of the Federal Rules of Civil Procedure. In this most familiar form of deposition, questions are formulated and asked by a party or counsel directly to a witness, who provides an immediate oral answer. The term "interrogatories," in Rule 15 is used to correspond to what is termed "a deposition upon written questions" in Rule 31 of the Federal Rules of Civil Procedure. In this form of deposition, questions are read from a script by a deposition officer, and oral answers given by the witness. Existing Rule 15 has no procedure to allow for "interrogatories" as that term is most commonly used, meaning that written questions are submitted by one party, with written answers provided in reply. The revised rule adopts the more commonly used and widely known terminology of the Federal Rules of Civil Procedure. References to interrogatories are therefore deleted from the proposed rule. As in the Federal Rules, the proposed Rules of Practice have one rule for depositions upon oral examination, and a separate rule for depositions upon written questions.

Existing Rule 15 specifies only that depositions are to take place before a designated officer, but does not define who such a person could be. The proposed rule specifies the criteria for a deposition officer, based on the criteria provided in Rule 28 of the Federal Rules of Civil Procedure.

(ER 15(a))

(b) *Motions for depositions.* Any party desiring to take a deposition shall make a written motion therefor, setting forth the reasons why such deposition should be taken, the name and residence of the witness, the matters concerning which the witness is expected to be questioned, and the time and place proposed for the taking of the deposition. The Commission may, in its discretion, or if a hearing officer is assigned, the hearing officer may, in his or her discretion, issue an order that a deposition be taken upon a finding that a prospective witness will likely give testimony material to the proceeding, that it is likely that such witness will be unable to attend a hearing, and that the taking of a deposition will serve the interests of justice.

Comment: Depositions under the existing Rules of Practice are used only to preserve testimony of a witness who would be unlikely to be able to attend the hearing. They are not allowed for purposes of discovery. *L.M. Rosenthal & Co., Inc.*, Adm. Pro. File No. 3–4330 (Jan. 30, 1974). The revised rules do not change this approach. As discussed in the Task Force Report, the Task Force spent an extensive amount of time considering proposals to allow depositions for purposes of discovery, and concluded that such a change was unwarranted at this time.

Provisions with respect to the content of the order for a deposition have been moved to Proposed Rule 22(c). Provisions with respect to service of the order on the parties are part of Proposed Rule 32.

(ER 15(a))

(c) *Order for deposition.* An order for deposition shall state:

(1) The name of the witness whose deposition is to be taken;

(2) The scope of the testimony to be taken;

(3) The time and place of the deposition;

(4) The identity of the deposition officer;

(5) The manner of recording, preserving and filing the deposition; and

(6) The number of copies, if any, of the deposition and exhibits to be filed upon completion of the deposition.

Comment: Proposed paragraph (c) is based on the requirements for a deposition order

included in Existing Rule 15(a). The existing rule states that depositions were to be "recorded." The revised rule provides that the order for deposition shall state the manner of recording and preserving the deposition in order to make clear that the means of recording and preserving a deposition may vary: Videotape or other new technologies may be used.

(d) *Testimony on depositions.* A witness whose testimony is taken by deposition shall be sworn or shall affirm before any questions are put to him or her. Examination and cross-examination of deponents may proceed as permitted at a hearing.

(e) *Objections to questions or evidence.* Objections to questions or evidence shall be in short form, stating the grounds of objection relied upon. Objections to questions or evidence shall be noted by the deposition officer upon the deposition, but a deposition officer other than the hearing officer shall not have the power to decide on the competency, materiality or relevance of evidence. Failure to object to questions or evidence before the deposition officer shall not be deemed a waiver unless the ground of the objection is one that might have been obviated or removed if presented at that time.

Comment: The proposed rule deletes the existing provision that deposition transcripts are to exclude argument or debate. The requirement to exclude argument appears to have not been followed in practice. It is inappropriate for the participants to a deposition to agree to redact portions of the proceedings deemed by them, or a deposition officer, to be argumentative. The hearing officer should have the opportunity to review the entire deposition as it occurred. Moreover, where the deposition officer is the hearing officer, the hearing officer can hear argument and rule on the objections.

(f) *Filing of depositions.* The testimony shall be reduced to writing by the deposition officer, or under his or her direction, after which the deposition shall be subscribed by the witness and certified by the deposition officer. The original deposition and exhibits shall be forwarded under seal to the hearing officer, if one is assigned, and otherwise to the Secretary with such number of copies as may be requested by the Secretary. Copies of the deposition and exhibits shall be forwarded to each party.

(g) *Form of depositions.* Such depositions shall conform to the specifications of Rule 31, but deficiencies of form shall not invalidate the deposition if properly executed.

(h) *Depositions as part of the record.* At a hearing, anyone wishing to introduce a part or all of a deposition, so far as otherwise admissible in the proceeding, may make a motion setting forth the reasons therefor. Such motion shall be granted if it appears that:

(1) The witness is dead;

(2) The witness is out of the United States, unless it appears that the absence of the witness was procured by the party offering the deposition;

(3) The witness is unable to attend or testify because of age, sickness, infirmity, imprisonment or other disability;

(4) The party offering the deposition has been unable to procure the attendance of the witness by subpoena; or

(5) Such circumstances exist to make it desirable, in the interests of justice, and with due regard to the importance of presenting the testimony of witnesses orally in open hearing, to allow the deposition to be used.

If only part of a deposition is offered in evidence by a party, the hearing officer may, in his or her discretion, require that all relevant portions of the deposition be introduced.

Comment: Comment is requested as to whether the stipulation of the parties to accept a deposition in lieu of live testimony should be included in the proposed rule as a factor in determining whether a deposition already taken should be admitted.

(ER 15(g))

Rule 23. Depositions Upon Written Questions.

Depositions may be taken and submitted on written questions upon motion of any party as provided in Rule 22(b). The written questions shall be filed with the motion. Within 10 days after the motion and written questions are served, a party may file objections, if any, to such written questions and may serve cross-questions upon any or all other parties. When a deposition is taken pursuant to the provisions of this rule, no party shall be present or represented unless otherwise permitted by order. No persons other than the witness, counsel to the witness, the deposition officer, and, if the deposition officer does not act as reporter, a reporter, shall be present at the examination of the witness. The deposition officer shall propound the questions and cross-questions to the witness in their order. The order for deposition, filing of the deposition, form of the deposition and use of the deposition in the record shall be governed by the applicable provisions of Rule 22.

Comment: In the proposed rule the term "interrogatories" was replaced by the term "written questions" to conform the proposed rule to the more widely used terminology of Rules 31 and 33 of the Federal Rules of Civil Procedure.

(ERs 16(a)–(b), 17(f))

Rule 24. Content, Effect and Finality of Initial Decision.

(ER 16(b))

(a) *When initial decision required.* Unless the Commission directs otherwise, the hearing officer shall make an initial decision in any proceeding in which the Commission directs a hearing officer to preside at a hearing, provided, however, that an initial decision may be waived by the parties with the consent of the hearing officer pursuant to Rule 12(d)(2).

Comment: The existing rule requires a hearing officer to make an initial decision in two situations: (1) "In any proceeding in which a hearing is required to be conducted in conformity with section 7 of the Administrative Procedure Act, unless an initial decision is waived by all parties who appear at the hearing and the Commission does not subsequently order that an initial decision nevertheless be made by the hearing officer"; and (2) "in any other proceeding in which the Commission directs him to make such a decision."

Section 7 of the Administrative Procedure Act was repealed in 1966, and reenacted as 5 U.S.C. 556. It applies only in cases of formal, "on the record" adjudication. The proposed rule has been modified to conform to existing practice, which is that an initial decision is prepared in all matters submitted to a hearing officer for hearing, unless the Commission orders otherwise, or the parties waive an initial decision in accord with Proposed Rule 12(d) [ER 8(c)].

(ER 16(a))

(b) *Content of initial decisions.* An initial decision shall include: Findings and conclusions, and the reasons or bases therefor, upon all the material issues of fact, law or discretion presented on the record; and the appropriate order, sanction, relief, or denial thereof. An initial decision shall also include a statement of the time within which a petition for review of the initial decision may be filed. The time allowed to file a petition for review shall not exceed 21 days after service of the initial decision except for good cause shown. An initial decision shall also include a statement that:

(1) The initial decision shall become the final decision of the Commission as to each party unless a party files a petition for review of the initial decision or the Commission determines on its own initiative to review the initial decision as to a party; and

(2) If a party timely files a petition for review or the Commission takes action to review as to a party, the initial

decision shall not become final with respect to that party.

Comment: Existing Rule 16(a) is based on the requirements of section 557(c)(3) of the Administrative Procedure Act. The proposed language added to the first sentence reflects more closely the actual text of that section as it applies to adjudicatory decisions.

Existing Rule 16(a) states that an initial decision is to contain, inter alia, "a statement of the time within which a petition for review of the initial decision may be filed." There is no cross-reference to the requirement of Existing Rule 17(b), that a petition for review of an initial decision "shall be filed within 15 days after service of the initial decision." A 15-day period does not allow as much time as warranted for review of an initial decision and preparation of a petition for review.

By contrast, Exchange Act section 19(d)(2) provides a 30-day period for the filing of an application for review of a determination by a self-regulatory organization, a shorter and simpler document than a petition for review. Because parties in Commission proceedings will already have prepared proposed findings of fact and proposed conclusions of law which will form the basis for any petition for review, the Task Force did not believe 30 days would ordinarily be needed for preparation of a petition for review. Accordingly, the proposed rule includes a guideline of 21 days time for the filing of petitions for review.

The proposed rule retains the requirement that the initial decision recite certain information about the procedural effect of an initial decision. This information is of particular benefit to pro se respondents.

(ER 17(f))

(c) *Effect of initial decisions; when final.* (1) Unless a party or other person entitled to seek review of an initial decision timely files a petition for review, or unless the Commission on its own initiative orders review pursuant to Rule 26, an initial decision shall become the final decision of the Commission.

(2) If a petition for review is timely filed by a party or any other person aggrieved by the decision and entitled to review, or if the Commission upon its own initiative has ordered review of a decision with respect to a party or a person aggrieved who would be entitled to review, the initial decision shall not become final as to that party or person.

Comment: Proposed Rule 24 is written to be consistent with Proposed Rule 26 (ER 17), which recognizes that a non-party may, in certain limited circumstances, be aggrieved by a decision and entitled to seek review. *See, e.g.*, Exchange Act section 25(a)(1).

(ER 17(f))

(d) *Order of finality.* In the event that the initial decision becomes the final decision of the Commission with respect to a party, the Commission shall issue an order that the decision has become final as to that party. The order shall state that the time for filing of a petition for review of the initial decision by the party has expired and that the Commission has determined not to order review of the initial decision on its own initiative. Unless otherwise provided, any sanctions ordered in an initial decision shall take effect on the first day following service of the order of finality. Notice of the order shall be published in the Securities and Exchange Commission News Digest and the SEC Docket.

Comment: The existing rule requires only a "notice" of finality to be issued and published. However, the "notice," published by the Secretary actually operates as a Commission order in that it sets the date on which an initial decision, and any sanctions specified therein, become effective. The revised rule provides instead that the Commission issue an "order." An initial decision automatically becomes final with the passage of time even if the order of finality is not issued. However, unless otherwise provided, the sanctions specified in an initial decision do not take effect until the first day after service of the order of finality.

(ER 16(c)–(g))

Rule 25. Proposed Findings, Conclusions and Supporting Briefs Filed With the Hearing Officer.

(a) *Proposed findings and conclusions; briefs.* Before an initial decision is made, the parties will be granted a reasonable opportunity to file in writing proposed findings and conclusions together with, or as a part of, their briefs. Proposed findings of fact must be supported by citations to specific portions of the record.

Comment: Existing Rule 16(d) provides that parties "may file" proposed findings and conclusions in any proceeding involving "a hearing or opportunity for hearing." The proposed rule would track more closely the language of section 557(c) of the Administrative Procedure Act, pursuant to which parties are entitled "to a reasonable opportunity to submit" proposed findings and conclusions prior to an initial decision. The limitation in the proposed rule that the opportunity to submit proposed findings and conclusions be "reasonable" would permit the hearing officer to restrict the time or length for filing any submission as appropriate, given the circumstances of the case.

By its terms, section 557(c) applies only to hearings "on the record," after notice and opportunity for hearing. By contrast, the language of the proposed rule mandates the opportunity for submission of findings and conclusions in any case in which an initial decision is to be prepared whether or not the proceeding is "on the record." The proposed standard conforms to current Commission practice, which is to permit proposed findings and conclusions in all cases in which an initial decision is to be issued.

Neither the existing rule nor the proposed rule applies to proceedings in which the Commission itself presides at the taking of evidence, and no initial decision is to be issued. In such a case—for example in a proceeding where a temporary cease-and-desist order is sought—the Commission has complete discretion whether to allow for posthearing submissions.

The requirement that each proposed finding of fact or conclusion of law be briefed would be eliminated because it was unnecessary and not followed in practice. Proposed findings of fact or conclusions of law may be uncontested or so obvious that they do not warrant briefing. Instead, the proposed rule requires that each finding must be supported by appropriate citations to the record. A respondent can choose whether or not to brief proposed conclusions of law. Those which are contested and which are not supported will not be deemed to be waived, but may not be persuasive.

(b) *Time for filing proposed findings and briefs prescribed by hearing officer.* At the end of each hearing, the hearing officer shall, by order, after consultation with the parties, prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed provided, however, that the period within which the first filing is to be made normally should be no more than 30 days after the close of the hearing. If the hearing officer directs that the first filing be made at a date later than 30 days after the close of the hearing, the reasons for so doing shall be stated in the order.

Comment: Simultaneous filings of proposed findings and conclusions of law may have been used in some proceedings in the past. Currently, the practice of the administrative law judges is to require successive filings. Successive filings are of greater benefit to the hearing officers. They are more likely to lead to proposed findings and conclusions which highlight those areas not in dispute as well as to articulate the competing arguments for points which are contested. A hearing officer would always have the authority to order simultaneous filings of proposed findings and conclusions if warranted in a particular case. Comment is requested as to whether, in light of current practice, the separate provisions relating to simultaneous filings should be eliminated from the proposed rule.

It is important that posthearing submissions be completed without delay, while the evidence is fresh in the minds of the hearing officer and the parties. The existing rule contains a suggested time limit of 30 days for the filing of the first posthearing submissions, but no time limit for the entire posthearing briefing schedule. Based on an assessment of the time necessary to file briefs, and the recommendation that the entire hearing process should take approximately 10 months, the Task Force concluded that a 90-day period for briefing was appropriate under normal

circumstances. The hearing officer may order a longer or shorter period for the filing of briefs. The reasons for allowing more than a 90-day period must be stated in the order. A 90-day period is comparable to the 84-day period allowed for briefs under Rule 31 of the Federal Rules of Appellate Procedure. The proposed rule retains the requirement that the first brief should be filed within 30 days of the close of the hearing.

If successive filings are directed, the proposed findings and conclusions of the party assigned to file first shall be set forth in serially numbered paragraphs and any counter-statement of proposed findings and conclusions must, in addition to any other matter, indicate as to which paragraphs of the proposals already filed there is no dispute. A reply brief may be filed by the party assigned to file first, or, where simultaneous filings are directed, reply briefs may be filed by each party, within the period prescribed therefor by the hearing officer. No further briefs may be filed except with leave of the hearing officer.

Normally, the total period within which all such proposed findings and conclusions and supporting briefs and any counter-statements of proposed findings and conclusions and reply briefs are to be filed should be no more than 90 days after the close of the hearing. If the hearing officer directs that such total period be extended beyond 90 days, the reasons for so doing shall be stated in the order.

(ER 16(f))

(c) *Service of record.* In proceedings in which an initial decision by a hearing officer is to be made, the Director of the Office of Filings, Information and Consumer Services shall serve the record in the proceeding and an index thereto upon the hearing officer when the hearing officer so directs. The hearing officer shall transmit any corrections to the index to the Director who shall promptly issue a corrected index. The initial decision shall include a certification by the hearing officer that the record consists of those items that are set forth in the index.

Comment: Under current procedures responsibility for receipt and custody of filings and exhibits is fragmented among several offices over the course of a proceeding. The Task Force recommended that new procedures be developed for the filing and safekeeping of administrative proceedings case records.

Existing Rule 20(a)(2) seeks to address issues concerning the transfer of items in the record to and from the hearing officer by requiring that at the beginning of a hearing the hearing officer read into the record all items then constituting the record. Other items added to the record would presumably be noted in the transcript. The requirement that the items constituting the record be read aloud has not been followed in practice. It would therefore be deleted from the proposed rule. Instead, the revised rule includes a requirement that the hearing officer review the record and certify in the initial decision that it is complete.

Under the proposed rule, the Director of the Office of Filings, Information and Consumer Services is required to submit an index or listing of the contents of the record showing the items that the Director has in his or her custody. Staff in the Office of Filings, Information and Consumer Services, who are responsible for the physical custody of administrative proceedings files at the conclusion of a hearing, would not have personal knowledge of whether all documents filed with the Secretary or relied upon at hearing were forwarded to them. Accordingly, they cannot certify that a record is complete. Under the proposed rule, the hearing officer who presides at a hearing and who will have personal knowledge of the contents of the record is responsible for certifying that the record is complete. The hearing officer's certification in the initial decision that the record is complete affords the parties a clear opportunity to object if they believe that the certified record is incomplete.

(ER 16(f))

(d) *Filing of initial decision.* Normally, the hearing officer should file the initial decision with the Secretary within 75 days of the filing of the last brief called for by the posthearing briefing schedule, or, if no briefs are filed, within 75 days of the close of the hearing. The Secretary shall promptly serve the initial decision upon the parties and shall promptly publish notice of the filing thereof in the Securities and Exchange Commission News Digest. Thereafter, the Secretary shall publish the initial decision in the SEC Docket; provided, however, that in nonpublic proceedings no notice shall be published unless the Commission otherwise directs.

Comment: The existing rule states that initial decisions are to be filed within 30 days after the record has been served on the hearing officer. There is no guideline as to how much time the hearing officer should take before he or she requests that the record be served. Because of the availability of photocopies, the hearing officer does not need the official record to prepare an initial decision. In many cases, the initial decision is issued within a few days after service of the record. However, this interval is not an accurate reflection of actual time spent preparing the initial decision because it does not take into account the amount of time spent after the end of the briefing but before the record is served. The proposed rule provides that the hearing officer should ordinarily take no more than 75 days from the filing of the last brief called for by the briefing schedule to prepare the initial decision. This period is consistent with the amount of time actually taken to prepare initial decisions in a majority of cases.

Additionally, Rule 16(g) is deleted from the proposed rule because the authority to hear oral argument on any pending matter is inherent in the powers of a hearing officer (set forth in Proposed Rule 4) and does not need to be restated.

(ER 17(a)–(d),(g)–(h))

Rule 26. Review by the Commission of Initial Decisions by Hearing Officers.

(a) *Petition for review; when available.* In any proceeding in which an initial decision is made by a hearing officer, any party to the proceeding, and any person who would have been entitled to judicial review of the final order entered in the proceeding if the Commission itself had made the initial decision, may file a petition for Commission review of the initial decision.

Comment: In the federal court system, an appeal from a decision of a district court is initiated with a notice of appeal which, in the absence of a local rule to the contrary, does not generally require any statement or analysis of the alleged errors in the district court's decision. *See* Rule 3 of the Federal Rules of Appellate Procedure. The Task Force considered suggestions that appeals from the decision of a hearing officer be initiated with an analogous summary notice, instead of a more extensive petition. The procedure for a petition for review is retained because, unlike a federal court of appeals, the Commission, with certain exceptions, may determine not to hear an appeal or may limit the issues on appeal. The petition, while not as extensive as a brief, must include enough information to permit this preliminary jurisdictional decision to be made. Moreover, preparing a petition should sharpen the presentation of the matters at issue, and should assist in preparation of the appellant's brief on the merits. Finally, pursuant to Administrative Procedure Act section 557(c), on appeal of an initial decision a party must have the opportunity to file proposed conclusions of law and fact. This requirement is satisfied by the filing of a petition for review setting forth exceptions to findings and conclusions of law of the hearing officer. Accordingly, for the Commission to retain its power to order a summary affirmance (*see* Proposed Rule 26(g); Existing Rule 17(d)), the petition for review must provide an opportunity to note exceptions.

By contrast, when a respondent applies for review of a determination by a self-regulatory organization pursuant to Proposed Rule 56, the Commission is required by statute to consider *de novo* the appeal in every case. Accordingly, under the existing rules only a summary application for review, similar to a notice of appeal under the Federal Rules, is required.

Comment is requested as to whether, notwithstanding the potential benefits of preparing a petition for review, the requirement for a petition should be eliminated where an appeal is provided as of right by section 4A(b) of the Exchange Act. *See* Proposed Rule 26(f). Comment is also requested as to whether, in light of the Commission's longstanding practice of accepting virtually all petitions for review, and rarely granting a summary affirmance, the requirement of filing a petition for review (and the possibility of a summary affirmance) should be eliminated in all cases. Comment

is also requested as to whether, in light of the potential benefits of a summary statement of the contested issues very early in the appellate process, respondents in appealing the determination of a self-regulatory organization should be required to file a petition for review which includes a statement of the issues on review and the alleged errors by the self-regulatory organization.

(b) *Petition for review a prerequisite to judicial review.* Pursuant to the provisions of 5 U.S.C. 704, a petition to the Commission for review of an initial decision in any proceeding is a prerequisite to the seeking of judicial review of a final order entered pursuant to the initial decision.

(c) *Petition for review; procedure.* Any person who seeks Commission review of an initial decision by a hearing officer shall, within such time after service of the decision as prescribed by the hearing officer pursuant to Rule 24(b) file a petition for Commission review indicating specifically the findings and conclusions as to which exceptions are taken together with supporting reasons for such exceptions based on appropriate citations to the record. These reasons may be stated in summary form. Any objection to an initial decision not saved by written exception filed pursuant to this rule will be deemed to have been waived. A brief in opposition to a petition for review may be filed within five days of service of the petition. Any party may petition for summary affirmance in opposition to a petition for review and identify those issues which the party contends do not warrant consideration by the Commission, stating briefly the reasons for such a contention with appropriate citations to the record.

Comment: Proposed Rule 26(c) would modify the existing rule by explicitly providing a five day period after service of a petition for review for the filing of a brief in opposition to grant of review and/or a petition for summary affirmance. Under Proposed Rule 24(b), the hearing officer would include in the initial decision a statement as to the period allowed for filing a petition for review. Pursuant to that rule, the period allowed for a respondent to file a petition for review normally would be 21 days after service of the initial decision on that respondent. Under Proposed Rule 27(a), the Commission would have 15 days after the filing of a statement in opposition to review or a petition for summary affirmance to determine whether to grant review, and to issue an order establishing a briefing schedule. If additional time is allowed for filing of an opposition, there would be a corresponding increase in the time that would elapse before the Commission would determine whether to order review. Comment is requested as to whether 10 days or 15 days would be a more realistic period for filing a brief in opposition to a petition for review or a petition for summary affirmance.

(ER None)

(d) *Requirement to include financial disclosure statement.* Any person who files a petition for review of an initial decision which asserts that person's inability to pay either disgorgement or a penalty shall file with the opening brief a financial disclosure statement containing the information specified in Rule 55(b).

Comment: The Commission is authorized to bring proceedings seeking disgorgement and penalties either in court or administrative proceedings. In each forum, a defendant's or respondent's ability to pay sums that may be owed often becomes a significant issue. Even when there is undisputed evidence of a defendant's or a respondent's inability to pay, the Commission will generally insist upon an order assessing disgorgement and/or penalties as a term of any settlement that might be reached. In connection with such settlements, however, the Commission often agrees to a waiver of disgorgement and/or penalties to the extent there is a verified inability to pay.

In order to make a determination with respect to whether a proposed disgorgement or penalty is appropriate, and whether it should be waived due to inability to pay, the Commission must have access to complete and current financial information about respondents who raise inability to pay as an issue. Even if financial disclosure has been made during the course of a hearing before a hearing officer pursuant to Rule 55, or otherwise, by the time an initial decision and petition for review have been filed that information may no longer be current.

Pursuant to Proposed Rules 26 (petitions for review), and 28(e) (adducing evidence), the Commission could, at the time that it grants a petition for review, or orders review on its own motion, issue an order that additional evidence on ability to pay be adduced and that the issue be briefed. However, because of the importance of the information, and the advantages of receiving the information in a standardized form, the proposed rule would provide that a financial statement be required with the opening brief on the merits whenever a petition for review raises inability to pay as an issue. The information would have to be kept current pending a final decision. A model financial disclosure statement form can be obtained from the Commission. See Rule 55f. The Commission would specify when it issues the briefing schedule order required by Rule 27(a) whether the form should be used, or whether the information should be submitted by other in another format.

The requirement to include a financial disclosure statement if a respondent makes a claim of inability to pay does not apply to cases on appeal of determinations by self-regulatory organizations. Comment is requested as to whether a similar requirement should be extended, through the Rules of Practice, or otherwise, to self-regulatory organization cases.

(e) *Review by the Commission on its own initiative.* The Commission may, on its own initiative, order review of any initial decision (or a portion of any initial decision) by a hearing officer within 15 days after the end of the period established pursuant to Rule 26(c) for filing a brief in opposition to a petition for review. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review. A party who does not intend to file a petition for review and who desires the Commission's determination to be made in a shorter time, may make a motion for an expedited decision, accompanied by a written statement that the party waives its right to file a petition for review.

Comment: The proposed rule would use a different formula than that in the existing rule to establish the time allowed the Commission to order review on its own initiative. However, the amount of time allowed for the Commission to decide whether to order review after the filing of petitions for review and any replies would remain the same, 15 days. (Existing Rule 17(c) allows the Commission up to 30 days from service of the initial decision to order review on its own initiative; Existing Rule 17(b) allows a respondent 15 days after service of the initial decision to file a petition for review. Thus, the Commission has 15 days after any petitions for review are due to determine whether to order review on its own initiative.)

Whether or not the Commission may order review on its own initiative is not necessarily linked to whether or not a petition for review is filed. Even if a respondent files a petition for review, that respondent may not seek review as to all issues or other respondents in the same proceeding may not file petitions for review. Before the Commission determines whether to order review of an issue on its own motion, all of the parties' petitions, cross-petitions and replies should be filed.

Under Proposed Rule 24(b) the time allowed for filing a petition for review, which would be set by the hearing officer, would normally be 21 days. Further, Proposed Rule 26(c) would allow five days after service of the petition for review for filing of petitions in opposition to review or for summary affirmance. Accordingly, Proposed Rule 26(e) would provide that the Commission could order review on its own initiative up to 15 days after the last day of the period allowed for filing a brief in opposition to a petition for review. This period corresponds to the time allowed under Proposed Rule 27(a) for the Commission to establish a briefing schedule. The Commission rarely exercises its authority to order review on its own initiative; based on existing practice a 15-day period is sufficient to make this determination.

Existing Rule 17(c) would also be revised to incorporate the requirement of section 4A(b) of the Exchange Act that the vote of one member of the Commission is sufficient

to bring a matter before the Commission for review.

(f) *Standards for granting review by the commission pursuant to petition for review.* After a petition for review has been filed:

(1) The Commission shall review any initial decision which:

(i) Denies any request for action pursuant to section 8(a) or section 8(c) of the Securities Act of 1933 or the first sentence of section 12(d) of the Securities Exchange Act of 1934;

(ii) Suspends trading in a security pursuant to section 12(k) of the Securities Exchange Act of 1934; or

(iii) Is in a case of adjudication (as defined in 5 U.S.C. 551) not required to be determined on the record after notice and opportunity for hearing (except to the extent there is involved a matter described in 5 U.S.C. 554(a)(1) through (6)).

Comment: This paragraph would be amended to conform to the requirements of section 4A(b) of the Exchange Act, which mandates review of certain decisions made pursuant to delegated authority. The standards of this proposed rule would also apply to review of decisions pursuant to delegated authority by persons other than a hearing officer. *See* Proposed Rule 30 (ER 26). Although it is unlikely under current procedures that a case assigned to a hearing officer and resulting in an initial decision would involve the matters set forth in subparagraph (f)(1)(i) or (ii), decisions on those matters are specified in the Exchange Act as ones as to which there is a right to review, and were therefore included here. Paragraph (f)(1)(iii) incorporates statutory language from section 4A. The phrase "on the record after notice and opportunity for hearing" in that section is a term of art. If that phrase does not appear in the statute authorizing a particular proceeding, the proceeding is considered to be "informal" adjudication under the Administrative Procedure Act. The Exchange Act provides an automatic right of appeal in such cases, notwithstanding that a hearing may, in fact, be held. Cease-and-desist proceedings are an example of proceedings not required to be "on the record."

(2) The Commission may decline to review any other decision. In determining whether to grant review, the Commission shall consider whether the petition for review makes a reasonable showing that:

(i) A prejudicial error was committed in the conduct of the proceeding; or

(ii) The initial decision embodies:

(A) A finding or conclusion of material fact that is clearly erroneous; or

(B) A conclusion of law that is clearly erroneous; or

(C) An exercise of discretion or decision of law or policy that is important and that the Commission should review.

Comment: Existing Rule 17(d) intertwines statutory provisions mandating review of certain decisions with provisions adopted by the Commission by rule which set standards for discretionary review. The rule would be modified to delineate those cases in which there is a statutory requirement for Commission review (subparagraph (1)), and those cases in which review is discretionary, with the decision whether to grant review guided by criteria provided in the rule (subparagraph (2)). The provisions relating to summary affirmance have been deleted and replaced by a separate paragraph, below.

The Task Force is unaware of any case in which the Commission has declined to grant a petition for review. This practice represents a Commission determination, the product of a consensus over many years, that there is a benefit to joint deliberation by the Commission itself before a decision becomes final and binding. Although Commission review in a particular case can be time consuming, it establishes authoritative precedent applicable to other cases and promotes confidence in the entire adjudicatory process. Both of these factors may encourage settlements or acceptance of hearing officers' decisions in other matters and accordingly reduce the number of cases appealed to the Commission. Reducing the Commission's role in reviewing cases therefore might not be efficient in the long-term.

The Task Force agreed that the rationale for accepting virtually all petitions for review remains compelling, particularly if the volume of the Commission's adjudicatory docket does not expand beyond the levels of the past eleven years. However, the Commission should also recognize that decisions which do not warrant full consideration by the Commission may arise on appeal. In such cases the Commission should not be unwilling to exercise its authority to deny a petition for review or summarily affirm the decision of the hearing officer. Exercise of that authority makes the hearing officer's decision the final decision of the Commission. A respondent is able to immediately appeal that final decision to federal court. *See* Comments to Rules 26(a) and 26(g).

(g) *Summary Affirmance.* The Commission may summarily affirm an initial decision based upon the petition for review and any response thereto, without further briefing, if it finds that no issue raised in the petition for review warrants further consideration by the Commission.

Comment: This paragraph is derived from Existing Rule 17(d), which provided for summary affirmance. Proposed Rule 26(c) establishes a specific opportunity for a party to argue for summary affirmance in response to a petition for review.

Provision in the existing rule for both the denial of a petition for review and summary affirmance arises from a recommendation of the Administrative Conference of the United States (ACUS) 1 CFR 305.68–6, (2)(b) (1992). However, the availability of either mechanism would satisfy the policy concerns addressed by the ACUS recommendation. Comment is requested as to whether both procedures are necessary or whether denial of a petition for review should be eliminated from the Rules of Practice. *See* also Comment to Rule 26(a).

The existing rule includes a provision prohibiting summary affirmance in cases in which the petition for review made "a reasonable showing" of prejudicial procedural error, clearly erroneous factual error, an erroneous conclusion, or an exercise of discretion which is "important" and which the Commission "should" review. Under the proposed rule those factors would be considered by the Commission in determining whether or not to grant review in the first place. Relating these standards to the decision whether to grant review is more logical and should focus the petition on the relevant issues. If the Commission finds any of those factors is present and grants review, a summary affirmance would not be warranted. Focusing the application of these standards on the petition for review is also more consistent with the provisions of Proposed Rule 26 (ER 17), which permits the Commission to select particular issues for review.

Summary affirmance has rarely been granted. The last summary affirmance of an initial decision was in 1988 in a case in which the petitioners failed to file required briefs. *In the Matter of Joseph Lugo*, Adm. Pro. File No. 3–6740 (Aug. 8, 1988), Exchange Act Release No. 25982, 41 SEC Docket 946 (1988). The Task Force considered suggestions that the Commission should use summary affirmance in appropriate cases as a mechanism to resolve cases which were correctly decided by a hearing officer. After a summary affirmance a respondent can immediately seek appellate court review.

Virtually all cases appealed to the Commission turn on specific facts, particularly those facts regarding whether a proposed sanction is in the public interest. The Task Force concluded that the Commission should consider more closely whether to use its power to affirm summarily particular initial decisions. At the same time, the Task Force believes that the Commission should continue to set a high threshold for any such affirmance.

(h) *Scope of review.* (1) Review by the Commission of an initial decision by a hearing officer shall be limited to the matters specified in the order for review. On notice to all parties, however, the Commission may at any time prior to issuance of its decision raise and determine any other matters which it deems material, with opportunity for oral or written argument thereon by the parties.

(2) The Commission may affirm, reverse, modify, set aside or remand for further proceedings, in whole or in part, the initial decision by the hearing officer and make any findings or conclusions which in its judgment are proper and on the record.

(3) In the event a majority of participating Commissioners do not agree to a disposition on the merits, the initial decision shall be of no effect, and an order will be issued in accordance with this result.

Comment: The provisions of this existing Rule 17(h) have been moved to paragraph (b) of this rule.

(ERs 17(e), 18)

Rule 27. Briefs to the Commission.

(ER 17(e))

(a) *Time for filing briefs.* At the time the Commission grants or orders review of an initial decision made by a hearing officer or by any other person pursuant to delegated authority, or promptly after receipt by the Commission of an index to the record of a determination of a self-regulatory organization filed pursuant to Rule 58, the Commission shall issue a briefing schedule order. The order shall specify the party or parties to file opening briefs and establish the dates by which briefs shall be filed. Normally, this briefing schedule order should be issued within 15 days of the last day permitted for filing a brief in opposition to a petition for review or, for filing a record index pursuant to Rule 58. Unless otherwise ordered, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No further briefs may be filed except with leave of the Commission. Any petition for review or any application for review not perfected by timely filing of such briefs may be dismissed pursuant to Rule 3.

Comment: The proposed rule applies to any brief filed with the Commission on review of an initial decision by a hearing officer, by any other person pursuant to delegated authority or by a self-regulatory organization.

The proposed rule requires, at the time the Commission grants or orders review, or promptly after receipt of an index to the record of a determination of a self-regulatory organization filed pursuant to Rule 58, that the Commission issue a briefing schedule order specifying the party or parties to file opening briefs and the dates briefs shall be due. In litigation before a federal court of appeals pursuant to the Federal Rules of Appellate Procedure, no such order is required. The appellant files the first brief pursuant to a briefing schedule established by rule. *See* Rules 28, 31, Fed. R. App. Proc. Unlike a court of appeals, however, the Commission can order review on its own initiative. In such cases, there would be no appellant. Moreover, by local rule a federal court may issue separate orders confirming or modifying the presumptive schedule established by the Federal Rules of Appellate Procedure. The proposed rule adopts this bifurcated approach. The proposed rule establishes a presumptive briefing schedule. However, a briefing schedule order is required in every case, and that order may modify the briefing schedule on a case-by-case basis.

Under the proposed rule, the first brief on the merits would usually be due 40 days after the date of the scheduling order. The proposed rules allot time prior to issuance of the scheduling order for filing of a petition for review and opposition thereto or, in the case of an appeal from a self-regulatory organization decision, for filing of a notice pursuant to Exchange Act Rule 19d–1, an application for review and index. Accordingly, in the case of an appeal from an initial decision of a hearing officer, the first brief on the merits ordinarily would be due no sooner than 85 days after issuance of an initial decision. In the case of an appeal from a self-regulatory organization, the first brief on the merits ordinarily would be due no sooner than 95 days after the filing of a Rule 19d–1 notice, which is due "promptly" after the decision of the self-regulatory organization. *See* Exchange Act Rule 19d–1.

In the case of an appeal from a decision by delegated authority by a person other than a hearing officer, the first brief would be due much earlier. By its terms, the proposed rule would apply to such cases. By contrast, the existing rule does not. Briefing schedules in such cases are simply handled on an *ad hoc* basis at present. Appeals in such cases are rare, however. When they do occur, they tend to involve time sensitive matters that require expedited consideration. Under Proposed Rule 30, a petition for review is due only 10 days after the decision. The briefing schedule order, as appropriate, could require expedited briefing. Otherwise, the first brief would be due 50 days after the decision.

Comment is requested as to whether the time allowed for filing of briefs under proposed Rule 27 should be increased to 45 days for the opening brief, 35 days for a brief in opposition and 21 days for a reply brief.

The proposed rule links the issuance of the briefing schedule order to the end of the period during which a petition for review or an index of the record of a self-regulatory organization proceeding could be filed. The period for issuance of the briefing schedule order should not be linked to the actual filing of a petition or index since there may be sequential requests for review by different persons. Even in cases in which there is a single respondent, a non-party "aggrieved" by a decision might seek review. *See* Proposed Rule 26(a).

The proposed rule incorporates from Exchange Act Rule 19d–3, which governs the filing of briefs in appeals from actions of a self-regulatory organization, a provision that the failure to file a brief may be grounds for dismissal.

(ER 18)

(b) *Additional requirements.* Briefs filed with the Commission with respect to the review of an initial decision made by a hearing officer, or any other person pursuant to delegated authority, or by a self-regulatory organization, shall be confined to the particular matters at issue. Each exception to the findings or conclusions being reviewed shall be stated succinctly. Exceptions shall be supported by citation to the relevant portions of the record, including references to the specific pages relied upon, and by concise argument including citation of such statutes, decisions and other authorities as may be relevant. If the exception relates to the admission or exclusion of evidence, the substance of the evidence admitted or excluded shall be set forth in the brief or in an appendix thereto. Reply briefs shall be confined to matters in opposition briefs of other parties. Briefs which fail to comply with the requirements of this rule shall be subject to sanctions as provided in Rule 3(b).

Comment: The Task Force was informed that in some cases briefs fail to cite to the record. This failure can cause considerable delay, particularly where the record is long, because the Commission must search the entire record to determine where a particular exception or argument may be supported by the evidence. The cross reference to Proposed Rule 3(b) was included particularly for the benefit of *pro se* respondents.

(ER 21)

Rule 28. Hearing Before the Commission; Leave to Adduce Additional Evidence; Petitions for Rehearing.

(a) *Oral argument.* Except as to determinations whether to accept a matter for interlocutory review or to order review of a decision made pursuant to delegated authority, any party may, upon written motion, request oral argument before the Commission on any matter to be decided by the Commission. Requests for oral argument shall be made by separate motion accompanying the initial brief on the merits. Where it deems it appropriate to do so, the Commission will consider an application on the basis of the papers filed by the parties, without oral argument, provided, however, that motions for oral argument with respect to whether to affirm all or part of an initial decision made by a hearing officer shall be granted unless exceptional circumstances make oral argument impractical or inadvisable. The Commission shall issue an order as to whether oral argument is to be heard, and if so, the time and place therefor. Normally, the grant or denial of a motion for oral argument should be made by the Commission within 21 days of the date for the filing of the last brief called for by the briefing schedule. The time fixed for oral argument shall

be changed only by written order of the Commission, for good cause shown. The order shall state at whose request the change is made and the reasons for any such change.

Comment: The existing rule requires a written request for oral argument but does not specify how it is to be made. From time to time a party will insert a request for oral argument in a footnote, or in the text of a lengthy brief, and the Commission may not have timely notice that oral argument has been requested. The proposed rule therefore requires that a request for oral argument be set forth in a separate motion. Some federal courts faced with the same issue have promulgated a local rule requiring that requests for oral argument be made in a particular portion of a party's brief. The Task Force considered the federal court approach and believes that it has merit, particularly in the context of a rule setting forth with some specificity the content and order of required sections of each brief. *See, e.g.*, Rule 28, Fed. R. App. Proc.

The Task Force concluded, however, that a separate motion would be more readily identifiable and therefore more easily entered into a case tracking system by the clerks who receive Commission filings. The Task Force has recommended that the Commission improve the existing case tracking system. Once an upgraded case tracking system has been developed the importance of this assessment may change. A final rule might therefore require that a request for oral argument be made as a specific part of the brief.

The third sentence of the proposed rule, which sets forth standards for whether requests for oral argument will be granted, is based on Existing Rule 21(a) and Exchange Act Rule 19d–3(f). The proviso that the Commission ordinarily will hear argument in cases on appeal from an initial decision by a hearing officer reflects the Commission's practice, which is to grant requests for oral argument when the matter involves an appeal from an initial decision of a hearing officer. Requests for oral argument in other circumstances are rarely granted. Fifty-five initial decisions decided after October 1, 1981 were appealed to the Commission and decided as of September 30, 1992. In 29 of these cases an oral argument was requested. The Commission granted all but one of the oral argument requests. *See In the Matter of Military Robot Corporation*, Adm. Pro. File No. 3–6493 (December 17, 1985) (Order Denying Oral Argument). During the same period from October 1, 1981 through September 30, 1992, the Commission did not grant oral argument in any of the approximately 185 cases in which an opinion was issued on appeal of a decision of a self-regulatory organization. In one case a joint argument was allowed with respect to both a decision of a self-regulatory organization and an initial decision. *See In the Matter of Gallagher & Co.*, Adm. Pro. File Nos. 3–6907 and 3–6953 (May 29, 1991).

The Commission's reasons for the existing practice with respect to oral arguments has not been articulated in any orders or other public statements. The practice of granting oral argument only in cases arising from Commission hearings does not appear to be based on the severity of the sanction in those cases. In some cases the sanction imposed by a self-regulatory organization may be greater than the sanction imposed by the initial decision of a hearing officer. Rather, the Commission's practice appears to reflect the view that cases involving decisions by self-regulatory organizations do not warrant multiple opportunities for the parties to appear before an appellate tribunal. Persons subject to self-regulatory organization regulation generally have an opportunity prior to any appeal to the Commission for several levels of hearing. It is not necessary that there also be an opportunity for oral argument before the Commission. Similarly, on review of the Commission's decision, a respondent will not necessarily be afforded an opportunity to appear before the court of appeals. *See* Rule 34, Fed. R. App. Proc.

Comment is requested as to whether the Commission's practice with respect to granting requests for oral argument should be changed to limit the opportunity for oral argument on appeals from decisions of administrative law judges to the most significant cases. Comment is also requested as to whether the Commission should change its standards for granting oral argument in self-regulatory organization appeals to allow argument in the most significant cases. For example, the Commission might establish a standard which would make available time for oral argument in cases in which fines exceed certain dollar limits, in which a member or associated person with no prior disciplinary record is permanently barred from membership, or in which the decisional process as to an important matter of law would be significantly aided by oral argument.

The Secretary has been delegated authority to set the time and place of oral arguments. *See* 17 CFR 200.30–7(a)(1). In practice, that authority is exercised only in close consultation with the members of the Commission. In some cases reviewed by the Task Force there was considerable delay in scheduling oral argument. The proposed rule includes a guideline that motions for oral argument should be decided within 21 days of the filing of the last brief called for by the briefing schedule. In its report on the administrative process, the Task Force has recommended that if steps in the adjudicatory process, such as the scheduling and holding of oral argument, do not take place within fixed periods that the matter which is delayed be put on the Commission's calendar for a status conference or other action. If implemented, this process should assure that oral arguments are timely scheduled. Once an argument is scheduled, it should be postponed only for good cause shown. The proposed rule requires that the Commission issue a written order if the time of an argument is to be changed. To effectuate the purposes of such a requirement, the order should be approved by the Commission itself, not by the staff pursuant to delegated authority.

(b) *Time allowed.* Unless otherwise directed by the Commission, not more than one half-hour will be allowed for oral argument for each side. The Commission may, in its discretion, determine that several persons have a common interest, and that the interests represented will be considered a single side for purposes of allotting time for oral argument. Time will be divided equally among persons on a single side, provided, however, that by mutual agreement they may reallocate their time amongst themselves. A request for allowance of additional time must be made by motion filed reasonably in advance of the date fixed for argument.

Comment: The provision in the existing rule with respect to postponements was moved to paragraph (a). The proposed rule deletes the provision that the Commission has the authority to extend or shorten time because this authority is set forth in Proposed Rule 17.

The term "side" is used in the proposed rule to indicate that the time allowed by the rule is afforded to opposing interests rather than to individual parties. *See* Rule 34(b), Fed. R. App. P. If multiple appellants or appellees have a common interest, they may constitute only a single side.

(c) *Participation of commissioners.* A member of the Commission who was not present at the oral argument may participate in the decision of the proceeding, provided that he or she has reviewed the transcript of such argument prior to such participation. The decision shall state whether the required review was made.

(d) *Petition for rehearing.* A petition for rehearing by the Commission shall be filed within 10 days after entry of the order complained of, or within such time as the Commission may prescribe upon request of the party if made within the foregoing 10 day period. The petition for rehearing shall clearly state the specific matters upon which rehearing is sought.

(e) *Leave to adduce additional evidence.* A party may file a motion for leave to adduce additional evidence at any time prior to issuance of a decision by the Commission. Such motion shall show with particularity that such additional evidence is material and that there were reasonable grounds for failure to adduce such evidence previously. Upon such motion, or upon its own motion, the Commission may hear additional evidence, may remand the proceeding to a self-regulatory organization or may remand or refer the proceeding to a hearing officer for the taking of additional evidence.

Comment: The proposed Rules of Practice would apply to self-regulatory organization proceedings as well as proceedings initiated before the Commission. Consistent with this broad scope, provisions relating to self-regulatory organization proceedings would

be deleted from Exchange Act rules and integrated into the Rules of Practice. *See* Comment, Proposed Rule 1(a). To this end, Proposed Rule 28(e) would modify Existing Rule 21(d) to provide for the remand of a case to a self-regulatory organization.

Exchange Act Rule 19d–3(e) currently provides that the Commission may "direct that the record under review be supplemented * * *." Under this standard the Commission has remanded cases to a self-regulatory organization to allow additional evidence. *See Jerome U. Burke*, Adm. Pro. File No. 3–7326 (Feb. 26, 1991) (Order Granting Motion to Remand); *David Arm*, Adm. Pro. File No. 3–6575 (Apr. 1, 1987) (Order Remanding Proceedings). The proposed standard for allowing additional evidence is based on the standards of Existing Rule 21(d) of the Rules of Practice and Exchange Act Rule 19d–3(e), which requires that additional evidence be "material." The proposed rule would eliminate the separate standard of "relevancy," which applies to a motion, *sua sponte*, by the Commission to adduce additional evidence under Rule 19d–3(e).

(ERs 20, 21(c))

Rule 29. Record Before the Commission; Basis for Determinations; Contents; Certification.

The Commission shall determine each matter on the basis of the record. Normally, the Commission should issue its opinion within nine months of the date of the briefing schedule order required in each case pursuant to Rule 27(a).

Comment: The requirement that the Commission determine each matter based on the record is taken from Existing Rule 21(c). Consistent with the recommendations of the Task Force to establish guidelines for the completion of all the major phases of the adjudicatory process, the rule also specifies a normative time limit as to when the Commission should issue its decision. The guideline is a goal for the average case, not a limit to be applied to any particular case. In some proceedings, more than nine months from the issuance of the briefing order will be necessary. The guideline imposes no affirmative obligations on the Commission and confers on respondents or other persons no right to a decision within a particular time.

(ER 20)

(a) *Contents of record.* The record in every proceeding for final decision before the Commission shall include:

(1) The order instituting proceedings, any notice of hearing and any amendments to them;

(2) Any applications, submissions, pleadings and moving papers, and any amendments, motions, objections, and exceptions to or regarding them;

(3) Any stipulations, proofs of service, transcripts of testimony, evidence, including any exhibits received into evidence, and any final environmental impact statement (including any supplement thereto) prepared in connection with the proceedings, as well as any public comments received thereon and any Commission responses to such comments;

(4) Any written communications accepted by the hearing officer pursuant to Rule 13;

(5) With respect to a request to disqualify a hearing officer or to allow the hearing officer's withdrawal under Rule 15(d), any affidavits or testimony taken and the decision made in connection with the request;

(6) Any proposed findings and conclusions;

(7) Any initial decisions and orders; and

(8) Any petitions for review.

Comment: Under the proposed rule, subparagraphs have been arranged chronologically in the order in which their components might be present in a typical administrative proceeding. The substantive provisions of existing subparagraphs (1)(vi) – (x) and (xiv) have been redrafted and combined into new subparagraphs. Subparagraph (xiii) has been split into new subparagraphs (7) and (8) and modified. Subparagraphs (iv) and (x) would be deleted from the proposed rule because, with the widespread availability of photocopying equipment, they are unnecessary.

Subparagraph (2) was deleted because it was not followed in practice. The proposed rules would still require the hearing officer to certify the contents of the record. See paragraph (b), below, and Proposed Rule 25(c) (ER 16(f)). Subparagraph (3) was deleted because, with the widespread availability of photocopying, documents received into evidence should be physically introduced as an exhibit, unless extraordinary circumstances make it inappropriate to do so.

(b) *Transmittal of items part of the record.* The hearing officer may, at any time, transmit to the Director of the Office of Filings, Information and Consumer Services motions, briefs, original exhibits or any other materials filed with or accepted into evidence by the hearing officer. The hearing officer shall maintain a written record of all items so transmitted. Promptly after the close of the hearing, the hearing officer shall transmit to the Director of the Office of Filings, Information and Consumer Services a final list of the filings, exhibits or other materials which are part of the record in the proceeding. The hearing officer shall transmit to the Director the originals of any filings, exhibits or other materials which were filed with or accepted into evidence by the hearing officer and have not been previously transmitted to the Director by the hearing officer.

Comment: The Task Force recommended that new procedures be developed for the filing and safekeeping of administrative proceedings case records. The Director of the Office of Filings, Information and Consumer Services ("OFICS") is the Commission's records custodian. Because exhibits and other filings are accepted into the record by the hearing officer during the course of the hearing, the hearing officer must forward copies of these materials to the Director in order for OFICS to maintain the docket, prepare an index, as required by Proposed Rule 25(c) (ER 16(f)) and certify the record as required by paragraph (c), below. The record handling requirements of the proposed rule clarify and streamline the existing requirements. The substance of the last sentence of the existing rule is incorporated in paragraph (c), below.

(c) *Transmittal of record to Commission.* Within 15 days after the last date set for filing briefs to the Commission, or at such other time as the Commission may direct after receipt of a petition or application for review, and prior to any oral argument before the Commission, the Director of the Office of Filings, Information and Consumer Services shall certify the entire record to the Commission.

Comment: Proposed paragraph (c) is based on the last sentence of Existing Rule 20(a)(4). Under the existing rule the record is to be certified to the Commission "promptly." Under the proposed rule, a specific time for certification of the record, 15 days, is specified. The existing rule also excludes from the documents to be physically transmitted documents which comprise part of the Commission's official records. Under the proposed rule all documents would be transmitted. Because of the availability of photocopying, certified copies of official documents should be available and be a part of the record.

(d) *Retention of documents not admitted in evidence; substitution of copies.* (1) Documents offered in evidence during the course of a hearing but excluded by the hearing officer, and documents marked for identification but not offered as exhibits, shall not be considered as a part of the record, but any such document shall be retained in the custody of the Commission.

(2) With the consent of the parties a copy may be substituted for a document that is retained pursuant to the provisions of this paragraph.

(e) *Correction of transcript.* Prior to the filing of the first posthearing brief, a party may move that the hearing officer correct the transcript, provided, however, that other than with leave of the hearing officer, proposed corrections should be submitted within 60 days of the day of the proceeding from which the transcript was made. Proposed corrections of the transcript may be submitted to the hearing officer by

stipulation of the parties, or by a motion by any party. Upon notice to all parties to the proceeding, the hearing officer may, by order, specify corrections of the transcript.

Comment: The existing rule requires corrections to be submitted on a "timely" basis, but gives no guidance as to what that means. The proposed rule limits motions for correction of the transcript to a 60-day period after the transcript was made. Requests for correction of the transcript should be by motion. Specification of corrections should be made by order. Since orders are served on all parties and are part of the record, the separate provision for these requirements in the existing rules is deleted from the proposed rule.

(f) *Scandalous or impertinent matter.* Any scandalous or impertinent matter contained in any brief or pleading or in connection with any oral presentation in a proceeding may be stricken on order of the Commission or the hearing officer.

(ER 26)

Rule 30. Review by the Commission of Determinations at a Delegated Level.

(a) *Scope of rule.* This rule is applicable only to review of determinations made pursuant to authority delegated in Subpart A, Organization and Program Management, 17 CFR 200.1 *et seq.* This rule does not apply to determinations made by a duty officer or by a hearing officer pursuant to these rules. Review of determinations made by a duty officer is governed by the provisions of 17 CFR 200.42(c). Review of determinations made by a hearing officer is governed by Rules 18 and 26.

Comment: Commission review of determinations made pursuant to delegated authority is required and governed by Exchange Act Section 4A. The Commission has delegated decision-making to hearing officers, division directors and other senior staff, and to a single commissioner, acting as duty officer. Because of the differing nature of matters delegated to hearing officers, senior staff or a duty officer, the Commission's rules provide different mechanisms for review of determinations depending upon who made the decision. Both the existing and the proposed Rules of Practice address only those determinations made pursuant to delegated authority by division directors and other senior staff. Review of decisions by a duty officer is governed by 17 CFR 200.42(c).

(b) *Petition for review; procedure.* A party or any person aggrieved by a determination made by delegated authority may seek review of the decision by filing a written notice of intention to petition for review within five days after actual notice to the party of the determination complained of or service of notice of the determination pursuant to Rule 32, whichever is earlier. The notice shall identify the petitioner, the determination complained of, and shall be accompanied by a notice of appearance pursuant to Rule 2(d). Within five days after such notice has been communicated, the person seeking review shall file a petition for review containing a clear and concise statement of the issues to be reviewed and the reasons review is appropriate. The petition shall include exceptions to any findings of fact or conclusions of law made, together with supporting reasons for such exceptions based on appropriate citations to such documentary record as may exist. These reasons may be stated in summary form.

Comment: Decisions pursuant to delegated authority by senior staff often involve matters which are highly time-sensitive. Generally the record for such a determination consists of documents only and is not extensive. The review process under both the existing and proposed rules is therefore simple and requires a prompt decision by a party as to whether review will be sought.

Notwithstanding the need for prompt action, under the existing rule there is an unrealistically short period to initiate the process for petitioning for review of a decision made pursuant to delegated authority. A party has either one day after actual notice of an adverse determination or five days after mailing of the notice (whether or not the notice arrives), whichever is shorter. Under the proposed rule, a party or other aggrieved person may file a notice of intent to petition for review within five days after actual notice of the decision, or within five days after service of a written decision pursuant to Rule 32, whichever is earlier.

Notice of a decision pursuant to delegated authority may be conveyed by any means, including a telephone call. While a decision should also be served pursuant to Proposed Rule 32, receipt of service is not necessary in order to trigger the five-day period to initiate review. The proposed rule also adds a cross-reference to the requirement of Rule 2 to file a notice of appearance at the time the notice of intention to petition for review is filed. The proposed rule further adds a description of what information should be included in the petition for review. The required information is essentially the same as that required for a petition for review of a hearing officer's initial decision. *See* Proposed Rule 26(c).

(c) *Review by the commission on its own initiative.* The Commission may, on its own initiative, order review of any determination at a delegated level at any time provided, however, that where there are one or more parties to the matter, review by the Commission on its own initiative shall not be ordered more than ten days after the determination. The vote of one member of the Commission, conveyed to the Secretary, shall be sufficient to bring a matter before the Commission for review.

Comment: Existing Rule 26(d) was adopted in 1963 to implement the authority granted to the Commission by Congress in 1962 to delegate decision making to, among others, subordinate employees. *See* Securities Act Release No. 4588 (Mar. 8, 1963) (adopting release). *See* generally Public Law No. 87–592, 76 Stat. 394 (codified, as amended, in section 4A of the Exchange Act). The text of the rule has remained unchanged since its adoption.

The existing rule provides that the Commission may order review of any determination at a delegated level "at any time." When a decision pursuant to delegated authority involves a party, however, some time limit is necessary, so that decisions achieve finality. The existing rule therefore further provides that "any review by the Commission on its own initiative will be ordered within five days where there are parties to or intervenors in the matter." The Commission's ability, as well as its need to review delegated decisions by subordinate employees other than hearing officers is more limited in practice than the language of the rule may suggest. First, because of the large number of decisions made pursuant to delegated authority, the Commission is not informed in most instances when such a decision is made. To give Commissioners notice of each such decision would be inefficient and impractical. Absent notice of a decision, the Commission is not able to initiate review *sua sponte*. Second, there are few matters of consequence decided by delegated authority as to which there would not be a party or intervenors.

In practice, the authority to review decisions on the Commission's own initiative is very rarely used. When the staff has a controversial issue to decide which it could address pursuant to delegated authority, it will ordinarily consult with the Commissioners individually, or will submit the matter to the Commission for formal action. Under the proposed rule the Commission would have 10 days from the determination, instead of five, to review a matter on its own initiative. A 10-day period provides a more realistic period of time for an unusual matter to be reported to and acted on by the Commission. Comment is requested as to whether the period for Commission review should be retained at five days or extended to 15 days. Comment is also requested as to whether the time limit on Commission review of delegated action should apply to all matters, whether or not there are parties.

The proposed rule incorporates the provisions of section 4A that the vote of a single commissioner shall be sufficient to bring a matter before the Commission for review.

(d) *Standards for grant of review.* The Commission shall review any decision made by delegated authority which it would be required to review pursuant to Rule 26(f) if the decision were the initial decision of a hearing officer.

Comment: The proposed rule cross-references the standards for granting review which are set forth at Proposed Rule 26(f). The standards are established by section 4A(b) of the Exchange Act.

(e) *Effect of delegated determination; stays, etc.* Any determination pursuant to delegated authority shall have immediate effect and be deemed the action of the Commission. Upon communication to the Secretary of a notice of intention to petition for review as provided in paragraph (b) hereof, or of the vote of a Commissioner that a matter be reviewed, as provided in paragraph (c) hereof, the determination pursuant to delegated authority (except a determination to grant a stay of action by the Commission or a self-regulatory organization) shall thereafter be stayed until the Commission orders otherwise. An order directing review on the Commission's own initiative or granting a petition for review of a determination made by delegated authority will set forth the time within which any party or other person may file a statement in support of or in opposition to the determination whether a stay should be granted or continued and whether oral argument will be heard. As against any person who shall have acted in reliance upon any determination at a delegated level, any stay or any modification or reversal by the Commission of such determination shall be effective only from the time such person receives actual notice of such stay, modification or reversal.

Comment: Under the existing rule a request for review of a decision taken by delegated authority stays the decision for which review is sought. The proposed rule makes clear that the vote of a Commissioner that a matter be reviewed has the same effect.

A decision to grant a stay may be made by the General Counsel pursuant to delegated authority. *See, e.g.*, 17 CFR 200.30–14(5). Requests for stays of a decision by a self-regulatory organization arise with some regularity from persons seeking review of the decision. Under the existing rule, a stay can be overturned by the self-regulatory organization if it simply files a petition for review of the decision to enter the stay. This anomaly has been eliminated in the proposed rule.

(ER 22)

Rule 31. Filing Formalities.

(a) *Length and form of briefs.* All briefs filed with the Commission or with a hearing officer containing more than 10 pages shall include a table of contents and a table of cases (alphabetically arranged), statutes, and other authorities cited, with references to the pages of the brief wherein they are cited. Opening and opposition briefs shall not exceed 50 pages and reply briefs shall not exceed 25 pages, exclusive of pages containing the table of contents, table of cases, and any addendum, except with leave of the Commission or a hearing officer.

Comment: Under both the existing and proposed rules there is a single standard for the length of briefs in proceedings before the Commission and hearing officers. Under Rule 28(g) of the Federal Rules of Appellate Procedure, the longest brief filed without special permission of the court is 50 pages. The Task Force concluded that other than with leave of the Commission matters briefed to the Commission did not warrant more than 50 pages. It may not be appropriate to apply this same limit to briefs submitted to a hearing officer. As does the Commission, a hearing officer has the authority to extend the limits for briefs in particular cases. The page limit prescribed by rule should be sufficient, however, to discourage such requests. Given that briefs before a hearing officer may encompass proposed findings of fact and conclusions of law, *see* Proposed Rule 25(a), comment is requested as to whether the page limit for briefs prior to an initial decision should be 60, 75 or 100 pages.

(b) *Paper, spacing, type.* All papers filed under these rules shall be typewritten or printed, such that, in the opinion of the Commission, copies suitable for computer scanning or microfilming can be produced therefrom. All papers shall be plainly legible and shall be on one grade of unglazed white paper measuring no larger than 8½ x 11 inches. To the extent that the reduction of larger documents would render them illegible, such documents may be filed on paper larger than 8½ x 11 inches in size. All papers should have left hand margins at least 1½ inches wide, shall be bound on the left-hand side, and shall be double-spaced, with single spaced, indented quotations, and, if printed, they shall be in either 10 or 12-point type.

(c) *Signatures.* All papers must be dated and signed as provided in Rule 10.

Comment: Signature requirements are set forth in Proposed Rule 10.

(d) *Title page.* All papers filed must include at the head thereof, or on a title page, the name of the Commission, the title of the proceeding, the names of the parties, the subject of the particular paper or pleading, and the file number assigned to the proceeding.

Comment: Existing Rule 22(i) was deleted because of the availability of overnight mail, airmail, and courier services.

(ERs 22(h), (k), 23(d))

Rule 32. Orders, Rulings and Decisions.

(ER 23(d))

(a) *Service.* In every proceeding, copies of rulings by the Commission or a hearing officer on all written motions, and all other decisions or orders of the Commission or a hearing officer (including those pursuant to delegated authority) shall be served pursuant to one of the methods set forth in Rule 5(b), by the Secretary or other duly designated officer of the Commission on all parties and other participants.

Comment: Under Proposed Rule 5 the obligation of a party or other participant to serve copies of its filings arises only in proceedings where an order instituting proceedings has been entered or an application for review of a determination by a self-regulatory organization has been filed. Proceedings such as applications for registration being conducted by delegated authority at a staff level do not require the formalities of a service rule. By contrast, the Commission is obligated to serve a copy of any ruling or decision it makes on all parties and non-party participants, regardless of the type or phase of the proceeding.

(ER 22(h))

(b) *Signature on orders.* All orders of the Commission shall be signed by the Secretary or such other person duly authorized by the Commission.

Comment: This paragraph is based on Existing Rule 22(h).

(ER 22(k))

(c) *Availability of orders for inspection.* An order shall be available for inspection by the public from and after the date of the entry, unless it is a nonpublic order. A nonpublic order shall be available for inspection from and after the date of entry by any person entitled to inspect it.

Comment: This paragraph of Proposed Rule 32 is based on Existing Rule 22(k). The portions of the existing rule that would be deleted are included in Proposed Rule 6.

(ER 25)

Rule 33. Applications for Confidential Treatment of Certain Matters; Transcripts of Private Hearings.

(a) *Applications for confidential treatment.* Any person may file an application with the Commission, or with the hearing officer if one is assigned, requesting confidential treatment of material pursuant to the provisions of Clause 30 of Schedule A of the Securities Act of 1933 and Rule 406 thereunder, section 24(b)(2) of the Securities Exchange Act of 1934 and

Rule 24b–2 thereunder, section 22(b) of the Public Utility Holding Company Act of 1935 and Rule 104 thereunder, section 45(a) of the Investment Company Act of 1940 and Rule 45a–1 thereunder, or section 210(a) of the Investment Advisers Act of 1940, or any other applicable statute or rule. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought.

Comment: The last two sentences of the existing rule would be moved to paragraph (b) of this rule. Under Proposed Rule 5(a) motions requesting confidential treatment may be filed *ex parte*. Ordinarily, if there is more than one party to a proceeding, the Commission or hearing officer should require some notice of the filing to other parties. An application for confidential treatment can describe generally the material to be protected, without revealing confidential details. Any brief in support of the application and the material as to which confidential treatment would be sought would accompany, but not be a part of the application. Comment is requested as to whether the filing of an application for confidential treatment should be permitted *ex parte*.

(b) *Procedure for supplying additional information in confidential treatment cases.* In any case in which an application for confidential treatment is made, the Commission, in its discretion, or the hearing officer in his or her discretion, may require the person desiring the confidential treatment to furnish in writing additional information with respect to the grounds for its objection to public disclosure. Failure to supply the information so requested within 14 days from the date of receipt by the registrant of a notice of the information required shall be deemed a waiver of the objection to public disclosure of that portion of the information to which the additional information relates, unless the Commission or the hearing officer shall otherwise order for good cause shown at or before the expiration of such 14-day period.

Comment: The provisions of this paragraph are based on the last two sentences of Existing Rule 25(a). The proposed rule modifies the existing rules to permit the Commission or the hearing officer to request additional information as to any request for confidential treatment, not only those scheduled for hearing.

(c) *Confidentiality of materials pending decision.* (1) Upon request of the person making an application for confidential treatment, motions and other filings relating to the application shall be placed under seal upon filing. All motions, filings, orders, transcripts and other papers concerning confidential treatment, shall, unless otherwise ordered by the Commission, be for the confidential use only of the hearing officer, the Commission, the parties and counsel. Materials containing information as to which confidential treatment is sought shall be made available to the public only in accordance with orders of the Commission, and/or the applicable provisions of Rule 406 under the Securities Act of 1933, Rule 24b–2 under the Securities Exchange Act of 1934, Rule 104 under the Public Utility Holding Company Act of 1935, section 45 of the Investment Company Act of 1940 and Rule 45a–1 under that Act, or section 210(a) of the Investment Advisers Act of 1940, the Freedom of Information Act or any other applicable statutes.

Comment: The provisions of this paragraph are based on Existing Rule 25(b). The existing provisions were modified to make clear that all parties or other participants in a proceeding concerning an application for confidential treatment have an obligation to keep the subject matter of the application confidential pending its final determination. The proposed rule has been revised to reflect that availability of materials to the public may be subject to the requirements of the Freedom of Information Act as well as other applicable statutes.

(2) If an initial decision is to be issued in connection with a proceeding where confidential treatment is granted, each page of such decision shall contain a statement that such decision is nonpublic.

(3) Any order of the Commission sustaining or denying an application for confidential treatment shall be made available to the public. Any finding or opinion issued by a hearing officer or by the Commission in any proceeding relating to confidential treatment shall be made public at such time as the material filed confidentially is made available to the public.

(d) *Purchase of transcripts of private hearings.* Transcripts of private hearings will be supplied to the parties at the prescribed rates.

(ERs 27, 28)

Rule 34. Adjudications Not Required To Be Determined on the Record After Notice and Opportunity for Hearing.

(a) *Scope of the rule.* This rule applies to every case of adjudication (as defined in 5 U.S.C. 551) pursuant to any statute which the Commission administers, where adjudication is not required to be determined on the record after notice and opportunity for hearing and which the Commission has not chosen to determine on the record after notice and opportunity for hearing.

(ER 27)

(b) *Procedure.* In every case of adjudication under this rule, the Commission shall:

(1) Give prompt notice of any adverse action or final disposition to any person who has requested the Commission to make (or not to make) any such adjudication; and

(2) Furnish to any such person a written statement of reasons therefor. Additional procedures may be specified in rules relating to specific types of such adjudications; where any such rule provides for the publication of a Commission order, notice of the action or disposition shall be deemed to be given by such publication.

(c) *Contents of the record.* In any case of adjudication described in paragraph (a) above, if the Commission provides notice and opportunity for the submission of written comments by parties to the adjudication or, as the case may be, by other interested persons, written comments received on or before the closing date for comments, unless accorded confidential treatment pursuant to statute or rule of the Commission, become a part of the public record of the adjudication. The Commission, in its discretion, may accept and include in the public record written comments filed with the Commission after the closing date.

Comment: Existing Rule 27 and Existing Rule 28 both concern adjudications not required to be determined on the record after notice and opportunity for a hearing. These two rules have been combined into Proposed Rule 34. The proposed rule specifies certain procedures for proceedings which are not required by the Administrative Procedure Act to be "on the record" adjudications, and for which the Commission does not, by order, direct other procedures to be used. For example, while most enforcement matters, even those not required to be "on the record," are determined after an "on the record" type hearing before an administrative law judge pursuant to an order instituting proceedings, regulatory matters not required to be "on the record" are determined less formally, and would be subject to the requirements of this rule.

(ER 29)

Rule 35. Applications by Barred Individuals for Consent To Associate with Registered Brokers, Dealers, Municipal Securities Dealers, Government Securities Brokers, Government Securities Dealers, Investment Advisers, Investment Companies or Transfer Agents.

Comment: The preliminary note in Existing Rule 35 follows the text of Proposed Rule 35.

(a) *Scope of rule.* Applications for Commission consent to associate, or to

change the terms and conditions of association, with a registered broker, dealer, municipal securities dealer, government securities broker, government securities dealer, investment adviser, investment company or transfer agent may be made pursuant to this rule where a Commission order bars the individual from association with a registered entity and:

(1) Such barred individual seeks to become associated with an entity that is not a member of a self-regulatory organization; or

(2) The order contains a proviso that application may be made to the Commission after a specified period of time.

(b) *Form of application.* Each application shall be supported by an affidavit, manually signed by the applicant, which addresses the factors set forth in paragraph (d) of this rule. One original and four copies of the application shall be filed pursuant to Rule 5. Each application shall include as exhibits:

(1) A copy of the Commission order imposing the bar;

(2) An undertaking by the applicant to notify immediately the Commission in writing if any information submitted in support of the application, while pending, becomes materially false or misleading;

(3) A copy of a completed Form U–4, where the applicant's proposed association is with a broker-dealer or municipal securities dealer;

(4) A copy of a completed Form MSD–4, where the applicant's proposed association is with a bank municipal securities dealer;

(5) The information required by Form ADV with respect to the applicant, where the applicant's proposed association is with an investment adviser; and

(6) A written statement by the proposed employer that describes:

(i) The terms and conditions of employment and supervision to be exercised over such applicant and, where applicable, by such applicant;

(ii) The qualifications, experience, and disciplinary records of the proposed supervisor(s) of the applicant;

(iii) The compliance and disciplinary history, during the two years preceding the filing of the application, of the office in which the applicant will be employed; and

(iv) The names of any other associated persons in the same office who have previously been barred by the Commission, and whether they are to be supervised by the applicant.

(c) *Required showing.* The applicant shall make a showing satisfactory to the Commission that the proposed association would be consistent with the public interest.

(d) *Factors to be addressed.* The affidavit required by paragraph (b) shall address each of the following:

(1) The time period which has elapsed since the imposition of the bar;

(2) Any restitution or similar action taken by the applicant to recompense any person injured by the misconduct that resulted in the bar;

(3) The applicant's compliance with the order imposing the bar;

(4) The applicant's employment during the period subsequent to imposition of the bar;

(5) The capacity or position in which the applicant proposes to be associated;

(6) The manner and extent of supervision to be exercised over such applicant and, where applicable, by such applicant;

(7) Any relevant courses, seminars, examinations or other actions completed by the applicant subsequent to imposition of the bar to prepare for his or her return to the securities business; and

(8) Any other information material to the application.

(e) *Notification to applicant and written statement.* In the event an adverse recommendation is proposed by the staff with respect to an application made pursuant to this rule, the applicant shall be so advised and provided with a written statement of the reasons for such recommendation. The applicant shall then have 30 days to submit a written statement in response.

(f) *Concurrent applications.* The Commission will not consider any application submitted pursuant to this rule if any other application for consent to associate concerning the same applicant is pending before any self-regulatory organization.

Note: This rule governs applications by certain persons, barred by Commission order from association with brokers, dealers, municipal securities dealers, government securities brokers, government securities dealers, investment advisers, investment companies or transfer agents, for consent to become so associated. Applications made pursuant to this rule must show that the proposed association would be consistent with the public interest. In addition to the information specifically required by the rule, applications should be supplemented, where appropriate, by written statements of individuals (other than the applicant) who are competent to attest to the applicant's character, employment performance, and other relevant information. Intentional misstatements or omissions of fact may constitute criminal violations of 18 U.S.C. 1001 *et seq.* and other provisions of law.

The nature of the supervision that an applicant will receive or exercise as an associated person with a registered entity is an important matter bearing upon the public interest. In meeting the burden of showing that the proposed association is consistent with the public interest, the application and supporting documentation must demonstrate that the proposed supervision, procedures, or terms and conditions of employment, are reasonably designed to prevent a recurrence of the conduct that led to imposition of the bar. As an associated person, the applicant will be limited to association in a specified capacity with a particular registered entity and may also be subject to specific terms and conditions.

Normally, the applicant's burden of demonstrating that the proposed association is consistent with the public interest will be difficult to meet where the applicant is to be supervised by, or is to supervise, another barred individual. In addition, where an applicant wishes to become the sole proprietor of a registered entity and, thus, is seeking Commission consent notwithstanding an absence of supervision, the applicant's burden will be difficult to meet.

In addition to the factors set forth in paragraph (d) of this rule, the Commission will consider the nature of the findings that resulted in the bar when making its determination as to whether the proposed association is consistent with the public interest. In this regard, attention is directed to Rule 5(e) of the Commission's Rules on Informal and Other Procedures. 17 CFR 202.5(e). Among other things, Rule 5(e) sets forth the Commission's policy "not to permit a * * * respondent (in an administrative proceeding) to consent to * * * (an) order that imposes a sanction while denying the allegations in the * * * order for proceedings." Consistent with the rationale underlying that policy, and in order to avoid the appearance that an application made pursuant to this rule was granted on the basis of such denial, the Commission will not consider any application that attempts to reargue or collaterally attack the findings that resulted in the Commission's bar order.

(ER 23(e))

Rule 36. Receipt of Petitions for Review Pursuant to 28 U.S.C. 2112(a)(1)

Commission receipt pursuant to 28 U.S.C. 2112(a)(1) of copies of petitions for judicial review of Commission orders where petitions for review are filed in two or more courts of appeals with respect to the same order. The Commission officer and office designated to receive, pursuant to 28 U.S.C. 2112(a)(1), copies of petitions for review of Commission orders, from the persons instituting the review proceedings in a court of appeals, are the Secretary and the Office of the Secretary at the Commission's Headquarters in Washington, DC. 10 copies of the petition shall be submitted. Each copy shall state on its

face that it is being submitted to the Commission pursuant to 28 U.S.C. 2112 by the person or persons who filed the petition in the court of appeals.

(ER 4)

Rule 37. Issuance, Amendment and Repeal of Rules of General Application.

(a) *By petition.* Any person desiring the issuance, amendment or repeal of a rule of general application may file a petition therefor with the Secretary. Such petition shall include a statement setting forth the text or the substance of any proposed rule or amendment desired or specifying the rule the repeal of which is desired, and stating the nature of his or her interest and his or her reasons for seeking the issuance, amendment or repeal of the rule. The Secretary shall acknowledge, in writing, receipt of the petition and refer it to the appropriate division or office for consideration and recommendation. Such recommendations shall be transmitted with the petition to the Commission for such action as the Commission deems appropriate. The Secretary shall notify the petitioner of the action taken by the Commission.

(b) *Notice of proposed issuance, amendment or repeal of rules.* Except where the Commission finds that notice and public procedure are impracticable, unnecessary, or contrary to the public interest, whenever the Commission proposes to issue, amend, or repeal any rule or regulation of general application other than an interpretive rule, general statement of policy, or a rule of agency organization, procedure, or practice, or any matter relating to agency management or personnel or to public property, loans, grants, benefits, or contracts, there shall first be published in the **Federal Register** a notice of the proposed action. Such notice shall include:

(1) A statement of the time, place, and nature of the rulemaking proceeding, with particular reference to the manner in which interested persons shall be afforded the opportunity to participate in such proceeding;

(2) Reference to the authority under which the rule is proposed; and

(3) The terms or substance of the proposed rule or a description of the subjects and issues involved.

Rules Relating to Temporary Sanctions

(ER None)

Rule 38. Expedited Consideration of Proceedings.

In every proceeding in which an application for a temporary sanction is pending, or a temporary sanction or order suspending temporarily the effectiveness of an exemption from registration pursuant to Regulations A, B, E or F under the Securities Act, 17 CFR 230.261, 230.336, 230.610 and 230.656, is in effect, or an order suspending temporarily the privilege of appearing before the Commission under Rule 2(e)(3) is in effect, every hearing shall be held and every decision shall be rendered at the earliest possible time, consistent with the Commission's or the hearing officer's other responsibilities.

Comment: Proposed Rule 38 requires the expeditious conduct of all proceedings in which a temporary sanction or temporary suspension of an exemption from registration pursuant to Securities Act Regulations A, B, E or F, or a temporary suspension from practice before the Commission under Existing Rule 2(e)(3) ("temporary suspensions") is sought or pending, including proceedings to determine whether to make a temporary sanction or suspension permanent. The term "temporary sanction" is defined in Proposed Rule 1(c) to mean a temporary cease-and-desist order or a temporary suspension of the registration of a broker, dealer, municipal securities dealer, government securities broker, government securities dealer or transfer agent. Temporary suspensions involve summary proceedings which differ significantly from proceedings to suspend the registration of a registered entity or to issue a temporary cease-and-desist order. Accordingly, they were not included in the definition of temporary sanction.

The proposed rule requires that "every hearing shall be held and every decision shall be rendered at the earliest possible time, consistent with the Commission's or the hearing officer's other responsibilities." This standard is derived from two sources. First, by statute, when a temporary cease-and-desist order is entered ex parte and the respondent timely seeks Commission review of the decision, the Commission must hold a hearing and render its decision "at the earliest possible time." See, e.g., Exchange Act section 21C(d)(1), 15 U.S.C. 78u–3(d)(1). See also Proposed Rule 43(c) (implementing Exchange Act section 21C(d)(1)). Second, Existing Rule 2(e)(3)(iii) of the Rules of Practice contains an essentially identical standard. That rule requires that proceedings in connection with Commission review of temporary suspensions of persons appearing or practicing before the Commission "be expedited in every way, consistent with the Commission's other responsibilities."

Applications for temporary sanctions generally arise as a result of exigent circumstances. Expedited consideration of the decision whether to enter a temporary sanction is necessary both to protect the public from harm by promptly restraining improper ongoing or threatened activities and to protect the rights of respondents, who may be adversely affected merely by an application for a temporary sanction even if the sanction is ultimately denied. *See Barry v. Barchi*, 443 U.S. 55, 73 (1979) (Brennan, J., concurring in part) (even a temporary sanction can do "irreparabl[e] damage"). After a temporary sanction is entered, fairness to the public—especially those persons harmed by violative conduct—and to the respondent, further dictates expediting additional proceedings to determine quickly whether a permanent sanction and other appropriate relief are warranted.

(ER None)

Rule 39. Applications for a Temporary Suspension of a Registered Entity or for a Temporary Cease-and-Desist Order.

(a) *How made.* A request for entry of a temporary suspension of a registered entity or a temporary cease-and-desist order shall be made by application filed by the Division of Enforcement. The application shall consist of a proposed order to show cause whether a temporary sanction should be imposed and, if a proceeding for a permanent sanction has not already been commenced, a proposed order instituting proceedings to determine whether a permanent sanction should be imposed. The application shall be filed with the Secretary, not a hearing officer. If the Secretary is unavailable, the application may be filed with the duty officer.

(b) *Accompanying documents.* The application shall be accompanied by a declaration of facts signed by a person with knowledge of the facts contained therein, a memorandum of points and authorities, and a proposed order imposing a temporary sanction.

(c) *Waiver of filing of accompanying documents.* Upon motion by the Division of Enforcement, the Commission, in its discretion, may waive the filing of any or all of the documents that are required to accompany the application pursuant to paragraph (b), provided that, if the Commission waives the filing of a written declaration of facts, the Division of Enforcement shall make an oral declaration of the facts supporting the issuance of a temporary sanction.

(d) *Record of proceedings.* After an application has been filed, proceedings in which a party appears in person before the Commission, particularly *ex parte* presentations made by the Division of Enforcement, should be recorded, transcribed or otherwise memorialized to the extent that circumstances permit.

Comment: Proposed Rule 39 requires a request for a temporary cease-and-desist order or a temporary suspension be made by application, not motion, to emphasize that the time limitation governing the filing of an opposition to a motion does not apply. The rule also specifies various documents to be filed together with the application.

By statute, the Commission may suspend temporarily the registration of a broker, dealer, municipal securities dealer, government securities dealer or transfer agent, only pending the completion of an ongoing proceeding to determine whether to revoke the registration. See Exchange Act sections 15(b)(5), 15 U.S.C. 78o(b)(5); 15B(c)(3), 15 U.S.C. 78o–4(c)(3); 15C(c)(1)(B), 15 U.S.C. 78o–5(c)(1)(B); and 17A(c)(4); 15 U.S.C. 78q–1(c)(4). Similarly, a temporary cease-and-desist order may be issued only pending a proceeding to determine whether to issue a permanent sanction. *See, e.g.*, Exchange Act section 21C(c)(1), 15 U.S.C. 78u–3(c)(1). In either type of proceeding, if an order instituting proceedings has not already been issued, a proposed order is required so that one can be issued simultaneously with the order imposing or scheduling a hearing with respect to a temporary sanction.

The rule requires that the application for a temporary cease-and-desist order or a temporary suspension of a registered entity be made in writing and supported by a declaration of facts and a memorandum of points and authorities. These requirements are patterned after those in Rule 65(b) of the Federal Rules of Civil Procedure for temporary restraining orders. The rule requires a declaration of facts and a memorandum of points and authorities in order to provide the Commission with a clearly articulated record on which to base the temporary suspension or temporary cease-and-desist order. A declaration may be made by a staff member or any other person.

For the sake of efficiency, the proposed rule requires advance preparation of a proposed order to show cause why sanctions should not be issued and a proposed order imposing sanctions. The order to show cause would be issued if a hearing is held prior to imposing sanctions. Should the Commission decide after a hearing, or in the case of a temporary cease-and-desist order, even without a hearing, that a situation warrants a temporary sanction, the order imposing sanctions can be signed promptly, with such modifications as may be appropriate.

The proposed rule also specifies that required documents are to be filed with the Secretary. The Secretary would promptly forward such documents to each Commissioner. Unlike other filings which could be made with a hearing officer (if one had been assigned pursuant to Proposed Rule 5(e)), a request for a temporary suspension or a temporary cease-and-desist order must be filed with the Secretary even when it arises in an ongoing proceeding.

Proposed Rule 39 incorporates provisions granting the Commission flexibility to assure that immediate action can be taken to impose a temporary sanction if warranted. In order to accommodate emergencies arising outside regular business hours, the proposed rule provides that if the Secretary is unavailable, an application for a temporary suspension order or a temporary cease-and-desist order can be made directly to the duty officer. In addition, upon oral or written motion by the Division of Enforcement, Proposed Rule 39 provides that the Commission can waive the requirement to file a written declaration of facts, a memorandum of points and authorities, and a proposed order imposing a temporary sanction. The waiver may be complete (in which case no accompanying documents must be filed) or partial.

The Task Force believes that a written declaration of facts should be filed in virtually every case. The sole exception to this practice might be where there are such extraordinary, exigent circumstances that the Director or an Associate Director of the Division of Enforcement informs the Commission that any delay in the entry of an order would be contrary to the public interest. The proposed rule, however, commits the decision whether to waive the filing of any or all accompanying documents solely to the Commission's discretion.

The Task Force requests comment as to whether the standard for granting a waiver should require a specific finding of need, for example, allowing a waiver "when, in the Commission's opinion, the preparation of these papers would be impracticable or would cause undue delay." Comment is also requested as to whether, when a waiver is granted, the rule should require that the temporary order include the reason for the waiver.

It was suggested to the Task Force that the preparation of a declaration or other accompanying documents would unduly complicate requests for issuance of a temporary order. The Task Force requests comment as to whether the requirement to file a declaration and/or other accompanying documents should be modified so that such documents are required only if the Commission determines that they are necessary in a particular case.

Paragraph (d) requires that proceedings be recorded to the extent circumstances permit. This requirement is triggered only after proceedings are formally instituted and an application for temporary relief has been filed. If an application for a temporary sanction is heard by the Commission in a proceeding at which the Division of Enforcement makes a presentation during regular business hours, the proceeding ordinarily would be recorded and a transcript would be prepared by the Secretary. If an application is heard by the duty officer, particularly on an evening or weekend, it may not be feasible to record the proceedings. When the respondent is present at a proceeding, the lack of a recording is not as great a source of concern. However, if the respondent is not present, particular effort should be made to have the proceedings recorded, transcribed or otherwise memorialized to the extent circumstances permit. Minutes taken by the Secretary or another person would satisfy this requirement.

The lack of a recording or transcription, even where there has been an *ex parte* presentation, will not affect the validity of the proceedings, although the respondent would ordinarily be entitled to minutes or a recording if available. A nonpublic Commission meeting at which the Commission deliberates with respect to a filed application ordinarily is recorded. Such meetings, however, are not "proceedings before the Commission in which a party appears" in person and are therefore outside the scope of this rule. The contents of such meetings are privileged and confidential and ordinarily would not be available to the parties.

(ER None)

Rule 40. Notice and Opportunity To Be Heard on an Application for a Temporary Sanction.

(a) *Notice.* Notice to a respondent of an application for a temporary sanction shall be given by serving the application pursuant to Rule 5(b) or by any means calculated to give actual notice, including telephone or facsimile transmission.

(b) *Hearing.* A hearing on an application for a temporary sanction shall be held before the Commission or a hearing officer. One or more of the parties may participate by telephone or other remote means. In the event the hearing is held before the Commission or a panel of Commissioners, the Chairman shall preside or designate a Commissioner to preside. The person presiding shall rule on the admissibility of evidence and other procedural matters, including but not limited to those enumerated in paragraph (c) of this rule, provided, however, that each Commissioner present shall be afforded a reasonable opportunity to ask questions of the witnesses or counsel. If the Chairman is absent or unavailable at the time of hearing and no other Commissioner has been designated to preside, the duty officer on the day the hearing begins shall preside or designate a presiding Commissioner.

(c) *Evidence.* The form of evidence to be offered, the amount of evidence that may be offered, the time allowed for argument, and the time allowed, if any, for the submission of briefs, proposed findings and conclusions, and exceptions to the decisions or recommendations, if any, of a hearing officer, shall be determined solely in the Commission's discretion.

Comment: Hearings held pursuant to the Commission's authority to impose a temporary sanction are not required to be formal, "on the record" adjudications within the meaning of the Administrative Procedure Act, 5 U.S.C. 554, 556–57. *Chemical Waste Management, Inc.* v. *EPA*, 873 F.2d 1477, 1481–82 (D.C. Cir. 1989) (no presumption that a statutory "hearing" requirement compels the agency to undertake a formal "hearing on the record"). A full, trial-type evidentiary hearing will not ordinarily be held because of the exigent nature of the proceedings, the temporary nature of any sanction, and the opportunity for immediate post-sanction review, either by a federal district court or by the full Commission if a hearing officer issues an initial decision. *See Boddie* v. *Connecticut*, 401 U.S. 371, 378

(1971) ("The formality and procedural requisites for the hearing can vary, depending upon the importance of the interests involved and the nature of the subsequent proceedings.").

In the past, requests by the staff for a temporary suspension of a broker or dealer pursuant to Exchange Act section 15(b)(5), 15 U.S.C. 78o(b)(5), were heard by an administrative law judge. Although a hearing on an application for a temporary sanction could still be delegated to an administrative law judge under the proposed rule, the Task Force recommends that applications for temporary sanctions be heard by the Commission or a single Commissioner acting as the duty officer.

Proposed Rule 40(a) provides that notice of a hearing on a temporary sanction shall be given by any means calculated to give actual notice. Written notice or service pursuant to Proposed Rule 5(b) is not required.

Proposed Rule 40(b) provides that a hearing may be conducted with one or more parties participating by telephone or other remote means, such as a video link. Because of the emergency nature of cases in which temporary sanctions are sought, respondents, their counsel and the participating Commission staff may not be in Washington, DC, where the Commission ordinarily meets. The proposed rule anticipates that cases arising out of investigations in the Commission's Regional Offices most distant from Washington will result in hearings where a person may not be able to be physically present.

Paragraph (b) also establishes a procedure for conducting hearings before one or more Commissioners. If the Chairman is present, he or she shall preside. In the absence of the Chairman, a Commissioner designated by the Chairman shall preside. Authorizing the Chairman to designate someone to preside provides the greatest flexibility to permit the Commissioner with the most appropriate experience to preside if that person is not the Chairman or the Chairman cannot be present.

Proposed Rule 40(c) makes clear that the hearing does not have to be a formal, trial-type proceeding. The amount of process due will vary based on the facts and circumstances of each case. *See Boddie*, 401 U.S. at 378. The Commission may limit the form of evidence (for example, whether live, by affidavit, deposition or video recording), the duration of the hearing (for example, by restricting the time for argument) or posthearing procedures. Relevant factors in making these determinations may include, among others, the risk of harm to investors or the public, the interest of the respondent in not being subject erroneously to sanctions, the nature of the alleged or threatened violations, the potential effect of a sanction on the respondent and the likely duration of the sanction before opportunity for further hearings.

The interests of investors and the public must be balanced against those of the respondent. On the one hand, all other things being equal, the greater the risk of harm to the public, the less reason to delay a decision on a temporary sanction in order to permit a more formal or protracted hearing. On the other hand, every case will have some element of apparent risk to the public. The extent of this risk must be measured against the reliability of evidence that a violation occurred or may occur and the effect of a temporary sanction on the respondent. The less certain or self-evident the evidence of wrongdoing, the greater the respondent's interest in additional process. Also, the greater the effect of a sanction, the more process may be due. In some cases, even a temporary sanction may effectively determine a respondent's ultimate fate from a practical or business standpoint. In other cases, a temporary sanction may only limit certain activities of an individual while allowing other activities to continue unimpeded.

The nature of the violations—an intricate net capital issue, or a "garden variety" fraud concerning the imminent violation of a limitation on the closing of a "best efforts, all or none" offering—will also influence the extent of evidence needed and the form the evidence might take. *See, e.g., Mathews* v. *Eldridge*, 424 U.S. 319, 343–44 (1976); *Fuentes* v. *Shevin*, 407 U.S. 67, 87 n.18 (1972).

Further, the hearing should not be viewed in isolation. In all cases, after a Commission hearing, respondents have immediate access to a U.S. district court to seek review of the Commission's sanction order followed by a prompt full blown trial on the merits of a permanent sanction. These factors tend to support the fairness of an informal hearing process when swift action appears necessary. Other factors also may be relevant. Just as a court must set the amount of time allowed for a trial in light of its total caseload or deadlines in other cases, so must the Commission balance the need to conclude expeditiously a case involving temporary sanctions against its other responsibilities.

In summary, the scope of the hearing will depend on the particular circumstances of each case. *See Eldridge*, 424 U.S. at 348 ("All that is necessary is that the procedures be tailored, in light of the decision to be made, 'to the capacities and circumstances of those who are to be heard,' * * * to insure that they are given a meaningful opportunity to present their case." (citation omitted)).

(ER None)

Rule 41. Preparation and Review of an Initial Decision Whether to Impose a Temporary Sanction.

(a) *Preparation of an initial decision.* Where a hearing officer is to prepare an initial decision with respect to whether to issue a temporary sanction, the Secretary shall serve the record in the proceedings upon the hearing officer the day after either the conclusion of the hearing or the filing of the last brief called for by the hearing officer, whichever is later. The hearing officer shall file his or her initial decision with the Secretary at the earliest possible time, normally within three days after service of the record.

Comment: While the Task Force recommends that applications for temporary sanctions be heard by the Commission or the duty officer, the Commission could also assign a matter to a hearing officer. For example, the Commission could make such an assignment when an application for a temporary sanction has arisen during the course of a proceeding already assigned to a hearing officer. When a matter is assigned to a hearing officer, however, a temporary sanction imposed by the hearing officer would not take effect until the decision either is affirmed by the Commission or becomes a final decision of the Commission by the passage of time. *See* Proposed Rule 24(c).

The proposed rule provides for expedited service of the record and expedited preparation of an initial decision.

(b) *Review of an initial decision.* Any party may seek review of an initial decision which imposes or denies, in whole or in part, a temporary sanction, by filing a petition for review, together with a supporting brief, within five days after receipt of the initial decision. Unless otherwise ordered, an opposition brief shall be filed within five days after receipt of the original brief, and a reply brief may be filed within three days of receipt of the opposition brief.

Comment: The rule provides for expedited review of an initial decision whether to impose a temporary sanction. The petition for review is accompanied by briefs. Where there is a cross appeal, both parties will file an opening brief, and the Commission will issue an order establishing a schedule for opposition and reply briefs.

(ER None)

Rule 42. Issuance of a Temporary Cease-and-Desist Order After Notice and Opportunity for Hearing.

(a) *Requirement for notice and opportunity for hearing.* A temporary cease-and-desist order shall be entered only after notice and opportunity for a hearing unless the requirements of Rule 43 are met.

(b) *Basis for issuance.* A temporary cease-and-desist order shall be issued only if the Commission determines, based on specific facts shown by written or oral declaration pursuant to Rule 39, that a violation, threatened violation or continuation of a violation specified in an order instituting proceedings for a permanent cease-and-desist order is likely to result in significant dissipation or conversion of assets, significant harm to investors or substantial harm to the public interest (including losses to the Securities Investor Protection Corporation) prior to completion of proceedings on the permanent cease-and-desist order.

Comment: Proposed Rule 42 incorporates the statutory criteria for issuance of a temporary cease-and-desist order when the order is preceded by notice and an opportunity to be heard. Proposed Rule 42(b)

requires a written or oral declaration setting forth facts that establish that there is a threat of harm that the Commission determines meets the statutory standard for imposition of a temporary cease-and-desist order. *See, e.g.*, Exchange Act section 21C(c)(1).

(c) *Content, scope and form of order.* Every temporary cease-and-desist order granted shall:

(1) Describe the basis for its issuance, including a description of the violation, dissipation or conversion of assets or harm likely to result without the issuance of an order;

(2) Describe in reasonable detail, and not by reference to the order instituting proceedings or any other document, the act or acts the respondent is to take or refrain from taking;

(3) Be indorsed with the date and hour of issuance; and

(4) Be issued forthwith and entered of record.

Comment: Proposed Rule 42(c) requires that the temporary cease-and-desist order describe the basis for the order and the acts that the respondent is to take or refrain from taking to comply with the order. These requirements, which are modeled on Rule 65(d) of the Federal Rules of Civil Procedure, are meant to ensure that a respondent will have adequate notice of the constraints placed upon him or her by the order and to provide the predicate notice for enforcement of the order if the respondent fails to comply with it.

Proposed Rule 42(c) also requires that a temporary cease-and-desist order be indorsed with the date and hour of issuance. A similar provision is included in Rule 65(b) of the Federal Rules of Civil Procedure. *See generally* Charles A. Wright & Arthur R. Miller, 11 *Federal Practice and Procedure* sections 2952, 2953 (1973 & supp. 1992). Although temporary cease-and-desist orders, unlike temporary restraining orders, are not time limited, we propose requiring this indorsement in order to minimize potential disputes over when an order was entered and when the applicable period for seeking review has lapsed.

(d) *Effective upon service.* A temporary cease-and-desist order is effective upon service upon the respondent. The order is binding upon the respondents named in the order, their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

Comment: According to statute, a temporary cease-and-desist order becomes effective upon service upon the respondent. *See, e.g.*, Exchange Act section 21C(c)(1). Respondents may not do indirectly through agents or other persons that which they are prohibited from doing directly. The second sentence of Proposed Rule 43(d), drawn from Rule 65(d) of the Federal Rules of Civil Procedure, makes clear that an order is binding not only on the respondents who are named in the order and properly served but also upon their officers, agents, servants, employees and attorneys, and upon those persons in active concert or participation with them who receive actual notice of the order by personal service or otherwise.

(e) *Service: How made.* Service of a temporary cease-and-desist order shall be made pursuant to Rule 5(b), or by any other reasonable means which gives actual notice of the terms of the order, including notice delivered by telephone or facsimile transmission to the respondent or the respondent's attorney. The person who serves the order shall promptly file a declaration of service stating the time and means of service; provided, however, failure to file such a declaration shall have no effect on the validity of the service.

Comment: Paragraph (e) provides for the filing of a declaration of service to assure that the method and time of service is made part of the record.

(f) *Commission review.* At any time after the respondent has been served with a temporary cease-and-desist order, the respondent may apply to the Commission to have the order set aside, limited or suspended.

Comment: Paragraph (f) repeats the statutory provisions permitting respondents to seek a modification of a temporary order at any time. Such modifications should be sought only if changed circumstances warrant a change in the order. *See, e.g.*, Exchange Act section 21C(d)(1).

(ER None)

Rule 43. Ex Parte Issuance of a Temporary Cease-and-Desist Order.

In addition to the requirements for issuance of a temporary cease-and-desist order set forth in Rule 42, the following requirements shall apply if a temporary cease-and-desist order is to be entered without prior notice and opportunity for hearing:

(a) *Basis for issuance without prior notice and opportunity for hearing.* A temporary cease-and-desist order may be issued without notice and opportunity for hearing only if the Commission determines, based on specific facts shown by written or oral declaration pursuant to Rule 39, that notice and hearing prior to entry of an order would be impracticable or contrary to the public interest.

Comment: Ordinarily, entry of a temporary cease-and-desist order must be preceded by notice and opportunity for hearing. The Commission may enter a temporary cease-and-desist order without prior notice and opportunity for hearing only if the Commission, based on specific facts shown by written or oral declaration, makes the statutorily required determination that notice and opportunity for hearing would be impracticable or contrary to the public interest. *See, e.g.*, Exchange Act section 21C(c)(1).

(b) *Content of the order.* An *ex parte* temporary cease-and-desist order shall state specifically why notice and hearing would have been impracticable or contrary to the public interest.

Comment: Proposed Rule 43(b) requires that an *ex parte* temporary cease-and-desist order state the reasons why it was granted without notice and hearing. The Commission should state the reasons for *ex parte* action in order to comply fully with the statutory scheme authorizing the issuance of cease-and-desist orders. *See generally* Securities Act section 8A; Exchange Act section 21C; Investment Advisers Act section 203(k); and Investment Company Act section 9(f); *see also SEC* v. *Sloan*, 436 U.S. 103, 117–118 (1978) (noting that when reviewing an administrative ruling, a court will consider among other things "the thoroughness evident in its consideration" and "the validity of its reasoning"); *Yong* v. *Regional Manpower Adm'r*, 509 F.2d 243, 246 (9th Cir. 1975) (stating that an administrative record should reveal a foundation for decision).

(c) *Availability of hearing before the commission.* If a respondent has been served with a temporary cease-and-desist order entered without a prior Commission hearing, the respondent may, within 10 days after the date on which the order was served, move to have the order set aside, limited or suspended and request a hearing on the motion. The Commission shall hold a hearing and render a decision on the motion at the earliest possible time. Normally such a hearing should be held within 48 hours of a request for hearing, unless the respondent requests a longer period.

Comment: Proposed Rule 43(c) restates the statutory standards with respect to opportunity for a hearing after service of a temporary cease-and-desist order entered *ex parte*. *See, e.g.*, Exchange Act section 21C(d)(1). The requirement that a hearing be held and a decision rendered "at the earliest possible time" is not elaborated upon in the legislative history. The proposed rule establishes a normative guideline that a hearing be held within 48 hours of a respondent's request for a hearing, unless the respondent requests a longer time period. The standards of the proposed rule are similar to the provisions for a speedy hearing under Rule 65(b) of the Federal Rules of Civil Procedure. Rule 65(b) specifies that a party who is subject to a TRO obtained without notice may, on two days notice to the adverse party, or such shorter time as permitted by the court, appear and move for dissolution of the TRO. The court will hear and determine the motion "as expeditiously as the ends of justice require."

The requirement in Proposed Rule 43 to hold a hearing or render a decision "at the

earliest possible time" must be interpreted consistently with the requirements of constitutional due process. The Due Process Clause of the Fifth Amendment requires that if a person is subject to an *ex parte* deprivation of property, he or she shall be provided a "prompt" opportunity for hearing thereafter. *FDIC* v. *Mallen*, 486 U.S. 230, 241–42 (1988); *Barry* v. *Barchi*, 443 U.S. 55, 65–66 (1979) (hearing must be provided "at a meaningful time") (citation omitted); *Cf. Cleveland Board of Educ.* v. *Loudermill*, 470 U.S. 532, 547 (1985). While the hearing must be held and a decision rendered promptly, judicial decisions should be made in a "considered and deliberate manner," and without excessive or undue haste. *Mallen*, 486 U.S. at 244. The Commission must allow an appropriate amount of time for each party to prepare its case prior to hearing and must allow time for each Commissioner to review all evidence or other submissions and, as necessary, to engage in joint deliberation. *See Id.* at 243–244. What would be "possible" in terms of the earliest time for hearing or resolution of a case would depend, therefore, on the specific facts of each case and the Commission's other responsibilities.

(ER 19)

Rule 44. Whether a Temporary Sanction Should be Made Permanent: Provisions Relating to an Initial Decision.

Unless otherwise ordered, if a temporary sanction is in effect, the following time limits shall apply to preparation and review of an initial decision as to whether the temporary sanction should be made permanent:

(a) *Proposed findings and briefs.* Proposed findings and conclusions and briefs in support thereof shall be filed five days after the close of the hearing.

Comment: Existing Rule 19 requires expedited review of an initial decision of a hearing officer as to whether a temporary suspension of a broker-dealer's registration should be made permanent. Proposed Rule 44 would apply to all proceedings in which a temporary sanction is in effect pending preparation and review of an initial decision as to whether a permanent sanction should be ordered.

(b) *Service of record; filing of decision.* In proceedings in which an initial decision by a hearing officer is to be prepared, the record in the proceedings shall be served by the Secretary upon the hearing officer two days after the date for the filing of the last brief called for by the hearing officer. The initial decision shall be filed with the Secretary at the earliest possible time, normally within 15 days after service of the record.

(c) *Petition for review.* Any person who seeks Commission review of an initial decision shall file a petition for review pursuant to Rule 26, provided, however, that the petition must be filed within 10 days after service of the initial decision. A statement in opposition to a petition for review shall be filed within five days after service of the petition for review.

(d) *Briefs.* If the Commission determines to grant or order review, it shall issue a briefing schedule order pursuant to Rule 27(a). Unless other periods are specified, opening briefs shall be filed within 15 days of the order granting or ordering review, and opposition briefs shall be filed within 10 days after opening briefs are filed. Reply briefs shall be filed within five days after opposition briefs are filed.

Comment: Existing Rule 19(e) has no counterpart in the proposed rule because it is inconsistent with a Commissioner's right, pursuant to Exchange Act section 4A, to call for review of a decision by subordinate officials if he or she does not agree with that decision.

(ER None)

Rule 45. Duration of a Temporary Suspension of a Registered Entity or a Temporary Cease-and-Desist Order.

(a) *Duration.* A temporary suspension of a registered entity or a temporary cease-and-desist order not otherwise limited in its duration shall expire:

(1) 15 days after service upon the Division of Enforcement of an initial decision declining to make permanent a temporary sanction then in effect;

(2) 180 days, or such other time as specified by the Commission, after the Commission grants a petition for review or orders review on its own initiative with respect to an initial decision making permanent, in whole or in part, a temporary sanction then in effect; or

(3) 180 days, or such other time as specified by the Commission, after the close of the hearing with respect to a determination whether to make a temporary sanction permanent in cases when no initial decision is to be prepared.

(b) *Extension.* The Commission may, at any time, by order, without notice and opportunity to be heard, extend the duration of an order temporarily suspending a registered entity or a temporary cease-and-desist order beyond the limits set forth in the order or by operation of paragraphs (a)(2) and (a)(3) of this rule. Any extension order made without the consent of all respondents to which it applies shall state the duration of the extension and the reason why the extension is necessary under the criteria specified in Rule 42(b). A respondent who objects to an extension order shall file a motion for reconsideration with the Commission, setting forth the reasons why the temporary sanction should not remain in effect pending a final Commission decision.

Comment: *Reasons for the Rule:* Proposed Rule 45 establishes a mechanism for the Commission to evaluate the need to maintain a temporary sanction while the Commission reviews a case after issuance of an initial decision by a hearing officer, or if the Commission itself has heard the case on whether to make a temporary sanction permanent, then after the Commission hearing. The proposed rule is intended to set flexible guidelines for the duration of a temporary sanction, pending Commission deliberations with respect to whether the sanction should become permanent.

By statute, a temporary cease-and-desist order and a temporary suspension of a registered entity do not have to have a fixed duration. *See, e.g.*, Exchange Act Section 21C(c)(1) ("[U]nless set aside, limited, or suspended by the Commission or a court of competent jurisdiction, [a temporary order] shall remain effective and enforceable pending the completion of the proceedings."). A temporary sanction may not, however, continue in effect indefinitely. *See FDIC v. Mallen*, 486 U.S. 230, 242 (1988) (there is a point at which an unjustified delay in completing a post-deprivation proceeding "'would become a constitutional violation'") (*quoting Cleveland Board of Education v. Loudermill*, 470 U.S. 532, 547 (1985)); *Gonzalez v. Freeman*, 334 F.2d 570, 579 n.19 (D.C. Cir. 1964) ("How long a 'temporary' suspension could be sustained would depend upon the need and other circumstances."). *Cf. Aquavella v. Richardson*, 437 F.2d 397, 404–05 (2d. Cir. 1971) (failure of agency to take final action for 18 months after preliminary suspension is reviewable as final agency action).

Exchange Act section 23(d) specifically requires the Commission to establish regulations providing for the "expeditious conduct of hearings *and rendering of decisions*" in cease-and-desist order cases. (emphasis added). Although Proposed Rule 45's specific time limits are not statutorily required, they would implement the statutory requirement that the Commission adopt regulations providing for the expeditious rendering of decisions. The Task Force believes that its other proposed revisions to the Rules of Practice, if adopted, would lead to expeditious rendering of decisions generally. Once a temporary order has been issued, however, there is a risk that subsequent agency consideration would not be treated as urgent. The Task Force concluded that, given the mandate in section 23(d), a rule establishing a strong, but not absolute, presumption limiting the duration of a temporary sanction while the Commission considers what action to take after a hearing on whether to enter a permanent order would be an appropriate means of addressing the potential for unjustified delay in reaching a decision on a permanent sanction. *See generally Securities Law Enforcement Remedies Act of 1990*, H.R. Rep. No. 616, 101st Cong., 2d Sess. 25–27 (1990); *The Securities Law Enforcement Act of 1990*, S. Rep. No. 337, 101st Cong., 2d Sess. 20–21 (1990).

Some limitation on the duration of a temporary order is particularly appropriate if a hearing officer determines after a full hearing on the merits that no permanent sanction is warranted. Temporary sanctions pending a final determination may not be imposed constitutionally without some form of check—in this case the check would be the initial hearing before the Commission—to assure that a sanction is not imposed without sufficient justification. *See Mallen*, 486 U.S. at 244–45; *Barry v. Barchi*, 443 U.S. 55, 66 (1979). But once a hearing officer, who had the opportunity to review not just some but all of the evidence concluded that the temporary sanction was not justified on a permanent basis, confidence in the correctness of the check would necessarily be affected to some degree; such a decision clearly should affect the balancing of factors that determines whether an administratively imposed sanction unconstitutionally remains in effect. *Cf. Logan v. Zimmerman Brush Co.*, 455 U.S. 422, 434 (1982) (two of the factors governing constitutional analysis of the timing and nature of a hearing and decision are length and/or finality of deprivation and likelihood of governmental error).

The Task Force considered the suggestion that any proposal to limit the duration of a temporary order could create a potential loophole allowing a malefactor to attempt further wrongdoing if the Commission inadvertently allows a deadline to pass. On balance, we do not believe that this potential danger is sufficiently significant to outweigh the benefits of a limitation on temporary orders.

Specifics of the Rule: Proposed Rule 45 establishes presumptive time limits on the amount of time a temporary order should remain in effect pending a decision by the Commission whether to make the order permanent. If there were a hearing before a hearing officer, and the hearing officer issued an initial decision that no permanent sanction was appropriate, the Commission would have 15 days to determine whether to extend or modify the temporary sanction pending review of the initial decision; without such supervision or modification the temporary sanction will expire pursuant to Proposed Rule 45(a)(1). If the hearing officer were to order that the temporary sanction be made permanent, in whole or in part, the respondent would have 21 days, pursuant to Proposed Rule 24(b), to file a petition for review. Pursuant to section 4A(b) of the Exchange Act, a statutory right of review exists for cease-and-desist proceedings. Under Proposed Rule 45, the Commission would have 180 days from the filing of the petition for review to consider the initial decision. This period would allow approximately 90 days for briefing and 90 days for oral argument, if any, and issuance of an opinion.

Proposed Rule 42(f) provides that a respondent may move to have a temporary order set aside, limited or suspended by the Commission at any time. Accordingly, notwithstanding the presumption that an order will continue, a respondent may seek to have the order modified pending Commission review.

Under some circumstances, the Commission, instead of a hearing officer, may conduct the hearing on a permanent cease-and-desist order. *See* Proposed Rule 15. In such a case, Proposed Rule 45(a)(3) provides for a 180-day period after the end of a hearing during which a temporary order would remain in effect pending a Commission decision whether to enter a permanent order. Under the proposed rule, the Commission need not wait the full 180 days before issuing its decision. Similarly, if the record were not lengthy, or the hearing officer had ruled against a respondent on the need for a permanent sanction or for other reasons, the Commission could expedite its review and enter its decision in less than 180 days. This flexible mechanism reflects the fact that due process with respect to the timely completion of administrative proceedings while a temporary order is pending requires the balancing of several factors and that the weight of these factors may bear reassessment.

The presumptive period specified in the proposed rule is not absolute. The Commission may either extend or reduce the period. The window for Commission decision would open only after completion of the hearing before the Commission or the issuance of an initial decision by a hearing officer. Accordingly, the duration of a temporary sanction cannot be predicted in advance. It varies depending upon the length of the hearing and the time taken to issue an initial decision, if one were prepared, as well as any other time limitation placed on the order by the Commission, if any, pending Commission review. Therefore, a respondent cannot claim a settled expectation as to when a temporary sanction will terminate.

The Task Force considered whether the extension of a temporary sanction would be an appealable order. As noted, the specific procedures contained in Proposed Rule 45 are not required by statute. The Commission should therefore have a large degree of discretion to attach such conditions to those procedures as it sees fit, including the right to extend the 180-day presumptive period for review. *See Mallen*, 486 U.S. at 243 (where statute allows a "permissive standard for continuing a suspension," the agency may, when in doubt, presumably "give greater weight to the public interest and leave the suspension in place"). In effect, extension of whatever window is established is no different from the denial of a request by a respondent to stay or modify the temporary order at any other stage of the proceeding. The Task Force has concluded that extension of an existing temporary sanction would not meet the literal language triggering the special appeal provisions of Exchange Act section 21C(d)(2), nor would it constitute a final order subject to appeal under section 25(a) of that Act.

Questions were also raised within the Task Force as to whether the purposes of Proposed Rule 45 are met since the rule sets forth no limit on the time allowed for the hearing on whether permanent sanctions were necessary. The Task Force considered whether a rule would be necessary to limit the amount of time for a hearing before a hearing officer or the Commission when a temporary sanction is pending. The Task Force concluded that a fixed deadline for the conduct of a hearing is not appropriate, even when a temporary order is pending, because the number of respondents, the number of witnesses and other factors vary so greatly from case to case. Moreover, a respondent's own preparation and trial strategy have a significant impact on the pace of a hearing. Also, based on the historical data compiled by the Task Force, we believe that the proposed revisions to the Rules of Practice are sufficient to give assurance that a hearing before a hearing officer will be conducted with appropriate speed.

If a sanction is to remain in effect for more than 180 days after an initial decision the proposed rule requires the Commission affirmatively to provide for a longer period. The Commission may provide for a temporary sanction to remain in effect for more than 180 days by so ordering when it takes up the case after a hearing officer's decision or a hearing, or it may extend an order anytime during the 180-day window.

For example, where there is a particularly large record and a hearing officer has issued an initial decision that a temporary sanction should be made permanent, the Commission may determine that 180 days is not enough time to complete its review and that the temporary sanction must be kept in place for an additional period of time. An extension beyond 180 days, or any other period specified at the time an order for review is issued, may also become necessary where conditions still warrant a temporary sanction and the Commission cannot act within the 180-day period because of the lack of a quorum, appointment of new Commissioners who need time to familiarize themselves with the record, intervening litigation, or because the requirement of other business prevents Commission action prior to the original deadline.

Proposed Rule 45 would grant no substantive rights; it would simply create a mechanism to guide the timing and circumstances of Commission review. The Task Force believes an order extending the duration of a temporary sanction should not be immediately appealable to the courts because it would be essentially a non-final, procedural order, which would not determine any rights anew. Moreover, in the event a respondent does object to the extension, the proposed rule would provide for an administrative remedy—the filing of a motion to stay or to dissolve the temporary sanction.

The Task Force also concluded that although substantial, the 180-day period for continuance of a temporary order after an initial decision adverse to a respondent would be appropriate because it would encompass the time for briefing and argument, as well as for preparation of a decision. The fairness of the temporary suspension itself should not be an issue demanding an especially expedited review. The respondent would already have been able to challenge the temporary sanction in federal district court, and subsequent to a court challenge, would have been free to apply to the Commission to modify or vacate the order at any time if changed conditions so warranted.

Comment is requested as to whether Proposed Rule 45 should be triggered only if

an initial decision finds that no permanent sanction was necessary. Alternatively, should such a ruling by the hearing officer trigger a period less than 180 days for Commission review?

(17 CFR 202.8)

Rule 46. Summary Suspensions Pursuant to Securities Exchange Act Section 12(k)(1)(A).

(a) Any person adversely affected by a suspension pursuant to Section 12(k)(1)(A) of the Securities Exchange Act who desires to show that such suspension is not necessary in the public interest or for the protection of investors may file a sworn petition with the Secretary, requesting that the suspension be terminated. The petition shall set forth the reasons why the petitioner believes that the suspension of trading should not continue and state with particularity the facts upon which the petitioner relies.

(b) The Commission, in its discretion, may schedule a hearing on the matter, request additional written submissions, or decide the matter on the facts presented in the petition and any other relevant facts known to the Commission.

(c) Failure by the petitioner to cooperate with the making of an examination by the Commission, or obstruction or refusal by the petitioner to permit the making of an examination by the Commission, shall be grounds to deny the petition.

Comment: The rules governing petitions with respect to Securities Exchange Act section 12(k)(1)(A) suspensions are currently a part of the Commission's informal and other procedures. See 17 CFR 202.8. Orders suspending trading in particular securities pursuant to section 12(k)(1)(A) are directed towards a security; they do not name a person or entity as a respondent. Accordingly, the Commission established a special mechanism to allow persons adversely affected by a suspension to petition for relief.

The usual purpose of a suspension is to alert the investing public that there is insufficient public information about the issuer upon which an informed investment judgment can be made or that the market for the securities may be reacting to manipulative forces or deceptive practices. Consequently the primary issues normally to be considered by the Commission in determining whether or not a 10-day suspension should be instituted are whether or not there is sufficient public information upon which to base an informed investment decision or whether the market for the security appears to reflect manipulative or deceptive activities. *See generally SEC v. Sloan*, 436 U.S. 103 (1978)(section 12(k) authorizes a single 10-day period as the maximum time for a suspension for any single set of circumstances).

Rules Relating to Disgorgement and Penalty Payments

(ER None)

Rule 47. Interest on Sums Disgorged.

Prejudgment interest shall be paid on any sum required to be paid pursuant to an order of disgorgement. The disgorgement order shall specify the proposed sum to be disgorged and the date of the violation or violations which form the basis for the disgorgement calculation. Interest shall be computed from the first day of the month following the date of the violation through the last day of the month preceding the month in which payment is made. The rate of interest shall be the underpayment rate of interest established under section 6621(a)(2) of the Internal Revenue Code, 26 U.S.C. 6621(a)(2), and shall be compounded quarterly. The amount of prejudgment interest owed as of the date of the order shall be stated in the order. The order shall further state that interest shall accrue on all amounts owed until they are paid.

Comment: Congress has authorized the Commission to order disgorgement, "including reasonable interest," in any proceeding in which a cease-and-desist order is sought and in any proceeding in which the Commission could impose a civil monetary penalty. *See, e.g.*, Exchange Act Section 21B(e), (monetary penalty proceedings); Exchange Act Section 21C(e), (cease-and-desist proceedings). To implement this authority, the Commission is authorized "to adopt rules, regulations, and orders concerning payments to investors, rates of interest, periods of accrual, and such other matters as it deems appropriate." Exchange Act Section 21B(e); Exchange Act Section 21C(e).

The Task Force based the proposed rule on the Commission's current practice in calculating prejudgment interest in settled cases. Under that practice, partial payments are ignored and interest is compounded quarterly. It was suggested to the Task Force that by rule the amount of disgorgement and prejudgment interest owed should be offset against the amount of taxes a respondent had paid on ill-gotten gains. The rationale for this suggestion was that the respondent did not have the use of funds used to pay taxes. In fact, respondents often have the use of such funds for many months, until taxes, if any, are paid. Comment is requested on whether the proposed method of computation should require payment from the date of a violation to the date of payment, without giving credit for partial months, whether amounts owed should be compounded daily and whether there is any other widely available index which would be more appropriate to establish the rate of interest.

(ER None)

Rule 48. Prompt Payment of Disgorgement and Penalties.

(a) *Timing of Payments.* Unless provided otherwise, amounts due pursuant to an order by the Commission requiring the payment of disgorgement and/or penalties shall be paid no later than five days after service of the order. Amounts due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final pursuant to Rule 24.

Comment: An order requiring disgorgement does not fulfill its remedial, equitable purposes so long as a wrongdoer retains the use of funds improperly obtained. Prompt payment of disgorgement is essential to make the remedy effective and to discourage or prevent the dissipation of assets. Based upon the Commission's experience in civil actions, the collection of disgorgement and penalties becomes increasingly more difficult the longer it is delayed. Moreover, in the absence of prompt, uniform deadlines limited staff resources are diverted to negotiating and monitoring individual deadlines in each case. Accordingly, the proposed rule would establish presumptive deadlines for the prompt payment of disgorgement or penalties.

Administrative proceedings do not have a mechanism for execution of a money judgment. If disgorgement or penalties are not paid as required, the Commission must either seek an order from a district court to enforce its administrative order or refer the matter to the Department of Justice for collection. The Task Force believes that the proposed deadlines will facilitate the staff's making timely and successful requests for judicial enforcement of any unpaid disgorgement or penalty order.

In addition to efforts to collect any unpaid amounts due pursuant to an order requiring disgorgement and/or penalties, the Commission could provide for collateral consequences in its orders if amounts owed are not paid and payment has not been waived. For example, for associated persons of a registered entity, failure to pay required disgorgement or penalties could be made grounds for a suspension or for the denial of a request to reassociate after expiration of a bar. Termination of a suspension could also be made conditional upon payment of sums owed. Comment is requested as to whether these, or any other collateral consequences, should flow, either by order or rule, from a failure to make required disgorgement or penalty payments.

The proposed rule provides that amounts due pursuant to an order by a hearing officer would be due on the first day after the order becomes final. Proposed Rule 24(b) provides at least a 21-day period before a hearing officer's order would become final if no review were sought, so that a respondent effectively would have 21 days notice prior to payment being required. If a respondent sought review of the order, the Commission would have to deny the petition for review

or affirm the initial decision prior to its becoming effective.

In the case of an order by the Commission, the proposed rule provides a presumption that payments would be required five days after service of the order. Pursuant to Proposed Rule 6(a), weekends and federal legal holidays do not count toward the five-day period. While a respondent would not have advance knowledge of when the Commission would issue a final order on review of an initial decision, the five-day requirement would provide sufficient time for a respondent in the ordinary case to either make payment or file a motion requesting a modification or stay of the order in the event payment could not be made.

The time periods specified in Proposed Rule 48(a) would be only presumptive. A shorter or longer period could be imposed by an order. In some circumstances a period of only one day for payment might be justified.

Comment is requested as to whether the presumptive five-day period should be shorter or should be extended to 10 days, 21 days or longer.

(b) *Stays.* A stay of any order requiring the payment of disgorgement and/or penalties may be sought at any time pursuant to Rule 16.

(ER None)

Rule 49. Submission of a Plan of Disgorgement.

The Commission or the hearing officer may order any party to submit a plan for the distribution of disgorgement at any time after an order requiring disgorgement has been entered. Normally, if a plan will be required, it should be submitted no later than 45 days after funds or other assets are placed in an escrow account or otherwise set aside by the respondent pursuant to the order of disgorgement.

Comment: The proposed rules for disgorgement are based on the Commission's experience in civil actions involving disgorgement. In most civil actions, the court orders the Commission to submit a proposed plan of disgorgement, which the court later approves, modifies or disapproves after notice and a hearing. At the hearing, other parties to the action may present their objections to the court. Other persons also may seek to intervene or object. Ordinarily, the Commission seeks to avoid disputes over the plan and attempts, when preparing the plan, to consult with other parties and any other persons who have notified the staff or the court of an interest in the disposition of disgorgement.

Normally, a similar procedure should be followed in administrative proceedings. Because the development of a disgorgement plan may be a significant undertaking, it will not be required in most proceedings until money to be disgorged has been transferred from the control of the respondent. The Commission and the hearing officer would retain the authority to require the submission of a plan at an earlier time if deemed appropriate. Normally, the Division of Enforcement would be asked to draft a proposed plan, however, any other party could be asked to submit a plan.

(ER None)

Rule 50. Contents of Plan of Disgorgement; Provisions for Payment.

(a) *Required plan elements.* Unless otherwise ordered, a plan for the administration of a disgorgement fund shall include the following elements:

(1) Procedures for the receipt of additional funds or other assets, including specification of an account where funds will be held and the instruments in which the funds may be invested;

(2) Specification of categories of persons potentially eligible to receive proceeds from the fund;

(3) A means of providing notice to such persons of the existence of the fund and their potential eligibility to receive proceeds of the fund;

(4) Procedures for making and approving claims, procedures for handling disputed claims and a cut-off date for the making of claims;

(5) A date for the termination of the fund, including provision for the disposition of any assets not otherwise distributed;

(6) A provision for the administration of the fund, including selection, compensation and, as necessary, indemnification of a fund administrator to oversee the fund, process claims, prepare accountings, file tax returns and, subject to the approval of the Commission, make distributions from the fund to investors; and

(7) Such other provisions as the Commission or the hearing officer, if one has been appointed, may require.

Comment: This paragraph includes the basic elements that have been found necessary in court supervised disgorgement plans. Comment is requested as to whether additional elements should be included in a plan developed for administrative proceedings or whether some proposed elements are unnecessary.

(b) *Payment to registry of the Court or Court-appointed receiver.* A plan of disgorgement may provide for payment of assets to be disgorged into a court registry or to a court-appointed receiver in any case pending in federal or state court based upon a complaint against the respondent alleging violations arising from the same or substantially similar facts as those alleged in the Commission's order instituting proceedings.

Comment: The Commission's practice in court proceedings has been to consent to the payment of disgorgement funds obtained in a Commission action into a fund for the benefit of persons suing a violator in a private civil action. *See SEC* v. *Levin*, No. 3–92CV–399D (N.D. Tex. Mar. 2, 1992) (settlement directed payment of disgorgement into court registry); *SEC* v. *Boesky*, No. 86–CIV–2299, slip op. (S.D.N.Y. Nov. 14, 1986) (settlement directed payment of disgorgement to escrow agent). Where appropriate, this practice may be utilized in administrative proceedings.

(c) *Payment to the United States Treasury under certain circumstances.* When, in the opinion of the Commission, the cost of administering a plan of disgorgement relative to the value of the available disgorgement assets and the number of potential claimants would not justify distribution of the disgorgement assets to injured investors, the plan may provide that the assets shall be paid directly to the general fund of the United States Treasury.

Comment: This paragraph provides that when the cost of administering a plan of disgorgement would consume all or most of the value of the disgorgement pool, the assets may instead be turned over to the general fund of the United States Treasury. Although return of ill-gotten gains to injured investors is often an appropriate disposition of disgorged assets, the purpose of disgorgement is to deprive a wrongdoer of his or her ill-gotten gains—not to make injured investors whole. *See, e.g., SEC* v. *First City Financial Corp.*, 890 F.2d 1215, 1230, 1232 n.24 (D.C. Cir. 1989) (the primary purpose of disgorgement is not to compensate investors); *SEC* v. *Tome*, 833 F.2d 1086, 1096 (2d Cir. 1987), *cert. denied*, 486 U.S. 1014 (1988); *SEC* v. *Texas Gulf Sulphur Co.*, 446 F.2d 1301, 1307 (2d Cir.), *cert. denied*, 404 U.S. 1005 (1971); *Securities Law Enforcement Remedies Act of 1990*, H.R. Rep. No. 616, 101st Cong., 2d Sess. at 22 (1990). The Commission has the authority to provide for the return of ill-gotten gains to investors, however, there is no requirement to do so. *See, e.g.*, Exchange Act sections 21B(e) and 21C(e) ("The Commission is authorized to adopt rules, regulations, and orders * * * concerning payments to investors * * *"). Returning funds to the United States Treasury when the expense of locating or making distributions to injured investors is prohibitive would be consistent with treatment by the courts in similar situations. *SEC* v. *Marcus Schloss & Co.*, 714 F. Supp. 100 (S.D.N.Y. 1989); *SEC* v. *Courtois* (1985 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶ 92,000 (S.D.N.Y. 1985); *SEC* v. *Lund*, 570 F. Supp. 1397, 1404–1405 (C.D. Cal. 1983).

(ER None)

Rule 51. Notice of Proposed Plan of Disgorgement and Opportunity for Comment by Non-Parties.

Notice of the proposed plan of disgorgement shall be published in the SEC Daily News Digest, the SEC Docket, and in such other publications as the Commission or the hearing officer may require. The notice shall specify how

copies of the proposed plan may be obtained and shall state that persons desiring to comment on the proposed plan may submit their views, in writing, to the Secretary.

Comment: Publication of notice that a proposed plan has been submitted is required in order to provide potential claimants or other persons with an opportunity to make known their views prior to adoption of the plan. In addition to submitting written comments, persons would be permitted to seek leave to take part in the proceeding pursuant to the provisions of Proposed Rule 13.

(ER None)

Rule 52. Order Approving, Modifying or Disapproving a Plan of Disgorgement.

At any time more than 30 days after publication of notice of a proposed plan of disgorgement, the hearing officer, if one is assigned, or the Commission shall, by order, approve, modify or disapprove the proposed plan. Normally this order should be entered within 30 days after the end of the period allowed for comments on the proposed plan.

Comment: After submission of comments, if any, the plan promptly should be approved, modified or disapproved. The Commission or the hearing officer may hold a hearing on the proposed plan or may rule on the plan based only on written submissions.

(ER None)

Rule 53. Administration of a Plan of Disgorgement.

(a) *Appointment of Administrator.* The Commission shall have discretion to appoint any person, including a Commission employee, as administrator of a plan of disgorgement and to delegate to that person responsibility for administering the plan. The Commission may require or permit a respondent to administer or assist in administering a plan of disgorgement, subject to such terms and conditions as the Commission deems appropriate to ensure the proper distribution of funds.

Comment: Where the number of potential claimants to a fund is small, and the identity of the claimants is known in advance (for example, when an investment adviser fraudulently diverts funds from a small number of particular accounts), the plan of disgorgement may be relatively uncomplicated and may not require extensive resources to administer. In such a case, the administrative law judge or a staff member may most effectively administer the plan of disgorgement.

As in court actions, however, if the amount of disgorgement is large or there are many potential claimants, administration of a disgorgement plan may involve extensive time and resources and may be accomplished most efficiently and most appropriately by selecting an administrator with appropriate expertise in handling disgorgement-type proceedings, who would, as necessary, retain an accounting firm, a law firm, or other entity to assist in administering the disgorgement plan.

In court proceedings, the Commission usually recommends one individual or submits a short list of individuals to the court as possible administrators and the court actually appoints the administrator. In administrative proceedings, however, the Commission would be directly responsible for appointing the administrator.

The method used to select an administrator must comply with any applicable Federal law regarding the selection of independent contractors in such circumstances and should promote public confidence that the selection was made on an impartial basis. An administrator could be selected on a case-by-case basis as in court proceedings. An alternative, which could permit the Commission to benefit from economies of scale, would be to select an administrator to work on all disgorgement plans over a particular period of time. Another alternative would be to issue criteria required of an administrator and allow interested persons who meet these criteria to place their names on a roster from which administrators in a particular case could be chosen.

In some proceedings, particularly those in which a settlement has been reached, the respondent may be required or allowed to assist in administering a disgorgement plan. *See, e.g., In the Matter of Donaldson, Lufkin & Jenrette Sec. Corp.* Admin. Proc., File No. 3–7329, Exchange Act Release No. 27889, 45 SEC Docket 1826, 1834 (1990). Particularly in such self-administered disgorgement plans, the Commission may require affidavits, an accountant's certification, or other safeguards to assure that funds have been distributed only in accordance with the plan. The rule does not specify a method for selecting an administrator. At least until the Commission gains experience in this area, the Commission will consider different approaches and base its decisions on the facts of individual cases. Comment is requested as to what criteria or what process the Commission should use in selecting administrators.

(b) *Administrator to post bond.* If the administrator is not a Commission employee, the administrator shall be required to obtain a bond in the manner prescribed by 11 U.S.C. 322, in an amount to be approved by the Commission. The cost of the bond may be paid for as a cost of administration. The Commission may waive posting of a bond for good cause.

(c) *Administrator's fees.* If the administrator is not a Commission employee, he or she may be paid a reasonable fee for his or her services. The administrator shall submit an application for fees to the Commission, which must approve the payment of any fees to the administrator.

(d) *Source of funds.* Fees and other expenses of administering the plan of disgorgement shall be paid first from the interest earned on disgorged funds, and if the interest is not sufficient, then from the corpus.

(e) *Accountings.* During the first 10 days of each calendar quarter or as otherwise directed by the Commission, the administrator shall file with the Secretary an accounting of all monies earned or received and all monies spent in connection with the administration of the plan of disgorgement. A final accounting shall be submitted for Commission approval when administration of the plan of disgorgement is completed.

Comment: Monies or assets paid as disgorgement would be placed into a segregated account established for the purpose of holding funds until they could be disbursed to investors who suffered losses as a result of violative conduct; no funds should be transferred to the Commission itself. *See* 31 U.S.C. 3302(b). The Commission has established an account for this purpose at the Department of the Treasury. In addition, the Commission could approve the transfer of funds from a respondent to an escrow or similar-type account at a financial institution.

Funds paid pursuant to a disgorgement order would not belong to the Commission. Therefore, internal control and audit procedures mandated by statute for the Commission's own funds would not be applicable to the disgorgement account and ordinarily would not encompass funds in a disgorgement account. However, the Commission would have a responsibility to ensure that the funds are safeguarded and that they are disbursed only as provided for by the order of disgorgement. Paragraphs (b), (c), (d) and (e) of Proposed Rule 53 would establish basic guidelines for the handling of disgorgement funds which, absent special circumstances, should be followed in all cases.

Proposed Rule 53(b) requires the administrator to obtain a surety bond. This is standard practice when a trustee is appointed in a SIPC liquidation or bankruptcy proceeding. *See* 15 U.S.C. 78eee(b)(3); 11 U.S.C. 322. Paragraph (c) provides authority for the payment of fees and expenses, including a reasonable fee to the administrator, if the administrator is not a Commission employee. Payments of the administrator's fees would have to be based on an application by the administrator and approved by the Commission itself.

The broad authority granted to the Commission to adopt rules, regulations and orders concerning matters appropriate to implement disgorgement permits the Commission to pay for fees and expenses associated with administering a plan of disgorgement by using appropriated funds, interest on disgorged funds or the disgorged funds themselves. *See, e.g.*, Exchange Act section 21B(e), 15 U.S.C. 78u–2(e). Paragraph (d) provides, however, that fees and expenses be paid first out of interest earned on

disgorged funds, and if the interest were insufficient, then out of the corpus of the funds. Except to the extent a Commission employee was appointed administrator, appropriated funds would not be used to defray the costs of administering a plan of disgorgement. Subject to any statutory restrictions on the amount or use of appropriated funds in a given fiscal year, we believe the Commission has the authority to issue an order in a specific case allowing the use of appropriated funds to pay for the expenses of a disgorgement.

The routine use of appropriated funds to pay the fees and expenses of administering a plan of disgorgement is inappropriate for three reasons. First, use of appropriated funds to pay fees and expenses that would otherwise be paid from disgorged assets represents a subsidy by taxpayers generally to injured investors who would thereby receive larger distributions. Such a subsidy is not available in disgorgement cases brought in court. To the extent feasible, injured investors who obtain relief in one forum should not be favored over injured investors in another forum.

Second, use of appropriated funds to subsidize returns to injured investors would have the anomalous effect of decreasing available funds to investigate and pursue remedial actions against other wrongdoers. The more successful the Commission became in obtaining disgorgement and the larger or more complex the disgorgement pools became, the less staff the Commission would have available to devote to new enforcement matters.

Third, as noted in the comment to Proposed Rule 50(c), the purpose of disgorgement is not to make injured investors whole, it is to deprive a wrongdoer of his or her ill-gotten gains. *See* comment to Proposed Rule 50(c) *supra*. Use of appropriated funds to pay the costs of administering a disgorgement plan is not required to fulfill the purposes of the disgorgement remedy provided by the federal securities laws. *See, e.g.*, Exchange Act sections 21B(e) and 21C(e). If there are not enough funds to administer a plan of disgorgement, the disgorged funds can simply be turned over to the general fund of the United States Treasury. *See* Proposed Rule 50(c).

Proposed Rule 53(e) requires that the administrator submit an accounting every 90 days. Requiring periodic, public accounting is a basic safeguard for assuring that disgorged funds are husbanded to the greatest extent possible until distributions are authorized.

(ER None)

Rule 54. Right to Challenge an Order of Disgorgement

No person shall have standing to challenge an order of disgorgement, or an order approving, disapproving, or modifying a plan of disgorgement, or any determination relating to a plan of disgorgement based upon that person's eligibility or potential eligibility to participate in a disgorgement fund or based upon any private right of action such person may have against any person who is also a respondent in a Commission administrative proceeding.

Comment: The primary purpose of disgorgement is to deprive a wrongdoer of his ill-gotten gains—not to compensate investors or other creditors. *See* comment to Proposed Rule 50(c) *supra*. Accordingly, in civil injunctive actions brought by the Commission, disgorged money is not always returned to investors. For example, where it is not practical to locate persons who have been harmed, disgorgement has been ordered paid into the general fund of the U.S. Treasury. *See SEC* v. *Marcus Schloss & Co.*, 714 F. Supp. 100, 103 (S.D.N.Y. 1989); *SEC* v. *Courtois*, (1985 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶92,000, at 90,959 (S.D.N.Y. 1985); *SEC* v. *Lund*, 570 F. Supp. 1397, 1404–1405 (C.D. Cal. 1983). In insider trading cases, courts have required that disgorgement be made available to persons other than investors, including printers and their clients. *See SEC* v. *Materia*, (1983–84 Transfer Binder) Fed. Sec. L. Rep. (CCH) ¶99,583, at 97,284–85 (S.D.N.Y. 1983), *aff'd on other grounds*, 745 F.2d 197 (2d Cir. 1984), *cert. denied*, 471 U.S. 1053 (1985). *See generally* Louis Loss, *Fundamentals of Securities Regulation* 1007 (2d ed. 1988) (discussing discretion exercised by courts in designating recipients of disgorged funds).

The legislative history of the Remedies Act makes clear that Congress intended that the primary purpose of disgorgement in Commission administrative proceedings is to deprive violators of ill-gotten gains and thus serve as a deterrent to violations, rather than to compensate injured investors. *The Securities Law Enforcement Act of 1990*, S. Rep. No. 337, 101st Cong., 2d Sess. 16 (1990) ("The Committee believes * * * that the Commission should have the express authority to order disgorgement in its administrative proceedings in order to ensure that respondents in administrative proceedings do not retain ill-gotten gains. In contrast to an award of damages in a private action, which is designed to compensate an injured plaintiff, disgorgement forces a defendant to give up the amount by which he was unjustly enriched.").

Accordingly, persons who may have a private right of action against a respondent named in a Commission administrative proceeding should not be granted standing in the Commission's administrative proceeding to challenge a plan of disgorgement because they are dissatisfied with their potential eligibility to receive funds from the disgorgement pool. Investors have a separate right to bring a private action against a securities law violator who has injured them. *But cf. Elkind* v. *Liggett & Meyers, Inc.*, 635 F.2d 156 (2d Cir. 1980) (suggesting in the insider trading context that a defrauded investor is entitled to seek disgorgement from a violator of section 10(b) and Rule 10b–5 thereunder); *SEC* v. *Certain Unknown Purchasers of the Common Stock of and Call Options for Santa Fe Int'l Corp.*, 817 F.2d 1018, 1021 & n.1 (2d Cir. 1987) ("For purposes of standing, it is sufficient to note that (an investor) asserts an interest that may be affected by the trial court's judgment."). Where the Commission has obtained disgorgement from a defendant who is involved in private litigation on the same substantive offenses, the Commission, where appropriate, has consented to the payment of disgorgement into a fund for the benefit of persons proving injury. The proposed rules allow this practice to be continued when disgorgement is obtained in administrative proceedings. *See* Proposed Rule 50(b).

(ER None)

Rule 55. Inability to Pay Disgorgement or Penalties.

(a) *Generally.* In any proceeding in which an order requiring disgorgement or an order imposing penalties may be entered by the Commission, a respondent may present evidence of an inability to pay disgorgement or a penalty. Whether or not the respondent presents such evidence, the Commission may, in its discretion, or if a hearing officer is assigned, the hearing officer may, in his or her discretion, consider evidence concerning ability to pay in determining whether disgorgement or a penalty is in the public interest.

Comment: The Remedies Act provides that a respondent may present evidence of ability to pay a penalty, and that the Commission may, in its discretion, consider such evidence. *See, e.g.*, Exchange Act section 21B(d), 15 U.S.C. 78u–2(d). The standards in Proposed Rule 55 reflect existing practice in settled cases.

A respondent's ability to pay becomes a significant issue not only in most court proceedings and administrative actions in which a penalty is ordered, but also when disgorgement is ordered. Although the Remedies Act is silent with respect to inability to pay disgorgement, as a practical matter, the Commission does not have a different process for considering assertions of an inability to pay disgorgement; the Commission is willing to consider evidence of ability to pay as a factor in determining whether a respondent should be required to pay disgorgement or penalties.

(b) *Financial disclosure statement.* Any respondent against whom the Commission or a hearing officer has entered or may enter an order imposing disgorgement or penalties who intends to assert or does assert an inability to pay such disgorgement or penalties may be required to file a sworn financial disclosure statement and to keep the statement current. The financial statement shall show the respondent's assets, liabilities, income or other funds received and expenses or other payments, from the date of the first violation alleged against that respondent in the order instituting proceedings to the date of the order requiring the disclosure statement to be filed. By order, the hearing officer or Commission may prescribe a particular form to be

used and may specify such other time periods for which disclosure is required, or may require such other information as deemed necessary to evaluate a claim of inability to pay.

Comment: Proposed Rule 55(b) provides that any respondent who has asserted, or intends to assert, an inability to pay disgorgement or penalties may be ordered to file a financial disclosure statement. Absent up-to-date, comprehensive information as to income, expenses, assets and liabilities, the Commission cannot fairly evaluate a respondent's asserted inability to pay. The provision that respondents may be required to file a financial disclosure statement is necessary to implement the Commission's authority to order disgorgement. *See, e.g.*, Exchange Act section 21C(e). In addition, the Commission has broad authority as an adjudicatory body to require persons making claims to submit evidence in support of those claims.

In the Commission's experience, not all respondents can be relied upon to be entirely candid about their financial position when asserting an inability to pay disgorgement or penalties. The Commission has adopted the practice in cases brought administratively and in court of requiring persons who assert an inability to pay disgorgement or penalties to file sworn, verifiable financial disclosure statements before it will consider inability to pay as a basis for waiving disgorgement or penalties in connection with a settlement. The Commission has established a similar approach with respect to persons making application for an award under the Commission's regulation with respect to the Equal Access to Justice Act, 5 U.S.C. 504. See 17 CFR 201.42 (1992) (requiring filing of net worth statement). Proposed Rule 55(b) provides the Commission or a hearing officer with a mechanism to require such financial disclosure in cases that do not settle, without requiring an undue expenditure of time to hear live witnesses concerning what is essentially documentary evidence.

The proposed rule applies to a respondent who "intends to assert" or who "does assert" an inability to pay. By making Proposed Rule 55 applicable to respondents who intend to assert an inability to pay, a hearing officer can ascertain at a prehearing conference whether a respondent intends to assert an inability to pay and may require the respondent to file a financial statement before the hearing begins. In addition, Proposed Rule 26(d) requires the filing of a financial disclosure statement with the respondent's opening brief if a petition for review raises an issue as to ability to pay.

The Task Force has developed a proposed financial disclosure statement (see Rule 55f) that may, in the discretion of the hearing officer or the Commission, be utilized by a respondent required to provide financial information. The Task Force modeled the proposed form on the form currently used by the Division of Enforcement to obtain information in connection with offers of settlement. A respondent may seek to have all or part of a financial disclosure statement kept confidential. *See* paragraph (c) Confidentiality, below.

Comment is requested as to what alternatives, if any, could further the Commission's interest in having current financial information when considering a respondent's assertion of inability to pay.

(c) *Confidentiality.* Any person submitting financial information pursuant to a request under this rule or Rule 26(d), may request that the Commission afford this information confidential treatment pursuant to Rule 33 (§ 201.33) and/or 17 CFR 200.83, which sets forth procedures related to requests for confidential treatment pursuant to the Freedom of Information Act, 5 U.S.C. 552. No party receiving information for which confidential treatment has been requested may transfer or convey the information to any person or entity not a party to the proceeding or counsel to a party, without the prior permission of the Commission or a hearing officer.

Comment: The proposed rule provides that a respondent may request confidential treatment of a financial disclosure statement at any time. Notwithstanding any such request, the financial disclosure statement must be served upon the interested division. *See* Proposed Rule 55(d).

The public's right to review financial disclosure statements submitted in connection with a respondent's claim of inability to pay should be balanced against the respondent's legitimate interest in protecting confidential or personal information from premature or unnecessary disclosure. Information required by a financial disclosure statement may be of a particularly personal or confidential nature. For example, it may reveal expenses related to treating the mental disorder of a child or other family member. On the other hand, the public must have access to financial disclosure information in order to assess the appropriateness of the Commission's decision whether or not to waive payment of disgorgement or penalties for a respondent who asserts an inability to pay.

The appropriate balance may shift during the course of a hearing. The Task Force considered whether evidence with respect to disgorgement or penalties should be presented only after a finding of liability had been made. The Task Force concluded that to have completely separate liability and penalty phases in a hearing would be inefficient. The Task Force assumes that barring a sudden change in financial circumstances during the course of a hearing, a respondent should be required to raise a potential claim of inability to pay in connection with prehearing submissions or conferences. Early submission of a financial disclosure form would allow the hearing officer to better assess the length of the hearing, and would permit Enforcement to prepare cross-examination or to seek verification of the information submitted.

However, prior to even a preliminary assessment of liability or entry of the financial statement as an exhibit, a respondent would have a stronger case for the confidentiality of personal financial information than after the respondent sought to introduce evidence of inability to pay. Providing for confidential treatment of some information until a preliminary finding of liability would protect a respondent's privacy interests to the extent that the Division failed in its case in chief, or the case settled.

The Task Force has developed a proposed financial disclosure statement (see Rule 55f) that may, in the discretion of the hearing officer or the Commission, be utilized by a respondent required to provide financial information. The proposed financial disclosure statement is in two parts. Part I requires summary information with respect to assets, liabilities, income and expenses. Part II requires detailed information regarding these same items, including verifying documentation, such as tax returns and the identification of bank, brokerage and credit accounts. Information in Part I is unlikely to warrant confidential treatment if a claim of inability to pay is raised at hearing. Information in Part II, such as account identifying information, medical payments and other highly personal information is more likely to warrant some level of confidentiality. Each request for confidentiality must be decided based on the procedural status of the case, what information already has been disclosed, and upon the individual facts and circumstances underlying the request.

Comment is requested as to whether any additional guidelines for confidential treatment of financial disclosure statements should be included in the rule, and if so, what those guidelines should be.

(d) *Service.* Notwithstanding any request under paragraph (c) for confidential treatment concerning a financial disclosure statement, copies of the statement shall be served on the interested division. Notice that a financial disclosure statement and request for confidential treatment, if any, have been filed shall be served on all other parties.

Comment: Proposed Rule 5 generally provides that materials as to which confidential treatment is requested do not need to be served on other parties. That policy is designed to protect business secrets or other information that may be filed, particularly in proceedings dealing with regulatory matters. Proposed Rule 55(d) creates an exception to that general policy because even highly personal financial information must be subject to possible challenge by the Division of Enforcement when a respondent claims an inability to pay. Notice that a disclosure statement has been filed must be provided to other respondents, who may seek all or part of the information submitted. Summary information such as that in Part I of the model form routinely should be provided to other respondents even if not made a part of the public record. If information of the kind included in Part II is not publicly disclosed, it should be disclosed to other respondents only upon a showing of specific need.

(e) *Sanction for failure to file required financial information.* Any claim of inability to pay either disgorgement or a penalty that is not perfected by the filing of a financial disclosure statement that a respondent has been ordered to file or is required to file by rule, may, in the discretion of the Commission or of the hearing officer, if one is assigned, be deemed to have been waived. No other sanctions shall be imposed for a failure to file such a statement.

Comment: Under Proposed Rule 3, sanctions for a failure to make a required filing, including a financial statement, could include entry of an adverse finding on the question of liability. Paragraph (e) limits any sanction for failure to file a financial statement to a waiver of a claim of inability to pay.

Rule 55f. Financial Information Disclosure Statement Form.

(a) Rules 26(d) and 55 of the Rules of Practice provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement or penalties may be required to disclose certain financial information. Unless otherwise ordered, this form may be used by individuals required to supply such information.

(b) The respondent filing this form is required to notify the Commission of any material change in the answer to any question on this form.

(c) A respondent making financial information disclosures on this form, or as otherwise ordered, may request that the Commission afford the information submitted confidential treatment pursuant to Rule 33 of the Commission's Rules of Practice and under the Commission's Freedom of Information Act, 5 U.S.C. 552 ("FOIA") procedures, see 17 CFR 200.83. A request for confidential treatment allows the requestor an opportunity to justify the need for confidentiality. A request for confidential treatment does not, however, guarantee confidentiality.

(d) Notwithstanding any request for confidential treatment of a financial disclosure statement, copies of the statement must be served on the interested division and will be included in the record of the proceeding. See Rule 55(d). If confidential treatment is sought, notice that a financial disclosure statement and request for confidential treatment have been filed shall be served on all other parties.

(e) No party receiving information for which confidential treatment has been requested may transfer or convey the information to any person or entity not a party to the proceeding without the prior permission of the Commission or a hearing officer.

(f) Any person may obtain a copy of this form by written request to the Securities and Exchange Commission; 450 Fifth Street NW., Washington, DC 20549.

Note: This form has been printed below after proposed Exchange Act Rule 19d–3.

Rules Related to Review of Self-Regulatory Organization Determinations

(The following four rules are intended to be read in conjunction with revised Securities Exchange Act Rules 19d–2 and 19d–3)

(17 CFR 240.19d–3(h))

Rule 56. Applications for Commission Review of Determinations by Self-Regulatory Organizations, Pursuant to Securities Exchange Act Section 19(d)(2).

Any person who is aggrieved by a determination by a self-regulatory organization with respect to any final disciplinary sanction, denial or conditioning of membership, association or participation, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof may file an application for review. Such application shall be filed with the Commission within 30 days after notice of the determination was filed pursuant to section 19(d)(1) of the Securities Exchange Act and received by the aggrieved person applying for review. The application shall be served on the self-regulatory organization pursuant to Rule 5. The application shall be in summary form, shall include a statement of the determination complained of and shall be accompanied by the notice of appearance required by Rule 2 and the proof of service required by Rule 5.

Comment: Securities Exchange Act section 19(d)(2) requires the Commission to review certain determinations by self-regulatory organizations upon application by any aggrieved person. The formula for specifying the period during which review may be applied for—30 days from receipt of the notice required by section 19(d)(1)—is the minimum allowed by statute. The cross-references to Proposed Rule 2 (the requirement to file a notice of appearance) and Proposed Rule 5 (the requirement to file a proof of service) were included particularly for the benefit of persons appearing *pro se*.

Comment is requested as to whether the application for review should require additional information concerning the objections to the SRO's decision. See comment to Proposed Rule 26(a).

(ER None)

Rule 57. Review by the Commission on Its Own Initiative.

The Commission may, on its own initiative, order review of any determination by a self-regulatory organization with respect to any final disciplinary sanction, denial or conditioning of membership, association or participation, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof within 40 days after notice thereof was filed pursuant to Securities Exchange Act section 19(d)(1).

Comment: Securities Exchange Act section 19(d)(2) specifies that the Commission may order review of the determination of a self-regulatory organization on its own motion. The proposed rule is modeled on Proposed Rule 26(d) (ER 17(c)) which deals with Commission review on its own initiative of an initial decision by a hearing officer. Under Proposed Rule 56, a respondent has 30 days after receipt of notice of a final determination by a self-regulatory organization to file an application for review. Proposed Rule 57 allows the Commission 40 days to determine whether to order review on its own initiative. The time limit for Commission review is tied to the Commission's receipt of the notice required by Exchange section 19(d)(1), not receipt of the notice by the respondent since the Commission would have no practical way of knowing that date. In practice, the Commission has only rarely exercised its authority to review a self-regulatory organization's determination *sua sponte*. In light of the Commission's practice, the rule does not include provisions comparable to those in Proposed Rule 26 for obtaining early notification that the Commission will not order review.

(17 CFR 240.19d–3(b))

Rule 58. Certification of the Record; Service of the Index.

Ten days after receipt of the application or the Commission order for review, the self-regulatory organization shall certify and file with the Commission one copy of the record upon which the action complained of was taken, and shall file with the Commission three copies of an index to such record, and shall serve upon each party one copy of the index.

Comment: Existing Securities Exchange Act Rule 19d–3(b) specifies that after an application for review is filed with the Commission, the Secretary will then serve the self-regulatory organization. The self-regulatory organization is then required to certify the record and file copies of the index with the Commission; the Secretary must serve a copy on the respondent. Under the proposed rule, the parties would be responsible for serving each other at the initial stage, as they are throughout the remainder of the proceeding. This change

simplifies procedures, and eliminates unnecessary delay. It was suggested that having the Commission serve the application for review and the index eliminates potential disputes about whether these documents were filed or served. However, there is no reason why there should be fewer problems with service simply because the Commission mails or sends a document. Moreover, the most critical document—the notice under section 19(d)(1) which triggers the entire review process—is served without involvement of the Commission.

The rule was drafted with the expectation that to the extent that any self-regulatory organization does not already do so, it will, in the future, include in its written decision, or in an attachment to the section 19d–1 notice sent to each respondent, a clear and simple statement of the procedures for seeking review, including the Commission's address, and the address of the appropriate office of the self-regulatory organization to which a copy of an application for review or other papers should be directed.

Comment is requested as to the appropriateness of the proposed change in procedure. Comment is also requested as to whether the service of the application for review by the respondent and the service of the index by the self-regulatory organization should have to be made by a means which will obtain a signed receipt.

(17 CFR 240.19d–3(c)–(g))

Rule 59. Briefs to the Commission; oral argument; leave to adduce additional evidence.

Briefs shall be filed pursuant to the schedule set forth in Rule 27. Requests for oral argument must accompany each party's initial brief on the merits, and must be made in accordance with Rule 28(a). Requests for leave to adduce additional evidence must be made in accordance with Rule 28(d).

Comment: Existing Securities Exchange Act Rule 19d–3 included provisions with respect to filing of briefs, requests for oral argument, requests for leave to adduce additional evidence and the applicability of the Rules of Practice to the review of determinations by self-regulatory organizations. Those topics are already included in other proposed rules. The cross-references to the specific rules were included particularly for the benefit of *pro se* respondents. As a result of the proposed changes to the Rules of Practice, the Task Force has rewritten Exchange Act Rule 19d–3.

Proposed Revisions to Securities Exchange Act Rules 19d–2 and 19d–3

Exchange Act Rule 19d–2 Applications for Stays of Disciplinary Sanctions or Summary Suspensions by a Self-Regulatory Organization.

If any self-regulatory organization imposes any final disciplinary sanction pursuant to section 6(b)(6), 15A(b)(7) or 17A(b)(3)(G) of the Securities Exchange Act, or summarily suspends or limits or prohibits access pursuant to section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Securities Exchange Act, any person aggrieved thereby for which the Commission is the appropriate regulatory agency may file with the Secretary, a written motion for a stay of imposition of such action pursuant to Rule 16 of the Commission's Rules of Practice (17 CFR 201.16).

Comment: Exchange Act section 19(d)(2) requires that for "appropriate cases" the Commission establish procedures for expedited consideration of a request for a stay of certain determinations by self-regulatory organizations. Proposed Rule 16 of the Rules of Practice deals generally with the procedures for seeking a stay, and includes provisions for expedited consideration of appropriate cases.

Exchange Act Rule 19d–3 Applications for Review of Final Disciplinary Sanctions, Denials of Membership, Participation or Association, or Prohibitions or Limitations of Access to Services Imposed by Self-Regulatory Organizations.

Applications to the Commission for review of any final disciplinary sanction, denial or conditioning of membership, association or participation, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof by any such organization shall be made pursuant to Rule 56 of the Commission's Rules of Practice (17 CFR 201.56).

Comment: Provisions for review of self-regulatory organization determinations have been included in the Rules of Practice either as part of rules generally applicable to all proceedings before the Commission, or by specific rules addressed to applications for review of self-regulatory organization determinations. *See* Proposed Rule 59 and accompanying comment.

Under Existing Rule 19d–3, the Rules of Practice apply to proceedings for review of self-regulatory organization determinations to the extent that they are not inconsistent with Rule 19d–3. Certain inconsistencies between procedures for review of self-regulatory organization determinations and review of proceedings before a hearing officer were simply the result of historical development, and served no regulatory or policy goals. Frequently, these inconsistencies were a source of confusion and delay. Where appropriate, these inconsistencies have been eliminated.

In addition to the inconsistencies, there were many gaps. Many of the Rules of Practice were written in terms of proceedings arising before the Commission. As a result, there was confusion as to the extent to which such rules were to apply to proceedings arising from self-regulatory organizations.

[The Financial Information Disclosure Statement Form follows on the next page]

[The Topical index (including timetable) appears following the Financial Form]

Model Financial Information Disclosure Statement Form

Instructions: The Commission's Rules of Practice provide that under certain circumstances a respondent who asserts or intends to assert an inability to pay disgorgement or penalties may be required to disclose certain financial information. *See* Rules 26(d) and 55. Unless otherwise ordered, this form may be used by individuals required to supply such information. Partnerships, corporations or other entities should submit a financial statement, including an income statement, balance sheet and federal tax returns for each year from the year of the earliest violation alleged against the entity in the order instituting proceedings to the present.

The respondent filing this form is required promptly to notify the Commission of any material change in the answer to any question on this form.

A respondent making financial information disclosures on this form, or in another manner pursuant to the requirements of Rule 26(d) or Rule 55, may request that the Commission afford the information submitted confidential treatment pursuant to Rule 33 of the Commission's Rules of Practice and under the Commission's Freedom of Information Act, 5 U.S.C. § 552 ("FOIA") procedures, *see* 17 CFR 200.83. A request for confidential treatment allows the requester an opportunity to justify the need for confidentiality. A request for confidential treatment does not, however, guarantee confidentiality.

Notwithstanding any request for confidential treatment of a financial disclosure statement, copies of the statement must be served on the interested division and will be included in the record of the proceeding. *See* Rule 55(d). If confidential treatment is sought, notice that a financial disclosure statement and request for confidential treatment have been filed shall be served on all other parties.

No party receiving information for which confidential treatment has been requested may transfer or convey the information to any person or entity not a party to the proceeding without the prior permission of the Commission or a hearing officer.

1/93 This form was prepared by the Task Force on Administrative Proceedings. It has not been approved for use by the Commission or by OMB.

BILLING CODE 8010-01-P

United States of America
Before the
Securities and Exchange Commission

In the Matter of

_____

Administrative
Proceeding File No.
3-_____

Part I: Summary Financial Disclosure Statement

Full Name: _____
Last First Middle

A. Net Worth

1. Assets: (from Part II.B.) _____
2. Liabilities: (from Part II.C.) _____
3. Net Worth: (from Part II.D.) _____

B. Income and Payments Received

1. Gross income reported on most recent federal tax filing: _____
2. Last 12 calendar months (from Part II.E.): _____*

* If this amount, divided by 12, does not equal your current monthly income, please explain the discrepancy on an attached sheet.

C. Expenses

1. Last 12 calendar months (from Part II.F.): _____*

* If this amount, divided by 12, does not equal your current monthly expenses, please explain the discrepancy on an attached sheet.

United States of America
Before the
Securities and Exchange Commission

In the Matter of

_____

Administrative
Proceeding File No.
3-_____

Part II: Detailed Financial Disclosure Information

Full Name: _____
Last First Middle

If confidential treatment has been requested pursuant to Rule 33 of the Rules of Practice, please check the box below.

☐ CONFIDENTIAL TREATMENT REQUESTED. Disclosure of this document is prohibited unless specifically authorized below. This document should be placed in a nonpublic file.

For Use Only by the Secretary of the Commission:

☐ By order of _____ (date) the Commission authorized this file to be placed in a public file.

_____
(Signature of Secretary)

Last Name: _____

A. Scope of Information Requested:

Requests for information about you include a request for the same information about your spouse (unless you are legally separated and living apart), minor children and any other dependents.

B. Assets:

List all assets owned by you, directly or indirectly, and all assets which are subject to your enjoyment or control, regardless of whether legal title or ownership is held in your name.

1. Cash _____
2. Listed Securities _____
3. Surrender Value of Insurance _____
4. Loans, Notes, Accounts Receivable Due to You _____
5. Real Estate _____
6. Furniture _____
7. Jewelry, Art, Rugs, Silver Collectibles, Other Valuables _____
8. Automobiles _____
9. Unlisted Securities _____
10. Partnership Interest (non-securities) _____
11. Net Value of Ownership Interest in Business _____
12. IRA, Keogh, 401(k), Annuity or Pension Accounts _____
13. Other (Itemize):

_____ _____

_____ _____

14. **Total Assets** _____

C. Liabilities:

List all your liabilities including, but not limited to, the items listed below.

1. Mortgages _____
2. Auto Loans _____
3. Credit Card Debt _____
4. Margin Loans _____
5. Insurance Policy Loans _____
6. Installment Loans _____
7. Other Loans, Notes or Accounts Payable _____
8. Accrued Real Estate Taxes _____
9. Judgments/Settlements Owed _____
10. Other (Itemize):

_____ _____

_____ _____

11. **Total Liabilities** _____

Last Name: _____

D. Net Worth
(Assets Less Liabilities) _____

E. Income/Payments Received

List all income or other payments received from any source in the last 12 months by you, or by any other person or entity if you have any right, power or authority to control or enjoy the use of the money or property received by such other person or entity. Identify the source, the recipient and the amount of payment, including but not limited to the items listed below.

	Description/Purpose	Source	Amount
1.	Salary/Wages	_____	_____
2.	Commissions/Advances	_____	_____
3.	Bonuses	_____	_____
4.	Dividends	_____	_____
5.	Interest	_____	_____
6.	Distributions of Capital	_____	_____
7.	Annuity, Pension Payments	_____	_____
8.	Rents/Royalties (net)	_____	_____
9.	Sales of Assets (net)	_____	_____
10.	Repayment of Loans	_____	_____
11.	Alimony/Child Support	_____	_____
12.	Gifts over $1000	_____	_____
13.	Payments by Others on Your Behalf (see item I, below)	_____	_____
14.	Other (itemize):		
	_____	_____	_____
	_____	_____	_____
15.	**Total Income/Receipts**		_____

16. If you anticipate unusual income in the coming 12 months, please explain.

Last Name: _____

F. Expenses/Disbursements

List all your expenditures for the past 12 months, including but not limited to the items listed below. Identify the purpose and the amount of each expenditure.

Description	Amount
1. Mortgage/Rent	_____
2. Food	_____
3. Utilities	_____
4. Payments on Loans	_____
5. Real Estate Taxes	_____
6. Insurance Premiums	_____
7. Medical Expenses	_____
8. Automobile Expenses	_____
9. Alimony/Child Support	_____
10. Income Taxes (federal, state and local)	_____
11. Other Expenses (itemize):	
_____	_____
_____	_____
_____	_____
_____	_____
12. **Total Expenses/Disbursements**	_____

13. If you anticipate unusual expenses in the coming 12 months, please describe them.

G. Asset Schedules

1. For each asset or class of assets included in Section II.B(5-13) with a fair market value greater than $2000, describe the asset(s), state the form of ownership (e.g., individual, joint, beneficial interest), provide a fair market value, and explain how fair market value was determined (e.g., appraisal, comparison, estimate, etc.).

2. List all securities or commodities brokerage accounts and accounts at banks or other financial institutions in your name, under your control, in which you have or had a beneficial interest, or to which you are or were a signatory since the date of the first violation alleged against you. For each

Last Name: _____

account, specify the location of the account, account number, balance and balance date. Please identify all accounts, regardless of their location.

3. List all 401(k) plans, pension plans, Keogh plans, individual retirement accounts, profit sharing plans, thrift plans, life insurance policies or annuities in which you have an interest, vested or otherwise. For each account, specify the account name, the location of the account, account number, balance and balance date. For each account state whether you are permitted to borrow against or make withdrawals from the account.

4. Identify the location and account number of all your safe deposit boxes. Include any boxes in which you have property or papers, whether or not you are the account holder.

5. Identify all patents, trademarks, service marks, royalty agreements, licenses, or other general intangibles in which you have an interest.

H. Liability Schedules

1. For each liability greater than $2,000 listed in Section II.C., indicate the creditor, the account number, if any, the date incurred, the original amount of the liability, the length of the obligation, the interest rate, the collateral or security, if any, the outstanding balance, and the name(s) and address(es) of any other obligee(s). State whether you are related to or have a personal or social relationship with the creditor, its management or owners.

2. List all credit cards and lines of credit in your name or to which you are a signatory, including the name of the credit issuer, account number, credit limit, and amount of indebtedness.

3. List all contingent liabilities. Include any notes on which you are a co-maker, guarantor or endorser and all pending lawsuits in which you are named as a defendant.

I. Schedules of Income, Receipts and Disbursements

1. Disbursements by Others on Your Behalf. List any payments or disbursements having a value of $1000 or greater, made by any other person or entity to a third party on your behalf since the date of the first violation alleged against you. Include the amount of the disbursement and the name and address of the person or entity who made the disbursement. If no such disbursements have been made, please so state.

2. Fringe Benefits. List any fringe benefits, such as the lease of an automobile, currently provided by your employer.

3. Asset Transfers by You. List any assets or property with a cost or fair market value of $2000 or more, which you transferred or otherwise disposed of since the date of the first violation alleged against you. State the value of the asset, the consideration received, and your relationship with the transferee. If no such transfers have been made, please so state.

4. Additional Deposits by You. Identify any financial institution accounts (other than those identified in item G.2. above) in which you have deposited more than $2000 since the date of the first violation alleged against you. If no such deposits have been made, please so state.

5. Trusts and Inheritances Already Vested. Describe any vested interest in a trust or will pursuant to which you are receiving or would receive a devise, bequest, other inheritance or distribution.

Last Name: _____

6. Current and Prior Business Relations. List any sole proprietorships, joint ventures, corporations or other business enterprises in which you are now or have been a principal, a holder of 10 percent or more of the issued stock, an officer, director, manager or chief operating officer at any time since the date of the first violation alleged against you.

J. Personal Information

Current residence: _____
street unit

_____
city state zip code

Current phone number(s): home: ( ) -
business: ( ) -
car: ( ) -
other: ( ) -

Social security number: _____

List any other names (including a maiden name) you have used.

If currently married please state your spouse's name, age and social security number, whether or not he or she resides with you and the date of your marriage.

If you have been previously married please state the name of your former spouse(s) and the date of your marriage(s). If the date of a marriage was after the date of the first violation alleged against you, include your former spouse's social security number and last known address.

Identify all dependents. For each, please state his or her age, social security number and whether or not he or she resides with you.

Identify any other members of your household. For each, please state his or her age and relationship to you.

K. Attachments:

1. Attach any federal tax returns filed by you (including personal, trust, or business returns) for the year of the first violation alleged against you and all subsequent years.

2. Attach any federal gift tax returns filed by you for the year of the first violation alleged against you and all subsequent years.

3. Attach any financial statement which you prepared for any purpose (e.g., a financial statement provided to a bank to secure a loan) in the year of the first violation alleged against you and all subsequent years.

4. If you are a trustee, executor or administrator, attach a copy of the instrument appointing you as such.

Last Name: _____

5. List of Attachments Submitted With This Form:

Please list all financial statements, tax returns and other materials submitted with this form. Do not submit originals. Make sure all copies are legible. Illegible copies do not satisfy the requirements for filing your financial disclosure information.

L. Declarations and Signature

I _____ hereby declare under penalty of perjury, that I have examined the information given in this statement and attached hereto and, to the best of my knowledge and belief, it is true, correct, and complete. I further declare that I have no assets, owned either directly or indirectly, or income of any nature other than as shown in, or attached to, this statement. I understand that any material misstatements or omissions made by me herein or in any attachments hereto may constitute criminal violations, punishable under 18 U.S.C. 1001 or other statutes.

The Securities and Exchange Commission and any of its staff is authorized to obtain any such information from credit bureaus, financial institutions or any other source as may be needed to verify the statements made on this form.

The statements herein and attached hereto represent my financial condition as of _____ (date).

_____ (signature) _____ (date)

Sworn before me this ___ day of _____, 199__.

[Seal]

_____
Notary Public

My commission expires on _____(date)

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Topical Index Including Timetable Relating to the Rules Of Practice

This index sets forth a general outline of many of the significant steps of an administrative proceeding under the Commission's Rules of Practice. It does not constitute part of the Rules and has no legal effect. It has been prepared for the convenience of the reader and is not intended as a substitute for review of the Rules. The generalizations contained in this index are qualified in their entirety by the text of the Rules themselves, which are hereby incorporated by reference.

The Commission or the hearing officer, for good cause shown, may extend or shorten any time limits for any filing and may postpone or adjourn any hearing.

Amicus Participation

Any amicus curiae shall file its brief (along with a motion for leave to participate as amicus curiae or written consent of all parties, if required) within the time allowed the party whose position the amicus will support, unless all parties otherwise consent or the hearing officer (for cause shown) shall grant leave for later filing. (Rule 13(d)).

Answers

In any order instituting proceedings, the Commission may direct that any respondent file an answer to such order. Any party not so ordered may also elect to file an answer. A party directed to file an answer shall do so within 20 days after service upon such party of the order instituting proceedings. Any person granted leave to participate may be required to file an answer within a reasonable time, as determined by the hearing officer. Where amendments to the matters of fact and law at issue in the proceedings are authorized, the parties may be required to answer the amended matters to be considered within a reasonable time, as determined by the Commission or hearing officer. (Rule 9(a),(b)).

Appeal

See "Initial Decision-Petition for Review," "Interlocutory Review of Hearing Officer's Rulings," "Petition for Rehearing," "Review by the Commission of Determinations at a Delegated Level (other than by a Duty Officer or a Hearing Officer)," "Review by the Commission of Initial Decisions by Hearing Officers," and "Self-Regulatory Organization Determinations-Applications for Commission Review."

Appearance

A person may appear before the Commission or a hearing officer on his or her own behalf; any person admitted to the practice of law before the U.S. Supreme Court or the highest court of any state may represent any person or party before the Commission; a member of a partnership may represent such partnership; and a bona fide officer of a corporation, trust, or association may represent such corporation, trust, or association. (Rule 2(a),(b)). See "Notice of Appearance."

Briefs to the Commission

At the time the Commission grants or orders review of a decision or upon receipt of an index to the record in a self-regulatory organization determination, the Commission shall issue a briefing schedule order. Such order shall specify the parties to file opening briefs and the dates by which such briefs shall be filed. Normally, the briefing schedule order should be issued within 15 days of either (i) the last day permitted for filing a brief in opposition to a petition for review or (ii) the last day permitted for filing an index to the record in a self-regulatory organization proceeding. Unless otherwise ordered, opening briefs shall be filed within 40 days of the date of the briefing schedule order. Opposition briefs shall be filed within 30 days after the date opening briefs are due. Reply briefs shall be filed within 14 days after the date opposition briefs are due. No further briefs may be filed except with leave of the Commission. (Rule 27(a)).

Business Hours; Business Days

The Headquarters of the Commission, at 450 Fifth Street, NW., Washington, DC 20549, is open each day, from 9 a.m. to 5:30 p.m., Eastern Standard Time or Eastern Daylight-savings Time, whichever is currently in effect in the District of Columbia, except Saturdays, Sundays, and federal legal holidays. Federal legal holidays consist of New Year's Day, Martin Luther King, Jr.'s Birthday, Presidents Day, Memorial Day, Independence Day, Labor Day, Columbus Day, Veterans Day, Thanksgiving Day, Christmas Day, and any other day appointed as a holiday in the District of Columbia by the President or the Congress of the United States. Each day on which the Commission is open is a "Business Day." (Rule 7).

Certification of Record to the Commission

Administrative Proceedings

At the close of the hearing, the hearing officer shall transmit to the Commission's Director of the Office of Filings, Information and Consumer Services ("OFICS Director") a list of all filings, exhibits or other materials which are part of the record, as well as originals of all such documents. Within 15 days after the last date set for filing briefs to the Commission or at such other time as the Commission may direct after receipt of a petition or application for review (but, in any event, prior to any oral argument), the OFICS Director shall certify the entire record to the Commission. (Rule 29(b),(c)).

Self-Regulatory Organization

Ten days after receipt of the application or Commission order for review, the self-regulatory organization shall certify and file with the Commission one copy of the record and three copies of an index to such record and shall serve upon each party one copy of that index. (Rule 58).

Commission Decisions

Normally, the Commission should issue its opinion within nine months of the date of the briefing schedule order required to be issued in each case. (Rule 29). Normally, if a sanction has taken effect, a decision as to whether or not to grant a stay should be issued within five days of the date set for filing of the opposition to a motion for a stay. If the sanction has not taken effect, the decision as to granting or denying a stay should be issued within 30 days. (Rule 16(e)). Normally, interlocutory review of a hearing officer's decision should be completed within 30 days of the date set for filing of the final brief on the matter submitted for interlocutory review. (Rule 18(b)).

Commission Review of Decisions on its Own Initiative

See "Review by the Commission of Determinations at a delegated Level (Other than by a Duty Officer or a Hearing Officer" and "Review by the Commission of Initial Decisions of Hearing Officers."

Computation of Time

In computing any period of time under the Rules, the day of the act, event, or default after which the period begins to run is not to be included. The last day of the period so computed is to be included, unless it is a Saturday, a Sunday, or a federal legal holiday (as

defined in the Rules), in which event the period runs until the end of the next day which is neither a Saturday, a Sunday, nor a federal legal holiday. Intermediate Saturdays, Sundays, and federal legal holidays shall be excluded from the computation when the period is seven days or less, not including any additional time allowed for service by mail. If on the last day on which a filing is permitted to be made, weather or other conditions have made the Secretary's office at the Commission or other designated filing location inaccessible, the filing deadline shall be extended to the end of the next day on which such location is accessible and which is neither a Saturday, a Sunday, nor a federal legal holiday. (Rule 6(a)).

Confidential Treatment

Any person may file an application requesting confidential treatment of material pursuant to the provisions of the Securities Act, the Exchange Act, the Public Utility Holding Company Act, the Investment Company Act, the Investment Advisers Act, the rules under any of the foregoing, or any other applicable statute or rule. The application shall be accompanied by a sealed copy of the materials as to which confidential treatment is sought. The Commission may require the person making such application to furnish in writing additional information with respect to the grounds for such application. Failure to supply such requested information within 14 days from the person's receipt of the request shall be deemed a waiver of the person's objections to public disclosure, unless the Commission shall otherwise order, for good cause shown, at or before the expiration of the 14-day period. Upon request of the person making the confidential treatment request, motions and other filings relating to the request shall be placed under seal upon filing. (Rule 33(a),(b),(c)).

Copying Costs

The respondent shall be responsible for the costs of copying documents turned over by the interested division of the Commission. (Rule 20(d)). See "Documents and Witnesses' Statements."

Copies of Papers To Be Filed

One original and three copies of all papers shall be filed with the Commission or the hearing officer. (Rule 5(f)). See "Service."

Date of Entry

The date of the entry of an order by the Commission shall be (i) the date of the adoption of an order by then Commission, as reflected in the caption of the order or (ii) in cases where the Commission staff takes action pursuant to delegated authority, the date when the action is taken, as reflected in the caption of the order. (Rule 6(c)). See "Computation of Time."

Defaults; Motion To Set Aside Defaults

If a party fails to file an answer, or if a person named in an order instituting proceedings against whom findings may be made or sanctions imposed fails to appear at a hearing or prehearing conference, or such person fails to file a notice of appearance when ordered to do so, the hearing officer or the Commission may deem the allegations against such person to be true and enter an order making findings, by default, against such person. (Rules 3(c), 9(e), 9(f)). Any motion to set aside a default shall be made within a reasonable time. (Rule 9(g)).

Depositions—Oral and Written

Notice

Any party desiring to take a deposition shall make a written motion setting forth the reasons why the deposition should be taken, the matters to be covered and the proposed time and place for taking the deposition. See "Depositions on Written Questions."

Grounds

The Commission or the hearing officer, in its discretion, may issue an order that the deposition be taken upon a finding that the prospective witness is likely to give material testimony, that it is likely the prospective witness will not be able to attend the hearing, and that the taking of the deposition will serve the interests of justice. (Rule 22(b), 23).

Filing

Testimony taken in depositions shall be reduced to writing, subscribed by the witness and certified by the deposition officer. The original deposition and any exhibits thereto shall be forwarded under seal to the hearing officer or, if none is assigned, to the Secretary of the Commission. Copies of the depositions and exhibits shall be forwarded to each party. (Rule 22(f)).

Depositions on Written Questions

Depositions may be taken and submitted on written questions upon any party's motion. Within 10 days after the motion and written questions are served, a party may file objections, if any, to such written questions and may serve cross-questions upon any or all other parties. (Rule 23).

Discovery

See "Documents and Witnesses' Statements."

Disgorgement

Plan of Disgorgement

The Commission or the hearing officer may order any party to submit a plan for the distribution of disgorgement funds at anytime after an order requiring disgorgement has been entered. Normally, if a plan will be required, it should be submitted no later than 45 days after funds or other assets are placed in an escrow account or otherwise set aside. (Rule 49).

Order Approving, Modifying or Disapproving the Plan

At any time more than 30 days after publication of notice of the proposed plan of disgorgement, the hearing officer, if one is assigned, or the Commission, shall, by order, approve, modify or disapprove the proposed plan. Normally, this order should be entered within 30 days after the end of the period allowed for comments on the proposed plan. (Rule 52).

Prompt Payment

Unless provided otherwise by order of a hearing officer or the Commission, disgorgement shall be paid no later than five days after service of the disgorgement order. Amounts due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final. (Rule 48(a)).

Dispositive Motions

Any party may make a motion for an order that would dispose of the proceeding, in whole or in part. Motions made prior to the hearing shall be filed no later than 30 days prior to the commencement of the hearing or at such earlier time in advance of the final prehearing conference as the hearing officer may order. For purposes of ruling on a dispositive motion prior to the conclusion of the interested division's case, the facts of the pleadings of the party against whom the motion is made shall be taken as true (except as modified by stipulation entered into by that party). The hearing officer shall promptly grant or deny the motion or defer decision until after the interested division concludes its case. (Rule 16(b)).

Documents and Witnesses' Statements

In enforcement proceedings, the interested division shall make available to the other parties for inspection and copying all non-privileged, relevant documents that are not work-product; provided, however, the interested

division may withhold any document it believes would result in a breach of personal privacy, confidentiality or where turnover otherwise would not be in the interests of justice. The hearing officer shall review the withheld material to determine whether it should be produced. The interested division also shall make available to any party any statement of a person called or to be called as a witness by the interested division that would be required to be produced pursuant to the Jencks Act. (Rules 20(a), 21(a)). See "Failure to Produce."

Evidence

The hearing officer shall receive relevant and material evidence and exclude all irrelevant, immaterial or unduly repetitious evidence. (Rule 19(a)).

Ex Parte Temporary Cease-and-Desist Orders

A temporary-cease-and-desist order may be issued without notice and opportunity for hearing only if the Commission determines that notice and a hearing prior to entry of an order would be impracticable and contrary to the public interest. A respondent served with an *ex parte* temporary cease-and-desist order may, within 10 days after the date on which the order was served, move to have the order set aside, limited, or suspended and request a hearing. The Commission shall hold a hearing and render a decision on the respondent's motion at the earliest possible time. Normally, such a hearing should be held within 48 hours of a request for hearing, unless the respondent requests a longer period. (Rule 43(a),(c)).

Extensions and Enlargements of Time; Adjournment

The Commission or the hearing officer (for good cause shown) may extend or shorten any time limits for any filing of any papers or documents and may postpone or adjourn any hearing. In considering requests for postponement, adjournment or extensions, the hearing officer or the Commission shall consider the length of the proceeding to date; the number of postponements, adjournments or extensions already granted; the stage of the proceedings when the request is made; and any other matters as justice may require. Postponements or adjournments should normally not exceed 21 days although longer periods are permissible if the reasons for such postponement or adjournment are set forth in the written order. (Rule 17).

Failure To Appear

Any person who is named in an order instituting proceedings as a person against whom findings may be made or against whom sanctions may be imposed that fails to appear at a hearing or prehearing conference or fails to file a notice of appearance when ordered to do so may be deemed in default and the proceedings may be determined against such person, upon consideration of the allegations, which may be deemed to be true. (Rules 3(c), 9(f)).

Failure To File Answer

If a party fails to file an answer within the time provided, such person shall be deemed in default and the proceedings may be determined against such person upon consideration of the allegations, which may be deemed to be true. (Rules 3(b), 9(e)).

Failure To Produce

If a document or statement required to be turned over to a respondent is not turned over by the interested division of the Commission, no rehearing or redecision of a matter already heard or decided shall be required unless respondent shall establish that the failure to produce the document or statement was not harmless error. (Rules 20(b), 21(b)).

Filings—Deficient Filings and Failure To File

The Commission or the hearing officer may reject, in whole or in part, any filing which fails to comply with the Rules or any order. In the event a required filing is not made or is rejected, in whole or in part, and such failure or deficiency is not cured within the time period authorized, the party failing to make the filing may be deemed in default, and the proceedings may be dismissed or determined against such party on the basis of the record then existing, including the order instituting proceedings, the allegations of which may be deemed to be true. (Rule 3(b)).

Filing With the Commission or Hearing Officer

All papers required to be served by a person shall be filed with the Commission, addressed to the Secretary of the Commission, or the hearing officer, as the case may be, before service on any other person or promptly thereafter. An original and three copies of all papers shall be filed with the Commission or the hearing officer. (Rule 5(d), (e), (f)).

Final Decision

Unless a party or other person entitled to seek review of an initial decision timely files a petition for review, or the Commission on its own initiative orders review, an initial decision shall become the final decision of the Commission. The Commission shall issue an order that the decision has become final, but even if the order of finality is not issued, the initial decision automatically becomes final with the passage of time. (Rule 24(c), (d)).

Hearings—Time and Place

Each party shall be given advance notice, reasonable in light of the circumstances, of the date, time and location of the hearing in such party's proceedings; provided, however, that in a proceeding in which a temporary *ex parte* sanction is sought, the Commission may direct that notice of the hearing shall be delayed. The time and place for any hearing shall be fixed with due regard for the public interest and the convenience and necessity of the parties, the participants or their representatives. (Rule 8(c)).

Holidays

See "Business Hours, Business Days."

Initial Decision

Normally, the hearing officer should file the initial decision with the Secretary of the Commission within 75 days of the filing of the last brief specified in the post-hearing briefing schedule, or, if no post-hearing briefs are filed, within 75 days of the close of the hearing. (Rule 25(d)).

Petition for Review

An initial decision shall include a statement of the time within which a petition for review of the initial decision may be filed. The time allowed to file a petition for review shall not exceed 21 days after service of the initial decision upon the parties except for good cause shown. (Rule 24(b),(c)). A brief in opposition to a petition for review and/or a petition for summary affirmance in opposition to a petition for review may be filed within five days of service of the petition upon the party filing such opposition or petition for summary affirmance (Rule 26(c)). Within 15 days after the filing of such brief in opposition and/or a petition for summary affirmance, the Commission shall issue: (i) An order determining whether to grant the petition for review and (ii) if the petition for review is granted, a briefing schedule order. (Rule 27(a)). See "Final Decision."

Interlocutory Review of Hearing Officer's Rulings

In the absence of extraordinary circumstances, the Commission will not

review a ruling of the hearing officer prior to considering a final order with respect to the entire proceeding. A hearing officer shall not certify a ruling for interlocutory review by the Commission unless a party requests such review within five days of the hearing officer's ruling and the hearing officer certifies in writing the grounds for such review. Normally, interlocutory review should be completed within 30 days of the date set for filing the final brief on the matter being reviewed. (Rule 18(a),(b)).

Interrogatories

See "Depositions—Oral and Written" and "Depositions on Written Questions."

Leave to Adduce Additional Evidence

Any party may file a written motion for leave to adduce additional evidence, stating with particularity why such evidence is material and the reasonable grounds for failure to adduce such evidence previously. Upon such motion or upon its own motion, the Commission may hear additional evidence, may remand the proceeding to a self-regulatory organization or may remand or refer the proceeding to a hearing officer for the taking of additional evidence. (Rule 28(e)). See "Motions."

Leave to Participate

Any person seeking leave to participate shall file a motion for leave to participate not later than 20 days prior to the date fixed for the commencement of the hearing. (Rule 13(c)).

Length and Form of Briefs

All briefs filed with the Commission or with a hearing officer containing more than ten pages shall include a table of contents and a table of cases, statutes and other authorities cited. Except with leave of the Commission or hearing officer, principal briefs shall not exceed 50 pages, and reply briefs shall not exceed 25 pages. (Rule 31).

Mail

Service by mail is complete upon mailing. Service by mail adds three days to the period computed from time of service. (Rules 5(b), 6(b)). See "Service."

Motions

Unless made during the hearing itself, a motion, including any supporting material, affidavits or other exhibits, shall be in writing. Opposition briefs or affidavits in opposition to motions shall be filed within 10 days after service of the motion. Reply briefs shall be filed within five days after service of the opposition brief or affidavit. (Rule 16(a)).

Notice of Appearance

When an individual person first appears on his or her own behalf before the Commission or a hearing officer in a proceeding arising out of an order instituting proceedings or seeking review of a self-regulatory organization determination, he or she shall file a written notice with the Commission or state on the record a current address and telephone number where he or she may be reached during business hours. When an attorney appears before the Commission or a hearing officer in a representative capacity in a proceeding, he or she shall file a written notice of such appearance, which shall state the name of the proceeding in which he or she is appearing, his or her name, current address and business telephone number and the name and current address of the person or persons on whose behalf he or she appears. (Rule 2(d)).

Oral Argument

Except as to determinations whether to (i) accept a matter for interlocutory review or (ii) order review of a hearing officer's initial decision, any party may make a separate written motion accompanying the initial brief on the merits requesting oral argument. Normally, the grant or denial of a request for oral argument should be made by the Commission within 21 days of the date for the filing of the last brief called for by the briefing schedule. (Rule 28(a)). A motion of an amicus curiae to participate in oral argument will be granted only for extraordinary reasons. (Rule 13(d)).

Order Instituting Proceedings

Whenever the Commission issues an order instituting proceedings, appropriate notice shall be given by the Commission to each party (or his authorized representative) to the proceedings. (Rule 8(a)).

Amendments

Motions for amendments to the matters of fact and law to be considered may be granted by the hearing officer at any time prior to the filing of an initial decision or, if no initial decision is to be filed, prior to the time fixed for the filing of final briefs with the Commission. An amendment to the matters of fact and law to be considered may be granted by the Commission at any time. (Rule 8(e)).

Penalties—Prompt Payment

Unless otherwise provided, amounts due pursuant to an order by the Commission requiring the payment of penalties shall be paid no later than five days after service of the order upon the party required to pay such penalty. Amounts due pursuant to an order by a hearing officer shall be paid on the first day after the order becomes final. (Rule 48(a)).

Petition for Rehearing

Any petition requesting rehearing by the Commission shall be filed (i) within 10 days after entry of the order complained of or (ii) within such time as the Commission may prescribe upon request of a party, if such request is made within the foregoing 10 day period. The petition for rehearing shall clearly state the specific matters upon which rehearing is sought. (Rule 28(d)).

Petition for Review

See "Initial Decision—Petition for Review."

Prehearing Conferences

The hearing officer may direct, or any party may request, that counsel, any party, or any other participant, meet with the hearing officer for a prehearing conference or conferences. Except where the emergency nature of a proceeding would make a prehearing conference clearly inappropriate, a final prehearing conference should be held. Any final prehearing conference should be held as close to the time of the hearing as reasonable under the circumstances. At the conclusion of any conference or promptly thereafter, the hearing officer shall enter a ruling or order which recites the agreements reached and any procedural determinations made by the hearing officer. (Rule 12(a),(c)).

Prehearing Submissions

The hearing officer, at a prehearing conference, may, on his own motion or at the request of a party or participant, order any party, including the interested division of the Commission, to furnish to the hearing officer and the other parties and participants information prior to the hearing, including a summary of such party's case or defense, its legal theories, copies and a list of documents to be introduced at the hearing by such party and a list of names, occupations, addresses and expected testimony of witnesses to be called on its behalf at the hearing. (Rule 12(b)).

Production of Relevant Investigative Documents in Enforcement Proceedings

See "Documents and Witnesses' Statements."

Proposed Findings, Conclusions and Supporting Briefs

At the end of each hearing and before an initial decision is made, the hearing officer shall give the parties a reasonable opportunity to submit in writing proposed findings and conclusions, together with, or as part of, their briefs. The hearing officer shall prescribe the period within which proposed findings and conclusions and supporting briefs are to be filed and shall direct such filings to be simultaneous or successive; provided, however, the first filing should normally be made no more than 30 days after the close of the hearing. Normally, the total period within which all such proposed findings and conclusions and supporting briefs and any counter-statements of proposed findings and conclusions and reply briefs are to be filed should be no more than 90 days after the close of the hearing. Exceptions to the time periods specified above may be made so long as the reasons therefor are set forth in the hearing officer's order. (Rule 25(a),(b)).

Publication of Notice of Hearing

Unless otherwise ordered by the Commission, notice of any public hearing shall be given general circulation by release to the public, by publication in the SEC News Digest and, where directed, by publication in the **Federal Register**. (Rule 8(d)).

Responsive Pleadings

See "Answers," "Motions."

Review by the Commission of Determinations at a Delegated Level (Other Than by a Duty Officer or a Hearing Officer)

Any person who seeks review of a determination made at a delegated level (other than by a duty officer or a hearing officer) shall file with the Commission a written notice of intention to petition for review within five days after actual notice of the determination complained of. Within five days after such notice has been communicated, the person seeking review shall file a petition for review with the Commission. The Commission may at any time, on its own initiative, order review of any determination made at a delegated level; provided, however, that where there are parties to the matter, review by the Commission on its own initiative shall not be ordered more than 10 days after the determination. (Rule 30).

Review by the Commission of Initial Decisions by Hearing Officers

Any party or person who would have been entitled to judicial review of a final order if entered by the Commission may, within such time as prescribed by the hearing officer, file a petition for Commission review of the initial decision. Statements in opposition to a petition for review and/or a petition for summary affirmance may be filed within five days of service of the petition upon the party opposing the petition. Any party may petition for summary affirmance in opposition to a petition for review of any issues which such party believes do not warrant consideration by the Commission. The Commission may, on its own initiative, order review of all or part of any initial decision by a hearing officer within 15 days after the end of the period in which a brief in opposition to a petition for review and/or a petition for summary affirmance may be filed. Normally, the Commission shall issue within 15 days after the filing of a statement in opposition and/or a petition for summary affirmance: (i) An order determining whether to grant the petition for review and (ii) if the petition for review is granted, a briefing schedule order. See "Initial Decision-Petition for Review." (Rule 26(a),(c),(e)).

Scheduling

See "Briefs to the Commission."

Self-Regulatory Organization Determinations—Applications for Commission Review

Any person who is aggrieved by a determination by a self-regulatory organization may file an application for review within 30 days after notice of such determination was filed with the Commission and received by the aggrieved person applying for review. (Rule 56). The Commission, on its own initiative, may order review of a self-regulatory organization determination within 40 days after notice of such determination was filed with the Commission. (Rule 57).

Service

Every notice, motion, brief or other paper in any proceeding where an order instituting proceedings or application for review of a self-regulatory organization determination has been granted shall be served upon each of the parties and any other participants to the proceedings; provided, however, that no service shall be required of *ex parte* motions, requests for confidential treatment of information or requests for issuance of a subpoena. Service shall be made upon counsel if a person is represented by counsel who has filed a notice of appearance; provided, however, a copy of any paper served may also be served upon the person represented. (Rule 5).

By Mail

Whenever a person has the right to, or is required to, do some act after service of a paper and service is made by mail, three days shall be added to the prescribed period which is computed from such service. Service by mail is complete upon mailing. (Rules 5(b), 6(b)).

Means of Service

Service shall be made by delivering a copy of the paper to be served upon counsel or, if not represented, the person or party required to be served by any of the following means: (1) Personal or hand delivery, including leaving a copy of the paper with a responsible individual at the office or in a conspicuous place; (2) commercial courier or overnight delivery service that obtains a receipt or proof of delivery; or (3) first-class, registered, certified or Express Mail. (Rule 5(b)).

Proof of Service

Proof of service shall be made by filing an affidavit of service simultaneously with the filing of the required number of copies of the paper with the Commission. (Rule 5(c)).

Stop Order Proceedings

Any notice of a proceeding relating to the issuance of a stop order suspending the effectiveness of a registration statement pursuant to section 8(d) of the Securities Act shall be sent to or served on the issuer; or in the case of a foreign government, to or on the underwriter; or in the case of a foreign or territorial person, to its duly authorized United States representative named in the registration statement. (Rule 8(f)).

Service of Order Instituting Proceedings

Service of an order instituting proceedings may be given by personal delivery, commercial carrier or overnight delivery with proof of delivery or first class, registered, Express or certified mail; provided, however, that with respect to proceedings under section 8 or 10 of the Securities Act or section 305 or 307 of the Trust Indenture Act, service shall be by personal service or confirmed telegraphic notice; provided, further, that in proceedings under the Investment Company Act and the Investment Advisers Act, service shall be given by personal service upon each party or by registered mail, certified

mail, or confirmed telegraphic notice to the party's last known business address. (Rule 8(b)).

Settlements

Persons who are notified that proceedings may or will be instituted against them, or a party to a proceeding already instituted may, at any time, propose in writing offers of settlement. (Rule 11(a)).

Stays

A motion seeking a stay of effectiveness of an order of the Commission pending judicial review shall be made to the Commission prior to or at the same time as the filing of a petition for review in the appropriate court; provided, however, a motion seeking a stay of effectiveness of a final disciplinary sanction, summary suspension, prohibition or limitation of access by a self-regulatory organization in connection with an application pursuant to section 19(d)(2) of the Exchange Act or any other motion for stay not covered by the first clause hereof may be made to the Commission at any time. (Rule 2(e)(5)).

Opposition briefs to a motion for a stay shall be filed (i) within five days of actual notice of the motion for a stay if the sanction complained of is not yet in effect, or (ii) within two days, if the sanction complained of took effect or will take effect within four days of the order imposing the sanction. When a sanction or action has already taken effect and respondent has promptly sought relief upon notice of the sanction, a decision on a stay motion shall be expedited. Normally, if a sanction has taken effect, a decision as to whether or not to grant a stay should be issued within five days of the date set for filing of the opposition to a motion for a stay. (Rule 16(e)).

Subpoenas

Subpoenas requiring the attendance and testimony of witnesses or the production of documentary or other tangible evidence at a designated time and place may be made in writing or on the record to the hearing officer at any time. Any person to whom a subpoena is directed may, prior to the time specified therein for compliance, but in no event more than 10 days after the date of service of such subpoenas, apply in writing to quash or modify such subpoena. The person on whose behalf the subpoena was issued may, within five days of service of the application, file a brief in opposition to the application to quash or modify the subpoena. (Rule 19 (c), (d)).

Summary Affirmance

The Commission may summarily affirm an initial decision based upon the petition for review and any responses thereto, without further briefing, if it finds that no issue raised in the petition for review warrants the Commission's further consideration. (Rule 26(g)).

Summary Trading Suspensions

Any person adversely affected by a suspension pursuant to section 12(k)(l)(a) of the Exchange Act may file a petition with the secretary of the Commission requesting that the suspension be terminated. The Commission may, in its discretion, schedule a hearing on the matter or decide the matter on the facts presented in the petition. (Rule 46 (a), (b)).

Sworn Testimony

Any witness at a hearing shall testify under oath or affirmation, administered by the hearing officer. (Rule 19(a)).

Temporary Suspension of a Professional Practice

The Commission, without preliminary hearing, may by order temporarily suspend any attorney, accountant, engineer or other professional or expert from appearing before it. An order of temporary suspension shall become effective upon service upon the respondent. Any person temporarily suspended may, within 30 days after service upon him or her of the temporary suspension order, petition the Commission to lift the temporary suspension. If no petition has been received by the Commission within 30 days after service of the order, the suspension shall become permanent. (Rule 2(e)(3)).

Reinstatement

An application for reinstatement of a person permanently suspended or disqualified may be made at any time. The Commission may, in its discretion, afford the applicant a hearing; provided, however, the suspension or disqualification shall continue unless the Commission reinstates the applicant for good cause shown. Any person who has been suspended from appearing or practicing before the Commission because of a suspension or disbarment from any Federal or state court, a felony conviction or misdemeanor involving moral turpitude may file an application for reinstatement at any time and shall be afforded an opportunity for hearing. (Rule 2(e)(5)).

Temporary Sanctions: Cease-and-Desist Orders and Suspension of Registration

Temporary sanctions are defined as a temporary cease-and-desist order or a temporary suspension of the registration of a broker, dealer, municipal securities dealer, government securities broker, or government securities dealer or transfer agent. An application for a temporary sanction shall be filed by the Division of Enforcement with the Secretary of the Commission. (Rule 39(a)).

Duration

A temporary suspension of a registered entity or a temporary cease-and-desist order not otherwise limited in its duration shall expire: (i) 15 days after service upon the Division of Enforcement of an initial decision declining to make permanent a temporary sanction; (ii) 180 days, or such other time specified by the Commission, after the Commission grants a petition for review; or (iii) 180 days, or such other time as specified by the Commission, after the close of the hearing with respect to a determination whether to make a temporary sanction permanent. The duration of an order may be extended at any time with the consent of the persons named in the order. The Commission may at any time, by order, without notice or opportunity to be heard, extend the duration of an order; provided, that, if made without respondents' consent, reasons for such extension shall be stated in the order. (Rule 45 (a), (b)).

Transcripts

Transcripts of private hearings may be purchased by parties at prescribed rates. (Rule 33(d)).

Witness Fees

Witnesses summoned before the Commission and witnesses whose depositions are taken shall be paid the same fees and mileage paid to witnesses in the United States Courts. Witness fees and mileage shall be paid by the party at whose instance the witnesses appear. (Rule 19(e)).

III. Initial Regulatory Flexibility Analysis

This initial regulatory flexibility analysis, which has been prepared in accordance with section 3(a) of the Regulatory Flexibility Act, 5 U.S.C. 603(a), relates to the Securities and Exchange Commission's proposed Rules of Practice (the "proposed Rules") which would replace the current Rules of Practice (the "Rules" or the "existing Rules"), 17 CFR part 201, subpart A (17 CFR 201.1–29 (1993)). The Rules govern proceedings, excluding investigations

and rulemaking, before the Commission under the Securities Act of 1933 ("Securities Act"), the Securities Exchange Act of 1934 ("Exchange Act"), the Public Utility Holding Company Act ("PUHCA") of 1935, the Trust Indenture Act ("Trust Indenture Act") of 1939, the Investment Company Act ("Investment Company Act") of 1940 and the Investment Advisers Act ("Advisers Act") of 1940.

A. Reasons for the Proposed Action

In February 1993, the Task Force on Administrative Proceedings issued its final Report in which it recommended a comprehensive revision to the Commission's Rules of Practice.[3] The Rules, first adopted in 1935, have not been comprehensively revised by the Commission since 1960. Although the Commission has subsequently amended the Rules, many important developments have occurred in the interim which merit this comprehensive revision.

The Commission is proposing to revise its Rules of Practice in order to accomplish a number of objectives: (1) To improve the organization, clarity and internal consistency of the Rules; (2) to increase efficiency in the administrative process; (3) to promote transparency—insuring that the Rules accurately reflect Commission practice; and (4) to comply with the statutory requirement that the Commission "establish regulations providing for the expeditious conduct of hearings and rendering of decisions" in cease-and-desist proceedings under the federal securities laws. 15 U.S.C. 78w(d).

Organization, Clarity and Internal Consistency

To improve the organization, clarity and internal consistency of the Rules, the Commission proposes a number of changes. First, as an organizational matter, the Commission has decided to reorder the Rules so that they follow, as closely as possible, the chronological flow of events from service and filing of papers to institution of a hearing before a hearing officer to review by the Commission. Second, rules regarding temporary sanctions, such as a temporary suspension of a registered entity, a suspension pursuant to Exchange Act section 12(k)(1)(A) or a temporary cease-and-desist order, appear separately from those rules applicable in all proceedings. Third, rules regarding disgorgement and penalty payments are also separated out from general procedural rules and appear after the temporary sanction rules. Finally, rules related to the review of self-regulatory organization determinations, currently found in the Exchange Act rules, have been relocated to the Rules of Practice.

The proposed Rules also contain an "unofficial timetable" outlining many of the significant steps in the administrative process and indicating the time period for each step.[4] Organized alphabetically, the timetable also furnishes securities practitioners and pro se litigants alike with a quick entry point into the specific provisions of the Rules as well as cross-references to related provisions. Two cross-reference tables have been provided to help identify the location of the existing Rules within the proposed Rules and vice versa.

Efficiency

A number of rule changes will increase the efficiency of the administrative process. Existing Rule 11(e), for example, states that "an application or motion which requires a ruling which would dispose of the proceeding in whole or in part shall be made to the hearing officer *after the conclusion of the division's case or after the conclusion of the hearing.*" (emphasis added) This rule may require respondents and the Commission to go through "the time and expense of a hearing on issues where prehearing procedures permit agreement as to the facts, and where no hearing is necessary." *Report of the Task Force*, at 174. Because a hearing officer may obtain additional or different information than was available to the Commission when it instituted the proceedings, certain issues may be resolvable at an earlier stage.

Another example of a rule change designed to improve efficiency can be found in proposed Rule 19(c) concerning subpoenas. Under existing Rule 14(b)(1), subpoenas are returnable only at the time and place of hearing. Although parties often agree to exchange documents in advance, when the Rule is adhered to hearings may be delayed while each side reviews the other side's document production and arranges for copies to be introduced into evidence. Proposed Rule 19(c)(1) permits subpoenas *duces tecum* to be returnable in advance of the hearing.

Transparency

Although a number of minor changes have been proposed to improve the Rules' transparency, Proposed Rule 20, a completely new rule, is the most prominent rule specifically designed to attain this goal. Proposed Rule 20 codifies the practice, in most Enforcement proceedings, to voluntarily turn over to respondents relevant investigative documents prior to the commencement of a hearing. As the Task Force noted in its report, notwithstanding the fact that the staff is not required to do so under the current Rules, many proceedings involve such document turn over because the some staff believes that doing so is appropriate under the Commission's obligations under existing Rule 11–1. Additionally, some staff members believe "that the practice promotes a fairer, more efficient hearing." Task Force Report at 191. In addition, Proposed Rule 20 will ensure that the scope of production of relevant investigative documents, which varies significantly in different offices, will be uniform.

Compliance With Statutory Requirements

The Commission is proposing new Rules 38 through 45 in order to comply with the statutory requirement that the Commission "establish regulations providing for the expeditious conduct of hearings and rendering of decisions" in cease-and-desist proceedings under the federal securities laws. 15 U.S.C. 78w(d).

B. Legal Basis

The proposed Rules would be promulgated pursuant to the Commission's authority to adopt rules and regulations as may be necessary or appropriate to implement the provisions of the federal securities laws. See section 19 of the Securities Act, 15 U.S.C. 77s; section 23 of the Exchange Act, 15 U.S.C. 78w; section 20 of the PUHCA, 15 U.S.C. 79t; section 319 of the Trust Indenture Act, 15 U.S.C. 77sss; sections 38 and 40 of the Investment Company Act, 15 U.S.C. 80a–37 and 80a–39; and section 211 of the Investment Advisers Act, 15 U.S.C. 80b–11. Rules 38 through 45 governing the issuance of temporary cease-and-desist orders would also be promulgated pursuant to section 23(d) of the Exchange Act, 15 U.S.C. 78w(d).

C. Small Businesses and Entities Subject to the Rules

The proposed Rules would affect all parties appearing in an administrative proceeding before the Commission or a

[3] "Fair and Efficient Administrative Proceedings," the Report of the Task Force on Administrative Proceedings of the U.S. Securities and Exchange Commission (Feb. 1993) (hereafter Task Force Report).

[4] The Commission or the hearing officer, for good cause shown, may extend or shorten any time limits for any filing and may postpone or adjourn any hearing.

hearing officer. Neither the existing Rules of Practice nor the proposed Rules are specifically designed to effect small entities or businesses. With the exception of the rules governing temporary cease-and-desist orders, the Commission has no basis to determine the number of small businesses which would be making use of, or be subject to, the proposed Rules.[5]

The temporary cease-and-desist order rules are applicable only to a broker, dealer, investment company, investment advisor, transfer agent, municipal securities dealer, government securities broker, government securities dealer, or a respondent who is, or was, at the time of the alleged misconduct, an associated person of, or a person seeking to become associated with one of the foregoing. See, e.g., 15 U.S.C. 78u–3(c)(2). The federal securities laws provide definitions for when one of these entities is considered a "small business" or "small entity" subject to the Regulatory Flexibility Act.

When used with reference to a broker or dealer, "small business" means that the broker or dealer had total capital of less than $500,000 on the date in the prior fiscal year as of which audited financial statements were prepared pursuant to 17 CFR 240.17a–5(d), or if not required to file such statements, on the last business day of the preceding fiscal year, and is not affiliated with any person that is not a small business.[6]

According to the Office of Economic Analysis, as of December 30, 1992, there were 5,783 broker-dealers that met the definition of "small business."

For purposes of the Investment Company Act, a "small business" is an investment company "with net assets of $50 million or less at the end of its most recent fiscal year." 17 CFR 270.0–10. According to the Division of Investment Management, as of April 30, 1993, of the approximately 4,100 registered small investment companies, approximately 1,200 met the definition of "small business."

For purposes of the Investment Advisers Act, a "small business" is an investment adviser who:

(1) Manages assets with a total value of $50 million or less, in discretionary or non-discretionary accounts, as of the end of its most recent fiscal year and does not render other advisory services;[7] or (2) solely, or in addition to managing assets of $50 million or less, renders other advisory services, and the assets related to its advisory business do not exceed in value $50,000 as of the end of its most recent fiscal year.[8]

According to the Division of Investment Management, as of April 30, 1993, of the approximately 18,400 investment advisers registered with the Commission, approximately 16,200 met the definition of "small business." Of the 16,200 small advisers, approximately 7,200 have discretionary or non-discretionary accounts under management.

When used the term "small business" refers to a transfer agent, the transfer agent must have:

(1) Received less than 500 items for transfer and less than 500 items for processing during the proceeding six months (or in the same time it has been in business, if shorter); (2) maintained master shareholder files that in the aggregate contained less than 1,000 shareholder accounts or was the named transfer agent for less than 1,000 shareholder accounts at all times during the preceding fiscal year (or in the same time it has been in business, if shorter); and (3) is not affiliated with any person (other than a natural person) that is not a small business or small organization * * *.[9]

According to the division of Market Regulation, there are approximately 1800 transfer agents of which 1000 would meet the definition for "small business."

D. Overlapping or Conflicting Federal Regulations

The proposed Rules of Procedure and their accompanying additional changes would not overlap or conflict with any federal regulations.

E. Significant Alternatives

Pursuant to section 3(c) of the Regulatory Flexibility Act, 5 U.S.C. 603(c), the following types of alternatives were considered:

(1) The establishment of differing compliance or reporting requirements or timetables that take into account the resources available to small entities;

(2) The clarification, consolidation, or simplification of compliance and reporting requirements under the rules for such small entities;

(3) The use of performance rather than design standards; and

(4) An exemption from coverage of the rules, or any part thereof, for such small entities.

The Commission has designed its proposed Rules of Practice to accommodate *pro se* litigants and other small entity participants. The Commission considered as a significant alternative to the Proposed Rules different or simplified timetables for small entities or *pro se* litigants. Such timetables would have included longer periods for the filing of respondent answers, motions, objections, petitions for review or briefs to the Commission. Such alternatives, however, based solely on the size of the respondent and no other criteria, would not be consistent with the Commission's program for the fair and efficient administration of justice under the Rules of Practice. Similarly, exemption from the proposed Rules, or any portion thereof, was considered inconsistent with the Commission's role in administering and enforcing the federal securities laws. Finally, adoption of performance standards rather than design standards would not be consistent with the goals of the federal securities laws as they relate to investor protection and the efficient administration of justice.

F. Solicitation of Comments

The Commission encourages the submission of written comments with respect to any aspect of this initial regulatory flexibility analysis. Such comments will be considered in the preparation of the final regulatory flexibility analysis. Persons wishing to make written comments should submit them to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Comment letters should refer to File No. S7–40–92. All comments received will be available for public inspection and copying at the Commission's Public Reference Room at the same address.

IV. Statutory Basis for Rules

These amendments to the Rules of Practice and related rules are being proposed pursuant to: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78*o*(d), 78*o*–3, 78s, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12. Section 201.36 is also issued under 28 U.S.C. 2112(a). Sections 201.131 to 201.160 are also issued under

[5] For purposes of the Regulatory Flexibility Act, the term "small business" is defined by Rule 157 of the Securities Act, 17 CFR 230.157, as "an issuer whose total assets on the last day of its most recent fiscal year were $5,000,000 or less and that is engaged or proposing to engage in" a public offering of securities not exceeding $5,000,000. (The Trust Indenture Act Rule 0–7 contains an identical definition of small business. 17 CFR 260.0–7). If an investment company is an issuer for purposes of the Securities Act, "small business" means "an investment company with net assets of $50 million or less at the end of its most recent fiscal year." 17 CFR 230.157(b) and 240.0–10(b).

[6] 17 CFR 240.0–10(c).

[7] Other advisory services are those services referred to in form ADV, Part II, Item 1A (3)–(9). 17 CFR 275.0–7(b).

[8] 17 CFR 275.0–7.

[9] 17 CFR 240.0–10(h).

5 U.S.C. 504(c)(1). Sections 201.261 to 201.268 are also issued under 15 U.S.C. 78u–1.

List of Subjects in 17 CFR Parts 201, 202, 229, and 240

Accountants, Administrative practice and procedure, Brokers, Insider trading—bounty payments, Cease-and-desist orders, Confidential business information, Confidential treatment requests, Disgorgement payments, Equal Access to Justice Act, Fraud, Lawyers, Penalty payments, Reporting and recordkeeping requirements, Securities, Self-regulatory organizations, Temporary cease-and-desist orders, Temporary suspension of a registered entity.

Text of the Proposed Rules of Practice

For the reasons set out in the preamble, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 201—RULES OF PRACTICE

1. The authority citation for part 201 is removed.

Subpart C—Procedures Pertaining to the Payment of Bounties Pursuant to Subsection 21A(e) of the Securities Exchange Act of 1934

2. The authority citation for Subpart C of part 201 is revised to read as follows:

Authority: 15 U.S.C. 78u–1 and 78w.

§§ 201.61–201.68 [Redesignated as §§ 201.261–201.268]

3. Sections 201.61 through 201.68 are redesignated as §§ 201.261 through 201.268.

§ 201.264 [Amended]

4. In newly redesignated § 201.264, the reference to "Rule 65 of this subpart" is corrected to read "§ 201.265".

Subpart B—Regulations Pertaining to the Equal Access to Justice Act

5. The authority section for Subpart B of part 201 is revised to read as follows:

Authority: 15 U.S.C. 77s, 78w, 78x, 79t, 77sss, 80a–37 and 80b–11; 5 U.S.C. 504(c)(1).

§§ 201.31–201.60 [Redesignated as §§ 201.131–201.160]

6. Sections 201.31 through 201.60 are redesignated as §§ 201.131 through 201.160.

§ 201.132 [Amended]

7. In newly redesignated § 201.132: the reference to "§ 201.33" is corrected to read "§ 201.133".

§ 201.133 [Amended]

8. In newly redesignated § 201.133: the reference in paragraph (a) to "17 CFR 201.60" is corrected to read "17 CFR 201.160".

§ 201.142 [Amended]

9. In newly redesignated § 201.142: the references to "§ 201.34(f)" in paragraph (a) and "201.25" in paragraph (b) are corrected to read "§ 201.134(f)" and "201.33" respectively.

§ 201.152 [Amended]

10. In newly redesignated 201.152: the reference in paragraph (c) to "§ 201.55" is corrected to read "§ 201.155".

§ 201.153 [Amended]

11. In newly redesignated § 201.153: the reference to "§ 201.55" is corrected to read "§ 201.155".

§ 201.154 [Amended]

12. In newly redesignated § 201.154: the reference to "§ 201.8" is corrected to read "§ 201.11".

§ 201.157 [Amended]

13. In newly redesignated § 201.157: the reference to "§ 201.17" is corrected to read "§ 201.26 and § 201.27".

14. Subpart A of part 201 is revised to read as follows:

Subpart A—Rules of Practice

Sec.

201.1 Scope, Rules of Construction and Definitions.
201.2 Appearance and Practice Before the Commission.
201.3 Sanctions.
201.4 Authority of Hearing Officer.
201.5 Service and Filing of Papers.
201.6 Computation of Time.
201.7 Business Hours.
201.8 Notice of Proceedings and Hearings.
201.9 Answers; Defaults.
201.10 Signature; Requirement and Effect Generally.
201.11 Settlements.
201.12 Prehearing Conferences; Submissions; Specification of Procedures.
201.13 Parties, Limited Participants and Amicus Curiae.
201.14 Consolidation.
201.15 Hearings.
201.16 Motions; Objections to Evidence; Exceptions to Rulings; Stays.
201.17 Extensions of Time and Adjournments.
201.18 Interlocutory Review.
201.19 Evidence; Subpoenas.
201.20 Production of Relevant Investigative Documents in Enforcement Proceedings.
201.21 Production of Witnesses' Statements in Enforcement Proceedings.
201.22 Depositions Upon Oral Examination.
201.23 Depositions Upon Written Questions.
201.24 Content, Effect and Finality of Initial Decision.
201.25 Proposed Findings, Conclusions and Supporting Briefs Filed with the Hearing Officer.
201.26 Review by the Commission of Initial Decisions by Hearing Officers.
201.27 Briefs to the Commission.
201.28 Hearing Before the Commission; Leave to Adduce Additional Evidence; Petitions for Rehearing.
201.29 Record Before the Commission; Basis for Determinations; Contents; Certification.
201.30 Review by the Commission of Determinations at a Delegated Level.
201.31 Filing Formalities.
201.32 Orders, Rulings and Decisions.
201.33 Applications for Confidential Treatment of Certain Matters; Transcripts of Private Hearings.
201.34 Adjudications Not Required to be Determined on the Record After Notice and Opportunity for Hearing.
201.35 Applications by Barred Individuals for Consent to Associate with Registered Brokers, Dealers, Municipal Securities Dealers, Government Securities Brokers, Government Securities Dealers, Investment Advisers, Investment Companies or Transfer Agents.
201.36 Receipt of Petitions For Review Pursuant to 28 U.S.C. § 2112(a)(1).
201.37 Issuance, Amendment and Repeal of Rules of General Application.

Rules Relating to Temporary Sanctions

201.38 Expedited Consideration of Proceedings.
201.39 Applications for a Temporary Suspension of a Registered Entity or for a Temporary Cease-and-Desist Order.
201.40 Notice and Opportunity to be Heard on an Application for a Temporary Sanction.
201.41 Preparation and Review of an Initial Decision Whether to Impose a Temporary Sanction.
201.42 Issuance of a Temporary Cease-and-Desist Order After Notice and Opportunity for Hearing.
201.43 *Ex Parte* Issuance of a Temporary Cease-and-Desist Order.
201.44 Whether a Temporary Sanction Should be Made Permanent: Provisions Relating to an Initial Decision.
201.45 Duration of a Temporary Suspension of a Registered Entity or a Temporary Cease-and-Desist Order.
201.46 Summary Suspensions Pursuant to Securities Exchange Act Section 12(k)(1)(A).

Rules Relating to Disgorgement and Penalty Payments

201.47 Interest on Sums Disgorged.
201.48 Prompt Payment of Disgorgement and Penalties.
201.49 Submission of a Plan of Disgorgement.
201.50 Contents of Plan of Disgorgement; Provisions for Payment.
201.51 Notice of Proposed Plan of Disgorgement and Opportunity for Comment by Non-Parties.
201.52 Order Approving, Modifying or Disapproving a Plan of Disgorgement.

201.53 Administration of a Plan of Disgorgement.
201.54 Right to Challenge an Order of Disgorgement.
201.55 Inability to Pay Disgorgement or Penalties.

Form

201.55f Financial Information Disclosure Statement Form.

Rules Related to Review of Self-Regulatory Organization Determinations

201.56 Applications for Commission Review of Determinations by Self-Regulatory Organizations, Pursuant to Securities Exchange Act Section 19(d)(2).
201.57 Review by the Commission on Its Own Initiative.
201.58 Certification of the Record; Service of the Index.
201.59 Briefs to the Commission; Oral Argument; Leave to Adduce Additional Evidence.
Cross-Reference Table 1: Existing Rules to Proposed Rules
Cross-Reference Table 2: Proposed Rules to Existing Rules

Subpart A—Rules of Practice

Authority: 15 U.S.C. 77f, 77g, 77h, 77h–1, 77j, 77s, 77u, 78c(b), 78d–1, 78d–2, 78*l*, 78m, 78n, 78o(d), 78o–3, 78s, 78u–3, 78v, 78w, 79c, 79s, 79t, 79z–5a, 77sss, 77ttt, 80a–8, 80a–9, 80a–37, 80a–38, 80a–39, 80a–40, 80a–41, 80a–44, 80b–3, 80b–9, 80b–11, and 80b–12 unless otherwise noted.

Section 201.36 is also issued under 28 U.S.C. 2112(a).

Notes to Subpart A (the Rules of Practice)

1. *Numbering:* Generally, the rules of practice follow the chronological flow of events from institution, hearing before a hearing officer, and Commission review. Separate provisions with respect to temporary sanctions (including temporary cease-and-desist proceedings), disgorgement, and review of self-regulatory organization determinations follow the rest of the rules.

2. *Headings:* Each rule and each major section of a rule have descriptive headings which are intended to guide a reader in searching for information on particular requirements.

3. *Topical index including timetable:* A topical index has been provided to assist persons consulting the Rules of Practice. The index is structured alphabetically by subject matter and contains cross-references to rule numbers. The index is provided as a guide only. Its contents are not dispositive and do not form any portion of the rules.

[**Note:** The contents of subpart A, the Rules of Practice, appear above in the **SUPPLEMENTARY INFORMATION** section. The Rules have not been repeated here as a cost and paper saving measure. The tables follow Subpart A.]

Cross-Reference Table 1.—Existing Rules to Proposed Rules

Existing rules (17 CFR 201.1–29)	Proposed rules
1	1.
2(a)–(e)	2.
2(d)	5.
2(e)(3)(i)(*b*)	5.
2(f)	3(a).
2(g)	2(f).
2(h)	5.
3 [Reserved]	None.
4	37.
5	7.
6(a)	8(a).
6(b)	5, 8(b)–(c).
6(c)–(d)	8(d)–(e).
6(e)	3(c), 9(e)–(f).
6(f)	8(f).
7(a)–(e)	9.
7(f)	10.
8(a)	11.
8(b)–(d)	12.
9	13.
10	14.
11(a)–(c)	15(a)–(d).
11(c)–(d)	4.
11(e)	16(a)–(c).
11(f)	15(e).
11–1	21.
12(a)	18(a).
12(b)–(c)	16.
12(d)	9(g).
13	17.
14(a)	19(a).
14(b)(1)	19(c)(1).
14(b)(2)	19(d).
14(b)(3)	5.
14(b)(3)(i)–(iii)	19(c)(4).
14(c)	19(e).
14(d)	19(b).
15(a)–(f)	22(b)–(h).
15(g)	23.
16(a)–(b)	24(a)–(b).
16(c) [Reserved]	None.
16(d)–(f)	25(a)–(c).
16(g)	4.
17(a)	26(a).
17(b)	26(c).
17(c)–(d)	26(e)–(g).
17(e)	27(a).
17(f)	24(c)–(d).
17(g)	26(h).
17(h)	26(b).
18	27(b).
19	44.
20	29.
21(a)–(b), (d)–(f)	28.
21(c)	29.
22(a)	5(e).
22(b) [Reserved]	None.
22(c)	5(f).
22(d)–(g)	31.
22(h)	32(b).
22(i)	None.
22(j)	6(a).
22(k)	6(c), 32(c).
23(a)	5(a).
23(b)	5(b), 6(b).
23(c)	5(c).
23(d)	32(a).
23(e)	36.
24	17 CFR 229.703.
25	33.
26	30.
27	34(b).
28(a)	34(a).
28(b)	34(c).
29	35.
17 CFR 202.8	46.

Cross-Reference Table 2.—Proposed Rules to Existing Rules

Proposed rules	Existing rules (17 CFR 201.1–29)
1	1.
2	2(a)–(e).
2(f)	2(g).
3(a)	2(f).
3(b)	None.
3(c)	6(e).
4	11(c)–(d), 16(g).
5	2(d), 2(e)(3)(i)(*b*), 2(h), 6(b), 14(b)(3).
5(a)	23(a).
5(b)	23(b).
5(c)	23(c).
5(e)	22(a).
5(f)	22(c).
6(a)	22(j).
6(b)	23(b).
6(c)	22(k).
7	5.
8(a)	6(a).
8(b)–(c)	6(b).
8(d)–(e)	6(c)–(d).
8(f)	6(f).
9(a)–(e)	7(a)–(e).
9(f)	6(e).
9(g)	12(d).
10	7(f).
11	8(a).
12	8(b)–(d).
13	9.
14	10.
15(a)–(d)	11(a)–(c).
15(e)	11(f).
16(a)–(d)	11(e),12(b), 12(c).
16(e)	12(c).
17	13.
18(a)	12(a).
18(b)	None.
19(a)	14(a).
19(b)	14(d).
19(c)	14(b)(1).
19(c)(4)	14(b)(3)(i)–(iii).
19(d)	14(b)(2).
19(e)	14(c).
20	None.
21	11–1.
22(a)	None.
22(b)–(c)	15(a).
22(d)–(h)	15(b)–(f).
23	15(g).
24(a)	16(b).
24(b)	16(a).
24(c)–(d)	17(f).

CROSS-REFERENCE TABLE 2.—PROPOSED RULES TO EXISTING RULES—Continued

Proposed rules	Existing rules (17 CFR 201.1–29)
25(a)–(d)	16(d)–(f).
26(a)	17(a).
26(b)	17(h).
26(c)	17(b).
26(d)	None.
26(e)–(g)	17(c)–(d).
26(h)	17(g).
27(a)	17(e).
27(b)	18.
28	21(a)–(b), (d)–(f).
29	20, 21(c).
30	26.
31	22(d)–(g).
32(a)	23(d).
32(b)	22(h).
32(c)	22(k).
33	25.
34(a)	28(a).
34(b)	27.
34(c)	28(b).
35	29.
36	23(e).
37	4.
38–43	None.
44	19.
45	None.
46	17 CFR 202.8.
47–55	None.
56	17 CFR 240.19d–3(b).
57	None.
58	17 CFR 240.19d–3(b).
59	17 CFR 240.19d–3(c)–(g).
17 CFR 229.703	24.

PART 202—INFORMAL AND OTHER PROCEDURES

15–16. The general authority citation for part 202 continues to read as follows:

Authority: 15 U.S.C. 77s, 77t, 78d–1, 78u, 78w, 78ll(d), 79r, 79t, 77sss, 77uuu, 80a–37, 80a–41, 80b–9, and 80b–11, unless otherwise noted.

* * * * *

§ 202.8 [Removed and Reserved]

17. Section 202.8 is removed and reserved:

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The general authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79(e), 79(n), 79(t), 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

2. Section 229.703 is added to read as follows:

§ 229.703 (Item 703) Incorporation by Reference.

Where rules, regulations, or instructions to forms of the Commission permit incorporation by reference, a document may be so incorporated by reference to the specific document and to the prior filing or submission in which such document was physically filed or submitted. Except where a registration or issuer is expressly required to incorporate a document or documents by reference, reference may not be made to any document which incorporate another document by reference if the pertinent portion of the document containing the information or financial statements to be incorporated by reference includes an incorporation by reference to another document. No document on file with the Commission for more than five years may be incorporated by reference except:

(a) Documents contained in registration statements which may be incorporated by reference as long as the registrant has a reporting requirement with the Commission; and

(b) Documents that the registration specifically identifies by physical location and by SEC file number reference, provided such materials have not been disposed of by the Commission pursuant to its Records Control Schedule (17 CFR 200.80f).

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

18. The authority citation for part 240 is revised to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78*o*–3, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

19. Sections 240.19d–2 and 19d–3 are revised to read as follows:

§ 240.19d–2 Applications for stays of disciplinary sanctions or summary suspensions by a self-regulatory organization.

If any self-regulatory organization imposes any final disciplinary sanction pursuant to section 6(b)(6), 15A(b)(7) or 17A(b)(3)(G) of the Act (15 U.S.C. 78f(b)(6), 78*o*–3(b)(7) or 78q–1(b)(3)(G)), or summarily suspends or limits or prohibits access pursuant to section 6(d)(3), 15A(h)(3) or 17A(b)(5)(C) of the Act (15 U.S.C. 78f(d)(3), 78*o*–3(h)(3) or 78q–1(b)(5)(C)), any person aggrieved thereby for which the Commission is the appropriate regulatory agency may file with the Secretary, a written motion for a stay of imposition of such action pursuant to Rule 16 of the Commission's Rules of Practice, 17 CFR 201.16.

§ 240.19d–3 Applications for review of final disciplinary sanctions, denials of membership, participation or association, or prohibitions or limitations of access to services imposed by self-regulatory organizations.

Applications to the Commission for review of any final disciplinary sanction, denial or conditioning of membership, association or participation, or prohibition or limitation with respect to access to services offered by a self-regulatory organization or a member thereof by any such organization shall be made pursuant to Rule 56 of the Commission's Rules of Practice, 17 CFR 201.56.

Dated: November 5, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

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H.R. 175/P.L. 103–142

To amend title 18, United States Code, to authorize the Federal Bureau of Investigation to obtain certain telephone subscriber information. (Nov. 17, 1993; 107 Stat. 1491; 2 pages)

H.R. 1345/P.L. 103–143

To designate the Federal building located at 280 South First Street in San Jose, California, as the "Robert F. Peckham United States Courthouse and Federal Building". (Nov. 17, 1993; 107 Stat. 1493; 1 page)

S. 836/P.L. 103–144

El Camino Real de Tierra Adentro Study Act of 1993 (Nov. 17, 1993; 107 Stat. 1494; 2 pages)

S. 983/P.L. 103–145

El Camino Real Para Los Texas Study Act of 1993 (Nov. 17, 1993; 107 Stat. 1496; 2 pages)

S.J. Res. 131/P.L. 103–146

Designating the week beginning November 14, 1993, and the week beginning November 13, 1994, each as "Geography Awareness Week". (Nov. 17, 1993; 107 Stat. 1498; 2 pages)

S.J. Res. 139/P.L. 103–147

To designate the third Sunday in November of 1993 as "National Children's Day". (Nov. 17, 1993; 107 Stat. 1500; 2 pages)

S.J. Res. 142/P.L. 103–148

Designating the week beginning November 7, 1993, and the week beginning November 6, 1994, each as "National Women Veterans Recognition Week". (Nov. 17, 1993; 107 Stat. 1502; 1 page)

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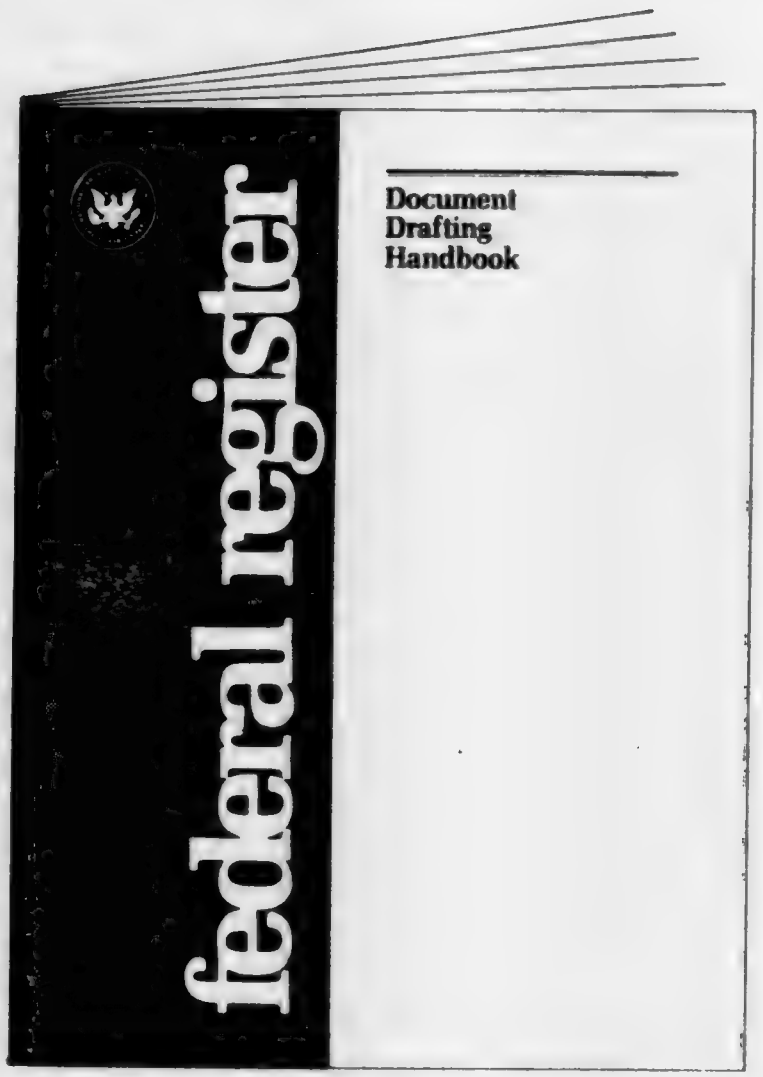

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Presidential Documents

Title 3—

The President

Proclamation 6626 of November 18, 1993

National Children's Day, 1993

By the President of the United States of America

A Proclamation

America's children are at once our most precious national resource and our most weighty responsibility. They represent our future hopes and aspirations. By empowering and supporting America's families today, we can make a more secure world for all Americans tomorrow.

Millions of America's children grow up in stable and loving families. At the same time, an alarmingly high number of our youth do not have the benefit of such security; many grow up hungry, neglected, or abused. Far too many reach adolescence having experienced painful episodes of physical, mental, or emotional mistreatment that have long-lasting effects. For them, the future can be clouded with doubt or despair.

We all must take it upon ourselves to address these problems and to guarantee that children of all families will be given new hope for a better life. We must get back to "being our neighbor's keeper" when it comes to raising children. The plight of our neighborhoods and communities must be rectified and replaced with a positive environment in which to grow and live in safety. Today's children are frightened and worried. We must close the opportunity gap and the responsibility gap because all of the children of America deserve an equal chance.

Parents must make an all-out effort to provide an accepting, caring, and loving atmosphere for their children. Grandparents also have an important role to play, as do other members of the extended family.

This is an issue that all Americans can and should support and promote. By becoming directly involved and assuming personal responsibility, we can strengthen our schools, churches, and communities in ways that will reinforce and enhance the importance of values that the family structure can provide. This is all the more critical as the world becomes an increasingly complex and interrelated place. We must interact in the future with any number of new and emerging nations. In order to do this successfully, we will need the talent, dedication, and best efforts of all of our youth.

Today's children will also be tomorrow's parents. To preserve the American Dream, the fiber of our Nation must be strengthened. By instilling a common purpose and assuring ourselves that children are receiving the best and most comprehensive care possible, we can face the awesome challenges that lie ahead. We can start at the family level to bring our country together, solve problems, and make progress.

So I ask all Americans to reaffirm this Nation's commitment to its children. I appeal specifically to parents to spend quality time each day with their children, to listen to their concerns and dreams, and to guide them well as they make the transition into adolescence and adulthood. We have a right and an obligation to make sure our children can rise as far and as high as their talents and determination will let them.

The Congress, by Senate Joint Resolution 139, has designated the third Sunday in November as "National Children's Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim November 21, 1993, as National Children's Day. On this day and every day, I urge all Americans to express their love, advocacy, and appreciation for their children and all children of the world. I invite Federal officials, State and local governments, and particularly the American family, to join together in observing this day with appropriate ceremonies and activities to honor our Nation's children.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-28943
Filed 11-19-93; 4:27 pm]
Billing code 3195-01-P

Presidential Documents

Proclamation 6627 of November 18, 1993

National Military Families Recognition Day, 1993

By the President of the United States of America

A Proclamation

Military families are diverse, strong, resourceful, and patriotic. The men and women who serve our country understand that their families provide essential support and make enormous sacrifices every day. We, as a Nation, must also recognize the unselfish contributions of our military families wherever they may be around the world.

As we go about the routine business of our lives, it is easy to forget the daily hardships, inconveniences, separations, and disruptions that our service men and women and their families endure to protect America. These dedicated individuals will affirm that it is their families who invariably sustain them and warm their hearts. In every city and State and in many countries worldwide, service men and women proudly note that the highlight of their day is that special smile, telephone call, or letter they receive. The military family is the motivational force that continually elevates the spirit of the service member when life's joys and sorrows need to be shared.

The Department of Defense has long recognized that the family unit is an important factor in the overall readiness and well-being of the members of the Armed Forces. Indeed, military families make extraordinary contributions to the entire Nation through their efforts to support and encourage their loved ones.

The Congress, by Senate Joint Resolution 115, has designated November 22, 1993, as "National Military Families Recognition Day" and has authorized and requested the President to issue a proclamation in observance of this day.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim November 22, 1993, as National Military Families Recognition Day. I call upon all Americans to join in honoring military families throughout the world. Finally, I ask Federal, State, and local officials and private organizations to observe this day with appropriate ceremonies and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this eighteenth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-28944
Filed 11-19-93; 4:30 pm]
Billing code 3195-01-P

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Federal Register
Vol. 58, No. 224
Tuesday, November 23, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL RESERVE SYSTEM

12 CFR Part 204

[Regulation D; Docket No. R–0816]

Reserve Requirements of Depository Institutions; Reserve Requirement Ratios

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Final rule.

SUMMARY: The Board is amending Regulation D, Reserve Requirements of Depository Institutions, to increase the amount of transaction accounts subject to a reserve requirement ratio of three percent, as required by section 19(b)(2)(C) of the Federal Reserve Act, from $46.8 million to $51.9 million of net transaction accounts. This adjustment is known as the low reserve tranche adjustment. The Board has increased from $3.8 million to $4.0 million the amount of reservable liabilities of each depository institution that is subject to a reserve requirement of zero percent. This action is required by section 19(b)(11)(B) of the Federal Reserve Act, and the adjustment is known as the reservable liabilities exemption adjustment. The Board is also leaving unchanged at $44.8 million the deposit cutoff level that is used in conjunction with the reservable liabilities exemption amount to determine the frequency of deposit reporting.

DATES: *Effective Date:* December 14, 1993.

Compliance Dates: For depository institutions that report weekly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective on the reserve computation period that begins Tuesday, December 21, 1993, and on the corresponding reserve maintenance period that begins Thursday, December 23, 1993. For institutions that report quarterly, the low reserve tranche adjustment and the reservable liabilities exemption adjustment will be effective on the reserve computation period that begins Tuesday, December 14, 1993, and on the corresponding reserve maintenance period that begins Thursday, January 13, 1994. For all depository institutions, the deposit cutoff level will be used to screen institutions in the second quarter of 1994 to determine the reporting frequency for the twelve month period that begins in September 1994.

FOR FURTHER INFORMATION CONTACT: Patrick J. McDivitt, Attorney (202/452–3818), Legal Division, or June O'Brien, Economist (202/452–3790), Division of Monetary Affairs, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202/452–3544), Board of Governors of the Federal Reserve System, 20th and C Streets, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION: Section 19(b)(2) of the Federal Reserve Act (12 U.S.C. 461(b)(2)) requires each depository institution to maintain reserves against its transaction accounts and nonpersonal time deposits, as prescribed by Board regulations. The initial reserve requirements imposed under section 19(b)(2) were set at three percent for net transaction accounts of $25 million or less and at 12 percent on net transaction accounts above $25 million for each depository institution. Effective April 2, 1992, the Board lowered the required reserve ratio applicable to transaction account balances exceeding the low reserve tranche from 12 percent to 10 percent. Section 19(b)(2) also provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the total dollar amount of the transaction account tranche against which reserves must be maintained at a ratio of three percent. The adjustment in the tranche is to be 80 percent of the percentage change in net transaction accounts at all depository institutions over the one-year period that ends on the June 30 prior to the adjustment.

Currently, the low reserve tranche on net transaction accounts is $46.8 million. The increase in the net transaction accounts of all depository institutions from June 30, 1992, to June 30, 1993 was 13.5 percent (from $695.4 billion to $789.3 billion). In accordance with section 19(b)(2), the Board is amending Regulation D (12 CFR part 204) to increase the low reserve tranche for transaction account for 1994 by $5.1 million to $51.9 million.

Section 19(b)(11)(A) of the Federal Reserve Act (12 U.S.C. 461(b)(11)(B)) provides that $2 million of reservable liabilities[1] of each depository institution shall be subject to a zero percent reserve requirement. Section 19(b)(11)(A) permits each depository institution, in accordance with the rules and regulations of the Board, to designate the reservable liabilities to which this reserve requirement exemption is to apply. However, if net transaction accounts are designated, only those that would otherwise be subject to a three percent reserve requirement (*i.e.*, net transaction accounts within the low reserve requirement tranche) may be so designated.

Section 19(b)(11)(B) of the Federal Reserve Act provides that, before December 31 of each year, the Board shall issue a regulation adjusting for the next calendar year the dollar amount of reservable liabilities exempt from reserve requirements. Unlike the adjustment for net transaction accounts, which adjustment can result in a decrease as well as an increase, the change in the exemption amount is to be made only if the total reservable liabilities held at all depository institutions increases from one year to the next. The percentage increase in the exemption is to be 80 percent of the increase in total reservable liabilities of all depository institutions as of the year ending June 30. Total reservable liabilities of all depository institutions from June 30, 1992, to June 30, 1993, increased by 7.4 percent (from $1,390.6 billion to $1,493.8 billion). Under section 19(b)(11)(B), the reservable liabilities exemption amount will be increased by $0.2 million. Consequently, the reservable liabilities exemption amount for 1994 will increase to $4.0 million.

The effect of the application of section 19(b) of the Federal Reserve Act to the

[1] Reservable liabilities include transaction accounts, nonpersonal time deposits, and Eurocurrency liabilities as defined in section 19(b)(5) of the Federal Reserve Act. The reserve ratio on nonpersonal time deposits and Eurocurrency liabilities is zero percent.

change in the total net transaction accounts and the change in the total reservable liabilities from June 30, 1992 to June 30, 1993 is to increase the low reserve tranche to $51.9 million, to apply a zero percent reserve requirement on the first $4.0 million of transaction accounts, and to apply a three percent reserve requirement on the remainder of the low reserve tranche.

The tranche adjustment and the reservable liabilities exemption adjustment for weekly reporting institutions will be effective on the reserve computation period beginning Tuesday, December 21, 1993, and on the corresponding reserve maintenance period beginning Thursday, December 23, 1993. For institutions that report quarterly, the tranche adjustment and the reservable liabilities exemption adjustment will be effective on the computation period beginning Tuesday, December 14, 1993, and on the reserve maintenance period beginning Thursday, January 13, 1994. In addition, all institutions currently submitting Form FR 2900 must continue to submit reports to the Federal Reserve under current reporting procedures.

In order to reduce the reporting burden for small institutions, the Board has established a deposit reporting cutoff level to determine deposit reporting frequency. Institutions are screened during the second quarter of each year to determine reporting frequency beginning the following September. In July of 1988 the Board set the cutoff level at $40 million plus an amount equal to 80 percent of the annual rate of increase of total deposits.[2] The current reporting cutoff level is $44.8 million.

From June 30, 1992, to June 30, 1993, total deposits fell 0.02 percent, from $3,794.2 billion to $3,793.5 billion. This results in no change in the deposit cutoff level that determines the frequency of reporting. Consequently, the deposit cutoff level will remain at $44.8 million. Based on the indexation of the reservable liabilities exemption, the cutoff level for total deposits above which reports of deposits must be filed will rise from $3.8 million to $4.0 million. Institutions with total deposits below $4.0 million are excused from reporting if their deposits can be estimated from other data sources. The $44.8 million cutoff level for weekly versus quarterly FR 2900 reporting and for quarterly FR 2910q versus annual FR 2910a reporting, and the $4.0 million level threshold for reporting will be used in the second quarter 1994 deposits report screening process, and the adjustments will be made when the new deposit reporting panels are implemented in September 1994.

All U.S. branches and agencies of foreign banks and all Edge and Agreement Corporations, regardless of size, are required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). All other institutions that have reservable liabilities in excess of the exemption level prescribed by section 19(b)(11) of the Federal Reserve Act (known as "nonexempt institutions") and total deposits at least equal to the deposit cutoff level ($44.8 million) are also required to file weekly the Report of Transaction Accounts, Other Deposits and Vault Cash (FR 2900). However, nonexempt institutions with total deposits less than the deposit cutoff level ($44.8 million), may file the FR 2900 quarterly for the twelve month period starting September 1994. Institutions that obtain funds from non-U.S. sources or that have foreign branches or international banking facilities are required to file the Report of Certain Eurocurrency Transactions (FR 2950/2951) at the same frequency as they file the FR 2900.

Institutions with reservable liabilities at or below the exemption level ($4.0 million) (known as "exempt institutions") must file the Quarterly Report of Selected Deposits, Vault Cash, and Reservable Liabilities (FR 2910q) if their total deposits are not below the deposit cutoff level ($44.8 million). Exempt institutions with total deposits less than the deposit cutoff level but more than the exemption amount must file the Annual Report of Total Deposits and Reservable Liabilities (FR 2910a). Institutions that have total deposits less than the exemption amount ($4.0 million) are not required to file deposit reports if their deposits can be estimated from other data sources.

Finally, the Board may require a depository institution to report on a weekly basis, regardless of the cutoff level, if the institution manipulates its total deposits and other reservable liabilities in order to qualify for quarterly reporting. Similarly, any depository institution that reports quarterly may be required to report weekly and to maintain appropriate reserve balances with its Reserve Bank if, during its computation period, it understates its usual reservable liabilities or it overstates the deductions allowed in computing required reserve balances.

[2] "Total deposits" as used in determining the cutoff level includes not only gross transaction deposits, savings accounts, and time deposits, but also reservable obligations of affiliates, ineligible acceptance liabilities, and net Eurocurrency liabilities.

Notice and Public Participation

The provisions of 5 U.S.C. 553(b) relating to notice and public participation have not been followed in connection with the adoption of these amendments because the amendments involve adjustments prescribed by statute and by an interpretative statement reaffirming the Board's policy concerning reporting practices. The amendments also reduce regulatory burdens on depository institutions. Accordingly, the Board finds good cause for determining, and so determines, that notice and public participation are unnecessary and contrary to the public interest.

The provisions of 5 U.S.C. 553(d) relating to notice of the effective date of a rule have not been followed in connection with the adoption of these amendments because the amendments relieve a restriction on depository institutions, and for this reason there is good cause to determine, and the Board so determines, that such notice is not necessary.

Regulatory Flexibility Act Analysis

Pursuant to section 605(b) of the Regulatory Flexibility Act (Pub. L. 96–354, 5 U.S.C. 601 *et seq.*), the Board certifies that the proposed amendments will not have a significant economic impact on a substantial number of small entities. The proposed amendments reduce certain regulatory burdens for all depository institutions, reduce certain burdens for small depository institutions, and have no particular effect on other small entities.

List of Subjects in 12 CFR Part 204

Banks, banking, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board is amending 12 CFR part 204 as follows:

PART 204—RESERVE REQUIREMENTS OF DEPOSITORY INSTITUTIONS (REGULATION D)

1. The authority citation for part 204 is revised to read as follows:

Authority: 12 U.S.C. 248(a), 248(c), 371a, 461, 601, 611, and 3105.

2. In § 204.9 paragraph (a) is revised to read as follows:

§ 204.9 Reserve requirement ratios.

(a)(1) *Reserve percentages.* The following reserve ratios are prescribed for all depository institutions, Edge and Agreement Corporations, and United States branches and agencies of foreign banks:

Category	Reserve requirement
Net transaction accounts:[1]	
$0 to $51.9 million	3 percent of amount.
Over $51.9 million	$1,437,000 plus 10 percent of amount over $51.9 million.
Nonpersonal time deposits.	0 percent.
Eurocurrency liabilities	0 percent.

[1] Dollar amounts do not reflect the adjustment to be made by the next paragraph.

(2) *Exemption from reserve requirements.* Each depository institution, Edge or agreement corporation, and U.S. branch or agency of a foreign bank is subject to a zero percent reserve requirement on an amount of its transaction accounts subject to the low reserve tranche in paragraph (a)(1) of this section not in excess of $4.0 million determined in accordance with § 204.3(a)(3) of this part.

* * * * *

By order of the Board of Governors of the Federal Reserve System, November 17, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-28685 Filed 11-22-93; 8:45 am]

BILLING CODE 6210-01-M

12 CFR Part 215

[Regulation O; Docket No. R-0800]

Loans to Executive Officers, Directors, and Principal Shareholders of Member Banks

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Interim rule.

SUMMARY: The Board is extending through February 18, 1994, an interim provision in Regulation O permitting adequately capitalized small banks to raise their limit on aggregate lending to insiders from 100 percent up to 200 percent of unimpaired capital and surplus. The extension will prevent a lapse in the availability of the interim rule while the Board considers comments about it.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Gordon Miller, Attorney (202/452-2534), Legal Division; William G. Spaniel, Supervisory Financial Analyst (202/452-3469), or Mark Benton, Senior Financial Analyst (202/452-5205), Division of Banking Supervision and Regulation, Board of Governors of the Federal Reserve System. For the hearing impaired only, Telecommunication Device for the Deaf (TDD), Dorothea Thompson (202/452-3544), Board of Governors of the Federal Reserve System, 20th & C Street, NW., Washington, DC 20551.

SUPPLEMENTARY INFORMATION:

Background

Section 22(h) of the Federal Reserve Act (12 U.S.C. 375b), as amended by section 306 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA), imposes an aggregate limit on the amount a bank may lend to its executive officers, directors, and principal shareholders (insiders) and their related interests as a class. In general, the limit is equal to the bank's unimpaired capital and unimpaired surplus. 12 U.S.C. 375b(5); 12 CFR 215.4(d). Section 22(h) also authorizes the Board to set a higher limit for banks with deposits of less than $100 million if the Board determines that the exception is "important to avoid constricting the availability of credit in small communities or to attract directors of such banks." The statute provides that the higher limit for smaller banks may not exceed 200 percent of the bank's unimpaired capital and unimpaired surplus.

Effective May 18, 1992, the Board adopted an interim rule permitting adequately capitalized banks with deposits under $100 million to adopt a higher limit, not to exceed 200 percent of the bank's unimpaired capital and unimpaired surplus. The interim rule was scheduled to expire May 18, 1993. See 57 FR 22420, May 28, 1992. The Board subsequently extended the interim rule for six months, through November 18, 1993, in order to obtain public comments on whether the interim rule should be made permanent, modified, or permitted to expire. See 58 FR 28492, May 14, 1993.

In response to the notice of the extension of the interim rule, the Board received 147 written comments. The large majority of the comments were submitted by small banks subject to the interim rule. The Board also has received comments from state and national banking associations, Federal Reserve Banks, state banking superintendents, bank directors, bank holding companies, and law firms. In addition to written comments, the Board has reviewed the call reports of small banks and received relevant information from other governmental agencies.

The Board is hereby extending the interim rule for three months, through February 18, 1994. The Board finds that it is necessary to extend the interim rule in order to prevent any lapse in its availability while the information described above is considered. For the foregoing reasons, the Board for good cause finds that notice and public comment is impracticable, and that the interim rule should be effective immediately. See 5 U.S.C. 553(b)(B) and 553(d)(3). The effective date of this extension is November 18, 1993. Resolutions adopted by small banks to increase their aggregate lending limits that by their terms expired on May 18, 1993, or will expire on November 18, 1993, will be considered by the Board to remain in effect through February 18, 1994.

Initial Regulatory Flexibility Analysis

The Regulatory Flexibility Act (5 U.S.C. 601-612) requires an agency to publish an initial regulatory flexibility analysis. Two of the requirements of an initial regulatory flexibility analysis (5 U.S.C. 603(b))—a description of the reasons why the action by the agency is being considered and a statement of the objectives of, and legal basis for, the rulemaking—are contained in the supplementary information above.

Another requirement of an initial regulatory flexibility analysis is a description and, where feasible, an estimate of the number of small entities to which the interim rule will apply. The interim rule imposes an additional reporting requirement upon small banks that elect to prepare the board of directors resolution required in order to establish a higher aggregate lending limit for themselves. This resolution, which sets forth the facts and reasoning on which the board of directors bases its action, including the amount of the bank's lending to its insiders as a percentage of the bank's unimpaired capital and unimpaired surplus as of the date of the resolution, must be submitted to the appropriate federal banking agency (as defined in 12 U.S.C. 1813(q)) with a copy to the Board. The rulemaking does not duplicate, overlap, or conflict with other relevant federal rules.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980, the interim rule will be reviewed by the Board under authority delegated by the Office of Management and Budget after consideration of the comments received during the public comment period. 44 U.S.C. 3507; 5 CFR 1320.130. The interim rule applies to any adequately capitalized bank with deposits under $100 million that chooses to adopt a higher aggregate lending limit. As of December 31, 1992, 8,643 banks were potentially subject to the interim rule.

During the 18-month period in which the interim rule has been in effect, 48 banks have chosen to adopt this policy, and it is not expected that this number will change significantly over the next three months. For banks that choose to adopt a higher aggregate lending limit, the burden per respondent is estimated to be 0.75 hours. Therefore, the estimated aggregate burden is not deemed to be significant.

List of Subjects in 12 CFR Part 215

Credit, Penalties, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, the Board amends title 12 of the Code of Federal Regulations, part 215, subpart A, as follows:

PART 215—LOANS TO EXECUTIVE OFFICERS, DIRECTORS, AND PRINCIPAL SHAREHOLDERS OF MEMBER BANKS (REGULATION O)

1. The authority citation for part 215 is revised to read as follows:

Authority: 12 U.S.C. 248(i), 375a, 375b), 1817(k), and 1972(2)(G)(ii).

2. Section 215.4 is amended by removing from paragraph (d)(2) introductory text the phrase "18-month period ending November 18, 1993" and adding in its place the phrase "21-month period ending February 18, 1994."

By order of the Board of Governors of the Federal Reserve System, November 17, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-28686 Filed 11-22-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF COMMERCE

Economic Development Administration

13 CFR Part 301

[Docket No. 930531-3131]

Establishment and Organization; Description of Organization and Information Collection Requirements Under the Paperwork Reduction Act; OMB Control Numbers

AGENCY: Economic Development Administration (EDA), Commerce.

ACTION: Final rule.

SUMMARY: This rule amends regulations relating to EDA's organization description and information collection requirements under the Paperwork Reduction Act. The purpose of these amendments is to make the regulations consistent with the current Departmental Organization Order and assigned OMB Control Numbers.

DATES: Effective date November 23, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph M. Levine, (202) 482-4687, U.S. Department of Commerce, Herbert C. Hoover Building, 14th and Constitution Avenue, NW., Washington, DC 20230.

SUPPLEMENTARY INFORMATION: EDA is amending subpart C, Description of Organization, 13 CFR 301.31(e) by adding the Federated States of Micronesia and the Marshall Islands to the jurisdiction of the Seattle Regional Office; § 301.32 is amended by removing the Executive Secretariat from the Assistant Secretary's direct oversight; § 301.33 is amended by adding to the duties of the Deputy Assistant Secretary (DAS), those of Equal Employment Officer and other civil rights responsibilities, and by removing the Office of Compliance from the DAS' direct oversight.

Section 301.35 is revised to establish and set forth the obligations and duties of the Deputy Assistant Secretary for Program Support, including the direction and supervision of the Budget, Accounting, Information Systems, Executive Secretariat, Operations Review and Analysis, and Compliance Review Divisions, § 301.36 is removed and § 301.37 is renumbered as § 301.36.

Subpart E, 13 CFR 301.70 is revised to list parts of EDA's regulations subject to the Paperwork Reduction Act, and their current OMB control numbers.

This rule is exempt from all requirements of 5 U.S.C. 553 including notice and opportunity to comment and delayed effective date, because it relates to agency management or personnel.

No other law requires that notice and opportunity for comment be given for this rule.

Since a notice and an opportunity for comment are not required to be given for the rule under section 553 of the APA (5. U.S.C. 553) or any other law, under sections 603(a) and 604(a) of the Regulatory Flexibility Act (5 U.S.C. 601–612), no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

This rule does not contain a collection of information for purposes of the Paperwork Reduction Act (Pub. L. 96–511).

This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism Assessment under Executive Order 12612.

List of Subjects in 13 CFR Part 301

Freedom of information, Organization and functions (Government agencies).

For the reasons set out in the preamble, 13 CFR part 301 is amended as set forth below:

PART 301—ESTABLISHMENT AND ORGANIZATION

1. The authority citation for part 301 is revised to read as follows:

Authority: Section 701, Pub. L. 89–136, 79 Stat. 570 (42 U.S.C. 3211); Department of Commerce Organization Order 10–4, as amended (40 FR 56702, as amended).

2. Section 301.31 is amended by revising paragraph (e) to read as follows:

§ 301.31 Economic Development Administration Regional Offices.

* * * * *

(e) *Seattle.* Seattle, Washington. Serving: Alaska, American Samoa, Arizona, California, Guam, Hawaii, Idaho, Nevada, Oregon, Washington, Northern Mariana Islands, Federated States of Micronesia and the Marshall Islands.

* * * * *

3. Section 301.32 is revised to read as follows:

§ 301.32 Assistant Secretary.

The Assistant Secretary for Economic Development directs the programs and is responsible for the conduct of all activities, including overall direction and coordination of the Regional Offices of EDA, subject to the policies and directives prescribed by the Secretary of Commerce.

4. Section 301.33 is revised to read as follows:

§ 301.33 Deputy Assistant Secretary.

(a) The Deputy Assistant Secretary assists the Assistant Secretary in all matters affecting EDA, serves as Equal Employment Opportunity (EEO) Officer, and performs the duties of the Assistant Secretary during the latter's absence. In serving as EEO Officer, the Deputy Assistant Secretary may either delegate the responsibility or directly resolve discrimination complaints in accordance with the provisions of Title VII of the Civil Rights Act, and administer EDA's Affirmative Action Program. Regional Directors report directly to the Deputy Assistant Secretary.

(b) For EDA programs in their regions, Regional Directors process applications for economic development assistance, and monitor and service approved projects.

5. Section 310.35 is revised to read as follows:

§ 301.35 Deputy Assistant Secretary for Program Support.

The Deputy Assistant Secretary for Program Support reports to the Assistant Secretary; serves as Internal Control Coordinator for EDA; is responsible for coordinating and evaluating internal management control systems; provides for the full range of administrative services, unless otherwise provided at Departmental level, for EDA Headquarters, and as required, for the Regional Office; evaluates, reports, and makes recommendations on the optimum use of staff, funds and physical assets by EDA; and serves as liaison with the Assistant Secretary for Administration on administrative support matters. In addition, the Deputy Assistant Secretary directs and supervises the activities of the Budget Division, Accounting Division, Information Systems Division, Executive Secretariat, Operations Review and Analysis Division, and Compliance Review Division.

(a) The Budget Division develops and prepares the annual budget for EDA; is responsible for the total financial program of EDA, and for the fiscal aspects of EDA programs entrusted to other Federal agencies; and reviews and monitors a fiscal control system for both program and administrative expenses consistent with the requirements of the Anti-Deficiency Act, which shall include, but not be restricted to apportionments/reapportionments, allotment of funds, operating budgets, employment limitations, and analyses of reports and proposed actions.

(b) The Accounting Division develops and maintains accounting systems and prepares financial reports for internal and external use, according to the needs of management, the requirements of laws or regulations and established policies; provides accounting support for effective control of all funds administered to present accurately the status of the appropriate funds within the requirements of the Anti-Deficiency Act and as required by the program officials; analyzes financial and operating data to ensure that financial and management policies are being followed; and serves as the liaison with the Office of the Secretary and other Federal agencies in all accounting matters.

(c) The Information Systems Division plans, develops, acquires, and coordinates information resources, including the use of automatic data processing, office automation, and data communications systems and equipment by EDA; provides information resources management services, including the conduct of feasibility studies and development of plans for systems and programs and implementation of such plans; develops and maintains a comprehensive information and data base system to meet specified requirements for administrative, planning, operational, program management, and program evaluation purposes; and provides periodic and special summary reports on current operational trends and performance comparisons to planned goals.

(d) The Executive Secretariat develops and conducts a program for the efficient management of all official records of the Office of the Assistant Secretary for Economic Development; develops and administers a control system for the Assistant Secretary's correspondence and project activity; receives all correspondence addressed to the Office of the Assistant Secretary, all letters from Congressional Offices addressed to staff and all mail addressed to the Economic Development Administration; assigns it to the appropriate office for action; reviews, edits, distributes, and dispatches responses to correspondence, projects, and action memoranda to or from the Assistant Secretary; maintains prompt follow-up of replies to ensure that deadlines are met; and maintains correspondence and policy files, and provides a selective reference service to files as requested by EDA officials.

(e) The Operations, Review and Analysis Division provides technical staff support to the Deputy Assistant Secretary for Program Support in the areas of agencywide program and policy planning, development and evaluation; designs and conducts or manages contracts to study and evaluate how well EDA programs and policies are achieving objectives; develops, coordinates, reviews, and implements new policies and the modification or elimination of existing policies; develops and coordinates a continuous agencywide planning system; coordinates, reviews and evaluates EDA vulnerability assessments of its internal controls to ensure conformance with OMB Circular A–123; prepares the Assistant Secretary's annual statement to the Secretary of Commerce; coordinates, reviews, and prepares the official responses to reports of EDA received from the Office of Inspector General, the General Accounting Office, Congressional staff, Department staff and others, as required; prepares and transmits **Federal Register** notices; coordinates the Agency's Management-By-Objectives; coordinates and reviews preparation of the EDA Annual Report; designs and coordinates a system of periodic evaluations of Headquarters and regional offices; maintains the directives system and manages the OMB information collection activities for EDA; and designs and controls official forms.

(f) The Compliance Review Division develops policies and procedures and implements the provisions of:

(1) Section 702 of PWEDA, the Prevention of Unfair Competition.

(i) Performs preliminary reviews and when necessary conducts complete section 702 studies, prepares a written report on demand, capacity, and existing competitive enterprises in sufficient detail to support a definitive opinion as to the eligibility of the proposed project.

(ii) Prepares special industry studies as requested by program managers on an as needed basis.

(2) Title IV, Section 401 of PWEDA—Area Eligibility and Designation and Title IV, Section 402 of PWEDA—Annual Review of Area Eligibility.

(i) Determines initial area eligibility and prepares appropriate notices to the affected communities and interested public officials.

(ii) Recommends areas for designation upon completion of all Overall Economic Development Plan (OEDP) requirements.

(iii) Conducts the annual review of area eligibility and identifies areas no longer statistically eligible for designation.

(3) Environmental Requirements on EDA Assisted Projects.

(i) Coordinates all of EDA's environmental activities.

(ii) Develops, as appropriate, Agency procedures for complying with environmental legislation, regulations, and executive orders.

(iii) Serves as EDA's official under the provisions of the National Environmental Policy Act of 1969 (NEPA), as amended, 42 U.S.C. 4321–4370.

(4) Civil Rights Requirements on EDA Assisted Projects.

(i) Establishes effective systems throughout EDA to obtain and monitor reports regarding the program of equality of opportunity and ensures compliance with Civil Rights Policy Directives, Department and EDA regulations.

(ii) Establishes report requirements to ensure equality of opportunity by participants in economic development programs, conducts on-site inspections, and receives, investigates, and resolves complaints.

(iii) Evaluates EDA experience regarding the equal opportunity program from the project activity viewpoint.

(iv) Establishes uniform equal opportunity standards and procedures to be followed in reviewing EDA projects.

§ 301.36 [Removed]

§ 301.37 [Redesignated as § 301.36]

6. Section 301.36 is removed and § 301.37 is redesignated as § 301.36.

7. Section 301.70 is revised to read as follows:

§ 301.70 OMB control numbers assigned pursuant to the Paperwork Reduction Act.

(a) This table displays control numbers assigned to EDA's information collection requirements by the Office of Management and Budget (OMB) pursuant to the Paperwork Reduction Act of 1980, Pub. L. 96–511. EDA intends that this table comply with the requirements of section 3507(f) of the Paperwork Reduction Act, which requires that agencies display a current control number assigned by the Director of OMB for each agency information collection requirement.

(b) Control Number Table:

13 CFR part or section where identified and described	Current OMB control number
Part 305	0610–0011
Part 306	0610–0010
Part 308	0610–0058
Sec. § 309.2(c)	0610–0082
Sec. § 309.22	0610–0011
	0610–0092
Part 311	0610–0003
	0610–0021
Sec. § 312.5	0610–0011

Dated: November 9, 1993.

Wilbur F. Hawkins,

Acting Assistant Secretary for Economic Development.

[FR Doc. 93–28752 Filed 11–22–93; 8:45 am]

BILLING CODE 3510–34–M

Bureau of Export Administration

15 CFR Part 799

[Docket No. 930775–3304]

Foreign Availability Determination and General License GFW Eligibility for Certain Oil Well Perforators Controlled by ECCN 1C18A.o

AGENCY: Bureau of Export Administration, Commerce.

ACTION: Interim rule and request for comments.

SUMMARY: Under section 5(f) of the Export Administration Act (EAA) and part 791 of the Export Administration Regulations (EAR), the Department of Commerce determined that foreign availability exists for certain oil well perforators. The Department made this determination on October 18, 1993, and clarified it on November 8, 1993, following discussions with other agencies, as provided for in the EAA.

This interim rule removes national security-based validated export license requirements for exports of these oil well perforators to most non-controlled countries (i.e., Country Groups T and V, except the People's Republic of China) by making the oil well perforators eligible for export under General License GFW.

A validated export license continues to be required for exports of these oil well perforators to all destinations in Country Groups Q, W, Y, and Z, and the People's Republic of China. A validated export license also continues to be required to the following non-controlled destinations: Iran, Syria, Country Group S, and the South African military and police.

The United States is submitting to COCOM a proposal to remove validated license requirements for exports of these oil well perforators to controlled destinations, (i.e., Country Groups Q, W, Y, and Z and the People's Republic of China).

This rule is expected to result in a reduction in the number of export license applications that will have to be submitted for oil well perforators controlled by 1C18A.o, thereby reducing the paperwork burden on exporters.

DATES: This rule is effective November 23, 1993. Comments must be received by December 23, 1993.

ADDRESSES: Written comments (six copies) should be sent to Steven C. Goldman, Director, Office of Foreign Availability, Bureau of Export Administration, Department of Commerce, room 1087, Washington, DC 20230.

FOR FURTHER INFORMATION CONTACT: For questions of a technical nature, contact Jeffrey Tripp, Office of Technology and Policy Analysis, Telephone: (202) 482–1309.

For questions on the foreign availability assessment, contact Ronald Rolfe, Foreign Industrial Analyst, Office of Foreign Availability, Bureau of Export Administration, Department of Commerce, Telephone: (202) 482–0074.

SUPPLEMENTARY INFORMATION:

Background

Section 5(f)(3) of the EAA and part 791 of the EAR set forth the procedures and criteria for determining the foreign availability of items controlled for national security reasons. The Secretary of Commerce, or the Secretary's designee, is authorized to determine whether foreign availability exists.

With limited exceptions, the Department of Commerce may not maintain national security controls on exports of an item to countries when the Department determines that items of comparable quality are available, in fact, to such countries from foreign sources in quantities sufficient to render the controls ineffective in achieving their purpose.

On June 21, 1993, the Office of Foreign Availability (OFA) initiated a foreign availability assessment of certain oil well perforators controlled by ECCN 1C18A.o in response to a claim filed pursuant to section 791 of the EAR. The Department published a notice of the initiation of the assessment in the **Federal Register** on July 28, 1993. (58 FR 40407).

On October 18, 1993, the Acting Assistant Secretary, having considered the assessment and other relevant information provided by OFA, determined that foreign availability of certain oil well perforators exists within the meaning of section 5(f) of the EAA and part 791 of the EAR. The Department provided all interested agencies an opportunity to review and comment on the assessment and determination. On November 8, 1993, based on discussions with other agencies, the Acting Assistant Secretary clarified the scope of oil well perforators covered by the foreign availability determination, as provided for in the EAA.

This interim rule implements the foreign availability determination as it applies to most non-controlled countries, (i.e., Country Groups T and V, except the People's Republic of China). Under section 5(f)(8), whenever Commerce removes national security controls from an item for foreign availability reasons, Commerce may not maintain such controls on any similar item whose function, technological approach, performance thresholds, and other attributes that form the basis for such controls do not exceed the technical parameters of the item determined to be available.

As a result of this regulatory action, exports of certain oil well perforators no longer require a validated license for national security reasons to any destination in Country Group T or V (except the People's Republic of China). Subject to the restrictions in § 771.2(c), these oil well perforators may be exported under General License GFW to most destinations in Country Groups T and V. General license GFW is not available for exports to Iran, Syria, the

People's Republic of China or the South African military or police and a validated license continues to be required for exports of all oil well perforators controlled by ECCN 1C18A.o to these destinations. Exporters should also be aware that the Department of the Treasury's Office of Foreign Assets Control maintains an embargo on other destinations, such as Iraq, Haiti, and the Federal Republic of Yugoslavia (Serbia and Montenegro).

The United States originally established General license GFW for commodities described in the Advisory Notes in the Commerce Control List that indicate a likelihood of approval for Country Groups Q, W, and Y. However, the United States also uses GFW for commodities not covered by such Advisory Notes when so indicated in the GFW paragraph under the Requirements heading of an entry.

A validated license continues to be required for national security reasons for exports to all destinations in Country Groups T and V for oil well perforators that are still controlled by 1C18A.o (i.e., that exceed the technical parameters described in this regulation).

A validated license requirement also continues to apply to exports of all oil well perforators controlled by 1C18A.o to all destinations in Country Groups Q, S, W, Y, and Z, and the People's Republic of China. Foreign policy-based validated license requirements remain in effect for exports to Iran or Syria of all oil well perforators controlled by 1C18A.o. All other foreign policy-based validated license requirements also remain in effect.

The United States is submitting to COCOM a proposal for removing national security-based validated license requirements for certain oil well perforators controlled by 1C18A.o. Following multilateral review of this proposal by COCOM, the Department will take appropriate action, consistent with the provisions of section 5(f)(3) of the EAA and § 791.7 of the EAR, to remove national security-based validated license requirements for exports of these perforators to controlled destinations, i.e., Country Groups Q, W, Y, and Z and the People's Republic of China.

Rulemaking Requirements

1. This rule involves collections of information subject to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*). This collection has been approved by the Office of Management and Budget under control numbers 0694–0005, 0694–0007, and 0694–0010.

2. This rule does not contain policies with Federalism implications sufficient to warrant preparation of a Federalism assessment under Executive Order 12612.

3. Because a notice of proposed rulemaking and an opportunity for public comment are not required to be given for this rule by section 553 of the Administrative Procedure Act (5 U.S.C. 553) or by any other law, under section 3(a) of the Regulatory Flexibility Act (5 U.S.C. 603(a) and 604(a)) no initial or final Regulatory Flexibility Analysis has to be or will be prepared.

4. The provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, the opportunity for public participation, and a delay in the effective date, are inapplicable because this regulation involves a military or foreign affairs function of the United States. Section 13(b) of the EAA does not require that this rule be published in proposed form because this rule does not impose a new control. Further, no other law requires that a notice of proposed rulemaking and an opportunity for public comment be given for this rule.

However, because of the importance of the issues raised by these regulations, this rule is issued in interim form and comments will be considered in the development of final regulations. Accordingly, the Department encourages interested persons who wish to comment to do so at the earliest possible time to permit the fullest consideration of their views.

The period for submission of comments will close December 23, 1993. The Department will consider all comments received before the close of the comment period in developing final regulations. Comments received after the end of the comment period will be considered if possible, but their consideration cannot be assured. The Department will not accept public comments accompanied by a request that a part or all of the material be treated confidentially because of its business proprietary nature or for any other reason. The Department will return such comments and materials to the person submitting the comments and will not consider them in the development of final regulations. All public comments on these regulations will be a matter of public record and will be available for public inspection and copying. In the interest of accuracy and completeness, the Department requires comments in written form. Oral comments must be followed by written memoranda, which will also be a matter of public record and will be available for public review and copying. Communications from agencies of the United States Government or foreign governments will not be made available for public inspection.

The public record concerning these regulations will be maintained in the Bureau of Export Administration Freedom of Information Records Inspection Facility, room 4525, Department of Commerce, 14th Street and Pennsylvania Avenue NW., Washington, DC 20230. Records in this facility, including written public comments and memoranda summarizing the substance of oral communications, may be inspected and copied in accordance with regulations published in part 4 of title 15 of the Code of Federal Regulations. Information about the inspection and copying of records at the facility may be obtained from Alex Braier, Bureau of Export Administration Freedom of Information Officer, at the above address or by calling (202) 482–5653.

List of Subjects in 15 CFR Part 799

Exports, Reporting and recordkeeping requirements.

Accordingly, part 799 of the Export Administration Regulations (15 CFR parts 730–799) is amended as follows:

PART 799—[AMENDED]

1. The authority citation for 15 CFR part 799 is revised to read as follows:

Authority: Pub. L. 90–351, 82 Stat. 197 (18 U.S.C. 2510 *et seq.*), as amended; sec. 101, Pub. L. 93–153, 87 Stat. 576 (30 U.S.C. 185), as amended; sec. 103, Pub. L. 94–163, 89 Stat. 877 (42 U.S.C. 6212), as amended; secs. 201 and 201(11)(e), Pub. L. 94–258, 90 Stat. 309 (10 U.S.C. 7420 and 7430(e)), as amended; Pub. L. 95–223, 91 Stat. 1626 (50 U.S.C. 1701 *et seq.*); Pub. L. 95–242, 92 Stat. 120 (22 U.S.C. 3201 *et seq.* and 42 U.S.C. 2139a); sec. 208, Pub. L. 95–372, 92 Stat. 668 (43 U.S.C. 1354); Pub. L. 96–72, 93 Stat. 503 (50 U.S.C. App. 2401 *et seq.*), as amended (extended by Pub. L. 103–10, 107 Stat. 40); sec. 125, Pub. L. 99–64, 99 Stat. 156 (46 U.S.C. 466c); E.O. 11912 of April 13, 1976 (41 FR 15825, April 15, 1976); E.O. 12002 of July 7, 1977 (42 FR 35623, July 7, 1977), as amended; E.O. 12058 of May 11, 1978 (43 FR 20947, May 16, 1978; E.O. 12214 of May 2, 1980 (45 FR 29783, May 6, 1980); E.O. 12735 of November 16, 1990 (55 FR 48587, November 20, 1990), as continued by Notice of November 11, 1992 (57 FR 53979, November 13, 1992); E.O. 12867 of September 30, 1993 (58 FR 51743, October 7, 1993; and E.O. 12868 of September 30, 1993 (58 FR 51749, October 7, 1993).

2. In Supplement No. 1 to § 799.1 (the Commerce Control List), Category 1 (Materials), ECCN 1C18A is amended by revising the Requirements section to read as follows:

1C18A Items on the International Munitions List

REQUIREMENTS

Validated License Required: QSTVWYZ.
Unit: Kilograms.
Reason for Control: NS.
GLV: $3,000.
GCT: No.
GFW: Yes for items in the Advisory Note and for oil well perforators in 1C18A.o described as "shaped charges specially designed for oil well operations, utilizing one charge functioning along a single axis, that upon detonation produce a hole, and:

(a) Contain any formulation of RDX, PYX, PETN, HNS, or HMX; and

(b) Have only a uniformly shaped conical liner with an included angle of 90 degrees or less; and

(c) Have a total explosive mass of no more than 90 grams; and

(d) Have a diameter not exceeding three inches."

* * * * *

Dated: November 18, 1993.

Iain S. Baird,

Acting Assistant Secretary for Export Administration.

[FR Doc. 93-28760 Filed 11-22-93; 8:45 am]

BILLING CODE 3510-DT-P

DEPARTMENT OF DEFENSE

Department of the Navy

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS HARTFORD (SSN 768) and USS COLUMBIA (SSN 771) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with their special functions as naval submarines. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. ROSSI, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332-2400, Telephone number: (703) 325-9744

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS HARTFORD (SSN 768) and USS COLUMBIA (SSN 771) are vessels of the Navy which, due to their special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS HARTFORD (SSN 768) and USS COLUMBIA (SSN 771) are members of the SSN-688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS HARTFORD (SSN 768) and USS COLUMBIA (SSN 771).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706. 2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessels:

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
• • • • •		
USS HARTFORD	SSN-768	3.5
USS COLUMBIA	SSN-771	3.5

3. Table Three of § 706.2 is amended by adding the following vessels:

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; Rule 21(a)	Side lights arc of visibility; Rule 21(b)	Stern lights arc of visibility; Rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) Annex 1	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters 2(K) Annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) Annex 1
• •	•	•	•	•	•	•	•	
USS HARTFORD	SSN-768	.....	.....	205	4.2	5.2	3.5	1.7 below.
USS COLUMBIA	SSN-771	.....	.....	205	4.2	5.2	3.5	1.7 below.

Dated: November 4, 1993.

J.E. Dombroski,

CAPT, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 93–28637 Filed 11–22–93; 8:45 am]

BILLING CODE 3810–AE–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS PORT ROYAL (CG 73) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval cruiser. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS PORT ROYAL (CG 73) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS, Annex I, section 3(a), pertaining to the location of the forward masthead light in the forward quarter of the ship, the placement of the after masthead light, and the horizontal distance between the forward and after masthead lights, without interfering with its special functions as a naval cruiser. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in closest possible compliance with the applicable 72 COLREGS requirements.

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table Five of § 706.2 is amended by adding the following vessel:

TABLE FIVE

Vessel	Number	Masthead lights not over all other lights and obstructions. Anex I, sec. 2(f)	Forward masthead light not in forward quarter of ship. Annex I, sec. 3(a)	After masthead light less than ½ ship's length aft of forward masthead light. Annex I, sec. 3(a)	Percentage horizontal separation attained
USS PORT ROYAL	CG 73	N/A	X	X	38

Dated: November 4, 1993.

J.E. Dombroski,

CAPT, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 93–28639 Filed 11–22–93; 8:45]

BILLING CODE 3810–AE–P

32 CFR Part 706

Certifications and Exemptions Under the International Regulations for Preventing Collisions at Sea, 1972; Amendment

AGENCY: Department of the Navy, DOD.

ACTION: Final rule.

SUMMARY: The Department of the Navy is amending its certifications and exemptions under the International Regulations for Preventing Collisions at Sea, 1972 (72 COLREGS), to reflect that the Judge Advocate General of the Navy has determined that USS SANTA FE (SSN 763) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with certain provisions of the 72 COLREGS without interfering with its special functions as a naval submarine. The intended effect of this rule is to warn mariners in waters where 72 COLREGS apply.

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Captain R.R. Rossi, JAGC, U.S. Navy, Admiralty Counsel, Office of the Judge Advocate General, Navy Department, 200 Stovall Street, Alexandria, VA 22332–2400, Telephone number: (703) 325–9744.

SUPPLEMENTARY INFORMATION: Pursuant to the authority granted in 33 U.S.C. 1605, the Department of the Navy amends 32 CFR part 706. This amendment provides notice that the Judge Advocate General of the Navy, under authority delegated by the Secretary of the Navy, has certified that USS SANTA FE (SSN 763) is a vessel of the Navy which, due to its special construction and purpose, cannot comply fully with 72 COLREGS: Rule 21(c), pertaining to the arc of visibility of the sternlight; Annex I, section 2(a)(i), pertaining to the height of the masthead light; Annex I, section 2(k), pertaining to the height and relative positions of the anchor lights; and Annex I, section 3(b), pertaining to the location of the sidelights. Full compliance with the above-mentioned 72 COLREGS provisions would interfere with the special functions and purposes of the vessel. The Judge Advocate General of the Navy has also certified that the aforementioned lights are located in

closest possible compliance with the applicable 72 COLREGS requirements.

Notice is also provided to the effect that USS SANTA FE (SSN 763) is a member of the SSN–688 class of vessels for which certain exemptions, pursuant to 72 COLREGS, Rule 38, have been previously authorized by the Secretary of the Navy. The exemptions pertaining to that class, found in the existing tables of § 706.3, are equally applicable to USS SANTA FE (SSN 763).

Moreover, it has been determined, in accordance with 32 CFR parts 296 and 701, that publication of this amendment for public comment prior to adoption is impracticable, unnecessary, and contrary to public interest since it is based on technical findings that the placement of lights on this vessel in a manner differently from that prescribed herein will adversely affect the vessel's ability to perform its military functions.

List of Subjects in 32 CFR Part 706

Marine Safety, Navigation (Water), Vessels.

PART 706—[AMENDED]

Accordingly, 32 CFR part 706 is amended as follows:

1. The authority citation for 32 CFR part 706 continues to read:

Authority: 33 U.S.C. 1605.

§ 706.2 [Amended]

2. Table One of § 706.2 is amended by adding the following vessel:

TABLE ONE

Vessel	Number	Distance in meters of forward masthead light below minimum required height. § 2(a)(i), Annex I
• • • • •		
USS SANTA FE	SSN–763	3.5

3. Table Three of § 706.2 is amended by adding the following vessel:

TABLE THREE

Vessel	Number	Masthead lights arc of visibility; Rule 21(a)	Side lights arc of visibility; Rule 21(b)	Stern light arc of visibility; Rule 21(c)	Side lights distance inboard of ship's sides in meters 3(b) Annex 1	Stern light, distance forward of stern in meters; Rule 21(c)	Forward anchor light, height above hull in meters; 2(K) Annex 1	Anchor lights relationship of aft light to forward light in meters 2(K) Annex 1
• •	•	•	•	•		•		•
USS SANTA FE	SSN–763	.....	.....	205	4.2	6.2	3.5	1.7 below.

Dated November 4, 1993.

J.E. Dombroski,

CAPT, JAGC, U.S. Navy, Acting Judge Advocate General.

[FR Doc. 93–28641 Filed 11–22–93; 8:45 am]

BILLING CODE 3810–AE–P

DEPARTMENT OF AGRICULTURE

Forest Service

36 CFR Part 242

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 100

RIN 1018–AB43

Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D—1993–1994 Subsistence Taking of Fish and Wildlife Regulations; Correction

AGENCY: Forest Service, USDA; Fish and Wildlife Service, Interior.

ACTION: Correcting amendments to final rule.

SUMMARY: This document contains corrections to the final Subsistence Management Regulations for Federal Public Lands in Alaska, Subpart D—1993–1994 Subsistence Taking of Fish and Wildlife, which was published in the **Federal Register** on June 1, 1993 (58 FR 31252–31295). Changes in this document are made to correct errors and omissions in the original subpart D publication.

EFFECTIVE DATE: July 1, 1993.

FOR FURTHER INFORMATION CONTACT: Chair, Federal Subsistence Board, c/o Richard S. Pospahala, Office of Subsistence Management, U.S. Fish and Wildlife Service, 1011 E. Tudor Road, Anchorage, Alaska 99503; telephone (907) 786–3447. For questions specific to National Forest System lands, contact Norman R. Howse, Assistant Director—Subsistence, USDA, Forest Service, Alaska Region, P.O. Box 21628, Juneau, Alaska 99802–1628, telephone (907) 586–8890.

SUPPLEMENTARY INFORMATION: The 1993–1994 subpart D final regulations contain errors and omissions which require correction to maintain certain subsistence taking opportunities. The corrections are made in identical fashion at 36 CFR part 242 and 50 CFR part 100.

The Federal Subsistence Board (Board) finds these corrections to be exempt from Administrative Procedures Act (APA) requirements for public notice and public comments prior to publication. In this instance, the Board finds that such requirements are impracticable, unnecessary, and contrary to public interest. Corrections contained herein accurately reflect actions previously taken by the Board under full public review processes. Public notice and public comment opportunities on issues underlying these corrections were formerly afforded through the **Federal Register**, newspaper publications, public meetings, and other means. Further notice and public comment on these corrections would impede the regulatory process, would provide insignificant benefits in nature and impact, would unnecessarily restrict certain subsistence opportunities, and would generally fail to serve overall public interest. Therefore, the Board has not reapplied notice and public comment procedures prior to publication of these corrections.

The Board also finds good cause to implement these corrections as of July 1, 1993, the date on which these measures would have taken effect had inadvertent oversights not occurred. Minor errors in editing constitute the only reason that these provisions were omitted from the final rule published on June 1, 1993 (58 FR 31252–31295). The Board therefore

finds these corrections to be exempt from APA requirements for publication 30 days prior to the effective date.

List of Subjects

36 CFR Part 242

Administrative practice and procedure, Alaska, Fish, National forests, Public lands, Reporting and recordkeeping requirements, Wildlife.

50 CFR Part 100

Administrative practice and procedure, Alaska, Fish, Public lands, Reporting and recordkeeping requirements, Wildlife.

For reasons set forth in the preamble, 36 CFR part 242 and 50 CFR part 100 are corrected by making the following correcting amendments:

36 CFR PART 242—[AMENDED]

50 CFR PART 100—[AMENDED]

1. The authority: citation for both 36 CFR part 242 and 50 CFR part 100 continues to read as follows:

Authority: 16 U.S.C. 3, 472, 551, 668dd, 3101–3126; 18 U.S.C. 3551–3566; 43 U.S.C. 1733.

2. Section _____.25 is amended by revising paragraphs (b)(2)(i) introductory text, (b)(2)(iv) introductory text and (f) to read as follows:

§ _____.25 Subsistence taking of wildlife.

* * * * *

(b) * * *

(2) * * *

(i) Using a firearm other than a rifle, shotgun, muzzle-loaded rifle, or rifle or pistol using center-firing cartridges, for the taking of ungulates or bears except that—

* * * * *

(iv) Using bait for taking ungulates, bear, wolf, or wolverine; except, that an individual in possession of a valid trapping license may use bait to take wolves and wolverine, and, black bears may be taken with the use of bait in Units 14(A) between April 15–May 25; in Unit 14(B) between April 15–May 31; in Units 1(A)(B)(D), 2, 3, 5, 6, 7 (except Resurrection Creek and its tributaries), 11, 13 and 16 (except Denali State Park), 15 and 17, between April 15–June 15; and in Units 12, 19–21, 24, and 25, between April 15–June 30—

* * * * *

(f) Sealing of marten, lynx, beaver, otter, wolf, and wolverine. No person may possess or transport from Alaska the untanned skin of a marten taken in Units 1–5, 7, 13(E), and 14–16, or the untanned skin of a lynx, beaver, otter, wolf, or wolverine whether taken inside or outside the State, unless the skin has been sealed by an authorized representative of ADF&G in accordance with State regulations.

* * * * *

3. In addition, in the table at _____.25(m)(1) under the species listing of "GOAT", the entry for Unit 1 (D), is revised to read as follows:

§ _____.25 Subsistence taking of wildlife.

m * * *

(1) * * *

Bag limits	Open season
GOAT:	
. . . . .	
Unit 1(D)—that portion lying north of the Katzehin River and northeast of the Haines highway—1 goat by State registration permit only..	
Unit 1(D)—that portion lying between Taiya Inlet and River and the White Pass and Yukon Railroad.	No open season.
Remainder of Unit 1(D)—1 goat by state registration permit only	Sept. 15–Oct. 15.
. . . . .	

Ronald B. McCoy,

Interim Chair, Federal Subsistence Board.

Michael A. Barton,

Regional Forester, USDA-Forest Service.

[FR Doc. 93–26390 Filed 11–22–93; 8:45 am]

BILLING CODE 4310–55–M

DEPARTMENT OF VETERANS AFFAIRS

38 CFR Part 0

RIN 2900–AG27

Standards of Ethical Conduct and Related Responsibilities

AGENCY: Department of Veterans Affairs.

ACTION: Final rule.

SUMMARY: The Department of Veterans Affairs is amending its regulations governing the conduct of VA employees to remove provisions which have been superseded by recently issued Office of Government Ethics (OGE) regulations which took effect on February 3, 1993, and to revise VA ethics program administrative regulations to conform to current legal requirements and refine VA ethics program responsibilities.

EFFECTIVE DATE: November 23, 1993.

FOR FURTHER INFORMATION CONTACT: Audley Hendricks, Assistant General Counsel (023), Office of the General Counsel, Veterans Administration, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 633–7081.

SUPPLEMENTARY INFORMATION: In 1989, the President issued Executive Order 12674 (later modified by E.O. 12731) directing the Office of Government Ethics (OGE) to "establish a single, comprehensive, and clear set of executive branch standards of conduct that shall be objective, reasonable, and enforceable" and giving OGE authority, with the concurrence of the Attorney General, to issue regulations interpreting 18 U.S.C. 207–209. The order also directed OGE to promulgate regulations establishing a system of confidential financial disclosure by executive branch employees, and to administer the training requirements of the order. Finally, the order required that the Secretary ensure that the Designated Agency Ethics Official's rank, responsibilities, authority, staffing and resources be sufficient to ensure the effectiveness of the VA ethics program.

The Office of Government Ethics, on August 7, 1992, published its final rule establishing Government-wide Standards of Ethical Conduct for Executive Branch Employees. 57 FR 35006. The new regulations, which are codified at 5 CFR part 2635, took effect on February 3, 1993, and, pursuant to the Executive order, have supplanted

most of the VA standards of conduct regulations. 57 FR 35006 (1992).

The Office of Government Ethics, on April 7, 1992, published its final rule establishing executive agency ethics training programs. 57 FR 11886. The new regulations, which are codified at 5 CFR part 2638, took effect May 7, 1992, and required each agency to provide initial ethics orientation to all its employees and annual ethics training for employees in certain sensitive positions 57 FR 11886 (1992).

The Office of Government Ethics, on April 7, 1992, published its interim rule on financial disclosure, including the new branch-wide confidential financial disclosure system. 57 FR 11800. The new regulations, which are codified at 5 CFR part 2634, require VA, *inter alia*, to establish a new confidential financial disclosure system.

The purposes of this rule are to remove those portions of VA's standards of conduct regulations, codified at subparts B and C of 38 CFR part 0, which have been superseded by the Government-wide regulations, and to revise the general provisions in subpart A of part 0 pertaining to the VA ethics program, which have also been affected by the new standards of conduct, the new financial disclosure regulations, and the new training regulations. In this rulemaking document, the VA is revising subpart A, and retaining and renumbering four residual provisions in subpart B which have not been superseded. Also included is a cross-reference to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635 and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

Those regulations in subpart B not being removed will remain in effect for all purposes. There are four provisions in this category. Those four are section 0.735–20(e)(4), "intoxicants and drugs," section 0.735–20(e)(5), "patient abuse," section 0.735–21(e), "safety," and section 0.735–21(f), "furnishing testimony," now being renumbered as sections 0.735–11 and 0.735–12.

Pursuant to 5 CFR 2635.105(c)(3), the Department has obtained the concurrence of OGE in the view that the four provisions in subpart B need not be issued as regulations supplementary to part 2635. None of these provisions is intended to modify or amplify any of the standards in part 2635, and they do not involve the authority conveyed in the Executive orders. They are grounded instead in the general authority of section 501, title 38, United States Code, of the Secretary of Veterans Affairs to prescribe regulations "necessary or appropriate" to carry out the Department's mission. Accordingly, the Department is amending the Authority note at the beginning of part 0 to specify section 501 as well as other general provisions concerning rulemaking authority on the matter of employee conduct.

The VA conduct regulations in subpart C, which provide separate rules for special Government employees, are superseded by the OGE Government-wide standards of conduct. VA is repealing subpart C in its entirety. Following the OGE pattern in part 2635 of including special Government employees within the definition of "employee" in 5 CFR 2635.102(h) and delineating within the specific standards of conduct the few special rules that apply only to special Government employees, VA has also included special Government employees within the definition of "employee" in this rule. This rule contains no provisions that apply only to special Government employees; the VA regulations apply to all VA employees.

In addition to implementing the 1989 Executive order, this rule also gives effect to subpart I of part 2634 of title 5, Code of Federal Regulations, which overrode subpart D of part 0 of title 38, CFR. 57 FR 11800 (1992). Thus, the rule removes VA's superseded confidential financial disclosure regulations in subpart D from part 0.

The revisions to the general provisions in subpart A conform VA ethics program regulations to the new requirements imposed by the Executive Order and the implementing regulations. The revisions also set out the administrative responsibilities which the Secretary has assigned to VA ethics officials. New sections entitled "Agency ethics officials" and "Agency designees" replace the assignment of responsibilities in the repealed section entitled "Interpretation and advisory service" with assignments to ethics officials and agency designees identified by the nomenclature of the current OGE ethics program scheme: the designated agency ethics official (DAEO), deputy ethics officials, and agency designees. A section on ethics education implements the ethics training requirements, and replaces the section entitled "Informing employees." The portions of the section entitled "Interpretation and advisory service" which are not replaced by the new sections on ethics officials and agency designees are replaced by the new section on ethics advice. A new section is added which assigns responsibility within VA for both the public and confidential financial disclosure systems. The definition of "person" was removed as superfluous, because the revised part does not contain the term. The definition of special Government employee is no longer necessary, as it has no particular significance in the amended part and is codified at 18 U.S.C. 202. The introductory section on the purpose of the VA ethics program and the final section on violation of these regulations remain unchanged.

Because the VA is required pursuant to the Executive order to remove superseded provisions of part 0, there remains no justification for subpart D. The repeal of subpart C and portions of subparts A and B is necessary because those provisions were superseded by the new Government-wide standards of conduct, confidential disclosure regulations, and training regulations. Thus VA has no discretion in the matter, and VA finds, pursuant to 5 U.S.C. 553 (b)(B), and (d)(3), that there is good cause not to seek public comment on, or a 30-day delayed effective date for, this rule, as such comment and delayed effectiveness are unnecessary and would serve no purpose.

Because the amendments to subpart A are rules of agency organization, practice, or procedure, and a general statement of policy, a notice of proposed rulemaking is not required. 5 U.S.C. 553(b)(B).

Since a notice of proposed rulemaking is unnecessary and will not be published, these amendments do not come within the term "rule" as defined in, and are not made subject to the requirements of, the Regulatory Flexibility Act. 5 U.S.C. 601(2). Nevertheless, the Secretary hereby certifies that these regulatory amendments will not have a significant economic impact on a substantial number of small entities as they are defined in the Regulatory Flexibility Act, 5 U.S.C. 601–612.

There is no Catalog of Federal Domestic Assistance Program number.

List of Subjects in 38 CFR Part 0

Conflicts of interests, Government employees.

Approved: October 4, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

For the reasons set out in the preamble, 38 CFR part 0 is amended as set forth below:

PART 0—STANDARDS OF ETHICAL CONDUCT AND RELATED RESPONSIBILITIES

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 38 U.S.C. 501; see sections 201, 301, and 502(a) of E.O. 12674, 54 CFR 15159, 3 CFR, 1989 Comp., p. 215 as modified by E.O. 12731, 55 CFR 42547, 3 CFR, 1990 Comp., p. 306.

2. Subpart A is revised to read as follows:

Subpart A—General Provisions

Sec.
0.735–1 Purpose.
0.735–2 Definitions.
0.735–3 Agency ethics officials.
0.735–4 Agency designees.
0.735–5 Ethics education.
0.735–6 Ethics advice.
0.735–7 Financial disclosure.
0.735–8 Violation of regulations.

Subpart A—General Provisions

§ 0.735–1 Purpose.

For proper performance of the Government business and the maintenance of confidence by citizens in their Government, employees in the Department of Veterans Affairs shall maintain the highest possible standards of honesty, integrity, impartiality, and conduct. They shall avoid misconduct and conflicts of interest through informed judgment as an indispensable means to the maintenance of these high standards.

§ 0.735–2 Definitions.

For the purposes of this part, *employee* means an officer or employee of the Department of Veterans Affairs, including a special Government employee.

§ 0.735–3 Agency ethics officials.

(a) *Designated Agency Ethics Official (DAEO).* The Assistant General Counsel (023) is the designated agency ethics official (DAEO) for the Department of Veterans Affairs. The Deputy Assistant General Counsel (023C) is the alternate DAEO, who is designated to act in the DAEO's absence. The DAEO has primary responsibility for the administration, coordination, and management of the VA ethics program, pursuant to 5 CFR 2638.201–204.

(b) *Deputy ethics officials.* (1) The District Counsel are deputy ethics officials. They have been delegated the authority to act for the DAEO within their jurisdiction, under the DAEO's supervision, pursuant to 5 CFR 2638.204.

(2) The alternate DAEO, the DAEO's staff, and staff in the Offices of District Counsel, may also act as deputy ethics officials pursuant to delegations of one or more of the DAEO's duties from the DAEO or the District Counsel.

§ 0.735–4 Agency designees.

(a) The following officials are "agency designees" for purposes of the standards of conduct in 5 CFR part 2635:

Under Secretaries
Assistant Secretaries
Director, National Cemetery System
General Counsel
Inspector General
Chairman, Board of Veterans Appeals
Chairman, Board of Contract Appeals
Heads of Independent Facilities
Designated Agency Ethics Official
District Counsel.

(b) Agency designees are authorized, pursuant to 5 CFR 2635.102(b), to make specified determinations, grant approval, or take other specified action required or permitted by the standards of conduct with respect to another employee. An agency designee may seek the advice of the DAEO or a deputy ethics official in exercising his or her responsibilities as to any other employee.

§ 0.735–5 Ethics education.

(a) *Initial ethics orientation.* Each new agency employee shall receive initial ethics orientation, pursuant to 5 CFR 2638.703, within 90 days of his or her entrance on duty.

(b) *Annual ethics training.* (1) The following employees shall receive annual ethics training, pursuant to 5 CFR 2638.704:

(i) Employees appointed by the President.

(ii) Employees required to file public financial disclosure reports or confidential financial disclosure reports.

(iii) Officers or employees who have been authorized by the Secretary or his or her designee to enter into, administer, or terminate contracts and make related determinations and findings.

(iv) With respect to any procurement (including the modification or extension of a contract), any civilian or military official or employee of an agency, (including a contractor, subcontractor, consultant, expert, or advisor (other than a competing contractor) acting on behalf of, or providing advice to, the agency with respect to any phase of the agency procurement concerned), who has participated personally and substantially in the drafting of a specification developed for that procurement; the review and approval of a specification developed for that procurement; the preparation or issuance of a procurement solicitation in that procurement; the evaluation of bids or proposals for that procurement; the selection of sources for that procurement; the conduct of negotiations in that procurement; the review and approval of the award, modification, or extension of a contract in that procurement; or such other specific procurement as may be specified in the procurement integrity implementing regulations at 48 CFR 3.104.

(v) Other employees designated by the Secretary or his or her designee based on a determination that such training is desirable in view of their particular duties.

(2) For purposes of administering training, the DAEO, the alternate DAEO, the District Counsel, and attorneys which these individuals designate are "qualified individuals."

(c) *Other ethics education.* The DAEO and deputy ethics officials may conduct such other ethics education, training and orientation for employees as he, she, or they deem(s) appropriate, or as requested by VA management officials.

§ 0.735–6 Ethics advice.

(a) Employees may request and shall receive, upon such request, ethics advice from the DAEO or deputy ethics officials, in accordance with paragraphs (b) and (c) of this section. Former employees may request and shall receive, upon such request, ethics advice related to post-employment restrictions, in accordance with paragraphs (b) and (c) of this section. Employees need not follow the chain of command, and former employees need not follow their former chain of command, in seeking ethics advice from their District Counsel or the DAEO.

(b) The DAEO is authorized to:

(1) Interpret for the Department of Veterans Affairs the laws, executive orders, and regulations relating to employee ethics and conduct matters, and the regulations in this part;

(2) Coordinate counseling services on ethics and conduct matters for employees, and counseling services on post-employment restrictions for former employees;

(3) Resolve questions of conflict of interest, the appearance of conflict of interest and other matters covered in 5 CFR parts 2634, 2635 and this part, whether the questions arise directly from an employee or former employee; or indirectly from an agency designee or a deputy ethics official.

(4) Assure that counseling, advice and interpretations of a precedential nature are available to deputy ethics officials and, if appropriate, other employees, including agency designees;

(c) District Counsel may render advice and interpretations on questions of ethics and conduct matters to any employee, and on questions of post-employment restrictions to former

employees, within the District Counsel's jurisdiction. The District Counsel shall be guided by the interpretations of the DAEO on the pertinent law, executive orders, and regulations. In case of doubt regarding any question, or disagreement of interpretation between District Counsel and employee or former employees, or novel questions of broad application within VA, the District Counsel may submit the matter for consideration by the DAEO.

§ 0.735–7 Financial disclosure.

The DAEO shall administer the public financial disclosure program within the Department of Veterans Affairs. The DAEO shall administer the confidential financial disclosure program, and distribute, collect, review, certify and retain the confidential financial disclosure reports of Central Office employees. The District Counsel shall distribute, collect, review, certify and retain confidential financial disclosure reports for employees whose duty station is within their geographic jurisdiction. The DAEO and District Counsel shall maintain records and reports of the financial disclosure system(s) within their responsibility.

§ 0.735–8 Violation of regulations.

Violation of the regulations in this part by an employee may be cause for appropriate disciplinary action which may be in addition to any penalty prescribed by law.

3. Subpart B is revised to read as follows:

Subpart B—Standards of Ethical Conduct and Related Responsibilities of Employees

Sec.

0.735–10 Cross-reference to employee ethical and other conduct standards and financial disclosure regulations.
0.735–11 Other conduct on the job.
0.735–12 Standards of conduct in special areas.

Subpart B—Standards of Ethical Conduct and Related Responsibilities of Employees

§ 0.735–10 Cross-reference to employee ethical and other conduct standards and financial disclosure regulations.

Employees of the Department of Veterans Affairs (VA) should refer to the executive branch-wide Standards of Ethical Conduct at 5 CFR part 2635, the executive branch-wide Employee Responsibilities and Conduct at 5 CFR part 735, and the executive branch-wide financial disclosure regulation at 5 CFR part 2634.

§ 0.735–11 Other conduct on the job.

Relationship with beneficiaries and claimants. Employees are expected to be helpful to beneficiaries, patients and claimants, but:

(a) An employee shall not procure intoxicants or drugs for, or attempt to sell intoxicants or drugs to, patients or members, or give or attempt to give intoxicants or drugs to them unless officially prescribed for medical use;

(b) An employee shall not abuse patients, members, or other beneficiaries, whether or not provoked.

§ 0.735–12 Standards of conduct in special areas.

(a) *Safety.* (1) Employees will observe safety instructions, signs, and normal safety practices and precautions, including the use of protective clothing and equipment.

(2) An employee shall report each work-connected injury, accident or disease he or she suffers.

(b) *Furnishing testimony.* Employees will furnish information and testify freely and honestly in cases respecting employment and disciplinary matters. Refusal to testify, concealment of material facts, or willfully inaccurate testimony in connection with an investigation or hearing may be ground for disciplinary action. An employee, however, will not be required to give testimony against himself or herself in any matter in which there is indication that he or she may be or is involved in a violation of law wherein there is a possibility of self-incrimination.

Subparts C and D [Removed]

4. Subparts C and D are removed.

[FR Doc. 93–27912 Filed 11–22–93; 8:45 am]
BILLING CODE 8320–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 799

[OPPTS–42114B; FRL–4648–1]

RIN 2070–AB94

Testing Consent Agreement for N-methylpyrrolidone

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final Consent Agreement.

SUMMARY: EPA has signed an Enforceable Consent Agreement (ECA) pursuant to the Toxic Substances Control Act (TSCA), 15 U.S.C. 2601 *et seq.*, with Arco Chemical Company, BASF Corporation, and International Specialty Products Company, hereinafter, "the Companies" who have agreed to perform certain health effects tests with *n*-methylpyrrolidone (CAS No. 872–50–4) (NMP). This document summarizes the ECA and amends 40 CFR 799.5000 by adding NMP to the list of chemical substances and mixtures subject to ECA's. Accordingly, the export notification requirements of 40 CFR par 707 apply to NMP.

EFFECTIVE DATE: November 23, 1993.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Rm. E–543B, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD (202) 554–0551.

SUPPLEMENTARY INFORMATION: This document amends 40 CFR 799.5000 by adding NMP to the list of chemical substances and mixtures subject to ECAs and export notification requirements.

I. Background

NMP is a possible substitute for methylene chloride for use in paint stripper formulations. Its annual production volume exceeds 55 million pounds. Approximately 2.7 million consumers and more than 71,000 workers may be exposed to NMP.

On March 28, 1990 (55 FR 11398), EPA issued a Notice of Proposed Rulemaking, proposing that NMP manufacturers test NMP for oncogenicity, mutagenicity, developmental and reproductive toxicity, neurotoxicity, and subchronic toxicity. EPA deferred proposing pharmacokinetics testing in the NMP proposed rule because a test guideline for pharmacokinetics was not yet available. The NMP proposed test rule contained a chemical profile of NMP, a discussion of EPA's TSCA section 4(a) findings, and the proposed test standards and reporting requirements.

In addition, in the **Federal Register** of July 15, 1991 (56 FR 32292) EPA reopened the comment period on NMP to permit further comment in relation to EPA's proposed statement of policy for interpreting its legal authority to make TSCA section 4(a)(1)(B) findings.

After EPA issued the Notice of Proposed Rulemaking for NMP, it received data adequate for evaluating the potential mutagenicity and developmental and reproductive toxicity effects of NMP.

On January 29, 1992 EPA's Office of Pollution Prevention and Toxics placed NMP into risk management evaluation after an initial review of the data. On April 15, 1992, EPA informed the NMP manufacturers by letter that it was concerned that there is a potential for adverse health effects on reproduction

and development to persons exposed to NMP. In that letter, EPA also requested additional exposure information, industrial hygiene information, and historical control data not submitted with the reproductive toxicity study.

In response to EPA's April 15, 1992 letter, on May 20, 1992 and June 22, 1992 the manufacturers submitted additional information on use and exposure, glove permeability, on-going testing, and product stewardship.

II. Enforceable Consent Agreement Negotiations

EPA published a **Federal Register** Notice (57 FR 31714; July 17, 1992) announcing an "open season." The "open season" was a time during which manufacturers could submit to EPA proposals for testing chemical substances which had been proposed for testing by EPA but had not been subject to a final test rule. In that notice, EPA indicated that it would review the submissions and select candidates for negotiation of enforceable consent agreements (ECA) pursuant to 40 CFR part 790. EPA also indicated that it would later publish a **Federal Register** notice soliciting persons interested in participating in or monitoring negotiations for the development of consent agreements on the chemicals selected.

On September 11, 1992, the Synthetic Organic Chemical Manufacturers Association (SOCMA) on behalf of "The Companies" submitted a proposal for testing NMP under an ECA. On October 30, 1992, SOCMA sent EPA another letter that added a 2–year oncogenicity bioassay to their testing proposal.

EPA published a **Federal Register** notice (59 FR 16669; March 30, 1993) announcing candidates selected for consent order negotiations and requesting that interested parties identify themselves to EPA. The notice established EPA's priority for initiating negotiations on the chemicals selected, and because the proposal submitted by SOCMA was similar to the testing proposed in EPA's proposed test rule, NMP was among the chemicals assigned a high priority. This **Federal Register** notice also announced a tentative date for starting negotiations on NMP and the other high priority chemicals.

EPA met with identified interested parties, on April 28, 1993 to discuss the testing proposal submitted. EPA conducted subsequent negotiations by letter. Once EPA determined that consensus had been reached it provided a final ECA to the Companies for signature.

The Companies signed the ECA on September 9, 1993, and the Assistant Administrator for EPA's Office of Prevention, Pesticides, and Toxic Substances signed the ECA on November 15, 1993. Because EPA has determined that the data submitted for mutagenicity, developmental, and reproductive toxicity testing required in the proposed test rule is adequate, the final ECA does not require testing for those end points. This ECA is a final action by EPA on NMP; therefore, the NMP proposed test rule will not be adopted as final.

III. Testing Program

The following Table 1 describes the tests, the test standards, and reporting requirements for NMP under the ECA. This testing program will allow EPA to further characterize the potential health hazards resulting from exposure to NMP.

TABLE 1.—REQUIRED TESTING, TEST STANDARDS AND REPORTING REQUIREMENTS FOR NMP

Description of Tests	Test Standard (40 CFR citation)	Deadline for Final Report[1] (Months)	Interim Reports[2] Required Number
Pharmacokinetics; oral, dermal[3], inhalation, and intravenous routes.	795.232 as amended (Appendix I)	15	2
28 day subchronic toxicity range finding study	OECD guideline #407 (adopted in 1981) (Appendix II).	6	0
90 day subchronic toxicity range finding study	798.2650 as amended (Appendix III)	24	3
Functional Observation Battery: subchronic	798.6050 as amended (Appendix IV)	24	3
Motor Activity Test: subchronic	798.6200 as amended (Appendix V)	24	3
Neuropathology: subchronic	798.6400 as amended (Appendix VI)	24	3
Oncogenicity in the mouse and rat administered orally	798.3300 as amended (Appendix VII)	72	12

[1] Number of months after the effective date of the consent order. This reporting requirement includes 19 months for obtaining information from the 28– and 90–day range finding and pharmacokinetics studies.
[2] Interim reports are required every 6 months from the effective date until the final report is submitted. This column shows the number of interim reports required for each test.
[3] The dermal pharmacokinetics consists of a single administration, low dose, dermal exposure group.

IV. Export Notification

The issuance of the ECA subjects any persons who export or intend to export the chemical substance, NMP (CAS No. 872–50–4), of any purity, to the export notification requirements of section 12(b) of TSCA. The listing of the chemical substance at 40 CFR 799.5000 serves as a notification to persons who export or intend to export a chemical substance or mixture that is the subject of an ECA that 40 CFR part 707 applies.

V. Public Record

A. Supporting Documentation

EPA has established a record for this ECA under docket number OPPTS–42114B, which is available for inspection Monday through Friday, excluding legal holidays, in the TSCA Nonconfidential Information Center, East Tower, rm. G–102, 401 M St., SW., Washington, DC 20460 from 8 a.m. to 12 noon and from 1 p.m. to 4 p.m. Information claimed as Confidential Business Information (CBI), while part of the record, is not available for public review. This record contains the basic information considered in developing this Consent Order, and includes the following information:

(1) Testing Consent Agreement for NMP and associated testing protocols attached as appendices.

(2) **Federal Register** notices pertaining to this notice and consent order consisting of:

(a) Notice of Proposed Rulemaking for *N*-methylpyrrolidone, (March 28, 1990, 55 FR 11398)

(b) Notice announcing opportunity to initiate Negotiations for TSCA Section 4

Testing Consent Agreements (July 17, 1992, 57 FR 31714)

(c) Notice announcing Testing Consent Agreement Development for Tier I Chemical Substances; Solicitation for Interested Parties (March 30, 1993, 58 FR 16669)

(3) Communications consisting of:

(a) Written Letters.

(b) Contact reports of telephone summaries.

(c) Meeting summaries.

(4) Reports - published and unpublished factual materials.

VI. Regulatory Assessment Requirements

The Office of Management and Budget (OMB) has approved the information collection requirements contained in the Consent Agreement under the provisions of the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.*, and has assigned OMB control 2070–0033.

Public reporting burden for this collection of information is estimated to average 586 hours per response. The estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Management and Budget, Paperwork Reduction Project (2070–0033), Washington, DC 20503.

List of Subjects in 40 CFR Part 799

Environmental protection, Chemicals, Chemical export, Hazardous substances, Health effects, Laboratories, Reporting and recordkeeping requirements, Testing.

Dated: November 15, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR chapter I, part 799 is amended as follows:

PART 799—[AMENDED]

1. The authority citation for part 799 continues to read as follows:

Authority: 15 U.S.C. 2603, 2611, 2625.

2. Section 799.5000 is amended by revising the section heading to read as set forth below and by adding *N*-methylpyrrolidone to the table in CAS Number order, to read as follows:

§ 799.5000 Testing Consent Agreements for Substances and Mixtures with Chemical Abstract Service Registry Numbers.

* * * * *

CAS Number	Substance or mixture name	Testing	FR Publication Date
872–50–4	*N*-methylpyrrolidone	Health effects	November 23, 1993

[FR Doc. 93–28734 Filed 11–22–93; 8:45 am]

BILLING CODE 6560–50–F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 401, 488 and 489

[HSQ–159–F]

RIN 0938–AF17

Medicare Program; Granting and Withdrawal of Deeming Authority to National Accreditation Organizations

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Final rule.

SUMMARY: This rule implements section 1865(a) of the Social Security Act, as amended by sections 2345 and 2346 of the Deficit Reduction Act of 1984 and section 6019 of the Omnibus Budget Reconciliation Act of 1989. The amendments expand the types of providers and suppliers of services that we may consider to meet conditions of participation or certification, nursing home requirements, or conditions for coverage by virtue of their accreditation by a national accreditation program; these providers and suppliers are also subject to validation surveys. The rule also extends confidentiality to accreditation surveys, other than home health agency surveys, done by accreditation programs in addition to the Joint Commission on Accreditation of Healthcare Organizations, except that we may disclose survey and related information to the extent that such information relates to an enforcement action we take on the basis of accreditation survey findings. The rule also provides for: the release to, and use by, HCFA of all accreditation surveys and other relevant information even if a provider or supplier is not subject to a validation survey; the removing of deemed status of a facility based on a validation survey, an accreditation survey, or other information related to either; and appeal procedures for denied or withdrawn approval.

EFFECTIVE DATE: This rule is effective February 22, 1993. The provisions of this rule also apply as of the effective date to any accreditation organization that previously received approval of deeming authority.

FOR FURTHER INFORMATION CONTACT: Irene Gibson, (410) 966–6768.

SUPPLEMENTARY INFORMATION:

I. Background

In order to participate in the Medicare program, providers and most types of suppliers of health care services (such as hospitals and rural health clinics) must meet requirements specified in the Social Security Act (the Act) and any others specified by the Department of Health and Human Services. These requirements are called conditions of participation for providers, conditions for coverage for suppliers, conditions of certification for rural health clinics (RHCs), or long-term care requirements for skilled nursing facilities (SNFs). Any provider or supplier who does not meet these requirements is considered out of compliance and risks having its participation in the Medicare program terminated or may be subject to other adverse actions.

State health departments or similar agencies under contract with HCFA (in accordance with section 1864 of the Act) survey providers and some types of suppliers to ascertain compliance with the conditions of participation, conditions for coverage, or long term care requirements, and to certify their findings to HCFA. On the basis of these State survey agency certifications, HCFA determines whether the provider or supplier qualifies, or continues to qualify, for participation in the

Medicare program, whether deficiencies exist, and if they have been corrected.

Section 1865(a) of the Act provides that a hospital that is accredited by the Joint Commission on Accreditation of Healthcare Organizations (JCAHO) is deemed to meet, by virtue of that accreditation, the Medicare conditions of participation, except those on utilization review, discharge planning and any requirement promulgated by the Secretary under section 1861(e)(9) that is higher than JCAHO requirements for accreditation unless the Secretary determines that the JCAHO process in these areas is at least equivalent to the standards promulgated by the Secretary. This eliminates the need for State survey agencies to determine routinely whether these "deemed" hospitals comply with the requirements of section 1861(e).

Section 1864(c) of the Act authorizes the Secretary to enter into agreements with the State survey agencies to determine, through validation surveys, whether hospitals participating in Medicare on the basis of JCAHO accreditation are in fact meeting the conditions of participation. In order for a JCAHO accredited hospital to be deemed to meet the Medicare conditions of participation, the hospital must agree, if it is included in a validation survey, to authorize the JCAHO to release (and the JCAHO must release), to HCFA or a designated State agency, on a confidential basis, a copy of the most current JCAHO accreditation survey together with any other information related to the survey (including corrective action plans) that the Secretary requires.

Section 1865(b) provides that if a hospital is found to have significant deficiencies, based on a validation survey or any other information, it will no longer be deemed to meet the Medicare conditions of participation.

Section 1865(a) of the Act, until July 18, 1984, provided that if the Secretary found that accreditation of an institution or agency by the American Osteopathic Association (AOA) or another national accreditation organization provided reasonable assurance that any or all of the conditions of sections 1861(e) (for hospitals), 1861(j) (for skilled nursing facilities), and 1861(o) (for home health agencies (HHAs)), as the case may be, were met, to the extent the Secretary deemed it appropriate, the Secretary could treat the entity as meeting the conditions of participation. On July 18, 1984, legislation expanded the types of entities that could be deemed. (See the section entitled "LEGISLATION", below.) Up to the present, we have not determined that any accreditation organization except AOA (for hospitals) has provided these assurances.

Except for hospitals that are accredited by either the JCAHO or the AOA and HHAs that are accredited by the Community Health Accreditation Program (CHAP), no providers are deemed to meet our conditions of participation, long-term care requirements, or conditions for coverage. That is, although JCAHO accredits many other types of providers, such as SNFs, ambulatory surgical centers (ASCs), and RHCs, no members of these other provider categories have been granted deemed status by virtue of their accreditation by the JCAHO.

Section 1864(c) of the Act authorizes the Secretary to enter into an agreement with the State survey agency to survey JCAHO accredited hospitals, either on a selective-sample basis or in response to a substantial allegation that significant deficiencies exist. In a previous rule, under the authority provided in sections 1865(a) and 1871 of the Act, we extended these surveys to AOA-accredited hospitals in order to provide reasonable assurance that an AOA-accredited hospital meets the requirements of section 1861 of the Act.

Under section 1865(a) of the Act, we may deem as meeting conditions of participation a JCAHO accredited hospital only if the hospital authorizes the JCAHO to release to us, and the JCAHO releases to us, its most current accreditation survey together with any other information directly related to the survey (including corrective action plans) as the Secretary requires. This survey and other information is, in general, confidential. However, the survey and other information may be disclosed by us to the extent that it relates to an enforcement action we have taken.

There is no similar specific statutory statement for requiring entities accredited by another accreditation organization to authorize release of accreditation surveys to us. However, under the general authority of section 1865(a) of the Act, we also have required AOA-accredited hospitals to authorize release of their surveys in order to provide reasonable assurance that all the conditions of section 1861(e) (the statutory definition of "hospital") are met. Until July 18, 1984, other than for JCAHO's accreditation findings, there was no statutory authority to keep any accreditation finding confidential.

Current regulations at 42 CFR 488.5 (53 FR 22850, June 17, 1988) implement the statutory requirements of section 1865 of the Act insofar as JCAHO and AOA are concerned. Section 488.6, which applies to both JCAHO and AOA accredited hospitals, implements Section 1864(c) of the Act. This section discusses the basis for selecting a provider for a validation survey, what the provider must do if selected and the effect if it refuses to cooperate.

II. Legislation

July 18, 1984, the Deficit Reduction Act of 1984 (DEFRA, Pub. L. 98–369) was enacted. Section 2345 of DEFRA amended Section 1865(a) of the Social Security Act to require the Secretary to keep confidential the accreditation survey released to us by any accreditation body for any entity accredited by that body.

Section 2346 of DEFRA also amended Section 1865(a) of the Act. This amendment allows us to find that if the accreditation of the enumerated entities by any national accreditation organization provides reasonable assurance that the conditions of participation or certification (for RHCs), or conditions for coverage, are met for these entities, then we may deem these entities as meeting these conditions. These additional entities are: psychiatric hospitals; ASCs; RHCs; laboratories; hospices; HHAs; SNFs; comprehensive outpatient rehabilitation facilities (CORFs); and clinic, rehabilitation agency, or public health agency providers of outpatient physical therapy (which includes speech pathology services) or occupational therapy services.

Section 411 of the Medicare Catastrophic Coverage Act of 1988 (Pub. L. 100–360) also amended section 1865(a) of the Act. This amendment requires the Secretary to keep confidential the accreditation survey released to us by any accreditation organization for any entity other than a survey with respect to a home health agency.

However, section 6019 of the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) (Pub. L. 101–239), enacted December 19, 1989, further amended section 1865(a) of the Act to allow the Secretary to disclose an accreditation survey and information related to it to the extent the survey and information are related to an enforcement action taken by the Secretary. This provision was effective December 19, 1989. Section 6019 of OBRA '89 also amended section 1865(a), effective June 19, 1990, to require JCAHO-accredited hospitals to authorize the JCAHO to release to the Secretary upon request any other information (in addition to the accreditation survey) directly related to the survey as the Secretary may require (including

corrective action plans), if they are to be deemed to meet the conditions of participation. Also effective June 19, 1990, the JCAHO must release the survey and other information to the Secretary in order for the hospital to be deemed to meet the conditions of participation.

III. Provisions of the Proposed Regulations

On December 14, 1990, we published a proposed rule to implement the legislation (55 FR 51434). Below we discuss the proposed revisions.

1. Confidentiality and Disclosure Provisions

We proposed to revise 42 CFR 401.126(b)(2), which concerns information or records that are not available upon public request. We proposed to extend the confidentiality of accreditation surveys and related information to any national accreditation program recognized by HCFA under Section 1865 of the Act that accredits the specified providers or suppliers other than home health agencies (hospitals; psychiatric hospitals; SNFs; hospices; ASCs; RHCs; CORFs; laboratories; and clinic, rehabilitation agency, or public health agency providers of outpatient physical therapy services, speech pathology services, or occupational therapy services).

We would also simultaneously amend § 401.126(b)(2) and add a paragraph (d) to § 401.133, Availability of official reports on providers of services, State agencies, intermediaries, and carriers under Medicare, to indicate that we will disclose any survey and related information released to us by an accreditation organization to the extent they are related to an enforcement action taken by HCFA and the accreditation survey of any HHA. We would add a paragraph (e) to § 401.133 to show that home health agency surveys are available without regard to reason for disclosure. We would also revise the title of § 401.133 to include suppliers.

We also proposed to revise § 488.5, Effect of JCAHO and AOA accreditation, to show that hospitals accredited by JCAHO or AOA must authorize the release to HCFA of the most current accreditation surveys and any other related information (including corrective action plans) HCFA requires. We would also repeat the provision in revised § 401.126(b)(2) and new § 401.133(d) that accreditation surveys and related information may be disclosed to the extent they relate to an enforcement action taken by HCFA. In addition, the accreditation survey of any HHA can be disclosed. We proposed to state that we may determine, based on a validation survey, the accreditation survey or other related information, that the hospital does not meet Medicare conditions of participation.

2. Expansion of Types of Accredited Entities

We proposed to redesignate § 488.6, Validation survey, as § 488.7 and add a new § 488.6, Other national accreditation programs. This new section would amend the regulations to conform to the statute, which permits HCFA to deem entities other than hospitals to meet the conditions of participation or certification or conditions for coverage, if HCFA finds that a national accreditation organization has provided reasonable assurance that these conditions are met. The accreditation organization would have to provide us with reasonable assurance that the requisite conditions of participation or certification, long-term care requirements or conditions for coverage are met by the entities the accrediting body has accredited.

We proposed to revise the regulations to reflect our current policy of publishing in the **Federal Register** any change in organizations whose specified providers or suppliers may be deemed as meeting conditions of participation or certification or conditions for coverage.

We would include parallel provisions in § 488.5 regarding the release and use of accreditation surveys. That is, we would disclose the accreditation survey of any HHA and the most current accreditation survey and related information on any provider or supplier to the extent they are related to an enforcement action taken by HCFA; the provider or supplier must authorize its accreditation organization to release to us a copy of its most current accreditation survey; and we may determine that a provider or supplier does not meet Medicare conditions based on its accreditation survey or related information.

3. Validation Surveys

We proposed that the redesignated § 488.7, Validation survey, would extend the validation survey to the specified types of providers and suppliers accredited by accreditation organizations other than the JCAHO and AOA.

In § 488.7(a), we would make a distinction between a survey done on the basis of a selective sample and one done on the basis of a substantial allegation of significant deficiencies. The first is comprehensive and addresses all conditions of participation or certification, long-term care requirements, or conditions for coverage; the latter is initially directed solely at the requirements related to the allegation. If the State survey agency substantiates the allegation, and HCFA determines that the provider or supplier is out of compliance with one or more conditions of participation, conditions for coverage, or long-term care requirements, the survey agency would then conduct a complete survey.

Paragraphs (b), (c), (d) and (e) would be revised to substitute "provider or supplier" for "hospital" so that our rules would apply to any approved accreditation organization that accredits providers or suppliers other than hospitals. We would also revise paragraph (b) to extend confidentiality to an accreditation survey of any accredited entity other than a home health agency.

4. Review of Accrediting Bodies

In a new section, § 488.9, Federal review of accreditation organizations, we proposed the standards for evaluating applications for deeming authority. We planned to evaluate an accreditation organization's accreditation requirements to determine whether they are equivalent to ours; the organization's survey process to determine the composition of the survey team, its qualifications and its ability to continue surveyor training; the comparability of survey procedures; the organization's monitoring procedures for providers or suppliers found out of compliance; the ability to provide HCFA with electronic data and reports necessary for effective validation and assessment of the survey process; the adequacy of staff and other resources; and the organization's ability to provide adequate resources for performing required surveys.

We proposed to include in HCFA's review of a national accreditation organization the organization's agreement with HCFA to allow the organization to release the most current accreditation survey to us with any information related to the survey that we may require, including corrective action plans. We also indicated that we would publish a notice in the **Federal Register** to notify the public of any organizations whose accredited, specified types of providers or suppliers are deemed to meet Medicare participation requirements. The notice would describe how the accreditation organization's accreditation program provides reasonable assurance that an entity accredited by the organization meets the Medicare requirements.

In this section, we would also establish the criteria and procedures for removing the deeming authority. At the end of a validation review period, HCFA would identify any accreditation programs for which validation survey results indicate a rate of disparity between certifications of the accreditation organization and those of the State agency validating the accreditations of 20 percent or more. We would also identify validation survey results of accreditation programs that indicate a pattern over 2 years or more of increasing disparity between the certifications of the accreditation organization and those of the State agency. In addition, we would assess the equivalency of the accreditation organization's accreditation requirements compared to our comparable requirements if an accreditation organization proposes to adopt new requirements. An organization must provide written notification to HCFA at least 30 days before the effective date of any proposed changes in its accreditation requirements.

We would provide written notification to an accreditation organization indicating that its approval to be an accreditation organization may be in jeopardy based on documentation identified through the validation review. We would include in the notification a statement concerning the discrepancies found; information explaining our deeming authority review; a description of the procedures the accreditation organization may follow to explain or justify findings made during validation review; and a description of what we may do as a result of the findings from the validation review.

We proposed that if we find an accreditation organization to have a disparity rate of 20 percent or more between its accreditation determinations and the certification determinations of the State survey agency or if we find that validation survey results over a period of two or more years show a pattern of increasing disparity between the certifications of the accreditation organization and certifications of the State agency, we would conduct a deeming authority review. We would reevaluate whether the accreditation organization meets all the criteria we have for initial determinations that an organization's specified providers or suppliers are deemed to meet conditions of participation. We defined "rate of disparity" and included an example in the definitions section, § 488.1.

If we determined, following the deeming authority review, that the organization's requirements were not comparable to ours, we would be able to give the organization a conditional approval of its deeming authority for a probationary period of up to 180 days to adopt comparable requirements. If we determined that the rate of disparity identified during the validation review indicates poor performance, we could (1) give conditional approval of its deeming authority for a period of up to one year, effective 30 days after the determination; (2) require the accreditation organization to release to us any facility-specific data we require for continued monitoring; (3) require the organization to provide us with a survey schedule for the purpose of intermittent onsite monitoring (by HCFA, State surveyors, or both) of the accreditation organization's survey process; and (4) publish in the Medicare Annual Report to Congress the name of any accreditation organization we give a probationary period.

Within 60 days after the conclusion of the probationary period, we would determine whether the organization continued to meet the criteria necessary for its accredited providers or suppliers to be deemed to meet conditions of participation or certification, conditions for coverage, or long-term care requirements and issue an appropriate notice. The determination would be based on any or all of the following:

(1) The evaluation of the most recent validation findings. For an organization to continue to have its providers or suppliers deemed to meet conditions of participation, the evaluation would have to show a significant reduction (from the prior two or more years) in the rate of disparity between the certifications of the State agency and the accreditation organization, and show a disparity rate of less than 20 percent;

(2) The evaluation of facility-specific data, as necessary, as well as other information;

(3) The evaluation of an accreditation body's surveyors in terms of qualifications, ongoing training, composition of survey team, etc.;

(4) The evaluation of survey procedures; and

(5) The evaluation of accreditation requirements.

We proposed that if the accreditation organization made no significant improvements during the probationary period, we would remove recognition of deemed authority, effective 30 days after we provided written notice to the organization that its deeming authority was removed. We would also publish a notice in the **Federal Register** giving the basis for removing the deeming authority from the accreditation organization and providing the reasons the organization's accreditation program no longer meets our requirements.

The regulations would state that the existence of any validation review, deeming authority review, probationary period, or any other action by HCFA does not affect or limit the conducting of any validation survey.

5. Other clarifying revisions.

a. We proposed to revise the definition of "accredited hospital" in § 488.1, Definitions, to "accredited provider or supplier" in order to include other providers and suppliers and to include accreditation programs other than the JCAHO and AOA.

b. We proposed to revise the definition of "substantial allegation" in § 488.1 in order to show that such an allegation may be a complaint from a variety of sources. We would clarify that a complaint need not be formal, be directed to HCFA or the survey agency, or be a result of first-hand experiences.

c. We proposed to add to § 488.1 a definition of "conditions of participation", in order to clarify that the requirements include conditions of certification for RHCs, and a definition of "conditions for coverage". We proposed to also define "Medicare condition" as any condition of participation or for coverage or any long term care requirement, in order to avoid repeating the entire list of possibilities every place it is applicable.

We also proposed to add a definition of "validation review period." The "validation review period" would be the period after the end of a fiscal year during which HCFA conducts a review of the previous year's validation surveys.

d. We proposed to add parts 416 and 485 to the list of applicable conditions of participation or conditions for coverage a provider must meet in order to participate in the Medicare program. These parts contain the conditions for ASCs and CORFs.

e. We would revise redesignated § 488.7(d) to parallel paragraph (c) of that section; i.e., we would add that a provider found out of compliance with Medicare conditions following a full State agency survey may be subject to termination of its provider agreement under § 489.53.

f. We proposed to delete current § 488.6(d)(2) concerning when a significant deficiency will be determined not to exist and revise redesignated § 488.7(b)(3) to clarify the necessity for the State agency to follow-up any flaw serious enough to threaten

the hospital's participation in the Medicare and Medicaid programs.

We would make a conforming change to redesignated § 488.7 by removing paragraph § 488.6(e)(3), which allows a hospital to regain its deemed status if it withdraws a prior refusal to authorize its accreditation organization to release periodic status reports of correction progress since the accreditation organization would no longer monitor its correction progress.

g. We also proposed to delete the informal review procedures now specified in § 488.6(f) to assure that the appeals process is applied uniformly for all facilities participating in the program regardless of accreditation status.

h. We would also amend § 488.10, State survey agency review; Statutory provisions, to include the additional types of providers and suppliers in the statutory provision in paragraph (d) that concerns treating accredited entities as meeting conditions of participation or conditions for coverage.

i. We would update the cross-reference in § 488.11, which refers to validation surveys, from § 488.6 to § 488.7.

IV. Comments and Responses

We received comments from 66 commenters in response to the proposed rule we published on December 14, 1990. Commenters included professional organizations, individual providers and suppliers, accreditation organizations, State governments, consumer advocacy organizations, and consumers. While the commenters expressed overall support for the proposed regulation and approval of HCFA's "deeming" process, they also addressed a wide variety of issues. These issues included:

- Confidentiality and disclosure of survey information;
- Cost shifting through accreditation fees;
- Enforcement and quality of surveys;
- Duplication of surveys and fragmentation of responsibilities among accreditation, certification and licensure; and
- Inconsistency with OBRA '87 requirements.

General Comments

General Comments: We have summarized below those comments which do not pertain to a single specific section of the proposed regulations but, rather, related to the proposed rule in general.

Comment: Commenters expressed overall support for the proposed regulations and the process by which HCFA will grant deeming authority to national accreditation organizations.

Response: We acknowledge the broad support for the proposed regulation and have developed a final rule consistent with that support.

Comment: We received several comments with respect to JCAHO. One commenter expressed explicit support for JCAHO being recognized as an accreditation organization. A few commenters expressed concern about JCAHO's current performance as an accreditation organization. A summary of those comments are as follows:

- Statistics show that when JCAHO finds fault with its accredited facilities, the problems it cites are usually limited to issues of recordkeeping and documentation.
- Given the history of serious violations of many JCAHO accredited facilities, close scrutiny of JCAHO's requirements and survey process is necessary. The commenters also expressed concern about the absence of a toll-free hotline telephone number and the unaffordable fee of $100.00 that the JCAHO charges the public and consumer advocate organizations for information pertaining to the facilities it accredits.

Response: We will examine these issues when we conduct a review of any accreditation organization requesting deeming authority or through the annual deeming authority review of these organizations. We will publish a proposed notice in the **Federal Register** describing the basis for granting an accreditation organization deeming authority and provide opportunity for comment. We will subsequently publish a final notice in the **Federal Register**. We will also publish a notice whenever deeming authority is removed. We also note that section 1865(a) of the Act already gives explicit deeming authority to the JCAHO with respect to hospitals, except for utilization review requirements and any standards promulgated by the Secretary that are higher than JCAHO accreditation requirements.

Comment: Nine commenters stated that the deeming authority application process should be outlined in the regulations and believed that accreditation organizations that have been denied approval for deeming authority should be afforded the opportunity to resubmit their applications. Additionally, the commenters recommended that a decision on all applications for deeming authority should be made by HCFA no later than 60 days after an application is filed or refiled.

Response: We have accepted the comment concerning the application process and inserted the application process at § 488.4 of this rule. We feel that the inclusion of the application process and requirements is appropriate and, by specifying those items the accreditation organization must furnish, we set forth additional general criteria that will be used in evaluating applications for approval of deeming authority.

We do not, however, agree with the recommendation that we make a decision on all applications for deeming authority within 60 days. We must reserve the right to establish and alter such timeframes to assure the flexibility necessary to respond appropriately to applications that could affect large numbers of facilities.

- With respect to the application process, accreditation organizations wishing to apply to HCFA for "deeming authority" must provide the following information:

* The provider or supplier type(s) for which the organization is requesting "deeming authority";
* A detailed comparison of individual accreditation requirements with the equivalent Medicare conditions; i.e., crosswalk;
* A description of the accreditation organization's automated data system, including the kinds of reports and tables generated by that system;
* A detailed description of the survey process, including:

—the frequency of surveys;
—whether surveys are announced or unannounced;
—copies of survey forms and survey guidelines and/or instructions;
—the accreditation survey review process and decision-making process; and
—the steps taken to monitor the correction of deficiencies;

* Detailed information about who performs accreditation surveys, including:

—the size and composition of individual accreditation survey teams;
—the education and experience requirements those surveyors must meet; and
—the content and frequency of the in-service training provided to survey personnel;

* Policies and procedures regarding withholding or removal of accreditation status for facilities that fail to meet the accreditation organization's standards, or any other remedial actions taken by the organization with respect to noncompliance with its own standards;

* Current procedures employed to investigate complaints against accredited facilities;

* Duration of accreditation;

* A listing of all currently accredited facilities that would achieve deemed status upon approval of deeming authority and the expiration date of each facility's current accreditation; and

* Additional supporting documentation, including an agreement to notify HCFA of certain events, such as the removal of accreditation from a provider or supplier, and to conform accreditation requirements to changes in Medicare conditions.

• HCFA will notify an organization if it finds that additional information is required.

• The accreditation organization will receive a formal notice from the HCFA Administrator stating whether the request for "deeming authority" has been approved or denied and an explanation of the reasons for the denial.

• Approval of an accreditation organization will be for a six-year term. We have established a six-year term of approval because we believe it would be irresponsible and unreasonable simply to approve an organization for an indefinite amount of time and not provide for further comprehensive reviews. Since HCFA has discretionary authority with respect to the approval of accreditation organizations, we must be able to impose reasonable conditions, such as the six-year approval term, in order to ensure the health and safety of patients and the general public.

• All requests for "deeming authority" should be mailed to: Administrator, Health Care Financing Administration, room 700 East High Rise Building, 6325 Security Boulevard, Baltimore, Maryland 21207.

• A national accreditation organization whose request for deeming authority has been denied may request that its original application be reconsidered in accordance with the procedures in this rule or it may resubmit its application in its entirety as soon as the organization has made improvements in its accreditation program to meet Medicare requirements.

Comment: Eight commenters stated that it is not clear how the regulatory notice provisions would apply to individual accreditation organizations at the point of, or during, the process of application for deeming authority. Specifically, they requested clarification on:

• Whether public notice would be provided at the point an organization applies for deeming authority;

• Whether public notice would be provided that would identify the organizations that have not been granted deeming authority, including the basis for denial; and

• Whether there would be an opportunity for public comment on applications submitted by individual accreditation organizations.

Response: Because this rule could have broad applicability with respect to potentially large numbers of affected health care providers, facilities and consumers, we are enthusiastically committed to providing adequate notice and comment opportunities with respect to the approval of deeming authority for any accreditation organization. We believe that the proposed approval of deeming authority for an accreditation organization should be publicized and that the public should be offered the opportunity to comment on the proposed approval so that any final determination regarding such approval would be made only after consideration of all information and perspectives provided by interested and affected parties.

Therefore, we have revised the final rule to provide for publication in the **Federal Register** of a proposed notice with comment period whenever we determine that an accreditation organization has demonstrated that it can provide reasonable assurance that the entities it accredits meet the appropriate Medicare requirements and the rationale for the determination. At least six months after the publication of the proposed notice, we will publish a final notice before any approval of deeming authority becomes effective.

Comment: Four commenters believed that the proposed regulations should include State licensure agencies as organizations that can be approved for "deeming authority" if these agencies have both survey and enforcement programs that meet HCFA's standards. The commenters also believed that when the proposed regulations are implemented, the State should be given first "refusal rights" for recognition as the accreditation organization because State agency personnel have received training on the survey and certification processes and are knowledgeable about the Medicare certification requirements. One commenter also believed that in some situations a State or regional program may be better equipped to understand and accommodate State laws when ascertaining compliance.

Response: We cannot accept this comment because under the authority of section 1865(a) of the Act HCFA is permitted to grant deeming authority only to national accreditation organizations.

Comment: One commenter indicated that the term "national accreditation organization" needs to be clarified.

Response: A national organization is an accreditation organization that offers accreditation services that are available in every State to any provider or supplier of the type accredited by the organization wishing to obtain accreditation status.

Comment: Four commenters stated that granting authority to private accreditation organizations creates a significant potential for inhibiting redress of consumer grievances and fails to provide sufficient consumer and beneficiary representation.

Response: We do not agree with this comment. The deemed status validation process includes a complaint investigation process. As indicated in § 488.7(a)(2) of this rule, the State survey agency, in response to a substantial allegation of noncompliance, surveys for any condition, or requirement for SNFs, that HCFA determines is related to the allegation. We have defined the term substantial allegation of noncompliance to mean a complaint from a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles), or any other source, that reflects on the health and safety of patients and raises doubts as to a provider's or supplier's compliance with any Medicare condition level requirement.

Comment: One commenter urged that HCFA work with entities such as the American Hospital Association, the JCAHO, the College of American Pathologists, the American Society of Internal Medicine, and the Commission on Office Laboratory Assessment, all of which potentially will request "deeming authority" as national accreditation organizations; the commenter added that these entities have the knowledge and expertise to provide HCFA with valuable information in finalizing these regulations. Four commenters suggested that HCFA consult with professional organizations to investigate alternatives to the proposed 20 percent rate of disparity. The commenters suggested that one alternative would be to engage an independent body to undertake a nation-wide, on-site review of a sample of the facilities accredited by an organization and report its findings back to HCFA. The commenters believed that such an approach would reduce the impact of varying State standards and survey techniques and would allow these important decisions about

possible withdrawal of deeming authority to be based on a larger and more diverse national sample.

Response: The standard process by which we respond to comments on a published notice of proposed rulemaking offers an efficient and effective means to request and obtain input from the broadest possible spectrum of the public. In addition, there will be a proposed notice published in the **Federal Register**, and an opportunity for comment before the final approval of deeming authority for any accreditation organization. To include only a few organizations in drafting final regulations would, at best, be soliciting repetitive and subjective comments from these parties, and, at worst, allow for inequitable opportunity of certain parties to influence the agency's reaction to public comments and the ultimate formulation of policy. We will not allow an outside organization to develop criteria to measure the equivalency of standards nor to conduct a nationwide validation activity on our behalf because of the importance of ensuring sound, consistent, national policy on these issues.

Comment: One commenter stated that the proposed regulation does not refer to laboratories; there is no mention of how this regulation will be applied and its relationship to the Clinical Laboratory Improvement Amendments of 1988 (CLIA '88).

Response: We acknowledge the commenter's concerns that the proposed regulation did not discuss the deeming of accreditation of laboratories in significant detail nor does it explain the relationship between this rule and the implementation of the requirements of CLIA '88.

Regulations implementing CLIA '88 were published on February 28, 1992 (57 FR 7002) and January 19, 1993 (58 FR 5215): Medicare, Medicaid and CLIA Programs; Regulations Implementing the Clinical Laboratories Improvement Amendments of 1988 (CLIA '88). We also published, on July 31, 1992, a rule entitled, HSQ–81–F: Granting and Withdrawal of Deeming Authority to Private Nonprofit Accreditation Organizations and of CLIA Exemption Under State Laboratory Programs (57 FR 33992), to implement CLIA '88 requirements concerning deeming authority for accreditation organizations and States that accredit or license, respectively, laboratories. CLIA '88 has specific requirements for deeming laboratories as meeting CLIA requirements by virtue of their accreditation or licensure.

This final rule includes provisions only with respect to the granting and withdrawal of deeming authority to national accreditation organizations for the other provider and supplier types specified in the proposed rule, and only with regard to non-laboratory service requirements. Of the provider and supplier types for which national accreditation organizations may apply for approval of deeming authority, three have condition level requirements for laboratory services: hospitals; long-term care facilities; and ambulatory surgery centers. These condition level Medicare certification requirements require that a laboratory in an accredited facility meet the applicable requirements for a CLIA certificate and that the CLIA approved laboratory services be adequate to the needs of the patients in the facility. For example, once the CLIA certification requirements are effective, laboratories in accreditated hospitals will not have deemed status by virtue of their hospital accreditation by JCAHO or AOA. Therefore, a national accreditation organization may apply for deeming authority for all conditions for these provider types under this rule. However, if an organization wishes to have deeming authority for CLIA requirements, it must make separate application for that approval under the laboratory deeming rule. In all cases, a provider or supplier must provide CLIA certified laboratory services, either directly or under arrangement, in order to meet Medicare certification requirements.

Comment: Two commenters recommended that before issuing a final regulation, HCFA should commission an independent study comparing the private accreditation systems (including their ability to find violations that affect patients' health, safety or welfare, and to secure elimination of those violations) and the certification system mandated by the Omnibus Budget Reconciliation Act of 1987 (OBRA '87) (a system that is an outcome-oriented process that evaluates the standard of care furnished to residents based on outcomes of care, protection of resident rights, and then ensuring that the residents' well-being is not compromised).

Response: As provided for in § 488.9 of this rule, each accreditation organization applying to HCFA for deeming authority will be reviewed on a case-by-case basis. This process will evaluate accreditation systems more effectively than doing an overall comparative study. HCFA's evaluation of accreditation systems does not focus on the relative merits of one organization against another but on each organization's equivalency to the applicable Federal requirements.

Comment: Two commenters asked how the "deemed status" would work when a nursing home participates in both Medicare and Medicaid and questioned whether only the Medicare portion would be "deemed" if it had a Medicare distinct part.

Response: Because there is no statutory authority for granting deemed status to Medicaid nursing facilities, the deemed status granted by an accreditation organization would only apply to the Medicare certification of a dually participating facility or its dually participating distinct part(s). This may result in multiple surveys if any accreditation organizations request approval to grant deemed status to nursing homes and their accredited facilities participate in both Medicare and Medicaid. One survey would be conducted by the accreditation organization for the Medicare certification and another survey would be conducted by the State survey agency for Medicaid participation. The only instances where eligibility for Medicaid participation can be established through deemed status are for providers and suppliers that are only required under Medicaid regulations to comply with the Medicare participation requirements for that provider or supplier type. In such instances, if the accreditation body has received approval of deeming authority under Medicare, and if the provider or supplier is deemed to meet Medicare requirements by virtue of its accreditation by the approved accreditation body, that provider or supplier has met Medicaid requirements. Under present Medicaid rules, the only facilities subject to Medicare participation requirements are hospitals, home health agencies, laboratories and rural health clinics. We have revised §§ 488.5 and 488.6 to include deeming of Medicaid providers and suppliers where applicable.

OBRA '87 Comments

The Omnibus Budget Reconciliation Act of 1987 (Pub. L. 100–203) mandated nursing home reform and was comprised of numerous provisions addressing comprehensive requirements for resident health, safety and rights in order for nursing homes to participate in Medicare and Medicaid. OBRA '87 also specified an innovative survey and enforcement mechanism to ensure facility compliance with these requirements. We received several comments about how our proposed rule is affected by OBRA '87 changes.

Comment: Twelve commenters questioned the legality of "deemed

status" and its consistency with the intent of the nursing home reform provisions of OBRA '87. The commenters believed that accreditation organizations will not be able to demonstrate that their standards are equivalent to the equivalent standards of OBRA '87.

Response: Section 1865(a) of the Act specifies that if HCFA finds that the accreditation of certain listed entities by a national accreditation organization provides reasonable assurance that the Medicare conditions imposed on those entities are met, it may treat such an entity as meeting those conditions. Included in the list of entities in section 1865 of the Act are skilled nursing facilities. The ability of an accreditation organization to demonstrate that its standards are equivalent to corresponding standards of OBRA '87 cannot be ascertained until that organization applies for deeming authority and HCFA completes a comparative analysis. Only if the accrediting organization conclusively demonstrates that its standards are at least equivalent to the OBRA '87 requirements for skilled nursing facilities would we consider granting deeming authority for these types of facilities.

OBRA '87 made sweeping changes in nursing home requirements, survey and enforcement, with which an accrediting organization could have difficulty demonstrating equivalence. The law requires public accountability and access to public information that goes well beyond the deeming provisions of the statute and that requires State agencies to use their survey responsibilities in administering a complex system of quality assurance initiatives.

The likelihood that any national accreditation organization will request approval of deeming authority for long-term care facilities appears to be low because only 870 of the currently 16,297 certified long-term care facilities participate only in the Medicare program. The number of Medicare-only facilities has steadily decreased as more facilities elect to participate in both Medicare and Medicaid, and we anticipate this trend continuing. Facilities that participate in both programs may decide not to seek accreditation for purposes of deeming since the facility would then be subject to two surveys; that is, an accreditation survey for deeming of the Medicare requirements and a survey by the State agency for Medicaid participation. The increasingly limited number of facilities that could benefit from accreditation for deeming purposes would make an unattractive market for accreditation organizations as the survey system necessary to support a deeming authority program would prove costly to the organization.

Comment: Six commenters expressed concern that accreditation organizations would not be required to use interpretive guidelines consistently that were developed for surveyors to survey nursing homes and home health agencies.

Response: Although the use of HCFA's interpretive guidelines would not be required, the accreditation organization must demonstrate that it can provide reasonable assurance that the requirements of the nursing home reform provisions of OBRA '87 are met. We expect an accreditation organization applying for deeming authority to have survey guidelines and procedures that will assure consistent application of their standards and provide reasonable assurance to HCFA that the participation requirements would be met if the facility were surveyed for compliance with those requirements.

Comment: One commenter suggested that delegating oversight authority to an accreditation body is not sound policy, especially in light of changes mandated by OBRA '87, which radically revised how we determine whether a nursing home may participate in Medicare and Medicaid.

Response: Congress has granted deeming status to JCAHO since the inception of the Medicare program. Congress further authorized the Secretary at section 1865 of the Act to permit other types of providers and suppliers to be deemed by accreditation bodies if those accreditation bodies provide reasonable assurance that the applicable participation requirements are met. By granting deeming authority the Secretary does not delegate oversight authority. The oversight authorization with respect to participating facilities remains with HCFA, who may take enforcement actions on the basis of surveys performed by the accreditation organization, the State survey agency, or both. The approval of deeming authority for OBRA '87 nursing home provisions will only occur if an accreditation body applies for such deeming authority and provides reasonable assurance that its accredited facilities meet the OBRA '87 nursing home requirements.

Comment: Two commenters believe that important issues such as improper and overuse of chemical and physical restraints, pharmacy care and resident rights could easily be overlooked by private accreditation organizations.

Response: As we have stated earlier, when an accreditation organization requests approval to grant deemed status, that organization must provide reasonable assurance that Federal requirements for each type of provider to which it wishes to grant deemed status will be met and that it can consistently survey accurately for those requirements. If these assurances are not provided, we will not approve the organization.

Comment: One commenter said there appeared to be a direct conflict with OBRA '87 provisions, which require the imposition of incremental fines for repeated or uncorrected deficiencies, and the concept of reasonable assurance and findings of significant deficiencies that appear to provide for an acceptable level of noncompliance.

Response: There is no acceptable level of noncompliance with Federal requirements. Only through a careful comparative analysis can we determine whether an accreditation organization provides reasonable assurance that all Federal requirements are met by accredited facilities. We will not grant approval of deeming authority to any organization whose standards or survey process permit noncompliance with the applicable Federal requirements. The use of the sanction provisions of OBRA '87, that is, denial of payment for new admissions, civil money penalties, temporary management, etc., can be used in addition to any actions an accreditation organization takes when it finds noncompliance, because the Omnibus Budget Reconciliation Act of 1989 (OBRA '89) specifies that we can take action based on an accreditation organization's findings. Accordingly, we may impose incrementally more severe fines for repeated or uncorrected deficiencies cited by the accreditation organization in its survey documentation. We may also impose sanctions based on our own survey when HCFA removes a provider's deemed status. For cases in which HCFA takes an adverse action based on an accreditation organization's findings, we have included a requirement in § 488.4 that in its application for deeming approval an accreditation organization must agree to permit its surveyors to serve as witnesses.

Comment: One commenter stated that since no final rules have been issued to implement any OBRA '87 provision, there exists no basis for consideration of granting deemed status to nursing facilities and home health agencies at this time.

Response: The process involved in approving accreditation organizations for deeming purposes does not require

that the provisions of OBRA '87 be implemented. We will grant deeming approval to accreditation organizations whose accreditation requirements are equal to or more stringent than the requirements we have in effect at the time. However, we do note that the OBRA '87 provisions have been included in several regulations: "BPD–396–FC: Requirements for Long Term Care Facilities", published February 2, 1989 (54 FR 5316), "BPD–396–F: Requirements for Long Term Care Facilities", published on September 26, 1991 (56 FR 48826), and "BPD–76–F: Home Health Agencies; Conditions of Participation", published on July 18, 1991 (56 FR 32973).

Comment: One commenter believed that approving an accreditation organization that uses a medical model rather than patient outcomes is contrary to nursing home reform provisions of OBRA '87, which stress quality of life for residents and pays closer attention to social and emotional needs.

Response: Although historically accreditation organizations have focused on compliance with process standards, any accreditation organization seeking approval to grant deemed status must demonstrate that it has requirements equivalent to all of the HCFA requirements for the same facility type, including those addressing social and emotional needs and patient outcomes in general. We also expect an organization to demonstrate a survey procedure and overall philosophy compatible with the OBRA '87 requirements, which mandated a survey process that evaluates resident outcomes, rather than focusing on policies and procedures, and provides for enforcement sanctions other than termination if facilities are out of compliance. These issues will be examined when an organization applies for approval to grant deemed status to any type of provider or supplier.

Comment: Four commenters expressed concern that the Joint Commission routinely announces its surveys three months in advance, which gives facilities ample time to prepare for the accreditation survey, while OBRA '87 requires that surveys be unannounced so that facilities will not be able to cover up the failings and inadequacies of the facility cosmetically.

Response: Any accreditation organization requesting approval to grant deemed status must assure and demonstrate to the Secretary that its surveys conform to Federal survey requirements. In fact, our policy is also to announce hospital surveys. We will examine the survey process of any accreditation organization wishing to grant deemed status to nursing homes to determine if it includes a survey policy consistent with the requirements of the law and HCFA operating policy.

Comment: Fifteen commenters believed there will be duplication, overlap and fragmentation of responsibilities if the Secretary allows accreditation organizations to grant deemed status to nursing homes and home health agencies (HHAs). They argued that nursing homes and HHAs would have to be licensed by the State and, additionally, by the accreditation organization. They stated that these surveys would be conducted at different intervals.

Response: In nursing homes and HHAs, State licensure and HCFA surveys are separate but in most cases are conducted concurrently. OBRA '87 requires that surveys be unannounced and allows the State survey agency to conduct a survey up to 15 months from the last survey as long as the Statewide average does not exceed 12 months. Any accreditation organization requesting approval would likely demonstrate a similar mechanism to assure an unannounced aspect and an acceptable frequency of surveys, and we are revising § 488.8(1)(ii)(B) (proposed § 488.9(1)(ii)(B)) to cite specifically whether surveys are announced or unannounced as one of the survey procedures we will include in determining comparability.

Comment: Three commenters asked that accreditation organizations be held to the same timeframes for conducting surveys and releasing the survey findings to providers as the State survey agency. One commenter further asked that the length of accreditation should be flexible based on the facility's ability to meet standards; another expressed concern that accreditation status was generally conferred for a three-year period.

Response: Accreditation organizations will have to demonstrate to HCFA that they use survey processes, survey frequencies and other timeframes that provide reasonable assurance that Medicare requirements, whether designated in law, regulations, or manual instructions, are met for the types of facilities for which the accreditation organization is seeking approval to grant deemed status. The statute does permit survey intervals of as much as 15 months for nursing homes and HHAs, and there is nothing to preclude such intervals from being set by an accreditation organization based on the facility's past performance. The specific timeframes and other procedures used by an accreditation organization will be evaluated by HCFA during the application process, as will the mechanisms used by the organization to monitor facilities and ensure compliance with requirements during the periods between surveys.

Comment: Twenty-one commenters questioned the advisability of dividing the survey and enforcement functions when an accreditation organization is approved to grant deemed status. Commenters stated that—

- The quality of the survey will be compromised by possible differences in interpretation of Federal regulations.
- Survey and enforcement processes are inextricably linked. Results of the surveys dictate the enforcement remedies, and enforcement needs must guide the survey (i.e., assuring that the survey documentation will withstand legal challenges).
- When the survey is performed by an outside entity, there will be no information released on substandard facilities and no enforcement actions taken while residents live in poor quality and sometimes life-threatening circumstances.
- Granting approval to an accreditation organization undermines the government's ability to perform quality assurance and protection of nursing home residents from abuse and neglect.

Response: All accreditation organizations must provide reasonable assurance that applicable standards will be met, as ascertained by HCFA through our comparative analysis, before an organization will be approved for granting deemed status. Accreditation organizations will be applying their own standards and will not be interpreting Federal regulations. Further, we are authorized to accept the accreditation organization's survey as our own in imposing sanctions, so the survey and enforcement processes remain closely associated. The government expects accreditation organizations to enforce requirements for quality assurance and for assuring resident protection. The validation activity will further demonstrate whether the organization's application of its standards meets HCFA enforcement needs and provides reasonable assurance of compliance. Additionally, the validation authority for State survey agencies to survey accredited facilities encompasses both routine validation reviews and other reviews stemming from complaints and can help to ensure the health and safety of patients and residents. Finally, we can require accreditation survey information to be available for substandard facilities to the extent the

information results in an enforcement action.

Comment: Nine commenters stated that the proposed rule does not take into account the interrelationships of the survey to other critical quality assurance functions and that no accreditation organization could be responsive in a consistent and timely manner to investigations of abuse since the accreditation organization would not share its findings and has no jurisdiction or authority to act on behalf of someone found to need assistance. The commenters added that, although the proposed rule requires an accreditation organization to have the ability to investigate complaints, there is no requirement for the investigations to be coordinated with other responsible agencies.

Response: The relationship between an accreditation organization, the State ombudsman for long term care and the State will be evaluated to assure that the accreditation organization meets the coordination requirements of OBRA '87. We will consider such relationships in determining whether the organization that seeks deeming authority for skilled nursing facilities has a survey process that provides reasonable assurance that the standards dictated by OBRA '87 and codified in section 1819(g) of the Act will be met and should therefore be approved for deeming authority. Specifically, an accreditation organization seeking approval for skilled nursing facilities will be expected to have procedures in place to notify the State ombudsman when it identifies deficiencies in an accredited facility with respect to its accreditation standards as well as any adverse action taken with respect to the facility's accreditation status. The accreditation organization will also be expected to notify each attending physician and the State board that licenses nursing home administrators whenever the accreditation organization identifies one or more instances of substandard care in an accredited facility.

Comment: Two commenters believed that granting deeming authority to an accreditation organization increases the time between the discovery of a deficiency and the application of a remedy because the survey agency would need to conduct another survey before imposing remedies.

Response: While the State agency is not precluded from conducting another survey, Section 1865(b) of the Act as amended by section 6019(b) of OBRA '89 permits HCFA to accept the accreditation organization's findings as its own and impose remedies immediately. To further ensure the protection of the health and safety of patients and residents in accredited facilities, we will require in § 488.4(b)(3)(vi) an approved accreditation organization to agree to notify HCFA within ten days whenever it identifies a deficiency that poses an immediate jeopardy to those patients or residents.

Comment: Two commenters recommended that validation/complaint surveys be conducted by a disinterested party, such as the Office of the Inspector General, and not by HCFA agents, to yield more objective and fair results.

Response: As stipulated in Section 1864(c) of the Social Security Act, there is no statutory authority for the Secretary to delegate this function to any entity other than the State survey agency.

Comment: One commenter believed that if more than one national accreditation organization exists, competition for contracts with nursing homes could undermine the survey process by creating a potential conflict of interest between the facility and an organization that accredits it.

Response: Accreditation is strictly voluntary. While it is possible that a facility could "shop around" for an accreditation organization whose standards the facility could meet, if the accrediting organization has approval of deeming authority its standards as a whole will have been found to provide reasonable assurance that equivalent Federal requirements would be met.

Cost Issues

Comment: One commenter believed that diverting survey dollars to an accreditation organization would weaken the capacity of the designated government survey agency to respond to substandard conditions.

Response: Accreditation fees for hospitals have always been an allowable cost under the Medicare program and included in a facility's indirect costs or in its prospective payment rate for inpatient services. The allowable costs considered reasonable are allocable on the basis of Medicare patient days or are reflected in a hospital's prospective payment rate for inpatient services. This rule will not divert survey dollars or reduce the enforcement funding of survey agencies. The level of funding of the State's survey agency will continue to be based on its survey and enforcement workload. Funding of State survey agencies will be commensurate with workload and number of facilities involved and will take into account the responsibility to "respond to substandard conditions".

Comment: One commenter believed that extending an accreditation program to nursing homes is not appropriate because it increases the administrative costs of regulating nursing homes. He believed these funds should go for direct care services for residents.

Response: As explained above, extending an accreditation program to nursing homes will not increase administrative costs since the Federal government will either pay the accreditation fees allocable to the Medicare program or pay the cost of a State agency survey of the facility.

Comment: Twenty commenters believed that "deemed status" shifts costs to the public from one budget to another. They stated that fees to accreditation organizations are paid by providers, which are in turn reimbursed for their expenses as part of their allowable operating costs of doing business. The commenters were concerned that this fee-for-service arrangement reduces public accountability and objectivity and that, consequently, the Federal government will still be paying for the accreditation surveys.

Response: While it is true that accreditation fees are considered an allowable cost, those costs are allocable on the basis of the Medicare population in a facility or are reflected in the calculation of a hospital's prospective payment rate for inpatient services. Since the remaining accreditation costs will be borne by the facility, there is not a dollar-for-dollar shifting of survey costs. We will evaluate factors such as cost, public accountability, conflict of interest, and objectivity through the review of an accreditation organization's application for approval of deeming authority.

Specific comments: The following are comments we received on specific regulatory sections:

§ 401.126 Information or records that are not available.

§ 401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.

Comment: Twenty-seven commenters believed that, based on the OBRA '87 provisions related to public accountability and access to public information, all survey results, including accreditation surveys, should be made available to allow consumers to make comparative judgements about certified providers and suppliers. Moreover, the commenters believed that the accreditation survey confidentiality requirements are inconsistent with OBRA '87 provisions on disclosure and

will abridge the effectiveness of ombudsmen as a source of information about a facility.

Response: Section 1865(a) of the Act prohibits disclosure of accreditation surveys or related information by the Secretary except to the extent that these surveys and information relate to an enforcement action taken by the Secretary. Copies of all accreditation survey information will be available to HCFA, which will monitor accreditation organizations and the facilities they accredit. We will take enforcement action if deficiencies are not corrected by the facility; the accreditation survey and related information with respect to the enforcement action will be available to the public. In this way, there is access by the public to information about poor performance on the part of accredited entities. Although this provision at Section 1865(a) of the Act does not speak to the release of information on good performance by nursing homes, the primary objective of the nursing home provisions of OBRA '87 was the protection of the health and safety of residents. Disclosure of information on poor performers that the public would want to avoid is certainly consistent with that objective of OBRA '87. While Section 1819(g)(5)(A)(i), as added by OBRA '87, requires us to make available to the public survey and certification information about all SNFs (not only those that are subject to enforcement actions), Section 1819 of the Act mentions only surveys conducted by the State or the Federal government and is silent on those conducted by accreditation organizations. However, when we evaluate an accreditation organization's application for deeming authority, we will consider all of the issues raised in the above comment. In addition, while Section 1865(a) of the Act prohibits us from disclosing accreditation survey information, unless an enforcement action is taken on the basis of that survey, or any accreditation survey of a home health agency, there is nothing in the statute to preclude the accrediting organization from releasing this information. In addition, we do not prohibit the release of this information by the individual facilities. The responsiveness of an accreditation organization to public inquiries about surveys of individual facilities, or a facility's willingness to release survey information, are factors consumers can consider in evaluating the facility. Based on these factors, the consumers can reach their own conclusion about a facility's performance and management philosophy, and the relative value to consumers that accreditation by a certain organization may have. As mentioned previously, we will evaluate an accreditation organization's level of coordination and cooperation with State ombudsmen programs when we receive the organization's application for deeming authority.

Finally, where ombudsmen function as an agency or otherwise are under the aegis of the State government, Federal law does not preclude the enforcement of State laws requiring the disclosure of accreditation information, for example, under State licensure programs.

Comment: One commenter requested clarification on the kinds of actions HCFA will consider as "enforcement actions" under § 401.126(b)(2)(B) of this rule.

Response: An enforcement action may include any action the Secretary takes in response to noncompliance with Federal requirements. Such sanctions include termination and other remedies that are alternatives to termination. We have amended the text at §§ 401.126(b)(2)(B) and 401.133(d) to include some examples of enforcement actions.

Comment: Two commenters recommended that § 401.133(d) be revised to require (rather than allow) the Secretary to release the accreditation survey and related information upon request. The commenters believed that this change is needed to achieve equivalency to the current Federal survey policy.

Response: We accept this recommendation and have amended the text at § 410.133 (d) and (e) to state that HCFA will release the information, rather than that we may release it. We are also changing, in other sections, all references to "the Secretary" to "HCFA" to correspond to other HCFA regulations. For consistency with the release of accreditation surveys of entities other than HHAs, in paragraph (e) we will require the release of HHA surveys only upon written request.

Comment: Two commenters objected to the proposed provisions in §§ 401.126 and 401.133, which state that the Secretary may release the accreditation survey of any home health agency. One commenter believed that in accordance with Section 1864(a) of the Act, the Secretary is authorized, at most, to release only certain accreditation survey information concerning significant deficiencies with respect to patient care to the State survey agencies so that they may make that information available over the home health hotline. The commenters believed that the disclosure of home health agency accreditation survey information should be similar to disclosure for other providers or suppliers.

Response: Section 1865(a) explicitly prohibits the Secretary from disclosing the accreditation survey released to HCFA by any accreditation organization for any entity other than a survey with respect to a home health agency (except that the Secretary may disclose survey results and information related to the survey for any type of facility to the extent that the survey and additional information are related to an enforcement action the Secretary takes). Accordingly, the law does not prohibit the Secretary's disclosure of accreditation surveys of home health agencies. Therefore, based on the law, we do not accept these comments.

Section 488.1—Definitions

Comment: Four commenters recommended that the definition of a substantial allegation be revised to define the sources of complaints more specifically. The commenters believed that the revision will reduce instances of rumor and speculation.

Response: We do not agree that specifying or explaining the sources of complaints in regulations will reduce unsubstantiated allegations. Our administrative procedures manuals provide guidance to Federal and State surveyors to evaluate all complaints. Those complaints that pertain to charges and billing, health insurance coverage, and personal complaints that are clearly subjective are not authorized for investigation. We believe, however, that all complaints, regardless of the source, concerning the quality of care and other participation requirements must be investigated. Specific investigative procedures are included in the procedure manuals. However, writing regulations to this level of specificity would unnecessarily limit HCFA's flexibility in applying its administrative policies.

Comment: One commenter asked that we define the term "reasonable assurance" as specified in section 1865 of the Act and as it relates to the accreditation process in § 488.1.

Response: We have accepted this comment and are defining "reasonable assurance" in § 488.1 to mean that an accreditation organization has demonstrated to HCFA that its standards, taken as a whole, are at least as stringent as those established by HCFA, taken as a whole. This does not mean that the requirements of the accreditation organization must be identical to HCFA requirements. The accreditation requirements may vary from and be organized differently than the Federal requirements for a specific

service or facility. It is possible that an accreditation organization may impose less stringent requirements in one area that are balanced by more stringent requirements in a closely related requirement elsewhere in the standards. The main consideration in determining reasonable assurance is the level of protection afforded to the accredited facility on the basis of the accreditation requirements taken as a whole. We have revised the proposed § 488.6 to reflect this policy.

Comment: One commenter stated that a definition for "pattern of increasing disparity" should be developed.

Response: We have deleted references to increasing rate of disparity and have revised our approach in using the rate of disparity in determining whether a comprehensive review of an accreditation organization's deeming authority should be undertaken. As provided in the final rule, at the close of a validation review period, we will evaluate the findings of the validation program, including the rate of disparity. If the rate of disparity is 20 percent or more, we will initiate a deeming authority review. On the basis of validation review findings where the rate of disparity is less than 20 percent, we may implement deeming authority review if the validation review findings indicate widespread or systematic problems in an organization's accreditation process that provide evidence that there is no longer reasonable assurance that accredited entities meet Medicare requirements.

Section 488.5—Effect of JCAHO or AOA Accreditation of Hospitals

Comment: Two commenters stated that under § 488.5(b) all accreditation findings for any hospital should be automatically released to HCFA.

Response: Section 1865(a) of the Social Security Act provides that only if an accredited hospital authorizes the accreditation organization to release its most recent accreditation survey will a hospital be deemed to meet the Medicare requirements. The regulation at § 488.5(b) simply restates this statutory provision. We will determine administratively when and under what circumstances (e.g., validation survey, complaint investigation, enforcement action, etc.) we will exercise our rights to secure this information as we do not necessarily have a need for records of all accreditation surveys.

Comment: One commenter believed that a provision needs to be included in § 488.5 that requires providers and suppliers to report substandard surveyors and erroneous accreditation survey reports to HCFA.

Response: Surveyor performance and accuracy of accreditation survey reports are issues that will be evaluated as part of the validation review process. When reviewing the performance and accuracy as part of the comparability review process, we will ensure that an accreditation organization has a quality control process, and evaluate the effectiveness of that process.

In determining whether the accreditation organization provides reasonable assurance that Medicare requirements are met, HCFA will review how the organization assures its surveyors are competent and that survey results are accurate. For this reason, we have declined to accept this comment. In addition, affected providers will have the opportunity to comment prospectively on the survey process and personnel qualifications at the time the proposed notice of approval is published. Finally, there is nothing to preclude any provider from notifying HCFA or the accreditation organization whenever the provider encounters problems in the accreditation process or survey personnel.

Section 488.6—Other National Accreditation Programs for Hospitals and Other Providers and Suppliers

Comment: Seven commenters disagreed with the proposed provision in § 488.6 that permits partial accreditation for providers that meet "any or all of the Medicare conditions". The commenters believed that such services as dietary, nursing, assessment, and quality of care are all interrelated. They stated that under an outcome-oriented system, a surveyor must look at the whole picture before determining compliance; partial accreditation would segment the information available to the public and segment enforcement efforts.

Response: The term partial accreditation is misleading. We have no authority over the services, facilities, or requirements that an accreditation organization chooses to evaluate and accredit. Based on an organization's scope of interest, we could be faced with the issue of partial deeming. We agree with the commenters that this concept could be problematic. As the commenters point out, many of the participation requirements are inextricably related and cannot be properly evaluated without careful examination of the related requirements. We also believe, however, that there could be effective accreditation organizations whose standards address individual participation requirements or groups of requirements that are less than the full range of requirements that a specific facility type must meet in order to participate in the Medicare program.

The statute gives the Secretary explicit authority to deem compliance with "any or all" of the Medicare conditions if equivalent accreditation standards are met. While we can see no advantage to recognizing partial accreditation at this time, the authority to do so is reflected in this rule. Deeming compliance with only a portion of the Medicare certification requirements could create an extreme administrative burden, but it can also provide the necessary flexibility to administer the certification program effectively. In addition to those cases where the accreditation organization accredits less than the full range of Federal requirements, there are those instances where we have imposed specific requirements that are more stringent than comparable requirements imposed by an accreditation organization. In such cases, deeming authority for the majority of the requirements could be an effective device that allows us or our agent to survey directly for some requirements and to allow for the deeming of others by a specific entity.

For example, currently accredited psychiatric hospitals are deemed to meet all of the hospital conditions for participation except the special psychiatric hospital staffing and records requirements, which HCFA surveys through other means. Other similar arrangements could prove desirable, and we must maintain the authority to exercise flexibility in the scope of deeming authority that is approved.

Comment: Two commenters strongly recommended that the proposed deletion of the informal review process currently specified in § 488.6(f) be retained and extended to all providers whether or not they are accredited.

Response: We do not accept this comment. As indicated in the preamble of the proposed regulation, we will implement a uniform appeals process for both accredited and nonaccredited providers and suppliers. Eliminating the informal review process for accredited providers and suppliers, which is not available to nonaccredited providers and suppliers, is part of our effort to establish this uniform appeals process.

Comment: One commenter believed that the proposed language in § 488.6 deviates substantially from the intent of the language specified in section 1865 of the Act. The commenter recommended that the language in § 488.6 be changed to specify that conditions precedent to accreditation recognition by HCFA include the requirement that the accreditation organization demonstrate

that it imposes the Medicare condition(s) or other requirements that serve substantially the same purpose or standards that HCFA determines are at least equivalent to the Medicare standards imposed by HCFA.

Response: Section 488.9 satisfies the intent of the law by outlining the general criteria an accreditation organization must meet in order to provide reasonable assurance to HCFA that its standards are equivalent to those standards established by HCFA. Therefore, we are not revising § 488.6 as suggested.

§ 488.7—Validation Survey

Comment: Two commenters supported the use of private accreditation survey results as the basis for triggering a validation survey but strongly objected to the initiation of enforcement actions based on an accreditation survey without independent verification of noncompliance through a Medicare survey.

Response: Under section 6019(b) of OBRA '89 HCFA may use a validation survey, an accreditation survey, or other information related to the survey to determine that a facility does not meet the Medicare conditions of participation. HCFA may, based on the results of an accreditation survey, remove "deemed" status and initiate an enforcement action against a facility based simply on a review of the accreditation organization's documents. Such immediate action is necessary to protect the health and safety of patients and residents in accredited facilities.

Comment: One commenter believed that significant deviations currently exist among regional offices and between regional offices and HCFA central office concerning the interpretations of the conditions of participation and that HCFA has not given instructions to its own surveyors on when to cite standard versus condition level deficiencies. He stated that surveyors' classifications of deficiencies vary and will likely continue to do so until HCFA develops more specific instructions on weighing systems for establishing consistency.

Response: The HCFA survey and certification procedures applied by the State survey agencies and Federal surveyors are not the subject of this rule. However, we point out that the survey and certification process includes review mechanisms to ensure that surveyors, in exercising their best professional judgement in identifying and citing deficiencies, are consistent in their application of the requirements. Based on our experience in evaluating State agency performance, we disagree with the comment that HCFA and the State agency survey are inconsistent with respect to citing deficiencies.

Comment: One commenter believed that providers certified on the basis of "deemed status" should be allowed to request a review by the State agency or the HCFA surveyors where accreditation findings indicate deemed noncompliance with Federal conditions; in such cases, the State or regional office surveyors could confirm the accreditation organization's findings or conclude that Federal requirements are met whether or not all standards of the accreditation organization are met.

Response: The law provides no authority for providers or suppliers certified on the basis of "deemed status" to choose to have a State survey when accreditation findings indicate noncompliance with accreditation standards and, therefore, presumed noncompliance with Federal requirements. Only HCFA has the authority to determine which accreditation survey results will be validated. A State agency survey will be available to a facility if the facility voluntarily discontinues its accreditation status or loses its accreditation due to noncompliance with accreditation requirements and formally requests certification by the survey agency. Otherwise, State agency surveys of accredited facilities will be done on a sample basis or in response to complaints, as explained below. Except in the situations noted above, neither HCFA nor the State agency will intervene in any dispute between an accreditation organization and its accredited providers or facilities.

Comment: Two commenters questioned whether the terms "significant deficiencies" and "reasonable assurances that conditions were met to the extent appropriate" allow an acceptable amount of facility noncompliance with HCFA requirements.

Response: We do not agree with this comment. As we indicated in the preamble of the proposed regulations, it is in the public's interest to follow up any deficiency serious enough to threaten a provider or supplier's participation in the Medicare program and we are revising the proposed regulations at § 488.7(a) to permit us to survey in response to substantial allegations of any deficiencies (instead of significant deficiencies). We have no authority to change the statutory provision that requires "reasonable assurances that conditions were met to the extent appropriate". However, we believe the criteria for determining reasonable assurance, as presented in this final rule, will assure that accredited facilities meet Medicare requirements. Our evaluation of an accreditation organization will determine the equivalency of the accreditation organization's facility standards, taken as a whole, and its survey and inspection requirements to the applicable Federal requirements. Equivalency means that the organization's requirements correspond to and provide at least the same protection as the applicable Medicare condition level requirements established by HCFA. It is acceptable for an accreditation organization's requirements to vary from and be organized differently from the HCFA requirements, as long as all of the accreditation organization's requirements, taken as a whole, are at least equal to the HCFA requirements, taken as a whole.

Comment: One commenter believed that § 488.7(b)(1), which requires the provider or supplier to authorize the release of its survey to HCFA, should be deleted because it is redundant of §§ 488.5(b) and 488.6(b).

Response: We agree with the commenter that the provision at § 488.7(b)(1) is essentially duplicative of the provisions at §§ 488.5(b) and 488.6(b) and have deleted that provision. To conform to the requirements of the statute, we have revised §§ 488.5(b) and 488.6(b) to reflect that a hospital or other facility deemed to meet Medicare requirements by virtue of accreditation must authorize the release of its accreditation survey to the State survey agency as well as to HCFA.

Comment: One commenter stated that § 488.7(a)(1) of the proposed regulation should be amended to allow the validation survey to focus on specific conditions when appropriate. This validation survey approach was permitted in a HCFA letter to the Joint Commission.

Response: We agree with the commenter and have revised the regulation at § 488.7(a)(1) to reflect that the validation survey may be focused on specific conditions or requirements when appropriate.

Comment: One commenter stated that the proposed regulation does not require validation surveys to be conducted with sufficient frequency, according to accepted scientific standards. Another commenter stated that under § 488.7(a), HCFA should conduct validation surveys within 60 days of the latest accreditation organization report to ensure the accuracy of the survey.

Response: Historically, the establishment of time limits for performing validation surveys of hospitals has been included within HCFA's internal operating instructions. Such time limits and procedures are subject to adjustment in response to changes in workload, staff resources, etc., as well as statistical reliability. The maximum allowable timeframe provided in our instruction manual for the interval between an accreditation survey and a corresponding validation survey is 60 days. However, based on recently revised procedures, we will also include in the representative sample of facilities for validation surveys facilities that have not had a recent accreditation survey (i.e., those that are at the midpoint of their accreditation cycle). When a validation survey is scheduled in a facility that has not had a recent accreditation survey, the State agency will be directed to perform the survey within 60 days of the survey request. We anticipate maintaining this threshold for accredited providers and suppliers subject to a validation survey.

Comment: One commenter recommended that HCFA clarify in § 488.7(e)(3), which concerns once again permitting deeming of a provider or supplier if we find it meets all the Medicare conditions, what effect condition level deficiencies will have on reimbursement. The commenter stated that current HCFA policy allows laboratories not in compliance with Medicare's conditions of participation to be reimbursed for a period of time when plans of correction are being implemented. He added that, accordingly, HCFA's administrative and operating procedures concerning termination and reinstatement should be included in the preamble.

Response: Reimbursement and laboratory issues do not come under the purview of this rule. Provider and supplier termination and reinstatement procedures are addressed in part 498, which addresses appeals procedures. The removal of a provider's or supplier's deemed status by HCFA for condition-level deficiencies is the customary first step in the termination process. HCFA procedures provide for a 23 or 90 day timeframe for termination depending on the scope and severity of the cited deficiencies. Providers and suppliers who are able to address the deficiencies to HCFA's satisfaction before the effective date of the proposed termination are not terminated.

Comment: One commenter believed that in § 488.7(a) (which lists the criteria under which we will review a national accreditation organization) the makeup of the team that will conduct any validation surveys should be specified; section 1819 of the Act, for example, recognizes the importance of specifying the makeup of the survey team.

Response: We do not accept this comment because we want to maintain the flexibility to ensure that the specific composition of validation survey teams is appropriate to the type of facility and to the circumstances of survey. For example, a complaint survey may be partial, focusing on certain requirements and may not require a full team.

Comment: Six commenters stated that the Joint Commission accreditation problems identified in testimony before the Subcommittee on Health of the House Committee on Ways and Means held in June 1990 have not been adequately addressed in the proposed regulation. One of the commenters believed that, based on this testimony, § 488.7(a) should be amended to include the following: (a) A minimum of five percent of all accredited providers of each provider type for each approved accreditation organization will receive a validation survey; (b) the rule should specify that a full survey shall be conducted for every instance in which the State agency substantiates a complaint regarding inappropriate treatment or inadequate quality of care; and (c) the terms "substantial allegations of significant deficiencies" should be changed to read, "a substantial allegation validated by the State survey agency." The commenter thought that more than one allegation is not necessary and the term "significant deficiencies" is very subjective and is not defined.

Response: In determining whether an accreditation organization provides reasonable assurance of compliance with Medicare requirements, all aspects of its survey and accreditation process will be subjected to examination. Concerning the size of the validation sample, we note that the statute does not require a particular sample size for validation surveys, and we do not believe it is necessary to establish such a sample size through regulation. Further, § 488.7(a)(2) specifically states that "If the State survey agency substantiates a deficiency * * * the State conducts a full Medicare survey." Accordingly, any substantiated instances of inappropriate treatment and inadequate care would trigger a full Medicare survey. As we have indicated earlier we are deleting references to significant deficiencies because we believe it is in the public's interest to follow up any alleged deficiency with respect to Medicare requirements. We have amended § 488.7(a) of the rule to reflect this policy.

Comment: Three commenters recommended that § 488.7(d) be revised to reflect that accredited facilities found out of compliance with Medicare requirements should be subject to the requirements for enforcement remedies applied to non-accredited facilities. The commenters believed that this section needs clarification to indicate that if found out of compliance during the validation survey the facility will be subject to the same enforcement remedies that may be imposed on a non-accredited facility.

Response: We have accepted this recommendation and have incorporated clarifying language in the text at § 488.7(d) of this rule.

Comment: Four commenters indicated their belief that the triggers for a validation survey as proposed by HCFA are seriously lacking. OBRA '87 requires that facilities meet "all" requirements, not just "substantial" and "significant" ones.

Response: We believe our triggers for a validation survey are consistent with the intent of OBRA '87; we will respond to every possible deficiency of any requirement that reflects on the health and safety of patients or residents or raises doubts as to a provider's or supplier's compliance with those requirements. As indicated earlier, we have deleted references to the term "significant deficiencies" and amended § 488.1 to reflect this policy.

Comment: Three commenters stated that the proposed regulation requires that a facility found through a v idation survey to be out of compliance must be subject to termination. They believed that this proposal, by naming termination alone as a response to noncompliance, ignores the range of sanctions available under State law and under OBRA '87, which include denial of payment for new admissions, temporary management, and civil money penalties.

Response: We have revised § 488.7(d) to state that a facility may be subject to intermediate sanctions, if applicable to that type of provider, as well as termination. We have not included sanctions available under State law because Medicare participation does not fall under the State's jurisdiction.

Comment: One commenter believed there will be an increased burden on HCFA and State agencies due to performing validation surveys of deeming authorities.

Response: Under this rule, the State survey agencies, acting as HCFA's agents, will conduct validation surveys of accredited facilities. Since the States

are currently conducting all surveys, conducting only validation surveys for a sample of accredited facilities could represent a significant decrease in workload.

Section 488.9—Federal Review of Accreditation Organizations

A few commenters expressed opposition to the implementation of the provision at § 488.9(c)(2), which establishes the criteria and procedures for removing deeming authority based on validation reviews. A summary of the concerns expressed follows:

- One commenter indicated that the calculation for determining the rate of disparity assumes that HCFA will be able to develop a "crosswalk" to identify correspondences between Federal and private standards and that the private standards will be organized in the same manner as the Federal so that they can be aggregated to the "condition level"
- Two commenters recommended that the concept of a disparity rate be eliminated or held in abeyance until sufficient experience has been gained in inspecting laboratories under CLIA conditions.
- One commenter believed that tolerating a rate of disparity of up to 20 percent between findings of the accreditation organization and HCFA or its agents is acceptable only if this amount of disparity could have occurred by chance. The commenter stated that the proposed regulation does not provide enough information to assess whether a 20 percent rate of disparity would be statistically significant.

Response: It will be the responsibility of any accreditation organization seeking approval of deeming authority to develop and present the referenced crosswalk as part of its application package. It is acceptable for an accreditation organization to organize its requirements differently than HCFA does, and to have requirements that are not identical but are at least equivalent to Federal requirements. The accreditation organization must be able to provide reasonable assurance that all applicable Medicare conditions would be met. It will be HCFA's responsibility to determine if the accreditation organization's requirements as presented in its application are at least equivalent to HCFA's standards and are organized in such a way to enable HCFA to accept accreditation as providing reasonable assurance that all the Medicare conditions would be met.

In evaluating an accreditation organization's performance under validation review, HCFA will calculate a rate of disparity between the findings of the accreditation organization and the validation survey results. This calculation will be based on condition level deficiencies (or deficiencies in HCFA's requirements for long term care facilities) where the accreditation organization failed to identify the same or similar deficiencies. In addition, if an organization has received approval of an accreditation structure that is not exact in its replication of Medicare requirements, but which compensates in other areas so that its overall standards are at least equivalent to those established under the Act (for example, a lower constituent standard in one area of a condition level requirement is offset by a more stringent standard elsewhere in the requirements pertaining to the condition), HCFA will accommodate those distinctions in conducting validation surveys and in making conclusions with respect to the performance of accreditation organizations on the basis of the validation survey findings.

The 20 percent level of disparity that will be used in monitoring the effectiveness of accreditation organizations in providing reasonable assurance that accredited facilities meet Federal requirements is not indicative of an acceptable level of noncompliance with Federal requirements for accredited facilities. This figure was based on statistical analyses of historical validation survey findings for accredited hospitals for the period 1974 to 1991.

We cannot accept the comment that the use of a disparity rate be phased in or eliminated. As explained elsewhere, the 20 percent rate is simply a threshold that triggers a notice from HCFA to the accreditation organization that its deeming authority is in jeopardy and that its accreditation system is under rigorous scrutiny. Based on further evaluation, we could remove deeming authority, but the removal is not mandatory on the 20 percent criterion alone nor is a 20 percent rate of disparity an absolute requirement that must be met before HCFA can withdraw its approval of an accreditation organizations deeming authority. While deeming authority review will always be implemented when the rate of disparity is 20 percent or more, HCFA can institute such a review at any time validation findings indicate widespread or systematic problems in an organization's accreditation process that may indicate that there is no longer reasonable assurance that accredited entities meet Medicare requirements.

As stated earlier, an accreditation organization's approval period will not exceed a period of six years; we will conduct a validation review at the end of the term of approval. We reserve the right to determine if the reapplication process should occur more frequently then every six years. The frequency of the application and the nature of the reapplication materials will be based on a range of issues, such as:

An evaluation to determine if the accreditation organization follows its own procedures in imposing corrective action plans on providers and/or suppliers that do not meet its standards and in monitoring those plans with follow-up surveys.

An evaluation to determine if the accreditation organization is ensuring that identified deficiencies are corrected within the timeframes established in the organization's procedures.

An evaluation of whether deemed status is removed from those providers and suppliers that fail to correct their deficiencies in accordance with the established timeframes.

An evaluation to determine if the complaints are investigated timely and if onsite visits were required. Paragraphs (d)(1)(iii) and (3) of § 488.8 now reflect the reapplication requirements.

Comment: One commenter stated that under § 488.9(c)(2)(i), the rate of disparity will not be needed if HCFA has the authority to impose termination or intermediate sanctions rather than removing deeming authority as an interim step.

Response: Section 488.9(c)(2)(i) of the proposed regulation (§ 488.8(d)(2)(i) in this final rule) refers to the term "rate of disparity" that applies strictly to the validation review process for accreditation organizations. The rate of disparity is used to determine if the removal of deeming authority from an organization is warranted. This provision does not, per se, refer to individual facilities. On the other hand, HCFA can remove deemed status from an individual facility whenever a condition level requirement is found out of compliance. HCFA has the authority to impose termination or intermediate sanctions at any time, based on its own survey findings or the survey findings of the accreditation organization.

Comment: Two commenters indicated that the calculation for determining the rate of disparity considers only deficiencies identified by HCFA that are not identified by the accreditation organization, effectively assuming that deficiencies identified by the accreditation organization, but not by HCFA, are irrelevant. They stated that State survey findings are the sole basis for judging the accreditation program findings, which assumes the validity

and reliability of the State agency surveys.

Response: In order to perform a comparative analysis of any kind, certain baseline standards must be established. Congress has charged HCFA with the authority to determine which requirements and standards are necessary for carrying out in good faith the laws related to the Medicare and Medicaid programs. Our validation program is concerned chiefly with the equivalency of accreditation standards to Federal requirements, and assuring that Medicare participating facilities deemed by virtue of accreditation would meet those requirements if surveyed against them. While it will be helpful for HCFA to examine its survey findings in light of deficiencies identified by accreditation organizations but not by HCFA, these findings have no place in evaluating the effectiveness of accreditation in satisfying existing Medicare requirements. We have clarified the definition of "rate of disparity" in § 488.1 to state more clearly that the calculation of the percentage rate is based on an organization's most recent surveys of providers or suppliers of the same type.

Comment: Four commenters stated that HCFA should define the phrase "significant reduction in the rate of disparity" in § 488.9(e)(iv)(B). One commenter indicated that § 488.9(c)(2)(i) mentions validation surveys and a disparity rate of 20 percent or more. The commenter questioned the use of a 20 percent "rate of disparity" to determine whether an accreditation organization meets requirements for retaining deeming authority. He stated that it is not uncommon to have differences in a validation survey, which upon review do not result in finding of significant noncompliance; perhaps, the issue could be clarified to specify the relative importance of various areas under review.

Response: As discussed previously, we have revised our approach to the use of validation review findings in evaluating the performance of accreditation organizations, and significant reduction in the rate of disparity will no longer be used. If an accreditation organization is subject to deeming authority review because its rate of disparity is 20 percent or more, its rate of disparity for validation review findings during the period of conditional approval must be reduced to less than 20 percent before it can be returned to unconditional approval status. If deeming authority review is undertaken on the basis of validation review findings where the rate of disparity was less than 20 percent, HCFA will make a determination, on the basis of its review, including review of recent validation findings, whether accreditation by the organization continues to provide reasonable assurance that the applicable Medicare requirements are met.

Comment: Two commenters suggested that the validation review required in § 488.9(c) should be replaced with the State Agency Evaluation Program (SAEP). They stated that SAEP uses a comprehensive approach in the evaluation of State survey agency performance. Another commenter indicated that the 1989 Federal monitoring surveys of unaccredited hospitals certified by State agencies for Medicare participation revealed that in this sample State agencies were judged to have had a 25 percent rate of disparity by Regional Office staff. The commenter believed that if a 25 percent rate of disparity is a reasonable performance standard for HCFA's own agents, it would seem a reasonable performance standard for accreditation organizations as well.

Response: The State agency evaluation program (SAEP) is a comprehensive evaluation protocol used in the administration of the contractual relationship between HCFA and the State survey agencies. The agreements between HCFA and the States are governed by Section 1864 of the Act as well as Federal and Departmental acquisition regulations, and the criteria used to evaluate accreditation organizations are not derivative of the SAEP. Therefore, it is inappropriate for us to act on this commenter's suggestion. We will continue to use the 20 percent rate stipulated in the proposed rule as a threshold indication that the accreditation organization is not meeting the regulatory requirements. The 20 percent rate will be the point at which HCFA will notify the organization that its approval for deeming authority is in jeopardy.

Comment: Six commenters stated that the rate of disparity and pattern of increasing disparity are discussed in relation to compliance with condition level deficiencies. The commenters believed that this is too permissive and leaves too many people at risk for too long a period of time, and that, further, it is based on condition level compliance, a construction not in use in nursing homes. They believed that this hierarchical approach would allow an accreditation organization to ignore, for example, inappropriate restraint use, inadequate social services, violations of residents' rights provision, inadequate activities, or improper nurse aide training to be tolerated indefinitely.

Response: We have revised our definition of "Medicare condition" at § 488.1 to include "long term care requirements"; therefore references to rates of disparity based on conditions include nursing home requirements. These requirements must be addressed in the crosswalk that organizations submit in their application for approval of deeming authority. A final rule pertaining to the requirements for long term care facilities eliminated the hierarchical system and the final enforcement rule allows the determination of the seriousness of deficiencies based on how far the nursing home deviates from HCFA's requirements. (See "BPD–396–F, Requirements for Long-Term Care Facilities" (56 FR 48826).) For other types of facilities, the hierarchial system of conditions, standards and elements is still in place. These conditions essentially represent clusters of standards, regardless of the type of facility accredited. Similarly, the accreditation organizations for these facilities must submit a crosswalk showing equivalency between their requirements and HCFA's clusters of standards. The evaluation of accreditation organizations' initial requests for deeming authority, as well as periodic validation and deeming authority reviews thereafter, provides continuing Federal oversight to assess the equivalency of the accreditation organization's standards to Federal requirements, including use of restraints, social services, residents' rights, etc.

Comment: One commenter recommended that both the triggering of a State agency survey and the provisions related to a deeming authority review should be based on determinations of a significant level of noncompliance with the requirements for participation for long term care facilities. The commenter further recommended that the definition of significant noncompliance be based on the citing of deficiencies and the imposition of a sanction or sanctions for a violation or violations that have resulted in negative outcomes, including the violation of residents' rights, causing actual or life-threatening harm or death; and/or based on the failure of the facility to meet administrative requirements to the degree that negative outcomes have occurred in sufficient number or with sufficient regularity.

Response: Now that the hierarchical system of nursing home requirements is eliminated, all requirements are equally enforceable. Therefore, deficiencies

with any requirements detected during a validation survey will be considered in computing the rate of disparity if comparable deficiencies were not detected by the accreditation survey.

Comment: One commenter believed that recognizing an accreditation organization under "deemed status" would result in duplicative staffing and a substantial increase in staff training for the State survey agencies.

Response: Under deemed status, the State agencies will continue to conduct surveys under the Federal requirements in effect for the facility type at the time of the survey. Inasmuch as the State egencies will conduct validation surveys only on a sample basis end in response to complaints, the granting of deemed status should not necessitate increased staffing levels or increased training needs at the State survey agencies.

Comment: One commenter requested that HCFA consider voluntary accreditation standards for the providers of rehabilitation services including rehabilitation agencies, comprehensive outpatient rehabilitation facilities, skilled nursing facilities, home health agencies, and public health agencies.

Response: We are not sure what the commenter means by "voluntary standards". Since accreditation organizations are not required to request approval for granting deemed status for various providers, any standards they develop are voluntary. However, the standards developed by accreditation organizations must be equivalent to HCFA's standards in order for the organization to receive approval to grant deemed status. Accreditation is also voluntary on the part of providers and suppliers. (Facilities can voluntarily choose to be accredited by an organization with deeming authority in lieu of having periodic certification surveys and ongoing monitoring by the State.) However, to be considered for deeming authority, an accreditation organization's standards must be requirements and, as such, may not be voluntary or optional. The provider/supplier categories mentioned by the commenter would be eligible for deemed status through means of accreditation if an accreditation organization applies for and receives approval of deeming authority.

Comment: Two commenters urged that the deeming authority review process be carried out in a rigorous and objective manner to ensure that quality of care will not be compromised.

Response: We agree with the commenters and believe that the review process set forth in § 488.9 insures a thorough and unbiased evaluation.

Comment: One commenter recommended that § 488.9 be revised to include the process for continued participation of a deemed facility when an accreditation organization loses its deeming authority. The commenter suggested two options: the first option would be to consider the facility as deemed until the expiration of its accreditation certificate even though the accreditation organization has lost its deeming authority; and the second option would be to include in the regulation a notice requirement to deemed facilities explaining that the accreditation organization has lost its deeming authority and informing the deemed facility of its options.

Response: Section 488.9 (now § 488.8) has been revised to add a paragraph that stipulates that facilities be notified of HCFA's removal of an accreditation organization's deeming authority, and the options available to each facility that had received deemed status based on its accreditation by that organization. Specifically, a provider's or supplier's deemed status will continue in effect for 60 days following notification and can be extended for an additional 60 days if we determine that the provider or supplier submitted a timely application to another approved accreditation organization or to us. A provider's or supplier's failure to do so will jeopardize its participation in the Medicare program and, where applicable, in the Medicaid program. These procedures will apply regardless of the provider's accreditation schedule to allow time for a State agency survey or accreditation by another approved organization.

Comment: Five commenters stated that the proposed rule establishes a prolonged process of negotiation when serious discrepancies exist due to lack of comparability between requirements and/or problems of poor performance. Further, one commenter believed there should be a continuum of sanctions including probation, suspension, termination and various forms of civil monetary penalties, depending on the degree of seriousness of the problem. The commenter believed that HCFA should not allow poor performance to continue for up to a year as is proposed nor allow protracted delays to occur before considering suspension of an organizations's deeming authority.

Response: HCFA only agrees to accept an approved accreditation organization's reasonable assurance that a deemed facility would meet HCFA's requirements if surveyed against them. HCFA has no statutory authority to impose sanctions on accreditation organizations, other than removal of deeming authority.

Section 488.8 sets forth two types of probationary periods. A probationary period of 180 days is provided when HCFA determines that an accreditation organization's standards are no longer equivalent to the applicable Federal requirements. This will allow a reasonable time for that organization to revise its standards to achieve equivalency with HCFA's requirements and to implement the revised standards. A probationary period of up to one year is provided when an accreditation organization's standards are determined to be equivalent to Federal requirements but the results of validation surveys indicate that the accreditation organization is incorrectly or inconsistently surveying for those requirements. This period of time is intended to provide the accreditation organization a reasonable opportunity to examine and improve its survey process and for HCFA to validate that the organization is once again surveying consistently with respect to its own requirements. For those facilities for which HCFA identifies deficiencies, the facilities' deemed status is removed and enforcement action can be taken immediately, regardless of the approval status of the accreditation organization.

The probationary periods provided for under deeming review do not apply, if at any time HCFA determines the continued approval of deeming authority of any accreditation organization poses an immediate jeopardy to the patients of the entities accredited by that organization, or such continued approval otherwise constitutes a significant hazard to the public health. In such cases, as provided in § 488.8(g), HCFA may immediately withdraw the approval of deeming authority of that accreditation organization. For example, if we determine, based on a validation review, comparability review, or an onsite visit to an approved accreditation organization, that the organization can no longer fulfill its obligation to perform surveys due to inadequate resources (e.g., financial hardship or lack of qualified personnel), we will institute measures to withdraw the approval of deeming authority immediately.

Comment: One commenter believed that the requirement in § 488.9 for 30 days' notice regarding changes in an organization's requirements is unduly burdensome. The commenter suggests that the rule be revised so that 30 days' advance notice is required only for changes that substantially affect an organization's accreditation standards

and not be required for checklist modifications.

Response: We cannot accept this recommendation because it is not administratively feasible to evaluate and sort each proposed change depending on the type or substance of the change.

Comment: One commenter stated that under § 488.9 the requirement to provide electronic data in ASCII equivalent code is meaningless without specification of format and other details. The commenter suggested the proposed rule should be modified to indicate that HCFA requires only "reasonably necessary information in an agreed upon computer-usable format necessary for validation and/or assessment of the organization's survey process."

Response: All references to ASCII code may be interpreted as the ability to generate Standard electronic data files that are capable of being processed on main frame computers. EBCDIC STANDARD 6250 BPI tape is an acceptable alternative to ASCII. File formats, record layouts, edits and procedures have not yet been designed. When these parameters are decided upon, we will require that they be submitted to HCFA electronically, either on magnetic tape or through electronic data transmission.

Comment: One commenter urged HCFA to specify in detail at § 488.9(a)(1)(ii)(A) the composition of the inspection team.

Response: We do not believe that this level of specificity in the regulation is warranted and, therefore, have not accepted this comment. In addition, these specific requirements will vary depending on the types of facilities for which the accreditation organization in seeking approval of deeming authority.

Comment: Two commenters suggested that when a facility is found, through a validation survey, to be out of compliance, the facility must be subject to the State survey requirements and may be subject to termination. The commenters argued that when HCFA removes the facility's deemed status and requires the facility to use HCFA's standards that it is an acknowledgement that the accreditation organization's standards are not equal to HCFA's standards.

Response: The issue of equivalent standards does not apply in this instance. An accreditation organization has the ability to survey a facility, but no authority to impose sanctions other than to withhold accreditation. When a facility is found to be out of compliance by the State survey agency, HCFA removes the facility's deemed status. Once the facility's deemed status is removed it is no longer under the accreditation body's standards and must meet HCFA's requirements. However, we will have found the accreditation organization's standards to provide reasonable assurance that Medicare conditions or requirements for long term care will be met. When HCFA evaluates the results of all validation surveys for a given accreditation organization, it may be that the organization's standards are no longer found to provide reasonable assurance that Medicare requirements are met. Similarly, HCFA may determine that the organization fails to demonstrate that it can consistently survey for its own standards. In either case, HCFA will take appropriate action under deeming authority review.

Comment: One commenter suggested that in § 488.9(a)(1)(ii)(B), which requires HCFA to review the organization's ability to investigate complaints, HCFA also be required to review the organization's ability to respond appropriately to them. The commenter also asked that the monitoring procedures an accreditation organization is proposing to use when a facility is out of compliance (required at § 488.9(a)(1)(ii)(C)) be developed and published.

Response: We accept the comment concerning the response to complaints and have revised the regulation accordingly. However, we do not believe we should require an accreditation organization to publish its procedures. By publishing a notice in the **Federal Register** that the organization's requirements are equivalent to ours, we are endorsing its monitoring procedures. Thus, we do believe it is unnecessarily burdensome to require the organization to publish these procedures.

Comment: Seven commenters believed that an administrative hearing process is absent from the proposed rule. The commenters believed that an administrative hearing process should be developed for accreditation organizations whose deeming authority applications are rejected or whose status is threatened with withdrawal of previously granted deeming authority.

Response: In response to this comment, we have revised the regulation to provide such a reconsideration process. We include a new subpart D in part 488 to provide a reconsideration for both denial of initial applications and withdrawal of deeming authority approval. The process described in subpart D affords the accreditation organization several opportunities to furnish information and evidence relative to the circumstances of the adverse action, including a hearing before a hearing officer.

Comment: Five commenters suggested that HCFA consider adding two additional criteria to the evaluation process for deemed authority applicants. The commenters suggested that experience with a specific type of provider be considered; the second criterion suggested was that the accreditation organization consult with professional associations. Two commenters further requested that a cost comparison per survey between accreditation organizations and State agencies be considered in evaluating the organization.

Response: We consider experience as part of the adequacy of staff and other resources in our evaluation of each accreditation organization's application for approval of deeming authority. We do not believe that consultation with professional associations should be part of the evaluation criteria since there is no direct link between an organization's standards equivalency to Federal requirements or survey performance and consultation with professional organizations. Finally, the costs incurred by an accreditation organization in conducting its surveys is immaterial to the deeming process, except as they relate to reimbursement by Medicare to individual facilities for the portion of accreditation fees allocable to the Medicare program. Accreditation fees determined to be not reasonable will be disallowed. We will also examine an organization's financial strength and commitment to the accreditation program to ensure that the organization can finance its surveys and related activities.

We have added a provision (§ 488.9, Onsite observation of accreditation organization operations) to the final rule that permits HCFA to conduct an onsite evaluation of the organization's accreditation operations, to verify information provided by the organization and to ensure that the organization follows its own policies and procedures. This observation may be in response to our review of an application or a validation review or as part of our continuing oversight of accreditation organizations.

Comment: Two commenters believed that efficient administration of the CLIA and Medicare programs requires the Secretary to establish consistent policies for the Federal review and approval of accreditation organizations seeking deeming authority for the purpose of laboratory compliance with CLIA and Medicare program conditions of participation and should be specifically addressed in the regulations so that

private accreditation organizations can be assured that inconsistent requirements under the two programs are efficiently resolved.

Response: We agree that the review of laboratory accreditation standards for deeming authority for both CLIA and Medicare requirements should be conducted in accordance with consistent policies. While these issues are addressed in separate regulations, the processes are essentially similar and singularly consistent. As discussed previously, CLIA laboratory requirements and Medicare laboratory requirements are one and the same. The approval process for deeming authority for laboratories, as opposed to other providers, was published in the July 31, 1992 rule (57 FR 33992).

Comment: We received five comments related to notice requirements. Two commenters recommended that under § 488.9(a)(1)(ii), which concerns the circumstances under which we will do a comparability review, a new section be added to read: "The ability of the organization to report deficiencies to the surveyed facility, and respond to the facility's plan of correction in a timely manner." The commenters believed that this revision is needed to achieve equivalency with Federal survey procedures. Three commenters asked that a paragraph be added in § 488.9 to require accreditation organizations to explain their procedures for notifying the State survey agency immediately when any serious problem exists that cannot be corrected in a very short period of time.

Response: We have revised proposed § 488.9(a)(1)(ii) (now § 488.8(a)(1)(ii)) to add a requirement that an accreditation organization must demonstrate its ability to report deficiencies to the surveyed facility. We do not believe it is necessary for an accreditation organization to notify the State agency of deficiencies in a facility, since the State agency is not authorized to take any action in these cases. Since HCFA will have access to all accreditation surveys, we can take necessary enforcement action on the basis of the accreditation survey.

Comment: Two commenters recommended that to the comparability of survey procedures in § 488.9(a)(ii)(B) we add a requirement that we review "the focus of the survey on resident outcomes; and the inclusion of procedures to assure survey consistency and surveyor accountability." The commenters believed that these additions are essential components of the survey currently included in the Federal survey procedures or anticipated through future OBRA survey and certification rulemaking.

Response: We have not accepted this comment. We believe that these proposed additions to the regulations are unnecessary because these issues are specifically evaluated in our initial review of an organization's application for approval of deeming authority and in our periodic review of deeming authority. Since a great number of the Medicare requirements and Federal survey procedures focus on patient outcomes and include provisions for surveyor consistency and accountability, an accreditation organization must demonstrate that its requirements focus on patient outcomes, as appropriate, that its survey process can consistently survey for those requirements on the basis of outcomes, and that the organization evaluates its surveyors and holds them accountable for their findings and performance.

Comment: Three commenters recommended that we revise § 488.9(a)(ii)(A), which requires us to determine the composition of the survey team, survey qualifications, and the ability of the organization to provide continuing surveyor training. The commenters wanted to add to these access to surveyor competency tests. The commenters indicated that a significant mandate of OBRA '87 toward achieving competency and consistency in the survey of nursing facilities is competency testing of surveyors. An equivalent test or demonstration of competency should be required of the accreditation organization's surveyors.

Response: The OBRA '87 requirement for continuing surveyor training and surveyor competency is a statutory requirement for nursing homes only and not a general requirement for all providers and suppliers. As we have stated earlier, each accreditation organization's standards must be equivalent to HCFA's participation requirements for the facility or facilities involved. The surveyor training and competency requirements are no exception and will be evaluated by HCFA.

Comment: One commenter stated that the proposed rule does not sufficiently articulate the procedures that accreditation organizations must follow in monitoring providers found not to be in compliance. The commenter suggested that HCFA should look at standards and elements as well as conditions.

Response: The proposed rule does not articulate any standards or procedures that accreditation organizations must follow. The concept of voluntary accreditation must provide an accreditation organization the opportunity to develop standards it believes will ensure the highest quality of care and services. When determining an organization's eligibility for deeming authority by means of accreditation, HCFA will evaluate the accreditation organization's standards and procedures to ascertain if they are at least equivalent to the Federal minimum requirements. An accreditation organization is expected to enforce its requirements rigorously whether they are organized based on standards and elements, or some other hierarchy.

Comment: Seven commenters stated that the criteria for actually qualifying to be approved as a deeming authority remain extremely general. The commenters urged HCFA to publish criteria for qualifications for approval as a deeming authority as a formal notice of proposed rulemaking with a minimum of a 60-day comment period.

Response: As with other statutory provisions for which HCFA is responsible, we have sought public comments on our interpretation of the statute and resulting regulatory policies. The provider-specific criteria mentioned by the commenter do not depend on statutory interpretation but on program policy, although the statute does stipulate some specific requirements from most providers and suppliers. To publish the qualifying criteria for each provider-type in the **Federal Register** to seek public comments would unnecessarily delay implementation of the regulation. We do recognize our responsibility to publish the general criteria, contained in § 488.9, and we also believe that the items that an accreditation organization must furnish in its application serve to define additional criteria.

Comment: One commenter recommended that specific criteria developed to evaluate accreditation organizations be applied by HCFA in evaluating its own survey process. The commenter believed that HCFA's guidelines are not specific and have no specific directions for translating findings into deficiencies.

Response: The criteria developed to evaluate accreditation organizations are based on Federal requirements. The evaluation criteria for the accreditation organization will be designed to determine whether an organization is capable of meeting HCFA's requirements. Using these evaluation criteria to evaluate HCFA's survey process serves no purpose since it is a tool to compare equivalency between the accreditation organization and HCFA. HCFA is continually evaluating the effectiveness of its survey programs

and implements enhancements to those programs at every opportunity. We have not accepted this comment.

Comment: Five commenters stated that the proposed rule at § 488.9(a)(1) (i) and (ii) should specify that the requirements and survey procedures be "equivalent" because all residents of certified nursing homes are entitled to the same protection under the Federal law. The commenters believed that since States are required to use HCFA's procedures, forms and guidelines that an accreditation organization must also use HCFA's procedures, forms and guidelines.

Response: HCFA will determine through its evaluation process whether an accreditation organization has equivalent requirements and acceptable survey procedures. HCFA will only approve accreditation organizations to grant deemed status to various providers if those accreditation organizations provide reasonable assurance that Medicare conditions, or requirements for long term care, will be met. We believe that when an accreditation organization's standards are found to be equivalent, those standards will provide the same protection to Medicare beneficiaries as HCFA requirements.

Comment: Eighteen commenters believed that § 488.9(a)(1)(i) is confusing as to what constitutes equivalent criteria. The commenters believed that the rule should specify the process used to determine equivalent standards.

Response: HCFA will use its provider-specific participation requirements and survey expertise to determine whether an accreditation organization has equivalent requirements. Specific criteria will be applied as necessary in making these determinations. We will not include provider-specific evaluation criteria in this rule for the following reasons:

- Evaluation criteria will be based on the participation requirements for each type of provider.
- Including this level of specificity limits HCFA's flexibility in evaluating accreditation organizations applying for the granting of deemed status, and limits the broad authority accorded to the Secretary to determine when accreditation provides reasonable assurance that Medicare requirements are met.
- This rule is a general rule to apply to all national accreditation organizations except those for laboratories. It is not intended to be an encyclopedic recapitulation of the various facility requirements, already specified elsewhere in our regulations.

Comment: Six commenters thought that allowing "equivalent" standards negates the public rulemaking process under the Administrative Procedure Act by allowing standard setting by accreditation organizations without public review and comment.

Response: The standard setting by the accreditation organization must be equivalent to HCFA participation requirements in order for HCFA to approve that organization to grant deemed status. Since the public has an opportunity to comment on all Federal participation requirements and those requirements are equal to any approved accreditation organization's requirements, the public has, in fact, had an opportunity to comment on the spirit of those requirements. Additionally, we do not believe that it would be appropriate to require an accreditation organization to seek public comments on its standards, although it may decide to do so on a voluntary basis. Therefore, we see no violation of the Administrative Procedure Act and have not revised our rule in this regard.

Comment: One commenter pointed out that in § 488.9(b) we state that facilities accredited by an approved accreditation organization are deemed to meet our conditions of participation except for those Federal conditions or standards which HCFA identifies as being more stringent or more precise than the requirements for accreditation. The commenter asked that those "more stringent" areas be specified in the final rule.

Response: We cannot specify in this rule any conditions or standards that HCFA identifies as being "more stringent" than the standards of any given accreditation organization. These areas will be identified through the application of provider-specific considerations in evaluating applications for approval of deeming authority. We do not believe that specifying conditions or requirements pertaining to different providers or suppliers in a general rule is appropriate. An accreditation organization's standards must be at least equivalent to Federal requirements for all condition-level requirements for which deeming authority is sought. Currently the only exceptions are the requirement for utilization review in all hospitals and the additional special staffing and medical records requirements that are necessary for the provision of active treatment in psychiatric hospitals. However, any participating hospital, accredited or unaccredited, can continue to meet the utilization review requirement as long as the hospital is subject to review by the appropriate utilization and quality control peer review organization. We have also revised the regulation to state more clearly that deeming authority is approved for a specific condition or conditions for each accreditation organization.

Comment: One commenter believed that HCFA's agents should not be permitted to use their standards to restrain others from providing services or practitioners from qualifying for positions that HCFA would allow them to fill. He stated that, for example, outside accreditation organizations should not be allowed to refuse recognition to physical therapy programs acceptable to HCFA nor should such a group be permitted to require laboratory directors with higher qualifications than HCFA recognizes.

Response: Seeking deemed status from an accreditation organization is strictly voluntary and does not affect any provider's or supplier's ability to participate in Medicare. An accreditation organization's standards must be equivalent but nothing prohibits the standards from being more stringent. We have no authority to restrict an accreditation organization's more stringent requirements.

Comment: One commenter asked that § 488.9(a)(1)(ii)(C) specify the types of providers for which this subsection applies. The commenters were unclear whether this provision applies to entities that sought but were denied accreditation or to entities that received accreditation and only later were found to be out of compliance with program requirements.

Response: This paragraph only speaks to areas which HCFA will evaluate when an accreditation organization is applying for deemed status. HCFA's evaluation of monitoring procedures is an assurance that when an accreditation organization finds noncompliance the organization has procedures to monitor those facilities appropriately. This provision applies to any and all of the providers or suppliers for which an accreditation organization seeks approval of deeming authority.

IV. Summary of Revisions

After review and consideration of comments, as described above, we are adopting as final the rule as proposed on December 14, 1990, except as follows:

A. To §§ 401.126(b)(2)(ii)(A) and 401.133(d), we add examples of enforcement actions that we may take and to which releasable information relates. We also add to §§ 401.126(b)(2)(i) and 401.133(d), for the sake of consistency, national accreditation organizations of laboratories meeting the requirements of

§ 493.506 to the entities to which the provisions of these paragraphs apply.

B. We change the provision in § 401.133(d) and (e) that allows us to release certain information so that it requires us to release it. In paragraph (e) we add a provision for consistency with paragraph (d) to be able to require a written request for home health agency surveys.

C. Section 488.1 is amended by adding a definition of "reasonable assurance" and we have revised the definitions of "accredited provider or supplier", "Medicare condition", "rate of disparity", "substantial allegation of noncompliance" and "validation review period".

D. We are updating statutory citations and regulation citations in § 488.3.

E. We add § 488.4 to specify application procedures.

F. In §§ 488.5 and 488.6, we are adding the State survey agency as an entity to which a hospital must authorize the release of its most recent survey (deleted from proposed § 488.7). We also provide for deeming status of providers and suppliers participating in the Medicaid program where applicable.

G. In § 488.6, we clarify that the requirements of an accreditation organization must be at least as stringent as HCFA's, when taken as a whole. We add to the list of accredited providers and suppliers in this section and in § 488.10 screening mammography services and rural primary care hospitals.

H. In § 488.7, we change "selective" sample to "representative sample", specify that the validation survey may be focused on a specific condition or conditions, and make technical changes. In paragraph (d), we specify that the requirements to which providers and suppliers will be subject are the participation and enforcement requirements and that they may be subject to applicable intermediate sanctions and remedies as well as termination of the provider agreement if applicable.

I. We are incorporating the contents of current § 488.8, Civil rights requirements, into § 489.10, Basic requirements [concerning provider and supplier agreements].

Section 489.10 currently requires providers and suppliers to agree to meet the civil rights requirements of 45 CFR parts 80, 84 and 90; § 488.8 requires surveyed providers and suppliers to meet the requirements of 45 CFR parts 80 and 84 and other pertinent requirements. Since § 488.8 in essence duplicates § 489.10, and we believe part 489 is a more logical place to impose civil rights requirements, we are revising § 489.10 to contain both the contents of current § 488.8 and § 489.10. We are also adding a description of the requirements of 45 CFR part 90 to the cross-reference to that section to match the descriptions of 45 CFR parts 80 and 84 currently in 42 CFR 488.8. 45 CFR part 90 prohibits discrimination on the basis of age.

J. In § 488.8 (proposed § 488.9) we include an accreditation organization's ability to (1) respond appropriately to complaints and (2) report deficiencies to the surveyed facility and respond to the facility's plan of correction in a timely manner as part of our evaluation and review of accreditation organizations. We clarify in § 488.8(b) what the notice we will publish will contain when an accrediting organization's application is approved. We revise paragraph (d)(2) so that an increasing rate of disparity over a two-year period will not be one of two mandatory triggers for a review; rather, any indication of decreasing performance may trigger a review. Paragraph (d)(1)(iii) adds the end of the approved term as a trigger for a comparability review; new paragraph (d)(3) adds reapplication procedures. New paragraph (e)(5) discusses submission of reapplication materials. In § 488.8(e)(4)(i) (designated as § 488.9(c)(4)(iv)(A) in the proposed rule), we specify that the results of an evaluation must indicate an acceptable rate of disparity instead of a significant reduction in the rate of disparity. We add two paragraphs, § 488.8(f)(8) and (9), to indicate our policy concerning continued deemed status of providers and suppliers if we remove our approval of an accreditation organization's deeming authority. We add a new paragraph (g) to permit immediate withdrawal of HCFA approval in cases involving immediate jeopardy to patients. We also make several technical clarifying changes.

K. We add a new § 488.9, Onsite observation of accreditation organization operations.

L. We also make a number of technical changes to conform the provisions of this rule to those of our rule concerning accreditation organizations for laboratories found in part 493.

M. We amend reconsideration procedures in subpart D of part 488 to include national accreditation organizations of entities other than laboratories.

V. Regulatory Impact Statement

A. Economic Impact

This rule does not, in itself, establish terms or conditions for Federal spending and does not impose any requirements that would precipitate changes in the conduct of private businesses. Inasmuch as the provisions of this rule could represent a striking departure from existing processes, it is impossible to gauge the impact of this rule with any precision, or to quantify any programmatic, budgetary, or economic impact. Nevertheless, our analyses of possible effects of this rule are detailed below.

Compliance with specific conditions and standards has always been required for certain health care providers and suppliers (e.g., hospitals, SNFs, HHAs) to establish eligibility for participation in the Medicare program. Currently, compliance with applicable requirements is established through an inspection and verification process, known as survey and certification, either directly by HCFA or by agencies of State government under an agreement with HCFA. However, hospitals can establish compliance either through routine survey and certification or through accreditation by the Joint Commission on the Accreditation of Healthcare Organizations (JCAHO) or the American Osteopathic Association (AOA). Accredited hospitals are deemed to meet Medicare requirements by virtue of their accreditation and are said to have deemed status. A decision to seek accreditation is voluntary on the part of each hospital; accreditation is never required for Medicare eligibility or participation. This rule expands the availability of deemed status to health care providers and suppliers other than hospitals if they are accredited by private organizations who apply for and receive approval of their accreditation programs.

Accreditation is an approval status conferred by an accrediting body and indicates that accredited member facilities meet the standards established by that body. Reminiscent of the long-standing tradition in the educational establishment, accreditation is perceived by many as a commitment on the part of the accredited entities to delivery of the highest quality services through voluntary adherence to requirements and standards that reflect sound policies and procedures, state of the art diagnostic and treatment strategies, and a philosophy that accents quality assurance. Accreditation programs not only set standards for their member facilities and assess their performance against those standards but also provide their members with educational and training programs, and technical assistance that may be necessary to meet their standards and enhance the quality of services

delivered. In certain cases, private insurance carriers reimburse accredited providers at higher rates than unaccredited ones, and, similarly, certain accreditation costs have historically been paid by the Medicare program.

The implementation of this rule and the subsequent availability of accreditation as an alternative to traditional survey and certification will afford a new flexibility to the health care provider community in determining how to most effectively and efficiently demonstrate compliance with Medicare requirements and establish eligibility for program reimbursement.

Currently, most of the costs of the survey and certification program are paid by the Federal government to State governmental agencies under the terms of a formal agreement. These State agencies perform onsite evaluations of compliance with Federal participation requirements and certify their findings to HCFA. HCFA also performs some survey activities directly, and the survey of special requirements for most psychiatric hospitals is performed by a private contractor.

The number and type of facilities surveyed by HCFA, its contractor and the State agencies as well as the available cost data are detailed below. The data are up-to-date as of 3/31/93.

Facility type	No. certified	Annual survey cost [1]
Medicare SNF	870	$13,749
SNF/NF [2]	10,226	14,793
Nonaccredited Hospital	1,330	[3] 8,450
JCAHO–AOA Accredited Hospital	5,107	.....
Psychiatric Hospital	720	10,450
Home Health Agency	6,596	4,590
Home visits [4]	.....	118
End-stage renal disease facility	2,362	2,809
Hospice	1,259	1,467
Screening Mammography [5]	6,639	450
All others [6]	4,824	1,489

[1] Reflects total survey and certification costs per facility including follow-up and complaint surveys and administrative costs. Costs are those reflected in Congressional budget projections for FY 1994.

[2] Dually participating Medicare skilled nursing facilities and Medicaid nursing facilities.

[3] Validation costs for JCAHO and AOA accredited hospitals are included: 5% of the accredited hospitals are surveyed as part of HCFA's validation program.

[4] Costs associated with surveyors' visits to homes of patients of HHAs.

[5] New provider category.

[6] All others include ambulatory surgery centers, rural health clinics, outpatient physical therapy, X-ray facilities and comprehensive outpatient rehabilitation facilities.

There are two major variables associated with the implementation of this rule that preclude any projected impact assessment: First, the number of accreditation organizations that will apply for and receive approval of deeming authority; and second, the number of each facility type that will avail themselves of the accreditation alternative.

There is no direct statutory authority for deemed status under the Medicaid program. Therefore, it is extremely unlikely that certain dually participating facilities, especially SNFs/NFs, would seek to demonstrate compliance through accreditation since that would double the number of surveys performed in the facility. Specifically, a dually participating SNF/NF could be subject to both an accreditation survey that could be used to satisfy Medicare requirements and a State agency survey to determine compliance with Medicaid requirements.

No substantial economic or budgetary impact is expected as a result of this rule. Federal expenditures to ensure compliance with requirements will continue either in payments to States to perform compliance surveys or to facilities in reimbursement for the reasonable and allocable accreditation costs for cost reimbursed facilities or as reflected in a facility's payment rates when paid under another mechanism (for example, the prospective payment system).

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule does not have a significant economic impact on a substantial number of small entities. As discussed above, we believe that the provisions of this regulation do not, in themselves, have an economic impact. Indirectly, this rule may result in future issuances whereby small entities might be affected. However, in each of these cases, procedures consistent with the RFA will be followed and a regulatory flexibility analysis performed, if warranted. Therefore, we conclude, and the Secretary certifies, that this rule does not have a significant economic impact on a substantial number of small entities.

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have significant impact on the operations of a substantial number of small rural hospitals. Such an analysis must conform to the provisions of section 604 of RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital with fewer than 50 beds located outside of a Metropolitan Statistical Area.

We are not preparing a rural impact statement since we have determined, and the Secretary certifies, that this rule, in itself, does not have a significant economic impact on the operations of a substantial number of small rural hospitals.

VI. Paperwork Burden

These changes do not impose paperwork collection requirements. Consequently, they need not be reviewed by the Executive Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3801 *et seq.*).

List of Subjects

42 CFR Part 401

Claims, Freedom of information, Health facilities, Medicare, Privacy.

42 CFR Part 488

Health facilities, Survey and certification, Forms and guidelines.

42 CFR Part 489

Health facilities, Medicare, Reporting and recordkeeping requirements.

42 CFR chapter IV is amended as follows:

A. Part 401, subpart B is amended as follows:

PART 401—GENERAL ADMINISTRATIVE REQUIREMENTS

1. The authority citation is revised to read as follows:

Authority: Secs. 205, 1102, 1106, 1865 and 1871 of the Social Security Act (42 U.S.C. 405, 1302, 1306, 1395bb and 1395hh); the Freedom of Information Act (5 U.S.C. 552); and the Privacy Act (5 U.S.C. 552a).

2. Paragraph (b)(2) of § 401.126 is revised to read as follows:

§ 401.126 Information or records that are not available.

* * * * *

(b) *Materials exempt from disclosure by statute.*

(1) * * *

(2)(i) Except as specified in paragraph (b)(2)(ii) of this section, HCFA may not disclose any accreditation survey or any

information directly related to the survey (including corrective action plans) made by and released to it by the Joint Commission on Accreditation of Healthcare Organizations, the American Osteopathic Association or any other national accreditation organization that meets the requirements of § 488.6 or § 493.506 of this chapter. Materials that are confidential include accreditation letters and accompanying recommendations and comments prepared by an accreditation organization concerning the entities it surveys.

(ii) *Exceptions.*

(A) HCFA may release the accreditation survey of any home health agency; and

(B) HCFA may release the accreditation survey and other information directly related to the survey (including corrective action plans) to the extent the survey and information relate to an enforcement action (for example, denial of payment for new admissions, civil money penalties, temporary management and termination) taken by HCFA; and

* * * * *

3. In § 401.133, the introductory text is republished, the section heading is revised and the section is amended by adding new paragraphs (d) and (e) to read as follows:

§ 401.133 Availability of official reports on providers and suppliers of services, State agencies, intermediaries, and carriers under Medicare.

The following shall be made available to the public under the conditions specified:

* * * * *

(d) *Accreditation surveys.* Upon written request, HCFA will release the accreditation survey and related information from an accreditation organization meeting the requirements of § 488.5, § 488.6 or § 493.506 of this chapter to the extent the survey and information relate to an enforcement action taken (for example, denial of payment for new admission, civil money penalties, temporary management and termination) by HCFA;

(e) Upon written request, HCFA will release the accreditation survey of any home health agency.

PART 488—SURVEY AND CERTIFICATION PROCEDURES

B. Part 488 is amended as follows:

1. The authority citation is revised to read as follows:

Authority: Secs. 1102, 1138(b), 1814, 1819, 1832, 1861, 1864, 1865, 1866, 1871, 1880, 1881, 1883, and 1919 of the Social Security Act (42 U.S.C. 1302, 1320b–5(b), 1395f, 1395i–3, 1395k, 1395x, 1395aa, 1395bb, 1395cc, 1395hh, 1395qq, 1395rr, 1395tt, and 1396r).

2. Section 488.1 is amended by revising the definition of "Substantial allegation", removing "Accredited hospital", and adding definitions for "Accredited provider or supplier", "Conditions for coverage", "Conditions of participation", "Medicare condition", "Rate of disparity", "Reasonable assurance", and "Validation review period" to read as follows:

§ 488.1 Definitions.

As used in this part—

Accredited provider or supplier means a provider or supplier that has voluntarily applied for and has been accredited by a national accreditation program meeting the requirements of and approved by HCFA in accordance with § 488.5 or § 488.6.

* * * * *

Conditions for coverage means the requirements suppliers must meet to participate in the Medicare program.

Conditions of participation means the requirements providers other than skilled nursing facilities must meet to participate in the Medicare program and includes conditions of certification for rural health clinics.

* * * * *

Medicare condition means any condition of participation or for coverage, including any long term care requirements.

* * * * *

Rate of disparity means the percentage of all sample validation surveys for which a State survey agency finds noncompliance with one or more Medicare conditions and no comparable condition level deficiency was cited by the accreditation organization, where it is reasonable to conclude that the deficiencies were present at the time of the accreditation organization's most recent surveys of providers or suppliers of the same type.

Example: Assume that during a validation review period State survey agencies perform validation surveys at 200 facilities of the same type (for example, ambulatory surgical centers, home health agencies) accredited by the same accreditation organization. The State survey agencies find 60 of the facilities out of compliance with one or more Medicare conditions, and it is reasonable to conclude that these deficiencies were present at the time of the most recent survey by an accreditation organization. The accreditation organization, however, has found deficiencies comparable to the condition level deficiencies at only 22 of the 60 facilities. These validation results would yield ((60–22)/200) a rate of disparity of 19 percent.

Reasonable assurance means that an accreditation organization has demonstrated to HCFA's satisfaction that its requirements, taken as a whole, are at least as stringent as those established by HCFA, taken as a whole.

* * * * *

Substantial allegation of noncompliance means a complaint from any of a variety of sources (including complaints submitted in person, by telephone, through written correspondence, or in newspaper or magazine articles) that, if substantiated, would affect the health and safety of patients and raises doubts as to a provider's or supplier's noncompliance with any Medicare condition.

* * * * *

Validation review period means the one year period during which HCFA conducts a review of the validation surveys and evaluates the results of the most recent surveys performed by the accreditation organization.

3. In § 488.3, the section heading is revised, the introductory paragraph (a) is republished and paragraphs (a)(1) and (a)(2) are revised to read as follows:

§ 488.3 Conditions of participation; conditions for coverage; and long-term care requirements.

(a) *Basic rules.* In order to be approved for participation in or coverage under the Medicare program, a prospective provider or supplier must—

(1) Meet the applicable statutory definition in section 1138(b), 1819, 1832(a)(2)(F), 1861, 1881, or 1919 of the Act; and

(2) Be in compliance with the applicable conditions or long-term care requirements prescribed in subpart N, Q or U of part 405, part 416, subpart C of part 418, part 482, part 483, part 484, part 485, subpart A of part 491, or part 494 of this chapter.

* * * * *

4. A new § 488.4 is added to read as follows:

§ 488.4 Application and reapplication procedures for accreditation organizations.

(a) A national accreditation organization applying for approval of deeming authority for Medicare requirements under § 488.5 or 488.6 of this subpart must furnish to HCFA the information and materials specified in paragraphs (a)(1) through (10) of this section. A national accreditation organization reapplying for approval must furnish to HCFA whatever information and materials from

paragraphs (a)(1) through (10) of this section that HCFA requests. The materials and information are—

(1) The types of providers and suppliers for which the organization is requesting approval;

(2) A detailed comparison of the organization's accreditation requirements and standards with the applicable Medicare requirements (for example, a crosswalk);

(3) A detailed description of the organization's survey process, including—

(i) Frequency of the surveys performed;

(ii) Copies of the organization's survey forms, guidelines and instructions to surveyors;

(iii) Accreditation survey review process and the accreditation status decision-making process;

(iv) Procedures used to notify accredited facilities of deficiencies and the procedures used to monitor the correction of deficiencies in accredited facilities; and

(v) Whether surveys are announced or unannounced;

(4) Detailed information about the individuals who perform surveys for the accreditation organization, including—

(i) The size and composition of accreditation survey teams for each type of provider and supplier accredited;

(ii) The education and experience requirements surveyors must meet;

(iii) The content and frequency of the in-service training provided to survey personnel;

(iv) The evaluation systems used to monitor the performance of individual surveyors and survey teams; and

(v) Policies and procedures with respect to an individual's participation in the survey or accreditation decision process of any facility with which the individual is professionally or financially affiliated;

(5) A description of the organization's data management and analysis system with respect to its surveys and accreditation decisions, including the kinds of reports, tables, and other displays generated by that system;

(6) The organization's procedures for responding to and for the investigation of complaints against accredited facilities, including policies and procedures regarding coordination of these activities with appropriate licensing bodies and ombudsmen programs;

(7) The organization's policies and procedures with respect to the withholding or removal of accreditation status for facilities that fail to meet the accreditation organization's standards or requirements, and other actions taken by the organization in response to noncompliance with its standards and requirements;

(8) A description of all types (for example, full, partial, type of facility, etc.) and categories (provisional, conditional, temporary, etc.) of accreditation offered by the organization, the duration of each type and category of accreditation and a statement specifying the types and categories of accreditation for which approval of deeming authority is sought;

(9) A list of all currently accredited facilities, the type and category of accreditation currently held by each facility, and the expiration date of each facility's current accreditation; and

(10) A list of all full and partial accreditation surveys scheduled to be performed by the organization.

(b) The accreditation organization must also submit the following supporting documentation—

(1) A written presentation that demonstrates the organization's ability to furnish HCFA with electronic data in ASCII comparable code;

(2) A resource analysis that demonstrates that the organization's staffing, funding and other resources are adequate to perform the required surveys and related activities; and

(3) A statement acknowledging that as a condition for approval of deeming authority, the organization will agree to—

(i) Notify HCFA in writing of any facility that has had its accreditation revoked, withdrawn, or revised, or that has had any other remedial or adverse action taken against it by the accreditation organization within 30 days of any such action taken;

(ii) Notify all accredited facilities within 10 days of HCFA's withdrawal of the organization's approval of deeming authority;

(iii) Notify HCFA in writing at least 30 days in advance of the effective date of any proposed changes in accreditation requirements;

(iv) Within 30 days of a change in HCFA requirements, submit to HCFA an acknowledgement of HCFA's notification of the change as well as a revised crosswalk reflecting the new requirements and inform HCFA about how the organization plans to alter its requirements to conform to HCFA's new requirements;

(v) Permit its surveyors to serve as witnesses if HCFA takes an adverse action based on accreditation findings;

(vii) Notify HCFA in writing within ten days of a deficiency identified in any accreditation entity where the deficiency poses an immediate jeopardy to the entity's patients or residents or a hazard to the general public; and

(viii) Conform accreditation requirements to changes in Medicare requirements.

(c) If HCFA determines that additional information is necessary to make a determination for approval or denial of the accreditation organization's application for deeming authority, the organization will be notified and afforded an opportunity to provide the additional information.

(d) HCFA may visit the organization's offices to verify representations made by the organization in its application, including, but not limited to, review of documents and interviews with the organization's staff.

(e) The accreditation organization will receive a formal notice from HCFA stating whether the request for deeming authority has been approved or denied, the rationale for any denial, and reconsideration and reapplication procedures.

(f) An accreditation organization may withdraw its application for approval of deeming authority at any time before the formal notice provided for in paragraph (e) of this section is received.

(g) Except as provided in paragraph (i) of this section, an accreditation organization that has been notified that its request for deeming authority has been denied may request a reconsideration of that determination in accordance with subpart D of this part.

(h) Except as provided in paragraph (i) of this section, any accreditation organization whose request for approval of deeming authority has been denied may resubmit its application if the organization—

(1) Has revised its accreditation program to address the rationale for denial of its previous request;

(2) Can demonstrate that it can provide reasonable assurance that its accredited facilities meet applicable Medicare requirements; and

(3) Resubmits the application in its entirety.

(i) If an accreditation organization has requested, in accordance with part 488, subpart D of this chapter, a reconsideration of HCFA's determination that its request for deeming approval is denied, it may not submit a new application for deeming authority for the type of provider or supplier that is at issue in the reconsideration until the reconsideration is administratively final.

5. Section 488.5 is revised to read as follows:

§ 488.5 Effect of JCAHO or AOA accreditation of hospitals.

(a) *Deemed to meet.* Institutions accredited as hospitals by the JCAHO or AOA are deemed to meet all of the Medicare conditions of participation for hospitals, except—

(1) The requirement for utilization review as specified in section 1861(e)(6) of the Act and in § 482.30 of this chapter;

(2) The additional special staffing and medical records requirements that are considered necessary for the provision of active treatment in psychiatric hospitals (section 1861(f) of the Act) and implementing regulations; and

(3) Any requirements under section 1861(e) of the Act and implementing regulations that HCFA, after consulting with JCAHO or AOA, identifies as being higher or more precise than the requirements for accreditation (section 1865(a)(4) of the Act).

(b) *Deemed status for providers and suppliers that participate in the Medicaid program.* Eligibility for Medicaid participation can be established through Medicare deemed status for providers and suppliers that are not required under Medicaid regulations to comply with any requirements other than Medicare participation requirements for that provider or supplier type.

(c) *Release and use of hospital accreditation surveys.*

(1) A hospital deemed to meet program requirements must authorize its accreditation organization to release to HCFA and the State survey agency a copy of its most current accreditation survey together with any other information related to the survey that HCFA may require (including corrective action plans).

(2) HCFA may use a validation survey, an accreditation survey or other information related to the survey to determine that a hospital does not meet the Medicare conditions of participation.

(3) HCFA may disclose the survey and information related to the survey to the extent that the accreditation survey and related survey information are related to an enforcement action taken by HCFA.

6. Section 488.6 is redesignated as § 488.7 and is revised to read as follows:

§ 488.7 Validation survey.

(a) *Basis for survey.* HCFA may require a survey of an accredited provider or supplier to validate its organization's accreditation process. These surveys will be conducted on a representative sample basis, or in response to substantial allegations of noncompliance.

(1) When conducted on a representative sample basis, the survey is comprehensive and addresses all Medicare conditions or is focused on a specific condition or conditions.

(2) When conducted in response to a substantial allegation, the State survey agency surveys for any condition that HCFA determines is related to the allegations.

(3) If the State survey agency substantiates a deficiency and HCFA determines that the provider or supplier is out of compliance with any Medicare condition, the State survey agency conducts a full Medicare survey.

(b) *Effect of selection for survey.* A provider or supplier selected for a validation survey must—

(1) Authorize the validation survey to take place; and

(2) Authorize the State survey agency to monitor the correction of any deficiencies found through the validation survey.

(c) *Refusal to cooperate with survey.* If a provider or supplier selected for a validation survey fails to comply with the requirements specified in paragraph (b) of this section, it will no longer be deemed to meet the Medicare conditions but will be subject to full review by the State survey agency in accordance with § 488.11 and may be subject to termination of its provider agreement under § 489.53 of this chapter.

(d) *Consequences of finding of noncompliance.* If a validation survey results in a finding that the provider or supplier is out of compliance with one or more Medicare conditions, the provider or supplier will no longer be deemed to meet any Medicare conditions. Specifically, the provider or supplier will be subject to the participation and enforcement requirements applied to all providers or suppliers that are found out of compliance following a State agency survey under § 488.24 and to full review by a State agency survey in accordance with § 488.11 and may be subject to termination of the provider agreement under § 439.53 of this chapter and any other applicable intermediate sanctions and remedies.

(e) *Reinstating effect of accreditation.* An accredited provider or supplier will again be deemed to meet the Medicare conditions in accordance with this section if—

(1) It withdraws any prior refusal to authorize its accreditation organization to release a copy of the provider's or supplier's current accreditation survey;

(2) It withdraws any prior refusal to allow a validation survey; and

(3) HCFA finds that the provider or supplier meets all the applicable Medicare conditions. If HCFA finds that an accredited facility meets the Life Safety Code Standard by virtue of a plan of correction, the State survey agency will continue to monitor the facility until it is in compliance with the Life Safety Code Standard.

7. A new § 488.6 is added to read as follows:

§ 488.6 Other national accreditation programs for hospitals and other providers and suppliers.

(a) In accordance with the requirements of this subpart, a national accreditation program for hospitals; psychiatric hospitals; SNFs; HHAs; ASCs; RHCs; CORFs; hospices; screening mammography services; rural primary care hospitals; or clinic, rehabilitation agency, or public health agency providers of outpatient physical therapy, occupational therapy or speech pathology services may provide reasonable assurance to HCFA that it requires the providers or suppliers it accredits to meet requirements that are at least as stringent as the Medicare conditions when taken as a whole. In such a case, HCFA may deem the providers or suppliers the program accredits to be in compliance with the appropriate Medicare conditions. These providers and suppliers are subject to validation surveys under § 488.7 of this subpart. HCFA will publish notices in the **Federal Register** in accordance with § 488.8(b) identifying the programs and deeming authority of any national accreditation program and the providers or suppliers it accredits. The notice will describe how the accreditation organization's accreditation program provides reasonable assurance that entities accredited by the organization meet Medicare requirements. (See § 488.5 for requirements concerning hospitals accredited by JCAHO or AOA.)

(b) Eligibility for Medicaid participation can be established through Medicare deemed status for providers and suppliers that are not required under Medicaid regulations to comply with any requirements other than Medicare participation requirements for that provider or supplier type.

(c)(1) A provider or supplier deemed to meet program requirements under paragraph (a) of this section must authorize its accreditation organization to release to HCFA and the State survey agency a copy of its most current accreditation survey, together with any information related to the survey that HCFA may require (including corrective action plans).

(2) HCFA may determine that a provider or supplier does not meet the Medicare conditions on the basis of its own investigation of the accreditation survey or any other information related to the survey.

(3) Upon written request, HCFA may disclose the survey and information related to the survey—

(i) Of any HHA; or

(ii) Of any other provider or supplier specified at paragraph (a) of this section if the accreditation survey and related survey information relate to an enforcement action taken by HCFA.

8. Section 488.8 is revised to read as follows:

§ 488.8 Federal review of accreditation organizations.

(a) *Review and approval of national accreditation organization.* HCFA's review and evaluation of a national accreditation organization will be conducted in accordance with, but will not necessarily be limited to, the following general criteria—

(1) The equivalency of an accreditation organization's accreditation requirements of an entity to the comparable HCFA requirements for the entity;

(2) The organization's survey process to determine—

(i) The composition of the survey team, surveyor qualifications, and the ability of the organization to provide continuing surveyor training;

(ii) The comparability of survey procedures to those of State survey agencies, including survey frequency, and the ability to investigate and respond appropriately to complaints against accredited facilities;

(iii) The organization's procedures for monitoring providers or suppliers found by the organization to be out of compliance with program requirements. These monitoring procedures are to be used only when the organization identifies noncompliance. If noncompliance is identified through validation surveys, the State survey agency monitors corrections as specified at § 488.7(b)(3);

(iv) The ability of the organization to report deficiencies to the surveyed facilities and respond to the facility's plan of correction in a timely manner;

(v) The ability of the organization to provide HCFA with electronic data in ASCII comparable code and reports necessary for effective validation and assessment of the organization survey process;

(vi) The adequacy of staff and other resources;

(vii) The organization's ability to provide adequate funding for performing required surveys; and

(viii) The organization's policies with respect to whether surveys are announced or unannounced; and

(3) The accreditation organization's agreement to provide HCFA with a copy of the most current accreditation survey together with any other information related to the survey as HCFA may require (including corrective action plans).

(b) *Notice and comment.*

(1) HCFA will publish a proposed notice in the **Federal Register** whenever it contemplates approving an accreditation organization's application for deeming authority. The proposed notice will specify the basis for granting approval of deeming authority and the types of providers and suppliers accredited by the organization for which deeming authority would be approved. The proposed notice will also describe how the accreditation organization's accreditation program provides reasonable assurance that entities accredited by the organization meet Medicare requirements. The proposed notice will also provide opportunity for public comment.

(2) HCFA will publish a final notice in the **Federal Register** whenever it grants deeming authority to a national accreditation organization. Publication of the final notice will follow publication of the proposed notice by at least six months. The final notice will specify the effective date of the approval of deeming authority and the term of approval (which will not exceed six years).

(c) *Effects of approval of an accreditation organization.* HCFA will deem providers and suppliers accredited by an approved accreditation organization to meet the Medicare conditions for which the approval of deeming authority has specifically been granted. The deeming authority will take effect 90 days following the publication of the final notice.

(d) *Continuing Federal oversight of equivalency of an accreditation organization and removal of deeming authority.* This paragraph establishes specific criteria and procedures for continuing oversight and for removing the approval of deeming authority of a national accreditation organization.

(1) *Comparability review.* HCFA will compare the equivalency of an accreditation organization's accreditation requirements to the comparable HCFA requirements if—

(i) HCFA imposes new requirements or changes its survey process;

(ii) An accreditation organization proposes to adopt new requirements or change its survey process. An accreditation organization must provide written notification to HCFA at least 30 days in advance of the effective date of any proposed changes in its accreditation requirements or survey process; and

(iii) An accreditation organization's approval has been in effect for the maximum term specified by HCFA in the final notice.

(2) *Validation review.* Following the end of a validation review period, HCFA will identify any accreditation programs for which—

(i) Validation survey results indicate a rate of disparity between certifications of the accreditation organization and certification of the State agency of 20 percent or more; or

(ii) Validation survey results, irrespective of the rate of disparity, indicate widespread or systematic problems in an organization's accreditation process that provide evidence that there is no longer reasonable assurance that accredited entities meet Medicare requirements.

(3) *Reapplication procedures.*

(i) Every six years, or sooner as determined by HCFA, an approved accreditation organization must reapply for continued approval of deeming authority. HCFA will notify the organization of the materials the organization must submit as part of the reapplication procedure.

(ii) An accreditation organization that is not meeting the requirements of this subpart, as determined through a comparability review, must furnish HCFA, upon request and at any time, with the reapplication materials HCFA requests. HCFA will establish a deadline by which the materials are to be submitted.

(e) *Notice.* If a comparability or validation review reveals documentation that an accreditation organization is not meeting the requirements of this subpart, HCFA will provide written notice to the organization indicating that its deeming authority approval may be in jeopardy and that a deeming authority review is being initiated. The notice provides the following information—

(1) A statement of the requirements, instances, rates or patterns of discrepancies that were found as well as other related documentation;

(2) An explanation of HCFA's deeming authority review on which the final determination is based;

(3) A description of the process available if the accreditation organization wishes an opportunity to explain or justify the findings made during the comparability or validation review;

(4) A description of the possible actions that may be imposed by HCFA based on the findings from the validation review; and

(5) The reapplication materials the organization must submit and the deadline for their submission.

(f) *Deeming authority review.*

(1) HCFA will conduct a review of an accreditation organization's accreditation program if the comparability or validation review produces findings as described at paragraph (d)(1) or (2), respectively, of this section. HCFA will review as appropriate either or both—

(i) The requirements of the accreditation organization; or

(ii) The criteria described in paragraph (a)(1) of this section to reevaluate whether the accreditation organization continues to meet all these criteria.

(2) If HCFA determines, following the deeming authority review, that the accreditation organization has failed to adopt requirements comparable to HCFA's or submit new requirements timely, the accreditation organization may be given a conditional approval of its deeming authority for a probationary period of up to 180 days to adopt comparable requirements.

(3) If HCFA determines, following the deeming authority review, that the rate of disparity identified during the validation review meets either of the criteria set forth in paragraph (d)(2) of this section HCFA—

(i) May give the accreditation organization conditional approval of its deeming authority during a probationary period of up to one year (whether or not there are also noncomparable requirements) that will be effective 30 days following the date of this determination;

(ii) Will require the accreditation organization to release to HCFA upon its request any facility-specific data that is required by HCFA for continued monitoring;

(iii) Will require the accreditation organization to provide HCFA with a survey schedule for the purpose of intermittent onsite monitoring by HCFA staff, State surveyors, or both; and

(iv) Will publish in the Medicare Annual Report to Congress the name of any accreditation organization given a probationary period by HCFA.

(4) Within 60 days after the end of any probationary period, HCFA will make a final determination as to whether or not an accreditation program continues to meet the criteria described at paragraph (a)(1) of this section and will issue an appropriate notice (including reasons for the determination) to the accreditation organization and affected providers or suppliers. This determination will be based on any of the following—

(i) The evaluation of the most current validation survey and review findings. The evaluation must indicate an acceptable rate of disparity of less than 20 percent between the certifications of the accreditation organization and the certifications of the State agency as described at paragraph (d)(2)(i) of this section in order for the accreditation organization to retain its approval;

(ii) The evaluation of facility-specific data, as necessary, as well as other related information;

(iii) The evaluation of an accreditation organization's surveyors in terms of qualifications, ongoing training composition of survey team, etc.;

(iv) The evaluation of survey procedures; or

(v) The accreditation requirements.

(5) If the accreditation program has not made improvements acceptable to HCFA during the probationary period, HCFA may remove recognition of deemed authority effective 30 days from the date that it provides written notice to the organization that its deeming authority will be removed.

(6) The existence of any validation review, deeming authority review, probationary period, or any other action by HCFA, does not affect or limit the conducting of any validation survey.

(7) HCFA will publish a notice in the **Federal Register** containing a justification of the basis for removing the deeming authority from an accreditation organization. The notice will provide the reasons the accreditation organization's accreditation program no longer meets Medicare requirements.

(8) After HCFA removes approval of an accreditation organization's deeming authority, an affected provider's or supplier's deemed status continues in effect 60 days after the removal of approval. HCFA may extend the period for an additional 60 days for a provider or supplier if it determines that the provider or supplier submitted an application within the initial 60 day timeframe to another approved accreditation organization or to HCFA so that a certification of compliance with Medicare conditions can be determined.

(9) Failure to comply with the timeframe requirements specified in paragraph (f)(8) of this section will jeopardize a provider's or supplier's participation in the Medicare program and where applicable in the Medicaid program.

(g) If at any time HCFA determines that the continued approval of deeming authority of any accreditation organization poses an immediate jeopardy to the patients of the entities accredited by that organization, or such continued approval otherwise constitutes a significant hazard to the public health, HCFA may immediately withdraw the approval of deeming authority of that accreditation organization.

(h) Any accreditation organization dissatisfied with a determination to remove its deeming authority may request a reconsideration of that determination in accordance with subpart D of this part.

9. Section 488.9 is added to read as follows:

§ 488.9 Onsite observation of accreditation organization operations.

As part of the application review process, the validation review process, or the continuing oversight of an accreditation organization's performance, HCFA may conduct an onsite inspection of the accreditation organization's operations and offices to verify the organization's representations and to assess the organization's compliance with its own policies and procedures. The onsite inspection may include, but is not limited to, the review of documents, auditing meetings concerning the accreditation process, the evaluation of survey results or the accreditation decision-making process, and interviews with the organization's staff.

10. Section 488.10(d) is revised to read as follows:

§ 488.10 State survey agency review; Statutory provisions.

* * * * *

(d) Section 1865(a) of the Act also provides that if HCFA finds that accreditation of a hospital; psychiatric hospital; SNF; HHA; hospice; ASC; RHC; CORF; laboratory; screening mammography service; rural primary care hospital; or clinic, rehabilitation agency, or public health agency provider of outpatient physical therapy, occupational therapy, or speech pathology services by any national accreditation organization provides reasonable assurance that any or all Medicare conditions are met, HCFA may treat the provider or supplier as meeting the conditions.

§ 488.11 [Amended]

11. In § 488.11(b), the reference to § 488.6 is revised to read "§ 488.7."

12. Section 488.201(a)(1) is revised to read as follows:

§ 488.201 Reconsideration.

(a) *Right to reconsideration.* (1) A national accreditation organization dissatisfied with a determination that its accreditation requirements do not provide (or do not continue to provide) reasonable assurance that the entities accredited by the accreditation organization meet the applicable long-term care requirements, conditions for coverage, conditions of certification, conditions of participation, or CLIA condition level requirements is entitled to a reconsideration as provided in this subpart.

* * * * *

C. Part 489 is amended as follows:

PART 489—PROVIDER AND SUPPLIER AGREEMENTS

1. The authority citation continues to read as follows:

Authority: Secs. 1102, 1861, 1864, 1866, and 1871 of the Social Security Act (42 U.S.C. 1302, 1395x, 1395aa, 1395cc, and 1395hh).

2. Section 489.10 is revised to read as follows:

§ 489.10 Basic requirements.

(a) Any of the providers specified in § 489.2 may request participation in Medicare. In order to be accepted, it must meet the conditions of participation or requirements (for SNFs) set forth in this section and elsewhere in this chapter.

(b) In order to participate in the Medicare program, the provider must meet the requirements of:

(1) Title VI of the Civil Rights Act of 1964, as implemented by 45 CFR part 80, which provides that no person in the United States shall, on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subject to discrimination under, any program or activity receiving Federal financial assistance (section 601);

(2) Section 504 of the Rehabilitation Act of 1973, as implemented by 45 CFR part 84, which provides that no qualified handicapped person shall, on the basis of handicap, be excluded from participation in, be denied the benefits of, or otherwise be subject to discrimination under any program or activity receiving Federal financial assistance;

(3) The Age Discrimination Act of 1975, as implemented by 45 CFR part 90, which is designed to prohibit discrimination on the basis of age in programs or activities receiving Federal financial assistance. The Age Discrimination Act also permits federally assisted programs and activities, and recipients of Federal funds, to continue to use certain age distinctions, and factors other than age, that meet the requirements of the Age Discrimination Act and 45 CFR part 90; and

(4) Other pertinent requirements of the Office of Civil Rights of HHS.

(c) In order for a hospital, SNF, HHA, or hospice to be accepted, it must also meet the advance directives requirements specified in subpart I of this part.

(d) The State survey agency will ascertain whether the provider meets the conditions of participation or requirements (for SNFs) and make its recommendations to HCFA.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 23, 1993.

Bruce C. Vladeck,

Administrator, Health Care, Financing Administration.

Dated: August 9, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–28436 Filed 11–22–93; 8:45 am]

BILLING CODE 4120–01–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43–CFR Public Land Order #7011

[WY–930–4210–06; WYW–83357]

Partial Revocation of Secretarial Order Dated April 20, 1921; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public Land Order.

SUMMARY: This order revokes a Secretarial order insofar as it affects 160 acres of National Forest system land withdrawn for Stock Driveway No. 144, Wyoming No. 18. The land is no longer needed for this purpose, and the revocation is needed to permit disposal of the land through land exchange under the General Exchange Act of 1922. This action will open the land to such forms of disposition as may by law be made of National Forest System land. The land is temporarily closed to mining by a Forest Service exchange proposal.The land has been and will remain open to mineral leasing.

EFFECTIVE DATE: December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6127.

By virtue of the authority vested in the Secretary of the Interior by Section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Secretarial Order dated April 20, 1921, which withdrew National Forest System land for Stock Driveway No. 144, Wyoming No. 18, is hereby revoked insofar as it affects the following described land:

Sixth Principal Meridian

Medicine Bow National Forest

T. 30 N., R. 77 W.,
Sec. 32, SE¼SE¼;
Sec. 33, S½SW¼ and SW¼SE¼.

The area described contains 160 acres in Converse and Natrona Counties.

2. At 9 a.m. on December 23, 1993, the land shall be opened to such forms of disposition as may by law be made of National Forest System land, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law.

Dated: November 12, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–28640 Filed 11–22–93; 8:45 am]

BILLING CODE 4310–22–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 90

[PR Docket No. 93–60; FCC 93–450]

Private Land Mobile Radio Services; Co-Channel Protection Criteria Above 800 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule; correction.

SUMMARY: This document contains a correction to the final regulations [PR Docket No. 93–60, FCC 93–450] which were published Friday, October 15, 1993, (58 FR 53431). The regulations related to certain co-channel protection criteria for private land mobile radio stations operating in the 800/900 MHz bands.

EFFECTIVE DATE: November 15, 1993.

FOR FURTHER INFORMATION CONTACT: Eugene Thomson, Rules Branch, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION:

Background

The final regulations that are subject to this correction concern co-channel

protection criteria for private land mobile radio systems operating in the 800 MHz and 900 MHz frequency bands and specify procedures to be followed by persons applying for such frequencies pursuant to 47 CFR part 90.

Need for Correction

As published, the final regulations did not include a revision to § 90.615(b)(2)(ii) to change the cross reference to § 90.621(c). Because the final regulations amended § 90.621(c), the reference in § 90.615(b)(2)(ii) to § 90.621(c) is no longer applicable and requires correction.

Correction of Publication

Accordingly, the publication on October 15, 1993 of the final regulations [PR Docket No. 93–60, FCC 93–450] which were the subject of FR Doc. 93–25261, is corrected as follows:

On page 53433, in the first column below the Table, add paragraph 3 at the end of the amendatory text, to read as follows:

3. Section 90.615 is amended by revising paragraph (b)(2)(ii) to read as follows:

§ 90.615 Frequencies available in the General Category.

* * * * *

(b) * * *

(2) * * *

(ii) Each application must include a written signed statement from each co-channel licensee located within 113 km (70 mi) of the primary site of the trunked system verifying that each such licensee has agreed to the proposed trunked use (see exceptions at § 90.621(b)). The statement(s) must include each licensee's call sign.

* * * * *

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–28645 Filed 11–22–93; 8:45 am]

BILLING CODE 6712–01–M

OFFICE OF MANAGEMENT AND BUDGET

Office of Federal Procurement Policy

48 CFR Part 9903

Cost Accounting Standards Board; Applicability and Thresholds for Cost Accounting Standards Coverage

AGENCY: Cost Accounting Standards Board, Office of Federal Procurement Policy, OMB.

ACTION: Correction to final rule.

SUMMARY: This document contains a correction to the final rule revising applicability, thresholds and procedures for the application of Cost Accounting Standards to negotiated government contracts, which was published Thursday, November 4, 1993 (58 FR 58798).

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: Richard C. Loeb, Executive Secretary, Cost Accounting Standards Board (telephone: 202–395–3254).

The final rule published Thursday, November 4, 1993, at 58 FR 58798 is corrected as follows.

§ 9903.201–3 [Corrected]

Instruction paragraph 4. for § 9903.201–3 which begins on page 58801, at the bottom of the third column, and continues at the top of page 58802 in the first column, is corrected on page 58802 by adding the following instruction in the third line after the first semicolon:

4. * * * by removing the amount "$10 million" in the "Caution" statement at the end of paragraph (c)(4) in Part I of the clause and adding the amount "$25 million" in its place; * * *

Dated: November 17, 1993.

[FR Doc. 93–28677 Filed 11–22–93; 8:45 am]

BILLING CODE 3110–01–M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930615–3215; I.D. 110793A]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic Atmospheric Administration (NOAA), Commerce.

ACTION: Notification of commercial quota transfer.

SUMMARY: NMFS issues this notification to announce that 7,815 pounds (3,545 kg) of summer flounder commercial quota available to the State of North Carolina has been transferred to the State of New Jersey. The summer flounder allocated to New Jersey by this transfer can only be harvested under the conditions of a net-mesh selectivity study authorized by the Regional Director. This notification advises the public that the quota adjustment has been made and that the adjusted commercial quota for the State of North Carolina is 3,256,750 pounds (1,477,252 million kg), and the State of New Jersey is 2,073,354 pounds (940,467 million kg).

DATES: Effective November 18, 1993 through December 31, 1993.

ADDRESSES: Comments or questions regarding the experimental fishery for summer flounder should be sent to Richard B. Roe, Regional Director, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 625 (December 4, 1992, 57 FR 57358). The regulations require the annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state are described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year was set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The percent allocated to each state was adjusted by Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery (September 24, 1993, 58 FR 49937) with 16.72499 percent, or 2,065,539 pounds (936,922 million kg) allocated to New Jersey, and 27.44584 percent, or 3,389,565 pounds (1,537,497 kg) allocated to North Carolina.

An emergency interim rule published August 26, 1993, (58 FR 45075) allows two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) to evaluate requests for quota transfers or combinations.

Further, the Regional Director is required to publish a notification in the **Federal Register** advising a state and notifying Federal vessel and dealer permit holders that, effective upon a specific date, a portion of a state's commercial quota has been transferred to or combined with the commercial quota of another state.

On November 8, 1993, a notification was published announcing a transfer of 125,000 pounds (56,700 kg) of summer flounder commercial quota from the State of North Carolina to the Commonwealth of Virginia (58 FR 59196). The quota for the State of North Carolina was thus reduced to 3,264,565 pounds (1,480,797 kg).

North Carolina and New Jersey have agreed to transfer 7,815 pounds (3,545 kg) of North Carolina's commercial quota to New Jersey. The Regional Director has determined that the criteria set forth in § 625.20 have been met, and publishes this notification of quota transfer. The net-mesh selectivity study is a continuation of an experimental fishery for summer flounder authorized by the Regional Director earlier this year. Details of the design of the experimental fishery are available from the Regional Director (see **ADDRESSES**). The revised quotas for the calendar year 1993 are: North Carolina—3,256,750 pounds (1,477,252 million kg), New Jersey—2,073,354 pounds (940,467 million kg).

Classification

This action is authorized by 50 CFR part 625.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: November 18, 1993.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28694 Filed 11–18–93; 11:21 am]

BILLING CODE 3510–22–M

50 CFR Part 640

[Docket No. 931102–3302; ID 102793]

Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Final rule, technical amendment.

SUMMARY: NMFS issues this technical amendment to correct a reference in the prohibitions section of the regulations that govern conservation and management of spiny lobster and slipper lobster in the exclusive economic zone off the Atlantic and Gulf of Mexico states from the Virginia/North Carolina border to the U.S./Mexico border. The intended effect of this rule is to correct the regulations.

EFFECTIVE DATE: November 23, 1993.

FOR FURTHER INFORMATION CONTACT: W. Perry Allen, 813–893–3722.

SUPPLEMENTARY INFORMATION: The spiny lobster fishery of the Gulf of Mexico and South Atlantic is managed under the Fishery Management Plan for the Spiny Lobster Fishery of the Gulf of Mexico and South Atlantic (FMP). The FMP was prepared by the Gulf of Mexico and South Atlantic Fishery Management Councils and is implemented through regulations at 50 CFR part 640 under the authority of the Magnuson Fishery Conservation and Management Act.

The regulations at 50 CFR 640.7(n) contain an incorrect reference for the prohibition on pulling or tending a spiny lobster trap other than during daylight hours. This final rule, technical amendment, corrects that reference.

Classification

This technical amendment is issued as a final rule under 50 CFR part 640.

This rule is minor and technical and does not change regulatory impacts that were previously reviewed and analyzed.

Because this rule (1) makes a non-substantive correction to the regulations and (2) will not necessitate a change in operating practices in the spiny lobster fishery, the Assistant Administrator for Fisheries, NOAA, under section 553 (b)(B) and (d) of the Administrative Procedure Act (5 U.S.C. 553) for good cause finds that it is unnecessary and contrary to the public interest to provide notice and public comment on this rule or to delay for 30 days its effective date.

List of Subjects in 50 CFR Part 640

Fisheries, Fishing, Reporting and recordkeeping requirements.

Rolland A. Schmitten,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set forth in the preamble, 50 CFR part 640 is amended as follows:

PART 640—SPINY LOBSTER FISHERY OF THE GULF OF MEXICO AND SOUTH ATLANTIC

1. The authority citation for part 640 continues to read as follows:

Authority: 16 U.S.C. 1801 *et seq.*

§ 640.7 [Revised]

2. In § 640.7, in paragraph (n), the reference to "§ 640.21(b)(2)" is revised to read "§ 640.22(b)(2)".

[FR Doc. 93–28759 Filed 11–22–93; 8:45 am]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 224
Tuesday, November 23, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF JUSTICE

Immigration and Naturalization Service

8 CFR Parts 210, 245a, and 274a

[INS No. 1399–92]

RIN 1115–AB73

Control of Employment of Aliens

AGENCY: Immigration and Naturalization Service, Justice.

ACTION: Proposed rule.

SUMMARY: This is a proposed rule to reduce the number of INS-issued documents that are acceptable for purposes of completing the Employment Eligibility Verification Form (Form I–9). This rule is proposed to further simplify compliance with the employment eligibility verification requirements and to address the concerns of employers who allege confusion created by the number of acceptable documents on the Form I–9. Reduction in the number of acceptable documents should reduce any uncertainty on the part of employers, and thereby reduce potential employment discrimination based upon misapplication of the employment eligibility verification requirements.

DATES: Written comments must be submitted on or before December 23, 1993.

ADDRESSES: Please submit written comments, in triplicate, to the Director, Policy Directives and Instructions Branch, Immigration and Naturalization Service, 425 I Street NW., room 5307, Washington, DC 20536. To ensure proper handling, please reference INS number 1399–92 on your correspondence.

FOR FURTHER INFORMATION CONTACT: Michael C. McGoings, Associate General Counsel, Immigration and Naturalization Service, 425 I St. NW., room 6100, Washington, DC 20536, telephone (202) 514–2895.

SUPPLEMENTARY INFORMATION:

Statutory and Regulatory Authority

Part 274a, originally published as a final rule in the **Federal Register** on May 1, 1987, 52 FR 16216, was necessitated by section 101 of the Immigration Reform and Control Act of 1986, Public Law No. 99–603, 100 Stat. 3359 (1986) (IRCA). Section 101 of IRCA added to the Immigration and Nationality Act (Act) provisions relating to the control of employment of aliens in the United States, generally referred to as employer sanctions. Since implementation of these provisions on June 1, 1987, the Immigration and Naturalization Service (INS or Service) has reviewed numerous public comments, reports, and proposals recommending improvements to the employer sanctions procedures. The regulations have been revised on several occasions since 1987. See, *e.g.*, 56 FR 41767 (Aug. 23, 1991).

The Employment Eligibility Verification Form (Form I–9) is the linchpin of the employment eligibility verification system set forth at section 274A(b) of the Act. That section provides that the employer must verify, for every employee hired after November 6, 1986, that the person is not an unauthorized alien. There are three categories of documents that are acceptable for Form I–9 purposes. The first category is referred to as "List A" documents. List A documents establish both a person's identity and eligibility to be employed. Currently, 8 CFR 274a.2(b)(1)(v)(A) identifies the ten (10) types of acceptable List A documents. The second category of documents is referred to as "List B" documents, which establish only identity. There are currently twelve (12) types of acceptable List B documents and they are listed in 8 CFR 274a.2(b)(1)(v)(B). Finally, the third category of documents listed in 8 CFR 274a.2(b)(1)(v)(C) is referred to as "List C" documents, which establish only employment eligibility. There are seven (7) types of acceptable List C documents. Thus, there are a total of twenty-nine (29) types of documents that are acceptable for Form I–9 purposes.

Background

One often repeated criticism of employer sanctions relates to the number of documents that are acceptable for completing the Form I–9. The General Accounting Office (GAO) stated, in its March 1988 report, that the number of acceptable work eligibility documents made it difficult for employers to judge their genuineness. Immigration Control: A New Role for the Social Security Card, (GAO/HRD–88–4, Mar. 1988). In a March 1990 report to Congress on the implementation of employer sanctions, the GAO again noted that "IRCA allows persons to use any of 17 different documents to establish work eligibility [10 types of List A documents and 7 types of List C documents]. This multiplicity can give rise to confusion and uncertainty in the minds of employers seeking to confirm whether job applicants are eligible to work." Immigration Reform: Employer Sanctions and the Question of Discrimination 62 (GAO/GGD–90–62, Mar. 1990). This theme was echoed by the Task Force on IRCA-Related Discrimination, chaired by Assistant Attorney General John R. Dunne. The Task Force's report stated "that a work verification process that relies on fewer documents, and is easier to understand, will measurably reduce discrimination." Report and Recommendation of the Task Force on IRCA-Related Discrimination, 44 (GPO 276–024, Sept. 1990).

The INS has already taken steps to address this criticism. In July 1988, the INS committed to the establishment of procedures for a uniform employment authorization policy. First, the INS limited the number and type of paper documents on which employment could be authorized. Second, the INS introduced the standardized Employment Authorization Document (Form I–688B) in 1989 and implemented it nationwide by August 1990. This document, known as the EAD, is a laminated plastic card containing a photograph and clearly noting the expiration date of, and any limitations on, an alien's work authorization. Issuance of the EAD has standardized the INS' employment authorization issuance process and permitted more accurate data to be collected and compiled relating to work authorization. Further, the EADs contain security features not found on previous INS-issued employment authorization documents that make them more resistant to tampering and fraud. Nationwide, the EAD is issued at

more than 200 sites. For example, these sites include district offices, suboffices, certain airports and ports of entry, asylum offices, service centers, detention processing centers, and border patrol sector offices. Ultimately, this card will be replaced by an even more secure employment authorization document that is currently under development.

The INS has now moved to reduce to one the types of alien registration receipt cards in circulation that are acceptable as proof of lawful permanent resident status and for Form I–9 purposes. The oldest type of alien registration receipt card, designated as Form I–151, was issued prior to June 1978, and was periodically revised. There were 17 different versions of this card. These cards lack sufficient security features and are prone to tampering and fraud. Consequently, a third GAO report noted that during August and September 1989, INS agents reviewed 110 alien registration receipt cards and found 106 (96 percent) to be counterfeit. Immigration Reform: Employer Sanctions and the Question of Discrimination 66 (GAO/GGD–90–62, Mar. 1990). From March 1977, to August 1, 1989, the INS began issuing improved alien registration receipt cards, designated as Form I–551. Beginning on August 1, 1989, the INS began issuing machine-readable Forms I–551 with expiration dates and enhanced security features. The INS on May 28, 1993, published a proposed rule in the **Federal Register** at 58 FR 31000, concerning the replacement of the previously issued alien registration documents with the new type which is more resistant to fraud. The final rule, published on September 20, 1993 in the **Federal Register** at 58 FR 48775, terminates the validity of previous versions of the alien registration card effective September 20, 1994. The final rule makes those previous versions of the alien registration card invalid for Form I–9 employment eligibility verification purposes as of that date.

In addition to the improvements outlined above, the INS has determined that further steps can be taken to streamline the employment eligibility verification system by reducing the number of documents that are acceptable for Form I–9 purposes. What follows is a detailed analysis of the changes suggested in this proposed rule.

Analysis of the Proposed Rule

The INS proposes eliminating certain documents from the Form I–9. Each list of documents on the Form I–9 will be analyzed from the standpoint of the documents that the INS proposes eliminating. Note that although the documents would no longer be acceptable for purposes of completing Forms I–9, with the exception of Forms I–151, they would still be valid for the purpose for which they are issued.

List A

The INS proposes removing the following three (3) documents from List A:

Form I–688A, Employment Authorization Card

This employment authorization document is issued to those aliens who have applied for legalization under section 245A of the Act, or for benefits as a special agricultural worker (SAW) under section 210 of the Act, but who have not yet been approved. Although the Form I–688A serves as only an employment authorization document for legalization applicants, it serves as both an employment authorization document and a travel document for SAW applicants. Aliens possessing these documents will be declining in numbers as their applications for relief are either granted or denied. The INS will make a concerted effort to eliminate the backlog of SAW applications pending with the service centers. However, the INS also recognizes that pending litigation and appeals of denials of SAW status make it likely that some aspects of the SAW program will continue for some time. Therefore, aliens in possession of the Form I–688A will be issued an EAD, Form I–688B, to evidence employment authorization. Special agricultural worker applicants will be granted advanced parole under section 212(d)(5) of the Act, if they wish to travel during the pendency of their SAW application. The regulations at 8 CFR 210.4(b) and 8 CFR 245a.3(n) will be amended to delete the references to Form I–688A and to reflect that the Form I–688B can be obtained at designated INS offices, and not just at legalization offices. In addition, a new paragraph (20) will be added to 8 CFR 274a.12(c) to reflect that aliens who have applied for temporary residence under the legalization or SAW provisions of the Act are authorized for employment.

Form I–327, Re-Entry Permit

Aliens in possession of this document are lawful permanent residents and, as such, are in possession of alien registration receipt cards. While no security concerns have been identified with this document, bearers will suffer no hardship by its elimination since they already possess an acceptable alternative document for Form I–9 purposes.

Form I–571, Refugee Travel Document

This document is issued only to aliens who have been admitted as refugees under section 207 of the Act, have been granted asylum status in the United States under section 208 of the Act, or who are lawfully admitted for permanent residence. These individuals may obtain an EAD, Form I–688B, in accordance with 8 CFR 274a.12 (a)(3) or (a)(5), or, when statutorily eligible, they may adjust their status to lawful permanent resident aliens, thereby becoming entitled to an alien registration receipt card, Form I–551, in accordance with 8 CFR 274a.12(a)(1).

List B

The INS proposes combining two (2) document categories and removing the following five (5) documents from List B:

Proposed Combined Documents

Driver's Licenses and Identification Cards

Certain redundancy is present in two categories in List B. 8 CFR 274a.2(b)(1)(v)(B)(*1*)(*i*) states that certain driver's licenses and identification cards are acceptable evidence of identity. 8 CFR 274a.2(b)(1)(v)(B)(*1*)(*v*) also permits certain identification documents to be used as acceptable evidence of identity. The INS proposes combining these two categories. The INS has received numerous inquiries concerning local documents such as fishing licenses, which arguably contain sufficient identifying information to satisfy the regulatory definition. However, these documents are issued through a process that does not preserve the document's security. All states now issue identification cards, thereby permitting the elimination of local identification documents.

Proposed Eliminated Documents

School Identification Cards

The myriad of school identification documents adds unnecessary complexity and confusion to the employment eligibility verification system. Students may obtain either a state driver's license or identification card, or, if they are under the age of 18, their parents or legal guardians may attest to their identity in accordance with 8 CFR 274a.2(b)(1)(v)(*B*)(*3*).

Voter's Registration Cards

On June 25, 1990, the INS published an interim rule in the **Federal Register** at 56 FR 25928, removing this document as an acceptable identity document for Form I–9 purposes because it lacks the proper indicia of identity, such as a

photograph or other personal identifying information, that would qualify it as an acceptable List B document. However, based on a comment submitted that indicate that some individuals' sole identity document is their voter's registration card, the voter's registration cards was reinstated, as an acceptable List B document, in the final rule published on August 23, 1991, at 56 FR 41767.

The problem of document fraud and the need to simplify the Form I–9 process now mandate that the voter's registration card be removed from List B. The INS has continued to doubt the acceptability of a voter's registration card to establish identity. Most contain very little identifying information, and the issuance process is quite insecure. In addition, some local governments now allow non-citizens to vote in local elections. See Los Angeles Times, November 13, 1991, at B7, col. 1 (reporting that in Takoma Park, Maryland, voters approved a measure to extend the right to vote in municipal elections to residents who are not United States citizens; noting that Somerset, Maryland, has permitted non-citizen voting in local elections for decades; and further reporting that in New York and Chicago, parents of children in public schools may vote in school board elections regardless of citizenship). Persons in possession of voter's registration cards should be able to obtain appropriate alternative documents to comply with the requirements of the employment eligibility verification system. Moreover, the group referred to in the regulation was restricted to a small group of employees in one particular company.

U.S. Military Documents

The necessity to streamline the employment eligibility verification system has caused the INS to propose eliminating documents that are not capable of specific definition and whose bearers could readily obtain alternative documents. Military identification fits both criteria. The INS has never specifically defined what was included within this regulatory provision because the types of military identification are too numerous. In addition, members of the armed services should already possess or readily be able to obtain other documents that remain acceptable for completion of Forms I–9.

U.S. Coast Guard Merchant Mariner Cards

This document is issued only to United States citizens and aliens lawfully admitted for permanent residence. Citizen merchant mariners can obtain a social security card combined with an identity document, or a U.S. passport. Lawful permanent resident alien merchant mariners should already possess a Form I–551.

Documents for Individuals Under the Age of 18

The current regulations at 8 CFR 274a.2(b)(1)(v)(B)(*2*) permit three (3) additional types of documents to be used by minors under the age of 18 to establish identity. These are: school records or report cards; clinic, doctor, or hospital records; and day-care or nursery school records. Originally, these documents were included on Form I–9 to address those situations where children are involved in employment situations. However, this class of employee is quite small in relation to the total number of persons hired for employment in the United States each year. In addition, a perfectly acceptable alternative exists for these minors. Under 8 CFR 274a.2(b)(1)(v)(B)(*3*), minors under the age of 18 are exempt from producing an identity document if their parent or legal guardian attests on the Form I–9. Therefore, these minors are capable of satisfying the employment eligibility verification requirements without having to produce any identity document.

List C

The INS proposes modifying the regulatory language relating to one (1) document and removing the following three (3) documents from List C:

Forms FS–545 and DS–1350, Certificates of Birth Abroad

United States citizens born abroad would be able to obtain other documents that U.S. citizens may obtain, such as the combination of an identity document and a social security card, or a U.S. passport.

Form I–197, U.S. Citizen I.D. Card

This card has not been issued since the early 1980's. Persons in possession of this document would be able to obtain other documents that United States citizens may obtain, such as the combination of an identity document and a social security card, or a U.S. passport.

Form I–179, I.D. Card For Use of Resident Citizen in the United States

This document has not been issued since the 1970's. Persons in possession of this document would be able to obtain other documents that U.S. citizens may obtain, such as the combination of an identity document and a social security card, or a U.S. passport.

In accordance with 5 U.S.C. 605(b), the Commissioner of the Immigration and Naturalization Service certifies that this rule does not have a significant adverse economic impact on a substantial number of small entities. This rule is not considered to be a major rule within the meaning of section 1(b) of E.O. 12291, nor does this rule have Federalism implications warranting the preparation of a Federalism Assessment in accordance with E.O. 12612.

The information collection requirements contained in this rule have been cleared by the Office of Management and Budget under the provisions of the Paperwork Reduction Act. Clearance numbers for these collections are contained in 8 CFR 299.5, Display of Control Numbers.

List of Subjects

8 CFR Part 210

Aliens, Migrant labor, Reporting and recordkeeping requirements.

8 CFR Part 245a

Aliens, Immigration, Reporting and recordkeeping requirements.

8 CFR Part 274a

Administrative practice and procedure, Aliens, Employment, Penalties, Reporting and recordkeeping requirements.

Accordingly, chapter I of title 8 of the Code of Federal Regulations is proposed to be amended as follows:

PART 210—SPECIAL AGRICULTURAL WORKERS

1. The authority citation for part 210 is revised to read as follows:

Authority: 8 U.S.C. 1103, 1160, 8 CFR part 2.

2. In § 210.4, paragraphs (b) (2) and (3) would be revised to read as follows:

§ 210.4 Status and benefits.

* * * * *

(b) * * *

(2) *Employment and travel authorization prior to the granting of temporary resident status.* Permission to travel abroad and to accept employment will be granted to the applicant after an interview has been conducted in connection with a nonfrivolous application at a Service office. If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted, valid until the scheduled appointment date. Employment authorization, both prior

and subsequent to an interview, will be granted on Form I–688B, and will be restricted to six months duration, pending final determination on the application for temporary resident status. If a final determination has not been made on the application prior to the expiration date of the I–688B, that date may be extended upon return of the I–688B by the applicant to the Service office where it was obtained. Persons submitting applications who currently have work authorization incident to status as defined in § 274a.12(b) of this chapter shall be granted work authorization by the INS effective on the date the alien's prior work authorization expires. Permission to travel abroad shall be granted in accordance with the Service's advance parole provisions contained in § 212.5(e) of this chapter.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office, and upon surrender of the previously issued Form I–688B, will be issued Form I–688, Temporary Resident Card. An alien whose status is adjusted to that of a lawful temporary resident under section 210 of the Act has the right to reside in the United States, to travel abroad (including commuting from a residence abroad), and to accept employment in the United States in the same manner as aliens lawfully admitted for permanent residence.

* * * * *

PART 245a—ADJUSTMENT OF STATUS TO THAT OF PERSONS ADMITTED FOR LAWFUL TEMPORARY OR PERMANENT RESIDENT STATUS UNDER SECTION 245A OF THE IMMIGRATION AND NATIONALITY ACT, AS AMENDED BY PUB. L. 99–603, THE IMMIGRATION REFORM AND CONTROL ACT OF 1986, AND PUB. L. 100–204, SECTION 902

3. The authority citation for part 245a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1255a and 1255a note.

4. In § 245a.2, paragraphs (n) (2) (ii) and (3) would be revised to read as follows:

§ 245a.2 Application for temporary residence.

* * * * *

(n) * * *

(2) *Employment authorization prior to the granting of temporary resident status.*

(i) * * *

(ii) If an interview appointment cannot be scheduled within 30 days from the date an application is filed at a Service office, authorization to accept employment will be granted valid until the scheduled appointment date. Employment authorization, both prior and subsequent to an interview, will be granted on Form I–688B, and will be restricted to six months duration, pending final determination on the application for temporary resident status.

(3) *Employment and travel authorization upon grant of temporary resident status.* Upon the granting of an application for adjustment to temporary resident status, the service center will forward a notice of approval to the applicant at his or her last known address and to his or her qualified designated entity or representative. The applicant may appear at any Service office, and upon surrender of the previously issued Form I–688B will be issued Form I–688, Temporary Resident Card.

* * * * *

PART 274a—CONTROL OF EMPLOYMENT OF ALIENS

5. The authority citation for part 274a continues to read as follows:

Authority: 8 U.S.C. 1101, 1103, 1324a, and 8 CFR part 2.

6. Section 274a.2(b)(1)(v) would be amended by:

a. removing paragraphs (A)(*4*)(*i*) and (A)(*5*);

b. revising paragraphs (A)(*6*), (A)(*7*), (A)(*8*), and (A)(*9*);

c. revising paragraph (A)(*10*) and redesignating it as paragraph (A)(*6*);

d. revising paragraph (B) introductory text and paragraphs (B)(*1*) and (B)(*1*)(*i*);

e. removing paragraphs (B)(*1*)(*ii*), (B)(*1*)(*iii*), (B)(*1*)(*iv*), (B)(*1*)(*v*), (B)(*1*)(*vi*) and (B)(*1*)(*viii*);

f. revising paragraphs (B)(*1*)(*vii*) and redesignating it as paragraph (B)(*1*)(*ii*);

g. revising paragraphs (B)(*1*)(*ix*) and redesignating it as paragraph (B)(*1*)(*iii*);

h. removing paragraph (B)(*2*);

i. redesignating paragraphs (B)(*3*) and (B)(*4*) as paragraphs (B)(*2*) and (B)(*3*) respectively;

j. revising paragraphs (C)(*1*);

k. removing paragraphs (C)(*2*), (C)(*3*), (C)(*6*) and (C)(*7*);

l. revising paragraphs (C)(*4*), (C)(*5*) and (C)(*8*) and redesignating them as paragraphs (C)(*2*), (C)(*3*) and (C)(*4*) respectively to read as follows:

§ 274a.2 Verification of employment eligibility.

* * * * *

(b) * * *

(1) * * *

(v) * * *

(A) * * *

(*4*) * * *

(*i*) Contains an unexpired stamp therein which reads, "Processed for I–551. Temporary Evidence of Lawful Admission for permanent residence. Valid until _____. Employment authorized" or "Temporary Form I–551. Admission for permanent residence at _____ (port)_____ (date) verified. _____ (office of issuance)_____ (date) _____ (signature of issuing officer) _____ (title)"; either stamp may be placed on the arrival portion of Form I–94, with the alien's picture affixed thereto, if the alien is not in possession of his or her passport; or

* * * * *

(*5*) An Alien Registration Receipt Card, INS Form I–551; or

(*6*) An unexpired employment authorization document issued by the Immigration and Naturalization Service which contains a photograph, INS Form I–688, or I–688B.

(B) The following documents and procedures are acceptable to establish identity only:

(*1*) The following documents, whether expired or unexpired are acceptable to establish identity only:

(*i*) A driver's license or identification card issued by the Federal Government, a state (as defined in section 101(a)(36) of the Act), or an outlying possession (as defined in section 101(a)(29) of the Act) of the United States, provided the document contains a photograph or the following information: name, date of birth, sex, height, eye color, and address;

(*ii*) A Native American tribal document; or

(*iii*) A driver's license issued by a Canadian Government authority, or a Canadian federal or provincial identification card.

* * * * *

(C) * * *

(*1*) A social security card with no employment restrictions;

(*2*) An original or certified copy of a birth certificate issued by a state (as defined in section 101(a)(36) of the Act), county, municipal authority, or outlying possession of the United States (as defined in section 101(a)(29) of the Act) bearing an official seal;

(*3*) A Native American tribal document; or

(*4*) An unexpired Form I–94 indicating admission as refugee or

containing an employment authorization stamp, so long as the period of endorsement has not yet expired and the proposed employment is not in conflict with any restrictions or limitations identified thereon.

* * * * *

7. Section 274a.12(c) would be amended by removing the "." at the end of paragraph (19) and replacing it with a ";" and adding a new paragraph (20) to read as follows:

§ 274a.12 Classes of aliens authorized to accept employment.

* * * * *

(c) * * *

(20) An alien who has filed an application for lawful temporary residence pursuant to section 245A or 210 of the Act. Such an alien shall apply for employment authorization only in accordance with the procedures set forth in parts 245a or 210 of this chapter.

Dated: November 16, 1993.

Doris Meissner,

Commissioner, Immigration and Naturalization Service.

[FR Doc. 93-28676 Filed 11-22-93; 8:45 am]

BILLING CODE 4410-10-M

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

12 CFR Part 574

[No. 93-60]

RIN 1550-AA63

Acquisition of Control of Savings Associations Applications, Approval Standards and Procedural Requirements

AGENCY: Office of Thrift Supervision, Treasury.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Office of Thrift Supervision (OTS) proposes to amend its acquisition of control regulations to incorporate the provisions of section 211 of the Federal Deposit Insurance Corporation Improvement Act of 1991 (FDICIA). Section 211, which became effective upon the enactment of the FDICIA on December 19, 1991, amended Section 10(e) of the Home Owners' Loan Act (HOLA) to require that the OTS, in reviewing a holding company application under section 10(e) to acquire a savings association, consider the competence, experience, and integrity of the officers, directors, and principal shareholders of the proposed acquirors and the savings association to be acquired.

Section 211 also amended section 10(e) of the HOLA to set forth two additional circumstances under which the Director is required to deny a holding company application. First, the OTS must deny an application under section 10(e) of the HOLA if the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the HOLA. Second, the statute requires the OTS to deny an application by a foreign bank if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the home country of the foreign bank.

In addition, the OTS proposes to amend its acquisition of control regulations to reflect the previous combination of the various holding company application forms in order to provide consistency between the forms and the regulations, to eliminate confusion, and to streamline the regulations.

DATES: Comments must be received on or before December 23, 1993.

ADDRESSES: Send comments to Director, Information Services Division, Public Affairs, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, Attention Docket No. 92-60. These submissions may be hand delivered to 1700 G Street, NW. from 9 a.m. to 5 p.m. on business days; they may be sent by facsimile transmission to FAX Number (202) 906-7753 or (202) 906-7755. Submissions must be received by 5 p.m. on the day they are due in order to be considered by the OTS. Late-filed, misaddressed or misidentified submissions will not be considered in this rulemaking. Comments will be available for inspection at 1700 G Street, NW. from 1 to 4 p.m. on business days. Visitors will be escorted to and from the Public Reference Room at established intervals.

FOR FURTHER INFORMATION CONTACT: David Sjogren, Program Manager, Corporate Analysis, (202) 906-6739, Supervisory Operations, Eileen McCarthy, Program Analyst, Thrift Policy, (202) 906-5752, Supervision Policy, Kevin A. Corcoran, Assistant Chief Counsel, (202) 906-6962, or V. Gerard Comizio, Deputy Chief Counsel, (202) 906-6411, Corporate and Securities Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552.

SUPPLEMENTARY INFORMATION:

I. Acquisition Standards

Section 10(e) of the HOLA, 12 U.S.C. 1467a, generally prohibits any company, directly or indirectly, from acquiring control of a savings association without prior OTS approval. The OTS is required to evaluate holding company applications under the standards set forth at section 10(e) of the HOLA. In reviewing any holding company acquisition under section 10(e), the OTS is required to take into consideration the financial and managerial resources and future prospects of the company and association involved, the insurance risk to the SAIF or the BIF, and the convenience and needs of the community to be served.[1]

A. Competence, Experience, and Integrity of Officers, Directors, and Principal Shareholders

Section 211 of the FDICIA, Public Law No. 102-242, 105 stat. 2236, amended sections 10(e)(1)(B) and 10(e)(2) of the HOLA to require that the OTS, in considering the managerial resources of companies and savings associations involved in a holding company acquisition, consider "the competence, experience, and integrity of the officers, directors, and principal shareholders of the company or association."[2]

Neither the HOLA nor the OTS acquisition of control regulations defines the term "principal shareholder." The OTS acquisition of control regulations, however, define the term "controlling shareholder" as "any person who directly or indirectly or acting in concert with one or more persons or companies, or together with members of his or her immediate family, owns, controls, or holds with power to vote 10 percent or more of the voting stock of a company or controls in any manner the election or appointment of a majority of the company's board of directors."[3]

The OTS believes that the definition of the term "controlling shareholder" currently contained in its acquisition of

[1] 12 U.S.C. 1467a(e)(1)(B) and (e)(2). These standards also apply to acquisitions of stock in connection with qualified stock issuances under section 10(q) of the HOLA, and any transaction under section 13(k) of the Federal Deposit Insurance Act.

[2] *Id.* In assessing the managerial resources of proposed acquirors of savings associations, the OTS has, as a matter of practice and policy, generally interpreted this standard to require a review of the competence, experience, and integrity of proposed acquirors. Thus, the OTS believes that the new statutory requirements of section 10(e)(1)(B) and (2) are consistent with, and enhance, approval standards currently used by OTS.

[3] 12 CFR 574.2(g).

control regulations encompasses the shareholders intended to be treated as "principal shareholders." Accordingly, the proposed amendments, rather than including a separate definition of "principal shareholders," rely on the existing OTS terminology "controlling shareholder" and require the OTS to consider the competence, experience, and integrity of "controlling shareholders."[4]

The statutory language, however, does not prevent the OTS from considering the extent to which a "principal shareholder" or "controlling shareholder" is involved in the affairs of a savings association or savings and loan holding company. An underlying purpose of section 211 is to permit the OTS to consider the abilities of the principal shareholders of savings associations and savings and loan holding companies in appropriate situations, including situations where a principal shareholder has or could have a significant effect on the financial and managerial resources, future prospects, or safety and soundness of a savings association or savings and loan holding company. Thus, the OTS, in weighing the shareholder's experience and competence, would give significant consideration to whether the shareholder proposes to be a passive investor. For instance, a principal shareholder who holds a passive investment would not need the same level of experience and competence required of a principal shareholder who could exert significant influence upon the direction of the savings association or savings and loan holding company.

B. Assurances Regarding Availability of Information

Section 211 of FDICIA added new section 10(e)(2)(C) to the HOLA, which provides that the OTS shall not approve a holding company application if the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the HOLA.

This standard applies both to applications submitted by foreign acquirors and domestic acquirors. The assurances apply to affiliates that are under common control of an individual as well as to those under common control of a company.

The OTS specifically requests comment on whether the OTS should, in all instances, seek specific assurances from applicants. The OTS currently seeks all information needed to consider holding company applications,[5] has promulgated regulations and issued forms that require savings and loan holding companies to file information with the OTS on a regular basis,[6] and has broad authority under section 10(b) of the HOLA to examine savings and loan holding companies and their affiliates. In addition, the OTS has broad authority to investigate and bring enforcement actions against holding companies and other affiliates of savings associations under section 10(g) of the HOLA, as well as other statutory provisions, including section 8 of the Federal Deposit Insurance Act.

In processing applications submitted by foreign acquirors, the OTS has, as a matter of policy, required foreign acquirors to enter into a foreign acquiror agreement.[7] Foreign acquiror agreements generally state, *inter alia*, that the foreign acquiror (i) voluntarily consents to United States jurisdiction for purposes of laws relating to United States depository institutions, (ii) shall designate agents for service of process, and (iii) shall permit the OTS to examine it to such extent as the Director may prescribe.

The OTS solicits comment as to whether, for purposes of enforcing United States depository institution laws, this type of agreement is sufficient to ensure personal jurisdiction over all foreign parties that directly or indirectly control savings associations, or are otherwise involved in the affairs of a savings association.

Further, the OTS solicits comment on the precise nature of the assurances that the OTS should consider to be adequate regarding access to information concerning domestic or foreign holding companies or other affiliates, and the manner in which such assurances should be presented to the OTS (*e.g.*, submission of an affidavit, certification, or line item of an application).

C. Comprehensive Supervision and Regulation of Foreign Banks

New section 10(e)(2)(D) of the HOLA, also added by the FDICIA, provides that the OTS shall not approve a holding company application by a foreign bank if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by appropriate authorities in the bank's home country.

The statute, by its terms, relates to foreign banks, and does not address foreign bank holding companies. The OTS specifically requests comment on whether the OTS should include foreign bank holding companies, or subsidiaries of a foreign bank holding company that would not themselves become holding companies, within the scope of the regulation implementing new section 10(e)(2)(D) of the HOLA, thereby requiring that such entities be subject to comprehensive supervision or regulation on a consolidated basis in the appropriate home country.[8]

In processing holding company applications by foreign banks, the OTS will be required to address the question of what constitutes "comprehensive supervision or regulation on a consolidated basis by the appropriate authorities." The OTS specifically requests comment regarding the manner in which the OTS should implement this standard. The OTS could, for example, address this question on a case-by-case basis. In the alternative, the OTS could establish a general definition, or provide other guidance as to the type of supervision that satisfies this standard, and require each foreign bank involved in an acquisition transaction to demonstrate that it is subject to the appropriate level of supervision. Finally, the OTS could take a position on a country-by-country, or regulator-by-regulator basis.

The OTS notes that the Federal Reserve Board, in implementing section 202(a) of the FDICIA, has promulgated a regulation setting forth the basis on which the Federal Reserve Board will determine the presence of "comprehensive supervision or regulation on a consolidated basis."[9] The regulation provides that the Federal Reserve Board will determine whether the foreign bank is supervised or regulated in such a manner that its home country supervisor receives sufficient information on the worldwide

[4] This proposed treatment is consistent with the scope of the "principal shareholder" concept used by the Board of Governors of the Federal Reserve System ("Federal Reserve Board") in implementing section 210 of the FDICIA. See 58 FR 471, 472 (Jan. 6, 1993).

[5] See OTS Form H–(e)__.

[6] See 12 CFR 584.1 and OTS Forms H–(b)10 and H–(b)11.

[7] In addition, the OTS has required parties that attempt to rebut a rebuttable determination of control under 12 CFR 574.4(b) and 574.4(e) to file a foreign holding company agreement.

[8] The Federal Reserve Board, in promulgating final regulations implementing section 202(a) of the FDICIA, has stated that the comprehensive supervision standard is established in the context of supervision of the bank itself. The Federal Reserve Board has stated that the comprehensive supervision standard focuses on, among other things, how the supervisor reviews transactions between a foreign bank and its affiliates, rather than on direct supervision of these companies. See 58 FR 6348, 6349–6350 (January 28, 1993).

[9] See 58 FR 6348, 6360–6361 (to be codified as 12 CFR 211.24(c)(1)(ii)).

operations of the foreign bank (including the relationships of the bank to any affiliate) to assess the foreign bank's overall financial condition and compliance with law and regulation.[10] The Federal Reserve Board has stated that as the standard requires a bank-specific determination, it will address the standard on a case-by-case basis, and not make any blanket pronouncements.[11]

II. Holding Company Application Forms

Previously, potential holding company acquirors of savings associations were required to determine which of five separate holding company application forms, H–(e)1, H–(e)2, H–(e)3, H–(e)4, or H–(e)1–S, was required to be filed in connection with an acquisition subject to part 574. These separate forms, each containing different instruction and form requirements, were originally deemed necessary to accommodate different types of holding company acquirors and transactions.

While it has been useful to OTS review of holding company applications to be able to readily identify different types of acquisition transactions, the differing form requirements and related instructions for each application has caused some degree of confusion and resulted in unnecessary complexity in connection with filing these forms. Thus, the OTS decided to merge the five forms into one comprehensive form with uniform instructions and form requirements. This new combined form contains uniform instructions pertaining to all types of holding company transactions. Further, duplicative information requirements contained in the previous forms, and those currently contained in § 574.6(a)(2) relating to H–(e)1–S applications, have been eliminated, as have numerous information items that are no longer relevant. Also, information routinely requested by the staff has been incorporated into the new combined form to reduce the necessity of additional information requests in connection with OTS review of such filings. The surviving form has been designated as the Application/Information Filing H–(e)_____ (OMB no. 1550–0015).[12]

In light of these form changes, the OTS proposes to amend part 574 to reflect the already-completed merger of the various forms in order to provide consistency between the forms and the regulations, to eliminate confusion, and to streamline the regulations.

Request for Public Comment

The OTS requests public comment on all aspects of the proposal.

III. Executive Order 12866

The Director of the OTS has determined that this proposal does not constitute a "significant regulatory action" for purposes of Executive Order 12866.

IV. Regulatory Flexibility Act

It is certified that this proposal will not have a significant economic impact on a substantial number of small entities. Consequently, a Regulatory Flexibility Analysis is not required.

List of Subjects in 12 CFR Part 574

Administrative practice and procedure, Holding companies, Reporting and recordkeeping requirements, Savings associations, Securities.

Accordingly, the Office of Thrift Supervision hereby proposes to amend part 574, subchapter D, chapter V, title 12, Code of Federal Regulations as set forth below:

PART 574—[AMENDED]

1. The authority citation for part 574 is revised to read as follows:

Authority: 12 U.S.C. 1467a, 1817, 18311i.

2. Section 574.6 is amended by revising paragraph (a) to read as follows:

§ 574.6 Procedural requirements.

(a) *Form of application or notice.* An application, notice, or informational filing required by § 574.3 of this part shall be filed on the Application/Information Filing H–(e)_____ form. (As specified in the form's instructions, the blank line following the H–(e) should be filled in by applicants with the appropriate "1", "1–S", "2", "3", or "4" depending on the type of application.) The specific application requirements for each type of filing are indicated on the form. An acquiror may request confidential treatment of portions of an application or notice only by complying with the requirements of paragraph (f) of this section. In the case of an application involving a merger (including a merger with an interim association) the Application/Information Filing H–(e)_____ form shall be used in lieu of an application that otherwise would be required for such merger under §§ 546.2, 552.13, and 563.22 of this chapter.

(1) *H–(e)1.* This application type shall be filed under § 574.3(a) of this part by a company, other than a savings and loan holding company, for approval to acquire direct or indirect control of one savings association.

(2) *H–(e)1–S.* This application type shall be filed under § 574.3(a) of this part by a savings association for approval to reorganize into a holding company structure, provided that the proposed transaction satisfies each of the conditions for automatic approval specified in §§ 574.7 (a)(2) and (a)(3) of this part.

(3) *H–(e)2.* This application type shall be filed under § 574.3(a) of this part:

(A) By a savings and loan holding company for approval to acquire and hold separately one or more savings associations;

(B) By any other company for approval to acquire and hold separately more than one savings association;

(C) By a savings and loan holding company for approval of an acquisition of shares issued by a savings association in a qualified stock issuance pursuant to § 574.8 of this part; or

(D) By any director, officer, or any individual who owns, controls, or holds with power to vote (or holds proxies representing) more than 25 percent of the voting shares of a savings and loan holding company for approval of an acquisition of one or more savings associations.

(ii) The OTS may determine as a general matter or on a case-by-case basis not to require application information not relevant to transactions described in paragraphs (a)(3)(i) (C) and (D) of this section.

* * * * *

3. Section 574.7 is amended by revising the section heading and paragraph (c) to read as follows:

§ 574.7 Determination by the OTS.

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[10] *Id.* The regulation sets forth certain factors that the Federal Reserve Board will assess, including the extent to which the home country supervisor: Ensures that the foreign bank has adequate procedures for monitoring and controlling its activities worldwide; obtains information on the foreign bank and its subsidiaries and offices outside the home country through regular reports of examination, audit reports, or otherwise; obtains information on the dealings and relationships between the foreign bank and its foreign and domestic affiliates; receives from the foreign bank financial reports that are consolidated on a worldwide basis, or comparable information; and evaluates prudential standards, such as capital adequacy and risk asset exposure, on a worldwide basis.

[11] The Federal Reserve Board, however, stated that it expects, as it acts on applications, to use information already reviewed regarding comprehensive supervision in particular countries to make judgments without requiring significant input from similar applicants chartered in the same country. See 58 FR 6348, 6349.

[12] As specified in the form's instructions, the blank line following the H–(e) should be filled in by applicants with the appropriate "1", "1–S", "2", "3", or "4" depending on the type of application.

(c) *Application criteria.* (1) The OTS may deny an application by a company or certain persons, described in paragraph (b) of this section, affiliated with a savings and loan holding company, to acquire control of a savings association, or by a savings and loan holding company to acquire a qualified stock issuance pursuant to § 574.8 of this part:

(i) If the OTS finds that the financial and managerial resources and future prospects of the acquiror and association involved would be detrimental to the association or the insurance risk of the SAIF or BIF; or

(ii) If the acquirer fails or refuses to furnish information requested by the OTS.

(2) Consideration of the managerial resources of a company or savings association shall include consideration of the competence, experience, and integrity of the officers, directors, and controlling shareholders of the company or association. In connection with the applications filed pursuant to §§ 574.6 (a)(2) and (a)(3), and 574.8 of this part, the OTS will also consider the convenience and needs of the community to be served. Moreover, the OTS shall not approve any proposed acquisition:

(i) Which would result in a monopoly, or which would be in furtherance of any combination or conspiracy to monopolize or to attempt to monopolize the savings and loan business in any part of the United States;

(ii) The effect of which on any section of the country may be substantially to lessen competition, or tend to create a monopoly, or which in any other manner would be in restraint of trade, unless the OTS finds that the anticompetitive effects of the proposed acquisition are clearly outweighed in the public interest by the probable effect of the acquisition in meeting the convenience and needs of the community to be served;

(iii) If the company fails to provide adequate assurances to the OTS that the company will make available to the OTS such information on the operations or activities of the company, and any affiliate of the company, as the OTS determines to be appropriate to determine and enforce compliance with the Home Owners' Loan Act; or

(iv) In the case of an application by a foreign bank, if the foreign bank is not subject to comprehensive supervision or regulation on a consolidated basis by the appropriate authorities in the home country of the foreign bank.

* * * * *

Dated: April 26, 1993.

By the Office of Thrift Supervision.

Jonathan L. Fiechter,

Acting Director.

Editorial Note: This document was received at the Office of the Federal Register on November 18, 1993.

[FR Doc. 93–28721 Filed 11–22–93; 8:45 am]

BILLING CODE 6720–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–161–AD]

Airworthiness Directives; McDonnell Douglas Model DC–9–80 Series Airplanes and Model MD–88 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to certain McDonnell Douglas Model DC–9–80 series airplanes and Model MD–88 airplanes. This proposal would require inspection of the ceiling pressure relief panels in the cargo compartments to determine if slotted attach points are present and, if not, modification of the panels. This proposal is prompted by a report that certain panels were manufactured without the appropriate slotted attach points. The actions specified by the proposed AD are intended to ensure that the action of the cargo compartment pressure relief panels will enable the airplane to withstand a rapid decompression caused by a hole below the compartment floor.

DATES: Comments must be received by January 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from McDonnell Douglas Corporation, P. O. Box 1771, Long Beach, California 90846–0001, Attention: Business Unit Manager, Technical Publications, C1–HDR (54–60). This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Los Angeles Aircraft Certification Office, FAA, Transport Airplane Directorate, 3229 East Spring Street, Long Beach, California.

FOR FURTHER INFORMATION CONTACT: David Hempe, Aerospace Engineer, Airframe Branch, ANM–120L, FAA, Transport Airplane Directorate, Los Angeles Aircraft Certification Office, 3229 East Spring Street, Long Beach, California 90806–2425; telephone (310) 988–5224; fax (310) 988–5210.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–161–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–161–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

A production quality check at the manufacturer's facility revealed that certain cargo compartment ceiling pressure relief panels installed on McDonnell Douglas Model DC–9–80 series airplanes had been manufactured

with .25-inch diameter holes, rather than the required radius slots, at the attach points. Radius slots at the panel attach points are required so that the panels can "blow out" (flexibly extend) when a differential pressure of .75 pounds per square inch (PSI) exists. Ceiling pressure relief panels having holes, rather than slots, at the attach points would not be capable of blowing out during a rapid decompression of the airplane. This condition, if not corrected, could result in the airplane not being able to withstand a rapid decompression caused by a hole below the compartment floor.

The FAA has reviewed and approved McDonnell Douglas MD–80 Service Bulletin 25–335, dated April 28, 1993, that describes procedures for inspecting the ceiling pressure relief panels in the forward, mid, and aft cargo compartments to determine if slotted attach points exist. The service bulletin provides instructions for modifying panels that do not have slotted attach points; this modification entails trimming material from the panel to create a slotted attach point.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require inspection of the ceiling pressure relief panels to determine if slotted attach points are present, and modification of the panel(s), if necessary. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 1,016 Model DC–9–80 series airplanes and Model MD–88 airplanes of the affected design in the worldwide fleet. The FAA estimates that 556 airplanes of U.S. registry would be affected by this proposed AD. It would take approximately 1 work hour per airplane to accomplish the proposed inspection, at an average labor rate of $55 per work hour. Based on these figures, the total cost impact of the proposed inspection requirements of this AD on U.S. operators is estimated to be $30,580, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

If modification of a panel is necessary, accomplishing the modification would entail approximately 5.4 work hours, at an average labor rate of $55 per work hour. No additional parts would be required. Based on these figures, the total cost of impact of any necessary modification is estimated to be $297 per panel.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

McDonnell Douglas: Docket 93–NM–161–AD.

Applicability: Model DC–9–81 (MD–81), DC–9–82 (MD–82), DC–9–83 (MD–83), DC–9–87 (MD–87) series airplanes, and Model MD–88 airplanes; as listed in McDonnell Douglas MD–80 Service Bulletin 25–335, dated April 28, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the action of the cargo compartment ceiling relief panels will enable the airplane to withstand a rapid decompression caused by a hole below the compartment floor, accomplish the following:

(a) Within 18 months after the effective date of this AD, inspect the ceiling relief panels in the forward, mid, and aft cargo compartments to determine if slotted attach points are present, in accordance with McDonnell Douglas MD–80 Service Bulletin 25–335, dated April 28, 1993.

(1) If slotted attach points are present, no further action is required by this AD.

(2) If slotted attach points are not present on any panel, prior to further flight, modify that panel in accordance with the service bulletin.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Los Angeles Aircraft Certification Office (ACO). Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Los Angeles ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Los Angeles ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 17, 1993.

James V. Devany,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–28680 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 73

[Airspace Docket No. 92–AWP–6]

Proposed Alteration and Subdivision of Restricted Area R–2503 and Revocation of R–2533; CA

AGENCY: Federal Aviation Administration (FAA), DOT..

ACTION: Notice of proposed rulemaking.

SUMMARY: This proposed rule would modify Restricted Area R–2503, Camp Pendleton, CA, and subdivide the area into three separate areas designated as R–2503A, R–2503B, and R–2503C. R–2503A would incorporate part of the existing Restricted Area R–2533, Oceanside, CA. R–2533 is proposed to be removed concurrent with this action. This proposal would allow Marine Corps Base Camp Pendleton to accomplish required training.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Manager, Air Traffic Division, AWP–500, Docket No.

92–AWP–6, Federal Aviation Administration, P.O. Box 92207, Worldway Postal Center, Los Angeles, CA 90009.

The official docket may be examined in the Rules Docket, Office of the Chief Counsel, room 916, 800 Independence Avenue, SW., Washington, DC, weekdays, except Federal holidays, between 8:30 a.m. and 5 p.m.

An informal docket may also be examined during normal business hours at the office of the Regional Air Traffic Division.

FOR FURTHER INFORMATION CONTACT: Diane Bodenhamer, Military Operations Program Office (ATM–420), Office of Air Traffic System Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267–3178.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 92–AWP–6." The postcard will be date/time stamped and returned to the commenter. Send comments on environmental and land use aspects to: LT. Col. Robert Settle, Assistant Chief of Staff, Operations and Training (Airspace Management), Marine Corps Base, Camp Pendleton, CA 92055; telephone: (619) 725–8183.

All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA–220, 800 Indendence Avenue SW., Washington, DC 20591, or by calling (202) 267–3485.

Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 73 of the Federal Aviation Regulations (14 CFR part 73) to subdivide Restricted Area R–2503, Camp Pendleton, CA, into three separate areas designated as R–2503A, R–2503B, and R–2503C. Camp Pendleton has found that having two restricted areas with similar sounding, but different numbers is confusing, and has requested that R–2533 be removed and modified under the designation of R–2503A. The proposed R–2503A is smaller in size than the current R–2533.The southwestern boundary of R–2503A would be two miles closer to shoreline so that the distance that nonparticipating aircraft would need to fly offshore to avoid the area would be reduced. Additionally, the boundary on the northwestern side of R–2503A would be adjusted to return airspace near San Clemente to the public. The proposed R–2503B is a slightly enlarged version of the current R–2503. The southwestern boundary would be moved one mile toward the shoreline to enable the Marine Corps to provide requisite training. The proposed R–2503C is new airspace which would extend from 15,000 to 27,000 feet and would overlie approximately three-fourths of the proposed R–2503B. The Marine Corps has requested this additional airspace to accomplish required training, such as high angle, high altitude artillery firing, and has indicated that its use will typically be less than 40 hours per year. A change to the using agency to standardize format is also included in this proposal. The coordinates for its airspace docket are based on North American Datum 83. Section 73.25 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8A dated March 3, 1993.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Prior to a final decision, an environmental review is being conducted by the Department of Defense in compliance with the National Environmental Policy Act of 1969 (NEPA).

List of Subjects in 14 CFR Part 73

Airspace, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 73 as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510, 1522; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 73.25 [Amended]

2. § 73.25 is amended as follows:

R–2503 Camp Pendleton, CA [Removed]

R–2503A Camp Pendleton, CA [New]

Boundaries. Beginning at lat. 33°22′42″N., long. 117°36′45″W.; to lat. 33°27′13″N., long. 117°34′17″W.; to lat. 33°18′41″N., long. 117°23′58″W.; to lat. 33°17′30″N., long. 117°16′43″W.; to lat. 33°14′09″N., long. 117°26′38″W.; to the point of beginning by following a line 1 NM from and parallel to the shoreline.

Designated altitudes. Surface to 2,000 feet MSL.

Time of designation. 0600–2400 local time daily; other times by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Marine Corps, Commanding Officers, MCB Camp Pendleton, CA.

R-2503B Camp Pendleton, CA [New]

Boundaries. Beginning at lat. 33°24'23"N., long. 117°15'18"W.; to lat. 33°18'00"N., long. 117°16'11"W.; to lat. 33°17'30"N., long. 117°16'43"W.; to lat. 33°18'41"N., long. 117°23'58"W.; to lat. 33°27'13"N., long. 117°34'17"W.; to lat. 33°30'13"N., long. 117°29'16"W.; to the point of beginning.

Designated altitudes. Surface to 15,000 feet MSL.

Time of designation. 0600–2400 local time daily; other times by NOTAM.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Marine Corps, Commanding Officer, MCB Camp Pendleton, CA.

R-2503C Camp Pendleton, CA [New]

Boundaries. Beginning at lat. 33°24'23"N., long. 117°15'18"W.; to lat. 33°18'41"N., long. 117°23'58"W.; to lat. 33°27'13"N., long. 117°34'17"W.; to lat. 33°30'13"N., long. 117°29'16"W.; to the point of beginning.

Designated altitudes. 15,000 feet MSL to FL 270.

Time of designation. Intermittent by NOTAM at least 24 hours in advance, and with the concurrence of the controlling agency.

Controlling agency. FAA, Los Angeles ARTCC.

Using agency. U.S. Marine Corps, Commanding Officer, MCB Camp Pendleton, CA.

* * * * *

R-2533 Oceanside, CA [Removed]

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Issued in Washington, DC, on November 15, 1993.

Harold W. Becker,

Manager, Airspace-Rules and Aeronautical Information Division.

[FR Doc. 93-28717 Filed 11-22-93; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 41

[Public Notice 1905]

Visas: Documentation of Nonimmigrants Under the Immigration and Nationality Act; Temporary Visitors for Business or Pleasure

AGENCY: Bureau of Consular Affairs, DOS.

ACTION: Proposed rule; extension of comment period.

SUMMARY: This document extends to December 6, 1993 the comment period regarding the proposed changes to B visa regulations. The proposed rulemaking, published on July 26, 1993, 56 FR 40024, reflects changes in the interpretation of the B visa classification, temporary visitors for business and/or pleasure resulting from the enactment of the Immigration Act of 1990 (IMMACT 90).

DATES: Written comments must be received in duplicate on or before December 6, 1993.

ADDRESSES: Interested persons are invited to submit comments in duplicate to Chief, Division of Legislation and Regulations, Visa Office, Department of State, Washington, DC 20522–0113.

FOR FURTHER INFORMATION CONTACT: Stephen K. Fischel, Chief, Legislation and Regulations Division, Visa Office, Washington, DC, 20522–0113, (202) 663–1204.

SUPPLEMENTARY INFORMATION: The Immigration Act of 1990 (Pub. L. 101–649, Nov. 29, 1990) with subsequent modification by the Miscellaneous and Technical Immigration and Naturalization Amendments of 1991 (MATINA) (Pub. L. 102–232, Dec. 12, 1991) amended certain exisiting nonimmigrant visa classifications in the Immigration and Nationality Act of 1952, (INA), and added several new ones. IMMACT 90 and MATINA did not directly amend the INA's B visa classification (INA 101(a)(15)(B)), but certain changes to the H–1B visa classification (INA 101(a)(15)(H)(i)(b)) and the creation of the new O, P, and R classifications by IMMACT 90 affect the interpretation of the B visa classification currently set forth in the FAM. Proposed rulemaking 1840 concerns an extremely significant visa classification. In view of the importance of the subject matter, and to coincide with INS' comment period, the Department is extending the comment period through December 6, 1993 to provide the public with ample time to submit comments.

Dated: November 17, 1993.

David L. Hobbs,

Acting Assistant Secretary for Consular Affairs.

[FR Doc. 93-28838 Filed 11-22-93; 8:45 am]

BILLING CODE 4710-06-P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 701, 784 and 817

RIN: 1029–AB69

Definitions of "Anthracite," "Bituminous/Subbituminous," "Coal," and "Lignite"

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Notice of public hearings.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) published a proposed rule which would revise the existing definitions of "anthracite" and "coal"; add definitions of "bituminous/subbituminous" and "lignite"; and remove the existing definitions of "anthracite, bituminous and subbituminous coal" and "lignite coal." OSM has received requests to hold public hearings on the proposed rule and is announcing that public hearings will be held.

DATES: Public hearings are scheduled for: November 29, 1993, in Washington, DC, at 9:30 a.m. local time and December 6, 1993, in Jackson, CA, at 9 a.m. local time.

ADDRESSES: The public hearings will be held at the South Interior Building Room 220, 1951 Constitution Ave. NW., Washington, DC and the Amador Inn's Gold Room located in Denny's Restaurant, 200 South Highway 49, Jackson, CA.

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, room 640, 1951 Constitution Avenue, NW, Washington, DC 20240; Telephone: 202–343–1507.

SUPPLEMENTARY INFORMATION: On October 7, 1993 (58 FR 52374), OSM published a proposed rule which would revise the existing definitions of "anthracite" and "coal"; add definitions of "bituminous/subbituminous" and "lignite"; and remove the existing definitions of "anthracite, bituminous and subbituminous coal" and "lignite coal." OSM proposes to change the existing definition of "coal" and its related terms by deleting references to the coal classifications of ASTM Standard D 388–77. These revisions will avoid prior periodic calls to update the existing definitions to reflect the most current ASTM Standard D 388.

OSM has received requests to hold public hearings on the proposed rule.

As a result, OSM has scheduled public hearings on the proposed definition of coal rule in Washington, DC; and Jackson, California. Refer to **DATES** and **ADDRESSES** for the times, dates and locations for each hearing. The hearings will continue until all persons wishing to testify have been heard. To assist the transcriber and ensure an accurate record, OSM requests that persons who testify at a hearing give the transcriber a written copy of their testimony.

Any disabled individual who has need for a special accommodation to attend a public hearing should contact the individual listed under **FOR FURTHER INFORMATION CONTACT.**

Dated: November 18, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–28761 Filed 11–22–93; 8:45 am]

BILLING CODE 4310–05–M

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30 CFR Part 934

North Dakota Permanent Regulatory Program

AGENCY: Office of Surface Mining Reclamation and Enforcement (OSM), Interior.

ACTION: Proposed rule; public comment period and opportunity for public hearing on proposed amendment.

SUMMARY: OSM is announcing the receipt of a proposed amendment to the North Dakota permanent regulatory program (hereinafter, the "North Dakota program") under the Surface Mining Control and Reclamation Act of 1977 (SMCRA). The amendment consists of proposed changes in the State's preblast survey requirements and the Small Operator Assistance Program rules.

This document sets forth the times and locations that the North Dakota program and proposed amendment to that program are available for public inspection, the comment period during which interested persons may submit written comments on the proposed amendment, and procedures that will be followed regarding the public hearing, if one is requested.

DATES: Written comments must be received by 4 p.m., m.s.t. December 23, 1993. If requested, a public hearing on the proposed amendment will be held on December 20, 1993. Requests to present oral testimony at the hearing must be received by 4 p.m., m.s.t. on December 8, 1993.

ADDRESSES: Written comments should be mailed or hand delivered to Guy Padgett at the address listed below.

Copies of the North Dakota program, the proposed amendment, and all written comments received in response to this notice will be available for public review at the addresses listed below during normal business hours, Monday through Friday, excluding holidays. Each requester may receive one free copy of the proposed amendment by contacting OSM's Casper Field Office.

Guy Padgett, Director, Casper Field Office; Office of Surface Mining Reclamation and Enforcement; 100 East B Street, room 2128; Casper, WY 82601–1918 (307) 261–5776.

Mr. Edward J. Englerth, Director, Reclamation Division; North Dakota Public Service Commission, Capitol Building; Bismarck, North Dakota 58505–0165 (701) 224–4092.

FOR FURTHER INFORMATION CONTACT: Guy V. Padgett, Telephone: (307) 261–5776.

SUPPLEMENTARY INFORMATION:

I. Background on the North Dakota Program

On December 15, 1980, the Secretary of the Interior conditionally approved the North Dakota program as administered by the North Dakota Public Service Commission. General background information on the North Dakota program, including the Secretary's findings, the disposition of comments, and conditions of approval of the North Dakota program can be found in the December 15, 1980 **Federal Register** (45 FR 82214). Subsequent actions concerning North Dakota's program and program amendments can be found at 30 CFR 934.15 and 934.16.

II. Proposed Amendment

By letter dated October 26, 1993, (Administrative Record No. ND–T–01) North Dakota submitted a proposed amendment to its permanent program pursuant to SMCRA. The North Dakota proposed amendment is required in order to implement changes in North Dakota's reclamation law approved by the 1993 State Legislative Assembly.

(1) North Dakota Administrative Code (NDAC) 69–05.2–17–02. North Dakota is proposing to increase the distance standard required for pre-blast surveys from ½ mile (0.85 kilometers) to 1 mile (1.61 kilometers).

(2) NDAC Chapter 69–05.2–29 [Small Operator Assistance]. North Dakota proposes to make changes throughout Chapter 29 of its Administrative Code to conform with amendments made by the 1993 Legislative Assembly to Section 38–14.1–37 of the North Dakota Century Code (NDCC). The proposed changes include: (1) Expanding the services available to small operators to include those listed in NDCC 38–14.1–37(2); (2) increasing the annual production limit for small operators from 100,000 tons to 300,000 tons and limiting eligibility to those operations that would be required to pay reclamation fees under SMCRA; (3) revising the overproduction conditions under which an operator might be subject to reimbursement of program expenses to production in excess of 300,000 tons in the twelve months following issuance of a mining permit; (4) limiting the conditions under which the reimbursement obligation can be waived due to applicant good faith to cases where the applicant fails to submit a permit application or where the applicant fails to mine after obtaining a permit; and (5) changing the description of entities that perform such services from "laboratories" to "public or private entities."

III. Public Comment Procedures

In accordance with the provisions of 30 CFR 732.17(h), OSM is seeking comments on whether the proposed amendment satisfies the applicable program approval criteria of 30 CFR 732.15. If the amendment is deemed adequate, it will become part of the North Dakota program.

Written Comments

Written comments should be specific, pertain only to the issue proposed in this rulemaking, and include explanations in support of the commentor's recommendations. Comments received after the time indicated under **DATES** or at locations other than the Casper Field Office will not necessarily be considered in the final rulemaking or included in the administrative record.

Public Hearing

Persons wishing to testify at the public hearing should contact the person listed under **FOR FURTHER INFORMATION CONTACT** by 4 p.m., m.s.t. December 8, 1993. The location and time of the hearing will be arranged with those persons requesting the hearing. If no one requests an opportunity to testify at the public hearing, the hearing will not be held.

Filing of a written statement at the time of the hearing is requested as it will greatly assist the transcriber. Submission of written statements in advance of the hearing will allow OSM officials to prepare adequate responses and appropriate questions.

The public hearing will continue on the specified date until all persons scheduled to comment have been heard. Persons in the audience who have not

been scheduled to testify, and who wish to do so, will be heard following those who have been scheduled. The hearing will end after all persons scheduled to testify and persons present in the audience who wish to testify have been heard.

Public Meeting

If only one person requests an opportunity to testify at a hearing, a public meeting, rather than a public hearing, may be held. Persons wishing to meet with OSM representatives to discuss the proposed amendment may request a meeting at the OSM office listed under **FOR FURTHER INFORMATION CONTACT.** All such meetings will be open to the public and, if possible, notices of meetings will be posted at the locations listed under **ADDRESSES.** A written summary of each meeting will be made a part of the administrative record.

IV. Procedural Determinations

Compliance With Executive Order 12866

This proposed rule is exempted from review by the Office of Management and Budget (OMB) under Executive Order 12866.

Compliance With Executive Order 12778

The Department of the Interior has conducted the reviews required by section 2 of Executive Order 12778 (Civil Justice Reform) and has determined that this rule meets the applicable standards of subsection (a) and (b) of that section. However, these standards are not applicable to the actual language of State regulatory programs and program amendments since each such program is drafted and promulgated by a specific State, not by OSM. Under sections 503 and 505 of SMCRA (30 U.S.C. 1253 and 1255) and 30 CFR 730.11, 732.15, and 732.17(h)(10), decisions on proposed State regulatory programs and program amendments submitted by the States must be based solely on a determination of whether the submittal is consistent with SMCRA and its implementing Federal regulations and whether the requirements of 30 CFR parts 730, 731, and 732 have been met.

Compliance With the National Environmental Policy Act

No environmental impact statement is required for this rule since section 702(d) of SMCRA (30 U.S.C. 1292(d)) provides that agency decisions on proposed State regulatory program provisions do not constitute major Federal actions within the meaning of section 102(2)(C) of the National Environmental Policy Act, 42 U.S.C. 4332(2)(C).

Paperwork Reduction Act

This rule does not contain information collection requirements that require approval by the Office of Management and Budget under the Paperwork Reduction Act, 44 U.S.C. 3507 *et seq.*

Compliance With the Regulatory Flexibility Act

The Department of the Interior has determined that this rule will not have a significant economic impact on a substantial number of small entities under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*). The State submittal which is the subject of this rule is based upon counterpart Federal regulations for which an economic analysis was prepared and certification made that such regulations would not have a significant economic effect upon a substantial number of small entities. Hence, this rule will ensure that existing requirements previously promulgated by OSM will be implemented by the State. In making the determination as to whether this rule would have a significant economic impact, the Department relied upon the data and assumptions for the counterpart Federal regulations.

List of Subjects in 30 CFR Part 926

Intergovernmental relations, Surface mining, Underground mining.

Dated: November 9, 1993.

Raymond L. Lowrie,

Assistant Director, Western Support Center.

[FR Doc. 93–28701 Filed 11–22–93; 8:45 am]

BILLING CODE 4310–05–M

Notices

Federal Register
Vol. 58, No. 224
Tuesday, November 23, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Cooperative State Research Service

Committee of Nine; Meeting

In accordance with the Federal Advisory Committee Act of October 6, 1972, (Public Law 92–463, 86 Stat. 770–776), the Cooperative State Research Service announces the following meeting:

Name: Committee of Nine.
Date: December 1, 1993.
Time: 11 a.m., EST.
Place: Room 346, 901 D Street SW., USDA, CSRS, Washington, DC.
Type of Meeting: Conference call. Open to the public. Persons may participate in the meeting as time and space permit.
Comments: The public may file written comments before or after the meeting with the contact person listed below.
Purpose: To evaluate and recommend proposals for cooperative research on problems that concern agriculture in two or more States, and to make recommendations for allocation of regional research funds appropriated by Congress under the Hatch Act for research at the State Agricultural Experiment Stations.
Contact Person for Agenda and More Information: Dr. Walter R. Woods, Executive Secretary, U.S. Department of Agriculture, Cooperative State Research Service, room 346, Aerospace Building, Washington, DC 20250, Telephone: 202–401–6040.

Done at Washington, DC this 9th day of November, 1993.

William D. Carlson,

Associate Administrator, Cooperative State Research Service.

[FR Doc. 93–28675 Filed 11–22–93; 8:45 am]
BILLING CODE 3410–22–M

DEPARTMENT OF COMMERCE

International Trade Administration

(A–570–822)

Amended Final Determination and Amended Antidumping Duty Order: Certain Helical Spring Lock Washers From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 23, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482–0116.

Amended Final Determination and Amended Antidumping Duty Order

We are amending the final determination of sales at less than fair value, and the antidumping duty order, of helical spring lock washers (HSLWs) from the People's Republic of China (PRC), to reflect the correction of ministerial errors made in the margin calculation in the final determination.

Case History

In accordance with section 735(a) of the Tariff Act of 1930, as amended (19 U.S.C. 1673d(a)) (the Act), on September 20, 1993, the Department of Commerce (the Department) published its final determination that HSLWs from the PRC were being sold at less than fair value (58 FR 48833). On September 27, 1993, respondent, Hangzhou Spring Washer Plant (HSWP), alleged that the Department made several clerical errors in its final determination regarding the margin calculations and requested that the Department correct these errors. On October 4, 1993, petitioner, Shakeproof Industrial Products Division of Illinois Tool Works, Inc., submitted its comments on respondent's allegations. On October 8, 1993, in accordance with section 735(d) of the Act, the International Trade Commission (ITC) notified the Department that an industry in the United States is threatened with material injury by reason of such imports. The ITC did not determine, pursuant to section 735(b)(4)(B) of the Act, that but for the suspension of liquidation of entries of certain HSLWs from the PRC, the domestic industry would have been materially injured. In accordance with section 736(a) of the Act, on October 19, 1993, the Department published its antidumping duty order directing the assessment of antidumping duties of certain HSLWs from the PRC (58 FR 53914).

Scope of Order

For purposes of this investigation, certain HSLWs are circular washers of carbon steel, of carbon alloy steel, or of stainless steel, heat-treated or non heat-treated, plated or non-plated, with ends that are off-line. HSLWs are designed to: (1) Function as a spring to compensate for developed looseness between the component parts of a fastened assembly; (2) distribute the load over a larger area for screws or bolts; and (3) provide a hardened bearing surface. The scope does not include internal or external tooth washers, nor does it include spring lock washers made of other metals, such as copper. The lock washers subject to this investigation are currently classifiable under subheading 7318.21.0000 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Amended Final Determination

On September 27, 1993, respondent alleged that the Department had made six ministerial errors in the final calculation performed to determine the margin for HSWP in accordance with section 353.28 of the Department's regulations. Each alleged error is discussed separately below.

Comment 1

Chemical usage was reported at different concentration levels for the two separate production processes used to make finished HSLWs: the HSLW manufacturing process and the plating process. Respondent claims that the Department failed to adjust the hydrochloric acid price used in the plating process to reflect a 33–35 percent concentration level. Moreover, respondent also states that the Department failed to adjust the prices of hydrogen fluoride and nitric acid to reflect their concentration levels as used by HSWP's plating subcontractor.

Petitioner states that this is not a clerical error. Petitioner notes that respondent refers to submissions and not its case brief. Additionally, petitioner asserts that it did not find any specific reference in respondent's case brief to this issue and it is not clear why this issue is now being raised.

DOC Position

We agree with respondent that the Department erred in not adjusting the prices of hydrochloric acid and hydrogen fluoride to reflect the 33–35 percent and 55 percent concentration levels, respectively, used in the plating process. In our final determination, we indicated that we would adjust chemical prices to reflect their concentration levels. We did this for hydrochloric acid used in the HSLW manufacturing process. However, we inadvertently omitted accounting for the concentration levels of hydrochloric acid and hydrogen fluoride used in the plating process. We disagree with petitioner that this issue could only be addressed in the briefing process; these omissions constitute an error in the mathematics of our margin calculation. These were ministerial oversights, and we have made the necessary corrections (see below).

We disagree with respondent that the price of nitric acid should be recalculated to reflect its concentration level. In its March 16, 1993, response, respondent does not give a concentration level. The response states only that the nitric acid used in the plating process is in a very low consistency. Thus, this is not a clerical error as such, but is a methodological decision by the Department.

Comment 2

Respondent notes that the Department considered respondent's statements that the Indian import prices were considerably higher than other sources such as a U.S. Consulate quote from the Chrome plated Lug Nuts from the PRC (Lug Nuts) case and a quote from the U.S. spot market. Respondent also notes that despite the lower prices, the Indian import statistics for hydrochloric acid were used because the U.S. Consulate quote from the Lug Nuts case was not 1000 percent lower than the Indian import figure when the U.S. Consulate quote is adjusted for the concentration level of the chemical as used by respondent. Respondent states that it is a clerical error to make this comparison of Indian import statistics to the U.S. Consulate quote by adjusting only one half of the equation for chemical concentration level. Respondent argues that neither the Indian import statistics nor the U.S. Consulate quote carry a chemical concentration level. Respondent states that the Department's comparison of Indian import statistics to other sources, such as the U.S. Consulate quote, should be made by multiplying both figures by the concentration level of the chemical as used by respondent. Respondent argues that such an equation will yield a difference of over 1000 percent, and that the Department should therefore use the U.S. Consulate quote from the Lug Nuts case to value respondent's hydrochloric acid usage for both production and plating costs.

Petitioner states that this is not a ministerial error. Petitioner contends that respondent's allegation is based on assumptions which were not contained in its case brief.

DOC Position

We disagree with respondent. In our final determination, we examined the prices for hydrochloric acid in the cable rrom our consulate in Pakistan, which shows the price in Pakistani Rupees per kilogram. We also examined the recommended source for contemporary U.S. spot market prices. We noted in our final determination that a difference between two source prices of greater than 1000 percent warranted stricter scrutiny by the Department. This percentage was a benchmark which we used together with other factors in examining the alternatives before the Department; this was not, and is not, a determinative rule per se. In its allegation of clerical errors, respondent frames its arguments concerning hydrochloric acid in terms of the percentage difference in the prices from different sources. We therefore note that in our analysis the value derived from the India import statistics is not over 1000 percent higher than the values reported in either alternative source. According to our analysis only the import statistics value must first be multiplied by 31 percent, the concentration of hydrochloric acid in the solution actually employed in making HSWP's HSLW.

Our analysis of valuing hydrochloric acid was based on our interpretation that the value of the chemical in the cable represented hydrochloric acid in an industrial solution while the Indian import statistics represented bulk quantities at or near 100 percent consistency. We determined that in this particular instance, we would use the Indian import statistics to value hydrochloric acid. We determined that the divergence of the Indian import value is not so significantly different from other indicators, both contemporary world market prices and Indian domestic prices, that we must rely on the data reported in the investigation of Lug Nuts, adjusted for inflation. Thus, in our final determination, to value hydrochloric acid, we used the 1991 Indian Import Statistics, adjusted for inflation. This is not a clerical error as such, but is a methodological decision by the Department.

Comment 3

Respondent claims that it is a clerical error for the Department to have used the much more expensive anhydrous form rather than the standard aqueous solution form of sodium hydroxide because most chemicals are purchased and used in an aqueous solution. Respondent states that in its March 16, 1993, submission it reported a list of chemicals and their concentration characteristics, and in some cases, whether the chemical was in its solid or anhydrous form.

Petitioner asserts that this is not a clerical error. Petitioner contends that respondent's allegation is based on assumptions which were not contained in its case brief.

DOC Position

We disagree with respondent. In our September 13, 1993, final concurrence memorandum, we used the 1991 Indian import statistics for all solid sodium hydroxide to value sodium hydroxide (NaOH). We noted that both the HSLW platers and the Indian Import statistics specifically refer to separate uses of NaOH by the two terms "soda lye" and "sodium hydroxide." The differences between the soda lye used in the production process and the highly concentrated sodium hydroxide formula used for plating include such elements as purity, form, and consistency. We determined that using the two specific import categories reflects any such outstanding differences in physical characteristics. Thus, this is not a clerical error as such, but is a methodological decision by the Department.

Comment 4

Respondent argues that in valuing caustic soda the Department has arbitrarily assigned a 15 percent concentration level to Indian imports of this chemical. Respondent further contends that the Department chose this concentration level because it was the lowest concentration reported by respondent for this chemical. Respondent maintains that caustic soda is generally traded at a 50 percent concentration and sometimes shipped

internationally at a higher 73–76 percent concentration. Respondent contends that the Department was not consistent in assigning concentration levels to the chemicals that it valued.

Petitioner asserts that this is not a clerical error. Petitioner contends that respondent's allegation is based on assumptions which were not on the record.

DOC Position

We disagree with respondent. On page 14 of the March 16, 1993, submission, respondent reported a concentration level of 15 percent for caustic soda used in the plating process. Based on that submission, in the final determination we adjusted the value of caustic soda to reflect the 15 percent concentration. Because we used information on the record and we intended to do so, this is not a clerical error as such, but is a methodological decision by the Department.

Comment 5

Respondent argues that the Department should have calculated the processed wire usage using the figure for all green wire used during the period of investigation (POI) rather than a figure representing U.S. sales of HSLWs during the POI. Respondent argues that the use of a figure representing all green wire rod consumption would more clearly reflect actual processed wire usage and would corroborate the Department's verification finding that there was only a small amount of processed wire in evidence at the plant during verification.

Petitioner states that this is not a clerical error. Petitioner believes that this is a question of the methodology used and is not an error in the margin calculations.

DOC Position

We agree with petitioner. In our September 13, 1993, final concurrence memorandum, we stated that respondent failed to report the use of processed wire in a timely manner, and that, therefore, we do not have the information regarding the consumption of processed wire vis-a-vis HSWP's various markets. We noted at verification that the inspection of the current inventory showed that almost all of the raw steel was green wire rod. We also stated that this was a general indication that the processed wire purchased for production during the POI is no longer being purchased. We made the adverse assumption that this is a result of HSWP's verified declining sales and shipments to the United States resulting from this investigation. Thus, this is not a clerical error as such, but is a methodological decision by the Department.

Comment 6

Respondent argues that it is a clerical error for the Department to choose the selling, general & administrative expenses (SG&A) figure found in the August 3, 1993, cable from the U.S. Consulate in India, when there was publicly available published information on the record (*i.e.*, the industry average published by the Reserve Bank of India).

Petitioner states that this is not a clerical error. Petitioner believes that this is a question of the selection of a production input, not an error in the margin calculations.

DOC Position

We agree with petitioner. In our final determination, we used 30 percent to establish HSWP's SG&A. According to the cable sent by the U.S. Consulate in Bombay for this investigation, 30 percent represents the SG&A expense of Forbes Gokak, the only Indian producer of HSLWs. We determined that this degree of specificity was more important than the fact that the other two sources were published and publicly available (the Reserve Bank of India Bulletin and the Official Directory of the Stock Exchange of India). Thus, this is not a clerical error as such, but is a methodological decision by the Department.

Accordingly, pursuant to section 735(e) of the Act, we have corrected the ministerial errors in the final determination of sales at less than fair value by recalculating the prices in the plating process for a 34 percent concentration level of hydrochloric acid, thus, using the average of the 33–35 percent range reported for hydrochloric acid by the respondent, and recalculating the price of hydrogen fluoride to represent a 55 percent consistency. The final estimated margin changes from 77.47 percent published in the final determination of sales at less than fair value of HSLWs from the HSWP and for all exports by HSWP's through its named market trading companies to 69.88 percent. The "All Others" rate does not change from the 128.63 percent published in the final determination.

Amended Antidumping Duty Order

In accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administrating authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the U.S. price for all entries of certain HSLWs from the PRC. These antidumping duties will be assessed on all unliquidated entries of certain HSLWs from the PRC entered, or withdrawn from warehouse, for consumption on or after October 15, 1993. U.S. Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise:

Manufacturer/producer/exporter	Margin percentage
Hangzhou Spring Washer Plant	69.88
Hangzhou via IFI Morgan Limited	69.88
Hangzhou via Carway Development Limited	69.88
Hangzhou via Midway Fasteners Ltd.	69.88
Hangzhou via Linkwell Industry Co., Ltd.	69.88
Hangzhou via Fastwell Industry Co., Ltd.	69.88
Hangzhou via Sunfast International Corp.	69.88
Hangzhou via Winner Standard Parts Co., Ltd.	69.88
All Others	128.63

This notice constitutes the amended final determination and amended antidumping duty order with respect to HSLWs from the PRC, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B–099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This amended final determination and amended antidumping duty order is published in accordance with section 735(e) and 736(a) of the Act and 19 CFR 353.21 and 353.28.

Dated: November 17, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28753 Filed 11–22–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–437–601]

Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, From the Republic of Hungary; Preliminary Results of Antidumping Administrative Review

AGENCY: International Trade Administration/Import Administration.

ACTION: Notice of preliminary results of the antidumping duty administrative review of tapered roller bearings and

parts thereof, finished and unfinished, from the Republic of Hungary.

SUMMARY: In response to a request by the respondent, Magyar Gordulocsapagy Muvek, the Department of Commerce is conducting an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, from the Republic of Hungary. The review covers shipments of this merchandise to the United States during the period June 1, 1991 through May 31, 1992. The review indicates the existence of dumping margins during the period of review.

As a result of this review, we have preliminarily determined to assess antidumping duties equal to the difference between United States price and foreign market value. Interested parties are invited to comment on these preliminary results.

EFFECTIVE DATE: November 23, 1993.

FOR FURTHER INFORMATION CONTACT: Breck Richardson or Maureen Flannery, Office of Antidumping Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington DC 20230; telephone (202) 482–0648.

Background

On June 8, 1992, the Department of Commerce (the Department) published in the **Federal Register** (57 FR 24244) a notice of opportunity to request an administrative review of the antidumping duty order on tapered roller bearings and parts thereof, finished and unfinished, (TRBs) from Hungary (52 FR 23319, June 19, 1987). On June 30, 1992, the respondent, Magyar Gordulocsapagy Muvek (MGM), requested that we conduct an administrative review in accordance with 19 CFR 353.22(a). We published a notice of initiation of this antidumping duty administrative review on July 22, 1992 (57 FR 32521). The Department is conducting the administrative review in accordance with section 751 of the Tariff Act of 1930, as amended (the Act). From September 13 through September 20, 1993, we conducted a verification of MGM's responses.

Scope of Review

Imports covered by this review are shipments of TRBs and parts thereof, finished and unfinished, from Hungary. This merchandise is classifiable under the *Harmonized Tariff Schedule* (HTS) item numbers 8482.20.00, 8482.91.00.60, 8482.99.30, 8483.20.40, 8483.20.80, 8483.30.80, 8483.90.20, 8483.90.30 and 8483.90.80. Although the HTS item numbers are provided for convenience and customs purposes, our written description of the scope of this proceeding is dispositive.

This review covers one manufacturer/exporter of Hungarian TRBs and the period June 1, 1991, through May 31, 1992. MGM accounts for all Hungarian exports to the United States of the subject merchandise.

United States Price

We based the United States price on purchase price, in accordance with section 772(b) of the Act, because the subject merchandise was sold to unrelated purchasers in the United States prior to importation into the United States. Purchase price was based on the FOB Hamburg port price to unrelated purchasers. Deductions were made for brokerage and handling and foreign inland freight charges. The brokerage and handling charges were paid in convertible currency. We valued foreign inland freight deductions using surrogate data based on Mexican freight costs. We selected Mexico as the surrogate country for the reasons explained in the "Foreign Market Value" section of this notice.

Foreign Market Value

In the most recent review of this order, the Department treated Hungary as a non-market-economy country. None of the parties to this proceeding has contested such treatment in this review. We have calculated foreign market value in accordance with section 773(c) of the Act and section 353.52 of the Department's regulations. Section 773(c) of the Act requires us to base foreign market value on a valuation of the factors of production in a market economy country that is at a level of development comparable to that of the non-market-economy country and is a significant producer of comparable merchandise. Based on these criteria, we determined that South Africa, Uruguay, Algeria, Malaysia and Mexico would be appropriate surrogates for Hungary.

We chose Mexico as the surrogate for valuing the factors of production because we were able to obtain from Mexico more complete publicly available data than from the other countries. It is the Department's practice to value factor of production inputs from publicly available sources in a market economy, where possible (*see Final Determination of Sales at Less Than Fair Value: Certain Helical Spring Lock Washers from the People's Republic of China*, 58 FR 48833, September 20, 1993). We valued the factors of production as follows:

- Certain raw material costs were valued based on MGM's imports of steel products from market economies which were paid for in freely convertible currency.
- In the absence of market economy prices paid by MGM, we valued other raw material inputs using the 1991 and 1992 publications of Schedule B Commodity by Country (U.S. Department of Commerce: Economics and Statistics Administration—Bureau of the Census). The information we obtained from this publication was for F.A.S. export data on hot-rolled steel, cold-rolled steel, and steel alloy scrap.
- We applied the values we obtained for materials to the factors of production reported by MGM, some of which were adjusted in accordance with our findings at verification. The material cost for each component was determined by multiplying the gross weight of steel used in the production of that component by the price of steel (based on weight) and then deducting an amount for saleable scrap. Because MGM was unable at verification to provide sufficient evidence to support its claimed scrap adjustment for certain sales, we only allowed a scrap credit in those cases where we could verify MGM's claimed saleable scrap. The scrap factor was calculated as the difference between the weight of the steel input (the gross weight) and the weight of the component (the net weight). We adjusted the scrap factor downward to account for waste and burn-off. Saleable scrap value was determined by applying a surrogate scrap value to the adjusted scrap factor. The steel costs we used were derived from two sources: Public information on Mexican imports of steel from the United States and actual imports of steel by MGM from western European countries at costs incurred in market-based currencies. Adjustments were made to some of the import pricing information as well as to some of the reported gross and net weights based on information learned during the verification of MGM's response.
- We valued both inland freight for the finished TRBs and inland freight on the steel inputs using publicly available Mexican freight rates. This information was taken from data obtained from the Mexican Freight Transportation Industry Chamber.
- We used actual brokerage and handling charges since those charges were incurred in a freely convertible currency.
- We valued direct labor using a 1991 Mexican labor rate for the manufacture of fabricated metal products, except machinery and equipment. This rate

was obtained from the Book of Labour Statistics, published by the International Labour Office (ILO). This ILO rate includes basic salaries, "payments in respect of time paid for but not worked, bonuses and gratuities, the cost of food, drink and other payments in kind, cost of workers' housing borne by employers, employers' social security expenditures, cost to the employer for vocational training, welfare services and miscellaneous items, such as transport of workers, work clothes and recruitment, together with taxes regarded as labour cost" in Mexico.

- The labor cost for each component was calculated by multiplying the total labor minutes by the surrogate labor rate.
- Publicly available data regarding overhead were not available, so we had to resort to a range of factory overhead and indirect labor rates from a number of roller bearing and steel producers in Mexico. We used a simple average of the range obtained from actual producers of the subject merchandise in Mexico as the most reasonable rate, given that there was no public information available on this subject. We reduced this rate by an amount to reflect indirect labor because the surrogate labor rate included indirect labor.
- We used the statutory minimum of ten percent of the sum of material and fabrication costs for general expenses.
- We used the statutory minimum of eight percent of material and fabrication costs plus general expenses for profit.
- Consistent with our valuation of packing in the Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Republic of Hungary, 56 FR 41819 (August 23, 1991), and the Final Results of Antidumping Duty Administrative Review: Tapered Roller Bearings and Parts Thereof, Finished and Unfinished, from the Republic of Hungary, 58 FR 47861 (September 13, 1993), the value of packing was based on publicly available data contained in the public file of the investigation of Tapered Roller Bearings from Italy, 52 FR 24198 (June 29, 1987). These data have been placed on the record for this administrative review.

Currency Conversion

We made currency conversions in accordance with 19 CFR 353.60(a). Currency conversions were made at the rates certified by the Federal Reserve Bank.

Preliminary Results of the Review

As a result of our comparison of the United States price to foreign market value, we preliminarily determine that the following dumping margin exists:

Manufacturer/ exporter	Time period	Margin (percent)
Magyar Gordulocs-opagy Muvek	6/1/91–5/31/92	5.89

Parties to the proceeding may request disclosure within 5 days of the date of publication of this notice. Any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the publication of this notice, or the first workday thereafter. Interested parties may submit case briefs within 30 days of the date of publication of this notice. Rebuttal briefs, which must be limited to issues raised in the case briefs, may be filed not later than 37 days after the date of publication. The Department will publish a notice of final results of this administrative review, which will include the results of its analysis of issues raised in any such comments.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. The Department will issue appraisement instructions directly to the Customs Service.

Furthermore, in accordance with section 751(a)(1) of the Act, we will instruct the Customs Service to collect cash deposits for MGM and all other exporters of Hungarian TRBs, at the rate indicated above. This deposit rate will be effective upon publication of the final results of this administrative review for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date. This deposit rate, when imposed, shall remain in effect until publication of the final results of the next administrative review.

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

This administrative review and notice are in accordance with section 751(a)(1) of the Tariff Act (19 U.S.C. 1675(a)(1)) and 19 CFR 353.22.

Dated: November 17, 1993.

Barbara R. Stafford

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–28755 Filed 11–22–93; 8:45 am]

BILLING CODE 3510–DS–P

National Institute of Standards and Technology

OSE Implementors' Workshop (OIW); Notice of 1994 Meeting Dates

AGENCY: National Institute of Standards and Technology (NIST), Commerce.

ACTION: Notice.

SUMMARY: The NIST announces four (4) workshop sessions to reach implementor agreements on Open System Environments (OSE) computer standards.

DATES: The 1994 meeting dates for the workshops have been established and are as follows: March 14–18, 1994, June 13–17, 1994, September 12–16, 1994, December 12–16, 1994.

The meetings will be hosted by NIST and held at Gaithersburg, Maryland.

ADDRESSES: To register for the workshops, companies may contact: OSE Implementors Workshop Series, Attn: Brenda Gray, National Institute of Standards and Technology, Building 225, room B–266, Gaithersburg, MD 20899, Telephone: (301) 975–3664.

The registration request must name the company representative(s) and specify the business address and telephone number for each participant.

FOR FURTHER INFORMATION CONTACT: For technical questions contact, Albert T. Landberg (301) 975–2245.

SUPPLEMENTARY INFORMATION: The workshops are an ideal vehicle for identifying candidate specifications to satisfy user needs for an open system application environments and developing functional standards (profiles) to meet interoperability requirements. A registration fee will be charged for attending the workshops. Participants are expected to make their own travel arrangements and accommodations. NIST reserves the right to cancel any part of the workshops.

Dated: November 16, 1993.

Samuel Kramer,

Associate Director.

[FR Doc. 93–28664 Filed 11–22–93; 8:45 am]

BILLING CODE 3510–CN–M

National Oceanic and Atmospheric Administration

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Receipt of Application for a Second Modification to Scientific Research permit No. 822 (P500B).

Notice is hereby given that the Fish Passage Center (FPC) has applied in due form for a second modification to scientific research Permit No. 822 to take listed species as authorized by the Endangered Species Act of 1973 (ESA) (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217–227).

Permit No. 822 was issued on march 15, 1993 (58 FR 16524) as authorized by the ESA. It authorizes FPC to take listed Snake River sockeye salmon (*Oncorhynchus nerka*), Snake River fall chinook salmon (*O. tshawytscha*), and Snake River spring/summer chinook salmon (*O. tshawytscha*) for scientific research purposes through December 31, 1997.

FPC is requesting authorization to add smolt monitoring activities at Lower Granite, Little Goose, Lower Monumental and McNary dams to Permit No. 822. These activities were previously authorized under Permit 828, issued to the U.S. Army Corps of Engineers, which expires December 31 1993. The FPC is also requesting authorization to add a new smolt monitoring trap on the Grande Ronde River and increase handling efforts at the Clearwater River and Snake River (Lewiston) traps.

Addition of the transportation sites, the Grande Ronde River trap, and increases in sampling at the Snake River and Clearwater traps would increase the total numbers of listed fish authorized to be handled under Permit 822 from 12,410 to 52,410 juvenile Snake River spring/summer chinook salmon, from 216 to 24,316 juvenile Snake River fall chinook salmon, and from 10 to 130 juvenile Snake River sockeye salmon.

FPC is also requesting authorization to passive integrated transponder (PIT) tag subsets of the fish that would be handled at Lower Granite dam, the Snake River trap, which would increase the number of listed fish authorized to be PIT tagged under Permit 822 from 5,000 to 10,800 Snake River spring/summer chinook salmon and from 0 to 600 Snake River fall chinook salmon.

As a result of all of the above activities, FPC expects mortalities of listed fish that would be authorized under Permit 822 to increase from 125 to 535 Snake River spring/summer chinook salmon, from 6 to 566 Snake River fall chinook salmon, and from 1 to 13 Snake River sockeye salmon.

Written data or views, or requests for a public hearing on this modification request should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Hwy., room 13229, Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular request would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this request summary are those of the Applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above request are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Hwy., room 13229, Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., Room 620, Portland, OR 97232 (503–230–5400).

Dated: November 15, 1993.

William W. Fox, Jr., Phd.

Director, Office of Protected Resources.

[FR Doc. 93–28642 Filed 11–22–93; 8:45 am]

BILLING CODE 3510-22-M

DEPARTMENT OF DEFENSE

Office of The Secretary

DoD Government-Industry Technical Data Committee

AGENCY: Office of the Under Secretary of Defense (Acquisition).

ACTION: Notice.

SUMMARY: Pursuant to Section 807 of Public Law 102–120, the National Defense Authorization Act for Fiscal Years 1992 and 1993, a Government-Industry Technical Data Committee has been formed. The committee will make recommendations to the Secretary of Defense for the final regulations required by subsection (a) of 10 U.S.C. 2320 "Rights in Technical Data."

The next committee meetings are scheduled for December 8 and 9, 1993, from 9:30 a.m. to 4 p.m. at The Russell Baker Conference Room, room 1000, 815 Connecticut Ave., NW., Washington, DC 20006–4078. These meetings will be open to the public. For more information, please contact the Committee Executive Secretary, Angelena Moy at (703) 693–5639.

Dated: November 17, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–28649 Filed 11–22–93; 8:45 am]

BILLING CODE 5000-04-M

Department of the Air Force

Privacy Act of 1974; Deletion and Amendment of Systems of Records

AGENCY: Department of the Air Force, DOD.

ACTION: Deletion and amendment of systems of records.

SUMMARY: The Department of the Air Force proposes to delete one and amend 24 systems of records notices to its inventory of systems of records notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended.

DATES: The deletion will be effective November 23, 1993.

The amendments will be effective on December 23, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to the Assistant Air Force Access Programs Officer, SAF/AAIA, 1610 Air Force Pentagon, Washington, DC 20330–1610.

FOR FURTHER INFORMATION CONTACT: Mr. Jim Gibson at (703) 697–3491 or DSN 227–3491.

SUPPLEMENTARY INFORMATION: The complete inventory of Department of Air Force record system notices subject to the Privacy Act of 1974 (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the address above.

Dated: November 17, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETION

F050 AFCC D

SYSTEM NAME:

Student Record *(February 22, 1993, 58 FR 10391).*

Reason: System is no longer needed. There are no plans to reinstate this system in the future. Records maintained in this system will be destroyed nine years from date of discontinuance of the system.

AMENDMENTS
F011 AF A

SYSTEM NAME:

Locator, Registration and Postal Directory Files *(February 22, 1993, 58 FR 10289).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete 'and specified'.

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are destroyed for one year after permanently assigned personnel depart, or three months after transient personnel depart. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Change first sentence to read 'Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, 1680 Air Force Pentagon, Washington, DC 20330–1680.'

* * * * *

F011 AF A

SYSTEM NAME:

Locator, Registration and Postal Directory Files.

SYSTEM LOCATION:

Headquarters, United States Air Force; Air Force installations to include bases; units; offices and functions, and headquarters of unified commands for which Air Force is Executive Agent. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force military and civilian personnel; Air Force Reserve and National Guard personnel; volunteer personnel; United States Armed Forces military and civilian personnel assigned to headquarters of unified and specified commands for which Air Force is Executive Agent, and contractor personnel. Dependents may also be included in this system.

CATEGORIES OF RECORDS IN THE SYSTEM:

Cards or listings may contain the individuals name, grade, military service identification number, Social Security Number, duty location, office telephone number, residence address and residence telephone number, and similar type personnel data determined to be necessary by local authority.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and E.O. 9397.

PURPOSE(S):

Used to locate or identify personnel assigned/attached to, tenanted on, or on temporary duty at the specific installation, office, base, unit, function, and/or organization in response to specific inquiries from authorized users for the conduct of business. Portions of the system are used for directory service and forwarding individual personal mail received by Air Force postal activities, and for assignment of individual mail boxes. Files may be used locally to support official and unofficial programs which require minimal locator information, membership or user listings.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on paper records in card or form media in visible file binders/ cabinets or card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name and/or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Retained in office files until reassignment or separation, or when superseded or no longer needed for reference. Postal directory files are destroyed for one year after permanently assigned personnel depart, or three months after transient personnel depart. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Information Management, Office of the Administrative Assistant to the Secretary of the Air Force, 1680 Air Force Pentagon, Washington, DC 20330–1680.

Local system managers: Records Custodians at the installation, base, unit, organization, office or function to which the individual is assigned, attached, tenanted on, performing volunteer service at, or on temporary duty. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information about themselves should address inquiries to or visit the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the local system manager. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces; the individuals, or from personnel records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F030 MPC B

SYSTEM NAME:

Indebtedness, Nonsupport, Paternity *(February 22, 1993, 58 FR 10318).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Personal Programs Branch, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4717.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 35–18' and replace with 'Air Force Instruction 35–706, Personal Financial Responsibility.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Personal Programs Branch, Records and Special Programs Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4714.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Personal Programs Branch, Records and Special Programs Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4714.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Personal Programs Branch, Records and Special Programs Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4714.'

* * * * *

F030 MPC B

SYSTEM NAME:

Indebtedness, Nonsupport, Paternity.

SYSTEM LOCATION:

Personal Programs Branch, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4717.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel who are the subject of complaints of indebtedness, nonsupport or inadequate support, or paternity allegations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Correspondence relating to a complaint of indebtedness, nonsupport or inadequate support of dependents, or allegations of paternity with a report of the immediate commander's final action regarding same.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Instruction 35–706, Personal Financial Responsibility; and E.O. 9397.

PURPOSE(S):

Source of background information used for historical and statistical purposes.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained for two years after end of year in which the case was closed, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personal Programs Branch, Records and Special Programs Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4714.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Personal Programs Branch, Records and Special Programs Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4714.

Individual should provide name, Social Security Number and date of birth.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Personal Programs Branch, Records and Special Programs Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4714.

Individual should provide name, Social Security Number and date of birth.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals, private concerns, and government agencies with interests pursuant to subject records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF A

SYSTEM NAME:

Officer Quality Force Management Records *(February 22, 1993, 58 FR 10320).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Strategic Command, 901 SAC Boulevard, Suite

1F7, Offutt Air Force Base, NE 68113–1010.

Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Air Force active duty officers assigned or attached to Headquarters United States Strategic Command or Air Force Command, Control, Communications and Computer Agency, whose performance, conduct, or alleged misconduct may or has resulted in initiation of administrative action(s).'

* * * * *

PURPOSE(S):

Delete 'HQ USSTRATCOM' and 'HQ AFCC' and insert 'Headquarters United States Strategic Command' and 'Air Force Command, Control, Communications and Computer Agency' respectively.

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–1010.

Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–1010; or to the Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.

Full name, military status, grade and Social Security Number are required to determine if the system contains records on an individual.

Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–1010; or to the Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.

Full name, military status, grade and Social Security Number are required to access records.

Visitors must provide proof of identity such as a military ID card, valid drivers license, or some item of information which can be verified from the records.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Information is obtained from the individual concerned; member's commander; Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, and Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency.'

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F035 AF A

SYSTEM NAME:

Officer Quality Force Management Records.

SYSTEM LOCATION:

Headquarters United States Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–1010.

Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty officers assigned or attached to Headquarters United States Strategic Command or Air Force Command, Control, Communications and Computer Agency, whose performance, conduct, or alleged misconduct may or has resulted in initiation of administrative action(s).

CATEGORIES OF RECORDS IN THE SYSTEM:

Information relating to substandard performance, unacceptable conduct or unfitness, and status and dates of pending or completed administrative actions.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 8074, Commands; territorial organization, and E.O. 9397.

PURPOSE(S):

To provide information to Commander in Chief, Headquarters United States Strategic Command; Deputy Chief of Staff for Personnel, Air Force Command, Control, Communications and Computer Agency; and staff members as appropriate who make decisions on officers' qualifications for continuation on active duty, or further consideration for promotion.

Used to evaluate and monitor status of actions on subjects.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by the custodian of the record system and by persons responsible for servicing the records in performance of their official duties who are properly screened and cleared for need-to-know. Those in computer storage devices are protected by computer system software. Records and computer software are stored in locked cabinets and rooms in buildings protected by guards.

RETENTION AND DISPOSAL:

Retained until superseded, obsolete, or no longer needed for reference,

whichever is sooner. Files will be destroyed not later than 2 years from last entry. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–1010.

Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.

NOTIFICATION PROCEDURES:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–1010; or to the Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.

Full name, military status, grade and Social Security Number are required to determine if the system contains records on an individual.

Visitors must provide proof of identity such as a military identification card, valid drivers license, or some item of information which can be verified from the records.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, 901 SAC Boulevard, Suite 1F7, Offutt Air Force Base, NE 68113–1010; or to the Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency, 203 W. Losey Street, Suite 1020, Scott Air Force Base, IL 62225–5219.

Full name, military status, grade and Social Security Number are required to access records.

Visitors must provide proof of identity such as a military ID card, valid drivers license, or some item of information which can be verified from the records.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents; the individual concerned; member's commander; Chief, Personnel Programs Division, Directorate of Manpower and Personnel, Headquarters United States Strategic Command, and Chief, Personnel Programs Branch, Directorate of Resources, Air Force Command, Control, Communications and Computer Agency.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP C

SYSTEM NAME:

Military Personnel Records System *(February 22, 1993, 58 FR 10323).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040;

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703;

Air Reserve Personnel Center, 6760 E. Irvington Place (6600), Denver, CO 80280–6600;

National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001.

Headquarters of major commands and separate operating agencies; consolidated base personnel offices; State Adjutant General Office of each respective state, District of Columbia and Commonwealth of Puerto Rico, and at Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete first portion of paragraph beginning with 'Officer Correspondence....' through 'MPerRGp at AFMPC...' and replace with 'Officer Correspondence and Miscellaneous Document Group (C and M) for active duty officers at Air Force Military Personnel Center (AFMPC); at Headquarters, United States Air Force (HQ USAF), Officer Selection Record (OSR) Group; at HQ USAF, General Officer Group; at HQ USAF AND HQ AFMPC Air Force Colonel's Group. Retired general officers Master Personnel Record Group (MPerRGp) at AFMPC; Officer Command Selection Record Group (OCSRGp) at the respective Air Force base of assignment/servicing Military Personnel Flight (MPF). Air Force active duty enlisted personnel MPerRGp and senior NCO selection folder at AFMPC; FRGp at respective servicing MPF; personnel in Temporary Disability Retired List (TDRL), Missing in Action (MIA), Prisoner of War (POW), Dropped From Rolls status MPerRGp at AFMPC.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 35–44' and replace with 'Air Force Instruction 36–2608.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete the address in the first paragraph and replace with 'Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

RECORD ACCESS PROCEDURES:

Delete the address in the first paragraph and replace with 'Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

F035 AF MP C

SYSTEM NAME:

Military Personnel Records System.

SYSTEM LOCATION:

Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040; Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703; Air Reserve Personnel Center, 6760 E. Irvington Place (6600), Denver, CO 80280–6600; National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001. Headquarters of

major commands and separate operating agencies; consolidated base personnel offices; State Adjutant General Office of each respective state, District of Columbia and Commonwealth of Puerto Rico, and at Air Force Reserve and Air National Guard units. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military, Air Force Reserve and Air National Guard personnel.

CATEGORIES OF RECORDS IN THE SYSTEM:

Officer Correspondence and Miscellaneous Document Group (C and M) for active duty officers at Air Force Military Personnel Center (AFMPC); at Headquarters, United States Air Force (HQ USAF), Officer Selection Record (OSR) Group; at HQ USAF, General Officer Group; at HQ USAF AND HQ AFMPC Air Force Colonel's Group. Retired general officers Master Personnel Record Group (MPerRGp) at AFMPC; Officer Command Selection Record Group (OCSRGp) at the respective Air Force base of assignment/ servicing Military Personnel Flight (MPF). Air Force active duty enlisted personnel MPerRGp and senior NCO selection folder at AFMPC; FRGp at respective servicing MPF; personnel in Temporary Disability Retired List (TDRL), Missing in Action (MIA), Prisoner of War (POW), Dropped From Rolls status MPerRGp at AFMPC; Reserve Officers MPerRGp at Air Reserve Personnel Center (ARPC); OCSR at the respective Air Force major command when applicable, FRGp at the respective unit of assignment or servicing CBPO or Consolidated Reserve Personnel Office (CRPO); Reserve airmen MPerRGp at ARPC and FRGp at the respective unit of assignment or servicing CBPO/CRPO; Air National Guard (ANGUS) officers MPerRGp at ARPC, OCSR at the respective State Adjutant General Office, and FRGp at the respective unit of assignment; ANGUS airmen MPerRGp at the respective State Adjutant General Office and FRGp at the respective unit of assignment; Retired and discharged Air Force military personnel MPerRGp at National Personnel Records Center and Air Force Academy cadets MPerRGp at unit of assignment CBPO. System contains substantiating documentation such as forms, certificates, administrative orders and correspondence pertaining to appointment as a commissioned officer, warrant officer, Regular AF, AF Reserve or ANGUS, enlistment/reenlistment/ extension of enlistment, assignment, Permanent Change of Station, Temporary Duty (TDY), promotion and demotion; identification card requests; casualty; duty status changes; Absent Without Leave/MIA/POW/Missing/ Deserter; military test administration/ results; service dates; separation; discharge/ retirement; security; training; Professional Military Education (PME); On-The-Job Training; Technical, General Military Training; commissioning; driver; academic education; performance/effectiveness reports; records corrections; formal/ informal medical or dental treatment/ examination; flying/rated status administration; extended active duty; emergency data; line of duty determinations; human/personnel reliability; career counseling; records transmittal; AF reserve administration; Air National Guard administration; board proceedings; personnel history statements; Department of Veterans Affairs compensations; disciplinary actions; record extracts; locator information; personal clothing/ equipment items; passport; classification; grade data; Career Reserve applications/cancellations; traffic safety; Unit Military Training; travel voucher for TDY to Republic of Vietnam; dependent data; professional achievements; Geneva Convention card; Federal insurance; travel and duty restrictions; Conscientious Objector status; decorations and awards; badges; Favorable Communications (colonels only); Inter-Service transfers; pay and allowances; combat duty; leave; photographs, and Personnel Data System products.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2608, and E.O. 9397.

PURPOSE(S):

Military personnel records are used at all levels of Air Force personnel management within the agency for actions/processes related to procurement, education and training, classification, assignment, career development, evaluation, promotion, compensation, sustentation, separation and retirement.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Records may be disclosed to the Department of Veterans Affairs for research, processing and adjudication of claims, and providing medical care.

To dependents and survivors for determination of eligibility for identification card privileges.

To the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS) for determination of eligibility and benefits.

To local Immigration/Naturalization Office for accountability and audit purposes.

To State Unemployment Compensation offices for verification of military service related information for unemployment compensation claims; Respective local state government offices for verification of Vietnam 'State Bonus' eligibility.

To the Office of Personnel Management for verification of military service for benefits, leave, or Reduction in Force purposes, and to establish Civil Service employee tenure and leave accrual rate.

To the Social Security Administration to substantiate applicant's credit for social security compensation; Local state office for verification of military service relative to the Soldiers and Sailors Civil Relief Act. Information as to name, rank, Social Security Number, salary, present and past duty assignment, future assignments that have been finalized, and office phone number may be provided to military financial institutions who provide services to DOD personnel. For personnel separated, discharged or retired from the Air Force, information as to last known address may be provided to the military financial institutions upon certification by a financial institution officer that the facility has a dishonored check or defaulted loan.

To the Selective Service Agencies for computation of service obligation.

To the American National Red Cross for emergency assistance to military members, dependents, relatives or other persons if conditions are compelling.

To the Department of Labor for claims of civilian employees formerly in military service, verification of service-related information for unemployment compensation claims, investigations of possible violations of labor laws and for pre-employment investigations.

To the National Research Council for medical research purposes.

To the U.S. Soldiers' and Airman's Home to determine eligibility.

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file folders/ binders, cabinets and on computer and computer output products.

RETRIEVABILITY:

Information in the system is retrieved by last name, first name, middle initial and Social Security Number.

Records stored at National Personnel Records Center are retrieved by registry number, last name, first name, middle initial and Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the records system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records stored in locked room, cabinets, and in computer storage devices protected by computer system software.

RETENTION AND DISPOSAL:

Those documents designated as temporary in the prescribing directive remain in the records until their obsolescence (superseded, member terminates status, or retires) when they are removed and provided to the individual data subject.

Those documents designated as permanent remain in the military personnel records system permanently and are retired with the master personnel record group.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Individuals may also appear in person at the responsible official's office or the respective repository for records for personnel in a particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. The system manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Commander, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Individuals may also appear in person at the responsible official's office or the respective repository for records for personnel in a particular category during normal duty hours any day except Saturday, Sunday or national and local holidays. The Saturday and Sunday exception does not apply to Reserve and National Guard units during periods of training. The system manager has the right to waive these requirements for personnel located in areas designated as Hostile Fire Pay areas. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information is obtained from the subject of the file, supervisors, correspondence generated within the agency in the conduct of official business, educational institutions, and civil authorities.

EXEMPTION CLAIMED FOR THE SYSTEM:

None.

F035 AF MP L

SYSTEM NAME:

Unfavorable Information Files (UIF) *(February 22, 1993, 58 FR 10330).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Complete UIFs are maintained in the unit orderly room or the Military Personnel Flight (MPF) office. A copy of the UIF summary sheet is maintained at: Individual's unit of assignment; geographically separated units not collocated with a servicing MPF. For officers only at major command level; for colonel, colonel select, and general officers at Headquarters Air Force level; and the gaining unit for individuals selected for reassignment. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Add to end of entry 'and drug/alcohol abuse correspondence.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 35–32' and insert 'Air Force Instruction 36–2907, The Air Force Unfavorable Information File Program.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Personnel for whom optional UIFs exist are routinely notified of the existence of a file. In all cases personnel have had the opportunity and are authorized to rebut the correspondence in the file. Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the servicing military personnel flight or unit orderly room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system should address written inquiries to the servicing military personnel flight or unit orderly room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.'

* * * * *

F035 AF MP L

SYSTEM NAME:

Unfavorable Information Files (UIF).

SYSTEM LOCATION:

Complete UIFs are maintained in the unit orderly room or the Military Personnel Flight (MPF) office. A copy of the UIF summary sheet is maintained at: Individual's unit of assignment; geographically separated units not collocated with a servicing MPF. For officers only at major command level; for colonel, colonel select, and general officers at Headquarters Air Force level; and the gaining unit for individuals selected for reassignment. Official mailing addresses are published as an appendix to the Air Force compilation of record system notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military personnel who are the subject of an UIF.

CATEGORIES OF RECORDS IN THE SYSTEM:

Derogatory correspondence determined as mandatory for file or as appropriate for file by an individual's commander. Examples include written admonitions or reprimands; court-martial orders; letters of indebtedness, or control roster correspondence and drug/alcohol abuse correspondence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2907, The Air Force Unfavorable Information File Program.

PURPOSE(S):

Reviewed by commanders and personnel officials to assure appropriate assignment, promotion and reenlistment considerations prior to effecting such actions. UIFs also provide information necessary to support administrative separation when further rehabilitation efforts would not be considered effective.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets and in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Computer records are protected by computer software.

RETENTION AND DISPOSAL:

UIFs are maintained for one year from the effective date of the most recent correspondence, except when the file contains documentation pertaining to Articles 15, Court-Martial or certain civil court convictions, in which case the retention period is two years from the date of that correspondence. Files are automatically destroyed upon separation or retirement, and on an individual basis when the individual's commander so determines. Destroy by tearing into pieces, shredding, pulping, macerating, or burning. Computer records are destroyed by degaussing or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Personnel for whom optional UIFs exist are routinely notified of the existence of a file. In all cases personnel have had the opportunity and are authorized to rebut the correspondence in the file. Individuals seeking to determine whether this system of records contains information about themselves should address written inquiries to the servicing military personnel flight or unit orderly room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written inquiries to the servicing military personnel flight or unit orderly room. Official mailing addresses are published as an appendix to the Air Force's compilation of record system notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Supervisory reports or censures and documented records of poor performance or conduct.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 AF MP N

SYSTEM NAME:

Individual Weight Management and Physical Fitness File *(February 22, 1993, 58 FR 10332).*

CHANGES:

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SYSTEM NAME:

Change system name to 'Individual Weight Management File.'

* * * * *

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Air Force active duty military personnel; Air National Guard (ANG) and Air Force Reserve personnel who are enrolled in the Weight Management Control Program.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'File contains individual weight management record; AF Form 108 informing individual of weight management program status, scheduled medical evaluations, and pertinent medical status.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; Powers and duties, delegation by; as implemented by Air Force Instruction 36–2905, Air Force Weight Program.'

PURPOSE(S):

Delete entry and replace with 'The files keep the individual informed of weight/body fat loss in attaining body fat standards, provides history of weight/body fat loss and counseling, provides an input for medical determinations.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'When a person achieves the prescribed weight

standards or desired fitness level, file is retained for one year from date of removal from the Weight Management Program and destroyed by unit; or destroyed upon retirement or separation by unit, whichever is earlier; or upon successful completion of probation and rehabilitation under Air Force Instruction 36–3208.

Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander at the unit of assignment or attachment.

Include full name, grade, and Social Security Number. Personal visits require proof of identity with an Armed Forces Identification Card.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking access to records about themselves contained in this system should address written requests to the Commander at the unit of assignment or attachment.

Include full name, grade, and Social Security Number. Personal visits require proof of identity with an Armed Forces Identification Card.'

* * * * *

F035 AF MP N

SYSTEM NAME:

Individual Weight Management File.

SYSTEM LOCATION:

Air Force unit of assignment or attachment and servicing medical facility. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel; Air National Guard (ANG) and Air Force Reserve personnel who are enrolled in the Weight Management Control Program.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains individual weight management record; AF Form 108 informing individual of weight management program status, scheduled medical evaluations, and pertinent medical status.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Powers and duties, delegation by; as implemented by Air Force Instruction 36–2905, Air Force Weight Program; and E.O. 9397.

PURPOSE(S):

The files keep the individual informed of weight/body fat loss in attaining body fat standards, provides history of weight/body fat loss and counseling, provides an input for medical determinations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and on computer and computer output products.

RETRIEVABILITY:

Retrieved by name, Social Security Number and grade.

SAFEGUARDS:

Records are accessed by custodian of the records system and by person(s) responsible for servicing the records system in performance of their official duties who are properly screened and cleared for need-to-know. Records are controlled by personnel screening.

RETENTION AND DISPOSAL:

When a person achieves the prescribed weight standards or desired fitness level, file is retained for one year from date of removal from the Weight Management Program and destroyed by unit; or destroyed upon retirement or separation by unit, whichever is earlier; or upon successful completion of probation and rehabilitation under Air Force Instruction 36–3208.

Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Aif Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander at the unit of assignment or attachment. Include full name, grade, and Social Security Number.

Personal visits require proof of identity with an Armed Forces Identification Card.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the Commander at the unit of assignment or attachment.

Include full name, grade, and Social Security Number. Personal visits require proof of identity with an Armed Forces Identification Card.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individuals to whom the record pertains.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC C

SYSTEM NAME:

Chaplain Applicant Processing Folder *(February 22, 1993, 58 FR 10357).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 HC D.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete 'Air Force Regulation 36–15' and insert 'Air Force Instruction 36–2005, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories Reserve of the Air Force and United States Air Force (Temporary).'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.'

* * * * *

F035 HC D

SYSTEM NAME:

Chaplain Applicant Processing Folder.

SYSTEM LOCATION:

Office of the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Chaplaincy applicants and Reserve Chaplains applying for active duty.

CATEGORIES OF RECORDS IN THE SYSTEM:

Forms used by the Air Force Manpower and Personnel Center (AFMPC) Command Chaplains Office in processing chaplains to active duty including: Application for Appointment as Reserve of the Air Force; Application for Extended Active Duty with the United States Air Force; United States Air Force (USAF) Drug Abuse Certificate; Statement of Personal History; National Agency Check Request; Report of Medical Examination; Report of Medical History; Fingerprint Card; Checklist for Chaplain Appointment; Ecclesiastical Endorsement; Certificate of Continuance of Ecclesiastical Endorsement; Certificate of Seminary Graduation and Ordination; Official Transcripts of College Education; Personal correspondence between resource manager and applicant regarding status of his application.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8067, Designation: Officers to perform certain professional functions, and 8293, Commissioned officers; chaplains: Original appointment; examination; as implemented by Air Force Instruction 36–2005, Appointment in Commissioned Grades and Designation and Assignment in Professional Categories Reserve of the Air Force and United States Air Force (Temporary).

PURPOSE(S):

The documents maintained in these transitory folders are used by the resource manager in processing chaplain applicants to active duty.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Once applicant is accessed, forms are entered into the Master Personnel Records Group. If applicant does not qualify for appointment, file is destroyed after one year.

SYSTEM MANAGER(S) AND ADDRESS:

Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief of Chaplains, Headquarters United States Air Force, 172 Luke Avenue, 3rd Floor, Washington, DC 20330–5113.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records, and for contesting contents and appealing initial agency determinations are published in Air Force Regulation 12–35; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual's application.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC D

SYSTEM NAME:

Correction of Military Record Card *(February 22, 1993, 58 FR 10357).*

CHANGES:

* * * * *

SYSTEM NAME:

Delete 'Card' and replace with 'System.'

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. Chapter 79 Correction of Military Records; as implemented by Air Force Instruction 36–2603, Air Force Board for the Correction of Military Records.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Maintained in computer system for five years. Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

F035 MPC D

SYSTEM NAME:

Correction of Military Record System.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active and retired or discharged officers and airmen. Next of kin of deceased officers and airmen.

CATEGORIES OF RECORDS IN THE SYSTEM:

Summary of application for correction of records request followed through to its final decision by the appropriate correction board.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 79 Correction of Military Records; as implemented by Air Force Instruction 36–2603, Air Force Board for the Correction of Military Records; and E.O. 9397.

PURPOSE(S):

To monitor application by member and cocase by the appropriate correction board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer magnetic tapes, disks, or computer paper printouts, or microfiche.

RETRIEVABILITY:

Retrieved by Social Security Number or Air Force Service Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms and computer system software.

RETENTION AND DISPOSAL:

Maintained in computer system for five years. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application, Master Personnel Records.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC E

SYSTEM NAME:

Disability/Non-disability Retirements Records *(February 22, 1993, 58 FR 10358).*

CHANGES:

* * * * *

SYSTEM NAME:

Change system name to 'Disability Retirement Records.'

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4708.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Officers and airmen on the Temporary Disability Retired List.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete the last five words of the entry.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. Chapter 61, Retirement or Separation for Physical Disability; as implemented by Air Force Instruction 36–2902, Physical Evaluation for Retention, Retirement and Separation.'

* * * * *

STORAGE:

Delete 'and in microcomputers.'

RETRIEVABILITY:

Delete 'or Social Security Number.'

SAFEGUARDS:

Delete last sentence.

RETENTION AND DISPOSAL:

Delete entry and replace with 'Disability retain files are retained for 30 days after case is finalized; case files are retired to Master Personnel Records Group when disability retirement action has been completed.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force

Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

RECORD SOURCE CATEGORIES:

Delete entry and replace with 'Correspondence and forms generated in Retirements Branch, Headquarters Air Force Military Personnel Center (AFMPC); military hospitals; HQ USAF Surgeon General; HQ AFMPC Surgeon; consolidated base personnel offices; major air commands; by the members themselves, and by the general public on retirement-related matters.'

* * * * *

F035 MPC E

SYSTEM NAME:

Disability Retirement Records.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4708.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers and airmen on the Temporary Disability Retired List.

CATEGORIES OF RECORDS IN THE SYSTEM:

Copies of medical histories, Secretarial determinations, retirement forms, routine correspondence files, case files, disability retain folders.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. Chapter 61, Retirement or Separation for Physical Disability; as implemented by Air Force Instruction 36–2902, Physical Evaluation for Retention, Retirement and Separation.

PURPOSE(S):

To provide information on retirement cases and to allow appropriate case processing.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Stored in secure building.

RETENTION AND DISPOSAL:

Disability retain files are retained for 30 days after case is finalized; case files are retired to Master Personnel Records Group when disability retirement action has been completed.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Correspondence and forms generated in Retirements Branch, Headquarters Air Force Military Personnel Center (AFMPC); military hospitals; HQ USAF Surgeon General; HQ AFMPC Surgeon; consolidated base personnel offices; major air commands; by the members themselves, and by the general public on retirement-related matters.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC F

SYSTEM NAME:

Health Education Records *(February 22, 1993, 58 FR 10358).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'All airmen and officers of the United States Air Force who have applied for training to Air Force Military Personnel Center/Medical Service Officer Utilization Division.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'PHYSICIAN EDUCATION BRANCH:

Undergraduate Selection Folders: Application; Medical College Admission Test; Letter of acceptance to approved medial school; Dean's letter of recommendation; DD Form 398, Personal History Statement; Health Professions Scholarship Program (HPSP); Uniformed Services University of the Health Sciences service obligation contracts; Air Reserve Personnel Center order; Privacy Act Statement; Photo; HPSP selection notification letter; Physical exam; Separation order.

Graduate Medical Education Folders: Medical College Admission Test; final medical school transcript; Dean's letter from medical school; hospital agreement form; Privacy Act Statement; photo; application for training; AFMPC Form

131, Education Summary; Program Director's letter; other letters of recommendation; memos for record; Congressional inquiries; general correspondence; legal opinions for correction of military records; essay on career intention and professional goals; residency/fellowship resignation letters; select notification letter; Active Duty Service Commitment statement; redeferred statement of understanding.

MEDICAL SERVICE CORPS UTILIZATION AND EDUCATION BRANCH:

Air Force Institute of Technology Sponsored Graduate Education Folders: Transcripts; chronological listings of work experience (VITAE); letters of recommendation; graduate record examination results; Graduate Management Admission Test results; officer career briefs.

DENTAL UTILIZATION AND EDUCATION BRANCH:

Graduate Dental Education Folders: Application for sponsored training; graduate record examination results; essay on why program is desired; letters of recommendation; general correspondence with applicant; select/non-select/alternate letter; Dean's letter; Active Duty Service Commitment statement.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'Used by the Medical Service Officer Utilization Division/Branches and Medical Education Selection Boards in selecting individuals to attend undergraduate and graduate educational programs. Such programs include medical school, residencies and fellowship programs for physicians, graduate dental education and graduate education for Medical Service Corps officers. Another use of the system is to monitor the individual's progress in an educational program after selection until completion of program.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Undergraduate and graduate medical education records are retained until the individual separates or retires from the Air Force. Air Force Institute of Technology (AFIT) selection folders are maintained until the end of the calendar year with the exception of transcripts which are returned to AFIT within 60 days of board completion. Dental graduate education folders are maintained while member is in program. Upon graduation, only transcripts, letters of recommendation, Graduate Record Examination results and Active Duty Service Commitment statements are maintained until member separates, retires or is promoted to colonel. When promoted to colonel, records are transferred to the Colonel's Group.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Medical Service Officer Utilization Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Chief, Medical Service Officer Utilization Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Chief, Medical Service Officer Utilization Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

F035 MPC F

SYSTEM NAME:

Health Education Records.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All airmen and officers of the United States Air Force who have applied for training to Air Force Military Personnel Center/Medical Service Officer Utilization Division.

CATEGORIES OF RECORDS IN THE SYSTEM:

PHYSICIAN EDUCATION BRANCH:

Undergraduate Selection Folders: Application; Medical College Admission Test; Letter of acceptance to approved medial school; Dean's letter of recommendation; DD Form 398, Personal History Statement; Health Professions Scholarship Program (HPSP); Uniformed Services University of the Health Sciences service obligation contracts; Air Reserve Personnel Center order; Privacy Act Statement; Photo; HPSP selection notification letter; Physical exam; Separation order.

Graduate Medical Education Folders: Medical College Admission Test; final medical school transcript; Dean's letter from medical school; hospital agreement form; Privacy Act Statement; photo; application for training; AFMPC Form 131, Education Summary; Program Director's letter; other letters of recommendation; memos for record; Congressional inquiries; general correspondence; legal opinions for correction of military records; essay on career intention and professional goals; residency/fellowship resignation letters; select notification letter; Active Duty Service Commitment statement; redeferred statement of understanding.

MEDICAL SERVICE CORPS UTILIZATION AND EDUCATION BRANCH:

Air Force Institute of Technology Sponsored Graduate Education Folders: Transcripts; chronological listings of work experience (VITAE); letters of recommendation; graduate record examination results; Graduate Management Admission Test results; officer career briefs.

Education With Industry Fellowship Application Folders: Military Facility Fellowship Application Folders; Professional Military Education Application Folders: VITAE; letters of recommendation; officer career briefs.

DENTAL UTILIZATION AND EDUCATION BRANCH:

Graduate Dental Education Folders: Application for sponsored training; graduate record examination results; essay on why program is desired; letters of recommendation; general correspondence with applicant; select/non-select/alternate letter; Dean's letter; Active Duty Service Commitment statement.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 105, Armed Forces Health Professions Scholarship and 10 U.S.C. 9301, Members of Air Force: Detail as students, observers, and investigators at educational institutions, industrial plants, and hospitals.

PURPOSE(S):

Used by the Medical Service Officer Utilization Division/Branches and Medical Education Selection Boards in selecting individuals to attend undergraduate and graduate educational programs. Such programs include medical school, residencies and fellowship programs for physicians, graduate dental education and graduate education for Medical Service Corps officers. Another use of the system is to monitor the individual's progress in an educational program after selection until completion of program.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSE OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Undergraduate and graduate medical education records are retained until the individual separates or retires from the Air Force. Air Force Institute of Technology (AFIT) selection folders are maintained until the end of the calendar year with the exception of transcripts which are returned to AFIT within 60 days of board completion. Dental graduate education folders are maintained while member is in program. Upon graduation, only transcripts, letters of recommendation, Graduate Record Examination results and Active Duty Service Commitment statements are maintained until member separates, retires or is promoted to colonel. When promoted to colonel, records are transferred to the Colonel's Group.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Medical Service Officer Utilization Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief, Medical Service Officer Utilization Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief, Medical Service Officer Utilization Division, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Member's application, supervisor's evaluation, master personnel records (board use only), Career Brief (board use only), transcripts, test scores, Deans' letters of recommendation, Standard Form (SF) 88 and SF 93.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC G

SYSTEM NAME:

Medical Officer Personnel Utilization Records *(February 22, 1993, 58 FR 10359).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2105, Officer Classification; Air Force Regulation 36–4, Special Pay for Medical Corps Officers; Air Force Instruction 36–2610, Appointment of Officers in the Regular Air Force; Air Force Instruction 36–2110, Continuation Pay for Dental Corps Officers; Air Force Regulation 36–20, Officer Assignments; Air Force Regulation 36–21, Selective Continuation Program; Air Force Instruction 36–2107, Active Duty Service Commitments (PA); and Air Force Instruction 36–2107, Specified Period of Time Contracts (SPTC) (PA).'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Director of Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Deputy Director of Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Deputy Director of Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

F035 MPC G

SYSTEM NAME:

Medical Officer Personnel Utilization Records.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force active duty medical service officers.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel Utilization records containing: Career briefs; Print-outs; Letters from individuals; Letters from Utilization Branch to individuals Letters concerning medical service education and training; Copy of application for Indefinite Reserve Status; Copy of request to join spouse; Copy of Specified Period of Time Contract (SPTC) requests; Copy Air Force Manpower and Personnel Center (AFMPC) Form 8, Assignment/Actions Worksheet; Air Force Manpower and Personnel Center (AFMPC) Form 138, Officer Reassignment; Memorandum of Official Contact; Officer Career Objective Statement; Personnel Action Request; Application for Appointment in the AF Reserve; Recall to Active Duty; Supplement to Application for Commission in the United States Air Force (U.S.) Medical Services;

Assignment Notification of Medical Service Officer; Constructive Credit Computation; Personal Interview-USAF Nurse Application; Air Force Institute of Technology (AFIT) Education Plan; Messages; Department of Defense Notification of change in service members official records; Master Personnel Record Fiche; Training/ Specialty Board Certification Records; Continuation Pay Contracts; Specialty Badge Award; Personnel Data Systems (PDS) transactions; Record of Office of Special Investigations (OSI) background checks; Resumes/special applications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; as implemented by Air Force Instruction 36–2105, Officer Classification; Air Force Regulation 36–4, Special Pay for Medical Corps Officers; Air Force Instruction 36–2610, Appointment of Officers in the Regular Air Force; Air Force Instruction 36–2110, Continuation Pay for Dental Corps Officers; Air Force Regulation 36–20, Officer Assignments; Air Force Regulation 36–21, Selective Continuation Program; Air Force Instruction 36–2107, Active Duty Service Commitments (PA); and Air Force Instruction 36–2107, Specified Period of Time Contracts (SPTC) (PA).

PURPOSE(S):

Verify current assignment; verify history of application for: Tour extension, tour curtailment, Specified Period of Time Contract, Indefinite Reserve Status, duty Air Force specialty code change, special duty application, formal school application, change of assignment reporting dates, join spouse application; Use AF Form 24 for obtaining date of birth and place of birth when processing assignment to academy or other highly sensitive area of assignment; to hold messages pertaining to assignment; to hold action notices and career briefs as a result of input from original office and any other office pertaining to an individual. This also includes career briefs and action notices from automatic actions (i.e., available assignment); pay computation; grade computation; to provide background information to answer correspondence.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets. etc.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retained in office files for six months after the individual terminates military service, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director of Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Director of Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Director of Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Applications for appointment, letters written by individual or on individuals by others. Computer print-outs, forms completed by individuals, Personnel Data Systems (PDS) transactions, other information pertinent to assignments or career development of the officer.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC H

SYSTEM NAME:

Medical Opinions on Board for Correction of Military Records Cases *(February 22, 1993, 58 FR 10360).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, Deputy Director, Medical Service Officer Management, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, and 10 U.S.C. 79, Correction of Military Records; as implemented by Air Force Instruction 36–2603, Air Force Board for Correction of Military Records.'

* * * * *

STORAGE:

Delete the word 'unlocked.'

* * * * *

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in cabinets and locked rooms.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Director, Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Deputy Director, Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Deputy Director, Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

F035 MPC H

SYSTEM NAME:

Medical Opinions on Board for Correction of Military Records Cases (BCMR).

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, Deputy Director, Medical Service Officer Management, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Files are maintained on individuals making application to the Air Force Board for Correction of Military Records on which a medical opinion has been rendered.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains a copy of the medical advisory opinion rendered on Air Force Board for Correction of Military Records.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; Powers and duties; delegation by, and 10 U.S.C. 79, Correction of Military Records; as implemented by Air Force Instruction 36–2603, Air Force Board for Correction of Military Records.

PURPOSE(S):

A historical reference, by name, to previous action taken regarding a specific BCMR application.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders in filing cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in cabinets and locked rooms.

RETENTION AND DISPOSAL:

Retained in office files for one year or until no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Director, Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Director, Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Director, Medical Service Officer Management, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC I

SYSTEM NAME:

Office File *(February 22, 1993, 58 FR 10361).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F035 AF DP B.'

SYSTEM NAME:

Delete entry and replace with 'Colonels Assignment File'.

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete 'HQ AFMPC/MPCO' in two places and insert 'HQ USAF/DPO.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force; powers and duties; delegation by; as implemented by Air Force Instruction 36–2402, Officer Evaluations.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Chief, Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Chief, Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Chief, Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.'

* * * * *

F035 AF DP B

SYSTEM NAME:

Colonels Assignment File.

SYSTEM LOCATION:

Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All active duty colonels (grade 06) and former active duty colonels (grade 06), who have retired, and who have been retired for 90 days or less.

CATEGORIES OF RECORDS IN THE SYSTEM:

Official photograph; Air Force Form 620, Colonel Resume; copies of correspondence generated by Headquarters USAF/DPO pertaining to the subject of the file; correspondence received by Headquarters USAF/DPO pertaining to the subject of the file;

memoranda of assignment, and related personnel actions contemplated/completed on the subject of the file.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force; powers and duties; delegation by; as implemented by Air Force Instruction 36–2402, Officer Evaluations.

PURPOSE(S):

Assignment considerations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/cabinets and rotary file bins (lectriever).

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

Retain until first anniversary of effective date of retirement/separation from the United States Air Force of the subject of the file, at which point the office file is destroyed by shredding.

SYSTEM MANAGER(S) AND ADDRESS:

Chief, Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address inquiries to the Chief, Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address inquiries to the Chief, Air Force Colonels Group, Headquarters United States Air Force, 1040 Air Force Pentagon, Washington, DC 20330–1040.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Subject of the file; AFMPC/MPCO personnel; other Air Force and outside agency originators of correspondence relating to subject of the file, and any additional information which has/could have bearing on assignability of the subject.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F035 MPC P

SYSTEM NAME:

Recorder's Roster *(February 22, 1993, 58 FR 10364).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703. Washington National Records Center, Washington, DC 20409.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete 'CMSs considered for HYT.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 531, Original appointment, and 611, Convening of selection boards; as implemented by Air Force Instruction 36–2501, Promotion of Active Duty List Officers.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

F035 MPC P

SYSTEM NAME:

Recorder's Roster.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703. Washington National Records Center, Washington, DC 20409.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Records are maintained on all Air Force officers who are eligible for competitive consideration and officers considered for Regular Air Force appointment and Officers considered for involuntary separation, and any other special board directed by the Secretary of the Air Force or the Chief of Staff.

CATEGORIES OF RECORDS IN THE SYSTEM:

Listing containing record number, name, Social Security Number, date of roster, program control number, component, competitive category, select/non-select status, FOR OFFICIAL USE ONLY statement and name and year of board. A numerical/chronological listing of all changes to competitive file data base after initial build. Listing of special follow items/OPR letters.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 531, Original appointment, and 611, Convening of selection boards; as implemented by Air Force Instruction 36–2501, Promotion of Active Duty List Officers.

PURPOSE(S):

These records are used to determine whether individuals were considered by the convening board.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use

pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in visible file binders/ cabinets.

RETRIEVABILITY:

Records are accessed by identification of board of consideration and then by inverted Social Security Number of subject by competitive category.

SAFEGUARDS:

Records are accessed by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms.

RETENTION AND DISPOSAL:

The records are retained in the Selection Board Secretariat for five calendar years and then retired to the National Archives, Washington, DC.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Assistant Deputy Chief of Staff for Personnel, Headquarters Air Force Military Personnel Center, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

Request must include name, grade, Social Security Number, board identification, competitive category, and zone of consideration as applicable.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

The information in these records is extracted from the Selection Board Support File, and from data compiled from individual board member inputs.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 AFCC A

SYSTEM NAME:

United States Air Force Air Traffic Control (ATC) Certification and Withdrawal Documentation *(February 22, 1993, 58 FR 10390).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F050 AFFSA A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Flight Standards Agency, headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, as implemented by Air Force Instruction 13–203, Air Traffic Control, and E.O. 9397.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Air Force Flight Standards Agency, Scott Air Force Base, IL 62225–5219.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Commander, Air Force Flight Standards Agency, Scott Air Force Base, IL 62225–5219.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Commander, Air Force Flight Standards Agency, Scott Air Force Base, IL 62225–5219.'

* * * * *

F050 AFFSA A

SYSTEM NAME:

USAF Air Traffic Control (ATC) Certification and Withdrawal Documentation.

SYSTEM LOCATION:

Headquarters Air Force Flight Standards Agency, headquarters of major commands and at all levels down to and including Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel, and Air Force Reserve and Air National Guard personnel assigned ATC duties.

CATEGORIES OF RECORDS IN THE SYSTEM:

Records on individuals by name and Social Security Number, Air Traffic Control Certificate Numbers (ATCS) military status (active duty, reserve, or air guard), requested action (issue, reissue, or cancellation of certificate), and justification. Contains documentation compiled by requesting unit to justify withdrawal of the ATCS. Includes evaluation by medical authorities; Staff Judge Advocate (legal); Office of Special Investigation results; serious incident reports; and statements by supervisory personnel, co-workers and the individual. Contains copies of officer effectiveness/airman performance (OER/APR) reports and unfavorable information files. Includes headquarters staff evaluation and all files maintained by the system user. Computer reports pertaining to withdrawal of ATCS, Certificates, master roster of ATCS certificate members and Air Traffic Control experience level report.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, as implemented by Air Force Instruction 13–203, Air Traffic Control, and E.O. 9397.

PURPOSE(S):

Documentation used to evaluate request for withdrawal of ATCS certification. Permits immediate access to name, Social Security Number, certificate number, date of issuance, and category of service. A master alphanumeric roster is maintained at Headquarters AFCC/DOOF and the units maintain certificate information in the individual's on-the-job training record.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained

therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders note books/ binders and on computer paper printouts and microfiche.

RETRIEVABILITY:

Retrieved by name or Social Security Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in locked cabinets or rooms. Records are controlled by computer system software.

RETENTION AND DISPOSAL:

Individual withdrawal microfiche case files are kept for 6 years after end of the year in which case closed. Official withdrawal book, long, and to by name and Social Security Number will be kept for 20 years. Other computer reports are superseded monthly. Files are destroyed by tearing into pieces, shredding, pulping, macerating of burning.

Retained for one year after end of year in which the case was closed, transferred to a staging area for one additional year, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Flight Standards Agency, Scott Air Force Base, IL 62225–5219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, Air Force Flight Standards Agency, Scott Air Force Base, IL 62225–5219.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Commander, Air Force Flight Standards Agency, Scott Air Force Base, IL 62225–5219.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from source documents such as reports, and from medical institutions, trade associations, police and investigating officers, state and local governments, and witnesses.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F050 AFCC C

SYSTEM NAME:

Individual Academic Training Record *(February 22, 1993, 58 FR 10391).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F050 AFC4A A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Command, Control, Communications and Computers Agency (AFC4A) System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343; AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

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RETRIEVABILITY:

Add to end of entry 'and/or class number.'

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SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commandant, AFC4A System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; Commandant, AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343, and Commandants, AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete addresses and replace with 'Commandant, AFC4A System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; Commandant, AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343, or Commandants, AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

RECORD ACCESS PROCEDURES:

Delete addresses and replace with 'Commandant, AFC4A System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; Commandant, AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343, or Commandants, AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

F050 AFC4A A

SYSTEM NAME:

Individual Academic Training Record.

SYSTEM LOCATION:

Air Force Command, Control, Communications and Computers Agency (AFC4A) System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343; AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Active duty military, Air Force Reserve, Air National Guard, Army National Guard, and Department of Defense civilian personnel, and others who apply for this training.

CATEGORIES OF RECORDS IN THE SYSTEM:

Personnel index; class pre-graduation/ graduation roster; absentee report; attendance record; student questionnaires, individual academic standing; record of individual training.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by.

PURPOSE(S):

To record emergency data and course completion information, and to report student absences to the school commandant.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folder and card files, and on computer and computer output products.

RETRIEVABILITY:

Retrieved by name and/or class number.

SAFEGUARDS:

Records are accessed by custodian of the records system and by person(s) responsible for servicing the records system in performance of official duties. Stored in file cabinet. Automated records are controlled by computer system software.

RETENTION AND DISPOSAL:

Retained for ten years after individual completes or discontinues training course. Records of individual training at EI organizations are retained until individual no longer performs EI duties, then are destroyed.

SYSTEM MANAGER(S) AND ADDRESS:

Commandant, AFC4A System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; Commandant, AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343, and Commandants, AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commandant, AFC4A System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; Commandant, AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343, or Commandants, AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Commandant, AFC4A System Evaluation School, 1815 Operational Test and Evaluation Squadron, Wright-Paterson Air Force Base, OH 45433–6346; Commandant, AFC4A Engineering Installation Academy, Communication Systems Center, Tinker Air Force Base, OK 73145–6343, or Commandants, AFC4A Engineering Installation organizations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information from individuals and instructors.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F066 AF A

SYSTEM NAME:

Maintenance Management Information and Control System (MMICS) *(February 22, 1993, 58 FR 10413).*

CHANGES:

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Change system name to 'Core Automated Maintenance System (CAMS).'

SYSTEM LOCATION:

Delete entry and replace with 'All Air Force installations utilizing CAMS. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'Maintenance personnel records related to an individual on-the-job training certification and qualifications.'

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Instruction 21–101, Air Force Aircraft and Equipment Maintenance; Air Force Instruction 36–2232, Maintenance Training Policy, and E.O. 9397.'

PURPOSE(S):

Change second sentence to read 'Used by work center supervisors maintenance training and administrative personnel and other members of the chief of maintenance staff (or equivalent) to maintain basic data relating to an individual's training certification and qualifications and to monitor the overall manning status of an organization.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name, man number, or Social Security Number.'

* * * * *

RETENTION AND DISPOSAL:

Add to end of entry 'Computer records are destroyed by erasing, deleting or overwriting.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete 'MMICS' and insert 'CAMS.'

NOTIFICATION PROCEDURE:

Delete 'MMICS' and insert 'CAMS.'

RECORD ACCESS PROCEDURES:

Delete 'MMICS' and insert 'CAMS.'

* * * * *

F066 AF A

SYSTEM NAME:

Core Automated Maintenance System (CAMS).

SYSTEM LOCATION:

All Air Force installation utilizing CAMS. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals assigned to organizations involved in the maintenance of aircraft missiles, communications electronics and associated equipment.

CATEGORIES OF RECORDS IN THE SYSTEM:

Maintenance personnel records related to an individual on-the-job training certification and qualifications.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; Air Force Instruction 21–101, Air Force Aircraft and Equipment Maintenance; Air Force Instruction 36–2232, Maintenance Training Policy, and E.O. 9397.

PURPOSE(S):

Used to establish and maintain data and on-the-job training records pertaining to a specific individual assigned to a maintenance organization. Used by work center supervisors maintenance training and administrative personnel and other members of the chief of maintenance staff (or equivalent) to maintain basic data relating to an individual's training certification and qualifications and to monitor the overall manning status of an organization.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on disks or tapes.

RETRIEVABILITY:

Retrieved by name, man number, or Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are controlled by computer system software.

RETENTION AND DISPOSAL:

Maintained until purpose has been served or for 1 month whichever is sooner then destroyed by tearing into pieces, pulping, burning, shredding, or macerating. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Non-commissioned officer in charge of the maintenance documentation or files maintenance section at each unit utilizing CAMS. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system should address written inquiries to or visit the Non-commissioned officer in charge of the maintenance documentation or files maintenance section at each unit utilizing CAMS. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system should address written inquiries to or visit the Non-commissioned officer in charge of the maintenance documentation or files maintenance section at each unit utilizing CAMS. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from automated system interfaces and source documents such as reports.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F100 AFCC A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records *(February 22, 1993, 58 FR 10424)*.

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F100 AFC4A A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Air Force Command, Control, Communications and Computers Agency (AFC4A), and at MARS member stations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete entry and replace with 'MARS Personnel Action Notification and Application for Membership in Military Affiliate Radio System. Information includes individuals name, MARS call sign, amateur call sign, mailing address, Federal Communications Commission (FCC) license class, military status, telephone number, and date of birth.'

* * * * *

PURPOSE(S):

Delete entry and replace with 'To identify MARS members, to describe and update information concerning members, to assign call signs and designator, mailing address, amateur license, telephone number, and responsibilities.'

* * * * *

STORAGE:

Delete 'file folders' and insert 'card files.'

* * * * *

RETENTION AND DISPOSAL:

Delete first sentence and replace with 'At AFC4A, retained until termination of membership, then destroyed by tearing to pieces, shredding, pulping, macerating or burning.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Deputy Chief of Staff, Systems and Procedures, (AFC4A/SYXR), 203 W. Losey Street, Room 1020, Scott Air Force Base, IL 62225–5219.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Deputy Chief of Staff, Systems and Procedures, (AFC4A/SYXR), 203 W. Losey Street, Room 1020, Scott Air Force Base, IL 62225–5219.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Deputy Chief of Staff, Systems and Procedures, (AFC4A/SYXR), 203 W. Losey Street, Room 1020, Scott Air Force Base, IL 62225–5219.'

* * * * *

F100 AFC4A A

SYSTEM NAME:

Military Affiliate Radio System (MARS) Member Records.

SYSTEM LOCATION:

Air Force Command, Control, Communications and Computers

Agency (AFC4A), and at MARS member stations. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Amateur Radio Operators licensed by United States Air Force (USAF) Military Affiliate Radio System.

CATEGORIES OF RECORDS IN THE SYSTEM:

MARS Personnel Action Notification and Application for Membership in Military Affiliate Radio System. Information includes individuals name, MARS call sign, amateur call sign, mailing address, Federal Communications Commission (FCC) license class, military status, telephone number, and date of birth.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of Air Force, powers and duties; delegation by; as implemented by Air Force Regulation 700–17, Military Affiliate Radio System (MARS).

PURPOSE(S):

To identify MARS members, to describe and update information concerning members, to assign call signs and designator, mailing address, amateur license, telephone number, and responsibilities.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in card files, in computers and on computer output products.

RETRIEVABILITY:

Retrieved by name, by call sign or designator and geographic location.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

At AFC4A, retained until termination of membership, then destroyed by tearing to pieces, shredding, pulping, macerating or burning. At Military Affiliate Radio System stations, retained in office files until reassignment or termination of membership. Records are destroyed by tearing into pieces, shredding, pulping, macerating or burning. Computer records are destroyed by erasing, deleting or overwriting.

SYSTEM MANAGER(S) AND ADDRESS:

Deputy Chief of Staff, Systems and Procedures, (AFC4A/SYXR), 203 W. Losey Street, Room 1020, Scott Air Force Base, IL 62225–5219.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Deputy Chief of Staff, Systems and Procedures, (AFC4A/SYXR), 203 W. Losey Street, Room 1020, Scott Air Force Base, IL 62225–5219.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Deputy Chief of Staff, Systems and Procedures, (AFC4A/SYXR), 203 W. Losey Street, Room 1020, Scott Air Force Base, IL 62225–5219.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Individual members and Military Affiliate Radio System officials.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F125 AF A

SYSTEM NAME:

Correction and Rehabilitation Records *(February 22, 1993, 58 FR 10442).*

CHANGES:

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SYSTEM LOCATION:

Delete entry and replace with 'Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664, and elements; the Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662.

Chief of Security Police at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

Records may also be at Headquarters, United States Air Force, Chief of Security Police, 1340 Air Force Pentagon, Washington, DC 20330–1340, and at the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001.'

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Delete entry and replace with 'Individuals placed in confinement at an installation or federal prison as the result of military criminal conviction. Individuals placed in confinement or rehabilitation and assigned to Headquarters, Air Force Security Police Agency (AFSPA) or any element of operating location.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, as implemented by Air Force Instruction 31–205, Operation and Administration of Air Force Confinement and Correction Programs and Facilities, and E.O. 9397.'

* * * * *

STORAGE:

Delete 'in microfilm.'

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by any or a combination of name, Social Security Number and fingerprint classification, or by date of board hearing.'

* * * * *

RETENTION AND DISPOSAL:

Delete entry and replace with 'Depending on the type of record within the system, it is either destroyed after release of the prisoner, maintained for one year after the release of the individual, or retained in the files at the facility in which the individual was confined for three months, after which time the record is forwarded to Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air

Force Base, NM 87117–5664. Within two years after receipt, records are sent to the National Personnel Records Center, Military Personnel Records, St. Louis, MO.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Director of Correction, Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664. Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662. Chief of Security Police at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

NOTIFICATION PROCEDURE:

Delete addresses and replace with 'Director of Correction, Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664; Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662, or Chief of Security Police at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

RECORD ACCESS PROCEDURES:

Delete addresses and replace with 'Director of Correction, Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664; Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662, or Chief of Security Police at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

F125 AF A

SYSTEM NAME:

Correction and Rehabilitation Records.

SYSTEM LOCATION:

Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664, and elements; the Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662.

Chief of Security Police at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. Records may also be at Headquarters, United States Air Force, Chief of Security Police, 1340 Air Force Pentagon, Washington, DC 20330–1340, and at the National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132–2001.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Individuals placed in confinement at an installation or federal prison as the result of military criminal conviction. Individuals placed in confinement or rehabilitation and assigned to Headquarters, Air Force Security Police Agency (AFSPA) or any element of operating location.

CATEGORIES OF RECORDS IN THE SYSTEM:

Prisoner personnel records consisting of confinement orders, release orders, personal history records, medical examiners report, request and receipt for health and comfort supplies, recommendations for disciplinary action, inspection records, prisoner classification summaries and records pertaining to any clemency/parole actions.

Corrections officers records including personal deposit fund records and related documents, disciplinary books, correction facility blotters and visitor registers; requests for interview and evaluation reports; prisoner records consisting of daily strength records and reports of escaped and returned from escaped prisoners.

Psychological or rehabilitation test records.

Clemency and Parole Board decisional documents and related records reflecting the action of the Board, the Board's recommendations to the Secretary and the rationale for actions taken or proposed.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, as implemented by Air Force Instruction 31–205, Operation and Administration of Air Force Confinement and Correction Programs and Facilities, and E.O. 9397.

PURPOSE(S):

To maintain a life file on the individual as a prisoner on an Air Force installation, or as an Air Force prisoner serving a sentence in a federal prison.

The records are used to establish background for either disciplinary or good conduct action as well as general administration uses of the records concerning health and welfare of the individual, as well as clemency and parole actions.

Historical records in microfilm are used as a research data base.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Information may also be disclosed Federal, state, and local law enforcement and investigation agencies for investigation and possible criminal prosecution, civil court actions or regulatory orders, confinement/correctional agencies for use in the administration of correctional programs, including custody classification, employment, training and educational assignments, treatment programs, clemency, restoration to duty or parole actions, verification of offender's criminal records, employment records, and social histories.

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders, in notebooks/binders, in card files, on computer and computer output products, and as photographs.

RETRIEVABILITY:

Retrieved by any or a combination of name, Social Security Number and fingerprint classification, or by date of board hearing.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked cabinets or rooms and controlled by visitor registers.

RETENTION AND DISPOSAL:

Depending on the type of record within the system, it is either destroyed

after release of the prisoner, maintained for one year after the release of the individual, or retained in the files at the facility in which the individual was confined for three months, after which time the record is forwarded to Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664. Within two years after receipt, records are sent to the National Personnel Records Center, Military Personnel Records, St. Louis, MO.

SYSTEM MANAGER(S) AND ADDRESS:

Director of Correction, Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664. Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662. Chief of Security Police at local installation where individual is assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Director of Correction, Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664; Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662, or Chief of Security Police at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

RECORD ACCESS PROCEDURES:

Individuals seeking access to records about themselves contained in this system should address written requests to the Director of Correction, Headquarters, Air Force Security Police Agency, 8201 H Avenue, Kirtland Air Force Base, NM 87117–5664; Executive Secretary, Air Force Clemency and Parole Board, Office of the Secretary of the Air Force Personnel Council, 1662 Air Force Pentagon, Washington, DC 20330–1662, or Chief of Security Police at local installation where individual was last assigned. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Financial and medical institutions, police and investigative officers, state or local government, witnesses or source documents.

Installation level confinement facilities, courts-martial, and court-martial reviews, and submissions received directly from, or in behalf of the prisoner.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Portions of this system may be exempt pursuant to 5 U.S.C. 552a(j)(2), as applicable.

An exemption rule for this record system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 806b. For additional information contact the system manager.

F160 MPC A

SYSTEM NAME:

Medical Assignment Limitation Record System *(February 22, 1993, 58 FR 10458).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by and implemented by Air Force Instruction 36–2902, Physical Evaluation for Retention, Retirement and Separation; Air Force Instruction 36–2110. '

* * * * *

SAFEGUARDS:

Add to end of entry 'Records are stored in locked rooms and cabinets.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–6001.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–6001.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–6001.'

* * * * *

F160 MPC A

SYSTEM NAME:

Medical Assignment Limitation Record System.

SYSTEM LOCATION:

Headquarters Air Force Military Personnel Center, Medical Service Officer Utilization Division, 550 C Street W, Randolph Air Force Base, TX 78150–4703.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Air Force members whose cases have been presented to a Medical Evaluation Board and were returned to duty by Medical Evaluation Board or Physical Evaluation Board action and have been assigned an Assignment limitation Code 'C.'

CATEGORIES OF RECORDS IN THE SYSTEM:

Medical Evaluation Board, Report of Medical Examination, Report of Medical History, Narrative Summary, Clinical Record Consultation Sheet, Electrocardiographic Record, etc.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by and implemented by Air Force Instruction 36–2902, Physical Evaluation for Retention, Retirement and Separation; Air Force Instruction 36–2110.

PURPOSE(S):

To determine if previous action has been taken by the system manager, and what the previous disposition was.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained

therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Retained in office files for two years or no longer needed for reference, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–6001.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–6001.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to Headquarters Air Force Military Personnel Center, Chief, Medical Service Officer Utilization Division, Randolph Air Force Base, TX 78150–6001.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from medical institutions.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F161 AF SG A

SYSTEM NAME:

Air Force Aerospace Physiology Training Programs *(February 22, 1993, 58 FR 10459).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Chamber Flight Records located at Human Systems Center, Data Sciences Branch, 2510 Kennedy Circle, Suite 3, Brooks Air Force Base, TX 78235–5199; Physiological Training monthly reports at each Air Force Physiological Training Unit; Headquarters Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113; Medical records at Armstrong Laboratory, Aerospace Medicine Directorate, Hyperbaric Medicine Division, 2510 Kennedy Drive, Suite 117, Brooks Air Force Base, TX 78235–5119. Physiological training records at Air Force Physiological Training Units; individual physiological training records for non-aircrew personnel at consolidated flight record custodians at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132.'

* * * * *

CATEGORIES OF RECORDS IN THE SYSTEM:

Delete first sentence.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, as implemented by Air Force Instruction 11–403, Air Force Aerospace Physiological Training Program.'

PURPOSE(S):

Delete entry and replace with 'Authenticate type of training, location and trainees performance during course. Flight profiles (altitude chamber) and any reactions occurring during flight are maintained by each Physiological Training Unit for future authentication of training. Additional authentication is provided flight managers and scheduling officers and copies of flight profiles and reaction data are provided United States Air Force School of Aerospace Medicine for research. A compilation of select data is forwarded to appropriate Command Coordinator for Physiological Training for management purposes, to United States Air Force School of Aerospace Medicine, and Human System Center, Data Sciences Division for analysis and research, and to the Air Force Medical Operations Agency for management and research. Data for specific reactors to low pressure are handled as medical records with additional distribution to appropriate Major Air Command Surgeon for information and possible corrective action, to Armstrong Laboratory, Hyperbaric Medicine Division for research and analysis and to Headquarters Air Force Medical Operations Agency for policy/management/statistical and research analysis.'

* * * * *

RETRIEVABILITY:

Delete the words 'filed' and insert 'retrieved.'

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by commanders of medical centers and hospitals and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Chamber Flight Record at United States Air Force School of Aerospace Medicine retained until entered into computer files, until superseded, obsolete, or no longer needed for reference. Physiological Training Monthly Report (original) at Headquarters Air Force Medical Operations Agency is retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Copies at locations are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Physiological Training Record are retained for 7 years; Individual Physiological Training Records for non-flying personnel retained as a part of individual medical record until member separates from active or Reserve duty. For flying personnel, record is retained in flight records and turned over to individual upon discharge, separation, or retirement.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Air Force Medical Operations Agency, 170 Luke Avenue,

Suite 400, Bolling Air Force Base, DC 20332–5113.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address written requests to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training. Requesters may visit Air Force Medical Service Center. Proof of identity is by government ID Card for active/retired, driver's license for others.'

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F161 AF SG A

SYSTEM NAME:

Air Force Aerospace Physiology Training Programs.

SYSTEM LOCATION:

Chamber Flight Records located at Human Systems Center, Data Sciences Branch, 2510 Kennedy Circle, Suite 3, Brooks Air Force Base, TX 78235–5199; Physiological Training monthly reports at each Air Force Physiological Training Unit; Headquarters Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113; Medical records at Armstrong Laboratory, Aerospace Medicine Directorate, Hyperbaric Medicine Division, 2510 Kennedy Drive, Suite 117, Brooks Air Force Base, TX 78235–5119. Physiological training records at Air Force Physiological Training Units; individual physiological training records for non-aircrew personnel at consolidated flight record custodians at Air Force installations. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices. National Personnel Records Center, Military Personnel Records, 9700 Page Boulevard, St. Louis, MO 63132.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All Aircrew and non-aircrew personnel required to fly on Air Force aircraft.

CATEGORIES OF RECORDS IN THE SYSTEM:

Contains data on attendance at formal training, type of course received, quality performance, training flight profiles, location of training, age, height, weight and sex of trainees.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by, as implemented by Air Force Instruction 11–403, Air Force Aerospace Physiological Training Program.

PURPOSE(S):

Authenticate type of training, location and trainees performance during course. Flight profiles (altitude chamber) and any reactions occurring during flight are maintained by each Physiological Training Unit for future authentication of training. Additional authentication is provided flight managers and scheduling officers and copies of flight profiles and reaction data are provided United States Air Force School of Aerospace Medicine for research. A compilation of select data is forwarded to appropriate Command Coordinator for Physiological Training for management purposes, to United States Air Force School of Aerospace Medicine, and Human System Center, Data Sciences Division for analysis and research, and to the Air Force Medical Operations Agency for management and research. Data for specific reactors to low pressure are handled as medical records with additional distribution to appropriate Major Air Command Surgeon for information and possible corrective action, to Armstrong Laboratory, Hyperbaric Medicine Division for research and analysis and to Headquarters Air Force Medical Operations Agency for policy/management/statistical and research analysis.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Record of training, records of individuals in a given class, altitude flight profiles, combined data of all individuals trained each month, and data on technicians providing the training are maintained in file folders, and in visible file cabinets.

RETRIEVABILITY:

Data relative to reactors to low pressure, management analysis procedures retrieved by Social Security Number. Authentication of training filed by name.

SAFEGUARDS:

Records are accessed by commanders of medical centers and hospitals and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Chamber Flight Record at United States Air Force School of Aerospace Medicine retained until entered into computer files, until superseded, obsolete, or no longer needed for reference. Physiological Training Monthly Report (original) at Headquarters Air Force Medical Operations Agency is retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Copies at locations are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation. Physiological Training Record are retained for 7 years; Individual Physiological Training Records for non-flying personnel retained as a part of individual medical record until member separates from active or Reserve duty. For flying personnel, record is retained in flight records and turned over to individual upon discharge, separation, or retirement.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Air Force Medical Operations Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Chief Aerospace Physiology, Air Force Medical Operations Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

Students should provide full name, military status, approximate date and last location of training; officers and technicians assigned Air Force Aerospace Physiology Programs provide full name and location of last training. Requesters may visit Air Force Medical Service Center. Proof of identity is by government ID Card for active/retired, driver's license for others.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physiological Training Unit (PTU).

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F161 AF SG B

SYSTEM NAME:

United States Air Force Compression Chamber Operation *(February 22, 1993, 58 FR 10460).*

CHANGES:

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Treatment records (original) retained in individual health record at United States Air Force hospitals; medical centers and clinics as part of health records or National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118; first copy retained at Armstrong Laboratory, Aerospace Medicine Directorate, Hyperbaric Medicine Division, 2510 Kennedy Circle, Suite 117, Brooks Air Force Base, TX 78235–5119; other copies at Air Force Medical Operations Agency; major command headquarters, and individual Physiological Training Units having compression therapy capability. Compression Chamber Reactor Case Report (original) at Air Force hospitals, medical centers and clinics as part of health record or at the National Personnel Records Center. First copy retained at Armstrong Laboratory. Other copies at Headquarters Air Force Medical Operations Agency, major command headquarters, and individual Physiological Training Unit having compression therapy capabilities. Oxygen Sensitivity Tolerance/Pressure Test at National Personnel Records Center, Air Force Hospitals, medical centers and clinics, as part of health records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.'

* * * * *

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Delete entry and replace with '10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 10 U.S.C. 55, Medical and Dental Care, as implemented by Air Force Instruction 48–104, Aerospace Medicine.'

PURPOSE(S):

Delete entry and replace with 'Provide an exact record for a patient treated by compression therapy and documents reactions of the patient's response to high pressure. Protects the patient by insuring that overexposure to high pressure does not occur.

Records are maintained on persons performing treatments because they are exposed to the same treatment profiles as their patients and to insure their capability of performing treatment and to determine in advance that they are not physiologically susceptible to potential hazards of treatment.

Used for research and statistical analysis, and management effectiveness by the Air Force Medical Operations Agency.

Records maintained on technicians/officers conducting procedures are maintained at treatment site to insure overexposure to high pressure does not occur and to determine professional adequacy to participate in treatment dives.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by name.'

SAFEGUARDS:

Delete entry and replace with 'Records are accessed by commanders of medical centers and hospitals and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.'

RETENTION AND DISPOSAL:

Delete entry and replace with 'Treatment Records (original) retained in individual health record for fifty years after date of latest document and then destroyed. First copy and other copies at Armstrong Laboratory, Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units are destroyed after 3 years; Compression Chamber Operation Record at Physiological Training Units are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Compression Chamber Reaction Case Report (original) retained in individual health record for fifty years after date of latest document, then destroyed. First copy at Armstrong Laboratory and other copies at Headquarters Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Oxygen Sensitivity Tolerance/Pressure Test retained in individual health record for fifty years after date of latest document, then destroyed. All records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.'

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Headquarters Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Commander, Headquarters Air Force Medical Operation Agency, 170 Luke

Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

Required information for military/ex-military is full name, Social Security number; civilian should provide name, Social Security Number, location of treatment, and approximate date of treatment. Requester may visit system locations. Proof of identity is by government ID card for active/retired military, driver's license for civilians.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address written requests to Commander Headquarters, Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113; Commander, Air Force Health Care Support Agency, Brooks Air Force Base, TX 78235–5000.

Requester may visit system locations. Proof of identity is by government ID card for active/retired military, driver's license for civilians.'

* * * * *

F161 AF SG B

SYSTEM NAME:

Compression Chamber Operation.

SYSTEM LOCATION:

Treatment records (original) retained in individual health record at United States Air Force hospitals; medical centers and clinics as part of health records or National Personnel Records Center, Civilian Personnel Records, 111 Winnebago Street, St. Louis, MO 63118; first copy retained at Armstrong Laboratory, Aerospace Medicine Directorate, Hyperbaric Medicine Division, 2510 Kennedy Circle, Suite 117, Brooks Air Force Base, TX 78235–5119; other copies at Air Force Medical Operations Agency; major command headquarters, and individual Physiological Training Units having compression therapy capability. Compression Chamber Reactor Case Report (original) at Air Force hospitals, medical centers and clinics as part of health record or at the National Personnel Records Center. First copy retained at Armstrong Laboratory. Other copies at Headquarters Air Force Medical Operations Agency, major command headquarters, and individual Physiological Training Unit having compression therapy capabilities. Oxygen Sensitivity Tolerance/Pressure Test at National Personnel Records Center, Air Force Hospitals, medical centers and clinics, as part of health records. Official mailing addresses are published as an appendix to the Air Force's compilation of record systems notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Officers/technicians performing treatments (normally medical doctors, aerospace physiologists/physiological training technicians); patients who are Active duty military personnel, retired Air Force military personnel, dependents of military personnel, dependents of retired military and civilians treated on an emergency basis.

CATEGORIES OF RECORDS IN THE SYSTEM:

Treatment records of patient and records of personnel conducting treatment. Records of exposure to high pressure profiles are maintained for patient and personnel conducting treatment. Records of training dives are maintained on officers and technicians performing treatment dives as well as their physical capability/tolerance to perform in subsequent treatment dives/procedures.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; 10 U.S.C. 55, Medical and Dental Care, as implemented by Air Force Instruction 48–104, Aerospace Medicine.

PURPOSE(S):

Provide an exact record for a patient treated by compression therapy and documents reactions of the patient's response to high pressure. Protects the patient by insuring that overexposure to high pressure does not occur.

Records are maintained on persons performing treatments because they are exposed to the same treatment profiles as their patients and to insure their capability of performing treatment and to determine in advance that they are not physiologically susceptible to potential hazards of treatment.

Used for research and statistical analysis, and management effectiveness by the Air Force Medical Operations Agency.

Records maintained on technicians/officers conducting procedures are maintained at treatment site to insure overexposure to high pressure does not occur and to determine professional adequacy to participate in treatment dives.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and visible file binders/cabinets.

RETRIEVABILITY:

Retrieved by name.

SAFEGUARDS:

Records are accessed by commanders of medical centers and hospitals and by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets.

RETENTION AND DISPOSAL:

Treatment Records (original) retained in individual health record for fifty years after date of latest document and then destroyed. First copy and other copies at Armstrong Laboratory, Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units are destroyed after 3 years; Compression Chamber Operation Record at Physiological Training Units are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Compression Chamber Reaction Case Report (original) retained in individual health record for fifty years after date of latest document, then destroyed. First copy at Armstrong Laboratory and other copies at Headquarters Air Force Medical Operations Agency and major commands are retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Copies at Physiological Training Units retained in office files until superseded, obsolete, no longer needed for reference, or on inactivation, then destroyed. Oxygen Sensitivity Tolerance/Pressure Test retained in individual health record for fifty years after date of latest document, then destroyed. All records are destroyed by tearing into pieces, shredding, pulping, macerating or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Headquarters Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Commander, Headquarters Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113.

Required information for military/ex-military is full name, Social Security number; civilian should provide name, Social Security Number, location of treatment, and approximate date of treatment. Requester may visit system locations. Proof of identity is by government ID card for active/retired military, driver's license for civilians.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to Commander Headquarters, Air Force Medical Operation Agency, 170 Luke Avenue, Suite 400, Bolling Air Force Base, DC 20332–5113; Commander, Air Force Health Care Support Agency, Brooks Air Force Base, TX 78235–5000.

Requester may visit system locations. Proof of identity is by government ID card for active/retired military, driver's license for civilians.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Physicians regarding diagnosis/treatment.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F178 AFCC A

SYSTEM NAME:

Center Automated Manpower and Update System (CAMPUS) *(February 22, 1993, 58 FR 10496).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F178 AFC4A A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.'

* * * * *

RETRIEVABILITY:

Delete entry and replace with 'Retrieved by Social Security Number.'

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Commander, Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.'

NOTIFICATION PROCEDURE:

Delete entry and replace with 'Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.'

RECORD ACCESS PROCEDURES:

Delete entry and replace with 'Individuals seeking to access records about themselves contained in this system should address written requests to the Commander, Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.'

* * * * *

F178 AFC4A A

SYSTEM NAME:

Center Automated Manpower and Update System (CAMPUS).

SYSTEM LOCATION:

Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force active duty military personnel and civilian employees assigned to the SSC.

CATEGORIES OF RECORDS IN THE SYSTEM:

CAMPUS records contain data on SSC personnel nonavailable time (time in man-hours chargeable as SSC overhead for purposes of total man-hour accounting), personnel available time (time chargeable against a specific human resource package) and workload tracking data (data on project or task). Included in nonavailable time are leave, training, and all activities not related to the SSC's primary mission. Available time includes administrative duties, management/supervision functions, time spent in general support areas and time devoted to developing new and/or maintaining existing computer software. Workload tracking includes data on pending, active, and completed activities as to estimated/actual resources required, estimated/actual dates, and identification data.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

10 U.S.C. 8013, Secretary of the Air Force: Powers and duties; delegation by; and E.O. 9397.

PURPOSE(S):

CAMPUS provides information to SSC management personnel about manpower utilization within the organization. Specific uses of the system by all management levels include monitoring of manpower resources expended on ADP projects, validating and defending the SSC manpower posture with workload and man-hour expenditure data, and distributing workloads between and within the SSC directorates.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained on computer and computer output products.

RETRIEVABILITY:

Retrieved by Social Security Number.

SAFEGUARDS:

Records are accessed by person(s) responsible for servicing the record system in performance of their official duties and by authorized personnel who are properly screened and cleared for

need-to-know. Records are stored in locked rooms and cabinets. Those in computer storage devices are protected by computer system software.

RETENTION AND DISPOSAL:

Hard-copy listings are retained in office files until superseded, obsolete, or no longer needed, then destroyed by tearing into pieces, shredding, pulping, macerating, or burning.

SYSTEM MANAGER(S) AND ADDRESS:

Commander, Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to the Commander, Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to the Commander, Standard Systems Center (SSC), 201 E. Moore Drive, Maxwell Air Force Base, Gunther Annex, AL 36114–3005.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information for CAMPUS is obtained from the individuals assigned to the SSC.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

F200 AFIS B

SYSTEM NAME:

DIA Program for Foreign Intelligence Collection *(February 22, 1993, 58 FR 10501).*

CHANGES:

SYSTEM IDENTIFIER:

Change system identifier to 'F200 AFIC A.'

* * * * *

SYSTEM LOCATION:

Delete entry and replace with 'Headquarters 696 Inspector General, Andrews Air Force Base, MD 20331–6500, and subordinate units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.'

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

Delete entry and replace with 'In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.'

* * * * *

SYSTEM MANAGER(S) AND ADDRESS:

Delete entry and replace with 'Headquarters 696 Inspector General/DOO, Andrews Air Force Base, MD 20331–6500, Submanager, Commander, Detachment 2, 696 IG, Wright-Patterson Air Force Base, OH 45433–5607.'

NOTIFICATION PROCEDURE:

Delete address and replace with 'Headquarters 696 Inspector General/DOO, Andrews Air Force Base, MD 20331–6500, or Submanager, Commander, Detachment 2, 696 IG, Wright-Patterson Air Force Base, OH 45433–5607.'

RECORD ACCESS PROCEDURES:

Delete address and replace with 'Headquarters 696 Inspector General/DOO, Andrews Air Force Base, MD 20331–6500, or Submanager, Commander, Detachment 2, 696 IG, Wright-Patterson Air Force Base, OH 45433–5607.'

* * * * *

F200 AFIC A

SYSTEM NAME:

DIA Program for Foreign Intelligence Collection.

SYSTEM LOCATION:

Headquarters 696 Inspector General, Andrews Air Force Base, MD 20331–6500, and subordinate units. Official mailing addresses are published as an appendix to the Air Force's compilation of systems of records notices.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Air Force Reserve personnel, retired Air Force military personnel, foreign nationals residing in the United States, U.S. Citizens, and foreign nationals overseas who are sources or support assets for foreign intelligence collection operations.

CATEGORIES OF RECORDS IN THE SYSTEM:

Biographic data and records incidental to foreign intelligence collection operations.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

National Security Act of 1947, Pub. L. 257, July 26, 1947 (61 Stat 495); as implemented by Air Force Regulation 200–3, The Medical Intelligence Program.

PURPOSE(S):

Routine internal reference relative to use or possible use in foreign intelligence collection operations.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records, or information contained therein, may specifically be disclosed outside the DOD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

The 'Blanket Routine Uses' published at the beginning of the Air Force's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING, AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Maintained in file folders and note books/binders, and on computer paper printouts and roll microfilm.

RETRIEVABILITY:

Retrieved by name and National File Number.

SAFEGUARDS:

Records are accessed by custodian of the record system and by person(s) responsible for servicing the record system in performance of their official duties who are properly screened and cleared for need-to-know. Records are stored in security file containers/cabinets and safes.

RETENTION AND DISPOSAL:

Prior to destruction, files are screened, purged of extraneous material, and microfilmed. Microfilm retained indefinitely.

SYSTEM MANAGER(S) AND ADDRESS:

Headquarters 696 Inspector General/DOO, Andrews Air Force Base, MD 20331–6500, Submanager, Commander, Detachment 2, 696 IG, Wright-Patterson Air Force Base, OH 45433–5607.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether this system of records contains information on themselves should address written inquiries to Headquarters 696 Inspector General/DOO, Andrews Air Force Base, MD 20331–6500, or Submanager, Commander, Detachment 2, 696 IG, Wright-Patterson Air Force Base, OH 45433–5607.

RECORD ACCESS PROCEDURES:

Individuals seeking to access records about themselves contained in this system should address written requests to Headquarters 696 Inspector General/DOO, Andrews Air Force Base, MD 20331–6500, or Submanager, Commander, Detachment 2, 696 IG, Wright-Patterson Air Force Base, OH 45433–5607.

CONTESTING RECORD PROCEDURES:

The Air Force rules for accessing records and for contesting contents and appealing initial agency determinations are published in Air Force Instruction 37–132; 32 CFR part 806b; or may be obtained from the system manager.

RECORD SOURCE CATEGORIES:

Information obtained from biographical data and records incident to foreign intelligence collection operations.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

[FR Doc. 93-28650 Filed 11-22-93;8:45am]

BILLING CODE 5000-04F

Department of the Army

Office of the Secretary; Supplemental Environmental Assessment for Realignment Actions at Letterkenny Army Depot, Pennsylvania

AGENCY: Department of Defense, United States Army.

ACTION: Finding of No Significant Impact.

SUMMARY: The proposed action implements the July 1993 Defense Base Closure and Realignment Commission's (BRAC 93) decision to realign administrative and maintenance workloads at Letterkenny Army Depot (LEAD). The administrative realignment, which affirmed the 1991 Base Closure and Realignment Commission's (BRAC 91) decision, transfers Headquarters, U.S. Army Depot System Command (DESCOM) from LEAD to Rock Island Arsenal, Illinois. Systems Integration and Management Activity-East (SIMA-E) will not transfer from LEAD as originally recommended by BRAC 91. In addition, the artillery maintenance workload will remain at LEAD.

Maintenance realignments, including all applicable secondary items, subassemblies and peripherals, are occurring to consolidate workloads among Army depots. These realignments involve the following:

—The transfer of tactical missile maintenance workloads from contractor facilities, Anniston Army Depot, Tobyhanna Army Depot (AN/TSQ–73 Air Defense Command and Control System), Red River Army Depot, and Navy, Marine and Air Force facilities to LEAD.

—Tactical missile maintenance will also transfer from various contractor sites.

—The retention of the artillery maintenance workload at LEAD.

—The realignment of the Firefinder radar maintenance workload from Sacramento Army Depot (SAAD) to LEAD. The workload competition was won by McClellan Air Logistics Center. However, LEAD is protesting the award. Firefinder will be referenced in all LEAD publications until the protest is settled.

The overall effect of the realignments described above (with the exception of the Firefinder radar maintenance) will be a net gain of approximately 126 civilian personnel at LEAD. Should LEAD be successful in the protest, an additional 157 work-years for LEAD would result.

Alternatives considered in the Supplemental Environmental Assessment (SEA) include the following:

—The Preferred Alternative, which would transfer workload into renovated and existing facilities.

—Alternative 1, which would transfer workload into new and existing facilities.

—Alternative 2, the No-Action Alternative, which provides the baseline at LEAD against which the other alternatives can be compared.

The Preferred Alternative would not require building construction at LEAD, and would require only internal renovations to existing buildings. The workload to be transferred to LEAD is the same or similar to maintenance work already conducted at LEAD. The overall result will be a slight increase in positions at the installation as the maintenance workload increases. This increase would affect water and energy use, waste water flows, air emissions, and municipal, solid and hazardous waste generation. Neither the resources used or waste streams produced would have a significant impact on the environment. Biological, physical, and cultural resources would not be affected by this action since existing buildings to be renovated and used for maintenance activities are located in developed or otherwise disturbed areas.

The proposed realignments are expected to have an insignificant effect on the socioeconomic environment, including total sales, employment, population and income.

Based on the environmental impact analyses found in the August 1992 Environmental Assessment and supplemented by this EA, which is hereby incorporated into this Finding of No Significant Impact (FNSI), it has been determined that implementation of the proposed action would not have significant individual or cumulative impacts on the quality of the natural or human environment. Because there would be no significant environmental impacts resulting from implementation of the proposed action, an Environmental Impact Statement is not required and will not be prepared.

DATES: Comments must be received within 30 days from the publishing date of this notice.

ADDRESSES: Persons wishing to comment may obtain a copy of the supplemental and original EA's or inquire into this FNSI by writing to the Public Affairs Officer, Letterkenny Army Depot, ATTN: SDSLE–CA, Chambersburg, Pennsylvania.

FOR FURTHER INFORMATION CONTACT: Questions regarding this FNSI may be directed to the Public Affairs Officer at (717) 267–5102.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety & Occupational Health OASA (IL&E).

[FR Doc. 93–28692 Filed 11–22–93; 8:45 am]

BILLING CODE 3710–08–M

Intent to Prepare a Draft Environmental Impact Statement (DEIS) for a Flood Control Project on the White River in Indianapolis, Marion County, IN

AGENCY: U.S. Army Corps of Engineers, Louisville District, DOD.

ACTION: Notice.

SUMMARY: The U.S. Army Engineer District, Louisville Corps of Engineers is presently undertaking the preparation of a DEIS for a flood control project along reaches of the White River in northern Indianapolis, Marion County, Indiana. The primary purpose of this study is to investigate the feasibility and the extent of Federal interest in providing a

solution to local flooding problems along the White River. This feasibility study is conducted under the authority of a resolution adopted on May 6, 1958 by the Committee on Public Works of the United States Senate and by continuing appropriations. The City of Indianapolis, Department of Public Works, in a letter dated October 2, 1992, stated that the city was interested in cost sharing with the Corps of Engineers a feasibility study of a project in Indianapolis. A cost sharing agreement was entered into on March 4, 1993.

ADDRESSES: U.S. Army Engineer District, Louisville, Corps of Engineers, CEORL–PD–R, P.O. Box 59, Louisville, Kentucky 40201–0059.

FOR FURTHER INFORMATION CONTACT: Questions or comments concerning the preparation of this DEIS should be addressed to Mr. Van Shipley at (502) 582–5774.

SUPPLEMENTARY INFORMATION: The Louisville District completed a Reconnaissance report in July 1992, which concluded that there appears to be economically feasible and environmentally sustainable solutions to the flooding problems present along reaches of the White River in northern Indianapolis, Marion County, Indiana. The study area includes approximately 13.5 miles of the White River extending from the I–465 crossing of the river in northern Indianapolis downstream to the I–65 crossing of the river. The proposed reasonable alternatives to prevent impacts of flooding along the White River are to rehabilitate existing levees, raise existing levees or construct new levees and pump plants. The District's scoping process has involved meetings with local groups and state and Federal agencies. Public workshops were held in Indianapolis within the project area on May 17 and June 8, 1993 at the Broad Ripple High School and Rocky Ripple Town Hall, respectively. The major significant issues brought up during the workshops that will be analyzed in depth in the DEIS are:

1. Removal of trees growing on the riverside slope of the existing levees be minimized.
2. Home relocation be minimized.
3. Recreational facilities may not be proper for all reaches considered under this flood control study.

The White River is a tributary to the Wabash River with the confluence occurring along the Gibson and Knox County borders, adjacent to the city of Mt. Carmel, Illinois in southwestern Indiana. The drainage area of the White River is 6,500 square miles. The White River lies entirely within the state of Indiana and extends generally in a north-eastwardly direction to its headwaters which rise in Randolph County along the Ohio border.

Subsequent to the 1913 flood in the Wabash River Basin, local interests developed a comprehensive plan to protect Indianapolis against a recurrence of that flood event. Implementation of the plan began in 1915 by the City of Indianapolis and later by the Works Progress Administration, and all work accomplished since has been in general accordance with the adopted comprehensive plan. Both structural and non-structural flood protection measures are in place in Indianapolis. The structural projects include reservoirs, levees, floodwalls, diversions and channel improvements. The nonstructural measures include state and local building ordinances and zoning as provided under the mergence phase of the National Flood Insurance Program. The most predominant form of existing flood protection along the White River primary study area is levees, however, the level of protection afforded by them, and their current conditions, are highly variable from location to location. The levees were built over a considerable time period, by different agencies and/or by private interests, and therefore differ considerably with regard to their structural condition.

The endangered species of major concern for this study if the Indiana bat. However, if removal of trees are minimized endangered species consultation should not be necessary for the proposed project. Other environmental requirements are in regard to the Clear Water Act. If required, a Section 404(b)(1) evaluation will be prepared as an appendix to the DEIS. A Section 401 State Water Quality Certification will be requested at that time. The Section 402 National Pollutant Discharge Elimination System, Pollution Prevention Plan and Notice of Intent under the State of Indiana General Permit will be prepared and submitted to the State of Indiana just prior to construction.

The public involvement will include meetings and close coordination with interested private individuals and organizations, as well as concerned Federal, state and local agencies. A public notice requesting comments on the proposed project and DEIS will be provided to appropriate agencies and the public through printed media and mailings. A scoping meeting is tentatively planned for mid January to early February 1994. The Louisville District invites potentially affected Federal, state and local agencies, and other interested organizations and parties to participate in this study. Agencies that are currently involved in the feasibility study and EIS process include, but are not limited to the U.S. Environmental Protection Agency, U.S. Fish and Wildlife Service, U.S. Soil Conservation Service, City of Indianapolis and Marion County.

The DEIS is tentatively scheduled to be available for public review in the spring of 1995.

Kenneth L. Denton,

Army Federal Register Liaison Officer.

[FR Doc. 93–28643 Filed 11–22–93; 8:45 am]

BILLING CODE 3710–02–M

Notice of Availability, Final, Environmental Impact Statement Addressing the Relocation of the Woodbridge Research Facility Electromagnetic Pulse Simulators

AGENCY: Department of the Army, DoD.

ACTION: Notice of availability.

SUMMARY: The Department of Army announces the completion of a Final EIS addressing the proposed action to relocate existing inactive EMP simulators from the Woodbridge Research Facility, Woodbridge, Virginia, to construct a new simulator, the Vertical EMP Simulator II (VEMPS II), and to operate them at a new location. (The Notice of Intent and the Notice of Availability of the Draft EIS for this action were previously announced in 54 F.R., No. 207, P. 43847 and 57 F.R., No. 201, P. 47463 respectively.)

The Draft EIS provided detailed information gathered from six candidate relocation sites. These included one site at Dugway Proving Ground, Utah, four sites at White Sands Missile Range, New Mexico, and one site at Yuma Proving Ground, Arizona. Alternatives considered in the Draft EIS included:

—Alternative 1, the proposed action, to relocate and operate the simulators at one of the six candidate relocation sites;
—Alternative 2, to conduct such testing by other means of simulation;
—Alternative 3, to have other military, Federal departments or contractors conduct such testing;
—Alternative 4, to cease type of testing (do not relocate the simulators, the no-action alternative).

The Draft EIS did not identify a preferred relocation site. After the completion of the Draft EIS the Army determined its preferred site to be the Orogrande site in the southeast corner of the White Sands Missile Range, for operational reasons.

The Final EIS incorporates all responses to the Draft EIS, including those received from Federal, state and local agencies, private citizens, and civic and environmental organizations. It also includes additional specific information developed for the preferred site from consultations held with the U.S. Fish and Wildlife Service, in accordance with the Endangered Species Act, and the New Mexico State Historic Preservation Office, in accordance with the National Historic Preservation Act. The Final EIS evaluates the candidate sites and identifies the Orogrande site as the environmentally preferred site.

LEAD AGENCY: U.S. Army Research Laboratory.

ADDRESSES: All interested parties may obtain a copy of the Final EIS by writing to U.S. Army Research Laboratory, Public Affairs Office, 2800 Powder Mill Road, Adelphi, Maryland 20783–1145.

FOR FURTHER INFORMATION CONTACT: Questions regarding this Notice of Availability action may be directed to Mr. David Davison by calling (301) 394–3590.

Lewis D. Walker,

Deputy Assistant Secretary of the Army, (Environment, Safety and Occupational Health) OASA (I,L&E).

[FR Doc. 93–28654 Filed 11–22–93; 8:45 am]

BILLING CODE 3710–08–M

Defense Nuclear Agency

Privacy Act of 1974; Delete and Amend Record Systems

AGENCY: Defense Nuclear Agency, DOD.

ACTION: Delete and amend record systems.

SUMMARY: The Defense Nuclear Agency proposes to delete two and amend four existing systems of records in its inventory of record systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended.

DATES: The amendments will be effective on December 23, 1993, unless comments are received that would result in a contrary determination.

ADDRESSES: Send comments to General Counsel, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

FOR FURTHER INFORMATION CONTACT: Ms. Sandy Barker at (703) 325–7681.

SUPPLEMENTARY INFORMATION: The Defense Nuclear Agency systems of records notices for records systems subject to the Privacy Act of 1974, (5 U.S.C. 552a), as amended, have been published in the **Federal Register** and are available from the above address.

These changes are necessary due to the transfer (effective October 1, 1993) of host management of the Armed Forces Radiobiology Institute (AFRRI) from the Defense Nuclear Agency (DNA) to the Uniformed Services University of the Health Sciences (USUHS), and DNA's recordkeeping responsibility for personnel-related records of the On Site Inspection Agency. Therefore, any reference to AFRRI has been deleted from the following systems of record notices which are published below in their entirety, as amended.

The amendments are not within the purview of subsection (r) of the Privacy Act of 1974 (5 U.S.C. 552a), as amended, which requires the submission of altered systems reports.

Dated: November 18, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

DELETIONS

HDNA 003

SYSTEM NAME:

Drug-Free Workplace Files *(February 22, 1993, 58 FR 10550).*

Reason: This system is currently covered under OPM/GOVT–10 *(August 10, 1992, 57 FR 35722)* and a separate system notice is no longer needed.

HDNA 009

SYSTEM NAME:

Personnel Radiation Exposure Records *(February 22, 1993, 58 FR 10555).*

Reason: This system has been transferred with the host management of the Armed Forces Radiobiology Research Institute from the Defense Nuclear Agency to the Uniformed Services University of the Health Sciences (USUHS). Washington Headquarters Service has incorporated this system into WUSU11, USUHS Radiation Dosimetry Records *(February 22, 1993, 58 FR 10928).*

AMENDMENTS

HDNA 001

SYSTEM NAME:

Employee Assistance Program.

SYSTEM LOCATION:

The Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398; the Civilian Personnel Office, Building 20203A, Kirtland Air Force Base, NM 87115–5000; and the Civilian Personnel Office, On Site Inspection Agency, Dulles International Airport, Washington, DC 20041–0498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All civilian employees in appropriated and non-appropriated fund activities who are referred by management for, or voluntarily request, counseling assistance.

CATEGORIES OF RECORDS IN THE SYSTEM:

Case records on employees which are maintained by counselors, supervisors, and civilian personnel offices, that consist of information on condition, current status, and progress of employees or dependents who have alcohol, drug, or emotional problems (referrals only).

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

Drug Abuse Office and Treatment Act of 1972, as amended by Pub.L. 93–282 (21 U.S.C. 1175); Subchapter A of Chapter I, Title 42, Code of Federal Regulations; Chapter 43 of 5 U.S.C.; and E.O. 9397.

PURPOSE(S):

For use by the Drug and Alcohol Abuse Coordinator in referring individuals for counseling and by management officials for follow-up actions.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

In order to comply with provisions of 42 U.S.C. 290dd–3 and 290ee–3, the DNA 'Blanket Routine Uses' do not apply to this system of records.

Records in this system may not be disclosed without the prior written consent of such patient, unless the disclosure would be:

To medical personnel to the extent necessary to meet a bona fide medical emergency.

To qualified personnel for the purpose of conducting scientific research, management audits, financial audits, or program evaluation, but such personnel may not identify, directly or indirectly, any individual patient in any report of such research, audit, or evaluation, or otherwise disclose patient identities in any manner; and

If authorized by an appropriate order of a court of competent jurisdiction

granted after application showing good cause therefor.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Case records are stored in paper file folders.

RETRIEVABILITY:

Retrieved by the individuals Social Security Number.

SAFEGUARDS:

Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are purged of identifying information within five years after termination of counseling or destroyed when they are no longer useful.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters, Defense Nuclear Agency contact the Occupational Health Nurse, Occupational Health Unit, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For Field Commands, DNA contact the Civilian Personnel Officer, Kirtland Air Force Base, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

The letter should contain the full name, Social Security Number, and signature of the requester and the approximate period of time, by date, during which the case record was developed.

RECORD ACCESS PROCEDURE:

Individuals seeking access to records about themselves contained in this system of records should address written inquiries to the appropriate system manager.

The letter should contain the full name, Social Security Number, and signature of the requester and the approximate period of time, by date, during which the case record was developed.

CONTESTING RECORD PROCEDURES:

The DNA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Counselors, other officials, individuals or practitioners, and other agencies both in and outside of Government.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HNDA 002

SYSTEM NAME:

Employee Relations.

SYSTEM LOCATION:

Civilian Personnel Management Division, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398; the Civilian Personnel Office, Building 20203A, Kirtland Air Force Base, NM 87115–5000; and the Civilian Personnel Office, On Site Inspection Agency, Dulles International Airport, Washington, DC 20041–0498.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Civilian employees and former employees paid from appropriated funds serving under career, career-conditional, temporary and excepted service appointments on whom suitability, discipline, grievance, and appeal records exist.

CATEGORIES OF RECORDS IN THE SYSTEM:

Documents and information pertaining to discipline, grievances, and appeals.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 1302, 3301, 3302, 7301; E.O. 11222; E.O. 11557; E.O. 11491.

PURPOSE(S):

For use by agency officials and employees in the performance of their official duties related to management of civilian employees and the processing, administration and adjudication of discipline, grievances, suitability and appeals.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Appeals examiners of the Merit Systems Protection Board to adjudicate appeals.

The Comptroller General or his authorized representatives and the Attorney General of the United States or his authorized representatives in connection with grievances, disciplinary actions, suitability, and appeals, Federal Labor Relations officials in the performance of official duties.

The 'Blanket Routine Uses' published at the beginning of DNA's compilation of system of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Records are stored in paper folders.

RETRIEVABILITY:

Retrieved alphabetically by last name of individual.

SAFEGUARDS:

Buildings are protected by security guards and an intrusion alarm system. Records are maintained in locked security containers in a locked room accessible only to personnel who are properly screened, cleared and trained.

RETENTION AND DISPOSAL:

Records are destroyed upon separation of the employee from the agency or in accordance with appropriate records disposal schedules.

SYSTEM MANAGER(S) AND ADDRESSES:

For Headquarters, Defense Nuclear Agency contact the Civilian Personnel Officer, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For Field Commands, DNA contact the Civilian Personnel Officer, Kirtland Air Force Base, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

The letter should contain the full name and signature of the requester and the approximate period of time, by date during which the case record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the appropriate system manager.

CONTESTING RECORD PROCEDURES:

The DNA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Supervisors or other appointed officials designated for this purpose.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 005

SYSTEM NAME:

Manpower/Personnel Management System.

SYSTEM LOCATION:

Primary location is at the Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Secondary locations exist at the following DNA subordinate commands: Field Command, Defense Nuclear Agency, Building 20364, Kirtland Air Force Base, NM 87115–5000;

Civilian Personnel Office, On Site Inspection Agency, Dulles International Airport, Washington, DC 20041–0498; and

the Defense Nuclear Agency, Las Vegas, NV 89193–8539.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

Any individual, military or civilian, employed by DNA, and all On Site Inspection Agency civilian employees.

CATEGORIES OF RECORDS IN THE SYSTEM:

File contains the following information on all personnel assigned to DNA: Social Security Number; agency; employee name; birth date; veteran's preference; tenure group; service computation date; federal employees group life insurance; retirement code; nature of action code; effective date of action; position number; pay plan; occupation code; functional classification code; grade; step; pay basis; salary; supervisory position; location code/duty station; position occupied; work schedule; pay rate determinant; sex; citizen status; date entered present grade; date entered present step; separation date; reason for separation (quit code); cost center; academic discipline; career conditional appointment date (conversion to career); education level; degree date; purpose of training; type of training; source of training; special interest; direct cost; indirect cost; date of completion; on-duty hours; off-duty hours; JTD paragraph number; JTD line number; competitive level; military service retirement date; uniformed service; joint specialty officer; service position number; career status; officer evaluation report date (Army only); highest professional military education; rank; grade; status of incumbent in Personnel Reliability Program (PRP); date of latest PRP certification;' promotion sequence number; service commissioned (military); service pay grande (rank); Agency sub-element code; submitting office number; retired military code; bureau; unit identification code; program element code; civil function code; guard/reserve technician; appropriation code; active/inactive strength designation; work center code; projected vacancy date; targeted grade; position title; date of last equivalent increase; fair labor standards act designator; health benefits enrollment code; type and date of incentive award; civil service or other legal authority; date probationary period begins; performance rating; due date for future action; position tenure; leave category; personnel authorized; projected personnel requirement; special experience identifies; additional duties; manpower track: facility; branch of service; date of rank; primary/Alternate specialty; control specialty; last OER/EER; total commissioned service date; total active service date; date of arrival; projected rotation date; security clearance; marital status; spouse's name; dependents; address (Number and street, city, state, Zip Code); phones (home and duty); handicap code; minority group designator; aggregate program element code; position indicator; academic degree requirements; directorate/department, division, branch, and section office titles; service authorization position number; physical profile; nature of action code No. 2; annuitant indicator; Vietnam veteran; entered present position; future action type; agency submitting element; submitting office code; merit pay designator; bargaining unit designator; old Social Security Number; course title host; tuition; Transportation Per Diem; hourly rate; training grade level; administrative cost; type of career training program.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 301, 302, 4103; Pub. L. 89–554. September 6, 1966; and E.O. 9397.

PURPOSE(S):

For use by officials and employees of the Defense Nuclear Agency in the performance of their official duties related to the management of civilian and military employee programs and for preparation and publication of personnel rosters to facilitate communications/contact for official, or emergency purposes.

To compile and consolidate reports relating to manpower authorization/assigned strengths and to record personnel data and use that data to compile information as required by management officials within the agency.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Representatives of the Merit Systems Protection Board on matters relating to the inspection, survey, audit or evaluation of the civilian programs or such other matters under the jurisdiction of that organization.

The Comptroller General or any of his authorized representatives in the course of performance of duties of the General Accounting Office relating to civilian programs.

Duly appointed Hearing Examiners or Arbitrators for the purpose of conducting hearings in connection with an employee grievance.

The 'Blanket Routine Uses' published at beginning of DNA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, discs, computer printouts, and on punched cards. Manual records are stored in paper file folders and card file boxes.

RETRIEVABILITY:

Automated records are retrieved by employee name, Social Security Number or Position Service Number (PSN). Manual records are retrieved by employee's last name and PSN.

SAFEGUARDS:

The computer facility and data base are located in a restricted area accessible only to authorized personnel that are properly screened, cleared, and trained.

Terminal users are within a restricted area. Use of these terminals are by authorized personnel who have a need to acquire data from the database. Terminal users are cleared, provided proper training and are assigned a password/code to retrieve data. Manual records and computer printouts are available only to authorized personnel having a need to know. Buildings are protected by security guards and is protected by an intrusion alarm system.

RETENTION AND DISPOSAL:

Computer magnetic tapes are permanent. Manpower's manual records are maintained indefinitely and all personnel manual records are kept until the employee departs. Monthly reports are destroyed at the end of each fiscal year; annual reports are retained in 5–year blocks, transferred to the Washington National Records Center, and offered to National Archives and Records Administration 20 years after cutoff.

SYSTEM MANAGER(S) AND ADDRESS:

Assistant Director, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the Assistant Director, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

The letter should contain the full name and signature of the requester and the approximate period of time, by date, during which the record was developed.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the Assistant Director, Manpower Management and Personnel, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

Written requests for information should contain the full name of individual. For personal visits, the individual should provide military or civilian identification card.

CONTESTING RECORD PROCEDURES:

The DNA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, Joint Manpower Program documents and voluntarily submitted by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

None.

HDNA 007

SYSTEM NAME:

Security Operations.

SYSTEM LOCATION:

Security Operations Division, Intelligence and Security, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

System also exists at the following subordinate command: Security Division, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, Albuquerque, NM 87115–5000.

CATEGORIES OF INDIVIDUALS COVERED BY THE SYSTEM:

All military and civilian personnel assigned to, or employed by Headquarters, Defense Nuclear Agency (DNA); and the Field Command, Defense Nuclear Agency (FCDNA).

Other U.S. Government personnel, U.S. Government contractors, foreign government representatives, and visitors from foreign countries.

CATEGORIES OF RECORDS IN THE SYSTEM:

Name; Social Security Number; date and place of birth; height; weight; hair/eye color; citizenship; grade/rank; service; organization; security clearance; date of clearance; basis special accesses; courier authorization; continuous access roster expiration date; badge number; vehicle ID and sticker Number; special intelligence access; expiration date; agency; billet number; list of badges/passes issued; list of keys issued; conference title; conference duties; location; Department of Defense Form 398 'Statement of Personal History;' Reports of Investigation; security incident files; visit requests; conference rosters; clearance and special access rosters; picture identification; and correspondence concerning adjudication/passing of clearances.

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

E.O. 10450, Security Requirements for Government Employment, 27 April 1953, as amended by E.O.s 10491, 10531, 10548, 10558, 11605, and 11785; E.O. 12065, 'National Security Information,' 28 June 1978; Section 21 of the Internal Security Act of 1950 (Pub. L. 831); Section 145 of the Atomic Energy Act of 1954, as amended by Pub. L. 83–703, 42 U.S.C. 2185; and E.O. 9397.

PURPOSE(S):

For use by officials and employees of the Defense Nuclear Agency and other DoD Components in the performance of their official duties related to determining the eligibility of individuals for access to classified information, access to buildings and facilities, or to conferences over which DNA has security responsibility.

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND THE PURPOSES OF SUCH USES:

In addition to those disclosures generally permitted under 5 U.S.C. 552a(b) of the Privacy Act, these records or information contained therein may specifically be disclosed outside the DoD as a routine use pursuant to 5 U.S.C. 552a(b)(3) as follows:

Officials and employees of Government contractors and other Government agencies in the performance of their official duties related to the screening and selection of individuals for security clearances and/or special authorizations, access to facilities or attendance at conferences.

The 'Blanket Routine Uses' published at the beginning of DNA's compilation of systems of records notices apply to this system.

POLICIES AND PRACTICES FOR STORING, RETRIEVING, ACCESSING, RETAINING AND DISPOSING OF RECORDS IN THE SYSTEM:

STORAGE:

Automated records are stored on magnetic tapes, discs, computer printouts, and/or hard drives. Manual records are stored in paper file folders, card files and paper rosters.

RETRIEVABILITY:

Automated records are retrieved by individual's last name, conference title, and by type of badge issued. Manual records are retrieved by individuals last name, organization or subject file.

SAFEGUARDS:

The computer facility and terminals are located in restricted areas accessible only to authorized personnel. Manual records and computer printouts are available only to authorized persons

with an official need to know. Buildings are protected by security guards and an intrusion alarm system.

RETENTION AND DISPOSAL:

Computer records on individuals are erased upon termination of an individual's affiliation with DNA and FCDNA; personnel security files are destroyed within thirty days from the date of termination of an individual's employment, assignment or affiliation with DNA or FCDNA. Manual records or conference attendees, visitors, and visit certifications to other agencies are maintained for two years and destroyed. Security incident files are retained for two years unless they concern compromise of classified information, in which case they may be retained permanently.

SYSTEM MANAGER(S) AND ADDRESS:

For Headquarters DNA contact the Assistant Director, Intelligence and Security, Command Services Directorate, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

For Field Commands, DNA contact the Chief, Security Division, Field Command, Defense Nuclear Agency, Kirtland Air Force Base, NM 87115–5000.

NOTIFICATION PROCEDURE:

Individuals seeking to determine whether information about themselves is contained in this system of records should address written inquiries to the appropriate system manager.

RECORD ACCESS PROCEDURES:

Individuals seeking access to information about themselves contained in this system of records should address written inquiries to the appropriate system manager.

Written requests for information should contain the full name, home address, Social Security Number, date and place of birth. For personal visits, the individual must be able to provide identification showing full name, date and place of birth, and their Social Security Number.

CONTESTING RECORD PROCEDURES:

The DNA rules for accessing records and for contesting contents and appealing initial agency determinations are published in DNA Instruction 5400.11A; 32 CFR part 318; or may be obtained from the system manager or the General Counsel, Headquarters, Defense Nuclear Agency, 6801 Telegraph Road, Alexandria, VA 22310–3398.

RECORD SOURCE CATEGORIES:

Information is extracted from military and civilian personnel records, investigative files, and voluntarily submitted by individual.

EXEMPTIONS CLAIMED FOR THE SYSTEM:

Part of this system may be exempt under the provisions of 5 U.S.C. 552a(k)(5), as applicable.

An exemption rule for this system has been promulgated in accordance with the requirements of 5 U.S.C. 553(b)(1), (2), and (3), (c) and (e) and published in 32 CFR part 318. For additional information contact the system manager.

[FR Doc. 93–28695 Filed 11–22–93; 8:45 am]

BILLING CODE 5000–04–F

DEPARTMENT OF EDUCATION

Indian Education National Advisory Council; Meeting

AGENCY: National Advisory Council on Indian Education, Education.

ACTION: Notice of cancellation.

SUMMARY: This announcement is to notify to the public of the cancellation of a meeting of the National Advisory Council on Indian Education. Notice for this meeting was originally published in the **Federal Register**, Volume 58, page 58854 on Thursday, November 4, 1993. The National Advisory Council on Indian Education was originally scheduled to meet November 29–30, 1993, in Reno, Nevada. A notice will be published when the meeting is rescheduled.

Dated: November 18, 1993.

John W. Cheek,

Acting Director, National Advisory Council on Indian Education.

[FR Doc. 93–28791 Filed 11–22–93; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Office of Energy Efficiency and Renewable Energy

Notice of Meeting or Quality Metrics

SUMMARY: The U.S. Department of Energy's Office of Energy Efficiency and Renewable Energy (EE) is holding a meeting on the topic of "quality metrics." Representatives from various organizations have been invited to provide their views and thoughts concerning this issue.

DATES: The meeting will be held on December 8, 1993, at the Rosslyn West Park Hotel, 1900 Fort Myer Drive, Arlington, VA 22209, beginning at 9 a.m.

FOR FURTHER INFORMATION CONTACT: Murray Liebman, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, EE–1, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9220.

SUPPLEMENTARY INFORMATION: The purpose of the meeting is to provide the Office of Energy Efficiency and Renewable Energy with the opportunity to hear views and opinions from various persons and stakeholder organizations on the development and application of performance measures for EE's programs. The quality metrics (QM) process will enable EE to measure and prioritize its program activities. Strategic plans and objectives will be translated into an analytical framework for measuring and evaluating EE program priorities. In addition, the process will ensure that EE's programs compliment the Department's mission, goals and objectives. Members of the public who do not receive a specific invitation to participate in the meeting will be given an opportunity to observe the meeting to the extent that there is room to accommodate them.

Issued in Washington, DC on November 18, 1993.

Frank Stewart,

Acting Assistant Secretary, Office of Energy Efficiency and Renewable Energy.

[FR Doc. 93–28788 Filed 11–22–93; 8:45 am]

BILLING CODE 6450–01–M

[Energy Research Financial Assistance Program Notice 94–06]

Office of Science Education and Technical Information; Experimental Program to Stimulate Competitive Research (EPSCoR)

AGENCY: U.S. Department of Energy (DOE).

ACTION: Notice inviting grant applications.

SUMMARY: The Office of Science Education and Technical Information (ET) of the U.S. Department of Energy (DOE), in keeping with its energy-related mission to assist in strengthening the Nation's human resource infrastructure through the support of science, engineering, and mathematics education at all levels of education, announces its interest in receiving applications from eligible States for the support of the DOE/EPSCoR Program. The purpose of the DOE/EPSCoR Program is to enhance the capabilities of designated States to conduct nationally competitive energy-

related research and to develop science and engineering manpower in energy-related areas to meet current and future needs in those areas. Subject to availability of funds, approximately $7 million will be available for awards under the DOE/EPSCoR Program in FY 1994 for collaborative research and manpower development in energy-related science and engineering disciplines.

DATES: Applications under this Notice should be received by 4:30 p.m. Eastern Standard Time, February 2, 1994.

ADDRESSES: Application materials are available from the Office of Science Education and Technical Information, ET–31, 1000 Independence Avenue SW., Washington, DC 20585. Telephone requests for application materials may be made by calling (202) 586–8949. The completed applications referencing Program Notice 94–06 must be submitted to: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, room F–220, Washington, DC 20585, ATTN: Program Notice 94–06. The following address must be used when submitting applications by U.S. Postal Service Express mail, any commercial mail delivery service, or when hand-carried by the applicant: U.S. Department of Energy, Office of Energy Research, Acquisition and Assistance Management Division, ER–64, 19901 Germantown Road, Germantown, MD 20874. Telephone and telefax numbers must also be included in any application.

FOR FURTHER INFORMATION CONTACT: Ms. Donna J. Prokop, DOE/EPSCoR Program Manager, Office of Science Education and Technical Information, ET–31, U.S. Department of Energy, Washington, DC 20585. She may be reached by telephone on (202) 586–8949, fax: (202) 586–0019.

SUPPLEMENTARY INFORMATION: The House and Senate reports accompanying the FY 1994 Energy and Water Development Appropriation Bill (H.R. Rep. No. 135, 103rd Cong., 1st Sess., pg. 88. and S. Rep. No. 147, 103rd Cong., 1st Sess., pg. 97, respectively) recommended that $7 million be committed to continuing the DOE/EPSCoR program. In accordance with 10 CFR 600.7(b)(1), and to be consistent with the Congressionally recognized limitations, DOE has decided to continue to restrict eligibility to the following States and Territory: Alabama, Arkansas, Idaho, Kansas, Kentucky, Louisiana, Maine, Mississippi, Montana, Nebraska, Nevada, North Dakota, Oklahoma, South Carolina, South Dakota, Vermont, West Virginia, Wyoming, and the Commonwealth of Puerto Rico.

Awards issued under this Notice will implement plans formulated under the previously awarded DOE/EPSCoR planning grants. New awards will provide funding for state management and coordination, research collaboration, human resource development activities and traineeship activities. Approximately three to four new awards will be issued for a two-year period and up to a maximum of $1.25 million each for management and coordination, research collaboration, and human resource development activities. In addition, an optional award is available for a two-year period at a maximum of $250,000 for traineeships. The traineeship award must be tied to an identified DOE technical research area of interest. Any remaining balance of the estimated $7 million will be used to award funds to enable unsuccessful DOE/EPSCoR state committees to upgrade and refine state energy-related plans.

In addition, as a tangible measure of an applicant's commitment to the objectives of the DOE/EPSCoR program, cost-sharing on a one-to-one ratio is a requirement of this program, except for the DOE/EPSCoR traineeships. Therefore, each application submitted requesting support from DOE under this Notice must provide, from non-Federal funds, an amount equal to the amount awarded by the DOE; i.e., for every dollar provided by DOE, the recipient must provide a dollar from non-Federal sources for the project.

General information about development and submission of applications, eligibility, limitations, evaluation, and selection processes, and other policies and procedures are contained in the Application Guide for the Office of Energy Research Financial Assistance Program and in 10 CFR part 605. The Catalog of Federal Domestic Assistance number of this program is 81.049.

D.D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–28706 Filed 11–22–93; 8:45 am]

BILLING CODE 6450–01–P

Notice of Public Meeting to Discuss Comments Received on the Preapproval Environmental Assessment for Interim Storage of Plutonium Components at Pantex Plant, Amarillo, TX

AGENCY: United States Department of Energy (DOE).

ACTION: Notice.

SUMMARY: The United States Department of Energy has scheduled a public meeting in Amarillo, Texas, on Monday, December 6, 1993, to discuss comments received from the State of Texas and stakeholders on the preapproval Environmental Assessment for Interim Storage of Plutonium Components at Pantex Plant, Amarillo, Texas. The Pantex Plant, located 17 miles northeast of Amarillo, Texas, is the United States' only nuclear weapons assembly and disassembly facility. It is being considered for expanded interim storage capacity for plutonium components removed from dismantled nuclear weapons.

DATES AND ADDRESSES: The public meeting will be held at the Amarillo Radisson Hotel, I–40 West and Lakeside Drive, Amarillo, Texas, 79104 from 9 a.m. to 9 p. m., Monday, December 6, 1993.

FOR FURTHER INFORMATION OR FOR A COPY OF THE ENVIRONMENTAL ASSESSMENT AND COMMENT RESPONSE DOCUMENT CONTACT: Thomas Walton, Public Affairs Officer, Amarillo Area Office, P.O. Box 30030, Amarillo, Texas 79120, (806) 477–3120.

SUPPLEMENTARY INFORMATION: Under the Department of Energy National Environmental Policy Act Implementing Procedures (10 CFR 1021.301), the Department is required to provide Environmental Assessments for review prior to approval to the host State(s) and Indian Tribes. A copy of an earlier version of this preapproval Environmental Assessment was provided to the State of Texas in December 1992. Subsequently, the State provided the preapproval Environmental Assessment to interested and affected members of the public. State and public comments on the preapproval Environmental Assessment were transmitted to the Department for consideration. At that time, the State also requested that the Department of Energy hold a public meeting to discuss the Department's resolution of comments.

On November 11, 1993, Secretary of Energy Hazel O'Leary provided copies of the preapproval Environmental Assessment, which has been revised on the basis of the comments received, and comment response document to State Officials and members of the public. In addition, a copy of that Environmental Assessment and the comment response document was mailed to each member of the public who provided comments on the original preapproval Environmental Assessment. Copies of the Environmental Assessment and

comment response document also were placed in the following local Department of Energy Reading Rooms:

U.S. Department of Energy Reading Room, Amarillo College, Lynn Library and Learning Center, P.O. Box 447, Amarillo, Texas 79178, Phone: (806) 371–5400.

U.S. Department of Energy Reading Room, Carson County Library, P.O. Box 339, Panhandle, Texas 79068, Phone: (806) 537–3742.

The purpose of the meeting is to provide the State and stakeholders an opportunity to discuss the revised Environmental Assessment and the Department's resolution of comments. All interested and affected individuals are invited to participate in the public meeting which will be held at the Amarillo Radisson Hotel, Amarillo, Texas, from 9 a.m. to 9 p.m. on Monday, December 6, 1993. During the morning and afternoon sessions (9 a.m. to 5 p.m.), the Department proposes to discuss specific technical issues raised in comments on the Environmental Assessment. During the evening session (6 p.m. to 9 p.m.), the morning and afternoon sessions will be summarized and the public will have further opportunity to ask questions and to discuss the Environmental Assessment. Department of Energy officials will be present and available to answer questions.

Issued in Washington, DC, on November 18, 1993.

Tara O'Toole,

Assistant Secretary, Environment, Safety and Health.

[FR Doc. 93–28751 Filed 11–22–93; 8:45 am]

BILLING CODE 6450–01–P

Waste Isolation Pilot Plant Land Management Plan

AGENCY: Department of Energy.

ACTION: Notice of availability.

SUMMARY: The Department of Energy (DOE) has prepared and issued a plan for the management of the withdrawn land at the Waste Isolation Pilot Plant (WIPP) until the decommissioning phase. In so doing, it is the intent of the land management plan to manage the withdrawal area under the traditional multiple-use concept and to minimize, to the extent possible, land use restrictions. In it not the intent of the DOE to manage the area as a WIPP exclusive-use area. The plan is available upon request.

ADDRESSES: The plan is available at the Public Reading Room (room 1E–190), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, Monday–Friday, excluding Federal holidays. Copies of the report have also been placed in the following WIPP reading rooms: WIPP Public Reading Room, National Atomic Museum, U.S. Department of Energy, Albuquerque Operations Office, P.O. Box 5400, Albuquerque, New Mexico 87115; Thomas Brannigan Memorial Library, 200 E. Picacho, Las Cruces, New Mexico 88005; New Mexico State Library, 325 Don Gaspar, Santa Fe, New Mexico 87503; Pannell Library, New Mexico Junior College, 5317 Lovington Highway, Hobbs, New Mexico 88240; Carlsbad Public Library, 101 S. Halagueno, Carlsbad, New Mexico 88220; Zimmerman Library, Government Publications Department, University of New Mexico, Albuquerque, New Mexico 87138; and Martin Speare Memorial Library, New Mexico Tech, Campus Station, Socorro, New Mexico 87801.

FOR FURTHER INFORMATION CONTACT: Ms. Patty Baratti-Sallani, Waste Isolation Pilot Plant Project Site Office, U.S. Department of Energy, P.O. Box 3090, Carlsbad, New Mexico 88220, at (505) 234–7337.

SUPPLEMENTARY INFORMATION: WIPP is a research and development facility located in Southeastern New Mexico with the mission of demonstrating the safe shipment and disposal of radioactive wastes resulting from defense activities and programs of the United States. This plan, a requirement of section 4(b)(1) of the WIPP Land Withdrawal Act (Pub. L. 102–579), has been prepared in consultation with the Bureau of Land Management (BLM) and the State of New Mexico. In addition, two public information meetings were held in July 1993 to brief the public and to answer any questions. As a complement to this land management plan, a Memorandum of Understanding (MOU) shall be executed between the DOE and the BLM, as required by Section 4(d) of the Act. This MOU will also be made available in the aforementioned reading rooms. This MOU, which will remain in effect until the end of the decommissioning phase, will serve to implement the management plan.

Issued in Washington, DC, on November 2, 1993.

Thomas P. Grumbly,

Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–28705 Filed 11–22–93; 8:45 am]

BILLING CODE 6455–01–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development

[FRL–4805–3]

Ambient Air Monitoring Reference and Equivalent Methods; Equivalent Method Designation

Notice is hereby given that EPA, in accordance with 40 CFR part 53, has designated another equivalent method for the determination of lead in suspended particulate matter collected from ambient air. The new designated method is identified as follows:

EQL–1193–094, "Determination of Lead Concentration in Ambient Particulate Matter by Inductively Coupled Argon Plasma Optical Emission Spectrometry (State of Illinois)."

The applicant's request for an equivalent method determination for the above method was received on April 6, 1993. Additional requested information pertinent to the original submittal was received on September 9, 1993.

This method has been tested by the applicant, the Illinois Environmental Protection Agency, in accordance with the test procedures prescribed in 40 CFR part 53. After reviewing the results of these tests and other information submitted by the applicant, EPA has determined, in accordance with part 53, that this method should be designated as an equivalent method. The information submitted by the applicant will be kept on file at EPA's Atmospheric Research and Exposure Assessment Laboratory, Research Triangle Park, North Carolina, and will be available for inspection to the extent consistent with 40 CFR part 2 (EPA's regulations implementing the Freedom of Information Act).

This method uses the sampling procedure specified in the reference method for the determination of lead in suspended particulate matter collected from ambient air (43 FR 46258). Lead in the particulate matter is solubilized by extraction with nitric acid facilitated by heat (hot plate). The lead content of the sample is analyzed by a Jarrel Ash 61E inductively coupled argon plasma optical emission spectrometer using the 220.35 nm lead emission line and instrument conditions optimized by the user laboratory. Technical questions concerning the method should be directed to the State of Illinois, Environmental Protection Agency, Champaign Inorganics Laboratory, 2120 South First Street, Champaign, Illinois 61820.

As a designated equivalent method, this method is acceptable for use by

states and other control agencies under requirements of 40 CFR part 58, Ambient Air Quality Surveillance. For such purposes the method must be used in strict accordance with the procedures and specifications provided in the method description. States or other agencies using inductively coupled argon plasma optical emission spectrometric methods that employ procedures and specifications significantly different from those in this method must seek approval for their particular method under the provisions of § 2.8 of appendix C to 40 CFR part 58 (Modification of Methods by Users) or may seek designation of such methods as equivalent methods under the provisions of 40 CFR part 53.

Additional information concerning this action may be obtained from Frank F. McElroy, Methods Research and Development Division (MD–77), Atmospheric Research and Exposure Assessment Laboratory, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone (919) 541–2622.

Carl Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–28736 Filed 11–22–93; 8:45 am]

BILLING CODE 6560–50–M

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94–150–000, et al.]

PacifiCorp, et al., Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 17, 1993.

Take notice that the following filings have been made with the Commission:

1. PacifiCorp

[Docket No. ER94–150–000]

Take notice that on November 15, 1993, PacifiCorp tendered for filing, in accordance with 18 CFR 35 of the Commission's Rules and Regulations, a Emergency Interconnection Agreement between Fall River Rural Electric Cooperative, Inc. and PacifiCorp dated October 21, 1993.

Copies of this filing have been supplied to the Idaho Public Utilities Commission and the Public Utility Commission of Oregon.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Boston Edison Co.

[Docket No. ER94–149–000]

Take notice that on November 15, 1993, Boston Edison Company (Edison) tendered for filing for informational purposes only a specification for interconnection services to the Reading Municipal Light Department (RMLD) for the period from November 1, 1993 through October 31, 1997.

Edison states that it has served the filing on RMLD and the Massachusetts Department of Public Utilities.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Maine Electric Power Company, Inc.

[Docket No. ES94–5–001]

Take notice that on November 12, 1993, Maine Electric Power Company, Inc. (Maine Electric) filed an amendment to its application in Docket No. ES94–5–000 under section 204 of the Federal Power Act seeking authorization to issue up to $9.5 million of unsecured notes or other unsecured short-term obligations to be issued on or before December 31, 1995, with a maturity of one year or less after date of issuance, in lieu of the $15 million originally proposed.

Comment date: December 1, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Atlantic City Electric Co.

[Docket No. ER94–151–000]

Take notice that on November 15, 1993, Atlantic City Electric Company (AE) tendered for filing as an initial Rate Schedule an Agreement for Installed Capacity Credit Transactions between GPU Service Corporation (GPU), acting as agent for Jersey Central Power and Light Company, Metropolitan Edison Company and Pennsylvania Electric Company and AE dated November 5, 1993. This contract sets forth the terms under which AE will sell PJM installed capacity credits to GPU. In order to maximize the economic advantages to both AE and GPU, AE requests that the Commission waive its customary notice period and permit this Agreement to become effective on November 15, 1993.

AE states that a copy of this filing have been served by mail on GPU, the New Jersey Board of Regulatory Commissioners, and the Pennsylvania Public Utility Commission.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Florida Power & Light Co.

[Docket No. ER94–137–000]

Take notice that on November 9, 1993, Florida Power & Light Company (FPL) tendered for filing Amendment Number Sixteen To Revised Agreement To Provide Specified Transmission Service Between Florida Power & Light Company And Tampa Electric Company (Amendment No. 16). FPL requests that Amendment No. 16 be made effective November 10, 1993.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Northeast Utilities Service Co.

[Docket No. ER94–136–000]

Take notice that on November 9, 1993, Northeast Utilities Service Company (NUSCO), on behalf of The Connecticut Light and Power Company, Western Massachusetts Electric Company (WMECO), Holyoke Water Power Company, Holyoke Power and Electric Company and Public Service Company of New Hampshire, tendered for filing a Second Amendment to Transmission Service Agreement and a Second Amendment to Distribution and Transformation Agreement for service to New England Power Company (NEP). These rate schedule changes implement the terms of a Settlement Agreement accepted by the Commission to provide for delivery of power from NEP to the Massachusetts Electric Company's (MASS Electric) load at Brodie Mountain Road in lieu of firm requirements service from WMECO to this Mass Electric load.

NUSCO requests that these two Second Amendments be permitted to become effective November 1, 1993, and be permitted to supersede WMECO's requirements service to the Mass Electric load at Brodie Mountain Road.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. New England Power Co.

[Docket No. ER94–148–000]

Take notice that New England Power Company (NEP), on November 15, 1993, tendered for filing seven (7) Unit Power Contracts between NEP and (1) Boston Edison Company; (2) Town of Braintree Electric Light Department; (3) Fitchburg Gas and Electric Light Department; Massachusetts Municipal Wholesale Electric Company; Northeast Utilities Service Company; Public Service Company of New Hampshire; and Taunton Municipal Lighting Plant for the sale of capacity from several of NEP's generation units.

Pursuant to the Commission's Final Order in Docket No. PL93–2–000, dated July 31, 1993, NEP requests waiver of the Commission's notice requirements so that the Contracts can be made effective and simultaneously terminated.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. North American Energy Conservation, Inc.

[Docket No. ER94–152–000 and EL94–9–000]

Take notice that North American Energy Conservation, Inc., (NAEC) on November 12, 1993, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 285.207 (1992), a petition for waivers and blanket approvals under various regulations of the Commission, and also filed its Rate Schedule No. 1, to be effective as of January 1, 1994.

NAEC intends to engage in electric power and energy transactions as a marketer and a broker. In transactions where NAEC sells power as a marketer, it proposes to make such sales on rates, terms, and conditions to be mutually agreed upon with the purchasing party. Rate Schedule No. 1 provides for the sale of power under such agreements. All sales will be at arms-length, and no sales will be made to affiliated entities. In transactions where NAEC does not take title to the electric power and/or energy, NAEC will be limited to the role of a broker and charge a fee for its services. NAEC is not in the business of producing or transmitting electric power. NAEC does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Comment date: December 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Genesee Power Station Limited Partnership

[Docket Nos. ES94–7–000 and ES94–7–001]

Take notice that on November 12, 1993, Genesee Power Station Limited Partnership (Genesee) filed an application and on November 16, 1993, filed an amendment un ler section 204 of the Federal Power Act seeking authorization to enter into a long-term loan agreement for up to $65 million of tax-exempt bonds, to enter into a long-term bank term loan for up to $26 million of promissory notes and for blanket approval of all other future issuances of securities and assumptions of liabilities. Also, Genesee requests exemption from the Commission's competitive bidding and negotiated placement regulations.

Comment date: December 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Edison Sault Electric Company

[Docket No. ES94–8–000]

Take notice that on November 15, 1993, Edison Sault Electric Company filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $10 million of unsecured short-term notes on or before December 31, 1995, with a maturity date no later than December 31, 1996.

Comment date: December 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. New England Power Pool

[Docket No. ER93–985–000]

Take notice that on November 15, 1993, twenty-nine participants in the New England Power Pool (the Filing Participants) filed additional information concerning the Thirtieth Amendment to the New England Power Pool (NEPOOL) Agreement (the Amendment), which had been filed with the Commission on September 29, 1993. The additional information submitted by the Filing Participants constitutes an amendment to the original filing and has been submitted in response to the Commission's October 26, 1993, letter in the captioned docket that requested additional information concerning the Amendment.

The Filing Participants have provided additional details concerning each revision to the NEPOOL Agreement made by the Amendment. Specifically, the Filing Participants state that they have provided a detailed comparison of the present and revised sections of the NEPOOL Agreement, and a detailed explanation of, and justification for, each revision and the impact of each revision on NEPOOL participants. The Filing Participants also state that they have provided additional information which demonstrates that the revisions to the NEPOOL Agreement contained in the Amendment are reasonable and are consistent with the objectives specified in the NEPOOL Agreement and all applicable pool procedures.

The Filing Participants have renewed their request that the Commission waive the customary notice period and permit the Amendment to become effective as of September 30, 1993.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Florida Power Corp.

[Docket No. ER94–144–000]

Take notice that on November 10, 1993, Florida Power Corporation filed (1) a supplement to an Exhibit C to the Service Agreement between itself and Tampa Electric Company and (2) an Exhibit A to that supplement. The Supplement and Exhibit A describe service which Tampa Electric has agreed to provide to the City of St. Cloud beginning January 1, 1994, and extending through December 31, 2012 and which will be wheeled by Florida Power under the T–1 tariff and Florida Power's Service Agreement with Tampa Electric. Florida Power requests waiver of the notice requirement to permit the Supplement and Exhibit A to become effective on January 1, 1994, when Tampa Electric's service to St. Cloud will commence.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

13. CRSS Power Marketing, Inc.

[Docket No. ER94–142–000]

Take notice that CRSS Power Marketing, Inc. (the Petitioner) on November 9, 1993, tendered for filing pursuant to Rule 207 of the Commission's Rules of Practice and Procedure, 18 CFR 385.207 (1993), a petition for waivers and blanket approvals under various regulations of the Commission and an order accepting its Rate Schedule No. 1.

The Petitioner intends to engage in wholesale electric power transactions as a marketer. The Petitioner will purchase power, including capacity and related services from electric utilities, qualifying facilities and independent power producers, and resell such power to other purchasers. The Petitioner proposes to charge rates mutually agreed upon by the parties. No sales will be made to affiliated entities. The Petitioner is not in the business of producing or transmitting electric power. The Petitioner does not currently have or contemplate acquiring title to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

14. WestPlains Energy, a Division of UtiliCorp United, Inc.

[Docket No. ER94–140–000]

Take notice that on November 9, 1993, WestPlains Energy, a division of UtiliCorp United, Inc. (WestPlains) tendered for filing an Agreement with Kansas Electric Power Cooperative, Inc. (KEPCo) to extend service under Service Schedule 92–I–2 for the period from June 1 to September 30, 1993. Pursuant to the amnesty established by the Commission in Docket No. PL93–2–002, Prior Notice and Filing Requirements Under Part II of the Federal Power Act, 64 FERC ¶ 61,138 (1993), an effective date of June 1, 1993, is requested.

A copy of the filing was served upon KEPCo and the Kansas Corporation Commission.

Comment date: December 2, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28758 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. CP93–618–000 and CP93–685–000]

Pacific Gas Transmission Co. and Tuscarora Gas Transmission Co.; PGT/Tuscarora Pipeline Project; Intent/Preparation To Prepare a Draft Environmental Impact Report/Statement for the Proposed PGT Expansion II and Tuscarora Projects and Request for Comments on Environmental Issues

November 17, 1993

The staff of the Federal Energy Regulatory Commission (FERC or Commission) will prepare a joint environmental impact report/statement (EIR/EIS) with the California State Lands Commission (SLC) that will discuss environmental impacts of the construction and operation of facilities proposed in the PGT Expansion II and Tuscarora Projects (known hereafter as the PGT/Tuscarora Pipeline Project).[1] This EIR/EIS will be used by the Commission in its decision-making process (whether or not to approve the individual projects).

The California SLC will be cooperating with us because of the significant amount of California state lands affected by the proposals. The FERC will be the lead Federal agency and, with the California SLC as the lead State agency for California, will produce this joint EIR/EIS satisfying the requirements of the California Environmental Quality Act (CEQA) and the National Environmental Policy Act (NEPA), respectively.

The Bureau of Land Management (BLM) will be cooperating with us in the preparation of the EIR/EIS because of the amount of BLM-managed land that would be affected by the proposals and because this proposed action may include one or more planning amendments by the BLM. The other Federal agencies being asked to cooperate (see Appendix 1) may choose to participate once they have evaluated each proposal relative to their agencies' responsibilities.

Summary of the Proposed Facilities

The PGT/Tuscarora Pipeline Project is a natural gas pipeline proposal involving construction of natural gas transmission facilities in Oregon, Washington, Idaho, California, and Nevada. Appendices 2 and 3 list the proposed PGT/Tuscarora pipeline facilities. The general locations of both the PGT/Tuscarora facilities are shown on appendices 4 and 5.[2]

In Docket No. CP93–618–000, PGT proposes to construct and operate 102 miles of new 12-inch-diameter pipeline lateral in two segments in Oregon. The Coyote Springs Extension Lateral would consist of 17.71 miles of new pipeline connecting PGT's mainline system between Lexington and Pine City, and extending to Portland General Electric's (PGE) proposed cogeneration facility near Boardman. All facilities would be located in Morrow County, Oregon. Two 12-inch mainline valve sites and one new meter station are also proposed. The purpose of the Coyote Springs Extension Lateral is to enable PGT to transport 41 decatherms (Dth) per day of natural gas for PGE.

The Medford Extension Lateral would consist of 84.17 miles of new pipeline extending between PGT's mainline system at Compressor Station 14 near Bonanza, Oregon and terminating near Medford, Oregon. Seven 12-inch mainline valve sites, two meter stations, and communication equipment are also proposed. All facilities would be located in Klamath and Jackson Counties, Oregon. The purpose of the Medford Extension Lateral is to transport natural gas to WP Natural Gas Company's distribution system in southern Oregon.

To transport the volume of gas required by PGT and Tuscarora, PGT's pipeline system upstream of Malin, Oregon, must undergo minor modifications and improvements. PGT plans to add approximately 14,000 to 16,000 horsepower to existing compressor stations at Sandpoint, Idaho, and Rosalia, Washington; and to add three meter runs inside its existing Malin Meter Station in southern Oregon.

In Docket No. CP93–685–000, Tuscarora proposes to construct and operate 229 miles of new 20-inch-diameter pipeline. The pipeline would extend from Malin, Klamath County, Oregon, southward through the Modoc National Forest in Modoc County, California, where it would head southeast into Lassen County and terminate in Storey County, Nevada. No compressor facilities are proposed. The purpose of the Tuscarora Project is to transport approximately 113,050 Dth per day of natural gas to its prospective shippers.

Three laterals in California are also proposed. The Alturas Lateral would consist of 5.3 miles of 4-inch-diameter pipeline extending between the Tuscarora Mainline and Alturas, in Modoc County, California. The Susanville Lateral would consist of 10.7 miles of 6-inch-diameter pipeline extending between the Tuscarora Mainline and Leavitt, Lassen County, California. The Herlong Lateral would consist of 5.5 miles of 4-inch-diameter pipeline extending between the Tuscarora Mainline and the Sierra Army Depot, in Lassen County, California.

Five meter stations are proposed: Alturas, Susanville, and Herlong (Sierra Army Depot) in California; and Spanish Springs and Tracy in Nevada.

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[1] Pacific Gas Transmission Company's and Tuscarora Gas Transmission Company's applications were filed with the Commission pursuant to section 7 of the Natural Gas Act and part 157 of the Commission's regulations.

[2] Tables and figures referenced in this notice are not printed in the **Federal Register**, but have been sent to all those receiving this notice. Copies are also available from the Commission's Public Reference Branch, room 3104, 941 North Capitol Street, NE., Washington, DC 20426 or call (202) 208–1371.

Land Requirements/Construction Procedures

PGT's portion of the proposed pipeline would be built within a 65-foot-wide construction right-if-way; Tuscarora proposes a 100-foot-wide width.

Construction of the pipelines would normally follow standard pipeline construction methods: Right-of-way clearing and grading; trenching; pipe stringing, bending, welding, joint coating, and lowering in; backfilling of the trench; and cleanup and restoration. The applicants propose to implement erosion control and revegetation measures and to use special construction techniques for wetland and water crossings and for construction in residential areas. These construction procedures and mitigation plans will be discussed further in the draft EIR/EIS.

Pipeline segments would be hydrostatically tested according to U.S. Department of Transportation minimum safety standards and specifications (49 CFR part 192) before being placed in service. No chemicals would be used during testing, and the applicants would be required to obtain appropriate Federal and state discharge permits prior to testing.

The EIR/EIS Process

The NEPA requires the Commission to take into account the environmental impacts that could result from a major Federal action whenever it considers the issuance of a Certificate of Public Convenience and Necessity. The California SLC, as a cooperating state agency, is required to consider the same potential impacts within the state of California under the CEQA. The EIR/EIS we are preparing will give both the Commission and the SLC the information we need to do that. NEPA (and CEQA) also requires us to discover and address concerns the public may have about proposals. We call this "scoping". The main goal of the scoping process is to focus the analysis in the EIR/EIS on the important environmental issues, and to separate those issues that are insignificant and do not require detailed study.

The EIR/EIS will discuss impacts that could occur as a result of the construction and operation of the proposed projects under these subject headings (but are not limited to):

Geology and Soils
- —Erosion control
- —Geological hazards
- —Right-of-way restoration and maintenance
- —Effect on cropland

Water Resources
- —Effect on potable water supplies
- —Effect on surface water quality
- —Impact on wetland hydrology
- —Impact of stream and river crossings on water flow

Biological Resources
- —Impact on wetlands
- —Impact on forestlands and habitat alteration
- —Short-and long-term effects of right-of-way clearing and maintenance
- —Impact on threatened and endangered species
- —Indirect effect on Modoc National Wildlife Refuge

Cultural Resources
- —Effect on properties listed on or eligible for the National Register of Historic Places
- —Native American and tribal concerns
- —National Historical Trail Study Area concerns
- —Effect on known archaeological sites

Land Use
- —Impact on residences
- —Impact on public lands
- —Impact on agricultural land
- —Impact on commercial and industrial areas
- —Impact on aesthetic resources
- —Impact on recreational areas
- —Impact on present or planned use of an area

Socioeconomics
- —Effects on population growth and displacement
- —Effects on employment

Air quality
- —Effect of compressor station operation on air quality

Noise
- —Effect on compressor station operation on nearby noise-sensitive receptors

Reliability and Safety
- —Risk assessment of hazards associated with natural gas pipelines

Alternatives
- —Route variations to avoid sensitive areas

Cumulative Impacts
- —Identification of related projects
- —Analysis of cumulative impacts and mitigation measures

We will also evaluate possible alternatives to the projects, or portions of the projects, and make recommendations on how to lessen or avoid impacts on the various resource areas.

Our independent analysis of the issues will result in the publication of a Draft EIR/EIS which will be mailed to Federal, state, and local agencies, public interest groups, interested individuals, affected landowners, newspapers, libraries, and the Commissions's official service list for these proceedings. A 45-day comment period will be allocated for the review of the Draft EIR/EIS. We will consider all comments on the Draft EIR/EIS and revise the document, as necessary, before issuing a Final EIR/EIS. The Final EIR/EIS will include our response to each comment received.

Public Participation and Scoping Meetings

You can make a difference by sending a letter with your specific comments or concerns about the projects. You should focus on the potential environmental effects of the proposals, alternatives to the proposals, (including alternative routes), and measures to avoid or lessen environmental impact. The more specific your comments, the more useful they will be. Please follow the instructions below to ensure that your comments are received and properly recorded:

- Address the letter to: Ms. Lois Cashell, Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426;
- Reference Docket No. CP93–618–000 or CP93–685–000;
- Send a copy of the letter to the following individuals:

Alisa M. Lykens, EIS Project Manager, Federal Energy Regulatory Commission, Office of Pipeline and Producer Regulation, room 7312, 825 North Capitol Street, NE., Washington, DC 20426

Kirk Walker, EIR Project Manager, State Lands Commission, 1807 13th Street, Sacramento, CA 95814;

- Mail comments before December 20, 1993.

In addition to asking for written comments, we invited you to attend any of the scoping meetings listed on the following page. The meetings will be designed to provide you with more detailed information and another opportunity to offer your comments on the proposed projects. Those wanting to speak at the meetings can call the EIS Project Manager to pre-register their names on the speakers' list. Those people on the speakers' list prior to the date of the meeting will be allowed to speak first. A second speakers' list will be available at the meeting. Priority will be given to people representing groups. A transcript of each meeting will be made so that your comments will be accurately recorded.

Schedule for EIR/EIS Scoping Meetings PGT/Tuscarora Pipeline Project

Sparks, Nevada, December 6, 1993; 7 p.m., Best Western, McCarran House Inn, 55 East Nugget Avenue, Sparks, Nevada 89431, (702) 358–6900

Susanville, California, December 7, 1993; 7 p.m., The Monticola Club, 140 South Lassen Street, Susanville, California 96130, (916) 257–2345

Medford, Oregon, December 8, 1993; 7 p.m., Red Lion Motor (Crater Room), Medford, Oregon 97501, (503) 779–5811

Becoming an Intervenor

In addition to involvement in the EIR/EIS scoping process, you may want to become an official party to the FERC proceedings or an "intervenor". Among other things, intervenors have the right to receive copies of case-related Commission documents and filings by other intervenor.. Likewise, each intervenor must provide copies of its filings to all other parties. If you want to become an intervenor, you must file a Motion to Intervene according to Rule 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214) which is attached as appendix 6.

Environmental Mailing List

If you don't want to send comments at this time but still want to keep informed and receive copies of the Draft and Final EIR/EIS, please return the Information Request (appendix 7). If you don't return the information Request, you will be taken off the mailing list. Additional information about the proposed projects is available from Ms. Alisa Lykens, EIS Project Manager, (202) 208–0766.

Information concerning the involvement of the California SLC in the EIR/EIS may be obtained from: Kirk Walker, 1807 13th Street, Sacramento, California 95814, Telephone (916) 322–0530

As of this notice the FERC is aware that the Bureau of Land Management (BLM) will be a cooperating agency. The BLM contacts for the environmental analysis are:

Tuscarora Project

Pete Humm, BLM—Susanville District, 705 Hall Street, Susanville, California 96130, Telephone (916) 257–5381

PGT Project

Tom Cottingham, BLM Klamath Falls Resource Area 2795 Anderson Ave.—Bldg. 25 Klamath Falls, OR 97603 Telephone (503) 885–4210

Lois D. Cashell,

Secretary.

[FR Doc. 93–28655 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–01058T Texas–154]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 17, 1993.

Take notice that on November 5, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the L–12, L–13, L–14, L–24, L–25, and L–26 zones of the Wilcox Sand Formation, underlying a portion of Zapata County, Texas, qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area lies in Railroad Commission District No. 4. The area occupies approximately 1,286 acres in a portion of Porcion 14, Bernard Gutierrez Survey, A–34 and Porcion 15, Jose Clement Gutierrez Survey, A–35.

The notice of determination also contains Texas' findings that the referenced portions of the Wilcox Formation meet the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street, N.E., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28656 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 10998–001 Oregon]

Ochoco Irrigation District; Surrender of Preliminary Permit

November 17, 1993.

Take notice that Ochoco Irrigation District, Permittee for the Prineville Project No. 10998, has requested that its preliminary permit be terminated. The preliminary permit for Project No. 10998 was issued March 18, 1991, and would have expired February 28, 1994. The project would have been located on lands administered by the Bureau of Reclamation, on the Crooked River in Crook County, Oregon.

The Permittee filed the request on November 5, 1993, and the preliminary permit for Project No. 10998 shall remain in effect through the thirtieth day after issuance of this notice unless that day is a Saturday, Sunday or holiday as described in 18 CFR 385.2007, in which case the permit shall remain in effect through the first business day following that day. New applications involving this project site, to the extent provided for under 18 CFR part 4, may be filed on the next business day.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28657 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. RP93–14–000, et al., RP93–126–000, et al., RP87–14–000, et al., RP86–41–000, et al.]

Algonquin Gas Transmission Co.; Informal Settlement Conference

Take notice that an informal settlement conference will be convened in these proceedings on December 6, 1993 at 10 a.m. at the offices of the Federal Energy Regulatory Commission, 810 First Street, NE., Washington, DC 20426, for the purpose of exploring the possible settlement of the issues in this proceeding.

Any party, as defined by 18 CFR 385.102(c), or any participant as defined by 18 CFR 385.102(b), is invited to attend. Persons wishing to become a party must move to intervene and receive intervenor status pursuant to the Commission's regulations (18 CFR 385.214).

For additional information, contact Marc G. Denkinger (202) 208–2215 or David R. Cain (202) 208–0917.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28659 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–43–001]

ANR Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 17, 1993.

Take notice that on November 12, 1993, ANR Pipeline Company (ANR) tendered for filing, proposed changes in its FERC Gas Tariff, Second Revised Volume No. 1, to become effective

December 1, 1993. On November 1, 1993, ANR Pipeline Company (ANR) filed with the Commission in the referenced docket an application for a general rate increase pursuant to section 4 of the Natural Gas Act (NGA). In that filing, ANR submitted three alternative cases. ANR supplements its November 1, 1993, rate filing for the purpose of offering additional options to its shippers under the third case as more fully set forth in the application on file with the Commission.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.211). All such protests should be filed on or before November 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceedings. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28660 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RS92–64–001]

High Island Offshore System; Compliance Filing

November 17, 1993.

Take notice that on November 10, 1993, High Island Offshore System ("HIOS") filed tariff sheets to comply with and implement the line pack gas settlement that was approved in the captioned proceeding by the Federal Energy Regulatory Commission by Letter Order dated October 12, 1993. HIOS requests, consistent with the settlement, that tariff sheets which includes a $.0017 per Mcf line pack surcharge, be accepted effective on November 1, 1993.

Any person desiring to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 and Rule 214 of the Commission's Rules of Practice and Procedure 18 CFR 385.211, 385.214. Any such protests and motions to intervene should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party mist file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the Public Reference Room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28662 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–206–001]

Proposed Changes in FERC Gas Tariff

November 17, 1993

Take notice that on November 12, 1993, Northern Natural Gas Company (Northern) tendered for filing to become part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets, proposed to be effective November 1, 1993:

First Revised Sheet No. 263
Orignial Sheet No. 263A

Northern states that such tariff sheets are being submitted in compliance with the Commission's Order issued October 28, 1993, in Docket No. RP93–206–000 to revise the tariff to incorporate the operational conditions as set forth in the "Resolution of Supply Commitment at Carlton" filed on September 30, 1993, as amended on October 20, 1993.

Northern further states that copies of the filing have been mailed to each of its customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure (18 FR 385.211). All such protests must be filed on or before November 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28661 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP91–203–038]

Tennessee Gas Pipeline Co.; Tariff Filing

November 17, 1993.

Take notice that on November 15, 1993, Tennessee Gas Pipeline Company (Tennessee) tendered for filing as part of its FERC Gas Tariff, the following tariff sheets to be effective November 1, 1993:

Fifth Revised Volume No. 1

Substitute First Revised Sheet No. 26
Substitute First Revised Sheet No. 176
Substitute Alternate First Revised Sheet No. 177
Substitute First Revised Sheet No. 178

Original Volume No. 2

Substitute Sixteenth Revised Sheet No. 9
Substitute Eighth Revised Sheet No. 9A

Tennessee states that the purpose of this filing is to comply with the Commission's October 29, 1993, order in the above-referenced docket, in order to implement the NET Settlement approved by the Commission in its order dated April 21, 1993.

Tennessee states that copies of the filing has been served on each person designated on the official service list in the above-reference proceeding.

Any person desiring to protest this filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rule 211 of the Commission's Rules of Practice and Procedure. All such protest should be filed on or before November 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28658 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–1–76–001]

Wyoming Interstate Co., Proposed Changes in FERC Gas Tariff

November 17, 1993.

Take notice that on November 12, 1993, Wyoming Interstate Company, Ltd. (WIC) tendered for filing as part of its FERC Gas Tariff, Second Revised Volume No. 2, Substitute First Revised Sheet No. 4, with a proposed effective date of October 1, 1993.

WIC states that it submitted tariff changes on August 20, 1993, in Docket No. TM94–1–76 to implement the

Commission's new ACA charge effective October 1, 1993. First Revised Sheet No. 4 submitted in that filing inadvertently reflected a Base Interest Component of Maximum Commodity Charge for Rate Schedule IT of $0.0000, instead of $0.0401. The instant filing corrects this error. The proposed change to Sheet No. 4 is administrative, and has no impact on the rates being billed by WIC.

WIC states copies of this filing are being served on all participants listed on the Commission's official service list in this docket.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capital Street, NE., Washington, DC 20426, in accordance with § 385.211 of the Commission's Rules and Regulations. All such protests should be filed on or before November 24, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28663 Filed 11–22–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

Office of Research and Development

[FRL–4805–4]

Ambient Air Monitoring Reference and Equivalent Methods; Receipt of Two Applications for Equivalent Method Determinations

Notice is hereby given that on October 26, 1993, the Environmental Protection Agency received two applications from Lear Siegler Measurement Controls Corporation, 72 Inverness Drive East, Englewood, Colorado 80112–5189, to determine if their Monitor Labs Ozone Analyzer Models 9811 and 9812 should be designated by the Administrator of the EPA as equivalent methods under 40 CFR part 53. If, after appropriate technical study, the Administrator determines that these methods should be so designated, notice thereof will be given in a subsequent issue of the Federal Register.

Carl Gerber,

Acting Assistant Administrator for Research and Development.

[FR Doc. 93–28737 Filed 11–22–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4805–6]

Final Maximum Pressures for Rule-Authorized Enhanced Recovery Injection Wells in Michigan—Second Group Fields

AGENCY: Environmental Protection Agency.

ACTION: Notice of Final Maximum Injection Pressure in Fields with Rule-Authorized Enhanced Recovery Injection Wells in Michigan—Second Group Fields.

SUMMARY: The United States Environmental Protection Agency (USEPA or Agency) today is issuing pressure gradients for calculating the maximum allowable liquid injection pressure for rule-authorized Class II enhanced recovery injection wells in six Michigan fields currently approved by the State of Michigan for enhanced recovery operations. Therefore, as of the date of publication of this notice, operators of rule-authorized enhanced recovery wells in the six fields must limit their liquid injection pressure as directed in this notice. This notice now becomes part of the applicable Underground Injection Control program for the State of Michigan, administered by Region 5 of USEPA, promulgated under the provisions of the Safe Drinking Water Act.

FOR FURTHER INFORMATION CONTACT: Patrick Saieh, Underground Injection Control Section, Water Division, (312) 886–4240, 17th floor Metcalfe Building (WD–17J), 77 West Jackson Boulevard, Chicago, Illinois 60604–3590.

SUPPLEMENTARY INFORMATION:

I. Background

Federal regulations at 40 CFR 147.1154 stipulate that the Regional Administrator shall establish maximum injection pressures ("field rules") for rule-authorized enhanced recovery injection wells in Michigan fields, after proper notice and opportunity for public comment. Notice was given on August 9, 1993, to persons on a state-wide mailing list and on August 10, 1993, in the Federal Register (58 FR 42543). The public notice period ended September 24, 1993. Two written comments were received, which included additional data for the West Branch and Norwich fields, respectively. The new data have been incorporated into this final notice.

II. Final Maximum Pressures

In this final notice, USEPA is announcing that rule-authorized, enhanced recovery, injection wells in the Michigan fields listed in Table 1, must operate below a maximum injection pressure for liquids calculated using the following formula:

$$Pm = (FPG - 0.433\ Sg)d$$

where

Pm = injection pressure at the wellhead (psi)
FPG = fracture pressure gradient from Table 1 (psi/ft)
Sg = specific gravity of the injection fluid (dimensionless)
d = depth to top of injection zone (ft)

III. Alternative Maximum Pressures

If an owner or operator wishes to inject at a pressure higher than that calculated using the above formula, he or she may submit a request that the USEPA establish an alternative maximum pressure for a particular field and formation. This request may result in permission to inject at higher pressures if the operator can demonstrate to the satisfaction of the Agency that the desired injection pressure will not fracture the confining layer adjacent to the lowermost Underground Source of Drinking Water (USDW) and that there will be no migration of fluids into a USDW. The Agency may grant such a request after notice and opportunity for public comment, according to the provisions of 40 CFR part 124.

If a request for an Alternative Maximum Pressure is denied, the owner or operator may apply for a UIC permit under 40 CFR 144.25(c). The final permit decision, including permit conditions which the owner or operator considers to be inappropriate, may be subject to administrative review pursuant to 40 CFR 124.19. To be added to a mailing list to receive notice of Agency decisions in Michigan regarding Alternative Maximum Pressures or Class IIR permits, contact USEPA, Region 5 Underground Injection Control Section at the address given above.

IV. Notice to Owners and Operators

Concurrent with publication of this notice, USEPA is sending certified written notices to owners and operators of wells in affected fields informing them of the applicable formula to be used in determining the maximum allowable liquid injection pressure. After receipt of this notice, owners and operators who exceed the injection pressure established under the formula or the alternative maximum pressure approved by USEPA will be considered in violation of 40 CFR 147.1154(a), and may be subject to enforcement action, including the assessment of civil penalties and the issuance of compliance orders. If an owner or

operator does not receive a certified written notice from USEPA within thirty (30) days of the date of this notice, he or she should immediately contact USEPA, Region 5 at the telephone number given above, to avoid the possibility of violating UIC regulations.

Dated: November 12, 1993.

Edward P. Watters,

Acting Director, Water Division Region 5, U.S. Environmental Protection Agency.

TABLE 1.—FRACTURE PRESSURE GRADIENT VALUES

Field	Formation	County	Township/range/section	FPG (psi/ft)
Enterprise	Richfield	Missaukee	T23N,R4W,S18 and T23N,R5W,S10–14	1.10
Hamilton	Richfield	Clare	T19N,R3W,S5–8 and T19N,R4W,S1,2 and T20N,R4W,S35,36	1.06
Manistee	Niagaran	Manistee	T22N,R17W,S36	0.82
East Norwich	Richfield	Missaukee	T24N,R5W,S1–3,9–16, 21, 22 and T24N,R4W,S6,7,18	1.14
St. Helen	Richfield	Roscommon	T24N,R1W,S16,19–21,27–30	1.16
West Branch	Dundee	Ogewmaw.		
West Branch Unit	.....	.....	T21N,R2E,S2 and T22N,R2E,S21,26,27,33–36 and all of S28 except the S/2 of the NW/4*.	1.15
Country Club Unit.	.....	.....	T22N,R1E,S13,24 and T22N,R2E,S18–21,29	1.15

* Pressure limits for the S/2 of the NW/4 of Section 28, the "West Branch 28 Unit", will be proposed and finalized with the third group of fields.

[FR Doc. 93–28735 Filed 11–22–93; 8:45 am]
BILLING CODE 6560–50–P

[FRL 4805–2]

Ambient Water Quality Criteria Aniline and 2,4-Dimethylphenol

AGENCY: Environmental Protection Agency.

ACTION: Notice of availability and request for comments on Proposed Ambient Water Quality Criteria Documents for the Protection of Aquatic Life.

SUMMARY: The purpose of the notice is to announce the availability of two documents presenting proposed Ambient Water Quality Criteria for the protection of aquatic life for two chemicals; and to request public comment on these documents. The documents present data and proposed criteria for aniline and 2,4-dimethylphenol. The Environmental Protection Agency (EPA) intends to publish the documents in final form after considering public comments. This action is taken pursuant to section 304(a)(1) of the Clean Water Act, which requires EPA to develop and publish criteria for water quality accurately reflecting the latest scientific knowledge. When published in final form these criteria will serve as guidance to States in developing water quality standards, which are used as the basis for establishing enforceable water quality based effluent limitations.

DATES: Written comments should be submitted on or before January 24, 1994, and should be addressed as indicated below.

ADDRESSES: Requests for documents should be sent to: Aniline and 2,4-Dimethylphenol Proposal, Water Resource Center, (RC–4100), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Send written comments on the draft documents to: Aniline and 2,4-Dimethylphenol Proposal, Comment Clerk; Water Docket (MC–4101), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Commenters are requested to submit any references cited in their comments. Commenters are also requested to submit an original and 3 copies of their written comments and enclosures. Commenters who want receipt of their comments acknowledged should include a self-addressed, stamped envelope. No facsimiles (faxes) will be accepted.

FOR FURTHER INFORMATION CONTACT: Call Ecological Risk Assessment Branch at (202) 260–0658.

Availability of Documents

This notice announces the availability of draft documents proposing Ambient Water Quality Criteria for the protection of aquatic life for two chemicals. EPA is releasing the following draft criteria documents for public review and comments:

* Ambient Aquatic Life Water Quality Criteria for ANILINE.
* Ambient Aquatic Life Water Quality Criteria for 2,4-DIMETHYLPHENOL.

Acute and Chronic Criteria for the protection of aquatic life within proposed "Ambient Aquatic Life Water Quality Criteria for 2,4-DIMETHYLPHENOL" would, upon finalization, supersede guidance given in the previous Ambient Water Quality Criteria for 2,4-dimethylphenol (U.S. EPA, 1980). The proposed criteria were derived using improved procedures and additional information.

Copies of the complete drafts may be obtained upon request by writing to the address listed above. These documents are available for review at EPA's Water Docket; 401 M Street, SW., Washington, DC 20460. For access, call (202) 260–3027 between 9 am and 3:30 pm for an appointment. Copies of these documents are also available for review in the EPA Regional Office libraries. As provided in 40 CFR part 2, a reasonable fee may be charged for copying services.

Background Information

Section 304(a)(1) of the Clean Water Act (33 U.S.C. 1314(a)(1)), directs EPA to develop and publish criteria reflecting the latest scientific knowledge on the identifiable effects of pollutants on public health and welfare, aquatic life and recreation.

The draft criteria announced today are intended to protect aquatic life and were derived using the 1985 "Guidelines for Deriving Numerical National Water Quality Criteria for the Protection of Aquatic Organisms and Their Uses" (50 FR 30784). All of the criteria developed by EPA using this methodology are summarized in Quality Criteria for Water 1986 (1986 "Gold Book") (which is updated periodically).

EPA's criteria documents provide a comprehensive aquatic toxicological evaluation of each chemical. For toxic pollutants, the documents tabulate the relevant acute and chronic toxicity information for aquatic life and derive the criteria maximum concentrations (acute criteria) and criteria continuous

concentrations (chronic criteria) which the Agency recommends to protect aquatic life resources. The proposed criteria announced today are not intended to protect human health and do not address human health concerns.

Description of Pollutants and Associated Criteria

Criteria pollutants were selected based on two factors: (1) frequency of occurrence in the environment; and (2) availability of existing toxicological data for each chemical. Those toxic pollutants which are given high priority by EPA's Office of Water, as described in section 307(a) of the Clean Water Act and listed in 40 CFR part 423, appendix A, were also considered.

Aniline

(CAS Registry No. 62–53–3)

Aniline (aminobenzene, benzenamine, phenylamine) occurs naturally in coal tars and is manufactured through various chemical procedures. The major uses of aniline are in the polymer, rubber, agricultural and dye industries. Aniline is used to manufacture polyurethanes, antioxidants, antidegradants, vulcanization accelerators, and sulfa drugs. Aniline derivatives are used in herbicides, fungicides, insecticides, repellents, and defoliants. Aniline has also been used as an antiknock compound in gasolines. Aniline is the simplest of the aromatic amines ($C_6H_5NH_2$).

2,4-Dimethylphenol

(CAS Registry No. 105–67–9)

2,4-Dimethylphenol (2,4-DMP) is a naturally occurring, substituted phenol derived from petroleum or coal tars. 2,4-DMP (1-hydroxy-2,2-dimethylbenzene, m-xylenol, 2,4-xylenol or m-4-xylenol) is used in the manufacture of phenolic antioxidants, disinfectants, solvents, pharmaceuticals, insecticides, fungicides, plasticizers, rubber chemicals, polyphenylene oxide, wetting agents, and dyestuffs. 2,4-DMP is also an additive of lubricants, gasolines, and cresylic acid.

Pollutant	CWA 307(a) priority pollutant?	Proposed FW acute criterion	Proposed SW acute criterion	Proposed FW chronic criterion	Proposed SW chronic criterion
Aniline	No	14 µg/L	77 µg/L	6.7 µg/L	37 µg/L
2,4-dimethylphenol	Yes	1,300 µg/L	270 µg/L	530 µg/L	110 µg/L

Request for Comments

EPA is soliciting comments on the proposed criteria documents. If issued in final form, the proposed documents would supersede material specific to the aquatic life toxicity of these chemicals as published in any previous ambient water quality criteria documents. Specifically, Acute and Chronic Criteria for the protection of aquatic life within proposed "Ambient Aquatic Life Water Quality Criteria for 2,4-Dimethylphenol" would, upon finalization, supersede guidance given in the previous Ambient Water Quality Criteria for 2,4-dimethylphenol (U.S. EPA, 1980). The proposed criteria were derived using improved procedures and additional information.

The Agency is soliciting additional toxicological data on the pollutants covered by today's notice. Data suitable (as specified in the Agency's guidelines for developing aquatic life criteria) for determining the bioconcentration of Aniline in freshwater (FW) or saltwater (SW) organisms is of particular interest. The Agency is also soliciting comments on the scientific basis for the criteria values, the appropriate analytical techniques for measuring attainment of criteria, and the allowable duration and frequency for exceeding the criteria. The proposed criteria announced today, if published in final form, would serve as guidance to the States in developing water quality standards pursuant to 40 CFR part 131.

Dated: November 11, 1993.

Robert Perciasepe,

Assistant Administrator for Water.

[FR Doc. 93–28738 Filed 11–22–93; 8:45 am]

BILLING CODE 6560–50–M

EXPORT-IMPORT BANK

Advisory Committee; Meeting

SUMMARY: The Advisory Committee was established by Public Law 98–181, November 30, 1983, to advise the Export-Import Bank on its programs and to provide comments for inclusion in the reports of the Export-Import Bank to the United States Congress.

TIME AND PLACE: Tuesday, December 7, 1993, from 9:30 a.m. to 12 noon. The meeting will be held at Eximbank in room 1143, 811 Vermont Avenue, NW., Washington, DC 20571.

AGENDA: The meeting agenda will include a discussion of the following topics: Advisory Committee Comments on Lundine/Key Linkages Report; Subcommittee Reports: Small Business, Banking, Insurance, Project Finance, CIS/Eastern Europe, Tied Aid; and other topics.

PUBLIC PARTICIPATION: The meeting will be open to public participation; and the last 10 minutes will be set aside for oral questions or comments. Members of the public may also file written statement(s) before or after the meeting. In order to permit the Export-Import Bank to arrange suitable accommodations, members of the public who plan to attend the meeting should notify Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893, not later than December 6, 1993. If any person wishes auxiliary aids (such as a sign language interpreter) or other special accommodations, please contact, prior to December 2, 1993, Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, Voice: (202) 566–8893 or TDD: (202) 535–3913.

FOR FURTHER INFORMATION CONTACT: For further information, contact Loretta Carrier, room 1112, 811 Vermont Avenue, NW., Washington, DC 20571, (202) 566–8893.

Helene H. Wall,

Vice President, Administrative & Management Services.

[FR Doc. 93–28723 Filed 11–22–93; 8:45 am]

BILLING CODE 6690–01–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1995]

Application for Review of Action in Rulemaking Proceeding

November 10, 1993.

Application for review has been filed in the Commission rulemaking proceeding listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of this document is available for viewing and copying in room 239, 1919 M Street, NW., Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc., (202) 857–3800. Opposition to

this petition must be filed December 8, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Amendment of § 73.202(b) FM Table of Allotments FM Broadcast Stations (Kingsville and Ingleside, Texas) (MM Docket No. 88–257).

Application for Review

Number of Petitions Filed: 1.

Federal Communications Commission

William F. Caton,

Acting Secretary.

[FR Doc. 93–28644 Filed 11–22–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

[Petition No. P95–93]

Petition for Temporary Exemption From Electronic Tariff Filing Requirements; Petition of Yangming Marine Transport Corporation; Filing of Petition

Notice is hereby given of the filing of a petition by Yangaming Marine Transport Corporation pursuant to 46 CFR 514.8(a), for temporary exemption from the November 22, 1993, electronic service contract tariff filing requirements of the Commission's ATFI System.

To facilitate thorough consideration of the petition, interested persons are requested to reply to the petition no later than November 26, 1993. Replies shall be directed to the Secretary, Federal Maritime Commission, Washington, DC 20573–0001, shall consist of an original and 15 copies, and shall be served on Counsel for petitioner, Paul M. Keane, Esq., Cichanowicz, Callan & Keane, 21 West Street, New York, New York 10006–2908.

Copies of the petition are available for examination at the Washington, DC office of the Secretary of the Commission, 800 North Capitol Street, NW., room 1046.

Joseph C. Polking,

Secretary.

[FR Doc. 93–28638 Filed 11–22–93; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

BB&T Financial Corporation, et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1993.

A. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. BB&T Financial Corporation, Wilson, North Carolina; to acquire 100 percent of the voting shares of Asheville Savings Bank, SSB, Asheville, North Carolina.

B. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Sun Financial Corporation, Earth City, Missouri; to acquire at least 84.45 percent of the voting shares of Farmers State Bank of Risco, Risco, Missouri.

C. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Elmore Bancshares, Inc., Elmore, Minnesota; to acquire at least 83.2 percent of the voting shares of Farmers State Bank of Delavan, Delavan, Minnesota.

D. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Community Banks of Kansas, Inc., Prairie Village, Kansas; to become a bank holding company by acquiring 100 percent of the voting shares of First Kansas Holding Company, Junction City, Kansas, and thereby indirectly acquire First State Bank, Junction City, Kansas, and to acquire 99.18 percent of the voting shares of Chapman Bancshares, Inc., Prairie Village, Kansas, and thereby indirectly acquire Community Bank, Chapman, Kansas.

2. Lindoe, Inc., Ordway, Colorado; to acquire 100 percent of the voting shares of Pueblo Bancorporation, Inc., Pueblo, Colorado, and thereby indirectly acquire Pueblo Bank & Trust Company, Pueblo, Colorado.

3. Southwest Kansas Bancshares, Inc., Girard, Kansas; to become a bank holding company by acquiring 99 percent of the voting shares of Prescott State Bank Holding Company, Prescott, Kansas, and thereby indirectly acquire Prescott State Bank, Prescott, Kansas.

Board of Governors of the Federal Reserve System, November 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28687 Filed 11-22-93; 8:45 am]

BILLING CODE 6210-01-F

Dauphin Deposit Corporation, et al.; Notice of Applications to Engage de novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the

evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 13, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. Dauphin Deposit Corporation, Harrisburg, Pennsylvania; to engage *de novo* through its subsidiary, Farmers Maryland, Inc., Owings Mills, Maryland, in soliciting loans pursuant to § 225.25(b)(1) of the Board's Regulation Y.

B. Federal Reserve Bank of Richmond (Lloyd W. Bostian, Jr., Senior Vice President) 701 East Byrd Street, Richmond, Virginia 23261:

1. City Holding Company, Charleston, West Virginia; to engage *de novo* through its subsidiary, City Mortgage Corporation, McKee's Rocks, Pennsylvania, in making, acquiring, or servicing loans or other extensions of credit (including issuing letters of credit and accepting drafts) for Company's account and the account of others; performing real estate appraisals; performing loan settlement services; and offering, as agent or broker, insurance (including home mortgage redemption insurance) that is (i) directly related to extensions of credit by Company or its affiliates and (ii) limited to assuring the repayment of the outstanding balance due on such extension of credit in the event of the death, disability or involuntary unemployment of the debtor pursuant to §§ 225.25(b)(1)(ii), (b)(8), and (b)(13) of the Board's Regulation Y.

C. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. SunTrust Banks, Inc., Atlanta, Georgia; to engage *de novo* through its subsidiary, SunTrust Securities, Inc., Atlanta, Georgia, in providing financial advice, arranging commercial real estate equity financing and providing securities brokerage services pursuant to §§ 225.25(b)(4)(iii), (iv), (v), and (vi), (b)(14) and (b)(15)(ii) of the Board's Regulation Y.

D. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Midwest Bancorp, Inc., Naperville, Illinois; to engage *de novo* through its subsidiary, First Midwest Mortgage, Inc., Joliet, Illinois, in making, acquiring, selling and servicing residential mortgage loans pursuant to § 225.25(b)(1) of the Board's Regulation Y, and to acquire certain assets of the mortgage operations of its subsidiary banks including the mortgage servicing rights and the mortgage loans held for sale.

2. Weldon Bancshares, Inc., Weldon, Illinois; to engage *de novo* through its subsidiary, Weldon Insurance Service, Weldon, Illinois, in general insurance agency activities in a town with a population of less than 5,000 pursuant to § 225.25(b)(8)(iii) of the Board's Regulation Y. These activities will be conducted in Weldon, Illinois.

Board of Governors of the Federal Reserve System, November 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28693 Filed 11-22-93; 8:45 am]

BILLING CODE 6210-01-F

Hawkeye Bancorporation, et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 17, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Hawkeye Bancorporation, Des Moines, Iowa; to acquire Centre Pointe Leasing Co., Inc., West Des Moines, Iowa, and thereby engage in nonoperating leasing activities pursuant to § 225.25(b)(5) of the Board's Regulation Y.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Pinnacle Bancorp, Inc., Central City, Nebraska, through its proposed subisdiary, Pinnacle Investment Company, Windsor, Colorado; to enter into a joint venture with Gilbert Marshall and Company, Greeley, Colorado, by acquiring 81 percent of Pinnacle Financial Services, Windsor, Colorado, and thereby engage in providing full service brokerage services pursuant to § 225.25(b)(15) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28690 Filed 11-22-93; 8.45 am]

BILLING CODE 6210-01-F

The Sumitomo Bank, Limited, Osaka, Japan; Application to Engage in Nonbanking Activities

The Sumitomo Bank, Limited, Osaka, Japan (Applicant), has applied pursuant to section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) (BHC Act) and § 225.23(a)(3) of the Board's Regulation Y (12 CFR 225.23(a)(3)) to engage *de novo* through its subsidiary, Sumitomo Bank Capital Markets, Inc. (Company), in providing by any means general information and statistical forecasting with respect to foreign exchange markets; advisory services designed to assist customers in monitoring, evaluating, and managing their foreign exchange exposures; and transactional services with respect to foreign exchange by arranging for swaps among customers with complementary foreign exchange transactions.

Section 4(c)(8) of the BHC Act provides that a bank holding company may, with Board approval, engage in any activity which the Board, after due notice and opportunity for hearing, has determined (by order or regulation) to be so closely related to banking or managing or controlling banks as to be a proper incident thereto. This statutory test requires that two separate tests be met for an activity to be permissible for a bank holding company. First, the Board must determine that the activity is, as a general matter, closely related to banking. Second, the Board must find in a particular case that the performance of the activity by the applicant bank holding company may reasonably be expected to produce public benefits that outweigh possible adverse effects.

A particular activity may be found to meet the "closely related to banking" test if it is demonstrated that banks have generally provided the proposed activity; that banks generally provide services that are operationally or functionally similar to the proposed activity so as to equip them particularly well to provide the proposed activity; or that banks generally provide services that are so integrally related to the proposed activity as to require their provision in a specialized form. *National Courier Ass'n v. Board of Governors*, 516 F.2d 1229, 1237 (DC Cir. 1975). In addition, the Board may consider any other basis that may demonstrate that the activity has a reasonable or close relationship to banking or managing or controlling banks. Board Statement Regarding Regulation Y, 49 FR 806 (1984).

The Board previously has determined that the proposed foreign exchange advisory and transactional services are closely related to banking within the meaning of section 4(c)(8) of the BHC Act when conducted subject to certain specified conditions and limitations. *See* 12 CFR 225.25(b)(17). One of those conditions is that the company engaged in the foreign exchange activities does not take positions in foreign exchange for its own account; another of those conditions is that the company does not itself execute foreign exchange transactions. *See* 12 CFR 225.25(b)(17)(i), (iii).

Company engages in currency swap and swap-related transactions, and, in connection with such swap transactions, takes positions in foreign currency and executes foreign currency transactions. *See The Sumitomo Bank, Limited*, 75 Federal Reserve Bulletin 582 (1989). These activities would preclude Sumitomo from conducting the proposed foreign exchange activities strictly in accordance with the conditions and limitations specified in § 225.25(b)(17). To address the concerns raised by the conduct of Sumitomo's existing currency swap activities concurrently with the proposed foreign exchange activities, Sumitomo proposes to disclose to customers transactions in which Company may have an interest, and to offer its currency advisory and transactional services only to sophisticated customers who would be unlikely to place undue reliance on investment advice received and would be better able to detect investment advice motivated by self-interest. Applicant believes that these limitations adequately address any possible concerns that might arise when a bank holding company provides foreign exchange advisory and transactional services while concurrently taking positions and executing transactions in foreign currencies.

In order to satisfy the proper incident to banking test, section 4(c)(8) of the BHC Act requires the Board to find that the performance of the activities by Company can reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interest, or unsound banking practices. Applicant believes that the proposed activities will benefit the public by promoting competition. Applicant believes that the proposed activities will not result in any unsound banking practices or other adverse effects.

In publishing the proposal for comment, the Board does not take a position on issues raised by the proposal. Notice of the proposal is published solely in order to seek the views of interested persons on the issues presented by the application and does not represent a determination by the Board that the proposal meets, or is likely to meet, the standards of the BHC Act.

Any comments or requests for hearing should be submitted in writing and received by William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, Washington, D.C. 20551, not later than December 15, 1993. Any request for a hearing on this application must, as required by § 262.3(e) of the Board's Rules of Procedure (12 CFR 262.3(e)), be accompanied by a statement of the reasons why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

This application may be inspected at the offices of the Board of Governors or the Federal Reserve Bank of San Francisco.

Board of Governors of the Federal Reserve System, November 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28689 Filed 11-22-93; 8:45 am]

BILLING CODE 6210-01-F

G.E. Wortman, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 13, 1993.

A. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. G.E. Wortman, Loup City, Nebraska; to acquire an additional 11.51 percent of the voting shares of Sherman County Management, Inc., Loup City, Nebraska, for a total of 23.85 percent, and thereby indirectly acquire Sherman County Bank, Loup City, Nebraska.

B. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Albert Furman, Glenview, Illinois, to acquire 45.4 percent; Robert Cook, Union Grove, Wisconsin, to acquire 7.6 percent; Robert Durham, Austin, Texas, to acquire 7.6 percent; Howard Marvin, Palm Desert, California, to acquire 7.6 percent; and Robert Wunsch, Austin, Texas, to acquire 7.6 percent of the voting shares of Hutto State Bank, Hutto, Texas.

Board of Governors of the Federal Reserve System, November 17, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc:. 93-28688 Filed 11-22-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Idaho National Engineering Laboratory Environmental Dose Reconstruction Project: Public Meeting

The National Center for Environmental Health (NCEH), Centers for Disease Control and Prevention (CDC), announces the following meeting.

Name: Initiation of Sanford Cohen and Associates' Working Group for the Idaho Engineering Laboratory Environmental Dose Reconstruction Project.

Time and Date: 6:30 p.m.–9 p.m., Monday, December 13, 1993.

Place: Red Lion-Riverside, 2900 Chinden Boulevard, Boise, Idaho 83714.

Status: Open to the public for observation and comment, limited only by space available. The meeting room will accommodate approximately 100 people.

Purpose: Under a Memorandum of Understanding with the Department of Energy (DOE), the Department of Health and Human Services has been given the responsibility and resources for conducting analytic epidemiologic investigations of residents of communities in the vicinity of DOE facilities and other persons potentially exposed to radiation or to potential hazards from non-nculear energy production and use.

An initial step in an analytic epidemiologic study for persons living offsite of a given DOE facility is the reconstruction of radiation doses due to releases from that facility. CDC has begun such an environmental dose reconstruction for DOE's Idaho National Engineering Laboratory near Idaho Falls, Idaho. Sanford Cohen & Associates (SC&A) is gathering the data necessary to perform the dose reconstruction under contract to CDC. SC&A is forming a working group made up of Idaho citizens. The working group's primary purpose will be to follow the project's progress and provide input in SC&A's planning process. The purpose of this public meeting is to:

(1) Initiate the working group for SC&A;

(2) Provide the public an opportunity to review actual records that have been entered into the database;

(3) Discuss topics of future meetings; and

(4) Solicit any additional comments from the public regarding the Environmental Dose Reconstruction Project.

Agenda items are subject to change as priorities dictate.

Contact person for More Information: Leeann S. Denham, Radiation Studies Branch, Division of Environmental Hazards and Health Effects, NCEH, CDC, 4770 Buford Highway NE., (F-35), Atlanta, Georgia, 30341-3724, telephone 404/488-7040.

Dated: November 16, 1993.

Elvin Hilyer,

Associate Director for policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-28682 Filed 11-22-93; 8:45 am]

BILLING CODE 4160-18-M

Workshop on a Strategy for Power Hand Tool Ergonomics Research—Design, Selection, Installation, and Use Within the Automotive Industry: Meeting

The National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following meeting.

Name: Workshop on a Strategy for Power Hand Tool Ergonomics Research—Design, Selection, Installation, and Use Within the Automotive Industry.

Times and Dates: 9:15 a.m.–3 p.m., January 13, 1994. 9 a.m.–12 noon, January 14, 1994.

Place: Alice Hamilton Laboratory, Conference Room C, NIOSH, CDC, 5555 Ridge Avenue, Cincinnati, Ohio 45226.

Status: Open to the public, limited only by the space available.

Purpose: The purpose of this meeting is to identify the power hand tools utilized in the automotive manufacturing industry, problems associated with power hand tool usage, and the existing research in the area of adverse biomechanical and physiological effects from power hand tools. Using this information to determine research gaps, discussions of strategies for filling specific gaps will be conducted. Three areas for discussion will be emphasized at the Workshop—Surveillance/Epidemiology, Problem Source Identification, and Engineering Controls and Design/ Manufacturing. Viewpoints and suggestions from industry, labor, academia, other government agencies, and the public are invited.

Contact Person for Additional Information: Steve Smith, NIOSH, CDC, 4676 Columbia Parkway, Mailstop R5, Cincinnati, Ohio 45226, telephone 513/841–4385.

Dated: November 16, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–28681 Filed 11–22–93; 8:45 am]

BILLING CODE 4160–18–M

Health Resources and Services Administration

National Vaccine Injury Compensation Program; List of Petitions Received

AGENCY: Public Health Service, HHS.

ACTION: Notice.

SUMMARY: The Public Health Service (PHS) is publishing this notice of petitions received under the National Vaccine Injury Compensation Program ("the Program"), as required by section 2112(b)(2) of the PHS Act, as amended. While the Secretary of Health and Human Services is named as the respondent in all proceedings brought by the filing of petitions for compensation under the Program, the United States Court of Federal Claims is charged by statute with responsibility for considering and acting upon the petitions.

FOR FURTHER INFORMATION CONTACT: For information about requirements for filing petitions, and the Program generally, contact the Clerk, United States Court of Federal Claims, 717 Madison Place NW., Washington, DC. 20005, (202) 219–9657. For information on the Public Health Service's role in the Program, contact the Administrator, Vaccine Injury Compensation Program, 6001 Montrose Road, room 702, Rockville, MD 20852, (301) 443–6593.

SUPPLEMENTARY INFORMATION: The Program provides a system of no-fault compensation for certain individuals who have been injured by specified childhood vaccines. Subtitle 2 of title XXI of the PHS Act, 42 U.S.C. 300aa-10 *et seq*, provides that those seeking compensation are to file a petition with the U.S. Court of Federal Claims and to serve a copy of the petition on the Secretary of Health and Human Services, who is named as the respondent in each proceeding. The Secretary has delegated his responsibility under the Program to PHS. The Court is directed by statute to appoint special masters who take evidence, conduct hearings as appropriate, and make initial decisions as to eligibility for, and amount of, compensation.

A petition may be filed with respect to injuries, disabilities, illnesses, conditions, and deaths resulting from vaccines described in the Vaccine Injury Table set forth at section 2114 of the PHS Act. This Table lists for each covered childhood vaccine the conditions which will lead to compensation and, for each condition, the time period for occurrence of the first symptom or manifestation of onset or of significant aggravation after vaccine administration. Compensation may also be awarded for conditions not listed in the Table and for conditions that are manifested after the time periods specified in the Table, but only if the petitioner shows that the

condition was caused by one of the listed vaccines.

Section 2112(b)(2) of the PHS Act, 42 U.S.C. 300aa-12(b)(2), requires that the Secretary publish in the **Federal Register** a notice of each petition filed. Set forth below is a partial list of petitions received by PHS on October 1, 1990.

Section 2112(b)(2) also provides that the special master "shall afford all interested persons an opportunity to submit relevant, written information" relating to the following:

1. The existence of evidence "that there is not a preponderance of the evidence that the illness, disability, injury, condition, or death described in the petition is due to factors unrelated to the administration of the vaccine described in the petition," and

2. Any allegation in a petition that the petitioner either:

(a) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition not set forth in the Vaccine Injury Table (see section 2114 of the PHS Act) but which was caused by" one of the vaccines referred to in the table, or

(b) "Sustained, or had significantly aggravated, any illness, disability, injury, or condition set forth in the Vaccine Injury Table the first sympton or manifestation of the onset or significant aggravation of which did not occur within the time period set forth in the Table but which was caused by a vaccine" referred to in the Table.

This notice will also serve as the special master's invitation to all interested persons to submit written information relevant to the issues described above in the case of the petitions listed below. Any person choosing to do so should file an original and three (3) copies of the information with the Clerk of the U.S. Court of Federal Claims at the address listed above (under the heading "For Further Information Contact"), with a copy to PHS addressed to Director, Bureau of Health Professions, 5600 Fishers Lane, room 8–05, Rockville, MD 20857. The Court's caption (*Petitioner's Name* v. *Secretary of Health and Human Services*) and the docket number assigned to the petition should be used as the caption for the written submission.

Chapter 35 of title 44, United States Code, related to paperwork reduction, does not apply to information required for purposes of carrying out the Program.

List of Petitions

1. Tyne Gonzales on behalf of Brian Gonzales, El Paso, Texas, Claims Court Number 90–3626 V
2. Vickie Leonard, Baton Rouge, Louisiana, Claims Court Number 90–3627 V
3. Helena Howard, Elaine, Arkansas, Claims Court Number 90–3628 V
4. Patrick Tynan, Shreveport, Louisiana, Claims Court Number 90–3629 V
5. Eva Mitchell on behalf of Janice Majewski, Paola, Kansas, Claims Court Number 90–3630 V
6. James K. and Susan Lautenbacher on behalf of James H. Lautenbacher, Orange, New Jersey, Claims Court Number 90–3631 V
7. Joseph and Cynthia Lamb on behalf of Stephanie Lamb, Fort Lauderdale, Florida, Claims Court Number 90–3633 V
8. Robert and Linda Rowe, Jr., on behalf of Daniel Rowe, Sewickley, Pennsylvania, Claims Court Number 90–3634 V
9. Janice Baresel on behalf of James Baresel, Bayport, New York, Claims Court Number 90–3635 V
10. William Shamrell on behalf of Bernadette Shamrell, Deceased, San Gabriel, California, Claims Court Number 90–3636 V
11. Lillie Nusz on behalf of Robert and Stanley Nusz, Enid, Oklahoma, Claims Court Number 90–3637 V
12. Linda Young, Mt. Pleasant, Iowa, Claims Court Number 90–3638 V
13. Brenda Klein on behalf of Sharon Giardina and Karen Klein, Greer, South Carolina, Claims Court Number 90–3639 V
14. Martin Fields on behalf of Martin Fields, Jr., Deceased, Norfolk, Virginia, Claims Court Number 90–3640 V
15. Lorraine Halgas, Waltham, Massachusetts, Claims Court Number 90–3641 V
16. David and Diana Martin on behalf of Kyle Martin, Oklahoma City, Oklahoma, Claims Court Number 90–3643 V
17. Carol Burley on behalf of Michael Burley, Barberton, Ohio, Claims Court Number 90–3644 V
18. Carol Burley on behalf of Matthew Burley, Barberton, Ohio, Claims Court Number 90–3645 V
19. Elizabeth Senn on behalf of Mandy Senn, Portland, Oregon, Claims Court Number 90–3646 V
20. Raphael and Renee Adam on behalf of Romanos Anooya, Deceased, Chicago, Illinois, Claims Court Number 90–3647 V
21. Emma Mitchell on behalf of Edward Lee Mitchell, Austin, Texas, Claims Court Number 90–3648 V
22. Andrea Topelian on behalf of Brian Condon, Allen Park, Michigan, Claims Court Number 90–3649 V
23. Theresa MacCloskey on behalf of Kerry MacCloskey, Aurora, Colorado, Claims Court Number 90–3650 V
24. Willie Iyamu on behalf of Osazee Iyamu, Boston, Massachusetts, Claims Court Number 90–3651 V
25. Elizabeth Messer on behalf of Joshua Messer, Riverside, California, Claims Court Number 90–3652 V
26. Elizabeth Messer on behalf of Jared Messer, Riverside, California, Claims Court Number 90–3653 V
27. Michael MacNabb on behalf of Kelly MacNabb, Minneapolis, Minnesota, Claims Court Number 90–3654 V
28. Debra Pugh on behalf of Clayton Pugh, Deceased, Phoenix, Arizona, Claims Court Numbeer 90–3655
29. Barbara Crotty on behalf of Deborah Crotty, Orchard Park, New York, Claims Court Number 90–3656 V
30. Debra Evans on behalf of Christopher Evans, Deceased, Sioux City, Iowa, Claims Court Number 90–3657 V
31. Linda Louthian on behalf of Anthony Louthian, Hudson, Florida, Claims Court Number 90–3658 V
32. Mary Carter on behalf of Steven Carter, Alderson, West Virginia, Claims Court Number 90–3659 V
33. Nancy Rhyne, Weir, Mississippi, Claims Court Number 90–3660 V
34. Brenda Peloso on behalf of Robert Henry, Deceased, Cairo, Georgia, Claims Court Number 90–3661 V
35. Adele Bonvie on behalf of Michael Bonvie, Plainville, Massachusetts, Claims Court Number 90–3662 V
37. Dennis Gunter on behalf of Ashley and Justin Gunter, Fort Smith, Arkansas, Claims Court Number 90–3663 V
38. Yvette Ferguson on behalf of Milton Smith, Jr., Cleveland, Ohio, Claims Court Number 90–3665 V
39. Charles Troop on behalf of Charlotte Troop, Deceased, Boise, Idaho, Claims Court Number 90–3666 V
40. Robert Tichy on behalf of Jonathan Tichy, Louisville, Kentucky, Claims Court Number 90–3667 V
41. Donald Townsend on behalf of Jessica Townsend, Flint, Michigan, Claims Court Number 90–3668 V
42. Gary Wilson, Itasca, Texas, Claims Court Number 90–3669 V
43. Raul Ramirez on behalf of Raul Ramirez, Jr., New Orleans, Louisiana, Claims Court Number 90–3670 V
44. Kenneth Rhea, Spearman, Texas, Claims Court Number 90–3671 V
45. Russell Rhodes on behalf of Lisa Rhodes, Elizabeth, Indiana, Claims Court Number 90–3672 V

46. Ceilia Bumanglag on behalf of Amy Bumanglag, Palmer, Alaska, Claims Court Number 90–3673 V
47. Katherine Burns and Steven Pfeiffer on behalf of Stephanie Pfeiffer, Philadelphia, Pennsylvania, Claims Court Number 90–3674 V
48. Kathleen Mozzayanpour on behalf of Shirin Mozzayanpour, Miami, Florida, Claims Court Number 90–3675 V
49. John and Laurene Nelson on behalf of John K. Nelson, Jr., Narragansett, Rhode Island, Claims Court Number 90–3676 V
50. Maureen Schaeffer on behalf of Nora Schaeffer, Batavia, New York, Claims Court Number 90–3677 V
51. Joseph Lewis on behalf of Kelly Lewis, Williamsville, New York, Claims Court Number 90–3678 V
52. Michael Bapst on behalf of Melissa Bapst, Buffalo, New York, Claims Court Number 90–3679 V
53. Carla Stafford on behalf of Jonathan Stafford, Sandy Hook, Mississippi, Claims Court Number 90–3680 V
54. Steven and Linda Morey on behalf of Timothy Morey, Erie, Pennsylvania, Claims Court Number 90–3681 V
55. John Sykes, Houston, Texas, Claims Court Number 90–3682 V
56. Margaret McFarland on behalf of Jeffrey McFarland, Minden, Louisiana, Claims Court Number 90–3683 V
57. Helena Wray on behalf of Clinton Wray, Goleta, California, Claims Court Number 90–3684 V
58. James Young on behalf of Amber Young, Baldwinsville, New York, Claims Court Number 90–3685 V
59. Mickey Weiser on behalf of Brock Weiser, Hoxie, Kansas, Claims Court Number 90–3686 V
60. Judy Sabri on behalf of Hesham Sabri, Cairo, Egypt, Claims Court Number 90–3687 V
61. Daniel and Jennifer McNally on behalf of Will McNally, Indianapolis, Indiana, Claims Court Number 90–3688 V
62. Michael Walker on behalf of Randy Walker, Odessa, Texas, Claims Court Number 90–3689 V
63. Dorothy Turney on behalf of William Turney, Jr., Edwardsville, Illinois, Claims Court Number 90–3690 V
64. Richard Hammaker on behalf of Adam Hammaker, Miami, Florida, Claims Court Number 90–3691 V
65. Gwendolyn Lewis on behalf of Carla Holmes, Albany, New York, Claims Court Number 90–3692 V
66. Christopher Evans on behalf of Frank Evans, Essex Junction, Vermont, Claims Court Number 90–3693 V
67. Richard and Judith Gleason on behalf of Sharon Gleason, Levittown, New York, Claims Court Number 90–3694 V
68. Sally Lavoie on behalf of O'Neil Lavoie, Lewiston, Maine, Claims Court Number 90–3695 V
69. Dan Goodwin on behalf of Hillary Goodwin, Deceased, Corpus Christi, Texas, Claims Court Number 90–3696 V
70. Jennifer Keith on behalf of Pamela Keith, Jackson, Mississippi, Claims Court Number 90–3697 V
71. Deloris Prewitt on behalf of Tanya Prewitt, Denver, Colorado, Claims Court Number 90–3698 V
72. Ron Kiersey on behalf of Bret Kiersey, Modesto, California, Claims Court Number 90–3699 V
73. Deborah Holzhey, Santa Rosa, California, Claims Court Number 90–3700 V
74. Cheryl Xystros, Sibley, Illinois, Claims Court Number 90–3701 V
75. Robert Cervenka on behalf of Christopher Cervenka, Chicago, Illinois, Claims Court Number 90–3702 V
76. Donald Bastian, Middleburg, Ohio, Claims Court Number 90–3703 V
77. Ralph Becker on behalf of Wesley Becker, Fort Smith, Arkansas, Claims Court Number 90–3704 V
78. Harold Berger on behalf of Sara Berger, Brooklyn, New York, Claims Court Number 90–3705 V
79. Alicia Clover, Trufant, Michigan, Claims Court Number 90–3706 V
80. Susan Collins on behalf of Betsy Collins, Dallas, Texas, Claims Court Number 90–3707 V
81. Myron Carterman on behalf of Diana Carterman, Kent, Washington, Claims Court Number 90–3708 V
82. Barbara Fuller on behalf of Sara Fuller, Kissimmee, Florida, Claims Court Number 90–3709 V
83. Kaye Caroll, Lampasas, Texas, Claims Court Number 90–3710 V
84. Gregory Caudill, Barberton, Ohio, Claims Court Number 90–3711 V
85. Edward Carrico on behalf of Shane Carrico, Deceased, Nutter Fort Stonewood, West Virginia, Claims Court Number 90–3712 V
86. Gary Cahill on behalf of Donald Cahill, Deceased, Mooresville, Indiana, Claims Court Number 90–3713 V
87. Robert Jackson on behalf of Arnel Jackson, Houston, Texas, Claims Court Number 90–3714 V
88. Marguerite Ward on behalf of Christopher Jones, Merrillville, Indiana, Claims Court Number 90–3715 V
89. Kelley Jackson on behalf of Arthur Jackson, Brownwood, Texas, Claims Court Number 90–3716 V
90. Joseph Jenkins on behalf of Charles Jenkins, Jacksonville, North Carolina, Claims Court Number 90–3717 V
91. Tommie Jordon on behalf of Alton Jordon, Metairie, Louisiana, Claims Court Number 90–3718 V
92. Blake Breedveld on behalf of Christopher Medina, Chicago, Illinois, Claims Court Number 90–3719 V
93. Eric Bergerson, Silver Spring, Maryland, Claims Court Number 90–3720 V
94. Carolyn Barnes on behalf of Nicholas Barnes, Soldotna, Alaska, Claims Court Number 90–3721 V
95. Michael Alder, Watseka, Illinois, Claims Court Number 90–3722 V
96. Vanessa Anthony on behalf of Jarreau Anthony, Ft. Riley, Kansas, Claims Court Number 90–3723 V
97. Betty Alexander on behalf of Janet Alexander, Meridian, Mississippi, Claims Court Number 90–3724 V
98. Charles Pedersen on behalf of John Pedersen, Portland, Oregon, Claims Court Number 90–3725 V
99. Rick Middleton on behalf of Clinton Middleton, Springfield, Oregon, Claims Court Number 90–3726 V
100. Norman Van Leuven on behalf of Jennifer Van Leuven, Deceased, Prineville, Oregon, Claims Court Number 90–3727 V
101. David and Cindy Smith on behalf of Stephanie Smith, Deceased, Portland, Oregon, Claims Court Number 90–3728 V
102. John Doyle on behalf of Mary Doyle, Bronx, New York, Claims Court Number 90–3729 V
103. Tamara Hampton on behalf of Robbie Lee Hampton, Patrick AFB, Florida, Claims Court Number 90–3730 V
104. Evelyn Holmes on behalf of Susan Rawlings, Philadelphia, Pennsylvania, Claims Court Number 90–3731 V
105. Susan Kelly, Saginaw, Michigan, Claims Court Number 90–3732 V
106. Billy Henson, Jr., Weir, Mississippi, Claims Court Number 90–3733 V
107. Carol McLeod on behalf of Darin McLeod, Portland, Oregon, Claims Court Number 90–3734 V
108. Christopher Zwart, Dell Rapids, South Dakota, Claims Court Number 90–3735 V
109. Belinda Sons on behalf of Jared Sons, Salem, Indiana, Claims Court Number 90–3736
110. Sandra Erb on behalf of Kerry Erb, Honeoye Falls, New York, Claims Court Number 90–3737 V
111. Ronald Venard on behalf of Tyson Venard, Longview, Washington, Claims Court Number 90–3738 V
112. Naomi Kasten on behalf of Shira Kasten, Oceanside, New York, Claims Court Number 90–3739 V

113. Dianna Anderson on behalf of Erika Anderson, Deceased, Moline, Illinois, Claims Court Number 90–3741 V
114. Donna Anderson on behalf of Darla Anderson, Watertown, South Dakota, Claims Court Number 90–3742 V
115. Lynne Schone on behalf of Amanda Schone, Biloxi, Mississippi, Claims Court Number 90–3743 V
116. Thomas J. Delaune on behalf of Thomas R. Delaune, Metairie, Louisiana, Claims Court Number 90–3744 V
117. Christopher Frontera, Detroit, Michigan, Claims Court Number 90–3745 V
118. Fred Fulton on behalf of Laura Fulton, Dallas, Texas, Claims Court Number 90–3746 V
119. Lenna Dee Kyle, Red Bluff, California, Claims Court Number 90–3747 V
120. Coche and Evelyn Gilbert on behalf of Peter Gilbert, Cleveland, Mississippi, Claims Court Number 90–3748 V
121. Coche Gilbert, Hattiesburg, Mississippi, Claims Court Number 90–3749 V
122. Fredrick Kamienny on behalf of Howard Kamienny, Deceased, Southfield, Michigan, Claims Court Number 90–3750 V
123. Beth Turpin on behalf of Andrew Turpin, Deceased, Greenfield, Indiana, Claims Court Number 90–3751 V
124. Carol Freeman, Richland, Washington, Claims Court Number 90–3752 V
125. Thomas Graham on behalf of Wesley Graham, St. Louis, Missouri, Claims Court Number 90–3753 V
126. Enedelia Mendez on behalf of Santos Mendez, Crescent City, Florida, Claims Court Number 90–3754 V
127. Lucille Tabor on behalf of Joel Tabor, Deceased, Princeton, West Virginia, Claims Court Number 90–3755 V
128. Ruben Lapitan on behalf of Melanie Lapitan, Honolulu, Hawaii, Claims Court Number 90–3756 V
129. Norris Jenkins on behalf of Burwell Jenkins, Deceased, Philadelphia, Pennsylvania, Claims Court Number 90–3757 V
130. Heidi Starr on behalf of Jessica Sterling, Canoga Park, California, Claims Court Numbers 90–3758 V
131. Diane VanDusen, Gibsonton, Florida, Claims Court Number 90–3759 V
132. Benjamin Allgyer on behalf of J. Michael Allgyer, Gordonville, Pennsylvania, Claims Court Number 90–3760 V
133. Bernice Ditchfield on behalf of Laureign Ditchfield, Deceased, Portsmouth, Virginia, Claims Court Number 90–3761 V
134. Paul Ritzer, Walpole, Massachusetts, Claims Court Number 90–3762 V
135. Wanda Justice on behalf of Sunny Justice, Las Vegas, Nevada, Claims Court Number 90–3763 V
136. David Silvius, Yarmouth, Maine, Claims Court Number 90–3764 V
137. Linda Roth on behalf of David Roth, Mount Lebanon, Pennsylvania, Claims Court Number 90–3765 V
138. Jeffrey Moore on behalf of June Moore, Deceased, Midwest City, Oklahoma, Claims Court Number 90–3766 V
139. Walter Lynch on behalf of Jeffrey Lynch, Wayland, Michigan, Claims Court Number 90–3767 V
140. Gary and Sharon Neese on behalf of Crista Neese, Brazil, Indiana, Claims Court Number 90–3768 V
141. Jana Donald on behalf of Aubrey Donald, Waynesboro, Mississippi, Claims Court Number 90–3769 V
142. Manuel Alvarez on behalf of Manuel Vergne, Santurce, Puerto Rico, Claims Court Number 90–3770 V
143. Ryan Burns, Gardner, Massachusetts, Claims Court Number 90–3771 V
144. Christine Nesmith, Lincoln, Nebraska, Claims Court Number 90–3772 V
145. Corey Kirk on behalf of Charles Hulsey, Oklahoma City, Oklahoma, Claims Court Number 90–3774 V
146. Michael Collins, Detroit, Michigan, Claims Court Number 90–3775 V
147. Roy Howard, Jr., Oklahoma City, Oklahoma, Claims Court Number 90–3776 V
148. David Perret on behalf of Cynthia Perret, Deceased, New Orleans, Louisiana, Claims Court Number 90–3777 V
149. Bobby Joe Atkins, Rockmart, Georgia, Claims Court Number 90–3778 V
150. John Nicholson, New Orleans, Louisiana, Claims Court Number 90–3779 V
151. Ruby Hulet on behalf of Jon C. Hulet, Anoka, Minnesota, Claims Court Number 90–3780 V
152. Thomas Hull on behalf of Alison Hull, Wiesbaden, West Germany, Claims Court Number 90–3781 V
153. Joy McKenzie on behalf of Marlaina Lewin, New York, New York, Claims Court Number 90–3782 V
154. Julia Lamb on behalf of Seth Lamb, Fawn Grove, Pennsylvania, Claims Court Number 90–3783 V
155. LaWanda Scroggins, San Francisco, California, Claims Court Number 90–3784 V
156. Billy Hampton, Bland, Virginia, Claims Court Number 90–3785 V
157. Jeanette Woods on behalf of Lance Woods, Miami Beach, Florida, Claims Court Number 90–3786 V
158. Mary Golden on behalf of Inga Nickel, Sacramento, California, Claims Court Number 90–3787 V
159. David Trevino on behalf of Catherine Trevino, Robstown, Texas, Claims Court Number 90–3788 V
160. Betty Barrett on behalf of Tom Barrett, Augusta, Georgia, Claims Court Number 90–3790 V
161. Teresa Watson, Mc Rae, Georgia, Claims Court Number 90–3791 V
162. Terrence Benton on behalf of Brandon Benton, Staunton, Virginia, Claims Court Number 90–3792 V
163. Larry and Janette Pepper, Jr., on behalf of Amy Gibbs, Wheeling, West Virginia, Claims Court Number 90–3793 V
164. E.J. Hickman on behalf of Mary Hickman, Scott A F B, Illinois, Claims Court Number 90–3794 V
165. Linda LaRue on behalf of Daniel LaRue, Milwaukee, Wisconsin, Claims Court Number 90–3795 V
166. Sandra Jean Pollins, Charleston, South Carolina, Claims Court Number 90–3796 V
167. Edward Hart on behalf of Brian Hart, Reynoldsburg, Ohio, Claims Court Number 90–3797 V
168. Joseph McCoy on behalf of Ramon Villegas, San Benito, Texas, Claims Court Number 90–3798 V
169. Geraldine Correia on behalf of Cherie Correia, Daytona Beach, Florida, Claims Court Number 90–3799 V
170. Delores Williams on behalf of Teri Konchalski, San Francisco, California, Claims Court Number 90–3800 V
171. Tina Gomez on behalf of Veronica Gomez, Deceased, Pittsburg, California, Claims Court Number 90–3801 V
172. Catherine Dunning on behalf of Megan Dunning, Chino, California, Claims Court Number 90–3802 V
173. Steve Brunson, Gadsden, Alabama, Claims Court Number 90–3803 V
174. Roger Clay on behalf of Courtney Clay, Minneapolis, Minnesota, Claims Court Number 90–3804 V
175. Eleanor Diaz on behalf of Crystal Diaz, Tucson, Arizona, Claims Court Number 90–3805 V
176. Louise Harpley, Augusta, Georgia, Claims Court Number 90–3806 V
177. Benny Kelly on behalf of Erin Kelly, Dodge City, Kansas, Claims Court Number 90–3807 V
178. Annie Hobson on behalf of Calvin Hobson, Memphis, Tennessee, Claims Court Number 90–3808 V

179. Mylyndia Duncan, Drexel Hill, Pennsylvania, Claims Court Number 90–3809 V
180. Robert Whitley on behalf of Mark Whitley, Rogers, Arkansas, Claims Court Number 90–3810 V
181. Barbara Miller, Auburn, New York, Claims Court Number 90–3811 V
182. Diana Stark on behalf of Corey Stark, Deceased, Brattleboro, Vermont, Claims Court Number 90–3812 V
183. Marie Skrzypchak on behalf of Pamela Skrzypchak, Wausau, Wisconsin, Claims Court Number 90–3813 V
184. Gale Stanford, Birmingham, Alabama, Claims Court Number 90–3815 V
185. Monte Hancock, Salt Lake City, Utah, Claims Court Number 90–3817 V
186. Karen Harmon, Butler, Pennsylvania, Claims Court Number 90–3818 V
187. Virginia Mercer on behalf of Edwin Cusick Maeurer, Jersey City, New Jersey, Claims Court Number 90–3819 V
188. Leslie Martin on behalf of Peter Martin, New Orleans, Louisiana, Claims Court Number 90–3820 V
189. Woodrow Gerdon on behalf of Monroe Gerdon, Deceased, Corydon, Indiana, Claims Court Number 90–3821 V
190. Charles Rath, Chicago, Illinois, Claims Court Number 90–3822 V
191. James Cline on behalf of Jonathan Cline, Appleton, Wisconsin, Claims Court Number 90–3823 V
192. Michael Dewey on behalf of Jeremy Dewey, Deceased, San Jose, California, Claims Court Number 90–3824 V
193. Zoe Backman on behalf of Janyne Holtzman, Bellmore, New York, Claims Court Number 90–3825 V.

Dated: November 17, 1993.

William A. Robinson,

Acting Administrator

[FR Doc 93–28669 Filed 11–22–93; 8:45 am]

BILLING CODE 4160–15–P

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–671–674 (Preliminary)]

Silicomanganese From Brazil, the People's Republic of China, Ukraine, and Venezuela

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–671–674 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from Brazil, the People's Republic of China, Ukraine, and Venezuela of silicomanganese (ferrosilicon manganese), provided for in subheading 7202.30.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by December 27, 1993.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 12, 1993.

FOR FURTHER INFORMATION CONTACT: Janine Wedel (202–205–3178), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 9, 1993, by Elkem Metals Company, Pittsburgh, PA, and the Oil, Chemical and Atomic Workers, Local, Belpre, OH.

Participation in the investigations and public service list.

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 3, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Janine Wedel (202–205–3178) not later than November 30, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in sections 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 8, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of sections 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with sections 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and

a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to section 207.12 of the Commission's rules.

Issued: November 18, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-28754 Filed 11-22-93; 8:45 am]

BILLING CODE 7020-02-M

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 290 (Sub-No. 2)]

Railroad Cost Recovery Procedures

AGENCY: Interstate Commerce Commission.

ACTION: Final decision.

SUMMARY: The Commission declines to change the methodology for weighting the index used to calculate the quarterly rail cost adjustment factor. The weighting methodology currently in use will be continued.

EFFECTIVE DATE: December 22, 1993.

FOR FURTHER INFORMATION CONTACT: Thomas A. Schmitz, (202) 927-5720, or Robert C. Hasek, (202) 927-6239. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: The RCAF is a quarterly index that measures changes in railroad expenses. It is composed of various components that are weighted together and revised annually to insure proportional representation of each component in the RCAF index. The Association of American Railroads petitioned for a proposed change in the weighting methodology to accommodate special charges related to labor buyouts and depreciation charges. A coalition of shippers proposed an alternative methodology. The Commission concluded that the methodology currently in use is superior to any of the suggested proposals.

Additional information is contained in the Commission's decision. To purchase a copy of the full decision write to, or call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423, or telephone (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927-5721.]

Decided: November 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28725 Filed 11-22-93; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-399X]

Golden Cat Railroad Corporation—Abandonment Exemption—In Scott and Cape Girardeau Counties, MO

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903-04 The abandonment by The Golden Cat Railroad Corporation, of 10.3-miles of rail line extending between milepost 150.0, at or near Delta, and the end of The line at milepost 160.3, at or near Newman Spur, in Scott and Cape Girardeau Counties, MO.

DATES: The exemption will be effective on December 8, 1993, unless a formal expression of intent to file an offer of financial assistance is filed. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by December 3, 1993; petitions to stay must be filed by December 3 1993; requests for a public use condition must be filed by December 3, 1993; and petitions to reopen must be filed by December 13, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB-399X to: (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423; and (2) Petitioner's representative: Robert B. Hebert, 1800 INB Tower, One Indiana Square, Indianapolis, IN 46204.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder, (202) 927-5610. [TDD for hearing impaired: (202) 927-5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289-4357/4359. [Assistance for the hearing impaired is available through TDD services (202) 927-5721.]

Decided: November 17, 1993.

[1] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

By The Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28872 Filed 11-22-93; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32389]

LWR, Inc.—Acquisition and Operation Exemption—Lines of Consolidated Rail Corp.

LWR, Inc. (LWR), a noncarrier, has filed a notice of exemption to acquire from Consolidated Rail Corporation (Conrail) 5.5 miles of the following lines of railroad in Carroll, Stark, and Columbiana Counties, OH: (1) The Tuscarawas Industrial Track-LC 40-2427, from milepost O.O at point of connection to the Bayard siding in Bayard, to milepost 2.9 at the end of Conrail ownership, 175 feet west of Grant Street in Minerva, including the Conrail operating easement between mileposts 2.7 and 2.9; (2) the Piney Fork Industrial Track-LC 40-2446, from milepost 40.9 at the beginning of Conrail's ownership in Minerva, to milepost 43.5 at the end of Conrail's ownership in Minerva, including all track, facilities, and property comprising Minerva Yard; and (3) the "Horn Track," a short connecting track between the Tuscarawas Industrial Track and the Piney Fork Industrial Track, between Grant Street and Sandy Creek Bridge. LWR will enter into an agreement with Ohi-Rail Corp. to operate the line in a contract carrier capacity and not as a rail common carrier. The parties intended to consummate the transaction on or after October 31, 1993.[1]

Any comments must be filed with the Commission and served on: Richard R. Wilson, 2310 Grant Building, Pittsburgh, PA 15219.

This notice is filed under 49 CFR 1150.31. If the notice contains any false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 15, 1993.

[1] Under 49 CFR 1150.32(b), exemptions become effective 7 days after the exemption notice is filed. In this case, the notice of exemption was not filed until October 29, 1993, and thus the exemption was not effective until November 5, 1993. Petitioner's representative has confirmed that the correct consummation date is on or after November 5, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 93-28726 Filed 11-22-93; 8:45 am]

BILLING CODE 7035-01-P

[Docket No. AB-401X]

Oregon Pacific & Eastern Railway Co.—Abandonment Exemption—Lane County, OR

Oregon Pacific & Eastern Railway Company (OP&E) has filed a notice of exemption under 49 CFR Part 1152, Subpart F—Exempt Abandonments to abandon its 14.15-mile line of railroad from milepost 3.35 near Mosby Creek, to milepost 17.5 near Culp Creek, in Lane County, OR.[1]

OP&E has certified that: (1) No local traffic has moved over the line for at least 2 years; (2) there is no overhead traffic on the line; and (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirement at 49 CFR 1152.50(d)(1) (notice to government agencies) has been met.

As a condition to use of this exemption, any employee affected by the abandonment shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 23, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[2] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[3] and trail use/rail banking statements under 49 CFR 1152.29[4] must be filed by December 3, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 13, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Douglas M. Ragen, 111 SW. Fifth Avenue, Portland, OR 97204.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio.*

Applicant has filed an environmental report which addresses the abandonment's effect, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 26, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927-6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 12, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93-28727 Filed 11-22-93; 8:45 am]

BILLING CODE 7035-01-P

[Finance Docket No. 32264]

Public Service Co. of Colorado—Acquisition Exemption—Line of the Colorado and Wyoming Railway Co.

Public Service Company of Colorado (PSC), a noncarrier, seeks to acquire a 4.5 mile rail line, known as the Comanche Spur[1], located in Pueblo County, CO from The Colorado and Wyoming Railway Company (Old C&W).[2] The parties expected consummation to occur on March 4, 1993.

Any comments must be filed with the Commission and served on George P. Green, Manager, Electric Supply Resources, Public Service Company of Colorado, 1225 17th Street, Denver, CO 80202.

This transaction is related to the restructuring of CF&I Steel Corporation[3] pursuant to a plan of reorganization approved by the bankruptcy court.[4] PSC is acquiring the Comanche Spur from Colorado and Utah Land Company and CF&I Steel Corporation by designation of CF&I Steel L.P and from Old C&W. The operations on the line will be conducted by New C&W pursuant to a service agreement with PSC.[5] As a condition to the use of this exemption, any employee adversely affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).[6]

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[1] Pursuant to 49 CFR 1152.50(d)(2), the railroad must file a verified notice with the Commission at least 50 days before the abandonment or discontinuance is to be consummated. The applicant, in its verified notice, indicated a proposed consummation date of December 20, 1993. Because the verified notice was not filed until November 3, 1993, consummation should not have been proposed to take place prior to December 23, 1993. Applicant's representative has confirmed that the correct consummation date is on or after December 23, 1993.

[2] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[3] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[4] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[1] In spite of its name, the line does not appear to be a spur within the meaning of 49 U.S.C. 10907

[2] In a notice of exemption served March 22, 1993 in Finance Docket No. 32263, the Commission exempted Colorado and Wyoming Railway Company's (New C&W),: (1) Acquisition and operation of approximately 1 mile of rail line, including associated feeder lines, owned by The Colorado and Wyoming Railway Company (Old C&W) located within the boundaries of the CF&I steel mill property in Pueblo, Co; and (2) operations over the Comanche Spur, which PSC seeks to acquire here. That transaction was subject to labor protective conditions.

[3] On November 7, 1990, CF&I Steel Corporation (Old CF&I) and its subsidiaries, including Old C&W, filed for reorganization under Chapter 11 of the Bankruptcy Code. Prior to reorganization, Oregon Steel Mills, Inc. controlled Old CF&I, which in turn controlled Old C&W. Pursuant to a plan of reorganization approved by the Bankruptcy Court in *In Re CF&I Fabricator of Utah, Inc.*, No. 90b-6721, (D. Utah Dec. 1, 1992) a limited partnership, consisting of New CF&I, Inc. (the general partner) and the Pension Benefit Guaranty Corporation (the limited partner), purchased certain assets of Old CF&I and all of the remaining assets of Old C&W The New C&W will be a wholly owned subsidiary of New CF&I, which in turn will be a wholly owned subsidiary of Oregon Steel Mills, Inc. Also in that proceeding the Bankruptcy Court authorized the sale of the Comanche Spur to PSC.

[4] Pursuant to 49 CFR part 1180 Subpart B, transactions under 11 U.S.C. 1172 involving the transfer or operation of lines of bankrupt railroads, by a noncarrier, under a plan of reorganization are governed by the procedures in 49 CFR 1150, subpart D. See Transfer of Operation of Lines of Railroads in Reorganization, 9 I.C.C.2d 201 (1992) (Reorganization).

[5] PSC also filed a motion to dismiss this proceeding for lack of jurisdiction. That motion has been denied in a Commission decision in Finance Docket No. 32264 (not printed), served November 10, 1993.

[6] In these types of transactions, pursuant to 49 CFR part 1180, subpart B, the Commission is

Continued

This notice is filed under 49 CFR 1180.20 and 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 16, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 93-28728 Filed 11-22-93; 8:45 am]

BILLING CODE 7035-01-P

DEPARTMENT OF LABOR

Bureau of Labor Statistics

Business Research Advisory Council; Meeting and Agenda

The regular Fall meeting of the Committee on Occupational Safety and Health of the Business Research Advisory Council will be held on December 16, 1993, at 1 p.m. The meeting will be held in Meeting Room 4 of the Postal Square Building Conference Center, 2 Massachusetts Avenue, NE., Washington, DC.

The Business Research Advisory Board and its committees advise the Bureau of Labor Statistics with respect to technical matters associated with the Bureau's programs from American business and industry.

The schedule and agenda for the meeting is as follows:

Thursday, December 16, 1993

1-4 p.m.—Committee on Occupational Safety and Health Statistics

a. 1992 Survey of Occupational Injuries and Illnesses
   a. Lost workday measures
   b. Table formats for worker demographic and case characteristics data
   c. Availability of state data
   d. Department of Labor report on data needs to the House and Senate Appropriations Committees
   e. Title VIII, OSHA Reform Act (proposed)
2. 1992 Census of Fatal Occupational Injuries: availability of state data
3. Other business

The meeting is open to the public. Persons with disabilities wishing to attend should contact Constance B. DiCesare, Liaison, Business Research Advisory Council, at (202) 606-5886, for appropriate accommodations.

Signed at Washington, DC the 15th day of November 1993.

Katherine G. Abraham,

Commissioner.

[FR Doc. 93-28757 Filed 11-22-93; 8:45 am]

BILLING CODE 4510-24-M

Office of Federal Contract Compliance Programs

Layton Construction Company, Inc, Debarment

AGENCY: Office of Federal Contract Compliance Programs, Labor.

ACTION: Notice of Debarment, Layton Construction Company, Inc.

SUMMARY: This notice advises of the debarment of Layton Construction Company, Inc. (hereinafter "Layton"), as an eligible bidder on Government contracts and subcontracts and Federally-assisted construction contracts and subcontracts. The debarment is effective immediately.

FOR FURTHER INFORMATION CONTACT: Leonard J. Biermann, Acting Director, Office of Federal Contract Compliance Programs, U.S. Department of Labor, 200 Constitution Ave., NW., room C-3325, Washington, DC 20210 (202-219-9475).

SUPPLEMENTARY INFORMATION: On November 1, 1993, pursuant to 41 CFR 60-30.13(a), the Deputy Chief Administrative Law Judge issued a Decision and Order approving the Consent Decree entered into by Layton and OFCCP. Under the terms of the Consent Decree, Layton and its officers, agents, servants, employees, successors, divisions and subsidiaries, and those persons in active concert or participation with them, are declared ineligible for the award of any contracts or subcontracts funded in whole or in part with Federal funds and ineligible for extension or other modifications of any existing Government contracts or subcontracts; and federally assisted construction contracts and subcontracts. The Decision and Order is set forth below.

The debarment from future Government contracts and subcontracts and the ineligibility for extensions or other modifications is effective immediately and shall be lifted once Layton has satisfied the Director of OFCCP that it is in compliance with the Consent Decree for ninety days.

Signed November 16, 1993, Washington, DC.

Leonard J. Biermann,

Acting Director, OFCCP.

Date Issued: November 1, 1993.

Case No.: 93-OFC-17.

In the Matter of *Office of Federal Contract Compliance Programs, U.S. Department of Labor*, Plaintiff, v. *Layton Construction Company, Inc.*, Defendant.

Before: John M. Vittone, Deputy Chief Judge.

Decision and Order

This case arises under Executive Order No. 11246, 30 FR 12,319, as amended by Executive Order No. 11375, 32 FR 14,303 and Executive Order No. 12086, 43 FR 46,501; Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793; and Vietnam Era Veterans' Readjustment Assistance Act of 1974, 38 U.S.C. 4212 and the regulations thereunder.

On September 3, 1993, the Office of Federal Contract Compliance Programs of the United States Department of Labor (DOL) filed a Complaint against Layton Construction Company (Defendant) with the Office of Administrative Law Judges. DOL alleges that Defendant violated the terms of the attached Conciliation Agreement entered into on May 10, 1990.

With the Complaint, DOL filed an executed Consent Decree with this Office. DOL and Defendant report that they have resolved all disputed claims. Defendant, without admitting any violations, has agreed to comply with the terms of the Conciliation Agreement and the Consent Decree. Pursuant to 41 CFR 60-30.13(a), the parties request review of the agreement and an order disposing of this proceeding.

Upon review of the record, the Consent Decree is hereby approved. Such agreement constitutes full and final resolution of this matter. It is further ordered that:

(1) this order shall have the same force and effect as an order after full hearing;

(2) the entire record upon which this order is based shall consist solely of the Complaint and this agreement;

(3) any further procedural steps before this Office are waived; and

(4) any right to challenge or contest the validity of this order entered into in

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required under 11 U.S.C. 1172(c)(1) to provide affected employees with adequate protection, as set forth in 49 U.S.C. 11347, unless a need is shown for greater levels of protection. See Reorganization, supra.

The United Transportation Union and Transportation Communications International Union (petitioners), jointly filed on March 24, 1993, a petition to revoke, and an alternative request for imposition of labor protection. PSC filed a response to that petition on April 12, 1993. The petition to revoke has been denied in a Commission decision served in Finance Docket No. 32264 on November 10, 1993. In accordance with 49 CFR 1180.20(c), appropriate labor protective conditions have been imposed providing the alternative relief sought by petitioners.

accordance with this agreement is waived.

In accordance with 41 CFR 60–30.13(d), this Decision and Order shall constitute the final administrative order.

John M. Vittone,
Deputy Chief Judge.

Consent Decree

This Consent Decree is entered into between the Plaintiff, United States Department of Labor, Office of Federal Contract Compliance Programs (hereinafter "OFCCP"), and Defendant Layton Construction Company, Inc. (hereinafter "Defendant") in resolution of the Administrative Compliant filed by OFCCP pursuant to Executive Order 11246 (30 FR 12319), as amended by Executive Order 11375 (32 FR 14303) and Executive Order 12086 (43 FR 46501) ("Executive Order"), Section 503 of the Rehabilitation Act of 1973, as amended, 29 U.S.C. 793 ("Section 503"), and Section 4212 of the Vietnam Era Veterans' Readjustment Assistance Act, 38 U.S.C. 4212. The Administrative Complaint alleged that Defendant violated the terms of a Conciliation Agreement which was executed by Defendant and OFCCP and which became effective on May 10, 1990.

Part A. General Provisions

1. The record on the basis of which this Consent Decree is entered shall consist of the Complaint and the Consent Decree and the attachments thereto.

2. Attachment A of the Consent Decree consists of the Conciliation Agreement between OFCCP and Defendant which became effective on May 10, 1990.

3. This Consent Decree shall not become final until it has been signed by the Administrative Law Judge and the effective date of the Decree shall be the date it is signed by the Administrative Law Judge.

4. This Consent Decree shall be binding upon Defendant and any and all purchasers, successors, assignees, and/or transferees, and shall have the same force and effect as an order made after a full hearing.

5. All further procedural steps to contest the binding effect of the Consent Decree, and any right to challenge or contest the obligations entered into in accordance with the agreement contained in this Decree, are waived by the parties.

6. Subject to the performance by Defendant of all duties and obligations contained in this Consent Decree, all alleged violations identified in the Administrative Complaint shall be deemed fully resolved. However, nothing herein is intended to relieve Defendant from compliance with the requirements of the Executive Order, Section 503, VEVRA or their regulations, nor to limit OFCCP's right to review Defendant's compliance with such requirements.

7. Defendant agrees that there will be no retaliation of any kind against any beneficiary of this Consent Decree, or against any person who has provided information or assistance in connection with this Decree.

8. This Consent Decree does not constitute an admission by Layton of discrimination on the basis of sex against any individual applicant. Nor does defendant admit a failure to make good faith efforts to comply with the terms of the Conciliation Agreement entered into on May 10, 1990.

Part B. Jurisdiction and Procedural History

9. In its initial compliance review of Layton Construction in March 1990, OFCCP identified 13 affirmative action violations.

10. On May 10, 1990 OFCCP and Defendant entered into a Conciliation Agreement, at which point Defendant had already remedied 10 of the 13 affirmative action violations.

11. The three remaining violations which Defendant was obligated to correct under the Conciliation Agreement included: (1) Layton's failure to maintain a current list of minority and female recruitment sources and to notify such sources of its employment opportunities; (2) Layton's failure to list all available employment openings with the State Employment Service; and (3) Layton's failure to make good faith efforts to meet the nationally established construction craft goal of 6.9% for women in the laborer, carpenter helper, carpenter, and equipment operator crafts.

12. In addition, the Conciliation Agreement obligated Defendant to submit two semi-annual reports to OFCCP so that it could monitor the company's compliance with the terms of the Conciliation Agreement. After Defendant submitted the first of the two reports, OFCCP determined that Defendant failed to comply with the three provisions of the conciliation agreement designed to correct the deficiencies outlined in ¶11, *supra.* Specifically, OFCCP found that Defendant had failed to provide certain recruitment sources with timely notice of its employment opportunities; failed to list all employment openings with the state employment service; and failed to make good faith efforts to recruit and consider qualified women in construction craft positions.

13. In addition, as part of this follow-up investigation OFCCP identified four female applicants (Becky Reynolds, Patricia Stamp, LaDee Scott and Kristi Bateman) for the laborer positions who it believed to be equally, if not more, qualified than the males hired as laborers during the same period.

Part C. Specific Provisions

1. Job Offers

The parties desire to enter into a just and reasonable resolution of this matter without further proceedings. To that end, they have negotiated in good faith and have executed this Consent Decree with the following specific provisions.

14. On May 19, 1993, as part of the terms of settlement under this Consent Decree, Layton sent by certified mail job offers to LaDee Scott and Becky Reynolds. On May 25, 1993, Layton sent by certified mail a job offer to Partricia Stamp. OFCCP determined that Kristi Bateman was not interested in a job with Layton Construction and thus Layton did not extend an offer to Ms. Bateman. The job offers included job title, rate of pay, job site, description of job benefits, start date, expected duration of the job and time in which to respond to the employment offer. The terms of these offers of employment were acceptable to OFCCP.

2. Back Pay

15. Within 10 days of the effective date of this agreement Layton will submit by certified mail a certified check to Ms. Becky Reynolds Otterstrom in the amount of $3097.29, minus legal payroll deductions, at the following address: 653 West 550 North, Clearfield, Utah 84015. This settlement payment resolves back wages to Ms. Otterstrom for the period April 24, 1990, to June 30, 1993. Within 10 days of the effective date of this agreement, Layton will submit a certified check payable to LaDee Scott in the amount of $885.35, minus legal payroll deductions as determined by her W–4 tax form, at the following address: 144 East 400 South, Spanish Fork, Utah 84660. This settlement payment resolves back wages to Ms. Scott for the period July 18, 1990 to June 30, 1993.

16. Layton will submit confirmation of payment of the settlement back wage awards specified in paragraph 15 of this Decree, including the addresses to which the checks were sent, the amounts of the checks and the dates on which the checks were mailed, to: U.S. Department of Labor, Office of the Solicitor, Division of Civil Rights, 200

Constitution Avenue NW., room N–2464, Washington, DC 20210, within 10 days after such payment has been made.

3. Debarment Period

17. Defendant agrees that it will be barred from bidding for or entering into future Government contracts, subcontracts or Federally assisted construction contracts for a period of ninety days from the effective date of this Consent Decree. This ninety day debarment period shall be effective against Defendant and its officers, agents, servants, employees, successors, divisions and subsidiaries and those persons in active concert or participation with them.

18. Notice of the debarment shall be printed in the Federal Register. In addition, OFCCP shall notify the Comptroller General of the United States General Accounting Office and all Federal Contracting Officers that Defendant is ineligible for the award of any Government contracts, subcontracts or Federally assisted construction contracts.

19. The debarment shall be lifted at the conclusion of the ninety day period once Defendant satisfies the Director of OFCCP that it is in compliance with ¶ 20 below.

20. In order to satisfy the Director of OFCCP that it is in compliance with the Executive Order, Section 503, VEVRA and their implementing regulations, Defendant must accomplish each of the following, without any departure from the stated terms:

a. Layton must list all craft and laborer employment opportunities with the State Employment Service.

b. Layton must provide notification to recruitment sources as soon as defendant is aware of employment openings. Layton provided OFCCP with a list of recruitment sources, from which they specifically request female applicants, in fulfillment of its obligations under the conciliation agreement. (See Attachment B hereto). Layton must contact these sources when an opening is available.

c. Layton agrees to provide three monthly reports to the OFCCP Salt Lake City District Office, Ten West Broadway, Suite 305, Salt Lake City, Utah, 84101. Each report will include the following:

1. A list, for laborers and for each craft, of the number of openings during each one-month period;

2. A list, for laborers and for each craft, of the total number of applications and the total number of female applications received in each one-month period;

3. Verification for laborers and for each craft that the above openings were referred to the State Employment Service and the recruitment sources outlined in ¶20 b. above in each one-month period. Defendant may verify recruitment efforts by documenting a continuing request for craft/laborer employees from the recruitment sources listed on Attachment B; and

4. A list, for laborers and for each craft, of the total number of hires and the total number of female hires in each one-month period.

d. The first report will be due 30 days after the effective date of this Consent Decree. The second report will be due 60 days after the effective date of this Consent Decree. The third report will be due 90 days after the effective date of this Decree.

e. If there is disagreement between Layton and OFCCP over the proper format of information in ¶ 20c, defendant will have the opportunity to resubmit the information in a format acceptable to OFCCP. Layton will not be found to be out of compliance solely due to the format of the information provided to OFCCP.

21. The OFCCP Salt Lake City District Office shall review each of Defendant's monthly reports and shall determine whether Defendant has complied with the terms of ¶ 20 of this Consent Decree. OFCCP shall notify Defendant in writing, within 10 days of receipt of each report, if there is a deficiency.

22. If OFCCP finds that Defendant has complied with the terms of this Consent Decree, the debarment shall be lifted after the ninety day period and Defendant shall be free to enter into future Government contracts, subcontracts and Federally assisted construction contracts. OFCCP will notify Defendant in writing within 10 days of the last report whether it will be reinstated. Notice of the reinstatement shall be printed in the **Federal Register** and shall be made to the Comptroller General of the General Accounting Office and all Federal Contracting Officers.

23. If OFCCP's Salt Lake City District Office finds that Defendant has not complied with the terms of the Consent Decree, OFCCP will notify Defendant in writing within 10 days of the last report that the debarment shall not be lifted. The debarment shall remain in effect until Defendant submits to the OFCCP Salt Lake City District Office three consecutive acceptable monthly reports containing the information set out in ¶ 20c which demonstrates that it is in compliance with the Consent Decree, the Executive Order, Section 503, VEVRA and their implementing regulations. The first report shall be submitted 30 days after issuance of OFCCP's notice that the debarment will not be lifted. Additional reports, if necessary, shall be filed every 30 days thereafter.

24. OFCCP shall notify Defendant in writing, once it is in compliance for three consecutive months pursuant to ¶ 23, above, that its obligations under the Consent Decree are fulfilled and that the debarment will be lifted.

25. Defendant may file a motion with the Administrative Law Judge for review of the Director's decision and Defendant may request a hearing at which the sole issue will be whether Defendant has complied with the terms of this Consent Decree.

Part D. Implementation and Enforcement of the Decree

26. Jurisdiction, including the authority to issue any additional orders or decrees necessary to effectuate the implementation of the provisions of this Consent Decree, is retained by the Office of Administrative Law Judges for a period of nine months from the date this Consent Decree becomes final. If any motion is pending before the Office of Administrative Law Judges nine months from the date this Consent Decree becomes final, jurisdiction shall continue beyond nine months and until such time as the pending motion is finally resolved.

27. If any time during the nine months OFCCP believes that Defendant has violated any portion of this Consent Decree, Defendant will be promptly notified of that fact in writing. This notification will include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Defendant with 15 days to respond in writing except where OFCCP alleges that such a delay would result in irreparable injury.

28. Enforcement proceedings for violation of this Consent Decree may be initiated at any time after the 15-day period referred to in paragraph 27 has elapsed (or sooner, if irreparable injury is alleged) upon filing with the Court a motion for an order of enforcement and/or sanctions. The issues in a hearing on the motion shall relate solely to the issues of the factual and legal claims made in the motion.

29. Liability for violation of this Consent Decree shall subject Defendants to sanctions set forth in the Executive Order, Section 503, VEVRA and their implementing regulations and other appropriate relief, including further debarment.

30. If an application or motion for an order of enforcement or clarification indicates in writing that the application or motion is unopposed by the plaintiff

or defendant, as appropriate, the application or motion may be presented to the Court without hearing and the proposed Order may be implemented immediately. If an application or motion is opposed by any party, the party in opposition shall file a written response within twenty (20) days of service. The Office of Administrative Law Judges may, if it deems it appropriate, schedule an oral hearing on the application or motion.

31. The Agreement, herein set forth, is hereby approved and shall constitute the final Administrative Order in this case.

It is so ordered, this 1st day of November, 1993.

John M. Vittoner,
Administrative Law Judge, U.S. Department of Labor.

So Agreed.

On Behalf of Layton Construction Company, Inc.

Dated: August 31, 1993.

Darwin Millet,
Vice-President Administration, Layton Construction Company.

On Behalf of the Office of Federal Contract Compliance Programs.

Thomas S. Williamson, Jr.,
Solicitor of Labor.

James D. Henry,
Associate Solicitor.

Heidi Dalzell-Finger,
Acting Counsel for Litigation.

Beverly Dankowitz,
Attorney.

Dated: September 2, 1993.

L. Denise Galambos,
Attorney.

U.S. Department of Labor, room N–2464, 200 Constitution Ave., NW., Washington, DC 20210, (202) 219–5854.

Conciliation Agreement Between U.S. Department of Labor Office of Federal Contract Compliance Programs and Layton Construction Company, Inc., 2987 South 300 West, Salt Lake City, Utah 84115

Part I: General Provisions

1. This Agreement is between the Office of Federal Contract Compliance Programs (hereinafter OFCCP) and Layton Construction Company, Inc. (hereinafter Layton).

2. The problem areas identified in this Agreement were found during the compliance review of Layton which commenced March 14, 1990. OFCCP alleges that Layton has violated Executive Order 11246, as amended, 38 U.S.C. 2012, as amended (Vietnam Era Veterans Readjustment Assistance Act of 1974), Section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations at 41 CFR chapter 60 by failing to comply with the regulations cited in Part II (Specific Provisions) of this Agreement.

3. This Agreement does not constitute an admission by Layton of any violation of Executive Order 11246, as amended, 38 U.S.C. 2012, as amended (Vietnam Era Veterans Readjustment Assistance Act of 1974), Section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations. The provisions of this Agreement will become part of Layton's Affirmative Action Programs.

Subject to the performance by Layton of all promises and representations contained herein and in its Affirmative Action Programs, all identified problem areas in this Agreement in regard to the compliance of Layton with Executive Order 11246, as amended, 38 U.S.C. 2012, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations, shall be deemed resolved. However, Layton is advised that the commitments contained in this Agreement do not preclude future determinations of noncompliance based on a finding that the commitments are not sufficient to achieve compliance.

4. Layton agrees that OFCCP may review compliance with this Agreement. As part of such review, OFCCP may require written reports, inspect the premises, examine witnesses, and examine and copy documents, as may be relevant to the matter under investigation and pertinent to Layton's compliance. Layton shall permit access to its premises during normal business hours for these purposes.

5. Nothing herein is intended to relieve Layton from compliance with the requirement of Executive Order 11246, as amended, 38 U.S.C. 2012, as amended, Section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations.

6. Layton agrees that there will be no retaliation of any kind against any beneficiary of this Agreement, or against any person who has provided information or assistance, or who files a charge or who participates in any manner in any proceeding under Executive Order 11246, as amended, 38 U.S.C. 2012, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended, or any other equal employment statute or Executive Order.

7. This Agreement will be deemed to have been accepted by the Government on the date of signature by the District Director unless it has been disapproved by the Director, OFCCP, within 45 days of the Director's receipt of the Agreement.

8. (a) If, at any time in the future, OFCCP believes that Layton has violated any portion of this Agreement, Layton will be promptly notified of that fact in writing. This notification shall include a statement of the facts and circumstances relied upon in forming that belief. In addition, the notification will provide Layton with 15 days from receipt of the notification to respond in writing, except where OFCCP alleges that such delay would result in irreparable injury.

(b) It is understood that enforcement proceedings for violation of this Agreement may be initiated at any time after the 15-day period has elapsed (or sooner if irreparable injury is alleged) without issuance of a show cause notice.

(c) It is recognized that where OFCCP believes that Layton has breached the conciliation agreement, evidence regarding the entire scope of Layton's alleged noncompliance from which the conciliation agreement resulted, in addition to evidence regarding Layton's alleged violation of the conciliation agreement, may be introduced at the enforcement proceeding.

(d) It is further recognized that liability for violation of this Agreement may subject Layton to sanctions set forth in Section 209 of the Executive Order and/or appropriate relief, or to the sanctions set forth in 41 CFR 60–250.28 and 41 CFR 60–741.28.

Part II: Specific Provisions

1. *Problem Area:* Layton has failed to include or to otherwise reference the equal opportunity clause in its non-exempt purchase orders. This is a requirement of 41 CFR 60–1.4(a)(7).

Remedy: On April 19, 1990, Layton submitted a revised purchase order form which references the equal opportunity clause. This submission was found acceptable by OFCCP and met the requirements of 41 CFR 60–1.4(a)(7). Layton will not repeat this deficiency.

2. *Problem Area:* Layton has failed to notify OFCCP of the award of non-exempt subcontracts. This is a requirement of 41 CFR 60–4.2(d)3.

Remedy: On March 16, 1990, and April 19, 1990, Layton submitted a list of its current non-exempt subcontracts and committed to notify OFCCP of the award of future non-exempt subcontracts. This notice shall include the name, address, and telephone number of the subcontractor, employer identification number of the subcontractor, estimated dollar amount of the subcontract, estimated starting and ending dates of the subcontract, and the geographical area in which the subcontract is to be performed. This

submission and commitment were found acceptable by OFCCP and met the requirements of 41 CFR 60–4.2(d)3. Layton will not repeat this deficiency.

3. *Problem Area:* Layton has failed to maintain a current list of minority and female recruitment sources and to notify such sources of its employment opportunities. This is a requirement of 41 CFR 60–4.3(a)7.b.

Remedy: On April 19, 1990, Layton submitted a current list of minority and female recruitment sources and committed to provide timely notification to such sources when it has employment opportunity. This submission and commitment were found acceptable by OFCCP and met the requirements of 41 CFR 60–4.3(a)7.b. Layton will not repeat this deficiency.

4. *Problem Area:* Layton has failed to thoroughly address the requirements of 41 CFR 60–4.3(a)7.f. Specifically, Layton has failed to develop an EEO policy, to review this policy with its supervisory personnel and employees, and to post its policy where it is accessible to all employees.

Remedy: On April 19, 1990, Layton submitted its EEO policy and evidence of the dissemination of this policy. This submission was found acceptable by OFCCP and met the requirements of 41 CFR 60–4.3(a)7.f. Layton will not repeat this deficiency.

5. *Problem Area:* Layton has failed to review its EEO policy and affirmative action obligations at least annually with its supervisory personnel. This is a requirement of 41 CFR 60–4.3(a)(7.g.

Remedy: On April 19, 1990, Layton submitted evidence of the review of its EEO policy and affirmative action obligations with its supervisory personnel, and committed to continue such review at least annually. This submission and commitment were found acceptable by OFCCP and met the requirements of 41 CFR 60–4.3(a)7.g. Layton will not repeat this deficiency.

6. *Problem Area:* Layton has failed to conduct an inventory and evaluation of all minority and female employees for promotion potential at least annually. This is a requirement of 41 CFR 60–4.3(a)7.1.

Remedy: On April 19, 1990, Layton submitted evidence of the review of its minority and female employees' promotion potential, and committed to continue and review at least annually. This submission and commitment were found acceptable by OFCC and meet the requirements of 41 CFR 60–4.3(a)7.1. Layton will not repeat this deficiency.

7. *Problem Area:* Layton has failed to review its supervisors' adherence to and performance under its eeo policies and affirmative action obligations at least annually. This is a requirement of 41 CFR 60–4.3(a)7.p.

Remedy: On April 19, 1990, Layton submitted evidence of the review of its supervisors' adherence to and performance under its eeo policies and affirmative action obligations, and committee to continue such review at least annually. This submission was found acceptable by OFCCP and met the requirements of 41 CFR 60–4.3(a)7.p. Layton will not repeat this deficiency.

8. *Problem Area:* Layton has failed to adequately demonstrate every good faith effort in meeting the nationally established construction craft goal of 6.9% for women in the laborer, carpenter helper, carpenter, and equipment operator crafts. It is noted that during the review period Layton experienced employment vacancies in the laborer, carpenter helper, and carpenter crafts. The nationally established construction craft goal for women is a requirement of 41 CFR 60–4.6, Appendix A.

Remedy: On April 19, 1990, Layton agreed to make every good faith effort in order to recruit and consider qualified women for its employment opportunities. Such efforts will include but not be limited to provided notice to female recruitment sources of employment opportunities. Layton has also agreed to enter into voluntary linkage agreements with the Salt Lake City Job Service Center and Salt Lake Community College Placement Office for the purpose of increasing its recruitment of qualified female applicants. This agreement was found acceptable by OFCCP and met the requirements of 41 CFR 60–4.6, Appendix A. Layton will not repeat this deficiency.

9. *Problem Area:* Layton has filed to list all suitable employment openings with the State employment service. This is a good requirement of 41 CFR 60–250.4 (b) and (h).

Remedy: On April 19, 1990, Layton committed to list all suitable employment openings with the State employment service. This commitment was found acceptable to OFCCP and met the requirements of 41 CFR 60–250.4 (b) and (h). Layton will not repeat this deficiency.

10. *Problem Area:* Layton has failed to include the affirmative action clauses in its non-exempt purchase orders. This is a requirement of 41 CFR 60–250.4(m) and 41 CFR 60–741.4(f).

Remedy: On April 19, 1990, Layton submitted a revised purchase/order form which references the affirmative action clauses. This submission was found acceptance by OFCC and met the requirements of 41 CFR 660–250.4(m) and 41 CFR 60–741.4(f). Layton will not repeat this deficiency.

11. *Problem Area:* Layton has failed to develop, implement, and maintain current year affirmative action programs are required by 38 USC 2012, as amended (Vietnam Era Veterans' Readjustment Assistant Act of 1974), Section 503 of the Rehabilitation Act of 1973, as amended, and their implementing regulations at 41 CFR 60–250.5(a), 41 CFR 60–250.6, 41 CFR 60–741.5(a), and 41 CFR 60–741.6.

Remedy: On April 19 and 25, 1990, Layton submitted current year affirmative action programs which address the requirements of the Vietnam Era Veterans Readjustment Assistance Act of 1974, as amended, and Section 503 of the Rehabilitation Act of 1973, as amended. This submission was found acceptable by OFCCP and met the requirements of 41 CFR 60–250(a), 41 CFR 60–250.6, 41 CFR 60–741.5(a), 41 CFR 60–741.6. Layton will not repeat this deficiency.

12. *Problem Area:* Layton has failed to post the location and hours during which its full affirmative action programs are available for inspection. This is a requirement of 41 CFR 250.5(c) and 41 CFR 60–741.5(d).

Remedy: On April 19, 1990, Layton submitted evidence that it has posted the availability of its full affirmative action programs for inspection. This submission was found acceptable by OFCCP and met the requirements of 41 CFR 60–250.5(c) and 41 CFR 60–741.5(d). Layton will not repeat this deficiency.

13. Problem Area: Layton has failed to issue an investigation to self-identify to its employees and applicants for employment. This is a requirement of 41 CFR 60–250.5(d) and 41 CFR 60–741.5(c)(1).

Remedy: On April 19, 1990, Layton submitted evidence that it has offered an invitation to self-identify to its employees and applicants for employment. This submission was found acceptable by OFCCP and met the requirements of 41 CFR 60–250.5(d) and 41 CFR 60–741.5(c)(1). Layton will not repeat this deficiency.

Part III: Reporting Requirements

Layton agrees to provide two reports to the Salt Lake City District Office, OFCCP, which will include the following:

a. List for each craft the number of contacts with linkage and other recruitment sources

b. List for each craft the number of applications and the number of female applications received

c. List for each craft the number of hires and the number of female hires made

d. List for each craft the number of regular and overtime hours worked and the number of regular and overtime hours worked by women.

The first report will be due November 12, 1990, and will cover the period of May 1, 1990 through October 31, 1990.

The second report will be due May 10, 1990 and will cover the period of November 1, 1990, through April 30, 1991.

This Agreement will terminate one year from the date of signature of the District Director, OFCCP.

Part IV: Signatures

This Conciliation Agreement is hereby executed by and between the Office of Federal Contract Compliance Programs and Layton Construction, Company, Inc., 2987 South 300 West, Salt Lake City,Utah.

Dated: May 8, 1990.

Allan Layton,

President.

Layton Construction Co., Inc., 2987 South 300 West, Salt Lake City, Utah 84115.

Dated: May 10, 1990.

Christina Anderson,

Equal Opportunity Specialist.

Office of Federal Contract, Compliance Programs, Salt Lake City, Utah.

Dated: May 10, 1990.

Joseph Gallegos Jr.,

District Director, Office of Federal Contract Compliance Programs.

Attachment B

To: Christina Anderson, Equal Opportunity Specialist

From: Darwin D. Millet, Equal Employment Officer, Layton Construction Co., Inc.

Subject: Compliance With EEO Audit of March 14th, 15th & 16th.

During your compliance audit last month you outlined a number of areas that needed improvement or formalization to conform to EEO regulations. This memo, and the enclosures, should respond entirely to those areas. If you have further concerns do not hesitate to call.

1. In compliance with 41 CFR 60–4.2(d)3 we will notify the Office of Federal Contract Compliance of all non-exempt subcontracts on U.S.-government funded projects in the future.

We understand that this notification must be made within 10 days of award of any subcontract in excess of $10,000.00.

2. The recruitment sources we are currently using are:

Utah Department of Employment Security, 1234 South Main Street, 533–2698

Rae Wall, Employer Relations Representative

Off the street applicants.

Deseret News and Salt Lake Tribune

Employee Referrals

Note: As the audit showed we have close to 50% minority participation in our trades. We have visited with Job Service and feel confident we can find qualified handicapped and women candidates through them, the newspapers and employee referrals.

In compliance with 41 CFR 60–4.3(a)(7)(b) we will maintain the above list of recruitment sources and document any responses from them.

3. Enclosed is the formal Equal Employment Opportunity Policy Statement for Layton Construction. Further, in compliance with 41 CFR 60–3(a)(7)(f) this policy is being posted at each job site and at the home office.

4. In compliance with 41 CFR 60–4(a)(7)(g) all supervisory personnel will review and be instructed in the company's EEO Policy and their Affirmative Action Plan.

The meetings are scheduled as follows:

April 18th Wednesday: All construction site supervisors

April 20th Friday: All construction office managers

April 23th Monday: All executive and office management

Meeting Agenda

I. Discussion on the laws prohibiting discrimination.

A. Define protected groups and what constitutes discrimination. Handicapped Workers, Disabled Veterans, Veterans of the Vietnam Era, Age, Sex, Equal Pay.

II. Discussion of the company's EEO Policy & Affirmative Action Plan.

III. Discussion of how to implement the AA Plan and how to avoid and investigate discrimination issues.

5. In compliance with 41 CFR 60–4.4(a)(7)(j) We have posted the enclosed NOTICE FOR REFERRALS at all of our jobsites and in the home office.

6. Our Affirmative Action Plan indicates that we will annually evaluate and prepare an inventory of minority, female and handicapped persons for promotional opportunities. This evaluation will be documented on the enclosed form entitled "ANNUAL INVENTORY AND EVALUATION". See 41 CFR 60–4.3(a)(7)(1).

7. In compliance with 41 CFR 60–4.3(a)(7)(p) annually the EEO officer will review the performance of all supervisory personnel regarding their adherence to the company's EEO policy and Affirmative Action plan. This review will be completed within the calendar year. See enclosed form "ANNUAL EVALUATION OF SUPERVISORS'/FOREMEN'S ADHERENCE TO EEO POLICY AND AFFIRMATIVE ACTION PLAN".

8. As indicated in our Affirmative Action Plan all suitable employment openings (at a salary of less than $25,000 per year) will be listed at the local office of the Utah Department of Employment Security. I have already met with them and initiated this procedure. See 41 CFR 60–250.4(b).

9. The following clause will be added to all Purchase Orders in excess of $10,000.00 on all federally assisted projects: "Layton Construction Co., Inc. is an Equal Opportunity Employer. All suppliers and vendors are hereby notified that you are subject to the provisions of 41 CFR 60–1.4(a)(7), 41 CFR 60–1.8(b), 41 CFR 60–250.4(m), and 41 CFR 60–741.4(f)."

10. Enclosed is our Affirmative Action Plan per CFR 60–250.5(c).

11. Our EEO Policy statement (see enclosed) includes a paragraph noting the availability of our Affirmative Action Plan for inspection per 41 CFR 60–250.5(c).

12. Enclosed is our "INVITATION TO SELF IDENTIFY" form which is included with each application effective immediately. See 41 CFR 60–250.5(d) and 41 CFR 60–741.5(c)(1).

I believe the above actions will now put us into compliance. The actual execution of these procedures has already begun.

Thank you for reviewing this memo and noting our compliance status.

Service Sheet

Case Name: Layton Construction Company

Case No.: 93–OFC–17

Title of Document: Decision and Order

A copy of the above-entitled document was mailed November 1, 1993, to the following individuals:

Director, Office of Administrative Appeals, U.S. Department of Labor, room S–4309, 200 Constitution Avenue, NW., Washington, DC 20210.

Solicitor of Labor, U.S. Department of Labor, room S–2002, FPB, 200 Constitution Avenue, NW., Washington, DC 20210.

Darwin Millet, Layton Construction Co., Inc., 2987 South 300 West, Salt Lake City, UT 84115.

James D. Henry, Associate Solicitor, Civil Rights Division, U.S.

Department of Labor, room N–2464, 200 Constitution Avenue, NW., Washington, DC 20210.

Tedrick A. Housh, Esquire, Regional Solicitor, U.S. Department of Labor, 2106 Federal Office Building, 911 Walnut Street, Kansas City, MO 64106.

Special Counsel to the Asst. Secretary of Labor, U.S. Department of Labor, ETA, room N–4671, 200 Constitution Avenue, NW., Washington, DC 20210.

Office of Federal Contract Compliance Programs, U.S. Department of Labor, room C–3325, 200 Constitution Avenue, NW., Washington, DC 20210.

Joseph Gallegos, Jr., District Director, Office of Federal Contract Compliance Programs, suite 305, 10 West Broadway, Salt Lake City, UT 84101.

Juanita Prophet,

Paralegal.

[FR Doc. 93–28756 Filed 11–22–93; 8:45 am]

BILLING CODE 4510–27–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–409]

Dairyland Power Cooperative, La Crosse Boiling Water Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the revised 10 CFR 50.120 requirements of the Code of Federal Regulations to the Dairyland Power Cooperative (the licensee) for the La Crosse Boiling Water Reactor (LACBWR), pursuant to 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated July 26, 1993, the licensee identified the special conditions that exist at LACBWR as the basis for their exemption request.

The Need for the Proposed Action

LACBWR is permanently shutdown, defueled, and in SAFSTOR. All the La Crosse spent fuel has been transferred to the spent fuel pit. This exemption would relieve the licensee from the training requirements of 10 CFR 50.120. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed exemption from the requirements of 10 CFR 50.120 does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

The nuclear fuel is stored in the spent fuel pit, and the accidents previously analyzed in the NRC approved Decommissioning Plan demonstrated there are no credible accident scenarios that could result in offsite doses greater than a small fraction of the U.S. Environmental Protection Agency's "Protective Action Guidelines." The proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no change in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental effects that would result from the proposed action, any altneratives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Supplement to the Environment Report for LACBWR.

Agencies and Persons Consulted

The NRC staff reviewed the exemption request. No other agencies or personnel were contacted.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's letter dated July 26, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the La Crosse Public Library, 800 Main Street, La Crosse, WI 54601.

Dated at Rockville, Maryland, this 17th day of November, 1993.

For the Nuclear Regulatory Commission

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards

[FR Doc. 93–28746 Filed 11–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–16]

Detroit Edison Co., Enrico Fermi Atomic Power Plant, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the revised 10 CFR 50.120 requirements of the Code of Federal Regulations to the Detroit Edison Company (the licensee) for the Enrico Fermi Atomic Power Plant, Unit 1 (Fermi-1), pursuant to 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated July 30, 1993, the licensee identified the special circumstances that exist at the Firmi-1 as the basis for their exemption request.

The Need for the Proposed Action

Fermi-1 is a permanently shutdown sodium cooled, fast breeder reactor in SAFSTOR. The fuel and uranium-238 blanket material have been removed and shipped offsite. A possession-only licensee was issued on September 5, 1973. The exemption would relieve the licensee from the training requirement of 10 CFR 50.120. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed exemption would not have any effect on accidents previously analyzed in the Fermi-1 Supplemental Environmental Information, September 1975. The reactor has been defueled and the nuclear fuel has been shipped offsite. Based on the conditions at

Fermi-1, there are no credible accident scenarios that could result in offsite doses that would exceed a small fraction of the U.S. Environmental Protection Agency's "Protective Action Guidelines."

The proposed action would not change the types of effluent that may be released offsite, and there would be no significant increase in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Fermi-1 Supplemental Environmental Information.

Agencies and Persons Consulted

The NRC staff reviewed the exemption request. No other agencies or personnel were contacted.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's letter dated July 30, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the Monroe County Library System, 3700 South Custer Road, Monroe, MI 48161.

Dated at Rockville, Maryland, this 17th Day of November, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93-28748 Filed 11-22-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-18]

General Electric Co., Vallecitos Boiling Water Reactor; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the revised 10 CFR 50.120 requirements of the Code of Federal Regulations to the General Electric Company (the licensee) for the Vallecitos Boiling Water Reactor (VBWR), pursuant to 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated July 18, 1993, the General Electric Company (GE) identified the special conditions that exist at the VBWR as the basis for this exemption request.

The Need for the Proposed Action

VBWR is a 50 MW boiling water reactor that permanently ceased power operations in 1962. The nuclear fuel has been removed from the reactor and shipped offsite. VBWR was issued a possession-only license in 1965 and the plant is currently in SAFSTOR until the year 2016. An exemption would relieve the licensee from the training requirements of 10 CFR part 50.120, which are not applicable at a reactor that has no nuclear fuel on site and that is in SAFSTOR. However, an exemption from the requirement of 10 CFR 50.120 does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed exemption from the requirements of 10 CFR 50.120 does not have any effect on accidents previously analyzed in the NRC approved "Final Report on Deactivation of the Vallecitos Boiling Water Reactor." There is no nuclear fuel on site and there are no credible accident scenarios that could result in offsite doses that would exceed a small fraction of the U.S. Environmental Protection Agency's "Protective Action Guidelines." The proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no change in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not effect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered for VBWR.

Agencies and Persons Consulted

The NRC staff reviewed the exemption request. No other agencies or personnel were contacted.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's letter dated July 18, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037.

Dated at Rockville, Maryland, this 17th day of November, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93-28744 Filed 11-22-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-322]

Long Island Power Authority, Shoreham Nuclear Power Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the requirements of 10 CFR 50.120 to the Code of Federal Regulations to the Long Island Power Authority (LIPA) or the licensee) for the Shoreham Nuclear Power Station (SNPS) pursuant to the requirements of 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated August 2, 1993, the licensee requested this exemption.

The Need for the Proposed Action

The SNPS Nuclear Power Station is being dismantled in accordance with the approved SNPS Decommissioning Plan (DP). This exemption would relieve the licensee from the requirements of 10 CFR 50.120 which are not applicable to a reactor that has been defueled, and is being dismantled. However, this exemption does not relieve the licensee from the training requirements or commitments contained in the approved SNPS DP.

Environmental Impacts of the Proposed Action

The proposed exemption will not have any effect on any of the accidents evaluated in the SNPS DP. SNPS is defueled and there are no credible accident scenarios that could result in offsite doses that would exceed a small fraction of the U.S. Environmental "Protection Agency's" Protective Action Guidelines."

Based on the staff's review of the accidents analyzed in the DP and the special circumstances at SNPS, the staff concludes that an exemption from the requirements of 10 CFR part 50.120 would not cause or increase the potential for an accident that would result in a radiological release that differs from those previously analyzed in DP for SNPS. The proposed action would not cause a change in the types of any effluent that may be released offsite, and there would be no change in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC staff concludes that this proposed action would result in no significant radiological environment impact.

With regard to potential non-radiological impacts, the preposed action does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for SNPS.

Agencies and Persons Consulted

The licensee initiated this exemption. The NRC staff is reviewing the request. The State of New York was contacted, and had no comments.

Finding of No Significant Impact

Based upon this environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's application dated August 2, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the Shoreham Wading River Public Library, Shoreham Wading River High School, Route 25A, Shoreham, NY 11792.

Dated at Rockville, Maryland, this 17th day of November, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93-28745 Filed 11-22-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-171]

Philadelphia Electric Co., Peach Bottom Atomic Power Station, Unit 1; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the revised 10 CFR 50.120 requirements of the Code of Federal Regulations to the Philadelphia Electric Company (the licensee) for the Peach Bottom Atomic Power Station, Unit 1 (PBAPS-1), pursuant to 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated July 30, 1993, the licensee identified the special conditions that exist at PBAPS-1 as the basis for this exemption request.

The Need for the Proposed Action

PBAPS-1 is a permanently shutdown, high-temperature, gas-cooled reactor that ceased power operations in 1974, and the fuel was removed from the reactor and shipped offsite. A possession-only licensee was issued July 6, 1974. PBAPS-1 is currently in SAFSTOR until 2015. The exemption would relieve the licensee from the training requirements of 10 CFR 50.120. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accident risk and the possibility of environmental impact is extremely remote.

The licensee stated that the reactor was defueled, and the nuclear fuel was shipped offsite. In addition, there are no credible accident scenarios that could result in offsite greater than a small fraction of the U.S. Environmental Protection Agency's "Protection Action Guidelines."

Therefore, the proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC concludes that this proposed action would result

in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not effect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered for PBAP–1.

Agencies and Persons Consulted

The NRC staff reviewed the exemption request. No other agencies or personnel were contacted.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's letter dated July 30, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the State Library of Pennsylvania, Walnut Street and Commonwealth Avenue, Harrisburg, PA 17105.

Dated at Rockville, Maryland, this 17th day of November, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–28749 Filed 11–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–267]

Public Service Company of Colorado, Fort St. Vrain Nuclear Generating Station; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the revised 10 CFR 50.120 requirements of the Code of Federal Regulations to the Public Service Company of Colorado (PSC or the licensee) for the Fort St. Vrain (FSV) Nuclear Generating Station, pursuant to 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated August 9, 1993, the licensee requested this exemption.

The Need for the Proposed Action

The FSV Nuclear Generation Station is being dismantled in accordance with the approved FSV Decommissioning Plan (DP). This exemption would relieve the licensee from the requirements of 10 CFR 50.120 which are not applicable to a reactor that has been defueled, and is being dismantled. However, this exemption would not relieve the licensee from the training requirements or commitments contained in the approved FSV DP.

Environmental Impacts of the Proposed Action

The proposed exemption from the requirements of 10 CFR part 50.120 will not have an impact on any of the accidents evaluated for the FSV DP. The nuclear fuel has been transferred to an Independent Spent Fuel Storage Installation, and there are no credible accident scenarios at the FSV Station that could result in offsite doses that would exceed a small fraction of the U.S. Environmental Protection Agency's "Protective Action Guidelines."

Based on the staff's review of PSC's August 9, 1993, submittal, and previously analyzed accidents in the DP, the staff concludes that an accident with the potential for causing a radiological release from FSV is small. The proposed action does not increase the probability or consequences of any accidents, no changes are being made in the types of any effluent that may be released offsite, and there is no significant increase in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC staff concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not effect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC staff concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This Action does not involve the use of any resources not previously considered in the Supplement to the Environmental Report for FSV.

Agencies and Persons Consulted

The licensee initiated this exemption. The NRC staff has reviewed the request. The State of Colorado was contacted, and did not provide comments.

Finding of No Significant Impact

Based upon this environmental assessment, the NRC staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC staff will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's application dated August 9, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20037, and at the local public document room at the Greeley Public Library, City Complex Building, Greeley, CO 80631.

Dated at Rockville, Maryland, this 17th day of November, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–28747 Filed 11–22–93; 8:45 am]

BILLING CODE 7590–01–M

Draft Regulatory Guides; Extension of Comment Period

On October 1, 1993, (58 FR 51392) the NRC issued for public comment drafts of two new guides planned for its Regulatory Guide Series. The draft guides are temporarily identified as DG–1023, "Evaluation of Reactor Pressure Vessels With Charpy Upper-Shelf Energy Less Than 50 Ft–Lb," and DG–1025, "Calculational and Dosimetry Methods for Determining Pressure Vessel Fluence." The draft guides are intended for Division 1, "Power Reactors." DG–1023 is being developed to provide guidance on methods acceptable to the NRC staff for evaluating the reactor pressure vessel when the Charpy upper-shelf falls below the 50 Ft-Lb limit specified in NRC's regulations. DG–1025 is being developed to describe methods and assumptions acceptable to the NRC staff for determining the reactor pressure vessel neutron fluence. Comments for these proposed guides were requested to be received by December 17, 1993. The Commission has received a request to extend the comment period based on the fact that the NRC staff is holding a meeting on Thursday, December 9, 1993, to make presentations on the content of the two guides and to answer questions to clarify positions taken by the staff in those draft guides. Consequently, insufficient time is left to develop comments and to adequately coordinate comments with other individuals and organizations.

The NRC finds it reasonable to extend the public comment period to January 31, 1994, in order to allow all interested person adequate time after the NRC staff presentations to develop and submit comments.

Public comments are being solicited on the guides. Comments should be accompanied by supporting data. Written comments may be submitted to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Copies of the comments received may be examined at the NRC Public Document Room, 2120 L Street NW., Washington, DC.

Although a time limit is given for comments on these draft guides, comments and suggestions in connection with items for inclusion in guides currently being developed or improvements in all published guides are encouraged at any time.

Regulatory guides are available for inspection at the Commission's Public Document Room 2120 L Street NW., Washington, DC. Requests for single copies of draft guides (which may be reproduced) or for placement on all automatic distribution lists for single copies of future draft guides in specific divisions should be made in writing to the U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Distribution and Mail Services Section. Telephone requests can not be accommodated. Regulatory guides are not copyrighted, and Commission approval is not required to reproduce them.

Dated at Rockville, Maryland, this 16th day of November 1993.

For the Nuclear Regulatory Commission.

Lawrence C. Shao,

Director, Division of Engineering, Office of Nuclear Regulatory Research.

[FR Doc. 93–28742 Filed 11–22–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 030–30485; License No. 37–28179–01 EA 93–284]

Indiana Regional Cancer Center, Indiana, PA; Order Modifying and Suspending License (Effective Immediately) and Demand for Information

I

Indiana Regional Cancer Center (Licensee) is the holder of Byproduct License No. 37–28179–01 issued by the Nuclear Regulatory Commission (NRC or Commission) pursuant to 10 CFR parts 30 and 35. The license authorizes the licensee to use a strontium-90 source for the treatment of superficial eye conditions. The license, originally issued on April 25, 1988, was due to expire on April 30, 1993, but has remained in effect, pursuant to 10 CFR 30.37(b), based on a timely request for renewal that was received by the NRC on April 5, 1993.

II

On November 11, 1993, the NRC performed an inspection at the facility in Indiana, Pennsylvania. During the inspection, the NRC found that the licensee had used its strontium-90 source to perform treatments of two patients for skin lesions on several occasions between September and November 1993, even though the license does not authorize the use of the strontium-90 for any purpose other than the treatment of superficial eye conditions. The use of the strontium-90 source for treatments of skin lesions is not authorized by the license, and constitutes a violation of the license.

During the inspection, the inspectors asked Dr. James Bauer (Dr. Bauer), the Radiation Safety Officer and only authorized user listed on the license, about the treatment modalities for which the source was used. Dr. Bauer stated that the source had been used for the treatment of pterygium, an eye condition. When the inspectors asked Dr. Bauer whether the source had ever been used for any other modality, Dr. Bauer again replied that the source had been used to treat pterygium. The inspectors then requested records of the last six patients who received treatment with the strontium-90 source. The records provided reflected only eye treatments. Subsequently, the inspectors performed a review of the patient treatment log maintained by Dr. Bauer's secretary, as well as a review of records of additional patient treatments. The NRC learned that the records initially provided were not for the last six patients treated, and that the strontium-90 source had been used for the treatment of superficial lesions of the skin, including a treatment on the day of the inspection that occurred before the inspection took place.

Dr. Bauer's failure to inform the inspectors that he had used the strontium-90 source to treat lesions of the skin, when specifically asked if the source was used for any purpose other than superficial eye treatments, constitutes a violation of the requirements set forth in 10 CFR 30.9 in that the licensee failed to provide complete and accurate information to the NRC. In light of the use of the strontium-90 source for treatment of skin lesions the day of the inspection, Dr. Bauer's communications also appear to constitute a violation of 10 CFR 30.10 in that he appears to have deliberately provided to NRC information that he knew to be incomplete or inaccurate in some material respect.

Previously, Dr. Bauer was involved in an incident in November 1992 at Indiana Regional Cancer Center as the supervisor of a treatment with a High Dose Rate Afterloader that resulted in a patient's being exposed to significant levels of radiation, and numerous other members of the general public were exposed to unnecessary radiation. In that event, he did not cause an adequate survey to be made which could have prevented the exposures.

III

Based on the above, the NRC has serious concerns regarding Dr. Bauer's and the Licensee's conduct of NRC-licensed activities at the Indiana Regional Cancer Center. Specifically, the NRC is concerned: (1) About Dr. Bauer's performance of activities with the strontium-90 source that were not

authorized by the license; (2) with Dr. Bauer's failure to provide complete and accurate information to the inspectors when questioned by the inspectors during the November 11, 1993 inspection; and (3) that a November 1992 event at the Indiana Regional Cancer Center involved a significant misadministration to a patient at the facility, as well as unnecessary radiation exposure to members of the general public, which occurred during or as a result of treatment supervised by Dr. Bauer in which Dr. Bauer failed to cause an adequate survey to be made.

Consequently, I lack the requisite reasonable assurance that information provided to the NRC by Dr. Bauer, the current Radiation Safety Officer and only authorized user listed on the license, will be complete and accurate in all material respects, that the Licensee's current operations can be conducted under License No. 37–28179–01 in compliance with the Commission's requirements, and that the health and safety of the public will be protected. I find that Dr. Bauer is either unable or unwilling to assure that Commission requirements are being and will be followed. Accordingly, the public health, safety and interest require that License No. 37–28179–01 be suspended pending further Order of the Commission and that the license be modified to remove Dr. Bauer from activities under this license. Therefore, the NRC is issuing this Order modifying and suspending License No. 37–28179–01, effective immediately. Furthermore, pursuant to 10 CFR 2.202, I find that the significance of the violations and conduct described above is such that the public health, safety, and interest require that this Order be immediately effective.

Accordingly, pursuant to sections 81, 161b, 161i, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.202 and 10 CFR parts 30 and 35, it is hereby ordered, effective immediately, that License No. 37–28179–01 is modified and suspended pending further order as follows:

1. The license is modified to prohibit Dr. Bauer from engaging in activities under the license;

2. The Licensee shall not receive any licensed material; and

3. The Licensee shall cease and desist from any use of byproduct material in its possession and shall immediately place all such material in locked storage.

The Regional Administrator, Region I, may, in writing, relax or rescind this order upon demonstration by the Licensee of good cause.

V

In accordance with 10 CFR 2.202, the Licensee must, and any other person, including Dr. Bauer, adversely affected by this Order may, submit an answer to this Order, and may request a hearing on this Order, within 20 days of the date of this Order. The answer may consent to this Order. Unless the answer consents to this Order, the answer shall, in writing and under oath or affirmation, specifically admit or deny each allegation or charge made in this order and set forth the matters of fact and law on which the Licensee or other person adversely affected relies and the reasons as to why the Order should not have been issued. Any answer or request for a hearing shall be submitted to the Secretary, U.S. Nuclear Regulatory Commission, ATTN: Chief, Docketing and Service Section, Washington, DC 20555. Copies of the hearing request also should be sent to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, to the Assistant General Counsel for Hearings and Enforcement at the same address, to the Regional Administrator, NRC Region 475 Allendale Road, King of Prussia, Pennsylvania, 19406, and to the Licensee if the hearing request is by a person other than the Licensee. If a person other than the Licensee requests a hearing, that person shall set forth with particularity the manner in which his interest is adversely affected by this Order and shall address the criteria set forth in 10 CFR 2.714(d).

If a hearing is requested by the Licensee or a person whose interest is adversely affected, the Commission will issue an Order designating the time and place of any hearing. If a hearing is held, the issue to be considered at such hearing shall be whether this Order should be sustained.

Pursuant to 10 CFR 2.202 (c)(2)(i), (57 FR 20194, May 12, 1992), the Licensee, or any other person adversely affected by this Order, may, in addition to demanding a hearing, at the time the answer is filed or sooner, move the presiding officer to set aside the immediate effectiveness of the Order on the ground that the Order, including the need for immediate effectiveness, is not based on adequate evidence but on mere suspicion, unfounded allegations, or error.

In the absence of any request for hearing, the provisions specified in section V above shall be final 20 days from the date of this Order without further order or proceedings. An answer or a request for hearing shall not stay the immediate effectiveness of this order.

VI

Demand for Information

In addition, pursuant to sections 161c, 161o, 182 and 186 of the Atomic Energy Act of 1954, as amended, and the Commission's regulations in 10 CFR 2.204 and 10 CFR 30.32(b), in order for the Commission to determine whether the license should be modified or revoked, or other enforcement action taken to ensure compliance with NRC regulatory requirements, the Licensee is required to submit to the Director, Office of Enforcement, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the date of this Demand for Information, the following information, in writing and under oath or affirmation:

State why, in light of the facts set forth in the above Order, the NRC should not revoke the NRC license; and if such an Order should not be issued why the NRC should have confidence that the Licensee will comply with all Commission requirements.

Dated at Rockville, Maryland, this 16th day of November 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Office of Enforcement.

[FR Doc. 93–28743 Filed 11–22–93; 8:45 am]

BILLING CODE 7590–01–M

RESOLUTION TRUST CORPORATION

Amended Statement of Policy on Contracting With Firms That Are Parties to Lawsuits With the RTC/FDIC

AGENCY: Resolution Trust Corporation.

ACTION: Amended statement of policy.

SUMMARY: In July of 1992, 57 FR 32839 (July 23, 1992) the Resolution Trust Corporation (RTC) adopted a statement of policy setting forth the factors which it would consider in determining whether the RTC would do business with a firm that was being sued by it, the Federal Deposit Insurance Corporation (FDIC) or the Federal Savings and Loan Insurance Corporation (FSLIC). Under this policy statement, as a general matter the RTC would not do business with entities which were defendants in these actions. In making this determination, however, the RTC could consider a number of factors including, but not limited to: the number of lawsuits, the total amount claimed, the number of individuals or offices named and the type of misconduct alleged.

By decision of the RTC's Executive Committee on November 10, 1993, it

was determined that this policy should be amended. The effect of this amendment is to permit the RTC to apply these same factors to determine whether an entity can do business with the RTC where the RTC has authorized its counsel to sue this same entity, but the proposed litigation has not yet been filed.

DATES: This amendment is effective November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Martin Blumenthal, Contractor Ethics Program Manager, Office of Ethics, (202) 416–2029 or Deborah M. House, Contractor Ethics Supervisor, Office of Ethics (202) 416–2135.

SUPPLEMENTARY INFORMATION: Generally, the RTC does not do business with entities that are being sued by it, the FDIC or FSLIC. The factors which are considered by the RTC's Office of Ethics in determining whether the RTC will do business with a firm, despite existing litigation, were set forth in the Statement of Policy on Contracting with Firms that are Parties to Lawsuits with RTC/FDIC (Litigation Policy), published at 57 FR 32839 (July 23, 1992). The regulatory bases underlying this Policy are that: (1) Entities which have been sued by the RTC may fail to meet the minimum standards of fitness and integrity required of an RTC contractor under 12 CFR Part 1606; and (2) the existence of such litigation may establish organizational conflicts of interest, as defined at 12 CFR 1606.2(j)(2), which create a situation where it is not in best interests of the RTC to contract with the entity which is the subject of the litigation.

To date, the Litigation Policy has been applied to contracting entities by the RTC's Office of Ethics only after a lawsuit has actually been filed. Its application is based on an analysis of the allegations made by the RTC, FDIC or FSLIC in the complaint initiating the litigation. For purposes of this analysis, the allegations contained in the complaint are assumed to be true.

It should be recognized that the final determination by the RTC to file a lawsuit against an entity is a lengthy and complicated internal procedure. The threshold undertaking in this process is a thorough analysis of the facts underlying the potential lawsuit by the RTC and its counsel. It is only after this and other analyses have been completed that authority to file the lawsuit is sought from the RTC's Executive Committee or its delegates. Once authority to sue is granted, the underlying facts upon which the original analysis was based are simply put in the form of a complaint and filed in a court of appropriate jurisdiction.

Accordingly, the RTC's analysis which would support a determination that an entity does not meet the minimum standards of fitness and integrity required of an RTC contractor or that an organizational conflict of interest exists which is an impediment to the RTC's contracting with an entity, is completed much in advance of an actual filing of a complaint. Therefore, it is not necessary for the Office of Ethics to delay action against the contractor until such time as a complaint is filed, provided, however, that the contractor is first given full notice of the factual bases for the proposed determination and an opportunity to respond.

It should be noted that the basis for the vast majority of the lawsuits brought by the RTC is that the entities against which they are filed have contributed to the creation of the savings and loans crisis. The RTC's authorizing legislation, the Financial Institutions, Reform, Recovery and Enforcement Act of 1989, mandates that the RTC decline to do business with entities which contributed to the savings and loan crisis. Therefore, it is consistent with this mandate that the RTC take action at the first possible moment to determine whether these entities should be barred from contracting with the RTC so that they may not benefit further from their own wrongdoing.

By order of the Executive Committee.

Dated at Washington, DC, this 10th day of November, 1993.

Resolution Trust Corporation.

John M. Buckley,

Secretary.

[FR Doc. 93–28707 Filed 11–22–93; 8:45 am]

BILLING CODE 6714–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33199; File No. SR–CBOE–93–46]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to FLEX Options on the Nasdaq 100 Index

November 15, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 20, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CBOE proposes to amend its rules to provide for the listing and trading of Flexible Exchange Options ("FLEX Options") on the Nasdaq 100 Index ("NDX Index").[1] The text of the proposed rule change is available at the Office of the Secretary, the CBOE, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The CBOE has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

The purpose of the proposed rule change is to enable the CBOE to expand the FLEX Option program to include FLEX Options on the NDX index. Currently, FLEX Options can be listed and traded only on the S&P 100, the S&P 500, and the Russell 2000 indices. The NDX Index is a capitalization-weighted index composed of the stocks of one hundred of the largest non-financial U.S. issuers whose securities are traded on the Nasdaq National Market. The NDX Index is calculated and maintained by the Nasdaq Stock Market, Inc. ("Nasdaq"), a subsidiary of the National Association of Securities Dealers, Inc. ("NASD").

The proposed rule change includes an amendment to the FLEX Option

[1] On September 22, 1993 and October 27, 1993 (Amendment No. 1), the CBOE submitted a rule change proposal with the Commission (File No. SR–CBOE–93–42) that would provide for the listing and trading of options, including both full-value and reduced-value long-term options series ("LEAPS"), on the NDX Index. That filed proposal, which includes certain background information respecting the makeup and weighting of the NDX Index, and the calculation formula used to derive the Index values, is currently pending Commission review

position limits. This change would apply the same limits to positions in NDX index options that exist for positions in options on the other indices in the FLEX program. No aggregation provisions are included in this filing for P.M.-settled FLEX Options and "comparable" QIX options, since the CBOE does not anticipate listing and trading QIX options on the NDX Index. If the CBOE determines to list such QIX options in the future, it will amend Rule 24A.7 at that time.

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act, in general, and furthers the objectives of section 6(b)(5) in particular, in that it is designed to include FLEX Options on the NDX Index in the CBOE's existing FLEX Options program in a manner that promotes just and equitable principles of trade and protects investors and the public interest.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The CBOE does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the CBOE. All submissions should refer to File No. SR–CBOE–93–46 and should be submitted by December 14, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28674 Filed 11–22–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Boston Stock Exchange, Inc.

November 17, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Intelcom Group, Inc.
Common Stock, $.01 Par Value (File No. 7–11536)
Promus Companies, Inc.
Common Stock, $1.50 Par Value (File No. 7–11537)
Shanghai Petrochemical, Inc.
Common Stock, $1.00 Par Value (File No. 7–11538)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit, on or before December 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–28673 Filed 11–22–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organization; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Chicago Stock Exchange, Incorporated

November 17, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

CBL & Associates Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11522)
Elan Corporation
Warrants (1.5 Amer. Dep. Shares (each representing one Ord. Shares of ELN) (File No. 7–11523)
Horizon Outlet Centers, Inc.
Common Stock, $.01 Par Value (File No. 7–11524)
Incyte Pharmaceutical, Inc.
Common Stock, $.001 Par Value (File No. 7–11525)
Helionetics, Incorporated
Common Stock, No Par Value (File No. 7–11526)
Avalon Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11527)
Golden Star Resources Ltd.
Common Stock, $.01 Par Value (File No. 7–11528)
Grupo Tribasa S.A. de C.V.
Amer. Dep. Shares (each representing two shares of Common Stock, No Par Value (File No. 7–11529)
Louis Dreyfus Natural Gas Corp.
Common Stock, $.01 Par Value (File No. 7–11530)
Newfield Exploration Co.
Common Stock, $.01 Par Value (File No. 7–11531)
Vesta Insurance Group, Inc.
Common Stock, $.01 Par Value (File No. 7–11532)
Voyageur Minnesota Municipal Income Fund III, Inc.
Common Stock, $.01 Par Value (File No. 7–11533)
Enersis S.A.
Amer. Dep. Shares (each representing 50 Shares of Common Stock, No Par Value (File No. 7–11534)
Tri-Lite, Inc.

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[2] 17 CFR 200.30–3(a)(12) (1993).

Common Stock, No Par Value (File No. 7–11535)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 9, 1993, written data, views and arguments concerning the above-referenced application. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such application is consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–28667 Filed 11–22–93; 8:45 am]

BILLING CODE 8010–01–M

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Opportunity for Hearing; Philadelphia Stock Exchange, Incorporated

November 17, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1994 and rule 12f–1 thereunder for unlisted trading privileges in the following securities:

Harte Hanks Communications, Inc.
Common Stock, $1.00 Par Value (File No. 7–11497)
Wellsford Residential Property Trust
Series A Cum. Conv. Pfd. Shares of Beneficial Interest $.01 Par Value (File No. 7–11498)
Kimco Realty Corporation
Dep. Shares Each Representing 1.10th of a share 7/75 Cum. Redeemable Pfd Stock $1.00 (File No. 7–11499)
National Intergroup Inc.
$4.20 Cum. Exchangeable Series A Pfd Stock (File No. 7–11500)
ACM Managed Dollar Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11501)
Preferred Income Opportunity Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11502)
Van Kampen Merritt Advantage Municipal Trust
Common Stock, $.01 Par Value (File No. 7–11503)
Bradley Real Estate Trust
Common Stock, $0.01 Par Value (File No. 7–11504)
MGI Properties
Common Stock, $.01 Par Value (File No. 11505)
Patriot Global Dividend Fund
Common Stock, $.01 Par Value (File No. 7–11506)
Incyte Pharmaceutical, Inc.
Common Stock, $.001 Par Value (File No. 7–11507)
Alabama Power Company
6.80 Class Pfd Stock Cum., $1 Par Value (File No. 7–11508)
Midland Bank Plc
American Depositary Shares Series A (File No. 7–11509)
Corpus Chrisit Bancshares, Inc.
Common Stock, $5.00 Par Value (File No. 7–11510)
Vesta Insurance Group, Inc.
Common Stock, $.01 Par Value (File No. 7–11511)
Avalon Properties, Inc.
Common Stock, $.01 Par Value No. (File No. 7–11512)
Nuveen Insured New York Premium Income Municipal Fund
Common Stock, $.01 Par Value (File No. 7–11513)
Louis Dreyfus Natural Gas Corp.
Common Stock, $.01 Par Value (File No. 7–11514)
Horizon Outlet Centers, Inc.
Common Stock, $.01 Par Value (File No. 7–11515)
Tri-Lite, Inc.
Common Stock, No Par Value (File No. 7–11516)
Voyageur Minnesota Municipal Income Fund III, Inc.
Common Stock, $.01 Par Value (File No. 7–11517)
Paul Revere Corporation
Common Stock, $.01 Par Value (File No. 7–11518)
Enersis S.A.
American Depositary Shares 50 Shares of Common Stock, No Par Value (File No. 7–11519)
Smith Barney High Income Opportunity Fund, Inc.
Common Stock, $0.001 Par Value (File No. 7–11520)
MuiYield Arizona Fund II, Inc.
Common Stock, $.01 Par Value (File No. 7–11521)

These securities are listed and registered on one or more other national securities exchange and is reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 9, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the application if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–28666 Filed 11–22–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19877; 812–8532]

Liberty Financial Trust, et al.; Application for Exemption

November 16, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or the "Commission").

ACTION: Notice of application for exemption under the Investment Accompany Act of 1940 (the "Act").

APPLICANTS: Liberty Financial Trust, Liberty Investment Services, Inc. ("Liberty Services"), Liberty Securities Corporation ("Liberty Securities"), and Stein Roe & Farnham Incorporated ("Stein Roe").

RELEVANT ACT SECTIONS: Order requested under section 6(c) of the Act for an exemption from sections 2(a)(32), 2(a)(35), 18(f), 18(g), 18(i), 22(c) and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek an order (i) to permit certain investment companies to issue multiple classes of shares representing interests in the same portfolio of securities, and (ii) to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on redemptions of shares.

FILING DATE: The application was filed on August 10, 1993. Applicants have agreed to file an additional amendment, the substance of which is incorporated herein, during the notice period.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be

received by the SEC by 5:30 p.m., on December 13, 1993, and should be accompanied by proof of service on the applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549; Applicants; 600 Atlantic Avenue, Boston, Massachusetts 02210.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272–3026 or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Liberty Financial Trust is an open-end management investment company registered under the Act that currently has five series, or portfolios (the "Liberty Financial Funds"). Stein Roe, an indirect wholly-owned subsidiary of Liberty Financial Companies, Inc. ("LFC"), and an affiliate of Liberty Securities and Liberty Services, is the investment manager of four of the series and of the separate registered investment company in which the fifth series invests substantially all of its assets. Liberty Services provides administrative services to the Liberty Financial Trust and the Liberty Financial Funds. Liberty Securities is the principal underwriter of the Liberty Financial Funds.

2. Applicants request that relief extend to all existing and future series of Liberty Financial Trust and any management investment company (including all series thereof) for which in the future Liberty Securities or any majority-owned subsidiary of LFC is the principal underwriter (collectively, with the Liberty Financial Funds, the "Funds").

A. The Multiple Class Distribution System

1. Applicants proposed to establish a multiple distribution system enabling each Fund to offer investors the option of purchasing shares (a) subject to a front-end sales load and, in most cases, a distribution and/or service fee pursuant to a rule 12b–1 plan ("Class A Shares"), (b) without a front-end sales load, but subject to a CDSC, a distribution fee and/or a service fee pursuant to a rule 12b–1 plan, and a conversion feature as described below ("Class B Shares"), or (c) without a front-end sales load, but subject to a CDSC (which is lower than, and for a shorter period of time than, the CDSC for the Class B shares), a distribution fee and/or service fee pursuant to a rule 12b–1 plan, but no conversion feature ("Class C Shares"). Any distribution arrangement of a Fund, including rule 12b–1 fees and front-end and deferred sales loads, will comply with Article III, section 26, of the Rules of Fair Practice of the National Association of Securities Dealers, Inc.

2. Applicants also seek the authority to create one or more additional classes of shares in the future, the terms of which may differ from the Class A, Class B, and Class C shares only in the following respects: (a) Any such class may bear different or no service and distribution fees and any other costs relating to implementing or amending the rule 12b–1 plan for such class, (b) any such class may bear any incremental difference in shareholder servicing fees, (c) any such class may bear different class designations, (d) any such class will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class except as provided in condition 15 below, (e) any such class may bear any other incremental expenses subsequently identified that should be properly allocated to such class which shall be approved by the SEC pursuant to an amended order, (f) any such class may have different conversion features, (g) any such class may have different exchange privileges, (h) any such class may be sold under different sales arrangements, including selling only to a particular type of investor, and (i) any such class may bear different printing and postage expenses relating to preparing and distributing materials such as shareholder reports, prospectuses, and proxy statements ("Class Expenses") relating to that class.

3. After a shareholder's Class B shares remain outstanding for a specified period of time (not to exceed eight years), they will automatically convert to Class A shares of the same Fund at the relative net asset values of each of the classes and will thereafter be subject to the lower fee under the Class A rule 12b–1 plan. In addition, any other class may provide that its shares (the "Purchase Class") will, after a period of time, automatically convert into another class (the "Target Class").

B. The CDSC

1. Applicants also request relief to permit the Funds to assess a CDSC on certain redemptions of Fund shares, and to permit the Funds to waive or reduce the CDSC with respect to certain types of redemptions. The amount of the CDSC to be imposed will depend on the amount of time since the investor purchased the shares being redeemed, as set forth in each Fund's prospectus. The CDSC schedule for any class having a CDSC will comply, to the extent applicable, with the requirements of section 26(d) of the Rules of Fair Practice of the NASD.

2. No CDSC would be imposed on an amount which represents an increase in the value of the shareholder's account resulting from capital appreciation above the amount paid for the CDSC shares purchased. In determining the applicability and rate of any CDSC, it would be assumed that a redemption is made first of shares not subject to the CDSC, including shares representing capital appreciation and shares representing the automatic reinvestment of dividends, and then of other shares held by the shareholder for the longest period of time.

3. The Funds also are requesting the ability to waive or reduce the CDSC in the following instances: (a) On redemptions following the death, disability, or financial hardship of a shareholder; (b) redemptions in connection with (i) distributions to participants or beneficiaries of plans qualified under sections 401(a) or 401(k) of the Internal Revenue Code (the "Code"); custodial accounts, individual retirement accounts, or deferred compensation plans under the Code; and other employee benefit or retirement plans, (ii) return of excess contributions to these plans, and (iii) the enactment or promulgation of any law or regulation pursuant to which continuation of the investment in the Funds would be improper; (c) in connection with redemptions of shares made pursuant to a shareholder's participation in any systematic withdrawal plan adopted by a Fund; (d) redemptions pursuant to the Funds' right to liquidate an account; (e) redemptions of shares acquired as a result of investment of distributions from shares of a class of one Fund into shares of the same class of another Fund; and (f) in connection with shares sold to certain individuals or groups or in certain situations, as described below: (i) Current and retired trustees and officers of the Funds, and current and retired directors, advisory board members, officers, employees and sales

representatives of Liberty Mutual Insurance Company and its affiliates, (ii) trust companies and bank trust departments with respect to funds as to which they exercise investment authority, (iii) clients of Stein Roe and prototype retirement plans sponsored by it and its affiliates, (iv) pension, profit-sharing or other qualified employee benefit plans covering 50 or more employees, (v) officers, directors and employees of banks and savings institutions with which Liberty Securities or its affiliates have operating or lease arrangements relating to the sale of securities or insurance products by or from the premises of such institutions; and (vi) where the amount invested represents redemption proceeds from a registered open-end management investment company other than a Fund purchased through Liberty Securities or any broker-dealer approved by the Board of Trustees of the Fund, provided that no deferred sales charge is payable with respect to the redemption proceeds.

4. In connection with waiver category (f) (vi) above, applicants will take such steps as may be necessary to determine that the shareholder has not paid a deferred sales load, fee, or other charge in connection with the redemption of shares of the other open-end investment company, including, without limitation, requiring the shareholder to provide a written representation that neither a deferred sales load, fee, nor other charge was imposed upon the redemption, and, in addition, either (a) requiring such shareholder to provide an activity statement reflecting the redemption that supports the shareholder's representation or (b) reviewing a copy of the current prospectus of the other open-end investment company and determining that such company does not impose a deferred sales load, fee, or other charge in connection with the redemption of shares.

Applicants' Legal Analysis

1. Applicants seek relief from sections 18(f)(1), 18(g), and 18(i) to issue multiple classes of shares representing interests in the same portfolio of securities. Applicants believe that by implementing the Multiple Class Distribution System, an investor would be able to choose the sales financing method which best suits the investor's situation. Applicants also believe that the proposed allocation of expenses and voting rights in the manner described above is equitable and would not discriminate against any group of shareholders.

2. The proposed arrangement does not involve borrowings, and does not affect the Funds' existing assets or reserves. Nor will the proposed arrangement increase the speculative character of the shares of a Fund, since all such shares will participate in the Fund's appreciation, income, and expenses in the manner described above.

3. Applicants also seek relief from sections 2(a)(32), 2(a)(35), 22(c), and 22(d) of the Act and rule 22c–1 thereunder to assess and, under certain circumstances, waive a CDSC on redemptions of shares. Applicants believe that the contingent nature of the proposed charge places the purchaser in a better position than if a sales load were imposed at the time of sale, since in the case of the CDSC there is a possibility that the shareholder will have to pay only a reduced sales charge, or no sales charge at all.

Applicant's Conditions

Applicants agree that the order of the Commission granting the requested relief shall be subject to the following conditions:

A. The Multiple Distribution System

1. Each class of shares of a Fund will represent interests in the same portfolio of investments of that Fund, and be identical in all respects, except as set forth below. The only differences among the various classes of shares of the same Fund will relate solely to: (a) The impact of the different distribution and service fee payments associated with any rule 12b–1 plan relating to a particular class of shares and any other costs relating to the implementation of such plan or any amendments thereto (including obtaining shareholder approval of such plan or any amendment thereto) which will be borne solely by shareholders of such class, any incremental shareholder servicing fees attributable solely to a particular class of shares of the Fund, and any other incremental expenses subsequently identified that should be properly allocated to one class which shall be approved by the Commission pursuant to an amended order; (b) the voting rights on matters that pertain to the rule 12b–1 plans, except as provided in condition 15 below; (c) the different exchange privileges of each class of shares; (d) the designation of each class of shares of the Fund; (e) the differences in conversion features of each class of shares; and (f) any differences in Class Expenses of each class of shares.

2. The board of trustees of each Fund, including a majority of the independent trustees, will approve the multiple distribution system for a particular Fund prior to its implementation by such Fund. The minutes of the meetings of the trustees regarding their deliberations with respect to the approvals necessary to implement the multiple distribution system will reflect in detail the reasons for the trustees' determination that the proposed multiple distribution system is in the best interests of both the Fund and its shareholders.

3. On an ongoing basis, the board of trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflicts between the interests of the various classes of shares. The trustees, including a majority of the independent trustees, shall take such action as is reasonably necessary to eliminate any such conflicts that may develop. Liberty Investment Services, Liberty Securities, and Stein Roe will be responsible for reporting any potential or existing conflicts to the trustees. If a conflict arises, Liberty Investment Services, Liberty Securities, and Stein Roe, at their own cost, will remedy such conflict up to and including establishing a new registered management investment company.

4. The trustees of the Funds will receive quarterly and annual statements concerning distribution and service expenditures complying with paragraph (b)(3)(ii) of rule 12b–1, as amended from time to time. In these statements, only expenditures properly attributable to the sale of a particular class of shares or to the provision of services to holders of such shares will be used to justify any distribution or service fee attributable to such class. Expenditures not related to the sale or service of a particular class or to services provided to holders of such shares will not be presented to the trustees to justify any fee attributable to that class. The statements, including the allocations upon which they are based, will be subject to the review of the independent trustees of the Funds in the exercise of their fiduciary duties.

5. Dividends paid by the Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time, on the same day, and will be in the same amount, except that (a) distribution and service fee payments associated with any rule 12b–1 plan relating to a particular class or shares (and any other costs relating to implementing the rule 12b–1 plan for such class or any amendment to such plan including obtaining shareholder approval of the rule 12b–1 plan for such class or any amendment to such plan) will be borne exclusively by that class; (b) any incremental shareholder servicing fees relating to a particular

class will be borne exclusively by that class; (c) Class Expenses relating to a particular class will be borne exclusively by that class; and (d) any other incremental expenses subsequently identified that should be properly allocated to a particular class which shall be approved by the Commission pursuant to an amended order will be borne exclusively by such class.

6. The methodology and procedures for calculating the net asset value and dividends and distributions of the various classes and the proper allocation of expenses between the various classes has been reviewed by an expert (the "Expert") who has rendered a report to applicants, a copy of which has been filed as an exhibit to the application, stating that such methodology and procedures are adequate to ensure that such calculations and allocations will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute Expert, will monitor the manner in which the calculations and allocations are being made and, based upon such review, will render at least annually a report to the Fund that the calculations and allocations are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and 30(b)(1) of the Act. The work papers of the Expert with respect to such reports, following request by the Funds (which the Funds agree to make), will be available for inspection by the Commission staff upon the written request to the Fund for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission, limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrators or Associate and Assistant Administrators. The initial report of the Expert is a "Special Purpose" report on the "Design of a System," as defined and described in SAS No. 44 of the AICPA, and the ongoing reports will be "reports on policies and procedures placed in operation and tests of operating effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

7. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the various classes of shares and the proper allocation of expenses among such classes of shares, and this representation has been concurred with by the Expert in the initial report referred to in condition 6 above and will be concurred with by the Expert, or an appropriate substitute Expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 6 above. Applicants agree to take immediate corrective action if the Expert, or appropriate substitute Expert, does not so concur in the ongoing reports.

8. The prospectuses of the Funds will contain a statement to the effect that a salesperson and any other person entitled to receive compensation for selling or servicing Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

9. Liberty Securities will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require their registered representatives and all broker-dealer firms with which they enter into selling agreements regarding the Funds to agree to conform to such standards.

10. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the trustees of the Funds with respect to the multiple distribution system will be set forth in guidelines that will be furnished to the trustees as part of the materials setting forth the duties and responsibilities of the trustees.

11. Each Fund will disclose in its prospectus the respective expenses, performance data, distribution agreements, services, fees, sales loads, contingent deferred sales loads, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus. The shareholder reports of each Fund will disclose the respective expenses and performance data applicable to each class of shares. The shareholder reports will contain, in the statement of asset and liabilities and statement of operations, information related to the Fund as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to the classes of shares of such Fund. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares, it will disclose the expenses and/or performance data applicable to all classes of shares. The information provided by applicants for publication in any newspaper or similar listing of the Funds' net asset value and public offering prices will present each class of shares separately.

12. Applicants acknowledge that the grant of the exemptive order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that the Funds may make pursuant to their rule 12b–1 distribution in reliance on the exemptive order.

13. Purchase Class shares will convert into Target Class shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based charge and service fee to which they were subject prior to the conversion.

14. The initial determination of the Class Expenses, if any, that will be allocated to a particular class of a Fund and any subsequent changes thereto will be reviewed and approved by a vote of the board of trustees of the Fund, including a majority of the independent trustees. Any person authorized to direct the allocation and disposition of the monies paid or payable by the Fund to meet Class Expenses shall provide to the board of trustees, and the board of trustees shall review, at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

15. If a Fund implements any amendment to its rule 12b–1 plan (or, if presented to shareholders, adopts or implements any amendment of a non-rule 12b–1 shareholder services plan) that would increase materially the amount that may be borne by the Target Class shares under the plan, existing Purchase Class shares will stop converting into Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into Target Class shares. If deemed advisable by the trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for

a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. The New Target Class or the New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the trustees reasonably believe will not be subject to Federal taxation. In accordance with condition 3, any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shares shall be borne solely by Liberty Securities, Liberty Services, or Stein Roe. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

B. The CDSC

1. Applicants will comply with the provisions of proposed rule 6c–10 under the Act (see Investment Company Act Release No. 16619 (Nov. 2, 1988)), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the Commission, by the Division of Investment Management, under delegated authority

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28672 Filed 11–22–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Approval of an Amendment to the Noise Compatibility Program; Des Moines International Airport, Des Moines, IA

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its findings on the amendment to the approved Noise Compatibility Program submitted by the City of Des Moines under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Pub. L. 96–193) (hereinafter referred to as the "Act") and 14 CFR part 150. These findings are made in recognition of the description of Federal and nonfederal responsibilities in Senate Report No. 96–52 (1980). On February 1, 1991, the FAA determined that the noise exposure maps submitted by the City of Des Moines under part 150 were in compliance with applicable requirements. On July 30, 1991, the Assistant Administrator for Airports approved the Noise Compatibility Program. All of the recommendations of the program were approved. On September 15, 1993, the Assistant Administrator approved the amendment to the Des Moines International Airport Noise Compatibility Program. All of the recommendations of the amendment were approved. No program elements relating to new or revised flight procedures for noise abatement were proposed by the airport operator.

EFFECTIVE DATE: The effective date of the FAA's approval of the amendment to the Des Moines International Airport Noise Compatibility Program is September 15, 1993.

FOR FURTHER INFORMATION CONTACT: G. Alan Wimpey, Airport Planner (IA), Airports Division, ACE–611C, 601 E. 12th Street Kansas City, Missouri 64106 (Telephone—816–426–4739). Documents reflecting this FAA action may be reviewed at this same location.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA has given its overall approval to an amendment to the approved Noise Compatibility Program for the Des Moines International Airport, effective September 15, 1993.

Under section 104(a) of the Act, an airport operator who has previously submitted Noise Exposure Maps that are found by FAA to be in compliance with the requirements of FAR part 150, promulgated pursuant to title I of the Act, may submit to the FAA a Noise Compatibility Program, or an amendment thereto for FAA approval which sets forth the measures taken or proposed by the airport operator for the reduction of existing noncompatible land uses and prevention of additional noncompatible uses within the area covered by the noise exposure maps. The Act requires such programs to be developed in consultation with interested and affected parties including local communities, governmental agencies, airport users, and FAA personnel.

Each airport noise compatibility program, or amendment thereto, developed in accordance with FAR part 150 is a local program, not a Federal program. The FAA does not substitute its judgment for that of the airport proprietor with respect to what measures should be recommended for action. The FAA's approval or disapproval of FAR part 150 program recommendations is measured according to the standards expressed in part 150 and the Act, and in this case is limited to the following determinations:

a. The amendment to the noise compatibility program was developed in accordance with the provisions and procedures of FAR part 150;

b. Program measures are reasonably consistent with achieving the goals of reducing existing noncompatible land uses around the airport and preventing the introduction of additional noncompatible land uses;

c. Program measures would not create an undue burden on interstate or foreign commerce, unjustly discriminate against types or classes of aeronautical uses, violate the terms of airport grant agreements, or intrude into areas preempted by the Federal Government; and

d. Program measures relating to the use of flight procedures can be implemented within the period covered by the program without derogating safety, adversely affecting the efficient use and management of the navigable airspace and air traffic control systems, or adversely affecting other powers and responsibilities of the Administrator prescribed by law.

Specific limitations with respect to FAA's approval of an airport noise compatibility program or amendment thereto, are delineated in FAR part 150, paragraph 150.5. Approval is not a determination concerning the acceptability of land uses under Federal, state, or local law. Approval does not by itself constitute an FAA implementing action. A request for Federal action or approval to implement specific noise compatibility measures may be required, and an FAA decision on the request may require an environmental assessment of the proposed action. Approval does not constitute a commitment by the FAA to financially assist in the implementation of the amendment nor a determination that all measures covered by the amendment are eligible for grant-in-aid funding from the FAA. Where federal funding is sought, request for project grants must be submitted to the FAA Regional Office in Kansas City, Missouri.

This amendment was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 for Des Moines International Airport were in compliance with applicable requirements on February 1, 1991. Notice of this determination was published in the **Federal Register** on February 20, 1991. On July 30, 1991, the

FAA approved the Noise Compatibility Program, FAA published its findings in the Federal Register on September 6, 1991.

The amendment contains elements designed for phased implementation by airport management beginning in 1993 to the year 2000. It was requested that the FAA review and approve this material as an amendment to the noise compatibility program as described in section 104(b) of the Act.

The FAA began its review of the proposed amendment to the approved noise compatibility program on April 20, 1993 and was required by a provision in the Act to approve or disapprove the amendment within 180 days (other than the use of new flight procedures for noise control). Failure to approve or disapprove such amendment within the 180-day period shall be deemed to be an approval of such amendment.

The submitted amendment contained two proposed elements for noise mitigation off the airport. The FAA completed its review and determined that the procedural and substantive requirements of the Act and FAR part 150 have been satisfied. The amendment to the approved Noise Compatibility Program, therefore, was approved by the Assistant Administrator effective September 15, 1993.

Outright approval was granted for all of the specific program elements. The approved actions were land use management strategies that included a voluntary Resale Assurance Program for those fixed (non-mobile) residential properties above the 70 DNL noise contour and as an alternative to the Resale Assurance Program, the city will offer a Noise and Aviation Easement Purchase Program for those residential property owners who desire to remain within the 70 DNL noise contour.

These determinations are set forth in detail in a Supplemental Record of Approval endorsed by the Assistant Administrator on September 15, 1993. The Supplemental Record of Approval, as well as other evaluation materials and the documents comprising the submittal, are available for review at the FAA office listed above and at the administrative offices of the Des Moines International Airport.

Issued in Kansas City, Missouri, on November 5, 1993.

George A. Hendon,

Manager, Airports Division.

[FR Doc. 93–28713 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

Acceptance of Noise Exposure Maps and Request for Review of Noise Compatibility Program for Hilo International Airport, Hilo, HI

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the noise exposure maps submitted by the State of Hawaii, Department of Transportation for the Hilo International Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements. The FAA also announces that it is reviewing a proposed noise compatibility program that was submitted for Hilo International Airport under part 150 in conjunction with the noise exposure map, and that this program will be approved or disapproved on or before May 3, 1994.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure maps and of the start of its review of the associated noise compatibility program is November 4, 1993. The public comment period ends December 30, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Airport Engineer/Planner, Honolulu Airports District Office, Federal Aviation Administration, P.O. Box 50244, Honolulu, Hawaii 96850, Telephone: (808) 541–1243. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the noise exposure maps submitted for Hilo International Airport are in compliance with applicable requirements of part 150, effective November 4, 1993. Further, FAA is reviewing a proposed noise compatibility program for that airport which will be approved or disapproved on or before May 3, 1994. This notice also announces the availability of this program for public review and comment.

Under section 103 of title I of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The State of Hawaii, Department of Transportation, submitted to the FAA on December 28, 1992 noise exposure maps, descriptions and other documentation which were produced during the preparation of the Hilo International Airport Noise Compatibility Study dated December, 1992. It was requested that the FAA review this material as the noise exposure maps, as described in section 103(a)(1) of the Act, and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(b) of the Act.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by the State of Hawaii, Department of Transportation. The specific maps under consideration are Figures 2–2 and 2–3 in the submission. The FAA has determined that these maps for Hilo International Airport are in compliance with applicable requirements. This determination is effective on November 4, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which

properties should be covered by the provisions of section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150 or through FAA's review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 150, that the statutorily required consultation has been accomplished.

The FAA has formally received the noise compatibility program for Hilo International Airport, also effective on November 4, 1993. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 3, 1994.

The FAA's detailed evaluation will be conducted under the provisions of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden on interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land uses and preventing the introduction of additional noncompatible land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW., room 617, Washington, DC 20591

Federal Aviation Administration, Western-Pacific Region, Airports Division, AWP–600, 15000 Aviation Blvd., room 3E24, Hawthorne, California 90261

Federal Aviation Administration, Honolulu Airports District Office, 300 Ala Moana Boulevard, room 7116, Honolulu, Hawaii 96813

State of Hawaii, Department of Transportation, Airports Division, Honolulu International Airport, 400 Rodgers Boulevard, suite 700, Honolulu, Hawaii 96819

State of Hawaii, Department of Transportation, Airports Division, District Office Manager, Hilo International Airport, Hilo, Hawaii 96720.

Questions may be directed to the individual named above under the heading, **FOR FURTHER INFORMATION CONTACT.**

Issued in Hawthorne, California, on November 4, 1993.

Herman C. Bliss,

Manager, Airports Division, AWP–600, Western-Pacific Region.

[FR Doc. 93–28711 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

Noise Exposure Map Notice, Smyrna Airport, Smyrna, TN

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces its determination that the updated noise exposure maps submitted by Metropolitan Nashville Airport Authority and Smyrna/Rutherford County Airport Authority for Smyrna Airport under the provisions of title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96–193) and 14 CFR part 150 are in compliance with applicable requirements.

EFFECTIVE DATE: The effective date of the FAA's determination on the noise exposure is November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Federal Aviation Administration, Peggy S. Kelley, Memphis Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301 Telephone: 901–544–3495.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA finds that the updated noise exposure maps submitted for Smyrna Airport are in compliance with applicable requirements of part 150, effective November 10, 1993.

Under section 103 of the Aviation Safety and Noise Abatement Act of 1979 (hereinafter referred to as "the Act"), an airport operator may submit to the FAA noise exposure maps which meet applicable regulations and which depict noncompatible land uses as of the date of submission of such maps, a description of projected aircraft operations, and the ways in which such operations will affect such maps. The Act requires such maps to be developed in consultation with interested and affected parties in the local community, government agencies, and persons using the airport.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations (FAR) part 150, promulgated pursuant to title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the prevention of the introduction of additional noncompatible uses.

The FAA has completed its review of the noise exposure maps and related descriptions submitted by Metropolitan Nashville Airport Authority and Smyrna/Rutherford County Airport Authority. The specific maps submitted for consideration are 1989 Contours With Existing Off-Airport Land Use and 1995 Recommended Noise Abatement Contours With Existing Off-Airport Land Use. The current map (1989) was based on 1989 aircraft operations, which exceeded the 1992 aircraft operations. The FAA has determined that these maps for Smyrna Airport are in compliance with applicable requirements. This determination is effective on November 10, 1993. FAA's determination on an airport operator's noise exposure maps is limited to a finding that the maps were developed in accordance with the procedures contained in appendix A of FAR part 150. Such determination does not constitute approval of the applicant's data, information or plans, or a commitment to approve a noise compatibility program or to fund the implementation of that program.

If questions arise concerning the precise relationship of specific properties to noise exposure contours depicted on a noise exposure map submitted under section 103 of the Act, it should be noted that the FAA is not involved in any way in determining the relative locations of specific properties with regard to the depicted noise contours, or in interpreting the noise exposure maps to resolve questions concerning, for example, which properties should be covered by section 107 of the Act. These functions are inseparable from the ultimate land use control and planning responsibilities of local government. These local responsibilities are not changed in any way under part 150, or through FAA's

review of noise exposure maps. Therefore, the responsibility for the detailed overlaying of noise exposure contours onto the map depicting properties on the surface rests exclusively with the airport operator which submitted those maps, or with those public agencies and planning agencies with which consultation is required under section 103 of the Act. The FAA has relied on the certification by the airport operator, under § 150.21 of FAR part 105, that the statutorily required consultation has been accomplished.

Copies of the noise exposure maps and of the FAA's evaluation of the maps are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue SW., room 617, Washington, DC 20591

Federal Aviation Administration, Airports District Office, 2851 Directors Cove, suite 3, Memphis, Tennessee 38131–0301

Administrative Offices, Smyrna Airport, Smyrna, Tennessee.

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Memphis, Tennessee, November 10, 1993.

Billy J. Langley,

Manager, Memphis Airports District Office.

[FR Doc. 93–28710 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Parts Approval Action Team—Phase 3 Working Group

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of establishment of Parts Approval Action Team—Phase 3 Working Group.

SUMMARY: Notice is given of the establishment of the Parts Approval Action Team—Phase 3 Working Group of the Aviation Rulemaking Advisory Committee (ARAC). This notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Leonelli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee, Flight Standards Service (AFS–300), 800 Independence Avenue SW., Washington, DC 20591, Telephone: (202) 267–3546; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area the ARAC deals with is air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR), which are the responsibility of the FAA Director, Flight Standards Service.

Specifically, the working group's task is the following: Develop a notice of proposed rulemaking which will embody interim policy to standardize the airworthiness determination for civil aircraft parts existing within the civil inventory and which lack acceptable documentation.

Reports

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice.

B. Give a detailed conceptual presentation on the task to the ARAC before proceeding with the work stated under item C below.

C. Draft for the ARAC a notice of proposed rulemaking for the task proposing new or revised requirements, a supporting economic analysis and other required analysis, advisory and guidance material, and any other collateral documents the working group determines to be needed.

D. Give a status report on the task at each meeting of the ARAC held to consider air carrier/general aviation maintenance issues.

The Parts Approval Action Team—Phase 3 Working Group will be comprised of experts from those organizations having an interest in the task assigned. A working group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the Assistant Chair of the ARAC for air carrier/general aviation maintenance issues and the Chair of the Parts Approval Action Team—Phase 3 Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public except as authorized by section 10(d) of the Federal Advisory Committee Act. Meetings of the Parts Approval Action Team—Phase 3 Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 17, 1993.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–28718 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

[Summary Notice No. PE–93–50]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 13, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC–10), Petition Docket No. _____, 800 Independence Avenue SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 17, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 2610
Petitioner: Chalk's International Airlines
Sections of the FAR Affected: 14 CFR 91.313(a)
Description of Relief Sought/ Disposition: To extend Exemption No. 5428 to continue to permit the petitioner to conduct air carrier flight crew member training in their Grumman HU–16B, which holds a restricted airworthiness certificate.

Docket No.: 27406
Petitioner: Diamond Flight Center
Sections of the FAR Affected: 14 CFR 141.5(b)
Description of Relief Sought: To allow the petitioner to be issued a pilot school certificate with associated ratings for that certificate without meeting the requisite number of applicants for flight certificates required during the 24 months preceding the application.

Docket No.: 27462
Petitioner: Mr. Robert R. Lowry
Sections of the FAR Affected: 14 CFR 121.383(c)
Description of Relief Sought: To allow the petitioner to serve as a pilot in part 121 air carrier operations after his 60th birthday.

Dispositions of Petitions

Docket No.: 26006
Petitioner: Beech Aircraft Corporation
Sections of the FAR Affected: 14 CFR 47.69(b)
Description of Relief Sought/ Disposition: To extend Exemption No. 5125 to continue to permit the petitioner to conduct flights outside the United States. *Grant, October 25, 1993, Exemption No. 5125B*

Docket No.: 27154
Petitioner: Flagler Aviation, Inc.
Sections of the FAR Affected: 14 CFR 105.43 (a) and (d)
Description of Relief Sought/ Disposition: To allow the petitioner's foreign clients to conduct parachute jumping at its facilities without having to comply with the parachute equipment and packing requirements *Partial Grant, November 12, 1993, Exemption No. 5787*

Docket No.: 27340
Petitioner: Mr. William Orr
Sections of the FAR Affected: 14 CFR 65.77
Description of Relief Sought: To allow the petitioner relief from presenting documentary evidence acceptable to the Administrator of his aircraft experience. *Denial, November 12, 1993, Exemption No. 5788*

Docket No.: 27384
Petitioner: The Boeing Company
Sections of the FAR Affected: 14 CFR 25.1435(b)(1)
Description of Relief Sought: To allow the petitioner to conduct hydraulic system tests at 3400 psig in lieu of 3600 psig, since the system relief value cracking pressure setting is 3400 psig. *Grant, October 29, 1993, Exemption No. 5758A*

Docket No.: 27411
Petitioner: Elliott Beecharft of Omaha, Inc.
Sections of the FAR Affected: 14 CFR 91.109 (a) and (b)(3)
Description of Relief Sought/ Disposition: To permit the petitioner's instructors or check airmen to conduct part 135 pilot training and checking in aircraft that are not equipped with a dual set of flight controls. *Denial, November 15, 1993, Exemption No. 5790.*

[FR Doc. 93–28716 Filed 11–22–93; 8:45 am]
BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 178; Requirements for Airport Surface Movement Sensors; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 178 meeting to be held January 11–12, 1994 starting at 9 a.m. The meeting will be held at the National Business Aircraft Association, Inc., 1200 18th Street NW., suite 200, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approve summary of the eighth meeting held November 8–9, RTCA paper No. XXX–93/SC178–XX (enclosed); (4) Review Draft Report—Review each item. Make additions, deletions, changes as required. The goal is to have a completed final draft at the end of this meeting; (5) Tentative schedule for final draft review and approval process; (6) Recap of session; (7) Other business; (8) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–28719 Filed 11–22–93; 8:45 am]
BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Air Carrier Operations

AGENCY: Federal Aviation Administration (FAA) DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration Aviation Rulemaking Advisory Committee to discuss air carrier operations issues.

DATES: The meeting will be held on December 7, 1993, at 9 a.m.

ADDRESSES: The meeting will be held at the Nassif Building, rooms 8334–8336, Headquarters, Department of Transportation, 400 7th Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mrs. Marlene Vermillion, Flight Standards Service, Air Transportation Division (AFS–200), 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8166.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C. App II), notice is hereby given of a meeting of the Aviation Rulemaking Advisory Committee to be

held on December 7, 1993, at the Nassif Building, rooms 8334–8336, Department of Transportation, 400 7th Street, SW., Washington, DC 20590. The agenda for this meeting will include progress reports from the Fuel Requirements Working Group, Autopilot Engagement Working Group, and Flight Crewmember Flight/Duty/Rest Requirements Working Group. Each working group Chair will report on the progress of the working group. Attendance is open to the interested public but may be limited to the space available. The public must make arrangements in advance to present oral statements at the meeting or may present written statements to the committee at any time. Arrangements may be made by contacting the person listed under the heading **FOR FURTHER INFORMATION CONTACT.**

Sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting.

Issued in Washington, DC, on November 16, 1993.

David S. Potter,

Assistant Executive Director for Air Carrier Operations, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–28709 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 180; Design Assurance Guidance for Complex Electronic Hardware Used In Airborne Systems; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 180 meeting to be held December 14–16 starting at 8:30 a.m. (first day only) 8 a.m. subsequent days. The meeting will be held at the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Chairman's introductory remarks; (2) Review and approval of meeting agenda; (3) Approve summary of second meeting held October 25–26; (4) Chairman Presentation on Outcome of Technical Management Committee Meeting Concerning Draft Revision of Terms Reference; (5) Review data from EUROCAE; (6) Review working group assignments; (7) Develop working group flow chart; (8) Preliminary W8S; (9) Review SC–180 Assets; (10) Review of action items from last meeting; (11) Other business; (12) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–28703 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc.; Federal Advisory Committee Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463, 5 U.S.C., appendix I), notice is hereby given for the following meeting:

The RTCA Board of Directors will meet as a Federal Advisory Committee on December 7, 1993 at 10 a.m in the RTCA conference room, 1140 Connecticut Avenue, NW., suite 1020, Washington, DC to approve the RTCA Task Force 2 report.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–28720 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Dubuque Regional Airport, Dubuque, IA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 23, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Federal Aviation Administration, Central Region, Airports Division, 601 E. 12th Street. Kansas City, Missouri 64106.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robert W. O'Brien, Jr., Airport Manager, Dubuque Regional Airport, at the following address: Dubuque Regional Airport, 11000 Airport Road, Dubuque, Iowa 52003–9555.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the City of Dubuque, Dubuque Regional airport, under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ellie Anderson, PFC Coordinator, FAA, Central Regional, 601 E. 12th Street, Kansas City, Missouri 64106, (816) 426–4728. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at the Dubuque Regional Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On November 9, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the City of Dubuque, Iowa, was substantially complete within the requirement of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 8, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: February 1, 1994

Proposed charge expiration date: November 1, 1996

Total estimated PFC revenue: $225,326

Brief description of proposed project(s): Acquisition of snow removal equipment; airport layout plan; ARFF radio system; air service study;

airfield beacon; signage; airline terminal HVAC; ATVN training; non revenue parking lot rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT.**

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Dubuque Regional Airport.

Issued in Kansas City, Missouri, on November 10, 1993.

Wayne E. Halter,

Acting Manager, Airports Division, Central Region.

[FR Doc. 93–28712 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

Intent To Rule on Application To Impose a Passenger Facility Charge (PFC) at Lewiston-Nez Perce County Airport, Lewiston, ID

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose a PFC at Lewiston-Nez Perce County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 23, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: J. Wade Bryant, Manager, Seattle Airports District Office, SEA–ADO, Federal Aviation Administration, 1601 Lind Avenue SW., suite 250, Renton, WA 98055–4056.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Robin L. Turner, Airport Manager of the Lewiston-Nez Perce County Airport at the following address: Airport Administration Building, 412 Burrell, Lewiston, ID 83501

Air carriers and foreign air carriers may submit copies of written comments previously provided to Mr. Robin Turner under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Ms. Sandra Simmons, Civil Engineer, (206) 227–2656; Seattle Airports District Office, SEA–ADO; Federal Aviation Administration, 1601 Lind Avenue SW., suite 250; Renton, WA 98055–4056. The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose a PFC at Lewiston-Nez Perce County Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IX of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On October 27, 1993, the FAA determined that the application to impose a PFC submitted by the City of Lewiston and Nez Perce County, Idaho was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 4, 1994.

The following is a brief overview of the application.

Level of the proposed PFC: $3.00

Proposed charge effective date: April 1, 1994

Proposed charge expiration date: January 31, 1997

Total estimated PFC revenue: $229,610.00

Brief description of proposed project(s): Expansion/renovation/remodeling of the terminal building and taxiway pavement rehabilitation.

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: Air Taxi/Commercial Operators when enplaning revenue passengers in limited, irregular, special service air taxi/commercial operations such as air ambulance services, non-stop sightseeing flights that begin and end at the airport and are concluded within a 25 mile radius of the airport, and other limited irregular, special service operations.

Any person may inspect the application in person at the FAA office listed above under **"FOR FURTHER INFORMATION CONTACT"** and at the FAA regional Airports office located at: Federal Aviation Administration, Northwest Mountain Region, Airports Division, ANM–600, 1601 Lind Avenue SW., suite 540 Renton, WA 98055–4056.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Lewiston-Nez Perce County Airport.

Edward G. Tatum,

Manager, Airports Division, Northwest Mountain Region.

[FR Doc. 93–28714 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

RTCA, Inc., Special Committee 181; Standards of Navigation Performance; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463, 5 U.S.C., appendix I), notice is hereby given for Special Committee 181 meeting to be held December 7–8 starting at 9:30 a.m. The meeting will be held at the RTCA conference room, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036.

The agenda for this meeting is as follows: (1) Introductory remarks; (2) Review of terms of reference; (3) Identify goals, develop work program and examine milestones; (4) Assign tasks; (5) Other business; (6) Date and place of next meeting.

Attendance is open to the interested public but limited to space available. With the approval of the Chairman, members of the public may present oral statements at the meeting. Persons wishing to present statements or obtain information should contact the RTCA Secretariat, 1140 Connecticut Avenue NW., suite 1020, Washington, DC 20036; (202) 833–9339. Any member of the public may present a written statement to the committee at any time.

Issued in Washington, DC, on November 16, 1993.

Joyce J. Gillen,

Designated Officer.

[FR Doc. 93–28708 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

Personnel Parachutes Assemblies

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of availability.

SUMMARY: This notice announces the availability of and requests comments on a proposed technical standard order (TSO) pertaining to personnel parachute assemblies. The proposed TSO prescribes the minimum performance standards that personnel parachute assemblies must meet in order to be identified with the marking "TSO–C23d."

DATES: Comments must be received on or before February 14, 1994.

ADDRESSES: Send all comments on the proposed technical standard order to: Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service—File No. TSO–C23d, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591. Or deliver comments to: Federal Aviation Administration, room 806, 800 Independence Avenue SW., Washington, DC 20591.

FOR FURTHER INFORMATION CONTACT:

Ms. Bobbie J. Smith, Technical Analysis Branch, AIR–120, Aircraft Engineering Division, Aircraft Certification Service, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591, Telephone (202) 267–9546.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to comment on the proposed TSO listed in this notice by submitting such written data, views, or arguments as they desire to the above specified address. Comments received on the proposed technical standard order may be examined, before and after the comment closing date, in room 806, FAA Headquarters Building (FOB–10A), 800 Independence Avenue, SW., Washington, DC 20591, weekdays except Federal holidays, between 8:30 a.m. and 4:30 p.m. All communications received on or before the closing date for comments specified above will be considered by the Director of the Aircraft Certification Service before issuing the final TSO.

Background

The proposed TSO–C23d incorporates SAE AS 8015B, "Minimum Performance Standards for Parachute Assemblies and Components, Personnel". The proposed TSO will allow the use of dual harness parachutes.

How To Obtain Copies

A copy of the proposed TSO–C23d may be obtained by contacting the person listed in **FOR FURTHER INFORMATION CONTACT.** Proposed TSO–C23d incorporates the Society of Automotive Engineers, Inc. (SAE) Aerospace Standard (AS) Document No. AS 8015B, dated July 7, 1992. Copies of SAE AS 8015B may be purchased from the Society of Automotive Engineers, Inc., Department 331, 400 Commonwealth Drive, Warrendale, PA 15096.

Issued in Washington, DC, on November 12, 1993.

John K. McGrath,

Manager, Aircraft Engineering Division, Aircraft Certification Service.

[FR Doc. 93–28715 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–13–M

National Highway Traffic Safety Administration

Announcing the Fourth Meeting of the Motor Vehicle Titling, Registration and Salvage Advisory Committee

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Meeting announcement.

SUMMARY: This notice announces the fourth meeting of the Motor Vehicle Titling, Registration, and Salvage Advisory Committee. The Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519, and in accordance with the Federal Advisory Committee Act, for the purpose of studying problems related to motor vehicle titling, registration, and controls over motor vehicle salvage which may affect the motor vehicle theft problem. The Committee will develop and submit a report to the President, the Congress, and the chief executive of each State concerning the result of this study, which will include recommendations to solve these problems. At this meeting the Committee will discuss flood damaged vehicles, exportation of motor vehicles, false reports of stolen vehicles, and the need for enforcement mechanisms. The Committee will also finalize all other Committee business.

DATE AND TIME: The meeting is scheduled to begin at 10 a.m. on Monday, December 6, 1993, and conclude at 4 p.m. on Wednesday, December 8, 1993.

ADDRESSES: The meeting will be held in room 2230, of the Department of Transportation Building, which is located at 400 Seventh street SW., Washington, DC.

SUPPLEMENTARY INFORMATION: In April 2993, the Motor Vehicle Titling, Registration, and Salvage Advisory Committee was established as required by section 140 of the Anti Car Theft Act of 1992, Public Law 102–519. The purpose of the Committee is to study problems which relate to motor vehicle titling, registration, and vehicle salvage controls, including the lack of uniformity in State laws, which may contribute to motor vehicle theft and fraud problems.

The Committee will prepare a report containing the results of the study, including appropriate recommendations to solve the problems identified. The report shall be submitted to the President, the Congress, and to the chief executive officer of each State not later than April 1994.

This meeting is open to the public; however, participation will be determined by the Committee Chairperson.

A public reference file (P.F. 93–001) has been established to contain products of the Committee and will be open to the public during the hours of 9:30 a.m. to 4 p.m. at the National Highway Traffic Safety Administration's Technical Reference Division in room 5108 at 400 Seventh Street SW., Washington, DC 20590, telephone (202) 366–2768.

FOR FURTHER INFORMATION CONTACT: Richard C. Morse, Odometer Fraud Staff, Office of the Associate Administrator for Enforcement, National Highway Traffic Safety Administration, NEF–20, room 5321, 400 Seventh Street SW., Washington, DC 20590, Phone: 202–366–4761.

Issued on: November 16, 1993.

William A. Boehly,

Associate Administrator for Enforcement.

[FR Doc. 93–28651 Filed 11–22–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 16, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–1002.
Form Number: IRS Form 8621.
Type of Review: Extension.
Title: Return by a Shareholder of a Passive Foreign Investment Company or Qualified Electing Fund.

Description: Form 8621 is filed by a U.S. person who owns stock in a foreign investment company. The form is used to report income, make an election to extend the time for payment of tax, and to pay an additional tax and interest amount. The IRS uses Form 8621 to determine if these shareholders have correctly reported amounts of income, made the election correctly, and have correctly computed the additional tax and interest amount.

Respondents: Individuals or households, Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeeping: 2,000.

Estimated Burden Hours Per Respondent/Recordkeeper:

Recordkeeping—12 hrs., 12 min.

Learning about the law of the form—1 hr., 41 min.

Preparing and sending the form to the IRS—1 hr., 58 min.

Frequency of Response: Annually.

Estimated Total Reporting/ Recordkeeping Burden: 31,680 hours.

Clearance Officer: Garrick Shear (202) 622–3869, Internal Revenue Service, Room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224,

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, Room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–28670 Filed 11–22–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

November 16, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515–0135.

Form Number: None.

Type of Review: Extension.

Title: Required Records for Smelting and Refining Warehouse.

Description: Each manufacturer engaged in smelting or refining must file an annual statement with the Regional Director, Regulatory Audit, showing any material change in the character of the metal-bearing materials smelted or refined, or changes in the method of smelting or refining. Also, the records must show the receipt and disposition of each shipment.

Respondents: Businesses or other for-profit.

Estimated Number of Respondents/ Recordkeepers: 15.

Estimated Burden Hours Per Respondent: 87 hours, 8 minutes.

Frequency of Response: Annually.

Estimated Total Reporting Burden: 1,325 hours.

Clearance Officer: Ralph Meyer (202) 927–1552, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.

OMB Reviewer: Milo Sunderhauf (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–28671 Filed 11–22–93; 8:45 am]

BILLING CODE 4820–02–M

Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service

AGENCY: Department Offices, Treasury.

ACTION: Notice of meeting.

SUMMARY: This notice announces the date of the next meeting and the agenda for consideration by the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service.

DATES: The next meeting of the Treasury Advisory Committee on Commercial Operations of the U.S. Customs Service will be held on Thursday, December 9, 1993, at 9:30 a.m. in the U.S. Treasury Department, Washington, DC. The precise location of the meeting is yet to be determined and may be ascertained by the meeting date by contacting the persons named at the end of this notice.

FOR FURTHER INFORMATION CONTACT:. Dennis M. O'Connell, Director, Office of Tariff and Trade Affairs, Office of the Assistant Secretary (Enforcement), room 4004, Department of the Treasury, 1500 Pennsylvania Avenue, NW., Washington, DC 20220. Tel.: (202) 622–0220.

SUPPLEMENTARY INFORMATION: The preliminary agenda to be considered at the meeting is as follows:

1. The Customs Modernization Act and Informed Compliance Legislation.
2. Status of the North American Free Trade Agreement.
3. Formation of the Customs reorganization team and development of a work plan for restructuring.
4. Briefing by the Chief Textile Negotiator on Administration initiatives to stop textile transshipment.
5. Other new business.

The agenda may be supplemented or otherwise amended prior to the meeting date.

The meeting is open to the public; however, it is necessary for any person other than an Advisory Committee member who wishes to attend the meeting to give advance notice. In order to be admitted to the meeting, contact Ms. Laura Wilkins at (202) 622–1431 or Ms. Theresa Manning at (202) 622–0220 no later than Thursday, December 2, 1993.

Dated: November 16, 1993.

John P. Simpson,

Deputy Assistant Secretary (Regulatory, Tariff and Trade Enforcement).

[FR Doc. 93–28665 Filed 11–22–93; 8:45 am]

BILLING CODE 4810–25–M

DEPARTMENT OF VETERANS AFFAIRS

Information Collection Under OMB Review: Application for Educational Assistance Test Program Benefits (Section 901, PL 96–342), VA Form 22–8889

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue,

NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 9, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Educational Assistance Test Program Benefits (Section 901, Pub. L. 96–342), VA Form 22–8889.

2. The form is used by individuals under the Educational Assistance Test Program to apply for educational benefits. The information is used by VA to determine eligibility for benefits.

3. Individuals or households.

4. 175 hours.

5. 30 minutes.

6. On occasion.

7. 350 respondents.

[FR Doc. 93–28696 Filed 11–22–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s) if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 9, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Revision

1. Report of Accidental Injury in Support of Claim for Compensation or Pension, VA Form 21–4176.

2. The form is used to obtain information regarding accidents resulting in the disability upon which a claim is based and to give the veteran an opportunity to provide information based on his/her own knowledge regarding the accident. The information is used by VA in determining eligibility for benefits.

3. Individuals or households.

4. 2,200 hours.

5. 30 minutes.

6. On occasion.

7. 4,400 respondents.

[FR Doc. 93–28698 Filed 11–22–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Report of Automatic Manufactured Home and/or Lot Loan, VA Form 26–8149

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 23, 1993.

Dated: November 9, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Report of Automatic Manufactured Home and/or Lot Loan, VA Form 26–8149.

2. The form is used by lenders authorized to make manufactured home and/or lot loans on the automatic basis. The information is used by VA to determine that all requirements are met before issuing evidence of guaranty.

3. Businesses or other for-profit—Small business or organizations.

4. 39 hours.

5. 30 minutes.

6. On occasion.

7. 78 respondents.

[FR Doc. 93–28702 Filed 11–22–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request for Verification of Employment, VA Form 26–8497

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 23, 1993.

Dated: November 9, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Request for Verification of Employment, VA Form 26–8497
2. The form is used by lenders to verify a loan applicant's income and employment information when making guaranteed and insured loans. The use of this form is optional since any comprehensible form of independent verification is acceptable, provided all information contained on VA Form 26–94497 is furnished.
3. Business or other for-profit
4. 52,667 hours.
5. 10 minutes.
6. On occasion.
7. 316,000 respondents.

[FR Doc. 93–28699 Filed 11–22–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Application for Release From Personal Liability to the Government on a Home Loan, VA Form 26–6381

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information: (1) The title of the information collection, and the Department form number(s), if applicable; (2) a description of the need and its use; (3) who will be required or asked to respond; (4) an estimate of the total annual reporting hours, and recordkeeping burden, if applicable; (5) the estimated average burden hours per respondent; (6) the frequency of response; and (7) an estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests or benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer by December 23, 1993.

Dated: November 9, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Application for Release from Personal Liability to the Government on a Home Loan, VA Form 26–6381
2. The form is completed by veterans who are selling their VA-guaranteed homes by assumption rather than requiring the purchaser to obtain their own financing to pay off the loan. The information is used by VA to determine assumption approval.
3. Individuals or households—Businesses or other for-profit.
4. 1,328 hours.
5. 10 minutes.
6. On occasion.
7. 7,973 respondents.

[FR Doc. 93–28700 Filed 11–22–93; 8:45 am]

BILLING CODE 8320–01–M

Information Collection Under OMB Review: Request to Lender for Status of Loan Account-LCS, VA Form 26–8778

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

The Department of Veterans Affairs has submitted to OMB the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). This document lists the following information:

(1) The title of the information collection, and the Department form number(s), if applicable;

(2) A description of the need and its use;

(3) Who will be required or asked to respond;

(4) An estimate of the total annual reporting hours, and recordkeeping burden, if applicable;

(5) The estimated average burden hours per respondent;

(6) The frequency of response; and

(7) An estimated number of respondents.

ADDRESSES: Copies of the proposed information collection and supporting documents may be obtained from Janet G. Byers, Veterans Benefits Administration (20A5), Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420 (202) 233–3021.

Comments and questions about the items on the list should be directed to VA's OMB Desk Officer, Joseph Lackey, NEOB, room 3002, Washington, DC 20503, (202) 395–7316. Do not send requests for benefits to this address.

DATES: Comments on the information collection should be directed to the OMB Desk Officer within 30 days of this notice.

Dated: November 9, 1993.

By direction of the Secretary.

B. Michael Berger,

Director, Records Management Service.

Extension

1. Request to Lender for Status of Loan Account-LCS, VA Form 26–8778
2. The form is used by VA to obtain pertinent data from the servicer of guaranteed or insured loans and vendee loans sold with VA repurchase agreement on the status of loans in default. The information is used to assure that necessary action is taken to cure the default.
3. Small businesses or organizations.
4. 29,167 hours.
5. 10 minutes.
6. On ocassion.
7. 175,000 respondents.

[FR Doc. 93–28697 Filed 11–22–93; 8:45 am]

BILLING CODE 8320–01–M

federal register

Tuesday
November 23, 1993

Part II

Department of Health and Human Services

Food and Drug Administration

21 CFR Part 820

Medical Devices; Current Good Manufacturing Practice (CGMP) Regulations; Proposed Revisions; Request for Comments; Proposed Rule

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR PART 820

[Docket No. 90N–0172]

Medical Devices; Current Good Manufacturing Practice (CGMP) Regulations; Proposed Revisions; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Proposed rule.

SUMMARY: The Food and Drug Administration (FDA) is proposing to revise the current good manufacturing practice (CGMP) regulations for medical devices to: Replace quality assurance program requirements with quality system requirements that include design; purchasing, and servicing controls; clarify recordkeeping requirements for device failure and complaint investigations; clarify requirements for qualifying, verifying, and validating processes and specification changes; and clarify requirements for evaluating quality data and correcting quality problems. In addition, FDA has also, through reorganization and modification of terms, revised the CGMP requirements for medical devices to ensure that they are compatible with specifications for quality systems contained in international quality standards, ISO 9001 "Quality Systems Part 1. Specification for Design/Development, Production, Installation, and Servicing" (Ref. 1), and other applicable international standards, thereby integrating international quality system terminology into proposed CGMP requirements.

DATES: Submit written comments by February 22, 1994. FDA is proposing that any final rule that may issue based upon this proposal become effective 180 days following its publication.

ADDRESSES: Submit written information and comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857. Submit written requests for single copies of this document to the Division of Small Manufacturers Assistance (HFZ–220), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857. Please provide two self-addressed envelopes to assist the division in processing your requests. All comments and requests should be identified with the docket number found in brackets in the heading of this document.

FOR FURTHER INFORMATION CONTACT: William F. Hooten, Center for Devices and Radiological Health (HFZ–300), Food and Drug Administration, 2098 Gaither Rd., Rockville, MD 20850, 301–594–4646.

SUPPLEMENTARY INFORMATION

I. Background

Manufacturers establish and follow quality systems to help ensure that their products consistently meet applicable requirements and specifications. The quality systems for FDA-regulated products (e.g., food, drugs, and devices) are known as CGMP's. CGMP requirements for devices (21 CFR part 820) were first authorized by section 520(f) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 360j(f)), which was among the authorities of the Medical Device Amendments of 1976 (Pub. L. 94–295) to the act.

Pursuant to section 520(f) of the act, FDA issued final regulations in the **Federal Register** of July 21, 1978 (43 FR 31508), prescribing CGMP requirements for the methods used in, and the facilities and controls used for, the manufacture, packing, storage, and installation of medical devices. These regulations became effective December 18, 1978, and are codified at part 820. Except for editorial changes to update organizational references in the regulations and revisions to the list of critical devices that was included in the preamble to the final regulations, the device CGMP requirements have not been revised since 1978. This proposed rule is the result of an effort begun in 1990 to revise these regulations.

On November 28, 1990, the Safe Medical Devices Act of 1990 (the SMDA) (Pub. L. 101–629) became law. The SMDA amended section 520(f)(1)(A) of the act to provide clear authority to add preproduction design validation controls to the device CGMP regulations and also added a new section 803 to the act (21 U.S.C. 383) which encourages FDA to work with foreign countries toward mutual recognition of CGMP requirements.

This action is being taken pursuant to those provisions of the SMDA, and in response to notices that appeared in the **Federal Register** of April 25, 1990 (55 FR 17502), and in the **Federal Register** of April 17, 1991 (56 FR 15626), that announced meetings of the agency's Device Good Manufacturing Practice Advisory Committee, at which the need for revisions to the CGMP regulations was explored, and an advance notice of proposed rulemaking (ANPRM) that appeared in the **Federal Register** of June 15, 1990 (55 FR 24544), that announced the agency's intent to revise the CGMP regulations. The agency also announced the availability of a document that appeared in the **Federal Register** of November 30, 1990 (55 FR 49644), entitled "Medical Devices; Current Good Manufacturing Practices (CGMP) Regulations Document; Suggested Changes; Availability," (Ref. 2) (hereinafter referred to as the November 1990 information document) and solicited comments from the public about the document. The agency has met to discuss current good manufacturing practice development with representatives of the European Community (EC), with members of the European Committee for Standardization who have developed the EC's current quality system standards for medical devices, and with representatives of the Canadian Ministry of Health and Welfare and the Japanese Ministry of Health and Welfare. The agency has also participated in numerous industry and professional association seminars and workshops where the proposed revisions of FDA's CGMP regulations were the focus of the meetings.

Thus, FDA's decision to revise the CGMP regulations is based on changes in the law by the SMDA, the agency's discussions with others including its Device Good Manufacturing Practice Advisory Committee, responses to the **Federal Register** notices on this matter, FDA's analysis of recall data, its experience with the regulatory application of the current device CGMP regulations, and its assessment of international quality standards.

II. Summary and Rationale of Proposed Changes

FDA is proposing to add design, purchasing, and servicing controls; modify the critical device requirements; revise certain existing requirements to clarify the intent of the requirements; and harmonize the CGMP regulations for medical devices with quality system specifications in the ISO 9001 International Quality Standard, "Quality Systems Part 1. Specification for Design/Development, Production, Installation, and Servicing" (Ref. 1).

A. Design Controls

Over the last 9 years, FDA has identified lack of design controls as one of the major causes of device recalls (Ref. 3). The intrinsic quality of devices, including their safety and effectiveness, is established during the design phase. Thus, FDA believes that unless

appropriate design controls are observed during preproduction stages of development, a finished device may be neither safe nor effective for its intended use. The SMDA provides FDA with the authority to add preproduction design validation controls to the device CGMP regulations. Based on its experience with administering the CGMP regulations, which currently do not include preproduction design validation controls, the agency is concerned that the current regulations provide less than an appropriate level of assurance that devices will be safe and effective. Therefore, FDA is proposing to add general requirements for design controls to the device CGMP regulations for all class III and II devices and several class I devices.

i. Congressional Hearings

As early as 1984, Congress began holding hearings on medical device failures and FDA's apparent inability to anticipate or address problems within the industry under the 1976 amendments. These hearings focused on deaths resulting from the use of cardiac pacemaker leads which had malfunctioned due to design problems. (See the March 13, 1984, hearing of the House of Representatives' Committee on Energy and Commerce's Subcommittee on Oversight and Investigations.)

As a result of a commitment made by FDA to congressional oversight committees, work began on a document intended to assist medical device manufacturers in planning and implementing a preproduction quality assurance program. In the **Federal Register** of May 19, 1987 (52 FR 18747), the agency published a notice of availability of a draft document entitled "Preproduction Quality Assurance Planning; Recommendations for Medical Device Manufacturers" (Ref. 4). That document was reviewed by the Device Good Manufacturing Practices Advisory Committee and discussed at an open committee meeting held on May 4 and 5, 1988 (Transcript Docket No. 88D–0087). The agency published a notice in the **Federal Register** of October 5, 1989 (54 FR 41165), announcing the availability of the final version of the document.

ii. FDA evaluations

In January 1990, FDA published the results of an evaluation of device recalls that occurred from October 1983 through September 1989, in a report entitled "Device Recalls: A Study of Quality Problems" (Ref. 3). (See 55 FR 21108, May 22, 1990, where FDA announced the availability of the report.) FDA found that approximately 44 percent of the quality problems that had led to voluntary recall actions during this 6-year period were attributable to errors or deficiencies that had been designed into the particular devices and that may have been prevented by adequate design controls. FDA believes that this figure is unacceptable from a public health standpoint. Some of the more egregious examples that FDA found during its evaluation included: (1) The failure to properly identify and establish adequate physical and performance requirements for the device before production; (2) the failure to verify that the device met physical and performance requirements before production; (3) the failure to ensure that device components functioned properly in conjunction with other components; (4) the failure to ensure that the environment would not adversely affect components; and (5) the failure to select adequate packaging materials. These design-related defects involved both noncritical devices (e.g., patient chair lifts, in vitro diagnostics, and administration sets) and critical devices (e.g., pacemakers and ventilators). With respect to software used to operate medical devices, the data are even more alarming. A study of software-related recalls for the period FY 1983—FY 1991 indicated that over 90 percent of all software-related device failures was due to design-related errors, generally, the failure to validate software prior to routine production (Ref. 5).

iii. The Inspector General's Report

In 1990, the Department of Health and Human Services' Inspector General (IG) conducted a study entitled "FDA Medical Device Regulation From Premarket Review to Recall" (Ref. 6). The purposes of the study were to describe FDA's regulatory process for selected medical devices that had been recalled and to identify potential vulnerabilities and strengths in the FDA regulatory system for medical devices. The devices selected for the study were defibrillator/cardiac monitors, balloon catheters, spinal fixation systems, heart valves, lithotripters, balloon inflation devices, insulin infusion pumps, and ventilators. As a result of the study, the IG recommended that FDA incorporate the preproduction quality assurance recommendations into the CGMP regulations for medical devices. Indeed, one company official interviewed as part of this study recommended that preproduction quality assurance requirements be incorporated into the device CGMP regulations.

iv. Proposed Changes

As stated in proposed § 820.1, the purpose of the device CGMP regulations is to help ensure that all devices will be safe and effective and otherwise in compliance with the act. FDA believes that, except for the most simple devices, i.e., certain class I devices, there cannot be an adequate assurance of safety and effectiveness unless proper physical and performance parameters are established during the design stage; such assurance cannot be provided solely by manufacturing controls. Therefore, FDA has concluded that it is essential that those firms and individuals who design class II, class III, and certain class I medical devices discussed in more detail below do so under formal controls that will ensure that, for each intended use of a device, specifications are established and validated to be adequate and that the final design actually meets these validated specifications.

In response to the ANPRM and the November 1990 information document, both of which discussed the proposed addition of design controls, both large and small medical device manufacturers expressed support for the addition of design controls to the device CGMP regulations. For example, one multinational manufacturer of medical devices, pharmaceuticals, biologics, and veterinary medicines (Ref. 7) stated: "The inclusion of design validation in the revised Good Manufacturing Practices (GMP) regulation is a good idea which is being implemented by many device manufacturers. The degree of formally documented validation procedures varies considerably within the device industry." The president of a small manufacturer (Ref. 8) of noncritical devices with 2 years of experience in implementing the specifications for quality systems contained in ISO 9001 said:

> Our experience validates the comments expressed in the summary of the proposed rules: although the implementation can be time consuming, it is our opinion that the medical device product leaving the design phase is in fact of far higher quality than a product without the protocol. By identifying problems early in the design phase, a great deal of subsequent engineering change to an item in production is eliminated. This is probably a net saving to the manufacturer; if the protocol is followed, the development may actually be more efficient. In addition, use of ISO 9001 better equips U.S. manufacturers to compete in a world market.

Thus, in accordance with the SMDA, the agency's experiences with design-related recalls, and comments on the ANPRM and November 1990 information document, FDA is proposing to require the manufacturers

of class II, class III, and certain class I medical devices to establish and implement design controls, with the extent of the controls based on the intended use of the device. FDA welcomes comment on this proposal.

FDA is not proposing to subject the majority of class I devices to design controls because FDA does not believe that such controls are necessary to ensure that such devices are safe and effective and otherwise in compliance with the act. For most class I devices, FDA believes that the production controls in this proposed regulation and the other general controls of the act will be sufficient, as they have been in the past, to ensure safety and effectiveness. However, FDA believes that certain class I devices do raise design-related safety and effectiveness concerns. For such class I devices, the safety, effectiveness, or both, of these devices will, FDA believes, be significantly enhanced by design controls. These devices are identified in the list below. (The list indicates the classification regulation section in title 21 of the Code of Federal Regulations under which the device is listed and the generic name of the device.)

LIST OF CLASS I DEVICES SUBJECT TO CGMP DESIGN CONTROLS

21 CFR	Device
862.2050 through 862.2920.	Instruments, Clinical Laboratory.
868.6810	Catheter, Tracheobronchial Suction.
878.4460	Glove, Surgeon's.
880.4680	Apparatus, Single Patient, Portable Suction.
880.5510	Lift, Patient, Non-AC-Powered.
880.6760	Restraint, Protective.
892.1100	Camera, Scintillation (gamma).
892.1110	Camera, Positron.
892.1130	Counter, Whole Body, Nuclear.
892.1300	Scanner, Rectilinear, Nuclear.
892.1320	Probe, Uptake, Nuclear.
892.1330	Scanner, Whole Body, Nuclear.
892.1410	Synchronizer, Electrocardiograph Nuclear.
892.1970	Synchronizer, Radiographic ECG/Respirator.
892.5650	System, Applicator, Radionuclide Manual.
892.5740	Source, Radionuclide Teletherapy.

When reviewing the list of class I devices to determine whether design controls were needed to ensure the safety and effectiveness of class I devices, FDA concluded that there were two categories of class I devices that should be subject to design controls. The first of these categories consists of devices whose performance cannot be validated properly unless the design process is controlled from the outset. The second category consists of devices that have had design-related problems that have, or could have, significantly affected their safety or effectiveness and injured the user or consumer. This, FDA believes, is a clear signal that design controls are needed. (Some of the devices on the list, such as the radiological devices, fall into both categories.)

Clinical laboratory instruments, cameras, and radiological devices fall into the first category of devices. For these devices, FDA believes that design controls are necessary to ensure that performance specifications are properly established and validated as adequate prior to production. In many cases, these are computerized devices, and thus, FDA believes, proper performance can only be ensured through proper assessment of the design as it is developed during the design phase.

The remaining devices (and the radiological devices as well) fall into the second category. With regard to the suction catheter and the suction apparatus, FDA believes that design controls are necessary to ensure the strength and compatibility of materials and bonded surfaces to minimize separation of components and breakage during use, both of which have been problems in the past. FDA believes that these issues are crucial to the safety and effectiveness of these devices. Similarly, FDA believes that it is critical that the barrier characteristics of materials used in surgeon's gloves be established and proven prior to production of these gloves. With regard to patient lifts and the radiological devices, FDA believes that the specifications for mechanical load capacity, mechanical stability, and strength of materials must be established and assessed as appropriate for their intended use, prior to production, to ensure safety. For protective restraints, FDA believes that design controls are necessary to ensure proper belt design and user instructions.

B. Purchasing Controls

The quality of purchased product and services is crucial to maintaining the intrinsic safety and effectiveness of a device. Many device failures due to problems with components that result in recall are due to unacceptable components provided by suppliers (Ref. 3). FDA has found during CGMP inspections that the use of unacceptable components is often due to the failure of the manufacturer of the finished device to adequately establish and define requirements for the device's purchased components, including quality requirements. Therefore, FDA believes that the purchasing of components, finished devices, packaging, labeling, and manufacturing materials must be conducted with the same level of planning, control, and verification as internal activities.

The appropriate level of control should be achieved, FDA believes, through a proper mix of supplier and in-house controls. Purchasing contracts, orders, or other purchasing documents must clearly and unambiguously specify the necessary requirements for the product or service ordered. This means, of course, that a manufacturer must establish and validate component requirements prior to purchasing the component. (FDA expects these steps to occur during the preproduction design stage.)

Each manufacturer is also responsible for ensuring that purchased products and services conform to specifications, first, by confirming the supplier's quality system and, second, by continued monitoring of the supplier's quality systems and the quality of the items and services received. Accordingly, FDA also is proposing general requirements for manufacturers to assess the capability of suppliers to provide quality products and services, along with general requirements for ensuring that purchasing documents clearly describe the requirements for the product or service purchased.

C. Servicing Controls

FDA finds, as a result of reviewing service records, that the data resulting from the maintenance and repair of medical devices provide valuable insight into the adequacy of the performance of devices. Thus, FDA believes that service data must be included among the data manufacturers use to evaluate and monitor the adequacy of the device design, the quality system, and the manufacturing process. Accordingly, FDA is proposing to add general requirements for the maintenance of servicing records and for the review of these records by the manufacturer. Servicing controls will apply to servicing conducted or controlled by or for finished device manufacturers (e.g., conducted by a manufacturer, employee, agent, or contractor). Manufacturers must ensure that the performance data obtained as a part of servicing are fed back into the manufacturer's quality system for evaluation as part of the overall device experience data.

D. Changes in Critical Device Requirements

In the June 15, 1990, ANPRM, the agency announced that it was considering whether to combine the critical device requirements with the general requirements and modify the critical device terminology in the device CGMP regulations because of duplication of critical and noncritical device requirements and the difficulty that both FDA and industry sometimes have experienced in identifying critical components and critical operations. As a result of the comments received in response to the June 15, 1990, ANPRM and the November 1990 information document, FDA is now proposing to eliminate the critical component and critical operation terminology contained in the present CGMP requirements for devices, and to meld the duplicative requirements into the general requirements of the revised CGMP regulations for medical devices. The increased emphasis on purchasing controls and on establishing the acceptability of component suppliers, however, ensures that the intent of the present critical component requirement is carried forward into the revised CGMP. The addition of a requirement to validate and document special processes further ensures that the requirements of the present critical operation requirements are retained. Process validation is a requirement of the current CGMP and guidelines were published in 1987 to assist manufacturers in establishing process validation procedures (Ref. 9).

FDA is proposing to retain the distinction between critical and noncritical devices for one regulatory purpose. Traceability will continue to be required only for critical devices, and each manufacturer should refer to the definition of "Critical device" in determining whether the traceability requirements apply to that manufacturer's device. FDA will continue to maintain an illustrative list of critical devices to assist device manufacturers in identifying critical medical devices. A current list may be obtained from FDA's Division of Small Manufacturers Assistance (address above), telephone 1–800–638–2041. Neither the proposed nor the current list is intended to be definitive or exhaustive.

E. Overview of Modifications of Specific Requirements

FDA's experience indicates that some existing CGMP requirements for medical devices should be modified, and others clarified, to accomplish their intended purpose. Such is the case with the failure investigations requirements (§ 820.162) and with requirements for investigating device complaints pertaining to death, injury, or health hazards (§ 820.198). The intent of these provisions is to ensure that firms adequately investigate complaints and device failures in order to identify, correct, and prevent the cause of device defects. The present regulations require firms to maintain records to facilitate these activities and to allow FDA to determine compliance with current complaint investigation requirements (§ 820.198) and medical device reporting (MDR) requirements in part 803 (21 CFR part 803). However, FDA has learned through numerous CGMP inspections and investigations of device failures that firms often do not have adequate written procedures for handling complaint reporting and failure investigations. This lack of written procedures, FDA believes, results in inadequate followup which, in turn, results in device failures that could and should have been prevented. Thus, the agency believes that written procedures are necessary to manage the complaint reporting and failure investigation requirements of the device CGMP regulations and to ensure consistent performance of appropriate activities by the proper individuals.

Regarding measures established to identify and solve quality problems, FDA finds that many are structured to focus upon identifying solutions to apparent problems on the basis of immediate information. Inadequate provisions are made for collecting and correlating all salient information to determine and identify the root cause of, and all factors contributing to, a problem and to evaluate all the implications of that cause. Accordingly, the agency intends to clarify existing § 820.20 to require each manufacturer to establish a written program for evaluating all internal and external quality data for purposes of identifying quality problems that result in device defects and developing and implementing corrective action. These clarifications appear in § 820.100.

Because many changes in device components and manufacturing processes can, and do, alter the characteristics of a device and adversely affect performance and quality characteristics in a way that is not readily detectable by visual inspection or routine testing of a device, a manufacturer must be able to demonstrate (i.e., to validate by documented analysis, challenge testing, and evaluation) that the changes accomplish their purpose and have not adversely affected the safety and effectiveness of the device. FDA's recall data show that defects in devices often are caused by changes that were not properly validated (Ref. 3). Had the manufacturers complied with CGMP's, and done the validation that is necessary to establish that a proposed change does what it is supposed to do, and does it properly (without any effect on safety or effectiveness), the need for these recalls could have been avoided. Accordingly, FDA is proposing to clarify that the CGMP requirements for specifications and process changes, currently found in § 820.100(a)(2) and (b)(3), to mandate that device specification and process changes be validated before implementation and that the results of these activities must be recorded.

F. Harmonization

FDA is proposing to reorganize the structure of the device CGMP regulations and modify some of their language in order to harmonize them with international quality standards. Thus, FDA is proposing to relocate and combine certain requirements to better harmonize the requirements with specifications for quality systems in the ISO 9001 quality standard and to use as much common language as possible to enhance conformance with ISO 9001 terminology.

The EC intends to harmonize all marketing requirements for products and services sold in the EC countries to ensure free trade among these countries. This action will effectively create a huge common market of over 320 million people. Medical devices are one of the product categories for which marketing requirements will be harmonized. Harmonization of device requirements within the EC will be accomplished through the issuance of directives that specify the essential requirements that must be met in order to market devices in the EC. Both horizontal standards, applicable to broad categories of products, and vertical standards, which are product specific, will be used in demonstrating conformity with the requirements of the directives. Harmonized quality systems or good manufacturing practice requirements are among the horizontal standards that will be applicable to medical devices.

Two European Standards, EN46001 "Quality Systems—Medical Devices—Particular Requirements for the Application of EN29001" (Ref. 10) and EN46002 "Quality Systems—Medical Devices—Particular Requirements for the Application of EN29002" (Ref. 11) have been prepared by the Joint European Committee for

Standardization/European Committee for Electro-technical Standardization Coordinating Work Group on Quality Supplements. EN46001 will be applicable to those manufacturers subject to design controls who choose to comply with a total quality system that want to market devices in the EC. EN46002 will be applicable to those manufacturers who choose to comply with a production quality system.

EN46001 consists of ISO 9001 requirements plus supplemental requirements specific to medical devices. The revised CGMP regulations will incorporate the requirements of ISO 9001 plus supplemental requirements specific to medical devices that are found in the present CGMP regulations. FDA is working closely with EC officials to harmonize the supplemental requirements of this proposed revised CGMP regulations with those of EN46001.

At a public meeting held on June 19 and 20, 1990 (55 FR 17502), FDA first discussed the possibility of harmonizing the device CGMP regulations with international quality standards with the agency's Device Good Manufacturing Practice Advisory Committee. Subsequently, at an open meeting of the Device Good Manufacturing Practice Advisory Committee held on May 29, 1991 (56 FR 15626), FDA proposed to facilitate harmonization by adopting verbatim the specifications in the ISO 9001 quality standard and to add supplements as necessary to achieve CGMP regulations appropriate for medical devices. However, FDA did not receive the expected permission to reprint for general distribution to the public either the ISO 9001 document or the ISO companion document containing the definitions of quality terms, ISO 8402 (Ref. 12). Of course, FDA would have to publish the documents in the **Federal Register** in order to propose to adopt them as binding regulations under the Administrative Procedure Act (5 U.S.C. 553). Furthermore, FDA decided, upon further reflection, that much of the language of ISO 9001 would need to be adapted for inclusion in the revised CGMP regulations for medical devices.

Therefore, FDA has determined that the most appropriate approach to developing device CGMP regulations equivalent to the quality system specifications in ISO 9001 is to structure the revised CGMP regulations as closely as possible to ISO 9001 specifications and to use similar terminology where appropriate.

FDA believes that revising the device CGMP regulations so they are comparable to the ISO 9001 specifications for quality systems will, once harmonization is achieved, reduce a source of competitive disadvantage to U.S. manufacturers attempting to market devices in the EC. Harmonization of FDA's device CGMP regulations with the medical device good manufacturing practice rules of the EC, and with comparable device good manufacturing practice rules being developed by Canada and Japan, will minimize the number of quality systems with which the U.S. industry must comply to compete in the international market. Harmonization is intended to increase the likelihood that manufacturers need to develop only one quality system for their primary markets. Also, unless FDA's device CGMP regulations are comparable to the EC's harmonized good manufacturing practice standards, FDA will have difficulty establishing mutual CGMP inspection agreements with other countries.

Finally, by requiring all manufacturers to design and manufacture devices under the controls of a total quality system, FDA believes that the proposed changes in the CGMP regulations will improve the quality of medical devices manufactured in the United States for domestic distribution or exportation as well as devices imported from other countries and, thus, are necessary to ensure that only safe and effective devices are distributed in conformance with the act. Thus, harmonization is not intended to, and should not be viewed as, lowering or lessening CGMP requirements. Rather, harmonization means a general enhancement of CGMP requirements among the world's leading producers of medical devices.

III. The Agency's Tentative Conclusions on the Public Comments

A. Comments on the June 15, 1990, ANPRM

As noted previously, FDA published an ANPRM (55 FR 24544, June 15, 1990) which announced that FDA was considering whether the agency should propose to revise the CGMP regulations for medical devices in part 820. At that time, the agency said that the decision to revise the device CGMP regulations would be based on the information and comments submitted in response to the notice; the recommendations of the Device Good Manufacturing Practice Advisory Committee; analysis of FDA's device recall data; the agency's experience in applying the device CGMP requirements in its regulation of medical devices; and the development of harmonized good manufacturing practice regulations by the EC.

In response to the ANPRM, FDA received 53 comments concerning changes to the device CGMP regulations, including comments from industry associations and from medical device manufacturers representing a broad section of small and large firms that manufacture both critical and noncritical devices ranging from the relatively simple to the extremely complex. The general comments covered a wide variety of concerns, from expressing support for implementing practices that would improve the industry's record for design quality, to expressing opposition to design controls. Comments also discussed the elimination of the critical device requirements, harmonization, and reciprocity.

i. Harmonization

1. Several comments said that Congress did not intend for FDA to ensure that manufacturers are competitive in the world marketplace and questioned FDA's legislative authority to undertake harmonization. It was stated that manufacturers and distributors should be responsible for proving compliance with international quality standards, if they wish to export, without Government intervention.

FDA believes the SMDA addresses an important aspect of the agency's role in encouraging the international harmonization of good manufacturing practices. Section 803(a) of the SMDA specifically directs the agency, in entering into agreements with foreign countries to facilitate commerce in devices, to encourage the mutual recognition of good manufacturing practice regulations under section 520(f) of the act, as well as other regulations and testing protocols as necessary. Further, section 514(a) of the act (21 U.S.C. 360d(a) encourages FDA to consult with internationally recognized standard setting organizations when issuing performance standards. FDA does, therefore, have a specific charge from Congress to promote international harmonization of good manufacturing practices. Such a charge is in addition to the agency's authority generally to strive toward harmonization that is consistent with legal requirements.

In this area, harmonization does much more than promote the competitiveness of U.S. device manufacturers; because ISO 9001 promotes a more comprehensive quality assurance system than FDA's present CGMP requirements, FDA believes that this rulemaking will also mean that safer, more effective medical devices are available in the United States. FDA's primary goal in revising the device

CGMP regulations and harmonizing with ISO 9001 is to strengthen its regulations. Thus, FDA would pursue the proposed changes regardless of the progress of the EC's activity to develop harmonized good manufacturing practice standards. Although harmonization with the EC's efforts in this area is secondary, FDA believes it will have significant competitive advantages for the U.S. medical device industry.

2. Several comments questioned FDA's reliance on recall data and whether the changes prompted by FDA analysis of this data would result in the desired corrections and address the quality problems with medical devices.

FDA's recall data are derived from the investigation and resolution of actual medical device failures. Because the recall data relate to actual device failure, FDA believes the data are appropriate for establishing the causes of device failures. The proposed revision of CGMP requirements will require each manufacturer to establish and implement a total quality system appropriate to the device manufactured. The benefits of such quality systems are well established (Ref. 13), and they have also been attested to by manufacturers who have successfully implemented such systems. (See section II.A. of this document.)

In response to the need to provide an economic impact analysis of the proposed CGMP revision, FDA commissioned an independent contractor, the Eastern Research Group, Inc. (ERG), to conduct the analysis (Ref. 14). The contractor's report also supports the public health need for revising the current rules. ERG analyzed FDA's recall and MDR data, interviewed device manufacturers and consultants, and concluded that, because a substantial portion of design problems result from preventable errors or foreseeable design shortcomings spawned by poor design practices, the proposed regulations will improve design practices for a major portion of the industry and thus eliminate a substantial portion of medical device design problems. ERG estimates that, if the proposed design controls are implemented, up to 73 percent of design-related recalls could be avoided. Based on this assumption, ERG estimates that the proposed CGMP regulations would prevent one-third of the design-related problems, avoiding 53 deaths and 1,257 injuries per year. The medical device industry would gain substantial economic benefits from the proposed changes to the CGMP regulations in three ways: cost savings from fewer recalls, productivity gains from improved designs, and efficiency gains for export-oriented manufacturers, who would now need to comply with only one set of quality standards. ERG has estimated that the savings to industry from avoided design-related recalls could be in the tens of millions of dollars.

3. Other comments noted that FDA should not surrender its inspection activity to other countries and that mutual inspection agreements should be pursued with caution.

Because of FDA's limited resources, FDA welcomes opportunities for establishing inspection agreements with other countries, where inspections by the other countries may augment or replace FDA inspections. However, FDA does not enter into such agreements lightly. The adequacy of the foreign country's inspection force, training programs, reporting, and enforcement are all carefully considered and evaluated before FDA enters into such agreements, and FDA preserves its ability to conduct audits.

4. Several comments suggested that FDA issue a guideline, rather than new regulations, to address the changes, while others opposed extending CGMP requirements to devices that are presently exempt.

Guidelines are not binding legal requirements. FDA's experience with guidelines has shown that many manufacturers do not adopt guidelines because they are not mandatory. FDA believes that the proposed changes must be followed to provide adequate assurance that devices are safe and effective. Because experience shows that voluntary guidelines would not be uniformly followed, FDA believes that the changes in the device CGMP regulations must be mandatory requirements.

As for the scope of the requirements, the proposed revised CGMP requirements will apply, as do the present ones, to manufacturers of finished devices distributed in the United States, unless specifically exempt by regulation. Those manufacturers now exempt from the devices' CGMP regulations would also be exempt from the revised CGMP regulations. Moreover, some CGMP requirements may not be applicable to all device manufacturers. For example, those manufacturers which do not produce serviceable devices or devices requiring installation would not be subject to the proposed CGMP regulations that pertain to such devices. Each manufacturer must develop a quality system that is appropriate for each particular device and its design, manufacture, and production processes. FDA will continue to evaluate the adequacy of each manufacturer's quality system and conformance to the selected system during good manufacturing practice inspections.

5. Several comments objected to the elimination of the two-tier system and critical device list associated with the present device CGMP regulations.

FDA believes that experience has shown the need to apply to medical devices generally some of the requirements currently applicable only to critical devices. As discussed earlier, the critical device list will be retained for traceability purposes. FDA welcomes further comment on this proposal.

6. Several of the comments on the proposed addition of design controls to the device CGMP regulations focused on increased costs to small U.S. manufacturers. Comments also claimed that the addition of design controls will slow the introduction of new products. Some comments noted that design concerns should be addressed during FDA's market clearance processes involving premarket notifications for devices, submitted under section 510(k) of the act (21 U.S.C. 360(k)) (510(k) or premarket notifications) and premarket approval applications (PMA's), submitted under section 515 of the act (21 U.S.C. 360e).

Medical device establishments will incur compliance costs in extending their quality systems to meet the proposed FDA regulation. However, FDA believes there is ample evidence to suggest that the long-term benefits will outweigh the costs. As stated previously, these estimated costs and benefits of design controls are contained in the economic impact analysis commissioned by FDA under contract No. 223–91–8100 (Ref. 14).

Moreover, FDA believes, based on comments submitted in response to the ANPRM, that both large and small manufacturers can realize cost and time savings through the proper establishment and implementation of appropriate design controls. (See section II.A. and comment 2 of this document.) In addition, a May 1991 study by the U.S. General Accounting Office indicates that both large and small manufacturers who developed quality improvement programs realized reduced times to develop new products, as well as reduced product defects (Ref. 13), which should result both in reduced costs and increased customer satisfaction.

FDA recognizes that the device industry consists of manufacturers of devices whose design requirements vary significantly based on the intended use of the device. The proposed regulation

sets out the general design control requirements. Under the proposed regulation, each manufacturer is required to develop a detailed design plan for each device it manufactures if it is a class II, class III, or designated class I device and an operating procedure that implements the plan. Device manufacturers are responsible for ensuring that the design plans and operating procedures establish all controls necessary to ensure the production of a safe and effective device. The type of the design controls established and the precise details of implementation are left for each manufacturer to decide, based on the complexity and intended use of the device. FDA will examine these design plans and operating procedures during inspections to determine whether a manufacturer is complying with the device CGMP regulations.

With respect to FDA's market clearance processes, only about 3 percent of all medical devices are subject to premarket approval, and premarket approval requirements do not address all of the design control elements envisioned for the revised CGMP. Further, design controls are not typically evaluated as part of a 510(k) submission.

Many of the comments which the agency received concerning its intention to consider revising the device CGMP regulations pertained to suggested changes and suggested language that were included in the November 1990 information document. These comments are summarized in the following section and discussed in detail in section IV. of this document.

ii. Comments on the November 1990 Information Document

In November 1990, FDA announced the availability of the November 1990 information document (Ref. 2). This document was developed in response to the recommendation, made by the agency's Device Good Manufacturing Practice Advisory Committee during its June 19 and 20, 1990, committee meeting (55 FR 17502), that FDA collaborate with industry in developing language for proposed revisions to the CGMP regulations. The November 1990 information document contained suggested changes and additions to the device CGMP regulations and was mailed to all registered medical device manufacturers to obtain comment and facilitate discussion of the changes being considered by FDA. In response to the November 1990 information document, FDA received 42 letters containing comments on the suggested changes. Letters were received from 10 industry associations (including 1 Canadian and 1 European industry association), 22 manufacturers (both large and small), 2 consulting firms, 2 associations representing medical device users, and members of the agency's Device Good Manufacturing Practice Advisory Committee.

Most of the comments concerned the proposed addition of design controls to the device CGMP regulations, the proposed adoption of CGMP regulations that conform with ISO 9001 specifications for quality systems, and the proposal to modify the critical device requirements and meld the requirements into the general CGMP requirements. The majority of the comments indicated that industry now supports the conformity of FDA's device CGMP regulations with appropriate specifications of ISO 9001 and the harmonization of FDA's device CGMP regulations with the EC's good manufacturing practice requirements for medical devices, EN46001, which is based on ISO 9001.

Approximately one-third of the letters specifically expressed support for the addition of design controls. Others suggested changes in the language proposed for design controls. However, concerns were expressed about retrospective design requirements, the economic impact of design controls, the availability of design data at the manufacturing facility, and the availability of proprietary or trade secret information.

FDA welcomes comments on the proposal to apply design controls to all class III and class II and certain class I devices and on FDA's proposal to make the revised regulations effective 180 days after the date of publication of the final revised regulations. At that time all manufacturers will be expected to have design controls established and implemented. Design control requirements will not be retroactive, although they will apply to design changes made after the effective date to currently marketed products.

All documents required by the CGMP regulations must be maintained at the manufacturing site or other location that is reasonably accessible to FDA. If reasonably accessible (i.e., capable of being provided during the course of an inspection), design control records may be maintained at a facility other than the manufacturing facility, e.g., the research and development (R&D) facility.

The handling of confidential documents is addressed similarly in the current CGMP regulations in § 820.180 and in the proposed revision of § 820.180. Trade secret information is protected by provisions of 21 CFR part 20, which exempts from public disclosure trade secrets and commercial or financial information that are privileged or confidential. In addition, section 301(j) of the act (21 U.S.C. 331(j)) prohibits the release of trade secret information except as set forth in that provision.

The economic impact of design controls was addressed above in comment 2 of section III.A. of this document and is addressed in detail in the economic impact analysis report (Ref. 14).

Pertinent comments received in response to the November 1990 information document are addressed in section IV. of this document.

IV. Analysis of Revised CGMP Regulation for Medical Devices

Following is a description of the proposed revision of the CGMP regulation for medical devices and response to comments received in response to the June 15, 1990, ANPRM and the November 1990 information document. For each section of the proposed revision, references to the applicable section of the November 1990 information document and the requirements of ISO 9001 that have been incorporated into the proposed CGMP regulation are provided. Many of the comments resulted in changes in the language of the proposed regulation.

A. General Provisions (Subpart A)

i. Scope

The scope of the proposed CGMP regulation is described in proposed § 820.1. It will apply to methods used in, and the facilities and controls used for, the design, purchasing, manufacture, packaging, labeling, storage, installation, and servicing of finished devices intended for human use. This is consistent with the scope of ISO 9001. The regulation would not apply to manufacturers of components which are not manufactured specifically for medical devices. However, device manufacturers must assess the quality systems of their suppliers and otherwise ensure that "off-the-shelf" components meet their specifications under proposed § 820.50.

ii. Definitions

Comments on the November 1990 information document recommended adding a number of terms. Those which were pertinent to the proposed changes were added to proposed § 820.3. Terms presently defined in the CGMP regulation that are omitted from proposed § 820.3 because the proposed revisions render them unnecessary are:

Critical component, critical operation, noncritical device, and quality assurance.

Definitions being added to proposed § 820.3 are: Complaint, design history record, design input, design output, design review, establish, executive management, lot or batch, nonconforming, production, quality, quality policy, quality system, record, reprocessing, servicing, special process, specifications, validation, and verification.

Design review, nonconforming, quality, quality policy, and quality system are definitions taken from, or are modifications of, definitions contained in ISO 8402—"Quality vocabulary" (Ref. 12). The November 1990 information document suggested a modification in the term "quality assurance" to include the entire life cycle of a device. In the proposed CGMP regulation, the term "quality assurance" has been deleted and replaced with "quality system," which applies to the entire life cycle of a device. "Executive management" is defined to make it clear which employees are executive management. "Establish" is terminology from ISO 9001. To avoid confusion concerning what is involved when the proposed regulations require manufacturers to establish something, FDA has defined it to include defining, documenting, and implementing. "Record" is defined to make clear that all documents are records for inspectional and recordkeeping purposes. The remaining definitions are taken from the current FDA CGMP regulations or are modifications of definitions taken from other sources.

FDA is also proposing to modify the existing definitions of a number of terms. The existing definition of "component" in proposed § 820.3(c) is modified to clarify that software, firmware, labeling, and packaging are subject to component controls. The definition of "control number" in proposed § 820.3(d) now includes purchasing to indicate that the history of purchasing is a part of traceability. "Critical device" is defined in proposed § 820.3(e) in terms of serious injury, rather than significant injury, to conform with concepts in other FDA regulations, e.g., the Medical Device Reporting (MDR) regulations in part 803. The definition of "Device Master Record" has been expanded to include purchasing, servicing, and installation records. The definition of "finished device" is clarified in proposed § 820.3(l) to include a device that is intended to be sterile, but that is not yet sterilized. In proposed § 820.3(n), the definition of "manufacturer" is revised to include designers, contract sterilizers, specification developers, and initial distributors of imported devices. Ethylene oxide or other sterilant residues are added to proposed § 820.3(o) definition of "manufacturing material." The term "quality audit" in proposed § 820.3(s) replaces the term "audit" in existing § 820.3(b) and the definition has been revised to harmonize with ISO 8402.

7. Several comments on the November 1990 information document suggested a definition for "quality." The proposed definition of "quality" in proposed § 820.3(r) takes into consideration the comments received and has been modified to emphasize that quality means the totality of safety and performance attributes and characteristics that satisfy fitness-for-use.

8. Other comments addressed the need for a definition of the term "signature" to allow for kinds of electronic or computerized signatures or identification in lieu of a written signature. The agency is currently studying whether to adopt a definition of electronic signatures for all regulated industries that includes electronic or computerized identification, and has issued an ANPRM on this issue (57 FR 32185, July 21, 1992).

iii. Quality system

FDA is proposing to revise § 820.5. This section of the proposed CGMP regulation incorporates ISO 9001 4.2 "Quality system." The term "quality system" is used to define a more comprehensive quality program than presently required on the existing CGMP regulations, taking into account the addition of design, purchasing, and servicing controls to the CGMP regulation. No comments were received on the similar language in the November 1990 information document.

B. Quality System Requirements (Subpart B)

i. Management responsibility

FDA is proposing to revise § 820.20. The proposed requirements revise the current requirements in existing § 820.20 to emphasize executive management's responsibility for ensuring that an adequate quality system is established and implemented. This section incorporates the requirements of ISO 9001 4.1 "Management responsibility."

Suggested language for proposed § 820.20 was included in the November 1990 information document. Comments received are addressed below.

Proposed § 820.20(a) requires each manufacturer's executive management to establish the firm's quality policy and objectives. Suggested language for this proposed section was included in the November 1990 information document. This section incorporates the requirements of ISO 9001 4.1.1 "Quality policy." Proposed § 820.20(a) requires the top or executive management of each manufacturer to ensure that the firm's quality policies and objectives are defined, documented, implemented, maintained, and communicated to all employees whose work or responsibilities may affect quality. Quality policy is defined in proposed § 820.3(v).

Executive management has the ultimate responsibility for ensuring that devices produced and distributed are safe and effective. Moreover, executive management's commitment to the quality system and the communication of that commitment to all employees is crucial to the success of the quality system (Ref. 13). FDA's experience indicates that, without such commitment by management and without continuous reinforcement of this management's commitment, employees over time stop adhering to quality system requirements, and the effectiveness of the program erodes. For example, while FDA's CGMP inspection results reveal that most device manufacturers have documented good manufacturing practice programs, because of a lack of executive management's commitment to the program, or a failure to communicate that commitment to employees in practical terms, these programs sometimes are not followed.

9. Several comments in response to the November 1990 information document stated that it was not appropriate to make the understanding, implementation, and maintenance of a quality policy a regulatory requirement and to make executive management responsible for implementation.

FDA disagrees with these comments. Executive management has the ultimate responsibility for ensuring the quality of all devices distributed. Therefore, it is appropriate for executive management to set the pace by establishing the quality policy and maintaining the company's commitment thereto. A critical feature of any successful quality system is executive management's role in providing leadership to the quality program (Ref. 13). Executive management must lead the process, demonstrating a commitment to quality through their daily actions and working to build quality values throughout the organization. FDA believes that through training and continuous reinforcement of the importance of the quality policy

by executive management, employees' understanding of the quality policy can be achieved.

The proposed amendment to § 820.20(b) clarifies that the responsibility and authority for the quality system must be defined and documented and provides examples of quality system activities for which responsibility and authority must be established. This section also establishes general verification requirements and a requirement that manufacturers appoint a management representative with authority over and responsibility for the quality system.Suggested language for this section was contained in the November 1990 information document but has been revised. Therefore, many of the comments no longer apply to the language now proposed for the section. This section of the proposed CGMP regulation incorporates ISO 9001 4.1.2 "Organization."

10. Several comments on similar language that was included in the November 1990 information document complained that the requirement (in proposed § 820.20(b)(3)) for a single individual to manage the quality system at the management level would be too restrictive.

FDA disagrees with these comments. FDA believes it is imperative that one management representative with overall authority be assigned responsibility for the quality system and have access to all parts of the quality system. Responsibility and authority must be established at the top management level to ensure that quality problems are resolved by a person with the ability and authority to implement and oversee a quality control system.

11. One comment asked if the management representative can also be responsible for other activities.

The management representative may carry out the proposed responsibility, either separately or in conjunction with other functions and responsibilities, as long as management effectiveness is not diminished and there is no conflict of interest.

Proposed § 820.20(c) requires each firm to assign a management representative with executive authority to periodically review the quality system to ensure its continuing suitability and effectiveness. An important part of this review is the review of the quality audit results. However, management review responsibilities extend beyond review of audit results and include all aspects of the quality system.

Proposed language for this section was not included in the November 1990 information document. This section incorporates the requirements of ISO 9001 4.1.3 "Management review."

ii. Quality audit

FDA is proposing to retain in proposed § 820.22 the current CGMP requirements of § 820.20(b), but it is proposing to change the title of this section from "Audit procedures" to "Quality audit" to be consistent with ISO 9001 and better identify the function. The term "quality assurance program" is replaced with "quality system" wherever it appears. Also this section states that reports written to document the audit of suppliers and contractors are subject to FDA review and copying. FDA needs access to these reports to determine compliance with proposed § 820.50. Proposed § 820.22 contains the requirements of ISO 9001 4.17 "Internal quality audits."

iii. Personnel

FDA is proposing to redesignate the requirements of CGMP § 820.25(b) to proposed § 820.70(d) because the health condition and hygiene of employees are most pertinent to the production process.

The general requirements of existing § 820.25 on personnel and the current requirements of existing § 820.25(a) on personnel training are being incorporated into proposed § 820.25. FDA notes that training must be more than just an administrative activity. A quality system is no more effective than the people who manage and conduct the quality system activities. Therefore, training must be continuous and appropriate for each employee's current job function.

Since the proposed requirements of this section are existing CGMP requirements, the suggested language for proposed § 820.25 was not included in the November 1990 information document. Proposed § 820.25 incorporates the requirements of ISO 9001 4.18 "Training."

In addition, FDA is proposing a new requirement relating to consultants. Over the years, FDA has observed that a surprising number of firms hire consultants who have no particular expertise in the area in which the firm is seeking assistance. Proposed § 820.25(c) addresses this problem by ensuring that a consultant's fitness for the specific tasks for which he or she is retained is considered and documented.

C. Design Controls (Subpart C)

To implement the design validation provisions of the SMDA, FDA is proposing, in proposed § 820.30, to adopt, as much as practical, the language of ISO 9001 4.4 "Design control." Suggested language for this section was included in the November 1990 information document. As discussed previously in more detail and as set forth in proposed § 820.30, FDA is proposing to apply design controls to all class III and class II devices and certain class I devices.

The quality of a device is strongly influenced by decisions made during the design process. Design deficiencies will affect all devices produced and are progressively more expensive to correct as development proceeds (Ref. 4). Therefore, from both cost and safety standpoints, FDA believes it is essential that a disciplined design program be followed that will minimize the possibility of error and allow design deficiencies to be detected and corrected as early as possible.

To satisfy the proposed design control requirements, each manufacturer will be required to establish a formal, documented program to ensure that design requirements are properly established, verified, and translated into design specifications, and that the design released to production meets the approved design specifications.

12. Two comments on this section said that "Preproduction quality assurance" should be changed to "Design control," as used in ISO 9001.

FDA has retitled the section "Design Controls" and has rewritten the requirements to more closely align them with the specifications of ISO 9001.

The language contained in the information document for proposed § 820.30 has been simplified and incorporates the requirements of ISO 9001 4.4.1 "General."

13. Several comments received in response to the November 1990 information document expressed concern that the costs of implementing design validation would place small manufacturers at a competitive disadvantage.

FDA believes that manufacturers of all sizes benefit from adequate design controls. Under section III.A. and comment 2 of this document, the agency discusses the reduced costs, time savings, international compliance, and other benefits derivable from design controls. An analysis of the cost of implementing design controls for large and small manufacturers is also provided in the report entitled "Economic Analysis of Proposed Revisions to the Good Manufacturing Practices Regulation for Medical Devices" (Ref. 14).

14. Several comments expressed concern that FDA would not have the ability to separate the evaluation of the

design process from the actual device design during good manufacturing practice inspections.

During CGMP inspections, the FDA investigator will review each manufacturer's design plan and the program that each manufacturer establishes to satisfy the applicable CGMP regulation design control requirements. The investigator will evaluate both the adequacy of the methods and procedures and each firm's compliance with these methods and procedures. Normally, the investigator will evaluate the process used to establish, evaluate, and release the finished design, rather than evaluate the adequacy of the design. However, if evidence of unsafe or ineffective designs is detected during good manufacturing practice inspections, the FDA investigator has an obligation under the act to investigate.

Proposed § 820.30(b) incorporates the requirements of ISO 9001 4.4.2 "Design and development planning," 4.4.2.1 "Activity assignment," and 4.4.2.2 "Organizational and technical interfaces." Many comments received on this section of the information document no longer apply, because the proposed requirements are a major revision of the suggested language. Pertinent comments are discussed below.

Proposed § 820.30(b) requires each manufacturer to establish a written plan that is appropriate to the design, that defines each design activity, including design verification points and methods, and that identifies the person responsible for each activity. The success of any activity is dependent upon knowing what is to be done. Therefore, the design process and its interface with other internal and external organizational groups must be defined as much as possible before the design process begins. Effective planning includes consideration of production needs, e.g., production environment and equipment, workmanship requirements, process development, and validation.

Proposed § 820.30(b) also requires each manufacturer to assign to designated individuals the responsibility, and provide these individuals with sufficient authority, to carry out the required design control activities. These individuals must be qualified to carry out their assigned activities and must be provided with sufficient and adequate resources to carry out the assigned activities.

In some firms, individuals outside the design unit may participate in the design program. When the design activity involves organizations or groups in addition to the design unit, organizational and technical interface controls must be in place to ensure that needed information and data are transferred in a timely and systematic manner. Determinations that provide the basis for such controls, which should be made during the planning stage, include: What information is to be transmitted; by whom, to whom, and by what means the information is to be transmitted; and what review process is to be followed and what records are to be maintained for the information that is to be transmitted.

Proposed § 820.30(c) has been retitled "Design input" in response to comments. The language provided in the information document for this section has been substantially simplified. Proposed § 820.30(c) requires manufacturers to establish controls to ensure the design requirements are properly established. This section incorporates the language of ISO 9001 4.4 "Design input," and also specifies that the needs of the user must be reflected in the design requirements.

Design input is the design definition phase, or the design requirements definition phase, in which the design's physical and performance features or characteristics are defined. The design input is typically configured in the form of a description of all pertinent design requirements, such as physical, functional, environmental, safety, and regulatory requirements. This phase also includes the identification of components that require development and/or analysis.

FDA notes that the establishment of labeling requirements is an important element of design input. When establishing the design and labeling requirements, a manufacturer must consider a variety of factors, including the safety needs of the users (e.g., operators and patients), the environment in which the device will be used (e.g., in the home, by a health care professional, in an operating suite, in an emergency vehicle), reliability, safeguards against misuse, and, where applicable, maintainability and serviceability. Adequate maintenance instructions must be provided, so that the user can maintain the device's safety and effectiveness. To ensure manufacturability, this phase should also include the establishment of manufacturing requirements. To ensure that conformance to specifications can be determined, this phase should include quality control requirements.

15. Several comments stated that the terms "Safety and effectiveness" should be deleted in favor of "Performance" because current investigational device exemption and PMA regulations adequately address safety and effectiveness. The comments maintained that FDA is prohibited from evaluating safety and effectiveness as part of any CGMP requirement dealing with design controls because the language of section 18 of the SMDA, which added design validation to the provisions of section 520(f)(1)(A) of the act, contained an exclusion that stated "preproduction design validation (including a process to assess the performance * * * but not including an evaluation of the safety or effectiveness of a device.)"

In response to these comments, the terms "safety and effectiveness" have been deleted and replaced with "intended use of the device." However, FDA notes that the CGMP requirements are, after all, intended "to assure that [a] device will be safe and effective and otherwise in compliance with [the act]" (section 520(f)(1)(A) of the act) and that the statutory basis for the CGMP requirements is not restricted to section 520(f) but encompasses other provisions concerned with safety and effectiveness, e.g., section 515 of the act.

Moreover, because issues of safety and effectiveness affect a device's ability to perform its intended use, FDA's focus upon the process used to design and assess device performance does not relieve a manufacturer of the responsibility of establishing and maintaining controls that set and assess the proper level of safety and effectiveness of the design. Manufacturers must establish the level of safety and effectiveness that is commensurate with the intended use of the device and ensure that the design adequately reflects these needs before it is released to production. FDA will evaluate the adequacy of the controls that manufacturers have established to ensure safety and effectiveness during good manufacturing practice inspections.

16. In responding to the November 1990 information document, several comments said that the words "ambiguous" and "incomplete" should be deleted from the language suggested for the design requirement that specified, "All incomplete, ambiguous, or conflicting design requirements should be resolved * * *." These terms have been deleted because FDA determined they added nothing to the requirements. FDA intends that manufacturers should comprehensively document design requirements. In accordance with recognized quality assurance principles, FDA expects

design specifications to be complete, clear, and consistent (Ref. 4).

Proposed § 820.30(d) will require manufacturers to conduct design verification procedures appropriate to the intended use of the device. The suggested language contained in the November 1990 information document for this section has been revised. Verification methods may vary and include, among other things, hazard analysis, failure mode effects analysis, and performance testing. The frequency and extent of the assessments are left for each manufacturer to decide, but should be based on such factors as: The intended use of the finished device, its complexity, the extent of innovation and new technology introduced, and the degree of standardization. Verification must include ensuring the design is adequate for its intended use. This includes, where applicable, software validation and hazard analysis. Each manufacturer should establish a design process hierarchy and assess the acceptability of the design, both during the stages of design development and before the design is released to production. A design review should be performed at the conclusion of each stage to evaluate the design requirements and the capability of the design to meet the design requirements and to identify problems and propose solutions.

Proposed § 820.30(f) requires manufacturers to document the design output and ensure the output meets approved design requirements. Proposed § 820.30(f) was included in the November 1990 information document. The proposed requirement incorporates the requirements of ISO 9001 4.4.4 "Design output." Design output occurs at various phases in the design process, and the proposed design output requirements are intended to apply to all phases of the design process. The final design output is the product of the design process and typically consists of the final component, manufacturing material, and device specifications and drawings as well as all instructions, software, and procedures that are used for purchasing, production, installation, maintenance, and servicing. These documents are included in the device master record.

Proposed 820.30(g) is a supplement to ISO 9001 requirements. Under proposed § 820.30(d)(3), before devices are released for routine distribution, finished devices must be sampled from the first three production runs and tested for performance under actual conditions of use or simulated use conditions in the environment or simulated environment in which the device is expected to be used. FDA considers this a critical element of the validation of the manufacturing process. The requirement to conduct simulated use testing of finished devices is presently found in § 820.160 of the CGMP regulation as part of finished device inspections and is being moved to proposed § 820.30(d)(3) because FDA believes that simulated use testing at this point is more effective in ensuring that only safe and effective devices are produced. Manufacturers must also conduct such tests when they make changes that could affect safety or effectiveness in the device design or the manufacturing processes. The extent of the testing conducted should be governed by the risk(s) the device will present if it fails. FDA considers these procedures essential for ensuring that the manufacturing process does not adversely affect the device (Ref. 9).

Manufacturers may not use prototypes developed in the laboratory or machine shop as test units to meet these requirements. Prototypes may differ from the finished production devices. During research and development, conditions are typically better controlled and personnel more knowledgeable about what needs to be done and how to do it than are regular production personnel. When going from laboratory to scaled-up production, standards, methods, and procedures may not be properly transferred or additional manufacturing processes may be added. Often, changes not reflected in the prototype are made in the product to facilitate the manufacturing process. Proper testing of devices that are produced using the same methods and procedures as those to be used in routine production will prevent the distribution and subsequent recall of many unacceptable medical devices.

17. One comment said that the phrase "before releasing a design to production" in the November 1990 information document under "Design verification" should be deleted. This phrase has been deleted in proposed § 820.30(d) in response to the comment and replaced with the language in proposed § 820.30(g).

18. Several comments objected to use of the term "worst-case conditions" in the November 1990 information document. The term has been deleted in response to the comments.

19. One comment stated that the design verification wording implies that no production can take place until every process and piece of equipment is in the final form anticipated for full-scale production. In response, the wording of the proposed requirements for simulated use testing has been changed to require sampling and testing of the first three production runs. However, samples must be taken from devices that were produced using the same specifications, production and quality system methods, procedures and equipment that will be used for routine production.

20. One comment stated that design "requirements" should be changed to design "specifications." In drafting the revisions to the CGMP regulation, FDA has adopted the definitions for specifications contained in the November 1990 information document, ISO 8402 "Quality vocabulary" (Ref. 12). A specification is a document that contains requirements. Requirements thus make up a specification. The design "specifications" contain the "requirements" for the design. In this respect, FDA has deleted use of the term "requirement" in favor of specifications, and has defined "Specifications" in proposed § 820.3(bb).

Proposed 820.30(h) is a supplement to the ISO 9001 requirements. Under proposed § 820.30(h) a designated individual must be responsible for approving the release of the design to production.

The requirements of proposed § 820.30(i) incorporate the requirements of ISO 9001 4.4.6 "Design changes." Proposed § 820.30(i) was included in the November 1990 information document. It requires manufacturers to document changes made to the design specifications during the design phase and ensure that changes are adequate for their intended use.

21. Several comments said that maintaining records of design changes would be unduly burdensome.

FDA recognizes that many design changes are made during the design process, but that not all become part of the final approved design. Manufacturers are not expected to maintain records of all changes proposed during the very early stages of the design process. However, all design changes made after design review that are approved for incorporation into the design, and those changes made to correct design deficiencies, must be documented. The records of these changes create a history of the evolution of the design, which can be invaluable for failure investigation and for facilitating the design of future similar products. Such records can prevent the repetition of errors and the development of unsafe or ineffective designs.

22. Several comments suggested that the reference to clinical evaluations under "Design changes," as contained in the November 1990 information document, was unnecessary and should

be deleted. FDA has deleted the reference to clinical evaluations in response to these comments.

23. One comment recommended that any reference to change should be eliminated and the focus should be on the validation of the final, full-scale, production design. Any changes after that time would require documentation.

FDA disagrees. The safety and effectiveness of devices cannot be proven by final inspection or testing. Product development is inherently an evolutionary process. While change is a healthy and necessary part of product development, quality can be ensured only if change is controlled and documented throughout the development process. Each manufacturer must establish criteria for evaluating changes to ensure that the changes are appropriate for its designs.

Proposed § 820.30(j) requires manufacturers to maintain a record that contains the complete design history of a device. The proposed requirement to maintain a design history record is a new requirement that, although not specified by ISO 9001, is necessary so that manufacturers can exercise control and accountability over the design process and thereby maximize the probability that the final design conforms to the design specifications.

D. Document Controls (Subpart D)

Proposed § 820.40 is a revision and clarification of existing § 820.100. This proposed section was not included in the November 1990 information document. It incorporates the requirements of ISO 9001 4.5 "Document control."

Under proposed § 820.40, all manufacturers must establish document controls to ensure the clear and precise control of all documents that are required by the CGMP regulations. These controls include establishing a formal, documented system that defines how and by whom documents will be produced, reviewed, and approved, and the process to be used for updating documents and defining the responsibility for the distribution and maintenance of all required documents and the removal of obsolete documents.

Proposed § 820.40(a) was not included in the November 1990 information document. This section of the proposed CGMP regulation incorporates the requirements of ISO 9001 4.5.1 "Document approval and issue." It requires manufacturers to designate employees to review and approve all documents prior to distributing them. The 1990 information document suggested modifying current requirements in § 820.100 to better control document issuance and obsolete documents. These controls are set out in proposed § 820.40(b).

24. In response to the November 1990 information document, several comments said that all obsolete documents should not have to be removed, because they may still have use. The agency disagrees. If obsolete documents still have use, they are not obsolete, but may require reidentification.

25. Other comments said that use of the term "practical number" needs interpretation.

After reviewing these comments, FDA believes it is best to delete the term, and will address the issue in future guidelines.

Proposed § 820.40(c), which requires certain controls for specification changes, was not included in the November 1990 information document in its present form. Reference in proposed § 820.40(c) to adequate validation of specification changes was mentioned in the November 1990 information document in addressing the need to qualify and validate specification changes. This section of the proposed CGMP regulation incorporates ISO 9001 4.5.2 "Document changes/modification."

Proposed § 820.40(c) is a clarification of § 820.100(a)(2) and (b)(3). Existing CGMP requirements state that the device design (including components, packaging, and labeling) and all production and quality system specifications and methods must be documented (§ 820.181). All changes to these specifications must also be documented (§ 820.100(a)(2) and (b)(3)). FDA's review of recall data indicates that many recalls occur because of failure to validate specification changes to ensure such changes are adequate for their intended use (Ref. 3). Proposed § 820.40(c) requires manufacturers to validate that changes are adequate for their intended use before implementation.

In addition, to ensure that each manufacturer fulfills its responsibility under 21 CFR 807.81 or 21 CFR 814.39, proposed § 820.40(c) contains a requirement to consider the need to submit a 510(k) or PMA supplement when significant changes are made to device or manufacturing process specifications.

26. Several comments said that requiring all specification changes to be validated, as was proposed in the November 1990 information document, is overly burdensome and unnecessary. The comments added that not all specification changes affect product function.

In response to the comments, the requirement in this proposed section to validate changes is modified to require that all changes that may affect quality must be validated. Quality is defined in proposed § 820.3(r).

E. Purchasing (Subpart E)

FDA is proposing to replace the requirements of § 820.80 with the proposed Subpart E—Purchasing Controls and Subpart H—Inspection and Testing. A similar proposal was included in the November 1990 information document. Subpart E incorporates the requirements of ISO 9001 4.6 "Purchasing."

The failure to implement adequate component controls has resulted in a significant number of recalls due to component failures. Most of these were due to unacceptable components provided by suppliers (Ref. 3). FDA believes that the explicit addition to CGMP requirements of the purchasing controls of ISO 9001 will provide additional assurances that only acceptable components are used.

To ensure that purchased items and services conform to specificatic .s, purchasing must be carried out under adequate controls, including the assessment and selection of suppliers, the clear and unambiguous specification of requirements and the performance of suitable inspection and testing. Each manufacturer must establish an appropriate mix of supplier and incoming controls to ensure that purchased components, finished devices, and manufacturing materials are acceptable for their intended use.

The specifications for the finished device cannot be met unless the individual parts of the finished device meet specifications. The most efficient and least costly approach to ensure that only acceptable components, packaging, and labeling are used is to ensure that only acceptable components, packaging, and labeling are received. This means that only suppliers who can consistently meet specifications should be used. Thus, proposed § 820.50(a), which incorporates ISO 9001 4.6.2 "Assessment of sub-contractors," requires manufacturers to assess the ability of suppliers to provide acceptable components, finished devices, manufacturing materials, and services.

The extent of the assessment, and the type and extent of control exercised by the manufacturer, are dependent upon the significance of the product or service purchased, and, where applicable, upon the previously demonstrated capability and documented performance of the

supplier. Selected suppliers should have a demonstrated capability to provide components, finished devices, manufacturing materials, or services that meet all of the needed requirements. Where it is not practical to assess the capability of suppliers and contractors, manufacturers must ensure the adequacy of supplied and contracted components, finished devices, manufacturing materials, and services through traditional incoming inspection or testing, with the degree of inspection and testing based on the intended use of the product or service.

27. Several comments stated that the assessment of supplier/subcontractor requirements, as set forth in the November 1990 information document, were too detailed. Other comments pointed out that each manufacturer does establish its own detailed criteria for supplier selection and should be left to do so on its own. FDA has reviewed the comments and has reduced the detail contained in the November 1990 information document.

Another comment suggested that quality is not the only consideration when selecting a supplier. Although FDA agrees that quality is not the only consideration when selecting suppliers, it is nevertheless a crucial consideration and may not be disregarded.

Proposed § 820.50(b) incorporates the requirements of ISO 9001 4.6.3 "Purchasing data" and specifies that controls must be established to ensure that specifications are properly described in the purchasing documentation. Often, purchased components do not meet the required specifications because the specifications provided to the supplier are unclear or incomplete. Ensuring that purchased components, finished devices, packaging, labeling, manufacturing materials, and services meet specifications begins with a clear definition of requirements. The proposed regulation specifies that controls must be established to ensure that specifications are properly described in the purchase or contract documentation.

28. Several comments, in response to the November 1990 information document, referred to the need for flexibility in requiring that purchasing documents contain "data clearly describing the item or service ordered."

In response to the comments, FDA has revised this proposed requirement. The proposed requirement now specifies that the purchasing documents shall describe or, when appropriate, reference published standards or specifications for the item or service purchased.

29. Several comments expressed concern that mandating that a designated individual review and approve purchasing documents was overly restrictive and did not allow for computerized checking.

In response to the comments, the requirement has been revised and no longer includes a reference to a designated individual. Nevertheless, because accountability is crucial, the signature of the person responsible for approving a purchasing document must be recorded.

F. Identification and Traceability (Subpart F)

i. Identification and traceability

Proposed § 820.60 imposes general controls to ensure that components, finished devices, and manufacturing materials are properly identified until they leave the manufacturer's control, but does not mandate traceability for noncritical devices. However, when a noncritical device manufacturer decides to establish traceability, traceability must be established using current, acceptable practices, i.e., identification such as serial or control numbers must be assigned.

The requirements in proposed § 820.60 were included in the November 1990 information document and incorporate the general requirements of ISO 9001 4.8 "Product identification and traceability."

30. Several comments, in response to the November 1990 information document, said that traceability should be limited to critical devices. While FDA was not suggesting that traceability was required for noncritical devices, the point has been clarified by placing traceability requirements for critical devices under a separate section in proposed § 820.65.

ii. Critical devices, traceability

Proposed § 820.65 retains traceability requirements for critical devices and is a supplement to ISO 9001.

31. Several comments agreed that the elimination of "critical component" was overdue, but claimed that not every component requires traceability even in a critical device.

FDA does not agree with these comments. Where traceability of components is important to prevent the distribution of nonconforming critical devices, critical device manufacturers must maintain traceability of components to a level that will enable the identification of the quality status of specific lots and batches of components, so that a problem component, or potential problem components, can be identified and traced to the supplier.

While FDA understands that traceability entails additional cost, it reminds manufacturers that, if a product recall is necessary, more devices would be subject to recall if lots of specific devices are not traceable, with associated higher recall costs to the manufacturer.

G. Production and Process Controls (Subpart G)

i. Process control

Subpart G—Production and Process Controls identifies the production conditions and controls that must be addressed when manufacturing medical devices. All are existing CGMP requirements, interpretation of CGMP's, or revisions of existing CGMP requirements, some of which are relocated from other parts of the CGMP regulation.

Proposed § 820.70(a) will require manufacturers to establish and implement sufficient and adequate process controls to ensure that the finished devices meet specifications. This is currently a requirement in § 820.100. No changes were suggested in the November 1990 information document for this proposed section; therefore, no comments were received. This section incorporates ISO 9001 4.9.1 "General." Written production methods, procedures, and workmanship criteria are required where deviations from device specifications could occur as a result of the absence of these production process controls. The proposed requirements are a clarification of the existing requirements in § 820.100(b).

Proposed § 820.70(b) duplicates existing § 820.46, except that static electricity is added to the list of conditions which may require control. Existing § 820.46 is redesignated as proposed § 820.70(b) because these requirements are pertinent to the production process. Because these proposed requirements are existing CGMP requirements, they were not included in the November 1990 information document and no comments were received. The requirements of this section of the proposed CGMP regulation are not contained in ISO 9001 and are a supplement to ISO 9001 4.9 "Process control."

Proposed § 820.70(c) is a combination of existing §§ 820.25(b) and 820.56. These requirements are redesignated as § 820.70(c) because they are pertinent to the production process. This proposed section was not included in the November 1990 information document and, therefore, no comments were received. Proposed § 820.70 (d), (e), and

(f) are existing CGMP requirements. The requirements of this section of the proposed CGMP regulation are not contained in ISO 9001 and are a supplement to ISO 9001 4.9 "Process control."

The proposed requirements in § 820.70(g) duplicate existing requirements in existing § 820.60, with some minor additions. For example, the phrase "adequate for its intended use" and the word "use," which are not contained in the language of existing § 820.60, are used in proposed § 820.70(g) to clarify that manufacturing equipment must be "adequate for its intended use," and to clarify that the equipment must be appropriately designed to facilitate not only maintenance, adjustment, and cleaning, but also use.

The proposed requirement in § 820.70(g), that manufacturing equipment must be adequate for its intended use, was included in the November 1990 information document. There were no comments on the suggested revision. The other proposed changes were not included in the information document. The requirements of this section of the proposed CGMP regulation are not contained in ISO 9001 and are a supplement to ISO 9001 4.9 "Process control."

Proposed § 820.70(h) is a combination of the CGMP requirements for automated operations contained in existing §§ 820.61 and 820.195. Such operations must be evaluated, and when necessary, the software validated according to formal protocols. The language of this section was included in the November 1990 information document. It was also cited as substitute language for existing requirements in that document which proposed deleting existing requirements to validate automated systems in § 820.61 and § 820.195. The requirements of this section are a supplement to ISO 9001.

32. Comments which addressed proposed requirements to validate automated systems stated that not all software requires validation; for some software, inspection and testing are alternatives.

FDA disagrees. Inspection and testing are not alternatives to validation; they are means to accomplish validation. Thus, inspection and testing may, in some cases, be appropriate to ensure that software is acceptable for its intended use in a production process. Such inspection and testing should be documented in a written protocol; this may accomplish validation. However, all software used in production must be reviewed for adequacy and properly validated before use.

ii. Special processes

FDA added proposed § 820.75 which provides requirements for special processes to clarify that process validation is required for many processes and is a CGMP requirement. A "Special process" is defined in proposed § 820.3(aa). Because the results of special processes cannot be verified by inspecting or testing the process results, special processes must be validated and carefully monitored during processing to ensure they will consistently produce the desired results.

Although proposed § 820.75 was not included in the November 1990 information document, process validation was discussed as a CGMP requirement in that document. The November 1990 information document did not use the term "special processes," as is done in proposed § 820.75, but otherwise described such a process. Many manufacturers have expressed confusion as to which processes should be validated in a given manufacturing process. FDA believes the clarification of validation requirements in proposed § 820.75, in conjunction with the definition of "Special process" in proposed § 820.3(aa), will assist manufacturers in deciding which processes to validate. This section incorporates the requirements of ISO 9001 4.9.2 "Special processes."

H. Inspection and Testing (Subpart H)

i. Inspection and testing

The requirements proposed in § 820.80 were not included in their present form in the November 1990 information document because they are primarily existing CGMP requirements. These requirements incorporate the provisions of ISO 9001 4.10 "Inspection and testing" and are incorporated in existing §§ 820.20(a)(4) and 820.80.

Proposed § 820.80(a) will require manufacturers to formalize assessment methods and procedures and ensure that they are adequate for their intended use and performed correctly. During production there are typically three phases where inspection, testing, or verification should take place: When receiving raw materials or components; during the manufacturing process; and prior to release of the finished devices. It is important that each of these activities be controlled and the results recorded in quantitative data to provide objective evidence of the completion of the operation. Manufacturers must use a combination of in-house inspection and testing methods, validation, and process control, to ensure conformance to design and process specifications. Proposed § 820.80(b) contains basically the same requirements as existing § 820.80(a). This section of the proposed CGMP regulation incorporates ISO 9001 4.10.1 "Receiving inspection and testing."

Each manufacturer must establish an appropriate mix of supplier and incoming controls to ensure that purchased components, finished devices, packaging, labeling, and manufacturing materials are acceptable for their intended use. The proposed language for this requirement will provide manufacturers some flexibility in deciding whether to carry out acceptance procedures at the supplier, under contract, or in-house, or some combination of these approaches.

The requirements in proposed § 820.80(c) are now contained in existing §§ 820.20(a)(2) and, 820.100 and therefore were not proposed in the information document. They incorporate the provisions of ISO 9001 4.10.2 "In-process inspection and testing." Proposed § 820.80(c) requires manufacturers to conduct in-process inspections and tests according to written procedures and to record the results, when the manufacturing process could affect the product's quality. The results must be recorded and maintained in the device history record.

Proposed § 820.80(d) is essentially identical to § 820.160, except that the requirement for actual or simulated use testing is being moved to proposed § 820.30(g), and the requirement that addresses sampling plans is moved to proposed § 820.250. These requirements were not included in the November 1990 information document. FDA believes the requirement for simulated use testing set out in proposed § 820.30(g) will be more effective at the end of the design process and following changes to the device and process. A new requirement is added to ensure that all acceptance data are present and reviewed before finished devices are released for distribution. This is a clarification of the requirement in § 820.20(a)(1). Final inspections and tests alone are not sufficient to ensure that devices are manufactured according to the requirements of the device master record. Objective evidence must be provided and reviewed before devices are distributed.

FDA proposes to remove existing § 820.161 because these requirements are now incorporated under proposed §§ 820.90, 820.100, and 820.80(d).

A proposal that existing § 820.161 be relocated was included in the November

1990 information document. No comments specific to that proposal were received, other than the general comments on elimination of the critical device requirements. (See section III.A. of this document.) The requirements of proposed § 820.80(d) incorporate ISO 9001 4.10.3 "Final inspection and testing."

Proposed § 820.80(e) clarifies that all inspection and test results must be recorded in the device history record and incorporates ISO 9001 4.10.4 "Inspection test records." This proposal was not included in the information document. It is consistent with existing § 820.184.

ii. Inspection and test equipment

Proposed § 820.84 consists of existing § 820.61, except that proposed § 820.84 (d) and (e) are added to ensure that, once calibrated, the integrity of the equipment calibration is maintained. This section incorporates ISO 9001 4.11 "Inspection, measuring, and test equipment."

The current requirement contained in § 820.61 to validate all automated production and quality assurance systems is being redesignated as proposed § 820.70(h), which contains a general validation requirement for all automated processes. Reference to removing and redesignating validation requirements for automated systems was made in the November 1990 information document. Comments on this point are addressed in section IV.G. of this document which discusses proposed § 820.70(h).

iii. Inspection and test status

Proposed § 820.86 incorporates ISO 9001 4.12 "Inspection and test status" and requires manufacturers to identify the inspection and test status of all components, finished devices, and manufacturing materials at all phases of purchasing and production. This proposed section was not included in the November 1990 information document. It must be possible to quickly and clearly establish the inspection status at any phase of purchasing and production and, in particular, identify those items which do not conform to specifications. This requirement is already a CGMP requirement contained in existing §§ 820.80 and 820.100.

I. Nonconforming Components and Devices (Subpart I)

Proposed § 820.90 is a revision of existing §§ 820.115 and 820.116 and sets forth the requirements for nonconforming components and devices. Similar proposed requirements were included in the November 1990 information document. Proposed § 820.90 incorporates the requirements of ISO 9001 4.13 "Control of nonconforming product."

Each manufacturer's quality system must include controls that will ensure that components, finished devices, or manufacturing materials that do not conform to specifications are not inadvertently used or distributed. This section is applicable to manufactured as well as purchased components, finished devices, or manufacturing materials and returned finished devices.

Purchasing and manufacturing processes sometimes yield suspect or defective items. In order to ensure that only acceptable finished devices are distributed, manufacturers need methods for preventing further processing, distribution, or installation of nonconforming components, finished devices, and manufacturing materials. The method of identifying and determining the disposition of nonconforming components, finished devices, and manufacturing materials will vary, depending upon the type of device produced. In all cases, the methods and procedures used to identify and control nonconformance must be documented and included in the device master record. The investigation of nonconforming items is an important part of the quality system. The results of the investigation of nonconformance provide valuable information that may be used to prevent reoccurrence of nonconforming components and devices. This activity, if properly designed, can also result in cost savings to the manufacturer and increased customer satisfaction.

33. With respect to the investigation of nonconforming components and finished devices, several comments stated that an investigation is not always necessary when a nonconforming product is identified.

FDA disagrees. Unless the defect is solely cosmetic (e.g., paint or polishing defects), manufacturers must investigate and establish both the cause and effect of the defect or nonconformance. If the cause and effect of nonconformance is already suspected, then the documented investigation need only confirm the cause and effect. When cause and effect are unknown, documented investigation must be conducted to the level necessary to determine the cause of nonconformance and the effect on quality.

34. One comment said that there are numerous types of repair and rework activities that take seconds to perform but would take hours to write up.

FDA believes the proposed good manufacturing practices accommodate this comment. The recordkeeping requirement is intended to ensure that nonconforming components and finished devices are identified and not distributed until they meet specifications. Each manufacturer must develop recordkeeping sufficient to achieve this requirement that is appropriate to the activity.

35. One comment asked if this section applied to the release of nonconforming materials without repair, rework, or reprocessing. When this disposition is chosen, the manufacturer must evaluate and document the decision and ensure that it does not compromise the finished device safety and effectiveness.

J. Corrective Action (Subpart J)

The regulations set forth in this proposed subpart incorporate the specifications contained in ISO 9001 4.14 "Correction Action," which are implicit in existing § 820.20(a)(3) and (a)(4). The ISO requirements are modified in proposed subpart J to clarify that corrective action activities must be documented and to create order in the approach to problem detection and resolution. Because proposed § 820.100 incorporates the current requirements under § 820.162, existing § 820.162 is being removed from the revised CGMP regulations.

Proposed § 820.100 requires manufacturers to establish a program for the collection, correlation, and evaluation of internal and external quality data for the purpose of detecting and preventing quality problems. A manufacturer is also required to develop solutions to any problems found, to identify, implement, verify, and document corrective action. These proposed requirements were included in the November 1990 information document under the organization section. Trend analysis was suggested in the information document as a means of evaluating data.

Proposed § 820.100(a)(1) through (a)(5) require that each manufacturer's quality system must include a documented, systematic method for identifying and eliminating the causes of nonconforming components, finished devices, and manufacturing materials. Under proposed § 820.100(a)(6), relevant quality information must be regularly reported to and monitored by management. Management must compare the information with quality objectives and identify opportunities for improvement in design, manufacturing, and the quality system.

36. Several comments objected to the specification of just one method (trend analysis) as a quality assurance tool. In proposed § 820.100(a)(1), the

requirement to evaluate data for nonconforming products is rewritten to align with ISO 9001 and to specify that trend analysis is to be conducted. The proposed requirement specifies that manufacturers must analyze all quality data, including complaint files and service reports, to detect systematic problems that cause nonconformance and other quality problems. Trend analysis is not a single analytical method. Rather, trend analysis requires a manufacturer to use an appropriate statistical methodology to determine whether systemic or unanticipated problems are occurring with a product or whether problems are occurring at a greater than anticipated frequency. Trend analysis is the appropriate method for conducting this analysis.

K. Handling, Storage, Distribution, and Installation (Subpart K)

i. Handling

The requirements of proposed § 820.120 are a revision of existing § 820.40. This proposed section incorporates ISO 9001 4.15.2 "Handling," and was not included in the November 1990 information document.

Each manufacturer must establish, as part of the quality system, documented controls that will ensure that the activities involved in the handling, moving, and holding of components, finished devices, and manufacturing materials will have no adverse effects on these items. Controls shall include provisions for preventing mixups.

ii. Storage

Proposed § 820.122 is a combination and revision of the current storage requirements in §§ 820.80(b), 820.40, and 820.150. This section incorporates ISO 9001 4.15.3 "Storage" and was not included in the November 1990 information document. Proposed § 802.122 specifies that the quality system must include controls for all storage areas that are adequate to ensure that the quality of components, finished devices, and manufacturing materials are not adversely affected during devices storage and that all deteriorated or rejected and nonconforming items are identified to prevent inadvertent use.

iii. Distribution

Proposed § 820.124 is a combination of existing §§ 820.150 and 820.151. The present regulation requires only critical device manufacturers to maintain distribution records. Proposed § 820.124 requires all manufacturers to maintain distribution records. This section incorporates ISO 9001 4.15.5 "Delivery." Proposed § 820.124 is a revision of the suggested language in the November 1990 information document and, therefore, some of the comments no longer apply.

37. Most comments on the November 1990 information document that are pertinent to the revised language in proposed § 820.124 were concerned with the imposition of the critical device requirement to maintain distribution records upon all medical devices. One comment suggested clarifying that control numbers are required for critical devices only.

FDA believes it is crucial for the agency to have access to distribution records in order to ensure that manufacturers are properly complying with recall and complaint investigation requirements, and to ensure that all defective devices are withdrawn from points of use.

iv. Installation

Proposed § 820.126 is identical to § 820.152, except that a requirement is added for a record to be maintained of the installation check. Instructions and procedures for installation must include criteria for determining if the installed device(s) is operating properly. A record of the installation check is necessary to provide evidence that the check was made. This proposed revision of § 820.152 was not included in the November 1990 information document and is a supplement to ISO 9001.

L. Packaging and Labeling Control (Subpart L)

Proposed subpart L consists of a revision of existing §§ 820.120 and 820.121 and a duplication of existing § 820.130.

i. Device packaging

Proposed § 820.160 is identical to existing § 820.130. Thus, this section was not included in the November 1990 information document. This section incorporates ISO 9001 4.15.4 "Packaging."

ii. Device labeling

Proposed § 820.162 is a revision of existing § 820.120 and includes the proofreading requirements of existing § 820.121(b). The revision states that, when labels and other labeling are proofread, a record must be made of the activity. A record is necessary to provide evidence that the labeling was proofread. The modification of existing § 820.120 was included in the November 1990 information document and is a supplement to ISO 9001.

38. One comment said that the requirement to allow proofreading should be expanded to allow proofreading of the labeling artwork or specifications, instead of samples. FDA believes it is crucial that the actual labeling is reviewed prior to use to ensure that it is accurate. A significant number of recalls occur each year due to inaccurate labeling (Ref. 4).

iii. Critical devices, labeling

Proposed § 820.165 is identical to existing § 820.121(a). The remaining labeling requirements for critical devices in existing § 820.121(b) and (c) are covered by other proposed sections. As mentioned previously, existing § 820.121(b) is being included in proposed § 820.162. Existing § 820.121(c) is covered by the general requirement of proposed § 820.120 that requires labeling to be stored to prevent "damage, deterioration, or other adverse effects" such as mixups. Proposed § 820.165 was not included in the November 1990 information document and is a supplement to ISO 9001.

39. Several comments said that it should be clarified that traceability or control numbers are required for critical devices only. In response to these comments, a separate section is provided for critical device requirements.

M. Records (Subpart M)

The proposed requirements under subpart M consist of revisions of the existing subpart J of the CGMP regulation.

i. General requirements

A requirement for legibility, traceability, and storage of records, which is not presently contained in existing § 820.180, is added to proposed § 820.180. All records maintained to meet the requirements of the CGMP regulation must be legible and clearly identified as to the entity to which they refer and must be stored in a manner to prevent deterioration, damage, or loss. When required under the regulation, the records maintained must include pertinent subcontractor quality records. Backups are required when records are stored on a computer. The remainder of the requirements in this section are requirements of existing § 820.180. No changes for this section were suggested in the November 1990 information document. This section incorporates the applicable requirements of ISO 9001 4.16 "Quality records." The confidentiality and record retention period requirements remain the same as in the existing CGMP regulation.

ii. Device master record

Proposed § 820.181 is revised to reflect new documentation requirements and use of the term "Quality system." Proposed § 820.181 is a supplement to ISO 9001. Any changes made to the device master record (DMR) must now be controlled as required by proposed § 820.40. Documentation of software design specifications and software source code is added in proposed § 820.181(a). In proposed § 820.181(c), "quality system procedures" replaces the former "quality assurance procedures" and "verification checks and verification apparatus used" replaces the former quality assurance terminology. Validation protocols and validation results must also be included in the DMR as set forth in revised § 820.181(c).

Documentation of installation, maintenance and servicing procedures in the DMR is required under proposed § 820.181(e).

Existing § 820.182 is being removed. These requirements are now being covered by proposed §§ 820.50 and 820.184. The deletion of existing § 820.182 was suggested in the November 1990 information document. No comments were received.

iii. Device history record

The existing requirements of § 820.184 are being revised to include a requirement that the actual labeling used must be included or its location referenced in the device history record.

Suggested language for the revised device history record requirements was included in the November 1990 information document. The language in proposed § 820.184 is a revision of the suggested language in the information document.

40. Comments in response to the November 1990 information document said that the requirement for specific labeling is not necessary if the manufacturer complies with the device master record requirements. FDA disagrees. Many recalls have occurred each year due to incorrect labeling (Ref. 4). Including the specific labeling in the device history record and requiring review of the record will help to ensure that proper labeling is used. The requirements of proposed § 820.184 are a supplement to ISO 9001, although records applicable to the device history record are required throughout ISO 9001.

iv. Complaint files

Proposed § 820.198 sets out the requirements for complaint files. Written procedures must be provided that describe the complaint handling process, that specify the activities to be conducted, and that address all required functions, including: Responsibilities, recordkeeping, complaint investigation, and the identification of events which must be reported under the MDR regulations at part 803. Proposed § 820.198 also clarifies that the requirements of § 820.198 apply not only to the device, but also to the packaging and labeling of a device. In addition to the current CGMP requirement to investigate complaints, proposed § 820.198(b) clarifies that complaint investigations must include a determination of whether there was an actual device failure, a determination of whether the device was involved in an injury or death, and a determination of the relationship of the device to the incident. These proposed clarifications were included in the November 1990 information document. Proposed § 820.198 is a supplement to ISO 9001.

Any complaint that is also reportable under part 803 must meet all the requirements of § 803.26. Firms that receive complaints or reports from user facilities, distributors, or other sources, that do not contain all the data or information required under part 803 or proposed § 820.198 must contact the reporter and either obtain the missing data or document why the missing information cannot be obtained. Followup should include:

(1) Collection, analysis, and testing of defective devices or samples, whenever possible.

(2) Failure analysis or other evaluation necessary to determine assignable cause.

(3) Review of the product's complaint history for the same or similar problems, including any recent changes in design, instructions, or production techniques.

(4) Formulation of approaches to correct any problems found.

Proposed § 820.198 also clarifies that complaints subject to the provisions of the section may be from any source. While copies of complaints may be contained in other files, such as litigation files, to facilitate processing, the original information regarding the complaint must be maintained in the complaint file specified in proposed § 820.198.

The language in proposed § 820.198 also clarifies that the record of investigation must contain the results of the investigation, including the corrective action taken, and must document the reason for a lack of a reply to the complainant. This information is necessary in order to show that a proper investigation was conducted. In addition to the name of the complainant, the complainant's address and phone number must be included in the record of investigation. This information is necessary to facilitate followup of complaints.

When the complaint involves a manufacturing site, a copy of the complaint and the record of the investigation must be transmitted to the manufacturing site. This is necessary to ensure that the actual manufacturer has all of the information relating to the complaint.

41. Several comments in response to the November 1990 information document said that it is not always possible to determine if there was a device failure. If, after adequate investigation, it is not possible to determine if a complaint involved a device failure, FDA believes that the actions taken by the firm and the results should be recorded in the record of investigation.

42. Several comments said that, as worded, the language that requires the corrective action to be recorded implies that every complaint will result in corrective action.

FDA does not believe the language in proposed § 820.198 makes this implication. Each manufacturer should develop a record for recording complaint investigations that includes provisions for recording corrective actions. When no corrective action is taken, the reason must be recorded. Those events that do not require corrective action may be identified in the written complaint processing procedures.

43. Several comments addressed trend analysis. One comment said that trend analysis was good business sense. One comment said that trend analysis should be added to the audit requirements; another said that trend analysis may not always be appropriate and that concern should be oriented toward significant problems, not just recurring problems of no practical significance.

FDA agrees that trend analysis makes good business sense, but has deleted reference to it in proposed § 820.198. However, proposed § 820.100 does require manufacturers to conduct trend analysis of complaints and other sources of quality data to detect systematic quality problems. FDA notes that trend analysis is the accepted method for detecting systemic problems, while the purpose of the quality audit is to periodically evaluate the applicability and effectiveness of the quality system. The evaluation of trend analysis procedures may be part of the overall audit evaluation. Trend analysis of quality data must be a routine function

of the quality system and is subject to FDA review.

44. With respect to maintaining copies of complaints at the manufacturing site, when the formally designated unit for processing complaints is located at a site separate from the actual manufacturing establishment several comments said that only those records of reviews, findings, and corrective actions that result in modifications to manufacturing operations should be maintained at the manufacturing site.

In response to these comments, FDA is revising the language relating to this proposed requirement to state that copies of complaints should be transmitted to and maintained at the manufacturing site when the complaint involves the manufacturing site.

N. Servicing and Returned Devices (Subpart N)

Proposed § 820.200 will require manufacturers who service devices or who authorize agents to service devices to maintain service records and written procedures for implementing the service activity. Service record data must be reviewed for systemic problems, and systemic problems acted upon when detected.

The quality system established by manufacturers who service devices for users must extend to the servicing operation. Information contained in service records is an important source of device experience information that may be used to detect systematic quality problems. Thus, an important part of the program must be the maintenance of servicing records, the periodic review and evaluation of these records, and the feedback of device problems into the quality data analysis program required under proposed § 820.100. Requirements of the quality system which are applicable to servicing include training, quality audit, component and documentation controls, inspection and testing, nonconforming component and device controls, measuring and test equipment controls, purchasing, and records. Controls must be in place that will ensure that serviced devices meet specifications and must include written procedures for managing the servicing activity.

Suggested language for servicing requirements was included in the November 1990 information document. That language was revised to arrive at the language being proposed for § 820.200. This section incorporates ISO 9001 4.19 "Servicing."

45. Several comments to the November 1990 information document wanted to know if the servicing requirements applied to service and repair at a customer's place of business.

FDA considers the proposed servicing requirements to apply to any servicing conducted or controlled by a finished device manufacturer.

46. Several comments said the language that was suggested to revise the CGMP regulation was too detailed and recommended that the ISO 9001 language be used in lieu of the suggested language. FDA agrees with these comments. The language in proposed § 820.200 is revised to eliminate much of the detailed language contained in the November 1990 information document.

As now written, the requirements in proposed § 820.200 specify that each manufacturer must conduct an analysis of service reports to detect systematic quality problems. When a systemic problem is detected, or a problem is detected that involves a death, serious injury, safety hazard, or recurring failure, that problem should be treated as a complaint and processed according to the requirements in proposed § 820.198. When such problems are identified, a determination must be made as to whether the event is reportable under part 803. Therefore, instructions for reporting under the MDR regulation must be provided in the procedures established to manage the servicing activities.

O. Statistical Techniques (Subpart O)

Proposed § 820.250 incorporates ISO 9001 4.20 "Statistical Techniques" and states that, when appropriate, statistical techniques must be applied to ensure the acceptability of process capability and device characteristics. The use of statistical methods can be beneficial in most aspects of data collection, analysis, and application. They may be used in determining process control, forecasting, verification and measurement, or assessment of quality.

When manufacturers develop sampling plans, the plans must be proven to be statistically sound for their intended use. In addition, sampling plans must be periodically reviewed for adequacy, especially when the plans fail to detect nonconformance. Sampling based upon a statistical rationale is now required by §§ 820.81 and 820.160.

The requirements of proposed § 820.250 were not included in their present form in the November 1990 information document. However, reference to the requisite statistical basis for sampling plans was made in that document with respect to the acceptance of components.

V. Statutory Authority and Enforcement

FDA's statutory authority to issue CGMP regulations is derived from sections 501, 502, 515, 518, 519, 520, 701, 704, and 801 of the act (21 U.S.C. 351, 352, 360e, 360h, 360i, 360j, 371, 374, and 381).

Section 701(a) of the act authorizes FDA to promulgate substantive, binding regulations for the efficient enforcement of the act. *Weinberger* v. *Hynson, Westcott & Dunning, Inc.*, 412 U.S. 609 (1973); see also *Weinberger* v. *Bentex Pharmaceuticals, Inc.*, 412 U.S. 645, 653 (1973); *National Assn. of Pharmaceutical Manufacturers* v. *FDA*, 637 F.2d 877 (2d Cir. 1981); *National Confectioners Assn.* v. *Califano*, 569 F.2d 690 (D.C. Cir. 1978); *National Nutritional Foods Assn.* v. *Weinberger*, 512 F.2d 688 (2d Cir.), cert. denied, 423 U.S. 827 (1975). Section 520(f)(1)(A) of the act, as amended by section 18(d) of the SMDA, specifically authorizes the agency to promulgate regulations that prescribe, and require conformance to, CGMP for the manufacture, preproduction design validation, packing, storage, and installation of device. Section 519(a) of the act (21 U.S.C. 360i(a)) also authorizes the agency to issue regulations requiring the manufacturers of devices to maintain and provide records to ensure that devices are not adulterated, misbranded, unsafe, or ineffective. FDA's CGMP regulations for medical devices are substantive regulations with the force and effect of law. *United States* v. *Undetermined Quantities of Various Articles of Device * * * Proplast II*, 800 F. Supp. 499, 502 (S.D. Tex. 1992); *United States* v. *789 Cases * * * Latex Surgeons' Gloves*, 799 F. Supp. 1275, 1287 (D.P.R. 1992).

CGMP regulations for medical devices are enforced through sections 301, 302, 303, 304, 501, 502, and 801 of the act (21 U.S.C. 331, 332, 333, 334, 351, 352, 381). Section 501(h) of the act deems a device to be adulterated if the methods, facilities, or controls for the manufacture, packing, storage, or installation of the device do not conform with good manufacturing practice requirements under section 520(f)(1) of the act (*Proplast II*, 800 F. Supp. at 503; *789 Cases*, 799 F. Supp. at 1285). Under section 502(t)(2) of the act, a device is deemed misbranded if there is a failure or refusal to furnish any material or information required by section 519 of the act respecting a device.

Section 301 of the act (21 U.S.C. 331) sets forth prohibited acts. Under section 301(a) of the act, the introduction of an adulterated or misbranded device into

interstate commerce is prohibited. Under section 301(b) of the act, the adulteration or misbranding of a device in interstate commerce is prohibited. Under section 301(k) of the act, any act which results in a device being adulterated or misbranded after its shipment in interstate commerce is prohibited. Section 301(q)(1)(B) of the act prohibits the failure or refusal to furnish any information required by section 519 of the act.

Persons who commit prohibited acts in violation of section 301 of the act may be enjoined under section 302(a) of the act and may be subject to criminal prosecution under section 303 of the act. Devices that are adulterated within the meaning of section 501(h) of the act, or misbranded within the meaning of section 502(t)(2) of the act, are subject to civil sanctions of seizure and condemnation under section 304(a)(2) of the act.

In addition to the criminal and civil enforcement actions mentioned above, section 17 of the SMDA added section 303(f) to the act. Section 303(f) of the act provides that manufacturers, importers, and distributors may be subject to civil penalties for those violations of sections 519(a) or 520(f) of the act that constitute a significant or knowing departure from these requirements or a risk to the public health. Civil penalties may not exceed $15,000 for a single violation, and may not exceed $1,000,000 for all such violations adjudicated in a single proceeding.

VI. Environmental Impact

The agency has determined under 21 CFR 25.24 (a)(8) and (e)(2) that this action is of a type that does not individually or cumulatively have a significant effect on the human environment. Therefore, neither an environmental assessment nor an environmental impact statement is required.

VII. Economic Impact

A. Summary

FDA has examined the costs and benefits of the proposed rule to revise the CGMP regulations covering medical devices (21 CFR part 820) in accordance with Executive Order 12866 and the Regulatory Flexibility Act (Pub. L. 96–354). The detailed data for this analysis were developed by ERG, under contract to FDA, and the full report, "Economic Analysis of Proposed Revisions to the Good Manufacturing Practices Regulation for Medical Devices," is on file at the Dockets Management Branch (address above).

The objective of the proposed rule is to reduce the number of fatalities and injuries attributable to defective medical devices. The U.S. Office of Management and Budget asks that Federal agencies justify new regulations by demonstrating that the problem that the regulation is designed to correct cannot be adequately addressed by other measures. For example, in some circumstances, private markets or industry guidelines can be relied on to abolish unwarranted risks. In this instance, FDA finds that private market incentives do not adequately reduce the risk of design-related device failures, because neither physicians nor consumers have all of the information needed to make adequate judgments of product quality and legal tort remedies, are slow, inefficient, and extremely costly.

The proposed CGMP regulations will extend the manufacturer's quality system in several areas, including design, purchasing, and servicing; and clarify or expand selected existing requirements. It will affect all medical device establishments engaged in the design, manufacture, contract sterilization, and packaging of medical devices. FDA considered two alternative levels of coverage for the preproduction design requirements of the proposal. The first alternative was to require compliance for all medical devices regardless of the potential public health risk. The second alternative was to exempt about 95 percent of the manufacturers of the lower risk, class I, devices from the preproduction design requirements. FDA found that the benefits from subjecting all device establishments, regardless of the class of device manufactured, to the preproduction design elements were not great enough to justify the cost. A summary of the detailed economic analysis of the proposed CGMP regulations is presented below.

Based on the ERG study, the total annual incremental costs to the U.S. industry of the proposed regulation are estimated to be about $84.5 million. These costs would be more than offset, however, by benefits to public health and by economic benefits to the medical device industry. FDA estimates that the benefits to public health would include over 50 fewer deaths and about 1,150 fewer serious injuries per year, which are now attributed to design-related device failures. Studies on the value of a statistical-life have reported estimates ranging from $1.6 million to $8.5 million.[1] Assuming an economic value of $5 million per fatality avoided, the monetary value of saving 50 lives each year would be $250 million. Therefore, the value of the public health benefits of preventing deaths alone easily exceeds the cost of compliance. Moreover, additional economic benefits to medical device establishments would result from cost savings due to fewer design-related product recalls, better product quality, and greater productivity. In addition, medical device establishments exporting to the EC would benefit from the harmonization of the CGMP regulation with the ISO 9001 quality standard. Because the EC is adopting ISO 9001 as a basis for its medical device manufacturing quality system, the harmonization of the two quality requirements will eliminate the need for device manufacturers to maintain different quality systems for each market.

FDA supports the ultimate goal of international harmonization of standards and regulations governing medical devices and the eventual mutual recognition of CGMP inspections between major device markets. While achievement of this goal is still in the future, the harmonization of quality standards is an important first step. The Health Industry Manufacturers Association has stated that reciprocity for quality assurance inspections could save the medical device industry millions of dollars as well as provide significant savings to governments.[2]

For individual establishments, the economic impact of the regulation will depend on a number of factors, such as the level of current compliance, the type of activities performed at the establishment, and the nature of the product. On average, the smaller establishments will bear a relatively greater economic burden.

B. Industry Profile

The U.S. medical device industry is among the most competitive sectors in the United States. It is characterized by a large number of innovative firms, many small, that produce an extremely diversified range of products. In 1991, the industry's domestic production was approximately $33.7 billion and accounted for 47.5 percent of total world medical device output.[3] From

[1] Fisher, A., L. Chestnut, and D. Violette, "The Value of Reducing Risks of Death: A Note on New Evidence," *Journal of Policy Analysis and Management*, 8:88–100, 1989.

[2] Gilmartin, R. V., "The Benefits of Cooperation for Industry and Regulators Alike: A Global Perspective," presented at the Third Annual Global Medical Device Conference, October 2, 1992.

[3] Health Industry Manufacturers Association, "The Global Medical Device Report: Markets for Health Care Technology Products," vol. II, Washington, DC, 1992.

1989 to 1992 the average annual growth in medical device shipments was 9.7 percent compared to an average of less than 1 percent for all U.S. manufacturing. The U.S. Department of Commerce projects continued growth in medical device shipments of 3 to 7 percent through 1997.[4]

Exports are an important factor in the competitiveness of the domestic industry. In 1991, exports were $7.9 billion and accounted for about 23 percent of medical device value of shipments, whereas imports were only $4.1 billion or about 12 percent of domestic consumption.[5] With growth in the domestic market for medical devices projected to slow with the advancement of cost containment measures, the export market would take on even greater importance.

Firms in the medical device industry are heterogeneous. They vary in size, product type, product and process technology, and rate of new product introductions. There are over 7,000 medical device establishments involved in the production of approximately 4,000 different types of devices. Sixty-two percent of these establishments are very small (fewer than 20 employees), while 27 percent are of medium-size (20 to 99 employees), 7 percent are large (100 to 249 employees), and 4 percent are very large (250 or more employees). (See Table 1). These size categories were developed to reflect relative size categories within the medical device industry and differ from the Small Business Administration definition of size. Under the Small Business Administration definition, almost all establishments would be small. FDA categorizes devices by class and criticality. Critical devices are defined as any device intended for surgical implant, to sustain life, or whose failure under normal conditions could result in serious injury or death. The distribution of affected establishments that manufacture or develop devices is presented by class and criticality in Table 2. Most of the establishments that manufacture, contract manufacture, or develop specifications produce class II devices (71 percent), while 8 percent produce class III and 21 percent produce class I devices. Only 10 percent of the establishments produce critical devices (a critical device can be class II or class III).

The class of devices manufactured, the extent of an establishment's current compliance with the proposed changes, the rate of new product introductions, and the size of the establishment are factors that affect the cost of compliance for individual establishments. In general, establishments producing class III and critical devices are subject to more stringent and costly premarket review and CGMP requirements but are also more likely to be in greater compliance with the proposed changes to the CGMP regulation. Also, larger establishments tend to have more formal procedures and more layers of management than smaller ones, increasing the cost and complexity of writing and implementing new procedures. However, because of their more formal structure, larger firms have already implemented many of the proposed changes to the CGMP regulations.

The rate of new product introductions has a major effect on the incremental costs of the proposed CGMP regulation. Based on a limited sample of 510(k) and PMA applications, ERG estimated that the average affected medical device establishment submits 1.1 new product applications per year (Table 3). The submittal rate by size of establishment varied from 0.6 applications per year from small and medium-sized establishments to 6.9 applications per year from very large establishments. Because a substantial number of establishments are small, they remain an important source of new product introductions.

The great diversity of this industry makes it extremely difficult to characterize. Medical devices are classified under one of six Standard Industrial Classification (SIC) codes—Surgical and Medical Instruments (3841); Surgical Appliances and Supplies (3842); Dental Equipment and Supplies (3843); X-ray Apparatus and Tubes (3844); Electromedical Equipment (3845); and Ophthalmic Goods (3851). However, many medical devices are produced by establishments whose primary classification is for another SIC, such as in vitro diagnostics (SIC 2835). An earlier FDA study[6] found primary classifications in over 150 different SIC codes for a significant number of manufacturing establishments registered with the agency.

C. Industry Costs

ERG estimated the total annual incremental cost of the proposed changes to the CGMP regulation at $84.5 million. This includes $6.3 million in one-time costs that were annualized over 5 years at a 10 percent discount rate. Table 4 lists the most costly of the new requirements.

Costs were based on the incremental tasks each manufacturer must perform to achieve compliance. To develop these estimates, ERG assembled a team of economists, industrial engineers, and other industry consultants, who addressed each compliance activity in turn, first assessing the state of current practice and next the level and cost of the needed additional tasks. These estimates take into account the added labor and capital resources that would be needed to move from existing compliance levels to new, more stringent levels required under the proposal. For the most part, ERG determined that most very large and large establishments are already in compliance with many of the new requirements and thus would not experience large increases in costs.

The great majority of the costs for all size establishments will be to establish preproduction design controls for new products. Therefore, the more innovative establishments will experience greater compliance costs than the less innovative establishments. The estimated annual preproduction design control costs total $62.1 million, which represents 74 percent of the total annual incremental cost of compliance. The most costly task within the preproduction design category is design verification ($49.2 million), which includes verifying design output. Other costly tasks are design review ($6.4 million), which encompasses conducting and documenting design review meetings; design changes ($4.0 million), which includes drawing, documenting, and maintaining design change procedures; and design and development planning ($2.5 million), which includes drafting and maintaining standardized plans for device design and development. The requirement for extending the quality system audit to new areas of production such as design and servicing ($5.2 million) and establishing greater purchasing controls ($7.9 million) are also relatively high cost items.

The projected average cost per establishment (Table 5) varies substantially across establishment size categories and by product type, design complexity, and innovation rate. For most sectors of the medical device industry (excluding dental and ophthalmics) the average annual incremental cost per establishment is estimated to be: $19,300 for small, $15,800 for medium, $27,800 for large,

[4] U.S. Department of Commerce, "U.S. Industrial Outlook," Washington, DC, 1993.

[5] Health Industry Manufacturers Association, "The Global Medical Device Report: Markets for Health Care Technology Products," vol. I, Washington, DC, 1992.

[6] Food and Drug Administration, "Baseline Data on Medical Device Industries in the Census of Manufacturers," (OPE Study 53), 1980.

and $11,600 for very large establishments. The dental and ophthalmic industries have a lower rate of new product development than other device industries and, therefore, a lower average cost of compliance ($8,800 per establishment versus $18,700).

Because average current compliance rates vary directly with establishment size and the majority of establishments are small, the largest share of the costs are incurred by small establishments, $50.2 million (59 percent), while the smallest share is incurred by very large establishments, $3.1 million (3.7 percent) (Table 6).

D. Benefits From Proposed Changes to the CGMP

The proposed changes to the CGMP regulation will provide public health benefits to medical device users and economic benefits to the medical device industry. Based on its review of medical device recalls over the past 4 years, FDA has estimated that 30 percent of all medical device product recalls are due to inadequate preproduction design controls. It is extremely difficult to judge how many of these recalls could have been avoided, ERG judged that a majority would have been prevented if manufacturers had fully implemented the proposed CGMP design controls.

1. Public Health Benefits

FDA requires manufacturers to submit an MDR when their device is associated with a patient or user death, serious injury, serious illness, or device malfunction. ERG used the MDR database to estimate the public health benefits of the proposed changes to the CGMP regulation. There were over 47,000 MDR's submitted to FDA in 1991. FDA reviews each report for cause and assigns it a code. An MDR is considered closed when the review is completed. At the time of this report, 22,674 of the 1991 MDR's were closed. Of these closed cases, FDA determined that 19 percent of the fatalities and 23 percent of the serious injuries were device-related. The bulk of the remaining incidents were due to user problems, but also include procedural problems and cases where cause could not be clearly established.

To estimate the total number of deaths and serious injuries for 1991 by cause, the MDR's that were still open were distributed across cause codes based on the 1988 through 1991 averages. To estimate the number of deaths and serious injuries due to design-related causes, ERG assumed that the percent of the device-related MDR's that were design-related MDR's was the same as that for recalls (30 percent). Because MDR's are substantially underreported[7], ERG made an upward adjustment in the number of MDR's of 20 percent for fatalities and 40 percent for serious injuries. Based on these assumptions, medical devices contributed to an estimated 72 fatalities and 1,576 serious injuries in 1991 due to design-related problems in class II and class III devices (Table 7).

To develop an approximate idea of the preventability of these incidents, ERG convened a panel of industrial engineers and regulatory specialists with extensive experience in the design of medical devices. Each panel member evaluated a random sample of 100 design-related recalls. ERG found that the expected value of their judgments implied that proper design controls would have prevented about 73 percent of these recalls. Based on this preventability ratio, ERG calculated that the proposal would prevent about 53 deaths and 1,150 serious injuries per year.

To verify the reasonableness of these estimates, FDA examined an alternative method of estimating the number of fatalities caused by design-related device failures. For this calculation, 3 years of design-related recalls were assumed to be linked to MDR fatalities that occurred for these devices 1 year before or 3 months after the date of the recall. This approach, which provides a lower-bound estimate, because not all relevant fatalities and subsequent MDR's would occur during this limited time period, found that about 60 deaths per year were due to design-related device failures. If 73 percent of such incidents could be avoided through compliance with the proposed CGMP regulation, 44 deaths per year would be prevented.

These estimates of the public health benefits from fewer design-related deaths and serious injuries represent FDA's best projections, given the limitations and uncertainties of the data and assumptions. It should be noted that the failure of just one widely used device can cause an exceptionally large number of deaths and injuries. For example over 500 fractures of the Bjork-Shiley convexo-concave heart valve, with over 300 deaths, have been reported since 1980. Worldwide, there are over 56,000 surviving recipients of this device and fractures still occur at a rate of 30 to 40 per year.

Moreover, the above numbers do not capture the quality of life losses to patients who experience less severe injuries than those reported in MDR's, who experience anxiety as a result of diagnosis or treatment with an unreliable medical device, or who experience inconvenience and additional medical costs because of device failure.

Medical device malfunctions are substantially more numerous than deaths or injuries from device failures and also represent a cost to society. Malfunctions represent a loss of product and an inconvenience to users and/or patients. Additionally, medical device malfunctions burden medical personnel with additional tasks, such as repeating treatments, replacing devices, returning and seeking reimbursement for failed devices, and providing reports on the circumstances of medical device failures. No attempt was made to quantify these additional costs.

2. Industry Benefits

The medical device industry would gain substantial economic benefits from the proposed changes to the CGMP regulations in three ways: cost savings from fewer recalls, productivity gains from improved designs, and efficiency gains for export-oriented manufacturers, who would now need to comply with only one set of quality standards.

An average of 359 medical device recall events per year were reported to FDA over the period 1988 to 1991. As stated above, FDA estimates that design-related deficiencies contributed to 30 percent of those recall events annually. Applying the 73 percent recall preventability factor, ERG projects that there would be 67 fewer recalls of class II and class III devices each year under the proposed CGMP regulation (Table 8). Although substantial medical device recall cost data were not available, ERG estimated that if the cost and distribution of medical device recalls were similar to those reported in previous drug and device recall studies, the industry would avoid roughly $45 million worth of recall expenses per year by adopting the new CGMP regulation.

ERG also found that the design control requirements in the proposed CGMP regulation would require manufacturers to integrate their design and production operations and that most industry experts believe that this change would lead to better quality products, more efficient engineering, lower manufacturing costs, and reduced product development time. These savings, however, could not be quantified.

Still another benefit of the revised regulation relates to the harmonization

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[7] General Accounting Office, "Medical Devices: Early Warning is Hampered by Severe Underreporting," GAO/PEMD-87-1, Washington, DC, 1986.

of the proposed CGMP rule with the ISO 9001 international standard. This change would especially benefit export-oriented establishments, because they would need to meet only one set of quality standards. The EC in particular is important because it is second only to the United States in market size and purchases $3.4 billion (43 percent) of U.S. medical device exports.[8] ERG could not derive quantitative measures of this benefit, however, due to the lack of data regarding implementation of the standard in the EC.

E. Costs and Benefits if all Device Classes Were Subject to Preproduction Design Requirements

If all device classes were subject to the proposed design control requirements the total annualized compliance cost would increase from $84.5 million to $91.3 million (Table 9), solely due to a $6.8 million increase in annualized compliance costs for class I devices. In contrast, ERG estimates that subjecting class I devices to the design control requirements would have no expected impact on the number of fatalities avoided. There would, however, be 108 fewer design-related serious injuries (Table 10) and 11 fewer design-related recalls (Table 11).

F. Economic and Small Business Impact

The ability of medical device establishments to pass on the added cost of the proposed changes will determine their economic impact on the industry. Under the current medical care system, the demand for medical devices tends to be price inelastic because they are often prescribed by physicians and frequently paid for by third parties. Thus, small price increases have not typically prompted significant declines in industry sales. Nonetheless, competitive pressures would rise under new health care cost-containment measures. Therefore, to examine the potential effect of the costs of compliance on the industry's competitive structure, ERG calculated the maximum impact on industry average prices and profits, using extreme scenarios.

Based on the assumption that all costs of compliance are passed through to the end user, with no loss in sales and no offset for avoided recalls or other industry productivity gains, ERG found that the average increase in the price of medical devices would be less than 0.2 percent. Estimated price increases ranged from 0.06 percent for X-ray Apparatus and Tubes (SIC 3844) and Electromedical Equipment (SIC 3845) to 0.24 percent for Dental Equipment and Supplies (SIC 3843) (Table 12). (The maximum price increase was calculated using aggregate compliance costs as a percentage of the value of shipments.) The price increases calculated by size of establishment suggest that small establishments will be under greater pressure to increase prices. The cost of compliance represented an average of 1.8 percent of the value of shipments for small establishments and only 0.01 percent for very large establishments.

To estimate the potential impact of compliance costs on medical device industry profits, ERG calculated after-tax compliance costs as a percentage of after-tax income for each medical device SIC (Table 12). Again, no adjustments were made for avoided recalls or expected productivity gains. If manufacturers have no ability to increase prices to offset the increase in compliance costs, this estimate represents an upper bound of the potential effect on entity income. Under these circumstances, the medical device sectors would incur reductions in net income ranging from about 1 percent (SIC 3844 and 3845, X-ray Apparatus and Tubes and Electromedical Equipment) to about 3 percent (SIC 3843 and 3851, Dental Equipment and Ophthalmic Goods). ERG concluded that such impacts may affect some establishments' decisions to develop new products where expected profits are marginal or highly uncertain, but judged that the level of incremental costs imposed by this regulation would not substantially lower the innovation rate of products with significant medical benefits.

In accordance with the Regulatory Flexibility Act; FDA has considered the effect of this action on small businesses and has determined that there will be a significant impact on a substantial number of small businesses. The increase in costs is greatest for small establishments due to the large number of small establishments in the industry (62 percent are small) and the lower rate of current compliance by small establishments. The actual added cost per establishment will vary by the establishment's current level of compliance, complexity of product design, product type, and rate of product innovation. Small establishments producing differentiated products or marketing to niche markets may not be at a disadvantage because of their ability to pass on the added cost of compliance. However, small establishments that compete with larger establishments based on price alone would suffer a drop in profits if they currently operate at a lower level of compliance than their competitors. For small start-up establishments that have not yet developed significant sales volume, regulatory costs would amount to a substantial fraction of company revenues.

FDA, through its Division of Small Manufacturers Assistance has a number of programs designed to assist small businesses. The Division of Small Manufacturers Assistance provides guidance materials, regional seminars and technical assistance that can help small businesses with their compliance activities. In addition, FDA's decision to exempt the majority of class I device manufacturers from preproduction design requirements decreases the cost of compliance by $6.8 million and minimized the potential burden on small establishments that manufacture class I devices. About 60 percent of that $6.8 million would have been borne by small establishments.

In summary, FDA concludes that the $84.5 million annual incremental cost to comply with the proposed changes to the CGMP regulation would be substantially offset by significant savings from avoided recalls and more importantly, the avoidance of deaths and serious injuries due to design-related device failures or malfunctions. FDA's estimate of public health benefits includes the prevention of about 53 deaths and 1,150 serious injuries annually. In addition, establishing preproduction design controls would result in better designed and higher quality devices and fewer device malfunctions or failures would reduce the inconvenience and expense of repetitive treatments or diagnoses. These public health benefits exceed industry's cost of compliance.

[8] Health Industry Manufacturers Association, "The Global Medical Device Report: Markets for Health Care Technology Products," vol. I, Washington, DC, 1992.

TABLE 1.—DISTRIBUTION OF AFFECTED ESTABLISHMENTS BY EMPLOYMENT SIZE

Type of establishment	Total [1]	Employment size [2]			
		Small (1–19)	Medium (20–99)	Large (100–249)	Very large (≥250)
Manufacturer	5,415	3,323	1,414	415	265
Contract manufacturer	419	257	109	32	20
Specification developer	541	352	162	27	0
Repacker/relabeler	828	538	248	41	0
Contract sterilizer	34	22	10	2	0
Total	7,237	4,492	1,943	517	285

[1] Based on data from FDA's Registration and Listing Branch, 1992, adjusted to reflect 13 percent not required to register and 6 percent exempt from CGMP requirements.
[2] ERG, Section 3.

TABLE 2.—DISTRIBUTION OF ESTABLISHMENTS BY HIGHEST CLASS OF MEDICAL DEVICE MANUFACTURED

Type of establishment	Total [1]	Class [2]			Noncritical	Critical
		I	II	III		
Manufacturer	5,415	1,137	3,844	433	4,873	541
Contract manufacturer	419	88	297	33	377	42
Specification developer	541	114	384	43	487	54
Total	6,375	1,339	4,525	510	5,737	637

[1] Includes manufacturing and product development establishments only.
[2] The Evolving Medical Device Industry 1976 through 1984. OPE, FDA (OPE study 74).
Note: Totals may not add due to rounding.

TABLE 3.—Annual Number of 510(K) AND PMA SUBMISSIONS PER ESTABLISHMENT

	Total	Employment size			
		Small (1–19)	Medium (20–99)	Large (100–249)	Very large (≥250)
Average number of product submissions	[1] 6,317	2,264	885	1,342	1,826
Number of affected establishments	[2] 5,956	3,675	1,576	442	265
Average number of 510(k) and PMA submissions per establishment	1.1	0.6	0.6	3.0	6.9

[1] Number includes 50 percent of PMA supplements.
[2] The number of manufacturers and the number of specification developers that would incur design costs associated with new product introduction.
Source: ERG, Section 3.

TABLE 4.—TOTAL COMPLIANCE COSTS BY MOST COSTLY INCREMENTAL TASKS

[$ millions]

Incremental tasks	One-time annualized [1]	Annual		Total annualized
		Labor	Nonlabor	
Preproduction design:				
Design verification	NA	19.7	29.5	49.2
Design review	NA	6.4	NA	6.4
Design changes	0.1	3.9	NA	4.0
Design and development planning	0.9	1.6	NA	2.5
Other:				
Quality audit	0.5	4.7	NA	5.2
Purchasing controls	0.6	4.7	2.6	7.9
Management review	NA	2.2	NA	2.2
Corrective action	0.9	0.3	NA	1.2
All remaining	3.3	2.0	0.5	5.9
Total of proposed regulation	5.3	45.5	32.6	84.5

[1] One-time costs annualized over 5 years at discount rate of 10 percent.
Notes: NA = Not Applicable; Totals may not add due to rounding; Source: ERG, Section 4.

TABLE 5.—TOTAL ANNUALIZED [1] AVERAGE COSTS PER ESTABLISHMENT BY EMPLOYMENT SIZE

Establishment employment size	Medical and surgical instruments, x-ray, and electromedical device industries (SIC 3841, 3842, 3844, and 3845) (dollars)	Dental and ophthalmic industries (SIC 3843 and 3851) (dollars)
Small (1–19)	19,300	7,700
Medium (20–99)	15,800	8,700
Large (100–249)	27,800	16,300
Very large (≥ 250)	11,600	11,600
All establishments	18,700	8,800

[1] One-time costs annualized over 5 years at discount rate of 10 percent.
Source: ERG, Section 6.

TABLE 6.—TOTAL ANNUALIZED COSTS BY SIZE CATEGORY

[$ millions]

Establishment size	One-time annualized [1]	Annual		Total annualized
		Labor	Nonlabor	
Small (1–19)	3.2	26.0	21.0	50.2
Medium (20–99)	2.0	11.3	7.7	21.0
Large (100–249)	0.7	5.8	3.8	10.2
Very large (≥ 250)	0.5	2.5	0.1	3.1
All establishments	6.3	45.6	32.6	84.5

[1] One-time costs annualized over 5 years at discount rate of 10 percent.
Notes: Totals may not add due to rounding; Source: ERG, Section 4.

TABLE 7.—NUMBER OF DESIGN-RELATED REPORTS AND ESTIMATED AVOIDED DEATHS AND SERIOUS INJURIES

	Fatalities			Serious injuries		
	Class II	Class III	Total	Class II	Class III	Total
Number in 1991	551	482	1,033	4,269	12,175	16,444
Device-related	124	76	200	538	3,214	3,752
Design-related [1]	37	23	60	161	964	1,126
Adjusted total number of design-related MDR's [2]	45	27	72	226	1,350	1,576
Number avoided	33	20	53	165	984	1,149

[1] Assumes 30 percent of device-related MDR's are design-related, based on FDA recall data.
[2] Total number of fatalities and injuries increased by 20 and 40 percent, respectively, to adjust for underreporting.
Source: ERG, Section 5.

TABLE 8.—NUMBER OF AVOIDED DESIGN-RELATED RECALL EVENTS BY CLASS OF DEVICE

Device Class	Average number of design-related recall events [1]	Number of avoided design-related recall events [2]
I	16	NA
II	79	58
III	12	9
All devices	107	67

[1] Office of Compliance and Surveillance, CDRH.
[2] ERG estimates based on random sample of recent design-related recalls.

TABLE 9.—TOTAL ANNUALIZED [1] COST BY DEVICE CLASS FOR PROPOSAL AND ALTERNATIVE

[$ millions]

Device class	Proposal		Alternative	
	Annualized costs	Percent of total	Annualized costs	Percent of total
Class I	5.2	5	11.9	13
Class II	71.4	86	71.4	78
Class III	7.9	9	7.9	9

TABLE 9.—TOTAL ANNUALIZED [1] COST BY DEVICE CLASS FOR PROPOSAL AND ALTERNATIVE—Continued
[$ millions]

Device class	Proposal		Alternative	
	Annualized costs	Percent of total	Annualized costs	Percent of total
Total	84.5	100	91.3	100

[1] One-time costs annualized over 5 years at discount rate of 10 percent
Source: ERG, Section 4.

TABLE 10.—NUMBER OF DESIGN-RELATED REPORTS AND ESTIMATED AVOIDED DEATHS AND SERIOUS INJURIES WHEN ALL DEVICES ARE SUBJECT TO DESIGN CONTROLS

	Fatalities				Serious injuries			
	Class I	Class II	Class III	Total	Class I	Class II	Class III	Total
Number in 1991	38	551	482	1,071	1,092	4,269	12,175	17,536
Device-related	1	124	76	201	355	538	3,214	4,107
Design-related [1]	<1	37	23	60	106	161	964	1,232
Adjusted total number of design-related MDR's [2]	<1	45	27	72	148	226	1,350	1,725
Number avoided	<1	33	20	53	108	165	984	1,257

[1] Assumes 30 percent of device-related MDR's are design-related, based on FDA recall data.
[2] Total number of fatalities and injuries increased by 20 and 40 percent, respectively, to adjust for underreporting.

TABLE 11.—NUMBER OF AVOIDED DESIGN-RELATED RECALL EVENTS BY CLASS OF DEVICE WHEN ALL DEVICES ARE SUBJECT TO DESIGN CONTROLS

Device class	Average number of design-related recall events [1]	Number of avoided design-related recall events [2]
I	16	11
II	79	58
III	12	9
All devices	91	78

[1] Office of Compliance and Surveillance, CDRH.
[2] ERG estimates based on random sample of recent design-related recalls.
Source: ERG, Section 5.

TABLE 12.—MAXIMUM POTENTIAL IMPACT ON PRICE OR PROFITS BY INDUSTRY AND EMPLOYMENT SIZE

Industry	Total annualized compliance costs as a percentage of shipments	After-tax compliance costs as a percentage of after-tax income
3841 Surgical and medical instruments	0.15	2.41
3842 Surgical appliances and supplies	0.18	2.29
3843 Dental equipment and supplies	0.24	3.02
3844 X-ray apparatus and tubes	0.06	1.10
3845 Electromedical equipment	0.06	0.68
3851 Ophthalmic goods	0.20	3.00
All	0.15	2.11
Establishment size:		
Small (1–19)	1.78	NA
Medium (20–99)	0.23	NA
Large (100–249)	0.11	NA
Very large (≥250)	0.01	NA
All	0.15	NA

Notes: NA=not available; Source: ERG, Section 5.

VIII. Paperwork Reduction Act of 1980

This proposed rule contains information collections that are subject to review by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35). The title, description, and respondents of the information collection are shown below with an estimate of the annual recordkeeping burden.

Title: Medical Devices, Current Good Manufacturing Practice Regulations,

Proposed Revisions, Request for Comments.

Description: FDA is proposing to revise the CGMP regulations for medical devices in part 820. Changes proposed include revisions that would: Replace quality assurance program requirements with quality system requirements, including design, procurement and servicing controls; eliminate critical component and critical operation terminology; expand procedures for device failure and complaint investigations; clarify requirements to qualify, verify, and validate processes and changes; and, clarify requirements to evaluate quality data and correct quality problems. Through reorganization and modification of terms, the revised CGMP requirements for medical devices are compatible with specifications for quality systems contained in international quality standards, ISO 9001/EN 29001, "Quality Systems Part 1. Specification for design/development, production, installation and servicing."

Description of Respondents: Businesses or other for-profit and small businesses or organizations.

ESTIMATED ANNUAL BURDEN FOR RECORDKEEPING

Part	Annual no. of recordkeepers	Annual hours per recordkeeper	Total recordkeeping hours
820	7,237	55.880842	404,410

Under OMB information collection No. 0910–0073, an estimated 375,266 burden hours have already been approved for 21 CFR part 820. The information requirements contained in this proposed rule will add 463,128 hours to the burden estimate.

As required by section 3504(h) of the Paperwork Reduction Act, FDA is submitting to OMB a request that it approve these information collection requirements. Organizations and individuals desiring to submit comments for consideration by OMB on these information collection requirements, should direct them to FDA's Dockets Management Branch (address above) and to the Office of Information and Regulatory Affairs, Office of Management and Budget, rm. 3001, New Executive Office Bldg., 725 17th St. NW., Washington, DC 20503, Attn: Desk Officer for FDA.

IX. References

The following references have been placed on display in the Dockets Management Branch (address above) and may be seen by interested persons between 9 a.m. and 4 p.m., Monday through Friday.

1. ISO 9001/EN 29001 "Quality Systems Part 1. Specification for Design/Development, Production, Installation, and Servicing," International Organization for Standardization, 1987.

2. "Suggested Changes to the Medical Device Good Manufacturing Practices Regulation Information Document November 1990," FDA, Center for Devices and Radiological Health, Rockville, MD 20857, Docket No. 90N–0172.

3. "Device Recalls: A Study of Quality Problems," FDA, Center for Devices and Radiological Health, Rockville, MD 20857, HHS Publication FDA 90–4235, January 1990.

4. "Preproduction Quality Assurance Planning; Recommendations for Medical Device Manufacturers," FDA, Center for Devices and Radiological Health, Rockville, MD 20857, HHS Publication FDA 90–4236, September 1989.

5. "Software Related Recalls for Fiscal Years FY 83–FY 91," FDA, Center for Devices and Radiological Health, Rockville, MD 20857, May 1992.

6. "FDA Medical Device Regulation From Premarket Review to Recall," Office of Inspector General, Washington, DC, HHS Publication OEI 09–90–00040, February 1991.

7. Letter from American Cyanamid Company to Dockets Management Branch (HFA–305), in response to Docket No. 90N–0172, February 28, 1991.

8. Letter from XRE Corporation to Dockets Management Branch (HFA–305) in response to Docket No. 90N–0172, August 16, 1990.

9. "Guideline on General Principles of Process Validation," FDA, Center for Drugs and Biologics, and Center for Devices and Radiological Health, Rockville, MD 20857, May 1987.

10. EN46001 "Quality Systems—Medical Devices—Particular Requirements for the Application of EN29001."

11. EN46002 "Quality Systems—Medical Devices—Particular Requirements for the Application of EN29002."

12. ISO 8402 "Quality Vocabulary," International Organization for Standardization, 1986.

13. "Management Practices; U.S. Companies Improve Performance Through Quality Efforts," General Accounting Office, Washington, DC 20548, May 1991, GAO/NSLAD–91–190.

14. "Economic Analysis of Proposed Revisions to the Good Manufacturing Practices Regulation for Medical Devices," FDA Contract No. 223–91–8100, Eastern Research Group, Inc., Lexington, MA 02173.

X. Request for Comments

Interested persons may, on or before February 22, 1993, submit to the Dockets Management Branch (address above) written comments regarding this proposal. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday.

FDA is establishing a 120-day comment period, rather than its usual 60 days, in anticipation that the agency will be requested to extend the comment period. The agency will not entertain requests to extend the comment period further.

List of Subjects in 21 CFR Part 820

Medical devices, Reporting and recordkeeping requirements.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, it is proposed that 21 CFR part 820 be revised to read as follows:

PART 820—GOOD MANUFACTURING PRACTICE FOR MEDICAL DEVICES

Subpart A—General Provisions

Sec.

820.1 Scope.
820.3 Definitions.
820.5 Quality system.

Subpart B—Quality System Requirements

820.20 Management responsibility.
820.22 Quality audit.
820.25 Personnel.

Subpart C—Design Controls

820.30 Design controls.

Subpart D—Document and Record Controls

820.40 Document controls.

Subpart E—Purchasing Controls

820.50 Purchasing controls.

Subpart F—Identification and Traceability

820.60 Identification and traceability.
820.65 Critical devices, traceability.

Subpart G—Production and Process Controls

820.70 Production and process controls.
820.75 Special processes.

Subpart H—Inspection and Testing

820.80 Inspection and testing.
820.84 Inspection, measuring, and test equipment.
820.86 Inspection and test status.

Subpart I—Nonconforming Components and Devices

820.90 Nonconforming components and devices.
820.91 Nonconforming components and devices, critical devices.

Subpart J—Corrective Action

820.100 Corrective action.

Subpart K—Handling, Storage, Distribution, and Installation

820.120 Handling.
820.122 Storage.
820.124 Distribution.
820.126 Installation.

Subpart L—Packaging and Labeling Control

820.160 Device packaging.
820.162 Device labeling.
820.165 Critical devices, labeling.

Subpart M—Records

820.180 General requirements.
820.181 Device master record (DMR).
820.184 Device history record.
820.198 Complaint files.

Subpart N—Servicing

820.200 Servicing.

Subpart O—Statistical Techniques

820.250 Statistical techniques.

Authority: Secs. 501, 502, 510, 513, 514, 515, 518, 519, 520, 522, 701, 704, 801, 803 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 351, 352, 360, 360c, 360d, 360e, 360h, 360i, 360j, 360l, 371, 374, 381, 383).

Subpart A—General Provisions

§ 820.1 Scope.

(a) *Applicability.* (1) The regulations set forth in this part describe current good manufacturing practices (CGMP's) for methods used in, and the facilities and controls used for, the design, purchasing, manufacture, packaging, labeling, storage, installation, and servicing of all finished devices intended for human use. The regulations in this part are intended to ensure that finished devices will be safe and effective and otherwise in compliance with the Federal Food, Drug, and Cosmetic Act (the act). This part establishes minimum requirements applicable to manufacturers of finished devices, including additional requirements for critical devices. With respect to class I devices, design controls apply only to those devices listed in § 820.30(a)(2). The regulations in this part do not apply to manufacturers of components or parts of finished devices when such components or parts are not intended specifically for use as part of a medical device, but such manufacturers are encouraged to use appropriate provisions of this regulation as guidelines. Manufacturers of human blood and blood components are not subject to this part, but are subject to part 606 of this chapter.

(2) The provisions of this part shall be applicable to any finished device, as defined in this part, intended for human use, that is manufactured, imported, or offered for import in any State or Territory of the United States.

(b) *Limitations.* The CGMP regulation in this part supplements regulations in other parts of this chapter except where explicitly stated otherwise. In the event it is impossible to comply with all applicable regulations, both in this part and in other parts of this chapter, the regulations specifically applicable to the device in question shall supersede any other regulations.

(c) *Consequences of failure to comply with the regulations.* (1) The failure to comply with any applicable provision in this part in the design, purchasing, manufacture, packaging, labeling, storage, installation, or servicing of a device renders the device adulterated under section 501(h) of the act. Such a device, as well as any person responsible for the failure to comply, is subject to regulatory action under sections 301, 302, 303, 304, and 801 of the act.

(2) If a manufacturer who imports devices into the United States refuses to schedule an FDA inspection of a foreign facility for compliance with this part or refuses to permit FDA to conduct or complete a scheduled inspection at a foreign facility, it shall appear, for purposes of 801(a) of the act, that the methods used in, and the facilities and controls used for, the design, purchasing, manufacture, packaging, labeling, storage, installation, or servicing of any devices produced at such facility that are offered for import into the United States do not conform to the requirements of section 520(f) of the act and this part and that the devices manufactured at that facility are adulterated under section 501(h) of the act. Foreign CGMP inspections will be scheduled in advance by FDA in writing.

(d) *Exemptions or variances.* Any person who wishes to petition for an exemption or variance from any device good manufacturing practice requirement is subject to the requirements of section 520(f)(2) of the act. Petitions for an exemption or variance shall be submitted according to the procedures set forth in § 10.30 of this chapter, the Food and Drug Administration's administrative procedures. Guidance is available from the Center for Devices and Radiological Health, Division of Small Manufacturers Assistance, Regulatory Assistance Branch (HFZ–220), 1901 Chapman Ave., Rockville, MD 20857, telephone 1–800–638–2041. Maryland and foreign residents, 1–301–443–6597, FAX 301–443–8818.

§ 820.3 Definitions.

(a) *Act* means the Federal Food, Drug, and Cosmetic Act, as amended (secs. 201–903, 52 Stat. 1040 et seq., as amended (21 U.S.C. 321–394)). All definitions in section 201 of the act shall apply to these regulations.

(b) *Complaint* means any written, electronic, or oral communication that relates to or concerns the unacceptability of the identity, quality, durability, reliability, safety, effectiveness, or performance of a device.

(c) *Component* means any raw material, substance, piece, part, software, firmware, packaging, labeling, or assembly used during device manufacture which is intended to be included as part of the finished, packaged, and labeled device.

(d) *Control number* means any distinctive combination of letters or numbers, or both, from which the complete history of the purchasing, manufacturing, packaging, labeling, and distribution of a lot or batch of finished devices can be determined.

(e) *Critical device* means a device that is intended to be surgically implanted into the body or to support or sustain life the failure of which to perform when properly used in accordance with instructions for use provided in the labeling can be reasonably expected to result in a serious injury to the user. Examples of critical devices are identified by the Commissioner of Food and Drugs after consultation with the Device Good Manufacturing Practice Advisory Committee authorized under section 520(f) of the act, and an illustrative list of critical devices is available from the Center for Devices and Radiological Health, Food and Drug Administration, at the addresses given in § 820.1(d).

(f) *Design history record* means a compilation of records containing the complete design history of a finished device.

(g) *Design input* means the physical and performance requirements of a device that are used as a basis for device design.

(h) *Design output* means the results of a design effort at each design phase and at the end of the total design effort. The total finished design output consists of the device, its packaging and labeling, and the associated specifications and drawings and the production and quality system specifications and procedures which are included in the device master record (DMR).

(i) *Design review* means a comprehensive, systematic examination of a design to evaluate the adequacy of the device requirements, to evaluate the capability of the design to meet these requirements, and to identify problems with the design and design requirements and to propose solutions to all such problems.

(j) *Device history record* means a compilation of records containing the complete production history of a finished device.

(k) *Device master record (DMR)* means a compilation of records containing a device's complete design, formulation, and specifications, the purchasing and manufacturing procedures and specifications, the quality system requirements and procedures, and the packaging, labeling, servicing, maintenance, and installation procedures of a finished device.

(l) *Establish* means define, document, and implement.

(m) *Executive management* means those senior employees of a manufacturer who have the authority to establish or make changes to the manufacturer's quality policy, quality system requirements, or to a device's design specifications or its production, distribution, servicing, maintenance, or installation procedures.

(n) *Finished device* means any device or accessory to any device that is suitable for use, whether or not it is packaged or labeled for commercial distribution. A finished device includes a device that is intended to be sterile that is not yet sterilized.

(o) *Lot or batch* means a unit of components or finished devices that consists of a single type, model, class, size, composition, and software version that are manufactured under essentially the same conditions and that are intended to have uniform character and quality within specified limits.

(p) *Manufacturer* means any person who designs, manufactures, fabricates, assembles, or processes a finished device, including contract sterilizers, specification developers, repackers, relabelers, and initial distributors of imported devices.

(q) *Manufacturing material* means any material or substance used in, or to facilitate, a manufacturing process that is not intended by the manufacturer to be included in the finished device, including cleaning agents, mold-release agents, lubricating oils, ethylene oxide or other sterilant residues, or other byproducts of the manufacturing process.

(r) *Nonconforming* means the failure of a component, manufacturing material, or finished device to meet its specifications, either before or after distribution of the finished device.

(s) *Production* means all activities subsequent to design transfer and to the point of distribution.

(t) *Quality* means the totality of features and characteristics that bear on the ability of a device to satisfy fitness-for-use, including safety and performance.

(u) *Quality audit* means an established systematic, independent, examination of a manufacturer's entire quality system that is performed at defined intervals and at sufficient frequency to ensure that both quality system activities and the results of such activities comply with specified quality system procedures, that these procedures are implemented effectively, and that these procedures are suitable to achieve quality system objectives. "Quality audit" is different from, and in addition to, the other quality system activities required by or under this part.

(v) *Quality policy* means the overall quality intentions and direction of an organization with respect to quality, as formally expressed by executive management.

(w) *Quality system* means the organizational structure, responsibilities, procedures, specifications, processes, and resources for implementing quality management.

(x) *Record* means any written or automated document, including specifications, procedures, protocols, standards, methods, instructions, plans, files, forms, notes, reviews, analyses, and reports.

(y) *Reprocessing* means all or part of a manufacturing operation which is intended to correct nonconformance in a component or finished device.

(z) *Servicing* means maintenance or repair of a finished device for purposes of returning a device to its specifications.

(aa) *Special process* means any process the results of which cannot be completely verified by subsequent inspection and testing.

(bb) *Specifications* means the documents that prescribe the requirements with which a device, component, production or servicing activity, or quality system must conform.

(cc) *Validation* means, with respect to a device, establishing and documenting evidence that the device is fit for its intended use. With respect to a process, "validation" means establishing and documenting evidence that the process will consistently produce a result or product meeting its predetermined specifications and quality attributes.

(dd) *Verification* means confirming and documenting, with valid, objective evidence, that specified requirements have been met. Verification includes the process of examining the results of an activity to determine conformity with the stated specifications for that activity and ensuring that the device is adequate for its intended use.

§ 820.5 Quality system.

Each manufacturer shall establish and maintain a quality system that ensures that the requirements of this part are met, and that devices produced are safe, effective, and otherwise fit for their intended uses. As part of its quality system activities, each manufacturer shall:

(a) Establish effective quality system instructions and procedures in accordance with the requirements of this part; and

(b) Maintain the established quality system instructions and procedures effectively.

Subpart B—Quality System Requirements

§ 820.20 Management responsibility.

(a) *Quality policy.* Each manufacturer's executive management shall establish its policy and objectives for, and commitment to, quality. Executive management shall maintain the policy at all levels in the organization. Executive management shall ensure that this policy is understood by all employees who may affect or influence the quality of a device.

(b) *Organization.* Each manufacturer shall establish and maintain an adequate organizational structure with sufficient personnel to ensure that devices are produced in accordance with the requirements of this part.

(1) Responsibility and authority. With respect to each section in this part, each manufacturer shall establish the responsibility, authority, and interrelation of all personnel who manage, perform, and verify work

affecting quality, particularly for personnel who need the organizational freedom and authority to:

(i) Initiate or implement action to prevent the occurrence or use of nonconforming components, manufacturing materials, or finished devices;

(ii) Identify or document quality problems with devices, production, or the quality system;

(iii) Initiate, recommend, provide, or implement solutions or corrective actions to quality problems;

(iv) Verify the adequacy or implementation of solutions or corrective actions to quality problems; and

(v) Direct or control further processing, distribution, or installation of nonconforming components, manufacturing materials, or finished devices.

(2) Verification resources and personnel. Each manufacturer shall establish verification functions and shall provide adequate resources and assign adequately trained personnel to perform verification activities.

(3) Management representative. Each manufacturer's executive management shall appoint an individual in executive management, who irrespective of other responsibilities, shall have established authority over and responsibility for:

(i) Ensuring that quality system requirements are established and maintained in accordance with this part; and

(ii) Reporting on the performance of the quality system to executive management for review and to provide information for improvement of the quality system; and the appointment shall be documented.

(c) *Management review.* Each manufacturer's executive management shall review the suitability and effectiveness of the quality system at defined intervals and at sufficient frequency to ensure that the quality system satisfies the requirements of this part and the manufacturer's established quality policy objectives. The management review shall be conducted in accordance with established review procedures, and the results of each quality system review shall be documented.

§ 820.22 Quality audit.

(a) Each manufacturer shall conduct quality audits to verify that the quality system is in compliance with the established quality system requirements. Quality audits shall be conducted in accordance with established audit procedures by appropriately trained individuals who do not have direct responsibilities for the matters being audited. A report of the results of each quality audit shall be made and the audit reports shall be reviewed by management having responsibility for the matters audited. Followup corrective action, including reaudit of deficient matters, shall be taken when necessary and shall be documented in the audit report.

(b) Section 820.180 does not apply to quality audit reports required under this section, except reports written to satisfy § 820.50(a), but does apply to established quality audit procedures. Audit reports written as part of the assessment of suppliers or contractors (§ 820.50(a)) are subject to review and copying by FDA. Upon request of a designated employee of the Food and Drug Administration, an employee in executive management shall certify in writing that the audits of the quality system required under this section have been performed and documented and that any required corrective action has been taken.

§ 820.25 Personnel.

(a) *General.* Each manufacturer shall employ sufficient personnel with the necessary education, background, training, and experience to ensure that all activities required by this part are correctly performed.

(b) *Training.* Each manufacturer shall ensure that all personnel are trained to adequately perform their assigned responsibilities. Training shall be conducted in accordance with established procedures by qualified individuals to ensure that employees have a thorough understanding of their current job functions and with the CGMP requirements applicable to their job functions. As part of their training, all employees shall be made aware of device defects which may occur from the improper performance of their specific jobs. Personnel who perform verification activities shall be made aware of defects and errors that may be encountered as part of their verification functions. Employee training shall be documented.

(c) *Consultants.* (1) Each manufacturer shall ensure that any consultant advising on the methods used in, or facilities or controls used for, the design, purchasing, manufacture, packaging, labeling, storage, installation, or servicing of devices has sufficient qualifications (education, training, and experience) to advise on the subjects about which the consultant will advise.

(2) Each manufacturer shall maintain records pertaining to each consultant. Such records shall include the consultant's name and address, the consultant's qualifications, including a copy of the curriculum vitae and a list of previous jobs, and a specific description of the subjects on which the consultant advised.

Subpart C—Design Controls

§ 820.30 Design controls.

(a) *General.* (1) Each manufacturer of any class III, or class II device, and the class I devices listed in paragraph (a)(2) of this section shall establish and maintain procedures to control and verify the design of the device in order to ensure that specified design requirements are met.

(2) The following class I devices are subject to design controls:

Section	Device
862.2050 through 862.2920.	Instruments, Clinical Laboratory.
868.6810	Catheter, Tracheobronchial Suction.
878.4460	Glove, Surgeon's.
880.4680	Apparatus, Single Patient, Portable Suction.
880.6760	Restraint, Protection.
892.1100	Camera, Scintillation (gamma).
892.1110	Camera, Positron.
892.1130	Counter, Whole Body, Nuclear.
892.1300	Scanner, Rectilinear, Nuclear.
892.1320	Probe, Uptake, Nuclear.
892.1330	Scanner, Rectilinear, Nuclear.
892.1410	Synchronizer, Electrocardiograph, Nuclear.
892.1970	Synchronizer, Radiographic, ECG/Respirator.
892.5650	System, Applicator, Radionuclide, Manual.
892.5740	Source, Radionuclide, Teletherapy.

(b) *Design and development planning.* Each manufacturer shall establish and maintain plans that identify each design and development activity and the persons responsible for each activity. The plans shall describe or reference the description of these design and development activities, including any interaction between or among different organizational and technical groups. The plans shall be updated as design and development evolves.

(c) *Design input.* Each manufacturer shall establish design input requirements relating to a device. The design input requirements shall completely address the intended use of the device, including the needs of the user and patient, and shall be reviewed and approved by a designated qualified individual. The approval of design input requirements, including the date and the person(s) approving the requirements, shall be documented.

(d) *Design verification.* Each manufacturer shall establish and maintain procedures for verification of the device design and assign such functions to competent personnel. Design verification shall be performed in a timely manner and shall confirm that design output meets the design input requirements and that the design is adequate for its intended use. The results of the design verification, including identification of the design verified, verification method(s), the date, and the person(s) performing the verification shall be documented in the design history record. Where applicable, design verification shall include software validation and hazard analysis.

(e) *Design review.* Each manufacturer shall conduct a formal design review of the design output according to established procedures. Each manufacturer shall assign design review responsibility to qualified individuals who do not have direct responsibility for the design development. The assignments shall be documented. The results of a design review shall be documented in the design history record.

(f) *Design output.* Each manufacturer shall define and document design output in terms that allow an adequate evaluation of conformance to design input requirements. Design output shall meet the design input requirements and shall include those design characteristics that are essential for the intended use of the device.

(g) *Design transfer.* Each manufacturer shall establish and maintain procedures to ensure that the design basis for a device and its components are correctly translated into production specifications. The production specifications shall be approved by an individual designated by the manufacturer. The approval, including identification of the design, the date, and the person(s) approving the specifications, shall be documented. Each manufacturer shall select a representative sample of a device from the first three production lots or batches and test such sample under actual or simulated use conditions. Each manufacturer shall conduct such testing according to established procedures and shall maintain records of all results of the testing. Each manufacturer shall also conduct such testing when changes are made in the device or manufacturing process.

(h) *Design release.* Each manufacturer shall ensure that a design is not released for production until the design is approved by individuals designated by the manufacturer. The designated individuals shall review all records required for the design history record to ensure that the design history file is complete and that the final design is consistent with the approved design plan before releasing the design. The release, including the date and signature of the individual(s) approving release, shall be documented.

(i) *Design changes.* Each manufacturer shall establish and maintain procedures for the identification, documentation, validation, review, and approval of design changes.

(j) *Design history record.* Each manufacturer shall establish and maintain a design history record for each device. Each design history record shall contain or reference all records necessary to demonstrate that the design was developed in accordance with the approved design plan and the requirements of this part.

Subpart D—Document and Record Controls

§ 820.40 Document controls.

Each manufacturer shall establish and maintain document control procedures to ensure that all documents that must be established and maintained under this part meet the requirements of this part and are accurate and adequate for their intended use.

(a) *Document approval and issue.* Each manufacturer shall designate individuals to review and approve all documents established under this part for adequacy prior to issuance. The approval, including the date and signature of the individual(s) approving the document, shall be documented.

(b) *Document distribution.* Each manufacturer shall ensure that all documents are current and available at all locations for which they are designed, and that all unneeded or obsolete documents are removed from all points of use in a timely manner.

(c) *Documentation changes.* Changes to specifications, methods, or procedures for components, finished devices, manufacturing materials, production, installation, servicing, or the quality system shall be documented, reviewed, and approved by individuals in the same functions/organizations that performed the original review and approval unless specifically designated otherwise. In addition, any change to a specification, method, or procedure that may affect quality shall be validated as adequate for their intended use before approval and issuance. Validation results shall be recorded. Approved changes shall be communicated to the appropriate personnel in a timely manner. When changes are made to a specification, method, or procedure, each manufacturer shall evaluate the change in accordance with an established procedure to determine if the submission of a premarket notification (510(k)) under § 807.81(a)(3) of this chapter, or the submission of a supplement to a premarket approval application (PMA) under § 814.39(a) of this chapter is required, as applicable. Records of this evaluation and its results shall be maintained.

(d) *Documentation change records.* Each manufacturer shall maintain records of changes to documents. Documentation change records shall include a description of the change, identification of the affected documents, the signature of the approving individuals, the approval date, and the date the change becomes effective. A list, index, or equivalent document control procedure shall be established and maintained to identify the current revision of documents in order to ensure that only current, approved documents are in use.

Subpart E—Purchasing Controls

§ 820.50 Purchasing controls.

Each manufacturer shall establish and maintain procedures to ensure that all components, manufacturing materials, and finished devices that are manufactured, processed, labeled, or packaged by other persons or held by other persons under contract conform to specifications. Each manufacturer shall also ensure that services provided by other persons conform to specifications.

(a) *Assessment of suppliers and contractors.* Each manufacturer shall establish and maintain assessment criteria for suppliers and contractors that specify the requirements, including quality requirements that suppliers and contractors must meet. Each manufacturer shall assess and select potential suppliers and contractors on the basis of their ability to meet requirements, including quality requirements and shall establish and maintain a list of suppliers and contractors that meet the manufacturer's documented assessment criteria. Records of the assessment, and assessment results shall be maintained.

(b) *Purchasing forms.* Each manufacturer shall establish and maintain purchasing forms that clearly describe or reference the specifications, including quality requirements, for the components, manufacturing materials, finished devices, or services ordered or contracted for. Purchasing forms shall include an agreement that the suppliers agree to notify the manufacturer of any changes in the product or service so that manufacturers may determine whether

the change may affect the quality of a finished device. Each manufacturer shall review and approve purchasing documents prior to release. The approval, including the date and signature of the individual(s) approving the form, shall be documented.

Subpart F—Identification and Traceability

§ 820.60 Identification and traceability.

Each manufacturer shall establish and maintain procedures for identifying components, manufacturing materials, and finished devices during all stages of production, distribution, and installation to prevent mixups and to ensure orderly handlings. For certain devices, additional traceability requirements apply under section 519(e) of the act and part §§ 820.65 and 820.165 of this chapter.

§ 820.65 Critical devices, traceability.

Each manufacturer shall identify each unit, batch, or lot of critical devices with a control number. Such identification shall be recorded in the device history record.

Subpart G—Production and Process Controls

§ 820.70 Production and process controls.

(a) *General.* Each manufacturer shall design, conduct, and control all production processes to ensure that a device conforms to its specifications. Where any deviation from device specifications could occur as a result of the manufacturing process, the manufacturer shall establish and maintain process control procedures that describe all process controls necessary to ensure conformance to specifications. Process controls shall include:

(1) Documented instructions, standard operating procedures (SOP's), and methods that define and control the manner of production, installation, and servicing;

(2) Monitoring and control of process parameters and component and device characteristics during production, installation, and servicing;

(3) Compliance with applied reference standards or codes and process control procedures;

(4) The approval of processes and process equipment; and

(5) Criteria for workmanship which shall be expressed in documented standards or by means of representative samples.

(b) *Environmental control.* Each manufacturer shall establish and maintain a control system to prevent contamination or other adverse effects on the device and to provide proper conditions for all operations. Conditions to be considered for control include: Lighting, ventilation, space, temperature, humidity, air pressure, filtration, airborne contamination, static electricity, and other environmental conditions. Each manufacturer shall periodically inspect its facilities and review its control system to verify that the system is adequate and functioning properly. Records of the results of such inspections shall be made and reviewed.

(c) *Cleaning and sanitation.* Each manufacturer shall establish and maintain adequate cleaning procedures and schedules to meet manufacturing process specifications. Each manufacturer shall ensure that the appropriate personnel understand such procedures.

(d) *Personnel health and cleanliness.* Each manufacturer shall ensure that personnel in contact with a device or its environment are clean, healthy, and suitably attired where lack of cleanliness, good health, or suitable attire could adversely affect the device. Any person who appears to be unclean or inappropriately attired shall be excluded from operations until he or she is clean and suitably attired. Any person who, by medical examination or supervisory observation, appears to have a condition which could adversely affect the device shall be excluded from operations until the condition is corrected. Each manufacturer shall instruct personnel to report such conditions to their supervisors.

(1) Clothing. When special clothing requirements are necessary to ensure that a device is fit for its intended use, each manufacturer shall provide clean dressing for personnel.

(2) Hygiene. Each manufacturer shall provide clean and adequate washing and toilet facilities.

(3) Personnel practices. When eating, drinking, smoking, and other activities by personnel may have an adverse effect on a device, each manufacturer shall limit such practices to designated areas. Each manufacturer shall ensure that its personnel understand any such limits. Each manufacturer shall designate selected areas to avoid any adverse effects on a device.

(e) *Contamination control.* Each manufacturer shall establish and maintain procedures to prevent contamination of equipment, components, manufacturing materials, and in-process and finished devices by rodenticides, insecticides, fungicides, fumigants, cleaning and sanitizing substances, and hazardous substances, including hazardous substances or contaminants generated by the manufacturing process.

(f) *Sewage and refuse disposal.* Each manufacturer shall dispose of sewage, trash, byproducts, chemical effluents, and other refuse in a safe, timely, and sanitary manner.

(g) *Equipment.* Each manufacturer shall ensure that all equipment used in the manufacturing process is adequate for its intended use and is appropriately designed, constructed, placed, and installed to facilitate maintenance, adjustment, cleaning, and use.

(1) Maintenance schedule. Each manufacturer shall establish and maintain schedules for the maintenance, adjustment, and, where applicable, cleaning of equipment to ensure that manufacturing specifications are met. The maintenance schedule shall be visibly posted on or near each piece of equipment or shall be readily available to personnel performing maintenance activities. A written record shall be maintained documenting the date when scheduled maintenance activities were performed and the individual(s) performing the maintenance activity.

(2) Inspection. Each manufacturer shall conduct periodic inspections in accordance with established procedures to ensure adherence to applicable equipment maintenance schedules. The inspections, including the date and individual conducting the inspections, shall be documented.

(3) Adjustment. Each manufacturer shall ensure that any inherent limitations or allowable tolerances are visibly posted on or near equipment requiring periodic adjustments or are readily available to personnel performing these adjustments.

(4) Manufacturing material. Each manufacturer shall establish and maintain procedures for the use and removal of manufacturing material to ensure that such material is removed from the device or limited to a specified amount that does not adversely affect the device's quality. The removal of such manufacturing material shall be documented.

(h) *Automated processes.* When computers are used as part of production, the quality system, or automated data processing systems, individuals designated by the manufacturer shall validate the computer software according to an established protocol. The results shall be documented. All software changes shall be made by a designated individual(s) through an established validation and approval procedure in accordance with § 820.40(c) document changes.

§ 820.75 Special processes.

(a) Each manufacturer shall ensure that special processes are:

(1) Validated according to an established protocol and records shall be made of the results of validation, including the date of and individual responsible for the validation;

(2) Conducted according to established procedures that describe all processing controls necessary to ensure conformance to specifications;

(3) Monitored according to establish procedures to ensure process parameters are met; and

(4) Performed by qualified, designated individuals.

(b) The individual(s) responsible for the performance of a special process shall record the completion of the process in the device history record. The record shall include identification of the process, the date performed, each individual that performed the special process, and the equipment used.

Subpart H—Inspection and Testing

§ 820.80 Inspection and testing.

(a) *General.* Each manufacturer shall establish and maintain the inspection and testing activities necessary to ensure that specified requirements are met. The results of all inspection and testing shall be documented.

(b) *Receiving inspection and testing.* Each manufacturer shall establish and maintain procedures for acceptance of incoming components, manufacturing materials, and finished devices. Incoming components, manufacturing materials, and finished devices shall not be used or processed until they have been verified as conforming to specified requirements. Individual(s) designated by the manufacturer shall accept or reject incoming components, finished devices, and manufacturing materials. Acceptance and rejection shall be documented.

(c) *In-process inspection and testing.* Each manufacturer shall establish and maintain procedures for inspecting and testing in-process components, finished devices, and manufacturing materials. Each manufacturer shall establish and maintain procedures for holding in-process components, finished devices, and manufacturing materials until the required inspection and tests have been completed or necessary reports have been received and verified.

(d) *Final inspection and testing.* Each manufacturer shall establish and maintain procedures for finished device inspection to ensure each lot or batch meets device specifications. Finished devices shall be held in quarantine or otherwise adequately controlled until released by an individual designated by the manufacturer. Finished devices shall not be released until all the required activities specified in the DMR have been completed and the associated data and documentation are reviewed to ensure all acceptance criteria have been met. Release, including the date and signature of the designated individual(s) responsible for release, shall be documented.

(e) *Inspection and test records.* Each manufacturer shall maintain records of the results of all inspections and tests required by this part. These records shall include the acceptance criteria, inspection checks performed; results; equipment used; and the date and signature of the individual(s) conducting the inspection and testing. These records shall be part of the device history record.

§ 820.84 Inspection, measuring, and test equipment.

Each manufacturer shall ensure that all measurement and test equipment, including mechanical, automated, or electronic inspection and test equipment, is suitable for its intended purposes and is capable of producing valid results. Each manufacturer shall establish and maintain procedures to ensure that equipment is routinely calibrated, inspected, and checked. Records documenting these activities shall be maintained.

(a) *Calibration.* Each manufacturer shall establish and maintain calibration procedures that include specific directions and limits for accuracy and precision and provisions for remedial action when accuracy and precision limits are not met. Calibration shall be performed by personnel who have the necessary education, training, background, and experience.

(b) *Calibration standards.* Each manufacturer shall establish and maintain calibration standards for measurement equipment that are traceable to the national standards of the National Institute for Standards and Technology, Department of Commerce. If national standards are not practical or available, the manufacturer shall use an independent reproducible standard. If no applicable standard exists, the manufacturer shall establish and maintain an in-house standard.

(c) *Calibration records.* Each manufacturer shall ensure that records of calibration dates, the individual performing each calibration, and the next calibration date are maintained. These records shall be maintained by individuals designated by the manufacturer and displayed on or near each piece of equipment or shall be readily available to the personnel using such equipment and the individuals responsible for calibrating the equipment.

(d) *Maintenance.* Each manufacturer shall establish and maintain procedures to ensure that the handling, preservation, and storage of inspection, measuring, and test equipment is such that their accuracy and fitness-for-use are maintained.

(e) *Facilities.* Each manufacturer shall protect inspection, measuring, and test facilities and equipment, including both test hardware and test software, from adjustments that would invalidate the calibration.

§ 820.86 Inspection and test status.

(a) Each manufacturer shall identify the inspection and test status of all components, manufacturing materials, and finished devices. The identification shall be visible, shall indicate the conformance or nonconformance of these items with respect to acceptance criteria, and shall be maintained, as necessary, throughout component acceptance, manufacturing, packaging, labeling, installation, and servicing of the device to ensure that only components, finished devices, and manufacturing materials which have passed the required inspections and tests are distributed, used, or installed.

(b) Each manufacturer shall ensure that records shall identify the individual(s) responsible for the release of components, of manufacturing materials, and of finished devices.

Subpart I—Nonconforming Components and Devices

§ 820.90 Nonconforming components and devices.

(a) *Control of nonconforming components and devices.* Each manufacturer shall establish and maintain procedures to ensure that components, manufacturing materials, finished devices, and returned devices that do not conform to specified requirements are not inadvertently used or installed. The procedures shall provide for the identification, documentation, investigation, segregation, and disposition of nonconforming components, manufacturing materials, finished devices, and returned devices, and for notification of the persons or organizations responsible for the nonconformance.

(b) *Nonconformity review and disposition.* (1) The responsibility for review and the authority for the disposition of nonconforming components, manufacturing materials,

finished devices, and returned devices shall be defined.

(2) Each manufacturer shall establish and maintain procedures for the reprocessing, retesting, and reinspection of nonconforming components and finished devices, to ensure that they meet their original, or subsequently modified and approved, specifications. The procedures shall be contained or referenced in the device master record. Reprocessed devices or components shall be clearly identified as reprocessed, and the reprocessing and reinspection results shall be recorded in the device history record. Reprocessed devices or components shall be subject to another complete reinspection for any characteristic of the device which may be adversely affected by such reprocessing. When there is repeated reprocessing of a device or component, a determination of the effect of the reprocessing upon the device or component shall be made and documented.

Subpart J—Corrective Action

§ 820.100 Corrective action.

(a) Each manufacturer shall establish and maintain procedures for:

(1) Analyzing all processes, work operations, concessions, quality audit reports, quality records, service records, complaints, returned product, and other sources of quality data to identify existing and potential causes of nonconforming components, finished devices, or other quality problems (analysis shall include trend analysis to detect recurring quality problems);

(2) Investigating the failure of any distributed device to meet specifications;

(3) Identifying action needed to correct the cause and prevent recurrence of nonconforming components or finished devices and other quality problems;

(4) Verifying or validating the adequacy of the corrective action to ensure that the corrective action does not adversely affect the finished device and that the corrective action is effective;

(5) Implementing and recording changes in methods and procedures needed as a result of the identification of quality problems and corrective action; and

(6) Ensuring that quality problem information is disseminated to those directly responsible for ensuring quality and is reviewed by management.

(b) All activities required under this section, and their results, shall be documented.

Subpart K—Handling, Storage, Distribution, and Installation

§ 820.120 Handling.

Each manufacturer shall establish and maintain procedures to ensure that mixups, damage, deterioration, or other adverse effects to components, finished devices, and manufacturing materials do not occur during any stage of handling.

§ 820.122 Storage.

(a) Each manufacturer shall establish and maintain procedures for the control of storage areas or stock rooms for components, manufacturing materials, and finished devices to prevent mixups, damage, deterioration, or other adverse effects pending use or distribution.

(b) Each manufacturer shall establish and maintain procedures for authorizing receipt from and dispatch to such designated areas. Any control number or other identification used shall be legible and clearly visible. When the quality of components or finished devices deteriorates over time, such devices shall be stored in a manner to facilitate proper stock rotation and their condition shall be assessed at appropriate intervals. Each manufacturer shall establish and maintain procedures to ensure that all obsolete, rejected, or deteriorated manufacturing materials, components, and devices located in storage are not inadvertently used or distributed.

§ 820.124 Distribution.

(a) Each manufacturer shall establish and maintain procedures for control and distribution of finished devices to ensure that only those devices approved for release are distributed. Where a device's fitness-for-use or quality deteriorates over time, the procedures shall ensure that the oldest approved devices are distributed first and that expired devices are not distributed.

(b) Each manufacturer shall maintain distribution records which include or make reference to the location of:

(1) The name and address of the consignee;

(2) The identification and quantity of devices shipped, the date shipped; and

(3) Any control number used for traceability.

§ 820.126 Installation.

Each manufacturer shall establish and maintain adequate instructions and procedures for proper device installation. Instructions and procedures shall include directions for verifying proper performance of the installation. When a manufacturer or its authorized representative installs a device, the manufacturer or representative shall verify that the device(s) will perform as intended after installation. The results of verification shall be recorded. When a person other than the manufacturer or its authorized representative installs a device, the manufacturer shall ensure that the installation instructions and procedures are distributed with the device or otherwise available to the person installing the device.

Subpart L—Packaging and Labeling Control

§ 820.160 Device packaging.

Each manufacturer shall design and construct device packaging and shipping containers to protect the device from alteration or damage during the customary conditions of processing, storage, handling, and distribution.

§ 820.162 Device labeling.

Each manufacturer shall establish and maintain procedures to maintain labeling integrity and to prevent labeling mixups.

(a) *Labeling integrity.* Each manufacturer shall ensure that labels are designed, printed, and, where applicable, applied so as to remain legible and affixed to the device during the customary conditions of processing, storage, handling, distribution, and use.

(b) *Labeling inspection.* Labels shall not be released for storage or use until a designated individual(s) has examined the labeling for accuracy including, where applicable, the correct expiration date, control number, storage instructions, handling instructions, and additional processing instructions. The release, including the date, name and signature of the individuals performing the examination, shall be documented in the device history record.

(c) *Labeling storage.* Each manufacturer shall store and maintain labeling in a manner that provides proper identification and is designed to prevent mixups.

(d) *Labeling control.* Each manufacturer shall control labeling and packaging operations to prevent labeling mixups.

§ 820.165 Critical devices, labeling.

Labeling for critical devices shall contain a control number.

Subpart M—Records

§ 820.180 General requirements.

All records shall be legible and shall be stored to minimize deterioration, prevent loss, and allow rapid retrieval. All records stored in automated data processing systems shall be backed up. All records required by this part shall be maintained at the manufacturing

establishment or other location that is reasonably accessible to responsible officials of the manufacturer and to employees of the Food and Drug Administration designated to perform inspections. Such records shall be available for review and copying by such employee. Except as specifically provided elsewhere, the following general provisions shall apply to all records required by this part.

(a) *Confidentiality.* Those records deemed confidential by the manufacturer may be marked to aid the Food and Drug Administration in determining whether information may be disclosed under the public information regulation in part 20 of this chapter.

(b) *Record retention period.* All required records pertaining to a device shall be retained for a period of time equivalent to the design and expected life of the device, but in no case less than 2 years from the date of release for commercial distribution by the manufacturer. Photostatic or other reproductions of records required by this part may be used. Where reduction techniques such as microfilming are used, suitable reading and photocopying equipment shall be available for use with the records.

§ 820.181 Device master record (DMR).

Each manufacturer shall maintain device master records (DMR's). Each manufacturer shall ensure that each DMR is prepared, dated, and signed by qualified individual(s) designated by the manufacturer. Any changes in a DMR shall meet the applicable requirements of § 820.40. The DMR for each type of device shall include, or refer to the location of, the following information:

(a) Device specifications including appropriate drawings, composition, formulation, component specifications, software design specifications, and software source code;

(b) Production process specifications including the appropriate equipment specifications, production methods, production procedures, and production environment specifications;

(c) Quality system documents, including verification checks used, the verification apparatus used, and validation protocols and results;

(d) Packaging and labeling specifications, including methods and processes used; and

(e) Installation, maintenance, and servicing procedures and methods.

§ 820.184 Device history record.

Each manufacturer shall maintain device history records. Each manufacturer shall establish and maintain procedures to ensure that device history records are maintained for each batch lot, or unit to demonstrate that the device(s) was manufactured in accordance with the device master record and the requirements of this part. Device history records shall be readily accessible and maintained by a designated individual(s). The device history record shall include, or refer to the location of, the following information:

(a) The dates of manufacture;

(b) The quantity manufactured;

(c) The quantity released for distribution;

(d) The labeling; and

(e) Any control number(s) used.

§ 820.198 Complaint files.

(a) Each manufacturer shall maintain complaint files. Each manufacturer shall establish and maintain procedures for receiving, reviewing, evaluating, and maintaining complaints. Such procedures shall ensure that:

(1) Complaints are received, reviewed, evaluated, investigated, and maintained by a formally designated unit;

(2) Oral complaints are documented upon receipt; and

(3) The complaint is reviewed to determine whether an investigation is necessary. When no investigation is made, the unit shall maintain a record that includes the reason no investigation was made and the name of the individual responsible for the decision not to investigate.

(b) Each manufacturer shall review, evaluate, and investigate all complaints involving the possible failure of a device, labeling, or packaging to meet any of its specifications. Any complaint pertaining to death, injury, or any hazard to safety shall be immediately reviewed, evaluated, and investigated by a designated individual(s) and shall be maintained in a separate portion of the complaint files. Investigations shall include a determination of whether there was an actual device failure to perform pursuant to specifications; whether the device was being used to treat or diagnose a patient; whether a death, injury, or serious illness was involved; and the relationship, if any, of the device to the reported incident or adverse event.

(c) When an investigation is made, a written record of each investigation shall be maintained by the formally designated unit identified in paragraph (a) of this section. The record of investigation shall include:

(1) The name of the device;

(2) The date the complaint was received;

(3) Any control number used;

(4) The name, address, and phone number of the complainant;

(5) The nature of the complaint; and

(6) The results of the investigation.

(d) The investigation results shall include:

(1) The corrective action taken;

(2) The dates of the investigation;

(3) The details of the complaint; and

(4) The reply to the complainant.

(e) When no reply is made to the complainant, the reason shall be recorded.

(f) Records of investigations of events that are determined to be reportable under medical device reporting (MDR) requirements of part 803 of this chapter shall include the information required by part 803 of this chapter. When such information cannot be obtained, a record of the reason shall be made and retained in the record of investigation.

(g) When the formally designated complaint unit is located at a site separate from the actual manufacturing establishment and a complaint involves the manufacturing site, a duplicate copy of the complaint and the record of investigation of the complaint shall be transmitted to and maintained at the actual manufacturing establishment in a file designated for device complaints.

(h) If a manufacturer's formally designated complaint unit is located outside of the United States, a copy of all of each records required under this section shall be maintained in the United States. If a manufacturer has a location in the United States where records are regularly kept, the copies required under this paragraph may be maintained at such location. Otherwise, the copies required under this paragraph shall be provided to and kept by the agent designated under § 803.26(g)(3) of this chapter.

(i) Each manufacturer shall establish and maintain procedures for processing complaints to ensure that all complaints are processed in a uniform and timely manner. Such procedures shall include provisions for determining whether the complaint represents an event which is required to be reported to the Food and Drug Administration under part 803 of this chapter.

(j) Any written or oral complaint that is also a reportable event under part 803 of this chapter shall be identified in the complaint file as such.

Subpart N—Servicing

§ 820.200 Servicing.

Each manufacturer shall establish and maintain procedures to ensure that finished devices that are serviced by the manufacturer or its representatives meet specifications. Procedures for servicing

shall include provisions for determining if service requests represent an event which must be reported to the Food and Drug Administration under the requirements of part 803 of this chapter.

(a) *Service records.* Each manufacturer shall establish and maintain procedures to ensure that service records are maintained that identify the device serviced, including any control number used, the date of service, the service performed, and individual(s) servicing the device.

(b) *Service record evaluation.* Each manufacturer shall analyze servicing records in accordance with § 820.100; except that when a service report involves a death, serious injury, or safety hazard, the report shall be considered a complaint and shall be investigated in accordance with the requirements of § 820.198.

Subpart O—Statistical Techniques

§ 820.250 Statistical techniques.

(a) Where appropriate, each manufacturer shall establish and maintain procedures for identifying valid statistical techniques required for verifying the acceptability of process capability and product characteristics.

(b) Sampling plans shall be written and based on a valid statistical rationale. Each manufacturer shall establish and maintain procedures to ensure that sampling methods are adequate for their intended use and are regularly reviewed, especially for events such as nonconforming devices, adverse quality audit reports, or complaints.

Dated: October 15, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

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Tuesday
November 23, 1993

Part III

General Accounting Office

4 CFR Parts 27 and 28
Personnel Appeals Board; Procedural Regulations; Final Rule

GENERAL ACCOUNTING OFFICE

4 CFR Parts 27 and 28

Personnel Appeals Board; Procedural Regulations

AGENCY: General Accounting Office Personnel Appeals Board.

ACTION: Final rule.

SUMMARY: The General Accounting Office Personnel Appeals Board is revising its procedural regulations. The changes contain several significant refinements of the Board's procedures, clarify the meaning of some sections, correct a few errors in the prior regulations and bring the regulations into conformity with the Civil Rights Act of 1991.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Barbara Lipsky, Solicitor for the Personnel Appeals Board, 202–512–6137.

SUPPLEMENTARY INFORMATION: The General Accounting Office Personnel Appeals Board hears and decides cases brought by GAO employees concerning various personnel matters including adverse or performance-based actions, claims of discrimination, alleged prohibited personnel practices and labor-management relations. The Board is revising and reissuing its procedural regulations.

On April 28, 1993, the Board published a notice of proposed rulemaking in the **Federal Register** (58 FR 25785). This notice announced the Board's intention to revise its procedural regulations. It explained how to obtain copies of both the Board's proposed regulations and a detailed statement explaining the changes. Interested persons were invited to submit comments by June 30, 1993. Copies of the proposed regulations, along with the explanation of changes, were also sent to the GAO's Office of General Counsel and to the Board's General Counsel who prosecutes many cases before the Board. The Board's General Counsel, in turn, provided copies to the GAO employee advisory councils. A notice concerning the Board's proposed rulemaking appeared in the "GAO Management News" for the week of May 3–7, 1993 (Vol. 20, No. 30). The Board also sent copies of the proposed changes to all private attorneys who had practiced before the Board in the last five years. The Board received six comments on its proposal. In response to these comments, the Board made several additional changes to its regulations.

All of the changes contained in the Board's proposed regulations (except for minor non-substantive changes in language) were summarized and explained in the explanation of changes that was distributed to interested parties along with the Board's proposal. The Board will not repeat all of that explanatory material here. However, the most significant changes made by the new regulations are highlighted in the next section of this preamble. Following that, the preamble summarizes the more significant comments received by the Board during the comment period and indicates how these comments were addressed in preparing the final version of the regulations.

Highlights of Significant Changes Contained in the New Regulations

The new regulations contain several significant refinements of the Board's prior procedures. The section on initial decisions issued by individual Board members (§ 28.87) has been substantially revised to permit the parties to request that the Board member reconsider his or her decision, and to provide more detailed procedures for appealing the initial decision to the full Board. A new provision in the section on disqualification of judges (§ 28.23) now permits parties to appeal to the full Board if an administrative judge denies a motion requesting that he or she withdraw from the case. Similarly, the full Board is given a greater role in determining whether matters are appropriate for an interlocutory appeal (§ 28.81). The section on requests for stays of personnel actions (§ 28.133) has been revised to provide more detailed procedures for such requests and to provide more specific standards for the disposition of such requests. Section 28.141 has also been revised to provide greater details on the nature of the informal hearing that career appointees may obtain when they are removed from the SES to a GAO position outside the SES for less than fully successful executive performance.

Most of the time limits throughout the regulations have been revised to provide that the prescribed period in which a party must act following the issuance of a document commences upon the service of that document rather than its receipt. In order to ensure that parties will have the full time prescribed in which to act, § 28.4(b) has been revised to state that a party shall have five additional days in which to act when a document is served upon that party by mail. There are a few exceptions to the rule that time periods commence upon service of a document. Actual receipt is retained as the triggering event where it is required by statute, or for a few filing requirements that are jurisdictional in nature. See, §§ 28.2(c), 28.90, 28.98(b), 28.100. A new time limit has been added requiring that motions for subpoenas be submitted to the administrative judge at least 15 days prior to the date that the hearing is scheduled to begin (§ 28.46(b)). During the discovery process, the motion for a subpoena must be submitted at least 15 days prior to the date set for the attendance of the witness at a deposition or the production of documents.

The Board has made a substantial modification in the procedures for filing charges of discrimination. The Board has retained the general rule that, in most instances, individuals who wish to allege discrimination must first file a complaint of discrimination with GAO. The individual may then file a charge with the Board's General Counsel either after the GAO issues a decision on the discrimination complaint or after at least 120 days have elapsed without a decision. However, the Board has added a new provision applicable only to individuals who have been affected by certain enumerated adverse and performance-based actions and who wish to allege that these actions were due, in whole or part, to discrimination. Individuals in these circumstances now have a choice of either filing a charge directly with the Board's General Counsel or first pursuing a discrimination complaint with GAO. See, § 28.98. Section 28.100 has also been revised to reflect that, under the Civil Rights Act of 1991, individuals now have 90 days (rather than 30 days) in which to file suit in court following notice of final agency action on their administrative complaints of discrimination.

The Board has also made several changes to the procedures applicable to labor-management relations cases. The provisions on representational elections have been revised to explain more clearly the Board's options where no labor organization on the ballot secures a majority of the votes cast (§ 28.116(d)(3)). The new regulations also provide more guidance on the filing and disposition of exceptions to an arbitrator's award (§ 28.124).

The Board has expanded the definition of a "person" to make clear that a former GAO employee may sometimes be an appropriate charging party (§ 28.3). Finally, the Board has added a new subpart which sets forth the criteria that the Board will consider in deciding whether to issue a statement of policy or guidance. See, Subpart J, § 28.155.

Summary of Comments

The Board received comments from four organizations: the General Counsel for the GAO, the Board's General Counsel, the GAO Advisory Council on Civil Rights and the GAO Advisory Council on Persons with Disabilities. The Board also received comments from two private attorneys who have practiced before the Board in the past. The comments addressed twenty-four different sections of the proposed regulations. The Board carefully considered each comment, and many suggestions contained in the comments were adopted. The more significant comments are discussed below in a section-by-section format.

Section 28.2(b) (Charges of Political Activity): Section 28.2, concerning the Board's jurisdiction, has two parts. Subsection (a) lists the actions that may be brought before the Board by the Board's General Counsel. Subsection (b) lists the actions that may be brought before the Board by "any person or groups of persons." The Board's proposal had suggested listing cases involving prohibited political activity under both subsections, rather than only under subsection (a), cases which may be brought by the Board's General Counsel. Two commentators objected to this change, while one supported it.

After carefully considering the arguments advanced in the comments, the Board decided to delete the proposed change and retain the original language of this section. While there is nothing in the General Accounting Office Personnel Act which expressly states that individuals may not bring such cases before the Board, Congress intended that the Board and its General Counsel have comparable powers to those exercised by the MSPB and the Special Counsel in the executive branch. Allegations that executive branch employees have engaged in prohibited political activity may only be brought before the MSPB by the Special Counsel. *Sims* v. *District of Columbia*, 7 M.S.P.R. 45 (1981). The Board concluded that the intent of Congress would best be effectuated if the Board followed a similar rule. Any individual who has information concerning prohibited political activity within GAO may, of course, bring this information to the attention of the Board's General Counsel. The General Accounting Office Personnel Act mandates that the General Counsel conduct an investigation of all such allegations. 31 U.S.C. 752(b)(3).

Section 28.4 (Time Limits): As noted above, changes were made throughout the regulations so that the time period in which to respond to a document generally begins to run from the date of service of the document rather than from actual receipt. Parties are given an additional five days to respond when they are served by mail. (See discussion under "Highlights" for exceptions to this rule.) Two commentators objected to this change, arguing that it sometimes takes more than five days to receive documents served by mail.

The final regulations include this proposal without modification. The Board concluded that using service as the starting point for time computations will allow both the Board and the litigants to determine with certainty the date upon which a particular action must be taken. An "actual receipt" standard does not allow for such certainty as neither the Board nor the other parties will know at the outset when a document served by mail is actually received. The Board concluded that, ordinarily, the addition of five days when a document is served by mail will be ample to ensure that parties so served are not disadvantaged. If, in rare instances, a party does not actually receive the document within five days and is thereby significantly hindered in his or her ability to make a timely response, the party can always move for an extension of time.

One commentator was concerned with the power of the administrative judge to shorten time limits for good cause shown. The commentator felt that this might particularly disadvantage some individuals with disabilities who would have difficulty responding in a shorter period of time. The Board appreciates that this is an important concern. While the Board concluded that it is desirable for its judges to retain this traditional and important power to shorten time limits in appropriate circumstances, the Board notes that any litigant may seek a modification of an order issued by a judge if the litigant believes that the order will work a hardship in the particular case.

Section 28.11(b)(4) (Continuing Violations): A majority of the Board members had suggested deleting the provision in former § 28.11(b)(5) which had stated: "Charges relating to continuing violations shall be filed at any time." They reasoned that this provision was confusing and did not fully reflect the complexity of the continuing violation theory. One Board member favored retaining the provision on the grounds that its deletion would lead some employees to conclude that their charges were time-barred when, in fact, they could be filed under the continuing violation theory.

One commentator objected to the deletion of this provision and agreed with the rationale of the dissenting Board member. Another commentator suggested that the Board add a definition of a continuing violation.

The Board decided to retain the provision on continuing violations but to change the word "shall" to "may." (The provision now appears in § 28.11(b)(4)). The Board's original proposal had been intended to eliminate confusion from the regulations. In light of the comments received and following a thorough review of this issue, the Board was persuaded that deletion of this provision would instead cause more confusion. The Board also decided that the continuing violation theory did not lend itself to a simple definition in a regulation. Rather, in applying this provision, the Board will be guided by relevant case law.

Section 28.18 (Availability of Hearing): The Board proposed deleting former § 28.18(f) which had been entitled "Right to a Hearing" and which gave employees the choice of requesting a hearing on their claims or requesting a determination based on a written record. The explanatory statement that accompanied the proposed regulations explained that the Board's policy is to hold a hearing in all cases in which there are material facts in dispute.

Three commentators objected to this change in the regulations, arguing that employees may prefer a decision based on written submissions because it may be less costly or burdensome than participating in a hearing. While the Board appreciates the concerns raised, the Board concluded that its primary responsibility is to ensure the integrity of its decisionmaking process. The Board concluded that, where there are disputes between the parties as to material facts, these issues cannot be resolved in a reliable manner without holding a hearing. The Board therefore decided not to alter its proposal. Parties are reminded, however, that they are always free to move for summary judgment (and thus avoid a hearing) where they believe that there are not material factual issues in dispute. Similarly, parties may reduce the scope (and thus the burden) of a hearing in appropriate cases by entering into stipulations as to some of the facts.

Section 28.42(d)(5) (Time Limit for Discovery): This section is unchanged from the prior regulations. It states that discovery "shall be completed by the time designated by the administrative judge, but no later than 65 days after the filing of the appeal." The rule permits the administrative judge to set a later date for the completion of discovery

after due consideration of the particular situation.

One commentator requested that the Board delete the 65 day limit and instead have the administrative judge set a time limit in each case. The Board declined to do this. The Board believes that retaining the current 65 day limit serves to put the parties on notice that expedition is necessary. If, despite due diligence, the parties cannot complete discovery in that time frame, then the rule leaves ample room for the discovery period to be extended.

Section 28.46(b) (Time Limit for Motion for Subpoena): The Board's proposed regulations included a new requirement that motions for subpoenas be submitted to the administrative judge at least 15 days before the date scheduled for the commencement of the hearing. One commentator suggested that this 15 day time limit be applied to requests for subpoenas during the discovery process as well. The Board agreed. The final version of the regulations reflects this change.

Section 28.56(g) (Witness Lists): One commentator objected to the new requirement in this section that each party, at the commencement of the hearing, submit to the administrative judge, to the court reporter and to the opposing counsel a typed list of witnesses expected to be called to testify.

While this requirement is new to the regulations, it is a common practice in Board proceedings. Most of the administrative judges require that witness lists be exchanged substantially before the hearing. This practice facilitates an orderly hearing and avoids surprise to either party. The new rule was only intended to ensure that all parties will come to the hearing with complete lists that will assist the court reporter in preparing the record. To make clear that parties frequently will be required to submit witness lists in advance of the hearing, the final rule has been revised to state that these lists must be furnished "no later than the commencement of the hearing."

Section 28.87 (Initial Decisions): This section on initial decisions by Board members had been substantially revised in the proposed regulations. One purpose of the revision was to provide parties with an opportunity to seek reconsideration from the Board member issuing a decision, prior to requesting review by the full Board. The revisions were also intended to provide detailed procedures for seeking review by the full Board.

The comments revealed that there was some ambiguity in the provisions of this section. The final rule incorporates additional revisions designed to clarify the intent of the section. Section 28.87(f) concerning remands now makes clear that the full Board has two options when it remands a case to the Board member who originally decided the matter. The Board may remand the matter without retaining jurisdiction, in which case the single Board member will issue a new initial decision which will then be subject to review in the same manner as any other initial decision. Alternatively, the Board can retain jurisdiction upon remand, in which case the single member will render a report to the full Board and the full Board will issue a final decision which will be subject only to judicial review.

Section 28.87(g), which lists the factors that the Board will consider in reviewing an initial decision, has also been revised. The list of factors has been rewritten to provide greater conformity with the factors listed in § 28.86(d) concerning Board review of recommended decisions issued by administrative judges who are not Board members. There is, however, one difference between the lists of factors in the two sections. Section 28.86(d) requires the Board to consider whether the "recommended decision is unsupported by evidence required by the requisite burden of proof as set forth at § 28.61." The Board chose not to include this factor in § 28.87(g) on review of initial decisions. The factor is appropriate in reviewing recommended decisions because the Board is required to review the record as though it were making the factual findings itself. See, § 28.86(c). The Board's review of initial decisions, however, is subject to a different standard. Although the Board may choose to review the record in such cases de novo, the Board generally defers to the factual findings contained in the initial decision unless unsupported by substantial evidence. See, § 28.87(g). Thus, the Board would generally grant such deference to a finding by the administrative judge or panel that a party had met its burden of proof. Of course, if the initial decision assigns an incorrect burden of proof, that is an error of law that is subject to Board review under § 28.87(g) (2) and (3).

Section 28.95 (Rehabilitation Act): The GAO objected to the references to the Rehabilitation Act that appear in this and other sections of the regulations. The GAO asserted, without providing legal argument, that the Rehabilitation Act does not apply to GAO employees. From the time that the Board's regulations were first promulgated in 1981, they have contained references to the Rehabilitation Act. See, 46 FR 15857, 15862 (March 10, 1981). These references were patterned after the General Accounting Office Personnel Act which specifically mentioned the Rehabilitation Act. Pub. L. 96–191, section 3(g)(3), 94 Stat. 27, 28 (1980). The Board does not think that it would be appropriate to eliminate these references (and implicitly to eliminate protection for GAO employees under the Rehabilitation Act) as part of a rulemaking procedure where there has not been a full, adversarial presentation of the issue of the applicability of that statute to GAO employees. The Board will address this issue if and when it is properly presented to the Board in an adjudicatory setting.

Section 28.98(b) (Time Limits for Filing Charges of Discrimination): The final regulation retains the provisions of the prior rule permitting a GAO employee to file a charge of discrimination with the Board's General Counsel if 120 days have elapsed since the employee filed a discrimination complaint with GAO and GAO has not issued a final decision. GAO suggested that this period be enlarged to 180 days to be consistent with EEOC practice.

While it is true that EEOC regulations give agencies 180 days to resolve complaints of discrimination (29 CFR 1614.108(e)), the Board's jurisdiction includes both matters that would be heard by EEOC and those that would be heard by MSPB. MSPB regulations only give agencies 120 days to resolve "mixed cases" which involve both allegations of discrimination and personnel actions that would otherwise be appealable to the MSPB. 5 CFR 1201.154(b)(2). That 120 day limit is mandated by statute. 5 U.S.C. 7702(a)(2). Because the Board's jurisdiction includes both mixed cases and "pure" discrimination cases, the Board concluded that it was most appropriate to retain the shorter 120 day period as the single time limit applicable to both kinds of cases. The Board notes that GAO did not argue that it is having any practical difficulty in resolving cases within this time frame.

Section 28.98(c) (New Choice of Procedures for Adverse or Performance-based Actions Alleged to be Due to Discrimination): This new subsection gives GAO employees affected by serious adverse or performance-based actions, who wish to allege that discrimination was a factor in those actions, a choice of either coming directly to the Board's General Counsel or first pursuing the matter through the GAO EEO process.

This new subsection represents a substantial change from the prior regulations. Those regulations had required every individual who wished to include allegations of discrimination in a charge first to file a complaint of discrimination with GAO. The individual could not file a charge with the Board's General Counsel until either the GAO issued a decision on the EEO complaint or at least 120 days had elapsed without a decision. This applied even where a GAO employee had been affected by a serious adverse or performance-based action which would otherwise be appealable directly to the Board. This was in sharp contrast to the procedures applicable to other federal employees. Executive branch employees who wish to allege that a personnel action, otherwise appealable to the MSPB, was due in whole or part to discrimination have the choice of either filing directly with the MSPB or pursuing the discrimination complaint process within their agency. 29 CFR 1614.302; 5 CFR 1201.154. The Board concluded that GAO employees were disadvantaged by this different procedure because they could not seek immediate impartial review outside their agency for serious personnel actions affecting them and because the required 120 day delay could cause substantial hardship in many cases.

Two commentators praised this change and none objected to it. The GAO, however, did request that employees opting to come first to the Board still be permitted to participate in confidential mediation through GAO's Civil Rights Office, and that the Board's General Counsel stay its investigation of the matter pending the outcome of the mediation process. The Board has decided not to adopt this suggestion. The whole purpose of the new provision is to give GAO employees who have been terminated, suspended or reduced in grade the opportunity to obtain an early review of that decision by an impartial body. Staying the Board's proceedings would undermine this intent.

The rule puts the choice in the hands of the employee. Any employee who feels that mediation or any other service offered by the Civil Rights Office would be in his or her interest may simply elect to file first with that office. Because the regulation expressly permits an employee to consult with an EEO counselor without that constituting an election of the GAO process, the employee is given ample opportunity to learn of the services offered by the Civil Rights Office and make an informed choice of forum. Of course, GAO may still choose to offer mediation to an employee who opts to file first with the Board. But the Board does not believe that an automatic stay of its proceedings under such circumstances would be warranted.

Section 28.100 (Availability of Trial De Novo Following Board Decision): Section 28.100(a)(2) states that a GAO employee may file suit in federal district court following the receipt of a final decision by the Board. In its comments, GAO notes that this is inconsistent with the position taken by the Justice Department, as counsel for GAO, in *Ramey* v. *Bowsher*, Appeal No. 92–5096, which is currently pending before the United States Court of Appeals for the District of Columbia Circuit. In that case, the Justice Department is arguing that, following receipt of a Board decision, an employee's only option is to seek appellate review before the United States Court of Appeals for the Federal Circuit, pursuant to 31 U.S.C. 755. By contrast, other federal employees covered by Title VII have the right to a trial de novo in federal district court following the receipt of a final decision by the EEOC or the MSPB concerning a discrimination appeal.

Because the *Ramey* case has not yet been decided by the District of Columbia Circuit, it would be premature to make any change in the Board's regulations at this time. The Board will review this issue once there has been a final disposition of the *Ramey* case.

Section 28.133 (Stay Proceedings): In the proposed regulations, this section on requests for stays of personnel actions was substantially revised to provide more detailed procedures for such requests. GAO raised several concerns about this section.

GAO's first concern was that the section did not specifically state that GAO would be served with a copy of the request for an ex parte stay. While the Board felt that the regulations did require service of this and any other pleading or motion in a Board proceeding, the section has been revised to state this expressly so as to eliminate any ambiguity on this point.

GAO also offered the opinion that the description of the contents of the request for an ex parte stay and the standard to be applied by the Board in deciding whether to issue the ex parte stay were too lax and vague. The Board has carefully reviewed this section and determined that it provides sufficient guidance. The Board notes that the standards in subsection (a) only relate to ex parte stays issued for not more than 30 days. In order to obtain a longer temporary stay or a permanent stay, the General Counsel would have to meet the more stringent requirements set forth in subsections (b) through (e).

Finally, GAO objects to the provision in subsection (d) which permits the Board sua sponte to extend the ex parte stay for a period not to exceed 30 days if this is necessary to give the Board a reasonable opportunity to decide whether to grant a request for an additional temporary or permanent stay. GAO argues that this places its personnel actions "in limbo" for an unacceptable period of time. The Board has reviewed the time frames in this section and determined that they are reasonable. The Board notes that the revisions to § 28.133, in general, represent a shortening of the time frames for stays. Under the prior regulations, the General Counsel could obtain an initial stay of 60 days. Now the time period for an ex parte stay has been shortened to 30 days. The General Counsel can only obtain a longer stay by prevailing in an adversarial proceeding. Permitting the Board itself to extend the ex parte stay for a brief period necessary to allow adjudication of a further stay request is reasonable and not unduly burdensome.

Section 28.141 (Informal Hearings for SES Members in Performance-based Actions): Career appointees in the Senior Executive Service (SES) who are removed to positions outside the SES for less than fully successful executive performance are entitled to an informal hearing before a member of the Board. This section has been revised to provide more details about the nature of that informal hearing.

GAO requested that certain language which had appeared in the prior version of the rule and which emphasized the limited nature of the rights of the removed SES member should be reinstated in the rule. The Board concluded that, since this language had been based on statutory requirements, it would be helpful to include the language in the final regulation so as not to mislead any employee about the extent of their rights in this situation. The final regulation thus includes a statement that the granting of an informal hearing does not give the career appointee the right to initiate an appeal with the Board under any other section of the regulations nor require the delaying of the removal action.

Subpart J, § 28.155 (Statements of Policy or Guidance): This is a new subpart which sets forth the criteria that the Board will consider in deciding whether to issue a statement of policy or guidance. The criteria were adapted from the Board's decision in *GS–13/14 Management and Policy Advisory*

Council v. *GAO*, Docket No. 116–600–GC–89 (Sept. 20, 1991).

GAO objects to this section, arguing that the Board lacks authority to issue statements of policy or guidance except in the area of labor-management relations where the Comptroller General delegated such authority to the Board. The Board, however, rejected this argument in the *GS–13/14* case and held that its authority to issue policy statements on labor-management relations was not dependent upon a delegation from the Comptroller General. The Board has reviewed its authority in other areas and concluded that it is also sufficiently broad to support the issuance of policy statements in appropriate cases.

List of Subjects

4 CFR Part 27

Government employees, Organization and functions (government agencies).

4 CFR Part 28

Administrative practice and procedure, Equal employment opportunity, Government employees, Labor-management relations.

For the reasons set out in the preamble, 4 CFR Ch.I is amended as follows:

1. Part 27 is revised to read as follows:

PART 27—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; ORGANIZATION

Sec.
27.1 The Board.
27.2 The Chair, Vice Chair.
27.3 The General Counsel.

Authority: 31 U.S.C. 753.

§ 27.1 The Board.

The General Accounting Office Personnel Appeals Board, hereinafter the Board, is composed of five members appointed by the Comptroller General, in accordance with the provisions of 31 U.S.C. 751. The Board may designate a panel of its members or an individual Board member to take any action within the scope of the Board's authority, subject to later reconsideration by the Board.

§ 27.2 The Chair, Vice Chair.

The members of the Board shall select from among its membership a Chairperson, hereinafter the Chair, who shall serve as the chief executive and administrative officer of the Board. The Members of the Board may select from among its membership a Vice Chairperson, hereinafter the Vice Chair, who shall serve in the absence of the Chair and in other matters delegated by the Chair.

§ 27.3 The General Counsel.

The Chair shall select an individual and the Comptroller General shall appoint the individual selected by the Chair to serve as the General Counsel of the Board. The General Counsel, at the request of the Board, shall investigate matters under the jurisdiction of the Board, and otherwise assist the Board in carrying out its functions, unless to do so would create a conflict of interest for the General Counsel.

2. Part 28 is revised to read as follows:

PART 28—GENERAL ACCOUNTING OFFICE PERSONNEL APPEALS BOARD; PROCEDURES

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Authority: 31 U.S.C. 753.

Subpart A—Purpose, General Definitions, and Jurisdiction

§ 28.1 Purpose and scope.

(a) The purpose of these rules is to establish the procedures to be followed:

(1) By the GAO, in its dealings with the Board;

(2) By employees of the GAO or applicants for employment by the GAO, or by groups or organizations claiming to be affected adversely by the operations of the GAO personnel system;

(3) By employees or organizations petitioning for protection of rights or extension of benefits granted to them under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.; and

(4) By the Board, in carrying out its responsibilities under Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

(b) The scope of the Board's operations encompasses the investigation and, where necessary, adjudication of cases arising under 31 U.S.C. 753. In addition, the Board has authority for oversight of the equal employment opportunity program at GAO. This includes the review of policies and evaluation of operations as they relate to EEO objectives and, where necessary, the ordering of corrective action for violation of or inconsistencies with equal employment opportunity laws.

(c) In considering any procedural matter not specifically addressed in these rules, the Board will be guided, but not bound, by the Federal Rules of Civil Procedure.

§ 28.2 Jurisdiction.

(a) The Board has jurisdiction to hear and decide the following actions brought by the General Counsel:

(1) Proceedings in which the General Counsel seeks to stay a personnel action based upon an alleged prohibited personnel practice that has occurred or is about to occur;

(2) Proceedings in which the General Counsel seeks corrective action for an alleged prohibited personnel practice; and

(3) Proceedings in which the General Counsel seeks discipline for a GAO employee who has allegedly committed a prohibited personnel practice or who has engaged in prohibited political activity.

(b) The Board has jurisdiction to hear any action brought by any person or group of persons in the following subject areas:

(1) An officer or employee appeal involving a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days;

(2) A prohibited personnel practice under 31 U.S.C. 732(b)(2);

(3) A decision of an appropriate unit of employees for collective bargaining;

(4) An election or certification of a collective bargaining representative;

(5) A matter appealable to the Board under the labor-management relations program under 31 U.S.C. 732(e), including an unfair labor practice under 31 U.S.C. 732(e)(1);

(6) An action involving discrimination prohibited under 31 U.S.C. 732(f)(1); and

(7) An issue about GAO personnel which the Comptroller General by regulation decides the Board shall resolve.

(c) *Special jurisdictional rules where matters are covered by a negotiated grievance procedure.* If a GAO employee is covered by a collective bargaining agreement containing a negotiated grievance procedure that permits the employee to grieve matters that would otherwise be appealable to the Board, the following special rules apply:

(1) Matters involving discrimination, performance-based reduction in grade or removal, or adverse action. If the negotiated grievance procedure permits the employee to grieve matters involving prohibited discrimination (as defined in § 28.95), performance-based reduction in grade or removal (as described in 5 U.S.C. 4303) or an adverse action (as described in 5 U.S.C. 7512), then the employee may elect to raise the matter either under the negotiated grievance procedure or under the Board's procedures, but not both. The employee will be deemed to have elected the Board's procedures if the employee files a timely charge with the Board's General Counsel or files a timely written EEO complaint with GAO before filing a timely written grievance.

(2) Other matters. If the negotiated grievance procedure permits the employee to grieve any matters which would otherwise be appealable to the Board, other than those listed in paragraph (c)(1) of this section, then those matters may only be raised under the negotiated grievance procedure and not before the Board.

(3) Board review of final decisions from the negotiated grievance procedure involving discrimination. If an employee elects to pursue a matter involving prohibited discrimination (as defined in § 28.95) through the negotiated grievance procedure, the employee may ask the Board to review the final decision of the negotiated grievance procedure as it relates to the issue of discrimination. A petition seeking such review shall be filed with the Clerk of the Board within 20 days of receipt of the final decision of the negotiated grievance procedure. The Board will not review any final decisions of the negotiated grievance procedure other than those where prohibited discrimination was raised as an issue in the grievance.

§ 28.3 General definitions.

In this part—

Administrative judge means any individual designated by the Board to preside over a hearing conducted on matters within its jurisdiction. An administrative judge may be a member of the Board, an employee of the Board, or any individual qualified by experience or training to conduct a hearing who is appointed to do so by the Board. When a panel of members or the full Board is hearing a case, the Chair shall designate one of the members to exercise the responsibilities of the administrative judge in the proceedings.

Board means the General Accounting Office Personnel Appeals Board as established by 31 U.S.C. 751.

Charge means any request filed with the PAB General Counsel on any matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Charging Party means any person filing a charge with the General Counsel for investigation.

Comptroller General means the Comptroller General of the United States.

Days means calendar days.

Exceptions to the Recommended Decision means a request filed by a party with the Board that objects to the findings and/or conclusions of a recommended decision.

GAO means the General Accounting Office.

General Counsel means the General Counsel of the Board, as provided for under 31 U.S.C. 752.

Initial Decision means the adjudicatory statement of a case that is issued by an administrative judge who is a member of the Board.

Person means an employee, an applicant for employment, a former employee, a labor organization or the GAO.

Petition for Review means any request filed with the Board for action to be taken on matters within the jurisdiction of the Board, under the provisions of Subchapter IV of Chapter 7 of Title 31, United States Code.

Petitioner means any person filing a petition for review for Board consideration.

Pleading means a document that initiates a cause of action before the Board, responds to a cause of action, amends a cause of action, responds to an amended cause of action, requests reconsideration of a decision, responds to a request for reconsideration of a recommended decision or responds to such a request.

Recommended Decision means the adjudicatory statement of a case that is issued by an administrative judge who is not a member of the Board at the time of the decision.

Request for Reconsideration means a request, filed with the administrative judge who rendered the initial decision, to reconsider that decision in whole or part.

Request for Review means a request filed with the full Board for review of an initial decision.

Solicitor means the attorney appointed by the Board to provide advice and assistance to the Board in carrying out its adjudicatory functions and to otherwise provide assistance as directed by the Board.

§ 28.4 Computation of time.

(a) To compute the number of days for filing under these rules, the first day shall be the day after the event from which the time period begins to run and the last day for filing shall be included in the computation. When the last day falls on a Saturday, Sunday or federal government holiday, then the filing deadline will be the next regular federal government workday.

(b) Whenever a party has the right or is required to do some act within a prescribed period after the service of a notice or other paper upon him or her and the notice or paper is served by mail, five (5) days shall be added to the prescribed period. Only two (2) days shall be added when a document is served by express mail or other form of expedited delivery.

(c) Except as otherwise provided by law, whenever an act is required or allowed to be done at or within a specified period of time, the time fixed or the period of time prescribed may for good cause be extended or shortened by the Board or administrative judge.

Subpart B—Procedures

§ 28.8 Informal procedural advice.

(a) Persons may seek informal advice on all aspects of the Board's procedures by contacting the Board's Solicitor, the Board's General Counsel or the Clerk of the Board.

(b) Informal procedural advice will be supplied within the limits of available time and staff.

§ 28.9 Procedures; general.

(a) The procedures described in this subpart are generally applicable to the processing of all matters presented for consideration by the Board. Where special procedures are to be followed, they will be prescribed in those subsequent subparts to which they are particularly applicable.

(b) No pleading, motion or supporting memorandum filed with the Board shall exceed 60 pages, exclusive of attachments. The Board or the administrative judge may waive this limitation for good cause shown. Pleadings, motions and supporting memoranda, and attachments thereto, shall be on standard letter-size paper (8½x11).

§ 28.10 Notice of appeal rights.

(a) The GAO shall be responsible for ensuring that employees are routinely advised of their appeal rights to the Board and that employees who are the object of an adverse or performance-based action are, at the time of the action, adequately advised of their appeal rights to the Board. The notice in adverse or performance-based actions must be accompanied by proof of service.

(b) The notice in adverse or performance-based actions shall include:

(1) Time limits for appealing to the Board and the address of the Board;

(2) A copy of the Board's regulations; and

(3) Notice of the right to representation, and the availability of a hearing before the Board where factual issues are in dispute.

§ 28.11 Filing a charge with the General Counsel.

(a) *Who may file.* (1) Any person claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, may file a charge with the General Counsel.

(2) Non-EEO class actions. One or more persons may file a charge as representative of a class in any matter within the Board's jurisdiction. See § 28.97 for EEO class actions.

(3) Unfair labor practice proceedings. Any person may file a charge alleging that the GAO or a labor organization has engaged or is engaging in an unfair labor practice. (The types of allegations which may be included in an unfair labor practice charge are discussed at § 28.121(a)).

(b) *When to file.* (1) Charges relating to adverse and performance-based actions must be filed within 20 days after the effective date of the action.

(2) Charges relating to other personnel actions must be filed within 20 days after the effective date of the action or 20 days after the charging party knew or should have known of the action.

(3) Charges which include an allegation of prohibited discrimination shall be filed in accordance with the special rules set forth in § 28.98.

(4) Charges relating to continuing violations may be filed at any time.

(c) *How to file.* Charges may be filed with the General Counsel in person or by mail. Please note that the address to be used differs for the two kinds of filing.

(1) *Filing in person:* A charge may be filed in person at the Office of the General Counsel, Suite 840, Union Center Plaza II, 820 First Street, NE., Washington, DC.

(2) *Filing by mail:* A charge may be filed by mail addressed to the General Counsel, Personnel Appeals Board, Suite 840, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the General Counsel.

(d) *What to file.* The charging party should include in any charge the following information:

(1) Name of the charging party or a clear description of the group or class of persons on whose behalf the charge is being filed;

(2) The names and titles of persons, if any, responsible for actions the charging party wishes to have the General Counsel review;

(3) The actions complained about, including dates, reasons given, and internal appeals taken;

(4) The charging party's reasons for believing the actions to be improper;

(5) Remedies sought by the charging party;

(6) Name and address of the representative, if any, who will act for the charging party in any further stages of the matter; and

(7) Signature of the charging party or the charging party's representative.

(e) The General Counsel shall not represent a petitioner when the only issue is attorney fees. When attorney fees are the only issue raised in a charge to the General Counsel, the General Counsel shall transmit the charge to the Board for processing under §§ 28.18 through 28.88 as a petition for review.

§ 28.12 General Counsel procedures.

(a) The General Counsel shall serve on the GAO or other charged party a copy of the charge, investigate the matters raised in a charge, refine the issues where appropriate, and attempt to settle all matters at issue.

(b) The General Counsel's investigation may include gathering information from the GAO or other charged party, and interviewing and taking statements from witnesses. Employees of GAO who are requested by the General Counsel to participate in any investigation under these Rules shall be on official time.

(c) Following the investigation, the General Counsel shall provide the charging party with a Right to Appeal Letter. Accompanying this letter will be a statement of the General Counsel advising the charging party of the results of the investigation. This statement of the General Counsel is not subject to discovery and may not be introduced into evidence before the Board.

(d) If, following the investigation, the General Counsel determines that there are not reasonable grounds to believe that the charging party's rights under Subchapters III and IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall not represent the charging party. If the General Counsel determines that there are reasonable grounds to believe that the charging party's rights under Subchapters III and IV of Chapter 7 of Title 31, United States Code, have been violated, then the General Counsel shall represent the charging party, unless the charging party elects not to be represented by the General Counsel. Any charging party may represent him or herself or obtain other representation.

(e) When the charging party elects to be represented by the General Counsel, the General Counsel is to direct the representation in the charging party's case. The charging party may also retain a private representative in such cases. However, the role of a private representative is limited to assisting the General Counsel as the General Counsel determines to be appropriate.

(f) When the General Counsel is not participating in a case, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

Hearing Procedures for Cases Before the Board—General

§ 28.15 Scope and policy.

The rules in this subpart apply to actions brought by any person, except as otherwise provided in § 28.17 (concerning internal appeals of Board employees). These rules also apply to actions brought by the General Counsel, except as otherwise provided in subpart G (concerning corrective action, disciplinary and stay proceedings). It is the policy of the Board that these rules shall be applied in a manner which expedites the processing of each case, but with due regard to the rights of all parties.

§ 28.16 Revocation, amendment or waiver of rules.

(a) The Board may revoke or amend these regulations by publishing proposed changes within GAO and providing for a comment period of not less than 30 days. Following the comment period, any changes to the rules are final once they are published in the **Federal Register**. Notice of publication in the **Federal Register** must be published throughout GAO.

(b) An administrative judge or the Board may waive a Board regulation in an individual case for good cause shown if application of the regulation is not required by statute.

§ 28.17 Internal appeals of Board employees.

(a) The provisions of the GAO Personnel Act, its implementing regulations, and the Board's procedural rules apply in the same manner to employees of the Board as they do to other GAO employees, with the following exceptions.

(1) The General Counsel serves at the pleasure of the Chair. The General Counsel may not bring any complaint or charge concerning his or her own employment except to allege that he or she has been the victim of prohibited discrimination or a prohibited personnel practice as defined in 31 U.S.C. 732 (b)(2) or (f)(1).

(2) When an employee of the Board believes that he or she has been denied his or her right to equal employment opportunity, the employee shall consult either with the Solicitor or with the General Counsel and seek advice on filing an EEO complaint. If the matter cannot be resolved within 10 days, the Solicitor or General Counsel shall notify the employee of his or her right to file an EEO complaint. The employee shall have 20 days from service of this notice to file an EEO complaint with the General Counsel. Upon receipt of an EEO complaint, the General Counsel shall arrange for processing in accordance with paragraph (b) of this section.

(3) When an employee of the Board wishes to raise any other issue that would be subject to the Board's jurisdiction, the employee shall file a charge with the General Counsel and the General Counsel shall arrange for processing in accordance with paragraph (b) of this section.

(b) The responsibilities and functions of the Board's General Counsel will be assumed by an attorney who is not a current or former employee of the Board or the GAO. The services of that attorney, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The attorney will be selected by an impartial body as described below.

(1) If agreed to by the Special Counsel of the Merit Systems Protection Board (MSPB) (or the EEOC, as appropriate), that body will appoint and detail a person from among its attorneys to perform the functions of the General Counsel.

(2) If the MSPB Special Counsel (or the EEOC) does not agree to such a procedure, an appointment of an attorney will be sought from the Federal Mediation and Conciliation Service (FMCS).

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the General Counsel in employee appeal cases.

(c) The adjudication responsibilities and functions of the Board will be assumed by a person who is not a current or former employee of the Board or the GAO. The services of that person, who shall be knowledgeable in federal personnel matters, will be paid for by the Board. The person will be selected by an impartial body as described below.

(1) If agreed to by the MSPB (or the EEOC, as appropriate), that body will appoint and detail one of its administrative law judges (ALJ) or administrative judges (AJ) to perform the Board's adjudicative functions.

(2) If the MSPB (or the EEOC) does not agree to such a procedure, an appointment of an arbitrator will be sought from the FMCS.

(3) In any event, whoever is so appointed shall possess all of the powers and authority possessed by the Board in employee appeals cases. The

decision of the administrative law judge, administrative judge or arbitrator shall be a final decision of the Board, in the same manner as if rendered by the Board under § 28.86(e). The procedure for judicial review of the decision shall be the same as that described in § 28.90 or § 28.100, as appropriate.

(d) Any employee of the Board (other than the General Counsel) who believes that he or she is aggrieved by any personnel matter that is not reviewable by the Board under 31 U.S.C. 753(a) may file a grievance as follows:

(1) *Informal Step.* The employee must discuss the complained of incident with his or her supervisor as soon as possible after the complained of incident.

(2) *Step 1.* If the supervisor is unable to resolve the matter informally to the satisfaction of the employee, then the employee may file a formal grievance with the supervisor. The formal grievance must be filed by the employee with the supervisor within 20 days after the complained of incident. The supervisor must respond to the employee in writing within 10 days.

(3) *Step 2.* (i) If the employee is not satisfied with the supervisor's response, the employee has 10 days in which to appeal to the Chair. In this appeal, the employee must forward to the Chair the formal grievance, the supervisor's response and a brief statement from the employee explaining why the supervisor's response is not satisfactory.

(ii) The Chair or another member designated by the Chair, shall meet with the employee and discuss the matter of concern within 10 days after service of the step 2 appeal. The Chair or designee shall issue a written resolution of the grievance.

(4) *Step 3.* Within 10 days after service of the Chair's resolution or within 60 days after initiating step 2, whichever occurs first, the employee may request that the full Board review the grievance. The decision of the full Board is the final decision in the matter.

§ 28.18 Filing a petition for review with the Board.

(a) *Who may file.* Any person who has received a Right to Appeal letter from the General Counsel and who is claiming to be affected adversely by GAO action or inaction which is within the Board's jurisdiction under Subchapter IV of Chapter 7 of Title 31, United States Code, may file a petition for review. A petition for review may also be filed by any person who has received a Right to Appeal letter from the General Counsel and who is alleging that the GAO or a labor organization engaged or is engaging in an unfair labor practice.

(b) *When to file.* Petitions for review must be filed within 20 days after service upon the charging party of the Right to Appeal Letter from the General Counsel.

(c) *How to file.* Petitions may be filed in person or by mail. Please note that the address to be used differs for the two kinds of filing.

(1) *Filing in person:* A petition may be filed in person at the office of the Board, Suite 830, Union Center Plaza II, 820 First Street, NE., Washington, DC.

(2) *Filing by mail:* A petition may be filed by mail addressed to the Personnel Appeals Board, suite 830, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. When filed by mail, the postmark shall be the date of filing for all submissions to the Board.

(d) *What to file.* The petition for review shall include the following information:

(1) Name of the petitioner or a clear description of the group or class of persons on whose behalf the petition is being filed;

(2) The names and titles of persons, if any, responsible for actions the petitioner wishes to have the Board review;

(3) The actions being complained about, including dates, reasons given and internal appeals taken;

(4) Petitioner's reasons for believing the actions to be improper;

(5) Remedies sought by the petitioner;

(6) Name and address of the representative, if any, who will act for the petitioner in any further stages of the matter; and

(7) Signature of the petitioner or petitioner's representative.

(e) Failure to raise a claim or defense in the petition for review shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

(f) *Non-EEO class actions.* One or more persons may file a petition for review as representatives of a class in any matter within the Board's jurisdiction. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure. See § 28.97 for EEO class actions.

§ 28.19 Content of response by charged party.

(a) Within 20 days after service of a copy of a petition for review, the GAO or other charged party shall file a response containing at least the following:

(1) A statement of the position of the charged party on each of the issues raised by the petitioner, including admissions, denials or explanations of each allegation made in the petition and any other defenses to the petition.

(2) Designation of, and signature by, the representative authorized to act for the charged party in the matter.

(b) Failure to raise a claim or defense in the response shall not bar its submission later unless to do so would prejudice the rights of the other parties or unduly delay the proceedings.

§ 28.20 Number of Pleadings, service and response.

(a) *Number.* One original and seven copies of all pleadings (see definition in § 28.3) must be filed with the Board. However, when before a single administrative judge, one original and three copies will be adequate unless informed otherwise.

(b) *Service—(1) Service by the Board.* The Board will serve copies of a petition for review upon the parties to the proceeding by mail. The Board will attach a service list indicating the names and addresses of the parties to the proceeding or their designated representatives. The Board will not serve copies of any pleadings, motions, or other submissions by the parties after the initial petition for review.

(2) *Service by the parties.* The parties shall serve on each other one copy of all pleadings other than the initial petition for review. Service shall be made by mailing or by delivering personally a copy of the pleading to each party on the service list previously provided by the Board. Each pleading must be accompanied by a certificate of service specifying how and when service was made. It shall be the duty of all parties to notify the Board and one another in writing of any changes in the names or addresses on the service list.

(c) *Time limitations for response to pleadings.* Unless otherwise specified by the administrative judge or this subpart, a party shall file a response to a pleading within 20 days of the service of that pleading upon the party.

(d) Size limitations are set forth at § 28.9(b).

§ 28.21 Prehearing procedures and motions practice.

(a) *Amendments to petitions.* The Board, at its discretion, may allow amendments to a petition for review as long as all persons who are parties to the proceeding have adequate notice to prepare for the new allegations and if to do so would not prejudice the rights of the other parties or unduly delay the proceedings.

(b) *Motions practice.* When an action is before an administrative judge,

motions of the parties shall be filed with the administrative judge and shall be in writing except for oral motions made during the hearing. An original and 3 copies of written motions shall be filed with the administrative judge. When an action is before the full Board, an original and 7 copies of any motion shall be filed with the Board. Copies shall be served simultaneously upon the other parties to the proceeding. An original and 3 copies of responses in opposition to written motions must be filed with the administrative judge, or if the action is before the full Board an original and 7 copies must be filed with the Board, and served simultaneously upon the other parties to the proceeding. Responses shall be filed within 20 days of service of the motion, unless the administrative judge requires a shorter response time. All written motions and responses thereto shall include a proposed order, where applicable. A certificate of service will be filed with all motions and responses thereto showing service by mail or personal delivery of the motion to the other parties. Additional responses to the motion or to the response to the motion by either party may be filed only with the approval of the administrative judge. Motions for extension of time will be granted only for good cause shown.

(c) *Oral argument.* The administrative judge may allow oral argument on the motion at his or her discretion.

(d) *General Counsel Settlement.* Where the General Counsel under § 28.12(a) transmits a settlement which has been agreed to by the parties, the settlement agreement shall be the final disposition of the case.

§ 28.22 Administrative judges.

(a) *Exercise of authority.* Administrative judges may exercise authority as provided in paragraph (b) of this section upon their own initiative or upon the motion of a party, as appropriate.

(b) *Authority.* Administrative judges shall conduct fair and impartial hearings and take all necessary action to avoid delay in the disposition of all proceedings. They shall have all powers necessary to that end unless otherwise limited by law, including, but not limited to, the authority to:

(1) Administer oaths and affirmations;

(2) Issue subpoenas in accordance with § 28.46;

(3) Rule upon offers of proof and receive relevant evidence;

(4) Rule upon discovery issues as appropriate under §§ 28.42 through 28.45;

(5) Convene a hearing as appropriate, regulate the course of the hearing, maintain decorum and exclude from the hearing any disruptive persons;

(6) Exclude from the hearing any witness, except the petitioner(s), whose later testimony might be colored by testimony of other witnesses, or any persons whose presence might have a chilling effect on a testifying witness;

(7) Rule on all motions, witness and exhibit lists and proposed findings;

(8) Require the filing of memoranda of law and the presentation of oral argument with respect to any question of law;

(9) Order the production of evidence and the appearance of witnesses whose testimony would be relevant, material and not repetitious;

(10) Impose sanctions as provided under § 28.24 of this part;

(11) Hold prehearing conferences for the settlement and simplification of issues; and

(12) File recommended or initial decisions, as appropriate.

§ 28.23 Disqualification of administrative judges.

(a) In the event that an administrative judge considers himself or herself disqualified, he or she shall withdraw from the case, stating on the record the reasons therefor, and shall immediately notify the Board of the withdrawal.

(b) Any party may file a motion requesting the administrative judge to withdraw on the basis of personal bias or other disqualification and specifically setting forth the reasons for the request. This motion shall be filed as soon as the party has reason to believe there is a basis for disqualification.

(c) The administrative judge shall rule on the withdrawal motion. If the motion is denied, the party requesting withdrawal may take an appeal to the full Board. The notice of appeal, together with a supporting brief, shall be filed within 15 days of service of the denial of the motion. Upon receipt of the appeal, the Board will determine whether a response from the other party or parties is required, and if so, will fix by order the time for the filing of the response.

§ 28.24 Sanctions.

The administrative judge may impose sanctions upon the parties as necessary to serve the ends of justice, including but not limited to the instances set forth in this section.

(a) *Failure to comply with an order.* When a party fails to comply with an order (including an order for the taking of a deposition, for the production of evidence within the party's control, for an admission, or for production of witnesses), the administrative judge may:

(1) Draw an inference in favor of the requesting party on the issue related to the information sought.

(2) Prohibit the party failing to comply with such order from introducing evidence concerning, or otherwise relying upon, testimony relating to the information sought.

(3) Permit the requesting party to introduce secondary evidence concerning the information sought.

(4) Strike any part of the pleadings or other submissions of the party failing to comply with such request.

(b) *Failure to prosecute or defend.* If a party fails to prosecute or defend an appeal, the administrative judge may dismiss the action with prejudice or rule for the petitioner.

(c) *Failure to make timely filing.* The administrative judge may refuse to consider any motion or other action which is not filed in a timely fashion in compliance with this subpart.

Parties, Practitioners and Witnesses

§ 28.25 Representation.

(a) All parties to an appeal may be represented in any matter relating to the appeal. The parties shall designate their representatives, if any, in the petition for review or responsive pleading. Any subsequent changes in representation shall also be in writing, and submitted to the administrative judge and served upon the other parties. Once a party has designated a representative, all documents required by the Board's regulations to be served upon the party shall instead be served upon the representative.

(b) A party may choose any representative so long as the person is willing and available to serve. However, the other party or parties may challenge the representative on the grounds of conflict of interest or conflict of position. This challenge must be made by motion to the administrative judge within 10 days of service of the notice of designation, and shall be ruled upon by the administrative judge prior to any further proceeding in the case. These procedures apply equally to original and subsequent designations of representatives. In the event the selected representative is disqualified, the party affected shall be given a reasonable time to obtain another representative.

(c) The administrative judge, on his or her own motion, may disqualify a party's representative on the grounds described in paragraph (b) of this section.

§ 28.26 Witness fees.

The costs involved in the appearance of witnesses in any Board proceeding shall be allocated as follows:

(a) Persons employed by the GAO shall, upon request by the administrative judge to GAO, be made available to participate in the hearing and shall be in official duty status for this purpose and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations.

(b) Employees of other federal agencies called to testify at a Board hearing shall, at the request of the administrative judge and with the approval of the employing agency, be in official duty status during any period of absence from their normal duties caused by their testimony, and shall not receive witness fees. Payment of travel and per diem expenses shall be governed by applicable laws and regulations. A party planning to call an employee of another federal agency as a witness shall promptly notify the administrative judge of the need to submit to the federal agency a request that the employee be granted official duty status. In the event that the employing agency refuses the request to release the employee-witness in an official duty status, the employee-witness may be paid a witness fee in accordance with paragraph (c) of this section.

(c) Witnesses who are not covered by paragraphs (a) or (b) of this section are entitled to the same witness fees as those paid to subpoenaed witnesses under 28 U.S.C. 1821. The fees shall be paid, in the first instance, by the party requesting the appearance of the witness, subject to a subsequent decision otherwise in accordance with § 28.89, concerning the award of attorneys fees and costs. Such fees shall be tendered to the witness at the time the subpoena is served, or, when the witness appears voluntarily, at the time of appearance. A federal agency or corporation is not required to tender witness fees in advance. Payment of travel and per diem expenses shall be governed by applicable law and regulation.

(d) When the General Counsel is the petitioner or is representing the petitioner, the General Counsel shall pay the witness fees and arrange for the travel and per diem expenses that are required by paragraph (c) of this section.

§ 28.27 Intervenors.

(a) Intervenors are persons who are allowed to participate in a proceeding because the proceeding, or its outcome, may affect their rights or duties.

(b) Any person may, by motion to the administrative judge, request permission to intervene. The motion shall state the reasons why the person should be permitted to intervene. A person alleged to have committed a prohibited personnel practice under 5 U.S.C. 2302(b) may request permission to intervene under this section.

(c) A motion for permission to intervene will be granted where a determination is made by the administrative judge or the Board that the requestor will be affected directly by the outcome of the proceeding. Denial of a motion for intervention may be appealed to the Board. Such an appeal shall be filed within 10 days of service of the denial of the motion to intervene.

(d) Intervenors who are granted permission to intervene will be considered full parties to the hearing and will have the same rights and duties as a party with two exceptions:

(1) Intervenors will not have an independent right to a hearing.

(2) Intervenors may participate in Board proceedings only on the issues affecting them, as determined by the administrative judge or Board.

§ 28.28 Substitution.

(a) If a petitioner dies or is otherwise unable to pursue the appeal, the action may be completed upon substitution of a proper party.

(b) A motion for substitution shall be filed by the proper party within 90 days after the death of the petitioner or other disabling event.

§ 28.29 Consolidation or joinder.

(a) *Explanation.* (1) Consolidation may occur where two or more parties have cases which should be united because they contain identical or similar issues or in such other circumstances as justice requires.

(2) Joinder may occur where one person has two or more appeals pending and they are united for consideration. For example, a single appellant who has one appeal pending challenging a 30-day suspension and another appeal pending challenging a subsequent dismissal might have the cases joined.

(b) *Action by administrative judge.* An administrative judge may consolidate or join cases on his or her own initiative or on the motion of a party if to do so would expedite processing of the cases and not adversely affect the interests of the parties.

Discovery

§ 28.40 Statement of purpose.

Proceedings before the Board shall be conducted as expeditiously as possible with due regard to the rights of the parties. Discovery is designed to enable a party to obtain relevant information needed for presentation of the party's case. These regulations are intended to provide a simple method of discovery. They will be interpreted and applied so as to avoid delay and to facilitate adjudication of the case. The parties are expected to initiate and complete needed discovery with a minimum of Board intervention.

§ 28.41 Explanation, scope and methods.

(a) *Explanation.* Discovery is the process apart from the hearing whereby a party may obtain relevant information from another person, including a party, which has not otherwise been provided. Relevant information includes information which appears reasonably calculated to lead to the discovery of admissible evidence. This information is obtained for the purpose of assisting the parties in developing, preparing, and presenting their cases. The Federal Rules of Civil Procedure may be used as a general guide for discovery practices in proceedings before the Board, except as to matters specifically covered by these regulations. The Federal Rules of Civil Procedure shall be interpreted as instructive rather than controlling.

(b) *Scope.* Any person may be examined pursuant to paragraph (c) of this section regarding any nonprivileged matter which is relevant to the issue under appeal, including the existence, description, nature, custody, condition and location of documents or other tangible things, and the identity and location of persons having knowledge of relevant facts. The information sought must appear reasonably calculated to lead to the discovery of admissible evidence.

(c) *Methods.* Discovery may be obtained by one or more of the methods provided under the Federal Rules of Civil Procedure, including written interrogatories, depositions, production of documents or things for inspection or copying, and requests for admission addressed to parties.

§ 28.42 Discovery procedures and protective orders.

(a) *Discovery from a party.* A party seeking discovery from another party shall initiate the process by serving a request for discovery on the other party. For purposes of discovery under these regulations, a party includes an intervenor.

(1) Each request for discovery shall state the time limit for responding, as prescribed in paragraph (d) of this section.

(2) In the case of a request for deposition of a party, reasonable notice

in writing shall be given to every party to the action. The notice shall:

(i) Specify the time and place of the taking of the deposition; and

(ii) Be served on the person to be deposed.

(3) When a request for discovery is directed to an officer or employee of GAO, the agency shall make the officer or employee available on official time for the purpose of responding to the request and shall assist the officer or employee as necessary in providing relevant information that is available to the agency.

(b) *Discovery from a nonparty.* Parties are encouraged to attempt to obtain voluntary discovery from nonparties whenever possible. A party seeking discovery from a nonparty may initiate the process by serving a request for discovery on that nonparty and on all other parties to the proceeding. When a party is unable to obtain voluntary cooperation, the party may request that the administrative judge issue a subpoena by following the procedures set forth in § 28.46.

(c) *Responses to discovery requests.* (1) A party shall answer a discovery request within the time provided by paragraph (d)(2) of this section either by furnishing to the requesting party the information or testimony requested or agreeing to make deponents available to testify within a reasonable time, or by stating an objection to the particular request and the reasons for objection, or by requesting a protective order.

(2) Upon failure or refusal of a party to respond in full to a discovery request, the requesting party may file with the administrative judge a motion to compel discovery. The time limits applicable to a motion to compel are set forth in paragraph (d)(4) of this section. A copy of the motion shall be served on the other parties. The motion shall be accompanied by:

(i) A copy of the original request served on the party from whom discovery was sought and a statement showing the relevancy and materiality of the information sought; and

(ii) A copy of the objections to discovery or, where appropriate, a verified statement that no response has been received.

(3) The party from whom discovery was sought shall respond to the motion to compel within the time limits set forth in paragraph (d)(4) of this section.

(d) *Time limits.* (1) Requests for discovery shall be served within 30 days after the service list is served by the Board on all parties.

(2) A party or nonparty shall respond to a discovery request within 20 days after service of the request on the party or nonparty. Any discovery requests following the initial request shall be served within 10 days of the date of service of the prior response, unless otherwise directed. Deposition witnesses shall give their testimony at the time and place stated in the notice of deposition-taking or in the subpoena, unless the parties agree otherwise.

(3) In responding to a discovery request, a party or nonparty shall respond as fully as possible, except to the extent that the party or nonparty objects to the discovery or requests a protective order. Any objection or request for a protective order shall be filed within the time limits set forth in paragraph (d)(2) of this section. Any objection shall be addressed to the party requesting discovery and shall state the particular grounds for the objection. Any request for a protective order shall state the grounds for the protective order and shall be served on the administrative judge and any other parties to the action. The administrative judge shall rule on the request for a protective order.

(4) Motions for an order compelling discovery shall be filed with the administrative judge within 10 days of the service of objections or within 10 days of the expiration of the time limits for response when no response or an alleged inadequate response is received. Opposition to a motion to compel must be filed with the administrative judge within 10 days of the date of service of the motion.

(5) Discovery shall be completed by the time designated by the administrative judge, but no later than 65 days after the filing of the appeal. A later date may be set by the administrative judge after due consideration of the particular situation including the dates set for hearing and closing of the case record.

§ 28.43 Compelling discovery.

(a) *Motion for an order compelling discovery.* Motions for orders compelling discovery shall be submitted to the administrative judge as set forth at § 28.42(c)(2) and (d)(4) above.

(b) *Content of order.* Any order issued may include, where appropriate:

(1) Provision for notice to the person to be deposed as to the time and place of such deposition.

(2) Such conditions or limitations concerning the conduct or scope of the proceedings or the subject matter as may be necessary to prevent undue delay or to protect any party or deponent from undue expense, embarrassment or oppression.

(3) Limitations upon the time for conducting depositions, answering written interrogatories, or producing documentary evidence.

(4) Other restrictions upon the discovery process as determined by the administrative judge.

(c) Failure to comply with an order compelling discovery may subject the noncomplying party to sanctions under § 28.24.

§ 28.44 Taking of depositions.

Depositions may be taken before any person not interested in the outcome of the proceedings who is authorized by law to administer oaths.

§ 28.45 Admission of facts and genuineness of documents.

(a) Any party may be served with requests for the admission of the genuineness of any relevant documents identified within the request or the truth of any relevant matters of fact or application of law to the facts as set forth in the request.

(b) Within the time period prescribed by § 28.42(d)(2), the party on whom the request is served must submit to the requesting party:

(1) A sworn statement specifically denying, admitting, or expressing a lack of knowledge after making reasonable inquiry regarding the specific matters on which an admission is requested; and/or

(2) An objection to the request for an admission, in whole or in part, on the grounds that the matters contained therein are privileged, irrelevant, or otherwise improper.

(c) Upon a failure or refusal of a party to respond to a request for admissions within the prescribed time period, the request shall be deemed admitted.

Subpoenas

§ 28.46 Motion for subpoena.

(a) *Authority to issue subpoenas.* Any member of the Board may issue subpoenas requiring the attendance and testimony of witnesses and the production of documentary or other evidence from any place in the United States or any territory or possession thereof, the Commonwealth of Puerto Rico, or the District of Columbia. Any member of the Board may order the taking of depositions or order responses to written interrogatories.

(b) *Motion.* A motion for the issuance of a subpoena requiring the attendance and testimony of witnesses or the production of documents or other evidence under § 28.46(a) shall be submitted to the administrative judge at least 15 days in advance of the date scheduled for the commencement of the hearing. If the subpoena is sought as part of the discovery process, the

motion shall be submitted to the administrative judge at least 15 days in advance of the date set for the attendance of the witness at a deposition or the production of documents.

(c) *Forms and showing.* Motions for subpoenas shall be submitted in writing to the administrative judge and shall specify with particularity the books, papers, or testimony desired and shall be supported by a showing of general relevance and reasonable scope and a statement of the facts expected to be proven thereby.

(d) *Rulings.* Where the administrative judge is not a Board member, the motion shall be referred with a recommendation for decision to a Board member. The Board member shall promptly rule on the request. Where the administrative judge is a Board member, he or she shall rule directly on the request.

§ 28.47 Motion to quash.

Any person against whom a subpoena is directed may file a motion to quash or limit the subpoena setting forth the reasons why the subpoena should not be complied with or why it should be limited in scope. This motion shall be filed with the administrative judge within 20 days after service of the subpoena.

§ 28.48 Service.

Service of a subpoena may be made by a United States Marshal or Deputy Marshal or by any person who is over 18 years of age and not a party to the proceeding.

§ 28.49 Return of service.

When service of a subpoena is effected by a person other than a United States Marshal or Deputy Marshal, that person shall certify on the return of service that service was made either:

(a) In person,

(b) By registered or certified mail, or

(c) By delivery to a responsible person (named) at the residence or place of business (as appropriate) of the person to be served.

§ 28.50 Enforcement.

If a person has been served with a Board subpoena but fails or refuses to comply with its terms, the party seeking compliance may file a written motion for enforcement with the administrative judge or make an oral motion for enforcement while on record at a hearing. The party shall present the return of service and, except where the witness was required to appear before the administrative judge, shall submit affidavit evidence of the failure or refusal to obey the subpoena. The Board may then request the appropriate United States district court to enforce the subpoena.

Hearings

§ 28.55 Scheduling the hearing.

The notice of initial hearing shall fix the date, time and place of hearing. GAO, upon request of the administrative judge, shall provide appropriate hearing space. Motions for postponement by either party shall be made in writing, shall set forth the reasons for the request and shall be granted only upon a showing of good cause. When the parties agree on postponement, motions may be made orally and shall be granted only upon a showing of good cause.

§ 28.56 Hearing procedures, conduct and copies of exhibits.

(a) The Board may designate one or more administrative judges to conduct hearings on appropriate matters.

(b) The hearing will be conducted as an administrative proceeding and, ordinarily, the rules of evidence will not be strictly followed.

(c) Parties will be expected to present their cases in a concise manner limiting the testimony of witnesses and submission of documents to relevant matters.

(d) Any party to a hearing offering exhibits into the record shall submit the original of each such exhibit to the court reporter, two copies to the administrative judge, plus one copy for each opposing party that is separately represented.

(e) Each party to a proceeding shall be responsible for bringing the proper number of copies of an exhibit to the hearing.

(f) Multipage exhibits shall be paginated in the lower right hand corner and the first page shall indicate the total number of pages in the exhibit.

(g) No later than the commencement of the hearing, each party shall submit to the administrative judge, to the court reporter, and to the opposing party: (1) A typed list of the witnesses expected to be called to testify; and (2) a typed list of the acronyms (with definitions) expected to be used by the witnesses.

§ 28.57 Public hearings.

(a) Hearings shall be open to the public. However, the administrative judge at his or her discretion, may order a hearing or any part thereof closed, where to do so would be in the best interests of the petitioner, a witness, the public, or other affected persons. Any order closing the hearing shall set forth the reasons for the administrative judge's decision. Any objections thereto shall be made a part of the record.

(b) Regardless of whether a hearing is open or closed, the GAO technical representative, who is not expected to testify, the GAO representative, the petitioner and the petitioner's representative each has a right to be present at the hearing.

§ 28.58 Transcript.

(a) *Preparation.* A verbatim record made under supervision of the administrative judge shall be kept of every hearing and shall be the sole official record of the proceeding. Upon request, a copy of a transcript of the hearing shall be made available to each party. Additional copies of the transcript shall be made available to a party upon payment of costs. Exceptions to the payment requirement may be granted for good cause shown. A motion for an exception shall be made in writing and accompanied by an affidavit setting forth the reasons for the request and shall be granted upon a showing of good cause. Requests for copies of transcripts shall be directed to the Clerk of the Board. The Clerk of the Board may, by agreement with the person making the request, make arrangements with the official hearing reporter for required services to be charged to the requester.

(b) *Corrections.* Corrections to the official transcript will be permitted. Motions for correction must be submitted within 30 days of service of the transcript upon the party. Corrections of the official transcript will be permitted only when errors of substance are involved and only upon approval of the administrative judge. The administrative judge may make changes at any time with notice to the parties.

§ 28.59 Official record.

The transcript of testimony and the exhibits, together with all papers and motions filed in the proceedings, shall constitute the exclusive and official record.

§ 28.60 Briefs.

(a) *Length.* Principal briefs shall not exceed 60 pages and reply briefs 30 pages, exclusive of tables and pages limited only to quotations of statutes, rules, and the like. Motions to file extended briefs shall be granted only for good cause shown. Briefs in excess of 10 pages shall include an index and a table of authorities.

(b) *Format.* Every brief must be easily readable. Pages must be 8½ x 11 inches with margins at least one inch on all sides. Typewritten briefs must have double spacing between each line of

text, except for quoted texts which may be single spaced.

(c) *Number of copies.* An original and 3 copies of each brief shall be filed with the administrative judge and one copy served on each party separately represented. When an action is before the full Board, an original and seven copies of each brief must be filed with the Board and one copy served on each party separately represented.

§ 28.61 Burden and degree of proof.

(a) In appealable actions, as defined by 5 U.S.C. 7701(a), agency action must be sustained by the Board if:

(1) It is a performance-based action and is supported by substantial evidence; or

(2) It is brought under any other provision of law, rule, or regulation as defined by 5 U.S.C. 7701(a) and is supported by a preponderance of evidence.

(b) Notwithstanding paragraph (a) of this section, the agency's decision may not be sustained if the petitioner:

(1) Shows harmful error in the application of the agency's procedures in arriving at such decision;

(2) Shows that the decision was based on any prohibited personnel practice described in 4 CFR 2.5; or

(3) Shows that the decision was not in accordance with law.

(c) In any other action within the Board's jurisdiction, the petitioner shall have the responsibility of presenting the evidence in support of the action and shall have the burden of proving the allegations of the appeal by a preponderance of the evidence.

(d) Definitions. For purposes of this section, the following definitions shall apply:

Harmful error means error by the agency in the application of its procedures which, in the absence or cure of the error, might have caused the agency to reach a conclusion different than the one reached. The burden is upon the petitioner to show that, based upon the record as a whole, the error was harmful, i.e., caused substantial harm or prejudice to his or her rights.

Preponderance of the evidence means that degree of relevant evidence which a reasonable person, considering the record as a whole, would accept as sufficient to support a conclusion that the matter asserted is more likely to be true than not true.

Substantial evidence means that degree of relevant evidence which a reasonable person, considering the record as a whole, might accept as adequate to support a conclusion, even though other reasonable persons might disagree. This is a lower standard of proof than preponderance of the evidence.

§ 28.62 Closing the record.

(a) When there is a hearing, the record shall be closed at the conclusion of the hearing. However, when the administrative judge allows the parties to submit argument, briefs or documents previously identified for introduction into evidence, the record shall be left open for such time as the administrative judge grants for that purpose.

(b) Once the record is closed, no additional evidence or argument shall be accepted into the record except upon a showing that new and material evidence has become available which was not available despite due diligence prior to the closing of the record. However, the administrative judge shall make part of the record any motions for attorney fees, any supporting documentation, and determinations thereon, and any approved correction to the transcript.

Evidence

§ 28.65 Service of documents.

Any document submitted with regard to any pleading, motion, or brief shall be served upon all parties to the proceeding.

§ 28.66 Admissibility.

Evidence or testimony may be excluded from consideration by the administrative judge if it is irrelevant, immaterial, or unduly repetitious.

§ 28.67 Production of statements.

After an individual has given evidence in a proceeding, any party may request a copy of any prior signed statement made by that individual which is relevant to the evidence given. If the party refuses to furnish the statement, the administrative judge may draw an adverse inference from the failure to produce or may exclude the relevant evidence given by the individual from consideration.

§ 28.68 Stipulations.

The parties may stipulate as to any matter of fact. Such a stipulation will satisfy a party's burden of proving the fact alleged.

§ 28.69 Judicial notice.

The administrative judge on his or her own motion or on motion of a party, may take judicial notice of a fact which is not subject to reasonable dispute because it is either: (a) A matter of common knowledge; or (b) capable of accurate and ready determination by resort to sources whose accuracy cannot reasonably be questioned. Judicial notice taken of any fact satisfies a party's burden of proving the fact noticed.

Interlocutory Appeals

§ 28.80 Explanation.

An interlocutory appeal is an appeal to the Board of a ruling made by an administrative judge during the course of a proceeding. This appeal may be permitted by the administrative judge if he or she determines that the issue presented is of such importance to the proceeding that it requires the Board's immediate attention. The Board makes a decision on the issue and the administrative judge acts in accordance with that decision.

§ 28.81 Procedures and criteria for certification.

(a) Interlocutory review by the Board of a ruling by the administrative judge during the course of the proceeding is disfavored and will be permitted only in circumstances where:

(1) The ruling involves an important question of law or policy about which there is substantial ground for difference of opinion; and

(2) An immediate review of the ruling by the Board will materially advance the completion of the proceeding, or denial will cause undue harm to a party or the public.

(b) The administrative judge may, on motion of a party or on his or her own motion, certify an interlocutory ruling to the Board for its immediate consideration. Any such certification shall explain the basis on which the administrative judge concluded that the standards for interlocutory review have been met. If the Board nevertheless determines that the certification does not meet those standards it may decline to accept the certification.

(c) A motion for certification to the Board of an interlocutory ruling by the administrative judge shall be filed within 10 days after service of the ruling upon the parties. The motion shall include arguments in support of both the certification and the determination to be made by the Board. Responses, if any, shall be filed within 10 days after service of the motion.

(d) The grant or denial of a motion for certification of an interlocutory ruling shall not be appealable. The administrative judge shall promptly bring a denial of such a motion, and the reasons therefor, to the attention of the Board. If, upon its consideration of the motion and the underlying record, the Board believes that interlocutory review is warranted, it may grant the motion sua sponte.

(e) Upon its acceptance of a ruling of the administrative judge for interlocutory review, the Board shall issue an order setting forth the procedures that will be followed in the conduct of that review.

(f) Unless otherwise directed by the Board, the stay of any proceedings during the pendency of either a motion for certification or an interlocutory review itself shall be within the discretion of the administrative judge.

(g) The denial of a motion for certification does not affect the right of the parties to challenge interlocutory rulings in the course of the review by the Board of initial or recommended decisions.

Board Decisions, Attorney's Fees and Judicial Review

§ 28.86 Board procedures; recommended decisions.

(a) *Non-member recommended decisions.* Where an administrative judge who is not a Board member issues a decision, the administrative judge shall transmit to the parties and to the Board a recommended decision.

(b) Exceptions to the recommended decision shall be filed within 30 days from service of the decision. Exceptions may be filed by hand delivery or by mail. Please note that the address to be used differs for the two kinds of filing.

(1) *Filing by hand delivery:* Exceptions may be filed by hand delivery at the office of the Board, suite 830, Union Center Plaza II, 820 First Street, NE., Washington, DC.

(2) *Filing by mail:* Exceptions may be filed by mail addressed to the Personnel Appeals Board, suite 830, Union Center Plaza II, 441 G Street, NW., Washington, DC 20548. When filed by mail, the postmark shall be the exclusive date of filing.

The party filing the exceptions shall serve the Board with an original and 7 copies and shall serve one copy of the exceptions on each of the other parties. The exceptions shall include all supporting material and shall set forth objections to the recommended decision, with references to applicable laws or regulations, and with specific reference to the record. The responding party shall have 30 days from service of the exceptions to file any reply. Additional responsive pleadings may be filed only with the approval of the Board.

(c) Regardless of whether exceptions to a recommended decision are filed with the Board, the Board shall review the recommended decision. In reviewing the recommended decision, the Board shall review the record as though it were making the initial decision. The Board may adopt, reverse, remand, modify or vacate the recommended decision, in whole or in part. Where no party files exceptions to a recommended decision and the Board is considering any action other than adopting the recommended decision in whole as the final decision, the Board shall provide the parties an opportunity to address the issues it is considering. Where appropriate, the Board shall issue a final decision and order a date for compliance. In reviewing any recommended decision, the Board may:

(1) Issue a single decision which decides the case;

(2) Hear oral arguments;

(3) Require the filing of briefs;

(4) Remand the proceedings to the administrative judge to take further testimony or evidence or make further findings or conclusions; or

(5) Take any other action necessary for final disposition of the case.

(d) The Board shall reject a recommended decision, in whole or in part, on the basis of its own motion or on the basis of exceptions filed by the parties, when the Board finds that:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(2) The recommended decision is based on an erroneous interpretation of statute or regulation;

(3) The recommended decision is arbitrary, capricious or an abuse of discretion, or otherwise not consistent with law;

(4) The recommended decision is not made consistent with required procedures and results in harmful error; or

(5) The recommended decision is unsupported by evidence required by the requisite burden of proof as set forth at § 28.61.

(e) The decision of the Board shall be final and subject to judicial review pursuant to § 28.90.

§ 28.87 Board procedures; initial decisions.

(a) When a case is heard in the first instance by a single Board member, or a panel of members, an initial decision shall be issued by that member or panel and served upon the parties.

(b) An aggrieved party may seek review or reconsideration of the initial decision in the following manner:

(1) Within 15 days of the service of the initial decision, such a party may seek review by the full Board by filing and serving a notice of appeal to the Board.

(2) Within 10 days of the service of the initial decision, such a party may file and serve a request for reconsideration with the administrative judge or panel rendering that decision. Filing of the request for reconsideration shall toll the commencement of the 15 day period for filing a notice of appeal with the full Board, pending disposition of the request for reconsideration by the administrative judge or panel. The administrative judge or panel shall determine if a response is required, and if so, will fix by order the time for the filing of the response. A motion for reconsideration will not be granted without providing an opportunity for response.

(c) Within 25 days following the filing of a notice of appeal to the full Board, the appellant shall file and serve a supporting brief. That brief shall identify with particularity those findings or conclusions in the initial decision that are challenged and shall refer specifically to the portions of the record and the provisions of statutes or regulations that assertedly support each assignment of error. Within 25 days following the service of the appellant's brief, the appellee may file and serve a responsive brief. Within 10 days following the service of the appellee's responsive brief, the appellant may file and serve a reply brief.

(d) In the absence of a timely appeal, the initial decision shall become the final decision of the Board 30 days following its issuance or the date of the administrative judge's or panel's disposition of a request for reconsideration (whichever comes later) unless, prior to the expiration of the 30 day period, the parties are notified in writing that the full Board intends to review the initial decision in whole or in part on its own motion. Such review sua sponte will normally be conducted only if a majority of the Board concludes that one or more issues of law addressed in the initial decision are of such importance as to warrant consideration by the full Board notwithstanding the absence of appeal. Issues so qualifying shall be identified in the Board's notice and the parties shall be provided an opportunity to brief them prior to the Board's decision.

(e) Oral argument on an appeal or in connection with a sua sponte review shall be held in the discretion of the Board. Any party may request that the Board exercise its discretion in that regard.

(f) Upon appeal or following its review sua sponte, the Board may affirm, reverse, modify or vacate the initial decision in whole or in part. If deemed warranted, the Board may remand the proceeding to the single member or panel for further action,

including the reopening of the record for the taking of additional evidence. Unless the full Board expressly retains jurisdiction, the single member or panel shall render, on completion of the remand, a supplemental initial decision which shall be subject to appellate review in the same manner and to the same extent as provided for initial decisions in paragraphs (b), (d) and (g) of this section. If the Board does expressly retain jurisdiction at the time of remand, the single member or panel shall instead render a report to the Board on the remanded matters. Upon receipt of the report, the Board shall determine whether the views of the parties on the content of the report should be obtained in writing and, where necessary, shall fix by order the time for the submission of those views. A decision of the full Board disposing of the proceeding without a remand or, where the Board has expressly retained jurisdiction, following completion of the remand shall be the final decision of the Board and subject to judicial review.

(g) In conducting its examination of the initial decision, the Board may review the record as though it were making the initial decision itself. As a general matter, however, the Board will not overturn a finding of fact contained in the initial decision unless that finding is unsupported by substantial evidence in the record viewed as a whole. In determining whether some action other than affirmance of the initial decision is required, the Board will also consider whether:

(1) New and material evidence is available that, despite due diligence, was not available when the record was closed;

(2) The initial decision is based on an erroneous interpretation of statute or regulation;

(3) The initial decision is arbitrary, capricious or an abuse of discretion, or otherwise not consistent with law;

(4) The initial decision is not made consistent with required procedures and results in harmful error.

(h) Initial decisions that become final without review by the full Board shall not be binding precedent in any other case.

§ 28.88 Board procedures; enforcement.

(a) A person required to take any action under the terms of a Board decision or order shall carry out its terms promptly, and shall, within 30 days after the decision or order becomes final, provide the Board and all parties to the proceeding with a compliance report specifying:

(1) The manner in which compliance with the provisions of the decision or order has been accomplished;

(2) The reasons why compliance with any provisions of the Board's order has not been fully accomplished; and

(3) The steps being taken to ensure full compliance.

(b) When the Board does not receive a notice of compliance in accordance with paragraph (a) of this section, the Solicitor shall make inquiries to determine the status of the compliance report. When the Solicitor establishes that a complete compliance report is not forthcoming, the Solicitor shall report the failure to file a complete compliance report to the Board.

(c) Any person and/or the General Counsel may petition the Board for enforcement of a final decision of the Board. The petition shall specifically set forth the reasons why the petitioner believes there is non-compliance.

(d) Upon receipt of a non-compliance report from its Solicitor or of a petition for enforcement of a final decision, the Board may issue a notice to any person to show cause why there was non-compliance. Following a show cause proceeding, the Board may seek judicial enforcement of its decision or order.

§ 28.89 Attorney's fees and costs.

Within 20 days after service of a final decision by the Board, or within 20 days after the date on which an initial decision becomes final pursuant to § 28.87(d), the petitioner, if he or she is the prevailing party, may submit to the administrative judge who heard the case initially a request for the award of reasonable attorney fees and costs. GAO may file a response within 20 days after service of the request. Motions for attorney fees shall be filed in accordance with § 28.21 of these regulations. Rulings on attorney's fees and costs shall be consistent with the standards set forth at 5 U.S.C. 7701(g). The decision of the administrative judge concerning attorney's fees and costs shall be subject to review and shall become final according to the provisions of §§ 28.86–28.87.

§ 28.90 Board procedures; judicial review.

(a) A final decision by the Board under 31 U.S.C. 753(a) (1), (2), (3), (6), or (7) may be appealed to the United States Court of Appeals for the Federal Circuit within 30 days after the petitioner receives notice of the Board's decision.

(b) Special provisions regarding civil actions in discrimination cases are set forth at § 28.100.

(c) The Board may designate the Solicitor, the General Counsel or any other qualified individual to represent it in any judicial proceeding involving a Board decision or the interpretation of a Board rule or of the GAO Personnel Act.

Subpart C—Oversight Procedures

§ 28.91 General.

Pursuant to section 732(f) of Title 31, U.S.C., the Board is authorized to conduct oversight of GAO employment regulations, procedures and practices as they relate to laws prohibiting discrimination in employment on the basis of race, color, religion, national origin, political affiliation, age, sex, marital status, or disability.

§ 28.92 Oversight of GAO EEO program.

(a) When requested by the Board in the exercise of its oversight responsibility, GAO shall provide:

(1) Such plans, procedures and regulations as GAO may develop in order to eliminate and prevent employment discrimination on the bases enumerated in § 28.95;

(2) Reports regarding its efforts to publicize to its employees the procedures to be followed for receiving advice and for filing complaints regarding the enforcement of laws prohibiting discrimination in employment;

(3) Quarterly statistical reports of pre-complaint counseling and of pending complaints, in a manner prescribed by the Board;

(4) An annual report on its equal employment opportunity affirmative action program and its Federal Equal Employment Opportunity Recruitment Program; and

(5) Any other information regarding equal employment opportunity within the GAO that may be required by the Board, in the time frame and format established by the Board after consultation with the Comptroller General or his or her designee.

(b) The Board shall review and evaluate the regulations, procedures and practices of the GAO, including the information filed with it in accordance with paragraph (a) above, and shall:

(1) Require the GAO to make any changes the Board determines are needed due to violations of or inconsistencies with Subchapters III and IV of Chapter 7 of Title 31, U.S.C. or equal employment opportunity laws, and

(2) Report to the Congress on the overall progress being made in effectuating the purposes of Subchapters III and IV of Chapter 7 of Title 31, U.S.C.

Subpart D—Special Procedures; Equal Employment Opportunity (EEO) Cases

§ 28.95 Purpose and scope.

The procedures in this subpart relate to charges filed against any GAO policies or specific actions which are alleged to involve prohibited discrimination. Prohibited discrimination is defined as any action in violation of:

(a) Section 717 of the Civil Rights Act of 1964 (42 U.S.C. 2000e–16), prohibiting discrimination based on race, color, religion, sex or national origin;

(b) Sections 12 and 15 of the Age Discrimination in Employment Act of 1967 (29 U.S.C. 631, 633a) prohibiting discrimination on account of age;

(c) Section 6(d) of the Fair Labor Standards Act of 1938 (29 U.S.C. 206(d), prohibiting discrimination in wages on the basis of sex;

(d) Sections 501 and 505 of the Rehabilitation Act of 1973 (29 U.S.C. 791, 794a) prohibiting discrimination on the basis of disability; or

(e) Any other law prohibiting discrimination in Federal employment on the basis of race, color, religion, age, sex, national origin or disability. 31 U.S.C. 732(f)(2).

§ 28.96 Applicability of general procedures.

Except where a different procedure is provided for in this subpart, the procedures to be followed by all parties in cases arising under this subpart shall be the general procedures as prescribed in subpart B of this part.

§ 28.97 Class actions in EEO cases.

(a) Prior to invoking the Board's procedures in a case alleging prohibited discrimination on behalf of a class of GAO employees or applicants for employment, a complaint must first be filed with GAO in accordance with GAO Order 2713.2.

(b) A petition for review of GAO's disposition of any EEO class complaint may be submitted to the Board at the following times:

(1) Within 20 days of receipt of a GAO determination rejecting or canceling the class complaint;

(2) Within 20 days of receipt of a GAO determination accepting the class action, but with modifications that are not satisfactory to the agent of the class;

(3) When a period of more than 180 days has elapsed since the formal class complaint was filed and the GAO has not issued a final decision; or

(4) Within 20 days of receipt of a final GAO decision resolving the complaint if that decision, in whole or in part, has not satisfied the agent for the class.

(c) In class actions in EEO cases, no charge shall be filed or investigated by the General Counsel prior to filing a petition for review with the Board. However, the General Counsel may request permission to intervene with regard to any issue in which the General Counsel finds a significant public interest with respect to the preservation of the merit system.

(d) The parties shall not have a right to a hearing on a petition for review in class actions under this section. Upon a showing of good cause as to why an evidentiary hearing is necessary, the Board may order such a hearing. Alternatively, the Board may, after a review of the administrative record and on its own motion, order a hearing for the purpose of gathering additional evidence. If no hearing is ordered, the Board's decision shall be based upon a review of the administrative record developed in the GAO class complaint process.

(e) Standards. For the purpose of determining whether it is appropriate to treat an appeal as a class action, the administrative judge will be guided, but not controlled, by the applicable provisions of the Federal Rules of Civil Procedure.

§ 28.98 Individual charges in EEO cases.

(a) Except as provided in paragraph (c) of this section, a charge alleging prohibited discrimination (as defined in § 28.95) shall not be filed with the Board's General Counsel unless the charging party has first filed a complaint of discrimination with GAO in accordance with GAO Order 2713.2.

(b) A charge relating to GAO's disposition of any individual EEO complaint may be filed with the Board's General Counsel at the following times:

(1) Within 20 days from the receipt by the charging party of a GAO decision rejecting the complaint in whole or part.

(2) Whenever a period of more than 120 days has elapsed since the complaint was filed, and the GAO has not issued a final decision; or

(3) Within 20 days from the receipt by the charging party of a final GAO decision concerning the complaint of discrimination.

(c) Special rules for adverse and performance-based actions. Where an employee is affected by a removal, suspension for more than 14 days, reduction in grade or pay, or furlough of not more than 30 days (whether due to disciplinary, performance-based or other reasons), and the employee wishes to allege that such action was due in whole or part to prohibited discrimination (as defined in § 28.95), the employee may elect to do either (but not both) of the following:

(1) File a charge directly with the Board's General Counsel within 20 days of the effective date of the personnel action and raise the issue of discrimination in the course of the proceedings before the Board; or

(2) File a complaint of discrimination with the GAO pursuant to GAO Order 2713.2. If the employee elects to file a complaint of discrimination with GAO, he or she may still seek Board review of the matter by filing a charge with the Board's General Counsel at the times authorized in paragraph (b) of this section. Where a complaint of discrimination filed with GAO relates to non-EEO issues that are within the Board's jurisdiction in addition to EEO-related allegations, the subsequent charge filed with the Board's General Counsel under paragraph (b) of this section shall be considered a timely appeal of the non-EEO issues. An employee will be deemed to have elected the EEO complaint process if the employee files a timely written complaint of discrimination with GAO before filing a charge with the Board's General Counsel. Consultation with an EEO counselor, without filing a written complaint of discrimination, does not constitute an election of the EEO complaint process.

(d) The charging party shall file the charge with the General Counsel in accordance with § 28.11. The General Counsel shall investigate the charge in accordance with § 28.12.

§ 28.99 Petitions for review to the Board in EEO cases.

(a) The provisions of §§ 28.18 through 28.90, inclusive, shall govern the Board's procedures in processing petitions filed under this subpart.

(b) Remedial action provided in Board orders in these cases may include:

(1) Provision for offers of employment, re-employment or promotion, with or without back pay, when the Board decides such action is required to make whole the individual found to have been discriminated against.

(2) Notification to all GAO employees of the action ordered to be taken to expunge the effect of the discrimination;

(3) Correction of GAO personnel records, as necessary, to reflect the purpose of the Board order; and,

(4) Any other action the Board believes proper to correct the effect of the discrimination found to have occurred.

§ 28.100 Civil action; discrimination complaints.

(a) *Race, color, religion, sex, or national origin.* An employee or applicant alleging violations of 42 U.S.C. 2000e–16 (Title VII of the Civil Rights Act of 1964, as amended) may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 90 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 90 days of receipt of notice of final action by the Board.

(b) *Disability.* An employee or applicant alleging discrimination based upon disability (29 U.S.C. 791, 794a, Rehabilitation Act) may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 90 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel, if there is no final decision by the Board on that discrimination appeal or within 90 days of receipt of notice of final action by the Board.

(c) *Age.* An employee or applicant alleging discrimination based upon age (29 U.S.C. 631, 633a, Age Discrimination in Employment Act) may forego administrative action altogether and file a civil action in U.S. District Court after giving GAO 30 days Notice of Intent to File such action. The Notice shall be filed within 180 days after the alleged unlawful practice occurred. When such notice is provided and no administrative complaint is filed, a civil action may be filed in the appropriate U.S. District Court within two years or, if the violation is willful, three years of the date of the alleged ADEA violation. An employee or applicant for employment, who has filed an administrative complaint alleging age discrimination, may file suit in Federal District Court—

(1) After 180 days from filing a complaint with GAO if there is no final decision on that complaint or within 90 days of receipt of notice of final action taken by GAO, or

(2) After 180 days from filing a charge with the General Counsel if there is no final decision by the Board on that discrimination appeal or within 90 days of receipt of notice of final action by the Board.

(d) *Sex-based salary inequity.* An employee or applicant alleging discrimination based upon salary inequity due to sex (29 U.S.C. 206d, Equal Pay Act provision of the Fair Labor Standards Act) may forego administrative action altogether and file suit in U.S. District Court.

(e) In lieu of filing a civil action in U.S. District Court, a final decision of the Board involving prohibited discrimination (31 U.S.C. 732(f)(1)) may be appealed, in accordance with 31 U.S.C. 755, to the United States Court of Appeals for the Federal Circuit within 30 days after the date the petitioner receives notice from the Board of the final decision.

§ 28.101 Effect on administrative processing.

Any proceeding before the Board shall be terminated when an employee or applicant who is alleging violations of Title VII of the Civil Rights Act of 1964, as amended, 42 U.S.C. 2000e–16, or who is alleging violations of the Rehabilitation Act, 29 U.S.C. 791, or who is alleging age discrimination (29 U.S.C. 631, 633a) files suit in Federal District Court pursuant to § 28.100 (a), (b) or (c).

Subpart E—Special Procedures; Representation Proceedings

§ 28.110 Purpose.

The procedures in this subpart relate to the Board's duty under 31 U.S.C. 753(a) (4) and (5) to determine appropriate units of GAO employees for collective bargaining, to conduct elections in order to determine whether the employees in any such units wish to select a labor organization to represent them in collective bargaining, and, thereafter, to certify labor organizations so selected as the designated exclusive bargaining representative. They are referred to in these regulations as "representation proceedings".

§ 28.111 Scope.

The Board shall consider, decide and order corrective action (as appropriate) in cases arising from the determination of appropriate units of employment for collective bargaining and cases arising from elections and certifications of collective bargaining representatives. Board decisions in these matters will be made with due regard for relevant provisions of GAO Orders and with the objective of insuring that the GAO labor relations program is consistent with Chapter 71 of Title 5, United States Code, which prescribes the standards for the labor relations program in the executive branch.

§ 28.112 Who may file petitions.

(a) Representation petitions may be filed by:

(1) A labor organization which wishes to be designated as the exclusive representative for collective bargaining by the GAO employees in an appropriate unit, or by a labor organization which desires to replace another currently having that status;

(2) An employee or a group of employees (or an individual on his, her or their behalf) desiring a new election to determine whether a labor organization has ceased to represent a majority of employees in a unit;

(3) The GAO if it has a good faith reason to doubt the continued desire of a group of its employees to be represented by a labor organization which is currently the exclusive representative of the employees in an appropriate unit;

(4) The GAO or a labor organization currently recognized as an exclusive representative desiring the Board to clarify an earlier unit determination or certification;

(5) Any person seeking clarification of, or an amendment to, a certification then in effect or any other matter relating to representation.

(b) Notwithstanding the provisions of paragraph (a) of this section, no petition may be filed which seeks representation rights for employees in a unit—

(1) Where an election has been held within the previous 12 calendar months and in such election a majority of the employees voting chose a labor organization for certification as the unit's exclusive representative, or

(2) Where an existing collective bargaining agreement having a term of three years or less is in effect, unless the petition for exclusive recognition is filed not more than 105 days and not less than 60 days before the expiration of the collective bargaining agreement, or

(3) Where an existing collective bargaining agreement having a term of more than three years is in effect, unless the petition for recognition is filed not more than 105 days and not less than 60 days before the third anniversary or any subsequent anniversary of the collective bargaining agreement.

§ 28.113 Contents of representation petitions.

(a) The contents of representation petitions filed under § 28.112(a)(1) (by a labor organization seeking to be designated as or replace an exclusive bargaining representative) shall consist of:

(1) A detailed identification of the unit of employees to which the petition

applies, and their geographical location within the GAO, the classifications of employees to be included and excluded, and the number of employees involved;

(2) Names, addresses and officers of any other labor organizations known by the petitioner to be interested in representing employees covered by the petition, including a labor organization which is party to a current collective bargaining agreement covering any employees in the unit;

(3) Name, address, affiliation, if any, and telephone number of the petitioning organization;

(4) A copy of the constitution and bylaws of the organization, a roster of the organization's officers and representatives, and a statement of the organization's objectives, together with a statement that these documents have also been supplied to the GAO;

(5) A declaration by the signer of the petition, under penalties of the Criminal Code (18 U.S.C. 1101), that the petition's contents are true and correct, to the best of his or her knowledge and belief;

(6) The signature of the representative of the petitioner, including title and telephone number; and

(7) Membership cards, dues records, or signed statements by employees indicating their desire to be represented by the labor organization, or similar evidence acceptable to the Board, showing that at least 30 percent of the employees in the proposed unit wish to be represented by the petitioner.

(b) The contents of petitions filed under § 28.112(a)(2) (by an employee or group of employees seeking an election to determine if a labor organization still represents a majority of employees in a unit) shall conform to those provided for in paragraph (a) of this section, except that the information required by paragraphs (a)(4) and (a)(7) of this section need not be supplied. Additionally, a petition under § 28.112(a)(2) shall include evidence satisfactory to the Board that at least 30 percent of the employees in the unit no longer wish to be represented by the labor organization currently having bargaining rights.

(c) The contents of petitions filed under § 28.112(a)(3) (by GAO raising good faith doubts about the continued desire of a group of its employees to be represented by a labor organization) shall conform to those provided in petitions under paragraph (a) of this section except that the information required by paragraphs (a)(4) and (a)(7) of this section need not be supplied. Additionally, such a petition shall include a detailed statement giving the objective considerations which support the GAO's good faith reason for doubting the labor organization's continued status as the exclusive representative.

(d) The contents of petitions filed under § 28.112(a)(4) (by GAO or a labor organization seeking clarification of a certification) shall include the information required under paragraph (a) of this section, with the exception of the information required by paragraphs (a)(4) and (a)(7) of this section. Also, instead of the information required in paragraph (a)(1) of this section, the petition shall identify the existing unit and the date the organization was recognized by the GAO or certified as the exclusive representative, and shall explain the changes desired in the unit and the reasons therefor.

(e) Petitions under § 28.112(a)(5) (by any person seeking clarification or amendment of a certification, or raising any other representation matter) shall be filed on forms to be supplied by the Board upon request.

§ 28.114 Pre-investigation proceedings.

(a) Upon the filing of a valid petition, the General Counsel may request GAO to notify employees as to the existence of the petition by posting a notice for at least 10 days in locations appropriately selected to reach all employees in the unit covered by the petition. The notice shall include a request that the Board's General Counsel be notified of the existence of any other interested parties.

(b) GAO shall supply the General Counsel with any information in its possession concerning other potentially interested labor organizations, copies of relevant correspondence, and copies of existing or recently expired agreements covering any employees in the unit. The GAO shall also provide a list of employees it believes should be included in the unit together with their classifications and the names and classifications of those employees it proposes to exclude from the unit.

(c) All interested parties shall meet as soon as possible after the expiration of the 10-day posting period and shall attempt to resolve any issues in controversy.

(d) A labor organization may become an intervenor in any representation proceeding by submitting to the General Counsel, within the 10-day period, evidence that it represents at least 10 percent of the employees in the proposed unit or that it is the exclusive representative of the employees involved. Denial of a request to intervene may be appealed to the Board. Such an appeal must be filed within 10 days of service of the General Counsel's determination.

§ 28.115 Processing petitions.

(a) Upon the expiration of the 10-day posting period, and after the General Counsel considers an appropriate period has elapsed for consultation among the parties to resolve or identify issues, the General Counsel shall prepare a report to the Board which may recommend:

(1) Approval of any agreement entered into by the parties during their consultations including an agreement on the appropriate units, on the withdrawal of the petition, or on a joint request to conduct an election to determine which labor organization, if any, the employees select to be their exclusive bargaining representative;

(2) Dismissal of the petition as being without merit; or

(3) Issuance of a notice of hearing for the purpose of disposing of the remaining issues raised in the petition.

(b) The General Counsel's report shall be supplied to all interested parties, and, unless all parties agree to a shorter period, they shall have 15 days during which to file any response with the Board.

(c) The Board, as expeditiously as feasible after the expiration of the period specified in paragraph (b) of this section, but no later than 30 days thereafter, shall either approve the report and order appropriate steps to carry out its recommendations, or remand it to the General Counsel with further instructions.

(d) Where a hearing is ordered, an administrative judge shall be designated by the Board. The report of the administrative judge shall include Findings of Fact and Recommendations.

(e) After receiving the report from the administrative judge, and after providing the parties with an opportunity for comment, the Board shall issue a Decision and Order determining the appropriate unit, directing an election, dismissing the petition or making some other appropriate disposition of the matter.

(f) Final Decisions and Orders issued by the Board based on hearings held in accordance with paragraphs (d) and (e) of this section shall not be considered final decisions subject to appeal before the Circuit Courts of Appeal.

§ 28.116 Conduct of elections.

(a) The Board shall supervise any election it orders to be conducted, but may delegate ministerial functions relating to an election to any qualified independent organization; to members of the Board's full-time staff; or to temporary employees hired for this purpose.

(b) Appropriate notices setting forth details of the election shall be posted by GAO as directed by the Board.

(c) The Board shall, through its agents chosen to conduct the election:

(1) Provide the opportunity for all qualified voters to indicate their choices in secrecy;

(2) Offer qualified voters the opportunity to vote for any labor organization on the ballot, or to reject all labor organizations;

(3) Permit all parties to observe all aspects of the election procedure other than any which would interfere with the secrecy of the ballot;

(4) Provide for all parties to challenge the eligibility of any voters, and to impound the ballots of such voters, subject to later determination of eligibility should the number of challenges potentially affect the results;

(5) Certify to all parties the results of the election.

(d) Upon receiving a report of the results of the election, the Board shall:

(1) If necessary rule on the challenges and adjust the results accordingly;

(2) Formally announce the results and, where appropriate, designate a labor organization as the exclusive collective bargaining agent, or withdraw such a designation;

(3) Order a runoff or an additional election, if the Board deems it appropriate, where the results of the original election are inconclusive because no choice on the ballot has secured a majority of the valid votes cast. Not more than one additional and one runoff election may be held.

(i) *Runoff election.* The Board may order a runoff election where one or more of the labor organizations on the ballot has received the vote of at least 30 percent of the employees eligible to vote, but none has gained a majority of the votes cast. The runoff election will be between the two choices receiving the largest and the second largest number of votes in the original election.

(ii) *Additional election.* The Board may order an additional election where there is a tie vote between all of the choices on the ballot or where a runoff election is not feasible because there is a tie between the choices receiving the second most votes in the original election. The additional election will include all the choices that appeared on the original ballot.

Subpart F—Special Procedures; Unfair Labor Practices

§ 28.120 Authority of the Board.

(a) The procedures in this subpart relate in part to the Board's function, under 31 U.S.C. 753(a)(6), to "consider and order corrective or disciplinary action in a case arising from * * * a matter appealable to the Board under the labor-management relations program under (31 U.S.C. 732(e)(2)) including a labor practice prohibited under (31 U.S.C. 732(e)(1))."

(b) The system so established by the Comptroller General is required to provide that each employee of the GAO has the right to form, join or assist, or not form, join or assist an employee organization, freely and without penalty or reprisal, and for a labor-management relations program consistent with Chapter 71 of Title 5, U.S.C. (31 U.S.C. 732(e)).

§ 28.121 Unfair labor practices; Board procedures.

(a) Unfair labor practices are defined at GAO Order 2711.1. An allegation that a provision of GAO Order 2711.1 is inconsistent with Chapter 71 of Title 5, United States Code, and thereby denies to an employee or labor organization rights comparable to those granted by Chapter 71 of Title 5, United States Code, may also be raised under the unfair labor practice procedure.

(b) An allegation that unfair labor practices have been committed shall be subject to the procedures appearing in subpart B of this part for the filing of charges, investigation by the General Counsel, and the Board's disposition, except as set forth in paragraphs (c) and (d) of this section.

(c) Except as provided in paragraph (d) of this section, no petition for review may be filed based on any alleged unfair labor practice which occurred more than 6 months before the filing of an unfair labor practice charge with the charged party, as provided in paragraph 14b of GAO Order 2711.1, or more than 9 months before the filing of a charge with the General Counsel.

(d) If the Board determines that the charging party was prevented from filing the charge during the 6-month period referred to in paragraph (c) of this section by reason of:

(1) Any failure of the charged party to perform a duty owed to the charging party; or

(2) Any concealment which prevented discovery of the alleged unfair labor practice during the 6-month period; the charge will be considered timely filed, provided it was filed with the charged party during the 6-month period beginning on the day of the discovery of the alleged unfair labor practice by the charging party.

§ 28.122 Negotiability issues; compelling need.

Where the GAO and an exclusive bargaining representative disagree on whether a matter is subject to negotiation as part of the requirement to bargain in good faith, the matter shall be appealable to the Board under the following procedures:

(a) When, in connection with negotiations, a proposal is declared nonnegotiable, the party submitting the proposal shall, prior to the close of negotiations, submit to the other party a Request for Formal Negotiability Determination reciting the proposal in question. The party declaring the proposal nonnegotiable shall, within ten (10) days, deliver to the other party a Formal Negotiability Determination stating the basis for the Determination.

(b) A Formal Negotiability Determination may be appealed to the Board within 20 days of its service by filing a Petition for Review with the Board. A complete statement of argument from the petitioner should accompany the Petition for Review.

(c) The Board shall serve the Respondent with a copy of the Petition for Review and accompanying argument. Respondent shall reply to the Petition for Review within 20 days of its service upon respondent.

(d) One or more members of the Board shall review the arguments, hold a hearing if the administrative judge deems it necessary, and issue a decision.

(e) The decision shall become final in accordance with §§ 28.86–28.87.

§ 28.123 Standards of conduct for labor organizations.

(a) The GAO shall only accord recognition to labor organizations that are free from corrupt influences and from influences opposed to basic democratic principles. An organization is not required to prove it is free from such influence if it is subject to governing requirements calling for the maintenance of:

(1) Democratic procedures;

(2) Freedom from totalitarian influence;

(3) Independence on the part of its agents and officers from any business or financial interests which represent conflicts of interest or potential conflicts of interest; and

(4) Fiscal integrity, including provision for the dissemination of regular financial reports to its members.

(b) A labor organization which has or seeks recognition as a representative of employees under this chapter shall file financial and other reports with the Board and comply with trusteeship and election standards.

(c) A labor organization which has or seeks recognition under these Rules shall adhere to principles enunciated in

the Regulations issued by the Assistant Secretary of Labor for Labor/Management Relations regarding standards of conduct for labor organizations in the public sector. Complaints of violations of this section shall be filed with the Board. In any matter arising under this section, the Board may require a labor organization to cease and desist from violations of this section and require it to take such actions as it considers appropriate to carry out the policies of this section.

(d) This chapter does not authorize participation in the management of a labor organization or acting as a representative of a labor organization by a management official, a supervisor, or a confidential employee, or by any employee if the participation or activity would result in a conflict or apparent conflict of interest or would otherwise be incompatible with law or with the official duties of the employee.

(e) In the case of any labor organization which by omission or commission has willfully and intentionally called or participated in a strike, work stoppage or slowdown, or picketed in a manner which interfered with the operations of a government agency, or has condoned such activity, the Board shall, upon an appropriate finding it has made of such a violation—

(1) Revoke the recognition status of the labor organization; or

(2) Take any other appropriate disciplinary action.

(f) The General Counsel may charge a labor organization with violations of this section. The Board shall conduct proceedings with regard to such charge and may require a labor organization to take such actions as it deems necessary to carry out the policies of this section.

§ 28.124 Review of arbitration awards.

(a) *Filing an exception.* (1) Either party to arbitration, conducted pursuant to a grievance procedure under a collective bargaining agreement, may file with the Board an exception to the arbitrator's award rendered pursuant to the arbitration.

(2) The time limit for filing an exception to an arbitration award is 30 days from the service of the award on the filing party.

(3) An opposition to the exception may be filed by a party within 30 days after the service of the exception.

(4) A copy of the exception and any opposition shall be served on the other party.

(b) *Content of exception.* An exception must be a dated, self-contained document which sets forth in full:

(1) A statement of the grounds on which review is requested;

(2) Evidence or rulings bearing on the issues before the Board;

(3) Arguments in support of the stated grounds, together with specific reference to the pertinent documents and citations of authorities;

(4) A legible copy of the award of the arbitrator and legible copies of other pertinent documents; and

(5) The name and address of the arbitrator.

(c) *Grounds for review.* (1) The Board will review an arbitrator's award to which an exception has been filed to determine if the award is deficient—

(i) Because it is contrary to any law, rule or regulation; or

(ii) On other grounds similar to those applied by Federal courts in private sector labor-management relations.

(2) The Board will not consider an exception where:

(i) The award relates to an action based on unacceptable performance covered under 5 U.S.C. 4303;

(ii) The award relates to a removal, suspension for more than 14 days, reduction in grade, reduction in pay, or furlough of 30 days or less covered under 5 U.S.C. 7512; or

(iii) the exception is based on a GAO rule which was not introduced into the record submitted to the arbitrator.

(d) *Board decision.* The Board shall issue its decision and order taking such action and making such recommendations concerning the award as it considers necessary, consistent with applicable laws, rules, or regulations.

Subpart G—Corrective Action, Disciplinary and Stay Proceedings

§ 28.130 General authority.

The procedures in this subpart relate to the Board's functions "to consider, decide and order corrective or disciplinary action (as appropriate) in cases arising" from any area within the Board's jurisdiction.

§ 28.131 Corrective action proceedings.

(a) When information comes to the attention of the General Counsel suggesting that a prohibited personnel practice may have occurred, exists or is to be taken, the General Counsel shall investigate the matter to the extent necessary to determine whether there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken.

(b) If the General Counsel terminates any investigation under this section which is not also the subject of a charge, the General Counsel shall prepare and transmit to any person on whose allegation the investigation was initiated, a written statement notifying the person of the termination of the investigation and the reasons therefore.

(c) If the General Counsel determines that there are reasonable grounds to believe that a prohibited personnel practice has occurred, exists or is to be taken which requires corrective action and which is not also the subject of a charge, the General Counsel shall report the determination together with any findings or recommendations to the GAO.

(d) If, after a reasonable period, GAO has not taken the corrective action recommended, the General Counsel may file a petition for review with the Board. Such petition for review shall be processed in accordance with §§ 28.19 through 28.25.

§ 28.132 Disciplinary proceedings.

(a) If the General Counsel determines after any investigation under 31 U.S.C. 752(b) that disciplinary action should be initiated against an employee, the General Counsel shall prepare a written complaint against the employee containing his or her determination, together with a statement of the supporting facts, and present the complaint and the statement to the employee and the Board in accordance with paragraphs (b) and (c) of this section.

(b) In the case of an employee in a confidential, policy making, policy-determining, or policy-advocating position appointed by the President, by and with the advice and consent of the Senate, the complaint and statement referred to in paragraph (a) of this section, with any response by the employee, shall be presented to the Congress for appropriate action in lieu of being presented under paragraph (d) of this section.

(c) Any employee against whom a complaint has been presented to the Board under paragraph (a) of this section is entitled to:

(1) A reasonable time to answer orally and in writing and to furnish affidavits and other documentary evidence in support of the answer;

(2) Be represented by an attorney or other representative;

(3) A hearing before the Board or a member designated by the Board;

(4) Have a transcript kept of any hearing under paragraph (c)(3) of this section; and

(5) A written decision and reasons therefor at the earliest practicable date, including a copy of a final decision ordering disciplinary action.

(d) A final order of the Board may order disciplinary action consisting of removal, reduction in grade, debarment from GAO employment for a period not to exceed 5 years, suspension, reprimand, or an assessment of civil penalty not to exceed $1,000.

(e) There may be no administrative appeal from an order of the Board under paragraph (d) of this section. An employee subject to a final decision ordering disciplinary action under this section may obtain judicial review of the order in the U.S. Court of Appeals for the Federal Circuit in accordance with 31 U.S.C. 755.

§ 28.133 Stay proceedings.

(a) The General counsel may request the issuance of an ex parte stay, not to exceed 30 days in duration, of any proposed personnel action that, in the General Counsel's judgment, may constitute a prohibited personnel practice. Any such request shall be in writing and shall specify, among other things, the nature of the action to be stayed and the basis for the General Counsel's belief that a prohibited personnel practice may be involved. The General Counsel shall serve a copy of the request on the GAO. Within three business days of its filing, the request shall be granted by the Board member designated by the Board Chair to entertain it unless, in the opinion of that member, the request either fails to satisfy the requirements of this paragraph or, on its face, conclusively establishes the absence of a prohibited personnel practice.

(b) The General Counsel may request either a further temporary stay or a permanent stay of the proposed personnel action. Such a request shall be filed and served so as to be received by the Board and the agency no less than 10 days before the expiration of any ex parte stay issued under paragraph (a) of this section. The agency's response to the request shall be filed and served so as to be received by the Board and the General Counsel no less than three days before the expiration of the ex parte stay issued under paragraph (a) of this section.

(c) A stay request under paragraph (b) of this section will be considered and decided by the Board member who issued the ex parte stay under paragraph (a) of this section, unless the Board Chair determines that it should be considered and decided by the Board en banc.

(d) Upon initial consideration of a stay request under paragraph (b) of this section, the Board or the designated member thereof may:

(1) grant or deny the requested stay, in whole or in part, on the basis of the written submissions of the respective parties without additional briefing, oral argument, or the receipt of any documentary evidence or testimony;

(2) require further briefing of the issues presented by the request and/or call for oral argument; or

(3) conduct a hearing at which documentary evidence and testimony is received. If necessary, the ex parte stay issued under paragraph (a) of this section may be extended sua sponte for a period not to exceed 30 days to enable the Board or the designated member thereof a reasonable opportunity to decide the matter.

(e) In acting upon a stay request under paragraph (b) of this section, the Board or the designated member thereof shall consider and balance such established equitable factors as:

(1) The likelihood that the personnel action sought to be stayed involves a prohibited personnel practice; and

(2) The nature and extent of the injury that the employee and the agency likely will suffer if the requested stay is or is not issued. If a further temporary stay is granted based on a claim that the General Counsel requires additional time to conclude an investigation of the employee's complaint, the duration of that further stay shall not exceed the amount of time necessary to complete the investigation in the exercise of a high degree of diligence.

(f) Any order issued by a member of the Board granting or denying, in whole or in part, a stay request under paragraph (b) shall be subject to review by the Board en banc on the filing and service of a notice of appeal, accompanied by a supporting brief, within 10 days of the service of that order. Responsive briefs shall be filed and served within 10 days of service of the appeal.

(g) A motion to vacate a stay order may be filed at any time. A stay order issued by the Board en banc may not be vacated by a single Board member.

Subpart H—Appeals by Members of the Senior Executive Service

§ 28.140 Personnel actions involving SES members.

Members of the GAO Senior Executive Service (SES) may appeal adverse actions relating to misconduct, malfeasance or similar action to the Board in accordance with Subpart B of this part. Members of the GAO SES who allege that they have been subjected to a personnel action that constitutes a prohibited personnel practice or prohibited discrimination may appeal to the Board in accordance with subpart B or subpart D of this part respectively.

§ 28.141 Performance based actions.

A career appointee removed from SES to a GAO position outside the SES for less than fully successful executive performance shall, upon notice of such removal, be entitled, upon request, to an informal hearing before a member of the Board designated by the Chair of the Board.

(a) At the informal hearing, the career appointee and/or a representative and the agency may appear and present documentary evidence and argument.

(b) The Board member will determine which, if any, witnesses will be allowed to testify. As a general rule, no cross-examination of witnesses will be allowed. The Board member will have discretion to allow cross-examination of witnesses in exceptional circumstances.

(c) The informal hearing shall not give the career appointee the right to initiate an action with the Board under another provision of these rules, nor need the removal action be delayed as a result of the granting of such hearing.

Subpart I—Ex Parte Communications

§ 28.145 Policy.

It is the policy of the Board to regulate strictly ex parte communications between members of the Board and their decision-making personnel and any interested party to a proceeding before the Board.

§ 28.146 Explanation and definitions.

(a) Ex parte communications are oral or written communications between decision-making personnel of the Board and an interested party to a proceeding without providing the other parties to the proceeding a chance to participate. Not all ex parte communications are prohibited, however, only those which involve the merits of the case or those which violate other rules requiring submissions to be in writing. Accordingly, interested parties may make inquiries about such matters as the status of a case, when it will be heard, and the method for transmitting evidence to the Board. Such communications should be directed to the Clerk of the Board. Parties may not inquire about such matters as what defense they should use or whether their evidence is adequate, make a submission orally which is required to be in writing, or otherwise inquire as to the merits of a pending case.

(b) In this subpart—

(1) "Interested party" includes:

(i) Any party, including the General Counsel of the Board, or representative

of a party involved in a proceeding before the Board;

(ii) Any person desiring to intervene in any proceeding before the Board; or

(iii) Any other person who might be affected by the outcome of a proceeding before the Board.

(2) "Decision-making personnel" means the Board, a panel of Board members, a Board member, an administrative judge, and/or an employee of the Board, who reasonably can be expected to participate in the decision-making process of the Board.

§ 28.147 Prohibited communications.

Ex parte communications concerning the merits of any matter before the Board for adjudication, or which would otherwise violate rules requiring written submissions, are prohibited from the time the interested party involved has knowledge that the matter may be considered by the Board until the Board has rendered a final decision on the case.

§ 28.148 Reporting of communications.

Any communication made in violation of this section shall be made part of the record in the proceeding and an opportunity for rebuttal allowed. If the communication was oral, a memorandum stating the substance of the discussion shall be placed in the record.

§ 28.149 Sanctions.

The following sanctions shall be available for violations of this Subpart:

(a) The Board, a panel of Board members, a Board member or an administrative judge, as necessary, may, in the interest of justice, require the offending party to show cause why his or her claim, interest, motion or petition should not be dismissed, denied or otherwise adversely affected.

(b) The Board, a panel of Board members, a Board member or an administrative judge, as necessary, may invoke such sanctions against any offending party as may be appropriate under the circumstances.

Subpart J—Statement of Policy or Guidance

§ 28.155 Statement of policy or guidance.

Upon petition by any person, or on its own motion, the Board may issue statements of policy or guidance. In determining whether to issue such a statement, the criteria to be considered by the Board will include, but not be limited to, the following:

(a) Whether the question presented can more appropriately be resolved by other means;

(b) Where other means are available, whether a Board statement would prevent the proliferation of cases;

(c) Whether the resolution of the question presented would have general applicability;

(d) Whether the question currently confronts the parties as part of their employee-management relationship;

(e) Whether the question is presented jointly by the parties involved; and

(f) Whether the issuance by the Board of a statement of policy or guidance would promote the purposes of the General Accounting Office Personnel Act.

Alan S. Rosenthal,

Chair, Personnel Appeals Board, General Accounting Office.

[FR Doc. 93–28652 Filed 11–22–93; 8:45 am]

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federal register

Tuesday
November 23, 1993

Part IV

Department of the Interior

Bureau of Indian Affairs

Petition for Acknowledgement of Existence as Indian Tribe; Wintu Tribe of Northern California; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Receipt of Petition for Federal Acknowledgment of Existence as an Indian Tribe

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice.

SUMMARY: This is published in the exercise of authority delegated by the Secretary of the Interior to the Assistant Secretary—Indian Affairs by 209 DM 8.

Pursuant to 25 CFR 83.8(a) (formerly 25 CFR 54.8(a)) notice is hereby given that the Wintu Tribe of Northern California, c/o Caleen Sisk-Franco, 1226 Jackson Street, Chico, California 95928, has filed a petition for acknowledgment by the Secretary of the Interior that the group exists as an Indian tribe. The petition was received by the Bureau of Indian Affairs (BIA) on August 25, 1993, and was signed by members of the group's governing body.

This is a notice of receipt of petition and does not constitute notice that the petition is under active consideration. Notice of active consideration will be sent by mail to the petitioner and other interested parties at the appropriate time.

Under section 83.8(d) (formerly 54.8(d)) of the Federal regulations, interested parties may submit factual and/or legal arguments in support of or in opposition to the group's petition. Any information submitted will be made available on the same basis as other information in the BIA's files. Such submissions will be provided to the petitioner upon receipt by the BIA. The petitioner will be provided an opportunity to respond to such submissions prior to a final determination regarding the petitioner's status.

The petition may be examined, by appointment, in the Department of the Interior, Bureau of Indian Affairs, Branch of Acknowledgment and Research, room 1362–MIB, 1849 C Street, NW., Washington, DC 20240, Phone: (202) 208–3592.

FOR FURTHER INFORMATION CONTACT: Holly Reckord, (202) 208–3592.

Dated: September 27, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs

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federal register

Tuesday
November 23, 1993

Part V

Department of Agriculture

Food Safety and Inspection Service

9 CFR Part 306, et al.
Prior Labeling Approval System; Proposed Rule

DEPARTMENT OF AGRICULTURE

Food Safety and Inspection Service

9 CFR Parts 306, 317, 320, 327, and 381

[Docket No. 92-012P]

RIN 0583-AB50

Prior Labeling Approval System

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is proposing to amend the Federal meat and poultry products inspection regulations by expanding the types of labeling currently authorized for use on meat and poultry products by official establishments in the United States and foreign establishments certified under foreign inspection systems which would be generically approved. FSIS is also requesting comment on an alternative option where all labeling for meat and poultry products would be generically approved. This proposal would eliminate unnecessary duplication in the labeling approval system, and contribute to President Clinton's initiatives for greater efficiency in government services.

DATES: Comments must be received on or before January 24, 1994.

ADDRESSES: Written comments to: Policy Office, Attn: Diane Moore, FSIS Hearing Clerk, room 3171, South Agriculture Building, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250. Oral comments as provided by the Poultry Products Inspection Act should be directed to Ms. Cheryl Wade, (202) 254-2590. (See also "Comments" under **SUPPLEMENTARY INFORMATION.**)

FOR FURTHER INFORMATION CONTACT: Ms. Cheryl Wade, Acting Director, Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, Area Code (202) 254-2590.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

The proposed rule has been reviewed under Executive Order 12866. The proposed rule would eliminate an estimated $4 million in direct label application costs and reduce the paperwork burdens of operators of all official establishments in the United States and establishments in foreign countries certified by responsible officials of foreign inspection systems by reducing the types of labeling that would have to be submitted for prior review and approval by FSIS. Such foreign establishments are certified by responsible officials of foreign meat and poultry inspection systems, to the Department, in accordance with parts 327 and 381, subpart T, of the Federal meat and poultry products inspection regulations as fully complying with requirements at least equal to those imposed on domestic products and establishments. Such foreign establishments are then eligible to have their meat and poultry products imported into the United States, unless the Administrator terminates their eligibility to import products in accordance with parts 327 and 381, subpart T, of the Federal meat and poultry products inspection regulations. The proposed rule would also reduce market inefficiencies caused by delays in new product introduction attributable to the labeling application and review process.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. States and local jurisdictions are preempted under the Federal Meat Inspection Act (FMIA) and the Poultry Products Inspection Act (PPIA) from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected meat and poultry products that are in addition to, or different than, those imposed under the FMIA or PPIA. States and local jurisdictions may, however, exercise concurrent jurisdiction over meat and poultry products that are outside official establishments for the purpose of preventing the distribution of meat and poultry products that are misbranded or adulterated under the FMIA or PPIA, or, in the case of imported articles, which are not at such an establishment, after their entry into the United States. Under the FMIA and PPIA, States that maintain meat and poultry inspection programs must impose requirements that are at least equal to those required under the FMIA and PPIA. The States may, however, impose more stringent requirements on such State inspected products and establishments.

No retroactive effect will be given to this proposed rule. The administrative procedures specified in 9 CFR 306.5 and 381.35 must be exhausted prior to any judicial challenge of the application of the provisions of this rule, if the challenge involves any decision of an inspector relating to inspection services provided under the FMIA or PPIA. The administrative procedures specified in 9 CFR parts 335 and 381, subpart W, must be exhausted prior to any judicial challenge of the application of the provision of this rule with respect to labeling decisions.

Effect on Small Entities

The Administrator, FSIS, has made an initial determination that this proposed rule would not have a significant economic impact on a substantial number of small entities. This proposal would impact the small businesses referred to a label expediters because the number of labels requiring the existing expediting service would decrease. The initial determination is based on a finding that there is not a substantial number of expediters. The Agency also believes that the economic impact may not be significant if the existing label expeditors are able to modify the services they offer and provide consulting services to their existing clients. The proposed rule would also provide a positive, but not significant impact, on a large number of small meat and poultry processors and importers.

Reducing direct labeling application costs does not necessarily reduce the need for obtaining outside advice on how best to comply with labeling rules and regulations. FSIS is interested in receiving comments on the potential impact of this proposed rule on labeling expediters, domestic and foreign meat and poultry processors, and importers.

Paperwork Requirements

This proposal would require meat and poultry official establishments and foreign establishments certified by responsible officials of foreign meat and poultry inspection systems to maintain certain records supporting the use of labeling applied to meat and poultry products, and to make such records available to any duly authorized representative of the Secretary upon request. This proposal would expand the types of generically approved labeling currently authorized for use by official establishments and foreign establishments without being required to be submitted for approval by FSIS in Washington or in the field. The proposal would also require official establishments and establishments certified under foreign inspection systems to submit to FSIS for approval only sketch labeling, thus eliminating for such establishments submission to FSIS of final labeling, with the exception of temporary approvals.

FSIS is proposing that official establishments and establishments certified by responsible officials of foreign inspection systems maintain a copy of all labeling used on product,

along with the product formulation and processing procedures. Such records would be required to be made available to any duly authorized representative of the Secretary. FSIS believes that if a question arises regarding a labeling issue, a copy of the labeling in question, along with the product formulation and processing procedures, should be made available to the inspector or other authorized representative of the Secretary. The Agency is also proposing to conduct random sampling of generically approved labeling from the records maintained by official establishments in order to monitor compliance with labeling requirements. Thus, such recordkeeping of labeling would be necessary to accommodate that monitoring process.

The paperwork requirements contained in this proposal have been submitted to the Office of Management and Budget for approval under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Alternative Option Considered

In developing this proposal, FSIS also considered the alternative of proposing a system where all labeling for domestic and imported products would be generically approved.

Under this alternative, there would not be any labeling review and approval conducted by program employees, either at headquarters or in the field. Establishments would be authorized to design, develop, print and apply labeling without any submission to FSIS, provided the labeling complies with existing labeling regulations. As with generically approved labeling under the proposed rule, establishments would be required to maintain records for all labeling. These records would include a copy of the labeling used on the product and a record of the product formulation and processing procedure. In addition, similar to the proposed rule, an all-generic system would include an enhanced sampling program to assure that labeling is accurate and not misleading. It is envisioned that this sampling program would supplement, but not replace, the existing inplant inspection task that directs inspectors of official establishments and analogous personnel of certified foreign establishments to check a sample of labeling to determine if the labeling is correct and used as intended. The Agency intends to complete an assessment of existing and planned sampling in conjunction with development of the final rule.

Both the proposed rule and the alternative of expanding generic approvals to cover all labeling were identified in an Advance Notice of Proposed Rulemaking (ANPR) published on March 25, 1992. The Department recognizes that both options identified in the ANPR represent a change in how firms would conduct new product development and new product introduction. Because these decisions are so integrally related to business profits and financial viability, it is understandable that this rulemaking has raised concerns. There are certainly unknowns and uncertainties raised by the alternative of total elimination of the headquarter's labeling review function. As mentioned above, the Agency is seeking comments to further evaluate the total generic option. To facilitate these comments, the Agency has summarized what it views as the three primary concerns associated with the second option of the ANPR. These are:

1. The headquarters' review function in the present system identifies and corrects problems with many labeling applications. To maintain the current level of accuracy, the FSIS review function will have to be replaced. Firms will have the option of expanding their internal knowledge of labeling rules and regulations or seeking outside advice from experts or consultants. FSIS is seeking specific comments that address the question of additional resources required by official establishments. It may be that a body of central expertise is most efficient, whether or not that function resides within FSIS.

2. As mentioned above, inspectors in official establishments and analogous personnel for foreign establishments currently examine labeling to determine if it is correct and used as intended.

Occasionally, product is retained if the inspector determines that the labeling is false or misleading. If the accuracy of labeling is maintained, the Agency foresees no reason for the frequency of such actions to change. Under either option, the Agency already has procedures for appealing decisions by Program employees, including the denial or withdrawal of the use of labeling on meat and poultry products. The type of problem frequently identified through inspection is the presence of an ingredient not identified in the ingredient list or the absence of an ingredient that is listed. There is no reason to believe that Agency review of labeling (the current system) reduces the frequency of this type of labeling error.

3. Some labeling is developed in conjunction with an entirely new product or new process, and may use new processing techniques and/or new equipment not previously approved. Under the current system, firms have the option of obtaining headquarter's approval of labeling and equipment before they invest in new equipment or make plant modifications. There may be some concern that without headquarter's review and approval of such labeling, firms would be more reluctant to take risks. A total generic approval system would not necessarily reduce all delays in new product introduction currently attributable to the labeling application and review process. Under such a system, the Agency would not be reviewing labeling associated with new products or processes. It would, however, be unrealistic to presume that the Agency could entirely remove itself from the function of providing policy advice and guidance on the acceptability of new products or ingredients. An almost identical concern is the specter of having labeling rejected after it has been used extensively and captured a share of the market. As with new products or processes, the removal of the review function does not mean that firms will be operating in a policy vacuum.

Comments

Interested persons are invited to submit comments concerning this proposal. Written comments should be sent to the Policy Office and refer to Docket No. 92–012P. Any person desiring an opportunity for an oral presentation of views, as provided by the Poultry Products Inspection Act, should make such request to Ms. Cheryl Wade so that arrangements can be made for such views to be presented. A transcript will be made of all views orally presented. All comments submitted in response to this proposal will be available for public inspection in the Policy Office from 9 a.m. to 12:30 p.m. and from 1:30 p.m. to 4 p.m., Monday through Friday.

Background

Introduction

The Federal Meat Inspection Act (FMIA) (21 U.S.C. 601 *et seq.*) and the Poultry Products Inspections Act (PPIA) (21 U.S.C. 451 *et seq.*) direct the Secretary of Agriculture to maintain meat and poultry inspection programs designed to assure consumers that meat and poultry products distributed to them (including imports) are wholesome, not adulterated, and properly marked, labeled, and packaged.

Section 2 of the FMIA (21 U.S.C. 602) and section 2 of the PPIA (21 U.S.C. 451) state that unwholesome, adulterated, or misbranded meat or meat food products and poultry products are injurious to the public welfare, destroy markets for wholesome, not adulterated,

and properly marked, labeled, and packaged products, and result in sundry losses to producers and processors of meat and poultry products, as well as injury to consumers. Therefore, Congress has granted the Secretary broad authority to protect consumers' health and welfare. Section 7(d) of the FMIA (21 U.S.C. 607(d)) states: "No article subject to this title shall be sold or offered for sale by any person, firm, or corporation, in commerce, under any name or other marking or labeling which is false or misleading, or in any container of a misleading form or size, but established trade names and other marking and labeling and containers which are not false or misleading and which are approved by the Secretary are permitted." The PPIA contains similar language in section 8(c) (21 U.S.C. 457(c)).

Under the latter provisions, the Secretary of Agriculture or his or her representative has the responsibility to approve all labels or other labeling to be used on Federally inspected and imported products prior to the distribution of such products from establishments that distribute such products in interstate or foreign commerce. Without approved labeling, products may not be sold or offered for sale or otherwise distributed in commerce. The term "labeling", as defined in section 1(p) of the FMIA and section 4(s) of the PPIA (21 U.S.C. 601(p) and 453(s), respectively), means all labels and other written, printed, or graphic matter (1) upon any article or any of its containers or wrappers, or (2) accompanying such article.

The aforementioned provisions also apply to establishments that operate solely within designated States. A State is designated if it does not have or is not effectively enforcing with respect to establishments within its jurisdiction at which livestock or poultry are slaughtered, or their carcasses, or products thereof, are prepared for use as human food solely for distribution within such State, requirements at least equal to titles I and IV of the FMIA and specified sections of the PPIA as applicable. Once a State is designated, the inspection requirements of the FMIA and PPIA apply to establishments that slaughter livestock and poultry and/or prepare or process meat and/or poultry products therefrom, solely for distribution within the State.

Section 1(m)(8) of the FMIA (21 U.S.C. 601(m)(8)) and section 4(g)(8) of the PPIA (21 U.S.C. 453(g)(8)) provide that any carcass, part thereof, meat or meat food product or any poultry product is adulterated "* * * if any valuable constituent has been in whole or in part omitted or abstracted therefrom; or if any substance has been substituted, wholly or in part therefor; or if damage or inferiority has been concealed in any manner; or if any substance has been added thereto or mixed or packed therewith so as to increase its bulk or weight, or reduce its quality or strength, or make it appear better or of greater value than it is * * *." Furthermore, section 1(n)(1) of the FMIA (21 U.S.C. 601(n)(1)) and section 4(h)(1) of the PPIA (21 U.S.C. 453(h)(1)) prescribe that any carcass, part thereof, meat or meat food product or poultry product is considered misbranded if its labeling is false or misleading in any particular.

In order to prevent product adulteration and misbranding, the FMIA and PPIA further authorize the Secretary to prescribe, whenever he or she determines such action is necessary for the protection of the public, (1) the styles and sizes of type to be used with respect to material required to be incorporated in labeling to avoid false or misleading labeling, and (2) definitions and standards of identity or composition for meat and poultry products (section 7(c) of the FMIA, 21 U.S.C. 607(c), and section 8(b) of the PPIA, 21 U.S.C. 457(b)).

Current Regulations

The labeling provisions of the meat and poultry products inspection regulations specify the required features of meat and poultry product labels for immediate containers of domestic product (9 CFR part 317 and 9 CFR part 381, subpart N) and for imported product (9 CFR part 327 and 9 CFR part 381, subpart T). These include: (1) The standardized, common or usual, or descriptive name of the product; (2) an ingredients statement containing the common or usual name of each ingredient listed in descending order of predominance; (3) the name and place of business of the manufacturer, packer, or distributor; (4) an accurate statement of the net quantity of contents; (5) the inspection legend; and (6) special handling instructions if product is perishable; i.e., "Keep Frozen" and "Keep Refrigerated." These essential labeling features must be prominently and informatively displayed on the principal display panel or the information panel of the product label.

The regulations contain other provisions to ensure that no statement, word, picture, design, or device which is false or misleading in any particular or conveys any false impression or gives any false indication of origin, identity, or quality, shall appear in any marking or other labeling (9 CFR 317.8 and 381.129). For example, for meat products terms having geographic significance with reference to a locality other than that in which the product is prepared may appear on the label only when qualified by the word "style", "type", or "brand", as the case may be, and accompanied with a prominent qualifying statement identifying the country, State, territory, or locality in which the product is prepared (9 CFR 317.8(b)(1)). Further, coverings for meat or meat products shall not be of such color, design, or kind as to be misleading with respect to color, quality, or kind of product (9 CFR 317.8(b)(5)).

Any marking or labeling which is determined to be false or misleading within the meaning of the FMIA or the PPIA and the regulations promulgated thereunder causes the article to which it relates to be misbranded, and, pursuant to the authority contained in section 7(e) of the FMIA (21 U.S.C. 607(e)) and section 8(d) of the PPIA (21 U.S.C. 457(d)), and §§ 335.12 and 381.233 of the Federal meat and poultry products inspection regulations (9 CFR 335.12 and 381.233), the Administrator, FSIS, may withhold the use of such marking or labeling.

In addition to providing substantive labeling requirements, the Federal meat and poultry products inspection regulations provide specific information regarding permitted and nonpermitted uses of various substances (9 CFR part 318 and part 381, subpart 0). These provisions prohibit the use of any food additive, color additive, pesticide chemical, or other added poisonous or deleterious substance, or any other substance in or on meat and poultry products that would cause such articles to be adulterated or misbranded within the meaning of the FMIA and PPIA. These provisions are designed to ensure, among other things, that ingredients aimed at improving physical qualities of a product, such as flavor, color, and shelf-life, meet a specific justifiable need in the product and do not promote deception as to product freshness, quality, weight, or size, or otherwise cause the product to be adulterated or misbranded.

The Federal meat and poultry products inspection regulations also prescribe definitions and standards of identity or composition for certain meat and poultry products (9 CFR part 319 and part 381, subpart P). Standards of composition identify the minimum amount of meat and/or poultry required in a product's recipe. For example, the standard of composition for "Chicken a la King" requires that, if a product bears this name on its label, at least 20

percent cooked deboned poultry meat must be used in the recipe (9 CFR 381.167).

Standards of identity set specific product requirements for a product's makeup. These standards often specify (1) the kind and minimum amount of meat and/or poultry; (2) the maximum amount of nonmeat ingredients, such as fat or moisture; and (3) any other ingredients allowed or expected in the final product.

Meat and poultry product standards provide a simple and direct means by which consumers can learn what to expect from a product if it is labeled with a particular name. Thus, these requirements help to ensure that consumers' expectations are met.

Current Prior Label Approval System

In order to assure that meat and poultry products comply with the FMIA and PPIA and the regulations promulgated thereunder, FSIS conducts a prior approval program for labels and other labeling as specified in 9 CFR 317.4, 317.5, 327.14, 327.15, 381.132, 381.134, and 381.205 to be used on federally inspected meat and poultry products and imported products. This program is administered by the Food Labeling Division (FLD), Regulatory Programs, FSIS, in Washington, DC.

To obtain labeling approval, domestic meat and poultry processors and certified foreign establishments, or their representatives, must submit final labels and other final labeling, except under certain conditions. Meat and poultry processors and certified foreign meat establishments may submit sketch labeling (a printer's proof or other version which clearly shows all required labeling features, size, location, and indication of final color), accompanied by FSIS Form 7234, "Application for Approval of Labels, Marking or Device," to FLD for review. Certified foreign poultry establishments are required to submit sketch and finished (final) labels of immediate containers for review and approval. The labeling application and sketch or final printed labeling to be used on domestic meat and poultry products and on imported meat products must be submitted to FLD in triplicate. Certified foreign poultry establishments must submit two copies of sketch and four copies of final labels to FLD. In addition to the required information, any special claims the processor intends to make (e.g., quality claims or nutrient content claims) must also be included on the labeling. The labeling application must contain the processing procedures and handling information, including the following as indicated on the form:

1. Product name; i.e., the standardized, common or usual, or descriptive name of the product;

2. Formulation information; i.e., listing by percentage or actual amount of ingredients in descending order of predominance, and method of preparation;

3. Firm name and address;

4. How the labeling is to be used; i.e., consumer size, institutional capacity, or shipping container;

5. Size and type of container, such as wrapper, casing, or carton; and

6. Size of the principal display panel.

All such information is reviewed by an FSIS label review specialist who is responsible for assuring that the labeling complies with all Federal regulations and labeling policies.

In 1983, the Agency promulgated regulations which granted limited labeling approval authority to the inspector-in-charge (IIC) of official establishments and established limited types of generically approved labeling for official establishments (48 FR 11410). This rulemaking did not establish analogous provisions for certified foreign establishments. This rulemaking was intended to reduce the number of labels and other labeling reviewed and processed by FLD, thereby improving the efficiency of the labeling approval system by expediting the process for specific types of labeling and reducing the paperwork burden on official establishments. As a result of these regulations, the IIC has authority (9 CFR 317.4(e) and 381.132(c)) to approve the following types of labeling provided certain requirements are satisfied:

1. Final labeling of labeling already approved in sketch or proof form by FLD and the final labeling is prepared without modification or with only minor modification as follows:

a. Brand name changes, provided there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance and the brand name does not affect the name of the product;

b. The deletion of the word "new" on new product labeling;

c. The addition, deletion, or amendment of handling instructions, provided that the change is consistent with § 317.2 or § 381.125;

d. Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label, provided the change in quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in parts 318 and 319 or § 381.147;

e. Changes in the color of the labeling, provided that the IIC is satisfied that sufficient contrast and legibility remain;

f. A change in the product vignette, provided the change does not affect mandatory labeling information; or

g. The addition, deletion, or substitution of the official USDA grade shield on labeling for poultry products;

2. Labeling for single-ingredient products (such as beef steaks, or lamb chops, or chicken or turkey thighs) which do not contain quality claims (such as "blue ribbon" or "choice"), negative claims (such as "no sugar added"), geographical claims, nutritional claims, guarantees, or foreign language;

3. Labeling for containers of meat and meat food products and poultry products sold under contract specifications to Federal Government agencies, when such product is not offered for sale to the general public, provided the contract specifications include specific requirements with respect to labeling, and are made available to the IIC;

4. Labeling for shipping containers which contain fully labeled immediate containers, provided such labeling for poultry products comply with § 381.127;

5. Labeling for products not intended for human food, provided they comply with part 325 and § 381.152(c), and labels for poultry heads and feet for export for processing as human food if they comply with § 381.190(b);

b. Inspection legends, which comply with parts 312 and 316 and with subpart M of part 381;

7. Meat carcass ink brands, and meat food product ink and burning brands, which comply with parts 312 and 316; and

8. Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within containers, and coverings of products, provided such devices contain no reference to product and bear no misleading feature.

The regulations also specify limited types of generically approved labeling; that is, certain modified labeling authorized for use by the establishment without submission for approval to FSIS, provided such labeling was previously approved by FLD and the labeling shows all mandatory information in a sufficiently prominent manner and is not otherwise false or misleading in any particular (9 CFR 317.5 (a) and (b) and 381.134 (a) and (b)). The IIC is also currently authorized to approve these types of labeling (9

CFR 317.4(e)(3)(i) and 381.132(c)(3)(i)). Generically approved labeling is labeling which contains one or more of the following modifications:

1. All features of the labeling are proportionately enlarged or reduced, provided all minimum size requirements specified in applicable regulations are met and the labeling is legible;

2. There is substitution of such abbreviations as "lb." for "pound", or "oz." for "ounce", or the word "pound" or "ounce" is substituted for the abbreviation;

3. A master or stock label has been approved from which the name and address of the distributor are omitted and such name and address are applied before being used (in such case, the words "prepared for" or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

4. During holiday seasons, wrappers or other covers bearing floral or foliage designs or illustrations of rabbits, chicks, fireworks, or other emblematic holiday designs are used with approved labeling (the use of such designs will not make necessary the application of labeling not otherwise required);

5. There is a change in the language or the arrangement of directions pertaining to the opening of containers or the serving of the product;

6. The addition, deletion, or amendment of a coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information;

7. Any change in the name or address of the packer, manufacturer, or distributor that appears in the signature line;

8. Any change in the net weight, provided the size of net weight statement complies with § 317.2 or § 381.121 of the regulations;

9. The addition, deletion, or amendment of recipe suggestions for the product;

10. Any change in punctuation;

11. Newly assigned or revised establishment numbers for a particular establishment for which use of the labeling has been approved by FLD or the IIC assigned to that establishment;

12. The addition or deletion of open dating information;

13. A change in the type of packaging material on which the label is printed; or

14. The addition of safe handling instructions as required by § 317.2 or § 381.125.

Under current regulations, official establishments are not required to submit labeling, that comes within the categories of labeling the IIC can approve, to the IIC for approval, but rather have the option of submitting the labeling to FLD for approval. Further, under the regulations, official establishments may submit labeling that comes within the generically approved category, at their option, to FSIS for approval.

Currently, official establishments may submit sketch labeling but must submit final labeling to FLD for approval, except as discussed above. When the official establishment prints final labeling based on a previously approved sketch, the final labeling, along with a labeling application, must still be processed and approved by either the IIC or FLD, depending on the modification made to the final labeling. Although the IIC has the authority to approve some of these final labeling, it is not mandatory and, consequently, many official establishments have continued to submit them to FLD for approval.

The Agency believed that the 1983 provisions would decrease the number of labels and other labeling submitted to FLD, and reduce the industry's burden by eliminating the need for FSIS approval of labeling with certain modifications. However, these provisions have not alleviated the burden on industry, nor have they significantly reduced the number of labels and other labeling being submitted to FLD. During the development of the 1983 rule, FSIS estimated the number of labels and other labeling reviewed by FLD at approximately 130,000. During fiscal year 1991, FLD processed approximately 210,000 labels—87,500 final labels and 60,000 sketch labels were reviewed and approved, 20,000 labels were reviewed but not approved, and about 43,000 IIC-approved labels were received for auditing. No records are maintained on numbers of temporary approvals, generically approved labels, or labeling inserts.

The continuing increase in the numbers of labels and other labeling submitted to FLD and limited Agency resources led to an Agency assessment of the prior label approval system in 1990. In exploring options for an improved labeling approval system, the Agency decided to institute a plan to automate the labeling review process and to revise internal procedures.

Modernizing the Labeling Approval System

FSIS plans to modernize its procedure for labeling approval by implementing a new system to be called the Label Analysis, Tracking, and Information System (LATIS). This system will include information on policy, rules, technical references, nutrition information, and previously submitted applications. FSIS labeling review specialists will be able to apply the information to analyze the components of a proposed label and other labeling and to electronically route the labeling through the necessary steps towards approval.

The purpose of LATIS, which will be phased into operation over several years, will be to improve the efficiency, uniformity, and accuracy of the labeling review procedure. The new labeling review procedures will replace the current manual system that evolved to meet the needs of a simpler, smaller food industry. Internal assessments and a report by the USDA Inspector General in 1990 recommended changes in the current labeling approval system to improve efficiency and to address projected increases in both volume and complexity of labeling applications. FSIS believes that an automated labeling review procedure is necessary to keep pace with advancing technology, changing consumer expectations, and emerging health concerns.

As the first step, FSIS is implementing a label tracking system, electronic access to technical references, and calculation assistance for evaluating nutrition information on labels. In addition, the Agency is designing a new application form that will allow electronic data entry and automatic calculations of restricted ingredients allowances. The automated system will provide FSIS label reviewers with the capability of electronic analysis, tracking, and information retrieval.

Discussion of Comments

On March 25, 1992, FSIS published an Advance Notice of Proposed Rulemaking (ANPR) (57 FR 10300) on the Agency's prior labeling approval system. The ANPR presented the following two options for making additional changes to the current prior label approval system: (1) Revise the current system by significantly reducing the scope of review, through expanding the categories of generically approved labeling and replace the current general requirement of FSIS approval of sketch and final labeling with one for sketch labeling only; and (2) replace the current system with a system in which all labeling would be generically approved and used without prior submission to FSIS.

FSIS sought comments on these two options and welcomed comments on other options. FSIS also sought

comments on the role of the IIC with regard to review or enforcement of labeling, and on whether generic approval should be provided for labeling that includes geographical, quality, health, nutrient content, or negative claims, or guarantees.

FSIS received 110 comments in response to the ANPR. Sixty-one comments were submitted by meat and poultry manufacturers, while 18 were received from consumers, 9 from trade associations, 2 from food retailers, 7 from professional organizations, 9 from label expediters, 2 from food service organizations, 1 from a Federal employee, and 1 from an importer/exporter.

The majority of the commenters agreed that expanding the generic categories and approving sketch labeling was the preferable system to adopt (option 1). The comments favoring this option raised several other issues in support of the option. Several commenters supported an all generic approval system (option 2). Only one commenter addressed the issue regarding generic approval for labeling that included claims. One consumer group stated that generically approved labeling with claims should be subject to prior approval. Other issues raised by the commenters and the Agency's response to each issue are as follows:

1. Sketch Approval and Voluntary Final Approval

Most commenters strongly agreed that submission of sketches for approval should replace the general requirement that final labeling be submitted for current approval and offered various modifications to this type of revision consistent in part with Option 1 in the ANPR. These modifications were to have all sketches approved by FLD and to include voluntary final approvals as part of the approval system. One commenter, however, suggested that sketch approval by FLD be optional. Over 50 percent of the comments in support of sketch approval also supported FLD's approving final labeling if submitted to it on a voluntary basis. Commenters believed that offering voluntary approval of final labeling would provide additional assurance that the labeling met all regulatory requirements.

FSIS is proposing a system of submission of sketch labeling to FLD, for approval, except for certain categories of generically approved labeling, with no requirement or allowance for submission of final labeling to FLD or the field for approval, except for temporary approved labeling (see proposed §§ 317.4(g), 381.132(g)). FSIS believes it is an unnecessary burden on industry and FSIS to require the submission of final labeling when the sketch has been previously approved. The Agency believes certain types of modifications to sketch labeling can be made by official establishments and certified foreign establishments and need not be required to be submitted for review.

In addition, one commenter suggested that FSIS require sketch approval for products with a standard of identity or composition rather than including this category under generic labeling. The Agency believes that approval of sketches for standardized product labeling is unnecessary because such labeling would pose little, if any, risk of misbranding since the regulatory standards specify the product name to be used on the labeling and the permitted ingredients.

2. Generic Approvals

Although the majority of commenters strongly supported option 1, which expands the category of generically approved labeling, several of those commenters believed that the generically approved category should be expanded even further. One commenter suggested that generic approvals be expanded to include sketch approval.

The Flavor and Extract Manufacturers Association supported option 2 as it applied to flavors. Flavors which are amenable to the Acts are subject to Prior Label Approval. FSIS has found these labels to be complex labels that require a high level of technical review. This is to assure that all reactions and resulting proteinaceous materials are properly identified in the ingredient statement. FSIS's regulations do not provide labeling instructions on these types of products. For this reason, FSIS believes this labeling should be subject to prior approval.

The commenter also requested elimination of FSIS's review of flavors by the Proprietary Mix Committee. This FSIS committee provides informal advice on labeling of nonamenable flavoring and batter and breading mixes, which is a voluntary service. FSIS believes the issue of eliminating the review by the Proprietary Mix Committee falls outside the scope of this rulemaking; therefore, the Agency will not address it in this rule.

While FSIS acknowledges that certain portions of the industry desire to further expand the category of generically approved labeling, the Agency is reluctant to expand the category any further until it can demonstrate that this labeling procedure will continue to provide the public with labeling that is accurate and not misleading.

3. Temporary Approval

Over 25 percent of the comments raised the issue of temporary approvals. The absence of a discussion in the ANPR led readers to believe that there may not be any provision for temporary approvals. Although FSIS is proposing that it would not require approval of final labeling, the Agency would continue to receive requests from establishments for temporary use of a final label for a period not to exceed 180 days, unless approved beyond 180 days, as further discussed under the "Proposed Rule" section of this document.

4. Approval of Labels for Imported Products

Over 10 percent of the commenters suggested that a revised labeling approval system provide sketch and final approval for foreign labels or labeling. FSIS believes these comments were referring to imported products. The Federal meat and poultry products inspection regulations identify those foreign countries which maintain meat and poultry inspection systems at least equal to the inspection systems of the United States, and which have been determined by FSIS to be eligible for importation of meat and poultry products into the United States (9 CFR 327.2 and 381.196). Only those establishments located in an approved foreign country and certified, as complying with "at least equal to" requirements, to FSIS by a responsible official of the approved foreign meat or poultry inspection system are eligible to have their meat or poultry products imported into the United States. Labeling for such products entering this country must meet to all USDA requirements. Therefore, FSIS believes all labeling for imported products should be under the same labeling review and approval process as administered for domestic products.

5. Role of the IIC

Commenters had varying opinions on the role of the IIC. The majority of commenters responding to this issue recommended that the IIC not have the authority to approve or disapprove labels or labeling and be prohibited from holding the shipment of product based on labeling issues unless there is a health and safety question.

This proposal would alleviate the burden of labeling approval from the IIC inspection activities. FSIS believes that product should be withheld from distribution in interstate or foreign

commerce or within "designated States" if the labeling is misbranded or may present a health, safety, or dietary concern to the consumer.

Section 7(e) of the FMIA (21 U.S.C. 607(e)) and section 8(d) of the PPIA (21 U.S.C. 457(d)) provide the Secretary with the authority to withhold the use of any marking, labeling, or container in use or proposed for use with respect to any article subject to the Acts if there is reason to believe that the marking or labeling or size or form of the container is false or misleading in any particular. This is further prescribed in §§ 335.12 and 381.233 of the Federal meat and poultry inspection regulations (9 CFR 335.12 and 381.233).

Several other commenters thought that the IIC should approve all labeling that is not approved in Washington. Still other commenters contended that the IIC's role should be increased to include more minor label changes and temporary approvals. In an effort to reduce the burden placed on FSIS inspectors, FSIS is proposing to expand the generic labeling categories, thereby allowing more time for inspectors to perform other inspection duties. The IIC, however, would retain the authority to approve meat carcass ink brands and meat food product ink and burning brands.

6. Labeling Appeals Process

Ten comments addressed the issue of establishing a process for labeling appeals when an inspector withholds the use of a labeling when there is reason to believe that it is false or misleading. However, none was specific as to how the process should be set up.

Under 9 CFR 306.5, 327.24, 381.35, and 381.202(d), appeals may be made on any decision made by an inspector, IIC, or other Program employee, except for the denial of a labeling application by the inspector or the IIC. Since the proposed rule would eliminate the IIC's authority to approve labeling applications, the exception to the appeals procedure would be removed.

Furthermore, 9 CFR 335.12 and 381.233 provide that when the Administrator determines that any marking or labeling or size or form of any container in use or proposed for use with respect to any meat or poultry product is false or misleading in any particular, he shall notify, in writing, the person, firm, or corporation using or proposing to use such marking, labeling, or container that such use shall be withheld unless the marking, labeling, or container is modified in such a manner as the Administrator may prescribe so that it would not be false or misleading. The person, firm, or corporation is provided an opportunity to respond to the Administrator's notification and a right to request a hearing regarding the merits or validity of the withholding action.

7. Maintain Current System

Commenters suggested as an option for consideration that the current prior labeling approval system be maintained. FSIS believes that the current prior approval system involves several hindrances to economic growth. Producers of meat and poultry products face direct labeling application costs. In addition, delays in the application process slow marketplace introduction of new products, imposing added costs on manufacturers. Therefore, FSIS is proposing changes to the current prior labeling approval system.

8. Preemption

One commenter raised the concern regarding generic approvals jeopardizing Federal preemption provisions. FSIS has addressed that comment under the discussion of Executive Order 12778 of this proposed rule.

9. Other Issues

FSIS received several comments on other issues, such as face-to-face labeling presentations with label reviewers, and changing the approval authority to a review function with increased enforcement activity. The scope of this rulemaking encompasses only the types of labeling submitted to FLD for approval and those authorized to be generically approved. FSIS believes that issues, such as face-to-face labeling presentations, are outside the scope of this rulemaking, and, thus, is not considering such comments at this time.

Proposed Rule

This proposed rule would require official establishments and establishments certified by responsible officials of foreign inspection systems to submit only sketch labeling in those instances where labeling is required to be submitted to FLD for approval. FSIS is proposing to limit the types of labeling submitted for review and approval for domestic and imported products and to revise 9 CFR 317.4, 317.5, 381.132, 381.133, 327.14, 381.205, and 381.206. No final labeling would be approved by FLD, except for temporary labeling approvals. This proposal would define a sketch label as a printer's proof or equivalent which clearly shows all labeling features (as set forth in 9 CFR 317.2 and 381, subpart N), size, location, and indication of final color, and is no larger than 8½×14 inches. This proposed size requirement is a result of the Agency's efforts to automate the review process and to use scanning technology to record certain information from the label application. A parent company for a corporation need only submit one labeling application for a product produced in other establishments which are owned by the corporation, since this would reduce the burdens on the industry and the Agency in submitting and revising such applications without posing any apparent risk of misbranding. Once a sketch is approved, the establishment would have the authority to print a final copy and use the labeling without my any further authorization from the Agency.

Establishments would still be required to assure that the labeling is not false or misleading in any particular. If an establishment chooses to modify an approved sketch label, the establishment would be authorized to use the final label if such labeling complies with the requirements proposed in 9 CFR 317.5, 327.14, 381.133, and 381.205. If the labeling is not in accord with these proposed provisions, the labeling would be required to be submitted as a sketch for approval by FLD.

Final labeling would be used with no further authorization from FSIS. Since the labeling would have been previously approved by FSIS in the sketch form, the Agency believes that there would be little, if any, risk of misbranding.

The Agency is proposing to revise the IIC and generic approval authorities prescribed in §§ 317.4(e), 317.5, 381.132(c), and 381.134 of the Federal meat and poultry products inspection regulations (9 CFR 317.4(e), 317.5, 381.132(c), and 381.134). This action would alleviate the burden of labeling approval from the IIC inspection activities. The IIC would retain the authority to approve meat carcass ink brands and meat food product ink and burning brands. All other provisions of 9 CFR 317.4(e) and 317.5 and of 9 CFR 381.132(c) and 381.134 would be combined to permit establishments to use final labeling for products in certain circumstances without the submission of a sketch to FLD and to use labeling for products for which a sketch had been approved. FSIS would add to this authority a few other provisions including the permitted use of labeling for standardized products prescribed in part 319 and subpart P, part 381, of the Federal meat and poultry inspection regulations (9 CFR part 319 and subpart P, part 381), provided such labeling does not contain special claims, such as

quality claims, nutrient content or health claims, geographical origin claims, negative claims, and guarantees, and does not represent a domestic product containing a foreign language. FSIS believes that prior submission for standardized product labeling is unnecessary because such labeling would pose little, if any, risk of misbranding since the regulatory standards specify the product name to be used on the labeling and the permitted ingredients.

Official establishments and foreign establishments certified by officials of foreign inspection systems would be permitted to use the following generically approved labeling without the submission of sketches for approval by FSIS:

1. Labeling for a product which has a standard of identity or composition as specified in part 319 or subpart P, part 381, and which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees, or which is not a domestic product labeled with a foreign language;

2. Labeling for single-ingredient products (such as beef steak or lamb chops or chicken legs or turkey breasts) which does not contain special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees, or which is not a domestic product labeled with a foreign language;

3. Labeling for products marked "For Export Only" in U.S. establishments which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees;

4. Labeling for containers of meat and meat food products and poultry products sold under contract specifications to Federal Government agencies, when such product is not offered for sale to the general public, provided the contract specifications include specific requirements with respect to labeling, and are made available to the IIC;

5. Labeling for shipping containers which contain fully labeled immediate containers, provided such labeling complies with § 316.13 or § 381.127.

6. Labeling for products not intended for human food, provided they comply with part 325 or § 381.152(c) and 381.193, and labeling for poultry heads and feet for export for processing as human food if they comply with § 381.190(b);

7. Inspection legends, which comply with parts 312 and 316 and with subpart M of part 381; and

8. Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within containers, and coverings of products, provided such devices contain no reference to product and bear no misleading feature.

Official establishments and foreign establishments certified by officials of foreign inspection systems would also be permitted to use final labeling, without further authorization from FSIS, which was approved by FSIS, FLD, in sketch form if the final labeling was prepared without modification or with the following modifications:

1. All features of the labeling are proportionately enlarged or reduced, provided that all minimum size requirements specified in applicable regulations are met and the labeling is legible;

2. A substitution of the abbreviation "lb." for "pound," or "oz." for "ounce," or of the word "pound" for "lb." or "ounce" for "oz.";

3. A master or stock label has been approved from which the name and address of the distributor are omitted and such name and address are applied before being used (in such case, the words "prepared for" or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

4. During holiday seasons, wrappers or other covers bearing floral or foliage designs or illustrations of rabbits, chicks, fireworks, or other emblematic holiday designs are used with approved labeling (the use of such designs will not make necessary the application of labeling not otherwise required);

5. A change in the language or the arrangement of directions pertaining to the opening of containers or the serving of the product;

6. The addition, deletion, or amendment of a dated or undated coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information;

7. Any change in the name or address of the packer, manufacturer or distributor that appears in the signature line;

8. Any change in the net weight, provided the size of the net weight statement complies with § 317.2 or § 381.121;

9. The addition, deletion, or amendment of recipe suggestions for the product;

10. Any change in punctuation;

11. Newly assigned or revised establishment numbers for a particular establishment for which use of the labeling has been approved by the FLD;

12. The addition or deletion of open dating information;

13. A change in the type of packaging material on which the label is printed;

14. Brand name changes, provided that there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the name of the product;

15. The deletion of the word "new" on new product labeling;

16. The addition, deletion, or amendment of special handling statements, such as "Keep Refrigerated" or "Keep Frozen," provided that the change is consistent with § 317.2 or § 381.125;

17. The addition of safe handling instructions as required by § 317.2(l) or § 381.125(b).

18. Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominence shown on the label, provided the change in quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in parts 318 and 319, or § 381.147 or subpart P of part 381;

19. Changes in the color of the labeling, provided that sufficient contrast and legibility remain;

20. The addition, deletion, or substitution of the official USDA grade shield on labels of poultry products;

21. A change in the product vignette, provided the change does not affect mandatory labeling information or misrepresent the content of the package; or

22. A change in an establishment number by a corporation or parent company for an establishment under its ownership.

Section 327.15 of the Federal meat inspection regulations (9 CFR 327.15) requires that all labeling used with outside containers of foreign meat product must be approved in accordance with part 317 of the Federal meat inspection regulations. However, 9 CFR 381.206 dealing with shipping containers of imported poultry products does not include such a provision. This proposal would amend 9 CFR 381.206 by adding a provision to require that shipping containers of imported poultry products be approved in accordance with subpart N of part 381 of the poultry products inspection regulations. This would provide consistency between

imported meat products and imported poultry products, and would clarify that labeling approval for imported products would be the same as for domestic products.

This proposal would transfer the responsibility of maintaining updated generically approved labeling records from the IIC to the official establishment in the United States and would require establishments certified by officials of a foreign inspection system to maintain such records. It would also require establishments to maintain records of labeling approved by FLD. In order to monitor compliance of regulatory labeling requirements, FSIS is proposing that establishments maintain records on all labeling used, and to make such records available to any authorized USDA official upon request. Each record would consist of a copy of the labeling and product formulation and processing procedure. Official establishments would no longer present to the IIC a copy of the generically approved labeling prior to its use, as is currently required under 9 CFR 317.5 and 381.134.

Sections 306.5, 327.24, 381.35 and 381.202(d) of the meat and poultry regulations (9 CFR 306.5, 327.24, 381.35, and 381.202(d)) specify the appeal procedures to be followed for decisions made by program employees or importers. These sections also state that denial of a labeling application by the IIC or inspector is not a basis for appeal under these sections. Since the proposed rule would not maintain the IIC's authority to approve labeling applications, there would no longer be a need to retain this provision. Therefore, these provisions would be removed from these sections.

FSIS is proposing to randomly select samples of generically approved labeling from official establishments and establishments certified under a foreign inspection system for checking compliance with labeling requirements. If the Agency would find that any such labeling is false or misleading in any particular, FSIS would initiate the proceedings set forth in 9 CFR 335.12 and 381.233 for domestic and imported products. These provisions provide generally that the Administrator notify, in writing, the person, firm, or corporation using the labeling or proposing to use the labeling that such labeling has been determined to be false or misleading and that use of such labeling shall be withheld unless the labeling is corrected. The person, firm, or corporation is provided an opportunity to respond to the Administrator's notification and a right to request a hearing regarding the merits or validity of the withholding action. Effective upon service of the notification, the use of the labeling shall be withheld, if the Administrator directs it to be withheld from use. Any hearing proceedings are governed by the Uniform Rules of Practice at (7 CFR 1.130 *et seq.*).

Although this proposed rule would not change the authority of temporary labeling approvals currently specified in 9 CFR 317.4(d) and 381.132(b), the provisions for temporary approvals are proposed at 9 CFR 317.4(g) and 381.132(g). Final labeling deficient in some particular may be granted a temporary approval up to 180 days, provided, among other things, the product is not misrepresented, as set forth in these proposed regulations, and such an approval may be extended under certain circumstances. Temporary labeling approval requests would continue to be handled the same as sketch labeling approvals through submittal of labeling applications to FLD.

This proposal would also remove the provision set forth in § 317.4(b) requiring that paper takeoffs of lithographed labels, in lieu of sections of the metal containers, be submitted to the Agency for approval. The provision was intended to assist producers of canned products when submitting a final label. Because FLD would no longer review final labels, such provision would not be necessary.

This proposal would also provide generic approval for domestic products marked "For Export Only." These products represent a limited category of products whose labeling generally will have been previously reviewed and approved by FSIS.

The Agency is proposing this action to reduce the regulatory burden placed on industry without compromising the truthfulness and accuracy of meat and poultry product labeling, and to improve production efficiency and quality of labeling review and approval.

This proposal would eliminate duplicative and unnecessary submissions. The proposed submittal of only sketch labeling would result in a more efficient approval process, as well as providing a savings to the regulated industry. FSIS, under this proposal, would sample generically approved labeling to assure the public is provided with labeling that is accurate and not misleading. This proposed rule is the first step in streamlining the labeling approval system. An all generic system may be proposed in the future if such generic approval system is found to assure accurate and truthful labeling.

List of Subjects

9 CFR Part 306

Appeals, Meat inspection.

9 CFR Part 317

Labeling, Meat inspection.

9 CFR Part 320

Records, Registration, Reports.

9 CFR Part 327

Imports, Food labeling, Meat inspection.

9 CFR Part 381

Appeals, Imports, Labeling, Poultry inspection, Records, Registration, Reports.

For the reasons set forth in the preamble, FSIS is proposing to amend 9 CFR parts 306, 317, 320, 327, and 381 of the Federal meat and poultry inspection regulations as follows:

PART 306—ASSIGNMENT AND AUTHORITIES OF PROGRAM EMPLOYEES

1. The authority citation for part 306 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

2. Section 306.5 would be amended by removing the last sentence.

PART 317—LABELING, MARKING DEVICES, AND CONTAINERS

3. The authority citation for part 317 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

4. Section 317.4 would be revised to read as follows:

§ 317.4 Labeling approval.

(a) No final labeling shall be used on any product unless the sketch labeling of such final labeling has been submitted for approval to the Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, and approved by such division, accompanied by FSIS Form 7234, Application for Approval of Labels, Marking, and Devices, except for generically approved labeling authorized for use in § 317.5. The management of the official establishment or establishment certified under a foreign inspection system, in accordance with part 327 of this subchapter, must maintain a copy of all labeling used, along with the product formulation and processing procedure, in accordance with part 320 of this subchapter. Such records shall be made available to any duly authorized

representative of the Secretary upon request.

(b) The Food Labeling Division shall permit submission for approval of only sketch labeling, as defined in § 317.4(d), for all products, except as provided in § 317.5 and except for temporary use of final labeling as prescribed in paragraph (g) of this section.

(c) All labeling required to be submitted for approval as set forth in 317.4(a) shall be submitted in triplicate to the Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(d) "Sketch" labeling is a printer's proof or equivalent which clearly shows all labeling features, size, location, and indication of final color, as specified in § 317.2, and is no larger than 8½ x 14 inches.

(e) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within, containers and coverings of product shall be submitted for approval in the same manner as provided for labeling in § 317.4(a), except that such devices which contain no reference to product and bear no misleading feature shall be used without submission for approval as prescribed in § 317.5(b)(8).

(f)(1) Consistent with the requirements of this section, temporary approval for the use of a final label or other final labeling that may otherwise be deemed deficient in some particular may be granted by the Food Labeling Division. Temporary approvals may be granted for a period not to exceed 180 calendar days, under the following conditions:

(i) The proposed labeling would not misrepresent the product;

(ii) The use of the labeling would not present any potential health, safety, or dietary problems to the consumer;

(iii) Denial of the request would create undue economic hardship; and

(iv) An unfair competitive advantage would not result from the granting of the temporary approval.

(2) Extensions of temporary approvals may also be granted by the Food Labeling Division provided that the applicant demonstrates that new circumstances, meeting the above criteria, have developed since the original temporary approval was granted.

(g) The inspector-in-charge shall approve meat carcass ink brands and meat food product ink and burning brands, which comply with parts 312 and 316 of this subchapter.

5. Section 317.5 would be revised to read as follows:

§ 317.5 Generically approved labeling.

(a)(1) An official establishment or an establishment certified under a foreign inspection system, in accordance with Part 327 of this subchapter, is authorized to use generically approved labeling, as defined in paragraph (b) of this section, without such labeling being submitted for approval to the Food Safety and Inspection Service in Washington or the field, provided the labeling is in accordance with this section and shows all mandatory features in a prominent manner as required in § 317.2, and is not otherwise false or misleading in any particular.

(2) The Food Safety and Inspection Service shall randomly select samples of generically approved labeling from the records maintained by official establishments and establishments certified under foreign inspection systems, in accordance with Part 327 of this subchapter, as required in § 317.4, to determine compliance with labeling requirements. Any finding of false or misleading labeling shall institute the proceedings prescribed in § 335.12.

(b) Generically approved labeling is labeling which complies with the following:

(1) Labeling for a product which has a standard of identity or composition as specified in part 319 and which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees, or which is not a domestic product labeled with a foreign language;

(2) Labeling for single-ingredient products (such as beef steak or lamb chops) which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees, or which is not a domestic product labeled with a foreign language;

(3) Labeling for products marked "For Export Only" in United States establishments which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees;

(4) Labeling for containers of products sold under contract specifications to Federal Government agencies, when such product is not offered for sale to the general public, provided that the contract specifications include specific requirements with respect to labeling, and are made available to the inspector-in-charge;

(5) Labeling for shipping containers which contain fully labeled immediate containers, provided such labeling complies with § 316.13;

(6) Labeling for products not intended for human food, provided they comply with part 325;

(7) Meat inspection legends, which comply with parts 312 and 316;

(8) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within containers, and coverings of products, provided such devices contain no reference to product and bear no misleading feature; and

(9) Labeling which was previously approved by the Food Labeling Division as sketch labeling, and the final labeling was prepared without modification or with the following modifications:

(i) All features of the labeling are proportionately enlarged or reduced, provided that all minimum size requirements specified in applicable regulations are met and the labeling is legible;

(ii) There is a substitution of the abbreviation "lb." for "pound," or "oz." for "ounce," or of the word "pound" for "lb." or "ounce" for "oz.";

(iii) A master or stock label has been approved from which the name and address of the distributor are omitted and such name and address are applied before being used (in such case, the words "prepared for" or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

(iv) During holiday seasons, wrappers or other covers bearing floral or foliage designs or illustrations of rabbits, chicks, fireworks, or other emblematic holiday designs are used with approved labeling (the use of such designs will not make necessary the application of labeling not otherwise required);

(v) A change in the language or the arrangement of directions pertaining to the opening of containers or the serving of the product;

(vi) The addition, deletion, or amendment of a dated or undated coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information;

(vii) Any change in the name or address of the packer, manufacturer or distributor that appears in the signature line;

(viii) Any change in the net weight, provided the size of the net weight statement complies with § 317.2;

(ix) The addition, deletion, or amendment of recipe suggestions for the product;

(x) Any change in punctuation;

(xi) Newly assigned or revised establishment numbers for a particular establishment for which use of the

labeling has been approved by the Food Labeling Division, Regulatory Programs;

(xii) The addition or deletion of open dating information;

(xiii) A change in the type of packaging material on which the label is printed;

(xiv) Brand name changes, provided that there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the name of the product;

(xv) The deletion of the word "new" on new product labeling;

(xvi) The addition, deletion, or amendment of special handling statements, provided that the change is consistent with § 317.2(k);

(xvii) The addition of safe handling instructions as required by § 317.2(l);

(xviii) Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label, provided that the change in quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in parts 318 and 319 of this subchapter;

(xix) changes in the color of the labeling, provided that sufficient contrast and legibility remain;

(xx) A change in the product vignette, provided that the change does not affect mandatory labeling information or misrepresent the content of the package; and

(xxi) A change in the establishment number by a corporation or parent company for an establishment under its ownership.

PART 320—RECORDS, REGISTRATION, AND REPORTS

6. The authority citation for part 320 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

7. Section 320.1 would be amended by adding a new paragraph (b)(9) to read as follows:

§ 320.1 Records required to be kept.

* * * * *

(b) * * *

(9) Records of all labeling, along with the product formulation and processing procedures, as prescribed in § 317.4 and § 317.5.

PART 327—IMPORTED PRODUCTS

8. The authority citation for part 327 would continue to read as follows:

Authority: 21 U.S.C. 601–695; 7 CFR 2.17, 2.55.

9. Section 327.14(c) would be revised to read as follows:

§ 327.14 Marking of products and labeling of immediate containers thereof for importation.

* * * * *

(c) All marks and other labeling for use on or with immediate containers, as well as private brands on carcasses or parts of carcasses, shall be approved by the Food Safety and Inspection Service in accordance with part 317 of this subchapter before products bearing such marks, labeling, or brands will be entered into the United States. The marks of inspection of foreign systems embossed on metal containers or branded on carcasses or parts thereof need not be submitted to the Food Safety and Inspection Service for approval, and such marks of inspection put on stencils, box dies, labels, and brands may be used on such immediate containers as tierces, barrels, drums, boxes, crates, and large-size fiberboard containers of foreign products without such marks of inspection being submitted for approval, provided the markings made by such articles are applicable to the product and are not false or misleading.

10. Section 327.24 would be amended by removing the last sentence.

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

11. The authority citation for part 381 would continue to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470; 7 CFR 2.17, 2.55.

12. Section 381.35 would be amended by revising the last sentence to read as follows:

§ 381.35 Appeal inspections; how made.

* * *. The poultry or poultry products involved in any appeal shall be identified by U.S. retained tags and segregated in a manner approved by the inspector pending completion of an appeal inspection.

13. Section 381.1342 would be revised to read as follows:

§ 381.132 Labeling approval.

(a) No final labeling shall be used on any product unless the sketch labeling of such final labeling has been submitted for approval to the Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, and approved by such division, accompanied by FSIS Form 7234, Application for Approval of Labels, Marking, and Devices, except for generically approved labels authorized for use in § 381.133. The management of the official establishment or establishment certified under a foreign inspection system, in accordance with subpart T of this part, must maintain a copy of all labeling used, along with the product formulation and processing procedure, in accordance with subpart Q of this part. Such records shall be made available to any duly authorized representative of the Secretary upon request.

(b) The Food Labeling Division shall permit submission for approval of only sketch labeling, as defined in § 381.132(d), for all products, except as provided in § 381.133 and except for temporary use of final labeling as prescribed in paragraph (g) of this section.

(c) All labeling required to be submitted for approval as set forth in § 381.132(b) shall be submitted in triplicate to the Food Labeling Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250.

(d) "Sketch" labeling is a printer's proof or equivalent which clearly shows all labeling features, size, location, and indication of final color, as specified in subpart N of this part, and is no larger than 8½ x 14 inches.

(e) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within, containers and coverings of product shall be submitted for approval in the same manner as provided for labeling in § 381.132(a), except that such devices which contain no reference to product and bear no misleading feature shall be used without submission for approval as prescribed in § 381.133(b)(8).

(f)(1) Consistent with the requirements of this section, temporary approval for the use of a final label or other final labeling that may otherwise be deemed deficient in some particular may be granted by the Food Labeling Division. Temporary approvals may be granted for a period not to exceed 180 calendar days under the following conditions:

(i) The proposed labeling would not misrepresent the product;

(ii) The use of the labeling would not present any potential health, safety, or dietary problems to the consumer;

(iii) Denial of the request would create undue economic hardship; and

(iv) An unfair competitive advantage would not result from the granting of the temporary approval.

(2) Extensions of temporary approvals may also be granted by the Food Labeling Division, provided that the applicant demonstrates that new circumstances, meeting the above

criteria, have developed since the original temporary approval was granted.

14. Section 381.133 would be redesignated as § 381.134, and § 381.134 would be redesignated as § 381.133 and revised to read as follows:

§ 381.133 Generically approved labeling.

(a)(1) An official establishment or an establishment certified under a foreign inspection system, in accordance with subpart T of this part, is authorized to use generically approved labeling, as defined in paragraph (b) of this section, without such labeling being submitted for approval to the Food Safety and Inspection Service in Washington or the field, provided the labeling is in accord with this section and shows all mandatory features in a prominent manner as required in Subpart N of this part, and is not otherwise false or misleading in any particular.

(2) The Food Safety and Inspection Service shall randomly select samples of generically approved labeling from the records maintained by official establishments and establishments certified under foreign inspection systems, in accordance with subpart T of this part, as required in § 381.132, to determine compliance with labeling requirements. Any finding of false or misleading labeling shall institute the proceedings prescribed in § 381.233.

(b) Generically approved labeling is labeling which complies with the following:

(1) Labeling for a product which has a standard of identity or composition as specified in subpart P of this part and which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees, or which is not a domestic product labeled with a foreign language;

(2) Labeling for single-ingredient products (such as chicken legs or turkey breasts) which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees, or which is not a domestic product labeled with a foreign language;

(3) Labeling for products marked "For Export Only" in United States establishments which does not contain any special claims, such as quality claims, nutrient content claims, health claims, negative claims, geographical origin claims, or guarantees;

(4) Labeling for containers of products sold under contract specifications to Federal Government agencies, when such product is not offered for sale to the general public, provided that the contract specifications include specific requirements with respect to labeling, and are made available to the inspector-in-charge;

(5) Labeling for shipping containers which contain fully labeled immediate containers, provided such labeling complies with § 381.127;

(6) Labeling for products not intended for human food, provided they comply with § 381.152(c) and § 381.193, and labeling for poultry heads and feet for export for processing as human food if they comply with § 381.190(b);

(7) Poultry inspection legends, which comply with subpart M of this part;

(8) Inserts, tags, liners, pasters, and like devices containing printed or graphic matter and for use on, or to be placed within containers, and coverings of products, provided such devices contain no reference to product and bear no misleading feature; and

(9) Labeling which was previously approved by the Food Labeling Division as sketch labeling, and the final labeling was prepared without modification or with the following modifications:

(i) All features of the labeling are proportionately enlarged or reduced, provided that all minimum size requirements specified in applicable regulations are met and the labeling is legible;

(ii) There is a substitution of the abbreviation "lb." for "pound," or "oz." for "ounce," or of the word "pound" for "lb." or "ounce" for "oz.";

(iii) A master or stock label has been approved from which the name and address of the distributor are omitted and such name and address are applied before being used (in such case, the words "prepared for" or similar statement must be shown together with the blank space reserved for the insertion of the name and address when such labels are offered for approval);

(iv) During holiday seasons, wrappers or other covers bearing floral or foliage designs or illustrations of rabbits, chicks, fireworks, or other emblematic holiday designs are used with approved labeling (the use of such designs will not make necessary the application of labeling not otherwise required);

(v) A change in the language or the arrangement of directions pertaining to the opening of containers or the serving of the product;

(vi) The addition, deletion, or amendment of a dated or undated coupon, a cents-off statement, cooking instructions, packer product code information, or UPC product code information;

(vii) Any change in the name or address of the packer, manufacturer or distributor that appears in the signature line;

(viii) Any change in the net weight, provided that the size of the net weight statement complies with § 381.121;

(ix) The addition, deletion, or amendment of recipe suggestions for the product;

(x) Any change in punctuation;

(xi) Newly assigned or revised establishment numbers for a particular establishment for which use of the labeling has been approved by the Food Labeling Division, Regulatory Programs;

(xii) The addition or deletion of open dating information;

(xiii) A change in the type of packaging material on which the label is printed;

(xiv) Brand name changes, provided that there are no design changes, the brand name does not use a term that connotes quality or other product characteristics, the brand name has no geographic significance, and the brand name does not affect the name of the product;

(xv) The deletion of the word "new" on new product labeling;

(xvi) The addition, deletion, or amendment of special handling statements, provided that the change is consistent with § 381.125(a);

(xvii) The addition of safe handling instructions as required by § 381.125(b);

(xviii) Changes reflecting a change in the quantity of an ingredient shown in the formula without a change in the order of predominance shown on the label, provided that the change in quantity of ingredients complies with any minimum or maximum limits for the use of such ingredients prescribed in § 381.147 and subpart P of this part;

(xix) Changes in the color of the labeling, provided that sufficient contrast and legibility remain;

(xx) A change in the product vignette, provided that the change does not affect mandatory labeling information or misrepresent the content of the package;

(xxi) The addition, deletion, or substitution of the official USDA poultry grade shield; and

(xxii) A change in the establishment number by a corporation or parent company for an establishment under its ownership.

15. Section 381.175 would be amended by adding a new paragraph (b)(6) to read as follows:

§ 381.175 Records required to be kept.

* * * * *

(b) * * *

(6) Records of all labeling, along with the product formulation and processing procedures, as prescribed in § 381.132 and § 381.133.

16. Section 381.202(d) would be amended by removing the last sentence and by revising the next to the last sentence to read as follows:

§ 381.202 Poultry products offered for entry; reporting of findings to customs; handling of articles refused entry; appeals, how made; denaturing procedures.

* * * * *

(d) * * *. The poultry or poultry products involved in any appeal shall be identified by U.S. retained tags and segregated in a manner approved by the inspector pending completion of an appeal inspection.

* * * * *

16. Section 381.205(c) would be revised to read as follows:

§ 381.205 Labeling of immediate containers of poultry products offered for entry.

* * * * *

(c) All marks and other labeling for use on or with immediate containers shall be approved for use by the Food Safety and Inspection Service in accordance with § 381.132 and § 381.133 before products bearing such marks and other labeling will be permitted for entry into the United States.

17. Section 381.206 would be amended by adding to the end thereof the following sentence:

§ 381.206 Labeling of shipping containers of poultry products offered for entry.

* * *. All labeling used with a shipping container of imported poultry products must be approved in accordance with subpart N of this part.

Done at Washington, DC, on November 16, 1993.

Eugene Branstool,

Assistant Secretary for Marketing and Inspection Services.

[FR Doc. 93–28624 Filed 11–22–93, 8:45 am]

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federal register

Tuesday
November 23, 1993

Part VI

Securities and Exchange Commission

17 CFR Part 229, et al.
Amendments to the Multijurisdictional Disclosure System for Canadian Issuers; Final Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 229, 230, 239 and 249

[Release Nos. 33–7025; 34–33134; International Series Release No. 604; File No. S7–16–93]

RIN 3235–AF83

Amendments to the Multijurisdictional Disclosure System for Canadian Issuers

AGENCY: Securities and Exchange Commission.

ACTION: Final amendments to rules and forms.

SUMMARY: The Securities and Exchange Commission (the "Commission") is adopting amendments to rules and forms relating to the multijurisdictional disclosure system ("MJDS") with Canada, including revisions which would modify the eligibility requirements for use of Forms F–9 and F–10 and recognize investment grade ratings by securities rating organizations recognized by Canadian securities regulators for purposes of filings on Forms F–9 and 40–F. These amendments are being adopted in light of the Commission's experience with the MJDS and should further facilitate transnational capital formation.

EFFECTIVE DATE: December 23, 1993.

APPLICABILITY DATE: Filings made prior to the 30th day after publication of this release in the **Federal Register** may proceed as if the amendments adopted hereby were effective on such publication, except for the amendments to the Instruction to § 239.39(a)(2) and the Instruction to General Instruction I.A. to Form F–9, which will be effective on the date of publication of such amendments in the **Federal Register** after the Canadian securities regulators have adopted certain amendments to the MJDS for U.S. issuers described herein.

FOR FURTHER INFORMATION CONTACT: Paul M. Dudek, (202) 272–3246, Office of International Corporate Finance, Division of Corporation Finance, Securities and Exchange Commission, Washington, DC. 20549.

SUPPLEMENTARY INFORMATION:

I. Amendments to the MJDS

The multijurisdictional disclosure system for Canadian issuers, adopted on June 21, 1991, permits Canadian issuers meeting specified eligibility criteria to satisfy certain securities registration and reporting requirements of the Commission by providing disclosure documents prepared in accordance with the requirements of Canadian securities regulators.[1] Concurrently with the Commission's action, the Canadian Securities Administrators (the "CSA") adopted a parallel multijurisdictional disclosure system for U.S. issuers in Canada.[2] On April 28, 1993, the Commission proposed for comment the amendments to the MJDS discussed herein. [3] The Commission received six comment letters on these proposed amendments. These amendments are being adopted today substantially as proposed.[4]

The Commission proposed to amend the eligibility requirements under Forms F–9, F–10 and 40–F[5] to eliminate the market capitalization threshold, to establish the public float threshold at U.S. $75 million and to shorten the reporting history requirements to as short as twelve months. Commenters expressing a view on these proposals were supportive of the elimination of the market capitalization threshold and the reduction of the reporting history requirement but were opposed to changing the public float threshold from Cn $75 million to U.S. $75 million. A U.S. $75 million threshold has been established for U.S. issuers desiring to use the Commission's short form registration form and shelf registration system for primary offerings.[6] The Commission believes it is appropriate for this same dollar threshold to apply to the MJDS inasmuch as Canadian issuers using the MJDS for offerings in the United States may make use of Canadian short form registration and shelf registration procedures. The Commission is eliminating the market capitalization requirement and establishing the public float requirement as proposed. The CSA has proposed and has indicated that it will adopt amendments to shorten the reporting history requirement for use of the POP System from 36 to 12 months.[7] In light of the CSA's actions and the support expressed by commenters on the Commission's proposal, the Commission is adopting amendments to Forms F–9, F–10 and 40–F to shorten the reporting history requirement to 12 months.

The Commission also proposed to amend Form F–9 to recognize investment grade ratings by securities rating organizations recognized by Canadian securities regulators. Commenters expressing a view on this proposal were uniformly supportive. The CSA has proposed and has indicated that it will adopt parallel amendments to National Policy Statement No. 45 to recognize investment grade ratings by securities rating organizations which are deemed to be nationally recognized statistical rating organizations ("NRSROs") under the Commission's rules.[8] In light of the above, the Commission is adopting the amendments as proposed; these amendments will, however, become effective after the Canadian securities regulators adopt parallel amendments to the Canadian MJDS, as described under "Effective Date" below.

The Commission is also adopting the proposed amendments to Item 10 of Regulation S-K[9] and Rules 134 and 436 under the Securities Act of 1933[10] to include appropriate cross-references to the ratings now recognized under Form F–9. The proposed amendments to Form F–9 to provide that the required rating must be obtained at the time of sale to the public, rather than at the time of effectiveness, and to add an instruction regarding the registrant's reasonable belief of obtaining the required rating are also being adopted, as well as an

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[1] Securities Act Release No. 6902 (June 21, 1991) [56 FR 30036].

[2] National Policy Statement No. 45 of the CSA, "Multijurisdictional Disclosure System" (referred to herein as "National Policy Statement No. 45").

[3] Securities Act Release No 6997 (April 28, 1993) 58 FR 26442.

[4] The Commission also proposed amending Forms F–10 and 40–F to retain the financial statement reconciliation requirement under such forms. Those amendments were adopted in June 1993. Securities Act Release No. 7004 (June 28, 1993) [58 FR 35367].

[5] 17 CFR 239.39, 239.40 and 249.40f.

[6] See Securities Act Release 6964 (Oct. 22, 1992) [57 FR 48970].

[7] The Prompt Offering Qualification system, which is known as the "POP System", has been established by Canadian securities regulators to allow substantial issuers quick access to the public securities markets. See National Policy Statement 47 of the CSA, "Prompt Offering Qualification System". Amendments to shorten the reporting history requirement under the POP System from 36 to 12 months were proposed in June 1993. See "Draft Amendments to National Policy Statement No. 47 and National Policy Statement No. 45" 16 OSC Bulletin 2889 (June 11, 1993).

[8] Market participants currently look to a no-action process administered by the staff of the Division of Market Regulation to determine which rating organizations will be treated as NRSROs for net capital purposes under Rule 15c3–1(c)(2)(vi)(F). Six rating organizations are currently treated as NRSROs for net capital purposes as a result of this process. Four of these NRSROs are not currently recognized under National Policy Statement No. 45. Under amendments to National Policy Statement No. 45, the ratings of these four rating organizations will be usable for purposes of determining whether a U.S. issuer is eligible to use the MJDS in Canada. Likewise, National Policy Statement No. 45 currently recognizes four rating organizations, two of which are not among the six rating organizations treated by the Commission staff as NRSROs for net capital purposes. Under the amendment to Form F–9 being adopted today, the ratings of these two rating organizations will be usable for purposes of determining whether a Canadian issuer is eligible to use Form F–9 or 40–F.

[9] 17 CFR 229.10.

[10] 17 CFR 230.134 and 230.436.

amendment to Form F–7 [11] relating to specifying an agent for service.

The Commission had solicited comments relating to amending the MJDS to accommodate the unallocated shelf registration of securities. The CSA has not proposed an unallocated shelf registration system and so the Commission is not taking action relating to unallocated shelf registration under the MJDS.

II. Regulatory Flexibility Act Certification

Pursuant to Section 605(b) of the Regulatory Flexibility Act [5 U.S.C. 605], at the time the Commission issued its release proposing the amendments being adopted hereby, the Chairman of the Commission certified that such amendments will not have a significant impact on a substantial number of small entities. That certification, including the reasons therefor, was attached as an Appendix to such release and was published in the **Federal Register**.

III. Cost-Benefit Analysis

No specific data were provided in response to the Commission's request regarding the costs and benefits of the amendments being adopted today. Some commenters indicated that amendments relating to recognition of investment grade ratings by securities rating organizations recognized by Canadian securities regulators would save Canadian issuers the expense of obtaining a securities rating from those rating organizations currently specified under Form F–9. Some commenters also noted that shortening the reporting history requirement under Forms F–9 and F–10 would permit newly public companies to more quickly achieve MJDS eligibility and thus a less expensive mechanism to access the U.S. capital markets.

IV. Effective and Applicability Dates

Except for the Instruction to § 239.39(a)(2) and the Instruction to General Instruction I.A. to Form F–9 as described in the next paragraph, the amendments adopted hereby shall be effective on the date specified under "Effective Date" above. In addition, except as described in the next paragraph, filings made prior to such date may proceed as if the amendments adopted hereby were effective on the date of publication of this release in the **Federal Register**.

The CSA has proposed amendments to National Policy Statement No. 45 which would expand the eligibility requirements under the Canadian MJDS for U.S. issuers.[12] These amendments proposed by the CSA would reduce the reporting history requirement, eliminate the market capitalization requirement, change the public float requirement and recognize ratings by NRSROs for purposes of the Canadian MJDS in a manner similar to the amendments being adopted today. The amendments to Form F–9 relating to recognition of ratings by rating organizations recognized by Canadian securities regulators (the Instruction to § 239.39(a)(2) and the Instruction to General Instruction I.A. to Form F–9 [13]) shall be effective on the date of publication of such amendments by the Commission in the **Federal Register** after the CSA and the provincial securities regulators have adopted substantially as proposed such amendments relating to the eligibility requirements for U.S. issuers using the MJDS in Canada. Such amendments to Form F–9 shall be effective immediately upon publication in the **Federal Register** in accordance with the Administrative Procedure Act, which allows effectiveness in less than 30 days after publication for "a substantive rule which grants or recognizes an exemption or relieves a restriction." 5 U.S.C. 553(d)(1).

V. Statutory Bases

The amendments to the Commission's rules and forms are being proposed pursuant to Sections 6, 7, 8, 10 and 19(a) of the Securities Act of 1933, and Sections 3(b), 4A, 12, 13, 14, 15, 16 and 23 of the Securities Exchange Act of 1934.

List of Subjects in 17 CFR Parts 229, 230, 239 and 249

Reporting and recordkeeping requirements; Securities.

Text of Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations is amended as follows:

[11] 17 CFR 239.37.

[12] See fn 7, supra.

[13] The instruction to 17 CFR 239.39(a)(2) and the Instruction to General Instruction I.A. to Form F–9 will be amended to read as follows:

Securities shall be "investment grade" if, at the time of sale, at least one nationally recognized statistical rating organization (as that term is used in relation to Rule 15c3–1(c)(2)(vi)(F) under the Securities Exchange Act of 1934 (the "Exchange Act") (§ 240.15c3–1(c)(2)(vi)(F) of this chapter)) or at least one Approved Rating Organization (as defined in National Policy Statement No. 45 of the Canadian Securities Administrators, as the same may be amended from time to time) has rated the security in one of its generic rating categories that signifies investment grade; typically the four highest rating categories (within which there may be subcategories or gradations indicating relative standing) signify investment grade.

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

1. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78l, 78m, 78n, 78o, 78w, 78ll(d), 79e, 79n, 79t, 80a-8, 80a-29, 80a-30, 80a-37, 80b-11, unless otherwise noted.

* * * * *

2. By amending § 229.10 by adding a new sentence to the end of paragraph (c)(1)(i) to read as follows:

§ 229.10 General.

* * * * *

(c) * * *

(1) * * *

(i) * * * When the registrant has filed a registration statement on Form F–9 (§ 239.39 of this chapter), see Rule 436(g) (§ 230.436(g) of this chapter) under the Securities Act with respect to the written consent of any rating organization specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F–9.

* * * * *

PART 230—GENERAL RULES AND REGULATIONS, SECURITIES ACT OF 1933

3. The authority citation for Part 230 continues to read in part as follows:

Authority: 15 U.S.C. 77b, 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*, 78w, 78*ll*(d), 79t, 80a-8, 80a-29, 80a-30, and 80a-37, unless otherwise noted.

* * * * *

4. By amending § 230.134 by revising paragraph (a)(14)(i) to read as follows:

§ 230.134 Communications not deemed a prospectus.

* * * * *

(a) * * *

(14)(i) With respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock, the security rating or ratings assigned to the class of securities by any nationally recognized statistical rating organization and the name or names of the nationally recognized statistical rating organization(s) which assigned such rating(s), and with respect to any class of debt securities, any class of convertible debt securities or any class of preferred stock registered on Form F–9 (§ 239.39 of this chapter), the security rating or ratings assigned to the class of securities by any other rating

organization specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F–9 and the name or names of the rating organization or organizations which assigned such rating(s).

* * * * *

5. By amending § 230.436 by revising paragraph (g)(1) to read as follows:

§ 230.436 Consents required in special cases.

* * * * *

(g)(1) Notwithstanding the provisions of paragraphs (a) and (b) of this section, the security rating assigned to a class of debt securities, a class of convertible debt securities, or a class of preferred stock by a nationally recognized statistical rating organization, or with respect to registration statements on Form F–9 (§ 239.39 of this chapter) by any other rating organization specified in the Instruction to paragraph (a)(2) of General Instruction I of Form F–9, shall not be considered a part of the registration statement prepared or certified by a person within the meaning of sections 7 and 11 of the Act.

* * * * *

PART 239—FORMS PRESCRIBED UNDER THE SECURITIES ACT OF 1933

6. The authority citation for part 239 continues to read in part as follows:

Authority: 15 U.S.C. 77f, 77g, 77h, 77j, 77s, 77sss, 78c, 78*l*, 78m, 78n, 78*o*(d), 78w(a), 78*ll*(d), 79e, 79f, 79g, 79j, 79*l*, 79m, 79n, 79q, 79t, 80a-8, 80a-29, 80a-30 and 80a-37, unless otherwise noted.

* * * * *

7. By amending Form F–7 (§ 239.37) by adding a new paragraph J to General Instruction II to read as follows:

Note: Form F–7 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–7

* * * * *

GENERAL INSTRUCTIONS

* * * * *

II. Application of General Rules and Regulations

* * * * *

J. Registrants are required to name an agent for service in the United States as required by the cover page of the registration statement even though not required to file a Form F–X.

* * * * *

8. By amending § 239.39 by revising paragraph (b)(3), by removing paragraph (b)(4), redesignating paragraph (b)(5) as paragraph (b)(4), by revising newly designated paragraph (b)(4), by revising paragraph (e), to read as follows, and in paragraph (f) introductory text and paragraph (f)(1) by removing the reference "36" and adding in its place "12" each time it appears:

§ 239.39 Form F–9, for registration under the Securities Act of 1933 of certain investment grade debt or investment grade preferred securities of certain Canadian issuers.

* * * * *

(b) * * *

(3) Has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations; and

(4) Has an aggregate market value of the public float of its outstanding equity shares of $75 million or more; *provided, however,* that the requirement set forth in this paragraph (b)(4) shall not apply if the securities being registered on this Form are not convertible into another security.

* * * * *

(e) If the registrant is a majority-owned subsidiary offering debt securities or preferred securities, it shall be deemed to meet the requirements of paragraphs (b)(3) and (b)(4) of this section if the parent of the registrant-subsidiary meets the requirements of paragraph (b) of this section, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

* * * * *

9. By amending Form F–9 (§ 239.39) by revising paragraph B.(3) of General Instruction I, by removing paragraph B.(4) of General Instruction I, by redesignating paragraph B.(5) of General Instruction I as paragraph B.(4), by revising newly redesignated paragraph B.(4) of General Instruction I, by revising paragraph E. of General Instruction I and by revising Instruction D. to the Signatures, to read as follows, and in paragraph F. of General Instruction I by removing in three places the references to "36" and adding in their place "12":

Note: Form F–9 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–9

* * * * *

GENERAL INSTRUCTIONS

I. Eligibility Requirements for Use of Form F–9

* * * * *

B. * * *

(3) has been subject to the continuous disclosure requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of this Form, and is currently in compliance with such obligations; and

(4) has an aggregate market value of the public float of its outstanding equity shares of $75 million or more; *provided, however,* that the requirements set forth in this B.(4) shall not apply if the securities being registered on this Form are not convertible into another security.

* * * * *

E. If the Registrant is a majority-owned subsidiary offering debt securities or preferred securities, it shall be deemed to meet the requirements of I.B. (3) and (4) above if the parent of the Registrant-subsidiary meets the requirements of I.B. above, as applicable, and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

* * * * *

SIGNATURES

* * * * *

Instructions

* * * * *

D. Where eligibility for use of this Form is based on the assignment of a security rating, the Registrant may sign the registration statement notwithstanding the fact that such security rating has not been assigned by the filing date, provided that the Registrant reasonably believes, and so states, that the security rating requirement will be met by the time of sale.

10. By amending § 239.40 in paragraph (c)(3) by removing the reference "36" and adding in its place "12" each time it appears and adding the word "and" after the semi-colon at the end of paragraph (c)(3), by removing paragraph (c)(4), by redesignating paragraph (c)(5) as paragraph (c)(4), by revising newly designated paragraph (c)(4) as set forth below, and in paragraph (h) by removing the reference "paragraphs (c)(3), (c)(4) and (c)(5)" and adding in its place "paragraphs (c)(3) and (c)(4)" and in paragraph (i) introductory text and paragraph (i)(1) by removing the reference "36" and adding in its place "12" each time it appears:

§ 239.40 Form F–10, for registration under the Securities Act of 1933 of securities of certain Canadian issuers.

* * * * *

(c) * * *

(4) Has an aggregate market value of the public float of its outstanding equity shares of $75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor registrant is $75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and *provided, further,* that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80 (§§ 239.38, 239.39, 239.40 or 239.41) or a tender offer in connection with which Schedule 13E–4F or 14D–1F (§§ 240.13e–102 or 240.14d–102 of this chapter) was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

* * * * *

11. By amending Form F–10 (§ 239.40) in paragraph C.(3) of General Instruction I by removing in two places references to "36" and adding in their place "12" and adding the word "and" after the semi-colon at the end of paragraph C.(3) of General Instruction I, by removing paragraph C.(4) of General Instruction I, by redesignating paragraph C.(5) of General Instruction I as paragraph C.(4), by revising newly redesignated paragraph C.(4) of General Instruction I and by revising paragraph H. of General Instruction I, to read as follows, and in paragraph I. of General Instruction I by removing in three places references to "36" and adding in their place "12":

Note: Form F–10 does not and these amendments will not appear in the Code of Federal Regulations.

Form F–10

* * * * *

GENERAL INSTRUCTIONS

I. General Eligibility Requirements for Use of Form F–10

C. * * *

(4) has an aggregate market value of the public float of its outstanding equity shares of $75 million or more; *provided, however,* that in the case of a business combination, the aggregate market value of the public float of the outstanding equity shares of each participating company other than the successor Registrant is $75 million or more, except that any such participating company shall not be required to meet such public float requirement if other participating companies whose assets and gross revenues, respectively, would contribute at least 80 percent of the total assets and gross revenues from continuing operations of the successor Registrant, as measured based on pro forma combination of the participating companies' most recently completed fiscal years, each meet such public float requirement; and *provided, further,* that in the case of a business combination, such public float requirement shall be deemed satisfied in the case of a participating company whose equity shares were the subject of an exchange offer that was registered or would have been eligible for registration on Form F–8, Form F–9, Form F–10 or Form F–80, or a tender offer in connection with which Schedule 13E–4F or 14D–1F was filed or could have been filed, that terminated within the last twelve months, if the participating company would have satisfied such public float requirement immediately prior to commencement of such exchange or tender offer.

* * * * *

H. With respect to registration of debt securities or preferred securities on this Form, if the Registrant is a majority-owned subsidiary, it shall be deemed to meet the requirements of I.C.(3) and (4) above if the parent of the Registrant-subsidiary meets the requirements of I.C. above and fully and unconditionally guarantees the securities being registered as to principal and interest (if debt securities) or as to liquidation preference, redemption price and dividends (if preferred securities); *provided, however,* that the securities of the subsidiary are only convertible or exchangeable, if at all, for the securities of the parent.

PART 249—FORMS, SECURITIES EXCHANGE ACT OF 1934

12. The authority citation for Part 249 continues to read in part as follows:

Authority: 15 U.S.C. 78a, *et seq.*, unless otherwise noted.

* * * * *

13. By amending § 249.240f by revising paragraph (b)(3), by removing paragraph (b)(4), redesignating paragraph (b)(5) as paragraph (b)(4) and by revising newly designated paragraph (b)(4), to read as follows, and in paragraph (c) introductory text and paragraph (c)(1) by removing the reference "36" and adding in its place "12" each time it appears:

§ 249.240f Form 40–F, for registration of securities of certain Canadian issuers pursuant to section 12(b) or (g) and for reports pursuant to section 15(d) and Rule 15d–4 (§ 240.15d–4 of this chapter).

* * * * *

(b) * * *

(3) The registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of this Form and is currently in compliance with such obligations; and

(4) The aggregate market value of the public float of the registrant's outstanding equity shares is $75 million or more; *provided, however,* no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9 (§ 239.39 of this chapter).

* * * * *

14. By amending Form 40–F (§ 249.240f) by revising clause (iii) of paragraph (2) of General Instruction A., by removing clause (iv) of paragraph (2) of General Instruction A., by redesignating clause (v) of paragraph (2) of General Instruction A. as clause (iv) and by revising newly redesignated clause (iv) of paragraph (2) of General Instruction A., to read as follows, and in paragraph (3) of General Instruction A in three places by removing the references "36" and adding in their place "12":

Note: Form 40–F does not and these amendments will not appear in the Code of Federal Regulations.

Form 40–F

* * * * *

GENERAL INSTRUCTIONS

A. *Rules As To Use of Form 40–F*

* * * * *

(2) * * *

(iii) the Registrant has been subject to the periodic reporting requirements of any securities commission or equivalent regulatory authority in Canada for a period of at least 12 calendar months immediately preceding the filing of this Form and is currently in compliance with such obligations; and

(iv) the aggregate market value of the public float of the Registrant's outstanding equity shares is $75 million or more; *provided, however,* that no market value threshold need be satisfied in connection with non-convertible securities eligible for registration on Form F–9.

* * * * *

By the Commission.

Dated: November 3, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28684 Filed 11–22–93; 8:45 am]

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The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 967

[Docket No. FV93-967-1IFR; Amendment 1]

Celery Grown in Florida; Decreased Expenses and Assessment Rate

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Amended interim final rule with request for comments.

SUMMARY: This interim final rule amends a previous interim final rule which authorized expenditures and established an assessment rate for the Florida Celery Committee (Committee) under Marketing Order No. 967 for the 1993–94 fiscal year. This interim final rule decreases the level of authorized expenses and reduces the assessment rate that generates funds to pay those expenses. Authorization of this decreased budget enables the Committee to incur expenses that are reasonable and necessary to administer the program. Funds to administer this program are derived from assessments on handlers.

DATES: Effective August 1, 1993, through July 31, 1994. Comments received by December 27, 1993, will be considered prior to issuance of a final rule.

ADDRESSES: Interested persons are invited to submit written comments concerning this action. Comments must be sent in triplicate to the Docket Clerk, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, FAX 202–720–5698. Comments should reference the docket number and the date and page number of this issue of the **Federal Register** and will be available for public inspection in the office of the Docket Clerk during regular business hours.

FOR FURTHER INFORMATION CONTACT: Martha Sue Clark, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, P.O. Box 96456, Room 2523–S, Washington, DC 20090–6456, telephone 202–720–9918, or William J. Pimental, Southeast Marketing Field Office, Fruit and Vegetable Division, AMS, USDA, P.O. Box 2276, Winter Haven, FL 33883–2276, telephone 813–299–4770.

SUPPLEMENTARY INFORMATION: This rule is issued under Marketing Agreement No. 149 and Order No. 967, both as amended [7 CFR part 967], regulating the handling of celery grown in Florida. The marketing agreement and order are effective under the Agricultural Marketing Agreement Act of 1937, as amended [7 U.S.C. 601–674], hereinafter referred to as the Act.

This rule is being issued in conformance with Executive Order 12866, and it has been determined that it is not a "significant regulatory action."

This interim final rule has been reviewed under Executive Order 12278, Civil Justice Reform. Under the provisions of the marketing order now in effect, Florida celery is subject to assessments. It is intended that the assessment rate as issued herein will be applicable to all assessable celery handled during the 1993–94 fiscal year, from August 1, 1993, through July 31, 1994. This interim final rule will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. Such handler is afforded the opportunity for a hearing on the petition. After the hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Pursuant to the requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this rule on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and the rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately seven producers of Florida celery under this marketing order, and approximately seven handlers. Small agricultural producers have been defined by the Small Business Administration [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of Florida celery producers and handlers may be classified as small entities.

The budget of expenses for the 1993–94 fiscal year was prepared by the Committee, the agency responsible for local administration of the marketing order, and submitted to the Department for approval. The members of the Committee are producers and handlers of Florida celery. They are familiar with the Committee's needs and with the costs of goods and services in their local area and are thus in a position to formulate an appropriate budget. The budget was formulated and discussed in a public meeting. Thus, all directly affected persons have had an opportunity to participate and provide input.

The assessment rate recommended by the Committee was derived by dividing anticipated expenses by expected shipments of Florida celery. Because that rate will be applied to actual shipments, it must be established at a rate that will provide sufficient income to pay the Committee's expenses.

The Committee met June 9, 1993, and unanimously recommended a 1993–94 budget of $90,000 and an assessment rate of $0.02 per crate. The expenses and assessment rate were published in the **Federal Register** as an interim final

rule July 16, 1993 [58 FR 38277]. That interim final rule added § 967.228, authorizing expenses and establishing an assessment rate for the Committee, and provided that interested persons could file comments through August 16, 1993. No comments were filed.

The committee budgeted $45,000 to the American Celery Council for promotional and merchandising activities. However, the Council is no longer in business. The Committee subsequently met on October 6, 1993, and unanimously recommended a decrease of $45,000 for promotion, merchandising, and public relations; reducing funding for the category to $15,000. This action reduces the total Committee budget for fiscal year 1993–94 to $45,000.

The Committee also unanimously recommended reducing the assessment rate by $0.01, for a total of $0.01. This rate, when applied to anticipated shipments of 4,500,000 crates, will yield $45,000 in assessment income. Funds in the Committee's authorized reserve as of July 31, 1992, were $27,853, which is within the maximum permitted by the order of one marketing year's expenses.

While this action will impose some additional costs on handlers, the costs are in the form of uniform assessments on handlers. Some of the additional costs may be passed on to producers. However, these costs will be offset by the benefits derived by the operation of the marketing order. Therefore, the Administrator of the AMS has determined that this action will nof have a significant economic impact on a substantial number of small entities.

After consideration of all relevant matter presented, including the information and recommendations submitted by the Committee and other available information, it is hereby found that this rule, as hereinafter set forth, will tend to effectuate the declared policy of the Act.

Pursuant to 5 U.S.C. 553, it is also found and determined upon good cause that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice prior to putting this rule into effect and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register** because:

(1) The Committee needs to have sufficient funds to pay its expenses which are incurred on a continuous basis;

(2) The fiscal year began on August 1, 1993, and the marketing order requires that the rate of assessment for the fiscal year apply to all assessable Florida celery handled during the fiscal year;

(3) Handlers are aware of this action which was unanimously recommended by the Committee at a public meeting and which is similar to budgets issued in past years; and

(4) This interim final rule provides a 30-day comments period, and all comments timely received will be considered prior to finalization of this action.

List of Subjects in 7 CFR part 967

Celery, Marketing agreements, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 967 is amended as follows:

PART 967—CELERY GROWN IN FLORIDA

1. The authority citation for 7 CFR part 967 continues to read as follows:

Authority: 7 U.S.C. 601–674.

2. Section 967.228 is revised to read as follows:

Note: This section will not appear in the Code of Federal Regulations.

§ 967.228 Expenses and assessment rate.

Expenses of $45,000 by the Florida Celery Committee are authorized, and an assessment rate of $0.01 per crate of assessable celery is established for the fiscal year ending July 31, 1994. Unexpended funds may be carried over as a reserve.

Dated: November 17, 1993.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 93–23805 Filed 11–23–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 92–ASW–23]

Revocation of Class E Airspace; Berclair, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the Class E airspace at Berclair, TX. The Department of the Navy has canceled all standard instrument approach procedures (SIAP) serving the Naval Auxiliary Landing Field (NALF) Goliad Airport, Berclair, TX, making control of this airspace for instrument flight rule (IFR) operations unnecessary. The intent of this action is to revoke the controlled airspace extending upward from 700 feet above ground level (AGL), a transition area, since it is no longer needed to contain instrument flight rule (IFR) operations at this location.

EFFECTIVE DATE: 0901 u.t.c., March 3, 1994.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Air Traffic Division, Southwest Region, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76 193–0530, telephone 817–624–5531.

SUPPLEMENTARY INFORMATION:

History

On May 3, 1993, a proposal to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to revoke the transition area at NALF Goliad Airport, Berclair, TX, was published in the **Federal Register** (58 FR 26268). The Department of the Navy has canceled all standard instrument approach procedures (SIAP) serving the NALF Goliad Airport. The airfield has been abandoned making control of this airspace for instrument flight rule (IFR) operations unnecessary. The intent of this action is to revoke the controlled airspace extending upward from 700 feet AGL, a transition area, that is no longer needed to contain IFR operations at this location. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet or more above ground level is now Class E airspace.

Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. No comments objecting to the proposal were received. Other than the change in terminology, this amendment is the same as that proposed in the notice.

Class E airspace designations for airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document will be removed from the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations revokes the Class E airspace at Naval Auxiliary Landing Field (NALF) Goliad, TX, that previously provided controlled airspace

from 700 feet AGL, a transition area, for aircraft executing all standard instrument approach procedure (SIAP) at NALF Goliad.

The FAA has determined that this regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW TX E5 Berclair, TX [Removed]

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28842 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

14 CFR Part 91

[Docket No. 27314; Amendment No. 91–232]

RIN 2120–AE49

Special Federal Aviation Regulation No. 64; Special Flight Authorizations for Noise-Restricted Aircraft; Correction

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; correction.

SUMMARY: This final rule was published June 3, 1993 (58 FR 31640), and established a Special Federal Aviation Regulation that allows persons to bring noise-restricted aircraft into the United States under certain conditions without requesting an exemption. The publication of the rule contained errors in paragraph numbering. This document corrects those errors.

EFFECTIVE DATE: June 3, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Laurette Fisher, Policy and Regulatory Division (AEE–300), Office of Environment and Energy, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591, telephone: 202–267–3561.

SUPPLEMENTARY INFORMATION: On June 3, 1993, the Federal Aviation Administration published a final rule that allows persons to bring noise-restricted aircraft into the United States under certain conditions without requesting an exemption. The publication of the rule contained errors in paragraph numbering and in a cross-reference. This document corrects those errors.

Accordingly, in **Federal Register** document number 93–13045, published June 3, 1993 at 58 FR 31640, make the following corrections:

1. On page 31641, column 2, in amendatory instruction number 2, the reference "Part 19" is corrected to read "Part 91".

2. On page 31641, column 2, in SFAR 64, in the fifth line from the bottom, the paragraph that begins "Contrary provisions of part 91," should be correctly designated as paragraph 1.

3. On page 31641, column 3, in SFAR 64, line 4, the reference "paragraph 3" is corrected to read "paragraph 2".

4. On page 31641, column 3, in SFAR 64, the paragraph designated 3. should be correctly redesignated as 2.

5. On page 31642, column 2, in SFAR 64, the paragraph designated 4. should be correctly redesignated as 3.

6. On page 31642, column 3, in SFAR 64, the paragraph designated 5. should be correctly redesignated as 4.

Issued in Washington, DC, on November 18, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

[FR Doc. 93–28823 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

Coast Guard

33 CFR Part 100

[CGD 05–93–080]

Special Local Regulations for Marine Events; Holidays in the City Boat Parade and Fireworks Display; Town Point, Elizabeth River, Norfolk, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of implementation.

SUMMARY: This notice implements special local regulations for the Holidays in the City Boat Parade and Fireworks Display. The event will consist of a boat parade of approximately 80 vessels and a fireworks display at the conclusion of the parade. The special local regulations are needed to control vessel traffic within the immediate vicinity of the event due to the confined nature of the waterway and the expected congestion at the time of the event. The regulations restrict general navigation in the area for the safety of life and property on the navigable waters during the event.

EFFECTIVE DATES: The regulations in 33 CFR 100.501 are effective from 4:30 p.m. to 9 p.m., on November 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004 (804) 398–6204, or Commander, Coast Guard Group Hampton Roads, 4000 Coast Guard Boulevard, Portsmouth, Virginia 23703–2199 (804) 483–8559.

SUPPLEMENTARY INFORMATION:

Drafting Information

The drafters of this notice are QM2 Gregory C. Garrison project officer, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, and LT Thomas McK. Sparks, project attorney, Fifth Coast Guard District Legal Staff.

Discussion

The Downtown Norfolk Council submitted an application to hold the Holidays in the City Boat Parade and Fireworks Display. The boat parade will be held in the Elizabeth River in the Town Point area between the Banana Landmass and the Berkley Bridge. The

fireworks display will be launched from Town Point Park. Since many spectator vessels are expected to be in the area to watch the boat parade and fireworks display, the regulations in 33 CFR 100.501 are being implemented for these events. The waterway will be closed from 4:30 p.m. until 9 p.m. Since the waterway will not be closed for an extended period, commercial traffic should not be severely disrupted. In addition to regulating the area for the safety of life and property, this notice of implementation also authorizes the Patrol Commander to regulate the operation of the Berkley drawbridge in accordance with 33 CFR 117.1007, and authorizes spectators to anchor in the special anchorage areas described in 33 CFR 110.72aa. The implementation of 33 CFR 100.501 also implements regulations in 33 CFR 110.72aa and 117.1007. 33 CFR 110.72aa establishes the spectator anchorages in 33 CFR 100.501 as special anchorage areas under Inland Navigation Rule 30, 33 U.S.C. 2030(g). 33 CFR 117.1007 closes the draw of the Berkley Bridge to vessels during and for one hour before and after the effective period under 33 CFR 100.501 for a total closure time in this case from 3:30 p.m. to 10 p.m. on November 27, 1993, except that the Coast Guard Patrol Commander may order that the draw be open for commercial vessels.

Date: November 15, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–28857 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–14–M

POSTAL SERVICE

39 CFR Part 266

Privacy of Information

AGENCY: Postal Service.

ACTION: Final rule.

SUMMARY: The Postal Service amends its Privacy Act regulations relating to disclosure of information to prospective employers about current or former employees. As amended, the regulation specifies the exact data elements that may be given to prospective employers without the employees' authorization to release and, more specifically, limits the terms that may be used when giving the reason for separation.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Betty Sheriff, Records Officer (202) 268–2924.

SUPPLEMENTARY INFORMATION: On March 31, 1993, the Postal Service published in the **Federal Register** (58 FR 16806) proposed changes to its regulations at 39 CFR 266.4 to specify the exact data elements that may be given to prospective employers without the employee's authorization to release. As amended, the regulation will allow disclosure of the grade, duty status, length of service, job title, salary, and date and "reason for separation." Supporting policy in postal handbooks has stated that the reason for leaving as shown on Form 50, Notification of Personnel Action, may be given. Because such information contained on the Form 50 can be considered personal in nature, the amended regulation will limit disclosure to the reason for separation expressed in specific terms that do not have strong privacy implications. No comments were received regarding the proposed change. Consequently, the rule will be adopted as proposed except that the term "death" as a reason for separation has been dropped since this term generally would be inapplicable.

List of Subjects in 39 CFR Part 266

Privacy.

The rule will be adopted to read:

PART 266—PRIVACY OF INFORMATION

1. The authority citation for part 266 continues to read as follows:

Authority: 39 U.S.C. 401; 5 U.S.C. 552a.

2. Paragraph (b)(5) of § 266.4 is revised to read as follows:

* * * * *

(b) * * *

(5) *Employee Job References.* Prospective employers of a postal employee or a former postal employee may be furnished with the information in paragraph (b)(4) of this section, in addition to the date and the reason for separation, if applicable. The reason for separation must be limited to one of the following terms: retired, resigned, or separated. Other terms or variations of these terms (e.g., retired—disability) may not be used. If additional information is desired, the requester must submit the written consent of the employee, and an accounting of the disclosure must be kept.

* * * * *

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–28832 Filed 11–23–93; 8:45 am]

BILLING CODE 7710–12–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 1E4010/R2017; FRL–4646–2]

RIN 2070–AB78

Pesticide Tolerance for Glyphosate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the herbicide glyphosate and its metabolite, aminomethylphosphonic acid, in or on the raw agricultural commodity celeriac, at 0.2 part per million (ppm). This regulation to establish a maximum permissible level for residues of the herbicide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective November 24, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 1E4010/R2017], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing request filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing requests to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of August 18, 1993 (58 FR 43828), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New

Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 1E4010 to EPA on behalf of the Agricultural Experiment Station of California. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)) propose the establishment of a tolerance for residues of the herbicide glyphosate and its metabolite aminomethylphosphonic acid resulting from application of the isopropylamine salt of glyphosate in or on the raw agricultural commodity celeraic, at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. By amending § 180.364(a) in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.364 Glyphosate; tolerances for residues.

(a) * * *

Commodity	Parts per million
* * * * *	
Celeriac	0.2
* * * * *	

* * * * *

[FR Doc. 93-28729 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[PP 0E2391/R2020; FRL-4648-9]

RIN 2070-AB78

Pesticide Tolerance for Phorate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for combined residues of the insecticide phorate (*O,O*-diethyl S[(ethylthio) methyl] phosphorodithioate) and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity (RAC) coffee beans. This regulation to establish the maximum permissible level for residues of the insecticide was requested by the American Cyanamid Co.

EFFECTIVE DATE: This regulation becomes effective November 24, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 0E2391/R2020], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert A. Forrest, Product Manager (PM) 14, Registration Division (H7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 219, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-6600.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 1993 (58 FR 46150), EPA issued a proposed rule that gave notice that the American Cyanamid Co., Agricultural Research Division, P.O. Box 400, Princeton, NJ 08540, had submitted pesticide petition (PP) 0E2391 to EPA requesting that the Administrator, pursuant to section 408(d) of the Federal Food, Drug, and Cosmetic Act, propose to establish a tolerance for the combined residues of the insecticide phorate and its cholinesterase-inhibiting metabolites in or on the raw agricultural commodity coffee beans at 0.02 part per million (ppm).

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the

objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.206 the commodity coffee beans is added to the list of commodities therein and the list is revised into a tabular format; as revised, the section reads as follows:

§ 180.206 Phorate; tolerances for residues.

Tolerances are established for combined residues of the insecticide phorate (*O,O*-diethyl *S*[(ethylthio) methyl] phosphordithioate) and its cholinesterase-inhibiting metabolites in or on raw agricultural commodities as follows:

Commodity	Parts per million
Alfalfa, fresh	0.5
Alfalfa, hay	1.0
Barley, grain	0.1
Barley, straw	0.1
Beans	0.1
Beans, vines	0.5
Bermuda grass, straw	0.5
Cattle, fat	0.05
Cattle, mbyp	0.05
Cattle, meat	0.05
Coffee beans[1]	0.02
Corn, forage	0.5
Corn, grain	0.1
Corn, sweet (K + CWHR)	0.1
Cottonseed	0.05
Eggs	0.05
Goats, fat	0.05
Goats, mbyp	0.05
Goats, meat	0.05
Hogs, fat	0.05
Hogs, mbyp	0.05
Hogs, meat	0.05
Hops	0.5
Horses, fat	0.05
Horses, mbyp	0.05
Horses, meat	0.05
Lettuce	0.1
Milk (negligible residue)	0.02
Peanuts	0.1
Peanuts, hay	0.3
Peanuts, vines	0.3
Potatoes	0.5
Poultry, fat	0.05
Poultry, mbyp	0.05
Poultry, meat	0.05
Rice	0.1
Sheep, fat	0.05
Sheep, mbyp	0.05
Sheep, meat	0.05
Sorghum, fodder	0.1
Sorghum, grain	0.1
Soybeans	0.1
Sugar beet, roots	0.3
Sugar beet, tops	3.0
Sugarcane	0.1
Tomatoes	0.1
Wheat, grain	0.05
Wheat, green fodder	1.5
Wheat, straw	0.05

[1]There are no U.S. registrations as of September 1, 1993 for coffee beans.

[FR Doc. 93-28733 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-60-F

40 CFR Part 180

[PP 8E3642/R2031; FRL-4740-5]

RIN 2070-AB78

Pesticide Tolerance for Beta-(4-Chlorophenoxy)-Alpha-(1,1-Dimethylethyl)-1H-1,2,4-Triazole-1-Ethanol

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-1*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2,2-dimethyl-4-(1*H*-1,2,4-triazol-l-yl)-1,3-butanediol, calculated as parent compound, in or on the raw agricultural commodity (RAC) imported bananas (whole) at 0.2 part per million (ppm). This regulation to establish the maximum permissible level for residues of the fungicide was requested by Mobay Corp.

EFFECTIVE DATE: This regulation becomes effective November 24, 1993.

ADDRESSES: Written objections, identified by the document control number, [PP 8E3642/R2031], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington. DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703)-305-5540.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 22, 1993 (58 FR 49265), EPA issued a proposed rule that gave notice that Mobay Corp., P.O. Box 4913, Kansas City, MO 64120-0013, had submitted pesticide petition (PP) 8E3642 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose to establish a tolerance for the combined residues of the fungicide *beta*-(4-chlorophenoxy)-*alpha*-(1,1-dimethylethyl)-*H*-1,2,4-triazole-1-ethanol, and its butanediol metabolite, 4-(4-chlorophenoxy)-2-dimethyl-4-(1*H*-1,2,4-triazol-1-yl)-1,3-butanediol, calculated as parent compound, in or on the RAC bananas at 0.2 ppm.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above (40 CFR 178.20). The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 3, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.450 is amended in paragraph (a) in the table therein by adding and alphabetically inserting the following raw agricultural commodity, to read as follows:

§ 180.450 Beta-(4-Chlorophenoxy)-alpha-(1,1-dimethylethyl)-1H-1,2,4-triazole-1-ethanol; tolerances for residues.

(a) * * *

Commodity	Parts per million
Bananas (whole)[1]	0.2
* * * * *	

[1]There are no U.S. registrations for bananas (whole) as of September 22, 1993.

* * * * *

[FR Doc. 93-28908 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Parts 180 and 186

[PP 3F2794, FAP 4H5439/R2022; FRL-4650-1]

RIN No. 2070-AB78

Pesticide Tolerances for Dicamba

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for the combined residues of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its 5-hydroxy metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid), resulting from the application of the sodium salt in or on the raw agricultural commodity (RAC) cottonseed at 3.0 parts per million (ppm) and a feed additive regulation for the same chemicals in or on the animal feed commodity cottonseed meal at 6.0 ppm. These rules were requested by Sandoz Agro, Inc., and establish the maximum level for residues of the herbicide in or on this RAC and animal feed commodity.

EFFECTIVE DATE: These regulations become effective November 24, 1993.

ADDRESSES: Written objections, identified by the document control number [PP 3P2794, FAP 4H5439/R2022], may be submitted to: Hearing Clerk (A-110), Environmental Protection Agency, Rm. 3708, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: By mail: Robert J. Taylor, Product Manager (PM) 25, Registration Division (7505C), Office of Pesticide Programs, Environmentral Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 241, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, (703)-305-6800.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of October 12, 1993 (58 FR 52757), EPA issued a notice that announced that the Sandoz Crop Protection Corp., Corporate Headquarters, 1300 East Touhy Ave., Des Plaines, IL 60018, had submitted amended petitions for PP 3F2794 proposing to establish tolerances for residues of the herbicide dicamba (3,6-dichloro-*0*-anisic acid) and its 5-hydroxy metabolite, resulting from the application of the sodium salt, on the raw agricultural commodity cottonseed at 3.0 ppm and amending FAP 4H5439 to establish a tolerance for the same herbicide for the animal feed item cottonseed meal at 6.0 ppm. EPA had previously issued a notice of the original filings for PP 3F2794 and FAP 4H5439 in the **Federal Register** of August 1, 1984 (49 FR 30790).

No comments were received in response to the notices of filing.

The data submitted in the petition and other relevant material have been evaluated. The dicamba toxicological data listed below were considered in support of these tolerances.

1. Several acute toxciology studies placing technical-grade dicamba in Toxicity Categtory I for eye irritation, Toxicity Category III for acute oral toxity, Toxicity Category IV for skin irritation, Toxicity Category III for acute dermal, and Toxicity Category IV for acute inhalation toxicity.

2. A subchronic feeding study in rats fed dosages of 1, 50, 250, and 500 milligrams per kilogram of body weight per day (mg/kg/bwt/day) with a no-observed-effect level (NOEL) of 250 mg/kg/day based on decreased weight and food consumption, absence or reduction of cytoplasmic vacuolation of hepatocytes indicating reduced glycogen storage at 500 mg/kg/day.

3. A 1-year feeding study with dogs fed dosages of 0, 2, 11, and 52 mg/kg/day with a NOEL of 52 mg/kg/day [highest dosage tested (HDT)].

4. A 2-year chronic feeding/carcinogenicity study in rats fed dosages

of 0, 2.5, 12.5, and 125 mg/kg/day with no carcinogenic effects observed under the conditions of the study at dose levels up to and including 125 mg/kg/day (HDT) and a systemic NOEL of 125 mg/dg/day (HDT).

5. A 2-year chronic feeding/carcinogenicity study in mice fed dosages of 0, 5.6, 18, 115, and 360 mg/kg/day with no carcinogenic effects observed under the condition of the study at dose levels up to and including 360 mg/kg/day (HDT) and a systemic NOEL of 115 mg/kg/day based on decreased weight in females and increased mortality in males at 360 mg/kg/day.

6. A developmental toxicity study in rats fed dosages of 0, 64, 160, and 400 mg/kg/day with no clear evidence of developmental effects. The maternal NOEL of 160 mg/kg/day was based on reduced food consumption and deaths at 400 mg/kg/day.

7. A developmental toxicity study in rabbits fed dosages of 0, 1.0, 3.0, and 10 mg/kg/day with no developmental effects occurring, even at the highest dose tested. A fetotoxic NOEL of 3.0 mg/kg/day was based on reduced fetal body weight at 10 mg/kg/day. This study was used in calculation of the Reference Dose (RFD) formerly known as the accceptable daily intake (ADI).

8. Mutagenicity studies include in vitro unscheduled DNA synthesis (did not induce UDS with or without metabolic activation up to 3,000 micrograms/milliliter [ug/mL]); an Ames test (not mutagenic to any strains of Salmonella typhimurium); and an in vitro microbiological mutagenicity and DNA synthesis with E. coli (negative with or without metabolic activation at 1,000 ug/plate).

The RFD, based on a NOEL of 3.0 mg/kg/day established in a developmental study in rabbits and using an uncertainty factor of 100, is calculated to be 0.03 mg/kg/day. The theoretical maximum residue contribution (TMRC) for published tolerances and food or feed additive regulation is 0.004816 mg/kg/bwt/day for the overall U.S. population. The current action will increase the TMRC by 0.000062 mg/kg/bwt/day (0.2 percent of the RFD) for the overall U. S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action will increase the TMRC 0.000021 mg/kg body weight/day (.07% percent of the RfD) and 0.000112 mg/kg body weight/day (.37% of the RfD), respectively. This tolerance and feed additive regulation and previously established tolerances and food or feed additive regulations utilize a total of 16 percent of the RFD for the overall U.S. population. For U.S. subgroup populations, nonnursing infants and children aged 1 to 6, the current action and previously established tolerances and food or feed additive regulations utilize, respectively, a total of 73 and 42 percent of the RFD, assuming that residue levels are at the established tolerances on food or feed additive regulation and that 100 percent of the crop is treated.

Data lacking include additional information on a chromosome aberration mutagencity study in Chinese hamster ovary cells, and the repeat of the two-generation rat reproduction study. The petitioner has been notified of the deficiencies. Despite the absence of these studies, EPA believes that the establishment of these tolerances will not significantly increase the risk posed by dicamba because the total increase in utilized RFD is less than 1 percent (0.21 percent).

Although dicamba itself has not been shown to be carcinogenic, chemical analysis of dicamba indicates that certain formulations may contain low levels of dimethyl-*N*-nitrosamine (DMNA) as an impurity. The contaminant dimethylnitrosoamine present in the formulation is due to the use of the dimethylamine (DMA) salt. The current proposed formulation change to the sodium salt negates this concern. Nitrosamine generation depends on the presence of a secondary amine as a substrate and a nitrating or a nitrosating agent. Neither is present in the sodium salt formulation; therefore, no nitrosamine risk will be present.

Because technical dicamba contains up to 50 parts per billion (ppb) of 2,7-dichlorodibenzo-*p*-dioxin (2,7-DCDD), the Agency has evaluated data on DCDD. The data evaluated included two carcinogenicity studies in which DCDD were fed to mice (at 750 and 1,500 mg/kg/day) and rats (at 250 and 500 mg/kg/day). Effects include marginal increased incidences of combination of leukemias and lymphomas, hemangiosarcomas and hemangiomas, and of hepatocellular carcinomas and adenomas in male B6C3F1 mice. These effects were "considered as suggestive of a carcinogenic effect of 2,7-dichlorodibenzo-*p*-dioxin in these animals," (Toxicology and Carcinogenesis Studies of 2,7-Dichlorodibenzo-*p*-dioxin. Report #123 (1979). NIH Pub #79-1378). A clear association between treatment and the noted liver tumors could not be made taking into account the study results and the historical incidences of these tumors. The incidences of the remaining tumors (leukemias and lymphomas, hemangiosarcomas and hemagiomas) were not dose related.

The National Toxicology Program Report of July 9, 1991 (NTIS #PB290570/AS) stated that the carcinogenic potential of DCDD was negative in male rats, negative in female rats, negative in female mice, and only equivocally positive (only possibly positive) in male mice. In addition, the International Toxicity Equivalency Factor (ITEF) for Di-dioxins is 0 according to NATO-CCMS (Committee on Challenge the ITEF of Risk Assessments for Complex Mixtures of Dioxin and Related Compounds) Update of TEF's dated February 1989 by Barnes, Ketz, and Bottimore. In light of these data, there is insufficient evidence to conclude that DCDD induces cancer in animals. The Agency has evaluated pertinent toxicology and residue information and has concluded that there is no potential carcinogenic risk to humans from a DCDD impurity in the dicamba to be used on cotton.

In developmental studies, it was reported that low incidence of cardiac lesions was observed in fetuses following the oral administration of 250 to 2,000 ug/kg/day of DCDD to female Wistar rats on days 6 to 15 of gestation; however, examination of sections of myocardium and pericardium from fetuses of female rats (strain not specified) adminstered 100 mg/kg/day on days 6 to 15 of gestation revealed no morphological differences from controls. Based on examination of these studies, the Agency has concluded that the residue levels from this compound will not pose a significant risk to the consuming public.

The pesticide is useful for the purposes for which the tolerances are sought and capable of achieving the intended physical or technical effect. The nature of the residue is adequately understood for the purpose of establishing these tolerances. Adequate analytical methodology (gas chromatography with an electron-capture detector) is available for enforcement purposes. This method is listed in the Pesticide Analytical Manual, Vol. II. There are currently no actions pending against the registration of this chemical. Any secondary residues occurring in milk, meat, fat, and meat byproducts and liver and kidney of cattle, goats, horses, hogs, and sheep from the use of dicamba on cotton will be covered by established tolerances for dicamaba and metabolite 3,6-dichloro-2-hydroxybenzoic acid on these commodities. No secondary residues are expected to occur in poultry or eggs from this use.

Based on the data and information cited above, the Agency has determined that the establishment of tolerances by amending 40 CFR parts 180 and 186 will protect the public health and that use of the pesticide in accordance with the feed additive regulation will be safe. Therefore, EPA is establishing the tolerances and feed additive regulation as described below.

Any person adversely affected by these regulations may, within 30 days after publication of this document in the **Federal Register**, file written objections with the Hearing Clerk, at the address given above. 40 CFR 178.20. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections. 40 CFR 178.25. Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on each such issue, and a summary of any evidence relied upon by the objector. 40 CFR 178.27. A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; the resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested. 40 CFR 178.32.

The Office of Management and Budget has exempted these rules from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 3, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

Therefore, chapter I of title 40 of the Code of Federal Regulations is amended as follow:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. In § 180.227 by adding new paragraph (c), to read as follows:

§ 180.227 Dicamba; tolerances for residues.

* * * * *

(c) A tolerance is established for the combined residues of dicamba (3,6-dichloro-*o*-anisic acid) and its 5-OH metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid), resulting from the application of the sodium salt of dicamba in or on the following raw agricultural commodity.

Commodity	Parts per million
Cottonseed	3.0

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.1800, to read as follows:

§ 186.1800 Dicamba.

(a) Tolerances are established for the combined residues of of the herbicide dicamba (3,6-dichloro-*o*-anisic acid) and its metabolite 3,6-dichloro-5-hydroxy-*o*-anisic acid in or on the processed feeds when present therein as a result of application of this herbicide to growing crops.

Feed	Parts per million
Sugarcane molasses	2.0

(b) A tolerance is established for the combined residues of dicamba (3,6-dichloro-*o*-anisic acid) and its 5-OH metabolite (3,6-dichloro-5-hydroxy-*o*-anisic acid), resulting from the application of the sodium salt, to the growing crop in or on the following processed feed.

Feed	Parts per million
Cottonseed meal	6.0

[FR Doc. 93-28907 Filed 11-23-93; 8:45 am]
BILLING CODE 6560-60-F

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

43 CFR Public Land Order 7009

[AK-932-4210-06; AA-17983, AA-14907, AA-16671]

Partial Revocation of Executive Order No. 4257, Dated June 27, 1925; Alaska

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order revokes an Executive order insofar as it affects 169.14 acres of National Forest System lands withdrawn for use by the Coast Guard, Department of Transportation, for the Amelius Island, Cliff Point, and Grand Island Lighthouses. The lands are no longer needed for the purpose for which they were withdrawn. This action also opens the Amelius Island Lighthouse land for selection by the State of Alaska, if such land is otherwise available. Any of this land that is not selected by the State will be open to such forms of disposition as may by law be made of National Forest system lands. Additionally, the Cliff Point Lighthouse land is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness, and the Grand Island Lighthouse is part of the Admiralty Island National Monument and Admiralty Island National Monument Wilderness, as established and designated by the Alaska National Interest Lands Conservation Act. The lands remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws.

EFFECTIVE DATE: November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Sue A. Wolf, BLM Alaska State Office, 222 W. 7th Avenue, No. 13, Anchorage, Alaska 99513-7599, 907-271-5477.

By virtue of the authority vested in the Secretary of the Interior by section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988), it is ordered as follows:

1. Executive Order No. 4257, dated June 27, 1925, which withdrew National Forest System lands for lighthouse

purposes, is hereby revoked insofar as it affects the following described lands:

Copper River Meridian

Tongass National Forest

(a) Amelius Island Lighthouse

Land within sec. 6, T. 66 S., R. 75 E., described as:
Small island about 400 yards in diameter 1¾ nautical miles 147° true from Point Amelius. (Approximate latitude 56° 10½' north, longitude 133° 52' west.)

The area described contains approximately 20 acres.

(b) Cliff Point Lighthouse

Land within T. 71 S., R. 100 E., described as Tracts A, B, and C of U.S. Survey No. 1714, excluding the following parcel:
Beginning at a point on low water line, west shore of Portland Canal, 300 feet in a direct line, southerly, from the center of the concrete slab forming the foundation of Cliff Point Light;
Thence west true 300 feet;
Thence north true 600 feet;
Thence east true 150 feet, more or less, to an intersection with the low water line;
Thence southeasterly and southerly, following the windings of the low water line to point of beginning. This parcel contains approximately 3.6 acres.

The area described, less exclusion, contains approximately 89.76 acres.

(c) Grand Island Lighthouse

Land within T. 43 S., R. 69 E., described as Tracts A and B of U.S. Survey No. 1717, excluding the following parcel:
Beginning at a point on low water line, east shore of Grand Island, 300 feet in a direct line, southerly, from the center of Grand Island Beacon, a slatted tripod anchored to concrete piers;
Thence west true 300 feet;
Thence north true 400 feet more or less, to an intersection with low water line;
Thence southeasterly and southerly following the winding of the low water line to point of beginning. This parcel contains approximately 2.8 acres.

The area described, less exclusion, contains approximately 59.38 acres.

The areas described aggregate approximately 169.14 acres.

2. Subject to valid existing rights, the land described in paragraph 1(a) is hereby opened to selection by the State of Alaska under section 6(a) of the Alaska Statehood Act of July 7, 1958, 48 U.S.C. note prec. 21 (1988).

3. As provided by section 6(g) of the Alaska Statehood Act, the State of Alaska is provided a preference right of selection for the land described in paragraph 1(a), for a period of ninety-one (91) days from the date of publication of this order, if such land is otherwise available. Any of the land described in paragraph 1(a) that is not selected by the State of Alaska will continue to be subject to the terms and conditions of the Tongass National Forest reservation, and any other withdrawal of record.

4. At 10 a.m. on February 23, 1994, the land described in paragraph 1(a) will be opened to such forms of disposition as may by law be made of the National Forest System land, including location and entry under the United States mining laws, subject to valid existing rights, the provisions of existing withdrawals, other segregations of record, and the requirements of applicable law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

5. The land described in paragraph 1(b) is part of the Misty Fjords National Monument and Misty Fjords National Monument Wilderness, and the land described in paragraph 1(c) is part of the Admiralty Island National Monument and Admiralty Island National Monument Wilderness pursuant to sections 503, 703, and 707 of the Alaska National Interest Lands Conservation Act, 94 Stat. 2399, 2418, and 2421. The lands described will remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws. Any lands described in paragraph 1(b) and 1(c) that may be outside of the Misty Fjords National Monument and the Misty Fjords National Monument Wilderness, or the Admiralty Island National Monument and Admiralty Island National Monument Wilderness, will remain withdrawn from all forms of entry, appropriation, or disposal under the public land laws until a further opening order is published.

Dated: November 2, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–28826 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–JA–M

43 CFR Public Land Order 7010

[WY–930–4210–06; WYW 88891; WYW 128399]

Opening of Land, Under Section 24 of the Federal Power Act, in Geological Survey Order Dated August 5, 1955, Which Established Powersite Classification No. 433; Wyoming

AGENCY: Bureau of Land Management, Interior.

ACTION: Public land order.

SUMMARY: This order opens, subject to the provisions of Section 24 of the Federal Power Act, a total of 220 acres of National Forest System lands withdrawn by a Geological Survey Order dated August 5, 1955, which established the Bureau of Land Management's Powersite Classification No. 433. This order will permit consummation of a pending land sale and also allows future land exchanges of Forest Service administered lands. The lands have been and continue to be open to mineral leasing, and under the provisions of the Mining Claims Rights Restoration Act of 1955, to mining.

EFFECTIVE DATE: November 24, 1993.

FOR FURTHER INFORMATION CONTACT:

Duane Feick, BLM Wyoming State Office, P.O. Box 1828, Cheyenne, Wyoming 82003, 307–775–6127.

By virtue of the authority vested in the Secretary of the Interior by the Act of June 10, 1920, section 24, as amended, 16 U.S.C. 818 (1988); and pursuant to the determinations by the Federal Energy Regulatory Commission in DVWY–182 and DVWY–188, it is ordered as follows:

1. At 9 a.m. on November 24, 1993, the following described National Forest System lands withdrawn by a Geological Survey Order dated August 5, 1955, which established Powersite Classification No. 433, will be opened to disposal by sale or exchange subject to the provisions of Section 24 of the Federal Power Act, as specified in Federal Energy Regulatory Commission determinations DVWY–182 and DVWY–188, and subject to valid existing rights, the provisions of existing withdrawals, and the requirements of applicable law:

Sixth Principal Meridian

Bridger-Teton National Forest

T. 45 N., R. 112 W.,
Sec. 20, NE¼NE¼;
Sec. 21, W½NW¼NE¼, NE¼NW¼, and NW¼NW¼.
T. 38 N., R. 113 W.,
Sec. 29, N½NW¼.

The areas described aggregate 220 acres in Teton and Sublette Counties.

Dated: November 9, 1993.

Bob Armstrong,

Assistant Secretary of the Interior.

[FR Doc. 93–28828 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–22–M

DEPARTMENT OF TRANSPORTATION

Maritime Administration

46 CFR Part 232

Docket No. R-150

[RIN 2133-AB05]

Uniform Financial Reporting Requirements

AGENCY: Maritime Administration, Department of Transportation.

ACTION: Final rule.

SUMMARY: The Maritime Administration (MARAD) is issuing this final rule to clarify its uniform financial reporting requirements applicable to the preparation and submission to MARAD of financial reports and other financial information by participants in MARAD financial assistance programs. These amendments will ensure that there is observance of generally accepted accounting principles in the keeping of financial records and the submission to MARAD of financial reports by these participants. Amendments also reflect changes in the MARAD organizational structure.

EFFECTIVE DATE: This final rule is effective December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Richard J. McDonnell, Director, Office of Financial Approvals, Maritime Administration, Washington, DC 20590. Telephone (202)366-5861.

SUPPLEMENTARY INFORMATION: The purpose of the regulations at 46 CFR part 232 is to provide direction to participants in MARAD's financial assistance programs in maintaining, in a uniform format, a chart of accounts which is the basis for the preparation of periodic financial reports and information that MARAD requires them to submit on Form MA-172. That format is derived from generally accepted accounting principles (GAAP), as promulgated by the Financial Accounting Standards Board of the American Institute to Certified Public Accountants. MARAD is amending its regulations to reflect many changes in the GAAP, including changes in terminology, that have occurred since these regulations were promulgated ten years ago, and to clarify its longstanding policy that required reporting to MARAD be in conformity with GAAP. Whenever a provision in these regulations could be construed to be in conflict with the requirements of GAAP, the requirements of GAAP shall prevail. Accordingly, when a change occurs in GAAP, e.g., a change in the name of an account, that change will now be deemed to be incorporated in these regulations without the need for a rulemaking.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

This rulemaking has been reviewed under Executive Order 12866, (September 30, 1993) and it has been determined that this is not a "significant regulatory action." It will not:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

This rulemaking does not involve any change in important Departmental policies and is considered nonsignificant under the DOT regulatory policies and procedures (44 FR 11034, February 26, 1979). Because the economic impact should be minimal, further regulatory evaluation is not necessary. Since this is a rule of agency procedure related to the format required for periodic financial reporting to MARAD, notice and public comment is not required pursuant to 5 U.S.C. 553(b)(3)(A).

Federalism

The Maritime Administration has analyzed this rulemaking in accordance with the principles and criteria contained in Executive Order 12612 and has determined that these regulations do not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Regulatory Flexibility Act

The Maritime Administration certifies that this regulation will not have a significant economic impact on a substantial number of small entities.

Environmental Assessment

The Maritime Administration has considered the environmental impact of this rulemaking and has concluded that an environmental impact statement is not required under the National Environmental Policy Act of 1969.

Paperwork Reduction Act

This rulemaking contains reporting requirements that have previously been approved by the Office of Management and Budget (Approval No. 2133-005).

List of Subjects in 46 CFR Part 232

Maritime carriers, Reporting requirements, Uniform system of accounts.

Accordingly, 46 CFR part 232 is amended as follows:

1. The authority citation for 46 CFR part 232 is revised to read as follows:

Authority: Section 204(b), Merchant Marine Act, 1936, as amended (46 App. U.S.C. 1114(b)); 49 CFR 1.66.

2. The table of contents is amended with respect to § 232.4 (A) Asset Accounts, as follows:

a. The title of account 160 is revised to read "Bad Debts."

b. The titles for accounts 360 and 380, respectively, are exchanged; and

c. The title of account 390 is revised to read "Intangible Assets".

3. Section 232.1, is amended by revising paragraph (b), to read as follows:

§ 232.1 Purpose and applicability.

* * * * *

(b) *Applicability.* This regulation is application to all participants in financial assistant programs administered by the Maritime Administration, U.S. Department of Transportation, that are required to file periodic financial reports with that agency.

4. Section 232.2 is amended as follows: a. In paragraph (a), after "generally accepted accounting principles," add "(promulgated by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants)", and remove the text that follows.

b. In paragraph (b), remove the words "the accounting principles contained in this part" and substitute the words "generally accepted accounting principles".

c. Remove existing paragraph (c) and redesignate paragraphs (d) through (f) as paragraphs (c) through (e), respectively.

d. In newly designated paragraph (d), substitute the name, "Office of Financial Approvals", for the "Office of Financial Management".

e. Revise the newly designated paragraphs (c) and (e), respectively, to read as follows:

§ 232.2 General instructions

* * * * * *

(c) *Reconciliation of financial reports.* When a program participant issues certified financial statements following accounting policies different from those followed for the financial statement filed with the Maritime Administration (such as reports filed with the Securities and Exchange Commission, public service commissions or other regulatory agencies, or reports using other acceptable accounting methods differing from methods used for this regulation's purposes), the program participant shall clearly set forth the nature and amount of each adjustment necessary to reconcile the published statements with those filed with the Maritime Administration.

* * * * *

(e) *Effective Date.* This regulation is effective as of December 27, 1993 and its requirements are mandatory for financial reports for accounting periods ending on or after December 31, 1993.

§ 232.3 [Amended]

5. Section 232.3, Chart of Accounts, is amended in paragraph (a) by removing the word, "basis", and substituting the word, "guide", and by adding a sentence at the end to read, "However, whenever there is a conflict between the meaning of any term used in the Chart of Accounts in this part 232 and that stated in any revision to generally accepted accounting principles, the meaning of the latter shall control and shall be followed."

6. Section 232.4 is amended as follows:

a. In paragraph (b)(A)(*2*)(i), substitute the words, "a related party", for "an affiliated company."

b. In paragraph (b)(A)(*5*), revise the heading to read" 160 Allowance for Bad Debts."

c. In paragraphs (b)(A)(*8*)(i) and (iv) substitute the words, "related parties", for "affiliated companies".

d. In paragraph (h)(a)(*8*)(i), substitute the words "related parties" for the word "affiliates".

e. Redesignate existing paragraph (b)(A)(*11*) as paragraph (b)(A)(*10*) and redesignate existing paragraph (b)(A)(*10*) as paragraph (b)(A)(*11*). Revise the heading of newly designated (b)(A)(*10*) to read "360 Deferred Charges" and revise the heading of newly designated (b)(A)(*11*) to read "380 Other Assets". In newly designated paragraph (b)(A)(*11*), in the first sentence of the text, remove the "(i)" at the beginning and the words "including deferred charges," and, in the last sentence of that paragraph, substitute the words, "related parties", for "affiliated companies", which words appear twice, separated by a comma.

e. In paragraph (b)(A)(*12*), revise the heading to read *390 Intangible Assets.*

f. In paragraph (b)(B)(*1*)(ii), substitute the words, "related parties", for "affiliated companies."

g. Paragraph (b)(A)(*3*)(ii), (b)(A)(*4*)(ii) and (b)(A)(*8*)(ii) are revised to read as follows:

§ 232.4 Balance Sheet Accounts

* * * * *

(b) * * *

(A) *Asset Accounts.*

(*1*) * * *

(*3*) *140 Notes receivable.*

(i) * * *

(ii) Separate subaccounts shall be used to segregate notes receivable from related parties.

(*4*) *150 Accounts Receivable.*

(i) * * *

(ii) Separate subaccounts shall be used to segregate trade or traffic receivables, claims receivables and miscellaneous receivables. Receivables arising from transactions with related parties shall also be segregated.

* * * * *

(*8*) *310 Investments.*

(i) * * *

(ii) Separate subaccounts shall be maintained for the various investments, including those resulting from related party transactions.

* * * * *

7. Section 232.5 is amended as follows:

a. In paragraph (b)(E)(*1*)(ii) remove the text beginning after the third semi-colon with the words "hull and machinery insurance costs", and ending with the words "second seamen's insurance premiums", preceding the fourth semi-colon, and substitute the following text, "hull and machinery insurance costs, including premium expense, deductibles which have been incurred or paid, protection and indemnity insurance, including premium expense, personal injury and illness deductibles which have been incurred or paid, and second seaman's insurance premiums".

b. In paragraph (b)(E)(*1*)(iii), remove the words, "direct costs", and substitute the words, "expenses directly".

c. Revise paragraph (b)(E)(*11*)(i) to read as follows:

§ 232.5 Income Statement Accounts

* * * * *

(b) * * *

(e) * * *

(11) *990 Cumulative Effect of Change in Accounting Policy.*

(i) This account shall be used to report the cumulative effect of a change in accounting policy or a change required under generally accepted accounting principles.

* * * * *

By Order of the Maritime Administrator.

Dated: November 17, 1993.

Joel Richard,

Acting Secretary, Maritime Administration.

[FR Doc. 93–28704 Filed 11–23–93; 8:45 am]

BILLING CODE 4730–01–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 64

[CC Docket No. 93–22, FCC 93–489]

Interstate Pay-Per-Call Services

AGENCY: Federal Communications Commission.

ACTION: Final rule; delay of effective date.

SUMMARY: The Commission adopted this Order to delay the effective date of its regulation requiring common carriers transmitting and billing interstate pay-per-call services to display all charges for such services separately from local or long distance telephone charges. This regulation was scheduled to take effect on November 1, 1993. The Commission delayed the effective date until January 1, 1994 to avoid the disruption and confusion that would result if carriers are unable to complete modifications to their billing systems by the required deadline.

EFFECTIVE DATE: Section 64.1510 (a)(2)(ii) and (b) is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Spangler, Enforcement Division, Common Carrier Bureau, 202–632–4890.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Order in CC Docket No. 93–22 (FCC 93–489), adopted and released on October 29, 1993. The full text of the Order is available for inspection and copying during normal business hours in the FCC Reference Center, room 239, 1919 M Street, NW., Washington, DC. The full text of this Order may also be purchased from the Commission's duplicating contractor, International Transcription Services, 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Order

1. On October 29, 1993, the Commission adopted and released an Order in CC Docket No. 93–22, summarized here, which extends the effective date of certain regulations applicable to billing of interstate pay-per-call charges. Specifically, acting on its own motion, the Commission reconsidered the effective date of the

"separate billing" requirements contained in § 64.1510 (a)(2)(ii) and (b), 47 CFR 64.1510 (a)(2)(ii), (b), and extended that date from November 1, 1993 to January 1, 1994. The separate billing requirement compels interexchange carriers (IXCs) carrying and billing for interstate pay-per-call services to list all charges for such services separately from charges related to local or long distance telephone services.

2. In extending the effective date of that requirement, the Commission observed the apparent difficulty of some carriers in completing the modifications to billing systems necessary to list pay-per-call charges separately by November 1, 1993, and the disruption likely to flow from failure to meet such requirements.[1] To avoid violating the separate billing requirements of Section 64.1510, an IXC would be required to (1) cease transmitting pay-per-call services, either entirely or, to the extent possible, selectively for those particular regions where billing cannot be accomplished as required; or (2) continue transmission of pay-per-call services but defer billing until compliance is assured. The Commission observed that either option could threaten the financial stability and, quite possibly, even the survival of some producers of pay-per-call services, since revenue would be either deferred or completely lost. In addition, consumers would not be well served if familiar pay-per-call programs are no longer available or if bills are not rendered until significantly after the services were used.

[1] Thirteen parties have requested or supported waiver of the November 1 effective date with respect to certain provisions in Section 64.1510. *See* AllTel Service Corporation Comments in Support of AT&T's Petition for Limited Interim Waiver on an Expedited Basis (Oct. 27, 1993); American Telephone and Telegraph Company (AT&T) Petition for Limited Interim Waiver on an Expedited Basis (Oct. 20, 1993); Cincinnati Bell Telephone (CBT) Petition for Temporary Limited Waiver (Oct. 20, 1993); GTE Service Corporation's Comments in Support of AT&T (Oct. 22, 1993); MCI Telecommunications Corporation Petition for Limited Waiver (Oct. 26, 1993); National Telephone Cooperative Association Comments in Support of AT&T's Petition for Limited Waiver (Oct. 27, 1993); New England Telephone and Telegraph Company Petition for Limited Waiver (Oct. 25, 1993); North State Telephone Company Petition for Limited Waiver (Oct. 27, 1993); Quintrex Data Systems Corp. Comments in Support of AT&T's Petition for a Temporary Limited Waiver (Oct. 27, 1993); Sprint Corporation Petition for Limited Waiver (Oct. 27, 1993); United States Telephone Association Comments on Petitions for Waiver and Petition for Limited Extension of Compliance Dates to Match Any Extension Granted to Interexchange Carriers (Oct. 25, 1993); U S West Petition for Reconsideration (Sep. 24, 1993). In addition, on October 27, 1993, the Information Industry Association filed a letter supporting the carriers' requests.

3. The Commission concluded that consumers would not be substantially harmed by a 60 day extension of separate billing requirements given other pay-per-call regulations mandating actions by IXCs that are designed to promote consumer awareness on pay-per-call matters. Nonetheless, the Commission found an extension beyond 60 days to be unwarranted. In addition, the Commission also let stand the requirement that all IXC bills for interstate pay-per-call charges rendered after November 1, 1993 include a brief disclosure statement informing subscribers of their pay-per-call rights and responsibilities in the manner set forth in § 64.1510 (a)(2)(i)

4. Accordingly, *it is ordered,* pursuant to section 4(i) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), that effectuation of Sections 64.1510 (a)(2)(ii), (b) is extended from November 1, 1993 until January 1, 1994.

5. *It is further ordered,* That, because of the action taken herein on our own motion, the Petitions filed by the parties identified in footnote 1 are dismissed.

6. *It is further ordered,* pursuant to Section 1.103(a) of the Commission's rules, 47 CFR 1.103(a), that this Order is effective upon release.[2]

List of Subjects in 47 CFR Part 64

Communications common carriers, Computer technology, Telephone.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–28768 Filed 11–23–93; 8:45 am]

BILLING CODE 6712–01–M

[2] Because the rule change we have adopted herein relieves a restriction, the normal 30 day notice period is not required. 5 U.S.C. 553(d)(1). In any event, because of the emergency nature of our action, there is good cause for immediate effectuation. See 5 U.S.C. 553(d)(3).

DEPARTMENT OF DEFENSE

48 CFR Parts 232 and 252

Defense Federal Acquisition Regulation Supplement; Reduction in Progress Payment Rates

AGENCY: Department of Defense (DoD).

ACTION: Interim rule with request for comments.

SUMMARY: The Director of Defense Procurement has issued an interim rule amending the Defense Federal Acquisition Regulation Supplement to reduce the customary progress payment rate for large businesses from 85 percent to 75 percent for solicitations issued on or after November 11, 1993. This includes awards to large businesses under foreign military sales (FMS) contracts.

DATES: *Effective Date:* November 11, 1993.

Comment Date: Comments on the interim rule should be submitted in writing at the address shown below on or before January 24, 1994, to be considered in formulation of the final rule. Please cite DFARS Case 93–D305 in all correspondence.

ADDRESSES: Interested parties should submit written comments to: Defense Acquisition Regulations Council, ATTN: Mr. Eric Mens, OUSD(A)DP(DAR), IMD 3D139, 3062 Defense Pentagon, Washington, DC 20301–3062. Telefax number (703) 697–9845.

FOR FURTHER INFORMATION CONTACT: Mr. Eric Mens, (703) 697–7266.

SUPPLEMENTARY INFORMATION:

A. Background

Section 8155 of the Fiscal Year 1994 Defense Appropriations Act (Pub. L. 103–139), requires the Department of Defense to reduce the customary progress payment rate for large businesses from 85 percent to 75 percent for all solicitations issued on or after November 11, 1993.

The language in DFARS 232.501–1 and the clause at 252.232–7004 is revised accordingly. Table 32–1 at DFARS 232.502–1–71 also is revised to preclude use of flexible progress payments in contracts resulting from solicitations issued on or after November 11, 1993.

B. Regulatory Flexibility Act

This interim rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 et seq. because the reduction in the customary progress payment rate applies only to large businesses. While the statute, in effect, also placed a ceiling of 75 percent on flexible progress payments, DoD does not expect the ceiling to have a significant economic impact on small entities because the customary progress payment rates for small and small disadvantaged businesses generally are significantly more favorable than a flexible progress payment rate with its associated terms and conditions.

C. Paperwork Reduction Act

The Paperwork Reduction Act (Pub. L. 96–511) does not apply because the interim rule does not impose any reporting or recordkeeping requirements

which require the approval of OMB under 44 U.S.C. 3501, *et seq.*

D. Determination To Issue an Interim Rule

A determination has been made under the authority of the Secretary of Defense to issue this rule as an interim rule. Urgent and compelling reasons exist to promulgate this rule before affording the public an opportunity to comment. Section 8155 of the FY 1994 Defense Appropriation Act (Pub. L. 103–139), was effective upon enactment on November 11, 1993. Therefore, it is essential that it be implemented as expeditiously as possible.

List of Subjects in 48 CFR Parts 232 and 252

Government procurement.

Claudia L. Naugle,

Deputy Director, Defense Acquisition Regulations Council.

Therefore, 48 CFR parts 232 and 252 are amended as follows:

1. The authority citation for 48 CFR parts 232 and 252 continues to read as follows:

Authority: 41 U.S.C. 421 and FAR Subpart 1.3.

PART 232—CONTRACT FINANCING

2. Section 232.501–1(a)(i) is revised to read as follows:

232.501–1 Customary progress payment rates.

(a)(i) The customary uniform progress payment rate for DoD contracts is 75 percent for large businesses, 90 percent for small businesses, and 95 percent for small disadvantaged businesses.

* * * * *

3. Section 232.502–1–71 is amended by revising Table 32–1 to read as follows:

232.502–1–71 Customary flexible progress payments.

TABLE 32–1. CUSTOMARY UNIFORM PROGRESS PAYMENT RATES

Contract award date	Uniform rate	Investment percentage	Cash flow model
Prior to May 1, 1985	90	5	CASH–II
May 1, 1985 through October 17, 1986	80	15	CASH–III
October 18, 1986 through September 30, 1988	75	25	CASH–IV
October 1, 1988 through June 30, 1991	80	20	CASH–V
After June 30, 1991*	85	20	CASH–VI**

* Flexible progress payments shall not be used for contracts awarded as a result of solicitations issued on or after November 11, 1993.
** See paragraph (b)(5)(ii) for implementation instructions.

PART 252—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

4. Section 252.232–7004 is amended by revising the introductory text, the clause heading, and paragraph (a) to read as follows:

252.232–7004 DoD Progress Payment Rates.

As prescribed in 232.502–4–70 (b) and (c), use the following clause:

DOD Progress Payment Rates (Nov 1993)

(a) If the contractor is a large business, the Progress Payments clause of this contract is modified to change each mention of the progress payment rate and liquidation rate (excepting paragraph (k), *Limitations on Undefinitized Actions)* to 75 percent.

* * * * *

[FR Doc. 93–28815 Filed 11–23–93; 8:45 am]

BILLING CODE 3810–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AB75

Endangered and Threatened Wildlife and Plants; Determination of Endangered Status for a Florida Plant, Jacquemontia Reclinata

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Final rule.

SUMMARY: The Service determines endangered status for *Jacquemontia reclinata* (beach jacquemontia) pursuant to the Endangered Species Act of 1973 (Act), as amended. This vine is native to coastal barrier islands in southeast Florida from Miami northward to Palm Beach County. The vast majority of the habitat originally occupied by this species has been destroyed by urban development. The protection and recovery provisions afforded by the Act for *Jacquemontia reclinata* are implemented by this final rule.

EFFECTIVE DATE: December 27, 1993.

ADDRESSES: The complete file for this rule is available for inspection, by appointment, during normal business hours at the Jacksonville Field Office, U.S. Fish and Wildlife Service, 6620 Southpoint Drive, South, Suite 310, Jacksonville, Florida 32216–0912.

FOR FURTHER INFORMATION CONTACT: Michael M. Bentzien, Assistant Field Supervisor, at the above address (telephone: 904–232–2580).

SUPPLEMENTARY INFORMATION:

Background

Jacquemontia reclinata was described as a new species by Homer D. House based on specimens collected by John Kunkel Small and Joel J. Carter on "Bull Key, opposite Lemon City, in November, 1903" (Small 1905). Lemon City is in the City of Miami, on Biscayne Bay 3 miles north of downtown; Bull Key was located at northern Miami Beach. House's treatment of this taxon as a distinct species was upheld by Robertson (1971). Although Small (1933) considered this plant's range to extend into the West Indies, Austin (1979) considers it endemic to the east coast of Florida.

Jacquemontia reclinata is a perennial vine whose stems are about 1 meter (3 feet) long and usually sprawl on the ground (i.e, are reclinate), though the stems may twine on other plants. The leaves are fleshy, with smooth margins and are elliptic to rounded egg-shaped, 1–3 centimeters (0.4–1 inch) long, with the leaf tips blunt or indented. Younger leaves and stems are pubescent enough to appear whitish. The flowers are in the

axils of the leaves, in groups or solitary. The flower's outer sepals have tiny hairs along their margins—a character that separates this species from *Jacquemontia curtissii*. The white corolla is shaped like a broad funnel or is nearly flat, 2.5–3 centimeters (1–1.2 inches) in diameter, with five broad lobes. The fruit is a capsule. This is the only species of *Jacquemontia* found near the beaches of southeastern Florida (Austin 1979). The other species of *Jacquemontia* on the mainland of southern Florida is *Jacquemontia curtissii*, which inhabits pinelands and has hairless sepals and narrower leaves that are not fleshy. Two more species of *Jacquemontia* occur in the Florida Keys (Small 1933).

Jacquemontia reclinata is restricted to the barrier islands of the southeastern Florida coast. Information on its distribution has been assembled from the Florida Natural Areas Inventory (FNAI) database, a careful recent survey of Florida's coastal upland vegetation communities (Johnson et al. 1990), a subsequent survey by Daniel Austin (1991), and reports to the Florida Natural Area Inventory by Carol Lippincott (Fairchild Tropical Garden) and Theodore O. Hendrickson (Fort Lauderdale).

A specimen identified as *Jacquemontia reclinata* was collected in a cypress swamp 10 miles west of the town of Hobe Sound; the specimen is probably *Stylisma villosa* (Austin 1991). Olga Lakela and others made numerous collections of *Jacquemontia reclinata* from Jupiter Island in Palm Beach and Martin Counties, but the species can no longer be found there. Austin (1991) confirmed that local naturalists have not seen the plant on Jupiter Island, which is largely a manicured residential area, and that it is not known to occur at Blowing Rocks Preserve or at Hobe Sound National Wildlife Refuge. *Jacquemontia reclinata* was collected at South Coral Cove Park, Jupiter Island, Palm Beach County, in 1962 but was not found in 1990; the park had suffered severe beach erosion and had a large number of Australian pines (*Casuarina equisetifolia*) that could shade out native species (Johnson et al. 1990).

Jacquemontia reclinata is presently known to occur at 12 sites, 11 of them publicly owned, in the following counties: Palm Beach (8 sites), Broward (2 sites), Dade (2 sites). All but one of the sites are public parks or recreation areas operated by State, county, or local governments. The only site in private ownership is in Broward County, and had just one plant (Johnson et al. 1990; Austin 1991; T. Hendrickson, Fort Lauderdale, *in litt.* to Florida Natural Areas Inventory, 1991; P. McVety, Fla. Dept. Natural Res., *in litt.* 1993).

Jacquemontia reclinata is an inhabitant of disturbed or sunny areas in the tropical maritime hammock (hardwood forest) or the coastal strand vegetation, typically with sea grape (*Coccoloba uvifera*) and other shrubs and dwarfed trees. It usually occurs with more or less weedy plants such as Madagascar periwinkle (*Catharanthus roseus*) and sand spurs (*Cenchrus* spp.). It occasionally occurs in the beach dune community with sea oats (*Uniola paniculata*) (Johnson et al. 1990; A. Johnson, FNAI, *in litt.*, 1990; Austin 1991; Lippincott 1990).

The historic role of hurricanes in creating bare sites for *Jacquemontia reclinata* to colonize can be surmised from the effects of human-induced disturbances and the effects of the August 1992 hurricane (Andrew) on natural populations at Key Biscayne and Virginia Key and introduced populations at Miami Beach. The Virginia Key population was thriving after the hurricane (McVety, *in litt.* 1993). The remnants of south Florida's strand vegetation have been heavily affected by invading exotic plants, including Australian pine (*Casuarina equisetifolia*), carrotwood (*Colubrina asiatica*), and Brazilian pepper (*Schinus terebinthifolius*). Native understory plants generally do not persist beneath these invaders.

Jacquemontia reclinata has been propagated from seed at Fairchild Tropical Garden and is thriving in cultivation at the Garden despite the hurricane. It appears that reintroductions of this species can be conducted relatively easily, as shown by a pilot project in Dade County (C. Lippincott, Fairchild Tropical Garden, *in litt.*, 1990, 1991).

Section 12 of the Endangered Species Act of 1973 directed the Secretary of the Smithsonian Institution to prepare a report on plants considered to be endangered, threatened, or extinct. This report, designated as House Document No. 94–51, was presented to the Congress on January 9, 1975. On July 1, 1975, the Service published a notice in the **Federal Register** (40 FR 27823) of its acceptance of the report as a petition in the context of section 4(c)(2) (now section 4(b)(3)) of the Act, as amended, and of its intention to review the status of the plant taxa contained within. *Jacquemontia reclinata* was included in these documents as a threatened species. On December 15, 1980, the Service published a notice of review for plants (45 FR 82480), which included *Jacquemontia reclinata* as a category 1 candidate (a taxon for which the Service has on file substantial data on biological vulnerability and threats to support proposing to list it as an endangered or threatened species). A supplement to the notice of review published on November 28, 1983 (48 FR 53640) changed this species to a category 2 candidate (a taxon for which data in the Service's possession indicates listing is possibly appropriate); the species retained category 2 status in a notices of review published September 27, 1985 (50 FR 39526) and February 21, 1990 (55 FR 6184).

Section 4(b)(3)(B) of the Act, as amended in 1982, requires the Secretary to make findings on certain pending petitions within 12 months of their receipt. Section 2(b)(1) of the 1982 Amendments further requires that all petitions pending on October 13, 1982, be treated as having been newly submitted on that date. This was the case for *Jacquemontia reclinata* because the Service had accepted the 1975 Smithsonian report as a petition. In each October from 1983 through 1989, the Service found that the petitioned listing of this species was warranted but precluded by other listing actions of a higher priority, and that additional data on vulnerability and threats were still being gathered. Publication of the proposal to list this species on March 18, 1993, constituted the final petition finding.

Summary of Comments and Recommendations

In the March 18 proposed rule (58 FR 25746) and associated notifications, all interested parties were requested to submit factual reports or information that might contribute to the development of a final rule. Appropriate State agencies, county governments, Federal agencies, scientific organizations, and other interested parties were contacted and requested to comment. A newspaper notice that invited general public comment was published in the *Sun-Sentinel* (Fort Lauderdale, Broward County, Florida; Boca Raton, Palm Beach County, Florida; Miami, Dade County, Florida) on April 6, 1993, and in the *Palm Beach Post* (West Palm Beach, Palm Beach County, Florida) on April 4, 1993. Three comments were received from two State agencies and one local government. All three comments supported the proposal, and a comment from the Florida Department of Natural Resources pointed out the discovery of a population in Dade County after Hurricane Andrew.

Summary of Factors Affecting the Species

After a thorough review and consideration of all information available, the Service has determined that *Jacquemontia reclinata* should be classified as an endangered species. Procedures found at section 4(a)(1) of the Endangered Species Act (16 U.S.C. 1531 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act were followed. A species may be determined to be endangered or threatened due to one or more of the five factors described in section 4(a)(1). These factors and their application to *Jacquemontia reclinata* (beach jacquemontia) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of its Habitat or Range

The barrier islands of the Florida east coast in the range of *Jacquemontia reclinata* from Jupiter Island to Key Biscayne (a distance of 85 miles) are entirely urbanized, except for a few small parks and private estates. Johnson et al. (1990) inventoried all tracts of coastal vegetation of 10 or more acres in southeast Florida. They found only 24 such tracts in the known range of *Jacquemontia reclinata*, 5 of them entirely or mostly in private ownership. These tracts have approximately 214 acres of beach strand vegetation in public ownership, 26 acres in private ownership, as well as 66 acres of maritime hammock, all in public ownership. The beach strand and maritime hammock vegetation is the primary habitat of *Jacquemontia reclinata*; the destruction of the vast majority of this habitat and modifications to the remnants (for parking lots, pedestrian routes, picnic areas, and other park uses) as well as loss to beach erosion at some sites (Johnson et al. 1990, Pilkey et al. 1984) seriously threatens the continued existence of the species.

Habitat degradation due to invasion of exotic plant species, including Australian pine, Brazilian pepper, and carrotwood has adversely affected *Jacquemontia reclinata*. A site in northern Palm Beach County is being overgrown by Brazilian pepper; another *Jacquemontia* colony was nearly destroyed between 1970 and 1991 by the expansion of a large stand of carrotwood (Austin 1991). Mowing, possible herbicide use, and other park maintenance practices also threaten *Jacquemontia reclinata*, especially because it occurs with weedy herbaceous plants and grasses.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

None known.

C. Disease or Predation

Not applicable.

D. The Inadequacy of Existing Regulatory Mechanisms

Jacquemontia reclinata is listed as an endangered species on the Florida Regulated Plant Index (Florida Department of Agriculture and Consumer Services Rule Chapter 5B–40). The list was formerly part of the Preservation of Native Flora of Florida law (section 581.185–187, Florida Statutes). The Regulated Plant Index regulates taking, transport, and sale of plants but does not provide habitat protection. The Endangered Species Act provides further protection through section 7, recovery planning, and the Act's additional penalties for taking of plants in violation of Florida law.

E. Other Natural or Manmade Factors Affecting its Continued Existence

The limited geographic distribution, the fragmentation of remaining habitat into small segments isolated from each other, and the small sizes of *Jacquemontia reclinata* populations make it doubtful that any of the existing populations are viable (for an example of a population viability analysis for a plant, see Menges (1990)). Typically, only a few *Jacquemontia* plants are present at a given site (Johnson et al. 1990; D. Austin, Florida Atlantic Univ., pers. comm., 1991). As a result, germplasm conservation (seed storage or a garden population) appears essential. Additionally, the southeast Florida coast is subject to frequent hurricanes.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats faced by this species in determining to make this rule final. Based on this evaluation, the preferred action is to list *Jacquemontia reclinata* as an endangered species. As discussed under Factor E, this species is likely to become extinct throughout its range within the foreseeable future, meeting the Act's requirements for listing as an endangered species.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that, to the maximum extent prudent and determinable, the Secretary propose critical habitat at the time the species is proposed to be endangered or threatened. Title 50, part 424 of the Code of Federal Regulations, § 424.12(1) states that designation of critical habitat is not prudent when one or both of the following situations exist: (i) The species is threatened by taking or other human activity, and identification of critical habitat can be expected to increase the degree of such threat to the species, or (ii) Such designation of critical habitat would not be beneficial to the species. Both situations apply to *Jacquemontia reclinata*.

All of the populations of *Jacquemontia reclinata* are very small and localized, typically only several plants. All but one are in public parks. If critical habitat were designated, it would need to be described in great detail, specifying precise locations of populations so as to exclude park facilities and vegetation unsuited to this species. Although unauthorized removal of *Jacquemontia reclinata* plants from parks is subject to Federal penalties under the Endangered Species Act, in addition to those provided in Florida law, such prohibitions are difficult to enforce, and publication of critical habitat descriptions and maps would only add to the threats faced by this species.

Critical habitat designation also would not be beneficial in terms of adding additional protection for the species under section 7 of the Act beyond that already available through listing the species. Regulations promulgated for the implementation of section 7 provide for both a "jeopardy" standard and a "destruction or adverse modification" of critical habitat standard. Because of the highly limited distribution of *Jacquemontia reclinata* and its precarious status, any Federal action that would destroy or have any significant adverse affect on its habitat would likely result in a jeopardy biological opinion under Section 7. Under these conditions, no additional benefits would accrue from designation of critical habitat that would not be available through listing alone.

All involved parties have been notified of the location and importance of protecting this species' habitat. In the case of public parks, the Service's experience with other endangered plants such as *Amorpha crenulata* (crenulate lead-plant) in Dade County, and *Asimina tetramera* (four-petal pawpaw) in Palm Beach County, shows that the affected park managers are informed and responsive to the needs of endangered plants without the designation of critical habitat.

Because *Jacquemontia reclinata* occurs primarily in public parks, the Service will work directly with park managers and other public officials to ensure the conservation of this species.

The only privately owned, otherwise unprotected tract known to be inhabited by *Jacquemontia reclinata* is protected in the Coastal Barrier Resource System (designated pursuant to the Coastal Barrier Resources Act, Pub. L. 97–348). The existing protection provided for *Jacquemontia reclinata* habitat, combined with the potential for problems with take, leads to the conclusion that designating critical habitat would provide no benefit to the plant beyond listing, and might increase threats to it. For this reason, the Service considers designation of critical habitat not to be prudent. The Service will address protection of this species' habitat through the recovery process, and through the section 7 jeopardy standard in the event of Federal involvement.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Endangered Species Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. The protection required of Federal agencies and the prohibitions against certain activities involving listed plants are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service.

The populations of *Jacquemontia reclinata* on public lands in its range will require careful management and a carefully managed program of propagation, germplasm conservation and augmentation of existing populations. Fairchild Tropical Garden and the Center for Plant Conservation have begun such a program. Control or extirpation of exotic pest plants such as Australian pine and Brazilian pepper may be necessary or desirable to protect existing populations of *Jacquemontia reclinata* or to restore former habitat.

The Act and its implementing regulations found at 50 CFR 17.61, 17.62 and 17.63 for endangered plants, set forth a series of general prohibitions and exceptions for all endangered plants. All prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.61, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export, transport in interstate or foreign commerce in the course of a commercial activity, sell or offer for sale listed species in interstate or foreign commerce, or to remove and reduce to possession these species from areas under Federal jurisdiction. In addition, for endangered plants, the 1988 amendments (Pub. L. 100–478) to the Act prohibit the malicious damage or destruction on Federal lands and the removal, cutting, digging up, or damaging or destroying of endangered plants in knowing violation of any State law or regulation, including State criminal trespass law. Certain exceptions apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.62 and 17.63 also provide for the issuance of permits to carry out otherwise prohibited activities involving endangered species under certain circumstances.

It is anticipated that few trade permits will be sought or issued because *Jacquemontia reclinata* is currently not sold or traded across state lines. Sale or distribution of cultivated specimens within Florida does not require a Federal permit. Trade within Florida could occur because this species is desirable for use in oceanfront parks and may be useful in oceanfront landscaping. Requests for copies of the regulations on listed plants and inquiries regarding prohibitions and permits may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 N. Fairfax Drive, room 432, Arlington VA 22203 (703/358–2104).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

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Small, J.K. 1905. Additions to the flora of subtropical Florida. Bull. New York Bot. Garden 3:419–440.

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Author

The primary author of this rule is Mr. David Martin (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Regulation Promulgation

Accordingly, part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, is amended as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.12(h) by adding the following, in alphabetical order, under Convolvulaceae, to the List of

Endangered and Threatened Plants, to read as follows:

§ 17.12 Endangered and threatened plants. (h) * * *

Species							
Scientific name	Common name	Historic range	Status	When listed	Critical habitat	Special rules
*	*	*	*	*	*	*	*
Convolvulaceae—Morning-glory family:							
*	*	*	*	*	*	*	*
Jacquemontia reclinata	Beach jacquemontia	U.S.A. (FL)	E		523	NA	NA
*	*	*	*	*	*	*	*

Dated: September 29, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–28867 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930615–3215; I.D. 111793A]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notification of commercial quota transfer.

SUMMARY: NMFS issues this notification to announce that 125,000 pounds (56,700 kg) of summer flounder commercial quota available to the State of North Carolina has been transferred to the Commonwealth of Virginia. This transfer allows Federally permitted summer flounder vessels to land in Virginia until the total adjusted state quota is attained. This notification advises the public that a quota adjustment has been made and the adjusted commercial quota for the State of North Carolina is 3,131,750 pounds (1,420,552 kg), and for the Commonwealth of Virginia is 2,882,623 pounds (1,307,549 kg).

DATES: Effective November 19, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: Regulations governing the summer flounder fishery are found at 50 CFR part 625 (December 4, 1992, 57 FR 57358). The regulations require an annual specification of a commercial quota that is apportioned among the coastal states from North Carolina through Maine. The process to set the annual commercial quota and the percent allocated to each state is described in § 625.20.

The commercial quota for summer flounder for the 1993 calendar year was set equal to 12.35 million pounds (5.6 million kg) (January 22, 1993, 58 FR 5658). The percent allocated to each state was adjusted by Amendment 4 to the Fishery Management Plan for the Summer Flounder Fishery (September 24, 1993, 58 FR 49937) with 21.31676 percent or 2,632,623 pounds (1,194,150 kg) allocated to Virginia, and 27.44584 percent, or 3,389,565 pounds (1,537,497 kg) allocated to North Carolina.

An emergency interim rule published August 26, 1993, (58 FR 45075) allows two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine summer flounder commercial quota. The Regional Director is required to consider the criteria set forth in § 625.20(f)(1) in the evaluation of requests for quota transfers or combinations.

Further, the Regional Director is required to publish a notification in the **Federal Register** advising a state, and notifying Federal vessel and dealer permit holders that, effective upon a specific date, a portion of a state's commercial quota has been transferred to or combined with the commercial quota of another state.

North Carolina and Virginia have agreed to transfer 125,000 pounds (56,700 kg) of North Carolina's commercial quota to Virginia. This transfer is in addition to the transfer of 125,000 pounds (56,000 kg) from North Carolina to Virginia on November 3, 1993 (November 8, 1993, 58 FR 59196), and 7,815 pounds (3,545 kg) which were transferred from North Carolina to New Jersey on November 18, 1993.

The Regional Director has determined that the criteria set forth in § 625.20 have been met, and publishes this notification of quota transfer. The revised quotas for the calendar year 1993 are: North Carolina—3,131,750 pounds (1,420,552 kg); Virginia—2,882,623 pounds (1,307,549 kg).

Classification

This action is authorized by 50 CFR part 625.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: November 18, 1993.

Joe P. Clem,

Acting Director of Office Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28851 Filed 11–19–93; 1:20 pm]

BILLING CODE 3510–22–M

Proposed Rules

Federal Register
Vol. 58, No. 225
Wednesday, November 24, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 25

[Docket No. NM–90; Notice No. SC–93–6–NM]

Special Conditions: Cessna Aircraft Company, Model 560 Block Point Change, S.N. 560–0260 and on, Airplanes, Lightning and High-Intensity Radiated Fields (HIRF)

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed special conditions.

SUMMARY: This notice proposes special conditions for the Cessna Aircraft Company (Cessna), Model 560 Block Point Change, S.N. 560–0260 and on, airplanes. These new airplanes will utilize new avionics/electronic systems that perform critical or essential functions. The applicable regulations do not contain adequate or appropriate safety standards for the protection of these systems from the effects of lightning and high-intensity radiated fields (HIRF). These proposed special conditions contain the additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that established by the existing airworthiness standards.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments on this proposal may be mailed in duplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, Attn: Rules Docket (ANM–7), Docket No. NM–90, 1601 Lind Avenue SW., Renton, Washington, 98055–4056; or delivered in duplicate to the Office of the Assistant Chief Counsel at the above address. Comments must be marked: Docket No. NM–90. Comments may be inspected in the Rules Docket weekdays, except Federal holidays, between 7:30 a.m. and 4 p.m.

FOR FURTHER INFORMATION CONTACT: Mark Quam, FAA, Standardization Branch, ANM–113, Transport Airplane Directorate, Aircraft Certification Service, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2145.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of these proposed special conditions by submitting such written data, views, or arguments as they may desire. Communications should identify the regulatory docket or notice number and be submitted in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Administrator before further rulemaking action is taken on these proposals. The proposals contained in this notice may be changed in light of comments received. All comments submitted will be available in the Rules Docket for examination by interested persons, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerning this rulemaking will be filed in the docket. Persons wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. NM–90." The postcard will be date stamped and returned to the commenter.

Background

On December 2, 1992, Cessna Aircraft Company (Cessna), applied for an amended type certificate in the transport airplane category for the Model 560 Block Point Change, S.N. 560–0260 and on, airplanes. The Cessna Model 560 Block Point Change is a modified Cessna Model 560. The two Pratt and Whitney, Canada, JT15D–5A engines will be replaced with JT15D–5D turbo fans which will have an increase of approximately 5 percent thrust. Two 8×7-inch primary flight instrument displays (PFD) at the pilot's station and an 8×7-inch Multifunction Display (MFD) (without engine indication and crew alerting system (EICAS)) will be installed in the center panel as standard equipment. Copilot's standard instruments will be an electro-mechanical attitude system driven by the VG–14 gyro and an electro-mechanical horizontal situation indicator (HSI) driven by the C–14D gyro. An option is offered to replace these copilot instruments with a copilot's 8×7-inch display. A Honeywell Primus 1000, digital autopilot/flight director system will be installed. This system will operate in conjunction with a suite of Collins radios (dual Com, Dual Nav, dual distance measuring equipment (DME), dual Mode S Transponder, and automatic direction finder (ADF)). Optional available avionics will be a second ADF, emergency locator transmitter (ELT) and cockpit voice recorder (CVR).

The Cessna 560 Block Point Change will also include adhesive bonded cabin side stringers, rather than riveting. Other structural, thermal and acoustic improvements will be installed. The zero fuel weight will increase from 11,200 pounds (lbs.) to 11,700 lbs., the ramp weight will increase from 16,100 lbs. to 16,500 lbs., and the takeoff weight will increase from 15,900 lbs. to 16,300 lbs.

Type Certification Basis

Under the provisions of § 21.17 of the FAR, except as provided in § 25.2, the certification basis of the Model 560 Block Point Change, S.N. 560–0260 and on, will include the applicable provisions of part 25, as amended by Amendments 25–1 through 25–17; §§ 25.251(e), 25.934, and 25.1091(d)(2) as amended through Amendment 25–23; § 25.1401 as amended through Amendment 25–27; § 25.1387 as amended through Amendment 25–30; §§ 25.787, 25.789, 25.791, 25.853, 25.855, 25.857, and 25.1359 as amended through Amendment 25–32; §§ 25.1303(a)(2) and 25.1385(c) as amended through Amendment 25–38; § 25.305 as amended through Amendment 25–54; § 25.1001 as amended through Amendment 25–57; part 34 of the FAR; part 36 of the FAR as amended by Amendments 36–1 through 36–18. Also included in the certification basis are Special Conditions 25–25–CE–4 and 25–ANM–21. The special conditions that may be developed as a result of this notice will form an additional part of the type certification basis.

For the Honeywell Primus 1000, compliance will be shown with the following regulations: §§ 25.1301, 25.1303(b), 25.1322 as amended through Amendment 25–38, §§ 25.1309, 25.25.1321(a), (b), (d), and (e), 25.1331, 25.1333, and 25.1335 as amended through Amendment 25–41.

If the Administrator finds that the applicable airworthiness regulations (i.e., part 25, as amended) do not contain adequate or appropriate safety standards for the Cessna Model 560 Block Point Change because of a novel or unusual design feature, special conditions are prescribed under the provisions of § 21.16 to establish a level of safety equivalent to that established in the regulations.

Special conditions, as appropriate, are issued in accordance with § 11.49 of the FAR after public notice, as required by §§ 11.28 and 11.29, and become part of the type certification basis in accordance with § 21.17(a)(2).

Novel or Unusual Design Features

The Model 560 Block Point Change, S.N. 560–0260 and on, incorporates new avionic/electronic installations, including two 8x7-inch PFD at the pilot's station, an 8x7-inch MFD (without EICAS) in the center panel, an optional copilot's 8x7-inch display, a Honeywell Primus 1000 digital autopilot/flight director system to operate in conjunction with a suite of Collins radios (dual Com, Dual Nav, dual DME, and ADF) and optional second ADF. These systems may be vulnerable to lightning and high-intensity radiated fields external to the airplane.

Discussion

The existing lightning protection airworthiness certification requirements are insufficient to provide an acceptable level of safety with new technology avionic systems. There are two regulations that specifically pertain to lightning protection: one for the airframe in general (§ 25.581), and the other for fuel system protection (§ 25.954). There are, however, no regulations that deal specifically with protection of electrical and electronic systems from lightning. The loss of a critical function of these systems due to lightning could prevent continued safe flight and landing of the airplane. Although the loss of an essential function would not prevent continued safe flight and landing, it could significantly impact the safety level of the airplane.

There is also no specific regulation that addresses protection requirements for electrical and electronic systems from HIRF. Increased power levels from ground based radio transmitters and the growing use of sensitive electrical and electronic systems to command and control airplanes have made it necessary to provide adequate protection.

To ensure that a level of safety is achieved equivalent to that intended by the regulations incorporated by reference, special conditions are proposed for the Cessna Model 560 Block Point Change, S.N. 560–0260 and on, which would require that new technology electronic systems, such as the primary instrument flight displays, multifunction display, digital autopilot/flight director, etc., be designed and installed to preclude component damage and interruption of function due to both the direct and indirect effects of lightning and HIRF.

Lightning

To provide a means of compliance with these proposed special conditions, clarification of the threat definition of lightning is needed. The following "threat definition," based on FAA Advisory Circular 20–136, Protection of Aircraft Electrical/Electronic Systems Against the Indirect Effects of Lightning, dated March 5, 1990, is proposed as a basis to use in demonstrating compliance with the lightning protection special condition, with the exception of the multiple burst environment, which has been changed to agree with the latest recommendation from the Society of Automotive Engineers (SAE) AE4L lightning committee.

The lightning current waveforms (Components, A, D, and H) defined below, along with the voltage waveforms in AC 20–53A, will provide a consistent and reasonable standard that is acceptable for use in evaluating the effects of lightning on the airplane. These waveforms depict threats that are external to the airplane. How these threats affect the airplane and its systems depends upon their installation configuration, materials, shielding, airplane geometry, etc. Therefore, tests (including tests on the completed airplane or an adequate simulation) and/or verified analyses need to be conducted in order to obtain the resultant internal threat to the installed systems. The electronic systems may then be evaluated with this internal threat in order to determine their susceptibility to upset and/or malfunction.

To evaluate the induced effects to these systems, three considerations are required:

1. *First Return Stroke:* (Severe Strike—Component A, or Restrike—Component D). This external threat needs to be evaluated to obtain the resultant internal threat and to verify that the level of the induced currents and voltages is sufficiently below the equipment "hardness" level; then

2. *Multiple Stroke Flash:* (½ Component D). A lightning strike is often composed of a number of successive strokes, referred to as multiple strokes. Although multiple strokes are not necessarily a salient factor in a damage assessment, they can be the primary factor in a system upset analysis. Multiple strokes can induce a sequence of transients over an extended period of time. While a single event upset of input/output signals may not affect system performance, multiple signal upsets over an extended period of time (2 seconds) may affect the systems under consideration. Repetitive pulse testing and/or analysis needs to be carried out in response to the multiple stroke environment to demonstrate that the system response meets the safety objective. This external multiple stroke environment consists of 24 pulses and is described as a single Component A followed by 23 randomly spaced restrikes of ½ magnitude of Component D (peak amplitude of 50,000 amps). The 23 restrikes are distributed over a period of up to 2 seconds according to the following constraints: (1) the minimum time between subsequent strokes is 10ms, and (2) the maximum time between subsequent strokes is 200ms. An analysis or test needs to be accomplished in order to obtain the resultant internal threat environment for the system under evaluation.

And,

3. *Multiple Burst:* (Component H). In-flight data-gathering projects have shown bursts of multiple, low amplitude, fast rates of rise, short duration pulses accompanying the airplane lightning strike process. While insufficient energy exists in these pulses to cause physical damage, it is possible that transients resulting from this environment may cause upset to some digital processing systems.

The representation of this interference environment is a repetition of short duration, low amplitude, high peak rate of rise, double exponential pulses that represent the multiple bursts of current pulses observed in these flight data gathering projects. This component is intended for an analytical (or test) assessment of functional upset of the system. Again, it is necessary that this component be translated into an internal environmental threat in order to be used. This "Multiple Burst" consists or repetitive Component H waveforms in 3 sets of 20 pulses each. The

minimum time between individual Component H pulses within a burst in 50 microseconds, the maximum is 1,000 microseconds. The 3 bursts are distributed according to the following constraints: (1) The minimum period between subsequent bursts is 30ms, and (2) the maximum period between subsequent bursts is 300ms. The individual "Multiple Burst" Component H waveform is defined below.

The following current waveforms constitute the "Severe Strike" (Component A), "Restrike" (Component D), "Multiple Stroke" (½ Component D), and the "Multiple Burst (Component H).

These components are defined by the following double exponential equation:

$i(t)=I_o (e^{-at} - e^{-bt})$

where:

t=time in seconds,
i=current in amperes, and

	Severe strike (component A)	Restrike (component D)	Multiple stroke (½ component D)	Multiple burst (component H)
I_o, amp =	218,810	109,405	54,703	10,572
a, sec^{-1} =	11,354	22,708	22,708	187,191
b, sec^{-1} =	647,265	1,294,530	1,294,530	19,105,100
This equation produces the following characteristics:				
I_{peak} =	200 KA	100 KA	50 KA	10 KA
and,				
$(di/dt)_{max}$ (amp/sec) =	1.4×10^{11} @t=0+sec	1.4×10^{11} @t=0+sec	0.7×10^{11} @t=0+sec	2.0×10^{11} @t=0+sec
di/dt, (amp/sec) =	1.0×10^{11} @t=.5μs	1.0×10^{11} @t=.25μs	0.5×10^{11} @t=.25μs	
Action Integral (amp^2 sec) =	2.0×10^6	0.25×10^6	0.625×10^6	

High-Intensity Radiated Fields (HIRF)

With the trend toward increased power levels from ground based transmitters, plus the advent of space and satellite communications, coupled with electronic command and control of the airplane, the immunity of critical digital avionics systems to HIRF must be established.

It is not possible to precisely define the HIRF to which the airplane will be exposed in service. There is also uncertainty concerning the effectiveness of airframe shielding for HIRF. Furthermore, coupling to cockpit-installed equipment through the cockpit window apertures is undefined. Based on surveys and analysis of existing HIRF emitters, an adequate level of protection exists when compliance with the HIRF protection special condition is shown with either paragraphs 1 or 2 below:

1. A minimum threat of 100 volts per meter peak electric field strength from 10 KHz to 18 GHz.

a. The threat must be applied to the system elements and their associated wiring harnesses without the benefit of airframe shielding.

b. Demonstration of this level of protection is established through system tests and analysis.

2. A threat external to the airframe of the following field strengths for frequency ranges indicated.

Frequency	Peak (V/M)	Average (V/M)
10 KHz–100 KHz	50	50
100 KHz–500 KHz	60	60
500 KHz–2000 KHz	70	70
2 MHz–30 MHz	200	200
30 MHz–70 MHz	30	30
70 MHz–100 MHz	30	30
100 MHz–200 MHz	150	33
200 MHz–400 MHz	70	70
400 MHz–700 MHz	4,020	935
700 MHz–1000 KHz	1,700	170
1 GHz–2 GHz	5,000	990
2 GHz–4 GHz	6,680	840
4 GHz–6 GHz	6,850	310
6 GHz–8 GHz	3,600	670
8 GHz–12 GHz	3,500	1,270
12 GHz–18 GHz	3,500	360
18 GHz–40 GHz	2,100	750

The envelope given in paragraph 2 above is a revision to the envelope used in previously issued special conditions in other certification projects. It is based on new data and SAE AE4R subcommittee recommendations. This revised envelope includes data from Western Europe and the U.S.

Conclusion

This action affects only certain unusual or novel design features on one model of airplane. It is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the airplane.

List of Subjects in 14 CFR Part 25

Air transportation, Aircraft, Aviation safety, Safety.

The authority citation for these proposed special conditions is as follows:

Authority: 49 U.S.C. app. 1344, 1348(c), 1352, 1354(a), 1355, 1421 through 1431, 1502, 1651(b)(2), 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11514; and 49 U.S.C. 106(g).

The Proposed Special Conditions

Accordingly, the Federal Aviation Administration (FAA) proposes the following special conditions as part of the type certification basis for the Cessna Model 560 Block Point Change, S.N. 560–0260 and on, series airplanes.

1. *Lightning Protection:* (a) Each new or modified electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to lightning.

(b) Each essential function of new or modified electronic systems or installations must be protected to ensure that the essential function can be recovered in a timely manner after the airplane has been exposed to lightning.

2. *Protection from Unwanted Effects of High-Intensity Radiated Fields (HIRF).* (a) Each new or modified electronic system that performs critical functions must be designed and installed to ensure that the operation and operational capability of these systems to perform critical functions are not adversely affected when the airplane is exposed to high-intensity radiated fields external to the airplane.

3. For the purpose of these special conditions, the following definitions apply:

Critical Function. Functions whose failure would contribute to or cause a failure condition that would prevent the continued safe flight and landing of the airplane.

Essential Functions. Functions whose failure would contribute to or cause a

failure condition that would significantly impact the safety of the airplane or the ability of the flightcrew to cope with adverse operating conditions.

Issued in Renton, Washington, on November 12, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service, ANM-100.

[FR Doc. 93-28834 Filed 11-23-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ASW-52]

Proposed Establishment of Class D and Class E Airspace: Fort Sill, OK

AGENCY: Federal Aviation Administration (FAA), Dot.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to maintain Class D airspace and establish Class E airspace at Fort Sill, OK. This proposal is initiated in response to a request by local aircraft operators to divide the current Lawton, OK, Class D airspace between Lawton Municipal Airport, Lawton, OK., and Henry Post Army Air Field (AAG), Fort Sill, OK. Controlled airspace from the surface is needed at Fort Sill on a continuous basis to contain instrument flight rules (IFR) operations at Henry Post AAF. Therefore, during the hours the Fort Sill air traffic control tower is in operation, Class D airspace will be in effect, and during nonoperational hours, Class E airspace, will be in effect. The intended effect of this proposal is to provide adequate controlled airspace to contain IFR operations at Fort Sill, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93-ASW-52, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: 817-624-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, as self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93-ASW-52." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to maintain Class D airspace during tower operations and establish Class E airspace during non-tower operations at Fort Sill, OK. This proposal would separate the current Lawton, OK, Class D airspace into two sections, thus creating independent Class D airspace for Fort Sill, OK, and also establishing Class E airspace, i.e., controlled airspace from the surface when the Fort Sill control tower is closed. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zones" and replaced it with the designation "Class D airspace." Controlled airspace from the surface without an operating control tower is designated as Class E surface areas. The intended effect of this proposal is to provide adequate controlled airspace to contain IFR operations at Fort Sill, OK.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 and Class E airspace designations are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D and Class E airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration

proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: General

* * * * *

ASW OK D Fort Sill, OK [New]

Henry Post Army Air Field, OK
(lat. 34°39'00" N., long. 98°24'07" W.)
Trail NDB
(lat. 34°46'53" N., long. 98°24'08" W.)
Lawton VOR/DME
(lat. 34°29'46" N., long. 98°24'47" W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4-mile radius of Henry Post AAF and within 1.3 miles each side of the 181° bearing from the Trail NDB extending from the 4-mile radius to 6.2 miles north of the Henry Post AAF and within 1.2 miles each side of the 003° radial of the Lawton VOR/DME extending from the 4-mile radius to 4.7 miles north of the Henry Post AAF excluding that airspace within Restricted Areas R–5601A and R–5601B when these restricted areas are activated and excluding that airspace south of a line between lat. 34°36'18" N., long. 98°20'33" W. and lat. 34°37'16" N., long. 98°28'29" W. This Class D surface area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Director.

* * * * *

ASW OK E2 Fort Sill, OK [New]

Henry Post AAF, OK
(lat. 34°39'00" N., long. 98°24'08" W.)
Trail NDB
(lat. 34°46'53" N., long. 98°24'08" W.)
Lawton VOR/DME
(lat. 34°29'46" N., long. 98°24'47" W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4-mile radius of Henry Post AAF and within 1.3 miles each side of the 181° bearing from the Trail NDB extending from the 4-mile radius to 6.2 miles north of the Henry Post AAF and within 1.2 miles each side of the 003° radial of the Lawton VOR/DME extending from the 4-mile radius to 4.7 miles north of the Henry Post AAF excluding that airspace within Restricted Areas R–5601A and R–5601B when these restricted areas are activated and excluding that airspace south of a line between lat. 34°36'18" N., long. 98°20'33" W. and lat. 34°37'16" N., long. 98°28'29" W.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28835 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–45]

Proposed Modification of Class E Airspace; Chickasha, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Chickasha, OK. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed for the Chickasha Municipal Airport. Controlled airspace extending upward from 700 feet above ground level is needed for aircraft executing the SIAP. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," replacing it with the designation "Class E airspace." The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the established SIAP.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–45, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit,with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–45." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief, Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace located at Chickasha, OK. A standard instrument approach procedure (SIAP) based on the Chickasha nondirectional radio beacon (NDB) has been established. Controlled

airspace extending upward from 700 feet or more above the ground is needed for IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace from 700 feet above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for instrument flight rule (IFR) operators executing the NDB SIAP at Chickasha Municipal Airport. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above ground are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedure and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a),.1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW OK E Chickasha, OK [Revised]

Chickasha Municipal Airport, OK
(lat. 35°05'46" N., long. 97°57'58" W.)
Chickasha NDB
(lat. 35°06'27" N., long. 97°58'30" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Chickasha Municipal Airport and within 2.5 miles each side of the 017 bearing from the Chickasha NDB extending from the 6.5-mile radius to 7.5 miles north east of the airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffice Division, Southwest Region.

[FR Doc. 93–28833 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–53]

Proposed Modification of Class D Airspace; Clinton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class D airspace at Clinton-Sherman Airport, Clinton, OK. The proposed modification would increase the vertical limits of the Class D airspace because the primary users of the airport are military jet trainers that need higher traffic pattern altitude to properly conduct their training. The intended effect of this proposal is to provide adequate Class D airspace to contain all instrument flight rules (IFR) operations at Clinton-Sherman Airport, Clinton, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–53, Department of Transportation, Federal Aviation Administration, Fort Worth TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3: p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participated in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–53." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. Communications must

identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment of part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Clinton-Sherman Airport, Clinton, OK. The proposed modification would expand the vertical limits of the airport traffic area. Currently the upper limit is 4000 feet MSL and 4500 feet is required to adequately contain all operations at the airport. The primary users of this airport are military jet trainers, that need a higher traffic pattern altitude to properly conduct their training. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "airport traffic area" for controlled airspace at an airport with an operating control tower and replaced it with the designation "Class D airspace." The intended effect of this proposal is a provide adequate Class D airspace to contain IFR operations and to require two-way radio communications at Clinton-Sherman Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 15, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: Class D Airspace

* * * * *

ASW OK D Clinton-Sherman, OK [Modify]

Clinton-Sherman Airport, OK
(Lat. 35°20'23" N., long. 99°12'02" W.)
Burns Flat VORTAC
(Lat. 35°14'13" N., long. 99°12'22" W.)

That airspace extending upward from the surface to and including 4,500 feet MSL within a 4.7-mile radius of the Clinton-Sherman Airport and within 1.1 miles each side of the 003° radial of the Burns Flat VORTAC extending from the 4.7-mile radius to 6.1 miles south of the airport. This Class D airspace area is effective during specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

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Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28841 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–51]

Proposed Modification of Class D Airspace: Lawton, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the current Class D airspace at Lawton, OK. This proposal is initiated in response to a request by local aircraft operators to separate the current Class D airspace encompassing both Lawton Municipal Airport, Lawton, OK and Henry Post Army Airfield, Fort Sill, OK, into two separate areas of Class D airspace. The intended effect of this proposal is to allow more flexibility in reclassifying each individual area of airspace, particularly during times when the towers are nonoperational, by separating the Lawton, OK, Class D airspace into two areas of Class D airspace; one area covering Lawton Municipal Airport, Lawton, OK, and the other area covering Henry Post Army Airfield, Fort Sill, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–51, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a

self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–51." The postcard will be date and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class D airspace at Lawton, OK. The proposal would separate the Class D airspace at Lawton Municipal Airport, Lawton, OK, formally the Lawton control zone, from the Class D airspace at Henry Post Army Airfield, formally the Fort Sill control zone Fort Sill, OK. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone" and replaced it with the designation "Class D airspace." The intended effect of this proposal is to allow more flexibility in reclassifying each individual area of airspace, particularly during times when the towers are nonoperational, by separating the Lawton, OK, Class D airspace into two areas of Class D airspace; one area covering Lawton Municipal Airport, Lawton, OK, and the other area covering Henry Post Army Airfield, Fort Sill, OK. A similar action concurrently is being proposed for the airspace surrounding Henry Post Army Airfield.

The coordinates for this airspace docket are based on North American Datum 83. Class D airspace designations are published in Paragraph 5000 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class D airspace designations listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact if so minimal. Since this is a routine matter that will only affect air traffic procedures and an navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 5000: Class D Airspace

* * * * *

ASW OK D Lawton, OK [Modify]

Lawton Municipal Airport, OK
(lat. 34°34'04" N., long. 98°25'00" W.)

That airspace extending upward from the surface to and including 3700 feet MSL within a 4.3-mile radius of the Lawton Municipal Airport excluding that airspace north of a line between lat. 34°36'18" N., long. 98°20'33" W. and lat. 34°37'16" N., long. 98°28'29" W. This Class D surface area is effective during the specific dates and times established in advance by a Notice to Airmen. The effective date and time will thereafter be continuously published in the Airport/Facility Directory.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28844 Filed 11–23–93; 8:45 am]
BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–44]

Proposed Establishment of Class E Airspace: Bentonville, AR and Rogers, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Bentonville, AR, and Rogers,AR. In response to user request to enhance safety and increase services, such as standard instrument departure (SID) procedures, controlled airspace to the surface, a control zone, is needed to contain instrument flight rules (IFR) operations at the airports. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone." Airspace extending upward from the surface of an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing established standard instrument approach procedures (SIAP) and SID's at these airports.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–44, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal

Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT:

Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–44." The postcard will be dated and time stamped and returned to the commenter. All communications received before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the System Management Branch, Air Traffic Division, at 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Bentonville, AR, and Rogers, AR. In response to numerous user requests to enhance safety and services, airspace extending upward from the surface of an airport without an operating control tower, a control zone, is needed to contain IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "control zone." Airspace extending upward from the surface, including any arrival extensions, of an airport without an operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing established SIAP.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated as surface for airports are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. aap. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6002: Class E Airspace Areas Designated as a Surface Area for an Airport

* * * * *

ASW AR E Bentonville, AR, and Rogers, AR [NEW]

Bentonville Municipal/Louise M. Thadden Field, AR
(lat. 36°20'74" N., long. 94°13'16" W.)
Razorback VOR
(lat. 36°14'79" N., long. 94°07'28" W.)

That airspace within a 3.9-mile radius of Bentonville Municipal Airport and within 2.2 miles each side of the 322 radial of the Razorback VOR extending from the 3.9-mile radius to 6.0 miles southeast of the airport excluding that airspace east of a line (lat. 36°24'25" N., long. 94°10'55" W.) and lat. 36°16'50" N., long. 94°08'00" W.)

Rogers Municipal/Carter Field, AR
(lat. 36°22'34" N., long. 94°19'17" W.)
Razorback VOR
(lat. 36°14'79" N., long. 94°07'28" W.)

That airspace within a 4.0-mile radius of Rogers Municipal/Carter Field and within 2.2 miles each side of the 005 radial of the Razorback VOR extending from the 4.0-mile radius to 5.7 miles south of the airport excluding that airspace west of a line (lat. 36°24'25" N., long. 94°10'55" W.) and (lat 36°16'50" N., long. 94°08'00" W.).

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28836 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–39]

Proposed Revision of Class E Airspace: DeRidder, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise the 700 feet above ground level (AGL) Class E Airspace at DeRidder, LA. An

airport surveillance approach (ASR) standard instrument approach procedure (SIAP) has been developed for Beauregard Parish Airport, and controlled airspace extending upward from 700 feet (AGL), a transition area, is needed to contain instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet AGL at an airport where there is no operating control tower is now designated Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the newly established SIAP.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–39, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES**."

Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–39." The postcard will be dated and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace at DeRidder, LA. A standard instrument approach procedure (SIAP) has been developed for Beauregard Parish Airport and controlled airspace extending upward from 700 feet AGL is needed to contain instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace designated from 700 feet AGL, including any arrival extensions, for an airport where there is no operating control tower is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the ASR SIAP at Beauregard Parish Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6002 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulation that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citations for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * * *

ASW LA DeRidder, LA [Revised]

Beauregard Parish Airport, LA
(Lat. 30°50′02″ N., Long. 93°20′22″ W.)
Runway 36
(Lat. 30°49′22″ N., Long. 93°20′15″.)

That airspace extending upward from 700 feet above the surface within a 6.7-mile radius of Beauregard Parish Airport and within 3.1-miles each side of the 179 bearing

from the approach end of Runway 36 extending from the 6.7-mile radius to 6.9-miles south of the airport.

* * * * *

Issued in Fort Worth, TX on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28837 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–37]

Proposed Revision of Class E Airspace: Venice, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to revise Class E airspace extending upward from 700 feet above ground level (AGL), a transition area, at Venice, LA. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Tiger Pass Seaplane Base, and controlled airspace extending from 700 feet above ground level (AGL), a transition area, is needed to contain aircraft executing the approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending from 700 feet or more AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Tiger Pass Seaplane Base, Venice, LA.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–38, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–37." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to revise the Class E airspace extending upward from 700 feet above ground level, a transition area, located at Venice, LA. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed for Tiger Pass Seaplane Base. Controlled airspace extending from 700 feet above ground level (AGL), a transition area, is needed to contain instrument flight rule (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Tiger Pass Seaplane Base, Venice, LA

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas for airports extending from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 21

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows;

Paragraph 6005 Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW Louisiana E5 Venice, LA [Revised]

Tiger Pass Seaplane Base, LA
(latitude 29°15'22" N., longitude 89°21'18" W.)
Venice RBN
(latitude 29°07'07" N., longitude 89°12'20" W.)
Garden Island Bay Seaplane Base, LA
(latitude 29°05'46" N., longitude 89°11'53" W.)
Tiger Pass NDB
(latitude 29°16'18" N., longitude 89°21'28" W.)

That airspace extending upward from 700 feet above the surface within a 6-mile radius of Garden Island Bay Seaplane Base, within 6.7-mile radius of Tiger Pass Seaplane Base, and within 2 miles each side of the 344 bearing from the Venice RBN extending from the 6-mile radius to 8.4 miles northwest of the seaplane base.

* * * * *

Issued in Fort Worth, TX on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28843 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–48]

Proposed Establishment of Class E Airspace: Claremore, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Claremore, OK. Two standard instrument approach procedures (SIAP) have been developed for Claremore Municipal Airport, and controlled airspace extending upward from 700 feet above the surface, a transition area, is needed to contain instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Claremore, OK.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–48, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76 193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–48." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76 193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A that describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Claremore, OK. Two very high frequency omnidirectional range/distance measuring equipment (VOR/DME) SIAP's have been developed for Claremore Municipal Airport and controlled airspace extending upward from 700 feet above the surface, a transition area, is needed to contain IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR executing the VOR/DME SIAP's at Claremore Municipal Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an

established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E Airspace Areas Extending Upward From 700 Feet or More Above the Surface of the Earth

* * * * *

ASW OK 5 Claremore, OK [New]

Claremore Municipal Airport, OK
(lat. 36°17'40" N., long. 95°28'46" W.)

That airspace extending upward from 700 feet above the surface within a 6.3-mile radius of the Claremore Municipal Airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28845 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF LABOR

Office of Workers' Compensation Programs

20 CFR Part 10

RIN Number: 1215–AA

Claims for Medical Benefits Under the Federal Employees' Compensation Act

AGENCY: Employment Standards Administration, Office of Workers' Compensation Programs, Labor.

ACTION: Notice of proposed rulemaking; request for comments.

SUMMARY: The Department of Labor proposes revisions to the rules establishing the procedure for submitting medical bills for reimbursement. These procedures include a fee schedule for medical procedures and services provided to injured federal employees under the Federal Employee's Compensation Act (FECA). The fee schedule was established in 1986 and in devising the standards used, the Department relied heavily on the system already established by the State of Washington, which at that time was one of the few comprehensive fee schedules in use that employed a nationally recognized coding scheme. The regulations specifically require the use of the relative value units (RVUs) and other factors developed by Washington State. Effective September 1, 1993, however, Washington State adopted a version of those devised by the Department of Health and Human Services, Health Care Financing Administration (HCFA). See Medicare Program: Fee Schedule for Physicians's Service for Calendar Year 1993, published November 25, 1992 (57 FR 55914). The Office of Workers' Compensation Programs (OWCP) proposes to change its regulations to: adopt the HCFA RVUs where applicable; eliminate the requirement to use the Washington State conversion factors; and allow the use of Geographic Practice Cost Indices (GPCIs) developed by the Urban Institute for HCFA to determine geographic adjustment factors. The rules also eliminate the requirement for original signatures on the bill.

DATES: Written comments must be submitted on or before January 24, 1994.

ADDRESSES: Send written comments to Thomas M. Markey, Director for Federal Employees' Compensation, Employment Standards Administration, U.S. Department of Labor, room S–3229, Frances Perkins Building, 200 Constitution Avenue NW., Washington, DC 20210; Telephone (202) 219–7552.

FOR FURTHER INFORMATION CONTACT: Thomas M. Markey, Director for Federal Employees' Compensation, Telephone (202) 219–7552.

SUPPLEMENTARY INFORMATION: The Federal Employees' Compensation Act (FECA), 5 U.S.C. 8101 *et seq.* establishes the workers' compensation system for Federal workers and provides in part that the United States shall furnish:

* * * The services, appliances and supplies prescribed or recommended by a qualified physician, which the Secretary of Labor considers likely to cure, give relief, reduce the degree or the period of disability, or aid in lessening the amount of monthly compensation * * *.

The expenses for such services, when authorized and approved by the Secretary, are paid out of the Employees' Compensation Fund. In March, 1986 the Office of Workers' Compensation Programs (OWCP), which administers the FECA under the authority granted by the Secretary, implemented a schedule of maximum allowable charges for most medical services provided to injured workers.

See 51 FR 8276, for a complete explanation of the background and purpose of the schedule. Under this system individual procedures are assigned a descriptor code using the Physicians's Current Procedural Terminology (CPT) scheme developed by the American Medical Association (AMA). Each code is then assigned a relative value unit (RVU) reflecting the relative skill, effort, risk, and time required to perform the procedure. The maximum allowable amount payable for a given service is calculated by multiplying the RVU by a conversion factor (CF). This product is in turn multiplied by a geographic index (GI) which allows for regional variations in medical costs. The fee schedule formula is:

RVU X CF X GI=Maximum allowable charge

As originally formulated, the schedule relied on elements devised by the State of Washington's Division of Labor and Industry, which in 1986 had one of the first comprehensive fee schedules. The existing rules reflect that reliance by specifying that the Department of Labor will adopt the Washington State RVUs, as well using the conversion factors. See 20 CFR 10.411(d)(3). (The geographic index, however, is devised by OWCP using its own analysis).

The components of the fee schedule have served OWCP well since 1986, with some updating from time to time. For example, the RVUs have had to be updated annually consistent with revisions published by the State of

Washington and the current edition of the CPT. In 1991, however, when Washington State delayed the adoption of new CPT codes for evaluation and management, OWCP developed its own values for these commonly used procedures. Additionally, the Department modified the conversion factors established by Washington, using the Medicare Economic Index (MEI) to adjust the conversion factors. See notice published at 57 FR 5189 (February 12, 1992).

In 1991 the nation's largest medical payment system, the Health Care Financing Administration (HCFA), published its own fee schedule which, like FECA, is truly nationwide in scope (56 FR 59502). Furthermore, the State of Washington announced on July 1, 1993, that it was adopting a new fee schedule based on HCFA's RVUs for physicians' services. It has, however, adapted that HCFA system to meet the limited geographic scope and other factors peculiar to the Washington State workers' compensation program.

The Department now has rules requiring it to use the Washington State RVUs and conversion factors that are now peculiar modifications of the NCFA system. The Department proposes to adopt elements of the HCFA fee schedule directly. This decision is based on the following:

(1) The HCFA fee schedule was developed with the assistance of a number of experts inside and outside the government;

(2) Like the existing OWCP system, this fee schedule is national in scope and includes geographic adjustment factors;

(3) Updates to the HCFA fee schedule are published on a yearly basis;

(4) The use of the HCFA relative value units furthers standardization among federal agencies; and

(5) The HCFA fee schedule is familiar to health care providers. The specific elements of the HCFA schedule that the Department would adopt are the RVUs and the geographic adjustment factors.

Relative Value Units

The Department will assign HCFA's RVUs to all those services for which there are published RVUs. These include physician's evaluation and management services, surgical and medical procedures, radiology services and some professional pathology services.

HCFA, however, has not published RVUs for all physicians services, because the procedures are reimbursed according to a different mechanism, such as anesthesia and clinical pathology services, or because HCFA does not reimburse for the particular services at all. Where there is no HCFA RVU, (particularly when the services involved are billed frequently in the FECA program), the Department proposes to develop RVUs based on internal data or external information such as the Medicare revised Clinical Laboratory Fee Schedule, National Limits.

Geographic Adjustment Factors

The present geographic indices will be replaced by the Geographic Practice Cost Indices (GPCIs) developed by the Urban Institute under a HCFA-sponsored research effort (Cooperative Agreement No. 17–C–99222/3–01, 3839–03–1, February 1991, Refining the Malpractice Geographic Practice Cost Index). The GPCIs adjust each of the three components of the RVUs (Physician work; practice expense and malpractice costs) for each CPT. These GPCIs were developed for three geographic localities: state, MSA and rural area, and Medicare pricing localities. The Department will continue to use geographic localities designated by MSAs for application of GPCIs, since Medicare pricing localities are career specific. In accordance with HCFA's rule, however, the Department will use values reflecting one-quarter of the difference in the cost of physicians' own time across geographic areas.

Finally, the conversion factors described in the **Federal Register** (see 57 FR 5186) will be changed to accommodate the change in scale of the relative unit values. As noted earlier, the conversion factors used by Washington State have already been modified by OWCP, as described in that notice. The rules, which provide that OWCP use the Washington State conversion factor, have been changed to eliminate this requirement.

Signature Authority

The proposed rules also change the provision requiring that the medical provider sign the billing form. Technological changes since this rule was established have resulted in the practice of electronic transmission of medical bills and other similar practices and as a result, signatures do not appear on many bills submitted. The signature requirement is therefore being eliminated. The fact that a signature is not required, however, in no way lessens the responsibility of the provider to ensure that services for which reimbursement is claimed were provided as described, were necessary, and that the amount claimed is otherwise proper. Submission of the bill and/or acceptance of payment constitute agreement by the provider to comply with all aspects of the FECA-related rules relating to billing and services.

Statutory Authority

5 U.S.C. 8149 provides the general statutory authority for the Secretary to prescribe rules and regulations necessary for administration and enforcement of the Federal Employees' Compensation Act.

5. U.S.C. 8145 provides that the Secretary of Labor shall administer the Act, may appoint employees to administer it, and may delegate powers conferred by the Act to any employee of the Department of Labor.

5 U.S.C. 8103 (a) and (b) specifies that the Secretary may approve or authorize "necessary and reasonable" expenses to be paid from the Employees' Compensation Fund; may issue regulations governing the provision of services, appliances and supplies; and may prescribe the form and content of the authorization certificate.

Classification

The Department of Labor has concluded that this proposed rule is not a significant regulatory action under the criteria of section 3(f) of Executive Order 12866.

Paperwork Reduction Act

The information collection requirements entailed by the proposed regulations have previously been approved by OMB.

Regulatory Flexibility Act

The Department believes that the rule will have "no significant economic impact upon a substantial number of small entities" within the meaning of section 3(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 91 Stat. 1164 (5 U.S.C. 605(b)). Although this rule will be applicable to small entities it should not result in or cause any significant economic impact, since the changes in the method of calculating the maximum allowable payments will not result in a significant difference in the outcome from that in the present method. The Secretary has so certified to the Chief Counsel for Advocacy of the Small Business Administration. Accordingly no regulatory impact analysis is required.

List of Subjects in 20 CFR Part 10

Claims, Government employees, Labor, Workers Compensation.

For the reasons set out in the preamble, it is proposed that part 10 of Chapter I of title 20 of the Code of Federal Regulations be amended as follows:

PART 10—CLAIMS FOR COMPENSATION UNDER THE FEDERAL EMPLOYEES' COMPENSATION ACT, AS AMENDED

1. The authority citation for part 10 is revised to read as follows:

Authority: 5 U.S.C. 301; Reorganization Plan No. 6 of 1950, 15 FR 3174, 64 Stat. 1263; 5 U.S.C. 8149; Secretary's Order 1–93. 58 FR 21190.

2. Section 10.411 is amended by revising paragraphs (b) and (d)(3) to read as follows:

§ 10.411 Submission of bills for medical services, appliances and supplies; limitation on payment for services.

* * * * *

(b) By submitting a bill and/or accepting a payment, the physician or other medical provider signifies that the service for which reimbursement is sought was performed as described and was necessary. In addition, the physician or other provider thereby agrees to comply with all rules and regulations set forth in this subchapter concerning the rendering of treatment and/or the process for seeking reimbursement for medical services, including the limitation imposed on the amount to be paid for such services.

* * * * *

(d) * * *

(3) The Director shall assign the relative value units (RVUs) published by the Health Care Financing Administration (HCFA) to all services for HCFA has made assignments, using the most recent revision. Where there are no RVUs assigned to a procedure, the Director may and assign that he/she considers to be appropriate RVUs. The Director will also devise conversion factors for each category of service, and in devising such factors the Director may adapt the HCFA conversion factors as appropriate using OWCP processing experience and internal data. The geographic adjustment factor shall be that designated by Geographic Practice Cost Indices for Metropolitan Statistical Areas as devised for HCFA by the Urban Institute and published February 1, 1991, as *Refining the Malpractice Geographic Cost Index*, as updated or revised from time to time.

* * * * *

Signed at Washington, DC, this 18th day of November 1993.

Lawrence W. Rogers,

Director, Office of Workers' Compensation Programs.

[FR Doc. 93–26771 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–27–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD23–1–5897; A–1–FRL–4805–9]

Approval and Promulgation of Air Quality Implementation Plans; Maryland; Stage II Vapor Recovery at Gasoline Dispensing Facilities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is taking action to propose approval of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, as a revision to the Maryland State Implementation Plan (SIP) for ozone. On January 18, 1993, the State of Maryland submitted a SIP revision request to EPA to satisfy the requirements of the Clean Air Act (the Act), which requires all ozone nonattainment areas classified as moderate or worse to require owners and operators of gasoline dispensing facilities to install and operate Stage II vapor recovery equipment to control volatile organic compound (VOC) emissions from vehicle refueling. This revision applies to the Maryland portion of the Philadelphia and Washington, DC ozone nonattainment areas and to the Baltimore ozone nonattainment area. This action is being taken in accordance with the SIP submittal and revision provisions of the Act.

DATES: Comments must be received by December 27, 1993.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; Public Information Reference Unit, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and the Maryland Department of the Environment, 2500 Broening Highway, Baltimore Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Maria A. Pino, at (215) 597–9337.

SUPPLEMENTARY INFORMATION: Under section 182(b)(3) of the Act, EPA was required to issue guidance as to the effectiveness of Stage II systems. In November 1991, EPA issued technical and enforcement guidance to meet this requirement.[1] In addition, on April 16, 1992, EPA published the "General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990" (General Preamble) (57 FR 13498). The guidance documents and the General Preamble interpret the Stage II statutory requirement and indicate what EPA believes a State submittal needs to include to meet that requirement.

In Maryland, there are three ozone nonattainment areas, the Baltimore, Philadelphia, and Washington, DC nonattainment areas. The Baltimore nonattainment area is classified as severe, and includes Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, and Howard Counties. The Philadelphia nonattainment area is also classified as severe, and contains only one county in Maryland, Cecil County. The Washington, DC nonattainment area is classified as serious, and includes Calvert, Charles, Frederick, Montgomery, and Prince George's Counties. Maryland has no moderate ozone nonattainment areas. See 56 FR 56694 (November 6, 1991) and 57 FR 56762 (November 30, 1992), codified at 40 CFR 81.347. Under section 182(b)(3) of the Act, Maryland was required to submit Stage II vapor recovery rules for these areas by November 15, 1992.

On January 18, 1993, the Maryland Department of the Environment submitted to EPA Stage II vapor recovery rules for the Baltimore nonattainment area, and the Maryland portion of the Philadelphia and Washington, DC nonattainment areas. These rules were adopted by the State on January 18, 1993 and became effective on February 15, 1993. By today's action, EPA is proposing to approve this submittal as meeting the requirements of section 182(b)(3) of the Act. EPA has reviewed Maryland's submittal against the statutory requirements and for consistency with EPA guidance. A summary of EPA's analysis is provided below. A more detailed analysis of Maryland's January 18, 1993 submittal is contained in a technical support document prepared for this revision, which is available from the Regional office, identified in the ADDRESSES section.

I. Applicability

Under section 182(b)(3) of the Act, states were required by November 15, 1992 to adopt regulations requiring

[1] These two documents are entitled "Technical Guidance-Stage II Vapor Recovery Systems for Control of Vehicle Refueling Emissions at Gasoline Dispensing Facilities" (EPA-450/3-91-022) and "Enforcement Guidance for Stage II Vehicle Refueling Control Programs."

owners or operators of gasoline dispensing systems to install and operate vapor recovery equipment at their facilities. Maryland has adopted Stage II measures for the Baltimore nonattainment area, and the Maryland portion of the Philadelphia and Washington, DC nonattainment areas, as required by the Act (COMAR 26.11.24.02A).

Section 182(b)(3)(A) of the Act specifies that Stage II controls must apply to any facility that dispenses more than 10,000 gallons of gasoline per month or, in the case of an independent small business marketer (ISBM), any facility that dispenses more than 50,000 gallons of gasoline per month. Section 324 of the Act defines an ISBM. Maryland has adopted a general applicability requirement for gasoline dispensing facilities with an average throughput of over 10,000 gallons per month and has provided an applicability requirement of 50,000 gallons per month for ISBMs (COMAR 26.11.24.02).

As more fully discussed in EPA's Enforcement Guidance and the General Preamble (57 FR 13514), Maryland has provided thatthe gallons of gasoline dispensed per month will be calculated as the average volume dispensed per month for the 2-year period prior to state adoption of the regulation, excluding any time periods when the facility was shut down (COMAR 26.11.24.01B(9) and 26.11.24.03)). Maryland has specified that the Stage II requirement apply to all gasoline dispensing facilities, including retail outlets and fleet fueling facilities (COMAR 26.11.24.01B(7)). In addition, Maryland's regulations cover all new facilities, regardless of gasoline throughput or ISBM ownership, which have a total storage tank capacity of at least 2000 gallons (COMAR 26.11.24.01B(10) and 26.11.24.02C(2)). This covers virtually all new facilities. Furthermore, Maryland requires any existing facility which was exempted because its average monthly throughput fell below the appropriate applicability threshold in COMAR 26.11.24.02 to install and operate Stage II within one year after any calendar year in which its throughput exceeds the applicability threshold (COMAR 26.11.24.07D).

Section 324(c) of the Act establishes a statutory definition of an ISBM. Maryland has adopted the statutory definition of an ISBM in its regulations (COMAR 26.11.24.01B(8)).

II. Implementation of Stage II

The Act specifies the time by which certain facilities must comply with the State regulation. For facilities that are not owned or operated by an ISBM, these times, calculated from the time of State adoption of the regulation, are: (1) 6 months for facilities for which construction began after November 15, 1990, (2) 1 year for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) 2 years for all other facilities. For ISBMs, section 324(a) of the Act provides that the time periods may be: (1) 33 percent of the facilities owned by an ISBM by the end of the first year after the regulations take effect, (2) 66 percent of such facilities by the end of the second year, and (3) 100 percent of such facilities after the third year.

Maryland's regulations are consistent with these requirements, even though Maryland did not adopt its regulations until January 18, 1993. Compliance dates are established as specified above, as if the regulations were adopted on November 15, 1992. The submitted regulation provides that facilities must install and operate Stage II by: (1) May 15, 1993 for facilities for which construction began after November 15, 1990, (2) November 15, 1993 for facilities that dispense greater than 100,000 gallons of gasoline per month, and (3) November 15, 1994 for all other facilities. For ISBMs, Maryland's regulations require compliance by: (1) November 15, 1994 for ISBMs who own 1 or 2 facilities and (2) November 15, 1995 for ISBMs who own 3 or more facilities, if at least one third are in compliance by November 15, 1993, and two thirds are in compliance by November 15, 1994 (COMAR 26.11.24.03).

III. Additional Program Requirements

Maryland's regulation does not explicitly require that Stage II equipment be tested and certified to meet a 95 percent emission reduction efficiency. However, this is required implicitly, because Maryland's regulation requires Stage II systems to be certified by the California Air Resources Board (COMAR 26.11.24.01B(1)). This is consistent with EPA guidance.

Maryland requires sources to verify proper installation and function of Stege II equipment through use of a liquid blockage test and a leak test prior to system operation and every five years or upon major modification (i.e. replacement of at least 75 percent more of an approved system) of a facility (COMAR 26.11.24.04).

With respect to recordkeeping, Maryland has adopted those items recommended in EPA's guidance, and specifies that sources subject to Stage II must make the following documents available upon request: (1) A license or permit to install and operate a Stage II system, (2) results of verification tests, (3) equipment maintenance and compliance file logs indicating compliance with manufacturer's specifications and requirements, (4) training certification files, and (5) inspection and compliance records issued by the State. In addition, Maryland requires facilities that are not subject to Stage II to maintain files containing the gasoline throughput of the facility (COMAR 26.11.24.07).

Maryland has also established an inspection function consistent with that described in EPA's guidance. Maryland plans to conduct inspections of facilities including a visual inspection of the Stage II equipment and of the required records and a functional test of the Stage II equipment. Maryland has indicated that it plans to inspect each facility at least 1 time per year with follow-up inspections at non-complying facilities. Finally, Maryland has established procedures for enforcing violations of the Stage II requirements, including a penalty schedule. These provisions are outlined in the supporting documentation which Maryland prepared for this SIP revision submittal.

Proposed Action

Because EPA believes that Maryland has adopted a Stage II regulation in accordance with section 182(b)(3) of the Act, as interpreted in EPA's guidance, EPA is proposing approval of the addition of COMAR 26.11.24, Stage II Vapor Recovery at Gasoline Dispensing Facilities, as a revision to Maryland's SIP.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to a SIP shall be considered in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Regulatory Process

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not

create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of sections 110(a)(2)(A)-(K) and 110(a)(3), and Part D of the Act, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations; Ozone, Reporting and recordkeeping requirements, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 21, 1993.

Stanley L. Laskowski,

Acting Regional Administrator, Region III.

[FR Doc. 93–28902 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–60–F

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[IN27–1–5749; FRL–4806–2]

Approval and Promulgation of Implementation Plans; Indiana

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Proposed rule.

SUMMARY: U.S. EPA proposes approval of a State Implementation Plan (SIP) request for Vermillion County, Indiana. The request was submitted by the State of Indiana for the purpose of attaining the National Ambient Air Quality Standards (NAAQS) for particulate matter with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM). The request was submitted by the State to satisfy Clean Air Act (Act) requirements for an approvable nonattainment area PM SIP for Vermillion County, Indiana.

DATES: Comments on this proposed action must be received in writing by December 27, 1993.

ADDRESSES: Copies of the State's submittal and other materials relating to this proposed action are available at the following address for review: (It is recommended that you telephone David Pohlman at (312) 886–3299, before visiting the Region 5 office.)

United States Environmental Protection Agency, Region 5, Air and Radiation Division, 77 West Jackson Boulevard (AR–18J), Chicago, Illinois 60604. Written comments should be addressed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), United States Environmental Protection Agency, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: David Pohlman, Regulation Development Branch, Regulation Development Section (AR–18J), U.S. Environmental Protection Agency, Region 5, Chicago, Illinois 60604, (312) 886–3299.

SUPPLEMENTARY INFORMATION:

BACKGROUND

On July 1, 1987 (52 FR 24634), the U.S. EPA revised the NAAQS for particulate matter (40 CFR 50.6). U.S. EPA replaced Total Suspended Particulate (TSP) as an indicator for the particulate matter ambient standard with a new indicator that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers. The 24-hour primary TSP standard was replaced by a 24-hour PM standard of 150 micrograms per cubic meter (μ/g^3), with no more than one expected exceedance per year. The annual primary TSP standard was replaced by a PM standard of 50 μ/g^3 expected annual arithmetic mean. The secondary TSP standards were replaced by 24-hour and annual PM standards that are identical to the primary standards. These standards were promulgated pursuant to sections 108 and 109 of the Act, 42 U.S.C. 7408, 7409. Section 110 of the Act requires that a state have an approved SIP to achieve federal air quality standards (42 U.S.C. 7410).

Section 107(d)(A)(B) of the Act, as amended on November 15, 1990 (amended Act), designated certain areas ("initial areas") nonattainment for particulate matter. Section 188 of the amended Act classified these initial areas as "moderate". The initial areas include the Vermillion County, Indiana nonattainment area. See 56 FR 56752 (November 6, 1991) or 40 CFR 81.315 for a complete description of these nonattainment areas. Section 189 of the amended Act required State submission of a PM SIP for the initial areas by November 15, 1991.

These moderate area PM SIPs are required to contain, among other things, the following provisions:

1. Provisions to assure that reasonably available control measures (RACM) (including such reductions in emissions from existing sources in the area as may be obtained through the adoption, at a minimum, of reasonable available control technology—RACT) shall be implemented no later than December 10, 1993;

2. Either a demonstration that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994, or a demonstration that attainment by that date is impracticable;

3. Quantitative milestones which are to be achieved every 3 years and which demonstrate reasonable further progress (RFP) toward attainment by December 31, 1994; and

4. Provisions to assure that the control requirements applicable to major stationary sources of PM also apply to major sources of PM precursors except where the Administrator determines that such sources do not contribute significantly to PM levels which exceed the NAAQS in the area. See sections 172(c), 188, and 189 of the Act.

Section 179(a) of the amended Act states that if the Administrator finds that a State has failed to make a required submission, finds that a SIP or SIP revision submitted by the State does not

satisfy the minimum criteria established under section 110(k) of the amended Act, or disapproves a SIP submission in whole or in part, unless the deficiency has been corrected within 18 months after the finding, one of the sanctions referred to in section 179(b) of the amended Act (selected by the Administrator) shall apply until the Administrator determines that the State has come into compliance. If the deficiency has not been corrected within 6 months of the selection of the first sanction, the second sanction under section 179(b) shall also apply. In addition, section 110(c) of the Act requires promulgation of a Federal Implementation Plan (FIP) within 2 years after the finding or disapproval, as discussed above, unless the State corrects the deficiency and the SIP is approved before the FIP is promulgated.

History of the Nonattainment Area

In 1988, several exceedances of the ambient air quality standard for PM were recorded in Vermillion County at monitoring sites located downwind of Peabody Coal Company's Universal Mine, Blanford East Area. As a result of these exceedances, part of Clinton Township, in Vermillion County, was classified as moderate nonattainment for PM.

On December 17, 1991, a letter was sent to the Governor of Indiana notifying him that the U.S. EPA was making a finding that the State of Indiana had failed to submit a PM SIP for the Vermillion County nonattainment area. This letter triggered both the sanctions and FIP processes as explained above. Indiana submitted a PM SIP revision for the Vermillion County nonattainment area on January 13, 1993, and supplemented the submittal on February 22, 1993, and April 8, 1993. A letter dated April 30, 1993, was sent to the State indicating that U.S. EPA had determined the SIP to be complete. Therefore, the deficiency which started the sanctions and FIP processes has been corrected, and the sanctions process has ended. The FIP process, however, is not stopped by the correction of the deficiency and U.S. EPA is required to promulgate a FIP within 2 years of the failure-to-submit letter, unless a PM SIP for the Vermillion County nonattainment area is finally approved before then.

On January 13, 1993, Indiana submitted a PM SIP revision for Vermillion County. Additional information in support of the request was submitted on February 22, 1993 and April 8, 1993. In these materials, the Indiana Department of Environmental Management (IDEM) has stated that mining operations at the Blanford mining area ceased permanently in early 1992. The only activity now taking place in the nonattainment area is land reclamation. The reclamation process has already been completed on a large part of the nonattainment area, and all reclamation will be completed by November 1, 1993. After the reclamation is complete, the entire nonattainment area will be used exclusively for agricultural purposes.

IDEM has also stated that the operating permit issued to Peabody Coal Company for this mining operation expired on April 1, 1992, and will not be renewed. These sources have been deleted from the State's emissions inventory, and there are no other permitted or registered PM sources located in the Vermillion County nonattainment area.

Analysis of State Submittal

The Act requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to U.S. EPA. Section 110(a)(2) of the Act provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing. Section 110(l) of the amended Act similarly provides that each revision to an implementation plan submitted by a State under the Act must be adopted by such State after reasonable notice and public hearing. The State of Indiana held a public hearing on February 17, 1993, to accept public comment on the implementation plan for Vermillion County. Following the public hearing the plan was adopted by the State and submitted to U.S. EPA.

The U.S. EPA also must determine whether a submittal is complete and therefore warrants further U.S. EPA review and action (see section 110(k)(1) of the amended Act and the April 16, 1992, General Preamble for the Implementation of Title I of the Amended Act at 57 FR 13565). The U.S. EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The U.S. EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by U.S. EPA 6 months after receipt of the submission. The SIP revision was reviewed by U.S. EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria set out at 40 CFR part 51, appendix V (1991), as amended by 57 FR 42216 (August 26, 1991). The submittal was found to be complete and a letter dated April 30, 1993, was sent to the State indicating the completeness of the submittal and the next steps to be taken in the review process.

Section 172(c)(3) of the amended Act requires that nonattainment plan provisions include a comprehensive, accurate, current inventory of actual emissions from all sources of pollutants for which the area is nonattainment. The emissions inventory should include a comprehensive, accurate, and current inventory of allowable emissions from all sources of such pollutants in the nonattainment area. Because the submission of such inventories are necessary to an area's attainment demonstration (or demonstration that the area cannot practicably attain), the emissions inventories must be received with the submission (see the April 16 1992, General Preamble at 57 FR 13539). This requirement does not apply to the Vermillion County nonattainment area, because there are no longer any permitted or registered PM sources in the nonattainment area.

As noted, for initial moderate PM nonattainment areas, the State must submit provisions to assure that Reasonably Available Control Measures (RACM) including Reasonable Available Control Technology (RACT) are implemented no later than December 10, 1993 (see sections 172(c)(1) and 189(a)(1)(C) of the amended Act). The April 16, 1992, General Preamble contains a detailed discussion of U.S. EPA's interpretation of the RACM (including RACT) requirement (see 57 FR 13539–13545 and 13560–13561). This requirement also has no bearing on the Vermillion County nonattainment area now that mining operations have ceased. There are no PM sources in the nonattainment area to which RACM must be applied.

As noted, the initial moderate PM nonattainment areas must submit a demonstration showing that the plan will provide for attainment as expeditiously as practicable but no later than December 31, 1994 (See section 189(a)(1)(B) of the amended Act). Alternatively, the State must show that attainment by December 31, 1994 is impracticable. The State submitted, for purpose of demonstrating attainment of the NAAQS, a summary of air quality data for the two air quality monitoring sites located near the nonattainment area covering the period 1988–1992. The table below shows the data from the Vermillion County PM monitor. This data shows that there have been no violations of the NAAQS since 1988,

and that ambient air quality has generally improved over the last 4 years. It can be seen that the annual average PM concentration has decreased significantly from 45 μg/m³ in 1988 to 29 μg/m³ in 1992 (the NAAQS is 50 μg/m³). The monitored 24 hour PM concentrations have also decreased greatly in the last 5 years. The highest monitored concentration in 1988 was 202 μg/m³ compared to 84 in 1992 (the NAAQS is 150 μg/m³). The most significant improvement is seen between the years 1991 and 1992 when mining operations in the nonattainment area ceased. Since there are no existing point or area PM sources in the area, this monitoring data is an acceptable attainment demonstration, and no air quality modeling is required to demonstrate attainment of the NAAQS for the Vermillion County nonattainment area.

MONITORED PM CONCENTRATIONS (μ/g³)

County	Year	Annual average	First high	Second high	Third high	Fourth high
Vermillion	88	45	202	180	120	119
	89	37	136	115	95	90
	90	36	110	108	103	103
	91	33	132	100	97	95
	92	29	84	81	66	66

Section 172(c)(9) of the amended Act requires each PM nonattainment area to adopt contingency measures that will take effect without further action by the State or U.S. EPA upon determination by U.S. EPA that an area has failed to make RFP or to timely attain the standards. Pursuant to section 172(b) of the amended Act, the Administrator has established that states shall submit SIP revisions containing contingency measures no later than November 15, 1993. The Vermillion County PM plan does not contain contingency measures. The State must submit a SIP revision containing approvable contingency measures by November 15, 1993. Since contingency measures are not currently due, U.S. EPA will address this issue in a future rulemaking action.

Section 189(c) of the amended Act provides that the SIP must contain quantitative milestones which are to be achieved every 3 years until the area is redesignated attainment and which demonstrate reasonable further progress as defined in section 171(1) of the amended Act. As stated in the General Preamble, attainment plans for moderate areas which demonstrate attainment by December 31, 1994, will meet the initial quantitative milestone requirement. The attainment demonstration for Vermillion County therefore satisfies the quantitative milestone requirement and RFP.

Section 189(e) of the amended Act provides that the control requirements for major stationary sources of PM shall also apply to major stationary sources of PM precursors, except where the Administrator determines that such sources do not contribute significantly to PM levels which exceed the standard in the area. Particulate matter precursors are pollutants emitted as gases that undergo chemical transformations to become particulate, and principally include sulfates and nitrates. There are no major stationary sources of PM precursors in the Vermillion County nonattainment area.

Proposed Rulemaking Action

U.S. EPA is proposing to approve the requested Vermillion County nonattainment area PM SIP revision which was submitted on January 13, 1993, as supplemented on February 22, 1993, and April 8, 1993. Among other things, the State of Indiana has demonstrated, as cited above, that the Vermillion County moderate PM nonattainment area will attain the PM NAAQS by December 31, 1994. As noted, additional submittals for the initial moderate PM nonattainment areas are due at later dates. U.S. EPA will determine the adequacy of any such submittal as appropriate, in future rulemaking actions.

Public comment is solicited on the requested SIP revision and on U.S. EPA's proposed rulemaking action. Comments received by December 27, 1993 will be considered in the development of U.S. EPA's final rulemaking action.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. (5 U.S.C. 603 and 604.) Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

The Office of Management and Budget has exempted this rule from the requirements of section 6 of Executive Order 12866.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Particulate matter.

Authority: 42 U.S.C. 7401–7671(q).

Dated: August 19, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–28901 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–P

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40 CFR Part 180

[OPP–300309; FRL–4649–7]

RIN No. 2070–AC18

Acrylonitrile-Styrene-Hydroxypropyl Methacrylate Copolymer Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of acrylonitrile-styrene-hydroxypropyl

methacrylate copolymer when used as an inert ingredient (pigment carrier) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Day-Glo Color Corp.

DATES: Comments, identified by the document control number [OPP-300309], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Westfield Building North, 6th Fl., 2800 Crystal Drive, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Day-Glo Color Corp., 4515 St. Clair Ave., Cleveland, OH 44103, has submitted pesticide petition (PP) 3E04181 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of acrylonitrile-styrene-hydroxypropyl methacrylate copolymer when used as an inert ingredient (pigment carrier) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for acrylonitrile-styrene-hydroxypropyl methacrylate copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Acrylonitrile-styrene-hydroxypropyl methacrylate copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum number-average molecular weight of the above-mentioned copolymer is 447,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250(d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300309]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from

8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 15, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * *	* *	* *
Acrylonitrile-styrene-hydroxypropyl methacrylate copolymer; minimum number-average molecular weight 447,000.	.....	Pigment carrier
* * *	* *	* *

* * * * *

[FR Doc. 93-28906 Filed 11-23-93; 8:45 am]

BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300306; FRL-4649-4]

RIN No. 2070-AC18

Trimethylolpropane; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of trimethylolpropane (CAS Reg. No. 77-99-6) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. This regulation is proposed by the Agency on its own initiative.

DATES: Comments, identified by the document control number [OPP-300306], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, Crystal Mall, Building #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of May 12, 1993 (58 FR 27972), EPA issued a proposal to exempt trimethylolpropane (CAS Reg. No. 77-99-6) from the requirement of a tolerance when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only with a limitation that it will not exceed 5% of the pesticide formulation. The Agency received a comment in response to the proposed rule, requesting that the Administrator expand the proposed tolerance exemption for trimethylolpropane. The commenter requested that the limit be raised to 10%.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The information submitted in the original petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk.

In the proposed rule of May 12, 1993, EPA noted that the Office of Pollution Prevention and Toxics (OPPT) Structure Activity Team (SAT) determined that trimethylolpropane could raise low-to-moderate concern for developmental toxicity because of structural similarity to branched-chain alcohols. However, the Agency developed a worst-case analysis which showed that a limit for trimethylolpropane of 5% posed no appreciable risk to humans.

As a result of the comment received, and because trimethylolpropane is currently being used in polyvinyl alcohol water-soluble films at levels up to approximately 15%, the Agency reevaluated the potential risk of trimethylolpropane using information obtained from the OPPT Chemical Screening and Risk Assessment Division concerning branched-chain alcohols. The Agency has assessed the risk of other branched-chain alcohols using a no-observable-adverse-effects-level (NOAEL) of 65 mg/kg (developmental toxicity in rats) for valproic acid (Food and Drug Administration; Internal Report of January 16, 1974). Using this NOAEL and assuming levels of 15% trimethylolpropane in the film and representative worst-case application scenarios, the Agency calculated a margin of exposure of 6,500 and concluded that trimethylolpropane will not pose a risk to human health at this level. Therefore, the Agency has raised the limit for trimethylolpropane to 15%.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient does not pose a risk to human health or the environment. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300306]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 16, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
* * * * * * *		
Trimethylolpropane (CAS Reg. No. 77-66-9)	Not more than 15% of the pesticide formulation.	Component of water-soluble film
* * * * * * *		

* * * * *

[FR Doc. 93-28905 Filed 11-23-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Part 180

[OPP-300312; FRL-4741-8]

RIN No. 2070-AC18

Vinyl Acetate-Ethylene Copolymer; Tolerance Exemption

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that an exemption from the requirement of a tolerance be established for residues of vinyl acetate-ethylene copolymer (CAS Reg. No. 24937-78-8) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only. This proposed regulation was requested by Air Products and Chemicals, Inc.

DATES: Comments, identified by the document control number [OPP-300312], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1132, Crystal Mall Bldg. #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part of all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by EPA without prior notice. The public

docket is available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: 2800 Crystal Drive, North Tower, Arlington, VA 22202, (703)-308-8320.

SUPPLEMENTARY INFORMATION: Air Products and Chemicals, Inc., 7201 Hamilton Blvd., Allentown, PA 18195-1501, has submitted pesticide petition (PP) 3E4275 to EPA requesting that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a(e), propose to amend 40 CFR 180.1001(d) by establishing an exemption from the requirement of a tolerance for residues of vinyl acetate-ethylene copolymer (CAS Reg. No. 24937-78-8) when used as an inert ingredient (component of water-soluble film) in pesticide formulations applied to growing crops only.

Inert ingredients are all ingredients that are not active ingredients as defined in 40 CFR 153.125, and include, but are not limited to, the following types of ingredients (except when they have a pesticidal efficacy of their own): solvents such as alcohols and hydrocarbons; surfactants such as polyoxyethylene polymers and fatty acids; carriers such as clay and diatomaceous earth; thickeners such as carrageenan and modified cellulose; wetting, spreading, and dispersing agents; propellants in aerosol dispensers; microencapsulating agents; and emulsifiers. The term "inert" is not intended to imply nontoxicity; the ingredient may or may not be chemically active.

The data submitted in the petition and other relevant material have been evaluated. As part of the EPA policy statement on inert ingredients published in the **Federal Register** of April 22, 1987 (52 FR 13305), the Agency established data requirements which will be used to evaluate the risks posed by the presence of an inert ingredient in a pesticide formulation. Exemptions from some or all of the requirements may be granted if it can be determined that the inert ingredient will present minimal or no risk. The Agency has decided that the data normally required to support the proposed tolerance exemption for vinyl acetate-ethylene copolymer will not need to be submitted. The rationale for this decision is described below:

In the case of certain chemical substances which are defined as "polymers," the Agency has established a set of criteria which identify categories of polymers that present low risk. These criteria (described in 40 CFR 723.250) identify polymers that are relatively unreactive and stable compared to other chemical substances as well as polymers that typically are not readily absorbed. These properties generally limit a polymer's ability to cause adverse effects. In addition, these criteria exclude polymers about which little is known. The Agency believes that polymers meeting the criteria noted above will present minimal or no risk. Vinyl acetate-ethylene copolymer conforms to the definition of a polymer given in 40 CFR 723.250(b)(11) and meets the following criteria which are used to identify low-risk polymers:

1. The minimum number average molecular weight of the above-mentioned copolymer is 69,000. Substances with molecular weights greater than 400 are generally not readily absorbed through the intact skin, and substances with molecular weights greater than 1,000 are generally not absorbed through the intact gastrointestinal (GI) tract. Chemicals not absorbed through the skin or GI tract are generally incapable of eliciting a toxic response.

2. The above-mentioned copolymer is not a cationic polymer, nor is it reasonably anticipated to become a cationic polymer in a natural aquatic environment.

3. The above-mentioned copolymer does not contain less than 32.0 percent by weight of the atomic element carbon.

4. The above-mentioned copolymer contains as an integral part of its composition the atomic elements carbon, hydrogen, nitrogen, and oxygen.

5. The above-mentioned copolymer does not contain as an integral part of its composition, except as impurities, any elements other than those listed in 40 CFR 723.250 (d)(3)(ii).

6. The above-mentioned copolymer is not a biopolymer, a synthetic equivalent of a biopolymer, or a derivative or modification of a biopolymer that is substantially intact.

7. The above-mentioned copolymer is not manufactured from reactants containing, other than as impurities, halogen atoms or cyano groups.

8. The above-mentioned copolymer does not contain reactive functional groups that are intended or reasonably anticipated to undergo further reaction.

9. The above-mentioned copolymer is not designed or reasonably anticipated to substantially degrade, decompose, or depolymerize.

Based upon the above information and review of its use, EPA has found that, when used in accordance with good agricultural practice, this ingredient is useful and a tolerance is not necessary to protect the public health. Therefore, EPA proposes that the exemption from the requirement of a tolerance be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300312]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 2 of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic effect on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Recording and recordkeeping requirements.

Dated: November 15, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1001(d) is amended by adding and alphabetically inserting the inert ingredient, to read as follows:

§ 180.1001 Exemptions from the requirement of a tolerance.

* * * * *

(d) * * *

Inert ingredients	Limits	Uses
•	•	•
Vinyl acetate-ethylene copolymer (CAS Reg. No. 24937-78-8); minimum number average molecular weight 69,000.	.....	Component of water-soluble film
•	•	•

* * * * *

[FR Doc. 93–28909 Filed 11–23–93; 8:45 am]
BILLING CODE 6560–50–F

40 CFR Part 180

[OPP–300313/FRL–4741–8]

RIN No. 2070–AC18

Definitions and Interpretations; Sorghum

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: This document proposes that 40 CFR 180.1(h) be amended by adding definitions of the commodity terms "sorghum grain" and "sorghum fodder and forage." The proposed amendment to 40 CFR 180.1(h) is based, in part, on recommendations of the Interregional Research Project No. 4 (IR-4).

DATES: Comments, identified by the document control number [OPP-300313], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice. All written comments will be available for public inspection in Rm. 1132 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Sixth Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703-308-8783).

SUPPLEMENTARY INFORMATION: Section 180.1(h) (40 CFR 180.1(h)) provides a listing of general commodity terms and EPA's interpretation of those terms as they apply to tolerances and exemptions from the requirement of a tolerance for pesticide chemicals under section 408 of the Federal Food, Drug, and Cosmetic Act, 21 U.S.C. 346a. General commodities are listed in column A of 40 CFR 180.1(h), and the corresponding specific commodities, for which tolerances and exemptions from the requirement of a tolerance established for the general commodity apply, are listed in column B. The Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, has requested that 40 CFR 180.1(h) be amended as follows: (1) To add the commodity term "sorghum (grain)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for its seed]" to column B; and (2) to add the commodity term "sorghum (fodder, forage)" to the general category of commodities in column A and to add the corresponding specific commodities "*Sorghum* spp. [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage]" to column B.

EPA has completed an evaluation of the proposed amendment and concludes that tolerances established for the raw agricultural commodities sorghum (grain) and sorghum (fodder, forage) are adequate to cover pesticide residues in or on *Sorghum* spp. grain/seed [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for seed] and *Sorghum* spp. fodder and forage [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage], respectively.

Because of differences in glumes covering seeds, residues in sudangrass seeds are expected to be equal to or less than residues found in grain sorghum. Residues in or on foliage are expected to be comparable in all sorghums because of similarities in cultural practices, crop uses, pest problems, morphology, and growth stages.

Both sorghums and sudangrass share common weed, insect, nematode, and disease problems. Sudangrass is only harvested for its seeds when producing the seed crop. When utilized for livestock feed, sudangrass is not allowed to set seed because the forage quality will be poor.

To obtain tolerances on sorghum grain, residue data should be generated using grain sorghum (as opposed to sudangrass grown for seed), considering the much larger acreage for the former and the differences in glumes of sudangrass and grain sorghum.

With regard to obtaining tolerances on sorghum forage and fodder, several options exist with respect to how residue data should be generated. One option is to generate the data on forage or grassy-type sorghums, including sudangrass and sorghum sudangrass hybrids. The second option takes into account that the total acreage of sorghum grown for silage, greenchop, hay, and dry forage is only a small percentage of that grown for grain. In this second option, most forage and fodder residue data may be obtained using grain sorghum provided some forage or grassy-type sorghums are also included.

Based on the above information, the Agency concludes that it is appropriate to establish the general commodities sorghum (grain) and sorghum (fodder, forage) with the corresponding specific commodities *Sorghum* spp. grain/seed [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for seed] and *Sorghum* spp. fodder and forage [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage], respectively.

Therefore, it is proposed that the changes to 40 CFR 180.1(h) be made as set forth below.

Interested persons are invited to submit written comments on the proposed regulation. Comments must bear a notation indicating the document control number, [OPP-300313]. All written comments filed in response to this proposal will be available in the Public Response and Program Resources Branch, at the address given above from 8 a.m. to 4 p.m., Monday through Friday, except legal holidays.

The Office of Management and Budget has exempted this rule from the requirements of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

Although this regulation does not establish or raise a tolerance level or establish an exemption from the requirement of a tolerance, the impact of the regulation would be the same as establishing new tolerances or exemptions from the requirement of a tolerance. Therefore, the Administrator concludes that this rule would not have a significant economic impact on a substantial number of small entities.

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Stephanie R. Irene,

Acting Director, Registration Division, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR part 180 be amended as follows:

PART 180—AMENDED

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. Section 180.1(h) is amended in the table therein by adding and alphabetically inserting the following commodities listings, to read as follows:

§ 180.1 Definitions and interpretations.

* * * * *

(h) * * *

A	B
* * * * * * *	
Sorghum (grain)	*Sorghum* spp. [sorghum (grain), sudangrass (seed crop), and hybrids of these grown for its seed].
Sorghum (fodder, forage)	*Sorghum* spp. [sorghum (fodder, forage), sudangrass, and hybrids of these grown for fodder and/or forage].
* * * * * * *	

* * * * *

[FR Doc. 93-28732 Filed 11-23-93; 8:45 am]
BILLING CODE 6560-50-F

40 CFR Parts 180 and 186

[PP 9F3743 and FAP 1H5614/P570; FRL-4743-4]

RIN No. 2070-AC18

Pesticide Tolerances and Food Additive Regulations for Clethodim

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: These regulations propose to establish permanent tolerances for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) in or on various raw agricultural commodities and feed additive commodities. These regulations were requested by Valent U.S.A. Corp. and would establish maximum permissible levels for residues of the herbicide in or on the commodities.

DATES: Written comments, identified by the document control number [PP 9F3743 and FAP 1H5614/P570], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, deliver comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted as a comment concerning this document may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential will be included in the public docket by the EPA without prior notice. The public docket is available for public inspection in Rm. 1128 at the address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Joanne I. Miller, Product Manager (PM-23), Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 237, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202, 703-305-7830.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of January 29, 1992 (57 FR 3296), EPA established interim tolerances under section 408 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a) for residues of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety in or on soybeans at 10 ppm; cottonseed at 1 ppm; meat, fat, and meat byproducts of cattle, goats, hogs, horses, poultry, and sheep at 0.2 ppm; milk at

0.05 ppm; and eggs at 0.2 ppm. In addition, EPA established interim tolerances under section 409 of the Federal Food, Drug, and Cosmetic Act (FFDCA)(21 U.S.C. 348) of the herbicide clethodim and its metabolites containing the 2-cyclohexen-1-one moiety on the feed commodities soybean soapstock at 15 ppm and cottonseed meal at 2 ppm. These tolerances were requested by Valent U.S.A. Corp., 1333 N. California Blvd., Suite 600, Walnut Creek, CA 95496, and establish the maximum permissible level for residues of the herbicide on these raw agricultural commodities (RAC).

These tolerances were issued as tolerances with an expiration date because EPA required submission of a rewritten analytical method (Valent's compound- specific method) for tolerance enforcement and subsequent validation. The tolerances will expire on January 29, 1994.

A common moiety analytical method for tolerance enforcement (gas chromatography with a flame photometric detector in the sulfur mode) was satisfactorily tested and is available for tolerance enforcement. This method, however, cannot distinguish between clethodim and sethoxydim, a closely related herbicide with tolerances established under 40 CFR 180.412. A compound-specific confirmatory method (HPLC with a UV detector) that can distinguish between derivatives of clethodim and sethoxydim was tested in the Agency laboratory. Considerable revisions were made by the Agency laboratory in order to obtain satisfactory analytical results. EPA's revised specific method was returned to Valent to be rewritten and to be validated by an independent laboratory. An independent validation was deemed useful to confirm that the revisions made by EPA are adequately explained.

A revised compound-specific method was submitted by Valent on August 30, 1993, and included new independent laboratory validation data. EPA concludes that the compound-specific method has been rewritten as recommended, including additional modifications from current method development, and is suitable to enforce the total clethodim tolerances in crops and animal tissues and to distinguish between residues of clethodim and sethoxydim. In addition, EPA concludes that the independent laboratory validation for the rewritten analytical method is adequate. The revised method is suitable to be a quantitative procedure to enforce the total clethodim tolerances in crops and animal tissues and a qualitative confirmatory method for total clethodim tolerances in milk.

The compound-specific method is not quantitative for milk and is not suitable for enforcing the total clethodim tolerance in milk. The common moiety method is quantitative for milk and is the enforcement method for milk. Therefore, the compound-specific method will serve as the primary tolerance enforcement procedure for cottonseed, soybeans, and animal tissues. Confirmation of total clethodim residues in cottonseed, soybeans, and animal tissues is to be with the common moiety method. To enforce the total clethodim tolerance in milk, the common moiety method will be used. Confirmation of total clethodim residues in milk is to be with the compound-specific method.

Based on the information cited above and in the document establishing the interim tolerance (57 FR 3296, Jan. 29, 1992), EPA has determined that the establishment of permanent tolerances by amending 40 CFR part 180 will protect the public health and that use of the pesticide in accordance with the proposed amendment of 40 CFR part 186 will be safe. Therefore, it is proposed that the tolerances be established as set forth below.

Any person who has registered or submitted an application for registration of a pesticide, under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) as amended, which contains any of the ingredients listed herein, may request within 30 days after publication of this document in the **Federal Register** that this rulemaking proposal as it relates to section 408 tolerances be referred to an Advisory Committee in accordance with section 408(e) of the Federal Food, Drug, and Cosmetic Act.

Interested persons are invited to submit written comments on the proposed regulations. Documents relied upon by EPA in issuing this proposal are available to the public in the Office of Pesticide Programs docket at the Public Response and Program Resources Branch, at the address given above. Comments must bear a notation indicating the document control number, [PP 9F3743 and FAP 1H5614/P570]. All written comments filed in response to this petition will be available in the Public Response and Program Resources Branch, at the address given above, from 8 a.m. to 4 p.m., Monday through Friday except legal holidays.

The Office of Management and Budget has exempted these rules from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act of 1980 (Pub. L. 96-354, 94 Stat. 1164; 5 U.S.C. 601-612.), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Parts 180 and 186

Environmental protection, Administrative practice and procedure, Agricultural commodities, Feed additives, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 10, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

Therefore, it is proposed that 40 CFR parts 180 and 186 be amended as follows:

PART 180—[AMENDED]

1. In part 180:

a. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

b. By revising § 180.458, to read as follows:

§ 180.458 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Tolerances are established for the combined residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following agricultural commodities.

Commodity	Parts per million
Cattle, fat	0.2
Cattle, meat	0.2
Cattle, mbyp	0.2
Cottonseed	1.0
Eggs	0.2
Goats, fat	0.2
Goats, meat	0.2
Goats, mbyp	0.2
Hogs, fat	0.2
Hogs, meat	0.2
Hogs, mbyp	0.2
Horses, fat	0.2
Horses, meat	0.2
Horses, mbyp	0.2
Milk	0.05

Commodity	Parts per million
Poultry, fat	0.2
Poultry, meat	0.2
Poultry, mbyp	0.2
Sheep, fat	0.2
Sheep, meat	0.2
Sheep, mbyp	0.2
Soybeans	10.0

PART 186—[AMENDED]

2. In part 186:

a. The authority citation for part 186 continues to read as follows:

Authority: 21 U.S.C. 348.

b. By revising § 186.1075, to read as follows:

§ 186.1075 Clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one); tolerances for residues.

Tolerances are established for residues of the herbicide clethodim ((E)-(±)-2-[1-[[(3-chloro-2-propenyl)oxy]imino]propyl]-5-[2-(ethylthio)propyl]-3-hydroxy-2-cyclohexen-1-one) and its metabolites containing the 2-cyclohexen-1-one moiety in or on the following feeds.

Feed	Parts per million
Cottonseed meal	2.0
Soybean soapstock	15.0

[FR Doc. 93-28730 Filed 11-23-93; 8:45 am]
BILLING CODE 6560-50-F

FEDERAL MARITIME COMMISSION

46 CFR Parts 514, 580 and 581

[Docket No. 93-22]

Coloading Practices by Non-Vessel-Operating Common Carriers; Shipper Affiliate Access to Service Contracts

AGENCY: Federal Maritime Commission.

ACTION: Proposed rule.

SUMMARY: This proposed rule amends the current coloading requirements by redefining the term "coloading" to limit it to the combining of cargo performed pursuant to an agreement between or among non-vessel-operating common carriers ("NVOCCs"). Coloading would not include cargo for which the receiving NVOCC issues its own bill of lading. Comments are also solicited on a possible alternative definition which would further limit the term coloading to exclude full containerload cargo. The proposed rule also requires that coloading agreements be in writing, and be made available to the Commission. The existence of coloading agreements, including the identity of coloading parties thereto, would be required to be listed in an NVOCC's tariff. The proposed rule would prohibit coloaded cargo from being carried under a service contract, and also limit the affiliates that may take advantage of service contracts. The proposed rule would continue to require that tendering NVOCCs annotate the identity of receiving NVOCCs on their bills of lading and the fact that specific cargo was coloaded, that NVOCC tariffs shall not offer special coloading rates for the exclusive use of other NVOCCs, and that shipments not fitting the coloading definition must be rated and carried pursuant to the tariff. Although no rule language on these matters is proposed at this time, comment is solicited as well on whether further restrictions should be imposed regarding coloaded cargo applicability to time-volume rates, and on the more fundamental issue of whether coloading should be prohibited altogether. The revisions to the existing coloading rules are deemed necessary to clarify ambiguities and to address current practices resulting in the increased application of untariffed NVOCC charges.

DATES: Comments due on or before January 24, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol St., NW., Washington, DC 20573., (202) 523-5725.

FOR FURTHER INFORMATION CONTACT: Wm. Jarrel Smith, Jr., Director, Bureau of Investigations, Federal Maritime Commission, 800 North Capitol Street NW., Washington, DC 20573, (202) 523-5860.

SUPPLEMENTARY INFORMATION:

Experience under the Federal Maritime Commission's ("Commission") coloading rules at 46 CFR 580.5(d) since their promulgation in 1985 has demonstrated that parts of those rules are less than satisfactory. The rules define coloading relatively broadly, and then proceed to impose varying regulatory requirements, depending on whether the particular coloading arrangement establishes a "carrier-to-carrier" or a "carrier-to-shipper" relationship. This regulatory regimen has been found to be unworkable in two general respects.

First, considerable confusion appears to have resulted from the requirement that the nature of the NVOCC–NVOCC coloading relationship determines the concomitant regulatory responsibilities. The criteria for defining those relationships are not clear. A presumption of a shipper-to-carrier relationship is created when a bill of lading is issued by a receiving NVOCC to the tendering NVOCC, but there are no adequate guidelines on how that presumption may be rebutted.

Second, even if the nature of the NVOCC–NVOCC relationship has been determined, the attendant regulatory requirements are ambiguous, particularly with respect to the NVOCC tariffs required to be filed pursuant to section 8 of the Shipping Act of 1984 ("1984 Act"), 46 U.S.C. app. 1707. Where there is a carrier-to-carrier arrangement, each NVOCC must report the "existence of such agreement" in its tariff. 46 CFR 580.5(d)(14)(ii)(B). While it could be argued that this provision anticipates that NVOCC tariffs actually list the parties to these agreements, the view apparently embraced by most NVOCCs is that NVOCCs need only note without further elucidation that a coloading arrangement exists or that coloading practices are possible. This view finds some support in the explanatory language which accompanied the promulgation of the rule. Similarly, the current requirement that the tendering NVOCC "shall describe in its tariff its co-loading practices," *id.* 580.5(d)(14)(ii)(C), is somewhat vague.

These ambiguities appear to encourage many NVOCCs to conclude that a larger percentage of their NVOCC activity constitutes coloading services pursuant to a "carrier-to-carrier" arrangement than was intended by the present rules. They also foster the belief that the Commission's regulatory requirements are satisfied by the vaguest suggestion in an NVOCC tariff that coloading services may be provided. As a result, the rates applicable to a substantial amount of NVOCC shipments may be eluding both the general shipping public's and the Commission's scrutiny.

The proposed rule revises the current rule by redefining and narrowing the scope of activity regarded as coloading. Coloading would be defined at proposed § 580.5(d)(14)(i) as the combining of cargo pursuant to an agreement between or among NVOCCs, for tendering to an ocean carrier under the name of one of the NVOCC agreement parties, wherein the receiving NVOCC does not issue its own bill of lading to the tendering NVOCC. When such a bill of lading is issued, the tendering NVOCC would continue to rate the cargo according to its tariff; the receiving NVOCC likewise would rate the cargo according to its tariff rates applicable to all shippers. Thus, coloading would be identified

without resorting to preliminary determinations as to whether the participating NVOCCs have a carrier-to-carrier or a carrier-to-shipper relationship.

The Commission is also soliciting comment on a possible alternative definition to coloading which would limit such activity to less-than-containerload ("LCL") cargo only. The Commission is particularly desirous of ascertaining the extent and impact of current coloading practices involving full containerloads ("FCL"), and is interested in industry views on whether the coloading regulations should be confined to LCL applicability.* This alternative proposal is reflected in the bracketed words "less-than-containerload" at § 580.5(d)(14)(i) of the proposed rule. Consistent with this alternative approach is the bracketed language at proposed § 580.5(d)(14)(iv), governing coloading rates, which would clarify, should the Commission adopt this course, that coloading agreements do not pertain to FCL cargo, which must be rated under the tariffed charges. Although not presented as alternative language at this time, the Commission additionally seeks comment on whether all coloading, for which non-tariffed rates are assessed, should be proscribed.

Proposed § 580.5(d)(14)(ii) prescribes the tariff-filing requirements for NVOCCs with respect to coloading activity or inactivity. Where the NVOCC does not tender cargo for coloading, it would continue to be required to so indicate, pursuant to § 580.5(d)(14)(ii)(A). Section 580.5(d)(14)(ii)(B) would dictate that where coloading takes place, the underlying coloading agreement must be made available to the Commission (or authorized Commission personnel) upon request. Coloading agreements must be in writing, dated and signed by all parties, and must contain all the applicable rates, charges, financial arrangements and terms.

The proposed rule also resolves the ambiguity in the current rule by requiring that each NVOCC party to a coloading agreement must note in its tariff not only the existence of such agreement but also the name and address of each NVOCC with whom it has such an arrangement. Furthermore, this proposed paragraph would affirmatively prohibit the coloading of cargo until the tariff of each participating NVOCC reflects the existence of and the names and addresses of the parties to the applicable coloading agreement.

While the documentation or annotation requirements of current § 580.5(d)(14)(iii) appear sufficiently clear, they have been modified slightly to emphasize the obligation of tendering NVOCCs to annotate unambiguously on each bill of lading that cargo is being coloaded and the identity of the receiving NVOCC. Where a decision to coload cargo is made after a bill of lading is issued, compliance with this provision can be achieved by issuing an amended bill of lading or an annotated copy of the bill of lading. Section 580.5(d)(14)(iv) of the proposed rule contains minor modifications but continues to prohibit NVOCCs from offering rates for the exclusive use of other NVOCCs, and to require that all non-coloaded cargo be rated and carried pursuant to the NVOCCs' tariffs. Alternative language has also been added to § 580.5(d)(14)(iv), as noted *supra*, which would state that FCL cargo cannot be coloaded and must be rated and carried pursuant to the tariff.

Section 580.5(d)(14)(v) makes reference to the prohibition codified in the proposed amendment to section 581.1 to the effect that coloaded cargo cannot be carried under a service contract.

The Commission also solicits comment on whether existing regulations governing time-volume rates, 46 CFR 580.12, should be amended to expressly proscribe the applicability of such rates to coloaded cargo. For example, it would appear inappropriate to permit NVOCCs to use coloaded cargo to satisfy time-volume rate requirements if other shippers are precluded from combining their cargoes to obtain such rates.

Parallel regulations are proposed for the Tariff Rules provisions of § 514.15(b)(14), including the alternative language regarding LCL and FCL cargo, for which comment is sought.

The Commission is also proposing that an NVOCC that is a signatory to a service contract cannot tender coloaded cargo under a service contract. The 1984 Act contemplates that service contract rates are available only to a shipper that enters into a service contract. See 1984 Act sections 3(21) and 8(c). It follows, therefore, that only the contract signatory shipper's cargo can be used to fulfill the shipper's commitment. Coloaded cargo, as defined by § 580.5(d)(14), is not the cargo of the contract shipper, but rather that of some other NVOCC with whom the contract NVOCC has a coloading relationship. If two or more NVOCCs wish to combine their cargo to obtain a service contract, Congress has provided them the means to do so by joining or forming a shippers' association as defined in section 3(24) of the 1984 Act.

The Commission's service contract rules presently permit an affiliate of a contract party to take advantage of the services under the contract if specifically named in the contract. See, 46 CFR 581.4(a)(1)(v). The rules, in essence, impute contract shipper status to direct or indirect affiliates of the contract signatory. This provision, however, requires more than a loose combination of like-minded shippers. It was intended to encompass only those affiliates having a corporate relationship between them, such as entities which own or are owned by contract signatories, or which share common owners with signatories. The Commission is, accordingly, taking this opportunity to amend this provision to make clear that non-affiliated shippers cannot join together to obtain service contract rates except through a shippers' association.

The proposed amendment to existing service contract rules would define the term "affiliate" to mean a company that shares an ownership interest with another company. This would preclude two unrelated entities from unlawfully sharing the benefits of a service contract by claiming that one is an affiliate of the other. The Commission welcomes comment on whether such ownership interest should be limited to a specified percentage or whether a company should be otherwise effectively controlled by the contract signatory, or vice versa, before it can be considered to be an affiliate.

In summary, the Commission is seeking comment on the following:

1. A proposal to redefine the term "coloading" to mean the combining of cargo pursuant to an agreement, which agreement must be in writing and made available to the Commission;
2. An alternative proposal limiting coloading to less-than-containerload cargo;
3. A proposal to prohibit coloaded cargo from being carried under a service contract; and
4. A proposal to define an "affiliate" having access to service contracts.

Although no specific proposal on the following issues is being made at this time, the Commission also seeks comment on:

5. Whether restrictions should be imposed regarding applicability of time-volume rates to coloaded cargo; and

*The current rule reflects the determination made in 1985 that NVOCCs should not be restricted to coload only LCL cargo. The Commission at the time concluded that coloading FCLs was less prevalent and less likely than coloading LCL cargo. Different industry practices appear to have evolved since that time, however, raising the issue whether the current coloading regulations are inappropriately facilitating the circumvention of NVOCC tariffs.

6. Whether coloading should be proscribed altogether.

The Chairman of the Commission certifies pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), that the rule will not have a significant economic impact on a substantial number of small entities, including small businesses, small organizational units and small governmental jurisdictions. The proposal does not impose substantial new requirements or proscriptions, but primarily would establish that rates for common carrier services must be contained either in coloading agreements or in carrier tariffs. To the extent the proposal's new recordkeeping and availability requirements create new obligations, they are only marginally more intrusive than the current regulations, and any resulting impact on small entities would be minimal. Moreover, the proposal's main purpose and effect is to clarify existing regulations and to further ensure compliance with the underlying statutory requirements of the 1984 Act with respect to tariffs and service contracts.

The collection of information requirements contained in this rule have been submitted to OMB for review under section 3504(h) of the Paperwork Reduction Act of 1980, as amended. Public reporting burden for this collection of information is estimated to average two hours per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of the collection of information, including suggestions for reducing this burden, to Norman W. Littlejohn, Director, Bureau of Administration, Federal Maritime Commission, Washington, DC 20573; and to the Office of Information and Regulatory Affairs, Attention: Desk Officer for the Federal Maritime Commission, Office of Management and Budget, Washington, DC 20503.

List of Subjects in 46 CFR Parts 514, 580 and 581

Cargo; Cargo vessels; Exports; Harbors; Imports; Maritime carriers; Rates and fares; Reporting and recordkeeping requirements; Water carriers; Water transportation.

Therefore, pursuant to 5 U.S.C. 553 and sections 8 and 17 of the Shipping Act of 1984, 46 U.S.C. app. 1707 and 1716, the Federal Maritime Commission proposes to amend title 46, Code of Federal Regulations, parts 514, 580 and 581 as follows:

PART 514—[AMENDED]

1. The authority citation for part 514 continues to read as follows:

Authority: 5 U.S.C. 552 and 553; 31 U.S.C. 9701; 46 U.S.C. app. 804, 812, 814–817(a), 820, 833a, 841a, 843, 844, 845, 845a, 845b, 847, 1702–1712, 1714–1716, 1718, 1721 and 1722; and sec. 2(b) of Public Law 101–92, 103 Stat. 601.

2. Section 514.15(b)(14) is revised to read as follows:

§ 514.15 Tariff Rules.

* * * * *

(b) * * *

(14) *Coloading in foreign commerce.* Tariff Rule 14 governs coloading by NVOCCs in foreign commerce. For the purpose of this section, *coloading* means the combining of (less-than-containerload) cargo in the import or export foreign commerce of the United States, by two or more NVOCCs pursuant to the rates, charges and terms of an agreement, for delivery to an ocean carrier under the name of one or more of the NVOCCs, wherein the receiving NVOCC does not issue its own bill of lading to the tendering NVOCC(s) for carriage of the coloaded cargo. Tariff Rule 14 shall contain the following provisions:

(i) *Filing requirements.*

(A) If an NVOCC does not tender cargo for coloading, Tariff Rule 14 shall so indicate. If an NVOCC does tender cargo for coloading, Tariff Rule 14 must comply with § 514.15(b)(14)(i)(B).

(B) Each NVOCC must have and make available to the Commission or authorized Commission personnel upon request a true copy of every agreement entered into with one or more NVOCCs to coload cargo. Coloading agreements must be in writing, dated and signed by all parties, and include all applicable rates, charges, financial arrangements and terms. Each NVOCC party to a coloading agreement must note in Tariff Rule 14 the existence of such agreement, including the name(s) and address(es) of the NVOCC(s) with whom it has such an agreement. Cargo may not be coloaded by NVOCCs until Tariff Rule 14 appropriately reflects the existence of and the names of the parties to the coloading agreement.

(ii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for coloading shall annotate in a clear and legible manner, on the face of each applicable bill of lading, the identity of the receiving NVOCC and the fact that the cargo was tendered to that NVOCC for coloading.

(iii) *NVOCC Specific Rates.* No NVOCC shall offer in its tariffs rates which are specifically stated as for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC other than pursuant to a coloading agreement, such cargo must be rated and carried under tariff provisions which are applicable to all shippers. (As full containerload cargo does not meet the definition of coloading, coloading agreements do not pertain to such cargo, which consequently must be rated under the tariffed charges.)

(iv) *Service contracts.* Coloaded cargo may not be tendered under a service contract.

* * * * *

PART 580—[AMENDED]

1. The authority citation for part 580 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702–1705, 1707, 1709, 1710–1712, 1714–1716, 1718, and 1721.

2. Section 580.5(d)(14) is revised to read as follows:

§ 580.5 Tariff Contents.

* * * * *

(d) * * *

(14) *Special rules and regulations applicable to coloading activities of non-vessel-operating common carriers (NVOCCs)*—(i) *Definition.* For the purpose of this section, *coloading* means the combining of (less-than-containerload) cargo in the import or export foreign commerce of the United States, by two or more NVOCCs pursuant to the rates, charges and terms of an agreement, for delivery to an ocean carrier under the name of one or more of the NVOCCs, wherein the receiving NVOCC does not issue its own bill of lading to the tendering NVOCC(s) for carriage of the coloaded cargo.

(ii) *Filing requirements.* (A) If an NVOCC does not tender cargo for coloading, its tariff(s) shall so indicate. If an NVOCC does tender cargo for coloading, its tariff(s) must comply with § 580.5(d)(14)(ii)(B).

(B) Each NVOCC must have and make available to the Commission or authorized Commission personnel upon request a true copy of every agreement entered into with one or more NVOCCs to coload cargo. Coloading agreements must be in writing, dated and signed by all parties, and include all the applicable rates, charges, financial arrangements and terms. Each NVOCC party to a coloading agreement must note in its tariff the existence of such agreement, including the name(s) and address(es) of the NVOCC(s) with whom

it has an agreement. Cargo may not be coloaded by NVOCCs until their tariffs appropriately reflect the existence of and the names of the parties to the coloading agreement.

(iii) *Documentation requirements.* NVOCCs which tender cargo to another NVOCC for coloading shall annotate in a clear and legible manner, on the face of each applicable bill of lading, the identity of the receiving NVOCC and the fact that the cargo was tendered to that NVOCC for coloading.

(iv) *NVOCC Specific Rates.* No NVOCC shall offer in its tariffs rates which are specifically stated as for the exclusive use of other NVOCCs. If cargo is accepted by an NVOCC from another NVOCC other than pursuant to a coloading agreement, such cargo must be rated and carried under tariff provisions which are applicable to all shippers. (As full containerload cargo does not meet the definition of coloading, coloading agreements do not pertain to such cargo, which consequently must be rated under the tariffed charges.)

(v) *Service contracts.* Coloaded cargo may not be tendered under a service contract.

* * * * *

PART 581—[AMENDED]

1. The authority citation for part 581 continues to read as follows:

Authority: 5 U.S.C. 553; 46 U.S.C. app. 1702, 1706, 1707, 1709, 1712, 1714–1716, 1718, and 1721.

2. Section 581.1 is amended by redesignating paragraphs (b) through (u) as (c) through (v) and by adding a new paragraph (b) reading as follows:

§ 581.1 Definitions.

* * * * *

(b) *Affiliate* means a company which owns or is owned by a contract party or which shares a common owner with a contract party.

* * * * *

3. Section 581.3 is amended by redesignating the text of paragraph (e) as paragraph (e)(1) and by adding a new paragraph (e)(2) reading as follows:

§ 581.3 Filing and maintenance of service contract materials.

* * * * *

(e) * * *

(1) * * *

(2) An NVOCC that enters into a service contract cannot tender coloaded cargo, as defined in §§ 580.5(d)(14) and 514.15(b)(14) of this chapter, to be carried under the contract.

By the Commission.

Joseph C. Polking,

Secretary.

[FR Doc. 93-28763 Filed 11-23-93; 8:45 am]

BILLING CODE 6730-01-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Parts 32 and 64

[Common Carrier Docket No. 93-251; FCC 93-453]

Transactions Between Carriers and Their Nonregulated Affiliates

AGENCY: Federal Communications Commission.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Communications Commission ("FCC" or "Commission") has adopted a Notice of Proposed Rulemaking ("*Notice*") proposing to amend its affiliate transactions rules. The *Notice* also proposes specific procedures for telephone companies to use in implementing the proposed rules. The FCC issued this *Notice* to enhance its ability to keep telephone companies from imposing the costs of nonregulated activities on interstate ratepayers, and to keep ratepayers from being harmed by the telephone companies' imprudence.

DATES: Comments are due December 10, 1993. Reply comments are due January 10, 1994.

ADDRESSES: All comments should be filed with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. A copy should be sent to William A. Kehoe III, Accounting and Audits Division, 2000 L Street, NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: William A. Kehoe III, telephone number 202–632–7500.

SUPPLEMENTARY INFORMATION:

1. This is a summary of the FCC's Notice of Proposed Rulemaking ("*Notice*") in amendment of parts 32 and 64 of the Commission's Rules to Account for Transactions Between Carriers and Their Nonregulated Affiliates, FCC No. 93–453, CC Docket No. 93–251, adopted September 23, 1993 and released October 20, 1993. The full text of the *Notice* is available for inspection and copying during normal business hours in the FCC Reference center, Room 230, 1919 M St., NW., Washington, DC. The full text will be published in the *FCC Record* and may also be purchased from the Commission's copy contractor, the International Transcription Service, 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

2. In the *Notice*, the Commission proposes to amend the valuation methods that the affiliate transactions rules require telephone companies to use in recording their transactions with their nonregulated affiliates in the accounts maintained under the Commission's Uniform System of Accounts, 47 CFR part 32. To reflect distinctions the marketplace draws between arm's length and affiliate transactions, we propose to reduce the affiliate transactions rules' reliance on the prices the providing affiliate charges non-affiliates for similar transactions. The affiliate transactions rules presently require telephone companies to record affiliate transactions at those prices whenever the providing affiliate also provides substantial quantities of the asset or service to non-affiliates. We propose to limit this valuation method (referred to as prevailing company pricing) to affiliate transactions in which the nonregulated affiliate in the transaction sells at least 75 percent of its output to non-affiliates. We also invite comment on whether we should abandon prevailing company pricing as a valuation method for all affiliate transactions if we find no workable test for determining when prevailing company prices provide reliable measures of how affiliate transactions should be valued.

3. To keep carriers from imposing the costs of nonregulated activities on interstate ratepayers and to keep ratepayers from being harmed by carrier imprudence, the Commission also proposes to change the valuation methods for affiliate transactions that are neither tariffed nor eligible for prevailing company pricing. We propose that all such transactions be recorded at the lower of cost and estimated fair market value when the telephone company is the buyer, and at the higher of cost and estimated fair market value when the telephone company is the seller. Under the present rules, those valuation methods are used only for non-tariffed asset transfers that are ineligible for prevailing company pricing. When affiliate transactions involve the provision of non-tariffed services that are ineligible for prevailing company pricing, the existing rules require the transactions to be recorded at the providing affiliates' fully distributed costs.

4. In the *Notice*, we tentatively conclude that any changes we make in the valuation methods for affiliate transactions should be exogenous for price cap purposes. Although we believe that deviations from the valuation methods specified in the rules generally should be prohibited, we

tentatively conclude that we should allow alternative valuation methods that reduce regulated costs. We ask the commenters to address how we can avoid "subsidy" arrangements that increase regulated costs while allowing alternative valuation methods that reduce those costs.

5. We propose, in addition, specific methods for implementing the proposed valuation methods. For those affiliate transactions that would be recorded at cost, we propose methods similar to those we require carriers to use in calculating interstate costs, while inviting comment on alternatives. We are proposing this approach because we believe that compliance with our rules for calculating affiliate costs should not be dependent on the corporate structures through which carriers choose to conduct their operations.

6. Under our proposals, carriers would calculate the costs of resources transferred in or used to provide affiliate transactions at the costs to the affiliate group, whenever the provider had obtained from the resources from an affiliate. We propose that except as otherwise ordered by the FCC, all accounting related to affiliate transactions comply with generally accepted accounting principles. We also propose specific requirements with regard to the calculation of accumulated depreciation and other reserves, and the apportionment of costs between regulated and nonregulated activities. We propose to specify rate base and expense methodologies that all carriers subject to the affiliate transactions rules would have to apply in calculating the costs of those affiliate transactions that would be recorded at cost. We propose to require carriers to use the prescribed interstate rates of return in determining the return component of affiliate transactions costs, while inviting comment on alternatives to that proposal. We propose, in addition, estimating, monitoring, and true-up procedures for affiliate transactions costs and to use the one-year period covered by the carrier's books to measure compliance with our affiliate transactions rules.

7. We propose two alternatives for measuring the nonregulated affiliates' output for purposes of the 75 percent test. The first would require carriers to measure each nonregulated affiliate's output using its actual revenues during the year for which affiliate transactions are to be valued. The second would require carriers to measure output using the nonregulated affiliate's revenues from the immediately preceding year. We also invite comment on the other potential conditions of eligibility for prevailing company pricing, and, in particular, whether we should provide for prevailing company pricing on a product line, line of business, or total company basis.

8. Instead of proposing to specify the precise steps carriers should use to estimate the fair market value of affiliate transactions, we propose to require carriers to attempt in good faith to determine whether fair market value exceeds cost when they provide assets or services to nonregulated affiliates and whether cost exceeds fair market value when they receive assets or services from nonregulated affiliates. If these attempts indicate that assets or services should be recorded at fair market value, we propose to require carriers to make additional efforts to define that value. We invite comment, however, on whether there are classes of affiliate transactions that lend themselves to a set of prescribed procedures for estimating fair market value. For instance, if companies making certain kinds of purchases routinely solicit competitive bids, survey potential suppliers, or obtain independent appraisals, we may require carriers to adopt identical procedures.

9. We propose to make clear that the American Telephone and Telegraph Company (AT&T) and LECs with annual revenues of $100 million or more to include in their cost allocation manuals information regarding nonregulated operations within carriers that do not use resources jointly or in common with regulated operations comparable to that which we require for other affiliate transactions. We propose to require carriers to state in their cost manuals which of their affiliates sell at least 75 percent of their output to non-affiliates. These statements would have to be updated quarterly. We propose to require that each cost manual state the rate of return the subject carrier will use to calculate affiliate transactions costs if we do not require carriers to use the prescribed interstate rates of return in determining the return component of affiliate transactions costs. We propose to require that cost manuals describe the procedures carriers propose to use to estimate fair market value.

10. We propose to amend § 64.904(a) of our rules to make clear that the scope of the independent audit must encompass compliance with any requirements we adopt in this proceeding. We propose to amend our rules to require carriers to maintain a complete audit trail of all cost allocations and affiliate transactions.

11. In the *Notice*, we invite comment on whether AT&T should be subject to each aspect of the system we propose for affiliate transactions. We propose to require Alascom, Inc. (Alascom) to apply the valuation methods we propose in this proceeding. To ensure Alascom's compliance with those methods and with our cost apportionment requirements, we also propose to require Alascom to submit a cost allocation manual for Commission approval and to obtain an attestation audit.

12. We propose to amend the affiliate transactions rules to make clear that they apply to transactions between nonregulated affiliates and nonregulated operations within carriers that record their costs in regulated accounts. To facilitate the development of a complete record in this proceeding, we hereby delegate to the Bureau our power to require carriers to quantify the potential effect of our proposals in this *Notice*.

13. In the *Notice*, the Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposals in this proceeding are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act.[1] Those proposals concern the methods dominant interexchange carriers and LECs use to account for affiliate transactions. These carriers are generally large corporations or affiliates of large corporations, are dominant in their fields of operation, and therefore are not "small entities" as defined by that act.[2] The Secretary shall send a copy of this Notice of Proposed Rulemaking, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 605(b) of that act.[3]

14. The following collections of information contained in these proposed rules have been submitted to the Office of Management and Budget for review under section 3504(h) of the Paperwork Reduction Act.[4] Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, 202–857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037. Persons wishing to comment on these collections of information should direct their comments to Timothy Fain, 202–395–3561, Office of Management and Budget, Room 3235 NEOB, Washington,

[1] 5 U.S.C. 601(3).

[2] See MTS and WATS Market Structure, 93 FCC 2d 241, 338–39 (1983).

[3] 5 U.S.C. 605(b).

[4] 44 U.S.C. 3504(h).

DC 20503. A copy of any comments filed with the Office of Management and Budget should also be sent to the following address at the Commission: Federal Communications Commission, Records Management Division, room 234, Paperwork Reduction Project, Washington, DC 20554. For further information, contact Judy Boley, 202–632–7513.

Title: Amendment of Parts 32 and 64 of the Commission's Rules to Account for Transactions between Carriers and Their Nonregulated Affiliates, CC Docket No. 93–251.

OMB Number: None.

Action: Proposed new and revised collections.

Respondents: Businesses or other for profit.

Frequency of Response: On occasion, quarterly, and annually.

Estimated Annual Burden as follows:

	No. of responses	Hours per response	Total
Reporting requirements:			
Proposed § 64.903	5	400	38,000
Proposed § 64.904	1	500	500
	No. of recordkeepers	**Hours per response**	**Total**
Recordkeeping requirements:			
Audit Trail and Cost Estimation and True-up Requirements	69	4,080	281,520
Total Hours			320,020

Needs and Uses: The *Notice* invites public comment on the Commission's proposals to amend its affiliate transactions rules and on the specific procedures telephone companies would use in implementing the proposed rules. The FCC proposed these measures to enhance its ability to keep telephone companies from imposing the costs of nonregulated activities on interstate ratepayers, and to keep ratepayers from being harmed by the telephone companies imprudence. The *Notice* proposes new and modified information requirements that would help ensure that carriers adhere to the proposed affiliate transactions rule amendments.

Ordering Clauses

1. Accordingly, *it is ordered,* that, pursuant to Sections 1, 4(i), 201–205, 218–220, and 403 of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 201–205, 218–220, and 403, notice is hereby given of proposed amendments to parts 32 and 64 of the Commission's rules, 47 CFR parts 32 and 64, described in this Notice of Proposed Rulemaking.

2. *It is further ordered that* the Chief, Common Carrier Bureau, shall have delegated authority to require carriers to quantify the potential effect of our proposals in this *Notice.*

List of Subjects

47 CFR Part 32

Communications common carriers, uniform system of accounts.

47 CFR Part 64

Communications common carriers.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Proposed Rules

Parts 32 and 64 of chapter I, title 47, of the Code of Federal Regulations are proposed to be amended as follows:

PART 32—UNIFORM SYSTEM OF ACCOUNTS FOR TELECOMMUNICATIONS COMPANIES

1. The authority citation for part 32 is revised to read as follows:

Authority: Secs. 4 and 220, 48 Stat. 1066, as amended; 47 U.S.C. 154 and 220, unless otherwise noted. Interpret or apply secs. 1, 201–205, 218–220, and 403, as amended, 47 U.S.C. 151, 201–205, 218–220, and 403, unless otherwise noted.

2. Section 32.23 is amended by revising paragraph (b) to read as follows:

§ 32.23 Nonregulated activities.

* * * * *

(b) When a nonregulated activity does not involve the joint or common use of assets or resources in the provision of both regulated and nonregulated products and services, carriers shall account for these activities on a separate set of books consistent with instructions set forth in §§ 32.1406 and 32.7990. Transactions between an activity for which a separate set of books is maintained and an activity for which a separate set of books is not maintained shall be accounted for in accordance with § 32.27. In the separate set of books, carriers may establish whatever detail they deem appropriate beyond what is necessary to provide this Commission with the information required in §§ 32.1406 and 32.7990.

* * * * *

3. Section 32.27 is amended by revising paragraphs (a) through (d) to read as follows:

§ 32.27 Transactions with affiliates.

(a) Unless otherwise approved by the Chief, Common Carrier Bureau, transactions with nonregulated affiliates involving transfers into or out of the regulated accounts shall be recorded by the carrier as provided in paragraphs (b) through (f) of this section.

(b) Affiliate transactions provided pursuant to tariffs that are generally available, on file with a federal or state agency, and in effect shall be recorded at tariffed rates.

(c) Affiliate transactions that are not required to be recorded at tariffed rates shall be recorded at prevailing company prices if and only if:

(1) The transactions are with nonregulated affiliates that sell at least 75 percent of their output to non-affiliates; and

(2) Any other conditions specified by Commission order are met.

(d) All other affiliate transactions shall be recorded at either cost or estimated fair market value in accordance with the following conditions:

(1) Sales to nonregulated affiliates shall be recorded at the higher of cost and estimated fair market value.

(2) Purchases from nonregulated affiliates shall be recorded at the lower of cost and estimated fair market value.

(3) In calculating the costs of affiliate transactions, carriers shall comply with the procedures specified by Commission order.

(4) In estimating the fair market value of affiliate transactions, carriers required to file cost allocation manuals shall

comply with the procedures set forth in those manuals.

* * * * *

PART 64—MISCELLANEOUS RULES RELATING TO COMMON CARRIERS

4. The authority citation for part 64 is revised to read as follows:

Authority: Secs. 4, 48 Stat. 1066, as amended; 47 U.S.C. 154, unless otherwise noted. Interpret or apply secs. 1, 201–205, 218–220, 225–227, and 403, 48 Stat. 1070, as amended, 47 U.S.C. 151, 201–205, 218–220, 225–227, and 403, unless otherwise noted.

5. Section 64.903 is amended by revising paragraphs (a)(3) and (a)(4), redesignating paragraphs (a)(5) and (a)(6) as paragraphs (a)(6) and (a)(7) and republishing them, adding new paragraph (a)(5), and revising paragraphs (b) and (c) to read as follows:

§ 64.903 Cost allocation manuals.

(a) * * *

(3) A chart showing all of the carrier's corporate affiliates including any operations within the carrier that engage in nonregulated activity that does not involve the joint or common use of assets or resources in the provision of both regulated and nonregulated products and services;

(4) A statement listing each affiliate that engages in or will engage in transactions with the carrier, identifying which, if any, of the listed affiliates sells at least 75 percent of its output to non-affiliates, and describing the nature, terms and frequency of each transaction;

(5) A description of the carrier's procedures for estimating the fair market value of affiliate transactions;

(6) A cost apportionment table showing, for each account containing costs incurred in providing regulated services, the cost pools within that account, the procedures used to place costs into each cost pool, and the method used to apportion the costs within each cost pool between regulated and nonregulated activities; and

(7) A description of the time reporting procedures that the carrier uses, including the methods or studies designed to measure and allocate nonproductive time.

(b) Each carrier shall ensure that the information contained in its cost allocation manual is accurate. Carriers must update their manuals at least quarterly, except that changes to the cost apportionment table and to the description of time reporting procedures must be filed at least 60 days before the carrier plans to implement the changes. Proposed changes in the description of time reporting procedures, the statement concerning affiliate transactions, and the cost apportionment table must be accompanied by a statement quantifying the impact of each change on regulated operations. Changes in the description of time reporting procedures and the statement concerning affiliate transactions must be quantified in $100,000 increments at the account level. Changes in cost apportionment tables must be quantified in $100,000 increments at the cost pool level. The Chief, Common Carrier Bureau, may suspend any such changes for a period not to exceed 180 days, and may thereafter allow the change to become effective or prescribe a different procedure.

(c) The Commission may by order require any other communications common carrier to file and maintain a cost allocation manual as provided in this section.

6. Section 64.904 is amended by revising paragraph (a) to read as follows:

§ 64.904 Independent audits.

(a) Each local exchange carrier required by this part or by Commission order to file a cost allocation manual shall have performed annually, by an independent auditor, an audit that provides a positive opinion on whether the applicable data shown in the carrier's annual report required by § 43.21(f)(2) of this chapter presents fairly, in all material respects, the information of the carrier required to be set forth therein in accordance with the carrier's cost allocation manual, the Commission's Joint Cost Orders issued in conjunction with CC Docket No. 86–111 and Affiliate Transactions Orders issued in conjunction with CC Docket No. 93–251, and the Commission's rules and regulations including §§ 32.23 and 32.27 of this chapter as well as §§ 64.901 and 64.903 in force as of the date of the auditor's report. The audit shall be conducted in accordance with generally accepted auditing standards, except as otherwise directed by the Chief, Common Carrier Bureau.

* * * * *

[FR Doc. 93–28770 Filed 11–23–93; 8:45 am]
BILLING CODE 6712–01–M

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47 CFR Part 43

[CC Docket No. 92–296; FCC 93–492]

Simplification of the Depreciation Prescription Process

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Federal Communications Commission has adopted an Order Inviting Comments on selected accounts and proposed projection life and future net salvage ranges for use by local exchange carriers (LECs) regulated under its price cap regulatory scheme. The Order Inviting Comments identifies 17 full and three partial accounts for which the Commission proposes to establish ranges for use beginning in 1994. The rule change is intended to lessen the depreciation prescription burden on price cap LECs in light of regulatory and market changes without sacrificing protection for consumers.

DATES: Comments are due on December 17, 1993. Reply comments are due on January 21, 1994.

ADDRESSES: All comments should be filed with the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. A copy should be sent to Fatina K. Franklin, Accounting and Audits Division, 2000 L Street, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Fatina K. Franklin, Common Carrier Bureau, Accounting and Audits Division, (202) 632–7500.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Order Inviting Comments on Simplification of the Depreciation Prescription Process, CC Docket No. 92–296, FCC 93–492, adopted November 8, 1993 and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M St., NW., Washington, DC. The full text will be published in the FCC Record and may also be purchased from the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554.

Summary

1. On September 23, 1993, this Commission adopted streamlined depreciation prescription procedures for American Telephone and Telegraph Company (AT&T) and those local exchange carriers (LECs) regulated under the Commission's price cap incentive regulatory model (price cap LECs).[1] The streamlining approach we selected for the price cap LECs requires us to establish ranges of projection life and future net salvage factors for as many plant accounts as feasible, beginning in 1994. By this order, we invite comment on the selected

[1] Simplification of the Depreciation Prescription Process, Report and Order, CC Docket 92–296, FCC 93–452 (adopted September 23, 1993) (Depreciation Simplification Order).

accounts and the proposed projection life and future net salvage ranges set forth in the appendix below.

2. Prior to adoption of the Depreciation Simplification Order, the depreciation prescription process required carriers to submit extensive date to support their future net salvage, projection life, and survivor curve estimates (basic factors) underlying proposed depreciation rates. These date requirements often resulted in voluminous submissions, numbering 20–25 pages of analyses for each plant account. In recognition of the regulatory, technological, and market changes that price cap LECs face today, we concluded that the process could and should be simplified. Thus, we determined that ranges could be established for the future net salvage and projection life estimates. Under our new process, if a carrier meeting the requisite criteria proposes to use future net salvage and projection life estimates from within established ranges, it will not need to submit the detailed supporting data now required.

3. We determined that the new, streamlined procedures should be implemented in phases, beginning with the accounts most readily adaptable to the range approach. We now identify accounts for which we propose to establish ranges for use beginning in 1994. We solicit public comment on these proposals.

4. In the Depreciation Simplification Order, we concluded that ranges should be established for all plant accounts if feasible. We also expressed our desire to establish ranges for as many accounts as practicable for use in 1994. However, we acknowledged that technical problems make it difficult to establish ranges for certain accounts, Given our current resources, we concluded that we would be unable to resolve these technical problems so that ranges for all accounts could be used beginning in 1994. After detailed review of current depreciation data, we tentatively conclude that the plant categories listed in the appendix meet the range criteria established by the Depreciation Simplification Order, and thus should be selected for the use of ranges in 1994.

5. As set forth in the appendix below, we propose to establish ranges for twenty-two plant categories. We direct the Bureau to recommend ranges for the remaining accounts if feasible as soon as possible. For the most part we are proposing to establish ranges at the plant account level. For four accounts, however, we are proposing to establish ranges for homogeneous subdivisions of accounts, which are referred to as "rate categories." For these accounts we currently prescribe rates at the rate category level when carriers so request, because it enables the carriers to simplify their analyses and its results in more accurate estimates for the accounts as a whole. We invited comment on this proposal.

6. If we implement these proposals, only those carriers seeking depreciation rates at the rate category level will be able to avail themselves of the streamlined procedures for the Circuit Equipment, Aerial Cable, Underground Cable, and Buried Cable accounts. We encourage the carriers who do not currently subdivide these accounts to do so because it will result in more accurate rates and it will enable them to take advantage of the streamlined procedures. We do not believe it will be difficult or expensive for these carriers to change to the rate category procedure because our accounting rules already require them to maintain the subsidiary records necessary to accomplish this.

7. In the Depreciation Simplification Order, we set forth a number of specific data that should be considered in establishing the projection life and future net salvage ranges. These data include, but are not limited to: A range of +/− one standard deviation around an industry-wide mean of basic factors underlying currently prescribed rates; the number of carriers encompassed by this range; and any trends of LEC plant retirement and modernization plans that are not fully reflected in current basic factors. However, we recognized that these specific data must be considered in light of our obligation to prescribe reasonable depreciation rates:

> * * * we wish to make the ranges wide enough to accommodate a significant number, if not all, of the LECs. On the other hand, we must not make the ranges so wide that they would no longer enable us to exercise effective oversight of depreciation rates.

Thus, in setting ranges, we considered both the specific data enumerated in the Depreciation Simplification Order and our obligation to prescribe reasonable depreciation rates. In the Appendix, we set forth our proposed projection life and future net salvage ranges for the proposed range accounts. We invite comment on the proposed ranges.

8. This is a non-restricted notice and comment rulemaking proceeding. *Ex Parte* presentations are permitted, except during the Sunshine Agenda period, provided they are disclosed as provided in the Commission's rules.

9. We certify that the Regulatory Flexibility Act of 1980 does not apply to this proceeding because if the proposals in this Order Inviting Comments are adopted, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. Because of the nature of local exchange and access service, the Commission has concluded that small telephone companies are dominant in their fields of operation and therefore are not "small entities" as defined by that act. The Secretary shall send a copy of this Order Inviting Comments, including this certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with section 603(a) of that act.

10. We invite comment on the proposals set forth above. Pursuant to applicable procedures set forth in § 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 17, 1993, and reply comments on or before January 21, 1994. To file formally in this proceeding, interested parties must file an original and four copies of all comments, reply comments, and supporting comments. If commenters want each Commissioner to receive a personal copy of their comments, they must file an original plus nine copies. Interested parties should send comments and reply comments to Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Parties should also file one copy of any documents filed in this docket with the Commission's copy contractor, International Transcription Services, room 246, 1919 M Street, NW., Washington, DC 20554. We also ask that parties send a courtesy copy of their comments to the Accounting and Audits Division, 2000 L Street, NW., Washington, DC 20036. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

11. Accordingly, *it is ordered*, Pursuant to sections 1, 4(i), 4(j), and 220(b) of the Communications Act of 1934, as amended, 47 U.S.C. 151, 154(i), 154(j), and 220(b), that notice is hereby given of proposed plant accounts for which basic factor ranges should be established and the ranges proposed for those accounts to be used in the depreciation prescription process as described in *Simplication of the Depreciation Prescription Process, CC Docket No. 92–296, FCC No. 93–452.*

Federal Communications Commission.

William F. Caton,

Acting Secretary.

APPENDIX—PROPOSED ACCOUNTS AND RANGES FOR INITIAL IMPLEMENTATION

Account number	Account name	Depreciation rate category	Projection life range (years)		Future net salvage range (percent)	
			Low	High	Low	High
2112	Motor Vehicles	Motor Vehicles	7.5	9.5	10	20
2113	Aircraft	Aircraft	7	10	30	50
2114	Special Purpose Vehicles	Special Purpose Vehicles	12	18	0	10
2115	Garage Work Equipment	Garage Work Equipment	12	18	0	10
2116	Other Work Equipment	Other Work Equipment	12	18	0	10
2122	Furniture	Furniture	15	20	0	10
2123.1	Office Support Equip	Office Support Equip	10	15	0	10
2123.2	Co. Communications Equip	Co. Communications Equip	7	10	−5	10
2124	General Purpose Computers	General Purpose Computers	5	5	0	5
2231	Radio Systems	Radio Systems	9	15	−5	5
2232	Circuit Equipment	Digital Data Service	7	11	−5	10
2232	Circuit Equipment	Analog	8	11	−5	0
2311	Station Apparatus	Station Apparatus	5	8	−5	5
2341	Large PBX	Large PBX	5	8	−5	5
2351	Public Telephone	Public Telephone	7	10	0	10
2362	Other Term Equipment	Other Term Equipment	5	8	−5	5
2421	Aerial Cable	Non-Metallic	25	30	−25	−10
2422	Underground Cable	Non-Metallic	25	30	−20	−5
2422	Underground Cable	Metallic	25	30	−30	−5
2423	Buried Cable	Non-Metallic	25	30	−10	0
2424	Submarine Cable	Submarine Cable	25	30	−5	0
2441	Conduit Systems	Conduit Systems	50	60	−10	0

[FR Doc. 93–28769 Filed 11–23–93; 8:45 am]
BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 93–290; DA 93–1349]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by requests filed by Mountain Broadcasting Corporation and WLIG–TV, Inc., to amend § 76.51 of the Commission's Rules to change the designation of the New York, New York-Linden-Paterson-Newark, New Jersey television market to include the communities of Newton, New Jersey and Riverhead, New York. This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before December 20, 1993, and reply comments are due on or before January 4, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–290, adopted November 4, 1993, and released November 16, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission in response to a Petition for Rulemaking filed by Mountain Broadcasting Corporation, licensee of WMBC–TV, Channel 63, Newton, New Jersey, proposed to amend § 76.51 of the Rules to change the designation of the New York, New York-Linden-Paterson-Newark, New Jersey television market to include the community of Newton, New Jersey. Further, in response to a Petition for Rulemaking filed by WLIG–TV, Inc., licensee of WLIG–TV, Channel 55, Riverhead, New York, the Commission also proposed to amend § 76.51 of the Rules to include the community of Riverhead, New York, in the same television market.

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the fact presented, the Commission believes that sufficient cases for redesignation of the subject market have been set forth so that these proposals should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Stations WMBC–TV and WLIG–TV and stations licensed to communities in the New York, New York-Linden-Paterson-Newark, New Jersey television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed communities to be added to a market designation and the market as a whole. Moreover, the petitioners' proposals appear to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

4. The Commission also recognized that the proposed adjustments under consideration involve two communities geographically distant within a particularly large and complex television market such that it may be useful to consider several alternative possibilities. In this regard, the Commission noted the impact that amendment of Section 76.51, which also is used to determine the extent of program exclusivity protections §§ 73.658(m); 76.92–97; 76.151–161 of the Rules). Accordingly, the Commission seeks comment on other mechanisms short of market hyphenation that might address some of the competition issues raised herein concerning stations operating in large and complex markets under existing rules, such as the possibility of rule waivers if it is determined that market hyphenation is inappropriate. Further, although no specific petitions have been filed, the Commission seeks comment on whether there are additional communities in the market to which stations are licensed that may warrant hyphenation along with Newton and/or Riverhead. Such comment is sought to address potential anomalies associated with having some but not all of the stations in an Area of Dominant Influence (ADI) market (as defined by Arbitron) included as hyphenated "designated" communities in the market. The Commission specifically requested comment on whether one or more of the following communities, which are included in the subject ADI, should also be included in § 76.51 of the Ru'es as designated communities: Secaucus, New Jersey; Bridgeport, Connecticut; and Poughkeepsie, Kingston and Smithtown, New York. The Commission also requested comment on the possibility of only partially "hyphenating" the market so that, for example, Riverhead might be included in a common market with New York City, and Newton included in a common market with New York City, but Riverhead and Newton not joined as part of a common market designation. Such an approach, the Commission stated, might be potential means of including stations truly competitive with each other so treating stations at the opposite ends of a large ADI market area.

Initial Regulatory Flexibility Analysis

5. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Public Law 96–354, 94 Stat. 1164, 5 U.S.C. section 601 et seq. (1981).

Ex Parte

6. This is a non-restricted notice and comment rulemaking proceeding. Ex parte presentations are permitted, provided they are disclosed as provided in the Commission's Rule. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

7. Pursuant to application procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 20, 1993, and reply comments on or before January 4, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

8. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–28848 Filed 11–23–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

RIN 1018–AC03

Endangered and Threatened Wildlife and Plants; Proposed Revision of the Special Rule for Nonessential Experimental Populations of Red Wolves in North Carolina and Tennessee

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Service proposes to revise the special rule for the nonessential experimental populations of red wolves (*Canis rufus*) in North Carolina and Tennessee to revise and clarify the incidental take provision; apply the incidental take provision to both reintroduced populations; clarify the livestock owner take provision; apply the livestock owner harassment and take provisions to both reintroduced populations; add harassment and take provisions for red wolves in close proximity to private residences; add Martin and Bertie Counties, North Carolina, to the list of nearby counties where the experimental population designation will apply; and apply the same taking (including harassment) provisions to red wolves outside the experimental population area, except for reporting requirements.

DATES: Comments from all interested parties must be received by January 10, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Asheville Field Office, U.S. Fish and Wildlife Service, 330 Ridgefield Court, Asheville, North Carolina 28806. Comments and materials received will be available for public inspection by appointment during normal business hours at the above address.

Requests for the summary report on the 5-year experimental reintroduction at the Alligator River National Wildlife Refuge (Alligator River) should be sent to the Alligator River National Wildlife Refuge, P.O. Box 1969, Manteo, North Carolina 27954.

FOR FURTHER INFORMATION CONTACT: Mr. V. Gary Henry, Red Wolf Coordinator, at the above Asheville, North Carolina, address (Telephone 704/665–1195, Ext. 226).

SUPPLEMENTARY INFORMATION:

Background

A proposed rule to introduce red wolves into Alligator River National

Wildlife Refuge (Alligator River), Dare County, North Carolina, was published in the **Federal Register** July 24, 1986 (51 FR 26564). A final rule making a determination to implement the proposed action with some modifications was published November 19, 1986 (51 FR 41790). The red wolf population in Dare County and adjacent Tyrrell, Hyde, and Washington Counties was determined to be a nonessential experimental population according to section 10(j) of the Endangered Species Act of 1973, as amended (Act). A revision added Beaufort County to the list of counties where the experimental population designation would apply (56 FR 56325). The status of the population was to be reevaluated within 5 years, and it was to include public meetings.

A proposed rule to introduce red wolves into the Great Smoky Mountains National Park (Park), Haywood and Swain Counties, North Carolina; and Blount, Cocke, and Sevier Counties, Tennessee, was published in the **Federal Register** August 7, 1991 (56 FR 37513). A final rule making a determination to implement the proposed action with some modifications was published November 4, 1991 (56 FR 56325). This population was also determined to be a nonessential experimental population according to section 10(j) of the Act. Graham, Jackson, and Madison Counties, North Carolina; and Monroe County, Tennessee, were also included in the experimental designation because of the close proximity of these counties to the Park boundary. The reintroduction potential of the Park was to be assessed after a 10- to 12-month experimental phase. A positive assessment would result in initiation of a permanent reintroduction attempt.

The red wolf is an endangered species that is currently found in the wild only as experimental populations on the Service's Alligator River and adjacent private lands in Dare, Hyde, Tyrrell, and Washington Counties, North Carolina; and in the Park in Swain County, North Carolina, and Blount and Sevier Counties, Tennessee; and as an endangered species in three small island propagation projects located on Bulls Island, South Carolina; Horn Island, Mississippi; and St. Vincent Island, Florida. These five carefully managed wild populations contain a total of approximately 46 animals. The remaining red wolves are located in 28 captive-breeding facilities in the United States. The captive population presently numbers approximately 148 animals.

Following are summaries of the results from the two experimental reintroductions. A more detailed summary for Alligator River is available (see "**ADDRESSES**" section) as Progress Report No. 6, entitled "Reestablishment of Red Wolves in the Alligator River National Wildlife Refuge, North Carolina, 14 September 1987 to 30 September 1992."

Alligator River 5-Year Summary

The 5-year experiment to reestablish a population of red wolves in Alligator River in northeastern North Carolina ended October 1, 1992.

From September 14, 1987, through September 30, 1992, 42 wolves (adults—10 males, 9 females; yearlings—1 female; pups—12 males, 10 females) were initially released on 15 occasions. Four releases were conducted in 1987, two in 1988, five in 1989, two in 1990, one in 1991, and one in 1992. As of September 30, 1992, there were at least 30 free-ranging wolves in northeastern North Carolina.

Animals were initially released as members of seven adult pairs; an adult and a yearling, an adult and a pup, five families, and one sibling pair. Adults are defined as animals ≤ 24 months of age, yearlings are between 12 and 24 months of age, and pups are ≤ 12 months of age. Released adults ranged in age from 2.25 years to 7.33 years.

Wide-ranging movements that created management situations or led to the death of some animals soon after release were common. Of the 31 releases of adults and 22 releases of pups, 18 adults and 10 pups either had to be returned to captivity or died within 2 months. Length of acclimation, release area, location of resident wolves, and type of social group released all affected a wolf's probability of successfully establishing itself in the wild.

Of the 42 wolves released, 22 died; 7 were returned to captivity for management reasons; 11 were free-ranging through September 30, 1992; and the fates of 2 are unknown. Length of time in the wild varied from 16 days to 3.5 years.

Reintroduced wolves were killed by one of at least seven mortality factors. Vehicles (n = 8), intraspecific aggression (n = 5), and drownings (n = 4) were the most significant sources of mortality. It is a measure of the program's success that all but two of the deaths were natural or accidental, not as a result of any irresponsible action by a private citizen.

A minimum of 22 wolves were born in the wild. These animals were members of eight litters produced by 11 adults (6 males, 5 females). Two litters were produced in 1988, at least one in 1990, four in 1991, and at least one in 1992. No pups were born in the wild during 1989 because there were no adult pairs together during the breeding season.

Only two wild-born wolves died, and the fate of one is unknown. As of September 30, 1992, wild-born wolves accounted for 63 percent of the known population (19 of 30).

Of the 11 adults that bred in the wild, 1 was wild-born and 10 were captive-born. Wild-born offspring are evidence that captive-born-and-reared adults can make the transition from captivity to life in the wild.

As expected, wild-born pups exhibited wide-ranging movements as they dispersed from natal home ranges. These animals, with the exception of one female, traveled up to 192 km before establishing new home ranges on private land south or west of Alligator River. One female was killed by a vehicle before she established a new home range. Dispersal age ranged between 7 and 22 months. The youngest dispersers were siblings that left their natal home range after their parents were returned to captivity. Likewise, another female dispersed at a young age after her mother was returned to captivity. It is likely that some or all of these pups would not have dispersed had their families remained intact.

Twenty-four of the released wolves were recaptured 63 times, and 17 of the wild-born wolves were recaptured 39 times. Most recaptures were necessary in order to meet program objectives (replace radio collars, place a specific wolf with a mate, translocate an animal to a suitable site, etc.). Every management problem was resolved without inflicting significant long-term damage to animals and with little or no inconvenience to residents of the area.

Captive breeding was an integral component of the reintroduction. Since 1986, 79 wolves have been held in captivity at Alligator River for varying periods of time. As of September 30, 1992, ten wolves were in captivity. During the 5-year experiment, 20 captive adult pairs produced 34 pups. With access to 12 pens, Alligator River will continue to be an important component of the red wolf captive-breeding program.

By almost every measure, the reintroduction experiment was successful and generated benefits that extended beyond the immediate preservation of red wolves to positively affect local citizens and communities, larger conservation efforts, and other imperiled species. During the last 5 years, four important points surfaced:

1. Since every management problem was resolved without inflicting long-term damage to animals and with little

inconvenience to residents of the area, it is evident that wolves can be restored in a controlled manner.

2. Significant land-use restrictions were not necessary in order for wolves to survive. Indeed, hunting and trapping regulations for Alligator River remained unchanged or were further relaxed during the experiment. Additionally, no restrictions were needed in order for wolves to survive on private land.

3. Red wolves and sportsmen can coexist. Many hunters and trappers expressed support, while others actively contributed to the success of the experiment by reporting sightings of red wolves.

4. The reintroduction area, which encompasses about 250,000 acres (111,750 hectares), probably cannot support 30 wolves for an extended period of time. Dispersal outside the reintroduction area by wild-born wolves has occurred and will continue. In addition to dispersal, the future of the wolf population is threatened by its smallness; many events (e.g., disease outbreaks) can cause extinction of small populations.

Increasing the size of the wolf population minimizes threats to its survival. The primary factor limiting population size is the size of the reintroduction area. A larger reintroduction area would provide habitat for dispersing wolves and provide the Service with opportunities to release additional wolves. Fortunately, the reintroduction area can easily be enlarged by adding to the project the 112,000-acre (45,327-hectare) Pocosin Lakes National Wildlife Refuge (Pocosin Lakes). Purchased in 1990 and located in Washington, Tyrrell, and Hyde Counties, North Carolina, Pocosin Lakes is ideal for probably 15 to 25 wolves because of its large size, remoteness, abundant prey populations, and proximity to Alligator River.

Meetings with the public and local governments were held to present the results of the first 5 years and to solicit input on a proposal to maintain the current population and expand the reintroduction westward to encompass Pocosin Lakes beginning in 1993. The seven public meetings were held in the communities of Engelhard, Manteo, Stumpy Point, East Lake, Columbia, Swanquarter, Washington, and Plymouth. Attendance at these meetings ranged from 7 to 90 people at each and totaled 146 at all locations. Meetings were also held with the county commissioners in Washington, Dare, Beaufort, Tyrrell, and Hyde Counties.

Reintroductions are generally supported by local, State, and Federal agencies; elected officials; and the general public. Most people who commented supported the restoration project, although some expressed concern about the effect of red wolves on activities on private land. The Service assured them that, because free-ranging wolves are legally classified as members of an experimental nonessential population, the wolves would not negatively impact legal activities on private or Federal land.

Some citizens used the meetings to express frustration about other matters involving the Service. No significant complaints were voiced specifically about the red wolf reintroduction experiment. However, Hyde and Washington Counties did pass resolutions opposing red wolf project expansion. These resolutions seemed to be based on anti-government sentiment and an unwarranted fear of prohibitions on private land use.

After consideration of the results from the 5-year experimental reintroduction and public input received in public meetings and meetings with State and local governments and agencies, the Service has determined that it will maintain the present populations at Alligator River and expand this population with reintroductions at Pocosin Lakes beginning in 1993. The proposed reintroductions at Pocosin Lakes will be within counties previously designated for the experimental population and will require no changes in the existing rule. However, although no red wolves will be reintroduced into Martin and Bertie Counties, North Carolina, the Service proposes to add these counties to the list of counties where the experimental population designation will apply. This will provide a buffer zone where dispersing red wolves will be managed under the same provisions as established for the core area.

Park 1–Year Summary

On November 12, 1991, the Service, in cooperation with the National Park Service (Park Service), experimentally released a single family group of red wolves into the Cades Cove area of the Park. This release was designed to assess the feasibility of eventually establishing a self-sustaining red wolf population on Park Service and surrounding National Forest Service property. The experimental period ended in late September 1992 with the capture of the remaining three members of the release group.

Specific technical objectives of the experimental release were to document and respond to movements and activities of the wolves in mountainous terrain and in the presence of high human activity, livestock interests, and an increasing coyote population. However, a more important objective was to establish an informative and cooperative relationship with the involved agencies and local citizens. Through continuous telemetric contact, direct and relayed sightings, and the dedicated efforts of project personnel, valuable information was gathered with respect to all of these categories; some problems were encountered as well.

Cades Cove is unique within the Park; it possesses a great diversity and abundance of prey species, making it highly attractive to a large predator. As a result, the average home range for the four released wolves was 15 km^2 (3,700 acres), scarcely larger than Cades Cove itself. As yet, an accurate prediction of red wolf home ranges for habitat typical of the other 99.3 percent of the Park cannot be made. Wolves made exploratory movements up to 16 km (10 miles) from the release site. Individuals strayed off Park property (<5 miles or <8 km) four times. Twice they were recaptured within several hours, and twice they returned of their own accord within 24 hours. The primary prey species taken by the wolves were deer, rabbit, ground-hog, and raccoon. Samples are currently being analyzed for percentages and seasonal variation.

Wolves were sighted on numerous occasions by visitors and project personnel throughout the experiment. This was somewhat expected in an area where prey species are extremely visible and comfortable with the intense attention of as many as 15,000 visitors daily. However, the two adult wolves, especially the male, repeatedly tolerated people at close distances. This was attributed to the amount of time (e.g., 6 years for the male) that the adults had spent in captivity. The male was eventually recaptured and removed from the experiment in late January 1992. The female tolerated human presence to a lesser degree, but she presented no problems and was allowed to roam free for the duration of the experimental period. The two female pups were often sighted crossing roads or, at a distance, hunting in pastures. They developed an increasing wariness to human activity as they spent more time in the wild. The behaviors of these wolves support the theory that younger wolves, with minimal exposure to human contact, make better release candidates.

The private land surrounding the Park and throughout the Southern Appalachians supports a variety of livestock interests. The perceived potential economic threat of a large predator is perhaps the single greatest

political barrier to establishing a self-sustaining red wolf population in the Southern Appalachians. The documentation and management of the wolves' interaction with domestic livestock is likely to be a major factor in deciding whether to expand the project. Thus, a $25,000 depredation account was established to compensate livestock owners for losses.

Throughout the experiment, the adult male was responsible for taking one chicken and three domestic turkeys in two separate incidents. The remaining three wolves took one of five injured or missing newborn calves. One additional depredation attempt occurred but did not result in injury to the calf. Reimbursements for the chicken and the calf totaled $253. Offers to reimburse for the turkeys were declined by the owner.

Cades Cove supports a 300-head black angus cattle-breeding operation, leased to a private stock owner. During the 6-month calving season, the wolves and calving operation were intensely monitored. The wolves were located disjunct from five of the six attempted depredations. Day and night (using night-vision equipment) visual observations revealed cooperative hunting by small groups of coyotes. Nightly spotlight observations by the stock owner revealed continuous coyote activity in calving pastures. Accurate records of lost calves prior to the experimental release of wolves were not kept. Estimates by the stock owner indicated approximately five to ten calves per year were lost to bears, coyotes, and other predators/scavengers.

Of significance is that all six of the depredation attempts on calves that occurred during the experimental release involved calves less than one week old, and all of the events occurred along wood lines away from the main herd of cattle. Project personnel began assisting the stock owner in moving newborn calves into the main herd, and no further depredations by coyotes or wolves occurred.

Prior to the red wolf release, the Service contracted the University of Tennessee to conduct a census of coyotes in the Park and to study interactions between resident coyotes and released wolves. Seven coyotes were outfitted with telemetry collars and were monitored for 18 months, or until they permanently left the study area. Only one coyote remained "on the air" in Cades Cove by the time the wolves were released. This collar expired 3 months later. Interaction data was then gathered by direct observation.

Initial information indicated aggressive behavior between the adult wolves and resident coyotes, with the wolves apparently dominating. After the removal of the adult male wolf, greater numbers determined the dominating species.

In preparation for the experimental release, project and Park personnel met with area business, citizenry, and natural resource organizations for comment on the proposal. Modifications to the release plans included the addition of a "non-injurious harassment clause" to the experimental rule package, prevention of reproduction in the wild, immediate recapture of wolves straying off Park property, and recapture of all wolves at the end of the experiment.

To facilitate information exchange, an information committee (composed of representatives from Federal and State wildlife resource agencies, Farm Bureau Federations, and conservation organizations) was established. The Heartland Series, a local television environmental program, produced a documentary entitled "Front Runner," focusing on the reestablishment effort in the Southern Appalachians. The "Front Runner" video, a teacher's guide, and an activity poster were distributed free to all requesting educational institutions. The project gained national television exposure on "Zoo Life with Jack Hanna," a weekly public education broadcast. Presentations and workshops were given at wildlife exhibitions and to a variety of groups from elementary to college students and to senior citizens. Other media contact included interviews with local and regional newspapers, popular magazines, free-lance writers, and television news teams.

During the final weeks of the experimental period, the Service reviewed and presented their findings to the Park Service and members of the information committee. The decision was made to proceed with a full reintroduction effort at a very conservative pace, with two releases in the fall of 1992.

On October 9, 1992, a family of six red wolves (two adults, four pups) were released into Cades Cove. To date, these wolves have shown restricted movements and food habits very similar to the experimental group. Within several weeks after release, the adult pair had taken a large European wild hog—an exotic species in the Park.

On December 9, 1992, a second group of six wolves (two adults, four pups) was released from a remote backcountry site several miles east of Cades Cove. It is expected that these animals will be more difficult to track. However, they will provide needed information about the home range requirements of red wolves in habitat that is typical of the vast majority of the Park and surrounding Federal lands.

All released wolves will wear transmitters and will be monitored as closely as the experimental group. There are no scheduled plans to recapture these animals, except to replace aging transmitters in approximately 2 to 3 years.

The possibility of expanding the Park reintroduction to include adjacent national forest lands within the Nantahala and Pisgah National Forests in North Carolina, the Cherokee National Forest in Tennessee, and the Chattahoochee National Forest in Georgia will be evaluated over the next few years. This evaluation will include meetings with congressional representatives, State wildlife and agriculture agencies, Farm Bureau Federations, local agriculture and hunting interests, conservation organizations, county commissioners, and a variety of local organizations. A final decision will be made after public meetings in the local areas where reintroductions are proposed.

Special Rule Changes for Both Reintroductions

In the period since publication of the special rules for the experimental population introduced on Alligator River and the Park (51 FR 41796 and 56 FR 56333), it has become apparent that changes are needed in the rule for these populations. These proposed changes will also provide consistency by treating both reintroductions the same.

The provision for taking red wolves incidental to lawful recreational activities needs revision and clarification. Current policy at Alligator River applies this provision to all lawful activities, not just to recreational activities. For example, eight wolves have been killed by vehicles not involved in recreational pursuits but certainly otherwise lawful. No problems have been encountered at Alligator River in the application of a more liberalized provision. Therefore, the Service proposes to delete the word "recreational." In addition, incidental take is defined in the policy at Alligator River as unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care. This definition provides needed clarification and is proposed for inclusion into the incidental take provision of the special rule.

The Service revised the proposed rule for the Park reintroduction, based on input by the North Carolina Farm Bureau Federation that stated that livestock owners should be allowed to

take red wolves engaged in livestock depredation. The Tennessee Citizens for Wilderness Planning supported the revision. The final rule permitted private livestock owners to harass red wolves actually engaged in the pursuit or killing of livestock on private lands. Such conflicts must be reported to the superintendent of the Park. Service or State officials will respond to these conflicts by live-capturing the offending animals. If an early response by the Service or State officials results in a failure to capture offending animals, the livestock owner will be permitted to take the offending animal.

These provisions worked well in all five depredation incidents recorded the first year. All offending animals were recaptured. In at least two of the instances, private landowners did harass the animals away but did not take offending animals. However, experience with offending animals has indicated a potential problem. There may be a time lapse before offending animals settle into a predictable pattern whereby they can be recaptured. During this time period, private livestock owners should not attempt to take the animals themselves. However, the special rule does not establish a definitive time when Service or State attempts to recapture the animal are deemed unsuccessful and the private livestock owner is then permitted to take the offending animals. This is a decision that must be made by the Service project leader or biologist in the field at the depredation location. Therefore, a rule revision is proposed to provide that private livestock owners will be permitted to take offending animals upon written approval by the Service project leader or biologist.

Experience at Alligator River and the Park indicates a need to extend the harassment and take provisions now in place for private livestock owners to include private individuals around private residences. Wolves that come in close proximity to private residences may cause property damage by killing pets or removing and/or physically defacing small property items. In addition, private individuals may not want the animals close to their residences because they fear them or consider them a nuisance. Although currently not covered by such rule provisions, these stipulations have been implemented as reasonable law enforcement procedures. To date, there have been at least 15 incidents where animals were harassed, but in no case were they taken, by private individuals. This proposed rule revision will provide the legal basis for a provision now being implemented as a reasonable procedure.

Currently, there are at least five red wolves, once present at Alligator River, whose fate is unknown. Two of these wolves were observed but never captured. Transmitters malfunctioned on the other three wolves. One animal, whose transmitter malfunctioned in December 1989, would now be 5 years old. The remaining four animals were pups or yearlings, and contact with them was lost in 1991 or 1992. As wolves are great wanderers, it is possible that some of these five animals may have dispersed outside the experimental population boundaries (which could also happen with future animals). There is no possibility of such dispersing wolves mixing with populations of red wolves that have been classified as endangered, because the only existing red wolves in the wild are those introduced as experimental populations or those introduced onto isolated islands for propagation purposes. As a result, dispersing animals will not contribute to the conservation of the species.

As resident wild canid populations are hunted and trapped, it is possible for a dispersing red wolf to be taken incidental to such lawful activities. Dispersing red wolves could also come within close proximity to private residences or attempt to kill livestock. Providing greater protection for dispersing red wolves than that provided for red wolves within the experimental population boundaries would seriously erode the public support that is so essential for the success of reintroductions. Therefore, the Service proposes to apply the same taking provisions to red wolves outside the experimental population boundaries as within, with one exception. This exception is that taking does not need to be reported to the refuge manager or Park superintendent immediately. Such reporting will be encouraged to the degree possible, but it will not be required. It is impractical to inform the general population of such requirements outside the localized experimental population boundaries, and red wolves taken are not likely to be recognized as red wolves, even after such taking occurs and an animal is in hand.

Special Rule Changes for Alligator River

The proposed rule for Alligator River provided for any person to take red wolves incidental to lawful recreational activities (51 FR 26564). Objections to this provision from the Defenders of Wildlife, the National Audubon Society, the Humane Society of the United States, and the National Wildlife Federation, based on lack of necessity and risk of misinterpretation, resulted in its deletion from the final rule. Instead, the enforcement policy of the Service was clarified in the preamble to the final rule to the effect that there would be no penalty for taking incidental to otherwise lawful activity that was unavoidable, unintentional, and did not result from negligent conduct lacking reasonable due care, provided the taking was immediately reported to the refuge manager. Experience at Alligator River did detect a need for this provision and did not detect any misinterpretation of the policy. Several red wolves were killed by vehicles; one wolf was killed in a trapping incident; and one was shot close to a private residence. The vehicle deaths were interpreted as incidental to lawful activity, which required little investigation. The trapping and shooting incidents were investigated and settlements were reached. In addition, the incidental take provision originally proposed and then deleted at Alligator River was included in the final rule for the Park. No taking of red wolves has occurred despite several instances of wolves visiting and having been seen on private lands. Therefore, this is additional evidence that the provision is not being misinterpreted by private individuals in order to take red wolves indiscriminately. As now implemented on Alligator River, incidental taking provisions are a Service law enforcement policy that is subject to change or misinterpretation with changes in personnel. Therefore, the Service proposes to apply the incidental take provisions now implemented in the Park to the Alligator River population as well.

Experiences at Alligator River indicate that a need exists for application of the private livestock owner harassment and take provisions to this population as well. Two depredation incidents were encountered where the provisions could have been utilized and may have altered the final outcome in a positive manner with regard to reducing depredation and increasing public support. As these provisions have worked well in five incidents in the Park population, with no difficulties encountered in their interpretation or application, this proposed rule will extend these provisions to the Alligator River population.

Additionally, based on experience gained to date, it now appears that there is some possibility that introduced wolves may wander into Martin and Bertie Counties, North Carolina, which are in close proximity to the Alligator River project area. In order to assure that in such an eventuality the wolves would

be completely covered under the special rule provisions, the Service proposes to add Martin and Bertie Counties, North Carolina, to the experimental population area.

Public Comments Solicited

The Service intends that any rule finally adopted be as effective as possible. Therefore, comments or recommendations concerning any aspect of this proposed rule are hereby solicited (see "ADDRESSES" section) from the public, concerned government agencies, the scientific community, industry, or any other interested party. Comments should be as specific as possible.

A decision on this proposed action will take into consideration any comments or additional information received by the Service. Such communications may lead to a final rule that differs from this proposal.

National Environmental Policy Act

Environmental assessments were prepared under the authority of the National Environmental Policy Act of 1969 and are available for inspection by the public at the Service's Asheville Field Office (see "Addresses" section). These assessments formed the basis for a decision that these actions are not major Federal actions that would significantly affect the quality of the human environment within the meaning of section 102(2)(C) of the National Environmental Policy Act (implemented at 40 CFR parts 1500–1508). These minor rule changes do not require revision of the environmental assessments.

Executive Order 12866, Paperwork Reduction Act, and Regulatory Flexibility Act

The Fish and Wildlife Service has determined that this rule would not have a significant economic effect on a substantial number of small entities as described in the Regulatory Flexibility Act (Pub. L. 96–354). No private entities will be affected by this action. The rule as proposed does not contain any information collection or recordkeeping requirements as defined in the Paperwork Reduction Act of 1980 (Pub. L. 96–511). This rule has been reviewed under Executive Order 12866.

Author

The principal author of this proposal is V. Gary Henry (see "ADDRESSES" section).

List of Subject in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations as set forth below:

PART 17—[AMENDED]

1. The authority for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544, 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

2. Amend § 17.84 by revising paragraphs (c)(4) and (c)(9)(i) as follows:

§ 17.84 Special rules—vertebrates.

* * * * *

(c) * * *

(4)(i) Any person may take red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section, *Provided* that such taking is incidental to lawful activities or in defense of that person's own life or the lives of others, and that such taking is reported immediately to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)). The term "incidental" is defined as unavoidable, unintentional, and not resulting from negligent conduct lacking reasonable due care.

(ii) Any livestock owner may harass red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section when the wolves are actually pursuing or killing livestock on private properties, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the red wolf and is reported immediately to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)).

(iii) Any livestock owner may take red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section to protect livestock actually pursued or being killed on private properties after efforts to capture depredating red wolves by project personnel have proven unsuccessful, *Provided* that the Service project leader or biologist has approved such actions in writing and that all such taking shall be immediately reported to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)).

(iv) Any person may harass red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section that are within 100 yards of a private residence, *Provided* that all such harassment is by methods that are not lethal or physically injurious to the red wolf and is immediately reported to the refuge manager (for the red wolf population defined in paragraph (c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)), as noted in paragraph (c)(6) of this section.

(v) Any person may take red wolves found in the areas defined in paragraphs (c)(9) (i) and (ii) of this section that are within 100 yards of a private residence to protect private property, including pets and livestock, after efforts to capture such animals by project personnel have proven unsuccessful, *Provided* that the Service project leader or biologist has approved such actions in writing and all such taking shall be immediately reported to the refuge manager (for the red wolf population defined in paragraph 2(c)(9)(i)) or the Park superintendent (for the red wolf population defined in paragraph (c)(9)(ii)).

(vi) The provisions of paragraphs (c)(4) (i) through (v) of this section apply to red wolves found in areas outside the areas defined in paragraphs (c)(9) (i) and (ii) of this section, with the exception that taking and harassment do not need to be reported to the refuge manager or Park superintendent immediately.

* * * * *

(9)(i) The Alligator River reintroduction site is within the historic range of the species in North Carolina, in Dare, Hyde, Tyrrell, and Washington Counties; because of their proximity and potential conservation value, Beaufort, Martin, and Bertie Counties are also included in the experimental population designation.

* * * * *

Dated: August 12, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–28789 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 225
Wednesday, November 24, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 19, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extension, or reinstatements. Each entry contains the following information: (1) Agency proposing the information collection; (2) Title of the information collection; (3) Form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Question about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Extension

• Agricultural Marketing Service
Onions Grown in Certain Designated Counties In Idaho, and Malheur County, Oregon, Marketing Order No. 958
Recordkeeping; On occasion; Annually; Biennially
Farms; Businesses or other for-profit; 1,470 responses; 215 hours
Bob Mathews (202) 690–0464

• Agricultural Marketing Service
Application for Plant Variety Protection Certificate and Objective Description of Variety
SD–470 and SD–470 series
On occasion
Individuals or households; State or local governments; Farms; Businesses or other for-profit; Federal agencies or employees; Non-profit institutions; Small businesses or organizations; 779 responses; 1,182 hours
Kenneth H. Evans (301) 504–5518

New Collection

• Food and Nutrition Services
WIC Farmers' Market Nutrition Program (FMNP) Annual Financial Report and the WIC Farmers' Market Nutrition Program Recipient Report
FNS–683 and FNS–203
Annually
State or local governments; 11 responses; 143 hours
Debra Utting (703) 305–2730

Larry K. Roberson,
Department Clearance Officer.
[FR Doc. 93–28865 Filed 11–23–93; 8:45 am]
BILLING CODE 3410–01–M

Farmers Home Administration

Redelegation of Authority Regarding Debt Settlement/Release of Liability Cases in Excess of $1,000,000

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice of redelegation of authority.

SUMMARY: All debt settlement/release of liability cases in excess of $1,000,000 (including principal, interest, and other charges) must be submitted to the National Office for approval by the Administrator. The Administrator hereby gives notice of redelegation of authority regarding such cases to the Director, Large Loan Servicing Group.

EFFECTIVE DATE: October 1, 1993 through September 30, 1994.

FOR FURTHER INFORMATION CONTACT: Joe O'Leska, Director, Large Loan Servicing Group, Farmers Home Administration, USDA, room 2905, South Agriculture Building, 14th and Independence Avenue, SW, Washington, DC 20250. Telephone (202)690–1299.

SUPPLEMENTARY INFORMATION:

PROGRAMS AFFECTED

This action affects the following FmHA programs as listed in the Catalog of Federal Domestic Assistance:

10.404 Emergency Loans
10.405 Farm Labor Housing Loans and Grants
10.406 Farm Operating Loans
10.407 Farm Ownership Loans
10.415 Rural Rental Housing Loans
10.416 Soil and Water Loans
10.428 Economic Emergency Loans

The notice of the relegation of authority regarding debt settlement/release of liability cases reads as follows:

Pursuant to the authority delegated to me as Administrator of the Farmers Home Administration, I hereby redelegate to the Director, Large Loan Servicing Group, the authority to review all debt settlement/release of liability cases in excess of $1,000,000 (including principal, interest and other charges) referred to the National Office by State Directors, and in connection with such review and at your discretion and in your professional judgment to:

(1) Reject such requests for debt settlements and releases of liability without further review by this office (subject to any Right of Appeal provided under law); or

(2) To return any and all such requests to the respective State Director in the event you determine that additional information is necessary to support such a request.

This authority does not extend to debt settlement of Nonprogram Loans, Economic Opportunity Loans and third party converters. In addition, this authority does not contravene the authority delegated to State Directors to Approve/Reject debt settlements/releases of liability in cases of less than $1,000,000 as contained in § 1956.84(a)(1)(i) of FmHA Instruction 1956–B(available in any FmHA office).

Nothing contained herein shall be construed to grant delegated authority to approve requests for debt settlement/release of liability in cases in excess of $1,000,000.

This redelegation of authority shall be effective through September 30, 1994, unless revoked, extended or otherwise modified in writing prior to such date.

Dated: November 15, 1993

Sharron S. Longino,

Acting Administrator, Farmers Home Administration.

[FR Doc. 93–28866 Filed 11–23–93; 8:45 am]

BILLING CODE 3410–07–U

Forest Service

Hawaii Tropical Forest Recovery Task Force

AGENCY: Forest Service, USDA.

ACTION: Notice of meeting.

SUMMARY: The Hawaii Tropical Forest Recovery Task Force will meet in Hilo, Hawaii, on December 13, 1993, 8 a.m. to 4:30 p.m., for a field trip and a formal meeting on December 14, 1993, from 8 a.m. to 4:30 p.m. The Task Force is composed of 12 members, including the Administrator of the Department of Land and Natural Resources, State of Hawaii, and 11 others appointed by the Governor of Hawaii and the Secretaries of Agriculture and Interior. During these sessions, task force members will discuss relevant topics and review the progress of six working groups which are drafting recommendations to help steward—manage, protect, and use—the tropical forests of Hawaii. Both sessions are open to the public. Persons who wish to bring tropical forest recovery matters to the attention of the Task Force should contact the Task Force Coordinator and preferably file written statements with the Task Force after the meetings. A meeting agenda will be available on request.

DATES: The field trip will be held December 13, 1993, and the meeting will be held December 14, 1993.

ADDRESSES: The field trip will depart from and return to the Hilo Hawaiian Hotel, 71 Banyan Drive, Hilo, Hawaii 96720. The meeting will be held at the Hilo Hawaiian Hotel. If you have an interest in attending either the field trip or the meeting, please confirm your attendance with Jan Lerum by December 6, 1993. Send written comments to Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, Forest Service, USDA, 1151 Punchbowl Street, room 323, Honolulu, HI 96813, FAX (808) 528–05576.

FOR FURTHER INFORMATION CONTACT:

Jan Lerum, Coordinator, Hawaii Tropical Forest Recovery Task Force, Forest Service, USDA, (808) 541–2628.

Dated: November 18, 1993.

Michael T. Rains,

Acting Deputy Chief, State and Private Forestry.

[FR Doc. 93–28824 Filed 11–23–93; 8:45 am]

BILLING CODE 3410–11–M

COMMISSION ON CIVIL RIGHTS

Agenda and Notice of Public Meeting of the California Advisory Committee

Notice is hereby given, pursuant to the provisions of the rules and regulations of the U.S. Commission on Civil Rights, that a meeting of the California Advisory Committee to the Commission will convene at 9 a.m. and adjourn at 2 p.m. on Saturday, December 11, 1993, at the Westin Hotel, 686 Anton Boulevard, Costa Mesa, California 92636. The purpose of the meeting is to discuss administration of justice issues in Orange County.

Persons desiring additional information, or planning a presentation to the Committee, should contact Committee Chairperson Michael Carney, or Philip Montez, Director of the Western Regional Office, 213–894–3437 (TDD 213–894–0508). Hearing-impaired persons who will attend the meeting and require the services of a sign language interpreter should contact the Regional Office at least five (5) working days before the scheduled date of the meeting.

The meeting will be conducted pursuant to the provisions of the rules and regulations of the Commission.

Dated at Washington, DC, November 17, 1993.

Carol-Lee Hurley,

Chief, Regional Programs Coordination Unit.

[FR Doc. 93–28774 Filed 11–23–93; 8:45 am]

BILLING CODE 6335–01–P

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to the Office of Management and Budget (OMB) for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: National Oceanic and Atmospheric Administration (NOAA).

Title: Southwest Region Logbook Family of Forms.

Agency Form Number: None for the new requirement.

OMB Approval Number: 0648–0214.

Type of Request: Revision of a currently approved collection.

Burden: 2,735 hours — an increase of 141 hours for the new requirement.

Number of Respondents: 200.

Avg Hours Per Response: 2 minutes for notification requirement, 1 hour for making arrangements for observers, and 8 hours for claims.

Needs and Uses: The Fishery Management Plan for Pelagic Fisheries governs the longline fishery based in Hawaii. It has been determined that this fishery takes species of sea turtles that are listed as threatened and endangered under the Endangered Species Act. A mandatory observer program is being established so that statistically valid information can be gathered on the amount of take. These data are necessary to determine the impact of takes on the species and for the development of measures to reduce or prevent the take in the future.

Affected Public: Individuals, businesses or other for–profit organizations, small businesses or organizations.

Frequency: On occasion.

Respondent's Obligation: Mandatory.

OMB Desk Officer: Don Arbuckle, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing Edward Michals, DOC Form Clearance Officer, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Don Arbuckle, OMB Desk Officer, room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 17, 1993.

Edward Michals,

Departmental Forms Clearance Officer, Office of Management and Organization.

[FR Doc. 93–28808 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–CW–F

1994 DPRB Membership

The Department amends the DPRB membership published in 58 FR 60841 with the addition of Carolyn P. Acree, Deputy Director for Human Resources Management (C).

Dated: November 18, 1993.

Marcia P. Kirksey,

Executive Secretary, Departmental Performance Review Board, Department of Commerce.

[FR Doc. 93–28894 Filed 11–23–93; 8:45 am]

BILLING CODE 3510–BS–M

Bureau of Export Administration

[Docket Nos. 2109–01 and 2109–02]

Doron Rotler Individually and Doing Business as Ram Robotics Ltd. Also Known as Ram Robotic Automation Manufacturing Systems Ltd. Respondents; Final Decision and Order

Respondent Doron Rotler, individually and doing business as Ram Robotics Ltd., also known as Ram Automation Manufacturing Systems Ltd., is charged with one count of violating section 787.2 and one count of violating § 787.4(a) of the Export Administration Regulations (currently codified at 15 CFR 768–799 (1993)) in connection with the attempted export of a Digital Equipment Corporation VAX 8600 computer system from the United States to Hong Kong without the validated export license required by § 772.1(b) of the Regulations. On October 18, 1993, the Administrative Law Judge (ALJ) issued his recommended Decision and Order, a copy of which is attached hereto and made a part hereof.

Having examined the record, including the submissions by the Respondent and by the United States Department of Commerce, and based on the facts of this case, I hereby affirm the Decision and order of the ALJ in all respects except Paragraph II (suspension of denial period) shall be modified by striking the phrase "and shall be remitted at the end of such five year period without further action" and inserting in its stead the phrase "and shall thereafter be waived".

This Order constitutes the final Agency action in this matter.

Dated: November 17, 1993.

Barry E. Carter,

Acting Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Mr. Doron Rotler, appearing *pro se* individually and doing business as Ram Robotics Ltd., also known as Ram Robotic Automation, Manufacturing Systems Ltd., c/o Trading, Marketing and Financing (T.M.F.), Jan Toorpopplein 1, 2391 GC, Hazerswoude, The Netherlands.

Appearance for Agency: Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, room H–3839, 14th & Constitution Avenue, NW., Washington, DC 20230.

Preliminary Statement

On May 21, 1992, the Office of Export Enforcement, Bureau of Export Administration, United States Department of Commerce (the Department or Agency), issued a charging letter against Doron Rotler, Individually and doing business as Ram Robotics Ltd., also known as Ram Automation Manufacturing Systems Ltd. (herein collectively referred to as the Respondent or Rotler), under the authority of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. Sections 2401–2420 [Pub. L. 103–10, March 27, 1993]) (the Act), and the Export Administration Regulations (currently codified at 15 CFR parts 768–799[1992]) (the Regulations). The charging letter alleges that:

On about June 6, 1987,[1] Rotler caused/facilitated the attempted export of a Digital Equipment Corporation (DEC) VAX 8600 computer system from the United States to Hong Kong without the validated export license Rotler knew, or should have known, was required by § 772.1(b) of the Regulations. In attempting by this conduct to bring about a violation of the Act and Regulations, Rotler violated § 787.2 of the Regulations. By engaging in the aforesaid conduct while knowing that to do so was violative of the Act and Regulations, Rotler also violated § 787.4(a) of the Regulations.

The Respondent filed a timely answer to the charging letter[2] denying violation of the Act and Regulations, but did not request a hearing. After the parties filed arguments and evidentiary testimony in accordance with a schedule issued April 26, 1993, the record closed for decision on August 27, 1993.

Facts

1. Agency Counsel's Evidence

The Department's evidence shows that in early 1987, Rotler, based in The Netherlands, negotiated with Multitronics, Inc., an United States company in West Bridgewater, Massachusetts, for the purchase by Rotler of a DEC VAX 8600 computer system for Emulax AG, a Swiss concern.[3] At the time, that computer system was classified under Export Control Commodity Number (ECCN) 1565a, requiring that, for its export to any country but Canada, a validated export license be issued by the Department.

In correspondence attending these negotiations, Multitronics advised Rotler that a validated license was required for the export of this computer from the United States. Accordingly, in March 10 correspondence to Rotler in The Netherlands, Jeffrey S. Chase of Multitronics advised that:

> In regard to the export license you will need for the equipment we are negotiating on, there are two ways for you to procure the license. You can work with Cambridge Int'l * * * Maidenhead, Berks, United Kingdom (fax and telex numbers). They can provide you with an export license for 2.5–3% of the total sale, and they can provide it within 48 hours. The alternative is that we can provide you with the export license for only 1% of the total sale within 2 weeks—30 days. Please let us know how you would like to proceed.

In March 17 correspondence to Gabriel (Gabi or Gabby) Jaish, director of GCS, a Netherlands company,[4] urging him to immediately complete certain financial arrangements in order to facilitate purchase of the equipment, Chase inquired as to the status of his export license.

In a date-illegible telex to Rotler excepting to certain transaction terms, Frank T. Gangi, president of Multitronics, agreed that Rotler could do whatever he wanted with the equipment so long, *inter alia*, as he agreed to comply with all applicable U.S. export laws and to hold Multitronics harmless for any actions resulting from his having exclusive power over the shipment (Gov't exh. 5). In a late April reply to Gangi, Rotler promised that the "system will be shipped out of USA with valid export-license to our client."

By May 12 correspondence to The Bank of Boston's Letter of Credit Department, Jonathan Usha, vice-president, T.F.S. International Shipping Inc. (TFS), Jamaica, New York, in effect, confirmed that the DEC VAX computer system and invoice-listed components had been received from Multitronics in four wooden cases and were being

[1] All dates hereinafter are within 1987 unless otherwise stated.

[2] On December 10, 1992, Agency Counsel received a letter from the Respondent answering the charging letter and, because the Respondent also had not filed his answer with this office, on December 11 Agency Counsel forwarded a copy of same to me.

[3] Multitronics' May 5, 1987, packing slip showed that the relevant equipment, including components, had been sold to "Doron, Emulax AG, c/o Ram Ltd * * * Ramat Hasharom, Israel."

[4] As described by Rotler, GCS, through Jaish, was to provide the Respondent with the customer and financing for the transaction and pay Rotler's commission to him through his designee. Emulax The customer identified by GCS was Jetpower Industrial Ltd. (Jetpower), Kowloon, Hong Kong. As reflected in Multitronics' correspondence with Rotler concerning the relevant transaction (Gov't exhs. 3 and 4), that company, in negotiating with Rotler, considered Jaish to be Rotler's agent, an asserted relationship that Rotler never denied in his communications with Multitronics.

stored for TFS at a certain warehouse also in Jamaica. Usha, in conclusion, notified the bank that "All instructions regarding further handling will be solely given by Mr. Doron Rothler (sic)." This notification apparently was given in order to conform to The Bank of Boston's letter of credit covering this transaction where, at Item 4, credit was made contingent, *inter alia*, upon receipt of a letter confirming that the goods had been stored by TFS "under the name of Emulax as and all instructions re further handling will be solely given by Mr. Doron Rothler." Rotler's designee, Emulax, was identified on the letter of credit as applicant.

Jetpower,[5] by John Chan, manager, enclosed with a May 14 letter to Usha a document there-identified as "Import License #17604 of 7 May 1987," which was being sent to Usha at the request of "Mr. J. Gabi of General Commercial Services in Belgium."[6] This import license, issued to Jetpower by the Hong Kong government, covered the import into Hong Kong of a DEC computer, Model: VAX 8600.

In a May 15 cable to Multitronics president Gangi, Rotler advised that the "equipment will be exported from USA under *export* license No: 17604 issued May 7 87 (emphasis supplied)." Although Rotler in that cable stated an intent to export the computer system from the United States under the import certificate issued by the Hong Kong authorities, alluding to that document's number and issuance date, as indicated by Agency Counsel, the Hong Kong import license was not the equivalent of a validated export license issued by the Department of Commerce.

On about May 28, TFS arranged for the computer system to be loaded into a container and moved to a pier in Newark, New Jersey, for eventual loading onto an outbound carrier. The U.S. Customs Service (Customs) seized the computer system on June 9 before it could be shipped because of Emulax' failure in advance of attempted export to obtain the required Department of Commerce validated license. On October 21, Emulax deposited $17,750.00 with Customs to obtain early release of the forfeited computer system. About one year later, Customs, on November 3, 1988, agreed to deduct the sum of $1,750.00 from that deposit as penalty, to clear remittance of the deposit balance to Emulax' representatives and to release the computer system to Emulax.

More specific details concerning this transaction were provided by Usha in an April 18, 1988, interview with agents of the Department's Office of Export Enforcement (OEE). Usha, described himself as an Israeli citizen/permanent resident alien of the United States, and TFS as an international forwarding company dealing in sea, land and air transport, which also warehouses goods prior to shipment. Sixty-five percent of TFS' freight forwarding was to Israel where, in Tel Aviv, TFS coordinated its freight forwarding operations with its agent company, Tavel. Usha's wife, Terri, who signed some of the documents connected with forwarding the relevant DEC VAX computer system for export, also is with TFS as general operations/office manager. Usha admitted to an understanding of export licenses to the extent that he knew that sophisticated computer equipment normally required an export license before it could be shipped from the United States. While TFS did not apply for export licenses, if Usha believed that one was necessary, he would call the matter to the U.S. supplier's attention.

Usha informed OEE that he originally had been contacted by Rotler concerning the Multitronics shipment in early 1987, having been introduced to Rotler by Tavel, TFS' Israeli agent. Rotler advised that his (Israeli) company, Ram Robotics Ltd., was buying a computer from Multitronics, in the U.S., on a local basis. As initially agreed, TFS was to warehouse the computer and also arrange for the freight forwarding and issuance. As Usha understood the transaction, Ram Robotics, because of Israeli currency laws, actually was purchasing the computer through Emulax, in Switzerland, to be shipped to Jetpower in Hong Kong. However, as other parties became involved, a question arose as to who would obtain the export license for the computer system. Since Multitronics considered the sale to be local, it had made no effort to obtain such a license. Usha also exchanged communications with Jaish. An Englishman, Brendan Gammons, too, became involved, somehow linked to the fact that Jetpower had an office in England. Usha became more confused when he learned that Jetpower, through its English connection, had requested that International Bonded Couriers, Inc. (IBC), Jamaica, New York, handle the freight forwarding. From then on, TFS's role was to accept, insure and store the equipment for Rotler and to coordinate with IBC on the shipping.

On May 12, TFS received the equipment from Multitronics. IBC arranged through Cargo Point Ltd., New York, New York, to have the computer equipment placed in a 20 foot container and, on May 28, taken to the Maher Terminal, Newark, New Jersey, intended for later loading onto the Ming Ocean V 39 W, with ultimate discharge at Haniel Transport, Kowloon, Hong Kong. Usha explained that he had operated in belief that IBC and its English connection would be responsible for obtaining the U.S. export license. Also, Rotler had advised him that an export license was in place. After the shipment was sent to the Maher Terminal, Usha received from J. Gabi (Jaish) a copy of the Hong Kong import license. Usha then advised Rotler, that that document was not the necessary U.S. export license. However, as noted, Usha by then no longer had possession of the equipment.

Usha informed OEE that he had received his instructions and commission from Rotler but that he never before had dealt with Gabi, Gammons, IBC, Cargo Point or Jetpower. To his knowledge, Jetpower was the ultimate consignee for the shipment.

2. The Respondent's Evidence

In his July 12, 1993, Submission on the Record, Rotler denied having violated the Act and Regulations and argued that others than himself had assumed the obligation of obtaining the necessary license for the shipment.

Rotler related that in January 1987, he had met by chance with Jaish in Israel. Through his Netherlands company, GCS, Jaish financed commodity transactions. During their meeting, Jaish told Rotler that he had a client who wanted to purchase a second-hand DEC VAX 8600 computer system. Having acquired familiarity with that system through his work, Rotler immediately thought that it might be available at less cost in the U.S. than in Europe. It was agreed that if Rotler located such a system in the U.S. "at a good price," he would receive a commission. Rotler denied having had any responsibility for exporting the computer system out of the U.S. and had been "guaranteed" that the customer, Jetpower, and that the company's shipping agents—IBC, New York, New York, and Portcare Freight Services Ltd. Portcare, Slough, England—would undertake all export responsibilities, including acquisition of the U.S. export license. Rotler asserts that he did not learn until mid-May that Jetpower was to be GCS' customer for the computer.

Rotler described Multitronics as a Boston-based dealer in second-hand computers which, through its president,

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[5] *Ibid.*

[6] I find, consistent with other such references contained in the record, that the mention of "J. Gabi of General Commercial Services in Belgium" in the May 14 letter alluded to Gabriel Jaish of GCS, The Netherlands.

Frank T. Gangi, and its other principal, Jeffrey Chase, had quoted the best price on the relevant equipment. Accordingly, Rotler, via Emulax, purchased the DEC VAX 8600 system from Multitronics for $355,000.00 (U.S.) for the purpose of selling it to GCS's customer in return for a commission from GCS. An additional component to the system was to be shipped later at an additional cost to Emulax of $1,500.00. Emulax' total cost, therefore, would be $370,000.00 which it paid by a letter of credit applied for by Emulax and financed by GCS.[7]

The Respondent identified certain companies that participated in the transaction as follows:

Emulax AG was a Swiss corporation that Rotler used solely to acquire and then immediately sell the DEC VAX 8600 computer system. As noted, Emulax applied for the financing letter of credit, brought in TFS as its forwarding/warehousing agent,[8] and Rotler's commission for his role in this transaction was to be paid to him through Emulax.[9]

Protcare is a British-based company which, through its principal, Brendan J. Gammons, acted as Jetpower's shipping and forwarding agent. IBC, as Portcare's New York agent or affiliate, took possession of the computer system from Rotler's agent, TFS, on May 28 and delivered it to the Maher Terminal, Newark, New Jersey. From the foregoing, I find that Portcare was the Jetpower "English connection" referenced above by Usha during his OEE interview.

Summarizing, Rotler's description of the transaction, Multitronics, which he selected as vendor, was to have sold the computer system to GCS' client, jetpower, as end-user. GCS/Jaish procured the buyer (Jetpower), provided financing to Emulax to enable it to obtain the letter of credit used to pay Multitronics, and was to remit Rotler's commission to Emulax. Rotler's asserted role merely had been to assist these parties in return for a commission. Accordingly, on May 12, Multitronics, having received the letter of credit, forwarded the equipment to TFS which caused it to be stored in a nearby warehouse and which arranged for insurance. On May 28, IBC took possession of the equipment from TFS and had it moved to the Maher Terminal for later loading onto a vessel. There, on June 9, the computer system was seized by Customs.[10]

In support of his contention that it was the acknowledged responsibility of Jetpower and its shipping agents, Portcare and IBC, farther than his own, to obtain the required export license, Rotler submitted several items of correspondence. Chronologically, these include a May 22 telex from Rotler to Usha of TFS; a May 27 telex from Portcare's Gammons to Jaish; a June 1 letter from Terri Usha to Gary Woglom, a principal of IBC; a July 6 letter from Gammons to Customs; and a December 19 fax from Portcare to TFS.

In the May 22 correspondence, Rotler began by informing Usha that the user was insisting that the shipment be made through his agents who "will take care to provide an export license based on the import license issued in hong kong (sic). I understand * * * that they have contacted you already, pls supply them the import license and don't supply any other documents without my confirmation." Later in that telex, Rotler advised that "(M)ultitronics are not involved in shipment and it is buyer responsibility to provide export license as explained."

Gammons for Portcare, in the May 27 telex, notified Jaish that he required $1,500.00 (U.S.) "for export license to Hong Kong."

On June 1, Terri Usha, for TFS, wrote to IBC's Woglom, in effect, that the charge of $632.00 was for the export license being prepared by his office in England, which charge was to be paid by the buyer.

In Gammons' July 6 correspondence to Customs petitioning for relief from forfeiture of the previously-seized computer system, he noted in mitigation that when he earlier had been asked to arrange to ship the computer system to Hong Kong, he contacted Cambridge International Trading (Cambridge) [11] in the United Kingdom which had an associated company in Boston, Massachusetts. His contact at Cambridge advised that they also had an office in Hong Kong which would help to obtain the necessary license. This information was conveyed to Jetpower in Hong Kong. When, more recently, Gammons was advised that the equipment was in the Jamaica, New York, warehouse with the necessary license, TFS was requested to collect the goods for shipment to Hong Kong. By the time Gammons realized that a mistake had been made as to the type of license, it was too late to take remedial action. Promising to pay more attention to detail in the future and noting that he had not been properly instructed concerning the shipment, Gammons asked that his mistake on that occasion be overlooked.

As noted, in early November 1988, Customs agreed that in consideration of a penalty payment to be deducted from Emulax' early release deposit already in hand, the seized equipment would be released to Emulax.

The Parties' Positions

1. Agency Counsel

Agency Counsel asserts that, from the start, Rotler had been central to the purchase/export venture and, accordingly, was required to procure the necessary validated export license from the Commerce Department before attempting shipment.

In this regard, Agency Counsel points to record evidence that Rotler, personally or through Emulax, had located and selected the U.S. seller of the computer system; had placed the purchase order; had applied for and obtained the letter of credit financing the acquisition; had designated TFS as his agent to store, insure and, originally, to ship the computer system; and had provided TFS with the instructions necessary to obtain the release of the equipment to IBC preparatory to shipment abroad. As Agency Counsel indicates, the letter of credit issued by The Bank of Boston in connection with this transaction specified that the available credit, in relevant part, was contingent upon issuance of a letter confirming that the goods had been stored under Emulax' name and that all instructions re further handling be given solely by Rotler. As also noted, Usha of TFS complied with this term in his May 12 letter to the bank.

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[7] According to Rotler, the deal for the first such computer system he had located ended because of differences between Gangi and Jaish concerning sales terms. However, after Rotler received a call from Chase in April offering another system at even a better price, he so notified GCS and, from that point, the transaction went forward.

[8] Rotler's assertion that he originally had not intended that TFS, his freight forwarding agency, also ship the computer system abroad conflicts with Usha's account to the OEE agents. According to Usha, TFS, until replaced by IBC and the English connection, was to have served as freight forwarder.

[9] While the record is not clear as to whether Rotler had an ownership interest in Emulax, it does show in the varied ways indicated herein that Emulax acted in connection with the relevant transaction only on Rotler's behalf as his designee and that there were no material distinctions between Rotler's role and stake in this venture and those of Emulax. Accordingly, I refer to Rotler and Emulax interchangeable in this Decision.

[10] Rotler, in his Submission for the Record, did not refer to the fact that Customs, after seizing the equipment, released it to Rotler's designee, Emulax, or did he allude to that company's role in bringing about remittance of the computer system.

[11] Cambridge was referenced above in the March 10 correspondence to Rotler from Chase of Multitronics. There, Chase identified Cambridge as an English company capable of providing Rotler with an export license within 48 hours for a larger percentage of the total sales price than would Multitronics for the same service. However, Multitronics would require two weeks to 30 days to obtain the license.

From above evidence that Rotler had been various advised, in writing, from early in his involvement with this purchase/export transaction of the need for a Department-issued validated license and that he also assured Multitronics, the U.S. seller, that the computer system would be exported with the appropriate license, Agency Counsel argues that Rotler's role in this matter was such that he caused, aided and abetted the attempted export of a DEC VAX 8600 computer system without the validated export license he knew, or should have known, was required by § 772.1(b) of the Regulations. By so doing, he attempted to infract the Act and Regulations in violation of § 787.2 of the Regulations. Agency Counsel contends that Rotler also violated § 787.4(a) of the Regulations by purchasing and attempting to transport the computer system while knowing, or when he should have known, that a violation of the Act and Regulations had occurred, or was about to occur. For these two violations, Agency Counsel seeks entry of an Order denying the Respondent all export privileges for five years.

2. The Respondent

In denying violation of the Act and Regulations, Rotler, from his above-described evidence, asserts that his role in the transaction merely had been to locate and buy a relevant pre-owned computer system in the U.S. at a favorable price for immediate resale to GCS' client in exchange for a commission to be paid by GCS. His involvement had ended when the equipment was delivered f.o.b., New York. After that, IBC, as the purchaser's agent, took possession and control of the equipment and removed it from the Jamaica, New York, warehouse selected by his agent, TFS, to the Newark loading terminal preparatory to export. Arguing that he never was directly involved in the export process, Rotler relies on his above-referenced documentary evidence to support his argument that, at all times, he had been guaranteed that the ultimate purchaser, Jetpower, and the company's designated shipping agents, Portcare and IBC, exclusive of himself, were responsible for all export responsibilities, including the validated license. Rotler explained that he had used TFS merely to provide an address and warehouse for the delivery of the computer from Multitronics and to monitor the provisions of the letter of credit issued in the latter's favor. It had not been intended that TFS ship the computer abroad for Rotler and, in fact, it did not act in that regard.

Rotler explained that no misrepresentation had been intended in his May 15 telex to Multitronics assuring that the equipment would be exported under the asserted export license number of what actually was the Hong Kong-issued import certificate. That communication merely had been based on then-received information that the license was ready. It only was later, when Rotler learned that the reported license was a Hong Kong-issued import license rather than an export license from the Commerce Department, that he suggested to Usha that IBC be advised to obtain an export license. Finally, Rotler contends that he did not then have knowledge of export/import licenses, that he had acted in good faith and that the Department in this proceeding more properly should be pursuing Jetpower, Portcare and IBC, the parties he holds responsible for obtaining the license.

Discussions and Conclusions

1. Liability

From the record as a whole, I find that Rotler, in argument, has understated his role in the relevant transaction to which he, in fact, was so essential. As noted, Rotler had located Multitronics as vendor for the computer system and had negotiated the purchase terms. Through Emulax, Rotler had applied for and arranged the financing letter of credit for the sale;[12] had put the transaction back in place with another computer system unit after the original deal had faltered because of differences between Multitronics and Jaish; and, having made the purchase, had the equipment delivered to his forwarding agent, TFS, to be stored, insured and, as originally intended, to be shipped abroad to the customer.[13] Rotler's role in the transaction did not end after Portcare/IBC, as Jetpower's designated freight forwarding agents, took possession of the shipment since in October, after the June seizure of the computer equipment, he, through Emulax, put up an early release deposit of $17,750.00 with Customs to regain possession. This move later proved successful when, in November 1988, Customs released the computer system to Rotler/Emulax upon payment of a penalty that was less than ten percent of the early release deposit standard (Gov't exh. 18). Accordingly, Rotler's interest and activities in furtherance of this transaction continued well after he was to have relinquished export control of the equipment to Portcare/IBC.

Also contrary to Rotler, his involvement in the transaction was such that he was perceived by Multitronics as the party responsible for obtaining the requisite validated export license. He and Jaish, whom Multitronics considered to be Rotler's agent, were reminded repeatedly in writing by that company of the need to meet this requirement. This is practically significant in defining Rotler's role because, if Rotler had not reassured Multitronics by the late April telex that the system would be shipped out of the U.S.A. with a valid export license (Gov't exh. 6), it is probable, given Multitronics' reiterated concerns in this regard, that the sale would not have gone forward. Even after the purchase had been completed and TFS had taken possession of the equipment, Rotler, in his May 15 communication to Gangi at Multitronics, continued to represent that the computer system would be shipped from the U.S.A. under a specific export license (Gov't exh. 14). Although Rotler explained here that, since he did not learn the details until later, he had not intended to misrepresent in his aforesaid May 15 correspondence that the equipment would be shipped abroad under a validated export license when the license there mentioned actually related only to a Hong Kong-issued import certificate. However, his admittedly short supply of unverified information did not prevent him from transmitting the May 15 statement as fact. Moreover, Rotler's demonstrated need to make any representation at all on the subject to Multitronics after the purchase had been completed and the system moved to TFS' custody illustrated his responsibility for obtaining an export license, at least with respect to that vendor. As stated in that communication, this was because of Rotler's abiding interest in "future continued business" with Multitronics.

While Rotler, as indicated in provided documentation, may have had reason to believe that Jetpower, Portcare and IBC

[12] As noted, the bank's letter of credit, as confirmed by correspondence from TFS, specified that all instructions regarding further handling of the computer system be given solely by Rotler.

[13] Although Portcare/IBC ultimately were the designated freight forwarding agents for the computer equipment, contrary to Rotler's contention that it never had been intended that his agent, TFS, serve in that capacity, Rotler's May 22 telex to Usha advising, apparently for the first time, that the user was insisting that such forwarding be done through its own shipping agents who would provide the export license (Resp. exh. E), supports Usha's statement to OEE agents that it had been Rotler's original intent that TFS not only warehouse the computer and arrange transit insurance, but also handle the freight forwarding (Gov't exh. 17). Accordingly, I find that, had Jetpower as customer not later intervened to name its own freight forwarders, Rotler, through TFS, also would have had direct responsibility for exporting the VAX 8600 computer system from the United States.

had assumed responsibility for obtaining the necessary export license from the Department,[14] as in *MM Technology, et al.*,[15] since Rotler had been so instrumental in causing the unlicensed export of the computer system, he at minimum shared jointly and separately with those three companies the obligation of acquiring the requisite export license. Also consistent with *MM Technology, supra*, Rotler had set into motion a chain of events that resulted in the VAX 8600 computer system being sent to a terminal for export without the required validated license. Although advised that such a license was necessary and although promised that others would take principal responsibility for obtaining the same, Rotler, nonetheless, did not meet his duty of diligence in ensuring that the proper license was in place. Rather, as indicated in his above May 15 correspondence to Multitronics, he there represented that the equipment would be shipped under a specifically-numbered export license when he admittedly had no direct knowledge that an appropriate license had been issued and where there is no evidence that he had inquired as to its existence.

Rotler's contention that he should not be held liable because he had acted in good faith in reliance on documented representations that others would seek the license and because, in any event, he was not knowledgeable with respect to export/import licenses would not be sustainable even if his protestations of "good faith" were acceptable which, considering his misrepresented involvement in this matter, they are not. As to Rotler's asserted lack of knowledge, the U.S. Court of Appeals, District of Columbia Circuit, emphasized in *Iran Air* v. *Kugelman*,[16] that in cases involving violation of § 787.2 of the Regulations, knowledge is not an essential element of proof for imposition of civil penalties. Moreover, knowledge of the Act and Regulations properly may be imputed to a Respondent who, from abroad, was actively engaged in an effort to export an unlicensed controlled commodity from the United States.[17]

Accordingly, by aiding and abetting an intended unlawful export of the VAX 8600 computer system, Rotler committed one violation of § 787.2 of the Regulations and, because he purchased and transported the equipment to aid and abet its export from the United States while knowing that to do so was violative of the licensing requirements of the Act and Regulations, Rotler Committed one violation of § 787.4(a) of the Regulations. Therefore, as alleged in the May 21, 1992 charging letter, the Respondent is responsible for a total of two violations of the Regulations.

2. Remedy

Contrary to Agency Counsel, I do not find from the evidence or from Agency Counsel's generally capable arguments, an adequate rationale for revoking the Respondent's export privileges for the full five year period sought by the Department. A denial period of that duration would be inconsistent with the manner in which this particular transaction until now has been treated by the United States Government, as indicated in Gov't exhibit 18. There, in response to Emulax' October 20, 1987, petition to Customs seeking relief from the forfeiture of the DEC VAX 8600 system seized because of that company's failure to obtain a Department of Commerce-issued validated license prior to attempted export, Customs, in a November 3, 1988, letter to Emulax' representatives advised that its Director, Entry Procedure and Penalties Division, after review, had found:

> * * * That a violation occurred as charged. The record shows that petitioner had no previous violation of this nature. Under the established guidelines, the forfeiture would ordinarily be remitted upon payment of no less than 5 percent of the value of the merchandise seized, or the full early release deposit of $17,750.00.[18] However, due to the unique circumstances of this case, a departure from the guidelines is appropriate. Accordingly, the forfeiture is remitted upon the payment of $1,750.00 * * *.
>
> Since the sum of $17,750.00 was deposited with this office on October 21, 1987, to obtain early release, the sum of $1,750.00 will be deducted and a refund of $16,000.00 will be sent to (Emulax' representatives) through the National Finance Center in due course.

Accordingly, for such reasons as may have been provided, Customs, while aware of the instant violations, found justification for departing from its own guidelines and releasing the equipment to Emulax upon payment of slightly less than ten percent of the standard penalty.

In view of the foregoing, noting particularly that Rotler has committed no prior relevant violations of the Act and Regulations; that, from the record as a whole, the stated end use of the equipment does not appear to threaten U.S. national security; that there is no allegation in Agency Counsel's submissions that an end use other than that specified was contemplated; that, as noted by Agency Counsel, collection of a monetary civil penalty in the relevant circumstances would be most unlikely; and that to impose, in the first instance, the full Agency-requested five year denial period would create an unreasonable disparity in the penalties applied by respectively responsible agencies of the United States for the same conduct, I find under the authority of § 788.16(c) of the Regulations that for the two violations found Rotler should be denied all export privileges for a period of five years, but that the final two years and six months should be suspended. This determination of a five year denial period, two years and six months of which should be suspended, as opposed to an outright denial period of just two and one-half years, or even lesser penalty,[19] takes into account

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[14] Rotler's contention that he had learned only in mid-May that Jetpower was to be GCS' customer for the computer is inconsistent with his assertion that he, in effect, had been assured that Jetpower and its designated shipping agents in the United States and England would take responsibility for obtaining the necessary U.S. export license. By mid-May, Rotler already had acquired the computer system from Multitronics, had obtained the financing letter of credit and had caused the system to be delivered to TFS for storage and insurance preparatory to final shipment. If Rotler's statement that he did not learn until mid-May that Jetpower was to be the customer is credited, then during the months before May, when Rotler's involvement in the transaction was paramount, he did not know who was guaranteeing that he had no personal duty to obtain the validated license. Rotler's early need for such information is accentuated by the above-described record evidence showing that, prior to May, Rotler had been advised in writing of the need to have such a license in order to export the relevant computer system and had been queried as to the license's status.

[15] 57 FR 19593, 19595 (May 7, 1992).

[16] 996 F.2d 1253 (1993), enfg. in part 57 FR 39178 (August 28, 1992) and remanding in part on other grounds.

[17] See Klaus Westphal, 58 FR 3420, 34242 (June 24, 1993).

[18] Since the November 3 letter noted that the computer system was domestically valued at $355,000.00, application of the five percent guideline would require a payment of $17,750.00, the sum Emulax had submitted to Customs as early release deposit.

[19] In Gunnar Wedell, 58 FR 47113, 47114 fn. 6 (September 7, 1993), addressing the Department's general practice of seeking remedial denial periods in undivided units of five years or multiples thereof, it was recognized that an effectively-enforced denial of all export privileges during even a single year can provide meaningful remedy because of the potential in such time for major income loss to a respondent active in the export industry. In Wedell, where the circumstances differed from the present case, it was found appropriate under the relevant facts to assess the additional five-year denial period there sought in lieu of the also previously-imposed civil monetary remedy that the Respondent had refused to pay However, in weighing the applicability of a possibly more proportionate lesser period of further denial in Wedell and the remedial significance of same, it was noted that the Respondent's conceivable income loss during even a single year of sanction

Continued

Rotler's lack of candor in submitted representations concerning his role and responsibilities in the matters involved herein. This, in turn, gives rise to concern as to future readiness to comply with the Act and Regulations and warrants a period of extended qualified sanction. Accordingly, I issue the following recommended

Order

It is ordered, That.

I. For a period of five years from the date of final Agency action, the Respondent Doron Rotler, individually and doing business as Ram Robotics Ltd. also known as Ram Robotic Automation Manufacturing Systems, Ltd., c/o Trading Marketing and Financing (T.M.F.), Jan Toorpopplein 1, 2391 GG, Hazerswoude, The Netherlands.

And all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Commencing two years and six months from the date that this Order becomes effective, the denial of export privileges set forth in paragraph I, above, shall be suspended, in accordance with § 788.16(c) of the Regulations, for the remainder of the five year period set forth in paragraph I, above, and shall be remitted at the end of such five year period without further action, provided that the Respondent has committed no further violations of the Act, the Regulations or the Final Order entered in this proceeding. The provisions of paragraphs III, V and VI, below, also are deferred during the two and one-half year suspension period.

III. Participation prohibited in any transaction, either in the United States or abroad, shall include, but not be limited to, participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

IV. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

V. All outstanding individual validated export licenses in which the Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of the Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

VI. No person, firm, corporation, partnership, or other business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity on behalf of or in any association with the Respondent or any related person, or whereby the Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for the Respondent or related person denied export privileges, or

(ii) Order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, finance or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VII. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. section 2412(c)(1)).

Dated: October 18, 1993.

Robert M. Schwarzbart,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by section 13(c) of the Act, submissions must be received in the Office of the Acting Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Avenue NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Acting Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

Certificate of Mailing

I certify that I have sent the attached document by first class U.S. mail, postage prepaid, to the following persons:

Mr. Doron Rotler, individually and doing business as Ram Robotics Ltd., also known as Ram Robotic Automation, Manufacturing Systems Ltd., c/o Trading Marketing and Financing (T.M.F.), Jan Toorpopplein 1, 2391 GG, Hazerswoude, The Netherlands.

Thomas C. Barbour, Esq., Office of Chief Counsel for Export Administration, U.S. Department of Commerce, room H–3839, 14th & Constitution Ave., NW., Washington, DC 20230.

Dated: October 18, 1993.

Williemae Waddell,

Docket Clerk.

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could well exceed the amount of the unpaid civil remedy. In this context, it is appropriate that rationale for the imposition of extended denial periods be separately expressed.

International Trade Administration

[C–791–801]

Final Negative Countervailing Duty Determinations: Certain Steel Products From South Africa

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 24, 1993.

FOR FURTHER INFORMATION CONTACT: Elizabeth A. Graham or Kristin M. Heim, Office of Countervailing Investigations, Import Administration, U.S. Department of Commerce, room

B099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4105 or 482–3798, respectively.

FINAL DETERMINATION:

Case History

Since the publication of the notice of preliminary negative countervailing duty determinations in the **Federal Register** (58 FR 47865, September 13, 1993), the following events have occurred.

The Department of Commerce ("the Department") conducted verification from September 20 through 30, 1993. The parties submitted case and rebuttal briefs on October 29 and November 3, 1993, respectively. A public hearing was held on November 8, 1993.

Scope of Investigations

The products covered by these investigations, certain steel products, constitute the following four separate "classes or kinds" of merchandise: (1) Certain hot-rolled carbon steel flat products, (2) certain cold-rolled carbon steel flat products, (3) certain corrosion-resistant carbon steel flat products, and (4) certain cut-to-length carbon steel plate. See Appendix A to this notice for a complete description of the merchandise.

Injury Test

South Africa is not a "country under the Agreement" within the meaning of section 701(b) of the Tariff Act of 1930, as amended ("the Act"), and the products covered by these investigations are dutiable. Therefore, the U.S. International Trade Commission is not required to determine whether imports of these products from South Africa materially injure, or threaten material injury to, a U.S. industry.

Analysis of Programs

For purposes of these final determinations, the period for which we are measuring bounties or grants, the period of investigation ("the POI"), is calendar year 1992.

The Government of South Africa ("GOSA") and South African Iron and Steel Industrial Corporation, Ltd. ("Iscor") along with its wholly owned subsidiary, Vantin (Pty) Ltd. ("Vantin"), are respondents for all four classes or kinds of merchandise. Highveld Steel and Vanadium Corporation Ltd. ("Highveld") is a respondent for cut-to-length carbon steel plate.

In determining the benefits received under the programs described below, we used the following calculation methodology. We first calculated a country-wide rate for each program. This rate is comprised of the *ad valorem* benefit received by each firm weighted by each firm's share of exports, separately for each class or kind of merchandise, to the United States. Because Vantin is a wholly owned subsidiary of Iscor, the benefits received by Iscor and Vantin were combined and weighted by their combined share of exports to the United States. The rates were then summed to arrive at a country-wide rate for each class or kind of merchandise.

Based upon our analysis of the petition and the responses to our questionnaires, we determine the following:

I. Programs Determined To Be Countervailable

A. Export Marketing Allowance

The Export Marketing Allowance program (section 11bis of the Tax Act) was established in 1962 to encourage export trade. The program provides a deduction from taxable income of an additional 75 to 100 percent of export marketing expenditures incurred if exports increase by 10 percent over a specific time period. The program was terminated on April 1, 1992. Therefore, expenses incurred after March 31, 1992, cannot be claimed. However, a portion of the allowance may be carried forward.

Iscor, Vantin and Highveld all claimed tax deductions under this program. All three companies were eligible for a 100 percent allowance. However, while Iscor was able to claim an allowance under this program, the company was otherwise in a tax loss position and, therefore, did not benefit from the program in the POI. Because Iscor's tax liability was not affected by the deductions it claimed under this program during the POI, we determine that this program was not used by Iscor. With respect to Vantin, we verified that its claims under this program did not relate to the U.S. market. We also verified those portions of Highveld's claim that related to the U.S. market. They consisted of travel expenditures of Highveld employees to the United States. Accordingly, we determine that this program was used only by Highveld based on eligible U.S. expenditures.

Because this program is limited to exporters, we determine that it confers an export bounty or grant. To calculate the benefit during the POI, we divided the tax savings attributable to the deductions related to U.S. expenditures by the total value of export sales to the United States of all products. On this basis, we determine the net bounty or grant from this program to be 0.00 percent *ad valorem* for hot-rolled carbon steel products, cold-rolled carbon steel products, and corrosion-resistant carbon steel products; and 0.11 percent *ad valorem* for cut-to-length carbon steel plate.

B. General Export Incentive Scheme ("GEIS")

GEIS is an export promotion scheme under which exporters can receive biannual benefits based on the value of their exports. GEIS regulations prohibit the receipt of GEIS benefits on steel sales to the United States.

Highveld and Iscor did not claim or receive any benefits under the GEIS with respect to their exports of the subject merchandise to the United States in 1992.

Although GEIS regulations prohibit the receipt of benefits on steel sales to the United States, Vantin mistakenly claimed and received GEIS benefits on several shipments of the subject merchandise to the United States. The mistaken claims were made on shipments to Puerto Rico (the company was unaware that Puerto Rico is part of the customs territory of the United States) and on shipments the company thought were going to Mexico and the United Kingdom, but that were actually exported to the United States.

With respect to the "Mexican" sales, the sales were reported in the response as "in bond sales to the United States" which were then to be re-exported to Mexico. In preparing for verification, the company learned that it could not document that the shipments were actually re-exported to Mexico. Therefore, to avoid possible penalties by the GEIS office, the GEIS payments received on those shipments were repaid, with interest.

The Department was able to verify that repayment of the GEIS benefits related to the "Mexican" sales had occurred at both the government and the company. However, because the Department did not verify the repayment of the other GEIS benefits, we have assumed adversely as "best information available" that the company did not repay the benefits on the remaining U.S. sales and have treated those benefits as grants.

Because the GEIS program is limited to exporters, we determine that, to the extent that GEIS payments were received by Vantin on shipments of subject merchandise to the United States, this program has conferred an export bounty or grant. To calculate the benefit during the POI, we divided the amount received in 1992 on U.S sales that had not been repaid by the total steel exports to the United States of

Iscor and Vantin. On this basis, we determine the net bounty or grant to be 0.08 percent *ad valorem* for hot-rolled carbon steel products, cold-rolled carbon steel products, and corrosion-resistant carbon steel products; and 0.05 percent *ad valorem* for cut-to-length carbon steel plate.

II. Programs Determined Not To Be Used

We verified that the following programs were not used by manufacturers, producers or exporters of the subject merchandise in South Africa:

A. *Export Marketing Assistance Schemes*
B. *Beneficiation Allowance*
C. *Industrial Development Corporation Financing*
   1. *Industrial Financing*
   2. *Low Interest-Rate Scheme for Export Promotion*
   3. *Export Finance Scheme*
   4. *Export Capacity Scheme*
   5. *Export Credit Scheme Interest-Rate Subsidy*
   6. *Multi Shift Scheme*
D. *Regional Industrial Development Incentives*
   1. *Incentives Provided Under the 1982 Regional Industrial Development Policy*
   a. *Rebates of Transportation Expense*
   b. *Electricity Rebates*
   c. *Housing Subsidies for Key Personnel*
   d. *Special Tender Preferences*
   e. *Short-Term Financing Incentives*
   f. *Labor Incentives*
   g. *Long-Term Interest and Rent Incentives*
   h. *Cash Training Allowances*
   2. *Incentives Provided Under the 1991 Regional Industrial Development Policy*
   a. *Annual Establishment Grant*
   b. *Profit Based Incentive*
   c. *Relocation Incentive*
E. *Tax Benefits Given to Manufacturers in Economic Development Areas Relating to the Cost of Power, Water and Transport*

Comments

All written comments submitted by the interested parties in these investigations which have not been previously addressed in this notice are addressed below.

Comment 1—Petitioners argue that the entire GEIS program should be found countervailable and the benefit should be calculated by dividing the total amount of GEIS payments received by total exports. Petitioners' argument is based on the following: (1) The mistakes made by Vantin reveal that payments under the program are not adequately monitored by GOSA to ensure that benefits are not provided in connection with steel exports to the United States; (2) the companies under investigation may have benefitted from GEIS on shipments of subject merchandise to the United States either through claims made by related parties or through transshipments through third countries; and (3) the GEIS benefits received on exports to Europe have actually benefitted U.S. exports because certain trade data indicates that the price of the subject merchandise is, on average, lower in the United States than in Europe. Petitioners argue that, taken together, these aspects of the GEIS program indicate that benefits cannot be tied to non-U.S. steel sales and, therefore, the Department must treat these benefits as "untied."

Respondents rebut petitioners' claims with the following arguments: (1) The program is adequately monitored, the Vantin mistakes were due to human error, and with the exception of the Vantin mistakes, the Department verified that benefits were not paid on U.S. exports; (2) GEIS restricts companies from claiming GEIS on exports of steel to the United States regardless of the claimant, and, if a company had ceded its GEIS rights to a related party, the Department would have found evidence of the cession at verification; and (3) the comparison of prices in the United States and Europe does not take into account numerous factors that must be considered, *e.g.*, quality, quantity and transport costs.

DOC Position—We disagree with petitioners that GEIS benefits received by the individual companies for other products or other markets should be treated as export subsidies on shipments of the subject merchandise destined for the United States. In accordance with section 355.47(b) of the Proposed Regulations which codifies Department practice, benefits which the Department has tied to a market other than the United States do not confer a countervailable subsidy.

Clearly, as evidenced by Vantin, errors can occur under the system. Where errors occurred and corrections were not verified, they were countervailed. Nevertheless, this does not mean that benefits are not tied under this system to particular markets. Indeed, other than Vantin's mistakes, we verified that the companies' GEIS claims were tied to non-U.S. shipments. In Vantin's case, we are satisfied with Vantin's explanation that the mistakes were due to human error.

We also find that the possibility of transshipment or transfer of benefits does not render the program "untied." We found no evidence of transshipment. With respect to the transfer of benefits to related parties, we note that GEIS regulations prohibit the GOSA from paying benefits on steel shipments to the United States, regardless of the claimant. Moreover, we examined the claims filed by various related parties at verification and found no evidence that the respondent companies had ceded their rights under GEIS to any of their related parties with respect to shipments of the subject merchandise to the United States.

If we had found that benefits related to exports of the subject merchandise to the United States had been ceded to related parties, we would likely have continued to tie the payments to the relevant merchandise, regardless of the corporate entity which actually received the GEIS payment. Therefore, the possibility of transfer of benefits in and of itself is not sufficient to render the program untied.

Finally, with respect to petitioners' argument that prices in Europe are higher than prices in the United States, the comparison does not take into account other factors such as supply and demand, quality, quantity and transportation costs. Moreover, based on price differences alone, we cannot conclude that subsidies received on European sales somehow flow to U.S. sales.

Comment 2—Vantin argues that because it refunded with interest the GEIS payments it received in error to the Department of Trade and Industry, the company has received no countervailable benefits on its shipments of the subject merchandise to the United States. In support of its contention, Vantin cites Article VI(3) of the General Agreement on Tariffs and Trade ("GATT") and Article 4(2) of the GATT Subsidies Code which state that no countervailing duty can be levied on an imported product in excess of the subsidy found to exist.

Petitioners argue that the Department should not consider Vantin's repayment of the GEIS claim in its final determinations because the repayment occurred after the preliminary determinations.

DOC Position—Vantin identified the erroneous receipt of GEIS benefits on the "Mexican" sales prior to verification and, also, repaid the benefits prior to verification. Due to the unique circumstances surrounding these sales, and because we were able to verify these repayments, we have not countervailed the GEIS payments received on the "Mexican" sales. However, the other GEIS payments were not disclosed to the Department until verification. At that time they had not been repaid and, hence, we were unable to verify repayment. Therefore, we have adversely assumed that Vantin did not refund the GEIS payments on the remaining U.S. sales and have treated them as grants.

Comment 3—Petitioners argue that the provision in the GEIS regulations which states that steel exports to the United States are not eligible for GEIS benefits constitutes a unilateral suspension agreement on the part of the GOSA. Petitioners suggest that, should the Department decide not to countervail all GEIS benefits, the Department should require the GOSA to enter into a formal suspension agreement which would terminate GEIS payments to the entire South African steel industry.

DOC Position—The Department has no basis, either through its statute, regulations, case precedent, or the GATT upon which to require a foreign government to enter into a suspension agreement.

Comment 4—Petitioners argue that the Department should examine the companies' Export Marketing Allowance claims on the income tax returns that relate to the POI rather than the claims on the income tax returns filed during the POI. Petitioners argue that when companies calculate their taxes on an accrual basis, benefits from tax programs should be calculated in the same manner.

Respondents point out that section 355.48 of the Proposed Regulations states that "the Secretary will deem a countervailable benefit to be received at the time that there is a cash flow effect on the firm receiving the benefit" and that the cash flow effect of tax benefits occurs at the time of filing.

DOC Position—The cash flow effect from a tax benefit occurs at the time a firm can calculate that benefit which will normally occur at the time of filing (*see* section 355.48(b)(4) of the Proposed Regulations).

As is evidenced by Iscor's use of this program, a company may not know whether it will benefit from the program (*e.g.*, whether it will be in a tax loss position or not) until it files its income tax return. Therefore, we disagree with petitioners' argument that benefits should be calculated as they accrue.

Comment 5—Petitioners argue that the total amount of the Export Marketing Allowance claim should be countervailed because the companies may have overseas offices which facilitate U.S. sales. Petitioners' claim is based on the assumption that because Vantin sometimes uses an agent based in the United Kingdom for its sales to the United States, Highveld's office in the United Kingdom must also facilitate sales of the subject merchandise to the United States.

Highveld rejects petitioners' argument. Highveld argues that it identified for the Department all the expenses which pertained to the United States. Highveld also states that it does not maintain offices outside of South Africa that promote the sale of the subject merchandise.

DOC Position—As stated above, we determine that only the U.S.-related portion of the Export Marketing Allowance claim is countervailable. Highveld successfully traced all expenses related to the United States to its income tax return. Furthermore, we verified that the only portion of the claim that related to U.S. expenditures was travelling expenses of Highveld officials to the United States. Petitioners' assertion that Highveld has overseas offices which facilitate U.S. sales of the subject merchandise is mere conjecture. They use the sales structure of one company (Vantin) and assume, without any foundation, that the other companies operate similarly.

Comment 6—Petitioners state that the Department inadequately verified that the companies under investigation did not benefit from the Beneficiation Allowance (section 37E) because it did not obtain the names of the companies which have been approved for the program. Petitioners further question the validity of the income tax return for Highveld reviewed by the Department at verification because it does not include section 37E benefits for the Columbus Joint Venture. (Highveld owns one-third of Columbus.)

Petitioners suggest that the Department use the "best information available" and determine the *ad valorem* rate based on capital expenditure for each company in 1992.

Highveld refutes petitioners' claim that its tax return was invalid. According to Highveld, Columbus' use of Section 37E will appear on its 1993 income tax return.

DOC Position—The Beneficiation Allowance is an income tax program. Due to confidentiality laws, government officials could not disclose any information on individual company income tax returns. The government did, however, identify where a section 37E claim would be found on an income tax return. We verified that none of the companies under investigation claimed benefits under this program on their income tax returns filed in the POI. Therefore, the Beneficiation Allowance was not used.

We verified the validity of Highveld's income tax return by tying entries on the income tax return to Highveld's audited financial statements and internal accounting records. Moreover, the income tax return was accompanied by an independent auditor's certificate and the Inland Revenue tax assessment certification.

Comment 7—Petitioners argue that the Department did not adequately address the issue of residual government interest in Iscor at verification. The Industrial Development Corporation ("IDC") holds 16.2 percent ownership interest in Iscor. Petitioners raise two arguments with respect to this issue. First, petitioners claim that there is no explanation as to why the IDC purchased Iscor shares. Second, petitioners state that the long-term loans reported in Iscor's 1992 Annual Report show interest rates lower than the average cost of borrowing in 1992. Petitioners claim that the interest rates on these loans demonstrate that they are either explicitly or implicitly guaranteed by the IDC. Petitioners further claim that the IDC itself provided low-interest rate loans to Iscor.

Iscor rejects petitioners' claim that the Department did not verify whether the GOSA has any residual governmental interest in Iscor through the IDC. Iscor points out that the GOSA verification report states that the IDC decided independently of the GOSA to invest in Iscor. Iscor further states that the only financing from the IDC to Iscor is one loan which was provided to Iscor's Vereeniging Works (a company that does not produce the subject merchandise). Finally, Iscor states that the Iscor verification report clearly shows that the long-term loans reported in Iscor's Annual Report were examined by the Department and were identified as being from private sources.

DOC Position—The Department examined all of Iscor's loans and found no explicit guarantees by the IDC, nor did it find any loans to Iscor from the IDC which benefitted the subject merchandise. The one loan received by Iscor's Vereeniging Works relates only to long products (*i.e.*, non-subject merchandise). With respect to any "implicit" guarantees, as explained in the preamble to section 355.44(c) of the Proposed Regulations, the Department does not regard implicit governmental loan guarantees as giving rise to a benefit.

Summary

Based on the two countervailable programs described above, the *ad valorem* rates are as follows: 0.08 percent for hot-rolled carbon steel products; 0.08 percent for cold-rolled carbon steel products; 0.08 percent for corrosion-resistant carbon steel flat products; and 0.16 percent for cut-to-length carbon steel plate. These rates are *de minimis*, pursuant to 19 CFR 355.7. Therefore, we determine that no benefits

which constitute bounties or grants within the meaning of the countervailing duty law are being provided to manufacturers, producers or exporters of certain steel products in South Africa.

Verification

In accordance with section 776(b) of the Act, we verified the information used in making our final determinations. We followed standard verification procedures, including meeting with government and company officials, examination of relevant accounting records, and examination of original source documents. Our verification results are outlined in detail in the public versions of the verification reports, which are on file in the Central Records Unit (Room B-099 of the Main Commerce Building).

Return or Destruction of Proprietary Information

This notice serves as the only reminder to parties subject to Administrative Protective Order (APO) of their responsibility concerning the return or destruction of proprietary information disclosed under APO in accordance with 19 CFR 355.34(d). Failure to comply is a violation of the APO.

These determinations are published pursuant to section 705(d) of the Act (19 U.S.C. 1671d(d)).

Dated: November 17, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

Appendix A

Scope of the Investigations

The products covered by these investigations, certain flat-rolled steel products, constitute four separate "classes or kinds" of merchandise, as outlined below. Although the Harmonized Tariff Schedule of the United States (HTS) subheadings are provided for convenience and customs purposes, our written descriptions and the scope of this proceeding are dispositive.

Certain Hot-Rolled Carbon Steel Flat-Rolled Products

These products include hot-rolled carbon steel flat products, of a width of 0.5 inch or greater, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers), or in straight lengths which are less than 4.75 millimeters in thickness and of a width measuring at least 10 times the thickness, as currently classifiable in the HTS under item numbers 7208.11.0000, 7208.12.0000, 7208.13.1000, 7208.13.5000, 7208.14.1000, 7208.14.5000, 7208.21.1000, 7208.21.5000, 7208.22.1000, 7208.22.5000, 7208.23.1000, 7208.23.5030, 7208.23.5090, 7208.24.1000, 7208.24.5030, 7208.24.5090, 7208.34.1000, 7208.34.5000, 7208.35.1000, 7208.35.5000, 7208.44.0000, 7208.45.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.12.0000, 7211.19.1000, 7211.19.5000, 7211.22.0000, 7211.29.1000, 7211.29.3000, 7211.29.5000, 7211.29.7030, 7211.29.7060, 7211.29.7090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7214.30.0000, 7214.40.0010, 7214.50.0010, 7214.60.0010, and 7215.90.5000. Excluded from this investigation are certain seat belt retractor spring steel and certain carbon band saw steel, which are defined respectively by the following specifications:

Certain Seat Belt Retractor Spring Steel

Chemical Composition:
- Carbon—0.78%–0.83%
- Manganese—0.35%–0.50%
- Phosphorus—0.020% maximum
- Sulphur—0.008% maximum
- Silicon—0.10%–0.20%
- Aluminum—0.020%–0.060%
- Chromium—0.05%–0.15%
- Copper—0.12% maximum

Non-Metallic Inclusion Rating:
- (1) IPSI 10,000 maximum
- (2) ASTM E45 A: 2 maximum
  B and C: 1 maximum
  D: 1 maximum
- (3) DIN 50602 SS: maximum 3
  OA: maximum 1
  OS: maximum 1
  OG: maximum 2

Banding:
- #1 maximum

Decarburization:
- Complete=0.0005 inch maximum
- Total=0.002 inch maximum

Width:
- 14 inches maximum

Thickness:
- 0.07 to 0.125 inches

Certain Carbon Band Saw Steel

Chemical Composition:
- Carbon—1.21%–1.35%
- Manganese—0.15%–0.35%
- Phosphorus—0.025% maximum
- Sulphur—0.010% maximum
- Silicon—0.10%–0.25%
- Aluminum—0.015% maximum
- Chromium—0.10%–0.30%
- Copper—0.15% maximum

Microstructure:
- Must be full sorbitic with carbide size #1 absolute maximum.

Certain Cold-Rolled Carbon Steel Flat-Rolled Products

These products include cold-rolled (cold-reduced) carbon steel flat products, neither clad, plated nor coated with metal, whether or not painted, varnished or coated with plastics or other nonmetallic substances, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7209.11.0000, 7209.12.0030, 7209.12.0090, 7209.13.0030, 7209.13.0090, 7209.14.0030, 7209.14.0090, 7209.21.0000, 7209.22.0000, 7209.23.0000, 7209.24.1000, 7209.24.5000, 7209.31.0000, 7209.32.0000, 7209.33.0000, 7209.34.0000, 7209.41.0000, 7209.42.0000, 7209.43.0000, 7209.44.0000, 7209.90.0000, 7210.70.3000, 7210.90.9000, 7211.30.1030, 7211.30.1090, 7211.30.3000, 7211.30.5000, 7211.41.1000, 7211.41.3030, 7211.41.3090, 7211.41.5000, 7211.41.7030, 7211.41.7060, 7211.41.7090, 7211.49.1030, 7211.49.1090, 7211.49.3000, 7211.49.5030, 7211.49.5060, 7211.49.5090, 7211.90.0000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7217.11.1000, 7217.11.2000, 7217.11.3000, 7217.19.1000, 7217.19.5000, 7217.21.1000, 7217.29.1000, 7217.29.5000, 7217.31.1000, 7217.39.1000, and 7217.39.5000. Excluded from this investigation is certain shadow mask steel, *i.e.*, aluminum-killed, cold-rolled steel coil that is open-coil annealed, has a carbon content of less than 0.002 percent, is of 0.003 to 0.012 inch in thickness, 15 to 30 inches in width, and has an ultra flat, isotropic surface.

Certain Corrosion-Resistant Carbon Steel Flat-Rolled Products

These products include flat-rolled carbon steel products, either clad, plated, or coated with corrosion-resistant metals such as zinc, aluminum, or zinc-, aluminum-, nickel- or iron-based alloys, whether or not corrugated or painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating, in coils (whether or not in successively superimposed layers) and of a width of 0.5 inch or greater, or in straight lengths which, if of a thickness less than 4.75 millimeters, are of a width of 0.5 inch or greater and which measures at least 10 times the thickness or if of a thickness of 4.75 millimeters or more are of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7210.31.0000, 7210.39.0000, 7210.41.0000, 7210.49.0030, 7210.49.0090, 7210.60.0000, 7210.70.6030, 7210.70.6060, 7210.70.6090, 7210.90.1000, 7210.90.6000, 7210.90.9000, 7212.21.0000, 7212.29.0000, 7212.30.1030, 7212.30.1090, 7212.30.3000, 7212.30.5000, 7212.40.1000, 7212.40.5000, 7212.50.0000, 7212.60.0000, 7215.90.1000, 7215.90.5000, 7217.12.1000, 7217.13.1000, 7217.19.1000, 7217.19.5000, 7217.22.5000, 7217.23.5000, 7217.29.1000, 7217.29.5000, 7217.32.5000, 7217.33.5000, 7217.39.1000, and 7217.39.5000.

Excluded from this investigation are flat-rolled steel products either plated or coated with tin, lead, chromium, chromium oxides, both tin and lead ("terne plate"), or both chromium and chromium oxides ("tin-free steel"), whether or not painted, varnished or coated with plastics or other nonmetallic substances in addition to the metallic coating. Also excluded from this investigation are certain clad stainless flat-rolled products, which are three-layered corrosion-resistant carbon steel flat-rolled products less than 4.75 millimeters in thickness that consist of a carbon steel flat-rolled product clad on both sides with cold-

rolled processed stainless steel flat-rolled products in a 20%–60%–20% ratio.

Certain Cut-to-Length Flat-Rolled Carbon Steel Plate

These products include hot-rolled carbon steel universal mill plates (*i.e.*, flat-rolled products rolled on four faces or in a closed box pass, of a width exceeding 150 millimeters but not exceeding 1,250 millimeters and of a thickness of not less than 4 millimeters, not in coils and without patterns in relief), neither clad, plated nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances; and certain hot-rolled carbon steel flat products in straight lengths, hot rolled, neither clad, plated, nor coated with metal, whether or not painted, varnished, or coated with plastics or other nonmetallic substances, 4.75 millimeters or more in thickness and of a width which exceeds 150 millimeters and measures at least twice the thickness, as currently classifiable in the HTS under item numbers 7208.31.0000, 7208.32.0000, 7208.33.1000, 7208.33.5000, 7208.41.0000, 7208.42.0000, 7208.43.0000, 7208.90.0000, 7210.70.3000, 7210.90.9000, 7211.11.0000, 7211.12.0000, 7211.21.0000, 7211.22.0045, 7211.90.0000, 7212.40.1000, 7212.40.5000, and 7212.50.0000. Excluded from this investigation is grade X–70 plate.

[FR Doc. 93–28895 Filed 11–23–93; 8:45 am]
BILLING CODE 3510–DS–P

The Consortia of American Businesses in the Newly Independent States Grant Program

ACTION: Notice.

SUMMARY: The Department of Commerce has selected three additional applicants to receive federal funding under the Consortia of American Businesses in the Newly Independent States (CABNIS) grant program. Each of the three applicants is a non-profit consortium formed to assist for-profit U.S. member companies establish a commercial presence in the Newly Independent States and contribute to the privatization process. The grantees will be required to match federal funding. Each consortium will use the funding to help defray the costs of starting and operating a Newly Independent States commercial office. The three new grantees are the American-Russian Technology Association, New York, NY; Port Authority of New York/New Jersey, New York, NY; University of Alaska—Anchorage/World Trade Center of Alaska, Anchorage, AK.

FOR FURTHER INFORMATION CONTACT: Friedrich R. Crupe, Acting Director, Office of Export Trading Company Affairs, Trade Development, U.S. Department of Commerce, Tel. (202) 482–5131. This is not a toll-free number.

SUPPLEMENTARY INFORMATION: On July 13, 1992, 57 FR 31044, the Department announced the availability of federal grant funds under the CABNIS program and its intention to select non-profit organizations to participate as grantees under the program.

Dated: November 16, 1993.

Friedrich R. Crupe,

Acting Director, Office of Export Trading Company Affairs.

[FR Doc. 93–28893 Filed 11–23–93; 8:45 am]
BILLING CODE 3510–DR–P

National Oceanic and Atmospheric Administration

[I.D. 111893B]

Mid-Atlantic Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Mid-Atlantic Fishery Management Council's (Council) Ad Hoc Scientific and Statistical Committee review will be held on December 14, 1993. The Council's Demersal Species Committee will meet on December 15, from 9 a.m. until 10:30 a.m., and will be followed by a Coastal Migratory Species Committee meeting from 10:30 a.m. until 11:30 a.m. The Council will begin its regular session on December 15 at 1:30 p.m. with adjournment at approximately noon on December 16. The meetings will be held at the Holiday Inn, 39th and Oceanfront, Virginia Beach, VA 23451; telephone: (804) 428–1711.

In addition to hearing committee reports, the Council may adopt Amendment 6 to the Summer Flounder Fishery Management Plan (FMP), may take action on Amendment 9 to the Surf Clam and Ocean Quahog FMP, and may address other fisheries management matters as deemed necessary. The Council meeting may be lengthened or shortened based on the progress of the agenda. The Council may also go into closed session to discuss personnel or national security matters.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Ms. Joanna Davis at least five days prior to the meeting dates, telephone (301) 674–2331.

FOR FURTHER INFORMATION CONTACT: David R. Keifer, Executive Director, Mid-Atlantic Fishery Management Council, room 2115, Federal Building, 300 South New Street, Dover, DE 19901; telephone: (302) 674–2331.

Dated: November 18, 1993.

Joe P. Clem,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28852 Filed 11–23–93; 8:45 am]
BILLING CODE 3510–22–P

Marine Mammals

AGENCY: National Marine Fisheries Service, (NMFS) NOAA, Commerce.

ACTION: Modification No. 3 to Permit No. 627.

SUMMARY: Notice is hereby given that pursuant to the provisions of § 216.33 (d) and (e) of the Regulations Governing the Taking and Importing of Marine Mammals (50 CFR part 216), Public Display Permit No. 627 issued to Horizons West, Ltd., dba Marine Life Aquarium, 6001 South Highway 16, Rapid City, South Dakota 57701, on March 14, 1988 (53 FR 9348), and modified on November 1, 1990 (55 FR 46980) and December 23, 1992 (57 FR 62303) is further modified as follows:

Section A.1 is changed to read:

A.1. One Atlantic bottlenose dolphin (*Tursiops truncatus*) not less than 6'6" of either sex may be taken from the wild; and one male (TT721 Howitz) has been received from the Naval Command, Control and Ocean Surveillance Center, RDT&E Division.

This modification becomes effective upon publication in the **Federal Register**.

Documents pertaining to the Permit and modification are available for review in the following Offices:

Office of Protected Resources, NMFS, NOAA, 1315 East West Highway, room 13130, Silver Spring, MD 20910;

Director, Southwest Region, NMFS, NOAA, 9450 Koger Blvd., St. Petersburg, FL 33702; and

Director, Northwest Region, NMFS, NOAA, 7600 Sand Point Way, NE. BIN C15700, Seattle, WA 98115.

Dated: November 18, 1993.

[FR Doc. 93–28812 Filed 11–23–93; 8:45 am]
BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Department of the Navy

Planning and Steering Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Planning and Steering Advisory Committee will meet December 2, 1993, from 9 a.m. to 3:30 p.m., at the Center for Naval Analyses, 4401 Ford Avenue, Alexandria, Virginia. This session will be closed to the public.

The purpose of this meeting is to discuss topics relevant to SSBN security. The entire agenda will consist of classified information that is specifically authorized by Executive order to be kept secret in the interest of national defense and is properly classified pursuant to such Executive order. Accordingly, the Secretary of the Navy has determined in writing that all sessions of the meeting will be closed to the public because they concern matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting, contact: LCDR, D. B. Rich, Pentagon, room 4D534, Washington, DC 20350, Telephone Number: (703) 693-7248.

Dated: November 9, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-28830 Filed 11-23-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF EDUCATION

National Board of the Fund for the Improvement of Postsecondary Education; Meeting

AGENCY: National Board of the Fund for the Improvement of Postsecondary Education, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the proposed agenda of a forthcoming meeting of the National Board of the Fund for the Improvement of Postsecondary Education. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act.

DATES AND TIMES: December 10, 1993 from 12 p.m. to 10:30 p.m. and on December 11, 1993 from 7 a.m. to 5 p.m.

ADDRESSES: The Airlie Conference Center, Airlie, Virginia 22186.

FOR FURTHER INFORMATION CONTACT: Charles Karelis, Director, Fund for the Improvement of Postsecondary Education, 7th & D Streets, SW., Washington, DC 20202. Telephone: (202) 708–5750.

SUPPLEMENTARY INFORMATION: The National Board of the Fund for the Improvement of Postsecondary Education (National Board) is established under section 1003 of the Higher Education Act of 1965, as amended (20 U.S.C. 1135a–1). The National Board of the Fund is authorized to recommend to the Director of the Fund and the Assistant Secretary for Postsecondary Education priorities for funding and approval or disapproval of grants submitted to the Fund.

The meeting of the National Board is open to the public. On December 10, 1993 from 12 p.m. to 10:30 p.m. and on December 11, 1993 from 7 a.m. to 5 p.m., the Board will meet to discuss FIPSE program priorities and operations.

Records are kept of all Board proceedings, and are available for public inspection at the Office of the Fund for the Improvement of Postsecondary Education, room 3100, Regional Office Building #3, 7th & D Streets, SW., Washington, DC 20202 from the hours of 8 a.m. to 4:30 p.m.

Dated: November 19, 1993.

David A. Longanecker,

Assistant Secretary for Postsecondary Education.

[FR Doc. 93–28868 Filed 11–23–93; 8:45 am]

BILLING CODE 4000-01-M

DEPARTMENT OF ENERGY

Guidelines for Voluntary Reporting of Greenhouse Gas Emissions and Reductions, and Carbon Sequestration

AGENCY: Office of Policy, Planning, and Program Evaluation DOE.

ACTION: Notice of public meeting.

SUMMARY: Two public workshops and meetings regarding the agriculture/forestry sector and transportation sector will be held by the DOE Office of Policy, Planning and Program Evaluation, to facilitate in the preparation of guidelines for the voluntary reporting of greenhouse gas emissions, reductions and carbon sequestration.

DATES AND ADDRESSES: The agriculture/forestry sector workshop will be held December 9, 1993 at the Westin Peachtree Plaza Hotel, 210 Peachtree Street, Atlanta, GA 30303. The workshop will begin at 8:30 a.m. and adjourn at 5:30 p.m.

The transportation sector workshop will be held on December 10, 1993 at the Westin Peachtree Hotel, 210 Peachtree Street, Atlanta, GA 30303. The workshop will begin at 8:30 a.m. and adjourn at 5 p.m.

FOR FURTHER INFORMATION CONTACT: To obtain more information on the workshops call Ms. Debbie Stowell at (202) 586–7767. To obtain a copy of the Options Identification Document regarding either the agriculture/forestry sector or the transportation sector, call (202) 646–7896. Copies of those documents will be available approximately one week before each workshop.

SUPPLEMENTARY INFORMATION: On July 27, 1993, DOE requested comment on the initial development stage of the guidelines for voluntary reporting, under section 1605(b) of the Energy Policy Act of 1992, of greenhouse gas emissions and their reductions and carbon fixation (58 FR 40116). For a more detailed discussion of issues in the development of the guidelines, the reader is referred to the discussion in the July 27 notice. As part of the guideline development process, DOE is hosting a series of public workshops and meetings.

It is anticipated that the workshop on agriculture/forestry issues will focus on institutional and technical issues related to:

- The reporting of carbon sequestration in forests, including the roles of land conversion to forests, modified forest management and harvest methods and forest preservation;
- The effects of urban forestry on the emission and sequestration of greenhouse gases;
- The potential for secondary negative carbon sequestration from forestry activities (e.g., through activity shifting or market leakage); and
- The effects of agricultural activities on greenhouse gas emissions and sequestration, with specific attention to fossil fuel substitution, efficiency improvements, carbon sequestration in soils and reductions in fertilizer use.

It is anticipated that the workshop on the transportation sector will focus on institutional and technical issues related to:

- Vehicle fuel efficiency improvements by both manufacturers and fleet owners;
- Total vehicle use reduction through both employer and fleet owner programs;
- Fuel switching to lower greenhouse gas emitting fuels; and
- Materials reductions in the infrastructure stage.

For each of the topics in these two workshops, a panel of invited participants will address issues and options identified in the Options Identification Document and discuss these with other workshop participants. There will be opportunities for brief oral statements from the public on the issues under consideration during each day's session.

The goal of the workshops is to develop the fullest information on alternative options, not to reach any consensus of opinion nor to make collective recommendations. Workshops on additional topics will be announced in the **Federal Register**.

Abraham E. Haspel,

Deputy Assistant Secretary, Economic and Environmental Analysis, Office of Policy, Planning and Program Evaluation.

[FR Doc. 93–28887 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–M

Advisory Committee on Environmental Restoration and Waste Management

AGENCY: Department of Energy.

ACTION: Notice of open meeting.

SUMMARY: Pursuant to the provisions of the Federal Advisory Committee Act (Pub. L. 92–463, 86 Stat. 770), notice is hereby given of the following Advisory Committee meeting:

Name: Environmental Restoration and Waste Management Advisory Committee.

Dates and Times:

Tuesday, December 14, 1993 from 8 a.m. to 6:30 p.m.

Wednesday, December 15, 1993 from 8 a.m. to 3 p.m.

Place. The Holiday Inn—Eisenhower Metro, 2460 Eisenhower Avenue, Alexandria, Virginia 22314–4695.

FOR FURTHER INFORMATION CONTACT: James T. Melillo, Executive Secretary, Environmental Restoration and Waste Management Advisory Committee, EM–1, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4400.

SUPPLEMENTARY INFORMATION:

Purpose of the Committee

The purpose of the Committee is to provide the Assistant Secretary for Environmental Management (EM) with advice and recommendations on both the substance and process of the EM Programmatic Environmental Impact Statement and other EM projects, from the perspectives of effected groups and State and local Governments. The Committee will help to improve the Environmental Management Program by assisting in the process of securing consensus recommendations, and providing the Department's numerous policies with opportunities to express their opinions regarding the Environmental Management Program.

Tentative Agenda

Tuesday, December 14, 1993

8 a.m.—Chairperson Opens the Meeting Chair reports.
8:30 a.m.—Assistant Secretary Thomas P. Grumbly—Program Goals.
9:30 a.m.—Senior Environmental Management Staff Issues Discussion.
12:30 p.m.—Lunch.
1:30 p.m.—Senior Environmental Management Staff Issues Discussion continued.
5:30 p.m.—Public Comment Session.
6:30 p.m.—Meeting Adjourns.

Wednesday, December 15, 1993

8 a.m.—Public Meeting Reconvened.
Senior Environmental Management Staff Issues Discussion continued.
12 p.m.—Lunch.
1 p.m.—Senior Environmental Management Staff Issues Discussion continued.
3 p.m.—Meeting Ends.

A final agenda will be available at the meeting.

Public Participation

The meeting is open to the public. Written statements may be filed with the Committee either before or after the meeting. Members of the public who wish to make oral statements pertaining to agenda items should contact James T. Melillo at the address or telephone number listed above. Individuals wishing to orally address the Committee during the public comment session should call (800) 862–8860 and leave a message. Individuals may also register on December 14, 1993, at the meeting site. Every effort will be made to hear all those wishing to speak to the Committee, on a first come, first serve basis. Those who call in and reserve time will be given the opportunity to speak first. The Committee Chairperson is empowered to conduct the meeting in a fashion that will facilitate the orderly conduct of business.

Transcripts and Minutes

A transcript and minutes of the meeting will be available for public review and copying at the Freedom of Information Public Reading Room, 1E–190, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585 between 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays.

Issued at Washington, DC on November 19 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 92–28886 Filed 11–23–92; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Efficiency and Renewable Energy

[Case No. F–064]

Energy Conservation Program for Consumer Products: Granting of the Application for Interim Waiver and Publishing of the Petition for Waiver of DOE Furnace Test Procedures From Lennox Industries Inc.

AGENCY: Office of Energy Efficiency and Renewable Energy, Department of Energy.

ACTION: Notice.

SUMMARY: Today's notice publishes a letter granting an Interim Waiver to Lennox Industries Inc. (Lennox) from the existing Department of Energy (DOE) test procedure regarding blower time delay for the company's GCS24–650/813 combination gas-electric equipment.

Today's notice also publishes a "Petition for Waiver" from Lennox. Lennox's Petition for Waiver requests DOE to grant relief from the DOE furnace test procedure relating to the blower time delay specification. Lennox seeks to test using a blower delay time of 40 seconds for its GCS24–650/813 combination gas-electric equipment instead of the specified 1.5-minute delay between burner on-time and blower on-time. The Department of Energy is soliciting comments, data, and information respecting the Petition for Waiver.

DATES: The Department of Energy will accept comments, data, and information not later than December 27, 1993.

ADDRESSES: Written comments and statements shall be sent to: Department of Energy, Office of Energy Efficiency and Renewable Energy, Case No. F–064, Mail Stop EE–90, room 6B–025, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–0561.

FOR FURTHER INFORMATION CONTACT:

Cyrus H. Nasseri, U.S. Department of Energy, Office of Energy Efficiency and Renewable Energy, Mail Station EE–431, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–7140.

Eugene Margolis, Esq., U.S. Department of Energy, Office of General Counsel,

Mail Station GC–41, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–9507.

SUPPLEMENTARY INFORMATION: The Energy Conservation Program for Consumer Products (other than automobiles) was established pursuant to the Energy Policy and Conservation Act (EPCA), Public Law 94–163, 89 Stat. 917, as amended by the National Energy Conservation Policy Act (NECPA), Public Law 95–619, 92 Stat. 3266, the National Appliance Energy Conservation Act of 1987 (NAECA), Public Law 100–12, the National Appliance Energy Conservation Amendments of 1988 (NAECA 1988), Public Law 100–357, and the Energy Policy Act of 1992 (EPAct), Public Law 102–486, 106 Stat. 2776, which requires DOE to prescribe standardized test procedures to measure the energy consumption of certain consumer products, including furnaces. The intent of the test procedures is to provide a comparable measure of energy consumption that will assist consumers in making purchasing decisions. These test procedures appear at 10 CFR part 430, subpart B.

The Department of Energy amended the prescribed test procedures by adding 10 CFR 430.27 on September 26, 1980, creating the waiver process. 45 FR 64108. Thereafter, DOE further amended the appliance test procedure waiver process to allow the Assistant Secretary for Energy Efficiency and Renewable Energy (Assistant Secretary) to grant an Interim Waiver from test procedure requirements to manufacturers that have petitioned DOE for a waiver of such prescribed test procedures. 51 FR 42823, November 26, 1986.

The waiver process allows the Assistant Secretary to waive temporarily test procedures for a particular basic model when a petitioner shows that the basic model contains one or more design characteristics which prevent testing according to the prescribed test procedures or when the prescribed test procedures may evaluate the basic model in a manner so unrepresentative of its true energy consumption as to provide materially inaccurate comparative data. Waivers generally remain in effect until final test procedure amendments become effective, resolving the problem that is the subject of the waiver.

The Interim Waiver provisions added by the 1986 amendment allow the Secretary to grant an Interim Waiver when it is determined that the applicant will experience economic hardship if the Application for Interim Waiver is denied, if it appears likely that the Petition for Waiver will be granted, and/or the Assistant Secretary determines that it would be desirable for public policy reasons to grant immediate relief pending a determination on the Petition for Waiver. An Interim Waiver remains in effect for a period of 180 days or until DOE issues its determination on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180 days, if necessary.

On August 23, 1993, Lennox filed an Application for Interim Waiver regarding blower time delay. Lennox's Application seeks an Interim Waiver from the DOE test provisions that require a 1.5-minute time delay between the ignition of the burner and starting of the circulating air blower. Instead, Lennox requests the allowance to test using a 40-second blower time delay when testing its GCS24–650/813 combination gas-electric equipment. Lennox states that the 40-second delay is indicative of how these furnaces actually operate. Such a delay results in an energy savings of approximately 0.7 percent. Since current DOE test procedures do not address this variable blower time delay, Lennox asks that the Interim Waiver be granted.

Previous waivers for this type of time blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991; Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

In those instances where the likely success of the Petition for Waiver has been demonstrated based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, based on the above, DOE is granting Lennox an Interim Waiver for its GCS24–650/813 combination gas-electric equipment. Pursuant to paragraph (e) of § 430.27 of the Code of Federal Regulations Part 430, the following letter granting the Application for Interim Waiver to Lennox was issued.

Pursuant to paragraph (b) of 10 CFR 430.27, DOE is hereby publishing the "Petition for Waiver" in its entirety. The petition contains no confidential information. DOE solicits comments, data, and information respecting the petition.

Issued in Washington, DC, November 17, 1993.

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

November 17, 1993.

Mr. David W. Treadwell,
Vice President, Research and Development, Lennox Industries Inc., P.O. Box 110877, Carrolton, Texas 75011–0877.

Dear Mr. Treadwell: This is in response to your August 23, 1993, Application for Interim Waiver and Petition for Waiver from the Department of Energy (DOE) test procedure regarding blower time delay for Lennox Industries (Lennox) GCS24–650/813 combination gas-electric equipment.

Previous waivers for this type of timed blower delay control have been granted by DOE to Coleman Company, 50 FR 2710, January 18, 1985; Magic Chef Company, 50 FR 41553, October 11, 1985; Rheem Manufacturing Company, 53 FR 48574, December 1, 1988, 56 FR 2920, January 25, 1991, 57 FR 10166, March 24, 1992, and 57 FR 34560, August 5, 1992; Trane Company, 54 FR 19226, May 4, 1989, 56 FR 6021, February 14, 1991, 57 FR 10167, March 24, 1992, and 57 FR 22222, May 27, 1992; Lennox Industries, 55 FR 50224, December 5, 1990, and 57 FR 49700, November 3, 1992; Inter-City Products Corporation, 55 FR 51487, December 14, 1990, and 56 FR 63945, December 6, 1991; DMO Industries, 56 FR 4622, February 5, 1991; Heil-Quaker Corporation, 56 FR 6019, February 14, 1991;

Carrier Corporation, 56 FR 6018, February 14, 1991, and 57 FR 38830, August 27, 1992; Amana Refrigeration Inc., 56 FR 27958, June 18, 1991, 56 FR 63940, December 6, 1991, and 57 FR 23392, June 3, 1992; Snyder General Corporation, 56 FR 54960, September 9, 1991; Goodman Manufacturing Corporation, 56 FR 51713, October 15, 1991, and 57 FR 27970, June 23, 1992; The Ducane Company Inc., 56 FR 63943, December 6, 1991, and 57 FR 10163, March 24, 1992; Armstrong Air Conditioning, Inc., 57 FR 899, January 9, 1992, 57 FR 10160, March 24, 1992, 57 FR 10161, March 24, 1992, 57 FR 39193, August 28, 1992, and 57 FR 54230, November 17, 1992; Thermo Products, Inc., 57 FR 903, January 9, 1992; Consolidated Industries Corporation, 57 FR 22220, May 27, 1992; Evcon Industries, Inc., 57 FR 47847, October 20, 1992; and Bard Manufacturing Company, 57 FR 53733, November 12, 1992. Thus, it appears likely that the Petition for Waiver will be granted for blower time delay.

Lennox's Application for Interim Waiver does not provide sufficient information to evaluate what, if any, economic impact or competitive disadvantage Lennox will likely experience absent a favorable determination on its application. However, in those instances where the likely success of the Petition for Waiver has been demonstrated, based upon DOE having granted a waiver for a similar product design, it is in the public interest to have similar products tested and rated for energy consumption on a comparable basis.

Therefore, Lennox's Application for an Interim Waiver from the DOE test procedure for its GCS24–650/813 combination gas-electric equipment regarding blower time delay is granted.

Lennox shall be permitted to test its GCS24–650/813 combination gas-electric equipment on the basis of the test procedures specified in 10 CFR part 430, subpart B, appendix N, with the modification set forth below:

(i) Section 3.0 in appendix N is deleted and replaced with the following paragraph:

3.0 Test Procedure. Testing and measurements shall be as specified in Section 9 in ANSI/ASHRAE 103–82 with the exception of sections 9.2.2, 9.3.1, and 9.3.2, and the inclusion of the following additional procedures:

(ii) Add a new paragraph 3.10 in Appendix N as follows:

3.10 Gas- and Oil-Fueled Central Furnaces. After equilibrium conditions are achieved following the cool-down test and the required measurements performed, turn on the furnace and measure the flue gas temperature, using the thermocouple grid described above, at 0.5 and 2.5 minutes after the main burner(s) comes on. After the burner start-up, delay the blower start-up by 1.5 minutes (t-) unless: (1) The furnace employs a single motor to drive the power burner and the indoor air circulation blower, in which case the burner and blower shall be started together; or (2) the furnace is designed to operate using an unvarying delay time that is other than 1.5 minutes, in which case the fan control shall be permitted to start the blower; or (3) the delay time results in the activation of a temperature safety device which shuts off the burner, in which case the fan control shall be permitted to start the blower. In the latter case, if the fan control is adjustable, set it to start the blower at the highest temperature. If the fan control is permitted to start the blower, measure time delay (t-) using a stop watch. Record the measured temperatures. During the heat-up test for oil-fueled furnaces, maintain the draft in the flue pipe within ±0.01 inch of water column of the manufacturer's recommended on-period draft.

This Interim Waiver is based upon the presumed validity of statements and all allegations submitted by the company. This Interim Waiver may be removed or modified at any time upon a determination that the factual basis underlying the application is incorrect.

The Interim Waiver shall remain in effect for a period of 180 days or until DOE acts on the Petition for Waiver, whichever is sooner, and may be extended for an additional 180-day period, if necessary.

Sincerely,

Frank M. Stewart, Jr.,

Acting Assistant Secretary, Energy Efficiency and Renewable Energy.

August 23, 1993.

Assistant Secretary, Conservation and Renewable Energy, United States Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585.

Dear Sir: This is a Petition for Waiver and Application for Interim Waiver submitted pursuant to title 10 CFR 430.27. Waiver is requested from the uniform test method for measuring energy consumption of furnaces. In the interest of saving energy, Lennox Industries Inc. intends to use a fixed 40 second timing control on our GCS24–650/813 series of combination gas-electric outdoor HVAC equipment to gain additional energy savings that are achieved with the use of shorter blower on times. Waiver is requested from the 1.5 minute time delay requirement between the burner ignition and indoor blower activation in the heat-up portion of the test as outlined in appendix N to subpart B of part 430. We have found that under the current method of test the flue gas temperature as measured in the stack reaches a value which is higher than that which will be seen in actual operation resulting in inaccurate comparative data. Our test data indicates that an energy savings of approximately 0.7% on the AFUE is achievable with this reduction in blower delay.

Previous waivers for this type of timed blower delay control have been granted to a number of manufacturers of this type of equipment. Lennox is confident that this waiver will be granted and therefore requests an interim waiver be granted until a final ruling is made.

Manufacturers that market similar equipment are being sent a copy of this petition. If any other information is required, please contact me.

Sincerely,

David W. Treadwell,

Vice President, Research and Development.

cc: Jim Hickson
Mike Rose
Jim Day
Gina Rigby-Ledonne, GAMA

[FR Doc. 93–28888 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–P

Federal Energy Regulatory Commission

[Docket No. ER93–949–000, et al.]

Carolina Power & Light Co. et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 18, 1993.

Take notice that the following filings have been made with the Commission:

1. Carolina Power & Light Company

[Docket No. ER93–949–000]

Take notice that on November 5, 1993, Carolina Power & Light Company (CP&L) tendered for filing an amendment to its September 13, 1993, filing in the above-referenced docket.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Northern Electric Power Company, L.P.

[Docket No. EC94–2–000]

Take notice that on November 10, 1993, Northern Electric Power Co., L.P. tendered for filing, a Request for Prior Approval of Sale of Partnership Interests Pursuant to Section 203 of the Federal Power Act. The Project is a qualifying small power production facility subject to the Federal Power Act.

Comment date: December 6, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Tampa Electric Company

[Docket No. ER94–133–000]

Take notice that on November 8, 1993, Tampa Electric Company (Tampa Electric) tendered for filing Letter Agreements between Tampa Electric and each of three utilities: The City of Homestead, Florida (Homestead); the Utilities Commission, City of New Smyrna Beach, Florida (New Smyrna Beach); and Oglethorpe Power Corporation (Oglethorpe). The Letter Agreements amend existing Letters of Commitment under Service Schedule J (Negotiated Interchange Service) of Tampa Electric's contracts for interchange service with each of the utilities, to extend the terms of the commitments. The Letter Agreements with Homestead and New Smyrna Beach also amend the respective Letters of Commitment to make them reciprocal.

Tampa Electric proposes that the Letter Agreements be made effective on January 1, 1994, and therefore requests waiver of the Commission's notice requirement.

Tampa Electric states that copies of the filing have been served on Homestead, New Smyrna Beach, Oglethorpe, and the Public Service Commissions of Florida and Georgia.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Louis Dreyfus Electric Power Company

[Docket No. ER94–141–000]

Take notice that on November 9, 1993, Louis Dreyfus Electric Power Inc. (LDEP) tendered for filing a letter from the Executive Committee of the Western Systems Power Pool (WSPP) indicating that LDEP had completed all the steps for pool membership. LDEP requests that the Commission amend the WSPP Agreement to include it as a member. LDEP requests an effective date of September 7, 1993, for the proposed amendment. Accordingly, LDEP requests waiver of the Commission's notice requirements for good cause shown.

Copies of the filing were served upon the WSPP Executive Committee.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Pacific Gas and Electric Company

[Docket No. ER94–139–000]

Take notice that on November 10, 1993, Pacific Gas and Electric Company (PG&E) tendered for filing with the Federal Energy Regulatory Commission ("FERC" or "Commission") an Agreement for Clarification and Establishment of Deviation Accounting and Operation Under the Pacific Gas and Electric Company—Sacramento Municipal Utility District Interconnection Agreement (Agreement).

The Agreement clarifies provisions in Section 4.6 of the PG&E–SMUD Interconnection Agreement, entitled Deviations from the Schedule, and establishes certain operating and accounting procedures. There is no change in rates and therefore no change in revenues.

Copies of this filing have been served upon SMUD and the California Public Utilities Commission.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Wisconsin Public Service Corporation

[Docket No. ER94–143–000]

Take notice that on November 10, 1993, Wisconsin Public Service Corporation requested the Commission to disclaim jurisdiction over a Transmission Line Construction Agreement between itself and an all requirements retail industrial customer, Waupaca Foundry, Inc., or, if the Commission asserts jurisdiction, to accept the Agreement for filing.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Southern California Edison Company

[Docket Nos. ER86–271–005 and ER87–365–004]

Take notice that on November 8, 1993, Southern California Edison Company tendered for filing its compliance filing in the above-referenced dockets.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–36–000]

Take notice that on November 16, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Settlement Agreement in its filing in the above-listed docket, for transmission service for New York State Electric & Gas Corporation (NYSEG). The Settlement agreement changes the proposed effective date of the rate change from April 1, 1993 to August 1, 1993.

Con Edison states that a copy of this filing has been served by mail upon NYSEG.

Comment date: November 30, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Elkem Metals Company

[Docket No. ER94–147–000]

Take notice that on November 12, 1993, Elkem Metals Company (Elkem Metals) tendered for filing a letter regarding the power purchase agreement between American Power-Ohio, Inc. and Elkem Metals.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Boston Edison Company

[Docket No. ER94–146–000]

Take notice that on November 10, 1993, Boston Edison Company (Edison) tendered for filing a true up of its 1992 bill to Cambridge Electric Light Company (CELCO) for services provided to CELCO from Edison's Substation 402 located in Somerville, Massachusetts.

Edison states that it has served the filing on CELCO and Town of Belmont, Massachusetts.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Portland General Electric Company

[Docket No. ER94–145–000]

Take notice that on November 12, 1993, Portland General Electric Company (PGE) tendered for filing a Notice of Cancellation FERC Rate Schedule No. 85 between PGE and Bonneville Power Administration.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Central Vermont Public Service Corporation

[Docket No. ER93–932–000]

Take notice that on November 10, 1993, Central Vermont Public Service Corporation ("Central Vermont" or the "Company") tendered for filing supplemental information in connection with the above-referenced docket.

Central Vermont requests the Commission waive its notice of filing requirements to permit the rate schedule to become effective within ten days.

Comment date: December 3, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraph

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28829 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2446–001 Illinois]

Commonwealth Edison Co.; Availability of Environmental Assessment

November 18, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a new major license for the existing Dixon Hydroelectric Project, located on the Rock River, in the town of Dixon, in Lee County, Illinois, and has prepared an Environmental Assessment (EA) for the project.

On August 26, 1993, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed with the Commission within 30 days. No comments were filed for this project in response to the draft EA.

In the EA, the Commission's staff has analyzed the environmental effects of the existing project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28796 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Project No. 11426–000 Pennsylvania]

T.A. Keck, III and H.S. Keck; Availability of Environmental Assessment

November 18, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for a minor license for the Blackstone Mill Project, located on East Mahantango Creek, in Dauphin County, Pennsylvania and has prepared an Environmental Assessment (EA) for the project.

On October 8, 1993, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed within 30 days. All comments that were filed have been considered in the EA.

In the EA, the Commission's staff has analyzed the environmental effects of the existing unlicensed project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104, of the Commission's offices at 941 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28797 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–74–000, et al.]

Arkla Energy Resources Company, et al.; Natural Gas Certificate Filings

November 17, 1993.

Take notice that the following filings have been made with the Commission:

1. Arkla Energy Resources Co.

[Docket No. CP94–74–000]

Take notice that on November 12, 1993, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–74–000, an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the construction and operation of a new mainline compressor station in Grady County, Oklahoma, all as more fully set forth in the application on file with the Commission and open to public inspection.

Specifically, AER requests authority to construct and operate on 8,250 horsepower compressor station on its Line AD in Grady County, Oklahoma (Amber Junction Compressor Station). AER states that this compressor station will allow AER to increase peak day gas delivery into the Chandler Compressor Station by 70,500 MMBtu per day thereby enhancing shipper supply options and increasing competitive transportation to existing markets at delivery points east of the proposed compressor station.

AER states that the estimated cost of the proposed facilities is $5,214,200. The proposed facility cost will be financed through internally generated funds.

Comment date: December 8, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. El Paso Natural Gas Co.

[Docket No. CP94–69–000]

Take notice that on November 9, 1993, El Paso Natural Gas Company (El Paso), P.O. Box 1492, El Paso, Texas 79978, filed in Docket No. CP94–69–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon an exchange service with Chevron U.S.A. Inc. (Chevron), which was authorized in Docket No. CP77–255–000, all as more fully set forth in the application on file with the Commission and open to public inspection.

El Paso proposes to abandon its exchange of natural gas with Chevron in New Mexico, which was carried out under the terms of an agreement dated October 15, 1976, on file with the Commission as El Paso's special Rate Schedule X–39. It is stated that the gas purchase agreement, dated October 14, 1976, under which El Paso was purchasing gas from Chevron, terminated March 10, 1989. It is explained that this gas purchase agreement was the basis for the gas exchange and that once El Paso terminated its purchases from Chevron, there is no need for the exchange. El Paso states that it has signed a letter agreement, dated June 30, 1993, with Chevron, agreeing to terminate the exchange. It is stated that there are no existing imbalances under the exchange service. It is asserted that any future need for the gas subject to purchase and exchange can be acquired by means of open-access transportation by El Paso for Chevron.

Comment date: December 8, 1993, in accordance with Standard Paragraph F at the end of this notice.

3. ANR Pipeline Co.

[Docket No. CP94–83–000]

Take notice that on November 15, 1993, ANR Pipeline Company (ANR), 500 Renaissance Center, Detroit, Michigan 48243, filed in Docket No. CP94–83–000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon a natural gas exchange service between ANR and Natural Gas Pipeline Company of America (Natural), all as more fully set forth in the application on file with the Commission and open to public inspection.

It is stated that in an order issued April 26, 1956, in Docket No. G–10057, the Federal Power Commission authorized the exchange of gas between Michigan Wisconsin Pipe Line Company (Michigan Wisconsin) and Natural pursuant to an exchange agreement dated March 6, 1956. It is

further stated that Michigan Wisconsin subsequently changed its name to ANR.

ANR states that in a letter dated August 20, 1993, Natural notified ANR of its intent to terminate the above described service. ANR further states that it submitted written consent to Natural's proposed abandonment.

No facilities are proposed to be abandoned herein.

Comment date: December 8, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Texas Gas Transmission Corp.

[Docket No. CP94–81–000]

Take notice that on November 15, 1993, Texas Gas Transmission Corporation (Texas Gas), 3800 Frederica Street, Owensboro, Kentucky 42301, filed in Docket No. CP94–81–000 a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.216) for authorization to abandon a delivery facility under Texas Gas's blanket certificate issued in Docket No. CP82–407–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Texas Gas proposes to abandon by removal the East South haven Meter Station which is located on its main line system in DeSoto County, Mississippi. Texas Gas states that the meter station is an existing delivery point to Mississippi Valley Gas Company (MVG) under a firm no-notice transportation agreement between Texas Gas and MVG. Texas Gas explains that MVG has requested by letter dated June 14, 1993, that (a) Texas Gas abandon service to MVG at the meter station, and (b) the gas requirements presently supplied from this delivery point be supplied from the existing Greenbrook delivery point. Texas Gas advises that service to MVG would not be affected by this abandonment.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. National Fuel Gas Supply Corp.

[Docket No. CP94–72–000]

Take notice that on November 12, 1993, National Fuel Gas Supply Corporation (National Fuel Gas Supply), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94–72–000 a request pursuant to §§ 157.205 and 157.212 of the Regulations under the Natural Gas Act for authorization to relocate an existing delivery point with respect to an existing transportation customer, National Fuel Gas Distribution Corporation (National Fuel Gas Distribution), under the certificate issued in Docket No. CP83–4–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

National Fuel Gas Supply states that the delivery point is being relocated because of a transfer of a portion of a gathering line from National Fuel Gas Supply to National Fuel Gas Distribution, making it necessary to relocate the delivery point. National Fuel Gas Supply further states that construction is not required.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

6. Transcontinental Gas Pipe Line Corp.

[Docket No. CP94–68–000]

Take notice that on November 9, 1993, pursuant to Section 7(c) of the Natural Gas Act, as amended (NGA) and the Federal Energy Regulatory Commission's (Commission) Regulations (18 CFR 157.7), Transcontinental Gas Pipe Line Corporation (Applicant), P.O. Box 1396, Houston, Texas 77251, filed an application for a certificate of public convenience and necessity authorizing Applicant's 1994 Southeast Expansion Project including (a) authorization to construct and operate certain pipeline facilities to create additional firm transportation capacity of the dekatherm equivalent of 35,000 Mcf of gas per day on the main line, and (b) approval of Applicant's initial rates for firm transportation service to be rendered through such incremental firm transportation capacity; all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Specifically, Applicant requests authorization to transport 35,000 Mcf of natural gas per day on a firm incremental basis under Rate Schedule FT and Applicant's blanket certificate under part 284(G) of the Commission's regulations on behalf of the 15 shippers in Georgia, South Carolina, North Carolina, and Virginia. The initial rate for the firm transportation service would consist of a monthly reservation rate of $12.70 per Mcf. This rate is based on the straight fixed-variable rate design methodology and an incremental cost of service. Applicant states that when the 1994 Southeast Expansion Project is completed it will provide additional capacity on the main line from the point of interconnection between the main line and the Mobile Bay Lateral near Butler, Alabama, to certain points of delivery upstream of Station No. 165 near Chatham, Virginia.

In order to provide the subject transportation service, Applicant proposes to:

(a) uprate (from 650 pounds per square inch "psi" to 800 psi) Line "A" from Station No. 120 to Station No. 130 in Georgia, which will be accomplished by regulator modifications and by replacing eight pipeline segments (totalling approximately 9.6 miles) on Line "A" between the stations; and

(b) place into regular service, two existing steam-driven compressors at Station 100 which are currently operated on a standby basis pursuant to Docket No. CP92–510 and re-wheel and make other minor modifications to these and other units to obtain more efficient operations.

The estimated cost of the proposed facilities is $27,842,000. The cost will be financed initially through short-term loans and funds on hand. Applicant proposes to have the facilities in service by November 1, 1994 and therefore, requests that the authorization be granted no later than May 31, 1994.

Comment date: December 7, 1993, in accordance with Standard Paragraph F at the end of this notice.

7. Koch Gateway Pipeline Co.

[Docket No. CP94–70–000]

Take notice that on November 10, 1993, Koch Gateway Pipeline Company (Koch), P.O. Box 1478, Houston, Texas 77251–1478, filed in Docket No. CP94–70–000 a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211) for authorization to construct and operate metering and regulating facilities for deliveries to Mobil Oil & Refinery Company (Mobil), under Koch's blanket certificate issued in Docket No. CP82–430–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Koch proposes to install an 8-inch meter station, flow computer and regulator to facilitate deliveries of gas transported on an interruptible basis to Mobil. It is stated that the facilities will be located adjacent to an existing tap on Koch's line in St. Bernard Parish, Louisiana. The cost of the proposed facilities is estimated at $122,640. It is stated that the facilities will be used for the delivery of 12,000 MMBtu equivalent of gas per day. It is asserted that the deliveries are within Mobil's existing entitlement from Koch and

would have no impact on Koch's peak day deliveries.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28803 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. TM94–1–32–000]

Colorado Interstate Gas Co.; GRI Charge Filing

November 18, 1993.

Take notice that on November 15, 1993, Colorado Interstate Gas Company (CIG) tendered for filing as part of its FERC Gas Tariff, First Revised Volume No. 1, pursuant to Commission Opinion No. 384 issued October 5, 1993, in Docket No. RP93–140–000, reflecting the revised Gas Research Institute (GRI) rates effective as of January 1, 1994.

CIG states that copies of this filing have been served on CIG's jurisdictional customers and public bodies, and the filing is available for public inspection at CIG's offices in Colorado Springs, Colorado.

Any person desiring to be heard or to protest said filing should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedure (18 CFR 385.214 and 385.211). All such petitions or protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28802 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–120–008]

Panhandle Eastern Pipe Line Co.; Report of Refunds

November 18, 1993.

Take notice that on November 15, 1993, Panhandle Eastern Pipe Line Company (Panhandle) filed a refund report with the Federal Energy Regulatory Commission (Commission).

Panhandle states that the refund report is filed in accordance with Article II of a Stipulation and Agreement (Agreement) dated June 4, 1993, approved by a Commission order issued August 4, 1993, in Docket No. RP92–120, *et al.* Panhandle states that the Agreement required it to pay refunds to customers on the Wattenberg System from September 1, 1992 to March 31, 1993.

Panhandle states that it paid the refunds on October 15, 1993, including interest calculated through that date.

Panhandle further states that a copy of the refund report was sent to each of its affected customers.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28800 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–79–000]

Panhandle Eastern Pipe Line Co.; Application

November 18, 1993.

Take notice that on November 15, 1993, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP94–79–000 an application pursuant to Section 7(b) of the Natural Gas Act for permission and approval to abandon by sale its ownership interest in offshore pipeline and appurtenant facilities located offshore Louisiana, all as more fully set forth in the application on file with the Commission and open to public inspection.

Panhandle proposes to abandon its 72.2 percent ownership of the Vermilion 329 Line and its 38.2 percent ownership of the Vermilion 340 Line along with all appurtenant facilities located in Vermilion South Addition, Blocks 329, 338, 339, 340, 341, 326, 325, 320, and 321. Panhandle proposes to sell its interests to Midcon Offshore, Inc. (Midcon).

It is stated that these facilities, which were installed for the purpose of offshore gas gathering, are located at a distance from Panhandle's contiguous pipeline system and that the gas supply contracts that formed the basis for the original construction and ownership have been terminated. It is asserted that Panhandle has not been providing firm service using its capacity in these facilities, and that, therefore, the proposed abandonment would have no adverse effect on Panhandle's existing or future customers.

Any person desiring to be heard or to make any protest with reference to said application should on or before December 3, 1993, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for Panhandle to appear or be represented at the hearing.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28794 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. RP89-224-009, RP89-203-000, RP90-139-000, RP91-69-000 (Consolidated)]

Southern Natural Gas Co.; Order Extending Briefing Schedule

November 18, 1993.

On August 12, 1993, Southern Natural Gas Company (Southern) filed a contested partial settlement (the Settlement) of cost of service and throughout issues for the locked-in period in the captioned dockets. On October 7, 1993, the Presiding ALJ certified the Settlement to the Commission. The Settlement addresses cost of service and throughput issues, but provides that issues of cost classification, cost allocation, rate design and refund obligations in the Docket Nos. RP90-139-000 and RP91-61-000 will be resolved by filing briefs and reply briefs with the Commission. The Settlement states that the first briefs were due 60 days after the Settlement was certified by the ALJ.

The Settlement is now under review by the Commission. In light of that review, and to assure that the parties brief the issues remaining under the Settlement in light of any modifications the Commission may make to the Settlement, the date for the filing of the first round of briefs is extended 30 days after the Commission issues an order on the Settlement in these proceedings. Thereafter briefs will be filed according to the schedule contained in the Settlement.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28789 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. GT94-7-000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 18, 1993.

Take notice that on November 15, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1 and Original Volume No. 2 certain revised Tariff sheets included in Appendix A attached to the filing. The proposed effective date of such tariff sheets is November 1, 1993.

TGPL states that the purpose of the filing is (i) to set forth in TGPL's Volume No. 1 Tariff the rates and fuel applicable to the Niagara Import Point Project—System Expansion (NIPPs-SE) transportation service which is converted from Section 7(c) service to transportation under part 284 and (ii) to terminate effective as of November 1, 1993, Rate Schedules X-314 and X-317 for KCS Energy Marketing, Inc. (KCS) formerly Energy Marketing Exchange, Inc. and Transco Energy Marketing Company (TEMCO), respectively, pursuant to the elections, made by KCS and TEMCO to convert such service to service under part 284 effective as of that date. The rates included therein reflect, in addition to the generally applicable charges under Rate Schedule FT (including fuel), reservation and commodity rate surcharges. The derivation of such surcharges is set forth in Appendix B attached to the filing. TGPL believes that the rates filed therein are consistent with the Commission's policy that the rate for conversions from part 157 to part 284 service be the Rate Schedule FT rate which shall include a surcharge if the part 157 rate is higher than the FT rate.

TGPL states that copies of the filing are being mailed to KCS and TEMCO.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Sections 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28795 Filed 11-23-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-160-018]

Trunkline Gas Co.; Report of Refunds

November 18, 1993.

Take notice that on November 4, 1993, Trunkline Gas Company (Trunkline) filed a refund report with the Federal Energy Regulatory Commission (Commission) in accordance with Article VI of the Stipulation and Agreement (Agreement) dated November 25, 1991, and approved by Commission orders issued January 3, 1992 and January 9, 1992, in Docket No. RP89-160-013, *et al.* Trunkline states that the Agreement required it to pay refunds to certain jurisdictional

customers for the period November 1, 1989 through November 30, 1991.

Trunkline states that it paid the refunds on October 4, 1993, including interest computed according to Section 154.67(c) of the Commission's regulations.

Trunkline further states that a copy of the refund report was sent to each of its affected customers and the state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28798 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP92–165–016]

Trunkline Gas Co.; Report of Refunds

November 18, 1993.

Take notice that on November 4, 1993, Trunkline Gas Company (Trunkline) filed a refund report with the Federal Energy Regulatory Commission (Commission) in accordance with Article VI of the Stipulation and Agreement (Agreement) dated January 25, 1993, and approved by Commission order issued February 24, 1993, in Docket No. RP92–165–010, *et al.* Trunkline states that the Agreement required it to pay refunds to certain jurisdictional customers for the period November 1, 1992 through January 31, 1993.

Trunkline states that it paid the refunds on October 4, 1993, including interest computed according to § 154.67(c) of the Commission's regulations. Trunkline further states that a copy of the refund report was sent to each of its affected customers and the state regulatory commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28801 Filed 11–23–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders During the Week of July 19 Through July 23, 1993

During the week of July 19 through July 23, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Carl Weissman & Sons, 7/22/93, LFA–0308

Carl Weissman & Sons (Weissman & Sons) filed an Appeal from a denial by the DOE Field Office, Richland (DOE/RL) of a request for information submitted under the Freedom of Information Act (FOIA). Weissman & Sons requested a copy of the tabulation of bids received in response to a Request for Proposal (RFP) issued by Westinghouse Hanford Company (WHC), a DOE contractor. The RFP was eventually cancelled by WHC after a review of the proposals submitted. DOE/RL withheld the bid tabulations pursuant to FOIA Exemption 4. In considering the Appeal, the DOE found that because WHC intended to reissue the RFP at a later date, disclosure of the requested bid information could cause substantial harm to the competitive position of the companies whose bids would be released and impair the government's ability to obtain proposals from these companies in the future. Accordingly, the Appeal was denied.

Energy Products, Inc., 7/22/93 LFA–0307

Energy Products, Inc., filed an Appeal from a determination issued to it on June 14, 1993, by the Director of the Office of Building Energy Research (Director) of the DOE. In that determination, the Director stated that the DOE did not find any documents responsive to the appellant's information request under the Freedom of Information Act. In considering the Appeal, the DOE confirmed that the Director followed procedures which were reasonably calculated to uncover responsive documents. Accordingly, the DOE denied the appellant's request.

Refund Applications

Apex Oil Company, Clark Oil & Refining Corp./Gramco, Ltd., Sinclair Marketing, Inc., Schoetzel Oil Co., Jacobus Co., 7/22/93, RF342–153, RF342–244, RF342–280, RF342–281

The DOE issued a Decision and Order denying four Applications for Refund filed in the Apex/Clark special refund proceeding. All four applicants were initially identified as spot purchasers of Clark refined petroleum products during the consent order period. None of the firms attempted to rebut the spot purchaser presumption of non-injury. Consequently, their Applications were denied.

Atlantic Richfield Company/Energy Cooperative, Inc., 7/23/93, RF304–13010

The DOE issued a Decision and Order granting an Application for Refund filed on behalf of Energy Cooperative, Inc. (ECI), in the Atlantic Richfield Company Subpart V special refund proceeding. In order to qualify for a refund based upon the ARCO products it resold to its member-patrons, cooperatives such as ECI need only document their purchases from ARCO and certify that any refunds will be passed along to its member-patrons. However, ECI is currently a Chapter 7 Debtor under the Jurisdiction of the U.S. Bankruptcy Court for the Northern District of Illinois. The DOE determined that as ECI's member-owners currently have claims in excess of $15 million against the Estate, any refund from this proceeding would benefit the member-owners by increasing the value of their claims or decreasing their obligations to ECI's estate. In addition, ECI's Trustee certified to the DOE that he would notify the Bankruptcy Court upon receipt of any refund. The DOE determined that ECI had met the requirements applicable to a cooperative for a full volumetric refund and granted Jay A. Steinberg, Trustee for the Estate of ECI, a refund of $26,822.

Enron Corp./Thoms Enterprises, Inc., 7/20/93, RF340–65

The DOE issued a Decision and Order concerning an Application for Refund that Thoms Enterprises, Inc. (TEI), had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that TEI was essentially a

continuation of the proprietorship operated by Gerald and Donna Thoms prior to the incorporation of their business as TEI in 1977. Accordingly, the DOE granted TEI a small claims refund of $5,963 dollars based on both the total purchases of TEI and the total purchases of Thoms prior to TEI's creation.

Enron Corp./Waterloo Service Company, 7/21/93, RF340–72

The DOE issued a Decision and Order concerning an Application for Refund that Waterloo Service Company (WSC) had submitted in the Enron Corporation (Enron) special refund proceeding. The DOE found that WSC is an agricultural cooperative operating for the benefit of its common shareholder/patrons. WSC claimed a refund both for volumes of Enron propane that it resold to its member-customers and for volumes resold to non-member customers. WSC's combined claim raised issues concerning the appropriateness of combining different presumptions of injury. Due to the extreme hardship being suffered by WSC's member-customers as a result of weather conditions in Iowa, the DOE determined to immediately grant WSC's claim regarding its cooperative gallonage and to defer its claim for volumes sold to non-member customers. Accordingly, the DOE granted WSC a refund of $778,632 dollars based on its total purchases from Enron that were resold to member-customers and required WSC to pass through this refund to its members on a dollar for dollar basis.

Shell Oil Company/Collier-Evans Oil Co., Mid-America Petroleum, Inc., 7/23/93, RF315–8922 RF315–8923

This Decision and Order considered the Applications for Refund filed by Gary R. Evans on behalf of Collier-Evans Oil Company (Collier-Evans) and Mid-America Petroleum Company (Mid-America). Although Mr. Evans sold Collier Evans and Mid-America in September 1985, he claimed that he bought back the rights to seek those firms' refunds. After reviewing the submitted Assignment of Claim, we concluded that the language in the contract stipulated clearly and explicitly that Mr. Evans did, indeed, buy back the right to any refund due to Collier-Evans and Mid-America for Shell's alleged overcharges. Next, despite Mr. Evans' request that Collier-Evans and Mid-America receive separate refunds based on the applicable presumption of injury, the DOE found that he did not affirmatively demonstrate that the firms were operationally distinct entities during and after the consent order period under his ownership. Therefore, the purchase volumes of Collier-Evans and Mid-America were combined and considered under a single presumption of injury. The total refund granted in this Decision and Order was $11,992 (comprised of $8,011 in principal and $3,981 in interest) based on the purchase of 88,620,032 gallons of Shell refined product.

Texaco Inc./Consolidated Rail Corporation, 7/22/93, RF321–3067

The DOE issued a Decision and Order granting an Application for Refund filed by Consolidated Rail Corporation (Conrail) in the Texaco Inc. special refund proceeding. Conrail requested a refund based on purchases of 21,577,764 gallons of diesel fuel that the firm's records indicated it had purchased from Texaco from April through June 1976, and for 104,235,103 gallons of other refined petroleum products that Conrail estimated it had purchased from Texaco during the period April 1976 through January 1981. Conrail's estimate of its purchases of refined products other than diesel fuel was based upon the firm's ratio of diesel fuel to non-diesel fuel purchases from the Mobil Oil Corporation. Texaco's records, however, indicated that Conrail had purchased only 192,231 gallons of non-diesel fuel products during the refund period for those products. Because Conrail did not present any basis for finding that the ratio of its purchases from Texaco was the same as that of its purchases from Mobil, the DOE found that Texaco's figures were the most reliable source of purchase volume data for motor gasoline, naphthas, and gas oils. Accordingly, the DOE granted Conrail a refund of $32,642 ($23,947 principal plus $8,695 interest) based on 21,769,995 gallons of Texaco products.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Asheville Paving Co., Inc. et al	RF272–94144	7/23/93
Atlantic Richfield Company/Fauber Construction Co., Inc	RF304–13267	7/22/93
Bridgewater Home, Inc. et al	RF272–90263	7/19/93
Carroll & Corum Bldg Supply Co. et al	RF272–91519	7/23/93
Chicago Housing Authority	RF272–63987	7/22/93
Childers Products Co. et al	RF272–92505	7/20/93
City of Bridgeport et al	RF272–94407	7/19/93
City of Sparta et al	RF272–94301	7/19/93
Clark Oil & Refining Corp./E.J. Bill Green	RF342–3	7/22/93
Glen's Clark Oil	RF342–265	.....
Garrow Oil Corp	RF342–322	.....
Chuck's Clark Super 100	RF342–323	.....
Cleveland Guillotte et al	RF272–91615	7/22/93
Columbus-McKinnon Corp. et al	RF272–93781	7/19/93
Consolidated Parcel Serv., Inc. et al	RF272–93206	7/20/93
Eby Contractor, Inc. et al	RF272–90512	7/22/93
Enron Corp./ Lyle Oil Company	RF340–68	7/20/93
Farmville Furniture Co. et al	RF272–92103	7/19/93
Florida Veneer Co., Inc. et al	RF272–91800	7/19/93
Gulf Oil Corporation/Briarwood Gulf, Inc,	RF300–13577	7/22/93
Briarwood Gulf	RF300–14939	.....
Briarwood Gulf, Inc	RF300–21745	.....
Gulf Oil Corporation/Econ-O-Gas, Inc	RF300–18439	7/23/93
Gulf Oil Corporation/Gilmer Plantation et al	RF300–19501	7/20/93
Gulf Oil Corporation/Hi-Air	RF300–13351	7/20/93
Stevens Aviation, Inc	RF300–13369	.....
Gulf Oil Corporation/Martin Gas Products	RF300–18005	7/23/93
Gulf Oil Corporation/Shubuta Gulf Service et al	RF300–19578	7/20/93

High Plains Concrete Co., Inc. et al	RF272–94200	7/22/93
Kimsey Egg Company et al	RF272–91700	7/19/93
Lemhi County, Idaho et al	RF272–85139	7/19/93
Luter Packing Co., Inc. et al	RF272–90400	7/19/93
Manor Independent School District et al	RF272–83600	7/20/93
Monahans-Wickett-Pyote I.S.D. et al	RF272–93927	7/19/93
Santa Cruz City High et al	RF272–79028	7/20/93
Saroni Sugar & Rice, Inc. et al	RF272–92302	7/19/93
Shell Oil Company/Simpson's Shell et al	RF315–927	7/20/93
Stanley Ivy Trucks	RC272–206	7/20/93
Texaco Inc./Gold Hill Texaco et al	RF321–15457	7/22/93
Texaco Inc./Heinen's Texaco et al	RF321–10990	7/22/93
Texaco Inc./J.C. Roberts et al	RF321–10280	7/20/93
Texaco Inc./John L. Cormier Texaco et al	RF321–5675	7/23/93
Texaco Inc./Redfern's Texaco et al	RF321–16912	7/22/93
Texaco Inc./Roger Plummer Co	RF321–19801	7/23/93
Texaco Inc./Western Square Texaco et al	RF321–1865	7/20/93
Waterloo Coal Co., Inc. et al	RF272–92627	7/19/93
Webb-Norfolk Conveyor et al	RF272–93553	7/19/93
White County Lumber Co. et al	RF272–94013	7/22/93
William L. Brown Ranch et al	RF272–90705	7/23/93
Williams Tile & Terrazzo Co. et al	RF272–94247	7/22/93
Yale Transportation Company	RC272–208	7/20/93

Dismissals

The following submissions were dismissed:

Name	Case no.
Basil Swim Texaco #1	RF321–16647
Breathitt County Schools	RF272–79283
Brox Diaries, Inc	RF272–85642
Bud's Texaco	RF321–18350
Cherne Contracting Corp	RF272–91674
Davis Bros	RF321–16934
Independent Taxi Operators Association.	RF272–90822
Jansky Brothers Dump Truck Service.	RF272–94602
Loneman School	RF272–81475
Loyola University Chicago	RF272–93883
Magnolia Oilfield Services	RF300–13976
North Trail Gulf	RF300–15292
Sandoval Texaco	RF321–16706
School District 024	RF272–87168
Shively's Texaco	RF321–10968
Station Shell	RF315–3384
Yellow Cab of Louisville, Inc.	RF272–93221

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 17, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28889 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Week of September 6 Through September 10, 1993

During the week of September 6 through September 10, 1993, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeals

Joseph A. Camardo, Jr., 9/9/93, LFA–0314

Mr. Joseph A. Camardo, Jr., filed an Appeal from a determination issued to him on July 19, 1993, by the Manager of the Pittsburgh Naval Reactors Office of the DOE. In that determination, the Manager denied a request for information filed pursuant to the Freedom of Information Act. Specifically, the Manager denied Mr. Camardo's request for copies of information regarding a contract awarded to Affirex Limited. In considering the Appeal, the DOE confirmed the existence of some additional documents responsive to Mr. Camardo's clarified request. Accordingly, the DOE remanded the case to the Manager for a determination regarding the releasability of these documents but denied the Appeal in all other respects.

Milton L. Loeb, 9/10/93, LFA–0313

Mr. Milton L. Loeb filed an Appeal from a denial by the Albuquerque Field Office of a request for information that he filed under the Freedom of Information Act (FOIA). In his Appeal, Mr. Loeb challenged Albuquerque's withholding of the user's manual for software developed by a contractor for the DOE. The DOE determined that Albuquerque had properly withheld the requested manual, in which the contractor holds a copyright, under Exemption 4 of the FOIA. Accordingly, the Appeal was denied.

Refund Applications

Empire Asphalt, Inc., 9/10/93, RF272–49401, RD272–44574

The DOE issued a Decision and Order granting an Application for Refund filed by Empire Asphalt, Inc., a producer of asphaltic concrete, in the Subpart V crude oil special refund proceeding. A group of States and Territories (States) objected to the Application on the grounds that the applicant was able to pass through increased petroleum costs to its customers. In support of their objection, the States submitted an affidavit of an economist stating that, in general, the construction industry was able to pass through increased petroleum costs. The DOE determined that the evidence offered by the States was insufficient to rebut the presumption of end-user injury and that the applicant should receive a refund. The DOE also denied the States' Motion for Discovery, finding that discovery was not warranted where the States had not presented evidence sufficient to rebut the applicant's presumption of injury. The refund granted to the applicant in this Decision was $5,142.

Texaco Inc./Gonzales Texaco, 9/10/93, RF321–19877

The DOE issued a Decision and Order rescinding a refund that had been granted to Gonzales Texaco in the Texaco Inc. Subpart V special refund proceeding on August 12, 1993 (Case

No. RF3211–5040). The events that led to this Decision began on October 25, 1990, when a refund was erroneously granted to Gonzales Texaco on the basis of the purchases of another Texaco outlet. When this error came to light, a further Decision dated April 19, 1991, was issued rescinding the prior refund and requiring Mr. Horacio Gonzales, the owner of Gonzales Texaco, and the firm's representative, Energy Refunds, Inc., to repay the improperly-based refund. See *Texaco Inc/Gonzales Texaco*, 21 DOE ¶ 85,220 (1991). Because the actual refund product sales of Gonzales Texaco formed the basis for a refund, when the improper refund was repaid, the August 12, 1993 Decision was issued granting Gonzales Texaco a refund that was somewhat greater than that awarded in the initial determination. Then, however, we learned from Energy Refunds, Inc., that Mr. Gonzales had not contributed to the repayment of the first improperly-based refund. In order to avoid a windfall to Mr. Gonzales, the August 12, 1993 refund was rescinded.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Atlantic Richfield Company/A.H. Perkins et al	RF304–13384	9/07/93
Atlantic Richfield Company/Euclid Arco	RF304–14481	9/07/93
Atlantic Richfield Company/Harvey's Arco et al	RF304–11882	9/10/93
Atlantic Richfield Company/Maryland Bolt & Nut Co. et al	RF304–14016	9/08/93
Atlantic Richfield Company/Milburn Grocery et al	RF304–14077	9/07/93
City of Llano et al	RF272–84360	9/10/93
City of Pineville, Louisiana et al	RF272–88125	9/07/93
Floyd S. Pike Electrical	RF272–87997	9/07/93
Getty Oil Company/Frantic Auto Repair	RF265–2887	9/10/93
Gulf Oil Corporation/James M. Walker, Jr.	RR300–74	9/9/93
Gulf Oil Corporation/Sumiton Gas Co. et al	RF300–13363	9/08/93
Magoffin County Schools	RR272–113	9/08/93
Shell Oil Company/Burditt W. Ashton	RF315–303	9/08/93
Corner Shell Grocery	RF315–5357	.....
San Andreas Shell	RF315–5910	.....
Joe's Shell	RF315–10280	.....
Texaco Inc./E.D. Lloyd Oil Co. et al	RF321–15704	9/10/93
Texaco Inc./Greene's Texaco #1 et al	RF321–16456	9/08/93
Texaco Inc./Peco Texaco	RF321–19873	9/08/93
Texaco Inc./Tideport Petroleum, Inc. et al	RF321–17637	9/10/93
Texaco Inc./Ward Road Texaco et al	RF321–19001	9/9/93
Town of Plainville et al	RF272–85318	9/07/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Abbott ISD	RF272–81266
Ansonia School District	RF272–81606
Bethel School District	RF272–81382
Big Springs Public Schools	RF272–81318
City of Guadalupe	RF272–88368
City of Harahan	RF272–88373
City of Sartell	RF272–88392
City of Seneca	RF272–88387
City of Tipton	RF272–88395
Colmesneil ISD	RF272–81242
Dolton School District 148	RF272–79638
Dupree School District 64–2.	RF272–81428
Enterprise School District	RF272–81793
Farwell Area Schools	RF272–81213
Gary Lekvold	LFA–0317
Graettinger Community School District.	RF272–81692
James W. Simpkin	LFA–0318
Liberty-Perry Community School Corp.	RF272–81518
Los Gatos/Saratoga Joint Union.	RF272–84605
Montgomery County R II	RF272–81250
Morrison Brothers, Inc	RF272–91821
North County Transit District.	RF272–92258
North White School Corporation.	RF272–81683
Oelwein Community School District.	RF272–81281
Painesville City School District.	RF272–81706
Pass & Seymour/Legrand	RF272–92012
Ravenswood City Elementary.	RF272–81217
Scott City R I School District.	RF272–81264
Scott County Central Schools.	RF272–79677
Sheldon Ranches, Inc	RF272–93180
Siren School District	RF272–81258
The O.K. Trucking Company.	RF315–9541
Toppenish School District	RF272–81495
Town of Tiburon	RF272–88396
Town of Torrington	RF272–88393
Town of Townsend	RF272–88394
Vecellio & Grogan, Inc	RF272–94515
Verifine Dairy Products Corp.	RF272–93703
Via Metropolitan Transit	RF272–91928
Village of Hastings-on-Hudson.	RF272–88377
Village of Hicksville	RF272–88381
Village of Thornton	RF272–88397
Whirlpool Corp	RF272–91954
Window Rock Unified District #8.	RF272–81298

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E–234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except Federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 17, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93–28890 Filed 11–23–93; 8:45 am]

BILLING CODE 6450–01–P

Issuance of Decisions and Orders During the Office of Hearings and Appeals

Week of September 13 Through September 17, 1993

During the week of September 13 through September 17, 1993, the decisions and orders summarized below were issued with respect to applications for relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were

dismissed by the Office of Hearings and Appeals.

Refund Applications

Atlantic Richfield Company/The Wemett Corp., 9/16/93, RS304–14224

On August 4, 1993, the DOE issued a Supplemental Decision and Order to the Wemett Corp. and the firm's counsel, Bassman, Mitchell & Alfano, concerning an Application for Refund that counsel had filed on behalf of the firm in the Atlantic Richfield Company (ARCO) Subpart V special refund proceeding. The Supplemental Order found that an ARCO refund previously granted to The Wemett Corp. had been excessive because the firm's refund Application overstated its period of ownership of an ARCO reseller and consequently overstated the volume of ARCO purchases that could form the basis for a refund. Consequently, the DOE required The Wemett Corp., or the counsel (the co-payee of the excessive refund), to repay the difference between the amount of the refund granted and the lesser refund to which the firm was entitled, *i.e.*, $677. In the event that the excessive portion of their refund was not repaid within a period of 30 days, the Supplemental Order provided for the accrual of interest on the unpaid balance. In response, Mr. Douglas B. Mitchell, of counsel, responded that the client was bankrupt and, while counsel attempted to locate the client, requested a stay of the portion of the Supplemental Decision concerning the accrual of interest. The request was denied because counsel did not even allege the possibility of irreparable injury or impossibility of complying with the provisions of the order—the general basis for a stay—and because the relief sought by counsel could be obtained merely by the repayment of the $677 excessive refund, obviating the need for any administrative remedy.

Charter Oil Company/Texas, 9/16/93, RM23–263

The State of Texas filed a Motion for Modification of a previously-approved, second-stage refund plan. The Motion, if granted, would allow the State to discontinue the Diesel Fuel Conservation program and implement a new Rural Public Transportation program. Under Texas' proposed modification, $1,700,000 ($800,000 plus accrued interest) of the Charter Oil Company monies designated for the Diesel Fuel Conservation program would be reallocated to the Rural Public Transportation program. The State predicts that its injured customers will receive restitutionary benefits through reduced gasoline consumption. A reduction in the number of single occupant vehicles will also lead to smoother traffic flow and reduce congestion. Furthermore, this program will reduce air pollution due to auto emissions. The DOE has previously approved funds for state support of public transportation. Accordingly, the Motion for Modification was granted.

Gulf Oil Corporation/ Holston Defense Corporation, 9/15/93, RF300–19821

The DOE issued a Decision and Order concerning an Application for Refund submitted in the Gulf Oil Corporation special refund proceeding by Holston Defense Corporation (Holston), a firm which purchased Gulf products for use in the Holston Army Ammunition Plant. Holston operated this facility under a "cost-plus-fixed fee" contract for the Department of the Army, which ultimately paid for the cost of all purchases of petroleum products made by Holston for the plant. Accordingly, the OHA found that Holston was not injured by any Gulf overcharges, and the Application for Refund was therefore denied.

South Orange-Maplewood School District, 9/16/93, RR272–108

The DOE issued a Decision and Order concerning a Motion for Reconsideration filed in the Subpart V crude oil special refund proceeding being completed by the DOE under 10 CFR Part 205. The South Orange-Maplewood School District stated as a basis for reconsideration that the individual responsible for submitting any additional crude oil refund information to OHA had not received the request for information. Upon reconsideration, the DOE determined that the School District should receive a refund of $1,300.

Texaco Inc./Jack Musgrove Texaco Service, 9/17/93, RF321–19897

The DOE issued a Supplemental Decision and Order reducing a refund of $4,377 (including $650 in accrued interest) that had been granted to Katherine M. Gentry in the Texaco Inc. Subpart V special refund proceeding. The refund was based upon the sales of Texaco refined products by a retail motor gasoline sales outlet, Jack Musgrove Texaco, operated by Ms Gentry's father during the period March 1973 through January 1981. However, a subsequent refund Application showed that Ms Gentry's father had not operated the Texaco outlet after May 1979. Accordingly, the DOE modified the refund granted to Ms Gentry and directed her to repay the excessive refund together with interest to the present date.

Texaco Inc/Mongans, Inc., 9/14/93, RF321–6167

DOE issued a Decision and Order concerning an Application for Refund filed by Mongans, Inc. (Mongans), in the Texaco Inc. special refund proceeding. This applicant claimed to have purchased Texaco products both directly from Texaco and indirectly through the Woodbury Fuel and Supply Co. Howevever, the applicant did not document any of the indirect purchases nor some of the purchases claimed to have been made directly from Texaco. The DOE determined that Mongans was eligible for a refund based upon the Texaco invoices for purchases that were not reflected in Texaco's records, but rejected the request that additional direct Texaco purchases be extrapolated from those invoice figures. Mongans was granted a refund of $2,253 ($1,649 principal plus $604 interest), based upon its documented direct Texaco purchases.

Texaco Inc./R & L Texaco, 9/15/93, RR321–125

Raymond R. Henry, the owner of R & L Texaco, filed a Motion for Reconsideration of a Decision and Order that denied duplicate refund Applications that he had filed in the Texaco refund proceeding. Mr. Henry had signed both Applications, and in the second Application had certified that he had not previouly filed, or authorized the filing of, any other refund application in the Texaco proceeding. In support of the Motion, Mr. Henry stated that he had not realized that he had filed two Applications for the same refund. In considering the Motion, the DOE found that Mr. Henry's statement was not credible since the DOE had previously dismissed an earlier duplicate Application and warned him not to file another Application in the Texaco proceeding. Accordingly, the DOE reaffirmed the denial of Mr. Henry's refund claim on equitable grounds and denied the Motion for Reconsideration.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Air Products and Chemicals, Inc	RF272-19034	09/17/93
Appleton City R II et al	RF272-81862	09/14/93
Atlantic Richfield Company/Borough of Northvale et al	RF304-14400	09/15/93
Atlantic Richfield Company/Faith Oil Company, Inc	RR304-62	09/17/93
Atlantic Richfield Company/Joe's Service et al	RF304-14131	09/17/93
Beacon Oil Company/Westside Beacon	RF238-6951	09/15/93
Belt High School D et al	RF272-82339	09/13/93
Chatham School District et al	RF272-80653	09/14/93
Enron Corp./Schauls Gas	RF340-79	09/14/93
Salem Blue Flame Gas Company	RF340-106	
Gulf Oil Corporation/Air Engineers, Inc. et al	RF300-19504	09/16/93
Gulf Oil Corporation/D.G. Thompson	RF300-15748	09/14/93
Gulf Oil Corporation/E & S Mobile Service et al	RF300-13907	09/16/93
Gulf Oil Corporation/Fuels, Inc	RF300-21749	09/14/93
Gulf Oil Corporation/Hendren's Gulf Service	RF300-18509	09/16/93
Gulf Oil Corporation/Wadsworth Auto Wash	RF300-18142	09/14/93
Norton Auto Wash	RF300-18143	
Copley Auto Wash	RF300-18144	
Howe Oil Co., Inc	RF272-86060	09/15/93
Pike Delta York Local Schools et al	RF272-80219	09/14/93
Sanderson Farms, Inc	RC272-214	09/17/93
Shell Oil Company/C&F Service Co., Inc	RF315-8351	09/15/93
Shell Oil Company/Cannon Aviation	RF315-6723	09/14/93
Texaco Inc./A & W Texaco	RF321-14495	09/15/93
Texaco Inc./La Pine Texaco	RF321-1660	09/16/93
Hagar's Texaco	RF321-17420	
Texaco Inc./Pine Tree Texaco Service et al	RF321-12346	09/14/93
Tri-County Electric Coop. et al	RF272-91029	09/17/93
Troiano Fuel Oil Co. et al	RF272-90404	09/15/93
W.R. Grace & Co.—Conn	RF272-90938	09/17/93

Dismissals

The following submissions were dismissed:

Name	Case No.
Anna Jonesboro Community High School District 81	RF272-81425
Billy's Texaco	RF321-18194
C.A. Dillon Supply Company	RF272-92856
Central Oklahoma Freight Lines, Inc.	RF272-80913
City of Lafayette	RF272-83230
City of Storm Lake	RF272-83093
Copeland Texaco	RF321-14502
Crothersville Community School	RF272-81577
Darby's Texaco	RF321-17058
East San Gabriel Valley Rop	RF272-81513
Fowlerville Community Schools	RF272-79412
Glasgow Grocery	RF321-14428
Hurry Back Texaco	RF321-14513
Hurry Back Texaco	RF321-14576
John G. Sales & Service	RF321-18839
Jose M. Silva	RF304-14229
Kirschenmanns Texaco	RF321-18825
Lake Forest School District 67	RF272-81371
Lewisville Texaco	RF321-14921
McIntosh County School Board	RF272-81566
Montague Area Public Schools	RF272-82445
Norshep Texaco	RF321-14490
Richfield Truck Stop	RF304-14106
Suburban Texaco	RF321-14424
W.A. Mathis Texaco	RF321-18829
Weisenfluh Service Center	RF321-14480
Willow Glenn Texaco	RF321-19049
Wilson Texaco	RF321-18830
Wilson's Gulf	RF300-13586

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, room 1E-234, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in Energy Management: Federal Energy Guidelines, a commercially published loose leaf reporter system.

Dated: November 17, 1993.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 93-28891 Filed 11-23-93; 8:45 am]

BILLING CODE 6450-01-P

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4806–1]

Access to Confidential Business Information by Booz-Allen, & Hamilton

AGENCY: Environmental Protection Agency.

ACTION: Notice.

SUMMARY: EPA is authorizing Booz-Allen, & Hamilton to conduct reviews of selected Superfund cost recovery documentation and records management. During the review, the contractor will have access to information which has been submitted to EPA under section 104 of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA). Some of this information may be claimed or determined to be Confidential Business Information (CBI).

DATES: The contractor (Booz-Allen, & Hamilton, Inc.) will have access to this data December 2, 1993.

ADDRESSES: Send or deliver, written comments to Steven X. Pandza, U.S. Environmental Protection Agency, Financial Management Section (3PM31), 841 Chestnut Street, Philadelphia, Pennsylvania 19107.

FOR FURTHER INFORMATION CONTACT: Steven X. Pandza, Financial Management Section, Superfund Cost Recovery Section (3PM31), 841 Chestnut Street, Philadelphia, Pennsylvania 19107, Telephone (215) 597–6161.

SUPPLEMENTARY INFORMATION: Under Contract 68–W3–002, Delivery Order 001, Booz-Allen, & Hamilton, Inc., will be conducting an on-site review of the procedures and systems currently in place for compliance with Superfund cost recovery and record keeping requirements in the States of Delaware and Virginia. These reviews involve conducting transaction testing to evaluate recipient conformance with applicable regulations and acceptable business practices and documenting findings. The contractor will examine transactions for the following:

(1) Expenditures Review: Expenditure documentation such as expense reports, timesheets, and purchase requests from the point of origination to the point of payment to determine compliance with such requirements as site-specific accounting data, authorizing signature and reconciliation of time sheets to expense reports.

(2) Financial Reports: Review financial drawdowns, Financial Status Reports, and internal status reports, to determine if information is consistent between these documents, if recipient is properly using information, and if the reports are submitted when required.

(3) Record Keeping Procedures: Review samples of Superfund documentation to determine the effectiveness of the recipient procedures to manage and reconcile this documentation (focusing on site-specific documentation, retention schedules, and the ability of the recipient to provide EPA with required financial documentation for cost recovery purposes in the specific time frame).

In providing this support, Booz-Allen, & Hamilton, Inc., employees may have access to recipient documents which potentially include financial documents submitted under section 104 of CERCLA, some of which may contain information claimed or determined to be CBI.

Pursuant to EPA regulations at 40 CFR part 2, subpart B, EPA has determined that Booz-Allen, & Hamilton, Inc., requires access to CBI to provide the support and services required under the Delivery Order. These regulations provide for five working days notice before contractors are given access to CBI.

Booz-Allen, & Hamilton, Inc. will be required by contract to protect confidential information. These documents are maintained in recipient office and file space.

Dated: October 18, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–28896 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–M

[OPP–30340A; FRL–4740–9]

AKZO Chemicals, Inc.; Approval of a Pesticide Product Registration

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces Agency approval of an application submitted by AKZO Chemicals, Inc., to register the pesticide product Sinesto B containing an active ingredient not included in any previously registered product pursuant to the provisions of section 3(c)(5) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended.

FOR FURTHER INFORMATION CONTACT: By mail: Cynthia Giles-Parker, Product Manager (PM) 22, Registration Division (7505C), Office of Pesticide Programs, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 229, CM #2, Environmental Protection Agency, 1921 Jefferson Davis Hwy, Arlington, VA 22202, (703–305–5540).

SUPPLEMENTARY INFORMATION: EPA issued a notice, published in the **Federal Register** of September 2, 1992 (57 FR 40186), which announced that AKZO Chemicals, Inc., 300 South Riverside Plaza, Chicago, IL 60606, had submitted an application to register the pesticide product Sinesto B (File Symbol 34688–AO), containing a new active ingredient alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil) at 12 percent, an active ingredient not included in any previously registered product.

The application was approved on September 30, 1993, as Sinesto B for use on fresh cut lumber to control sap stains (EPA Registration Number 34688–69).

The Agency has considered all required data on the risks associated with the proposed use of alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil), and information on social, economic, and environmental benefits to be derived from such use. Specifically, the Agency has considered the nature of the chemical and its pattern of use, application methods and rates, and level and extent of potential exposure. Based on these reviews, the Agency was able to make basic health and safety determinations which show that use of alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil) when used in accordance with widespread and commonly recognized practice, will not generally cause unreasonable adverse effects on the environment.

More detailed information on this registration is contained in a Chemical Fact Sheet on alkyl trimethylammonium chloride (alkyl as in fatty acids of coconut oil).

A copy of this fact sheet, which provides a summary description of the chemical, use patterns and formulations, science findings, and the Agency's regulatory position and rationale, may be obtained from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161.

In accordance with section 3(c)(2) of FIFRA, a copy of the approved label and the list of data references used to support registration are available for public inspection in the office of the Product Manager. The data and other scientific information used to support registration, except for material specifically protected by section 10 of FIFRA, are available for public

inspection in the Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, Rm. 1132, CM #2, Arlington, VA 22202 (703–305–5805). Requests for data must be made in accordance with the provisions of the Freedom of Information Act and must be addressed to the Freedom of Information Office (A–101), 401 M St., SW., Washington, DC 20460. Such requests should: (1) Identify the product name and registration number and (2) specify the data or information desired.

Authority: 7 U.S.C. 136.

List of subjects

Environmental protection, Pesticides and pests, Product registrations.

Dated: November 3, 1993.

Daniel M. Barolo,

Acting Director, Office of Pesticide Programs.

[FR Doc. 93–28613 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

[OPPTS–140217; FRL–4744–2]

Reduction of Hours of Service and Change of Mail Code for TSCA Confidential Business Information Center and TSCA Nonconfidential Information Center

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA is issuing this notice to announce that the Office of Pollution Prevention and Toxics (OPPT) Confidential Business Information Center (CBIC) and the Toxic Substances Control Act (TSCA) Nonconfidential Information Center (NCIC), also known as, the TSCA Public Docket Office will reduce their hours of service effective November 29, 1993. In addition, the EPA mail code has changed for both offices.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, TSCA Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–545, 401 M St., SW., Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Due to fiscal restraints, the Office of Pollution Prevention and Toxics (OPPT) Confidential Business Information Center (CBIC) will be open from 8 a.m. to 12 noon and the TSCA Nonconfidential Information Center (NCIC), also known as, the TSCA Public Docket Office, will be open from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays, effective November 29, 1993. EPA has reviewed the traffic and use patterns of the Public Docket Office and has determined that reducing the number of hours that the Docket Office is open should not restrict access to OPPT public documents. In addition, OPPT is committed to continuing its efforts to make more information publicly accessible through OPPT Information Products. The EPA mail code for both offices has changed to 7407. Telephone numbers remain the same.

List of Subjects

Environmental protection, Access to confidential business information.

Dated: November 18, 1993.

Linda A. Travers,

Director, Information Management Division, Office of Pollution Prevention and Toxics.

[FR Doc. 93–28904 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

[PP 0G3916/T650; FRL 4634–8]

Deltamethrin; Establishment of Temporary Tolerance

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: EPA has established a temporary tolerance for the combined residues of the insecticide deltamethrin and its metabolite in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm).

DATES: This temporary tolerance expires June 1, 1994.

FOR FURTHER INFORMATION CONTACT: By mail: George LaRocca, Product Manager (PM) 13, Registration Division (7505C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 202, CM#2, 1921 Jefferson Davis Highway, Arlington, VA, 703–305–6100.

SUPPLEMENTARY INFORMATION: Hoechst-Roussel Agri-Vet Co., Route 202–206, P.O. Box 2500, Somerville, NJ 08876–1258, has requested in pesticide petition (PP) 0G3916, the establishment of a temporary tolerance for the combined residues of the insecticide Deltamethrin (1*R*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-α-cyano-3-phenoxybenzyl ester and its metabolite, *trans*-deltamethrin: (1*S*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*S*)-alpha-cyano-3-phenoxybenzyl ester and alpha-*R*-deltamethrin: (1*R*,3*R*)-3(2,2-dibromovinyl)-2,2-dimethylcyclopropanecarboxylic acid (*R*)-alpha-cyano-3-phenoxybenzyl ester in or on the raw agricultural commodity cottonseed at 0.02 part per million (ppm). This temporary tolerance will permit the marketing of the above raw agricultural commodity when treated in accordance with the provisions of the experimental use permit 34147–EUP–3, which is being issued under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), as amended (Pub. L. 95–396, 92 Stat. 819; 7 U.S.C. 136).

The scientific data reported and other relevant materials were evaluated, and it was determined that establishment of the temporary tolerance will protect the public health. Therefore, the temporary tolerance has been established on the condition that the pesticide be used in accordance with the experimental use permit and with the following provisions:

1. The total amount of the active ingredient to be used must not exceed the quantity authorized by the experimental use permit.

2. Hoechst-Roussel Agri-Vet Co. must immediately notify the EPA of any findings from the experimental use that have a bearing on safety. The company must also keep records of production, distribution, and performance and on request make the records available to any authorized officer or employee of the EPA or the Food and Drug Administration.

This tolerance expires June 1, 1994. Residues not in excess of this amount remaining in or on the raw agricultural commodities after this expiration date will not be considered actionable if the pesticide is legally applied during the term of, and in accordance with, the provisions of the experimental use permit and temporary tolerance. This tolerance may be revoked if the experimental use permit is revoked or if any experience with or scientific data on this pesticide indicate that such revocation is necessary to protect the public health.

The Office of Management and Budget has exempted this notice from the requirement of section 3 of Executive Order 12291.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601–612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in

the **Federal Register** of May 4, 1981 (46 FR 24950).

Authority: 21 U.S.C. 346a(j).

List of Subjects

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 8, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–28612 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

[PF–586; FRL–4745–1]

Zeneca Ag Products et al.; Notice of Filing of Pesticide Petitions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This notice announces the initial filing of pesticide petitions, PP 6F3344 and PP 1E4031 filed by Zeneca Ag Products and Monsanto Co., respectively, proposing to establish regulations for residues of certain pesticide chemicals (safeners) in or on certain agricultural commodities.

DATES: Comments, identified by the document control number [PF-586], must be received on or before December 27, 1993.

ADDRESSES: By mail, submit written comments to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring comments to: Rm. 1128, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202.

Information submitted and any comment(s) concerning this notice may be claimed confidential by marking any part or all of that information as "Confidential Business Information" (CBI). Information so marked will not be disclosed except in accordance with procedures set forth in 40 CFR part 2. A copy of the comment(s) that does not contain CBI must be submitted for inclusion in the public record. Information not marked confidential may be disclosed publicly by EPA without prior notice to the submitter. Information on the proposed test and any written comments will be available for public inspection in Rm. 1128 at the Virginia address given above, from 8 a.m. to 4 p.m., Monday through Friday, excluding legal holidays.

FOR FURTHER INFORMATION CONTACT: By mail: Connie Welch, Registration Support Branch, Registration Division (7505W), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 703-308-8320.

SUPPLEMENTARY INFORMATION: EPA has received initial filings of pesticide petitions as follows proposing the establishment of regulations for residues of certain pesticide chemicals (safeners) in or on various agricultural commodities.

1. *PP 6F3344*. Zeneca Ag Products, 1800 Concord Pike, P.O. Box 751, Wilmington, DE 19897, proposes to amend 40 CFR 180.1026 by establishing a regulation to permit residues of *N,N*-diallyl dichloroacetamide when used as an inert ingredient (safener) in formulations applied to corn fields before the corn plants emerge from the soil with a maximum use level of 1.0 pound of this safener per acre per year in or on corn, fodder at 0.05 part per million (ppm), corn, forage at 0.05 ppm, and corn, grain at 0.05 ppm.

2. *PP 1E4031*. Monsanto Co., Suite 1100, 700 14th St., NW., Washington, DC 20005, proposes to amend 40 CFR part 180 by establishing a regulation to establish negligible (N) residue tolerances for the saefner MON 13900, 3-dichloroacetyl-5-(2-furanyl)-2,2-dimethyl-oxazolidine, in or on field corn, grain at 0.01 ppm (N) and field corn, fodder and forage at 0.01 ppm (N).

List of Subjects

Environmental protection, Agricultural commodities, Pesticides and pests.

Authority: 7 U.S.C. 136a

Dated: November 15, 1993.

Stephen L. Johnson,

Acting Director, Registration Division, Office of Pesticide Programs.

[FR Doc. 93–28731 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4805–8]

Notice of Proposed Administrative Settlement Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act, as Amended by the Superfund Amendments and Reauthorization Act

AGENCY: Environmental Protection Agency.

ACTION: Notice; request for public comment.

SUMMARY: In accordance with Section 122(i) of the Comprehensive Environmental Response, Compensation, and Liability Act, as amended by the Superfund Amendments and Reauthorization Act ("CERCLA"), notice is hereby given that a proposed administrative cost recovery settlement concerning the J.H. Baxter Superfund site in Weed, California was issued by the Agency on September 30, 1993. The settlement resolves an EPA claim under Section 107 of CERCLA against the following companies for past response costs through the date of October 31, 1992: J.H. Baxter and Company, Roseburg Forest Products Company, International paper, and Beazer East Incorporated on behalf of the American Lumber and Treating Company Interests; together known as Respondents. Costs through October 31, 1992 total at least $2,966,899, which include $2,790,497 in response costs and $176,402 in interest. Payment of $420,000 has previously been received from the Respondents, resulting in a revised total of $2,546,899.

The settlement of these past costs requires the Respondents to pay $2,324,381.10, plus interest, to the Hazardous Substances Superfund in seven payments over the next two year. Because the response costs incurred by EPA for this site exceed $500,000, EPA has received prior approval of the Attorney General to compromise its claim.

For thirty (30) days following the date of publication of this notice, the Agency will receive written comments relating to the settlement. The Agency's response to any comments received will be available for public inspection at the EPA Region 9 Office located at 75 Hawthorne Street, San Francisco, California.

DATES: Comments must be submitted on or before December 27, 1993.

ADDRESSES: The proposed settlement and additional background information relating to the settlement are available for public inspection at the EPA Region 9 Office located at 75 Hawthorne Street, San Francisco, California 94105. A copy of the proposed settlement may be obtained at the same address from Greg Pennington (Mail Code: H–7–4), telephone (415) 744–2372. Comments should reference the J.H. Baxter Superfund site, Weed, California and EPA Docket No. 93–25 and should be addressed to Greg Pennington (Mail Code: H–7–4) at the above address.

FOR FURTHER INFORMATION CONTACT: Mardi Black, Office of Regional Counsel, (415) 744–1395.

Dated: November 15, 1993.

Keith Takata,

Acting Director, Hazardous Waste Management Division, EPA Region 9.

[FR Doc. 93–28903 Filed 11–23–93; 8:45 am]

BILLING CODE 6560–50–M

[WH–FRL–4805–7]

State Water Quality Standards: Annual Listing of EPA Approvals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: This Notice contains a list of the States that have revised their water quality standards, dates of adoption by the State and dates of approval by EPA for the period October 1, 1991 through September 30, 1992. This Notice is published pursuant to a requirement of the Water Quality Standards Regulation (40 CFR 131.21).

FOR FURTHER INFORMATION CONTACT:

Region	Coordinator	Phone
1	Eric Hall	617–565–3533
2	Wayne Jackson	212–264–5685
3	Helene Drago	215–597–9911
	Evelyn Macknight	215–597–4491
4	Fritz Wagener	404–347–3396
5	Dave Pfiefer	312–353–9024
6	Cheryl Overstreet	214–655–6643
7	Larry Shepard	913–551–7441
8	Jim Luey	303–293–1425
9	Phil Woods	415–744–1997
10	Sally Marquis	206–553–2116
	Marcia Lagerloef	206–553–0176

SUPPLEMENTARY INFORMATION: This Notice lists State water quality standards review/revisions approved by EPA for the period October 1, 1991 through September 30, 1992. The most recent previous list of reviews and revisions of State water quality standards was published in the **Federal Register** on May 18, 1992 (57 FR 21068). Today's Notice identifies the State regulatory documentation containing the State water quality standards and dates of State adoption and EPA approval. Not included in this Notice are: (1) The text of the water quality standards, or (2) any conditions (including disapprovals of portions of the State submittals) that might have been attached to the approvals.

The text of a State's standards and copies of the approval letters can be obtained from the State's pollution control agency or the appropriate EPA Regional Office (see above). Proprietary publications such as those of the Bureau of National Affairs also contain the text of State Standards.

Dated: October 22, 1993.

Martha G. Prothro,

Acting Assistant Administrator for Water.

Region 1

Connecticut

Water Quality Standards for the State of Connecticut are contained in Connecticut General Statutes.

Adopted by State: January 29, 1992
EPA Action: Approval May 15, 1992

Adopted EPA numeric criteria for toxic for all chemicals except copper and zinc. Adopted State-specific criteria for cooper and zinc. Revised antidegradation policy and appended an implementation strategy.

Region 2

New York

Water Quality Standards for the State of New York are contained in Water Quality Regulations for Surface Waters and Ground Waters (6NYCRR Parts 700–705).

Adopted by State: September 1, 1991
EPA Action: Approval September 30, 1992

Revisions were made for Public Participation in the Development of Numeric Guidance Values; and the adoption of numeric criteria for seven substances (ammonia, benzene, cadmium, chlorine, chloroform, copper and nitribltriacetic acid)

Region 3

District of Columbia

Water Quality Standards for the District are contained in Water Quality Standards of the District of Columbia.

Adopted by District: August 30, 1991
EPA Action: Approved Zinc January 13, 1993

Amended criteria for zinc and mercury.

Maryland

Water Quality Standards for the State of Maryland are contained in Title 26, Dept. of the Environment, Subtitle 08 Water Pollution, Subpart 26.08.02 Water Quality.

Adopted by State: March 22, 1992
EPA Action: Approval June 25, 1992

Use designation revisions for a number of streams statewide.

Pennsylvania

Water Quality Standards for the State of Pennsylvania are contained in Title 25, Rules & Regulations, Part I, Dept of Environmental resources, Subpart C, Protection of Natural Resources Article II, Water Resources, Chap. 93 Water Quality Standards; Chap. 16 Water Quality Standards, Toxics Management Strategy.

Adopted by State: November 30, 1991
EPA Action: Approval March 17, 1992

Use designation revisions for a number of streams statewide (Chap 93, Section 93.9)

Adopted by State: July 18, 1992
EPA Action: Approval December 22, 1992

Use designation revisions for a number of streams statewide (Chap. 93, Section 93.9)

Virginia

Water Quality Standards for the State of Virginia are contained in Commonwealth of Virginia, State Water Control Board Water Quality Standards.

Adopted by State: May 20, 1992
EPA Action: Approval July 31, 1992

Revisisions to fulfill their triennial review requirements.

West Virginia

Water Quality Standards for the State of West Virginia are contained in Requirements Regarding Water Quality Standards.

Adopted by State: May 9, 1991
EPA Action: Approval July 23, 1991

Revisions to finalize the emergency rules that were filed August 20, 1990 and which expires in November 1991.

Region 4

Alabama

Water Quality Standards for the State of Alabama are contained in Chapter 335 6–10 (Water Quality Criteria) and Chapter 335 6–11 (Water Use Classifications for Interstate and Intrastate Waters) of the Alabama Dept of Environmental Management Administrative Code.

Adopted by State: June 26, 1991, Effective August 1, 1991, AG Certified December 27, 1991
EPA Action: Approved February 12, 1992

State adoption of the Outstanding National Resource Water Designation for the Little River, the East Fork of the Little River, the West Fork of the Little River and tributaries of these segments.

Adopted by State: February 26, 1992, Effective April 2, 1992, AG Certified June 3, 1992
EPA Action: Approval August 11, 1992

State Adoption of Outstanding National Resource Water designation for Weeks Bay.

Kentucky

Water Quality Standards for the State of Kentucky are contained in 401 KAR 5.031 Surface Water Standards.

Adopted by State: January 27, 1992
EPA Action: Approval May 26, 1992 (all except dioxin)

Region 5

Ohio

Water Quality Standards for the State of Ohio are contained in Ohio's Water Quality Standards Rule 3745–1–14 of the Ohio Administrative Code.

Adopted by State: September 9, 1992
EPA Action: Approval November 23, 1992

Incorporates a variance to the water quality standard for Fields Brooks for whole effluent toxicity.

Wisconsin

Water Quality Standards for the State of Wisconsin are contained in NR 103, NR 105.

Adopted by State: NR 103 August 1, 1991, NR 105 July 1991
EPA Action: Approval NR 103 February 11, 1992, Approval NR 105 November 11, 1991

NR 103—Wetland water quality standards

NR 105—Deletion of footnotes to water quality criteria regulating PCBs on an arochlor-specific basis.

Region 6

Louisiana

Water Quality Standards for the State of Louisiana are contained in Title 33 Environmental Quality, Part IX, Water Quality Regulations, Chapter 11. Surface Water Quality Standards.

Adopted by State: October 20, 1991
EPA Action: Approval January 24, 1992

Revisions added criteria for dioxin bringing the State into full compliance with Section 303(c)(2)(B) of the Clean Water Act.

New Mexico

Water quality Standards for the State of New Mexico are contained in Rule number WQCC 91–1, Amendment 1—"Water Quality Standards for Interstate and Intrastate Streams in New Mexico."

The State adopted revisions to the Water Quality Standards on May 22, 1991. These revisions contained numerical criteria for the protection of aquatic life and were approved by EPA on August 19, 1991. On October 8, 1991, the State revised its standards and adopted a revision which allowed biomonitoring criteria to supersede acute numerical criteria. This part of the standards was found to be not compliant with section 303(c)(2)(B) of the Clean Water Act and was disapproved by the Region on January 13, 1992.

Adopted by State: October 13, 1991
EPA Action: January 13, 1992

Arkansas

Water Quality Standards for the State of Arkansas are contained in Regulation No. 2—"Regulation Establishing Water Quality Standards for Surface Waters of the State of Arkansas."

The State adopted revisions to Water Quality Standards on October 25, 1991. These revisions contained human health criteria including criteria for dioxin. The revisions did not include aquatic life criteria for metals or cyanide. EPA disapproved this revision on January 24, 1992, for lack of aquatic life criteria for cadmium, chromium, copper, lead, mercury, nickel, selenium, silver, zinc, and cyanide.

Adopted by State: October 25, 1991
EPA Action: January 24, 1992

Region 8

Colorado

Water Quality Standards for the State of Colorado are contained in Basic Standards and Methodologies for Surface Water, 3.1.0 (5 CCR 1002–8).

Adopted by State October 8, 1991
EPA Action: Approval February 4, 1992 (all but toxics), Approval December 10, 1991 (toxics criteria only)

Addition of numeric criteria for priority toxic pollutants. Revisions to the antidegradation provisions, clarification of the Class 1 recreation use and several revisions/clarifications that address integration of standards into discharge permits.

Adopted by State: January 6, 1992
EPA Action: Approval July 16, 1992 (except for segments where CWA section 101(A)(2) uses not designated.

Revision of hardness-based aquatic life criteria for zinc, adoption of additional organic chemical standards for certain aquatic life segments and miscellaneous other segment specific water quality standard revisions.

Region 9

Arizona

Water Quality Standards for the State of Arizona are contained in Arizona's Rules on Water Quality Standards for Navigable Waters (Title 18, Chapter 11, Article 1)

Adopted by State: February 18, 1992
EPA Action: Approval March 2, 1992 (numeric standards for toxics only); Approval March 26, 1992 (nutrient standards for Colorado River below Imperial Dam); Approval July 6, 1992 (Colorado River Basin salinity standards)

General Revision including:

Numeric standards for additional toxic substances to fully satisfy section 303(c)(2)(B); revised use designations; revised microbiological standards; revised nutrient standards; amendment narrative requirements

California

These water quality standards for the State of California are contained in the Water Quality Control Plan for Inland Surface Waters of California and the Water Quality Control Plan for Enclosed Bays and Estuaries of California (State Water Resources Control Board Resolution No. 91–33)

Adopted by State; April 11, 1991
EPA Action: Partial Approval November 6, 1991

Added numeric standards for additional toxic substances and amended the narrative prohibition on toxicity to partially satisfy section 303(c)(2)(B) for these waters and provisions for implementation of these standards.

Approval of narrative water quality standards and toxicity limits, numeric standards for toxic substances, parts of the implementation program.

These water quality standards for the State of California are contained in 1990 Review-Water Quality Standards for Salinity-Colorado River System (State Water Resource Control Board Resolution No. 91–22).

Adopted by State: March 21, 1991
EPA Action: Approval March 12, 1992

Adopted 1990 Review of salinity standards for the Colorado River Basin.

These water quality standards for the State of California are contained in the Water Quality Control Plan for the North Coast Region as amended by State Water Resources Control Board Resolution No. 91–94.

Adopted by State: September 26, 1991
EPA Action: Approval March 13, 1992

Added numeric site-specific temperature standards and an interim action plan for the Trinity River.

Nevada

Water Quality Standards for the State of Nevada are contained in Nevada Administrative Code, Water Pollution Control Provisions (NAC).

Adopted by State: February 10, 1992
EPA Action: Approval July 6, 1992

Adopted 1990 review of salinity standards for the Colorado River Basin.

Guam

Water Quality Standards for the Territory of Guam are contained in the Guam Water Quality Standards.

Adopted by State: January 2, 1991 (eff. March 23, 1992)
EPA Action: Approval July 23, 1992

Numeric standards for toxic substances updated to reflect current national criteria guidance and continue to fully satisfy section 303(c)(2)(B); applicability of standards to wetlands was clarified, and an extensive wetlands classification system was added; provisions for 401 certification and miscellaneous other revisions were incorporated.

Northern Mariana Islands

Water Quality Standards for the Commonwealth of the Northern Mariana Islands are contained in Commonwealth of the Northern Mariana Islands Water Quality Standards.

Adopted by State: November 15, 1991 (eff. November 25, 1991)
EPA Action: Approval January 13, 1992

Added numeric standards for additional toxic substances and amended the narrative prohibition on toxicity to fully satisfy section 303(c)(2)(B).

Region 10

Oregon

Water Quality Standards for the State of Oregon are contained in Oregon Administrative Rules (OAR) Chapter 340, Division 41.

Adopted by State: July 24, 1991 (all but antidegradation) September 18, 1991 Antidegradation
EPA Action: Approval January 27, 1992

Antidegradation policy revision, bacterial criteria revision (enterococci); mixing zone policy; narrative biological criteria; turbidity; toxic substances.

[FR Doc. 93–28822 Filed 11–23–93; 8:45 am]
BILLING CODE 6560–50–M

FEDERAL COMMUNICATIONS COMMISSION

[Report No. 1981]

Petitions for Reconsideration and Clarification of Actions in Rulemaking Proceedings

November 2, 1993.

Petitions for reconsideration, and clarification have been filed in the Commission rulemaking proceedings listed in this Public Notice and published pursuant to 47 CFR 1.429(e). The full text of these documents are available for viewing and copying in room 239, 1919 M Street, NW. Washington, DC or may be purchased from the Commission's copy contractor ITS, Inc. (202) 857–3800. Opposition to this petition must be filed December 9, 1993. See § 1.4(b)(1) of the Commission's rules (47 CFR 1.4(b)(1)). Replies to an opposition must be filed within 10 days after the time for filing oppositions has expired.

Subject: Expanded Interconnection with Local Telephone Company Facilities (CC Docket No. 91–141).
Number of Petitions Filed: 16.

Federal Communications Commission.
William F. Caton,
Acting Secretary.
[FR Doc. 93–28847 Filed 11–23–93; 8:45 am]
BILLING CODE 6712–01–M

FEDERAL EMERGENCY MANAGEMENT AGENCY

Federal Emergency Management Agency Advisory Board Meeting

AGENCY: Federal Emergency Management Agency (FEMA).
ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a)(2) of the Federal Advisory Committee Act, 5 U.S.C. app. 1, FEMA announces a meeting of the FEMA Advisory Board.

NAME: Federal Emergency Management Agency Advisory Board (FAB).

DATES OF MEETING: December 13–14, 1993.

PLACE: Hyatt Regency Washington, 400 New Jersey Avenue, N.W., Washington, DC 20001.

TIME: December 13, 1993, 2 p.m.–5 p.m. and December 14, 1993, 9 a.m.–3 p.m.

PROPOSED AGENDA: General update on programs and issues concerning FEMA. Also an update on the status of FEMA's reorganization.

SUPPLEMENTARY INFORMATION: New members of the FEMA Advisory Board will be oriented, and all members of the FEMA Advisory Board will be brought current on FEMA programs and issues. The meeting will be open to the public with approximately 10 seats available on a first-come, first-served basis. Members of the general public who want to attend the meeting should contact John "Chili" Cole, Confidential Assistant to the Director of the Federal Emergency Management Agency, 500 C Street SW., Washington, DC 20472, (202) 646–3746, on or before December 8, 1993.

Minutes of the meeting will be prepared and will be available for public viewing upon request 60 days after the meeting.

Dated: November 18, 1993.
James L. Witt,
Director.
[FR Doc. 93–28762 Filed 11–23–93; 8:45 am]
BILLING CODE 6718–01–P

FEDERAL MARITIME COMMISSION

Agreement(s) Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the Federal Register in which this notice appears. The requirements for comments are found in § 572.603 of Title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–002744–073.
Title: West Coast of South America Agreement.
Parties:
A.P. Moller-Maersk
Compania Chilena de Navigacion Interoceania, S.A.
Compania Sud Americana de Vapores, S.A.
Crowley American Transport, Inc.
ENS Container Line Ltd.
Empremar/MSC Joint Service
Flota Mercante Grancolombiana, S.A
Gulf Pac Express Service
Lineas Navieras Bolivianas, S.A.
Lykes Bros. Steamship Co., Inc.
Nedlloyd Lijnen, B.V.
South Pacific Shipping Company Ltd

Synopsis: The proposed amendment revises the Agreement by adding language regarding inactive membership and service contract participation.

Agreement No.: 203–011408–005.
Title: The Red Sea/Arabian Gulf/Indian Subcontinent Discussion Agreement.
Parties:
American President Lines, Ltd.
A.P. Moller-Maersk Line
Croatia Line
National Shipping Company of Saudi Arabia
P&O Containers Limited
Sea-Land Service, Inc.
Senator Linie
United Arab Shipping Company

(S.A.G.)
Waterman Steamship Corporation
The "8900" Lines Rate Agreement
West Coast/Middle East Rate Agreement

Synopsis: The proposed modification provides for the termination of the Agreement effective January 31, 1994.

Agreement No.: 203–011435.
Title: APL–TMM Space Charter Agreement.
Parties:
American President Lines, Ltd. ("APL")
Transportacion Maritima Mexicana, S.A. de C.V. ("TMM")

Synopsis: The proposed Agreement authorizes the parties to discuss and agree upon terms by which APL may charter container slots to TMM between ports and points in the Far East, the Indian Subcontinent, and the Middle East, and ports and points in the U.S. Pacific.

Agreement No.: 207–011436.
Title: Hornet Shipping Company Limited/Lauritzen Reefers A/S Joint Service Agreement.
Parties:
Hornet Shipping Company Limited
Lauritzen Reefers A/S

Synopsis: The proposed Agreement authorizes the parties to establish and operate a joint service in the trades from ports and points on the U.S. West Coast to ports and points in Ecuador, and Chile and between ports and points on the U.S. West Coast and ports and points in Japan. The parties have requested a shortened review period.

Agreement No.: 224–200589–002.
Title: Jacksonville Port Authority/ Green Cove Marine, Inc. Terminal Agreement.
Parties:
Jacksonville Port Authority
Green Cove Marine, Inc.

Synopsis: The proposed amendment revises specific sections of the Agreement pertaining to throughput charges, rental and other related rates.

Agreement No.: 224–200810.
Title: The Port Authority of New York & New Jersey/D.B. Turkish Cargo, Line Container Incentive Agreement.
Parties:
The Port Authority of New York & New Jersey ("Port")
D.B. Turkish Cargo, Line ("D.B. Turkish")

Synopsis: The Agreement provides for the Port to pay D.B. Turkish a container incentive of $20.00 for each import container and $40.00 for each export container with cargo moved through the Port's marine terminals during calendar year 1993, provided each container is shipped by rail to or from points more than 260 miles from the Port.

Dated: November 18, 1993.

By Order of the Federal Maritime Commission.

[FR Doc. 93–28764 Filed 11–23–93; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Decatur Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 17, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Decatur Bancshares, Inc., Decaturville, Tennessee; to become a bank holding company by acquiring at least 80 percent of the voting shares of Decatur County Bank, Decaturville, Tennessee.

B. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Dakota Bancshares, Inc., Mendota Heights, Minnesota; to become a bank holding company by acquiring 100 percent of the voting shares of Dakota County State Bank, Mendota Heights, Minnesota.

2. St. Paul Bancshares, Inc., Phalen Park, Minnesota; to acquire 23.86 percent of the voting shares of Dakota Bancshares, Inc., Mendota Heights, Minnesota, and thereby indirectly acquire Dakota County State Bank, Mendota Heights, Minnesota.

Board of Governors of the Federal Reserve System, November 18, 1993

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93-28816 Filed 11-23-93; 8:45 am]
BILLING CODE 6210-01-F

David W. Fleming, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 14, 1993.

A. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. David W. Fleming, Litchfield, Illinois; to acquire an additional 7.58 percent of the voting shares of LBT Bancshares, Inc., Litchfield, Illinois, for a total of 19.12 percent, and thereby indirectly acquire Bank and Trust Company, Litchfield, Illinois, and First National Bank of Mt. Auburn, Mt. Auburn, Illinois.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jack L. and Frances M. Brozman, Kansas City, Kansas; to acquire 65.25 percent; David A. and Joyce A. Nichols, Kansas, City, Kansas, to acquire an additional 15.85 percent for a total of 27.61 percent; and The David A. Nichols Defined Benefit Pension Plan Dated January 1, 1985, Kansas City, Kansas, to acquire 4.35 percent of the voting shares of First Bancshares, Inc., Kansas City, Kansas, and thereby

indirectly acquire The First State Bank of Kansas City, Kansas City, Kansas.

2. Don H. Carlton, Tulsa, Oklahoma; to acquire an additional 6.6 percent for a total of 31.2 percent; and Roger Marshall, Tulsa, Oklahoma, to acquire an additional 5.9 percent for a total of 27.6 percent of the voting shares of Tulsa National Bancshares, Inc., Tulsa, Oklahoma, and thereby indirectly acquire Tulsa National Bank, Tulsa, Oklahoma.

Board of Governors of the Federal Reserve System, November 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28817 Filed 11-23-93; 8:45 am]

BILLING CODE 6210-01-F

Popular International Bank, Inc.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 17, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. Popular International Bank, Inc., Hato Rey, Puerto Rico, and BanPonce Financial Corp., Mount Laurel, New Jersey; to acquire Spring Financial Services, Inc., Mount Laurel, New Jersey, Spring Financial Mortgage Company, Mount Laurel, New Jersey, Spring Mortgage Servicing Company, Mount Laurel, New Jersey, Equity One Incorporated, Langhorne, Pennsylvania, and Equity One Consumer Discount Company, Langhorne, Pennsylvania; and thereby engage in acquiring or servicing of loans or other extensions of credit pursuant to § 225.25(b)(1); and acting as principal, agent, or broker for credit related insurance pursuant to § 225.25(b)(8)(i) and (ii) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 18, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-28819 Filed 11-23-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Mine Health Research Advisory Committee (MHRAC); Meeting

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the National Institute for Occupational Safety and Health (NIOSH) of the Centers for Disease Control and Prevention (CDC) announces the following committee meeting.

Name: Mine Health Research Advisory Committee (MHRAC).

Times and Dates: 8:30 a.m.–5 p.m., December 9, 1993; 8:30 a.m.–12 noon, December 10, 1993.

Place: Euro-Suites Hotel, Mezzanine Room, 501 Chestnut Ridge Road, Morgantown, West Virginia 26505.

Status: Open to the public, limited only by the space available.

Purpose: The committee is charged with advising the Secretary of Health and Human Services on matters involving or relating to mine health research, including grants and contracts for such research. Additionally, the committee assesses mine health research needs and advises on the conduct of mine health research.

Matters to be Discussed: The agenda will include the NIOSH Acting Director's remarks and charge to the committee; NIOSH fiscal year 1994 mining-related activities overview and discussion; an update on solicosis prevention efforts; interactions between NIOSH and the Mine Safety and Health Administration; policy update and criteria documents; and NIOSH injury/safety research relevant to mining. Agenda items are subject to change as priorities dictate.

Contact Person for Additional Information: Gregory R. Wagner, M.D., Executive Secretary, Division of Respiratory Disease Studies, NIOSH, CDC, Mailstop 220, 944 Chestnut Ridge Road, Morgantown, West Virginia 26505, telephone 304/291-4474.

Dated: November 18, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93-28811 Filed 11-23-93; 8:45 am]

BILLING CODE 4160-18-M

Health Care Financing Administration

[BPD-762-PN]

RIN 0938-AG04

Medicare Program; Payment for Extracorporeal Shock Wave Lithotripsy Services Furnished by Ambulatory Surgical Centers (ASCs)

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed notice; extension of comment period.

SUMMARY: This notice announces a 30-day extension of the comment period on a proposed notice we published in the Federal Register on October 1, 1993.

DATES: Comments will be considered if we receive them at the appropriate address, as provided in the October 1, 1993 proposed notice, no later than December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Vivian Braxton, (410) 966-4571.

SUPPLEMENTARY INFORMATION: On October 1, 1993, we published a proposed notice in the **Federal** Register (58 FR 51355), in response to a complaint and motion to preliminarily enjoin enforcement and implementation of our December 31, 1991 notice (55 FR 67666), insofar as it concerned Extracorporeal Shock Wave Lithotripsy (ESWL). The comment period for the October 1, 1993 proposed notice was to end on November 30, 1993. We are extending the comment period and will consider comments if we receive them at the appropriate address, as provided in the October 1, 1993 proposed notice,

no later than 5 p.m. on December 30, 1993.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 5, 1993.

Bruce C. Valadeck,

Administrator, Health Care Financing Administration.

Dated: November 12, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–28772 Filed 11–23–93; 8:45 am]

BILLING CODE 4120–01–P

National Institutes of Health

Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings to Review Small Business Innovation Research Program Applications

Scientific Review Administrator: Dr. Joseph Kimm (301) 594–7257
Date of Meeting: November 30, 1993
Place of Meeting: Hyatt Regency, Bethesda, MD
Time of Meeting: 9 a.m.

Meetings to Review Individual Grant Applications

Scientific Review Administrator: Dr. Anita Sostek (301) 594–7358
Date of Meeting: December 8, 1993
Place of Meeting: Westwood Bldg., room 319C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 11 a.m.
Scientific Review Administrator: Dr. Andrew Mariani (301) 594–7206
Date of Meeting: December 3, 1993
Place of Meeting: Chevy Chase Holiday Inn, Chevy Chase, MD
Time of Meeting: 9 a.m.

This notice is being published less than 15 days prior to the meeting due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93–396, 93.837–93–844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated: November 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28936 Filed 11–23–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

Coal Lease Offering By Sealed Bid

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of competitive coal lease sale.

SUMMARY: Notice is hereby given that certain coal resources in lands hereinafter described in Emery County, Utah, will be offered for competitive lease by sealed bid of $100.00 per acre or more to the qualified bidder submitting the highest bonus bid in accordance with the provisions of the Mineral Leasing Act of 1920, as amended (41 Stat. 437). However, no bid will be accepted for less than fair market value as determined by the authorized officer.

DATES: The lease sale will be held at 1 p.m., December 29, 1993. Sealed bids must be submitted on or before 10 a.m., December 29, 1993.

ADDRESSES: The lease sale will be held in the Bureau of Land Management Conference Room, 324 South State Street, Suite 302, Salt Lake City, Utah. Sealed bids must be mailed to the Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145–0155 or hand delivered to the cashier, 324 South State Street, (room 400), Salt Lake City, Utah.

COAL OFFERED: The coal resources to be offered consist of all recoverable reserves available in the following described lands located in Emery County, Utah, approximately 15 miles northwest of Huntington, Utah:

T. 15 S., R. 6 E., SLM, Utah
Sec. 25, S2;
Sec. 26, S2;
Sec. 35, all.
T. 15 S., R. 7 E., SLM, Utah
Sec. 30, lots 7–12, SE;
Sec. 31, lots 1–12, NE, N2SE, SWSE.
T. 16 S., R. 6 E., SLM, Utah
Sec. 1, lots 1–12, SW.
T. 16 S., R. 7 E., SLM, Utah
Sec. 6, lots 2–4, SWNE.
Containing 2,979.49 acres

One economically recoverable coal bed, the Hiawatha Seam is found in this tract. The seam averages 7.2 feet in thickness. This tract contains an estimated 18,666,000 tons of recoverable high volatile C bituminous coal. The estimated coal quality using weighted average of samples on an as-received basis is:

12,790 BTU/lb.;
4.08 Percent moisture;
.63 Percent sulphur
8.75 Percent ash;
45.31 Percent fixed carbon;
42.45 Percent volatile matter.

(Totals do not equal 100% due to rounding)

RENTAL AND ROYALTY: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre or fraction thereof and a royalty payable to the United States of 12.5 percent of the value of the coal mined by surface methods, and 8 percent of the value of coal mined by underground methods. The value of coal shall be determined in accordance with BLM Manual 3070.

NOTICE OF AVAILABILITY: Bidding instructions are included in the Detailed Statement of Lease Sale. A copy of the detailed statement and the proposed coal lease are available by mail at the Bureau of Land Management, Utah State Office, P. O. Box 45155, Salt Lake City, Utah 84145–0155 or in the Public Room (room 400) Utah State Office, 324 South State Street, Salt Lake City, Utah, telephone 801–539–4001. All case file documents and written comments submitted by the public on Fair Market Value or royalty rates except those portions identified as proprietary by the commentator and meeting exemptions stated in the Freedom of Information Act are available for public inspection in the Public Room (room 400) of the Bureau of Land Management, Utah State Office.

SUPPLEMENTARY INFORMATION: The unleased coal in this tract is included in the Utah Schools and Lands Improvement Act of 1993 (Pub. L. 103–93) as a Federal interest which the State of Utah may select to satisfy the value of the exchange of State for Federal lands authorized in the Act. In accordance with the Act, the Federal interest, i.e., the unleased coal, in this tract was offered to the State of Utah on October 20, 1993. Consummation of the exchange under the Act may, in the future, allow for the State of Utah to succeed to some or all of the United States interest in this tract.

G. William Lamb,

Associate State Director.

[FR Doc. 93–28869 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–DQ–P

[AZ–020–04–4140–05; LEAS]

Intent To Prepare an Environmental Impact Statement; Cyprus Casa Grande Mine, Papago Indian Reservation, AZ

AGENCY: Bureau of Land Management, Department of Interior.

ACTION: Agency Notice Correction of Notice of Intent to Prepare an Environmental Impact Statement; Cyprus Casa Grande Mine; Tohono O'Odham Nation, Papago Indian Reservation, Arizona.

SUMMARY: The meeting times published in column 3, page 60048, of the November 12, 1993 **Federal Register** are postponed until early 1994. Revisions are being made to the meeting schedule in order to maximize accessibility and participation of all concerned parties and members of the Tohono O'Odham Nation. Notice of the new schedule will be published in the **Federal Register**. Point of contact for information is Moon J. Hom, Mining Engineer, Bureau of Land Management, 2015 West Deer Valley Road, Phoenix, Arizona 85027, phone (602) 780–8090.

Dated: November 18, 1993.

David J. Miller,

Acting District Manager.

[FR Doc. 93–28820 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–32–M

[NM–060–4110–01 (603)]

Southeast New Mexico Playa Lakes Coordinating Committee; Meeting

AGENCY: Bureau of Land Management, Interior.

ACTION: Southeast New Mexico Playa Lakes Coordinating Committee meeting.

DATES: Friday, December 10, 1993, beginning at 9:30 a.m.

SUMMARY: The proposed agenda will include presentation by the Planning Group of the status of the moist soil project and the determent activities; the revised Action Plan; statement of work for literature review; and proposal for preliminary pathology work. The meeting will be held at the Carlsbad Resource Area Office, 620 E. Greene, Carlsbad, New Mexico. Planning Group recommendations will be presented at 9:30 a.m. to the Southeast New Mexico Playa Lakes Coordinating Committee. Final decisions on recommendations of the Planning Group are expected to be made by the Committee. Summary minutes will be maintained in the Roswell District Office and will be available for public inspection during regular business hours (7:45 a.m.–4:30 p.m.) within 30 days following the meeting. Copies will be available for the cost of duplication.

FOR FURTHER INFORMATION CONTACT: Leslie M. Cone, District Manager, Bureau of Land Management, 1717 West 2nd Street, Roswell, NM 88201, (505) 627–0272.

Dated: November 10, 1993.

Leslie M. Cone,

District Manager.

[FR Doc. 93–28776 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–FB–M

[NV–930–04–4710–06]

Notice of Closure of Bishop Canyon Road to Motorized Vehicle Travel

Authority: Title 43 Code of Federal Regulations 8365.1–6, 43 U.S.C. 1701.

SUMMARY: Notice is hereby given that motorized vehicle travel in Bishop Canyon is prohibited. The access route from the Woodward Ranch through Bishop Canyon to the top of the Pine Forest Mountain Range is closed to all motorized vehicle travel.

This notice/order affects all those public lands located in the general area of Bishop Canyon within the unsurveyed township, T. 42 N., R. 30 E., Mount Diable Meridian, Nevada.

Bishop Canyon Access Road starts on the East side of the Pine Forest Mountain Range in Northern Humboldt County, Nevada, just West of the Woodward Ranch then proceeds in a Southwesterly direction through Bishop Canyon to the crest of the Pine Forest Mountain Range for approximately three (3) miles. The access road is a single lane, narrow, steep grade consisting of loose rock and dirt. This access road is considered to be hazardous and dangerous for 4WD travel. This access road is closed to motorized vehicle travel for the purpose of public safety.

This road closure order does not affect the travel by U.S. Government employees in their administrative duties assigned of the management of those affected public lands within Bishop Canyon. The road closure also does not affect the emergency use by any other public entity, Humboldt County Sheriff's Department, State of Nevada Department of Public Safety or the Federal Aviation Administration.

The above road closure will remain in effect until the Paradise-Denio Resource Management Plan is completed and the restrictions as to motorized vehicle use have been identified in the RMP and are fully implemented.

Comments: Comments on the Bishop Canyon closure can be mailed to the Bureau of Land Management, Winnemucca District Office, 705 E. 4th St., Winnemucca, NV 89445, or phone (702) 623–1500.

Dated: November 12, 1993.

Ron Wenker,

District Manager.

[FR Doc. 93–28827 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–HC–M

[ID–942–04–4055–02]

Idaho; Filing of Plats of Survey

The plat of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 12, 1993.

The plat representing the dependent resurvey of portions of the north boundary and subdivisional lines, and subdivision of sections 3 and 4, T. 9 S., R. 14 E., Boise Meridian, Idaho, Group No. 845, was accepted, November 9, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: November 12, 1993.

Mark Smirnov,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–28775 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–GG–M

[NV-930-4210-05; N-57206]

Realty Action; Lease/Purchase for Recreation and Public Purposes, Clark County, NV

AGENCY: Bureau of Land Management, Interior.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The City of Las Vegas proposes to use the land for a fire station.

Mount Diablo Meridian, Nevada

T. 20 S., R. 60 E., M.D.M.
Sec. 7: E½SE¼NE¼NE¼.

Containing 5.00 acres, more or less.

The land is not required for any Federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

and will be subject to:

1. An easement 50.00 feet in width along the east boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the south boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

3. An easement 30.00 feet in width along the north boundary in favor of the City of Las Vegas for roads, public utilities and flood control purposes.

4. Those rights for distribution line and telephone line purposes which have been granted jointly to Nevada Power Company and Sprint Central Telephone Company by Permit No. N-52939 under the Act of October 21, 1976 (43 CFR 1732).

Detailed information concerning this action is available for review at the Office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register**, the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register**, interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: November 12, 1993.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 93-28849 Filed 11-23-93; 8:45 am]

BILLING CODE 4310-HC-M

[NM-010-4210-06; NMNM 90118]

Proposed Withdrawal and Opportunity for Public Meeting; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 120 acres of public land and 680 acres of federally reserved mineral interests underlying private surface estate in Rio Arriba County to allow the sale of a mineral material, humate (a carbonaceous shale). This notice closes 120 acres of public land for up to 2 years from surface entry and mining and closes 680 acres of federally reserved mineral interests from mining only, subject to valid existing rights. The land will remain open to mineral leasing.

DATE: Comments and requests for a public meeting must be received by February 22, 1994.

ADDRESSES: Comments and requests for a public meeting should be sent to the Albuquerque District Manager, BLM, 435 Montano Road NE., Albuquerque, New Mexico 87107.

FOR FURTHER INFORMATION CONTACT: Debby Lucero, BLM Rio Puerco Resource Area Office, (505) 761-8700.

SUPPLEMENTARY INFORMATION: On November 16, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described public land from settlement, sale, location, or entry under the general land laws, including the mining laws, subject to valid existing rights:

New Mexico Principal Meridian

T. 23 N., R. 1 W.,
Sec. 11, NE¼NE¼ and S½NE¼/

The area described contains approximately 120 acres in Rio Arriba County.

And, to withdraw the following described federally reserved mineral interests underlying private surface estate from the mining laws, subject to valid existing rights:

T. 23 N., R. 1 W.,
Sec. 11, SE¼SW¼ and SE¼;
Sec. 14, NW¼NE¼, S½NE¼, E½W½, SW¼SW¼, and SE¼.

The area described contains approximately 680 acres in Rio Arriba County.

The purpose of the proposed withdrawal is to segregate the above described land from mineral entry so a mineral material, humate (a carbonaceous shale) can be offered for sale.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the Albuquerque District Manager of the Bureau of Land Management.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested persons who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the Albuquerque District Manager within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of 2 years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be

permitted during this segregative period are licenses, permits, cooperative agreements, or discretionary land use authorizations of a temporary nature but only with the approval of an authorized officer of the Bureau of Land Management.

Dated: November 18, 1993.

Michael R. Ford,

District Manager.

[FR Doc. 93-28900 Filed 11-23-93; 8:45 am]

BILLING CODE 4310-FB-M

[UT-942-4210-06; UTU-71781]

Proposed Withdrawal; Opportunity for Public Meeting; Utah

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The Bureau of Land Management proposes to withdraw 4,710 acres of public land near Moab, Utah, to protect the recreational, scenic, geologic, cultural, and fish and wildlife values of Westwater Canyon of the Colorado River. This notice closes these lands for up to two years from surface entry and mining. The lands will remain open to mineral leasing.

DATES: Comments on the proposed withdrawal or request for public meeting must be received on or before February 22, 1994.

ADDRESS: Comments and meeting requests should be sent to the Utah State Director, P.O. Box 45155, Salt Lake City, Utah 94145-0155.

FOR FURTHER INFORMATION CONTACT: Randy Massey, Utah State Office, (801) 539-5119.

SUPPLEMENTARY INFORMATION: On November 12, 1993, a petition was approved allowing the Bureau of Land Management to file an application to withdraw the following described land from settlement, sale, location, or entry under the general lands laws, including the United States mining laws (30 U.S.C. ch. 2), subject to valid existing rights:

Salt Lake Meridian

T.21 S., R. 24 E.,
- Sec. 24, lots 11 to 21, inclusive, NE¼SE¼;
- Sec. 25, lot 2, N½NW¼NE¼.

T.20 S., R. 25E.,
- Sec. 22, lots 1, 2, and 4 to 8, inclusive, E½NW¼NE¼;
- Sec. 23, lots 7 and 8, SW¼NW¼;
- Sec. 26, lots 1 to 5, inclusive, NW¼NW¼, W½SE¼NW¼, W½NE¼SW¼, W½SE¼SW¼;
- Sec. 27, lots 1 to 5, inclusive, SW¼NE¼;
- Sec. 33, lots 1 to 4, inclusive, NW¼NE¼, E½NE¼NW¼;
- Sec. 34, lots 1 to 8, inclusive, NW¼NE½, W½NW¼NW¼, SW¼NW¼, SE¼SW¼, N½NE¼SE¼;
- Sec. 35, lots 1 and 2, W½NE¼NW¼, SW¼NW¼.

T. 21 S., R. 25 E.,
- Sec. 3, lots 1 to 4, inclusive, SW¼NE¼, N½NW¼, NE¼SW¼NW¼, SE¼NW¼, NE¼NE¼SW¼, W½SW¼, NW¼SE¼, E½SW¼SE¼, SW¼SW¼SE¼, W½E½SE¼;
- Sec. 4, lots 1 and 5;
- Sec. 8, lots SE¼NE¼, E½SE¼;
- Sec. 9, lots 1 to 15 inclusive, SE¼SW¼, N½SE¼SE¼;
- Sec. 10, lots 1 to 6, inclusive, W½NE¼NE¼, NW¼SW¼NE¼, W½NE¼SW¼, N½SW¼SW¼;
- Sec. 16, lots 1 to 4, inclusive;
- Sec. 17, lots 1, 2, 3, and 5 to 12, inclusive, N½N½SE¼;
- Sec. 18, SE¼SE¼;
- Sec. 19, lots 1, 2, and 6 to 13, inclusive, NE¼SE¼, SW¼SE¼;
- Sec. 20, lots 1 to 3, inclusive, W½NE¼NW¼;
- Sec. 30, lot 1, N½NE¼NW¼.

Unsurveyed lands in the Colorado River bed, in the area described above, are included in this notice. The area described contains approximately 4,710 acres in Grand County, Utah.

The purpose of the proposed withdrawal is to protect the recreational values of Westwater Canyon. Westwater Canyon has long been one of the most popular white water rafting areas in the Western United States. In addition to its recreational values, Westwater has other significant resource values. Six threatened or endangered species of animals are present in the corridor and it contains outstanding geologic features, scenery, and important historic and cultural sites.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments, suggestions, or objections in connection with the proposed withdrawal may present their views in writing to the State Director at the address indicated above.

Notice is hereby given that an opportunity for a public meeting is afforded in connection with the proposed withdrawal. All interested parties who desire a public meeting for the purpose of being heard on the proposed withdrawal must submit a written request to the State Director at the address indicated above within 90 days from the date of publication of this notice. Upon determination by the authorized officer that a public meeting will be held, a notice of the time and place will be published in the **Federal Register** at least 30 days before the scheduled date of the meeting.

The application will be processed in accordance with the regulations set forth in 43 CFR part 2300.

For a period of two years from the date of publication of this notice in the **Federal Register**, the land will be segregated as specified above unless the application is denied or canceled or the withdrawal is approved prior to that date. The temporary uses which may be permitted during this segregative period are leases, licenses, permits, rights-of-way, and disposal of vegetative resources other than under the mining laws.

Ted D. Stephenson,

Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93-28825 Filed 11-23-93; 8:45 am]

BILLING CODE 4310-DQ-M

Bureau of Reclamation

Los Vaqueros Project, Contra Costa County, CA; Final Environmental Impact Statement

AGENCY: Bureau of Reclamation, Interior.

ACTION: Notice of availability of final environmental impact statement/final environmental impact report (FEIS): INT-FES-93-27.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act (NEPA) of 1969, as amended, and section 21002 of the California Environmental Quality Act, the Bureau of Reclamation (Reclamation) and Contra Costa Water District (CCWD) have prepared a final environmental impact statement/final environmental impact report (FEIS/FEIR) for the Los Vaqueros Project in California. Because Department of the Army permits are required, the Corps of Engineers is a cooperating agency. The FEIS/FEIR describes and presents the environmental effects of five alternatives, including no action, for improving the quality of water supplied to CCWD customers, minimizing seasonal quality changes, and improving the reliability of the CCWD supply by providing for emergency storage.

No decision will be made on the proposed action until completion of the 30-day waiting period required under NEPA. After the 30-day waiting period, Reclamation proposes to issue a Record of Decision.

ADDRESSES: Copies of the FEIS/FEIR may be obtained on request from CCWD or Reclamation at the following addresses:

- Regional Director, Bureau of Reclamation, Mid-Pacific Regional Office, 2800 Cottage Way, Attention: MP-152, Sacramento CA 95825-1898; telephone: (916) 978-5130.

• Mr. John S. Gregg, Assistant General Manager, Contra Costa Water District, PO Box H20, Concord CA 94524; telephone: (510) 674–8000.

Copies of the FEIS/FEIR are available for inspection at the above addresses and the following locations:

• Bureau of Reclamation, Technical Liaison Division, 1849 C Street, NW., Washington DC 20240; telephone: (202) 208–4662.

• Bureau of Reclamation, Denver Office Library, Denver Federal Center, Denver CO 80225; telephone: (303) 236–6963.

Libraries

• California State Library, Government Publications Section, Sacramento, California.

• City of Livermore Public Library—Springtown, Livermore, California.

• City of Livermore Public Library, Livermore, California.

• Contra Costa County Public Library, Antioch, California.

• Contra Costa County Public Library, Oakley, California.

• Contra Costa County Public Library, Brentwood, California.

• Contra Costa County Public Library, Concord, California.

• Contra Costa County Public Library, Martinez, California.

• Contra Costa County Public Library, Walnut Creek, California.

• U.S. Geological Survey Library, Menlo Park, California.

• University of California, Water Resources Library, Berkeley, California.

FOR FURTHER INFORMATION CONTACT: Ms. Janice Hutton, Contra Costa Water District, PO Box H20, Concord CA 94524; telephone: (510) 674–8130 or Mr. Douglas Kleinsmith, Bureau of Reclamation, Mid-Pacific Region, MP–152, 2800 Cottage Way, Sacramento CA 95825–1898; telephone: (916) 978–5129.

SUPPLEMENTARY INFORMATION: The proposed action involves construction of a dam and 100,000-acre-foot reservoir on Kellogg Creek, south of the city of Brentwood in southeastern Contra Costa County. There would also be a new point of diversion in the Sacramento-San Joaquin Delta, associated water conveyance and delivery facilities, pumping plants, and other facilities. Vasco Road, an important arterial roadway that would be inundated by the project, would be realigned and several buried pipelines and electric power transmission lines would be relocated.

No significant changes have been made to the proposed action as a result of public review and comment (although some operational changes were made to accommodate concerns about fisheries) on the draft environmental impact statement/draft environmental impact report (DEIS/DEIR). The FEIS/FEIR presents the proposed action and four other alternatives, including no action. It also presents the comments received during the 60-day public review period of the DEIS/DEIR and documents Reclamation and CCWD responses to those comments.

Dated: November 10, 1993.

Donald R. Glaser,

Deputy Commissioner.

[FR Doc. 93–28741 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–94–M

National Park Service

Keweenaw National Historic Park Interim Boundary

AGENCY: National Park Service, Department of the Interior.

ACTION: Notification of establishment of interim boundary.

SUMMARY: Public Law 102–543, 106 Stat. 3569, 16 U.S.C. 410yy, *et. seq.* established Keweenaw National Historical Park, in Houghton County, Michigan, as a unit of the National Park System. Section 3(b)(1) describes the boundaries to "be as generally depicted on the map * * * numbered NH–KP/20012–B and dated June, 1992". Section 3(b)(2) of that law requires that the Secretary of the Interior publish in the **Federal Register** a detailed description and map of the boundaries of the Keweenaw National Historical Park as established under paragraph (a)(1).

The law also requires that not later than 3 years after the date of enactment of Public Law 102–543, the Secretary prepare, in consultation with a Commission established through the act, a general management plan for the park.

The National Park Service has determined that development of a final park boundary will require the type of data gathering and analysis and public involvement normally conducted as part of a general management planning process. The National Park Service anticipates initial funding for the new park to be available in fiscal year 1994. To avoid duplication of effort, an interim boundary will be published and a final boundary will be determined as part of the general management planning effort.

The interim boundary for the Keweenaw National Historical Park has been developed from the map numbered NHP–KP/20012–B. It includes adjustments which make the units more manageable, recognize conditions which have changed since the original map was developed, and more accurately reflect Congressional intent. The boundaries and map references are as follows.

Calumet Unit: Beginning at the intersection of the centerlines of Pine Street (M 203) and Rockland Street in Section 13, Township 56 North, Range 33 West, Michigan Principal Meridian; thence Southwesterly 7000 feet, more or less, along the centerline of Rockland Street to the centerline of U.S. 41; thence Southerly 1400 feet, more or less, along the centerline of U.S. 41 to the centerline of Church Street; thence Southwesterly 1250 feet, more or less, along the centerline of Church Street to the centerline of Millionaire Street; thence Westerly 1900 feet, more or less, along the centerline of Millionaire Street to the centerline of Mine Street; thence Southerly 500 feet, more or less, along the centerline of Mine Street to the centerline of an unnamed, informal road; thence Northwesterly 1100 feet, more or less, along the centerline of said unnamed road to the westerly right-of-way line of the SOO Line Railroad; thence Northerly 5500 feet, more or less, along said right-of-way to the centerline of Spruce Street; thence Northwesterly 1000 feet, more or less, to a point where the westerly prolongation of the south line of Scott Street intersects the southerly prolongation of the west line of the lots on the west side of Tenth Street; thence North 1000 feet, more or less, along said prolongated line and the west line of the lots on the west side of Tenth Street to the intersection with the westerly prolongation of the centerline of E. Acorn Street; thence Easterly 675 feet, more or less, along said prolongated line and the centerline of E. Acorn Street to the centerline of Ninth Street; thence North 1000 feet, more or less, along the centerline of Ninth Street to the centerline of Pine Street; thence East 175 feet, more or less, along the centerline of Pine Street to its intersection with the southerly prolongation of the west line of the west lots of Block 35, Village of Calumet; thence North 500 feet, more or less, along said prolongated line and west lot lines to the north right-of-way line of Spruce Street, said right-of-way line also being the north line of the Village of Calumet; thence East 1900 feet, more or less, along said north line to its intersection with the northerly prolongation of the centerline of Third Street; thence North 175 feet, more or less, to the shoreline of Calumet Lake; thence Northeasterly 1200 feet, more or less, along said shoreline to its intersection with the northerly

prolongation of the east line of the lots on the east side of Waterworks Road; thence South 1300 feet, more or less, along said prolongated line and east lot lines to the centerline of Pine Street (M 203); thence East 2250 feet, more or less, along said centerline to the point of beginning.

Quincy Unit: Beginning at the Southeast corner of the Southwest Quarter of the Southwest Quarter of Section 25, Township 55 North, Range 34 West, Michigan Principal Meridian; thence Westerly 900 feet, more or less, along the south line of said Section 25 to the east boundary of the City of Hancock; thence Northerly along said city boundary 339.6 feet; thence continuing along said city boundary Westerly 20 feet; thence continuing along said city boundary North 15 degrees 12 minutes West 341 feet; thence continuing along said city boundary Westerly 279.9 feet to its intersection with the west line of said Section 25; thence North 500 feet, more or less, along said section line to the North line of the lots on the north side of Lakeview Avenue; thence Westerly 1000 feet, more or less, along said lot lines to the northwest corner of the western most lot on the north side of Lakeview Avenue; thence Southerly 100 feet, more or less, along the west line of said lot to its intersection with the easterly prolongation of the centerline of Sampson Street; thence Westerly 1200 feet, more or less, along said centerline to the centerline of Hillside Avenue; thence Northwesterly 400 feet, more or less, along the centerline of Hillside Avenue to the centerline of Shafter Street; thence Westerly 150 feet, more or less, along the centerline of Shafter Street to its intersection with the North-South centerline of Section 26, said line also being the City of Hancock boundary line; thence North 2750 feet, more or less, along said center section line to its intersection with the centerline of now abandoned Township Road Q–37 (Streetcar Track); thence Northeasterly 600 feet, more or less, along the centerline of said road to its intersection with the centerline of now abandoned Township Road Q–38 (Karpenan Road); thence, leaving said road on a line bearing North 29 degrees East 4000 feet, more or less, to the centerline of Lake Annie Road; thence Northeasterly 350 feet, more or less, to the east quarter corner of Section 23; thence Northeasterly 5200 feet, more or less, to the intersection of the centerlines of Pontiac Road and an unnamed, abandoned road, said point being 650 feet, more or less, Northwesterly from the centerline of Township Road F–19 (Boston Road), as measured along the centerline of Pontiac Road; thence Southeasterly 650 feet, more or less, along the centerline of Pontiac Road to the centerline of Township Road F–19 (Boston Road); thence Northeasterly 200 feet, more or less, along the centerline of F–19 to the centerline of Township Road F–22; thence Southeasterly along the centerline of F–22 to a point 350 feet, more or less, southeast of F–19 as measured perpendicular to the centerline of F–19; thence Southwesterly 1000 feet, more or less, along a line parallel with and 350 feet southeast of, as measured perpendicular to, the centerline of F–19; thence Southeasterly 550 feet, more or less, along a line measured perpendicular to the centerline of F–19 to its intersection with a line lying parallel with and 150 feet southeast of the centerline of the now abandoned Mesnard Water Tower Road; thence Southwesterly 1000 feet, more or less, along said parallel line to the centerline of Township Road F–23 Paavola Road; thence Westerly 150 feet, more or less, along the centerline of Paavola Road to the centerline of said Mesnard Water Tower Road; thence Southwesterly 3850 feet, more or less, to the intersection of the centerlines of Arcadian Road and Sunshine Road; thence Southeasterly, 2100 feet, more or less, along the centerline of Pewabic Road to its intersection with the westerly prolongation of the centerline of a now abandoned road; thence Easterly 1400 feet, more or less, along the centerline of said abandoned road to its intersection with a line lying parallel with the east line of said Section 25 and passing through the northeast corner of lot 6, block 15 in the Village of Ripley; thence South 4800 feet, more or less, along said parallel line and its southerly prolongation thereof to its intersection with a line parallel with and 1100 feet south of the south line of Section 25; thence West 3000 feet, more or less, along said parallel line to its intersection with the southerly prolongation of the east line of the Southwest Quarter of the Southwest Quarter of Section 25; thence North 1100 feet, more or less, along said prolongated line to the point of beginning.

The maps required by Public Law 102–543, 106 Stat. 3569, 116 U.S.C. 410yy-2 bear a National Park Service Drawing Number of 480–80,000 and are dated September 1993. These maps are on file in the Office of the National Park Service, Department of Interior, the Office of the Midwest Region, National Park Service; and the Office of the Superintendent, Keweenaw National Historical Park.

Dated: November 14, 1993.

David N. Given,

Acting Regional Director, Midwest Region

[FR Doc. 93–23766 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–70–P

Wolf Trap Farm Park General Management Plan/Environmental Impact Statement, Vienna, VA

AGENCY: National Park Service (Interior)

ACTION: Notice of public scoping meetings for the General Management Plan/Environmental Impact Statement.

SUMMARY: Pursuant to Council on Environmental Quality regulations and National Park Service policy, the National Park Service (NPS) announces public scoping meetings to commence development of a General Management Plan/Environmental Impact Statement for Wolf Trap Farm Park.

Wolf Trap Farm Park, a unit of the NPS and home to the Filene Center, is the only unit of the National Park Service dedicated to the performing arts. It is managed as a public/private partnership between the NPS and the Wolf Trap Foundation for the Performing Arts, a private not-for-profit corporation.

General Management Plans are the planning documents for each unit of the national park system. The plans set forth the basic philosophy and management concepts for each park, and set guidelines for park operations. Completion of this plan will take approximately 3 years.

Public involvement in the development of the plan will be crucial to the success of the project. To facilitate and promote this involvement, several series of public meetings will be held at key stages of the planning process. The first will be scoping meetings to give the public an opportunity to tell the NPS what is special that should be promoted and preserved at Wolf Trap Farm Park, and about any issues or concerns they may have regarding the management of the park.

The meetings will be led by officials of the NPS. Representatives from the Wolf Trap Foundation also will be present.

The National Park Service invites interested persons to attend any meetings from the following schedule:

November 29, 7 p.m. Department of the Interior, Cafeteria Conference Room, 18th & C St., NW., Washington, DC

November 30, 2 p.m. Wolf Trap Farm Park, Filene Center, 1551 Trap Road, Vienna, VA

November 30, 7 p.m. Wolf Trap Farm Park, Filene Center.

For further information please contact Joe Lawler, Director, Wolf Trap Farm Park at (703) 255–1808. Written comments may be sent to Mr. Lawler at Wolf Trap Farm Park, 1551 Trap Road, Vienna, VA 22182. To have comments represented in the scoping newsletter, please mail them no later than December 31, 1993.

The responsible official for this EIS is Robert Stanton, Regional Director, National Capital Region, National Park Service. All written comments and requests for further information should be directed to: William Shields, Superintendent, Rock Creek Park, 5000 Glover Northwest, Washington, DC 20015.

Dated: November 12, 1993.

Robert Stanton,

Regional Director, National Capital Region.

[FR Doc. 93–28767 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–70–M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 13, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013–7127. Written comments should be submitted by December 9, 1993.

Carol D. Shull,

Chief of Registration, National Register.

CALIFORNIA

San Diego County

Olivenhain Town Meeting Hall, 423 Rancho Santa Fe Rd., Olivenhain, 93001395

Yuba County

Wheatland Masonic Temple, 400 Front St., Wheatland, 93001396

CONNECTICUT

Hartford County

Terry's Plain Historic District, Roughly bounded by Pharos, Quarry and Terry's Plain Rds. and the Farmington R., Simsbury, 93001417

INDIANA

Brown County

Brown County Bridge No. 36, Hickory Hill Rd. across the N. Fork of Salt Cr., Nashville vicinity, 93001430

Jefferson County

Eleutherian College, IN 250, Lancaster 93001410

Kosciusko County

Winona Lake Historic District, Roughly bounded by Kings Hwy., Chestnut Ave., Twelfth St. and Park Ave., Winona Lake, 93001411

Lawrence County

Indiana Limestone Company Building, 405 I St., Bedford, 93001412

Rush County

Gowdy, John K., House, 619 N. Perkins St., Rushville, 93001414

Rushville Commercial Historic District, Roughly bounded by Fourth, N. Morgan, First and N. Perkins Sts., Rushville, 93001416

Willkie, Wendell Lewis, House, 601 N. Harrison St., Rushville, 93001415

Starke County

Starke County Bridge No. 39, Jct. of Main and Water Sts., across the former Pennsylvania RR cut, Knox, 93001413

LOUISIANA

Orleans Parish

Mid-City Historic District, Roughly bounded by Derbigny St., Conti St., City Park Ave. and I–10, New Orleans, 93001394

MICHIGAN

Ingham County

Emery Houses (Lansing Downtown MRA), 320–322 and 326–328 W. Ottawa, Lansing, 93001409

Iron County

Camp Gibbs (Iron County MRA), 129 Camp Gibbs Rd., Iron River Township, Ottawa NF, Gibbs City vicinity, 93001408

NEBRASKA

Douglas County

Military Road Segment, Jct. of 82nd and Fort Sts., Omaha, 93001400

Lancaster County

President and Ambassador Apartments, 1330 and 1340 Lincoln Mall, Lincoln 93001401

Nuckolls County

Kendall, Wallace Warren and Lillian Genevieve Bradshaw, House, 412 E. Seventh St., Superior, 93001402

Superior Downtown Historic District, Roughly, along Central and Commercial Aves. from 3rd to 5th Sts. and 3rd, 4th, and 5th from Central to Commercial, Superior 93001405

Pawnee County

Lloyd, Harold, Birthplace, Jct. of Pawnee and 4th Sts., NW corner, Burchard, 93001403

Webster County

Auld Public Library, 537 N. Webster, Red Cloud, 93001404

NEW MEXICO

Eddy County

Dam—Sitting Bull Falls Recreation Area (Public Works of the CCC in the Lincoln National Forest MPS), Sitting Bull Falls, Lincoln NF, Carlsbad vicinity, 93001420

Group Picnic Shelter—Sitting Bull Falls Recreation Area (Public Works of the CCC in the Lincoln National Forest MPS), Sitting Bull Falls, Lincoln NF, Carlsbad vicinity, 93001419

Picnic Shelter—Sitting Bull Falls Recreation Area (Public Works of the CCC in the Lincoln National Forest MPS), Sitting Bull Falls, Lincoln NF, Carlsbad vicinity, 93001418

Rio Arriba County

Forest Service Site No. AR–03–10–01–374 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001421

Forest Service Site No. AR–03–10–01–521 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001422

Forest Service Site No. AR–03–10–01–832 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001423

Forest Service Site No. AR–03–10–01–390 (Archaic Sites of the Northwest Jemez Mountains MPS), Address Restricted, Coyote vicinity, 93001424

OHIO

Auglaize County

Fledderjohann, H.E., House, Doctor's Office and Summer Kitchen, 107 E. German St., New Knoxville, 93001388

Clermont County

New Richmond Water Works and Electric Station, 701 Washington St., 93001389

Montgomery County

Insco Apartments Building, 255 N. Main St., Dayton, 93001390

United Brethren Publishing House, 40–46 S. Main St. (7–21 E. Fourth St.), Dayton, 93001391

Portage County

Nelson, Luman, House, 8219 OH 44, Ravenna vicinity, 93001393

Washington County

Kaiser, John, House, 300 Bellevue, St., Marietta, 93001392

PUERTO RICO

Mayaguez Municipality

Isla de Mona (Lighthouse System of Puerto Rico MPS), Address Restricted, Mayaguez vicinity, 93001398

SOUTH CAROLINA

Anderson County

Pelzer Presbyterian Church, 13 Lebby St., Pelzer, 93001407

Saluda County

Saluda Theatre, 107 Law Range, Salude, 93001406

TENNESSEE

Rutherford County

Landsberger—Gerhardt House, 435 N. Spring St., Murfreesboro, 93001397

WISCONSIN

Chippewa County

Cornell Pulpwood Stacker, Cornell Mill Yard Park, Cornell, 93001425

Dane County

Schumann, Frederick, Farmstead, 8313 WI 19, Berry, 93001426

Kewaunee County

Dettman, Art, Fishing Shanty, Church St. at the Ahnapee R., Algoma, 93001428

Milwaukee County

Brown Deer School, 4800 W. Green Brook Dr., Brown Deer, 93001427

Rock County

Look West Historic District (Boundary Increase), Roughly bounded by Laurel Ave. and N. Madison, W. Court and N. Palm Sts., Janesville, 93001429

[FR Doc. 93–28765 Filed 11–23–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337–TA–356]

Certain Integrated Circuit Devices, Processes for Making Same, Components Thereof, and Products Containing Same; Notice of Commission Determination Not To Review an Initial Determination Designating the Investigation "More Complicated"

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) designating the above-captioned investigation "more complicated." The deadline for completion of the investigation is extended by six months, *i.e.*, until March 1, 1995.

FOR FURTHER INFORMATION CONTACT: Matthew T. Bailey, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3108.

SUPPLEMENTARY INFORMATION: On October 12, 1993, respondents Mitsubishi Electric Corp. and Mitsubishi Electronics America, Inc. moved that the subject investigation be designated more complicated. The Commission investigative attorney supported the motion and complainants National Semiconductor Corp. and Fairchild Semiconductor Corp. opposed it.

The ALJ issued an ID granting Mitsubishi's motion on October 21, 1993. The ALJ designated the investigation more complicated due to the involved nature of the integrated circuit subject matter, the large number of patents and claims, the large number of affirmative defenses, and the large number of accused products.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–2648.

Issued: November 15, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28871 Filed 11–23–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–358]

Certain Recombinantly Produced Human Growth Hormone; Commission Determination Not To Review an Initial Determination Granting the Motion of Eli Lilly Co. to Intervene for the Limited Purpose of Seeking Disqualification Counsel for Complainant Genentech, Inc.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review the presiding administrative law judge's (ALJ) initial determination (ID) in the above-captioned investigation granting a motion for intervention for the limited purpose of seeking disqualification of counsel for complainant Genentech, Inc.

FOR FURTHER INFORMATION CONTACT: Jean Jackson, Esq., Office of the General Counsel, U.S. International Trade Commission, telephone 202–205–3104.

SUPPLEMENTARY INFORMATION: On September 21, 1993, Eli Lilly Co. (Lilly) moved pursuant to Commission interim rule 210.26, 19 CFR 210.26, for limited intervention in this investigation for the purpose of seeking disqualification of Fish and Richardson, the law firm serving as counsel for complainant Genentech, Inc. (Genentech). In the same motion, Lilly moved to disqualify Genentech's firm on conflict of interest grounds.

Genentech responded to Lilly's motion by stating that it did not oppose the motion for the sole and limited purpose seeking to disqualify Fish & Richardson. The Commission investigative attorney (IA) responded that he did not oppose the motion for intervention as long as Lilly's counsel was not given access to confidential business information under the administrative protective order. Both Genentech and the IA opposed the portion of the motion concerning disqualification. Some respondents in the investigation notified the presiding ALJ that they had no objection to Lilly's motion; the remaining respondents notified the ALJ that they did not intend to respond to the motion.

On October 20, the ALJ issued Order No. 23, which granted the portion of Lilly's motion concerning intervention, but denied the portion of the motion requesting disqualification. On October 22, 1993, the ALJ reissued the portion of his order granting intervention as an ID (Order No. 28). No petitions for review of the ID or agency comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53(h), 19 CFR 210.53(h).

Copies of the ID and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 15, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28870 Filed 11–23–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–357]

Cerain Sports Sandals and Components Thereof; Notice of Initial Determination Terminating Respondent on the Basis of Settlement Agreement

AGENCY: U.S. International Trade Commission.

ACTION: Notice is hereby given that the Commission has received an initial determination from the presiding administrative law judge in the above captioned investigation terminating the following respondent on the basis of a settlement agreement: Fang Chun Ind. Ltd.

SUPPLEMENTARY INFORMATION: This investigation is being conducted pursuant to section 337 of the Tariff Act of 1930 (19 U.S.C. 1337). Under the Commission's rules, the presiding officer's initial determination will become the determination of the Commission thirty (30) days after the date of its service upon the parties, unless the Commission orders review of the initial determination. The initial determination in this matter was served upon parties on November 19, 1993.

Copies of the initial determination, the settlement agreement, and all other nonconfidential documents filed in connection with this investigation are available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone (202) 205–2000. Hearing impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on (202) 205–1810.

WRITTEN COMMENTS: Interested persons may file written comments with the Commission concerning termination of the aforementioned respondents. The original and 14 copies of all such documents must be filed with the Secretary to the Commission, 500 E Street, SW., Washington, DC 20436, no later than 10 days after publication of this notice in the **Federal Register**. Any person desiring to submit a document (or portions thereof) to the Commission in confidence must request confidential treatment. Such requests should be directed to the Secretary to the Commission and must include a full statement of the reasons why confidential treatment should be granted. The Commission will either accept the submission in confidence or return it.

FOR FURTHER INFORMATION CONTACT: Ruby J. Dionne, Office of the Secretary, U.S. International Trade Commission, Telephone (202) 205–1802.

Issued: November 19, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28874 Filed 11–23–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation 332–347]

Global Competitiveness of U.S. Environmental Technology Industries: Municipal & Industrial Water and Wastewater

AGENCY: United States International Trade Commission.

ACTION: Institution of investigation and scheduling of public hearing.

EFFECTIVE DATE: November 15, 1993.

SUMMARY: Following receipt of a request on October 15, 1993, from the Senate Committee on Finance, the Commission instituted investigation No. 332–347, Global Competitiveness of U.S. Environmental Technology Industries: Municipal & Industrial Water and Wastewater, under section 332(g) of the Tariff Act of 1930 (19 U.S.C. 1332(g)).

FOR FURTHER INFORMATION CONTACT: Industry-specific information may be obtained from Mr. David Ingersoll (202–205–2218) or Ms. Elizabeth Nesbit (202–205–3355), Office of Industries, U.S. International Trade Commission, Washington, DC 20436. For information on the legal aspects of this investigation contact Mr. William Gearhart of the Office of the General Counsel (202–205–3091). Hearing impaired individuals are advised that information on this matter can be obtained by contacting the TDD terminal on (202) 205–1107.

Background

This is the first of two competitiveness studies requested by the Committee on Finance in its letter of October 14, 1993. The second study concerns air pollution prevention and abatement equipment and services and will be instituted at a later date. The Commission expects to submit its first report to the Committee within 12 months of the release of final report in the series on American Industry and the Environment being conducted by the Office of Technology Assessment (OTA). The Commission expects to submit its second report not later than 12 months after delivery of its first report.

In its report, the Commission will, as requested by the Committee in its October 14, 1993, letter, seek to examine factors found by the Commission to be relevant to the global competitiveness of the environmental technology industry, including but not limited to government policies such as export promotion and market development, environmental regulation, technology transfer, technical development assistance, economic development or other financial assistance, and intellectual property protection.

Public Hearing

A public hearing in connection with the investigation will be held at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC, beginning at 9:30 a.m. on April 26, 1994. All persons shall have the right to appear, by counsel or in person, to present information and to be heard. Requests to appear at the public hearing should be filed with the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436, no later than 5:15 p.m., April 12, 1994. Any prehearing briefs (original and 14 copies) should be filed not later than 5:15 p.m., April 15, 1994; the deadline for filing post-hearing briefs or statements is 5:15 p.m., May 10, 1994.

Written Submissions

In lieu of or in addition to participating in the hearing, interested parties are invited to submit written statements concerning the matters to be addressed by the Commission in its report on this investigation. Commercial or financial information that a submitter desires the Commission to treat as confidential must be submitted on separate sheets of paper, each clearly marked "Confidential Business Information" at the top. All submissions requesting confidential treatment must conform with the requirements of section § 201.6 of the Commission's Rules of Practice and Procedure (19 CFR 201.6). All written submissions, except for confidential business information, will be made available in the Office of the Secretary of the Commission for inspection by interested parties. To be assured of consideration by the Commission, written statements relating to the Commission's report should be submitted to the Commission at the earliest practical date and should be received no later than the close of business on June 30, 1994. All submissions should be addressed to the Secretary, United States International Trade Commission, 500 E Street SW., Washington, DC 20436.

Persons with mobility impairments who will need special assistance in

gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

List of Subjects

Environmental protection, environmental technology, water supply, wastewater treatment, export promotion, air pollution.

Issued: November 17, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–28873 Filed 11–23–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

[Ex Parte No. 394]

Cost Ratio for Recyclables—1980 Determination

AGENCY: Interstate Commerce Commission (ICC).

ACTION: Rate reduction order in connection with recyclables aggregate compliance proceeding.

SUMMARY: The ICC, after reopening the proceeding in which it determined that rates for recyclable commodities shipped by railroad were in aggregate compliance with the rate ceiling set pursuant to 49 U.S.C. 10731(e), has found that movements of non-ferrous scrap metal from the former southern to the former eastern ratemaking territories during the period between 1982 and 1985 were not in aggregate compliance with the rate ceiling. The Commission has ordered rate reductions.

EFFECTIVE DATE: The Commission's decision will be effective on December 23, 1993.

FOR FURTHER INFORMATION CONTACT: Craig Keats, (202) 927–6046 or Thomas Schmitz (202) 927–5720; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423, Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD Services (202) 927–5721].

Regulatory Flexibility Certification

Pursuant to 5 U.S.C. 605(b), we conclude that our action in this proceeding will not have a significant economic impact on a substantial number of small entities. No new regulatory requirements are imposed, directly or indirectly, on such entities. Rather, we are simply assuring that railroad rate levels are consistent with the Interstate Commerce Act. The economic impact of our action, if any, is not likely to be felt by a substantial number of small entities.

This action will not significantly affect the quality of the human environment or conservation of energy resources.

Decided: November 16, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28882 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32406]

City of Dallas, City of Fort Worth, and D/FW Railtran—Petition For Declaratory Order

AGENCY: Interstate Commerce Commission.

ACTION: Institution of declaratory order proceeding.

SUMMARY: In response to a petition filed by the Cities of Dallas and Fort Worth, TX (Cities) and D/FW RAILTRAN (RAILTRAN), this proceeding is instituted to determine whether the Cities and RAILTRAN are now or will become carriers under the Interstate Commerce Act (Act) and whether regulatory approvals are required for (1) a Joint Use Agreement (JUA) with Missouri Pacific Railroad Company (MP) and (2) and a Trackage Rights Agreement (TRA) with Burlington Northern Railroad Company (BN). Interested persons are invited to file comments. Petitioners have requested expedited action.

DATES: Written comments (original and 10 copies) must be filed by December 6, 1993, and concurrently served on the representative of petitioners.

ADDRESSES: Send comments referring to Finance Docket No. 32406 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423 and (2) David A. Hirsh, Harkins Cunningham, suite 600, 1300 Nineteenth Street, NW., Washington, DC 20036–7600.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. (TDD for hearing impaired: (202) 927–5721.)

SUPPLEMENTARY INFORMATION: Under 49 U.S.C. 10321, the Commission has authority to issue declaratory and interpretive orders and in its sound discretion may issue a declaratory order to terminate a controversy or remove uncertainty under 5 U.S.C. 554(e) and 49 U.S.C. 10321. This proceeding is instituted at the request of petitioners to clarify their status as noncarriers. According to the petition, the Cities acquired the 34-mile rail line between Dallas and Fort Worth from the Trustee of the former Chicago, Rock Island and Pacific Railroad Company (RI). RI had previously been authorized to abandon the line. RAILTRAN was formed in 1984 to preserve the rail corridor between Fort Worth and Dallas for commuter rail service. At present MP and BN operate freight service on the RAILTRAN corridor.

Petitioners indicate that they are about to implement rail commuter operations over the line and negotiated new agreements with MP and BN to accommodate the proposed passenger service. They primarily want the Commission to clarify whether they would become common carriers under the Act by executing the new agreements with MP and BN and by contracting with a passenger operator. They also want the Commission to determine whether regulatory approval is required for the agreements with MP and BN and an agreement with a passenger operator. Also they want the Commission to determine whether a contract with a designee other than MP or BN to dispatch and maintain the RAILTRAN corridor requires Commission approval and whether that designee is eligible for a modified certificate under 49 CFR 1150 subpart C.

Petitioners indicate that under the JUA, RAILTRAN would reassign MP's maintenance and dispatching obligations to its designee by no later than January 1, 1994. They request expedited action on the petition and indicate they have served copies of the petition on interested persons. Copies of the petition are available for public inspection and copying at the Office of the Secretary, Interstate Commerce Commission, Washington, DC 20423.

Decided: November 17, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28883 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32339]

Jackson, Gordonville, and Delta Railroad Co.—Acquisition and Operation Exemption—Portion of the Golden Cat Railroad Corporation's Delta Branch

The Jackson, Gordonville, and Delta Railroad Co. (JGDR) has filed notice of exemption to acquire an approximately 0.05-mile segment of The Golden Cat Railroad Corporation's (GCRC) former "Delta Branch" between mileposts 149.5 and 150.0 at or near Delta, in Cape Girardeau County, MO.[1] The parties planned to consummate the transaction on October 5, 1993, the effective date of this notice.

Any comments must be filed with the Commission and served on: Robert B. Hebert, 1800 INB Tower, One Indiana Square, Indianapolis, IN 46204.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 18, 1993.

By the Commission. David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28884 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[1] In Finance Docket No. 32328, *Jackson, Gordonville, and Delta R. Co.—Acq. & Oper. Exempt.—Line in Cape Girardeau County, MO* (not printed), served and published in the **Federal Register** on August 12, 1993 (58 FR 42986), JGDR's acquisition and operation of another GCRC line was exempted under 49 CFR 1150.31, from the prior approval requirements of 49 U.S.C. 10901. In a supplementary verified letter filed on November 9, 1993, JGDR states that no action has been taken to consummate the August 12 notice of exemption and that it was the intention of the parties that both of these exemption proceedings be handled contemporaneously while JGDR remained a noncarrier. Because the Commission's records indicate that JGDR has no tariffs on file and it does not appear that JGDR has otherwise consummated the transaction exempted in Finance Docket No. 32328, section 1150.31 appears applicable to this transaction as well.

In a related proceeding, Docket No. AB–399X, GCRC has sought an exemption with respect to the remainder of its Delta Branch, between milepost 150.0 and the end of the line at milepost 160.3.

[Docket Nos. AB–32 (Sub-No. 62X) and AB–355 (Sub–No. 14Xx)]

Boston and Maine Corp.–Abandonment Exemption—in Hartford County, CT, and Hampden County, MA; Springfield Terminal Railway Co.—Discontinuance Exemption—in Hartford County, CT, and Hampden County, MA

Boston and Maine Corporation (B&M), as owner, and Springfield Terminal Railway Company (ST), as lessee, have filed a notice of exemption under 49 CFR part 1152 Subpart F—Exempt Abandonments and Discontinuances for B&M to abandon and ST to discontinue service over approximately a 12.50-mile segment of B&M's Hazardville Branch rail line between milepost 0.00 and milepost 12.50, in Springfield, Hartford County, CT, and Hazardville, Hampden County, MA.

B&M and ST have certified that: (1) No local traffic has moved over the line for at least 2 years; (2) any overhead traffic on the line has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period, and (4) that the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic reports), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication) and 49 CFR 1152.50(d)(1) (notice to governmental agencies) have been met.

As a condition to this exemption, any employee adversely affected by the abandonment and discontinuance of service shall be protected under Oregon Short Line R. Co.—Abandonment—Goshen, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expression of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking requests under 49 CFR 1152.29[3] must be filed by December 6, 1993. Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 14, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicant's representative: Kevin J. O'Connell, Boston and Maine Corporation, Springfield Terminal Railway Company, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

Applicants have filed an environmental report which addresses the effects of the abandonment and discontinuance of service, if any, on the environmental and historic resources. SEE will issue an environmental assessment (EA) by November 29, 1993. Interested persons may obtain a copy of the EA by writing to SEE (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–5449. Comments on environmental and historic preservation matters must be filed within 15 days after the EA is available to the public.

Environmental conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 17, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–28885 Filed 11–23–93; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be issued routinely by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. See Exemption of Out-of-Service Rail Lines, 5 I.C.C.2d 377 (1989). Any entity seeking a stay on environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use request as long as it retains jurisdiction to do so.

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Arctic Fisheries, Inc.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that on November 8, 1993, a proposed Consent Decree in *United States* v. *Arctic Fisheries, Inc.*, Civil Action No. C91–548W (W.D. Wash.),

was lodged with the United States District Court for the Western District of Washington. The Consent Decree resolves the United States' allegations against Arctic Fisheries, Inc. for violations of the Clean Water Act, 33 U.S.C. 1301 *et seq.*, by Arctic Fisheries, Inc. in this civil action. The Decree requires Arctic Fisheries, Inc. to pay a civil penalty in the amount of $725,000 to the United States; to comply with the provisions of the Clean Water Act in the future; to implement sampling of the affluent from the Defendant's fish meal plant; and to eliminate all but incidental discharges of seafood processing waste to the waters of Lost Harbor, Alaska.

The Department of Justice will receive comments relating to the proposed Consent Decrees for a period of thirty (30) days from the date of this publication. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Arctic Fisheries, Inc.*, D.J. No. 90–5–1–1–3569.

The proposed Consent Decree may be examined at the Office of the United States Attorney for the Western District of Washington, 3600 Seafirst Building, 800 Fifth Avenue, Seattle, Washington 98104; the Region 10 Office of the Environmental Protection Agency, 1200 Sixth Avenue, Seattle, Washington 98101; and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005 (Tel: 202–624–0892). A copy of the proposed Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $5.25 (25 cents per page reproduction cost) payable to Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment & Natural Resources Division.

[FR Doc. 93–28778 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree in Action Brought Under the Clean Air Act

In accordance with 28 CFR 50.7, notice is hereby given that on November 5th, 1993, a proposed consent decree in *United States* v. *Columbia Aluminum Corporation*, Civil Action No. CY–93–3125–AAM, was lodged with the United States District Court for the Eastern District of Washington.

This action was brought by the United States of America on behalf of the Environmental Protection Agency ("EPA") pursuant to section 113(b) of the Clean Air Act ("CAA"), 42 U.S.C. 7413(b) for injunctive relief and assessment of civil penalties against Columbia Aluminum Corporation ("Columbia"). The complaint alleges that Columbia violated section 113 of the CAA, 42 U.S.C. 7413, and the conditions and limitations of its Prevention of Significant Deterioration ("PSD") permit, No. PSDD–X–88–01. Pursuant to the proposed consent decree, defendant Columbia will pay to the United States a civil penalty of $90,160 and will operate its Goldendale facility in compliance with the CAA and the conditions and limitations of its PSD permit. The Department of Justice, for a period of thirty (30) days from the date of this publication, will receive comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General, Environment and Natural Resource Division, Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044, and should refer to *United States* v. *Columbia Aluminum Corporation*, DOJ number 90–5–2–1–1633.

The proposed consent decree may be examined at the U.S. Environmental Protection Agency, Office of the Regional Counsel, Region X, 1200 Sixth Avenue, Seattle, Washington 98101, and at the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $2.75 (25 cents per page reproduction costs) payable to "Consent Decree Library".

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–28781 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Consent Judgment Pursuant to the Comprehensive Environmental Response, Compensation, and Liability Act; United States v. Endicott Johnson Corp. et al.

In accordance with Departmental Policy, 28 CFR 50.7, 38 FR 19029, and 42 U.S.C. 9622(d), notice is hereby given that a proposed consent decree in *United States* v. *Endicott Johnson Corporation, International Business Machines Corp., the Village of Endicott, New York, and the Town of Union, New York*, (N.D.N.Y.), Civil Action No. 93CV–1409, was lodged with the United States District Court for the Northern District of New York on November 4, 1993. The proposed consent decree requires the Defendants to implement remedial measures for the Endicott Wellfield Superfund Site, located in the Village of Endicott, Broome County, New York, set forth in the September 30, 1992 Record of Decision (Operable Unit 2), to reimburse the United States for $1,263,773 is past response costs incurred in connection with the Site, and to pay the United States' future oversight costs to be incurred in connection with the Operable Unit 2 remedy. The remedy consists of capping the Endicott Landfill with a low permeability barrier cap which will decrease the leaching of contaminants from the Landfill.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, written comments relating to the proposed Consent Decree. Comments should be address to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530 and should refer to *United States* v. *Endicott Johnson Corp, et al.*, D.O.J. Ref. No. 90–11–3–299B.

The proposed Consent Decree may be examined at the Office of the United States Attorney, 319 Federal Building, Binghamton, New York 13901, c/o Thomas Walsh, (607) 772–2888; at the Region II Office of the Environmental Protection Agency, 26 Federal Plaza, room no. 437, New York, New York 10278; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. A copy of the Consent Decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please enclose a check in the amount of $52.25 (25 cents per page reproduction costs) payable to Consent Decree Library.

John C. Cruden,

Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–28777 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Water Act; United States v. Oklahoma Ordnance Works Authority and the State of Oklahoma

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Oklahoma Ordnance Works Authority and the State of Oklahoma*, Civil Action No. 93–C 969B,

was lodged on October 29, 1993 with the United States District Court for the Northern District of Oklahoma. The proposed consent decree resolves the United States' ("U.S.") claims under the Clean Water Act for violations of National Pollutant Discharge Elimination System ("NPDES") permits issued to Oklahoma Ordnance Works Authority ("OOWA") for its publicly-owned treatment works and water supply facility located at the Mid-America Industrial Park in Pryor, Mayes County, Oklahoma. The consent decree also resolves the U.S.'s claims for OOWA's failure to submit a timely permit application. The consent decree provides for OOWA's payment of a civil penalty of $750,000 and construction of additional treatment facilities.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Oklahoma Ordnance Works Authority and the State of Oklahoma,* Civil Action No. 93-C 969B, DOJ Ref. No. 90–5–1–1–3819.

The proposed consent decree may be examined at the Office of the United States Attorney, U.S. Courthouse, room 3900, 333 west forth Street, Tulsa, Oklahoma 74103; Office of the Environmental Protection Agency, Region 6, 1445 Ross Avenue, Dallas, Texas 75202; and the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $6.25 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environmental and Natural Resources Division.

[FR Doc. 93–28780 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Sunshine Biscuits, Inc., et al.

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Sunshine Biscuits, Inc. and International Dismantling and Machinery Corporation,* Civil Action No. 93–2448–JWL, was lodged on November 2, 1993, with the United States District Court for the District of Kansas. The complaint alleges that defendants violated the Clean Air Act and the work practice standards of the asbestos NESHAP during two asbestos removals at defendant Sunshine's facility located at 801 Sunshine Road, Kansas City, Kansas.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Sunshine Biscuits, Inc. and International Dismantling and Machinery Corporation, DOJ Ref.* # 90–5–2–1–1769.

The proposed consent decree may be examined at the office of the United States Attorney, 812 N. 7th, Kansas City, Kansas 66101; the Region VII Office of the Environmental Protection Agency, 726 Minnesota Ave., Kansas City, Kansas 66101, and at the Consent Decree Library, 1120 G. Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $5.25 payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–28779 Filed 11–23–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Labor Surplus Area Classifications Under Executive Orders 12073 and 10582; Notice of the Annual List of Labor Surplus Areas; Correction

AGENCY: Employment and Training Administration, Labor.

ACTION: Correction.

SUMMARY: In FR document 93–25627, beginning on page 53954 in the issue of Tuesday, October 19, 1993, the following areas were omitted and should be inserted in the third column in the table entitled "Labor Surplus Areas Eligible For Preference October 1, 1993 Through September 30, 1994," under the State of Texas, following the entry of "Balance of Cameron County."

Eligible labor surplus areas	Civil jurisdictions included
Texas	
Cass County	Cass County.
Del Rio City	Del Rio City In.
	Val Verde County.
Dimmit County	Dimmit County.
Duval County	Duval County.
Eagle Pass City	Eagle Pass City In.
	Maverick County.
Balance of Ector County.	Ector County Less.
	Odessa City.
Edinburg City	Edinburg City In.
	Hidalgo County.
El Paso City	El Paso City In.
	El Paso County.
Balance of El Paso County.	El Paso County Less.
	El Paso City.
Frio County	Frio County.
Ft. Worth City	Ft. Worth City In.
	Tarrant County.
Galveston City	Galveston City In.
	Galveston County.
Harlingen City	Harlingen City In.
	Cameron County.
Henderson County	Henderson County.
Balance of Hidalgo County.	Hidalgo County Less.
	Edinburg City.
	McAllen City.
	Mission City.
	Pharr City.
	Weslaco City.
Jasper County	Jasper County.
Jim Hogg County	Jim Hogg County.
Jim Wells County	Jim Wells County.
Killeen City	Killeen City In.
	Bell County.
La Salle County	La Salle County.
Laredo County	Laredo City In.
	Webb County.
Liberty County	Liberty County.
Longview City	Longview City In.
	Gregg County.
	Harrison County.
Loving County	Loving County.
Marion County	Marion County.
Matagorda County	Matagorda County.

Dated: November 17, 1993.

Doug Ross,

Assistant Secretary.

[FR Doc. 93–28813 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–30–M

Labor Surplus Area Classification Under Executive Orders 12073 and 10582; Notice of Addition to the Annual List of Labor Surplus Areas

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

DATES: The addition to the annual list of labor surplus areas is effective December 1, 1993.

SUMMARY: The purpose of this notice is to announce an addition to the annual list of labor surplus areas.

FOR FURTHER INFORMATION CONTACT: Richard Hardin, Chief, Division of Planning, USES, Employment and Training Administration, 200 Constitution Avenue, NW., room N–4470, Attention: TEESS, Washington, DC 20210. Telephone: 202–219–5185.

SUPPLEMENTARY INFORMATION: Executive Order 12073 requires executive agencies to emphasize procurement set-asides in labor surplus areas. The Secretary of Labor is responsible under that Order for classifying and designating areas as labor surplus areas. Executive agencies should refer to Federal Acquisition Regulation part 20 (48 CFR part 20) in order to assess the impact of the labor surplus area program on particular procurements.

Under Executive Order 10582 executive agencies may reject bids or offers of foreign materials in favor of the lowest offer by a domestic supplier, provided that the domestic supplier undertakes to produce substantially all of the materials in areas of substantial unemployment as defined by the Secretary of Labor. The preference given to domestic suppliers under Executive Order 10582 has been modified by Executive Order 12260. Federal Acquisition Regulation part 25 (48 CFR part 25) implements Executive Order 12260. Executive agencies should refer to Federal Acquisition Regulation part 25 in procurements involving foreign businesses or products in order to assess its impact on the particular procurements.

The Department of Labor regulations implementing Executive Orders 12073 and 10582 are set forth at 20 CFR part 654, subparts A and B. Subpart A requires the Assistant Secretary of Labor to classify jurisdictions as labor surplus areas pursuant to the criteria specified in the regulations and to publish annually a list of labor surplus areas. Pursuant to those regulations the Assistant Secretary of Labor published the annual list of labor surplus areas on October 19, 1993. (58 FR 53943).

Subpart B of part 654 states that an area of substantial unemployment for purposes of Executive Order 10582 is any area classified as a labor surplus area under subpart A. Thus, labor surplus areas under Executive Order 12073 are also areas of substantial unemployment under Executive Order 10582.

The area described below has been classified by the Assistant Secretary as a labor surplus area pursuant to 20 CFR 654.5(b) (48 FR 15615 April 12, 1983) and is effective December 1, 1993.

The list of labor surplus areas is published for the use of all Federal agencies in directing procurement activities and locating new plants or facilities.

Signed at Washington, DC on November 17, 1993.

Doug Ross,

Assistant Secretary.

Addition to the Annual List of Labor Surplus Areas

December 1, 1993.

Labor surplus areas	Civil jurisdictions included
New York: Town of Wappinger	Wappinger Town in Dutchess County.

[FR Doc. 93–28814 Filed 11–23–93; 8:45 am]

BILLING CODE 4510-30-M

Pension and Welfare Benefits Administration

[Application No. D–9442 et al.]

Proposed Exemptions; Donohoe Restated Profit Sharing Plan and Trust et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Proposed Exemption, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state: (1) The name, address, and telephone number of the person making the comment or request, and (2) the nature of the person's interest in the exemption and the manner in which the person would be adversely affected by the exemption. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing. A request for a hearing must also state the issues to be addressed and include a general description of the evidence to be presented at the hearing.

ADDRESSES: All written comments and request for a hearing (at least three copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5649, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Proposed Exemption. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of proposed exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of proposed exemption are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Donohoe Restated Profit Sharing Plan and Trust (the Plan) Located in Washington, DC

Exemption Application No. D–9442

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1), and 406(b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to the proposed cash sale by the Plan of shares of common stock of the Federal Center Plaza Corporation (FCPC) to FCPC; provided that:

(1) As the result of the sale, the Plan will receive in cash the greater of $25.00 per share or the fair market value of the shares of FCPC, as determined by an independent, qualified appraiser as of the date of the sale;

(2) The Plan will pay no commissions or fees in regard to the transaction; and

(3) The terms of the sale will be no less favorable to the Plan than those it would have received in similar circumstances when negotiated at arm's length with unrelated third parties.[1]

Summary of Facts and Representations

1. The Plan is a defined contribution profit sharing plan which was established by FCPC and which has been in effect since December 31, 1963. Thereafter, the Plan was restated and amended on September 25, 1990. It is represented that, as of June 14, 1993, the Plan had 370 participants and beneficiaries.

2. On December 30, 1986, FCPC, the original sponsor of the Plan, was subject to a reorganization, pursuant to section 368(a)(1)(D) of the Code. As a result of this reorganization, FCPC transferred certain assets to a newly created Delaware corporation, the Donohoe Companies, Inc. (Donohoe). It is represented that pursuant to the terms of the reorganization of FCPC, each shareholder of FCPC, including the Plan, in addition to retaining shares of FCPC, also received for each share of FCPC one share of Donohoe common stock and three shares of Donohoe preferred stock. However, it is represented that Donohoe and FCPC are not members of a controlled group of corporations within the meaning of section 1563(a) of the Code. As a result, FCPC and Donohoe are not affiliates within the meaning of section 407(d)(7) of the Act. Both Donohoe and FCPC are engaged in the business of developing, constructing, owning, and managing real estate.

After the reorganization of FCPC, Donohoe adopted the Plan on January 12, 1987, and became a participating employer along with FCPC. As of December 30, 1987, FCPC had eight (8) employees, and Donohoe had 426 employees. As of December 31, 1989, six (6) employees remained on the FCPC payroll who also performed services for Donohoe. It is represented that, as of December 31, 1989, those six (6) FCPC employees were transferred exclusively to Donohoe and thereafter received compensation solely from Donohoe. Since the transfer of these employees, FCPC, which still is in existence, no longer has any employees and has made no contributions to the Plan, even though FCPC is listed as one of the corporations and affiliates who are defined as employers, pursuant to Article 1.12 of the Plan document.[2] However, it is represented that employees of FCPC who transferred to Donohoe retained the same accounts in the Plan and received vesting credit in the Plan for all years of service with FCPC. It is represented that two (2) employees of FCPC who retired before December 31, 1986, and eight (8) beneficiaries of deceased participants who were former employees of FCPC are currently receiving benefits under the Plan.[3]

3. The provisions of the Plan provide for an administrative committee (the Administrative Committee) which is responsible for the operation and administration of the Plan. The Administrative Committee has the power to delegate fiduciary responsibility among its members or to other designated persons, including the power to direct the trustees of the Plan (the Trustees) concerning certain matters. The Trustees are responsible under the provisions of the Plan to receive contributions, and to hold, invest, and disburse the assets of the Plan for the benefit of the participants and beneficiaries.

The members of the Administrative Committee are shareholders of both FCPC and Donohoe. One of the members of the Administrative Committee, James A. Donohoe III is a director, president, and chief executive officer of both FCPC and Donohoe. The Trustees of the Plan, John E. Stinchfield and Robert A. Plitt, are officers, directors, and shareholders of both FCPC and Donohoe.

4. As of December 31, 1992, the aggregate fair market value of the total assets of the Plan was $12,316,859. It is represented that approximately 1.6% of the assets of the Plan consist of the common stock of FCPC and approximately 3% of the Plan's assets consist of shares of common and preferred stock in Donohoe. It is represented that the Plan acquired the shares of FCPC through purchases from various shareholders and from contributions by FCPC.[4] The contributions occurred on June 7, 1978, and August 31, 1979, when FCPC contributed in kind 24,000 and 7,237 shares of common stock of FCPC, respectively. The purchases by the Plan occurred between 1965 and 1980 when the Plan purchased approximately 28,763 shares of common stock of FCPC for various prices ranging from $4.50 to $12.50 per share.[5] It is represented that as of June 19, 1980, the Plan held 60,000 shares of common stock of FCPC.

5. It is represented that on approximately ten (10) separate occasions between December 31, 1990, and August 23, 1993, some of the shares of FCPC held by the Plan were distributed to terminating participants,

[1] For purposes of this exemption, references to specific provisions of title I of the Act, unless otherwise specified, refer also to the corresponding provisions of the Code.

[2] The Department expresses no opinion as to whether FCPC is an employer, as defined by section 3(14)(C) of the Act, any of whose employees are covered by the Plan or whether the shares of stock of FCPC constitute qualifying employer securities.

[3] The applicant, citing to Treasury regulation 1.414(l)–1(b)(1), maintains that the Plan is a single plan and will not fail to remain so because two employers, whether or not affiliated, contribute. In this regard, it is represented that all the assets of the Plan are available to pay benefits to all participants and beneficiaries and forfeitures are and were allocated to participants, regardless of the corporation for which the employee performed services.

[4] The applicant represents that the in kind contributions to the Plan of shares of FCPC were not prohibited transactions, under section 406 of the Act, because there was no obligation on the part of FCPC to make monetary contributions to the Plan in those years under the terms of the Plan or pursuant to a corporate resolution. The Department expresses no opinion as to whether the shares of stock of FCPC were qualifying employer securities, as defined by section 407(d)(5) of the Act, or whether the contributions or the purchases of such shares by the Plan were covered by the statutory exemption provided by section 408(e) of the Act, nor is the Department offering relief for transactions other than those proposed. Further, the Department notes that the Trustees' decision to acquire and hold the shares of FCPC are governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act.

[5] The applicant represents that all of the sellers of shares of FCPC to the Plan (including Joseph E. Donohoe) after 1974 were stockholders who were not employees, Plan participants, or parties in interest under section 3(14) of the Act.

pursuant to certain elections made by such participants. In this regard, section 12.04 of the Plan document provides that terminating participants shall upon distribution of benefits receive in kind the whole number of shares then allocated to their account and the balance in cash, including the value of any fractional shares. All shares so distributed are subject to a "right of first refusal" which provides that prior to any subsequent sale, the terminating participant must first offer such shares to FCPC or Donohoe, as appropriate. It is represented that upon receipt of election forms signed by terminating participants authorizing the sale of such shares to Donohoe and FCPC, the Plan instead of distributing in kind to the terminating participants the shares of FCPC and Donohoe, paid in the aggregate approximately $118,024 to such participants in cash for such shares. It is represented that thereafter, within 23 to 86 days after the Plan had made such payments to such participants, Donohoe and the FCPC paid the Plan for the purchase of their respective shares of stock. It is further represented that, as of November 2, 1993, there are no outstanding account receivables due to the Plan with respect to such distributions.[6] As of the date the application was filed, it is represented that the Plan holds 35,877 shares of common stock of FCPC which constitutes approximately 7% of the issued and outstanding shares of FCPC.

6. FCPC proposes to purchase in full and for cash the remaining 35,877 shares of FCPC common stock held by the Plan at a price of $25.00 per share. This proposed price of $25.00 per share which the Plan will receive for the sale of the shares to FCPC exceeds the per share fair market value of such shares, as determined by an independent, qualified third party appraiser. In this regard, Peter J. Phalon and William L. Leffler of Arthur Andersen & Co. prepared an appraisal report, dated March 31, 1993, which established the fair market value of a minority interest in FCPC at $16.00 per share.

It is represented that the transaction is administrative feasible, because FCPC will purchase the shares for cash in a single one time transaction. It is further represented that the transaction is in the interest of the Plan, as it will permit the Plan to liquidate its minority holding in FCPC and invest the proceeds in more productive assets. The Plan will pay no commissions as a result of the sale of shares of FCPC common stock to FCPC. It is represented that the transaction is protective of the rights of the participants and beneficiaries, because the per share price the Plan will receive from the sale exceeds the cost of between $4.50 to $12.50 per share expended by the Plan when it acquired such shares. In this regard, the proposed sale is part of a larger transaction pursuant to a proposed merger under which the shares of all but approximately thirty-five (35) shareholders of FCPC will be redeemed at a price of $25.00 per share. It is anticipated that the Trustees of the Plan will also redeem the shares of FCPC which each of the Trustees holds in his individual capacity at the price of $25.00 per share. After the merger is completed, FCPC through its remaining shareholders intends on January 1, 1994, to elect to become a subchapter S corporation under section 1361 of the Code.

7. In summary, the applicant, represents that the proposed transaction satisfies the criteria of section 408(a) of the Act because:

(a) The sale of the shares of FCPC will be a one time transaction for cash;

(b) As the result of the sale, the Plan will receive an amount per share which will be greater than the fair market value of the shares of FCPC, as determined by an independent, qualified appraiser as of the date of the sale;

(c) The amount the Plan will receive as the result of the sale of the shares of FCPC will be greater than the cost to the Plan when such shares were acquired;

(d) The Plan will be able to convert a minority interest in FCPC into liquid assets;

(e) The Plan will be able to invest the proceeds from the sale in more productive assets; and

(f) The Plan will pay no commissions or fees in regard to the transaction.

Tax Consequences of Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee benefit plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less than or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan and therefore must be examined under applicable provisions of the Code, including section 401(a)(4), 404, and 415.[7]

Notice to Interested Persons

Included among those persons who may be interested in the pendency of the requested exemption are all present employees of Donohoe, all participants in the Plan and former participants (including retirees) who have account balances in the Plan, all beneficiaries of deceased participants who have account balances in the Plan, and investment managers of the Plan.

It is represented that, within three (3) days of the publication of the Notice of Proposed Exemption (the Notice) in the **Federal Register**, all interested persons will receive a copy of the Notice, the beginning and ending information that appears with the Notice, and a copy of the supplemental statement, as required, pursuant to 29 CFR 2570.43(b)(2), either by hand delivering to all interested persons who are currently employed by Donohoe or by mailing Federal Express guaranteed overnight delivery to the last known mailing address to all other interested persons. All interested persons are invited to submit written comments or requests for a hearing on this proposed exemption within thirty-three (33) days from the date the Notice is published in the **Federal Register**.

For Further Information Contact: Angelena C. Le Blanc of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

NCR Corporation Savings Plan (the Plan) Located in Dayton, Ohio

[Application No. D–9536]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, August 10, 1990). If the exemption is granted the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1)(A) through (E) of the Code, shall not apply to (1) an interest-free loan to the Plan (the Loan) by NCR Corporation (the Employer), the sponsor of the Plan, with respect to guaranteed investment

[6] The Department, herein, is providing no relief for any extension of credit or other transaction between the Plan and FCPC and Donohoe as a result of execution of the arrangements described above. In this regard, FCPC represents that within sixty (60) days of the grant of this proposed exemption, it will file the FORM 5330 with the Internal Revenue Service, and will pay any applicable excise tax deemed to be due and owing with respect to such transactions between the Plan and FCPC and Donohoe.

[7] The applicant represents that to the extent the Plan will receive greater than the fair market value for its shares of FCPC, the limitations, as set forth in section 415 of the Code, if applicable, will not be exceeded. It is further represented that the allocation of any gain on the sale of the shares will not violate the discriminations provisions of section 401(a)(4) of the Code.

contract number GA-GIC–01226 (the GIC) issued by Executive Life Insurance Company of California (Executive Life); and (2) the Plan's potential repayment of the Loan (the Repayment); provided that the following conditions are satisfied:

(A) No interest and/or expenses are paid by the Plan;

(B) The Loan is made to reimburse the Plan for amounts invested with Executive Life under the terms of the GIC;

(C) The Repayment is restricted to cash proceeds paid to the Plan (the GIC Proceeds) by Executive Life and/or any other responsible third party with respect to the GIC, and no other Plan assets are used to make the Repayments; and

(D) The Repayments will be waived to the extent the Loan exceeds the GIC Proceeds.

Summary of Facts and Representations

1. The Plan is a defined contribution savings plan with provisions for individual participant accounts (the Accounts) and participant-directed investment of the Accounts, the assets of which are held in trust by the State Street Bank and Trust Company of Boston, Massachusetts (the Trust). The Plan had approximately 22,500 participants and total assets of approximately $461,883,532 as of December 31, 1992. The Plan is sponsored by the Employer, a Maryland public corporation with its principal offices in Dayton, Ohio.

2. Prior to January 1, 1992, the Plan offered four different investment funds (the Funds) for the investment of Accounts by Plan participants. The Funds included a Guaranteed Investment Fund (the GI Fund) which invested in a pooled collective investment fund, the Selection Fund, maintained by the Trustee. Assets of many employee-benefit plans subject to the Act were pooled in the Selection Fund, and each investing plan owned shares of the pooled fund assets as well as assets purchased specifically on behalf of the individual investing plan. Among the assets of the Plan in the Selection Fund is the GIC, a guaranteed investment contract purchased by the Trustees from Executive Life in April 1987. The GIC was purchased as an individual asset of the Plan's GI Fund, and is owned solely by the Plan. The terms of the GIC provide for an initial principal deposit of $4,765,544.41, a deposit limit of $21.6 million, a guaranteed annually compounded interest rate (the Contract Rate) of 7.85 percent, and a maturity date of November 1, 1991 (the Maturity Date). Upon the Maturity Date, Executive Life was obligated to make a final maturity payment (the Maturity Payment) in the amount of total principal deposits plus interest at the Contract Rate through maturity, less previous withdrawals. As of the Maturity Date, the accumulated book value of the GIC was $5,108,613.82, representing the Plan's total principal deposits under the GIC, plus accrued interest at the Contract Rate, less previous withdrawals. The Employer represents that as of the Maturity Date, the GIC constituted approximately 3.9 percent of the GI Fund's assets and approximately 1.0 percent of the Plan's total assets.

3. On April 11, 1991, Executive Life was placed into conservatorship by the Commissioner of Insurance of the State of California, and a moratorium was imposed on payments on Executive Life contracts, including the GIC.* Since the commencement of the moratorium, the Plan has received only a partial payment from Executive Life, in the amount of $950,570.61, with respect to the Maturity Payment which was due on the Maturity Date. Effective January 1, 1992, the Funds, which were offered by the Plan for Account investments, were replaced by six new investment funds, including a Conservative Strategy Fund (the CS Fund). The CS Fund consists largely of investment contracts issued by insurance companies and banks, with additional assets consisting of fixed income securities including, but not limited to, obligations of the U.S. Government, domestic or foreign corporations and other investment-grade debt. All assets of the GI Fund, other than assets invested in the GIC, have been transferred to the CS Fund. The Employer represents that it is uncertain whether, or to what extent, the Plan will recover the full amounts of principal and interest remaining due under the GIC. The Employer desires to alleviate the Plan's participants of risks associated with continued investment in the GIC, to prevent any losses of Account investments in the GIC, and to provide the Plan with the cash which otherwise would have been provided by the full Maturity Payment. Accordingly, the Employer proposes to make the Loan to the Plan in the amount due the Plan with respect to the GIC, plus interest through the date of the Loan, and is requesting an exemption for the Loan, and for its potential repayment by the Plan (the Repayment), under the terms and conditions described herein.

5. The Loan will be made pursuant to a written agreement between the Employer and the Trustee (the Agreement) embodying all terms of the extension of credit and its repayment. The Agreement provides for the Employer to make the Loan in one lump-sum payment in the amount of the total principal deposits under the GIC plus interest at the Contract Rate through the Maturity Date, plus interest from the Maturity Date through December 31, 1991 at the rate paid by the GI Fund for the same period (the GI Rate), plus interest from January 1, 1992 through the date of the Loan at the rate paid by the CS Fund for the same period (the CS Rate), reduced by the sum of all previous withdrawals from the GIC and all previous payments received by the Plan with respect to the GIC. The GI Rate is determined by averaging the return for the period on all investments in the GI Fund, consisting solely of guaranteed investment contracts issued by insurance companies. The CS Rate will be determined by averaging the return for the period on all investments in the CS Fund. The Agreement provides that in the event the aforementioned post-maturity interest rates are not acceptable to the Internal Revenue Service (the Service), they will be replaced by the highest interest rate allowed by the Service under a closing agreement between the Service and the Employer pursuant to Revenue Procedure 92–16. The Agreement specifies that the Loan proceeds shall be used for the payment of benefits, loans to participants, withdrawals, and transfers between investment funds offered by the Plan, in the same manner that the amounts attributable to the GIC would be permitted to be used if available to the Plan. The Loan will not bear interest, and the Employer shall not charge any fees, commissions or other charges for the Loan.

5. Repayment of the Loan under the Agreement is limited to payments made to the Plan pursuant to the GIC by Executive Life, any state guaranty association, any successor in interest to Executive Life, or any other source making payment with respect to Executive Life's obligations under the GIC (collectively, the GIC Payors). No other Plan assets will be available for repayment of the Loan. If payments from the GIC Payors are not sufficient to repay fully the Loan, the Agreement provides that the Employer will have no recourse against the Plan, or against any participants or beneficiaries of the Plan, for the unpaid amount. To the extent the Plan receives amounts with respect to

*The Department notes that the decision to acquire and hold the GIC is governed by the fiduciary responsibility requirements of part 4, subtitle B, title I of the Act. In this proposed exemption, the Department is not proposing relief for any violations of part 4 which may have arisen as a result of the acquisition and holding of the GIC.

the GIC from the GIC Payors in excess of the total amount of the Loan, such additional amounts will be retained by the Plan.

6. In summary, the applicant represents that the proposed transaction satisfies the criteria of section 408(a) of the Act for the following reasons:

(1) The Loan will enable the Plan to recover the full Maturity Payment which was due on the Maturity Date, plus interest at the GI Rate and the CS Rate or the highest rate allowed by the Service;

(2) The Plan will pay no interest or incur any expenses with respect to the Loan;

(3) Repayment of the Loan will be restricted to payments by the GIC Payors and no other Plan assets will be involved in the transactions; and

(4) Repayment of the Loan will be waived to the extent the Plan recoups less from the GIC Payors than the total amount of the Loan.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 219–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest of disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(b) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may be granted under section 408(a) of the Act and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 19th day of November, 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–28898 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–29–P

[Prohibited Transaction Exemption 93–82; Exemption Application No. D–9385]

Grant of Individual Exemption; Gary Tax Advantaged Savings Program and Profit Sharing Plan

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the **Federal Register** of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of proposed exemption were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the Code and the procedures set forth in 29 CFR part 2570, subpart B (55 FR 32836, 32847, August 10, 1990) and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Gary Tax Advantaged Savings Program and Profit Sharing Plan (the Plan) Located in Denver, Colorado

[Prohibited Transaction Exemption 93–82; Exemption Application No. D–9385]

Exemption

The restrictions of sections 406(a) and 406(b) (1) and (2) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to the sale for cash of a certain "net profits" interest (the Interest) from the Plan to Bloomfield Refining Company (Bloomfield), a party in interest with respect to the Plan, provided that the following conditions are met:

1. The fair market value of the Interest is established by an appraiser independent of any employers contributing to the Plan or affiliates;

2. Bloomfield pays no less than the greater of $173,756 or the fair market value of the Interest at the time of sale;

3. The sale is a one-time transaction for cash; and

4. The Plan pays no commissions or other expenses in regard to the sale.

For a more complete statement of the facts and representations supporting the

Department's decision to grant this exemption, refer to the notice of proposed exemption published on September 22, 1993, at 58 FR 49329.

FOR FURTHER INFORMATION CONTACT: Paul Kelty of the Department, telephone (202) 219–8883. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemptions does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application are true and complete and accurately describe all material terms of the transaction which is the subject of the exemption. In the case of continuing exemption transactions, if any of the material facts or representations described in the application change after the exemption is granted, the exemption will cease to apply as of the date of such change. In the event of any such change, application for a new exemption may be made to the Department.

Signed at Washington, DC, this 19th day of November 1993.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 93–28899 Filed 11–23–93; 8:45 am]

BILLING CODE 4510–29–P

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Records Schedules; Availability and Request for Comments

AGENCY: National Archives and Records Administration, Office of Records Administration.

ACTION: Notice of availability of proposed records schedules; request for comments.

SUMMARY: The National Archives and Records Administration (NARA) publishes notice at least once monthly of certain Federal agency requests for records disposition authority (records schedules). Records schedules identify records of sufficient value to warrant preservation in the National Archives of the United States. Schedules also authorize agencies after a specified period to dispose of records lacking administrative, legal, research, or other value. Notice is published for records schedules that (1) propose the destruction of records not previously authorized for disposal, or (2) reduce the retention period for records already authorized for disposal. NARA invites public comments on such schedules, as required by 44 U.S.C. 3303a(a).

DATES: Request for copies must be received in writing on or before January 10, 1994. Once the appraisal of the records is completed, NARA will send a copy of the schedule. The requester will be given 30 days to submit comments.

ADDRESSES: Address requests for single copies of schedules identified in this notice to the Records Appraisal and Disposition Division (NIR), National Archives and Records Administration, Washington, DC 20408. Requesters must cite the control number assigned to each schedule when requesting a copy. The control number appears in the parentheses immediately after the name of the requesting agency.

SUPPLEMENTARY INFORMATION: Each year U.S. Government agencies create billions of records on paper, film, magnetic tape, and other media. In order to control this accumulation, agency records managers prepare records schedules specifying when the agency no longer needs the records and what happens to the records after this period. Some schedules are comprehensive and cover all the records of an agency or one of its major subdivisions. These comprehensive schedules provide for the eventual transfer to the National Archives of historically valuable records and authorize the disposal of all other records. Most schedules, however, cover records of only one office or program or a few series of records, and many are updates of previously approved schedules. Such schedules also may include records that are designated for permanent retention.

Destruction of records requires the approval of the Archivist of the United States. This approval is granted after a thorough study of the records that takes into account their administrative use by the agency of origin, the rights of the Government and of private persons directly affected by the Government's activities, and historical or other value

This public notice identifies the Federal agencies and their subdivisions requesting disposition authority, includes the control number assigned to each schedule, and briefly describes the records proposed for disposal. The records schedule contains additional information about the records and their disposition. Further information about the disposition process will be furnished to each requester.

Schedules Pending

1. Department of Agriculture (N1–16–93–2). Call detail summaries for use of telecommunications equipment.
2. Department of the Army (N1–AU–94–1). Records relating to health promotion activities.
3. Department of the Army (N1–AU–94–3). Alcohol and Drug Abuse Prevention and Control Program clinical certification files.
4. Department of the Army (N1–AU–94–4). Alcohol and Drug Abuse Prevention and Control Program rehabilitation files.
5. Department of Education, National Council on Education Standards and Testing (N1–441–93–7). Subject files.
6. Department of Health and Human Services, Centers for Diseases Control and Prevention (N1–442–93–2). Comments on notices of proposed and final rulemaking published in the **Federal Register.**
7. Department of the Interior, Office of the Solicitor (N1–48–93–3). Surface Mining Control and Enforcement Act Case Files.
8. Department of Justice (N1–60–93–15). Dallas Bank Fraud Task Force case files.
9. Department of the Treasury, Internal Revenue Service (N1–58–92–4).

Microfilm copies of wage documents, known as the Wage Information Retrieval System.

10. Bureau of Labor Statistics, Office of Safety, Health and Working Conditions (N1–257–93–3). Census of fatal occupational injuries survey respondent data.

11. Defense Contract Audit Agency (N1–372–94–1). Training Course Manuals.

12. National Archives and Records Administration (N2–255–93–1). Patent files and other administrative and facilitative records from the National Aeronautics and Space Administration.

13. President's Commission on White House Fellowships (N1–220–93–14). Applications and Education Program Records.

Dated: November 8, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–28782 Filed 11–23–93; 8:45 am]

BILLING CODE 7515–01–M

NATIONAL SCIENCE FOUNDATION

Special Emphasis Panel in Materials Research; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis Panel in Materials Research (1203).

Date and Time: December 13, 1993 8:30 a.m. to 5 p.m.

Place: Room 380, National Science Foundation, Arlington, VA.

Type of Meeting: Closed.

Contact person: Dr. Robert Reynik, Head, Office of Special Programs, Division of Materials Research, National Science Foundation, 2401 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–9791.

Purpose of meeting: To provide advice and recommendations concerning support of REU Site Awards submitted to NSF for financial support.

Agenda: To review and evaluate DMR 1994 REU Site Awards Competition as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 19, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28864 Filed 11–23–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Mathematical Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name and committee code: Special Emphasis Panel in Mathematical Sciences (1204).

Date and time: December 10–11, 1993; 8:30 a.m. to 5 p.m.

Place: Providence Marriott Hotel, Orms and Charles Streets, Providence, RI 02904.

Type of meeting: Closed.

Contact person: Dr. H. Jean Thiebaux, Office of Special Projects, Division of Mathematical Sciences, room 1025, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–3453.

Purpose of meeting: To provide advice and recommendations for applications submitted to NSF for financial support.

Agenda: To review and evaluate Mathematical Sciences Postdoctoral Research Fellowships applications as part of the selection process for awards.

Reason for closing: The applications being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the applications. These matters are exempt under 5 U.S.C. 552 b(c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 19, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28863 Filed 11–23–93; 8:45 am]

BILLING CODE 7555–01–M

Advisory Committee for Mathematical and Physical Sciences; Meeting

In accordance with the Federal Advisory Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting.

Name: Advisory Committee for Mathematical and Physical Sciences (# 66).

Date & time: December 14, 1993, 9:30 a.m.–5:30 p.m., room 390; December 15, 1993, 8:30 a.m.–12:00 Noon, room 380.

Place: National Science Foundation, 4201 Wilson Boulevard, Arlington, Virginia 22230.

Type of meeting: Open.

Contact person: Judith S. Sunley, Executive Officer, MPS, National Science Foundation, 4201 Wilson Boulevard, Arlington, VA 22230. Telephone: (202) 357–9742 or (703) 306–1856.

Minutes: May be obtained from the contact person listed above.

Meeting purpose: To provide advice and recommendations on development of MPS strategic planning mechanisms; provide advice on the appropriateness of current disciplinary boundaries; evaluate the current MPS interfaces with academia and industry; and advise on methods of achieving overall program excellence in MPS.

Agenda:

December 14, 1993
AM—Introductory Remarks, MPS Budget & Priorities
PM—Strategic Working Groups
December 15, 1993—AM
Continuation of Working Groups
Discussion/Summary of Issues

Dated: November 19, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–28862 Filed 11–23–93; 8:45 am]

BILLING CODE 7555–01–M

NATIONAL TRANSPORTATION SAFETY BOARD

Public Hearing in Ypsilanti, Michigan: Aviation Accident

In connection with the investigation of the American International Airways, Inc. DC–8–61, Flight 808, accident at Guantanamo Bay NS, Cuba, on August 18, 1993, the National Transportation Safety Board will convene a public hearing at 9 a.m. (eastern standard time), on Wednesday, January 5, 1994, in the Lakeshore Ballroom of the Radisson on the Lake, Ypsilanti, Michigan. For more information, contact Mike Benson, Office of Public Affairs, National Transportation Safety Board, 490 L'Enfant Plaza, SW., Washington, DC 20594, telephone (202) 382–0660.

Dated: November 19, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93–28839 Filed 11–23–93; 8:45 am]

BILLING CODE 7533–01–M

NUCLEAR REGULATORY COMMISSION

[Docket 70–3070]

Louisiana Energy Services, L.P.; Availability of the Draft Environmental Impact Statement for The Claiborne Enrichment Center; Homer, LA

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission) has published a Draft Environmental Impact Statement (DEIS) (NUREG–1484) regarding the proposed construction and operation of the Claiborne Enrichment Center to be located near Homer, LA. The DEIS describes and evaluates the potential environmental consequences of granting Louisiana Energy Services, L.P. (LES) a license to construct and operate a uranium enrichment facility. The facility would use the gaseous

centrifuge enrichment process. Natural uranium hexafluoride would be used as the feed material, the product would be uranium hexafluoride enriched up to 5 percent in the isotope uranium-235.

The DEIS is available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW, Washington, DC and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, LA. A free single copy of draft NUREG–1484 may be requested by those considering public comment by writing to the Director, Division of Information Support Services, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Any interested party may submit written comments on the DEIS for consideration by the staff. To be certain of consideration, comments on this report must be received by January 10, 1994. Comments received after the due date will be considered if it is practical to do so, but the Commission is able to assure consideration only for comments received on or before this date. Comments on the DEIS should be sent to the Chief, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, Office of Nuclear Material Safety and Safeguards, Mail Stop 4–E–4, U.S. Nuclear Regulatory Commission, Washington, DC 20555. All comments received by the Commission will be made available for public inspection at the Commission's Public Document Room in Washington, DC and the Local Public Document Room at the Claiborne Parish Library, 901 Edgewood Drive, Homer, LA.

FOR FURTHER INFORMATION, CONTACT: Merri Horn, Enrichment Branch, Division of Fuel Cycle Safety and Safeguards, U.S. Nuclear Regulatory Commission, Washington, DC 20555. Telephone (301) 504–2606.

Dated at Rockville, Maryland, this 18th day of November 1993.

For the Nuclear Regulatory Commission.

John W.N. Hickey,

Chief, Enrichment Branch, Division of Fuel Cycle Safety, and Safeguards, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–28877 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–P

Advisory Committee on Reactor Safeguards; Subcommittee Meeting on ABB-CE Standard Plant Designs; Meeting

The ACRS Subcommittee on ABB-CE Standard Plant Designs will hold a meeting on December 8, 1993, in Room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 8, 1993—9 a.m. until the conclusion of business

The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB-CE System 80+ design. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will then hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review. Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Douglas H. Coe (telephone 301/492–8972) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 18, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–28876 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

Biweekly Notice

Applications and Amendments to Facility Operating Licenses Involving No Significant Hazards Considerations

I. Background

Pursuant to Pub. L. 97–415, the U.S. Nuclear Regulatory Commission (the Commission or NRC staff) is publishing this regular biweekly notice. Pub. L. 97–415 revised section 189 of the Atomic Energy Act of 1954, as amended (the Act), to require the Commission to publish notice of any amendments issued, or proposed to be issued, under a new provision of section 189 of the Act. This provision grants the Commission the authority to issue and make immediately effective any amendment to an operating license upon a determination by the Commission that such amendment involves no significant hazards consideration, notwithstanding the pendency before the Commission of a request for a hearing from any person.

This biweekly notice includes all notices of amendments issued, or proposed to be issued from November 1, 1993, through November 12, 1993. The last biweekly notice was published on November 10, 1993 (58 FR 59743).

Notice of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The Commission has made a proposed determination that the following amendment requests involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. The basis for this proposed determination for each amendment request is shown below.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received before action is taken. Should the Commission

take this action, it will publish in the Federal Register a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555. The filing of requests for a hearing and petitions for leave to intervene is discussed below.

By December 27, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR Part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room for the particular facility involved. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of a hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1-(800) 248-5100 (in Missouri 1-(800) 342-6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to **(Project Director)**: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to the attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for a hearing will not be entertained absent a determination by the Commission, the presiding officer or the Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of factors specified in 10 CFR 2.714(a)(1)(i)-(v) and 2.714(d).

For further details with respect to this action, see the application for amendment which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room for the particular facility involved.

Baltimore Gas and Electric Company, Docket No. 50-318, Calvert Cliffs Nuclear Power Plant, Unit No. 2, Calvert County, Maryland

Date of amendment request: November 1, 1993Description of

amendment request: The proposed amendment would revise the heatup and cooldown curves for the Calvert Cliffs Nuclear Power Plant, Unit No. 2, to allow operation beyond 12 effective full power years (EFPY). Operation within the appropriate heatup and cooldown curves ensure that the 10 CFR part 50, appendix G, Pressure-Temperature limits for the reactor pressure vessel will not be violated.

The current 12 EFPY heatup and cooldown curves for Unit 2 will expire, at the earliest, in mid-June 1994. This proposed changes will extend the applicability of these curves to mid-1996. During the 1995 refueling outage, a variable-setpoint low temperature overpressure protection (VLTOP) system is scheduled to be installed at Unit 2 to increase the allowable operating pressure band in the Minimum Pressure and Temperature region. A license amendment request will be submitted at a later date proposing new heatup and cooldown curves and Low Temperature Overpressure Protection (LTOP) controls for Unit 2 to support the scheduled modifications to the LTOP system (a similar request has already been submitted for Unit 1). This proposed change to extend the current curves will allow the use of these current curves until the VLTOP system is implemented.

The specific Technical Specification (TS) changes proposed are:

1. TS Figures 3.4.9-1 and 3.4.9-2 are modified to reflect the current fluence predictions which will extend the applicability of the existing curves to approximately 13.8 EFPY. The expected fluence number will replace the projected EFPY number.

2. TS 3/4.4.9.3 is modified to include an additional overpressure requirement which will ensure that when the operable high pressure safety injection (HPSI) pump is not in use, its handswitch is in the pull-to-lock position. This prevents the pump from automatically starting. This is for clarification only in that it is currently required as specified in a footnote to TS 3/4.5.3 and Table 3.3-3. TS 3/4.4.9.3.3 is also modified to reflect this change.

3. TS Bases 3/4.4.9 is revised to reflect the requested changes.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. Would not involve a significant increase in the probability or consequences of an accident previously evaluated.

Operation within the appropriate heatup and cooldown curves ensures that the 10 CFR part 50, appendix G, Pressure-Temperature (P-T) limits for the reactor pressure vessel will not be violated while operating at low temperature. The heatup and cooldown curves are conservatively developed in accordance with the fracture toughness requirements of 10 CFR part 50, appendix G, as supplemented by the American Society of Mechanical Engineers Boiler and Pressure Vessel Code Section III, appendix G. New values for the copper and nickel content have been approved for the critical Unit 2 weld, which substantially improve the embrittlement projections for the limiting weld in the P-T limit calculations. This change extends the applicability of the current heatup and cooldown curves until mid-1996. The proposed change will not result in any changes to the LTOP controls. Adding the requirement to Specification 3/4.4.9.3 to ensure the operable high pressure safety injection (HPSI) pump's handswitch will be placed in pull-to-lock when not in use is only a clarification and does not change the intent of the specification. This requirement for the operable HPSI pump is currently in footnotes for Specification 3.5.3 and Table 3.3-3. Therefore, the proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. Would not create the possibility of a new or different type of accident from any accident previously evaluated.

The proposed change to extend the current curves to allow operation beyond 12 effective full power years (EFPY) does not represent a significant change in the configuration or operation of the plant. Specifically, no new hardware is being added to the plant as part of the proposed change, no existing equipment is being modified, nor are any different types of operations being introduced. The approval of the new chemistry for the limiting weld facilitates an extension of the applicability of the existing Unit 2 heatup and cooldown curves. This proposed change will not change any of the existing Unit 2 LTOP controls. The addition of the requirement to have the HPSI pump's handswitch in pull-to-lock when not in use is only a clarification of the existing requirements. Therefore, the proposed change does not create the possibility of a new or different type of accident from any accident previously evaluated.

3. Would not involve a significant reduction in a margin of safety.

The proposed change will not affect the existing Appendix G limits. The extension of the heatup and cooldown curves is a consequences of the new chemistry values for the limiting weld. The proposed change will not affect any margin of safety since the heatup and cooldown curves will continue to protect the Appendix G limits for all postulated transients. The clarification to Specification 3/4.4.9.3 to require the operable HPSI pumps handswitch be placed in pull-to-lock when not in use does not change the intent of the Specification. Therefore, the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Attorney for licensee: Jay E. Silbert, Esquire, Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037.

NRC Project Director: Robert A. Capra

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of amendment request: October 19, 1993Description of amendment request: The proposed amendment would remove the scram and Group I isolation value closure functions associated with the main steam line radiation monitors (MSLRM).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed technical specification changes associated with removal of the isolation and the reactor scram functions of the MSLRM do not involve a significant increase in the probability of an accident previously-evaluated. The trip function was in place only to react to a previously-evaluated accident, the CRDA (Control Rod Drop Accident), and as such, cannot increase the probability of occurrence of previously evaluated accidents.

The consequences of a previously evaluated accident are not significantly increased. There is no accident analysis that relies on the high radiation scram of the reactor protection system. The Pilgrim design basis accident analysis currently takes credit for the MSIV (main steam isolation valve) closure function to mitigate a CRDA. The NEDO-31400A analysis assumes that all activity calculated to be available for release is transported to the condenser before the closing of the MSIVs. The increase in dose for this scenario is considered not significant because the results for PNPS (Pilgrim Nuclear Power Station) are bounded by the NEDO and Standard Review Plan results. For PNPS, it is possible that the Mechanical Vacuum Pump will be in service. However, the offsite doses for the release from the condenser are bounded by the SRP (Standard Review Plan) and NEDO. These dose rates are still significantly below the 10 CFR part 100 limits.

(2) Create the possibility for a new or different kind of accident from any previously evaluated.

The proposed changes do not involve any plant hardware changes which could

introduce any new failure modes or effects. The MSLRM monitors will remain active and will still alarm in the control room. The direct impact on the plant is that this particular trip function (i.e., isolation valve closure and reactor scram) will no longer actuate. The new design basis accident analysis, per NEDO-31400A, does not take credit for this trip function to demonstrate acceptable radiological consequences. The proposed changes were evaluated specifically for PNPS and are enveloped by the NEDO analysis. In the CRDA, all activity available for release from failed fuel rods is assumed to be immediately transported to the condenser and is available for leakage from the condenser. Thus, the removal of the isolation and scram functions does not create the possibility of a new or different kind of accident than those previously evaluated.

(3) Involve a significant reduction in a margin of safety.

The proposed changes do not affect the calculated off-site dose consequences. Furthermore, the changes will improve the overall reliability of the plant when compared to the existing system, since the proposed changes will reduce the changes of an unnecessary plant transient occurring as a result of an inadvertent MSIV closure.

A reliability assessment of the elimination of the MSLRM scram function on reactivity control failure frequency and core damage frequency was performed in NEDO-31400A. The results of this analysis indicate a negligible increase in reactivity control failure frequency with the deletion of the MSLRM trip function. However, this increase is offset by the reduction in the transient initiating events (inadvertent scrams). This reduction in transient initiating events represents a reduction in core damage frequency and, thus, results in a net improvement to safety.

Removal of the MSLRM scram and isolation valve closure functions does not significantly increase the consequences of any design basis accident, including CRDA. Other trip signals for the RPS (reactor protection system) and isolation valves remain unaffected. Therefore, there is no significant reduction in the margin of safety as a result of this Technical Specification change.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

NRC Project Director: Walter R. Butler

Carolina Power & Light Company, et al., Docket No. 50-400, Shearon Harris Nuclear Power Plant, Unit 1, Wake and Chatham Counties, North Carolina

Date of amendment request: October 22, 1993, as revised October 28, 1993

Description of amendment request: The proposed revision will (1) remove the title-specific organizational listing of Plant Nuclear Safety Committee (PNSC) membership in TS 6.5.2.2 and replace it with a functional description of PNSC composition, (2) add specific PNSC member qualification requirements in TS 6.5.2.3, and (3) revise Section 6.5.2.2 to stipulate that PNSC members shall be designated by the Plant General Manager and shall be limited in number to between seven and nine members.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed amendment does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes to Technical Specification 6.5.2 are administrative changes to allow greater flexibility in establishing PNSC membership while maintaining the necessary qualifications of the committee to adequately advise the Plant General Manager on matters related to nuclear safety. The qualification requirements will continue to ensure that the committee has the necessary expertise to consider matters pertaining to nuclear safety and that the appropriate functional areas will be represented. Given that the effectiveness of the PNSC is maintained and that the PNSC has no direct impact on the factors which may initiate or mitigate accidents previously evaluated, this change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed amendment does not create the possibility of a new or different kind of accident from any accident previously evaluated.

The changes to Technical Specification 6.5.2 are administrative changes to allow greater flexibility in establishing PNSC membership while maintaining the necessary qualifications of the committee to adequately advise the Plant General Manager on matters related to nuclear safety. The qualification requirements will continue to ensure that the committee has the necessary expertise to consider matters pertaining to nuclear safety that the appropriate functional areas will be represented. Given that the effectiveness of the PNSC is maintained and that the PNSC has no direct impact on the factors which may initiate or mitigate accidents, the proposed changes do not created the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed amendment does not involve a significant reduction in the margin of safety.

The changes to technical Specification 6.5.2 are administrative changes to allow greater flexibility in establishing PNSC membership while maintaining the necessary qualifications of the committee to adequately advise the Plant General Manager on matters related to nuclear safety. The qualification requirements will continue to ensure that the committee has the necessary expertise to consider matters pertaining to nuclear safety (and) that the appropriate functional areas will be represented. Given that the effectiveness of the PNSC is maintained, this change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Cameron Village Regional Library, 1930 Clark Avenue, Raleigh, North Carolina 27605.

Attorney for licensee: R. E. Jones, General Counsel, Carolina Power & Light Company, Post Office Box 1551, Raleigh, North Carolina 27602

NRC Project Director: S. Singh Bajwa

Commonwealth Edison Company, Docket Nos. STN 50-456 and STN 50-457, Braidwood Station, Unit Nos. 1 and 2, Will County, Illinois; Docket Nos. STN 50-454 and STN 50-455, Byron Station, Unit Nos. 1 and 2, Ogle County, Illinois; Docket Nos. 50-373 and 50-374, LaSalle County Station, Unit Nos. 1 and 2, LaSalle County, Illinois; Docket Nos. 50-295 and 50-304, Zion Nuclear Power Station, Unit Nos. 1 and 2, Lake County, Illinois.

Date of amendment request: November 10, 1993

Description of amendment request: The proposed amendments would revise the "Radioactive Effluent Controls Program" described in Section 6.0 of the Braidwood, Byron, LaSalle, and Zion Technical Specifications to be consistent with the revised 10 CFR part 20. The changes specifically address the limitation on radioactive material release of liquid and gaseous effluent. This amendment supersedes the licensee's previous request dated June 29, 1993, as published in the **Federal Register** on September 15, 1993 (58 FR 48380).

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

A. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed changes to the radioactive material concentration limits in liquid and

gaseous effluent releases do not impact previously evaluated accidents because there is no change in the types and amounts of effluents that will be released. There will be no increase in individual or cumulative occupational radiation exposures.

B. The proposed changes do not create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed changes have no effect on the probability of an accident. The changes are administrative in nature and do not affect plant design or operation. There is no change to the types and amounts of effluent that will be released, nor is there an increase in individual or cumulative occupational radiation exposures.

C. The proposed changes do not involve a significant reduction in a margin of safety.

The proposed revision to the radioactive material concentration limits in the liquid effluents will not reduce a margin of safety. There is no change in the types and amounts of effluents released. The current 10 CFR part 20, Appendix B, Table II, Column 2 limits allow a maximum annual dose of 500 mrem. The revised 10 CFR part 20 allows a maximum total effective dose equivalent of 50 mrem/year. Using a factor of 10 multiplier on the new Column 2 values has no impact on the ability to meet the 10 CFR part 50, Appendix I limits, or the annual dose limit specified in 10 CFR part 20. Use of the instantaneous dose limit, in conjunction with the more restrictive quarterly and annual dose limits in 10 CFR part 50, Appendix I, will ensure that the requirements of 10 CFR 20.1302 are met. It also ensures continued operational flexibility. Controls are in place to prevent total dose from exceeding the 10 CFR part 20 and 10 CFR part 50 limits.

The proposed revision which specifies the limit of radioactive material concentration in the gaseous effluents will not reduce a margin of safety. There will be no change in the types and amounts of effluents released. The revision proposes a dose limit of 500 mrem/year to the whole body. This limit is currently used n the Commonwealth Edison Offsite Dose Calculation Manual (ODCM) and is also consistent with the current 10 CFR part 20, appendix B, Table II Column 1 limits. The revised 10 CFR part 20 allows a maximum total effective dose equivalent of 50 mrem/year. Using a value of 500 mrem/year as an instantaneous release limit has no impact on the ability to meet the 10 CFR part 50, Appendix I limits, or the annual dose limit in 10 CFR part 20. Use of the instantaneous dose limit, in conjunction with the more restrictive quarterly and annual dose limits in 10 CFR part 50, Appendix I, will ensure that the requirements of 10 CFR 20.1302 are met. It also ensures continued operational flexibility. Controls are in place to prevent total dose from exceeding the 10 CFR part 20 and 10 CFR part 50 limits.

The only other proposed change involves updating a 10 CFR part 20 paragraph reference to the applicable paragraph in the revised 10 CFR part 20. This revision entails no change to the types and amount of effluents that will be released and has no effect on the margin of safety related to effluent releases.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: For Braidwood, the Wilmington Township Public Library, 201 S. Kankakee Street, Wilmington, Illinois 60481; for Byron, the Byron Public Library, 109 N. Franklin, P.O. Box 434, Byron, Illinois 61010; for LaSalle, the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348; for Zion, the Waukegan Public Library, 128 N. County Street, Waukegan, Illinois 60085.

Attorney for licensee: Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690

NRC Project Director: James E. Dyer

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Unit Nos. 1 and 2, Westchester County, New York

Date of amendments request: September 29, 1993

Description of amendments request: The proposed amendments request would revise the Technical Specifications to clarify the control of keys for the doors of High Radiation Areas in which the intensity of radiation is greater than 1000 mrem/hr. The keys would be administratively controlled by the Radiation Protection Manager and/or the Senior Watch Supervisor on duty.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

This is an administrative change being proposed by the Company. The change clarifies current implementation of Technical Specifications, the same criteria for high radiation access as are currently in place and as previously evaluated would still be met under the proposed change.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

The proposed change is purely administrative in nature. The change does not modify plant configuration or operation, and therefore, the identical postulated accidents as analyzed prior to this submittal are the only ones that required analysis and resolution. Nothing would be added or removed that would conceivably introduce a new or different kind of accident mechanism or initiating circumstance than that previously evaluated.

3. There has been no reduction in the margin of safety

All safety criteria previously evaluated are still met at the same margins since the change is simply a clarification of the administrative control of High Radiation Area keys. Both the Radiation Protection Manager and the Senior Watch Supervisor are qualified by training to control these keys.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket Nos. 50-003 and 50-247, Indian Point Nuclear Generating Units No. 1 and No. 2, Westchester County, New York

Date of amendments request: September 29, 1993

Description of amendments request. The proposed amendments request would revise the Technical Specifications to change the submittal frequency of the Radioactive Effluent Release Report from semiannually to annually in accordance with the amended regulations.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration because:

1. There is no significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is designed to conform the Indian Point Unit No. 1 (IP1) and Indian Point Unit No. 2 (IP2) Technical Specifications to the NRC regulation 10 CFR 50.36a. The proposed action "will not reduce the protection of the public health and safety or the common defense and security" (57 Fed Reg. [FR] 39354). The proposed change to the IP1 and IP2 Technical Specifications is consistent with this intent in that it is designed to conform IP1 and IP2 Technical Specifications with 10 CFR 50.36a and does not affect plant operation, plant systems,

accident conditions or assumptions. The proposed change is to the frequency of a reporting requirement only and does not affect possible initiating events for accidents previously evaluated or any system functional requirements. Therefore, the proposed change to the subject Technical Specifications cannot increase the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously evaluated has not been created.

As stated above, the proposed change is administrative in nature. The proposed change does not affect the reactor coolant pressure boundary or any other Plant system or structure, nor does it affect any system functional requirements or operability requirements. Consequently, no new failure modes are introduced as a result of the proposed change. Therefore, the proposed change cannot initiate any new or different kind of accident.

3. There has been no significant reduction in the margin of safety.

The proposed change is administrative in nature and does not affect the Updated Final Safety Analysis Report (UFSAR) design bases, accident assumptions, or Technical Specification Bases. There is no change to effluent release limits, monitoring equipment or practices. Therefore, the proposed change does not result in a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 29, 1993

Description of amendment request: The proposed amendment request would revise the Technical Specifications to remove cycle-specific core parameter limits and reference a Core Operating Limits Report containing these limits.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The proposed change does not involve a significant hazards consideration since:

1. There is no significant increase in the probability or consequences of an accident.

The proposed amendment is administrative in nature, merely relocating cycle-specific parameter limits from the Technical Specifications to the Core Operating Limits Report. NRC-approved methodologies will continue to be used as the basis for establishing these limits. The Core Operating Limits Report will be submitted to the NRC for its use in trending the values of cycle-specific limits. The proposed changes are in accordance with the guidance provided by NRC Generic Letter 88-16 and do not involve an increase in the probability or consequences of an accident previously evaluated.

2. The possibility of a new or different kind of accident from any previously analyzed has not been created.

No safety-related equipment, function, or plant operational practice will be altered as a result of the proposed changes. The changes are administrative in nature and do not create any new accident mode. The level of document control and quality assurance applied to the preparation and use of the Core Operating Limits Report will be equivalent to that applied to the Technical Specifications.

3. There has been no reduction in the margin of safety.

The proposed changes are administrative in nature and do not impact the operation of the plant in a manner that will reduce the margin of safety. The proposed amendment still requires operation within the limits determined using NRC approved methods, and the appropriate remedial actions to be taken if the limits are violated remain in the Technical Specifications.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Consolidated Edison Company of New York, Docket No. 50-247, Indian Point Nuclear Generating Unit No. 2, Westchester County, New York

Date of amendment request: September 29, 1993

Description of amendment request: The proposed amendment request would revise the Technical Specifications to delete controls for three Boron Monitor Tanks which are no longer in service.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The deletion of the three boron monitor tanks from the Technical Specifications will remove the quantity limitation on radioactive contents and the requirements for level monitoring capability and instrument surveillance. Level monitoring will no longer be required because the tanks are empty, and the inlet and outlet piping will be cut and capped to preclude any liquid addition. Since no addition can be made, the contents limitation is no longer necessary.

In accordance with the requirements of 10 CFR 50.92, the proposed technical specification changes are deemed to involve no significant hazards consideration because operation of Indian Point Unit No. 2 (IP-2) in accordance with these changes would not:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated. The safety concerns with these tanks were the size of a potential release and the possibility of uncontrolled leakage of radioactive liquid effluent. Since the permanent isolation of these empty tanks eliminates these possibilities, the limit on quantity of contents will be superfluous, and the tank level indicating devices will not be needed to detect and control leakage. Thus, the probability and consequences of release or leakage are not affected.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated. The limit on quantity of contents served only to limit the potential dose due to a release. Level monitoring was used only to assure detection and control of leakage from the tanks. Elimination of contents limitation and monitoring requirements will have no adverse impact on any other plant system or equipment and thus is not capable of creating the possibility of a new or different kind of accident.

(3) Involve a significant reduction in a margin of safety. Replacement of the quantity limitation and tank level monitoring requirements with permanent isolation of the empty tanks will have no effect upon the margin of safety against release or uncontrolled leakage.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: White Plains Public Library, 100 Martine Avenue, White Plains, New York 10610.

Attorney for licensee: Brent L. Brandenburg, Esq., 4 Irving Place, New York, New York 10003.

NRC Project Director: Robert A. Capra

Duke Power Company, Docket Nos. 50-369 and 50-370, McGuire Nuclear Station, Units 1 and 2, Mecklenburg County, North Carolina

Date of amendment request: November 4, 1993

Description of amendment request: The proposed amendments change the Technical Specifications to allow extended outage time for each train of the control area ventilation system to allow system maintenance to improve system reliability. The one time extension to 14 days (for each train, one at a time) will allow completion of the maintenance activities while one or both units are on-line; otherwise, it would be necessary to shut down both units to complete the maintenance activities or to divide the maintenance activities into less than 7-day segments, which would increase unavailability of the control area ventilation system.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

The changes would not involve a significant increase in the probability or consequences of an accident previously evaluated. The proposed change will affect only the VC (control area ventilation system) system which is designed to maintain the habitability of the Control Room area as described in the FSAR [Final Safety Analysis Report], Section 6.4 and will not affect the probability of an accident. One train is fully adequate for all conditions, either train can draw outside air from either independent intake, and one train will be operable at all times, or the station will reduce poweror shutdown in accordance with Technical Specification 3.0.3. As the trains are totally redundant, including the ability of each train to draw outside air from either independent intake (should one intake become contaminated), or place the system in recirculation, Control Room doses due to inleakage as presented in Chapter 15 of the McGuire FSAR (Table 15-12) and the NRC Safety Evaluation Report for Facility Operating License amendments numbers 122 (NPF-9, Unit 1) and 104 (NPF-17, Unit 2) dated July 15, 1991 are unaffected. The additional allowed outage time thus will not affect the probability or consequences of an accident.

The proposed change will not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed allowed outage time extension is to allow system maintenance to enhance system reliability. Neither the extension or the planned maintenance activities are of a nature which could lead to any new accident scenarios.

The proposed changes would not involve a significant reduction in a margin of safety. With one train of VC operable, all margins are satisfied; Control Room doses are unaffected. Presently, one train may be inoperable for up to seven days before a station shutdown would be required. The addition of seven days allowed outage time on a one time basis for each train will not have an impact on any safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Atkins Library, University of North Carolina, Charlotte (UNCC Station), North Carolina 28223

Attorney for licensee: Mr. Albert Carr, Duke Power Company, 422 South Church Street, Charlotte, North Carolina 28242Acting

NRC Project Director: Robert A. Hermann

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 24, 1993

Description of amendment request: The proposed amendment would revise Technical Specification Table 4.2-2, "Minimum Test and Calibration Frequency for Core and Containment Cooling Systems," to remove a testing requirement for the Containment Cooling Subsystem. Specifically, note 9 on Table 4.2-2 currently requires calibration of time delay relays and timers in the logic system functional test for the Containment Cooling Subsystem. The proposed amendment would remove the requirement of note 9 since the Containment Cooling Subsystem does not contain time delay relays or timers and the requirement is, therefore, unnecessary.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

Use of the Containment Cooling Subsystem as an accident mitigation system is unaffected by the proposed change. The Containment Cooling Subsystem is a manually initiated system which removes heat from the containment in the event of testing, transients or accidents that add heat to the containment. The proposed change removes a testing requirement Table 4.2-2, note 9 to calibrate time delay relays and timers as part of the logic system functional test. The Containment Cooling Subsystem does not contain time delay relays or timers. Plant accident analyses, operations, hardware and procedures are not affected by the Technical Specification change. The nature of this change will not cause any increase in the probability or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from any accident previously evaluated.

The proposed change involves no modifications to hardware, analyses, operations or procedures. The Containment Cooling Subsystem is manually initiated and does not contain time delay relays or timers. The proposed change makes Technical Specification Table 4.2-2 consistent with the previously reviewed and approved system design. The nature of this change is such that no new or different kind of accident can be created.

3. Involve a significant reduction in the margin of safety.

The results of the plant accident analyses continue to bound operation under the proposed changes so there is no reduction in the margin of safety. The Containment Cooling Subsystem is manually initiated and does not contain time delay relays or timers. Therefore system operation and surveillance testing remain unaffected by the proposed change. A revision of this nature will not cause a reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 24, 1993

Description of amendment request: The proposed revisions would make miscellaneous administrative changes including typographical and editorial corrections to the Appendix A Operating Technical Specifications (TSs) and Appendix B Radiological Effluent TSs. The proposed changes are intended to clarify and improve the quality of the TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The intent of the proposed changes is to clarify and correct the Technical Specifications. The changes are administrative in nature and include: clarifying a specification to reflect system design; changing specifications for consistency with previous Amendments; revising a specification to accurately reflect surveillance testing, and; correction of typographical and editorial errors. There are no setpoint changes, safety limit changes, surveillance requirement changes, or limiting conditions for operation. These changes have no impact on plant safety or operations. The changes will have no impact on previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes are purely administrative in nature and involve only correcting typographical and editorial errors. These proposed changes are intended to clarify and improve the quality of the Technical Specifications. This cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The proposed changes correct errors which currently exist in the Technical Specifications. The changes are all administrative in nature and will clarify the Technical Specifications by eliminating errors such as typographical and editorial errors. These changes do not change any setpoint or safety limit changes regarding isolation or alarms. The proposed changes do not affect the environmental monitoring program. These changes do not affect the plants safety systems and do not reduce any safety margins.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: September 28, 1993

Description of amendment request: The proposed changes would revise the surveillance requirement for Emergency Service Water System (ESWS) pumps delineated in Technical Specification (TS) 4.11.D.1.b. The changes are intended to address the limitations of the "shut off head" pump test currently required. The proposed changes would add a flow requirement and test the pumps in accordance with the plant Inservice Testing (IST) Program, which is designed to address appropriate portions ot the American Society of Mechanical Engineers (ASME) Boiler and Pressure Vessel (B&PV) Code. The licensee has also proposed to modify the description of the ESWS contained in Bases Sections 3.11 and 4.11 D.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed Amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The changes identified in the proposed amendment revise pump surveillance testing for the ESWS to require flow testing under the IST [Inservice Testing] program using Section X1 of the ASME B&PV Code as a basis. This change involves no hardware modifications to the plant or changes in the capability of the system to perform the intended functions. The existing Surveillance Test procedure is used to perform the test.

The changes in the proposed amendment revise the flow requirements of the pumps to meet system requirements based on actual heat loads without excessive conservatisms, an assumed 82°F lake water temperature and a revised valve lineup to isolate loads not required to receive cooling water during normal operation. The isolation of the RHR [residual heat removal] pump seal water coolers and recirculation pump motor and seal does not affect the performance of any safety related function. There is no change to the capability of the ESWS to perform its intended functions. The proposed changes provide operational flexibility to deal with the microbiologically induced corrosion (MIC) which can restrict flow to the crescent area coolers. The reduced flow requirements were based on calculations. The capability of the ESWS to remove the required heat was demonstrated by testing. Since the ESWS continues to perform its intended functions, there is no increase to the probability or consequences of an accident.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

The proposed changes involve no hardware changes and do not change the capability of the ESW system to perform the intended functions.

The procedure for testing the ESW pumps to meet the proposed Surveillance Requirement is currently used to meet IST requirements. The changes to the system lineup were considered and the changes do not affect the performance of any plant safety function. The flow rate used to establish the acceptance criteria for the new ESW test is based on current accident analyses.

3. Involve a significant reduction in the margin of safety.

These changes do not affect the capability of the ESWS to perform its intended functions. The ESW system flow rate requirements for individual components have been reduced by calculation and the system alignment has been changed to isolate most systems not required to receive cooling water following a design basis event. With reduced flow there is ample margin in coolers for degradation so the change does not prevent the system from performing the required safety functions. Testing demonstrates this capability. Isolation of systems not required to receive cooling water provides additional cooling water for other components without affecting the operability of safety related systems or components.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Power Authority of the State of New York, Docket No. 50-333, James A. FitzPatrick Nuclear Power Plant, Oswego County, New York

Date of amendment request: October 18, 1993

Description of amendment request: The proposed amendment would modify Technical Specification (TS) 6.5.2.2 to change the membership of the Safety Review Committee (SRC). This portion of the proposed amendment, in part, resulted from an organizational change within the licensee's headquarters office which eliminated the position of Vice President—Nuclear Support. The proposed amendment

would also modify TS 6.5.2.10 to change the time limit for providing the Executive Vice President - Nuclear Generation with SRC meeting minutes and reports of review from 14 days to 30 days, consistent with the BWR/4 Standard TSs.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

Operation of the FitzPatrick plant in accordance with the proposed amendment would not involve a significant hazards consideration as defined in 10 CFR 50.92, since it would not:

1. Involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change is purely administrative and does not involve plant equipment or operating parameters. There is no effect on any accident analysis assumptions or other conditions which could involve the probability or consequences of previously evaluated accidents.

2. Create the possibility of a new or different kind of accident from those previously evaluated.

Since the proposed change is administrative in nature and does not involve hardware design or operation, it cannot create the possibility of a new or different kind of accident.

3. Involve a significant reduction in the margin of safety.

The role of the Safety Review Committee as an independent reviewer of safety and regulatory aspects of plant operations remains unchanged. Specific responsibilities of the SRC as stated in Technical Specification subsection 6.5.2.7, remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Attorney for licensee: Mr. Charles M. Pratt, 1633 Broadway, New York, New York 10019.

NRC Project Director: Robert A. Capra

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama

Date of amendments request: September 13, 1993

Description of amendments request: The proposed amendment would eliminate the low feedwater reactor trip and reduce the steam generator low-low water level reactor trip and safeguard actuation setpoint from 17 percent to 15 percent of narrow range span with a corresponding reduction in allowable value to 14.4 percent.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) The proposed elimination of the low feedwater flow trip and the reduction in the steam generator low-low water level trip setpoint does not significantly increase the probability or consequences of an accident previously evaluated in the FSAR. The low feedwater flow reactor trip is no longer needed as a primary trip for any FNP accident analyses, since FNP (Farley Nuclear Plant) is installing a MSS (median signal selector) which will select the median (middle) level signal for SGWLC on each steam generator. The MSS will eliminate the potential adverse control/protection interaction that necessitated the need for the low feedwater flow trip. No analysis previously performed in the FSAR required reanalysis. All acceptance criteria to be met. Therefore, there is no increase in the consequences of any previously evaluated accident. The MSS will be added to reduce susceptibility to spurious trips caused by failure of one level channel. This is a direct application of using MSS for trip reduction. The reduction in the steam generator low-low water level setpoint affords additional margin to spurious trips. The plant response to postulated accident scenarios involving fission product barrier integrity is unaffected. Therefore, the proposed modifications to the Technical Specifications do not significantly increase the probability or consequences of an accident previously evaluated in the FSAR.

(2) The proposed changes to the Technical Specifications do not create the possibility of a new or different kind of accident than any accident already evaluated in the FSAR. No new limiting single failures or accidents scenarios have been created or identified due to the proposed changes. All safety-related systems will continue to perform as designed. No new challenges to any installed safety system have been created by the proposed RPS (reactor protection system) modification and the previously postulated single failure scenario has been eliminated by use of the MSS. Qualified isolation devices are utilized for MSS input signals. The safety analysis limit for steam generator low-low water level remains unchanged; therefore, all remaining analyses using this set point remain unaffected. Therefore, the possibility of a new or different accident is not created.

(3) The proposed elimination of the low feedwater flow trip and reduction of the low-low steam generator water level setpoint does not involve a significant reduction in the margin of safety. No reanalysis was necessary because of the proposed RPS modification and setpoint change; therefore, all margin associated with the current acceptance criteria continue to be unaffected. In addition, RPS diversity for loss of heat sink events is provided by pressurizer high pressure, overtemperature delta-t reactor trip signals and the safety injection signals. Therefore, there is no significant reduction in the margin of safety due to elimination of the low feedwater flow trip and the setpoint reduction of the inclusion of the MSS for feedwater control.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NBC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Attorney for licensee: James H. Miller, III, Esq., Balch and Bingham, Post Office Box 306, 1710 Sixth Avenue North, Birmingham, Alabama 35201

NRC Project Director: S. Singh Bajwa

Vermont Yankee Nuclear Power Corporation, Docket NO. 50-271, Vermont Yankee Nuclear Power Station, Vernon, Vermont

Date of amendment request: August 4, 1993

Description of amendment request: The proposed amendment would modify the periodic surveillance of the emergency diesel generators (EDGs) to permit a slow start in place of the existing requirement to perform a monthly fast start. A fast start shall be performed every 6 months. The proposed amendment would also allow engine prelubrication and warmup when an EDG is started for surveillance testing. This is intended to improve engine reliability and availability by reducing engine wear.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated. The change only affects diesel generator periodic testing. The diesel generators are not accident initiators and the method of testing of the diesels cannot initiate an accident and therefore will not increase the probability of an accident. This change to the diesel generator testing method does not impact any FSAR (final safety analysis report) safety analysis. The proposed surveillance will still provide assurance that

the diesel generator is available to mitigate the consequences of accidents previously evaluated. We believe, as (Generic Letter 84-15) states, that "an overall improvement in diesel engine reliability and availability can be gained by performing diesel-generator starts for surveillance testing using engine prelube and other manufacturer recommended procedures to reduce engine stress and wear." In addition, the test duration of one hour is sufficient to demonstrate that during loaded operation proper cooling of the emergency diesel generators occurs. Thus the consequences of an accident previously evaluated are not increased.

2. The change does not create the possibility of a new or different kind of accident from any accident previously evaluated. The proposed change will only affect diesel generator periodic testing. The diesel generators are not accident initiators and the method of testing of the diesels cannot initiate an accident. This change does not relieve the operation of the diesel generator from existing requirements and the diesel generator is still bounded by the assumptions in the accident analysis. The method of testing provides assurance that the diesel generators are available when needed. The proposed change does not involve any changes in Technical Specification setpoints, plant equipment, plant operation, protective functions or design basis of the plant. Therefore, change in the method of starting, load application and test duration during periodic testing would not create a different type of accident than previously evaluated.

3. The change does not involve a significant reduction in the margin of safety. The proposed change is made to increase the reliability and availability of the EDGs thus enhancing the safety of the plant. Assurance that the diesel generators operate within limits determined to be acceptable continues to be provided. We believe, as (Generic Letter 84-15) states, that "an overall improvement in diesel engine reliability and availability can be gained by performing diesel generator starts for surveillance testing using engine prelube and other manufacturer recommended procedures to reduce engine stress and wear." In addition, the test duration of one hour is sufficient to demonstrate that during loaded operation proper cooling of the emergency diesel generators occurs. Thus improvement in diesel generator reliability and availability does not involve a reduction in the margin of safety.

Based on the above, Vermont Yankee concludes that the proposed change does not constitute a significant hazards consideration as defined in10 CFR 50.92(c).

The NRC staff has reviewed the licensee's analysis, and based on this review, it appears that the three standards of § 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room location: Brooks Memorial Library, 224 Main Street, Brattleboro, Vermont 05301

Attorney for licensee: John A. Ritsher, Esquire, Ropes and Gray, One International Place, Boston, Massachusetts 02110-2624

NRC Project Director: Walter R. Butler

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1993

Description of amendment request: The proposed amendment revises Technical Specification 6.3.1 related to the qualification requirements for the position of Manager Operations and revises Technical Specification 6.5.1.2 to delete specific title designations from the Plant Safety Review Committee (PSRC) membership. Technical Specification 6.3.1 currently requires members of the unit staff to meet or exceed the minimum qualifications of ANSI/ANS 3.1-1978, "American National Standard for Selection and Training of Nuclear Power Plant Personnel". The proposed change would revise the Manager Operations qualification requirements from those listed in the standard (holding a senior reactor operator license) to requiring that the Manager Operations shall hold or have previously held a senior operator license for a similar unit. The revision to Technical Specification 6.5.1.2 involves replacement of the description of PSRC membership from a list of specific position titles to management responsible for various areas of expertise.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequences of an accident previously evaluated.

The proposed change affects only an administrative control, which was based on the existing industry guidance in ANSI/ANS 3.1-1978, that recommended the operations manager hold a senior reactor operator license. The current guidance in ANSI/ANS 3.1-1987 recommends, as one option, that the operations manager have held a license on a similar unit with the "Operations Middle Manager" holding a senior reactor operator license. The proposed change in this license amendment request is consistent with the current guidance.

The proposed change does not alter the design of any system, structure, or component. It does not change the way any plant systems are operated. It does not reduce the knowledge, qualifications, or skills of any watchstander, and does not affect the way the Operations Division is managed other than to allow the Manager Operations to focus his efforts on maintaining the effective performance of his personnel and to ensuring the plant is operated safely and in accordance with the requirements of the Operating License.

The proposed change does not detract from the Manager Operations ability to perform his primary responsibilities. By having previously held a senior reactor operator license he will have gained the necessary training, skills, and experience to fully understand the operation of plant equipment and the requirements for proper watchstanding.

The proposed change does not weaken the supervisory chain that presently exits in the Operations Division. Control Room operators will continue to be supervised by NRC licensed personnel. The proposed change is intended to improve the ability of the Manager Operations to provide the plant oversight required of his position.

The change to the PSRC membership is administrative in nature only. The requirements for quorum, for representation by management, and for specified areas of expertise remain unchanged.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed changes do not affect the design or function of any plant system, structure or component. It does not affect in any way the performance of NRC licensed operators, nor does it change the way any plant equipment is operated. Operation of the plant in conformance with technical specifications and other license requirements will continue to be supervised by personnel who hold an NRC senior reactor operator license. The proposed changes do not introduce any new failure modes.

The proposed change to Section 6.3.1 is intended to remove an administrative requirement which adds a significant burden to the Manager Operations without significantly contributing to his effectiveness in managing plant operation and ensuring that the plant is operated safely and in accordance with the requirements of the Operating License. Deletion of specific title designations of the PSRC membership does not impact the performance or effectiveness of the PSRC.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed changes involves only an administrative control which is not related to the margin of safety as defined in the technical specifications. The proposed change to Section 6.3.1 does not reduce the level of knowledge or experience required of an individual who fills the Manager Operations position, nor does it affect the conservative manner in which the plant is operated. Control Room operators will continue to be supervised by personnel who hold a senior reactor operator license.

The change to the PSRC membership is administrative in nature only. The requirements for quorum, for representation by management, and for specified areas of expertise remain unchanged.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 21, 1993 Description of amendment request: The proposed amendment revises Technical Specification Sections 6.5.1, Plant Safety Review Committee (PSRC) and 6.8, Procedures and Programs, in order to allow implementation of a Qualified Reviewer Program for the review and approval of new procedures and procedure changes. The proposed approval process would require review of changes by a qualified reviewer and approval by the responsible manager for the functional area associated with the procedure. Some changes would continue to require review and approval by the PSRC.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed change does not involve a significant increase in the probability or consequence of an accident previously evaluated.

The proposed change is administrative in nature and provides for (1) procedural reviews through the use of qualified personnel designated by the PSRC Chairman and (2) procedural approval through the use of Managers designated by the Administrative Control Procedures. As part of this program, the Qualified Reviewer will be required to consider, document, and implement (if necessary) cross-discipline reviews prior to approval. The program will be controlled by Administrative Control Procedures that will be reviewed by the PSRC and approved by the Vice President Plant Operations. The PSRC will continue to review new procedures and procedure changes for which an Unreviewed Safety Question Determination (i.e., 10 CFR 50.59 safety evaluation) is required to be performed. The proposed change requires review of any new procedure and procedure change by a qualified individual (other than the preparer) who is knowledgeable in the functional area affected. Therefore, an independent technical review conducted by an individual whose qualification and knowledge encompasses the areas affected by the procedure combined with the added expertise contributed by the cross-disciplinary review will establish an equivalent level of review to that currently provided by the PSRC. The proposed change does not affect any plant hardware, plant design, limiting safety system settings, or plant systems and therefore, does not alter or add any initiating parameters that would cause a significant increase in the probability or consequences of an accident previously evaluated.

2. The proposed change does not create the possibility of a new or different kind of accident from any previously evaluated.

The proposed technical specification change will implement a procedural review and approval process and is strictly administrative in nature. The Qualified Reviewer Program will be controlled by Administrative Control Procedures. These Administrative Control Procedures will be reviewed by the PSRC and approved by the Vice President Plant Operations. The PSRC will continue to review those new procedures and procedure changes for which an Unreviewed Safety Question Determination (i.e., 10 CFR 50.59 safety evaluation) is required to be performed. Therefore, the proposed administrative change does not reduce the safety review function performed by the PSRC. The proposed change does not involve physical changes to the plant, changes to setpoints, or operating parameters. There are no potential initiating events that would result in the possibility of a new or different kind of accident from any accident previously evaluated.

3. The proposed change does not involve a significant reduction in the margin of safety.

The proposed change is administrative and is limited to (1) the transfer of procedure review responsibilities to designated Qualified Reviewers and (2) the transfer of procedure approval responsibilities to designated Managers. The PSRC will continue to review and approve those new procedures or procedure changes for which an Unreviewed Safety Question Determination (i.e., 10 CFR 50.59 safety evaluation) is required to be performed. The change does not alter WCNOC's commitment to maintain a management structure that contributes to the safe operation and maintenance of WCGS.

No position qualifications are being reduced. The level and quality of PSRC review are maintained, because there will be no change in the collective expertise of the PSRC. The independent review of those items important to nuclear safety by the PSRC will continue. Sufficient controls are included in the proposed review methodology to insure that the plant conditions and equipment availability required to support the integrity of the analyses and hence the margin to safety will continue to be maintained. It is therefore concluded that the proposed change does not involve a significant reduction in the margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Trowbridge, 2300 N Street, NW., Washington, DC 20037

NRC Project Director: Suzanne C. Black

Wolf Creek Nuclear Operating Corporation, Docket No. 50-482, Wolf Creek Generating Station, Coffey County, Kansas

Date of amendment request: October 27, 1993

Description of amendment request: The proposed amendment revises Technical Specification Table 4.3-1, Note 5, to reflect that integral bias curves, rather than detector plateau curves, are used to calibrate the nuclear instrumentation system (NIS) source range detectors. The power range and intermediate range nuclear instrumentation channels will continue to be calibrated using detector plateau curves.

Basis for proposed no significant hazards consideration determination: As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

1. The proposed changes do not involve a significant increase in the probability or consequences of an accident previously evaluated.

Plant equipment is not modified by calibrating the NIS source range instrumentation using the integral bias curve. Using the integral bias curve is a more inclusive calibration than the plateau curve and provides the same information, i.e., the high voltage operating point. The change does not affect accident initiators or assumptions. The consequences due to accidents previously evaluated are not being changed.

2. The proposed changes do not create the possibility of a new or different kind of accident from any previously evaluated.

No new accidents are created by the changes being made. No new equipment is being added. No new modes of operation or means of control are being made. The probability of a malfunction of equipment important to safety is unchanged since the calibration of the NIS source range instrumentation using the integral bias curve, rather than the plateau curve, provides the same information. The consequences of malfunctions of equipment important to safety are not changed. No new malfunctions are being created. No new controlling modes or equipment operations are being created.

3. The proposed changes do not involve a significant reduction in the margin of safety

Using the integral bias curve is a more inclusive calibration than the plateau curve and provides the same information, i.e., the high voltage operating point.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

Local Public Document Room Locations: Emporia State University, William Allen White Library, 1200 Commercial Street, Emporia, Kansas 66801 and Washburn University School of Law Library, Topeka, Kansas 66621

Attorney for licensee: Jay Silberg, Esq., Shaw, Pittman, Potts and Towbridge, 2300 N Street, NW., Washington, DC 20037

NRR Project Director: Suzanne C. Black

Previously Published Notices of Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The following notices were previously published as separate individual notices. The notice content was the same as above. They were published as individual notices either because time did not allow the Commission to wait for this biweekly notice or because the action involved exigent circumstances. They are repeated here because the biweekly notice lists all amendments issued or proposed to be issued involving no significant hazards consideration.

For details, see the individual notice in the **Federal Register** on the day and page cited. This notice does not extend the notice period of the original notice.

Georgia Power Company, Oglethorpe Power Corporation, Municipal Electric Authority of Georgia, City of Dalton, Georgia, Docket No. 50-366, Edwin I. Hatch Nuclear Plant, Unit 2, Appling County, Georgia

Date of amendment request: October 1, 1993

Description of amendment request: The proposed amendment would permit an increase in the allowable leak rate for the main steam isolation valves (MSIVs) and would delete the Technical Specification requirements for the MSIV leakage control system.

Date of publication of individual notice in **Federal Register:** November 5, 1993 (58 FR 59081)

Expiration date of individual notice: December 6, 1993

Local Public Document Room location: Appling County Public Library, 301 City Hall Drive, Baxley, Georgia 31513

Tennessee Valley Authority, Docket No. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2, and 3, Limestone County, Alabama

Date of application for amendment: August 27, 1993 (TS 335)

Brief description of amendment: Revise the Browns Ferry Technical Specifications to implement the latest revision of 10 CFR Part 20, incorporating guidance from Regulatory Guide 8N10, and making some minor editorial changes.

Date of publication of individual notice in the **Federal Register:** October 29, 1993 (58 FR 58203)

Expiration date of individual notice: November 29, 1993

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Notice of Issuance of Amendment to Facility Operating Licenses

During the period since publication of the last biweekly notice, the Commission has issued the following amendments. The Commission has determined for each of these amendments that the application complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's rules and regulations. The Commission has made appropriate findings as required by the Act and the Commission's rules and regulations in 10 CFR Chapter I, which are set forth in the license amendment.

Notice of Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for A Hearing in connection with these actions was published in the **Federal Register** as indicated.

Unless otherwise indicated, the Commission has determined that these amendments satisfy the criteria for categorical exclusion in accordance with 10 CFR 51.22. Therefore, pursuant to 10 CFR 51.22(b), no environmental impact statement or environmental assessment need be prepared for these amendments. If the Commission has prepared an environmental assessment under the special circumstances provision in 10 CFR 51.12(b) and has made a determination based on that assessment, it is so indicated.

For further details with respect to the action see (1) the applications for amendment, (2) the amendment, and (3) the Commission's related letter, Safety Evaluation and/or Environmental Assessment as indicated. All of these items are available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document rooms for the particular facilities involved.

Baltimore Gas and Electric Company, Docket Nos. 50-317 and 50-318, Calvert Cliffs Nuclear Power Plant, Unit Nos. 1 and 2, Calvert County, Maryland

Date of application for amendments: April 1, 1993, as supplemented on July 22, 1993

Brief description of amendments: The amendments revise Technical Specification 3/4.8.2, "Onsite Power Distribution Systems AC Power Distribution - Operating," in relation to the actions to be taken if any of the 120 volt alternating current vital busses are not operable. The allowed outage time of 8 hours for an inoperable vital bus can be extended to 24 hours when the vital bus is being powered from the inverter backup bus.

Date of issuance: October 29, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment Nos.: 183 and 160

Facility Operating License Nos. DPR-53 and DPR-69: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 12, 1993 (58 FR 28052) and renoticed on September 29, 1993 (58 FR 50965)

The Commission's related evaluation of these amendments is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Calvert County Library, Prince Frederick, Maryland 20678.

Boston Edison Company, Docket No. 50-293, Pilgrim Nuclear Power Station, Plymouth County, Massachusetts

Date of application for amendment: May 20, 1993

Brief description of amendment: This amendment reduces the main steam isolation valve low turbine inlet pressure setpoint from greater than or equal to 880 pounds per square inch gage (psig) to greater than or equal to 810 psig, and reduces the minimum pressure in the definition of RUN mode from 880 psig to 785 psig.

Date of issuance: November 3, 1993

Effective date: November 3, 1993

Amendment No.: 150

Facility Operating License No. DPR-35: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36425)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 3, 1993

No significant hazards consideration comments received: No Coordinator

Local Public Document Room location: Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

Connecticut Yankee Atomic Power Company, Docket No. 50-213, Haddam Neck Plant, Middlesex County, Connecticut

Date of application for amendment: August 18, 1993

Brief description of amendment: The amendment changes the Haddam Neck Technical Specifications (TS) by incorporating a new TS Section 3/4.8.3.1.2, "ONSITE POWER DISTRIBUTION." The new TS will incorporate an additional limiting condition of operation (LCO) into the TS which will require that the 480 VAC motor control center 5 and its automatic bus transfer scheme be operable during Modes 1, 2, 3, and 4. In addition, the LCO currently numbered 3.8.3.1 and the surveillance requirement currently numbered 4.8.3.1 will be renumbered 3.8.3.1.1 and 4.8.3.1.1, respectively, to support the incorporation of the additional LCO.

Date of issuance: November 1, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 169

Facility Operating License No. DPR-61. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48380)

The Commission's related evaluation of this amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Russell Library, 123 Broad Street, Middletown, Connecticut 06457.

Duquesne Light Company, et al., Docket No. 50-334, Beaver Valley Power Station, Unit No. 1, Shippingport, Pennsylvania

Date of application for amendment: November 2, 1992, as supplemented in letters dated February 23, 1993, June 28, 1993, July 9, 1993, August 16, 1993 (two letters), September 3, 1993, September 8, 1993, and October 8, 1993.

Brief description of amendment: This amendment revises Technical Specifications (TSs) 3/4.9.14, the Bases Section for 3/4.9.14, and TS 5.6.1 and 5.6.3. The spent fuel pool (SFP) storage capacity is increased to 1627 locations and divided into three regions of specified enrichment and burnup. Table 3.9-2 is added to restrict the enrichment and burnup for the third region of the modified SFP. The Bases sections are revised to provide a description of the basis for the changes. The Bases section is also revised to clarify the boron concentration uncertainty for the SFP.

Date of issuance: November 1, 1993

Effective date: To be implemented within 60 days of issuance.

Amendment No: 178

Facility Operating License No. DPR-66. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 4, 1993 (58 FR 7161) as revised September 8, 1993 (58 FR 47303)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: B. F. Jones Memorial Library, 663 Franklin Avenue, Aliquippa, Pennsylvania 15001.

Entergy Operations, Inc., Docket No. 50-368, Arkansas Nuclear One, Unit No. 2, Pope County, Arkansas

Date of application for amendment: May 7, 1993

Brief description of amendment: The amendment changed the Appendix A Technical Specifications (TSs) by revising the limiting conditions for operation, action requirements, and surveillance requirements of TS 3/4.5.1 to reflect changes in the operation of the safety injection tanks.

Date of issuance: November 8, 1993

Effective date: November 8, 1993

Amendment No.: 152

Facility Operating License No. NPF-6. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34075)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Tomlinson Library, Arkansas Tech University, Russellville, Arkansas 72801

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: August 5, 1993

Brief description of amendment: The amendment revised the Technical Specifications to change the frequency from once per 31 days to once per 92 days for the Control Element Assembly freedom of movement test.

Date of issuance: November 1, 1993

Effective date: November 1, 1993

Amendment No.: 87

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 15, 1993 (58 FR 48383)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Entergy Operations, Inc., Docket No. 50-382, Waterford Steam Electric Station, Unit 3, St. Charles Parish, Louisiana

Date of amendment request: May 6, 1993

Brief description of amendment: The amendment revised the Technical Specifications by increasing the voltage during load rejection tests on the emergency diesel generators (EDGs).

Date of issuance: November 2, 1993

Effective date: November 2, 1993

Amendment No.: 88

Facility Operating License No. NPF-38. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34078)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 2, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of New Orleans Library, Louisiana Collection, Lakefront, New Orleans, Louisiana 70122.

Florida Power and Light Company, et al., Docket Nos. 50-335 and 50-389, St. Lucie Plant, Unit Nos. 1 and 2, St. Lucie County, Florida

Date of application for amendments: May 20, 1993

Brief description of amendments: These amendments change the surveillance interval specified for performing an air or smoke flow test through the Containment Spray headers from 5 years to 10 years.

Date of issuance: November 8, 1993

Effective date: November 8, 1993

Amendment Nos.: 124 and 62

Facility Operating License Nos. DPR-67 and NPF-16: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 9, 1993 (58 FR 32382)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 8, 1993

No significant hazards consideration comments received: No.

Local Public Document Room location: Indian River Junior College Library, 3209 Virginia Avenue, Fort Pierce, Florida 34954-9003

Florida Power and Light Company, Docket Nos. 50-250, 50-251, Turkey Point Plant Units 3 and 4, Dade County, Florida

Date of application for amendment: April 23, 1993

Brief description of amendment: These amendments implement a Relaxed Axial Offset Control methodology for axial flux difference control and relocate cycle-specific parameter limits from the Technical Specifications to a Core Operating Limits Report.

Date of issuance: November 12, 1993

Effective date: November 12, 1993

Amendment Nos.: 156 and 150

Facility Operating License No. DPR-31: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** May 26, 1993 (58 FR 30195)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1993

No significant hazards consideration comments received: No

Local Public Document Room location: Florida International University, University Park, Miami, Florida 33199.

Illinois Power Company and Soyland Power Cooperative, Inc., Docket No. 50-461, Clinton Power Station, Unit No. 1, DeWitt County, Illinois

Date of application for amendment: December 15, 1992

Brief description of amendment: The amendment increases the allowed outage time for differential temperature instruments associated with the containment and reactor vessel isolation control system (CRVICS) as described in CPS Technical Specification Table 3.3.2-1, CRVICS INSTRUMENTATION.

Date of issuance: November 5, 1993

Effective date: Immediately, to be implemented within 30 days.

Amendment No.: 85

Facility Operating License No..NPF-62. The amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** February 3, 1993 (58 FR 6999)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: The Vespasian Warner Public Library, 120 West Johnson Street, Clinton, Illinois 61727.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: May 21, 1993

Brief description of amendment: The amendment revises Technical Specification (TS) Table 2.2.1-1, "Reactor Protection System Instrumentation Setpoints," to increase the setpoints for the Average Power Range Monitor (APRM) Flow-Biased Simulated Thermal Power - Upscale scram. The amendment also revises TS 3/4.2.2, "Average Power Range Monitor Setpoints;" TS Table 3.3.6-1, "Control Rod Block Instrumentation;" TS Table 3.3.6-2, "Control Rod Block Instrumentation Setpoints;" TS Table 4.3.6-1, "Control Rod Block Instrumentation Surveillance Requirements;" and TS 6.9.1.9, "Core Operating Limits Report," to delete references to APRM rod block instrumentation. These TS changes are required to facilitate operation in the Extended Load Line Limit region. The amendment also makes a minor editorial correction in parameter 3.a of TS Table 3.3.6-2 and revises TS Bases 3/4.2.2, "APRM Setpoints," to reflect the deletion of references to the APRM rod block instrumentation.

Date of issuance: November 9, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 51

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34080)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

Niagara Mohawk Power Corporation, Docket No. 50-410, Nine Mile Point Nuclear Station, Unit 2, Oswego County, New York

Date of application for amendment: March 22, 1993, as supplemented July 14, 1993, and September 14, 1993.

Brief description of amendment: The amendment revises Technical Specification (TS) Section 6.9.1.9, "Core Operating Limits Report," to incorporate the SAFER/GESTR-LOCA methodology for accident analyses. The amendment also revises TS Bases Section 3/4.2 to reflect the addition of the SAFER/GESTR-LOCA methodology and to more clearly describe certain actions taken to avoid operation in excess of thermal limits.

Date of issuance: November 10, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 52

Facility Operating License No. NPF-69: Amendment revises the Technical Specifications.

Date of initial notice in **Federal Register:** April 28, 1993 (58 FR 25858)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1993. The supplemental submittals provided additional information to support the licensee's application and did not change the initial proposed no significant hazards consideration determination.

No significant hazards consideration comments received: No

Local Public Document Room location: Reference and Documents Department, Penfield Library, State University of New York, Oswego, New York 13126.

North Atlantic Energy Service Corporation, Docket No. 50-443, Seabrook Station, Unit No. 1, Rockingham County, New Hampshire

Date of application for amendment: June 18, 1993.

Brief description of amendment: The amendment revises the Appendix A Technical Specifications (TS) relating to the condensate storage tank (CST). The amendment modifies the Seabrook Station TS to reduce the frequency of surveillances that are required to verify the integrity of the CST enclosure. Specifically, surveillance requirement TS 4.7.1.3 is changed to require verification of CST enclosure integrity at least every 18 months vice every 12 hours.

Date of issuance: November 10, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 26

Facility Operating License No. NPF-86: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43928)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Exeter Public Library, 47 Front Street, Exeter, New Hampshire 03833.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: July 27, 1993

Brief description of amendment: The amendment rewords the description of the May 10, 1985, Appendix J exemptions described in Millstone Unit 1 Operating License Section 2.D(2), deleting the reference to low pressure tests of the containment access air locks. The amendment also: (1) Replaces Technical Specification Section 4.7.A.3.d(2) with wording consistent with paragraph III.D.2(b) of 10 CFR part 50, Appendix J, and (2) revises the Technical Specification Bases Section 4.7.A to state that personnel air lock door seal testing is performed in accordance with 10 CFR part 50, Appendix J requirements.

Date of issuance: November 1, 1993

Effective date: As of the date of issuance to be implemented within 60 days.

Amendment No.: 67

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications and Facility Operating License.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46239)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Northeast Nuclear Energy Company, Docket No. 50-245, Millstone Nuclear Power Station, Unit 1, New London County, Connecticut

Date of application for amendment: September 1, 1993

Brief description of amendment: The amendment revises the surveillance requirements for local leak rate testing which are included in Technical Specification Section 4.7.A, to remove the 5% L_{∞} limit. Removing the limit will allow Millstone Unit 1 to address individual penetration leakage while maintaining the overall leakage rate for Type B and C tests below the Appendix J acceptance criterion of 0.60 L_a. In addition, the amendment: (1) Makes editorial changes and deletes the exclusion of main steam isolation valves from Section 4.7.A.3.e.(1), and (2) revises the applicable Bases section.

Date of issuance: November 10, 1993

Effective date: As of the date of issuance to be implemented within 30 days.

Amendment No.: 68

Facility Operating License No. DPR-21. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50968)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 10, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Learning Resources Center, Thames Valley State Technical College, 574 New London Turnpike, Norwich, Connecticut 06360.

Omaha Public Power District, Docket No. 50-285, Fort Calhoun Station, Unit No. 1, Washington County, Nebraska

Date of amendment request: October 9, 1992

Brief description of amendment: The amendment changed Technical Specification 2.10.4, to establish a limit for cold-leg temperature to maintain departure from nucleate boiling ratio margin during power operation above 15 percent of rated power and to make an administrative change. The other changes requested in your October 9, 1992, application were granted in

Amendment No. 154, dated August 10, 1993.

Date of issuance: October 29, 1993

Effective date: October 29, 1993

Amendment No.: 156

Facility Operating License No. DPR-40. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** November 25, 1992 (57 FR 55584)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: W. Dale Clark Library, 215 South 15th Street, Omaha, Nebraska 68102

Philadelphia Electric Company, Public Service Electric and Gas Company Delmarva Power and Light Company, and Atlantic City Electric Company, Docket Nos. 50-277 and 50-278, Peach Bottom Atomic Power Station, Unit Nos. 2 and 3, York County, Pennsylvania

Date of application for amendments: February 25, 1993, as supplemented by letter dated September 1, 1993

Brief description of amendments: These amendments revise the Technical Specifications to make the Effluent Report an annual submittal in accordance with the revision to 10 CFR 50.36a that was published on August 31, 1992.

Date of issuance: November 1, 1993

Effective date: November 1, 1993Amendments Nos.: 180 and 185

Facility Operating License Nos. DPR-44 and DPR-56: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50973)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 1, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Government Publications Section, State Library of Pennsylvania, (REGIONAL DEPOSITORY) Education Building, Walnut Street and Commonwealth Avenue, Box 1601, Harrisburg, Pennsylvania 17105.

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: May 10, 1993

Brief description of amendments: The amendments revise the Technical Specifications to change the frequency of reporting of radioactive effluents from a semiannual basis to an annual basis pursuant to 10 CFR 50.36a.

Date of issuance: October 29, 1993

Effective date: October 29, 1993

Amendment Nos.: 102 and 95

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** July 7, 1993 (58 FR 36447)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated October 29, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Southern Nuclear Operating Company, Inc., Docket Nos. 50-348 and 50-364, Joseph M. Farley Nuclear Plant, Units 1 and 2, Houston County, Alabama.

Date of amendments request: August 28, 1992

Brief description of amendments: The amendments make several administrative changes to section 6.0 of the Technical Specifications.

Date of issuance: November 4, 1993

Effective date: November 4, 1993

Amendment Nos.: 103 and 96

Facility Operating License Nos. NPF-2 and NPF-8. Amendments revise the Technical Specifications.

Date of initial notice in **Federal Register:** September 30, 1992 (57 FR 45089)

The Commission's related evaluation of the amendments is contained in a Safety Evaluation dated November 4, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Houston-Love Memorial Library, 212 W. Burdeshaw Street, Post Office Box 1369, Dothan, Alabama 36302

Tennessee Valley Authority, Docket Nos. 50-259, 50-260 and 50-296, Browns Ferry Nuclear Plant, Units 1, 2 and 3, Limestone County, Alabama

Date of application for amendments: March 19, 1993, as supplemented on September 2, 1993 (TS 332)

Brief description of amendments: Amendment will change technical specifications to extend the surveillance frequency for emergency diesel generator maintenance inspections from once per 12 months to once per 24 months.

Date of issuance: October 25, 1993

Effective date: October 25, 1993

Amendment Nos.: 200 - Unit 1, 218 - Unit 2, and 173 - Unit 3

Facility Operating License Nos. DPR-33, DPR-52 and DPR-68: Amendments revised the Technical Specifications.

Date of initial notice in **Federal Register:** June 23, 1993 (58 FR 34095)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated October 25, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket No. 50-260, Browns Ferry Nuclear Plant, Unit 2, Limestone County, Alabama

Date of application for amendments: September 15, 1993, as supplemented by letter dated October 26, 1993 (TS 343T).

Brief description of amendments: The amendment adds a footnote to Table 3.2.B, "Instrumentation that Initiates or Controls the Core and Containment Cooling Systems", of the Browns Ferry Nuclear Plant, Unit 2, Technical Specifications to facilitate modification of the reactor vessel water level instrumentation system. The purpose of the modification is to eliminate level indication errors caused by dissolved, noncondensible gases in the instrumentation reference legs coming out of solution during plant depressurizations. Such level indication errors were the subject of NRC Bulletin 93-03, "Resolution of Issues Related to Reactor Vessel Water Level Instrumentation in BWRs".

Date of issuance: November 12, 1993

Effective date: November 12, 1993

Amendment No.: 219

Facility Operating License No. DPR-52: Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** September 30, 1993 (58 FR 51120). The October 26, 1993 letter provided clarifying information that did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 12, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: Athens Public Library, South Street, Athens, Alabama 35611

Tennessee Valley Authority, Docket No. 50-328, Sequoyah Nuclear Plant, Unit 2, Hamilton County, Tennessee

Date of application for amendment: September 8, 1993 (TS 93-12)

Brief description of amendment: The amendment adds Operating License Condition 2.C.(17) to provide limited extension of the surveillance test intervals for certain specified instrumentation on Unit 2 to coincide with the completion of the Cycle 6 refueling outage. The surveillance intervals that are affected will not exceed 25 months.

Date of issuance: November 9, 1993

Effective date: November 9, 1993

Amendment No.: 162

Facility Operating License No. DPR-79: Amendment revises the technical specifications.

Date of initial notice in **Federal Register:** September 29, 1993 (58 FR 50976)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 9, 1993.

No significant hazards consideration comments received: None

Local Public Document Room location: Chattanooga-Hamilton County Library, 1101 Broad Street, Chattanooga, Tennessee 37402

TU Electric Company, Docket Nos. 50-445 and 50-446, Comanche Peak Steam Electric Station, Unit Nos. 1 and 2, Somervell County, Texas

Date of amendment requests: April 30, 1993, as supplemented by letter dated July 30, 1993.

Brief description of amendment: The amendments change the Technical Specifications by removing references to the source range boron dilution flux doubling instrumention and its associated action statement, surveillance, and implementation footnotes.

Date of issuance: November 3, 1993

Effective date: November 3, 1993, to be implemented within 15 days of issuance.

Amendment Nos.: Unit 1 - Amendment No. 20; Unit 2 - Amendment No. 6

Facility Operating License Nos. NPF-87 and NPF-89: Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 18, 1993 (58 FR 43933). The July 30, 1993, submittal provided additional clarifying information and did not change the initial no significant hazards determination.

The Commission's related evaluation of the amendment is contained in a Safety Evalution dated November 3, 1993.

No significant hazards consideration comments received: No

Local Public Document Room location: University of Texas at Arlington Library, Government Publications/Maps, 701 South Cooper, P. O. Box 19497, Arlington, Texas 76019.

Union Electric Company, Docket No. 50-483, Callaway Plant, Unit 1, Callaway County, Missouri

Date of application for amendment: June 4, 1993 as clarified on October 19, 1993

Brief description of amendment: The amendment revises the Technical Specification Tables 2.2-1 and 4.3-1 and associated Bases 3/4.2.2 and 3/4.2.3 by changing the axial flux difference (AFD) penalty function f_1 (delta - I) defined in Note 1 of Table 2.2-1 for the Overtemperature Delta-T reactor trip.

Date of issuance: November 8, 1993

Effective date: November 8, 1993

Amendment No.: 84

Facility Operating License No. NPF-30. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** September 1, 1993 (58 FR 46240)The clarifying information did not change the initial proposed no significant hazards consideration determination.

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 8, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: Callaway County Public Library, 710 Court Street, Fulton, Missouri 65251.

Wisconsin Public Service Corporation, Docket No. 50-305, Kewaunee Nuclear Power Plant, Kewaunee County, Wisconsin

Date of application for amendment: June 22, 1993

Brief description of amendment: The amendment changes the Kewaunee Nuclear Power Plant (KNPP) Technical Specifications (TS) Section 1.0 to define frequency notations for surveillance requirements. Sections 3.2 and 3.3 have been revised to incorporate formatting changes and to correct minor typographical errors as part of converting the TS document to the WordPerfect software. In Section 3.10, "every shift" has been changed to "at least once per 8 hours" as applicable. Section 4.2 has been changed to revise an incorrect reference, and Section 6 has been revised to remove audit frequencies, define "vital areas," and extend the reporting period for the Radioactive Effluent Release Report from semiannual to annual.

Date of issuance: November 5, 1993

Effective date: November 5, 1993

Amendment No.: 103

Facility Operating License No. DPR-43. Amendment revised the Technical Specifications.

Date of initial notice in **Federal Register:** August 4, 1993 (58 FR 41520)

The Commission's related evaluation of the amendment is contained in a Safety Evaluation dated November 5, 1993.

No significant hazards consideration comments received: No.

Local Public Document Room location: University of Wisconsin Library Learning Center, 2420 Nicolet Drive, Green Bay, Wisconsin 54301.

Dated at Rockville, Maryland, this 17th day of November 1993.

For the Nuclear Regulatory Commission

Steven A. Varga,

Director, Division of Reactor Projects - I/II, Office of Nuclear Reactor Regulation

[Doc. 93-28750 Filed 11-23-93; 8:45 am]

BILLING CODE 7590-01-F

Advisory Committee on Reactor Safeguards (ACRS) and Advisory Committee on Nuclear Waste (ACNW); Notice of Proposed Meetings

In order to provide advance information regarding proposed public meetings of the ACRS Subcommittees and meetings of the ACRS full Committee, of the ACNW, and the ACNW Working Groups the following preliminary schedule is published to reflect the current situation, taking into account additional meetings that have been scheduled and meetings that have been postponed or cancelled since the last list of proposed meetings was published on October 21, 1993 (58 FR 54382). Those meetings that are firmly scheduled have had, or will have, an individual notice published in the **Federal Register** approximately 15 days (or more) prior to the meeting. It is expected that sessions of ACRS and ACNW full Committee meetings designated by an asterisk (*) will be closed in whole or in part to the public. The ACRS and ACNW full Committee meetings begin at 8:30 a.m. and ACRS Subcommittee and ACNW Working Group meetings usually begin at 8:30 a.m. The time when items listed on the agenda will be discussed during ACRS and ACNW full Committee meetings, and when ACRS Subcommittee and ACNW Working Group meetings will start will be published prior to each meeting. Information as to whether a meeting has been firmly scheduled, cancelled, or rescheduled, or whether changes have been made in the agenda for the December 1993 ACRS and ACNW full Committee meetings can be obtained by contacting the Office of the Executive Director of the Committees (telephone: 301/492–4600 (recording) or 301/492–7288, Attn: Barbara Jo White) between 7:30 a.m. and 4:15 p.m., (EST).

ACRS Subcommittee Meetings

ABB–CE Standard Plant Designs, December 8, 1993, Bethesda, MD. The Subcommittee will begin its review of the Standard Safety Analysis Report for the ABB–CE System 80+ design.

Planning and Procedures, December 8, 1993, Bethesda, MD (4 p.m.–6 p.m.). The Subcommittee will discuss proposed ACRS activities and related matters. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, December 15, 1993, Bethesda, MD. The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the GE ABWR design and related matters.

Materials and Metallurgy, December 16, 1993, Bethesda, MD. The Subcommittee will discuss with representatives of the NRC staff and NUMARC, the steam generator operating experiences and relating rulemaking activities.

Thermal Hydraulic Phenomena, January 4 and 5, 1994, Bethesda, MD. The Subcommittee will continue its review of the NRC RELAP5/MOD 3 code. The focus of the discussion will be on the use of the code in support of the AP600 passive plant design certification review.

Planning and Procedures, January 5, 1994, Bethesda, MD (2 p.m.–4:30 p.m.). The Subcommittee will discuss proposed ACRS

activities and related matters. Also, it will discuss qualifications of candidates nominated for appointment to the ACRS. A portion of this meeting may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

Advanced Boiling Water Reactors, January 25–26, 1994, Bethesda, MD. The Subcommittee will review any residual issues associated with the ABWR design and prepare a proposed ACRS report on ABWR issues for consideration by the full Committee.

ACRS Full Committee Meetings

404th ACRS Meeting, December 9–11, 1993, Bethesda, MD. During this meeting, the Committee plans to consider the following:

A. *Proposed Supplement to Generic Letter 86–10 on Fire Endurance Testing*—Review and comment on the proposed supplement to Generic Letter 86–10 on Fire Endurance Testing, and the technical differences between NUMARC and the NRC Staff on the NUMARC test program related to the thermo-lag fire barrier. Representatives of the NRC staff and industry will participate.

B. *EPRI Passive LWR Requirements Document*—Discuss proposed ACRS report on the EPRI Passive LWR Requirements document. Representatives of the NRC staff will participate, as appropriate.

C. *ABWR Certified Design Material*—Review and comment on the Certified Design Material for the ABWR in the areas of piping design, human factors, and radiation protection. Representatives of the NRC staff and General Electric Nuclear Energy (GE) will participate.

D. *ABWR and SBWR Water-Level Instrumentation*—Review and comment on the NRC staff's recommendation that diversity of reactor pressure vessel water-level measurement be required for the ABWR and SBWR. Representatives of the NRC staff and industry will participate.

E. *Insights Gained from the NRC Staff Reassessment of the Fire Protection Program*—Hear a briefing by and hold discussions with representatives of the NRC staff on the lessons learned from the staff's recent reassessment of the fire protection program. Representatives of the industry will participate, as appropriate.

*F. *Report on the Extended Station Blackout Event at Narora Atomic Power Station (India)*—Hear a briefing by and hold discussions with representatives of the NRC staff on the lessons learned from the severe turbine building fire that resulted in an extended station blackout on March 31, 1993, at the Narora Atomic Power Station (India). A portion of this session may be closed pursuant to 5 U.S.C. 552 b(c)(4) to discuss information provided in confidence by a foreign source.

G. *Status of Individual Plant Examination (IPE) Program*—Hear a briefing by and hold discussions with representatives of the NRC staff on the status of the IPE program, the methodologies used by the licensees in performing IPEs and the insights gained from these studies, and the use of the IPE/IPEEE programs to resolve generic issues.

H. *First-of-a-Kind Engineering*—Hear a briefing by and hold discussions with representatives of the DOE and EPRI on a program at Advanced Reactors Corporation in the area of first-of-a-kind engineering.

I. *Resolution of ACRS Comments and Recommendations*—Discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

*J. *Report of the Planning and Procedures Subcommittee*—Hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c) (2) and (6) to discuss personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

K. *ACRS Subcommittee Activities*—Hear reports and hold discussions regarding the status of ACRS subcommittee activities, including reports from the Subcommittees on Advanced Boiling Water Reactors and ABB–CE Standard Plant Designs.

L. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

*M. *Election of Officers*—Elect new officers (Chairman, Vice-Chairman, and Member-at-Large to the Planning and Procedures Subcommittee) for calendar year 1994. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

N. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of the Committee activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

405th ACRS Meeting, January 6–8, 1994, 7920 Norfolk Avenue, Bethesda, MD, Room P–110. Agenda to be announced.

406th ACRS Meeting, February 10–12, 1994, 7920 Norfolk Avenue, Bethesda, MD, Room P–110. Agenda to be announced.

ACNW Full Committee Meetings

59th ACNW Meeting, December 13, 1993, Las Vegas, NV. During this meeting the Committee plans to consider the following:

A. *Activities at the Proposed Yucca Mountain High-Level Waste Repository*—Hear a briefing by and hold discussions with representatives of DOE management on current activities at the proposed HLW repository at Yucca Mountain. Representatives of the NRC staff will participate, as appropriate.

B. *Yucca Mountain Project—Technical Issues*—Hear a briefing by and hold discussions with DOE & M&O representatives on selected technical areas, i.e., surface-based testing, ESF status and design, and the status of resolution of selected issues.

C. *Yucca Mountain Project—Interested Party Comments*—Hear comments from and hold discussions with state, county, and local government officials. Representatives from Indian tribes and others interested in the proposed HLW repository may also present comments.

D. *Future Activities*—Discuss topics proposed for consideration by the full Committee during future meetings.

*E. *Election of Officers*—Elect Chairman and Vice-Chairman for calendar year 1994. A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

F. *Miscellaneous*—Discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

60th ACNW Meeting, January 19–20, 1994, Bethesda, MD. Agenda to be announced.

61st ACNW Meeting, February 23–24, 1994, Bethesda, MD. Agenda to be announced.

ACNW Working Group Meeting

Unsaturated Zone Working Group, December 14, 1993, Las Vegas, NV. The Working Group will examine the relationship between precipitation, recharge, and flux through the unsaturated zone at the proposed Yucca Mountain site, and the adequacy of ongoing field studies to ascertain these relationships. Emphasis will be placed on the modeling of flow in the unsaturated zone, alternative conceptual models of fracture versus matrix flow, and conditions under which fracture flow can be shown to predominate. The Working Group will also focus on the recharge term in hydrogeologic models, alternative conceptual models for how and where regional recharge occurs, and the effect of assumptions about recharge on model results.

Dated: November 18, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–28875 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–529]

Arizona Public Service Co., Palo Verde Nuclear Generating Station, Unit 2; Consideration of Issuance of Amendment to Facility Operating License, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing; Correction

In notice document 93–28122 beginning on page 60223, in the issue of Monday, November 15, 1993, make the following correction:

In the third full paragraph, in the first column, on page 60225, in line 1, the statement "By November 30, 1993" should be corrected to read "By December 15, 1993."

Dated at Rockville, Maryland, this 17th day of November 1993.

For the Nuclear Regulatory Commission.

Brian E. Holian,

Project Manager, Project Directorate, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28879 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

[License SNM–561; Docket 70–622]

Finding of No Significant Impact and Opportunity For a Hearing Renewal of Special Nuclear Materials; Department of Army U.S. Army Armament Research, Development and Engineering Center, Picatinney Arsenal, Dover, NJ

The U.S. Nuclear Regulatory Commission is considering the renewal of Special Nuclear Materials License SNM–561 for the continued operation of the Department of Army, U.S. Army Armament Research, Development and Engineering Center (ARDEC), Picatinney Arsenal, in Dover, New Jersey for a period of 5 years.

Summary of the Environmental Assessment

Identification of the Proposed Action

The proposed action is the renewal of SNM–561 for a period of 5 years for the receipt, possession, storage, use, and transfer of sealed sources of plutonium-238, plutonium-239, and neptunium-237, and for the possession only of material test reactor-type (MTR) uranium fuel elements. The sealed sources may be used as calibration or check sources in research programs or as a tool in the study of other materials.

The MTR fuel elements are aluminum-clad, uranium aluminum alloy which is enriched to 93.27 percent in the ^{235}U isotope. The elements are for use with the Californium Flux Multiplication System (CFX) which is a subcritical assembly. The CFX serves as a multiplying medium to enhance the emission of a neutron flux for the purpose of conducting neutron radiography of activation analysis. The CFX is not currently authorized for use, however, should ARDEC decide to proceed with the process for which the MTR fuel elements were obtained, a request to amend the license authorizing usage of the CFX will be submitted for NRC approval.

The Need for the Proposed Action

Activities under this license serve a variety of research and development needs for the military. Research and development activities associated with the license are primarily in the areas of weapons, weapon systems, and munitions.

Environmental Impacts of the Proposed Action

The radioactive material authorized by this license is in a non-dispersible form and, therefore, no liquid or gaseous effluents are produced. No solid waste is generated by the use of the sealed sources or the storage of the fuel elements. There is no radiological impact to offsite or onsite populations due to either the storage or use of licensed material.

Conclusion

Based on the information presented above, the environmental impacts associated with the proposed license renewal will be insignificant. No gaseous or liquid effluents will be released to the environment. The radiological impact from the storage and use of licensed materials is insignificant.

Alternatives to the Proposed Action

The only feasible alternative to the proposed action of license renewal is the denial of the license renewal. Denying renewal of the license would cause ARDEC to cease operations authorized by License SNM–561, while activities authorized by other NRC licenses issued to the Army at this facility would continue. Not renewing the license would only be considered if there were issues of public health and safety that could not be resolved to the satisfaction of the NRC staff.

Agencies and Persons Consulted

Staff utilized the application dated August 28, 1993 in completing the environmental review.

Finding of No Significant Impact

The Commission has prepared an Environmental Assessment related to the renewal of Special Nuclear Material License SNM–561. On the basis of the assessment, the Commission has concluded that environmental impacts that would be created by the proposed licensing action would not be significant and do not warrant the preparation of an Environmental Impact Statement. Accordingly, it has been determined that a Finding of No Significant Impact is appropriate.

The Environmental Assessment and the above documents related to this proposed action are available for public inspection and copying at the Commission's Public Document Room at the Gelman Building, 2120 L Street NW., Washington, DC.

Opportunity for a Hearing

Any person whose interest may be affected by the issuance of this renewal may file a request for a hearing. Any request for hearing must be filed with the Office of the Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555, within 30 days of the publication of this notice in the **Federal Register**; be served on the NRC staff (Executive Director for Operations, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852); on the licensee (Department of the Army, U.S. Army Armament Research, Development, and Engineering Center, Picatinney Arsenal, Dover, New Jersey, 07806–5000); and must comply with the requirements for requesting a hearing set forth in the Commission's regulation, 10 CFR part 2, subpart L, "Informal Hearing Procedures for Adjudications in Materials Licensing Proceedings."

These requirements, which the requestor must address in detail, are:

1. The interest of the requestor in the proceeding;

2. How that interest may be affected by the results of the proceeding, including the reasons why the requestor should be permitted a hearing;

3. The requestor's areas of concern about the licensing activity that is the subject matter of the proceeding; and

4. The circumstances establishing that the request for hearing is timely, that is, filed within 30 days of the date of this notice.

In addressing how the requestor's interest may be affected by the proceeding, the request should describe the nature of the requestor's right under the Atomic Energy Act of 1954, as amended, to be made a party to the proceeding; the nature and extent of the requestor's property, financial, or other (i.e., health, safety) interest in the proceeding; and the possible effect of any order that may be entered in the proceeding upon the requestor's interest.

Dated at Rockville, Maryland, this 16th day of November 1993.

For the Nuclear Regulatory Commission.

Robert C. Pierson,

Chief, Licensing Branch, Division of Fuel Cycle Safety and Safeguards, FCSS.

[FR Doc. 93–28878 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–P

[Docket No. 50-320]

General Public Utilities Nuclear Corp. (Three Mile Island Nuclear Station Unit 2); Exemption

I

GPU Nuclear Corporation (the licensee), is the holder of Facility Operating (Possession Only) License No. DPR-73 which authorizes possession and maintenance of the Three Mile Island Nuclear Station, Unit 2 (TMI-2 or the plant). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The plant is a permanently shut down light water reactor, currently in the process of being placed in Post-Defueling Monitored Storage (PDMS), and is located at the licensee site in Dauphin County, Pennsylvania.

II

TMI-2 permanently ceased power operations in March 1979, fuel has been removed from the reactor and from the site, and detailed plans to place the facility in Post-Defueling Monitored Storage have been developed. By Amendment No. 45, dated September 14, 1993, License No. DPR-73 was modified to a possession only status. This license allows the licensee to possess, but not operate the facility. In order to reflect the permanently shutdown and defueled status of the plant, the NRC, on its own initiative, is granting an exemption from the requirements of 10 CFR 50.120. This rule states the following:

> * * * each nuclear power plant licensee, by November 22, 1993, shall establish, implement, and maintain a training program derived from a systems approach to training as defined in 10 CFR 55.4.

This exemption will relieve the licensee from training program requirements of 10 CFR 50.120. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

III

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are: (1) Authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances.

Section 50.12(a)(2)(ii) of 10 CFR part 50 provides that special circumstances exist when application of the regulations in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The purpose of 10 CFR 50.120 is to ensure that civilian nuclear power plant operating personnel are trained and qualified to safely operate and maintain the facility commensurate with the safety status of the facility.

The licensee in its letter dated July 29, 1993, addressed the special circumstances related to the NRC requiring the TMI-2 training programs to comply with 10 CFR 50.120. The reactor has been defueled and the fuel removed from the site. The reactor vessel internals have been removed and shipped offsite. The reactor cannot be returned to operation.

The licensee has stated that the training requirements necessary to assure adequate protection of the public health and safety in a permanently shutdown and defueled facility are significantly less than the training requirements necessary to assure the public health and safety at an operating facility. The current TMI-2 training programs for the personnel categories required by 10 CFR 50.120 are as follows:

Non-Licensed Operators

The auxiliary operators currently assigned to TMI-2 were previously qualified to work in TMI-2. On entering PDMS, these individuals will become TMI-1 auxiliary operators and will be expected to complete the accredited non-licensed operator training and qualification program. In preparation for PDMS, TMI-1 auxiliary operators have begun classroom training and plant walkthroughs on selected TMI-2 systems. Prior to entry into PDMS, the TMI-1 auxiliary operators will have completed qualification on those systems.

Shift Supervisor

There are no Shift Supervisors at TMI-2. This category of personnel is not applicable to the current or future conditions at TMI-2.

Shift Technical Advisor (STA)

There are no Shift Technical Advisors at TMI-2. This category of personnel is not applicable to the current or future conditions at TMI-2.

Instrumentation and Control, Electrical, and Mechanical Maintenance

The licensee stated that there are two instrumentation and controls technicians, two electricians, and two mechanics assigned to TMI-2. These individuals were previously qualified to work in TMI-2 and possess years of TMI-2 specific experience. Additionally, these individuals have been qualified to the Systems Approach to Training (SAT) based training and qualification standards of the TMI-1 accredited training programs. Additional personnel assigned to the TMI-1 Maintenance Department, who were previously assigned to TMI-2, who possess the experience to work on TMI-2 equipment have also been qualified to TMI-1 SAT-based accreditation standards. As systems are turned over to TMI-1, additional training needs can be addressed, and TMI-1 maintenance department personnel trained, as appropriate.

Radiation Protection Technician

All GPU Nuclear radiation protection technicians at TMI have completed the SAT-based and accredited TMI-1 training and qualification program. All technicians attend continuing training which addresses changes to the plants (TMI-1 and TMI-2) and plant and industry experience. Basic technical skills required for TMI-2 support are addressed.

Chemistry Technician

All chemistry technicians supporting TMI-2 are assigned to TMI-1 and have completed the SAT-based and accredited TMI-1 training and qualification programs. All technicians attend continuing training which addresses changes to the plants (TMI-1 and TMI-2) and plant and industry experience. Basic technical skills required for TMI-2 support are addressed.

Engineering Support

There is no TMI-2 specific Engineering Support Personnel (ESP) Program. On entering PDMS, TMI-2 engineers will be assigned to TMI-1 Plant or to Technical Function Division. In addition, personnel in other departments will be transferred from TMI-2 to Site Services. These personnel will be enrolled in the TMI-1 ESP program, as appropriate.

In addition to the above training, all individuals having unescorted access to the Three Mile Island plant site receive general employee training annually.

Thus, for all categories of training described above, the licensee indicates that the existing training requirements and commitments provide the protection necessary to ensure public health and safety given the current shutdown and defueled status of the facility. With TMI-2 defueled and decontaminated to a safe and stable condition, the principal tasks and activities performed on the site are those

necessary to monitor and maintain remaining systems. The tasks and activities associated with maintaining the remaining systems are relatively simple compared to the tasks and activities required to maintain an operating nuclear power plant. Therefore, requiring TMI–2 to comply with the literal training requirements specified in 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

The NRC staff reviewed and agrees with the licensee analysis described above. In addition, the NRC has previously analyzed the limiting design basis accident for TMI–2, in this permanently shut down condition. The results of this analysis indicated that if a release of radioactive materials were to occur at TMI–2, the resulting offsite dose to the maximally exposed individual would be a small fraction of the 10 CFR part 100 offsite dose limits. The staff has also determined that the tasks that remain to be performed by the TMI–2 plant staff are fewer in number and significantly less complicated than the tasks performed by the staff of an operating nuclear plant. Thus, the NRC staff concludes the licensee justification for exemption is reasonable based on: (1) The significantly reduced risk to the public health and safety due to TMI–2 being permanently shut down, and (2) the reduced number and complexity of tasks to be performed by the TMI–2 plant staff.

IV

Based on the analyses presented in Section III above, the staff concludes that sufficient bases exist for approval of this exemption. In addition, the staff finds that the special circumstance present satisfies the requirement of 10 CFR 50.12(a)(2)(ii) in that requiring compliance with 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

V

Based on the above evaluation, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission, on its own motion, hereby grants TMI–2 an exemption to 10 CFR 50.120. This exemption does not relieve the licensee of any other training requirements or commitments which they have made to the NRC, including those set forth herein.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 60704, dated November 17, 1993).

This exemption is effective on November 22, 1993, the implementation date of the rule.

Dated at Rockville, Maryland this 17th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28880 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–344]

Portland General Electric Co., et al. (Trojan Nuclear Plant); Exemption

I

The Portland General Electric Company, et al., (PGE or the licensee), is the holder of Facility Operating License No. NPF–1, which authorizes possession and maintenance of the Trojan Nuclear Plant (Trojan or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect. The facility is a permanently shutdown pressurized water reactor, currently in the process of being decommissioned, and is located at the PGE site in Columbia County, Oregon, on the west bank of the Columbia River.

II

The licensee, by letter dated February 2, 1993, informed the NRC that Trojan had permanently ceased power operations, all fuel had been removed from the reactor to the fuel pool, and that PGE had begun to develop detailed plans to decommission the facility. The NRC, in License Amendment 190, dated May 5, 1993, modified License No. NPF–1 to a Possession Only License (POL). The license is conditioned so that PGE is not authorized to operate the reactor or place fuel in the Trojan reactor vessel, thus formalizing the commitment of the licensee to permanently cease power operations.

By letter dated July 8, 1993, the licensee requested an exemption from the requirements of 10 CFR 50.54(w) which requires licensees to obtain and maintain a minimum of $1.06 billion of decontamination insurance coverage for radiological accidents at the reactor site. The level of coverage required by the regulation was based on an evaluation of potential accidents that could occur at an operating facility. The July 8, 1993 letter requested a full exemption to 10 CFR 50.54(w) but commits the licensee to maintain a minimum coverage of $5 million to stabilize and decontaminate the reactor and the reactor station site.

III

The PGE bases for the exemption request are that the reactor has been defueled, the fuel placed in the spent fuel pool, and that the reactor cannot be returned to operation. In addition, PGE stated that the types of accidents defined in the regulation, 10 CFR 50.54(w)(2)(i), can no longer occur at the plant. The licensee also stated that the potential risk to the public was therefore significantly reduced and that the range of credible accidents and accident consequences for Trojan was greatly diminished. The licensee analysis shows that the worst case design basis accident for this plant, in its permanently shutdown defueled state, is a fire in the radioactive waste annex building. The licensee calculated that a postulated fire in the Trojan radioactive waste annex would result in estimated cleanup costs of $4.9 million. To provide a conservative estimate, the licensee estimated the cost to recover from the fire and added a 25 percent cushion to arrive at the value of $4.9 million. The licensee also considered a second design basis accident scenario, a fuel handling accident. The licensee estimated site decontamination cost for the fuel handing accident at $0.5 million. This estimate also includes a 25 percent cushion. In both accident scenarios, the licensee estimated site boundary radiation doses to the public would be less than the U.S. Environmental Protection Agency (EPA) Protective Action Guidelines (PAG).

The NRC staff evaluated the hypothetical fire in the radwaste storage building located onsite. The staff concluded that, if such a highly unlikely event were to occur, the immediate impact would be the burning of dry activated waste. Because of the extremely low activity commonly associated with dry activated waste the staff concludes that the doses to the public resulting from a fire will not approach the EPA PAGs. Unsolidified resins could contribute to the offsite dose and site contamination; however, the staff concludes that a release from stored resins at the Trojan site would require a fire of significant magnitude and intensity to melt the resins. The staff concludes that a fire of such magnitude could not occur in or in the vicinity of the radwaste storage building and that such event is not credible. This conclusion is based on the location of the radwaste storage building in relation

to adjacent buildings, its construction, and the lack of a significant quantity of combustible material inside or in the general area of the building.

The NRC staff also evaluated the consequences of a fuel handling accident. In a hypothetical fuel handling accident, contamination would be restricted to the immediate vicinity of the fuel building since there is no credible energy source available to widely disperse the irradiated fuel onsite during the fuel handling accident. The staff has data on two comparable events. The first event, the dropping of a fuel bundle that resulted in some ruptured fuel rods, incurred costs in excess of $2 million; however, we determined that most of the costs consisted of the capital cost of the fuel assembly replacement and three days of lost power generation due to the accident. Neither of these costs is pertinent to Trojan in its permanently shut down status. The remaining costs of about $45,000 were for recovery from the accident and are applicable to evaluate the postulated decontamination costs associated with a fuel handling accident at Trojan. The second comparable accident, the dropping and rupturing of fuel rods during bundle reconstitution, occurred at a plant for which its licensee prepared an internal investigation report. The report contained detailed cost data and showed a recovery cost of $50,000. Therefore, with respect to a fuel handing accident at the Trojan plant, the historical data supports the licensee assertion that $5 million represents a conservative upper bound for recovery costs from a design basis fuel handling accident.

The NRC staff also independently calculated the offsite doses resulting from a fuel handling accident at Trojan. The staff analysis shows that the doses at the exclusion area boundary for the whole body, the thyroid, and the skin would be a small fraction of the EPA PAGs.

The NRC staff also requested that the licensee examine a hypothetical accident sequence involving the complete or partial loss of water from the Trojan spent fuel pool as a result of a major seismic event near the plant. This beyond design basis postulated accident sequence, described in NUREG–1353, could result in a zirconium fuel cladding fire in some of the recently irradiated spent reactor fuel stored in the pool that could then propagate through the spent fuel pool and result in a significant radioactive release, and associated site contamination. The licensee responded to the staff request for additional information and the staff conducted a review of the licensee submittal. The staff determined that the Trojan spent fuel pool will maintain, with an adequate margin, its structural integrity even for an earthquake with a resulting ground acceleration value of 0.5g. The 0.5g value was found to be appropriate for the geographic location of Trojan and could be used to evaluate plant vulnerabilities significantly beyond the design basis. Therefore, the staff concluded that there is an extremely low likelihood of a complete or partial loss of water from the Trojan spent fuel pool.

Furthermore, the staff has also determined that in view of the low likelihood of the postulated event and the time elapsed since shut down of the facility (one year), and the configuration of the fuel in the spent fuel pool, there would be sufficient time after a postulated loss of water and before the initiation of a cladding fire for the licensee to implement actions to cool the spent fuel and avert a cladding fire. The licensee has implemented procedures that provide this additional level of protection using a variety of cooling water sources. Thus, the staff concludes that the likelihood of a beyond design basis cladding fire in the spent fuel pool resulting in significant onsite contamination is extremely remote and insurance coverage to recover from this accident scenario is unnecessary.

Based on a thorough evaluation of potential accidents at the Trojan site, the staff concludes that a significant reduction in onsite liability coverage to stabilize and decontaminate the site is warranted.

The Commission will not consider granting an exemption unless special circumstances are present. In its letter of July 8, 1993, PGE addressed these special circumstances as follows:

10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule * * *."

Licensee response: PGE concludes that maintaining the $1.06 billion level of decontamination insurance stipulated in 10 CFR 50.54(w) is not required to achieve the underlying purpose of the rule. Since no accidents as defined in 10 CFR 50.54(w)(2)(i), can occur with the plant in the permanently defueled condition, it is no longer necessary to maintain coverage to ameliorate the consequences of an accident.

10 CFR 50.12(a)(2)(iii)—"Compliance would result in undue hardship or other costs that are significantly in excess of those contemplated when the regulation was adopted, * * *"

Licensee response: PGE currently maintains $1.06 billion of decontamination insurance coverage at an annual premium of $2,017,585. Although valid for an operating power reactor, the cost of maintaining insurance coverage at the $1.06 billion required by the regulation is not justifiable for a permanently defueled power plan such as Trojan. The proposed exemption would allow PGE to establish insurance coverage commensurate with the need for onsite decontamination rather than the level of coverage needed for decontamination efforts associated with operating power reactor accidents. Operating power reactor accidents as stated in the regulation constitute the underlying basis for the regulation. PGE has determined that the level of coverage commensurate with onsite decontamination would be $5 million resulting in an annual premium of $250,000, a savings of $1,767,585 annually based on the current annual premium of $1.06 billion of coverage.

IV

The staff, based on its independent evaluation, finds the PGE analysis acceptable and concludes that there are special circumstances present that satisfy the requirements of 10 CFR 50.12(a)(2) (ii) and (iii).

V

Based on sections III and IV above, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

The staff also concludes that issuance of this exemption will have no significant effect on the safety of the public or the plant. Further, the licensee has shown special circumstances as described in the safety evaluation supporting this exemption.

Pursuant to 10 CFR 51.32, the Commission has determined that the issuance of this exemption will have no significant impact on the environment (58 FR 60705, dated November 17, 1993).

Accordingly, the Commission hereby grants an exemption to 10 CFR 50.54(w) to PGE for the Trojan Nuclear Plant. However, the licensee shall either maintain a minimum limit of $5 million of property damage insurance or be able to demonstrate self-insurance of this amount. The PGE letter of July 8, 1993, contained a commitment to maintain this amount of protection.

This exemption is effective immediately.

Dated at Rockville, Maryland this 17th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–28881 Filed 11–23–93; 8:45 am]

BILLING CODE 7590–01–M

OVERSEAS PRIVATE INVESTMENT CORPORATION

Public Hearing

AGENCY: Overseas Private Investment Corporation.

ACTION: Notice of public hearing.

SUMMARY: This notice sets forth the schedule and requirements for participation in an annual public hearing to be conducted by the Board of Directors of the Overseas Private Investment Corporation (OPIC) on December 15, 1993. This hearing is required by the OPIC Amendments Act of 1985, and this notice is being published to facilitate public participation. The notice also describes OPIC and the subject matter of the hearing.

DATES: The hearing will be held on December 15, 1993, and will begin promptly at 2 p.m. Prospective participants must submit to OPIC before close of business December 10, 1993, notice of their intent to participate.

ADDRESSES: The location of the hearing will be: Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC.

Notices and prepared statements should be sent to James R. Offutt, Department of Legal Affairs, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527.

PROCEDURE: (a) Attendance; Participation. The hearing will be open to the public. However, a person wishing to present views at the hearing must provide OPIC with advance notice on or before December 10, 1993. The notice must include the name, address and telephone number of the person who will make the presentation, the name and address of the organization which the person represents (if any) and a concise summary of the subject matter of the presentation.

(b) Prepared Statements. Any participant wishing to submit a prepared statement for the record must submit it to OPIC with the notice or, in any event, not later than 5 p.m. on December 13, 1993. Prepared statements should be typewritten, double spaced and should not exceed twenty-five (25) pages.

(c) Duration of Presentations. Oral presentations should not exceed ten (10) minutes, and the time for individual presentations may be reduced proportionately, if necessary, to afford all prospective participants on a particular subject an opportunity to be heard or to permit all subjects to be covered.

(d) Agenda. Upon receipt of the required notices, OPIC will draw up an agenda for the hearing setting forth the subject or subjects on which each participant will speak and the time allotted for each presentation. OPIC will provide each prospective participant with a copy of the agenda.

(e) Publication of Proceedings. A verbatim transcript of the hearing will be compiled and published. The transcript will be available to members of the public at the cost of reproduction.

SUPPLEMENTARY INFORMATION: OPIC is a U.S. Government agency which provides, on a commercial basis, political risk insurance and financing in friendly developing countries and emerging democracies for projects which confer positive developmental benefits upon the project country while avoiding negative effects on the U.S. economy and the environment of the project country. OPIC's Board of Directors is required by section 213A(b) of the Foreign Assistance Act of 1961, as amended ("the Act") to hold at least one public hearing each year.

Among other issues, OPIC's annual public hearing has, in previous years, provided a forum for testimony concerning section 231A(a) of the Act. This section provides that OPIC may operate its programs only in those countries that are determined to be "taking steps to adopt and implement laws that extend internationally recognized worker rights to workers in that country (including any designated zone in that country)."

Based on consultations with Congress, OPIC complies with annual determations made by the Executive Branch with respect to worker rights for countries that are eligible for the Generalized System of Preferences (GSP). Any country for which GSP eligibility is revoked on account of its failure to take steps to adopt and implement internationally recognized worker rights is subject concurrently to the suspension of OPIC programs until such time as a favorable worker rights determination can be made.

For non-GSP countries in which OPIC operates its programs, OPIC has agreed to provide a worker rights report to the Congress for any country which is the subject of a formal challenge at its annual public hearing. To qualify as a formal challenge, testimony must pertain directly to the worker rights requirements of the law as defined in OPIC's 1985 reauthorizing legislation (Pub. L. 99–204) with reference to the Trade Act of 1974, as amended, and be supported by factual information. A list of non-GSP, OPIC-eligible countries may be obtained by calling the OPIC contact identified below

FOR FURTHER INFORMATION ABOUT THE PUBLIC HEARING CONTACT: James R. Offutt, Department of Legal Affairs, Overseas Private Investment Corporation, 1100 New York Avenue, NW., Washington, DC 20527 (202) 336–8414.

Dated: November 18, 1993.

Anne Smart,

Corporate Secretary.

[FR Doc. 93–28840 Filed 11–23–93; 8:45 am]

BILLING CODE 3210–01–M

POSTAL SERVICE

Privacy Act of 1974, System of Records

AGENCY: Postal Service.

ACTION: Notice of amended routine use and editorial changes to a system of records.

SUMMARY: The purposes of this document are to publish notice of (1) an amendment to a routine use in the Postal Service's Privacy Act system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto) and (2) minor amendments to the description of that system. The amended routine use narrows the existing routine use to specify the exact data elements that may be disclosed about a current or former employee to an inquiring prospective employer. As amended, the routine use corresponds to the paralleling regulation which is published today as a final rule. The minor amendments correct organizational names changed during the recent Postal Service restructuring.

DATE: Comments on PART 1 must be received on or before December 27, 1993. PART 2 is effective November 24, 1993.

ADDRESS: Comments on the proposed amended routine use (PART 1) may be mailed to: UNITED STATES POSTAL SERVICE, RECORDS OFFICE, 475 L'ENFANT PLAZA, RM 8831, WASHINGTON DC 20260–5240.

Comments also may be delivered to Room 8831 at the above address between 8:15 a.m. and 4:45 p.m.,

Monday through Friday. Comments received also may be inspected during the above hours in Room 8831.

FOR FURTHER INFORMATION CONTACT:

Betty Sheriff, Records Office (202) 268–2924.

SUPPLEMENTARY INFORMATION: Pursuant to subsection (e)(11) of the Privacy Act, the Postal Service is publishing at PART 1 notice of a revised routine use in its system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto). A statement concerning editorial corrections related to Postal Service restructuring is given at PART 2.

PART 1. Amended Routine Use

The Postal Service proposes to amend routine use No. 1 in its Privacy Act system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto). The proposal does not reflect a change in disclosure policy, but rather more specifically describes the information that may be given to an inquiring prospective employer of a current or former postal employee.

On March 31, 1993, the Postal Service published in the **Federal Register** (58 FR 16806) proposed changes to its regulations at 39 CFR 266.4 to specify the exact data elements that may be given to prospective employers without the employee's authorization to release. The final rule is published today. As amended, the regulation will allow disclosure of the grade, duty status, length of service, job title, salary, date, and "reason for separation." The routine use authority and supporting postal regulations are being amended to correspond to that regulation which limits disclosure without consent to public information and specific "reasons for separation" that do not have negative or personal connotations. Consequently, this notice amends existing routine use No. 1 of Postal Service system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto) as follows:

"1. To disclose to prospective employers the following information about a specifically identified current or former postal employee: (a) Grade, (b) duty status, (c) length of service, (d) job title, (e) salary, and (f) date and reason for separation, limited to one of the following terms: retired, resigned, or separated."

PART 2. Editorial Changes

This part makes editorial changes to the "System Location" and "System Manager(s) and Address" sections of system of records USPS 120.070, Personnel Records—General Personnel Folder (Official Personnel Folders and records related thereto). The changes merely reflect the renaming of titles and offices under the recently restructured Postal Service. They do not in any manner alter the character, scope, location, or populations of the system as it exists. These sections are changed as follows:

SYSTEM LOCATION:

Personnel Offices of all USPS facilities; National Personnel Records Center, St. Louis, MO; Information Systems, Employee Relations, Headquarters; Information Systems Service Centers; National Test Administration Center, Merrifield, VA; and selected contractor sites.

SYSTEM MANAGER(S) AND ADDRESS:

Vice President, Employee Relations, United States Postal Service, 475 L'Enfant Plaza SW., Washington DC 20260–4200.

Stanley F. Mires,

Chief Counsel, Legislative.

[FR Doc. 93–28831 Filed 11–23–93; 8:45 am]

BILLING CODE 7710–12–M

SECURITIES AND EXCHANGE COMMISSION

Forms Under Review by Office of Management and Budget

Agency Clearance Officer—John J. Lane (202) 272–3900:

Upon written request copies available from: Securities and Exchange Commission, Office of Filings, Information, and Consumer Services, Washington, DC 20549.

Extensions

Form 11–K—File No. 270–101
Form T–1—File No. 270–121
Form T–2—File No. 270–122
Form T–6—File No. 270–344
Form 13F—File No. 270–22

Notice is hereby given that pursuant to the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the Securities and Exchange Commission has submitted to the Office of Management and Budget request for approval of extensions on the following currently approved rules and forms:

Form 11–K is an annual report filed by employee stock purchase savings and similar plans. Approximately 774 respondents file Form 11–K annually at an estimated 30 burden hours per response with a total annual burden of 23,220 hours.

Forms T–1, T–2, and T–6 are statements of eligibility under the Trust Indenture Act of 1939 filed by individuals or entities designated to act as trustees. Approximately 500 respondents file Form T–1 annually at an estimated 15 burden hours per response with a total annual burden of 7,500 hours; 36 respondents file Form T–2 annually at an estimated 9 burden hours per response with a total annual burden of 324 hours; and 15 respondents file Form T–6 annually at an estimated 17 burden hours per response with a total annual burden of 255 hours.

Form 13F is used by certain large investment managers to report quarterly with respect to certain securities over which they exercise investment discretion. Approximately 1,100 respondents file Form 13F quarterly at an estimated 24.6 burden hours per response with a total annual burden of 108,240 hours.

The estimated average burden hours are made solely for purposes of the Paperwork Reduction Act and are not derived from a comprehensive or even a representative survey or study of the costs of Commission rules and forms.

General comments regarding the estimated burden hours should be directed to Gary Waxman at the address below. Any comments concerning the accuracy of the estimated average burden hours for compliance with Commission rules and forms should be directed to John J. Lane, Associate Executive Director, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549 and Gary Waxman, Clearance Officer, Office of Management and Budget, (Project Number 3235–0082, 3235–0110, 3235–0111, 3235–0391, and 3235–0006), room 3208, New Executive Office Building, Washington, DC 20503.

Dated: November 15, 1993.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28855 Filed 11–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-33212; File Nos. SR-Amex-93-39, SR-CBOE-93-52, SR-NYSE-93-42, SR-PSE-93-30, and SR-Phlx-93-46]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Changes by the American Stock Exchange, Inc., Chicago Board Options Exchange, Inc., New York Stock Exchange, Inc., Pacific Stock Exchange, Inc., and Philadelphia Stock Exchange, Inc., Relating to an Extension of Position Limit Exemption Pilot Programs

November 17, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 28, 1993, the New York Stock Exchange, Inc. ("NYSE"); on November 5, 1993, the Chicago Board Options Exchange, Inc. ("CBOE"); on November 10, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx"); on November 16, 1993, the Pacific Stock Exchange, Inc. ("PSE"); and, on November 17, 1993, the American Stock Exchange, Inc. ("Amex") (each individually referred to as an "Exchange" and two or more collectively referred to as "Exchanges"), filed with the Securities and Exchange Commission ("Commission") proposed rule changes as described in Items I and II below, which items have been prepared by the self-regulatory organizations. The Commission is publishing this notice to solicit comments on the proposed rule changes from interested persons.

I. Self-Regulatory Organizations' Statement of the Terms of Substance of the Proposed Rule Changes

The proposed rule changes filed by the Amex and Phlx extend for one year (i.e., from November 17, 1993, to November 17, 1994) the Exchanges' pilot programs for exemptions from equity option position limits for certain hedged positions.[1] The proposed rule changes filed by the CBOE, NYSE, and PSE extend for one year (i.e., from November 17, 1993, to November 17, 1994) the Exchanges' pilot programs for position limit exemptions for certain hedged (1) equity option positions; and (2) stock index option positions. The text of the proposed rule changes are available at the Office of the Secretary of the respective Exchanges and at the Commission.

[1] Position limits impose a ceiling on the aggregate number of options contracts on the same side of the market that can be held or written by an investor or group of investors acting in concert.

II. Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

In their filings with the Commission, the Exchanges included statements concerning the purpose of and basis for the proposed rule changes. The text of these statements may be examined at the places specified in Item IV below. The Exchanges have prepared summaries, set forth in Section (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organizations' Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Changes

The Commission has previously approved pilot programs proposed by the Amex and the Phlx providing exemptions from position limits for certain fully hedged equity option positions.[2] Additionally, the Commission has also previously approved pilot programs proposed by the CBOE, the NYSE, and the PSE providing exemptions from position limits for certain fully hedged (1) equity option positions; and/or (2) stock index option positions.[3] (The pilot programs being amended herein are collectively referred to as "Pilot Programs.") Each of the Pilot Programs allow the underlying hedged positions to include securities that are readily convertible into common stock.[4] Under all of the Pilot Programs, exercise limits still correspond to position limits, such that investors are allowed to exercise, during any five consecutive business days, the number of option contracts set forth as the position limit, as well as those contracts purchased pursuant to the Pilot Program.[5]

Each of the Pilot Programs, as subsequently amended, are scheduled to expire on November 17, 1993.[6] Accordingly, the Exchanges propose to extend their respective Pilot Programs for one year, until November 17, 1994.

The surveillance departments of the respective Exchanges have been monitoring the use of the Pilot Programs to detect any abuses or violations of the programs or any attempts at manipulation. Each of the Exchanges represent that they have not experienced any significant problems with the Pilot Programs since their inception.

During the duration of the Pilot Programs, the Exchanges will review each exemption application to determine a position's eligibility for the exemption and to track the positions and dollar values of the portfolios. The Exchanges will also monitor on a daily basis (1) the use of the exemptions to determine if the positions are being maintained in accordance with all conditions and requirements, and (2) the effects of the exemptions on the market.

The Exchanges believe that the proposed rule changes are consistent with section 6(b) of the Act, in general, and section 6(b)(5), in particular, in that they are designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

[2] See Securities Exchange Act Release No. 25738 (May 24, 1988), 53 FR 20201.

[3] See Securities Exchange Act Release Nos. 25738 (May 24, 1988), 53 FR 20201 (approving CBOE's equity option hedge exemption pilot programs); 25739 (May 24, 1988), 53 FR 20204 (approving CBOE's stock index option hedge exemption pilot program); 27786 (March 8, 1990), 55 FR 9523 (approving NYSE's equity option and stock index option hedge exemption pilot programs); 25811 (June 20, 1988), 53 FR 23821 (approving PSE's equity option hedge exemption pilot program); and 32900 (September 14, 1993), 58 FR 49077 (approving PSE's stock index option hedge exemption pilot program).

[4] The Commission expects the Exchanges to determine on a case-by-case basis whether an instrument that this being used as the basis for an underlying hedged position is readily and immediately convertible into the security underlying the corresponding option position. In this regard, the Commission has found that an instrument which will become convertible into a security at a future date, but which is not presently convertible, is not a "convertible" security for purposes of the equity option position limit hedge exemption until the date it becomes convertible. Additionally, if the convertible security used to hedge an options position is called for redemption by the issuer, the security would have to be converted into the underlying security immediately or the corresponding options position reduced accordingly. See, e.g., Securities Exchange Act Release No. 32904 (September 14, 1993), 58 FR 49339 ("Exchange Act Release No. 32904).

[5] Exercise limits prohibit the exercise by an investor or group of investors acting in concert of more than the number of options contracts specified in the position limit rule within five consecutive business days. See, e.g., NYSE Rule 705.

[6] See Securities Exchange Act Release Nos. 32902 (September 14, 1993), 58 FR 49066 (approving extension of Amex's equity option hedge exemption pilot program); 32903 (September 14, 1993), 58 FR 49068 (approving extension of CBOE's equity option hedge exemption pilot program); 32904 (September 14, 1993), 58 FR 49339 (approving extension of CBOE's stock index option hedge exemption pilot program); 32901 (September 14, 1993), 58 FR 49076 (approving extension of NYSE's equity option and stock index option hedge exemption pilot programs); 32900 (September 14, 1993), 58 FR 49077 (approving extension of PSE's equity option hedge exemption pilot program, and approving PSE's stock index option hedge exemption pilot program until November 17, 1993); and 32174 (April 20, 1993), 58 FR 25687 (approving extension of Phlx's equity option hedge exemption pilot program).

(B) Self-Regulatory Organizations' Statement on Burden on Competition

The Exchanges do not believe that the proposed rule changes will impose any burden on competition.

(C) Self-Regulatory Organizations' Statement on Comments on the Proposed Rule Changes Received From Members, Participants or Others

No written comments were solicited or received by any of the Exchanges with respect to the proposed rule changes.

III. Date of Effectiveness of the Proposed Rule Changes and Timing for Commission Action

The Exchanges have requested that the proposed rule changes be given accelerated effectiveness pursuant to section 19(b)(2) of the Act.

The Commission finds that the proposed rule changes to extend the Pilot Programs are consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5) thereunder.[7] Specifically, the Commission concludes, as it did when originally approving each of the Pilot Programs, that providing for increased position and exercise limits for equity and stock index options in circumstances where those excess positions are fully hedged with offsetting stock positions will provide greater depth and liquidity to the market and allow investors to hedge their stock portfolios more effectively, without significantly increasing concerns regarding intermarket manipulations or disruptions of either the options market or the underlying stock market.

The Commission also notes that before the Pilot Program(s) of an Exchange can be approved on a permanent basis, that Exchange must provide the Commission with a report on the operation of its Pilot Program(s). Specifically, an Exchange must provide the Commission with details on (1) the frequency with which the exemptions have been used; (2) the types of investors using the exemptions; (3) the size of the positions established pursuant to the Pilot Program(s); (4) what types of convertible securities are being used to hedge positions and how frequently convertible securities have been used to hedge; (5) whether the Exchange has received any complaints on the operation of the Pilot Program(s); (6) whether the Exchange has taken any disciplinary action against, or commenced any investigations, examinations, or inquiries concerning, any of its members for any violation of any term or condition of the Pilot Program(s); (7) the market impact, if any, of the Pilot Program(s); and (8) how the Exchange has implemented surveillance procedures to ensure compliance with the terms and conditions of the Pilot Program(s). In addition, the Commission expects each Exchange to inform the Commission of the results of any surveillance investigations undertaken for apparent violations of the provisions of its position limit hedge exemption rules.

The Commission finds good cause for approving the proposed rule changes prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register** so that the Pilot Programs will not lapse. The Commission notes that the Exchanges have not experienced any significant problems with the Pilot Programs since their inception and that the Exchanges will continue to monitor the Pilot Programs to ensure that no problems arise. Finally, no adverse comments have been received by the Exchanges concerning the Pilot Programs since their implementation. As a result, because of the importance of maintaining the quality and efficiency of the Exchanges' markets, the Commission believes good cause exists for approving the extension of the Pilot Programs on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule changes that are filed with the Commission, and all written communications relating to the proposed rule changes between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange to which it relates. All submissions should refer to file no. set forth in the caption to this filing and should be submitted by December 15, 1993.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[8] that the proposed rule changes (File Nos. SR–Amex–93–39, SR–CBOE–93–52, SR–NYSE–93–42, SR–PSE–93–30, and SR–Phlx–93–46), are approved and, accordingly, the Pilot Programs are extended until November 17, 1994.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28854 Filed 11–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33221; File No. SR–BSE–93–13]

Self-Regulatory Organizations; Boston Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Adoption of Account Identification Codes

November 16, 1993.

I. Introduction

On July 22, 1993, the Boston Stock Exchange, Inc. ("BSE" or "Exchange") submitted to the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adopt account identification codes to enhance its audit trail capabilities. On September 20, 1993, the BSE submitted to the Commission Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, together with Amendment No. 1, was noticed for comment in Securities Exchange Act Release No. 32965 (September 27, 1993), 58 FR 51393 (October 1, 1993). No comments were received on the proposal.

II. Description of the Proposal

The BSE is amending Chapter II, Section 15 of the BSE Rules of the Board of Governors to require member firms to specify the account type on all orders sent to the Exchange. In this regard, the BSE is adopting a set of account identification codes to be used when specifying the account type on the

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[7] 15 U.S.C. 78f(b)(5) (1982).

[8] 15 U.S.C. 78s(b)(2) (1982).

[9] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1991).

[3] See letter from Karen A. Aluise, Assistant Vice President, BSE, to Diana Luka-Hopson, Branch Chief, Commission, dated September 14, 1993. Amendment No. 1 clarified that the language of the proposed rule would be added to Chapter II, section 15 of the Rules of the Exchange following the first paragraph.

orders. There will be three separate categories of trade types consisting of: (1) Program trade, index arbitrage; (2) program trade, non-index arbitrage; and (3) all other orders. Each category will be broken down by four customer types as shown below along with the account identification codes.

	Program trade index arbitrage	Program trade non-index arbitrage	All other orders
Member/member organization:			
—Proprietary	D	C	P
—As agent for other member.	M	N	W
Customer:			
—Individual (80A).	J	K	I
—Other agency.	U	Y	A

The Exchange also is adopting definitions for "program trade, index arbitrage,"[4] "program trade, non-index arbitrage,"[5] "member/member organization: proprietary,"[6] "member/member organization: as agent for other member,"[7] "individual (80A),"[8] and "other agency."[9]

The BSE believes that the proposal will enhance the efficiency and accuracy of audit trail[10] information and will facilitate surveillance investigations by readily identifying a member's own proprietary trading, thus reducing information requests to member firms.

The Exchange states that the proposed rule change is consistent with section 6(b)(5) of the Act, which provides, in pertinent part, that the rules of an exchange be designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and, in general, to protect investors and the public.

III. Discussion

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b)(5) of the Act.[11] Section 6(b)(5) requires that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and practices, to remove impediments to and perfect the mechanism of a free and open market, and, in general, to protect investors and the public interest.

The Commission believes that the proposed identification codes should prevent fraudulent and manipulative acts by improving the accuracy and efficiency of audit trail information. Specifically, the Commission believes that the identification codes should facilitate surveillance investigations by clearly demarcating a member's own proprietary trades. In this regard, the Commission believes that fraud and manipulation would be more effective deterred by more focused surveillance investigations promptly revealing disciplinary violations. In addition, more accurate audit trail information should increase the effectiveness of the Exchange's automated surveillance procedures and provide Exchange staff with a more comprehensive reconstruction of trading activity.

The Commission notes that member firms will be given three months following Commission approval of the proposal to make changes to their systems to enable them to comply with the new order identification requirements.[12]

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change (SR–BSE–93–13) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28850 Filed 11–23–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33208; File No. SR–CBOE–93–28]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the Chicago Board Options Exchange, Inc. Relating to Bids and Offers for Stocks, Warrants, and Other Non-Option Securities, and Priority and Preference of Such Bids and Offers

November 17, 1993.

On June 22, 1993, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] and Rule 19b–4 thereunder,[2] filed with the Securities and Exchange Commission ("SEC" or "Commission") a proposed rule change to amend Exchange Rule 30.12, which defines bids and offers for stocks, warrants, and other non-option securities, and CBOE Rule 30.13, which establishes rules of priority and precedence for such bids and offers, to make these rules conform more closely to the comparable rules of certain other self-regulatory organizations ("SROs"). Notice of the proposal appeared in the **Federal Register** on September 20, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Exchange proposed to amend Interpretation and Policy .01 under CBOE Rule 30.12 to provide that notwithstanding the provision of Exchange Rule 7.4 that prohibits orders in which a member, non-member joint venture participant, or non-member broker-dealer, has an interest, from being accepted in the limit order book, no such prohibition shall apply to orders for stocks, warrants, unit investment trust ("UIT") interests, and other nonoption securities. The proposal would also amend CBOE Rule 30.13 in order to eliminate the provision

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[4] "Program trade, index arbitrage" is defined as the purchase or sale of "baskets" or groups of stocks in conjunction with the intended purchase or sale of one or more cash-settled options or futures contracts in an attempt to profit by the price difference, as defined in NYSE Rule 80A.

[5] "Program trade, non-index arbitrage" is defined as a trading strategy involving the related purchase or sale of a group of 15 or more stocks having a total market value of $1 million or more, as defined in NYSE Rule 80A.

[6] "Member/member organization: Proprietary" is defined as a member/member organization trading for its own account.

[7] "Member/member organization: as agent for other member" is defined as a member/member organization trading as agent for the account of another member/member organization.

[8] "Individual (80A)" is defined as an account for an individual as defined by NYSE Rule 80A. NYSE Rule 80A(e)(iii) states that "account of an individual investor" means an account covered by section 11(a)(1)(E) of the Act. Section 11(a)(1)(E) states that section 11(a)(1) shall not make unlawful any transaction for the account of a natural person, the estate of a natural person, or a trust (other than an investment company) created by a natural person for himself or another natural person.

[9] "Other agency" is defined as any other non-member or non-member organization.

[10] An audit trail is a surveillance tool produced and utilized by a self-regulatory organization to detect fraudulent or illegal trading and for investigative purposes in disciplinary proceedings. It is comprised of trade-by-trade data, in chronological order, including the name of the security, quantity, price, execution time and parties to each trade.

[11] 15 U.S.C. 78f(b) (1988).

[12] Telephone conversation between Karen A. Aluise, Assistant Vice President, BSE, and Louis A. Randazzo, Attorney, Commission, on July 28, 1993.

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 32887 (September 14, 1993), 58 FR 48912.

of subparagraph (f)(1) that gives bids and offers in the limit order book priority over bids and offers in the trading crowd at the same price.

The Exchange believes that the foregoing rules, as they are currently written, differ from the rules of certain other SROs. Specifically, the CBOE believes that the proposed amendment to CBOE Rule 30.12 will make CBOE's rules more like New York Stock Exchange, Inc. ("NYSE") Rule 104 and American Stock Exchange, Inc. ("Amex") Rules 170 and 190, which only prohibit orders for non-options securities from specialists from being held in a specialist's limit order book. Similarly, the Exchange believes that the proposed amendment to CBOE Rule 30.13 will conform the Exchange's rules to those of the Amex which do not provide for book order priority for non-options orders, except (1) that a specialist must give precedence to orders in his limit order book before executing at the same price orders for an account in which he has an interest,[4] and (2) in certain other limited circumstances.[5] CBOE Rule 8.80(c)(7) incorporates Amex's specialist exception by giving booked orders priority over proprietary orders of Designated Primary Market-Makers who represent orders in the book. As a result, the CBOE believes the effect of the proposed amendments is to put the CBOE on parity with other SROs with respect to orders for non-options securities, and thus enhance its ability to compete with other SROs in stocks, warrants, UIT interests, and other non-option securities.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5),[6] in that the Exchange rules, as amended, will mirror the rules of various other SROs with respect to orders for stocks, warrants, UIT interests, and other non-options securities. Specifically, the proposed amendment to Interpretation .01 to CBOE Rule 30.12 will conform the Exchange's rules to NYSE Rule 104, and Amex Rules 170 and 190, which prohibit specialists' orders for non-option securities from being held in a specialist's limit order book.

Similarly, the proposed amendment to CBOE Rule 30.13 would conform the CBOE's rules to Amex's rules. Specifically, Amex Rule 108(d) which does not provide for book priority except to the extent the limit order book is entitled to participate with brokers on parity in stated percentages of unpaired orders at the opening. Additionally, this proposed amendment, in conjunction with CBOE Rule 8.80(c)(7), will conform CBOE's rules to Amex Rule 155 which provides that book order priority only exists in the case of specialists in that a specialist is required to give precedence to orders in his limit order book before executing at the same price orders for an account in which he has an interest.

The Commission believes that the proposed rule change may enhance the ability of the CBOE to compete with other SROs for orders for stocks, warrants, UIT interests and other non-option securities, which will ultimately benefit investors who trade these products. In addition, the Commission finds that the proposed rule change will solely affect orders for stocks, warrants, and other non-option securities and will have no affect on the priority given to options orders in the limit order book pursuant to CBOE Rule 6.45. As a result, the Commission finds that the proposed rule change is consistent with the provisions of the Act and may serve to increase competition between SROs for orders for non-option securities without raising any regulatory concerns.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[7] that the proposed rule change (File No. SR-CBOE-93-28) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[8]

Margaret H. McFarland,

Deputy Secretary,

[FR Doc. 93-28804 Filed 11-23-93; 8:45 am]

BILLING CODE 8010-01-M

[4] See Amex Rule 155.

[5] Limit book order priority would also exist to the extent that the limit order book is entitled to participate with brokers on parity in stated percentages of unpaired orders at the opening. See Amex Rule 108(d).

[6] 15 U.S.C. 78f(b)(5) (1988).

[7] 15 U.S.C. 78s(b)(2) (1988).

[8] 17 CFR 200.30-3(a)(12) (1992).

[Release No. 34-33220; File No. SR-Phlx-93-40]

Self-Regulatory Organizations; Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Conforming Certain Documents to Reflect Changes to Form BD Concerning Disclosure of Fines

November 18, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b-4 thereunder,[2] notice is hereby given that on November 2, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Phlx proposes to amend both its Notice of Fine for Minor Violation(s) of Options Floor Procedure Advices ("Citation") and the index of the Floor Procedure Advice Handbook ("index") to indicate that Form BD no longer requires disclosure of any uncontested fine of $2,500 or less imposed pursuant to the Exchange's minor rule plan.

The Phlx requests accelerated approval of the proposal. The Phlx stated that accelerated approval would enable the Exchange to conform its policy relating to the reporting of minor rule violations to the Commission's amendments to Form BD.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

(a) Purpose

On July 27, 1992, the Commission adopted amendments to Item 7(E)(2) of Form BD, the uniform application form for broker-dealer registration under the Act.[3] The amendments eliminated the requirement that broker-dealers disclose on Form BD any violation of a self-regulatory organization ("SRO") rule

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b-4 (1991).

[3] See Securities Exchange Act Release No. 30958 (July 27, 1992), 57 FR 34028 (July 31, 1992).

that is designated as "minor" pursuant to an enforcement and reporting plan filed with, and approved by, the Commission pursuant to Rule 19d–1 under the Act.[4]

The Exchange, a self-regulatory organization with a plan approved under SEC Rule 19d–1[5] and codified in Exchange Rule 970,[6] proposes to amend the Citation and index to the Floor Procedure Advice Handbook to reflect the Commission's amendments to Form BD. Specifically, the Phlx proposes to add the following language to the Citation and index: The Securities and Exchange Commission does not require an amendment to Item 7 of Form BD for any fine of $2,500 or less imposed pursuant to the Exchange's Floor Procedure Advices.[7]

(b) Statutory Basis

The proposed rule change is consistent with section 6 of the Act in general, and in particular, with section 6(b)(5), in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any inappropriate burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received.

III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Phlx. All submissions should refer to File No. SR–Phlx–93–40 and should be submitted by December 15, 1993.

IV. Commission's Findings and Order Granting Accelerated Approved of Proposed Rule Change

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of sections 6(b) (1) and (7), 6(d)(1) and 19(d) of the Act and Exchange Act Rule 19d–1.[8]

The Commission believes that the proposal furthers the purposes of section 6(b)(1) of the Act by referencing the Commission's recent amendments to Form BD in the rules of the Exchange. An exchange's ability to enforce compliance by its members and member organizations with exchange and Commission rules is central to its self-regulatory function. In this regard, the proposal would amend the Exchange's Citation and the index in accordance with the Commission's amendments to Form BD by specifying that the Commission does not require an amendment to Item 7 of Form BD for any uncontested fine of $2,500 or less imposed pursuant to the Exchange's Floor Procedure Advices.[9] As noted above, the Commission determined to amend Question (E)(2) of Item 7 of Form BD to exclude SRO rule violations designated as minor pursuant to a plan approved by the Commission under Rule 19d–1.[10] The Commission has approved the Phlx's Floor Procedure Advices and, as a result, the Phlx files periodic reports in accordance with Rule 19d–1.[11] Accordingly, the Commission believes that it is appropriate for the Phlx to amend its Citation and the index to reflect the Commission's amendments to Form BD.

Because the revised Citation and index would specify the Commission's disclosure requirement, the proposal should assist members and member organizations in preparing accurate responses to Question (E)(2) of Item 7 of Form BD. The Commission, therefore, believes that the proposal is consistent with the section 6(b)(7) requirement that the rules of an exchange be consistent with section 6(d)(1) and provide fair procedures for the disciplining of exchange members and persons associated with exchange members.

Finally, the Commission notes that the proposed rule change preserves the regulatory benefits intended by the Act. Although the proposed rule change would conform Phlx rules to amend Form BD's disclosure requirements, the proposal would not alter the Exchange's reporting requirements under Rule 19d–1(c)(2). The Phlx will continue to have the obligation to report minor rule violation determinations to the Commission on a periodic basis.

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Phlx proposal simply conforms the Phlx's Citation and index to the Commission's recent amendments to Form BD. Moreover, the Commission's proposed amendments to Form BD were published in the **Federal Register** for the full statutory period.[12]

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[4] 17 CFR 240.19d–1 (1991). Rule 19d–1(c)(2) authorizes national securities exchanges to adopt minor rule violation plans for summary discipline and abbreviated reporting of minor rule violations by exchange members and member organizations. An SRO is required, pursuant to paragraph (c)(1) of Rule 19d-1, to file promptly with the Commission any final disciplinary actions taken by the SRO. However, paragraph (c)(2) of Rule 19d-1 establishes that minor rule plan determinations not exceeding $2,500 are not final, thereby permitting the SRO to report on a periodic, as opposed to immediate, basis.

[5] The Phlx's minor rule plan consists of Floor Procedure Advices with accompanying fines.

[6] See Securities Exchange Act Release No. 23491 (August 1, 1986), 51 FR 28469 (August 7, 1986) (order approving File No. 4–289).

[7] Phlx Rule 970 authorizes the Exchange, in lieu of commencing a disciplinary proceeding, to impose a fine, not to exceed $2,500, on any member, member organization, or any partner, officer, director or person employed by or associated with any member or member organization, for any violation of a Floor Procedure Advice of the Exchange, which violation the Exchange shall have determined is minor in nature.

In accordance with SEC Rule 19d–1(c)(2), fines in excess of $2,500, assessed under Phlx Rule 970, are not considered pursuant to the minor rule violation plan and thus are subject to the current reporting requirements of Rule 19d–1(c)(1) of the Act.

[8] 15 U.S.C. 78f(b)(1) and (7), 78f(d)(1), 78s(d) and 17 CFR 240.19(d)–1 (1991).

[9] A party penalized pursuant to Rule 970 may properly contest the Exchange's determination, and the matter shall be referred to the Business Conduct Committee for their consideration and determination. See Phlx Rule 970(d).

[10] See Securities Exchange Act Release No. 30958, supra note 3. Prior to the Commission's adoption of amendments to Form BD, Question (E)(2) of Item 7 required applicants to disclose whether an SRO or commodities exchange ever found the applicant or a control affiliate to have been involved in any violation of its rules.

[11] See supra note 6.

[12] See Securities Exchange Act Release No. 29643 (September 6, 1991), 56 FR 44029. All of the comments that addressed the proposed amendment to Item 7 (E) (2) believed that it was appropriate.

Continued

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[13] that the proposed rule change is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[14]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28853 Filed 11-23-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19884; 811-3926]

MFS High Yield Municipal Bond Fund; Application

November 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 (the "Act").

APPLICANT: MFS High Yield Municipal Bond Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 5, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 13, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: Elaine M. Boggs, Staff Attorney, at (202) 272-3026, or Robert A. Robertson, Branch Chief, at (202) 272-3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management investment company that was organized as a business trust under the laws of Massachusetts. On December 14, 1983, applicant registered under the Act as an investment company, and filed a registration statement to register its shares under the Securities Act of 1933. The registration statement was declared effective on February 27, 1984, and the initial public offering commenced on or about that date.

2. On April 21, 1993, applicant's board of trustees approved an agreement and plan of reorganization (the "Plan") between applicant and MFS Series Trust III (formerly, Massachusetts Financial High Income Trust), a registered open-end management investment company, on behalf of one of its series, MFS Municipal High Income Fund (the "Surviving Fund"). In addition, the board of trustees made the findings required by rule 17a-8 under the Act.[1]

3. On June 9, 1993, applicant distributed proxy materials to its shareholders. At a meeting held on August 5, 1993, applicant's shareholders approved the reorganization.

4. Pursuant to the Plan, on September 7, 1993, applicant transferred all of its assets to the Surviving Fund in consideration of the Surviving Fund's Class A shares with the equivalent net asset value. Applicant then distributed the Surviving Fund's shares to its shareholders. After completion of the reorganization, each shareholder of applicant owned Class A share of the Surviving Fund with the same aggregate net asset value as the shares of applicant owned by the shareholder immediately prior to the reorganization. On September 7, 1993, applicant had 84,884,946.641 shares outstanding, having an aggregate net asset value of $796,730,121.10 and a per share net asset value of $9.39.

5. The Surviving Fund assumed all expenses in connection with the reorganization. Legal, accounting, printing, transfer agency, proxy solicitor, and other expenses were in the approximately amount of $13,674, $1,245, $11,695, $21,476, $4,253, and $8,017, respectively.

6. There are no securityholders to whom distributions in complete liquidation of their interests have not been made. Applicant has no debts or other liabilities that remain outstanding. Applicant is not a party to any litigation or administrative proceeding.

7. Applicant will file certificates of dissolution with Massachusetts authorities after the requested order is obtained.

8. Applicant is not now engaged, nor does it propose to engage, in any business activities other than those necessary for the winding up of its affairs.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28856 Filed 11-23-93; 8:45 am]

BILLING CODE 8010-01-M

TRADE AND DEVELOPMENT AGENCY

SES Performance Review Board

AGENCY: Trade and Development Agency.

ACTION: Notice.

SUMMARY: Notice was given on the appointment of members of the Trade and Development Agency's (TDA) Performance Review Board in the **Federal Register** on November 3, 1993, 58 FR 58712.

Two members of TDA's Performance Review Board are being replaced.

FOR FURTHER INFORMATION CONTACT:

Amey DeSoto, General Counsel, Trade and Development Agency, State Annex—16, Room 309, Washington, DC 20523-1602, (703) 875-4357.

SUPPLEMENTARY INFORMATION: The following names replace Nancy Frame and Lisa DeSoto as members of the Trade and Development Agency's Performance Review Board: Duff Gillespie, Acting Deputy Assistant Administrator for the Global Bureau, Agency for International Development; and Robert Perkins, Counsel to the Inspector General, Agency for International Development.

Dated: November 18, 1993.

J. Joseph Grandmaison,

Director, TDA.

[FR Doc. 93-28846 Filed 11-23-93; 8:45 am]

BILLING CODE 8040-01-M

See Securities Exchange Act Release No. 30958, supra note 3.0

[13] 15 U.S.C. 78s(b)(2) (1988).

[14] 17 CFR 200.30-3(a)(12) (1991).

[1] Rule 17a-8 provides an exemption from section 17(a) for certain reorganizations among registered investment companies that may be affiliated persons, or affiliated persons of an affiliated person, solely by reason of having a common investment adviser, common directors, and/or common officers.

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements filed during the Week Ended November 12, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49249
Date filed: November 9, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1500 dated November 5, 1993, Within Europe Expedited Resos r–1 to r–16 (Not Applicable between EC Member States)
TC2 Reso/P 1501 dated November 5, 1993, Within Europe Expedited Resos r–17 to r–23 (Applicable between EC Member States)
TC2 Reso/P 1502 dated November 5, 1993, Within Europe Expedited Resos 4–24 to r–25 (Applicable between EC Member States)
Proposed Effective Date: January 1, 1994
Docket Number: 49250
Date filed: November 9, 1993
Parties: Members of the International Air Transport Association
Subject: Telex COMP Mail Vote 653, Amend Mileage Manual
Proposed Effective Date: December 1, 1993
Docket Number: 49251
Date filed: November 9, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1508 dated November 5, 1993, Within Africa Expedited Resos r–1 to r–7
Proposed Effective Date: January 1, 1994
Docket Number: 49264
Date filed: November 12, 1993
Parties: Members of the International Air Transport Association
Subject: Comp Telex Mail Vote 654, Delete Cities from reso 015v Add-on Tables
Proposed Effective Date: December 1, 1993
Docket Number: 49265
Date filed: November 12, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1536 dated October 15, 1993, Mid Atlantic-Africa Resos r–1 to r–7
Proposed Effective Date: April 1, 1994
Docket Number: 49267
Date filed: November 12, 1993
Parties: Members of the International Air Transport Association
Subject: TC12 Reso/P 1534 dated October 15, 1993, North Atlantic-Africa Pass Resos r–1 to r–20
Proposed Effective Date: April 1, 1993

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–28702 Filed 11–23–93; 8:45 am]
BILLING CODE 4910–62–P

Notice of Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q during the Week Ended November 12, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 et. seq.). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49244
Date filed: November 8, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 6, 1993

Description: Application of Sociedad Anonima Ecuatoriana De Transportes Aereos, S.A., pursuant to Section 402 of the Act and Subpart Q of the Regulations requests a foreign air carrier permit to engage in regular foreign air transportation with respect to persons, property and mail, between the Republic of Ecuador and the United States.

Docket Number: 42081
Date filed: November 9, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 7, 1993.

Description: Application of Martinair Holland N.V., pursuant to Section 402 of the Act and Subpart Q of the Regulations, applies for amendment of its foreign air carrier permit so that it may engage in scheduled and charter foreign air transportation to the full extent permitted by the Open Skies Agreement concluded by the United States and The Kingdom of the Netherlands on September 4, 1992. Martinair requests implementation of the new authority on December 4, 1993 in conjunction with the inauguration of its Amsterdam-Denver service.

Phyllis T. Kaylor,
Chief, Documentary Services Division.
[FR Doc. 93–28793 Filed 11–23–93; 8:45 am]
BILLING CODE 4910–62–P

Coast Guard

[CGD 93–076]

Draft Environmental Impact Statement; Bridges Across Arthur Kill, New York and New Jersey

AGENCY: Coast Guard, DOT.
ACTION: Notice of intent.

SUMMARY: The U.S. Coast Guard, as the Federal lead agency and in cooperation with the Port Authority of New York and New Jersey, intends to prepare and circulate a Draft Environmental Impact Statement (DEIS) for a proposed parallel bridge south of the existing Goethals Bridge crossing the Arthur Kill and other crossings between New Jersey and New York for the proposed modernizing or enhancing the vehicular capacity of the Staten Island Bridge System. A Coast Guard bridge permit approving the location and plans of bridge projects crossing navigable waters of the United States is required before construction can begin.

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments may be mailed to Commander (obr), First Coast Guard District, Governors Island, Bldg. 135A, New York, NY 10004–5073.

FOR FURTHER INFORMATION CONTACT: Ms. Evelyn Smart, Environmental Protection Specialist, Bridge Administration Branch, at the address shown above or by telephone at (212) 668–7994.

SUPPLEMENTARY INFORMATION: This notice of intent is published as required by regulations of the Council on Environmental Quality at 40 CFR 1501.7.

The proposed project is intended to provide additional capacity for interstate transportation in this section of the New York/New Jersey metropolitan area.

Selection of alternatives to be evaluated in the DEIS will be determined through a screening analysis of structural alternatives, including construction of a parallel bridge south of the existing Goethals Bridge and other crossings at various locations on the Arthur Kill, Raritan Bay and Newark Bay; nonstructural alternatives, including use of high-occupancy-vehicle lanes, intelligent vehicular

highway system options, and other traffic safety management measures; potential ferry routes across the Arthur Kill, Raritan Bay and Upper New York Bay; transit use, including the Delaware and Otsego Railroad crossing of the Arthur Kill, providing links between Amtrak's Northeast Corridor line and the Staten Island Rapid Transit; and a composite alternative of selected, complementary nonstructural, transit, and/or ferry actions. The no action alternative will evaluate the effects of not modernizing and enhancing capacity on the Staten Island Bridge System.

Potentially significant issues to be evaluated include relocation of residential, commercial and industrial displacements; relocation of hazardous wastes located within the proposed project right-of-way; existing and future land use and traffic patterns; threatened and endangered species and critical habitat; impacts on section 4(f) properties, historic and archaeological resources, wetlands, water and air quality and navigation.

A formal interagency scoping meeting is planned for federal, state and local agencies to identify potential impacts, issues and concerns. Written comments are invited from all interested parties to assure that all significant issues are identified and the full range of alternatives and impacts of the proposed project are addressed.

Dated: November 12, 1993.

W.J. Ecker,

Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 93–28859 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–14–M

[CGD 93–077]

Chemical Transportation Advisory Committee (CTAC) Subcommittee on Marine Occupational Safety and Health; Meeting

AGENCY: Coast Guard, DOT.

ACTION: Notice of meeting.

SUMMARY: The Subcommittee on Marine Occupational Safety and Health of the Chemical Transportation Advisory Committee will meet on Thursday, December 16, 1993 to determine the need to lower the threshold for regulating the human exposure to Benzene-containing mixtures. The Subcommittee will also review the need for additional comprehensive exposure standards for marine workers. This meeting will initiate the Subcommittee's work in both areas.

FOR FURTHER INFORMATION CONTACT: Mr. G.R. Colonna, National Fire Protection Association, 1 Batterymarch Park, Quincy, MA 02269, (617) 984–7435, or Dr. A.L. Schneider, U.S. Coast Guard Headquarters (G–MTH–1), 2100 Second Street, SW., Washington, DC 20593–0001, (202) 267–1217.

SUPPLEMENTARY INFORMATION: The meeting will be held at Houston Airport Marriott, 18700 Kennedy Boulevard, Houston, TX 77032, phone number (713) 443–2310. The meeting will begin at 9 a.m. and end at 5 p.m. Attendance is open to the public. Members of the public may present oral statements at the meetings.

Persons wishing to present oral statements should notify Mr. Colonna, National Fire Protection Association, or Dr. Schneider, U.S. Coast Guard Headquarters no later than the day before the meeting. Any member of the public may present a written statement to the Subcommittee at any time.

Dated: November 15, 1993.

K.L. Ervin,

Acting Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–28860 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–14–M

National Highway Traffic Safety Administration

National Award for the Advancement of Motor Vehicle Research and Development

AGENCY: National Highway Traffic Safety Administration, DOT.

ACTION: Announcement of award; request for nominations.

SUMMARY: This notice announces the National Award for the Advancement of Motor Vehicle Research and Development, describes its background and basis, and solicits nominations for the award. It also identifies the required content for nominations and describes the evaluation process and criteria to be used in making selections.

DATES: Nominations must be postmarked not later than December 31, 1993.

ADDRESSES: Send complete nominations with supporting information to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. For further information, contact Dr. Richard L. Strombotne, Special Assistant for Technology Transfer Policy and Programs, NRD–01, National Highway Traffic Safety Administration, Washington, DC 20590, phone: 202–366–4730, fax: 202–366–5930.

SUPPLEMENTARY INFORMATION: The Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 establishes a National Award for the Advancement of Motor Vehicle Research and Development. It sets the basis for the award as follows:

> The Secretary of Transportation shall periodically make and present the award to domestic motor vehicle manufacturers, suppliers, or Federal laboratory personnel who, in the opinion of the Secretary of Transportation, have substantially improved domestic motor vehicle research and development in safety, energy savings, or environmental impact. No person may receive the award more than once every 5 years. (15 U.S.C. 3711c.)

This announcement is to solicit nominations for the National Award for the Advancement of Motor Vehicle Research and Development and to provide relevant information. The award consists of a medal and citation from the Secretary of Transportation. It will be presented at an appropriate ceremony.

Nominators

Any person may nominate individuals or organizations he or she believes are worthy of receiving the award by reason of accomplishments.

Eligibility

Eligibility for the National Award for the Advancement of Motor Vehicle Research and Development is limited to domestic motor vehicle manufacturers, domestic suppliers to the motor vehicle industry, their employees, and personnel of Federal laboratories. See the *Definitions* section below for the definitions of the following terms:

Domestic motor vehicle manufacturer, Domestic supplier, and Federal laboratory.

Qualifying Work

The award will recognize work that has substantially improved domestic motor vehicle research and development in the areas of motor vehicle safety, motor vehicle energy savings, or environmental impacts of motor vehicles. The work may be a singular one-time accomplishment or it may be a series of accomplishments that have had substantial effect over time. Examples of the types of achievements that fall into the three categories are:

1. Safety Improvement—Vehicular technology that reduces the likelihood of crashes (crash avoidance) or the likelihood of serious injury when a crash occurs (crashworthiness) or otherwise improves the chances of post-

crash survival/recovery of crash victims. This could include research and development of instrumentation or biomechanics.

2. Energy Savings—Technology that saves energy in the production or operation of motor vehicles by such means as light weight structures, engine and drive train improvements, reductions in tire rolling resistance or aerodynamic drag, and modifications of fuel characteristics.

3. Improvements in Environmental Quality—Motor vehicle technology that reduces emissions, reduces solid waste, reduces hazardous waste, reduces noise (e.g., tire noise), as well as technology that reduces waste byproducts of motor vehicle production, operation, or scrappage.

Required Contents of nomination

*Names and identification of specific individuals or organizations being nominated.
*Identification of nominator(s) with title(s), address(es) and phone number(s). At least one nominator must sign the nomination.
*Description of accomplishments, including the nature of the specific research and development accomplishment and reasons why it constitutes substantial improvement. Identify involvement of organization or individual(s) nominated.
*Reference for improvements (patents, awards, papers, other recognition).
*Establish eligibility of nominees. Individuals must be past or current employees of organization at which research and development was accomplished.
*Establish that improved technology is for motor vehicles offered for sale in the United States.

Limitation on length of nomination

The nomination is limited to 10 numbered pages of 8.5 inch x 11.0 inch paper with one inch margins and font size not less than 12 point.

Send an original and three copies of the complete nomination to George L. Parker, Associate Administrator for Research and Development, NRD–01, National Highway Traffic Safety Administration, 400 Seventh St. SW., Washington, DC 20590. Nomination will be returned to the nominator if it includes a written request.

Evaluation process and criteria

NHTSA and other Federal agency staff will make an initial screening of all nominations postmarked on or before December 31, 1993 to ensure that they contain the required information and meet the statutory requirements for eligibility and field of work. Subsequently, a special panel will evaluate the nominations. NHTSA intends that the evaluation panel will include experts in the fields of energy savings and environmental impact in addition to motor vehicle safety. The panel will make its evaluations according to the following criteria:

1. Quality of cited work.
2. Contribution of cited work to improved safety, energy savings or environmental quality.
3. Involvement of nominee with cited work.

The Secretary of Transportation will then select the awardee from among the nominees receiving high evaluations from the evaluation panel. The Secretary may also decide not to make an award. His decision is final.

Definitions

For the purposes of determining eligibility for the National Award for the Advancement of Motor Vehicle Research and Development, the following definitions will apply:

Domestic motor vehicle manufacturer—a company engaged in the production and sale of motor vehicles in the United States and that has majority ownership or control by individuals who are citizens of the United States. [Definition based on that of "United States-owned company" in 15 U.S.C. 278n(j)(2) as added by Public Law 102–245.]

Domestic supplier—a company that supplies research and development, design services, materials, parts and/or items of equipment or machinery to a motor vehicle manufacturer or subcontractor to a motor vehicle manufacturer or whose products are used in new motor vehicles and that has majority ownership or control by individuals who are citizens of the United States.

Personnel of Federal laboratory—Individuals employed by the Federal Government at a facility engaging in research and development activities or employed by a contractor at such a facility that is owned by the Federal Government and operated by that contractor.

Issued on: November 18, 1993.

Howard M. Smolkin,

Acting Administrator.

[FR Doc. 93–28806 Filed 11–23–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0004.
Form Number: TA–1.
Type of Review: Extension.
Title: Uniform Form for Registration and Amendment to Registration as a Transfer Agent.
Description: This form is used by national banks and national bank subsidiaries for registration and amendment to registration as a transfer agent.
Respondents: Businesses or other for-profit, Small businesses or organizations.
Estimated Number of Respondents: 55.
Estimated Burden Hours Per Respondent: 28 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping Burden: 26 hours.
Clearance Officer: John Ference, (202) 874–4697, Comptroller of the Currency, 250 E Street, SW., Washington, DC 20219.
OMB Reviewer: Gary Waxman, (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer

[FR Doc. 93–28809 Filed 11–23–93; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

November 17, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: 1545–0939.
Form Number: IRS Form 8404.
Type of Review: Extension.
Title: Computation of Interest Charge on DISC-Related Deferred Tax Liability.
Description: Shareholders of Interest Charge Domestic International Sales Corporations (IC–DISCs) use Form 8404 to figure and report an interest on their DISC related deferred tax liability. The interest charge is required by Internal Revenue Code section 995(f). IRS uses Form 8404 to determine whether the shareholder has correctly figured and paid the interest charge on a timely basis.
Respondents: Individuals or households, Businesses or other for-profit.
Estimated Number of Respondents/Recordkeeping: 2,000.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—4 hrs., 4 min.
Learning about the law of the form—2 hrs., 23 min.
Preparing and sending the form to the IRS—2 hrs., 34 min.
Frequency of Response: Annually.
Estimated Total Reporting/Recordkeeping Burden: 18,020 hours.
Clearance Officer: Garrick Shear, (202) 622–3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports, Management Officer.

[FR Doc. 93–28810 Filed 11–23–93; 8:45 am]

BILLING CODE 4830–01–P

UNITED STATES INFORMATION AGENCY

Internship Capacity Building for Selected Countries of Central and Eastern European, Russia, and Central Asia Republics

AGENCY: United States Information Agency.

ACTION: Notice—request for proposals.

SUMMARY: The Office of Citizen Exchanges (E/P) requests proposals for the planning and conducting of a series of training workshops around the U.S. The workshops are intended to build the capacity of local organizations to run quality internship programs in diverse fields. In addition, the Agency seeks the development of internship program standards which will form the core of the workshop curriculum, and also be used later by USIA to evaluate internships completed by those organizations who have taken the workshop.

After the deadline for submitting the proposal, USIA officers may not discuss this competition in any way with applicants until final decisions are made.

ANNOUNCEMENT NAME AND NUMBERS: All communications concerning this announcement should refer to the INTERNSHIP CAPACITY BUILDING INITIATIVE. This announcement number is E/P–94–16. Please refer to this title and number in all correspondence or telephone calls to USIA.

DATES: Deadlines for Proposals: All copies must be received at the U.S. Information Agency by 5 p.m. Washington, DC time on January 14, 1994. Faxed documents will not be accepted, nor will documents postmarked January 14,1994, but received at a later date.

It is the responsibility of each grant applicant to ensure that proposals are received by the above deadline. Internship Capacity Building grant project activity should begin after April 1, 1994.

ADDRESSES: The original and 14 copies of the completed application and required forms should be submitted by the deadline to U.S. Information Agency, Ref: ICBI–E/P–94–16; Office of Grants Management (E/XE); 301 4th Street, SW., room 336; Washington, DC 20547.

FOR FURTHER INFORMATION CONTACT: Interested organizations, institutions should contact: European Division of Citizens Exchanges (E/P), room 216, U.S. Information Agency, 301 4th Street SW., Washington, DC 20547, telephone 202/619–5326, fax 202/619–4350 to request detailed application packets, which include award criteria, all necessary forms, and guidelines for preparing proposals, including specific budget preparation.

Objectives of Internship Capacity Building Initiative

Overview

USIA has determined that internships are one of the most effective ways to provide skills to individuals from the other countries. As the demand for these placements increases, the Agency has determined that more opportunities for placements are needed. Since the increase in internships is mostly likely for participants from Central and Eastern Europe, Russia, and Central Asia, proposals should use these areas for geographic focus when planning training seminars. The purpose of this program is to increase the capacity of community-backed organizations within the U.S. for internships placements, primarily in the business field, but also including other fields such as journalism and local government.

For this program, an internship is defined as an exchange program of a minimum of one month, whose defining aspect is the placement of the foreign exchange within an institution for the purpose of professional improvement. This would include "shadowing" programs as well as those in which the intern is assigned, to greater or lesser extent, the tasks of a regular employee.

E/P will give strong consideration to proposals demonstrating a significant previous involvement in the development of internship programs as well as institutional experience in conducting community based training programs. Groups with internship experience but that lack expertise in organizing training workshops may wish to present a joint proposal with an organization whose specialty is training.

Programmatic Considerations

Pursuant to the Bureau's authorizing legislation, grant programs must maintain a nonpolitical character and should be balanced and representative of the diversity of American political, social and cultural life.

The Workshops

The management of internships, in both a logistical and programmatic sense, is a complicated operation, but one with common challenges and problems regardless of U.S. location or field. Thus it is a program skill which can be taught to individuals and organizations that wish to start internships in their community or improve existing standards.

The trainer organization will send a training team to conduct workshops in ten cities selected for training. The trainer organization should develop a core workshop curriculum which covers all elements common to any internship program, but can be tailored to the needs of each city. For the purposes of curriculum planning, the workshop should use the program model of receiving a minimum of 25 interns in the community at the same time. The workshops should be planned to address all of the issues which arise during the management of internships, such as recruitment of interns, placements, transportation logistics, housing, training of mentors, cross-cultural sensitivity, monitoring, fund-

raising, pre-placement briefings of hosts and interns, post-placement debriefings and evaluation. Materials should be prepared for the workshop which highlight differing approaches to each one of these elements. Workshop leaders should be familiar with internship placements in different fields. Since many of the community-based organizations may have little international experience, particular emphasis must be placed on cross-cultural differences, particularly differences in work attitudes. The length of the workshops should normally not exceed three days, although flexibility to expand the core program should be considered.

Development of Standards of Performance

The Agency also seeks a method of measuring performance of organization's management of internship programs to assure that U.S. Government funds for internships are spent well. The organization selected to conduct the workshops will be expected to develop pre-set criteria which can be used to measure the performance of community based organizations. These standards will form the core of the workshop curriculum, must coincide with the topics listed above and should clearly assign minimal levels of performance in each sub-category. The workshops should be designed to teach community based organizations how to meet these minimal standards. Since it is expected that these organizations would compete for USIA internship program grants, the Agency would use these standards to evaluate how well those communities conducted USIA-funded internships. Organizations are encouraged to consult with the Office of Policy and Evaluations of the Bureau of Education and Cultural Affairs in developing these standards.

Selection of Trainees

The selection of the cities, and the organizations in them to receive the training, will be done separately. Proposals for this competition should assume that one or more non-profit organizations within a city will be taking the workshop, and that the city will have the minimum requirements to carry on internships, such as size, diverse economy, and community support.

Funding

USIA has budgeted approximately $250,000 for this project, but expects that competitive proposals will come in well under this amount. Exchange organizations with less than four years of successful experience in managing international exchange programs will not be eligible for this competition.

Cost-sharing is encouraged. Cost-sharing may be in the form of allowable direct costs. The recipient must maintain written records to support all allowable costs which are claimed as being its contribution to cost participation, as well as cost to be paid by the Federal government. Such records are subject to audit. The basis for determining the value of cash and in-kind contributions must be in accordance with OMB Circular A110, Attachment E—Cost-sharing and matching should be described in the proposal. In the event the Recipient does not provide the minimum amount of cost sharing as stipulated in the Recipient's budget, the Agency's contribution will be reduced in proportion to the Recipient's contribution.

The recipient's proposal shall include the cost of an audit that:

(1) Complies with the requirements of OMB Circular No. A–133, Audits of Institutions of Higher Education and other Nonprofit Institutions;

(2) Complies with the requirements of American Institute of Certified Public Accountants (AICPA) Statement of Position (SOP) No. 92–9; and

(3) Includes review by the recipient's independent auditor of a recipient-prepared supplemental schedule of indirect cost rate computation, if such a rate is being proposed.

The audit costs shall be identified separately for:

(1) Preparation of basic financial statements and other accounting services; and

(2) Preparation of the supplemental reports and schedules required by OMB Circular No. A–133, AICPA SOP 92–9, and the review of the supplemental schedule of indirect cost rate computation.

USIA believes that the costs of this program will fall into two basic categories: (A) Development of the course curriculum and course materials, including the standards of performance, and (B) costs connected with the workshops themselves, mainly staff, travel and per diem. Proposals should separate the two categories, and give a "unit cost" per workshop in the second category. Workshop site costs should be included, however it may happen that some cities may provide a venue at no cost. Since cities have not yet been selected, proposals should include airfare costs to a city of "average" distance away from the grantee's base of operations.

The following project costs are eligible for consideration for funding:

1. Domestic air fares; ground transportation costs.

2. Per Diem. Organizations have the option of using a flat $140/day for non-staff workshop leaders or the published U.S. Federal per diem rates for individual American cities.

Note: Grantee staff must use the published federal per diem rates, not the flat rate.

3. Consultants. May be used to provide specialized expertise or to make presentations. Daily honoraria generally do not exceed $250 per day. Subcontracting organizations may also be used, in which case the written agreement between the prospective grantee and subcontractor should be included in the proposal.

4. Room rental, which generally should not exceed $250 per day.

5. Materials development. Proposals may contain costs to purchase and develop materials for the workshop participants.

6. Other costs necessary for the effective administration of the program, including salaries for grant organizations employees, benefits, an other direct and indirect costs per detailed instructions in the application package.

Application Requirements

Proposals must be structured in accordance with the instructions contained in the application package.

Review Process

USIA will acknowledge receipt of all proposals and will review them for technical eligibility. Proposals will be deemed ineligible if they do not fully adhere to the guidelines established herein and in the application packet. Eligible proposals will be forwarded to panels of USIA officers for advisory review. Proposals may also be reviewed by the Office of General Counsel or other Agency offices. Funding decisions are at the discretion of the Associate Director for Educational and Cultural Affairs. Final technical authority for grant awards resides with USIA's contracting officer. The award of any grant is subject to availability of funds.

The U.S. Government reserves the right to reject any or all applications received. USIA will not pay for design and development costs associated with submitting a proposal. Applications are submitted at the risk of the applicant; should circumstances prevent award of a grant all preparation and submission costs are at the applicants expense. USIA will not award funds for activities conducted prior to the actual grant award.

Review Criteria

USIA will consider proposals based on their conformance with the objectives and considerations already stated in this RFP, as well as the following criteria:

1. Institutional Ability/Capacity/Record

Applicant institutions must demonstrate not only their experience in conducting successful internships, but also show that they can teach internship management in a workshop format. If an organization is a previous USIA grant recipient, responsible fiscal management and full compliance with all reporting requirements for past USIA grants as determined by the Office of Contracts (M/KG) will be considered. Relevant program evaluation of previous projects may also be considered in this assessment.

2. Project Personnel

Personnel should have extensive experience in implementing internship programs in different fields. Previous experience by staff in conducting training workshops should be noted. Resumes must be provided for all individuals involved in this project; including those responsible for the development of workshop materials, management of workshops, and presenters at the workshops. Resumes for consultants and/or subcontractors must be included.

3. Program Planning

A detailed work plan should provide milestones for the accomplishment of each phase of the project and clearly demonstrate how the grantee institution will meet milestones. In addition, the work plan should indicate how the work plan will accomplish the overall project goals.

4. Cross-Cultural Expertise

Evidence of sensitivity to historical, linguistic, and other cross-cultural factors are prerequisites. Since most interns come from societies which are newly democratic and with only a tenuous knowledge of the free market/western business environment, the successful applicant should provide evidence that the core curriculum and workshop format will prepare participating community based organizations for interns from this environment.

5. Project Evaluation

Proposals should include a plan to evaluate each workshop. The applicant should indicate what technique or methodology will be used to meet this requirement. Reports are required after each workshop outlining success or failures and what if any changes in the core curriculum or workshop approach are needed.

Notice

The terms and conditions published in this RFP are binding and may not be modified by any USIA representative. Explanatory information provided by USIA that contradicts published language will not be binding. Issuance of the RFP does not constitute an award commitment on the part of the U.S. Government. Awards cannot be made until funds have been fully appropriated by the U.S. Congress and allocated and committed through internal USIA procedures.

Notification

All applicants will be notified of the results of the review process on or about March 1, 1994. Awarded grants will be subject to periodic reporting and evaluation requirements.

Dated: November 16, 1993.

Barry Fulton,

Acting Associate Director, Bureau of Educational and Cultural Affairs.

[FR Doc. 93-28543 Filed 11-23-93; 8:45 am]

BILLING CODE 8230-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Committee on Readjustment of Vietnam and Other War Veterans; Meeting

ACTION: Notice of meeting; Advisory Committee on the Readjustment of Vietnam and Other War Veterans.

SUMMARY: The Department of Veterans Affairs (VA) gives notice under Public Law 92-463 of a meeting of the Advisory Committee on the Readjustment of Vietnam and Other War Veterans. This is a regularly scheduled meeting for the purpose of reviewing VA and other relevant services for Vietnam and other war veterans, to review Committee work in progress and to formulate Committee recommendations and objectives.

DATES: The meetings will be held on December 2 and 3, 1993. The meeting on December 2 will be held at Techworld in room 1105 located at 801 I Street, NW., Washington, DC. On December 3 the meeting will be conducted at the American Legion, Washington Office, 1608 K Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Those who plan to attend or who have questions concerning the meeting should contact Arthur S. Blank, Jr., M.D., Director, Readjustment Counseling Service, Department of Veterans Affairs (phone number: 202-535-7554).

SUPPLEMENTARY INFORMATION: The meeting on December 2 will begin at 8 a.m. and adjourn at 4:30 p.m. and on December 3 the agenda will commence at 8:30 a.m. and adjourn at 4:30 p.m. The agenda for December 2 will begin with a meeting with the Secretary of Veterans Affairs to provide national perspective to the Committee's plans and activities. The first day's agenda will also cover outreach and counseling issues related to serving Native American war veterans, a meeting with the Assistant Secretary for Policy and Planning to review and discuss VA services to minority veterans and a presentation by and discussion with the Director of VA's National Center for Post-traumatic Stress Disorder to review some current research on post-traumatic stress disorder.

On December 3 the Committee will review pending legislation of importance for the readjustment of war veterans. The second day's agenda will also include a briefing on the status of the Readjustment Counseling Service, Women Veterans Sexual Trauma Counseling Program. The Committee will conclude the day by reviewing Committee work in progress and formulating objectives and plans for the coming year.

Both day's meeting will be open to the public up to the seating capacity of the room.

Dated: November 16, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93-28785 Filed 11-23-93; 8:45 am]

BILLING CODE 8320-01-M

Special Medical Advisory Group; Meeting

ACTION: Notice.

SUMMARY: Notice is given that, under Public Law 92-463, there will be a meeting of the Special Medical Advisory Group. The purpose of the Special Medical Advisory Group is to advise the Secretary and Under Secretary for Health relative to the care and treatment of disabled veterans, and other matters pertinent to the Department's Veterans Health Administration. All sessions will be open to the public up to the seating capacity of the meeting room.

DATES: The meeting will be held December 9 and 10, 1993. The first

session will convene on December 9 at 6 p.m., and the session on December 10 will convene at 8:30 a.m. Because there will be limited seating capacity, those wishing to attend should contact Susan Hall, Office of the Under Secretary for Health, Department of Veterans Affairs, 202/535–7357, prior to December 6, 1993.

ADDRESSES: The meeting will be held at the Renaissance Hotel, located at 999 9th Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Susan Hall, Office of the Under Secretary for Health, Department of Veterans Affairs, 202–535–7357.

Dated: November 15, 1993.

By direction of the Secretary.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–28784 Filed 11–23–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register

Vol. 58, No. 225

Wednesday, November 24, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, November 29, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. International banking matter. (This item was previously announced for a closed meeting on November 15, 1993.)
2. Request by the General Accounting Office for Board comment on a draft report regarding international banking supervision.
3. Matters relating to the Plans administered under the Federal Reserve System's employee benefits program.
4. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
5. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–28935 Filed 11–19–93; 4:50 am]

BILLING CODE 6210–01–P

PENNSYLVANIA AVENUE DEVELOPMENT CORPORATION

Board of Directors' Meeting

ACTION: The Pennsylvania Avenue Development Corporation announces the date of their forthcoming meeting of the Board of Directors.

DATE: The meeting will be held Wednesday, December 8, 1993, at 10:00 a.m.

ADDRESS: The meeting will be held at the Pennsylvania Avenue Development Corporation, Suite 1220 North, 1331 Pennsylvania Avenue, NW., Washington, DC.

SUPPLEMENTARY INFORMATION: This meeting is held in accordance with 36 Code of Federal Regulations Part 901, and is open to the public.

Robert E. McCally,

Acting Executive Director.

[FR Doc. 93–28983 Filed 11–22–93; 11:40 am]

BILLING CODE 7630–01–M

federal register

Wednesday
November 24, 1993

Part II

Environmental Protection Agency

40 CFR Parts 51 and 93
Air Quality: Transportation Plans, Programs, and Projects; Federal or State Implementation Plan Conformity; Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 51 and 93

[FRL–4804–3]

Criteria and Procedures for Determining Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This action establishes the criteria and procedures for determining that transportation plans, programs, and projects which are funded or approved under title 23 U.S.C. or the Federal Transit Act conform with State or Federal air quality implementation plans. This action is required under section 176(c)(4) of the Clean Air Act, as amended in 1990.

Conformity to an implementation plan is defined in the Clean Air Act as conformity to an implementation plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards. In addition, Federal activities may not cause or contribute to new violations of air quality standards, exacerbate existing violations, or interfere with timely attainment or required interim emission reductions towards attainment. This final rule establishes the process by which the Federal Highway Administration and the Federal Transit Administration of the United States Department of Transportation and metropolitan planning organizations determine conformity of highway and transit projects.

EFFECTIVE DATE: This final rule is effective on December 27, 1993.

ADDRESSES: Materials relevant to this rulemaking are contained in Docket No. A–92–21. The docket is located in room M–1500 Waterside Mall (ground floor) at the Environmental Protection Agency, Attention: Docket No. A–92–21, 401 M Street SW., Washington, DC 20460. The docket may be inspected from 8:30 a.m. to 12 p.m. and from 1:30 p.m. to 3:30 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Kathryn Sargeant, Emission Control Strategies Branch, Emission Planning and Strategies Division, U.S. Environmental Protection Agency, 2565 Plymouth Road, Ann Arbor, MI 48105. (313) 741–7884.

SUPPLEMENTARY INFORMATION: The contents of this preamble are listed in the following outline:

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II. Summary of the Final Rule
III. Background of the Final Rule
A. History of Conformity
B. Conformity Under the Clean Air Act As Amended in 1990
C. Interim EPA/DOT Conformity Guidance
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E. Conformity of General Federal Actions
IV. Discussion of Major Issues
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J. Frequency of Conformity Determinations
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6. Multiple Stage Projects
7. Project-level Determinations
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B. Applicable Implementation Plans
C. Conformity SIP Revisions
D. Public Participation
E. Plan Content
1. Plan Specificity
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J. Regional Emissions Analysis
1. Regionally Significant Projects
2. Projects Included in the Regional Emissions Analysis
3. Modeling Procedures
4. Build/no-build Test
K. Hot-spot Criteria and Analysis
L. Exempt Projects
VI. Environmental and Health Benefits
VII. Economic Impact
VIII. Administrative Requirements
A. Administrative Designation
B. Reporting and Recordkeeping Requirements
C. Regulatory Flexibility Act

I. Authority

Authority for the actions taken in this notice is granted to EPA and DOT by section 176(c) of the Clean Air Act as amended (42 U.S.C. 7521(a)).

II. Summary of the Final Rule

This rule requires metropolitan planning organizations (MPOs) and the United States Department of Transportation (DOT) to make conformity determinations on metropolitan transportation plans and transportation improvement programs (TIPs) before they are adopted, approved, or accepted. In addition, highway or transit projects which are funded or approved by the Federal Highway Administration (FHWA) or the Federal Transit Administration (FTA) must be found to conform before they are approved or funded by DOT or an MPO.

This rule applies to nonattainment and maintenance areas. EPA will issue a supplementary notice of proposed

rulemaking to propose criteria and procedures for determining conformity in attainment areas.

The provisions of this rule apply with respect to those transportation-related pollutants for which an area is designated nonattainment or is subject to a maintenance plan approved under Clean Air Act section 175A (i.e., ozone, carbon monoxide (CO), nitrogen dioxide (NO_2), and particles with an aerodynamic diameter of less than or equal to a nominal 10 micrometers (PM–10)). The provisions of this rule also apply with respect to the following precursors of those pollutants: volatile organic compounds (VOC) and oxides of nitrogen (NO_X) in ozone areas, NO_X in NO_2 areas, and VOC and NO_X in PM–10 areas.

This rule requires States to submit to EPA revisions to their State implementation plans (SIPs) establishing conformity criteria and procedures consistent with this rule by November 25, 1994. However, the requirements of this rule apply as a matter of Federal law beginning December 27, 1993. All conformity determinations made after this date must be made according to the requirements of this rule and, after the conformity SIP revision is approved by EPA, according to the requirements of the applicable SIP.

The criteria and procedures in this rule differ according to the pollutant for which an area is designated nonattainment or maintenance, and according to the type of action (i.e., transportation plan, TIP, project from a conforming transportation plan and TIP, or project not from a conforming transportation plan and TIP). The rule requires regional emissions analysis of transportation plans and TIPs. All regionally significant highway and transit projects, regardless of funding source, must either come from a conforming transportation plan and TIP, have been included in the regional emissions analysis of the plan and TIP which supports the plan or TIP's adoption, or be included in a newly performed regional analysis. Transportation projects funded or approved by FHWA or FTA must also be analyzed for their localized air quality impacts in PM–10 and CO nonattainment areas.

The criteria and procedures also vary according to the period of time in which the conformity determination is made. Transportation plans, TIPs, and projects must satisfy different criteria depending on whether a State has submitted a SIP revision which establishes control strategies to demonstrate reasonable further progress and attainment. Criteria and procedures also vary depending on whether the SIP revision has been submitted, approved, disapproved, or the Clean Air Act deadline for submission of the SIP revision has been missed.

The final rule is being placed in both 40 CFR part 51 and 40 CFR part 93. Part 93 applies to Federal agencies immediately, and part 51 establishes requirements for States in submitting SIPs. The requirements of the rule are the same in both parts, except that the rule does not require a conformity SIP revision in part 93.

The final rule has a variety of minor changes from the proposal based on comments received regarding specific details of the regulatory text. In addition, several major changes have been made in response to public comment. These include changes to the criteria and procedures during the interim period and specific requirements for regionally significant "non-federal" projects (those not requiring FHWA or FTA funding or approval). The reader is referred to the Discussion of Major Issues and Discussion of Comments sections for details on these and other issues.

III. Background of the Final Rule

A. History of Conformity

Conformity provisions first appeared in the Clean Air Act Amendments of 1977 (Pub. L. 95–95). Although these provisions did not define conformity, they provided that no Federal department "shall: (1) engage in, (2) support in any way or provide financial assistance for, (3) license or permit, or (4) approve any activity which does not conform to a [State implementation plan] after it has been approved or promulgated." Assurance of conformity was an affirmative responsibility of the head of each Federal agency. In addition, no MPO could approve any transportation project, program, or plan which did not conform to a State or Federal implementation plan.

Following enactment of the 1977 Amendments, DOT consulted with EPA to develop conformity procedures for programs administered by FHWA and the Urban Mass Transportation Administration (now FTA). The June 14, 1978 "Memorandum of Understanding Regarding Integration of Transportation and Air Quality Planning" provided EPA an opportunity to jointly review and comment on the conformity of transportation plans and TIPs.

In April 1980, EPA published an advance notice of proposed rulemaking on conformity (45 FR 21590, April 1, 1980). EPA maintained that the Congressional intent of Clean Air Act section 176(c) was to prevent Federal actions from causing a delay in the attainment or maintenance of the NAAQS. However, no further rulemaking action was taken.

In June 1980 EPA and DOT jointly issued a guidance document entitled "Procedures for Conformance of Transportation Plans, Programs and Projects with Clean Air Act State Implementation Plans." This guidance established that in nonattainment and maintenance areas (areas experiencing violations of the national ambient air quality standards (NAAQS) and required to develop air quality maintenance plans under 40 CFR part 51, subpart D), conformity determinations must be documented as a necessary element of all certifications, TIP reviews, and environmental impact statement findings. It was necessary to make certifications that the planning process had been conducted according to a continuous, cooperative, and comprehensive transportation planning process and consistent with Clean Air Act requirements.

Transportation plans and programs were considered to conform with the SIP if they did not adversely affect the transportation control measures (TCMs) in the SIP, and if they contributed to reasonable progress in implementing those TCMs. A transportation project would conform if it were a TCM from the SIP, came from a conforming TIP, or did not adversely affect the TCMs in the SIP.

Subsequently, DOT developed and issued an interim final rule (46 FR 8426, January 26, 1981) based upon the joint guidance. DOT established this rule to meet its obligations under section 176(c) of the Clean Air Act, and the rule was put into effect immediately upon publication. It amended 23 CFR part 770 (FHWA Air Quality Guidelines) and added 49 CFR part 623 (UMTA Air Quality Conformity and Priority Procedures).

The rule used the joint guidance's definition of conformity, interpreting conformity in the context of TCMs rather than emissions budgets or air quality analysis. Compliance with the conformity requirements was to be demonstrated as part of the planning and National Environmental Policy Act (NEPA) processes.

B. Conformity Under the Clean Air Act As Amended in 1990

In addition to adding specific provisions regarding the conformity of transportation actions, the Clean Air Act Amendments of 1990 expand the scope and content of the conformity

provisions by defining conformity to an implementation plan to mean

Conformity to the plan's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards and achieving expeditious attainment of such standards; and that such activities will not (i) cause or contribute to any new violation of any standards in any area; (ii) increase the frequency or severity of any existing violation of any standard in any area; or (iii) delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Clean Air Act Amendments of 1990 emphasize reconciling the estimates of emissions from transportation plans and programs with the implementation plan, rather than simply providing for the implementation of TCMs. This integration of transportation and air quality planning is intended to protect the integrity of the implementation plan by ensuring that its growth projections are not exceeded without additional measures to counterbalance the excess growth, that progress targets are achieved, and that air quality maintenance efforts are not undermined.

C. Interim EPA/DOT Conformity Guidance

On June 7, 1991, EPA and DOT jointly issued guidance for determining conformity of transportation plans, programs, and projects during the period before the final rule is promulgated. This guidance was based on the interim conformity requirements in section 176(c)(3) of the CAA. This rule will supersede the June 7, 1991, interim guidance on its effective date.

D. Public Participation

The Notice of Proposed Rulemaking (NPRM) for this rule was published in the **Federal Register** on January 11, 1993 (58 FR 3768) as a proposed amendment to 40 CFR part 51. A March 15, 1993 **Federal Register** notice proposed the January 11 requirements for 40 CFR part 93. The comment period lasted from January 11 until March 12, 1993, and was subsequently reopened from March 15 until May 1, 1993, in order to allow comment in the context of the NPRM for conformity of general Federal actions (see next section). Over 300 written comments were received, including comments from Governors, State air agencies, State DOTs, MPOs and other local transportation agencies, local air agencies, the associations of these agencies, environmental interest groups, highway interest groups, and private citizens. Copies of the comments in their entirety can be obtained from the docket for this rule (see **ADDRESSES**). The docket also includes a complete Response to Comments document for this rule.

Three public hearings were held on the transportation conformity NPRM during the public comment period. In addition, opportunity to comment on the transportation conformity NPRM was provided at the public hearing for the NPRM on conformity of general Federal actions.

E. Conformity of General Federal Actions

Section 176(c) of the Clean Air Act applies to all departments, agencies, and instrumentalities of the Federal government. This rule applies only to the conformity of transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act. Criteria and procedures for determining the conformity of all other Federal actions ("general conformity"), including highway and transit projects which require funding or approval from a Federal agency other than FHWA or FTA, are promulgated in a separate rule. Criteria and procedures for determining conformity of general Federal actions were proposed in the **Federal Register** on March 15, 1993 (58 FR 13836).

IV. Discussion of Major Issues

A. Attainment Areas

1. EPA's Position

In the NPRM, EPA indicated that the statute was ambiguous with respect to whether conformity applied only in nonattainment areas, or in attainment areas as well. EPA received significant public comment arguing that the statute should be read to apply conformity also in attainment areas, based on the wording of Clean Air Act section 176(c)(1) and the policy merits of such applicability. Similar comments were received arguing that conformity did not apply in attainment areas.

EPA continues to believe that the statute is ambiguous, and that it provides discretionary authority to apply these transportation conformity procedures to both attainment and nonattainment areas. EPA plans to carry out a separate rulemaking proposing to apply transportation conformity procedures to certain attainment areas. EPA sees strong policy reasons not to apply conformity in all attainment areas, given the significant burden associated with making conformity determinations relative to the risk of NAAQS violations in clean areas. Thus EPA believes that it would be reasonable to propose applying conformity in attainment areas for which air quality is close to nonattainment levels, for example at 85% of nonattainment levels (see discussion below).

EPA intends to take comment on the basic proposal to apply conformity in attainment areas. EPA will also seek comment on the specific application of conformity in certain categories of attainment areas.

Therefore, EPA intends to issue in the near future a supplemental notice of proposed rulemaking dealing with conformity requirements in attainment areas.[1] The requirements of this final rule will apply only in nonattainment and maintenance areas, as proposed.

2. Supplemental Notice of Proposed Rulemaking

While EPA will solicit comments on other options, the supplemental notice of proposed rulemaking on transportation conformity will propose to require conformity determinations only in the metropolitan planning areas (the urbanized area and the contiguous area(s) likely to become urbanized within twenty years) of attainment areas which have exceeded 85% of the ozone, CO, NO_2, PM–10 annual, or PM–10 24-hour NAAQS within the last three, two, one, three, and three years, respectively. These periods are consistent with the way areas are designated as attainment or nonattainment. Further, the statistical form of the comparison to the 85% value would follow that specified for the relevant ambient standard.

Transportation plans, TIPs, and projects in all other areas, including all rural areas and all urbanized areas which are not subject to EPA requirements for ambient monitoring, would be exempt from the obligation to conduct transportation conformity determinations, based on the de minimis impact on air quality that would result from transportation activities in such areas. All attainment areas above 85% of the CO or PM–10 standard in which motor vehicles and transportation project construction do not contribute significantly to ambient levels of CO or PM–10 would also be exempt from transportation conformity requirements, for similar reasons. Because the merit of exempting certain

[1] For PM–10, the areas which would be addressed in the supplemental notice are designated "unclassifiable." The Clean Air Act Amendments of 1990 designated areas meeting certain qualifications as nonattainment for PM–10 by operation of redesignated to nonattainment, and for nonattainment areas to be redesignated to attainment. This rule refers to areas redesignated to attainment as "maintenance areas."

areas from conformity requirements will vary depending on the activities being regulated, the general conformity rule may propose different exemptions for applicability of conformity requirements in attainment areas than those for transportation conformity.

EPA intends to propose flexible, low-resource procedures and criteria for the attainment areas subject to the conformity requirements to demonstrate the conformity of transportation plans, TIPs, and projects.

B. Interim Period

1. Background

As discussed in the NPRM, there exists an "interim period" which lasts until EPA approves SIPs with control strategies demonstrating attainment and reasonable further progress, or maintenance. Once these control strategy SIPs are approved, conformity of plans and TIPs shall be demonstrated by comparing the emissions expected from the transportation system when the transportation plan and TIP are implemented to the emissions "budget" established in the SIP. However, during the interim period, section 176(c)(3)(A)(iii) of the Clean Air Act allows positive conformity determinations where transportation plans and TIPs contribute to annual emission reductions in ozone and CO nonattainment areas.

Although the interim period discussed in the Clean Air Act lasts only until the conformity SIP revisions are approved, EPA is extending the interim requirements until the control strategy SIPs are submitted, because it would be impossible to apply the emissions budget test prior to that time. EPA is also establishing interim criteria in PM–10 and NO_2 nonattainment areas because Clean Air Act section 176(c)(1)(ii) clearly refers to the Federal activity avoiding increases in the frequency or severity of any standard. Interim criteria for PM–10 and NO_2 areas are discussed in section IV.D. of this preamble. EPA sees no way to ensure that activities will not contribute to violations short of requiring reductions in emissions.

For ozone and CO areas, the NPRM proposed a "build/no-build" test which requires a regional emissions analysis to demonstrate that the emissions from the transportation system in future years, if it included the proposed action and all other expected regionally significant projects, would be less than the emissions from the current transportation system in future years.

EPA received substantial public comment on the adequacy of the "build/no-build test" as a demonstration of contribution to annual emission reductions. In particular, conformity determinations being made according to this test are showing insignificant emission reductions, which commenters claim are not consistent with the need to achieve reasonable further progress as necessary to attain, as required by sections 182(b)(1) and 187(a)(7) and referenced by section 176(c)(3)(A)(iii) of the Clean Air Act. In addition, EPA itself expressed concern in the NPRM's preamble that there might be long delays before emissions budgets are approved.

2. Phase II of the Interim Period

Phase I of the interim period, which ends December 27, 1993, was covered by the EPA/DOT joint guidance of June 7, 1991. The final rule defines Phase II of the interim period as beginning on December 27, 1993.

The final rule retains the criteria which the NPRM proposed for Phase II of the interim period. In particular, regional analysis of transportation plans and TIPs in ozone and CO areas will have to satisfy the build/no-build test proposed in the NPRM and demonstrate emissions reductions from 1990 levels. EPA continues to believe, as stated in the NPRM preamble, that it is not appropriate for EPA to require specific annual emissions reductions before they have been established by the State in the reasonable further progress and attainment demonstrations ("control strategy SIP revisions"). EPA believes the States should be allowed to decide how much reduction to require from motor vehicles and how much to require from stationary sources. Commenters also expressed substantial support for this approach.

However, in order to achieve emission reductions that are more consistent with the SIP's emission reduction targets as soon as possible, EPA is ending Phase II with either the submission of the control strategy SIP revision or the Clean Air Act deadline for submission of the control strategy SIP revision, whichever is earlier. In contrast, the NPRM proposed that Phase II would last until approval of the control strategy SIP.

3. Transitional Period

When a State submits to EPA a control strategy SIP revision which has been endorsed by the Governor and subject to a public hearing, Phase II ends and the "transitional" period begins. The final rule defines the transitional period to be the time between submission of the control strategy SIP revision and EPA final action on the control strategy SIP (i.e., full approval or disapproval).

During the transitional period, transportation plans and TIPs are required to be consistent with the emissions budget in the submitted control strategy SIP. EPA believes that an MPO should observe the emission budgets established by the State for its area once the SIP has been endorsed by the Governor and submitted to EPA, rather than apply only the build/no-build test while waiting for EPA approval of the budget, because of concern about the potential length of the interim period and the need for reasonable further progress by 1996. EPA believes it is appropriate to require the transportation community to begin contributing its part to the motor vehicle emissions reduction plan adopted by the State immediately, even before EPA approval.

In order to ensure that the SIP emission budget does not loosen the interim requirement for contribution to annual emission reductions while awaiting EPA approval, areas must demonstrate satisfaction of the build/no-build test in addition to consistency with the submitted emissions budget. Because it is the "build" scenario which is compared with the emissions budget, two separate emissions analyses are not necessary to demonstrate both the build/no-build test and consistency with the emissions budget.

Submission of a control strategy SIP revision triggers a requirement for the transportation plan and TIP to be found to conform according to the transitional period criteria and procedures. For control strategy SIP revisions which are submitted after November 24, 1993, the conformity of transportation plans and TIPs must be determined according to the transitional period criteria within 12 months from the Clean Air Act deadline for submission. During this 12-month period, the existing plan and TIP are still valid, and projects from the existing plan and TIP may proceed, provided the NEPA process is completed and the project has been found to conform. However, if the transportation plan and TIP have not been demonstrated to conform according to the transitional period criteria within 12 months from the Clean Air Act deadline for control strategy SIP submission, the transportation plan and TIP lapse, and no projects may proceed except for projects which had already completed the NEPA process and had a project-level conformity determination; projects which are exempted by the conformity rule; and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds.

Although existing transportation plans and TIPs remain valid for 12 months following the Clean Air Act deadline, new transportation plans and TIPs which are approved more than 90 days following submission of the control strategy SIP revision must be found to conform according to transitional period criteria and procedures. During the first 90 days following submission of the control strategy SIP revision, new transportation plans and TIPs may be found to conform according to the Phase II interim period criteria and procedures. However, the conformity status of these transportation plans and TIPs will lapse 12 months from the Clean Air Act deadline for submission if conformity is not redetermined according to the transitional period criteria and procedures.

The 90-day period is intended to accommodate MPOs which are close to completing a long-scheduled plan and TIP adoption at the time the SIP revision is submitted, to provide DOT time to review and concur in those (and any pending previous) MPO actions which it must review, and to provide time for all involved parties to obtain and understand the budget implications of the SIP revision.

The 12-month period to redetermine conformity according to the transitional period criteria and procedures is an outside limit; EPA hopes that most MPOs will revise their TIPs as necessary and redetermine conformity even earlier than within 12 months. A date certain is provided (rather than starting the 12 months on the date of submission) to avoid creating an incentive for delay of the SIP revision.

For areas which submitted a control strategy SIP revision before November 24, 1993, transportation plans and TIPs must be redetermined according to transitional period criteria and procedures by November 25, 1994, or they will lapse. Conformity determinations on new transportation plans and TIPs must be made according to the transitional period criteria beginning February 22, 1994. New transportation plans and TIPs may be found to conform according to Phase II interim period criteria until February 22, 1994, but these conformity determinations will lapse November 25, 1994 if they are not redetermined according to transitional period criteria and procedures.

At any time during the transitional period when the currently conforming transportation plan and TIP have not yet been found to conform according to the transitional period criteria and procedures, the State air agency must be consulted regarding any new regionally significant project which would increase single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes). The State air agency must be consulted on how the emissions from the implementation of the currently conforming transportation plan and TIP (estimated in the "build" scenario in the transportation plan and TIP's conformity determination) compare to the motor vehicle emissions budget in the SIP, or the projected motor vehicle emissions budget in the SIP under development. The State air agency may escalate to the Governor any unresolved disputes, as with any State air agency comments on a conformity determination.

Because SIPs must contain specific measures to achieve the planned emissions reductions, and in the case of transportation the MPO should have assisted in developing these measures, the rule's transitional period requirements should not impose any unanticipated or impossible burden on the MPO. In fact, EPA anticipates that many control strategy SIPs will be developed from an emissions analysis of the transportation plan and TIP which are in place at the time of SIP submission. Where the MPO's analysis of the plan and TIP was used for the SIPs emissions projection and there are no projects in the SIP which are not from the transportation plan and TIP, the rule states that the MPO and DOT can determine conformity of the transportation plan and TIP according to the transitional criteria without new emissions modeling and without having to apply the criteria for current planning assumptions and latest emissions models. If the MPO and DOT avail themselves of this option, however, the three-year limit for full redetermination of the plan and TIP is not reset.

As described more completely in the next section of this preamble, the rule provides that a SIP submittal is sufficient to start the transitional period even if it includes only commitments to implement some parts of the control strategy. The MPO and DOT may assume future implementation of the committal measures when testing the transportation plan and TIP against the new budget.

A SIP containing only commitments for some measures may occur if a State has devised a strategy for meeting an emission reduction or attainment requirement of the Clean Air Act, but it has not adopted all measures in the strategy in an enforceable form suitable for EPA approval. For example, certain VOC limits for consumer products may not have been adopted yet, or an inspection program for diesel trucks aimed at PM–10 reductions may not have been put in regulatory form yet. However, emission reductions for these measures may have been quantified and included in the total emission reductions for the strategy.

EPA's tolerance of committed measures when starting the transitional period is intended to allow the transportation community to proceed with its part of the strategy while the State works to complete full adoption of the committed measures. (The State may be under a sanctions clock or even under sanctions during some or all of this period.) This respect for commitments in SIP revisions for conformity purposes is distinct from the possibility of EPA conditionally approving committals under section 110(k)(4). Today's rule does not prejudge EPA action in regard to completeness or incompleteness findings, approvals, conditional approvals, partial approvals, or disapprovals of SIP revisions.

Once EPA has approved the control strategy SIP revision, the transitional period ends and the control strategy period begins. During the control strategy period, the regional test for transportation plans and TIPs requires only consistency with the motor vehicle emissions budget in the approved SIP. Conditional approval or approval of specific control measures without approval of the SIP as a whole as meeting the applicable Clean Air Act requirement does not terminate the transitional period. 4. Control Strategy SIP Revisions EPA Finds State Failed to Submit, Finds Incomplete, or Disapproves.

EPA believes it is reasonable to interpret the requirement to contribute to emission reductions as demanding some greater contribution where the State has failed to establish emission budgets in a timely fashion, and as the time remaining before the attainment deadline decreases. EPA believes that in the prolonged absence of a control strategy SIP which allocates the emission reductions required by the Clean Air Act among sources, allowing no new conformity determinations and postponing new commitments of funds will prevent uncontrolled emissions increases by delaying projects with emissions impacts until the State has established control strategies consistent with reasonable further progress and attainment. This will also provide incentive for the relevant actors within the State to agree on control strategies and emissions budgets for the SIP.

If the control strategy SIP revision is not submitted, no new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline. If EPA finds the submission to be incomplete, no new transportation plans or TIPs may be found to conform beginning 120 days after the incompleteness finding. In both cases, the conformity status of the existing transportation plan and TIP lapses 12 months after the date that the Clean Air Act requires submission of the control strategy SIP revision.

Where a control strategy SIP revision has not been submitted, no new transportation plans and TIPs may be found to conform 120 days after the Clean Air Act SIP deadline provided EPA has notified the State, MPO, and DOT that the State had failed to submit the SIP revision. EPA will strive to issue findings of failure to submit the required SIP revision within 60 days following the Clean Air Act deadline. Such a finding starts a non-discretionary sanctions clock under section 179(b) of the Clean Air Act and EPA will so notify the State. In the case of such a failure, EPA will also consider whether it is appropriate to propose and impose discretionary sanctions under section 110(m).

The conformity status of the transportation plan and TIP will lapse 120 days after EPA's final disapproval of the control strategy SIP revision wholly or in part because it lacks an adequate control strategy, and no new project-level conformity determinations may be made. Because such disapproval will be proposed as a rulemaking action before it is final, affected parties will be provided adequate notice.

EPA has already made findings of failure to submit or failure to submit complete control strategy SIP revisions for some CO nonattainment areas and some moderate PM–10 areas, as these revisions were due for certain areas on November 15, 1992 and November 15, 1991, respectively. The conformity status of transportation plans and TIPs in these areas will lapse one year from today, i.e., November 25, 1994, if the failure has not been remedied by then and acknowledged by a letter from the EPA Regional Administrator. Also, if EPA has already disapproved or in the next 120 days disapproves any submission that has been made, the conformity status of transportation plans and TIPs will lapse March 24, 1994. These delays are intended to give MPOs and others in these areas equitable notice of this rule's requirements and reasonable opportunity to adjust to them.

EPA believes that the restrictions just stated following a finding that a control strategy submittal is incomplete or following disapproval of such a submittal are inappropriate if the only reason for these findings is that the State has not completed legislation or rulemaking to put all of the measures in its otherwise adequate strategy into enforceable legal forms. A State may submit a SIP revision (or may have already submitted one prior to today) to EPA which contains certain emission reduction measures in adopted rule or other legally enforceable form which are by themselves clearly inadequate to meet the relevant emission reduction requirement of the Clean Air Act (for example, the 15 percent rate-of-progress requirement for moderate and above ozone nonattainment areas), but accompanied by commitments to complete adoption of additional specifically identified measures which if implemented would bring the total emission reduction to an approvable level (according to calculations in the SIP submittal).

EPA may find such a SIP submittal incomplete and so notify the State, with an explicit statement that EPA nevertheless considers the revision to meet the description just given. In this case, the transitional period would continue. The consequences described above for failure to submit or for incompleteness (limited period for further conformity determinations, lapse of the plan and TIP) will not ensue on the timeframe described there. Rather, the MPO and DOT may treat the submittal as if it were complete and still being evaluated by EPA for substantive approvability, and continue to make conformity findings for new plans and TIPs and for projects using transitional criteria. However, EPA is concerned that the MPO not rely on the budget indefinitely if the State in fact does not complete adoption of the measures to which it committed or other equivalent measures. Therefore, the rule provides for the plan and TIP to lapse 12 months after the date of the EPA incompleteness finding, or 12 months from today in the case of an incompleteness finding made prior to today. This lapse will be avoided if the State remedies the failure and the EPA Regional Administrator recognizes that action by letter.

If the conformity status of the transportation plan and TIP lapse, no new project-level conformity determinations may be made until a control strategy SIP revision is submitted (thereby starting the transitional period). Also, although non-federal projects do not require conformity determinations, recipients of Federal aid may not approve or adopt regionally significant non-federal projects in the absence of a conforming plan and TIP (see section IV.L. of this preamble). Only projects which are exempted by the conformity rule, projects which have completed all plan, TIP, and project conformity determinations, and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds may proceed.

5. Future SIP Revisions

For many ozone nonattainment areas, post-1996 reasonable further progress demonstrations and attainment demonstrations are required to be submitted by November 15, 1994. This constitutes a deadline for a control strategy implementation plan, and the requirements described above apply even if the 1996 reasonable further progress demonstration has been submitted or approved. For example, the conformity status of transportation plans and TIPs will lapse as described above if States fail to submit the post-1996 reasonable further progress and attainment demonstration within 120 days of this deadline. Similarly, the requirements of the transitional period will apply as described above once the post-1996 reasonable further progress and attainment demonstration is submitted.

Subsequent SIP revisions which adjust the control strategy and do not have a specific deadline established by the Clean Air Act trigger conformity redeterminations within an 18-month time period, as originally proposed in the NPRM. The transitional period requirements do not apply in the case of such SIP revisions.

C. Emissions Budgets

After SIPs which demonstrate reasonable further progress and attainment are submitted, conformity determinations will involve demonstrating consistency with the SIP's motor vehicle emissions budget. Section 176(c)(2)(A) of the Clean Air Act specifically requires conformity determinations to show that "emissions expected from implementation of plans and programs are consistent with estimates of emissions from motor vehicles and necessary emission reductions contained in the applicable implementation plan." SIP demonstrations of reasonable further progress, attainment, and maintenance contain these emissions estimates and "necessary emission reductions." The emissions budget is the mechanism EPA has identified for carrying out the demonstration of consistency.

While other mechanisms exist to show that Federal actions do not cause or contribute to a violation of an ambient standard for a regional pollutant—such as duplication of the SIP's dispersion modeling for the transportation network represented by the transportation plan or TIP—the Clean Air Act specifically requires an emissions-based comparison between the transportation plan/TIP and the SIP. EPA believes that with respect to regional-scale pollutants, such a comparison also suffices as the required showing that violations will not be caused or exacerbated, since the air quality analysis in the SIP can be relied upon to show that the SIP emission level is acceptable in this regard.

1. What Is a Motor Vehicle Emissions Budget?

Motor vehicle emissions budgets are the explicit or implicit identification of the motor vehicle-related portions of the projected emission inventory used to demonstrate reasonable further progress milestones, attainment, or maintenance for a particular year specified in the SIP. The motor vehicle emissions budget establishes a cap on emissions which cannot be exceeded by predicted highway and transit vehicle emissions.

SIPs for some nonattainment areas will not have budgets because there is no Clean Air Act requirement for a SIP revision demonstrating attainment, reasonable further progress, or annual emission reductions. The rule provides for such areas in § 51.464, "Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment."

Other SIPs submitted to EPA prior to today's rule which demonstrate attainment, reasonable further progress, or annual emissions reductions do have budgets as defined in the rule, although they may not have their emissions budgets explicitly labeled because the requirement for a comparison to an emissions budget is established in this rule and may not have been fully appreciated by the State. In such cases, the attainment or maintenance highway and transit mobile source inventory serves the purpose of a motor vehicle emissions budget (see "Locating the Motor Vehicle Emissions Budget in the SIP," below). EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 (57 FR 13557, April 16, 1992) did indicate EPA's intent to require the use of SIP motor vehicle emissions budgets for conformity demonstrations. In future SIPs, explicit identification of the emissions budget is strongly preferred in order to reduce misinterpretation.

The SIP necessarily defines an emissions budget for the attainment year in an attainment demonstration, for the maintenance period in a maintenance plan, and for certain milestone years. The SIP may also set budgets for interim years as necessary to demonstrate attainment, and the SIP may explicitly provide for a NO_x budget on the dates for which ozone nonattainment areas are required to have VOC milestones.

The emissions budget applies as a ceiling on emissions in the year for which it is defined, and for all subsequent years until another year for which a different budget is defined or until a SIP revision modifies the budget. For example, an emissions budget for a milestone year remains in effect until the next milestone year, when another emissions budget supersedes it. The attainment demonstration establishes an emissions budget for the attainment year, and that budget remains in effect until the area is redesignated and EPA approves a maintenance plan, which may establish a different emissions budget. When a required SIP revision which should add additional budget years is late or disapproved, the conformity status of the transportation plan and TIP will subsequently lapse, and the existing budget ceases to apply for the purposes of demonstrating conformity.

The emissions budget included in the attainment demonstration may be different than that included in the maintenance demonstration since the geographic and temporal distribution of emissions may change between the two modeling efforts. Also, a State may choose to shift the balance between motor vehicles and other sources, provided such a shift is consistent with continuing maintenance.

At the State's option, a SIP may contain an early demonstration of maintenance following the attainment date, with a different motor vehicle emissions budget in each year. In all situations, the emissions budget in the SIP must be consistent with the attainment or maintenance demonstration and any interim requirements of the Clean Air Act.

In general, all pollutants and associated precursors for which an area is designated nonattainment or subject to a maintenance plan approved under Clean Air Act section 175A and which are associated with highway and transit vehicles should be explicitly identified in the emission budget and included in the SIP. Conformity determinations must demonstrate consistency with the motor vehicle emissions budget for each pollutant and precursor identified in the SIP.

However, in some nonattainment and maintenance areas, the SIP may demonstrate that highway and transit vehicle emissions are an insignificant contributor to the nonattainment problem, for example, CO or PM–10 violations near industrial sources. For areas with control strategy SIPs which have already been submitted and which demonstrate that motor vehicle emissions (including exhaust, evaporative, and reentrained dust emissions) are insignificant and reductions are not necessary for attainment, the conformity determination is not required to satisfy the criteria for regional emissions analysis of that pollutant. If the control strategy SIP demonstrates that motor vehicle emissions of a precursor are insignificant and reductions are not necessary for attainment, the conformity determination is not required to satisfy the criteria for regional emissions analysis of the precursor. In the future, the SIP must explicitly state that no regional emissions analysis of a particular pollutant or precursor is necessary for attainment, and therefore is not necessary for conformity.

All highway and transit related source categories that contribute to the nonattainment problem should be identified and included in the motor vehicle emissions budget, including exhaust, evaporative, and reentrained dust emissions (including emissions from antiskid and deicing materials, where treated as mobile source emissions by the SIP). States vary in whether they treat vehicle refueling emissions as mobile or stationary area sources. If the SIP is silent or ambiguous on intent regarding refueling emissions, these emissions should not be considered to be part of the motor vehicle emissions budget and the regional emissions estimates for a plan, TIP or project should not include them. It is more common to include refueling emissions in a non-mobile source category, and MPOs do not have control over refueling emissions.

2. Emissions Budget Test

A regional analysis must estimate the emissions which would result from the transportation system if the transportation plan and TIP were implemented, and compare these emissions to the motor vehicle emissions budget identified in the SIP. If the emissions associated with the transportation plan and TIP are greater than the motor vehicle emissions budget, the transportation plan and TIP do not conform. This may occur even

though all transportation measures in the SIP are being properly implemented; for example, if population and VMT growth are higher than predicted when the SIP was developed, motor vehicle emissions may exceed the SIP's budget for such emissions.

Under no circumstances may motor vehicle emissions predicted in a conformity determination exceed the motor vehicle, pollutant-specific emissions budget. If actual emissions of pollutants are lower than their SIP emissions budgets, or if the emissions budgets themselves are lower than actually necessary to demonstrate attainment, maintenance, or other milestones, the motor vehicle emissions budget may be increased only if the State submits a SIP revision which changes the various emissions budgets. Such a SIP revision must meet all applicable Clean Air Act requirements, including those of section 110(l). Conformity determinations may not trade emissions among SIP budgets for pollutants, precursors, or highway/transit versus other sources unless a SIP revision for the specific trade is submitted and approved by EPA or the SIP establishes mechanisms for such trading.

Today's final rule requires transportation plans and TIPs to demonstrate consistency with the SIP's motor vehicle emissions budget by performing a regional emissions analysis. This emissions analysis must include emissions from the nonattainment or maintenance area's entire existing transportation network (as described in the rule), in addition to all proposed regionally significant Federal and non-federal highway and transit projects. The regional emissions analysis must estimate total projected emissions for certain future years (including the attainment year), and may include the effects of any emission control programs which are already adopted by the enforcing jurisdiction (such as vehicle inspection and maintenance programs and reformulated gasoline and diesel fuel). In the transitional period, the effects of emission control programs which are committed to in the submitted SIP may also be included.

When performing the regional emissions analysis for the purpose of the budget test, attention must be paid to the season and time period for which the SIP defines the emissions budget, and the period used by the MPO and DOT to estimate regional emissions for a plan, TIP, or project. For example, reasonable further progress milestones for ozone areas are defined in the Clean Air Act based on annual emissions, but EPA interprets this to mean emissions when temperatures, congestion levels, and other conditions are typical of a day during the ozone season (a typical summer weekday), multiplied by 365 days, rather than actual annual emissions across all seasons. Further, EPA guidance in "Procedures for Emission Inventory Preparation Volume IV: Mobile Sources" (EPA 450/4–81–026d (revised), 1992) specifies a particular way to select temperature values for the emissions estimates. Also, SIPs may calculate emission reductions from fleet turnover using either July 1 of the milestone year, or November 15 (by interpolating between the July 1 and January 1 outputs of the emissions model). The MPO and DOT should duplicate the temperature, season, and time period inputs used in the SIP when estimating future emissions for comparison to the emissions budget, or must apply appropriate adjustments to avoid any distortion in the comparison.

Where a nonattainment area contains multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area. If a metropolitan planning area includes more than one air basin or nonattainment area, a conformity determination must be made for each air basin or nonattainment area. The conformity SIP revision must establish interagency consultation procedures which address how conformity determinations will be made in such circumstances.

3. Locating the Motor Vehicle Emissions Budget in the SIP

Existing SIPs may not all have an explicitly labeled motor vehicle emissions budget. EPA indicated in the General Preamble to Title I of the Clean Air Act Amendments of 1990 that the highway and transit vehicle related emissions included in the SIP would be considered to be the emissions budget. Without a clearly indicated intent in the SIP otherwise, the SIP's estimate of future highway and transit emissions used in the milestone or attainment demonstration is the motor vehicle emissions budget.

In general, the SIP will either (1) demonstrate that once the control strategies in the SIP are implemented, emissions from all sources will be less than the identified total emissions that would be consistent with attainment, maintenance, or other required milestone; or (2) demonstrate that emissions from all sources will result in achieving attainment prior to the attainment deadline or will result in ambient concentrations in the attainment deadline year which are lower than necessary to demonstrate attainment. In either case, the SIP demonstration will rely on a projection of emissions from each source category for the attainment year, maintenance period, or other milestone year. The projection of motor vehicle emissions is the motor vehicle emissions budget.

Where the estimate of emissions from all sources is less than required to demonstrate the milestone, attainment, or maintenance, the SIP may explicitly quantify the "safety margin" and include some or all of it in the motor vehicle emissions budget for purposes of conformity. Where the existing SIP is unclear, the State air agency and the appropriate EPA Regional Office should be consulted through the interagency consultation process to define the emission budget. Unless the SIP explicitly quantifies the "safety margin" and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emissions budget for conformity purposes, the MPO may not interpret the budget to be higher than the SIP's estimate of future highway and transit emissions.

If the attainment demonstration includes projections of emissions beyond the attainment year, these projections are not considered emissions budgets for the purposes of transportation conformity unless the SIP explicitly states such an intent. Where the attainment SIP does not establish explicit emissions budgets for years following the attainment year, emissions in analysis years later than the attainment year must be consistent only with the attainment year's emissions budget.

Like the attainment SIP, the maintenance plan contains a quantitative demonstration that the NAAQS can be met for a given period of time into the future. Section 175A of the Clean Air Act requires a maintenance plan to provide for maintenance for a period of ten years from its approval by EPA, but the Act does not specify any particular milestones within this period for which an analysis and demonstration must be made. At a minimum, the SIP should establish an emissions level that will demonstrate maintenance at the end of the ten-year period. EPA will be releasing more specific guidance regarding conformity to budgets in maintenance plans in the future. For areas that have been redesignated to attainment prior to this rule, the MPO and DOT should work with the EPA Regional Office through the interagency

consultation process to interpret the maintenance plan to define an emissions budget. EPA recommends amending maintenance plans to explicitly identify the motor vehicle emissions budget.

Some moderate PM–10 nonattainment areas may have submitted SIPs which demonstrate that the area cannot attain the PM–10 standard by the applicable attainment date. These areas have been or will be reclassified as serious areas under section 188(b) of the Clean Air Act. Such SIPs which do not demonstrate attainment do not have budgets and are not considered control strategy SIPs for the purposes of transportation conformity. Until an attainment demonstration is submitted, these areas must satisfy the interim period criteria in order to demonstrate conformity.

The above discussion on locating the emissions budget in the SIP assumed a simple case in which the geographic boundary of the area to which the budget applies is the same as the nonattainment area boundary. This is the case for ozone nonattainment areas. The Clean Air Act explicitly defines reasonable further progress requirements in terms of the emissions inventory for the entire nonattainment area, and EPA believes that the best interpretation is that the Act also means to have the attainment budget also be defined for the nonattainment area per se. While ozone area SIPs may contain estimates of current and future emissions outside the nonattainment area, these are not budgets for purposes of conformity (unless the State in its conformity SIP revision chooses to go beyond the requirements of the rule).

For CO, PM–10, and NO_2 nonattainment areas, there are either no Clean Air Act requirements for reasonable further progress, or the requirements are not explicitly defined in terms of the nonattainment area inventory as a whole. Moreover, it may be possible for a SIP to demonstrate attainment for one of these pollutants based on an emissions and dispersion modeling domain that is either less or more than the nonattainment area. For example, an entire county may be designated nonattainment for CO, but the actual area of violations and the area analyzed in the SIP may be less than the entire county. CO, PM–10, and NO_2 modeling may also in some cases extend beyond the boundary of the designated nonattainment area, to capture the effect of transport from surrounding areas. If the geographic domain of an attainment demonstration and its emissions estimates are less than the CO, PM–10, or NO_2 nonattainment area and the SIP does not explicitly indicate an intent otherwise, EPA believes the budget applies to that domain. The MPO and DOT should analyze emissions from the transportation plan and TIP for the same area in a consistent manner. If the modeling domain extends beyond the nonattainment area, the budget applies for the portion within the nonattainment area boundary.

4. Revisions to the Emissions Budget

The emissions budget may be revised at any time through the standard SIP revision process, provided the SIP demonstrates that the revised emission budget will not threaten attainment and maintenance of the standard or any milestone in the required timeframe.

The State may choose to revise its SIP emissions budgets in order to reallocate emissions among sources or among pollutants and precursors. For example, if the SIP is revised to provide for greater control of stationary source emissions, the State may choose to increase the motor vehicle emissions budget to allow corresponding growth in motor vehicle emissions (provided the resulting total emissions are still adequate to provide for attainment/maintenance of the NAAQS and to satisfy all other applicable requirements of the Clean Air Act, including section 110(l)). Such a SIP revision must be approved by EPA before it can be used for the purposes of transportation conformity.

In cases where a SIP submitted prior to November 24, 1993 does not have an explicit emissions budget but quantifies a "safety margin" by which emissions from all sources are less than the total emissions that would be consistent with attainment, the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA. All other SIP revisions adjusting the highway and transit emissions budget must be approved by EPA before they are used for the purposes of transportation conformity.

EPA would allow early use of a SIP revision which reallocates part of the safety margin because some SIPs were developed before this rule and without awareness that in the absence of an explicit budget, the emissions projections would be used as the emissions budget for the purposes of conformity. Areas which submit SIPs with budgets after the publication of this rule will also be using the SIP's budget for conformity purposes before it is approved by EPA.

5. Subregional Emissions Budgets

The SIP may specify emissions budgets for subareas of the region, provided that the SIP includes a demonstration that the subregional emissions budget, when combined with all other portions of the emissions inventory, will result in attainment and/or maintenance of the standard. The conformity determination must demonstrate consistency with each subregional emissions budget in the SIP. EPA's General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990 discussed the possibility of subregional budgets (57 FR 13558, April 16, 1992).

6. Requirements for a SIP Control Strategy to Meet the Budgets

A SIP may not select a desired level of future highway and transit emissions and rely on the requirement for conformity findings by the MPO and DOT to achieve that level of emissions without specifying control measures which are expected to result in that emission level and demonstrating that each measure is enforceable and has adequate resources for implementation (see sections 110(a)(2) (A), (B), and (E) of the Clean Air Act). An approvable SIP must indicate how the State expects to be able to achieve each budgeted level (including any subregionally budgeted level) of emissions by the relevant date. The MPO will usually have been involved in estimating "baseline" future emissions (i.e., emissions in the absence of any new actions to control them), and in designing and estimating benefits for any new controls that are identified in the SIP.

Any type of transportation action affects emissions under some conditions, and therefore the SIP's demonstration of future emissions will in a sense rely on the full collection of those actions that were assumed. EPA believes that all actions which the SIP relies on to reduce travel, such as plans for expanded transit, HOV lanes, other high occupancy facilities or services, and other demand management measures which are reflected in the emissions analysis, do require enforceable commitments from the agencies who will undertake them. Generally, inclusion in the transportation plan and TIP in effect at the time of SIP submittal will be sufficient evidence of adequate resources.

D. NO_2 and PM–10 in the Interim Period

EPA proposed in the NPRM to allow no increase in NO_X and PM–10 emissions above 1990 levels in NO_2 and PM–10 nonattainment areas. As described in the preamble to the NPRM, EPA proposed this requirement rather than the build/no-build test proposed for ozone and CO areas because EPA is not certain what degree of VMT reduction might be needed to pass a build/no-build comparison, and because the Clean Air Act did not appear to require it. (The requirement for contribution to annual emission reductions only refers to ozone and CO areas.)

EPA received significant public comment that a 1990 ceiling on NO_X and PM–10 emissions would impose stringent VMT reduction requirements on many areas. In particular, because PM–10 emissions from reentrained dust are closely related to VMT levels, areas with significant emissions from reentrained dust may have to freeze or decrease VMT in order to demonstrate emissions below 1990 levels.

Therefore, in the final rule EPA allows NO_2 and PM–10 nonattainment areas to demonstrate conformity by either keeping emissions below 1990 (or some other baseline) levels, or by satisfying a build/no-build test. EPA believes that either of these demonstrations is sufficient to assure that there is no increase in the frequency or severity of existing violations during the interim period which can be attributed to the transportation plan, TIP, or project itself. The build/no-build test is consistent with the interim requirements for ozone and CO areas and sufficient to ensure that the transportation plan, TIP, or project is not itself causing a new violation or exacerbating an existing one. EPA is retaining the option of keeping emissions below 1990 (or some other baseline) levels because some commenters expressed support for this approach, and EPA believes some flexibility should be allowed in the absence of definitive information on the VMT reductions necessary for an area to meet either the build/no-build test or an emissions ceiling.

EPA noted in the preamble to the NPRM that there is no requirement for a 1990 inventory in PM–10 and NO_2 nonattainment areas, and invited comment on allowing other years to be used as the baseline. However, Clean Air Act section 172(c)(3) requires a "current" inventory of emissions. Since this will be 1990 in most cases, the final rule establishes 1990 as the baseline year, unless the conformity SIP revision defines it as the year of the baseline emissions inventory used in control strategy SIP development.

E. NO_x Reductions in Ozone Areas in the Interim Period

The NPRM did not propose to require demonstration of NO_x reductions in ozone nonattainment areas during the interim period with a build/no-build test. EPA received significant public comment that the Clean Air Act mandates such reductions. After reviewing the comments and the statute, EPA agrees that Clean Air Act section 176(c)(3)(A)(iii)'s reference to section 182(b)(1) requires a contribution to reductions in NO_x emissions during the interim period, as that section requires reductions in both VOC and NO_x as necessary to demonstrate attainment. Therefore, the final rule requires the build/no-build test in ozone nonattainment areas to be satisfied for both VOC and NO_x, unless the Administrator determines under section 182(f) of the Clean Air Act that additional reductions of NO_x would not contribute to attainment in any area.

F. Transportation Control Measures (TCMs)

1. Demonstration of Timely Implementation

Like the proposal, the final rule will allow the "timely implementation" criterion to be satisfied even if TCMs are behind the schedule in the SIP, i.e., even if a SIP milestone for TCM implementation has already passed or the plan or TIP in question will result in a future implementation milestone being missed. EPA received comment on both sides of this issue, and EPA continues to believe that this approach is a practical necessity to accommodate uncontrollable delays. However, because section 176(c)(2)(B) of the Clean Air Act requires "timely implementation" of TCMs, conformity may be demonstrated when TCMs are delayed only if all obstacles to implementation have been identified and are being overcome, and if State and local agencies with influence over approvals or funding are giving TCMs maximum priority.

EPA believes that the determination of "timely implementation" should focus on the prospective schedule for TCM implementation, and all past delays should be irrelevant. Therefore, it is permissible for the plan/TIP to project completion of a TCM implementation milestone which is later than the SIP schedule if the lateness is due to delays which have already occurred, or due to the time reasonably required to complete remaining essential steps (such as preparation of a NEPA document, design work, right-of-way acquisition, Federal permits, construction, etc.). It is also permissible to allow time for obtaining state or local permits if the project has not yet advanced to the point where a permit could have been applied for.

However, where implementation milestones have been missed or are projected to be missed, agencies must demonstrate that maximum priority is being given to TCM implementation. All possible actions must be taken to shorten the time periods necessary to complete essential steps in TCM implementation—for example, by increasing the funding rate—even though the timing of other projects may be affected. It is not permissible to have prospective discrepancies with the SIP's TCM implementation schedule due to lack of programmed funding in the TIP, lack of commitment to the project by the sponsoring agency, unreasonably long periods to complete future work due to lack of staff or other agency resources, lack of approval or consent by local governmental bodies, or failure to have applied for a permit where necessary work preliminary to such application has been completed. However, where statewide and metropolitan funding resources and planning and management capabilities are fully consumed (within the flexibilities of the Intermodal Surface Transportation Efficiency Act (ISTEA)) with responding to damage from natural disasters, civil unrest, or terrorist acts, TCM implementation can be determined to be timely without regard to the above, provided reasonable efforts are being made. The burden of proof will be on the agencies making conformity determinations to demonstrate that the amount of time to complete remaining implementation steps will not exceed that specified in the SIP without good cause, and that where possible, steps will be completed more rapidly than assumed in the SIP in order to make up lost time.

The determination that obstacles to implementation are being overcome and maximum priority is being given to TCMs is a specific issue which the conformity SIP revisions' interagency consultation procedures must address.

Considerable comment was received regarding priority for TCMs and demonstration of timely implementation of TCMs. In response to comments that a part of § 51.394 "Priority" could be interpreted to weaken timely implementation of TCMs rather than promote it, EPA has deleted language

which required funding decisions to promote the timely implementation of transportation measures in the applicable implementation plan "to the extent that funds are available."

There was also significant comment regarding the relationship between TCM funding and timely implementation. Some commenters suggested that TCMs should be funded before obligations were made for any other TIP projects, or that TCM funds should in some way be set aside. EPA is also concerned that without explicit funding protection for TCMs, it is possible that TCMs in a conforming TIP may not actually have funds obligated. Timely implementation could then be demonstrated in the next TIP through additional promises to fund the TCMs in the upcoming TIP cycle, but no mechanism would force the MPO or project sponsor to obligate funds for TCMs in that TIP cycle once it has started.

After extensive consideration of this issue, EPA has concluded that the Federal transportation funding process does not offer practical opportunities to control the use of appropriated funds once they are apportioned or allocated. State DOTs and MPOs need flexibility in establishing the sequence in which projects are funded, due to unpredictable events in the timing of the project implementation process. This rules out requiring all TCMs to be obligated before other projects.

Furthermore, setting aside funds for TCMs poses special difficulties. A set-aside would in effect be a lower limit on obligations for all other projects. DOT informs EPA that it is not authorized to reduce States' obligation limits in this way. In addition, when TCMs are legitimately delayed for reasons beyond any agency's control, the obligation authority cannot be reserved. If a State will be unable to use its obligation authority by the end of the Federal fiscal year it must be released so DOT can redistribute it to other States that can use it. Any obligation authority not used by the end of the fiscal year lapses and is not available in subsequent years. Therefore, EPA believes it is not reasonable to impose extra controls on how MPOs and State DOTs spend Federal highway and transit funds, beyond the requirements for maximum priority for approval and funding and for timely implementation of TCMs. The ISTEA requirements for fiscally constrained transportation plans and TIPs also provide assurance that funds are reasonably available to implement TCMs as well as the other projects in the transportation plan and TIP.

2. SIP Revisions Due to TCM Delays

The preamble to the NPRM requested comment on whether a SIP revision should be required when a TCM falls behind its implementation schedule in the SIP. The final rule does not automatically require a SIP revision when a TCM falls behind the schedule in the SIP. However, plans and TIPs cannot be found in conformity unless the "timely implementation" criterion is satisfied. Therefore, if obstacles to TCM implementation are not being overcome because it is impossible to do so, if State and local agencies are not giving maximum priority to TCMs which are behind schedule, or if the original sponsor or the cooperative planning process decides not to implement the TCM or decides to replace it with another TCM, a SIP revision which removes the TCM will be necessary before plans and TIPs may be found in conformity. (In order to be approved by EPA, such a SIP revision must include substitute measures that achieve emissions reductions sufficient to meet all applicable requirements of the Clean Air Act, including section 110(l).) The interagency consultation procedures established by the conformity SIP revision must include a process to discuss whether delays in TCM implementation should be handled by submitting SIP revisions to remove or substitute TCMs.

This approach is generally consistent with the comments EPA received on this issue. Most commenters did not favor an automatic requirement for a SIP revision in the case of every TCM implementation delay, although many believed that SIP action might be appropriate in certain circumstances. Several commenters supported requiring the SIP to include substitute TCMs and funding sources which would be implemented to ensure that emission reduction goals are met if the implementation of other TCMs were delayed. Although the SIP may have automatic project and/or funding substitutes in the case of TCM delays, the final rule does not require this. In general, the Clean Air Act does not require individual measures to have automatic substitutes in case of non-implementation.

3. Retrospective Analysis of TCMs

Neither the proposal nor the final rule requires the determination of timely implementation to be based on retrospective analyses of TCM effectiveness or otherwise requires MPOs or DOT to affirmatively study and determine whether each TCM had its predicted effectiveness (unless the SIP explicitly includes such a requirement). However, the final rule does require any analysis supporting a conformity determination to reflect the latest available information regarding the effectiveness and actual implementation of the area's TCMs, in order to satisfy the criterion regarding use of the latest planning assumptions.

EPA believes that the transportation community should be held responsible through the conformity process for implementing TCMs which the State committed to in the SIP. However, EPA does not believe it is appropriate to hold the transportation community responsible for achieving the emission reduction goals predicted for each TCM, especially given the difficulty in predicting TCM effectiveness or even measuring project-specific benefits once TCMs are implemented. Because any shortfall in emissions reductions is reflected in future conformity determinations through use of the latest planning assumptions, and because conformity is ultimately based on a comparison with an emissions budget, EPA believes that the conformity process adequately addresses the issue of TCM effectiveness. Shortfalls in emissions reductions from TCMs will either be offset by other measures in the transportation plan and TIP so that the motor vehicle emissions budget is still met, or the transportation plan and TIP will not be in conformity. In addition, serious and above ozone areas are required to track aggregate VMT and vehicle emissions under section 182(c)(5)(A) of the Clean Air Act and overall emissions under section 182(g). CO areas above 12.7 parts per million must also track aggregate VMT each year. Conformity determinations are required to use the latest planning assumptions.

4. TCMs in the Absence of a Conforming Transportation Plan and TIP

Individual projects may not be funded, accepted, or approved unless there is a currently conforming transportation plan and TIP. EPA received public comment indicating that TCMs in the SIP should be able to proceed even in the absence of a conforming transportation plan and TIP, because the commenters considered them to be consistent with the purpose of the SIP.

The final rule would not allow TCMs to proceed without a conforming transportation plan and TIP. Clean Air Act sections 176(c)(2) (C) and (D) clearly require conforming transportation plans and TIPs to exist in order to find projects in conformity. EPA does not believe that Clean Air Act section

176(c)(1)'s very general definition of conformity as meaning conformity to the purpose of the SIP overrules this more specific requirement. According to the final rule, only exempt projects may proceed without a conforming plan and TIP, because these projects are emissions neutral or constitute a de minimis exception to the requirement for a conforming transportation plan and TIP to be in place.

Although it may appear intuitively counterproductive to delay transportation projects which benefit air quality just because an area is unable to develop a conforming transportation plan and TIP, the underlying philosophy of the conformity requirement for transportation plans and TIPs is that transportation actions must be planned and evaluated for emissions effects in the aggregate and for the long term. Allowing project-by-project approvals in the absence of a conforming transportation plan and TIP is contrary to this philosophy. If TCMs proceed outside the context of the transportation plan and TIP, there is no assurance that the alternatives analysis has been properly conducted and that the effect of the TCM on the flow within the network has been properly accounted for.

Furthermore, EPA believes that because many compromises and trade-offs among involved parties may be required to develop a conforming transportation plan and TIP or to revise the SIP so that this is possible, it is important for all constituencies to have a stake in their development. Allowing TCMs to proceed without a conforming transportation plan and TIP may undermine the cooperative transportation planning process.

G. Enforceability

Several commenters remarked that project-level mitigation or control measures which are relied upon to demonstrate conformity should be enforceable. EPA agrees that some mechanism is necessary to ensure that the project design concept and scope (including any mitigation or control measures) which is assumed in a conformity analysis is actually implemented during the construction of the project and operation of the resulting facility or service.

The final rule requires that before a project may be found in conformity, there must be written enforceable commitments from the project sponsor and/or operator that necessary project-level mitigation or control measures will be implemented as part of the construction and operation of the project. Specifically, the rule refers to project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM–10 or CO impacts, or which are included in the project design concept and scope which was used in the supporting plan, TIP, and/or project-level conformity analyses as a condition for making conformity determinations.

Normal project design elements (dimensions, lane widths, materials, etc.) are not mitigation measures. But the mitigation measures would include, for example, construction practices to control fugitive dust. Mitigation measures would also include certain operating policies such as differential SOV/HOV pricing strategies and high-occupancy vehicle designation, unless they are shown not to be critical to the conformity determination. For these cases, the commitment may be either to a specific operating policy, or to an interactive process to determine the operating policy which produces a certain effect (i.e., the effect assumed in the conformity analysis). For example, a project sponsor/operator could commit to either a certain toll, or to a process of setting a toll which results in a given level of average daily traffic on the facility.

Actual other projects that are assumed in a current project's conformity analysis to be completed and operational at a future date—such as parallel non-SOV service—are not considered to be mitigation or control measures for the current project and would not require written commitments. The requirement to use the latest planning assumptions will ensure that conformity analyses reflect the current plans for implementation of such other projects. In combination with the requirement for fiscal constraint and improved metropolitan planning procedures, EPA believes this is adequate assurance that these other projects or their equivalent will be implemented.

If the regional emissions analysis supporting a plan or TIP conformity determination includes project-level mitigation or control measures in a project's design concept and scope, but written commitments from the project sponsor/operator are not obtained prior to the project-level conformity determination, the project must be considered to be "not from a conforming plan and TIP." The project will therefore need to be included in a new regional emissions analysis which may not assume implementation of the mitigation or control measures.

In addition to requiring that written commitments to mitigation measures be obtained from project sponsors prior to making a positive conformity determination, the final rule also requires that project sponsors must comply with such commitments once made. Pursuant to these final rules, EPA can enforce mitigation commitments directly against project sponsors under section 113 of the Clean Air Act, which authorizes EPA to enforce the provisions of rules promulgated under the Act. Once a State conformity SIP revision requiring written commitments to mitigation measures is approved by EPA, such commitments can also be enforced directly against project sponsors by States and citizens under section 304 of the Clean Air Act, which provides for citizen enforcement of requirements under an applicable implementation plan relating to transportation control measures or air quality maintenance.

The concern was raised to EPA that direct enforcement against non-federal parties could violate the prohibition against indirect source review programs in Clean Air Act section 110(a)(5). However, EPA concludes that this prohibition is not relevant to the requirement that project sponsors comply with mitigation commitments. EPA is not promulgating a generally applicable requirement for review of all indirect sources. Rather, EPA is enabling Federal agencies to make positive conformity determinations under Clean Air Act section 176(c) based on voluntary commitments by project sponsors to complete mitigation measures. Project sponsors are not obligated to make such commitments. Where they volunteer to do so to facilitate Federal conformity determinations, EPA is requiring them to live up to such commitments. Without such a requirement, EPA could not allow positive conformity determinations based on mitigation measures prior to actual construction of mitigation measures.

If at a later time (only during the budget period, which extends to or beyond the attainment date) the MPO or project sponsor believes the mitigation measure is no longer necessary for conformity, the project operator may be relieved of its obligation if it shows in a regional emissions analysis of the transportation plan/TIP that the emissions budget(s) can still be met without the mitigation measure, and if it shows that no hot spots will be caused or worsened by not implementing the mitigation measure. The MPO and DOT must confirm that the conformity determinations for the transportation plan, TIP, and project would still be

valid if the mitigation measure is not implemented.

If the mitigation measure was not included in the project design concept and scope which was modeled for the purpose of the transportation plan and TIP conformity determination, the project sponsor or operator would not have to perform a regional emissions analysis in order to be relieved of its obligation. The MPO and DOT could confirm that the conformity determinations for the transportation plan and TIP are valid without further emissions analysis. However, a hot-spot analysis would be necessary in order to demonstrate that the project-level conformity determination is valid even without the mitigation measure.

H. Time Limit on Project-Level Determinations

Several commenters expressed concern that by proposing in the "Applicability" section that projects with a completed NEPA document and a project-level conformity determination may proceed unless there has been a significant change in design concept and scope or a supplemental environmental document for air quality reasons, the proposal would have allowed too many projects to proceed without an updated conformity analysis. Upon reflection, EPA believes that it is appropriate to respect prior determinations for projects which have received final approval, provided there have been no significant changes in project design concept and scope and major steps have been taken to advance the project. However, EPA believes that it is reasonable to require a new conformity determination if there is no ongoing activity that would be delayed during the redetermination process and if several years have elapsed since the original determination, during which emissions models and planning assumptions may have changed.

EPA wants to balance two conflicting goals: (1) To maintain a stable and efficient transportation planning process by avoiding costly reanalysis and project redesign, and (2) to protect air quality by taking into account changes to the real world or to our understanding of it (e.g., changes to the transportation network, the planned transportation network, planning assumptions, or models). By proposing to allow projects which have final approval to proceed, and by proposing to require only one project-level conformity determination, EPA intended to avoid disrupting the implementation process for projects which are underway. To protect air quality by considering new information and changed circumstances, the NPRM relied on DOT's process for reevaluating NEPA documents and determining if supplemental NEPA documents are necessary. However, this process does not have clear consultation procedures or criteria for determining when supplemental analysis is necessary.

Therefore, the final rule allows implementation to continue for only those projects which have a completed NEPA document and project-level conformity determination, and which have had one of the following major steps within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of right-of-way; or approval of the plans, specifications and estimates. The rule would require a new finding of project-level conformity if the State seeks DOT authorization for a new step or phase of a project which has not had one of these major steps within the past three years. Thus, in contrast to the proposal, project-level conformity determinations lapse automatically under certain circumstances rather than lapsing through a DOT determination that a supplemental NEPA document is necessary. DOT's NEPA regulations require reevaluation of NEPA documents for projects which have not had major action for three years; the conformity process will ensure that the effects of new planning assumptions and emissions models are explicitly and affirmatively considered with the benefit of interagency consultation.

Under the EPA/DOT interim guidance issued June 7, 1991 and under the NPRM, projects which had received a conformity determination but had been inactive for more than three years were allowed to be included in the "Baseline" (no-build) scenario, and were also included in the "Action" (build) scenario. Consequently, they did not influence the outcome of the build/no-build comparison even if the actual effect of their completion would be to increase emissions. For the same reasons that EPA believes such inactive projects should receive new project-level conformity determinations before being reactivated, EPA believes that there should be one cycle of plan and TIP analysis in which the project is treated as a newly proposed project. Accordingly, the rule requires that for the first instance after today in which the MPO and DOT apply a build/no-build test to the plan and TIP, the project should appear in the build but not in the no-build scenario, if the project remains in the plan or TIP. In subsequent plan and TIP conformity determinations, the project will appear in both scenarios regardless of how much longer it remains inactive or whether it experiences a new period of inactivity. The project's effects will always be accounted for in the budget test during the transitional or control strategy period, as long as the project has not been removed from the transportation plan.

The requirement to redetermine project-level conformity is independent of the requirement to include the project in the build scenario for one plan and TIP conformity determination. The project may be considered to come from a currently conforming transportation plan and TIP for the purposes of a project-level conformity determination even if the project has not yet been removed from the no-build scenario. This would not relieve the MPO of the responsibility to include the project's emissions only in the build scenario in the next plan and TIP redetermination. However, the MPO and the project sponsor should consult on whether it is desirable to approve the project before it has been analyzed with its emissions included in the build scenario only, since completing the project might reduce options for the rest of the transportation system.

Once a reactivated project with a lapsed project-level determination has been properly analyzed as part of a TIP, the redetermination of project-level conformity will depend upon the consideration of hot spots. In all cases, once a project-level determination has lapsed, a new finding of project-level conformity must be made. However, under certain circumstances, a redetermination of conformity for a project with respect to hot spots may be based on the analysis performed for the previous conformity determination. For example, if there have been changes since the previous analysis to the emissions models, planning assumptions, or current facts or assumptions regarding the transportation network or traffic volumes, it may still be possible to demonstrate that the hot-spot criterion is satisfied by making approximate calculations and judgments about the effect of the latest information on the previous analysis. If the previous-analysis predicts a concentration which is not close to the ambient air quality standard and the changes in emissions models or planning assumptions are not significant, it may be possible to demonstrate conformity without a complete reanalysis. Such decisions about models and methodologies for hot-spot analyses are the subject of interagency consultation.

Although EPA wants the effects of new planning assumptions and

emissions models to be considered in project-level redeterminations, EPA does not intend the conformity process to force the development of supplemental NEPA documents. Under NEPA, supplemental documents are not necessary for every project which has not had major steps within three years. Supplemental NEPA documents should only be prepared when there are significant changes as defined by the responsible Federal agency. By allowing certain conformity determinations to be made on the basis of previous analyses, EPA hopes that rigorous reanalyses will not need to be performed in all cases.

I. Interagency Consultation

1. Minimum Standards

Like the proposal, the final rule requires the conformity SIP revision to establish detailed interagency consultation procedures. The rule lists topics which the procedures must address, such as frequency of meetings, without establishing minimum standards. The conformity SIP revision shall determine such specifics and identify the agencies to be involved in the interagency consultation process—in particular, the local transportation agencies (such as county-level implementing agencies) and local air agencies. Commenters suggested examples of specific requirements States may choose to include, such as consultation on the unified planning work program; early notification announcing the initiation of major work efforts; establishment of oversight committees involving all significant, interested parties; forms of announcement of comment periods; interagency notice of public hearings; specific consultation requirements for plans and TIPs which DOT returns to the MPO or State DOT for additional conformity findings; and availability of the MPO's summary and analysis of comments. Because EPA believes that each State should have the flexibility to design the most effective and appropriate consultation process, EPA is not specifically requiring States to include these measures. However, EPA encourages adoption of extensive, effective consultation procedures that will resolve problems as early in the process as possible and that will facilitate the development of approaches to maximize air quality and mobility.

Until the conformity SIP revision is approved by EPA, the consultation requirements of the final rule may be satisfied if reasonable opportunity for interagency consultation is provided.

2. Consequences of Failure to Follow Consultation Procedures

The preamble to the notice of proposed rulemaking asked for comment on what should be the consequences of failure to follow the consultation procedures established in the conformity SIP revision. The final rule establishes as a criterion for determining conformity that the MPO must follow the consultation procedures established by the SIP. Thus, failure to follow the consultation procedures established in the conformity SIP revision would be a violation of the SIP and would also undermine the validity of the conformity determination. The final rule's approach is consistent with the majority of commenters, who believed that the validity of a conformity determination should depend on proper consultation procedures and that each State and participating agencies should jointly develop their own legally enforceable State conformity procedures.

3. Role of State Air Agencies in Conformity Determinations

EPA received many comments regarding the role of State air agencies in determining conformity. EPA believes that a well-defined conflict resolution process provides security to all parties and thus facilitates the informal negotiation and collaboration which is essential to cooperative planning. A well-defined process will also expedite the resolution of disagreements and help prevent the transportation planning process from falling behind schedule if consensus is not achieved.

Therefore, the final rule provides that conflicts among State agencies and between State agencies and MPOs must be escalated to the Governor if they cannot be resolved by State agency heads. The State air agency may delay an MPO or State DOT's conformity determination if interagency consultation has been pursued to the level of the head or chair of both agencies, and if the air agency escalates unsolved issues to the Governor within 14 calendar days. Once the State air agency has appealed, the Governor's concurrence must be obtained for the final conformity determination. If no appeal is made during the 14-day waiting period after the State DOT or MPO has notified the State air agency head of the resolution of its comments, the MPO or State DOT may finalize its conformity determination. The Governor may delegate his or her role in the process, but not to the head or staff of the State or local air agency, State DOT, State transportation commissions or boards, or MPO. The start of the 14-day clock and the form(s) of escalation are to be defined in the consultation procedures established by the SIP revision.

EPA is authorized to address consultation procedures by Clean Air Act section 176(c)(4)(B)(i), and EPA believes that this conflict resolution process is necessary to ensure a meaningful consultation process.

Although the rule does not specify a concurrence role for State air agencies, a State may choose to provide one when it establishes consultation procedures in its conformity SIP revision.

4. EPA Role in Conformity Determinations

The proposal solicited comment on whether EPA should be required to concur on conformity determinations or on the choice of models and methodologies. The final rule does not require EPA concurrence, and the Clean Air Act gives no direct authority to do so. However, the consultation procedures in the conformity SIP revision must address a process for response to the significant comments of involved agencies, including EPA.

5. Interagency Consultation Requirements in DOT's Metropolitan Planning Regulations

In addition to the consultation requirements established by the conformity SIP revision, DOT's metropolitan planning regulations (23 CFR part 450) impose consultation requirements on the MPOs. These regulations specifically require in nonattainment and maintenance areas an agreement between the MPO and the regional air quality agency which describes their respective roles and responsibilities for air quality-related transportation planning. Furthermore, these regulations require that in cases where the metropolitan planning area does not include the entire nonattainment or maintenance area, there must be an agreement between the State DOT, State air agency, other affected local agencies, and the MPO describing the process for cooperative planning and analysis for all projects outside the metropolitan planning area but within the nonattainment or maintenance area. This agreement must indicate how the total transportation-related emissions from the nonattainment or maintenance area, including areas both within and outside the metropolitan planning area, will be treated for the purposes of determining conformity.

J. Frequency of Conformity Determinations

1. Grace Periods Following Triggers for Redetermination

Several comments were received regarding the 18-month grace period for redetermination of the transportation plan following the promulgation of the final rule or EPA approval of certain SIP revisions. Some commenters expressed the need for longer or more flexible grace periods, while others believed that the grace periods should be shorter in order to rapidly accommodate new requirements. EPA continues to believe that 18 months is an appropriate balance between the need for conformity determinations to reflect updated information and the need to maintain a stable transportation planning process. Often (if not always) the emissions budget in a newly-approved SIP will have already been used to demonstrate conformity of the existing plan and TIP months earlier through the "transitional period" requirements of the final rule, making the 18-month trigger redundant for budget purposes, although still important for assessing timely implementation of TCMs.

It should be emphasized that any new conformity determination following promulgation of the final rule or approval of a SIP revision involving the motor vehicle emissions budget or TCMs must be made according to the new requirements or the new SIP provisions. The 18-month time period is only a grace period before the conformity status of existing plans must be re-evaluatedin the context of the new requirements. DOT must make conformity determinations on existing plans according to the requirements of today's rule within 18 months, or the conformity status of existing plans will lapse, and no further conformity determinations on projects may be made. MPOs must act before DOT. These determinations may coincide with the periodic adoption of a new transportation plan or TIP, or with a transportation plan and TIP determination otherwise required by the rule (for example, one made to show conformity to a submitted emissions budget).

It should also be emphasized that any conformity determination made after the effective date of the final rule must be made according to the requirements of the final rule, even if the conformity SIP revision has not yet been approved. Once the conformity SIP revision has been approved, conformity determinations must also follow the requirements it establishes. The 18-month time period before transportation plans must have a new conformity determination satisfying the requirements of the final rule is not in any way tied to the deadline for submission of a conformity SIP revision.

2. TIP Amendments

The NPRM proposed that each TIP amendment requires a conformity determination, unless the amendment merely adds or deletes exempt projects. The final rule requires notification to other agencies of such plan and TIP revisions to be an interagency consultation procedure which must be established in the conformity SIP revision. Notification is not expected to occur before the fact, unless the conformity SIP revision requires it.

Some commenters expressed concern that not every TIP amendment involves regionally significant projects or changes in project design concept and scope which are significant. EPA believes that in such cases, no new regional emissions analysis would be required if the MPO and DOT make a finding that the previous analysis is still valid. That is, if the only changes to the TIP involve either projects which are not regionally significant and which were not or could not be modeled in a regional emissions analysis, or changes to project design concept and scope which are not significant, the MPO or DOT could document this and use data from the previous regional emissions analysis to demonstrate satisfaction of the criteria which involve regional analysis. EPA said in the preamble to the NPRM that when a conformity determination is based on a previous analysis and no new transportation or air quality modeling is otherwise required, EPA would not require new modeling solely to incorporate revised planning assumptions (although use of the latest information is always recommended). Therefore, EPA believes that conformity determinations on minor TIP amendments do not necessarily require new regional emissions analysis, although a positive conformity finding must be made and the regional emissions criteria must be satisfied by documenting the appropriateness of relying on the previous analysis.

One commenter also stated that full-blown conformity determinations should not be required if a project is moved between TIP years, but its completion date is still within the same year, or changes by more than a year but not enough to affect a milestone year. Under DOT's metropolitan transportation planning regulations, moving a project from the second or third year of the TIP does not require a TIP amendment, and therefore, a conformity determination would not be required. When a project in the first year of the TIP is delayed, the DOT regulations allow a project to be moved up from the second or third year using the ISTEA project selection procedures or other project selection procedures agreed to by the MPO, State, and transit operator. Furthermore, EPA believes that for conformity determinations on TIP amendments, the demonstration of timely implementation of TCMs should focus on the changes to the TIP which impact TCM implementation. A new status report on implementation of TCMs is not necessarily required for TIP amendments; the status report from the previous conformity determination may be relied on if by its nature the TIP amendment does not affect TCM implementation.

3. SIP Revisions as Triggers

Some commenters also stated that a full-blown conformity determination should not be required every time EPA approves a SIP revision which adds, deletes, or modifies a TCM. In order to be approved, such a SIP revision would have to demonstrate that the added, deleted, or modified TCM is still consistent with attainment, maintenance, or other Clean Air Act milestones. EPA believes that an MPO or DOT could rely on the regional analysis used in the SIP revision to make its conformity determination, if the MPO or DOT makes a finding that the SIP analysis meets this rule's requirements for how regional emissions analyses are performed.

In the preamble to the NPRM, EPA requested comment on whether the trigger for conformity redetermination following a SIP revision should be submission of the SIP revision to EPA, or EPA approval of the SIP revision. EPA received significant comment advocating each of these approaches. In general, the final rule follows the NPRM's approach of using EPA approval of the SIP revision as the triggering event. Section 176(c) of the Clean Air Act refers to conformity to the "applicable implementation plan," and the applicable implementation plan is a SIP which is approved by EPA.

In the context of the interim and transitional period requirements, the final rule does establish a regional emissions test which requires consistency with the motor vehicle emissions budget in the submitted SIP, even before it is approved. EPA requires use of a submitted SIP in this case because EPA believes a SIP emissions budget, even if it is not yet approved, is

the best way to determine "contribution to annual emissions reductions consistent with sections 182(b)(1) and 187(a)(7)," in the absence of an approved SIP, as required by section 176(c)(3)(a)(iii) of the Clean Air Act. Even in this case, EPA does not consider the submitted control strategy SIP, or any other SIP which is not yet approved, to be an "applicable implementation plan."

Although EPA is in most cases not adopting the option of triggering conformity determinations with SIP submission, EPA believes the final rule's interim and transitional period criteria and procedures do address the concern of many commenters that the State's control strategy should be used as soon as possible for the purposes of conformity.

4. Additional Triggers

EPA believes the proposed triggers achieve an appropriate balance between maintaining the stability of the transportation planning process and considering new information as expeditiously as possible. Some commenters supported additional triggers, such as changes in assumptions about assumed transit ridership (due to changes in fare structure or the transit network), funding availability, or land use scenarios. EPA believes that these changes are unpredictable, and using them as triggers for new conformity determinations would be disruptive to the transportation planning process. However, the final rule requires such changes to be explicitly recognized in all future conformity determinations, in order to satisfy the criterion which requires use of the latest planning assumptions.

5. Lapsing of Transportation Plan and TIP Conformity Determinations

The final rule clarifies that if transportation plan and TIP conformity determinations are not made within the three-year timeframe for periodic redetermination or within the grace period following a trigger, the conforming status of the transportation plan and TIP will lapse. In the absence of a conforming transportation plan and TIP, no new project-level conformity determinations may be made. Also, although non-federal projects do not require conformity determinations, recipients of Federal highway and transit funds may not approve or adopt regionally significant non-federal projects in the absence of a conforming transportation plan and TIP (see section IV.L. of this preamble). Thus, without a conforming transportation plan and TIP, only the following projects may proceed: projects which are exempted by the conformity rule; projects which have completed all transportation plan, TIP, and project conformity determinations; and non-federal projects which are not regionally significant or which do not involve recipients of Federal funds.

K. Fiscal Constraint

The NPRM included language from ISTEA on fiscal constraint for transportation plans and TIPs. EPA received several comments on this issue. In response to one comment, EPA has clarified that only transportation plans and TIPs which are fiscally constrained according to the requirements of DOT's metropolitan planning regulations (which implement ISTEA) may be found to conform.

Several other comments concerned how the ISTEA language on fiscal constraint should be interpreted. EPA believes that the conformity requirements on fiscal constraint must be consistent with those that DOT establishes, and references DOT's metropolitan planning regulations at 23 CFR part 450 on this subject.

The metropolitan planning regulations require the transportation plan to include a financial plan that demonstrates the consistency of proposed transportation investments with already available and projected sources of revenue. The financial plan shall compare the estimated revenue from existing and proposed funding sources that can reasonably be expected to be available for transportation uses, and the estimated costs of constructing, maintaining and operating the total (existing plus planned) transportation system over the period of the plan. The estimated revenue by existing revenue source (local, State, Federal, and private) available for transportation projects shall be determined and any shortfalls identified. Proposed new revenues and/or revenue sources to cover shortfalls shall be identified, including strategies for ensuring their availability for proposed investments. Existing and proposed revenues shall cover all forecasted capital, operating, and maintenance costs. Cost and revenue projections shall be based on data reflecting the existing situation and historical trends. For nonattainment and maintenance areas, the financial plan shall address the specific financial strategies required to ensure the implementation of projects and programs to reach air quality compliance.

The metropolitan planning regulations at 23 CFR 450 also require the TIP to be financially constrained and include a financial plan that demonstrates which projects can be implemented using current sources and which projects are to be implemented using proposed new sources (while the existing transportation is being adequately operated and maintained). Only projects for which construction and operating funds can reasonably be expected to be available may be included. In the case of new funding sources, strategies for ensuring their availability shall be identified. In developing the financial analysis, the MPO shall take into account all projects and strategies funded under title 23 U.S.C. and the Federal Transit Act, other Federal funds, local sources, State assistance, and private participation. In nonattainment and maintenance areas, projects included in the first two years of the TIP must be limited to those for which funds are available or committed.

"Available" funds means funds derived from an existing source of funds dedicated to or historically used for transportation purposes which the financial plan (in the TIP approved by the MPO and the Governor) shows to be available to fund projects. In the case of State funds which are not dedicated to or historically used for transportation purposes, only those funds that the Governor has control of may be considered "committed" funds. In this case, approval of the TIP by the Governor will be considered a commitment of funds. For local or private sources of funding not dedicated to or historically used for transportation purposes (including donations of property), a commitment in writing/letter of intent by the responsible official or body having control of the funds will constitute a commitment. Where the use of State, local or private funds not dedicated to or historically used for transportation purposes is proposed and a commitment as described above cannot be made, this funding source should be treated as a new funding source and must be demonstrated to be a "reasonably available new source."

With respect to Federal funding sources, "available" or "committed" shall be taken to mean authorized and/or appropriated funds the financial plan shows to be available to the area. Where the transportation plan or TIP period extends beyond the current authorization period for Federal program funds, "available" funds may include an extrapolation based on current/past authorizations of Federal funds that are distributed by formula. For Federal funds that are distributed on a discretionary basis, including Section 3 and "demo funding," any funding

beyond that currently authorized and targeted to the area should be treated as a new source and must be demonstrated to be a "reasonably available new source."

For periods beyond years 1 and 2 of the TIP in nonattainment and maintenance areas, for TIPs in other areas, and for the transportation plan, funding must be "reasonably available," but need not be currently available or committed. Hence, new funding sources may also be considered. New funding sources are revenue sources that do not currently exist or that require some steps (legal, executive, legislative, etc.) before a jurisdiction, agency, or private party can commit such revenues to transportation. Simply identifying new funding sources without identifying strategies for ensuring their availability will not be acceptable. Under the regulations, the financial plan must identify strategies for ensuring their availability. It is expected that the strategies, particularly for new funding sources requiring legislation, voter approval or multi-agency actions, would include a specific plan of action that describes the steps that will be taken to ensure that the funds will be available within the timeframe shown in the financial plan.

The plan of action should provide information such as how the support of the public, elected officials, business community, and special interests will be obtained, e.g., comprehensive and continuing program to make the public and others aware of the need for new revenue sources and the consequences of not providing them. Past experience (including historical data) with obtaining this type of funding, e.g., success in obtaining legislative and/or voter approval for new bond issues, tax increases, special appropriations of funds, etc. should be included. Where efforts are already underway to obtain a new revenue source, information such as the amount of support (and/or opposition) for the measure(s) by the public, elected officials, business community, and special interests should be provided.

For innovative financing techniques, the plan of action should identify the specific actions that are necessary to implement these techniques, including the responsible parties, steps (including the timetable) to be taken to complete the actions and extent of commitment by the responsible parties for the necessary actions.

Following are examples of specific cases where new funding sources should not generally be considered to be "reasonably available": (1) Past efforts to enact new revenue sources have generally not been successful; (2) the extent of current support by the public, elected officials, business community, and/or special interests indicates passage of a pending funding measure is doubtful; or (3) there is no specific plan of action for securing the funding source and/or other information that demonstrates a strong likelihood that funds will be secured.

Since the financial plans will be included in the metropolitan transportation plans and TIPs, the public and other interested parties will have an opportunity to review and comment on the financial plans through the public involvement process required under the metropolitan planning regulations. Similarly, agencies involved in the conformity process will have an opportunity to review and comment on the financial plans through the interagency consultation procedures established by the conformity SIP revision, which must contain a process for circulating draft documents (including plans and TIPs) for comment prior to approval.

L. Non-federal Projects

The NPRM proposed that non-federal projects (i.e., projects which receive no Federal funding and require no Federal approval but which are adopted or approved by an entity that receives Federal transportation funds for other projects) do not require conformity determinations. However, to ensure that the transportation sector overall contributes to emissions reductions in the interim period as required, and because Federal and non- federal projects eventually share the same SIP motor vehicle emissions budget, the NPRM proposed to require the regional emissions analyses for conformity determinations on transportation plans and TIPs to include all known regionally significant non-federal projects. The final rule retains these two features but differs from the proposal as described below.

1. Requirements For Adoption or Approval of Projects By Recipients of Funds Designated Under Title 23 U.S.C. or the Federal Transit Act

EPA received significant public comment on the issue of conformity's applicability to non-federal projects. The final rule does not require non-federal projects to have a conformity determination (i.e., a finding that the project satisfies all the rule's criteria and procedures, including hot-spot analysis and regional analysis). EPA continues to believe, as described in the NPRM, that the better reading of the Clean Air Act does not apply all of these aspects of conformity to non-federal projects.

However, upon consideration of public comments, EPA believes that the NPRM's solitary requirement to account for known regionally significant non-federal projects does not fully comply with the best reading of Clean Air Act Section 176(c)(2)(C). Section 176(c)(2)(C) says explicitly that "a transportation project may be adopted or approved by a metropolitan planning organization or any recipient of funds designated under title 23 U.S.C. or the Urban Mass Transportation Act * * * only if it comes from a conforming transportation plan and TIP," or (to paraphrase) if a regional emissions analysis demonstrates that the plan and TIP would still conform if the project were included.

EPA has decided that "transportation project" in Section 176(c)(2)(C) of the Clean Air Act is best interpreted as meaning any transportation project, rather than only Federally funded or approved projects. The statutory language does not limit the phrase "transportation project" in any way. Accordingly, the final rule requires that before adopting or approving a regionally significant non-federal transportation project, recipients of title 23 U.S.C. or Federal Transit Act funds must determine either that the project was included in a conforming plan and TIP, or was included in the original regional emissions analysis supporting the plan or TIP's adoption, or that a new regional emissions analysis including the plan, TIP, and project demonstrates that the plan and TIP would still conform if the project were implemented.

DOT would have no responsibility for ensuring that recipients of Federal funds make the proper determinations before they adopt or approve regionally significant non-federal projects. However, failure of a recipient of Federal funds to determine that a regionally significant non-federal project is included in a conforming plan and TIP (or regional emissions analysis of a plan and TIP) would be a violation of the SIP and of the Clean Air Act Section 176(c)(2)(C).

EPA's interpretation of "transportation project" to mean any transportation project rather than only Federally funded or approved projects, can be applied to every other use of "transportation project" throughout Section 176(c), without contradicting any aspect of EPA's rule and without requiring conformity determinations on such projects. This is because section 176(c)(1) of the Clean Air Act, which defines conformity, requires conformity

determinations only for transportation projects which are adopted, accepted, or funded by an MPO or DOT.

Although Section 176(c)(2)(C) refers to "projects" in general, EPA is limiting its requirement regarding approval or adoption by recipients of Federal funds to regionally significant projects. Section 176(c)(2)(C) requires projects to either come from a conforming plan and TIP, or meet the Section 176(c)(2)(D) requirement that a regional emissions analysis demonstrate that the plan and TIP would still conform if the project were implemented. By their nature, projects which are not regionally significant would meet at least the terms of Section 176(c)(2)(D), or they would fail to meet these terms by at most a de minimis amount. These projects either cannot be incorporated into the transportation network demand model, are emissions neutral, or their effect is implicitly captured in the modeling of regionally significant projects (through the universal practice of assuming that the amount of off-network travel is a function of the travel predicted to occur on regionally significant facilities that are represented in the network model). Consequently, EPA is exempting from this requirement those non-federal projects which are not regionally significant.

Recipients of title 23 U.S.C. or Federal Transit Act funds include recipient agencies at any level of State, county, city, or regional government. Private landowners or developers, and contractors or grant recipients (including local government agencies) which are only paid for services or products created by their own employees, are not considered recipients of funds. That is, if an agency receives title 23 U.S.C. or Federal Transit Act funds and then uses the funds to pay private landowners or developers, contractors, or grant recipients, the private entities/contractors/grant recipients are not thereby considered recipients of Federal funds for the purposes of this requirement, and their other non-federal projects would not be subject to this requirement. Furthermore, projects which do not involve any participation by recipients of Federal funds are not subject to this requirement.

The requirement regarding approval or adoption of regionally significant non-federal projects by recipients of funds does apply when recipients of funds approve regionally significant projects which they are not implementing themselves. This includes approvals to connect regionally significant privately built roads to public roads, and/or transfer of ownership to a public entity.

Although the Clean Air Act refers to adoption or approval of projects, the line separating tentative planning from actual implementation of non-federal projects may not always be clear. The specific step considered to be adoption or approval may depend on what other steps exist in a recipient's process. The SIP must designate what action by each affected recipient constitutes adoption or approval. EPA believes that adoption/approval is never later than the execution of a contract for site preparation or construction. Adoption/approval will often be earlier, for example, when an elected or appointed commission or administrator takes a final action allowing or directing lower-level personnel to proceed.

Although MPOs do not necessarily have an adoption or approval role, if an MPO does adopt or approve any highway or transit project, regardless of funding source, a full project-level conformity determination which satisfies all the requirements of today's rule is required.

2. Disclosure and Consultation Requirements for Non-federal Projects

Upon consideration of public comment, EPA concluded that the NPRM's solitary requirement to account for known regionally significant projects does not adequately protect against situations in which a project sponsor does not inform the MPO of its intent to undertake a project because it anticipates objection from others in the transportation planning process. Or, a sponsor may consider its thought processes too preliminary to constitute an intention or plan. Also conceivable are situations in which the MPO purposely does not include a known project in the emissions modeling because of the anticipated difficulty it would cause for the transportation plan and TIP's regional emissions conformity test. In these situations, emissions increases from non-federal projects could not be simultaneously offset, and projects could be irreversibly committed before transportation planning participants realized the need to offset their impacts.

The final rule addresses these situations by (1) making disclosure of regionally significant non-federal projects a requirement of the conformity SIP's consultation provisions; (2) explicitly stating that disclosure is required even if the project sponsor has not made a final decision; (3) requiring MPOs to include all disclosed or otherwise known regionally significant non-federal projects in the regional emissions analysis; (4) requiring MPOs to specifically respond in writing to any comments that known plans for a regionally significant non-federal project have not been properly reflected in the regional emissions analysis; and (5) requiring recipients of Federal funds to determine that their regionally significant non-federal projects satisfy the requirements of section 176(c)(2)(C) of the Clean Air Act before the projects are adopted or approved (i.e., determine that the projects are included in a conforming transportation plan or TIP or are included in a regional emissions analysis of the plan and TIP). These five requirements are directly imposed as Federal regulation; they must also be established as conformity SIP provisions. Failure to observe the consultation requirements (items 1 through 4, discussed above) would be a violation of the SIP.

The final rule requires the conformity SIP to establish a mechanism which ensures that other recipients of Federal funds disclose to the MPO on a regular basis their plans for construction of regionally significant non-federal projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered). Changes in such plans must be disclosed immediately. The final rule also requires consultation between the MPO and project sponsors to determine the non-federal projects' location and design concept and scope to be used in the regional emissions analysis, particularly for projects for which the sponsor does not report a single intent because the sponsor's alternatives selection process is not yet complete. If the MPO assumes a design concept and scope which is different from the sponsor's ultimate choice, the next regional emissions analysis for a conformity determination must reflect the most recent information regarding the project's design concept and scope.

3. Response to Comments

Although EPA does not agree with the commenters who believe the Clean Air Act requires conformity determinations for non-federal projects, EPA believes that the final rule addresses many of these commenters' practical concerns. Because the final rule prohibits the implementation of regionally significant non-federal projects until their emissions impacts are accounted for in the regional emissions analysis, the integrity of the transportation planning process is preserved. There is no opportunity to escape or delay the conformity implications of a project by shifting its funding from Federal to non-federal sources, and a formal

mechanism will be established to ensure that plans for regionally significant non-federal projects are disclosed to the MPO. In this way, the impacts of non-federal projects will be considered at the same time as the impacts of Federal projects, and Federal projects (or non-federal projects by other sponsors) will not be forced to offset the emissions of non-federal projects in later transportation plans and TIPs, after the non-federal projects have already been built.

Furthermore, in the absence of a conforming transportation plan and TIP, project sponsors will not be able to adopt or approve new regionally significant non-federal projects. This ensures that all participants in the transportation planning process are involved in the effort to develop a conforming transportation plan and TIP, and that regionally significant non-federal projects are not proceeding without necessary emissions offsets from other transportation projects.

The final rule's approach is also consistent with the comments EPA received regarding the potential burden of making conformity determinations for non-federal projects. The final rule does not impose any significant additional substantive burden on MPOs or project sponsors beyond that of the NPRM, because the NPRM also required the impacts of regionally significant non-federal projects to be accounted for in the regional emissions analysis of the plan and TIP. DOT's proposed rule on metropolitan planning (58 FR 12064, March 2, 1993) requires the transportation plan to include regionally significant non-federal projects, and requires the TIP to include for informational purposes all regionally significant projects to be funded with non-federal funds.

V. Discussion of Comments

A. Applicability

1. Incomplete Data, Transitional, and "Not Classified" Areas

Because incomplete data and transitional ozone areas and CO "not classified" areas are designated nonattainment, the NPRM's conformity requirements applied to them. EPA received significant public comment that these areas should be exempt from conformity requirements.

EPA believes that section 176(c)(1)(B) of the Clean Air Act, which requires that no activity may "cause or contribute to any new violation of any standard in any area, or increase the frequency or severity of any existing violation of any standard in any area" requires that conformity requirements apply to all nonattainment areas. However, as with attainment areas (as described above), EPA agrees that the burden of determining conformity according to the requirements proposed in the NPRM may outweigh the incremental protection it provides to air quality in incomplete data, transitional, and "not classified" nonattainment areas, given that these areas already may be at little risk of experiencing violations of ambient standards.

As described above, EPA will be issuing in the near future a supplemental notice of proposed rulemaking which proposes criteria and procedures to apply conformity to attainment areas. EPA intends that this proposal will offer flexible, low-resource criteria and procedures for certain attainment areas which must make conformity determinations. In this supplemental proposal EPA will also consider how to amend the requirements for incomplete data, transitional, and "not classified" areas so that the analysis requirements for these areas more closely correspond to the potential risk of NAAQS violations in these areas.

2. Length of the Maintenance Period

The NPRM proposed that the maintenance period lasts indefinitely. Several commenters recommended that the maintenance period be finite. Three-year, five-year, and twenty-year maintenance periods were suggested.

The final rule limits the length of the maintenance period to twenty years, unless the applicable implementation plan specifies a longer maintenance period. Because the maintenance plan required by section 175A of the Clean Air Act must address twenty years, EPA believes that conformity determinations are required for at least that time. If the maintenance plan establishes emissions budgets for more than twenty years, the area would be required to show conformity to that maintenance plan for more than twenty years. In the absence of intent in the maintenance plan to extend the maintenance period, EPA believes it is appropriate for the maintenance period to coincide with the period addressed by the maintenance plan. Once the maintenance period ends, maintenance areas will be subject to the forthcoming rule addressing conformity in attainment areas as applicable, and will therefore be protected from falling back into nonattainment.

3. Statewide Transportation Plans and Statewide Transportation Improvement Programs (STIPs)

The NPRM proposed that transportation plans, TIPs, and transportation projects must be found to conform. Some commenters stated that conformity should also apply to statewide transportation plans and STIPs, which are newly required by ISTEA and DOT's statewide planning regulations at 23 CFR part 450.

The final rule requires conformity determinations only for metropolitan transportation plans and TIPs developed under 23 CFR part 450. EPA believes that STIPs are not TIPs as the latter term is meant in Clean Air Act section 176(c), and that conformity therefore does not apply to them directly. However, this exclusion does not in any way reduce the protection afforded by the conformity process. DOT's statewide planning regulations require that the Governor may not adopt a metropolitan transportation plan or TIP into the statewide transportation plan or STIP unless the metropolitan plan or TIP has been found to conform. Because not all areas of a State are required to perform conformity analyses, EPA believes that it is more practical to ensure conformity by making conformity determinations at the metropolitan level, before incorporation into the statewide plan or STIP, and that the Clean Air Act requires nothing more.

Furthermore, regional emissions analyses for the purposes of conformity are to be conducted under this rule only for each nonattainment area or area subject to a maintenance plan under Clean Air Act section 175A, not on a statewide basis. Therefore, there is no advantage to analyzing for conformity groups of projects aggregated at the State level. EPA believes that DOT's statewide planning regulations provide adequate assurance that the statewide plan and STIP include only projects from conforming metropolitan plans and TIPs.

4. Other Transportation Modes

The NPRM for this rule applied conformity only to actions by FHWA and FTA. EPA received some public comment on whether the transportation conformity regulations should apply to other modes of transportation, such as railroads, airports, and ports.

The final transportation conformity rule applies its criteria and procedures only to FHWA and FTA actions. EPA believes that the special "transportation" provisions in Clean Air Act sections 176(c)(2) and 176(c)(3) clearly are addressed only to

transportation plans, programs, and projects developed under title 23 U.S.C. and the Federal Transit Act, which do not address projects involving railroads, airports, and ports. However, the general conformity rule covers all other Federal actions, including those associated with railroads, airports, and ports.

As some commenters pointed out, there is no planning authority for these activities vested in the MPO under ISTEA. Although ISTEA emphasizes intermodal planning, MPOs have only a coordination responsibility. In general, MPOs are not comprehensive transportation or land use agencies. Airport, rail, and shipping systems are covered by separate Federal law, and the TIP is not the appropriate tool for controlling these activities.

However, EPA also agrees with some commenters that the State may develop an appropriate mechanism for dealing with other transportation modes, either through the transportation or general conformity process.

5. Highway and Transit Operational Actions

The NPRM's proposed definition of "transit project" specifically did not encompass transit operational actions such as route changes, service schedule adjustments, or fare changes (58 FR 3788). The NPRM also did not intend conformity to apply to changes in road or bridge tolls (58 FR 3773). EPA invited comment on what type of limited application of conformity to these types of actions might be appropriate and received a substantial response from the public on this issue.

The final rule does not consider highway and transit operational actions such as route, schedule, fare, or toll changes to be a "transportation project" subject to conformity. However, as described in the NPRM, any changes of this sort must be included in the background modeling assumptions for subsequent conformity determinations. The final rule further clarifies this by requiring that changes to transit operating policies and assumed transit ridership be documented in the conformity determination in order to demonstrate use of the latest planning assumptions.

Although EPA acknowledges that certain operational actions may be significant, EPA was unable to identify a defensible threshold above which conformity determinations should be required or triggered, nor a legal rationale for requiring conformity review of such activities. EPA believes that it is not practical or appropriate for all operational actions to be found to conform before they are implemented, or for these actions to trigger conformity determinations. As described in the preamble to the NPRM, FTA is specifically prohibited from becoming involved in local decisions such as fares, routes, and schedules, so section 176(c) does not seem to directly apply to such actions. Furthermore, changes in such policies are frequent, and transit operators need the flexibility to respond quickly to local needs. Requiring conformity for these types of actions would be unnecessarily burdensome, especially because transportation models cannot measure the impacts of most individual route and schedule changes. Using changes in operational policies to trigger new determinations of plans and TIPs also seems impractical because operational changes are frequent and unpredictable.

6. Multiple Stage Projects

Some commenters requested clarification of how EPA intends to treat projects with multiple stages. The NPRM and the final rule define "highway project" to consist of all required phases necessary for implementation. NEPA requires projects to have logical termini and independent utility. Therefore, project-level conformity determinations are made on entire projects as defined by NEPA, not stages of them. NEPA termini must be included in the regional analysis and project-level analysis before the project may be found to conform. If only some of the project's stages are included in the conforming TIP, the project may still be found to conform provided the total project is included in the regional emissions analysis.

Hot spots must be addressed separately for different project phases if there is significant delay between them, in order to prevent violations being caused for a period of years before later phases which would correct the violations are actually programmed and built.

7. Project-level Determinations

Some commenters requested clarification on the responsibilities for project-level determinations. Section 176(c) of the Clean Air Act requires transportation projects which are funded or approved by FHWA or FTA to be found to conform before they can be adopted or approved by an MPO or approved, accepted, or funded by DOT. MPOs do not necessarily adopt or approve projects, and are not required by the Clean Air Act to make project-level conformity determinations unless they perform a project-level adoption or approval role. Project-level conformity determinations are clearly necessary, however, in order for DOT to fund a project. EPA anticipates that if the MPO does not adopt or approve a project, the project sponsor (e.g., the State DOT) will make a project-level conformity determination of its own, or will at least perform the required analysis and recommend an affirmative determination, in order to facilitate DOT's conformity determination. This is similar to the way NEPA analyses are conducted, and EPA expects that most project-level conformity determinations will be made as part of the NEPA process.

8. Projects Which Are Not From a Conforming Transportation Plan and TIP

Regional analysis. Some commenters requested clarification on how conformity determinations are made for projects in rural nonattainment areas which are not associated with a metropolitan area, and in areas which are outside the MPO boundary but inside the boundary of a nonattainment or Clean Air Act section 175A maintenance plan area that is dominated by a metropolitan area ("donut areas").

The NPRM and the final rule require the conformity SIP revision to include in its interagency consultation procedures a process involving the MPO and State DOT for cooperative planning and analysis for determining conformity of projects in donut areas. Because an MPO must consider in its regional analysis of transportation plans and TIPs all highway and transit projects in the nonattainment or maintenance area, the MPO and State DOT may choose to actually include donut area projects in the transportation plan and TIP. In such cases, no further regional analysis of such projects would be necessary.

If projects in donut areas are not specifically included in the transportation plan and TIP, the project-level conformity determination would have to document that such projects were included in the original regional emissions analysis used to demonstrate conformity of the existing transportation plan and TIP. Another option is to perform a complete reanalysis in which the project is hypothetically assumed to be added to the transportation plan and TIP, and the combination is tested to see if it would satisfy all the conformity criteria for transportation plans and TIPs. If it would, the project may be found to conform. EPA notes that this reanalysis must use the latest planning assumptions and emissions models, which may have changed since the TIP was adopted. Of the three options, EPA

believes that all parties involved will be better served by pursuing the first or second option.

In isolated rural nonattainment areas (and other areas which do not contain a metropolitan planning area and which are not part of a nonattainment or maintenance Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area) there is no metropolitan transportation plan or TIP which requires a regional emissions analysis. The final rule provides that projects in such areas may satisfy the regional emissions conformity test if the projects in the nonattainment or maintenance area which are funded or approved by FHWA or FTA are grouped together and analyzed in a regional emissions analysis, together with all other regionally significant projects expected in the nonattainment or maintenance area. Projects need not be demonstrated to meet the regional emissions criteria on an individual basis; rather, one regional emissions analysis may be performed which includes them all. The statewide plan and STIP will provide one mechanism for identifying the projects which need to be regionally analyzed. Responsibilities for conducting such analysis shall be determined through the conformity SIP, but EPA anticipates that the State DOT will be primarily responsible for conformity analyses in such areas.

In isolated rural areas, non-federal projects may be considered to have been included in a regional emissions analysis of the transportation plan or TIP if they are grouped with Federal projects in the nonattainment or maintenance area in the statewide plan and STIP for the purposes of a regional emissions analysis.

Interim period. EPA proposed that during the interim period, projects not from a conforming transportation plan or TIP be afforded the same opportunity to demonstrate conformity that such projects have in the control strategy period. Specifically, projects not from a conforming transportation plan and TIP could be included in a regional emissions analysis of the projects together with those of the conforming plan and TIP in order to determine whether the plan and TIP would still conform to the SIP. This opportunity is provided for all projects without limitation in section 176(c)(2)(D) of the Clean Air Act. Some commenters indicated that this provision should not be applicable during the interim period, by which they mean the period prior to adoption (or approval) of an emissions budget.

Section 176(c)(3) of the Clean Air Act provides certain alternative methods for demonstrating conformity with respect to both plans and TIPs as well as projects during an interim period, defined as the period prior to the approval of the conformity SIP revision. However, the statute nowhere indicates that the provisions of section 176(c)(3) are the exclusive method of determining conformity during the interim period as the term is used in this rule and by the commenters. Section 176(c)(3) provides that during the interim period, conformity of projects "will be demonstrated" if certain tests are met. It does not say that conformity may only be demonstrated through those tests.

EPA concludes that while projects may take advantage of the provisions of section 176(c)(3) during the interim period, they may also demonstrate conformity under section 176(c)(2) where possible. Therefore, EPA is retaining in the final rule the provisions allowing the use of project-level determinations under section 176(c)(2)(D) during the interim period, with the applicable interim criteria in the final rule substituted for the statute's "emission reduction projections and schedules assigned to such plans and programs" as the benchmark against which conformity is measured.

9. Multiple Nonattainment Areas and MPOs

Some commenters requested clarification on how conformity determinations should be made if a metropolitan planning area includes multiple nonattainment areas, or if a nonattainment area includes multiple MPOs. In general, interagency relationships and responsibilities will be established by the conformity SIP revision. If a metropolitan planning area includes more than one nonattainment area, a conformity determination must be made for each nonattainment area. Emissions budgets established in the SIP(s) for the included nonattainment areas may not be combined or reallocated. Build/no-build tests must be applied separately in each nonattainment area. Where a nonattainment area includes multiple MPOs, the control strategy SIP may either allocate emissions budgets to each metropolitan planning area, or the MPOs must act together to make a conformity determination for the nonattainment area.

EPA also expects there to be agreements among agencies on how to make conformity determinations for multistate nonattainment areas.

B. Applicable Implementation Plans

The NPRM defined the "applicable implementation plan" to which conformity must be demonstrated as a SIP which has been approved by EPA or a Federal implementation plan which has been promulgated by EPA. EPA received some comments expressing concerns that in some areas, notably in California, the approved SIP is quite outdated, although there have been relatively recent SIP submissions which EPA has not yet approved. These commenters argued that it is most appropriate to determine conformity with the SIP submission, which represents the most recent SIP control strategies, rather than the approved SIP.

The final rule retains the NPRM's definition of "applicable implementation plan." EPA believes that it does not have the authority to require conformity to an implementation plan which has not been approved by EPA and therefore does not have the force of Federal law. (During the transitional period, EPA requires use of the submitted SIP to determine contribution to annual emission reductions, but does not consider the submitted SIP to be the "applicable implementation plan" to which transportation plans, TIPs, and projects must conform.) Because EPA does not believe that SIPs approved before 1990 have motor vehicle emissions budgets which are applicable for conformity purposes, TCMs are the relevant element of an old approved SIP. Areas with outdated SIPs have been required to demonstrate timely implementation of TCMs in the SIP at least since the June 1991 EPA/DOT interim conformity guidance. At that time, EPA urged areas to revise their SIPs to remove any TCMs which are outdated and no longer appropriate, to prevent failure to implement them from prohibiting conformity determinations. EPA continues to believe that because the statute requires that conformity be demonstrated with the approved SIP, any outdated elements of that SIP which areas are concerned would prohibit conformity determinations must be revised through the SIP process. EPA will strive to expedite its action on such SIP revisions.

C. Conformity SIP Revisions

EPA requested comment in the preamble to the NPRM regarding the legal form of the conformity SIP revision. Commenters asserted that States should not be required to formally adopt regulations embodying the conformity procedures. EPA has reviewed this issue and concludes that the appropriate form of the State conformity procedures depends upon the requirements of local law, so long as the selected form complies with all

Clean Air Act requirements for adoption, submittal to EPA, and implementation of SIPs.

Clean Air Act section 110(a)(2)(A) requires that all SIP measures be enforceable, and section 110(a)(2)(E) requires that States have adequate authority under local law to implement the SIP. Read together, these provisions require that the State have the authority under State law to compel compliance with the SIP conformity procedures by the persons or entities to which they apply, in whatever form the procedures may take.

For the most part, EPA believes that adopted regulations will be required at the State or local level to enable States to require MPOs, project sponsors, recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, and DOT to comply with the requirements of State conformity procedures. However, EPA understands that in some States, environmental board resolutions or air agency administrative orders could provide adequate authority. EPA will accept State conformity procedures in any form provided the State can demonstrate to EPA's satisfaction that, as a matter of State law, the State has adequate authority to compel compliance with the requirements of the State conformity procedures.

Whatever the form, EPA expects the State procedures to mirror portions of the text of EPA's rule essentially verbatim to ensure compliance with Clean Air Act section 176(c), especially §§ 51.392 (definitions), 51.394 (applicability), and §§ 51.410 through 51.446 (criteria), except where the State chooses to make its procedures more stringent than the EPA rule, as provided by § 51.396 of today's rule.

EPA believes that, due to limitations on the waiver of sovereign immunity in the Clean Air Act, if a State wishes to apply more stringent conformity rules for the purpose of attaining air quality, it may do so only if the same requirements are imposed on non-federal as well as Federal actions. Differing State conformity rules may not cause a more significant or unusual obstacle to Federal agencies than non-federal agencies for the same type of action. Therefore, if a State determines that more stringent conformity criteria and procedures are necessary, these requirements must be imposed on all similar actions whether the sponsoring agency is a Federal or non-federal entity; non-federal entities include State and local agencies and private sponsors.

If a State elects to impose more stringent conformity requirements, they must not be so narrowly construed as to apply in practical effect only to Federal actions. For example, if a State decides that actions of employers with more than 500 employees require conformity determinations, and the Federal government is the only employer of this size in a particular jurisdiction, then this rule would be viewed as discriminatory and would not be permitted. Consequently, more stringent State conformity rules must not only be written to apply similarly to all Federal and non-federal entities, but they must be able to be implemented so that they apply in a nondiscriminatory way in practice. For a full discussion of the issue of State authority to impose more stringent conformity requirements, see the preamble to the general conformity final rule ("Determining Conformity of General Federal Actions to State or Federal Implementation Plans").

Some commenters requested clarification on whether attainment areas, which are not subject to the final rule, are required to submit conformity SIP revisions within 12 months of the promulgation of the final rule. The final rule does not require attainment areas to submit conformity SIP revisions. However, as indicated in the preamble section "Discussion of Major Issues," EPA intends to issue a supplementary notice of proposed rulemaking which would propose criteria and procedures to apply conformity to attainment areas. EPA intends to require conformity SIP revisions for attainment areas within 12 months following promulgation of a final rule establishing the criteria and procedures applying conformity to attainment areas.

This final rule does require a conformity SIP revision within 12 months following an attainment area's redesignation to nonattainment.

D. Public Participation

The NPRM referenced DOT's then as yet unreleased metropolitan planning regulations implementing ISTEA for public participation requirements. Until those regulations became effective, the NPRM proposed to require agencies to publish their proposed public participation procedures and allow 45 days for written comments. The NPRM also proposed to require MPOs to prepare a summary and analysis of written and oral comments before taking final action on conformity determinations, and to require additional opportunity for public comment if the transportation plan or TIP to be submitted to DOT is significantly different from the one made available for public comment.

EPA received substantial public comment on the issue of public participation. Although some commenters supported the NPRM's approach, some commenters believed that the conformity rule should establish minimum public participation requirements. These commenters suggested a range of minimum requirements, including comment periods, public hearings, and analysis of significant comments.

EPA believes that to facilitate cooperative air quality/transportation planning, the public participation requirements in the conformity rule must be consistent with the public participation procedures in the transportation planning process. Furthermore, EPA believes that DOT's metropolitan planning regulations are the appropriate mechanism for public participation requirements because they address the development of the transportation plan and TIP themselves, not just the conformity determinations.

The metropolitan planning regulations require the metropolitan transportation planning process in general to include a proactive public involvement process that provides complete information, timely public notice, full public access to key decisions, and supports early and continuing public involvement in developing transportation plans and TIPs. The regulations require a minimum public comment period of 45 days before the public involvement process is initially adopted or revised. In serious and above nonattainment areas, the regulations require a public comment period of at least 30 days before approval of plans, TIPs, and major amendments. In nonattainment area transportation management areas (TMAs), at least one formal public meeting must be held annually on the development of the transportation plan and the TIP. The regulations also require a summary and analysis of comments and additional opportunities for comment after significant changes, as proposed by the conformity NPRM. Public involvement processes must be periodically reviewed by the MPO for effectiveness, and DOT will review the procedures during certification reviews and as otherwise necessary.

The NPRM and the final rule require public participation on project-level conformity determinations only as otherwise required by law (e.g., as part of the NEPA process). EPA and DOT expect that project-level conformity determinations will be made as part of the NEPA process.

Because DOT's metropolitan planning regulations require MPOs to establish and publish their public participation procedures, and the conformity rule

requires that these procedures be followed before conformity may be determined, the conformity rule does not require public participation procedures to be part of the applicable implementation plan.

E. Plan Content

1. Plan Specificity

The NPRM proposed to require transportation plans adopted after January 1, 1995 in serious and above ozone and CO nonattainment areas to specifically describe the transportation system in certain horizon years, in sufficient detail to use a transportation network demand model. EPA received public comment that this provision requires too much specificity for a transportation plan. In particular, commenters were concerned that there is such uncertainty in 20-year forecasts that the plan and TIP will always be inconsistent in the out-years. Furthermore, some commenters stated that it is difficult to select "best guess" alternatives prior to corridor analyses, and doing so may prejudge alternatives.

The final rule retains the requirements for plan content and separate regional analysis requirements for "specific" plans, as proposed in the NPRM. EPA recognizes the limitations of long-range planning, and agrees that the long-range transportation plan should be a flexible planning document which does not foreclose consideration of alternatives. However, EPA wants the conformity demonstration for a transportation plan to show that the area can develop and model a transportation strategy that is consistent with the SIP's required emission reductions for milestone years, the attainment year, and maintenance in the following years. This demonstrates that an area has developed one transportation system scenario which is consistent with the SIP, and that the area is implementing those activities which must begin now in order to achieve a transportation system consistent with the SIP. The area is free to later choose different alternatives, provided the new transportation plan demonstrates that the new transportation system scenario is also consistent with the SIP (i.e., the revised transportation plan is found to conform).

EPA is emphasizing project-specific transportation plans for serious and above ozone and CO areas, because state-of-the-art transportation network demand modeling requires project detail to the extent that a regionally significant project affects the speed-capacity relationship, the connectivity of the network, and significant alternatives to the use of single-occupant vehicles. EPA recognizes that detailed descriptions of projects in the later years of the transportation plan represent assumptions about those future projects, and expects that project descriptions will be modified to reflect information from corridor analyses as areas periodically update their transportation plans. At the time of the project-level conformity determination, if the project's design concept and scope is significantly different from that in the currently conforming transportation plan and TIP, new regional analysis including the project is required.

As EPA explained in the preamble to the NPRM, the transportation system must be analyzed in the context of the transportation plan, because the TIP's timeframe is too short to account for everything in the years the SIP's emissions budgets are addressing. To show that a budget for a future year will be met, it will be necessary to account for all facilities and services expected to be operational in that year, even if they are not yet in the TIP because they do not yet need to be started. Where a specific plan is not required by this rule, one may be otherwise needed to meet the requirements of ISTEA. Wherever a non-specific plan is permissible under both the Clean Air Act and ISTEA, the TIP must show conformity to all future emission budgets, taking into account those projects included in the TIP, any other projects specifically included in the transportation plan, and regionally significant non-federal projects.

2. Timeframe of the Transportation Plan

Several commenters requested that transportation plans be required to cover at least 20 years. The NPRM proposed to require regional emissions analyses to estimate emissions in the last year of the transportation plan's forecast period.

ISTEA requires the metropolitan transportation plan to address a period of at least 20 years. The requirement for a 20-year forecast period is covered in the DOT metropolitan planning regulations.

F. Relationship of Plan and TIP Conformity With the National Environmental Policy Act (NEPA) Process

EPA received comments suggesting that transportation plans and TIPs should be subject to NEPA. DOT's metropolitan planning regulations already require an analysis of major transportation investments. Under this provision, an appropriate range of alternatives would be analyzed for various factors, including social, economic, and environmental effects. Pending completion of the analysis, either one particular alternative version of the project or the no-build alternative for the corridor in which the major investment is located would be evaluated as part of the plan and TIP conformity analysis. This corridor/subarea analysis of alternatives serves as input to the draft NEPA document.

No Federal approval action is taken on the transportation plan or TIP, and there is no specific Federal commitment to fund projects in the plan or TIP. Furthermore, since the financial plans for the plans and TIPs must include all sources of funds, including State, local, and private sources, it is likely that some of the projects included will never be proposed for Federal funding. In view of this, it is not appropriate to extend the NEPA process to transportation plans and TIPs. In any case, doing so would be an action under NEPA, not the Clean Air Act, and is beyond the scope of this rulemaking.

G. Latest Planning Assumptions

EPA proposed that conformity determinations must use the latest planning assumptions. In response to public comment, the final rule explicitly requires key assumptions to be specified and included in the draft documents and supporting materials used during the interagency and public consultation process.

Some commenters also expressed concern that conformity determinations may be using assumptions which are different from the SIP assumptions, because they are more recent. It should be expected that conformity determinations will deviate from the SIP's assumptions regarding VMT growth, demographics, trip generation, etc., because the conformity determinations are required by Clean Air Act section 176(c)(1) to use the most recent planning assumptions. The final rule does not require, as a commenter suggested, that the conformity determination require an assessment of the degree to which key assumptions in the transportation modeling process are deviating from those used in the SIP, and if the deviations are significant, require an evaluation of the impact of the deviation on the area's ability to reach the SIP's emissions target. EPA is not requiring this process because the conformity determinations themselves are intended to demonstrate that given the most recent planning assumptions and emissions models, the SIP's emissions reductions will be met. However, States may require such a process in their conformity SIP revisions.

The final rule does require that ambient temperatures be consistent with those used in the SIP, and allows other factors assumed in the SIP, such as the fraction of travel in a hot stabilized engine mode, to be modified in a conformity determination only under certain conditions.

H. Latest Emissions Model

EPA proposed to require a new version of the motor vehicle emissions model to be used in any conformity analysis begun three months after its release, unless EPA and DOT announce an extension of the grace period in the **Federal Register**.

EPA received comments stating that the grace period was both too long and too short, and requesting clarification on how the grace period would be extended. EPA and DOT will consider extending the grace period if the effects of the new emissions model are so significant that previous SIP demonstrations of what emission levels are consistent with attainment would be substantially affected. In such cases, States should have an opportunity to revise their SIPs before MPOs must use the model's new emission factors. EPA encourages all agencies to inform EPA of the impacts of new emissions models in their areas, and EPA may pause to seek such input before determining the length of the grace period.

EPA is concerned that the proposal would have considered analyses begun before a new model is released or during the grace period to satisfy the "latest emissions model" criterion indefinitely. Therefore, the final rule provides that a final environmental document may continue to use the previous version of the motor vehicle emissions model provided no more than three years have passed since the draft was issued.

MOBILE5a internally bearing the release date of March 26, 1993, including "MOBILE5 Information Sheet #2: Estimating Idle Emission Factors Using MOBILE5," is hereby announced by EPA to be the latest motor vehicle emissions model outside California. There will be a one-year grace period prior to required use of this model for CO hot-spot or regional analyses for conformity determinations, beginning November 24, 1993. Future revisions and their grace periods will be announced in the **Federal Register**. EPA also hereby announces that in California, EMFAC7F is the latest motor vehicle emissions model, and the three-month grace period for use of this model begins November 24, 1993.

I. TCMs

The NPRM proposed to require timely implementation of those TCMs in the SIP which are eligible for title 23 U.S.C. or Federal Transit Act funding. Some commenters stated that all TCMs should meet the timely implementation test, regardless of their source of funding. The final rule retains the provisions of the NPRM.

Clean Air Act section 176(c)(2)(B) requires TIPs to provide for timely implementation of TCMs, but does not define TCMs. The statute is therefore ambiguous with respect to which TCMs must be implemented, and EPA may take any reasonable interpretation of the definition of TCMs. *Chevron* v. *NRDC*, 467 U.S. 837 (1984). Since plans and TIPs can at the most "provide for" only those projects which are eligible for Federal funding, it is reasonable to define those TCMs required to be implemented by Clean Air Act section 176(c)(2)(B) to be only those SIP TCMs that are eligible for Federal funding.

J. Regional Emissions Analysis

1. Regionally Significant Projects

The NPRM defined "regionally significant" to mean a facility with an arterial or higher functional classification, plus any other facility that serves regional travel needs (such as access to and from the area outside of the region; to major activity centers in the region; or to transportation terminals) and would normally be included in the modeling for the transportation network.

EPA received comments indicating that "regionally significant" should be more clearly defined, perhaps by a quantifiable threshold. Some commenters believed that "regionally significant" should be defined by the State or air quality agency, that the definition should include only freeways, or that the definition should be based upon air quality impact.

The final rule includes a definition of "regionally significant project" which is substantially similar to that in the NPRM. EPA has been unable to determine a quantifiable threshold that would consistently and appropriately reflect the concept of "regionally significant" and believes it is appropriate to allow flexibility and professional judgment in the definition of "regionally significant."

In response to comment that "arterial" is not a DOT functional classification, the final rule specifies that regionally significant includes, at a minimum, all principal arterials. Although EPA believes that some minor arterials are regionally significant, EPA believes that requiring all minor arterials to be modeled on a network model could involve a significant change in current modeling practice. Therefore, the final rule makes the determination of regionally significant projects a topic of interagency consultation, and allows the definition of regionally significant to be expanded through this process. The interagency consultation process must specifically address which minor arterials are also regionally significant.

Some commenters pointed out that the NPRM's definition of "regionally significant" relied on highway terminology, and it was not clear that transit projects were also covered by the definition. Therefore, the final rule also defines any fixed guideway transit system or extension that offers an alternative to regional highway travel to be regionally significant.

2. Projects Included in the Regional Emissions Analysis

EPA proposed criteria which required regional emissions analysis of projects in the transportation plan and TIP and all other regionally significant projects expected in the nonattainment or maintenance area. Some commenters expressed concern about projects in the transportation plan and TIP which cannot normally be modeled with a transportation network demand model. The final rule clarifies that emissions from projects which are not regionally significant, but which have or affect vehicle travel, may be estimated in accordance with reasonable professional practice. For example, the regional emissions analysis may assume that VMT on local streets not represented in the network model is a certain percentage of network VMT, without explicitly considering the new local streets. In addition to projects that are not regionally significant, the benefits of TCMs that cannot be analyzed through the modeling process may be estimated in accordance with reasonable professional practice.

EPA proposed that the regional emissions analysis could not include for emissions reduction credit any TCMs which have been delayed beyond the schedule in the SIP, until implementation has been assured. In response to public comment, the final rule clarifies that if a TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the regional analysis may include that emission reduction credit.

The final rule also clarifies that during the control strategy and maintenance periods, control programs

which are external to the transportation system itself (e.g., tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, oxygenated or reformulated gasoline or diesel fuel) may be assumed in the regional emissions analysis only if the program has been adopted by a State or local government, if an opt-in to a Federally-enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, determine its effective date, or not implement the program.

The build/no-build test may assume the above programs, but the same assumptions must be made in both the "build" and "no build" case. During the transitional period, control measures or programs which are committed to in a SIP submission which is not yet approved by EPA may be assumed for emission reduction credit when demonstrating consistency with the SIP submission's motor vehicle emissions budget.

3. Modeling Procedures

EPA proposed several attributes which a transportation network demand model must possess. In some cases, EPA specifically did not require certain attributes unless the necessary information was available. Some commenters believed that EPA should commit to review the attributes which were not specifically required. EPA intends to continue to review progress in transportation modeling, and the public can also petition for future rulemaking.

Some commenters expressed concern that the cumulative effect of non-regionally significant projects is not accounted for in the regional emissions analysis. The NPRM and the final rule specifically say that reasonable methods shall be used to estimate vehicle travel on off-network roadways. EPA believes that one such method would be to consider VMT on non-regionally significant facilities to be some percentage of network VMT. The rule requires documentation of all key assumptions used in emissions analyses, so there will be opportunity for public review of how vehicle travel is considered.

EPA asked for comment on whether serious PM–10 nonattainment areas should be required to use transportation network demand models, as required for serious and above ozone and CO areas. Comments were received on both sides of the issue. The final rule does not require network models in PM–10 areas, because EPA believes that the resources involved in such modeling efforts may often exceed the benefits in PM–10 areas. In many PM–10 areas, regional PM–10 emissions are due to construction-related fugitive dust and re-entrained dust, for which transportation network demand models may not offer special advantages. Agencies in PM- 10 areas must consult with each other on how to model PM–10 emissions.

4. Build/no-build Test

Based on comments received on the interim period regional emissions test, EPA believes it is important to clarify that because both the "build" and "no-build" scenarios must make the same assumptions regarding fleet turnover, inspection and maintenance programs, reformulated gasoline, etc., emission reductions from these programs and control measures are factored out and the emission reductions from the transportation plans and programs themselves are isolated.

K. Hot-spot Criteria and Analysis

EPA proposed to require projects to demonstrate that they eliminate or reduce the severity and number of localized CO violations in CO nonattainment areas. In response to comment, EPA has clarified in the final rule that this criterion applies in the project area. That is, a project is responsible for eliminating or reducing CO violations in the area substantially affected by the project. If there are no localized CO violations and would not be any in the project area, the project satisfies this criterion.

Some commenters also requested clarification on the hot-spot criteria. EPA intends that the hot-spot analysis compare concentrations with and without the project based on modeling of conditions in the analysis year. The hot-spot analysis is intended to assess possible violations due to the project in combination with changes in background levels over time. Estimation of background concentrations may take into account the effectiveness of anticipated control measures in the SIP if they are already enforceable and creditable in the SIP.

EPA proposed to allow the hot-spot criteria to be satisfied without quantitative hot-spot analysis if a qualitative demonstration can be made based on consideration of local factors. EPA requested comment on cutoffs on project size, geography, or other characteristics above which quantitative modeling is always required. EPA's November 1992 "Guideline for Modeling Carbon Monoxide from Roadway Intersections" requires for the purposes of SIP development the quantitative modeling of all intersections that are Level-of-Service (LOS) D, E, or F or that will change to LOS D, E, or F because of increased traffic volumes related to a new project in the vicinity. EPA's guidance also requires modeling of the top three intersections in the area based on highest traffic volume and the top three intersections based on the worst LOS.

Therefore, the final rule requires that projects involving or affecting any such intersections must be quantitatively modeled using that EPA guidance. The final rule would still allow qualitative analysis for projects at other locations if it clearly demonstrates satisfaction of the hot-spot criteria.

EPA also requested comment on when quantitative PM–10 hot-spot modeling is required. The comments EPA received were generally consistent with the approach discussed in the preamble to the NPRM. Therefore, although the hot-spot criterion in general allows either qualitative or quantitative demonstrations (as discussed above), the final rule explicitly requires quantitative PM–10 hot-spot modeling for projects at sites within the area substantially affected by the project at which violations have been verified by monitoring, and at sites which have essentially identical roadway and vehicle emissions and dispersion characteristics (including sites near one at which a violation has been monitored). These sites shall be identified through interagency consultation. In PM–10 nonattainment and maintenance areas, new or expanded bus terminals and transfer points and commuter rail terminals which increase the number of diesel vehicles congregating at a single location will generally require quantitative hot-spot analysis, except in cases where it can be demonstrated, based on appropriate dispersion modeling for projects of similar size, configuration, and activity levels, that there is no threat of a violation of the PM–10 standard. Conformity determinations on bus purchases (for replacements or minor expansions of the existing fleet) would not have to consider potential PM–10 hot-spot violations, as discussed in the preamble to the NPRM, because the incremental improvement in emissions spread over the service area of a metropolitan transit operator is considered to be a de minimis impact on air quality. Moreover, FTA has no control over how

these new, cleaner buses are to be deployed in local operations.

Several commenters were concerned about the technical capability to perform PM–10 hot-spot analysis. EPA will be releasing technical guidance on how to use existing modeling tools to perform PM–10 hot-spot analysis. The requirements for quantitative PM–10 hot-spot analysis will not take effect until the **Federal Register** has announced availability of this guidance. Also, FTA plans to issue guidance shortly on PM–10 hot-spot analysis for several common types of transit projects. This guidance will help project sponsors determine when quantitative hot-spot analysis is needed and how to perform the analysis.

EPA also requested comment on how to define "new" violations as opposed to relocated violations. Commenters did not propose any such clarification, and no language on this subject has been added to the final rule. EPA continues to believe that a seemingly new violation may be considered to be a relocation and reduction of an existing violation only if it were in the area substantially affected by the project and if the predicted design value for the "new" site would be less than the design value at the "old" site without the project—that is, if there would be a net air quality benefit.

Although no comment was received on the subject, problems may arise with respect to projects which dispersion modeling predicts to have a range of air quality effects in the "area substantially affected by the project." A project may, for example, reduce existing concentrations at several receptors while increasing concentrations at others.

EPA plans to issue guidance which would clarify the concept of "the area substantially affected by the project" and allow conformity demonstrations to distinguish between new and relocated violations. For example, while EPA believes that a "new" violation within the same intersection as an existing violation could be considered a relocation, whether a new violation miles from the existing violation should likewise be considered to be "relocated" as a result of changed traffic patterns is a question EPA will seek to address in this post-rule guidance. Interested parties are invited to provide their views to EPA for consideration.

L. Exempt Projects

EPA proposed a list of projects which, because they had no emissions impact, were considered to be neutral or de minimis and therefore should be exempt from conformity requirements. EPA received no comments opposing an exempt project list, but received a number of comments suggesting both additions and deletions to it.

EPA agrees with commenters that emergency truck pullovers, directional and informational signs, and transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities) are emissions neutral, and the final rule exempts these types of projects. Transportation enhancement activities are defined by ISTEA as "provision of facilities for pedestrians and bicycles, acquisition of scenic easements and scenic or historic sites, scenic or historic highway programs, landscaping and other scenic beautification, historic preservation, rehabilitation and operation of historic transportation buildings, structures or facilities (including historic railroad facilities and canals), preservation of abandoned railway corridors (including the conversion and use thereof for pedestrian or bicycle trails), control and removal of outdoor advertising, archaeological planning and research, and mitigation of water pollution due to highway runoff."

The final rule also exempts repair of damage from natural disasters, civil unrest, or terrorist acts, except for projects involving substantial functional, locational, or capacity changes. Finally, the final rule also exempts specific activities which do not involve or lead directly to construction, such as planning and technical studies, grants for training and research programs, planning activities conducted pursuant to titles 23 and 49 U.S.C., and Federal-aid systems revisions. These activities do not contribute to emissions, and they do not fall under the definition of construction or a project under 23 U.S.C. 101(a).

Because intersection signalization projects which are systemwide may have regional emissions impacts, EPA has clarified that only intersection signalization projects at individual intersections are exempt from regional emissions analysis. As proposed in the NPRM, however, all intersection signalization projects in CO and PM–10 areas are required to have a determination regarding their localized air quality impacts.

The final rule clarifies that in PM–10 nonattainment and maintenance areas, rehabilitation of buses and purchase of new buses to replace existing vehicles or for minor expansions of the fleet are exempt projects only if they are in compliance with the SIP's control measures involving such projects (if any). For example, if the SIP specifies that new buses will be alternatively fueled, purchases of diesel buses would not be exempt.

EPA agrees with commenters that deletion of ridesharing and vanpooling promotion activities would have emissions impacts. However, deletion of these activities would not be exempt under the NPRM or final rule because it is not "continuation of ridesharing and vanpooling promotion activities at current levels."

Some commenters asserted that operating assistance to transit agencies should not be exempt. EPA believes that operating assistance should remain exempt because FTA has no control over how operating assistance is used locally, and because increases or decreases in operating assistance at the Federal level may be balanced by new sources of revenue at the State and local level. To the extent that the local cooperative planning process influences the level of operating assistance, the increase or decrease in operating assistance is necessarily offset by changes in capital assistance for transit in the same metropolitan area. Therefore, the net effect on financing for transit should be neutral. However, the final rule does require conformity determinations to use and document the latest assumptions regarding transit operating policies and assumed transit ridership.

A number of commenters proposed exempting other types of projects from the conformity requirements, notably travel demand management actions whose air quality effects cannot be accurately assessed in a regional modeling context. The objective in implementing a program or project involving travel demand management is to achieve measurable reductions in congestion and vehicle emissions within a corridor or at a specific site; thus, it is not appropriate to exempt such programs or projects from conformity requirements. The final rule does state that if the effects of these projects cannot be discerned through traditional regional travel demand modeling, other accepted methods of quantifying their effects are encouraged.

Some commenters requested clarification of projects on the exempt list. EPA intends that intersection channelization include left-turn/right-turn slots and continuous left turn lanes, as well as those lanes/movements that are physically separated. Advance land acquisitions (23 CFR part 712 or 23 CFR part 771) are a parcel or limited number of parcels which are acquired to protect a property from imminent development and increased costs which would tend to limit a choice of

transportation alternatives, or are acquired to alleviate particular hardship to a property owner at his or her request. This is only allowed in emergency or extraordinary cases, and only after the State department of transportation has given official notice to the public that a preferred highway or transit location has been selected, held a public hearing, or provided an opportunity for a public hearing.

VI. Environmental and Health Benefits

This rule will help ensure that the implementation plan achieves its goal of attaining air quality standards. The environmental and health benefits of attaining the national ambient air quality standards are attributable to the strategies contained in the implementation plan rather than to this rule directly.

VII. Economic Impact

The primary impact of this rule involves the increased requirements for MPOs to perform regional transportation and emissions modeling and document the regional air quality impacts of transportation plans and programs. Because conformity requirements have existed in some form since 1977, the framework for consultation and TCM tracking has already been established.

The impact of this rule on MPOs may vary widely depending on the pollutant for which an area is in nonattainment, the classification of the nonattainment area, the population of the area, and the technical capabilities already developed in the area.

A DOT survey in September 1992 of MPOs in 98 ozone nonattainment areas indicated that during Phase I of the interim period, most MPOs are spending less than $50,000 for a conformity determination on the transportation plan and TIP. Of the 68 MPOs responding, 76% are spending less than $50,000, 21% are spending between $50,001 and $100,000, and 3% are spending between $100,001–250,000. MPOs serving populations over one million had clearly higher conformity costs than MPOs serving smaller populations.

Conformity determinations are required whenever a transportation plan or TIP is adopted or amended. DOT's metropolitan planning regulations at 23 CFR part 450 require transportation plans to be reviewed and updated at least every three years in nonattainment and maintenance areas, and they require TIPs to be updated at least every two years.

The conformity rule also requires periodic redetermination of conformity for transportation plans and TIPs at least every three years. However, because DOT's metropolitan planning regulations require new transportation plans and TIPs at least that often, the conformity rule's provisions for periodic redetermination should not impose any new burden.

Finally, the conformity rule requires a conformity determination for the transportation plan within 18 months after EPA approves a SIP revision which affect TCMs or the motor vehicle emissions budget.

Transportation projects also require conformity determinations. In ozone and NO_2 nonattainment areas, the conformity requirements are satisfied provided the project is included in a current, conforming transportation plan and TIP. If the project is not included in the transportation plan and TIP, a regional emissions analysis including the transportation plan, TIP, and project must be performed. In CO and PM–10 nonattainment areas, project-level conformity determinations also require a hot-spot analysis. This analysis of localized impacts is performed as part of the existing NEPA process.

There are approximately 300 ozone, CO, NO2, and PM–10 nonattainment areas. Because some areas are in nonattainment for more than one pollutant, there are about 250 individual nonattainment areas which are required to perform conformity determinations. EPA expects that areas will determine conformity for TIPs annually, and in general, areas will determine conformity for transportation plans once every three years.

If it is assumed that the ozone areas surveyed by DOT in September 1992 are representative of all nonattainment areas, the estimated total annual conformity costs for the nation's transportation plans and TIPs is $16,625,000. This is a preliminary estimate based on the requirements contained in the interim conformity guidance EPA and DOT are solicity further information from MPO's which will be used in the preparation of the information collection request (see VIII. B. Reporting and Recordkeeping Requirements) subsequent to the publication of this rule.

These estimates do not necessarily reflect the costs which will result from this final rule. On one hand, these may be overestimates of the costs, because determinations will probably become less expensive as the MPOs gain experience. For example, for future determinations it may be possible to perform the modeling with fewer runs. On the other hand, these estimates do not reflect the more specific requirements of this rule and may therefore underestimate the cost of determinations in the control strategy period. EPA welcomes reports from MPOs on the costs of making conformity determinations on plans and TIPs according to the requirements of this rule.

Because ISTEA and other CAA provisions also directly or indirectly require increased modeling, it is difficult to entirely separate the costs attributable to the conformity requirements alone. For example, ISTEA assigns more responsibility to the MPOs and shifts the planning focus to intermodalism and congestion management. This will require more sophisticated transportation modeling. The VMT tracking and forecasting requirements in sections 182 and 187 of the CAA will also promote the use of transportation demand network models in some nonattainment areas.

In addition, although the conformity requirements may prompt additional data collection and model development, these costs cannot be solely attributed to conformity. It is an ongoing responsibility of MPOs to review and upgrade their analysis capabilities to reflect the most recent understanding of travel demand and transportation forecasting. Resource constraints during the 1980's prevented many MPOs from updating their analysis procedures, so conformity is in many cases simply raising the priority of modeling improvements.

Metropolitan planning is eligible for funds under ISTEA. In addition, EPA has attempted to minimize the costs of conformity in several ways. First, EPA is establishing flexible methodological requirements for regional analyses in areas which do not use network models in order to accommodate the varying technical capabilities of MPOs. In addition, by designating projects which are exempt from conformity determinations or regional analyses, EPA is allowing project sponsors to conserve their analysis resources. Finally, EPA has attempted to minimize the frequency of conformity redetermination by requiring periodic redetermination only every three years (which is the longest period allowed by the Clean Air Act), by limiting the number of triggers for redetermination, and by allowing grace periods before the use of new emissions models and following an area's reclassification.

VIII. Administrative Requirements

A. Administrative Designation

Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency

must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Reporting and Recordkeeping Requirements

This rule does not contain any information collection requirements from EPA which require approval by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501 *et seq.* DOT will be preparing an information collection request subsequent to the publication of this rule.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires federal agencies to identify potentially adverse impacts of federal regulations upon small entities. In instances where significant impacts are possible on a substantial number of these entities, agencies are required to perform a Regulatory Flexibility Analysis (RFA).

EPA has determined that today's regulations will not have a significant impact on a substantial number of small entities. This regulation will affect Federal agencies and metropolitan planning organizations, which by definition are designated only for metropolitan areas with a population of at least 50,000.

Recipients of title 23 U.S.C. or Federal Transit Act funds must determine that their highway and transit projects are included in a conforming transportation plan and TIP, or a regional emissions analysis including the project, transportation plan, and TIP must demonstrate that the transportation plan and TIP would still conform if the project were implemented. Because MPOs are responsible for performing regional emissions analysis which includes all such projects, and because DOT's metropolitan planning regulations at 23 CFR part 450 already require such projects to be included in the transportation plan, and in the TIP for informational purposes, this requirement does not pose a significant burden for small entities.

Potential delays in highway construction that may result from the need to make positive conformity determinations as required by this rule could appear to adversely affect small entities that may be relying upon future highway construction to provide them with certain benefits. However, any such delays would merely preserve the status quo, and would not limit any benefits currently available to small entities.

Therefore, as required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities.

List of Subjects

40 CFR Part 51

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Nitrogen dioxide, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur oxides, Volatile organic compounds.

40 CFR Part 93

Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead, Ozone.

Dated: November 15, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I of the Code of Federal Regulations is amended as follows:

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401-7671p.

2. Part 51 is amended by adding a new subpart T to read as follows:

Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

Sec.

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51.452 Procedures for determining regional transportation-related emissions.

Sec.
51.454 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).
51.456 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).
51.458 Enforceability of design concept and scope and project-level mitigation and control measures.
51.460 Exempt projects.
51.462 Projects exempt from regional emissions analyses.
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Subpart T—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

§ 51.390 Purpose.

The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 et seq.), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 et seq.). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

§ 51.392 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented; or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 51.404.

Hot-spot analysis is an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Incomplete data area means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause

a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance period with respect to a pollutant or pollutant precursor means that period of time beginning when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in section 182(g)(1) and section 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NOx budget if NOx reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 et seq).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under § 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Not classified area means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after the effective date of this rule, lasting until the earlier of the following:

(1) Submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or

(2) The date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 51.448.

Project means a highway project or transit project.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Rural transport ozone nonattainment area means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act section 182(h) as a rural transport area.

Standard means a national ambient air quality standard.

Submarginal area means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transitional area means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant

control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 51.448.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

§ 51.394 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 51.460, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 51.450 applies to such projects if they are regionally significant.

(b) *Geographic applicability.* (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under section 182(f) of the CAA that additional reductions of NO_x would not contribute to attainment);

(ii) Nitrogen oxides in nitrogen dioxide areas; and

(iii) Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if:

(A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT; or

(B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(c) *Limitations.* (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

§ 51.396 Implementation plan revision.

(a) States with areas subject to this rule must submit to the EPA and DOT a revision to their implementation plan which contains criteria and procedures for DOT, MPOs and other State or local agencies to assess the conformity of transportation plans, programs, and projects, consistent with these regulations. This revision is to be submitted by November 25, 1994 (or within 12 months of an area's redesignation from attainment to nonattainment, if the State has not previously submitted such a revision). EPA will provide DOT with a 30-day comment period before taking action to approve or disapprove the submission. A State's conformity provisions may contain criteria and procedures more stringent than the requirements described in these regulations only if the State's conformity provisions apply equally to non-federal as well as Federal entities.

(b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the requirements of Clean Air Act section 176(c) until such time as the required conformity implementation plan revision is approved by EPA. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable implementation plan, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable implementation plan requirements relating to conformity remain enforceable until the State revises its applicable implementation plan to specifically remove them and that revision is approved by EPA.

(c) To be approvable by EPA, the implementation plan revision submitted to EPA and DOT under this section shall address all requirements of this subpart in a manner which gives them full legal effect. In particular, the revision shall incorporate the provisions of the following sections of this subpart in verbatim form, except insofar as needed to give effect to a stated intent in the revision to establish criteria and procedures more stringent than the requirements stated in these sections:

§§ 51.392, 51.394, 51.398, 51.400, 51.404, 51.410, 51.412, 51.414, 51.416, 51.418, 51.420, 51.422, 51.424, 51.426, 51.428, 51.430, 51.432, 51.434, 51.436, 51.438, 51.440, 51.442, 51.444, 51.446, 51.448, 51.450, 51.460, and 51.462.

§ 51.398 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§ 51.400 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) *Transportation plans.* (1) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 51.460. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) Conformity of existing transportation plans must be redetermined within 18 months of the following, or the existing conformity determination will lapse:

(i) November 24, 1993;

(ii) EPA approval of an implementation plan revision which:

(A) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide); or

(B) Adds, deletes, or changes TCMs; and

(iii) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(4) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(c) *Transportation improvement programs.* (1) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 51.460.

(3) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 51.460. Otherwise, the existing conformity determination for the TIP will lapse.

(4) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

§ 51.402 Consultation.

(a) *General.* The implementation plan revision required under § 51.396 shall include procedures for interagency consultation (Federal, State, and local) and resolution of conflicts.

(1) The implementation plan revision shall include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before the implementation plan revision is approved by EPA, MPOs and State departments of transportation before making conformity determinations must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.

(b) *Interagency consultation procedures: General factors.* (1) States shall provide in the implementation plan well-defined consultation procedures whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures shall include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures shall also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§ 51.460 and 51.462) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by § 51.418(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by § 51.454(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis; and

(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 51.460.

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 51.400; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 51.452.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model development by the MPO (e.g., household/travel transportation surveys).

(7) A process (including Federal agencies) for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption.

(d) *Resolving conflicts.* Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.396 shall define the procedures for starting of the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§ 51.404 Content of transportation plans.

(a) *Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.* The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 51.402;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept,

design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) *Moderate areas reclassified to serious.* Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) *Transportation plans for other areas.* Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 51.410 through 51.446.

(d) *Savings.* The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 51.406 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 51.410 through 51.446 for projects not from a TIP before NEPA process completion.

§ 51.408 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

§ 51.410 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 51.412 through 51.446 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(b) The following table indicates the criteria and procedures in §§ 51.412 through 51.446 which apply for each action in each time period.

TABLE 1.—CONFORMITY CRITERIA

Action	Criteria
All Periods	
Transportation Plan ...	§§ 51.412, 51.414, 51.416, 51.418(b).
TIP	§§ 51.412, 51.414, 51.416, 51.418(c).
Project (From a conforming plan and TIP).	§§ 51.412, 51.414, 51.416, 51.420, 51.422, 51.424, 51.426.
Project (Not from a conforming plan and TIP).	§§ 51.412, 51.414, 51.416, 51.418(d), 51.420, 51.424, 51.426.
Phase II of the Interim Period	
Transportation Plan ...	§§ 51.436, 51.442.
TIP	§§ 51.438, 51.444.
Project (From a conforming plan and TIP).	§ 51.434.
Project (Not from a conforming plan and TIP).	§ 51.434, 51.440, 51.446.
Transitional Period	
Transportation Plan ...	§§ 51.428, 51.436, 51.442.
TIP	§ 51.430, 51.438, 51.444.
Project (From a conforming plan and TIP).	§ 51.434.
Project (Not from a conforming plan and TIP).	§§ 51.432, 51.434, 51.440, 51.446.
Control Strategy and Maintenance Periods	
Transportation Plan ...	§ 51.428.
TIP	§ 51.430.
Project (From a conforming plan and TIP).	No additional criteria.
Project (Not from a conforming plan and TIP).	§ 51.432.

TABLE 1.—CONFORMITY CRITERIA—Continued

Action	Criteria
Project (Not from a conforming plan and TIP).	§ 51.432.

51.412 The conformity determination must be based on the latest planning assumptions.

51.414 The conformity determination must be based on the latest emission estimation model available.

51.416 The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by § 51.396.

51.418 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

51.420 There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

51.422 The project must come from a conforming transportation plan and program.

51.424 The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

51.426 The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan.

51.428 The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.430 The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.432 The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

51.434 The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

51.436 The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.

51.438 The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

51.440 The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

51.442 The transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.
51.444 The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.
51.446 The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

§ 51.412 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in §§ 51.414 through 51.446, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 51.402.

§ 51.414 Criteria and procedures: Latest emissions model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the **Federal Register**.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the **Federal Register**.

(c) Conformity analyses for which the emissions analysis was begun during the grace period or before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the **Federal Register** notice of availability, provided no more than three years have passed since the draft environmental document was issued.

§ 51.416 Criteria and procedures: Consultation.

The MPO must make the conformity determination according to the consultation procedures in this rule and in the implementation plan revision required by § 51.396, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by § 51.396 is approved by EPA, the conformity determination must be made according to the procedures in §§ 51.402(a)(2) and 51.402(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 51.418 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 51.420 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 51.400.

§ 51.422 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 51.404, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 51.458(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

§ 51.424 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 51.402(c)(1)(i) and 51.454.

(c) For projects which are not of the type identified by § 51.454(a) or § 51.454(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 51.454(b).

§ 51.426 Criteria and procedures: Compliance with PM_{10} control measures.

The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 51.428 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

(a) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met: (b) A regional emissions analysis shall be performed as follows:

(1) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(i) VOC as an ozone precursor;

(ii) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment;

(iii) CO;

(iv) PM_{10} (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for such emissions); or

(v) NO_x (in NO_2 nonattainment or maintenance areas);

(2) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(3) The emissions analysis methodology shall meet the requirements of § 51.452;

(4) For areas with a transportation plan that meets the content requirements of § 51.404(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(5) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), the

emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(1) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(2) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(3) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(4) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

§ 51.430 Criteria and procedures: Motor vehicle emissions budget (TIP).

(a) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met:

(b) For areas with a conforming transportation plan that fully meets the content requirements of § 51.404(a), this criterion may be satisfied without additional regional analysis if:

(1) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(2) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(3) If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:

(i) The TIP may be modified to meet those requirements; or

(ii) The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

(c) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), a regional emissions analysis must meet all of the following requirements:

(1) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(2) The analysis methodology shall meet the requirements of § 51.452(c); and

(3) The regional analysis shall satisfy the requirements of §§ 51.428(b)(1), 51.428(b)(5), and 51.428(c).

§ 51.432 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

(a) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 51.464. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(b) For areas with a conforming transportation plan that meets the content requirements of § 51.404(a):

(1) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(i) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(2) If the requirements in paragraph (b)(1) of this section are not met, a regional emissions analysis must be performed as follows:

(i) The analysis methodology shall meet the requirements of § 51.452;

(ii) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis

must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(iii) The emissions analysis shall meet the requirements of §§ 51.428(b)(1), 51.428(b)(4), and 51.428(c).

(c) For areas with a transportation plan that does not meet the content requirements of § 51.404(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(1) The analysis methodology meets the requirements of § 51.452(c);

(2) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

(3) The regional analysis satisfies the requirements of §§ 51.428(b)(1), 51.428(b)(5), and 51.428(c).

§ 51.434 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

(a) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 51.402(c)(1)(i) and 51.454.

(c) For projects which are not of the type identified by § 51.454(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 51.454(b).

§ 51.436 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

(a) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 51.438 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

(a) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in §§ 51.460 and 51.462 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is contained in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. Emissions in milestone years which are between analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 51.440 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A Transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 51.464. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 51.436 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 51.442 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).

(a) A transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either

paragraph (b) or (c) of this section are met.

(b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 51.436(c), and the "Action" scenario, as defined in § 51.436(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 51.452. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(4) Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(1) Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by § 51.396 defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(2) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 51.452. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

§ 51.444 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).

(a) A TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.

(b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated, according to the requirements of § 51.442(b)(1).

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 51.438(c), and the "Action" scenario, as defined in § 51.438(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by § 51.442(b)(3), and make the demonstration required by § 51.442(b)(4).

(c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within

the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 51.442(c) (1)–(3).

§ 51.446 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of § 51.442 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 51.442(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 51.448 Transition from the interim period to the control strategy period.

(a) *Areas which submit a control strategy implementation plan revision after November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section.

(ii) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.* (1) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993, and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(c) *Areas which have not submitted a complete control strategy implementation plan revision.* (1) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(1) (i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(d) *Areas which submitted a control strategy implementation plan before November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.

(ii) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(e) *Projects.* If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e) (1) and (2) of this section must be met.

(1) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by §§ 51.436 through 51.446) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(2) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 51.402(d), which applies for any State air agency comments on a conformity determination.

(f) *Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.* (1) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 51.412 and 51.414 if:

(i) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(ii) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(2) A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 51.400(b)(4) or § 51.400(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of § 51.410 within three years of the last determination which did not rely on paragraph (f)(1) of this section.

(g) *Ozone nonattainment areas.* (1) The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act section 182(b)(1) requires to be submitted to EPA November 15, 1993.

(2) The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act section 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act section 182(b)(1).

(3) The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) are submitted.

(h) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 51.464 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 51.464 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.

(i) *Maintenance plans.* If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act section 175A is submitted to EPA, the

requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 51.450 Requirements for adoption or approval of projects by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 51.420 and the requirements of one of the following paragraphs (a) through (e) of this section are met:

(a) The project comes from a conforming plan and program consistent with the requirements of § 51.422;

(b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 51.432;

(d) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 51.440 (in ozone and CO nonattainment areas) or § 51.446 (in PM_{10} and NO_2 nonattainment areas); or

(e) During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

§ 51.452 Procedures for determining regional transportation-related emissions.

(a) *General requirements.* (1) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by § 51.402. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 51.428 through 51.432, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 51.428 through 51.432 are satisfied.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §§ 51.436 through 51.440 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.

(b) *Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.* Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (5) of this section.

(1) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(i) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(ii) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(iii) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(iv) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(v) Free-flow speeds on network links shall be based on empirical observations;

(vi) Peak and off-peak travel demand and travel times must be provided;

(vii) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(viii) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which

emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(ix) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(x) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(xi) Consideration of emissions increases from construction-related congestion is not specifically required.

(2) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(3) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(4) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(5) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to § 51.402 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(c) *Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.* (1) Procedures which satisfy some or all of the requirements of paragraph (a) of this section shall be used in all areas not subject to paragraph (a) of this section in which those procedures have been the previous practice of the MPO.

(2) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods must also consider future economic activity, transit alternatives, and transportation system policies.

(d) *Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas.* This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(1) Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 51.432, 51.440, and 51.446 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(2) The requirements of § 51.432 shall be satisfied according to the procedures in § 51.432(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

(3) The requirements of §§ 51.440 and 51.446 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(4) The requirement of § 51.450(b) shall be satisfied if:

(i) The project is included in the regional emissions analysis which includes all regionaliy significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 51.432, 51.440, or 51.446 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and

(ii) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(e) *PM_{10} from construction-related fugitive dust.* (1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 51.454 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

(a) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2–78–027R), unless, after the interagency consultation process described in § 51.402 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

(1) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(2) For those intersections at Level-of-Service D, E, or F, or those that will

change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(3) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(4) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(5) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

(b) In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(c) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(d) PM_{10} hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM_{10} hot-spot analysis shall be determined through the interagency consultation process required in § 51.402. In PM_{10} nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the **Federal Register** that these requirements are in effect.

(e) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(f) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by § 51.458(a).

(g) CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 51.456 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§ 51.458 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 51.428 through 51.432 and §§ 51.436 through 51.440 or used in the project-level hot-spot

analysis required by §§ 51.424 and 51.434.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.396 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 51.424, 51.428, and 51.430 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 51.402. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of §§ 51.428 and 51.430 and that the project still satisfies the requirements of § 51.424, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§ 51.460 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

TABLE 2.—EXEMPT PROJECTS

Safety

Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.
Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.

Mass Transit

Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles.[1]
Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and track bed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet.[1]
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.

Other

Specific activities which do not involve or lead directly to construction, such as:
- Planning and technical studies.
- Grants for training and research programs.
- Planning activities conducted pursuant to titles 23 and 49 U.S.C.
- Federal-aid systems revisions.

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Advance land acquisitions (23 CFR part 712 or 23 CFR part 771).
Acquisition of scenic easements.
Plantings, landscaping, etc.

TABLE 2.—EXEMPT PROJECTS—Continued

Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

[1] PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 51.462 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 51.402(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§ 51.464 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

(a) *Application.* This section applies in the following areas:

(1) Rural transport ozone nonattainment areas;

(2) Marginal ozone areas;

(3) Submarginal ozone areas;

(4) Transitional ozone areas;

(5) Incomplete data ozone areas;

(6) Moderate CO areas with a design value of 12.7 ppm or less; and

(7) Not classified CO areas.

(b) *Default conformity procedures.* The criteria and procedures in §§ 51.436 through 51.440 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 51.428 through 51.432, except as otherwise provided in paragraph (c) of this section.

(c) *Optional conformity procedures.* The State or MPO may voluntarily develop an attainment demonstration and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 51.428 through 51.432 apply in lieu of the procedures in §§ 51.436 through 51.440.

3. A new part 93 is added to read as follows:

PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

Sec.

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93.118 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

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93.120 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

93.121 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

93.122 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

93.123 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

93.124 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

93.125 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).

93.126 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).

93.127 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

93.128 Transition from the interim period to the control strategy period.

93.129 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

93.130 Procedures for determining regional transportation-related emissions.

93.131 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

93.132 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

93.133 Enforceability of design concept and scope and project-level mitigation and control measures.

93.134 Exempt projects.

93.135 Projects exempt from regional emissions analyses.

93.136 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

Authority: 42 U.S.C. 7401–7671p.

Subpart A—Conformity to State or Federal Implementation Plans of Transportation Plans, Programs, and Projects Developed, Funded or Approved Under Title 23 U.S.C. or the Federal Transit Act

§ 93.100 Purpose.

The purpose of this subpart is to implement section 176(c) of the Clean Air Act (CAA), as amended (42 U.S.C. 7401 *et seq.*), and the related requirements of 23 U.S.C. 109(j), with respect to the conformity of transportation plans, programs, and projects which are developed, funded, or approved by the United States Department of Transportation (DOT), and by metropolitan planning organizations (MPOs) or other recipients of funds under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). This subpart sets forth policy, criteria, and procedures for demonstrating and assuring conformity of such activities to an applicable implementation plan developed pursuant to section 110 and Part D of the CAA.

§ 93.101 Definitions.

Terms used but not defined in this subpart shall have the meaning given them by the CAA, titles 23 and 49 U.S.C., other Environmental Protection Agency (EPA) regulations, or other DOT regulations, in that order of priority.

Applicable implementation plan is defined in section 302(q) of the CAA and means the portion (or portions) of the implementation plan, or most recent revision thereof, which has been approved under section 110, or promulgated under section 110(c), or promulgated or approved pursuant to regulations promulgated under section 301(d) and which implements the relevant requirements of the CAA.

CAA means the Clean Air Act, as amended.

Cause or contribute to a new violation for a project means:

(1) To cause or contribute to a new violation of a standard in the area substantially affected by the project or over a region which would otherwise not be in violation of the standard during the future period in question, if the project were not implemented, or

(2) To contribute to a new violation in a manner that would increase the frequency or severity of a new violation of a standard in such area.

Control strategy implementation plan revision is the applicable implementation plan which contains specific strategies for controlling the emissions of and reducing ambient levels of pollutants in order to satisfy CAA requirements for demonstrations of reasonable further progress and attainment (CAA sections 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide).

Control strategy period with respect to particulate matter less than 10 microns in diameter (PM_{10}), carbon monoxide (CO), nitrogen dioxide (NO_2), and/or ozone precursors (volatile organic compounds and oxides of nitrogen), means that period of time after EPA approves control strategy implementation plan revisions containing strategies for controlling PM_{10}, NO_2, CO, and/or ozone, as appropriate. This period ends when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area.

Design concept means the type of facility identified by the project, e.g., freeway, expressway, arterial highway, grade-separated highway, reserved right-of-way rail transit, mixed-traffic rail transit, exclusive busway, etc.

Design scope means the design aspects which will affect the proposed facility's impact on regional emissions, usually as they relate to vehicle or person carrying capacity and control, e.g., number of lanes or tracks to be constructed or added, length of project, signalization, access control including approximate number and location of interchanges, preferential treatment for high-occupancy vehicles, etc.

DOT means the United States Department of Transportation.

EPA means the Environmental Protection Agency.

FHWA means the Federal Highway Administration of DOT.

FHWA/FTA project, for the purpose of this subpart, is any highway or transit project which is proposed to receive funding assistance and approval through the Federal-Aid Highway program or the Federal mass transit program, or requires Federal Highway Administration (FHWA) or Federal Transit Administration (FTA) approval for some aspect of the project, such as connection to an interstate highway or deviation from applicable design standards on the interstate system.

FTA means the Federal Transit Administration of DOT.

Forecast period with respect to a transportation plan is the period covered by the transportation plan pursuant to 23 CFR part 450.

Highway project is an undertaking to implement or modify a highway facility or highway-related program. Such an undertaking consists of all required phases necessary for implementation. For analytical purposes, it must be defined sufficiently to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or significance, i.e., be usable and be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Horizon year is a year for which the transportation plan describes the envisioned transportation system according to § 93.106.

Hot-spot analysis is an estimation of likely future localized CO and PM_{10} pollutant concentrations and a comparison of those concentrations to the national ambient air quality standards. Pollutant concentrations to be estimated should be based on the total emissions burden which may result from the implementation of a single, specific project, summed together with future background concentrations (which can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors) expected in the area. The total concentration must be estimated and analyzed at appropriate receptor locations in the area substantially affected by the project. Hot-spot analysis assesses impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, and uses an air quality dispersion model to determine the effects of emissions on air quality.

Incomplete data area means any ozone nonattainment area which EPA has classified, in 40 CFR part 81, as an incomplete data area.

Increase the frequency or severity means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

ISTEA means the Intermodal Surface Transportation Efficiency Act of 1991.

Maintenance area means any geographic region of the United States previously designated nonattainment pursuant to the CAA Amendments of 1990 and subsequently redesignated to attainment subject to the requirement to develop a maintenance plan under section 175A of the CAA, as amended.

Maintenance period with respect to a pollutant or pollutant precursor means

that period of time beginning when a State submits and EPA approves a request under section 107(d) of the CAA for redesignation to an attainment area, and lasting for 20 years, unless the applicable implementation plan specifies that the maintenance period shall last for more than 20 years.

Metropolitan planning organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607. It is the forum for cooperative transportation decision-making.

Milestone has the meaning given in sections 182(g)(1) and 189(c) of the CAA. A milestone consists of an emissions level and the date on which it is required to be achieved.

Motor vehicle emissions budget is that portion of the total allowable emissions defined in a revision to the applicable implementation plan (or in an implementation plan revision which was endorsed by the Governor or his or her designee, subject to a public hearing, and submitted to EPA, but not yet approved by EPA) for a certain date for the purpose of meeting reasonable further progress milestones or attainment or maintenance demonstrations, for any criteria pollutant or its precursors, allocated by the applicable implementation plan to highway and transit vehicles. The applicable implementation plan for an ozone nonattainment area may also designate a motor vehicle emissions budget for oxides of nitrogen (NO_x) for a reasonable further progress milestone year if the applicable implementation plan demonstrates that this NO_x budget will be achieved with measures in the implementation plan (as an implementation plan must do for VOC milestone requirements). The applicable implementation plan for an ozone nonattainment area includes a NO_x budget if NO_x reductions are being substituted for reductions in volatile organic compounds in milestone years required for reasonable further progress.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the CAA.

NEPA means the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

NEPA process completion, for the purposes of this subpart, with respect to FHWA or FTA, means the point at which there is a specific action to make a determination that a project is categorically excluded, to make a Finding of No Significant Impact, or to issue a record of decision on a Final Environmental Impact Statement under NEPA.

Nonattainment area means any geographic region of the United States which has been designated as nonattainment under section 107 of the CAA for any pollutant for which a national ambient air quality standard exists.

Not classified area means any carbon monoxide nonattainment area which EPA has not classified as either moderate or serious.

Phase II of the interim period with respect to a pollutant or pollutant precursor means that period of time after the effective date of this rule, lasting until the earlier of the following: submission to EPA of the relevant control strategy implementation plan revisions which have been endorsed by the Governor (or his or her designee) and have been subject to a public hearing, or the date that the Clean Air Act requires relevant control strategy implementation plans to be submitted to EPA, provided EPA has notified the State, MPO, and DOT of the State's failure to submit any such plans. The precise end of Phase II of the interim period is defined in § 93.128.

Project means a highway project or transit project.

Recipient of funds designated under title 23 U.S.C. or the Federal Transit Act means any agency at any level of State, county, city, or regional government that routinely receives title 23 U.S.C. or Federal Transit Act funds to construct FHWA/FTA projects, operate FHWA/FTA projects or equipment, purchase equipment, or undertake other services or operations via contracts or agreements. This definition does not include private landowners or developers, or contractors or entities that are only paid for services or products created by their own employees.

Regionally significant project means a transportation project (other than an exempt project) that is on a facility which serves regional transportation needs (such as access to and from the area outside of the region, major activity centers in the region, major planned developments such as new retail malls, sports complexes, etc., or transportation terminals as well as most terminals themselves) and would normally be included in the modeling of a metropolitan area's transportation network, including at a minimum all principal arterial highways and all fixed guideway transit facilities that offer an alternative to regional highway travel.

Rural transport ozone nonattainment area means an ozone nonattainment area that does not include, and is not adjacent to, any part of a Metropolitan Statistical Area or, where one exists, a Consolidated Metropolitan Statistical Area (as defined by the United States Bureau of the Census) and is classified under Clean Air Act section 182(h) as a rural transport area.

Standard means a national ambient air quality standard.

Submarginal area means any ozone nonattainment area which EPA has classified as submarginal in 40 CFR part 81.

Transit is mass transportation by bus, rail, or other conveyance which provides general or special service to the public on a regular and continuing basis. It does not include school buses or charter or sightseeing services.

Transit project is an undertaking to implement or modify a transit facility or transit-related program; purchase transit vehicles or equipment; or provide financial assistance for transit operations. It does not include actions that are solely within the jurisdiction of local transit agencies, such as changes in routes, schedules, or fares. It may consist of several phases. For analytical purposes, it must be defined inclusively enough to:

(1) Connect logical termini and be of sufficient length to address environmental matters on a broad scope;

(2) Have independent utility or independent significance, i.e., be a reasonable expenditure even if no additional transportation improvements in the area are made; and

(3) Not restrict consideration of alternatives for other reasonably foreseeable transportation improvements.

Transitional area means any ozone nonattainment area which EPA has classified as transitional in 40 CFR part 81.

Transitional period with respect to a pollutant or pollutant precursor means that period of time which begins after submission to EPA of the relevant control strategy implementation plan which has been endorsed by the Governor (or his or her designee) and has been subject to a public hearing. The transitional period lasts until EPA takes final approval or disapproval action on the control strategy implementation plan submission or finds it to be incomplete. The precise beginning and end of the transitional period is defined in § 93.128.

Transportation control measure (TCM) is any measure that is specifically identified and committed to in the applicable implementation plan that is either one of the types listed in § 108 of the CAA, or any other measure for the

purpose of reducing emissions or concentrations of air pollutants from transportation sources by reducing vehicle use or changing traffic flow or congestion conditions. Notwithstanding the above, vehicle technology-based, fuel-based, and maintenance-based measures which control the emissions from vehicles under fixed traffic conditions are not TCMs for the purposes of this subpart.

Transportation improvement program (TIP) means a staged, multiyear, intermodal program of transportation projects covering a metropolitan planning area which is consistent with the metropolitan transportation plan, and developed pursuant to 23 CFR part 450.

Transportation plan means the official intermodal metropolitan transportation plan that is developed through the metropolitan planning process for the metropolitan planning area, developed pursuant to 23 CFR part 450.

Transportation project is a highway project or a transit project.

§ 93.102 Applicability.

(a) *Action applicability.* (1) Except as provided for in paragraph (c) of this section or § 93.134, conformity determinations are required for:

(i) The adoption, acceptance, approval or support of transportation plans developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT;

(ii) The adoption, acceptance, approval or support of TIPs developed pursuant to 23 CFR part 450 or 49 CFR part 613 by an MPO or DOT; and

(iii) The approval, funding, or implementation of FHWA/FTA projects.

(2) Conformity determinations are not required under this rule for individual projects which are not FHWA/FTA projects. However, § 93.129 applies to such projects if they are regionally significant.

(b) *Geographic applicability.* (1) The provisions of this subpart shall apply in all nonattainment and maintenance areas for transportation-related criteria pollutants for which the area is designated nonattainment or has a maintenance plan.

(2) The provisions of this subpart apply with respect to emissions of the following criteria pollutants: ozone, carbon monoxide, nitrogen dioxide, and particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers (PM_{10}).

(3) The provisions of this subpart apply with respect to emissions of the following precursor pollutants:

(i) Volatile organic compounds and nitrogen oxides in ozone areas (unless the Administrator determines under section 182(f) of the CAA that additional reductions of NO_X would not contribute to attainment);

(ii) Nitrogen oxides in nitrogen dioxide areas; and

(iii) Volatile organic compounds, nitrogen oxides, and PM_{10} in PM_{10} areas if:

(A) During the interim period, the EPA Regional Administrator or the director of the State air agency has made a finding that transportation-related precursor emissions within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT; or

(B) During the transitional, control strategy, and maintenance periods, the applicable implementation plan (or implementation plan submission) establishes a budget for such emissions as part of the reasonable further progress, attainment or maintenance strategy.

(c) *Limitations.* (1) Projects subject to this regulation for which the NEPA process and a conformity determination have been completed by FHWA or FTA may proceed toward implementation without further conformity determinations if one of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. All phases of such projects which were considered in the conformity determination are also included, if those phases were for the purpose of funding, final design, right-of-way acquisition, construction, or any combination of these phases.

(2) A new conformity determination for the project will be required if there is a significant change in project design concept and scope, if a supplemental environmental document for air quality purposes is initiated, or if no major steps to advance the project have occurred within the past three years.

§ 93.103 Priority.

When assisting or approving any action with air quality-related consequences, FHWA and FTA shall give priority to the implementation of those transportation portions of an applicable implementation plan prepared to attain and maintain the NAAQS. This priority shall be consistent with statutory requirements for allocation of funds among States or other jurisdictions.

§ 93.104 Frequency of conformity determinations.

(a) Conformity determinations and conformity redeterminations for transportation plans, TIPs, and FHWA/FTA projects must be made according to the requirements of this section and the applicable implementation plan.

(b) *Transportation plans.* (1) Each new transportation plan must be found to conform before the transportation plan is approved by the MPO or accepted by DOT.

(2) All transportation plan revisions must be found to conform before the transportation plan revisions are approved by MPO or accepted by DOT, unless the revision merely adds or deletes exempt projects listed in § 93.134. The conformity determination must be based on the transportation plan and the revision taken as a whole.

(3) Conformity of existing transportation plans must be redetermined within 18 months of the following, or the existing conformity determination will lapse:

(i) November 24, 1993;

(ii) EPA approval of an implementation plan revision which:

(A) Establishes or revises a transportation-related emissions budget (as required by CAA sections 175A(a), 182(b)(1), 182(c)(2)(A), 182(c)(2)(B), 187(a)(7), 189(a)(1)(B), and 189(b)(1)(A); and sections 192(a) and 192(b), for nitrogen dioxide); or

(B) Adds, deletes, or changes TCMs; and

(iii) EPA promulgation of an implementation plan which establishes or revises a transportation-related emissions budget or adds, deletes, or changes TCMs.

(4) In any case, conformity determinations must be made no less frequently than every three years, or the existing conformity determination will lapse.

(c) *Transportation improvement programs.* (1) A new TIP must be found to conform before the TIP is approved by the MPO or accepted by DOT.

(2) A TIP amendment requires a new conformity determination for the entire TIP before the amendment is approved by the MPO or accepted by DOT, unless the amendment merely adds or deletes exempt projects listed in § 93.134.

(3) After an MPO adopts a new or revised transportation plan, conformity must be redetermined by the MPO and DOT within six months from the date of adoption of the plan, unless the new or revised plan merely adds or deletes exempt projects listed in § 93.134. Otherwise, the existing conformity determination for the TIP will lapse.

(4) In any case, conformity determinations must be made no less frequently than every three years or the existing conformity determination will lapse.

(d) *Projects.* FHWA/FTA projects must be found to conform before they are adopted, accepted, approved, or funded. Conformity must be redetermined for any FHWA/FTA project if none of the following major steps has occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates.

§ 93.105 Consultation.

(a) *General.* The implementation plan revision required under § 51.396 of this chapter will include procedures for interagency consultation (Federal, State, and local), and resolution of conflicts.

(1) The implementation plan revision will include procedures to be undertaken by MPOs, State departments of transportation, and DOT with State and local air quality agencies and EPA before making conformity determinations, and by State and local air agencies and EPA with MPOs, State departments of transportation, and DOT in developing applicable implementation plans.

(2) Before the implementation plan revision is approved by EPA, MPOs and State departments of transportation before making conformity determinations must provide reasonable opportunity for consultation with State air agencies, local air quality and transportation agencies, DOT, and EPA, including consultation on the issues described in paragraph (c)(1) of this section.

(b) *Interagency consultation procedures: General factors.* (1) States will provide in the implementation plan well-defined consultation procedures whereby representatives of the MPOs, State and local air quality planning agencies, State and local transportation agencies, and other organizations with responsibilities for developing, submitting, or implementing provisions of an implementation plan required by the CAA must consult with each other and with local or regional offices of EPA, FHWA, and FTA on the development of the implementation plan, the transportation plan, the TIP, and associated conformity determinations.

(2) Interagency consultation procedures will include at a minimum the general factors listed below and the specific processes in paragraph (c) of this section:

(i) The roles and responsibilities assigned to each agency at each stage in the implementation plan development process and the transportation planning process, including technical meetings;

(ii) The organizational level of regular consultation;

(iii) A process for circulating (or providing ready access to) draft documents and supporting materials for comment before formal adoption or publication;

(iv) The frequency of, or process for convening, consultation meetings and responsibilities for establishing meeting agendas;

(v) A process for responding to the significant comments of involved agencies; and

(vi) A process for the development of a list of the TCMs which are in the applicable implementation plan.

(c) *Interagency consultation procedures: Specific processes.* Interagency consultation procedures will also include the following specific processes:

(1) A process involving the MPO, State and local air quality planning agencies, State and local transportation agencies, EPA, and DOT for the following:

(i) Evaluating and choosing a model (or models) and associated methods and assumptions to be used in hot-spot analyses and regional emissions analyses;

(ii) Determining which minor arterials and other transportation projects should be considered "regionally significant" for the purposes of regional emissions analysis (in addition to those functionally classified as principal arterial or higher or fixed guideway systems or extensions that offer an alternative to regional highway travel), and which projects should be considered to have a significant change in design concept and scope from the transportation plan or TIP;

(iii) Evaluating whether projects otherwise exempted from meeting the requirements of this subpart (see §§ 93.134 and 93.135) should be treated as non-exempt in cases where potential adverse emissions impacts may exist for any reason;

(iv) Making a determination, as required by § 93.113(c)(1), whether past obstacles to implementation of TCMs which are behind the schedule established in the applicable implementation plan have been identified and are being overcome, and whether State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding for TCMs. This process shall also consider whether delays in TCM implementation necessitate revisions to the applicable implementation plan to remove TCMs or substitute TCMs or other emission reduction measures;

(v) Identifying, as required by § 93.131(d), projects located at sites in PM_{10} nonattainment areas which have vehicle and roadway emission and dispersion characteristics which are essentially identical to those at sites which have violations verified by monitoring, and therefore require quantitative PM_{10} hot-spot analysis; and

(vi) Notification of transportation plan or TIP revisions or amendments which merely add or delete exempt projects listed in § 93.134.

(2) A process involving the MPO and State and local air quality planning agencies and transportation agencies for the following:

(i) Evaluating events which will trigger new conformity determinations in addition to those triggering events established in § 93.104; and

(ii) Consulting on emissions analysis for transportation activities which cross the borders of MPOs or nonattainment areas or air basins.

(3) Where the metropolitan planning area does not include the entire nonattainment or maintenance area, a process involving the MPO and the State department of transportation for cooperative planning and analysis for purposes of determining conformity of all projects outside the metropolitan area and within the nonattainment or maintenance area.

(4) A process to ensure that plans for construction of regionally significant projects which are not FHWA/FTA projects (including projects for which alternative locations, design concept and scope, or the no-build option are still being considered), including those by recipients of funds designated under title 23 U.S.C. or the Federal Transit Act, are disclosed to the MPO on a regular basis, and to ensure that any changes to those plans are immediately disclosed;

(5) A process involving the MPO and other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act for assuming the location and design concept and scope of projects which are disclosed to the MPO as required by paragraph (c)(4) of this section but whose sponsors have not yet decided these features, in sufficient detail to perform the regional emissions analysis according to the requirements of § 93.130.

(6) A process for consulting on the design, schedule, and funding of research and data collection efforts and regional transportation model

development by the MPO (e.g., household/travel transportation surveys).

(7) A process (including Federal agencies) for providing final documents (including applicable implementation plans and implementation plan revisions) and supporting information to each agency after approval or adoption.

(d) *Resolving conflicts.* Conflicts among State agencies or between State agencies and an MPO shall be escalated to the Governor if they cannot be resolved by the heads of the involved agencies. The State air agency has 14 calendar days to appeal to the Governor after the State DOT or MPO has notified the State air agency head of the resolution of his or her comments. The implementation plan revision required by § 51.396 of this chapter shall define the procedures for starting of the 14-day clock. If the State air agency appeals to the Governor, the final conformity determination must have the concurrence of the Governor. If the State air agency does not appeal to the Governor within 14 days, the MPO or State department of transportation may proceed with the final conformity determination. The Governor may delegate his or her role in this process, but not to the head or staff of the State or local air agency, State department of transportation, State transportation commission or board, or an MPO.

(e) *Public consultation procedures.* Affected agencies making conformity determinations on transportation plans, programs, and projects shall establish a proactive public involvement process which provides opportunity for public review and comment prior to taking formal action on a conformity determination for all transportation plans and TIPs, consistent with the requirements of 23 CFR part 450. In addition, these agencies must specifically address in writing all public comments that known plans for a regionally significant project which is not receiving FHWA or FTA funding or approval have not been properly reflected in the emissions analysis supporting a proposed conformity finding for a transportation plan or TIP. These agencies shall also provide opportunity for public involvement in conformity determinations for projects where otherwise required by law.

§ 93.106 Content of transportation plans.

(a) *Transportation plans adopted after January 1, 1995 in serious, severe, or extreme ozone nonattainment areas and in serious carbon monoxide nonattainment areas.* The transportation plan must specifically describe the transportation system envisioned for certain future years which shall be called horizon years.

(1) The agency or organization developing the transportation plan may choose any years to be horizon years, subject to the following restrictions:

(i) Horizon years may be no more than 10 years apart.

(ii) The first horizon year may be no more than 10 years from the base year used to validate the transportation demand planning model.

(iii) If the attainment year is in the time span of the transportation plan, the attainment year must be a horizon year.

(iv) The last horizon year must be the last year of the transportation plan's forecast period.

(2) For these horizon years:

(i) The transportation plan shall quantify and document the demographic and employment factors influencing expected transportation demand, including land use forecasts, in accordance with implementation plan provisions and § 93.105;

(ii) The highway and transit system shall be described in terms of the regionally significant additions or modifications to the existing transportation network which the transportation plan envisions to be operational in the horizon years. Additions and modifications to the highway network shall be sufficiently identified to indicate intersections with existing regionally significant facilities, and to determine their effect on route options between transportation analysis zones. Each added or modified highway segment shall also be sufficiently identified in terms of its design concept and design scope to allow modeling of travel times under various traffic volumes, consistent with the modeling methods for area-wide transportation analysis in use by the MPO. Transit facilities, equipment, and services envisioned for the future shall be identified in terms of design concept, design scope, and operating policies sufficiently to allow modeling of their transit ridership. The description of additions and modifications to the transportation network shall also be sufficiently specific to show that there is a reasonable relationship between expected land use and the envisioned transportation system; and

(iii) Other future transportation policies, requirements, services, and activities, including intermodal activities, shall be described.

(b) *Moderate areas reclassified to serious.* Ozone or CO nonattainment areas which are reclassified from moderate to serious must meet the requirements of paragraph (a) of this section within two years from the date of reclassification.

(c) *Transportation plans for other areas.* Transportation plans for other areas must meet the requirements of paragraph (a) of this section at least to the extent it has been the previous practice of the MPO to prepare plans which meet those requirements. Otherwise, transportation plans must describe the transportation system envisioned for the future specifically enough to allow determination of conformity according to the criteria and procedures of §§ 93.109 through 93.127.

(d) *Savings.* The requirements of this section supplement other requirements of applicable law or regulation governing the format or content of transportation plans.

§ 93.107 Relationship of transportation plan and TIP conformity with the NEPA process.

The degree of specificity required in the transportation plan and the specific travel network assumed for air quality modeling do not preclude the consideration of alternatives in the NEPA process or other project development studies. Should the NEPA process result in a project with design concept and scope significantly different from that in the transportation plan or TIP, the project must meet the criteria in §§ 93.109 through 93.127 for projects not from a TIP before NEPA process completion.

§ 93.108 Fiscal constraints for transportation plans and TIPs.

Transportation plans and TIPs must be fiscally constrained consistent with DOT's metropolitan planning regulations at 23 CFR part 450 in order to be found in conformity.

§ 93.109 Criteria and procedures for determining conformity of transportation plans, programs, and projects: General.

(a) In order to be found to conform, each transportation plan, program, and FHWA/FTA project must satisfy the applicable criteria and procedures in §§ 93.110 through 93.127 as listed in Table 1 in paragraph (b) of this section, and must comply with all applicable conformity requirements of implementation plans and of court orders for the area which pertain specifically to conformity determination requirements. The criteria for making conformity determinations differ based on the action under review (transportation plans, TIPs, and FHWA/FTA projects), the time period in which the conformity determination is made, and the relevant pollutant.

(b) The following table indicates the criteria and procedures in §§ 93.110

through 93.127 which apply for each action in each time period.

TABLE 1.—CONFORMITY CRITERIA

Action	Criteria
All Periods	
Transportation Plan ...	§§ 93.110, 93.111, 93.112, 93.113(b).
TIP	§§ 93.110, 93.111, 93.112, 93.113(c).
Project (From a conforming plan and TIP).	§§ 93.110, 93.111, 93.112, 93.114, 93.115, 93.116, 93.117.
Project (Not from a conforming plan and TIP).	§§ 93.110, 93.111, 93.112, 93.113(d), 93.114, 93.116, 93.117.
Phase II of the Interim Period	
Transportation Plan ...	§§ 93.122, 93.125.
TIP	§§ 93.123, 93.126.
Project (From a conforming plan and TIP).	§ 93.121.
Project (Not from a conforming plan and TIP).	§ 93.121, 93.124, 93.127.
Transitional Period	
Transportation Plan ...	§§ 93.118, 93.122, 93.125.
TIP	§§ 93.119, 93.123, 93.126.
Project (From a conforming plan and TIP).	§ 93.121.
Project (Not from a conforming plan and TIP).	§§ 93.120, 93.121, 93.124, 93.127
Control Strategy and Maintenance Periods	
Transportation Plan ...	§ 93,118.
TIP	§ 93.119.
Project (From a conforming plan and TIP).	No additional criteria.
Project (Not from a conforming plan and TIP).	§ 93.120.

93.110 The conformity determination must be based on the latest planning assumptions.

93.111 The conformity determination must be based on the latest emission estimation model available.

93.112 The MPO must make the conformity determination according to the consultation procedures of this rule and the implementation plan revision required by § 51.396 of this chapter.

93.113 The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan.

93.114 There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval.

93.115 The project must come from a conforming transportation plan and program.

93.116 The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas.

93.117 The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan.

93.118 The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.119 The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.120 The project which is not from a conforming transportation plan and conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan or implementation plan submission.

93.121 The FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas).

93.122 The transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas.

93.123 The TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

93.124 The project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas.

93.125 The transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

93.126 The TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

93.127 The project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas.

§ 93.110 Criteria and procedures: Latest planning assumptions.

(a) The conformity determination, with respect to all other applicable criteria in §§ 93.111 through 93.127, must be based upon the most recent planning assumptions in force at the time of the conformity determination. This criterion applies during all periods. The conformity determination must satisfy the requirements of paragraphs (b) through (f) of this section.

(b) Assumptions must be derived from the estimates of current and future population, employment, travel, and congestion most recently developed by the MPO or other agency authorized to make such estimates and approved by the MPO. The conformity determination must also be based on the latest assumptions about current and future background concentrations.

(c) The conformity determination for each transportation plan and TIP must discuss how transit operating policies (including fares and service levels) and assumed transit ridership have changed since the previous conformity determination.

(d) The conformity determination must include reasonable assumptions about transit service and increases in transit fares and road and bridge tolls over time.

(e) The conformity determination must use the latest existing information regarding the effectiveness of the TCMs which have already been implemented.

(f) Key assumptions shall be specified and included in the draft documents and supporting materials used for the interagency and public consultation required by § 93.105.

§ 93.111 Criteria and procedures: Latest emissions model.

(a) The conformity determination must be based on the latest emission estimation model available. This criterion applies during all periods. It is satisfied if the most current version of the motor vehicle emissions model specified by EPA for use in the preparation or revision of implementation plans in that State or area is used for the conformity analysis. Where EMFAC is the motor vehicle emissions model used in preparing or revising the applicable implementation plan, new versions must be approved by EPA before they are used in the conformity analysis.

(b) EPA will consult with DOT to establish a grace period following the specification of any new model.

(1) The grace period will be no less than three months and no more than 24 months after notice of availability is published in the **Federal Register**.

(2) The length of the grace period will depend on the degree of change in the model and the scope of re-planning likely to be necessary by MPOs in order to assure conformity. If the grace period will be longer than three months, EPA will announce the appropriate grace period in the **Federal Register**.

(c) Conformity analyses for which the emissions analysis was begun during the grace period or before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model

for transportation plans and TIPs. The previous model may also be used for projects if the analysis was begun during the grace period or before the Federal Register notice of availability, provided no more than three years have passed since the draft environmental document was issued.

§ 93.112 Criteria and procedures: Consultation.

The MPO must make the conformity determination according to the consultation procedures in this rule and in the implementation plan revision required by § 51.396 of this chapter, and according to the public involvement procedures established by the MPO in compliance with 23 CFR part 450. This criterion applies during all periods. Until the implementation plan revision required by § 51.396 of this chapter is approved by EPA, the conformity determination must be made according to the procedures in §§ 93.105(a)(2) and 93.105(e). Once the implementation plan revision has been approved by EPA, this criterion is satisfied if the conformity determination is made consistent with the implementation plan's consultation requirements.

§ 93.113 Criteria and procedures: Timely implementation of TCMs.

(a) The transportation plan, TIP, or FHWA/FTA project which is not from a conforming plan and TIP must provide for the timely implementation of TCMs from the applicable implementation plan. This criterion applies during all periods.

(b) For transportation plans, this criterion is satisfied if the following two conditions are met:

(1) The transportation plan, in describing the envisioned future transportation system, provides for the timely completion or implementation of all TCMs in the applicable implementation plan which are eligible for funding under title 23 U.S.C. or the Federal Transit Act, consistent with schedules included in the applicable implementation plan.

(2) Nothing in the transportation plan interferes with the implementation of any TCM in the applicable implementation plan.

(c) For TIPs, this criterion is satisfied if the following conditions are met:

(1) An examination of the specific steps and funding source(s) needed to fully implement each TCM indicates that TCMs which are eligible for funding under title 23 U.S.C. or the Federal Transit Act are on or ahead of the schedule established in the applicable implementation plan, or, if such TCMs are behind the schedule established in the applicable implementation plan, the MPO and DOT have determined that past obstacles to implementation of the TCMs have been identified and have been or are being overcome, and that all State and local agencies with influence over approvals or funding for TCMs are giving maximum priority to approval or funding of TCMs over other projects within their control, including projects in locations outside the nonattainment or maintenance area.

(2) If TCMs in the applicable implementation plan have previously been programmed for Federal funding but the funds have not been obligated and the TCMs are behind the schedule in the implementation plan, then the TIP cannot be found to conform if the funds intended for those TCMs are reallocated to projects in the TIP other than TCMs, or if there are no other TCMs in the TIP, if the funds are reallocated to projects in the TIP other than projects which are eligible for Federal funding under ISTEA's Congestion Mitigation and Air Quality Improvement Program.

(3) Nothing in the TIP may interfere with the implementation of any TCM in the applicable implementation plan.

(d) For FHWA/FTA projects which are not from a conforming transportation plan and TIP, this criterion is satisfied if the project does not interfere with the implementation of any TCM in the applicable implementation plan.

§ 93.114 Criteria and procedures: Currently conforming transportation plan and TIP.

There must be a currently conforming transportation plan and currently conforming TIP at the time of project approval. This criterion applies during all periods. It is satisfied if the current transportation plan and TIP have been found to conform to the applicable implementation plan by the MPO and DOT according to the procedures of this subpart. Only one conforming transportation plan or TIP may exist in an area at any time; conformity determinations of a previous transportation plan or TIP expire once the current plan or TIP is found to conform by DOT. The conformity determination on a transportation plan or TIP will also lapse if conformity is not determined according to the frequency requirements of § 93.104.

§ 93.115 Criteria and procedures: Projects from a plan and TIP.

(a) The project must come from a conforming plan and program. This criterion applies during all periods. If this criterion is not satisfied, the project must satisfy all criteria in Table 1 for a project not from a conforming transportation plan and TIP. A project is considered to be from a conforming transportation plan if it meets the requirements of paragraph (b) of this section and from a conforming program if it meets the requirements of paragraph (c) of this section.

(b) A project is considered to be from a conforming transportation plan if one of the following conditions applies:

(1) For projects which are required to be identified in the transportation plan in order to satisfy § 93.106, the project is specifically included in the conforming transportation plan and the project's design concept and scope have not changed significantly from those which were described in the transportation plan, or in a manner which would significantly impact use of the facility; or

(2) For projects which are not required to be specifically identified in the transportation plan, the project is identified in the conforming transportation plan, or is consistent with the policies and purpose of the transportation plan and will not interfere with other projects specifically included in the transportation plan.

(c) A project is considered to be from a conforming program if the following conditions are met:

(1) The project is included in the conforming TIP and the design concept and scope of the project were adequate at the time of the TIP conformity determination to determine its contribution to the TIP's regional emissions and have not changed significantly from those which were described in the TIP, or in a manner which would significantly impact use of the facility; and

(2) If the TIP describes a project design concept and scope which includes project-level emissions mitigation or control measures, written commitments to implement such measures must be obtained from the project sponsor and/or operator as required by § 93.133(a) in order for the project to be considered from a conforming program. Any change in these mitigation or control measures that would significantly reduce their effectiveness constitutes a change in the design concept and scope of the project.

§ 93.116 Criteria and procedures: Localized CO and PM_{10} violations (hot spots).

(a) The FHWA/FTA project must not cause or contribute to any new localized CO or PM_{10} violations or increase the frequency or severity of any existing CO

or PM_{10} violations in CO and PM_{10} nonattainment and maintenance areas. This criterion applies during all periods. This criterion is satisfied if it is demonstrated that no new local violations will be created and the severity or number of existing violations will not be increased as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 93.105(c)(1)(i) and 93.131.

(c) For projects which are not of the type identified by § 93.131(a) or § 93.131(d), this criterion may be satisfied if consideration of local factors clearly demonstrates that no local violations presently exist and no new local violations will be created as a result of the project. Otherwise, in CO nonattainment and maintenance areas, a quantitative demonstration must be performed according to the requirements of § 93.131(b).

§ 93.117 Criteria and procedures: Compliance with PM_{10} control measures.

The FHWA/FTA project must comply with PM_{10} control measures in the applicable implementation plan. This criterion applies during all periods. It is satisfied if control measures (for the purpose of limiting PM_{10} emissions from the construction activities and/or normal use and operation associated with the project) contained in the applicable implementation plan are included in the final plans, specifications, and estimates for the project.

§ 93.118 Criteria and procedures: Motor vehicle emissions budget (transportation plan).

(a) The transportation plan must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met:

(b) A regional emissions analysis shall be performed as follows:

(1) The regional analysis shall estimate emissions of any of the following pollutants and pollutant precursors for which the area is in nonattainment or maintenance and for which the applicable implementation plan (or implementation plan submission) establishes an emissions budget:

(i) VOC as an ozone precursor;

(ii) NO_x as an ozone precursor, unless the Administrator determines that additional reductions of NO_x would not contribute to attainment;

(iii) CO;

(iv) PM_{10} (and its precursors VOC and/or NO_x if the applicable implementation plan or implementation plan submission identifies transportation-related precursor emissions within the nonattainment area as a significant contributor to the PM_{10} nonattainment problem or establishes a budget for such emissions); or

(v) NO_x (in NO_2 nonattainment or maintenance areas);

(2) The regional emissions analysis shall estimate emissions from the entire transportation system, including all regionally significant projects contained in the transportation plan and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(3) The emissions analysis methodology shall meet the requirements of § 93.130;

(4) For areas with a transportation plan that meets the content requirements of § 93.106(a), the emissions analysis shall be performed for each horizon year. Emissions in milestone years which are between the horizon years may be determined by interpolation; and

(5) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), the emissions analysis shall be performed for any years in the time span of the transportation plan provided they are not more than ten years apart and provided the analysis is performed for the last year of the plan's forecast period. If the attainment year is in the time span of the transportation plan, the emissions analysis must also be performed for the attainment year. Emissions in milestone years which are between these analysis years may be determined by interpolation.

(c) The regional emissions analysis shall demonstrate that for each of the applicable pollutants or pollutant precursors in paragraph (b)(1) of this section the emissions are less than or equal to the motor vehicle emissions budget as established in the applicable implementation plan or implementation plan submission as follows:

(1) If the applicable implementation plan or implementation plan submission establishes emissions budgets for milestone years, emissions in each milestone year are less than or equal to the motor vehicle emissions budget established for that year;

(2) For nonattainment areas, emissions in the attainment year are less than or equal to the motor vehicle emissions budget established in the applicable implementation plan or implementation plan submission for that year;

(3) For nonattainment areas, emissions in each analysis or horizon year after the attainment year are less than or equal to the motor vehicle emissions budget established by the applicable implementation plan or implementation plan submission for the attainment year. If emissions budgets are established for years after the attainment year, emissions in each analysis year or horizon year must be less than or equal to the motor vehicle emissions budget for that year, if any, or the motor vehicle emissions budget for the most recent budget year prior to the analysis year or horizon year; and

(4) For maintenance areas, emissions in each analysis or horizon year are less than or equal to the motor vehicle emissions budget established by the maintenance plan for that year, if any, or the emissions budget for the most recent budget year prior to the analysis or horizon year.

§ 93.119 Criteria and procedures: Motor vehicle emissions budget (TIP).

(a) The TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. This criterion may be satisfied if the requirements in paragraphs (b) and (c) of this section are met.

(b) For areas with a conforming transportation plan that fully meets the content requirements of § 93.106(a), this criterion may be satisfied without additional regional analysis if:

(1) Each program year of the TIP is consistent with the Federal funding which may be reasonably expected for that year, and required State/local matching funds and funds for State/local funding-only projects are consistent with the revenue sources expected over the same period; and

(2) The TIP is consistent with the conforming transportation plan such that the regional emissions analysis already performed for the plan applies to the TIP also. This requires a demonstration that:

(i) The TIP contains all projects which must be started in the TIP's timeframe in order to achieve the highway and transit system envisioned by the

transportation plan in each of its horizon years;

(ii) All TIP projects which are regionally significant are part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of each regionally significant project in the TIP is not significantly different from that described in the transportation plan.

(3) If the requirements in paragraphs (b)(1) and (b)(2) of this section are not met, then:

(i) The TIP may be modified to meet those requirements; or

(ii) The transportation plan must be revised so that the requirements in paragraphs (b)(1) and (b)(2) of this section are met. Once the revised plan has been found to conform, this criterion is met for the TIP with no additional analysis except a demonstration that the TIP meets the requirements of paragraphs (b)(1) and (b)(2) of this section.

(c) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), a regional emissions analysis must meet all of the following requirements:

(1) The regional emissions analysis shall estimate emissions from the entire transportation system, including all projects contained in the proposed TIP, the transportation plan, and all other regionally significant highway and transit projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan;

(2) The analysis methodology shall meet the requirements of § 93.130(c); and

(3) The regional analysis shall satisfy the requirements of §§ 93.118(b)(1), 93.118(b)(5), and 93.118(c).

§ 93.120 Criteria and procedures: Motor vehicle emissions budget (project not from a plan and TIP).

(a) The project which is not from a conforming transportation plan and a conforming TIP must be consistent with the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission). This criterion applies during the transitional period and the control strategy and maintenance periods, except as provided in § 93.136. It is satisfied if emissions from the implementation of the project, when considered with the emissions from the projects in the conforming transportation plan and TIP and all other regionally significant projects expected in the area, do not exceed the motor vehicle emissions budget(s) in the applicable implementation plan (or implementation plan submission).

(b) For areas with a conforming transportation plan that meets the content requirements of § 93.106(a):

(1) This criterion may be satisfied without additional regional analysis if the project is included in the conforming transportation plan, even if it is not specifically included in the latest conforming TIP. This requires a demonstration that:

(i) Allocating funds to the project will not delay the implementation of projects in the transportation plan or TIP which are necessary to achieve the highway and transit system envisioned by the transportation plan in each of its horizon years;

(ii) The project is not regionally significant or is part of the specific highway or transit system envisioned in the transportation plan's horizon years; and

(iii) The design concept and scope of the project is not significantly different from that described in the transportation plan.

(2) If the requirements in paragraph (b)(1) of this section are not met, a regional emissions analysis must be performed as follows:

(i) The analysis methodology shall meet the requirements of § 93.130;

(ii) The analysis shall estimate emissions from the transportation system, including the proposed project and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan. The analysis must include emissions from all previously approved projects which were not from a transportation plan and TIP; and

(iii) The emissions analysis shall meet the requirements of §§ 93.118(b)(1), 93.118(b)(4), and 93.118(c).

(c) For areas with a transportation plan that does not meet the content requirements of § 93.106(a), a regional emissions analysis must be performed for the project together with the conforming TIP and all other regionally significant projects expected in the nonattainment or maintenance area. This criterion may be satisfied if:

(1) The analysis methodology meets the requirements of § 93.130(c);

(2) The analysis estimates emissions from the transportation system, including the proposed project, and all other regionally significant projects expected in the nonattainment or maintenance area in the timeframe of the transportation plan; and

(3) The regional analysis satisfies the requirements of §§ 93.118(b)(1), 93.118(b)(5), and 93.118(c).

§ 93.121 Criteria and procedures: Localized CO violations (hot spots) in the interim period.

(a) Each FHWA/FTA project must eliminate or reduce the severity and number of localized CO violations in the area substantially affected by the project (in CO nonattainment areas). This criterion applies during the interim and transitional periods only. This criterion is satisfied with respect to existing localized CO violations if it is demonstrated that existing localized CO violations will be eliminated or reduced in severity and number as a result of the project.

(b) The demonstration must be performed according to the requirements of §§ 93.105(c)(1)(i) and 93.131.

(c) For projects which are not of the type identified by § 93.131(a), this criterion may be satisfied if consideration of local factors clearly demonstrates that existing CO violations will be eliminated or reduced in severity and number. Otherwise, a quantitative demonstration must be performed according to the requirements of § 93.131(b).

§ 93.122 Criteria and procedures: Interim period reductions in ozone and CO areas (transportation plan).

(a) A transportation plan must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario for each of the analysis years to be the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming transportation plan and/or TIP; or have completed the NEPA process. (For the first conformity determination on the transportation plan after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario for each of the analysis years as the transportation system that will result in that year from the implementation of the proposed transportation plan, TIPs adopted under it, and other expected regionally significant projects in the nonattainment area. It will include the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) specifically identified in the proposed transportation plan which will be operational or in effect in the analysis year, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is identified in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the transportation plan;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the transportation plan, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions in NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions (for ozone nonattainment areas) and CO emissions (for CO nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the periods between the first milestone year and the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 93.123 Criteria and procedures: Interim period reductions in ozone and CO areas (TIP).

(a) A TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if a regional emissions analysis is performed as described in paragraphs (b) through (f) of this section.

(b) Determine the analysis years for which emissions are to be estimated. The first analysis year shall be no later than the first milestone year (1995 in CO nonattainment areas and 1996 in ozone nonattainment areas). The analysis years shall be no more than ten years apart. The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(c) Define the 'Baseline' scenario as the future transportation system that would result from current programs, composed of the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All in-place regionally significant highway and transit facilities, services and activities;

(2) All ongoing travel demand management or transportation system management activities; and

(3) Completion of all regionally significant projects, regardless of funding source, which are currently under construction or are undergoing right-of-way acquisition (except for hardship acquisition and protective buying); come from the first three years of the previously conforming TIP; or have completed the NEPA process. (For the first conformity determination on the TIP after November 24, 1993, a project may not be included in the "Baseline" scenario if one of the following major steps has not occurred within the past three years: NEPA process completion; start of final design; acquisition of a significant portion of the right-of-way; or approval of the plans, specifications and estimates. Such a project must be included in the "Action" scenario, as described in paragraph (d) of this section.)

(d) Define the 'Action' scenario as the future transportation system that will result from the implementation of the proposed TIP and other expected regionally significant projects in the nonattainment area in the timeframe of the transportation plan. It will include the following (except that projects listed in §§ 93.134 and 93.135 need not be explicitly considered):

(1) All facilities, services, and activities in the 'Baseline' scenario;

(2) Completion of all TCMs and regionally significant projects (including facilities, services, and activities) included in the proposed TIP, except that regulatory TCMs may not be assumed to begin at a future time unless the regulation is already adopted by the enforcing jurisdiction or the TCM is

contained in the applicable implementation plan;

(3) All travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which have been fully adopted and/or funded by the enforcing jurisdiction or sponsoring agency since the last conformity determination on the TIP;

(4) The incremental effects of any travel demand management programs and transportation system management activities known to the MPO, but not included in the applicable implementation plan or utilizing any Federal funding or approval, which were adopted and/or funded prior to the date of the last conformity determination on the TIP, but which have been modified since then to be more stringent or effective;

(5) Completion of all expected regionally significant highway and transit projects which are not from a conforming transportation plan and TIP; and

(6) Completion of all expected regionally significant non-FHWA/FTA highway and transit projects that have clear funding sources and commitments leading toward their implementation and completion by the analysis year.

(e) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the 'Baseline' and 'Action' scenarios, and determine the difference in regional VOC and NO_x emissions (unless the Administrator determines that additional reductions of NO_x would not contribute to attainment) between the two scenarios for ozone nonattainment areas and the difference in CO emissions between the two scenarios for CO nonattainment areas. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. Emissions in milestone years which are between analysis years may be determined by interpolation.

(f) This criterion is met if the regional VOC and NO_x emissions in ozone nonattainment areas and CO emissions in CO nonattainment areas predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and if this can reasonably be expected to be true in the period between the analysis years. The regional analysis must show that the 'Action' scenario contributes to a reduction in emissions from the 1990 emissions by any nonzero amount.

§ 93.124 Criteria and procedures: Interim period reductions for ozone and CO areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emissions reductions in ozone and CO nonattainment areas. This criterion applies during the interim and transitional periods only, except as otherwise provided in § 93.136. This criterion is satisfied if a regional emissions analysis is performed which meets the requirements of § 93.122 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the plan or TIP, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 93.125 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (transportation plan).

(a) A transportation plan must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised transportation plan. This criterion may be satisfied if the requirements of either paragraph (b) or (c) of this section are met.

(b) Demonstrate that implementation of the plan and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and of each transportation-related precursor of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated. Analysis years shall be no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 93.122(c), and the "Action" scenario, as defined in § 93.122(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios and determine the difference between the two scenarios in regional PM_{10} emissions in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and in NO_x emissions in an NO_2 nonattainment area. The analysis must be performed for each of the analysis years according to the requirements of § 93.130. The analysis must address the periods between the analysis years and the periods between 1990, the first milestone year (if any), and the first of the analysis years. Emissions in milestone years which are between the analysis years may be determined by interpolation.

(4) Demonstrate that the regional PM_{10} emissions and PM_{10} precursor emissions, where applicable, (for PM_{10} nonattainment areas) and NO_x emissions (for NO_2 nonattainment areas) predicted in the 'Action' scenario are less than the emissions predicted from the 'Baseline' scenario in each analysis year, and that this can reasonably be expected to be true in the periods between the first milestone year (if any) and the analysis years.

(c) Demonstrate that when the projects in the transportation plan and all other regionally significant projects expected in the nonattainment area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as follows:

(1) Determine the baseline regional emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) and NO_x (for NO_2 nonattainment areas) from highway and transit sources. Baseline emissions are those estimated to have occurred during calendar year 1990, unless the implementation plan revision required by § 51.396 of this chapter defines the baseline emissions for a PM_{10} area to be those occurring in a different calendar year for which a baseline emissions inventory was developed for the purpose of developing a control strategy implementation plan.

(2) Estimate the emissions of the applicable pollutant(s) from the entire transportation system, including projects in the transportation plan and TIP and all other regionally significant projects in the nonattainment area, according to the requirements of § 93.130. Emissions shall be estimated for analysis years which are no more than ten years apart. The first analysis year shall be no later than 1996 (for NO_2 areas) or four years and six months following the date of designation (for PM_{10} areas). The second analysis year shall be either the attainment year for the area, or if the attainment year is the same as the first analysis year or earlier, the second analysis year shall be at least five years beyond the first analysis year. The last year of the transportation plan's forecast period shall also be an analysis year.

(3) Demonstrate that for each analysis year the emissions estimated in paragraph (c)(2) of this section are no greater than baseline emissions of PM_{10} and PM_{10} precursors, where applicable (for PM_{10} nonattainment areas) or NO_x (for NO_2 nonattainment areas) from highway and transit sources.

§ 93.126 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (TIP).

(a) A TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies only during the interim and transitional periods. It applies to the net effect on emissions of all projects contained in a new or revised TIP. This criterion may be satisfied if the requirements of either paragraph (b) or paragraph (c) of this section are met.

(b) Demonstrate that implementation of the plan and TIP and all other regionally significant projects expected in the nonattainment area will contribute to reductions in emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area, by performing a regional emissions analysis as follows:

(1) Determine the analysis years for which emissions are to be estimated, according to the requirements of § 93.125(b)(1).

(2) Define for each of the analysis years the "Baseline" scenario, as defined in § 93.123(c), and the "Action" scenario, as defined in § 93.123(d).

(3) Estimate the emissions predicted to result in each analysis year from travel on the transportation systems defined by the "Baseline" and "Action" scenarios as required by § 93.125(b)(3), and make the demonstration required by § 93.125(b)(4).

(c) Demonstrate that when the projects in the transportation plan and TIP and all other regionally significant projects expected in the area are implemented, the transportation system's total highway and transit emissions of PM_{10} in a PM_{10} nonattainment area (and transportation-related precursors of PM_{10} in PM_{10} nonattainment areas if the EPA Regional Administrator or the director of the State air agency has made a finding that such precursor emissions from within the nonattainment area are a significant contributor to the PM_{10} nonattainment problem and has so notified the MPO and DOT) and of NO_x in an NO_2 nonattainment area will not be greater than baseline levels, by performing a regional emissions analysis as required by § 93.125(c) (1) through (3).

§ 93.127 Criteria and procedures: Interim period reductions for PM_{10} and NO_2 areas (project not from a plan and TIP).

A transportation project which is not from a conforming transportation plan and TIP must contribute to emission reductions or must not increase emissions in PM_{10} and NO_2 nonattainment areas. This criterion applies during the interim and transitional periods only. This criterion is met if a regional emissions analysis is performed which meets the requirements of § 93.125 and which includes the transportation plan and project in the 'Action' scenario. If the project which is not from a conforming transportation plan and TIP is a modification of a project currently in the transportation plan or TIP, and § 93.125(b) is used to demonstrate satisfaction of this criterion, the 'Baseline' scenario must include the project with its original design concept and scope, and the 'Action' scenario must include the project with its new design concept and scope.

§ 93.128 Transition from the interim period to the control strategy period.

(a) Areas which submit a control strategy implementation plan revision after November 24, 1993. (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by one year from the date the Clean Air Act requires submission of such control strategy implementation plan revision. Otherwise, the conformity status of the transportation plan and TIP will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures for 90 days following submission of the control strategy implementation plan revision, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (a)(1) of this section.

(ii) Beginning 90 days after submission of the control strategy implementation plan revision, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA disapproves the submitted control strategy implementation plan revision and so notifies the State, MPO, and DOT, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the conformity status of the transportation plan and TIP shall lapse 120 days after EPA's disapproval, and no new project-level conformity determinations may be made. No new transportation plan, TIP, or project may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (a)(2) of this section, if EPA disapproves the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph

(a)(1) of this section shall apply for 12 months following the date of disapproval. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of disapproval unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(b) *Areas which have not submitted a control strategy implementation plan revision.* (1) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan revision is after November 24, 1993 and EPA has notified the State, MPO, and DOT of the State's failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m):

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after the Clean Air Act deadline; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(2) For areas whose Clean Air Act deadline for submission of the control strategy implementation plan was before November 24, 1993 and EPA has made a finding of failure to submit a control strategy implementation plan revision, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(c) *Areas which have not submitted a complete control strategy implementation plan revision.* (1) For areas where EPA notifies the State, MPO, and DOT after November 24, 1993 that the control strategy implementation plan revision submitted by the State is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning 120 days after EPA's incompleteness finding; and

(ii) The conformity status of the transportation plan and TIP shall lapse one year after the Clean Air Act deadline, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(1)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (a)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(2) For areas where EPA has determined before November 24, 1993 that the control strategy implementation plan revision is incomplete, which initiates the sanction process under Clean Air Act sections 179 or 110(m), the following apply unless the failure has been remedied and acknowledged by a letter from the EPA Regional Administrator:

(i) No new transportation plans or TIPs may be found to conform beginning March 24, 1994; and

(ii) The conformity status of the transportation plan and TIP shall lapse November 25, 1994, and no new project-level conformity determinations may be made.

(iii) Notwithstanding paragraphs (c)(2)(i) and (ii) of this section, if EPA notes in its incompleteness finding that the submittal would have been considered complete with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act section 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for a period of 12 months following the date of the incompleteness determination. The conformity status of the transportation plan and TIP shall lapse 12 months following the date of the incompleteness determination unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(d) *Areas which submitted a control strategy implementation plan before November 24, 1993.* (1) The transportation plan and TIP must be demonstrated to conform according to transitional period criteria and procedures by November 25, 1994. Otherwise, their conformity status will lapse, and no new project-level conformity determinations may be made.

(i) The conformity of new transportation plans and TIPs may be demonstrated according to Phase II interim period criteria and procedures until February 22, 1994, provided the conformity of such transportation plans and TIPs is redetermined according to transitional period criteria and procedures as required in paragraph (d)(1) of this section.

(ii) Beginning February 22, 1994, new transportation plans and TIPs shall demonstrate conformity according to transitional period criteria and procedures.

(2) If EPA has disapproved the most recent control strategy implementation plan submission, the conformity status of the transportation plan and TIP shall lapse March 24, 1994, and no new project-level conformity determinations may be made. No new transportation plans, TIPs, or projects may be found to conform until another control strategy implementation plan revision is submitted and conformity is demonstrated according to transitional period criteria and procedures.

(3) Notwithstanding paragraph (d)(2) of this section, if EPA has disapproved the submitted control strategy implementation plan revision but determines that the control strategy contained in the revision would have been considered approvable with respect to requirements for emission reductions if all committed measures had been submitted in enforceable form as required by Clean Air Act § 110(a)(2)(A), the provisions of paragraph (d)(1) of this section shall apply for 12 months following November 24, 1993. The conformity status of the transportation plan and TIP shall lapse 12 months following November 24, 1993 unless another control strategy implementation plan revision is submitted to EPA and found to be complete.

(e) *Projects.* If the currently conforming transportation plan and TIP have not been demonstrated to conform according to transitional period criteria and procedures, the requirements of paragraphs (e) (1) and (2) of this section must be met.

(1) Before a FHWA/FTA project which is regionally significant and increases single-occupant vehicle capacity (a new general purpose highway on a new location or adding general purpose lanes) may be found to conform, the State air agency must be

consulted on how the emissions which the existing transportation plan and TIP's conformity determination estimates for the "Action" scenario (as required by §§ 93.122 through 93.127) compare to the motor vehicle emissions budget in the implementation plan submission or the projected motor vehicle emissions budget in the implementation plan under development.

(2) In the event of unresolved disputes on such project-level conformity determinations, the State air agency may escalate the issue to the Governor consistent with the procedure in § 93.105(d), which applies for any State air agency comments on a conformity determination.

(f) *Redetermination of conformity of the existing transportation plan and TIP according to the transitional period criteria and procedures.* (1) The redetermination of the conformity of the existing transportation plan and TIP according to transitional period criteria and procedures (as required by paragraphs (a)(1) and (d)(1) of this section) does not require new emissions analysis and does not have to satisfy the requirements of §§ 93.110 and 93.111 if:

(i) The control strategy implementation plan revision submitted to EPA uses the MPO's modeling of the existing transportation plan and TIP for its projections of motor vehicle emissions; and

(ii) The control strategy implementation plan does not include any transportation projects which are not included in the transportation plan and TIP.

(2) A redetermination of conformity as described in paragraph (f)(1) of this section is not considered a conformity determination for the purposes of § 93.104(b)(4) or § 93.104(c)(4) regarding the maximum intervals between conformity determinations. Conformity must be determined according to all the applicable criteria and procedures of § 93.109 within three years of the last determination which did not rely on paragraph (f)(1) of this section.

(g) *Ozone nonattainment areas.* (1) The requirements of paragraph (b)(1) of this section apply if a serious or above ozone nonattainment area has not submitted the implementation plan revisions which Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) require to be submitted to EPA November 15, 1994, even if the area has submitted the implementation plan revision which Clean Air Act section 182(b)(1) requires to be submitted to EPA November 15, 1993.

(2) The requirements of paragraph (b)(1) of this section apply if a moderate ozone nonattainment area which is using photochemical dispersion modeling to demonstrate the "specific annual reductions as necessary to attain" required by Clean Air Act section 182(b)(1), and which has permission from EPA to delay submission of such demonstration until November 15, 1994, does not submit such demonstration by that date. The requirements of paragraph (b)(1) of this section apply in this case even if the area has submitted the 15% emission reduction demonstration required by Clean Air Act section 182(b)(1).

(3) The requirements of paragraph (a) of this section apply when the implementation plan revisions required by Clean Air Act sections 182(c)(2)(A) and 182(c)(2)(B) are submitted.

(h) *Nonattainment areas which are not required to demonstrate reasonable further progress and attainment.* If an area listed in § 93.136 submits a control strategy implementation plan revision, the requirements of paragraphs (a) and (e) of this section apply. Because the areas listed in § 93.136 are not required to demonstrate reasonable further progress and attainment and therefore have no Clean Air Act deadline, the provisions of paragraph (b) of this section do not apply to these areas at any time.

(i) *Maintenance plans.* If a control strategy implementation plan revision is not submitted to EPA but a maintenance plan required by Clean Air Act section 175A is submitted to EPA, the requirements of paragraph (a) or (d) of this section apply, with the maintenance plan submission treated as a "control strategy implementation plan revision" for the purposes of those requirements.

§ 93.129 Requirements for adoption or approval of projects by other recipients of funds designated under title 23 U.S.C. or the Federal Transit Act.

No recipient of federal funds designated under title 23 U.S.C. or the Federal Transit Act shall adopt or approve a regionally significant highway or transit project, regardless of funding source, unless there is a currently conforming transportation plan and TIP consistent with the requirements of § 93.114 and the requirements of one of the following paragraphs (a) through (e) of this section are met:

(a) The project comes from a conforming plan and program consistent with the requirements of § 93.115;

(b) The project is included in the regional emissions analysis supporting the currently conforming TIP's conformity determination, even if the project is not strictly "included" in the TIP for the purposes of MPO project selection or endorsement, and the project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility;

(c) During the control strategy or maintenance period, the project is consistent with the motor vehicle emissions budget(s) in the applicable implementation plan consistent with the requirements of § 93.120;

(d) During Phase II of the interim period, the project contributes to emissions reductions or does not increase emissions consistent with the requirements of § 93.124 (in ozone and CO nonattainment areas) or § 93.127 (in PM_{10} and NO_2 nonattainment areas); or

(e) During the transitional period, the project satisfies the requirements of both paragraphs (c) and (d) of this section.

§ 93.130 Procedures for determining regional transportation-related emissions.

(a) *General requirements.* (1) The regional emissions analysis for the transportation plan, TIP, or project not from a conforming plan and TIP shall include all regionally significant projects expected in the nonattainment or maintenance area, including FHWA/FTA projects proposed in the transportation plan and TIP and all other regionally significant projects which are disclosed to the MPO as required by § 93.105. Projects which are not regionally significant are not required to be explicitly modeled, but VMT from such projects must be estimated in accordance with reasonable professional practice. The effects of TCMs and similar projects that are not regionally significant may also be estimated in accordance with reasonable professional practice.

(2) The emissions analysis may not include for emissions reduction credit any TCMs which have been delayed beyond the scheduled date(s) until such time as implementation has been assured. If the TCM has been partially implemented and it can be demonstrated that it is providing quantifiable emission reduction benefits, the emissions analysis may include that emissions reduction credit.

(3) Emissions reduction credit from projects, programs, or activities which require a regulation in order to be implemented may not be included in the emissions analysis unless the regulation is already adopted by the enforcing jurisdiction. Adopted regulations are required for demand management strategies for reducing

emissions which are not specifically identified in the applicable implementation plan, and for control programs which are external to the transportation system itself, such as tailpipe or evaporative emission standards, limits on gasoline volatility, inspection and maintenance programs, and oxygenated or reformulated gasoline or diesel fuel. A regulatory program may also be considered to be adopted if an opt-in to a Federally enforced program has been approved by EPA, if EPA has promulgated the program (if the control program is a Federal responsibility, such as tailpipe standards), or if the Clean Air Act requires the program without need for individual State action and without any discretionary authority for EPA to set its stringency, delay its effective date, or not implement the program.

(4) Notwithstanding paragraph (a)(3) of this section, during the transitional period, control measures or programs which are committed to in an implementation plan submission as described in §§ 93.118 through 93.120, but which has not received final EPA action in the form of a finding of incompleteness, approval, or disapproval may be assumed for emission reduction credit for the purpose of demonstrating that the requirements of §§ 93.118 through 93.120 are satisfied.

(5) A regional emissions analysis for the purpose of satisfying the requirements of §§ 93.122 through 93.124 may account for the programs in paragraph (a)(4) of this section, but the same assumptions about these programs shall be used for both the "Baseline" and "Action" scenarios.

(b) *Serious, severe, and extreme ozone nonattainment areas and serious carbon monoxide areas after January 1, 1995.* Estimates of regional transportation-related emissions used to support conformity determinations must be made according to procedures which meet the requirements in paragraphs (b)(1) through (5) of this section.

(1) A network-based transportation demand model or models relating travel demand and transportation system performance to land-use patterns, population demographics, employment, transportation infrastructure, and transportation policies must be used to estimate travel within the metropolitan planning area of the nonattainment area. Such a model shall possess the following attributes:

(i) The modeling methods and the functional relationships used in the model(s) shall in all respects be in accordance with acceptable professional practice, and reasonable for purposes of emission estimation;

(ii) The network-based model(s) must be validated against ground counts for a base year that is not more than 10 years prior to the date of the conformity determination. Land use, population, and other inputs must be based on the best available information and appropriate to the validation base year;

(iii) For peak-hour or peak-period traffic assignments, a capacity sensitive assignment methodology must be used;

(iv) Zone-to-zone travel times used to distribute trips between origin and destination pairs must be in reasonable agreement with the travel times which result from the process of assignment of trips to network links. Where use of transit currently is anticipated to be a significant factor in satisfying transportation demand, these times should also be used for modeling mode splits;

(v) Free-flow speeds on network links shall be based on empirical observations;

(vi) Peak and off-peak travel demand and travel times must be provided;

(vii) Trip distribution and mode choice must be sensitive to pricing, where pricing is a significant factor, if the network model is capable of such determinations and the necessary information is available;

(viii) The model(s) must utilize and document a logical correspondence between the assumed scenario of land development and use and the future transportation system for which emissions are being estimated. Reliance on a formal land-use model is not specifically required but is encouraged;

(ix) A dependence of trip generation on the accessibility of destinations via the transportation system (including pricing) is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available;

(x) A dependence of regional economic and population growth on the accessibility of destinations via the transportation system is strongly encouraged but not specifically required, unless the network model is capable of such determinations and the necessary information is available; and

(xi) Consideration of emissions increases from construction-related congestion is not specifically required.

(2) Highway Performance Monitoring System (HPMS) estimates of vehicle miles traveled shall be considered the primary measure of vehicle miles traveled within the portion of the nonattainment or maintenance area and for the functional classes of roadways included in HPMS, for urban areas which are sampled on a separate urban area basis. A factor (or factors) shall be developed to reconcile and calibrate the network-based model estimates of vehicle miles traveled in the base year of its validation to the HPMS estimates for the same period, and these factors shall be applied to model estimates of future vehicle miles traveled. In this factoring process, consideration will be given to differences in the facility coverage of the HPMS and the modeled network description. Departure from these procedures is permitted with the concurrence of DOT and EPA.

(3) Reasonable methods shall be used to estimate nonattainment area vehicle travel on off-network roadways within the urban transportation planning area, and on roadways outside the urban transportation planning area.

(4) Reasonable methods in accordance with good practice must be used to estimate traffic speeds and delays in a manner that is sensitive to the estimated volume of travel on each roadway segment represented in the network model.

(5) Ambient temperatures shall be consistent with those used to establish the emissions budget in the applicable implementation plan. Factors other than temperatures, for example the fraction of travel in a hot stabilized engine mode, may be modified after interagency consultation according to § 93.105 if the newer estimates incorporate additional or more geographically specific information or represent a logically estimated trend in such factors beyond the period considered in the applicable implementation plan.

(c) *Areas which are not serious, severe, or extreme ozone nonattainment areas or serious carbon monoxide areas, or before January 1, 1995.* (1) Procedures which satisfy some or all of the requirements of paragraph (a) of this section shall be used in all areas not subject to paragraph (a) of this section in which those procedures have been the previous practice of the MPO.

(2) Regional emissions may be estimated by methods which do not explicitly or comprehensively account for the influence of land use and transportation infrastructure on vehicle miles traveled and traffic speeds and congestion. Such methods must account for VMT growth by extrapolating historical VMT or projecting future VMT by considering growth in population and historical growth trends for vehicle miles travelled per person. These methods must also consider future economic activity, transit

alternatives, and transportation system policies.

(d) *Projects not from a conforming plan and TIP in isolated rural nonattainment and maintenance areas.* This paragraph applies to any nonattainment or maintenance area or any portion thereof which does not have a metropolitan transportation plan or TIP and whose projects are not part of the emissions analysis of any MPO's metropolitan transportation plan or TIP (because the nonattainment or maintenance area or portion thereof does not contain a metropolitan planning area or portion of a metropolitan planning area and is not part of a Metropolitan Statistical Area or Consolidated Metropolitan Statistical Area which is or contains a nonattainment or maintenance area).

(1) Conformity demonstrations for projects in these areas may satisfy the requirements of §§ 93.120, 93.124, and 93.127 with one regional emissions analysis which includes all the regionally significant projects in the nonattainment or maintenance area (or portion thereof).

(2) The requirements of § 93.120 shall be satisfied according to the procedures in § 93.120(c), with references to the "transportation plan" taken to mean the statewide transportation plan.

(3) The requirements of §§ 93.124 and 93.127 which reference "transportation plan" or "TIP" shall be taken to mean those projects in the statewide transportation plan or statewide TIP which are in the nonattainment or maintenance area (or portion thereof).

(4) The requirement of § 93.129(b) shall be satisfied if:

(i) The project is included in the regional emissions analysis which includes all regionally significant highway and transportation projects in the nonattainment or maintenance area (or portion thereof) and supports the most recent conformity determination made according to the requirements of §§ 93.120, 93.124, or 93.127 (as modified by paragraphs (d)(2) and (d)(3) of this section), as appropriate for the time period and pollutant; and

(ii) The project's design concept and scope have not changed significantly from those which were included in the regional emissions analysis, or in a manner which would significantly impact use of the facility.

(e) *PM_{10} from construction-related fugitive dust.* (1) For areas in which the implementation plan does not identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the fugitive PM_{10} emissions associated with highway and transit project construction are not required to be considered in the regional emissions analysis.

(2) In PM_{10} nonattainment and maintenance areas with implementation plans which identify construction-related fugitive PM_{10} as a contributor to the nonattainment problem, the regional PM_{10} emissions analysis shall consider construction-related fugitive PM_{10} and shall account for the level of construction activity, the fugitive PM_{10} control measures in the applicable implementation plan, and the dust-producing capacity of the proposed activities.

§ 93.131 Procedures for determining localized CO and PM_{10} concentrations (hot-spot analysis).

(a) In the following cases, CO hot-spot analyses must be based on the applicable air quality models, data bases, and other requirements specified in 40 CFR part 51, Appendix W ("Guideline on Air Quality Models (Revised)" (1988), supplement A (1987) and supplement B (1993), EPA publication no. 450/2–78–027R), unless, after the interagency consultation process described in § 93.105 and with the approval of the EPA Regional Administrator, these models, data bases, and other requirements are determined to be inappropriate:

(1) For projects in or affecting locations, areas, or categories of sites which are identified in the applicable implementation plan as sites of current violation or possible current violation;

(2) For those intersections at Level-of-Service D, E, or F, or those that will change to Level-of-Service D, E, or F because of increased traffic volumes related to a new project in the vicinity;

(3) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the highest traffic volumes;

(4) For any project involving or affecting any of the intersections which the applicable implementation plan identifies as the top three intersections in the nonattainment or maintenance area based on the worst Level-of-Service; and

(5) Where use of the "Guideline" models is practicable and reasonable given the potential for violations.

(b) In cases other than those described in paragraph (a) of this section, other quantitative methods may be used if they represent reasonable and common professional practice.

(c) CO hot-spot analyses must include the entire project, and may be performed only after the major design features which will significantly impact CO concentrations have been identified. The background concentration can be estimated using the ratio of future to current traffic multiplied by the ratio of future to current emission factors.

(d) PM_{10} hot-spot analysis must be performed for projects which are located at sites at which violations have been verified by monitoring, and at sites which have essentially identical vehicle and roadway emission and dispersion characteristics (including sites near one at which a violation has been monitored). The projects which require PM–10 hot-spot analysis shall be determined through the interagency consultation process required in § 93.105. In PM–10 nonattainment and maintenance areas, new or expanded bus and rail terminals and transfer points which increase the number of diesel vehicles congregating at a single location require hot-spot analysis. DOT may choose to make a categorical conformity determination on bus and rail terminals or transfer points based on appropriate modeling of various terminal sizes, configurations, and activity levels. The requirements of this paragraph for quantitative hot-spot analysis will not take effect until EPA releases modeling guidance on this subject and announces in the **Federal Register** that these requirements are in effect.

(e) Hot-spot analysis assumptions must be consistent with those in the regional emissions analysis for those inputs which are required for both analyses.

(f) PM_{10} or CO mitigation or control measures shall be assumed in the hot-spot analysis only where there are written commitments from the project sponsor and/or operator to the implementation of such measures, as required by § 93.133(a).

(g) CO and PM_{10} hot-spot analyses are not required to consider construction-related activities which cause temporary increases in emissions. Each site which is affected by construction-related activities shall be considered separately, using established "Guideline" methods. Temporary increases are defined as those which occur only during the construction phase and last five years or less at any individual site.

§ 93.132 Using the motor vehicle emissions budget in the applicable implementation plan (or implementation plan submission).

(a) In interpreting an applicable implementation plan (or implementation plan submission) with respect to its motor vehicle emissions budget(s), the MPO and DOT may not

infer additions to the budget(s) that are not explicitly intended by the implementation plan (or submission). Unless the implementation plan explicitly quantifies the amount by which motor vehicle emissions could be higher while still allowing a demonstration of compliance with the milestone, attainment, or maintenance requirement and explicitly states an intent that some or all of this additional amount should be available to the MPO and DOT in the emission budget for conformity purposes, the MPO may not interpret the budget to be higher than the implementation plan's estimate of future emissions. This applies in particular to applicable implementation plans (or submissions) which demonstrate that after implementation of control measures in the implementation plan:

(1) Emissions from all sources will be less than the total emissions that would be consistent with a required demonstration of an emissions reduction milestone;

(2) Emissions from all sources will result in achieving attainment prior to the attainment deadline and/or ambient concentrations in the attainment deadline year will be lower than needed to demonstrate attainment; or

(3) Emissions will be lower than needed to provide for continued maintenance.

(b) If an applicable implementation plan submitted before November 24, 1993 demonstrates that emissions from all sources will be less than the total emissions that would be consistent with attainment and quantifies that "safety margin," the State may submit a SIP revision which assigns some or all of this safety margin to highway and transit mobile sources for the purposes of conformity. Such a SIP revision, once it is endorsed by the Governor and has been subject to a public hearing, may be used for the purposes of transportation conformity before it is approved by EPA.

(c) A conformity demonstration shall not trade emissions among budgets which the applicable implementation plan (or implementation plan submission) allocates for different pollutants or precursors, or among budgets allocated to motor vehicles and other sources, without a SIP revision or a SIP which establishes mechanisms for such trades.

(d) If the applicable implementation plan (or implementation plan submission) estimates future emissions by geographic subarea of the nonattainment area, the MPO and DOT are not required to consider this to establish subarea budgets, unless the applicable implementation plan (or implementation plan submission) explicitly indicates an intent to create such subarea budgets for the purposes of conformity.

(e) If a nonattainment area includes more than one MPO, the SIP may establish motor vehicle emissions budgets for each MPO, or else the MPOs must collectively make a conformity determination for the entire nonattainment area.

§ 93.133 Enforceability of design concept and scope and project-level mitigation and control measures.

(a) Prior to determining that a transportation project is in conformity, the MPO, other recipient of funds designated under title 23 U.S.C. or the Federal Transit Act, FHWA, or FTA must obtain from the project sponsor and/or operator written commitments to implement in the construction of the project and operation of the resulting facility or service any project-level mitigation or control measures which are identified as conditions for NEPA process completion with respect to local PM_{10} or CO impacts. Before making conformity determinations written commitments must also be obtained for project-level mitigation or control measures which are conditions for making conformity determinations for a transportation plan or TIP and included in the project design concept and scope which is used in the regional emissions analysis required by §§ 93.118 through 93.120 and §§ 93.122–93.124 or used in the project-level hot-spot analysis required by §§ 93.116 and 93.121.

(b) Project sponsors voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(c) The implementation plan revision required in § 51.396 of this chapter shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination, and that project sponsors must comply with such commitments.

(d) During the control strategy and maintenance periods, if the MPO or project sponsor believes the mitigation or control measure is no longer necessary for conformity, the project sponsor or operator may be relieved of its obligation to implement the mitigation or control measure if it can demonstrate that the requirements of §§ 93.116, 93.118, and 93.119 are satisfied without the mitigation or control measure, and so notifies the agencies involved in the interagency consultation process required under § 93.105. The MPO and DOT must confirm that the transportation plan and TIP still satisfy the requirements of §§ 93.118 and 93.119 and that the project still satisfies the requirements of § 93.116, and therefore that the conformity determinations for the transportation plan, TIP, and project are still valid.

§ 93.134 Exempt projects.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 2 are exempt from the requirement that a conformity determination be made. Such projects may proceed toward implementation even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 2 is not exempt if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potentially adverse emissions impacts for any reason. States and MPOs must ensure that exempt projects do not interfere with TCM implementation.

TABLE 2.—EXEMPT PROJECTS

Safety
Railroad/highway crossing.
Hazard elimination program.
Safer non-Federal-aid system roads.
Shoulder improvements.
Increasing sight distance.
Safety improvement program.
Traffic control devices and operating assistance other than signalization projects.
Railroad/highway crossing warning devices.
Guardrails, median barriers, crash cushions.

TABLE 2.—EXEMPT PROJECTS—Continued

Pavement resurfacing and/or rehabilitation.
Pavement marking demonstration.
Emergency relief (23 U.S.C. 125).
Fencing.
Skid treatments.
Safety roadside rest areas.
Adding medians.
Truck climbing lanes outside the urbanized area.
Lighting improvements.
Widening narrow pavements or reconstructing bridges (no additional travel lanes).
Emergency truck pullovers.

Mass Transit

Operating assistance to transit agencies.
Purchase of support vehicles.
Rehabilitation of transit vehicles[1].
Purchase of office, shop, and operating equipment for existing facilities.
Purchase of operating equipment for vehicles (e.g., radios, fareboxes, lifts, etc.).
Construction or renovation of power, signal, and communications systems.
Construction of small passenger shelters and information kiosks.
Reconstruction or renovation of transit buildings and structures (e.g., rail or bus buildings, storage and maintenance facilities, stations, terminals, and ancillary structures).
Rehabilitation or reconstruction of track structures, track, and trackbed in existing rights-of-way.
Purchase of new buses and rail cars to replace existing vehicles or for minor expansions of the fleet[1].
Construction of new bus or rail storage/maintenance facilities categorically excluded in 23 CFR part 771.

Air Quality

Continuation of ride-sharing and van-pooling promotion activities at current levels.
Bicycle and pedestrian facilities.

Other

Specific activities which do not involve or lead directly to construction, such as:
- Planning and technical studies.
- Grants for training and research programs.
- Planning activities conducted pursuant to titles 23 and 49 U.S.C.
- Federal-aid systems revisions.

Engineering to assess social, economic, and environmental effects of the proposed action or alternatives to that action.
Noise attenuation.
Advance land acquisitions (23 CFR part 712 or 23 CFR part 771).
Acquisition of scenic easements.
Plantings, landscaping, etc.
Sign removal.
Directional and informational signs.
Transportation enhancement activities (except rehabilitation and operation of historic transportation buildings, structures, or facilities).
Repair of damage caused by natural disasters, civil unrest, or terrorist acts, except projects involving substantial functional, locational or capacity changes.

[1] In PM_{10} nonattainment or maintenance areas, such projects are exempt only if they are in compliance with control measures in the applicable implementation plan.

§ 93.135 Projects exempt from regional emissions analyses.

Notwithstanding the other requirements of this subpart, highway and transit projects of the types listed in Table 3 are exempt from regional emissions analysis requirements. The local effects of these projects with respect to CO or PM_{10} concentrations must be considered to determine if a hot-spot analysis is required prior to making a project-level conformity determination. These projects may then proceed to the project development process even in the absence of a conforming transportation plan and TIP. A particular action of the type listed in Table 3 is not exempt from regional emissions analysis if the MPO in consultation with other agencies (see § 93.105(c)(1)(iii)), the EPA, and the FHWA (in the case of a highway project) or the FTA (in the case of a transit project) concur that it has potential regional impacts for any reason.

TABLE 3.—PROJECTS EXEMPT FROM REGIONAL EMISSIONS ANALYSES

D

Intersection channelization projects.
Intersection signalization projects at individual intersections.
Interchange reconfiguration projects.
Changes in vertical and horizontal alignment.
Truck size and weight inspection stations.
Bus terminals and transfer points.

§ 93.136 Special provisions for nonattainment areas which are not required to demonstrate reasonable further progress and attainment.

(a) *Application.* This section applies in the following areas:

(1) Rural transport ozone nonattainment areas;
(2) Marginal ozone areas;
(3) Submarginal ozone areas;
(4) Transitional ozone areas;
(5) Incomplete data ozone areas;
(6) Moderate CO areas with a design value of 12.7 ppm or less; and
(7) Not classified CO areas.

(b) *Default conformity procedures.* The criteria and procedures in §§ 93.122 through 93.124 will remain in effect throughout the control strategy period for transportation plans, TIPs, and projects (not from a conforming plan and TIP) in lieu of the procedures in §§ 93.118 through 93.120, except as otherwise provided in paragraph (c) of this section.

(c) *Optional conformity procedures.* The State or MPO may voluntarily develop an attainment demonstration

and corresponding motor vehicle emissions budget like those required in areas with higher nonattainment classifications. In this case, the State must submit an implementation plan revision which contains that budget and attainment demonstration. Once EPA has approved this implementation plan revision, the procedures in §§ 93.118 through 93.120 apply in lieu of the procedures in §§ 93.122 through 93.124.

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Federal Register

Wednesday
November 24, 1993

Part III

The President

Proclamation 6628—National Family Week, 1993 and 1994

Title

The

Federal Register
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Wednesday, November 24, 1993

Presidential Documents

Title 3—

The President

Proclamation 6628 of November 22, 1993

National Family Week, 1993 and 1994

By the President of the United States of America

A Proclamation

Families are our Nation's lifeblood and strength. No matter its size or composition, it is the source of our ideals and the birthplace of our memories. Connected families in vital communities are essential to this country's future.

The common bonds of family love, sharing, and mutual support have for generations shaped the character of our society. Anchored by strong insights, deeply felt convictions, moral principles, and concern for societal improvement and well-being, families have used their devotion, creative ideals, and energies to define themselves, their communities, and the Nation.

The willing acceptance of family obligations and the unselfish shouldering of responsibilities are core components of caring families. Families encourage and foster teamwork, as well as individuality, personal sacrifice, personal attainment, and a wide range of joys and life experiences.

America has maintained its unique position in the history of nations because we have not forgotten the teachings of our forebears. We have thrived because we, their children, have remained committed to advancing the causes of liberty and justice. Even in times of national crisis, we have recalled the importance of our national family tree, always returning to the promise of its protective shade.

As families across the country gather in thanksgiving, it is particularly appropriate that we pause as a Nation to acknowledge the blessings of love and loyalty that families bring to their members and through them, to the community of America. Like our democracy, all of our families must strive to be nurturing and steady. All of our children, grandparents, mothers and fathers must know that no matter the challenges we face, we can be secure in the love and support of a family. This lesson is among our founders' most precious gifts. Fulfilling their ideal is each generation's most profound responsibility.

The Congress, by House Joint Resolution 79, has designated the week of November 21, 1993, and the week of November 20, 1994, as "National Family Week" and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the week of November 21, 1993, and the week of November 20, 1994, as National Family Week. I invite the States, communities, and people of the United States to observe these weeks with appropriate ceremonies and programs in appreciation of our Nation's families.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-second day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

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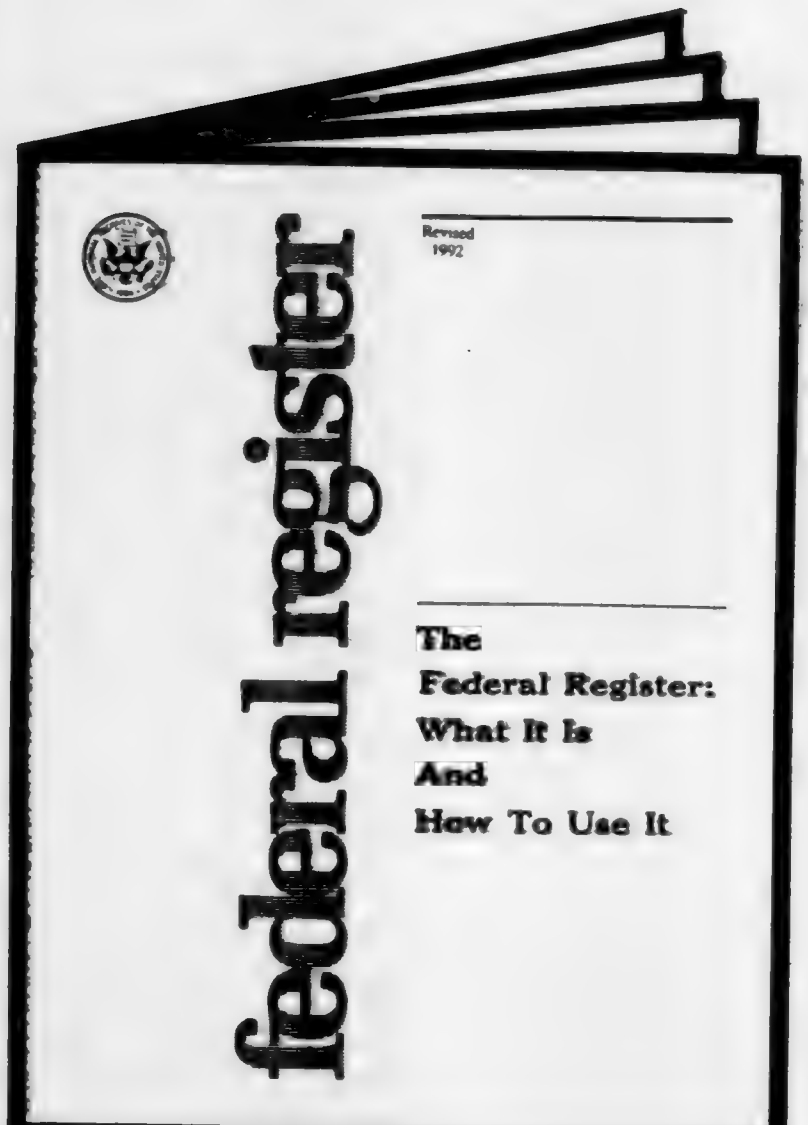

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Federal Register

Friday
November 26, 1993

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For information on briefings in Washington, DC, see announcement on the inside cover of this issue.

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WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
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WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

WASHINGTON, DC
(two briefings)

WHEN: November 30 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Free Electronic Bulletin Board service for Public Law numbers and Federal Register finding aids is available on 202–275–1538 or 275–0920.

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Rules and Regulations

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

FEDERAL ELECTION COMMISSION

11 CFR Part 112

[Notice 1993–31]

Federal Elections

AGENCY: Federal Election Commission.

ACTION: Revision to advisory opinion comment procedure.

SUMMARY: The Commission will provide a limited public comment opportunity on draft advisory opinions proposed by the Office of General Counsel and scheduled for a Commission agenda. Further information on this procedural revision is provided in the supplementary information which follows.

DATES: The revised comment procedure became effective on October 21, 1993, for a trial period that expires on June 1, 1994.

FOR FURTHER INFORMATION CONTACT: N. Bradley Litchfield, Associate General Counsel, 999 E Street, NW., Washington, DC 20463, (202) 219–3690 or (800) 424–9530.

SUPPLEMENTARY INFORMATION: On October 21, 1993, the Commission approved a temporary revision to its procedures for accepting comments from any interested person on advisory opinion requests that are submitted pursuant to 11 CFR 112.1 and made public under 11 CFR 112.2. Commission regulations authorize the Commission to extend the public comment opportunity on an advisory opinion request. 11 CFR 112.3(b). The Commission has now decided to allow additional time for public comments on advisory opinion requests currently pending and those submitted before June 1, 1994. Furthermore, the additional time to submit comments will coincide with the public release of advisory opinion drafts proposed by the Office of General Counsel ("OGC") and scheduled for Commission consideration at an open meeting held approximately one week after the release date.

The procedures for public comments on OGC draft opinions are summarized:

(1) OGC advisory opinion drafts ("OGC drafts") that are proposed for Commission consideration at a scheduled public meeting, announced pursuant to the Sunshine Act, will be made public for comment by any person as soon as they are circulated to the Commission. In most cases, the release date to the public will be not later than close of business on the Thursday next preceding the Commission meeting date for which the opinion has been "sunshined." (When an opinion is scheduled for a meeting date other than a Thursday, the OGC draft will be made public as soon as possible, generally one week, before the scheduled meeting date.)

(2) OGC drafts will be made available for public comment at the Public Records office of the Commission's Public Disclosure Division. This is the same office where advisory opinion requests are made public as provided in 11 CFR 112.2(b).

(3) The public comment period on the OGC draft will close at 12 noon (EST/EDT) on the Wednesday preceding the Thursday meeting date when the draft is scheduled for the Commission agenda. (For meeting dates other than Thursday, the comment period closes at noon on the next preceding regular workday before the meeting date.) The closing date and time for public comments on the OGC draft will be stated in a cover memorandum prepared by OGC and attached to the OGC draft.

(4) No comments will be accepted or considered or circulated if received after the deadline set forth in paragraph 3; they will be returned to the commenter. Extensions of this deadline will be considered by the Commission on a case by case basis only in the following circumstances: If the scheduled meeting date for the draft opinion is canceled or postponed, or if the OGC draft is withdrawn from the agenda by the General Counsel or is carried over to a future agenda by consensus of at least four Commissioners. Any extension of a public comment deadline will be stated in a written memorandum from OGC to the Commission and placed on the public record in the Public Disclosure Division.

(5) Written comments on the OGC draft shall be submitted by the commenter to the Secretary of the Commission with a full duplicate copy to OGC. Comments may be submitted by fax transmission to both offices. Comments will be distributed to each Commissioner's office, the Staff Director, the General Counsel, and to other designated offices within the Commission. They will also be available to the public.

(6) Any written public comments submitted by a commenter to any Commissioner or to the directly supervised staff of a Commissioner, which are not concurrently submitted in accordance with paragraph 5, shall be forwarded within two hours of receipt to the Secretary of the Commission for further distribution. Such comments, if forwarded within two hours of receipt, will not be considered ex parte communications for purposes of 11 CFR part 201.

(7) The Commission and OGC will consider all public comments that are timely submitted under the foregoing paragraphs before the draft opinion is voted on by the Commission.

(8) All the requirements of 2 U.S.C. 437f and 11 CFR part 112 remain applicable to advisory opinion requests and to comments submitted on OGC drafts, including the mandate to issue an opinion within 60 days and 11 CFR 112.6 that provides for Commission reconsideration of an issued advisory opinion.

(9) The foregoing procedures will not apply to any advisory opinion request or OGC draft opinion that qualifies for the expedited 20 day opinion process set forth in 11 CFR 112.4(b), except that OGC drafts will be released to the public as provided in paragraph 1.

(10) The foregoing procedures became effective on October 21, 1993, and will continue in effect for a trial period which expires as to any advisory opinion request received after May 31, 1994. After expiration of the trial period, the OGC draft public comment procedure will be reviewed and evaluated by the Commission and OGC to determine if it should be implemented on a permanent basis.

Additional information regarding the revised advisory opinion comment procedures may be found in Agenda Document #93–85, dated October 18, 1993.

Dated: November 22, 1993.

Scott E. Thomas,

Chairman, Federal Election Commission.

[FR Doc. 93–29003 Filed 11–24–93; 8:45 am]

BILLING CODE 6715–01–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 8482]

RIN 1545–AQ90

Method Changes for Capitalization and Inclusion in Inventory of Certain Costs; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of the location of a public hearing for a revenue procedure.

SUMMARY: This document provides notice of change of location for the public hearing on a revenue procedure relating to required method changes for capitalization and inclusion in inventory of certain costs. Taxpayers were invited to comment regarding the approach for implementing required method changes in Treasury Decision 8482.

DATES: The public hearing will be held on Tuesday, November 30, 1993, beginning at 1 p.m.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a revenue procedure under section 263A of the Internal Revenue Code. The notice of public hearing on this revenue procedure was published in the **Federal Register** for Friday, October 29, 1993 (58 FR 58101), and a rescheduling of this public hearing; change of date to submit requests to speak and outlines of oral comments was published in the **Federal Register** for Wednesday, November 10, 1993 (58 FR 59657). The notice of public hearing and rescheduling of the public hearing for the related proposed regulations (IA–64–91) were published simultaneously at 58 FR 58145 and 58 FR 59698, respectively. The requests for comments regarding the approach for implementing required method changes (TD 8482) and the proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale (IA–64–91) were published on Monday, August 9, 1993 (58 FR 42198) and (58 FR 42263), respectively. See change of the location of the public hearing for IA–64–91 elsewhere in this issue of the **Federal Register**.

There is a change in the location of the public hearing. The hearing will be held in the Commissioner's Conference Room (room 3313), Internal Revenue Service Building, 1111 Constitution Avenue NW., Washington, DC.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

All other details with respect to the previously published documents remain the same.

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93–28924 Filed 11–24–93; 8:45 am]

BILLING CODE 4830–01–U

DEPARTMENT OF JUSTICE

Office of the Attorney General

28 CFR Part 0

[Order No. 1814–93]

Office of Investigative Agency Policies

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This order will amend part 0 of title 28 of the Code of Federal Regulations to reflect the establishment of the Office of Investigative Agency Policies at the Department of Justice. This new Office has been created to increase efficiency within the Department by coordinating specified activities of the Department's criminal investigative components and by advising the Attorney General and the Deputy Attorney General on all criminal investigative policies, procedures and activities that warrant uniform treatment or coordination. This order will provide the public with a list of the duties of the Director of Investigative Agency Policies. It is being included in the Code of Federal Regulations in order to reflect accurately the Department's internal management structure.

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Carl Stern, Director, Office of Public Affairs, U.S. Department of Justice, Washington, DC 20530, Telephone: (202) 616–2777.

SUPPLEMENTARY INFORMATION: This order pertains to a matter of internal Department management. It does not have a significant economic impact on a substantial number of small entities. 5 U.S.C. 605(b). It is not a significant regulatory action within the meaning of or subject to Executive Order No. 12866.

List of Subjects in 28 CFR Part 0

Authority delegations (Government agencies), Government employees, Organization and functions (Government agencies), Whistleblowing.

Accordingly, by virtue of the authority vested in me as Attorney General, including 5 U.S.C. 301 and 28 U.S.C. 509, 510, part 0, subpart C of title 28 of the Code of Federal Regulations is amended as follows:

PART 0—ORGANIZAITON OF THE DEPARTMENT OF JUSTICE

1. The authority citation for part 0 is revised to read as follows:

Authority: 5 U.S.C. 301; 28 U.S.C. 509, 510, 515–519.

2. Part 0, subpart C is amended by adding a new section 0.17 to read as follows:

Subpart C—Office of the Deputy Attorney General

§ 0.17 Office of Investigative Agency Policies.

(a) *Organization.* The Office of Investigative Agency Policies is headed by a Director appointed by the Attorney General. The Director shall be responsible to, and report directly to, the Deputy Attorney General, and shall serve at the pleasure of the Attorney General. The Director shall be chosen from among the heads of the criminal investigative agencies of the Department, i.e., the Federal Bureau of Investigation, Drug Enforcement Administration, United States Marshals Service and Immigration and Naturalization Service. The Director shall serve concurrently as the Director of Investigative Agency Policies and as head of the agency for which he or she was nominated and confirmed. The Director shall be supported by a staff consisting of personnel detailed from the criminal investigative agencies of the Department, and from the Criminal Division. The staff shall be nominated by these various agencies, subject to the approval of the Director.

(b) *Functions.* Subject to the general supervision and direction of the Attorney General and Deputy Attorney General, the Director shall in the areas of overlapping jurisdiction of the criminal investigative agencies:

(1) Take all steps necessary to improve coordination among the criminal investigative agencies of the Department, both within the United States and abroad;

(2) Assure, to the extent appropriate, consistent operational guidelines for the criminal investigative agencies of the Department;

(3) Establish procedures, structures and mechanisms for coordinating the collection and dissemination of intelligence relating to the Department's law enforcement responsibilities;

(4) Establish procedures and policies relating to procurement for the criminal investigative agencies of the Department, including but not limited to procurement of communications and computer systems;

(5) Determine and establish procedures for the coordination of all automation systems;

(6) Determine and establish plans to ensure the effective deployment of criminal investigative agency task forces;

(7) Establish procedures for coordinating the apprehension of fugitives;

(8) Establish programs to coordinate training among the criminal investigative agencies of the Department;

(9) Provide advice to the Attorney General and the Deputy Attorney General on all investigative policies, procedures and activities that warrant uniform treatment or coordination among the criminal investigative agencies of the Department;

(10) Provide advice to the Attorney General and the Deputy Attorney General on the budgetary and resource requests of the criminal investigative agencies of the Department;

(11) Perform such other functions as may be necessary for the effective policy-level coordination of criminal investigations by the criminal investigative agencies of the Department, particularly with respect to drug trafficking, fugitive apprehension, violence, and related areas, and for the elimination of waste and duplication in these functions.

(12) Perform such special duties as may be assigned by the Attorney General or the Deputy Attorney General from time to time.

(c) *Cooperation.* Officials of the Federal Bureau of Investigation, the Drug Enforcement Administration, the United States Marshals Service, the Immigration and Naturalization Service and all other components of the Department that may be requested by the Director of Investigative Agency Policies shall provide such information as the Director may request.

(d) *Review.* Prior to making any decision having a significant impact on any criminal investigative agency of the Department, the Director shall consult with the head of such agency, or the designee of the head of such agency. Any head of a criminal investigative agency shall have an opportunity to seek review of any decision of the Director by the Deputy Attorney General or the Attorney General.

(e) *Scope.* Nothing in this section shall be interpreted to alter or diminish the responsibilities of the Department's criminal investigative agencies, or of other components of the Department, including the Criminal Division and the United States Attorneys, in the investigation and prosecution of violations of federal criminal law.

(f) *Reservation.* This policy is set forth solely for the purpose of internal Department of Justice guidance. It is not intended to, does not, and may not be relied upon to create any rights, substantive or procedural, that are enforceable at law by any party in any matter, civil or criminal, nor does it place any limitations on otherwise lawful investigative or litigative prerogatives of the Department of Justice.

Dated: November 18, 1993.

Janet Reno,

Attorney General.

[FR Doc. 93–28947 Filed 11–24–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 155

[CGD 93–054]

RIN 2115–AE55

Oil Pollution Placard Language

AGENCY: Coast Guard, DOT.

ACTION: Final rule.

SUMMARY: The Coast Guard is revising the placard language required to be posted on ships of 26 feet in length or greater stating the Federal Water Pollution Control Act's (FWPCA) oil discharge prohibition and the penalty for violation of that prohibition. Because the Oil Pollution Act of 1990 amended the penalty provisions of FWPCA, the required placard language is outdated. This rule revises the required placard language to reflect current FWPCA authority.

EFFECTIVE DATE: November 26, 1993.

ADDRESSES: Unless otherwise indicated, documents referred to in this preamble are available for inspection or copying at the office of the Executive Secretary, Marine Safety Council (G–LRA, 3406), U.S. Coast Guard Headquarters, room 3406, 2100 Second Street, SW., Washington, DC 20593–0001 between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (202) 267–1477.

FOR FURTHER INFORMATION CONTACT: Lieutenant Jonathan C. Burton, Project Manager, Division of Marine Environmental Protection (G–MEP–1), (202) 267–6714.

SUPPLEMENTARY INFORMATION:

Drafting Information

The principal persons involved in the drafting of this rule are Lieutenant Jonathan C. Burton, Project Manager, Division of Marine Environmental Protection, and Ms. Helen G. Boutrous, Project Counsel, Office of Chief Counsel.

Background and Purpose

Section 311 of the Federal Water Pollution Control Act (FWPCA) prohibits the discharge of oil into the navigable waters of the United States or the waters of the contiguous zone and specifies penalties for violation of that prohibition (33 U.S.C. 1321(b)). Section 155.450 of title 33 of the Code of Federal Regulations requires ships of 26 feet in length or greater to post a placard that states FWPCA's oil discharge prohibition and the penalty for violation of that prohibition. However, the Oil Pollution Act of 1990 (OPA 90) amended FWPCA by increasing the maximum amount of criminal and civil penalties that may be assessed under FWPCA (Pub. L. 101–380). Consequently, the placard language required by § 155.450 stating that violators are subject to a penalty of $5,000 has become outdated. The OPA 90 amendments to FWPCA provide for fines, or imprisonment, or both. The amendments also provide for Class I administratively assessed penalties of up to $10,000 per violation, not to exceed $25,000, class II administratively assessed penalties of up to $10,000 per day for each day during which the violation continues, not to exceed $125,000, and judicially assessed civil penalties of up to $25,000 per day of violation or up to $1,000 per barrel of oil discharged.

Discussion of Amendments

This rule would revise the required placard language to accurately reflect the penalty provisions of FWCPA. In consideration of space limitations on

placards and in order to ensure that the placard language requirement remains current with FWCPA authority, this rule requires placard language stating that violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment. Owners and operators will continue to be allowed to use placards meeting existing Coast Guard requirements for the lifetime of the placards.

Because this action would merely conform the language required to be displayed on ship's placards with revised statutory authority, this action is considered to be administrative and procedural in nature. Accordingly, under 5 U.S.C. 553(b)(3)(B) notice and opportunity for public comment are unnecessary and, in accordance with 5 U.S.C. 553(d)(3), good cause exists to publish this action as a final rule effective upon publication in the **Federal Register**.

Regulatory Evaluation

This rule is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979).

The Coast Guard expects the economic impact of this rule to be so minimal that a full Regulatory Evaluation is unnecessary. Because existing placards may be used for the lifetime of the placards, there would be no economic impact on the industry.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider the economic impact on small entities of a rule for which a general notice of proposed rulemaking is required. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). This rule does not require a general notice of proposed rulemaking and, therefore, is exempt from the regulatory flexibility requirements. Although exempt, the Coast Guard has reviewed this rule for potential impact on small entities.

This rule merely revises the language required to be posted on placards aboard certain ships to conform with revised statutory authority. Existing placards may be used for the lifetime of the placard. This rule has no economic impact on industry. Therefore, the Coast Guard's position is that this rule will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This rule contains no new collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this rule under the principles and criteria contained in Executive Order 12612 and has determined that this rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

FWPCA explicitly preserves the authority of any State to impose its own requirements or standards with respect to the liability of persons in the removal of oil (33 U.S.C. 1321(o)). The State's authority to regulate in this area is preserved as long as State law is not in direct conflict with Federal law.

Environment

The Coast Guard considered the environmental impact of this rule and concluded that, under section 2.B.2 of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. This rule is editorial and administrative in nature and clearly has no impact on the environment. A Determination of Categorical Exclusion is available in the docket for inspection or copying where indicated under "ADDRESSES."

List of Subjects in 33 CFR Part 155

Hazardous substances; Oil pollution; Reporting and recordkeeping requirements.

For the reasons set out in the preamble, the Coast Guard amends 33 CFR part 155 as follows:

PART 155—OIL OR HAZARDOUS MATERIAL POLLUTION PREVENTION REGULATIONS FOR VESSELS

1. The authority citation for part 155 is revised to read as follows:

Authority: 33 U.S.C. 1231, 1321(j)(1)(C); E.O. 12777, 56 FR 54757, 49 CFR 1.46. Sections 155.100 through 155.130, 155.350 through 155.400, 155.430, 155.440, and 155.470 also issued under 33 U.S.C. 1903(b).

2. In § 155.450, paragraph (a) is revised to read as follows:

§ 155.450 Placard.

(a) A ship, except a ship of less than 26 feet in length, must have a placard of at least 5 by 8 inches, made of durable material fixed in a conspicuous place in each machinery space, or at the bilge and ballast pump control station, stating the following:

Discharge of Oil Prohibited

The Federal Water Pollution Control Act prohibits the discharge of oil or oily waste into or upon the navigable waters of the United States, or the waters of the contiguous zone, or which may affect natural resources belonging to, appertaining to, or under the exclusive management authority of the United States, if such discharge causes a film or discoloration of the surface of the water or causes a sludge or emulsion beneath the surface of the water. Violators are subject to substantial civil penalties and/or criminal sanctions including fines and imprisonment.

* * * * *

Dated: October 7, 1993.

A.E. Henn,

Rear Admiral, U.S. Coast Guard, Chief, Office of Marine Safety, Security and Environmental Protection.

[FR Doc. 93–29038 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 9 and 63

[AD–FRL–4804–7]

Approval of State Programs and Delegation of Federal Authorities

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The EPA is promulgating regulations to provide guidance, relating to approval of State programs, that the EPA is required to publish under section 112(l) of the Clean Air Act as amended in 1990 (Act). Section 112(l)(2) of the Act requires the EPA to publish guidance useful to States in developing programs for implementing and enforcing emission standards and other requirements for hazardous air pollutants (HAP's) and guidance concerning requirements for the prevention and mitigation of accidental releases of toxic substances into the ambient air. This final rule contains guidance specifically relating to the approval of rules or programs that States can implement and enforce in place of certain Federal section 112 rules, and the partial or complete delegation of Federal authorities and responsibilities associated therewith. Submission of rules or programs by the States under this subpart is entirely voluntary. States seeking to implement and enforce some provisions of their own programs in lieu of federally promulgated hazardous air pollutant standards under section 112 need to obtain approval under this final rule. Once granted approval, State rules and applicable part 70 operating permit conditions resulting from approved

State programs would be federally enforceable and would substitute for the otherwise applicable Federal requirements within a State or local jurisdiction.

EFFECTIVE DATE: The guidance announced herein takes effect on December 27, 1993.

ADDRESSES: *Docket.* Supporting information used in developing the proposed and final rules is contained in Docket No. A–92–46. The docket is available for public inspection and copying from 8:30 a.m.–12 p.m. and 1:30 p.m.–3:30 p.m., Monday through Friday, at the EPA's Air Docket Section, Waterside Mall, Room M1500, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For general information on today's final rule, contact Sheila Q. Milliken, Pollutant Assessment Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina 27711, telephone number (919) 541–2625.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background and Purpose
II. Public Participation
III. Summary of Final Rule
IV. Significant Comments and Changes to the Proposed Rule
  A. Section 63.90—Program Overview
  B. Section 63.91—Criteria common to all approval options
  C. Section 63.92—Approval of a State rule that adjusts a section 112 rule
  D. Section 63.93—Approval of State authorities that substitute for a section 112 rule
  E. Section 63.94—Approval of a State program that substitutes for section 112 emission standards
  F. Section 63.95—Additional approval criteria for Federal accidental release prevention programs
  G. Section 63.96—Review and withdrawal of approval
  H. Other Comments
V. Additional Guidance
VI. Administrative Requirements
  A. Docket
  B. Executive Order 12866
  C. Paperwork Reduction Act
  D. Regulatory Flexibility Act
  E. Review

This preamble provides an overview of criteria and procedures for approval by the EPA of State rules and programs that implement and enforce section 112 of the Act.

The preamble also provides a detailed discussion of the changes made to the proposed regulation. Section I discusses the background and purpose of today's rule. Section II provides information regarding public involvement in the rulemaking during the public comment period following proposal. A summary of today's rule is found in section III which gives a brief overview of the regulatory requirements. A discussion of the significant comments and resulting regulatory changes from the proposed requirements is detailed in section IV. The discussion of comments and changes to the rule are found in this section in the sequence of the subpart E rule. In the preamble of the proposed rule, the EPA explained the basis for its various proposed positions. Where the proposed regulation has not been changed in the final rule, the EPA continues to rely on the rationale provided in the proposal notice. In addition, clarification or explanation has been included in those places where comments indicated it would be useful. Section V discusses additional guidance required by section 112(l). Finally, section VI covers administrative requirements necessary for promulgation of this rule.

The EPA proposed these regulations to be codified in 40 CFR part 63 on May 19, 1993 (58 FR 29296). The comment period for the proposal ended on July 6, 1993. The EPA received comments from 27 commenters on the proposed rule during the public comment period. The comments have been carefully considered, and where determined to be appropriate by the Administrator, changes have been made in the proposed rule. Copies of these comments appear in the docket for this action.

The major comments and responses are summarized in this preamble. A separate document providing additional responses to comments on the proposal is included in the docket.

I. Background and Purpose

Many States have developed or are developing air toxics programs under State authorities. The Congress was very much aware of the States' air toxics programs in the course of developing the 1990 Amendments. (See, e.g. S. Rep. No. 228, 101st Cong. 1st Sess. 192 (1989) (herein after S. Rep.).) These programs, developed to address specific State needs, may differ from Federal rules being developed by the EPA under section 112 of the 1990 Amendments for the control of emissions of HAP's and other programs. Existing State programs may result in controls that are more stringent than, equivalent to, or less stringent than controls resulting from corresponding Federal standards.

From discussions with States and other interested parties, the EPA has learned that some States want to continue to implement and enforce the requirements of their own air toxics and accidental release prevention programs even though new 1990 Amendments requirements under section 112 relating to hazardous air pollutants will be issued. The prospect of simultaneous implementation and enforcement of both Federal and State air toxics and accidental release prevention programs in some States has caused concerns to be expressed regarding the possible effects on the States and the regulated community. A primary concern is that section 112 could lead to "dual regulation", a situation in which sources are subject to differing State and Federal program requirements. Dual regulation may burden regulated sources and permitting and enforcement agencies for several reasons. First, permits resulting from dual regulation are necessarily longer and more expensive to develop and approve due to the need to specify separate sets of operating conditions derived from both Federal and State regulations. Second, compliance and enforcement costs may be greater because of two sets of conditions that must be enforced. Third, permit conditions that result from dual regulation may not always be complementary and may even be fundamentally inconsistent in instances where the Federal and State programs may require measures that are technically incompatible. In this latter instance, it may be difficult or impossible for a source to employ simultaneously the control requirements mandated by both Federal and State regulations.

To avoid dual regulation and the attendant complications, as well as to preserve the integrity of their own air toxics and accidental release prevention programs, some States have contended that section 112(l) of the 1990 Amendments authorizes the EPA to delegate authority to the States to implement and enforce their rules or programs in lieu of Federal rules under section 112. Many States have expressed this argument to the EPA through a series of discussions and informal conversations prior to proposal. The EPA agrees that section 112(l) authorizes the EPA to delegate certain section 112 authorities to States. Today's final rule offers guidance intended to assist States (and local agencies) in submitting rules and programs for approval by the EPA. After approval by the EPA, States may implement and enforce their rules and

programs in place of certain Federal rules promulgated under section 112, with the EPA approved State rules and programs being federally enforceable. Section 112(l) also provides that any delegation of the EPA's authorities under today's rule shall not include the authority to set standards or other emission limitations or requirements less stringent than those promulgated by the EPA under the 1990 Amendments. The regulation in today's notice, along with guidance for review of high-risk point sources fulfills the requirement for the EPA to publish guidance under section 112(l)(2). See section V of this preamble for further discussion of the high-risk point source program guidance. In addition, today's final rule provides a procedural mechanism for approval and delegation of State requirements that are exactly as promulgated by the EPA under section 112.

Today's final rule seeks to achieve the goal of allowing the EPA and the States to work together to minimize potential program redundancies and inconsistencies and to reduce the costs and time involved in permit review and issuance. At the same time today's rule will assure that all sources of hazardous air pollutants and hazardous substances listed under section 112(r) meet emission standards and other requirements that are no less stringent than corresponding Federal requirements.

Today's notice also addresses the requirement in section 112(l)(2) that the EPA include as an element of the guidance "an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to subsection (b)." Pursuant to that provision, the EPA has developed guidance to assist State agencies in establishing a high risk point source program that can work within and beyond the context of section 112. Enabling Guidance to provide further details on the requirements of section 112(l) and information about various technical assistance activities, including an air toxics clearinghouse is published concurrent with promulgation of this rule.

II. Public Participation

A public hearing was held on the proposed rule in Research Triangle Park, North Carolina on June 22, 1993 to provide interested persons the opportunity for oral presentation of data, views, or arguments concerning the proposed rule. This hearing was open to the public, and each attendee was given an opportunity to comment on the proposed rule. The significant changes to the regulations resulting from public comments are described in this preamble. A summary of all public comments and the EPA responses and transcripts of the public hearing are contained in the docket.

III. Summary of Final Rule

Today's final regulations establish guidance for the EPA approval of State (or local, Tribal or Territorial) air toxics control rules (i.e., promulgated regulations) or programs (i.e., any collection of legally enforceable statutes, regulations) that are at least as stringent as otherwise applicable Federal section 112 rules. No State rule or program is federally approved and enforceable unless and until it is approved by the EPA through the full section 112(l) process established in subpart E. After approval, State rules and operating permit conditions (incorporated in a part 70 permit, as applicable,) that result from approved State programs would be federally enforceable and substitute for the otherwise applicable Federal requirements in that State or local jurisdiction.

State and local agencies with approved part 70 operating permit programs have the responsibility under part 70 to begin immediately the implementation and enforcement of all applicable section 112 rules. Authorities granted at the time of part 70 program approval will not by themselves allow for Federal enforceability of a State rule or program that differs in any respect from an existing Federal rule. State rules or programs that differ from the existing Federal rule remain State enforceable until approved under subpart E. Upon the EPA approval of part 70 programs, States may also receive approval under section 112(l) to implement and enforce federal section 112 rules as promulgated for all part 70 sources. Prior to part 70 approval, States seeking delegation of authority to implement and enforce Federal section 112 rules as promulgated for part 70 sources may request approval under subpart E.

To gain EPA approval of a State rule or program under today's final rule, certain statutory approval criteria contained in section 112 must be met. These criteria require that a submission for approval of a State rule or program must demonstrate adequate authority, adequate resources, an expeditious implementation schedule and an adequate enforcement strategy. In addition, for State rules or programs that differ from Federal requirements, one of three sets of specific criteria must be met to assure adequate stringency. If a State is seeking delegation without changes, these stringency criteria are not necessary. The three sets of specific criteria correspond to three options for requesting approval of such rules or programs: Approval of a state rule that adjusts a section 112 rule, approval of State authorities that substitute for a section 112 rule, and approval of a State program which substitutes for some or all section 112 emission standards. Under the first of these three options, a State rule could be approved that is similar to and at least as stringent as, a Federal rule. The State rule must have undergone a 30-day State notice and public comment period before submission for Federal approval under section 112(l). Under this option, any difference from the Federal rule must have been included in the subpart E list of "adjustments". The Agency believes that those adjustments will result in a rule that is clearly no less stringent than the otherwise applicable Federal rule. There can be no ambiguity regarding the stringency of a rule that differs from the Federal rule by any of the proposed adjustments approved under this option. If the EPA finds that the State request meets the necessary criteria, the State rule with adjustments is approved and becomes Federally enforceable in lieu of the otherwise applicable section 112 rule.

Under the second option, the EPA may approve a State rule (and in certain limited cases, a specific application of broader State authorities) with greater differences from the Federal rule. This could be the case when a State submits a rule written with a different conformation than a Federal rule or when, for example, a State rule achieves equivalent emission reductions but with a combination of levels of control and compliance and enforcement measures not provided for in the Federal rule.

Under today's final rule, a State must make a detailed demonstration that the State rule results in equal or greater emission reductions (or other measure of stringency such as specified for section 112(r)) for each individual source affected by the Federal section 112 rule. Further discussion of detailed demonstrations can be found in the enabling guidance entitled, "Enabling Guidance for Approval of State Programs and Delegation of Federal Authorities available as described in section V of this preamble. If the EPA finds that the demonstration is satisfactory, subpart A of part 63 would be amended to incorporate the approved State rule. The approved State rule would be federally enforceable and replace the otherwise applicable Federal

rule in the relevant State or local jurisdiction.

For requirements for prevention of accidental releases, approval of a State rule which substitutes for the Federal section 112(r) rule must be no less stringent, cover the substances listed pursuant to section 112(r) at or below the threshold quantity, contain accident prevention requirements, facility registration, enforcement provisions which contain an auditing component as well as other measures, and provisions for the disclosure of facility information.

The third option is for approval of a generic State program that substitutes for some or all section 112 emission standards. Under this option, a State program may be approved in place of specific standards and requirements established under sections 112(d), (f), or (h) for incorporation in part 70 permits. For other Federal rules which are not emission standards, for example the requirements of section 112(g), this third option is not available. Rather, approval for State programs with requirements corresponding to Federal requirements other than section 112 (d), (f), or (h) may be sought under options one or two.

For approval under this third option, a State must make a legally-binding commitment to undertake certain actions; the commitment will be adopted under State law. First, the State must commit to regulate every source that would have been regulated by the otherwise applicable Federal section 112 emission standards for which approval is requested. Second, the State must provide assurance that the level of control and compliance and enforcement measures in each part 70 permit for these sources are at least as stringent as those that would have resulted from the otherwise applicable Federal emission standards. Finally, the State must commit to expressing the part 70 operating permit terms and conditions in the form of the otherwise applicable Federal standard. This means that the State must commit to express in the resulting part 70 permit, a level of control in terms of an emission limit, level or reduction, derived from its own program, that is in the same units of measure as the Federal rule and must commit to express other elements of the standard in the same form as the Federal standard. Required compliance provisions must also be in the same form and units of measure as the Federally promulgated compliance provisions. Underlying these commitments is the premise that a State must demonstrate the authority and commitment to permit all of these sources and to require terms and conditions that are no less stringent than would be required under the otherwise applicable Federal standard. If the EPA approves the State program, the EPA would then promulgate a rule amending part 63 to incorporate the State program.

A State may use any one or any combination of these three options in its request for approval of State rules or programs. To illustrate, a State submitting a request under option three, program approval, might not be able to gain approval for regulation of all source categories. In particular, approval under option three may not be granted for area sources which a State has chosen to exempt from part 70 permits. This would not, however, preclude a State from seeking approval under option two of a State rule regulating these area sources.

Regarding the EPA oversight of approved State programs, in receiving approval of a State rule or program, a State has the responsibility to respond in a timely fashion to the EPA requests for information needed to review the adequacy of State implementation and enforcement of an approved rule or program. The EPA will develop guidance for the regular review and intermittent audits of approved State rules and programs.

After approval has been granted, if the EPA finds that an approved rule or program is not being adequately implemented or enforced, the EPA has the authority to withdraw approval of that rule or program. Before approval is withdrawn, however, the State has the opportunity to correct the deficiencies identified in the EPA's review or audit. The EPA would inform the State of changes that need to be made and, if the State does not take adequate action to correct the deficiencies, a public hearing would be held and public comment accepted. The State would then have 90 days to correct the situation. After this process has taken place, if the State does not correct the identified deficiencies, the EPA would then withdraw approval of the rule, the program or part of the rule or program. Upon withdrawal of approval of a State rule or program that is found to be less stringent than Federal requirements, States would be required to reopen part 70 operating permits according to the provisions in § 70.7(f) and rewrite permit conditions to reflect requirements of the applicable Federal section 112 rule. The federally promulgated section 112 standard is the applicable and federally enforceable standard unless and until a State rule or program is approved by the EPA pursuant to the procedures set forth in this final rule. Once approved, the State rule or program becomes the applicable standard which the EPA has authority to enforce, and the federally promulgated standard is no longer the applicable or enforceable standard. Upon withdrawal of approval of a State rule or program, the federally promulgated standard for which the State rule or program substitutes once again becomes the applicable standard. In the withdrawal notice, the EPA will establish an expeditious schedule for sources to come into compliance with the federally promulgated standard.

Under §§ 63.96(b)(4)(v) and 63.96(b)(7)(iii), which address withdrawal of approval of State programs either by the EPA or voluntarily by the State, the final rule states that the EPA has authority to enforce the applicable section 112 requirement. This authority is a restatement of section 112(l)(7), which provides that nothing shall prohibit the EPA from enforcing any applicable emissions standard or requirement under section 112. The EPA always has concurrent authority to enforce the applicable section 112 standard, which may be either an approved State standard or a Federal standard, depending upon whether the State standard has been federally approved pursuant to the procedures set forth in this final rule.

Today's rule also provides guidance on the approval of State Accidental Release Prevention (ARP) Programs established under section 112(r). The section 112(r) (3)–(5) "list and threshold" rule was proposed in January 1993 (58 FR 5102). A proposed risk management program rule under section 112(r)(7) was proposed in October 1993.

In order to receive approval and delegation for an ARP program which differs from the Federal section 112(r) rules, a State submission must meet the criteria set out in § 63.91, either § 63.92 or § 63.93, and § 63.95. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and § 63.95 must be met.

A State program must demonstrate the authority and resources necessary to implement and enforce regulations which authority covers the regulated substances at or below the thresholds, the accidental release prevention requirements, as well as identify the entity that will be receiving the registration from regulated sources.

In addition, the State submission must include a description of the procedures for registration of sources,

receiving and reviewing risk management plans, making the plans available to the public, and the coordination mechanism the implementing agency will use with the Chemical Safety and Hazard Investigation Board, the State Emergency Response Commission, the Local Emergency Planning Committees, and the air permitting program (if it is not responsible for implementing section 112(r) in the State).

States do have the option of requesting a complete or partial program. Partial delegation in terms of the ARP program here refers to geographic area. This allows delegation of section 112(r) to local agencies, provided that the entire area of the State is subject to the requirements under section 112(r). The Agency believes that the ARP program should not be subdivided into various components based on chemical or industry because this would promote confusion for industry and inhibit the integration of the ARP program into State wide activities. Further, any delegation of the ARP program requires the State program to contain a set of core requirements for all subject sources. This is consistent with the requirements in section 112(l)(5)(A) that requires an approved State program to contain the authorities "to assure compliance by all sources within the State with each applicable standard, regulation, or requirement established by the Administrator under this section." Section 63.95 sets out the core requirements for an approvable State ARP program.

IV. Significant Comments and Changes to the Proposed Rule

This portion of the preamble is organized by each section in subpart E, and discusses the principal regulatory changes made in the final rule in response to public comments. It also discusses some comments that did not result in regulatory changes.

A. Section 63.90—Program Overview

This section provides a brief overview of the subpart. It also establishes subpart definitions, outlines local agency roles and enumerates authorities to be retained by the Administrator.

In response to comments received, and to provide for approval of State programs under additional circumstances, the Agency has amended this section to provide for approval of State rules or programs to implement and enforce Federal section 112 rules without change as promulgated by the EPA. Therefore, this section now provides a mechanism for delegation of Federal standards prior to approval of a State's part 70 operating permit program and for Federal section 112 requirements for sources that are not subject to the requirements of part 70. A State seeking approval for programs to implement and enforce Federal section 112 rules must meet the criteria of section 112(l), as specified in this section, including the requirement for notice and opportunity for public comment. Procedural mechanisms for delegation will be addressed in the Enabling Guidance, available as described in section V of this preamble.

Part 70—Approval and Delegation Without Changes

One commenter noted that approval of a State part 70 program would not include a review of resources needed to cover the cost of bringing enforcement actions under section 502(b) and yet this cost must be included in an adequate demonstration of resources before approval under this subpart. In addition, the commenter argued that the part 70 program approval process will not be adequate to assure section 112(l)(5) criteria are met before delegating under section 112(l).

The Agency disagrees with these comments. The Agency notes that approval that occurs under any of the three part 63 subpart E options for approving changes to the Federal program will examine these costs in a specific resource review during the approval process under subpart E. The EPA maintains that program review under part 70 will satisfy the adequate resource criterion under section 112(l) and that the section 112 program requirements may be delegated to the States without changes.

Part 70 requires a demonstration that a State has authority to adequately administer and enforce the part 70 program. Several provisions of the part 70 regulations ensure this type of demonstration. For example, the State must demonstrate under § 70.4(b)(3)(vii) adequate authority to enforce all permit terms and conditions and the requirements of the permit program consistent with the civil and criminal authority required by § 70.11. States must also submit pursuant to § 70.4(b)(4)(ii) all relevant guidance used in implementing the program, including criteria for monitoring source compliance such as inspection strategies, and pursuant to § 70.4(b)(5), a complete description of the State's compliance tracking and enforcement program.

States must also submit a detailed statement that adequate personnel and funding have been made available to develop, administer and enforce the program under § 70.4(b)(8). Finally, States are required to annually submit detailed information regarding the State's enforcement activities under § 70.4(b)(9). In addition § 70.6 (a) and (c) require all permits to contain sufficient monitoring, recordkeeping, reporting and compliance certification requirements to ensure that the permit terms and conditions may be adequately enforced.

The commenter is correct in that section 502(b)(3)(A)(ii) does not require a State to collect permit fees to cover "any court costs or other costs associated with any enforcement action." However, this does not mean that the State does not have to adequately enforce the terms and conditions of permits, including bringing judicial enforcement action where necessary. Rather, it means that the State is not required under title V to collect fees to cover the actual court costs of such enforcement actions. Under section 112(l)(5), the State demonstration must show that adequate resources to implement the program are available; the EPA believes that the requirements under part 70 will meet this requirement as applicable.

In addition, the commenter noted that citizens have not been provided adequate notice that States may receive delegation of section 112 based on their part 70 operating permit program because some States have already begun preparation for submittal of part 70 programs.

The EPA disagrees with this comment. In order to obtain approval of a part 70 operating permit program, adequate resources and authority must be demonstrated. In addition, the part 70 operating permits rule provides that States write permits including "all applicable requirements". Part 70 defines applicable requirement to include "(a)ny standard or other requirement under section 112 of the Act." Clearly, this constitutes adequate notice of intent that section 112 requirements must be included in part 70 programs, and this was included in the part 70 regulations when promulgated.

In addition, during the part 70 permit issuance process, "* * * any person may petition the Administrator to veto a permit * * *." § 70.8(d). The objections in the petition must have been previously raised during the public comment period on the permit provided by the State issuance process, unless the petitioner shows that it was impracticable at that time. This provides an additional opportunity for comment on incorporation of particular section

112 requirements in an individual permit.

Clarification of State Rights Under Section 116 and Section 112(d)(7)

Some commenters questioned whether the Act provides authority for the EPA to approve more stringent State standards that are not based on the same considerations the EPA must include when it establishes standards under section 112, for example the cost of achieving emission reduction and any non-air quality health and environmental impacts and energy requirements. See section 112(d)(2). In addition, commenters pointed out that EPA may not approve, under § 70.1(c), State programs that are inconsistent with the Act.

The Agency recognizes the complex interactions that are the consequence of regulation of a community of sources by both the State and Federal governments and that accompany any division of responsibility in such a joint effort. From its inception, the Act has been based on a strategy of air pollution prevention and control at its source that recognizes the States and local governments as bearing the primary responsibility for such prevention and control. Clean Air Act section 101(a)(3). By enacting section 116, Congress also recognized that States and local governments, in responding to concerns within their own jurisdictions, might desire to control air emissions more stringently than would be required by the Federal government on a nationwide basis and might therefore require more stringent limitations on emission of air pollutants from sources within their State. Section 116 explicitly allows such State standards and limitations as long as they are no less stringent than the corresponding Federal standard or limitation.

In enacting the 1990 Amendments, which require the EPA to establish standards for emission of hazardous air pollutants, Congress was aware that many States had already developed active and effective air toxics programs. S. Rep. at 149. Much of the development of these State programs had occurred with the support and encouragement of the EPA, and Congress recognized that existing State programs were a significant component of the nationwide air toxics control strategy. In addition, the preamble to the final rule establishing the part 70 operating permit program recognized that minimizing disruption of existing State programs is an important goal of the Agency's implementation of the Act. (57 FR 32350, 32251, 32263, 32265, 32273 (1992).)

In establishing requirements under the 1990 Amendments, Congress included under the provisions of section 112 a mechanism by which States could seek approval of their air toxics programs and established criteria for determining whether or not a State program was approvable. Section 112(l)(5) requires that the Administrator disapprove a State program if, among other things, the Administrator determines that "the authorities contained in the program are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under this section." Section 112(l)(1) requires that a program submitted by a State "shall not include authority to set standards less stringent than those promulgated by the Administrator" under the Act. Therefore, State standards and requirements must be at least as stringent as corresponding Federal standards and requirements.

In addition, section 112(d)(7) reinforces the authority of States to issue standards under State authority specifically in the area of air toxics control. No section 112 standard or other requirement is to be interpreted, construed or applied to diminish or replace the requirements of a standard issued under State authority. Since section 116 precludes a State from adopting or enforcing less stringent standards than those under section 112, section 112(d)(7) thus prohibits interpreting, construing, or applying section 112 standards or requirements to diminish or replace State standards if they are no less stringent than section 112 standards.

The part 70 operating permits program regulations also provide for no less stringent State requirements. Section 70.1(c) states that nothing in part 70 shall prevent a State from establishing additional or more stringent requirements not inconsistent with the Act. In addition, § 70.1(c) also states that no permit can be less stringent than necessary to meet all applicable requirements. Section 70.6(b)(2) requires a State to identify any permit terms and conditions that are not required under the Act or under any of its applicable requirements, and thus States may establish more stringent State-only standards for incorporation in that section of the operating permit. The 1990 Amendments section 506 authorizes States to establish additional permitting requirements as long as they are not inconsistent with the Act, and States are free to establish more stringent permit revision procedures provided the minimum requirements of part 70 are met. 57 FR 32250, 32284 (1992).

Thus, States may establish State requirements, as long as they are no less stringent than corresponding Federal requirements, and may incorporate those requirements into part 70 operating permits according to the requirements of part 70. In addition, section 112(l) places no restrictions on the stringency of approvable State standards, other than that they may not be less stringent than corresponding Federal standards, nor does section 112(l) require consideration of any particular factors in development of an approvable State standard.

Federal Enforceability

Several commenters questioned the basis for the EPA's determination that a State rule or program, once approved according to the requirements of section 112(l), resulted in approved State standards and emission limitations that were federally enforceable. Other commenters requested explanation as to the EPA's delegation authority under section 112. One commenter stated that the EPA's delegation of authority would be unconstitutional under the Appointments Clause of the United States Constitution.

Prior to the enactment of the 1990 Amendments, the Administrator was authorized to delegate her authority to implement and enforce standards promulgated under section 112. When this delegation occurred, a **Federal Register** notice was published and the delegation authority cited in the Code of Federal Regulations. Delegation procedures were spelled out in an EPA publication, "Good Practices Manual for Delegation of NSPS and NESHAPs". Duplicate delegation authority for new source performance standards resided in section 111 and was unchanged by the 1990 Amendments section 111(c). In the 1990 Amendments, Congress chose a new mechanism for delegation of EPA's authority under section 112, by adding provisions for approval of State programs to the delegation of authorities and responsibilities that had been present in the pre-1990 section 112. See S. Rep. at 196. The provisions for approval under section 112(l) indicate Congress's view of a dramatically expanded role for the States in regulation of air toxics. For example, Congress recognized that section 112(l) authorities will greatly expand the role of State agencies and stated that "the legislation significantly expands the statutory role for State and local air pollution control agencies in the regulation of air toxics." S. Rep. at 149,

192. In addition, Congress expressly recognized the effectiveness of existing State programs in control of air toxics, *e.g.*, 136 Cong. Rec. S16978 (daily ed. Oct. 27, 1990) (Clean Air Conference Report, Air Toxics); 136 Cong. Rec. S519–20 (daily ed. Jan. 30, 1990) (statement of Sen. Durenberger).

As enacted under the 1990 Amendments, section 112(l) authorizes the Administrator to approve State programs for control of hazardous air pollutants and for prevention and mitigation of accidental releases if the State program meets certain criteria, which are specified in section 112(l)(5).

These criteria require the State program to contain adequate authorities to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under section 112; adequate authority and resources to implement and enforce the program; and an expeditious schedule for implementing the program and assuring compliance by affected sources. Section 112(l)(5)(A)–(C). The program must be in compliance with the guidance issued under section 112(l)(2) and can not be unlikely to satisfy, in whole or in part, the objectives of the Act. Section 112(l)(5)(D). In addition, the program may not include authority to set standards less stringent than Federal standards promulgated under the Act. Section 112(l)(1). Activities under section 112(l) are subject to the provisions of savings clauses for enforcement of section 112 standards and requirements, section 112(l)(7), and authorities and obligations of the Administrator and the State under title V, section 112(l)(9). However, section 112(l) does not directly address the issue of Federal enforceability of State air toxics standards.

Provisions regarding Federal enforcement of section 112 requirements are specified in section 113. In particular, section 113(a)(3) provides for enforcement of any "requirement or prohibition of (title I, including section 112), including, but not limited to, a requirement or prohibition of any rule, plan, order, waiver, or permit promulgated, issued, or approved under (title I, including section 112)." This language was added by the 1990 Amendments, which generally broadened enforcement authorities under section 113. S. Rep. at 358–66.

Under the pre-1990 Amendments, more stringent State standards were not Federally enforceable, since the statute provided for enforcement only of violations of section 112(c), which clearly applied only to standards promulgated by the EPA. The statute as amended in 1990 does not by its own terms prohibit the violation of State hazardous air pollutant emission standards, and thus, such standards are Federally enforceable only if they constitute a "rule, order, waiver or permit promulgated, issued, or approved" under the Act, that is if such State hazardous air pollutant emission standards included within or adopted into an approved program are "promulgated, issued, or approved" under the Act.

There is no doubt that State standards are "emissions standards" that the State must implement and enforce under section 112(l)(1). Section 302(k) defines "emission standard" to mean "a requirement established by the State or the Administrator which limits the quantity, rate, or concentration of emissions of air pollutants on a continuous basis * * *." Moreover, Congress expressly acknowledged State authority to set emission standards under section 112(l) programs. Section 112(l) prohibits States from submitting programs that include "authority to set standards less stringent than those promulgated by the Administrator" under the Act. This formulation implies that States have authority to set more stringent standards. If they lacked such authority, the prohibition would be unnecessary. While section 112(l)(1) permits States to submit programs for the "implementation and enforcement" of emission standards and other requirements, it does not provide guidance as to the scope of applicability of these State programs. Section 112(l) does not specify what is meant by "partial or complete delegation" of the EPA's authorities and responsibilities and does not provide guidance as to the relationship between existing State standards, previously encouraged and supported by the EPA, and newly-promulgated Federal standards. In particular, it does not provide explicitly for the approval of State emission standards. Because the statute is ambiguous regarding the question of Federal enforceability of approved State standards, the EPA must consider Congress's objectives and policy goals in enacting section 112(l), as well as the overall purposes of the Act. Through this rulemaking the EPA is therefore interpreting the provisions of section 112(l) to authorize approval of State programs and rules that are federally enforceable under section 113. Under the two-step analysis of *Chevron U.S.A. Inc.* v. *Natural Resources Defense Council*, 467 U.S. 837 (1984), if Congress has not "directly spoken to the precise question at issue," and if the statute is silent or ambiguous on the issue, then a regulation must be based on a "permissible construction of the statute." *Id.* at 843. When "competing Congressional goals" are encompassed within the statutory scheme, the EPA may reconcile these with "a reasonable accommodation of (the) differing policy objectives." *Natural Resources Defense Council* v. *EPA*, 822 F.2d 104, 117 (D.C. Cir. 1987). The EPA's interpretation must be "reasonable and consistent with the statute's purpose." *Chemical Mfrs. Ass'n* v. *EPA*, 919 F.2d 158, 162–63 (D.C. Cir. 1990). Section 101(a) of the Act recognizes that air pollution prevention and air pollution control at its source is the primary responsibility of States and local governments. In the area of air toxics regulated under section 112, Congress clearly supported States' past efforts to regulate air toxics sources, recognized that some State programs had been developed earlier than the Federal program, and provided a new Federal regulatory scheme under section 112 that included a mechanism for States to maintain existing requirements as long as they were no less stringent than Federal requirements and the State met program approval criteria.

In response to comments, the EPA has added § 63.90(d), Federally enforceable requirements, to clarify that approved rules and requirements are enforceable by the Administrator and citizens under the Act.

However, in exercising EPA's enforcement authority, the Agency would direct its resources towards the provisions of the approved State rule, program, and resulting permit conditions implementing the rule, which the Agency relied on in determining that the State rule or program assured compliance with the Federal requirements. In deciding whether to bring an enforcement action, the Agency would take into account the extent to which any violations implicate the control levels or compliance measures required by the otherwise applicable Federal rule, where the source's compliance with the otherwise applicable Federal standard can be determined. For example, if the Federal standard required a control efficiency of 95 percent and the State rule approved pursuant to section 112(l) required a control efficiency of 99 percent, EPA, in deciding whether to bring an enforcement action, would consider whether the source met the 95 percent control level. If EPA determines that the source was operating equipment that achieved a control level of 96 percent, EPA would not intend to take action

against the source for violation of that element of the State rule.

The EPA does not intend to bring an enforcement action against any source covered by a State rule that would not have been covered by the Federal rule. In cases where an alleged violation does not implicate a control requirement of the otherwise applicable Federal rule, EPA will defer to the State to exercise its own enforcement authorities to enforce the more stringent provisions of the approved State rule.

Regarding the constitutionality of delegation under section 112, the EPA notes that delegation of authority is a well-established practice that has long provided a mechanism for States and local governments to carry out certain provisions of Federal mandates, as authorized by Congress, according to specific criteria and standards, and as overseen by the delegating Federal agency. For example, under the Act, Congress has expressly granted the EPA authority to delegate to a State in section 111(c)(1) (new source performance standards), section 112(l)(1) (hazardous air pollutant and accidental release prevention requirements), and section 328(a)(3) (outer continental shelf activities). Delegation of authority from Federal agencies to State or local governments, including delegation of authority under the Act, has been upheld by the courts. *Southern Pacific Transp. Co.* v. *Watt*, 700 F.2d 550 (9th Cir. 1983) *cert. denied* 464 U.S. 1064 (1984); *Nance* v. *Environmental Protection Agency*, 645 F.2d 701, 714–15 (9th Cir. 1981) *cert. denied sub nom Crow Tribe of Indians* v. *Environmental Protection Agency*, 454 U.S. 1081 (1981); *United States* v. *Matherson*, 367 F.Supp. 779, 782 (E.D.N.Y. 1973) *aff'd without op.* 493 F.2d 1399 (2d Cir. 1974).

Stringency

Several commenters requested clarification of the measure of stringency that the EPA would use to determine whether a State program or rule was approvable. Commenters asked whether stringency would be measured by emissions reductions and whether the comparison would be made at the emission point, source, or facility level.

As explained below, stringency may be measured by level of control as expressed by emissions reductions, applicability as to the sources subject to requirements, compliance and enforcement measures, such as averaging times, or other measures as determined by the Administrator. Simply put, comparison is made at the point at which the Federal requirement is determined, so that if the Federal requirement is a requirement at the source, so too must the approvable State requirement be at the source; and if the Federal requirement is placed on an emission point, the State requirement must do the same.

In the general description of State Programs under section 112, section 112(l)(1) describes programs that States may develop and submit for approval by the EPA. Section 112(l)(1) prohibits State programs that include "authority to set standards less stringent than those promulgated by the Administrator" under the Act. This prohibition against standards less stringent than Federal standards implies a comparison between the State requirements and the corresponding Federal requirements. Under section 112(l)(5), the EPA must disapprove a State program if the program's authorities are not adequate to assure compliance by all sources within the State with each applicable standard, regulation or requirement established by the Administrator under section 112.

Taken together, these requirements provide that State programs maintain, as a minimum, all Federal standards, regulations, and requirements as established by the Administrator and ensure that any corresponding State requirements are at least as stringent. Thus, an approvable State standard could not allow, for example, less emissions reductions than the corresponding Federal standard, and the emission reductions would be measured according to the requirements of the Federal standard, that is, if the Federal standard measured emissions reductions at each emission point, a State standard would have to do likewise to be approvable.

Several commenters also felt that the basis for stringency should not be restricted to emission reductions but should instead focus on the impacts that result from emissions. Also, a commenter noted that the basis for stringency should be in accordance with the criteria for establishment of regulatory requirements, e.g. cost, non-air quality health, environmental, and energy impacts of section 112(d) standards.

The EPA recognizes that several provisions under section 112 examine specific impacts to human health and the environment and call for future regulation based on such impacts. The central basis for section 112, however, is the maximum achievable control technology (MACT) program that mandates the installation of controls and the reduction of emissions of listed HAP's regardless of proof of specific resulting impacts. While a reduction of the impacts of HAP emissions to human health and the environment are the central objectives of section 112 of the 1990 Amendments, Congress based the establishment of MACT stringency on "reduction of emissions" and "emission limitation." (See sections 112(d)(2) and 112(d)(3).) This then should also be the primary basis for determining the stringency of State rules and programs to be approved in lieu of Federal section 112 rules. Further, the EPA believes that reliance on a comparison of impacts would be extremely difficult and resource-intensive and such analysis might often require approval decisions in the face of large degrees of uncertainty. Section 63.90 defines "stringency" to be measured by the quantity of emissions or by parameters relating to rule applicability, level of control, and compliance and enforcement measures, or as otherwise determined by the Administrator. Thus determinations that State rules are no less stringent than corresponding Federal rules will typically compare the parameters in the State and Federal rules using the definitional measures or as mandated by a particular Federal standard.

The EPA wishes to clarify that, where Federal emission limitations are expressed as an aggregate total, or as a total of an aggregate grouping (for example total volatile organic compounds), the stringency comparison is made based upon the aggregation that is identified in the Federal rule. For example, for an emission limitation in a Federal rule expressed as a given pounds per hour of total HAPs, the stringency comparison in a section 112(l) submittal would be made on a total HAP basis. To clarify this point, the definition of "level of control" has been changed in the final rule to explicitly address such situations where the Federal rule provides for emission limitations on an aggregate basis. The change to this definition also reflects a requirement to ensure that, when such aggregate comparisons are made, there would not be an increase in public health risk.

One commenter also indicated that the EPA had not articulated the basis for determining the equivalency of State ARP programs. Since the ARP program is not necessarily based on emissions, determining equivalency based on potential emission reduction can not be done. These requirements are structured as a performance based standard and provide considerable flexibility to the regulated community in terms of compliance. Consequently, State programs may contain different requirements for accidental release

prevention which are at least as stringent as the Federal requirement and that may be approvable under the criteria in this rulemaking.

Challenging Mechanism

Several commenters sought clarification of judicial review provisions for approval of State rules and programs. Another commenter asked whether approved State rules and programs would be subject to challenge in State or Federal court.

The EPA will look to the provisions of section 307 of the Act regarding judicial review of this rulemaking and of rulemakings for approval of State rules or programs under subpart E. Challenge to State rules when enacted by the State would be under the requirements of State law. However, approval of State rules or programs under subpart E will be a Federal rulemaking and thereby will be subject to the provisions of section 307.

Public Notice and Comment

One commenter stated that approvals, particularly approvals under § 63.92, should be subject to section 307 notice and comment rulemaking.

Section 307 provides for administrative proceedings and judicial review under the Act. Section 307(d)(1) lists actions to which section 307(d) rulemaking procedures apply, and publication of guidance under section 112(l)(2) is not among them. Although the Administrator may determine under section 307(d)(1)(U) that otherwise unlisted actions are subject to section 307, the Administrator has not done so here. Therefore, the rulemaking provisions of the Administrative Procedures Act rather than those of section 307(d) are the relevant provisions for this section 112(l) rulemaking. The commenter noted that approvals under section 112(l) effectively constitute promulgation or revision of section 112 standards and are therefore subject to notice and comment requirements. Although the commenter is correct that section 307 requires notice and opportunity for comment for revisions of certain section 112 standards, the EPA believes that Congress's specific provision for notice and comment under section 112(l)(5) rather than the provisions of section 307(d) guides the procedures required under section 112(l). The EPA notes that approvals under section 112(l) are not national in scope like those listed in section 307(d) but are instead limited to a State or local area. Moreover, a State's request for approval may include State standards corresponding to section 112(r), section 112(h), or other section 112 standards that are not listed in section 307 at all, and Congress nowhere indicated that different procedures should be followed depending on the particular section 112 standard for which the State was seeking approval.

Section 112(l)(5) contains procedural requirements that include a requirement for notice and comment. The EPA has revised § 63.91 to clarify that requests for approval, including requests for delegation of unchanged Federal standards, are subject to the notice and comment requirements of section 112(l)(5). Once a State's initial request has been approved, the notice and comment provisions of §§ 63.91, 63.92, 63.93, or 63.94 apply. In the case of requests under § 63.92, i.e. requests for adjustments that are unequivocally no less stringent than the otherwise applicable Federal standard, today's rulemaking along, with the notice and opportunity for comment at the time of the State's initial request fulfills the notice and comment requirement under section 112(l)(5). Because the EPA has determined in this rulemaking, which has provided notice and opportunity for comment, that each of the listed adjustments is unequivocally no less stringent, and because at the time of the State's initial request, the EPA will evaluate the State's program to ensure that it meets the requirements of section 112(l)(5), the requirement for notice and opportunity for comment will be fulfilled both for determination of stringency and for determination of adequacy of the State's program.

Delegation

One commenter noted that the term "delegation" should be more clearly defined to explain how it relates to Federal enforceability.

Delegation under section 112(l) means the transfer of authority from the Administrator to a State, according to certain criteria and standards, to implement and enforce the rules or programs approved according to the requirements of section 112(l). Once approved under the provision of section 112(l), a State rule or program is federally enforceable, which means that the Administrator can enforce the approved State rule or program in Federal court. The State may also enforce approved State standards in State court under State law. In addition, with the exception of requirements designated in the permit as State-enforceable only, and terms and conditions of an approved State rule or program, must be incorporated in the Federally enforceable section of a part 70 permit, and are enforceable according to the provisions of part 70. State law may determine the actual mechanism by which delegation occurs and by which requirements are incorporated in part 70 permits. Also, delegation of authority may occur according to requirements under State law for sources not subject to the requirements of part 70.

Adding Pollutants

In response to EPA's solicitation of comment regarding delegation of authority to add to the list of pollutants under section 112(b), many commenters expressed a view that this was not authorized under section 112(l). Similar comments were received regarding delegation of authority to regulate substances beyond those listed under section 112(r) and to modify the list of source categories under section 112(c). Other commenters feared adverse effects on State programs that contain pollutants other than those specified in section 112(b) if the EPA did not delegate authority under section 112(l) for regulation of additional pollutants.

The EPA notes the many comments regarding delegation of authority to regulate additional pollutants and substances under section 112 (b), (c), and (r). Some commenters noted that these sections contain procedures under which the Administrator may revise the list of pollutants, substances, or source categories and that these procedures are the appropriate mechanism for changes to the lists. The EPA has carefully considered the comments received on this issue and has chosen not to revise the proposal as to delegation of these authorities. Therefore, the EPA retains its authority and will not delegate the authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b), the authority to add or delete substances from the list of substances established under section 112(r), or the authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard, as was specified in the proposal in § 63.90(c).

The Agency notes that Congress recognized that many State programs prior to enactment of the 1990 Amendments addressed many more pollutants than those finally listed under section 112(b). In fact, Congress explicitly provided for support of State programs for additional pollutants in requiring the EPA to include the high-risk point source program as an element in the guidance to be published under section 112(l)(2). The EPA is publishing

this guidance for high-risk point source programs, available as described in section V of this preamble. Congress also provided for technical assistance and grants, which may include support for high-risk point source review. Section 112(l)(4). These mechanisms provide additional support for broader State programs that address pollutants other than those listed under section 112(b), without requiring approval of State standards for additional pollutants.

B. Section 63.91—Criteria Common to All Approval Options

This section describes the basic process for approval under this subpart, criteria which must be met for all three approval options and discussion of the process employed when previously approved State authorities are later revised.

The EPA has revised this section to incorporate procedures for approval of State programs that contain section 112 rules exactly as promulgated by the EPA. States are likely to seek these approvals prior to receiving approval of their part 70 operating permit programs or for sources not subject to part 70, such as deferred or exempt sources.

In addition, in response to comments received, the EPA has revised this section to delete the reference to a determination by the EPA of whether a State rule or program is likely to satisfy the objectives of the Act in whole or in part. This reference has been deleted because it is not a criterion for approvability to be included in this subpart. Section 112(l)(5) provides that the Administrator must disapprove a State program if the Administrator determines that the program is not in compliance with the guidance issued under section 112(l)(2), that is subpart E, or the program is not likely to satisfy, in whole or in part, the objectives of the Act. Therefore, since the determination as to satisfying the objectives of the Act is separate and distinct from the requirement to comply with subpart E, the EPA has deleted the reference from this section.

The EPA's evaluation of a State's request for approval will necessarily ensure that an approved program is not inconsistent with the objectives of the Act. Consideration of consistency with objectives of the Act is a qualitative judgement implicitly incorporated in the EPA's overall determinations, not only for approval of State programs under section 112(l) but in other determinations that the EPA must make as well, rather than a separate criterion for approval under the guidelines of section 112(l)(5) (A), (B), and (C) and the regulations as promulgated here. The EPA would not and will not approve a State program that is not likely to satisfy, in whole or in part, the objectives of the Act.

Timing for Approvals

Several commenters felt that the 180 days that the EPA is allowed by the statute to approve or disapprove a State rule or program is unnecessarily long.

Submissions for approval under §§ 63.93 and 63.94 require evaluation of the State's submittal and a determination as to the stringency of the State rule or program, as well as notice and opportunity for public comment and a careful consideration by the EPA of those comments prior to approving or disapproving a State submittal. The EPA, therefore, finds 180 days to be an appropriate period to consider State requests made under these sections. As explained in the previous section on public notice and comment, under § 63.92, additional public comment beyond public comments at the State level for each rule submitted under § 63.92 and public comment on this subpart E rulemaking will not be taken. For this reason, the EPA is committing to grant requests for approval under this section within 90 days. Shortening this period for approval will result in less uncertainty for sources and States affected by a request for approval under this section. The rule has been revised accordingly to reflect this shorter review period.

Part 70—Approval as a Precondition for Section 112(l) Approval

Several commenters noted that approval of a State's part 70 program should not be a precondition for approval of a State's request under section 112(l).

Under § 70.4, States must submit to the Administrator a proposed part 70 operating permit program. Elements of the initial program submission are specified in § 70.4(b) and include a complete program description; regulations that comprise the permitting program; a legal opinion from the State Attorney General that the laws of the State provide adequate authority to carry out all aspects of the program including all applicable 112 requirements; a complete description of the State's compliance tracking and enforcement program; a demonstration that permit fees required by the State program are sufficient to cover per program costs; a statement that adequate personnel and funding have been made available to develop, administer, and enforce the program; a commitment from the State to submit information regarding the State's enforcement activities; provisions for adequate, streamlined, and reasonable procedures for expeditious review of permit revisions or modifications; and other information.

Under section 112(l)(5), the Administrator must disapprove a State's program if she determines that the authorities contained in the program are not adequate to assure compliance with each applicable standard, regulation, or requirement established by the EPA under section 112; adequate authority does not exist or adequate resources are not available to implement the program; the implementation and compliance schedule is not sufficiently expeditious; or the program is not in compliance with the guidance issued under section 112(l)(2) or is not likely, in whole or in part, to satisfy the objectives of the Act.

As outlined above, the information which must be submitted by a State under part 70 encompasses the information required under section 112(l)(5) for approval of State programs that seek only to implement and enforce Federal standards exactly as promulgated. Moreover, the EPA's exercise of its oversight functions under part 70 will help ensure that a State with an approved part 70 program will continue to meet the criteria in section 112(l)(5) for sources subject to the requirements of the part 70 program. Therefore, duplicate applications for such programs would be unnecessary and redundant for any sources a State will permit under part 70. States will need to receive delegation of authorities to implement and enforce section 112 rules and this delegation may take place according to the provisions of the EPA guidance entitled, "Enabling Guidance for Approval of State Programs and Delegation of Federal Authorities".

Part 70 approval also confers approval under section 112(l) for delegation of unchanged Federal standards because part 70 approval suffices to satisfy section 112(l) approval requirements for unchanged section 112 standards. Requirements for part 70 approval, specified in 40 CFR 70.4(b), encompass section 112(l)(5) approval requirements for delegation of section 112 standards as promulgated by the EPA. Section 112(l)(5) requires that the State's program contain adequate authorities, adequate resources for implementation, and an expeditious compliance schedule, which are also requirements under part 70. Therefore, for part 70 sources, part 70 approval also constitutes approval under section 112(l)(5) of the State's programs for delegation of section 112 standards that

are unchanged from Federal standards as promulgated.

An approval action under the provisions of part 63 may in fact include the actual delegation of existing standards. It will not, however, include delegation of future standards. Rather, it will make provisions—for example, as structured in an accompanying MOU—for the delegation of future standards. Such an MOU may allow for automatic delegation, or case-by-case delegation, or automatic delegation except for certain standards, such as the radionuclides standard, or other delegations as appropriate. The provisions of individual approvals and MOUs will differ depending on the authority the State has under State law to accept delegation.

In addition, States may seek approval of State programs prior to receiving approval of their operating permit programs under part 70. In this instance, States must fulfill the requirements of § 63.91, including requirements for notice and comment, even for programs containing only Federal standards exactly as promulgated by the EPA or containing only adjusted rules under § 63.92. The EPA has revised the provisions of § 63.91 to reflect this requirement.

Delegation of section 112 standards is subject to the requirements of section 112(l). Procedurally, implementation of section 112(l) requires submittal of a request for approval, notice in the **Federal Register** that the EPA has received a request, a public comment period of at least 30 days, and notice in the **Federal Register** that the EPA has approved or disapproved the request.

Newly promulgated standards under section 112 must be delegated under the provisions of section 112(l). Delegations of section 112 standards that occurred prior to the 1990 Amendments may remain in effect. Although the EPA could require rescission of these delegations under section 112(l)(1), which provides for review of enforcement delegations previously granted, it is permissible to conclude from that section's provisions and from the savings provisions in section 112(q) that delegations occuring prior to November 15, 1990 remain valid. Nevertheless, the EPA may choose to conduct a review of previously granted delegations under section 112(l)(1), and if the EPA finds, as a result of this review, that the basis for the Agency's determination under pre-1990 section 112(d) of adequacy regarding the State's program is no longer valid, the Agency may require the State to submit a request under section 112(l) to renew its delegation authority.

States may submit requests for section 112(l) programs that would provide for approval of existing standards without the need to repeat section 112(l)(5) notice and comment, as long as the State's law allows such delegation and there is a mechanism to assure that the State continues to meet the approval criteria of section 112(l). A State might be authorized under State law to accept delegation automatically, and as long as the State committed to an adequate funding mechanism, delegation of future standards would be approvable as long as any other section 112(l) requirements were met. If the State for some reason was unable to meet its commitment to provide adequate resources in the future, the auditing and withdrawal mechanism would allow the EPA to withdraw approval, thus providing protection against a State's failure to continue to meet the criteria.

Another procedural streamlining mechanism is the use of direct final rulemaking where appropriate for delegations where there has been no prospective approval like that discussed above. In the instances where the EPA did not expect any comment upon publication of a notice of approval, the notice could specify that the approval would become effective in 30 days unless comments were received. If comments were received, then the EPA would have to renotice the approval and provide for a 30-day public comment period. The time and resource savings from this use of direct final rulemaking would thus depend on the correctness of the Agency's judgement regarding whether or not comments would be submitted.

For States seeking approval of programs under section 112(l) that will include requirements different from Federal requirements, additional information must be submitted. The requirements for these programs are specified under subpart E and in individual section 112 rules. In some cases, States will obtain approval of part 70 programs before they submit requests under part 63. When this is not the case, under certain circumstances, such as prior to approval of a State's part 70 program, or for a request for approval of standards or requirements for sources not subject to the requirements of part 70, the EPA will review State submissions under § 63.91, § 63.92 or § 63.93 according to the criteria in part 63 and will not require approval of the State's part 70 program as a precondition to approval under part 63. Nevertheless, § 63.94 continues to require part 70 program approval prior to section 112(l) approval (see § 63.94 comments). The EPA reserves the right to establish requirements for delegation under section 112(l) according to the criteria of section 112(l) and under other circumstances which may arise in the future. Because part 70 program approval may not necessarily precede approval under subpart E, the following changes have been made concerning the general criteria for approval:

Section 63.91(b)(5) is amended to state the plan should include "at a minimum a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies."

Section 63.91(b)(3) is expanded to require the demonstration to include: (i) A description in narrative form of the scope, structure, coverage and processes of the State program; (ii) a description of the organization and structure of the agency or agencies that will have responsibility for administering the program; (iii) a description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees. The State need not submit complete job descriptions for every employee carrying out the State program.

Section 63.91(b)(6) is revised to read: "A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement: (i) The State shall have enforcement authorities that meet the requirements of § 70.11; (ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11.

The language of § 63.93(b)(4) "whenever they are a part of the rule for which the approved rule would substitute" is deleted.

Section 63.93(b)(4)(iv) is revised to read "The results of all required monitoring or testing must be reported at least every 6 months." Approval of a State part 70 program will substantially meet these requirements.

Objectives of the Act

Nearly every commenter discussed the application of the statutory provision under section 112(l)(5)(D), "not likely to satisfy, in whole or in part, the objectives of the Act." A wide diversity of viewpoints was expressed. Some commenters felt that this requirement gave the EPA the ability to disapprove State rules or programs that, although more stringent than the relevant Federal rule, ran counter to a policy direction the EPA has pursued.

Other commenters pointed out that the EPA policies are not themselves objectives of the Act.

The EPA agrees that in application of this provision, the EPA policies do not necessarily represent the only possible way of meeting the objectives of the Act. The EPA policies generally represent the EPA decisions about the means it will use to achieve the Act's objectives. The 1990 Amendments support the adoption of alternative State and local standards that are at least as stringent as Federal standards and section 112(l) itself is structured to provide flexibility and to accommodate differing State and local approaches.

It would be counter to the goals of section 112(l) and the 1990 Amendments, therefore, for the EPA to disapprove a State or local rule or program simply because it perceives its policies to be different than those of the State standard. As previously explained, the EPA has deleted reference to "objectives of the Act" from § 63.91 because this provision is separate from the approval criteria under subpart E.

Opportunity for Public Comment and Review of Permit Modifications

One commenter expressed concern about public opportunity to review and comment on permits which must be updated as a result of an approval under this subpart.

The EPA agrees that public involvement in the review of such permits is appropriate and beneficial to help assure proper implementation. To clarify this position, § 63.91(a)(6) states that newly approved requirements be included in a permit via the process described under § 70.7(f) of this chapter.

Additional Language on Reopening of Permits

Another commenter pointed out that the requirement that language be inserted in each permit describing permit reopening upon possible withdrawal of approval was unnecessary.

The EPA maintains the need to have a State reopen every permit per the process described in § 70.7(f) upon withdrawal. The EPA feels that such instances are cause for reopening because after withdrawal of the approved State standard, permits containing only the State standard no longer contain applicable requirements.

Compliance Uncertainty

Numerous commenters expressed concerns about the uncertainty sources face in the time period between a State submission for approval and the EPA's decision to approve or disapprove.

Until the EPA approves or disapproves a State submission, sources will remain uncertain about what standards will ultimately apply to them. Several factors may decrease this uncertainty. First, in many cases sources will already be in compliance or soon need to be in compliance with State requirements that are being submitted for approval. It will generally be far more beneficial to such sources to have approval granted, thereby obviating the need for such sources to take further action to comply with the otherwise applicable Federal requirements. Second, any State requirements submitted for approval will have undergone a public comment process at the State level. A third reason tempering concern can be added. While it is true that for any approval under this subpart, a source must always be in compliance with either the underlying Federal rule or the approved State rule or program requirements applicable to that source, this does not mean that sources need be immediately subject to a State rule or program upon approval. It is possible for States to grant additional time to sources to come into compliance with the approved State rule. In their submission to the EPA for approval, a State could set an absolute date for approval or establish a certain period to achieve compliance once a State rule or program is approved. If a State chooses to provide such flexibility, sources must be in compliance with the underlying Federal rule according to any specified compliance timeframes in the interim period.

C. Section 63.92—Approval of a State Rule That Adjusts a Section 112 Rule

This section describes the process and criteria for gaining approval under the first of three approval options. "Rule Adjustment" is the streamlined approval option based on a promulgated list of allowable adjustments to Federal rules that the EPA has determined to result in rules that are categorically no less stringent than the corresponding unchanged Federal rule.

Under each of the three approval options, the EPA will publish the approved rule or program in the **Federal Register** and incorporate the approved rule or program, directly or by reference, under the appropriate subpart of part 63. Several commenters suggested that incorporation of the approved rule or program under the subpart containing the otherwise applicable Federal rule would simplify sources' understanding of applicable requirements. The EPA agrees and will incorporate rules upon approval into these subparts to the extent appropriate. As approvals under § 63.94 can cover numerous section 112 standards, approvals made under that section as well as approvals of ARP programs may be treated differently. For example, ARP programs may be incorporated under the part containing other accidental release regulations.

Stringency Comparison

A few commenters discussed whether comparisons of stringency are best made at the source level or the level of individual emission points.

Among the criteria for approval under this section, a State rule must be unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each source and emission point. The test for stringency of a State submission under the adjustment approval option is a check to assure that proposed State changes qualify as adjustments under § 63.92 and do not deviate from the Federally promulgated list of allowable adjustments in this section. Once that determination is made, no further judgment is necessary. Therefore, no additional Federal public notice and comment are necessary prior to approval of the adjusted State rule because this rulemaking to establish guidance for approval of State programs under section 112(l) constitutes adequate notice and opportunity for public comment for this approval option. For these reasons there can be no question about stringency of a rule submitted for approval under this section. Therefore, to the extent that there are specific Federal requirements for individual emission points, a State rule must match or exceed stringency at each regulated emission point. If a State seeks to submit a rule that creates opportunities for shifting emissions between emission points within the same source or some other type of averaging scheme, that rule must be submitted under § 63.93 in order that the EPA may evaluate the stringency of the State rule compared to the corresponding Federal rule in detail.

Public Notice and Comment

Several commenters felt that approvals granted under this section should be subject to additional opportunity for Federal public notice and comment. Another commenter stated that for approval under § 63.92, a public comment period at the Federal level is unnecessary if the State or local program is already subject to public participation requirements as stringent as the Federal process.

This section was specifically developed to provide sources and States an opportunity to use a streamlined

approval process. The adjustment list was carefully chosen to include only adjustments that are unequivocally no less stringent and has been subject to public comment during this rulemaking under section 112(l). The Agency has considered the public comments regarding the stringency of the adjustments and generally disagrees with those commenters that thought the adjustments could under certain circumstances result in less stringent requirements. If however, a State request for approval under § 63.92 includes an adjustment that as applied in a particular circumstance would not be unequivocally no less stringent, the EPA will disapprove the State's request. The State would be free to resubmit its request under another approval option, such as § 63.93. Therefore, the EPA believes that additional notice and comment for requests under § 63.92 would be unnecessary and redundant and that this rulemaking constitutes adequate notice and opportunity for public comment. First of all, each State rule for which a state seeks approval must have undergone rulemaking at the State level that included public participation equivalent to that required at the Federal level. The regulated community and interested public would have had ample opportunity for comment at that time. Furthermore, this rulemaking for part 63 has provided additional opportunity for comment on the list of adjustments and its application to State rules. Prior to the 1990 Amendments, delegation to implement and enforce unchanged section 112 standards was granted under section 112(d), which did not require opportunity for public notice and comment if the State met "adequate procedures". Those "adequate procedures" specifically called for a demonstration of adequate legal authority, adequate resources, and expeditious compliance. Once a State successfully completed this demonstration, the authority to implement and enforce the unchanged rules was granted.

Under the 1990 Amendments, it is possible for a State to obtain delegation to implement and enforce State rules or programs that may differ from the Federal requirements by submitting them for approval under subpart E. The EPA believes that certain types of changes will clearly result in State rules that are unequivocally no less stringent than the relevant Federal rule. Only a limited set of changes, referred to under this section as adjustments, fall under this definition. These adjustments were included in the proposed subpart E and public comment was sought. A State rule that included only changes from the list of adjustments, therefore, can be approved without additional public notice and comment since the public has had the opportunity through the proposal of this rule to comment on each of the submitted changes. As discussed above, by streamlining the procedures, the EPA has been able to reduce the normal period of the EPA approval time under this section from 180 days to 90 days and has made this change in § 63.92 in response to comments received. Finally, the EPA anticipates that approvals under § 63.92 will be numerous, routine, and noncontroversial. The Administrator may not approve, under § 63.92, any State program or rule in which "any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point." Section 63.92(a)(2). If a State submittal under § 63.92 is in any way ambiguous, the EPA will disapprove the request. The State may then resubmit the request under § 63.93 and the EPA will seek public comment for no less than 30 days. Section 63.93(a). The EPA believes that the regulated community and the interested public will have had sufficient notice and opportunity to comment on the unambiguous, unequivocally no less stringent adjustments listed in § 63.92(b)(3) at the State level and through this rulemaking, and that additional safeguards are provided by the provision that requires a State to seek approval under § 63.93 for nonroutine changes to the Federal requirement.

"Any Other Adjustments"

Some commenters felt that the EPA should include among the list of adjustments one which read, "any other adjustments which are unequivocally no less stringent and which have been approved by the Administrator upon petition by the State."

The EPA believes that additions to the list of adjustments must afford an opportunity for Federal public notice and comment. This would generally amount to an amendment of this regulation and, therefore, such a category should not be included in the listed adjustments under § 63.92. Note, however, that the EPA may propose new adjustments specific to a particular section 112 rule at the time that the Federal section 112 rule is proposed. (See § 63.92(b)(3)(xiii).) The public will have opportunity to comment on such Federal rules when they are proposed.

Adjustment for Additional Pollutants

Several commenters felt that the EPA should include an adjustment allowing for the regulation of pollutants not among those listed under section 112(b).

The EPA has chosen not to include such an adjustment at this time. This situation may be difficult for the many States that regulate pollutants not on the section 112(b) list, as those States may not incorporate requirements that do not relate to Federally listed pollutants in the Federally enforceable section of the part 70 permit and therefore State-only requirements for additional pollutants would need to be incorporated in a different section of the part 70 permit. See § 70.6(b)(2). Instead, the EPA encourages States with data that indicate a pollutant should be Federally regulated to submit a petition to the EPA to include such pollutants on the section 112(b) list.

D. Section 63.93—Approval of State Authorities That Substitute for a Section 112 Rule

This is the second of three approval options under this subpart. Under this option States are given the widest possible range of flexibility in seeking approval of authorities that differ significantly from an otherwise applicable Federal rule. The EPA will make a detailed and thorough evaluation of the State's submittal to ensure that it meets the stringency and other requirements of this section.

Need for Emission Point Basis Rather Than "Affected Source"

One commenter felt that § 63.93 should be deleted from the rule, because it allows stringency to be compared at an "affected source" level rather than for each emission point. The EPA disagrees with the view that this option should be deleted. Under § 63.93, a detailed demonstration is required that will ensure that any approved State alternative will achieve an equal or greater reduction in emissions. This section is further reinforced by requirements to address in detail the effects of alternative enforcement and compliance methods. The final rule continues to address stringency for § 63.93 on a source" basis. The term "affected source" has, however, been deleted from § 63.90(a), because there does not appear to be a compelling need to define the term in both subpart E and also in subpart A "General Provisions" of this part. The final rule will, as a result, rely on the definition in subpart A once it is promulgated. The rule was

proposed on August 11, 1993 (58 FR 42760).

For a given source category, the "affected source" definition will be specifically defined when the section 112 standard is promulgated for the category. In making stringency comparisons under § 63.93, the reviewer should therefore consult the appropriate subpart of part 63 for the "affected source" definition for the category in question.

Incorporation of Approved Rules

As discussed in the previous section of this preamble, several commenters suggested incorporation of an approved rule under the subpart containing the otherwise applicable Federal rule. The EPA agrees and will do so as appropriate.

Form of the Standard for Work Practice, Design, Operational or Equipment Standards

For approval under § 63.93, States are required to provide the EPA with a detailed demonstration showing that implementation and enforcement of State authorities results in as great or greater emission reductions (or other appropriate measures in the case of section 112(r)) for each affected source as the implementation and enforcement of the otherwise applicable Federal rule. In contrast, under the approval option in § 63.94, no detailed demonstration is necessary but States are required to express permit terms and conditions that result from the approved State program requirement in the form of the Federal standard.

Numerous commenters expressed concern about inflexibility that the "form of the standard" requirement imposes. Several commenters had specifically suggested the addition of a provision allowing for a source specific detailed demonstration of stringency in instances where the "form of the standard" requirement severely limited needed flexibility. To address the concerns about this inflexibility, the EPA is broadening the type of State authority that can be approved under § 63.93 for certain types of standards and under certain conditions.

The EPA agrees that under certain conditions, requiring States to write permit conditions in the form of the Federal standard could be unnecessarily inflexible. Those conditions are when the following circumstances exist together: (1) The EPA writes a work practice, equipment, design or operational standard (in other words, when the EPA does not write a standard based on performance, such as control efficiency or an emission rate) and (2) such a Federal standard does not address a State work practice, equipment, design or operational standard as either meeting or failing to meet the Federal standard. These conditions will generally only arise when a State has decided to require control equipment or practices which have been developed since the EPA promulgated the relevant standard. In such cases the State standard may be at least as stringent as the previously promulgated Federal standard but can not be expressed in the form of the Federal standard. The flexibility otherwise provided in § 63.94 here would not allow the State standard to be the basis for the permit in these cases since the State standard would not be able to be expressed in the form of the Federal standard.

In this rule as proposed, States would have had the opportunity to solve this problem by codifying their standard in a source category-specific rule through a State rulemaking and then seeking approval of that rule under § 63.93. Since many States regulate hazardous air pollutants through authorities which do not include source-category-specific rules, pursuit of approval under these circumstances would require a significant employment of resources for largely administrative purposes so that the State standard could be expressed as a source-category specific State rule for which the State could seek approval.

To address this difficulty, the EPA has revised § 63.93 to allow for slightly broader applicability of this section. Under the narrow circumstances discussed above, the EPA is not requiring the submission of a source-category-specific rule for approval under this section. Instead the EPA is willing to review and to consider for approval a specific application of broader State authorities under certain conditions as explained here. As at proposal, the EPA will only grant approval under this section in lieu of a single specific section 112 rule that specifies work practice or similar requirements. Approval of a specific application of broad State authorities will only be given to a State with a program already approved under § 63.94 to regulate the applicable source category, only for a source category that is not federally regulated by a performance based standard and only where the Federal standard has not addressed the State's particular approach to controlling emissions. In this case, a State need not submit a rule specifically and exclusively addressing the requirements of the Federal rule. Instead a State may submit for approval legally enforceable broader authorities which allow it to regulate the source category in question, identifying the sources in that source category, and specifying proposed section 112 permit terms and conditions (such as the controls that are required by application of those authorities) and the authorities which will assure adequate compliance and enforcement according to the provisions of this subpart and part 70. If the EPA approves a State's request in such a case, only the specific application of the State authorities to a single source category as approved will be Federally enforceable terms and conditions. If a State later revises its authorities to require different controls or compliance and enforcement measures, those changed requirements will not be federally enforceable unless the State submits documentation or a request under § 63.91(c) regarding revisions of State authorities. The source will remain subject to the approved requirements incorporated in its part 70 permit according to the provisions of part 70 unless the EPA disapproves the revision or otherwise finds that the authorities are inadequate and initiates withdrawal proceedings. The EPA has included in § 63.93 the types of "authorities" needed for approval. Authorities submitted under that section must meet the criteria of section 112(l)(5)(A), that is the authorities must be adequate to assure compliance by all sources subject to the request for approval with each applicable Federal standard, regulation or requirement. A threshold requirement for approvability is that State authorities must be legally enforceable by the State under State law. Such legally enforceable authorities may be statutes, rules, regulations, or other instruments that impose legally enforceable requirements.

For example, a State might have a single regulation that assesses risk at facilities that emit hazardous air pollutants and based on estimates of risk, requires specific emission rates or specific controls at particular facilities which might differ from facility to facility. The State's regulation might apply to a wide range of source categories in the State. If such a State initially received approval under § 63.94 for a State program that included a source category which was later regulated under a Federal equipment standard, approval under § 63.94 might provide very little flexibility to the State to require different types of equipment in lieu of equipment specified by the otherwise applicable Federal requirements. This might be especially problematic when a State sought to

require innovative controls not evaluated at the time of Federal standard promulgation because they were not yet developed. If a State can demonstrate to EPA, via the process described in § 63.93 that such controls resulted in emission reductions for all sources in the source category as great or greater than the emissions reductions the Federal standard would achieve, the EPA is willing to consider a request to approve the State authorities requiring such controls as Federally enforceable in lieu of the otherwise applicable Federal standard. Resulting terms and conditions would be incorporated in a part 70 permit. This would be an approval of a specific application of broad State authorities under the narrow circumstances described.

Thus, as described above, provisions for approval under § 63.93 has been revised to allow a State to request approval of a limited application of its general air toxics regulatory authority as that authority applies to a single source category. To do so, the State would need to meet the requirements of this section which call for, among other things, a detailed analysis of emission reductions that would result from both the Federal and State scenarios. Only the terms and conditions to be incorporated in the source's part 70 permit, as approved under this subpart for the single application of authorities for the single source category for which the request was submitted, would be federally enforceable.

Stringency Criterion for Accidental Release Prevention Programs

In terms of the ARP program, one comment indicated that States should not be allowed to submit ARP programs under § 63.93 because approval is unnecessary. Rather, the Federal and current State programs could be easily meshed together and the most stringent requirements of each be included. The commenter also pointed out that the criteria for approval of equivalent State programs are primarily based on the ability of the State program to achieve equivalent or better emission reductions and that this criterion makes little sense in the context of accidental releases.

The Agency disagrees that States do not now, or will not in the future, need the flexibility of submitting ARP programs for approval which differ from the Federal requirements. However, EPA recognizes that the criteria in the proposed rulemaking may not have been sufficiently broad to include all the requirements under the section 112(r) program. Thus, the Agency has added additional approval criteria to § 63.93 which are specific to the ARP program.

E. Section 63.94—Approval of a State Program That Substitutes for Section 112 Emission Standards

This is the third of the three approval options. It allows for a one-time approval of a legally binding commitment adopted through under State law to adequately regulate sources subject to hazardous air pollutant section 112 emission standards as specified under § 63.94(b)(2). This section applies only to sources for which part 70 permits will be issued by the State and which are subject to section 112 requirements expressed as terms and conditions of the part 70 permit. Part 70 permit requirements must be written in the form of the Federal standard which would be otherwise applicable to the source. This section may be used to approve standards corresponding to Federal section 112 (d), (f), or (h) standards only and can not be used to approve infrastructure rules such as those developed under sections 112(g), 112(i)(5) or 112(r).

Infrastructure Rules

Some commenters felt that the EPA could approve under this section requests for approval of infrastructure rules. As mentioned above, stringency requirements for approval under this section require that permit terms and conditions resulting from approval be expressed in the form of the Federal standard. Infrastructure rules may include requirements that can not be simply compared for stringency through a test of emission rates or control efficiencies.

In fact, some infrastructure rules provide guidelines for case-by-case determinations on controls where no simple stringency comparison can be made but rather the determinations must meet criteria specified in the applicable section 112 provisions. For these reasons, State infrastructure rules can only be approved under subpart E when they either adjust the Federal rule per § 63.92 or the State submits a detailed demonstration of stringency according to the provisions of § 63.93.

Stringency Comparison

As in the previous section, commenters questioned whether the basis for stringency comparisons should be at the source or emission point level. Approvals under this section require States to write permits in the form of the Federal standard. If the Federal standard requires for example, specific controls or emission rates from specific emission points, that form must be maintained in permits resulting from an approval under this section. If, on the other hand, a Federal standard has no requirements that apply at the emission point level, but instead stringency is measured at a more broadly defined source level, a State could choose to express terms and conditions at the source level also, as long as those terms and conditions were no less stringent than the Federal requirements and were expressed in the Federal form. This allows States to express terms and conditions with the same degree of flexibility that is allowed by the Federal standard.

Part 70—Approval Prior to Section 112(l) approval

As discussed earlier, commenters expressed preferences both for and against the requirement of part 70 program approval prior to a State receiving approval under this subpart. The primary Federal determination of stringency under this approval option occurs through EPA review of a part 70 permit with terms and conditions expressed in the form of the Federal standard. The EPA therefore finds that it is necessary for a State to be implementing an approved part 70 program before it would approve a request under this section for different but equally effective State programs. More specifically, approval under this section for this purpose would only apply to those sources for which the State is the part 70 permitting authority. This addresses any potential applicability issues that might arise from a partial or interim approval under part 70.

State Enforceability

Two commenters noted that States with existing hazardous air pollutant programs, which can include State statutes, regulations, or other requirements that limit the emissions of hazardous air pollutants from affected sources and that may be structurally dissimilar from section 112 regulations (e.g. risk-based standards) should be allowed the option to operate independently of and in addition to the Federal MACT standards and programs while at the same time maintaining Federal applicable requirements in part 70 operating permits. These State standards would be State enforceable only.

EPA agrees with this comment. Nothing in today's rule precludes a State from operating existing programs that may differ from federal section 112 emission standards and requirements as long as they are enforceable as State-only requirements. Such State-only requirements may be incorporated in a part 70 permit under § 70.6(b)(2). In

addition, as discussed previously, section 116 of the Act preserves the right of States to adopt and enforce standards or limitations as long as they are no less stringent than Federal section 112 standards or limitations.

F. Section 63.95—Additional Approval Criteria for a State Rule That Adjusts or Substitutes for the Federal Accidental Release Prevention Program

Section 63.95 contains specific approval criteria for the approval of State programs which adjust or substitute for the Federal accidental release prevention program.

Section 112(r) Registration of Facilities Under Section 112(l)

One comment disputed whether the proposed rule properly addressed the provision of section 112(l)(2) which directed the EPA to draft guidance under this section which "provides for" the registration of facilities producing, processing, handling, or storing over a threshold quantity of a substance listed under section 112(r). The comment stated that § 63.95 lacked sufficient specificity to fulfill the guidance required by the statute. The commenter suggested specific components of a registration program, including standards for outreach, verification of coverage through database crosschecking, and the specific contents of a registration form. The commenter suggested that by using the phrase "provide for" in the requirement to promulgate guidance, Congress did not intend for the EPA to delay informing affected parties of the minimum requirements of an acceptable program. The EPA generally disagrees with the comment that the EPA has failed to provide sufficient guidance to States as required by section 112(l)(2). However the EPA notes that it has made some modifications to the provisions of §§ 63.93 and 63.95 to clarify the regulatory provisions. Furthermore, the EPA believes that the publication of the proposed rule implementing section 112(r)(7)(B) provides additional guidance to States concerning the specific minimum contents of registration. Together, these actions provide not only for the guidance required by statute but also provide much of the supplementary specifics suggested by the commenter.

Today's rule requires a State agency seeking delegation of the Accidental Release Prevention Program to include procedures for registering stationary sources covered by the section 112(r) rules in a manner consistent with the registration requirements under those rules. Section 63.95(b)(2). In addition, to make clear that a State must include a procedure for registration in its application for delegation of the Accidental Release Prevention Program, § 63.95 requires a State to demonstrate authority and resources to enforce all core release prevention requirements. Furthermore, the rule requires a State to describe its outreach program.

The Agency has modified § 63.95 to clarify that a State seeking delegation of the Accidental Release Prevention Program must identify the State entity with which a source must register. Identifying the entity receiving the registration is a necessary aspect of describing the procedures by which a State would register subject sources. The Agency has determined that no specific standards for outreach or database crosschecking are appropriate because such activities are extremely State specific. Certain States may maintain computerized Emergency Planning and Community Right-to-know Act Tier 2 databases while others may be able to rely on Standard Industry Classification (SIC) codes, property tax filings, and other information for outreach purposes and for determining whether all covered sources are registered. However, a description of such outreach and oversight activities would be relevant in consideration of the adequacy of program resources.

The Agency set out proposed specific requirements for registration of risk management plans in the proposed rule implementing section 112(r)(7)(B) (proposed § 68.12). The proposed section 112(r)(7)(B) rule, if adopted, would require a stationary source that has over a threshold quantity of a substance listed pursuant to section 112(r)(3) to register with the Administrator within three years of the final rule's publication. The registration would contain identifying information about the source (name, street and mailing addresses, telephone number, contact persons, Dun and Bradstreet number, applicable SIC codes), data on listed substances present in above-threshold quantities, and a certification by the owner or operator concerning the accuracy of the information submitted and the submission of risk management plans to appropriate local, State and Federal authorities. Such data would need to be updated when it is no longer accurate. The proposed section 112(r)(7)(B) rule does not propose to require additional information concerning the plant's safety programs and surrounding populations because such data would be difficult to standardize for data management purposes. Furthermore, such information does not need to be included in the registration for right-to-know purposes because such information already would be available to the public in the risk management plans filed locally, with the State, and with the Chemical Safety and Hazards Investigation Board. Comments concerning the contents of registration submittal should be directed to the rulemaking docket for the section 112(r)(7)(B) proposed rule.

The Agency believes that today's rule and the discussion herein fulfills its duty to promulgate guidance that provides for registration of facilities that have more than a threshold of a section 112(r) regulated substance. The rule promulgated today unambiguously requires a State seeking delegation of a section 112(r) program to have an element providing for facility registration, which is consistent with the 1989 Senate Environment and Public Works Committee report explaining the guidance requirement. See S. Rep. 1630 at 193. The Agency interprets the requirement to provide guidance for registration of covered facilities to mean that the Agency must make clear that a State seeking a delegation of the section 112(r) program must have a registration element in its program.

The Agency does not believe that today's rule must detail the substantive data requirements for registration because such detail would be inconsistent with the structure of section 112(l) and section 112(r). Under section 112(r)(7)(B), all stationary sources that have over a threshold quantity of a substance regulated under section 112(r) must prepare a risk management plan. Sources that prepare risk management plans must register such plans with the Administrator. Section 112(r)(7)(B)(iii). The Agency interprets the registration of facilities mentioned in section 112(l)(2) to be the same registration as the registration of stationary sources required under section 112(r). Facilities described in section 112(l)(2) would not have a threshold quantity or more of a chemical unless the quantity would also trigger registration under section 112(r). To interpret section 112(l) to require a different registration than section 112(r) would require States opting to develop a delegated Accidental Release Prevention Program to run two redundant registration programs. Section 112(l) provides a means to delegate the section 112(r) registration requirement as part of a delegation of the Accidental Release Prevention Program. No commenter has suggested otherwise.

The statute provides the Agency with a different and more lengthy time frame to develop the section 112(r) registration requirements than it provides for the development of "guidance * * * useful to the States in developing programs for submittal." Section 112(l)(2). It would be a strained reading of the section 112(l) guidance requirement to say that the Agency must detail the specific registration requirements for State programs that elect to seek delegation of the Accidental Release Prevention Program prior to the Agency developing the actual registration requirement.

The Agency has provided useful guidance to the States concerning the registration requirement by promulgating this rule, discussing registration in today's preamble, and responding to this comment. The rule outlines the minimum content of a State delegation submittal and explicitly provides that such submittal must include a description of the State's registration process. Such description must include an identification of the State entity with which parties must register. Furthermore, as noted above, the Agency has discussed its most current view of the specific details of what registration will entail. Section 112(l) does not require the Agency to provide the specific elements of what information is necessary for facility registration. The 1990 Amendments leave the development of the specific elements of registration to a future section 112(r)(7) rulemaking.

Section 112(r) Authorities

One commenter indicated that States should be required to obtain the authorities for the general duty and emergency order authority provisions found in section 112(r)(1) and (9) respectively, because State agencies will often receive citizen complaints about hazards and will have more of the expertise necessary to use such authorities properly than the EPA's regional personnel. The Agency believes, however, that States should be given the option to have authorities beyond the core elements necessary to administer the program. While the general duty and emergency order authority provisions could enhance the State program by providing them with additional compliance and enforcement tools, they are not essential elements which would be required to maintain a functioning ARP program at the State level.

Further, many States already have emergency order authorities under other environmental statutes and may not find section 112(r)(9) critical to the administration of their program. In terms of the general duty provisions, some States are prohibited from having general duty authorities.

Section 112(r) Enforcement Authorities

One commenter indicated that the EPA should specifically advise States that they must have the authority to impose the penalties required under the 1990 Amendments for violators of section 112(r). The proposed rulemaking contained specific language which indicates that the State submission would need to contain a demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy that is consistent with the proposed section 112(r)(7) rule and this language has been retained in the final rule. Section 63.95(b)(3).

Interface Between Section 112(r) and Part 70

One commenter suggested that the Agency should require States to establish appropriate interagency agreements which would promote the exchange of information between the administering agency and the permitting agency if they are different. The Agency agrees that information flow is critical if the implementing State agency is not the permitting agency. This is particularly important since section 112(r) requires the development, submittal, and implementation of a risk management plan which must be addressed in a part 70 permit for subject sources. Consequently, the Agency has added language to § 63.95 which requires a description of any coordination mechanisms the implementing agency will use with the air permitting program, provided it is not the implementing agency.

G. Section 63.96—Review and Withdrawal of Approval

This section discusses terms for the EPA review of the implementation and enforcement of approved State rules and programs and describes the process and criteria for EPA withdrawal of a State approval.

Source Uncertainty About Withdrawals

Numerous commenters expressed concern over the uncertainty that sources might face when approval of a rule or program to which they are subject is withdrawn.

Generally, there are three reasons upon which the Administrator might base a withdrawal. The State might lack adequate authority or resources, the State might not be implementing or enforcing the rule or program adequately, or the rule or program might be found to be less stringent than the otherwise applicable Federal rule or program, perhaps, for example, as a result of EPA review sometime after approval.

If the Administrator withdraws a program for the third of these three reasons, sources' permits will need to be reopened according to the provisions of part 70 and the underlying Federal standard will become the applicable Federally enforceable requirement again on the date set forth by the Administrator in a compliance schedule published concurrently with the withdrawal.

This withdrawal and permit reopening would be due to the fact that the rule or program was found to be less stringent than the Federal standard and is, therefore, no longer appropriate as a substitute for the Federal standard in the part 70 permit. In this case, the permits of sources subject to the requirement will be reopened according to procedures specified in § 70.7(f) because the withdrawal amounts to a finding by the EPA that the permit no longer assures compliance with the applicable requirement consistent with § 70.7(f)(iv). The withdrawal also results in additional requirements becoming applicable to the source, which triggers a reopening under § 70.7(f)(1)(i). Sources would be required to come into compliance by the date specified in the **Federal Register** withdrawal notice regardless of whether or not the permit has been reopened. Since the Federal standard is considered a new requirement, the permit shield in § 70.6(f) would not apply. When only the first or second reasons are cited by the Administrator, and the stringency of the State standard is not in question, reopening of part 70 permits will not be required for sources affected by withdrawal of an approval under § 63.92 or § 63.94. Any source that is in compliance with permit conditions established under such approvals will also be in compliance with the underlying Federal standard upon withdrawal, because a source in compliance with a no less stringent State standard that is in the same form as the Federal standard is also in compliance with the Federal standard. Approved State standards under § 63.92 and permit terms and conditions resulting from an approved State program under § 63.94 are necessarily in the same form as the otherwise applicable Federal standard.

The situation is different for approvals under § 63.93, in particular for work practice, design, operational or

equipment standards because such approved State standards would commonly not be in the same form as the otherwise applicable Federal standard. To assure sources of greater certainty, EPA has revised § 63.96 to provide that permits need not be reopened if the Administrator finds at the time of withdrawal that the approved State rule is still demonstrated to be no less stringent than the otherwise applicable Federal standard. Section 63.96(b)(5). In such cases the Administrator will approve as equivalent according to the provisions of the appropriate subpart of part 63 the equipment, design, work practice or operational standard, emission limitation, or other requirement upon which the original approval was based. This is in accordance with the provisions of section 112(h)(3) for alternative standards. Such an equivalence determination was proposed in § 63.6(g) of subpart A of this part (58 FR 42760 August 11, 1993).

To further increase certainty for sources affected by a withdrawal, the EPA will publish an expeditious schedule for compliance by sources for both involuntary and voluntary withdrawals. Included in this schedule are interim emission limits, as appropriate, to limit emissions for the time period between withdrawal and the deadline for the source coming into compliance with the Federal standard. Sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions at all times during this transition period. The schedule will be published in the **Federal Register** notice withdrawing the approval.

Audits

One commenter noted that the EPA should commit to audits, at least every 3 years, of programs which implement any averaging allowed in approved rules. Today's rule provides that the EPA "may at any time * * * review the adequacy of implementation and enforcement of an approved rule or program * * *". The EPA believes that today's rule provides the appropriate degree of flexibility in performing periodic reviews and allowing the EPA to determine on a case-by-case basis the frequency of those reviews.

One commenter asked the EPA to consider employing an auditing program instead of individual permit reviews. As allowed under § 63.96(a), the EPA intends to establish a program for a review of approved rules and programs and the audit of permits that result from such approvals. Such a program, however, can not replace the EPA's authority to review and potentially veto any rule or program approved under subpart E if and when the EPA finds such review to be necessary. In addition, § 70.10 provides additional protection through Federal oversight of State part 70 programs.

H. Other Comments

Potential To Emit

The May 19, 1993 proposal, requested comment on the potential to emit definition and how it related to submittals under section 112(l). The potential to emit issue, including concerns raised by comments to the subpart E proposal on this issue will not be addressed here but rather will be addressed in a later rulemaking. The issue was also discussed in the proposal for the General Provisions under subpart A of this part (58 FR 42760, proposed August 11, 1993). Since the potential to emit issue is currently under discussion, the EPA is deferring discussion of that issue at this time in this preamble.

Alternative Equipment Under Section 112(h)(3)

One commenter noted that the form of the standard limitation on State authority imposed by § 63.94 diminishes the flexibility in encouraging alternative technologies. The commenter believes that this approach is inconsistent with the fundamental policy goals of the CAA, including the goal of pollution prevention. The commenter feels that State programs should be allowed by the proposed rule to approve alternative technologies, particularly for equipment standards consistent with section 112(h)(3) of the Act.

Section 112(h) of the Act allows the EPA to promulgate equipment standards, in cases where an emission limitation is not feasible. An example of this type of equipment standard is the standard recently promulgated for perchloroethylene dry cleaning facilities (58 FR 49354, September 22, 1993). Under section 112(h)(3) of the Act, sources may request permission from the EPA for use of an alternative means of control. Procedures for review of these requests by the EPA have been proposed in § 63.6(g) of subpart A of this part (58 FR 42760 August 11, 1993).

The EPA wishes to clarify in this rulemaking, the process for making these section 112(h)(3) equivalency determinations for a State that has an approved program under § 63.94, or for a State that believes a given technology would satisfy the requirements of § 63.93. In the final rule for perchloroethylene dry cleaners (58 FR 49354, 49371, September 22, 1993), the EPA indicated that "Section 112(l) of the Act would allow a State to request approval of a State's program that permits a source to seek permission to use an alternative means of emission limitation under section 112(h)(3), provided that the State demonstrated that its program would be no less stringent and that certain conditions were met."

The EPA is here in this discussion further clarifying the procedures by which a State may seek and obtain approval of such a program under section 112(l).

It is unlikely that, for an equipment standard promulgated in accordance with section 112(h) of the Act, there would be an alternative means of control that could satisfy the § 63.94 requirement that the program express the limitation in the same "form as the Federal standard." Accordingly, § 63.94 approval by itself would likely not be sufficient to provide for section 112(h)(3) equivalency determinations. There are, however, two other avenues for an equivalency finding that are provided in today's rule.

First, as described above (preamble section IV), § 63.93 has been modified to provide a means for approval of work practice, equipment, or similar standards that do not require the State to submit a category-specific rule. In order to use this process, the State must have prior approval under § 63.94, and must identify in its submittal under § 63.93, (1) the specific work practice, design, equipment or operational standard that would replace the Federal requirement, (2) a specific description of the State authorities that would be exercised, and (3) proposed part 70 permit terms and conditions. Once approved, the State equipment standard would become the applicable requirement.

Second, the State may develop a State rule containing the alternative equipment limitation and provide a detailed demonstration in accordance with § 63.93 that the rule is no less stringent than the Federal standard. A source seeking permission to use an alternative means of emission limitation under section 112(h)(3) would thus first request permission from the State, demonstrating that the subject alternative means is no less stringent than the Federal requirement. The State would then seek approval from the EPA for that kind of equipment or alternative means of emission limitation.

Currently, the EPA does not delegate authority to determine equivalency of emission control technologies to the States. The February 1983 "Good

Practices Manual for Delegation of NSPS and NESHAPS", reserved to the EPA the determination of equivalency for design, equipment, or work place standards that will achieve a reduction in emissions as allowed for in section 112(h)(3) of the Act to the Administrator because these determinations require notice and opportunity for comment and impact National consistency of standards. While the EPA continues to retain the authority for this decision process, the EPA is providing as much flexibility as possible to the State and sources to receive approval of an equivalent emission control technology under subparts A and E of part 63.

Guidance on Acceptable Controls

Commenters noted that to reduce the paperwork burden and enhance national consistency, the EPA should provide guidance to States regarding acceptable controls on a source category basis. The EPA will usually provide information regarding acceptable controls in MACT rules (reference control technologies). Therefore, the EPA encourages States to provide comments to EPA on alternative compliance during development of MACT standards so that alternatives will receive the fullest possible consideration.

Approvals Should Be for Entire Rules

Commenters expressed concern that approval under section 112(l) should be for entire rules and not for individual provisions within rules.

In accordance with section 112(l)(1), the EPA has allowed for approval of State provisions which meet the stringency requirements specified in this section 112(l) rule and thus as previously described to become federally enforceable. This subpart provides flexibility to the states in submitting programs for approval and also minimizes dual regulation by providing a mechanism to approve those portions of existing State rules which meet the approval criteria specified in the section 112(l) rule. Determination of stringency as required under section 112(l)(1) is predicated on a corresponding Federal standard, rule, or requirement. As the section 112 regulations are developed, elements relevant to stringency determinations will be included, and State rules submitted for approval may be compared with the corresponding Federal requirements.

Notice of Delegation

One commenter noted that the EPA must provide clear notice of rule applicability, effectiveness, and enforceability by providing a notice of delegation which clearly states which Federal or State rules remain in effect and whether they are enforceable by the EPA or the State.

The EPA agrees with this comment and the **Federal Register** notice of approval will specify this information. In addition, the EPA has added § 63.90(d) to make clear that approved rules and requirements are Federally enforceable.

Exemption of Electric Utility Steam Generating Units Exemption of Sources of Radionuclide Emissions

One commenter noted that electric utility steam generating units are exempt under section 112(n) which provides for such exemption unless and until the EPA finds regulation to be appropriate and necessary after considering the results of a study currently being performed. The commenter stated that therefore the EPA can not enforce State regulation of such units at this time. Additionally, a commenter noted that radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission (NRC) should be exempted per section 112(d)(9).

The EPA agrees with these exclusions from subpart E regulation at this time according to the provisions of section 112(n) and section 112(d)(9). Under section 112(n), no Federal standard will be promulgated until some future time, and therefore no stringency comparison can be made at this time for a State rule applicable to sources subject to section 112(n).

One commenter argued that the EPA should not enforce State regulations of radionuclide emissions from facilities licensed by the Nuclear Regulatory Commission ("NRC"), citing the intention of Congress in section 112(d)(9) of the 1990 Amendments to avoid duplicative regulation of NRC licensees and the pending EPA proposal to rescind 40 CFR part 61, subpart I, for nuclear power reactors. Under section 112(d)(9), the EPA may decline to regulate radionuclide emissions from a particular category of NRC licensees if it determines by rule that the NRC program for that category of licensees provides an ample margin of safety to protect human health. Thus, before the EPA may decline to regulate radionuclide emissions from a category of NRC licensees, it must examine the NRC regulatory program for that category and determine that it provides a level of protection equal to or greater than would be provided by implementation of the EPA standard. Although the EPA has not yet made the requisite finding for any category of NRC licensees, it has proposed to rescind 40 CFR part 61, subpart I, as applied to nuclear power reactors (56 FR 37196, August 5, 1991) and to NRC licensees other than nuclear power reactors (57 FR 56877, December 1, 1992), and to rescind 40 CFR part 61, subpart T (56 FR 67561), December 31, 1991), which governs inactive uranium mill tailings disposal sites.

The EPA agrees with the commenter that recognition and enforcement by the EPA of State regulations of radionuclide emissions from NRC licensees which differ from the EPA standards is not consistent with the Congressional objective to eliminate unnecessary duplicative regulation of NRC licensees. Acceptance of alternative State standards or programs for such emission could also complicate the rescission of any Federal standards for which the EPA ultimately makes the necessary finding concerning the NRC program. So long as the EPA standards governing radionuclide emissions for NRC licensees are in effect, States may request that the EPA delegate enforcement of such standards pursuant to § 63.91, but the EPA will not grant requests to adjust such standards or to substitute State authorities or programs for such standards pursuant to § 63.92, § 63.93, or § 63.94. The EPA has added a provision to § 63.90 clarifying this issue.

Of course, in those instances where a State may lawfully adopt differing or more stringent standards regulating radionuclide emissions from NRC licensees under its own authorities, the State may then include terms and conditions implementing such State standards in the State-enforced section of the permit for each facility. Moreover, the decision by the EPA not to adopt or enforce State standards governing radionuclide emissions from NRC licensees does not affect the ability of the States to seek EPA recognition and enforcement of other State standards or programs which may apply to NRC licensees.

High Risk Point Source Program

One commenter pointed out that section 112(l)(2) requires the EPA to publish guidance that includes as an element "an optional program begun in 1986 for the review of high-risk point sources of air pollutants including, but not limited to, hazardous air pollutants listed pursuant to (section 112(b))."

This final rule, along with a guidance document addressing the high-risk point source program described in section 112(l)(2), will fulfill the requirement to "publish guidance useful to the States in developing programs for submittal

under (section 112(l))." A summary of the high-risk point source program guidance document, which will be available concurrently with the final rule is discussed below in section V of this preamble.

V. Additional Guidance

As stated previously in this preamble, additional guidance is concurrently published with this final rule. Specifically: (1) Guidance to review high-risk point sources; (2) information about establishing and maintaining various technical assistance activities, including an air toxics clearinghouse; and (3) enabling guidance outlining procedures, roles and responsibilities for section 112(l) approvals. These guidance documents are separate documents which are available with the promulgation of today's rule and may be revised and updated from time to time as appropriate. Each of these documents is discussed here.

A. High-Risk Point Source Guidance

Purpose of High Risk Point Source Guidance

The purpose of the High Risk Point Source (HRPS) guidance is to outline a methodology that State agencies may wish to employ in order to assess the risks from potentially high-risk point sources. The EPA envisions several uses of this program, particularly for those agencies that do not already have comprehensive air toxics programs. First, the guidance can help agencies evaluate and regulate sources which will not be regulated under the Federal program. As an example, a listed source category may consist of major sources (those that emit greater than 10 tons per year of one hazardous air pollutant (HAP), or 25 tons per year of a combination of HAP's), and area sources (sources of a HAP that are not major). The major sources in the category will be covered by a section 112(d) standard, but the area sources may not be regulated unless the EPA finds that such sources present a threat of adverse effects to human health or the environment warranting Federal regulation under section 112 (section 112(c)(3)) (see source category list (57 FR 31576, July 16, 1992). In this case, the State agency may choose to assess a source to determine whether the State may wish to pursue state mandated controls. States may also undertake such analyses to examine residual risk after installation of Federal controls or risk from pollutants not on the section 112(b) list.

Second, an agency may wish to regulate sources under a faster timetable than the Federal program. Section 112(e) of the 1990 Amendments requires the EPA to regulate source categories on a specific schedule, either within 2, 4, 7, or 10 years after the date of enactment (November 15, 1990). A State may wish to apply the methodology offered in the HRPS guidance to evaluate a source or sources to determine whether early controls required at the State level are warranted. Similarly, States may wish to evaluate sources in order to set residual risk standards sooner than the Federal program. Section 112(f) requires the EPA to address the issue of residual risk eight years after the promulgation of a MACT standard. A State Agency may wish to examine the need for a residual risk examination before the eight year Federal analysis would be conducted.

Third, in response to public concern, agencies may wish to determine the risks associated with sources of air toxics, for a number of reasons, including questions from the public raised during part 70 permit hearings, or in response to public inquiries as to the safety of ambient air. A HRPS program can also increase environmental equity in that it helps an agency address, for example, a single source that may otherwise be missed because it was not in a source category to be regulated under the Federal regulatory program. See 136 Cong. Rec. S16978 (daily ed. Oct. 27, 1990) (Clean Air Conference Report, Air Toxics).

Finally, the methodology and resources presented in the HRPS guidance can add to the available tools States can use to evaluate the potential for adverse health impacts and protect the public health from local sources of HAPs. Information collected from the HRPS evaluations will be useful to the public, the State agencies themselves and to the Federal program.

The use of this guidance does not mandate regulation. It is designed to provide ideas for developing or expanding upon State high-risk point source programs in keeping with the provisions of section 112(l)(2) that specify the optional nature of the high-risk point source program. Publication of this document fulfills the requirement of section 112(l)(2) to publish guidance that includes as an element the optional high-risk point source program begun in 1986.

Organization of this Document

The document that the EPA developed to fulfill Congress's directive concerning the HRPS program under section 112(l)(2) is based in large part on information and documentation that the EPA has developed from its experience with the program since the program's inception in 1986. See S. Rep. at 193–94 which describes the agency's efforts and support for the HRPS program. The document begins with a discussion of policy issues: how to determine what chemicals to assess, how to choose sources to assess, and how to communicate program objectives and risks to health. The document then outlines a tiered methodology agencies may choose to follow to determine whether the risk from a particular source (or sources) is significant, and worthy of regulation. The reader is then directed to appropriate EPA documents and services to assist in evaluating health effects from High Risk Point Sources.

B. Technical Assistance Activities

Several sources of technical assistance are provided by the EPA to State and local agencies. Each is briefly described.

Air Risk Information Support Center (Air RISC)

Developed to assist State and local air pollution agencies and EPA Regional offices on technical matters pertaining to health, exposure, and risk assessments for toxic air pollutants, the primary goal of Air RISC is to serve as a focal point for obtaining information and, where needed, provide assistance in the review and interpretation of that information.

Emission Measurement Technical Information Center (EMTIC)

Created for the purpose of promoting consistent and accurate emissions test method application in the development and enforcement of national, State, and local emission prevention and control programs, the EMTIC is an information exchange network that communicates the EPA emissions measurement technology to the emissions measurement community. The EMTIC provides information in the form of publications, videos, workshops, computer information databases, and support projects.

National Air Toxics Information Clearinghouse (NATICH)

This clearinghouse is intended to facilitate information exchange among State and local agencies, and between the EPA and State and local agencies, and to minimize duplication of effort. The Clearinghouse consists of a computerized data base which contains information on potentially toxic air pollutants, hard copy reports of information from the data base, special reports, and a bi-monthly newsletter.

Clearinghouse for Inventories/Emission Factors (CHIEF)

This clearinghouse contains the latest information on air emission inventories and emission factors. It provides access to tools for estimating emission of air pollutants and performing air emission inventories for both criteria and toxic pollutants.

C. Enabling Guidance

The enabling guidance was developed as a further tool to assist State and local agencies interested in receiving approval of State programs under the process described in subpart E of this part. Also included is detailed information for procedures for receiving delegation for unchanged Federal section 112 rules. Included in this document is information on the following: (1) Specific roles and responsibilities of State and the EPA offices; (2) specifics regarding "detailed demonstrations" under § 63.93 submittals and "form of the standard" under § 63.94 submittals; (3) Forms used in submittals; and (4) commonly asked questions regarding section 112(l) submittals.

D. Accessing Additional Guidance

Technology Transfer Network (TTN) Bulletin Board System

This network provides information and technology exchange in different areas or air pollution control, ranging from emission test methods to regulatory air pollution control models. The individual bulletin boards offered with respect to air toxics are: (1) Emission Measurement Technical Information Center (EMTIC); (2) National Air Toxics Information Clearinghouse (NATICH); (3) Clean Air Act Amendments (1990 Amendments) and (4) Clearinghouse for Inventories/ Emission Factors (CHIEF). The access number to the bulletin board system is 919–541–5742. If problems are encountered accessing the bulletin board, call 919–541–5384.

High Risk Point Source Guidance

The guidance document for the review of high risk point sources is available in Air Docket A–92–46. It can also be found on the EPA Technology Transfer Network (TTN) bulletin board system in the 1990 Amendments section under "Title III Policy and Guidance". The EPA Publication number for this document is EPA–453/R–93–039. To obtain copies, contact the EPA Library in Research Triangle Park, North Carolina at 919–541–2777 or the National Technical Information Service (NTIS) at 800–553–6847. For other questions regarding this document, contact Kelly Rimer at 919–541–2962.

Air RISC

Air RISC services include a hotline, detailed technical assistance, and general technical assistance. Contact the hotline at 919–541–0888 and requesting the specific type of assistance needed.

Enabling Guidance

The enabling guidance document for Approval of State Programs and Delegation of Federal Authorities is available in Air Docket A–92–46. It can also be found on the TTN Bulletin Board system noted in the above paragraph. The EPA Publication number for this document is EPA–453/R–93–040 and can be obtained from the EPA Library or NTIS. For questions regarding this document, contact Sheila Milliken at 919–541–2625.

E. Grants

Section 112(l)(4) gives the Administrator the discretion to award grants to States to support the development of air toxics programs, including high-risk point source programs and the development and implementation of areawide area source programs pursuant to subsection 112(k).

The EPA has, for a number of years, supported air toxics program activities under State and local assistance grants issued pursuant to section 105 of the Act. The EPA will continue to evaluate, in close cooperation with the States, the types of activities that can and should be supported in this manner. The EPA is currently reviewing the exact mechanisms to be used for this purpose, including any administrative changes that may be required to track the grants pursuant to section 112(l)(4) authority instead of under section 105.

VI. Administrative Requirements

A. Docket

The docket for this regulatory action is A–92–46. The docket is an organized and complete file of all the information submitted to, or otherwise considered by, EPA in the development of this proposed rulemaking. The principal purposes of the docket are:

(1) To allow interested parties a means to identify and locate documents so that they can effectively participate in the rulemaking process, and

(2) To serve as the record in case of judicial review. The docket is available for public inspection at the EPA's Air Docket, which is listed under the **ADDRESSES** section of this document.

B. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/94), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant" regulatory action as one that is likely to lead to a rule that may:

(1) Have an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof;

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order."

Pursuant to the terms of Executive Order 12866, the OMB has notified the EPA that this action is a "significant regulatory action" within the meaning of the Executive Order. For this reason, this action was submitted to the OMB for review. Changes made in response to the OMB suggestions or recommendations will be documented in the public record.

Any written comments from OMB to the EPA and any written EPA response to any of those comments will be included in the docket listed at the beginning of today's notice under **ADDRESSES**. The docket is available for public inspection at the EPA's Air Docket Section, (LE–131), ATTN: Docket No. A–92–46, U.S. Environmental Protection Agency, 401 M Street SW, Washington, DC 20460.

C. Paperwork Reduction Act

Under the Paperwork Reduction Act (44 U.S.C. 3501 et seq.), Federal agencies must obtain the OMB clearance for collection of information from ten (10) or more non-Federal respondents. Under this final rule, each State or other air pollution control agency which elects to develop a section 112(l) program, or to take any other approved actions under section 112(l), shall be required to submit to the Administrator a program, written findings, schedules, plans, statements, and/or other documentation required for approval of the submitted program or action. The effect of this rule is to subject those States and other air pollution control agencies utilizing section 112(l) to the

informational requirements of this rule in order to assure that the requirements of a section 112(l) program or approved action have been met under section 112(l)(5) of the Act. These statutory requirements for approval give rise to the informational requirements of this rule.

The Office of Management and Budget (OMB) has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned the OMB control number 2060–0264.

The burden to States and other air pollution control agencies for the collection of information under this rule for the first year is estimated to be a maximum of 1901 hours per State or agency. This estimate includes time for rule interpretation, analysis and/or revision of state or local legislative authority, development of a program and schedule of implementation, as well as demonstrations of adequate resources, compliance and enforcement. Since most of these requirements are not recurring, the burden will decrease significantly in subsequent years.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden to: Chief, Information Policy Branch (2136), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA."

D. Regulatory Flexibility Act

Under the Regulatory Flexibility Act, whenever an Agency publishes any proposed or final rule in the **Federal Register**, it must, except under certain circumstances, prepare a Regulatory Flexibility Analysis (RFA) that describes the impact of the rule on small entities (i.e., small businesses, organizations, and governmental jurisdictions). That analysis is not necessary, however, if an Agency's Administrator certifies that the rule will not have a significant economic impact on a substantial number of small entities.

The EPA believes that there will be no impact on any small entities as a result of the promulgation of this rule since all the entities which would have the authority to accept partial or complete delegation of the Administrator under section 112(l) of the Act are States and other governmental jurisdictions whose populations exceed 50,000 persons. With no impacts expected on entities whose populations are less than 50,000, a RFA is not required by law. What follows is the certification of the Administrator that an RFA is not required with the promulgation of this rule. Pursuant to section 605(b) of the Regulatory Flexibility Act, 5 U.S.C. 605(b), the Administrator certifies that this rule will not have a significant economic impact on a substantial number of small entities.

E. Review

This regulation will be reviewed 9 years from the date of promulgation. This review will include an assessment of such factors including overlap with other programs, the existence of alternative methods, enforceability, and result of section 112 standards review.

List of Subjects

40 CFR Part 9

Reporting and recordkeeping requirements.

40 CFR Part 63

Environmental protection, Administrative practices and procedures, Air pollution control, Hazardous substances, Intergovernmental relations, Reporting and recordkeeping requirements.

Dated: November 15, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, title 40, chapter I, of the Code of Federal Regulations is amended as follows:

PART 9—[AMENDED]

1. The authority citation for part 9 continues to read as follows:

Authority: 7 U.S.C. 135 *et seq.*, 136–136y; 15 U.S.C. 2001, 2003, 2005, 2006, 2601–2671; 21 U.S.C. 331j, 346a, 348; 31 U.S.C. 9701; 33 U.S.C. 1251 *et seq.*, 1311, 1313d, 1314, 1321, 1326, 1330, 1344, 1345 (d) and (e), 1361; E.O. 11735, 38 FR 21243, 3 CFR, 1971–1975 Comp. p. 973; 42 U.S.C. 241, 242b, 243, 246, 300f, 300g, 300g-1, 300g-2, 300g-3, 300g-4, 300g-5, 300g-6, 300j-1, 300j-2, 300j-3, 300j-4, 300j-9, 1857 *et seq.*, 6901–6992k, 7401–7671q, 7542, 9601–9657, 11023, 11048.

2. Section 9.1 is amended by adding a new entry to the table under the indicated heading to read as follows:

§ 9.1 OMB approvals under the Paperwork Reduction Act.

* * * * *

40 CFR citation	OMB control No.
• • • • •	
National Emission Standards for Hazardous Air Pollutants for Source Categories	
63.91—63.96	2060–0264
• • • • •	

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, et seq.

2. Part 63 is amended by adding subpart E to read as follows:

Subpart E—Approval of State Programs and Delegation of Federal Authorities

Sec.
63.90 Program overview.
63.91 Criteria common to all approval options.
63.92 Approval of a State rule that adjusts a section 112 rule.
63.93 Approval of State authorities that substitute for a section 112 rule.
63.94 Approval of a State program that substitutes for section 112 emission standards.
63.95 Additional approval criteria for accidental release prevention programs.
63.96 Review and withdrawal of approval.

§ 63.90 Program overview.

The regulations in this subpart establish procedures consistent with section 112(l) of the Clean Air Act (Act) (42 U.S.C. 7401–7671q). This subpart establishes procedures for the approval of State rules or programs to be implemented and enforced in place of certain otherwise applicable section 112 Federal rules, emission standards or requirements (including section 112 rules promulgated under the authority of the Act prior to the 1990 Amendments to the Act). Authority to implement and enforce section 112 Federal rules as promulgated without changes may be delegated under procedures established in this subpart. This subpart also establishes procedures for the review and withdrawal of section 112 implementation and enforcement authorities delegated through this subpart.

(a) *Definitions.* The following definitions apply to this subpart.

Applicability criteria means the regulatory criteria used to define all emission points within all affected sources subject to a specific section 112 rule.

Approval means a determination by the Administrator that a State rule or

program meets the criteria of § 63.91 and the additional criteria of either § 63.92, § 63.93 or § 63.94, where appropriate. For accidental release prevention programs, the criteria of § 63.95 must also be met.

Compliance and enforcement measures means requirements within a rule or program relating to compliance and enforcement, including but not necessarily limited to monitoring, test methods and procedures, recordkeeping, reporting, compliance certification, inspection, entry, sampling or accidental release prevention oversight.

Level of control means the degree to which a rule or program requires a source to limit emissions or to employ design, equipment, work practice, operational, accident prevention or other requirements or techniques (including a prohibition of emissions) for:

(1)(i) Each hazardous air pollutant, if individual pollutants are subject to emission limitations, and

(ii) The aggregate total of hazardous air pollutants, if the aggregate grouping is subject to emission limitations, provided that the rule or program would not lead to an increase in risk to human health or the environment; and

(2) each substance regulated under section 112(r).

Local agency means a local air pollution control agency or, for the purposes of § 63.95, any local agency or entity having responsibility for preventing accidental releases which may occur at a source regulated under section 112(r).

Program means, for the purposes of an approval under § 63.94, a collection of State statutes, rules or other requirements which limits or will limit the emissions of hazardous air pollutants from affected sources.

Stringent or stringency means the degree of rigor, strictness or severity a statute, rule, emission standard or requirement imposes on an affected source as measured by the quantity of emissions, or as measured by parameters relating to rule applicability and level of control, or as otherwise determined by the Administrator.

(b) *Local agency coordination with state and territorial agencies.* Local agencies submitting a rule or program for approval under this subpart shall consult with the relevant State or Territorial agency prior to making a request for approval to the Administrator. A State or Territorial agency may submit requests for approval on behalf of a local agency after consulting with that local agency.

(c) *Authorities retained by the Administrator.* (1) The following authorities will be retained by the Administrator and will not be delegated:

(i) The authority to add or delete pollutants from the list of hazardous air pollutants established under section 112(b);

(ii) The authority to add or delete substances from the list of substances established under section 112(r);

(iii) The authority to delete source categories from the Federal source category list established under section 112(c)(1) or to subcategorize categories on the Federal source category list after proposal of a relevant emission standard;

(iv) The authority to revise the source category schedule established under section 112(e) by moving a source category to a later date for promulgation; and

(v) Any other authorities determined to be nondelegable by the Administrator.

(2) Nothing in this subpart shall prohibit the Administrator from enforcing any applicable rule, emission standard or requirement established under section 112.

(3) Nothing in this subpart shall affect the authorities and obligations of the Administrator or the State under title V of the Act or under regulations promulgated pursuant to that title.

(d) *Federally-enforceable requirements.* All rules and requirements approved under this subpart and all resulting part 70 operating permit conditions are enforceable by the Administrator and citizens under the Act.

(e) *Standards not subject to modification or substitution.* With respect to radionuclide emissions from licensees of the Nuclear Regulatory Commission or licensees of Nuclear Regulatory Commission Agreement States which are subject to 40 CFR part 61, subpart I, T, or W, a State may request that the EPA approve delegation of implementation and enforcement of the Federal standard pursuant to § 63.91, but no changes or modifications in the form or content of the standard will be approved pursuant to § 63.92, § 63.93, or § 63.94.

§ 63.91 Criteria common to all approval options.

(a) *Approval process.* To obtain approval under this subpart of a rule or program that is different from the Federal rule, the criteria of this section and the criteria of either § 63.92, § 63.93 or § 63.94 must be met. For approval of State programs to implement and enforce Federal section 112 rules as promulgated without changes (except for accidental release programs), only the criteria of this section must be met. For approval of State rules or programs to implement and enforce the Federal accidental release prevention program as promulgated without changes, the requirements of this section and § 63.95 must be met. In the case of accidental release prevention programs which differ from the Federal accidental release prevention program, the requirements of this section, § 63.95, and either § 63.92 or § 63.93 must be met. For a State's initial request for approval, and except as otherwise specified under § 63.92, § 63.93, or § 63.94 for a State's subsequent requests for approval, the approval process will be the following.

(1) Upon receipt of a request for approval, the EPA will review the request for approval and notify the State within 30 days of receipt whether the request for approval is complete according to the criteria in this subpart. If a request for approval is found to be incomplete, the Administrator will so notify the State and will specify the deficient elements of the State's request.

(2) Within 45 days after receipt of a complete request for approval, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(3) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section are met, the State rule or program will be approved by the Administrator under this section, published in the **Federal Register**, and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(4) Within 180 days of receiving a complete request for approval, the Administrator will either approve or disapprove the State rule or program.

(5) If the Administrator finds that; any of the criteria of this section are not met, or any of the criteria of either § 63.92, § 63.93 or § 63.94 under which the request for approval was made are not met, the Administrator will disapprove the State rule or program. If a State rule or program is disapproved, the Administrator will notify the State of any revisions or additions necessary to obtain approval. Any resubmittal by a State of a request for approval will be

considered a new request under this subpart.

(6) If the Administrator finds that; all of the criteria of this section are met; and all of the criteria of either § 63.92, § 63.93 or § 63.94 are met, the Administrator will approve the State rule or program and thereby delegate authority to implement and enforce the approved rule or program in lieu of the otherwise applicable Federal rules, emission standards or requirements. The approved State rule or program shall be Federally enforceable from the date of publication of approval. When a State rule or program is approved by the Administrator under this subpart, applicable part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter. Operating permit conditions resulting from any otherwise applicable Federal section 112 rules, emission standards or requirements will not be expressed in the State's part 70 permits or otherwise implemented or enforced by the State or by the EPA unless and until authority to enforce the approved State rule or program is withdrawn from the State under § 63.96. In the event approval is withdrawn under § 63.96, all otherwise applicable Federal rules and requirements shall be enforceable in accordance with the compliance schedule established in the withdrawal notice and relevant part 70 permits shall be revised according to the provisions of § 70.7(f) of this chapter.

(b) *Criteria for approval.* Any request for approval under this subpart shall meet all section 112(l) approval criteria specified by the otherwise applicable Federal rule, emission standard or requirements and all of the approval criteria of this section. The State shall provide the Administrator with the following.

(1) A written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State has the necessary legal authority to implement and to enforce the State rule or program upon approval and to assure compliance by all sources within the State with each applicable section 112 rule, emission standard or requirement. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) The State shall have authority to request information from regulated sources regarding their compliance status.

(iii) The State shall have authority to inspect sources and any records required to determine a source's compliance status.

(iv) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(2) A copy of State statutes, regulations and other requirements that contain the appropriate provisions granting authority to implement and enforce the State rule or program upon approval.

(3) A demonstration that the State has adequate resources to implement and enforce all aspects of the rule or program upon approval, which includes:

(i) A description in narrative form of the scope, structure, coverage and processes of the State program;

(ii) A description of the organization and structure of the agency or agencies that will have responsibility for administering the program; and

(iii) A description of the agency staff who will carry out the State program, including the number, occupation, and general duties of the employees.

(4) A schedule demonstrating expeditious State implementation of the rule or program upon approval.

(5) A plan that assures expeditious compliance by all sources subject to the rule or program upon approval. The plan should include at a minimum a complete description of the State's compliance tracking and enforcement program, including but not limited to inspection strategies.

(6) A demonstration of adequate legal authority to assure compliance with the rule or program upon approval. At a minimum, the State must have the following legal authorities concerning enforcement:

(i) The State shall have enforcement authorities that meet the requirements of § 70.11 of this chapter.

(ii) If a State delegates authorities to a local agency, the State must retain enforcement authority unless the local agency has authorities that meet the requirements of § 70.11 of this chapter.

(c) *Revisions.* Within 90 days of any State amendment, repeal or revision of any State rule, program, or other authorities supporting an approval under this subpart, a State must provide the Administrator with a copy of the revised authorities and meet the requirements of either paragraph (c) (1) or (2) of this section.

(1) (i) The State shall provide the Administrator with a written finding by the State Attorney General (or for a local agency, the General Counsel with full authority to represent the local agency) that the State's revised legal authorities are adequate to continue to implement and to enforce all previously approved State rules and the approved State program (as applicable) and adequate to continue to assure compliance by all sources within the State with approved rules, the approved program (as applicable) and each applicable section 112 rule, emission standard or requirement.

(ii) If the Administrator determines that the written finding is not adequate, the State shall request approval of the revised rule or program according to the provisions of paragraph (c)(2) of this section.

(2) The State shall request approval under this subpart of a revised rule or program.

(i) If the Administrator approves the revised rule or program, the revised rule or program will replace a rule or program previously approved.

(ii) If the Administrator disapproves the revised rule or program, the Administrator will initiate procedures under § 63.96 to withdraw approval of any previously approved rule or program that may be affected by the revised authorities.

(iii) Until such time as the Administrator approves or withdraws approval of a revised rule or program, the previously approved rule or program remains Federally enforceable.

§ 63.92 Approval of a State rule that adjusts a section 112 rule.

Under this section a State may seek approval of a State rule with specific adjustments to a Federal section 112 rule.

(a) *Approval process.* (1) If the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State rule will be approved by the Administrator, published in the **Federal Register** and incorporated, directly or by reference, in the appropriate subpart of this part 63, without additional notice and opportunity for comment. Rules approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(2) If the Administrator finds that any one of the State adjustments to the Federal rule is in any way ambiguous with respect to the stringency of applicability, the stringency of the level of control, or the stringency of the compliance and enforcement measures for any affected source or emission point, the Administrator will disapprove the State rule.

(3) Within 90 days of receiving a complete request for approval under this section, the Administrator will

either approve or disapprove the State rule.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A demonstration that the public within the State has had adequate notice and opportunity to submit written comment on the State rule; and

(2) A demonstration that each State adjustment to the Federal rule individually results in requirements that:

(i) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to applicability;

(ii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to level of control for each affected source and emission point;

(iii) Are unequivocally no less stringent than the otherwise applicable Federal rule with respect to compliance and enforcement measures for each affected source and emission point; and

(iv) Assure compliance by every affected source no later than would be required by the otherwise applicable Federal rule.

(3) State adjustments to Federal section 112 rules which may be part of an approved rule under this section are:

(i) Lowering a required emission rate or de minimis level;

(ii) Adding a design, work practice, operational standard, emission rate or other such requirement;

(iii) Increasing a required control efficiency;

(iv) Increasing the frequency of required reporting, testing, sampling or monitoring;

(v) Adding to the amount of information required for records or reports;

(vi) Decreasing the amount of time to come into compliance;

(vii) Subjecting additional emission points or sources within a source category to control requirements; and

(viii) Any adjustments allowed in a specific section 112 rule.

§ 63.93 Approval of State authorities that substitute for a section 112 rule.

Under this section a State may seek approval of State authorities which differ in form from a Federal section 112 rule for which they would substitute, such that the State authorities do not qualify for approval under § 63.92.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section, the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of public comments and any State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State authorities will be approved by the Administrator under this section and the approved authorities will be published in the **Federal Register** and incorporated directly or by reference, in the appropriate subpart of part 63. Authorities approved under § 63.95 will be incorporated pursuant to requirements under section 112(r).

(3) If the Administrator finds that any of the requirements of this section or § 63.91 have not been met, the Administrator will disapprove the State authorities.

(4) Authorities submitted for approval under this section shall include either:

(i) State rules or other requirements enforceable under State law that would substitute for a section 112 rule; or

(ii) (A) The specific permit terms and conditions for the source or set of sources in the source category for which the State is requesting approval under this section, including control requirements and compliance and enforcement measures, that would substitute for the permit terms and conditions imposed by the otherwise applicable section 112 rule for such source or set of sources.

(B) The Administrator will approve authorities specified under paragraph (a)(4)(ii)(A) of this section only when the State submitting the request already has an approved program under § 63.94, the Federal standard for the source category has been promulgated under section 112(h), and the Administrator has not determined the work practice, design, equipment or operational requirements submitted by the State to be inadequate under the provisions of the Federal standard.

(5) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with detailed documentation that the State authorities contain or demonstrate:

(1) Applicability criteria that are no less stringent than those in the respective Federal rule;

(2) Levels of control and compliance and enforcement measures that result in emission reductions from each affected source or accidental release prevention program requirements for each affected source that are no less stringent than would result from the otherwise applicable Federal rule;

(3) A compliance schedule that assures that each affected source is in compliance no later than would be required by the otherwise applicable Federal rule; and

(4) At a minimum, the approved State authorities must include the following compliance and enforcement measures. (For authorities addressing the accidental release prevention program, minimum compliance and enforcement provisions are described in § 63.95.)

(i) The approved authorities must include a method for determining compliance.

(ii) If a standard in the approved authorities is not instantaneous, a maximum averaging time must be established.

(iii) The authorities must establish an obligation to periodically monitor or test for compliance using the method established per § 63.93(b)(4)(i) sufficient to yield reliable data that are representative of the source's compliance status.

(iv) The results of all required monitoring or testing must be reported at least every 6 months.

§ 63.94 Approval of a State program that substitutes for section 112 emission standards.

Under this section a State may seek approval of a State program to be implemented and enforced in lieu of specified existing and future Federal emission standards or requirements promulgated under sections 112(d), (f) or (h), for those affected sources permitted by the State under part 70 of this chapter.

(a) *Approval process.* (1) Within 45 days after receipt of a complete request for approval under this section the Administrator will seek public comment for a minimum of 30 days on the State request for approval. The Administrator will require that comments be submitted concurrently to the State.

(2) If, after review of all public comments, and State responses to comments submitted to the Administrator within 30 days of the close of the public comment period, the Administrator finds that the criteria of this section and the criteria of § 63.91 are met, the State program will be approved by the Administrator. The approved State commitment made under paragraph (b)(2) of this section

and reference to all documents submitted under § 63.91(b)(2) will be published in the **Federal Register** and incorporated directly or by reference in the appropriate subpart of part 63.

(3) If the Administrator finds that any of the criteria of this section or § 63.91 have not been met, the Administrator will disapprove the State program.

(4) Within 180 days of receiving a complete request for approval under this section, the Administrator will either approve or disapprove the State request.

(b) *Criteria for approval.* Any request for approval under this section shall meet all of the criteria of this section and § 63.91 before approval. The State shall provide the Administrator with:

(1) A reference to all specific sources or source categories listed pursuant to subsection 112(c) for which the State is seeking authority to implement and enforce standards or requirements under this section;

(2) A legally binding commitment adopted through State law that, after approval:

(i) For each source subject to Federal section 112 emission standards or requirements for which approval is sought, part 70 permits shall be issued or revised by the State in accordance with procedures established in part 70 of this chapter and in accordance with the schedule submitted under § 63.91(b)(5) assuring expeditious compliance by all sources; and

(ii) All such issued or revised part 70 permits shall contain conditions that:

(A) Reflect applicability criteria no less stringent than those in the otherwise applicable Federal standards or requirements;

(B) Require levels of control for each affected source and emission point no less stringent than those contained in the otherwise applicable Federal standards or requirements;

(C) Require compliance and enforcement measures for each source and emission point no less stringent than those in the otherwise applicable Federal standards or requirements;

(D) Express levels of control and compliance and enforcement measures in the same form and units of measure as the otherwise applicable Federal standard or requirement;

(E) Assure compliance by each affected source no later than would be required by the otherwise applicable Federal standard or requirement.

§ 63.95 Additional approval criteria for accidental release prevention programs.

(a) A State submission for approval of an Accidental Release Prevention (ARP) program must meet the criteria and be in accordance with the procedures of this section, § 63.91, and, where appropriate, either § 63.92 or § 63.93.

(b) The State ARP program application shall contain the following elements consistent with the procedures in § 63.91 and, where appropriate, either § 63.92 or § 63.93:

(1) A demonstration of the State's authority and resources to implement and enforce regulations which are at least as stringent as regulations promulgated under section 112(r) that specify substances, related thresholds and a risk management program,

(2) Procedures for:

(i) Registration of stationary sources, as defined in section 112(r)(2)(C) of the Act, which clearly identifies the State entity to receive the registration;

(ii) Receiving and reviewing risk management plans;

(iii) Making available to the public any risk management plan submitted to the State pursuant to provisions specified in section 112(r) which are consistent with section 114(c) of the Act; and

(iv) Providing technical assistance to subject sources, including small businesses;

(3) A demonstration of the State's authority to enforce all accidental release prevention requirements including a risk management plan auditing strategy;

(4) A description of the coordination mechanisms the State implementing agency will use with:

(i) The Chemical Safety and Hazard Investigation Board, particularly during accident investigation; and

(ii) The State Emergency Response Commission, and the Local Emergency Planning Committees; and

(iii) The air permitting program with respect to sources subject to both section 112(r) of the Act and permit requirements under part 70 of this chapter.

(c) A State may request approval for a complete or partial program. A partial accidental release prevention program must include the core program elements listed in paragraph (b) of this section.

§ 63.96 Review and withdrawal of approval.

(a) *Submission of information for review of approval.* (1) The Administrator may at any time request any of the following information to review the adequacy of implementation and enforcement of an approved rule or program and the State shall provide that information within 45 days of the Administrator's request:

(i) Copies of any State statutes, rules, regulations or other requirements that have amended, repealed or revised the approved State rule or program since approval or since the immediately previous EPA review;

(ii) Information to demonstrate adequate State enforcement and compliance monitoring activities with respect to all approved State rules and with all section 112 rules, emission standards or requirements;

(iii) Information to demonstrate adequate funding, staff, and other resources to implement and enforce the State's approved rule or program;

(iv) A schedule for implementing the State's approved rule or program hat assures compliance with all section 112 rules and requirements that the EPA has promulgated since approval or since the immediately previous EPA review,

(v) A list of part 70 or other permits issued, amended, revised, or revoked since approval or since immediately previous EPA review, for sources subject to a State rule or program approved under this subpart.

(vi) A summary of enforcement actions by the State regarding violations of section 112 requirements, including but not limited to administrative orders and judicial and administrative complaints and settlements.

(2) Upon request by the Administrator, the State shall demonstrate that each State rule, emission standard or requirement applied to an individual source is no less stringent as applied than the otherwise applicable Federal rule, emission standard or requirement.

(b) *Withdrawal of approval of a state rule or program.* (1) If the Administrator has reason to believe that a State is not adequately implementing or enforcing an approved rule or program according to the criteria of this section or that an approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirements, the Administrator will so inform the State in writing and will identify the reasons why the Administrator believes that the State's rule or program is not adequate. The State shall then initiate action to correct the deficiencies identified by the Administrator and shall inform the Administrator of the actions it has initiated and completed. If the Administrator determines that the State's actions are not adequate to correct the deficiencies, the Administrator will notify the State that the Administrator intends to withdraw approval and will hold a public hearing and seek public comment on the proposed withdrawal of approval. The Administrator will require that comments be submitted concurrently to

the State. Upon notification of the intent to withdraw, the State will notify all sources subject to the relevant approved rule or program that withdrawal proceedings have been initiated.

(2) Based on any public comment received and any response to that comment by the State, the Administrator will notify the State of any changes in identified deficiencies or actions needed to correct identified deficiencies. If the State does not correct the identified deficiencies within 90 days after receiving revised notice of deficiencies, the Administrator shall withdraw approval of the State's rule or program upon a determination that:

(i) The State no longer has adequate authorities to assure compliance or resources to implement and enforce the approved rule or program, or

(ii) The State is not adequately implementing or enforcing the approved rule or program, or

(iii) An approved rule or program is not as stringent as the otherwise applicable Federal rule, emission standard or requirement.

(3) The Administrator may withdraw approval for part of a rule, for a rule, for part of a program, or for an entire program.

(4) Any State rule, program or portion of a State rule or program for which approval is withdrawn is no longer Federally enforceable. The Federal rule, emission standard or requirement that would have been applicable in the absence of approval under this subpart will be the federally enforceable rule, emission standard or requirement.

(i) Upon withdrawal of approval, the Administrator will publish an expeditious schedule for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements. Such schedule shall include interim emission limits where appropriate. During this transition, sources must be operated in a manner consistent with good air pollution control practices for minimizing emissions.

(ii) Upon withdrawal, the State shall reopen, under the provisions of § 70.7(f) of this chapter, the part 70 permit of each source subject to the previously approved rules or programs in order to assure compliance through the permit with the applicable requirements for each source.

(iii) If the Administrator withdraws approval of State rules applicable to sources that are not subject to part 70 permits, the applicable State rules are no longer Federally enforceable.

(iv) If the Administrator withdraws approval of a portion of a State rule or program, other approved portions of the State rule or program that are not withdrawn shall remain in effect.

(v) Any applicable Federal emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(5) If a rule approved under § 63.93 is withdrawn under the provisions of § 63.96(b)(2) (i) or (ii), and, at the time of withdrawal, the Administrator finds the rule to be no less stringent than the otherwise applicable Federal requirement, the Administrator will grant equivalency to the previously approved State rule under the appropriate provisions of this part.

(6) A State may submit a new rule, program or portion of a rule or program for approval after the Administrator has withdrawn approval of the State's rule, program or portion of a rule or program. The Administrator will determine whether the new rule or program or portion of a rule or program is approvable according to the criteria and procedures of § 63.91 and either of § 63.92, § 63.93 or § 63.94.

(7) A State may voluntarily withdraw from an approved State rule, program or portion of a rule or program by notifying the EPA and all affected sources subject to the rule or program and providing notice and opportunity for comment to the public within the State.

(i) Upon voluntary withdrawal by a State, the Administrator will publish a timetable for sources subject to the previously approved State rule or program to come into compliance with applicable Federal requirements.

(ii) Upon voluntary withdrawal, the State must reopen and revise the part 70 permits of all sources affected by the withdrawal as provided for in this section and § 70.7(f), and the Federal rule, emission standard, or requirement that would have been applicable in the absence of approval under this subpart will become the applicable requirement for the source.

(iii) Any applicable Federal section 112 rule, emission standard or requirement shall remain enforceable by the EPA as specified in section 112(l)(7) of the Act.

(iv) Voluntary withdrawal shall not be effective sooner than 180 days after the State notifies the EPA of its intent to voluntarily withdraw.

[FR Doc. 93-28821 Filed 11-24-93; 8:45 am]
BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-139; RM-8211, RM-8307]

Radio Broadcasting Services; Anchorage and Seward, AK

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document substitutes Channel 276C1 for Channel 275C2 at Anchorage, Alaska, and modifies the license for Station KXDZ (FM) to specify operation on the higher powered channel, in response to a request filed by American Radio Brokers, Inc. Additionally, Channel 290A is substituted for vacant Channel 276A at Seward, Alaska, to accommodate the modification of Station KXDZ (FM) at Anchorage, in response to a counterproposal filed by American Radio Brokers, Inc. (RM-8307). See 58 FR 32338 (June 9, 1993). Coordinates for Channel 276C1 at Anchorage are 61-09-58 and 149-49-34. Coordinates for Channel 290A at Seward are 60-06-15 and 149-26-32. With this action, the proceeding is terminated.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-139, adopted October 29, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, located at 1919 M Street NW., room 246, or 2100 M Street NW., Suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Alaska, is amended by removing Channel 275C2 and adding Channel 276C1 at Anchorage, and by removing Channel 276A and adding Channel 290A at Seward.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28923 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–222; RM–8297]

Radio Broadcasting Services; Moberly, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 247C3 to Moberly, Missouri, as that community's third local FM broadcast service in response to a petition filed by KWIX Inc. The coordinates for Channel 247C3 are 39–26–22 and 92–15–28. There is a site restriction 15.2 kilometers (9.5 miles) east of the community. With this action, this proceeding is terminated.

DATES: Effective December 27, 1993. The window period for filing applications for Channel 247C3 at Moberly will open on December 29, 1993, and close on January 27, 1994.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–222, adopted October 28, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 247C3, Moberly.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28927 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–209; RM–8282]

Radio Broadcasting Services; Rainelle, WV

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of R–B Company, Inc., substitutes Channel 237B1 for Channel 237A at Rainelle, West Virginia, and modifies Station WRRL–FM's construction permit accordingly. See 58 FR 40402, July 28, 1993. Channel 337B can be allotted to Rainelle in compliance with the Commission's minimum distance separation requirements with a site restriction of 21 kilometers (13 miles) northeast to avoid a short-spacing to Station WXIL, Channel 236B, Parkersburg, West Virginia. The coordinates for Channel 237B1 at Rainelle are North Latitude 38–07–21 and West Longitude 80–37–37. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Sharon P. McDonald, Mass Media Bureau, (202) 634–6430.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–209, adopted October 19, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under West Virginia, is amended by removing Channel 237A and adding Channel 237B1 at Rainelle.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28926 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 90

[PR Docket No. 93–35; FCC 93–479]

Private Land Mobile Radio Services; Channel Exclusivity for Qualified Private Paging Systems at 929–930 MHz

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission has amended its rules governing private paging systems at 929–930 MHz to grant channel exclusivity to qualified local, regional, and national paging systems. This action responds to a petition for rule making filed by the Association for Private Carrier Paging Section of the National Association of Business and Educational Radio, Inc., and is intended to prevent frequency congestion and provide incentives for paying licensees to invest in superior technology.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Furth, Private Radio Bureau, (202) 634–2443.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, PR Docket No. 93–35, FCC 93–479, adopted October 21, 1993, and released November 17, 1993. The full text of the Report and Order is available for inspection and copying during normal business hours in the FCC Dockets Branch, room 230, 1919 M St., NW., Washington, DC. The complete text may be purchased from the Commission's copy contractor, International Transcription Service, Inc., 2100 M St., NW., suite 140, Washington, DC 20037, (202) 857–3800.

Summary of Report and Order

A. Introduction and Background

1. In the Report and Order, we amend part 90 of the Commission's rules to

grant channel exclusivity to qualified 929–930 MHz private paging systems. The proceeding was initiated by a Notice of Proposed Rule Making, 8 FCC Rcd 2227, published at 58 FR 17819 (April 6, 1993). Under the rules adopted today, paging systems consisting of six or more transmitters will be entitled to local exclusivity in most areas, and larger systems can obtain regional or nationwide exclusivity. Exclusivity will be implemented on 35 of 40 private paging channels, while five channels will continue to be assigned on a shared basis. Exclusivity is conditioned on completion of construction within eight months of licensing, with "slow growth" extensions allowed under some circumstances. Existing systems meeting the new criteria will obtain immediate exclusivity, and all other existing systems will be grandfathered.

B. Need for Exclusivity

2. Under our previous rules, the 40 private paging frequencies at 900 MHz were assigned on a shared basis, with applications subject to frequency coordination to maximize efficient channel use. Since these rules were adopted in 1982, however, the demand for paging services, and particularly for services that can be offered on a wide-area basis, has increased dramatically. As demand for paging spectrum grows, the sharing of paging frequencies, although technically feasible, threatens to discourage optimally efficient use. Even where sharing has not been necessary in the past, licensees are reluctant to invest in advanced paging technology because of the risk that others will be assigned to the same frequency in the future. Therefore, in order to create a more stable, predictable environment for investment in wide-area, high-capacity paging systems, we are establishing "earned" channel exclusivity for 929–930 MHz paging systems.

C. Exclusivity Criteria

3. In all but the three largest urban markets, we will grant local exclusivity to any paging system comprised of at least six contiguous transmitters (to be "contiguous," each transmitter must be within 25 miles of at least one other transmitter in the system and not co-located with another transmitter being counted toward the minimum on the same frequency). In the three largest markets, 18 transmitters will be required. For purposes of meeting this minimum, multiple licensees (e.g., affiliates, subsidiaries, joint venture partners) will be allowed to aggregate transmitters provided they are part of a single jointly operated system and otherwise meet our criteria.

4. Regional systems comprised of 70 or more transmitters situated in no more than 12 adjacent states will receive the same co-channel protection as local systems, except that protection is extended to non-contiguous transmitters in the system. However, to prevent applicants from attempting to "block out" major markets through strategic transmitter placement, regional system operators proposing to serve any of the top 30 markets must meet the criteria for local exclusivity in those markets.

5. Nationwide paging systems may obtain nationwide exclusivity provided they (1) have a minimum of 300 transmitters, (2) provide service to fifty or more markets, including at least twenty-five of the top fifty markets, and (3) serve at least two markets in each of seven designated regions. This standard distinguishes truly national paging systems from those that are essentially regional in character. We also adopt the suggestion of several commenters to extend the scope of nationwide exclusivity to include Alaska, Hawaii, and Puerto Rico.

6. Many commenters raise the issue of whether licensees should be allowed to count the same transmitter for exclusivity purposes on more than one frequency by use of "frequency-agile" transmitters. To prevent the potential hoarding of multiple frequencies, we will allow multi-frequency transmitters to be counted only once for exclusivity purposes. A licensee using multi-frequency transmitters may qualify for exclusivity on two frequencies, however, by constructing twice the number of transmitters required to obtain one channel.

7. For those systems that qualify for local and regional exclusivity, minimum mileage separations will be imposed on co-channel licensees. Required separation distances are based on the antenna height and effective power of the protected system's transmitters, and are similar to our rules for 930–931 MHz common carrier paging frequencies. For those systems that qualify for nationwide exclusivity, no new licensing of co-channel systems will be allowed anywhere in the continental United States, Hawaii, Alaska, or Puerto Rico.

D. Channel Allocation

8. The new rules apply to 35 of the 40 929–930 MHz channels. The remaining five channels (929.0375, 929.0625, 929.0875, 929.1625, and 929.2625) will continue to be assigned on a non-exclusive basis. This reserve will be particularly useful to small non-commercial systems that do not need or desire an exclusive channel assignment. Commercial and non-commercial operators are equally eligible to apply for any 929–930 MHz frequency, whether it is shared or exclusive.

E. Construction and Technical Requirements

9. Exclusivity is granted conditionally upon frequency assignment and runs for eight months from initial licensing, at which point constructed stations will receive final exclusivity. Licensees will not be allowed to extend the eight-month limit by applying for license modifications. Applicants seeking to build larger systems (30 or more transmitters) may apply for up to three years to construct based on a showing of reasonable need for the extension, a detailed construction timetable, and a commitment to obtain a performance bond or place funds in escrow to cover estimated construction costs. If the system is not constructed and operating at the end of the relevant construction period, exclusivity will be forfeited and the channel made available to other applicants.

10. To discourage speculative applications, the Order establishes minimum technical standards for each transmitter to be counted towards the number required for channel exclusivity. Specifically, each transmitter must have 100 watts minimum output power and simulcast capability, and all transmitters must function together as part of a single operating system.

11. To prevent applicants from applying for multiple frequencies to block entry by potential competitors, applicants are limited to requesting one frequency at a time at any location. An applicant may not request a second frequency in a given area unless and until it completed construction and commenced operation of a qualified system in that area on the initial frequency.

F. Existing Systems and Future Licensing

12. The Order provides that all incumbent licensees will be grandfathered with respect to their existing systems, and those who meet our exclusivity criteria will be granted exclusivity. The grandfathering provisions of the Order apply to all 929–930 MHz paging licenses granted on or before October 14, 1993 and to licensees subsequently granted based on applications filed on or before October 14, 1993. It should be emphasized that the rules grant incumbent licensees protection only against new co-channel

licensing: To the extent that grandfathered licensees are currently sharing frequencies with each other, they must continue to comply with the obligations of mutual cooperation and non-interference that have applied previously.

13. With respect to future expansion, the Commission will process all future applications for 900 MHz paging licenses, i.e., applications filed after October 14, 1993, on a first-come, first-served basis. Applications for new licenses will be accepted only if the resulting system qualifies for exclusivity under our rules and does not violate our minimum separation standards with respect to other systems that have previously qualified for exclusivity on the same frequency. In the event of simultaneously filed mutually exclusive applications, we will grant a dispositive preference in favor of an application to expand an existing system over an application to construct a new system. With respect to simultaneous mutually exclusive applications where no party is entitled to a preference, we will defer action until the conclusion of our pending rule making on competitive bidding procedures.

G. Coordination

14. NABER will continue as coordinator for this during the initial implementation and commencement of licensing under this Order, but we are prepared to introduce additional coordinators into this process once we are assured that they are capable of developing a coordination data base and exchanging data base information instantaneously with other coordinators. The Order delegates authority to the Chief of the Private Radio Bureau to develop specific standards for those who wish to provide coordination service at 929–930 MHz and to authorize coordination as soon as possible by those who demonstrate the ability to meet those standards.

H. Transition Procedures

15. To facilitate the transition from shared to exclusive licensing, we are implementing the following procedures. Within thirty days of the effective date of this Order, any incumbent licensee that believes it qualifies for exclusivity based on existing construction or authorizations shall submit a request for designation of exclusive status to NABER. The request shall provide information demonstrating that the licensee's paging system qualifies for exclusivity under the criteria set forth in this Order. NABER will review all submissions, confirm that they meet our exclusivity criteria, and forward confirmed requests to the Commission for final review, approval, and entry into our licensing data base. Once this process is complete, we will begin processing new applications. New applicants will be required to provide the exclusivity information described above as part of their application. Further details of these procedures will be provided by Public Notice.

I. Conditional Operation

16. We are making a minor modification to our rules on conditional licensing to allow conditional operation of 929–939 MHz stations located above "Line A," i.e., within 250 miles of the Canadian border. Previously, we did not allow conditional operation of such stations above Line A because such applications required coordination with Canada prior to licensing. In July 1992, however, the Commission and Canada's Department of Communications agreed that such coordination was no longer necessary at 929–930 MHz. We have received a petition from PageNet requesting that we amend our conditional permit rules to conform to this agreement. Although this matter was not raised in the Notice in this proceeding, we consider this to be a minor and non-controversial matter in which the public is unlikely to be interested. Accordingly, we find good cause to conclude that notice and comment is unnecessary. Therefore, we are amending our rules to allow conditional operation of 929–939 MHz stations above Line A, provided all other requirements of our rules are met.

Final Regulatory Flexibility Analysis

17. Pursuant to the Regulatory Flexibility Act of 1980, a Final Regulatory Flexibility Analysis has been prepared. It is available for public viewing as part of the full text of this decision, which may be viewed at the Commission's offices or obtained from its copy contractor.

Ordering Clauses

18. Accordingly, *it is ordered that,* Pursuant to the authority of sections 4(i), 303(g), 303(r), and 332(a) of the Communications Act of 1934, as amended, 47 U.S.C. 154(i), 303(g), 303(r), and 332(a), part 90 of the Commission's Rules, 47 CFR part 90, is amended as set forth below.

19. *It is further ordered* that this Report and Order will be effective thirty days after publication in the **Federal Register**.

20. *It is further ordered* that PageNet's Petition for Rule Making, filed August 9, 1993, is dismissed as moot.

21. *It is further ordered* that this proceeding is terminated.

List of Subjects in 47 CFR Part 90

Business and industry, Channel exclusivity, Private carrier paging, Private land mobile radio services.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 90 of chapter I of title 47 of the Code of Federal Regulations is amended as follows:

PART 90—PRIVATE LAND MOBILE RADIO SERVICES

1. The authority citation for part 90 continues to read as follows:

Authority: Sections 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303 and 332, unless otherwise noted.

2. Section 90.159 is amended by revising paragraph (b)(1) to read as follows:

§ 90.159 Temporary and conditional permits.

* * * * *

(b) * * *

(1) For applicants proposing to operate below 470 MHz, that the proposed station location is south of Line A or west of Line C as defined in § 90.7; for applicants in the one-way paging 929–930 MHz band, that the proposed station location is west of Line C as defined in § 90.7.

* * * * *

3. Section 90.175 is amended by revising paragraph (c) to read as follows:

§ 90.175 Frequency coordination requirements.

* * * * *

(c) For frequencies in the 929–930 MHz band. A statement from the coordinator recommending the most appropriate frequency. For applications under § 90.495, the coordinator's statement must verify that the proposed system meets the requirements of that section.

* * * * *

4. Section 90.494 is revised to read as follows:

§ 90.494 One-way paging operations in the 929–930 MHz band.

(a) The following frequencies are available to all eligible part 90 users for one-way paging systems on an exclusive basis as provided under § 90.495:

929.0125, 929.1125, 929.1375, 929.1875, 929.2125, 929.2375, 929.2875, 929.3125, 929.3375, 929.3625, 929.3875, 929.4125, 929.4375,

929.4625, 929.4875, 929.5125, 929.5375, 929.5625, 929.5875, 929.6125, 929.6375, 929.6625, 929.6875, 929.7125, 929.7375, 929.7625, 929.7875, 929.8125, 929.8375, 929.8625, 929.8875, 929.9125, 929.9375, 929.9625, 929.9875

(b) The following frequencies are available to all eligible part 90 users for one-way paging systems on a shared basis only and will not be assigned for the exclusive use of any licensee.

929.0375, 929.0625, 929.0875, 929.1625, 929.2625

(c) All frequencies listed in this section may be used to provide one-way paging communications to persons eligible for licensing under subpart B, C, D, or E of this part, representatives of Federal Government agencies, and individuals. The provisions of § 90.173(b) apply to all frequencies listed in this section.

(d) Licensees on these frequencies may utilize any type of paging operation desired (tone only, tone-voice, digital, tactile, optical readout, etc.).

(e) There shall be no minimum or maximum loading standards for these frequencies.

(f) Except as provided in paragraph (g) of this section, the effective radiated power and antenna height for base stations providing one-way paging service in the frequency band 929–930 MHz must not exceed 1 kilowatt (30 dBw) and 304 meters (1000 feet) above average terrain (AAT), or the equivalent thereof determined from the following table:

Antenna height (AAT) [meters/(feet)]	Effective radiated power (ERP) (watts)
Above 1357 (4500)	85
Above 1205 to 1357 (4000 to 4500)	70
Above 1056 to 1205 (3500 to 4000)	75
Above 904 to 1056 (3000 to 3500)	100
Above 762 to 904 (2500 to 3000)	140
Above 609 to 762 (2000 to 2500)	200
Above 457 to 609 (1500 to 2000)	350
Above 304 to 457 (1000 to 1500)	500

(g) Stations operating as part of nationwide paging systems under § 90.495(a)(3) may operate at a maximum effective radiated power of 3500 watts.

5. Section 90.495 is added to read as follows:

§ 90.495 Channel exclusivity for local, regional, and national paging systems.

(a)(1) Applicants for commercial or non-commercial private paging stations in the 929–930 MHz band are eligible for channel exclusivity based on the minimum separation standards provided in this section. To qualify for exclusivity, applicants must construct and operate a local, regional, or nationwide paging system that conforms to the following criteria:

(i) A local system must consist of at least six contiguous transmitters, except in the New York, Los Angeles, and Chicago markets, as defined in § 90.741, where 18 contiguous transmitters are required. For purposes of this section, transmitters will be considered contiguous if:

(A) Each transmitter is located within 25 miles (40 kilometers) of at least one other transmitter in the system;

(B) The combined areas defined by a 12.5 mile radius around each transmitter form a single contiguous area; and

(C) No transmitter is co-located with any other transmitter being counted as part of a local system for purposes of this section.

(ii) Transmitters will be considered co-located for purposes of this section if they are situated on a common antenna, building, antenna farm, or similar facility.

(2) A regional system must consist of 70 or more transmitters, not necessarily contiguous as defined in paragraph (a)(1)(i) of this section, located in no more than twelve adjacent states in the continental United States. In each of the top thirty markets listed in § 90.741, no transmitter may be counted as part of a regional system under this paragraph unless it would also qualify as part of a local system under paragraph (a)(1)(i) of this section.

(3) A nationwide system must consist of 300 or more transmitters in the continental United States, Alaska, Hawaii, and Puerto Rico, and must provide service to at least 50 markets listed in § 90.741, including 25 of the top 50 markets and two markets in each of the following regions:

(i) Region 1—Connecticut, Maine, Massachusetts, New Hampshire, New York, Rhode Island, Vermont.

(ii) Region 2—Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania, Virginia, West Virginia.

(iii) Region 3—Illinois, Indiana, Ohio, Michigan, Wisconsin.

(iv) Region 4—Alabama, Florida, Georgia, Kentucky, Louisiana, Mississippi, North Carolina, South Carolina, Tennessee.

(v) Region 5—Arkansas, Kansas, Missouri, Oklahoma, Texas.

(vi) Region 6—Arizona, Colorado, Idaho, Iowa, Minnesota, Montana, Nebraska, New Mexico, North Dakota, Oregon, South Dakota, Utah, Washington, Wyoming.

(vii) Region 7—California, Nevada.

(4) No transmitter may be counted as part of a local, regional, or nationwide system under this section unless it is capable of at least 100 watts output power, has simulcast capability, and is to be operated as part of the paging system for which channel exclusivity is sought. Transmitters that are part of a single paging system need not be licensed to a single entity to comply with this requirement.

(5) Frequency-agile transmitters may be counted no more than once for purposes of this section. A licensee using frequency-agile transmitters may qualify for exclusivity on a second frequency by constructing twice the number of transmitters required to obtain exclusivity on a single frequency, provided that all other requirements of this section are met.

(6) The provisions of this section apply solely to the frequencies listed in § 90.494(a).

(b) If a paging licensee qualifies for exclusivity under paragraph (a) of this section, no co-channel authorization may be granted to another applicant except in compliance with the separation requirements set forth in this paragraph.

(1) The following table of heights and powers is used to classify all 929–930 MHz paging stations:

Average antenna height above average terrain [meters/(feet)]	Station Class					
1206–1526 (4001–5000)	G	G	F	E	F	F
862–1205 (2826–4000)	H	G	G	F	F	F
610–861 (2001–2825)	K	H	H	G	F	F
427–609 (1401–2000)	L	K	H	G	G	G
304–426 (1001–1400)	L	L	K	H	G	G

Average antenna height above average terrain [meters/(feet)]	Station Class					
177–303 (581–1000)	L	L	L	L	K	H
0–176 (0–580)	L	L	L	L	L	L
Effective radiated power (watts)	125	250	500	1000	1860	3500

(2) The minimum distance between each co-channel station and each transmitter in a system qualified for local or regional exclusivity under paragraph (a) of this section is determined by the following table:

MINIMUM SEPARATION BETWEEN CO-CHANNEL STATIONS

[kilometers/(miles)]

Station Class:						
L	112 (70)					
K	120 (75)	125 (78)				
H	128 (80)	133 (83)	138 (86)			
G	163 (101)	168 (104)	173 (107)	187 (116)		
F	223 (139)	227 (142)	233 (145)	247 (154)	275 (171)	
Station class	L	K	H	G	F	

(3) No co-channel authorization will be granted in the continental United States, Alaska, Hawaii, or Puerto Rico on any frequency assigned to a nationwide paging system as defined in paragraph (a)(3) of this section.

(4) The separation standards set forth in this section do not apply to the placement of co-channel stations that have been authorized on or prior to October 14, 1993 or that are subsequently authorized based on applications filed with the Commission on or prior to October 14, 1993.

(c) A proposed paging system that meets the criteria for channel exclusivity under paragraph (a) of this section will be granted exclusivity under this section at the time of initial licensing. Such exclusivity will expire unless the proposed system (or a sufficient portion of the system to qualify for exclusivity) is constructed and operating within eight months of the licensing date. If exclusivity expires for failure to construct a qualified system:

(1) The licensee may operate constructed stations, but such operation will be secondary to that of any licensee who qualifies for exclusivity under this section; and

(2) The licensee may not apply for any new station authorization in the previously proposed service area for one year from the expiration of exclusivity.

(d) Applications for channel exclusivity may request no more than one frequency in each location to be served. No applicant or affiliate of an applicant may apply for an additional frequency in an area that is the subject of the applicant's prior application unless the system proposed in the prior application has been constructed, is operating, and meets the criteria set forth in paragraph (a) of this section.

(e) Paging licensees may obtain channel exclusivity for stations that have been authorized on or prior to October 14, 1993, or for stations that are subsequently authorized based on applications filed with the Commission on or prior to October 14, 1993, by showing that such stations constitute part of a paging system that meets the criteria set forth in paragraph (a) of this section.

(f) Applications for stations will be deemed mutually exclusive if they are filed on the same day for the same frequency and if the grant of both applications would violate the separation standards set forth in paragraph (b) of this section. Where a 929–930 MHz licensee applies to add a station or stations to a system that has previously qualified for exclusivity under paragraph (a) of this section, applicants who are seeking to construct new systems in the same area and whose applications are mutually exclusive with the licensee's application will be deemed ineligible and such applications will be dismissed as unacceptable for filing.

6. Section 90.498 is added to read as follows:

§ 90.496 Extended implementation schedule.

For applications filed with the Commission after October 14, 1993, a period of up to three years may be authorized for construction and commencement of operations if the proposed system to be constructed qualifies for channel exclusivity under § 90.495(a), is comprised of more than 30 transmitters, and the applicant submits justification for an extended implementation period.

(a) The justification must include reasons for requiring an extended construction period and a proposed construction schedule (with milestones). The applicant must also provide a construction cost estimate and must certify that within 30 days of the grant of its application, it will either place a sum equal to the estimate in an escrow account or obtain a performance bond payable in that amount. An applicant who proposes to establish an escrow fund or obtain a bond equal to $20,000 for each proposed transmitter and who otherwise meets our slow-growth criteria will be presumed to qualify for an extension. An applicant whose request is based on a cost estimate lower than $20,000 per transmitter will not receive this presumption and must submit an itemized statement demonstrating that the reduced estimate is reasonable.

(b) A licensee who elects to place funds in escrow as provided in paragraph (a) of this section must provide the Commission with the name of the financial institution that holds the escrow account and the account number. A licensee who elects to post a performance bond as provided in paragraph (a) of this section must use a surety company deemed acceptable within the meaning of 31 U.S.C. 9304 *et seq.* (see, e.g., Department of the Treasury Fiscal Service, Companies Holding Certificates of Authority as Acceptable Sureties on Federal Bonds and As Acceptable Reinsuring Companies, 57 FR 29356 (1992)), and the bond must name the United States Treasury as beneficiary in the event of the licensee's default. The licensee must

provide the Commission with a copy of the performance bond, including all details and conditions.

(c) As construction of the system proceeds, the licensee may draw from the escrow account or reduce the bond amount to reflect costs incurred, except that the amount of any reduction amount may not exceed the originally estimated construction cost of that portion of the system, even if the actual cost was higher. The amount of the reduction is subject to review and modification by the Commission. If the licensee fails to construct all or part of the proposed system within the extended construction period, the escrow balance or the outstanding principal on the bond will be paid to the United States Treasury.

(d) If an extended construction schedule is authorized under this section, channel exclusivity under § 90.495 will be extended for the duration of the construction period.

(e) Authorizations under this section are conditioned upon the licensee's compliance with the submitted extended implementation schedule. Failure to meet the schedule will result in loss or authorizations for facilities not constructed and loss of exclusivity as provided in § 90.495(c).

[FR Doc. 93–28920 Filed 11–24–93; 8:45 am]
BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 531

[Docket No. LVM 89–01; Notice 14]

Passenger Automobile Average Fuel Economy Standards; Final Decision

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final decision.

SUMMARY: This decision is issued in response to a petition filed by Rolls-Royce Motors, Ltd. (Rolls-Royce) requesting that it be exempted from the generally applicable average fuel economy standard of 27.5 miles per gallon (mpg) for its model year (MY) 1995 and 1996 passenger automobiles, and that lower alternative standards be established for it. This decision exempts Rolls-Royce and establishes an alternative standard of 14.6 mpg for each of MYs 1995 and 1996 for Rolls-Royce.

DATES: *Effective date:* January 10, 1994.

Applicability: This exemption and the alternative standards apply to Rolls-Royce for MYs 1995 and 1996.

Petitions for reconsideration: Petitions for reconsideration must be received no later than December 27, 1993.

ADDRESSES: Petitions for reconsideration of this rule should refer to the docket number and notice number cited in the heading of this notice and must be submitted to: Administrator, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington DC 20590.

FOR FURTHER INFORMATION CONTACT: Ms. Yolene Young, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington DC 20590. Ms. Young's telephone number is: (202) 366–4802.

SUPPLEMENTARY INFORMATION:

Background

NHTSA is exempting Rolls-Royce from the generally applicable average fuel economy standard for 1995 and 1996 model year (MY) passenger automobiles and establishing alternative standards applicable to Rolls-Royce for each of these model years. This exemption is issued under the authority of section 502(c) of the Motor Vehicle Information and Cost Savings Act, as amended (the Act) (15 U.S.C. 2002(c)). Section 502(c) provides that NHTSA may exempt a low volume manufacturer of passenger automobiles from the generally applicable average fuel economy standards for passenger automobiles if NHTSA concludes that those standards are more stringent than the maximum feasible average fuel economy for that manufacturer and if NHTSA establishes an alternative standard for that manufacturer at its maximum feasible level. Under the Act, a low volume manufacturer is one that manufactured (worldwide) fewer than 10,000 passenger automobiles in the second MY before the MY for which the exemption is sought (the affected MY) and that will manufacture fewer than 10,000 passenger automobiles in the affected MY. In determining maximum feasible average fuel economy, the agency is required by section 502(e) of the Act to consider:

(1) Technological feasibility;
(2) Economic practicability;
(3) The effect of other Federal motor vehicle standards on fuel economy; and
(4) The need of the Nation to conserve energy.

Proposed Decision and Public Comment

This final decision was preceded by a proposed decision announcing the agency's tentative conclusion that Rolls-Royce should be exempted from the generally applicable MY 1995 and 1996 passenger automobile average fuel economy standard of 27.5 mpg, and that an alternative standard of 14.6 mpg be established for Rolls-Royce for each of those model years (58 FR 41228; August 3, 1993).

The agency received one comment in response to the proposed decision. The comment was from Mr. William R. Ludt, who recommended that the alternative standards proposed for Rolls-Royce be amended to 16.5 mpg for MY 1995, and 17.8 mpg for MY 1996. Mr. Ludt stated that the alternative standards he recommended would "more closely reflect the intent of the regulations," since 16.5 and 17.8 mpg represent, respectively, "compliance factor(s)" of 60 percent and 65 percent of the generally applicable standard of 27.5 mpg.

NHTSA has decided not to adopt Mr. Ludt's recommendation. NHTSA's proposed decision presented several reasons why it would not be technologically feasible or economically practicable for Rolls-Royce to improve the fuel economy of its MY 1995 and 1996 automobiles above an average of 14.6 mpg. Mr. Ludt did not refute the agency's reasoning or provide a technical evaluation of how the higher standards he proposed for MYs 1995 and 1996 would be technologically feasible and economically practicable. Thus, the agency has no basis to adopt Mr. Ludt's recommendations.

NHTSA Final Determination

Therefore, the agency is adopting the tentative conclusions set forth in the proposed decision as its final conclusions, for the reasons set forth in the proposed decision. Based on the conclusions that the maximum feasible average fuel economy level for Rolls-Royce in each of MYs 1995 and 1996 is 14.6 mpg, that other Federal motor vehicle standards will not affect achievable fuel economy beyond the extent considered in the proposed decision, and that the national effort to conserve energy will not be affected by granting this exemption, NHTSA hereby exempts Rolls-Royce from the generally applicable passenger automobile average fuel economy standard for the 1995 and 1996 model years and establishes an alternative standard of 14.6 mpg for Rolls-Royce for each of these years.

Regulatory Impacts

NHTSA has analyzed this decision, and determined that neither Executive Order 12866 nor the Department of Transportation's regulatory policies and

procedures apply, because this decision is not a "rule," which term is defined as "an agency statement of general applicability and future effect." This exemption is not generally applicable, since it applies only to Rolls-Royce. If the Departmental policies and procedures were applicable, the agency would have determined that this action is not "significant." The principal impact of this exemption is that Rolls-Royce will not be required to pay civil penalties if it achieves a CAFE level equivalent to the alternative standard established in this notice. Since this decision sets an alternative standard at the level determined to be Rolls-Royce's maximum feasible average fuel economy, no fuel would be saved by establishing a higher alternative standard. The impacts for the public at large will be minimal.

The agency has also considered the environmental implications of this decision in accordance with the National Environmental Policy Act and determined that this decision will not significantly affect the human environment. Regardless of the fuel economy of a vehicle, it must pass the emissions standards which limit the amount of emissions per mile traveled. Thus, the quality of the air is not affected by this exemption and alternative standard. Further, since Rolls-Royce's MY 1995 and 1996 automobiles cannot achieve better fuel economy than 14.6 mpg, granting this exemption will not affect the amount of gasoline available.

Since the Regulatory Flexibility Act may apply to a decision exempting a manufacturer from a generally applicable standard, I certify that this decision will not have a significant economic impact on a substantial number of small entities. This decision does not impose any burdens on Rolls-Royce. It relieves the company from having to pay civil penalties for noncompliance with the generally applicable standard for MYs 1995 and 1996. Since the price of 1995 and 1996 Rolls-Royce automobiles will not be affected by this decision, the purchasers will not be affected.

List of Subjects in 49 CFR Part 531

Energy conservation, Gasoline, Imports, Motor vehicles.

In consideration of the foregoing, 49 CFR part 531 is amended as follows:

PART 531—[AMENDED]

1. The authority citation for part 531 continues to read as follows:

Authority: 15 U.S.C. 2002; delegation of authority at 49 CFR 1.50.

2. In § 531.5, the introductory text of paragraph (b) is republished and paragraph (b)(2) is revised to read as follows:

§ 531.5 Fuel economy standards.

* * * * *

(b) The following manufacturers shall comply with the standards indicated below for the specified model years:

* * * * *

(2) Rolls-Royce Motors, Inc.

[Miles per gallon]

Model year	Average fuel economy standard
1978	10.7
1979	10.8
1980	11.1
1981	10.7
1982	10.6
1983	9.9
1984	10.0
1985	10.0
1986	11.0
1987	11.2
1988	11.2
1989	11.2
1990	12.7
1991	12.7
1992	13.8
1993	13.8
1994	13.8
1995	14.6
1996	14.6

* * * * *

Issued on November 19, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–28946 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–59–M

Proposed Rules

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–53]

Airworthiness Directives; Pratt & Whitney Canada Model PT6A–67D Turboprop Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede priority letter AD 92–27–19 by adopting a new airworthiness directive (AD), applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, that currently requires inspections of the compressor turbine (CT) disk and blades for cracking and other irregularities using visual inspections and fluorescent penetrant inspections (FPI). That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) and installing a placard that alerts the pilot of this restriction. This proposal would continue all the requirements of the current priority letter AD and require the installation of parts having an improved design including a CT stator assembly, a CT shroud housing, CT turbine blades, feather seals, and a small exit duct assembly. This proposal is prompted by the manufacturer developing new design improvements that will reduce the susceptibility of the CT blades to high cycle fatigue (HCF) damage. The actions specified by the proposed AD are intended to prevent engine failure and inflight engine shutdown due to HCF failure of the CT blades.

DATES: Comments must be received by January 25, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–53, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Pratt & Whitney Canada, 1000 Marie-Victorin, Longueil, Quebec, Canada J4G 1A1. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Mark A. Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7137, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–53." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–53, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

On December 28, 1992, the Federal Aviation Administration (FAA) issued priority letter AD 92–27–19, applicable to Pratt & Whitney Canada (PWC) PT6A–67D turboprop engines, that requires deblading the compressor turbine (CT) disk; inspecting the entire disk surface area and fir tree areas of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, using visual inspections and fluorescent penetrant inspections (FPI). That AD also requires amending the Beech Model 1900D Airplane Flight Manual (AFM) by inserting requirements that describe restricting continuous engine operation above 94.0% and below 97.1% N1 (Gas Generator RPM); and installing a placard that alerts the pilot of this restriction. That action was prompted by a report from Transport Canada, which is the airworthiness authority of Canada. Transport Canada advised that they received a report of a CT blade failure due to a high cycle fatigue (HCF) fracture in the fir tree area of the blade while exposed to normal engine vibrations. That condition, if not corrected, could result in an engine failure and inflight engine shutdown due to a CT blade fracture.

Since the issuance of that priority letter AD, the manufacturer has developed parts having an improved design, including a CT stator assembly, a CT shroud housing, CT turbine blades, feather seals, and a small exit duct assembly. These design improvements entail installing a CT vane ring with fourteen vanes, replacing 25 vanes on the existing PWC PT6A–67D engine, thereby reducing vibratory input to the CT blades. The improved CT blade with feather seals also improves blade root cooling air flow.

PWC has issued Service Bulletin (SB) No. 14128, Revision 3, dated April 19, 1993, that specifies procedures for CT blade inspections; SB No. 14132, Revision 1, dated May 12, 1993, that specifies procedures for CT stator vane

replacement; and SB 14142, Revision 1, dated May 12, 1993, that specifies procedures for CT blade replacement. Transport Canada classified these service bulletins as mandatory and issued AD CF–92–25–R1, dated June 1, 1993, in order to assure the airworthiness of these PWC PT6A–67D engines in Canada.

This engine model is manufactured in Canada and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement. Pursuant to this bilateral airworthiness agreement, Transport Canada has kept the FAA informed of the situation described above. The FAA has examined the findings of Transport Canada, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other PWC PT6A–67D engines of the same type design registered in the United States, the proposed AD would supersede priority letter AD 92–27–19 to retain the inspections and AFM revisions required by the current AD, but would also require installation at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first, the CT turbine stator assembly, CT shroud housing, small exit duct assembly, CT blades, and feather seals. Installation of this hardware constitutes terminating action to the inspections required by this AD. PWC has advised the FAA that December 31, 1994, is the earliest compliance end-date possible due to parts availability. The actions are required to be accomplished in accordance with the service bulletins described previously. Engines manufactured after the introduction of these new parts already include these design improvements. Therefore, this proposal limits the applicability by engine serial number to those engines manufactured before the new parts were introduced.

There are approximately 100 engines of the affected design in the worldwide fleet. The FAA estimates that 87 engines installed on aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 40 work hours per engine to accomplish the proposed installation of improved hardware, and that the average labor rate is $55 per work hour. PWC advises the FAA that it will reimburse operators for the cost of labor and the cost of required parts. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be negligible.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Pratt & Whitney Canada: Docket No. 93–ANE–53.

Applicability: Pratt & Whitney Canada (PWC) Model PT6A–67D turboprop engines with serial numbers prior to PC–E114100, installed on but not limited to Beech Model 1900D airplanes.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure and inflight engine shutdown due to high cycle fatigue (HCF) failure of the compressor turbine (CT) blades, accomplish the following:

(a) Prior to further flight, amend the Beech Model 1900D Aircraft Flight Manual (AFM), Part Number (P/N) 129–590000–3, by inserting the following requirements between pages 2–4 and 2–5:

"ENGINE OPERATING LIMITATIONS

Gas Generator RPM (N1)—Continuous operation of the gas generator between 94.0% and 97.1% is prohibited.

Notes

1. This limitation does not prohibit the use of N1's between 94.0% and 97.1% when the pilot in command determines that the power setting is required for the safe operation of the airplane. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

2. This limitation does not prohibit the use of static Take-Off Power and Maximum Continuous Power between 94.0% and 97.1% N1 to meet the required Take-Off performance. If such occurrences exceed 5 minutes, the engine(s) must be inspected in accordance with Pratt & Whitney Canada Service Bulletin No. 14128, Revision 3, dated April 19, 1993.

3. Operation at 94.0% and below, and at 97.1% and above are permitted. Continuous operation at 94.1% through 97.0% is prohibited.

4. "Continuous Operation" means time periods exceeding 5 minutes.

5. High Speed Cruise Power Tables found in the Pilot's Operating Manual may produce N1's in the prohibited range. Flights should be planned using Intermediate or Long Range Power settings.

6. The goal of the operator should be to keep the total time of operation in the prohibited range to the absolute minimum, since the effects of operating between N1's of 94.0% and 97.1% are cumulative.

Placards

Located in front of the pilot on the aft edge of the glareshield between the Master Caution annunciator and the fire extinguisher control switch:

CONTINUOUS OPERATION BETWEEN

94.0% AND 97.1% N1 IS PROHIBITED

SEE AFM

(b) Compliance with the requirements of paragraph (a) of this AD may also be accomplished by inserting a copy of this AD into the Beech Model 1900D AFM.

(c) Prior to further flight, install the placard as specified in paragraph (a) of this AD.

(d) For engines that have not been inspected prior to the effective date of this AD in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, or debladed and inspected in accordance with PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, accomplish the following:

(1) For engines with Serial Numbers PC–E114001 to PC–E114044, within 25 hours time in service (TIS) after the effective date

of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking and the trailing edge of the blade airfoil section for irregularities, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(2) For engines with Serial Numbers PC–E114045 to PC–E114099, within 50 hours TIS after the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(e) For engines that have been inspected in accordance with PWC SB No. 14128, Revision 1, dated November 13, 1992, prior to the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of the CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, as follows:

(1) For blade sets with greater than 600 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 50 hours TIS.

(2) For blade sets with greater than or equal to 250 hours TIS, and less than or equal to 600 hours TIS, since new, on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 100 hours TIS.

(3) For blade sets with less than 250 hours TIS since new on the effective date of this AD, deblade, inspect, and replace, if necessary, within the next 250 hours TIS.

(f) For uninstalled CT disk and blade assemblies that have not been inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, in the preceding 250 hours TIS from the effective date of this AD, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to installation.

(g) For engines with CT disk and blade assemblies that have been debladed and inspected in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 2, dated December 22, 1992, or PWC SB No. 14128, Revision 3, dated April 19, 1993, prior to the effective date of this AD, within 250 hours TIS since the last deblading and inspection, deblade the CT disk, inspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(h) For CT disk and blade assemblies that have been debladed and inspected in accordance with paragraphs (d), (e), (f), and (g) of this AD, deblade the CT disk, reinspect the entire disk surface area and fir tree area of CT blades for cracking, and replace, if necessary, with serviceable parts, in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993, at intervals not to exceed 250 hours TIS since the last deblading and inspection performed in accordance with the Accomplishment Instructions of PWC SB No. 14128, Revision 3, dated April 19, 1993.

(i) Install a CT stator assembly, a CT shroud housing, and a small exit duct assembly in accordance with PWC SB No. 14132, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(j) Install CT blades and feather seals in accordance with PWC SB No. 14142, Revision 1, dated May 12, 1993, at the next shop visit after the effective date of this AD, or December 31, 1994, whichever occurs first.

(k) For the purpose of this AD, a shop visit is defined as when major engine flanges are separated.

(l) Installation of improved hardware in accordance with paragraphs (i) and (j) of this AD constitutes terminating action for the inspections required by paragraphs (d) through (h) of this AD.

(m) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(n) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–28954 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–49]

Proposed Modification of Class E Airspace: Follett, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Follett, TX. The cancellation of the nondirectional radio beacon (NDB) Runway (RWY) 35 standard instrument approach procedure (SIAP) serving the Follett/Lipscomb County Airport has necessitated this proposal. Controlled airspace extending upward from 700 feet above ground level (AGL) is no longer needed for instrument flight rule (IFR) operations for the NDB RWY 35 SIAP at this location. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–49, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following

statement: "Comments to Airspace Docket No. 93–ASW–49." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the Office of the Assistant Chief Counsel, 4400 blue Mound Road, Fort Worth, TX both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Follett, TX. The cancellation of the NDB RWY 35 standard instrument approach procedure (SIAP) serving the Follett/Lipscomb County Airport has prompted this proposal. Controlled airspace will no longer be needed for the NDB RWY 35 SIAP at this location. Airspace reclassification effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Follett, TX [Revised]

Follett/Lipscomb County Airport, TX
(Lat. 36°26'27" N., long. 100°07'25" W.)
Gage VORTAC
(Lat. 36°20'37" N., long. 99°52'48" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of Follett/Lipscomb County Airport and within 8 miles north and 4 miles south of the 296° and 117° radial's of the Gage VORTAC extending from the airport to 29.1 miles southeast of the airport.

* * * * *

Issued in Fort Worth, TX, on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–28976 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[IA–64–91]

RIN 1545–AQ88

Capitalization and Inclusion in Inventory of Certain Costs; Hearing

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Change of the location of a public hearing on proposed regulations.

SUMMARY: This document provides notice of a change of location for the public hearing on proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale.

DATES: The public hearing will be held on Tuesday, November 30, 1993, beginning at 1 p.m.

ADDRESSES: The public hearing will be held in room 3313, Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Carol Savage of the Regulations Unit, Assistant Chief Counsel (Corporate), (202) 622–8452 or (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is proposed regulations under section 263A of the Internal Revenue Code. The notice of public hearing on these proposed regulations was published in the **Federal Register** for Friday, October 29, 1993 (58 FR 58145), and a rescheduling of this public hearing; change of date to submit requests to speak and outlines of oral comments was published in the **Federal Register** for Wednesday, November 10, 1993 (58 FR 59698). The notice of public hearing and rescheduling of the public hearing for the related proposal to prepare a revenue procedure (TD 8482) were published simultaneously at 58 FR 58101 and 58 FR 59657, respectively. The proposed regulations relating to accounting for costs incurred in producing property and acquiring property for resale (IA–64–91) and the requests for comments regarding the approach for implementing required

method changes (TD 8482) were published on Monday, August 9, 1993 (58 FR 42198) and (58 FR 42263), respectively. See change of location of the public hearing for TD 8482 elsewhere in this issue of the **Federal Register**.

There is a change in the location of the public hearing. The hearing will be held in the Commissioner's Conference Room (room 3313), Internal Revenue Service Building, 1111 Constitution Avenue, NW., Washington, DC.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

All other details with respect to the previously published documents remain the same.

Jacquelyn B. Burgess,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 93-28925 Filed 11-24-93; 8:45 am]

BILLING CODE 4830-01-U

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Parts 110 and 165

[CCGD11-93-007]

RIN 2115-AE62

Regulated Navigation Area; San Pedro Bay, CA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard proposes to restrict vessel movement in Commercial Anchorage G and to expand the Regulated Navigation Area at the approach to Los Angeles/Long Beach Harbor, California and prescribe certain vessel operating requirements for vessels operating in that area. The proposed changes are proactive prevention measures to enhance navigation safety in the approach to and departure from this heavily transited area. The proposed rule would not change existing regulations associated with the pilot areas.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments may be mailed to Commander(oan), Eleventh Coast Guard District, 501 West Ocean Blvd., Long Beach, CA 90822, Attn: CCGD11-93-007 or may be delivered to suite 6200 at the same address between 8 a.m. and 3 p.m., Monday through Friday, except Federal holidays. The telephone number is (310) 980-4300 ext 501.

The Eleventh Coast Guard District Commander maintains the public docket for this rulemaking. Comments will become part of this docket and will be available for inspection or copying at suite 6200, Eleventh Coast Guard District office, Long Beach, CA.

FOR FURTHER INFORMATION CONTACT: Lieutenant Scott Pisel, Aids to Navigation and Waterways Management Branch, telephone (310) 980-4300 ext 501.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names and addresses, identify this rulemaking (CCGD11-93-007) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Eleventh District Commander at the address under **ADDRESSES**. The request should include reasons why a hearing would be beneficial. If it is determined that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the **Federal Register**.

Drafting Information

The principal persons involved in drafting this document are Commander Michael Haucke, Project Manager, and Lieutenant Commander Craig Juckniess, Project Counsel.

Background and Purpose

The combined harbor of Los Angeles and Long Beach is the largest shipping complex in the United States. Since 1980, over 7,000 vessels have called on the port annually, equalling over 14,000 transits of the regulated navigation area. During times of heavy traffic, incoming traffic in the morning and outgoing traffic in the evening, large ships may be closer than one minute apart when moving through the bottleneck of the two breakwater harbor entrances or gates. The Coast Guard, desiring to take a proactive role in the prevention of maritime accidents, proposes to restrict vessel movement in Commercial Anchorage G and expand the regulated navigation area to ensure maritime safety through better regulation of vessel movements in the prescribed area.

The proposed regulated navigation area contains two pilot areas, a restricted navigation area and a precautionary area. All are marked on navigational charts.

The now disbanded Los Angeles/Long Beach Port and Navigational Safety Committee, consisting of Long Beach, Los Angeles and Navy Pilots; Ports of Los Angeles and Long Beach; dry cargo vessel operators; the tanker industry; the towing industry; and the U.S. Navy and Coast Guard, worked to minimize risk, reduce close calls, and prevent collisions in San Pedro Bay. After the EXXON VALDEZ grounding in 1989, the Committee accelerated their work to improve navigational safety and focused specifically on San Pedro Bay. The Committee agreed that a larger regulated navigation area, better organization, and better regulation of incoming and outgoing vessel traffic was needed to prevent accidents.

Pursuant to the State of California Oil Spill Prevention, Abatement, and Removal Act of 1990, the Long Beach/Los Angeles Harbor Safety Committee was created. This new committee, with representatives from the Ports of Los Angeles and Long Beach, local pilots, tank vessel operators, dry cargo vessel operators, towing industry, a local environmental representative, Los Angeles Fisherman's Association, a maritime labor representative and the State of California, agrees that better regulation of vessel movements in the prescribed area will increase navigation safety.

Discussion of Proposed Amendments

The proposed rules will enhance navigation safety by requiring specific vessels within the designated area to operate within certain parameters.

It is proposed that the existing regulation concerning Commercial Anchorage G (33 CFR 165.1109(d)) be moved to 33 CFR 110.214(a)(7)(iii). Regulations concerning the anchorages are more appropriately located in 33 CFR part 110.

The following changes to § 165.1109 are also proposed:

(1) The regulated navigation area be expanded to three nautical miles from the breakwaters;

(2) The pilot area coordinates be converted to 1983 North American Datum;

(3) Specified vessel speed in the regulated navigation area be limited to 12 knots;

(4) All verbal contact between specified vessels in the regulated navigation area be communicated in the English language;

(5) Specified vessels in the regulated navigation area be required to make verbal passing arrangements via radiotelephone in addition to sound signals required by the COLREGS;

(6) A prohibition from entering the pilot area unless inbound or outbound be added.

These changes are proposed for the following specific reasons:

(1) Increasing the size of the regulated navigation area will provide for safer and more orderly traffic movement further away from the breakwater entrances than exists now. This increased distance will oblige ships to prepare earlier to enter port and increase the level of awareness on the bridge of the ship. The expanded regulated navigation area will also oblige ships to align themselves before getting too close to the breakwater gates;

(2) The geographic boundaries of the pilot areas are currently described in 1927 datum. The proposed rule would update the boundary coordinates to reflect the datum of the current nautical charts;

(3) Limiting vessel speed to 12 knots will increase safety and reduce the risk of collisions. The current practice of assigning longshoremen when the vessel arrives at the sea buoy has encouraged inbound vessels to exceed 20 knots when approaching the pilot area as they race each other for longshoreman assignments. Pilots have reported difficulty approaching inbound vessels with the pilot boat because of excessive speed. Stopping and turning distances on the vessels to which this limit applies are substantial. A speed of 12 knots will reduce those distances and allow for longer reaction time while still allowing sufficient maneuverability. The common practice of high speed transits of this small congested area is unsafe.

(4) and (5) Communication is the essence of collision prevention between vessels in close proximity. A significant portion of the requirements from both International and Inland Navigation Rules is basic communication. These communication requirements are based on lights, sounds, and shapes. The Ports and Waterways Safety Act (33 U.S.C. 1221 *et. seq.*), and the Vessel Bridge-to-Bridge Radiotelephone Act (33 U.S.C. 1201 *et. seq.*) as implemented by 33 CFR parts 26 and 165, authorize the issuance of regulations requiring both the carriage and use of voice communications equipment by specified vessels in areas, such as the San Pedro Bay regulated navigation area, which have been determined to pose hazardous vessel traffic conditions. This proposed rule requires voice communication between vessels that are meeting, overtaking, or crossing in the regulated navigation area and will enhance and complement the Rules and the Act by improving communications between approaching ships.

(6) The mix of recreational boaters and large ships in the approach areas of the Los Angeles and Long Beach harbors has long been a problem and concern. The existing regulated navigation area already includes restrictions (which will remain) on loitering in the pilot areas. The Coast Guard, in cooperation with local recreational organizations, established two buoys for the recreational boaters to use as turn marks. This was a highly unusual and unique effort to move small boat traffic out of the pilot areas and away from the large ships because boaters were using the harbor approach buoys as turn marks. This effort has enjoyed qualified success mainly from organized groups. The problem still exists however, necessitating a regulation to prohibit all vessels from entering the pilot area unless inbound or outbound.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under the "Department of Transportation Regulatory Policies and Procedures" (44 FR 11040; February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a Regulatory Evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted will not have a significant economic impact on a substantial number of small entities.

Collecton of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Environmental Assessment

The Coast Guard has considered the environmental impact of this proposal and concluded that under section 2.B.2.c of Commandant Instruction M16475.1B, it will have no significant environmental impact and it is categorically excluded from further environmental documentation.

Federalism

The Coast Guard has analyzed this proposal under the principals and criteria contained in Executive Order 12612 and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

List of Subjects

33 CFR Part 110

Anchorage regulations 18, Nov. 93.

33 CFR Part 165

Harbors, Marine safety, Navigation (water), Reporting and recordkeeping requirements, Security measures, Waterways.

For the reasons set out in the preamble, the U.S. Coast Guard proposes to amend 33 CFR parts 110 and 165 as follows:

PART 110—[AMENDED]

1. The authority citation for part 110 continues to read as follows:

Authority: 33 U.S.C. 471, 2030, 2035 and 2071; 49 CFR 1.46 and 33 CFR 1.05–1(g). Section 110.1a and each section listed in 110.1a is also issued under 33 U.S.C. 1223 and 1231.

2. Section 110.214 is amended by adding paragraph (a)(7) (iii) to read as follows:

§ 110.214 Los Angeles and Long Beach Harbors, California.

(a) * * *

(7) * * *

(iii) Vessels 30 meters or over in length, towing vessels of 8 meters or over in length, every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating, and each dredge and floating plant engaged in operations shall not enter anchorage G unless:

(A) In an emergency;

(B) Proceeding to anchor in or departing from Commercial Anchorage G;

(C) Standing by with confirmed pilot boarding arrangements; or,

(D) Engaged in towing vessels to or from Commercial Anchorage G.

* * * * *

PART 165—[AMENDED]

3. The authority citation for Part 165 continues to read as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 33 CFR 1.05–1(g), 6.04–1, 6.04–6, and 160.5, 49 CFR 1.46.

4. Section 165.1109 is revised to read as follows:

§ 165.1109 San Pedro Bay, California—Regulated Navigation Area.

(a) *Location.* The following is a regulated navigation area: The water area of San Pedro Bay encompassed by the following geographic coordinates:

From Pt. Fermin Light (33°42′18″ N, 118°17′36″ W) thence along the shoreline to the San Pedro Breakwater, thence along the San Pedro Breakwater and the Middle Breakwater (following the COLREGS Demarcation Lines) to Long Beach Channel Entrance Light "2" (33°42′42″ N, 118°14′42″ W), thence south southeast to: 33°40′31″ N, 118°08′42″ W; thence west to 33°40′31″ N, 118°12′03″ W; thence west southwest to 33°39′17″ N, 118°16′00″ W; thence northeast to 33°40′06″ N, 118°17′38″ W; thence north to the point of origin.

[Datum: NAD 1983]

(b) *Pilot areas.* There are two pilot areas within the regulated navigation area described in paragraph (a) of this section. They are defined as follows:

(1) The Los Angeles Pilot Area is enclosed by a line beginning at Los Angeles Light (33°42′30″ N, 118°15′06″ W); thence easterly to Los Angeles Main Channel Entrance Light 2 (33°42′42″ N, 118°14′42″ W), thence southeasterly to: 33°41′36.2″ N, 118°13′46.2″ W; thence southwest to 33°41′13.9″ N, 118°14′55.4″ W; thence north to the point of origin.

[Datum: NAD 1983]

(2) The Long Beach Pilot Area is enclosed by a line beginning at Long Beach Light (33°43′24″ N, 118°11′12″ W); thence easterly to Long Beach Channel Entrance Light 2 (33°43′24″ N, 118°10′48″ W), thence southerly to: 33°42′09.1″ N, 118°10′26.2″ W; thence west to 33°42′09.1″ N, 118°11′35.5″ W; thence northeasterly to the point of origin.

[Datum: NAD 1983]

(c) *Definitions.* For the purposes of this section:

(1) Floating Plant—means any vessel, other than a vessel underway and making way, engaged in any construction, manufacturing, or exploration operation.

(2) Vessel—means every description of watercraft, used or capable of being used as a means of transportation on water.

(d) Paragraphs (d) (1) and (2) apply to all vessels while operating within the regulated navigation area:

(1) Los Angeles Pilot Area:

(i) No vessel may enter the Los Angeles Pilot Area unless it is entering or departing the Los Angeles Main Channel via the Los Angeles Harbor Entrance (Angel's Gate).

(ii) Vessels entering the Los Angeles Pilot Area shall pass directly through without stopping or loitering unless stopping is necessary to embark or disembark a pilot.

(iii) Vessels shall leave Los Angeles Approach Lighted Bell Buoy LA to port when entering and departing Los Angeles Main Channel;

(2) Long Beach Pilot Area:

(i) No vessel may enter the Long Beach Pilot Area unless it is entering or departing the Long Beach Harbor Entrance (Queen's Gate).

(ii) Every vessel entering the Long Beach Pilot Area shall pass directly through without stopping or loitering unless stopping is necessary to embark or disembark a pilot.

(iii) Every vessel shall leave Long Beach Approach Lighted Whistle Buoy LB to port when entering and departing Long Beach Channel and departing vessels shall pass across the southern boundary of the Long Beach Pilot Area.

(e) Paragraphs (e) (1) through (4) apply to vessels 30 meters (approximately 98 feet) or over in length, each towing vessel of 8 meters (approximately 26 feet) or over in length, every vessel of 100 gross tons and upward carrying one or more passengers for hire while navigating, and each dredge and floating plant engaged in operations in the regulated navigation area:

(1) The vessel's speed shall not exceed 12 knots;

(2) All verbal contact between vessels shall be communicated in the English language. No vessel may enter or transit within the regulated navigation area unless there is at least one person on the bridge immediately available to communicate with other vessels in the English language;

(3) When vessels in the regulated navigation area encounter meeting, crossing, or overtaking situations as defined by the International Regulations for Prevention of Collisions at Sea, 1972 (72 COLREGS) the master, pilot or person in charge of such vessels shall make verbal passing arrangements with each other over radiotelephone in addition to sound signal requirements of the 72 COLREGS;

(4) No such vessel may enter the waters between Commercial Anchorage G and the Middle Breakwater as defined by an area enclosed by a line beginning at Los Angeles Main Channel Entrance Light 2 (33°42′42″ N, 118°14′42″ W); eastward along the middle breakwater to Long Beach Light (33°43′24″ N, 118°11′12″ W); south to latitude 33°43′05.3″ N, longitude 118°11′15.3″ W; thence westerly to latitude 33°43′05.3″ N, longitude 118°12′15.7″ W; thence southwesterly parallel to the breakwater to latitude 33°42′29.9″ N, longitude 118°14′16.0″ W and back to the point of origin, unless such vessel is:

(i) In an emergency;

(ii) Proceeding to anchor in or departing Commercial Anchorage G;

(iii) Standing by with confirmed pilot boarding arrangements; or,

(iv) Engaged in towing vessels to or from Commercial Anchorage G.

Dated: August 24, 1993.

R.D. Herr,

Rear Admiral, U.S. Coast Guard, Commander, Eleventh Coast Guard District.

[FR Doc. 93–28861 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–14–M

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33 CFR Part 117

[CGD13 93–031]

Drawbridge Operation Regulations; Columbia River, OR and WA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: At the request of the Oregon State Department of Transportation (ODOT), the Coast Guard is considering the amendment of the regulations governing the operation of the dual Interstate 5 drawbridges across the Columbia River between Portland, Oregon, and Vancouver, Washington. The proposed amendment would lengthen the weekday closed periods of the drawspans to accommodate the increased commuter traffic on the interstate highway. The proposed weekday closed periods are 5:30 a.m. to 9 a.m. and from 2:30 p.m. to 6 p.m.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments should be mailed to Commander (oan), Thirteenth Coast Guard District, 915 Second Avenue, Seattle, Washington 98174–1067. The comments and other materials referenced in this notice will be available for inspection and copying at 915 Second Avenue, room 3410, Seattle, Washington. Normal office

hours are between 7:45 a.m. and 4:15 p.m., Monday through Friday, except holidays. Comments may also be hand-delivered to this address.

FOR FURTHER INFORMATION CONTACT:

John E. Mikesell, Chief, Plans and Programs Section, Aids to Navigation and Waterways Management Branch, (206) 220–7270.

SUPPLEMENTARY INFORMATION: Interested persons are invited to participate in this proposed rulemaking by submitting written views, comments, data, or arguments. Persons submitting comments should include their names and addresses, identify the bridge, and give reasons for concurrence with, or any recommended changes in, the proposal. Persons desiring acknowledgment that their comments have been received should enclose a stamped, self-addressed postcard or envelope.

The Commander, Thirteenth Coast Guard District, will evaluate all communications received and determine a course of final action on this proposal. The proposed regulations may be changed in light of comments received.

Drafting Information

The drafters of this notice are Austin Pratt, project officer, and Lieutenant Laticia Argenti, project attorney.

Discussion of the Proposed Regulations

The purpose of the proposed regulations is to alleviate commuter traffic congestion by lengthening the lift span closed periods of the Interstate 5 drawspans to coincide with the increased periods of peak highway use. The proposed regulations would extend the rush hour closed periods for the drawspans by two hours in the morning and one hour in the afternoon. The regulations presently governing the Interstate 5 Bridges prescribe daily periods during which the twin vertical lift spans need not be raised for the passage of vessels. These weekday periods are from 6:30 a.m. to 8 a.m. and from 3:30 p.m. to 6 p.m. Based upon the records of the drawbridge operators, the Oregon State Department of Transportation believes that the proposed regulations would affect only a tenth of the river traffic while preventing lengthy halts of roadway traffic during its peak volume hours. Since many vessels on this reach of the Columbia can traverse the bridge via the fixed spans, the proposed regulations do not increase closures that would delay all river traffic.

Federalism Assessment and Certification

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the proposed rulemaking does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Economic Assessment and Certification

These proposed regulations are considered to be not a significant regulatory action under Executive Order 12866 and is not significant under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979).

The economic impact of this proposal is expected to be so minimal that a full regulatory evaluation is unnecessary. Pursuant to the Regulatory Flexibility Act (5 U.S.C. 601, *et seq.*), the Coast Guard certifies that the proposed regulations, if adopted, will not have a significant impact on a substantial number of small entities.

Environmental Assessment and Certification

This action has been reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation under the authority of 40 CFR 1507.3 and in accordance with paragraph 2.B.2.g.(5) of the NEPA Implementing Procedures, COMDTINST M16475.1B. A copy of the Categorical Exclusion Certification is available for review in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Proposed Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05–1(g).

2. Section 117.869 is amended by revising paragraph (a) to read as follows:

§ 117.869 Columbia River.

(a) The draw of the Interstate 5 bridges, mile 106.5, at Vancouver, Washington, shall open on signal; except that, from 5:30 a.m. to 9 a.m. and 2:30 p.m. to 6 p.m. Monday through Friday except Federal Holidays, the draws need not open for the passage of vessels.

* * * * *

Dated: November 10, 1993.

John A. Pierson,

Captain, Coast Guard, Acting Commander, 13th Coast Guard District.

[FR Doc. 93–29039 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–14–M

33 CFR Part 117

[CGD 05–93–079]

Drawbridge Operation Regulations; Pamunkey River, West Point, VA

AGENCY: Coast Guard, DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Coast Guard is considering a change to the regulations that govern the operation of the drawbridge, SR 33, across Pamunkey River, mile 1.0, located in West Point, Virginia, by eliminating bridge openings between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays.

This change is being considered due to the increase volume of vehicular traffic crossing this bridge at peak traffic times. The proposed changes to these regulations are, to the extent practical and feasible, intended to provide for regularly scheduled drawbridge openings to help reduce motor vehicle traffic delays and congestion on the roads and highways linked by this drawbridge, while still providing for the reasonable needs of navigation.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Comments may be mailed to Commander (ob), Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704–5004, or may be delivered to room 109 at the same address between 8 a.m. and 4 p.m., Monday through Friday, except Federal holidays. The telephone number is (804) 398–6222. Comments will become part of this docket and will be available for inspection or copying at room 109, Fifth Coast Guard District.

FOR FURTHER INFORMATION CONTACT: Ann B. Deaton, Bridge Administrator, Fifth Coast Guard District, (804) 398–6222.

SUPPLEMENTARY INFORMATION:

Request for Comments

The Coast Guard encourages interested persons to participate in this rulemaking by submitting written data, views, or arguments. Persons submitting comments should include their names

and addresses, identify this rulemaking (CGD 05–93–079) and the specific section of this proposal to which each comment applies, and give the reason for each comment. The Coast Guard requests that all comments and attachments be submitted in an unbound format suitable for copying and electronic filing. If not practical, a second copy of any bound material is requested. Persons wanting acknowledgement of receipt of comments should enclose a stamped, self-addressed postcard or envelope.

The Coast Guard will consider all comments received during the comment period. It may change this proposal in view of the comments.

The Coast Guard plans no public hearing. Persons may request a public hearing by writing to the Commander (ob) at the address under ADDRESSES. The request should include reasons why a hearing would be beneficial. If it determines that the opportunity for oral presentations will aid this rulemaking, the Coast Guard will hold a public hearing at a time and place announced by a later notice in the Federal Register.

Drafting Information

The principal persons involved in drafting this document are Bill H. Brazier, Project Officer, and LT Monica L. Lombardi, Project Attorney, Fifth Coast Guard District.

Background and Purpose

The Virginia Department of Transportation has requested that openings of the drawbridge across Pamunkey River, mile 1.0, located in West Point, Virginia, be restricted due to the increase in vehicular traffic during rush hour periods. The Coast Guard is proposing to restrict the passage of vessels between the hours of 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays. The bridge will continue to open on signal at all other times.

According to the most recent traffic counts, vehicular traffic has increased to the point that any drawbridge openings on weekdays during the morning and evening peak traffic periods as well the noon hour cause extreme backups and traffic problems. The Virginia Department of Transportation, in an effort to improve this situation, has requested these proposed regulations.

Regulatory Evaluation

This proposal is not a significant regulatory action under Executive Order 12866 and is not significant under Department of Transportation regulatory policies and procedures (44 FR 11034, February 26, 1979). The Coast Guard expects the economic impact of this proposal to be so minimal that a full regulatory evaluation is unnecessary.

Small Entities

Under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*), the Coast Guard must consider whether this proposal, if adopted, will have a significant economic impact on a substantial number of small entities. "Small entities" include independently owned and operated small businesses that are not dominant in their field and that otherwise qualify as "small business concerns" under section 3 of the Small Business Act (15 U.S.C. 632). Because it expects the impact of this proposal to be minimal, the Coast Guard certifies under 5 U.S.C. 605(b) that this proposal, if adopted, will not have a significant economic impact on a substantial number of small entities.

Collection of Information

This proposal contains no collection of information requirements under the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*).

Federalism

The Coast Guard has analyzed this proposal under the principles and criteria contained in Executive Order 12612, and has determined that this proposal does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environment

The Coast Guard considered the environmental impact of this proposal and concluded that under section 2.B.2.g.(5) of Commandant Instruction M16475.1B, this rule is categorically excluded from further environmental documentation. A Categorical Exclusion Determination statement has been prepared and placed in the rulemaking docket.

List of Subjects in 33 CFR Part 117

Bridges.

Regulations

In consideration of the foregoing, the Coast Guard proposes to amend part 117 of title 33, Code of Federal Regulations as follows:

PART 117—DRAWBRIDGE OPERATION REGULATIONS

1. The authority citation for part 117 continues to read as follows:

Authority: 33 U.S.C. 499; 49 CFR 1.46; 33 CFR 1.05.1(g).

2. Section 117.1023 is added to read as follows:

§ 117.1023 Pamunkey River.

(a) The draw of the Eltham Bridge (SR33/30), mile 1.0, located in West Point, Virginia, shall open on signal; except that, from 7 a.m. to 9 a.m., 12 noon to 1 p.m. and 4 p.m. to 6 p.m., Monday through Friday, except Federal holidays, the bridge need not be opened for the passage of vessels.

(b) Public vessels of the United States and vessels in an emergency involving danger to life or property shall be passed at any time.

Dated: November 5, 1993.

W.T. Leland,

Rear Admiral, U.S. Coast Guard, Commander, Fifth Coast Guard District.

[FR Doc. 93–28858 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CO20–1–5681; FRL–4798–9]

Clean Air Act Approval and Promulgation of Title V, Section 507, Small Business Stationary Source Technical and Environmental Compliance Assistance Program for the State of Colorado

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of proposed rulemaking.

SUMMARY: The EPA proposes to approve the State Implementation Plan (SIP) revision submitted by the State of Colorado for the purpose of establishing a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM). The implementation plan was submitted by the State to satisfy the Federal mandate, found in section 507 of the Clean Air Act (CAA), to ensure that small businesses have access to the technical assistance and regulatory information necessary to comply with the CAA. The rationale for the approval is set forth in this proposal; additional information is available at the address indicated below.

DATES: Comments on this proposed action must be received in writing by December 27, 1993.

ADDRESSES: Comments can be mailed to: Douglas M. Skie, Chief, Air Programs Branch, Environmental Protection Agency, Region VIII, Mail Code–8ART-AP, 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

Copies of the State's submittal and EPA's technical support document are available for inspection during normal

business hours at the following location: Air Programs Branch, Environmental Protection Agency, Region VIII 999 18th Street, Suite 500, Denver, Colorado 80202–2405.

FOR FURTHER INFORMATION CONTACT: Laura Farris, Mail Code–8ART-AP, Environmental Protection Agency Region VIII, 999 18th Street, Suite 500, Denver, Colorado 80202–2405, (303) 294–7539.

SUPPLEMENTARY INFORMATION:

I. Background

Implementation of the provisions of the Clean Air Act (CAA), as amended in 1990, will require regulation of many small businesses so that areas may attain and maintain the National ambient air quality standards (NAAQS) and reduce the emission of air toxics. Small businesses frequently lack the technical expertise and financial resources necessary to evaluate such regulations and to determine the appropriate mechanisms for compliance. In anticipation of the impact of these requirements on small businesses, the CAA requires that States adopt a Small Business Stationary Source Technical and Environmental Compliance Assistance Program (PROGRAM), and submit this PROGRAM as a revision to the federally approved SIP. In addition, the CAA directs the Environmental Protection Agency (EPA) to oversee these small business assistance programs and report to Congress on their implementation. The requirements for establishing a PROGRAM are set out in Section 507 of Title V of the CAA. In February 1992, EPA issued *Guidelines for the Implementation of Section 507 of the 1990 Clean Air Act Amendments*, in order to delineate the Federal and State roles in meeting the new statutory provisions and as a tool to provide further guidance to the States on submitting acceptable SIP revisions.

The State of Colorado has submitted a SIP revision to EPA in order to satisfy the requirements of section 507. In order to gain full approval, the State submittal must provide for each of the following PROGRAM elements:

(1) The establishment of a Small Business Assistance Program (SBAP) to provide technical and compliance assistance to small businesses;

(2) The establishment of a State Small Business Ombudsman to represent the interests of small businesses in the regulatory process; and

(3) The creation of a Compliance Advisory Panel (CAP) to determine and report on the overall effectiveness of the SBAP.

II. Analysis

The State of Colorado has met all of the requirements of section 507 by submitting a SIP revision that implements all required PROGRAM elements. At a public hearing held before the Colorado Air Quality Control Commission (Commission) on October 15, 1992, the plan for the PROGRAM was approved. A notice of approval dated October 30, 1992, was issued by the Technical Secretary of the Commission adopting the PROGRAM plan. Legal authority to implement the PROGRAM was obtained through Senate Bill 105 and is contained in the Colorado Act (ACT) Section 25–7–109.2. The collection of fees to cover the cost of implementing the PROGRAM is contained in the ACT Section 25–7–114.7.

1. Small Business Assistance Program

Section 507(a) sets forth six requirements [1] that the State must meet to have an approvable SBAP. The State's PROGRAM meets these six requirements which are contained in eight SBAP elements in its proposed SIP revision. It also establishes a Task Force that will discuss these eight SBAP elements and choose some or all of the implementation methods listed for each element, or add additional implementation methods, as required. The Task Force consists of members from the Colorado Department of Health Air Pollution Control Division (Division), the Commission, the Office of Regulatory Reform, the CAP and other State entities which assist small businesses and small business associations.

The first requirement set forth in section 507(a) is to establish adequate mechanisms for developing, collecting and coordinating information concerning compliance methods and technologies for small business stationary sources, and programs to encourage lawful cooperation among such sources and other persons to further compliance with the Act. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Dissemination of compliance issues, regulation, monitoring, modeling, and control technology information." The proactive component of this element states the following: "General information regarding the services provided by the PROGRAM shall be developed," "The Division shall develop information regarding existing regulations that affect small business," and "The Division shall coordinate with the Ombudsman to develop a procedure through which the information can be developed as new regulations are proposed by the EPA or the State." The reactive component of this element states that "The SBAP shall refer calls as they are received to appropriate Division staff or other resources, depending on the type and complexity of information being sought."

The second requirement is to establish adequate mechanisms for assisting small business stationary sources with pollution prevention and accidental release detection and prevention, including providing information concerning alternative technologies, process changes, products and methods of operation that help reduce air pollution. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Pollution prevention and accidental release assistance." This element states that "the Division shall compile a directory of Federal, State, Local, and trade group and other industry resources that can provide assistance in these areas," and "establish a central "clearinghouse" of information from these various entities."

The third requirement is to develop a compliance and technical assistance program for small business stationary sources which assists small businesses in determining applicable requirements and in receiving permits under the Act in a timely and efficient manner. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Dissemination of compliance issues, regulation, monitoring, modeling, and control technology information." In addition to the implementation methods listed under the first requirement above, the Division "shall develop information regarding small businesses' requirements for obtaining operating and construction permits," and "will explain the requirements, ... and how a source can calculate their emissions, and ... determine their compliance status."

The fourth requirement is to develop adequate mechanisms to assure that small business stationary sources receive notice of their rights under the Act in such manner and form as to assure reasonably adequate time for such sources to evaluate compliance methods and any relevant or applicable proposed or final regulation or standards issued under the Act. The State has met this requirement by committing in its proposed SIP revision

[1] A seventh requirement of section 507(a), establishment of an Ombudsman office, is discussed in the next section.

to implement a SBAP element titled "Notifying small businesses of their rights under the Act." This element states that when Federal or State air regulations are proposed that affect small businesses, the Division and Ombudsman "shall develop brochures and/or presentations for informing small businesses," and "obtain small business comments or to ensure that small businesses submit their comments to the EPA." They will further "develop and implement a procedure that contains specific timeframes for proceeding with development of information regarding a new requirement proposal," and "develop information explaining enforcement procedures and source's rights."

The fifth requirement is to develop adequate mechanisms for informing small business stationary sources of their obligations under the Act, including mechanisms for referring such sources to qualified auditors or, at the option of the State, for providing audits of the operations of such sources to determine compliance with the Act. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Small business source auditor referrals or audit provisions." A list of auditors will be compiled as follows: "The Division shall consult with trade groups and other small business representatives, and shall solicit names of companies that these entities are familiar with and approve of," and "shall add to the list any companies ... dealt with in the past." "When compiling the list, the Division shall consider the company's ability to provide environmental audits, especially in regard to providing pollution prevention assistance." The Division does not plan to directly conduct audits of small businesses.

The sixth requirement is to develop procedures for consideration of requests from a small business stationary source for modification of: (A) Any work practice or technological method of compliance, or (B) the schedule of milestones for implementing such work practice or method of compliance preceding any applicable compliance date, based on the technological and financial capability of any such small business stationary source. The State has met this requirement by committing in its proposed SIP revision to implement a SBAP element titled "Modification of work practices or alternate control method requests." This element states that the Division shall develop a formal procedure for sources to follow when making such requests in cases where a SIP revision is not required. If a SIP revision is required, the Division shall "consult with the EPA Region VIII to establish the least intensive method of obtaining a SIP revision for these requests," and "develop a "generic" alternative control procedure as part of the State SIP, where possible."

2. Ombudsman

Section 507(a)(3) requires the designation of a State office to serve as the Ombudsman for small business stationary sources. The State has met this requirement by locating the position of the Small Business Ombudsman in the Office of Regulatory Reform.

3. Compliance Advisory Panel

Section 507(e) requires the State to establish a Compliance Advisory Panel (CAP) that must include two members selected by the Governor who are not owners or representatives of owners of small businesses; four members selected by the State legislature who are owners, or represent owners, of small businesses; and one member selected by the head of the agency in charge of the Air Pollution Permit Program. The State has met this requirement by outlining in its proposed SIP revision how the members will be determined, which is consistent with the method described above.

In addition to establishing the minimum membership of the CAP the CAA delineates four responsibilities of the Panel: (1) To render advisory opinions concerning the effectiveness of the SBAP, difficulties encountered and the degree and severity of enforcement actions; (2) to periodically report to EPA concerning the SBAP's adherence to the principles of the Paperwork Reduction Act, the Equal Access to Justice Act, and the Regulatory Flexibility Act [2]; (3) to review and assure that information for small business stationary sources is easily understandable; and (4) to develop and disseminate the reports and advisory opinions made through the SBAP. The State has met these requirements by outlining in its proposed SIP revision the functions of the CAP which are consistent with those stated above.

[2] Section 507(e)(1)(B) requires the CAP to report on the compliance of the SBAP with these three Federal statutes. However, since State agencies are not required to comply with them, EPA believes that the State PROGRAM must merely require the CAP to report on whether the SBAP is adhering to the general principles of these Federal statutes.

4. Eligibility

Section 507(c)(1) of the CAA defines the term "small business stationary source" as a stationary source that:

(A) Is owned or operated by a person who employs 100 or fewer individuals;

(B) Is a small business concern as defined in the Small Business Act;

(C) Is not a major stationary source;

(D) Does not emit 50 tons per year (tpy) or more of any regulated pollutant: and

(E) Emits less than 75 tpy of all regulated pollutants.

The State of Colorado has established a mechanism for ascertaining the eligibility of a source to receive assistance under the PROGRAM, including an evaluation of a source's eligibility using the criteria in Section 507(c)(1) of the CAA. The State of Colorado has also provided for public notice and comment on grants of eligibility to sources that do not meet the provisions of sections 507(c)(1)(C), (D), and (E) of the CAA but do not emit more than 100 tpy of all regulated pollutants, and for exclusion from the small business stationary source definition, after consultation with the EPA and the Small Business Administration Administrator and after providing notice and opportunity for public comment, of any category or subcategory of sources that the State determines to have sufficient technical and financial capabilities to meet the requirements of the CAA.

III. This Action

In this proposal, EPA is proposing to approve the SIP revision submitted by the State of Colorado.

The State of Colorado has submitted a SIP revision implementing each of the required PROGRAM elements required by section 507 of the CAA. The Small Business Ombudsman started in the Office of Regulatory Reform in August, 1992. A schedule for implementation of the PROGRAM submitted in a letter by the State dated January 7, 1993, indicates that members of the CAP will be appointed by July 1, 1993, and a final report of the Task Force on implementation methods for the SBAP is scheduled for completion by October, 1993. EPA is therefore proposing to approve this submittal.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of

Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

In this action, EPA is approving a State program created for the purpose of assisting small businesses in complying with existing statutory and regulatory requirements. The program being approved does not impose any new regulatory burden on small businesses; it is a program under which small businesses may elect to take advantage of assistance provided by the State. Therefore, because the EPA's approval of this program does not impose any new regulatory requirements on small businesses, I certify that it does not have a significant economic impact on any small entities affected.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Incorporation by reference, Small business assistance program.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 19, 1993.

Patricia D. Hull,

Acting Regional Administrator.

[FR Doc. 93–29047 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[DE 11–1–5979; FRL–4800–1]

Approval and Promulgation of Air Quality Implementation Plans; Delaware; Reasonably Available Control Technology Requirements for Major Sources of Nitrogen Oxides

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing a limited approval/limited disapproval of a State Implementation Plan (SIP) revision submitted by the State of Delaware. This revision establishes and requires all major sources of nitrogen oxides (NOx) to implement reasonably available control technology (RACT). The intended effect of this action is to propose approval of Delaware Regulation No. 12, Control of Nitrogen Oxides Emissions for the limited purpose of strenthening the Delaware SIP which currently has no requirements for existing NOx sources. In addition, this action is intended to propose disapproval of Delaware Regulation No. 12 for the limited purpose of allowing Delaware the opportunity to correct the deficiencies in the regulation which result in its failure to meet all requirements of the Clean Air Act (CAA). This action is being taken pursuant to section 110 of the Clean Air Act.

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107.

Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; and Delaware Department of Natural Resources & Environmental Control, 89 Kings Highway, P.O. Box 1401, Dover, Delaware 19903.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address indicated in the ADDRESSES section.

SUPPLEMENTARY INFORMATION: On January 11, 1993, Delaware Department of Natural Resources and Environmental Control (DNREC) submitted a revision to its State Implementation Plan (SIP) for the control of NOx emissions from major sources. The revision consists of a new regulation which would require sources which emit or have the potential to emit 25 tons or more of NOx per year in New Castle and Kent Counties and 100 tons or more of NOx per year in Sussex County to comply with reasonably available control technology requirements by May 31, 1995.

Background

Pursuant to section 182 of the Clean Air Act (CAA), Delaware is required to implement RACT for all major NOx sources by no later than May 31, 1995. The major source size in determined by its location, the classification of that area and whether it is located in the ozone transport region (OTR) which is established by the CAA. New Castle and Kent Counties in Delaware are part of the Philadelphia ozone nonattainment area and are classified as severe. Sussex County, Delaware is classified as marginal nonattainment but is located in the OTR on which the CAA imposes certain additional requirements, including the NOx RACT requirement for all major NOx sources. For New Castle and Kent Counties, section 182 requires that, among other requirements, all sources which emit or have the potential to emit 25 tons of NOx or more per year must implement RACT by no later than May 31, 1995. For Sussex County, sections 182 and 184 require that all sources which emit or have the potential to emit 100 tons of NOx or more per year implement RACT by May 31, 1995.

Delaware NOx RACT Regulation

Specific NOx Requirements

Delaware's proposed NOx RACT regulation contains specific emission limits for fuel burning equipment with a rated heat capacity of 100 million BTU (MMBTU)/hour or greater. Gas fired face and tangential units are required to meet an emission limit of 0.2 pounds of NOx per million BTU input. Oil or gas fired face and tangential units are required to meet an emission limit of 0.25 lbs of NOx per million BTU input. Oil or gas fired cyclones are required to meet an emission limit of 0.43 lbs of NOx per million BTU input. Dry bottom coal fired face and tangential units are required to meet an emission limit of 0.38 lbs of NOx per million BTU input. Dry bottom coal fired stokers are required to meet an emission limit of 0.40 lbs of NOx per million BTU input. All emission limits are required to be met on a 24 hour rolling averaging period using continuous emission monitoring (CEM) data approved by the Department. EPA is proposing to approve the above emission limits as RACT for fuel burning equipment with a rated heat input capacity of 100 MMBTU/hour or greater. The numerical emission limits are supported by data gathered by the State and Territorial Air Pollution Program Administrators (STAPPA) and Association of Local Air Pollution Control Officials (ALAPCO). The 24 hour rolling average compliance period is consistent with protection of the short-term ozone National Ambient Air Quality Standard (NAAQS).

EPA is, however, proposing to disapprove Delaware's proposed

emission limit of 1.0 lbs of NOx per million BTU for wet bottom coal fired face and tangential units. There are no applicable sources in the State of Delaware, no data to support such an emission limit, and no reason to adopt such an emission standard. Any newly constructed wet bottom coal fired face and tangential units would be subject to the Delaware SIP's new source review requirements.

Delaware's regulation also contains specific emission limits for gas turbines. The emission limit for gas fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 42 parts per million (ppm). The emission limit for liquid fired simple or combined cycle gas turbines, corrected to 15% oxygen, is 88 ppm. Both emission standards require compliance to be demonstrated using a one hour averaging period based on CEM data approved by the Department.

NOx Technology Requirements

The Delaware regulation, in Section 3.3 also requires fuel burning equipment with a rated heat capacity of less than 100 MMBTU/hr to emit no more NOx than what would be emitted if either low excess air and low NOx burner technology or flue gas recirculation technology is used or some equivalent control technology approved by the Department and EPA. Section 3.4 requires stationary internal combustion engines to limit their emissions to no more than those emitted when using pre-ignition chamber combustion (also referred to as clean burn technology) for gas fired units and those emitted when using lean burn technology for diesel fired units. As in Section 3.3, these sources may also meet an equivalent control technology which is approved by the Department and EPA.

Source-specific Requirements

All other major sources of NOx are required to notify the Department of their subject status, submit a proposal as to what constitutes RACT for the source including technical and economic support documentation, and provide a schedule, acceptable to the Department, to implement RACT no later than May 31, 1995. The notification to the Department, submittal of a RACT proposal and schedule must be made no later than November 15, 1993.

Alternative Requirements

Section 5 of the Delaware regulation allows sources to obtain alternative and equivalent RACT determinations all of which require EPA approval as a SIP revision. Included in these alternative and equivalent RACT determinations is a specific provision to allow averaging of emissions at multiple installations to meet applicable RACT emission limits if those installations have a common owner.

EPA Analysis

EPA is proposing a limited approval of Regulation No. 12 into the Delaware SIP, which was submitted on January 11, 1993. EPA is also proposing to disapprove Delaware Regulation No. 12 for the limited purpose of allowing Delaware the opportunity to correct certain deficiencies in Regulation No. 12. These deficiencies are located in Section 2 (definition of potential to emit), Section 3.2 (emission limit for wet bottom coal fired face and tangential units), Section 4.1 a. through f. (pertaining to exemptions for certain sources and compliance extensions), and Section 7.4 b. (use of alternative test methods). EPA is soliciting public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the ADDRESSES section of this document.

EPA requires that states determine potential emissions by using the maximum emission rate, production capacity and hours of operation unless the source is restricted by federally enforceable conditions. The Delaware definition of "potential to emit", located in Section 2, is deficient in that it does not require that the emissions limiting conditions be federally enforceable. Therefore, EPA is proposing to disapprove this definition to the extent that it does not require federally enforceable emissions limiting conditions.

EPA is proposing to disapprove the exemptions contained in Section 4.1 a. through f. Section 4.1 a. and b. would allow exemptions of fuel burning equipment used primarily for residential heating and incinerators or oxidizers built before November 15, 1992 and used primarily for the control of air pollution. The exemptions contained in Section 4.1 c. and d. pertain to fuel burning units with a rated heat capacity of less than 15 MMBTU/hr and stationary internal combustion engines with a rated capacity of less than 450 hp of output power, respectively. Delaware has not provided any support information to indicate what population of sources these two exemptions would represent or what the total emissions from these sources are compared to the total NOx emissions in the state. Section 4.1 e. would allow sources which operate exclusively during the months of November through the end of March to be exempt from RACT requirements. There is, however, no requirement in Regulation No. 12, or elsewhere in the Delaware regulations which would apply to this regulation, for these sources to keep the necessary records to prove their exempt status. Therefore, EPA is proposing to disapprove this exemption.

If Delaware wishes to allow exemptions of major NOx sources from RACT requirements, there is a mechanism to do so under section 182(f) of the Clean Air Act. Under section 182(f), any person, including a state, is allowed to petition EPA so that if the petition were granted, some or all of the Act's Title I NOx requirements would not apply. Under section 182(f)(1)(B), this petition can only be granted if the NOx reductions do not provide a net air quality benefit and if those emission reductions could be considered excess. EPA interprets the term air quality to include both health and welfare effects that may be directly or indirectly related to NOx emissions. Therefore, these impacts include ozone, nitrogen dioxide, and particulate matter formation, visibility impairment, acid deposition, air toxics formation, and nitrogen deposition in nutrient-sensitive areas. The net air quality benefit test requires that a modeling demonstration with and without the proposed NOx emission reductions be performed for the applicable area. The petitioner must show that there is a detrimental air quality effect with the control of NOx emissions, not simply that there is no effect on air quality.

EPA is also proposing to disapprove Section 7.4 b. which allows alternative test methods to be approved by the Department without EPA approval. Since the stringency of the emission standards and other RACT requirements are dependent on compliance using EPA approved test methods, EPA cannot agree to allow Delaware to approve alternative test methods without knowing how those alternative test methods may affect RACT.

EPA has evaluated Delaware's submitted Regulation No. 12 for consistency with the CAA and EPA regulations, and has found that the revisions will require emission reductions from a population of sources which were previously unregulated. The Delaware regulation, as noted above, also contains certain deficiencies which result in enforceability problems and in the regulation of a smaller population of sources than required by the CAA. Further discussion can be found in the

accompanying technical support document.

Because of the deficiencies discussed above, EPA cannot grant full approval of this rule under section 110(k)(3) and part D. Also, because the submitted rule is not composed of separable parts which meet all the applicable requirements of the CAA, EPA cannot grant partial approval of the rule(s) under section 110(k)(3). However, EPA may grant a limited approval of the submitted rule under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further air quality by strengthening the SIP. The approval is limited because EPA's action also contains a simultaneous limited disapproval, due to the fact that the rule does not meet the section 182(a)(2)(A) requirement of part D because of the noted deficiencies. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Delaware's submitted Regulation No. 12 under section 110(k)(3) and 301(a) of the CAA.

At the same time, EPA is also proposing a limited disapproval of this rule because it contains deficiencies which result in less than the full population of required NOx sources to be regulated and enforceability problems, and, as such, the rule does not fully meet the requirements of Part D of the Act. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the 24-month Federal implementation plan (FIP) requirement under section 110(c).

Proposed Action

For the above stated reasons, EPA is proposing a limited approval/limited disapproval of Delaware Regulation No. 12. In order to correct the deficiencies in Regulation No. 12 which EPA is proposing as a limited disapproval, Delaware must successfully petition EPA under section 182(f) of the Act if it wishes to exempt any major NOx sources from RACT requirements or delete the exemptions, correct the definition of potential to emit to require Federal enforceability of restricting operating conditions, provide adequate technical support for the proposed emission limit for wet bottom coal fired face and tangential units or delete the emission limit, require adequate recordkeeping requirements for all NOx sources, including those which claim exempt status, and require EPA approval for alternative test methods.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State Implementation Plan. Each request for revision to the State Implementation Plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

EPA's disapproval of the State request under section 110 and subchapter I, part D of the CAA does not affect any existing requirements applicable to small entities. Any pre-existing Federal requirements remain in place after this disapproval. Federal disapproval of the state submittal does not affect its state-enforceability. Moreover, EPA's disapproval of the submittal does not impose any new Federal requirements. Therefore, EPA certifies that this disapproval action does not have a significant impact on a substantial number of small entities because it does not remove existing requirements and impose any new Federal requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofSection 110(a)(2)(A)-(K), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Intergovernmental relations, Nitrogen dioxide, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q

Dated: September 16, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–29045 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[IL67–1–5721; FRL–4799–8]

Approval and Promulgation of an Implementation Plan for Vehicle Miles Traveled (VMT) Offsets; Illinois

AGENCY: U.S. Environmental Protection Agency.

ACTION: Proposed rule.

SUMMARY: The United States Environmental Protection Agency (U.S. EPA) proposes to conditionally approve a request for a State Implementation Plan (SIP) revision, addressing the Chicago ozone nonattainment area, submitted by the State of Illinois for the purpose of offsetting any growth in emissions from growth in vehicle miles traveled (VMT) or number of vehicle trips, and to attain reduction in motor vehicle emissions, in combination with other emission reduction requirements, as necessary to comply with Reasonable

Further Progress (RFP) milestones and attainment requirements of the Clean Air Act (Act). The implementation plan request was submitted by the State of Illinois to satisfy the statutory mandate that the State submit a SIP revision which identifies and adopts specific enforceable transportation control measures (TCMs) to offset any growth in emissions from growth in VMT or number of vehicle trips in severe and extreme ozone nonattainment areas. The rationale for the proposed conditional approval is set forth in this document; additional information is available at the address indicated in the ADDRESSES section.

DATES: Comments on this proposed action must be received in writing by December 27, 1993.

ADDRESSES: Written comments should be mailed to: J. Elmer Bortzer, Chief, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois, 60604.

Copies of the State's submittal and U.S. EPA's technical support document are available for inspection during normal business hours at the following location: Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604.

FOR FURTHER INFORMATION CONTACT: Patricia Morris, Regulation Development Section, Regulation Development Branch (AR–18J), U.S. Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 353–8656.

SUPPLEMENTARY INFORMATION:

I. Background

Section 182(d)(1)(A) of the Act as amended in 1990 requires States containing ozone nonattainment areas classified as "severe" pursuant to section 181(a) of the Act to adopt transportation control measures and transportation control strategies to offset any growth in emissions from growth in VMT or number of vehicle trips, and to attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with the Act's RFP milestones. The requirements for establishing a VMT Offset program are discussed in the April 16, 1992, General Preamble to Title I of the Act (57 FR 13498), in addition to section 182(d)(1)(A) of the Act.

Section 110(k) of the Act contains provisions governing U.S. EPA's action on VMT Offset SIP submittals. Once found to be complete (or deemed complete by the passage of time), this section authorizes U.S. EPA to take one of three actions on SIP submittals. As provided by section 110(k)(3), if the submittal satisfactorily addresses all of the required VMT Offset elements, the U.S. EPA will grant full approval. U.S. EPA may grant a conditional approval of the submission under section 110(k)(4), however, if the submittal contains: (1) A commitment from the Governor or the Governor's designee to take the required actions; (2) a schedule establishing a date certain for taking the required actions, with the date not being later than one year from the time U.S. EPA will issue a final conditional approval; and (3) evidence that a public hearing was held on the commitments. See July 22, 1992 memorandum from Michael M. Shapiro, Deputy Assistant Administrator for Air and Radiation, entitled "Guidelines for State Implementation Plan (SIP) Submittals Due November 15, 1992." Finally, if the submittal fails to adequately address or commit to address one or more of the mandatory VMT Offset elements, the U.S. EPA must issue a disapproval. A State plan may therefore be approved, conditionally approved or disapproved.

In order to satisfy the applicable requirements, and to gain full approval, section 182(d)(1)(A) requires that a State VMT Offset SIP submittal must:

(1) Identify and adopt specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips;

(2) Identify and adopt specific enforceable transportation control strategies and TCMs that attain reductions in motor vehicle emissions (in combination with other emission reduction requirements) as necessary to comply with RFP milestones;

(3) Consider the measures specified in section 108(f) of the Act and choose from among and implement such measures as necessary to demonstrate attainment with the National ambient air quality standards; and

(4) Ensure adequate access to downtown, other commercial and residential areas, and that emissions and congestion are reduced rather than relocated.

II. Analysis

The following discussion provides more information on the requirements for full approval, and Illinois' efforts to meet these requirements. Section 182(d)(1)(A) sets forth four requirements that must be met by a VMT Offset SIP. The first and second requirements mandate that the State submit a revision, by November 15, 1992 that identifies and adopts specific enforceable transportation control strategies and TCMs to offset any growth in emissions from growth in VMT or number of vehicle trips in affected areas, and attains reduction in motor vehicle emissions as necessary in combination with other emission reduction requirements of Act title I, part D, subpart II to comply with the requirements of section 182(d)(1)(A). These requirements are to ensure that projected motor vehicle volatile organic compound (VOC) emissions will never be greater during the ozone season in any given year than during the preceding year's ozone season. When growth in VMT or vehicle trips would otherwise cause a motor vehicle emissions upturn, that upturn must be prevented. The emissions level at the point of potential upturn becomes a ceiling on motor vehicle emissions. Motor vehicle VOC emission projections for meeting this requirement will be determined consistent with U.S. EPA's section 187 VMT forecasting and tracking guidance.

It should be noted that while the above requirements are simple in concept, their application could encourage areas to delay VMT or emissions reduction measures suitable for use as offsets until the trend in motor vehicle emissions reaches its minimum point and is about to turn upwards. To implement the VMT offset provision while avoiding this counterproductive incentive for delay, U.S. EPA looks for State compliance with the following approach: if projected motor vehicle emissions during the ozone season in one year are not higher than during the ozone season the year before, given the control measures in the SIP, the VMT offset requirement is satisfied. However, if the State plans to implement control measures over and above those specifically required by the Act and those required to demonstrate RFP and attainment, earlier than would be necessary and sufficient to prevent an emissions upturn, a projected subsequent growth-related increase to the level of emissions that would occur if these measures were scheduled later will not be considered to violate the requirement to offset emissions due to growth in VMT or vehicle trips. The latter situation will be viewed as a temporary reduction in emissions to a level below that required by the provision, rather than an increase above the required level, with no effect on emissions at or after the point at which

offsetting measures become essential to compliance.

The U.S. EPA will approve a SIP revision as meeting this provision despite a forecasted upturn in vehicle emissions, as long as motor vehicle VOC emissions in the ozone season of a given year do not exceed a ceiling level which reflects a hypothetical strategy of implementing otherwise specifically required measures on schedule and saving offset measures until the point at which VMT growth would otherwise cause an emission upturn. The ceiling level is therefore defined (up to the point of upturn) as motor vehicle emissions that would occur in the ozone season of that year, with VMT growth, if all measures for that area in that year were implemented as required by the Act. When this curve begins to turn up due to growth in VMT or vehicle trips, the ceiling becomes a fixed value. The ceiling line would include the effects of Federal measures such as new motor vehicle standards, Phase II Reid Vapor Pressure controls, and reformulated gasoline, as well as Act mandated SIP requirements such as enhanced inspection and maintenance, the fleet clean-fuel vehicle program, and the employer commute options program. The ceiling line would also include the effect of forecasted growth in VMT and vehicle trips in the absence of new discretionary measures to reduce them. The ceiling line must, in combination with projected emissions from nonvehicle sources, satisfy the RFP requirements for the area. Any VMT reduction measures or other actions to reduce motor vehicle emissions adopted since November 15, 1990 and not specifically required for the area by another provision of the Act would not be included in the calculation of the ceiling line.

Forecasted motor vehicle emissions must be held at or below the minimum level of the ceiling line after the ceiling line reaches its minimum level. If an area implements offset measures early, the forecasted emissions will be less than the ceiling line, and forecasted motor vehicle emissions could increase from one year to the next, as long as forecasted emissions never exceed the ceiling line.

These emissions offset requirements apply to projected emissions during the years between submission of the SIP revision and the statutory ozone national ambient air quality standard (NAAQS) attainment deadline. The State has not met these requirements but is in the process of forecasting future travel and emissions levels and has committed to implement these requirements by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

The third requirement is that the State shall consider transportation control measures specified in section 108(f) and choose from among and implement such measures as necessary to demonstrate attainment with the NAAQS. The State has not met this requirement, but is assessing TCM strategies to offset any growth in emissions from growth in VMT or number of vehicle trips and has committed to implement this requirement by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

The fourth requirement is that the State should ensure adequate access to downtown, other commercial, and residential areas and should avoid measures that increase or relocate emissions and congestion rather than reduce them. The State has not met this requirement, but is making progress towards forecasting future emissions that would occur from implementing specific TCMs, and has committed to meet this requirement by adopting specific enforceable measures within one year of U.S. EPA conditional approval.

III. Analysis of State Submittal

The State of Illinois has not submitted a SIP revision implementing all the requirements relevant to the nonattainment classification of the State's nonattainment areas contained in section 182(d)(1)(A) of the Act. Illinois has, however, set forth the process for evaluating and selecting TCMs for implementation. The Illinois Environmental Protection Agency (IEPA) has worked with the Illinois Department of Transportation and the Chicago Area Transportation Study (the metropolitan planning organization (MPO) for the Chicago area) to set up a number of committees and taskforces to review and evaluate TCMs. An Air Quality Executive Committee (chaired by IEPA) is providing overall direction and integration, and seven taskforces are addressing air quality issues, including three new taskforces which have been formed to address environmental quality, conformity and employee commute options.

Illinois describes a 3 step process for evaluating TCMs through coordination of activities as specified by section 174 of the Act for transportation planning activities. The CATS, the IDOT and the IEPA have agreed to coordinate activities. The first step, in the three step process, is to determine the acceptability of a TCM through a series of white papers. The second step is to assess the implementability of the TCM. The third step is to evaluate the results of steps one and two. This process is to be completed by November 15, 1993.

The Illinois submittal contains interim dates for completion of work toward the VMT offset SIP. Specifically, the submittal states: all measures pertaining to step 1, step 2 and step 3 will be completed by November 15, 1992, June 30, 1993 and November 15, 1993. In completion of step one, a document entitled "Transportation Control Measures Committal for the State Implementation Plan" dated November 5, 1992 has been made available to the public.

Illinois has been actively participating in the Lake Michigan Ozone Control Program and in the urban air shed modeling for the area. Because of active participation, U.S. EPA expects the attainment demonstration for the Lake Michigan area and specifically the Chicago nonattainment area to be completed by November 15, 1994 and include TCM's as necessary to meet attainment.

Illinois has made commitments to adopt each of the required elements, and has provided a schedule with specific dates for additional work products and a process that will lead to adoption of enforceable measures, that will not extend over one year from the date of final conditional approval, and has subjected the commitments and schedule to a public hearing on October 27, 1992. Illinois has committed to adopt and submit specific enforceable measures to satisfy the requirements of section 182(d)(1)(A) by November 15, 1994. Illinois committed to this date in a letter dated October 13, 1993, which is part of the administrative record of this approval.

U.S. EPA believes that VMT Offset submittals such as Illinois' are appropriate for conditional approval considerations because section 182(d)(1)(A) of the Act requires that specific, enforceable measures identified and adopted by the State be submitted by November 15, 1992 along with a demonstration that they are adequate to offset any growth in emissions from growth in VMT or number of vehicle trips, which U.S. EPA interprets to mean adequate to hold vehicle emissions within the emissions ceiling described in the General Preamble to Title I, Section III. (A)(5)(d) (57 FR 13498, 13521–13523). The Act also states that these measures, beyond offsetting growth in emissions, shall be sufficient to allow total area emissions to comply with the RFP and attainment requirements. These requirements create a timing problem. Ozone nonattainment areas affected by this provision are not

otherwise required to submit SIP demonstrations which would predict attainment of the 1996 RFP milestone until November 15, 1993 and likewise are not required to demonstrate post–1996 RFP and attainment until November 15, 1994. U.S. EPA does not believe that Congress intended the offset growth provisions to advance the dates for these broader submissions. Even without the requirement that the offset growth measures be sufficient to allow overall RFP and attainment in conjunction with other measures, U.S. EPA believes that the November 15, 1992 date might not allow the States sufficient time to develop a set of measures that would comply with the offset growth provisions over the long term.

To solve this timing problem and to allow a more coordinated and comprehensive planning process, U.S. EPA may accept and conditionally approve committal SIP revisions for the offset growth requirements under the authority of section 110(k)(4) of the Act. This could allow States one (1) year from the date of U.S. EPA's final conditional approval of the committal SIP revision, but not beyond November 15, 1994 to submit the full revision containing sufficient measures in specific and enforceable form.

IV. Proposed Rulemaking Action

The U.S. EPA proposes to conditionally approve the requested SIP revision commitment submitted by the State of Illinois.

If the U.S. EPA conditionally approves the State's commitment, the State must meet its commitment to adopt the specific enforceable VMT requirements and submit these rules to U.S. EPA by November 15, 1994. If the State fails to adopt or submit any rules to U.S. EPA within this time frame, this conditional approval will become a disapproval upon U.S. EPA notification of the State by letter. At that time, this commitment will no longer be a part of the approved Illinois SIP. The U.S. EPA subsequently will publish a document in the **Federal Register** indicating that the commitment has been disapproved and removed from the SIP. If the State adopts and submits these rules to U.S. EPA within the applicable time frame, the conditionally approved commitment will remain a part of the SIP until the U.S. EPA takes final action approving or disapproving the new submittal. If the commitment is associated with existing rules and the U.S. EPA disapproves the subsequent submittal, the rules on which the conditional approval was based will also be disapproved at that time. If U.S. EPA approves the subsequent submittal, those newly approved rules will become a part of the SIP.

If the U.S. EPA issues a final disapproval, or if the conditional approval is converted to a disapproval, the sanctions clock under section 179(a) will begin. This clock will begin at the time U.S. EPA issues the final disapproval or at the time U.S. EPA notifies the State by letter that a conditional approval has been converted to a disapproval. If the State does not submit the implementation plan on which the disapproval was based within 18 months of the disapproval, U.S. EPA must impose one of the sanctions under section 179(b)—highway funding restrictions or the offset sanction. In addition, the final disapproval triggers the Federal Implementation Plan (FIP) requirement under section 110(c). Finally, under section 110(m), U.S. EPA has discretionary authority to impose sanctions at any time after a final disapproval or conversion of conditional approval to disapproval. Furthermore, if U.S. EPA does not approve the implementation plan revision request, the 18 month clock will begin where it stopped.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the U.S. EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, U.S. EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Act do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected. Moreover, due to the nature of the Federal-State relationship under the Act, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Act forbids U.S. EPA to base its actions concerning SIPs on such grounds. See *Union Electric CO.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S. Ct. 1976); 42 U.S.C. 7410(a)(2).

If the conditional approval is converted to disapproval under section 110(k) of the Act, based upon the State's failure to meet the commitment, it will not affect any existing state requirements applicable to small entities. Federal disapproval of the State submittal does not affect its state-enforceability. Moreover, U.S. EPA's disapproval of the submittal does not impose a new Federal requirement. Therefore, U.S. EPA certifies that this potential disapproval does not have a significant impact on a substantial number of small entities because it does not remove existing state requirements nor does it substitute a new Federal requirement.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Ozone.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 21, 1993.

Valdas V. Adamkus,

Regional Administrator.

[FR Doc. 93–29046 Filed 11–24–93; 8:45 am]

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DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Care Financing Administration

42 CFR Parts 410 and 411

[BPD–705–P]

RIN 0938–AE98

Medicare Program; Medicare Coverage of Screening Pap Smears for Early Detection of Cervical Cancer

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Proposed rule.

SUMMARY: This proposed rule would address provisions of section 6115 of the Omnibus Budget Reconciliation Act of 1989, which provides limited coverage of screening Pap smear services. The rule would amend current

Medicare regulations to set forth conditions and limitations for coverage of screening Pap smear services.

DATES: Written comments will be considered if we receive them at the appropriate address, as provided below, no later than 5 p.m. on January 25, 1994].

ADDRESSES: Mail written comments (1 original and 3 copies) to the following address: Health Care Financing Administration, Department of Health and Human Services, Attention: BPD–705–P, P.O. Box 26688, Baltimore, Maryland 21207.

If you prefer, you may deliver your comments (1 original and 3 copies) to one of the following addresses: Room 309–G, Hubert H. Humphrey Building, 200 Independence Avenue, SW., Washington, DC 20201, or Room 132, East High Rise Building, 6325 Security Boulevard, Baltimore, MD 21207.

Due to staffing and resource limitations, we cannot accept comments by facsimile (FAX) transmission. In commenting, please refer to file code BPD–705–P. Comments received timely will be available for public inspection as they are received, generally beginning approximately 3 weeks after publication of a document, in room 309–G of the Department's offices at 200 Independence Avenue SW., Washington, DC, on Monday through Friday of each week from 8:30 a.m. to 5 p.m. (phone: 202–690–7890).

FOR FURTHER INFORMATION CONTACT: William Larson, (410) 966–4639.

SUPPLEMENTARY INFORMATION:

I. Background

The Papanicolaou (Pap) smear is recognized as the most effective noninvasive screening test currently available for the early detection of cervical cancer in asymptomatic women. Named for Dr. George Papanicolaou who developed the test in 1943, the Pap smear consists of a sample of cells, scraped or aspirated from the cervix, which is affixed to a glass slide and then sent to a laboratory for evaluation.

Currently, section 1862(a) of the Social Security Act (the Act) lists items and services excluded from Medicare coverage. Paragraph (a)(7) of that section identifies routine physical checkups as excluded services, and it is on this basis that screening Pap smear services have been excluded from Medicare coverage. This policy is reflected in Medicare regulations at 42 CFR 411.15(a), which implement the statute by excluding coverage for routine physical checkups. In addition, current coverage instructions setting forth the routine physical checkup exclusion are found in the Medicare Carriers Manual (HCFA Pub. 14), the Part A Intermediary Manual (HCFA Pub. 13), the Hospital Manual (HCFA Pub. 10), the Skilled Nursing Facility Manual (HCFA Pub. 12), and the Home Health Agency Manual (HCFA Pub. 11). Current coverage instructions on payment for diagnostic Pap smears and related medically necessary services (as distinguished from screening Pap smears and related medically necessary services) are included in section 50–20 of the Medicare Coverage Issues Manual (HCFA Pub. 6). Under this policy, Pap tests have been covered when necessary to diagnose a specific complaint or identified medical problem. This coverage is based on section 1861(s)(3) of the Act, which provides Medicare coverage for diagnostic tests. In addition, it is distinct from coverage for routine, screening Pap smears for early detection of medical problems before symptoms appear, which has, prior to July 1, 1990, been excluded from coverage based on section 1862(a)(7) of the Act.

Section 6115 of Public Law 101–239, the Omnibus Budget Reconciliation Act of 1989 (OBRA 89) amended sections 1861, 1862, 1864, 1865, 1902, and 1915 of the Act to provide coverage of screening Pap smear services (including a physician's interpretation of the sample of cervical cells) effective July 1, 1990, subject to certain conditions and frequency limitations. Section 6115 of OBRA 89 added new paragraph (s)(14) to section 1861 of the Act, to include "screening Pap smears" in the term "medical and other health services". Section 6115 of OBRA 89, also added new paragraph (nn) to section 1861 of the Act to define the term "screening Pap smear".

A new section 50–20.1 has been added to the Medicare Coverage Issues Manual (effective for services performed on or after July 1, 1990) to implement section 6115 of OBRA 89 on a timely basis. We provided in section 50–20.1 that Medicare contractors are permitted to pay for a screening Pap smear performed for a woman (when ordered by a physician) once every 3 years or more frequently than every 3 years if certain conditions are met. Specifically, section 50–20.1 provides that coverage is available under the new benefit for a screening Pap smear performed for a woman more frequently than once every 3 years if there is evidence (on the basis of the woman's medical history or other findings) that she is at high risk of developing cervical cancer and her physician recommends that she have the test done. However, section 1861(nn) of the Act specifically provides that the screening Pap smear must be covered once every 3 years, or a shorter period as the Secretary may specify in the case of a woman who is at high risk of developing cervical cancer (as determined in accordance with factors identified by the Secretary). Therefore, the new statute clearly contemplates that the Secretary would specify in regulations the high risk factors that might be used by physicians and Medicare contractors to determine, for Medicare coverage purposes, if certain women might be considered to be at high risk of developing cervical cancer. Accordingly, on the basis of recommendations received from the National Cancer Institute and the Center for Disease Control, we are proposing that three high risk factors be used in this regard. These risk factors are discussed later in this preamble.

II. Provisions of the Regulations

This proposed rule would implement section 6115 of OBRA 89 by establishing conditions and limitations for coverage of screening Pap smear services to ensure appropriate collection and preparation of Pap smear samples and interpretation of the test results. We are proposing that Medicare coverage of screening Pap smear services include services that relate to—(1) the collection of the Pap smear sample from the beneficiary and the preparation of the sample for submission for laboratory examination; and (2) examination of the sample by a laboratory and a physician's interpretation of it as appropriate.

Thus, we would specify an exception to the list of examples of routine physical checkups excluded from coverage at § 411.15(a). The exception would be for screening Pap smear services (including collection and preparation of the smear by or under the direct supervision of, a physician) as provided in the applicable Medicare laboratory rules as discussed below. Coverage of screening Pap smear services would be provided under Medicare Part B only; the procedures would not be separately covered in Part A settings.

A. Coverage Conditions

In accordance with sections 1832(a)(1) and 1861(s)(14) and (nn) of the Act, we would amend 42 CFR part 410, which pertains to the Medicare Part B Supplementary Medical Insurance Program, to provide Medicare coverage of screening Pap smears for early detection of cervical cancer.

In addition, as recommended in the Energy and Commerce Committee Report accompanying OBRA 89 (H.R.

Rep. No. 3299, 101st Cong., 1st Sess. 362 (1989)] on Medicare coverage of screening Pap smears, the Secretary has consulted the U.S. Preventive Services Task Force Report (Guide to Clinical Preventive Services, 1989) in implementing the new screening Pap smear benefit.

We would revise § 410.10, to add a new paragraph (u), "Screening Pap smear services". This would add screening Pap smear services to the list of "medical and other health services" covered under Medicare Part B.

We propose to add a new § 410.56 that would set forth conditions and limitations on coverage for screening Pap smear services. In developing the conditions of coverage for screening Pap smears, we have been guided by certain provisions of the Clinical Laboratory Improvement Amendments of 1988 (CLIA) and the final CLIA regulations, 57 FR 7002 (February 28, 1992), which are to be implemented on a phased-in basis. The microscopic examination of a screening Pap smear sample is a cytology test that is subject to CLIA and the final CLIA regulations. This is because CLIA regulates laboratory testing (including cytology tests) in virtually all laboratories, including all laboratories participating under Medicare. It is imperative that the final conditions on coverage for screening Pap smear services be consistent with the final CLIA rules pertinent to cytology tests.

Using language similar to that contained in section 1861(nn) of the Act, § 410.56(a)(1) would define "screening Pap smear services" to include a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the early detection of cervical cancer, including collection and preparation of the smear by, or under the direct supervision of, a physician or other qualified individual authorized under State law to perform these services, who is entitled to payment under Medicare law. Although section 1861(nn) of the Act does not explicitly refer to the collection and preparation of the smear for laboratory analysis, there is no question that without the performance of these services there would be no specimen to submit to the laboratory for microscopic examination. Since Medicare coverage is currently available for diagnostic Pap smears for both a physician's collection and preparation component (or physician's office visit) and a laboratory's examination component, we believe it is reasonable and appropriate to provide program coverage for both of these components under the screening Pap smear benefit as well.

We propose, in § 410.56(a)(2), to define the term "direct supervision" to mean that the supervising individual is present in the suite or office during the time in which the person being supervised is performing his or her service and that the supervisor is therefore immediately available in case help is needed. This is distinct from "general supervision", by which we mean that the supervising individual need not be present in the suite or office during the time in which the individual being supervised is performing his or her services.

Under new § 410.56(b)(1), we are proposing that the first condition of coverage for a screening Pap smear under the Medicare program would be that the test must be ordered by a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or by a certified nurse midwife (as defined in section 1861(gg) of the Act), or a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa) of the Act) who is authorized under State law to perform the smear, and who is entitled to payment under Medicare law. We are proposing this requirement for screening Pap smears to be consistent with the CLIA and with the final CLIA regulations that HHS published in the **Federal Register** on February 28, 1992 (57 FR 7002) that apply. Section 493.1105 of these latter regulations provides that "The laboratory must perform tests only at the written or electronic request of an authorized person." Further, § 493.2 of those regulations defines an "authorized person" to mean "an individual authorized under State law to order tests, or to receive test results, or both."

To reiterate, we are proposing to limit the categories of physicians and other practitioners who may order a screening Pap smear, as noted above, to doctors of medicine and doctors of osteopathy (as defined in section 1861(r)(1) of the Act), certified nurse midwives (as defined in section 1861(gg) of the Act), and physician assistants, nurse practitioners, and clinical nurse specialists (as defined in section 1861(aa)(5) of the Act). These are the only groups of physicians and other practitioners who are professionally recognized as being knowledgeable about the proper techniques for the collection and preparation of Pap smear samples, who see Medicare beneficiaries about their gynecological concerns, and who are entitled to payment under Medicare law. Thus, this proposed rule is more specific than the final CLIA regulations with respect to the types of physicians and other practitioners who may order a screening Pap smear, but we believe this greater specificity is reasonable and appropriate.

We are also proposing, in new § 410.56(b)(2), to limit coverage of screening Pap smears to beneficiaries who have not had a hysterectomy with total removal of the cervix. If a woman's cervix has been totally removed, cervical cancer of course cannot occur. Women who undergo a hysterectomy for pre-invasive cervical neoplasia do require post-operative follow-up, including frequent cervical cytology evaluations at the discretion of their physician, but these services would be covered under the program as medically necessary diagnostic tests.

The third condition of coverage is located at § 410.56(b)(3). It would provide that the screening Pap smear must be collected from the beneficiary and prepared for laboratory examination by or under the direct supervision of a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or a certified nurse midwife, physician assistant, nurse practitioner, or clinical nurse specialist who ordered the test. In addition, instructions pertaining to the collection and preparation of the sample set forth in § 493.1103 of the February 28, 1992, final CLIA regulations would also have to be followed. The language we propose for § 410.56(b)(3) is similar in certain aspects to that used in § 493.1103 of the final CLIA regulations, which sets forth a standard on procedures for specimen submission and handling that requires the laboratory to make available to physicians or other practitioners written instructions for specimen collection and preparation, etc., to ensure that specimens submitted are received in a condition acceptable for testing. The primary difference between our proposed § 410.56(b)(3) and § 493.1103 of the final CLIA regulation is that the proposed condition at § 410.56(b)(3) would require the ordering physician or other practitioner to follow the specimen submission procedure instructions provided by the CLIA laboratory while the CLIA regulation standard at § 493.1103 requires the laboratory to provide the specimen submission and handling procedure instructions to the ordering physician or other practitioner.

As a fourth condition of coverage, we propose, in § 410.56(b)(4), that Medicare Part B will cover only screening Pap smears that are evaluated by a laboratory that is certified under CLIA and therefore is entitled to payment under Medicare regulations, including

the technical supervisor requirements. This requirement is consistent with the final CLIA regulations pertinent to cytology tests such as screening Pap smears. Section 493.1257(c) of existing rules provides, for example, that all gynecological smears determined to be showing reactive or separative cellular changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant or malignant category, must be confirmed by a technical supervisor in cytology. Under § 493.1449, technical supervisors in cytology of laboratories must be physicians. We recognize the importance of ensuring the consistent classification and communication of screening Pap smear results between laboratories and physicians or other practitioners. In this regard, § 493.1257(e) requires that cytology laboratory reports clearly distinguish specimens or smears, or both, that are unsatisfactory for diagnostic interpretations; and contain narrative descriptive nomenclature for all results. All laboratories that perform cytology tests, including screening Pap smears, must submit laboratory reports in accordance with § 493.1257(e), which specifies the requirements for cytology reports. One possible uniform classification and reporting system for cytology test results that might be used to meet the requirements of § 493.1257(e) is "The Bethesda System," which was developed at a national conference in 1988 under the sponsorship of the National Cancer Institute. However, use of "The Bethesda System" is not required by us for this purpose. Other uniform classification and reporting systems for cytology test results are acceptable under the Medicare program as long as they use narrative, descriptive nomenclature for all the test results as provided in § 493.1257(e).

We recognize that it might be argued that section 1861(nn) of the Act should be interpreted to require performance (and Medicare coverage) of a physician's interpretation of a screening Pap smear in every case and not just those involving a preliminary finding by a laboratory cytotechnologist, in which the smear is determined to be showing reactive or separative cellular changes, atypical squamous or glandular cells of undetermined significance, or to be in the premalignant or malignant category. However, we believe the long-standing operating practices among cytology laboratories limiting mandatory physician confirmation of Pap smears to those that indicate a possible abnormality, together with the final CLIA regulations that require extensive physician involvement and supervision of this testing to help assure a high quality examination, argue persuasively for the approach we have taken in this proposed rule.

With respect to matters affected by both this proposed rule and the February 28, 1992, CLIA regulations, it is important to emphasize that the CLIA regulations, although published in final, were subject to a 60-day public comment period. Analysis of the public comments received may result in further changes to the CLIA regulations. If such changes are made in the final rule, we will discuss their bearing on the positions taken in this proposed rule or on any other issues about which we receive public comment.

B. Recommendations Concerning High Risk Factors

The Task Force Report, referenced above, advises that screening Pap smear tests performed for the early diagnosis of cervical cancer should be performed as "recommended by the physician based on the presence of risk factors (for example, early onset of sexual intercourse, history of multiple sexual partners, or low socioeconomic status)."

In addition, the National Cancer Institute (NCI) and the Centers for Disease Control (CDC) both recommended the following high-risk factors as factors that might warrant coverage of screening Pap smear services more frequently than once every 3 years:

- Early onset of sexual activity (under 16 years of age).
- Multiple sexual partners (five or more during lifetime).
- History of a sexually transmitted disease.

NCI also included the following high-risk factors in their recommendations:

- Absence of three negative Pap smears within the previous 7 years.
- Extended interval since last Pap smear (for example, if a woman has not had a Pap test for 10 years, this would be considered an extended interval).
- Low socioeconomic status.

We have accepted three of these factors. However, for the reasons listed below, we are not proposing to adopt NCI's last three recommendations. The absence of three negative Pap smears within the previous 7 years and an extended interval as high-risk factors for patients do not appear necessary for Medicare coverage purposes given the fact that the new screening benefit provides for Medicare coverage of one screening Pap smear at the time of the woman's entitlement without regard to whether she is considered to be at high-risk of developing cervical cancer. That is, women in the first two categories would automatically be eligible for immediate coverage of one screening Pap smear under the new benefit, at the time of their entitlement, and they would not have to demonstrate that they have not had a screening Pap smear performed by Medicare within the past 3 years. We are not proposing to include the third recommendation "Low socioeconomic status" as a criterion because we believe it is too vague to constitute a condition of benefit eligibility. We are aware of articles that have recently been published regarding relationships between income and cervical-cancer incidence, and between income and education and use of Pap smear screening. However, we do not have medical evidence that relates any specific defined economic category (such as Medicaid-eligible persons) to a high risk of developing cervical cancer. However, if there is evidence specifically linking high risk with a more defined financial status, such as eligibility for the Medicaid or the Supplemental Security Income programs, we would be interested in receiving this information. In addition, we specifically invite comments on the appropriateness of including either one of these or other possible indicators of women who might be considered at high risk of developing cervical cancer. If we are unable to identify any further acceptable high-risk factors on the basis of the comments we receive, we do intend to revisit the question and possibly refine the high-risk categories and associated screening frequencies in the future as more detailed epidemiological evidence becomes available, particularly for elderly women.

NCI and CDC recommended that recent Pap smear screening history should be taken into account in determining whether an individual otherwise considered to be at high risk for developing cervical cancer should continue to remain in that category after one or more consecutive annual screening Pap smears have been performed for that patient with negative test results. For example, CDC indicated that while epidemiological studies clearly document the appropriateness of identifying "Early onset of sexual activity (under 16 years of age)" as a high-risk factor for developing cervical cancer, clinical studies also clearly demonstrate that recent negative Pap screening tests for patients in that category could result in a determination that these patients are no longer at high risk, at least for a limited period of time.

We agree that recent screening history should be taken into account in determining whether a woman is considered at high risk of developing cervical cancer. Therefore, we propose to establish a limitation on the frequency within which Medicare coverage of screening Pap smears would be available. Accordingly, for women who may be considered to be at high risk under any of the three factors listed below, coverage of a screening Pap smear would not be provided until 12 months after the end of the month in which the last Medicare-covered screening Pap test was performed and was later found to be normal. In those situations, we are proposing that the individual must wait at least 12 months until she can again be covered for a screening Pap smear. For example, a woman at high risk receives a covered screening Pap smear on January 5, 1991. She would be eligible for a subsequent screening Pap smear sooner than 36 months, but not before January 5, 1992.

The time interval of 12 months is consistent with the recommendations of national cancer organizations, such as the National Cancer Institute, the American Cancer Society, and other national professional organizations, such as the American Medical Association, that recommend that screening Pap smears be performed annually. It should be noted that a woman who has undertaken a Medicare screening Pap smear that was not found to be normal would be eligible to receive payment for a follow-up diagnostic Pap smear or other medically necessary services, such as those required in connection with a biopsy, within less than 12 months as determined by her physician. These latter services have always been covered under Medicare (and will continue to be covered under the program) as provided under the diagnostic testing benefit in section 1861(s)(3) of the Act.

C. Proposed High-Risk Factors

In § 410.56(c), we propose to set forth the limits on coverage of screening Pap smear services. We propose that a screening Pap smear performed on an asymptomatic woman would be covered under Part B if the individual has not had a Medicare-covered test during the preceding 35 months following the month in which her last Medicare-covered screening Pap smear was performed. In addition, we propose that screening Pap smears would be covered for an asymptomatic woman more frequently than once every 36 months if her physician or other qualified person recommends that she have the test performed and there is evidence (on the basis of her medical history or other findings) that she is at high risk of developing cervical cancer, as determined in accordance with the risk factors listed below:

- Early onset of sexual activity (under 16 years of age);
- Multiple sexual partners (five or more in a lifetime); or
- History of sexually transmitted disease (including HIV infection).

Women who might otherwise be considered to be at high risk on the basis of any of the above-listed factors would not be considered to be at high risk of developing cervical cancer under the regulation if they have undergone a Pap smear screening in the previous 11 months and have been found to be normal.

It is understood that the definition of high risk status might be modified in the future to reflect advances in science and knowledge about the efficacy and effectiveness of screening pap smears.

III. Response to Comments

Because of the large number of items of correspondence we normally receive on proposed regulations, we are not able to acknowledge or respond to them individually. However, we will consider all comments that we receive by the date and time specified in the "Dates" section of this proposed rule, and, if we proceed with a final rule, we will respond to the comments in the final rule.

IV. Information Collection Requirement

This proposed rule does not impose information collection and recordkeeping requirements. Consequently, it need not be reviewed by the Office of Management and Budget under the authority of the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*).

IV. Regulatory Impact Statement and Flexibility Analysis

A. Introduction

This proposed rule would implement section 6115 of OBRA '89 to provide Medicare coverage of screening Pap smears. We would pay for the collection and preparation of the Pap smear if the conditions and limitations of § 410.56(b) of this proposed rule are met. We also would pay for Pap smear services under the proposed rule for the examination of the Pap smear by a laboratory if the conditions of § 410.56(b)(4) are met. We anticipate that Medicare coverage of screening Pap smear tests, including the cost of the collection of the Pap smear cultures, would result in the following costs:

TABLE I.—PROJECTED COSTS AS A RESULT OF MEDICARE COVERAGE OF SCREENING PAP SMEARS

[In millions] [1]

Fiscal years				
1994	1995	1996	1997	1998
$30	$35	$40	$45	$50

[1] Rounded to the nearest $5 million.

This proposed rule would not result in annual costs exceeding $100 million, therefore, a regulatory impact analysis is not provided.

B. Regulatory Flexibility Act

We generally prepare a regulatory flexibility analysis that is consistent with the Regulatory Flexibility Act (RFA) (5 U.S.C. 601 through 612) unless the Secretary certifies that a rule would not have a significant economic impact on a substantial number of small entities. For purposes of the RFA, all doctors of medicine or osteopathy and other practitioners ordering Pap smear tests and laboratories examining Pap smears are considered to be small entities. Individuals are not considered small entities under the RFA.

Since the Medicare coverage of screening Pap smears represents an expansion of Medicare benefits, we are providing the following voluntary regulatory flexibility analysis.

1. Effects on Practitioners and Laboratories

We believe that most of the practitioners who order screening Pap smears, and collect or supervise the collection of the sample of cervical cells that is affixed to the glass slide before it is sent to a laboratory for analysis, are physicians. Other health practitioners, including certified nurse midwives, physician assistants, nurse practitioners, and clinical nurse specialists authorized under State law to perform such services, would also be affected by this proposed rule.

We believe that Medicare coverage of screening Pap smears would result in increased utilization of these services over current levels on the part of Medicare eligible women. A logical outgrowth of this increased utilization would be an increase in services by those practitioners who provide Pap test services and supplies, namely: Physicians, cytology laboratories and their pathologists, and other qualified practitioners and suppliers.

The effect of this proposed rule on an individual physician or other health care practitioner or supplier would depend on the percentage of his or her

practice that involves Medicare eligible women and the percent of his or her practice that involves the ordering, collection, and interpretation of screening Pap smears. Clearly, this would vary among practicing physicians and other health care practitioners and suppliers. Additionally, we believe that providers of laboratory supplies for screening Pap smears would experience an increased demand for their supplies.

Physicians who interpret screening Pap smears must meet the proposed Medicare qualification requirements or the applicable State licensure law or regulations as appropriate. The pathologist fee for interpreting screening Pap smears is incorporated into the laboratory fee. Laboratories would be paid 100 percent of the upper limit for a screening Pap smear test. In CY 1992, the average payment per test not requiring physician interpretation was approximately $8. The average payment for the test that required interpretation in CY 1992 was approximately $11.50.

2. Effect on Beneficiaries

We believe the effect of this proposed rule on beneficiaries would be a positive one. According to a study by the Congressional Office of Technology Assessment, one-quarter of the new cases of invasive cervical cancer occur in women aged 65 and older. Early detection of cervical cancer through screening Pap smears may prevent beneficiaries from enduring the suffering and expense of prolonged treatment or surgery for the more advanced stages of cervical cancer. A significant decrease in the death rate from cervical cancer in the last 40 years has been attributed to the performance of Pap smear tests ("The 1988 Bethesda System—National Cancer Institute Workshop", Journal of the American Medical Association, August 18, 1989).

C. Rural Hospital Impact Statement

Section 1102(b) of the Act requires the Secretary to prepare a regulatory impact analysis if a rule may have a significant impact on the operations of a substantial number of small rural hospitals. This analysis must conform to the provisions of section 603 of the RFA. For purposes of section 1102(b) of the Act, we define a small rural hospital as a hospital that is located outside of a Metropolitan Statistical Area and has fewer than 50 beds.

We are not preparing a rural impact statement since screening Pap smears are usually taken in a physician's office rather than in a hospital setting. We have determined, and the Secretary certifies, that this proposed rule would not have a significant impact on the operations of a substantial number of small rural hospitals.

List of Subjects

42 CFR Part 410

Medical and other health services, Medicare.

42 CFR Part 411

Medicare, Recovery against third parties, Secondary payments.

We are proposing to amend 42 CFR chapter IV as set forth below:

I. Part 410 is amended as set forth below:

PART 410—SUPPLEMENTARY MEDICAL INSURANCE (SMI) BENEFITS

A. The authority citation for part 410 continues to read as follows:

Authority: Secs. 1102, 1832, 1833, 1834, 1835, 1861(r), (s) and (cc), 1861(aa), 1871, and 1881 of the Social Security Act (42 U.S.C. 1302, 1395k, 13951, 1395m, 1395n, 1395x(r), (s) and (cc), 1395x(aa), 1395hh, and 1395rr).

Subpart B—Medical and Other Health Services

B. Subpart B is amended as follows:

1. In § 410.10, the introductory text is republished and a new paragraph (u) is added to read as follows:

§ 410.10 Medical and other health services: Included services.

Subject to the conditions and limitations specified in this subpart, "medical and other health services" includes the following services:

* * * * *

(u) Screening Pap smear services.

2. A new § 410.56 is added to read as follows:

§ 410.56 Screening Pap smears: Conditions and limitations.

(a) *Definitions.* As used in this section—

(1) *Screening Pap smear services* means a diagnostic laboratory test consisting of a routine exfoliative cytology test (Papanicolaou test) provided to a woman for the early detection of cervical cancer, including collection and preparation of the smear by, or under the direct supervision of, a physician or other qualified individual authorized under State law to perform these services, who is entitled to payment under Medicare law.

(2) *Direct supervision* means that the supervising individual is present in the suite or office during the time in which the person being supervised is performing his or her service and that the supervisor is therefore immediately available in case help is needed. This is distinct from "general supervision," by which we mean that the supervising individual need not be present in the suite or office during the time in which the individual being supervised is performing his or her services.

(b) *Conditions.* Medicare Part B pays for screening Pap smear services subject to the following conditions and limitations:

(1) The Pap smear must be ordered by a doctor of medicine or osteopathy (as defined in section 1861(r)(1) of the Act), or by a certified nurse midwife (as defined in section 1861(gg) of the Act), or a physician assistant, nurse practitioner, or clinical nurse specialist (as defined in section 1861(aa) of the Act) who is authorized under State law to perform the smear, and who is entitled to payment under Medicare law.

(2) The beneficiary must not have had a hysterectomy with the total removal of the cervix.

(3) The Pap smear must be collected from the beneficiary and prepared for laboratory examination by or under the direct supervision of a physician or other practitioner who ordered the test as required in paragraph (b)(1) of this section, and the laboratory instructions for specimen collection and preparation must meet the requirements set forth at § 493.1103 of this chapter.

(4) The Pap smear must be evaluated by a laboratory that is certified under CLIA and therefore is entitled to payment under Medicare regulations including the technical supervisor requirements set forth at §§ 493.1257(c) and 493.1449 of this chapter.

(c) *Limits on coverage of screening Pap smear services.* The following limitations apply to coverage of screening Pap smear services:

(1) *General rule.* Except as specified in paragraph (c)(2) of this section, payment may be made for a screening Pap smear performed on an asymptomatic woman only if the individual has not had a smear paid for by Medicare during the preceding 35 months following the month in which her last Medicare-covered screening Pap smear was performed.

(2) *More frequent screening based on high-risk factors.* Subject to the limitation as specified in paragraph (c)(3) of this section, payment may be made for an asymptomatic woman more frequently than once every 36 months since her last Medicare-covered screening Pap smear was performed if her physician recommends that she have the test performed and there is evidence (on the basis of her medical history or other findings) that she is at

high risk of developing cervical cancer. The physician must consider the following factors in making this determination:

(i) Early onset of sexual activity (under 16 years of age).

(ii) Multiple sexual partners (five or more in a lifetime).

(iii) History of a sexually transmitted disease (including HIV infection).

(3) *Limitation applicable to women at high risk.* Payment is not made for a screening Pap smear for women considered to be at high risk (under any of the criteria described in paragraph (c)(2) of this section) more frequently than once every 12 months after the last screening Pap smear covered by Medicare was performed and found to test normal.

II. Part 411 is amended as set forth below:

PART 411—EXCLUSIONS FROM MEDICARE AND LIMITATIONS ON MEDICARE PAYMENT

A. The authority citation for part 411 continues to read as follows:

Authority: Secs. 1102, 1834, 1842(1), 1861, 1862, 1866, 1871, 1877, and 1879 of the Social Security Act (42 U.S.C. 1302, 1395m, 1395u(1), 1395x, 1395y, 1395cc, 1395hh, 1395nn, and 1395pp).

Subpart A—General Exclusions and Exclusion of Particular Services

B. Subpart A is amended as follows:

1. In § 411.15, the introductory text is republished, paragraph (a)(1) is redesignated as paragraph (a)(1)(i), and a new paragraph (a)(1)(ii) is added to read as follows:

§ 411.15 Particular services excluded from coverage.

The following services are excluded from coverage.

(a) *Routine physical checkups such as*—(1)(i)

* * * * *

(ii) Screening Pap smear services (including collection and preparation of the smear by, or under the direct supervision of, a physician or other practitioner) except those that meet the conditions for coverage of screening Pap smear services specified at § 410.56 of this chapter.

* * * * *

(Catalog of Federal Domestic Assistance Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: June 4, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

Dated: August 11, 1993.

Donna E. Shalala,

Secretary.

[FR Doc. 93–28996 Filed 11–24–93; 8:45 am]

BILLING CODE 4120–01–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–283, RM–8374]

Radio Broadcasting Services; Pillager, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by NorMin Broadcasting Co. proposing the allotment of Channel 240A to Pillager, Minnesota, as that community's first local aural transmission service. There is a site restriction 9.2 kilometers (5.7 miles) southeast of the community. Canadian concurrence will be requested at coordinates 46–14–59 and 94–26–33.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: John F. Garziglia, Pepper & Corazzini, 1776 K Street, NW., Washington, DC 20006.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–283, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commissions copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28962 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–278, RM–8344]

Radio Broadcasting Services; Pequot Lakes, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Minnesota Christian Broadcasters, Inc., proposing the allotment of Channel 261A to Pequot Lakes, Minnesota, as that community's second FM broadcast service. The channel can be allotted to the community without a site restriction at coordinates 46–36–11 and 94–18–33. Canadian concurrence will be requested for this allotment.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Dennis F. Begley, Reddy, Begley & Martin, 1001 22nd Street, NW., suite 350, Washington, DC 20037.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–278, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the

Commission's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involves channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28961 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–285, RM–8376]

Radio Broadcasting Services; Alamo, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 228A to Alamo, Nevada, as the community's first local aural transmission service. Channel 228A can be allotted to Alamo in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 37–21–54 and West Longitude 115–09–49.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–285, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28960 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–282, RM–8371]

Radio Broadcasting Services; Eureka, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 233A to Eureka, Nevada, as the community's first local aural transmission service. Channel 233A can be allotted to Eureka in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 39–30–46 and West Longitude 115–57–35.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, D.C. 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–282, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28959 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–281, RM–8370]

Radio Broadcasting Services; Austin, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 259A to Austin, Nevada, as the community's first local FM service. Channel 259A can be allotted to Austin in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 39–29–36 and West Longitude 117–04–07.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–281, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28963 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–280, RM–8369]

Radio Broadcasting Services; Lund, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 264A to Lund, Nevada, as the community's first local FM broadcast service. Channel 264A can be allotted to Lund in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 38–51–24 and West Longitude 115–00–25.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–280, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28958 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 76

[MM Docket No. 93–291; DA 93–1363]

Cable Television Service; List of Major Television Markets

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission invites comments on its proposal, initiated by a request filed by MFP, Inc. to amend the Commission's Rules to change the designation of the Boston-Cambridge-Worcester, Massachusetts television market to "Boston-Cambridge-Lawrence-Worcester, Massachusetts." This action is taken to test the proposal for market hyphenation through the record established based on comments filed by interested parties.

DATES: Comments are due on or before December 28, 1993, and reply comments are due on or before January 12, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Alan E. Aronowitz, Mass Media Bureau, Policy and Rules Division, (202) 632–7792.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–291, adopted November 8, 1993, and released November 18, 1993. The complete text of this document is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC 20554, and may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Washington, DC 20037.

Synopsis of the Notice of Proposed Rule Making

1. The Commission, in response to a Petition for Rulemaking filed by MFP, Inc., licensee of WMFP (TV), Channel 63, Lawrence, Massachusetts, proposed to amend § 76.51 of the Rules to change the designation of the Boston-Cambridge-Worcester, Massachusetts, television market to "Boston-

Cambridge-Lawrence-Worcester, Massachusetts."

2. In evaluating past requests for hyphenation of a market, the Commission has considered the following factors as relevant to its examination: (1) The distance between the existing designated communities and the community proposed to be added to the designation; (2) whether cable carriage, if afforded to the subject station, would extend to areas beyond its Grade B signal coverage area; (3) the presence of a clear showing of a particularized need by the station requesting the change of market designation; and (4) an indication of benefit to the public from the proposed change. Each of these factors helps the Commission to evaluate individual market conditions consistent "with the underlying competitive purpose of the market hyphenation rule to delineate areas where stations can and do, both actually and logically, compete."

3. Based on the facts presented, the Commission believes that a sufficient case for redesignation of the subject market has been set forth so that this proposal should be tested through the rulemaking process, including the comments of interested parties. It appears from the information before us that Station WMFP (TV) and stations licensed to communities in the Boston-Cambridge-Worcester television market do compete for audiences and advertisers throughout much of the proposed combined market area, and that evidence has been presented tending to demonstrate commonality between the proposed community to be added to a market designation and the market as a whole. Moreover, the petitioner's proposal appears to be consistent with the Commission's policies regarding redesignation of a hyphenated television market.

4. The Commission also recognize that the proposed major market adjustment under consideration involves a particularly large television market, the nation's sixth largest. In another proceeding, the Commission is considering several alternative possibilities other than market hyphenation to respond to competition issues that are raised with regard to stations operating in large markets under existing rules. See Notice of Proposed Rule Making in MM Docket No. 93–290 (Newton, New Jersey and Riverhead, New York), DA 93–1349 (released November 16, 1993. In this regard, the Commission stated that interested parties may wish to address the issues raised in that proceeding in connection with the instant proposal.

Initial Regulatory Flexibility Analysis

5. The Commission certifies that the Regulatory Flexibility Act of 1980 does not apply to this rulemaking proceeding because if the proposed rule amendment is promulgated, there will not be a significant economic impact on a substantial number of small business entities, as defined by section 601(3) of the Regulatory Flexibility Act. A few cable television system operators will be affected by the proposed rule amendment. The Secretary shall send a copy of this Notice of Proposed Rule Making, including the certification, to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. 96–354, 94 Stat. 1164, 5 U.S.C. 601 *et seq.* (1981).

Ex Parte

6. This is a non-restricted notice and comment rulemaking proceeding. *Ex parte* presentations are permitted, provided they are disclosed as provided in the Commission's Rules. See generally 47 CFR 1.1202, 1.1203 and 1.1206(a).

Comment Dates

7. Pursuant to applicable procedures set forth in §§ 1.415 and 1.419 of the Commission's Rules, interested parties may file comments on or before December 28, 1993, and reply comments on or before January 12, 1994. All relevant and timely comments will be considered before final action is taken in this proceeding. To file formally in this proceeding, participants must file an original and four copies of all comment, reply comments, and supporting comments. If participants want each Commissioner to receive a personal copy of their comments, an original plus nine copies must be filed. Comments and reply comments should be sent to the Office of the Secretary, Federal Communications Commission, Washington, DC 20554. Comments and reply comments will be available for public inspection during regular business hours in the FCC Reference Center (room 239) of the Federal Communications Commission, 1919 M Street, NW., Washington, DC 20554.

8. Accordingly, this action is taken by the Chief, Mass Media Bureau, pursuant to authority delegated by § 0.283 of the Commission's Rules.

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–28929 Filed 11–24–93; 8:45 am]

BILLING CODE 6712–01–M

Notices

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

[Docket No. 90–108–5]

Medfly Cooperative Eradication Program Final Environmental Impact Statement

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Notice.

SUMMARY: We are advising the public that the Animal and Plant Health Inspection Service has prepared a final environmental impact statement for the Medfly Cooperative Eradication Program. This document analyzes potential environmental effects of a program to eradicate the Mediterranean fruit fly from the U.S. mainland.

ADDRESSES: Copies of the final environmental impact statement are available for review between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays, at the following locations:

APHIS Reading Room, room 1141, South Building, 14th Street and Independence Avenue, SW., Washington, DC 20250;

USDA–APHIS Library, room G–180, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782;

* USDA–APHIS–PPQ, 9580 Micron Avenue, Suite I, Sacramento, CA 95827;

* USDA–APHIS–PPQ, 3505 Boca Chica Boulevard, suite 360, Brownsville, TX 78521–4065;

* USDA–APHIS–PPQ, 3505 25th Avenue, Building 1, North, Gulfport, MS 39501;

* USDA–APHIS–PPQ, Blason II, 1st Floor, 505 South Lenola, Moorestown, NJ 08057.

Interested persons may obtain a copy of the final environmental impact statement by writing to any of the addresses listed above with an asterisk, or to the address listed below under "FOR FURTHER INFORMATION CONTACT."

FOR FURTHER INFORMATION CONTACT: Mr. Harold T. Smith, Branch Chief, Environmental Analysis and Documentation, BBEP, APHIS, USDA, room 543, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8963.

SUPPLEMENTARY INFORMATION:

Background

The Animal and Plant Health Inspection Service (APHIS), in cooperation with 12 other Federal and State organizations, has prepared a final environmental impact statement (EIS) for the Medfly Cooperative Eradication Program. Copies of this document were filed with the U.S. Environmental Protection Agency (EPA) on November 12, 1993, pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969 (42 U.S.C. 4332(2)(c)), and the EPA Notice of Availability is published in the Notices section of today's **Federal Register**.

On April 9, 1993, we published in the **Federal Register** (58 FR 18366, Docket No. 90–108–3) a notice advising the public that APHIS had prepared a draft EIS for the Medfly Cooperative Eradication Program. The notice also requested comments on or before May 24, 1993. On May 28, 1993, we published a notice reopening the comment period and extending it until June 18, 1993 (58 FR 31007, Docket No. 90–108–4).

By close of business June 18, 1993, we had received 255 comments on the draft EIS. We carefully reviewed and considered all of the comments. Based on suggestions and information offered in the comments, we have revised our draft EIS, and have produced a final EIS.

This notice is issued in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Done in Washington, DC, this 19th day of November 1993.

Terry Medley,

Acting Administrator, Animal and Plant Health Inspection Service.

[FR Doc. 93–29008 Filed 11–24–93; 8:45 am]
BILLING CODE 3410–34–P

Forest Service

Newspapers Used for Publication of Legal Notice of Appealable Decisions for Pacific Northwest Region, Oregon and Washington

AGENCY: Forest Service, USDA.

ACTION: Notice.

SUMMARY: This notice lists the newspapers that will be used by all ranger districts, forests, and the Regional Office of the Pacific Northwest Region to publish legal notice of all decisions subject to appeal under 36 CFR part 217. This action is necessary to implement the Secretary of Agriculture's final rule amending the Forest Service administrative appeal procedures, which was signed on December 5, 1990 and was published in the **Federal Register** on February 6, 1991 (56 FR 4914). The intended effect of this action is to inform interested members of the public which newspapers will be used to publish legal notices of decisions, thereby allowing them to receive constructive notice of a decision, to provide clear evidence of timely notice, and to achieve consistency in administering the appeals process.

DATES: Publication of legal notices in the listed newspapers will begin with decisions subject to appeal that are made on or after October 31, 1993. The list of newspapers will remain in effect until another notice is published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: James L. Schuler, Regional Appeals Coordinator, Pacific Northwest Region, P.O. Box 3623, Portland, Oregon 97208–3623, phone: (503) 326–2322.

SUPPLEMENTARY INFORMATION: On December 5, 1990 the Deputy Secretary of Agriculture signed a final rule amending the administrative appeal procedures 36 CFR part 217 of the Forest Service to require publication of legal notice in a newspaper of general circulation of all decisions subject to appeal. This newspaper publication of

notices of decisions is in addition to direct notice to those who have requested notice in writing and to those known to be interested and affected by a specific decision.

The legal notice is to identify: The decision by title and subject matter; the date of the decision; the name and title of the official making the decision; and how to obtain copies of the decision. In addition, the notice is to state the date the appeal period begins is the day following publication of the notice.

In addition to the principal newspaper listed for each unit, some forest supervisors and district rangers have listed newspapers providing additional notice of their decisions. The timeframe for appeal shall be based on the date of publication of the notice in the first (principal) newspaper listed for each unit.

The newspapers to be used are as follows:

Pacific Northwest Regional Office

Pacific Northwest Regional Forester decisions on Oregon National Forests:
The Oregonian, Portland, Oregon
Pacific Northwest Regional Forester decisions on Washington National Forests:
The Seattle Post-Intelligencer, Seattle, Washington
Columbia Gorge National Scenic Area Manager decisions:
The Oregonian, Portland, Oregon

Oregon National Forests

Deschutes National Forest

Deschutes Forest Supervisors Decisions:
The Bulletin, Bend, Oregon
Bend District Ranger decisions:
The Bulletin, Bend, Oregon
Crescent District Ranger decisions:
The Bulletin, Bend, Oregon
Fort Rock District Ranger decisions:
The Bulletin, Bend, Oregon
Sister District Ranger decisions:
Sisters Nugget, Sisters, Oregon
Bend Pine Nursery Managers decisions:
The Bulletin, Bend, Oregon
Redmond Air Center Managers decisions:
The Bulletin, Bend, Oregon

Fremont National Forest

Fremont Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Newspapers providing additional notice for Fremont Forest Supervisor decisions:
Lake County Examiner, Lakeview, Oregon
The Bulletin, Bend, Oregon
Bly District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Lakeview District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Paisley District Ranger decisions:
Lake County Examiner, Lakeview, Oregon
Silver Lake District Ranger decisions:
Hearald and News, Klamath Falls, Oregon
Newspaper providing additional notice of Silver Lake decisions:
The Bulletin, Bend, Oregon

Malheur National Forest

Malheur Forest Supervisor decisions:
Blue Mountain Eagle, John Day, Oregon
Bear Valley District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Burns District Ranger decisions:
Burns Times Herald, Burns, Oregon
Long Creek District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon
Prairie City District Ranger decisions:
Blue Mountain Eagle, John Day, Oregon

Mt Hood National Forest

Mt Hood Forest Supervisor decisions:
The Oregonian, Portland, Oregon
Barlow District Ranger decisions:
The Oregonian, Portland, Oregon
Bear Springs District Ranger decisions:
The Oregonian, Portland, Oregon
Clackamas District Ranger decisions:
The Oregonian, Portland, Oregon
Columbia Gorge District Ranger decisions:
The Oregonian, Portland, Oregon
Estacada District Ranger decisions:
The Oregonian, Portland, Oregon
Hood River District Ranger decisions:
The Oregonian, Portland, Oregon
Zigzag District Ranger decisions:
The Oregonian, Portland, Oregon

Ochoco National Forest

Ochoco Forest Supervisor decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Ochoco Forest Supervisor decisions:
Burns Times/Herald, Burns, Oregon
Central Oregonian, Prineville, Oregon
Big Summit District Ranger decisions:
The Bulletin, Bend, Oregon
Crooked River National Grassland District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Grassland decisions:
Madras Pioneer, Madras, Oregon
Paulina District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Paulina decisions:
Blue Mountain Eagle, John Day, Oregon
Prineville District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Prineville decisions:
Central Oregonian, Prineville, Oregon
Snow Mountain District Ranger decisions:
The Bulletin, Bend, Oregon
Newspapers providing additional notice of Snow Mountain decisions:
Burns Times/Herald, Burns, Oregon

Rogue River National Forest

Rogue River Forest Supervisor decisions:
Mail Tribune, Medford, Oregon
Applegate District Ranger decisions:
Mail Tribune, Medford, Oregon
Ashland District Ranger decisions:
Mail Tribune, Medford, Oregon
Butte Falls District Ranger decisions:
Mail Tribune, Medford, Oregon
J. Herbert Stone Nursery Managers decisions:
Mail Tribune, Medford, Oregon
Prospect District Ranger decisions:
Mail Tribune, Medford, Oregon

Siskiyou National Forest

Siskiyou Forest Supervisor decisions:
Grants Poss Courier, Grants Pass, Oregon
Chetco District Ranger decisions:
Curry Coastal Pilot, Brookings, Oregon
Galice District Ranger decisions:
Grants Poss Courier, Grants Pass, Oregon
Gold Beach District Ranger decisions:
Curry County Reporter, Gold Beach, Oregon
Illinois Valley District Ranger decisions
Grants Pass Courier, Grants Pass, Oregon
Powers District Ranger decisions:
The World, Coos Bay, Oregon
Newspapers providing additional notice of Powers decisions:
Curry County Reporter, Gold Beach, Oregon

Siuslaw National Forest

Siuslaw Forest Supervisor decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Alsea District Ranger decisions:
Corvallis Gazette-Times, Corvallis, Oregon
Hebo District Ranger decisions:
Headlight Herald, Tillamook, Oregon
Mapleton District Ranger decisions:
Siuslaw News, Florence, Oregon
Oregon Dunes National Recreation Area Manager decisions:
The World, Coos Bay, Oregon
Waldport District Ranger decisions:
Newport News Times, Newport,

Oregon

Umatilla National Forest

Umatilla Forest Supervisor decisions:
East Oregonian, Pendleton, Oregon
Heppner District Ranger decisions:
East Oregonian, Pendleton, Oregon
North Fork John Day District Ranger decisions:
East Oregonian, Pendleton, Oregon
Pomeroy District Ranger decisions:
East Oregonian, Pendleton, Oregon
Walla Walla District Ranger decisions:
East Oregonian, Pendleton, Oregon

Umpqua National Forest

Unpqua Forest Supervisor decisions:
The News-Review, Roseburg, Oregon
Cottage Grove District Ranger decisions:
The News-Review, Roseburg, Oregon
Diamond Lake District Ranger decisions:
The News-Review, Roseburg, Oregon
North Umpqua District Ranger decisions:
The News-Review, Roseburg, Oregon
Tiller District Ranger decisions:
The News-Review, Roseburg, Oregon
Dorena Tree Improvement Center Manager decisions:
The News-Review, Roseburg, Oregon

Wallowa-Whitman National Forest

Wallowa-Whitman Forest Supervisor decisions:
Baker City Herald, Baker City, Oregon
Baker District Ranger decisions:
Baker City Herald, Baker City, Oregon
Eagle Cap District Ranger decisions:
Wallowa County Chieftain, Enterprise, Oregon
Hells Canyon National Recreation Area Ranger decisions:
Occurring in Oregon—
Wallowa County Chieftain, Enterprise, Oregon
Occurring in Idaho—
Lewiston Morning Tribune, Lewiston, ID
La Grande District Ranger decisions:
The Observer, La Grande, Oregon
Pine District Ranger decisions:
Baker City Herald, Baker City, Oregon
Unity District Ranger decisions:
Baker City Herald, Baker City, Oregon
Wallowa Valley District Ranger decisions:
Wallowa county Chieftain, Enterprise, Oregon

Willamette National Forest

Willamette Forest Supervisor decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Willamette Forest Supervisor decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Blue River District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Blue River decisions:
Salem Statesman Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Detroit District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Detroit decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Lowell District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Lowell decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
McKenzie District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspaper providing additional notice of McKenzie decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Oakridge District Ranger decisions
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Oakridge decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Rigdon District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Rigdon decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon
Sweet Home District Ranger decisions:
Register-Guard, Eugene, Oregon
Newspapers providing additional notice of Sweet Home decisions:
Salem Statesman-Journal, Salem, Oregon
Albany Democrat Herald, Albany, Oregon

Winema National Forest

Winema Forest Supervisor decisions:
Herald and News, Klamath Falls, Oregon
Chemult District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Chiloquin District Ranger decisions:
Herald and News, Klamath Falls, Oregon
Klamath District Ranger decisions:
Herald and News, Klamath Falls,

Oregon

Washington National Forests

Colville National Forest

Colville Forest Supervisor decisions:
Statesman-Examiner, Colville, WA
Colville District Ranger decisions:
Satesman-Examiner, Colville, WA
Kettle Falls District Ranger decisions:
Statesman-Examiner, Colville, WA
Newport District Ranger decisions:
Newport Miner, Newport, WA
Republic District Ranger decisions:
Republic News Miner, Republic, WA
Sullivan Lake District Ranger decisions:
Newport Miner, Newport, WA

Gifford Pinchot National Forest

Gifford Pichot Forest Supervisor decisions:
Columbian, Vancouver, Washington
Mount St. Helens National Volcanic Monument Manager decisions:
Columbian, Vancouver, Washington
Mt. Adams District Ranger decisions:
Enterprise, White Salmon, Washington
packwood District Ranger decisions:
Chronicle, Chehalis, Washington
Randle District Ranger decisions:
Columbian, Vancouver, Washington
Wind River District Ranger decisions:
Columbian, Vancouver, Washington

Mt. Baker-Snoqualmie National Forest

Mt. Baker-Snoqualmie Forest Supervisor decisions:
Seattle Post-Intelligencer, Seattle, Washington
Darrington District Ranger decisions:
Everett Herald, Everett, Washington
Mt. Baker District Ranger decisions:
Skagit Valley Herald, Mt. Vernon, Washington,
North Bend District Ranger decisions:
Valley Record, North Bend, Washington
Skykomish District Ranger decisions:
Everett Herald, Everett, Washington
White River District Ranger decisions:
Enumclaw Courier Herald, Enumclaw, Washington

Okanagon National Forest

Okanagon Forest Supervisor decisions:
Omak Chronicle, Omak, Washington
Tonasket District Ranger decisions:
The Gazette-Tribune, Oroville, Washington
Twisp District Ranger decisions:
Methow Valley News, Twisp, Washington
Winthrop District Ranger decisions
Methow Valley News, Twisp, Washington

Olympic National Forest

Olumpic Forest Supervisor decisions:
The Olympian, Olympia, Washington

Newspapers providing additional notice for Olympic Forest Supervisor decisions:
Mason County Journal, Shelton, Washington
Daily World, Aberdeen, Washington
Peninsula Daily News, Port Angeles, Washington
Bremerton Sun, Bremerton, Washington
Hood Canal District Ranger decisions:
Mason County Journal, Shelton, Washington
Quilcene District Ranger decisions:
Peninsula Daily News, Port Angeles, Washington
Newspaper providing additional notice for Quilicene decisions;
Bremerton Sun, Bremerton, Washington
Quinault District Ranger decisions:
The Daily World, Aberden, Washington
Soleduck District Ranger decisions:
The Forks Forum, Forks, Washington

Wenatchee National Forest

Wenatchee Forest Supervisor decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Wenatchee Forest Supervisor decisions:
The Yakima Herald-Republic, Yakima, Washington
Chelan District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Chelan decisions:
The Yakima Herald-Republic, Yakima, Washington
Cle Elum District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Cle Elum decisions:
The Yakima Herald-Republic, Yakima, Washington
Entiat District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Entiat decisions:
The Yakima Herald-Republic, Yakima, Washington
Lake Wenatchee District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Lake Wenatchee decisions:
The Yakima Herald-Republic, Yakima, Washington
Leavenworth District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Leavenworth decisions:
The Yakima Herald-Republic, Yakima, Washington
Naches District Ranger decisions:
The Wenatchee World, Wenatchee, Washington
Newspaper providing additional notice for Naches decisions:
The Yakima Herald-Republic, Yakima, Washington.

Dated: November 19, 1993.

Richard A. Ferraro,

Deputy Regional Forester.

[FR Doc. 93–28951 Filed 11–24–93; 8:45 am]

BILLING CODE 3410–11–M

Sandy River Delta Master Plan, Columbia River Gorge National Scenic Area, Multnomah County, OR

AGENCY: Forest Service, USDA.

ACTION: Revised notice of intent to prepare an environmental impact statement.

SUMMARY: The Forest Service, USDA, will prepare an environmental impact statement (EIS) and master plan which will describe the long term development, restoration, and management of the Sandy River Delta site, located in Oregon, Multnomah County, T.1N, R.3E, Sections 13, 14, 24, 25 and T.1N, R.3E, Sections 18, 19, 20, 29 and 30, Willamette Meridian.

The EIS and master plan will describe the location of the National Scenic Area's south-west orientation and information gateway facilities, approximately 4 miles of new trails, and landscape restoration opportunities, particularly wetlands. The master plan will include design guidelines, and will fulfill National Scenic Area requirements for an open space plan.

The project scope has been expanded and the schedule revised from the notice of intent printed in the February 23, 1993 **Federal Register** (58 FR 11023). The project has been expanded to include redesign of the Jordan Interchange (I–84 exit 18), with approximately 200 acres added to the project area. Since the notice of intent, extensive public scoping has identified issues and preliminary alternatives have been developed. Alternatives to be considered will include the location of gateway facilities and trails, and the type, location and degree of landscape restoration. The draft EIS will be completed July 1994. The final EIS is scheduled to be completed by December 1994.

DATES: Comments concerning the expanded project scope should be received by January 3, 1994.

ADDRESSES: Submit written comments and suggestions concerning the expanded project scope to Arthur J. Carroll, Area Manager, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031.

FOR FURTHER INFORMATION CONTACT: Please direct questions about the proposed action and EIS to Virginia Pugh, Planning Team Leader, Columbia River Gorge National Scenic Area, 902 Wasco Avenue, Hood River, Oregon 97031, telephone (503) 386–2333.

Dated: November 18, 1993.

Arthur J. Carroll,

Area Manager.

[FR Doc. 93–29850 Filed 11–24–93; 8:45 am]

BILLING CODE 3410–11–M

Soil Conservation Service

Lick Creek Watershed, TN; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of a finding of no significant impact.

SUMMARY: Pursuant to section 102(2)(C) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Guidelines (40 CFR part 1500); and the Soil Conservation Service Guidelines (7 CFR part 650), the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Lick Creek Watershed, Greene and Washington Counties, Tennessee.

FOR FURTHER INFORMATION CONTACT: Jerry S. Lee, State Conservationist, Soil Conservation Service, 675 U.S. Courthouse, 801 Broadway, Nashville, Tennessee 37203, telephone (615) 736–5471.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Jerry S. Lee, State Conservationist, has determined that the preparation and review of an environmental impact statement are not needed for this project.

Lick Creek Watershed, Tennessee

Notice of a Finding of No Significant Impact

The project concerns a plan for watershed protection and water quality improvement. The planned works of improvement include animal waste systems, exclusion of cattle from streams, and treatment of pastureland erosion. Federal financial assistance

will be provided to accelerate financial and technical assistance for water quality improvement.

The Notice of a Finding of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, state and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Jerry S. Lee.

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904—Watershed Protection and Flood Prevention—and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials)

Dated: November 17, 1993.

Jerry S. Lee,

State Conservationist.

[FR Doc. 93–28991 Filed 11–24–93; 8:45 am]

BILLING CODE 3410–16–M

Marshland Dike: Misich to Wallace, Snohomish County, WA; Finding of No Significant Impact

AGENCY: Soil Conservation Service, USDA.

ACTION: Notice of finding of no significant impact.

SUMMARY: Pursuant to section 102(2) of the National Environmental Policy Act of 1969; the Council on Environmental Quality Regulations (40 CFR part 1500); and the Soil Conservation Service Regulations (7 CFR part 650); the Soil Conservation Service, U.S. Department of Agriculture, gives notice that an environmental impact statement is not being prepared for the Marshland Dike: Misich To Wallace, Snohomish County, Washington.

FOR FURTHER INFORMATION CONTACT: Lynn A. Brown, State Conservationist, Soil Conservation Service, Rock Pointe Tower West, 316 Boone Avenue, suite 450, Spokane, Washington 99201, telephone (509) 353–2337.

SUPPLEMENTARY INFORMATION: The environmental assessment of this federally assisted action indicates that the project will not cause significant local, regional, or national impacts on the environment. As a result of these findings, Lynn A. Brown, State Conservationist, has determined that the preparation and review of an environmental impact statement is not needed for this project.

The project purposes are watershed protection and flood protection. The planned works of improvement include the reconstruction of 4,300 feet of dike of the final 15,312 feet planned in the Watershed work plan of 1958, recommended in the SCS Environmental Impact Statement of 1978, and the Snohomish River Comprehensive Flood Control Management Plan of 1991. The proposed construction will extend from the downstream end of the dike section that was completed in 1974, as part of the Marshland Watershed Project, on the John Misich farm to its junction with the Lowell-Snohomish road. The planned work will include the removal of the previous material from the landward side of the existing dike and replacing it with impervious fill material. The dike top will be built to the elevations agreed upon and outlined in the Levee and Dike System Coordination Agreement, signed March 13, 1991. The dike is designed to withstand out of bank flow and/or overtopping during high flows in the Snohomish River. All disturbed areas will be revegetated to sod farming grasses, forbs, and small trees to meet the stabilization objectives, maintain structural integrity, and incorporate the habitat and forage needs of wildlife.

The Notice of a Finding Of No Significant Impact (FONSI) has been forwarded to the Environmental Protection Agency and to various Federal, State, and local agencies and interested parties. A limited number of copies of the FONSI are available to fill single copy requests at the above address. Basic data developed during the environmental assessment are on file and may be reviewed by contacting Frank R. Easter, Assistant State Conservationist (Programs).

No administrative action on implementation of the proposal will be taken until 30 days after the date of this publication in the **Federal Register**.

(This activity is listed in the Catalog of Federal Domestic Assistance under No. 10.904, Watershed Protection and Flood Prevention, and is subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials.)

Dated: November 15, 1993.

Lynn A. Brown,

State Conservationist.

[FR Doc. 93–28988 Filed 11–24–93; 8:45 am]

BILLING CODE 3410–16–M

DEPARTMENT OF COMMERCE

International Trade Administration

Antidumping or Countervailing Duty Order, Finding, or Suspended Investigation; Opportunity To Request Administrative Review

AGENCY: International Trade Administration/Import Administration Department of Commerce.

ACTION: Notice of opportunity to request administrative review of antidumping or countervailing duty order, finding, or suspended investigation.

BACKGROUND: Each year during the anniversary month of the publication of an antidumping or countervailing duty order, finding, or suspension of investigation, an interested party as defined in section 771(9) of the Tariff Act of 1930, as amended, may request, in accordance with § 353.22 or 355.22 of the Commerce Regulations, that the Department of Commerce ("the Department") conduct an administrative review of that antidumping or countervailing duty order, finding, or suspended investigation.

OPPORTUNITY TO REQUEST A REVIEW: Not later than December 31, 1993, interested parties may request administrative review of the following orders, findings, or suspended investigations, with anniversary dates in December for the following periods:

Antidumping duty proceedings	Period
Brazil: Certain Carbon Steel Butt-Weld Pipe Fittings (A–351–602)	12/01/92–11/30/93
Canada: Elemental Sulphur (A–122–047)	12/01/92–11/30/93
Germany: Animal Glue and Inedible Gelatin (A–428–062)	12/01/92–11/30/93
Hong Kong: Photo Albums and Filler Pages (A–582–501)	12/01/92–11/30/93
Japan: Certain Small Business Telephone Systems and Subassemblies Thereof (A–588–809)	12/01/92–11/30/93
Japan: Cellular Mobile Telephones and Subassemblies (A–588–405)	12/01/92–11/30/93
Japan: Certain Electric Motors of 150–500 HP (A–588–091)	12/01/92–11/30/93
Japan: Drafting Machines and Parts Thereof (A–588–811)	12/01/92–11/30/93

Antidumping duty proceedings	Period
Japan: Polychloroprene Rubber (A–588–046)	12/01/92–11/30/93
Japan: Steel Wire Strand for Prestressed Concrete (A–588–068)	12/01/92–11/30/93
Japan: Tuners (of the Type Used in Consumer Electronic Products (A–588–014)	12/01/92–11/30/93
Mexico: Porcelain-on-Steel Cooking Ware (A–201–504)	12/01/92–11/30/93
New Zealand: Low-Fuming Brazing Copper Rod and Wire (A–614–502)	12/01/92–11/30/93
Sweden: Certain Carton-Closing Staples and Staple Machines (A–401–004)	12/01/92–11/30/93
Sweden: Seamless & Welded Stainless Steel Hollow Products (A–401–603)	12/01/92–11/30/93
Taiwan: Certain Carbon Steel Butt-Weld Pipe Fittings (A–583–605)	12/01/92–11/30/93
Taiwan: Certain Small Business Telephone Systems and Subassemblies Thereof (A–583–806)	12/01/92–11/30/93
Taiwan: Certain Welded Stainless Steel Pipe (A–583–815)	03/01/92–11/30/93
Taiwan: Porcelain-On-Steel Cooking Ware (A–583–506)	12/01/92–11/30/93
The People's Republic of China: Ceiling Fans (A–570–807)	12/01/92–11/30/93
The People's Republic of China: Porcelain-On-Steel Cooking Ware (A–570–506)	12/01/92–11/30/93
The Republic of Korea: Certain Welded Stainless Steel Pipes (A–580–810)	06/22/92–11/30/93
The Republic of Korea: Photo Albums and Filler Pages (A–580–501)	12/01/92–11/30/93
Venezuela: Aluminum Sulfate (A–307–801)	12/01/92–11/30/93
Mexico: Porcelain-On-Steel Cookware (C–201–505)	01/01/93–12/31/93
Venezuela: Aluminum Sulfate (C–307–802)	01/01/93–12/31/93

In accordance with §§ 353.22(a) and 355.22(a) of the Commerce regulations, an interested party may request in writing that the Secretary conduct an administrative review. For antidumping reviews, the interested party must specify for which individual producers or resellers covered by an antidumping finding or order it is requesting a review, and the requesting party must state why the person desires the Secretary to review those particular producers or resellers. If the interested party intends for the Secretary to review sales of merchandise by a reseller (or a producer if that producer also resells merchandise from other suppliers) which was produced in more than one country or origin, and each country of origin is subject to a separate order, then the interested party must state specifically which reseller(s) and which countries of origin for each reseller the request is intended to cover.

Seven copies of the request should be submitted to the Assistant Secretary for Import Administration, International Trade Administration, room B–099, U.S. Department of Commerce, Washington, DC 20230. The Department also asks parties to serve a copy of their requests to the Office of Antidumping Compliance, Attention: Pamela Woods, in room 3069–A of the main Commerce Building. Further, in accordance with §§ 353.31(g) or 355.31(g) of the Commerce Regulations, a copy of each request must be served on every party on the Departments's service list.

The Department will publish in the **Federal Register** a notice of "Initiation of Antidumping (Countervailing) Duty Administrative Review", for requests received by December 31, 1993.

If the Department does not receive, by December 31, 1993, a request for review of entries covered by an order or finding listed in this notice and for the period identified above, the Department will instruct the Customs Service to assess antidumping or countervailing duties on those entries at a rate equal to the cash deposit of (or bond for) estimated antidumping or countervailing duties required on those entries at the time of entry, or withdrawal from warehouse, for consumption and to continue to collect the cash deposit previously ordered.

This notice is not required by statute, but is published as a service to the international trading community.

Dated: November 17, 1993.

Holly A. Kuga,

Acting Deputy Assistant Secretary for Compliance.

[FR Doc. 93–29025 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–DS–M

National Oceanic and Atmospheric Administration

[I.D. 111893E]

North Pacific Fishery Management Council

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of agenda revisions and additional meetings.

SUMMARY: An agenda for a public meeting of the North Pacific Fishery Management Council (Council) and its Advisory Committees, which are scheduled to meet during the week of December 6, 1993, was published in the **Federal Register** at 58 FR 58843 on November 4, 1993. The following changes have been made to the agenda, and two additional meetings have been scheduled. All other information originally published remains unchanged.

Agenda Revisions

(1) Under item #8 in the original notice, the discussion of "bycatch rate standards for the Vessel Incentive Program" has been deleted.

(2) Under item #9 in the original notice, the "review of proposed regulatory amendments for directed fishing standards for 1994" has been deleted.

Additional Meetings

The two additional meetings will be held at the Downtown Hilton Hotel, 6th and University Streets, Seattle, WA; and are open to the public.

On December 6 at 7 p.m., the National Marine Fisheries Service (NMFS), will hold an information meeting on implementation of the Council's Sablefish and Halibut Individual Fishing Quota program.

On December 8 at 7 p.m., staff from NMFS and the Council will meet with industry to discuss discards and full utilization in the groundfish fisheries off Alaska.

These meetings are physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Judy Willoughby, on (907) 271–2809, at least 10 working days prior to the meeting date.

FOR FURTHER INFORMATION CONTACT: The North Pacific Fishery Management Council, P.O. Box 103136, Anchorage, AK 99510; telephone: (907) 271–2809,

Dated: November 19, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–28957 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–22–P

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for an incidental take permit (P503K).

Notice is hereby given that the Idaho Department of Fish and Game (IDFG) has applied in due form for a permit to incidentally take listed species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217–227).

The applicant requests authorization to stock hatchery rainbow trout (*Oncorhynchus mykiss*) in waters where listed salmon occur. Releases of catchable (20–30 cm) rainbow trout are proposed for the Salmon River basin, and releases of subcatchable (13–18 cm) rainbow trout are proposed for the Salmon and Clearwater river basins. The requested duration of the permit is five years (1994–1998). IDFG also plans to release catchable trout in the Cape Horn Lake #2, Pettit, Perkins, Alturas, and Stanley Lakes, which are not currently used by listed salmon.

Rainbow trout may affect endangered Snake River sockeye salmon (*O. nerka*), threatened Snake River spring/summer chinook salmon (*O. tshawytsha*), and threatened Snake River fall chinook salmon (*O. tshawytscha*) through predation, competition, behavior modification, and transmission of disease.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the applicant and do not necessarily reflect the views of NMFS.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Environmental and Technical Services Division, National Marine Fisheries Service, 911 North East 11th Ave., room 620, Portland, OR 97232 (503–230–5400).

Patricia Montanio,

Acting Director, Office of Protected Resources.

[FR Doc. 93–28919 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–22–M

Endangered Species; Permits

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notice of receipt of application for a modification to scientific research and enhancement Permit 747 (P45H).

Notice is hereby given that the U.S. Fish and Wildlife Service (FWS) has applied in due form for a modification to Permit 747 to take listed species as authorized by the Endangered Species Act of 1973 (16 U.S.C. 1531–1543) and the NMFS regulations governing listed fish and wildlife permits (50 CFR part 217–227).

Permit 747 was issued on August 8, 1991 (56 FR 40312) and modified on March 3, 1993 (58 FR 14202) as authorized by the ESA. The permit currently authorizes scientific research on and captive propagation of endangered Sacramento River winter-run chinook (*Oncorhynchus tshawytscha*), including the capture of up to 20 adults per year for broodstock purposes, the incubations of up to 35,000 of their eggs, and the rearing of the resulting juveniles for release into the upper Sacramento River. These activities are permitted through December 31, 1995.

FWS is requesting authorization to collect and sacrifice up to 450 coded-wire tagged and adipose fin clipped juvenile winter-run chinook salmon, released from the Coleman National Fish Hatchery, annually for the duration of the permit, through December 31, 1995. A similar take was authorized for 1993 through an emergency modification.

Written data or views, or requests for a public hearing on this application should be submitted to the Director, Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910, within 30 days of the publication of this notice. Those individuals requesting a hearing should set forth the specific reasons why a hearing on this particular application would be appropriate. The holding of such hearing is at the discretion of the Assistant Administrator for Fisheries. All statements and opinions contained in this application summary are those of the Applicant and do not necessarily reflect the views of the National Marine Fisheries Service.

Documents submitted in connection with the above application are available for review by interested persons in the following offices by appointment:

Office of Protected Resources, National Marine Fisheries Service, 1335 East-West Hwy., Silver Spring, MD 20910 (301–713–2322); and

Director, Southwest Region, National Marine Fisheries Service, NOAA, 501 West Ocean Blvd., suite 4200, Long Beach, CA 908021–4213 (310–980–4016).

Dated: November 18, 1993.

Patricia A. Montanio,

Acting Director, Office of Protection Resources.

[FR Doc. 93–28995 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–22–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Announcement of Import Restraint Limits and Guaranteed Access Levels for Certain Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Jamaica

November 18, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits and guaranteed access levels for the new agreement year.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

In a Memorandum of Understanding (MOU) dated November 8, 1993, the Governments of the United States and Jamaica agreed to amend and extend their current bilateral agreement. The term of the agreement will be extended for two consecutive one-year periods,

beginning on January 1, 1994 and extending through December 31, 1995.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to establish limits and guaranteed access levels (GALs) for the period January 1, 1994 and through December 31, 1994.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the availability of the 1994 CORRELATION will be published in the **Federal Register** at a later date.

Requirements for participation in the Special Access Program are available in **Federal Register** notices 51 FR 21208, published on June 11, 1986; 52 FR 6049, published on February 27, 1987; 52 FR 26057, published on July 10, 1987; and 54 FR 50425, published on December 6, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement and the MOU dated November 8, 1993, but are designed to assist only in the implementation of certain of their provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 18, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further extended on December 9, 1992; pursuant to the Bilateral Cotton, Wool, Man-Made Fiber and Other Vegetable Fiber Textile Agreement of August 27, 1986, as amended and extended, and the Memorandum of Understanding (MOU) dated November 8, 1993 between the Governments of the United States and Jamaica; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1994, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool, man-made fiber and other vegetable fiber textiles and textile products in the following categories, produced or manufactured in Jamaica and exported during the twelve-month period beginning on January 1, 1994 and extending through December 31, 1994, in excess of the following levels of restraint:

Category	Twelve-month restraint limit
331/631	500,000 dozen pairs.
336/636	118,000 dozen.
338/339/638/639.	985,870 dozen.
340/640	461,018 dozen of which not more than 390,093 dozen shall be in shirts made from fabrics with two or more colors in the warp and/or the filling in Categories 340–Y/640–Y [1].
341/641	578,898 dozen.
342/642	175,000 dozen.
345/845	142,845 dozen.
347/348/647/648.	1,064,123 dozen.
352/652	1,590,000 dozen.
445/446	50,390 dozen.
447	10,000 dozen.

[1] Category 340–Y: only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

Imports charged to these category limits for the period January 1, 1993 through December 31, 1993 shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement between the Governments of the United States and Jamaica.

In accordance with the provisions of the Special Access Program, as set forth in 51 FR 21208 (June 11, 1986), 52 FR 26057 (July 10, 1987) and 54 FR 50425 (December 6, 1989), you are directed to establish guaranteed access levels for properly certified cotton, man-made fiber and other vegetable fiber textile products in the following categories which are assembled in Jamaica from fabric formed and cut in the United States and re-exported to the United States from Jamaica during the twelve-month period which begins on January 1, 1994 and extends through December 31, 1994.

Category	Guaranteed Access Level
331/631	1,320,000 dozen pairs.
336/636	125,000 dozen.
338/339/638/639.	1,500,000 dozen.
340/640	300,000 dozen.
341/641	375,000 dozen.
342/642	200,000 dozen.
345/845	50,000 dozen.
347/348/647/648.	2,000,000 dozen.
352/652	10,500,000 dozen.
447	30,000 dozen.

Any shipment for entry under the Special Access Program which is not accompanied by a valid and correct certification and Export Declaration in accordance with the provisions of the certification requirements established in the directive of February 19, 1987 shall be denied entry unless the Government of Jamaica authorizes the entry and any charges to the appropriate designated consultation levels or specific limits. Any shipment which is declared for entry under the Special Access Program but found not to qualify shall be denied entry into the United States.

Textile products in Category 632, produced or manufactured in Jamaica and exported to the United States on and after January 1, 1994 shall no longer be subject to the Special Access Program and are not subject to quota.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29049 Filed 11–24–93; 8:45 am]

BILLING CODE 3510–DR–F

Amendment of the Coverage of Part-Categories for Certain Cotton Textile Products Produced or Manufactured in Various Countries

November 19, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs amending coverage of certain part-categories.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

To facilitate implementation of existing bilateral textile agreements and export visa arrangements based upon the Harmonized Tariff Schedule (HTS), for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after November 8, 1993 for part-Categories 347–T, 348–T, 347–W and 348–W; and on and after January 1, 1994 for Categories 341–Y and 341–O, regardless of the date of export, certain HTS classification numbers are being

changed on all visa and certification arrangements and all import controls for countries with these part-categories. These changes in the tariff numbers are a result of statistical breakouts.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Information regarding the 1994 CORRELATION will be published at a later date.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 19, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, all import control directives issued to you by the Chairman, Committee for the Implementation of Textile Agreements, which include cotton textile products in part-Categories 347–T, 348–T, 347–W, 348–W, 341–Y and 341–O, produced or manufactured in various countries and entered in the United States for consumption on and after November 8, 1993, in the case of Categories 347–T, 348–T, 347–W and 348–W; and January 1, 1994, in the case of Categories 341–Y and 341–O, regardless of the date of export.

Also, this directive amends, but does not cancel, all directives issued to you which establish visa arrangements for part-Categories 347–T, 348–T, 347–W, 348–W, 341–Y and 341–O, for all countries for which visa arrangements are in place with the United States Government.

Effective on November 29, 1993, you are directed to make the changes shown below in the aforementioned directives for goods entered in the United States for consumption or withdrawn from warehouse for consumption on and after November 8, 1993 for Categories 347–T, 348–T, 347–W and 348–W; and on and after January 1, 1994 for Categories 341–Y and 341–O, regardless of the date of export:

Category	Obsolete number	New number
341–Y	—	6211.42.0054
341–O	6211.42.0050	6211.42.0056
347–T	6210.40.2035	6210.40.2033
348–T	6210.50.2035	6210.50.2033
347–W	6210.40.2035	6210.40.2033
348–W	6210.50.2035	6210.50.2033

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,
Rita D. Hayes,
Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29048 Filed 11–24–93; 8:45 am]
BILLING CODE 3510–DR–F

COPYRIGHT ROYALTY TRIBUNAL

[Docket No. 93–1–92DRD]

1992 Audio Home Recording Act Distribution Proceeding

AGENCY: Copyright Royalty Tribunal.
ACTION: Notice.

SUMMARY: On November 17, 1993, the Gospel Music Coalition ("GMC"), the Alliance of Artists and Recording Companies ("AARC"), Reachout Records International, Inc., and Copyright Management, Inc. ("CMI") ("Joint Parties") filed a joint motion to suspend commencement of the procedural schedule for the 1992 Sound Recordings Fund distribution proceeding. The Copyright Royalty Tribunal ("Tribunal") invites comments from the interested parties.

DATES: Comments are due by Monday, November 29, 1993.

ADDRESSES: An original and five copies of the comments shall be addressed to Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

FOR FURTHER INFORMATION CONTACT: Cindy Daub, Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009.

SUPPLEMENTARY INFORMATION: By, Notice Establishing Procedural Schedule (58 FR 52478) (1993), the Tribunal established a procedural schedule for the 1992 Audio Home Recording Act ("AHRA") commencing with exchange of Direct Cases on December 1, 1993, and continuing through commencement of the evidentiary hearing on January 10, 1993. On November 3, 1993, claimants to the Musical Works Fund, including the GMC and CMI, filed a Motion to Consolidate the 1992 and 1993 DART Proceedings in the Musical Works Fund. The Tribunal invited comments on the November 3, 1993 motion by November 23, 1993. (58 FR 58220).

The Joint Parties request that because of significant uncertainty created by pending legislation and in the interest of justice and efficient administration the Tribunal suspend the 1993 DART Distribution proceedings in the Sound Recordings Fund. The Joint Parties note the following reasons for the suspension of the 1993 DART Distribution proceedings:

1. The first DART Distribution proceeding will have precedential effect that will result in significant legal costs, and therefore should not be held while significant uncertainty due to pending legislation exists.

Further given pending legislation concerning copyright royalty distribution proceedings which would transfer the Tribunal's operations to another forum effective January 1, 1994, interested copyright joint parties face significant uncertainty over whether the procedural schedule can be implemented. Additionally, in the meantime, the Joint Parties are faced with the prospect of incurring significant costs in preparing for a hearing that may not occur as scheduled.

2. Furthermore, the Joint Parties contend that the Tribunal's established procedural schedule of March 31, 1994 as the date for completion of the DART distribution proceeding is precatory, not mandatory, and should not outweigh the statutory interest in efficient distribution of royalties to claimants.

The Joint Parties contend that if the proceedings move forward as scheduled many interested parties, and particularly smaller parties, will be unable to participate due to the significant possibility that duplicate costs will be incurred if pending legislation passes. Therefore, the Joint Parties request that given the confluence of unique circumstances relevant to the DART proceedings, the best interests of all parties would be served if the procedural schedule were suspended until after the current pending legislation is resolved.

Dated: November 22, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–29094 Filed 11–23–93; 9:48 am]
BILLING CODE 1410–09–M

DEPARTMENT OF DEFENSE

Office of the Secretary

DOD Advisory Group on Electron Devices; Meeting

ACTION: Notice.

SUMMARY: Working Group A (Microwave Devices) of the DoD Advisory Group on Electron Devices (AGED) announces a closed session meeting.

DATES: The meeting will be held at 0900, Tuesday, 9 December 1993.

ADDRESSES: The meeting will be held at Palisades Institute for Research

Services, Inc., 2011 Crystal Drive, Suite 307, Arlington, VA 22202.

FOR FURTHER INFORMATION CONTACT: Walter Gelnovatch, AGED Secretariat, 2011 Crystal Drive, Suite 307, Arlington, Virginia 22202.

SUPPLEMENTARY INFORMATION: The mission of the Advisory Group is to provide the Under Secretary of Defense for Acquisition, the Director, Advanced Research Projects Agency and the Military Departments with technical advice on the conduct of economical and effective research and development programs in the area of electron devices.

The Working Group A meeting will be limited to review of research and development programs which the Military Departments propose to initiate with industry, universities or in their laboratories. This microwave device area includes programs on developments and research related to microwave tubes, solid state microwave devices, electronic warfare devices, millimeter wave devices, and passive devices. The review will include details of classified defense programs throughout.

In accordance with section 10(d) of Public Law 92–463, as amended, (5 U.S.C. App. II 10(d) (1988)), it has been determined that this Advisory Group meeting concerns matters listed in 5 U.S.C. 552b(c)(1) (1988), and that accordingly, this meeting will be closed to the public.

Dated: November 19, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29904 Filed 11–24–93; 8:45 am]

BILLING CODE 5000–04–M

Defense Logistics Agency

Proposed DLA Guidance; Process Oriented Contract Administration Services (PROCAS)

AGENCY: Defense Logistics Agency, Department of Defense.

ACTION: Proposed change in agency operating guidance and request for comments.

SUMMARY: The Defense Logistics Agency proposes new guidance (in draft) for agency personnel performing contract administration services. The proposed change would direct agency employees to team with contractors and customers, focusing on improving the contractor processes that support contract performance. Contractor participation in voluntary. The proposed guidance is published in the **Federal Register** for informational purposes and to solicit public comment.

DATES: Comments should be submitted to the address below on or before 31 January 1994, to be considered prior to formal publication of the proposed guidance.

ADDRESSES: Interested parties should submit written comments to Defense Logistics Agency, ATTN: Mr. Sydney Pope, PROCAS Program Manager, AQCP, Cameron Station, Alexandria, VA 22304–6100.

FOR FURTHER INFORMATION CONTACT: Questions and requests for copies of draft policy documents may be directed to Mr. Sydney Pope, Defense Logistics Agency, AQCP (703) 274–7761.

SUPPLEMENTARY INFORMATION:

A. Background

DLA is committed to improving the efficiency and effectiveness of the contract administration services provided to their customers. The proposed guidance is intended to focus specifically on the contractor processes that support contract performance. The emphasis is on teaming with contractors and customers to achieve continuous improvement. It will also give DLA the facts and data necessary to make informed management decisions regarding the deployment of agency resources.

B. Regulatory Flexibility Act

The proposed guidance will not have a significant economic impact on small businesses within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it does not require any additional time or cost on the part of the contractor. Any contractor effort is voluntary.

C. Paperwork Reduction Act

The proposed guidance does not impose any reporting or record keeping requirements which require the approval of OMB under 44 U.S.C. 3501 *et seq.* and, as such, the Paperwork Reduction Act does not apply.

Glenn Patrick Phillips,

Rear Admiral, USN, Acting Executive Director (Contract Management).

[FR Doc. 93–28949 Filed 11–24–93; 8:45 am]

BILLING CODE 3620–01–M

Department of the Navy

Notice of Intent to Prepare an Environmental Impact Statement for the Proposed Disposal and Reuse of Naval Station Puget Sound, Seattle, WA

Notice of Intent was published Friday, November 19, 1993, at 58 FR 61079, that a public scoping meeting was to have been held on December 9, 1993, begining at 7 p.m., at the National Oceanic and Atmospheric Administration facility, 7600 Sand Point Way NE., Building 9 Theater, Seattle, Washington. That Meeting has been rescheduled and will now be held on December 16, 1993. All other information in the previous notice remains in effect. In accordance with 5 U.S.C. 552b(e)(2), the meeting change is publicly announced at the earliest time.

For further information concerning this meeting contact: Commanding Officer, Engineering Field Activity Northwest, Naval Facilities Engineering Command, 3505 NW Anderson Hill Road, Silverdale, Washington, 98383-9130 (Attn: Mr. Don Morris, code 232DM), telephone (206) 396-5976.

November 19, 1993.

Saundra K. Melancon

Alternate Federal Register Liaison Officer.

[FR Doc. 93-28922 Filed 11-24-93; 8:45 am]

BILLING CODE 3810-AE-F

Navy Exchange System Advisory Committee; Closed Meeting

Pursuant to the provisions of the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Navy Exchange System Advisory Committee will meet December 8, 1993, in the Navy Exchange Service Command (NEXCOM) Headquarters, Virginia Beach, Virginia. The meeting will commence at 9 a.m. and will be closed to the public because it is likely to relate solely to internal agency personnel rules and practices; may disclose confidential commercial or financial information; and may involve information which, if disclosed prematurely, would be likely to frustrate implementation of a proposed agency action. The Secretary of the Navy has therefore determined, in writing, that the public interest requires the meeting be closed to the public because it will concern matters listed in title 5, U.S.C. 552b(c)(2), (4), and (9)(B).

For further information concerning this meeting, please contact: Captain Roger J. Blood, SC, USN, Naval Supply Systems Command (SUP 09B), 1931

Jefferson Davis Highway, room 508, Arlington, VA 22241-5360, Telephone Number (703) 607-0072/73.

Dated: November 17, 1993.

Saundra K. Melancon,

Alternate Federal Register Liaison Officer.

[FR Doc. 93-28986 Filed 11-24-93; 8:45 am]

BILLING CODE 3810-AE-F

DELAWARE RIVER BASIN COMMISSION

Notice of Commission Meeting and Public Hearing

Notice is hereby given that the Delaware River Basin Commission will hold a public hearing on Wednesday, December 8, 1993. The hearing will be part of the Commission's regular business meeting which is open to the public and scheduled to begin at 1:30 p.m. in City Hall, 10 East Church Street, Bethlehem, Pennsylvania.

An informal conference among the Commissioners and staff will be open for public observation at 9:30 a.m. at the same location and will include a National Park Service presentation on the Lower Delaware National Wild and Scenic River Study as well as status reports on Basinwide hydrologic conditions; compliance with DRBC's Special Protection Waters regulations and the Upper Delaware ice jam project.

The subjects of the hearing will be as follows:

Current Expense and Capital Budgets. A proposed current expense budget for the fiscal year beginning July 1, 1994, in the aggregate amount of $3,063,000 and a capital budget for the same period in the amount of $1,722,500 in revenue and $1,302,500 in expenditures. Copies of the current expense and capital budget are available from the Commission on request by contacting Richard C. Gore. This hearing continues that of October 27, 1993.

Applications for Approval of the Following Projects Pursuant to Article 10.3, Article 11 and/or Section 3.8 of the Compact

1. *Myerstown Municipal Authority D–81–67 CP RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 33 million gallons (mg)/30 days of water to the applicant's distribution system from Well Nos. 3, 5, 6 and 8. Commission approval on September 28, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 33 mg/30 days. The project is located in Jackson Township and Myerstown Borough, Lebanon County, Pennsylvania.

2. *Borough of Kutztown D–83–23 CP RENEWAL–2.* An application for the renewal of a ground water withdrawal project to supply up to 60 mg/30 days of water to the applicant's distribution system from Well Nos. 1, 2, 3A, 4 and 5. Commission approval on September 28, 1988 was limited to five years. The applicant requests that the total withdrawal from all wells remain limited to 60 mg/30 days. The project is located in Maxatawny Township, Berks County, Pennsylvania.

3. *Hansen Nurseries D–88–66 RENEWAL.* An application for the renewal of a ground water withdrawal project to supply up to 10.02 mg/30 days of water to the applicant's nursery from Well Nos. 1 and 33. Commission approval on December 14, 1988 was limited to five years and will expire unless renewed. The applicant requests that the total withdrawal from all wells remain limited to 10.02 mg/30 days. The project is located in Douglass Township, Montgomery County, in the Southeastern Pennsylvania Ground Water Protected Area.

4. *Deer Lake Municipal Authority D–92–50 CP.* A sewage treatment plant (STP) expansion project to increase the capacity of the applicant's existing 0.153 mgd STP to 0.23 mgd. The expanded STP will continue to provide secondary treatment, serve the Borough of Deer Lake and discharge to Pine Creek, a tributary of the Schuylkill River in West Brunswick Township, Schuylkill County, Pennsylvania.

5. *City of Wilmington D–92–67 CP.* A project to modify the City of Wilmington's regional 90 mgd capacity sewage treatment plant (STP) to provide consistent reliable secondary treatment during periodic hydraulic overload conditions. The project will enable the STP to expand its peak treatment capacity from 200 mgd to 350 mgd. The STP serves most of northern New Castle County, Delaware and portions of Upper Chichester and Bethel Township in Delaware County, Pennsylvania. It is located just off East 12th Street and Hay Road in the City of Wilmington, New Castle County, Delaware, and will continue to discharge to Water Quality Zone 5 of the Delaware River.

6. *UNISYS Corporation D–92–82 (G).* A ground water remediation project consisting of the proposed withdrawal of up to 367,000 gallons per day (gpd) of ground water at the applicant's computer manufacturing plant site, to be accomplished by three wells (MW–6D at 7,200 gpd; MW–11D at 72,000 gpd; and MW–21 at 228,000 gpd). The project is situated in both East Whiteland and Tredyffrin Townships, Chester County, located in the Southeastern Pennsylvania Ground Water Protected Area.

7. *Perdue Farms, Incorporated D–93–29.* An application for approval of a ground water withdrawal project to supply up to 25.9 mg/30 days of water to the applicant's poultry processing facility from new Well No. 4, and to increase the existing withdrawal limit of 35 mg/30 days from all wells to 66 mg/30 days. The project is located in the Town of Georgetown, Sussex County, Delaware.

8. *Filomina, Inc. D–93–47.* An application for approval of a ground water withdrawal project to supply up to 9.16 mg/30 days of water to the applicant's golf course irrigation system from new Well Nos. 1, 6 and 8, and to limit the withdrawal from all wells to 9.16 mg/30 days. The project is located in Polk Township, Monroe County, Pennsylvania.

9. *Pennsylvania Department of Environmental Resources D–93–55 CP.* An application from the Pennsylvania Department of Environmental Resources (PADER) for inclusion in the DRBC Comprehensive Plan of those portions of the Tulpehocken Creek which have been been designated as part of the Pennsylvania Scenic Rivers System. The designation of these components is to conserve and protect their pastoral, recreational, fishery, cultural, historical and geological uses and/or characteristics. The designated areas of Tulpehocken Creek include segments of the main stem in Lebanon and Berks Counties; and a small segment of Cacoosing Creek in Berks County as follows:

(1) Tulpehocken Creek: Headwaters of the Tulpehocken Creek near Kimmerlings Church in North Lebanon Township to Ramona Road (Township Route 560) in Jackson Township, 3.4 miles, Pastoral.

(2) Tulpehocken Creek: Western boundary of the Carl Sensenig property, now or formerly owned by Carl Sensenig and wife, to the bridge carrying S.R. 4010 over the Tulpehocken near the entrance to Heidelberg Country Club, 16.8 miles, Pastoral.

(3) Tulpehocken Creek: Base of the Blue Marsh Dam to the creek's confluence with the Schuylkill River at Reading, 6.6 miles, Recreational.

(4) Cacoosing Creek: State Hill Road bridge S.R. 3023 to the confluence with the Tulpehocken Creek, 2.0 miles, Recreational.

10. *Nancy Lee, Inc. (Harding Woods STP) D–93–66.* An application to modify the existing 0.05 mgd secondary treatment plant serving Harding Woods Mobile Home Park located just south of

U.S. Route 40, approximately 3700 feet east of State Route 553 in Pittsgrove Township, Salem County, New Jersey. The plant will continue to discharge at the same permitted capacity via proposed replacement Infiltration/ Percolation lagoons in the Dry Branch watershed, a tributary of the Maurice River.

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D–78–71 CP Renewal 2	City of New Castle	City of New Castle	New Castle	DE	01/20/98	01/20/2003
D–79–08 CP Renewal 2	Jackson Twp Municipal Utilities Auth.	Jackson Twp	Ocean	NJ	01/16/96	01/16/2001
D–79–86 CP	Borough of Westville	Westville Boro	Gloucester	NJ	08/08/95	08/08/2000
D–79–88 CP Renewal 2	SPS Technologies	Abington Twp	Montgomery	PA	01/12/95	01/12/2000
D–80–05 Renewal 2	Totten Farms	North Hanover Twp	Burlington	NJ	05/23/95	05/23/2000
D–80–07 CP Renewal 2	PADER–Bureau of State Parks.	Union Twp	Berks	PA	06/27/95	06/27/2000
D–80–32 CP Renewal	Pennsylvania Fish & Boat Commission.	Mt. Pleasant Twp	Wayne	PA	01/25/94	01/25/1999
D–81–05 CP Renewal 2	Village of Monticello	Village of Monticello	Sullivan	NY	02/20/96	02/20/2001
D–81–10 Renewal 2	George A. Coombs & Sons.	Upper Pittsgrove Twp	Salem	NJ	08/14/96	08/14/2001
D–81–11 CP Renewal	New Jersey American Water Company.	City of Camden	Camden	NJ	10/24/95	10/24/2000
D–81–30 Renewal 2	Schuylkill Haven Bleach & Dye Works.	Schuylkill Haven Boro	Schuylkill	PA	01/20/98	01/20/2003
D–81–71 CP Renewal 2	Jim Thorpe Municipal Authority.	Jim Thorpe Boro	Carbon	PA	08/12/97	08/12/2002
D–82–05 Renewal 2	Cressona Aluminum Company.	Cressona Boro	Schuylkill	PA	04/22/97	04/22/2002
D–82–07 CP Renewal	Deptford Twp Municipal Utilities Auth.	Deptford Twp	Gloucester	NJ	12/12/95	12/12/2000
D–83–26 CP Renewal	Lawrenceville Water Company.	Lawrence Twp	Mercer	NJ	01/12/95	01/12/2000
D–84–02 Renewal	Alpo Petfoods, Inc.	South Whitehall Twp	Lehigh	PA	04/26/94	04/26/1999
D–84–36 Renewal	Occidental Chemical Corporation.	Burlington Twp	Burlington	NJ	01/25/94	01/25/1999
D–84–52 CP Renewal	Merchantville-Pennsauken Water Comm.	Pennsauken Twp	Camden	NJ	10/25/94	10/25/1999
D–84–63 CP Renewal	Borough of East Stroudsburg.	East Stroudsburg Boro	Monroe	PA	03/28/95	03/28/2000
D–85–05 Renewal	Sybron Chemicals, Inc.	Pemberton Twp	Burlington	NJ	04/22/97	04/22/2002
D–85–07 CP Renewal	Honey Brook Borough Authority.	Honey Brook Twp	Chester	PA	05/23/95	05/23/2000
D–85–09 CP	Mount Laurel Municipal Utilities Auth.	Mt. Laurel Twp	Burlington	NJ	06/24/97	06/24/2002
D–85–10 Renewal	Riverton Country Club	Riverton Boro	Burlington	NJ	04/26/94	04/26/1999
D–85–14 Renewal	Hoffman-LaRoche, Inc.	White Twp	Warren	NJ	08/14/96	08/14/2001
D–85–18 CP Renewal	Borough of Brooklawn Water Dept..	Brooklawn Boro	Camden	NJ	12/06/94	12/06/1999
D–85–32 Renewal	E.I. DuPont DeNemours & Company.	Greenwich Twp	Gloucester	NJ	12/06/94	12/06/1999
D–85–57 CP Renewal	Upper Saucon Township	Upper Saucon Twp	Lehigh	PA	05/22/95	05/22/2001
D–85–80 Renewal	Eastern Foundry Company.	Boyertown Boro	Berks	PA	01/16/96	01/16/2001
D–86–15 Renewal	Coastal Eagle Point Oil Company.	West Deptford Twp	Gloucester	NJ	08/12/97	08/12/2002
D–86–31 P.A. Renewal	Penn Engineering & Mfg Corporation.	Plumstead Twp	Bucks	PA	02/03/97	02/03/2002
D–86–54 CP Renewal	Douglassville Water Company.	Amity Twp	Berks	PA	03/25/97	03/25/2002
D–86–79 Renewal	AT&T Microelectronics	Muhlenberg Twp	Berks	PA	04/22/97	04/22/2002
D–86–83 Renewal	Mid-Atlantic Canners Association.	Hamburg Boro	Berks	PA	06/24/97	06/24/2002
D–87–02 P.A. Renewal	Highway Materials, Inc.	East Whiteland Twp	Chester	PA	02/03/97	02/03/2002
D–87–32 Renewal	Baldwin Hardware Corporation.	City of Reading	Berks	PA	12/09/97	12/09/2002
D–87–33 CP Renewal	Country Place Water Company.	Coolbaugh Twp	Monroe	PA	08/12/97	08/12/2002
D–87–40 CP	City of Vineland	City of Vineland	Cumberland	NJ	10/23/96	10/23/2001
D–87–57 CP	Department of the Army	Coolbaugh Twp	Monroe	PA	01/25/94	01/25/1999
D–87–58 CP Renewal	Muhlenberg Township Authority.	Muhlenberg Twp	Berks	PA	11/04/97	11/04/2002
D–87–60 CP Renewal	Borough of Catasauqua	Catasauqua Boro	Lehigh/Northampton.	PA	01/20/98	11/04/2002

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS—Continued

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D–87–66 Revision 2	Panther Creek Partners	Nesquehoning Boro	Carbon	PA	06/27/95	06/27/2000
D–87–91 Renewal	Star Enterprise		New Castle	DE	02/17/98	02/17/2003
D–87–92 CP	Borough of Clementon	Clementon Boro	Camden	NJ	02/24/94	02/24/1998
D–87–93 P.A.	James D. Scully Company.	Douglas Twp	Montgomery	PA	09/22/93	09/22/1998
D–88–01 P.A.	Peter McClennen	East Rockhill Twp	Bucks	PA	09/13/93	09/13/1998
D–88–28	Moon Nurseries Contracting.	Lower Makefield Twp	Bucks	PA	04/26/94	04/26/1999
D–88–31	Valley Township Authority.	Valley Twp	Chester	PA	10/26/93	10/26/1998
D–88–38 CP	Garden State Water Company.	Gloucester Twp	Camden	NJ	05/22/96	05/22/2001
D–88–68 P.A.	Paletown Development Corp.	Richland Twp	Bucks	PA	10/19/94	10/19/1999
D–88–74	ICI Americans, Inc	City of New Castle	New Castle	DE	01/25/94	01/25/1999
D–88–81 CP	New Jersey American Water Co.	Gibbsboro, Cherry Hill Twp. Laurel Springs Boro.	Camden	NJ	10/24/95	10/25/2000
D–88–82	Moorestown Foursome Partnership.	Moorestown Twp	Burlington	NJ	08/02/94	08/02/1999
D–89–07	J.T. Baker, Inc	Town of Phillipsburg, Lopatcong Twp.	Warren	NJ	09/27/94	09/27/1999
D–89–08 P.A.	Rohm & Haas Company	Lower Gwynedd Twp	Montgomery	PA	05/03/94	05/03/1999
D–89–15 CP	Borough of Dublin	Dublin Boro	Bucks	PA	08/02/94	08/02/1999
D–89–17 CP	Southeastern Chester County Auth.	New Garden Twp	Chester	PA	01/12/95	01/12/2000
D–89–33 CP	Tamiment Water Company.	Lehman Twp	Pike	PA	10/25/94	10/25/1999
D–89–35 CP	Tennanah Lake Community Water Co.	Town of Fremont	Sullivan	NY	09/27/94	09/27/1999
D–89–43	Allen Family Foods, Inc.		Sussex	DE	09/27/94	09/27/1999
D–89–50 CP	Manwalamink Water Company.	Smithfield Twp	Monroe	PA	03/28/95	03/28/2000
D–89–59	Textile Chemical Company, Inc..	Ontelaunee Twp	Berks	PA	10/25/94	10/25/1999
D–89–66	Draper-King Cole, Inc.	Town of Milton	Sussex	DE	12/06/94	12/06/1999
D–89–75 P.A.	Gordon Eadie Associates, Inc..	East Vincent Twp	Chester	PA	01/19/95	01/19/2000
D–89–80	Peronic Enterprises	Upper Freehold Twp	Monmouth	NJ	01/12/97	01/12/2000
D–89–84 P.A.	S.A. Kele Associates	Richland Twp	Bucks	NJ	04/23/95	04/23/2000
D–89–85 CP	Cranberry Hill/Stroud Water Co..	Stroud Twp	Monroe	PA	01/12/95	01/12/2000
D–89–86 CP	Burlington Township	Burlington Twp	Burlington	NJ	06/24/97	06/24/2002
D–89–99 P.A.	Melody Lakes Properties	Richland Twp	Bucks	PA	05/15/96	05/15/2001
D–90–02 CP	A.C. Wagner Youth Corr Facility.	Chesterfield Twp	Burlington	NJ	04/25/96	04/25/2000
D–90–03 CP	Richland Twp Board of Supervisors.	Richland Twp	Bucks	PA	06/27/95	06/27/2000
D–90–06 CP	North Wales Water Authority.	Upper Gwynedd Twp, Lower Gwynedd Twp, Upper Dublin Twp.	Montgomery	PA	06/27/95	06/27/2000
D–90–109 (G)	Alco Industries	Upper Providence Twp	Montgomery	PA	04/24/96	04/24/2001
D–90–11 CP	New Jersey Dept of Corrections.	Maurice River Twp	Cumberland	NJ	12/12/95	12/12/2000
D–90–18	Baer Aggregates, Inc.	Pohatcong Twp	Warren	NJ	10/24/95	10/24/2000
D–90–19 CP	Warrington Twp Municipal Authority.	Warrington Twp	Bucks	PA	12/12/95	12/12/2000
D–90–23	Binney & Smith, Inc.	Forks Twp	Northampton	PA	06/27/95	06/27/2000
D–90–38	Wilmington Country Club	Town of Middletown	New Castle	DE	06/27/95	06/27/2000
D–90–40	Mobil Oil Corporation	Greenwich Twp	Gloucester	NJ	04/22/97	04/22/2002
D–90–44 CP	Horsham Water Authority.	Horsham Twp	Montgomery	PA	12/12/95	12/12/2000
D–90–50 CP	Philadelphia Suburban Water Co.	Upper Uwchlan Twp	Chester	PA	10/24/95	10/24/2000
D–90–70	Hatfield Quality Meats, Inc..	Hatfield Twp	Montgomery	PA	02/20/96	02/20/2001
D–90–71	Public Service Electric & Gas Co.	Lower Alloways Creek Twp.	Salem	NJ	09/26/95	09/26/2000
D–90–76	Moyer Packing Company.	Franconia Twp	Montgomery	PA	02/20/96	02/20/2001

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS—Continued

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D–90–77 CP	Resorts USA, Inc	Middle Smithfield Twp	Monroe	PA	06/24/97	06/24/2002
D–90–85 CP	Milford Township Water Authority.	Milford Twp	Bucks	PA	05/22/96	05/22/2001
D–90–95	Elverson Water Company, Inc..	Elverson Boro	Chester	PA	03/27/96	03/27/2001
D–90–96	Standard Chlorine of Delaware, Inc..	Delaware City	New Castle	DE	03/27/96	03/27/2001
D–91–01 CP	Stroudsburg Municipal Authority.	Stroud Twp	Monroe	PA	02/20/96	02/20/2001
D–91–02 CP	Garden State Water Company.	Hamilton Twp	Mercer	NJ	10/23/96	10/23/2001
D–91–04 CP	North Penn Water Authority.	Franconia Twp, Skippack Twp, Lower Salford Twp, Souderton Boro, Montgomery, Towamencin Twp, Worcestar Twp, Lansdale Boro, Upper Gwynedd Twp, Montgomery Twp, East Rockhill Twp, New Britain Twp, New Britain Boro, Hatfield Twp, Hatfield Boro, Hilltown Twp.	Bucks/	PA	02/26/97	02/26/2002
D–91–06	Green Hills Management Company.	Cumru Twp	Berks	PA	06/19/96	06/19/2001
D–91–18 CP	Resorts USA, Inc	Middle Smithfield Twp, Lehman Twp.	Monroe/Pike	PA	08/14/96	08/14/2001
D–91–21 CP	Borough of Clayton	Clayton Boro	Gloucester	NJ	02/26/97	02/26/2002
D–91–23	Resorts USA, Inc	Middle Smithfield Twp	Monroe	PA	08/14/96	08/14/2001
D–91–24 CP	South Jersey Water Supply Company.	Harrison Twp	Gloucester	NJ	10/23/96	10/23/2001
D–91–25 CP	Washington Twp Municipal Utilities Auth.	Washington Twp	Gloucester	NJ	02/26/97	02/26/2002
D–91–31	Connaught Laboratories, Inc.	Pocono Twp	Monroe	PA	09/25/96	09/25/2001
D–91–32 (G)	B.P. Oil Company	Paulsboro Boro	Gloucester	OH	08/14/96	08/14/2001
D–91–36 CP	County of Bucks	Doylestown Twp	Bucks	PA	01/22/97	01/22/2002
D–91–40 CP	Doylestown Twp Municipal Auth.	Doylestown Twp	Bucks	PA	11/04/97	11/04/2002
D–91–48 CP	Town of Felton	Town of Felton	Kent	DE	12/11/96	12/11/2001
D–91–53	Joseph Jackewicz, Sr	Town of Magnolia	Kent	DE	02/26/97	02/26/2002
D–91–55	McGinley Mills, Inc	Town of Phillipsburg	Warren	NJ	02/26/97	02/26/2002
D–91–58 CP	Maidencreek Twp Water Auth.	Maidencreek Twp	Berks	PA	01/22/97	01/22/2002
D–91–59 P.A	C&M Developers, Inc	Plumstead Twp	Bucks	PA	02/19/97	02/19/2002
D–91–61 P.A	Thomas & Betts Corporation.	East Rockhill Twp	Bucks	NJ	10/02/96	10/02/2001
D–91–83	Wagner Lighting Division	Weatherly Boro	Carbon	PA	05/20/97	05/20/2002
D–91–86 CP	Philadelphia Suburban Water Co.	Birmingham Twp, East Bradford, Twp, East Goshen Twp, West, Goshen Twp, Westtown Twp, West, Whiteland Twp.	Chester	PA	08/12/97	08/12/2002
D–92–87 CP	Buckingham Water Company.	Buckingham Twp	Bucks	PA	06/24/97	06/24/2002
D–92–02 CP	Township of Buckingham.	Buckingham Twp	Bucks	PA	08/12/97	08/12/2002
D–92–05 CP	Borough of Orwigsburg	Orwigsburg Boro	Schuykill	PA	11/04/97	11/04/2002
D–92–14	Wheaton Industries	Millville City	Cumberland	NJ	06/24/97	06/24/2002
D–92–20 CP	Hilltown Twp Water & Sewer Auth.	Hilltown Twp	Bucks	PA	11/04/97	11/04/2002
D–92–28 CP	Whitehall Township Authority.	Whitehall Twp	Lehigh	PA	05/20/97	05/20/2002
D–92–31 PA	Peddler's Village Partnership.	Buckingham Twp	Bucks	PA	10/22/97	10/22/2002
D–92–33	American Argo Corporation.	Schuylkill Haven Boro	Schuylkill	PA	11/04/97	11/04/2002

APPLICATIONS FOR APPROVAL FOR EXTENSION OF THE EXPIRATION DATES OF THE FOLLOWING GROUND WATER DOCKETS AND PROTECTED AREAS PERMITS—Continued

Docket No.	Docket name	Municipality	County	State	Current expiration	Proposed expiration
D–92–35 CP	Womelsdolf-Robersonia Joint Auth.	Heidelberg Twp	Berks	PA	09/23/97	09/23/2002
D–92–37	Pedricktown Cogeneration L.P.	Oldsmans Twp	Salem	NJ	02/17/98	02/17/2003
D–92–52	Longwood Gardens, Inc	East Marlborough Twp	Chester	PA	11/04/97	11/04/2002
D–92–53	General Foods USA	City of Dover	Kent	DE	12/09/97	12/09/2002

Documents relating to these items may be examined at the Commission's offices. Preliminary dockets are available in single copies upon request. Please contact George C. Elias concerning docket-related questions. Persons wishing to testify at this hearing are requested to register with the Secretary prior to the hearing.

Dated: November 19, 1993.

Susan M. Weisman,

Secretary.

[FR Doc. 93–29051 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–01–P

DEPARTMENT OF EDUCATION

Notice of Proposed Information Collection Requests

AGENCY: Department of Education.

ACTION: Notice of proposed information collection requests.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection requests as required by the Paperwork Reduction Act of 1980.

DATES: Interested persons are invited to submit comments on or before December 27, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok: Desk Officer, Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, DC 20503. Requests for copies of the proposed information collection requests should be addressed to Cary Green, Department of Education, 400 Maryland Avenue SW., room 4682, Regional Office Building 3, Washington, DC 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) my call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 35) requires that the Office of Management and Budget (OMB) provide interested Federal agencies and the public and early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State or Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Director of the Information Resources Management Service, publishes this notice containing proposed information collection requests prior to submission of these requests to OMB. Each proposed information collection, grouped by office, contains the following: (1) Type of review requested, e.g. new, revision, extension, existing or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting burden; and/or (6) Recording burden; and (7) Abstract. OMB invites public comment at the address specified above. Copies of the request are available from Cary Green at the address specified above.

Dated: November 19, 1993.

Cary Green,

Director, Information Resources Management Service.

Office of Elementary and Secondary Education

Type of Review: Reinstatement
Title: State Annual Performance Report for Dwight D. Eisenhower Mathematics and Science Act
Frequency: Annually
Affected Public: State or local governments; Federal agencies or employees
Reporting Burden:
Responses: 104
Burden Hours: 4,160
Recordkeeping Burden:
Recordkeepers: 0
Burden Hours: 0

Abstract: State Agencies for Higher Education and State educational agencies that have participated in programs under the Dwight D. Eisenhower Mathematics and Science Act are required to submit this report. The Department uses the information to assess the accomplishments of project goals and objectives, and to aid in effective program management.

[FR Doc. 93–28931 Filed 11–24–93; 8:45 am]

BILLING CODE 4000–01–M

[CFDA No: 84.128B]

Special Projects and Demonstrations for Providing Supported Employment Services to Individuals With the Most Severe Disabilities and Technical Assistance Projects—Statewide Supported Employment Demonstration Projects; Correction

ACTION: Correction notice.

SUMMARY: On November 9, 1993, a notice extending the closing date for transmittal of applications for new awards for fiscal year (FY) 1994 and clarifying eligible entities for this program was published in the **Federal Register** (58 FR 59453).

In the first paragraph, the extension of the transmittal deadline date should read "is extended from December 1, 1993, to December 22, 1993."

Program Authority: 29 U.S.C. 777a(c).

Dated: November 18, 1993

Judith E. Heumann,

Assistant Secretary for Special Education and Rehabilitative Services.

[FR Doc. 93–28929 Filed 11–24–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. QF83-161-002]

Calciner Industries, Inc. and Superior Graphite Co.; Notice of Amendment to Filing

November 19, 1993.

On November 15, 1993, Calciner Industries, Inc. and Superior Graphite Company filed an answer to Louisiana Power and Light Company's Motion for a hearing. Part of this filing has been considered a supplement to its filing in this docket.

The supplement pertains to the ownership structure and technical aspects of its cogeneration facility. No determination has been made that the submittal constitutes a complete filing.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such motions or protests must be filed by December 3, 1993, and must be served on the Applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28939 Filed 11-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. QF93-127-001]

Pioneer Energy Partners, Limited Partnership; Application for Commission Recertification of Qualifying Status of a Cogeneration Facility

November 19, 1993.

On November 15, 1993, Pioneer Energy Partners, Limited Partnership (Pioneer Energy) of Newberg Mill, Foot of Wynoski Street, Newberg, Oregon 97132, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207(b) of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

According to the applicant, the topping-cycle cogeneration facility will be located at the Smurfit Newsprint Corporation (Smurfit), Newberg Mill, in Newberg, Oregon. On July 1, 1993, in Docket No. QF93-127-000, the applicant filed a notice of self-certification. The instant request for recertification reflects supplementary firing of the boiler for the steam turbine generator, a slight increase in the maximum net electric power production capacity from 229 MW to 238 MW, a possible change in the initial date of commercial operation, now slated for 1996, and the negotiation of a separate equity option agreement between Pioneer Energy and Smurfit, in which Smurfit or an affiliate of Smurfit, has the option to purchase up to 50% limited partnership equity interest in Pioneer Energy, within a three month period after the date of the execution of an energy agreement between Pioneer Energy and Smurfit.

Any person desiring to be heard or objecting to the granting of qualifying status should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rule of Practice and Procedure. All such motions or protests must be filed within 30 days after the date of publication of this notice in the **Federal Register** and must be served on the applicant. Protests will be considered by the Commission in determining the appropriate action to be taken but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-28940 Filed 11-24-93; 8:45 am]

BILLING CODE 6717-01-M

[Project Nos. 2142-017, et al.]

Hydroelectric Applications [Central Maine Power Co., et al.]; Notice of Applications

Take notice that the following hydroelectric applications have been filed with the Commission and are available for public inspection:

1a. *Type of Application:* Project Recreation Plan.

b. *Project No:* 2142-017.

c. *Date Filed:* September 30, 1993.

d. *Applicant:* Central Maine Power Company.

e. *Name of Project:* Indian Pond Project.

f. *Location:* Somerset County, Maine.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. William Campbell, Central Maine Power Company, Edison Drive, Augusta, ME 04336; (207) 626-9600.

i. *FERC Contact:* Dan Hayes, (202) 219-2660.

j. *Comment Date:* December 29, 1993.

k. *Description of Project:* Central Maine Power Company, licensee for the Indian Pond Project, has filed an application for a recreation plan for the project. The plan sets forth licensee's intentions toward recreation development and public access to the project for the remainder of the current license period (December 31, 2001).

l. *This notice also consists of the following standard paragraphs:* B, C1, and D2.

2a. *Type of Application:* New License.

b. *Project No.:* 2318-002.

c. *Date Filed:* December 16, 1991.

d. *Applicant:* Niagara Mohawk Power Corporation.

e. *Name of Project:* E.J. West Project.

f. *Location:* On the Sacandaga River in Saratoga County, New York.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)-825(r).

h. *Applicant Contact:* Mr. Jerry L. Sabattis, Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202, (315) 428-6215.

i. *FERC Contact:* Robert Bell (202) 219-2806.

j. *Comment Date:* January 14, 1994.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The proposed project consists of: 1. The E.J. West Project takes water from the downstream end of the spillway channel of the Conklingville dam which is owned and operated by the Hudson River-Black River Regulating District (HRBRRD or District). The water is discharged from the turbines directly into the upper end of the Stewarts Bridge Reservoir (FERC Project No. 2048).

2. *Impoundment:* The Great Sacandaga Lake supplies water to the project and is owned and operated by HRBRRD. The impoundment has a normal maximum surface area of 25,940 acres, a normal maximum surface elevation of 768 ft. (MSL), a gross

storage at normal maximum surface elevation of 792,000 acre feet, and 681,000 acre ft. of usable storage.

3. *Intake Structure:* The reinforced concrete substructure of the intake is 38.5 ft. wide by 96 ft. long and contains trash racks and six penstock openings. Four of the penstock openings are provided with 10.5 ft. wide by 19 ft. high steel gates for the two existing hydroelectric generating units. The upstream face of the intake structure contains steel bulkhead gates and a hoist mechanism. The brick and steel superstructure of the intake is 29.8 ft. wide by 91 ft. long and contains the trash rake and headgate hoist mechanism. The two remaining penstock openings, available for a possible future generating unit, are sealed by bulkheads.

4. *Water Conduits:* There are two concrete penstocks per unit, each approximately 31 ft. long varying in size from a rectangle 9 ft. wide by 18 ft. high to a semicircle 15.62 ft. in diameter. Also, there are two penstocks for potential future unit.

5. *Powerhouse:* The brick and steel powerhouse, which is supported by a concrete substructure, is 46 ft. wide by 88 ft. long and approximately 50 ft. high.

6. *Turbines and Generators:* There are two vertical Francis turbines, with rated heads of 71 ft., rated capacities of 17,150 hp and speeds of 112.5 rpm. Rated output for the two generators is 10,000 kVA each.

7. There are no project transmission lines in the applicant's project boundary.

8. Mechanical equipment is controlled by a cabinet actuator type governor. There is a common motor driven oil pump and sump tank for both units Each generator has its own shaft mounted exciter, rated at 250/270 volts, 364 amps and 91 Kw. Each unit is conductored to a step-up transformer in the outdoor switchyard, which then ties into a Niagara Mohawk non-project 115kV bus.

9. and appurtenant facilities. The existing project would also be subject to Federal takeover under Sections 14 and 15 of the Federal Power Act. Based on the expiration of December 31, 1993, the Applicant's estimated net investment in the project would amount to $3,925,242.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, D.C., 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Niagara Mohawk Power Corporation, 300 Erie Boulevard West, Syracuse, New York 13202 or by calling (315) 428–6215.

3a. *Type of Application:* Minor License.

b. *Project No.:* 11058–001.

c. *Date filed:* November 2, 1992.

d. *Applicant:* A.L.L. Natural Resources, Inc.

e. *Name of Project:* Fitchburg Paper Mill Dam #4.

f. *Location:* on the North Nashua River, in Worcester County, Massachusetts.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* James Lane. A.L.L. Natural Resources, Inc., 29 Westminster St., Fitchburg, MA 01420, (508) 342–4029.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline Date:* See paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The proposed project consists of: (1) An existing granite block and concrete dam 200 feet long; (2) an existing reservoir with a surface area of 1 acre and a total storage volume of 3 acre-feet at the proposed normal maximum surface elevation of 525.6 feet NGVD; (3) a proposed powerhouse containing: (a) Two proposed 8-foot-diameter by 6-foot-wide overshot waterwheels, constructed of ship-grade steel, each with a maximum hydraulic capacity of 37.5 cfs (providing a combined maximum hydraulic capacity of 75 cfs) and rated at 25 kW, and (b) two proposed 25-kW generators (providing a total plant rating of 50 kW); and (4) existing and proposed appurtenant facilities.

m. *Purpose of Project:* All project energy generated would be utilized by the applicant or sold.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. James Lane, III, 29 Westminster St., Fitchburg, MA (508) 342–4029.

4a. *Type of Application:* New License for Major Project.

b. *Project No.:* 2069–003.

c. *Date filed:* December 18, 1992.

d. *Applicant:* Arizona Public Service Company.

e. *Name of Project:* Childs-Irving Hydroelectric Project.

f. *Location:* Entirely within the Coconino and Tonto National Forests, on Fossil Creek, in Yavapai and Gila Counties, Arizona. T11N, R6E; T11N, R7E; T12N, R6E; T12N, R7E.

g. *Filed Pursuant to:* Federal Power Act, 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Pearl M. Parker. Environmental Licensing, Arizona Public Service Company, P.O. Box 53999, Station 9364, Phoenix, Arizona 85072–3999.

i. *FERC Contact:* Mr. Michael Strzelecki, (202) 219–2827.

j. *Comment Date:* Sixty days from the issuance date of this notice. (January 10, 1994).

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D9.

l. *Description of Project:* The project as licensed includes two existing developments. The Irving development consists of: (1) A 25-foot-high concrete diversion structure on Fossil Creek; (2) a 16,578-foot-long flume; (3) a 3,278-foot-long penstock; (4) a powerhouse containing one generating unit with a total installed capacity of 1,600 kW; (5) a tailrace returning water to the flume of the Childs development; (6) a 6.31-mile-long transmission line leading to the powerhouse of the Childs development; and (7) appurtenant facilities.

The Childs development consists of: (1) A 5-foot-high diversion structure on Fossil Creek located 350 feet upstream of the Irving powerhouse; (2) a 23,190-foot-long conduit discharging into the licensee's Stehr Lake; (3) the 23-acre lake created by a 12-foot-high dam and a 20-foot-high dam; (4) a 6,281-foot-long pressure tunnel connecting the lake with a penstock; (5) the 4,800-foot-long penstock; (6) a powerhouse containing three generating units with a total installed capacity of 5,400 kW; (7) a tailrace discharging water into the Verde River; (8) two 200-foot-long transmission lines interconnecting with the Arizona Public Service Company transmission grid; and (9) appurtenant facilities.

m. *Purpose of Project:* All project energy would be distributed to the applicant's customers.

n. *This notice also consists of the following standard paragraphs:* D9.

o. *Available Locations of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at the Arizona Public Service Company referenced above.

5a. *Type of Application:* Exemption from Licensing.

b. *Project No.:* 11365–000.

c. *Date filed:* December 2, 1992.

d. *Applicant:* Swan Falls Corporation.

e. *Name of Project:* Swan Falls Hydroelectric Project.

f. *Location:* on the Saco River in Oxford County, Maine.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Lawrence J. Keddy, 5 Gambo Road, P.O. Box 40, South Windham, Maine 04082–0040, (207) 892–4000.

i. *FERC Contact:* Mary C. Golato (202) 219–2804.

j. *Deadline Date:* See paragraph D10.

k. *Status of Environmental Analysis:* This application is ready for environmental analysis at this time—see attached paragraph D10.

l. *Description of Project:* The proposed project consists of the following features: (1) An existing dam approximately 630 feet long and 10 feet high; (2) an existing impoundment with a surface area of 150 acres, a length of 4.1 miles, and a storage capacity of 450 acre-feet; (3) an existing powerhouse containing one operable and one inoperable turbine generator unit (both to be upgraded), thus increasing the installed capacity of the project from 350 to 820 kilowatts; (4) an existing 34.5-kilovolt transmission line; and (5) appurtenant facilities. The applicant estimates that the total average annual generation would be 4 million kilowatthours.

m. *Purpose of the Project:* All project energy generated would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* A4 and D10.

o. *Available Locations of Application:* A copy of the application is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE, room 3104, Washington, DC 20426, or by calling (202) 219–1371. A copy is also available for inspection and reproduction at Mr. Lawrence J. Keddy, 5 Gambo Road, P.O. Box 40, South Windham, ME 04082–0040 (207) 892–4000.

6a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11430–000.

c. *Date filed:* August 16, 1993.

d. *Applicant:* Northern Wasco County People's Utility District.

e. *Name of Project:* Dalles Dam JBS.

f. *Location:* On the Columbia River, at the Dalles Dam, in Klickitat County, Washington.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Harold E. Haake, Northern Wasco County People's Utility District, P.O. Box 621, The Dalles, OR 97058, (503) 296–2226.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* January 20, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' existing Dalles dam and consist of: (1) A 10-foot-diameter, 30-foot-long penstock within the dam which is part of the dam's fish passage facilities; and (2) a powerhouse containing a generating unit with a capacity of 4.0 MW and an average annual generation of 30.0 GWh.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $130,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

7a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11443–000.

c. *Date Filed:* October 21, 1993.

d. *Applicant:* Pike Island Hydro Associates.

e. *Name of Project:* Pike Island Hydro Project.

f. *Location:* On the Ohio River, in Belmont County, Ohio and Ohio County, West Virginia.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. V. James Dunlevy, 185 Genesee Street, suite 1518, Utica, NY 13501, (315) 793–0366.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* January 21, 1994.

k. *Description of Project:* The proposed project would utilize the U.S. Army Corps of Engineers' Pike Island Lock and Dam and consists of the following new facilities: (1) A powerhouse containing three 13.3–MW generating units for a total installed capacity of 40 MW; (2) a 160-foot-wide, 350-foot-long tailrace; (3) an 8,600-foot-long, 138–Kv transmission line; and (5) appurtenant facilities. The average annual generation would be 181.34 Gwh. The applicant estimates that the cost of the studies under the terms of the permit would be $150,000. All power generated would be sold to a local utility company. The project lock and dam is owned by the U.S. Army Corps of Engineers, Pittsburgh District, 1000 Liberty, Federal Building, room 1834, Pittsburgh, PA 15222, (412) 644–6872.

l. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

8a. *Type of Application:* Major License.

b. *Project No.:* 10854–002.

c. *Date Filed:* September 1, 1993.

d. *Applicant:* Upper Peninsula Power Company.

e. *Name of Project:* Cataract Hydro Project.

f. *Location:* On the Middle Branch Escanaba River in Marquette County, near Gwinn, Michigan.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Clarence R. Fisher, Upper Peninsula Power Company, P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130, (906) 487–5000.

i. *FERC Contact:* Ed Lee (202) 219–2809.

j. *Comment Date:* January 21, 1994.

k. *Status of Environmental Analysis:* This application is accepted for filing but is not ready for environmental analysis at this time—see attached standard paragraph E1.

l. *Description of Project:* The project as licensed consists of the following: (1) A concrete diversion dam about 265 feet long and 8 feet high (maximum) having (a) a spillway/weir section about 185.3 feet long with 19 bays (18 bays about 10 feet wide and one bay 5.3 feet wide), three bays with crest elevation at 1,166.5 feet (USGS), and sixteen bays with crest elevation at 1,170.4 feet; (b) wooden flashboards 7.4 feet and 3.5 feet high with top of flashboards elevation at 1,173.9 feet; (2) an intake structure 19.83 feet wide, 11.9 feet high and 42 feet long, with trashracks and stoplog type gate; (3) a vertical rectangular tunnel (excavated in rock) about 8 feet by 16 feet in size and about 30 feet long; (4) a horizontal tunnel (excavated in

rock) about 8.5–10 feet by 9.5–10 feet in size and about 500 feet long (upper section) and 900 feet long (lower section); (5) two steel pipes each 8 feet in diameter consisting of a mid section about 1,300 feet long, and a penstock section about 120 feet long; (6) a powerhouse 54 feet long, 34 feet wide and 34 feet high with one 2,000 kW turbine-generator unit; (7) an 860-acre-foot reservoir with normal maximum pool elevation at 1,173.9 feet; and (8) appurtenant electric and mechanical facilities. The applicant estimates the average annual generation for this project would be 8,413 MWH. The dam and existing project facilities are owned by the applicant.

m. *Purpose of Project:* Project power would be utilized by the applicant for sale to its customers.

n. *This notice also consists of the following standard paragraphs:* B1 and E1.

o. *Available Location of Application:* A copy of the application, as amended and supplemented, is available for inspection and reproduction at the Commission's Public Reference and Files Maintenance Branch, located at 941 North Capitol Street, NE., room 3104, Washington, DC 20426, or by calling (202) 208–1371. A copy is also available for inspection and reproduction at Upper Peninsula Power Company P.O. Box 130, 600 Lakeshore Drive, Houghton, MI 49931–0130 or by calling (906) 487–5000.

9a. *Type of Application:* Preliminary Permit.

b. *Project No.:* 11442–000.

c. *Date filed:* October 18, 1993.

d. *Applicant:* Weeden's Hydro.

e. *Name of Project:* West Cady Creek.

f. *Location:* In the Snoqualmie—Mt. Baker National Forest, on West Cady Creek, in Snohomish County, Washington. Township 28 N Range 12 E.

g. *Filed Pursuant to:* Federal Power Act 16 U.S.C. 791(a)–825(r).

h. *Applicant Contact:* Mr. Arthur Weeden; P.O. Box 40101; Bellevue, WA 98015; (206) 742–6442.

i. *FERC Contact:* Michael Spencer at (202) 219–2846.

j. *Comment Date:* January 21, 1994.

k. *Description of Project:* The proposed project would consist of: (1) A 10-foot-high concrete dam at elevation 2,360 feet (msl); (2) a 6-foot-diameter, 3.2-mile-long penstock; (3) a powerhouse containing one generating unit with a capacity of 10,500 kW and an estimated average annual generation of 92.3 GWh; (4) a 15-mile-long transmission line; and (5) a 4-mile-long access road to the powerhouse.

No new access road will be needed to conduct the studies. The applicant estimates that the cost of the studies to be conducted under the preliminary permit would be $200,000.

l. *Purpose of Project:* Project power would be sold.

m. *This notice also consists of the following standard paragraphs:* A5, A7, A9, A10, B, C, and D2.

Standard Paragraphs

A4. Development Application—Public notice of the filing of the initial development application, which has already been given, established the due date for filing competing applications or notices of intent. Under the Commission's regulations, any competing development application must be filed in response to and in compliance with public notice of the initial development application. No competing applications or notices of intent may be filed in response to this notice.

A5. Preliminary Permit—Anyone desiring to file a competing application for preliminary permit for a proposed project must submit the competing application itself, or a notice of intent to file such an application, to the Commission on or before the specified comment date for the particular application (see 18 CFR 4.36). Submission of a timely notice of intent allows an interested person to file the competing preliminary permit application no later than 30 days after the specified comment date for the particular application. A competing preliminary permit application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A7. Preliminary Permit—Any qualified development applicant desiring to file a competing development application must submit to the Commission, on or before a specified comment date for the particular application, either a competing development application or a notice of intent to file such an application. Submission of a timely notice of intent to file a development application allows an interested person to file the competing application no later than 120 days after the specified comment date for the particular application. A competing license application must conform with 18 CFR 4.30(b) (1) and (9) and 4.36.

A9. Notice of intent—A notice of intent must specify the exact name, business address, and telephone number of the prospective applicant, and must include an unequivocal statement of intent to submit, if such an application may be filed, either a preliminary permit application or a development application (specify which type of application). A notice of intent must be served on the applicant(s) named in this public notice.

A10. Proposed Scope of Studies under Permit—A preliminary permit, if issued, does not authorize construction. The term of the proposed preliminary permit with be 36 months. The work proposed under the preliminary permit would include economic analysis, preparation of preliminary engineering plans, and a study of environmental impacts. Based on the results of these studies, the Applicant would decide whether to proceed with the preparation of a development application to construct and operate the project.

B. Comments, Protests, or Motions to Intervene—Anyone may submit comments, a protest, or a motion to intervene in accordance with the requirements of the Rules of Practice and Procedure, 18 CFR 385.210, .211, .214. In determining the appropriate action to take, the Commission will consider all protests or other comments filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any comments, protests, or motions to intervene must be received on or before the specified comment date for the particular application.

B1. Protests or Motions to Intervene—Anyone may submit a protest or a motion to intervene in accordance with the requirements of Rules of Practice and Procedure, 18 CFR 385.210, 385.211, and 385.214. In determining the appropriate action to take, the Commission will consider all protests filed, but only those who file a motion to intervene in accordance with the Commission's Rules may become a party to the proceeding. Any protests or motions to intervene must be received on or before the specified deadline date for the particular application.

C. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "NOTICE OF INTENT TO FILE COMPETING APPLICATION", "COMPETING APPLICATION", "PROTEST", "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to

Director, Division of Project Review, Federal Energy Regulatory Commission, room 1027, at the above-mentioned address. A copy of any notice of intent, competing application or motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

C1. Filing and Service of Responsive Documents—Any filings must bear in all capital letters the title "COMMENTS", "RECOMMENDATIONS FOR TERMS AND CONDITIONS", "PROTEST", OR "MOTION TO INTERVENE", as applicable, and the Project Number of the particular application to which the filing refers. Any of the above-named documents must be filed by providing the original and the number of copies provided by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. A copy of any motion to intervene must also be served upon each representative of the Applicant specified in the particular application.

D2. Agency Comments—Federal, state, and local agencies are invited to file comments on the described application. A copy of the application may be obtained by agencies directly from the Applicant. If an agency does not file comments within the time specified for filing comments, it will be presumed to have no comments. One copy of an agency's comments must also be sent to the Applicant's representatives.

D9. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 10, 1994 for Project No. 2069–003). All reply comments must be filed with the Commission within 105 days from the date of this notice. (February 23, 1994 for Project No. 2069–003).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

D10. Filing and Service of Responsive Documents—The application is ready for environmental analysis at this time, and the Commission is requesting comments, reply comments, recommendations, terms and conditions, and prescriptions.

The Commission directs, pursuant to § 4.34(b) of the regulations (see Order No. 533 issued May 8, 1991, 56 FR 23108, May 20, 1991) that all comments, recommendations, terms and conditions and prescriptions concerning the application be filed with the Commission within 60 days from the issuance date of this notice. (January 18, 1994 for Project No. 11058–001 and January 10, 1994 for Project No. 11365–000). All reply comments must be filed with the Commission within 105 days from the date of this notice. (March 1, 1994 for Project No. 11058–001 and February 23, 1994 for Project No. 11365–000).

Anyone may obtain an extension of time for these deadlines from the Commission only upon a showing of good cause or extraordinary circumstances in accordance with 18 CFR 385.2008.

All filings must: (1) Bear in all capital letters the title "COMMENTS", "REPLY COMMENTS", "RECOMMENDATIONS," "TERMS AND CONDITIONS," or "PRESCRIPTIONS;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person submitting the filing; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. All comments, recommendations, terms and conditions or prescriptions must set forth their evidentiary basis and otherwise comply with the requirements of 18 CFR 4.34(b). Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. Each filing must be accompanied by proof of service on all persons listed on the service list prepared by the Commission in this proceeding, in accordance with 18 CFR 4.34(b), and 385.2010.

E1. Filing and Service of Responsive Documents—The application is not ready for environmental analysis at this time; therefore, the Commission is not now requesting comments, recommendations, terms and conditions, or prescriptions.

When the application is ready for environmental analysis, the Commission will issue a public notice requesting comments, recommendations, terms and conditions, or prescriptions.

All filings must: (1) Bear in all capital letters the title "PROTEST" or "MOTION TO INTERVENE;" (2) set forth in the heading the name of the applicant and the project number of the application to which the filing responds; (3) furnish the name, address, and telephone number of the person protesting or intervening; and (4) otherwise comply with the requirements of 18 CFR 385.2001 through 385.2005. Agencies may obtain copies of the application directly from the applicant. Any of these documents must be filed by providing the original and the number of copies required by the Commission's regulations to: The Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426. An additional copy must be sent to Director, Division of Project Review, Office of Hydropower Licensing, Federal Energy Regulatory Commission, room 1027, at the above address. A copy

of any protest or motion to intervene must be served upon each representative of the applicant.

Dated: November 19, 1993, Washington, DC.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28938 Filed 11–24–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TM94–4–29–000]

Transcontinental Gas Pipe Line Corp.; Proposed Changes in FERC Gas Tariff

November 19, 1993.

Take notice that on November 15, 1993, Transcontinental Gas Pipe Line Corporation (TGPL) tendered for filing as part of its FERC Gas Tariff, Third Revised Volume No. 1, certain revised tariff sheets included in appendix A attached to the filing.

TGPL states that the purpose of the instant filing is to tract (1) rate and fuel changes attributable to the transportation service purchased from Texas Gas Transmission Corporation (Texas Gas) under its Rate Schedule FT the costs of which are include in the rates and charges payable under TGPL's Rate Schedule FT–NT, (2) rate changes attributable to the transportation service purchased from CBG Transmission Corporation (CNG) under its Rate Schedule X–74 the costs of which are included in the rates and charges payable under TGPL's Rate Schedule FT–NT and (3) rate changes attributable to storage services purchased from CNG under its Rate Schedule GSS the costs of which are included in the rates and charges payable under TGPL's Rate Schedule LSS. The tracking filing is being made pursuant to section 4 of TGPL's Rate Schedule FT–NT and section 4 of TGPL's Rate Schedule LSS.

Included in Appendices B and C attached to the filing is an explanation of the rate and fuel changes and details regarding the computation of the revised Rate Schedules FT–NT and LSS rates, respectively.

TGPL states that copies of the filing are being mailed to each of its FT–NT and LSS customers and interested State Commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 26, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–28941 Filed 11–24–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Energy Research

Health and Environmental Research Advisory Committee Renewal

Pursuant to section 14(a)(2)(A) of the Federal Advisory Committee Act, and in accordance with title 41 of the Code of Federal Regulations, § 101–6.1015(a), and following consultation with the Committee Management Secretariat, General Services Administration, notice is hereby given that the Health and Environmental Research Advisory Committee has been renewed for a two-year period beginning in November 1993. The Committee will provide advice to the Director, Office of Energy Research, on the Biological and Environmental Research Program managed by the Office of Health and Environmental Research.

The renewal of the Health and Environmental Research Advisory Committee has been determined to be essential to the conduct of the Department of Energy business and to be in the public interest in connection with the performance of duties imposed upon the Department of Energy by law. The Committee will operate in accordance with the provisions of the Federal Advisory Committee Act, the Department of Energy Organization Act (Pub. L. 95–91), and rules and regulations issued in implementation of those Acts.

Further information regarding this Advisory Committee can be obtained from Ms. Rachel Murphy at (202) 586–3279.

Issued in Washington, DC on November 22, 1993.

Marcia L. Morris,

Deputy Advisory Committee Management Officer.

[FR Doc. 93–29027 Filed 11–24–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Fossil Energy

[Docket EA–97]

Application for Export Authorization by Portland General Electric Company

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of application.

SUMMARY: On October 15, 1993, the Portland General Electric Company (PGE), filed an application with the Department of Energy (DOE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. The exports proposed by this application would be non-firm energy to British Columbia Hydro and Power Authority (BC Hydro) from uncontrollable hydroelectric resources, controllable hydroelectric resources, thermal resources, or power purchased by PGE.

DATES: Comments, protests or requests to intervene must be submitted on or before December 27, 1993.

ADDRESSES: Comments, protests or requests to intervene should be addressed as follows: Office of Coal & Electricity (FE–52), Office of Fuels Programs, Office of Fossil Energy, Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585.

Docket Number EA–97 should appear clearly on the envelope and the document contained therein.

FOR FURTHER INFORMATION CONTACT: William H. Freeman (Program Office) 202–586–5883 or Lise Howe (Program Attorney) 202–586–2900.

SUPPLEMENTARY INFORMATION: On October 15, 1993, PGE filed an application with the Office of Fossil Energy (FE) for authorization to export electric energy to Canada pursuant to section 202(e) of the Federal Power Act. Specifically, PGE has applied for authorization to transmit economy and firm surplus energy to BC Hydro. The electrical energy proposed for export would be delivered to BC Hydro over transmission facilities owned and operated by the Bonneville Power Administration (BPA) for which Presidential permits have been granted in Dockets PP–10, PP–36, and PP–46. These facilities consist of two 500-kilovolt (kV) lines between BPA's Custer Substation and the U.S.-Canadian border, and two 230-kV lines extending from BPA's Boundary Substation to the U.S.-Canadian border.

PGE, BPA, and BC Hydro are all parties to the Western Systems Power Pool Agreement. The Western Systems Power Pool (WSPP) is a diverse group

involving more than 40 privately-owned and publicly-owned utilities, including federal agencies, like BPA, that serve customers in more than twenty-two states and British Columbia. The WSPP's primary function is to provide an electronic bulletin board on which members may provide information on services or products currently available for purchase. The WSPP Agreement provides for sales of coordination power and transmission services among members so long as the price is below a cost-based ceiling.

PGE will deliver the power it sells to BC Hydro over BPA's transmission system. The portion of BPA's system used to transmit power to BC Hydro will be the Canadian (Northern) Intertie which consists of:

1. Two 500-kV lines between Custer Substation and the U.S.-Canadian border;
2. One 500-kV line between the Custer and Monroe Substations; and,
3. Two 230-kV lines from the Boundary Substation to the U.S.-Canadian border, including the associated substation facilities.

PGE states in its application that the power sold to BC Hydro can be transferred onto the BPA system at a number of interconnection points. PGE's 230-kV system interconnects with BPA's 500-kV system at the McLoughlin, Pearl, Keeler, and Allston Substations.

Any person desiring to be heard or to protest said application should file a petition to intervene or protest with the address provided above in accordance with Rules 211 and 214 of the Rules of Practice and Procedure (18 CFR 385.211, 385.214).

Any such petitions and protests should be filed with the DOE no later than December 27, 1993. Additional copies of such petitions to intervene or protests also should be filed directly with Ms. Melinda Horgan, Assistant General Counsel, Portland General Electric Company, 121 SW Salmon Street, Portland, Oregon 97204.

Pursuant to 18 CFR 385.211, protests and comments will be considered by the DOE in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene under 18 CFR 385.214. Section 385.214 requires that a petition to intervene must state, to the extent known, the position taken by the petitioner and the petitioner's interest in sufficient factual detail to demonstrate either that the petitioner has a right to participate because it is a State Commission; that it has or represents an interest which may be directly affected by the outcome of the proceeding, including any interest as a consumer, customer, competitor, or security holder of a party to the proceeding; or that the petitioner's participation is in the public interest.

A final decision will be made on this application after a determination is made by the DOE that the proposed transaction will not impair the sufficiency of electric supply within the United States or impede or tend to impede the coordination in the public interest of facilities subject to the jurisdiction of the DOE.

Before an export authorization may be issued or amended, the environmental impacts of the proposed DOE action must be evaluated pursuant to the National Environmental Policy Act of 1969 (NEPA). The NEPA compliance process is a cooperative, non-adversarial process involving members of the public, State governments and the Federal government. The process affords all persons interested in or potentially affected by the environmental consequences of a proposed action an opportunity to present their views, which will be considered in the preparation of the environmental documentation for the proposed action. Intervening and becoming a party to this proceeding will not create any special status for the petitioner with regard to the NEPA process. Should a public proceeding be necessary in order to comply with NEPA, notice of such activities and information on how the public can participate in those activities will be published in the **Federal Register**, local newspapers, and public libraries and/or reading rooms in the vicinity of the electric transmission facilities.

Copies of this application will be made available, upon request, for public inspection and copying at the Department of Energy, Room 3F–056, Forrestal Building, 1000 Independence Avenue SW., Washington, DC, from 9 a.m. to 4 p.m., Monday through Friday.

Issued in Washington, DC on November 22, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office Fossil Energy.

[FR Doc. 93–29026 Filed 11–24–93; 8:45 am]

BILLING CODE 6450–01–P

Western Area Power Administration

Collections From Central Valley Project Power Contractors To Carry Out the Restoration, Improvement, and Acquisition of Environmental Habitat Provisions of the Central Valley Project Improvement Act of 1992

AGENCY: Western Area Power Administration, DOE.

ACTION: Notice of proposed procedures for the assessment and collection of restoration fund payments from the Central Valley Project power contractors.

SUMMARY: The Central Valley Project (CVP) Improvement Act of 1992 (Act) (Pub. L. 102–575, 106 Stat. 4726 et seq.) establishes in the Treasury of the United States the "Central Valley Project Restoration Fund" to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors (Restoration Fund payments). The Secretary of the Interior, through the Bureau of Reclamation (Reclamation), is responsible for determining the CVP water contractors' share and the CVP power contractors' share of the Restoration Fund payments. Because Western Area Power Administration (Western) is responsible for the marketing of CVP power and maintains all CVP power contracts, Western has agreed to assess and collect the total power contractors' share of the Restoration Fund payments, as determined by Reclamation, from each power contractor. By implementing this process, Western will establish procedures to accomplish the assessment and collection of Restoration Fund payments from the CVP power contractors as required by the Act.

DATES: The comment period will begin with the publication of this notice in the **Federal Register** and will end the later of 30 days after publication or December 19, 1993. All written comments should be received by Western by the end of the comment period to be assured consideration. A public information forum will be held at 10 a.m. on December 16, 1993, and will be followed by a public comment forum at 1 p.m. The forums will be held at the Red Lion Hotel, 2001 Point West Way, Sacramento Room, Sacramento, CA 95815.

The final procedures are to become effective not less than 90 days after the publication of this notice in the **Federal**

Register or February 18, 1994, whichever occurs later.

ADDRESSES: All written comments should be mailed to James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097. All documentation made or retained by Western for the purpose of developing these procedures will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, suite 105, Sacramento, California 95825–1097.

FOR FURTHER INFORMATION CONTACT:

Ms. Zola M. Jackson, Assistant Area Manager for Power Marketing, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097, (916) 649–4421.

SUPPLEMENTARY INFORMATION: Section 3407 of the Act establishes in the Treasury of the United States the "Central Valley Project Restoration Fund" to carry out the habitat restoration, improvement, and acquisition provisions of the Act. The Act further requires the Secretary of the Interior to assess and collect annual mitigation and restoration payments from CVP water and power contractors. The Secretary of the Interior, through Reclamation, is responsible for determining and collecting the CVP water contractors' share and the CVP power contractors' share of the annual Restoration Fund payments.

Because Western is responsible for the marketing of CVP power, Western has agreed to administer the assessment and collection of the Restoration Fund payments from the CVP power contractors. Western will enter into a letter agreement with Reclamation to establish procedures for depositing the collections from the CVP power contractors into the Restoration Fund.

The amount of the assessment against each CVP power contractor is proposed to be based upon a total power Restoration Fund payment obligation amount which will be determined by Reclamation. This total power Restoration Fund payment obligation will then be prorated among the CVP power contractors by Western. Every month each CVP power contractor will receive a supplemental bill reflecting this prorated amount. The CVP power contractor will pay that prorated amount to Western, who will deposit all amounts collected from the CVP power contractors into the Restoration Fund.

Proposed Procedures

Acronyms and Definitions

Assessment Month: The service month which is 2 months prior to the actual billing month. The data derived from this service month will serve as the basis for calculating the monthly supplemental bills.

Billing Month: The month each CVP power contractor will be billed for the Restoration Fund payment.

CVP: Central Valley Project.

CVP Power Contractor: Any entity purchasing firm capacity and energy from Western on a long-term basis.

CVP Power Contractor's Restoration Fund Payment: The amount recorded as payable on the CVP power contractor's supplemental bill.

FY: Fiscal year beginning October 1, 19XX, and ending September 30, 19XX+1.

Long-Term Basis: A period in excess of 1 year.

Reclamation: Bureau of Reclamation, United States Department of the Interior.

Restoration Fund: The Central Valley Project Restoration Fund created by section 3407 of Public Law 102–575, 106 Stat. 4726 *et seq.*

Total Power Restoration Fund Payment Obligation: The total annual Restoration Fund payment obligation calculated and assigned to the CVP power contractors by Reclamation.

Western: Western Area Power Administration, United States Department of Energy.

Procedures

Determination of the Total Power Restoration Fund Payment Obligation

Reclamation is responsible for assigning the total power Restoration Fund payment obligation to the CVP power contractors. Reclamation will, by written communication, provide to Western's Area Manager, Sacramento Area Office, the amount determined to be the total power Restoration Fund payment, and a detailed explanation of the computation of the amount. Upon receiving the written communication from Reclamation, Western will notify each CVP power contractor of the total Power Restoration Fund payment obligation and the monthly amounts to be collected from all CVP power contractors.

Prorating the Total Power Restoration Fund Payment Obligation

Western will prorate the total power Restoration Fund payment obligation against all CVP power contractors each FY. The total power Restoration Fund payment for any FY will be divided by the number of months remaining in the FY, after notification by Reclamation, to determine a monthly obligation.

Each month, Western will prorate the total monthly obligation, based on the delivered or scheduled energy in kilowatthours (kWh) in the assessment month. The total amount assessed to the CVP power contractor will be equal to the ratio of the individual CVP power contractor's share of delivered or scheduled energy in kWh in the assessment month to the sum of all CVP power contractors' delivered or scheduled energy in kWh in the assessment month. Each CVP power contractor's ratio will then be applied to the total monthly obligation to determine the individual CVP power contractor's payment for that billing month.

Collection of CVP Power Contractor's Restoration Fund Payment

Each CVP power contractor will receive a supplemental bill on or about the 25th, but no later than the 30th, of each billing month designating the amount payable. Within 20 days of the billed date shown on the supplemental bill, the total amount payable as set forth on the supplemental bill will be due. Each FY, Western will begin issuing supplemental bills for Restoration Fund payments in the billing cycle which is at least 30 days after (1) October 1 or (2) written notification of the total power Restoration Fund payment obligation is received from Reclamation, whichever occurs later.

Payment Due Date

All CVP power contractors' Restoration Fund payments are due and payable by the CVP power contractors before the close of business on the 20th calendar day after the date of issuance of each supplemental bill or the next business day thereafter if said day is a Saturday, Sunday, or Federal holiday.

Interest Assessed to Delinquent Restoration Fund Payment

Western will calculate and assess interest charges on all CVP power Restoration Fund payment obligations which are not paid in full by the due date as specified above. Interest will accrue on all unpaid balances and be compounded quarterly at the average prime interest rate values published in the Federal Reserve Bulletin for each calendar quarter.

Deposit of CVP Power Contractor's Restoration Fund Payments Into the Restoration Fund

On or about the 21st day of the month following each billing month, Western will deposit all of the CVP power contractors' Restoration Fund payments, including late payment interest payments, into the Restoration Fund.

Interim Billing

Western plans to implement collections for the Restoration Fund, on an interim basis beginning with a November 24, 1993, supplemental billing.

FY 1994 Billing

The total power Restoration Fund payment obligation assigned by Reclamation to the CVP power contractors for FY 1994 is $7,092,800. Western will distribute the $7,092,800 due in FY 1994 over 10 months, which equals the total monthly obligation of $709,280 per month for FY 1994 from November 1993 to August 1994. The amounts payable to Western for the November billing will be based upon the September 1993 service month's actual delivered or scheduled energy in kWh. The total amount billed to each CVP power contractor in November will equal the individual CVP power contractor's actual September service month's delivered or scheduled energy in kWh divided by the total of all CVP power contractors' actual September service month's delivered or scheduled energy in kWh times the total monthly obligation of $709,280.

Adjustments Required as the Result of Final Procedures

Should the final procedures result in a change to Western's proposed allocations among the CVP power contractors, adjustments will be calculated retroactively to the date of the initial supplemental billing and adjusted in future FY 1994 supplemental bills.

Instructions for Mailing Public Comments

The comment period will begin with the publication of this notice in the **Federal Register** and will end the later of 30 days after publication or December 19, 1993. All written comments should be received by Western by the end of the comment period to be assured consideration. All written comments should be mailed to James C. Feider, Area Manager, Sacramento Area Office, Western Area Power Administration, 1825 Bell Street, suite 105, Sacramento, CA 95825–1097.

Availability of Information

All documentation made or retained by Western for the purpose of developing these procedures is and will be made available for inspection and copying at the Sacramento Area Office, located at 1825 Bell Street, Suite 105, Sacramento, CA 95825–1097.

Regulatory Flexibility Analysis

Pursuant to the Regulatory Flexibility Act of 1980, 5 U.S.C. 601 *et seq.*, each agency, when required to publish proposed procedures, is further required to prepare and make available for public comment an initial regulatory flexibility analysis to describe the impact of the procedures on small entities. Western has determined that (1) this rulemaking relates to services offered by Western and, therefore, is not a rule within the purview of the Act and (2) the impacts of an assessment from Western would not cause a substantial adverse economic impact to such entities. The requirements of this Act can be waived if the head of the agency certifies that the rule will not, if promulgated, have a significant economic impact on a substantial number of small entities. By execution of this **Federal Register** notice, Western's Administrator certifies that no significant economic impact on a substantial number of small entities will occur.

Executive Order 12866

DOE has determined that this is not a significant regulatory action as defined in Executive Order 12866, 58 FR 51735, October 4, 1993. Western has an exemption from centralized regulatory review under Executive Order 12866; accordingly, no clearance of this procedure by OMB is required.

Environmental Evaluation

In compliance with the National Environmental Policy Act of 1969, 42 U.S.C. 4321 *et seq.*; Council on Environmental Quality Regulations (40 CFR Part 1500–1508); Reclamation is performing a Programmatic Environmental Impact Statement (PEIS) on the Central Valley Project Improvement Act of 1992 (Pub. L. 102–575, 106 Stat. 426 *et seq.*). Western is a cooperating agency in that PEIS. The proposed procedures for the Restoration Fund payments covered by this notice fall within Western's routine activities and operations categorical exclusion issued January 7, 1993, and will have no environmental impact.

Issued at Golden, Colorado, November 10, 1993.

William H. Clagett,

Administrator.

[FR Doc. 93–29028 Filed 11–24–93; 8:45 am]

BILLING CODE 6450–01–P

ENVIRONMENTAL PROTECTION AGENCY

[ER–FRL–4705–8]

Environmental Impact Statements; Notice of Availability

Responsible Agency: Office of Federal Activities, General Information (202) 260–5076 OR (202) 260–5075. Weekly receipt of Environmental Impact Statements Filed November 15, 1993 Through November 19, 1993 Pursuant to 40 CFR 1506.9.

EIS No. 930497, Draft Supplement, SFW, Federal Aid in Sports Fish and Wildlife Restoration Programs Operation and Management Programmatic EIS, Updated Information, Implementation and Funding, Due: January 17, 1994, Contact: Columbus H. Brown (703) 358–2156.

EIS No. 930408, Draft Supplement, AFS, MT, Lewis and Clark National Forest 1986–90 Noxious Weed Control Program, Updated Information, Implementation, several Counties, MT, Due: January 10, 1994, Contact: Bob Casey (406) 791–7700.

EIS No. 930409, Draft EIS, AFS, MT, Berray Mountain Timber Sale, Harvesting Timber, Kootenai National Forest, Cabinet Ranger District, Sanders County, MT, Due: January 10, 1994, Contact: Dave Clay (406) 827–3533.

EIS No. 930410, Final EIS, APH, Medfly (Mediterranean Fruit Fly) Cooperative Eradication Program, Implementation AL, AZ, CA, FL, GA, LA, MS, SC and TX, Due: December 27, 1993, Contact: Harold T. Smith (301) 436–8963.

EIS No. 930411, Final EIS, FRC, CA, Lower Mokelumne River Hydroelectric Project Modifications, Licensing, (FERC. No. 29116–004), Parts of Pardee and Camanhe Dams, Mokelumne River, CA, Due: December 27, 1993, Contact: John A. Schnagl (202) 219–2661.

EIS No. 930412, Final EIS, USA, NM, AZ, UT, Woodbridge Research Facility (WRF) Electromagnetic Pulse Simulators Relocation Project, Construction and Operation, Sites Selected for Six potential locations, Dugway Proving Ground, UT; Yuma Proving Ground, AZ; and the remaining (4) in White Sands Missile

Range, NM, Due: December 27, 1993, Contact: Eugene Patrick (703) 490–2110.

EIS No. 930413, Draft Supplement, AFS, CA, Casa-Guard Timber Sale, Timber Harvesting, Updated Information concerning Impact on the California Spotted Owl and Fish Creek Watershed and Reforestation, Sequoia National Forest, Cannel Meadow Ranger District, Tulare County, CA, Due: January 10, 1994, Contact: Sandra Keys (209) 784–1500.

EIS No. 930414, Draft Supplement, AFS, CA, Cottonwood and Gulf Timber Sales, Timber Harvesting in the Breckenridge Compartment, Updated Information Concerning Withdrawal of the Golf Timber Sale and Impacts on the California Spotted Owl and Reforestation for the Cottonwood Timber Sale, Sequoia National Forest, Greenhorn Ranger District, Kern County, CA, Due: January 10, 1994, Contact: Sandra Kay (209) 784–1500.

EIS No. 930415, Draft EIS, NRC, LA, Claiborne Uranium Enrichment Center, Construction and Operation, (NUREG–1482), NPDES Permit and Licensing, Homer, Claiborne Parish, LA, Due: January 10, 1994, Contact: Merri Horn (301) 504–2606.

EIS No. 930416, Final Eis, IBR, CA, Los Vaqueros Water Quality and Reliability Project, Implementation, Section 10 and 404 Permits and Possible NPDES Permit, Contra Costa Water District, Contra Costa County, CA, Due: December 27, 1993, Contact: Doug Kleinsmith (916) 978–5129.

EIS No. 930417, Draft EIS, NPS, ID, City of Rocks National Reserve, Comprehensive Management Plan and Development Concept Plan, Implementation, Cassia County, ID, Due: February 1, 1994, Contact: Mary Magee (303) 969–2210.

EIS No. 930418, Draft EIS, AFS, CO, Illonis Creek Timber Sale, Harvesting Timber, Implementation, Amended Land and Resource Management Plan, Grand Mesa, Uncompahgre and Gunnison National Forests, Gunnison County, CO, Due: January 14, 1994, Contact: Jeff Ulrich (303) 874–6648.

EIS No. 930419, Draft EIS, AFS, NM, Diamond Bar Allotment Management Plan, Implementation, Gila National Forest, Mimbres Ranger District, Sierra and Catron Counties, NM, Due: February 28, 1994, Contact: Russell Ward (505) 536–2250.

Amended Notices

EIS No. 930395, Draft EIS, TVA, KY, TN, Land between the Lakes (LBL) Natural Resource Management Plan, Implementation, KY and TN, Due: January 10, 1994, Contact: Dale K. Fowler (614) 632–4223. Published FR—11–12–93—Due Date Correction.

Dated: November 22, 1993.

Richard E. Sanderson,

Director, Office of Federal Activities.

[FR Doc. 93–29012 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–U–M

[OPPTS–00144; FRL–4745–7]

Biotechnology; Discussion of Agency's Current Thinking on Biotechnology Issues; Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of open meeting.

SUMMARY: EPA's Office of Prevention, Pesticides and Toxic Substances will hold a 1-day meeting to discuss biotechnology issues. This will be an information-gathering meeting wherein the views of individual participants at the meeting will be collected. EPA anticipates that during 1994, it will publish two proposals dealing with regulation of biotechnology products: A proposal addressing microorganisms under the Toxic Substances Control Act (TSCA), and a proposal dealing with pesticidal substances produced by plants under the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA) and the Federal Food, Drug, and Cosmetic Act (FFDCA). Agency staff will briefly outline EPA's current thinking on these two proposals during the first quarter of the meeting.

DATES: The meeting will be held on Thursday, December 16, 1993, starting at 2 p.m. and ending at 5 p.m.

ADDRESSES: The meeting will be held at the Environmental Protection Agency, 401 M St., SW., Rm. 642 East Tower, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Ms. Creavery Lloyd, Science and Policy Staff (MC–7100), Office of Prevention, Pesticides and Toxic Substances, Environmental Protection Agency, 401 M St., SW., Rm. 627B East Tower, Washington, DC 20460, Telephone: (202) 260–6900.

SUPPLEMENTARY INFORMATION: Attendance by the public will be limited to available space. Persons interested in attending the meeting should contact Creavery Lloyd at 202–260–6900 or send a FAX to 202–260–0951 no later than Wednesday, December 8, 1993.

Dated: November 19, 1993.

Lynn R. Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

[FR Doc. 93–29016 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4807–1]

Science Advisory Board; Notification of Public Advisory Committee Meeting

SUMMARY: Pursuant to the Federal Advisory Committee Act, Public Law 92–463, notice is hereby given that the Science Advisory Board's (SAB) *ad hoc* Industrial Excess Landfill (IEL) Advisory Panel will meet on December 14, 1993 at the Uniontown United Methodist Church, 13370 Cleveland Avenue, NW., Uniontown, Ohio 44685. The meeting will begin at 9 a.m. and adjourn no later than 5 p.m. This is the third meeting of the IEL Panel. Information relevant to the history of the request to the SAB and the charge to the Panel are contained in a previous **Federal Register** notice (58 FR (129):36686–36687, dated 8 July 1993). The primary purpose of this meeting is for the Panel to discuss the materials they have received concerning the IEL site and to formulate responses to the questions outlined in the Charge to the Panel. There will be a brief public comment period. The meeting is open to the public, however, due to limited space, seating will be on a first-come basis.

FOR FURTHER INFORMATION CONTACT: For details concerning this review, including a draft meeting agenda and Panel roster, or the overall activities of this Panel or the Science Advisory Board, please contact the Designated Federal Official for this review: Mr. Robert Flaak, Assistant Staff Director, Science Advisory Board (1400F), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460. Telephone: (202) 260–6552 and FAX: (202) 260–7118. Members of the public who wish to make a brief oral presentation to the Panel must contact Mr. Flaak in writing (by letter or by fax) no later than 12 noon Eastern Time, Friday, December 10, 1993 in order to be included on the Agenda.

PROVIDING ORAL OR WRITTEN COMMENTS: The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date may be mailed to the Panel prior to its meeting; comments received too close to the meeting date will normally be provided to the Panel at its meeting. Written comments may be provided to the Panel up until the time of the meeting.

Dated: November 18, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93–29050 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–P

[OPP–60049; FRL–4741–2]

Intent to Suspend Certain Pesticide Registrations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of issuance of notices of intent to suspend.

SUMMARY: This Notice, pursuant to section 6(f)(2) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), 7 U.S.C. 136 et seq., announces that EPA has issued Notices of Intent to Suspend pursuant to sections 3(c)(2)(B) and 4 of FIFRA. The Notices were issued following issuance of Section 4 Reregistration Requirements Notices by the Agency and the failure of registrants subject to the Section 4 Reregistration Requirements Notices to take appropriate steps to secure the data required to be submitted to the Agency. This Notice includes the text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information. Table A of this Notice further identifies the registrants to whom the Notices of Intent to Suspend were issued, the date each Notice of Intent to Suspend was issued, the active ingredient(s) involved, and the EPA registration numbers and names of the registered product(s) which are affected by the Notices of Intent to Suspend. Moreover, Table B of this Notice identifies the basis upon which the Notices of Intent to Suspend were issued. Finally, matters pertaining to the timing of requests for hearing are specified in the Notices of Intent to Suspend and are governed by the deadlines specified in section 3(c)(2)(B). As required by section 6(f)(2), the Notices of Intent to Suspend were sent by certified mail, return receipt requested, to each affected registrant at its address of record.

FOR FURTHER INFORMATION CONTACT: Stephen L. Brozena, Office of Compliance Monitoring (7204), Laboratory Data Integrity Assurance Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, (703) 308–8267.

SUPPLEMENTARY INFORMATION:

I. Text of a Notice of Intent to Suspend

The text of a Notice of Intent to Suspend, absent specific chemical, product, or factual information, follows:

United States Environmental Protection Agency

Office of Prevention, Pesticides and Toxic Substances

Washington, DC 20460

Certified Mail

Return Receipt Requested

SUBJECT: Suspension of Registration of Pesticide Product(s) Containing _____ for Failure to Comply with the Section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice for _____ Dated _____.

Dear Sir/Madam:

This letter gives you notice that the pesticide product registrations listed in Attachment I will be suspended 30 days from your receipt of this letter unless you take steps within that time to prevent this Notice from automatically becoming a final and effective order of suspension. The Agency's authority for suspending the registrations of your products is sections 3(c)(2)(B) of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA). Upon becoming a final and effective order of suspension, any violation of the order will be an unlawful act under section 12(a)(2)(J) of FIFRA.

You are receiving this Notice of Intent to Suspend because you have failed to comply with the terms of the Phase 5 Registration Eligibility Document Data Call-In Notice imposed pursuant to section 4(g)(2)(b) and section (3)(2)(B) of FIFRA.

The specific basis for issuance of this Notice is stated in the Explanatory Appendix (Attachment III) to this Notice. Affected products and the requirements which you failed to satisfy are listed and described in the following three attachments:

Attachment I Suspension Report - Product List

Attachment II Suspension Report - Requirement List

Attachment III Suspension Report - Explanatory Appendix

The suspension of the registration of each product listed in Attachment I will become final unless at least one of the following actions is completed.

1. You may avoid suspension under this Notice if you or another person adversely affected by this Notice properly request a hearing within 30 days of your receipt of this Notice. If you request a hearing, it will be conducted in accordance with the requirements of section 6(d) of FIFRA and the Agency's procedural regulations in 40 CFR part 164.

Section 3(c)(2)(B), however, provides that the only allowable issues which may be addressed at the hearing are whether you have failed to take the actions which are the bases of this Notice and whether the Agency's decision regarding the disposition of existing stocks is consistent with FIFRA. Therefore, no substantive allegation or legal argument concerning other issues, including but not limited to the Agency's original decision to require the submission of data or other information, the need for or utility of any of the required data or other information or deadlines imposed, and the risks and benefits associated with continued registration of the affected product, may be considered in the proceeding. The Administrative Law Judge shall by order dismiss any objections which have no bearing on the allowable issues which may be considered in the proceeding.

Section 3(c)(2)(B)(iv) of FIFRA provides that any hearing must be held and a determination issued within 75 days after receipt of a hearing request. This 75–day period may not be extended unless all parties in the proceeding stipulate to such an extension. If a hearing is properly requested, the Agency will issue a final order at the conclusion of the hearing governing the suspension of your products.

A request for a hearing pursuant to this Notice must (1) include specific objections which pertain to the allowable issues which may be heard at the hearing, (2) identify the registrations for which a hearing is requested, and (3) set forth all necessary supporting facts pertaining to any of the objections which you have identified in your request for a hearing. If a hearing is requested by any person other than the registrant, that person must also state specifically why he asserts that he would be adversely affected by the suspension action described in this Notice. Three copies of the request must be submitted to: Hearing Clerk, 1900, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, and an additional copy should be sent to the signatory listed below. The request must be *received* by the Hearing Clerk by the 30th day from your receipt of this Notice in order to be legally effective. The 30–day time limit is established by FIFRA and cannot be extended for any reason. Failure to meet the 30–day time limit will result in automatic suspension of your registration(s) by operation of law and, under such circumstances, the suspension of the registration for your

affected product(s) will be final and effective at the close of business 30 days after your receipt of this Notice and will not be subject to further administrative review.

The Agency's Rules of Practice at 40 CFR 164.7 forbid anyone who may take part in deciding this case, at any stage of the proceeding, from discussing the merits of the proceeding *ex parte* with any party or with any person who has been connected with the preparation or presentation of the proceeding as an advocate or in any investigative or expert capacity, or with any of their representatives. Accordingly, the following EPA offices, and the staffs thereof, are designated as judicial staff to perform the judicial function of EPA in any administrative hearings on this Notice of Intent to Suspend: The Office of the Administrative Law Judges, the Office of the Judicial Officer, the Administrator, the Deputy Administrator, and the members of the staff in the immediate offices of the Administrator and Deputy Administrator. None of the persons designated as the judicial staff shall have any *ex parte* communication with trial staff or any other interested person not employed by EPA on the merits of any of the issues involved in this proceeding, without fully complying with the applicable regulations.

2. You may also avoid suspension if, within 30 days of your receipt of this Notice, the Agency determines that you have taken appropriate steps to comply with the section 4 Phase 5 Reregistration Eligibility Document Data Call-In Notice requirements. In order to avoid suspension under this option, you must satisfactorily comply with Attachment II, Requirement List, for each product by submitting all required supporting data/information described in Attachment II and in the Explanatory Appendix (Attachment III) to the following address (preferably by certified mail):

Office of Compliance Monitoring (7204), Laboratory Data Integrity Assurance Division, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460.

For you to avoid automatic suspension under this Notice, the Agency must also determine within the applicable 30–day period that you have satisfied the requirements that are the bases of this Notice and so notify you in writing. You should submit the necessary data/information as quickly as possible for there to be any chance the Agency will be able to make the necessary determination in time to avoid suspension of your product(s).

The suspension of the registration(s) of your company's product(s) pursuant to this Notice will be rescinded when the Agency determines you have complied fully with the requirements which were the bases of this Notice. Such compliance may only be achieved by submission of the data/information described in the attachments to the signatory below.

Your product will remain suspended, however, until the Agency determines you are in compliance with the requirements which are the bases of this Notice and so informs you in writing.

After the suspension becomes final and effective, the registrant subject to this Notice, including all supplemental registrants of product(s) listed in Attachment I, may not legally distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Persons other than the registrant subject to this Notice, as defined in the preceding sentence, may continue to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I.

Nothing in this Notice authorizes any person to distribute, sell, use, offer for sale, hold for sale, ship, deliver for shipment, or receive and (having so received) deliver or offer to deliver, to any person, the product(s) listed in Attachment I in any manner which would have been unlawful prior to the suspension.

If the registrations of your products listed in Attachment I are currently suspended as a result of failure to comply with another section 4 Data Requirements Notice or section 3(c)(2)(B) Data Call-In Notice, this Notice, when it becomes a final and effective order of suspension, will be in addition to any existing suspension, i.e., all requirements which are the bases of the suspension must be satisfied before the registration will be reinstated.

You are reminded that it is your responsibility as the basic registrant to notify all supplementary registered distributors of your basic registered product that this suspension action also applies to their supplementary registered products and that you may be held liable for violations committed by your distributors. If you have any questions about the requirements and procedures set forth in this suspension notice or in the subject section 4 Data Requirements Notice, please contact Stephen L. Brozena at (703) 308–8267.

Sincerely yours,

Director, Office of Compliance Monitoring

Attachments:

Attachment I - Product List

Attachment II - Requirement List

Attachment III - Explanatory Appendix

II. Registrants Receiving and Affected by Notices of Intent to Suspend; Date of Issuance; Active Ingredient and Products Affected

The following is a list of products for which a letter of notification has been sent:

TABLE A.—LIST OF PRODUCTS

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Air Products and Chemicals	02947200009	Ethylene	Ethylene	10/8/93
Angus Chemical Corporation	01136400005	Sodium Hydroxide	Angus Hot Rod	10/8/93
Brooker Chemical Corporation	00828100001	Indole-3-Butyric Acid	Hormex Rooting Powder No. 8	10/8/93
	00828100002	Indole-3-Butyric Acid	Hormex Rooting Powder No. 16	10/8/93
	00828100003	Indole-3-Butyric Acid	Hormex Rooting Powder No. 3	10/8/93
	00828100004	Indole-3-Butyric Acid	Hormex Rooting Powder No. 30	10/8/93
	00828100005	Indole-3-Butyric Acid	Hormex Rooting Powder No. 45	10/8/93
	00828100006	Indole-3-Butyric Acid	Hormex Rooting Powder No. 1	10/8/93
	00828100007	Indole-3-Butyric Acid	Hormex	10/8/93
Cotey Chemical Company	00094290002	Sodium Hydroxide	Weigicide Cleaner	10/8/93
Earth Science Products Corporation	04390500001	Indole-3-Butyric Acid	Wood's Rooting Compound	10/8/93
Green Light Company	00086900060	Indole-3-Butyric Acid	Green Light Root Stimulator and Starter Solution	10/8/93

TABLE A.—LIST OF PRODUCTS—Continued

Registrant Affected	EPA Registration Number	Active Ingredient	Name of Product	Date Issued
Hortus USA Corporation	06331000008	Indole-3-Butyric Acid	Rhizopon AA Water Soluble Tablets	10/8/93
Iron Out, Inc.	00099020001	Sodium Hydroxide	Klean Em All Root Destroyer	10/8/93
National Research & Chemical Company	04219800006	Indole-3-Butyric Acid	Grow More Rapid Root	10/8/93
Plantabbs Corp.	00533200010	Indole-3-Butyric Acid	Plantabbs Rooting Powder	10/8/93
Riverside/Terra Corporation	00977900313	Indole-3-Butyric Acid	Crop Booster Plus 12-8-8	10/8/93
	00977900321	Indole-3-Butyric Acid	Maxon II	10/8/93
Rockland Corporation	00057200333	Indole-3-Butyric Acid	Hormo-Root "B"	10/8/93
	00057200334	Indole-3-Butyric Acid	Hormo-Root "C"	10/8/93
	00057200335	Indole-3-Butyric Acid	Hormo-Root "A"	10/8/93
	00057200336	Indole-3-Butyric Acid	Hormo-Root 4	10/8/93
	00057200337	Indole-3-Butyric Acid	Hormo-Root 1	10/8/93
	00057200338	Indole-3-Butyric Acid	Hormo-Root 2; Hormo-Root 3	10/8/93
	00057200339	Indole-3-Butyric Acid	Hormo-Root 3	10/8/93
Rooto Corp.	00813200003	Sodium Hydroxide	Rooto No. 2	10/8/93
	00828100003	Indole-3-Butyric Acid	Hormex Rooting Powder No. 3	10/8/93
Syntex, S.A. DE C.V. Division Quimica	04247300001	Indole-3-Butyric Acid	Indole-3-Butyric Acid	10/8/93
Voluntary Purchasing Group, Inc.	00740100343	Indole-3-Butyric Acid	Ferti-Lome Rooting Powder	10/8/93

III. Basis for Issuance of Notice of Intent; Requirement List

The following companies failed to submit the following required data or information:

TABLE B.—REQUIREMENT LIST

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due–Date
Indole-3-Butyric Acid	Riverside/Terra Corporation	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Green Light Company	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due–Date
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Plantabbs Corp.	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Brooker Chemical Corporation	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Rockland Corporation	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
	National Research & Chemical Company	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
	Syntex, S.A. De C.V. Division Quimica	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due–Date
	Earth Science Products Corporation	Primary Dermal Irritation - Tier I	152-14	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
	Hortus USA Corporation	Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
		Product Identity	151-10	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
	Voluntary Purchasing Group, Inc.	Product Identity	151-10	5/10/93
		Manufacturing Process	151-11	5/10/93
		Discussion of Formation of Impurities	151-12	5/10/93
		Analysis of Samples	151-13	5/10/93
		Certification of Limits	151-15	5/10/93
		Analytical Methods	151-16	5/10/93
		Physical and Chemical Properties	151-17	5/10/93
		Acute Oral Toxicity - Tier I	152-10	5/10/93
		Acute Dermal Toxicity - Tier I	152-11	5/10/93
		Acute Inhalation - Tier I	152-12	5/10/93
		Primary Eye Irritation - Tier I	152-13	5/10/93
		Primary Dermal Irritation - Tier I	152-14	5/10/93
		Hypersensitivity Study - Tier I	152-15	5/10/93
		Hypersenstivity Incidents - Tier I	152-16	5/10/93
		Confidential Statement of Formula (CSF) Form		5/10/93
		Certification Form: Data Citation		5/10/93
		Certification Form: Offer to Cost Share		5/10/93
		Certification Form: Data Compensation		5/10/93
Sodium Hydroxide	Cotey Chemical Company	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61-1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
	Iron Out, Inc.	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61-1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
	Angus Chemical Corporation	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61-1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93

TABLE B.—REQUIREMENT LIST—Continued

Active Ingredient	Registrant Affected	Requirement Name	Guideline Reference No.	Original Due-Date
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
	Rooto Corp.	Confidential Statement of Formula (CSF) Form		5/30/93
		Chemical Identity	61-1	5/30/93
		Beginning Materials & Manufacturing Process	61-2	5/30/93
		Discussion of Formation of Impurities	61-3	5/30/93
		Preliminary Analysis of Product Samples	62-1	5/30/93
		Certification of Ingredient Limits	62-2	5/30/93
		Analytical Method to Verify Certified Limits	62-3	5/30/93
		Odor	63-4	5/30/93
		Melting Point	63-5	5/30/93
		Boiling Point	63-6	5/30/93
		Density, Bulk Density, or Specific Gravity	63-7	5/30/93
		Solubility	63-8	5/30/93
		Vapor Pressure	63-9	5/30/93
		Dissociation Constant	63-10	5/30/93
		Octanol/Water Partition Coefficient	63-11	5/30/93
		pH	63-12	5/30/93
		Stability	63-13	5/30/93
		Oxidizing/Reducing Action	63-14	5/30/93
		Flammability	63-15	5/30/93
		Explodability	63-16	5/30/93
		Storage Stability	63-17	5/30/93
		Viscosity	63-18	5/30/93
		Miscibility	63-19	5/30/93
		Corrosion Characteristics	63-20	5/30/93
		Dielectric Breakdown Voltage	63-21	5/30/93
		Certification Form: Data Citation		5/30/93
		Certification Form: Offer to Cost Share		5/30/93
		Certification Form: Data Compensation		5/30/93
Ethylene	Air Products and Chemicals, Inc.	Certification Form: Data Citation		5/28/93
		Certification Form: Offer to Cost Share		5/28/93
		Certification Form: Data Compensation		5/28/93
		Product Identity	151-10	5/28/93
		Manufacturing Process	151-11	5/28/93
		Discussion of Formation of Impurities	151-12	5/28/93
		Analysis of Samples	151-13	5/28/93
		Certification of Limits	151-15	5/28/93
		Analytical Methods	151-16	5/28/93
		Physical and Chemical Properties	151-17	5/28/93

IV. Attachment III Suspension Report—Explanatory Appendix

A discussion of the basis for the Notice of Intent to Suspend follows:

A. Ethylene

On September 30, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing ethylene to develop and submit certain data/information. These data/information were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Ethylene Phase 5 Reregistration Data Requirements Notice dated September 30, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. The Notice further required that data/information be submitted by deadlines noted for the subject data/information requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data/information to satisfy these data/information requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data/information requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

B. Indole-3-Butyric Acid

On September 10, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing indole-3-butyric acid to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Indole-3-Butyric Acid Phase 5 Reregistration Data Requirements Notice dated September 10, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt

of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

C. Sodium Hydroxide

On September 30, 1992, EPA issued the Phase 5 Reregistration Data Requirements Notice imposed pursuant to section 4 of FIFRA which required registrants of products containing sodium hydroxide to develop and submit certain data. These data were determined to be necessary to satisfy reregistration data requirements of section 4(g)(2)(B) of FIFRA.

The Sodium Hydroxide Phase 5 Reregistration Data Requirements Notice dated September 30, 1992, required each affected registrant to submit materials relating to the election of the options to address each of the data requirements. That submission was required to be received by the Agency within 90 days of the registrant's receipt of the Notice. The Agency received a response from you in which you committed to undertake the required testing. The Notice further required that data be submitted by deadlines noted for the subject data requirements on Attachment II. These deadlines have passed and to date the Agency has not received adequate data to satisfy these data requirements. Because you have failed to provide an appropriate or adequate response within the time provided for data requirements listed on Attachment II, the Agency is issuing this Notice of Intent to Suspend.

V. Conclusions

EPA has issued Notices of Intent to Suspend on the dates indicated. Any further information regarding these Notices may be obtained from the contact person noted above.

List of Subjects

Environmental protection.

Dated: November 16, 1993.

Michael M. Stahl,

Director, Office of Compliance Monitoring.

[FR Doc. 93–29018 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–F

[FRL–4806–4]

Beaunit/Circular Knit and Dying Plant Site, Notice of Proposed Settlement; Correction

AGENCY: Environmental Protection Agency.

ACTION: Correction of the notice of proposed settlement.

SUMMARY: In notice document 93–26427 beginning on page 57828 in the issue of Wednesday, October 27, 1993, make the following correction:

On page 57828 in the first column, the city and state of the Beaunit Circular Knit and Dying Plant Site was previously listed as Baldwin, Florida. This should be changed to read Fountain Inn, South Carolina.

EPA will consider public comments on the proposed settlement for thirty (30) days from the date of the publication of this Notice Correction.

Dated: November 10, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93–29044 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–M

[FRL–4906–5]

Rock Hill Chemical Company Site, Rock Hill, SC; Notice of Proposed Settlement

AGENCY: Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act of 1980 (CERCLA), as amended 42 U.S.C. 9601 *et seq.*, the Environmental Protection Agency (EPA) has agreed to a partial, *de minimis* settlement with the First Union National Bank of South Carolina for claims of response costs at the Rock Hill Chemical Company Site. EPA will consider public comments on the proposed settlement for thirty (30) days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management DIvision, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, 404–347–5059.

Written comments must be submitted to the person above by thirty days from the date of publication.

Dated: November 10, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93–29043 Filed 11–24–93; 8:45 am]

BILLING CODE 6560–50–M

FARM CREDIT ADMINISTRATION

Privacy Act of 1974; Revision to Systems of Records

AGENCY: Farm Credit Administration.

ACTION: Notice of proposed revision to systems of records maintained on individuals; request for comments.

SUMMARY: The Farm Credit Administration (FCA) intends to omit two systems of records (FCA–1 and FCA–2) from the list of FCA systems that appears in the **Federal Register**. The records are already included in a governmentwide system, which the Office of Personnel Management (OPM) has established and published in the **Federal Register** (OPM/GOVT–1). The FCA intends to adopt OPM/GOVT–1, and the OPM's **Federal Register** notice of OPM/GOVT–1. The FCA also intends to update the location of personnel records it maintains, and the identification of the FCA official to whom inquiries are addressed.

EFFECTIVE DATE: Comments must be received on or before December 27, 1993. Unless changes are made in response to comments received from the public, this action is effective December 27, 1993.

ADDRESSES: Comments may be mailed or delivered (in triplicate) to Jean Noonan, General Counsel, Office of General Counsel, Farm Credit Administration, McLean, Virginia, 22102–5090. Copies of all communications will be available for examination by interested parties in the Office of General Counsel, Farm Credit Administration.

FOR FURTHER INFORMATION CONTACT: Frances A. Pedersen, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, Virginia 22102–5090.

SUPPLEMENTARY INFORMATION: Pursuant to the provisions of the Privacy Act of 1974 (5 U.S.C. 552a), notice is hereby given that the FCA intends to omit two systems of records entitled General Personnel Records—FCA" (FCA–1) and "Former Employee Records—FCA" (FCA–2) from the list of FCA systems that appears in the **Federal Register**. The personnel records in FCA–1 and FCA–2 are already included in a governmentwide system established by the OPM entitled "General Personnel

Records" (OPM/GOVT–1). The existence and character of OPM/GOVT–1 is published in the **Federal Register**.

The categories of records listed in FCA–1 are: (1) Official Personnel Folders (OPFs); and (2) Employee Service Record Cards, more commonly known as Standard Form 7B Cards (7B Cards). The OPFs are already included in OPM/GOVT–1. OPM considers 7B Cards to be obsolete and no longer requires agencies to use such records. Since the FCA published its notice in the **Federal Register** on the existence and character of FCA–1, the FCA has destroyed the 7B Cards in accordance with Federal statutory and regulatory requirements governing the disposition of Federal records.

The categories of records listed in FCA–2 are: (1) 7B Cards on former FCA employees; (2) photocopies of retirement records; and (3) cards showing the name, date of birth, social security number, and disposition of OPFs of separated employees. The photocopies of retirement records that the FCA maintains pertain to individuals employed by the FCA as of April 22, 1990. Such records are already included in OPM/GOVT–1. Since the FCA published its notice in the **Federal Register** on the existence and character of FCA–2, the FCA has destroyed the records in categories (1) and (3) in accordance with Federal statutory and regulatory requirements governing the disposition of Federal records.

Because the existing records in FCA–1 and FCA–2 are already included in OPM/GOVT–1, which is described in the OPM's **Federal Register** notice, it is unnecessarily duplicative for the FCA to include FCA–1 and FCA–2 in its **Federal Register** notice. Notice is hereby given that the FCA intends to adopt OPM/GOVT–1, and the OPM's **Federal Register** notice of OPM/GOVT–1, with respect to those personnel records that are maintained by the FCA and described in OPM/GOVT–1. Individuals are referred to the OPM's **Federal Register** notice on the existence and character of OPM/GOVT–1. The citation is 57 FR 35705–35709, August 10, 1992, as amended from time to time.

The OPM's **Federal Register** notice sets out the routine uses of records in OPM/GOVT–1. The uses are more expansive than those provided by the FCA in its **Federal Register** notice. Individuals interested in reviewing and commenting on such routine uses are referred to 57 FR 35706–35708, August 10, 1992, as amended from time to time.

This notice also reflects several administrative changes resulting from reorganizations and the relocation of the FCA offices. At the time that the FCA published its **Federal Register** notice on the existence and character of FCA–1 and FCA–2, the offices of the FCA were located in Washington, D.C. Since that time, the FCA has relocated to McLean, Virginia. As a result, the location of personnel records maintained by the FCA and described in OPM/GOVT–1 is hereby updated to: 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

The designated point of contact at the FCA for inquiries on OPM/GOVT–1 has also changed based on certain FCA reorganizations. Employee inquiries about OPM/GOVT–1 and employee requests for access or amendments to records described therein that are maintained by the FCA may be directed to: Chief, Human Resources Division, Office of Resources Management, FCA, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: November 19, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–28948 Filed 11–24–93; 8:45 am]

BILLING CODE 6705–01–P

FEDERAL MARITIME COMMISSION

Ocean Freight Forwarder License; Reissuance of License

Notice is hereby given that the following ocean freight forwarder license has been reissued by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License No.	Name/address	Date reissued
2561R	Fontana International, Inc., 2503B NW 72nd Avenue, Miami, FL 33122.	Oct. 22, 1993.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–28966 Filed 11–24–93; 8:45 am]

BILLING CODE 6730–01–M

Ocean Freight Forwarder License Revocations

Notice is hereby given that the following ocean freight forwarder licenses have been revoked by the Federal Maritime Commission pursuant to section 19 of the Shipping Act of 1984 (46 U.S.C. app. 1718) and the regulations of the Commission pertaining to the licensing of ocean freight forwarders, 46 CFR part 510.

License Number: 308
Name: Geo. S. Bush & Co., Inc.
Address: 1400 Exchange Bldg., 821 Second Ave., Seattle, WA 98104
Date Revoked: June 3, 1993
Reason: Surrendered license voluntarily.

License Number: 3506
Name: Dirman Incorporated
Address: 97–11 63rd Dr., Rego Park, NY 11374
Date Revoked: October 13, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3308
Name: Simtex Ocean Services, Inc.
Address: 17524 Carriage Way Dr., Ste. 3, Hazel Crest, IL 60429
Date Revoked: October 20, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 2456
Name: Export Forwarding Company
Address: 2213 Royal Lane, Dallas, TX 75229
Date Revoked: October 20, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 181
Name: Alexander Schor
Address: 2303 Lucaya La., N–4, Coconut Creek, FL 33066
Date Revoked: October 27, 1993
Reason: Surrendered license voluntarily.

License Number: 3376
Name: J. B. Daman (U.S.A.) Ltd.
Address: 2500A Broening Highway, Ste. 100, Baltimore, MD 21224
Date Revoked: October 27, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 1516
Name: C & S International Corporation
Address: 609 Lafayette Bldg., Philadelphia, PA 19106
Date Revoked: October 27, 1993
Reason: Surrendered license voluntarily.

License Number: 3562
Name: Transport Express Corporation
Address: 5613 Leesburg Pike #29, Falls Church, VA 22041
Date Revoked: October 29, 1993
Reason: Failed to maintain a valid surety bond.

License Number: 3169
Name: Air, Land, & Sea, Inc.
Address: 4195 Oneida St., Denver, CO 80216
Date Revoked: October 30, 1993

Reason: Failed to maintain a valid surety bond.

Bryant L. VanBrakle,

Director, Bureau of Tariffs, Certification and Licensing.

[FR Doc. 93–28965 Filed 11–24–93; 8:45 am]

BILLING CODE 6730-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

[Docket No. 93E–0214]

Determination of Regulatory Review Period for Purposes of Patent Extension; Lovenox®

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) has determined the regulatory review period for Lovenox® and is publishing this notice of that determination as required by law. FDA has made the determination because of the submission of an application to the Commissioner of Patents and Trademarks, Department of Commerce, for the extension of a patent which claims that human drug product.

ADDRESSES: Written comments and petitions should be directed to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Brian J. Malkin, Office of Health Affairs (HFY–20), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–1382.

SUPPLEMENTARY INFORMATION: The Drug Price Competition and Patent Term Restoration Act of 1984 (Pub. L. 98–417) and the Generic Animal Drug and Patent Term Restoration Act (Pub. L. 100–670) generally provide that a patent may be extended for a period of up to 5 years so long as the patented item (human drug product, animal drug product, medical device, food additive, or color additive) was subject to regulatory review by FDA before the item was marketed. Under these acts, a product's regulatory review period forms the basis for determining the amount of extension an applicant may receive.

A regulatory review period consists of two periods of time: a testing phase and an approval phase. For human drug products, the testing phase begins when the exemption to permit the clinical investigations of the drug becomes effective and runs until the approval phase begins. The approval phase starts with the initial submission of an application to market the human drug product and continues until FDA grants permission to market the drug product. Although only a portion of a regulatory review period may count toward the actual amount of extension that the Commissioner of Patents and Trademarks may award (for example, half the testing phase must be subtracted as well as any time that may have occurred before the patent was issued), FDA's determination of the length of a regulatory review period for a human drug product will include all of the testing phase and approval phase as specified in 35 U.S.C. 156(g)(1)(B).

FDA recently approved for marketing the human drug product Lovenox® (enoxaparin sodium injection). Lovenox® is indicated for the prevention of deep vein thrombosis, which may lead to pulmonary embolism, following hip replacement surgery. Subsequent to this approval, the Patent and Trademark Office received a patent term restoration application for Lovenox® (U.S. Patent No. 4,692,435) from Choay S.A., and the Patent and Trademark Office requested FDA's assistance in determining this patent's eligibility for patent term restoration. FDA, in a letter dated July 15, 1993, advised the Patent and Trademark Office that this human drug product had undergone a regulatory review period and that the approval of Lovenox® represented the first permitted commercial marketing or use of the product. Shortly thereafter, the Patent and Trademark Office requested that FDA determine the product's regulatory review period.

FDA has determined that the applicable regulatory review period for Lovenox® is 1,777 days. Of this time, 1,322 days occurred during the testing phase of the regulatory review period, while 455 days occurred during the approval phase. These periods of time were derived from the following dates:

1. *The date an exemption under section 505(i) of the Federal Food, Drug, and Cosmetic Act became effective:* May 19, 1988. FDA has verified the applicant's claim that May 19, 1988, was the date the investigational new drug application (IND) became effective.

2. *The date the application was initially submitted with respect to the human drug product under section 505(b) of the Federal Food, Drug, and Cosmetic Act:* December 31, 1991. The applicant claims December 31, 1991, as the new drug application (NDA) effective date "to determine the applicable regulatory review period," but claims July 26, 1991, as the "initially submitted" date in its actual calculation of the length of the extension. FDA records indicate that the NDA for Lovenox® (NDA 20–164) submitted on July 26, 1991, was incomplete. FDA refused to file this incomplete application and notified the applicant of this fact by letter dated September 20, 1991. The completed NDA was then submitted on December 31, 1991, which is properly considered to be the NDA's initially submitted date.

3. *The date the application was approved:* March 29, 1993. FDA has verified the applicant's claim that NDA 20–164 was approved on March 29, 1993.

This determination of the regulatory review period establishes the maximum potential length of a patent extension. However, the U.S. Patent and Trademark Office applies several statutory limitations in its calculations of the actual period for patent extension. In its application for patent extension, this applicant seeks 887 days of patent term extension.

Anyone with knowledge that any of the dates as published is incorrect may, on or before January 25, 1994, submit to the Dockets Management Branch (address above) written comments and ask for a redetermination. Furthermore, any interested person may petition FDA, on or before May 25, 1994, for a determination regarding whether the applicant for extension acted with due diligence during the regulatory review period. To meet its burden, the petition must contain sufficient facts to merit an FDA investigation. (See H. Rept. 857, part 1, 98th Cong., 2d sess., pp. 41–42, 1984.) Petitions should be in the format specified in 21 CFR 10.30.

Comments and petitions should be submitted to the Dockets Management Branch (address above) in three copies (except that individuals may submit single copies) and identified with the docket number found in brackets in the heading of this document. Comments and petitions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: October 22, 1993.

Stuart L. Nightingale,

Associate Commissioner for Health Affairs.

[FR Doc. 93–28999 Filed 11–24–93; 8:45 am]

BILLING CODE 4160-01-F

Health Care Financing Administration

Public Information Collection Requirements Submitted to the Office of Management and Budget (OMB) for Clearance

AGENCY: Health Care Financing Administration.

The Health Care Financing Administration (HCFA), Department of Health and Human Services, has submitted to OMB the following proposals for the collection of information in compliance with the Paperwork Reduction Act (Pub. L. 96–511).

1. *Type of Request:* Extension; *Title of Information Collection:* Disclosure of Ownership and Control Interest Statement; *Form No.:* HCFA–1513; *Use:* The information will be used by State agencies and HCFA regional offices to make eligibility determinations for provider participation in the Medicare and Medicaid programs and for grants under titles V and XX; *Frequency:* Annually; *Respondents:* Small businesses or organizations; *Estimated Number of Responses:* 40,000; *Average Hours Per Response:* .50; *Total Estimated Burden Hours:* 20,000.

2. *Type of Request:* Revision; *Title of Information Collection:* Intermediate Care Facility for the Mentally Retarded or Persons With Related Conditions Survey Report Form; *Form No.:* HCFA–3070 G–I; *Use:* The survey report form is used to record providers' compliance with individual standards and report it to the Federal Government; *Frequency:* Annually; *Respondents:* State or local governments; *Estimated Number of Responses:* 6,701; *Average Hours Per Response:* 3; *Total Estimated Burden Hours:* 20,103.

Additional Information or Comments: Call the Reports Clearance Office on (410) 966–5536 for copies of the clearance request packages. Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated at the following address: OMB Human Resources and Housing Branch, Attention: Allison Eydt, New Executive Office Building, room 3001, Washington, DC 20503.

Dated: November 16, 1993.

Paul J. Fiore,

Deputy Director, Management Planning & Analysis Staff, Office of Budget and Administration, Health Care Financing Administration.

[FR Doc. 93–28918 Filed 11–24–93; 8:45 am]

BILLING CODE 4120–03–P

[OPA–010–N]

Medicare Program; Meeting of the Practicing Physicians Advisory Council

AGENCY: Health Care Financing Administration (HCFA), HHS.

ACTION: Notice of meeting.

SUMMARY: In accordance with section 10(a) of the Federal Advisory Committee Act, this notice announces a meeting of the Practicing Physicians Advisory Council. This meeting is open to the public.

DATES: The meeting is scheduled for December 13, 1993, from 8 a.m. until 5 p.m. e.s.t. (Additional meetings are tentatively scheduled for March 7, June 6, September 12, and December 12, 1994.)

ADDRESSES: The meeting will be held in room 800, 8th Floor of the Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201.

FOR FURTHER INFORMATION CONTACT: John Lanigan, Acting Executive Director, Practicing Physicians Advisory Council, room 425–H, Hubert H. Humphrey Building, 200 Independence Avenue SW., Washington, DC 20201, (202) 690–7874.

SUPPLEMENTARY INFORMATION: The Secretary of the Department of Health and Human Services (the Secretary) is mandated by section 1868 of the Social Security Act, as added by section 4112 of the Omnibus Budget Reconciliation Act of 1990 (Public Law 101–508), enacted on November 5, 1990, to appoint a Practicing Physicians Advisory Council (the Council) based on nominations submitted by medical organizations representing physicians. The Council meets quarterly to discuss certain proposed changes in regulations and carrier manual instructions related to physicians' services, as identified by the Secretary. To the extent feasible and consistent with statutory deadlines, the consultation must occur before publication of the proposed changes. The Council submits an annual report on its recommendations to the Secretary and the Administrator of the Health Care Financing Administration not later than December 31 of each year.

The Council consists of 15 physicians, each of whom has submitted at least 250 claims for physicians' services under Medicare in the previous year. Members of the Council include both participating and nonparticipating physicians, and physicians practicing in rural and underserved urban areas. At least 11 members must be doctors of medicine or osteopathy authorized to practice medicine and surgery by the States in which they practice. Members have been invited to serve for overlapping 4-year terms.

The current members are: Gary C. Dennis, M.D.; Harvey P. Hanlen, D.O.; Kenneth D. Hansen, M.D.; Isabel V. Hoverman, M.D.; Ramon L. Jimenez, M.D.; Jerilyn S. Kaibel, D.O.; William D. Kirsch, D.O.; Marie G. Kuffner, M.D.; David L. Massanari, M.D.; Kenton K. Moss, M.D.; Susan W. Owens, M.D.; Isadore Rosenfeld, M.D.; Richard B. Tompkins, M.D.; James C. Waites, M.D.; and Gary L. Yordy, M.D. The chairperson is Richard B. Tompkins, M.D.

The seventh meeting of the Council will be held on December 13, 1993. The following topics will be discussed at that meeting:

- Telemedicine.
- Medically unnecessary laboratory services.
- Authentication of medical records.
- Certificates of medical necessity and home health recertification.

Those individuals or organizations who wish to make 10-minute oral presentations on the above issues must contact the Acting Executive Director to be scheduled. For the name, address, and telephone number of the Acting Executive Director, see the **FOR FURTHER INFORMATION CONTACT** section at the beginning of this notice. A written copy of the oral remarks must be presented to the Acting Executive Director at the time of the presentation. The number of oral presentations may be limited by the time available.

Anyone who is not scheduled to speak may submit written comments to the Acting Executive Director. The meeting is open to the public but attendance is limited to the space available on a first-come basis.

Authority: Section 1868 of the Social Security Act (42 U.S.C. 1395ee) and section 10(a) of Public Law 92–463 (5 U.S.C. App. 2, section 10(a)); 45 CFR part 11.

(Catalog of Federal Domestic Assistance Program No. 93.773, Medicare—Hospital Insurance; and Program No. 93.774, Medicare—Supplementary Medical Insurance Program)

Dated: November 19, 1993.

Bruce C. Vladeck,

Administrator, Health Care Financing Administration.

[FR Doc. 93–29052 Filed 11–24–93; 8:45 am]

BILLING CODE 4120–01–P

Health Resources and Services Administration

Notice of Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Public Law 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committee has been filed with the Library of Congress:

National Advisory Council on Nurse Education and Practice Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Dr. Mary S. Hill, Executive Secretary, National Advisory Council on Nurse Education and Practice, room 9–36, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6193.

Dated: November 19, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–29000 Filed 11–24–93; 8:45 am]

BILLING CODE 4160–15–P

Advisory Council; Notice of Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), announcement is made of the following National Advisory bodies scheduled to meet during the month of January 1994.

Name: Graduate Training in Family Medicine Review Committee.

Date and Time: January 5–7, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 5, 8:30 a.m.–11 a.m.

Closed for Remainder of Meeting.

Purpose: The Graduate Training in Family Medicine Review Committee shall review applications from public or nonprofit private hospitals, and other public or nonprofit entities that plan, develop and operate or participate in approved graduate training programs in the field of family medicine; or supports trainees in such programs who plan to specialize or work in the practice of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 5, at 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

* * * * *

Name: Faculty Development Review Committee.

Date and Time: January 10–13, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 10, 8:30 a.m.–11 a.m.

Closed for Remainder of Meeting.

Purpose: The Faculty Development Review Committee shall review applications that (1) plan, develop and operate programs for the training of physicians who plan to teach in family medicine training programs; and support physicians who are trainees in such programs and who plan to teach in family medicine training programs; and that (2) plan develop and operate programs for the training of physicians who plan to teach in general internal medicine or general pediatrics training programs and support traineeships and fellowships to physicians in training.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 10, at 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

* * * * *

Name: Residency Training Review Committee.

Date and Time: January 25–27, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 25, 8:30 a.m.–11 a.m..

Closed for Remainder of Meeting.

Purpose: The Residency Training Review Committee shall review applications that plan, develop and operate approved residency training programs in internal medicine or pediatrics, which emphasize the training of residents for the practice of general internal medicine or general pediatrics and assist residents, through traineeships and fellowships, who are participants in any such program and who plan to specialize or work in the practice of general internal medicine or general pediatrics.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 26, 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public Law 92–463.

* * * * *

Name: Predoctoral Training Review Committee.

Date and Time: January 31–February 1, 1994, 8:30 a.m.

Place: Holiday Inn Crowne Plaza, Halpine Room, 1750 Rockville Pike, Rockville, Maryland 20852.

Open on January 31, 8:30 a.m.–11 a.m.

Closed for Remainder of Meeting.

Purpose: The Predoctoral Training Review Committee shall review applications that either assist in meeting the cost of planning, developing and operating, or participating in approved predoctoral training programs in the field of family medicine.

Agenda: The open portion of the meeting will cover welcome and opening remarks, financial management and legislative implementation updates, and overview of the review process. The meeting will be closed to the public on January 31, at 11 a.m. for the remainder of the meeting for the review of grant applications. The closing is in accordance with the provisions set forth in section 552b(c)(6), Title 5 U.S.C., and the Determination by the Administrator, Health Resources and Services Administration, pursuant to Public law 92–463.

Anyone requiring information regarding the above Councils should contact Mrs. Sherry Whipple, Executive Secretary, room 4C–18, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301) 443–6874.

Agenda Items are subject to change as priorities dictate.

Date: November 19, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, HRSA.

[FR Doc. 93–29001 Filed 11–24–93; 8:45 am]

BILLING CODE 4160–15–P

HRSA Aids Advisory Committee, Subcommittee on Ryan White Care Act; Future Program Directions and Reauthorization

AGENCY: Health Resources and Services Administration (HRSA), PHS.

ACTION: Notice of public meeting and opportunity to provide written comments.

SUMMARY: On October 6, 1993, the HRSA AIDS Advisory (HAAC) Committee established the Ryan White CARE Act Future Program Directions and Reauthorization Subcommittee. The Subcommittee is seeking public input about future HIV/AIDS care program directions including issues related to reauthorization of the Ryan White CARE Act. The HAAC will subsequently submit a set of formal recommendations relating to future program directions and reauthorization issues to the HRSA Administrator.

DATES: A public meeting will be held on December 15, 1993 from 9:30 a.m. to 5 p.m. to obtain public input into future

program directions and issues related to the reauthorization of the Ryan White CARE Act (Pub. L. 101–381). To be assured of consideration, written comments should be postmarked no later than December 31, 1993. The public meeting will be held at the Omni Shoreham Hotel, 2500 Calvert Street, N.W., Washington, D.C., (202) 234–0700.

ADDRESSES: Written comments should be sent to the HRSA AIDS Advisory Committee, c/o HRSA AIDS Program Office, Attention: Susan Thorner, 4350 East-West Highway, Room 9C–10C3, Bethesda, Maryland 20814.

Persons interested in providing oral comments at the meeting should notify, Professional and Scientific Associates, Inc. (PSAI) by phone, facsimile (fax) or letter no later than close of business December 10, 1993. PSAI may be contacted at 8180 Greensboro Drive, suite 1050, McLean, Virginia 22102, (703) 442–9824 or (703) 442–9826 by fax. All requests for making oral comments at the meeting must contain the name, address, telephone (day and evening) and fax numbers and any organizational affiliation of the persons requesting to give a public statement. Persons providing oral comments at the meeting must provide PSAI with two copies of their comments no later than December 15.

Depending on the number of requests to present oral comments, it may be necessary to limit the length of time for each presenter. Persons wishing to make a public statement will be notified by phone or fax regarding the length of time available for their comments and the time their comments are scheduled to begin.

SUPPLEMENTARY INFORMATION: We are particularly interested in comments which address new and/or changing service needs for people and populations with HIV and the extent to which the CARE Act addresses identified priorities, including:

1. The current Title structure;

2. The focus on the "emergency" nature of the epidemic;

3. Appropriateness of current funding formulas, and;

4. Effectiveness in strengthening coordination and joint planning by interested and affected entities and communities.

Comments would also be appreciated on issues related to the training needs for HIV/AIDS providers.

FOR FURTHER INFORMATION CONTACT: Susan Thorner, HRSA AIDS Program Office, (301) 594–4444.

Dated: November 19, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–29002 Filed 11–24–93; 8:45 am]

BILLING CODE 4160–15–P

National Institutes of Health

Division of Research Grants; Meetings

Pursuant to Public Law 92–463, notice is hereby given of meetings of the Division of Research Grants Behavioral and Neurosciences Special Emphasis Panel.

The meetings will be closed in accordance with the provisions set forth in section 552(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, for the review, discussion and evaluation of individual grant applications and Small Business Innovation Research Program Applications in the various areas and disciplines related to behavior and neuroscience. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Office of Committee Management, Division of Research Grants, Westwood Building, National Institutes of Health, Bethesda, Maryland 20892, telephone 301–594–7265, will furnish summaries of the meetings and rosters of panel members.

Meetings To Review Individual Grant Applications

Scientific Review Administrator: Dr. Leonard Jakubczak (301) 594–7198
Date of Meeting: December 8, 1993
Place of Meeting: Westwood Bldg, Rm 325C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 2 p.m.
Scientific Review Administrator: Dr. Leonard Jakubczak (301) 594–7198
Date of Meeting: December 9, 1993
Place of Meeting: Westwood Bldg, Rm 325C, NIH, Bethesda, MD (Telephone Conference)
Time of Meeting: 2 p.m.

(Catalog of Federal Domestic Assistance Program Nos. 93.306, 93.333, 93.337, 93.393–93.396, 93.837–93.844, 93.846–93.878, 93.892, 93.893, National Institutes of Health, HHS)

Dated : November 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28937 Filed 11–24–93; 8:45 am]

BILLING CODE 4140–01–M

National Cancer Institute; Meeting of the Cancer Clinical Investigation Review Committee

Pursuant to Public Law 92–463, notice is hereby given of the meeting of the Cancer Clinical Investigation Review Committee, National Cancer Institute, on December 8, 1993, The Georgetown Inn, 1310 Wisconsin Avenue NW., Washington, DC 20007.

This meeting will be open to the public on December 8, 1993, from 8:30 a.m. to 9 a.m., to review administrative details and other cancer clinical investigation review issues. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in sections 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and section 10(d) of Public Law 92–463, the meeting will be closed to the public on December 8 from approximately 9 a.m. to adjournment for the review, discussion and evaluation of individual grant applications. These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

The Committee Management Office, National Cancer Institute, Executive Plaza North, room 630E, National Institutes of Health, Bethesda, Maryland 20892, (301/496–5708), will provide summaries of the meeting and rosters of committee members upon request.

Dr. John W. Abrell, Scientific Review Administrator, Cancer Clinical Investigation Review Committee, National Cancer Institute, Executive Plaza North, room 635B, National Institutes of Health, Bethesda, Maryland 20892, (301/496–9767), will furnish substantive program information.

Individuals who plan to attend and need special assistance, such as sign language interpretation or other reasonable accommodations, should contact Dr. Abrell in advance of the meeting.

This notice is being published less than 15 days prior to the meeting date due to the difficulty of coordinating the attendance of members because of conflicting schedules.

(Catalog of Federal Domestic Assistance Program Numbers: 93.393, Cancer Cause and Prevention Research; 93.394, Cancer Detection and Diagnosis Research; 93.395, Cancer Treatment Research; 93.396, Cancer Biology Research; 93.397, Cancer Centers Support; 93.398, Cancer Research Manpower; 93.399, Cancer Control)

Dated: November 19, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–28942 Filed 11–24–93; 8:45 am]

BILLING CODE 4140–01–M

Public Health Service

Agency Forms Submitted to the Office of Management and Budget for Clearance

Each Friday the Public Health Service (PHS) publishes a list of information collection requests it has submitted to the Office of Management and Budget (OMB) for clearance in compliance with the Paperwork Reduction Act (44 U.S.C. chapter 35). The following requests have been submitted to OMB since the list was last published on November 12, 1993.

(Call PHS Reports Clearance Officer on (202) 690–7100 for copies of requests.)

1. 1994 National Employer Health Insurance Survey—(New)—The National Employer Health Insurance Survey will provide health insurance data from 51,250 employers (1000 per state and DC) to produce state level estimates of private health insurance for the National Health Accounts, monitoring the status of health insurance prior to the implementation of health care reform, and detailed national level analysis of private health insurance. A pilot study of 250 employers is included. *Respondents:* State or local governments; Businesses or other for-profit; Federal agencies or employees; small businesses or organizations; *Number of Respondents:* 51,250; *Number of Responses Per Respondent:* 1; *Average Burden Per Response;* 0.75 hours; *Estimated Annual Burden hours:* 38,438 hours.

2. Cancer Prevention Awareness: The Black College As A Resource—0925–0377—(Extension, No change). This collection of information will assist in the National Cancer Institute (NCI) efforts to effectively utilize these historically black institutions in health promotion activities, especially as it pertains to cancer prevention. The information will also provide the NCI with the foundation for planning and developing further cancer prevention intervention research (e.g., smoking, dietary habits, knowledge and attitudes, health behavior practices) that is appropriate for the target population. *Respondents:* Individuals or Households; *Number of Respondents:* 2,891; *Number of Respondents Per Respondent:* 1.6; *Average Burden Per Response;* .265 hours; *Estimated Annual Burden hours:* 765 hours.

Written comments and recommendations for the proposed information collections should be sent within 30 days of this notice directly to the OMB Desk Officer designated below at the following address: Shannah Koss, Human Resources and Housing Branch, New Executive Office Building, room 3002, Washington, DC 20503.

Dated: November 19, 1993.

James Scanlon,

Director, Division of Data Policy, Office of Health Planning and Evaluation.

[FR Doc. 93–28997 Filed 11–24–93; 8:45 am]

BILLING CODE 4160–17–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

[Docket No. N–93–1917; FR–3350–N–59]

Federal Property Suitable as Facilities To Assist the Homeless

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Notice.

SUMMARY: This Notice identifies unutilized, underutilized, excess, and surplus Federal property reviewed by HUD for suitability for possible use to assist the homeless.

ADDRESSES: For further information, contact Mark Johnston, room 7262, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410; telephone (202) 708–4300; TDD number for the hearing- and speech-impaired (202) 708–2565 (these telephone numbers are not toll-free), or call the toll-free title V information line at 1–800–927–7588.

SUPPLEMENTARY INFORMATION: In accordance with 56 FR 23789 (May 24, 1991) and section 501 of the Stewart B. McKinney Homeless Assistance Act (42 U.S.C. 11411), as amended, HUD is publishing this Notice to identify Federal buildings and other real property that HUD has reviewed for suitability for use to assist the homeless. The properties were reviewed using information provided to HUD by Federal landholding agencies regarding unutilized and underutilized buildings and real property controlled by such agencies or by GSA regarding its inventory of excess or surplus Federal property. This Notice is also published in order to comply with the December 12, 1988 Court Order in *National Coalition for the Homeless* v. *Veterans Administration,* No. 88–2503–OG (D.D.C.).

Properties reviewed are listed in this Notice according to the following categories: Suitable/available, suitable/unavailable, suitable/to be excess, and unsuitable. The properties listed in the three suitable categories have been reviewed by the landholding agencies, and each agency has transmitted to HUD: (1) Its intention to make the property available for use to assist the homeless, (2) its intention to declare the property excess to the agency's needs, or (3) a statement of the reasons that the property cannot be declared excess or made available for use as facilities to assist the homeless.

Properties listed as suitable/available will be available exclusively for homeless use for a period of 60 days from the date of this Notice. Homeless assistance providers interested in any such property should send a written expression of interest to HHS, addressed to Judy Breitman, Division of Health Facilities Planning, U.S. Public Health Service, HHS, room 17A–10, 5600 Fishers Lane, Rockville, MD 20857; (301) 443–2265. (This is not a toll-free number.) HHS will mail to the interested provider an application packet, which will include instructions for completing the application. In order to maximize the opportunity to utilize a suitable property, providers should submit their written expressions of interest as soon as possible. For complete details concerning the processing of applications, the reader is encouraged to refer to the interim rule governing this program, 56 FR 23789 (May 24, 1991).

For properties listed as suitable/to be excess, that property may, if subsequently accepted as excess by GSA, be made available for use by the homeless in accordance with applicable law, subject to screening for other Federal use. At the appropriate time, HUD will publish the property in a Notice showing it as either suitable/available or suitable/unavailable.

For properties listed as suitable/unavailable, the landholding agency has decided that the property cannot be declared excess or made available for use to assist the homeless, and the property will not be available.

Properties listed as unsuitable will not be made available for any other purpose for 20 days from the date of this Notice. Homeless assistance providers interested in a review by HUD of the determination of unsuitability should call the toll free information line at 1–800–927–7588 for detailed instructions or write a letter to Mark Johnston at the address listed at the beginning of this

Notice. Included in the request for review should be the property address (including zip code), the date of publication in the **Federal Register**, the landholding agency, and the property number.

For more information regarding particular properties identified in this Notice (*i.e.*, acreage, floor plan, existing sanitary facilities, exact street address), providers should contact the appropriate landholding agencies at the following addresses: U.S. Army: Robert Conte, Dept. of Army, Military Facilities, DAEN–ZCI–P; Rm. 1E671, Pentagon, Washington, DC 20310–2600; (703) 693–4583; *U.S. Navy:* John J. Kane, Deputy Division Director, Dept. of Navy, Real Estate Operations, Naval Facilities Engineering Command, 200 Stovall Street, Alexandria, VA 22332–2300; (703) 325–0474; (These are not toll-free numbers).

Dated: November 19, 1993.

Jacquie M. Lawing,

Deputy Assistant Secretary for Economic Development.

Title V, Federal Surplus Property Program Federal Register Report for 11/26/93

Suitable/Available Properties

Buildings (by State)

Kentucky

Bldg. 1502, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330429
Status: Underutilized
Comment: 4627 sq. ft., 1-story, most recent use—barber shop, needs repair, off-site use only.

Bldg. 2729, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330430
Status: Unutilized
Comment: 5310 sq. ft., 2-story, needs rehab, off-site use only.

Bldg. 2740, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330431
Status: Unutilized
Comment: 3150 sq. ft., 1-story, needs repair, off-site use only.

Bldg. 06644, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330432
Status: Unutilized
Comment: 8052 sq. ft., 1-story, most recent use—lodge, needs rehab, off-site use only

Bldg. 07147, Fort Campbell
Ft. Campbell Co: Christian KY 42223—
Landholding Agency: Army
Property Number: 219330433
Status: Unutilized
Comment: 10034 sq. ft., 1-story, most recent use—open dining, needs rehab, off-site use only.

Maryland

Bldg. E4890
Aberdeen Proving Ground Co: Harford MD 21005–5001
Landholding Agency: Army
Property Number: 219330434
Status: Unutilized
Comment: 6250 sq. ft., 1-story, needs rehab, presence of asbestos.

New Jersey

Bldg. 421, Fort Monmouth
Ft. Monmouth Co: Monmouth NJ 07703—
Landholding Agency: Army
Property Number: 219330435
Status: Unutilized
Comment: 4720 sq. ft., 2-story, most recent use—office.

Bldg. 2529, Fort Monmouth
Charles Wood Area
Ft. Monmouth Co: Monmouth NJ 07703—
Landholding Agency: Army
Property Number: 219330436
Status: Unutilized
Comment: 4413 sq. ft., 2-story, needs rehab, most recent use—admin.

New York

Bldg. 1848
U.S. Military Academy
Lake Frederick Road
Woodbury Co: Orange NY 10996–1592
Landholding Agency: Army
Property Number: 219330437
Status: Underutilized
Comment: 2866 sq. ft., 2-story, needs major repairs, presence of asbestos and lead base paint, most recent use—storage/office, off-site use only.

Texas

Bldg. P–293, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330441
Status: Unutilized
Comment: 442 sq. ft., 1-story brick, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–298, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330442
Status: Unutilized
Comment: 3200 sq. ft., 1-story hollow tile, needs rehab, within National Landmark Historic District, off-site use only.

Bldg. P–371, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330443
Status: Unutilized
Comment: 18387 sq. ft., 2-story structural tile, most recent use—vehicle maintenance shop, off-site use only.

Bldg. P–377, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330444
Status: Unutilized
Comment: 74 sq. ft., 1-story brick, needs rehab, most recent use—scale house, located in National Historic District, off-site use only.

Bldg. S–1164, Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219330445
Status: Unutilized
Comment: 8629 sq. ft., 1-story metal, needs rehab, most recent use—classroom, off-site use only.

Suitable/Unavailable Properties

Buildings (by State)

Maryland

Bldg. 230
Naval Communication Detachment
9190 Commo Road
Cheltenham Co: Prince George MD 20397–5520
Landholding Agency: Navy
Property Number: 779330010
Status: Unutilized
Comment: 12,384 sq. ft., 4-story, needs rehab, potential utilities, includes 37 acres of land.

Unsuitable Properties

Buildings (by State)

Alabama

Bldgs. 516, 517—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340112
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 518—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340113
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 604—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340114
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 616—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340115
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 801—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340116
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 802—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340117
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1105—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340118
Status: Unutilized
Reason: Other

Comment: Extensive deterioration.

Bldgs. 1431, 1432—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340119
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 3406—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340120
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 3408, 3409—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340121
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 3802, 3809—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340122
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 3911—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340123
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 4107—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340124
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 8601–8605—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340125
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 9009–9011, 9013, 9016
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340126
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 9301—Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340127
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldgs. 9302, 9304, 9305
Fort Rucker
Ft. Rucker Co: Dale AL 36362–5138
Landholding Agency: Army
Property Number: 219340128
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Arkansas

Bldg. 3612, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340023
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3613, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340024
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3614, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340025
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3615, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340026
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3616, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340027
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3617, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340028
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3618, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340029
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3619, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340030
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3620, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340031
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3621, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340032
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3622, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340033
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3624, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340034
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3625, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340035
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3626, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340036
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3627, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340037
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3628, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340038
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3629, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340039
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3630, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340040
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3631, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340041
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3632, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340042
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3633, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340043
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3635, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340044
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3636, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340045
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3637, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340046
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3638, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340047
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3640, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340048
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3641, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340049
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3642, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340050
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3643, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340051
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3644, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340052
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3645, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340053
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3658, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340054
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3659, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340055
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3662, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340056
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3664, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340057
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3667, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340058
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3669, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340059
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3670, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340060
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3671, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340061
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3707, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340062
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3713, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340063
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3714, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340064
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3715, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340065
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3716, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340066
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3717, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340067
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3718, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340068
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3719, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340069
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3720, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340070
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3721, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340071
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3722, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340072
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3723, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340073
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3725, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340074
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3726, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340075
Status: Unutilized

Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3750, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340076
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3751, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340077
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3752, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340078
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3754, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340079
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3755, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340080
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3756, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340081
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3758, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340082
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3759, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340083
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3760, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340084
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3761, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340085
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3764, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340086
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3765, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340087
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3771, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340088
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3773, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340089
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Bldg. 3775, Fort Chaffee
Ft. Chaffee Co: Sebastian AR 72905–5000
Landholding Agency: Army
Property Number: 219340090
Status: Unutilized
Reason: Other Secured Area
Comment: Extensive deterioration.

Iowa

Bldg. 679
Iowa Army Ammunition Plant
Middletown Co: Des Moines IA 52638—
Landholding Agency: Army
Property Number: 219340091
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Kentucky

Bldg. 477, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340132
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1011, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340133
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1012, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340134
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1013, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340135
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1014, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340136
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1015, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340137
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1016, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340138
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1017, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340139
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1018, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340140
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1019, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340141
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1020, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340142
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1021, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340143
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1023, Fort Knox
Ft. Knox Co: Hardin KY 40121—
Landholding Agency: Army
Property Number: 219340144
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1025, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340145
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 1026, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340146
Status: Unutilized
Reason: Other

Comment: Ext nsive deterioration.
Bldg. 1027, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340147
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1049, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340148
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1050, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340149
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1051, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340150
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1302, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340151
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1471, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340152
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 1501, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340153
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 2387, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340154
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 2733, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340155
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 5085, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340156
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 5135, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340157
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 5136, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340158
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6291, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340159
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6292, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340160
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6293, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340161
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6294, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340162
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6643, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340163
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6644, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340164
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6645, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340165
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6759, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340166
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6760, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340167
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 6761, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340168
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 7743, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340169
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9020, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340170
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9021, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340171
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9022, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340172
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9480, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340173
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9481, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340174
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9482, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340175
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9483, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340176
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9484, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340177
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.
Bldg. 9493, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340178

Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 9495, Fort Knox
Ft. Knox Co: Hardin KY 40121–
Landholding Agency: Army
Property Number: 219340179
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00154, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340221
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00155, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340222
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00156, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340223
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00157, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340224
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00158, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340225
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00159, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340226
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00160, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340227
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00162, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340228
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00163, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340229
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00164, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340230
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00166, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340231
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 00168, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340232
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 07166, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340233
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02611, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340242
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02613, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340243
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02615, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340244
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02617, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340245
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02625, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340246
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02627, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340247
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02630, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340248
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02634, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340249
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02636, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340250
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02638, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340251
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02640, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340252
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 02642, Fort Campbell
Ft. Campbell Co: Christian KY 42223–
Landholding Agency: Army
Property Number: 219340253
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Louisiana

Bldg. 607, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340105
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 608, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340106
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 703, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340107
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 704, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340108
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8001, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340109
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8218, Fort Polk

Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340110
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 8219, Fort Polk
Ft. Polk Co: Vernon Parish LA 71459–7100
Landholding Agency: Army
Property Number: 219340111
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Nebraska

Bldg. A0011
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219340129
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. A0012
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219340130
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. A0018
Cornhusker Army Ammunition Plant
Grand Island Co: Hall NE 68803–
Landholding Agency: Army
Property Number: 219340131
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

North Carolina

Bldg. N–3808, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340099
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. M–4957, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340100
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. M–5156, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340101
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. A–6163, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340102
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 2–2134, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340103
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 3–1931, Fort Bragg
Ft. Bragg Co: Cumberland NC 28307–
Landholding Agency: Army
Property Number: 219340104
Status: Unutilized
Reason: Secured Area.

Texas

Bldg. T–2431
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340095
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. P–8239
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340096
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. P–8263
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340097
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. P–8268
Fort Sam Houston
San Antonio Co: Bexar TX 78234–5000
Landholding Agency: Army
Property Number: 219340098
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. 56320, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340238
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Bldg. 56550, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340239
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Bldg. 56650, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340240
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Bldg. 56860, Fort Hood
Ft. Hood Co: Coryell TX 76544–
Landholding Agency: Army
Property Number: 219340241
Status: Unutilized
Reason: Other
Comment: Extensive Deterioration.

Virginia

Bldg. T–3615
US Army Combined Arms Support Command
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219340092
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. T–11002
US Army Combined Arms Support Command
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219340093
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

Bldg. T–11003
US Army Combined Arms Support Command
Fort Lee
Ft. Lee Co: Prince George VA 23801–
Landholding Agency: Army
Property Number: 219340094
Status: Unutilized
Reason: Other
Comment: Extensive deterioration.

[FR Doc. 93–28914 Filed 11–24–93; 8:45 am]
BILLING CODE 4210–S–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[NV–930–4210–05; N–5791]

Termination of Recreation and Public Purposes Classification and Opening Order, Nevada

November 17, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: This notice terminates a Recreation and Public Purposes classification and opens the land to appropriation under the public land laws and the general mining laws.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Clark, Nevada State Office, Bureau of Land Management, 850 Harvard Way, Reno, NV 89520, (702) 785–6530.

SUMMARY: In the early 1970s, the land described below was classified as suitable for lease or sale pursuant to the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4). The Proposed Classification Decision issued on December 6, 1971, segregated the land from appropriation under the public land laws and the general mining laws:

Mount Diablo Meridian, Nevada

T. 34 N., R. 56 E.,
Sec. 30, lots 13–16, inclusive, lots 18–24, inclusive, lots 28–33, inclusive, lots 37–40, inclusive, and lot 47.

Patent was subsequently issued to the Elko County Board of County Commissioners on July 17, 1972. By quitclaim deed dated September 7, 1983, the land was reconveyed to the United States; it had never been developed for recreation purposes. Title was accepted on October 5, 1983, and on that date the land returned to its former public land status.

Pursuant to section 7 of the Taylor Grazing Act (48 Stat. 1272) and the authority delegated by Appendix 1 of Bureau of Land Management Manual 1203, the aforementioned Recreation and Public Purposes classification is hereby terminated.

At 10 a.m. on December 27, 1993 the above described land will become open to the operation of the public land laws generally, subject to existing rights, the provisions of existing withdrawals, and the requirements of applicable laws, rules, and regulations.

At 10 a.m. on December 27, 1993 the above described land will become open to the location under the United States mining laws. Appropriation of the land under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. 38, shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal law. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights since Congress has provided for such determinations in local courts.

The land has been and will remain open to the operation of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869, 869–1 to 869–4), and to leasing under the mineral leasing laws.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93–28981 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–HC–M

[AZ–920–04–4210–04; AZA 20349A and AZA 23217A]

Arizona: Reconveyed Mineral Estate Opened to Entry in Mohave County, AZ

AGENCY: Bureau of Land Management, Interior.

ACTION: Opening order.

SUMMARY: The following described lands were a portion of the mineral estate reconveyed to the United States pursuant to section 206 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1701 et seq., with the State of Arizona (AZA 20349A) and Santa Fe Railroad (AZA 23217A). This order will open these lands to location and entry under all mineral laws:

Gila and Salt River Meridian, Arizona

T. 15 N., R. 18 W.,
Sec. 29, all;
Sec. 31, lots 1 and 2, E½, E½NW¼;
Sec. 32, SW¼;
Sec. 33, all.

Containing 1,914.34 acres.

At 9 a.m. on December 27, 1993, the land described above, will be opened to entry under the United States mining laws. The reconveyed mineral estate will be open to applications and offers under all locatable, leasable and salable mineral laws, including the Geothermal Steam Act, subject to valid existing rights, and requirements of applicable laws. The surface estate of the lands in section 31, lot 2 E½NW¼, T. 15 N., R. 18 W., Gila and Salt River Meridian, Arizona, containing 117.22 acres, are in private ownership.

Appropriation under the general mining laws prior to the date and time of restoration is unauthorized. Any such attempted appropriation, including attempted adverse possession under 30 U.S.C. section 38 shall vest no rights against the United States. Acts required to establish a location and to initiate a right of possession are governed by State law where not in conflict with Federal laws. The Bureau of Land Management will not intervene in disputes between rival locators over possessory rights, since Congress has provided for such determinations in local courts. All applications and offers received prior to 9 a.m. on December 27, 1993, will be considered as simultaneously filed as of that time and date. Those applications and offers received thereafter shall be considered in the order of filing. A drawing will be held in accordance with 43 CFR 1821.2–3, if necessary.

The above described lands will remain closed to all other forms of appropriation.

Inquiries concerning the land should be addressed to Levi Deike, Area Manager, Havasu Resource Area, 3189 Sweetwater Avenue, Lake Havasu City, Arizona 86440.

Lois Carneal,

Acting Chief, Branch of Lands and Minerals Operations.

[FR Doc. 93–28987 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–32–M

[MT–930–4410–02]

Notice To Comment on Area of Critical Environmental Concern; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: In accordance with section 202 of the Federal Land Policy and Management Act of 1976 and section 202(c) of the National Environmental Policy Act of 1969, a draft resource management plan and environmental impact statement was prepared for the Big Dry Resource Area planning area. During the public comment period on the draft, two new areas were proposed for areas of critical environmental concern designation. Smoky Butte and the Miles/Sitting Bull Cedar Creek Fight. In accordance with 43 CFR 1610.7–2, written comments on these proposed areas of critical environmental concern will be accepted for 60 days, beginning with the date of this Federal Register notice. Written comments pertaining to these areas of critical environmental concern and received during the comment period will be considered in preparation of the Final Big Dry Resource Management Plan and Environmental Impact Statement.

ADDRESSES: Written comments on the two proposed areas of critical environmental concern should be addressed to: Chuck Frost, District Manager, Bureau of land Management, Miles City District Office, P.O. Box 940, Miles City, Montana 59301.

FOR FURTHER INFORMATION CONTACT: Mary Bloom, Resource Management Plan and Environmental Impact Statement Team Leader, Big Dry Resource Area Office, Miles City Plaza, Miles City, Montana 59301, 406–232–7000.

SUPPLEMENTARY INFORMATION: The Smoky Butte geologic feature (80 public surface areas) in Garfield County would be designated as an area of critical environmental concern. This area would be managed to protect its unique geologic values. Management actions affecting this area are: Off-road vehicle travel would be closed, locatable minerals would be withdrawn from entry subject to valid existing rights, mineral material sales and permits would not be allowed, nonenergy leasable minerals and coal would not be available for leasing, oil and gas leasing would be allowed with a no-surface occupancy stipulation, geophysical exploration would be allowed, livestock grazing would be allowed, and rights-of-way construction would be excluded.

The Miles/Sitting Bull Cedar Creek Fight in Prairie County has no public surface. An area of critical environmental concern means "Areas within the public lands where special management attention is required * * *" (43 CFR 1601.5(a)). As these lands are not managed by BLM, special management attention cannot be recommended. This area will be considered and dropped from further analysis in the Final Big Dry Resource Management Plan and Environmental Impact Statement.

This notice meets the requirements of 43 CFR 1610.7–2 for designation of areas of critical environmental concern.

Dated: November 17, 1993.

John A. Kwiatkowski,

Deputy State Director, Division of Lands and Renewable Resources.

[FR Doc. 93–28989 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–DN–M

[CA–019–04–4110–03]

Availability of Final Hollister Resource Management Plan Amendment and Environmental Impact Statement

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of availability.

SUMMARY: Pursuant to 40 CFR 1501.7 and 43 CFR 1610.2(c), a final Resource Management Plan Amendment/ Environmental Impact Statement (RMP Amendment/EIS) has been prepared for the Hollister Resource Area. The final RMP Amendment/EIS describes and analyzes the impacts of oil and gas leasing on approximately 310,000 acres of public land and 385,000 additional acres of private lands with federal ownership of subsurface minerals. These lands are located in the central California counties of Monterey, San Benito, Fresno, Madera, and Merced.

Decisions relating to oil and gas leasing generated during this planning process will supersede those currently in the Hollister RMP. Copies of the final RMP Amendment/EIS can be obtained from the Hollister Resource Area Office, 20 Hamilton Court, Hollister CA 95023.

Copies are also available for review at public libraries in Salinas, Coalinga, Hollister, and Fresno and at the following BLM locations:

Office of Public Affairs, Main Interior Building rm. 5600, 18th and C Street NW., Washington, DC 20240.
California State Office, 2800 Cottage Way, Sacramento, CA 95825.
Bakersfield District Office, 800 Truxton Avenue, Bakersfield, CA 93301.

Background information and maps used in developing the final RMP Amendment/EIS can be reviewed at the Hollister Resource Area Office.

This RMP Amendment is subject to a 30-day protest period. Any part of this proposed decision can be protested by any person who has been an active participant in the planning process and has a significant interest that may be adversely affected by the approval of this RMP Amendment.

DATES: Protests must be postmarked within 30 days after the Environmental Protection Agency publishes the notice of availability of the Final EIS in the **Federal Register**. Protests must minimally contain the following information:

(1) The name, mailing address, telephone number, and interest of the person filing the protest,

(2) A statement of the issue or issues being protested,

(3) A statement of the part or parts being protested citing pages, paragraphs, maps, etc of the RMP Amendment where practical,

(4) A copy of all documents addressing the issue(s) for the record, and

(5) A concise statement of why you believe the BLM State Director's decision in incorrect.

ADDRESSES: Protests must be sent to: Director (760), Bureau of Land Management, 1849 "C" Street NW. (406 L Street), Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Steve Addington, RMP Team Leader, Hollister Resource Area; phone (408) 637–8183.

SUPPLEMENTARY INFORMATION: The final RMP Amendment/EIS analyzes five alternative management scenarios for the oil and gas leasing program to address the following issues: Air quality; threatened, endangered and other special status plants; threatened, endangered, and other special status animals; scenic values; ground water and surface water quality; and mineral exploration and development. Each alternative provides management direction for the issues being addressed. The alternatives can be summarized as: (1) No action or continuation of present management, (2) no leasing, (3) leasing with Endangered Species Stipulation on T&E Plant populations and No Surface Occupancy Stipulation (NSO) on Pinnacles National Monument viewshed, (4) leasing with Endangered Species Stipulation on T&E Plant Habitat and NSO Stipulation on Pinnacles National Monument Viewshed Alternative has been identified as the BLM's Proposed Action.

Public participation has occurred throughout the RMP process. A Notice of Intent was filed in the **Federal Register** in January 1990. The Notice of Availability of Planning Criteria was published in the **Federal Register** in June 1991. The Draft RMP Amendment and Draft EIS was released in August 1992. Copies of the draft document were distributed to all interested or affected parties. All substantive comments received in response to the draft were addressed and/or incorporated into the Final RMP Amendment and EIS.

Dated: November 19, 1993.

Robert E. Beehler,

Area Manager, Hollister Resource Area.

[FR Doc. 93–28985 Filed 11–25–93; 8:45 am]

BILLING CODE 4310–40–M

[ID–942–04–4059–02]

Idaho; Filing of Plats of Survey

The plat of survey of the following described land was officially filed in the Idaho State Office, Bureau of Land Management, Boise, Idaho, effective 9 a.m., November 19, 1993.

The plat representing the dependent resurvey of a portion of the subdivisional lines, the subdivision of sections 9 and 10, a metes-and-bounds survey in section 10 and a survey of Lot 4 in section 10, Township 14 South, Range 32 East, Boise Meridian, Idaho, Group No. 846, was accepted November 15, 1993.

This survey was executed to meet certain administrative needs of the Bureau of Land Management.

All inquiries concerning the survey of the above-described land must be sent to the Chief, Branch of Cadastral Survey, Idaho State Office, Bureau of Land Management, 3380 Americana Terrace, Boise, Idaho 83706.

Dated: November 19, 1993.

Gary T Oviatt,

Acting Chief Cadastral Surveyor for Idaho.

[FR Doc. 93–28992 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–GG–M

[AZ–930–4210–06; A–2680, A–6898, A–7131, A–13001, AR–05059, AR–07159, AR–018950]

Proposed Modification and Continuation of Withdrawals; Opportunity for Public Comments, Arizona

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The U.S. Department of Agriculture, Forest Service, proposes to modify and continue for 20 years, the following withdrawal orders or portions thereof, as amended or modified;

EO–1417 (A–13001), SO–11/18/1907 (AR–07159), PLO–1176 (AR–05059), PLO–1845 (AR–018950), PLO–3263 (AR–07159), PLO–4704 (A–2680), PLO–5354 (A–7131), PLO–5384 (A–6898).

These Orders withdrew National Forest System lands in the Apache-Stigreaves National Forests for use by the Forest Service as lookouts, administrative sites, and ranger stations. All sites continue to be utilized for purposes withdrawn and the Forest Service does not anticipate any significant changes in land use in the near future. Most of the land has been and all will remain closed to operation of the mining law. A number of the sites will be reduced in size for more efficient management.

DATES: Comments on the proposed action should be received on or before February 24, 1994.

ADDRESSES: Comments should be sent to the Arizona State Director, Bureau of Land Management (BLM), 3707 North 7th Street, Phoenix, Arizona, 85104, or P.O. Box 16563, Phoenix, Arizona 85011–6563.

FOR FURTHER INFORMATION CONTACT: Johh Mezes, BLM, Arizona State Office, 602–650–0509.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that Public Land Orders (PLO) 1176, 1845, 3265, 4704, 5354, 5384, Executive Order 1417 dated 10/2/1911, and Secretarial Order dated 11/18/1907 withdrawing lands for uses such as administrative sites, lookouts and ranger stations, be modified and generally continued for 20 years. Some of the same orders have been utilized to withdraw other sites for a variety of uses. These uses will be addressed in other withdrawal review reports. Portions of specific sites will be reduced in size to better meet present day needs. All sites, or portions thereof, remaining withdrawn will remain closed to operations under the mining laws; they will continue to be open to the mineral leasing laws and to other uses applicable to National Forest System lands. Continuation of the withdrawal as proposed in this notice is in conformance with the approved planning documents for the forests. All sites listed below, with one exception, are located within the boundaries of the Apache-Sitgreaves National Forests in Coconino, Navajo, Apache and Greenlee Counties, in Arizona. The individual sites are described as follows:

Gila and Salt River Meridian

Round Valley Administrative Site (A–13001)

T. 9 N., R. 29 E.,
Sec. 28, NE¼SW¼.
The area described totals 40.00 acres

Deer Springs Lookout and Administrative Site (A–05959)

T. 11 N., R. 18 E.,
Sec. 34, S½NW¼, Lots 1 and 4.
The areas described totals 147.55 acres.

Gentry Lookout and Administrative Site (AR–05059)

T. 11 N., R. 15 E.,
Sec. 35, NW¼NE¼.
The area described contains 40.00 acres.

Heber Administrative Site (AR–05059)

T. 12 N., R. 17 E.,
Sec. 32, SW¼, SW¼NW¼, Lots 4 and 6.
The areas described aggregate 259.85 acres.

Lakeside Administrative Site (AR–05059)

T. 9 N., R. 22 E.,
Sec. 23, portions of W½NW¼NE¼, SW¼NE¼, W½SE¼NE¼ and an irregular tract in the E½NW¼SE¼.
The areas described aggregate totals 68.83 acres.

Los Burros Administrative Site (AR–05059)

T. 9 N., R. 25 E.,
Sec. 26, SW¼SW¼;
Sec. 27, SE¼SE¼;
Sec. 34, E½NE¼;
Sec. 35, W½NW¼.
The areas described aggregate 240.00 acres.

Pinedale Ranger Station (AR–05059)

T. 11 N., R. 20 E.,
Sec. 32, N½SE¼, NE¼SW¼, E½NE¼, SW¼NE¼.
The areas described aggregate 240.00 acres.

Promontory Lookout and Administrative Site (AR–05059)

T. 11 N., R. 13 E.,
Sec. 5, NW¼SW¼;
Sec. 6, NE¼SE¼.
The areas described aggregate 80.00 acres.

Juniper Ridge Lookout Administrative Site (AR–018950)

T. 10 N., R. 20 E.,
Sec. 14, E½NE¼NW¼.
The area described contains 20.00 acres

Alpine Ranger Station and Administrative Site #2 (AR–07159)

T. 5 N., R. 30 E.,
Sec. 12, SE¼NE¼SE¼.
T. 5 N., R. 31 E.,
Sec. 7, SW¼ lot 3 and lot 5.
The areas described aggregate 24.79 acres.

Hannagan Ranger Station Administrative Site (AR–07159)

T. 3 N., R. 29 E., Unsurveyed
Sec. 2, W½NW¼NW¼, W½SW¼NW¼, approximate location;
Sec. 3, E½NE¼NE¼, E½SE¼NE¼, approximate location.
The areas described aggregate 80.00 acres.

Bear Mountain Lookout (AR–07159)

T. 2 N., R. 29 E., Unsurveyed
Sec. 9, SE¼NW¼, approximate location.
The area described contains 40.00 acres.

Blue Lookout (AR–07159)

T. 3 N., R. 29 E., Unsurveyed.
Sec. 36, S½SW¼NE¼, approximate location.
The area described contains 20.00 acres.

Escudilla Lookout (AR–07159)

T. 6 N., R. 31 E.,
Sec. 6, SE¼ of lot 4.
The area described contains 10.25 acres.

Greer Administrative Site (AR–07159)

T. 7 N., R. 27 E.,
Sec. 12, N½SE¼NW¼.
The area described contains 20.00 acres.

Water Canyon Ranger Station Administrative Site (AR–07159)

T. 8 N., R. 29 E.,
Sec. 28, lot 3.
The area described contains 41.77 acres.

Strayhorse Administrative Site (A–2680)

T. 2 N., R. 29 E., (Unsurveyed)
Sec. 2, SE¼SW¼, except that part previously withdrawn by PLO 1583.
The area described contains approximately 40.00 acres.

Chevelon Ranger Station Administrative State (A–7131)

T. 13 N., R. 13 E.,
Sec. 1, SE¼NE¼, E½SW¼NE¼, N½SE¼, SE¼SE¼, N½SW¼SE¼.
T. 13 N., R. 14 E.,
Sec. 6, W½ of lot 5, and lot 7.
The areas described aggregate 276.71 acres.

O'haco Lookout and Administrative Site (A–6898)

T. 12 N., R. 12 E.,
Sec. 10, SE¼SE¼NW¼.
The area described contains approximately 10.00 acres.

Heber Job Corps Conservation Center Administrative Site (A–6898)

T., 12 N., R., 16 E.,
Sec. 20, N½SE¼, SW¼SE¼, N½SE¼SE¼, SW¼SE¼SE¼.
The areas described aggregate 150.00 acres.

The areas described in this publication aggregates 1,849.75 acres. The purpose of these withdrawals is to protect U.S. Forest Service lookouts, administrative sites, and ranger stations from location and possible disturbances caused mining activity.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with these proposed actions may present their views in writing to this office. The authorized officer of the

BLM will undertake such investigation as is necessary to determine the existing and potential demand for the land and its resources.

A report will be prepared for consideration to determine whether or not the withdrawal will be modified and continued and, if so, for how long. Notice of a final determination will be published in the **Federal Register** in the form of a Public Land Order. The existing withdrawals will continue in force pending the final determination on each action.

Herman L. Kast,

Deputy State Director, Lands and Renewable Resources.

[FR Doc. 93–28984 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–32–M

Fish and Wildlife Service

Information Collection Submitted to the Office of Management and Budget for Review Under the Paperwork Reduction Act

The proposal for the collection of information listed below has been submitted to the Office of Management and Budget (OMB) for reinstatement approval under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35). Copies of the proposed information collection requirement and related forms and explanatory material may be obtained by contacting the Service's clearance officer at the phone number listed below. Comments and suggestions on the requirement should be made directly to the Service Clearance Officer and the Office of Management and Budget, Paperwork Reduction Project (1018–0022) Washington, DC 20503, telephone 202–395–7340.

Title: Federal Fish and Wildlife License/Permit Application and Related Reports.

OMB Approval Number: 1018–0022.

Abstract: The Federal Fish and Wildlife License/Permit application is a standard application to assist persons applying for Service permits issued under subchapter B of title 50 of the Code of Federal Regulations (CFR). In addition to the permit application, attachments are necessary to provide additional information required for each specific type of permit. The information on the application form will be used to review permit applications and allow the Service to make decisions, according to criteria established in various Federal wildlife conservation statutes and regulations, on the issuance, suspension, revocation or denial of permits.

Service Form Number: 3–200.

Frequency: On occasion.

Description of Respondents: Individuals and households, small businesses and educational institutions.

Estimated Completion Time: The reporting burden for the requirements for this application is estimated to vary from 15 minutes to 4 hours per response, with an average of 1.028 hours per response.

Annual Responses: 20,907.

Annual Burden Hours: 24,463.

Service Clearance Officer: James E. Pinkerton, 703–358–1943, Mail Stop—224 Arlington Square, U.S. Fish and Wildlife Service, Washington, DC 20240.

Dated: July 7, 1993.

David L. Olsen,

Assistant Director—Refuges and Wildlife.

[FR Doc. 93–28990 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Independence National Historical Park General Management Plan; Notice of Intent To Prepare an Environmental Impact Statement and Notice of Public Scoping

In accordance with section 102(c) of the National Environmental Policy Act of 1969, the National Park Service is preparing an Environmental Impact Statement (EIS) to assess the impacts of alternative management strategies for Independence National Historical Park (INHP) which will be described in a general management plan (GMP). A range of alternatives will be formulated for resource protection, visitor use and interpretation, facilities and operations. INHP consists of 52 historic and modern buildings and 44.85 acres of grounds within the City of Philadelphia, Philadelphia County, Pennsylvania.

Independence Hall is a World Heritage Site, designated by the World Heritage Convention of the United Nations. The entire park is on the National Register of Historic Places, and some buildings and grounds associated with the park have also been listed individually on the National Register or as National Historic Landmarks.

The National Park Service announces a public scoping period to invite public participation in the development of issues and alternatives to be considered in the Draft GMP/Draft EIS for INHP.

The GMP will set forth the basic management philosophy for the management of the park's cultural and natural resources, visitor use and services, and maintenance and administrative activities. The final GMP/EIS will guide the management, operation, and use of INHP for the next 10 to 15 years.

Preliminary information about the project was provided to the public through meetings and printed material in September and October, 1993. The scoping process will occur over the next 90 days and the public is encouraged to provide input on concerns and issues related to INHP.

Comments that were provided to the National Park Service during meetings held in September and October will be considered as part of the scoping process. Those who have supplied the NPS with comments may wish to provide additional comments during the next 60 days.

The NPS anticipates holding public meetings on the scope of alternatives in the next few months. Upcoming opportunities for public involvement will be announced through additional notices, press releases to the local media, and planning update documents. A draft GMP/EIS will be released for public review and comment followed by a final GMP/EIS.

Persons wishing to participate in the scoping process for the GMP/EIS should address comments to the Superintendent, Independence National Historical Park, 313 Walnut Street, Philadelphia, Pennsylvania 19106. Comments should be received no later than 90 days from the publication of this notice. Further information can be obtained from the Superintendent.

The responsible official is the Regional Director, National Park Service, Mid-Atlantic Regional Office, 143 S. Third Street, Philadelphia, Pennsylvania 19106.

Dated: November 19, 1993.

Charles P. Clapper,

Deputy Regional Director, Mid-Atlantic Region.

[FR Doc. 93–29041 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–70–M

Delta Region Preservation Commission; Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the Delta Region Preservation Commission will be held at 7 p.m., on Wednesday, December 15, 1993, at the University of New Orleans, Lakefront, New Orleans, Louisiana.

The Delta Region Preservation Commission was established pursuant to section 907 of Public Law 95–625 (16 U.S.C. 230f), as amended, to advise the Secretary of the Interior in the selection of sites for inclusion in Jean Lafitte National Historical Park and Preserve,

and in the implementation and development of a general management plan and of a comprehensive interpretive program of the natural, historical, and cultural resources of the Region.

The matters to be discussed at this meeting include:

—General Management Plan update
—Update on the Atchafalaya Basin Study
—Update on the Jazz Study
—Chalmette Waterline and Beauregard House
—New facility openings
—Old Business
—New Business

The meeting will be open to the public. However, facilities and space for accommodating members of the public are limited, and persons will be accommodated on a first-come-first-served basis. Any member of the public may file a written statement concerning the matters to be discussed with the Superintendent, Jean Lafitte National Historical Park and Preserve.

Persons wishing further information concerning this meeting, or who wish to submit written statements may contact Robert Belous, Superintendent Jean Lafitte National Historical Park and Preserve, U.S. Customs House, 423 Canal Street, room 210, New Orleans, Louisiana 70130–2341, Telephone 504/589–3882. Minutes of the meeting will be available for public inspection four weeks after the meeting at the office of Jean Lafitte National Historical Park and Preserve.

Dated: November 5, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–29042 Filed 11–24–93; 8:45 am]

BILLING CODE 4310–70–M

INTERNATIONAL TRADE COMMISSION

In the Matter of: Certain Diltiazem Hydrochloride and Diltiazem Preparations. [Investigation No. 337–TA–349]

Notice

Notice is hereby given that the prehearing conference in this matter will commence at 10 a.m. on December 6, 1993, in Courtroom A (room 100), U.S. International Trade Commission Building, 500 E St. SW., Washington, DC, and the hearing will commence immediately thereafter.

The Secretary shall publish this notice in the **Federal Register**.

Issued: November 19, 1993.

Sidney Harris,

Administrative Law Judge.

[FR Doc. 93–28964 Filed 11–24–93; 8:45 am]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Availability of Environmental Assessments

Pursuant to 42 U.S.C. 4332, the Commission has prepared and made available environmental assessments for the proceedings listed below. Dates environmental assessments are available are listed below for each individual proceeding.

To obtain copies of these environmental assessments contact Ms. Tawanna Glover-Sanders or Ms. Johnnie Davis, Interstate Commerce Commission, Section of Energy and Environment, room 3219, Washington, DC 20423, (202) 927–6212 or (202) 927–6245.

Comments on the following assessment are due 15 days after the date of availability:

AB–12 (Sub-No. 159X), Southern Pacific Transportation Company—Abandonment Exemption—In Sacramento and El Dorado Counties, California. EA available 11/15/93.
AB–290 (Sub-No.134X), Norfolk and Western Ry. Co.—Abandonment—Between Huff Creek Junction and Lynco, WV. EA available 11/19/93.
AB–No. 405 (Sub-No. 1X), LI Acquisition Corp., d/b/a Upper Merion & Plymouth Railroad—Abandonment Exemption—In Montgomery County, PA. EA available 11/19/93.
AB–12 (Sub-No. 168X), Southern Pacific Transportation Co.—Abandonment Exemption—In Merced and Fresno Counties, California. EA available 11/19/93.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29029 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32369]

Belt Railway Co. of Chicago—Trackage Rights Exemption—Indiana Harbor Belt Railroad Co.

Indiana Harbor Belt Railroad Company (IHB) has agreed to grant The Belt Railway Company of Chicago (BRC) overhead trackage rights over a portion of IHB's Elsdon Branch railroad track lying on IHB's railroad right-of-way extending from Consolidated Rail Corporation's track connection (CP–518) south of 48th Place to a point of track connection with BRC's Single Track Elsdon Line at approximately 50th Street in Chicago, IL, a total distance of approximately .21 miles. The trackage rights exemption became effective November 15, 1993.

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Woodward M. Cunningham, The Belt Railway Company of Chicago, 6900 South Central Avenue, Chicago, IL 60638.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected pursuant to *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29030 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32396]

Eastern Idaho Railroad, Inc.—Acquisition and Operation Exemption—Union Pacific Railroad Co.

Eastern Idaho Railroad, Inc. (EIRR), a noncarrier, has filed a notice of exemption: (1) To acquire and operate ten rail lines of the Union Pacific Railroad Company (UP) for a distance of 266.40 miles in the State of Idaho; and (2) to acquire incidental trackage rights over two rail lines of UP's in the State of Idaho for a distance of 70.25 miles. EIRR will become a class III rail carrier. The transaction was to be consummated on or after November 14, 1993.[1]

The 266.40 miles of rail line being acquired include: (1) UP's Yellowstone Branch extending 50.21 miles between milepost 1.39, at Idaho Falls, and

[1] This transaction is related to a notice of exemption concurrently filed in Finance Docket No. 32397, *Charles R. Webb—Continuance in Control Exemption—Eastern Idaho Railroad, Inc.*, under 49 CFR § 1180.2(d)(2) and 1180.4(g). to exempt Mr. Webbs' continuance in control of EIRR upon EIRR becoming a class III rail carrier. Mr. Webb currently controls the Southeast Kansas Railroad Company and Blue Mountain Railroad, Inc.

milepost 51.60, at Ashton; (2) UP's East Belt Branch extending 38.48 miles between milepost 0.07, at Orvin, and milepost 38.55, at Newdale; (3) UP's Goshen Industrial Lead extending 4.03 miles between milepost 21.56, at Lincoln Junction, and milepost 17.53, at Ammon; (4) UP's West Belt Branch extending 10.66 miles between milepost 0.06, at Ucon, and milepost 10.72, at Menan; (5) UP's St. Anthony Industrial Lead extending 8.65 miles between milepost 37.45, at St. Anthony, and milepost 28.80, at Elgin; (6) UP's Old Butte main line extending 3.63 miles between milepost 184.05 and milepost 187.68, at Idaho Falls; (7) UP's Twin Falls Branch extending 74.00 miles between milepost 0.20, at Minidoka, and milepost 74.20, at Buhl; (8) UP's Oakley Branch extending 11.19 miles between milepost 0.49, at Burley, and milepost 11.68, at Martin; (9) UP's Raft River Branch extending 8.69 miles between milepost 0.55, at Burley, and milepost 9.24, at Declo; and (10) UP's Northside Branch extending 56.86 miles between milepost 0.64, at Rupert, and milepost 57.50 at Wendell.[2]

The 70.25 miles of incidental trackage rights that EIRR will acquire will be over the following lines: (1) UP's line from milepost 181.5 to milepost 188.75 in Idaho Falls, a distance of 7.25 miles; and (2) UP's line from milepost 211.0, at Pocatello, to milepost 274.0, at Minidoka, a distance of 63 miles.

Any comments must be filed with the Commission and served on: Karl Morell, 919 Eighteenth Street, N.W., Suite 210, Washington, DC 20006.

The notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void ab initio. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 18, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.

Secretary.

[FR Doc. 93–29032 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[2] EIRR will also lease on a non-exclusive basis from UP certain yard and side track in Idaho Falls. Under 49 U.S.C. 10907 the lease and operation of the yard and side track are not subject to the Commission's jurisdiction.

[Finance Docket No. 32381]

Soo Line Railroad Co.—Acquisition of Trackage Rights— Burlington Northern Railroad Co.

The Burlington Northern Railroad Company (BN) has agreed to grant non-exclusive bridge trackage rights to Soo Line Railroad Company (Soo Line) between BN milepost 13.27 at Lyndale Junction, MN to BN milepost 9.54 East leg of Wye and BN milepost 10.05 West leg of Wye at Minneapolis Junction, Minneapolis, MN. The trackage rights exemption became effective on November 12, 1993.[1]

This notice is filed under 49 CFR 1180.2(d)(7). If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not stay the transaction. Pleadings must be filed with the Commission and served on: Wayne C. Serkland, 1000 Soo Line Building, 105 South Fifth Street, Minneapolis, MN 55402.

As a condition to the use of this exemption, any employees affected by the trackage rights will be protected under *Norfolk and Western Ry. Co.—Trackage Rights—BN*, 354 I.C.C. 605 (1978), as modified in *Mendocino Coast Ry., Inc.—Lease and Operate*, 360 I.C.C. 653 (1980).

Decided: November 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29033 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[1] The terms of the trackage rights agreement were scheduled to take effect upon commencement of operations over BN's trackage by Soo Line and/or Twin Cities & Western Railroad Company.

[Finance Docket No. 32325]

Three Rivers Railway Co.—Acquisition Exemption—Pittsburgh and Ohio Valley Railroad Co.

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: Under 49 U.S.C. 10505, the Commission exempts from the prior approval requirements of 49 U.S.C. 11343–44 the purchase by the Three Rivers Railway Company of all of the Pittsburgh and Ohio Valley Railroad Company's rail lines, totaling about 2 miles of main-line track and 7 miles of yard and other trackage in Neville Township, PA. The exemption is subject to standard employee protective conditions.

DATES: This exemption will be effective on December 27, 1993. Petitions to stay must be filed by December 13, 1993 and petitions to reopen must be filed by December 21, 1993.

ADDRESSES: Send pleadings referring to Finance Docket No. 32325 to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, (2) Charles M. Rosenberger and Nicholas S. Yovanovic, CSX Transportation, Inc., 500 Water Street, Jacksonville, FL 32202, (3) David W. Hagy and Peter J. Shudtz, CSX Corporation, 901 East Cary Street, One James Center, Richmond, VA 23219, and (4) James E. Howard, Kirkpatrick & Lockhart, One International Place, Boston, MA 02110–2600.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610. [TDD for hearing impaired (202) 927–5721.]

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. [Assistance for the hearing impaired is available through TDD service (202) 927–5721.]

Decided: November 16, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29034 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[Docket No. AB–32 (Sub-No. 54X) and [Docket No. AB–355 (Sub-No. 6X)]

Boston and Maine Corp.—Abandonment—Hampden County, MA and Springfield Terminal Railway Co.—Discontinuance of Service—Hampden County, MA

Boston and Maine Corporation (BM) and Springfield Terminal Railway Company (ST) filed a notice of exemption under 49 CFR Part 1152 Subpart F—*Exempt Abandonments and Discontinuances* to abandon and discontinue service over .75 miles of railroad known as the Chicopee Falls Branch, from milepost 0.00, to milepost 0.75, all in Chicopee, Hampden County, MA. BM seeks authority to abandon the line, and ST, which leases the line from BM, seeks authority to discontinue service over the line.

BM and ST certify that: (1) No local traffic has moved over the line for at least 2 years; (2) overhead traffic has been rerouted over other lines; (3) no formal complaint filed by a user of rail service on the line (or by a State or local government entity acting on behalf of such user) regarding cessation of service over the line either is pending with the Commission or with any U.S. District Court or has been decided in favor of the complainant within the 2-year period; and (4) the requirements at 49 CFR 1105.7 (environmental reports), 49 CFR 1105.8 (historic report), 49 CFR 1105.11 (transmittal letter), 49 CFR 1105.12 (newspaper publication), and 49 CFR 1152.50(d)(1) (notice to government agencies) have been met.

As a condition to use of this exemption, any employee affected by the abandonment or discontinuance shall be protected under *Oregon Short Line R. Co.—Abandonment—Goshen*, 360 I.C.C. 91 (1979). To address whether this condition adequately protects affected employees, a petition for partial revocation under 49 U.S.C. 10505(d) must be filed.

Provided no formal expressions of intent to file an offer of financial assistance (OFA) has been received, this exemption will be effective on December 24, 1993, unless stayed pending reconsideration. Petitions to stay that do not involve environmental issues,[1] formal expressions of intent to file an OFA under 49 CFR 1152.27(c)(2),[2] and trail use/rail banking statements under 49 CFR 1152.29 must be filed by December 6, 1993.[3] Petitions to reopen or requests for public use conditions under 49 CFR 1152.28 must be filed by December 14, 1993, with: Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423.

A copy of any pleading filed with the Commission should be sent to applicants' representative: Kevin J. O'Connell, Esq., Law Department, Iron Horse Park, North Billerica, MA 01862.

If the notice of exemption contains false or misleading information, the exemption is void *ab initio*.

BM and ST have filed an environmental report which addresses the abandonment's and discontinuance's effect, if any, on the environmental or historic resources. The Section of Energy and Environment (SEE) will issue an environmental assessment (EA) by November 29, 1993. Interested persons may obtain a copy of the EA from SEE by writing to it (Room 3219, Interstate Commerce Commission, Washington, DC 20423) or by calling Elaine Kaiser, Chief of SEE, at (202) 927–6248. Comments on environmental and historic preservation matters must be filed within 15 days after the EA becomes available to the public.

Environmental, historic preservation, public use, or trail use/rail banking conditions will be imposed, where appropriate, in a subsequent decision.

Decided: November 19, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29031 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[1] A stay will be routinely issued by the Commission in those proceedings where an informed decision on environmental issues (whether raised by a party or by the Commission's Section of Energy and Environment in its independent investigation) cannot be made prior to the effective date of the notice of exemption. *See Exemption of Out-of-Service Rail Lines*, 5 I.C.C.2d 377 (1989). Any entity seeking a stay involving environmental concerns is encouraged to file its request as soon as possible in order to permit this Commission to review and act on the request before the effective date of this exemption.

[2] *See Exempt. of Rail Abandonment—Offers of Finan. Assist.*, 4 I.C.C.2d 164 (1987).

[3] The Commission will accept a late-filed trail use statement as long as it retains jurisdiction to do so.

[Docket No. AB–167 (Sub 1117X)]

Consolidated Rail Corporation—Abandonment Exemption—In Elizabeth, Union County, NJ

AGENCY: Interstate Commerce Commission.

ACTION: Notice of exemption.

SUMMARY: The Commission exempts from the prior approval requirements of 49 U.S.C. 10903–10904 the abandonment by Consolidated Rail Corporation (Conrail) of a 1.7±mile rail line between milepost 0.0± and milepost 1.7± in Elizabeth, in Union County, NJ. This exemption is subject to standard labor protective conditions.

DATES: Provided no formal expression of intent to file an offer of financial assistance has been received, this exemption will be effective on December 26, 1993. Formal expressions of intent to file an offer of financial assistance under 49 CFR 1152.27(c)(2)[1] must be filed by December 6, 1993, petitions to stay must be filed by December 13, 1993, requests for a public use condition conforming to 49 CFR 1152.28(a)(2) must be filed by December 16, 1993, and petitions to reopen must be filed by December 21, 1993.

ADDRESSES: Send pleadings referring to Docket No. AB–167 (Sub-No. 1117X) to (1) Office of the Secretary, Case Control Branch, Interstate Commerce Commission, Washington, DC 20423, and (2) Robert S. Natalini, 2001 Market Street, 16A, Philadelphia, PA 19101–1416.

FOR FURTHER INFORMATION CONTACT: Richard B. Felder (202) 927–5610, (TDD for hearing impaired: (202) 927–5721).

SUPPLEMENTARY INFORMATION: Additional information is contained in the Commission's decision. To purchase a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. (Assistance for the hearing impaired is available through TDD service (202) 927–5721.)

Decided: November 18, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29036 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

[1] See Exempt. of Rail Abandonment—Offers of Finan. Assist., 4 I.C.C.2d 164 (1987).

[Finance Docket No. 32397]

Charles R. Webb—Continuance in Control Exemption—Eastern Idaho Railroad, Inc.

Charles R. Webb, a noncarrier individual, has filed a notice of exemption to continue in control of Eastern Idaho Railroad, Inc. (EIRR) upon EIRR becoming a carrier.

EIRR has concurrently filed a notice of exemption in Finance Docket No. 32396, Eastern Idaho Railroad, Inc.—Acquisition and Operation Exemption—Lines of the Union Pacific Railroad Company, to acquire and operate 266.40 miles of rail line from the Union Pacific Railroad Company (UP), and to acquire incidental trackage rights over 70.25 miles of rail line from UP, all in the State of Idaho.

Mr. Webb currently controls, through stock ownership and management, two class III rail carriers: (1) Southeast Kansas Railroad Company, which has acquired and leased approximately 171.7 miles of rail line in Missouri, Kansas, and Oklahoma; and (2) Blue Mountain Railroad, Inc., which owns and operates 207.1 miles of rail line in Washington, Oregon, and Idaho. Mr. Webb indicates that: (1) the properties operated by the affiliated railroads will not connect with each other; (2) the

continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction is therefore exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleading must be filed with the Commission and served on: Karl Morell, 919 Eighteenth Street, NW, suite 210, Washington, DC 20006.

Decided: November 18, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29035 Filed 11–24–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Antitrust Division

Pursuant to the National Cooperative Research and Production Act of 1993—Michigan Materials and Processing Institute

Notice is hereby given that, on October 26, 1993, pursuant to section 6(a) of the National Cooperative Research and Production Act of 1993, 15 U.S.C. 4301 *et seq.* ("the Act"), the Michigan Materials and Processing Institute ("MMPI") has filed written notifications simultaneously with the Attorney General and the Federal Trade Commission disclosing a change in its membership. The notifications were filed for the purpose of extending the Act's provisions limiting the recovery of antitrust plaintiffs to actual damages under specified circumstances. The following company was recently accepted as an Associate Member in MMPI: Nicholas Plastics, Inc., Allendale, MI.

No other changes have been made in either the membership or planned activity of the group research project. Membership in this group research project remains open, and MMPI intends to file additional written notification disclosing all changes in membership.

On August 7, 1990, MMPI filed its original notification pursuant to section 6(a) of the Act. The Department of Justice published a notice in the **Federal Register** pursuant to section 6(b) of the Act on September 6, 1990, 55 FR 36710. The last notification was filed with the Department on July 2, 1993. A notice was published in the **Federal Register** pursuant to section 6(b) of the Act on August 17, 1993, 58 FR 43655.

Joseph H. Widmar,

Director of Operations, Antitrust Division.

[FR Doc. 93–28917 Filed 11–24–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

[TA–W–28,731, etc.]

Cleveland Pneumatic Company, et al.; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In the matter of: TA–W–28,731 Cleveland, OH; TA–W–28,731A Fayette City, PA; TA–W–28,731B Little Egg Harbor, NJ; TA–W–28,731C Anaheim Hills, CA; TA–W–28,732 Cleveland Plating Company, Cleveland, OH.

In accordance with Section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor issued a Certification for Worker Adjustment Assistance on August 25, 1993, applicable to all workers of the Cleveland Pneumatic Company, Cleveland, Ohio and the Cleveland Plating Company, Cleveland, Ohio. The notice was published in the **Federal Register** on September 3, 1993 (58 FR 46998).

At the request of the company the Department reviewed the subject certification. The findings show that a few workers of Cleveland Pneumatic were laid off in Pennsylvania, New Jersey and California. The workers were quality control representatives for aircraft landing gears. Therefore, the Department is amending the subject certification to include the other locations.

The intent of the Department's certification is to include all workers of Cleveland Pneumatic Company who were adversely affected by increased imports.

The amended notice applicable to TA–W–28,731 and TA–W–28,732 is hereby issued as follows:

All workers of the Cleveland Pneumatic Company, Cleveland, Ohio; Fayette City, Pennsylvania; Little Egg Harbor, New Jersey and Anaheim Hills, California and the Cleveland Plating Company, Cleveland, Ohio producing aircraft landing gears who became totally or partially separated from employment on or after May 21, 1992 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, DC, this 15th day of November 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–29019 Filed 11–24–93; 8:45 am]

BILLING CODE 4510–30–M

Investigations Regarding Certifications of Eligibility To Apply Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the Appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of the Trade Adjustment Assistance, at the address shown below, not later than December 6, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 6, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC, this 8th day of November, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/workers/firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Good Quality Sewing Company (Wkrs)	Honesdale, PA	11/08/93	10/28/93	29,198	Ladies' & Mens' Knitting Tops.
Robbins Company (The) (Wkrs)	Kent, WA	11/08/93	10/27/93	29,199	Underground Excavation Equipment.
Playtimer Industries Ltd (Wkrs)	Elizabethville, PA	11/08/93	10/26/93	29,200	Ladies', Mens' and Children's Slippers.
Essex Specialty Products (Co)	Sayreville, NJ	11/08/93	10/26/93	29,201	Automotive Sealants and Adhesives.
Sargent-Fletcher Co (Co)	El Monte, CA	11/05/93	10/26/93	29,202	In-Flight Refueling Systems.
Rockwell International Corp (Co)	Seal Beach, CA	11/08/93	10/19/93	29,203	Global Positioning Satellites.
Wean Industries, Inc (USWA)	Youngstown, OH	11/08/93	10/27/93	29,204	Steel Processing Machinery.
Dyna Turn of Oklahoma, Inc (Co)	Elk City, OK	11/08/93	10/27/93	29,205	Aluminum Discs.
Vought Aircraft Co (Co)	Dallas, TX	11/08/93	10/06/93	29,206	Aircraft Assemblies.
Kerr-McGee Refining (Wkrs)	Wynnewood, OK	11/08/93	10/25/93	29,207	Refinery Services.
Kerr-McGee Pipeline (Wkrs)	Wynnewood, OK	11/08/93	10/25/93	29,208	Pipeline Services.
Beaver Precision Products (UAW)	Troy, MI	11/08/93	10/06/93	29,209	Ball Screws for Aircraft Missiles.
Aluminun Co of America (Wkrs)	Lafayette, IN	11/08/93	10/04/93	29,210	Aluminum Ingots, Extrusions, Tubes.
Mallinckrodt Medical, Inc (Co)	New Haven, MO	11/08/93	11/01/93	29,211	Temperature Monitoring Devices.
Elastimold (Co)	Spring Lake, MI	11/08/93	10/21/93	29,212	
Smead Manufacturing (Wkrs)	Hastings, MN	11/08/93	11/01/93	29,213	Expandable Files.
Shenango, Inc (USWA)	Neville Island, PA	11/08/93	10/21/93	29,214	Coke.
Cooper Industries, Wagner Brake Div (IBEW).	Hilliard, OH	11/08/93	9/27/93	29,215	Vehicle Brake Parts.

[FR Doc. 93–29020 Filed 11–24–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–29,056, TA–W–29,057]

Neles-Jamesbury, Inc., Lincoln Street Plant, Worcester, MA; and Neles-Jamesbury, Inc., Glens Falls, NY; Termination of Investigation

Pursuant to Section 221 of the Trade Act of 1974, an investigation was initiated on September 20, 1993, in response to a petition which was filed on September 20, 1993, on behalf of workers at Neles-Jamesbury, Inc., Lincoln Street Plant, Worcester, Massachusetts (TA–W–29,056) and Glens Falls, New York (TA–W–29,057).

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 15th day of November 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 93–29021 Filed 11–24–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,909]

Parker Hannifin, Trumann, AR; Notice of Revised Determination on Reconsideration

On November 10, 1993, the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers engaged in employment related to the production of air conditioning hoses for vehicles at the subject firm. This notice will soon be published in the **Federal Register**.

The company submitted new information on reconsideration showing that it lost most of its business of air conditioning hoses for the BOC Division of General Motors (GM) in August, 1993 and will lose the remainder by July, 1994. The workers producing the BOC air conditioning hoses are separately identifiable from other workers at the plant.

Reconsideration findings show worker separations occurred at the subject facility in July 1993 and will continue until July 1994.

Other findings on reconsideration show that the lost business was relocated to Mexico and that imports of BOC air conditioning hoses are currently occurring.

Conclusion

After careful consideration of the new facts obtained on reconsideration, it is concluded that Parker Hannifin's workers in Trumann, Arkansas were adversely affected by increased imports of articles like or directly competitive with air conditioning hoses for the BOC Division of General Motors produced at Trumann, Arkansas. In accordance with the provisions of the Act, I make the following revised certification for the Parker Hannifin workers in Trumann, Arkansas.

All workers of Parker Hannifin, in Trumann, Arkansas producing air conditioning hoses for the BOC Division of GM and who became totally or partially separated from employment on or after July 1, 1993 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974.

Signed at Washington, D.C., this 15th day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–29022 Filed 11–24–93; 8:45 am]
BILLING CODE 4510–30–M

[TA–W–28,909]

Parker Hannifin, Trumann, AR; Notice of Affirmative Determination Regarding Application for Reconsideration

On November 4, 1993, the company requested administrative reconsideration of the Department of Labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on October 6, 1993 and published in the **Federal Register** on October 28, 1993 (58 FR 58187).

The company submitted new information showing decreased sales and employment in 1993.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this 10th day of November 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation and Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–29023 Filed 11–24–93; 8:45 am]

BILLING CODE 4510–30–M

Employment Standards Administration

Wage and Hour Division

Minimum Wages for Federal and Federally Assisted Construction; General Wage Determination Decisions

General wage determination decisions of the Secretary of Labor are issued in accordance with applicable law and are based on the information obtained by the Department of Labor from its study of local wage conditions and data made available from other sources. They specify the basic hourly wage rates and fringe benefits which are determined to be prevailing for the described classes of laborers and mechanics employed on construction projects of a similar character and in the localities specified therein.

The determinations in these decisions of prevailing rates and fringe benefits have been made in accordance with 29 CFR part 1, by authority of the Secretary of Labor pursuant to the provisions of the Davis-Bacon Act of March 3, 1931, as amended (46 Stat. 1494, as amended, 40 U.S.C. 276a) and of other Federal statutes referred to in 29 CFR part 1, Appendix, as well as such additional statutes as may from time to time be enacted containing provisions for the payment of wages determined to be prevailing by the Secretary of Labor in accordance with the Davis-Bacon Act. The prevailing rates and fringe benefits determined in these decisions shall, in accordance with the provisions of the foregoing statutes, constitute the minimum wages payable on Federal and federally assisted construction projects to laborers and mechanics of the specified classes engaged on contract work of the character and in the localities described therein.

Good cause is hereby found for not utilizing notice and public comment procedure thereon prior to the issuance of these determinations as prescribed in 5 U.S.C. 553 and not providing for delay in the effective date as prescribed in that section, because the necessity to issue current construction industry wage determinations frequently and in large volume causes procedures to be impractical and contrary to the public interest.

General wage determination decisions, and modifications and supersedeas decisions thereto, contain no expiration dates and are effective from their date of notice in the **Federal Register**, or on the date written notice is received by the agency, whichever is earlier. These decisions are to be used in accordance with the provisions of 29 CFR parts 1 and 5. Accordingly, the applicable decision, together with any modifications issued, must be made a part of every contract for performance of the described work within the geographic area indicated as required by an applicable Federal prevailing wage law and 29 CFR part 5. The wage rates and fringe benefits, notice of which is published herein, and which are contained in the Government Printing Office (GPO) document entitled "General Wage Determinations Issued Under The Davis-Bacon And Related Acts," shall be the minimum paid by contractors and subcontractors to laborers and mechanics.

Any person, organization, or governmental agency having an interest in the rates determined as prevailing is encouraged to submit wage rate and fringe benefit information for consideration by the Department. Further information and self-explanatory forms for the purpose of submitting this data may be obtained by writing to the U.S. Department of Labor, Employment Standards Administration, Wage and Hour Division, Division of Wage Determinations, 200 Constitution Avenue, NW., room S–3014, Washington, DC 20210.

New General Wage Determination Decisions

The numbers of the decisions added to the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" are listed by Volume and State.

Volume I

Maryland
- MD930046 (Nov. 26, 1993)
- MD930047 (Nov. 26, 1993)

Pennsylvania
- PA930049 (Nov. 26, 1993)
- PA930051 (Nov. 26, 1993)
- PA930052 (Nov. 26, 1993)
- PA930053 (Nov. 26, 1993)
- PA930054 (Nov. 26, 1993)

Virginia
- VA930103 (Nov. 26, 1993)

Volume II

Iowa
- IA930031 (Nov. 26, 1993)

Kansas
- KS930061 (Nov. 26, 1993)

Texas
- TX930088 (Nov. 26, 1993)
- TX930089 (Nov. 26, 1993)
- TX930090 (Nov. 26, 1993)

Wisconsin
- WI930029 (Nov. 26, 1993)
- WI930030 (Nov. 26, 1993)

Modification to General Wage Determination Decisions

The number of decisions listed in the Government Printing Office document entitled "General Wage Determinations Issued Under the Davis-Bacon and Related Acts" being modified are listed by Volume and State. Dates of publication in the **Federal Register** are in parentheses following the decisions being modified.

Volume I

Connecticut
- CT930001 (Feb. 19, 1993)
- CT930003 (Feb. 19, 1993)
- CT930004 (Feb. 19, 1993)

Delaware
- DE930009 (Feb. 12, 1993)

Kentucky
- KY930025 (Feb. 19, 1993)
- KY930029 (Feb. 19, 1993)

New York
- NY930002 (Feb. 19, 1993)

Pennsylvania
- PA930024 (Feb. 19, 1993)
- PA930029 (Feb. 19, 1993)

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Iowa
- IA930004 (Feb. 19, 1993)

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Kansas
- KS930004 (Feb. 19, 1993)
- KS930005 (Feb. 19, 1993)
- KS930012 (Feb. 19, 1993)

Louisiana
- LA930001 (Feb. 19, 1993)
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- LA930005 (Feb. 19, 1993)
- LA930009 (Feb. 19, 1993)
- LA930014 (Feb. 19, 1993)
- LA930015 (Feb. 19, 1993)
- LA930016 (Feb. 19, 1993)
- LA930017 (Feb. 19, 1993)
- LA930018 (Feb. 19, 1993)

Ohio
- OH930001 (Feb. 19, 1993)
- OH930002 (Feb. 19, 1993)
- OH930003 (Feb. 19, 1993)
- OH930012 (Feb. 19, 1993)
- OH930028 (Feb. 19, 1993)
- OH930029 (Feb. 19, 1993)
- OH930035 (Feb. 19, 1993)

Texas
- TX930006 (Feb. 19, 1993)
- TX930008 (Feb. 19, 1993)
- TX930012 (Feb. 19, 1993)
- TX930063 (Feb. 19, 1993)
- TX930067 (Feb. 19, 1993)

General Wage Determination Publication

General wage determinations issued under the Davis-Bacon and related Acts, including those noted above, may be found in the Government Printing Office (GPO) document entitled "General Wage

Determinations Issued Under The Davis-Bacon and Related Acts." This publication is available at each of the 50 Regional Government Depository Libraries and many of the 1,400 Government Depository Libraries across the country. Subscriptions may be purchased from: Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402, (202) 783–3238.

When ordering subscription(s), be sure to specify the State(s) of interest, since subscriptions may be ordered for any or all of the three separate volumes, arranged by State. Subscriptions include an annual edition (issued on or about January 1) which includes all current general wage determinations for the States covered by each volume. Throughout the remainder of the year, regular weekly updates will be distributed to subscribers.

Signed at Washington, DC this 19th day of November 1993.

Alan L. Moss,

Director, Division of Wage Determinations.

[FR Doc. 93–28892 Filed 11–24–93; 8:45 am]

BILLING CODE 4510–27–M

Mine Safety and Health Administration

Petitions for Modification

The following parties have filed petitions to modify the application of mandatory safety standards under section 101(c) of the Federal Mine Safety and Health Act of 1977.

1. Peabody Coal Co.

[Docket No. M–93–302–C]

Peabody Coal Company, P.O. Box 1990, Henderson, Kentucky 42420 has filed a petition to modify the application of 30 CFR 75.1002 (location of trolley-wires, trolley feeder wires, high-voltage cables and transformers) to its Camp No. 11 Mine (I.D. No. 15–08357) located in Union County, Kentucky. Due to the width of the coal panels and required production, the petitioner proposes to use high-voltage (2400 volt) longwall equipment in the No. 9 Seam inby the last open crosscut. The petitioner states that application of the standard would result in a diminution of safety to the miners. In addition, the petitioner asserts that the proposed alternate method would provide at least the same measure of protection as would the mandatory standard.

2. Red Brush Coal Company

[Docket No. M–93–303–C]

Red Brush Coal Company, 1668 Maple Avenue, Shamokin, Pennsylvania 17872 has filed a petition to modify the application of 30 CFR 75.1002–1(a) (location of other electric equipment; requirements for permissibility) to its 7 Vein Slope (I.D. No. 36–08246) located in Northumberland County, Pennsylvania. The petitioner proposes to use nonpermissible electric equipment within 150 feet of the pillar line and to suspend equipment operation anytime the methane concentration at the equipment reaches 0.5 percent, either during operation or a preshift examination. The petitioner asserts that the proposed alternative method would provide at least the same measure of protection as would the mandatory standard.

Request for Comments

Persons interested in these petitions may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before December 27, 1993. Copies of these petitions are available for inspection at that address.

Dated: November 17, 1993.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 93–29024 Filed 11–24–93; 8:45 am]

BILLING CODE 4510–43–P

Occupational Safety and Health Administration

OSHA Training Institute Education Centers

AGENCY: Occupational Safety and Health Administration (OSHA), Department of Labor.

ACTION: Request for proposals.

SUMMARY: The Occupational Safety and Health Administration (OSHA) conducts short-term technical training in occupational safety and health through the OSHA Training Institute in Des Plaines, Illinois. In recent years, the number of private sector personnel and Federal personnel from agencies other than OSHA requesting training has increased beyond the capacity of the OSHA Training Institute to meet the demand. In October 1992, OSHA began a pilot project to test the feasibility of using other training or educational institutions to conduct OSHA Training Institute courses for private sector personnel and for Federal personnel from agencies other than OSHA. Based on the success to date of this pilot project, OSHA is expanding the program.

This notice announces the opportunity for interested organizations to submit applications to become OSHA Training Institute Education Centers. Applications will be rated on a competitive basis, and four organizations will be selected to participate in the project. Complete application instructions are contained in this notice.

Authority for this program may be found in sections 21(b) and (c) of the Occupational Safety and Health Act of 1970 (29 U.S.C. 670) (the OSH Act).

DATES: Applications must be received by January 21, 1994.

ADDRESSES: Applications must be submitted to the Division of Training and Educational Programs, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018.

FOR FURTHER INFORMATION CONTACT: Ronald Mouw, Chief, Division of Training and Educational Programs, or Zigmas Sadauskas, Director, OSHA Training Institute, Office of Training and Education, Occupational Safety and Health Administration, U.S. Department of Labor, 1555 Times Drive, Des Plaines, Illinois 60018, telephone (708) 297–4810.

SUPPLEMENTARY INFORMATION:

Background

The OSHA Training Institute conducts 79 short-term technical training courses in OSHA standards, policies, and procedures for persons responsible for enforcing or directly supporting the OSH Act, private sector employers and employees, and Federal personnel from agencies other than OSHA. Its primary responsibility is to the first group: Federal and State compliance officers and State consultation program staff. Private sector and Federal personnel from agencies other than OSHA receive training on an "as available" basis.

In recent years the demand for training has increased from all three groups. Resources of the OSHA Training Institute have not increased at a rate that can keep up with the demand. As the number of Federal and State personnel engaged in enforcement or consultation being trained has increased, opportunities for training for private sector personnel and Federal personnel from agencies other than OSHA have remained static or have decreased.

In order to meet the increased demand for its courses, the OSHA

Training Institute selected four educational institutions to conduct OSHA Training Institute courses for private sector personnel and Federal personnel from agencies other than OSHA. These OSHA Training Institute Education Centers, which were selected through a nationwide competitive process are: Georgia Tech Research Institute, Atlanta, Georgia; Maple Woods Community College, Kansas City, Missouri; Red Rocks Community College, Lakewood, Colorado; and the University of California, San Diego, California.

The OSHA Training Institute now proposes to expand the number of OSHA Training Institute Education Centers from four to eight.

Scope

OSHA will enter into nonfinancial agreements with four colleges, universities or other nonprofit training organizations to conduct OSHA courses for private sector personnel and Federal personnel from agencies other than OSHA. The four new OSHA Training Institute Education Centers will be located in four OSHA Regions, one per region. The four OSHA Regions contain the following states.

1. Region I: Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
2. Region II. New Jersey and New York.
3. Region III: Delaware, District of Columbia, Maryland, Pennsylvania, Virginia, and West Virginia.
4. Region VI: Arkansas, Louisiana, New Mexico, Oklahoma, and Texas.

The new OSHA Training Institute Education Centers will be selected through a nationwide competitive process. This notice solicits applications from organizations interested in participating in the project.

Applicants selected to participate as OSHA Training Institute Education Centers will be expected to present five courses, consisting of four general industry OSHA courses: Course 204A, Machinery and Machine Guarding Standards; Course 501, A Guide to Voluntary Compliance in Safety and Health; Course 521, OSHA Guide to Voluntary Compliance in the Industrial Hygiene Area; and Course 600, Collateral Duty Course for Other Federal Agencies; and one construction industry course: Course 500, Basic Instructor Course in Occupational Safety and Health Standards for the Construction Industry. Additional information about each of these courses is in the appendix to this notice.

Applicants will be selected based upon their occupational safety and health experience, their nonacademic training background, the availability of classroom and lodging facilities, and access to nationwide transportation. OSHA will support the program by providing curriculum outlines, masters of student handouts, and orientation to OSHA course presentation. OSHA also will provide assistance in presenting and/or answering questions on OSHA policy.

The project will be 18 months in duration. OSHA will monitor each of the new OSHA Training Institute Education Centers to evaluate the effectiveness of their programs. If performance is satisfactory at the end of the 18-month period, OSHA will enter into a new agreement for a 2-year period. Continuation of this agreement will be dependent on continued satisfactory performance and mutual interest of the parties in continuing the OSHA Training Institute Education Center program. OSHA may initiate modifications to agreements to increase or decrease the number of different OSHA courses offered by the OSHA Training Institute Education Centers.

Eligibility

Any nonprofit public or private college or university is eligible to apply. Any other nonprofit organization that can demonstrate that training or education is part of its mission and that more than 50 percent of its staff and dollar resources is devoted to training or education is also eligible to apply.

In addition to meeting the eligibility criteria, applicants must have a physical presence in the Region for which they are applying. For example, an eligible national organization based in San Francisco that has a training facility in New York City would have a physical presence in Region II. On the other hand, a national organization based in Chicago that rents hotel space to provide training at multiple sites around the county would be considered to have a physical presence only in Illinois and would not be qualified to apply.

A training or educational institution may elect to apply for this program in partnership with a safety and health organization that is not primarily a training organization. For example, a university could enter into an agreement with a labor union that provides for the use of university classrooms and faculty supplemented by union safety and health professionals.

If two or more organizations wish to apply as a consortium, a training or educational member of the consortium must be designated as the lead organization. OSHA will only enter into a nonfinancial agreement with the lead organization.

Financial Considerations

Organizations selected as OSHA Training Institute Education Centers will not be provided funding by OSHA to support this effort. The Centers will be expected to support their OSHA training through their normal tuition and fee structures.

Length of Project

The project will start July 1, 1994, and will run for 18 months.

OSHA Training Institute Education Center Responsibilities

Each OSHA Training Institute Education Center will be responsible for the following:

1. Arranging to have instructors assigned to teach OSHA courses attend OSHA orientation.
2. Scheduling courses. Courses are to be scheduled on a year-round basis, with each course being offered more than once a year. For the initial period, July 1 to September 30, 1994, each OSHA Training Institute Education Center must schedule a minimum of three course sessions and train a minimum of 100 students.
3. Publicizing the availability of courses.
4. Registering students.
5. Purchasing, or otherwise obtaining, audiovisual materials for use in courses.
6. Reproducing handouts for students.
7. Conducting courses in accordance with materials and instruction provided by OSHA.
8. Monitoring courses to ensure that OSHA course outlines are being followed.
9. Collecting course evaluation data from students in accordance with OSHA procedures.
10. Maintaining student registration and attendance records.
11. Issuing course completion certificates to students. These certificates, which must be approved by OSHA, certify that a student has completed training in a particular course.
12. Providing the OSHA Training Institute with registers of successful course completers.
13. Providing the OSHA Training Institute with a schedule showing the dates, times, and locations of every OSHA course to be offered.
14. Maintaining clearly identifiable records of tuition and/or fees collected from OSHA course students.
15. Arranging for the availability of appropriate accommodations for students.

OSHA Training Institute Responsibilities

The OSHA Training Institute will be responsible for the following:

1. Providing OSHA Training Institute Education Center instructors with orientation on how the OSHA Training Institute teaches OSHA courses.

2. Providing a detailed course outline for each OSHA course to be presented by the OSHA Training Institute Education Center.

3. Providing a master copy of the student handouts for each course to be presented.

4. Providing answers for and technical assistance on questions of OSHA policy.

5. Monitoring the performance of OSHA Training Institute Education Centers through on-site visits, including unannounced attendance at courses, and examining records of registrations, course attendance, tuition collections and personnel records concerning qualifications of staff assigned as instructors.

6. Evaluating the effectiveness of the OSHA Training Institute Education Centers.

In addition to these responsibilities, which will be included in the agreement between OSHA and the OSHA Training Institute Education Center, OSHA will make every effort to have an OSHA staff member, usually from an OSHA Regional or Area Office, available for a portion of each OSHA Training Institute Education Center training session to answer questions of OSHA policy.

Application and Selection Procedures

Eligible organizations wishing to be considered for selection as an OSHA Training Institute Education Center should prepare an application in accordance with the instructions contained in this notice.

Applications are to be submitted to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 66018. The submission is to consist of one original and two copies of the application. Applications should not be bound or stapled and should only be printed on one side of the page. All applications must be received no later than 4:30 p.m. Central Standard Time, January 21, 1994.

OSHA will convene a panel of OSHA staff to review and rate the applications. Following the panel review, OSHA staff may conduct an on-site review of highly rated applicants before making a selection. The final selections will be made by the Assistant Secretary.

All applicants will be notified in writing of their selection or nonselection. it is anticipated that final selections will be made by May 1, 1994. OSHA will enter into a nonfinancial agreement with each successful applicant. The agreement will cover the responsibilities of both parties.

Appeals

There is no appeal procedure for unsuccessful applicants. Any applicant may request a copy of the documentation of its own review by writing to the OSHA Office of Training and Education, Division of Training and Educational Programs, 1555 Times Drive, Des Plaines, Illinois 60018.

Content of Applications

Each application must address each of the following points:

1. *Identifying Information.* Provide the name and address of the applicant organization. If the mailing address is a post office box, also provide the street address. Provide the name, title, and telephone number of the contact person who can answer questions about the application.

2. *Authority to Apply.* Provide a copy of the resolution by the Board of Directors, Board of Regents, or other governing body of the applicant organization approving the submittal of an application to OSHA to become an OSHA Training Institute Education Center.

3. *Nonprofit Status.* Include evidence of the nonprofit status of the applicant organization. A letter from the Internal Revenue Service or a statement included in a recent audit report is preferred. In the absence of either of these, a copy of the articles of incorporation showing the nonprofit status will be accepted.

4. *Status as a Training Organization.* This section applies only to applicants that are not colleges or universities.

Show that training or education is a principal activity of the applicant organization. Through audit reports, annual reports, or other documentation, demonstrate that for the last 2 years more than 50 percent of the applicant's funds have been used for training and education activities and more than 50 percent of its staff resources have also been used for this purpose.

5. *Occupational Safety and Health Experience.* Describe the applicant's relevant course offerings for the last 2 years. Include copies of catalogs and other recruitment materials that provide descriptive material about courses. For each course, include the dates the course was offered and the number of students who completed the course. Also include descriptive material similar to the information contained in the appendix: course description, objectives, topic outline, number of hours, and laboratories or other practical hands-on exercises included in the course.

6. *Staff Qualifications.* Describe the qualifications of staff teaching occupational safety and health courses. Indicate the professional qualifications of each, such as Certified Safety Professional (CSP), Professional Engineer (PE), or Certified Industrial Hygienist (CIH). Also describe staff knowledge off and/or experience with Federal OSHA standards and their application to hazards and hazard abatement. Include resumés of current staff and position descriptions and minimum hiring qualifications for all positions, whether filled or vacant, that may be assigned to conduct OSHA classes.

7. *Classroom Facilities.* Describe classroom facilities available for presentations of the courses. Include number off students accommodated, desk arrangements, and availability of audiovisual equipment. Also describe appropriate laboratory facilities and other facilities available for hands-on exercises. Indicate provisions for accessibility for persons with disabilities.

8. *Recruitment and Registration.* Explain procedures for recruiting students from Federal agencies other than OSHA and from the private sector. Describe registration procedures including provisions for cancellation, furnishing enrollees with hotel information, and tuition or fee collection.

9. *Accommodations.* Provide a representative listing of hotels available for student accommodation and given sample room rates. Explain how students will be transported between the hotels and classes. Also describe the food service and restaurants available in both the area in which the classes will be held and the area where the hotels are located.

10. *Location.* Describe the accessibility of the training facility for students from all parts of the country. Include such items as distance from a major airport, number of airlines serving the airport, transportation from the airport to hotels, and distance from the interstate system. Also describe the proximity of the training facility to the nearest OSHA Regional or Area Office, including the distance, and give the approximate driving or other travel time.

11. *Tuition.* Provide a copy of the applicant organization's tuition and fee schedule. Explain how tuition and/or

fees will be computed for each course, referencing the schedule.

12. *Nondiscrimination.* Provide copies of the applicant organization's nondiscrimination policies covering staff and students. In the absence of a written policy, explain how the applicant will ensure that staff and students are selected without regard to race, color, notional origin, sex, age, or disability.

13. *Off-site Courses.* Successful applicants will be expected to conduct courses at sites other than their own facilities at the request of organizations sponsoring training. Explain the procedures that will be used to assure that classroom facilities and accommodations, if appropriate, are adequate and that instructional staff, if different from those individuals included in item 6 above, Staff Qualifications, meet the hiring standards included in that item.

Review Criteria

A panel of OSHA staff will review the applications. It will consider each of the factors listed below:

1. Occupational Safety and Health Training Experience

a. Evidence that occupational safety and health training or education has been an ongoing program of the applicant organization. Reviewers will examine the number of different occupational safety and health courses offered by the applicant organization over the past 2 years, the length of the courses, the number of students completing each course, and the number of times each course was offered. Successful applicants will also include samples of course announcements.

b. Qualifications of personnel teaching occupational safety and health courses. These include academic training in occupational safety and health subjects, experience with the application of Federal OSHA standards to hazards and hazard abatement, professional certification, practical experience in the field of occupational safety and health, and training experience. Training experience is defined as experience in training workers or managers in nonacademic situations.

2. Adequacy of Training Facilities.

Potential for accommodating classes of 25 to 40 students on a year-round basis in settings comparable to those of the OSHA Training Institute. Items considered will include classroom layout, e.g. desks or tables for students, availability of audiovisual equipment, reproduction facilities for handouts, and availability of appropriate laboratory and/or hands-on facilities. Accessibility for persons with disabilities will also be considered.

3. Recruitment and Registration Procedures

Reasonableness of the applicant's procedures for recruiting and registering students. Methods of reaching potential students, ease of registration, provisions for cancellations, and system for informing students of available accommodations and materials necessary for the course, if any, are among the items that will be reviewed.

4. Accommodations and Location

Availability of lodging and restaurant facilities, access to nationwide transportation, and proximity to an OSHA Area or Regional Office. Accommodations, preferably national hotel/motel chains, and restaurants should be reasonably priced and should be within a few miles of the training facility. A major airport with regular service to all parts of the country should be within a reasonable driving time from the hotel and training locations. Interstate highways should also be within reasonable distance. The nearest OSHA Office should be within 1 hour's travel time of the principal training site to facilitate OSHA participation in training sessions.

5. Tuition

Conformance of proposed tuition and/or fees with the established policies of the applicant and reasonableness of the charges.

6. Nondiscrimination

Adherence of the applicant's policies with Federal requirements.

7. Off-site Courses

Experience and/or ability of the applicant to conduct courses at sites other than its own facility.

Proposal Conferences

The OSHA Office of Training and Education will hold two proposal conferences. These are intended to provide potential applicants with information about the OSHA Training Institute including a tour of the facility, OSHA Training Institute courses and methods of instruction, and administrative requirements for OSHA Training Institute Education Centers. They will also feature question and answer sessions about the documentation expected in applications.

The proposal conferences will be held from 9:30 a.m. to 12:30 p.m. on December 9 and December 14, 1993, at the OSHA Office of Training and Education, 1555 Times Drive, Des Plaines, Illinois 60018. Persons interested in attending one of these conferences should contact Ronald Mouw, Chief, Division of Training and Educational Programs, or Helen Beall, Training Specialist, at (708) 297–4810 to obtain information about local hotel accommodations and transportation. It is not necessary to register for the conferences.

Signed at Washington, DC, this 19th day of November, 1993.

Joseph A. Dear,

Assistant Secretary of Labor for Occupational Safety and Health.

Appendix

Course 204A, Machinery and Machine Guarding Standards

1. Course Description. The course provides the student with an overview of various types of common machinery and related safety standards. The course provides guidance in recognizing hazards such as those created by points of operation, ingoing nip points, rotating parts, and flying chips or sparks, and provides some options to achieve abatement. A field trip is provided to enhance students' knowledge of machine guarding standards. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Identify various machines and their functions;

b. Identify common machinery hazards;

c. Recommend selected abatement methods; and

d. Select the appropriate OSHA standard that applies to a hazard.

3. Course Topics. a. Introduction, pretest and pretest review, posttest and posttest review—2 hours.

b. Hazards and standards workshop and review—2 hours. In this workshop, written hazard conditions are researched, and standards are reviewed and referenced. Oral review also incorporates policy relating to specific conditions.

c. Inspection field trip to machine shop operations and inspection writeup—6 hours.

The class is taken to facilities with extensive and varied metalworking and woodworking operations following the discussions of machinery, terminology, and 29 CFR 1910.211–1910.219. It exposes the students to operations including lathes, mills, boring machines, screw machines, woodworking machines, mechanical power presses, and power transmission apparatus. Students are given an opportunity to apply hazard recognition concepts on a site inspection at an operating facility with a variety of machine operations. They evaluate and document any machinery and machine guarding hazards, then return to the classroom to research the standards for citation references. They present an oral report on their findings.

d. Review of 29 CFR Part 1910, Subpart O, machinery and machine guarding concepts—1 hour.

e. Review of 29 CFR 1910.211 and 29 CFR 1910.212, definitions, guarding and devices, general requirements—2 hours.

f. 29 CFR Subpart J, 1910.147, control of hazardous energy sources (lockout/tagout), and 29 CFR Subpart S, 1910.332–1910.335, electrical safety-related work practices—2 hours.

g. 29 CFR Subpart P, 1910.242–1910.244, portable powered tools—1 hour.

h. 29 CFR 1910.212 and section 5(a)(1) of the OSH Act, robotic safeguarding—1 hour.

i. 29 CFR 1910.213, woodworking machinery requirements—2 hours.

j. 29 CFR 1910.215, abrasive wheel machinery—1 hour.

k. 29 CFR 1910.216, mills and calenders—1 hour.

l. 29 CFR 1910.217, mechanical power presses—2 hours.

m. 29 CFR 1910.218, forging machines—1 hour.

n. 29 CFR 1910.219, power transmission apparatus—1 hour.

Course 500, Basic Instructor Course in Occupational Safety and Health Standards for the Construction Industry

1. Course Description. The course is designed for students in the private sector who are interested in developing safety and health programs in the construction industry. Special emphasis is placed upon those areas in construction that are the most hazardous, using OSHA standards as a guide. Course participants are briefed on effective instructional approaches and the effective use of visual aids and handouts. The course features demonstrations and hands-on use of various construction tools and equipment. Successful completion of this course qualifies the student to conduct both a 10-hour and a 30-hour construction safety and health course and to issue OSHA cards to participants certifying course completion. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. define construction terms found in OSHA standards;

b. present effective safety and health training programs in accordance with OSHA construction standards, regulations, and guidelines;

c. identify hazards and determine appropriate standards;

d. prepare reports citing the conditions found; and

e. identify methods to abate hazards.

3. Course Topics. a. Introduction, pretest and pretest review, overview of the OSH Act and OSHA, introduction to OSHA standards, posttest and posttest review—4 hours.

b. Safety programs, inspections, targeting and penalties—1 hour.

c. Training techniques—2 hours.

d. 29 CFR Part 1904, recordkeeping—1 hour.

e. 29 CFR Part 1926, Subpart D, hazard communication—1 hour.

f. 29 CFR Part 1926, Subpart E, health hazards in construction and personal protective equipment—3 hours.

g. 29 CFR Part 1926, Subpart F, fire protection and prevention—1 hour.

h. 29 CFR Part 1926, Subparts G, O and W, motor vehicles—1 hour.

i. 29 CFR Part 1926, Subpart H, rigging—1 hour.

j. 29 CFR Part 1926, Subpart I, tools—1 hour.

k. 29 CFR Part 1926, Subpart K, electrical—2 hours.

l. 29 CFR Part 1926, Subpart L, scaffolds—2 hours.

m. 29 CFR Part 1926, Subparts M and X, walking and working surfaces and ladders—1 hour.

n. 29 CFR Part 1926, Subpart N, cranes—1 hour.

o. 29 CFR Part 1926, Subpart P, trenching—2 hours.

p. 29 CFR Part 1926, Subpart Q, concrete—1 hour.

Course 501, A Guide to Voluntary Compliance in Safety and Health

1. Course Description. This course is intended for private sector personnel from all types of industries. It presents detailed information on how the provisions of the OSH Act may be implemented in the workplace. The primary focus is on the basics of the Act. The course includes an introduction to general industry standards and provides an overview of the requirements of the more frequently referenced standards. Segments of the course cover rights and responsibilities under the Act, contested citations, recordkeeping, and Voluntary Protection Programs. Successful completion of the course qualifies the student to conduct both a 10-hour and a 30-hour voluntary compliance course and to issue OSHA cards to participants certifying course completion. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Locate OSHA safety and health standards, policies, and procedures;

b. Describe the use of OSHA standards and regulations to supplement an on-going safety and health program;

c. Identify common violations of OSHA standards;

d. Describe appropriate abatement procedures for selected safety hazards; and

e. Describe how to conduct internal training on OSHA regulations.

3. Course topics. a. Pretest and review, posttest and review, and overview of the training outreach program—2 hours.

b. Introduction to OSHA standards and hazard violation workshop—2 hours. The hazard violation workshop introduces the students to the format of the OSHA standards. They are shown how the numbering system works, then must identify the applicable standard for approximately 40 hazardous conditions.

c. Overview of the OSH Act and 29 CFR Part 1903, inspections, citations and proposed penalties—2 hours.

d. 29 CFR Part 1904—recordkeeping—1 hour.

e. 29 CFR Part 1910, Subpart D, walking and working surfaces—2 hours.

f. 29 CFR Part 1910, Subparts E and L, means of egress and fire protection—2 hours.

g. 29 CFR Part 1910, Subpart H, hazardous materials—2 hours.

h. 29 CFR Part 1910, Subpart I, personal protective equipment—1 hour.

i. 29 CFR Part 1910, Subpart J, lockout/tagout—½ hour.

j. 29 CFR Part 1910, Subpart N, material handling—1 hour.

k. 29 CFR Part 1910, Subpart O, machine guarding—2 hours.

l. 29 CFR Part 1910, Subpart Q, welding—2 hours.

m. 29 CFR Part 1910, Subpart S, electrical standards and work practices—2½ hours

n. 29 CFR Part 1910, Subpart Z, hazard communication—1½ hours.

o. 29 CFR Part 1910, Subpart Z, introduction to industrial hygiene—1½ hours.

Course 521, OSHA Guide to Voluntary Compliance in the Industrial Hygiene Area

1. Course Description. This course is designed for private sector personnel who are interested in increasing their knowledge of industrial hygiene practices and related OSHA regulations and procedures. Topics covered include permissible exposure limits, OSHA health standards, respiratory protection, engineering controls, hazard communication, sampling instrumentation, and workplace health program elements. There are workshops in health hazard recognition, safety and health program elements, and the use of OSHA standards. The OSHA Training Institute awards 2.5 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Interpret requirements of OSHA health standards;

b. Recognize potential health hazards in the workplace;

c. Perform basic health hazard evaluation using OSHA sampling procedures;

d. Recommend acceptable strategies for controlling hazardous conditions; and

e. Describe the elements required for an effective workplace health protection program.

3. Course Topics. a. Course opening and course closing—1 hour.

b. Air contaminant sampling—2 hours.

c. Compliance with air contaminant standards—2 hours.

d. Compliance with hazard communication—1½ hours.

e. Compliance with hazardous waste standards—2 hours.

f. Compliance with the asbestos standard—1 hour.

g. Compliance with the bloodborne disease standard—1 hour.

h. Compliance with the confined space standard—1 hour.

i. Compliance with the noise standard—2 hours.

j. Compliance with the respirator standard—2 hours.

k. Compliance with ventilation standards—2 hours.

l. Detector tube sampling—1 hour.

m. Elements of a workplace health program and safety and health program workshop—1½ hours. Students are presented with the elements of a workplace health program and

draft a safety and health program for their own workplaces.

n. Hazard violation workshop—1 hour. Students are presented written workplace scenarios describing hazards and are to determine which OSHA health standards apply and why.

o. Health hazard recognization—1 hour.

p. Health hazard slide workshop—1 hour. Students are shown slides depicting health hazards and asked to identify the hazards.

q. OSHA ergonomic guidelines—1 hour.

r. OSHA recordkeeping for health—1 hour.

Course 600, Collateral Duty Course for Other Federal Agencies

1. Course Description. This course introduces Federal agency collateral duty (part-time) safety and health personnel to the OSH Act, Executive Order 12196, 29 CFR part 1960, and 29 CFR part 1910. It enables them to recognize basic safety and health hazards in their own workplaces, and to effectively assist agency safety and health officers with inspection and abatement efforts. A mock workplace inspection is conducted and student findings are reviewed. The OSHA Training Institute awards 2.2 CEU's for this course.

2. Course Objectives. Students completing this course should be able to:

a. Describe the OSH Act, 29 CFR part 1960, and 29 CFR part 1910;

b. Describe major provisions of Executive Order 12196;

c. Identify selected safety and health hazards and the corresponding OSHA standards;

d. Describe abatement methods for selected safety and health hazards; and

e. Explain and apply workplace inspection procedures consistent with established OSHA policies, procedure, and directives.

3. Course Topics. a. Course opening and course closing—1 hour.

b. Hazard communication—1 hour.

c. Inspection field trip, writeup and review—5 hours. Students are introduced to the process of site inspection, i.e., what hazardous conditions or activities may be observed in the work environment. They are taken to an active government facility, and evaluate and document any observed hazards. After returning to the classroom, they research and select the standards applicable to the observed hazards. Presentations of findings are made to the class.

d. Introduction to accident investigation—1 hour.

e. Introduction to the OSH Act, Executive Order 12196, and 29 CFR part 1960—2 hours.

f. Introduction to OSHA standards and hazard violation workshop and review—2 hours. The hazard violation workshop introduces the students to the format of the OSHA standards. They are shown how the numbering system works, then must identify the applicable standard for approximately 40 hazardous conditions.

g. Office safety—1 hour.

h. 29 CFR part 1910, Subpart D, walking and working surfaces—1 hour.

i. 29 CFR part 1910, Subparts E and L, means of egress and fire protection—1 hour.

j. 29 CFR part 1910, Subpart H, hazardous materials—1 hour.

k. 29 CFR part 1910, Subpart I, personal protective equipment—1 hour.

l. 29 CFR part 1910, Subpart N, material handling—1 hour.

m. 29 CFR part 1910, Subpart O, machine guarding and portable tools—1 hour.

n. 29 CFR part 1910, Subpart Q, welding, cutting and brazing—1 hour.

o. 29 CFR part 1910, Subpart S, electrical standards—1 hour.

p. 29 CFR part 1910, Subpart Z, introduction to industrial hygiene—1 hour.

[FR Doc. 93–28915 Filed 11–24–93; 8:45 am]
BILLING CODE 4510–26–M

NATIONAL SCIENCE FOUNDATION

Office of Polar Programs; Permit Issued Under the Antarctic Conservation Act of 1978

November 22, 1993.

AGENCY: National Science Foundation.

ACTION: Notice of permits issued under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation (NSF) is required to publish notice of permits issued under the Antarctic Conservation Act of 1978. This is the required notice.

FOR FURTHER INFORMATION CONTACT: Thomas F. Forhan, Permit Office, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

SUPPLEMENTARY INFORMATION: On October 19, 1993 the National Science Foundation published a notice in the **Federal Register** of permit applications received. Permit for taking import into USA-Port of Entry Hulnimi and enter specially protected area, was issued to Gerald L. Kooyman on November 20, 1993.

Guy G. Guthridge,

Acting Permit Officer, Office of Polar Programs.

[FR Doc. 93–29007 Filed 11–24–93; 8:45 am]
BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50–133]

General Electric Co., Humboldt Bay Power Plant; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission is considering issuance of an exemption from the revised 10 CFR 50.120 requirements of the Code of Federal Regulations to the Pacific Gas and Electric Company (the licensee) for the Humboldt Bay Power Plant (HBPP), pursuant to 10 CFR 50.12.

Environmental Assessment

Identification of Proposed Action

The proposed action would grant an exemption from the training requirements of 10 CFR 50.120. By letter dated July 28, 1993, the licensee identified the specical conditions that exist at the HBPP as the basis for this exemption request.

The Need for the Proposed Action

HBPP is a boiling water reactor that permanently ceased power operations in 1984. The fuel was removed from the reactor and placed in the spent fuel pool. A possession-only licensee was issued in 1985. HBPP is currently in SAFSTOR. This exemption would relieve the licensee from the training requirements of 10 CFR 50.120, that are not applicable for a reactor that has been defueled and in SAFSTOR. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel.

Environmental Impacts of the Proposed Action

The proposed action does not have any effect on accidents previously analyzed in the Safety Evaluation Report (SER) for decommissioning HBPP. The licensee stated that the nuclear fuel is stored in the spent fuel pool. In addition, there are no credible accident scenarios that could result in offsite doses that would exceed a small fraction of the U.S. Environmental Protection Agency's "Protective Action Guidelines" as evaluated in the SER.

The proposed action would not change the types of effluents that may be released offsite, and there would be no significant increase in the allowable individual or cumulative occupational radiation exposures on-site. Accordingly, the NRC concludes that this proposed action would result in no significant radiological environmental impact.

With regard to potential non-radiological impacts, the proposed action does not effect non-radiological plant effluents and has no other environmental impact. Therefore, the NRC concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternatives to the Proposed Action

Since the NRC staff has concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered for HBPP.

Agencies and Persons Consulted

The NRC staff reviewed the exemption request. No other agencies or personnel were contacted.

Finding of No Significant Impact

Based upon this environmental assessment, the staff concludes that the proposed action will not have a significant effect on the quality of the human environment. Therefore, the NRC will not prepare an environmental impact statement for the proposed exemption.

For further details with respect to this action, the licensee's letter dated July 28, 1993, and the NRC staff's Safety Evaluation, included in the exemption, are available for public inspection at the NRC's Public Document Room, the Gelman Building, 2120 L Street NW., Washington DC 20037, and at Humboldt County Library, 421 I Street, Eureka, CA 95501.

Dated at Rockville, Maryland, this 19th day of November, 1993.

For the Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–29015 Filed 11–24–93; 8:45 am]

BILLING CODE 7590–01–P

Decommissioning of Shieldalloy Metallurgical Corporation's Facility in Cambridge, OH; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), to conduct a scoping process for the EIS, and to conduct a scoping meeting.

SUMMARY: The NRC intends to prepare an Environmental Impact Statement for decommissioning Shieldalloy Metallurgical Corporation's (Shieldalloy) facility located in Cambridge, Ohio. Shieldalloy and predecessor companies at the Cambridge location have been licensed by the NRC to process ores and mineral concentrates containing the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material). As a result of processing the ores, the facility concentrated the radioactive materials in high temperature slag. Shieldalloy no longer actively processes source material at the Cambridge site and is, therefore, decommissioning the site in preparation for requesting the NRC to terminate the license controlling the possession of source material at the site. This notice indicates NRC's intent to prepare an Environmental Impact Statement in conjunction with this proposed action and to conduct a scoping process that will include a public scoping meeting.

DATES: Written comments on matters covered by this notice received by January 15, 1994, will be considered in developing the scope of the EIS. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

A public scoping meeting will be held at the Meadowbrook High School in Byesville, Ohio, on December 13, 1993 from 7–10 p.m.

ADDRESSES: Written comments on the matters covered by this notice and/or the scoping meeting should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

The scoping meeting will be held in the auditorium of the Meadowbrook High School, 58615 Marietta Road, Byesville, Ohio 43723, on December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Weber, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–1298, or Chad Glenn, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–2546.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission (NRC) has the statutory responsibility for protection of public health and safety and the environment related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to assure safe and timely decommissioning of nuclear facilities which it licenses. This responsibility can be partially fulfilled by providing guidance to licensees on how to plan for and prepare their sites for decommissioning. Decommissioning, as defined in the NRC's regulations in 10 CFR 40.4, for example, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated. This requires that radioactivity in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation be reduced to acceptably low levels that allow the property to be released for unrestricted use. Licensees must then demonstrate by a site radiological survey that residual contamination in all facilities and environmental media have been properly reduced or eliminated and that, except for any residual radiological contamination found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

Need for Proposed Action

Shieldalloy Metallurgical Corporation (Shieldalloy) is licensed by the NRC (License Number SMB–1507) to possess and store the radioactive materials uranium and thorium (source material) at a site located south of Cambridge, Guernsey County, Ohio. Under NRC license, previous owners of the site processed niobium ore containing licensable quantities of the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material). As a result of the processing of the ore to produce metal alloys, the radioactive materials were incorporated into waste slag and are currently stored in two separate piles (west and east) at the site. Shieldalloy previously remediated portions of the site by removing contamination and consolidating the radioactive materials into the two piles: the west pile with a mass of about 400,000 metric tons (440,000 tons) and a volume of 160,000 cubic meters (about 5,700,000 cubic feet), and the east pile with a mass of about 81,600 metric tons (90,000 tons) and a volume of 32,600 cubic meters (about 1,200,000 cubic feet). The principal radionuclides in the waste are thorium-232 (and decay products) and uranium-238 (and decay products).

Processing at the site no longer involves source material. Consequently, Shieldalloy has been engaged in

decommissioning the site for the last several years in preparation for requesting the NRC to terminate the license and release the site for unrestricted use in accordance with NRC's requirements. Because the Cambridge site has inactive waste piles containing a large volume of radioactively contaminated soil and slag (up to a total of 10 million cubic feet), NRC included the Cambridge site in the Site Decommissioning Management Plan (SDMP) [1] and has been devoting special attention to the site to ensure timely and effective decommissioning.

In September 1993, Shieldalloy and its parent company, Metallurg Inc., filed for protection from creditors under Chapter 11 of the Bankruptcy Code. Decommissioning the Cambridge facility, and another licensed site in Newfield, New Jersey, represent two of Shieldalloy's largest and unquantified liabilities, which must be resolved as part of the company's restructuring activities under Chapter 11. To complete restructuring in a timely manner, Shieldalloy has requested NRC to determine whether onsite stabilization and disposal of radioactive waste is acceptable for completing the decommissioning of the Cambridge facility.

The NRC has determined that approval of onsite stabilization and disposal of the radioactive waste constitutes a major federal action and, therefore, warrants preparation of an EIS in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51. Concentrations of uranium, thorium, and their radioactive decay products in the waste piles exceed NRC's current criteria for allowing release of sites for unrestricted use. These criteria are listed in NRC's Action Plan to Ensure Timely Cleanup of SDMP Sites (57 FR 13389; April 16, 1992). As described in the Action Plan, the criteria are applied on a site-specific basis with emphasis on residual contamination levels that are as low as is reasonably achievable (ALARA).

Consequently, if NRC approved on-site stabilization of the radioactive material, land use restrictions or other institutional controls may be necessary to ensure long-term protection of the public and the environment. NRC expects that Shieldalloy would have to apply for and obtain an exemption from NRC's present requirements because NRC's current requirements for decommissioning do not allow for land use restrictions.

In addition to the issues discussed above that fall under NRC's jurisdiction, there are other environmental issues associated with decommissioning the Cambridge site that are regulated by other State and Federal agencies, including the U.S. Environmental Protection Agency (USEPA) and the Ohio Environmental Protection Agency (OHEPA). The scoping process and EIS will not only aid NRC in reaching decisions about the decommissioning of the Cambridge site, but should also be useful to these other agencies in discharging their respective duties.

Description of Proposed Action

The proposed action is onsite stabilization and disposal of radioactive waste containing elevated concentrations of thorium and uranium and their radioactive decay products at the Shieldalloy facility in Cambridge, Ohio. Because radioactive contamination at the site has been consolidated into two waste piles, the proposed action principally focuses on the disposal of the radioactive materials within those waste piles.

Preparation of an Environmental Impact Statement

Under the National Environmental Policy Act (NEPA), all Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes. NRC regulations implementing NEPA are contained in 10 CFR Part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare an EIS that will analyze the environmental impacts of the proposed action, as well as environmental impacts of alternatives to the proposed action and the costs associated with both the proposed action and the alternatives. All reasonable alternatives to the proposed action, including the "no action" alternative, will be analyzed. The scope of the EIS includes consideration of both radiological and non-radiological impacts associated with the alternative actions.

This notice announces the NRC's intent to prepare an EIS. The principal intent of the EIS is to provide a document describing environmental consequences that will be available to the Agency's decision makers in reviewing the licensee's decommissioning plan for the Cambridge site.

The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of an EIS. In accordance with 10 CFR 51.26, whenever the NRC determines that an EIS will be prepared by NRC in connection with a proposed action, NRC will publish a notice of intent in the **Federal Register** stating that an EIS will be prepared and conduct an appropriate scoping process. In addition, this scoping process may include the holding of a public scoping meeting.

NRC also describes, in 10 CFR 51.27, the content of the notice of intent and requires that the notice describe the proposed action and also, to the extent that sufficient information is available, possible alternatives. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accordance with §§ 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this EIS includes the following:

(1) Participants may attend and provide oral discussion on the proposed action and possible alternatives at the public scoping meeting at Meadowbrook High School auditorium, Byesville, Ohio, on December 13, 1993, from 7 to 10 p.m.

(2) The Commission will also accept written comments on the proposed action and alternatives from the public. Written comments should be submitted by January 15, 1994, and should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland between 7:45 am and 4:15 pm on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

(a) *Define the proposed action to be the subject of the EIS.* The proposed action is the onsite stabilization and disposal of radioactive waste in the form

[1] The Site Decommissioning Management Plan, U.S. Nuclear Regulatory Commission, NUREG–1444, 1993, is available from the U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328.

of slag and contaminated soil at the Shieldalloy facility in Cambridge, Ohio.

(b) *Determine the scope of the EIS and the significant issues to be analyzed in depth.* The NRC is proposing to analyze the costs and impacts associated with the proposed action and alternative decommissioning approaches. The following proposed outline for the EIS reflects the current NRC staff view on the scope and major topics to be dealt with in the EIS:

Proposed Outline: Environmental Impact Statement

Abstract

Executive Summary

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4. Decommissioning Alternatives Analyzed and Method of Approach for the Analysis
   - 4.1 General Information on Approach and Method of Analysis of Decommissioning Alternatives
   - 4.2 Alternatives Considered—each of the alternatives represent alternate decommissioning approaches.
     - (a) Alternative 1, *Onsite Stabilization and Disposal* [Licensee's Proposed Action]—radioactive contamination would be consolidated and stabilized in a single pile that would be covered and graded in a manner to provide long-term protection against wind and water erosion and to minimize groundwater contamination. This alternative would also likely include land use restrictions and/or other institutional controls to prevent or reduce potential intrusion into the waste and to monitor the long-term effectiveness of the disposal and take mitigative measures as necessary to protect the public and environment.
     - (b) Alternative 2, *Offsite Disposal*—radioactive contamination would be exhumed from the site and disposed offsite at a licensed low-level waste disposal facility. The disposal facility may either be located in the vicinity of Cambridge, Ohio (e.g., within 50 km) or in another State. This alternative could also consider disposal of the contamination along with other wastes of similar physical, chemical, and radiological characteristics, such as mill tailings, or in a dedicated disposal facility that would provide enhanced barriers against human intrusion into the waste for thousands of years, such as a deep mine. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 picoCuries per gram (pCi/g) total uranium (with decay products) and 10 pCi/g thorium-232 and thorium-228 and other criteria such as exposure rate and radon concentrations);
     - (c) Alternative 3, *Onsite Separation Processing with Offsite Disposal*—radioactive contamination would be processed using physical or chemical methods to separate more highly concentrated contamination from lower concentrations that could be stabilized onsite. Higher concentration wastes would be sent offsite to a licensed disposal facility. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g thorium-232 and thorium-228 and other criteria such as exposure rate and radon concentrations);
     - (d) Alternative 4, *Onsite Dilution Processing and Disposal*—existing radioactive contamination would be blended with clean fill to reduce average concentrations of uranium and thorium to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g thorium-232 and thorium-228 and other criteria such as exposure rate and radon concentrations). Diluted contamination would then be graded onsite and released for unrestricted use; and
     - (e) Alternative 5, *No Action*—radioactive contamination would be abandoned in its present configuration without any additional processing or stabilization. This alternative does not consider any protective measures, such as land use restrictions or other institutional controls, that might mitigate or prevent intrusion into the waste or long-term release and transport of contamination in the environment.
   - 4.3 Method of Analysis of Regulatory Alternatives
     - (a) Define a range of alternative decommissioning approaches;
     - (b) Evaluate the alternative decommissioning approaches with respect to: (1) the incremental impact to workers, members of the public, and the environment, both radiological and nonradiological, resulting from each alternative, and (2) the costs associated with each regulatory alternative. Evaluations of impacts and costs are contained in Sections 5 and 6 below;
     - (c) Perform a comparative evaluation of the decommissioning approaches based on the impacts and costs of each alternative from 4.3(b).
5. Environmental Consequences, Monitoring, and Mitigation
   - 5.1 Construction and Remediation Consequences
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8. List of Agencies, Organizations, and Persons Receiving Copies of the Draft EIS
9. References

Appendix A—Reserved for Comments on DEIS

Appendix B—Results of Scoping Process

(c) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering

elimination of the following issues from the scope of this EIS because they have been previously analyzed in a previous Generic Environmental Impact Statement (GEIS) (NUREG–0586) and included in an earlier rulemaking (53 FR 24018, June 28, 1988): (i) Planning necessary to conduct decommissioning operations in a safe manner; (ii) assurance that sufficient funds are available to pay for decommissioning; (iii) the time period in which decommissioning should be completed; and (iv) whether facilities should not be left abandoned, but instead remediated to appropriate levels. In addition, requirements were recently proposed in a separate rulemaking regarding timeliness of decommissioning for 10 CFR Parts 30, 40, and 70 licensees (58 FR 4099; January 13, 1993).

(d) *Identify any Environmental Assessments or EISs which are being or will be prepared that are related but are not part of the scope of this EIS.* A draft Environmental Assessment on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (58 FR 4099; January 13, 1993) and will be finalized. NRC is presently developing a Generic EIS to support a rulemaking to establish generic radiological criteria for decommissioning. In addition, NRC is presently developing an EIS for decommissioning the waste piles at Shieldalloy's facility in Newfield, New Jersey.

(e) *Identify other environmental review or consultation requirements related to the proposed action.* NRC will consult with other Federal, State, and local agencies that have jurisdiction over the Cambridge site decommissioning. For example, NRC has already been coordinating its reviews of decommissioning actions at the Cambridge site with the USEPA, OEPA, and the Ohio Department of Health. NRC anticipates continued consultation with these and other agencies, as appropriate, during the development of the EIS.

(f) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* NRC intends to prepare and issue for public comment a draft EIS in October 1994. The comment period would be for 90 days. The final EIS is scheduled for publication in June 1995. Subsequent to completion of the final EIS, the NRC would review and act on a license amendment from the licensee requesting authorization for decommissioning the site, including the decommissioning plan as required in 10 CFR 40.42(c)(2). Depending on the resolution of the licensee's financial restructuring under Chapter 11 of the bankruptcy code, the NRC may terminate or postpone development of the EIS.

(g) *Describe the means by which the EIS will be prepared.* NRC will prepare the draft EIS according to the requirements in 10 CFR part 51. Specifically, in accordance with 10 CFR 51.71, the draft EIS will consider comments submitted to NRC as part of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical, and other benefits of the proposed action.

The EIS will be prepared by the NRC staff and an NRC contractor. NRC is arranging a project with Oak Ridge National Laboratory to provide technical assistance in the preparation of the EIS. In addition, NRC anticipates requesting specific information from the licensee to support preparation of the EIS. Any information received from the licensee related to the EIS will be available for public review, unless the information is protected from public disclosure in accordance with NRC requirements in 10 CFR 2.790.

In the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy to each participant in the scoping process.

Dated at Rockville, Maryland, this 19th day of November 1993.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–29013 Filed 11–24–93; 8:45 am]

BILLING CODE 7590–01–P

Decommissioning of Shieldalloy Metallurgical Corporation's Facility in Newfield, NJ; Notice of Intent To Prepare an Environmental Impact Statement and To Conduct a Scoping Process

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of intent to prepare an Environmental Impact Statement (EIS), to conduct a scoping process for the EIS, and to conduct a scoping meeting.

SUMMARY: The NRC intends to prepare an EIS for decommissioning Shieldalloy Metallurgical Corporation's (Shieldalloy) facility located in Newfield, New Jersey. Shieldalloy and predecessor companies at the Newfield location have been licensed by the NRC to process ores and mineral concentrates containing the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material). As a result of processing the ores to produce metal alloys, Shieldalloy concentrated the radioactive materials in high temperature slag and in baghouse dust. Shieldalloy continues to process the source material. Although Shieldalloy has no intent to close down the Newfield facility in the foreseeable future, plans for stabilizing or disposing of the slag and dust need to be established as part of a process for renewing the NRC license at the site. This notice indicates the NRC's intent to prepare an EIS in conjunction with this proposed action and to conduct a scoping process that will include a public scoping meeting.

DATES: Written comments on matters covered by this notice received by January 15, 1994, will be considered in developing the scope of the EIS. Comments received after this date will be considered if it is practical to do so, but the NRC is able to assure consideration only for comments received on or before this date.

A public scoping meeting will be held at Delsea Regional High School in Franklinville, New Jersey, on December 16, 1993, from 7–10 p.m.

ADDRESSES: Written comments on the matters covered by this notice and/or the scoping meeting should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

The scoping meeting will be held at Delsea Regional High School, Blackwoodtown Road (County Highway

655), Franklinville, New Jersey, on December 16, 1993.

FOR FURTHER INFORMATION CONTACT: Michael Weber, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–1298, or Gary Comfort, Office of Nuclear Material Safety and Safeguards, Washington, DC 20555, Telephone: 301–504–2667.

SUPPLEMENTARY INFORMATION:

Background

The Nuclear Regulatory Commission has the statutory responsibility for protection of health and safety related to the use of source, byproduct, and special nuclear material under the Atomic Energy Act. The NRC believes that one portion of this responsibility is to assure safe and timely decommissioning of nuclear facilities which it licenses. This responsibility can be partially fulfilled by providing guidance to licensees on how to plan for and prepare their sites for decommissioning. Decommissioning, as defined in NRC's regulations in 10 CFR 40.4, for example, means to remove nuclear facilities safely from service and to reduce residual radioactivity to a level that permits release of the property for unrestricted use and termination of the license.

Once licensed activities have ceased, licensees are required, in existing NRC regulations, to decommission their facilities so that their licenses can be terminated. This requires that radioactivity in buildings, equipment, soil, groundwater, and surface water resulting from the licensed operation be reduced to acceptably low levels that allow the property to be released for unrestricted use. Licensees must then demonstrate by a site radiological survey that residual contamination in all facilities and environmental media have been properly reduced or eliminated and that, except for any residual radiological contamination found to be acceptable to remain at the site, radioactive material has been transferred to authorized recipients. Confirmatory surveys are conducted by NRC, where appropriate, to verify that sites meet NRC radiological criteria for decommissioning.

In accordance with NRC requirements promulgated in 1988, licensees are also required to provide financial assurance for decommissioning, including submission of a decommissioning funding plan [10 CFR 40.36(c)]. In accordance with 10 CFR 40.36(d), the decommissioning funding plan must contain a cost estimate for decommissioning and a description of the method for assuring funds for decommissioning using one of several methods, including prepayment; surety, insurance, or other guarantee; external sinking fund coupled with a surety method; or statement of intent (for government licensees only). Based on NRC's definition of decommission, the cost estimate would be based on the assumption that residual radioactivity would be reduced to a level that permits release of the property for unrestricted use and termination of the license.

Need for Proposed Action

Shieldalloy Metallurgical Corporation (Shieldalloy) is licensed by the NRC (License Number SMB–743) to possess and store the radioactive materials uranium, thorium, and their associated decay products (i.e., collectively considered source material) at a site located near Newfield, Gloucester County, New Jersey. As a result of processing ores and mineral concentrates to produce metal alloys, the radioactive materials have been concentrated in high temperature slag and baghouse dust.

Since 1955, Shieldalloy has operated a manufacturing facility in Newfield and produced specialty steel and super alloy additives, including aluminum master alloys, metal carbides, powdered metals, and optical surfacing products. Raw materials used at the facility include ores and concentrates of niobium, vanadium, zirconium, titanium, and other metals and materials. NRC licenses activities at the site related to processing a mineral concentrate (pyrochlore) to recover niobium. The pyrochlore contains more than 0.05 percent (by weight) of the radioactive materials uranium and thorium, which are source materials and require a license under 10 CFR part 40.

During the manufacturing process, the radioactive materials are concentrated in a high temperature slag and in baghouse dust. The slag has been placed into two piles with a total mass of about 45,000 metric tons (about 50,000 tons) and a volume of about 18,000 cubic meters (about 630,000 cubic feet); the baghouse dust is located in a third pile of about 12,000 metric tons (13,400 tons) and a volume of about 15,000 cubic meters (530,000 cubic feet). In addition to these piles, radioactive materials have also been dispersed in soil around the piles and at numerous other locations at the facility. The concentrations of radioactive materials in the piles vary with maximum thorium-232 concentrations up to 1,500 picocuries per gram (pCi/g) and average thorium-232 concentrations ranging from several tens to hundreds of pCi/g. Because the Newfield site has large waste piles that may be difficult to dispose of at the time of decommissioning, NRC included the Newfield site in the Site Decommissioning Management Plan (SDMP)[1] and has been devoting special attention to the site to ensure planning continues to achieve timely and effective decommissioning.

Shieldalloy's license for the Newfield facility has been in timely renewal since Shieldalloy filed its request for renewal with the NRC in 1985. As a condition of acting on the renewal request, the NRC identified the need for Shieldalloy to submit an adequate decommissioning funding plan in accordance with 10 CFR 40.36(c)(2). In addition, the NRC raised a concern in 1992 that Shieldalloy's plan for eventual decommissioning of the Newfield site may not satisfy NRC's requirements because it contemplated stabilization of the contaminated waste onsite and may require land use restrictions to ensure continued long-term protection of the public and environment. This approach is inconsistent with NRC's requirements for decommissioning, which require that residual radioactivity be reduced to a level that permits release of the property for unrestricted use.

In September 1993, Shieldalloy and its parent company, Metallurg Inc., filed for protection from creditors under Chapter 11 of the Bankruptcy Code. Decommissioning the Newfield facility, and another licensed site in Cambridge, Ohio, represent two of Shieldalloy's largest and unquantified liabilities, which must be resolved as part of the company's restructuring activities under Chapter 11. To complete restructuring in a timely manner, Shieldalloy has requested NRC to determine whether onsite stabilization and disposal of radioactive waste is acceptable for decommissioning the Newfield facility.

NRC has determined that approval of onsite stabilization and disposal of the radioactive waste is a major Federal action and, therefore, warrants preparation of an EIS in accordance with the National Environmental Policy Act (NEPA) and the NRC's implementing requirements in 10 CFR part 51. Concentrations of uranium, thorium, and their radioactive decay products in the waste piles exceed NRC's current criteria for allowing release of sites for unrestricted use. These criteria are listed in NRC's Action Plan to Ensure Timely Cleanup of SDMP

[1] The Site Decommissioning Management Plan, U.S. Nuclear Regulatory Commission, NUREG–1444, 1993, is available from the U.S. Government Printing Office, Mail Stop SSOP, Washington, DC 20402–9328.

Sites (57 FR 13389; April 16, 1992). As described in the Action Plan, the criteria are applied on a site-specific basis with emphasis on residual contamination levels that are as low as is reasonably achievable (ALARA).

Consequently, if NRC approved on-site stabilization of the radioactive material, land use restrictions or other institutional controls may be necessary to ensure long-term protection of the public and the environment. NRC expects that Shieldalloy would have to apply for and obtain an exemption from NRC's present requirements because NRC's current requirements for decommissioning do not allow for land use restrictions.

In addition to the issues discussed above that fall under NRC's jurisdiction, there are other environmental issues associated with decommissioning the Newfield site that are regulated by other State and Federal agencies, including the U.S. Environmental Protection Agency (EPA) and the New Jersey Department of Environmental Protection and Energy (NJDEPE). For example, the Newfield site is listed on the National Priorities List and is being remediated under the Comprehensive Environmental Response Compensation and Liability Act to mitigate groundwater contamination caused by non-licensed activities at the site. These activities are administered by EPA and NJDEPE. The scoping process and EIS will not only aid NRC in reaching decisions about the decommissioning of the Newfield site, but should also be useful to these other agencies in discharging their respective duties.

Description of Proposed Action

The proposed action is onsite stabilization and disposal of radioactive waste containing elevated concentrations of thorium and uranium and their decay products at the Shieldalloy facility in Newfield, New Jersey. Because most of the radioactive contamination at the site exists in three waste piles, the proposed action principally focuses on the disposal of the radioactive materials within those waste piles.

Preparation of an Environmental Impact Statement

Under the National Environmental Policy Act (NEPA), all Federal agencies must consider the effect of their actions on the environment. Section 102(1) of NEPA requires that the policies, regulations, and public laws of the United States be interpreted and administered in accordance with the policies set forth in NEPA. It is the intent of NEPA to have Federal agencies incorporate consideration of environmental issues into their decision-making processes. NRC regulations implementing NEPA are contained in 10 CFR part 51. To fulfill NRC's responsibilities under NEPA, the NRC intends to prepare an EIS that will analyze the environmental impacts of the proposed action, as well as environmental impacts of alternatives to the proposed action and costs associated with both the proposed action and the alternatives. All reasonable alternatives to the proposed action, including the "no action" alternative, will be analyzed. The scope of the EIS will include both radiological and non-radiological impacts associated with the alternative actions.

This notice announces the NRC's intent to prepare an EIS. The principal intent of the EIS is to provide a document describing environmental consequences that will be available to the Agency's decision makers in reviewing the licensee's decommissioning plan for the Newfield site.

The Scoping Process

The Commission's regulations in 10 CFR part 51 contain requirements for conducting a scoping process prior to preparation of an EIS. In accordance with 10 CFR 51.26, whenever the NRC determines that an EIS will be prepared by NRC in connection with a proposed action, NRC will publish a notice of intent in the **Federal Register** stating that an EIS will be prepared and conduct an appropriate scoping process. In addition, this scoping process may include the holding of a public scoping meeting.

NRC also describes, in 10 CFR 51.27, the content of the notice of intent and requires that the notice include the proposed action and, to the extent that sufficient information is available, also describe possible alternatives. In addition, the notice of intent is to describe the proposed scoping process, including the role of participants, whether written comments will be accepted, and whether a public scoping meeting will be held.

In accordance with §§ 51.26 and 51.27, the proposed action and possible alternative approaches are discussed below. The role of participants in the scoping process for this EIS includes the following:

(1) Participants may attend and provide oral discussion on the proposed action and possible alternatives at the public scoping meeting at Delsea Regional High School in Franklinville, New Jersey, on December 16, 1993, from 7 to 10 p.m.

(2) The Commission will also accept written comments on the proposed action and alternatives from the public. Written comments should be submitted by January 15, 1994, and should be sent to: Secretary, U.S. Nuclear Regulatory Commission, Washington, DC 20555. ATTN: Docketing and Services Branch. Hand deliver comments to 11555 Rockville Pike, Rockville, Maryland 20852, between 7:45 a.m. and 4:15 p.m., on Federal workdays.

According to 10 CFR 51.29, the scoping process is to be used to address the topics which follow. Participants may make written comments, or verbal comments at the scoping meeting, on the following (current preliminary NRC staff approaches with regard to each topic are included for information):

(a) *Define the proposed action to be the subject of the EIS.* The proposed action is consideration of onsite stabilization and disposal of radioactive waste at the Shieldalloy facility in Newfield, New Jersey.

(b) *Determine the scope of the EIS and the significant issues to be analyzed in depth.* The NRC is proposing to analyze the costs and impacts associated with the proposed action and alternative decommissioning approaches. The following proposed outline for the EIS reflects the current NRC staff view on the scope and major topics to be dealt with in the EIS:

Proposed Outline: Environmental Impact Statement.

Abstract.

Executive Summary.

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4. Decommissioning Alternatives Analyzed and Method of Approach for the Analysis
   4.1 General Information on Approach and Method of Analysis of Decommissioning Alternatives
   4.2 Alternatives Considered—each of the alternatives represent alternate decommissioning approaches.

(a) Alternative 1, *Onsite Stabilization and Disposal* [Licensee's Proposed Action]—radioactive contamination would be consolidated and stabilized in a single pile that would be covered and graded in a manner to provide long-term protection against wind and water erosion and to minimize groundwater contamination. This alternative would also likely include land use restrictions and/or other institutional controls to prevent or reduce potential intrusion into the waste and to monitor the long-term effectiveness of the disposal and take mitigative measures as necessary to protect the public and environment.

(b) Alternative 2, *Offsite Disposal*—radioactive contamination would be exhumed from the site and disposed offsite at a licensed low-level waste disposal facility. The disposal facility may either be located in the near vicinity of Newfield (e.g., within 50 km) or in another State. This alternative could also consider disposal of the contamination along with other wastes of similar physical, chemical, and radiological characteristics, such as mill tailings, or in a dedicated disposal facility that would provide enhanced barriers against human intrusion into the waste for thousands of years, such as a deep mine. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 picoCuries per gram (pCi/g) total uranium (with decay products) and 10 pCi/g Thorium-232 and Thorium-228 in addition to other criteria such as gamma exposure rate and radon concentrations in air);

(c) Alternative 3, *Onsite Separation Processing with Offsite Disposal*—radioactive contamination would be processed using physical or chemical methods to separate more highly concentrated contamination from lower concentrations that could be stabilized onsite. Higher concentration wastes would be sent offsite to a licensed disposal facility. Radioactive contamination onsite would be reduced down to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g Thorium-232 and Thorium-228 in addition to other criteria such as gamma exposure rate and radon concentrations in air);

(d) Alternative 4, *Onsite Dilution Processing and Disposal*—existing radioactive contamination would be blended with clean fill to reduce average concentrations of uranium and thorium to levels that NRC presently considers acceptable for release for unrestricted use (e.g., 10 pCi/g total uranium (with decay products) and 10 pCi/g Thorium-232 and Thorium-228 in addition to other criteria such as gamma exposure rate and radon concentrations in air). Diluted contamination would then be graded onsite and released for unrestricted use; and

(e) Alternative 5, *No Action*—radioactive contamination would be abandoned in its present configuration without any additional processing or stabilization. This alternative does not consider any protective measures, such as land use restrictions or other institutional controls, that might mitigate or prevent intrusion into the waste or long-term release and transport of contamination in the environment.

   4.3 Method of Analysis of Regulatory Alternatives

(a) Define a range of alternative decommissioning approaches;

(b) Evaluate the alternative decommissioning approaches with respect to: (1) the incremental impact to workers, members of the public, and the environment, both radiological and nonradiological, resulting from each alternative; and (2) the costs associated with each regulatory alternative. Evaluations of impacts and costs are contained in Sections 5 and 6 below;

(c) Perform a comparative evaluation of the decommissioning approaches based on the impacts and costs of each alternative from 4.3(b).

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Appendix A—Reserved for Comments on DIES

Appendix B—Results of Scoping Process

(c) *Identify and eliminate from detailed study issues which are not significant or which are peripheral or which have been covered by prior environmental review.* The NRC has not yet eliminated any nonsignificant issues. However, NRC is considering elimination of the following issues from the scope of this EIS because they have been previously analyzed in a previous Generic Environmental Impact Statement (NUREG–0586) and included in an earlier rulemaking (53 FR 24018, June 28, 1988): (i) Planning necessary to conduct decommissioning operations in a safe manner; (ii) assurance that sufficient funds are available to pay for decommissioning; (iii) the time period in which decommissioning should be completed; and (iv) whether facilities should not be left abandoned, but instead remediated to appropriate levels. In addition, requirements were recently proposed in a separate rulemaking regarding timeliness of decommissioning for 10 CFR parts 30, 40, and 70 licensees (58 FR 4099; January 13, 1993).

(d) *Identify any Environmental Assessments or EISs which are being or will be prepared that are related but are not part of the scope of this EIS.* A draft Environmental Assessment on the timeliness of decommissioning has been prepared as part of a separate rulemaking on decommissioning timeliness (58 FR 4099; January 13, 1993) and will be finalized. NRC is presently developing a Generic Environmental Impact Statement to support a rulemaking to establish generic radiological criteria for decommissioning. In addition, NRC is presently developing an EIS for decommissioning the waste piles at Shieldalloy's facility in Cambridge, Ohio.

(e) *Identify other environmental review or consultation requirements*

related to the proposed action. NRC will consult with other Federal, State, and local agencies that have jurisdiction over the Newfield site. For example, NRC has already been coordinating its reviews of decommissioning actions at the Newfield site with the USEPA and the NJDEPE. NRC anticipates continued consultation with these and other agencies, as appropriate, during the development of the EIS.

(f) *Indicate the relationship between the timing of the preparation of environmental analysis and the Commission's tentative planning and decision making schedule.* NRC intends to prepare and issue for public comment a draft EIS in October 1994. The comment period would be for 90 days. The final EIS is scheduled for publication in June 1995. Subsequent to completion of the final EIS, the NRC would review and act on a supplemented license renewal request from the licensee requesting continued authorization for possession and storage of source material at the site, including the decommissioning funding plan as required in 10 CFR 40.36(c)(2). Depending on the resolution of the licensee's financial restructuring under Chapter 11 of the bankruptcy code, the NRC may terminate or postpone development of the EIS.

(g) *Describe the means by which the EIS will be prepared.* NRC will prepare the draft EIS according to the requirements in 10 CFR part 51. Specifically, in accordance with 10 CFR 51.71, the draft EIS will consider comments submitted to NRC as part of the scoping process and will include a preliminary analysis which considers and balances the environmental and other effects of the proposed action and the alternatives available for reducing or avoiding adverse environmental and other effects, as well as the environmental, economic, technical, and other benefits of the proposed action.

The EIS will be prepared by the NRC staff and an NRC contractor. NRC is arranging a project with Oak Ridge National Laboratory to provide technical assistance in the preparation of the EIS. In addition, NRC anticipates requesting specific information from the licensee to support preparation of the EIS. Any information received from the licensee related to the EIS will be available for public review, unless the information is protected from public disclosure in accordance with NRC requirements in 10 CFR 2.790.

In the scoping process, participants are invited to speak or submit written comments, as noted above, on any or all of the areas described above. In accordance with 10 CFR 51.29, at the conclusion of the scoping process, NRC will prepare a concise summary of the determinations and conclusions reached, including the significant issues identified, and will send a copy to each participant in the scoping process.

Dated at Rockville, Maryland, this 18th day of November 1993.

For the U.S. Nuclear Regulatory Commission.

John H. Austin,

Chief, Decommissioning and Regulatory Issues Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–29014 Filed 11–24–93; 8:45 am]

BILLING CODE 7590–01–p

Advisory Committee on Reactor Safeguards Subcommittee on Planning and Procedures; Meeting

The ACRS Subcommittee on Planning and Procedures will hold a meeting on December 8, 1993, room P–422, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance, with the exception of a portion that may be closed pursuant to 5 U.S.C. 552b(c)(2) and (6) to discuss organizational and personnel matters that relate solely to internal personnel rules and practices of ACRS and matters the release of which would represent a clearly unwarranted invasion of personal privacy.

The agenda for the subject meeting shall be as follows:

Wednesday, December 8, 1993—4 p.m. Until 6 p.m.

The Subcommittee will discuss proposed ACRS activities, practices and procedures for conducting Committee business, and organizational and personnel matters relating to ACRS and its staff. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

Further information regarding topics to be discussed, the scheduling of sessions open to the public, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements, and the time allotted therefor can be obtained by contacting the cognizant ACRS staff person, Dr. John T. Larkins (telephone 301/492–4516) between 7:30 a.m. and 4:15 p.m., EST. Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 18, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–28998 Filed 11–24–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–312]

Sacramento Municipal Utility District (Rancho Seco Nuclear Generating Station); Exemption

I

The Sacramento Municipal Utility District (SMUD or the licensee) is the holder of Facility Operating License No. DPR–54. The license provides, among other things, that it is subject to all rules, regulations, and orders of the Nuclear Regulatory Commission (the Commission or NRC) now or hereafter in effect. The facility consists of a pressurized water reactor located at the licensee site in Sacramento County, California, and is currently defueled with fuel stored in the spent fuel pool. Additionally, a confirmatory order prevents the movement of the fuel into the reactor building without NRC approval.

II

The Rancho Seco Nuclear Generating Station (Rancho Seco) was permanently shut down on June 7, 1989, and completely defueled on December 8, 1989. The NRC in Amendment No. 117, dated Mach 17, 1992, modified Facility Operating License No. DPR–54 to a Possession Only License (POL). The license is conditioned so that SMUD is not authorized to operate or place fuel in the reactor vessel, thus formalizing the licensee commitment to permanently cease power operations.

By letter dated November 14, 1990, and supplemented by letter dated October 15, 1992, the licensee requested a reduction in primary financial coverage and an exemption from participation in the industry

retrospective rating plan requiring secondary level coverage requirements in 10 CFR 140.11(a)(4), 10 CFR 140.21, 10 CFR 140.92 Appendix B, 10 CFR 140.109 Appendix I, and an application pursuant to 10 CFR 140.92, Article II, Section 7.

III

The justification presented by the licensee for the exemption request is that because of the defueled condition of the reactor, there are no longer any credible design basis accidents except the loss of offsite power and a fuel handling accident. The licensee contends that, with the reactor in its permanently defueled condition combined with administrative controls which minimize fuel movement, the possibility of an accident, an extraordinary nuclear occurrence, or a nuclear accident is further reduced. The licensee also noted that a confirmatory order was issued on May 2, 1990, which prohibited movement of fuel from the spent fuel pool into the reactor building without prior Commission approval.

Because this confirmatory order prohibits the SMUD from resuming power operation without explicit approval by the NRC, the licensee contended that Rancho Seco fell outside the ambit of 10 CFR 140.11(a)(4). Other factors supporting the non-operating status of Rancho Seco included: Cessation of operation of Rancho Seco, the NRC approval of the Possession Only License, and the licensee analysis that the consequences of any postulated accident cannot exceed the primary financial protection requirements in the current defueled condition.

In its request, the licensee indicated that it believed that reduced financial protection was warranted. The licensee analysis indicated that coverage of $50 million provides adequate coverage for liability stemming from any alleged radiation exposure. SMUD also cited a previous NRC exemption which concluded that there were no credible basis accidents associated with Rancho Seco that are comparable, in consequence or severity, to the design basis accidents of an operating facility. SMUD further concluded that there were no postulated accidents that could result in an extraordinary nuclear occurrence or a nuclear incident that could exceed the requested $50 million primary financial protection insurance coverage.

SMUD also indicated that since power operations had permanently ceased and revenues were no longer received from operations, literal compliance with the regulatory requirements for full financial coverage and mandatory participation in the industry retrospective rating plan would result in undue financial hardship to the licensee and its ratepayers. SMUD indicated that the following conditions constituted "extreme and undue financial hardship:"

- Payment of the retrospective assessments under the secondary plan, and
- Payment of insurance premiums under the primary plan.

On October 15, 1992, the licensee reiterated its request for relief and exemption under 10 CFR 140.8 and provided a legal opinion from retained counsel. This additional information focused on legal interpretations of the Price-Anderson Act, statements of consideration, comments made by members of Congress during consideration of the 1988 Amendments to the Price-Anderson Act, and past NRC actions with respect to the relief granted to the Consolidated Edison facility, Indian Point 1. The licensee concluded that the NRC has the requisite authority to grant the requested relief on the grounds that removal of the operating authority, that is, granting of a "Possession Only License," was tantamount to termination of the "operating license." The licensee asks the NRC to exercise that authority by reducing the financial protection requirements in accordance with the reduction in risk posed by the Rancho Seco facility as recognized by American Nuclear Insurers. The licensee concludes that because Rancho Seco is no longer authorized to operate, the potential for hazards for which Price-Anderson coverage is to provide financial protection are greatly reduced, and SMUD is entitled to a corresponding reduction in the financial protection requirements for the plant.

The licensee determined that the requirement to maintain primary financial coverage of $200,000,000 is excessive, and requested a reduction from the full amount of $200,000,000 to an amount of $50,000,000. SMUD requested a total exemption from the requirement for secondary liability coverage as required by the industry retrospective rating plan, exemption from the 10 CFR 140.21 requirements to provide an annual certified financial statement, and made application pursuant to 10 CFR 140.92, Article II, Section 7, to enter into an agreement with the Commission to maintain an equitable amount of financial protection commensurate with the current plant condition.

The NRC staff independently evaluated the legal and technical issues associated with the application of the Price-Anderson Act to permanently shut down reactors in SECY–93–127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," May 10, 1993. In this evaluation, the staff concluded that the Commission has discretionary authority to respond to licensee requests for reduction in the level of primary financial protection and withdrawal from participation in the industry retrospective rating plan Depending on the plant-specific configuration and the time since permanent shutdown, the staff also concluded that potential hazards may exist at permanently shut down reactors for which financial protection is warranted. Lastly, the staff concluded that accidents and hazards insured against under Price-Anderson go beyond design basis accidents and beyond those considered "credible" as that term is used in 10 CFR part 100 and cases interpreting the application of that regulation. The Commission issued a Staff Requirements Memorandum (SMR) on SECY–93–127 on July 13, 1993. In the SMR, the Commission approved the staff recommendation to permit reduction of primary level coverage to $100 million through the exemption process after the appropriate spent fuel cooling period and after allowing withdrawal from participation in the secondary financial protection layer.

In the exercise of its discretionary authority, the Commission may, so long as a potential hazard existed at a permanently shutdown reactor, require the full amount of primary financial protection and full participation in the industry retrospective rating plan. At such time that the hazard was determined to no longer exist, the Commission may reduce the amount of primary financial protection and permit the licensee to withdraw from participation in the industry retrospective rating plan.

Since the legislative history does not explicitly consider the potential hazards that might exist after termination of operation, the staff generically evaluated the offsite consequences associated with normal and abnormal operations, design basis accidents, and beyond design basis accidents for reactors that have been permanently defueled and shut down. The staff concluded that in view of the time that has elapsed since plant shutdown, aside from the handling, storage, and transportation of spent fuel and radioactive materials, no reasonably conceivable potential accident exists that could cause significant offsite damage.

A severe transportation accident potentially result in local contamination

requiring cleanup and offsite liabilities resulting from traffic disruption and loss of use. This type of accident would warrant maintaining some level of liability insurance. The liabilities and indemnification requirements associated with the transfer of spent fuel from the license to the Department of Energy will be evaluated on a case-by-case basis at a future time when spent fuel is shipped to a repository.

The most significant accident sequence for a permanently defueled and shutdown reactor involves the complete loss of water from a light water reactor spent fuel pool. This beyond-design-basis accident sequence could result in a zirconium fuel cladding fire that could propagate through the spent fuel storage pool and result in significant offsite consequences. The potential consequences of such an accident could range up to several billion dollars. Although such an accident is beyond the design bases, it may be considered "reasonably conceivably" and could warrant requiring substantial financial protection. Such an accident is possible during the first year after reactor shutdown for a low density spent fuel storage configuration and during the first two years after shutdown for spent fuel stored in certain high density configurations.

Concerns for adequacy of heat removal mechanisms as well as uncertainties in the spent fuel storage studies indicate a need for an additional year of cooling for the high density storage configurations. Accident scenarios involving blockage of coolant channels in conjunction with loss of spent fuel pool water could hypothetically extend further the time within which a zirconium fuel cladding fire could occur. However, in addition to being less likely than loss of water, air flow to react with the zirconium and to disperse fission products would likely to inhibited by such blockage. The staff believes that this sequence approaches the strictly hypothetical.

Once the requisite cooling period after reactor shutdown has elapsed, the zirconium fuel cladding fire sequence after a postulated loss of water is no longer a concern since the fuel would air cool sufficiently to avoid zirconium fuel cladding combustion. Possible accident scenarios, after these cooling periods have elapsed, have greatly reduced consequences, but could result in small releases or precautionary evacuations which could result in offsite liability.

With respect to the Rancho Seco plant-specific evaluation, the NRC staff independently evaluated the legal and technical justifications for the exemption presented by the license. The NRC recognizes the current Rancho Seco condition, that is, permanently shut down and defueled, licensed to authorize "possession only," and under a confirmatory order that prohibits fuel movement from the spent fuel pool into the reactor building without Commission approval. The staff concurred with the licensee evaluation of credible design basis accidents, loss of offsite power and fuel handling accidents, and their minimal associated offsite consequences. Although the licensee presented substantive legal views and opinions regarding the application of the Price-Anderson Act and 10 CFR part 140 to permanently shut down reactors, the staff did not concur with these licensee views and opinions.

The licensee evaluation of potential hazards and liability coverage needs was less than comprehensive. The licensee-identified need for continuing liability coverage, $50,000,000, was limited to liability stemming from any alleged radiation exposure. Coverage needs associated with decommissioning activities and transportation of radioactive materials or precautionary evacuations were not identified. Beyond design basis accidents, such as the zircalloy spent fuel pool fire sequence, that could be applicable to the currently defueled and permanently shutdown condition of Rancho Seco were likewise not considered.

The license also contended that compliance with existing regulations would result in potential payment of retrospective assessments under the secondary indemnity plan and payments of insurance premiums under the primary financial protection plan. These payments would allegedly constitute an "extreme and undue financial hardship" to the licensee and its ratepayers. Although the staff recognizes that the potential hazards and consequences associated with a permanently shutdown reactor are greatly reduced, the state of greatly reduced risk does not exist until a minimum cooling period for the spent fuel has elapsed. Thereafter, the permanently shutdown reactor does not contribute a level of risk to the participants in the secondary pool proportionate to that of an operating reactor and relief from financial protection requirements would then be warranted.

Although the licensee justification for this exemption was not conclusive, the staff, on its own initiative, did consider liability coverage needs associated with decommissioning activities, transportation of radioactive materials, design basis accidents, and the beyond-design-basis accidents noted above. The results of our evaluation, as embodied in the July 13, 1993 SRM on SECY–93–127 and in SECY–93–127, allow, after the requisite minimum spent fuel cooling period has elapsed, a reduction in the amount of financial protection required of licensees of large nuclear plants that have been prematurely shutdown. Unless the licensee provides an analysis to determine the appropriate cooling period for a site-specific spent fuel configuration, for a pressurized water reactor, such as Rancho Seco, with a high density spent fuel pool storage configuration, a generic minimum cooling period of three years after permanent reactor shutdown is required before a reduction in financial protection requirements would be permitted. The Rancho Seco Nuclear Generating Station was permanently shut down on June 7, 1989, and completely defueled on December 8, 1989. Approximately four years and three months have elapsed since the permanent shutdown of Rancho Seco. This meets the criterion established in SECY–93–127 for relief from financial protection requirements.

Although the licensee requested a new primary financial protection coverage level of $50,000,000, the staff has also concluded that the Three Mile Island Unit 2 (TMI–2) claims settlement experience (an accident which did not result in a significant release of radioactivity) provides a reasonable basis for establishing the appropriate level of primary insurance coverage. Because TMI–2 claims have reached $60,000,000 and a large number of TMI–2 claims are still unsettled, the staff concluded that a level of $100,000,000 for primary financial protection coverage is warranted. This level of primary insurance coverage is consistent with the Staff Requirements Memorandum dated July 13, 1993 on SECY–93–127 for relief from financial protection requirements.

IV

The staff, based on its independent evaluation as embodied in the July 13, 1993 Staff Requirements Memorandum on SECY–93–127 and in SECY–93–127, "Financial Protection Required of Licensees of Large Nuclear Power Plants During Decommissioning," has concluded that sufficient bases exist for our approval of relief from the financial protection requirements for the Rancho Seco Nuclear Generating Station. The staff has also concluded that granting the proposed exemption does not increase the probability or consequences

of any accidents or reduce the margin of safety at this facility.

V

Based on Sections III and IV above, the Commission has determined, that pursuant to 10 CFR 140.8, that this exemption is authorized by law and is otherwise in the public interest. Therefore, the Commission grants an exemption from the requirements from 10 CFR 140.11(a)(4) to the extent that primary financial protection in the amount of $100,000,000 shall be maintained and exemption from participation in the industry retrospective rating plan (secondary level financial protection) is granted for the Rancho Seco Nuclear Generating Station.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 60883, dated November 18, 1993).

This exemption is effective upon issuance.

Dated at Rockville, Maryland, this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29006 Filed 11–24–93; 8:45 am]

BILLING CODE 7590–01–M

OFFICE OF SPECIAL COUNSEL

Privacy Act; System of Records

AGENCY: Office of Special Counsel.

ACTION: Notice of transfer of Privacy Act system of records.

SUMMARY: The purpose of this document is to notify all interested parties that pursuant to the Privacy Act, (5 U.S.C. 552a), the U.S. Office of Special Counsel ("OSC") hereby transfers the Privacy Act system of records, "MSPB/OSC–1, OSC Complaint, Litigation and Political Activity Files," to OSC's own system of records. The system was published at 52 FR 29906 (August 12, 1987) and in the Privacy Act Issuances 1991 Compilation, Volume V, at pages 132 and 133. The system of records is redesignated as "OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files." Also, the revised citation of authority for maintenance of the system, the system location and the system manager are provided.

EFFECTIVE DATE: November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Cathleen M. Sadlo, Attorney, Prosecution Division, U.S. Office of Special Counsel, 1730 M Street NW., Suite 300, Washington, DC 20036–4505. Telephone No. (202) 653–6005.

SUPPLEMENTARY INFORMATION: The U.S. Office of Special Counsel ("OSC") was created by Reorganization Plan No. 2 of 1978 (43 FR 36037, May 23, 1978), Executive Order No. 12,107 (December 28, 1978) and the Civil Service Reform Act of 1978, Pub. L. 95–454, as an independent investigative and prosecutive arm of the U.S. Merit Systems Protection Board ("MSPB"). Pursuant to the Whistleblower Protection Act of 1989, Pub. L. 101–12 (5 U.S.C. 1211–1219), OSC became an independent agency. The OSC has the authority to investigate allegations of prohibited personnel practices under 5 U.S.C. 2302(b), prohibited political activity by Federal and District of Columbia employees under 5 U.S.C. 7321–7328 and prohibited political activity by certain State and local officers and employees under 5 U.S.C. 1501–1508 (known as the "Hatch Act"), and certain other matters under 5 U.S.C. 1216. The OSC has the authority to prosecute these matters before the MSPB to obtain corrective and disciplinary action. Also under 5 U.S.C. 1213, the OSC provides federal employees or former federal employees with the opportunity to make confidential whistleblower disclosures.

While OSC was an office of the MSPB, OSC published a Privacy Act system notice, "MSPB/OSC–1, OSC Complaint, Litigation and Political Activity Files." This system of records contains the documents necessary to assist the OSC in carrying out its responsibilities under the statues listed above. The OSC hereby transfers the Privacy Act system of records, "MSPB/OSC–1," which is published at 52 FR 29906 (August 12, 1987) and in the Privacy Act Issuances, 1991 Compilation, Volume V, at pages 132 and 133, to OSC's own system of records. The system of records is redesignated as "OSC/GOVT–1, OSC Complaint, Litigation and Political Activity Files."

The following administrative changes have been made to OSC/GOVT–1:

AUTHORITY FOR MAINTENANCE OF THE SYSTEM:

5 U.S.C. 552, 552a, 1211–1221, 1501–1508 and 7321–7328.

SYSTEM LOCATION:

Management Division, U.S. Office of Special Counsel, 1730 M Street, NW., Washington, DC 20036–4505.

SYSTEM MANAGER(S) AND ADDRESS:

Director for Management, U.S. Office of Special Counsel, 1730 M Street, NW., Washington, DC 20036–4505.

Signed this 17th day of November 1993.

William E. Reukauf,

Associate Special Counsel for Prosecution.

[FR Doc. 93–28916 Filed 11–24–93; 8:45 am]

BILLING CODE 7405–01–M

POSTAL RATE COMMISSION

Notice of Commission Visit

November 19, 1993.

Notice is hereby given that members of the Commission and certain advisory staff will visit Business Mail Express, Inc., in Reston, Virginia, on December 3, 1993.

A report of the visit will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Charles L. Clapp,

Secretary.

[FR Doc. 93–28945 Filed 11–24–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

Self-Regulatory Organizations; Applications for Unlisted Trading Privileges; Notice and Opportunity for Hearing; Cincinnati Stock Exchange, Incorporated

November 19, 1993.

The above named national securities exchange has filed applications with the Securities and Exchange Commission ("Commission") pursuant to section 12(f)(1)(B) of the Securities Exchange Act of 1934 and Rule 12f-1 thereunder for unlisted trading privileges in the following securities:

Alliance World Dollar Government Fund
Common Stock, $1.00 Par Value (File No. 7–11539)
Ballard Medical Products
Common Stock, $.10 Par Value (File No. 7–11540)
Barnes & Noble, Inc.
Common Stock, $.01 Par Value (File No. 7–11541)
Belden, Inc.
Common Stock, $.01 Par Value (File No. 7–11542)
Boise Cascade Corp.
$1.58 Depositary Shares (rep. 1/10 sh. of Conv. Pfd. Stock Ser. G) (File No. 7–11543)
Boyd Gaming Corp.
Common Stock, $.01 Par Value (File No. 7–11544)
Capital Guaranty Corp.
Common Stock, $.10 Par Value (File No. 7–11545)
Colonial Properties Trust
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11546)
Corrpro Co.'s

Common Shares; No Par Value (File No. 7–11547)
Detroit Diesel Corp.
Common Stock, $.01 Par Value (File No. 7–11548)
Gerrity Oil & Gas Corp.
Common Stock, $/01 Par Value (File No. 7–11549)
Global High Income Dollar Fund, Inc.
Common Stock, $.001 Par Value (File No. 7–11550)
Grupo Tribasa, S.A. de C.V.
American Depository Shares (rep. 2 sh. Common Stock, No Par Value (File No. 7–11551)
Integrated Health Services, Inc.
Common Stock, $.001 Par Value (File No. 7–11552)
Intercapital California Quality Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11553)
Intercapital New York Quality Municipal Securities
Common Shares Beneficial Interest, $.01 Par Value (File No. 7–11554)
Intercapital Quality Municipal Securities
Common Shares of Beneficial Interest, $.01 Par Value (File No. 7–11555)
Margaretten Financial Corp.
Depository Shares (rep. ¼ sh. Cum. Pfd. Stock, Ser. A) (File No. 7–11556)
Material Sciences Corp.
Common Stock, $.01 Par Value (File No. 7–11557)
Nations Government Income Term Trust 2003, Inc.,
Common Stock, $.001 Par Value (File No. 7–11558)
Newecorp Overseas Ltd.
8 ⅝% Cum. Gtd. Pref. Shrs., Ser. A, $25.00 Par Value (File No. 7–11559)
Northern Border Partners, L.P.
Common Units (rep. L.P. Ints.) $.001 Par Value (File No. 7–11560)
Protective Life Corp.
Common Stock, $.50 Par Value (File No. 7–11561)
Sphere Drake Holdings Ltd.
Common Stock, $.01 Par Value (File No. 7–11562)
Templeton Emerging Markets Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11563)
Tucker Properties
Common Stock, $.001 Par Value (File No. 7–11564)
Urban Shopping Center, Inc.
Common Stock, $.01 Par Value (File No. 7–11565)
ACM Managed Dollar Income Fund, Inc.
Common Stock, $.01 Par Value (File No. 7–11566)
Amerco
Ser. A. Pfd. Stock, No Par Value (File No. 7–11567)
Aquila Gas Pipeline Corp.
Common Stock, $.01 Par Value (File No. 7–11568)
CBL & Associates Properties, Inc.
Common Stock, $.01 Par Value (File No. 7–11569)
Chelsea GCA Realty, Inc.
Common Stock, $.01 Par Value (File No. 7–11570)
Enersis S.A.
American Depositary Shares (rep. 50 sh. Common Stock, No Par Value (File No. 7–11571)
Lexington Corporate Properties, Inc.
Common Stock, $.001 Par Value (File No. 7–11572)
New Age Media Fund, Inc.
Common Stock, $.0001 Par Value (File No. 7–11573)
Paul Revere Corp.
Common Stock, $1.00 Par Value (File No. 7–11574)
Regency Realty Corp.
Common Stock, $.01 Par Value (File No. 7–11575)

These securities are listed and registered on one or more other national securities exchange and are reported in the consolidated transaction reporting system.

Interested persons are invited to submit on or before December 13, 1993, written data, views and arguments concerning the above-referenced applications. Persons desiring to make written comments should file three copies thereof with the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Following this opportunity for hearing, the Commission will approve the applications if it finds, based upon all the information available to it, that the extensions of unlisted trading privileges pursuant to such applications are consistent with the maintenance of fair and orderly markets and the protection of investors.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–28933 Filed 11–24–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19886; 812–7521]

Daily Money Fund, et al.; Notice of Application

November 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Daily Money Fund; Daily Money Fund II; Daily Tax-Exempt Money Fund; Fidelity Advisor Series I (formerly Equity Portfolio: Growth); Fidelity Advisor Series II (formerly Plymouth Fund); Fidelity Advisor Series III (formerly Equity Portfolio: Income); Fidelity Advisor Series IV (formerly Income Portfolios); Fidelity Advisor Series V (formerly Plymouth Investment Series); Fidelity Advisor Series VI (formerly Tax-Exempt Portfolios); Fidelity Advisor Series VII (formerly Plymouth Securities Trust); Fidelity Advisor Series VIII (formerly Fidelity Special Situations Fund); Fidelity Beacon Street Trust (formerly Fidelity Tax-Exempt Money Market Trust); Fidelity California Municipal Trust (formerly Fidelity California Tax-Free Fund); Fidelity California Municipal Trust II; Fidelity Capital Trust; Fidelity Charles Street Trust; Fidelity Commonwealth Trust (formerly Fidelity Intermediate Bond Fund); Fidelity Congress Street Fund; Fidelity Contrafund; Fidelity Court Street Trust; Fidelity Court Street Trust II; Fidelity Destiny Portfolios; Fidelity Deutsche Mark Performance Portfolio, L.P.; Fidelity Devonshire Trust; Fidelity Exchange Fund; Fidelity Financial Trust; Fidelity Fixed-Income Trust; Fidelity Government Securities Fund; Fidelity Hastings Street Trust (formerly Fidelity Fund); Fidelity Income Fund; Fidelity Institutional Cash Portfolios; Fidelity Institutional Investors Trust (formerly Income Portfolios II); Fidelity Institutional Tax-Exempt Cash Portfolios; Fidelity Institutional Trust; Fidelity Investors (formerly Income Portfolios II); Fidelity Magellan Fund; Fidelity Massachusetts Municipal Trust (formerly Fidelity Massachusetts Tax-Free Fund); Fidelity Money Market Trust; Fidelity Money Market Trust II; Fidelity Mt. Vernon Street Trust (formerly Fidelity Growth Company Fund); Fidelity Municipal Trust (formerly Fidelity Municipal Bond Fund); Fidelity Municipal Trust II; Fidelity New York Municipal Trust; Fidelity New York Municipal Trust II; Fidelity Phillips Street Trust (formerly Fidelity Cash Reserves); Fidelity Puritan Trust; Fidelity School Street Trust (formerly Fidelity Limited Term Municipals); Fidelity Securities Fund; Fidelity Select Portfolios; Fidelity Sterling Performance Portfolio, L.P.; Fidelity Summer Street Trust; Fidelity Trend Fund; Fidelity Union Street Trust; Fidelity Union Street Trust II; Fidelity U.S. Investments-Bond Fund, L.P.; Fidelity U.S. Investments-Government Securities Fund, L.P.; Fidelity Yen Performance Portfolio, L.P.; Spartan U.S. Treasury Money Market Fund (formerly Fidelity U.S. Treasury Money Market Fund, L.P.); The North Carolina Cash Management Trust; Variable Insurance Products Fund; and Variable Insurance Products Fund II (collectively, the "Funds"); Fidelity Management & Research Company ("FMR"); Fidelity Distributors Corporation ("Distributors"); and National Financial Services Corporation ("NFSC").

RELEVANT ACT SECTIONS: Exemption requested pursuant to sections 6(c) and 17(b) of the Act from sections 17(a)(1) and 17(a)(2) of the Act.

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to sections 6(c) and 17(b) of the Act to permit the Funds and other investment companies for which FMR or any company controlled by, under common control with, or controlling FMR may act in the future as investment adviser, or for which Distributors or NFSC or any company controlled by, under common control with, or controlling Distributors or NFSC may act in the future as distributor: (1) To engage in short-term current transactions with certain banks; and (2) to borrow money on a short-term basis from such banks.

FILING DATE: The application was filed on May 21, 1990, and amended on August 6, 1990, March 26, 1991, August 17, 1992, and July 23, 1993. Counsel, on behalf of the applicants, has agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the Commission orders a hearing. Any interested person may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 13, 1993 and should be accompanied by proof of service on applicants in the form of an affidavit, or for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants: c/o Fidelity Management & Research Company, 82 Devonshire Street (N4A), Boston, Massachusetts 02109, Attention: Stanley N. Griffith, Esq.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504–2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Fund currently is organized as a business trust under the laws of the Commonwealth of Massachusetts or Delaware, or as a partnership under the laws of the State of Delaware, and is registered as an open-end management investment company. Each of the Funds (on behalf of its series in some cases) has entered into a management or advisory and service contract with FMR. NFSC is the principal underwriter for three of the Funds, and Distributors is the principal underwriter for the remainder of the Funds.

2. In 1982, the Commission issued a conditional order under sections 6(c) and 17(b) exempting the funds from sections 17(a)(1), 17(a)(2) and 17(e)(1) to permit them to engage in certain securities transactions with "Affiliated Banks" ("1982 Order").[1] The 1982 Order defined "Affiliated Banks" as banks, bank holding companies or affiliates thereof that directly or indirectly own, control or hold 5 percent or more of the outstanding voting securities of any of the Funds. The 1982 Order permits the Funds to buy and sell the following specific types of instruments from or to "Affiliated Banks": (a) Short-term obligations of an "Affiliated Bank" which is one of the 50 largest U.S. banks (as measured by deposits), their bank holding companies or affiliates thereof; (b) repurchase agreements with an "Affiliated Bank" that also serves as a custodian to one or more of the Funds; and (c) tax-exempt obligations. The 1982 Order also permits an Affiliated Bank to accept compensation within the limits of section 17(e)(2) when it acts as agent for any Fund in connection with a permitted transaction.

3. In 1989, the Commission amended the 1982 Order by granting further exemptions pursuant to sections 6(c) and 17(b) of the Act from sections 17(a)(1), 17(a)(2) and 17(e)(1) of the Act ("1989 Order"). The 1989 Order expanded the definition of the term "Affiliated Banks" as stated in the 1982 Order to include banks, bank holding companies or affiliates thereof which directly or indirectly act as investment adviser to any of the Funds. The 1989 Order permits the Funds: (a) To engage in purchase and sale transactions of both long-term and short-term United States government securities with "Affiliated Banks" which are primary dealers in these securities; (b) to permit such affiliated dealers to accept compensation within the limits of section 17(e)(2) for acting as agent for any Fund in connection with the purchase or sale of such United States government securities; and (c) to enter into repurchase agreement transactions with an "Affiliated Bank" if such bank is one of the 50 largest United States banks, as measured by deposits.[2]

4. Applicants now seek an order to supplement the 1982 Order and the 1989 Order to permit the Funds to engage in short-term currency transactions with, and to borrow money on a short-term basis from, "Affiliated Banks," defined in accordance with the 1989 Order to include banks, bank holding companies or affiliates thereof which directly or indirectly (1) own, control or hold 5 percent or more of the outstanding voting securities of any of the Funds, or (2) act as investment adviser to any one of the Funds. The term "Affiliated Banks" does not include any entity that is an affiliated person of a Fund, or an affiliated person of an affiliated person of a Fund, except by virtue of being a non-controlling shareholder of a Fund or an investment adviser to another Fund. Currently, no bank serves as an investment adviser to a Fund, and none of the Funds' custodian banks are Affiliated Banks.

5. To avoid inadvertent violation of section 17, FMR currently has internal operating procedures in place designed to identify situations where a bank is record owner of five percent or more of a Fund's outstanding voting securities. As soon as a bank is so identified, FMR tries to resolve the situation promptly, including, if necessary, prohibiting FMR from engaging in any currency transaction with, or secured borrowing from, such bank on behalf of any of the Funds, until the bank's record ownership of the shares is reduced below the five percent limit or it is established that the bank holds shares without the ability to vote on behalf of its customers or the ability to make investment decisions with respect to such shares, *i.e.*, as agent or custodian without beneficial ownership of the shares. Such procedures may bar the Funds from engaging in currency and secured borrowing transactions that otherwise would be advantageous to the Funds.

6. Under applicants' proposal, the Funds would enter into short-term forward currency exchange contracts with Affiliated Banks as a means of facilitating the Funds' investment in

[1] In the Matter of Fidelity Fund, Investment Company Act Release Nos. 12851 (Nov. 24, 1982) (notice) and 12912 (Dec. 21, 1982) (order).

[2] In the Matter of Daily Money Fund, Investment Company Act Release Nos. 16996 (June 9, 1989) (notice) and 17057 (July 7, 1989) (order).

securities of non-United States issuers.[3] In addition, the Funds would negotiate short-term loan agreements with Affiliated Banks.[4] Such loan agreements will enable the Funds to satisfy redemption requests on those occasions when the Funds receive an unexpectedly high volume of such requests.

7. The Funds' short-term borrowings are effected pursuant to previously negotiated lending agreements which permit short-term loans. These agreements provide for interest to be fixed according to a certain benchmark, such as the federal funds rate, or according to a rate negotiated at the time of the borrowing. Currently, the Funds have loan agreements with eight banks, although no Fund expects to have agreements with all eight banks. Under these agreements, certain banks may require security. The agreements provide for extensions of credit of between $30 million and $2.0 billion and total more than $3.5 billion. The lending banks are large banks of national standing and include some of the custodian banks of the Funds.

8. Daily quotes of loan rates usually are obtained from each bank with which the Funds have loan agreements. On any given business day, most such banks will be willing to lend money to one or more of the Funds. If quotes are solicited from less than all of the lending banks, FMR will solicit quotes from those banks which, on the basis of the facts and circumstances known at the time, it believes will offer loan interest rates as favorable to the borrowing Funds as interest on comparable loans from the other banks with which one or more Funds have borrowing agreements. Applicants contend that these procedures provide a high level of assurance that quoted rates will be representative of the prevailing available bank loan rates.

9. There is no, and will not be any, express or implied understanding between the Fund or FMR, Distributors or NFSC and any bank which is (or may become) an Affiliated Bank of a Fund that FMR will cause any of the Funds to enter into currency or secured borrowing transactions with any such bank in consideration of the bank's purchase of Fund shares. No reciprocal practices have existed or will exist among any Fund and an Affiliated Bank involving currency or secured borrowing transactions, and no favorable treatment will be given to any Affiliated Bank in short-term currency or secured borrowing transactions because of the bank's affiliation with a Fund. Moreover, the Funds are not requesting an order under the Act to permit allocation of currency or borrowing transactions to banks based upon investment in any of the Funds by such banks or their clients and customers.

Applicants' Legal Analysis

1. Section 2(a)(3)(A) provides that "any person directly or indirectly owning, controlling, or holding with power to vote, 5 per centrum or more of the outstanding voting securities" of any other person is an affiliated person of that other person. Applicants represent that the Affiliated Banks may be deemed affiliated persons of one or more Funds, and that if a bank is an affiliated person of one of the Funds, that bank arguably may be deemed to be an affiliated person of an affiliated person of all the other Funds under the Act.

2. Sections 17(a)(1) and 17(a)(2) prohibit affiliated persons of the Funds, or affiliated persons of affiliated persons of the Funds, from knowingly selling to or purchasing from the Funds "any security or other property." The proposed transactions may involve a sale or purchase which would be prohibited by section 17. Currency transactions involve the sale and purchase of currency, which arguably constitutes "property." The pledging of securities by a Fund as collateral in a secured borrowing transaction also may constitute the sale of such securities.[5]

3. Under section 17(b), the Commission may issue an order of exemption from one or more of the provisions of Section 17(a) if evidence establishes that: (a) The terms of the proposed transactions are reasonable and fair and do not involve overreaching on the part of any person; (b) the proposed transactions are consistent with the policy of each registered investment company concerned; and (c) the proposed transactions are consistent with the general purposes of the Act. The proposed transaction meets the standards set forth in section 17(b). The proposed transactions also qualify for relief under section 6(c) because the exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. In addition, the procedures to be implemented if the order is issued not only ensure fairness but that such transactions will be the same as arm's-length transactions.

4. The requested relief for short-term currency transactions is appropriate to facilitate the settlement of Fund transactions in foreign equity and debt securities. These transactions generally are effected in the currency of the country of the issuer or the country in which the securities are traded. Thus, the Funds buy foreign currency to settle purchase transactions within foreign markets and sell foreign currency that they received in the settlement of sale transactions within foreign markets. In addition, some of the Funds may enter into forward currency exchange contracts as a means of managing exchange rate risks. A Fund may enter into a foreign currency contract covering foreign securities held in the Fund in order to reduce or eliminate foreign currency exposure; such technique is know as currency hedging, and is a means of reducing portfolio risk.

5. Currency transactions are entered into by telephone or computer. There is no centralized trading floor. Commercial banks act as the core of this market, quoting bid/asked prices and acting as principals. The spread between the bid and the asked price in the foreign exchange markets represents the potential profit to the market maker and the compensation for its perceived risk in quoting the price and selling or holding the currency. At any one time there usually are ten or twelve commercial banks that will provide price indications for a particular currency. Foreign exchange rates generally are obtained through automated quotation systems. The Reuters Monitor Money Rates Service ("Reuters") is the money rate quote service that currently is recognized in the currency markets as the most reliable.

6. Short-term "odd lot" currency transactions, established by industry practice as those involving a United States dollar value of less than $1 million, are of particular importance to the Funds. Currency dealer generally do not make an active market in odd lot currency transactions and indications for such transactions are not reported on Reuters. The exchange rate that can be obtained for an odd lot currency transaction generally varies directly with the size of the transaction and the type of currency.

7. The Funds' custodian banks (including foreign subcustodians), some of which may be Affiliated Banks, are

[3] A forward currency exchange contract is an agreement to exchange one currency for another at an agreed on price at a future date. Applicants define a short-term currency transaction as one in which no more than 45 days elapse between the entry of an order to buy or sell a security and settlement of the transaction.

[4] Applicants define short-term loan agreements as loans with maturities of 14 days or less. However, applicants represent that borrowings ordinarily are for one day only.

[5] See *Rubin* v. *United States*, 449 U.S. 424 (1981).

among the banks that deal in foreign currencies. Those custodian banks ordinarily will accommodate any short-term odd lot currency transaction required for securities settlement. These transactions with a custodian bank are advantageous to the Funds because settlement procedures for such transactions are simpler and more easily coordinated, resulting in a lower trade settlement failure rate. Custodian banks are a major factor in the foreign currency markets available to the Funds for short-term transactions. Also, there is a reduction in efficiency of executing and settling transactions when dealing with currency dealers other than one of the Fund's custodian banks which cannot be readily quantified.

8. The Funds currently attempt to engage in currency transactions with banks not affiliated with the Funds or with non-bank currency dealers. The requested relief is appropriate because the statutory prohibitions have a particularly adverse impact with respect to the currency transactions. Over time, the number of banks using the Funds has grown, thereby increasing the restrictive impact of the statutory prohibitions to the point where a Fund's ability to obtain competitive currency prices, particularly with respect to small transactions, is adversely affected. For short-term odd lot currency transactions in particular, an Affiliated Bank may offer the most favorable price and execution as against the other banks. If the Funds cannot trade with one or more Affiliated Banks, the Funds may be deprived of the most favorable price and execution on the occasions when those banks have the best overall offer for the transaction. The shareholders' return from their investment in the Funds may be reduced if the Funds' access to Affiliated Banks is restricted. Access to the markets in particular foreign securities depends on access to currency dealers, and this access can only be obtained in some cases by being a participating customer of the Affiliated Banks.

9. The problem of limited access to Affiliated Banks is exacerbated when not all currency dealers make markets in a particular currency. When a currency dealer does not, it is not likely to quote prices for the currency within the prevailing market range. Thus, when there are a small number of competitive currency dealers in a currency, which includes one or more Affiliated Banks, the Funds' ability to obtain the most favorable price or prompt execution is even more restricted.

10. The risk of insolvency of Affiliated Banks engaging in short-term currency transactions is minimal. The creditworthiness of such counterparties is monitored by FMR and would be subject to the creditworthiness standard set forth in Condition 4 below.[6] If the counterparty on a currency forward fails to perform, a Fund can almost always resort to a highly liquid spot market, where the risk would be limited to the same currency value fluctuations as if the Fund purchased a foreign security without entering into a forward currency contract.

11. The purpose of sections 17(a)(1) and 17(a)(2) is to prevent a party with strong potential adverse interests and some influence over the investment decisions of a registered investment company from causing or inducing the investment company to engage in transactions which unfairly inure to the benefit of that party and which are detrimental to the best interests of the investment company and its shareholders. Applicants note that under no circumstances may an entity that is a controlling person of a Fund enter into a short-term currency transaction with such Fund. The Funds believe that they can best serve the interests of their shareholders by obtaining the most favorable price and execution in short-term currency transactions, regardless of whether the bank is affiliated, directly or indirectly, with one of the Funds.

12. Applicants also request relief with respect to short-term borrowing transactions to provide the Funds with a source of immediate, short-term liquidity pending settlement of the sale of portfolio securities. When the Funds liquidate portfolio securities to meet redemption requests, they often do not receive payment in settlement for up to seven days (or longer for certain foreign transactions). However, redemption requests normally are settled within one day. By borrowing, a Fund also can attempt to avoid selling securities into an unsettled market.

13. If collateral is required, loan transactions with a Fund's custodian are desirable because the administrative problems of transferring assets to a third party when a pledge is involved do not arise. Furthermore, some extensions of credit occur so late in the day that it is difficult, if not impossible, to secure an extension of credit from a non-custodian. The Funds' inability to borrow from all of the banks with which they have loan agreements necessarily decreases to some degree their ability to compete for the best interest rates and other terms. In addition, applicants contend that there is a reduction in efficiency in arranging secured borrowing transactions when dealing with banks other than the relevant Fund's custodian which cannot be readily quantified.

14. Permitting the Funds to enter into short-term borrowing transactions with Affiliated Banks will not implicate the concerns behind section 17(a). Applicants note that under no circumstances may an entity that is a controlling person of a Fund enter into a short-term secured borrowing transaction with such Fund. The Funds believe that they can best serve the interests of their shareholders by obtaining the most favorable interest rate and other terms in a secured borrowing transaction, regardless of whether the bank is affiliated, directly or indirectly, with one of the Funds. Further, there are occasions when an Affiliated Bank offers the most favorable interest rate and other terms compared to other lending banks, especially for small overdraft loans. If a Fund cannot borrow from one or more Affiliated Banks, the Fund may be deprived of entering into the most advantageous loan transaction. As a result, the shareholders' return from their investment in the Funds may be reduced in the Funds' access to Affiliated Banks is restricted.

15. The Funds believe that they can best safeguard their investors from any remote possibility of abuse by concentrating their attention directly on the inherent fairness of transactions by any Fund with Affiliated Banks. Thus, the Funds propose to create internal control procedures for the careful monitoring of currency and borrowing transactions with Affiliated Banks and to place responsibility for monitoring the reasonableness and fairness of those transactions on the Funds' Trustees and Managing General Partners. Currency and borrowing transactions subject to the order would be scrutinized to determine essentially that: (a) Any transaction by a Fund is consistent with the investment policy and objectives of that Fund and with the interests of its shareholders and is comparable to other similar transactions in which the Fund is authorized to engage and in which the Fund currently engage; (b) the terms of any proposed transactions are reasonable and fair to the shareholders of that Fund and do not involve overreaching on the part of any person concerned; and (3) any proposed

[6] In the 1989 Order, the Funds were permitted to enter into repurchase agreement transactions with an Affiliated Bank if the bank had sufficiently large deposits. The current proposal is not similarly restricted. See *supra* n.2. The staff of the Division of Investment Management believes that the creditworthiness standard described in Condition 4 is more appropriate for assessing the insolvency risk of an Affiliated Bank.

transaction is consistent with the general purposes of the Act. The Funds further believe that when the remote potential harm to shareholders from overreaching by Affiliated Banks in currency and borrowing transactions with the Funds is weighed against the benefits to the Funds' shareholders, the benefit to shareholders significantly outweighs the likelihood of harm. The interests of the Funds' shareholders will be served best by permitting the Funds to deal with all banks in currency and borrowing transactions, regardless of whether a bank also is affiliated with one or more Funds. The order would permit transactions that would have been made in the ordinary course of business on their own merit, without regard to the affiliated status of the counterparty.

Conditions to Relief

If the requested relief is granted, applicants agree to the following conditions:

1. The Board of Trustees or General Partner of each of the Funds, including a majority of the noninterested Trustees or General Partners, as the case may be, (i) will adopt procedures, pursuant to which transactions may be effected for the Funds, which are reasonably designed to provide that the conditions in paragraphs 2 through 5 below have been complied with, (ii) will review no less frequently than annually such procedures for their continuing appropriateness, and (iii) will determine no less frequently than quarterly that such transactions made during the preceding quarter were effected in compliance with such procedures. The investment adviser of each Fund will implement these procedures and make decisions necessary to meet these conditions, subject to the direction and control of the Board of Trustee or General Partners of each Fund.

2. No Fund will engage in currency or secured borrowing transactions with a bank that is an investment adviser to such Fund. No Fund will enter into currency transactions with an Affiliated Bank if, as a result, the net value of all currency contracts with such Affiliated Bank would exceed five percent of such Fund's total assets. No Fund will enter into secured borrowing transactions with an Affiliated Bank if, as a result, five percent of its total assets would be involved in the consummation of such transactions with such bank.

3. The Funds (i) will maintain and preserve permanently in an easily accessible place a written copy of the procedures (and any modifications thereto) described in paragraph 1, and (ii) will maintain and preserve for a period of not less than six years from the end of the fiscal year in which any transactions occurred, the first two years in an easily accessible place, a written record of each currency and secured borrowing transaction setting forth a description of such transaction, including without limitation the closing date and time of the transaction, the identity of the person on the other side of the transaction, the material terms and price of the purchase or sale of currency or the material terms and interest rate of the loan transaction, the identity of the other sources offering a similar transaction, the material terms and prices or material terms and interest rates offered by other sources, the closing date and time of the transaction, and all other information or materials upon which the determinations described below were made. With respect to information obtained from other sources about similar transactions, the written record will set forth the date and time that this information was obtained and received from these sources. To the extent that the information required about similar transactions is not available with respect to short-term odd lot currency transactions, records pertaining to such transaction will be kept consistent with the requirements of Condition 5.

4. The currency and secured borrowing transactions entered into will be consistent with the investment objectives and policies of that Fund as recited in the Fund's registration statement (including any creditworthiness standards), and will be consistent with the interests of that Fund and its shareholders.

In addition, the Funds will only engage in short-term currency transactions with Affiliated Banks of the following creditworthiness: those with short-term debt instruments rated high quality by at least one nationally recognized statistical rating organization ("NRSRO") (*e.g.*, A–1 or A–2 by Standard & Poor's Corporation), unless the Managing General Partners or Trustees of a Fund approve the entry into transactions with an Affiliated Bank that has short-term debt rated high grade by at least one NRSRO (*e.g.*, A–1, A–2 or A–3 by Standard & Poor's Corporation). If the Affiliated Bank has no short-term debt rating, the Funds may enter into transactions with such Affiliated Bank if FMR determines that its creditworthiness is comparable to high quality short-term debt, subject to review by the Funds' respective Trustees or Managing General Partners. Moreover, applicants will only engage in secured short-term bank loans with Affiliated Banks meeting the same creditworthiness standards.

5. The terms of each currency and secured borrowing transaction must be reasonable and fair to the shareholders of that Fund and will not involve overreaching of that Fund or its shareholders on the part of any person concerned. The terms and the prices to be paid or received (with respect to currency transactions) or the terms and interest rates to be paid (with respect to borrowing transactions) will be at least as favorable to the relevant Fund as the best terms and prices or terms and interest rates available from other sources, obtained pursuant to these procedures. Before any short-term transaction in currencies, or any borrowing, may be conducted pursuant to the exemption, the Funds of their advisers must obtain such available market information as they deem necessary to determine that the price to be paid or received for, or the terms of, each transaction is at least as favorable as that available from other sources. This shall include the following information, without limitation. With respect to short-term round lot currency transactions, the Funds or their advisers must obtain and document two competitive indications with respect to the specific proposed transaction, either from two other currency dealers or from one currency dealer and from an automated quotation system approved by the Board of Trustees and General Partners of the Funds, including a majority of noninterested members. Competitive quotation information includes price and settlement terms With respect to prospective purchases or disposition of currencies, these dealers must be those who, in the experience of the Funds' advisers, have demonstrated the consistent ability to provide professional execution of currency transactions at competitive market prices in the currencies of the type desired. With respect to the prospective purchase or disposition of currencies, these dealers must be those who, in the experience of the Funds' advisers, are in a position to quote favorable prices.

In the case of short-term odd lot currency transactions, the cost of each transaction must be consistent with guidelines established and reviewed at least annually by the Funds' Boards, including a majority of the noninterested members. These guidelines will fix what is an odd lot and will take into account current market prices of currencies (based on specified pricing procedures) and the size of the transactions, and the range of permitted prices will be based on a

survey of currency dealers (which are not affiliates) that have, as a group, executed at least 90% of odd lot currency transactions for the Funds (other than transaction with affiliates) since the last survey period. The dealers will be asked to furnish data concerning prices of odd lot currency transactions based upon actual odd lot currency trades with parties other than the Funds or their affiliates during normal market conditions during a one-week period. If a Managing General Partner or a Board, including a majority of its non-interested members, approves the survey methodology as a means for establishing guidelines, then it will further determine the frequency with which such survey data will be updated (but no less than annually), and will further determine the one-week period or periods during which the survey will be conducted. The survey will not be conducted as to currencies affected by market dislocation during such periods of dislocation. Rather, after any market dislocation (e.g., the recent European monetary crisis), a new survey will be conducted with respect to the affected currencies within 30 days of the end of the market dislocation, using the same methods described herein for the annual survey. The guidelines will only be used if dealers who have, as a group, executed at least 50% of such non-affiliate transactions respond in writing and, with respect to each currency, at least two responses are received. The guidelines will be based on a composite average of the survey results for each currency, using statistically reliable methods. In the event that FMR fails to obtain a response with respect to a particular currency sufficient to establish guidelines, then no trade in that currency will be executed with an Affiliated Bank (unless the trade can be effected at the prevailing round lot price, in which case the price would be verified, as with an ordinary round lot transaction, by two competitive quotations). This information will be incorporsted in guidelines to be affirmed at the next Board meeting. No trade will be executed with an Affiliated Bank unless the price falls within the guidelines. The guidelines and the information upon which they are based will be reviewed by the Boards, including a majority of the noninterested members, annually and whenever currency market dislocations or significant changes in the currency market have occurred. In addition, all transactions effected pursuant to the guidelines will be reviewed quarterly. In the event that FMR wishes to effect a short-term odd lot trade at a time of currency market dislocation and the Funds are unable to obtain round lot prices to effect the trades, FMR would use the existing guidelines for such currency in effecting the trade, if it determined that reliance on such guidelines was reasonable under the circumstances. In every such case, the relevant Fund's Managing General Partners or Trustees, including a majority of the non-interested members, will specifically review and approve the transaction at the next scheduled meeting.

With respect to borrowings, the Funds or their advisers must obtain and document competitive quotations from at least two unaffiliated banks that will include interest rate, maturity, collateralization requirements, prepayments rights and transaction charges.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-28932 Filed 11-24-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 19885; 812-8632]

Smith Barney Shearson Fundamental Value Fund Inc., et al.

November 18, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of Application for Exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Smith Barney Shearson Fundamental Value Fund Inc. and Smith Barney Shearson Growth and Opportunity Fund, a series of Smith Barney Shearson Equity Funds (the "Company").

RELEVANT ACT SECTIONS: Exemption requested pursuant to section 17(b) of the Act from section 17(a) of the Act.

SUMMARY OF APPLICATION: Applicants seek an order under section 17(b) of the Act granting an exemption from section 17(a) of the Act to enable Smith Barney Shearson Fundamental Value Fund Inc. ("Value Fund") to acquire the assets of Smith Barney Shearson Growth and Opportunity Fund ("Growth Fund"), a series of the Company, in exchange for shares of Value Fund.

FILING DATES: The application was filed on October 18, 1993. By letter dated November 9, 1993, counsel for Applicants agreed to file an amendment to the application containing certain additional information, the substance of which is incorporated herein.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 13, 1993, and should be accompanied by proof of service on Applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o The Boston Company Advisors, Inc., Exchange Place, Boston, Massachusetts 02109, Attention, Mary E. Moran, Esq.

FOR FURTHER INFORMATION CONTACT: H.R. Hallock, Jr., Special Counsel, at (202) 272-3030, or Barry D. Miller, Senior Special Counsel, at (202) 272-3018 (Office of Investment Company Regulation, Division of Investment Management).

SUMMARY INFORMATION: The following is a summary of the application. The complete applications may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. Value Fund is a Washington corporation registered under the Act as an open-end management investment company. Value Fund offers for sale three classes of shares with different sales load arrangements and fee structures. Smith Barney Shearson Asset Management Division (the "Adviser") of Smith, Barney Advisers, Inc. ("SBA") serves as the investment adviser of Value Fund.

2. Growth Fund is one of four series of the Company, a Massachusetts business trust registered under the Act as an open end management investment company. Growth Fund offers for sale three classes of shares with the same fee structure as each respective class of Value Fund. Salomon Brothers Asset Management Inc. serves as investment adviser to Growth Fund.

3. The other series offered by the Company are Smith Barney Shearson Growth and Income Fund ("Growth and Income Fund"), Smith Barney Shearson Strategic Investors Fund and Smith Barney Shearson Sector Analysis Fund

("Sector Analysis Fund"). The investment advisers of Growth and Income Fund and Sector Analysis Fund are Greenwich Street Advisors Division of Mutual Management Corp. ("Greenwich Advisors") and Smith Barney Shearson Strategy Advisers Inc. ("Strategy Advisers"), respectively. The Adviser and Strategy Advisers are both wholly-owned subsidiaries of SBA.

4. Smith Barney Shearson Inc. (the "Distributor') serves as the distributor for each Applicant. The Distributor, SBA, and Greenwich Advisors are each direct or indirect wholly-owned subsidiaries of Primerica Corporation ("Primerica"). Primerica is primarily engaged, through its subsidiaries, in providing consumer finance services, incurance services and investment services.

5. Value Fund proposes to acquire all or substantially all of the assets of Growth Fund in exchange for its shares (the "Reorganization"). The consummation of the Reorganization is subject to certain conditions, including that the parties shall have received exemptive relief on the application from the SEC.

Applicants' Legal Analysis

1. Section 17(a) of the Act generally prohibits an affiliated person of a registered investment company from knowingly purchasing securities or other property from, or selling securities or other property to, such registered investment company. Section 2(a)(3) of the Act defines "affiliated person" of another person to include any person directly or indirectly under common control with such other person. Section 17(b) of the Act authorizes the SEC to grant exemptive relief from section 17(a) if it finds that the proposed transaction is fair and reasonable, that it does not involve overreaching on the part of any person concerned, and that it is consistent with the policies of any investment companies involved at those policies are recited in their registration statements and reports filed under the Act and with the general purposes of the Act.

2. Where two investment companies have a common investment adviser, directors and/or officers, the companies may be considered to be under common control and, therefore, affiliated persons of each other. Thus, a merger or other combination of two such companies could be considered to involve a prohibited purchase or sale under section 17(a)

3. Rule 17a–8 under the Act excepts from the prohibitions of section 17(a) transactions involving a merger or other combination of investment companies that are affiliated persons solely by reason of having a common investment adviser, common directors and/or common officers, provided that certain conditions are satisfied. Applicants do not meet the requirements of that rule, however, because they do not have a common investment adviser, common directors and/or common officers.

4. Value Fund and Growth Fund may be deemed to be under the ultimate common control of Primerica, however, because through its subsidiaries, Primerica may be deemed to have the power to exercise a controlling influence over the management and policies of each Fund. Accordingly, the Funds may be deemed to be "affiliated persons" of one another within the meaning of section 2(a)(3) of the Act.

5. Nonetheless, Applicants submit that the terms of the proposed transactions relating to the Reorganization meet the standards of section 17(b) of the Act for an exemption from section 17(a). They note, in particular, that the board of trustees of Growth Fund and the board of directors of Value Fund, including, in each case, the board members who are not "interested persons" of such boards (as such term is defined in the Act), have concluded that the Reorganization is in the best interests of the Applicants' respective shareholders and will not result in the dilution of the interests of any of the existing shareholders. Accordingly, Applicants request that the SEC issue an order under section 17(b) of the Act exempting the proposed transactions from section 17(a) of the Act to the extent necessary to permit Applicants to effect the proposed Reorganization.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–28934 Filed 11–24–93; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Pilot in Region VI To Streamline Loan Application Process

AGENCY: Small Business Administration (SBA).

ACTION: Notice of Region VI Pilot.

SUMMARY: On November 2, 1993, the Administrator of SBA authorized the commencement of a pilot in Region VI in order to test an attempt to streamline the loan application process for guaranty loans of $100,000 or less under section 7(a) of the Small Business Act. This notice is issued pursuant to § 120.1–2 of SBA's regulations (13 CFR 120.1–2).

Phase one of the pilot will cover loans originating from the service areas of the SBA district offices in San Antonio, Dallas and Houston. Phase two is scheduled to commence on January 1, 1994 to cover the other SBA district offices in Texas, Oklahoma and Louisiana. All the loan applications submitted under this pilot will be processed at the SBA district office in San Antonio, Texas. Lenders who participate in this pilot will be encouraged to submit applications by FAX or mail. If the pilot proves to be successful, lenders will be encouraged to use computer transmission. The pilot is scheduled to end on December 31, 1994.

While the pilot is in effect, with respect to guaranty loans of $100,000 or less, lenders and SBA will rely on the individual applicant's personal and business credit history as an indication of the ability and willingness to repay a loan. Other traditional credit criteria, including collateral, lien position and business equity, although considered, will not be a primary consideration in approving such loans. Accordingly, the pilot will reduce SBA's application documents, with the lender's own documents being used in lieu of some of the SBA forms. SBA's primary focus for the credit decision will be the willingness to repay debt as indicated by a good credit history, the likelihood that expected earnings will be enough to make the scheduled payments, and that with the financing, the business has a good chance of achieving success. Lenders will be required to secure a credit report on all owners, guarantors and co-signers.

Existing statutory requirements for loan maturities will be maintained during the pilot. Loans under the pilot will be term only, with no revolving feature allowed. SBA personnel will make eligibility determinations. Permitted use of proceeds will be the same as in the normal section 7(a) program, including the reductions of lender's exposure when it meets the current policy requirements, except that the maximum amount that will be allowed for the reduction of a lender's exposure will be 25% of the total loan. A lender may choose to increase its percentage of participation to cover the level of its reduction, when the reduction exceeds the 25% maximum.

Under the pilot, lenders will be required to liquidate loans having an original loan amount of $50,000 and under, and SBA will not pay any of the liquidation expenses in excess of recoveries on these loans. All

recoveries, less liquidation expenses, will be applied to the loan balance prior to the lender submitting a request to SBA for purchase. If the original loan amount exceeds $50,000, lender will submit a liquidation plan to SBA prior to any liquidation action. Once the liquidation plan is approved by SBA, the lender will perform the liquidation, unless SBA determines it to be in its best interest to perform the liquidation.

Dated: November 12, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93–28974 Filed 11–24–93; 8:45 am]

BILLING CODE 8025–01–M

Providence District Advisory Council; Public Meeting

The U.S. Small Business Administration Providence District Advisory Council will hold a public meeting at 10:30 a.m. on Thursday, December 16, 1993, at the U.S. Small Business Administration, 380 Westminster Mall, Room 511, Providence, Rhode Island, to discuss such matters as may be presented by members, staff of the U.S. Small Business Administration, or others present.

For further information, write or call Joseph P. Loddo, District Director, U.S. Small Business Administration, 380 Westminster Street, Providence, Rhode Island 02903, (401) 528–4580.

Dated: November 17, 1993.

Dorothy A. Overal,

Acting Assistant Administrator, Office of Advisory Councils.

[FR Doc. 93–28975 Filed 11–25–93; 8:45 am]

BILLING CODE 8025–01–M

[License No. 02/02–5455]

Triad Capital Corp. of New York; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 104.102)) by Triad Capital Corporation of New York, 15 West 39th Street, 9th floor, New York 10018, for transfer of ownership and control of its license under the Small Business Investment Act of 1958, as amended (15 U.S.C. *et seq.*). The transfer of ownership and control of Triad Capital Corporation of New York, which was licensed November 25, 1983, is subject to prior written approval of SBA.

If approved, the Business Consortium Fund, Inc. of the National Minority Supplier Development Council will own 100 percent of Triad Capital Corporation of New York.

The proposed officers and directors are:

Name	Title
Marcial E. Robiou, 15 West 39th Street, 9th Floor, New York, NY 10018.	President & Director.
Thomas C. Fitzgerald, 100 Crystal Drive, Hershey, PA 17033–0810.	Chairman.
William Alcorn, 5001 Spring Valley Rd., Dallas, TX.	Vice Chairman & Treasurer.
C. Douglas Dixon, 90 Park Avenue, 37th Floor, New York, NY 10016.	Secretary & Director.

Triad Capital Corporation of New York will be managed by Rutgers Minority Investment Company, a Small Business Investment Company located at 92 New Street, Newark, New York 07102. The applicant will begin operations with private capitalization of approximately $1.6 million.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not latter than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW., Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: November 19, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93–28973 Filed 11–24–93; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

[AC No. 120–XX]

Development of Advisory Circular (AC) on Flightcrew Sleeping Quarters/ Facilities

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of FAA intent to consider the design and installation criteria for flightcrew rest facilities on commercial transport aircraft contained in Aerospace Recommended Practice (ARP) 4101/3 in the development of AC 120–XX, Flightcrew Sleeping Quarters/ Facilities; and request for comments concerning the adequacy and appropriateness of these criteria.

SUMMARY: This notice contains a reprint of the Society of Automotive Engineers (SAE) document ARP4101/3, Crew Rest Facilities, which contains information that the FAA intends to consider in development of AC 120–XX, Flightcrew Sleeping Quarters/Facilities. When developed and issued, this AC would provide guidance for one means, but not the only means, for Federal Aviation Regulations (FAR) parts 121 and 135 certificate holders to obtain an FAA finding regarding the adequacy of sleeping quarters/facilities to be used for flight crewmembers sleeping in flight. These sleeping quarters/facilities would be used: (1) By three- or four-pilot crews during long-range flights under FAR part 135; and (2) when applicable, by flight crewmembers in conduct of flag and supplemental operations under FAR part 121. This notice gives all interested persons an opportunity to present their views on the adequacy of the information in the subject SAE document for the purpose described herein. The FAA will consider all comments received prior to issuing any notice of availability of draft AC 120–XX, Flightcrew Sleeping Quarters/ Facilities.

DATES: Comments must be received on or before January 25, 1994.

ADDRESSES: Send all comments on the subject to SAE document to: Federal Aviation Administration, Air Carrier Branch, AFS–220, 800 Independence Avenue SW., Washington, DC 20591. Comments may be inspected at the above address between 9 a.m. and 4 p.m. weekdays, except Federal holidays.

FOR FURTHER INFORMATION CONTACT: Don Streeter, AFS–220, at the address above, telephone (202) 267–7579.

SUPPLEMENTARY INFORMATION: In developing a flightcrew sleeping

quarters/facilities AC, the FAA intends to provide standard technical definitions and guidelines for FAR part 121 certificate holders and, based on comments received, FAR part 135 certificate holders. The definitions and guidelines would then be used by these certificate holders to develop plans for a sleeping quarters installation in a particular type airplane and to obtain an FAA finding regarding the adequacy of that installation for sleeping purposes. This AC will reference recommended guidelines based on suggested criteria contained in ARP4101/3 for the design and installation of crew rest facilities on commercial transport aircraft capable of ultra-long-range operations with augmented/enlarged crew complements.

FAR § 135.269 permits certificate holders to assign three- or four-pilot crews to flights having extended duty periods, under certain conditions. One condition that must be met to authorize such assignments is that adequate sleeping quarters must be available for use on such flights. The FAA recognizes that accepting certain guidance criteria in ARP4101/3 may be difficult for FAR part 135 operators. Therefore, comments from FAR part 135 operators regarding the adequacy of the ARP4101/3 criteria are requested to ensure the development of equitable guidelines. Some of the issues in need of comment are:

(1) Aircraft size is limited under FAR part 135, therefore, recognizing the size differential, should or can the ARP4101/3 criteria be applied to FAR part 135 aircraft?

(2) Should the proposed AC include FAR part 135 guidelines? If so, should the FAR part 135 guidelines be separate from the FAR part 121 guidelines?

(3) Should a separate AC be developed for FAR part 135 operators?

(4) What additions or changes in the ARP4101/3 criteria would be needed to accommodate the needs of FAR part 135 operators? The following related SAE documents may also prove to be useful in the development of the draft AC:

SAE ARP4101—Flight Deck Layout and Facilities
SAE ARP4101/4—Flight Deck Environment
SAE ARP1323—Type Measurements of Aircraft Interior Sound Pressure Levels During Cruise
SAE AIR4245—Quantities for Description of the Acoustical Environment in the Interior of Aircraft

Copies of these documents may be obtained, for a fee, by contacting: SAE, The Engineering Society For Advanced Mobility Land Sea Air and Space International, 400 Commonwealth Drive, Warrendale, PA 15096–0001, Attention: Mr. Richard A. Vandame, Jr., telephone (412) 776–4841.

Issued in Washington, DC, on November 12, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

[FR Doc. 93–28969 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee; Part 65 Working Group—New Task

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of new task assignment for the Part 65 Working Group.

SUMMARY: Notice is given of a new task assignment for the Part 65 Working Group from the Aviation Rulemaking Advisory Committee. This notice informs the public of the activities of the ARAC on air carrier/general aviation maintenance issues.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick J. Lenoalli, Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee, Flight Standards Service (AFS–300), 800 Independence Avenue, SW., Washington, DC 20591, Telephone: (202) 267–3546; FAX: (202) 267–5230.

SUPPLEMENTARY INFORMATION: The Federal Aviation Administration (FAA) has established an Aviation Rulemaking Advisory Committee (ARAC) (56 FR 2190, January 22, 1991; and 58 FR 9230, February 19, 1993). One area the ARAC deals with is air carrier/general aviation maintenance issues. These issues involve mechanic certification and approved training schools outlined in parts 65 and 147 and the maintenance standards for parts 23, 25, 27, 29, 31, 33, and 35 aircraft, engines, propellers, and their component parts and parallel provisions in parts 21, 43, 91, 121, 125, 127, 129, 133, 135, and 137 of the Federal Aviation Regulations (FAR), which are the responsibility of the FAA Director, Flight Standards Service. At its first meeting on air carrier/general aviation maintenance issues on May 24, 1991 (56 FR 20492, May 3, 1991), the ARAC established the Part 65 Working Group and assigned it a task. At its meeting held on October 18, 1993 (58 FR 49542, September 23, 1993), the ARAC assigned an additional task to the Part 65 Working Group:

Task

Specifically, the Part 65 Working Group's task is the following:

1. Conduct a further regulatory review of Part 65, including possible development of additional certifications and re-registration of aviation maintenance technicians and repairmen, to include appropriate training issues. Additional certifications would include an advanced generalist and an advanced specialist, based on the current system of Airframe and Powerplant generalists and repairmen specialists.

2. If the working group determines that a notice of proposed rulemaking would be an appropriate measure, ensure that the recommendation to the FAA is a complete package. That package should include the preamble, the proposed rule, an economic evaluation or analysis, and an appropriate legal review.

3. If the working group determines that an advisory circular would be appropriate, that package should include a complete justification and an appropriate legal review before submitting a recommendation to the FAA.

Reports

A. Recommend time line(s) for completion of the task, including rationale, for consideration at the meeting of the ARAC to consider air carrier/general aviation maintenance issues held following publication of this notice.

B. Give a detailed conceptual presentation on the task to the ARAC before proceeding with the work as stated in the task statement above.

C. Give a status report on the task at each meeting of the ARAC held to consider air carrier/general aviation maintenance issues.

The Part 65 Working Group will be comprised of experts from those organizations having an interest in the task assigned. A working group member need not necessarily be a representative of one of the member organizations of the ARAC. An individual who has expertise in the subject matter and wishes to become a member of the working group should write the person listed under the caption **FOR FURTHER INFORMATION CONTACT** expressing that desire, describing his or her interest in the task, and the expertise he or she would bring to the working group. The request will be reviewed with the Assistant Chair of the ARAC for air carrier/general aviation maintenance issues and the Chair of the Part 65 Working Group, and the individual will be advised whether or not the request can be accommodated.

The Secretary of Transportation has determined that the formation and use of the ARAC are necessary in the public interest in connection with the performance of duties imposed on the FAA by law. Meetings of the ARAC to consider air carrier/general aviation maintenance issues will be open to the public except as authorized by section 10(d) of the Federal Advisory

Committee Act. Meetings of the Part 65 Working Group will not be open to the public, except to the extent that individuals with an interest and expertise are selected to participate. No public announcement of working group meetings will be made.

Issued in Washington, DC, on November 19, 1993.

Benjamin J. Burton, Jr.,

Acting Assistant Executive Director for Air Carrier/General Aviation Maintenance Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–28980 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on General Aviation and Business Airplane Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting cancellation.

SUMMARY: The FAA is issuing this notice to advise the public that the November 30, 1993, meeting of the Aviation Rulemaking Advisory Committee to discuss general aviation and business airplane issues (58 FR 60081, November 12, 1993) has been cancelled.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Nininger, Small Airplane Directorate (ACE–112), 601 East 12th Street, Kansas City, Missouri 64106, telephone (816) 426–5688.

Issued in Washington, DC, on November 19, 1993.

John R. Colomy,

Assistant Executive Director for General Aviation and Business Airplane Issues, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–28977 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Security Advisory Committee Policy, Procedures and Public Awareness Subcommittee

AGENCY: Notice of the Aviation Security Advisory Committee's Policy (ASAC), Procedures and Public Awareness Subcommittee Meeting.

SUMMARY: This notice announces a meeting of the ASAC's Policy, Procedures and Public Awareness Subcommittee to examine the discussion papers associated with the rewrites of 14 CFR parts 107 and 108.

DATES: The meeting will be held December 15, 1993, from 10 a.m. to 3 p.m.

ADDRESSES: The meeting location is the Air Transport Association Headquarters, 1301 Pennsylvania Avenue NW., Board Room, Washington, DC 20004.

FOR FURTHER INFORMATION CONTACT: The Office of the Assistant Administrator for Civil Aviation Security, ACS, 800 Independence Avenue SW., Washington, DC 20591, telephone (202) 267–8293.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. app. II), this notice announces a meeting of the ASAC's Policy, Procedures and Public Awareness Subcommittee to be held December 15, 1993, at the Air Transport Association Headquarters, 1301 Pennsylvania Avenue NW, Board Room, Washington, DC.

The agenda will include a review of the discussion papers—outlining areas for consideration in the Re-write of parts 107 and 108 that is being distributed to all ASAC members prior to the December 15 subcommittee meeting. The papers are also available to non-ASAC members. Persons wishing to obtain a copy of the discussion papers should contact the telephone number under the "**FOR FURTHER INFORMATION CONTACT**" section listed above. The details for gathering the Subcommittee's comments and responses on the discussion papers, such as forming a task force, will be discussed.

Attendance at the December 15, 1993, meeting is open to the public but limited to available space. Members of the public may address the subcommittee only with the written permission of the chair, which needs be arranged in advance. The chair may entertain public comment if, in its judgment, doing so will not disrupt the orderly progress of the meeting and will not be unfair to any other person. Members of the public are welcome to present written material to the subcommittee at any time.

Issued in Washington, DC, on November 19, 1993.

Jack Gregory,

Acting Assistant Administrator for Civil Aviation Security.

[FR Doc. 93–28978 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Aviation Rulemaking Advisory Committee Meeting on Transport Airplane and Engine Issues

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of meeting.

SUMMARY: The FAA is issuing this notice to advise the public of a meeting of the Federal Aviation Administration's Aviation Rulemaking Advisory Committee to discuss transport airplane and engine issues.

DATES: The meeting will be held on December 8, 1993 at 8 a.m. Arrange for oral presentations by November 29, 1993.

ADDRESSES: The meeting will be held at Aerospace Industries Association of America, Inc., 1250 Eye St. NW., suite 1100, Goddard Rooms A and B, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Lewis Lebakken, Office of Rulemaking, FAA, 800 Independence Avenue, SW., Washington, DC 20591, telephone (202) 267–9682.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463; 5 U.S.C. App. II), notice is given of a meeting of the Aviation Rulemaking Advisory Committee to be held on December 8, 1993, at Aerospace Industries Association of America, Inc., 1250 Eye St. NW., suite 1100, Washington, DC. The agenda for the meeting will include:

- Opening Remarks.
- Review of Action Items.
- Reports of working groups.
- Special discussion and possible action regarding the efforts of the Small Transport and Commuter Airworthiness Assurance Working Group, Airworthiness Assurance Working Group, Installation Harmonization Working Group, and Propulsion Harmonization Working Group.

Attendance is open to the interested public, but will be limited to the space available. The public must make arrangements by November 29, 1993, to present oral statements at the meeting. The public may present written statements to the committee at any time by providing 25 copies to the assistant Executive Director for Transport Airplane and Engine Issues or by bringing the copies to him at the meeting. In addition, sign and oral interpretation can be made available at the meeting, as well as an assistive listening device, if requested 10 calendar days before the meeting. Arrangements may be made by contacting the person listed under the heading "**FOR FURTHER INFORMATION CONTACT.**"

Issued in Washington, DC, on November 16, 1993.

Chris A. Christie,

Executive Director, Aviation Rulemaking Advisory Committee.

[FR Doc. 93–28979 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Benedum Airport, Clarksburg, WV

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Benedum Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address: Mr. Joseph H. Scheff, Manager, Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Mr. Paul Stewart, Airport Manager of the Benedum Airport Authority at the following address: Benedum Airport Authority, 200 Aviation Way, Bridgeport, West Virginia 26330.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Benedum Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph H. Scheff, Manager Beckley Airports Field Office, Main Terminal building, 469 Airport Circle, Beaver, West Virginia 25813–6216 (Tel. 304–252–6216). The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Benedum Airport under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

On September 13, 1993, the FAA determined that the application to impose and use the revenue form a PFC submitted by the Benedum Airport Authority was substantially complete within the requirements of section 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than January 8, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: December 1, 1993
Proposed charge expiration date: December 31, 1995
Total estimated PFC revenue: $108,241

Brief description of proposed projects: The PFC funds will be utilized to fund the local share of the following proposed AIP projects:

—Airport Runway Signs
—Terminal Building/Security
—Replace Heating & Air Conditioning and removal of asbestos in terminal building
—Purchase snow blower
—Replace ARFF equipment
—Replace electric cables to runway & Taxiway
—Purchase two snow removal vehicles (sand spreader & snow plow)

Class or classes of air carriers which the public agency has requested not be required to collect PFCs: None.

Any person may inspect the application in person at the FAA office listed above under "**FOR FURTHER INFORMATION CONTACT**" and at the FAA regional Airports office located at: Fitzgerald Federal Building, John F. Kennedy International Airport, Jamaica, New York, 11430.

In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Benedum Airport Authority.

Issued in Jamaica, New York State on November 15, 1993.

Louis P. DeRose,

Manager, Airports Division, Eastern Region.

[FR Doc. 93–28972 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Notice of Intent To Rule on Application To Impose and Use the Revenue From a Passenger Facility Charge (PFC) at Guam International Air Terminal-Agana NAS, Agana, Guam

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of intent to rule on application.

SUMMARY: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Guam International Air Terminal-Agana NAS under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L. 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158).

DATES: Comments must be received on or before December 27, 1993.

ADDRESSES: Comments on this application may be mailed or delivered in triplicate to the FAA at the following address:

Federal Aviation Administration, Airports Division, P.O. Box 92007, Worldway Postal Center, Los Angeles, CA 90009,

or

Honolulu Airports District Office, P.O. Box 50244, Honolulu, HI 96850–0001; Street Address: 300 Ala Moana Blvd., room 7116, Honolulu, HI 96813.

In addition, one copy of any comments submitted to the FAA must be mailed or delivered to Jess Q. Torres, Executive manager of the Guam Airport Authority at the following address: Guam Airport Authority, Guam International Air Terminal, P.O. Box 8770, Tamuning, Guam 96931.

Air carriers and foreign air carriers may submit copies of written comments previously provided to the Guam Airport Authority under § 158.23 of part 158.

FOR FURTHER INFORMATION CONTACT: David J. Welhouse, Honolulu Airports District Office, P.O. Box 50244, Honolulu, HI 96850; Street Address: 300 Ala Moana Blvd., room 7116, Honolulu HI 96813; Telephone: (808) 541–1243 The application may be reviewed in person at this same location.

SUPPLEMENTARY INFORMATION: The FAA proposes to rule and invites public comment on the application to impose and use the revenue from a PFC at Guam International Air Terminal under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (Title IX of the Omnibus Budget Reconciliation Act of 1990) (Pub. L 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). On November 5, 1993, the FAA determined that the application to impose and use the revenue from a PFC submitted by the Guam Airport Authority was substantially complete within the requirements of § 158.25 of part 158. The FAA will approve or disapprove the application, in whole or in part, no later than February 4, 1994.

The following is a brief overview of the application:

Level of the proposed PFC: $3.00
Proposed charge effective date: June 1, 1994
Proposed charge expiration date: September 1, 2026

Total estimated PFC revenue:
$308,110,994.00

Brief Description of the proposed projects: the project are part of a multi-phased development program as defined in FAR part 158.3 consisting of the following:

(1) Renovate and expand Terminal Building by 544,000 square feet including: install 5 baggage claim carousels, provide new INS and Customs processing areas and office space, increase administrative office and terminal support space, install 11 new passenger loading bridges, replace existing outbound baggage system, install multi-user Flight Information Display System, replace single departure lounge of 13,500 square feet with gate oriented lounges totaling 69,000 square feet, construct 204,000 square feet of public area, and construct 26,000 square feet of mechanical/electrical space to support terminal building.

(2) Reconfigure Airport Access Road with grade separated crossovers, and reconstruct terminal loop road to increase curb frontage by 800 feet.

(3) Expand aircraft apron for 7 additional gates with taxilanes.

Class or classes of air carriers which the public agency has requested not be required to collect PFC's Part 135 air taxi/commercial operators.

Availability of Application

Any person may inspect the application in person at the FAA office listed above under **FOR FURTHER INFORMATION CONTACT** and at the FAA regional Airport office located at: Western-Pacific Region, Airports Division, room 3012, 15000 Aviation Blvd., Hawthorne, CA 90261. In addition, any person may, upon request, inspect the application, notice and other documents germane to the application in person at the Guam Airport Authority.

Issued in Hawthorne, California, on November 5, 1993.

Herman C. Bliss,

Manager, Airports Division, Western-Pacific Region.

[FR Doc. 93–28970 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–13–M

Federal Highway Administration

Environmental Impact Statement: Brunswick County, NC

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge replacement project in the Town of Sunset Beach, Brunswick County, North Carolina.

FOR FURTHER INFORMATION CONTACT: Roy C. Shelton, Operations Engineer, 310 New Bern Avenue, suite 410, Raleigh, North Carolina 27601, Telephone (919) 856–4350.

SUPPLEMENTARY INFORMATION: The FHWA in cooperation with the North Carolina Department of Transportation (NCDOT) will prepare an environmental impact statement (EIS) for the improvement of SR 1172 in the Town of Sunset Beach, Brunswick County, North Carolina. The proposed action would be the replacement of the Sunset Beach Bridge on SR 1172 over the Atlantic Intracoastal Waterway, potentially on new location, along with the reconstruction of the approach roadways. The project extends from the island to the mainland in Sunset Beach. Improvements to the existing one-lane pontoon bridge are considered necessary to improve traffic safety and highway access between the island portion of the Town of Sunset Beach and the Brunswick County mainland and to enhance watercraft operation on the Intracoastal Waterway.

Alternatives under consideration include: (1) The "no-build," (2) rehabilitation of the existing structure, (3) replacing the existing structure at its current location, and (4) replacing the structure on new location. A 65-foot fixed span and various heights of movable span structures will be evaluated.

Letters describing the proposed action and soliciting comments have been sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. A complete public involvement program has been developed for the project to include: The distribution of newsletters to interested parties, along with public meetings and a public hearing to be held in the project study area. A toll-free project telephone "hotline" is also being made available. Information on the time and place of the public hearing will be provided in the local news media. The draft EIS will be available for public and agency review and comment prior to the public hearing. A formal interagency scoping meeting has also been conducted.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues are identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the FHWA at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Research, Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to this program)

Dated: November 18, 1993.

Roy C. Shelton,

Operations Engineer, Raleigh, NC.

[FR Doc. 93–28993 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Gila, Coconino, and Navajo Counties, AZ

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of Intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an Environmental Impact Statement (EIS) will be prepared for a proposed highway project in Gila, Coconino, and Navajo Counties, Arizona.

FOR FURTHER INFORMATION CONTACT: Mr. Nathan M. Banks, District Engineer, Federal Highway Administration, 234 North Central Avenue, Suite 330, Phoenix, AZ 85004, Telephone: (602) 379–3646.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the Arizona Department of Transportation (ADOT), will prepare an Environmental Impact Statement (EIS) for a proposal to improve State Route 260 between Payson and Heber, AZ. The proposal will include a "no action" alternative in addition to a range of build alternatives along and away from the existing roadway to improve the capacity and safety features of this 54-mile segment. Various designs of grade, alignment, geometry and access will be evaluated. The evaluation of alternatives will consider the social, economic, and environmental impacts associated with construction and with secondary and cumulative effects.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed or are known to have interest in this proposal. Public involvement will continue with public information meetings to obtain public input in the planning process, newsletters to advise

the public of project progress, and a public hearing following distribution of the Draft EIS.

To ensure that a full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposal and the EIS should be directed to the Federal Highway Administration at the address provided above.

(Catalog of Federal Domestic Assistance Program Number 20.205, Highway Planning and Construction. The regulations implementing Executive Order 12372 regarding intergovernmental construction on Federal programs and activities apply to this program)

Dated: November 19, 1993.

Nathan M. Banks,

District Engineer, Phoenix, Arizona.

[FR Doc. 93–28982 Filed 11–24–93; 8:45 am]

BILLING CODE 4910–22–M

Environmental Impact Statement: Monroe County, NY

AGENCY: Federal Highway Administration (FHWA), New York State Department of Transportation (NYSDOT).

ACTION: Notice of intent.

SUMMARY: The FHWA is issuing this notice to advise the public that an environmental impact statement will be prepared for a proposed bridge/highway project in Monroe County, New York.

FOR FURTHER INFORMATION CONTACT:

Harold J. Brown, Division Administrator, Federal Highway Administration, New York Division, Leo W. O'Brien Federal Building, 9th Floor, Clinton Avenue and North Pearl Street, Albany, New York 12207, Telephone (518) 472–3616;

or

Lewis M. Gurley, Regional Director, New York State Department of Transportation, Region 4, 1530 Jefferson Road, Rochester, New York 14623–3161, Telephone: (716) 272–3310.

SUPPLEMENTARY INFORMATION: The FHWA, in cooperation with the NYSDOT will prepare an Environmental Impact Statement (EIS) on a proposal on a proposal to repair or replace the Mitchell Road bridge, Bridge Identification Number 4443070, over the Erie Canal in Monroe County, New York. The proposed improvement would involve the repair or replacement of the existing one-lane bridge located on Mitchell Road in the town of Pittsford. Through the NYSDOT bridge inspection system, the Mitchell Road bridge was found to be in a state of advanced deterioration. The bridge was closed to all traffic on April 18, 1988. The repair or replacement is necessary to address the existing structurally deficient bridge.

Alternatives under consideration included (1) taking no action; (2) rehabilitation of the existing structure; (3) replacement with a one-lane structure at the same location; (4) replacement with a two-lane structure at the same location; and (5) replacement with a two-lane structure at a new location. Incorporated into and studied with the various building alternatives will be design variations of grade and alignment. The suggested termini for any new location alternative are defined as New York Route 31 to the east and New York Route 96 to the west.

Letters describing the proposed action and soliciting comments will be sent to appropriate Federal, State and local agencies, and to private organizations and citizens who have previously expressed interest in the proposal. A public information meeting will be held in the town of Pittsford between January and June of 1994. In addition, the opportunity for a public hearing will be offered. Public notice will be given of the time and place of the meeting and hearings (if necessary). The Draft EIS will be available for public and agency review and comment. A formal National Environmental Policy Act scoping meeting will be held at a date and time to be determined.

To ensure that the full range of issues related to this proposed action are addressed and all significant issues identified, comments and suggestions are invited from all interested parties. Comments or questions concerning this proposed action and the EIS should be directed to the NYSDOT or FHWA at the addresses provided above.

Dated: November 19, 1993.

Harold J. Brown,

Division Administrator, Federal Highway Administration, Albany, New York.

[FR Doc. 93–28994 Filed 11–24–93; 8:45 am]

BILLING CODE 4190–22–M

Federal Transit Administration

[Docket No. 93–B]

Private Enterprise Participation

AGENCY: Federal Transit Administration, DOT.

ACTION: Notice of proposed recision of private enterprise participation guidance.

SUMMARY: The Federal Transit Administration proposes to rescind its current guidance on private enterprise participation. This guidance addresses the requirement that local transportation improvement plans encourage the participation of private transportation companies in transit service funded under the Federal Transit Act. With the Intermodal Surface Transportation Efficiency Act of 1991 has come a new emphasis on public participation in local decisionmaking on transit choices; as a result, the current guidance is believed to be unnecessary, as well as overly restrictive of the ability of local planning agencies and transit operators to make rational transportation choices in light of local needs. Accordingly, FTA proposes to rescind its current non-regulatory guidance.

DATES: Comments on this notice must be received on or before January 25, 1994.

ADDRESSES: Comments should be addressed to the Docket Clerk, Federal Transit Administration, Department of Transportation, room 9316, No. 93–B, 400 Seventh Street, SW., Washington, DC 20590. They will be available for review at this address from 9 a.m. to 5 p.m., Monday through Friday.

Commenters who desire acknowledgment of their comments should include a self-addressed, stamped postcard with their comments. The Docket Clerk will stamp the card with the date and time the comments are received and return the card to the commenter.

FOR FURTHER INFORMATION CONTACT: John W. Spencer, Deputy Associate Administrator, Office of Budget and Policy, Federal Transit Administration, 202/366–4050; Gregory B. McBride, Deputy Chief Counsel, Federal Transit Administration, 202/366–4063.

SUPPLEMENTARY INFORMATION:

I. Background

The principal purpose of the Federal Transit Act (FT Act), as amended, 49 U.S.C. app. 1601 et seq., is to assist the development and improvement of mass transportation systems in metropolitan and rural areas. In sections 3, 9, 16(b)(2), and 18, Congress has authorized FTA to make funds available to State and local public bodies for capital acquisition and construction, operating assistance, and planning activities in connection with mass transportation projects. Congress has expressed its concern that such Federal assistance not be used without regard for the interests of private enterprise. At the same time, Congress has made it clear that decisions regarding mass transportation services to be provided with Federal assistance

are to be made locally. Indeed, section 2(b) of the FT Act states that one of the fundamental purposes of the Act is

> to provide assistance to State and local governments and their instrumentalities in financing such systems, *to be operated by public or private mass transportation companies as determined by local needs* * * *.

49 U.S.C. app. 1601(b)(3) (emphasis added).

This emphasis on local decisionmaking in determining how best to serve the transportation needs of the local area has been recognized by the courts, e.g.:

> The statutory scheme of [FTA] emphasizes the large role to be played by local bodies responsible for urban mass transit * * *. This reliance on the local or State group is consistent with the statute's encouragement of local responsibility in urban mass transportation. The statute does not promote a procedure which leaves all decisions with the Secretary [of Transportation], but rather emphasizes local solutions to problems.

Pullman v. *Volpe*, 337 F. Supp. 432, 438–439 (E.D. Pa. 1970).

The participation of private enterprise in mass transit is addressed at several points in the FT Act; most notably, section 9(f) requires that in developing a proposed program of projects recipients consult with "interested parties, including private transportation providers" and in developing the final program of projects recipients particularly consider the "comments and views * * * of private transportation providers." This activity at the recipient level is the first step that leads to the planning process under section 8. In section 8(o) Congress has required that local transportation plans and programs prepared under section 8 encourage "to the maximum extent feasible the participation of private enterprise." In section 3(e), Congress has directed that where an existing mass transportation company is providing service, FTA may not provide financial assistance to a public body for the operation of competing or supplemental service, unless it finds that the relevant transportation improvement program required by section 8 provides for such private enterprise participation to the "maximum extent feasible." In section 9(e)(1), Congress extended the requirement of section 3(e) to the section 9 formula program.

II. Legal Provisions Relating to Private Enterprise Involvement in Transit Operations

Since enactment of the FT Act in 1964, the Federal transit program has recognized the need to address the interests of existing private operators. Section 3(e) originated in Senate Bill S. 6 in 1963 (88th Cong., 1st Sess.), which was introduced by Senator Harrison Williams. This section reads in pertinent part:

> No financial assistance shall be provided under this Act * * * for the purpose * * * of acquiring any interest in, or purchasing * * * property of a mass transportation company, or for improving * * * any property acquired from any company, or for providing, by contract * * * for the operation of mass transportation facilities or equipment in competition with, or supplementary to, the service provided by an existing mass transportation company, unless (1) the Secretary finds that such assistance is essential to the program of projects required by section 8 of this Act, (2) the Secretary finds that such program, to the maximum extend feasible, provides for the participation of private mass transportation companies * * *.

In his remarks before the Senate, Senator Williams emphasized that the aim of the provision was to assure fair and equitable treatment for private operators that were providing service at the time the statute was enacted. In a broader context, however, Senator Williams made it clear that local decisionmakers, not the Federal government, would decide, case by case, whether mass transit services should be provided by privately or publicly owned carriers.

> The most important single feature of the bill is a long-range program of Federal grants to States and local public bodies to assist public and private transit systems in financing the acquisition, construction, and improvement of mass transportation facilities and equipment. The eligible facilities and equipment would include terminal facilities, rights-of-way, buses and other rolling stock, and any other property needed for an efficient and coordinated mass transportation system * * *.
>
> A grant under this program would be made only to a public body which shows that it has the legal, financial, and technical capacity to carry out the proposed transit project. However, the public body would not necessarily have to operate the transit facilities and equipment itself. It could provide for their operation by lease or other arrangement. Thus, every locality would remain free to choose public or private operation of its transportation system or any combination of the two.

109 Cong. Rec. 215 (Daily Ed., Jan. 14, 1963).

Debate on the provision in the House reflected the intent of Congress to make transit assistance available to existing mass transportation companies so that they might be able to remain in business and improve their transportation services. This legislative history indicated, however, that local officials should be free to decide whether service should be provided by public or private operators, consistent with local needs. H.R. Rep. No. 204, 88th Cong 2d Sess., 1964 U.S. CODE CONG. & AD. NEWS, 2569, 2583–2584.

The courts have accordingly determined that while the interests of existing private operators are entitled to consideration, the statute was enacted for the public benefit, not for the special benefit of any party, including a private mass transportation company. E.g., *A.B.C. Bus Lines, Inc.* v. *Urban Mass Transportation Administration*, CA No 86–05698 (D.R.I. 1987) aff'd. 831 F.2d 360 (1st Cir. 1987); *Associated Businesses of Franklin, Inc.* v. *Warren County Board of Commissioners*, 522 F. Supp. 1015 (S.D. Ohio 1981).

This original congressional intent that local decisionmakers, not FTA, determine the appropriate level and conditions for private enterprise involvement, has been reiterated in a recent amendment to section 8(i)(5) of the FT Act made by the Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA), Public Law 102–240, 105 Stat. 1914, which prohibits FTA from withholding certification of a Metropolitan Planning Organization (MPO) on the basis of an MPO's private enterprise policies or those of a recipient. Section 8(i)(5) thus reinforces the fundamental statutory principle on this issue: local decisionmakers must make the decision as to whether transit service should be publicly or privately operated. FTA's role under section 3(e) is to make a judgment, at the time of a specific grant where an existing mass transportation company is providing service, as to whether the transportation improvement program developed under section 8 adequately addresses the participation of private enterprise, "an administrative decision which is essentially an exercise of discretion." *South Suburban Safeway Lines, Inc.* v. *City of Chicago*, 416 F.2d 535, 539 (7th Cir. 1969). In enacting the FT Act, Congress declared its intent "to provide assistance to State and local governments and their instrumentalities in financing such systems, to be operated by public or private mass transportation companies *as determined by local needs.*" 49 U.S.C. 1601(b)(3) (emphasis added). Congress further declared that "[i]t is the purpose of this Act to create a partnership which permits *the local community*, through Federal financial assistance, to exercise the initiative necessary to satisfy its urban mass transportation requirements." 49 U.S.C. 1601(a) (emphasis added).

In enacting ISTEA in 1991 Congress also emphasized the need for autonomy

in local planning and local decisionmaking by States and local agencies. It is clear that in both the FT Act and ISTEA, Congress vested the States and local mass transportation agencies with wide discretion and responsibility in making transit decisions responsive to local needs. FTA therefore believes that local disputes involving private enterprise involvement should be resolved locally, not by FTA. In this connection, section 9(f) of the FT Act requires a consultative process between transit operators and local providers of private transportation services as provided in FTA Circular 9030.1A. Furthermore, the recently issued joint FTA/Federal Highway Administration statewide and metropolitan planning regulations (49 CFR part 613 and 23 CFR part 450, 58 FR 58040, October 28, 1993) now require a process for demonstrating explicit consideration and response to public views, including those of private operators of transit service, during the planning and program development process provided for in 23 CFR 450.212(a)(5) and 450.316(b)(1)(v). FTA believes that these processes will afford private operators ample opportunity to express their views and comments on the development of transit programs, while allowing local officials to encourage the participation of private enterprise to the maximum extent feasible.

III. FTA Guidance on Private Enterprise

Between 1964 and 1984, FTA provided no separate guidance relating to the participation of private enterprise in mass transportation, except in its charter service regulation (49 CFR part 604). FTA first issued guidance on this issue in a policy statement, "Private Enterprise Participation in the [Federal Transit] Program" (49 FR 41310, October 22, 1984), which set forth the factors FTA would consider in determining whether a recipient's planning process appropriately considered the participation of private enterprise. These factors included consultation with private providers in the local planning process, consideration of private enterprise in the development of the mass transit program, and the existence of records documenting the participatory nature of the local planning process and the rationale used in determining whether or not to contract with private operators for transit services.

Thereafter, in the Conference Report accompanying the Department of Transportation and Related Agencies Appropriations Act, 1987 (Pub. L. 99–464), Congress expressed concern that FTA had exceeded its discretion by conditioning certain section 9 grants on private enterprise involvement. Section 327 of that Act prohibited such conditioning of section 9 formula grants.

In 1986, FTA further informally implemented its private enterprise guidance for sections 3 and 9 recipients in FTA Circular 7005.1 ("Documentation of Private Enterprise Involvement in Sections 3 and 9 Programs") and for sections 16(b)(2) and 18 recipients in Chapter X of FTA Circular 9040.1C ("Section 18 Program Guidance") and Chapter IV of FTA Circular 9070.1B ("Section 16(b)(2) Program Guidance"). These Circulars state clearly that FTA will not condition grants on a certain level of private enterprise involvement. At the same time, the Circulars outline certain elements and procedures relating to private enterprise participation that a grantee should include in its planning process. Recipients have found some of these elements burdensome. FTA has reviewed its policy in light of the statutory background and believes these elements should no longer be part of its guidance.

1. Review of Existing Service

The Circulars provide that recipients should review each route every three years to determine whether the services in question could be more effectively provided by private operators. Based on reports received from its recipients, FTA believes that this provision entails a significant administrative burden for many, especially major transit agencies with large and complex route structures, requiring the devotion of very substantial staff time to conducting reviews on an arbitrary three-year cycle. FTA believes that local authorities should determine the frequency of any such reviews.

2. Fully Allocated Cost Analysis

When issued the Circulars provided that grantees should use a fully allocated cost methodology when calculating their costs of providing service for comparison with those of potential private operators. The use of this accounting methodology was intended to ensure that local decisionmakers have considered all costs associated with the provision of service by a public agency. The experience of many recipients, however, shows that in the context of their operations the fully allocated cost methodology is not always an appropriate gauge of the true cost of providing a particular service; in some cases, it takes into account costs already incurred or costs that remain fixed. Costs such as salaries of senior managers or other personnel who would be on the recipient's payroll regardless of whether or not the service was operated by the recipient may or may not enter into the business judgments involved in deciding whether or not to operate a particular route. Similarly, FTA has interpreted the policy to require that recipients bid fully allocated costs when competing with the private sector in response to a procurement solicited by a third party. This requirement interferes with maximum open competition by artificially restricting price competition between recipients and private enterprise. FTA's "Fully Allocated Cost Analysis Guidelines" are set forth in a complex and lengthy document the application of which imposes a significant administrative burden, especially on smaller recipients that lack adequate staff resources.

FTA believes that in comparing public and private costs of operating a particular service, recipients should be free to use any reasonable accounting methodology they find appropriate in a given setting. Indeed, the Circulars never required that the ultimate local decision be based on the fully allocated cost comparison, only that those costs be considered. However, the participation of private operators "to the maximum extent feasible" can depend on a number of factors, e.g., the ability to maintain quality service, ensure continued responsiveness, operate in a coordinated system, and provide an adequate measure of safety.

3. Institutional Barriers

The Private Enterprise Policy Statement and the Circulars also fail to recognize local institutional and policy constraints on private involvement. They provide that FTA will not recognize local labor agreements or local laws or policy that call for direct operation of mass transit service as an acceptable limitation on private enterprise participation. Many grantees maintain that this position unduly restricts the prerogatives of local officials and impedes their ability to consider a broad range of transit options. Moreover, the successful negotiation of collective bargaining agreements often requires that transit officials be accorded a maximum degree of bargaining flexibility.

4. Appeal Process

The Circulars provide that both recipients and MPOs should develop a process for the resolution of disputes with private operators. Private operators

may appeal to FTA if they fail to resolve their disputes at the local level. Pursuant to this provision, FTA has rendered administrative decisions following an investigation of disputes. In certain of these decisions, FTA has indicated that it would withhold Federal funds from grant recipients that failed to conform to an FTA determination. Since FTA will be conducting regular reviews of grantees' compliance with the planning requirements, a formal appeal process leading to FTA does not appear necessary, although FTA is always available to receive reports of planning process failures.

IV. Proposed Action

In keeping with congressional intent that FTA carefully respect the prerogatives of local decisionmakers with regard to the participation of private enterprise in the provision of mass transit, FTA proposes to rescind its 1984 Policy Statement (49 FR 41310, October 22, 1984), Circular 7005.1, Chapter X of Circular 9040.1C, and Chapter IV of Circular 9070.1B. FTA believes the best way to assure that private enterprise participation is encouraged is to fully support the consultative process under section 9(f).

Indeed, we particularly want to emphasize the continuing significance of the section 9(f) process as described in FTA Circular 9030.1A, during which key decisions regarding private enterprise participation are made. Pursuant to Chapter IV of that Circular, each recipient:

- Makes available to the public information concerning the amount of funds available under section 9 and the program of projects that the recipient proposes to undertake with such funds;
- Develops a proposed program of projects concerning activities to be funded in consultation with private transportation providers and other interested parties;
- Publishes the proposed program of projects in sufficient detail and in such a manner as to afford private transportation providers and others an opportunity to examine its content and to submit comments on the proposed program of projects and budget and on the performance of the recipient; and
- Affords an opportunity for a public hearing to obtain the views of citizens on the proposed program of projects.

The Circular further provides that in preparing the final program of projects to be submitted to the FTA, the recipient must particularly consider the views and comments of private transportation providers and, if deemed appropriate, modify the proposed program of projects and budget. In FTA's view, local transit providers are best able to develop procedures concerning the participation of private enterprise in local transit programs and to determine levels of private enterprise involvement that are consistent with diverse local circumstances and needs. We believe that it is up to each recipient to determine how private enterprise providers should be included in light of specific local factors. We believe that recipient's planning activities, including consideration of private enterprise participation pursuant to the section 9 process, link with the section 8 planning process and thereby provide the basis for an FTA finding under section 3(e).

As previously noted, in ISTEA Congress signaled its intent that FTA should defer to the local decisionmaking process with regard to the participation of private enterprise by adding the following to section 8(i)(5).

> The Secretary shall not withhold certification under this section based upon the policies and criteria established by a metropolitan planning organization or transit grant recipient for determining the feasibility of private enterprise participation in accordance with section 8(o) of the Federal Transit Act.

Accordingly, in making the finding relating to private enterprise required under section 3(e) when making a specific grant, FTA will rely on its previous certification of the relevant program of projects developed under section 8, unless it has noted deficiencies in that program related to private enterprise participation. FTA will conduct periodic Federal planning management reviews to ensure that all the planning requirements of section 8 are being met by recipients of FTA funds. In addition, FTA will monitor compliance with the private enterprise provisions of the FT Act as part of the annual audits and triennial reviews mandated by section 9 of the FT Act. Similarly, FTA believes that the statewide planning regulations, which also call for a detailed public participation process, will provide the basis for a finding under section 3(e) in connection with the sections 16 and 18 programs.

V. Invitation for Public Comment

FTA has not generally provided advance notice and opportunity for comment—as it does in its rulemaking proceedings—when adopting or rescinding the circulars it uses to provide guidance to its grantees, and it did not when issuing the 1984 Policy Statement and Circular 7005.1. It is providing notice of its proposed action to rescind these Circulars, however, because this action would represent a relatively significant change of recent FTA philosophy, consistent with the direction of ISTEA, by removing unnecessary Federal direction of local parties' discharge of their planning responsibilities under the FT Act and giving full weight to the need to provide for and respect the local decisionmaking process. In addition, considerable interest has been expressed by various members of the public, as well as members of Congress, in FTA's review of these private enterprise issues. FTA welcomes comment on its proposed action during the 60 days following publication of this notice.

Dated: November 19, 1993.

Gordon J. Linton,

Administrator.

[FR Doc. 93–28897 Filed 11–19–93; 2:35 pm]
BILLING CODE 4910–57–M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

November 19, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Comptroller of the Currency

OMB Number: 1557–0099
Form Number: FFIEC 030
Type of Review: Revision
Title: (MA)—Foreign Branch Report of Condition
Description: This report is the only report collected from all foreign branches of U.S. commercial banks. It provides information on the structure and geographic distribution of foreign branch assets and liabilities. The information is used to analyze foreign operations of U.S. banks and to plan examinations. Aggregate data are available to the public.
Respondents: Businesses or other for-profit
Estimated Number of Respondents: 677

Estimated Burden Hours Per Respondent: 3 hours
Frequency of Response: Quarterly, Annually.
Estimated Total Recordkeeping Burden: 3,255 hours.
Clearance Officer: John Ference (202) 874–4697, Comptroller of the Currency, 250 E Street, SW, Washington, DC 20219.
OMB Reviewer: Gary Waxman (202) 395–7340, Office of Management and Budget, room 3208, New Executive Office Building, Washington, DC 20503.

Lois K. Holland

Departmental Reports Management Officer

[FR Doc. 93–29009 Filed 11–24–93; 8:45 am]

BILLING CODE 4810–33–P

Public Information Collection Requirements Submitted to OMB for Review

November 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Internal Revenue Service

OMB Number: New.
Form Number: IRS Form 8849.
Type of Review: New collection.
Title: Claim for Refund of Excise Taxes.
Description: Internal Revenue Code (IRC) sections 6402, 6404, and §§ 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 8849 is used by taxpayers to claim these refunds, credits, or abatements.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeeping: 155,667.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—1 hr., 59 min.
Learning about the law of the form—12 min.
Preparing the form—48 min.
Copying, assembling, and sending the form to the IRS—1 hr., 22 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 1,549,380 hours.
OMB Number: 1545-0024.
Form Number: IRS Form 843.
Type of Review: Revision.
Title: Claim for Refund and Request for Abatement.
Description: Internal Revenue Code (IRC) sections 6402 and 6404, and §§ 301.6402–2, 301.6404–1, and 301.6404–3 of the regulations allow for refunds of taxes (except income taxes) or refund, abatement, or credit of interest, penalties, and additions to tax in the event of errors or certain actions by the IRS. Form 843 is used by taxpayers to claim these refunds, credits, or abatements.
Respondents: Individuals or households, State or local governments, Farms, Businesses or other for-profit, Non-profit institutions, Small businesses or organizations.
Estimated Number of Respondents/ Recordkeeping: 545,500.
Estimated Burden Hours Per Respondent/Recordkeeper:
Recordkeeping—26 min.
Learning about the law of the form—7 min.
Preparing the form—18 min.
Copying, assembling, and sending the form to the IRS—28 min.
Frequency of Response: On occasion.
Estimated Total Reporting/ Recordkeeping Burden: 720,060 hours.
Clearance Officer: Garrick Shear, (202) 622-3869, Internal Revenue Service, room 5571, 1111 Constitution Avenue, NW., Washington, DC 20224.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93–29010 Filed 11–24–93; 8:45 am]

BILLING CODE 4830–01–P

Public Information Collection Requirements Submitted to OMB for Review

November 18, 1993.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addressed to the OMB reviewer listed and to the Treasury Department Clearance Officer, Department of the Treasury, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

Special Request: In order to allow respondents sufficient lead time as possible in advance of the survey described below, the Department of Treasury's Office of Data Management is requesting review and approval from the Office of Management and Budget (OMB) by December 28, 1993. Sufficient lead time would significantly reduce their burden of reporting of this survey because it would enable them to plan and implement the most efficient, or least costly, method of retrieving the requested data from their databases and reporting them in a timely fashion. All comments must be received by close of business December 21, 2993.

Departmental Offices/Economic Policy/ Office of Data Management

OMB Number: New.
Form Number: None.
Type of Review: New collection
Title: Survey of Selected Foreign Financial Assets, as of March 31, 1994
Description: The purpose of this survey is to collect data on U.S. persons' selected financial claims on foreigners in order to reassess the value of various classes of portfolio capital positions as currently reported under the Treasury International Capital (TIC) reporting system. The data will be used to ensure the quality and completeness of international financial statistics used by U.S. Government policy makers. The survey will be filed primarily by U.S. custodians, but will also include other U.S. persons such as pension funds, insurance companies and investment managers.
Respondents: Businesses or other for-profit.
Estimated Number of Respondents/ Recordkeepers: 2,500.
Estimated Burden Hours Per Response/Recordkeeper: 40 hours
Frequency of Response: Other (one-time survey).
Estimated Total Reporting/ Recordkeeping Burden: 100,750 hours
Clearance Officer: Lois K. Holland, (202) 622–1563, Departmental Offices, room 3171, Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.
OMB Reviewer: Milo Sunderhauf, (202) 395–6880, Office of Management

and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Departmental Reports Management Officer.

[FR Doc. 93-29011 Filed 11-24-93; 8:45 am]

BILLING CODE 4810-25-P

Sunshine Act Meetings

Federal Register
Vol. 58, No. 226
Friday, November 26, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

UNITED STATES COMMISSION ON CIVIL RIGHTS

DATE AND TIME: Friday, December 3, 1993, 9 a.m.

PLACE: U.S. Commission on Civil Rights, 624 Ninth Street, NW, Room 540, Washington, DC 20425.

STATUS: Open to the Public.

December 3, 1993

Agenda

I. Approval of Agenda
II. Approval of Minutes of the November 19, 1993 Meeting
III. Announcements
IV. Followup to Previous Meeting
V. Appointments to the Connecticut, Idaho, Missouri, New Hampshire (interim), and Texas Advisory Committees
VI. White Supremacist Activity in Montana
VII. Hate Crime in Indiana: A Monitoring of the Level, Victims, Locations, and Motivations
VIII. New York Hearing Update
IX. Future Agenda Items
X. Commissioner Briefing on Economic Opportunity

Hearing impaired persons who will attend the meeting and require the services of a sign language interpreter, should contact Betty Edmiston, Administrative Services and Clearinghouse Division (202) 376–8105 (TDD 202–376–8116) at least five (5) working days before the scheduled date of the hearing.

CONTACT PERSON FOR FURTHER INFORMATION: Barbara Brooks, Press and Communications (202) 376–8312.

Emma Monroig,

Solicitor.

[FR Doc. 93–29106 Filed 11–23–93; 10:46 am]

BILLING CODE 6335–01–M

FEDERAL ELECTION COMMISSION

"FEDERAL REGISTER" NUMBER: 93–28026.

PREVIOUSLY ANNOUNCED DATE AND TIME:

Thursday, November 18, 1993 at 10:00 a.m. Meeting Open to the Public

The following item was withdrawn from the Agenda:

Implementing Directives for the Interim Ex Parte Communications Regulations.

DATE AND TIME: Tuesday, November 30, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C.

STATUS: This meeting will be closed to the Public.

ITEMS TO BE DISCUSSED:

Compliance matters pursuant to 2 U.S.C. § 437g.
Audits conducted pursuant to 2 U.S.C. § 437g, § 438(b), and Title 26, U.S.C.
Matters concerning participation in civil actions or proceedings or arbitration.
Internal personnel rules and procedures or matters affecting a particular employee.
Briefing on Allocation Regulations.

DATE AND TIME: Thursday, December 2, 1993 at 10:00 a.m.

PLACE: 999 E Street, N.W., Washington, D.C. (Ninth Floor).

STATUS: This meeting will be open to the Public.

ITEMS TO BE DISCUSSED:

Correction and Approval of Minutes.
Advisory Opinion 1993–18: Alan R. Siegel on behalf of Southwestern Bell Corporation.
Report of the National Performance Review on Reinventing Government—Creating a Government That works Better and Costs Less.
MURs in the Record.
Status of Regulations Projects.
Administrative Matters.

PERSON TO CONTACT FOR INFORMATION: Mr. Fred Eiland, Press Officer, Telephone: (202) 219–4155.

Delores Hardy,

Administrative Assistant.

[FR Doc. 93–29188 Filed 11–23–93; 3:38 pm]

BILLING CODE 6715–01–M

FEDERAL ENERGY REGULATORY COMMISSION

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: November 19, 1993, 58 FR 61140.

PREVIOUSLY ANNOUNCED TIME AND DATE OF MEETING: November 23, 1993, 10:00 a.m.

CHANGE IN THE MEETING: The following Docket Numbers have been added to Item CAG–3 on the Agenda scheduled for November 23, 1993:

Item No., Docket No., and Company

CAG–3—RP85–177–102 and RP85–177–107, Texas Eastern Transmission Corporation

Lois D. Cashell,

Secretary.

[FR Doc. 93–29194 Filed 11–23–93; 3:48 pm]

BILLING CODE 6712–02–M

FEDERAL HOUSING FINANCE BOARD

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: 58 FR 59516. November 9, 1993.

PREVIOUSLY ANNOUNCED TIME AND DATE OF THE MEETING: 9:00 a.m., Wednesday, November 17, 1993.

CHANGE IN THE MEETING: The following topic was deleted from the open portion of the meeting:

- System 2000 Implementation: Goal #5 Update

The Board determined that this change was made on less than seven days notice to the public and that no earlier notice of this change in the subject matter of the meeting was practicable.

CONTACT PERSON FOR MORE INFORMATION: Elaine L. Baker, Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

[FR Doc. 93–29137 Filed 11–23–93; 12:43 pm]

BILLING CODE 6725–01–P

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 10:00 a.m., Wednesday, December 1, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
2. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452–3204. You may call (202) 452–3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 23, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93–29186 Filed 11–23–93; 3:10 pm]

BILLING CODE 6210–01–P

UNITED STATES INTERNATIONAL TRADE COMMISSION

[USITC SE-93-35]

TIME AND DATE: December 1, 1993 at 2:30 p.m.

PLACE: Room 101, 500 E Street S.W., Washington, DC 20436.

STATUS: Open to the public.

1. Agenda for future meeting
2. Minutes
3. Ratification List
4. Invs. Nos. 303-TA-24, 701-TA-356-358 and 731-TA-664-668 (Preliminary) (Phthalic Anhydride from Venezuela, Brazil, Israel, Mexico and Hungary).
5. Outstanding action jackets
   1. GC-93-127, **Federal Register** notice of proposed section 337 rulemaking.

In accordance with Commission policy, subject matter listed above, not disposed of at the scheduled meeting, may be carried over to the agenda of the following meeting.

CONTACT PERSON FOR MORE INFORMATION: Donna R. Koehnke, Secretary, (202) 205-2000.

Issued: November 19, 1993.

Donna R. Koehnke,

Secretary.

[FR Doc. 93-29153 Filed 11-23-93; 2:47 pm]

BILLING CODE 7020-02-P

NUCLEAR REGULATORY COMMISSION

DATE: Monday, November 29, 1993.

PLACE: Commissioners' Conference Room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

Monday, November 29

2:00 p.m.

Briefing by the Executive Branch (Closed—Ex. 1)

Dated: November 22, 1993.

Note: The schedule for commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504-1292. Contact Person for More Information: William Hill (301) 504-1661.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-29150 Filed 11-23-93; 8:45 am]

BILLING CODE 7590-01-M

UNITED STATES POSTAL SERVICE BOARD OF GOVERNORS

The Board of Governors of the United States Postal Service, pursuant to its Bylaws (39 C.F.R. Section 7.5) and the Government in the Sunshine Act (5 U.S.C. Section 552b), hereby gives notice that it intends to hold a meeting at 8:30 a.m. on Tuesday, December 7, 1993, in Washington, D.C. The meeting is open to the public and will be held at U.S. Postal Service Headquarters, 475 L'Enfant Plaza, S.W., in the Benjamin Franklin Room. The Board expects to discuss the matters stated in the agenda which is set forth below. Requests for information about the meeting should be addressed to the Secretary of the Board, David F. Harris, at (202) 268-4800.

There will also be a session of the Board on Monday, December 6, 1993, but it will consist entirely of briefings and is not open to the public.

AGENDA

Tuesday Session

December 7, 8:30 a.m. (Open)

1. Minutes of the Previous Meeting, November 1-2, 1993.
2. Remarks of the Postmaster General and CEO. (Marvin Runyon)
3. Consideration of the FY 1993 Financial Statements. (Governor Sam Winters and M. Richard Porras, Vice President, Controller)
4. Final FY 1995 Budget Request to Congress. (Michael J. Riley, Chief Financial Officer and Senior Vice President, Finance)
5. Chief inspector's Semiannual Report. (Kenneth J. Hunter, Chief Postal Inspector)
6. Capital Investments. (Peter A. Jacobson, Senior Vice President, Processing and Distribution)
   a. Westchester, New York, Processing & Distribution Center.
   b. New Haven, Connecticut, Processing & Distribution Center.
7. Tentative Agenda for the January 3-4, 1994, meeting in Washington, D.C.

David F. Harris,

Secretary.

[FR Doc. 93-29115 Filed 11-23-93; 11:39 am]

BILLING CODE 7710-12-M

Corrections

Federal Register

Vol. 58, No. 226

Friday, November 26, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

CONSUMER PRODUCT SAFETY COMMISSION

[CPSC Docket No. 94-C0003]

Berman Mattress Co., Inc., a Domestic Corporation, and Sheldon Haber, Individually and as an Officer of the Corporation; Provisional Acceptance of a Settlement Agreement and Order

Correction

In notice document 93-27367 beginning on page 59242 in the issue of Monday, November 8, 1993, make the following correction:

On page 59242, in the second column, in **DATES:**, in the fifth and sixth lines, "November 13, 1993." should read "November 23, 1993."

BILLING CODE 1505-01-D

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

24 CFR Part 208

[Docket No. R-93-1691; FR-3521-I-01]
RIN 2502-AG16

Electronic Transmission of Required Data for Certification and Recertification and Subsidy Billing Procedures for Multifamily Subsidized Projects

Correction

In rule document 93-28388 beginning on page 61017 in the issue of Friday, November 19, 1993, make the following corrections:

On page 61018, in the first column, in the **DATES**, in the second line, "May 20, 1994" should read "March 21, 1994", and in the fourth line, "March 21, 1994" should read "May 20, 1994".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

Federal Highway Administration

23 CFR Part 1212

[NHTSA Docket No. 91-17; Notice 2]
RIN 2127-AE10

Drug Offender's Driver's License Suspension

Correction

In rule document 92-19102 beginning on page 35989 in the issue of Wednesday, August 12, 1992, make the following correction:

§ 1212.3 [Corrected]

On page 35999, in the second column, in § 1212.3(d), in the last line, "§§ 1038.11-.15." should read "§§ 1308.11-.15."

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 583

[Docket No. 92-64; Notice 3]

RIN 2127-AE63

Motor Vehicle Content Labeling

Correction

In proposed rule document 93-28392 beginning on page 61042 in the issue of Friday, November 19, 1993, make the following corrections:

1. On page 61043, in the first column, in the **DATES** section the *Proposed effective date* should read as follows:

Proposed effective date: The proposed new part would be added to the Code of Federal Regulations on [insert date 30 days after publication of the final rule in the **Federal Register**].

§ 583.1 [Corrected]

2. On page 61060, in the first column, in § 583.1(d)(1), in the 7th line insert "15" after "by".

3. On page 61063, the "Appendix to Preamble: Sample Labels" is corrected to read as follows:

Note: This appendix will not appear in the Code of Federal Regulations.

Appendix to Preamble: Sample Labels

Sample Figure 1: Section 583.5(b), the Standard Label

For vehicles in this carline:
U.S./Canadian Parts Content: 50%
Major Source of Foreign Parts Content:
Japan: 20%
Mexico: 15%

For this vehicle:
Final Assembly Point: Flint, Michigan, USA
Country of Origin:
Engine: U.S.
Transmission: Canada

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

Sample Figure 2: Section 583.5(e), Low U.S./Canadian Content Label

For vehicles in this carline:
U.S./Canadian Parts Content: Minimal
Major Source of Foreign Parts Content:
Italy: 90%

For this vehicle:
Final Assembly Point: Turin, Italy
Country of Origin:
Engine: Italy
Transmission: Italy

Note: The PARTS CONTENT of a typical vehicle makes up about (a range would be specified in a final rule) percent of the vehicle's total wholesale cost to the dealer.

Sample Figure 3: Section 583.5(f)-(g), Label for Multistage Manufacturers of Carlines With Fewer Than 1000 Vehicles Produces Annually; and Manufacturers That Produced a Total of Fewer Than 1000 Vehicles Annually

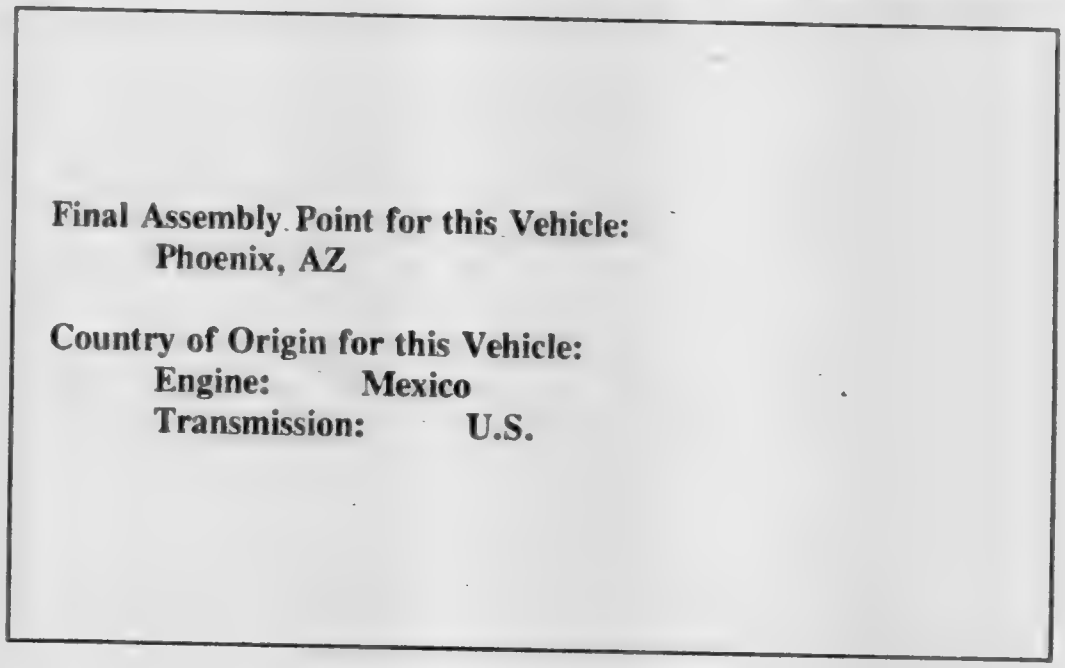

BILLING CODE 1505-01-D

federal register

Friday
November 26, 1993

Part II

Federal Emergency Management Agency

44 CFR Part 59, et al.
National Flood Insurance Program; General Provisions and Insurance Coverage; Final Rule

FEDERAL EMERGENCY MANAGEMENT AGENCY

44 CFR Parts 59, 61, and 62

RIN 3067–AB71

National Flood Insurance Program; General Provisions and Insurance Coverage

AGENCY: Federal Insurance Administration, FEMA.

ACTION: Final rule.

SUMMARY: This final rule amends the General Provisions and Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) by clarifying certain insurance coverage provisions, amending the NFIP definitions of terms, and by establishing a new SFIP for the insuring of residential condominium building associations and the individual unit owners residing in such buildings, while making appropriate amendments to the existing SFIP forms, the Dwelling Form and the General Property Form.

EFFECTIVE DATE: October 1, 1994.

FOR FURTHER INFORMATION CONTACT: Donald L. Collins, Federal Emergency Management Agency, Federal Insurance Administration, 500 C Street, SW., Washington, DC 20472, (202) 646–3419.

SUPPLEMENTARY INFORMATION: On July 30, 1992, the Federal Emergency Management Agency (FEMA) published in the **Federal Register** (Vol. 57, Page 33669) a proposed rule containing amendments to the General Provisions and Standard Flood Insurance Policy (SFIP) of the National Flood Insurance Program (NFIP) to clarify certain insurance coverage provisions, and to amend the NFIP definitions of terms. The rule also proposed to establish a new SFIP for the insuring of residential condominium building associations and the individual unit owners residing in such buildings, and to amend the existing SFIP forms (the Dwelling Form and the General Property Form) to conform to the new Residential Condominium Building Association Policy Form.

A 60-day period was provided for review and comment on the proposed changes. FEMA also requested comments on the estimates for the recordkeeping and reporting burden in connection with the collection of information titled "Claims for National Flood Insurance Program" and invited the public to submit comments to FEMA and/or the Office of Management and Budget (OMB) on the paperwork issues including the burden estimates and any aspects of the information collection requirements. While neither FEMA nor OMB received comments in connection with the collection of information during the comment period, FEMA did receive comments on the proposed changes to the NFIP from five respondents. The tally of comments included representatives from two private insurance companies participating in the NFIP Write Your Own Program, one flood insurance committee consisting of representatives from various producer trade associations, one state association of insurance agents, and one association concerned with flood plain management issues.

Most of the comments received were related to the SFIP Forms and, while generally supportive, did express concern for one or more of the proposed provisions. Other comments were editorial or technical in nature, some of which were incorporated into this final rule and some of which were not.

In the development of the new Residential Condominium Building Association Policy Form and the revised Dwelling Policy and General Property Policy Forms, a review of the forms was requested and received from six editors of the National Underwriter Company's publication "Fire, Casualty, and Surety (FC&S) Bulletins," as well as from Write Your Own company members of the Condominium Master Policy (CMP) Task Force to ensure that the policies conform to the greatest extent possible to the simplified language, procedures, and practices of the private sector personal lines insurance industry.

Before the Standard Flood Insurance Policies were included in the regulations as Appendices A(1) and A(2), key insurance terms and key provisions of the flood insurance policy were included respectively in part 59—Definitions and in the text of part 61—Insurance Coverage and Rates. When Appendices A(1) and A(2) were added in October 1979, these key insurance terms and provisions were retained and, over the years, as revisions were made to the policies in the Appendices, the definitions in part 59 and the text in part 61 were revised as well to conform with the Appendices. This has proved to be a cumbersome process and a needless duplication that, as the regulations have increased in volume over the years, is both time-consuming and costly. FEMA is, therefore, removing these key insurance terms and provisions from the text of parts 59 and 61.

Federal procurement procedures are followed in the selection of an NFIP servicing agent to assist in issuing flood insurance policies under the Program. Under these procedures, National Con-Serv, Inc. (NCSI), whose offices are located in Rockville, Maryland, became the new NFIP servicing agent effective October 1, 1993. An editorial change is being made in part 62 to reflect this change in the servicing agent. Since NCSI has several different addresses for receipt of correspondence depending on the various transactions being submitted and since those addresses are contained in the NFIP Agents Manual revisions, which are disseminated to insurance agents and other parties having an interest in writing flood insurance, a further editorial change is being made at part 62 to remove any reference to the servicing agent's mailing address.

Regarding the proposed coverage clarifications, in the Definitions section of the General Provisions, at § 59.1, and variously, in the SFIP, at § 61.13, one private insurance company questioned whether the new definition of "association," is accurate in regard to "managing the condominium building," and whether the definition of "elevated building" is complete enough. FEMA believes that these definitions are accurate and complete although it might be helpful to clarify at § 59.1 that "elevated building" is an insurance concept. Further, the six editors of the National Underwriter and the CMP Task Force members had no problems with these definitions. In keeping with the decision to remove key insurance terms from the Definitions section of the regulatory text, the definition for "association" is being removed at § 59.1 of this final rule but is contained in Article 2—Definitions of all three policies as originally proposed. The definition for "elevated building" is included in Article 2—Definitions of all three policies as originally proposed. The definition for "elevated building" is also being retained in § 59.1 of this final rule and, for clarification, is being revised to add the phrase ", for insurance purposes," following the phrase "Elevated building means". No comments were received concerning the proposed new definitions of "coinsurance," "improvement," "unit" (in conjunction with the SFIP condominium forms of coverage), and "special hazard area," as well as the amended definition of "direct physical loss by or from flood;" and these definitions are also contained in the final rule as originally proposed, except that, with respect to the definition of "special hazard area," zone "AR" has been added alphabetically to the listing. No comments were received concerning the proposed new definition of "valued policy." In keeping with the decision to

remove key insurance terms from the Definitions section of the regulatory text, this definition is being removed at § 59.1 of this final rule but is contained in Article 2—Definitions of all three policies as originally proposed. One respondent commented that the definition of "residential condominium building" in the Dwelling Form differed from the definition in the General Property Form and the Residential Condominium Building Association Policy Form. This is a valid point and, in the final rule, the definition in the Dwelling Form has been amended to conform to the definition in the other two policy forms. However, as this is an insurance term, the definition of "residential condominium building" is being removed at § 59.1 of this final rule.

One respondent commented on the proposal at § 61.3 (and the conforming language in the SFIP Dwelling Form's "Property Covered" article), to amend the grant of coverage for additions and extensions to include coverage only for a building which is attached to the insured structure by means of a common wall and suggested that a "common roof" should be addressed as well in order to further clarify the single building issue. Another respondent questioned how the language affects coverage for decks, carports, etc. The Dwelling Policy, as proposed, provides at Article 4, Coverage A, paragraph A.3., for a 10 percent extension of coverage for detached garages and carports and this 10 percent extension is not affected by the proposed language, one purpose of which is to eliminate coverage for decks. FEMA believes that the language as proposed provides sufficient clarification on the single building issue. In keeping with the decision to remove key provisions of the flood insurance policy from the text of the regulations, the proposed change at § 61.3 is not included in this final rule and the current last sentence is being removed from § 61.3 in this final rule. However, for clarification, the language as originally proposed in the Dwelling Form at Article 4—Property Covered, Coverage A—Building Property, paragraph A.1. is being revised in this final rule to reference Article 6—Property Not Covered, paragraph D.2. Due to a technical oversight, the proposed language was not included in the General Property Form and the Residential Condominium Building Association Policy Form in the proposed rule but, in this final rule, the revised language is included in these policy forms as well. Further, to make it clear that there is no coverage for decks, whether covered or not, a change is being made to the "Property Not Covered" article at Paragraph D.2. of all three policies to specifically list decks.

In the proposed rule at § 61.4, and in the conforming language at Article 3 of all three policies, new language was proposed to clarify when sewer backup or seepage of water is a covered peril. The current Dwelling Form has a more restrictive condition for coverage to attach than does the current General Property Form. In keeping with the decision to remove key provisions of the flood insurance policy from the text of the regulations, the designation (a) is being removed from the paragraph beginning with the words "All flood insurance" and paragraphs (b) through (e) of § 61.4 are being removed in this final rule. However, this final rule addresses changes to Article 3 of all three policies. Since the language in the proposed rule would have required "actual physical contact between surface flood water and the insured building" for coverage to attach, it was also proposed to offer optional coverage under the Dwelling Form whereby, subject to conditions, policyholders could purchase coverage for certain losses due to water seepage and sewer backup without the requirement that there be actual physical contact between the surface flood water and the insured building and for land subsidence as well.

Given the fact that the General Property Form provides coverage when the seepage or backup of water is related to a condition of "flood," as defined" and because, historically, the instances of land subsidence, water seepage and sewer backup have not occurred frequently, rather than offering an optional endorsement which would provide coverage for land subsidence, water seepage and sewer backup, it has been decided to include, at Article 3—Losses Not Covered of all three policies, a new paragraph B.3 providing coverage for land subsidence, water seepage, and sewer backup where certain conditions as specifically enumerated are present. In commenting on the optional endorsement, a private insurance company suggested changing the wording related to the time limit for the damage to occur from "72 hours from the onset of the flooding" to read "72 hours after the flood has receded." FEMA believes that this suggestion is worthwhile and it has been incorporated into paragraph B.3.

There will not be an additional premium charge for the coverage for land subsidence, water seepage and sewer backup but there will be a deductible of $250 to be applied for each building and contents loss, separately, in addition to the deductible amount for building and contents coverage, as appropriate, otherwise applicable to the policy.

Although an additional premium charge will not apply, additional premium dollars will be generated since one of the requirements for the coverage to attach is that the insured building must be insured, at the time of loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the National Flood Insurance Program. Further, FEMA intends to monitor the claims experience for the next few years to determine whether an additional premium charge may at some future time be appropriate.

Therefore, Optional Endorsement #3 is removed from this final rule and, instead, Article 3—Losses Not Covered, paragraph B.3., of all three policies is revised in this final rule to provide that the policy does cover loss caused by land subsidence, sewer backup or seepage of water where the enumerated conditions are present. Further, at Article 7—Deductibles of all three policies, a new paragraph E. has been added to provide for a deductible amount to be applied for each building and contents loss, separately, for land subsidence, water seepage, and sewer backup coverage.

One respondent, in commenting on paragraph B.3. of Article 3, expressed uncertainty as to the meaning of the last part of the paragraph and whether freezing, thawing, or the pressure or weight of ice or water are independent events not requiring physical contact between surface flood water and the insured property. Therefore, for clarification, a new paragraph B.4., is added to separately list freezing, thawing, or the pressure or weight of ice or water.

In furtherance of loss prevention, as an insurance concept, and hazard mitigation, in October 1984, the SFIP policy forms were revised to provide for reimbursement up to the then minimum deductible of $500.00 for certain loss mitigation measures, such as the purchase of sandbags, including the sand to fill them, and plastic sheeting and lumber used in connection with them. In January 1986, although maintaining the $500.00 limitation, the SFIP policy forms were further revised to include reimbursement for fill for temporary levees, pumps, and wood. In October 1992, FEMA established new deductibles of $750.00 (building and contents separately) for those flood insurance policies which are rated using the subsidized rates (i.e., chargeable

rates) established pursuant to sections 1308 (a)(1) and (a)(2) and 1336(b)(1) of the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4015 and 42 U.S.C. 4056). Loss prevention and hazard mitigation are major goals of FEMA and it seems only equitable to extend the reimbursement for the loss mitigation measures specifically listed in the policy to the higher standard deductible for policies rated using the chargeable rates. Therefore, in this final rule, Article 5, paragraph D., of all three policies is revised to provide for coverage for certain loss mitigation measures in an aggregate amount not to exceed $750.00.

Regarding the proposal to establish new deductibles for the insuring of residential condominium buildings, one respondent expressed concern about the large mandatory deductibles and pointed out that, based upon past experience, many mortgage companies, especially unit owner mortgagees, will not accept policies with deductibles over $1,000. Another respondent suggested that, since the deductibles are keyed to condominiums of five units or more, it would be better to change the wording to require a deductible of "$750.00 or $500.00 times the number of units, subject to a maximum deductible of $7,500 or $5,000." After carefully considering the issues raised and giving consideration to the importance of maintaining consistency in the Program, FEMA has determined that, in lieu of establishing separate deductibles, it would be better to retain the current standard deductibles of $750.00 (for buildings where Pre-FIRM rates are used to calculate the premium) or $500.00 (for all other buildings), as appropriate, for residential condominium buildings of five units or more and charge premium rates commensurate with the risk. This determination is made in recognition of the range of optional deductibles that will be available which condominium associations can avail themselves of with some corresponding reduction in the premium rates. Therefore, paragraphs (d)(1) and (d)(2) are being removed from § 61.5 in this final rule and paragraph (d)(3) is being redesignated as paragraph (d). Further, in keeping with the decision to remove key provisions of the flood insurance policy from the text of the regulations, the last sentence of paragraph (a)(1) and paragraphs (e) through (h) are being removed, paragraph (i) is being redesignated as paragraph (e), and paragraph (j) is being removed from § 61.5 in this final rule.

As stated in the proposed rule, new minimum deductibles became effective on and after October 1, 1992, for buildings (and the contents in them) that were built before the effective date of the Flood Insurance Rate Map for the community or December 31, 1974, whichever is later, and that are located in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE or V. In establishing the effective date for determining when the new minimum deductibles were to be applied, the intent was to be consistent with the grandfather clause contained in section 1308(c) of the National Flood Insurance Act of 1968, as amended, related to the availability of chargeable premium rates; and with language in the new definition of "Post-FIRM Building" being added to all three policies. Due to a technical oversight, the word "initial" was not included before the phrase "Flood Insurance Rate Map" in the proposed language at Article 7—Deductibles, paragraph C., of all three policies. This oversight has been corrected and, in this final rule, the phrase "initial Flood Insurance Rate Map" is included in Article 7, paragraph C. of all three policy forms.

No comments were received concerning the proposal to add a new paragraph (c) to § 61.6 providing that, consistent with the existing procedures related to the Condominium Master Policy, in the case of a residential condominium building in a regular program community, the allowable limits of building coverage are stated in terms of the number of units times the allowable limits of coverage for single family homeowners; nor were any comments received concerning the proposed amendment to the "Liberalization" clause to clarify that it only applies to losses occurring on or after the effective date of any policy changes. Therefore, these provisions are included in the final rule as originally proposed.

Regarding the proposal to specifically list in the SFIP, in all its forms, the kinds of property which can only be covered under the policy's building coverage and the kinds of property which can only be covered under the personal property coverage, the only comments received were editorial or technical in nature, some of which have been incorporated into this final rule and some of which have not.

Regarding the proposal to establish a new, distinct SFIP for the insuring of residential condominium buildings which will contain a coinsurance clause requiring the insured condominium association to share in the flood loss if it has not insured the building to 80 percent of its replacement cost value, one private insurance company expressed concern about the effect the coinsurance requirement would have on marketing for risks located in lower hazard areas. This respondent also suggested eliminating the examples from the SFIP and commented that providing examples is not normally done in insurance policies. Another private insurance company questioned the necessity of imposing the 80 percent coinsurance requirement on all buildings insured under the residential condominium building association policy form. The comment was made that the odds of a total flood loss are very small except for "V" zones and some coastal "A" zones, the contention being that the risk from flooding in "B," "C," and "X" zones does not justify requiring limits of 80 percent to value and that the rates for those zones are adequate to provide sufficient premium dollars for the exposure. It was suggested instead that the 80 percent insurance to value building coverage requirement be limited only to condominium buildings in special hazard areas. FEMA has carefully considered the positive and negative aspects of imposing the coinsurance requirement across the board or only in special hazard areas. However, for all of the reasons discussed in the supplementary information for the proposed rule, it is believed that the fair and equitable policy is to apply the insurance to value concept to all residential condominium buildings regardless of the flood zone in which the building may be located. In recognition of the very small odds of a total loss occurring in "B," "C," and "X" zones, appropriately low rates will be established for these zones. Further, since the penalty at the time of a loss for not insuring to value could, in some instances, be substantial, it is believed that the examples are necessary to ensure a clear understanding of the consequences of not insuring to value. Therefore, the coinsurance provision is included in the final rule as originally proposed.

The rule also proposed to add in Article 5 of all three policies a paragraph to make explicit that the SFIP is not a "valued policy" and that in processing a flood claim, loss will be paid in an amount equal to the lesser of the value of the damaged property under the terms and conditions of the policy (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the Act. One respondent suggested that this language be eliminated from the policy. However, for the reason outlined in the proposed rule, FEMA believes it important to

retain this language and it is included in the policies as originally proposed.

In addition to the optional endorsement included in the proposed rule for coverage for land subsidence, water seepage and sewer backup where certain enumerated conditions are present as already discussed, the rule also proposed that optional endorsements be offered under the Dwelling Form whereby policyholders could purchase coverage for certain losses due to increased cost of construction arising out of compliance with local floodplain management ordinances; and the standard policy's limitations of coverage in basements. Three respondents commented on the proposed endorsements. The comments were generally supportive with regard to the endorsement related to land subsidence, water seepage and sewer backups, as well as the endorsement related to the standard policy's limitations of coverage in basements. However, one private insurance company questioned why the three endorsements were being limited to the Dwelling Form and then only to single-family detached buildings which, at the time of a loss, are insured for at least 80 percent of their replacement cost or the maximum amount of insurance available under the NFIP.

From a review of the legislation related to the flood insurance program, it appears that, from the beginning of the NFIP, the major thrust of the program was toward the residential property owner. Specifically, in setting forth the scope of the program at section 1305(a) of the National Flood Insurance Act of 1968, as amended, Congress provided that priority should be given to "* * * residential properties which are designed for the occupancy of from one to four families * * *" Further, at section 1362(c) wherein Congress provided authorization for low interest loans for elevation of structures under certain circumstances, such authorization was limited to a "* * * single-family dwelling structure * * *"

In proposing the optional endorsements, FEMA chose to follow the lead of Congress and limit their availability to single family detached dwellings. However, as previously discussed, revisions are being made in this final rule to all three policies to provide for land subsidence, water seepage and sewer backup coverage where certain enumerated conditions are present. Therefore, the Optional Endorsement Related to Land Subsidence, Seepage of Water and Sewer Backup Exclusions is removed from this final rule and changes are being made in this final rule related to the other optional endorsements as discussed below.

Optional Endorsement Related to Coverage for Increased Costs of Repair or Reconstruction Due to a Community Flood Plain Management Ordinance

Regarding the endorsement related to the increased cost of construction arising out of compliance with local flood plain management ordinances, a private insurance company suggested that, in the second paragraph, condition 2., the phrase "market value" be changed to "replacement cost;" that the endorsement be clarified to show that the intent is to provide coverage for work which is done on the undamaged portion of the dwelling as well as the damaged portion; and that the endorsement be amended to provide demolition coverage. An association concerned with flood plain management commented that it understood that it was the Federal Insurance Administration's (FIA's) intent to study the increased cost of construction concept in a team-work approach over the coming year and it expressed interest in working with FIA on this issue. FIA is appreciative of the association's offer and stands ready to work with the association as well as all other interested parties on this important issue. Further, the suggestions made by the private insurance company are worthwhile and will be given careful consideration before implementing any procedures for providing increased cost of construction coverage. However, as legislative initiatives are currently under development which will, among other things, address the issue related to increased cost of construction, FEMA is postponing at this time any action related to coverage for increased cost of construction. Optional Endorsement #1 is, therefore, removed from this final rule.

Optional Endorsement Related to Coverage in Basements

A private insurance company questioned why the proposed endorsement is being offered to Pre-FIRM risks in certain zones and why the endorsement is being limited to buildings that were originally constructed with a finished floor, subgrade on all sides and containing, as originally constructed, a living room, dining room, and kitchen. The respondent commented that these conditions for eligibility will mean that the coverage would be available to only a limited number of structures countrywide.

This respondent's observation is correct. Upon further consideration in FEMA, it was decided that, due to such limited availability as outlined in the proposed rule, FEMA should defer at this time any action related to basement coverage and instead study the issue further with the option of developing a more broad granting of basement coverage by endorsement for an additional premium at actuarial rates at some future time. Optional Endorsement #2 is, therefore removed from this final rule.

National Environmental Policy Act

This rule is categorically excluded from the requirements of 44 CFR part 10, Environmental Consideration. No environmental impact assessment has been prepared.

Regulatory Flexibility Act

This rule is not a major rule under Executive Order 12291, Federal Regulation, February 17, 1981. No regulatory impact analysis has been prepared.

Paperwork Reduction Act

The information collection requirements in this final rule were approved by the Office of Management and Budget (OMB) under the provisions of the Paperwork Reduction Act of 1980, as amended (44 U.S.C. 3501 *et seq.*), and assigned OMB control number 3067–0021.

Public reporting and recordkeeping burden for this collection of information is estimated to average 3.8 hours per claim. The burden estimate includes the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the information requirements. The following forms are approved for NFIP use to obtain data required by this rule. The burden estimate for each form is provided:

FEMA form No.	Title	Burden estimate
81–40	Worksheet-Contents-Personal Property	2.5 hours.
81–40	Worksheet-Building	2.5 hours.
81–41A	Worksheet-Building (Cont'd)	1.0 hour.

FEMA form No.	Title	Burden estimate
81–42	Proof of Loss	5–6 minutes.
81–43	Notice of Loss	4 minutes.
81–44	Statement as to Full Cost of Repair or Replacement Cost Coverage, Subject to the Terms and Conditions of this Policy.	6–7 minutes.
81–57	National Flood Insurance Program, Preliminary Report	4 minutes.
81–58	National Flood Insurance Program, Final Report	4 minutes.
81–59	National Flood Insurance Program, Narrative Report	5–6 minutes.
81–63	Cause of Loss and Subrogation Report	45 minutes to 1 hour.

Send comments regarding the accuracy of the burden estimates and any suggestions for reducing the burden to: Information Collections Management, Federal Emergency Management Agency, 500 C Street, SW., Washington, DC 20472; and to the Office of Management and Budget, Paperwork Reduction Project (3067–0021), Washington, DC 20503.

Executive Order 12612, Federalism

This rule involves no policies that have federalism implications under Executive Order 12612, Federalism, dated October 26, 1987.

Executive Order 12778, Civil Justice Reform

This rule meets the applicable standards of section 2(b)(2) of Executive Order 12778.

List of Subjects in 44 CFR Parts 59, 61 and 62

Flood insurance.

Accordingly, 44 CFR parts 59, 61 and 62 are amended as follows:

PART 59—GENERAL PROVISIONS

1. The authority citation for part 59 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

2. Section 59.1 is amended by removing the current definition of "Elevated building" and adding, in place thereof a new definition to read as follows:

§ 59.1 Definitions.

* * * * *

Elevated building means, for insurance purposes, a nonbasement building which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

* * * * *

PART 61—INSURANCE COVERAGE AND RATES

3. The authority citation for part 61 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.*; Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 61.3 [Amended]

4. Section 61.3 is amended by removing the last sentence.

§ 61.4 [Amended]

5. Section 61.4 is amended by removing the designation "(a)" from the paragraph beginning with the words "All flood insurance", by removing paragraphs (b) through (e) and by redesignating paragraphs (1), (2), (3), and (4) as paragraphs (a), (b), (c), and (d).

§ 61.5 [Amended]

6. Section 61.5 is amended as follows:

a. By removing the last sentence in paragraph (a).

b. By removing paragraphs (d)(1) and (d)(2).

c. By redesignating paragraph (d)(3) as paragraph (d).

d. In newly redesignated paragraph (d) add, above the "Note," the following new "Category Four" of "Optional Deductibles" to read as follows:

* * * * *

(d) * * *

CATEGORY FOUR.—RESIDENTIAL CONDOMINIUM BUILDING POLICIES

Options	Policy combining building and contents	Single coverage only policy (either building or contents)
	$10,000/$10,000 25,000/10,000	$10,000 25,000

e. By removing paragraphs (e) through (h).

f. By redesignating paragraph (i) as paragraph (e).

g. By removing paragraph (j).

7. Section 61.6 is amended by adding a new paragraph (c), to read as follows:

§ 61.6 Maximum amounts of coverage available.

* * * * *

(c) In the insuring of a residential condominium building in a Regular Program community, the maximum limits of building coverage permitted under the Act is the lesser of $185,000.00 times the number of units in the building or the building's replacement cost. The maximum limit of contents coverage permitted under the Act in a Regular Program community is the lesser of $60,000.00 or the actual cash value of the contents.

§ 61.13 [Amended]

8. Section 61.13 is amended as follows:

a. By removing the parenthetical phrase in paragraph (a) and adding in its place the following parenthetical phrase:

* * *(General Property, Dwelling, and Residential Condominium Building Association) * * *

b. By adding, in paragraph (d) after the word "than" and before the word "through", the phrase "by the express written consent of the Administrator".

9. Appendix A(1) of part 61 is revised to read as follows:

Appendix A (1)

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy
[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

Dwelling Form

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions. This policy covers only:

1. A non-condominium residential building, designed for principal use as a dwelling place of one to four families, or

2. A single family dwelling unit in a condominium building.

Insuring Agreement

Agreement of insurance between the Federal Emergency Management Agency (FEMA), as Insurer, (hereinafter known as "we," "our," and "us,") and the Insured, (hereinafter known as "you" and "your").

We insure you against all *direct physical loss by or from flood* to the insured property, based upon:

1. Your having paid the correct amount of premium; and

2. Our reliance on the accuracy of the information and statements you have furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, you are insured up to the lesser of:

1. The *actual cash value*, except as provided in *Article 8*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

We insure only:

A. The named Insured and legal representatives;

B. Any mortgagee and loss payee named in the *application* and *declarations page*, as well as any other mortgagee or loss payee determined to exist at the time of a loss (See *Article 9*, paragraph P.), in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this policy—

Act means the National Flood Insurance Act of 1968, and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by you or your agent, and giving information on the basis of which we determine the acceptability of the risk, the *policy* to be issued and the correct premium payment. The correct premium payment must accompany the *application* for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the *condominium building* in which you, as the insured unit owner, maintain your residence.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building*, including any sunken room or sunken portion of a room, having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H. and a *walled and roofed building* in the course of construction, alteration or repair.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Condominium Association Policy means a *policy* of *flood* insurance coverage issued to an *association* pursuant to the *Act*.

Declarations Page is a computer generated summary of information furnished by you in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and our name. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *flood* (as defined in this *policy*).

Dwelling means a *building* designed for use as a residence for no more than four families and a single family *dwelling unit* in a *condominium building*.

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page*.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant*. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land area from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas, including your premises, as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, installations, or additions comprising a part of the insured *building* or *condominium dwelling unit*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between you and us; it includes this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. Only one *dwelling building* or *unit*, specifically described by you in the *application*, may be insured under this *policy*, unless application to cover more than one *dwelling building* or *unit* is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial FIRM for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a FIRM is in effect and full limits of coverage are available under the *Act*.

Residential condominium building means a *building* owned by the members of a *Condominium Association* containing one or more residential *units* and in which at least 75 percent of the floor area within the *building* is residential.

Special hazard area means an area having special *flood*, mudslide, (i.e., mudflow) and/or *flood*-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1–30, AE, A99, AH, AR, VO, V1–30, VE, V, M or E.

Unit means a single family *dwelling unit*, owned by the named Insured, in a *condominium building*.

Valued policy means a *policy* contract in which the insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Article 3—Losses Not Covered

We only provide coverage for *direct physical loss by or from flood* which means we do not cover:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Your additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Land subsidence, sewer backup, or seepage of water unless, subject to additional deductibles as provided for at *Article 7*, (a) there is a general and temporary condition of flooding in the area, (b) the flooding is the proximate cause of the land subsidence, sewer backup, or seepage of water, (c) the land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours after the *flood* has receded, and (d) the insured *building* must be insured, at the time of the loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*.

4. Freezing, thawing, or the pressure or weight of ice or water.

5. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the described *dwelling* or from any condition which is within your control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 a.m. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by you, a loss which is already in progress as of 12:01 a.m. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which your insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by your modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by you or any member of your household.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. Loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government, where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5, and 6 Provisions, Which Also Apply to the Other Articles, Terms and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

Subject to paragraph C. below, we cover your *dwelling* which includes:

A. A residential *building*, not a *condominium*, designed for principal use as a *dwelling* place for no more than four families, including:

1. Additions and extensions attached to and in contact with the *dwelling* by means of a common wall (but see *Article 6*, paragraph D.2.).

2. Materials and supplies to be used in constructing, altering or repairing the *dwelling* or an appurtenant structure while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed by you and us to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

3. As appurtenant structures, detached garages and carports located at the described premises, at your option at the time of loss, in an amount up to 10 percent of the amount of insurance you have purchased to cover the *dwelling*, including additions to the *dwelling*. By exercising this option, you reduce the amount of insurance available to cover other loss relating to Coverage A.

This option may not be used to extend coverage to *buildings*:

a. Occupied, rented or leased in whole or in part for *dwelling* purposes (or held for such use); or

b. Used in whole or in part for business or farming purposes (or held for such uses); or

c. Which are boathouses.

4. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed*;

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

B. Or, we cover your single-family *dwelling unit*, including *improvements* therein owned solely by you, in a *condominium building*. We also cover your share of assessments made against you as a tenant in common in that *building's* common elements and the common elements of any other *building* of your *Condominium Association* covered by insurance that is:

1. In the name of your *Condominium Association;*

2. Provided under the *Act;* and

3. In an amount at least equal to the *actual cash value* of the *building's* common elements at the beginning of the current *policy* term or the maximum *building* coverage limit available under the *Act*, whichever is less.

Provided, with respect to coverage for single-family *dwelling unit* assessments:

1. Coverage is available only when each of the *unit* owners comprising the membership of the *Association* are also assessed by reason of the same cause and provided the assessment arises out of a *direct physical loss by or from flood* to the *condominium building* in which your *unit* is located or to another *condominium building* of the *Association*, as to which the *condominium* documents (Articles of Association, Declarations, and your Deed) impose upon you the responsibility for such an assessment). The deductibles provisions of *Article 7* of this *policy* do not apply to assessments.

2. Assessments made by the *Association* to recoup the amount of a loss deductible incurred by the *Association in* connection with any *condominium building* or contents *policy* of insurance are not covered.

3. Assessments made by the *Association* in connection with loss of or damage to personal property, including any contents of any *condominium building* of the *Association*, are not covered.

4. Assessments made by the *Association* of a *condominium building* are not covered if

the assessments are made to recoup loss not reimbursed to the *Association*, under a *policy* of insurance issued pursuant to the *National Flood Insurance Program*, by reason of the fact that the *condominium building* insured under such *policy* was not, at the time of the loss, insured in an amount equal to the lesser of 80 percent or more of the full replacement cost of the *building* or the maximum amount of insurance available under the *National Flood Insurance Program*.

C. And we cover fixtures including the following items of property, if owned solely by you, for which coverage is *not provided* under "Coverage B - Personal Property":

- Furnaces
- Wall mirrors permanently installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Fire Sprinkler Systems
- Built-in Dishwashers
- Garbage Disposal Units
- Outdoor Antennas and Aerials
- Pumps and Machinery for operating them
- Carpet Permanently Installed Over Unfinished Flooring
- Built-in Microwave Ovens
- Hot Water Heaters, Including Solar Water Heaters
- Ranges and Stoves
- Radiators
- Kitchen Cabinets
- Light Fixtures
- Plumbing Fixtures
- Refrigerators

Coverage B—Personal Property

A. *Subject to paragraphs B. and C.* below, we cover personal property:

1. Owned by you as contents incidental to the occupancy of the *building*.

2. Owned by members of your family in your household.

3. At your option and within the limits of personal property coverage you have purchased, owned by your guests and servants.

Such personal property is covered while stored:

a. Within your *dwelling;*

b. Within a fully enclosed *building* at the property address;

c. Within a *building* having in place two or more rigid walls and a fully secured roof if the contents are secured to prevent flotation out of the *building* during flooding. The flotation out of the *building* during flooding of any such contents shall be deemed to establish the conclusive presumption that the contents were not reasonably secured to prevent flotation; or

d. At a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph C.2.).

B. Coverage, under this "Coverage B—Personal Property," includes the following property if owned solely by you, for which coverage is *not provided* under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the *dwelling* or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

C. *Limitations.* Under this "Coverage B—Personal Property" we shall not reimburse you for loss as to:

1. Personal property owned by you in common with any *unit* owners comprising the membership of a *Condominium Association*.

2. The following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows including their frames, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, watches, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

Within the limits of your coverage, we cover any expense you incur, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, as a result of removing debris of, on or from the insured property so long as the debris problem was directly caused by a *flood*. Under these provisions coverage extends to:

A. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property.

B. Parts of the insured property which is anywhere:

1. On the described premises; and

2. On property beyond the boundaries of the described premises.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *Condominium unit owner coverage is excess over Association coverage.* The insurance under this *policy* shall be excess over any insurance in the name of your *Condominium Association* covering the same property covered by this *policy*. Loss shall not be paid under "Coverage A—Building Property", paragraph B., and under "Coverage B—Personal Property" until we have verified the extent to which loss to *improvements* and personal property within your *unit*, and to the common elements of your *building* or any other *building* of your *Condominium Association*, is covered by any insurance in the name of your *Condominium Association*.

Should the amount of insurance collectible under this *policy* for a loss, when combined with any recovery available to you as a tenant in common under any *Condominium Association flood* insurance *policy* provided under the *Act* for the same loss, exceed the statutorily permissible limits of *building* coverage available for the insuring of single-family *dwellings* under the *Act*, then the limits of *building* coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

B. *This policy is not a valued policy.* Loss will be paid, provided you have purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

C. *Insured Property, Covered Locations.* Your *dwelling* and personal property are covered while the property is located:

1. At the property address shown on the *application* or endorsement, if corrected by endorsement; and

2. For 45 days, at another place above ground level or outside of the *special hazard area*, to which any of the insured property shall necessarily be removed by you in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by you, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates, in moving any of your insured property temporarily away from the peril of *flood* shall be reimbursed to you in an amount not to exceed $500. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement.

D. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by you for the purchase of the following items are also covered, in an aggregate amount not to exceed $750.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of your own labor and the labor of members of your household at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement.

For reimbursement under this paragraph D. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the

flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

Article 6—Property Not Covered

We do *not cover* any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether covered or not and all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building* or *unit*.

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on your premises, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

F. *Basements, building enclosures lower than the elevated floors of elevated buildings, and personal property, as follows:*

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footings, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*.

2. In a *basement* as defined in *Article 2*:

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other *improvements*, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., except for the case of a *dwelling unit* in a *condominium building* as to which the *Association's* coverage is sufficient to cover such property, the following *building* and personal property items connected to a power source and installed in their functioning location *are covered* so long as you have *purchased building* and personal property coverage, *as appropriate*:

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and or tanks used in conjunction with solar energy
- Furnaces
- Hot water heaters
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners
- Heat pumps
- Electrical junction and circuit breaker boxes
- Clean-up
- Stairways and staircases attached to the *building* which are not separated from the *building* by elevated walkways.
- Elevators, dumbwaiters, and relevant equipment, except for such relevant equipment located below the *base flood* elevation if such relevant equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers* such as but not limited to gas tanks or liquid tanks.

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to your insured property is subject to a deductible provision under which you bear a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any *flood* insurance *policy* issued or renewed for a property located in an *Emergency Program community* or for any property located in a *Regular Program community* in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: We shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which you selected when you applied for this *policy* or subsequently by endorsement.

E. Notwithstanding the applicable deductible in paragraphs C. or D. above, an additional deductible in the sum of $250.00 shall apply separately to each *building* and contents loss before payment is made under the *policy* for land subsidence, sewer backup, or seepage of water as provided for in *Article 3*, paragraph B.3.

Article 8—Replacement Cost Provisions

Subject to *Article 7* and the limits of *building* coverage you have purchased, these provisions shall apply only to a single family *dwelling* which is your principal residence and which is covered under this *policy*.

For purposes of this *Article 8*, a single family *dwelling* qualifies as your principal residence provided that, at the time of the loss, you or your spouse have lived in your *building* for either:

1. 80 percent of the calendar year immediately preceding the loss; or

2. 80 percent of the period of your ownership of the insured *building*, if less than one calendar year immediately preceded the loss.

The following are excluded from replacement cost coverage:

1. A *unit*, in a *condominium building*, not used exclusively for single family *dwelling* purposes.

2. Outdoor antennas and aerials, awnings, and other outdoor equipment, all whether attached to the *building* or not.

3. Carpeting.

4. Appliances.

Under this Article:

A. If at the time of loss the total amount of insurance applicable to the *dwelling* is 80 percent or more of the full replacement cost of such *dwelling*, or is the maximum amount of insurance available under the *National Flood Insurance Program*, the coverage of this *policy* applicable to the *dwelling* is extended to include the full cost of repair or replacement (without deduction for depreciation).

B. If at the time of loss the total amount of insurance applicable to the *dwelling* is less than 80 percent of the full replacement cost of such *dwelling* and less than the maximum amount of insurance available under the *National Flood Insurance Program*, our liability for loss shall not exceed the larger of the following amounts:

1. The *actual cash value* (meaning replacement cost less depreciation) of that part of the *dwelling* damaged or destroyed; or

2. That portion of the full cost of repair or replacement without deduction for depreciation of that part of the *dwelling* damaged or destroyed, which the total amount of insurance applicable to the *dwelling* bears to 80 percent of the full replacement cost of such *dwelling*.

If 80 percent of the full replacement cost of such *dwelling* is greater than the maximum amount of insurance available under the *National Flood Insurance Program*, use the maximum amount in lieu of the 80 percent figure in the application of this limit.

C. Our liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building;* or

2. The replacement cost of the *dwelling* or any part thereof identical with such *dwelling* on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *dwelling* or any part thereof intended for the same occupancy and use.

D. When the full cost of repair or replacement is more than $1,000 or more than 5 percent of the whole amount of insurance applicable to said *dwelling*, we shall not be liable for any loss under paragraph A. or subparagraph B.2. of these provisions unless and until actual repair or replacement is completed.

E. In determining if the whole amount of insurance applicable to said *dwelling* is 80 percent or more of the full replacement cost of such *dwelling*, the cost of excavations, underground flues and pipes, underground wiring and drains, and brick, stone and concrete foundations, piers and other supports which are below the under surface of the lowest *basement* floor, or where there is no *basement*, which are below the surface of the ground inside the foundation walls, shall be disregarded.

F. You may elect to disregard this condition in making claim hereunder, but such election shall not prejudice your right to make further claim within 180 days after loss for any additional liability brought about by these provisions.

G. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) *home* which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet or personal property (contents) covered under this *policy*, nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

H. If your *dwelling* sustains a total loss or if we should pay you the entire *building* loss proceeds under these Replacement Cost Provisions, there is no requirement that you rebuild the *building* at the insured property address.

I. If the community in which your property is located has been converted from the Emergency Program to the Regular Program during the current *policy* term, then these Replacement Cost Provisions shall be applied based on the maximum amount of insurance available under the *National Flood Insurance Program* at the beginning of the current *policy* term instead of at the time of loss.

Article 9—General Conditions and Provisions

A. *Pair and Set Clause:* If you lose an article which is part of a pair or set, we will have the option of paying you an amount equal to the cost of replacing the lost article, less depreciation, or an amount which represents the fair proportion of the total value of the pair or set that the lost article bears to the pair or set.

B. *Concealment, Fraud:* We will not cover you under this *policy*, which shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to you if:

1. You have sworn falsely, or willfully concealed or misrepresented any material fact; or

2. You have done any fraudulent act concerning this insurance (see paragraph F.1.d. below); or

3. You have willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes us to issue a *policy* to you based on a premium amount which is less than the premium amount which would have been payable by you were it not for the misstatement of fact (see paragraph G. below).

C. *Other Insurance.* If a loss covered by this *policy* is also covered by other insurance whether collectible or not, except insurance in the name of the *Condominium Association* issued pursuant to the *Act*, we will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss.

If there is other insurance in the name of the *Condominium Association* covering the same property covered by this *policy*, this insurance shall be excess over the other insurance.

D. *Amendments, Waivers, Assignment:* This *policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action we take under the terms of this *policy* can constitute a waiver of any of our rights. Except in the case of 1. a contents only *policy*, and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Cancellation of Policy By You:*

You may cancel this *policy* at any time but a refund of premium money will only be made to you when:

1. You cancel because you have transferred ownership of the described *building* or *unit* to someone else. In this case, we will refund to you, once we receive your written request for *cancellation* (signed by you), the excess of premiums paid by you which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. You cancel a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and we have received a written concurrence in the *cancellation* from any mortgagee of which we have actual notice; or

b. You have extinguished the insured mortgage debt and are no longer required by the mortgagee to maintain the coverage.

Refund of any premium, under this subparagraph 2., shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

3. You cancel because we have determined that your property is not, in fact, in a *special hazard area;* and you were required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to the *Act*; and the lender or Federal agency no longer requires the retention by you of the coverage. In this event, if no claims have been paid or are pending, your premium payments will be refunded to you in full, according to our applicable regulations.

F. *Voidance, Reduction or Reformation of the Coverage By Us:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss for which you may receive compensation under the *policy*;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which your property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, you shall be entitled to a pro rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event you or your agent have:

(1) Sworn falsely, or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to you in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for our administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium you submit is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment received by us is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph F.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by us prior to a loss and we can determine the amount of insufficient premium from information in our possession at the time of our discovery of the insufficient premium, we shall give a notice of additional premium due, and if you *remit* and we *receive* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by us at the time of a loss under the *policy*, we shall give a notice of premium due, and if you *remit* and we *receive* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by you within 30 days from the date we give you written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, we shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of your indebtedness, for 30 days after written notice to the mortgagee or trustee.

G. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the *declarations page* which is attached to the *policy*. We are under no obligation to:

1. Send you any renewal notice or other notice that your *policy* term is coming to an end and the receipt of any such notice by you shall not be deemed to be a waiver of this provision on our part.

2. Assure that *policy* changes reflected in endorsements submitted by you during the *policy* term and accepted by us are included in any renewal notice or new *policy* which we send to you. *Policy* changes includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by us at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to *Article 9*, paragraph F. above. If the renewal premium payment is mailed by certified mail to the *National Flood Insurance Program* prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received at the office of the *National Flood Insurance Program* and, in that event, we shall not be obligated to provide you with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, you may be requested during the *policy* term to recertify, on a Recertification Questionnaire we will provide you, the rating information used to rate your most recent *application* for or renewal of insurance.

Notwithstanding your responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by us prior to the expiration of the *policy* being renewed, we have established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding our business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to you at the address appearing on your most recent *application* or other appropriate form (received by the *National Flood Insurance Program* prior to the mailing of the renewal notice by us), does, in all respects for purposes of the *National Flood Insurance Program*, presumptively establish delivery to you for all purposes irrespective of whether you actually received the notice.

However, in the event we determine that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which we determine could preclude the likelihood of its being actually and timely received by you prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that you or your agent notified us, not later than 1 year after the date on which the payment of the renewal was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which we determine was attributable to the above circumstance, we shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

H. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, we shall not be liable for loss occurring while the hazard is increased by any means within your control or knowledge.

I. *Alterations and Repairs:* You may, at any time and at your own expense, make alterations, additions and repairs to the insured property, and complete structures in the course of construction.

J. *Requirements in Case of Loss:* Should a *flood* loss occur to your insured property, you must:

1. Notify us in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that we may examine it; and

3. Within 60 days after the loss, send us a proof of loss, which is your statement as to the amount you are claiming under the *policy* signed and sworn to by you and furnishing us with the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. Your interest in the property damaged (for example, "owner") and the interest, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. Names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount you claim is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy;* and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with our adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom we hire to investigate your claim may furnish you with a proof of loss form, and she or he may help you to complete it. However, this is a matter of courtesy only, and you must still send us a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help you complete it.

In completing the proof of loss, you must use your own judgment concerning the amount of loss and the justification for that amount.

The adjuster is not authorized to approve or disapprove claims or tell you whether your claim will be approved by us.

7. We may, at our option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event you will be required to sign and, at our option, swear to an adjuster's report of the loss which includes information about your loss and the damages sustained, which is needed by us in order to adjust your claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal Laws.

K. *Our Options After a Loss:* Options we may, in our sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If we specifically request it, in writing, you may be required to furnish us with a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amounts of loss claimed, and any written plans and specifications for repair of the damaged property which you can make reasonably available to us.

2. *Examination Under Oath and Access to Insured Property Ownership Records and Condominium Documents:* We may require you to:

a. Show us, or our designee, the damaged property, to be examined under oath by our designee and to sign any transcripts of such examinations; and

b. At such reasonable times and places as we may designate, permit us to examine and make extracts and copies of any *policies* of property insurance insuring you against loss; and the deed establishing your ownership of the insured real property; and the *condominium* documents including the Declarations of the *condominium*, its Articles of Association or Incorporation, Bylaws, rules and regulations, and other *condominium* documents if you are a *unit* owner in a *condominium building;* and all books of accounts, bills, invoices and other vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Replace:* We may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving you notice of our intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph J.3. above.

4. *Adjustment Options:* We may adjust loss to any insured property of others with the owners of such property or with you for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

L. *When Loss Payable:* Loss is payable within 60 days after you file your proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by you in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between us and you expressed in writing or by the filing with us of an award as provided in paragraph N. below.

If we reject your proof of loss in whole or in part, you may accept such denial of your claim, or exercise your rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

M. *Abandonment:* You may not abandon damaged or undamaged insured property to us.

However, we may permit you to keep damaged, insured property ("salvage") after a loss and we will reduce the amount of the loss proceeds payable to you under the *policy* by the value of the salvage.

N. *Appraisal:* If at any time after a loss, we are unable to agree with you as to the *actual cash value* or, if applicable, replacement cost of the damaged property so as to determine the amount of loss to be paid to you, then, on the written demand of either one of us, each of us shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand. The appraisers shall first select a competent and disinterested umpire; and failing, after 15 days, to agree upon such umpire, then, on your request or our request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with us shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of replacement cost and loss. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both of us equally.

O. *Loss Clause:* If we pay you for damage to property sustained in a *flood* loss, you are still eligible, during the term of the *policy*, to collect for a subsequent loss due to another *flood*. Of course, all loss arising out of a single, continuous *flood* of long duration shall be adjusted as one *flood* loss.

P. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom we have actual notice prior to the payment of loss proceeds under this *policy*).

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated by any act or neglect of the mortgagor or owner of the described property, nor by any foreclosure or other proceedings or notice of sale relating to the property, nor by any change in the title or ownership of the property, nor by the occupation of the premises for purposes more hazardous than are permitted by this *policy*; provided, that in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify us of any change of ownership or occupancy or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by us, it shall continue in force for the benefit only of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease, and we shall have the right, on like notice, to cancel this agreement.

Whenever we shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, we shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at our option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities; but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

Q. *Mortgagee Obligations:* If you fail to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

R. *Conditions for Filing a Lawsuit:* You may not sue us to recover money under this *policy* unless you have complied with all the requirements of the *policy*. If you do sue, you must start the suit within 12 months from the date we mailed you notice that we have denied your claim, or part of your claim, and you must file the suit in the United States District Court of the district in which the insured property was located at the time of loss.

S. *Subrogation*: Whenever we make a payment for a loss under this *policy*, we are subrogated to your right to recover for that loss from any other person. That means that your right to recover for a loss that was partly or totally caused by someone else is automatically transferred to us, to the extent that we have paid you for the loss. We may require you to acknowledge this transfer in writing. After the loss, you may not give up our right to recover this money or do anything which would prevent us from recovering it. If you make any claim against any person who caused your loss and recover any money, you must pay us back first before you may keep any of that money.

T. *Continuous Lake Flooding*: Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, we will pay you the lesser of these two amounts without waiting for the further damage to occur if you sign a release agreeing:

1. To make no further claim under this *policy*;
2. Not to seek renewal of this *policy*; and
3. Not to apply for any *flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph T. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

U. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the *Act*. When we find that duplicate *policies* are in effect, we shall by written notice give you the option of choosing which *policy* is to remain in effect under the following procedures:

1. If you choose to keep in effect the *policy* with the earlier effective date, we shall by the same written notice give you an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If you choose to keep in effect the *policy* with the later effective date, we shall by the same written notice give you the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, you must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or your insurable interests, whichever is less.

We shall make a refund to you, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect. For purposes of this paragraph U., the term "effective date" means the date coverage that has been in effect without any lapse was first placed in effect.

In addition to the provisions of this paragraph U. for increasing *policy* limits, the usual procedures for increasing *policy* limits, by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* you choose to keep in effect.

Article 10—Liberalization Clause

If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should we have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to your benefit as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to your benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, we have signed this *policy* below and hereby enter into this Insurance Agreement.

James L. Witt,

Director, Federal Emergency Management Agency.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021.)

10. Appendix A (2) of part 61 is revised to read as follows:

Appendix A(2)

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy
[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

General Property Form

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions.

This policy provides no coverage:

1. In a regular program community, for a residential condominium building, as defined in this policy; and

2. Except for personal property coverage, for a unit in a condominium building.

Insuring Agreement

Agreement of Insurance between the Federal Emergency Management Agency (FEMA), as insurer, and the Insured.

The Insurer insures the Insured against all *Direct physical loss by or from flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and

2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this *policy*:

A. The named Insured and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page*, as well as any other mortgagee or loss payee determined to exist at the time of a loss (See *Article 8*, paragraph L.), in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the *policy* to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the described *Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building*, including any sunken room or sunken portion of a room, having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Condominium means a system of individual ownership of *units* in a multi-unit

building or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a "*flood*" (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this *policy* on the *expiration date* shown on the *declarations page*.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the *National Flood Insurance Program* not covered by the *expense constant*. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, and is not subject to producers' commissions, expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in Title 44 of the Code of Federal Regulations, Subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial FIRM for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a FIRM is in effect and full limits of coverage are available under the *Act*.

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75% of the floor area within the *building* is residential.

Special hazard area means an area having special *flood*, mudslide (i.e., mudflow), and/or *flood*-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1–30, AE, A99, AH, AR, VO, V1–30, VE, V, M or E.

Unit means a *unit* in the insured *Condominium Building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, landslide, destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Land subsidence, sewer backup, or seepage of water unless, subject to additional deductibles as provided for at *Article 7*, (a) there is a general and temporary condition of flooding in the area, (b) the flooding is the proximate cause of the land subsidence, sewer backup, or seepage of water, (c) the land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours after the *flood* has receded, and (d) the insured *building* must be insured, at the time of the loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*.

4. Freezing, thawing, or the pressure or weight of ice or water.

5. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 a.m. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 a.m. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such

failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5 and 6 Provisions, Which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement).

Coverage A—Building Property

This *policy* covers a *building* (the "*building*") at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including, if owned in common by a *Condominium Association*, as named Insured, all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and in contact with the *building* by means of a common wall (but see *Article 6*, paragraph D.2.).

3. Fixtures, machinery and equipment, including the following property, all while within the *building* and owned by the named Insured, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces
- Wall Mirrors Permanently Installed
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper
- Ventilating Equipment
- Fire Extinguishing Apparatus
- Venetian Blinds
- Central Air Conditioners
- Awnings and Canopies
- Elevator Equipment
- Fire Sprinkler Systems
- Outdoor Antennas and Aerials
- Pumps and Machinery for Operating Them
- Carpet Permanently Installed Over Unfinished Flooring.
- In the *Units* Within the *Building Installed:*
- Built-in Dishwashers
- Garbage Disposal Units
- Hot Water Heaters
- Kitchen Cabinets
- Built-in Microwave Ovens
- Plumbing Fixtures
- Radiators
- Ranges
- Refrigerators
- Stoves

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building*:

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the deductible which is selected to apply after the *building* is *walled and roofed;*

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B, C, and D, below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned solely by the Insured, or in common by the *unit* owners of a *condominium*, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. In the case of a *condominium*, owned solely by a *condominium association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. When the insurance under this *policy* covers personal property (contents), coverage shall be for either household contents or other than household contents, but not for both.

1. When the insurance under this *policy* covers other than household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: Merchandise and stock, materials and stock supplies of every description, furniture, fixtures, machinery and equipment of every description all owned by the Insured and all while within the described enclosed *building*. Bailees' goods are specifically excluded from coverage under this *policy*.

2. When the insurance under this *policy* covers household contents, such insurance shall cover, subject to "Coverage A—Building Property", paragraph 3.: All household and personal property usual or incidental to the occupancy of the premises as a residence, except any property more specifically covered in whole or in part by other insurance including the peril insured against in this *policy*, belonging to the Insured or members of the Insured's family of the same household, or for which the Insured may be liable, or, at the *option of the Insured*, belonging to a servant or guest of the Insured—all while within the described enclosed *building*.

C. Coverage for personal property includes the following property, subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers
- Clothes Dryers
- Food Freezers
- Air Conditioning Units Installed in the *Building*
- Portable Dishwashers
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed
- Carpet not permanently installed over unfinished flooring
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address
- Portable microwave ovens and "cook-out" grills, ovens and the like

D. *Limitations.* Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows including their frames, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, watches, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

E. The Insured, if not an owner of the described *building*, may apply up to 10 percent of the amount of insurance applicable to the personal property covered under this item, not as an additional amount of insurance, to cover loss to *improvements* to the described *building* which have been made, or acquired, at the expense of the Insured exclusive of rent paid by the Insured, even though the *improvements* are not legally subject to removal by the Insured.

F. The Insured, if a *condominium unit* owner in the described *building*, may apply up to 10 percent of the amount of insurance on personal property covered under this *policy*, not as an additional amount of insurance, to cover loss to the interior walls, floors, and ceilings that are not otherwise covered under a *condominium association policy* insuring the described non-residential *condominium building*.

G. In the case of personal property owned by the Insured in a *condominium building*, as a *condominium unit* owner, as well as in common with other *condominium unit* owners, should the amount of insurance collectible under this *policy* for a loss, when

combined with any recovery available to the Insured as a tenant in common under any *condominium association flood* insurance coverage provided under the *Act* for the same loss, exceed the statutorily permissible limits of personal property coverage available under the *Act* for the insuring of the personal property, then the limits of personal property coverage under this *policy* shall be reduced in regard to that loss by the amount of such excess.

The insurance under this *policy* shall be excess over any insurance in the name of the *Condominium Association* covering the same property. Loss shall not be paid under this *policy* until the Insurer has verified the extent to which such loss is covered by any insurance in the name of a *condominium association*.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this *policy* for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this *policy* to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the Insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property, Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application;* and

2. For 45 days at another place above ground level or outside of the *special hazard area,* to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood,* due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7,* shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building,* reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $750.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a *flood* loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood.*

The *policy's building* deductible amount, as provided for at *Article 7,* shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning:*

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building.*

B. *Property over water or in the open, meaning:*

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including:*

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including:*

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether covered or not and all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building.*

E. *Other personal property, meaning:*

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building,* operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy.*

F. *Basements, building enclosures lower than the elevated floors of elevated buildings, and personal property, as follows:*

1. In a *special hazard area,* at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building,* including a *manufactured* (i.e., *mobile*) *home:*

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footings, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building.*

2. In a *basement* as defined in *Article 2:*

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided,* with regard to both 1. and 2., above, the following *building* and personal property items connected to a power source and installed in their functioning location *are covered* so long as the Insured has *purchased building* and personal property coverage, *as appropriate:*

- Sump pumps
- Well water tanks and pumps
- Oil tanks and the oil in them
- Cisterns and the water in them
- Natural gas tanks and the gas in them
- Pumps and/or tanks used in conjunction with solar energy
- Furnaces
- Hot water heaters
- Clothes washers and dryers
- Food freezers and the food in them
- Air conditioners

- Heat pumps
- Electrical junction and circuit breaker boxes
- Stairways and staircases attached to the *building* which are not separated from the *building* by elevated walkways
- Clean-up
- Elevators, dumbwaiters, and relevant equipment, except for such relevant equipment located below the *base flood* elevation if such relevant equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or *unit* is below ground, unless the lowest level is at or above the *base flood* elevation (in the Regular Program) or the adjacent ground level (in the Emergency Program) by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers* such as but not limited to gas tanks or liquid tanks.

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Public Law 101–591, 16 U.S.C. 3501 *et seq.*

K. *Residential condominium buildings* and their contents owned by the Insured as a tenant in common with others under a *condominium* form of ownership and any *building* components and contents owned solely by the Insured in connection with a *residential condominium building* in a *Regular Program community*.

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any flood insurance policy issued or renewed for a property located in an Emergency Program community or for any property located in a Regular Program community in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

E. Notwithstanding the applicable deductible in paragraphs C. or D. above, an additional deductible in the sum of $250.00 shall apply separately to each *building* and contents loss before payment is made under the *policy* for land subsidence, sewer backup, or seepage of water as provided for in *Article 3*, paragraph B.3.

Article 8—General Conditions and Provisions

A. *Pair and Set Clause*: If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud*: This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1*, paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (See paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, provided, if at the time of loss, there is other insurance *made available* under the *Act*, in the name of a *unit* owner which provides coverage for the same loss covered by this *policy*, this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy*, in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy*, the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy*, in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy*. Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy*;

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application*, renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy*, for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer shall give a notice of

additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy*, the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy*, the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date*, as shown on the *declarations page* which is attached to the *policy*. The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *Policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy*, subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date*, it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation*, termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy*, the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy by Insured:* The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. Except with respect to a *condominium building* or a *building* which has a *condominium* form of ownership, the Insured cancels because the Insured has transferred ownership of the insured property to someone else. In this case, the Insurer will refund to the Insured, once the Insurer receives the Insured's written request for *cancellation* (signed by the Insured) the excess of premiums paid by the Insured which apply to the unused portion of the *policy's* term, pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the *cancellation* is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 2., shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

3. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice prior to the payment of loss proceeds under this policy.)

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or

trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy, provided,* That in case the mortgagor or owner shall neglect to pay any premium due under this *policy,* the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy,* it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause* (*Applicable to contents items only*): Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy;* and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss*: Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss*: If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values*, amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents*: The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace*: The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options*: The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable*: Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment*: The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal*: In case the Insured and the Insurer shall fail to agree as to the *actual cash value* of the amount of loss, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer*: No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation*: In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding*: Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed*: Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* to those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 9—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, the Insurer has executed and attested these presents.

James L. Witt,

Director, Federal Emergency Management Agency.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021).

11. Appendix A (3) of part 61 is added to read as follows:

Appendix A(3)

Federal Emergency Management Agency, Federal Insurance Administration

Standard Flood Insurance Policy

[Issued Pursuant to the National Flood Insurance Act of 1968, or Any Acts Amendatory Thereof (Hereinafter Called the Act), and Applicable Federal Regulations in Title 44 of the Code of Federal Regulations, Subchapter B]

Residential Condominium Building Association Policy

Read the policy carefully. The coverage provided is subject to limitations, restrictions and exclusions.

This policy covers only a residential condominium building in a regular program community. If the community reverts to emergency program status during the policy term and remains as an emergency program community at time of renewal, this policy cannot be renewed.

Insuring Agreement

Agreement of insurance between the Federal Emergency Management Agency (FEMA), as Insurer, and the Insured.

The Insurer insures the Insured against all *Direct physical loss by or from flood* to the insured property, based upon:

1. The Insured having paid the correct amount of premium; and

2. The Insurer's reliance on the accuracy of the information and statements the Insured has furnished; and

3. All the terms of this *policy*, the National Flood Insurance Act of 1968, as amended, and Title 44 of the Code of Federal Regulations.

On this basis, the Insured is insured up to the lesser of:

1. The *actual cash value*, except as provided in *Article 8*, not including any antique value, of the property at the time of loss; or

2. The amount it would cost to repair or replace the property with material of like kind and quality within a reasonable time after the loss.

Article 1—Persons Insured

The following are insured under this *policy*:

A. The named Insured *condominium association, unit* owners in the insured *residential condominium building* and legal representatives;

B. Any mortgagee and trustee named in the *application* and *declarations page*, as well as any other mortgagee or loss payee determined to exist at the time of a loss (See *Article 10*, paragraph L.), in the order of precedence and to the extent of their interest but for no more, in the aggregate, than the interest of the named Insured.

Article 2—Definitions

As used in this Policy:

Act means the National Flood Insurance Act of 1968 and any acts amendatory thereof.

Actual Cash Value means the replacement cost of an insured item of property at the time of loss, less the value of physical depreciation as to the item damaged.

Application means the statement made and signed by the Insured, or the Insured's agent, and giving information on the basis of which the Insurer determines the acceptability of the risk, the *policy* to be issued and the correct premium payment, which must accompany the *application* in order for the

policy to be issued. The *application* is a part of this *flood* insurance *policy*.

Association means the group of *unit* owners which manages the described *Residential Condominium Building*.

Base flood means the *flood* having a one percent chance of being equalled or exceeded in any given year.

Basement means any area of the *building*, including any sunken room or sunken portion of a room, having its floor subgrade (below ground level) on all sides.

Building means a *walled and roofed* structure, other than a gas or liquid storage tank, that is principally above ground and affixed to a permanent site, including a *walled and roofed building* in the course of construction, alteration or repair and a *manufactured* (i.e., *mobile*) *home* on a permanent foundation, subject to *Article 6*, paragraph H.

Cancellation means that ending of the insurance coverage provided by this *policy* prior to the *expiration date*.

Coastal High Hazard Area means an area subject to high velocity waters, including hurricane wave wash and tsunamis.

Coinsurance means that the Insurer's liability for loss under the *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the property bears, at the time of loss, to the value of the insured property under the terms and conditions of this *policy*, provided, if the property is insured at the time of loss in an amount equal to the lesser of 80 percent or more of its full replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of the *policy*, as if the amount of insurance and the value of the insured property are equal.

Condominium means a system of individual ownership of *units* in a multi-unit *building* or *buildings* or in single-unit *buildings* as to which each *unit* owner in the *condominium* has an undivided interest in the common areas of the *building(s)* and facilities that serve the *building(s)*.

Declarations Page is a computer generated summary of information furnished by the Insured in the *application* for insurance. The *declarations page* also describes the term of the *policy*, limits of coverage, and displays the premium and the name of the Insurer. The *declarations page* is a part of this *flood* insurance *policy*.

Direct Physical Loss By or From Flood means any loss in the nature of actual loss of or physical damage, evidenced by physical changes, to the insured property (*building* or personal property) which is directly and proximately caused by a *flood* (as defined in this *policy*).

Elevated Building means a non-basement *building* which has its lowest elevated floor raised above ground level by foundation walls, shear walls, posts, piers, pilings, or columns.

Emergency Program Community means a community wherein a Flood Hazard Boundary Map (FHBM) is in effect and only limited amounts of insurance are available under the *Act*.

Expense Constant means a flat charge per *policy* term, paid by the Insured to defray the Federal Government's policywriting and other expenses.

Expiration Date means the ending of the insurance coverage provided by this policy on the expiration date shown on the declarations page.

Federal policy fee means a flat charge per *policy* term, paid by the Insured to defray certain administrative expenses incurred in carrying out the National Flood Insurance Program not covered by the expense constant. This fee was established by section 1307(a)(1)(B)(iii) of the National Flood Insurance Act of 1968, as amended, 42 U.S.C. 4014, and is not subject to producers' commissions, expense allowances, or state or local premium taxes.

Flood means:

A. A general and temporary condition of partial or complete inundation of normally dry land areas from:

1. The overflow of inland or tidal waters.

2. The unusual and rapid accumulation or runoff of surface waters from any source.

3. Mudslides (i.e., mudflows) which are proximately caused by flooding as defined in subparagraph A–2 above and are akin to a river of liquid and flowing mud on the surfaces of normally dry land areas as when earth is carried by a current of water and deposited along the path of the current.

B. The collapse or subsidence of land along the shore of a lake or other body of water as a result of erosion or undermining caused by waves or currents of water exceeding the cyclical levels which result in flooding as defined in subparagraph A–1 above.

Improvements means fixtures, alterations, or additions comprising a part of the insured *building*, including the *units* within the insured *building*.

Manufactured home means a *building* transportable in one or more sections, which is built on a permanent chassis and designed to be used with or without a permanent foundation when connected to the required utilities. The term *manufactured home* does not include park trailers, and other similar vehicles. To be eligible for coverage under this *policy*, a *manufactured home* must be on a permanent foundation and, if located in a FEMA designated *Special Hazard Area*, must meet the requirements of paragraph H. of *Article 6*.

Mobile home means a *manufactured home*.

National Flood Insurance Program means the program of *flood* insurance coverage and floodplain management administered under the *Act* and applicable Federal regulations in title 44 of the Code of Federal Regulations, subchapter B.

Policy means the entire written contract between the Insured and the Insurer, including this printed form, the *application*, and *declarations page*, any endorsements which may be issued and any renewal certificates indicating that coverage has been instituted for a new *policy* and *policy* term. *Only one building, specifically described by the Insured in the application, may be insured under this policy, unless application to cover more than one building is made on a form or in a format approved for that purpose by the Federal Insurance Administrator.*

Post-FIRM building means a *building* for which the start of construction or substantial improvement occurred after December 31, 1974, or on or after the effective date of the initial Flood Insurance Rate Map (FIRM) for the community in which the *building* is located, whichever is later.

Pre-FIRM rated building means a *building* for which the start of construction or substantial improvement occurred on or before December 31, 1974, or before the effective date of the initial FIRM for the community in which the *building* is located, whichever is later.

Probation Additional Premium means a flat charge per *policy* term paid by the Insured on all new and renewal *policies* issued covering property in a community that has been placed on probation under the provisions of 44 CFR 59.24.

Regular Program Community means a community wherein a FIRM is in effect and full limits of coverage are available under the *Act*.

Residential Condominium Building means a *building* owned by the members of a *condominium association* containing one or more residential *units* and in which at least 75 percent of the floor area within the *building* is residential.

Residential Condominium Building Association Policy means a *policy* of *flood* insurance coverage issued to an *Association* pursuant to the *Act*.

Special hazard area means an area having special *flood*, mudslide (i.e., mudflow), and/or *flood*-related erosion hazards, and shown on a FHBM or FIRM as Zone A, AO, A1–30, AE, A99, AH, AR, VO, V1–30, VE, V, M or E.

Unit means a single family dwelling *unit*, in a *Residential Condominium Building*.

Valued policy means a *policy* contract in which the Insurer and the Insured agree on the value of the property insured, that value being payable in event of total loss.

Walled and Roofed means the *building* has in place two or more exterior, rigid walls and the roof is fully secured so that the *building* will resist flotation, collapse and lateral movement.

Article 3—Losses Not Covered

The Insurer only provides coverage for *direct physical loss by or from flood* which means the following are not covered:

A. *Compensation, reimbursement or allowance for:*

1. Loss of use of the insured property or premises.

2. Loss of access to the insured property or premises.

3. Loss of profits.

4. Loss resulting from interruption of business, profession, or manufacture.

5. Any additional living expenses incurred while the insured *building* is being repaired or is uninhabitable for any reason.

6. Any increased cost of repair or reconstruction as a result of any ordinance regulating reconstruction or repair.

7. Any other economic loss.

B. *Losses from other casualties, including loss caused by:*

1. Theft, fire, windstorm, wind, explosion, earthquake, land sinkage, landslide,

destabilization or movement of land resulting from the accumulation of water in subsurface land areas, gradual erosion, or any other earth movement except such mudslides (i.e., mudflows) or erosion as is covered under the peril of *flood*.

2. Rain, snow, sleet, hail or water spray.

3. Land subsidence, sewer backup, or seepage of water unless, subject to additional deductibles as provided for at *Article 7*, (a) there is a general and temporary condition of flooding in the area, (b) the flooding is the proximate cause of the land subsidence, sewer backup, or seepage of water, (c) the land subsidence, sewer backup, or seepage of water damage occurs no later than 72 hours after the *flood* has receded, and (d) the insured *building* must be insured, at the time of the loss, for at least 80 percent of its replacement cost or the maximum amount of insurance available under the *National Flood Insurance Program*.

4. Freezing, thawing, or the pressure or weight of ice or water.

5. Water, moisture, mildew, mold or mudslide (i.e., mudflow) damage resulting primarily from any condition substantially confined to the insured *building* or from any condition which is within the Insured's control (including but not limited to design, structural or mechanical defects, failures, stoppages or breakages of water or sewer lines, drains, pumps, fixtures or equipment).

C. *Losses of the following nature:*

1. A loss which is already in progress as of 12:01 a.m. of the first day of the *policy* term, or, as to any increase in the limits of coverage which is requested by the Insured, a loss which is already in progress as of 12:01 a.m. on the date when the additional coverage becomes effective.

2. A loss from a *flood* which is confined to the premises on which the insured property is located unless the *flood* is displaced over two acres of the premises.

3. A loss caused by the Insured's modification to the insured property which materially increases the risk of flooding.

4. A loss caused intentionally by the Insured.

5. A loss caused by or resulting from power, heating or cooling failure, unless such failure results from physical damage to power, heating or cooling equipment situated on the premises where the described *building* or *unit* is located, caused by a *flood*.

6. A loss to any *building* or contents located on property leased from the Federal Government, arising from or incident to the flooding of the property by the Federal Government where the lease expressly holds the Federal Government harmless, under *flood* insurance issued under any Federal Government program, from loss arising from or incident to the flooding of the property by the Federal Government.

Article 4—Property Covered (Subject to Articles 3, 5 and 6 Provisions, Which Also Apply to the Other Articles, Terms, and Conditions of This Policy, Including the Insuring Agreement)

Coverage A—Building Property

This *policy* covers the *Residential Condominium Building* (the *building*) at the premises which is described in the *application*, and includes:

1. The entire *building*, for its real property elements, including all *units* within the *building* and the *improvements* within the *units*.

2. Additions and extensions attached to and in contact with the *building* by means of a common wall (but see *Article 6*, paragraph D.2.).

3. Fixtures, machinery and equipment, including the following property, all while within the *building*, including its *units*, as to which coverage is *not provided* under "Coverage B—Personal Property":

- Furnaces.
- Wall Mirrors Permanently Installed.
- Permanently Installed Corner Cupboards, Bookcases, Paneling, and Wallpaper.
- Ventilating Equipment.
- Fire Extinguishing Apparatus.
- Venetian Blinds.
- Central Air Conditioners.
- Awnings and Canopies.
- Elevator Equipment.
- Fire Sprinkler Systems.
- Outdoor Antennas and Aerials.
- Pumps and Machinery for Operating them.
- Carpet Permanently Installed Over Unfinished Flooring.
- In the *Units* Within the *Building, Installed:*
- Built-in Dishwashers.
- Garbage Disposal Units.
- Hot Water Heaters.
- Kitchen Cabinets.
- Built-in Microwave Ovens.
- Plumbing Fixtures.
- Radiators.
- Ranges.
- Refrigerators.
- Stoves.

4. Materials and supplies to be used in constructing, altering or repairing the *building* while stored inside a fully enclosed *building:*

a. At the property address; or

b. On an adjacent property at the time of loss; or

c. In case of another *building* at the property address which does not have walls on all sides, while stored and secured to prevent flotation out of the *building* during flooding (the flotation out of the *building* shall be deemed to establish the conclusive presumption that the materials and supplies were not reasonably secured to prevent flotation, in which case no coverage is provided for such materials and supplies under this *policy*).

5. A *building* in the course of construction before it is *walled and roofed* subject to the following conditions:

a. The amount of the deductible for each loss occurrence before the *building* is *walled and roofed* is two times the § ductible which is selected to apply after the *building* is *walled and roofed;*

b. Coverage is provided before the *building* is *walled and roofed* only while construction is in progress, or if construction is halted, only for a period of up to 90 continuous days thereafter, until construction is resumed; and

c. There is no coverage before the *building* is *walled and roofed* where the lowest floor, including *basement* floor, of a non-elevated *building* or the lowest elevated floor of an *elevated building* is below the *base flood* elevation in Zones AH, AE or A1–30 or is below the *base flood* elevation adjusted to include the effect of wave action in Zones VE or V1–30. The lowest floor levels are based on the bottom of the lowest horizontal structural member of the floor in Zones VE or V1–30 and the top of the floor in Zones AH, AE or A1–30.

Coverage B—Personal Property

A. Subject to paragraphs B. and C. below, this *policy* covers personal property which is in or on the insured, fully enclosed *building* and is:

1. Owned by the *unit* owners of the *condominium* in common, i.e., as to which each *unit* owner has an undivided ownership interest; or

2. Owned solely by the *Condominium Association* and used exclusively in the conduct of the business affairs of the *condominium*.

3. Such personal property is also covered while stored at a temporary location, as expressly authorized under this *policy* (see *Article 5*, paragraph B.2.).

B. Coverage for personal property includes the following property, whether owned by the *Association* or *unit* owner and subject to paragraph A. 1. and 2., above, for which coverage is *not provided* (irrespective of the manner in which the property is installed in or adapted to the *building*) under "Coverage A—Building Property":

- Clothes Washers.
- Clothes Dryers.
- Food Freezers.
- Air Conditioning Units Installed in the *Building*.
- Portable Dishwashers.
- Carpet, including wall-to-wall carpet, over finished flooring and whether or not it is permanently installed.
- Carpet not permanently installed over unfinished flooring.
- Outdoor equipment and furniture stored inside the dwelling or another fully enclosed *building* at the property address.
- Portable microwave ovens and "cook-out" grills, ovens and the like.

C. *Limitations.* Under this "Coverage B—Personal Property", the Insured shall not be reimbursed for loss as to the following personal property to the extent the loss to any one or more of such property exceeds, individually or in total, $250.00:

- Artwork, including but not limited to, paintings, etchings, pictures, tapestries, art glass windows including their frames, statuary, marbles, and bronzes;
- Rare books;
- Necklaces, bracelets, gems, precious or semi-precious stones, watches, articles of gold, silver, or platinum; or
- Furs or any article containing fur which represents its principal value.

Coverage C—Debris Removal

This insurance covers expense incurred in the removal of debris of, or on, or from the *building* or personal property covered hereunder, which may be occasioned by loss caused by a *flood*. Under these provisions coverage extends to:

1. Non-owned debris from beyond the boundaries of the described premises which is physically on the insured property (i.e., on the *building* or the personal property).

2. Parts of the insured property anywhere:

a. On the described premises; and

b. On property beyond the boundaries of the described premises.

The total liability under this policy for both loss to property and debris removal expense shall not exceed the amount of insurance applying under this policy to the property covered.

Article 5—Special Provisions Applicable to Coverages A, B, and C

A. *This policy is not a valued policy.* Loss will be paid, provided the Insured has purchased a sufficient amount of coverage, i.e., in an amount equal to the lesser of the value of the damaged property under the terms and conditions of this *policy* (and regardless of whether the amount of insurance purchased is greater than such value) or the limit of coverage permitted under the *Act*.

B. *Insured Property, Covered Locations.* The *building* and personal property are covered while the property is located:

1. At the property address shown on the *application*; and

2. For 45 days at another place above ground level or outside of the *special hazard area*, to which any of the insured property shall necessarily be removed in order to protect and preserve it from *flood*, due to the imminent danger of *flood* (provided, personal property so removed must be placed in a fully enclosed *building* or otherwise reasonably protected from the elements to be insured against loss), in which case the reasonable expenses incurred by the Insured, including the value of its own labor at prevailing Federal minimum wage rates, in moving any of the insured property temporarily away from the peril of *flood* shall be reimbursed in an amount not to exceed $500.00. This *policy's* deductible amounts, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under this *policy's* coverage.

C. *Coverage For Certain Loss Mitigation Measures.* When the insurance under this *policy* covers a *building*, reasonable expenses incurred by the Insured for the purchase of the following items are also covered, in an aggregate amount not to exceed $750.00:

1. Sandbags, including sand to fill them and plastic sheeting and lumber used in connection with them;

2. Fill for temporary levees;

3. Pumps; and

4. Wood;

all for the purpose of saving the *building* due to the imminent danger of a flood loss, including the value of the Insured's own labor at prevailing Federal minimum wage rates.

The *policy's building* deductible amount, as provided for at *Article 7*, shall not be applied to this reimbursement, but shall be applied to any other benefits under the *policy's building* coverage.

For reimbursement under this paragraph C. to apply, the following conditions must be met:

a. The insured property must be in imminent danger of sustaining *flood* damage; and

b. The threat of *flood* damage must be of such imminence as to lead a person of common prudence to apprehend *flood* damage; and

c. A general and temporary condition of flooding in the area must occur, even if the flooding does not reach the insured property, or a legally authorized official must issue an evacuation order or other civil order for the community in which the insured property is located calling for measures to preserve life and property from the peril of *flood*.

Article 6—Property Not Covered

This *policy shall not* cover any of the following:

A. *Valuables and commercial property, meaning*:

1. Accounts, bills, currency, deeds, evidences of debt, money, coins, medals, postage stamps, securities, bullion, manuscripts, other valuable papers or records, and personal property used in a business.

2. Personal property used in connection with any incidental commercial occupancy or use of the *building*.

B. *Property over water or in the open, meaning*:

1. A *building* and personal property in the *building* located entirely in, on, or over water or seaward of mean high tide, if the *building* was newly constructed or substantially improved on or after October 1, 1982.

2. Personal property in the open.

C. *Structures other than buildings, including*:

1. Fences, retaining walls, seawalls, bulkheads, wharves, piers, bridges, and docks.

2. Indoor and outdoor swimming pools.

3. Open structures and personal property located in, on, or over water, including boat houses or any structure or *building* into which boats are floated.

4. Underground structures and equipment, including wells, septic tanks and septic systems.

D. *Other real property, including*:

1. Land, land values, lawns, trees, shrubs, plants, and growing crops.

2. Those portions of walks, walkways, decks, driveways, patios, and other surfaces, all whether covered or not and all of whatever kind of construction, located outside the perimeter, exterior walls of the insured *building*.

E. *Other personal property, meaning*:

1. Animals, livestock, birds, and fish.

2. Aircraft.

3. Any self-propelled vehicle or machine and motor vehicle (other than motorized equipment pertaining to the service of the described *unit* or *building*, operated principally on the premises of the Insured, and not licensed for highway use) including their parts and equipment.

4. Trailers on wheels and other recreational vehicles whether affixed to a permanent foundation or on wheels.

5. Watercraft including their furnishings and equipment.

6. Personal property owned by or in the care, custody or control of a *unit* owner, except for the property described in *Article 4* under "Coverage B—Personal Property", paragraph B. of this *policy*.

F. *Basements, building enclosures lower than the elevated floors of elevated buildings, and personal property as follows*:

1. In a *special hazard area*, at an elevation lower than the lowest elevated floor of an *elevated Post-FIRM building*, including a *manufactured* (i.e., *mobile*) *home*:

a. Personal property.

b. *Building* enclosures, equipment, machinery, fixtures and components, except for the required utility connections and the footings, foundation, posts, pilings, piers or other foundation walls and anchorage system as required for the support of the *building*..

2. In a *basement* as defined in Article 2:

a. Personal property.

b. *Building* equipment, machinery, fixtures and components, including finished walls, floors, ceilings and other improvements, except for the required utility connections, fiberglass insulation, drywalls and sheetrock walls, and ceilings but only to the extent of replacing drywalls and sheetrock walls in an unfinished manner (i.e., nailed to framing but not taped, painted, or covered).

3. *Provided*, with regard to both 1. and 2., above, the following *building* and personal property items connected to a power source and installed in their functioning location *are covered* so long as the Insured has *purchased building* and personal property coverage, *as appropriate*:

- Sump pumps.
- Well water tanks and pumps.
- Oil tanks and the oil in them.
- Cisterns and the water in them.
- Natural gas tanks and the gas in them.
- Pumps and/or tanks used in conjunction with solar energy.
- Furnaces.
- Hot water heaters.
- Clothes washers and dryers.
- Food freezers and the food in them.
- Air conditioners.
- Heat pumps.
- Electrical junction and circuit breaker boxes.
- Stairways and staircases attached to the *building* which are not separated from the *building* by elevated walkways.
- Clean-up.
- Elevators, dumbwaiters, and relevant equipment, except for such relevant equipment located below the *base flood* elevation if such relevant equipment was installed on or after October 1, 1987.

G. *Property below ground, meaning* a *building* or *unit* and its contents, including personal property and machinery and equipment, which are part of the *building* or *unit*, where more than 49 percent of the *actual cash value* of such *building* or unit is below ground, unless the lowest level is at or above the *base flood* elevation by reason of earth having been used as an insulation material in conjunction with energy efficient building techniques.

H. *Certain manufactured homes, meaning* a *manufactured* (i.e., *mobile*) *home* located or placed within a FEMA designated *Special Hazard Area* that is not anchored to a permanent foundation to resist flotation, collapse, or lateral movement:

1. By over-the-top or frame ties to ground anchors; or

2. In accordance with manufacturer's specifications; or

3. In compliance with the community's floodplain management requirements;

unless it is a *manufactured* (i.e., *mobile*) *home* on a permanent foundation continuously insured by the *National Flood Insurance Program* at the same site at least since September 30, 1982.

I. *Containers* such as but not limited to gas tanks or liquid tanks.

J. *Buildings and their contents made ineligible* for *flood* insurance pursuant to the provisions of the Coastal Barrier Resources Act, 16 U.S.C. 3501 *et seq.*, and the Coastal Barrier Improvement Act of 1990, Pub. L. 101–591, 16 U.S.C. 3501 *et seq.*

Article 7—Deductibles

A. Each loss to the insured property is subject to a deductible provision under which the Insured bears a portion of the loss before payment is made under the *policy*.

B. The loss deductible shall apply separately to each *building* and personal property coverage loss including, as to each, any appurtenant structure loss and debris removal expense.

C. For any *flood* insurance *policy* issued or renewed for any property located in Zones A, AO, AH, A1–30, AE, VO, V1–30, VE, or V where the rates available for *buildings* built before the effective date of the initial Flood Insurance Rate Map or December 31, 1974, whichever is later, are used to compute the premium, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $750.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

D. For policies other than those described in paragraph C. above, the amount of the deductible for each loss occurrence is determined as follows: The Insurer shall be liable only when such loss exceeds $500.00, or the amount of any higher deductible which the Insured selected when it applied for this *policy* or subsequently by endorsement.

E. Notwithstanding the applicable deductible in paragraphs C. or D. above, an additional deductible in the sum of $250.00 shall apply separately to each *building* and contents loss before payment is made under the *policy* for land subsidence, sewer backup, or seepage of water as provided for in *Article 3*, paragraph B.3.

Article 8—Replacement Cost Coverage (For Building Coverage Only)

Subject to *Articles 7 and 9*, this *policy* will, in the event of a loss for which there is coverage and subject to the limits of *building* coverage purchased, pay the full cost of repair or replacement of the damaged parts of the *building* without deduction for depreciation. Under this Article:

A. The following outdoor property, whether attached to the insured *building* or not, are excluded from Replacement Cost Coverage: Antennas, aerials, carpeting, awnings, appliances, and other outdoor equipment.

B. Carpeting inside the insured *building* and laid over or affixed to finished or unfinished flooring is excluded from Replacement Cost Coverage.

C. The Insurer's liability for loss under this *policy* shall not exceed the smallest of the following amounts:

1. The limit of liability of this *policy* applicable to the damaged or destroyed *building*; or

2. The cost to repair or replace the *building* or any part thereof with material of like kind and quality on the same premises and intended for the same occupancy and use; or

3. The amount actually and necessarily expended in repairing or replacing said *building* or any part thereof intended for the same occupancy and use.

D. The Insurer shall not be liable for any loss on a Replacement Cost Coverage basis unless and until actual repair or replacement of the damaged *building*, or parts thereof, is completed.

E. These Replacement Cost Provisions do not apply to any *manufactured* (i.e., *mobile*) *home* which when assembled is not at least 16 feet wide or does not have an area within its perimeter walls of at least 600 square feet nor do they apply to any loss where insured property is abandoned and remains as debris at the property address following a loss.

F. If the *building* sustains a total loss or if the Insurer should pay the entire *building* loss proceeds under these Replacement Cost Provisions, there is no requirement that the *building* be rebuilt at the insured property address.

Article 9—Coinsurance (For Building Coverage Only)

A. In consideration of the rate and form under which this *policy* is written, it is expressly stipulated and made a condition of this contract that the Insurer's liability for loss under this *policy* shall be in an amount which is of no greater proportion to the amount of loss than the amount of insurance which the Insured has purchased to cover the insured property bears, at the time of loss, to the replacement cost value of the insured property, as follows:

1. If at the time of loss the total amount of insurance applicable to the insured property is the lesser of 80 percent or more of the full replacement cost of the insured property or the maximum amount of insurance available under the *National Flood Insurance Program*, the loss will be adjusted, subject to the *policy's* limit of coverage and all of the other terms and conditions of this *policy*, as if the amount of insurance and the value of the insured property are equal.

2. If at the time of loss the Insured has not purchased the maximum amount of insurance available under the *National Flood Insurance Program*, or if the replacement cost value of the covered property at the time of the loss times 80 percent is greater than the amount of insurance purchased to cover the property, the full cost of replacement or repair of the insured property, subject to the terms and conditions of this *policy*, arising out of a covered loss, shall not be paid and payment shall be made as follows:

To the extent the Insured has not purchased insurance in an amount equal to the lesser of 80 percent or more of the full replacement cost of the insured property at the time of loss or the maximum amount of insurance available under the *National Flood Insurance Program*, the Insured will not be reimbursed fully for a loss. The amount of loss to be paid in such cases shall be determined in accordance with the following formula:

$$\frac{\text{Insurance Carried}}{\text{Insurance Required}} \times \text{Amount of Loss} = \text{Limit of Recovery}$$

a. *Example 1:* The insurance carried is $500,000.00, the replacement cost value of the *building* is $1,000,000.00 (which is available under the *National Flood Insurance Program*) and the amount of the loss is $240,000.00. The formula is applied as follows:

$$\frac{\$500,000.00}{\$1,000,000.00 \times 80\%} \times \$240,000.00 = \frac{\$500,000.00}{\$800,000.00} \times \$240,000.00 = \$149,500.00 \text{ Limit of Recovery}^{*}$$

*($150,000 Less Deductible) The balance of the loss in the sum of $90,500.00 is not covered.

b. *Example 2:* The insurance carried is $1,850,000.00, the replacement cost value of the *building* is $2,000,000.00 and the amount of loss is $1,000,000.00. The formula is not applied because $1,850,000 exceeds

$1,600,000 ($2,000,000×80%). The Insured is paid the full amount of the loss ($1 Million).

B. In determining if the whole amount of insurance applicable to the *building* is 80 percent or more of the full replacement cost of such *building:*

1. The replacement cost value of any covered *building* property described in *Article 4* shall be included and the replacement cost value of any *building* property described in *Article 4* which constitutes property not covered under this *policy* shall not be included.

2. Regarding *improvements,* only the replacement cost value of *improvements* installed by the *Association* shall be included.

Article 10—General Conditions and Provisions

A. *Pair and Set Clause:* If there is loss of an article which is part of a pair or set, the measure of loss shall be a reasonable and fair proportion of the total value of the pair or set, giving consideration to the importance of said article, but such loss shall not be construed to mean total loss of the pair or set.

B. *Concealment, Fraud:* This *policy* shall be void, nor can this *policy* be renewed or any new *flood* insurance coverage be issued to the Insured if any person insured under *Article 1,* paragraph A., whether before or after a loss, has:

1. Sworn falsely, or willfully concealed or misrepresented any material fact; or

2. Done any fraudulent act concerning this insurance (see paragraph E.1.d. below); or

3. Willfully concealed or misrepresented any fact on a "Recertification Questionnaire," which causes the Insurer to issue a *policy* based on a premium amount which is less than the premium amount which would have been payable were it not for the misstatement of fact (see paragraph F. below).

C. *Other Insurance:* If a loss covered by this *policy* is also covered by other insurance, whether collectible or not, the Insurer will pay only the proportion of the loss that the limit of liability that applies under this *policy* bears to the total amount of insurance covering the loss, *provided,* if at the time of loss, there is other insurance *made available* under the *Act,* in the name of a *unit* owner which provides coverage for the same loss covered by this *policy,* this *policy's* coverage shall be primary and not contributing with such other insurance.

D. *Amendments and Waivers, Assignment:* This Standard *Flood* Insurance *Policy* cannot be amended nor can any of its provisions be waived without the express written consent of the Federal Insurance Administrator. No action the Insurer takes under the terms of this *policy* can constitute a waiver of any of its rights. Except in the case of 1. a contents only *policy* and 2. a *policy* issued to cover a *building* in the course of construction, assignment of this *policy,* in writing, is allowed upon transfer of title.

E. *Voidance, Reduction or Reformation of the Coverage:*

1. *Voidance:* This *policy* shall be void and of no legal force and effect in the event that any one of the following conditions occurs:

a. The property listed on the *application* is not eligible for coverage, in which case the *policy* is void from its inception;

b. The community in which the property is located was not participating in the *National Flood Insurance Program* on the *policy's* inception date and did not qualify as a participating community during the *policy's* term and before the occurrence of any loss;

c. If, during the term of the *policy,* the participation in the *National Flood Insurance Program* of the community in which the property is located ceases, in which case the *policy* shall be deemed void effective at the end of the last day of the *policy* year in which such cessation occurred and shall not be renewed.

In the event the voided *policy* included 3 *policy* years in a contract term of 3 years, the Insured shall be entitled to a pro-rata refund of any premium applicable to the remainder of the *policy's* term;

d. In the event any Insured or its agent has:

(1) Sworn falsely; or

(2) Fraudulently or willfully concealed or misrepresented any material fact including facts relevant to the rating of this *policy* in the *application* for coverage, or upon any renewal of coverage, or in connection with the submission of any claim brought under the *policy,* in which case this entire *policy* shall be void as of the date the wrongful act was committed or from its inception if this *policy* is a renewal *policy* and the wrongful act occurred in connection with an *application* for or renewal or endorsement of a *policy* issued to the Insured in a prior year and affects the rating of or premium amount received for this *policy.* Refunds of premiums, if any, shall be subject to offsets for the Insurer's administrative expenses (including the payment of agent's commissions for any voided *policy* year) in connection with the issuance of the *policy;*

e. The premium submitted is less than the minimum set forth in 44 CFR 61.10 in connection with any *application* for a new *policy* or *policy* renewal, in which case the *policy* is void from its inception date.

2. *Reduction of Coverage Limits or Reformation:* In the event that the premium payment is not sufficient (whether evident or not) to purchase the amount of coverage requested by an *application,* renewal, endorsement, or other form and paragraph E.1.d. does not apply, then the *policy* shall be deemed to provide only such coverage as can be purchased for the entire term of the *policy,* for the amount of premium received, subject to increasing the amount of coverage pursuant to 44 CFR 61.11; provided, however:

a. If the insufficient premium is discovered by the Insurer prior to a loss and the Insurer can determine the amount of insufficient premium from information in its possession at the time of its discovery of the insufficient premium, the Insurer shall give a notice of additional premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

b. If the insufficient premium is discovered by the Insurer at the time of a loss under the *policy,* the Insurer shall give a notice of premium due, and if the Insured *remits* and the Insurer *receives* the additional premium required to purchase (for the current *policy* term and the previous *policy* term, if then insured) the limits of coverage for each kind of coverage as was initially requested by the Insured within 30 days from the date the Insurer gives the Insured written notice of additional premium due, the *policy* shall be reformed, from its inception date, or, in the case of an endorsement, from the effective date of the endorsement, to provide *flood* insurance coverage in the amount of coverage initially requested.

c. Under subparagraphs a. and b. as to any mortgagee or trustee named in the *policy,* the Insurer shall give a notice of additional premium due and the right of reformation shall continue in force for the benefit only of the mortgagee or trustee, up to the amount of the Insured's indebtedness, for 30 days after written notice to the mortgagee or trustee.

F. *Policy Renewal:* The term of this *policy* commences on its inception date and ends on its *expiration date,* as shown on the *declarations page* which is attached to the *policy.* The Insurer is under no obligation to:

1. Send the Insured any renewal notice or other notice that the *policy* term is coming to an end and the receipt of any such notice by the Insured shall not be deemed to be a waiver of this provision on the Insurer's part.

2. Assure that *policy* changes reflected in endorsements submitted during the *policy* term are included in any renewal notice or new *policy* sent to the Insured. *Policy changes* includes the addition of any increases in the amounts of coverage.

This *policy* shall not be renewed and the coverage provided by it shall not continue into any successive *policy* term unless the renewal premium payment is received by the Insurer at the office of the *National Flood Insurance Program* within 30 days of the *expiration date* of this *policy,* subject to paragraph E. above. If the renewal premium payment is mailed by certified mail to the Insurer prior to the *expiration date,* it shall be deemed to have been received within the required 30 days. The coverage provided by the renewal *policy* is in effect for any loss occurring during this 30-day period even if the loss occurs before the renewal premium payment is received, so long as the renewal premium payment is received within the required 30 days. In all other cases, this *policy* shall terminate as of the *expiration date* of the last *policy* term for which the premium payment was timely received and in that event, the Insurer shall not be obligated to provide the Insured with any *cancellation,* termination, *policy* lapse, or *policy* renewal notice.

In connection with the renewal of this *policy,* the Insured may be requested during the *policy* term to recertify, on a Recertification Questionnaire the Insurer will provide, the rating information used to rate the most recent *application* for or renewal of insurance.

Notwithstanding the Insured's responsibility to submit the appropriate renewal premium in sufficient time to permit its receipt by the Insurer prior to the expiration of the *policy* being renewed, the Insurer has established a business procedure for mailing renewal notices to assist Insureds in meeting their responsibility. Regarding the business procedure, evidence of the placing of any such notices into the U.S. Postal Service, addressed to the Insured at the address appearing on its most recent *application* or other appropriate form (received by the Insurer prior to the mailing of the renewal notice), does, in all respects, for purposes of the *National Flood Insurance Program*, presumptively establish delivery to the Insured for all purposes irrespective of whether the Insured actually received the notice.

However, in the event the Insurer determines that, through any circumstances, any renewal notice was not placed into the U.S. Postal Service, or, if placed, was prepared or addressed in a manner which the Insurer determines could preclude the likelihood of its being actually and timely received by the Insured prior to the due date for the renewal premium, the following procedures shall be followed:

In the event that the Insured or its agent notified the Insurer, not later than 1 year after the date on which the payment of the renewal premium was due, of a nonreceipt of a renewal notice prior to the due date for the renewal premium, which the Insurer determines was attributable to the above circumstance, the Insurer shall mail a second bill providing a revised due date, which shall be 30 days after the date on which the bill is mailed.

If the renewal payment requested by reason of the second bill is not received by the revised due date, no renewal shall occur and the *policy* shall remain as an expired *policy* as of the *expiration date* prescribed on the *policy*.

G. *Conditions Suspending or Restricting Insurance:* Unless otherwise provided in writing added hereto, the Insurer shall not be liable for loss occurring while the hazard is increased by any means within the control or knowledge of the Insured.

H. *Liberalization clause:* If during the period that insurance is in force under this *policy* or within 45 days prior to the inception date thereof, should the Insurer have adopted under the *Act*, any forms, endorsements, rules or regulations by which this *policy* could be extended or broadened, without additional premium charge, by endorsement or substitution of form, then, such extended or broadened insurance shall inure to the benefit of the Insured as though such endorsement or substitution of form had been made. Any broadening or extension of this *policy* to the Insured's benefit shall only apply to losses occurring on or after the effective date of the adoption of any forms, endorsements, rules or regulations affecting this *policy*.

I. *Alterations and Repairs:* The Insured may, at the Insured's own expense, make alterations, additions and repairs, and complete structures in the course of construction.

J. *Cancellation of Policy By Insured:* The Insured may cancel this *policy* at any time but a refund of premium money will only be made when:

1. The Insured cancels a *policy* having a term of 3 years, on an anniversary date, and the reason for the cancellation is that:

a. A *policy* of *flood* insurance has been obtained or is being obtained in substitution for this *policy* and the Insurer has received a written concurrence in the *cancellation* from any mortgagee of which the Insurer has actual notice, or

b. The Insured has extinguished the insured mortgage debt and is no longer required by the mortgagee to maintain the coverage. Refund of any premium, under this subparagraph 1., shall be pro rata but with retention of the *expense constant* and the *Federal policy fee*.

2. The Insured cancels because the Insurer has determined that the property is not, in fact, in a *special hazard area;* and the Insured was required to purchase *flood* insurance coverage by a private lender or Federal agency pursuant to Public Law 93–234, section 102 and the lender or agency no longer requires the retention of the coverage. In this event, if no claims have been paid or are pending, the premium payments will be refunded in full, according to applicable *National Flood Insurance Program* regulations.

K. *Loss Clause:* Payment of any loss under this *policy* shall not reduce the amount of insurance applicable to any other loss during the *policy* term which arises out of a separate occurrence of the peril insured against hereunder; provided, that all loss arising out of a continuous or protracted occurrence shall be deemed to constitute loss arising out of a single occurrence.

L. *Mortgage Clause:* (Applicable to *building* coverage only and effective only when the *policy* is made payable to a mortgagee or trustee named in the *application* and *declarations page* attached to this *policy* or of whom the Insurer has actual notice prior to the payment of loss proceeds under this *policy*.)

Loss, if any, under this *policy*, shall be payable to the aforesaid as mortgagee or trustee as interest may appear under all present or future mortgages upon the property described in which the aforesaid may have an interest as mortgagee or trustee, in order of precedence of said mortgages, and this insurance, as to the interest of the mortgagee or trustee only therein, shall not be invalidated:

1. By any act or neglect of the mortgagor or owner of the described property; nor

2. By any foreclosure or other proceedings or notice of sale relating to the property; nor

3. By any change in the title or ownership of the property; nor

4. By the occupation of the premises for purposes more hazardous than are permitted by this *policy, provided,* that it in case the mortgagor or owner shall neglect to pay any premium due under this *policy*, the mortgagee or trustee shall, on demand, pay the same.

Provided, also, that the mortgagee or trustee shall notify the Insurer of any change of ownership or occupancy of the *building* or increase of hazard which shall come to the knowledge of said mortgagee or trustee and, unless permitted by this *policy*, it shall be noted thereon and the mortgagee or trustee shall, on demand, pay the premium for such increased hazard for the term of the use thereof; otherwise, this *policy* shall be null and void.

If this *policy* is cancelled by the Insurer, it shall continue in force for the benefit of the mortgagee or trustee for 30 days after written notice to the mortgagee or trustee of such *cancellation* and shall then cease.

Whenever the Insurer shall pay the mortgagee or trustee any sum for loss under this *policy* and shall claim that, as to the mortgagor or owner, no liability therefor existed, the Insurer shall, to the extent of such payment, be thereupon legally subrogated to all the rights of the party to whom such payment shall be made, under all securities held as collateral to the mortgage debt, or may, at its option, pay to the mortgagee or trustee the whole principal due or to grow due on the mortgage with interest, and shall thereupon receive a full assignment and transfer of the mortgage and of all such other securities, but no subrogation shall impair the right of the mortgagee or trustee to recover the full amount of said mortgagee's or trustee's claim.

M. *Mortgagee Obligations:* If the Insured fails to render proof of loss, the named mortgagee or trustee, upon notice, shall render proof of loss in the form herein specified within 60 days thereafter and shall be subject to the provisions of this *policy* relating to appraisal and time of payment and of bringing suit.

N. *Loss Payable Clause* (*Applicable to contents items only*): Loss, if any, shall be adjusted with the Insured and shall be payable to the Insured and loss payee as their interests may appear.

O. *Requirements in Case of Loss:* Should a *flood* loss occur to the insured property, the Insured must:

1. Notify the Insurer in writing as soon as practicable;

2. As soon as reasonably possible, separate the damaged and undamaged property, putting it in the best possible order so that the Insurer may examine it; and

3. Within 60 days after the loss, send the Insurer a proof of loss, which is the Insured's statement as to the amount it is claiming under the *policy* signed and sworn to by the Insured and furnishing the following information:

a. The date and time of the loss;

b. A brief explanation of how the loss happened;

c. The Insured's interest in the property damaged (for example, "owner") and the interests, if any, of others in the damaged property;

d. The *actual cash value* or replacement cost, whichever is appropriate, of each damaged item of insured property and the amount of damages sustained;

e. The names of mortgagees or anyone else having a lien, charge or claim against the insured property;

f. Details as to any other contracts of insurance covering the property, whether valid or not;

g. Details of any changes in ownership, use, occupancy, location or possession of the insured property since the *policy* was issued;

h. Details as to who occupied any insured *building* at the time of loss and for what purpose; and

i. The amount the Insured claims is due under this *policy* to cover the loss, including statements concerning:

(1) The limits of coverage stated in the *policy*; and

(2) The cost to repair or replace the damaged property (whichever costs less).

4. Cooperate with the Insurer's adjuster or representative in the investigation of the claim;

5. Document the loss with all bills, receipts, and related documents for the amount being claimed;

6. The insurance adjuster whom the Insurer hires to investigate the claim may furnish the Insured with a proof of loss form, and she or he may help the Insured to complete it. However, this is a matter of courtesy only, and the Insured must still send the Insurer a proof of loss within 60 days after the loss even if the adjuster does not furnish the form or help the Insured complete it. In completing the proof of loss, the Insured must use its own judgment concerning the amount of loss and the justification for the amount.

The adjuster is not authorized to approve or disapprove claims or to tell the Insured whether the claim will be approved by the Insurer.

7. The Insurer may, at its option, waive the requirement for the completion and filing of a proof of loss in certain cases, in which event the Insured will be required to sign and, at the Insurer's option, swear to an adjuster's report of the loss which includes information about the loss and the damages needed by the Insurer in order to adjust the claim.

8. Any false statements made in the course of presenting a claim under this *policy* may be punishable by fine or imprisonment under the applicable Federal laws.

P. *Options After a Loss:* Options the Insurer may, in its sole discretion, exercise after loss include the following:

1. *Evidence of Loss:* If the Insurer specifically requests it, in writing, the Insured may be required to furnish a complete inventory of the destroyed, damaged and undamaged property, including details as to quantities, costs, *actual cash values* or replacement cost (whichever is appropriate), amount of loss claims, and any written plans and specifications for repair of the damaged property which can reasonably be made available to the Insurer.

2. *Examination Under Oath and Access to the Condominium Association's Articles of Association or Incorporation, Property Insurance Policies, and Other Condominium Documents:* The Insurer may require the Insured to:

a. Show the Insurer, or its designee, the damaged property;

b. Be examined under oath by the Insurer or its designee;

c. Sign any transcripts of such examinations; and

d. At such reasonable times and places as the Insurer may designate, permit the Insurer to examine and make extracts and copies of any *condominium* documents, including the Articles of Association or Incorporation, Bylaws, rules and regulations, Declarations of the *condominium*, property insurance policies, and other *condominium* documents; and all books of accounts, bills, invoices and vouchers, or certified copies thereof if the originals are lost, pertaining to the damaged property.

3. *Options to Repair or Replace:* The Insurer may take all or any part of the damaged property at the agreed or appraised value and, also, repair, rebuild or replace the property destroyed or damaged with other of like kind and quality within a reasonable time, on giving the Insured notice of the Insurer's intention to do so within 30 days after the receipt of the proof of loss herein required under paragraph O. above.

4. *Adjustment Options:* The Insurer may adjust loss to any insured property of others with the owners of such property or with the Insured for their account. Any such insurance under this *policy* shall not inure directly or indirectly to the benefit of any carrier or other bailee for hire.

Q. *When Loss Payable:* Loss is payable within 60 days after the Insured files its proof of loss (or within 90 days after the insurance adjuster files an adjuster's report signed and sworn to by the Insured in lieu of a proof of loss) and ascertainment of the loss is made either by agreement between the Insured and the Insurer in writing or by the filing with the Insurer of an award as provided in paragraph S. below.

If the Insurer rejects the Insured's proof of loss in whole or in part, the Insured may accept such denial of its claim, or exercise its rights under this *policy*, or file an amended proof of loss as long as it is filed within 60 days of the date of the loss or any extension of time allowed by the Administrator.

R. *Abandonment:* The Insured may not abandon damaged or undamaged insured property to the Insurer.

However, the Insurer may permit the Insured to keep damaged, insured property ("salvage") after a loss and reduce the amount of the loss proceeds payable to the Insured under the *policy* by the value of the salvage.

S. *Appraisal:* If at any time after a loss, the Insurer is unable to agree with the Insured as to the *actual cash value*—or, if applicable, replacement cost—of the damaged property so as to determine the amount of loss to be paid to the Insured, then:

1. On the written demand of either the Insurer or the Insured, each shall select a competent and disinterested appraiser and notify the other of the appraiser selected within 20 days of such demand.

2. The appraisers shall first select a competent and disinterested umpire and failing, after 15 days, to agree upon such umpire, then on the Insurer's request or the Insured's request, such umpire shall be selected by a judge of a court of record in the State in which the insured property is located.

3. The appraisers shall then appraise the loss, stating separately replacement cost, *actual cash value* and loss to each item; and, failing to agree, shall submit their differences, only, to the umpire.

4. An award in writing, so itemized, of any two (appraisers or appraiser and umpire) when filed with the Insurer shall determine the amount of *actual cash value* and loss or, should this *policy's* replacement cost provisions apply, the amount of the replacement cost and loss.

5. Each appraiser shall be paid by the party selecting him or her and the expenses of appraisal and umpire shall be paid by both parties equally.

T. *Action Against the Insurer:* No suit or action on this *policy* for the recovery of any claim shall be sustainable in any court of law or equity unless all the requirements of this *policy* shall have been complied with, and unless commenced within 12 months next after the date of mailing of notice of disallowance or partial disallowance of the claim. An action on such claim against the Insurer must be instituted, without regard to the amount in controversy, in the United States District Court for the district in which the property shall have been situated.

U. *Subrogation:* In the event of any payment under this *policy*, the Insurer shall be subrogated to all the Insured's rights of recovery therefor against any party, and the Insurer may require from the Insured an assignment of all rights of recovery against any party for loss to the extent that payment therefor is made by the Insurer. The Insured shall do nothing after loss to prejudice such rights; however, this insurance shall not be invalidated should the Insured waive in writing prior to a loss any or all rights of recovery against any party for loss occurring to the described property.

V. *Continuous Lake Flooding:* Where the insured *building* has been inundated by rising lake waters continuously for 90 days or more and it appears reasonably certain that a continuation of this flooding will result in damage, reimbursable under this *policy*, to the insured *building* equal to or greater than the *building policy* limits plus the deductible(s) or the maximum payable under the *policy* for any one *building* loss, the Insurer will pay the Insured the lesser of these two amounts without waiting for the further damage to occur if the Insured signs a release agreeing to:

1. *Make no further claim* under this *policy*; and

2. *Not seek* renewal of this *policy*; and

3. *Not apply for any flood* insurance under the *Act* for property at the property location of the insured *building*.

If the *policy* term ends before the insured *building* has been flooded continuously for 90 days, the provisions of this paragraph V. still apply so long as the first *building* damage reimbursable under this *policy* from the continuous flooding occurred before the end of the *policy* term.

W. *Duplicate Policies Not Allowed:* Property may not be insured under more than one *policy* issued under the *Act*. When the Insurer finds that duplicate *policies* are in effect, the Insurer shall by written notice give the Insured the option of choosing which *policy* is to remain in effect, under the following procedures:

1. If the Insured chooses to keep in effect the *policy* with the earlier effective date, the Insurer shall by the same written notice give

the Insured an opportunity to add the coverage limits of the later *policy* to those of the earlier *policy*, as of the effective date of the later *policy*.

2. If the Insured chooses to keep in effect the *policy* with the later effective date, the Insurer shall by the same written notice give the Insured the opportunity to add the coverage limits of the earlier *policy* of those of the later *policy*, as of the effective date of the later *policy*.

In either case, the Insured must pay the pro rata premium for the increased coverage limits within 30 days of the written notice. In no event shall the resulting coverage limits exceed the statutorily permissible limits of coverage under the *Act* or the Insured's insurable interest, whichever is less.

The Insurer shall make a refund to the Insured, according to applicable *National Flood Insurance Program* rules, of the premium for the *policy* not being kept in effect.

For purposes of this paragraph W., the term *effective date* means the date coverage that has been in effect without any lapse was first placed in effect. In addition to the provisions of this paragraph W. for increasing *policy* limits, the usual procedures for increasing limits by mid-term endorsement or at renewal time, with the appropriate waiting period, are applicable to the *policy* the Insured chooses to keep in effect.

Article 11—What Law Governs

This *policy* is governed by the *flood* insurance regulations issued by FEMA, the National Flood Insurance Act of 1968, as amended (42 U.S.C. 4001, *et seq.*) and Federal common law.

In witness whereof, the Insurer has executed and attested these presents.

James L. Witt,

Director, Federal Emergency Management Agency.

(The information required under the terms of this policy has been approved by the Office of Management and Budget under OMB control number 3067–0021.)

PART 62—SALE OF INSURANCE AND ADJUSTMENT OF CLAIMS

12. The authority citation for part 62 is revised to read as follows:

Authority: 42 U.S.C. 4001 *et seq.;* Reorganization Plan No. 3 of 1978, 43 FR 41943, 3 CFR, 1978 Comp., p. 329; E.O. 12127 of Mar. 31, 1979, 44 FR 19367, 3 CFR, 1979 Comp., p. 376.

§ 62.3 [Amended]

13. Section 62.3 is amended as follows:

a. By revising paragraph (b) to read as follows:

* * * * *

(b) National Con-Serv, Inc., whose offices are located in Rockville, Maryland, is the servicing agent for the Federal Insurance Administration.

* * * * *

b. By removing paragraph (d).

(Catalog of Federal Domestic Assistance No. 83.100, "Flood Insurance")

Dated: November 12, 1993.

James L. Witt,

Director.

[FR Doc. 93–28487 Filed 11–24–93; 8:45 am]

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federal register

Friday
November 26, 1993

Part III

Department of Transportation

Federal Highway Administration

Orders in Motor Carrier Safety Enforcement Cases; Notice

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

Orders in Motor Carrier Safety Enforcement Cases

AGENCY: Federal Highway Administration (FHWA), DOT.

ACTION: Notice of agency decisions.

SUMMARY: This document gives notice of the Decisions and Orders served from February 8, 1993, to September 30, 1993, concerning motor carrier and hazardous materials proceedings conducted pursuant to 49 CFR Part 386. These Orders include both those issued by the Associate Administrator for Motor Carriers and those decided by Administrative Law Judges and adopted by the Associate Administrator. Earlier motor carrier safety enforcement decisions were published previously on March 31, 1993 (58 FR 16916), June 26, 1992 (57 FR 28709), October 26, 1990 (55FR 43264) and January 29, 1990 (55 FR 2924).

FOR FURTHER INFORMATION CONTACT: Mr. Charles Medalen, Office of Chief Counsel, Federal Highway Administration (202) 366–1354, 400 Seventh Street, SW., Washington, DC 20590. Office hours are from 7:45 a.m. to 4:15 p.m., et., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: The following orders are being published:

Name	Docket No.
Monson Trucking, Inc	R5–93–097
Exide Corporation	PA–93–001–561
Payne, Inc	R3–92–132
Used Equipment Sales, Inc	R1–91–03
Forsyth Milk Hauling Co., Inc.	91–GA–020–SA
Carry Companies of Illinois, Inc.	R5–93–348
Mr. Nick's Transporation and Brokerage, Inc.	R1–92–147
Trailer Shuttle Systems, Inc	R1–92–425
F & L Oil Co., Inc	R3–92–005
Browning-Ferris Industries of Alabama, Inc..	93–AL–027–SH
American Diversified Construction, Inc.	90–TN–043–SA
Elkins Distributing Co., Inc	R3–91–228
L. P. Fleming, Jr., Hauling, Inc	R3–91–159
James Kelton, Sr. d/b/a Kelton Tours.	90–AL–028–SA
National Retail Transportation, Inc..	R1–92–03
Trailer Shuttle Systems, Inc	R1–92–425
Browning-Ferris Industries of Alabama, Inc..	93–AL–027–SH
PGT Trucking, Inc	R3–92–278
John Steven Johnson	R9–89–058
Northeastern Poly Products, Inc.	92–207
PGT Trucking, Inc	R3–92–278
WDP Transportation, Inc	91–KY–027–SA
Owings Transport, Inc	R3–91–196
Otto Brehm, Inc	R1–92–132
Lakeview Farms, Inc	R3–91–157
Bill Carter Trucking, Inc	R3–91–279
Allen A. West	91–196
Northeastern Poly Products, Inc.	92–207
Twenty-eight Motor Carrier Safety Cases.	

(23 U.S.C. 315; 49 CFR 1.48)

Issued On: November 16, 1993.

Rodney E. Slater,

Federal Highway Administrator.

Before the Federal Highway Administration: In the Matter of Monson Trucking, Inc., Respondent; Docket No. R5–93–097.

Order Granting an Extension of Time

On September 9, 1993, the Regional Director, Region 5, filed a motion for final order on a December 4, 1992, notice of claim citing Monson Trucking, Inc., (Monson) with 38 violations of the Federal Motor Carrier Safety Regulations.[1]

Monson responded in a letter dated September 22, 1993, stating that it did not receive the Regional Director's motion for final order until September 15 and requesting an additional 14 days to reply to the motion. The carrier asserts that the additional time is necessary to permit it to adequately review and address the issues raised in the motion. The Regional Director has not responded to Monson's request.

Therefore, pursuant to 49 CFR 386.33, I find that good cause has been shown for granting the time extension.

It is hereby ordered that Monson Trucking's request for an extension of time to reply to the Regional Director's motion for final order is granted. Monson shall have until Wednesday, October 6, 1993, to respond to the September 9, 1993, motion.

Dated: September 30, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration; In the matter of Exide Corporation, Respondent; Docket No. PA–93–001–561.

Order

This matter comes before me on a motion for final order by the Regional Director, Region 3. This proceeding is governed by the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 C.F.R. part 386.

Background

In a notice of claim dated February 8, 1993, Respondent Exide Corporation was cited for 25 violations of Federal Motor Carrier Safety Regulations (FMCSRs). Twenty-two of these violations were for the repeated use of a driver who had tested positive for the use of controlled substances. These counts were cited as substantial health or safety violations of 49 CFR 391.11(a) and 391.95(a) and a penalty of $220,000 was assessed. The three remaining counts involved the use of three other drivers without first receiving the results of preemployment controlled substances tests for each driver. These counts were cited as a serious pattern of violations of 49 CFR 391.11(a) and 391.103(a) and a penalty of $3,000 was assessed for these violations. Notices of investigation and abatement were included with the notice of claim.

By letter dated February 19, 1993, Exide responded to these notices through counsel requesting a hearing "to determine if any violations did occur and if they did, whether they were of a serious or substantial nature." Exide's only specific denial, however, was that the alleged violations were neither "serious or substantial."

The Regional Director's June 28 motion for a final order asserts that Exide's response failed to comply with the requirements of 49 CFR 386.14 in that it failed to list all material facts believed to be in dispute. The Regional Director opposes the request for a hearing and asks that the Associate Administrator find the facts to be as alleged in the notice of claim and to impose a total penalty of $223,000 as assessed in the notice of claim. Attached to the Regional Director's motion is evidence supporting the violations alleged in the notice of claim.

On July 6 Exide answered the motion for final order opposing it and reiterating Exide's request for a hearing. The Regional Director replied to Exide's answer on July 12 and supplemented his reply on September 1.

Discussion

1. Violations of the Federal Motor Carrier Safety Regulations

If a motor carrier contests the charges against it and seeks a hearing, its reply "must contain * * * an admission or denial of each allegation of the claim * * * and a concise statement of the facts constituting each defense * * *." 49 CFR 386.14(b)(1). In addition, "[a]

[1] I note that the Regional Director's motion did not include a copy of the notice of claim.

request for a hearing must list all material facts believed to be in dispute." 49 CFR 386.14(b)(2). I find that Exide's response of February 19 does not meet the requirements of Part 386.

A motion for final order is analogous to a motion for summary judgment. See, *e.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16,983 (FHWA Order 1993) (affirmed by Final Order Sept. 23, 1993). The Regional Director has submitted documentary evidence supporting his motion for a final order. This documentary evidence establishes a *prima facie* case that Exide violated the safety regulations cited in the notice of claim. Exide has not submitted evidence or argument tending to rebut the Regional Director's *prima facie* case.

The Associate Administrator has held in numerous cases that when a carrier seeks a hearing under 49 CFR 386.14 that is opposed by the Regional Director with sufficient evidence, then simple denials will not suffice and the carrier must properly support its hearing request. *In re Kelton Tours*, FHWA Docket No. 90–AL–028–SA, Final Order at 2 (July 28, 1993), *citing In re Bryant Trucking*, 58 FR 16,968 (FHWA 1992) (Final Order). To the extent that Exide's February 19 response can be read to deny any facts alleged in the notice of claim, I find such bare denial to be insufficient to support Exide's request for a hearing in view of the Regional Director's *prima facie* case.

Accordingly, I deny Exide's request for a hearing and I find that Exide violated the FMCSRs as alleged in the notice of claim by requiring or permitting Thomas A. Hodges to drive a commercial motor vehicle in interstate commerce on the dates cited in Exhibit A to the notice of claim, despite Mr. Hodges' positive controlled substances test which rendered him unqualified to drive, and by requiring or permitting Donald Allen Green, Michael L. Gannon, and Mark E. Sanders to drive commercial motor vehicles in interstate commerce on the dates cited in Exhibit B to the notice of claim, despite Exide's failure to complete the required preemployment controlled substances testing for these drivers.

2. Penalty Determinations

The notice of claim states that requiring or permitting a driver to drive a commercial motor vehicle in interstate commerce, after that driver has tested positive for controlled substances, constitutes a "substantial health or safety violation" of the FMCSRs and that, in this case, requiring or permitting three drivers to operate commercial motor vehicles in interstate commerce without first completing the required controlled substances testing amounts to a "serious pattern of safety violations."

Exide specifically challenges the Regional Director's assertion that the use of a driver who tested positive for controlled substances amounts to a substantial health or safety violation. Exide argues that the Regional Director must demonstrate that the use of this driver, who tested positive more than a week before the first of the 22 instances cited in the notice of claim, resulted in serious personal injury or death or could have reasonably led to serious injury or death. Moreover, Exide faults the Regional Director for not offering any evidence that the driver was impaired at the time of the violations.

Impairment of the driver is not an issue in this case. Exide has not been charged with permitting an impaired driver to drive. Exide has been charged with violating the FHWA's controlled substances testing regulations which expressly provide that a person who tests positive for controlled substances is not qualified to drive. The Regional Director's position in this regard is fully consistent with FHWA policy.

The use of unqualified or disqualified drivers poses a serious threat to the traveling public. See, *e.g., Used Equipment Sales, Inc.*, 58 FR 16,952, at 16,962 (1993) (Order of the Administrative Law Judge) (affirmed upon review, Final Order September 23, 1993). I have recently held that the use of a driver who was unqualified to drive because of a positive test result for controlled substances constituted a substantial health or safety violation of the FMCSRs. *In the Matter of Mr. Nick's Transportation and Brokerage, Inc.*, FHWA Docket No. R1–92–147 (August 26, 1993). Accordingly, I find Exide's use of Thomas A. Hodges as a driver of a commercial motor vehicle in interstate commerce, while unqualified as a result of a positive controlled substances test, constitutes a substantial health or safety violation of the FMCSRs. Similarly, I find Exide's use of Donald Allen Green, Michael L. Gannon, and Mark E. Sanders as drivers of commercial motor vehicles in interstate commerce, while unqualified as a result of Exide's failure to complete the required preemployment controlled substances tests for these drivers, constitutes a serious pattern of violations of the FMCSRs. *Id.*

Exide also argues that the Regional Director should show how each day of driving by an unqualified driver represents a separate violation and not just one violation of the FMCSRs. Again, the Regional Director's position on this issue is consistent with long-standing agency interpretation of its regulations. Each time a motor carrier dispatches an unqualified or disqualified driver to drive, the carrier separately violates the FMCSRs. See *Used Equipment Sales, Inc.*, FHWA Docket No. R1–91–03 (Final Order September 23, 1993).

The Regional Director has assessed the maximum civil penalty allowed under law for the 25 violations cited in the notice of claim. Exide has argued the assessed penalty is inappropriate and that the burden is on the Regional Director to support his penalty assessment.

The amount of the civil penalty is determined by taking into account the "nature, circumstances, extent, and gravity of violations committed, and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance." 49 U.S.C. 521(b)(2)(C). I agree with Exide that the burden of proof is on the Regional Director to establish the justification for and amount of the penalties assessed in an enforcement action. *Used Equipment Sales, Inc.*, 58 FR 16,952, at 16,962 (1993) (Order of the Administrative Law Judge) (affirmed upon review, Final Order September 23, 1993). I do not agree, however, that a hearing is required. The Associate Administrator has repeatedly held that an objection to the penalty amount does not constitute a material factual issue in dispute which would merit a hearing. See, *e.g., In re Drotzmann, Inc.*, 55 FR 2,929 (FHWA 1990) (Order Appointing Administrative Law Judge). While the Associate Administrator has stated that he has the inherent authority to send a matter to a hearing if a hearing will enhance his ability to make a decision in a particular case (*Gunther's Leasing Transport, Inc.*, Order of the Associate Administrator September 30, 1991, published at 58 FR 16,985 (1993)), I do not believe that a hearing is necessary in this case to determine the appropriate penalty.

Nevertheless, I believe that the record before me is inadequate for me to independently determine the appropriate penalty in this case. The Regional Director's motion for final order states that the Regional Director considered the size of the carrier and prior enforcement proceedings against it in assessing the penalty amount. As noted above, the statute authorizing civil penalties requires additional factors to be considered, and I find that the parties must further address the penalty issue before I can determine

whether the penalty assessed by the Regional Director is reasonable.

It is hereby ordered that Exide's hearing request is denied, that the Regional Director's motion for final order is granted as to the issue of liability, and the Regional Director and Exide are directed to submit pleadings and supporting evidence, not already submitted, addressing the appropriate penalty for the 25 violations cited in the notice of claim and for which this order finds Exide liable. The parties shall submit their pleadings within 30 days of the date of this order. Either party may reply to the pleading of the other within 15 days of the date of service of the pleading. Submissions shall be in accordance with 49 CFR 386.61.

Dated: September 24, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Payne, Inc., Respondent. Docket No. R3–92–132.

Final Order

This matter comes before me upon a Verified Motion for Final Order by the Regional Director, Region 3. The Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386, govern this proceeding.

Background

The Respondent, Payne, Inc. (Payne), is an authorized for-hire carrier of general freight. After a July 1991 compliance review of its operations revealed numerous hazardous materials violations, Payne was issued an "unsatisfactory" safety rating and an Operations Out-of-Service Order the following October. A subsequent review of Payne's operations was performed on December 6, 1991, and revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR parts 350–399. As a result of this review, the Regional Director issued a notice of claim to Payne on February 24, 1992.

The notice of claim charged Payne with 18 violations of the FMCSRs. Specifically, the carrier was charged with nine violations of § 395.3(a)(1), requiring or permitting a driver to drive more than 10 hours following 8 consecutive hours off duty; six violations of § 395.3(b), requiring or permitting a driver to drive after having been on duty more than 70 hours in eight consecutive days; and three violations of § 395.8(e), failing to ensure that entries on records of duty status are true and correct, in that a driver used by Payne allegedly made false entries upon records of duty status.

Payne submitted two replies to the notice of claim, the first on March 4, 1992, and the second on March 13, 1992. In its first reply, Payne requested an administrative hearing, but stated that it "[did] not dispute the facts of the eighteen (18) violations * * * set forth in the Notice of Claim * * *." Payne claimed, however, that it intended to present at a hearing evidence tending to show that the FHWA's Federal Program Manager for Region 3 had approved, prior to the December 6, 1991, compliance review, a "plan" under which Payne would "abate all safety violations" cited in the October 1991 Out-of-Service Order. According to the carrier's reply, "[t]he plan went into initial effect December 1, 1991[,] but did not take full effect until about December 9, 1991. Payne, Inc.[,] advised the [FHWA] that it would not be ready for another safety review until the week of December 9 through 13, 1991, but the Federal agents conducted the review prematurely on or about December 6, 1991." Respondent's March 4, 1992, Letter at 1.

On March 13, 1992, Payne submitted a second reply, which it styled an "amendment and supplement" to its earlier letter. The carrier again stated that it did not dispute the facts of the 18 violations cited in the notice of claim, but argued that the FHWA's investigators "misrepresented" the July 1991 review as "a follow-up to an earlier review conducted in 1983" and also "misrepresented" to Payne that the "*sole purpose* of [the review on] * * * December 6, 1991[,] was to remove the out of service order for transporting hazardous materials * * *," and not to search for additional violations of the FMCSRs. Respondent's March 13, 1992, Letter at 1.

The Regional Director submitted his Verified Motion for Final Order and in Opposition to Request for a Hearing on April 9, 1993. In his motion, the Regional Director stated that the December 6, 1991, compliance review was intended as a follow-up to both the October 1991 Out-of-Service order and an earlier enforcement action. The Regional Director's motion specifically denied that the FHWA Federal Program Manager had agreed to any sort of "grace period" before Payne would have to come into compliance with the FMCSRs. Regional Director's Motion for Final Order at 2–3. Payne has made no reply to this motion.

Discussion

1. Payne's Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *." 49 CFR 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute."Section 386.14(b)(2).

Payne has not denied any of the charges in the notice of claim. Furthermore, for reasons that will be explained more fully in the next section, I find Payne's statements concerning the alleged "plan" fail to show the existence of a material factual dispute as to the 18 violations charged in the notice of claim. Accordingly, I decline to grant Payne's request for an administrative hearing.

2. The Regional Director's Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16,983 (FHWA 1991) (Order). Consequently, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). All inferences must be drawn in favor of the non-moving party.

As I have already noted, Payne has not denied the charges leveled against it in the notice of claim. Furthermore, the Regional Director's motion was accompanied by extensive documentary evidence, including drivers' records of duty status, company invoices, shipping papers, etc., tending to show that Payne committed each of the violations charged against it in the notice of claim.

The only remaining issue for purposes of Payne's liability is the carrier's claim that it entered into an agreement with the Federal Program Manager to allow it a grace period before coming into full compliance with the FMCSRs. In his motion for final order, the Regional Director's took issue with Payne's description of the "plan," claiming instead that it consisted only of a list of actions to be taken by Payne to abate the violations found during the July 1991 compliance review that led to the issuance of the Out-of-Service order. According to the Regional Director, "Payne's allegation that it had a plan to correct its past noncompliance with some type of grace period approved by [the Federal Program Manager] is an irrelevant misunderstanding * * *."

Regional Director's Verified Motion for Final Order at 3.

Regardless of whether such an agreement was actually made, I do not believe that an FHWA Federal Program Manager has the authority to allow a motor carrier to continue to operate in violation of the FMCSRs. Consequently, any such agreement would be invalid. Moreover, I note that the violations discovered in December 1991 occurred the previous October and November, two to four months after the compliance review that led to an Out-of-Service Order. These violations involve both the regulations governing carriers' recordkeeping and drivers' hours-of-service. Payne's failure to remedy these violations by October 1991 is unacceptable.

For all of these reasons, I find that Payne committed the 18 violations charged in the notice of claim. Therefore, I grant the Regional Director's motion for final order.

3. Penalty Determination

For each of the 15 charges involving hours-of-service violations, the Regional Director assessed a penalty of $750. The record before me indicates that these 15 counts, which occurred over a period of less than two months, involved no fewer than six of Payne's drivers. I find these two types of charges demonstrate serious patterns of safety violations, subject to a maximum penalty of $1,000 per violation, not to exceed $10,000 per pattern. 49 U.S.C. 521(b)(2)(A). I note that the penalty assessed by the Regional Director is within the statutory limits. Payne has provided me with no reason to reduce the assessed penalty, and considering the nature and scope of the violations, I decline to do so. 49 U.S.C. 521(b).

The three remaining charges are for violations of recordkeeping requirements, and subject the carrier to a maximum penalty of $500 for each violation. 49 U.S.C. 521(b)(2)(A). The Regional Director assessed a penalty of $400 for each count. Payne has offered no arguments in mitigation of this amount, and the record before me provides none. Accordingly, I find the penalties assessed by the Regional Director appropriate and reasonably calculated to induce Payne's compliance with the FMCSRs.

It is hereby ordered that the Regional Director's motion for a final order is granted. Payne, Inc., is directed to pay $12,450 to the Regional Director within 30 days of the date of this Order.

Dated: September 23, 1993.

John P. Elcher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Used Equipment Sales, Inc., Respondent. Docket No. R1–91–03.

Final Order

This matter comes before me on a petition for review of a decision of Administrative Law Judge Robert L. Barton, Jr., served on May 6, 1992. In his decision, the Administrative Law Judge found Respondent Used Equipment Sales, Inc., liable for 31 violations of the Federal Motor Carrier Safety Regulations and assessed a total civil penalty of $37,900.[1] For the reasons set forth below, the decision of the Administrative Law Judge is affirmed and hereby adopted as a final agency order.

1. Respondent Used Equipment Sales, Inc., argues that the Administrative Law Judge erred in holding that each day of use of a disqualified driver may be considered a separate offense. Respondent asserts that holding a carrier liable for separate violations for each day it used a disqualified driver amounts to cumulative penalties for the same continuing offense, and that such cumulative penalty is not authorized by the civil penalty statute (49 U.S.C. 521(b)).

In this case the Administrative Law Judge found Respondent liable for separate dispatches of disqualified drivers. This holding is in accord with the Federal Motor Carrier Safety Regulations. Section 391.15 provides that a carrier may not require or permit a driver who is disqualified to drive. 49 CFR 391.15. Each time a carrier dispatches a disqualified driver on a new trip is a separate violation. To accept Respondent's argument would compel us to conclude that continuous and repeated use of a disqualified driver during the period the driver is disqualified would never constitute more than one violation of the agency's regulations. That clearly is not the law.

2. Respondent argues that the Administrative Law Judge erred in ruling that Respondent should have known of the disqualification of driver MacDonald.

The Judge dealt with this issue at length. He held that Respondent should have know that MacDonald, and other drivers, were disqualified and, in effect, would have known they were disqualified if Respondent exercised closer control over its operations.

Nothing in Respondent's Petition for Review provides me with a basis for overturning the Judge's conclusion on this point. Respondent argues that there were no facts to put company officials on notice that MacDonald had been disqualified. Respondent further argues that no "reasonable inquiry" that might have been made would have disclosed the fact of MacDonald's disqualification.

I believe that the Administrative Law Judge's findings and conclusions as to what Respondent knew or should have known are entitled to considerable deference. The Judge conducted a full, formal hearing in this matter, observed the witnesses, weighed all the evidence, and applied the law to form his conclusions. I concur with the Regional Director that the Judge "determined that it was the duty of the respondent to take effective measures to supervise the performance of its employees." To accept Respondent's argument on this point would be to accept the notion that a motor carrier could escape liability for noncompliance with important safety regulations if it adopted company policies that employees should obey the law, but then took no effective action to ensure that the employees abided by that policy. Respondent points to no facts that prevented Respondent from more closely monitoring the work of both its drivers and its dispatchers.

3. Respondent argues that the Administrative Law Judge erred in ordering that a civil penalty be paid for Respondent's use of MacDonald, a driver who was disqualified. Respondent argues that, in effect, the Judge found that the dispatch of MacDonald was not a substantial health or safety violation. [Respondent argues that the FHWA does not have civil penalty authority available to it unless the alleged violation falls into one of three penalty categories (substantial health or safety, serious pattern, or recordkeeping).] The Regional Director in reply maintains that the Judge never said that the dispatch of MacDonald was not a substantial health or safety violation.

The Administrative Law Judge's discussion of this violation must be read in the context of the Judge's entire opinion. First, I note that the primary discussion of the violation involving MacDonald, and the assessment of a $1,500 fine for each use of that driver, is under the heading of "Substantial Health and Safety Violations" (page 53 through 57). Second, while the Judge specifically stated that he could not determine that the dispatch of

[1] The November 21, 1990, notice of claim upon which this case is based alleged 32 violations of the Federal Motor Carrier Safety Regulations and assessed a total penalty of $75,500.

MacDonald was a "serious infraction" because there was no evidence showing why McDonald's license was suspended (see Decision at 55), on page 47 of the decision the Judge expressly found that MacDonald was disqualified for safety reasons and posed "a serious threat to the traveling public."

The test for what constitutes a "substantial health or safety violation" is set forth in the statute, *i.e.*, whether the violation "could reasonably lead to, or has resulted in, serious personal injury or death * * *." 49 U.S.C. 521(b)(2)(A). In *R. W. Bozel Transfer, Inc.* the Associate Administrator discussed "substantial health or safety violations," as that term is used in 49 U.S.C. 521(b), and stated that "Whether an action is a threat to health and safety is inherent in the action itself * * *." 58 FR 16,918, at 16,920.

The Administrative Law Judge in this case has exhaustively analyzed the facts of this case. The Judge's decision contains a lengthy discussion of both the liability and penalty issues raised in this case. I believe that the Judge concluded that the dispatch of MacDonald, who had been disqualified, was a substantial health or safety violation because of the serious threat to the traveling public posed by disqualified drivers. The Judge further concluded, however, that a lesser penalty was warranted that that imposed for the use of drivers Bradley and DeVasto because of the lack of evidence on the specific reason MacDonald's license was suspended. Thus, the Judge mitigated the assessed penalty for using this disqualified driver because of an absence of evidence to show *how* serious these violations were. I find nothing in Respondent's Petition for Review to persuade me that the judge erred in concluding that the dispatch of MacDonald, after MacDonald was disqualified, constituted a substantial health or safety violation. Similarly, I find nothing in the record before me to warrant revising the Judge's penalty determination for these particular violations.

4. Respondent argues the Administrative Law Judge erred with respect to Respondent's failure to retain copies of records of duty status and driver inspection reports required to have been prepared by driver DeVasto. Respondent mischaracterizes, however, the Administrative Law Judge's imposition of "cumulative per diem penalties." As discussed above, the fact of the matter is that Respondent was not assessed penalties for multiple days of the same violation (*i.e.*, for succeeding days' failure to maintain a particular record). Rather, Respondent was found to have separately violated the recordkeeping requirements for separate days. Each of the separate days cited required separate reports which Respondent failed to obtain and keep. The Judge's decision on this point is consistent with the Federal Highway Administration's longstanding interpretation of the Federal Motor Carrier Safety Regulations.

In its Petition for Review, Respondent claims that it was double punishment to cite Respondent for Respondent's failure to keep both records of duty status and vehicle inspection reports. Respondent claims that the form it uses for driver's records of duty status contains the required vehicle inspection reports on the reverse side.

The applicable safety regulations separately require the retention of driver's records of duty status and vehicle inspection reports. While a carrier is permitted under the rules to combine a record of duty status with any other form (49 CFR 395.8(a)(1)), the carrier's decision to combine the record of duty status with another agency required form does not insulate the carrier from citations for separate violations, which is what occurred here.

The Respondent also argues that the Administrative Law Judge erred in failing to consider the fact that "when Respondent discharged driver DeVasto it no longer had an effective means to enforce collection of logs and vehicle inspection records."

The safety regulations impose a duty on motor carriers to take effective steps to ensure that their drivers make and submit driver's records of duty status and vehicle inspection reports. The Judge found that Respondent did not have an effective system in place for ensuring that these reports were made and submitted. I believe that the Judge carefully assessed the facts in this instance and properly applied the law to find Respondent liable for these violations. The record amply supports a finding that Respondent was in violation of the regulations before terminating DeVasto, and any inability to secure from DeVasto the required records afterward would speak to mitigation rather than exoneration. In this instance, I believe that the Administrative Law Judge properly weighed all the facts in arriving at his penalty determinations.

For the Reasons Set Forth Above, *It is hereby ordered* that the Administrative Law Judge's Decision of May 6, 1992, is adopted and Respondent Used Equipment Sales, Inc., is directed to pay $37,900 to the Regional Director, Region 1, within 30 days of the date of this Order.

Dated: September 23, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Forsyth Milk Hauling Co., Inc., Respondent, Docket No. 91–GA–020–SA.

Final Order

This matter comes before me on a renewed motion for final order by the Regional Director, Region 4. This proceeding is governed by the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386 (Rules of Practice).

Background

On December 5, 1991, the Associate Administrator issued an order in this case, holding that Forsyth Milk Hauling Co., Inc., (Forsyth), failed to report a reportable accident within the required time period in violation of 49 CFR 394.9(a). The carrier admitted it reported the accident several months after it occurred and only after it was told by a Federal Highway Administration safety investigator that this accident was "reportable" under 49 CFR 394.3[1] The Associate Administrator also held that, in the face of Forsyth's denials, the Regional Director did not make a *prima facie* showing that Forsyth committed the remaining 14 charges of failing to properly maintain driver qualification files as required under 49 CFR 391.51(a). Therefore, he denied the Regional Director's motion for final order as to these 14 counts but granted him leave to renew this motion. *In re Forsyth Milk Hauling Co.*, 58 FR 16,983 (FHWA 1983) (Order).

On May 4, 1992, the Regional Director filed a renewed motion for final order on the remaining counts. Included with that motion was a declaration by safety investigator Randolo B. Cuttino whose review of Forsyth's operations led to the charges in this case. The investigator declared that all of the driver qualification files he examined were incomplete, and that Forsyth employees were unable to produce the missing documents by the end of the two-day compliance review. Forsyth's president, by sworn declaration, replied that he did keep complete driver qualification files on the dates the compliance review was conducted, but that they were simply misplaced and could not be

[1] Part 394, Notification and Reporting of Accidents, has since been removed from the Federal Motor Carrier Safety Regulations. 58 FR 6726 (1993). Effective March 4, 1993, 49 CFR 390.15(b) provides that instead of submitting reports, carriers are required to maintain a register recording each "accident," as defined in 49 CFR 390.5, for a period of one year after the accident occurs.

located for the investigator due to the confusion caused by his bookkeeper's imminent departure from the company and by the investigator's unexpected arrival.

The carrier also contests the reportable accident charge. In his sworn statement, Forsyth's president stated the non-fatal accident was not a "reportable accident" under 49 CFR 394.3 because there were no injuries requiring treatment away from the scene and the damages were under $4,400. Forsyth claimed it submitted an accident report on the September 30, 1990, accident "in a good faith effort to comply" with the recommendations made by the investigator, not because it was obligated to do so under § 394.9. Forsyth attached to its reply a copy of the accident report which indicates a person other than the carrier's driver or co-driver was injured in the accident. This accident report was a part of the record upon which the Associate Administrator issued his December 1991 order. The Regional Director did not respond to Forsyth's pleading and thus did not address the carrier's assertion regarding the reportable accident charge.

Discussion

The Regional Director's Renewed Motion for Final Order

The December 5, 1991, opinion in this case addressed at great length the evidentiary burden borne by the Regional Director when seeking a final order on motion. Because the Regional Director would bear the burden of proving that Forsyth committed the alleged violations at any hearing on these charges, he must clearly establish all of the essential elements of his claim when seeking this summary disposition. *In re American Pacific Power Apparatus, Inc.*, 58 FR 16,977, at 16,978 (FHWA 1993) (Order). All pleadings, affidavits, and supporting evidence must show that there is no genuine issue as to any material fact and that the Regional Director is entitled to a judgment as a matter of law.

A. Incomplete Driver Qualification File Charges

The declarations of Messrs. Cuttino and Sanders, Sr., reveal that the parties do not dispute the facts surrounding Mr. Cuttino's examination of the carrier's driver qualification files on January 10 and 11, 1991. Both parties agree that the carrier could not produce the missing documents at the time of the review. The parties disagree, however, on the consequences of these facts.

The Regional Director concludes that the files could not be produced because they "did not exist." (Mot. Final Order at 4.) Even if Forsyth did have the required files at the time of the review, the Regional Director asserts that "[a]ny late submission of DQ files which Forsyth might attempt in the future would fail to disprove the failure to maintain DQ files at the time of the review." (Mot. Final Order at 5.) Therefore, the Regional Director argues, the carrier violated 49 CFR 391.51(a) because it failed to properly maintain a driver qualification file on each driver it employs. But Forsyth asserts that it "did have Driver Qualification files on January 10 and 11, 1991 and that they were in order" but were simply misplaced due to the confusion. (Sanders Decl. at 3.) The carrier concludes that this fact, coupled with its willingness to submit the complete files to the Regional Director once they were located, support a finding that it did properly maintain its driver qualification files at all times.

Thus, the pleadings plainly raise a question of law, not fact, namely, whether a carrier's inability to produce complete driver qualification files at the time of a compliance review, despite its claim that it did have the complete records at that time, constitutes a violation of 49 CFR 391.51(a). For the reasons set forth below, I find that Forsyth, in failing to produce the driver qualification files upon demand, violated § 391.51(a).

The motor carrier investigation program is built upon a practice of unannounced carrier reviews. By providing limited, if any, advance notice of the review, the safety investigator is better able to determine a carrier's true level of compliance with the Federal Motor Carrier Safety Regulations. Given sufficient notice, all but the most remiss carrier could cure its deficiencies before the arrival of the investigator. The FHWA cannot tolerate such piecemeal compliance, but instead requires that carriers consistently comply with the FMCSRs. In recognition of this policy, 49 U.S.C. 504(c) authorizes safety investigators, on demand and display of proper credentials, to inspect the equipment of a carrier and inspect and copy any record of a carrier. Thus, the statute authorizing safety inspections and the underlying aim of the inspection program both support the finding that a carrier must be able to produce certain documents *on demand*. Forsyth was not able to do so, and therefore violated 49 CFR 391.51(a).

B. Failure To Report a Reportable Accident Charge

The carriers' May 4, 1992, pleading and the declaration of its president now dispute the reportable accident violation for which Forsyth was found liable and fined $300 in the December 5, 1991, order.

Any party may petition the Associate Administrator for reconsideration of a final order within 20 days after issuance under 49 CFR 386.64. Any aggrieved person adversely affected by a final order, may, within 30 days of such order, petition for its review in a United States Court of Appeals under 49 CFR 386.67. Because Forsyth's May 4 pleading was submitted to me, I consider his objections to the reportable accident charge to be a petition for reconsideration of the Associate Administrator's ruling on this count in the December 5 order. Coming five months after the date of entry of the order, well past the 20-day time limit, Forsyth's claim is untimely.

The principle of finality of agency decisions cautions against re-opening an issue once it is fully and fairly addressed. That principle dictates the result in this case. With his original motion for final order, the Regional Director submitted a motor carrier accident report which revealed that a person in the car involved in the September 30, 1990, accident with a Forsyth driver was injured. In addition, Forsyth admitted in its reply to the notice of claim [2] that it did not report the injury accident until told to do so by the safety investigator several months after the accident occurred. Thus, the Associate Administrator found that Forsyth admitted it failed to report the accident in a timely manner. Since the Associate Administrator thoroughly addressed the reportable accident charge in his earlier order. I find no reason to reconsider the charge at this late date.

Penalty Determination

The Regional Director assessed a penalty of $300 for each of the 14 driver qualification charges. The general civil penalty provision, 49 U.S.C. § 521(b)(2), establishes a maximum civil penalty of $500 for each such recordkeeping violation. Forsyth has not directly

[2] Forsyth also failed to reply to the Regional Director's original motion for final order. Thus, the carrier had the opportunity to raise its objection to the reportable accident charge in response to the Regional Director's motion but failed to do so. Similarly, Forsyth could have petitioned for reconsideration or appealed but did neither. To the extent that this decision is adverse to Forsyth, it is, in part, attributable to the carrier's failure to fully participate in this proceeding.

objected to the penalty amount, but has asserted it is now willing to supply the Regional Director with the missing driver qualification files. As the Associate Administrator has held before, post-review compliance efforts carry little weight in determining an appropriate penalty. Forsyth "should have been in full compliance prior to this action based on its earlier contacts with the Agency," because Forsyth was cited for driver qualification file violations in a 1984 safety review report. See *In re Stanford & Inge*, 55 Fed. Reg. 43,296 (FHWA 1990) (Order Upon Reconsideration). Moreover, in spite of Forsyth's assertions that it would supply the missing driver qualification files, they have apparently never been produced. Thus, Forsyth has not shown that it has, in fact, taken action to correct its long history of driver qualification file deficiencies.

The extent of these driver qualification file violations is great. The compliance review report documents that the carrier was unable to produce a single properly-maintained driver qualification file. Forsyth claims the circumstances surrounding the inspection, *i.e.*, the confusion of the inspector's unplanned arrival at the time his bookkeeper was departing, somehow justify its inability to produce the requested records. I cannot agree. This factor is a mitigating one at best, and I believe the mid-range penalty of $300 per violation sufficiently reflects this factor. Finally, Forsyth has not claimed it would be unable to pay the $4,200 penalty, or that such sum would adversely affect its ability to continue to do business. Nor do I independently find evidence in the record that would lead me to believe payment of the $4,200 sum would cause undue financial hardship for Forsyth.

After applying the nine penalty determination factors in 49 U.S.C. 521(b)(2)(C) to the facts of this case, I find that the $4,200 penalty assessed by the carrier is reasonably calculated to induce compliance with the regulations.

It is hereby ordered that the Regional Director's motion for final order is granted, and Forsyth Milk Hauling Co., Inc., is directed to pay the sum of $4,200 for 14 violations of 49 CFR 391.51(a), failing to properly maintain a driver qualification file for each driver it employs.

Dated: September 23, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Carry Companies of Illinois, Inc., Respondent. Docket No. R5–93–346.

Order

This matter comes before me on a motion by Respondent Carry Companies of Illinois, Inc. (Carry), for an extension of time until September 17, 1993, to reply to a notice of claim and a notice of investigation, apparently dated July 16, 1993, and a notification of safety rating, apparently dated July 14, 1993. This motion was filed by counsel for Carry on August 18, which, according to the motion, was the date Carry engaged the service of counsel to represent it. The request for additional time is based on the need for counsel to consult with Carry and to review Carry's records.

The Regional Director has opposed this request for additional time partly on the ground that additional time is not needed under 49 CFR part 385 to respond to the notification of safety rating and partly because the Regional Director believes that the request is a delaying tactic.

At the outset I wish to note that the record before me consists solely of Carry's motion, the Regional Director's opposition, and Carry's August 19 rebuttal to the Regional Director's opposition. I do not have copies of the notice of claim, notice of investigation, or notification of safety rating.

I agree with the Regional Director that additional time is not now needed for Carry to respond to the notification of safety rating. Section 385.15 of the Federal Highway Administration (FHWA) regulations provides that petitions for review of safety ratings are to be submitted within 90 days to the Director, Office of Motor Carrier Field Operations. 49 CFR 385.15(b)(1). Carry's response to the safety rating notice should be made to the Director of that office in accordance with part 385 of the regulations. By my reckoning, Carry has until October 12, 1993, to submit such a petition.

Review of the notice of claim and notice of investigation is governed by 49 CFR part 386, FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings. 49 CFR 386.11. Reply to a notice of claim combined with a notice of investigation is due in 30 days. 49 CFR 386.11(c)(3) and 386.14(a). Requests for extensions of time are properly filed with the Associate Administrator. 49 CFR 386.33.

Apparently based on a compliance review of June 14, 1993, Carry's safety rating was downgraded to conditional and it was served with a notice of claim for $29,000 and a notice of investigation. Carry has requested a limited extension of time for it to consult counsel and for counsel to prepare a reply to the agency's actions of July 14 and 16. I am not persuaded that this request constitutes a "delaying tactic." Nothing in the record before me indicates that Carry has attempted to evade its responsibilities under either the substantive safety regulations or the FHWA's procedural regulations. The Regional Director's pleading admits that Carry was in contact with the Regional motor carrier safety office at least within 30 days of the notice of investigation. The Regional Director does not say whether Carry submitted any written reply during that time.

The Regional Director has not indicated in what way the government would be prejudiced by giving the respondent limited, additional time to prepare its response to the agency's charges. The Regional Director has not alleged that he believes that Carry has defaulted and that the notice of claim has become a final agency order, nor has the Regional Director moved the Associate Administrator for a final order respecting the notice of investigation. See 49 CFR 386.14(e).

I believe that the interests of justice will be best served by permitting Carry until September 17, 1993, to respond to the notice of claim and notice of investigation issued to it on July 16, 1993. Respondent Carry is advised that its reply should conform in all other respects to the requirements of section 386.14(b).

Accordingly, *it is hereby ordered* that Carry Companies of Illinois, Inc., shall reply to the July 16, 1993, notice of claim and notice of investigation on or before September 17, 1993.

Issued: August 26, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Mr. Nick's Transportation and Brokerage, Inc., Respondent. Docket No. R1–92–147.

Final Order

This matter comes before me upon a motion by the Regional Director, Region 1, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 C.F.R. part 386.

Background

The Respondent, Mr. Nick's Transportation and Brokerage, Inc. (Mr. Nick's), is an authorized for-hire carrier of fruit and produce. After a compliance review of Mr. Nick's operations in October and November 1991 allegedly

revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), the Regional Director served the carrier with a notice of claim on December 23, 1991. The notice of claim charged Mr. Nick's with 13 violations of the FMCSRs, including: one violation of §§ 391.11(a) and 391.95, using an unqualified driver who tested positive for a controlled substance; one violation of § 391.11(b), using a driver less than 21 years old; seven violations of § 391.103, failing to require a driver-applicant who the motor carrier intends to hire or use to be tested for the use of controlled substances as a pre-qualification condition; two violations of § 395.3, requiring or permitting a driver to drive after having been on duty more than 70 hours in eight consecutive days; and two violations of § 391.51, failing to maintain a complete qualification file for each driver used or employed.

Mr. Nick's replied to the notice of claim in a letter dated January 14, 1992. The carrier did not deny any of the charges in the notice of claim, but asked for an administrative hearing in order to "state our case and ask for consideration and leniency." Respondent's Reply at 1. The carrier offered explanations for each of the violations charged in the notice of claim.

The Regional Director submitted his Motion for Final Order on February 18, 1992. Mr. Nick's has made no reply to this motion.

Discussion

1. Mr. Nick's Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * * " 49 CFR 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute." § 386.14(b)(2). Ordinarily, unless a respondent's reply complies with these basic requirements, no hearing will be granted.

As I have already noted, Mr. Nick's has not denied any of the charges listed in the December 1991 notice of claim. In fact, with the exception of the charge of using a driver who had tested positive for a controlled substance, the carrier has admitted to all of the charges, while offering explanations in mitigation of the assessed penalties. With regard to the positive drug test, Mr. Nick's stated that "[t]he driver was and [sic] excellent driver, has several safe driving awards in his past experience. When tested again, the driver tested negative. This seems to cast serious doubt on the validity of the previous test and raises the question of error." Respondent's Reply at 2. I do not find this statement to be a denial that one of the carrier's drivers did in fact test positive for a controlled substances. Furthermore, Mr. Nick's does not deny that it used this driver after the date of the positive test. Instead, the reply contains a mere allegation, without elaboration, that the driver was later retested with negative results. The record before me contains no other evidence that the driver in question actually underwent a second test, nor does it provide any evidence as to when such a test might have taken place (hours, days, or weeks after the first test?). For these reasons, I find this statement does not present a material factual issue in dispute requiring a hearing.

Turning to Mr. Nick's request that a hearing be granted in order to allow it to present arguments for mitigation of the penalty amount, I note that "[m]itigation alone is not a material factual issue in dispute subject to hearing." *In the Matter of Tonawanda Tank Transport Service, Inc.*, 55 FR 43,279 (FHWA 1990) (Final Order). Accordingly, for the reasons set forth above, I hereby deny Mr. Nick's request for an administrative hearing.

2. The Regional Director's Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16,983 (FHWA 1991) (Order). Consequently, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). All inferences must be drawn in favor of the non-moving party, Mr. Nick's in this case.

As I have already noted, Mr. Nick's has not denied any of the charges leveled against it in the notice of claim. The Regional Director, on the other hand, has not submitted any affidavits or other evidence tending to support the charges. When a carrier denies the allegations against it but the Regional Director nevertheless seeks to avoid a hearing and obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish at least a *prima facie* case. See, *e.g., Forsyth Milk*, FR at 16,984. But in the absence of a denial by the carrier, I do not believe that the Regional Director must submit affidavits or other evidence in support of his motion for final order. *In re Bill Carter Trucking, Inc.*, 58 FR 16,935 (FHWA 1992) (Final Order). If Mr. Nick's had denied any of the charges against it, then the Regional Director would have been required to submit documentary or other evidence supporting his charges.[1] *Id.*

I do not believe Mr. Nick's can complain that the Regional Director has not produced substantive evidence in support of the violations alleged. The carrier has failed to deny any of the charges cited and ignored repeated opportunities to rebut the Regional Director's allegations, most recently by failing to respond to the Regional Director's motion for final order.

Accordingly, based on the record before me in this case, I find that Mr. Nick's committed the 13 violations cited in the notice of claim. Therefore, I grant the Regional Director's motion for final order.

3. Penalty Determination

The notice of claim alleged that the charge of using a driver who had tested positive for a controlled substance constituted a "substantial health and safety violation," and assessed a penalty of $3,000. Whether an action is a threat to health and safety, and thus subject to a maximum penalty of $10,000 under 49 U.S.C. § 521(b)(2)(A), is inherent in the action itself. *In re R.W. Bozel Transfer, Inc.*, 58 FR 16,918, 16,920 (FHWA 1992) (Final Order). In this case, the facts indicate that Mr. Nick's used a driver found to have used controlled substances in the past. The use of this driver by the carrier created a substantial safety hazard for members of the public who had to share the road with the driver. Accordingly, I find the violation of §§ 391.11(a) and 391.95 constituted a substantial health and safety violation warranting a significant penalty.

In its defense, Mr. Nick's has requested mitigation of the penalty amount, and has made unsubstantiated statements to the effect that the driver tested negative for drugs at a later date. In light of the serious nature of this violation, however, and absent more concrete information from the carrier in response to the notice of claim or the Regional Director's motion for final order, and recognizing that the assessed penalty is well below the maximum allowed by law, I find that no reduction in the amount of the penalty is warranted.

For each of the counts involving the use of an underage driver, failure to

[1] As stated in the discussion of Mr. Nick's hearing request, I do not find the carrier's statements concerning the positive drug test charge to rise to the level of a denial. *See* p. 3, *supra*.

require pre-employment drug tests, or hours-of-violations, the Regional Director assessed a penalty of $1,000. As for these counts, the record before me indicates that the underage driver (who was just 18 at the time of the violations) was used more than once by the carrier, and the record before me also demonstrates multiple violations of both the pre-employment drug-testing and hours-of-service regulations. I find these three types of charges demonstrate serious patterns of safety violations, subject to a maximum penalty of $1,000 per violation, not to exceed $10,000 per pattern. 49 U.S.C. 521(b)(2)(A). I note that the penalty assessed by the Regional Director is within the statutory limits. Mr. Nick's has provided me with no reason to reduce the assessed penalty, and considering the nature and scope of the violations, I decline to do so.

As for the two remaining counts, for violations of recordkeeping provisions of the FMCSRs, the Regional Director assessed a penalty of $500 for each count, the maximum amount for such violations. *Id.* In its reply to the notice of claim, Mr. Nick's alleges that these violations have been corrected. I find this argument unavailing for purposes of reducing the assessed penalty amount, however, because Mr. Nick's should have been in compliance with the regulations *before* the initiation of this action. See *In the Matter of Stanford & Inge*, 55 FR 43,296 (FHWA 1990) (Order Upon Reconsideration). I also note that although these charges are for recordkeeping violations, one of them involved the use of Mr. Nick's underage driver. Accordingly, I find the penalties assessed by the Regional Director appropriate and reasonably calculated to induce Mr. Nick's compliance with the FMCSRs.

It is hereby ordered that the Regional Director's motion for a final order is granted. Mr. Nick's Transportation and Brokerage, Inc., is directed to pay $14,000 to the Regional Director within 30 days of the date of this Order.

Dated: August 26, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Trailer Shuttle Systems, Inc., Respondent. Docket No. R1–92–425.

Final Order

Introduction

This matter comes before me on a motion by the Regional Director, Region 1, for a final order finding Respondent Trailer Shuttle Systems, Inc. (TSS), of Mississauga, Ontario, Canada, liable for 14 violations of the Federal hours of service regulations (49 CFR part 395) and assessing a penalty of $7,000 (United States). By order dated May 25, 1993, I extended the time for TSS to reply to the Regional Director's motion. On May 29, Michael Dorken, President of TSS, replied by letter opposing the Regional Director's motion, and on June 7, 1993, counsel for the Regional Director responded renewing the Regional Director's request for a final order.

On August 24, 1992, the Region 1 office of the Federal Highway Administration (FHWA) sent a notice of claim to TSS alleging that TSS was liable for fourteen (14) violations of the Federal Motor Carrier Safety Regulations. Motion at Exhibit 5. These violations included 10 instances of accepting false reports of a record of duty status and 4 violations of accepting altered supporting documents, all in violation of 49 CFR 395.8(e). *Id.* A total penalty of $7,000 was assessed for these alleged violations. *Id.*

Right to a Hearing

The notice of claim stated that Respondent TSS had 3 options in responding to the notice of claim: (1) Pay the fine; (2) contest the matter within 15 days; or (3) discuss settlement of the case. The letter clearly stated that options 2 and 3 required TSS to reply in 15 days. The 15-day response period for cases in which respondents wish to contest notices of claim is statutorily based. 49 U.S.C. 521(b)(1); see also 49 CFR 386.14(a). The notice of claim further set forth the necessity of complying with the requirements 49 CFR part 386, including the need to list all material factual issues believed to be in dispute if a hearing is requested, and the consequences for failing to request a hearing within 15 days, *i.e.*, a waiver of the right to a hearing. See 49 CFR 386.14(b).

By letter dated August 28, 1992, the President of TSS responded to the notice of claim. Motion at Exhibit 7. This letter explicitly acknowledges receipt of the August 24 notice of claim, but states that Mr. Dorken was "unable to allocate any immediate time to the alleged accusations," due to "a change in [his] marital status." *Id.* This letter clearly does not meet the requirements of the applicable regulation, 49 CFR 386.14.

Mr. Dorken again wrote to the Regional Office on September 22, 1992. Motion at Exhibit 8. Nowhere in that letter does Mr. Dorken deny that the alleged violations occurred. Indeed, he appears to admit that inaccurate documents are accepted because the only alternative that occurs to him is to "shred" them, thus "mak[ing] us an accomplice to falsifying." Mr. Dorken then outlined the steps that TSS took to discipline the drivers responsible for these "inaccurate" reports, including terminating some of the drivers.

Mr. Dorken's assertion that "shredding" is the only alternative to "accepting" is patently absurd. This agency expects that motor carriers operating commercial motor vehicles on public highways will exercise that quantum of control over their drivers necessary to ensure compliance with applicable safety regulations. Whether termination from employment, a rather severe measure to be sure, is necessary to secure a driver's compliance is a determination we leave to motor carriers to make. In any event, the terminations Mr. Dorken asserts TSS effected appear to have been initiated after the safety investigator brought the violations to the carrier's attention. Thus, at best, these "remedial" actions might be viewed as mitigating factors in assessing a penalty rather than exonerating the carrier from liability for the violations.

Mr. Dorken also failed to request a hearing in his September 22 letter. In fact, he expressed his hope that "it will not become necessary for me to apply for a formal hearing * * *."

Mr. Dorken's September 22 letter also does not conform to the requirements of 49 CFR 386.14(b). Rather, this letter evidences TSS's intent to pursue option 3 presented in the notice of claim, *i.e.*, TSS sought to settle the claim against it. The record before me, including Mr. Dorken's letters of October 29 and December 4, 1992, indicates that the parties discussed settlement of this case, obviously without success. Accordingly, I conclude that the record supports a finding that, at least from August 28 through December 4, 1992, TSS failed to deny the charges against it and failed to request a hearing, but pursued the third option of seeking to settle this case with the FHWA Regional Office.

I have also carefully reviewed Mr. Dorken's letters of January 29, February 15, May 7, and May 29, 1993. I find Mr. Dorken's protestations about the reasonableness of the 15-day response period unavailing.

The FHWA considers compliance with its safety rules to be an important matter for all motor carriers engaged in interstate or foreign commerce. We believe that the Congress indicated the importance it assigns to compliance in specifying 15 days as the time in which a motor carrier should contest alleged safety violations. on August 28, Mr. Dorken asserted that his personal affairs

precluded his devoting any time to reviewing and responding to serious allegations of safety violations. On September 22, Mr. Dorken wrote to say that he had time to review the charges against TSS. Nevertheless, his response again failed to conform to the requirements of 49 CFR 386.14(b), if it was his intention at that time to request a hearing. Specifically, he failed to deny the violations or request a hearing.

In view of TSS's failure to timely request a hearing in this matter, I find that TSS has waived its right to a hearing in this matter.

Motion for Final Order

The Regional Director's motion for a final order is accompanied by an affidavit of the FHWA safety specialist who conducted the compliance review that forms the basis of the instant case. Documentary evidence supporting the violations alleged in the notice of claim, apparently obtained from the carrier's files, is attached to this affidavit. Mr. Dorken's May 29, 1993, letter reflects that he has read these documents, yet he fails to offer any evidence or argument contradicting them. Indeed, he repeats assertions made in his September 22, 1992, letter that TSS terminated the employment of some of its drivers because of the violations discovered by the FHWA safety investigator and alleged in the notice of claim.

Based on the record before me, I find that the Regional Director has established a *prima facie* case that the violations occurred as alleged in the notice of claim. TSS has failed to convincingly deny these violations occurred nor has it satisfactorily rebutted the case presented by the Regional Director. Generally, it appears Mr. Dorken seeks to shift the responsibility for compliance with safety regulations to TSS's drivers. I find this to be inconsistent with the motor carrier's duty to require observance of the safety regulations by the driver, 49 CFR 390.11; see *R.W. Bozel Transfer, Inc.*, 58 FR 16,918, 16,920 (March 31, 1993) (FHWA Final Order 1992). Moreover, a fair reading of Mr. Dorken's letters reveals a pattern of assigning a low priority to meeting the safety obligations of a carrier involved in foreign commerce. Indeed, his personal affairs appear to have interfered more than once with his ability to devote attention to the claim against TSS.

Based on the record before me, I find that the violations alleged in the August 24, 1992, notice of claim occurred. I also hold that TSS is directly liable both for the actions of its drivers in submitting false documents and for its own actions in accepting these false documents.

Penalty Determination

The Regional Director has assessed the maximum penalty permitted by law for the individual recordkeeping violations cited in the notice of claim. Mr. Dorken's letter of May 29 asks that I mitigate the penalty in this case, but affords no basis for doing so.

The statute pursuant to which the Regional Director assessed the $7,000 penalty in the instant case provides that certain factors are to be considered. 49 U.S.C. 521(b). These factors include gravity of the violation, degree of culpability, and history of prior offenses. The record before me indicates that TSS management has accepted documents deliberately falsified in violation of safety regulations. TSS has been the subject of previous safety and compliance reviews and was the subject of an enforcement proceeding in 1991 which resulted in the payment of $2,250 for similar violations. I believe that the $7,000 penalty assessed in this case fully takes into account the aggravating factors outlined above.

TSS has provided no evidence to show that it is unable to pay this fine nor that it will adversely affect TSS's ability to continue to do business. Insofar as it is painful, the statute also provides that the assessment shall be calculated to induce further compliance. 49 U.S.C. 521(b)(2). It appears that the payment of $2,250 in 1991 for similar violations failed to induce TSS to comply with these regulations in 1992.

It is hereby ordered that the Regional Director's motion for final order is granted, and Trailer Shuttle Systems, Inc., is directed to pay the sum of $7,000 (United States) to the Regional Director, Region 1, within 30 days of this order for accepting false reports of records of duty status and altered supporting documents.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of F & L Oil Co., Inc., Respondent. Docket No. R3–92–005.

Final Order

This matter comes before me upon a motion by the Regional Director, Region 3, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

The Respondent, F & L Oil Company, Inc. (F & L), is a private interstate carrier of petroleum products. After an October 17, 1991, compliance review allegedly revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and the Hazardous Materials Regulations (HMRs), the Regional Director served F & L with a notice of claim on January 6, 1992. The notice charged the carrier with a total of 28 violations, including: one violation of § 391.21, using a driver who has not completed and furnished a proper application for employment (count one); two violations of § 391.23, failing to maintain in drivers' qualification files responses to inquiries into drivers' driving and/or employment records (counts 2–3); three violations of § 391.25, failing to maintain in drivers' qualification files notations of annual reviews of drivers' driving records (counts 4–6); three violations of § 391.27, failing to maintain in drivers' qualification files lists or certificates of violations of motor vehicle laws or ordinances (counts 7–9); ten violations of § 395.8(a), failing to require driver to make and submit a record of duty status (counts 10–19); and nine violations of § 180.405(b), transporting hazardous materials requiring specification packaging in nonspecification cargo tanks (counts 20–28).

F & L requested a hearing in a reply dated January 22, 1992. F & L denied counts 2, 4, 5, 7, 8, and 23 through 28. As for the remaining 17 charges, all involving the same driver, F & L claimed that it was not responsible for the alleged violations because the driver in question, Ronald Rumley, was an "independent contractor" and "not an employee of F & L Oil Company, Inc. * * *" Reply of F & L Oil Co., Inc., at 1.

The Regional Director submitted his Motion for Final Order and In Opposition to Request for a Hearing on March 6, 1992. F&L responded to this motion on March 13, 1992. The Regional Director then submitted two Amendments to the motion on March 23, 1992, along with exhibits and other evidence to support the charges in the notice of claim. After conducting discovery, and after F&L submitted documentary evidence in response to a request by the Regional Director, in August 1992 both sides joined in a request that the Associate Administrator for Motor Carriers render a ruling on this matter.

Discussion

1. F&L's Request for an Administrative Hearing

The Rules of Practice require a motor carrier seeking a hearing to include in its reply "an admission or denial of each allegation of the claim * * * and a concise statement of facts constituting each defense * * *." 49 CFR 386.14(b)(1). The hearing request must also "list all material facts believed to be in dispute." § 386.14(b)(2). Furthermore, "[i]f the Regional Director opposes the hearing request, as in this case, the motor carrier must do more than just deny the allegations in its pleadings. It must give sufficient evidence to support its allegations." *In the Matter of American Pacific Power Apparatus, Inc.*, 58 FR 16977 (FHWA 1992) (Order).

F&L has denied 11 of the 28 charges in the notice of claim and has offered a defense against liability for the remainder. These latter counts, all involving a driver that F&L claims was an "independent contractor" (counts 1, 3, 6, 9, and 10–22), concern a question of law—the driver's employment status under the FMCSRs—and not of fact. Accordingly, I deny F&L's request for a hearing on these counts.

For the six hazardous materials charges (counts 23–28) that do not involve Rumley, F&L denied the allegations in the notice of claim, stating that the vehicles in question had been inspected at a local garage. I find that this denial also presents a legal, not a factual question: Does such an inspection satisfy the requirements of the HMRs? As such, I decline to grant the respondent's request for a hearing on these counts.

The five remaining counts (2, 4, 5, 7, and 8) involve incomplete driver qualification files. F&L has denied each of these counts, and in response to a discovery request by the Regional Director has supplied documentary evidence tending to show that the carrier did, in fact, have at least some of the required documents in its possession. Nevertheless, F&L has never denied that it did not have these documents at its Bluefield, Virginia, office (where the October 1991 compliance review took place). Nor has F&L denied that it failed to tell the FHWA's safety inspectors that the records might exist elsewhere. F&L did not produce the required records at the time of the review. Therefore, the records that F&L has produced subsequent to that time do not demonstrate the existence of a material factual issue in dispute concerning the allegations in the notice of claim.

2. The Regional Director's Motion for Final Order

I have held a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16983 (FHWA 1991) (Order). Accordingly, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). All inferences must be drawn in favor of the non-moving party, F&L in this case.

As noted in the previous section, while F&L does not deny 17 of the charges against it (counts 1, 3, 6, 9, and 10–22), it nevertheless claims that it should not be held liable for these charges because they involve F&L's use of a driver whom the carrier claims was an "independent contractor" and not its "employee." This defense is without merit, since the term "employee," as defined in the FMCSRs, clearly includes "independent contractors" such as Ronald Rumley.[1] Therefore, based on F&L's failure to deny these counts and the documentary evidence submitted by the Regional Director, I find F&L liable for these counts and grant the Regional Director's motion for a final order as to counts 1, 3, 6, 9, and 10 through 22.

F & L denied the six hazardous materials charges not involving driver Rumley (counts 23–28), claiming in its reply that the vehicles in question "had been inspected by Shaffers Crossing Garage of Roanoke, Virginia, and there was a plackard [sic] on the truck identifying it as a hauler of hazardous materials." Reply of F & L Oil Co., Inc., at 2. F & L has provided no further evidence to demonstrate that the vehicles in question met the requirements of the HMRs. The Regional Director, on the other hand, has provided numerous exhibits, including copies of photographs of the vehicles in question and an affidavit by the FHWA safety investigator, tending to show that the carrier committed the alleged violations. I find the carrier's statement, without more, to be insufficient to overcome the Regional Director's *prima facie* case, and I hereby grant the Regional Director's motion for final order as to counts 23 through 28.

The last five charges (counts 2, 4, 5, 7, and 8) involve incomplete driver's qualification files. The evidence before me in this case tends to show that F & L did not produce the pertinent records when requested to do so during the October 1991 compliance review. Moreover, this evidence, including the affidavit of the safety investigator who performed the compliance review, indicates that the carrier never informed the FHWA that the requested records might exist elsewhere than the carrier's Bluefield, Virginia, office.[2] Only months later, after a request for the production of documents was served on the carrier by the Regional Director, did F & L produce some, but not all, of the documents that were missing at the time of the compliance review.

Based on the evidence before me, I conclude that F & L has failed to rebut the Regional Director's *prima facie* case as to counts 2, 4, 5, 7, and 8. Accordingly, for the reasons set forth above, I hereby grant the Regional Director's motion for final order for these counts.

3. Penalty Determination

The notice of claim assessed a penalty of $300 for each violation of the FMCSRs, and a penalty of $1,000 for each violation of the HMRs. Title 49, United States Code, § 521(b)(2)(C), provides nine factors to be considered in assessing the propriety of penalties assessed pursuant to the FMCSRs. Substantially the same factors are provided in 49 U.S.C. app. § 1809(a) for consideration of penalties assessed pursuant to the HMRs.

Reviewing the record before me in light of these factors, I note first that there is no indication that F & L was the subject of any prior enforcement action resulting in either an admission of liability by the carrier or a formal finding against it. I also note that while 19 of the 28 counts leveled against F & L are for violations of recordkeeping requirements, nine of the counts are for more serious violations of the HMRs. Also, nothing in the record before me indicates that F & L cannot pay the assessed penalty, which I note is well below the maximum allowed by law. See 49 U.S.C. 521(b)(2)(A); 49 U.S.C. app. § 1809(a).

F & L did submit documents tending to show that it had in its possession at

[1] 49 CFR 390.5 reads, in pertinent part, "*Employee* means: (a) A driver of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle) * * *" *See also* 49 CFR 390.11; *In re Bozell Transfer, Inc.*, 58 FR 16918, 16920 (FHWA 1992) (Final Order).

[2] While F & L claims that its payroll, health insurance, and personnel records are kept at its Roanoke, Virginia, office, Affidavit of Coy Bowling at 1, its letterhead states that the company's "Main Office" is located in Bluefield, Virginia, where the October 1991 compliance review took place. Further, the evidence before me indicates that at least two earlier safety reviews took place at the same location. Affidavit of Terry Runge-Earle at 2. F & L admits that it has never submitted a written request to the FHWA for divided records authority, as required by 49 CFR 391.51(g). Respondent's Answer to Regional Director's First Request for Admissions at 1.

least some of the records pertaining to counts 2, 4, 5, 7, and 8. Nevertheless, the carrier has never denied that it did not produce these records at the time of the compliance review, nor has F & L denied that it did not inform the FHWA's safety inspectors that such documents might be kept elsewhere. The FMCSRs required a carrier wishing to maintain its records in more than one office to submit a written request to the Director of the Regional Motor Carrier Safety Office for the region in which the carrier has his principal place of business. 49 CFR 391.51(g). F & L admits that it has never done so. FHWA safety inspectors should not be required to guess the location of a carrier's driver qualification files, nor should motor carriers be allowed to keep their records out of reach of the inspectors, only to produce them after an enforcement action has been initiated. Accordingly, no mitigation of the assessed penalty is appropriate under these circumstances.

it is hereby ordered that the Regional Director's request for a final order is granted. F & L Oil Co., Inc., is directed to pay $14,700 to the Regional Director within 30 days of the date of this Order.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Browning-Ferris Industries of Alabama, Inc., Respondent. Docket No. 93–AL–027–SH.

Order

This case was initiated by a notice of claim received by Respondent Browning Ferris Industries of Alabama, Inc. (BFI), in late March 1993. This notice of claim charged BFI with 20 violations of 49 CFR 177.817(a), transporting a shipment of hazardous materials not accompanied by a properly prepared shipping paper, and 9 violations of 49 CFR 395.8(a), failing to require a driver to make a record of duty status. A total penalty of $22,700 was assessed for these 29 violations.

On April 28, BFI filed a motion for immediate appointment of an administrative law judge, for an expedited proceeding, and for extraordinary relief. Attached to this motion was BFI's response to the notice of claim denying the charges and requesting a hearing.

The extraordinary relief requested by BFI was for the Associate Administrator to direct the Director of the Office of Motor Carriers in Montgomery, Alabama, "forthwith to immediately communicate with the Mobile Police Department that no competent determination has been made that BFI is transporting hazardous materials in the course of its medical waste disposal business, and that there is, therefore, so far as is known to FHWA, no reason to prohibit use of tunnels in Mobile, Alabama to BFI."

In my May 18 order granting the Regional Director an extension of time to respond to BFI's motion, I declined to grant BFI the extraordinary relief it requested. Since that order, the Regional Director has filed a motion for a stay of these proceedings; BFI has filed a motion for correction of the record and other appropriate relief, wherein BFI has renewed its request for "emergency relief" or, "in the alternative that a denial that FHWA advised the Mobile, Alabama Police Department that Respondent was transporting hazardous materials through tunnels in Mobile, Alabama, be made on the record;" BFI has moved to dismiss the matter; the Regional Director has replied to Respondent's motions, urging that I deny them all; and BFI has again responded taking issue with the Regional Director's replies. Meanwhile, the pleadings before me indicate that BFI has sought an interpretation of the Hazardous Materials Regulations (HMR) at issue in this case from the Research and Special Programs Administration, which in turn, reportedly, is consulting with the United States Department of Health and Human Services.

The purpose of this order is to dispose of the motions currently pending before me. Despite all the motions and responses to motions submitted to me in this case, I do not see that this case is ready for submittal to an administrative law judge or for final disposition by me, by dismissal or otherwise.

First, I hereby deny BFI's request for extraordinary relief. This case has been submitted to me in my quasi-judicial role as final agency decisionmaker with respect to motor carrier safety enforcement cases. In that role, I do not engage in investigatory or supervisory activities. My responsibility is to decide matters brought before me based on the facts in the record before me. If there are material factual issues in dispute, I will refer the case to an administrative law judge for a hearing. If there are not, I will decide the case in accordance with the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

The extraordinary relief BFI has requested can and, if appropriate, should be obtained elsewhere. In my May 18 order, I suggested that BFI seek relief from the Mobile Police Department which, as I understand it, is the agency denying BFI the use of the Mobile tunnels. If BFI believes that it needs help from the FHWA, it must seek that help from the FHWA's State Director in Alabama, the Regional Director in Atlanta, or the Director of Field Operations in Washington, DC, not from me. These FHWA officials are invested with ample supervisory responsibilities in this area.

I decline to interject myself personally in BFI's dispute with the Mobile Police Department over BFI's use of these tunnels in the manner sought by BFI, because I believe that such action would be inconsistent with my role as final agency decisionmaker in the underlying enforcement case, because I believe that BFI has ample recourse elsewhere for relief, and because, in any event, the decision on the use of the tunnels is not FHWA's to make.

I also hereby deny BFI's request to dismiss the case at hand. The Regional Director has charged BFI with 29 violations of the HMR and the Federal Motor Carrier Safety Regulations (FMCSR). Much has been written by the parties on the subject of the alleged HMR violations, none of it dispositive; little, if anything, has been said about the alleged FMCSR violations.

BFI also filed a "Motion for Correction of Record and Other Appropriate Relief." This latter motion amounts to little more than squabbling and does not move the case forward at all. In fact, it demonstrates how far this case is from being ready for decision. Apparently, BFI cannot agree with itself as to what material factual issues are in dispute in this case.

On the third page of BFI's motion to "correct" the record, counsel for BFI asserts that, "In the Order Granting Extension of Time, the Acting Associate Administrator noted that there are two material factual issues in dispute requiring a hearing for resolution." Counsel follows this sentence by quoting from the order itself: "These are (1) 'whether any witness will testify that they had tendered hazardous material to BFI for shipment' and (2) 'whether BFI drivers transported property in interstate commerce and failed to make a record of duty status'." Counsel then asserts that the quoted statement "indicates a misunderstanding of what factual issues are in dispute." This statement is incredible.

First, I never said these were the material factual issues in dispute in this case. I said that these were the issues identified *by BFI* in asking for a hearing. Order Granting Extension of Time, May 18, at 1 (third sentence); see BFI's response to notice of claim at 2. Thus, in his motion to correct the record, counsel for BFI is arguing with himself.

Given the current posture of this case, it is premature for me to try to decide what material factual issues are in dispute. I am going to leave it to the parties to more clearly identify at a later date the precise material factual issues in dispute, if any.

I consider BFI's motion for correction of record and other appropriate relief to be argumentative and unhelpful. Insofar as it seeks modification of my May 18 order and the emergency relief regarding my personal intervention with the Mobile Police Department, it is denied for the reasons set forth above. In all other respects I am striking this pleading as merely argument with leave to counsel to make these arguments at the appropriate time.

Because I believe that this case is not ready for decision, I am granting the Regional Director's request for a stay of the proceedings, with leave to the parties to move that the portion of the case dealing with alleged FMCSR violations should proceed. However, the parties should be aware that I do not intend to bifurcate this case. I will not send the FMCSR violations to a hearing, if a hearing is warranted, until the parties are prepared to move the HMR violations portion of this case forward. This decision is based on the need to conserve agency resources, including the time and cost for a hearing before an administrative law judge. Thus, I will only deal with the FMCSR violation portion of this case separately, if that portion can be decided by me without a hearing.

Because of my concern that a decision in this case be not unduly delayed, I am hereby directing counsel for the Regional Director to advise me briefly of the status of this case within 120 days of the date of this order and every 120 days thereafter until the matter is resolved. A copy of this status report should be served on counsel for BFI. The status report should briefly advise whether the parties are prepared to move this case forward. If the parties are not so prepared, the Regional Counsel shall briefly state the reason.

If and when this case is ready to move forward, the parties shall, by joint motion if possible, so advise me. At that time, the parties will submit a joint record upon which a decision in this case should be based. If the parties agree that a hearing is required, the material factual issues in dispute shall be succinctly stated.

If a joint motion is not possible because the parties disagree on some issues or point, the party which believes that the case is ready for referral to an administrative law judge or final disposition by me shall submit a motion to that effect. The other party will then have 30 days in which to reply to that motion and the moving party will have 15 days to respond to the reply. No further pleading will be accepted thereafter without leave.

So ordered.

Issued: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration; In the matter of American Diversified Construction, Inc., Respondent. Docket No. 90–TN–043–SA.

Final Order

This matter comes before me upon a renewed motion by the Regional Director, Region 4, seeking a final order. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings (Rules of Practice), 49 CFR part 386.

Background

On May 12, 1992, the Associate Administration for Motor Carriers (Associate Administrator) issue an order denying the Regional Director's motion for a final order on ten charges that the Respondent, American Diversified Construction, Inc. (American Diversified), had violated the Federal Motor Carrier Safety Regulations (FMCSRs). The charges consisted of five counts of failing to preserve a driver's record of duty status for six months, 49 CFR 395.8(k), and five counts of failing to properly maintain driver qualification files, 49 CFR 391.51(a). The Associate Administrator found that American Diversified had denied the charges against it, and that the Regional Director had failed to submit sufficient evidence to support a *prima facie* case. The May 1992 order permitted the Regional Director to renew the motion by submitting affidavits or other evidence tending to show that American Diversified committed the charged violations. American Diversified was advised that if it failed either to respond to the Regional Director's renewed motion, or to produce any evidence rebutting the Regional Director's evidence, that failure might result in a final order for the Regional Director. *In re American Diversified Construction, Inc.*, 58 FR 16,951 (FHWA 1992) (Order).

The Regional Director submitted a renewed motion on August 5, 1992, requesting that the facts be found as alleged in the notice of claim, and seeking a penalty of $3,000. Attached to the renewed motion were a signed declaration of an FHWA safety investigator and several exhibits purporting to document the charges against American Diversified. The carrier has not responded to this evidence.

Discussion

1. The Regional Director's Renewed Motion for Final Order

I have held that a motion for final order is analogous to a motion for summary judgment. *E.g., In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16983 (FHWA 1991) (Order). Accordingly, the moving party bears the burden of clearly establishing that there is no genuine issue of material fact, and that it is entitled to a judgment as a matter of law. Fed. R. Civ. P. 56(c). Because American Diversified denies the allegations against it, but the Regional Director nevertheless seeks to obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish a *prima facie* case of the violations charged. American Diversified bears the burden to rebut a *prima facie* case, and mere assertions, unsupported by evidence, cannot defeat an otherwise justified motion for final order.

The evidence presented by the Regional Director in his renewed motion supports the allegations made in the notice of claim and remains unrebutted by American Diversified. Although American Diversified's failure to rebut does not act to lower the Regional Director's evidentiary burden in this case, American Diversified's failure to fully participate in this proceeding is significant because the carrier has failed to rebut the Regional Director's *prima facie* case.

The first five charges—for allegedly failing to preserve driver's records of duty status—are supported by documentary evidence and the safety inspector's declaration. The documentary evidence consists of copies of shipper's logs for each trip allegedly made in violation of the regulation, each signed by the driver who allegedly made the trip. The declaration, for its part, is signed by the safety inspector and states that for each of these trips "the necessary record of duty status was not kept in [American Diversified's] file[s]." Declaration of Eunice C. Smith at 3.

As for the driver's qualification file charges, all five counts are supported by the safety specialist's declaration. Four of the charges are further buttressed by copies of driver's records of duty status; but for one count, involving a trip allegedly made on August 1, 1990, no

record of duty status has been provided. I find nonetheless that the Regional Director has presented a *prima facie* case for all five driver's qualification charges, because I find that the safety specialist's signed declaration provides the necessary evidence for each count.

In spite of its denial of the charges, American Diversified has failed to produce any evidence supporting its denial and failed to rebut the evidence of these violations. Therefore, I find that American Diversified committed the violations charged in the notice of claim.

2. Penalty Assessment

The Regional Director assessed a penalty of $300 for each of the ten violations charged in the notice of claim, for a total penalty of $3,000. Although American Diversified has not responded to the evidence presented by the Regional Director in his renewed motion for final order, the record before me does contain a document pertaining to the issue of the penalty assessed by the Regional Director.

The document, an undated letter addressed to the FHWA's Headquarters office, makes assertions—unsupported by any other documents in the record—that American Diversified is in bankruptcy [1] and that its "principal" underwent back surgery after which it "[was] determined by the Social Security Administration that he is completely disabled this is the only money or income that this man has" [sic]. The letter is signed "Tammy Wauford," but nothing in the record before me indicates what her connection to American Diversified may be. A copy of this letter was sent to the regional office on October 2, 1992. To date, no response to this letter has been received from the Regional Director.

I must rely on the evidence presented by the parties—which I have already determined amounts to a *prima facie* case for the Regional Director which the carrier has failed to rebut. After review of this evidence in light of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), I find a $300 penalty for each of the charged recordkeeping violations reasonably calculated to induce American Diversified's compliance with the FMCSRs. Therefore, I grant the Regional Director's motion for final order in the amount of $3,000.

Pursuant to § 386.64 of the Rules of Practice, either party may petition for reconsideration of this final order within 20 days after the date it is issued.

It is hereby ordered that the Regional Director's renewed request for a final order is granted. American Diversified Construction, Inc., is directed to pay $3,000 to the Regional Director within 30 days of the date of this Order.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Elkins Distributing Co., Inc., Respondent. Docket No. R3–91–228.

Final Order

Background

This matter is a motor carrier safety civil forfeiture proceeding governed by the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

This civil forfeiture proceeding was initiated by notice of claim dated June 6, 1991. In the notice of claim, the Regional Director, Region 3, charged Elkins Distributing Co., Inc. (Respondent or Elkins), with nine (9) violations of the Federal Motor Carrier Safety Regulations (49 CFR parts 350–399). These alleged violations included two (2) instances of using a driver who had not been medically examined each 24 months, as required, and seven (7) violations of various recordkeeping requirements related to incomplete driver qualification files. The Regional Director assessed a total penalty of $3,000 for these violations.

The notice of claim clearly stated that a reply was due within 15 days and failure to request a hearing within 15 days would constitute a waiver of the right to a hearing. Moreover, the notice of claim advised Elkins of the need to comply with the requirements of 49 CFR part 386, especially 49 CFR 386.14 as that section relates to replies to notices of claim.

Mr. Jerry W. Warner, President of Elkins, responded to the notice of claim by letter dated June 19, 1991. This letter does not conform to the requirements of 49 CFR 386.14. In this letter, Elkins did not deny the violations nor did it request a hearing. Rather, Warner indicated an interest in settling this case with the Regional Office.

On March 26, 1992, the Regional Director filed a motion for a final order asking that I find the facts to be as alleged in the notice of claim and assess a total penalty of $3,100. Elkins responded, through counsel, on April 1, 1992, and requested a hearing in this matter. Counsel for Elkins asserted that Elkins "did not fully comprehend the ramifications of failing to request this hearing in a timely manner, absent the advice of counsel." Respondent's Answer to Motion for Final Order at 1.

The Regional Director renewed his motion for final order on July 5, 1993. On July 13, Elkins, through counsel, responded to this renewed motion and reiterated Elkins' request for a hearing.

Request for Hearing

Elkins' request for a hearing is clearly untimely. The notice of claim unambiguously alerted Elkins to the consequences of failing to timely request a hearing. In this case, Elkins first requested a hearing only after the Regional Director moved for a final order, more than 9 months after the notice of claim. The record before me indicates that Respondent Elkins chose to try to negotiate a settlement of this case with the Regional Office rather than contest the matters. I find that Elkins knowingly waived any right it may have had a hearing.

Elkins has also failed to deny the charges against it, nor has it alleged any material factual issues that it believes are in dispute, despite multiple opportunities to do so. See 49 CFR 386.14(b). The only issue raised by Elkins in this proceeding has been the amount of the penalty assessed by the Regional Director. I have repeatedly held that an objection to the amount of the assessed penalty does not constitute a material fact issue warranting a hearing under 49 CFR 386.16(b). *In re Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (order appointing administrative law judge). Accordingly, I have no basis upon which to order a hearing in this matter.

Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. See, e.g., *In re Forsyth Milk Hauling Co., Inc.*, 58 FR 16983 (FHWA Order 1993). The Regional Director has submitted documentary evidence supporting his motion for a final order. This documentary evidence establishes a *prima facie* case that Elkins violated the safety regulations cited in the notice of claim. Despite the long time since this motion was first filed and the additional notice and opportunity presented to Elkins by the Regional Director's July 5, 1993, Request for Immediate Ruling, Elkins has submitted no evidence or argument tending to rebut the Regional Director's *prima facie* case. Accordingly, I find that the Regional Director has met his burden in this case, and I hereby

[1] Under Federal law civil forfeiture amounts are not dischargeable in bankruptcy. 11 U.S.C. 523(a)(7).

grant the Regional Director's request for a final order.

Penalty Determination

The Regional Director assessed a penalty of $500 for each of the two violations of using a driver who has not been medically reexamined within 24 months and $300 for each of the cited recordkeeping violations. These penalties are within the statutory limits. 49 U.S.C. 521(b). Elkins sought to convince the Regional Director that this case should be settled for a lower amount, but, despite repeated opportunities, Elkins has provided me with no basis upon which to lower the assessed penalty. The record before me supports the penalty assessed by the Regional Director, and I hereby affirm that penalty.

It is hereby ordered that Elkins' request for a hearing is denied, the Regional Director's motion for a final order is granted, and Elkins Distributing Co., Inc., is directed to pay the sum of $3,100 of the Regional Director, Region 3, within 30 days of this order for the 2 instances of using a driver who had not been medically examined each 24 months, as required, and the 7 violations of recordkeeping requirements related to incomplete driver qualification files cited in the June 6, 1991, notice of claim.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of L.P. Fleming, Jr., Hauling, Inc., Respondent. Docket No. R3–91–159.

Final Order

This matter is a motor carrier safety civil forfeiture proceeding governed by the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

This civil forfeiture proceeding was initiated by notice of claim dated April 3, 1991. In the notice of claim, the Regional Director cited Respondent L.P. Fleming, Jr. Hauling, Inc. (Fleming), for 35 violations of the Federal Motor Carrier Safety Regulations, including one instance of using a medically (vision) unqualified driver and 34 various recordkeeping violations related to driver qualification files, drivers' records of duty status, and vehicle inspection and maintenance records. A total penalty of $16,600 was assessed for these 35 violations.

This matter comes before me as a result of a motion for a final order by the Regional Director, Region 3, dated March 31, 1992. On July 5, 1993, the Regional Director requested an immediate ruling this matter. Fleming has not responded to either of these pleadings.

The Regional Director has submitted with his motion for a final order documentary evidence supporting each of the violations alleged in the notice of claim. Also attached to this motion is a letter from Fleming dated April 11, 1991, apparently in response to the notice of claim. This letter does not conform to the requirements of 49 CFR 386.14(b) regarding the form and content of a reply. The record before me is devoid of any other submission by Fleming in this matter.

The notice of claim attached to the Regional Director's motion appears to be incomplete in that it has only two pages, the second of which begins with a paragraph number 3, while the first page has no such numbered paragraphs. Nevertheless, it appears that the notice of claim alerted Fleming to the nature of the proceeding, the charges against it, and the applicability of 49 CFR part 386 to this proceeding.

I find that Fleming has waived its right to a hearing in this matter by failing to request one within the required time period. 49 CFR 386.14(b)(2).

The Regional Director has established a *prima facie* case in his submission in support of his motion for a final order. Fleming has failed to respond to this motion, has failed to deny any of the charges against it, and has offered no defense whatsoever in this proceeding. Accordingly, I find the facts to be as alleged in the notice of claim.

The Regional Director has assessed a total penalty of $16,600 in this case. This information cannot be verified from the record before me because of the incompleteness of the copy of the notice of claim submitted to me. Nor can I tell how much of a penalty was assessed for each of the 35 violations charged. The Regional Director's motion sheds no light whatsoever on the basis for the Regional Director's civil penalty assessment. Thus, on the record before me I am unable to make any independent penalty determination.

While I would have appreciated a complete copy of the notice of claim and some support for the penalty assessed in the case, I recognize that the Regional Director has submitted numerous exhibits relevant to a determination that Fleming is liable for the violations alleged. The Regional Director's submission in this case was more than adequate to place Fleming on notice as to the seriousness of this matter, and Fleming had ample opportunity to correct the record or challenge any assertions made by the Regional Director. Accordingly, I view Fleming's non-participation in this civil forfeiture proceeding as a waiver of its right to challenge the Regional Director's penalty assessment, and I hereby affirm that penalty. If Respondent believes that this is unjust or otherwise contrary to law, the FHWA's Rules of Practice provide that Fleming can seek reconsideration within 20 days of this order. 49 CFR 386.64.

It is hereby ordered, that the Regional Director's motion for final order is granted. L.P. Fleming, Jr. Hauling, Inc., is directed to pay $16,600 to the Regional Director within 30 days of the date of this order.

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of James Kelton, Sr. d/b/a Kelton Tours, Respondent. Docket No. 90–AL–028–SA.

Final Order

This matter is before me upon a renewed motion for final order by the Regional Director, Region 4, in response to the Associate Administrator's May 13, 1992, order calling for the parties in this case to submit supplemental pleadings and evidence on the issues identified in that order. *In re Kelton Tours,* 58 FR 16943 (FHWA 1992) (Final Order).

Background

In the earlier decision in this case, the Associate Administrator found that the Regional Director failed to meet his evidentiary burden in moving for a final order on two false logs charges involving the April 26, 1990, trip by Kelton Tours (Kelton) drivers James Carroll and Robert Nelson. Instead of choosing to send these counts to an administrative law judge for a hearing, he deferred his ruling on Kelton's hearing request and directed the parties to submit pleadings and supporting evidence on these charges. Only the Regional Director complied with this order; I have received no response from Kelton.

In his renewed motion, the Regional Director asserts that although Carroll's and Nelson's logs read that the two spent eight hours off duty in Jennings, Florida, on April 26, 1990, they did not stop there, or anywhere, for the requisite off duty period, and in fact drove straight from Guntersville, Alabama, to Orlando, Florida, in approximately 11 hours. The Regional Director concluded

that the drivers falsified their logs in order to conceal excess hours of service.

Discussion

Hearing Request

In response to the notice of claim, Kelton requested a hearing and offered to provide affidavits and lodging receipts to prove the accuracy of some of its drivers' logs. Despite repeated, extensive opportunities to do so, Kelton has failed to come forward with its promised evidence.[1]

The Regional Director, however, provided a transcript of a telephone interview with bus passenger Danny Lancaster, in which Mr. Lancaster stated that the bus he rode did not stop anywhere for 8 hours on April 26. In addition, the Regional Director responded to the may 13, 1992, order with additional evidence to support the two remaining charges.

The Associate Administrator has held in numerous cases, including the earlier order in this case, that when a carrier seeks a hearing under 49 CFR 386.14(b)(2), but the Regional Director opposes the request with sufficient evidence, the carrier must properly support its hearing request. See, e.g., *In re Bryant Trucking*, 58 FR 16968 (FHWA 1992) (Final Order). Simple denials will not suffice. Therefore, I find that Kelton's bare denial of the allegations in its reply to the notice of claim, its sole response to the charges throughout this proceeding, is insufficient to meet the carrier's burden to establish that there is a material factual issue in dispute warranting a hearing in this case.

For whatever reason, Kelton has not fully participated in this proceeding. The carrier failed to submit the promised evidence in support of its denials, failed to reply to the Regional Director's initial motion for final order, and failed to respond to the May 13, 1992, order as directed. Nothing in the record before me leads me to believe that Kelton would suddenly take a renewed interest in this proceeding if I were to send it to a hearing on the basis of its nearly three-year-old hearing request.

Motion for Final Order

On a motion for final order, like a summary judgment motion, the Regional Director must clearly establish each essential element of his case. Kelton's failure to oppose the motion does not affect this standard. Where the evidence in support of the motion does not establish the absence of a genuine issue, summary judgment must be denied even if no evidence is presented by the non-moving party. *Fed. R. Civ. P.* 56 notes of advisory committee.

In the May 13 order, the Associate Administrator found that the Regional Director's own evidence was conflicting on whether Kelton drivers Carroll and Nelson took the 8-hour break recorded on their logs, and thus he was not able to grant the motion. With his renewed motion, the Regional Director has included a declaration by the safety investigator who initially cited Kelton for the two alleged violations at issue here. This declaration of Mr. LeMaster, however, does not sufficiently dispel this contradiction to allow me to dispose of this case on a motion for final order, where I must view all evidence in a light most favorable to the non-moving party, Kelton Tours. *In re American Pacific Power Apparatus, Inc.*, 58 FR 16977 (FHWA 1992) (Order). The declaration simply repeats sections of the interview transcripts of both bus passenger Danny Lancaster and Kelton driver James Carroll, the first of which states that the bus Lancaster was riding did not make the 8-hour stop, while the second states that Mr. Carroll stopped for 8 hours and that he and driver Robert Nelson always stayed together when driving. Because I cannot find that Carroll and Nelson drove straight through to Orlando, Floride, and did not take an 8-hour break, without discrediting the statement of Mr. Carroll and accepting as accurate the statement of Mr. Lancaster, this case is not properly disposed of by summary judgment.

Two False Log Charges

Having denied Kelton's hearing request and the Regional Director's renewed motion for final order for the reasons discussed above, I now view this case as submitted to me under 49 CFR 386.14(c) for decision on the merits. I recognize that, in some cases, this action might affect a motor carrier's opportunity to fully present its case, but such is not the situation here. Both parties to this proceeding have been afforded ample opportunity to present their views; Kelton has simply failed to do so.

Upon a review of the evidence as a whole, I believe that the Regional Director has proven, by a preponderance of the evidence before me, that Kelton drivers Carroll and Nelson failed to stop for 8 hours in Jennings, Florida, on the morning of April 26, 1990, as recorded in their logs. In his statement, Mr. Lancaster told how the two buses traveled together along the route, leaving Alabama at 9:20 p.m. on April 25, 1990, and arriving in Orlando together at approximately 8:30 a.m. the next morning for day at Disney World. Carroll's claim to have slept for eight hours in the back of his bus full of high school students on their way to Florida is unsupported and unbelievable. This statement being the sole evidence to support the accuracy of the logs, I find that the two buses traveled together on this trip, that neither one stopped in Jennings, Florida, or anywhere else for eight hours, and that the two falsified their records of duty status by recording this 8-hour stop.

Penalty Determination

The Regional Director assessed a penalty of $400 for each false log charge. These two charges were cited in a notice of claim that also included nine other false log charges on which the carrier was found liable and ordered to pay $3,600. Thus, these two violations are not isolated incidents, but a pattern of conduct for this carrier. Upon review of the civil penalty determination factors in 49 U.S.C. 521(b)(2)(C), I find that the penalty amount assessed is fully warranted by the facts of this case and is reasonably calculated to induce compliance. I affirm the admonishment made by the Associate Administrator in his May 13 order; Kelton's conduct of permitting drivers to operate buses full of children on long, non-stop trips presents a dangerous threat to the safety of all involved and will not be tolerated.

It Is Hereby Ordered that Kelton Tours' request for a hearing is denied, the Regional Director's motion for final order is denied, and Kelton Tours is directed to pay the sum of $3,600 to the Regional Director, Region 4, within 30 days of this order for having required or permitted its drivers to make false entries on their records of duty status, in violation of 49 C.F.R. 395,8(e).

Dated: July 28, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Department of Transportation, Office of Hearings, Washington, DC: In the Matter of National Retail Transportation, Inc., FHWA Docket No. R1–92–03 (Motor Carrier Safety).

Decision of Administrative Law Judge Burton S. Kolko

This case had its germination in a compliance review. On October 18, 1991, two Federal Highway Administration (FHwA) investigators, George Cowan and Susan Drabant, inspected certain NRT records at Respondent's offices in North Bergen,

[1] I have received no response from Kelton to my earlier order. For the purpose of addressing Kelton's hearing request, I assume that the remaining two charges are among those Kelton denied in its reply to the notice of claim.

N.J., to assess its compliance with the Federal Motor Carrier Safety Regulations (FMCSRs). In 1990 NRT owned 137 trucks and utilized 138 drivers, grossing $42 million (CX–7). Finding that Respondent in many cases lacked supporting documents for drivers' logs, the investigators filed a report recommending enforcement (CX–7; Tr. 58, 98). This action followed, in which the Assistant Regional Counsel, Federal Highway Administration (Claimant or Regional Director), has charged Respondent National Retail Transportation, Inc. (NRT), a motor carrier subsidiary of National Retail Systems, Inc., with forty-six violations of the FMCSRs, 49 CFR part 350 *et seq.*, and seeks a civil penalty of $23,000.[1] Respondent denied the charges. A hearing was held, from which I find the violations as charged and assess a civil penalty in the amount of $9,200.

Procedural Background

The Regional Director initiated this proceeding by filing a Notice of Claim (the Notice) under 49 CFR 386.11(b) on January 21, 1992.[2] The Notice cited the Respondent for failing to preserve supporting documents for certain driver records of duty status (driver logs) for six months (*Id.*; CX–17 through –62). The regulation, in pertinent part, states:

(1) Driver's records of duty status for each calendar month * * * shall be forwarded to the carrier's principal place of business where they shall be retained with all supporting documents for a period of 6 months from date of receipt. (emphasis supplied)

Each proven failure constitutes a violation of 49 CFR 395.8(k) and is subject to a civil penalty of $500 per day, up to a maximum of $2,500 for any single offense. 49 U.S.C. 521(b)(2). Claimant seeks a penalty of $500 for each of the alleged forty-six violations, or a total fine of $23,000.

Discussion

In conducting their compliance review investigators Cowan and Drabant initially saw NRT's safety consultant, Vincent Mariano, its general counsel, Marc Zoldessy, and its dispatcher, Richard Sullivan (Tr. 24–26, 42, 105; CX–7); they later met with its safety director, William Cluver (Tr. 43). The investigators sought certain examples of records NRT is required to maintain under the FMCSRs (Tr. 16, 24–26; CX–8). In response, NRT produced driver logs, drug-testing records, and other files (Tr. 25, 45–46; CX–8), but did not present documents (highlighted in the discussion that follows) that would have tended to support information stated on the drivers' logs, such as records relating to a driver's pay (Tr. 25–26, 95–96, 139, 171).

A. Cowan and Drabant spotted a dispatcher-completed outbound dispatch log—a record of routes to be undertaken, vehicles utilized, money advanced, and anticipated backhaul—on dispatcher Sullivan's desk, but could not obtain one, despite their entreaties. They were instead given a blank copy of the form NRT used, which was entered into evidence as CX–2 (Tr. 27–28, 52, 69–71, 98, 269). The following January, however, NRT did deliver dispatch logs corresponding to the 46 transactions in response to a subpoena. The Claimant's charges do not encompass outbound dispatch logs (Tr. 70–71, 87, 91, 98, 143; *see* R–2).

B. Sullivan told the investigators that drivers are required to prepare and submit upon return a driver's trip report, or DTR, which indicates the driver's origin and destination, his pick-up and delivery points, the routes he took and the mileage involved. To the DTR he attaches toll and fuel receipts and the like, and then submits it all to a payroll clerk for payment purposes. A blank DTR was given to the investigators and entered into evidence as CX–3 (Tr. 32–33, 264).

C. The trip summary, somewhat like the DTR, asks for mileage between stops, expenses and advances, and fuel and oil charges. It is also a document upon which drivers' pay is based, drivers being paid by the mile. The dispatcher enters the information and forwards it to payroll (Tr. 251, 254). Investigators Cowan and Drabant were given a blank copy of the trip summary, which became CX–4 (Tr. 34–35, 37).

D. CX–5 is a blank trip summary report, or trip envelope. The driver places all his documents into a trip envelope and submits it at the end of his trip. The envelope asks for trip mileage, all origins and destinations, road expenses, and advances. It also contains a separate section for fuel purchases. The trip envelope is given to payroll upon return (Tr. 38–40, 210, 266, 268).

E. Sullivan informed the investigators—in response to a specific query—that drivers also submit a delivery manifest following each trip. The manifest recaps the trip: stops, arrival and departure time at each, shipper's name, elapsed miles per stop, and aggregate delivery time and miles. A blank copy of Respondent's delivery manifest was submitted for the record as CX–6.[3]

Cowan and Drabant had attempted to obtain completed DTR's trip summaries, trip summary reports and delivery manifests (*i.e.*, CX–3, –4, –5, and –6 respectively; see Tr. 141–42) (Tr. 98), but were told by both general counsel Zoldessy and company Vice-President George LaFitte either that NRT did not retain them or that they were unavailable (Tr. 34, 43–45, 84, 93, 95–96, 98–99, 103–04, 106–09, 141, 168).

LaFitte explained that any completed forms were kept only until the drivers are paid—about two weeks later—and were then discarded (Tr. 44, 262–63). When Cowan asked for NRT documents pertaining to the most recent two weeks, LaFitte produced one trip envelope (Tr. 44, 168). The carrier's size indicated that several hundred should have been turned in, even for that relatively short period (Tr. 44). Cowan later questioned safety director Cluver about the carrier's retention policy, but again was told that nothing was retained (Tr. 45).

On January 14 or 15, 1992, in response to Claimant's December 10, 1991, subpoena, NRT did deliver some documents to the government, producing bills of lading, dispatch logs, and documents it described as "computerized trip file summaries."[4]

Findings and Conclusions

I conclude that Respondent National Retail Transportation, Inc., violated § 395.8(k) of the FMCSRs in forty-six instances by failing to preserve supporting documents for driver logs for the requisite six-month period on forty-six occasions.

As a threshold matter, I will deal with the meaning of the term "supporting documents." It is nowhere defined or described in the FMCSRs. NRT argues that, as such, it is being held to a formless standard, thus depriving it of fair warning of the kind of conduct the regulation requires or prohibits. This lack of notice amounts to a violation of due process of law, it states; NRT cannot be held to have transgressed a provision whose meaning and parameters are unknown. As a corollary, Respondent asserts that the term cannot be defined

[1] The FMCSRs are issued under the authority of 49 U.S.C. 3102 of the Motor Carrier Safety Act of 1984 (the Act), P.L. 98–554, 98 Stat. 2829.

[2] CX–A. The penalty sought by the Regional Director is erroneously stated in the Notice of Claim. The correct figure is $23,000. Tr. 177.

[3] Tr. 38–41, 104, 108. The manifest's title indicates generation by "National Retail Trucking, Inc." Respondent's in-house counsel represented that National Retail Trucking is an affiliated entity of Respondent. Tr. 285–86.

[4] R–2; Tr. 85–92, 144–45. NRT has also produced bills of lading at the time of the compliance review the previous October. Claimant's investigators asserted, however, that such documents contain little or no information tending to support the accuracy of driver logs, and so did not consider them to be supporting documents. Tr. 84–86, 88–89, 143; see R–2.

by prosecutorial whim. Claimant asserts that "supporting documents" is adequately defined.

On this record I find that the phrase is sufficiently clear and informative to apprise regulated entities of the behavior expected of them. The rule speaks in terms of retaining "supporting documents" for driver records of duty status (see p. 2). The context makes it plain that the quoted phrase contemplates all documents reasonably tending to support the information found in driver logs (see Tr. 147). Since the rule nowhere compels carriers to create supporting documents (see Tr. 119), carriers need retain such documents only if they already deal with them—that is, if in the ordinary course of business, such documents pass through their hands (see Tr. 111–13).

The "supporting-documents" rule is a rule of reason that, by its nature, must be interpreted on a case-by-case basis (*see* Tr. 30). But it does not follow that the rule thus lacks parameters adequate to warn regulated entities of conduct required. I find that the rule is sufficiently clear to pass due-process muster.[5]

I have found that Respondent handled completed DTRs, trip summaries, trip summary reports and delivery manifests. These documents were issued by or transmitted to NRT in the ordinary course of business and passed through its hands. They contained information tending to substantiate the information contained in driver logs. NRT officials failed or refused to turn these documents over to agency investigators (*see* pp. 3–5). The evidence further shows that NRT failed to retain these documents for six months in connection with 46 trips made in interstate commerce (CX–17 through –62). These circumstances impel me to conclude that Respondent violated § 395.8(k) on the forty-six occasions cited.

Respondent, however, also maintains that it preserved supporting documents on its computer system, as 49 CFR 390.31 allows, and in doing so, has in fact complied with the FMCSRs (Resp. Br., p. 10). This contention does not avail Respondent for two reasons. In the first place, although the scope of their request was broad—encompassing *"any and all documents related to payroll* and all the documents * * * that the drivers prepared and the carrier prepares or requires their employees to prepare * * *" (emphasis supplied)—the investigators were never offered or shown any computer-generated or -stored documents.[6] Further, section 390.13(b) requires computer records to contain all information set out in the originals, and NRT's computer records—according to Respondent's own witnesses—do not contain all the information that appears on the hard copies. Respondent's practice was to pull only certain data from the supporting documents for use in its database. For instance, it did not enter individual toll receipts, fuel receipts, and times and dates from Respondent's trip envelopes (CX–5; Tr. 268–69, 274–75). NRT also failed to show that it had entered any information contained in the driver's trip report (CX–3), stating that both copies of the DTR were sent to a third party in order to compute road and fuel taxes incurred (Tr. 205–06, 264–65). Respondent in any event failed to produce any computer-generated documents for the record.[7]

The "computerized trip file summaries" NRT submitted in response to the government's subpoena could not be considered supporting documents. As investigator Cowan pointed out, the summaries were incomplete and their origin uncertain. There was no way to know where the information contained in them came from. In short, their validity as log-supporting documents was dubious and unproven (Tr. 97, 100, 137, 145).

Penalty

The Notice of Claim seeks an assessment of $500 of each of the forty-six violations, for a total civil penalty of $23,000 (CX–A; *see also* p. 1, n. 1). The operative statute, 49 U.S.C. 521(b)(2)(C), states that the determination of civil penalty shall take into account:

> the nature, circumstances, extent, and gravity of the violation committed and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require.

It also states that the assessment "shall be calculated to induce further compliance."

The agency stated in its Notice of Claim that its determination of penalty was based on "the seriousness of your violations, your past history, your financial status, and other factors" (CX–A, p. 1). Fred Gruin, FHwA Federal Program Manager who is responsible for the region's enforcement program and who set the proposed assessment, described it as the "maximum penalty"[8] and explained that it was set in light of two previous audits of the carrier, one in 1981 and the other in 1987, and on agency guidelines (Tr. 179–80; CX–10 and CX–11).

The 1981 audit recommended that the carrier "maintain adequate records to monitor drivers logs for accuracy" (CX–10, p. 2); the 1987 safety review suggested continued monitoring of driver hours of service (CX–11, p. 4). No penalties were assessed as a result of either of these audits (Tr. 192–93). Nor was the carrier cited for violations of § 395.8(k) either time (Tr. 151–53, 185–86). Further, in response to a question on the FHwA form, "Does the carrier have a system to effectively control the driver's hours of service?", the 1987 investigators checked the box marked "Yes" (*See* CX–11, p. 4). In the judgment of FHwA, then, the carrier generally hewed to the regulatory line in each instance, at least in the area of driver logs and hours of service.

These considerations warrant an assessment lesser than that suggested by the Regional Director. While NRT's violations were continuing and hampered the agency in carrying out its safety responsibilities, past audits showed that it had generally complied with agency directives Additionally, in light of the fact that Respondent has begun to save toll receipts (Tr. 257–59), I will exercise my discretion to lower the suggested penalty in order to

[5] Respondent argues that because it did not use the documents to verify driver logs, it cannot be held in violation of § 395.8(k). Tr. 210; Resp. Br., p. 9. However, the use to which regulated entity put the documents is not dispositive of the question of their status as supporting documents. The purpose of the rule is to determine, by enabling FHWA investigators to cross-check the accuracy of log entries, whether drivers are complying with hours-of-service regulations. *See* Tr. 12, 121. Thus the critical inquiry is whether the documents themselves reasonably tend to verify driver-log entries, not whether Respondent used those documents for that purpose.

[6] Tr. 139. Respondent contends that the investigators' failure to inquire specifically whether supporting data was stored in computers sinks Claimant's case (Resp. Br. pp. 10–11), but it places responsibility on the wrong actors. NRT officials should have understood Cowan and Drabant's broad request to include all manner of document generation or storage. To put the investigators to a guessing game in these circumstances, as Respondent would, is little short of ludicrous.

[7] In these circumstances, I need not determine whether a carrier that enters supporting documents into a computer and stores them for six months, destroying the hard copies, has complied with § 395.8(k). *See* Tr. 133–34. 166. In light of modern technology and business practice, nonetheless, it might be worthwhile for the agency to determine in advance of an enforcement proceeding whether and how it would find compliance in these circumstances. *See* Tr. 134.

[8] While the maximum civil penalty per offense is $500, each day of a violation is considered a separate offense, except that the total civil penalty per violation cannot exceed $2,500. 49 U.S.C. 521(b)(2). In this case, then, the maximum allowable penalty may be $2,500 per violation.

provide an incentive to further compliance.[9]

I find and conclude that a civil penalty of $9,200, or $200 per violation, fairly accounts for the mix of factors the statue and agency policy considers in determining an appropriate fine. I further find and conclude that it will encourage future compliance as well, by this carrier and others.

National Retail Transportation, Inc. is hereby ordered to pay a civil penalty in the amount of $9,200 for violating Federal Motor Carrier Safety Regulation 49 CFR 395.8(k) in forty-six instances.[10]

Burton S. Kolko,

Administrative Law Judge.

Before the Federal Highway Administration: In the Matter of Trailer Shuttle Systems, Inc., Respondent, Docket No. R1–92–425.

Order Granting Time to Respond to Motion

This mater comes before me on a motion by the Regional Director, Region 1, for a final order finding Respondent Trailer Shuttle Systems, Inc. (TSS), liable for 14 violations of the Federal hours of service regulations (49 CFR part 395) and assessing a penalty of $7,000 (United States). This motion was served on TSS by mail on May 3, 1993. TSS responded to me by letter dated May 7, 1993, expressing its "sincere hope" that it would be extended the opportunity to express its views in this matter. This letter has been placed in the docket.

The notice of claim which underlies this enforcement case is dated August 22, 1992. Enclosed with that letter was a copy of the Federal Highway Administration's (FHWA) Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings. I also note that TSS has been the subject of previous contact by the FHWA, including an enforcement case in 1991 that was settled.

Section 386.35(c) of the FHWA's rules of practice expressly provide that answers to motions, such as the Regional Director's motion for a Final Order, shall be served within 7 days. I do not consider Respondent's May 7 letter to me to be responsive.

In deference to the "health sabbatical" of its President apparently from May 7 through May 26, I am granting Respondent TSS until June 2, 1993, to respond to the Regional Director's Motion for Final Order, that is, seven (7) days from the date of the President's scheduled return. Respondent TSS is reminded that copies of all communications with me regarding pending enforcement cases must be served on the Regional Director. Respondent is also advised that on or after June 3, 1993, I will formally rule on the Regional Director's motion.

Issued on: May 25, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Browning-Ferris Industries of Alabama, Inc., Respondent. Docket No. 93–AL–027–SH.

Order Granting Extension of Time

This matter arises as a result of a notice of claim issued to Respondent Browning-Ferris Industries of Alabama, Inc. (BFI), citing it for 29 violations of the Federal Motor Carrier Safety Regulations and the Hazardous Materials Regulations. BFI responded to the notice of claim denying the alleged violations and requesting the immediate appointment of an administrative law judge. BFI asserted that there are two material factual issues in dispute requiring a hearing for resolution. These are (1) "whether any witness would testify that they had tendered hazardous material to BFI for shipment" and (2) "whether BFI drivers transported property in interstate commerce and failed to make a record of duty status."

On April 28, 1993, BFI moved for the immediate appointment of an administrative law judge, for an expedited proceeding, and for extraordinary relief. Specifically, BFI requests that the Director of the Federal Highway Administration's (FHWA) Office of Motor Carriers in Montgomery, Alabama, "be directed forthwith to immediately communciate with the Mobile Police Department that no competent determination has been made that BFI is transporting hazardous materials in the course of its medical waste disposal business, and that there is, therefore, so far as is known to FHWA, no reason to prohibit use of tunnels in Mobile, Alabama to BFI." This request is based on BFI's assertion that it has been denied use of a tunnel by the Mobile Police Department based on information received by that Department from the FHWA. BFI apparently believes that the information provided to the Mobile Police Department is the same information that forms the basis of the instant enforcement case, and that that information is incorrect.

On May 10, the Regional Director requested an extension of time until May 24, 1993, to respond to BFI's motion. The Regional Director states that BFI has submitted a petition for exemption to the Research and Special Programs Administration of the Department of Transportation (DOT) which might have a direct bearing on this enforcement case. The Regional Director further argues that the question of what materials are permitted to pass through tunnels in Mobile, Alabama, is not properly before the FHWA.

I am granting the Regional Director's request for an extension of time until May 24. First, I believe that the decision on whether to send this enforcement case to an administrative law judge should await clarification of the nature and scope of any related petition submitted to one of FHWA's sister agencies within the DOT. Second, I believe that if BFI has been barred from using a tunnel under the authority of the Mobile Police Department, then BFI must take that matter up with that Department. I cannot tell whether the FHWA provided incorrect information to the Mobile Police Department without conducting an investigation or resolving the dispute raised in the underlying enforcement case. In any event, State and local governments are responsible for making decisions within their respective spheres of authority. If BFI believes that the Mobile Police Department does not have sufficient basis upon which to deny BFI the use of a tunnel, BFI should make that case to the Mobile Police Department.

It Is Hereby Ordered that the Regional Director's request for an extention of time to respond to BFI's April 28 motion is granted. The Regional Director shall respond to BFI's April 28 motion on or before May 24, 1993.

Dated: May 18, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration; In the Matter of PGT Trucking, Inc., Respondent. Docket No. R3–92–278.

Order Denying Motion for Reconsideration

By motion dated March 24, 1993, Respondent PGT Trucking, Inc., moved for reconsideration of my Order of March 19, 1993. That Order appointed an Administrative Law Judge to consider issues raised by a notice of claim issued against Respondent on September 10, 1992. But the Order further denied Respondent's March 2,

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[9] *See In the Matter of Frotzmann, Inc.*, Docket No. R10–89–11, Final Order of the Associate Administrator dated June 20, 1990.

[10] This decision is issued pursuant to 49 CFR § 386.61. This decision becomes the final decision of the Associate Administrator 45 days after it is served unless a petition or motion for review is filed under 49 CFR § 386.62.

1993, motion to expand the jurisdiction of the Administrative Law Judge to also consider a 1991 enforcement case. Order at 7. Respondent now seeks reconsideration of my March 19 Order insofar as it denied Respondent's request to expand the jurisdiction of the Administrative Law Judge to include review of the 1991 notice of claim against Respondent.

The instant case, Docket No. R3–92–278, has been assigned to Chief Administrative Law Judge John J. Mathias. I note that by Order served April 5, 1993, Chief Judge Mathias also denied Respondent's motion to expand the jurisdiction of the Administrative Law Judge in Docket No. R3–92–278 to include issues raised in the 1991 enforcement case, Docket No. R3–91–302.

In its March 24 motion, Respondent again seeks to re-open the earlier enforcement case, settled between the parties in September 1991. Respondent relies on arguments apparently first made by Counsel for Respondent in a letter to the Federal Highway Administration's (FHWA) Director of Motor Carrier Field Operations dated January 11, 1993, approximately 16 months after the 1991 settlement. These arguments include Respondent's alleged lack of counsel in settling the 1991 case.

Whether Respondent engaged the services of counsel in settling the 1991 enforcement case against it is a matter within Respondent's control. The FHWA's notice of claim dated August 23, 1991 (attached as Exhibit B to Respondent's March 2 motion), expressly provided that the carrier or its "representative" could contact the FHWA Regional Office to discuss or settle the 1991 enforcement case.

Respondent also takes issue with my finding that Respondent had not alleged any facts which would suggest that the settlement agreement was reached through a miscarriage of justice. Counsel for Respondent states that it is apparent from my March 19 Order that the entire record was not before me at that time. Counsel is reminded that letters and conversations with other FHWA personnel regarding a particular case are not brought to my attention, except by a party to the case with notice to the other party.

I find nothing in the materials attached to Respondent's March 24 motion, including Counsel's January 11, 1993, letter to the Director of Motor Carrier Field Operations, that persuades me that the principle of finality a agency decisions should be abandoned by reopening Docket No. R3–91–302 at this time. The FHWA's Rules of Practice for Motor Carrier Safety and hazardous Materials Proceedings (49 CFR part 386) set forth the procedural steps a respondent must follow to seek review, whether reconsideration or appeal, and the time limits that apply. In my view, the September 1991 settlement agreement between the Regional Director and PGT was a final agency order disposing of Docket No. R3–91–302, and the time has run for either reconsideration or appeal of it.

Moreover, I am not persuaded by Respondent's argument that, as a contractual matter, the 1991 settlement agreement is null and void for lack of consideration. While not holding that a settlement agreement in a civil forfeiture case is a matter of simple contract between parties, I believe that avoidance of litigation risk can adequately support an agreement such as this, if nothing else.

Counsel essentially argues that, if he had been counsel to Respondent in 1991, he would have advised against accepting the bargain Respondent then accepted. I believe that Respondent cannot now come in and say it is unhappy with the bargain it struck. Section 386.16(c)(3) plainly states that an executed settlement agreement is binding according to its terms. Counsel's assertions that Respondent was misled as to the regulations it was charged in 1991 with violating, including Counsel's assertions that FHWA employees misstated the requirements of the regulations, rest both on Counsel's argument as to the "true" facts of the case and on Counsel's interpretation of the requirements of the regulations. Counsel for Respondent seek to argue both the facts underlying the 1991 enforcement case and their legal significance. It is too late for that now.

Finally, Counsel for Respondent appears to dispute my assertion that the record before me at the time of my March 19 Order did not include a denial by Respondent of nineteen charges leveled in the 1992 notice of claim. I find Respondent's point moot since I expressly referred these nineteen counts to the Administrative Law Judge in my March 19, Order.

I believe that settlement of the 1991 enforcement case represents final agency action in that case, and for the reasons set forth in my March 19 Order and Chief Judge Mathias' April 5 Order Denying Motion Respondent, as well as the reasons set forth here, I hereby deny Respondent's motion to reconsider my March 19 Order. The Administrative Law Judge assigned to Docket R3–92–278, may, of course, consider matters related to the 1991 case, including its settlement and the continuing effect of the Notice of Abatement, to the extent such matters are relevant to Docket R3–92–278 as discussed in my March 19 Order and Judge Mathias' Order of April 5.

It Is Hereby Ordered that PGT's motion for reconsideration of the Associate Administrator's Order of March 19, 1993, is denied.

Dated: May 18, 1993.

John P. Eicher,

Acting Associate Administrator.

Department of Transportation, Office of Hearings, Washington, DC, Served May 10, 1993: In the matter of John Steven Johnson, in his individual capacity as President of Steve Johnson & Sons Trucking, Inc.; and Steve Johnson & Sons Trucking, Inc., a corporation., FHWA Docket No. R9–89–058 (Motor Carrier Safety).

Order Granting Agency Motion for Summary Judgment and Denying Respondent Counter-Motion for Summary Judgment

A motion for summary judgment or, in the alternative, for partial summary judgment, with a supporting memorandum, and a motion to compel discovery were filed by the Regional Director, Office of Motor Carriers, Federal Highway Administration ("Agency") on October 19, 1992. An opposition to the summary judgment motion and a counter-motion for summary judgment were filed by John Steven Johnson ("Respondent") on December 4, 1992. On December 16, 1992, Agency filed a reply to the opposition and on January 7, 1993, Respondent filed a rejoinder to the reply.

I have considered the pleadings and all other documents presently in the record before me and for the following reasons, Agency's Motion for Summary Judgment is hereby granted and Respondent's Counter-Motion for Summary Judgment is hereby denied. In light of this disposition of the case, no ruling is made on Agency's Motion to Compel Discovery.

I. Procedural Background

Procedural events leading up to this point in the proceeding are complicated and have been set out in various orders previously entered in the record and cited, *passim*. They also have been summarized in Agency's Memorandum at 1–13 and Motion to Compel Discovery at 1–4.

The proceeding arises by way of a Memorandum Opinion of the United States Court of Appeals for the Ninth Circuit dated July 12, 1991, remanding in part the Final Order of the Federal Highway Administration ("FHWA") Associate Administrator for Motor

Carriers dated September 20, 1989, imposing a $19,700 civil penalty against Respondent and Steve Johnson & Sons Trucking, Inc. ("Corporation"). The Court affirmed the fine against Corporation, but found "that the FHWA may have exceeded its statutory and regulatory authority in imposing this fine against *Johnson individually* * * *." The Court, therefore, directed "further consideration of the appropriateness of the fine against Johnson * * *." (Memorandum Opinion at 5 (emphasis added)).

By Order dated December 11, 1991, the FHWA Associate Administrator for Motor Carriers instituted this proceeding under the FHWA's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings in 49 CFR part 386 for the limited purpose of reviewing the appropriateness of imposing the fine against Mr. Johnson *in his individual capacity.*

The record, to date, in the proceeding is extensive. Among other things, by agreement of both sides the administrative record upon which the FHWA Associate Administrator issued the September 1989 Final Order and the judicial record upon which the Ninth Circuit issued the July 1991 Memorandum Opinion have been admitted in evidence. See Order served May 26, 1992.[1] Discovery has resulted in matters admitted and deemed admitted by Respondent, and in Respondent's production of documents.

II. Established Violations

The Ninth Circuit's ruling held that no violations are in issue. The $19,700 civil penalty Agency seeks to assess against Respondent, therefore, is a total amount for the following violations:

Five instances of operating a motor vehicle in interstate commerce without having the required minimum level of financial responsibility in violation of 49 CFR 387.7(a), at $2,000 per instance ("*financial responsibility*" violations).

Two instances of failing to timely report reportable motor vehicle accidents in violation of 49 CFR 394.9(a), at $350 per instance ("*recordkeeping*" violations).

Four instances of requiring or permitting drivers to make false entries on their records of duty status in violation of 49 CFR 395.8(e), at $500 per instance ("*recordkeeping*" violations).

Five instance of requiring or permitting drivers to drive in interstate commerce more than ten hours without having eight consecutive hours off duty in violation of 49 CFR 395.3(a)(1), at $700 per instance ("*safety*" violations).

Five instances of requiring or permitting drivers to drive in interstate commerce after having been on duty more than 70 hours in eight consecutive days in violation of 49 CFR 395.3(b), at $700 per instance ("*safety*" violations).

III. Statutory and Regulatory Provisions

The *financial responsibility* requirement in 49 CFR 387.7(a)[2] was promulgated by the FHWA pursuant to the Motor Carrier Act of 1980 ("1980 Act"). Specifically relevant therein to this proceeding is 49 U.S.C. 10927 note providing that:

> Any *person* (except an *employee* who *acts without knowledge*) who is determined by the Secretary * * * to have *knowingly violated* this section or *a regulation issued under this section* shall be liable to the United States for a civil penalty of not more than $10,000 for each violation, and if any such violation is a continuing one, each day of violation constitutes a separate offense. [Emphasis added].[3]

The *recordkeeping* requirements in 49 CFR 394.9(a)[4] and 395.8(e)[5]; and the *safety* requirements in 49 CFR 395.3(a)(1) and (b)[6] were promulgated by the FHWA pursuant to the Motor Carrier Safety Act of 1984 ("1984 Act"). Specifically relevant therein to this proceeding is 49 U.S.C. § 521(b)(2)(A) providing that:

> [A]ny *person* who is determined * * * to have *committed an act which is a violation* of a *recordkeeping* requirement issued by the Secretary pursuant to * * * the Motor Carrier Safety Act of 1984 shall be liable to the United States for a civil penalty not to exceed $500 for each offense * * *. If the Secretary determines that a serious pattern of *safety violations, other than recordkeeping requirements,* exists or has occurred, the Secretary may assess a civil penalty not to exceed $1,000 for each offense; except that the maximum fine for each such pattern of safety violations shall not exceed $10,000 * * *. Notwithstanding any other provision of this section * * *, *except for recordkeeping violations,* no civil penalty shall be assessed under this section against an *employee* for a violation unless the Secretary determines that such employee's actions constituted gross negligence or reckless disregard for safety, in which case such employee shall be liable for a civil penalty not to exceed $1,000. [Emphasis added].[7]

IV. Issue To Be Resolved

The issue to be resolved is that framed by the Ninth Circuit: whether the FHWA exceeded its statutory and regulatory authority in imposing the $19,700 fine against Respondent individually. *Accord* December 11, 1991 FHWA Order. For the sake of clarity, I stress that it is in this *individual* capacity that the case is to be decided.

As the case was originally begun by the FHWA, the grounds for Respondent's alleged liability, distinct from Corporation's appears to be two-fold; namely, "in his individual capacity as President of" Corporation, the terminology which continues to appear in the caption of the proceeding (*supra*) and, simply, "in his individual capacity". *See* Index No. 23, Tab J (Notice of Claim at case caption and 1). The Ninth Circuit acknowledged this fact (Memorandum Opinion at 1 ("John Steven Johnson ('Johnson'), in his individual capacity *and* as president" of Corporation (emphasis added)). But, in remanding the case, the Court expressly limited the liability question to the individual capacity (*id.* at 5 ("Petitioners finally contend that the FHWA erred in holding both Johnson, *in his individual capacity,* and the company liable for the $19,700 fine." (emphasis added)).

I shall not, therefore, be deciding the issue of whether "a corporate officer may be held jointly and severally liable with the corporate entity for the violations," as suggested by Agency. See Memorandum at 14–15. Although, as shortly to be found, Respondent was president of Corporation, this is only one of a number of capacities he acted in at Corporation. Moreover, the 1980 and 1984 Acts, in terms, require resolution of Respondent's liability as an individual for the violations at Corporation on the basis of whether,

Respondent was a "person" who knowingly violated the financial responsibility regulations or an "employee" who acted without knowledge of them within the meaning of 49 U.S.C. 10927 note; and

Respondent was a "person" and was an "employee" within the meaning of 49 U.S.C. 521(b)(2)(A).

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[1] Documents in the records are designated Index Nos. 1, 2, etc.

[2] 49 CFR 387.7(a) provides that: "No motor carrier shall operate a motor vehicle until the motor carrier has obtained and has in effect the minimum levels of financial responsibility as set forth in § 387.9 of this subpart."

[3] This provision of 49 U.S.C. 10927 note is in Section 30(d)(1) of the 1980 Act.

[4] 49 CFR 394.9(a), in relevant part, provides that: "Within 30 days after a motor carrier learns or should have learned that a reportable accident occurred, the motor carrier must file the original and two copies of Form * * * with * * *."

[5] 49 CFR 395.8(e), in relevant part, provides that: "Failure to complete the record of duty activities * * * or making of false reports in connection with such duty activities shall make the driver and/or the carrier liable to prosecution."

[6] 49 CFR 395.3(a)(1), in relevant part, provides that: "[N]o motor carrier shall permit or require any driver used by it to drive nor shall any such driver drive * * * [m]ore than 10 hours following 8 consecutive hours off duty * * *."

49 CFR 395.3(b) provides that: "No motor carrier shall permit or require a driver of a commercial motor vehicle to drive, nor shall any driver drive, regardless of the number of motor carriers using the driver's services, for any period after * * *"

[7] 49 U.S.C. 521(b)(2)(A) is in Section 213(b) of the 1984 Act.

V. Summary Judgment Requirements

The FHWA's procedural rules in 49 CFR part 386 do not refer to motions for summary judgment. I am empowered, however, "[t]o consider and rule upon all procedural and other motions * * *." 49 CFR 386.54(b)(6). The rules also provide that "[a]n application for an order or ruling not otherwise covered by these rules shall be by motion * * *" and that "[a]ll motions filed after the matter is called for hearing shall be to the administrative law judge." 49 CFR § 836.35(a). *See also Woodbury Horse Transportation, Inc.*, 55 FR 43272 (October 26, 1990).

The FHWA's procedural rules further provide that evidence presented at hearings conducted under Part 386 is subject to the Federal Rules of Evidence. I shall similarly apply requirements and case law applicable to motions for summary judgment pursuant to Rule 56 of the Federal Rules of Civil Procedure. Accordingly,

> The judgment sought shall be rendered forthwith if the pleadings, depositions, answers to interrogatories, and admissions on file, together with the affidavits, if any, show that there is no genuine issue as to any material fact and that the moving party is entitled to a judgment as a matter of law. [Fed. R. Civ. P. 56, 28 U.S.C.].

VI. Respondent's Counter-Motion for Summary Judgment Without Merit

In the instant proceeding, Respondent has relied on essentially one argument in virtually every pleading filed: the proceeding is allegedly being conducted contrary to the Ninth Circuit's remand order, and the controlling statutes and agency regulations. Respondent has maintained that conducting an oral evidentiary hearing is impermissible because "[t]he plain meaning * * * [of the Ninth Circuit's remand order] is that the hearing is to be on the record as made by the AGENCY *in the past* for the fine *imposed in the past*, and not some new one-sided augmentation by a new investigation." (Pleading filed March 19, 1992, at 4 (emphasis in original)). Respondent has maintained that the statutory and regulatory schemes for civil forfeitures require all evidentiary matters to be in the possession of the agency in advance of its issuance of a notice of claim involving such a forfeiture. (Pleading filed June 18, 1992, at 2).

I have held that the latter contention is "patently false," there being nothing in the underlying statutes or the agency's rules of practice which requires the Associate Administrator to have in his possession, when issuing a notice of claim, every piece of evidence necessary to prove the charges therein. Indeed, I emphasized that the rules of practice specifically set out the scope and means of discovery that parties may conduct after the commencement of such actions, see 49 CFR 386.37–45. (Order served July 2, 1992, at 2.)

As to the former contention, I have held that:

> [T]he Court found the record before it inadequate to support the agency's action finding Respondent liable for the fine and, in terms, remanded that action 'for further consideration by the FHWA.' (Memorandum Opinion at 2.) Respondent, therefore, is not presently liable and will only become liable for the fine, if at all, on the basis of *the evidentiary record to be established in this proceeding*. [Order served May 26, 1992, 8 n.11 (emphasis added)].[8]

I concluded, furthermore, at the outset of the proceeding that although admission of the administrative and the judicial records into the proceeding's evidentiary record would be permitted, neither contained sufficient factual information for determining Respondent's liability for the fine, with the *possible* exception of establishing liability for the recordkeeping violations. (Order served May 26, 1992, at 5–6, 8). Throughout the proceeding I also stressed that the legal issue of Respondent's liability involves "the factual question of the relationship between Respondent and Corporation and of the duties and activities Respondent performed in relation to Corporation." Order served March 3, 1992, at 5. See also Orders served June 24, 1992, July 8, 1992, September 1, 1992.

Despite all the foregoing, Respondent has elected to proceed with a counter-motion for summary judgment based solely on the ground that no "amendment" to the Notice of Claim is proper and the evidentiary record, closed as of the agency's final action on the Notice of Claim, is factually sufficient to demonstrate Respondent's nonliability for the $19,700 civil penalty. I deny the countermotion.

VII. Agency's Motion for Summary Judgment

A. Respondent's Opposition Without Merit

In opposing Agency's Motion for Summary Judgment, Respondent reiterates the above contentions. I find them wholly without merit as a defense against the motion. But, Respondent also proffers one new argument. By means of an affidavit attached to the opposition, Mr. Johnson asserts: "I can categorically declare that *I was not actively involved in the day to day running of the company;* I was operating a wholesale produce company, and left the management and operation of the trucking company [Corporation] to others. (*Id.* at 3 (emphasis added)). Ostensibly, Respondent argues that the affidavit is provided to counter "the new contentions" in an affidavit attached to the agency's motion. (Opposition at 4; Rejoinder at 12–14).[9]

Respondent has been well aware from the start of the proceeding that Agency considered the fact established that Respondent ran the day-to-day operations of Corporation, *see* Notice of Claim at Index No. 23 at Tab I, yet, as shown above, Respondent has not only had abundant opportunity to have an oral evidentiary hearing concerning his duties and activities at Corporation, a hearing he has repeatedly argued against, but he has, through his refusal to answer certain requests of admission, effectively admitted the facts which show his personal involvement and responsibility. See page 10 below.

"The doctrine of judicial estoppel * * * is invoked to prevent a party from changing its position over the course of judicial proceedings when such positional changes have an adverse impact on the judicial process." *Religious Tech. Ctr., Ch. of Scientology*, 869 F.2d 1306, 1311 (9th Cir. 1989). See also *Russell* v. *Rolfs*, 893 F.2d 1033, 1037 (9th Cir. 1990). The basis for the doctrine of judicial estoppel and the basis for preventing the use of inconsistent assertions is "to protect against a litigant playing 'fast and loose with the courts' * * *." *Rockwell Intern.* v. *Hanford Atomic Metal Trades*, 851 F.2d 1208, 1210 (9th Cir. 1988).

I consider Respondent's litigating tactics in this proceeding well within the category of playing "fast and loose" with the administrative hearing process. I will not permit Respondent, at this late

[8] It is to be noted that no evidentiary hearing has ever been held to date, in this case. When first before the FHWA, Respondent failed to make a timely request for a hearing and the agency's subsequent refusal to conduct a hearing, along with the alleged impermissibility of imposing the fine against Respondent, were the matters appealed by Respondent and Corporation to the Ninth Circuit.

[9] The Agency's affidavit is from FHWA Safety Specialist Mark D. Gilmore, who declares:

> During the latter part of April 1989 (April 26 and 27) and on May 9, 1989, I conducted a compliance review of STEVE JOHNSON & SONS TRUCKING, INC., a closely-held corporation which listed JOHN STEVEN JOHNSON (President) and his wife, Colleen R. Johnson (Secretary Treasurer) as officers of the corporation. To the best of my recollection and knowledge, Harlan W. Huber, the dispatcher, and a female employee were the only employees other than drivers who were employed by the corporation. Based upon my observations during the investigation of STEVE JOHNSON & SONS TRUCKING, INC., *these employees reported directly to Mr. Johnson who was actively involved in running the company.* [*Id.* at ¶ 3 (emphasis added)].

date, to plead a change in his position. Moreover, the overwhelming factual information provided by Respondent, as a result of Agency's discovery, is entirely contrary to any notion that during the relevant time period Respondent's full-time occupation was something other than running Corporation or even, indeed, that there were any *others* responsible for the management and operation of Corporation.

B. Facts Deemed Admitted May be the Basis for Summary Judgment

Agency served Respondent with 20 requests for admission on June 11, 1992. See Appendix. On June 18, 1992, Respondent filed objections on grounds of relevance to all but two of the requests (Request Nos. 3 and 16). By Order served July 8, 1992, the objections were overruled. In the meantime, on June 22, 1992, Respondent had filed a response admitting Request No. 3 and denying Request No. 16. In a second response filed July 21, 1992, submitted in compliance with the July 8, 1992 Order directing Respondent to file an answer to the outstanding requests, Respondent stated that he "will elect to answer * * * with silence." By Order served September 1, 1992, I held that Respondent's answer was deemed admission of the matters and facts set forth in the 18 outstanding requests.

The FHWA's procedural rule on requests for admission in 49 CFR 386.44(a) provides that "(2) Each matter for which an admission is requested * * * is admitted unless within 15 days after service of the request (or such alternate date as may be set by the administrative law judge), the party to whom the request is directed serves upon the party requesting the admission a written answer signed by the party of his/her attorney"; and that "(3) Each answer must specify whether the party admits or denies the matter. If the matter cannot be admitted or denied, the party shall set out in detail the reasons."

This agency rule mirrors Rule 36 on requests for admission in the Federal Rules of Civil Procedure, 28 U.S.C., and it is well settled that "admissions obtained under rule 36, *including matters deemed to be admitted*, can form the basis for granting summary judgment [under rule 56]." *First Nat. Bank Co., Etc. v. Insurance Co.*, 606 F.2d 760, 766 (7th Cir. 1979) (emphasis added). Furthermore, unanswered requests for admissions constitute matters deemed to be admitted and they "may properly serve as an uncontroverted basis for purposes of summary judgment, *Bowles v. Batson*, 61 F. Supp. 839 (D.S.C. 1945), *aff'd Batson v. Porter*, 154 F.2d 566 (4th Cir. 1946)." *Kirkland v. Cooper*, 438 F. Supp. 808, 811–12 (D.S.C. 1977). *See also Anchorage Associates v. V.I. Bd. of Tax Review*, 922 F.2d 168, 176 n.7 (3d Cir. 1990); *Goodman v. Mead Johnson & Co.*, 534 F.2d 566, 573 (3d Cir. 1976), *cert. denied*, 429 U.S. 1038; *U.S. v. Kasuboski*, 834 F.2d 1345, 1350 (7th Cir. 1987); *Dukes v. South Carolina Ins. Co.*, 770 F.2d 545, 548–49 (5th Cir. 1985); *Donovan v. Carls Drug Co., Inc.*, 703 F.2d 650, 651 (2d Cir. 1983).

The justification given by Respondent for his "silence" answer to Agency's 18 requests for admission was the oft repeated argument of "the clear invalidity of the present Post-Notice of Claim investigation," coupled with an alleged "implicit right" of the receiver of a request for admission "to remain silent" under 49 C.F.R. 386.44(a)(2). (Response filed July 21, 1992, at 1–2). My September 1, 1992 Order pointed out, once again, that Respondent's questioning of the "validity" of the proceeding had been previously considered and rejected. I further held that Respondent was reading into the agency's rules of practice governing requests for admission an "implicit right" that did not exist.

In any event, revisiting Respondent's answer merely reinforces the conclusion that it failed to comply with the procedural requirement, common both to the agency's rule and Rule 36 of the Federal Rules of Civil Procedure, that the only means by which a party can avoid "admitting" a request for admission is to file an answer specifically denying the request, in whole or in part, or detailing why the request cannot be admitted or denied. Then, as now, Respondent's "silence" answer leaves no question but that the Agency's 18 requests for admission must be and are deemed admitted for purposes of the proceeding and, at this time, for purposes of ruling on the agency's summary judgment motion.

I reiterate, furthermore, that Respondent's ill-conceived attempt to argue here, for the first time, a new factual position on his duties at Corporation will not be permitted. The rules of practice provide that "[a]ny matter admitted is *conclusively established* unless the * * * administrative law judge permits withdrawal or amendment." 49 CFR 386.44(b) (emphasis added). Respondent has made no request for such relief and the time has long passed when I would consider such a request to be timely made.

C. No Material Facts in Issue

I find that when the violations occurred, Steve Johnson & Sons Trucking, Inc., was an authorized for-hire carrier of general freight under Interstate Commerce Commission Docket No. 182717. (Index No. 23 at Tabs I, K).

I find that at such time, at Steve Johnson & Sons Trucking, Inc. Respondent and his wife were the only officers, directors, and shareholders. Respondent was president; his wife was secretary/treasurer. (Appendix at Request Nos. 2–3, 10–14, 17–18). All profits and losses from the business accrued to Respondent and his wife. (Appendix at Request No. 15).

I find that the dispatcher was Harlan W. Huber and that Respondent supervised Mr. Huber. (Index No. 23 at Tab K; Appendix at Request No. 19).

I find that Respondent was manager and supervised daily operations. (Appendix at Request Nos. 1, 4). Respondent was responsible for hiring, firing, training, and directly supervising all employees, including dispatchers and drivers; and for directly supervising any persons involved in hiring, firing, and training the employees. (Appendix at Request Nos. 5–9, 19). Respondent supervised accident reporting. (Appendix at Request No. 20).

I find that Respondent devoted all of his working time to carrying out the foregoing duties and activities. (Production of Document No. 4).[10]

In light of the statutory and regulatory provisions to be applied in this case, as now discussed, I conclude that there are no material facts in issue.

D. Agency Entitled to Summary Judgment as a Matter of Law

1. Respondent is Liable for the Financial Responsibility

In the Motor Carrier Act of 1980, Congress provided that "any person" who "knowingly violates" a financial responsibility regulation promulgated by the FHWA is liable for a civil penalty. Congress excepted from such liability, "an employee who acts without knowledge." 49 U.S.C. 10927 note.

In answering the Notice of Claim, Respondent did not dispute the facts relating to the financial responsibility charge; *i.e.*, that five interstate trips were operated by Corporation in which Ammonium Nitrate Fertilizer, a

[10] Production of Documents No. 4 contains the 1988 (tax year, April 1, 1988–March 31, 1989) U.S. Corporation Income Tax Return of Steve Johnson & Sons Trucking, Inc., and it gives the percentage of time Respondent—listed as the only "Officer" of Corporation—"devoted to business" as "ALL".

hazardous material, was transported without the minimum level of liability insurance required by 49 CFR 387.7(a), see Index No. 23 at Tab K, Nos. 1–5, but he now denies that he "knew" Corporation was transporting the product, see Appendix at Request No. 16. In his answer to the Notice of Claim Respondent also denied that he "knowingly" violated 49 CFR 387.7(a), see Index No. 23 at Tab I.

Respondent's current position, that he did not know about the trips and the transporting of Ammonium Nitrate Fertilizer, is not credible. I have before me a written statement signed by Respondent, dated April 27, 1989, which he provided to the FHWA during its investigation of Corporation. Respondent states therein:

> Since January 1, 1989 to the present date, Steve Johnson & Sons Trucking, Inc., has transported eleven (11) shipments of hazardous materials * * * The reason that we failed to have the required $1,000,000.00 of public liability for transporting hazardous materials is that even though the trailers were placarded oxidizer, I didn't think it was considered a hazardous material. [Index No. 23 at Tab K (Exhibit No. 1, Document 6)].

Where transportation of hazardous materials is concerned, "a civil penalty may be imposed only upon proof that the defendant knowingly committed the act which constitutes the violation (*it is not necessary to show that he knew the act constituted a violation*) * * *." S. Conf. Rep. No. 1347, 93d Cong., 2d Sess. 23, *reprinted in* 1974 U.S. Code Cong. & Admin. News 7669, 7686 (emphasis added). The Supreme Court has also recognized that where offenses involving dangerous products are concerned, while strict or absolute liability is not imposed, "the probability of regulation is so great that anyone who is aware that he is in possession of them or dealing with them *must be presumed to be aware of the regulation.*" *United States* v. *International Min'ls Corp.*, 402 U.S. 558, 565 (1971) (emphasis added). See also *TCI Corporation*, FAA Order No. 92–77 (December 22, 1992).

Respondent, therefore is properly charged with the requisite knowledge that hazardous materials were being transported. As discussed below, he must also be charged not only with the requisite knowledge that a minimal level of liability insurance was needed for its transportation by interstate motor carrier but also with personal liability for the illegal transportation, pursuant to 49 U.S.C. 10927 note and 49 CFR 387.7(a).

The word "person" is not defined in the 1980 Act, however, Congress has provided, as an overall rule of statutory construction, that "[i]n determining the meaning of any Act of Congress, unless the context indicates otherwise," the word "person" includes "*corporations* * * *, as well as *individuals*. 1 U.S.C. 1 (emphasis added). Consistent therewith, Congress expressly provided in the Motor Carrier Safety Act of 1984 that the word "person" means "any *individual*, partnership, association, *corporation*, business trust, and any other organized group of individuals * * *." 49 App. U.S.C. 2503(6) (emphasis added). As a general rule of statutory construction, Congress also directed that "words importing the singular include and apply to *several persons*, parties or things * * *." 1 U.S.C. 1 (emphasis added).

I conclude, therefore, that Congress did not limit the FHWA, in enforcing financial responsibility requirements, to citing one "person" for a violation; a corporation and an individual may both be cited, as in this case. Furthermore, given Respondent's position at the co-respondent corporation as officer, director, shareholder, full-time manager of all employee hiring, firing, and training, and full-time supervisor of all employees and daily operations, I also conclude that Respondent falls into the category of "individual" in relation to the corporate respondent. "The best indicator of what statutory words mean is what they say." *Finnegan* v. *Matthews*, 641 F.2d 1340, 1344, (9th Cir. 1981). See also *Rivera* v. *Becerra*, 714 F.2d 887, 893 (9th Cir. 1983). There remains, then, the question of "knowingly" and Respondent's status as an "employee" at Corporation acting "without knowledge" within the meaning of 49 U.S.C. 10927 note.

The legislative history of the 1980 Act indicates that it effected changes in the Interstate Commerce Act which had governed regulation of the motor carrier industry in the United States since 1935. H.R. Rep. No. 1069, 96th Cong., 2d Sess. 2, *reprinted in* 1980 U.S. Code Cong. & Admin. News 2283, 2284. Also indicated is Congressional concern that the changes "might have some impacts on safety" and, specifically, concern "that minimum financial responsibility requirements were needed whether or not any change was made in the economic regulatory scheme." Hence, the 1980 action by Congress on financial responsibility was "to encourage *the carriers* to engage in practices and procedures that will enhance the safety of their equipment so as to afford the best protection to the public." *Id.* at 42, 2324 (emphasis added).

The FHWA, accordingly, was directed "to establish regulations to require minimal levels of financial responsibility sufficient to satisfy liability amounts * * * covering public liability, property damage, and environmental restoration for the transportation of property for hire by motor vehicle in the United States * * *." 49 U.S.C. § 10927 note. And Congress provided that failure to adhere to the agency's regulations would result in civil penalty liability. *Id.*

The foregoing resulted in the regulation here in issue, 49 CFR 387.7(a), which obligates *motor carriers* to have certain minimum levels of financial responsibility, see note 2, *supra*. By regulation, the definition of a "motor carrier" is "a for-hire motor carrier * * * of property" and the term includes "a motor carrier's agents, *officers* and representatives as well as *employees responsible for hiring, supervising, training, assigning, or dispatching of drivers* * * *." 49 CFR 390.5 (emphasis added).

Respondent, at Corporation, not only was an officer but also clearly falls within the category of an employee responsible for hiring, supervising, and training drivers. He was also responsible for directly supervising the person dispatching drivers. In sum, at Corporation, Respondent was an *individual* who can be regarded as a *motor carrier* charged with the duty to maintain minimum levels of financial responsibility, as contemplated by statute and regulation.

As for Respondent's knowledge or lack thereof of the financial responsibility obligation, it is well settled that in a regulated industry such as interstate commerce—the first Interstate Commerce Act having been enacted in 1887—Congress frequently intends penalties to be the effective means of regulation and, thus, "[s]uch legislation dispenses with the conventional requirement for criminal conduct—awareness of some wrongdoing. In the interest of the larger good it puts the burden of acting at hazard upon a person otherwise innocent but standing in responsible relation to a public danger." *United States* v. *Dottevweich*, 320 U.S. 277, 280–81 (1943). *See also United States* v. *Balint*, 258 U.S. 250 (1922); *United States* v. *Freed*, 401 U.S. 601 (1970); *United States v. International Min'ls Corp., supra*, 402 U.S. 558.

It is also well settled that all citizens are charged with knowledge of the United States Statutes at Large, *Federal Crop Ins. Corp.* v. *Merrill*, 332 U.S. 380, 384 (1947); and, more significantly, that those who deal with the Government are expected to know the law, *Heckler* v. *Community Health Services*, 467 U.S. 51, 63 (1984). Moreover, Congress has provided that "the appearance of rules

and regulations in the **Federal Register** gives legal notice of their contents." *Federal Crop, supra* 332, U.S. at 385. See also 44 U.S.C. 1507.

I conclude, therefore, that Respondent, in the individual capacities he held at Corporation as indicated above, was by law on notice of Federal requirements for insurance in transporting in interstate commerce the hazardous materials which, in fact and by express acknowledgment of Respondent, were transported without the proper insurance. *Cf. Wisconsin Protein Carriers, Inc.*, 55 Fed. Reg. 43277, 43278 (October 26, 1990).

Furthermore, Respondent cannot be regarded as unfamiliar with regulatory obligations imposed on interstate motor carriers. Prior to Respondent's association with Steve Johnson & Sons Trucking, Inc., he had been an officer and director of W.L. Davis Trucking, Inc., an interstate common carrier investigated by the FHWA in 1977, and found to be in violation of agency regulations. In addition, Steve Johnson & Sons Trucking, Inc., had been earlier investigated by the FHWA, in May 1988, at which time it received a conditional safety rating.[11] *See* Index No. 23 at Tab K (Exhibit Abstract A).[12] *Cf. Trinity Transportation*, 57 FR 28737, 28742 (June 26, 1992); *Yankee Trails, Inc.*, 55 FR 43274, 43276 (October 26, 1990).

Accordingly, I hereby find Respondent liable, jointly and severally with Corporation, for the $10,000 civil penalty assessed by the FHWA for the five instances when improperly insured transportation of hazardous materials occurred.

2. Respondent is Liable for the Recordkeeping Violation

In the Motor Carrier Safety Act of 1984, Congress provided that "any person" who commits an act which violates a recordkeeping regulation promulgated by the FHWA is liable for a civil penalty. Congress made no exception for persons who are employees. 49 U.S.C. 521(b)(2)(A).

The recordkeeping violations in issue against Respondent involved two kinds of violations: failure to timely report accidents as required by 49 CFR 394.9(a); and requiring or permitting false driver records of duty status in violation of 49 CFR 395.8(e). In answering the Notice of Claim, Respondent admitted the failure to report accidents, but asserted that "I personally did not know the violation[s] took place and furthermore was not aware of the requirement to report such accidents." As to the driver record violations, Respondent denied personal liability "for every driver who makes a mistake." (Index No. 23 at Tab I).

Congress intended the 1984 Act to:

> [P]romote the safe operation of commercial motor vehicles, to minimize dangers to the health of operators of commercial motor vehicles and other employees whose employment directly affects motor carrier safety, and to assure increased compliance with traffic laws and with the commercial motor vehicle safety and health rules, regulations, standards, and orders issued pursuant to this Act. [49 U.S.C. 2501].

Issued by the FHWA thereunder were the recordkeeping regulations in 49 CFR 394.9(a), obligating *motor carriers* to file accident reports, *see* note 4, *supra;* and in 49 CFR 395.8(e), obligating *drivers and/or carriers* to ensure that drivers' records of duty status were accurate, see note 5, *supra.*

The nexus between required reporting of accidents and motor carrier safety is obvious. The falsification of driver records is equally a matter of safety.

> Congress recognized that interstate highway safety is a national problem and that excessive hours spent in driving over the road endangers others using the highways as well as the individual driving; that the only practical way to exercise control over independent day and night around the clock truck drivers is to limit their continuous hours of operation; that to enforce such, a log showing time on and off duty, time spent in driving as well as time spent in the sleeper berth is required to be kept and filed each day or at the completion of each trip with the *employing motor carrier.* Congress did not deem it an undue burden * * * *to impose on the motor carrier the burden of policing such to determine their truth or falsity.* [*United States* v. *Sawyer Transport, Inc.*, 337 F. Supp. 29, 30 (D. Minn. 1971), *aff'd*, 463 F.2d 175 (8th Cir. 1972) (emphasis added)].

See also United States v. *E. Brooke Matlock, Inc.*, 149 F. Supp. 814 (D. Md. 1957).

The interplay between the statute's designation of a *person's* liability for such recording violations and the regulations' *motor carrier* liability is the same as found in connection with the financial responsibility violations. In the 1984 Act, as noted above, Congress defined "person" as, among other things, an *individual* and a *corporation.* 49 App. U.S.C. 2503(6). I conclude, therefore, for the same reasons given above in Section VII.D.1., that Respondent, in relation to Corporation, is an individual within the meaning of 49 U.S.C. 521(b)(2)(A) and that the FHWA is empowered by Congress to assess liability against both Respondent and Corporation for the recordkeeping violations. Furthermore, Respondent as an "individual" in relation to Corporation also clearly falls within the category of motor carrier/carrier for purposes of 49 CFR 394.9(a) and 395.8(e). The reasons are the same as for the financial responsibility violations; namely, by definition a "motor carrier" means, among other things, an *officer* and an *employee responsible for hiring, supervising, training, assigning, or dispatching of drivers, see* 49 CFR 390.5. In this instance, moreover, it is expressly established that Respondent supervised accident reporting, see Appendix at Request No. 20.

I conclude that there is no question as to "knowingly" with regard to Respondent's liability as an individual for the recordkeeping violations in issue. The reasons are the same as for the financial responsibility violations, see Section VII.D.1. Respondent's individual status at Corporation placed him on notice as a matter of law as to the regulatory requirements for accident and driver reports. And, because of Respondent's prior relationship to another interstate trucking company with regulatory compliance problems and the fact that at the time of the recordkeeping violations at Corporation, the company had a conditional safety rating issued barely a year before which cited recordkeeping as a problem, see note 11, *supra*, disavowal by Respondent of actual knowledge of such regulatory requirements is virtually impossible to accept under any circumstances he might argue. *Cf. A. Weinfeld & Sons, Inc.*, 55 FR 43283 (October 26, 1990); *Horizon Transportation, Inc.*, 55 FR 43292 (October 26, 1990).

Accordingly, I hereby find Respondent liable, jointly and severally with Corporation, for the $700 civil penalty assessed by the FHWA for the two instances when motor vehicle accidents were not timely reported and for the $2,000 civil penalty assessed by the FHWA for the four instances when driver records of duty status had false entries.

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[11] 49 CFR 385.3(2) provides that a *conditional safety rating* means "a motor carrier does not have adequate safety management controls in place to ensure compliance with the safety fitness standard that could result in the occurrences listed in [49 CFR] 385.5(a) through (h)."

49 CFR 385.5(a) through (h) includes, "(b) Inadequate levels of financial responsibility (part 387)"; "(f) Nonreporting of accidents (part 394)"; and "(g) The use of fatigued drivers (part 395)".

[12] I note that the FHWA's compliance review report on Steve Johnson & Sons Trucking, Inc., dated May 20, 1988, lists as "persons interviewed during this review": Paul Martin, with the title "safety director"; and Steve Dement, with the title "vice president."(Index No. 23 at Tab K (Exhibit Abstract A). At the time of the violations here in issue, however, I must consider it established, through Respondent's deemed admission, that Respondent and his wife were the company's only officers and directors, see Appendix at Request No. 13.

3. Respondent is Liable for the Safety Violations

The statutory basis for Respondent's liability for the safety violations comes from the same section of the Motor Carrier Safety Act of 1984 as does his liability for the recordkeeping violations except that while "any person" who commits an act which violates a safety regulation promulgated by the FHWA is liable for a civil penalty, Congress did limit such liability for persons who are employees[13] unless their actions constituted gross negligence or reckless disregard for safety. 49 U.S.C. 521(b)(2)(A).[14]

Respondent's answer to the safety violations was not to deny that they happened, but to disclaim personal responsibility: "I can not [sic] ride with every driver and *force* them to obey the law." (Index No. 23 at Tab I (emphasis in original)). There is also some indication in pleadings before me that Respondent considers himself an *employee* for purposes of 49 U.S.C. 521(b)(2)(A) and the safety violations. See Pleading filed February 6, 1992, at 3 (Respondent, "as an individual person—was somehow, by some unexplained and undetected manner, converted into an '*EMPLOYER*,' * * *." (emphasis in original)).

The legislative history of the 1984 Act indicates why Congress distinguished between *persons/employers* and *employees* for purposes of their liability for safety violations.

> The Committee believes that an employee who is operating a commercial motor vehicle in a grossly negligent manner or with reckless disregard for safety and in violation of this title should be subject to a civil penalty. At the same time, the Committee recognizes the fact that employees and employers enjoy a different financial status. The level of penalty necessary to provide a deterrent to an employer could have the effect of financially bankrupting an employee. The different levels of penalties for employers and employees are designed, therefore, to create adequate incentives to assure compliance with the act. [S. Rep. No. 424, 98th Cong., 2d Sess. 11, *reprinted in* 1984 U.S. Code Cong. & Admin. News 4785, 4795].

Simply applying the terms employer and employee as used in the foregoing statement and in furtherance of the public policy contained therein, I must find that Respondent is an "employer" at Steve Johnson & Sons Trucking, Inc. Respondent, along with his wife, was the only shareholder in the corporation; they alone received all profits/losses from the business. Respondent, furthermore, was the person at Steve Johnson & Sons Trucking, Inc., who hired, trained, supervised, and fired all of the employees—including all of its drivers—who carried out the company's business. He was also the manager of the company and supervised its daily operations. It would defy common sense and logic to conclude that simply because the company was a corporation, thereby rendering the corporate entity the employer, that Respondent is not also an employer who is required by Federal statute to assume responsibility for safety infractions committed by the corporation's interstate truck drivers.

In any event, I am not limited to common sense and logic in this instance. The specific FHWA safety regulations in issue, and promulgated pursuant to the Congressional mandate in 49 U.S.C. 521(b)(2)(A), are in 49 CFR 395.3(a)(1) and (b). These regulations, in terms, provide that a *motor carrier* shall not permit or require drivers to exceed certain hours of service limitations, *see* note 6, *supra*. Moreover, 49 CFR 390.11 provides that "[w]henever . . . a duty is prescribed for a driver or a prohibition is imposed upon the driver, *It shall be the duty of the motor carrier to require observance of such duty or prohibition* * * *." (Emphasis added).

I have found Respondent to be a *person/individual* within the meaning of 49 U.S.C. 521(b)(2)(A) and *motor carrier* within the meaning of the FHWA's regulations issued thereunder, which would include 49 CFR 395.3(a)(1) and (b). See Section VII.D.2., *supra*. For purposes of 49 U.S.C. 521(b)(2)(A), Respondent must be considered an *employer* as defined in 49 App. U.S.C. § 2503(3), given his overall management responsibility at Corporation, including assigning employees to operate its commercial motor vehicles, see note 13, *supra*.

I find, again, that Respondent's responsibility for assigning employees placed him on notice as a matter of law as to the regulatory requirement for driver hours of service limitations. And, I find that Respondent must be considered as having actual notice of the requirements, see Section VII.D.2.; note 11, *supra*.

Accordingly, I hereby find Respondent liable, jointly and severally with Corporation, for the $7,000 civil penalty assessed by the FHWA for ten instances when drivers were required or permitted to drive in interstate commerce in violation of hours of service limitations.

Conclusion

Having granted Agency's motion for summary judgment, Respondent is jointly and severally liable with Corporation for the total amount of the civil penalty involved herein, $19,700.[15]

My decision in this Order becomes the final decision of the Associate Administrator 45 days after the Order is served unless a petition or motion for review is filed under 49 CFR 386.61 and in compliance with the requirements set out in 49 CFR 386.62.

So ordered.

John J. Mathias,

Chief Administrative Law Judge.

Attachments—Appendix—Agency Requests for Admission

Appendix—Agency Requests for Admission

Request No. 1

Admit or deny that John Steve Johnson supervised the daily operations of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

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[13] Congress defined "employee", in 49 App. U.S.C. 2503(2), as:

(A) an operator of a commercial motor vehicle (including an independent contractor while in the course of operating a commercial motor vehicle);

(B) a mechanic;

(C) a freight handler; and

(D) *any individual other than an employer;*

who is employed by an employer and who in the course of his or her employment directly affects commercial motor vehicle safety . . . . [Emphasis added].

Congress defined "employer", in 49 App. U.S.C. § 2503(3), as:

[A]ny person engaged in business affecting interstate commerce who owns or leases a commercial motor vehicle in connection with that business, or *assigns employees to operate it* . . . . [Emphasis added].

[14] 49 U.S.C. 521(b)(2)(A) also provides that a civil penalty, not to exceed $1,000 for each violation, may be assessed against "any person" and if a "serious pattern" of safety violations exists, the total amount may not exceed $10,000. In the case of an employee, the civil penalty may not exceed $1,000.

Here, the ten safety violations were assessed by the FHWA at $700 each; the total $7,000 fine, therefore, would comply with the statutory requirement for serious pattern violations if Respondent is found to be a *person* subject to such liability. If Respondent is found to be an *employee*, the assessed fine would, of course, exceed the permissible limit.

In light of my conclusion below that Respondent is not an employee vis-á-vis the ten safety violations for statutory and regulatory purposes, the $7,000 fine is appropriate. Moreover, there is no basis for otherwise considering whether a "serious pattern" of safety violations in fact existed, see Agency Memorandum at 33–36, since, pursuant to the Ninth Circuit's ruling, the violations are not in issue.

[15] Agency, in the alternative in its motion for summary judgment, requests partial summary judgment on Respondent's liability for the financial responsibility and recordkeeping violations, alone. Agency provides no argument for differentiating between his liability for these violations and the safety violations. Respondent did not address the question. I see no basis for such distinction either in fact or law in this case.

Request No. 2

Admit or deny that John Steven Johnson served as a director of Steven Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 3

Admit or deny that John Steven Johnson served as president of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Admitted.

Request No. 4

Admit or deny that John Steven Johnson served in the capacity of manager of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 5

Admit or deny that John Steven Johnson was responsible for the hiring of employees of Steven Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 6

Admit or deny that John Steven Johnson was responsible for the firing of employees of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 7

Admit or deny that John Steven Johnson was responsible for the training of employees of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 8

Admit or deny that John Steven Johnson was directly responsible for supervising any person involved in any of the activities described in Requests for Admission Numbers 5, 6, and 7 above.

Deemed admitted.

Request No. 9

Admit or deny that John Steven Johnson was directly responsible for supervising dispatchers, drivers, and other employees of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 10

Admit or deny that John Steven Johnson was married to Colleen Johnson during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 11

Admit or deny that Colleen Johnson was a co-director of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 12

Admit or deny that Colleen Johnson was the secretary/treasurer of Steve Johnson and Sons Trucking, Inc., during the period October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 13

Admit or deny that there were no other officers or directors of Steve Johnson and Sons Trucking, Inc., other than John Steven Johnson and Colleen Johnson, during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 14

Admit or deny that John Steven Johnson and Colleen Johnson were the sole shareholders of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 15

Admit or deny that the profits and losses of Steve Johnson and Sons Trucking, Inc., accrued to John Steven Johnson and Colleen Johnson during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Request No. 16

Admit or deny that John Steven Johnson knew that Steve Johnson and Sons Trucking, Inc., transported Ammonium Nitrate Fertilizer, UN 2067, Class 5.1, Oxidizer during the period between February 1, 1989, and April 30, 1989.

Denied.

Request No. 17

Admit or deny that at any time during the period between October 1, 1988, and May 31, 1989, Steve Johnson and Sons Trucking, Inc., was a corporation whose shares were held by a single shareholder or a closely-knit group of shareholders.

Deemed admitted.

Request No. 18

Admit or deny that at any time during the period between October 1, 1988, and May 31, 1989, there were no public investors in Steve Johnson and Sons Trucking, Inc.

Deemed admitted.

Request No. 19

Admit or deny that John Steven Johnson supervised Harlan Huber during the period between October 1, 1988, and May 31, 1989, while Mr. Huber was employed by Steve Johnson and Sons Trucking, Inc.

Deemed admitted.

Request No. 20

Admit or deny that John Steven Johnson supervised the accident reporting responsibilities of Steve Johnson and Sons Trucking, Inc., during the period between October 1, 1988, and May 31, 1989.

Deemed admitted.

Department of Transportation, Served April 12, 1993: In the Matter of Northeastern Poly Products, Inc., Respondent. Docket 92–207, FHWA (Motor Carrier Safety), Honorable John J. Mathias.

Order

The parties have agreed to settle this matter prior to hearing and having entered into a settlement agreement, IT IS HEREBY ORDERED, that the above matter is dismissed in accordance with the terms of the Stipulation of Compromise and Settlement attached hereto.

Honorable John J. Mathias,

Chief Administrative Law Judge.

Department of Transportation: In the matter of Northeastern Poly Products, Inc., Respondent. Docket No. 92–207, FHWA (Motor Carrier Safety) Hon. John J. Mathias.

Stipulation of Compromise and Settlement

It is hereby stipulated by the Regional Director, Office of Motor Carriers and respondent, Northeastern Poly Products, Inc., through their respective attorneys as follows:

1. The Regional Director, Office of Motor Carriers (hereinafter "Regional Director") made a claim for $2,700 against Northeastern Poly Products (hereinafter "Respondent") under subtitle IV of title 49, United States Code, 49 U.S.C. 501. Notice of Claim was sent to Respondent on January 30, 1992.

2. Pursuant to the Federal Claims Collection Act of 1966, 31 U.S.C. 3701 et seq. and the regulations of the Regional Director in 49 CFR part 386, the parties desire to settle the claim. This agreement for settlement of the claim is made pursuant to 49 CFR 386.14 and the Federal Rules of Civil Procedure.

3. Respondent shall pay the sum of Two Thousand Dollars and 00/100's ($2,000) in full satisfaction of any and all claims arising out of the January 30, 1992 Notice of Claim which is the subject of this action.

4. Respondent shall pay the agreed settlement in five monthly installments of Four Hundred Dollars ($400) each, commencing on April 1, 1993, by Certified Bank or Teller checks, payable to the Federal Highway Administration.

5. Should Respondent fail to abide by the terms described in paragraph four (4), Respondent acknowledges that the entire amount of the civil penalty assessment cited in the Notice of Claim dated January 30, 1992 shall become due and payable immediately.

6. Respondent acknowledges that it has received adequate notice of the Regional Director's claim and waives any and all rights it may have to further details of the violations that gave rise to the claim and a decision containing findings of fact and conclusions of law.

7. Respondent also acknowledges that a safety compliance review may be

conducted in the near future and, should sufficient violations be discovered, the Regional Director reserves the right to initiate any and all actions permitted under the Motor Carrier Act, the Interstate Commerce Act and as authorized by 49 App. U.S.C. 521(5)(A).

Dated: March 19, 1993.

Richard Balter,

Northeastern Poly Products, Inc.

Dated: March 22, 1993.

Lawrence Lowen,

Attorney for Northeastern Poly Products, Inc.

Dated: April 7, 1993.

Stephen P. Crane,

Regional Director, Office of Motor Carriers.

Dated: April 7, 1993.

Sheila D. O'Sullivan,

Attorney for the Regional Director.

Department of Transportation, Office of Hearings, Washington, DC, Served April 5, 1993 In the matter of PGT Trucking, Inc., FHWA Docket No. R3–92–278 (Motor Carrier Safety).

Order Denying Motion of Respondent

By motion dated March 2, 1993, Respondent moved to expand the jurisdiction of the administrative law judge and requested further that an administrative law judge be immediately appointed and that the judge's jurisdiction include the power to rule on this matter. FHWA Counsel, by pleading dated March 8, 1993, opposed the motion and moves to strike it. On March 19, 1993, the Office of the Acting Associate Administrator for Motor Carriers requested the appointment of an administrative law judge to conduct a hearing and render an initial decision in this matter. No mention was made in the request of Respondent's motion to expand the jurisdiction of the administrative law judge. By order dated March 25, 1993, this proceeding was assigned to the undersigned Administrative Law Judge.

Having reviewed the pleadings of the parties I find no need for an expansion of my authority to rule on the issues raised therein. The present proceeding is in no way a re-opening of the proceedings in Docket No. R3–91–302. The charges in the present Notice of Claim deal with alleged violations which post-date the settlement agreement of September 18, 1991, in Docket No. R3–91–302.

It is also my determination that the request for reinstatement of a portion of a previously suspended penalty, as set forth in the Notice of Claim, is not a rescission of the settlement agreement of September 18, 1991. Such request is based on 49 CFR 386.82 and Appendix A to Part 386. As such, it constitutes a separate charge of violation, albeit one that depends on the Notice of Abatement in Docket No. R3–91–302. On the other hand, this request in the Notice of Claim does raise the legal question as to whether the Notice of Abatement survived the Settlement Agreement of September 18, 1992. That agreement did provide for the payment of the full amount of the original penalty of $83,600 in the event PGT Trucking failed to make payments on the due date, but is silent as to any continuing effect of the Notice of Abatement included with the Notice of Claim in that matter. The agreement does, however, state that "In consideration of the *full compromise and settlement of the claim*, the CARRIER agrees to pay the ADMINISTRATION, and the ADMINISTRATION agrees to accept the sum of $62,400 * * *." (Emphasis added). Thus, Respondent's motion does raise a legal question as to the continuing effect of the Notice of Abatement in Docket No. R3–91–302, and calls into question and support for $17,500 of the civil forfeiture penalty requested in the present case. This question can be addressed on brief at the conclusion of any hearing on the issues raised in the Notice of Claim in the present case.

The other issues raised in Respondent's motion must fail in view of my findings on the above issues. It is clear, however, that I would have no jurisdiction to find the earlier settlement agreement to be null and void or to order restitution to Respondent of the amount paid under that agreement. Any error of law or fact that may have preceded that agreement is not at issue in this proceeding. The settlement agreement in that matter constituted a final agency decision therein, as well as a surrender of any rights Respondent might have had to contest the allegations of the Notice of Claim therein. To the extent any right to contest the penalty survived in that proceeding, it was extinguished when Respondent failed to file a Motion for Reconsideration within 20 days under 49 CFR 386.64.

So Ordered.

John J. Mathias,

Chief Administrative Law Judge.

Before the Federal Highway Administration: In the Matter of PGT Trucking, Inc., Respondent, Docket No. R3–92–278.

Order Appointing Administrative Law Judge

This matter comes before me on a motion for the immediate appointment of an administrative law judge by the Regional Director, Region 3. This proceeding is governed by the Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

By notices of claim and investigation dated September 10, 1992, the Regional Director charged PGT Trucking, Inc. (PGT), with 24 violations of the Federal Motor Carrier Safety Regulations, 49 CFR parts 350–399, and assessed a total penalty of $44,350. Specifically, PGT was cited for 1 violation of 49 U.S.C. 521(b)(7), failure to comply with an August 23, 1991, notice of abatement; 1 violation of 49 CFR 391.11(a) and 391.11(b)(6), use of a physically unqualified driver; 4 charges under 49 CFR 391.11(a) and 391.11(b)(6), use of a driver not physically reexamined every 24 months; 1 violation of 49 CFR 391.11(a) and 391.95, use of a driver after he tested positive for a controlled substance; 3 violations of 49 CFR 391.11(a) and 391.105(a), use of a driver without requiring the driver to submit to a biennial controlled substance test and before the carrier received negative results of the biennial controlled substance test; and 14 instances in which PGT failed to ensure that entries on records of duty status were correct, in that PGT drivers made false entries on their records of duty status, in violation of 49 CFR 395.8.

In its initial response to the charges, PGT requested a hearing and denied that it used a driver after he had tested positive for a controlled substance. In two later pleadings, PGT requested additional information regarding the 24 charges, asserting that the notices of claim and investigation were not sufficiently specific to permit the carrier to prepare a reply. Although it received additional detailed descriptions of the violations cited in the notices, including documentary evidence supporting 21 of the charges, PGT's supplemental responses to the notices addressed only 5 of the counts.

In his November 23, 1992, reply to PGT's Request for Particulars, the Regional Director provided a more detailed description of the facts constituting the basis of several of the driver qualification charges. PGT did not respond. On February 11, 1993, the Regional Director filed a request for the immediate appointment of an administrative law judge.

By motion dated March 2, 1993, PGT requested that an administrative law judge be appointed and that the administrative law judge's jurisdiction include reexamination of an enforcement case brought against PGT by the Federal Highway Administration (FHWA) in 1991. The 1991 enforcement case was settled by agreement of the parties. Counsel for Respondent argues that this settlement did not constitute a final disposition, and that the Associate Administrator should reexamine this earlier matter, including whether FHWA had a legal claim against PGT in the first place. On March 8, 1993, the Regional Director objected to this "motion to expand the jurisdiction of the administrative law judge," and moved to strike. PGT replied to this motion on March 12, 1993, again arguing that the settlement agreement was not a final order in the case and therefore the earlier case is still subject to administrative review.

Discussion

This case presents several major issues. First, I must determine whether a material factual issue is disputed and warrants a hearing. In this case, both the Regional Director and the Respondent motor carrier have requested the immediate appointment of an administrative law judge. In this regard, I note that PGT claims it is exempt from the biennial controlled substances testing requirements under 49 CFR 391.105(c) because its drivers have been tested at least once under either a pre-employment test or a 50 percent random drug testing program and the carrier has repeatedly denied that it used a driver after he tested positive for a controlled substance. Upon review of the pleadings, I find that these assertions by the carrier raise a material factual issue in dispute with regard to these four charges, namely, whether PGT committed these offenses, which should be addressed in an administrative hearing.

Next, PGT has denied that it used a driver after the driver tested positive for use of a controlled substance. In responding to the Respondent's request for particulars on this charge, the Regional Director attempted to modify the charge of operating a commercial motor vehicle after testing positive for a controlled substance by stating that the notice of claim should read that a PGT driver operated a commercial motor vehicle in interstate commerce but had not been drug tested in accordance with the provisions of 49 CFR 391.11(a), 391.41(c), and 391.95. This proceeding, however, is defined and limited by the allegations made in the claim letter. The Regional Director cannot alter the notice of claim as he has attempted in this case. He must amend the notice of claim or file an additional notice of claim to include the new charge. Such new claim letter or amendment must comply with the provisions of 49 CFR 386.11(b).

Because the Regional Director employed neither of these two methods, his attempt to modify the notice of claim is without effect. I find that PGT remains charged with using "an unqualified driver to operate commercial motor vehicles, in interstate commerce, after the driver had tested positive for a controlled substance," as stated in the September 10, 1992, notice of claim.

This alleged violation presents a further issue for resolution. In his notice of claim, the Regional Director has asserted that, in addition to constituting a substantial health or safety violation for which the Regional Director has assessed the maximum penalty of $10,000, the alleged illegal use of this driver constitutes a violation of the notice of abatement included with the 1991 notice of claim against the Respondent. For this latter infraction, the Regional Director assessed a penalty of $17,500.

It is in response to this latter position of the Regional Director that PGT now seeks to reopen the 1991 case. The 1991 settlement agreement provided that the payment of the settlement amount was "in consideration of full compromise and settlement of" the charges made in the notice of claim. PGT claims that because the current charge of violating the August 23, 1991, notice of abatement seeks to reinstate a portion of the penalty assessed in the earlier enforcement action, the Regional Director violated this term in the settlement agreement. Therefore, PGT asserts, the settlement agreement is "null and void" and the 1991 action is still in dispute.

Reinstatement of a portion of the suspended or deferred penalty, although not expressly provided for in the settlement agreement, was not prohibited by it. I do not believe that the Regional Director's attempt to reinstate a portion of the suspended or deferred penalty violates the settlement agreement, thus making it null and void.

Section 386.82 provides that civil penalties are chargeable for violations of notices and orders, including notices of abatement, and that such penalty claims shall be made through a civil forfeiture proceeding. "The issues to be decided in these proceedings will be limited to whether violations of notices and orders occurred as claimed and the appropriate penalty for such violations. Nothing contained herein shall be construed to authorize the reopening of a matter already finally adjudicated under this part." 49 CFR 386.82(c). In this regard, I further note that Appendix A to part 386 expressly provides that the penalty for violating a notice to abate shall be "reinstatement of any deferred assessment or payment of a penalty or portion thereof."

PGT has also argued that the parties can only consent to dispose of a case via a consent agreement under 49 CFR 386.22 and 386.23. The carrier further claims the 1991 agreement reached between PGT and the Regional Director does not comply with the provisions set forth in §§ 386.22 and 386.23, in large part because it was not signed by the Associate Administrator. Therefore, it claims, this case has not been finally disposed of by the Associate Administrator, and the provisions of § 386.82, requiring a final adjudication, would not apply to bar reopening the 1991 case.

The agreement reached between PGT and the Regional Director is a settlement agreement, not a consent order, and it constitutes the final disposition of the action by the Associate Administrator under 49 CFR 386.16(c) and is binding on both of the signatories according to its terms, as provided in § 386.16(c)(3). There is no requirement in § 386.16(c), as PGT argues is required in § 386.23, that the settlement agreement expressly provide that it becomes final in the same manner as other orders issued.

The Associate Administrator's authority to dispose of civil forfeiture proceedings on behalf of the Federal Highway Administration via settlement agreement was delegated to him in FHWA Order M 1100.1, part 1, ch. 7, par. 5, and was redelegated to the Regional Directors in a February 8, 1991, Memorandum by the Associate Administrator to the Regional Directors. The agreement was executed by the Regional Director as the Associate Administrator's delegatee under § 386.16, not §§ 386.22 and 386.23. Therefore, PGT's reliance on §§ 386.22 and 386.23 is misplaced. In accordance with § 386.16(c), the settlement agreement became a final agency decision when signed by both parties in September 1991.

PGT's claim that the Associate Administrator must review all settlement agreements to ensure consistency in all cases is an opinion of the carrier and not a requirement of the regulations. Moreover, PGT makes no showing that there has been any impermissible inconsistency which has adversely affected the carrier.

PGT also purports to withdraw its consent to the settlement agreement. Section 386.16(c)(3) provides, however, that "an executed settlement agreement is binding on the respondent and the claimant according to its terms." Therefore, PGT cannot withdraw its consent to this agreement; under § 386.16(c), it remains a final and binding disposition of the 1991 enforcement action. Similarly, unless the settlement agreement provides otherwise, the time to comply with the notice to abate begins at the time the settlement agreement is executed.

In addition, by entering into the settlement agreement, PGT has waived, at least implicitly, any right it may have to further contest the alleged violations. Although the record before me does not contain a complete account of the earlier proceeding, I note that PGT has failed to allege any facts which would suggest that the settlement agreement was reached through a miscarriage of justice.

Accordingly, I find that the citation for violating the August 23, 1991, notice of abatement neither rescinds the September 1991 settlement agreement which disposed of the case nor warrants reopening of that action. What remains, however, is whether PGT's conduct constitutes a violation of the notice of abatement, and if so, what is the appropriate penalty? Because Respondent argues that its conduct did not violate an operative notice to abate, I am referring this issue to the administrative law judge. I recognize that in the 1991 settlement agreement PGT neither admitted nor denied the violations, and insofar as that is relevant to the penalty assessment for the instant case, the administrative law judge is authorized to consider this fact in determining the penalty, if any, for the alleged violation of the notice to abate.

I also note that PGT failed to deny or otherwise contest the remaining 19 charges against it, and therefore the carrier apparently does not dispute these charges. Yet the Regional Director has not moved for a final order on any of the 19 counts, and instead seeks a hearing on all 24 violations cited. Had the Regional Director sought a final order on these 19 charges, I would have considered that motion. In the absence of a motion for final order, I refer these 19 charges to the administrative law judge.

Finally, counsel for PGT Trucking requests a conference with counsel for the Regional Director and me. I believe it is unnecessary to hold a conference with counsel for the parties in this case before I issue this order, and because I am referring this case to an administrative law judge for consideration, I believe it would be inappropriate to meet with them at this time.

It is hereby ordered that PGT Trucking's request for a conference with counsel for the Regional Director and me is denied; the Regional Director's motion to appoint an administrative law judge is granted; and PGT Trucking's motion to expand the jurisdiction of the administrative law judge is denied. I hereby appoint an administrative law judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the presiding judge in this matter. The appointed judge is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: March 19, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of WDP Transportation, Inc., Respondent, Docket No. 91–KY–027–SA.

Final Order

This matter comes before me on a motion to dismiss by the Regional Director, Region 4. In the June 24, 1992, order in this case, the Associate Administrator declined to grant either the Regional Director's motion for a final order or WDP Transportation's (WDP) hearing request after finding several deficiencies in the record. He ordered the parties to submit pleadings and supporting evidence addressing the issues identified in the order.

In response to the order, the Regional Director moved that this enforcement action be dismissed because he believes "that there are deficiencies within the record that the submission of affidavits * * * could not correct." WDP has not responded to either the June 24 order or the Regional Director's motion to dismiss. By its silence, I find that WDP has no objections to the motion for dismissal.

It is hereby ordered that this case is dismissed.

Dated: March 5, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Owings Transport, Inc., Respondent, Docket No. R3–91–196.

Final Order

This matter comes before me upon a motion for final order by the Regional Director, Region 3. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

After an April 30, 1991, compliance review of Respondent Owings Transport, Inc.'s (Owings), operations revealed numerous violations of the Federal Motor Carrier Safety Regulations (FMCSRs), 49 CFR parts 350–399, the Regional Director issued a notice of claim to the carrier on May 9, 1991. The notice of claim charged Owings with 28 violations of § 395.8(a), failing to require drivers to prepare and submit records of duty status. The notice of claim assessed a penalty of $300 for each violation, for a total penalty of $8,400.

Owings replied to the notice of claim on June 10, 1991. This untimely reply did not request an administrative hearing and did not deny the charges in the notice of claim. Instead, Owings requested that the parties begin settlement negotiations and claimed the carrier had reached an agreement in principle with a third party under which the third party would "buy out" Owings. The reply also stated that it enclosed "documents outlining our actions taken to rectify the violations found in the [compliance review] * * *." The record before me does not contain these documents, however.

After attempts to reach a compromise with Owings proved unsuccessful, the Regional Director submitted a Motion for Final Order on March 12, 1992. The Regional Director submitted a Supplemental Motion for Final Order on January 25, 1993. Owings did not respond to the Regional Director's initial motion, but did submit a response to the supplemental motion dated February 8, 1993. The supplemental motion and the carrier's response are discussed below.

Discussion

1. The Regional Director's Motion for Final Order

In an analogy to a motion for summary judgment, I have held that the moving party on a motion for final order bears the burden of proving that there is no genuine issue of material fact, and is entitled to a judgment as a matter of law. *E.G., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 5, 1991) (Order). All inferences must be drawn in favor of the non-moving party, Owings in this case.

Along with his motion for final order, the Regional Director submitted evidence documenting each of the trips Owings' drivers allegedly made in

violation of the records of duty status provisions of the FMCSRs. Owings, as already stated, submitted an untimely reply, did not request an administrative hearing, did not deny the charges in the notice of claim, and did not respond to the Regional Director's initial motion for final order. I find Owing's failure to respond to or otherwise defend the 28 records of duty status charges to constitute a default, and therefore these allegations will be taken as true. 10 C. Wright, A. Miller & M. Kane, *Federal Practice and Procedure* § 2688 (1983).

As discussed earlier, in its reply Owings claimed that it intended to sell its business to another company. Attached to the Regional Director's supplemental motion, however, is evidence tending to show that Owings was still operating as a motor carrier as recently as September 16, 1992. This evidence, consisting of an FHWA Driver Vehicle Inspection Report signed for by Owings' President, also tends to show continuing violations of the same regulations cited in the notice of claim. In its response to the supplemental motion, Owings denied that it was operating as a motor carrier on September 16, 1992.

Notwithstanding the parties' disagreement over Owings' current status as a motor carrier, the record before me contains no remaining issues of fact or law concerning Owings' liability for the violations charged in the notice of claim which would cause me to deny the Regional Director's motion. Accordingly, for the reasons set forth above I hereby grant the Regional Director's motion for a final order for all 28 counts listed in the notice of claim.

2. Penalty Determination

The Regional Director assessed a penalty of $300 for each violation charged in the notice of claim, for a total penalty of $8,400. Title 49, United States Code, § 521(b)(2)(C), provides none factors to be considered in assessing the propriety of such a penalty.

Reviewing the record before me in light of these nine factors, I note first that there is no indication that Owings was the subject of any prior enforcement action resulting in either an admission of liability by the carrier or a formal finding against it. I also note that all 28 counts leveled against Owings' are for violations of record-keeping requirements.

Nevertheless, the record before me demonstrates that the Regional Director brought this action only after both a safety and a compliance review revealed violations of the FMCSRs. Owings' cannot simply ignore applicable regulations or refuse to cure violations identified in separate reviews. Also, nothing in the record before me indicates that Owings cannot pay the assessed penalty, or that such payment would impair the carriers' ability to continue to do business. Further, I note that the $300 per violation penalty assessed by the Regional Director is well below the maximum allowed by law. See 49 U.S.C. 521(b)(2)(A).

While Owings' reply did contain a statement that it had taken steps to rectify the violations cited in the notice of claim, the carrier should have been in compliance with the regulations *before* the initiation of this action. See *In the Matter of Stanford & Inge*, 55 FR 43,296 (F.H.W.A. 1990) (Order Upon Reconsideration). The carrier had several contacts with the agency before the notice of claim was issued, and was put on notice of the deficiencies in its operations. No mitigation of the penalty is appropriate under these circumstances.

It is hereby ordered that the Regional Director's request for a final order is granted. Owings Transport, Inc., is directed to pay $8,400 to the Regional Director within 30 days of the date of this Order.

Dated: March 5, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Otto Brehm, Inc., Respondent, Docket No. R1–92–132.

Final Order

This matter comes before me upon a motion by the Regional Director, Region 1, in opposition to the hearing request of Otto Brehm, Inc., seeking a final order finding the facts to be as alleged by the Regional Director, and imposing a $5,500 civil penalty on the carrier. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

The Regional Director issued a notice of claim on December 13, 1991, charging Otto Brehm with eleven violations of 49 CFR 395.8, failure to require drivers to make and submit records of duty status. The carrier responded to the charges by requesting a hearing, stating that "the problem created by our driver's [sic] failure to maintain current log books has been internally resolved and we feel we are now in 100% compliance with DOT regulations." In addition, the carrier stated that it considered the fine for "these unintentional violations" to be excessive.

In response to Otto Brehm's hearing request, the Regional Director wrote to the carrier on February 19, 1992, informing Otto Brehm, "[y]our letter requesting a hearing does not comport with the regulations which were furnished to you with the Notice of Claim," because the letter failed to contain an admission or denial of each charge, a statement of the factual issues in dispute, and a concise statement of the carrier's defenses to the charges, as required under 49 CFR 386.14(b). The Regional Director offered Otto Brehm an additional ten days to respond and cure its hearing request.

The carrier did not respond until March 27, 1992, after the Regional Director filed a motion for final order. In that response, Otto Brehm asserted that it had never received the Regional Director's February 19, 1992, letter. The carrier also claimed that even through it did not require drivers to record their trips on records of duty status, the carrier did keep documents similar to the required records of duty status and thus had substantially complied with the regulation. Otto Brehm included copies of these "driver manifests" for the 11 trips for which it was cited. The carrier also repeated its hearing request and its objection to the penalty amount.

Discussion

Otto Brehm's Hearing Request

If a motor carrier contests the charges against it and seeks a hearing, its reply "must contain * * * an admission or denial of each allegation of the claim * * * and a concise statement of the facts constituting each defense * * *." 49 CFR 386.14(b)(1). In addition, "[a] request for a hearing must list all material facts believed to be in dispute." 49 CFR 386.14(b)(2).

Although the Regional Director listed these requirements in the notice of claim and repeated them in his February 19, 1992, letter, Otto Brehm failed to comply with these provisions. Instead, the carrier's replies simply contest the amount of the penalty and concede that the carrier failed to keep proper records of duty status.

I have repeatedly held that an objection to the amount of the assessed penalty does not constitute a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b). *In re Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Law Judge). Therefore, Otto Brehm's assertion that the penalty amount is excessive is insufficient to merit a hearing.

In addition, Otto Brehm's claim that it substantially complied with the record of duty status regulation by keeping driver manifests is insufficient grounds for a hearing. As I have concluded in earlier cases, I again hold that the question of whether mitigating circumstances are present is not a material factual issue. *In re Tonawanda Tank Transport Service, Inc.*, 55 Fed. Reg. 43279 (FHWA 1990) (Final Order).

I find that Otto Brehm has failed to deny the charges or otherwise allege any material factual issue in dispute. The carrier has, in fact, admitted to the charges in its March 27 letter, stating "our records do not show compliance with the Federal Motor Carriers [sic] Safety Regulations on the use of formal 'trip logs' * * *." Therefore, Otto Brehm's hearing request is denied.

The Regional Director's Motion for Final Order

A motion for final order is analogous to a motion for summary judgment. See e.g., *In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–007, at 2, (FHWA December 5, 1991) (Order). Accordingly, the Regional Director, as the moving party, bears the burden of clearly establishing that there is no genuine issue of material fact and that it is entitled to a judgment as a matter of law. All evidence presented must be viewed in a light most favorable to Otto Brehm, the non-moving party; all inferences must be drawn in its favor.

Otto Brehm's assertion that maintaining driver manifests substantially complies with the record of duty status regulation is an invalid defense to the violations cited in the notice of claim. The concept of substantial compliance is closely related to the question of whether a regulation is mandatory or directory. Proof that 49 CFR 395.8 is mandatory is clear and unambiguous from the language of the section. "Every driver who operates a commercial motor vehicle shall record his/her duty status, in duplicate, for each 24-hour period. The duty status time shall be recorded on a specified grid, as shown in paragraph (g) of this section." (Emphasis added.) In addition, where a regulation includes a penalty for failure to comply, as § 395.8 does here, the regulation is usually found to be mandatory.

Moreover, I believe the essential objective sought to be achieved by § 395.8 would be defeated if I were to find literal compliance unnecessary in this case. Although this section is considered to be a recordkeeping provision, the goal of § 395.8 is a substantive one. The data on driver duty status provided through this regulation is essential for determining whether drivers are complying with the hours of service provisions. The absence of records of duty status can mask serious hours of service violations. The driver manifests maintained by Otto Brehm, which do not contain any record of Brehm's drivers' duty statuses, provide little useful information on this subject. For example, regarding the first count, Jake Smith's July 2, 1991, driver manifest states only that he departed at 6:28 a.m. and then made 17 deliveries, covering 317 miles. A separate document, a "Duplicate Card Report," shows Mr. Smith arriving at Otto Brehm, Inc., at 5:54 a.m. on July 2 and leaving for the day at 9:11 p.m. Even when taken together, these documents do not reveal Mr. Smith's duty status for any part of July 2. Therefore, the documents supplied by Otto Brehm fail to advance the ultimate objective of the record of duty status regulation—to ensure that drivers who have driven for as long as the hours of service regulations permit do not continue to operate commercial motor vehicles and thereby endanger themselves and other motorists.

In addition, Otto Brehm's claim that the violations were unintentionally committed is not relevant in determining liability. "The mental state or intent element is not a part of the burden faced by an auditing agency in enforcing civil penalty statutes," where, as in this case, neither the regulation itself nor the penalty provision contains an intent requirement. *In re Horizon Transportation, Inc.*, 55 FR 43292 (FHWA 1990) (Final Order). I do note, however, that Otto Brehm was the subject of a compliance review in June 1991, 4 months before the compliance review that led to the 11 charges in this case. Although Otto Brehm was not cited for record of duty status charges as a result of the June review, the carrier was advised of its duties under the regulations at that time. In spite of this general knowledge of the regulations, Otto Brehm failed to require its drivers to make and submit records of duty status, as required under 49 CFR 395.8.

Therefore, I conclude that Otto Brehm's defenses to the 11 charges are without merit. Based on Otto Brehm's March 27, 1992, admission to the 11 charges of failing to require drivers to prepare and submit records of duty status and its failure to present a valid defense to the charges, I find that Otto Brehm has committed these violations.

Penalty Determination

The Regional Director assessed a civil penalty of $500 per violation, the maximum amount permitted for these recordkeeping violations under 49 U.S.C. 521(b)(2). Although Otto Brehm objected to the penalty amount, claiming it was excessive, the Regional Director provided no evidentiary support for this assessment in its pleadings.

Otto Brehm also argued that it had substantially complied with the record of duty status regulation. While I have held in this case that substantial compliance will not exculpate Otto Brehm, I believe this issue may be relevant in determining the civil penalty amount. But the Regional Director's pleadings did not address the carrier's claim of substantial compliance. The burden of proof is on the Regional Director to establish the justification for and amount of the penalties assessed in an enforcement action. I do not believe the Regional Director has met his burden in this case. Therefore, I decline to assess a penalty for these 11 violations at this time, and I find that the parties must further address the penalty assessment issue before I can determine whether the maximum $5,500 assessed by the Regional Director is reasonable. To assist the parties, I direct their attention to the extensive discussion of the 9 penalty determination factors of 49 U.S.C. 521(c) and the Revised Civil Penalty Guidelines in the Decision of Administrative Law Judge Barton in *Used Equipment Sales*, No. R1–91–03, (FHWA May 6, 1992) *petition for review pending*.

It is hereby ordered that the hearing request of Otto Brehm, Inc., is denied, the Regional Director's motion for final order is granted as to the use of liability, and the Regional Director and Otto Brehm, Inc., shall submit pleadings and supporting evidence within 30 days of the date of entry of this order, addressing the penalty assessment issues identified in this order. Submissions shall be served in accordance with 49 CFR 386.61.

Dated: March 5, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Lakeview Farms, Inc., Respondent, Docket No. R3–91–157.

Final Order

This matter comes before me upon a motion for final order by the Regional Director, Region 3. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

In an April 22, 1991, notice of claim, the Regional Director charged Lakeview Farms, Inc. (Lakeview), with 11 violations of the Federal Motor Carrier Safety Regulations (FMCSRs). Specifically, Lakeview was cited for seven violations of 49 CFR 395.8(a), failing to require drivers to prepare and submit drivers' records of duty status; three violations of 49 CFR 387.7(a), operating a motor vehicle without having in effect the minimum level of financial responsibility; and one charge of failing to maintain the required proof of financial responsibility at the carrier's principal place of business, in violation of 49 CFR 387.7(d).

In its response to the notice of claim, Lakeview did not deny the charges or request a hearing, but did present information to be considered in reducing the penalty amount.[1] The Regional Director filed a motion for final order on January 23, 1992. Lakeview did not reply to this motion.

Discussion

Lakeview's Reply to the Notice of Claim

As I have noted, an appendix to the motion for final order stated that Lakeview's reply to the notice of claim was lost by the Regional Director. I am concerned that the text of the motion did not reveal this fact, but presumably the Regional Director served the carrier with all appendices and evidence in support of his motion for final order. Therefore, the motor carrier was put on notice that its reply was misplaced, but it neither resubmitted the reply nor responded to the motion for final order. Absent an objection by Lakeview to the Regional Director's characterization of the carrier's reply, I find no reason to question his depiction of the pleading at this time. I note that under 49 CFR 386.64, Lakeview may petition the Associate Administrator for reconsideration of this final order, within 20 days after the order is issued, should Lakeview believe that the Regional Director mischaracterized its response.

The Regional Director's Motion for Final Order

In an analogy to a summary judgment motion, I have held that the moving party on a motion for final order must show that there is no genuine issue as to any material fact and that it is entitled to a judgment as a matter of law. *E.g., In re Forsyth Milk Hauling Co., Inc.*, No. R3–90–037, at 2, (FHWA December 6, 1992) (Order). All inferences must be drawn in favor of the non-moving party, Lakeview in this case.

In its response to the notice of claim, Lakeview did not deny any of the 11 charges against it. The evidence before me includes Lakeview President Lacey Givens' pre-notice of claim admissions to all charges but the count of permitting a driver to operate a commercial motor vehicle on January 18, 1991, while Lakeview did not have in effect the required amount of financial responsibility. While I do not deem this statement to constitute an admission to the charges made in the notice of claim that followed, I note that in its reply to the notice of claim, Lakeview did not recant these admissions. Nor has Lakeview replied to the motion for final order.

When a carrier denies the allegations against it but the Regional Director nevertheless seeks to avoid a hearing and obtain a final order on motion, the motion should be accompanied by evidence sufficient to establish at least a *prima facie* case. See, *e.g., In re Forsyth Milk Hauling Co.*, No. R3–90–037, at 2, (FHWA Dec. 5, 1991) (Order). But in the absence of a denial by the carrier, I do not believe that the Regional Director must submit affidavits or other evidence in support of his motion for final order. *In re Bill Carter Trucking, Inc.*, No. R3–91–279, at 5, (FHWA June 22, 1992) (Final Order). If Lakeview had denied any of the charges against it, then the Regional Director would have been required to submit documentary or other evidence supporting his charges. *Id.*

I do not believe Lakeview can complain that the Regional Director has not produced substantive evidence in support of the violations alleged. Lakeview has failed to deny any of the charges cited and ignored repeated opportunities to rebut the Regional Director's allegations, most recently by failing to respond to the Regional Director's motion for final order.

For the purpose of the Regional Director's motion for final order, and determining whether the Regional Director must provide evidence of the violations charged, I deem Lakeview's silence to be an admission to the charges. Therefore, I find that Lakeview committed the 11 violations cited in the notice of claim. Accordingly, I find there are no material factual issues in dispute, and the Regional Director is entitled to a judgment as a matter of law.

Penalty Determination

The Regional Director assessed a penalty of $300 for each of the seven charges of failing to require drivers to make and submit records of duty status, $500 for the charge of failing to maintain proof of financial responsibility, and $1,000 for each of the three charges of operating a motor vehicle without maintaining the minimum level of insurance. In its reply to the notice of claim, Lakeview apparently objected to the penalty amount, and presented evidence to be considered in reducing the penalty, but I do not have this evidence before me. As I stated above, the carrier was put on notice by the Regional Director's motion for final order that this information was lost, yet Lakeview neither resubmitted the evidence nor replied to the motion, citing why it believes the sum is excessive or claiming that it would be unable to pay the assessed penalty of $5,600.

After a review of the nine penalty determination factors of 49 U.S.C. 521(b)(2)(C), and based upon the record before me, I find that the $2,100 assessed for the seven records of duty status violations is reasonably calculated to induce Lakeview's compliance with these regulations. The compliance review which revealed the current violations was conducted because the carrier had been operating with an "unsatisfactory" motor carrier safety rating since May 1989. Lakeview cannot ignore applicable safety regulations, nor can it assign such a low priority to compliance with these regulations that, after two reviews, no significant progress has been made to bring the carrier into compliance. See *In re Kerr Drug Stores, Inc.*, 57 FR 28720 (FHWA 1992) (Final Order).

Similarly, upon review of the record and the nine penalty assessment factors of 49 CFR 381.17 and 49 U.S.C. 10927 note, I also find that Lakeview knowingly violated the financial responsibility provisions and that the $3,500 assessed for these four violations is reasonable. Due in part to the serious economic threat posed by uninsured drivers, the maximum penalty under these provisions is $10,000. The $1,000 and $500 penalties assessed against Lakeview are therefore well below the maximum permitted, despite Lakeview's conduct of permitting its insurance to lapse and failing to renew it for a period of up to three months, while still dispatching drivers in interstate commerce.

[1] This information on the contents of Lakeview's response is derived from the Regional Director's motion for final order. As Appendix B to that motion reveals, the regional office lost Lakeview's reply and penalty information and was therefore unable to forward them to me. Lakeview has not resubmitted the missing documents.

It is hereby ordered that the Regional Director's motion for a final order is granted, and Lakeview Farms, Inc., is directed to pay the sum of $5,600 to the Regional Director, Region 3, within 30 days of this order, for failing to require drivers to prepare and submit records of duty status, operating motor vehicles without having in effect the required level of financial responsibility, and failing to maintain proof of the required amount of financial responsibility.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the Matter of Bill Carter Trucking, Inc. Respondent, Docket No. R3–91–279.

Order In Response to Motion for Reconsideration

This matter comes before me on a "Notice of Appeal" by Bill Carter Trucking, Inc. (Carter), appealing the June 22, 1992, final order in this case. This proceeding is governed by the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386.

Background

In the June 22 final order, the Associate Administrator found Carter liable for 25 violations of the Federal Motor Carrier Safety Regulations (FMCSRs) and assessed a penalty of $10,400. Carter filed its notice of appeal of this decision on August 20, 1992, stating in an attached letter that the "trucking company has never been offered an opportunity for a hearing" in violation of its due process rights. The notice of appeal, however, objected to the final order solely "for the reasons that the assessed penalty is excessive and contrary to the normal amounts assessed by the Federal Highway Administration."

The Regional Director replied to the notice on August 24, stating that Carter had failed to file either a timely motion for reconsideration within 20 days of issuance of the final order or a timely appeal of the final order within 30 days of issuance. In addition, the Regional Director noted the final order found that Carter's December 16, 1991, hearing request was also untimely, coming more than four months after the notice of claim. I have received no further responsive pleading from Carter.

Discussion

The June 22, 1992, decision in this case is a final agency order. Accordingly, any party may, within 20 days after the issuance of the final order, petition the Associate Administrator for reconsideration of the order under 49 CFR 386.64, or may appeal the final order to the United States Court of Appeals within 30 days of issuance under 49 CFR 386.67 and 49 U.S.C. 521(b)(8). Because Carter's notice of appeal was submitted to me, I consider it to be a petition for reconsideration. This petition was filed almost two months after the date of entry of the June 22, 1992, final order; well past the 20-day time limit under § 386.64. Therefore, Carter's petition for reconsideration is untimely.

If Carter's petition were timely, it still does not raise any issue which warrants reconsideration of the final order. Carter argues that the penalty awarded was excessive and that the denial of its hearing request violated its due process rights. Both arguments are without merit.

Denial of Carter's Hearing Request

The final order addressed Carter's hearing request at length. See *In re Bill Carter Trucking, Inc.*, No. R3–91–279, at 2–4, (FHWA June 22, 1992) (Final Order). Therefore, I will not repeat that analysis here, where Carter's allegation of a due process violation is unsupported by evidence. I do note, however, that the June 22 final order contained a detailed discussion of the provisions of 49 CFR 386.14(b) by which a carrier may request a hearing. But the Associate Administrator found that Carter's hearing request was untimely under 49 CFR 386.14(b)(2), and that the carrier therefore waived any right it may have had to a hearing.

In addition, the Associate Administrator found that if Carter's request were viewed as timely, the carrier failed to deny the charges against it or allege any material issue of fact warranting a hearing under 49 CFR 386.16(b). Carter had requested a hearing only "to determine whether or not the [penalty] assessment is excessive." The Associate Administrator has repeatedly held that an objection to the penalty amount does not constitute a material factual issue in dispute which would merit a hearing. *E.g., In re Drotzmann, Inc.*, 55 FR 2929 (FHWA 1990) (Order Appointing Administrative Law Judge).

Penalty Determination

Carter has provided no evidence or cited any legal error to support a reversal of the June 22 decision based on its allegation that the penalty is excessive. Nor has the carrier's motion for reconsideration cited any cases or other evidence showing that the penalty is "contrary to the normal amounts assessed by the Federal Highway Administration," as it now alleges.

Carter claims that its penalty total should be in line with the sums awarded in other cases, but at best, this factor is simply one component of the penalty assessment. The amount of any civil penalty is determined by taking into account the "nature, circumstances, extent, and gravity of the violation committed, and, with respect to the violator, the degree of culpability, history of prior offenses, ability to pay, effect on ability to continue to do business, and such other matters as justice and public safety may require. In each case, the assessment shall be calculated to induce further compliance." 49 U.S.C. 521(b)(2)(C). As stated in the final order, the Associate Administrator carefully considered all of these factors when ordering payment of the $10,400 penalty.

In addition, the final order specifically addressed the issue of whether the penalty assessment was excessive. The Associate Administrator found that it was reasonably calculated to induce Carter's compliance with the FMCSRs under 49 U.S.C. 521(b)(2)(C). Carter has provided no new evidence which would lead me to view the penalty determination differently now. Therefore, I affirm the Associate Administrator's finding that the penalty of $500 for each of the four drug testing charges, constituting 2 serious patterns of safety violations, is reasonable. I also affirm the earlier finding that the $400 penalty for each of the four charges of failing to preserve records of duty status and 16 violations for falsified logs is reasonable under the statutory factors for determining civil penalties.

Conclusion

I have reviewed the record in this proceeding, and I find that Carter's petition for reconsideration is not timely and does not present any new evidence or persuasively argue any error of law which would warrant a modification of the earlier order finding Carter liable for 25 violations of the FMCSRs and directing the carrier to pay a penalty of $10,400.

It is hereby ordered that the June 22, 1992, final order in this case is affirmed, and the terms of that final order remain in effect.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Allen A. West, Driver Disqualification, Docket No. 91–196.

Final Order

This matter comes before me on a petition to review a letter of disqualification (letter) issued by the Regional Director, Region 1, on October 31, 1991. See 49 CFR 386.13. The letter charged that Allen A. West (West), a driver of commercial motor vehicles in interstate commerce, failed to meet the requirements of visual acuity contained in the Federal Motor Carrier Safety Regulations. 49 CFR 391.41(b)(10). The Regional Director submitted a motion in opposition to the petition on March 5, 1992, asking me to deny West's request for a hearing on the matter and to affirm the letter.

Since the filing of the Regional Director's motion in March, the FHWA has initiated a program to grant waivers of the vision requirements to drivers who meet certain conditions. *See* 57 FR 31,458 (1992). West applied for such a waiver on May 18, 1992, and his application was granted on August 4, 1992. This matter is now moot, and it is hereby dismissed.

It is hereby ordered that both Allen A. West's Petition for Review and the Regional Director's Motion in Opposition to Petition for Review are denied, and this matter is dismissed.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Northeastern Poly Products, Inc., Respondent, Docket No. 92–207.

Order Appointing Administrative Law Judge

This matter comes before me upon Northeastern Poly Products, Inc.'s (Northeastern), request for an administrative hearing under 49 CFR 386.14(b)(2) of the Federal Motor Carrier Safety Regulations. Both Northeastern and the Regional Director assert that Northeastern's hearing request raises a material factual issue in dispute warranting a hearing under 49 CFR 386.16(b).

Background

By notice of claim dated January 30, 1992, the Regional Director cited Northeastern with three violations of 49 CFR 391.51, failure to maintain a complete driver qualification file for each driver used or employed; three charges under 49 CFR 395.8(a), failure to require a driver to make and submit records of duty status; and three counts of failing to require drivers to prepare vehicle inspection reports, in violation of 49 CFR 396.11(a). Northeastern replied to the notice of claim on February 26, 1992, specifically denying all of the charges, and requesting a hearing at which it would "present physical evidence to support [its] denials of the violations."

Northeastern's reply was not made within 15 days after the notice of claim was served as specified under 49 CFR 386.14(b). Regional Director has stated in his March 12, 1992, reply to this response, however, that he "does not wish to contest the timeliness of [Northeastern's] request for a hearing," and he concurred in Northeastern's hearing request.

Conclusion

Upon review of the pleadings, I find that Northeastern's hearing request raises a material factual issue in dispute, namely, whether the carrier committed the nine violations, which should be addressed in an administrative hearing.

It is hereby ordered that Northeastern Poly Products, Inc.'s, request for a hearing is granted. In accordance with 49 CFR 386.54(a), I hereby appoint an Administrative Law Judge, to be designated by the Chief Administrative Law Judge of the Department of Transportation, as the Presiding Judge in this matter. The appointed Judge is authorized to perform those duties specified in 49 CFR 386.54(b).

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Before the Federal Highway Administration: In the matter of Twenty-eight Motor Carrier Safety Cases.

Final Order

Before me are 28 motor carrier safety enforcement cases (see Appendix), each the subject of a request for dismissal from an appropriate Regional Director. The requests take various forms (Motions for Voluntary Dismissal, Notifications of Settlement, etc.). In all but one case, however, the evidence before me indicates that the parties have reached a settlement. In the remaining case, *In re James F. Irwin, Inc.*, No. R3–91–227, the Regional Director has withdrawn his Motion for Final Order because he has been unable to make good service on the Respondent.

Nothing in the record before me indicates that any respondent motor carrier has objected to the dismissal of its case. Therefore, in accordance with the Federal Highway Administration's Rules of Practice for Motor Carrier Safety and Hazardous Materials Proceedings, 49 CFR part 386, I hereby dismiss the motor carrier safety enforcement proceedings listed in the attached appendix.

It is hereby ordered that the 28 motor carrier safety enforcement proceedings listed in the attached appendix are dismissed.

Dated: February 8, 1993.

John P. Eicher,

Acting Associate Administrator for Motor Carriers.

Appendix

1. All Freight Distribution Co., Inc.
   Docket No. R3–91–263
2. Browning-Ferris Industries of Mississippi, Inc.
   Docket No. 90–MS–026–SA
3. Charapata Trucking, Inc.
   Docket No. R5–91–084
4. Davis Water & Waste Industries, Inc.
   Docket No. 91–GA–024–SH
5. Eslinger Contracting Co., Inc.
   Docket No. 92–GA–017–HF
6. Faulk & Son, Inc.
   Docket No. R–91–007–NOI
7. Furniture Distributors, Inc.
   Docket No. 91–NC–031–SA
8. Gem Stone Coal, Inc.
   Docket No. R3–91–121
9. George K. Groff, Inc.
   Docket No. R3–91–270
10. Gunther's Leasing Transport, Inc.
    Docket No. R3–90–104
11. H B Tour and Travel, Inc.
    Docket No. R3–91–020
12. Hammond Lumber Co., Inc.
    Docket No. R1–91–148
13. Hobart Stone Dealers, Inc.
    Docket No. 92–102
14. James F. Irwin, Inc.
    Docket No. R3–91–227
15. J.B. Hunt Transport, Inc.
    Docket No. R6–91–15
16. Joseph J. Sarcona Trucking
    Docket No. R1–92–122
17. King Furniture Distributors, Inc.
    Docket No. 91–FL–087–SASY
18. Manchester Movers, Inc.
    Docket No. R1–90–344
19. NAFCO Wholesale Seafoods, Inc.
    Docket No. R3–91–326
20. Neely Truck Line, Inc.
    Docket No. 91–AL–005–SH
21. Olin Wooten Transport Co., Inc.
    Docket No. GA–89–041–SA
22. Perry B. Duryea & Son, Inc.
    Docket No. R1–92–320
23. Pridgen and Sons, Inc.
    Docket No. R–91–004–NOI
24. Rainbow Charter Service, Inc., T/A Lynne A. Gehouskey
    Docket No. R3–91–0234
25. Rogers Trucking, Inc.
    Docket No. 91–KY–017–SA
26. Sunnyland Refining Co.
    Docket No. 92–AL–054–SA
27. Technical Ordnance, Inc.
    Docket No. R5–90–289
28. Willis Roofing Consulting, Inc.
    Docket No. R9–90–017

[FR Doc. 93–28787 Filed 11–24–93; 8:45 am]

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federal register

Friday
November 26, 1993

Part IV

Department of Education

Administrative Dispute Resolution In Connection With Agency Actions: Administrative Dispute Resolution Act; Final Policy Statement; Notice

DEPARTMENT OF EDUCATION

Administrative Dispute Resolution in Connection With Agency Actions: Administrative Dispute Resolution Act; Final Policy Statement

AGENCY: Department of Education.

ACTION: Final policy statement.

SUMMARY: The Department of Education (ED) issues a policy statement under section 3(a) of the Administrative Dispute Resolution Act. The statement discusses the policy of the Department with respect to the use of alternative means of dispute resolution with regard to its administrative proceedings and certain other agency actions under Department programs.

EFFECTIVE DATE: This notice takes effect November 26, 1993.

FOR FURTHER INFORMATION CONTACT: Theodore Sky, Office of the General Counsel, U.S. Department of Education, 400 Maryland Avenue, SW., room 4091, FOB–6, Washington, DC 20202. Telephone (202) 401–2603. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern Time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Public Law 101–552, the Administrative Dispute Resolution Act (ADR Act) amends chapter 5 of Title 5 of the United States Code, to authorize the use of alternative means of dispute resolution in lieu of adjudication to resolve issues in controversy. These means include settlement negotiations, conciliation, facilitation, mediation, factfinding, minitrials and arbitration. Certain legal obstacles to the use of alternative means of dispute resolution are removed. The ADR Act, for example, repeals a longstanding prohibition on arbitration where arbitration can be used consistently with the public interest. Administrative Law Judges are given authority to require attendance at prehearing conferences of parties authorized to negotiate the resolution of issues in controversy. Other provisions are made to ensure that administrative dispute resolution is carried out in a fair, efficient, and effective manner.

The Report of the National Performance Review, "Creating a Government that Works Better and Costs Less," observes that it is often cheaper to resolve disputes through alternative dispute resolution and recommends that agencies "expand their use of alternative dispute resolution techniques."

In enacting the ADR Act, Congress found, among other things, that "administrative proceedings have become increasingly formal, costly, and lengthy"; that "alternative means of dispute resolution have been used in the private sector for many years and, in appropriate circumstances, have yielded decisions that are faster, less expensive, and less contentious;" that "such alternative means can lead to more creative, efficient, and sensible outcomes;" and that "the availability of a wide range of dispute resolution procedures, and an increased understanding of the most effective use of such procedures, will enhance the operation of the Government and better serve the public." (ADR Act, Section 2, 5 U.S.C. 571 note). The ADR Act is intended to bring about these advantages for federal agencies through the expanded use of alternative means of dispute resolution.

The Department's efforts to make greater use of alternative means of dispute resolution pre-date the ADR Act. For example, the procedures of the Office of Administrative Law Judges (OALJ), which is vested with authority in the Department to consider a wide range of disputes arising under ED programs, make explicit provision for the mediation of cases. See 20 U.S.C. 1234(h) and 34 CFR 81.13 (1992). Mediation is one of the alternative means of dispute resolution recognized in the ADR Act.

A substantial number of cases under the General Education Provisions Act closed by the OALJ since its inception have been closed by settlement. In a number of these cases, mediation contributed to the resolution. In others, settlement negotiations without mediation played the key role. It is estimated that the Department is resolving approximately 75 percent of its OALJ cases short of full adjudication. The Department has thus been consistently successful in resolving adjudicatory matters through techniques identified in the ADR Act before as well as after the enactment of that legislation.

The Department has supported legislation to facilitate the use of alternative means of dispute resolution. In 1988 the Department proposed, and Congress enacted, legislation that permits the Department to compromise cases before the OALJ where the difference between the original claim and the settlement amount is less than $200,000. 20 U.S.C. 1234a(j). In these cases, this measure encourages greater use of alternative means of dispute resolution by simplifying the approval procedures connected with it.

The ADR Act specifically requires each agency to appoint an administrative dispute resolution specialist to assist in implementation of the ADR Act and to adopt a policy regarding the use of alternative means of dispute resolution (Sections 3 (a) and (b)). The Department already has accomplished the first step. This document marks the achievement of the second step. It applies to administrative dispute resolution with respect to formal and informal administrative adjudication, enforcement proceedings, contract administration, and other actions of the Department. To the extent relevant, in developing this policy statement, the Department has examined the matters specified in section (a)(2) of the Act.

On November 27, 1992, the Secretary published in the **Federal Register** a notice of proposed policy statement under the ADR Act. (57 FR 56424).

Analysis of Comments and Changes

In response to the Secretary's invitation in the notice of proposed policy statement, two parties submitted letters of comment. An analysis of the comments and of the changes in the policy statement since publication of the notice follows. Technical and other minor changes—and suggested changes the Secretary is not legally authorized to make under the applicable statutory authority—are not addressed.

Comment: One commenter commended the Department for its dedication to the use of the ADR and recognized the integrity of the Department's enforcement and regulatory responsibilities. The commenter encouraged the Department to consider the use of ADR on a small, measured scale or pilot basis in some of the more controversial issues, such as early complaints resolution. The commenter also encouraged the Department to consider using ADR in employee-related disputes, such as EEO matters and grievances, as well as procurement and contracts.

Discussion: The Secretary agrees with the commenter that ADR should be used in attempting to resolve controversial issues involving the administration of grant programs, as well as in resolving employee-related disputes and procurement. The Department is studying the increased use of ADR techniques in grievance proceedings. To the extent practicable and appropriate, the Department will seek to obtain early resolution in grant-related audit cases after an appeal has been filed but before administrative proceedings have begun.

Changes: The policy statement has been revised to acknowledge the

potential use of ADR in employee-related disputes and procurement matters.

Comment: One commenter urged that the policy statement provide greater emphasis on arbitration, rather than mediation, and that the Department design a process for deciding before a dispute arises which methods of dispute resolution will be used. The commenter also expressed concern regarding the application of sufficient resources to implement the policy.

Discussion: Mediation, rather than arbitration, has been the means of alternative dispute resolution used most frequently in the Department's audit appeal procedures. As indicated above, mediation is the ADR method particularly authorized by Congress in part E of the General Education Provisions Act relating to enforcement of grant requirements in education programs. For this reason, particular focus was placed on that method. However, the Department will consider the use of other methods if appropriate. The selection of the appropriate method for dispute resolution when a dispute arises generally will be made by the responsible Department employee. At this stage in the administration of the ADR Act, the development of a fixed schedule of ADR methods to be applied to particular types of disputes is neither appropriate nor useful. The Department will, however, continue to evaluate this suggestion as it gains experience in administering the policy statement.

Changes: None.

Policy of the Department

It is, and has been, the policy of the Department to support fully the goals and objectives of the ADR Act, as set forth in section 2 of the ADR Act, and to seek to attain those goals and objectives wherever feasible through the Department's dispute resolution procedures. The Department's implementation of the ADR Act will be carried out in a manner consistent with E.O. 12778, Civil Justice Reform.

The Department is fully committed to implementing the ADR Act through steps already taken, steps listed below, and other actions to be pursued in accordance with the principles and goals set out in this policy statement. At the same time, the Department recognizes that some or all of the alternative dispute resolution techniques may be inappropriate where formal adjudication is necessary to achieve accountability or to protect the fiscal interests of the United States from illegal or wasteful practices or expenditures.

For example, the Department believes that use of alternative dispute resolution techniques may not be successful, and may serve to delay rather than expedite resolution of disputes, where the issue in controversy pertains to the initial or continued eligibility of an entity to participate in a program administered by the Department, such as those arising under the Higher Education Act of 1965, as amended, or title VI of the Civil Rights Act of 1964. The degree to which an institution has already been provided with an opportunity to propose informal resolution of a claim or a finding of violation is another factor that can affect the availability of alternative means of dispute resolution techniques during an administrative hearing. However, in these areas, the Department will consider the use of alternative means of dispute resolution where practicable and consistent with the above-described considerations.

The Department is committed to striking a proper balance between the formal adjudication of cases where necessary and their resolution through alternative means of dispute resolution where practicable and in the public interest.

This policy is consistent with and in furtherance of the recommendation of the Report of the National Performance Review quoted above.

Further Steps To Be Taken

In furtherance of the policies of the ADR Act, the Department plans to take the following additional steps:

(1) Each departmental office will be asked to assign an ADR liaison officer to consider administrative dispute resolution issues within that office and to encourage the expanded use of all appropriate alternative means of dispute resolution in resolving disputes arising in administrative proceedings involving that office. These ADR liaison officers will serve as points of contact for matters pertaining to alternative means of dispute resolution within the Department and will collectively study procedural issues pertaining to alternative dispute resolution that affect the Department generally, including the proper stage of a dispute at which to invoke alternative means of dispute resolution and the appropriate distribution of mediation costs among the parties to a dispute. The Department will provide the liaison officers with appropriate training regarding administrative dispute resolution and the ADR Act.

(2) The Department will continue to design and implement procedures to ensure that all parties are aware of existing opportunities for alternative means of dispute resolution for cases before the OALJ. It will be the practice of the Department's Office of the General Counsel to suggest mediation in appropriate cases where mediation holds promise for early resolution without undue delay or impairment of the public interest.

(3) The Department will work to continue to extend the availability of mediation to other administrative proceedings and functions not presently governed by Part E of the General Education Provisions Act or part 81 of title 34 of the Code of Federal Regulations.

(4) The Department will seek to continue and expand the use of all appropriate alternative means of dispute resolution in employee-related disputes and procurement matters, as well as in connection with audit resolution processes. Appropriate staff training in those areas will be pursued.

(5) The Department will conduct a study of its standard contract and other terms to determine if they need amendment to comply with the ADR Act.

(6) The Department will develop and maintain a system for keeping statistics related to alternative dispute resolution in its administrative proceedings.

(7) The Department will continue to coordinate with the Administrative Conference of the United States on alternative means of dispute resolution matters and to avail itself of training provided by the Conference.

(8) The Department will continue to determine what other agency actions will lend themselves to implementation of the ADR Act and to study how it may encourage the appropriate use of alternative dispute resolution techniques by educational agencies, institutions, and organizations that it serves to the end of achieving resolution of education related disputes without the need for unnecessary litigation.

Authority: Pub. L. 101–552, Section 3 (1990).

Dated: October 22, 1993.

Richard W. Riley,

Secretary of Education.

[FR Doc. 93–28930 Filed 11–24–93; 8:45 am]

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federal register

Friday
November 26, 1993

Part V

The President

Executive Order 12881—Establishment of the National Science and Technology Council

Executive Order 12882—President's Committee of Advisors on Science and Technology

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Title

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Presidential Documents

Title 3—

The President

Executive Order 12881 of November 23, 1993

Establishment of the National Science and Technology Council

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the National Science and Technology Council ("the Council").

Sec. 2. *Membership.* The Council shall comprise the:

(a) President, who shall serve as Chairman of the Council;

(b) Vice President;

(c) Secretary of Commerce;

(d) Secretary of Defense;

(e) Secretary of Energy;

(f) Secretary of Health and Human Services;

(g) Secretary of State;

(h) Secretary of the Interior;

(i) Administrator, National Aeronautics and Space Administration;

(j) Director, National Science Foundation;

(k) Director of the Office of Management and Budget;

(l) Administrator, Environmental Protection Agency;

(m) Assistant to the President for Science and Technology;

(n) National Security Adviser;

(o) Assistant to the President for Economic Policy;

(p) Assistant to the President for Domestic Policy; and

(q) Such other officials of executive departments and agencies as the President may, from time to time, designate.

Sec. 3. *Meetings of the Council.* The President or, upon his direction, the Assistant to the President for Science and Technology ("the Assistant"), may convene meetings of the Council. The President shall preside over the meetings of the Council, provided that in his absence the Vice President, and in his absence the Assistant, will preside.

Sec. 4. *Functions.* (a) The principal functions of the Council are, to the extent permitted by law: (1) to coordinate the science and technology policy-making process; (2) to ensure science and technology policy decisions and programs are consistent with the President's stated goals; (3) to help integrate the President's science and technology policy agenda across the Federal Government; (4) to ensure science and technology are considered in development and implementation of Federal policies and programs; and (5) to further international cooperation in science and technology. The Assistant may take such actions, including drafting a Charter, as may be necessary or appropriate to implement such functions.

(b) All executive departments and agencies, whether or not represented on the Council, shall coordinate science and technology policy through the Council and shall share information on research and development budget requests with the Council.

(c) The Council shall develop for submission to the Director of the Office of Management and Budget recommendations on research and development budgets that reflect national goals. In addition, the Council shall provide advice to the Director of the Office of Management and Budget concerning the agencies' research and development budget submissions.

(d) The Assistant will, when appropriate, work in conjunction with the Assistant to the President for Economic Policy, the Assistant to the President for Domestic Policy, the Director of the Office of Management and Budget, and the National Security Adviser.

Sec. 5. *Administration.* (a) The Council will oversee the duties of the Federal Coordinating Council for Science, Engineering, and Technology, the National Space Council, and the National Critical Materials Council.

(b) The Council may function through established or ad hoc committees, task forces, or interagency groups.

(c) To the extent practicable and permitted by law, executive departments and agencies shall make resources, including, but not limited to, personnel, office support, and printing, available to the Council as requested by the Assistant.

(d) All executive departments and agencies shall cooperate with the Council and provide such assistance, information, and advice to the Council as the Council may request, to the extent permitted by law.

William J. Clinton

THE WHITE HOUSE,
November 23, 1993.

[FR Doc. 93–29263
Filed 11–24–93; 11:50 am]
Billing code 3195–01–P

Presidential Documents

Executive Order 12882 of November 23, 1993

President's Committee of Advisors on Science and Technology

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 301 of title 3, United States Code, and in order to establish an advisory committee on science and technology, it is hereby ordered as follows:

Section 1. *Establishment.* There is established the President's Committee of Advisors on Science and Technology ("PCAST"). PCAST shall be composed of not more than 16 members, one of whom shall be the Assistant to the President for Science and Technology ("Assistant"), and 15 of whom shall be distinguished individuals from the nonfederal sector appointed by the President. The nonfederal sector members shall be representative of the diverse perspectives and expertise in this Nation's investments in science and technology. The Assistant to the President for Science and Technology shall co-chair PCAST with a nonfederal sector member selected by the President.

Sec. 2. *Functions.* (a) The PCAST shall advise the President, through the Assistant, on matters involving science and technology.

(b) In the performance of its advisory duties, PCAST shall assist the National Science and Technology Council ("Council") in securing private sector involvement in its activities.

Sec. 3. *Administration.* (a) The heads of executive departments and agencies shall, to the extent permitted by law, provide PCAST such information with respect to scientific and technological matters as required for the purpose of carrying out its functions.

(b) In consultation with the Assistant to the President for Science and Technology, PCAST is authorized to convene ad hoc working groups to assist the Council.

(c) Members of PCAST shall serve without any compensation for their work on PCAST. However, members may be allowed travel expenses, including per diem in lieu of subsistence, as authorized by law for persons serving intermittently in the government service (5 U.S.C. 5701–5707).

(d) Any expenses of PCAST shall be paid from the funds available for the expenses of the Office of Science and Technology Policy.

(e) The Office of Science and Technology Policy shall provide such administrative services as may be required.

Sec. 4. *General.* (a) I have determined that the Committee shall be established in compliance with the Federal Advisory Committee Act, as amended (5 U.S.C. App.). Notwithstanding any other Executive order, the functions of the President under the Federal Advisory Committee Act, as amended, except that of reporting to the Congress, which are applicable to PCAST shall be performed by the Office of Science and Technology Policy in accordance with the guidelines and procedures established by the Administrator of General Services.

(b) PCAST shall terminate 2 years from the date of this order unless extended prior to that date.

(c) Executive Orders Nos. 12700, 12768, and Section 2 of Executive Order No. 12869 are hereby revoked.

William J. Clinton

THE WHITE HOUSE,
November 23, 1993.

[FR Doc. 93-29264
Filed 11-24-93; 11:52 am]
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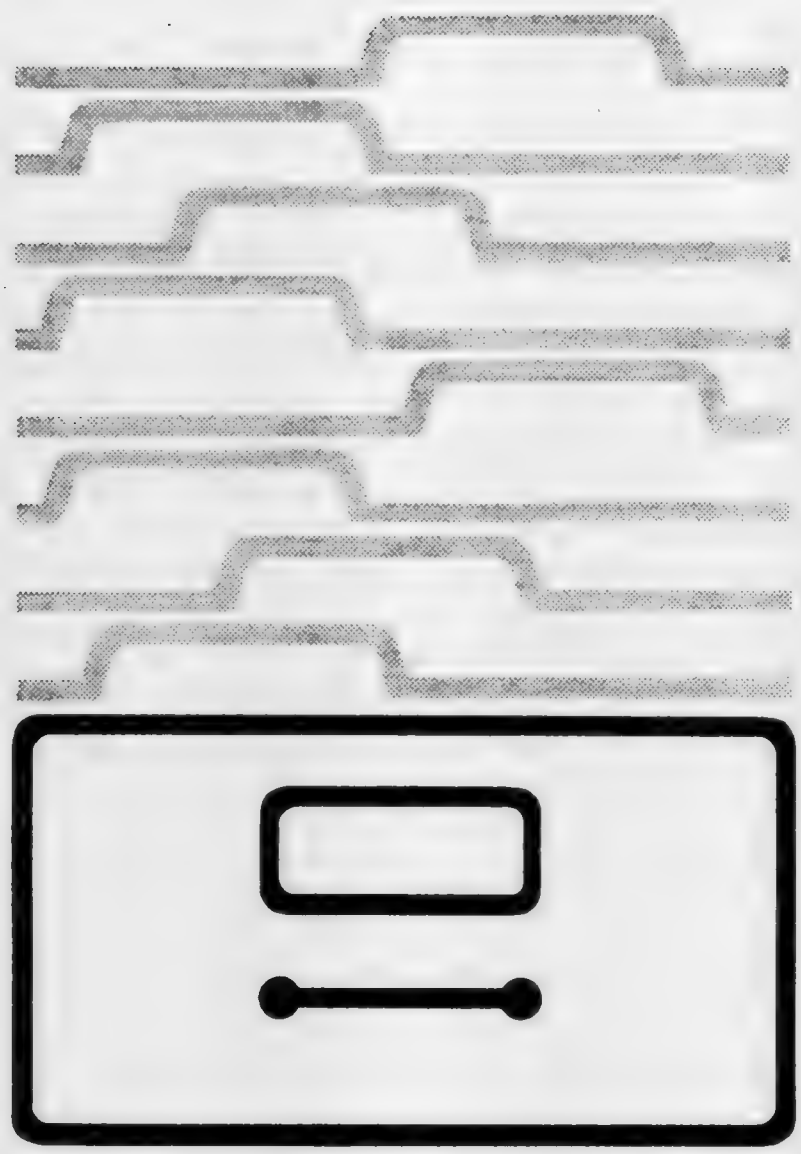

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in the Code of Federal Regulations (CFR)

GUIDE: Revised January 1, 1992

SUPPLEMENT: Revised January 1, 1993

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WHO: The Office of the Federal Register.

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(two briefings)

WHEN: November 30 at 9:00 am and 1:30 pm

WHERE: Office of the Federal Register, 7th Floor Conference Room, 800 North Capitol Street NW, Washington, DC (3 blocks north of Union Station Metro)

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Rules and Regulations

Federal Register
Vol. 58, No. 227
Monday, November 29, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

7 CFR Part 1

Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings; Amendment

AGENCY: Office of the Secretary, USDA.

ACTION: Final rule.

SUMMARY: This document amends the regulations governing the appearance of USDA employees as witnesses in order to testify or produce official documents in judicial or administrative proceedings.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Robert L. Siegler, Deputy Assistant General Counsel, Research and Operations Division, Office of the General Counsel, United States Department of Agriculture, Washington, DC 20250–1400, (202) 720–6035.

SUPPLEMENTARY INFORMATION: The regulations governing the appearance of USDA employees as witnesses to testify or produce official documents in judicial or administrative proceedings are amended to provide specific authority for heads of USDA agencies to delegate their responsibilities under the regulations to subordinate officials in their agencies.

This rule relates to internal agency management. Therefore, pursuant to 5 U.S.C. 553, notice of proposed rulemaking and opportunity for comment are not required, and this rule may be made effective less than 30 days after publication in the **Federal Register**. Further, since this rule relates to internal agency management, it is exempt from the provisions of Executive Order Nos. 12778 and 12866. Finally, this action is not a rule as defined by the Regulatory Flexibility Act, Pub. L. No. 96–354, and, thus, is exempt from the provisions of that Act.

List of Subjects in 7 CFR Part 1

Administrative practice and procedures; Witnesses.

PART 1—ADMINISTRATIVE REGULATIONS

Accordingly, part 1, title 7, Code of Federal Regulations is amended as follows:

1. The authority citation for part 1 continues to read as follows:

Authority: 5 U.S.C. 301, unless otherwise noted.

2. A new § 1.219 is added to subpart K to read as follows:

Subpart K—Appearance of USDA Employees as Witnesses in Judicial or Administrative Proceedings

* * * * *

§ 1.219 Delegations.

(a) Except as provided in paragraphs (b), (c), or (d) of this section, the head of a USDA agency may delegate his or her responsibilities under this subpart, including the retirement to be notified of the receipt of a subpoena as provided in §§ 1.214(a) and 1.216(a) of this part, to employees of his or her agency as follows:

(1) In the National office of the agency, to a level no lower than two levels below the agency head;

(2) In a field component of an agency, to a level no lower than the official who heads a state office.

(b) Notwithstanding paragraph (a) of this section, the Chief of the Forest Service may delegate his responsibilities under this subpart as follows:

(1) In the National office of the Forest Service, to a level no lower than a Deputy Chief of the Forest Service;

(2) In a field component of the Forest Service, to a level no lower than a Regional Forester or Station Director.

(c) Notwithstanding paragraph (a) of this section, the General Counsel may delegate his responsibilities under this subpart as follows:

(1) In the National office of the Office of the General Counsel, to a level no lower than an Assistant General Counsel;

(2) In the field component of the Office of the General Counsel, to Regional Attorneys who may redelegate their responsibilities to Associate Regional Attorneys and Assistant Regional Attorneys who report to them.

(d) The responsibilities assigned to heads of agencies and to Assistant and Under Secretaries in § 1.214(b)(2) of this part may not be redelegated.

Done this 17th day of November, 1993, at Washington, DC.

Mike Espy,

Secretary.

[FR Doc. 93–29133 Filed 11–26–93; 8:45 am]
BILLING CODE 3410–01–M

Soil Conservation Service

7 CFR Part 623

Emergency Wetlands Reserve Program

AGENCY: Soil Conservation Service, USDA.

ACTION: Interim rule.

SUMMARY: The Emergency Supplemental Appropriations for Relief From the Major, Widespread Flooding in the Midwest Act of 1993 authorizes the use of funds appropriated under the Act, which are otherwise available for waterway and watershed repair under the Emergency Watershed Protection Program of the Soil Conservation Service (SCS), to restore cropland, which was inundated by the 1993 Midwest floods, to wetlands for the purposes of the Wetlands Reserve Program (WRP) authorized by title XII of the Food Security Act of 1985, as amended. This rule sets forth the policies, procedures, and requirements of the Emergency Wetlands Reserve Program (EWRP) that have been established to implement the 1993 emergency wetland restoration and conservation provisions. The EWRP will be available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. This rule does not affect the policies, procedures, or requirements of the Wetlands Reserve Program regulations issued by the Agricultural Stabilization and Conservation Services.

DATES: November 26, 1993.

COMMENT DEADLINE: In order to be considered, comments must be submitted in writing by December 27, 1993.

ADDRESSES: Send written comments to Edward G. Riekert, Director, Watershed

Projects Division, SCS, USDA, P.O. Box 2890, Washington, DC 20013.

FOR FURTHER INFORMATION CONTACT: Edward G. Riekert, telephone (202) 720–3527.

SUPPLEMENTARY INFORMATION: The WRP was established under the authority of sections 1237–1237f of the Food Security Act of 1985, as amended, 16 U.S.C. 3837–3837f, and is administered by the Agricultural Stabilization and Conservation Service (ASCS) pursuant to regulations found at 7 CFR part 703. Under the WRP, persons who own croplands and other related lands that have wetland characteristics or the potential for restoration of such characteristics and who agree to the restoration and long-term maintenance of those lands as wetlands may be eligible to enroll the lands in the WRP and receive a payment for the long-term maintenance easement and some cost-sharing assistance for the restoration costs.

The Emergency Supplemental Appropriations for Relief From Major, Widespread Flooding in the Midwest Act of 1993, Public Law 103–75, 107 Stat. 739, provides appropriations for the repair of "damages to the waterways and watersheds resulting from the Midwest floods and other disasters of 1993" under the Emergency Watershed Protection Program of the SCS. See 107 Stat. 742. That section of the emergency appropriations legislation further provides that if the Secretary of Agriculture "determines that the cost of land and levee restoration exceeds the fair market value of an affected cropland, the Secretary may use sufficient funds provided (under this section) to accept bids from willing sellers to enroll such cropland inundated by the Midwest floods of 1993 in any of the affected States in the Wetlands Reserve Program as authorized by subchapter C of chapter 1 of subtitle D of title XII of the Food Security Act of 1985."

Pursuant to the delegations of authority of the Department of Agriculture contained in 7 CFR part 2, the EWRP will be administered by the SCS as an adjunct to the WRP administered by the ASCS. The policies, procedures, and requirements provided in this rule are separate from and do not affect the policies, procedures, and requirements related to the WRP that are contained in 7 CFR part 703 and administered by ASCS.

Under the EWRP, SCS will purchase wetland conservation easements from persons owning cropland that was damaged by the 1993 Midwest floods if those lands have the potential for restoration to wetland conditions with hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation, and if the owner voluntarily agrees to restore and maintain those conditions. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education. Furthermore, the wetland conservation easements will permanently prohibit use of the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

Eligible land for purchase will include farmed wetlands or prior converted wetlands (converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs. Farmed wetlands are lands that were drained, leveled, or otherwise manipulated prior to December 23, 1985 (the effective date of the Food Security Act of 1985) to the extent that agricultural crop production was made possible, but which continue to exhibit wetland characteristics. SCS will also consider for enrollment in the program:

(1) Farmed wetlands and adjoining lands with substantial wetland functions that are enrolled in the Conservation Reserve Program (CRP) administered under 7 CFR Part 1410 and were severely damaged by the 1993 Midwest floods;

(2) Other lands that would not otherwise be eligible if it is determined that inclusion in the program would promote the wetland values of the land.

The SCS State Conservationist will determine (1) the estimated costs of restoring the affected cropland to productive capacity and the estimated costs of repairing any associated levee, dike or other floodwater control systems; and (2) the fair market value (FMV) of the affected cropland based on an "as if restored" basis. If the estimated costs of the restoration and repair exceed the FMV of the affected cropland, the land will be eligible to be considered for enrollment in the EWRP. If the land is determined to be suitable for enrollment, the SCS State Conservationist will determine the FMV of the permanent easement offer that will be made. In determining the costs of cropland restoration, flood control system repair, the FMV of the affected cropland, and the FMV of the permanent easement, the SCS State Conservationist may use reasonably available information from appropriate sources to make the determinations.

Owners of lands determined to be eligible for enrollment in the EWRP and for which SCS makes an offer of enrollment may submit a bid of acceptance to the local SCS office.

To assure maximum benefits to the Federal Government, the SCS State Conservationist, in consultation with the U.S. Fish and Wildlife Service and input from a technical committee established by the State Conservationist, will establish a ranking process to determine the priority of the parcels offered for enrollment into the EWRP. The ranking process will consider floodway enhancement and environmental benefits per dollar of government expenditure for restoration and easement purchase. The State Conservationist will use the following criteria to establish a priority ranking for which enrollment in the EWRP will be offered and bids of acceptance accepted:

(1) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,

(2) Floodway expansion,

(3) Proximity to other protected wetlands,

(4) Level of wetland hydrologic conditions that could potentially be restored under the EWRP,

(5) Wetland functions and values,

(6) Likelihood of successful restoration of wetland values,

(7) Cost of restoration and easement purchases, and

(8) Other factors determined appropriate by SCS. Land behind a levee would have a lower priority than land where a levee does not exist or will be repaired.

The emergency watershed repair and wetland reserve provisions of Public Law 103–75 were passed in response to the devastating cropland losses caused by the Midwest floods of 1993. This disaster requires an immediate response to relieve flood damages. Complying with the normal comment procedures set forth in the Administrative Procedures Act would delay efforts to assist those harmed by the flood, further aggravating their losses, and would, therefore, be contrary to the public interest. Because of the urgency, SCS has determined that good cause exists to make this rule effective immediately. However, this interim rule affords the public a 30-day period following the effective date to submit written comments. SCS will consider all comments submitted in a timely manner

and will amend the rule if justified by the comments. Comments should be submitted, in writing, to the individual listed above as the information contact.

This interim/final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined this interim rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or state, local or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

The purpose of the EWRP is similar to that of the WRP, that is to restore certain cropland to wetlands and maintain them in wetland condition. An environmental assessment was prepared for WRP and it was determined that the program activities would not have a significant impact on the quality of the human environment. Therefore, an environmental impact statement was not needed for the WRP and, likewise, is not needed for this program. Copies of the environmental assessment for the WRP are available upon request.

This program is not subject to the provisions of Executive Order 12372 because it involves direct payments to individuals and not to State and local entities. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

The information collection requirements of the interim rule at 7 CFR part 623 have been submitted to OMB for approval under provisions of 44 U.S.C. chapter 33 in accordance with OMB emergency procedures set forth at 5 CFR 1320.18. An OMB control number will be assigned in accordance with these procedures. The public reporting burden for the information collections that would be required for compliance with these regulations is estimated to average 22 minutes per response, including the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 7 CFR Part 623

Administrative practices and procedures, Compliance procedures, Easements, Natural resources, Technical assistance, Wetlands Reserve Plan of Operations.

Interim Rule

Accordingly, Title VII of the Code of Federal Regulations is amended by adding a new part 623 to read as follows:

PART 623—EMERGENCY WETLANDS RESERVE PROGRAM

Sec.

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623.18 Access to land.
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623.20 Appeals.
623.21 Scheme and device.
623.22 Filing of false claims.

Authority: 16 U.S.C. 3837–3837f; Pub. L. 103–75, Chapter 1, 107 Stat. 739, 742.

§ 623.1 Purpose and scope.

(a) The regulations in this part set forth the policies, procedures, and requirements for the Emergency Wetlands Reserve Program (EWRP). Under the EWRP, SCS will make offers to purchase wetland conservation easements from persons owning croplands that were damaged by the 1993 Midwest floods if those lands have the potential for restoration to wetland conditions and if the owner voluntarily agrees to restore and maintain those conditions. The easements are to be purchased to promote the restoration and maintenance of wetland characteristics, such as hydrologic conditions of inundation or saturation of the soil and hydrophytic vegetation. The functions and values of the wetlands for wildlife habitat, water quality improvement, flood water retention, floodway enhancement, ground water recharge, open space, aesthetic values, and environmental education will thus be promoted. The wetland conservation easements will permanently prohibit use of the affected land as cropland. Additionally, the easement shall require permanent maintenance of the wetland conditions, except in the case of natural disaster.

(b) The EWRP is available only in the following States: Illinois, Iowa, Kansas, Minnesota, Missouri, Nebraska, South Dakota, and Wisconsin. Certain cropland areas within these States have been determined to have been inundated by the Midwest floods of 1993. As more fully defined and described in this part, eligible land may include farmed wetlands or prior converted wetlands (wetlands converted prior to December 23, 1985), together with adjacent lands on which the wetlands are functionally dependent so long as the likelihood of successful restoration of such land and the potential wetland values merit inclusion in the program with reasonable costs.

§ 623.2 Definitions.

The following definitions shall be applicable for the purposes of this part:

(a) *Agricultural commodity*—means any crop planted and produced by annual tilling of the soil, or on an annual basis by one trip planters, or alfalfa and other multiyear grasses and legumes in rotation as approved by the Secretary. For purposes of determining crop history, as relevant to eligibility to enroll land in the program, land shall be "considered planted to an agricultural commodity" during a crop year if, as determined by ASCS, as action of the Secretary prevented land from being planted to the commodity during the crop year.

(b) *Applicant*—means a person who submits to SCS an application to participate in the EWRP.

(c) *Commodity Credit Corporation*—a wholly owned government corporation within the U.S. Department of Agriculture.

(d) *Conservation District* (CD)—means a subdivision of a State or local government organized pursuant to applicable State law to promote soil and water conservation practices.

(e) *Conservation Reserve Program*—means the program under which long-term payments and cost-share assistance is provided to individuals to establish permanent vegetative cover on cropland that is highly erodible or environmentally sensitive.

(f) *Prior converted wetland*—means wetland that has been drained, dredged, filled, leveled, or otherwise manipulated (including any activity that results in impairing or reducing the flow, circulation, or reach of water) prior to December 23, 1985, for the purpose, or that has the effect, of

making the production of agricultural commodities possible if such production would not have been possible but for such action.

(g) *Cost-share payment*—means the payment made by SCS to assist program participants in establishing the practices required in a WRPO.

(h) *Chief*—means the Chief of the Soil Conservation Service, or the Chief's designee.

(i) *Easement*—means the real property interest acquired by SCS under this part for wetland restoration and maintenance and which is properly filed with the appropriate local or State government official.

(j) *Easement area*—means the land to which the approved wetland restoration practices and wetland conservation restrictions are to be applied.

(k) *Fair market value (FMV)*—means the price that a willing seller would accept and a willing buyer would pay in an open, informed transaction.

(l) *Farmed wetland*—means wetland that was drained, dredged, filled, or otherwise manipulated prior to December 23, 1985 to the extent that the production of agricultural commodities was made possible, but which continues to meet wetland criteria [refer to 7 CFR 12.32(a)(3) for descriptions of farmed wetlands].

(m) *Floodwater control systems*—means dikes, levees, or other similar structural measures for the protection of cropland from flooding.

(n) *FWS*—means the Fish and Wildlife Service of the United States Department of the Interior.

(o) *Local SCS office*—means the office of the Soil Conservation Service serving the county or combination of counties in which the landowner's farm or ranch is located.

(p) *Participant*—means a person(s) owning land subject to a perfected easement purchased by the Soil Conservation Service under this part.

(q) *Offer*—means the total payment SCS will make to a landowner to purchase an easement.

(r) *Permanent easement*—means an easement in perpetuity.

(s) *Substantially altered lands*—means lands which have not been and are not now wetlands but could likely develop wetland characteristics in the future, as a result of the Midwest floods of 1993.

(t) *Practice*—means the wetland and easement area development restoration measures agreed to in the WRPO to accomplish the desired program objectives.

(u) *Technical assistance*—means the assistance provided to land owners to facilitate implementation of the WRPO.

(v) *Wetland*—means land that (1) has a predominance of hydric soils; (2) is inundated or saturated by surface or groundwater at a frequency and duration sufficient to support a prevalence of hydrophytic vegetation typically adapted for life in saturated soil conditions; and (3) does support a prevalence of such vegetation under normal circumstances.

§ 623.3 Eligible person.

To be eligible to participate in the EWRP, a person must be the owner of eligible land for which enrollment is sought and must have been the owner of such land for at least the preceding 12 months prior to the time the enrollment offer is declared by SCS, as provided in this part. The person shall provide to SCS adequate proof of ownership of the land. SCS may waive the 12 month ownership requirement if:

(a) The land was acquired by will or succession as a result of the death of the previous owner; or

(b) Adequate assurances have been presented that the new owner of such land did not acquire such land for the purpose of placing it in the EWRP.

§ 623.4 Eligible land.

(a) Except as otherwise provided in this section, land is eligible for enrollment in the EWRP only if SCS determines that the land:

(1) Was inundated by the Midwest floods of 1993;

(2) If restored to productive condition, would have a fair market value that is less than the estimated costs of restoring the land to productive condition and repairing related floodwater control systems;

(3) Is likely to have its wetland value restored with minimal costs; and

(4) Is wetland farmed under natural conditions, a farmed wetland or prior converted wetland, or substantially altered lands which are cropland; or

(5) Is wetland that has been restored on the land under a CRP contract, or under a Federal or State wetland restoration program with an easement for a period of less than 30 years.

(b) To be eligible for enrollment in the EWRP, land must also:

(1) Be determined by ASCS to have been annually planted or considered planted to an agricultural commodity in at least 1 of the 5 previous crop years; or

(2) Be land under a CRP contract, in which case, the land need only to have been planted to an agricultural commodity during 2 of the 1981 through 1985 crop years.

(c) Other lands may be considered eligible if the inclusion of such lands in the EWRP easement would significantly add to the functions and values of the wetlands to be restored under this part, as determined by SCS.

(d) The criteria and procedures contained in 7 CFR part 12 will be used to identify wetlands, converted wetlands, and farmed wetlands.

§ 623.5 Ineligible land.

Notwithstanding any other provisions of this part, the following land is not eligible for enrollment in the EWRP:

(a) Land that contains either timber stands or trees established in connection with a CRP contract;

(b) Lands owned or acquired by an agency of the Federal Government;

(c) Land already subject to a deed restriction prohibiting the production of agricultural commodities or the alternation of existing wetland hydrologic conditions;

(d) Land located between the pre-flood mainstem levees and the river; or

(e) Land that was restored to wetland conditions, as required under Part 12 of this title, to mitigate the conversion of wetland to cropland use.

§ 623.6 Transfer of lands from the CRP to the EWRP.

Land that is subject to an existing CRP contract administered under 7 CFR parts 704 and 1410 may be transferred into the EWRP only if:

(a) The land and landowner(s) meet the requirements of this part; and

(b) The application for transfer into the EWRP is approved by Commodity Credit Corporation (CCC), if found to be in the interest of the program. If such transfer is requested by the owner and approved by CCC, the CRP contract for the property will be terminated or otherwise modified subject to such terms and conditions as are mutually agreed by the landowner, CCC, and SCS.

§ 623.7 Terms of the easement.

Landowners will grant to SCS an easement which shall run with the land and be in favor of SCS and its assigns or delegates. The easement shall require the land to be monitored as specified by the WRPO to promote the purposes of this part, including but not limited to maintenance of the restored wetland for entire length of the easement. Such easement shall: (a) be a permanent reserve interest easement; (b) require that the maintenance of the land be in accordance with the terms of the easement and with the terms of the WRPO and shall be the responsibility of the owners of the property and their successors of any kind, including, but not limited to, the owners' heirs and assigns; (c) grant to SCS a right of access

in favor of SCS and its delegates, assigns and successors of any kind, to the portion of the property which is subject to the provisions of the easement. Maintenance of such access shall be the responsibility of the owner and their successors of any kind; (d) reserve to SCS the right to permit such compatible uses of the easement area as may be identified in the WRPO; (e) reserve to the landowner those compatible uses identified in the WRPO that are permitted to be pursued by the landowner; (f) be signed by each person with an interest of any kind in the land covered by the easement; (g) permanently prohibit use of the easement area for cropland, except to harvest an agricultural commodity planted before the easement is perfected; and (h) require permanent maintenance of the wetland conditions, except in the case of natural disaster.

§ 623.8 Easement value.

SCS offers for easements will be based on the fair market value, as determined by the SCS State Conservationist, of the land covered by the easements. Fair market value will be based on post-flood conditions as if reclaimed. Land easement values will be determined by the State Conservationist in consultation with a technical committee. A technical committee shall included representatives of: ASCS, Extension Service, and FWS. Additionally, the State Conservationist may collect information from other sources as he deems necessary. Coordination between States will be provided by the Chief, SCS.

§ 623.9 Easement priority.

The State Conservationist, in consultation with the FWS and with input from a technical committee and other interested Federal agencies, will establish a ranking process to establish the priority of parcels offered into the EWRP. This process will rank the floodway enhancement and environmental benefits per dollar of government expenditure on restoration and easement purchase. The factors for determining the priority for selection will consider the following:

(a) Protection and enhancement of habitat for migratory birds and wildlife, including the contribution the restoration may make to the recovery of threatened and endangered species,

(b) Floodway expansion,

(c) Proximity to other protected wetlands,

(d) Level of hydrology restored,

(e) Wetland function or values,

(f) Likelihood of successful restoration of wetland values,

(g) Cost of restoration and easement purchase, and

(h) Other factors as determined appropriate by SCS.

§ 623.10 Application to participate.

(a) A person seeking to enroll land in the EWRP must apply for enrollment on an approved SCS form. The application to participate must be filed with the local SCS field office during an announced period for such submissions.

(b) A person submitting an application to participate shall not be obligated to accept an SCS offer to purchase an easement if one is forthcoming.

(c) An application to participate must be signed by all owners of the property or their duly authorized representative(s).

§ 623.11 Obligations of the landowner.

(a) All owners of land who accept an EWRP offer from SCS shall:

(1) Comply with the terms of the easement.

(2) Comply with all terms and conditions of the WRPO for the full life of the easement.

(3) Ensure that the easement granted to SCS is superior to the interest of all other parties who may have an interest in the easement area, except as authorized by SCS. Such action shall include, but not be limited to, obtaining a written statement of consent to such a superior easement from those holding a security interest or any other encumbrance or the land covered by the easement. Additionally, the landowner shall perfect the easement with superior SCS interest in accordance with State law.

(4) Agree to the permanent retirement of the aggregate total of crop acreage bases, and allotment and mandatory quota on the farm or ranch in order to maintain the base allotment on quota acres at or below the number of acres of cropland after the easement has been perfected.

(5) Not allow grazing or commercial use of the land covered by an easement except as provided for in the WRPO, or harvesting of any agricultural commodity produced on the land subject to the EWRP easement.

(6) Comply with Federal or State noxious week laws in the manner specified in the WRPO.

(7) Control other identified weed and pest species, in the manner specified in the WRPO.

(8) Be responsible for repairs, improvements, and inspections of the WRPO practices as necessary to maintain existing public drainage systems when the land is restored to the condition required by the terms of the easement, the contract, and the easement.

(9) Be permitted to control public access, in accordance with the WRPO, on the land enrolled in the program.

(10) Implement any additional provisions that are required by SCS in consultation with FWS in the contract, WRPO, or easement, in order to, as determined by SCS, facilitate the administration of the EWRP.

(11) Not alter the vegetation, except to harvest already planted crops or forage, or hydrology on such acres subsequent to perfection of the easement by the landowner, except as provided for in the easement or WRPO.

(12) Be responsible for the long-term management of the easement in accordance with the terms of the easement and related agreements including the WRPO. Owners may enter into agreements with Federal or State agencies or private organizations to assist in the management of the easement area. No SCS funds will be provided to these agencies or organizations for management expenses. Responsibility for management of the easement shall in all cases remain with the owner and the owner's successors of any kind regardless of whether arrangements are made for third-party management.

(13) Agree that each person with an interest in the land covered by an easement under EWRP shall be jointly and severally responsible for compliance with the WRPO, the easement, the provisions of this part, and for any refunds or payment adjustment which may be required for violation of any terms or conditions of the WRPO, the easement, or provisions of this part.

(14) Refrain from taking any action on the easement area unless specifically authorized in the reserve interest easement or the WRPO; and

(15) Secure any necessary local, State and Federal permits prior to commencing restoration of the designated area.

(b) In addition, program participants and their successors of any kind may:

(1) Not alter wildlife habitat and other natural land features of the enrolled land unless authorized by the WRPO.

(2) Apply pesticides or fertilizers on enrolled land or mow such land, only as provided for in the WRPO.

(3) Not engage in any activities on other land on the farm on which the easement exists that will, as determined by SCS; (i) alter the flow of surface or subsurface water into or out of the easement area except as specified in the

WRPO; or (ii) be otherwise inconsistent with the terms of the easement.

(c) The activities of any person on the property shall be considered for purposes of this section to be the actions of the program participant. However, if the SCS determines that the activities of the person were beyond the control of the program participants, SCS may adjust the remedies provided for in this part to the extent determined consistent with program goals. Obligations created by the easement shall run with the land and shall bind all persons having an interest in the property at any time whether such interest is created by death of the owner, sale, assignment, or otherwise.

§ 623.12 Payments to landowners by SCS.

(a) SCS will share the cost with landowners of rehabilitating the enrolled land in the EWRP as provided in the WRPO. The amount of the cost-share assistance shall be specified in the contract. Eligible costs for such cost-share assistance by SCS shall only include those costs which SCS determines are appropriate and shall be subject to the following restrictions:

(1) The State Conservationist will establish cost-share rates of between 75 to 100 percent of the historical cost of establishing or installing the practices specified in the WRPO; or pay the average cost of establishing the practices specified in the WRPO, based on the historical cost of establishing the practices in the State;

(2) Cost-share payments may be made only upon a determination that an approved practice or an identifiable unit of the practice has been completed in compliance with SCS approved standards and specifications; and

(3) Cost-share payments may not be made for the maintenance of the practice except as specifically permitted in writing by the State Conservationist.

(b) Notwithstanding paragraph (a)(3) of this section, cost share payments may be authorized for the replacement or restoration of practices for which cost share assistance has been previously allowed under the EWRP, but only if:

(1) Replacement or restoration of the practice is needed to meet the objectives for which the easement was established; and

(2) The failure of the original practice was due to reasons beyond the control of the participant.

(c)(1) SCS shall pay the amount agreed upon by SCS and the landowner for the purchase of the easement in a lump-sum amount after the easement is perfected in compliance with State law, except in the case of paragraph (c)(2) of this section.

(2) For all easements, SCS shall pay no more than 75 percent of the total easement price pending completion of the practices to restore the wetlands as provided under the WRPO. The remaining amount shall be paid when SCS determines the restoration is complete.

(d) After an easement is perfected, SCS will reimburse landowners for fair and reasonable expenses incurred for title searches, filing expenses, and related costs, as determined by SCS.

§ 623.13 Wetlands reserve plan of operations.

(a) After SCS has accepted the applicant for enrollment in the program, a WRPO will be developed by the landowner and SCS, in consultation with FWS.

(b) The WRPO shall:

(1) Include an aerial photo displaying the land offered for enrollment;

(2) Specify the manner in which the eligible land shall be restored, operated, and maintained to accomplish the goal of the program, including, but not limited to: (i) measures to control noxious weeds and insect pests in order to comply with applicable Federal, or State noxious weed and pest control laws; and (ii) measures to control other specified species of weeds, insects or pests;

(3) Specify compatible land uses for personal enjoyment for which the landowner may be compensated. These compatible land uses shall be reserved to the landowner in the easement. Such uses may include, among others: (1) recreational use, hunting and fishing; (ii) manage timber production including harvesting; and (iii) managed haying or grazing consistent with the goals of the program;

(4) Set out cost estimates of the practices required by the WRPO, the offer for the easement, and other reimbursement costs;

(5) Identify access routes to be maintained for wetland restoration activities and future management and easement monitoring in connection with the land to be enrolled;

(6) Make provisions deemed necessary for maintaining public drainage systems if present on lands subject to the WRPO;

(7) Contain scheduled implementation dates for restoration practices;

(8) Contain other provisions or limitations as SCS, in consultation with the FWS, determines to be necessary.

(c) SCS in consultation with FWS will collect from State or Federal agencies whatever additional information is deemed necessary for the development of the WRPO with the landowner.

(d) The WRPO must be signed by SCS, FWS, Conservation District (CD), and the landowner(s). However, if agreement between SCS and FWS, or CD at the local level is not reached within 20 calendar days, the WRPO shall be developed by the State Conservationist of SCS in consultation with FWS or CD.

(e) The WRPO may require that a temporary vegetative or water cover be established on the property if immediate establishment of a permanent cover is not practicable or otherwise desirable.

(f) The terms of an approved WRPO shall not relieve the program participant of any obligation or term imposed or provided for in the contract, the easement, or this part.

(g) WRPO, where appropriate, will provide for the development of a tree planting plan with the assistance of the FS or State forestry agency.

(h) The WRPO, where appropriate, will provide for the development by SCS of detailed plans for weed control, structural measures and their operation, vegetation establishment and management, and other measures as needed.

(i) Revisions of the WRPO to enhance or protect the value for which the easement was established may be made at any time at the request of either SCS, FWS, the owner and upon the concurrence of all three parties.

§ 623.14 Easement modifications.

After the easement has been perfected, no change will be made in the easement without a written request by the participant and the written consent of the Chief. Approval may be granted to achieve the goals of EWRP or facilitate the practical administration and management of the easement area or the program and the approval will not adversely affect the functions and values for which the easement was established. A modified easement shall be perfected in accordance with State law and SCS superior interest shall be reserved by the landowner in accordance with §§ 623.7 and 623.11(a)(3).

§ 623.15 Transfer of land.

(a) If a new owner purchases or obtains the right and interest in, or right to occupancy of, the land subject to a EWRP easement, such new owner shall be subject to the terms and conditions of the easement. The participant who is the signatory to the easement shall be entitled to receive all remaining payments, if any, for the purchase of the easement. Eligible cost-share payments shall be made to the participants, with respect to costs actually incurred.

(b) Upon the transfer of the property subject to an EWRP easement, any remaining cost-share payments shall be paid to the new owner or purchaser only if the new owner or purchaser becomes a party to the WRPO within 60 days of the perfection of the deed transferring title to the new owner. Such payments shall be paid in the manner agreed to by the participant and the buyer. The new owner or purchaser shall be responsible for assuring completion of all measures and practices required by the contract and the WRPO.

(c) Any transfer of the property prior to the perfection of the easement shall void any SCS offer or WRPO unless the new owner agrees to accept the offer within 60 days of the perfection of the deed transferring the land to the new owner.

§ 623.16 Monitoring and enforcement of easement terms and conditions.

(a) SCS or its representative shall be permitted to inspect each easement area at any and all times determined necessary by SCS to ensure that:

(1) Structural and vegetative restoration work are properly maintained;

(2) The wetlands and adjacent upland habitat of the easement area is being managed as required in the WRPO and the terms of the easement; and

(3) Uses of the area are consistent with the terms and conditions of the easement and the WRPO.

(b) If an owner or other interested party is unwilling to voluntarily correct, in a timely manner, deficiencies in compliance with the terms of the WRPO, the EWRP easement, or any related agreements, SCS may at the expense of any person who is subject to the EWRP easement correct such deficiency. Such SCS action shall be in addition to other remedies available to SCS.

(c) Monitoring and enforcement responsibilities may be delegated by SCS at any time to other Federal or State agencies. Landowners may transfer management responsibilities only to Federal, State, or local agencies or private organizations that have been approved by SCS in advance as having the appropriate authority, expertise, and resources necessary to carry out such delegated responsibilities.

§ 623.17 Violations and remedies.

(a) If a violation of the terms and conditions of the contract, the WRPO, or the recorded EWRP easement occurs, the easement shall remain in force and SCS may:

(1) Require the owner to fully restore the easement area to fulfill the terms and conditions of the easement and WRPO; and

(2) Require the owner, who received payments from SCS for any purpose under this part, to refund all or part of such payments received together with interest, as determined appropriate by SCS.

(b) If an owner fails to carry out the terms and conditions of an easement, appropriate legal action may be initiated. The owner of the property shall reimburse SCS for all costs incurred including, but not limited to, legal fees.

§ 623.18 Access to land.

In order to determine eligibility and compliance with respect to this part, representatives of the Department, or designee thereof, shall have the right of access to:

(a) Land which is the subject of an application made in accordance with this part,

(b) Land which is subject to an easement made in accordance with this part, and

(c) Records of the participant showing status of all ownership interest in lands subject to this part.

§ 623.19 Assignments.

Any participant entitled to any cash payment under this program may assign the right to receive such cash payments, in whole or in part.

§ 623.20 Appeals.

(a) A participant in the EWRP may obtain a review of any administrative determination concerning land eligibility, development of a WRPO, or any adverse determination under this part in accordance with the administrative appeal regulations provided in part 614 of this title.

(b) Before a person may seek judicial review of any action taken under this part, the person must exhaust all administrative appeal procedures set forth in paragraph (a) of this section, and for purposes of judicial review, no decision shall be a final agency action except a decision of the Chief of SCS under these procedures. No adverse action will be taken against a participant under this part until the administrative appeals have been exhausted.

§ 623.21 Scheme and device.

(a) If it is determined by SCS that a landowner has employed a scheme or device to defeat the purposes of this part, any part of any program payment otherwise due or paid such landowner during the applicable period may be withheld or be required to be refunded with interest thereon, as determined appropriate by SCS, and the contract with the landowner may be terminated. In such a case, SCS may also continue to hold the easement interest acquired under this part.

(b) A scheme or device includes, but is not limited to, coercion, fraud, misrepresentation, depriving any other person of payments for cost-share practices or easements for the purpose of obtaining a payment to which a person would otherwise not be entitled.

(c) An owner of land subject to this part who succeeds to the responsibilities under this part shall report in writing to SCS any interest of any kind in the land subject to this part that is retained by a previous participant. Such interest includes a present, future or conditional interest, reversionary interest or any option, future or present, with respect to such land and any interest of any lender in such land where the lender has, will, or can obtain, a right of occupancy to such land or an interest in the equity in such land other than an interest in the appreciation in the value of such land occurring after the loan was made. A failure of full disclosure will be considered a scheme or device under this section.

§ 623.22 Filing of false claims.

If it is determined by SCS that any participant has knowingly supplied false information or has knowingly filed a false claim, such participant shall be ineligible for any payment under this part. False information or false claims include claims for payment for practices which do not meet the specifications of the applicable WRPO. Any amounts paid under these circumstances shall be refunded, together with interest as determined by SCS, and any amounts otherwise due such participant shall be withheld.

Signed this 19th day of November, 1993, in Washington, DC.

James R. Lyons,

Assistant Secretary for Natural Resources and Environment.

[FR Doc. 93-29005 Filed 11-26-93; 8:45 am]

BILLING CODE 4017-60-M

Agricultural Marketing Service

7 CFR Part 1160

[DA-92-29-B]

RIN 0581-AA44

Fluid Milk Promotion Program; Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This rule establishes an order implementing a national program for fluid milk promotion and consumer education. The program will be funded by a mandatory assessment on fluid milk products processed and marketed commercially in consumer-type packages by fluid milk processors in the 48 contiguous States. The order is authorized by the Fluid Milk Promotion Act of 1990, as amended by the Fluid Milk Promotion Act Amendments of 1993.

The order was approved by at least 50 percent of the fluid milk processors voting in the referendum, held October 12–21, 1993, and by fluid milk processors voting in the referendum that marketed 60 percent or more of the volume of fluid milk products marketed in the United States by all processors of fluid milk during the representative period of May 1993.

EFFECTIVE DATE: December 10, 1993.

FOR FURTHER INFORMATION CONTACT: Bonnie O. Tanner, Head, Promotion and Research Staff, room 2734, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6909.

SUPPLEMENTARY INFORMATION: Prior documents in this proceeding:

Invitation to Submit Comments and Notice of Public Meeting: Issued April 16, 1993; published April 21, 1993 (58 FR 21512).

Proposed Rule and Notice of Referendum: Issued August 30, 1993; published September 3, 1993 (58 FR 46877).

Final rule; Procedure for Conduct of Referenda and Rules of Practice Governing Proceedings on Petitions to Modify or to be Exempted from an Order; Issued August 30, 1993; published September 3, 1993 (58 FR 46761).

This final order is authorized under the Fluid Milk Promotion Act of 1990 (Title XIX, subtitle H, of the Food, Agriculture, Conservation, and Trade Act of 1990); (Pub. L. 101–624), which was enacted on November 28, 1990, and amended on August 11, 1993 (Pub. L. 103–72), hereinafter referred to as the Act.

We are issuing this rule in conformance with Executive Order 12866.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This final rule will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with this rule.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 1999K of the Act, any person subject to a fluid milk promotion order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of the order or to be exempted from the order. A person subject to an order is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the person is an inhabitant, or has his principal place of business, has jurisdiction to review the Secretary's ruling on the petition, provided a complaint is filed not later than 20 days after the date of the entry of the ruling.

Regulatory Flexibility Act

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has considered the economic impact of this final rule on small entities.

The most current information available indicates that there currently are about 620 fluid milk processors in the 48 contiguous States. This final rule exempts about 40 percent of these processors on the basis that they process and distribute no more than 500,000 pounds of fluid milk products per month. Small businesses in the fluid milk processing industry have been defined by the Small Business Administration (13 CFR 121.601) as those employing fewer than 500 employees. Under the fluid milk promotion order, most of the fluid milk processors who would be subject to the provisions of the order would be classified as small entities.

The promotion order requires each fluid milk processor who processes and markets commercially over 500,000 pounds of fluid milk products per month to remit 20 cents per hundredweight of such products. Initially, such collections will occur only for six months during the first 30 months the order is effective, and total about $55 million. Because the 20-cent rate amounts to less than 2 percent of the per hundredweight cost of raw milk to affected processors, the economic impact of the assessment will not be significant.

While this final rule imposes certain recordkeeping requirements on fluid milk processors, any information required under this rule would be readily available from records currently maintained by all processors. Thus, any increased recordkeeping resulting from this rule would be insignificant.

Based on the above, the Administrator of AMS has determined that the issuance of this final rule will not have a significant economic effect on a substantial number of small entities.

Paperwork Reduction

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. Chapter 35), the forms and reporting and recordkeeping requirements that are included in this final rule have been approved by the Office of Management and Budget (OMB) and were assigned OMB No. 0581–0093, except for Board member nominee information sheets that were previously assigned OMB No. 0505–0001. This action sets forth the provisions of the final order which establishes a national program for fluid milk promotion to be funded by fluid milk processors. Information collection requirements in these regulations include:

(1) A periodic report by each fluid milk processor. The estimated maximum number of respondents who are subject to monthly reporting requirements is 365. They would submit one report for each of the second through seventh months of the first 30 months of the program, and then report monthly if the program is continued. Since fluid milk processors who process and distribute not more than 500,000 pounds of fluid milk products per month are exempted from the order, an estimated additional 255 exempt processors would submit only one response for each fiscal period (no more frequently than once per year). The estimated average reporting burden is 30 minutes per response.

(2) A nominee background statement form for Board member nominees. The estimated number of respondents for this form is 60 during the first year of the program and approximately 20 annually thereafter. Each respondent would submit one response per year, with an estimated average reporting burden of 60 minutes per response.

(3) A requirement to maintain records sufficient to verify reports submitted under the order. The estimated maximum number of recordkeepers necessary to comply with this requirement is 620, each of whom will have an estimated average annual burden of 6 hours.

It should be noted that under the law the promotion program expires at the end of 1996.

Background

The Act authorizes the Secretary of Agriculture (Secretary) to establish a

national fluid milk promotion program. This program will be funded by an assessment on fluid milk processors. Milk processors who process and market over 500,000 pounds of milk per month will be required to remit 20 cents per hundredweight.

The Act provided for the submission of a proposal to establish a fluid milk promotion order by processors marketing at least 30 percent of the volume of fluid milk products marketed by all processors within the 48 contiguous states. The Secretary published the proposed order on April 21, 1993, and a public meeting was held April 29, 1993, to provide an opportunity for interested persons to question proponents regarding the proposal. In addition, written comments were invited, to be submitted no later than May 21, 1993.

A proposed rule and notice of referendum was issued on August 30, 1993, and published on September 3, 1993 (58 FR 46877), summarizing and responding to the comments received, and containing the provisions of the proposed rule on which fluid milk processors were to vote. At the same time, a final rule setting forth the procedure for conduct of referenda and rules of practice governing proceedings on petitions to modify or to be exempted from an order also was issued and published.

Additional Findings

Pursuant to 5 U.S.C. 553, it is hereby found and determined that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. *It* will require a significant amount of time for the National Fluid Milk Processor Promotion Board to be nominated, selected, and begin to function. Proponents of the program have requested that it become operational as soon as possible so that educational and promotional activities can be in place as soon as possible. Therefore, to assure the timely implementation of this Order, this final rule shall be effective on December 10, 1993.

List of Subjects in 7 CFR Part 1160

Milk, Fluid milk products, Promotion.

For the reasons set forth in the preamble, title 7 of the Code of Federal Regulations is hereby amended by adding part 1160 to read as follows:

PART 1160—FLUID MILK PROMOTION PROGRAM

Subpart—Fluid Milk Promotion Order

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Authority: 7 U.S.C. 6401–6417.

Subpart—Fluid Milk Promotion Order

Definitions

§ 1160.101 Act.

Act means the Fluid Milk Promotion Act of 1990, Subtitle H of Title XIX of the Food, Agriculture, Conservation, and Trade Act of 1990, Public Law 101–624, 7 U.S.C. 6401–6417, and any amendments thereto.

§ 1160.102 Department.

Department means the United States Department of Agriculture.

§ 1160.103 Secretary.

Secretary means the Secretary of Agriculture of the United States or any officer or employee of the Department to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

§ 1160.104 United States.

United States means the 48 contiguous states in the continental United States and the District of Columbia, except that United States means the 50 states of the United States of America and the District of Columbia under the following provisions: the petition and review under section 1999K of the Act, enforcement under section 1999L of the Act, and investigations and power to subpoena under section 1999M of the Act.

§ 1160.105 Board.

Board means the National Processor Advertising and Promotion Board established pursuant to 7 U.S.C. 6407(b)(1) and this subpart (hereinafter known as the National Fluid Milk Processor Promotion Board or Board).

§ 1160.106 Person.

Person means any individual, group of individuals, partnership, corporation, association, cooperative or other entity.

§ 1160.107 Fluid milk product.

(a) *Fluid milk product* means any of the following products in fluid or frozen form: milk, skim milk, lowfat milk, milk drinks, buttermilk, filled milk, and milkshake and ice milk mixes containing less than 20 percent total solids, including any such products that are flavored, cultured, modified with added nonfat milk solids, concentrated (if in a consumer-type package), or reconstituted.

(b) *Fluid milk product* does not include evaporated or condensed milk (plain or sweetened), evaporated or condensed skim milk (plain or sweetened), formulas specifically prepared for infant feeding or dietary use that are packaged in hermetically sealed glass or all-metal containers, any product that contains by weight less than 6.5 percent milk solids, and whey.

§ 1160.108 Fluid milk processor.

(a) *Fluid milk processor* means any person who processes and markets

commercially fluid milk products in consumer-type packages in the United States, except that the term fluid milk processor shall not include in each of the respective fiscal periods those persons who process and market not more than 500,000 pounds of such fluid milk products during the representative month set forth below:

(1) For the first fiscal period, the representative month shall be May 1993;

(2) For the second fiscal period, the representative month shall be the month that the Secretary uses as the representative month in the conduct of the continuation referendum; and

(3) For each additional fiscal period, the representative month shall be the first month of the fiscal period.

(b) Any person who did not qualify as a fluid milk processor for a fiscal period because of the 500,000-pound limitation shall not later qualify as a fluid milk processor during that fiscal period even though the monthly volume limitation is later exceeded during that period.

(c) Any person who qualified as a fluid milk processor for a fiscal period and whose monthly marketings of fluid milk products later become 500,000 pounds or less shall no longer qualify as a fluid milk processor during that fiscal period beginning with the month in which the marketings first dropped below the volume limitation.

(d) For the purpose of determining qualification as a fluid milk processor, each processor of fluid milk products shall report for the representative month of each fiscal period the hundredweight of fluid milk products processed and marketed by the processor.

§ 1160.109 Milk.

Milk means any class of cow's milk produced in the United States.

§ 1160.110 Class I price.

Class I price is the price that is established for Class I milk in each marketing area under milk marketing orders authorized by the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601–674.

§ 1160.111 Promotion.

Promotion means the following activities:

(a) *Consumer Education*, which means any program utilizing public relations, advertising or other means devoted to educating consumers about the desirable characteristics of fluid milk products and directed toward increasing the general demand for fluid milk products.

(b) *Advertising*, which means any advertising or promotion program involving only fluid milk products and directed toward educating consumers about the positive attributes of fluid milk and increasing the general demand for fluid milk products.

§ 1160.112 Research.

(a) *Research* means market research limited to the support of promotion and consumer education efforts.

(b) *Research* does not include research directed to product characteristics such as nutrients; product development including new products; improved technology in production, manufacturing or processing; or any other efforts not directly applicable to measuring or increasing the effectiveness of promotion and consumer education activities in expanding sales of fluid milk products.

§ 1160.113 Fiscal period.

Fiscal period means prior to a continuation referendum, the initial period of up to 30 months that this subpart is effective. Thereafter, the fiscal period shall be such annual period as the Board may determine, except that the Board may provide for a lesser or greater period as it may find appropriate for the period immediately after the initial fiscal period to assure continuity of fiscal periods until the beginning of the first annual fiscal period.

§ 1160.114 Eligible organization.

Eligible organization means an organization eligible to nominate members of the Board and which meets the following criteria:

(a) Is a nonprofit organization pursuant to section 501(c) (3), (5), or (6) of the Internal Revenue Code (26 U.S.C. 501(c) (3), (5), or (6));

(b) Is governed by a board comprised of a majority of fluid milk processors; and

(c) Represents fluid milk processors on a national basis whose members process more than 50 percent of the fluid milk products processed and marketed within the United States.

§ 1160.115 Milk marketing area.

Milk marketing area means each area within which milk being marketed is subject to a milk marketing order issued pursuant to the Agricultural Marketing Agreement Act of 1937, as amended, 7 U.S.C. 601–674, or applicable state laws.

§ 1160.116 Initial referendum.

Initial referendum means the referendum among fluid milk processors that the Secretary conducted prior to the effective date of this subpart.

§ 1160.117 Continuation referendum.

Continuation referendum means that referendum among fluid milk processors that the Secretary shall conduct as provided in § 1160.501.

National Fluid Milk Processor Promotion Board

§ 1160.200 Establishment and membership.

(a) There is hereby established a National Fluid Milk Processor Promotion Board of 20 members, 15 of whom shall represent geographic regions and five of whom shall be at-large members of the Board. To the extent practicable, members representing geographic regions shall represent fluid milk processing operations of differing sizes. No fluid milk processor shall be represented on the Board by more than one member. The at-large members shall include at least three fluid milk processors and at least one member from the general public. Except for the member or members from the general public, nominees appointed to the Board must be active owners or employees of a fluid milk processor. The failure of such a member to own or work for the fluid milk processor with whom the member was associated at the time of his or her appointment to the Board shall disqualify that member for membership on the Board for the remainder of that term.

(b) In selecting the 15 Board members who represent geographic regions, one member shall be selected from each of the following regions:

Region 1. Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, and Vermont.
Region 2. New York and New Jersey.
Region 3. Delaware, Maryland, Pennsylvania, Virginia, and the District of Columbia.
Region 4. Georgia, North Carolina and South Carolina.
Region 5. Florida.
Region 6. Ohio and West Virginia.
Region 7. Michigan, Minnesota, North Dakota, South Dakota and Wisconsin.
Region 8. Illinois and Indiana.
Region 9. Alabama, Kentucky, Louisiana, Mississippi and Tennessee.
Region 10. Texas.
Region 11. Arkansas, Iowa, Kansas, Missouri, Nebraska and Oklahoma.
Region 12. Arizona, Colorado, New Mexico, Nevada, and Utah.
Region 13. Idaho, Montana, Oregon, Washington and Wyoming.
Region 14. Northern California which shall be composed of the Northern California Marketing Area and the South Valley Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2,

Part 3, Division 21, of the California Food and Agriculture Code, effective February 3, 1992.

Region 15. Southern California which shall be composed of the Southern California Marketing Area as defined by the Stabilization and Marketing Plan, as amended, issued by the California Department of Food and Agriculture pursuant to the provisions of Chapter 2, Part 3, Division 21, of the California Food and Agriculture Code, effective February 3, 1992.

§ 1160.201 Term of office.

(a) The members of the Board shall serve for terms of three years, except that the members appointed to the initial Board shall serve proportionately, for terms of one year, two years, and three years, as determined by the Secretary. The terms of all Board members shall expire upon the suspension or termination of the order except as provided in § 1160.502.

(b) No member shall serve more than two consecutive terms, except that any member who is appointed to serve for an initial term of one or two years shall be eligible to be reappointed for a 3-year term.

§ 1160.202 Nominations.

Nominations for members of the Board shall be made in the following manner:

(a) The Secretary shall solicit nominations for the initial Board from individual fluid milk processors and other interested parties, including eligible organizations. Fluid milk processors and other interested parties may submit nominations for positions on the Board for regions in which they are located or market fluid milk, and for at-large members. Eligible organizations may submit a slate of nominees for seats in all regions and for at-large members.

(b) After the appointment of the initial Board, the Secretary shall announce at least 180 days in advance of the expiration of members' terms that such terms are expiring, and shall solicit nominations for such positions in the manner described in paragraph (a) of this section. Nominations for such positions should be submitted to the Secretary not less than 120 days prior to the expiration of members' terms.

§ 1160.203 Nominee's agreement to serve.

Each nominee for Board membership must file with the Secretary at the time of nomination a written agreement to serve on the Board if appointed.

§ 1160.204 Appointment.

From the nominations made pursuant to § 1160.202, the Secretary shall appoint the members of the Board on the basis of representation provided for in §§ 1160.200 and 1160.201.

§ 1160.205 Vacancies.

To fill any vacancy occasioned by the death, removal, resignation, or disqualification of any member of the Board, the Secretary shall appoint a successor from the most recent list of nominations made by individual fluid milk processors and other interested parties, including eligible organizations, for the Board, or from nominations made by the Board.

§ 1160.206 Procedure.

(a) A majority of the members shall constitute a quorum at a properly convened meeting of the Board. Any action of the Board shall require the concurring votes of at least a majority of those present and voting. The Board shall establish rules concerning timely notice of meetings.

(b) The Board may take action upon the concurring votes of a majority of members by mail, telephone, telegraph, or other means of electronic communication when, in the opinion of the chairperson of the Board, such action must be taken before a meeting can be called. Action taken by this emergency procedure is valid only if all members are notified and provided the opportunity to vote and any telephone vote is confirmed promptly in writing. Any action so taken shall have the same force and effect as though such action had been taken at a properly convened meeting of the Board.

§ 1160.207 Compensation and reimbursement.

The members of the Board and trustees, if any, named under § 1160.502, shall serve without compensation but shall be reimbursed for necessary and reasonable expenses incurred by them in the performance of their duties under this subpart.

§ 1160.208 Powers of the Board.

The Board shall have the following powers:

(a) To receive and evaluate, or on its own initiative develop, and budget for plans or projects to educate consumers and promote the use of fluid milk products and to make recommendations to the Secretary regarding such proposals;

(b) To administer the provisions of this subpart in accordance with its terms and provisions;

(c) To make rules and regulations to effectuate the terms and provisions of this subpart;

(d) To receive, investigate, and report to the Secretary complaints of violations of the provisions of this subpart;

(e) To employ such persons as the Board deems necessary and determine the duties and compensation of such persons;

(f) To contract with eligible organizations or other persons to conduct activities authorized pursuant to this subpart;

(g) To select committees and subcommittees of the Board members, to adopt bylaws, and to adopt such rules for the conduct of its business as it may deem advisable;

(h) To recommend to the Secretary amendments to this subpart; and

(i) With the approval of the Secretary, to invest, pending disbursement pursuant to a plan or project, funds collected through assessments authorized under § 1160.211 in, and only in, obligations of the United States or any agency thereof, in general obligations of any State or any political subdivision thereof, in any interest-bearing account or certificate of deposit of a bank that is a member of the Federal Reserve System, or in obligations fully guaranteed as to principal and interest by the United States.

§ 1160.209 Duties of the Board.

The Board shall have the following duties:

(a) To meet not less than annually, and to organize and select from among its members a chairperson, who may serve for a term of one year and not more than two consecutive terms, and to select such other officers as may be necessary;

(b) To prepare and submit to the Secretary for approval a budget for each fiscal period of the anticipated expenses and disbursements in the administration of this subpart, including a description of and the probable costs of consumer education, promotion and research projects. However, for the initial fiscal period, the budget shall be such sum as may be collected from assessments paid during that period;

(c) To develop and submit to the Secretary for approval promotion and consumer education, and research plans or projects;

(d) To the extent practicable, carry out consumer education and promotion programs under § 1160.301 in such a manner as to ensure that advertising coverage in each of the regions defined in § 1160.200 is proportionate to funds collected from each such region;

(e) To disseminate information to fluid milk processors or eligible organizations;

(f) To maintain minutes, books and records that accurately reflect all of the acts and transactions of the Board, which shall be available to the Secretary

for inspection and audit, and prepare and promptly report minutes of each Board meeting to the Secretary and submit such reports from time to time to the Secretary as the Secretary may prescribe, and to account with respect to the receipt and disbursement of all funds entrusted to it;

(g) To enter into contracts or agreements, with the approval of the Secretary, with such persons and organizations as the Board may approve for the development and conduct of activities authorized under this subpart and for the payment of the cost thereof with funds collected through assessments pursuant to § 1160.211 and income from such assessments. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project together with a budget(s) showing the estimated cost of such plan or project;

(2) Any such plan or project shall be adopted upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of all activities conducted pursuant to the contract or agreement, and provide accounts of all funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board periodically may audit the records of the contracting parties;

(h) For the initial fiscal period, the Board shall contract, to the extent practicable and subject to the approval of the Secretary, with an eligible organization to carry out the provisions of this subpart;

(i) To prepare and make public, at least annually, a report of its activities and an accounting for funds received and expended;

(j) To have an audit of its financial statements conducted by a certified public accountant in accordance with generally accepted auditing standards, at the end of the first 15 months of the initial fiscal period, at the end of the initial fiscal period, and at least once each fiscal period thereafter as well as at such other times as the Secretary may request, and to submit a copy of each such audit report to the Secretary;

(k) To give the Secretary the same notice of meetings of the Board and committees of the Board, including actions conducted under § 1160.206(b), as is given to such Board or committee members in order that the Secretary, or a representative of the Secretary, may attend such meetings;

(l) To submit to the Secretary such information pursuant to this subpart as may be requested;

(m) The Board shall take reasonable steps to coordinate the collection of assessments, and promotion, education, and research activities of the Board, with the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)); and

(n) The Board shall conduct advertising using third parties only through contracts which shall prohibit the third party from selling, offering for sale, or otherwise making available advertising time or space to private industry members conducting brand-name advertising which immediately precedes, follows, appears in juxtaposition, or appears in the midst of Board-sponsored advertising.

§ 1160.210 Expenses.

(a) The Board is authorized to incur such expenses (including provision for a reasonable reserve) as the Secretary finds are reasonable and likely to be incurred by the Board for its administration, and to enable it to exercise its powers and perform its duties in accordance with the provisions of this subpart; except that, after the Board's first year, it shall not spend on its administration more than 5 percent of the assessments collected during any fiscal period subsequent to the initial fiscal period. Such administrative expenses shall be paid from assessments collected pursuant to § 1160.211.

(b) The Board shall reimburse the Secretary for administrative costs incurred by the Department from assessments collected pursuant to § 1160.211.

(c) Within 30 days after funds are remitted from Regions 14 and 15, the Board shall provide a grant of 80% of such funds to the entity authorized by the laws of the State of California to conduct an advertising program for fluid milk products in that State for the purpose of implementing a coordinated advertising program in the markets within those regions. Such grant shall be provided with the approval of the Secretary on the following conditions:

(1) The granted funds shall be utilized to implement a fluid milk promotion campaign within the markets within those regions. Verification of the implementation of this program shall be provided to the Board.

(2) The Board shall ensure that the recipients of these funds implement a research and evaluation program to determine the effect of such program on consumption of fluid milk within the region.

(3) The recipient of these funds must provide to the Board data from the research and evaluation programs so that the Board can determine the effect of the program on consumption of fluid milk.

§ 1160.211 Assessments.

(a) (1) Each fluid milk processor shall pay to the Board or its designated agent an assessment of $.20 per hundredweight of fluid milk products processed and marketed commercially in consumer-type packages in the United States by such fluid milk processor; *Provided, however,* That for the initial fiscal period the assessment due pursuant to this section shall be paid only on fluid milk products marketed during the second through the seventh months of that fiscal period. Producer-handlers required to pay assessments under section 113(g) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(g)), and not exempt under § 1160.108, shall also pay the assessment under this subpart. No assessments are required on fluid milk products exported from the United States. If the Board is not in place by the date the first assessments are to be collected, the Secretary shall have the authority to receive assessments on behalf of the Board, and shall remit such assessments to the Board when it is convened.

(2) Within 30 days after the effective date of this subpart, the Secretary shall announce the establishment of the assessment each month in the Class I price announcement in each milk marketing area by adding it to the Class I price for the following month. In the event the assessment is suspended for a given month, the Secretary shall inform all fluid milk processors of the suspension in the Class I price announcement for that month. The Secretary shall also inform fluid milk processors marketing fluid milk products in areas not subject to milk marketing orders administered by the Secretary of the establishment or suspension of the assessment.

(3) Each processor responsible for remitting an assessment shall remit it to the Board not later than the last day of the month following the month that the assessed milk was marketed.

(b) Such assessments shall not:

(1) Reduce the prices paid under the Federal milk marketing orders issued under section 8c of the Agricultural Adjustment Act (7 U.S.C. 608c), reenacted with amendments by the Agricultural Marketing Agreement Act of 1937;

(2) Otherwise be deducted from the amounts that handlers must pay to producers for fluid milk products sold to a processor; or

(3) Otherwise be deducted from the price of milk paid to a producer by a handler, as determined by the Secretary.

(c) Money remitted to the Board or the Board's designated agent shall be in the form of a negotiable instrument made payable to the Board or its agent, as the case may be. Processors must mail remittances and reports specified in §§ 1160.108, 1160.211(a)(1), 1160.213, 1160.214, and 1160.401 to the location designated by the Board or its agent.

§ 1160.212 Influencing governmental action.

No funds collected by the Board under this subpart shall in any manner be used for the purpose of influencing governmental policy or action, except to recommend to the Secretary amendments to this subpart.

§ 1160.213 Adjustment of accounts.

Whenever the Board or the Secretary determines through an audit of a processor's reports, records, books or accounts or through some other means that additional money is due the Board or to such processor from the Board, the Board shall notify that person of the amount due or overpaid. If the processor owes money to the Board, it shall remit that amount by the next date for remitting assessments as provided in § 1160.211. If the processor has overpaid, that amount shall be credited to its account and applied against amounts due in succeeding months.

§ 1160.214 Charges and penalties.

(a) Late-payment charge. Any unpaid assessments shall be increased 1.5 percent each month beginning with the day following the date such assessments were due. Any remaining amount due, which shall include any unpaid charges previously made pursuant to this section, shall be increased at the same rate on the corresponding day of each month thereafter until paid. For the purpose of this section, any assessment determined at a date later than prescribed by this subpart because of the failure of a processor to submit a report to the Board when due shall be considered to have been payable by the date it would have been due if the report had been filed when due. The receipt of a payment by the Board will be based on the earlier of the postmark date or the actual date of receipt.

(b) Penalties. The Secretary may assess any person who violates any provision of this subpart a civil penalty of not less than $500 nor more than $5,000 for each such violation. In the case of a willful failure to pay an assessment as required by this subpart, in addition to the amount due, the Secretary may assess an additional penalty of not less than $10,000 nor more than $100,000 for each such violation. The amount of any such penalty shall accrue to the United States, which may recover such amount in a civil suit. The remedies provided in this section are in addition to, and not exclusive of, other remedies that may be available by law or in equity.

Promotion, Consumer Education and Research

§ 1160.301 Promotion, consumer education and research.

(a) The Board shall receive and evaluate, or on its own initiative develop, and submit to the Secretary for approval any plans or projects authorized in §§ 1160.208 and 1160.209. Such plans or projects shall provide for:

(1) The establishment, issuance, effectuation, and administration of consumer education, promotion and research activities with respect to fluid milk products; and

(2) The evaluation of consumer education, promotion and research activities implemented under the direction of the Board, and the communication of such evaluation to fluid milk processors and the public.

(b) The Board shall periodically review or evaluate each plan or project authorized under § 1160.301(a) to ensure that it contributes to an effective program of promotion, consumer education and research. If the Board finds that any such plan or project does not further the purposes of the Act, the Board shall terminate that plan or project.

(c) No plan or project authorized under § 1160.301(a) may employ unfair or deceptive acts or practices with respect to the quality, value or use of any competing product.

(d) No plan or project authorized under § 1160.301(a) may make use of a brand or trade name of a fluid milk product, except that this paragraph does not preclude the Board from offering program material to commercial parties to use under such terms and conditions as the Board may prescribe, subject to approval by the Secretary.

Reports, Books and Records

§ 1160.401 Reports.

Each fluid milk processor marketing milk and paying an assessment under § 1160.211 shall be required to report upon the remittance of such assessments such information as the Board or the Secretary may require. Such information shall include but not be limited to the following:

(a) The quantity of fluid milk products marketed that is subject to the collection of the assessment;

(b) The amount of assessment remitted;

(c) The reason, if necessary, why the remittance is less than the number of hundredweights of milk multiplied by 20 cents; and

(d) The date any assessment was paid.

§ 1160.402 Books and records.

Each person subject to this subpart shall maintain and make available for inspection by agents of the Board and the Secretary such books and records as are necessary to carry out the provisions of this subpart and the regulations issued hereunder, including such records as are necessary to verify any reports required. Such books and records shall be retained for at least two years beyond the fiscal period of their applicability.

§ 1160.403 Confidential treatment.

(a) All persons, including agents and former agents of the Board, all officers and employees and all former officers and employees of the Department, and all officers and all employees and all former officers and employees of contracting agencies having access to commercial or financial information obtained from such books, records or reports under the Act and this subpart shall keep such information confidential, and not make it available to Board members. Only those persons, as determined by the Secretary, who have a specific need for such information in order to effectively administer the provisions of this subpart shall have access to such information. In addition, they shall disclose only that information the Secretary deems relevant, and then only in a suit or administrative hearing brought at the discretion, or upon the request, of the Secretary, or to which the Secretary or any officer of the United States is a party, and involving this subpart. Nothing in this section, however, shall be deemed to prohibit:

(1) The issuance of general statements based upon the reports of the number of processors, individuals, groups of individuals, partnerships, corporations, associations, cooperatives, or other entities subject to this subpart or statistical data collected from such sources, which statements do not identify the information furnished by any such parties, and

(2) The publication, at the direction of the Secretary, of the name of any

processor, individuals, group of individuals, partnership, corporation, association, cooperative, or other entity that has been adjudged to have violated this subpart, together with a statement of the particular provisions of the subpart so violated.

(b) Except as otherwise provided in this subpart, information obtained under this subpart may be made available to another agency of the Federal Government for a civil or criminal law enforcement activity if the activity is authorized by law and if the head of the agency has made a written request to the Secretary specifying the particular information desired and the law enforcement activity for which the information is sought.

(c) Any person violating this section, on conviction, shall be subject to a fine of not more than $1,000 or to imprisonment for not more than 1 year, or both, and if such person is an agent of the Board or an officer or employee of the Department shall be removed from office.

(d) Nothing in this subsection authorizes the Secretary to withhold information from a duly authorized committee or subcommittee of Congress.

Miscellaneous

§ 1160.501 Continuation referenda.

(a) At the request of the Board, but not later than one month after the initial fiscal period, the Secretary shall conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, to determine whether the order should be suspended or terminated.

(b) The Secretary at any time may conduct a referendum among those persons who the Secretary determines were fluid milk processors during a representative period, as determined by the Secretary, on whether to suspend or terminate the order. The Secretary shall hold such a referendum at the request of the Board or of any group of such processors that among them marketed during a representative period, as determined by the Secretary, 10 percent or more of the volume of fluid milk products marketed in the United States by all fluid milk processors.

(c) Any suspension or termination of the order on the basis of a referendum conducted pursuant to this section must be favored:

(1) By at least 50 percent of the fluid milk processors voting in the referendum; and

(2) By fluid milk processors voting in the referendum that marketed during a representative period, as determined by the Secretary, 40 percent or more of the volume of fluid milk products marketed in the United States by all processors of fluid milk.

(d) If the Secretary determines that the suspension or termination of the order is favored in the manner set forth in § 1160.501(c), the Secretary shall take such action within 6 months of such determination.

§ 1160.502 Proceedings after suspension or termination.

(a) Upon the suspension or termination of this subpart, the Board shall recommend to the Secretary not more than five of its members to serve as trustees for the purpose of liquidating the affairs of the Board. Once the Secretary has designated such members as trustees, they shall become trustees of all the funds and property that the Board owns, possesses, or controls, including unpaid and undelivered property or any other unpaid claim existing at the time of such termination. The actions of such trustees shall be subject to approval by the Secretary.

(b) The said trustees shall:

(1) Serve as trustees until discharged by the Secretary;

(2) Carry out the obligations of the Board under any contract or agreements that it entered pursuant to §§ 1160.208 and 1160.209;

(3) Account for all receipts and disbursements and deliver to any person designated by the Secretary all property on hand, together with all books and records of the Board and the trustees; and

(4) At the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in the Secretary's designee full title and right to all of the funds, property, and claims of the Board or the trustees.

(c) The Secretary's designee shall be subject to the same obligations with respect to funds, property or claims transferred or delivered pursuant to this subpart as the Board and the trustees.

(d) The Board, the trustees or the Secretary's designee shall deliver to the Secretary any residual funds not required to pay liquidation expenses, which funds may be used, to the extent practicable, to continue one or more of the promotion, research or nutrition education plans or projects authorized pursuant to this subpart.

§ 1160.503 Effect of suspension, termination or amendment.

Unless otherwise expressly provided by the Secretary, the suspension or termination of this subpart or of any regulation issued pursuant hereto, or the issuance of any amendment to either thereof, shall not:

(a) Affect or waive any right, duty, obligation, or liability of the Board or its trustees which shall have arisen or which may hereafter arise in connection with any provision of this subpart or any regulation issued thereunder;

(b) Release or extinguish any violation of this subpart or any regulation issued thereunder; or

(c) Affect or impair any rights or remedies of the United States, the Secretary, or any person, with respect to any such violation.

§ 1160.504 Personal liability.

No member or employee of the Board shall be held personally responsible, either individually or jointly, in any way whatsoever to any person for errors in judgment, mistakes, or other acts of either commission or omission by such member or employee, except for acts of dishonesty or willful misconduct.

§ 1160.505 Patents, copyrights, inventions and publications.

Any patents, copyrights, trademarks, inventions or publications developed through the use of funds collected under the provisions of this subpart are the property of the United States Government as represented by the Board, and shall, along with any rents, royalties, residual payments, or other income from the rental, sale, leasing, franchising, or other uses of such patents, copyrights, inventions, or publications, inure to the benefit of the Board. Section 1160.502 governs the disposition of all such property upon suspension or termination of this subpart.

§ 1160.506 Amendments.

The Secretary may from time to time amend provisions of this subpart. Any interested person or organization affected by the provisions of the Act may propose amendments to the Secretary.

§ 1160.507 Report.

The Secretary shall provide annually for an independent evaluation of the effectiveness of the fluid milk promotion program carried out under this subtitle during the previous fiscal year, in conjunction with the evaluation of the National Dairy Promotion and Research Board established under section 113(b) of the Dairy Production Stabilization Act of 1983 (7 U.S.C. 4504(b)).

§ 1160.508 Separability.

If any provision of this subpart is declared invalid or the applicability thereof to any person or any

circumstances is held invalid, such declaration or holding shall not offset the validity of the remainder of this subpart or the applicability thereof to other persons or circumstances.

Dated: November 16, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–28790 Filed 11–26–93; 8:45 am]

BILLING CODE 3410–02–P

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD31

Price Support Loan Requirements; Farmer Owned Reserve Program Eligibility Requirements

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends the regulations with respect to the Price Support Loan Program and the Farmer-Owned Reserve (FOR) Program which are conducted by the Commodity Credit Corporation (CCC) in accordance with section 110 of the Agricultural Act of 1949, as amended, (the 1949 Act). The interim rule, made final by this document, amended these provisions to offer producers an additional opportunity to declare their intentions for the 1992 feed grains FOR Program, and allow extensions of maturing 1990 FOR wheat loans and 1992 wheat and feed grain loans.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Mark Overbo, Program Specialist, Cotton, Grain, and Rice Price Support Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), PO Box 2415, Washington, DC 20013–2415; telephone 202–720–8223.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because:

(1) This rule will not have a significant adverse impact on a substantial number of small entities since this rule liberalizes benefits and,

(2) The CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will have no significant impact on the quality of human environment.

Executive Order 12372

This program is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778. To the extent State and local laws are in conflict with these regulatory provisions, it is the intent of CCC that the terms of the regulations prevail. The provisions of this final rule are retroactive to the extent that this rule extends price support availability for loans which may have matured. Prior to any judicial action in a court of competent jurisdiction, administrative review under 7 CFR part 780 must be exhausted.

Paperwork Reduction Act

The information collections requirements for participating in the FOR Program have been approved for use by the Office of Management and Budget (OMB) through August 31, 1994, and assigned OMB No. 0560–0087. The amendments to 7 CFR part 1421 set forth in this final rule do not impose any new or revised information collection requirements to participate in FOR from those previously reviewed and approved by OMB.

Public reporting burden for these collections is estimated to average 15 minutes per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection, including suggestions for reducing the burden, to the Department of Agriculture, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250–0001; and to the Office of Management and Budget, Paperwork Reduction Project (OMB No. 0560–0087), Washington, DC 20503.

No comments were received during the comment period which ended on September 27, 1993.

Accordingly, under the authority of 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f-1, 1445b-3a, 1445c-3, 1445e, and 1446f; 15 U.S.C. 714b and 714c, the interim rule amending 7 CFR part 1421 which was published at 58 FR 45039 on August 26, 1993, is adopted as a final rule without change.

Signed in Washington, DC on November 20, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–29135 Filed 11–26–93; 8:45 am]

BILLING CODE 3410–05–P

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7 CFR Part 1446

RIN 0560–AD33

Peanuts

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Final rule.

SUMMARY: This rule adopts without change the interim rule published in the **Federal Register** (58 FR 41625) on August 5, 1993, which amended the regulations for peanuts to increase, from $1.00 to $2.00, the maximum per net ton deduction that may be made from producer price support advances by the Southwestern Peanut Growers' Association (SWPGA) to fund activities of the association outside the price support program. The deductions are made only upon prior agreement of the

producer, and will have no effect on the amount of public outlay for the peanut program.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: David L. Kincannon, Tobacco and Peanuts Division, Agricultural Stabilization and Conservation Service, United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–0152.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This final rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this final rule:

(1) Would have an annual effect on the economy of less than $100 million;

(2) Would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Would not create a serious inconsistency of otherwise interfere with an action taken or planned by another agency;

(4) Would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Federal Assistance Program

The title and number of the Federal assistance program, as found in the Catalog of Federal Domestic Assistance, to which this final rule applies are: Commodity Loans and Purchases—10.051.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this final rule since the Commodity Credit Corporation (CCC) is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of this rule.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See the notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The information collection requirements contained in the regulations at 7 CFR part 1446 for the peanut price support program were approved by the Office of Management and Budget (OMB), as required by 44 U.S.C. chapter 35, and assigned OMB control numbers 0560–0006, 0560–0014, and 0560–0033. This final rule does not change the information collection as approved by OMB. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to USDA, Clearance Officer, OIRM, AG Box 7630, Washington, DC 20250; and to the OMB Paperwork Reduction Project (OMB 0560–0006, 0560–0014, or 0560–0033), Washington, DC 20503.

Background

On August 5, 1993, an interim rule was published in the **Federal Register** (58 FR 41625) seeking public comments with respect to an increase in the maximum deduction that could be made from producer price support advances on loan peanuts by the SWPGA to fund activities outside the price support program. The maximum deduction was increased from $1 to $2 per net ton of peanuts pledged as collateral for a price support loan. A total of 177 comments were received, representing: 161 producers, a State peanut growers' association, 2 county growers' associations, a chamber of commerce, 5 peanut farm service companies, 6 respondents from 2 financial institutions, and a newspaper. The increase was opposed conditionally by 105 producers who were not satisfied with the accounting of the previously collected funds. These producers opposed the increase until a satisfactory accounting is made of previously collected funds. All remaining respondents favored the increase.

The increased deduction is a convenience to the SWPGA and its members. The amount involved is not onerous. The collection is strictly voluntary. The deduction provided for in the rules is a convenience. The funds involved are funds that are available, from the program standpoint, for unrestricted use by the producers. Absent extraordinary circumstances, the sufficiency of the association's accounting is a matter between the producers and the association alone. No such extraordinary circumstances are demonstrated by the comments. CCC does not endorse the collection of the funds. Also, CCC takes no position on how the funds should be used. There may, however, be restrictions that apply under law on the use of the funds. Those restrictions will continue to apply. Adoption of the rule as a final rule will not interfere with the accomplishment of the goals of the program. For these reasons, it has been determined that the interim rule should be adopted as a final rule.

Accordingly, under the authority of 7 U.S.C. 1359a, 1375, 1421 *et seq.*; 15 U.S.C. 714b and 714c, the interim rule amending 7 CFR part 1446 which was published at 58 FR 41625 on August 5, 1993, is adopted as a final rule without change.

Signed at Washington, DC, on November 20, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–29071 Filed 11–26–93; 8:45 am]

BILLING CODE 3410–05–P

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7 CFR Part 1475

RIN 0560–AD49

Emergency Livestock Assistance

AGENCY: Commodity Credit Corporation, USDA.

ACTION: Interim rule.

SUMMARY: This interim rule would amend the regulations for the livestock emergency programs, which are authorized by the Agriculture Act of 1949 as amended, (the 1949 Act) and the Commodity Credit Corporation (CCC) Charter Act. This interim rule would provide a simplified method for determining total livestock feed needs. Other minor changes to update the regulations include changes in weight ranges and an appropriate amount of energy required to provide the daily maintenance needs for dairy goats; determining pasture value; applying the $50,000 payment limitation to crop year rather than calendar year; and calculating interest on refunds due CCC.

DATES: Interim rule effective November 29, 1993. Comments must be received on or before December 29, 1993 in order to be assured of consideration.

ADDRESSES: Submit comments to: Director, Emergency Operations and Livestock Programs Division, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture (USDA), P.O. Box 2415, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: James C. Williams, Program Specialist, Emergency Operations and Livestock Programs Division, ASCS, USDA, P.O.

Box 2415, Washington, DC 20013–2415, telephone 202–690–1324.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This interim rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this interim rule: (1) Would have an annual effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency: (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable to this interim rule since the CCC is not required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject matter of these determinations.

Environmental Evaluation

It has been determined by an environmental evaluation that this action will not have a significant impact on the quality of the human environment. Therefore, neither an Environmental Assessment nor an Environmental Impact Statement is needed.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies are: Commodity Loans and Purchases—10.051.

Executive Order 12778

This interim rule has been reviewed in accordance with Executive Order 12778. The provisions of the interim rule do not preempt State laws and are not retroactive to 1992 and prior crop years. Before any judicial action may be brought regarding the provisions of this regulation, the administrative appeal provisions set forth at 7 CFR part 780 must be exhausted.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order 12372, which requires intergovernmental consultation with State and local officials. See notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Paperwork Reduction Act

The amendments to 7 CFR part 1475 set forth in this interim rule will not result in any change in the public reporting burden.

Request for Comments

Comments are requested with respect to this interim rule and such comments shall be considered in developing the final rule.

Background

The regulations at 7 CFR part 1475 currently set forth the provisions which are used to administer the emergency livestock feed programs. These programs are authorized by the CCC Charter Act and the 1949 Act.

Title IV of the 1949 Act provides in part that the Secretary of Agriculture shall make one or more of certain specified programs available to eligible livestock owners if a livestock emergency exists in a State, county, or area. Over the past several years, the emergency livestock feed programs have come under increased criticism from livestock producers, Congressional staffs, as well as State and county ASCS office employees, concerning the method of computing the value of total livestock feed needs.

Previous regulations at 7 CFR 1475.6(i)(1)(i) provide the value of total livestock feed needs with respect to an owner of livestock, other than fish for food.

Presently, total livestock feed needs are computed as follows:

(1) Number of pounds of corn needed to maintain each livestock type and weight category; times

(2) Number of days in the feeding period; times

(3) A price established for corn, which is for:

(a) The preliminary computation, the posted county price (PCP) for corn, in the county, on the date LFP was approved for the county, and

(b) The final computation, the average PCP for corn, in the county, during the feeding period of each application.

The current method of recomputing the value of total livestock feed needs at the end of the feeding period has resulted in the following situations: The initial PCP, for counties that were approved for LFP early in the LFP crop year, generally were substantially higher than the average PCP during the individual producer's application feeding period, resulting in the producer's final total livestock feed needs being substantially less than the preliminary total livestock feed needs. In many cases, this substantially reduced a producer's program benefits. Some producers, who elected to take advance payments, became overpaid and were required to refund part of the program benefits computed at the beginning of the feeding period.

To more equitably provide emergency assistance, several options for computing a producer's total livestock feed needs were considered:

(1) Continue the current method,

(2) Use the corn PCP, in the county, on the day the county is approved for LFP to compute both the preliminary and final livestock feed needs,

(3) Use the previous 5-year average, dropping the high and low years of the PCP for corn, in the county, to compute both the preliminary and final livestock feed needs, and

(4) Use the same corn price established by CCC to determine normal production, feed loss, and feed available, to compute both preliminary and final livestock feed needs.

The last option was selected based on the following advantages:

(1) It would eliminate a cause of fluctuation in program benefits, over which the producer has no control;

(2) Producers will be able to more accurately predict their final benefits available based on total livestock feed needs;

(3) Producers will be able to make better educated management decisions;

(4) Fewer producers will be overpaid requiring refunds;

(5) It will be easier to explain benefits available to producers; and

(6) The price used to compute a producer's livestock feed benefits will be consistent for all producers applying in the same county.

Section 1475.3 is revised by modifying the definition for dairy cow "weight ranges" and to add a weight range for dairy goats in the table.

Section 1475.6(c) is revised to change the reference from CCC–653 to CCC–651.

Section 1475.6(e)(4) is being revised to clarify the manner in which pasture value is actually calculated for 1991 and subsequent crop years.

Section 1475.6(i)(1)(i)(A) is revised to clarify the method used to calculate total feed needs.

Section 1475.6(i)(2)(iii) is revised to correct a misprint in the Federal Register.

Section 1475.10(b) is revised to clarify when the emergency livestock feed program may be suspended or terminated in a contiguous county.

Section 1475.17 (a), (c), and (g) are being revised to clarify what type of interest will be charged on refunds to CCC.

Section 1475.22 is revised by changing the payment limitation from "calendar" year to "crop" year to be consistent with crop disaster payments and to simplify compliance with this statutory requirement.

List of Subjects in 7 CFR Part 1475

Animal feeds, Disaster assistance, Grant programs- agriculture, Livestock, Reporting and recordkeeping requirements.

Accordingly, 7 CFR part 1475 is amended as follows:

PART 1475—EMERGENCY LIVESTOCK ASSISTANCE

1. The authority citation for 7 CFR part 1475 continues to read as follows:

Authority: 7 U.S.C. 1427 and 1471–1471j, 15 U.S.C. 714b and 714c.

2. Section 1475.3 is amended by revising the table for the definition of "Weight ranges" to read as follows:

§ 1475.3 Definitions.

* * * * *

Weight ranges * * *.

Kind/type	Weight range	Daily energy requirement	Allowance/ day in lbs. of corn
(1) Beef cattle: Mcals			
Beef	Less than 400 ..	3.0 NE_m	3.5
Beef	400–799	5.2 NE_m	6.5
Beef	800–1099	7.0 NE_m	8.5
Beef	1100+	10.8 NE_m	12.5
Beef, cow	All	13.6 NE_m	15.7
Beef, bull	1000+	10.8 NE_m	13.0
(2) Dairy cattle:			
Dairy	Less than 400 ..	3.0 NE_m	3.5
Dairy	400–799	5.2 NE_m	6.5
Dairy	800–1099	7.0 NE_m	8.5
Dairy	1100+	10.8 NE_m	12.5
Dairy, cow	Less than 1100	20.4 NE_l	27.0
Dairy, cow	1100–1299	23.0 NE_l	31.0
Dairy, cow	1300–1499	24.5 NE_l	33.0
Dairy, cow	1500+	25.7 NE_l	34.5
Dairy, bull	1000+	12.0 NE_m	14.5
(3) Equine:			
Equine	Less than 450 ..	6.2 DE	4.4
Equine	450–649	8.9 DE	6.3
Equine	650–874	11.6 DE	8.2
Equine	875+	17.3 DE	11.6
(4) Swine: Kcals			
Swine	Less than 45	780 DE	.5
Swine	45–124	1630 DE	1.1
Swine	125+	2867 DE	1.9
Swine, sow	235+	9854 DE	6.5
Swine, boar	235+	5446 DE	3.7
(5) Sheep:			
Sheep	Less than 44	315 NE_m	.4
Sheep	44–82	718 NE_m	.9
Sheep	83+	973 NE_m	1.1
Sheep, ewe	150+	1420 NE_m	3.1
Sheep, ram	150+	1556 NE_m	1.7
(6) Goats: Mcals			
Goats	Less than 44	.70 DE_m	.5
Goats	44–82	1.59 DE_m	1.1
Goats	83+	2.16 DE_m	1.5
Goats, doe	125+	5.3 DE_m	3.5
Goats, doe, dairy 1994 and subsequent crop years	125+	7.6 DE_m	5.2
Goats, buck	125+	3.01 DE_m	2.1
(7) Poultry: Kcals			
Poultry	Less than 3.0 ...	150 ME	.1
Poultry	3.0–7.9	375 ME	.2
Poultry	8.0+	638 ME	.45

* * * * *

3. Section 1475.6 is amended by revising the section heading and paragraphs (c), (e)(4), (i)(1)(i)(A), and (i)(2)(iii) to read as follows:

§ 1475.6 Eligibility for assistance.

* * * * *

(c) A CCC–652 application worksheet and CCC–651 contract must be filed at the county ASCS office in an approved county or in a county ASCS office in a contiguous county.

* * * * *

(e) * * *

(4) For the 1991 and subsequent emergency livestock feed program crop years, the determination of a substantial

loss of production with respect to pasture, range, or other grazing land shall be computed based on the loss of current year grazing after the beginning of the livestock feed program crop year through the end of the feeding period. State ASC committees shall establish a carrying capacity for each type of grazing in the county. The normal grazing value will be based on the carrying capacity and the dollar value of the quantity of forage needed to maintain an animal unit for 1 day, as determined by DASCO.

* * * * *

(i) * * *

(1) * * *

(i) * * *

(A) The average cost of corn, as established by CCC, that is determined necessary to provide the energy requirements established for each weight class of livestock by type; times

* * * * *

(2) * * *

(iii) Dividing the sum of (i) and (ii) by 2.

* * * * *

4. Section 1475.10(b) is revised to read as follows:

§ 1475.10 Termination and suspension of program.

* * * * *

(b) Emergency livestock feed program assistance in a county contiguous to a county that requested and was determined eligible to receive livestock program assistance shall not be suspended or terminated.

5. Section 1475.17 is amended by revising paragraphs (a), (c), and (g) to read as follows:

§ 1475.17 Refunds to CCC; joint and several liability.

(a) In the event there is a failure to comply with any term, requirement, or condition for payment arising under the contract, or this part, and if any refund of a payment to CCC shall otherwise become due in connection with the contract, or this part, all payments made under this part to any person shall be refunded to CCC, together with interest as determined in accordance with paragraph (b) of this section and late-payment charges as provided for in part 1403 of this chapter.

* * * * *

(c) Interest shall be applicable to refunds required of the owner if CCC determines that payments or other assistance were provided to the owner and the owner was not eligible for such assistance. Such interest shall be charged at the rate of interest which the United States Treasury charges CCC for funds, as of the date CCC made such benefits available of the monies or benefits to be refunded. Such interest that is determined to be due CCC shall accrue from the date such benefits were made available by CCC to the date of repayment or the date interest increases in accordance with part 1403 of this chapter. CCC may waive the accrual of interest if CCC determines that the cause of the erroneous determination was not due to any action of the owner.

* * * * *

(g) In the event that the emergency livestock feed program contract was established as result of erroneous information provided by any owner to CCC, assistance available under the emergency livestock feed program contract shall be recomputed and any payments made or due under the contract shall be corrected as necessary. Any refund of payments which are determined to be required as a result of such recomputations of the contract shall be remitted with any applicable interest.

* * * * *

6. Section 1475.22 is revised to read as follows:

§ 1475.22 Benefits limitation.

The total amount of benefits that a person, as determined in accordance with part 1497 of this chapter, shall be entitled to receive under one or more of the programs established under this part, may not exceed $50,000 per livestock feed crop year for which payment is made or benefits received.

Signed at Washington, DC, on November 20, 1993.

Bruce R. Weber,

Acting Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–29070 Filed 11–26–93; 8:45 am]

BILLING CODE 3410–05–P

FARM CREDIT ADMINISTRATION

12 CFR Part 614

RIN 3052–AB46

Loan Policies and Operations

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board), adopts a final rule amending the regulation regarding the content of borrower rights notices for distressed loans. The FCA has learned that the foreclosure language requirement may unnecessarily offend borrowers. Therefore, the regulation will no longer require that Farm Credit System (System) institutions include a reference to foreclosure when notifying borrowers that their distressed loans may be suitable for restructuring.

EFFECTIVE DATE: The regulation shall become effective upon expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT:

Eric Howard, Policy Analyst, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4498,

or

James M. Morris, Senior Attorney, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

Background

The Agricultural Credit Act of 1987 (Pub. L. 100–233) enacted on January 6, 1988, amended the Farm Credit Act of 1971 (Act) to establish additional borrower rights. Final regulations on borrower rights (12 CFR parts 614, 615, and 618) were published on September 14, 1988 (54 FR 35427), and became effective on October 14, 1988. Section 614.4516 required that the lender notify a borrower that its loan is or has become a "distressed loan" as defined in the Act, and may be suitable for restructuring. On the determination that a loan is or has become distressed, the regulation also required that the lender notify the borrower that the alternative to restructuring may be foreclosure.

The FCA learned that the foreclosure language requirement could unnecessarily offend borrowers. The FCA now believes that the reference to "foreclosure" should be optional and is amending § 614.4516 to allow qualified lenders latitude in the timing of the foreclosure notification. Borrowers with distressed loans will still receive adequate warning of the possibility of foreclosure, since § 614.4519(a) requires that a qualified lender notify the borrower, not later than 45 days before commencing foreclosure proceedings, that the alternative to restructuring may be foreclosure.

Comment Received

On July 15, 1993, a proposed regulation incorporating this change was published in the **Federal Register** (58 FR 38091). One comment was received on the proposed regulation

from a State department of agriculture. The commenter requested that the FCA continue to require that institutions inform a borrower, in the initial notice that a loan is distressed, that the alternative to restructuring may be foreclosure. The commenter was concerned that some borrowers might disregard the importance of the distressed loan notice if the foreclosure language were not included. It is true that the regulations will no longer mandate that every distressed loan notice under § 614.4516 contain a reference to the possibility of foreclosure. However, the amendment will not shorten the time that must elapse after a borrower has been notified of the foreclosure option before foreclosure proceedings can be initiated. Section 614.4519(a) still requires that a qualified lender notify the borrower that the alternative to restructuring may be foreclosure at least 45 days before commencing foreclosure proceedings. Therefore, the FCA believes that existing regulations will continue to ensure that borrowers receive adequate warning of the possibility of foreclosure.

The commenter also suggested that the FCA require System institutions to include the distressed loan policy and an application for restructuring with the notice. Section 614.4516(a)(1) and (2) presently requires that a qualified lender include with the notification the lender's distressed loan policy and all materials needed in order to submit a restructuring application. The commenter also suggested that, in order to "reduce the potential for offending borrowers," the notice should detail what a borrower can do to avoid foreclosure, e.g., pay the account current within a specified period of time. Because § 614.4516 will no longer require mention of foreclosure, it is not necessary to mitigate the offensiveness of the reference to foreclosure. More importantly, although a borrower may generally have the ability to stop foreclosure by paying the account current, the options available to a borrower with a distressed loan vary from state to state and depend largely on the individual circumstances of the borrower. The borrower may, in fact, have options that are more favorable than paying the account current. Special legal expertise is needed in order to properly advise such borrowers. FCA does not believe that § 614.4516 should be amended to put the lending institution in the position of rendering legal advice to borrowers with distressed loans. Nor would such borrowers be well served by regulations that, by requiring lenders to provide certain minimal advice, give the borrowers a false sense that they have been informed of the best available options. Borrowers with distressed loans should obtain their own legal advice rather than relying on the lending institution for such advice. Therefore, the commenter's suggestions were not incorporated in the final regulation.

List of Subjects in 12 CFR Part 614

Agriculture, Banks, banking, Foreign trade, Reporting and recordkeeping requirements, Rural areas.

For the reasons stated in the preamble, part 614 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 614—LOAN POLICIES AND OPERATIONS

1. The authority citation for part 614 continues to read as follows:

Authority: Secs. 1.3, 1.5, 1.6, 1.7, 1.9, 1.10, 2.0, 2.2, 2.3, 2.4, 2.10, 2.12, 2.13, 2.15, 3.0, 3.1, 3.3, 3.7, 3.8, 3.10, 3.20, 3.28, 4.12, 4.12A, 4.13, 4.13B, 4.14, 4.14A, 4.14C, 4.14D, 4.14E, 4.18, 4.19, 4.36, 4.37, 5.9, 5.10, 5.17, 7.0, 7.2, 7.6, 7.7, 7.8, 7.12, 7.13, 8.0, 8.5 of the Farm Credit Act; 12 U.S.C. 2011, 2013, 2014, 2015, 2017, 2018, 2071, 2073, 2074, 2075, 2091, 2093, 2094, 2096, 2121, 2122, 2124, 2128, 2129, 2131, 2141, 2149, 2183, 2184, 2199, 2201, 2202, 2202a, 2202c, 2202d, 2202e, 2206, 2207, 2219a, 2219b, 2243, 2244, 2252, 2279a, 2279a–2, 2279b, 2279b–1, 2279b–2, 2279f, 2279f–1, 2279aa, 2279aa–5; sec. 413 of Pub. L. 100–233, 101 Stat. 1568, 1639.

Subpart N—Loan Servicing Requirements; State Agricultural Loan Mediation Programs; Right of First Refusal

2. Section 614.4516 is amended by revising the introductory text of paragraph (a) to read as follows:

§ 614.4516 Restructuring procedures.

(a) *Notice.* When a qualified lender determines that a loan is or has become a distressed loan, the lender shall provide written notice to the borrower that the loan may be suitable for restructuring. The qualified lender shall include with such notice:

* * * * *

Dated: November 18, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–29139 Filed 11–26–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 92–NM–245–AD; Amendment 39–8742; AD 93–23–08]

Airworthiness Directives; Corporate Jets Limited (Formerly British Aerospace) Model DH/BH/HS/BAe 125 Series Airplanes (Excluding Model BAe 125–1000A Series Airplanes), Equipped With Garrett Model TFE 731–3 Series Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule.

SUMMARY: This amendment adopts a new airworthiness directive (AD), applicable to certain Corporate Jets Model DH/BH/HS/BAe 125 series airplanes, that requires modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay. This amendment is prompted by a report of an in-service electrical overheating incident caused by a battery short-to-ground through a battery contactor in the rear equipment bay. The actions specified by this AD are intended to prevent overheating of the battery contactors and emergency contactors, and a potential fire in the rear equipment bay.

DATES: Effective December 29, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 29, 1993.

ADDRESSES: The service information referenced in this AD may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the Federal Aviation Administration (FAA), Transport Airplane Directorate, Rules Docket, 1601 Lind Avenue SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: William Schroeder, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington 98055–4056; telephone (206) 227–2148; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION: A proposal to amend part 39 of the Federal Aviation Regulations to include an airworthiness directive (AD) that is applicable to certain Corporate Jets

Model DH/BH/HS/BAe 125 series airplanes was published in the **Federal Register** as a supplemental notice of proposed rulemaking (NPRM) on August 11, 1993 (58 FR 42700). That action proposed to require modification of the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay.

Interested persons have been afforded an opportunity to participate in the making of this amendment. Due consideration has been given to the single comment received.

The commenter supports the proposed rule.

After careful review of the available data, including the comment noted above, the FAA has determined that air safety and the public interest require the adoption of the rule as proposed.

The FAA estimates that 350 airplanes of U.S. registry will be affected by this AD, that it will take approximately 6 work hours per airplane to accomplish the required actions, and that the average labor rate is $55 per work hour. Required parts will cost approximately $600 per airplane. Based on these figures, the total cost impact of the AD on U.S. operators is estimated to be $325,500, or $930 per airplane. This total cost figure assumes that no operator has yet accomplished the requirements of this AD.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A final evaluation has been prepared for this action and it is contained in the Rules Docket. A copy of it may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-23-08 Corporate Jets Limited (Formerly British Aerospace): Amendment 39-8742. Docket 92-NM-245-AD.

Applicability: Model DH/BH/HS/BAe 125 series airplanes, excluding Model BAe 125-1000A series airplanes; equipped with Garrett Model TFE 731-3 series engines; as listed in Corporate Jets Limited Service Bulletin SB.24-293-3501A, B, C, D, E, F, & G, Revision 2, dated March 31, 1993; certificated in any category.

Compliance: Required as indicated, unless accomplished previously. To prevent overheating of the battery contactors and emergency contactors and a potential fire in the rear equipment bay, accomplish the following:

(a) For Model BAe 125-800A series airplanes: Within 6 months after the effective date of this AD, modify the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay, Modification Number 253501, Parts A, B, F, & G, as appropriate; and prior to further flight, perform a functional test; in accordance with Corporate Jets Limited Service Bulletin SB.24-293-3501A, B, C, D, E, F, & G, Revision 2, dated March 31, 1993.

(b) For all other airplanes: Within 6 months after the effective date of this AD, modify the mounting arrangements of the battery contactors and emergency contactors in the rear equipment bay, Modification Number 253501, Parts C, D, & E, as appropriate; and prior to further flight, perform a functional test; in accordance with Corporate Jets Limited Service Bulletin SB.24-293-3501A, B, C, D, & E, Revision 1, dated February 4, 1993; or SB.24-293-3501A, B, C, D, E, F, & G, Revision 2, dated March 31, 1993.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM-113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM-113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM-113.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(e) The modifications and tests shall be done in accordance with Corporate Jets Limited Service Bulletin SB.24-293-3501A, B, C, D, & E, Revision 1, dated February 4, 1993; or Corporate Jets Limited Service Bulletin SB.24-293-3501A, B, C, D, E, F, & G, Revision 2, dated March 31, 1993; as applicable. (**Note:** The issue date of Service Bulletins SB.24-293-3501A, B, C, D, & E and SB.24-293-3501A, B, C, D, E, F, & G is indicated only on page 1 of each document; no other page of these documents is dated.) This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(f) This amendment becomes effective on December 29, 1993.

Issued in Renton, Washington, on November 17, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-28678 Filed 11-26-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-ANE-55; Amendment 39-8743; AD 93-16-15]

Airworthiness Directives; Teledyne Continental Motors IO-520, TSIO-520, IO-550, TSIO-550, and TSIOL-550 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93-16-15 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) IO-520, TSIO-520, IO-550, TSIO-550, and TSIOL-550 series reciprocating engines by individual letters. This AD requires inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling

engagement with longer fuel pump drive couplings. This amendment is prompted by tests the manufacturer conducted on these components from an engine involved in a recent fatal accident. The actions specified by this AD are intended to prevent possible fuel pump drive shaft disengagement and loss of engine power.

DATES: Effective December 14, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–16–15, issued on September 27, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–55, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991–3810; fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: On July 26, 1993, the Federal Aviation Administration (FAA) issued Notice of Proposed Rulemaking (NPRM) Docket No. 93–ANE–23 (58 FR 41645, August 5, 1993). That NPRM, applicable to Teledyne Continental Motors (TCM) IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines, proposed to require inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. That inspection was required to be accomplished at the next 100 hour, annual, or progressive maintenance inspection after the effective date of that AD, whichever occurred first. That action was prompted by reports of seven incidents where the fuel pump drive shaft disengaged from the fuel pump drive coupling. That condition was caused by a fuel pump drive coupling, Part Number (P/N) 631263, that had less than the required minimum engagement with drive shaft, P/N 646176, due to the tolerance range in the fuel pump drive train. If the fuel pump drive shaft disengages in flight, engine power will be lost, and this loss of power could be critical depending on the phase of flight. That condition, if not corrected, could result in possible fuel pump drive shaft disengagement and loss of engine power.

Since the publication of that NPRM, the manufacturer conducted tests on these components from an engine involved in a recent fatal accident. In addition, the National Transportation Safety Board conducted a similar test. The results of these tests indicated that failure of the fuel pump drive coupling could have been a factor in that accident. The FAA has therefore determined that the public would be better served if the compliance time for the inspection were reduced to 30 hours time in service and that a priority letter be issued.

On September 27, 1993, the FAA issued priority letter AD 93–16–15, which requires inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. The inspection must be accomplished within 30 hours TIS after the effective date of this AD.

The FAA has reviewed and approved the technical contents of TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993, that describes procedures for inspecting fuel pumps to determine which combination of fuel pump drive shafts and fuel pump drive couplings is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 93–16–15 to prevent possible fuel pump drive shaft disengagement and loss of engine power. The AD requires inspection of certain fuel pumps to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replacement, if necessary, of fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings. The inspection must be accomplished within 30 hours TIS after the effective date of this AD. TCM has replaced fuel pump drive coupling, P/N 631263, with a longer fuel pump drive coupling, P/N 653359. This new fuel pump drive coupling is compatible with both of the fuel pump drive shafts, P/N 643689 and 646176, used in early and current fuel pump assemblies. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on September 27, 1993, to all known U.S. owners and operators of TCM IO–520, TSIO–520, IO–550, TSIO–550, and TSIOL–550 series reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES.**" All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before

and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–55." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. app. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–16–15 Teledyne Continental Motors: Amendment 39–8743. Docket 93–ANE–55.

Applicability: Teledyne Continental Motors (TCM) Model IO–520B, IO–520BA, IO–520BB, IO–520C, IO–520CB, IO–520M, IO–520MB; IO–550A, IO–550B, IO–550C, IO–550G; TSIO–520B, TSIO–520BB, TSIO–520D, TSIO–520DB, TSIO–520E, TSIO–520EB, TSIO–520J, TSIO–520JB, TSIO–520K, TSIO–520KB, TSIO–520L, TSIO–520LB, TSIO–520N, TSIO–520NB, TSIO–520UB, TSIO–520VB, TSIO–520WB; TSIO–550B; and TSIOL–550A and TSIOL–550B reciprocating engines, with serial numbers lower than those listed in TCM Mandatory Service Bulletin (MSB) No. M93–9, Revision 1, dated March 10, 1993; which are equipped with the following fuel pumps: Part Numbers (P/N) 646210–1, –2, –8, –10, –11; P/N 646212–2, –5, –16, –17; P/N 646758–5, –7, –8, –9; P/N 646765–6 and –7; P/N 646766–1 and –2; 646767–1; 649368–19; or engines equipped with any fuel pump, regardless of part number that have had the fuel pump replaced in the field prior to the effective date of this AD with fuel pump drive shaft, P/N 646176, installed. These engines are installed on but not limited to the following aircraft: Beech Bonanza 35–C33A, E33A/C, F33A/C, S35, V35/A/B, A36/TC, B36TC; Beech Baron 95–C55/A, D55/A, E55/A, 58/A/P/PA/TC/TCA; Cessna 310R, T310P/Q/R, 320 D/E/F, 335 series, 340 series, 401 series, 402 series, 414 series; Cirrus VK–30; Lancaire IV; Mooney M20K with Rocket Engineering Corporation "Rocket Mooney" STC; Navion Model H; and Questair.

Compliance: Required as indicated, unless accomplished previously.

To prevent possible fuel pump drive shaft disengagement and loss of engine power, accomplish the following:

(a) Within the next 30 hours time in service after the effective date of this AD, visually inspect the fuel pump to determine which combination of fuel pump drive shaft and fuel pump drive coupling is installed, and replace, if necessary, fuel pump drive couplings that have less than the minimum required coupling engagement with longer fuel pump drive couplings, in accordance with Figure 1 of TCM MSB No. M93–9, Revision 1, dated March 10, 1993, as follows:

(1) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 631263, replace the fuel pump drive coupling with a serviceable fuel pump drive coupling, P/N 653359.

(2) If fuel pump drive shaft, P/N 643689, is installed with either fuel pump drive coupling, P/N 631263 or 653359, no further action is required.

(3) If fuel pump drive shaft, P/N 646176, is installed with fuel pump drive coupling, P/N 653359, no further action is required.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The inspections, and replacement, if necessary, shall be done in accordance with the following service bulletin:

Document No.	Pages	Revision	Date
TCM MSB No. M93–9.	1–5	1	Mar. 10, 1993.

Total pages: 5.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective December 14, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–16–15, issued September 27, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–28956 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–ANE–54; Amendment 39–8744; AD 93–22–05]

Airworthiness Directives; Teledyne Continental Motors C85, C90, O–200, and O–240 Series Reciprocating Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This document publishes in the **Federal Register** an amendment adopting Airworthiness Directive (AD) 93–22–05 that was sent previously to all known U.S. owners and operators of Teledyne Continental Motors (TCM) C85, C90, O–200, and O–240 series reciprocating engines by individual letters. This AD requires an initial inspection to determine if a suspect carburetor air intake housing assembly is installed, and repetitive inspections for cracks, and replacement, if necessary, of carburetor air intake housing assemblies with serviceable assemblies. This amendment is prompted by four reports from one flight school in Scotland of engines found with cracks in the carburetor air intake housing assemblies. The actions specified by this AD are intended to prevent engine failure due to a cracked air valve in the carburetor air intake housing.

DATES: Effective December 14, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–22–05, issued on November 4, 1993, which contained the requirements of this amendment.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 14, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 28, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–54, 12 New England Executive Park, Burlington, MA 01803–5299.

The applicable service information may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Jerry Robinette, Aerospace Engineer, Atlanta Aircraft Certification Office, FAA, Small Airplane Directorate, 1669 Phoenix Parkway, Suite 210C, Atlanta, GA 30349; telephone (404) 991–3810, fax (404) 991–3606.

SUPPLEMENTARY INFORMATION: On October 4, 1993, the Federal Aviation Administration (FAA) issued priority letter AD 93–22–05, applicable to Teledyne Continental Motors (TCM) C85, C90, O–200, and O–240 series reciprocating engines, which requires an initial inspection to determine if a suspect carburetor air intake housing assembly is installed, and repetitive inspections for cracks, and replacement, if necessary, of carburetor air intake housing assemblies with serviceable assemblies. That action was prompted by four reports from one flight school in Scotland of engines found with cracks in the carburetor air intake housing assemblies. TCM conducted further investigations and found cracks in the air valve (commonly called the carburetor heat butterfly valve) and the welds in the air valve and shaft areas of carburetor air intake housing assemblies. These cracks can result in loss of engine power due to the separation of the air valve or a piece of it from the shaft, which can then block off the air flow to the carburetor. The restricted air flow results in partial or complete power loss depending on the amount of blockage. The cracks in the suspect assemblies were discovered at 122, 29, 11, and 0 hours time in service since installation on TCM O–200 series reciprocating engines; however, this condition may apply to TCM C85, C90, and O–240 series reciprocating engines. This condition, if not corrected, could result in engine failure due to a cracked air valve in the carburetor air intake housing.

Teledyne Continental Motors has determined that 102 carburetor air intake housing assemblies and 41 repair kits with parts not produced to the type design data were manufactured. These units were installed at the factory in new TCM Model O–200A engines with serial numbers 256030 through 256037. In addition, suspect carburetor air intake housing assemblies, Part Numbers (P/N) CE11141, CE11142, 639814, 639815, 641534, and repair kit assembly, P/N 641689, were sold as replacement parts after August 31, 1991, for TCM C85, C90, O–200, and O–240 series engines.

Teledyne Continental Motors has changed the P/N's for new assemblies; the PN's are as follows: P/N 653661, which supersedes P/N CE11142; P/N 653670, which supersedes P/N 639815; P/N 653675, which supersedes P/N 641534; and P/N 653657, which supersedes P/N 641689. Assemblies with P/N CE11141 and P/N 639814 have not been superseded, as these assemblies include an air filter, but their corresponding airbox P/N's are CE11142 and 639815.

Since both correctly manufactured parts (12 total) and suspect parts (a total of 114 assemblies and 41 repair kits) of the same P/N were sold after August 31, 1991, and 12 suspect assemblies and 11 suspect kits have been removed from service to date, a total of 132 assemblies must be inspected to determine which are suspect.

Teledyne Continental Motors also produced several assemblies, P/N 641534, which meet type design criteria. Prior to shipment of these parts to a distributor, TCM will mark them with a permanent ink stamp, "CSB 93–13", located on the inside of the housing assembly where it is easily seen from the air filter interface.

The FAA has reviewed and approved the technical contents of TCM Critical Service Bulletin (CSB) No. 93–13, dated August 12, 1993, that describes procedures for an initial inspection to determine if a suspect assembly is installed, repetitive inspections for cracks, and replacement, if necessary, of carburetor air intake housing assemblies with serviceable assemblies.

Since the unsafe condition described is likely to exist or develop on other engines of the same type design, the FAA issued priority letter AD 93–22–05 to prevent an engine failure due to a cracked air valve in the carburetor air intake housing. The AD requires an initial inspection to determine if a suspect carburetor air intake housing assembly is installed. Suspect carburetor air intake housing assemblies must be replaced with a serviceable assembly if a crack is found. In addition, this AD requires repetitive inspections for cracks, and replacement, if necessary, of carburetor air intake housing assemblies with serviceable assemblies. Replacement with serviceable carburetor air intake housing assemblies constitutes terminating action to the inspection requirements of this AD. The actions are required to be accomplished in accordance with the service bulletin described previously.

Since it was found that immediate corrective action was required, notice and opportunity for prior public comment thereon were impracticable and contrary to the public interest, and good cause existed to make the AD effective immediately by individual letters issued on October 4, 1993, to all known U.S. owners and operators of TCM C85, C90, O–200, and O–240 series reciprocating engines. These conditions still exist, and the AD is hereby published in the **Federal Register** as an amendment to § 39.13 of part 39 of the

Federal Aviation Regulations (FAR) to make it effective to all persons.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption **ADDRESSES**. All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–54." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–22–05 Teledyne Continental Motors: Amendment 39–8744. Docket 93–ANE–54.

Applicability: Teledyne Continental Motors (TCM) Model O–200A reciprocating engines with Engine Serial Numbers 256030 through 256037; and TCM C85, C90, O–200, and O–240 series reciprocating engines with carburetor air intake housing assemblies, Part Numbers (P/N) CE11141, CE11142, 639814, 639815, 641534, and Repair Kit Assemblies, P/N 641689, purchased after August 31, 1991, without a permanent ink stamp "CSB 93–13" located on the inside of the housing assembly. These engines are installed on but not limited to the following aircraft: American Champion Models 7BCM, 7CCM, S7CCM, 7DC, S7DC, 7EC, S7EC, 7FC, 7JC, 7ECA, 11BC, S11BC, 11CC, S11CC, and 402; Anderson Greenwood Model 14; Cessna Model 120, 140, 140A, 150, 150A–M, and A150K–M; Luscombe Model 8E, 8F, and T–8F; McClish (Funk) Model B85C; Piper Model PA–18 and PA–19; Reims Model F150 G, H, J, K, L, M, FA150K, L, FRA150L, and M; Spinks Model Lark 95; Superior (Culver) Model V and V–2; Taylorcraft Model 19 and F–19; and Univair (Erco, Forney, Alon, Mooney) Model 415E, 415G, F–1, F–1A, A–2, and M–10.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to a cracked air valve in the carburetor air intake housing assembly, accomplish the following:

(a) Within the next 5 hours time in service (TIS) after the effective date of this AD, inspect the carburetor air intake housing assembly in accordance with paragraph 2 of the Inspection Procedure section of TCM Critical Service Bulletin (CSB) No. 93–13, dated August 12, 1993.

(1) If the carburetor air intake housing assembly meets the requirements of Paragraph 2A of the Inspection Procedures of TCM CSB No. 93–13, dated August 12, 1993, no further action is required.

(2) If the carburetor air intake housing assembly meets the requirements of paragraph 2B of TCM CSB No. 93–13, dated August 12, 1993, inspect the carburetor air intake housing assembly for cracks. If cracks are found anywhere in the assembly, prior to further flight replace with a serviceable assembly.

(b) Thereafter, for assemblies that meet the requirements of paragraph 2B of TCM CSB No. 93–13, dated August 12, 1993, inspect the carburetor air intake housing assembly for cracks in accordance with Paragraphs 3 and 4 of the Inspection Procedure of TCM CSB No. 93–13, dated August 12, 1993, at intervals not to exceed 25 hours TIS since the last inspection. If cracks are found anywhere in the assembly, prior to further flight replace with a serviceable assembly.

(c) Inspect uninstalled carburetor air intake housing assemblies in accordance with paragraph (a) of this AD prior to installation.

(d) For the purpose of this AD, a serviceable carburetor air intake housing assembly is defined as:

(1) An assembly purchased on or before August 31, 1991; or

(2) An assembly that meets the inspection criteria of paragraph (a)(1) of this AD; or

(3) An assembly with the following P/N's:

(i) 653661, which supersedes CE11142;

(ii) 653670, which supersedes 639815;

(iii) 653675, which supersedes 641534;

(iv) 653657, which supersedes 641689; or

(4) An assembly, P/N 641534, with a permanent ink stamp "CSB 93–13" located on the inside of the housing assembly.

Note: The assemblies, P/N's CE11141 and 639814, have not been superseded, as these are assemblies with the air filter included, corresponding to airboxes, P/N's CE11142 and 639815.

(e) Replacement with a serviceable carburetor air intake housing assembly constitutes terminating action to the inspection requirements of this AD.

(f) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Atlanta Aircraft Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Atlanta Aircraft Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Atlanta Aircraft Certification Office.

(g) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(h) The inspections, and replacement, if necessary, shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
TCM CSB No. 93–13	1–3	Original	Aug. 12, 1993.

Total pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Teledyne Continental Motors, P.O. Box 90, Mobile, AL 36601; telephone (205) 438–3411. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(i) This amendment becomes effective December 14, 1993, to all persons except those persons to whom it was made immediately effective by priority letter AD 93–22–05, issued November 4, 1993, which contained the requirements of this amendment.

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–28955 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 375 and 388

[Docket No. RM94–3–000]

Revisions to Regulations Governing Freedom of Information Act Requests

Issued November 22, 1993.

AGENCY: Federal Energy Regulatory Commission.

ACTION: Final rule.

SUMMARY: The Federal Energy Regulatory Commission (Commission) is transferring authority to reduce or waive fees and to release documents requested under the Freedom of Information Act from the Director of Public Affairs to the Director, Office of External Affairs because of a recent reorganization.

EFFECTIVE DATE: This rule is effective November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Adam Gurwitz, Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE, Washington, DC 20426, (202) 208–0457.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this document will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, LaDorn Systems Corporation, also located in room 3104, 941 North Capitol Street NE., Washington, DC 20426.

Order No. 562

Final Rule

I. Introduction

The Federal Energy Regulatory Commission (Commission) is revising its regulations in parts 375 and 388 transferring delegated authority to release or withhold documents, and to reduce or waive fees under the Freedom of Information Act (FOIA), from the Director of Public Affairs to the Director, Office of External Affairs.

II. Background and Discussion

The Commission's regulations authorize the Director of Public Affairs to determine whether to release or withhold non-public documents requested under the FOIA, and whether to reduce or waive fees associated with FOIA requests. See 18 CFR 375.312, 388.108, and 388.112. The Office of External Affairs recently was reorganized to combine the Division of Congressional Affairs and State Liaison with the Division of Public and Intergovernmental Affairs. This reorganization eliminated the Director of Public Affairs position. The Commission is amending its regulations to designate the Director, Office of External Affairs, as the official authorized to release or withhold FERC documents under FOIA and to reduce or waive FOIA fees.

This final rule will not effect any other changes to the Commission's FOIA procedures.

III. Regulatory Flexibility Certification

The Regulatory Flexibility Act of 1980 (RFA)[1] generally requires a description and analysis of final rules that will have significant economic impact on a substantial number of small entities.[2] Pursuant to section 605(b) of the RFA, the Commission hereby certifies that this rule will not have a significant economic impact on a substantial number of small entities.

IV. Environmental Statement

Issuance of this rule would not represent a major federal action having a significant adverse effect on the human environment under the Commission regulations implementing the National Environmental Policy Act.[3] This rule is procedural and falls within the categorical exemptions provided in the Commission's regulations. Neither an environmental impact statement nor an environmental assessment is required.[4]

[1] 5 U.S.C. 601–602.

[2] Section 601(c) of the RFA defines a "small entity" as a small business, a small not-for-profit enterprise, or a small governmental jurisdiction. A "small business" is defined by reference to section 3 of the Small Business Act as an enterprise which is "independently owned and operated and which is not dominant in its field of operation." 15 U.S.C. 632(a).

[3] See Order No. 486, 52 FR 47897 (Dec. 17, 1987), FERC Stats. & Regs., Regulations Preambles 1986–1990 ¶ 30,783 (Dec. 10, 1987) (codified at 18 CFR part 380).

[4] See 18 CFR 380.4(a)(1).

V. Information Collection Statement

Office of Management and Budget (OMB) regulations require that OMB approve certain information collection requirements imposed by agency rule.[5] This rule contains no information collection requirements and is not subject to OMB approval.

VI. Administrative Findings and Effective Date

This final rule is a rule of agency organization that does not alter any substantive rights or interests, but merely changes the title of the Commission official who is delegated authority to release or withhold documents under FOIA and to reduce or waive FOIA fees. Prior notice and comment under section 4 of the Administrative Procedure Act[6] are therefore unnecessary. The Commission finds good cause to make this rule effective immediately upon issuance. This rule therefore is effective November 22, 1993.

List of Subjects

18 CFR Part 375

Authority delegations (Government agencies), Seals and insignia, Sunshine Act.

18 CFR Part 388

Confidential business information, Freedom of information.

By the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission is amending parts 375 and 388, Chapter I, Title 18, Code of Federal Regulations, as set forth below.

PART 375—THE COMMISSION

1. The authority citation for part 375 continues to read as follows:

Authority: 5 U.S.C. 551–557; 15 U.S.C. 717–717w, 3301–3432; 16 U.S.C. 791–828r, 791a note, 2601–2645; 42 U.S.C. 7101–7532.

2. Section 375.312 is revised to read as follows:

§ 375.312 Delegations to the Director, Office of External Affairs.

The Commission authorizes the Director, Office of External Affairs to waive or reduce fees in accordance with §§ 388.108 through 388.110 of this chapter.

[5] 5 CFR Part 1320.

[6] 5 U.S.C. 553(b) (1988).

PART 388—INFORMATION AND REQUESTS

3. The authority citation for part 388 is revised to read as follows:

Authority: 5 U.S.C. 301–305, 551–557; 42 U.S.C. 7101–7352.

§ 388.108 [Amended]

4. In § 388.108, paragraphs (a)(1)(i), (a)(2) through (a)(4) and (b)(1), the words "Director of Public Affairs" are removed and the words "Director, Office of External Affairs" are inserted in their place.

§ 388.112 [Amended]

5. In § 388.112, paragraph (e), the words "Director of the Division of Public Affairs" are removed and the words "Director, Office of External Affairs" are inserted in their place.

[FR Doc. 93–29105 Filed 11–26–93; 8:45 am]
BILLING CODE 6717-01-P

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Food and Drug Administration

21 CFR Part 14

Advisory Committee; Clarifying Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Final rule.

SUMMARY: The Food and Drug Administration (FDA) is amending the standing advisory committees' regulations to change the name of the over-the-counter (OTC) Drugs Advisory Committee. This action is being taken to more accurately describe this committee.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Donna M. Combs, Committee Management Office (HFA–306), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–443–2765.

SUPPLEMENTARY INFORMATION: FDA is announcing that the name of the OTC Drugs Advisory Committee has been changed. After the establishment of this committee, on August 27, 1991, the agency decided that the name "Nonprescription Drugs Advisory Committee" would more accurately describe the committee. The committee reviews the safety and effectiveness of over-the-counter (nonprescription) human drug products which involves an exchange of views regarding both prescription and nonprescription status. The review of these various products or combinations thereof may include switches from one status to another. Therefore, the agency feels the name change will more accurately describe this committee to the public. In the **Federal Register** of September 30, 1993 (58 FR 51084), FDA published a notice and indicated that the name of the OTC Drugs Advisory Committee had been changed to the Nonprescription Drugs Advisory Committee in the charter renewal dated August 10, 1993. In this document, FDA is hereby formally changing the name of the committee by revising 21 CFR 14.100(c)(17).

Publication of this document constitutes a final action on this change under the Administrative Procedure Act (5 U.S.C. 553(b)(3)(B) and (d)) and under 21 CFR 10.40(d) and (e). Notice and public procedure and delayed effective date on this regulation are unnecessary and not in the public interest, because the final rule is merely a clarifying amendment to existing regulations and when effective will provide notice of accepted standards.

List of Subjects in 21 CFR Part 14

Administrative practice and procedure, Advisory committees, Color additives, Drugs, Radiation protection.

Therefore, under the Federal Food, Drug, and Cosmetic Act and under authority delegated to the Commissioner of Food and Drugs, 21 CFR part 14 is amended as follows:

PART 14—PUBLIC HEARING BEFORE A PUBLIC ADVISORY COMMITTEE

1. The authority citation for 21 CFR part 14 continues to read as follows:

Authority: Secs. 201–903 of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 321–394; 21 U.S.C. 41–50, 141–149, 467f, 679, 821, 1034; secs. 2, 351, 354, 361 of the Public Health Service Act (42 U.S.C. 201, 262, 263b, 264); secs. 2-12 of the Fair Packaging and Labeling Act (15 U.S.C. 1451-1461); 5 U.S.C. App. 2; 28 U.S.C. 2112.

2. Section 14.100 is amended by revising the heading for paragraph (c)(17) to read as follows:

§ 14.100 List of standing advisory committees.

* * * * *

(c) * * *

(17) *Nonprescription Drugs Advisory Committee.*

* * * * *

Dated: November 19, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–29113 Filed 11–26–93; 8:45 am]
BILLING CODE 4160-01-F

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Public and Indian Housing

24 CFR Parts 905 and 941

[Docket No R–93–1690; FR–3550–I–01]

RIN 2577–AB34

Public and Indian Housing Development—Amendment to Calculation of Total Development Cost

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Interim rule.

SUMMARY: This interim rule amends the Department's regulations to remove donations (non-public or non-Indian housing funds) from the Department's calculation of total development cost (TDC). The Department's experience has indicated that the inclusion of donations within the TDC of projects has created unwarranted delays in the development process, and, in some cases, has been a contributory reason for cost increases in the low-income housing development process.

DATES: Effective date: This interim rule becomes effective on December 29, 1993, and will expire on May 29, 1995.

COMMENT DUE DATE: January 28, 1994.

ADDRESSES: Interested persons are invited to submit comments regarding this interim rule to the Office of General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection and copying on weekdays between 7:30 a.m. and 5:30 p.m. at the above address. Facsimile (FAX) comments are not acceptable.

FOR FURTHER INFORMATION CONTACT: For Public Housing, Janice Rattley, Director of the Office of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4136, Washington, DC. 20410. Telephone (202) 708–1800 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

For Indian Housing, Dom Nessi, Director, Office of Native American Programs, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4140, Washington, DC 20410. Telephone (202) 708–1015 (voice) or (202) 708–4594 (TDD). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The regulations for HUD's public housing development program, which are codified at 24 CFR part 941, and HUD's Indian housing development regulations, which are codified at 24 CFR part 905, subpart C, provide for the inclusion of donations (non-public or non-Indian housing funds) that have been provided to public housing agencies and Indian housing authorities (collectively, "HAs") in the total development cost (TDC). The project TDC is then compared to the published TDC limitations currently in effect. The comparison can result in actual development costs that are less than, the same as, or more than the published TDC limitations. Under HUD's existing regulations, if the project TDC exceeds 100 percent of the published TDC limitation, notwithstanding the reason for the increase over the TDC limitation or the source of funding for the increase, the Field Office cannot approve the project TDC without authorization of the Regional Administrator or the Assistant Secretary of Public and Indian Housing. (See 24 CFR 941.406.) Similar provisions are contained in the Indian housing regulations. (See 24 CFR 905.255(d).) The approval procedure is intended to verify Field Office processing, and to ensure that the project TDC will provide modest, non-luxury, durable housing at a reasonable cost. In actual fact, however, the existing TDC approval process, which does not take into consideration that donations may be the reason for, or the source of payment of, the increase over the TDC limits, has resulted in unwarranted delays in the development process because of the amount of time it takes for the request to move through the system. In some cases, these delays have been a contributory reason for cost increases in development of public and Indian housing.

The amendments to be made by this interim rule will permit HUD Field Offices to calculate the project TDC relative to published TDC limitations, and to authorize HAs to proceed with developments, without referral to Regional Administrators or the Assistant Secretary, where funds in excess of TDC limits are provided through donations. Where funds in excess of TDC limits will not be provided through donations, Field Offices must continue to seek authorization from the Regional Administrators or the Assistant Secretary. HUD will not provide funds to HAs under section 5 of the U.S. Housing Act of 1937 in excess of TDC limitations without such authorization.

The Department is aware that other changes need to be made to part 941 to simplify and facilitate the development of public housing, and the Department is in the process of completely redesigning the public housing development program for this purpose. The Department will be issuing a proposed rule to amend 24 CFR part 941 to reflect the redesigned program, and to invite public comment on the Department's proposed redesign of the public housing development program. Thus, although additional and comprehensive changes are contemplated for part 941, the Department believes that it is in the best interest of HAs and the public to issue this interim rule, in advance of publication of the proposed rule, because the amendment to the calculation of the TDC is needed immediately to facilitate development of already reserved projects.

The specific sections in 24 CFR parts 905 and 941 to be amended by this interim rule are as follows:

Sections 905.102 and 941.103 are each amended by revising the definition of "total development cost" contained in these sections to clarify that maximum total development cost excludes any donations.

Sections 905.255 and 941.204 are amended to add a new paragraph to each section that will clarify that although donations are not included in the project TDC calculations, donations must be included in the project development cost budget. A new paragraph (j) would be added to § 905.255 and a new paragraph (d) would be added to § 941.204. Additionally, § 905.255(a)(2) would be amended to clarify that the "inclusion of all costs" discussed in this paragraph does not include donations.

Additionally, § 941.406 is amended to clarify that the total project cost refers to HUD funds.

Through implementation of these amendments, many developments in the pre-construction pipeline will be able to achieve construction starts sooner, which will benefit (1) low-income persons that need public and Indian housing, and (2) the public in general by creating local economic stimulus.

Justification for Interim Rulemaking

It is the Department's general policy to publish a rule for notice and comment before issuing a rule for effect, in accordance with its own rule on rulemaking, codified at 24 CFR part 10. However, part 10 provides for exceptions from that general rule where

the agency finds good cause to omit advance notice and public participation. The good cause requirement is satisfied when prior public procedure is determined to be "impracticable, unnecessary, or contrary to the public interest." (See 24 CFR 10.1)

The Department finds that good cause exists to publish this interim rule for effect without notice and prior public comment in that prior public procedure is contrary to the public interest. The amendments made by this interim rule are beneficial to HAs because they exclude donations from calculation of the total development cost (TDC) in the Department's public and Indian housing development programs. The Department's experience has shown that the inclusion of donations in the TDC has created unwarranted delays and contributed to cost increases in the public housing development process. Thus, not only HAs, but residents and prospective residents that the HAs serve benefit from these amendments.

Although this interim rule is being published for immediate effect, the Department requests comments from the public on this interim rule. All public comments will be considered by the Department in the development of a final rule.

Other Matters

Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The Finding is available for public inspection between 7:30 a.m. and 5:30 p.m. weekdays in the Office of the Rules Docket Clerk at the above address.

Executive Order 12866

This interim rule was reviewed by the Office of Management and Budget under Executive 12866 as a significant regulatory action.

Impact on Small Entities

The Secretary, in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed this interim rule before publication, and, by approving it, certifies that this interim rule will not have a significant economic impact on a substantial number of small entities. The interim rule's major effect is on HAs which are state and local governmental entities. The interim rule revises the manner in which the total development cost is calculated, and in so doing, reduces delays and costs in the development of public and Indian housing, which is beneficial to HAs.

Federalism Impact

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12612, Federalism, has determined that this interim rule will not have a substantial, direct effect on the States or their political subdivisions or on the relationship between the Federal government and the States, or on the distribution of power or responsibilities among the various levels of government. The interim rule removes, rather than imposes, a program requirement.

Impact on the Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this interim rule does not have a potential significant impact on family formation, maintenance, and general well-being, and thus is not subject to review under the Order. No significant change in existing HUD policies or programs will result from promulgation of this interim rule, as those policies and programs relate to family concerns.

Regulatory Agenda

This interim rule was listed as sequence number 1650 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56451) under Executive Order 12866 and the Regulatory Flexibility Act, and was submitted to the Committee on Banking, Housing and Urban Affairs of the Senate and the Committee on Banking, Finance and Urban Affairs of the House of Representatives under section 7(o) of the Department of Housing and Urban Development Act.

Catalog of Federal Domestic Assistance Program

The Catalog of Federal Domestic Assistance Program title and number is 14.850, Public and Indian Housing.

List of Subjects

24 CFR Part 905

Aged, Energy conservation, Grant programs—housing and community development, Grant programs—Indians, Indians, Individuals with disabilities, Lead poisoning, Loan programs—housing and community development, Loan programs—Indians, Low and moderate income housing, Public housing, Reporting and recordkeeping requirements.

24 CFR Part 941

Grant programs—housing and community development, Loan programs—housing and community development, Public housing.

Accordingly, 24 CFR parts 905 and 941 are amended as follows:

PART 905—INDIAN HOUSING PROGRAMS

1. The authority citation for part 905 continues to read as follows:

Authority: 25 U.S.C. 450e(b); 42 U.S.C. 1437a-1, 1437aa, 1437bb, 1437c, 1437cc, 1437d(c)(4)(D), 1437ee, and 3535(d).

2. In § 905.102, the definition of "Total development cost" is revised to read as follows:

§ 905.102 Definitions.

* * * * *

Total development cost. The sum of all HUD-approved costs for a project including all undertakings necessary for administration, planning, site acquisition, demolition, construction or equipment and financing (including the payment of carrying charges), and for otherwise carrying out the development of the project. The maximum total development cost excludes offsite water and sewer facilities development costs; costs normally paid for by other entities, but included in the development cost budget for the project for contracting or accounting convenience; and any donations received from public or private sources.

* * * * *

3. In § 905.255, paragraph (a)(2) is revised, and a new paragraph (j) is added to read as follows:

§ 905.255 Total development cost standard.

(a) * * *

(2) The costs covered by the TDC approved for a project, which is subject to the TDC standard, include all costs (excluding donations; see paragraph (j) of this section) associated with the project, except for the costs of off-site water and sanitation facilities infrastructure. The TDC limit for a project shall be calculated by multiplying the number of units for each bedroom size and structure type in the project by the applicable per unit TDC standard, and adding together the amounts for all the units in the project.

* * * * *

(j) *Donations.* Donations from other funding sources may be obtained by the IHA to supplement project costs which otherwise could not be included, provided that the added funds are not used for items which would result in substantially increased operating, maintenance, or replacement costs, and the HUD certification required under section 102 of the HUD Reform Act can

be made in accordance with 24 CFR part 12. Although donations are not subject to the TDC limitations set forth in paragraph (d) of this section, donations must be included in the project development cost budget, and legally acceptable written commitments must be provided to the IHA before the IHA can rely on the donations in its planning and contracting.

PART 941—PUBLIC HOUSING DEVELOPMENT

4. The authority citation for part 941 is revised to read as follows:

Authority: 42 U.S.C. 1437b, 1437c, 1437g, and 3535(d).

5. In § 941.103, the definition of "Total Development Cost" is revised to read as follows:

§ 941.103 Definitions.

* * * * *

Total development cost (TDC). The sum of all HUD-approved costs for planning (including proposal preparation), administration, site acquisition, relocation, demolition, construction and equipment, interest and carrying charges, on-site streets and utilities, non-dwelling facilities, a contingency allowance, insurance premiums, off-site facilities, any initial operating deficit, and other costs necessary to develop the project. The total development cost in the proposal, when reviewed and approved by the Field Office, becomes the maximum total development cost stated in the ACC. Upon completion of the project, the actual development cost is determined, and this becomes the maximum total development cost of the project for purposes of the ACC. The maximum total development cost excludes costs funded from donations. (See 24 CFR 941.204.)

6. In § 941.204, a new paragraph (d) is added to read as follows:

§ 941.204 Cost guidelines.

* * * * *

(d) *Donations.* Donations from other funding sources may be obtained by the PHA to supplement project costs which otherwise could not be included, provided that the added funds are not used for items that would result in substantially increased operating, maintenance or replacement costs, and the HUD certification required under section 102 of the HUD Reform Act can be made in accordance with 24 CFR part 12. Although donations are not subject to the TDC limitations set forth in § 941.406(a), donations must be included in the project development cost budget, and legally acceptable written commitments for such donations must be provided by the PHA for Field Office approval.

7. In § 941.406, paragraphs (a)(1) and (a)(2)(i) are revised to read as follows:

§ 941.406 Maximum development cost and advances.

(a) * * *

(1) The total project cost that may be approved and reserved with HUD funds for a proposed project at the time of the initial reservation of funds may not exceed 100 percent of the maximum TDC based on the most recently issued TDC limits.

(2)(i) After initial fund reservation and subject to the availability of funds:

(A) A Field Office may approve costs to be paid from HUD funds and reserve funds for a project up to 100 percent of the maximum TDC based on the most recently issued TDC limits;

(B) The Regional Administrator may authorize the Field Office to approve costs to be paid from HUD funds and reserve funds for a project up to 105 percent of the maximum TDC based on the most recently issued TDC limits;

(C) The Assistant Secretary may authorize the Field Offices to approve costs to be paid from HUD funds and reserve funds for a project above 105 percent of the maximum TDC, based on the most recently approved TDC limits.

* * * * *

Dated: November 19, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–29056 Filed 11–26–93; 8:45 am]

BILLING CODE 4210-33-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 47

[T.D. 8497]

RIN 1545–AS06

Vaccine Floor Stocks Tax of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the floor stocks tax on vaccines held on August 10, 1993. These rules reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (Act). The temporary regulations provide guidance relating to the person liable for the tax, an exception to the tax, and the time for reporting and paying the tax.

EFFECTIVE DATE: These regulations are effective August 10, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The Act reinstates the manufacturers excise tax on vaccines under section 4131 of the Internal Revenue Code (Code) effective August 11, 1993. The vaccine tax is imposed on DPT (diphtheria, pertussis, tetanus) vaccine at the rate of $4.56 per dose, DT (diphtheria, tetanus) vaccine at the rate of $0.06 per dose, MMR (measles, mumps, rubella) vaccine at the rate of $4.44 per dose, and polio vaccine at the rate of $0.29 per dose.

The Act also imposes a floor stocks tax, which does not appear in the Code, on these vaccines. The floor stocks tax is a one-time tax on taxable vaccines that were sold by the manufacturer, producer, or importer on or before August 10, 1993, on which no tax was imposed by section 4131 of the Code, and that were held at the last moment of August 10, 1993, for sale or use. The rates of floor stocks tax are equal to the tax rates for sales by the manufacturer, producer, or importer.

Explanation of Provisions

The regulations provide definitions relating to the floor stocks tax, identify the vaccines subject to the floor stocks tax, list the applicable rates of tax, and identify the persons liable for the tax (primarily doctors, public and private hospitals and clinics, and public health agencies).

The regulations also provide a de minimis exception to the floor stocks tax. Under this exception, any person that holds vaccines subject to a total tax of $1,000 or less is not required to report or pay the tax. If the tax exceeds $1,000, the full amount of tax must be reported and paid. Vaccines held by members of controlled groups must be aggregated for purposes of the de minimis exception. The de minimis exception is not prescribed by statute, but is being established for administrative convenience as were the de minimis exceptions contained in the Floor Stocks Tax provisions of the Environmental Tax Regulations (see 26 CFR 52.4682–4). The $1,000 threshold for tax is consistent with the de minimis exemption requested by the Department of Health and Human Services, which administers the Vaccine Injury Compensation Trust Fund.

The regulations provide that a return on Form 720, Quarterly Federal Excise

Tax Return, must be filed by February 28, 1994, and that the tax also must be paid by February 28, 1994. Persons that are also required to report other excise taxes for the fourth quarter of 1993 must report the floor stocks tax and the other excise taxes on the same Form 720. The due date for the return is February 28, 1994, even if returns for the other excise taxes are ordinarily due at an earlier date. This rule does not extend the time for making deposits or payments of any excise tax.

These regulations do not impose any specific recordkeeping requirements with respect to the floor stocks tax. However, the general recordkeeping requirements applicable to Form 720 apply. For example, inventories based on actual measurement, on a work-forward or work-back method, or any other method that accurately reflects vaccines held are acceptable.

Special Analyses

It has been determined that this Treasury decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Edward Madden, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR chapter I is amended as follows:

Paragraph 1. Part 47 is added to read as follows:

PART 47—FLOOR STOCKS TAXES

Subpart A—[Reserved]

Sec.
47.1–1T through 47.1–5T [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

47.2–1T Scope of subpart B (temporary).
47.2–2T Definitions relating to the vaccine floor stocks tax (temporary).
47.2–3T Imposition of vaccine floor stocks tax (temporary).
47.2–4T De minimis exception to vaccine floor stocks tax (temporary).
47.2–5T Requirements with respect to payment and return (temporary).

Authority: 26 U.S.C. 7805.

Section 47.2–5T also issued under section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312).

Subpart A—[Reserved]

§§ 47.1–5T [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

§ 47.2–1T Scope of subpart B (temporary).

The regulations in this subpart B relate to the vaccine floor stocks tax imposed by section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312). The tax is imposed on untaxed vaccines held at the last moment of August 10, 1993. This subpart describes the specific articles subject to tax, the rates of tax, and the persons liable for tax. This subpart also provides an exception to the tax and requirements for payment of tax and filing a return reporting the tax. This subpart is effective on August 10, 1993.

§ 47.2–2T Definitions relating to the vaccine floor stocks tax (temporary).

(a) *Terms used in section 4131.* For purposes of this subpart, terms that are also used in section 4131 have the same meaning as when so used.

(b) *Other terms.* For purposes of this section—

Act refers to the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312).

Controlled group means—

(i) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(ii) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(A) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(B) *Brother-sister group under common control* means two or more organizations if—

(*1*) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(*2*) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(*3*) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(C) *Controlling interest* means—

(*1*) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(*2*) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(*3*) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(*4*) In the case of a sole proprietorship, ownership of the sole proprietorship.

(D) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(E) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

§ 47.2–3T Imposition of vaccine floor stocks tax (temporary).

(a) *Vaccines subject to tax.* Section 13421(c) of the Act imposes a floor stocks tax on any taxable vaccine (as defined in section 4132(a)(1) of the Internal Revenue Code)—

(1) Which was sold by the manufacturer, producer, or importer on or before August 10, 1993;

(2) On which no tax was imposed under section 4131 (or on which such tax was imposed and subsequently credited or refunded); and

(3) Which is held at the last moment of August 10, 1993, by any person for sale or use.

(b) *Rates of tax.* The rate of floor stocks tax on each taxable vaccine is the

rate of tax specified in section 4131(b)(1) of the Code.

(c) *Person liable for tax.* The person liable for the floor stocks tax on any vaccine subject to tax is the person that holds the vaccine at the last moment of August 10, 1993. For purposes of the floor stocks tax, a vaccine is held at the last moment of August 10, 1993, by the person that has title to the vaccine (whether or not delivery to that person has been made) at such time, as determined under applicable local law. There is no exemption from the floor stocks tax for the United States or for State or local governments. Each business unit that has, or is required to have, its own employer identification number is treated as a separate person for purposes of the floor stocks tax.

§ 47.2–4T De minimis exception to vaccine floor stocks tax (temporary).

(a) *De minimis exception*—(1) *In general.* Except as otherwise provided in this section, if the aggregate amount of floor stocks tax payable by a person does not exceed $1,000, that person is not required to report or pay the tax.

(2) *All amounts held subject to tax if threshold exceeded.* If the aggregate amount of floor stocks tax payable by a person exceeds $1,000, that person is required to report and pay the total amount of tax as determined without regard to this section.

(3) *Controlled groups.* A member of a controlled group (as defined in § 47.2–2T) is not excepted from reporting and paying floor stocks tax under this section if the aggregate amount of floor stocks tax payable by all members of the controlled group exceeds $1,000.

(b) *Examples.* The following examples illustrate the rules of this section:

Example 1. A holds 50 doses of DPT vaccine and 60 doses of polio vaccine on the last moment of August 10, 1993. A is not a member of a controlled group. A is not required to report and pay the floor stocks tax on any of the taxable vaccines because the aggregate amount of floor stocks tax payable by A (determined without regard to this section) does not exceed $1,000 ((50×$4.56 per dose of DPT vaccine)+(60×$0.29 per dose of polio vaccine)=$245.40).

Example 2. D, E, and F are members of the same controlled group. On the last moment of August 10, 1993, D holds 100 doses of DPT vaccine and 160 doses of polio vaccine; E holds 80 doses of DPT vaccine, 10 doses of MMR vaccine and 60 doses of polio vaccine; and F holds 20 doses of MMR vaccine and 10 doses of DT vaccine. Without regard to this section, D is liable for a tax of $502.40 ((100×$4.56 per dose of DPT vaccine) + (160×$0.29 per dose of polio vaccine)); E is liable for a tax of $426.60 ((80×$4.56 per dose of DPT vaccine)+(10×$4.44 per dose of MMR vaccine)+(60×$0.29 per dose of polio vaccine)); and F is liable for a tax of $89.40 ((20×$4.44 per dose of MMR vaccine)+(10×$0.06 per dose of DT vaccine)). Because the aggregate amount of floor stocks tax payable by all members of the group ($1,018.40) exceeds $1,000, each member of the controlled group must report and pay the floor stocks tax.

§ 47.2–5T Requirements with respect to payment and return (temporary).

(a) *Payment of tax.* The floor stocks tax is to be paid without assessment or notice on or before February 28, 1994.

(b) *Filing of return—(1) Form 720.* Except as provided in § 47.2–4T(a) (relating to the de minimis exception), every person liable for the floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing—(i) In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before February 28, 1994, and is a return for the fourth calendar quarter of 1993. A first return reporting only floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the fourth calendar quarter of 1993 for other excise taxes earlier than February 28, 1994, that person files a single Form 720 for the quarter by February 28, 1994. This Paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 15, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–28910 Filed 11–22–93; 3:46 pm]

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26 CFR Part 47

[T.D. 8498]

RIN 1545–AS07

Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel held on October 1, 1993; on diesel fuel held on January 1, 1994; and on commercial aviation fuel held on October 1, 1995. These rules reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993 (Act). The temporary regulations provide guidance relating to the persons liable for the taxes, exceptions to the taxes, and the times for reporting and paying the taxes.

EFFECTIVE DATE: These regulations are effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The Act makes several changes to the Internal Revenue Code with respect to the taxation of motor fuels. First, effective October 1, 1993, it increases the rates of excise taxes on gasoline, diesel fuel, and aviation fuel. The gasoline tax, under section 4081, increases from 14.1 cents per gallon to 18.4 cents per gallon; the diesel fuel tax, under section 4091, increases from 20.1 cents per gallon to 24.4 cents per gallon; and the aviation fuel tax, under section 4091, increases from 17.6 cents per gallon to 21.9 cents per gallon. These new rates include the 0.1-cent-per-gallon tax that funds the Leaking Underground Storage Tank (LUST) Trust Fund. Second, effective January 1, 1994, the Act generally moves the point of imposition of tax on diesel fuel to the terminal rack. Third, effective October 1, 1995, the Act increases the tax on fuel used in commercial aviation by 4.3 cents per gallon.

The Act also imposes three floor stocks taxes, which are not codified, on these fuels. The taxes are to be paid by persons holding fuel on the effective dates of the taxes.

The first floor stocks tax is a one-time tax on gasoline, diesel fuel, and aviation fuel that are held at the first moment of October 1, 1993, at a point in the distribution chain where these fuels would not otherwise be subject to the increased tax rates. The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

The second floor stocks tax is a one-time tax on diesel fuel held by any person at the first moment of January 1, 1994, if (A) no tax was imposed on the fuel under section 4041(a) or 4091 as in effect on December 31, 1993, and (B) tax would have been imposed by section 4081, as amended by the Act, on any prior removal, entry, or sale of the fuel had section 4081 applied to the fuel for periods before January 1, 1994. The rate

of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

The third floor stocks tax is a one-time tax on commercial aviation fuel held by any person at the first moment of October 1, 1995, on which the Lust tax was imposed under section 4091 before October 1, 1995. The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

Explanation of Provisions

The temporary regulations provide definitions relating to the floor stocks taxes. The definitions of "aviation fuel" and "diesel fuel" are in substance the same as the existing definitions under the Fuel Floor Stocks Tax of 1990 Regulations (26 CFR 42.2). The definition of "gasoline" is in substance the same as the existing definition under § 48.4081–1(i) of the Manufacturers and Retailers Excise Tax Regulations (26 CFR part 48). A new definition is added for "commercial aviation fuel." "Commercial aviation fuel" is any liquid (other than any product taxable under section 4081) that is suitable for use as fuel in an aircraft and is held for use or sale for use in a business of transporting persons or property for compensation or hire by air.

The regulations identify the fuels subject to the floor stocks taxes, list the applicable rates of tax, and identify the persons liable for the taxes.

Exceptions to the Floor Stocks Taxes

The regulations also provide rules relating to exceptions to the floor stocks taxes. First, the floor stocks taxes generally do not apply to fuel held exclusively for an exempt use. An exempt use is any use of a fuel (other than use in producing gasohol or a diesel fuel/alcohol mixture, or use as fuel in a train) that is described in section 6420, 6421, or 6427 and gives rise to a credit or payment from the IRS equal to the tax imposed under section 4081 or 4091, as the case may be. Generally, the regulations provide that fuel is held exclusively for an exempt use only if the person holding the fuel at the first moment of the tax imposition date actually uses the fuel in an exempt use. Accordingly, fuel is not held exclusively for an exempt use if it is held for resale (including resale to a person who will use the fuel for an exempt use). However, the ultimate purchaser of fuel for an exempt use may be entitled to a credit or payment equal to the floor stocks tax pursuant to section 34, 6416, 6420, 6421, or 6427.

Generally, diesel fuel held for use in a train is not treated as held for an exempt use and, therefore, a floor stocks tax applies to such fuel. Fuel held for the exclusive use of a State or local government in a train, however, is treated as exempt and is not subject to the floor stocks tax.

Second, the October 1, 1993, floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of October 1, 1993, in the fuel supply tank of a motor vehicle or motorboat.

Third, a person is not liable for the October 1, 1993, floor stocks tax on gasoline if the amount of gasoline held by the person at the first moment of October 1, 1993, does not exceed 4,000 gallons. In determining whether this threshold is crossed, the amount of gasoline a person holds exclusively for an exempt use and the amount of gasoline held by a person in the fuel supply tank of a motor vehicle or motorboat are not taken into account. If a person holds more than 4,000 gallons of gasoline, then the floor stocks tax is imposed on all gasoline that is held by the person and that is not otherwise exempt.

Members of certain controlled groups must aggregate the gasoline held by all members in determining whether they hold no more than 4,000 gallons of gasoline. If holdings of all members in aggregate exceed 4,000 gallons, then the de minimis exception does not apply to any member of the group. The aggregation rule for controlled groups does not affect the requirement that each separate person liable for the floor stocks tax file a return.

Similar rules apply with respect to the October 1, 1993, floor stocks tax on diesel fuel and aviation fuel and the October 1, 1995, floor stocks tax on commercial aviation fuel, but the threshold amount under these rules is 2,000 gallons. There is no similar de minimis exception to the January 1, 1994, floor stocks tax on diesel fuel.

The temporary regulations provide that the January 1, 1994, floor stocks tax does not apply to any diesel fuel that would satisfy the dyeing and other requirements of section 4082, as amended by section 13242 of the Act. Temporary regulations providing rules relating to dyeing of diesel fuel and other requirements of section 4082 will be issued soon.

No specific exception is provided to any of the floor stocks taxes for fuel held in "dead storage" (i.e., the amount of fuel that will not be pumped out of a storage tank because the fuel is below the mouth of the draw pipe). Although exceptions to the floor stocks taxes are provided for fuel held for an exempt use and for dyed fuel, undyed fuel held in dead storage is not held for an exempt use and is, therefore, subject to the floor stocks taxes.

The temporary regulations define diesel fuel as a liquid suitable for use as a fuel in a diesel-powered highway vehicle or a diesel-powered train, aviation fuel as a liquid suitable for use as fuel in an aircraft, and gasoline as a product that is commercially known or sold as gasoline and is suitable for use as a motor fuel. Thus, the contents of a fuel storage tank are not subject to tax to the extent the owner can establish that they are not suitable for use as a fuel. However, the possibility that some liquids held in dead storage may not be suitable for use as a fuel does not justify a blanket exemption for otherwise taxable fuel that is held in dead storage.

Payment and Return

The tax must be paid with a return on Form 720, Quarterly Federal Excise Tax Return, filed by the applicable return date. Persons that are also required to report other excise taxes must report the floor stocks tax and the other excise taxes for the same calendar quarter on one Form 720. The due date for the return is the later of the floor stocks return date or the return date for the other excise taxes due for the same calendar quarter. This rule does not extend the time for making deposits or payments of the other excise taxes.

These regulations do not propose any specific recordkeeping requirements with respect to the floor stocks taxes. However, the general recordkeeping requirements applicable to Form 720 apply. In determining the amount of fuel subject to floor stocks taxes any acceptable method may be used. For example, inventories based on actual measurement, on a work-forward or work-back method, or any other method that accurately reflects fuel held are acceptable.

The applicable Form 720 and its separate instructions may be obtained at many local IRS offices or by calling the following toll-free number: 1–800–829–3676.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these temporary regulations will be submitted to the Chief Counsel for Advocacy of the

Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these temporary regulations is Edward Madden, Office of the Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes, Reporting and recordkeeping requirements.

Amendments to the Regulations

Accordingly, 26 CFR part 47 is amended as follows:

PART 47—FLOOR STOCKS TAXES

Paragraph 1. The authority citation for part 47 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *

Par. 2. Subpart C is added to read as follows:

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

Sec.

47.3–1T Scope of subpart C and effective date (temporary).
47.3–2T Definitions relating to the floor stocks taxes under subpart C (temporary).
47.3–3T Imposition of floor stocks tax on fuel held on October 1, 1993 (temporary).
47.3–4T Exceptions to the October 1, 1993, floor stocks tax (temporary).
47.3–5T Requirements with respect to payment and return for the October 1, 1993, floor stocks tax (temporary).
47.3–6T Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994 (temporary).
47.3–7T Exception to the January 1, 1994, floor stocks tax (temporary).
47.3–8T Requirements with respect to payment and return for the January 1, 1994, floor stocks tax (temporary).
47.3–9T Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995 (temporary).
47.3–10T Exceptions to the October 1, 1995, floor stocks tax (temporary).
47.3–11T Requirements with respect to payment and return for the October 1, 1995, floor stocks tax (temporary).

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

§ 47.3–1T Scope of subpart C and effective date (temporary).

The regulations in this subpart C relate to the fuel floor stocks taxes imposed by sections 13241(h), 13243, and 13245 of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312). The tax under section 13241(h) is imposed on previously taxed gasoline, diesel fuel, and aviation fuel held by any person at the first moment of October 1, 1993 (the October 1, 1993, floor stocks tax). The tax under section 13243 is imposed on untaxed diesel fuel that does not satisfy the requirements of section 4082 (as amended by section 13242 of the Act) and that is held by any person at the first moment of January 1, 1994, at a point in the distribution chain outside the bulk transfer/terminal system (the January 1, 1994, floor stocks tax). The tax under section 13245 is imposed on commercial aviation fuel on which tax was imposed under section 4091 (even if only at the Leaking Underground Storage Tank Trust Fund financing rate) before October 1, 1995, and that is held by any person at the first moment of October 1, 1995 (the October 1, 1995, floor stocks tax). The regulations in this subpart describe the specific fuels subject to tax, the rates of tax, and the persons liable for tax. The regulations in this subpart also provide exceptions to tax and requirements for payment of tax and filing a return reporting tax. This subpart is effective on October 1, 1993.

§ 47.3–2T Definitions relating to the floor stocks taxes under subpart C (temporary).

Act is the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312).

Aviation fuel is any liquid (other than any product taxable under section 4081) that is commonly or commercially known or sold as a fuel that is suitable for use in an aircraft.

Commercial aviation fuel is any aviation fuel that is held for use or sale for use in a business of transporting persons or property for compensation or hire by air.

Controlled group means—

(1) Any controlled group of corporations within the meaning of section 1563(a), except that the phrase "more than 50 percent" is substituted for the phrase "at least 80 percent" each place it appears therein and a controlled group of corporations includes members that are described in section 1563(b)(2) (relating to excluded members); and

(2) Any other group of organizations, at least one member of which is not a corporation, that is a brother-sister group under common control or a combined group under common control, with terms having the following meanings for this purpose:

(i) *Organization* means a sole proprietorship, a partnership, a trust, an estate, or a corporation.

(ii) *Brother-sister group under common control* means two or more organizations if—

(A) The same five or fewer persons who are individuals, estates, or trusts own (directly and with the application of § 1.414(c)–4 of this chapter) a controlling interest of each organization;

(B) Taking into account the ownership of each person only to the extent that person's ownership is identical with respect to each organization, such persons are in effective control of each organization; and

(C) The five or fewer persons whose ownership is considered for purposes of the controlling interest requirement for each organization are the same persons whose ownership is considered for purposes of the effective control requirement.

(iii) *Controlling interest* means—

(A) In the case of a corporation, ownership of stock possessing at least 50 percent of the total combined voting power of all classes of stock entitled to vote or at least 50 percent of the total value of the shares of all classes of stock of the corporation;

(B) In the case of a trust or estate, ownership of an actuarial interest (determined under § 1.52–1(f) of this chapter) of at least 50 percent of the trust or estate;

(C) In the case of a partnership, ownership of at least 50 percent of the profit interest or capital interest of the partnership; and

(D) In the case of a sole proprietorship, ownership of the sole proprietorship.

(iv) *Effective control* has the meaning given that term in § 1.52–1(d)(3) of this chapter.

(v) *Combined group under common control* has the meaning given that term in § 1.52–1(e) of this chapter.

Diesel fuel means any liquid (other than gasoline) that is suitable for use in a diesel powered highway vehicle, diesel-powered train, or, after December 31, 1993, diesel-powered boat.

Fuel means gasoline, diesel fuel, and aviation fuel (including after September 30, 1995, commercial aviation fuel).

Gasoline means—

(1) All products (including gasohol) that are commonly or commercially known or sold as gasoline and are suitable for use as a motor fuel (other than products that are not sold as gasoline and have an American Society for Testing Materials octane number of less than 75 as determined by the motor method); and

(2) Gasoline blend stocks (as defined in § 48.4081–1(j) of this chapter).

Person includes each business unit that has, or is required to have, its own employer identification number.

§ 47.3–3T Imposition of floor stocks tax on fuel held on October 1, 1993 (temporary).

(a) *Fuels subject to tax.* Section 13241(h)(1) of the Act imposes a floor stocks tax on gasoline (including gasohol), diesel fuel, and aviation fuel—

(1) On which tax was imposed under section 4081 or 4091 before October 1, 1993; and

(2) That is held at the first moment of October 1, 1993, by any person.

(b) *Rate of tax.* The rate of the October 1, 1993, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any fuel subject to the October 1, 1993, floor stocks tax is the person that holds the fuel at the first moment of October 1, 1993. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–4T Exceptions to the October 1, 1993, floor stocks tax (temporary).

(a) *Exception for fuel held for an exempt use*—(1) *Gasoline.* The October 1, 1993, floor stocks tax does not apply to gasoline held exclusively for an exempt use. In determining whether gasoline is held exclusively for an exempt use, the following rules apply:

(i) An exempt use, with respect to gasoline, is any use of gasoline (other than use in producing gasohol) that is described in section 6420, 6421, or 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4081. Thus, for example, exempt use of gasoline includes use on a farm for farming purposes; use in an off-highway business use; use in certain intercity, local, and school buses; exclusive use by a State or local government or nonprofit educational organization; and use in commercial aircraft.

(ii) Gasoline is held exclusively for an exempt use only if the person that holds gasoline at the first moment of October 1, 1993, actually uses the gasoline in an exempt use.

(iii) Gasoline is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the gasoline is held for resale (including resale to a person that will use the gasoline in an exempt use). Thus, for example, gasoline held by a gasoline service station for sale to a farmer for use on a farm for farming purposes is not exempt from the October 1, 1993, floor stocks tax. However, the farmer would be eligible to claim an income tax credit for an amount equal to the tax under sections 34 and 6420.

(2) *Diesel fuel.* The October 1, 1993, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(i) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than use in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(ii) Diesel fuel held for use in a diesel-powered train is not exempt from the October 1, 1993, floor stocks tax under this paragraph (a)(2) unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. See section 6427(l)(3) as amended by section 13241 of the Act.

(iii) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of October 1, 1993, actually uses the diesel fuel in an exempt use.

(iv) Diesel fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, diesel fuel held by a retailer for sale to a construction company for use in the construction company's off-road machinery is not exempt from the October 1, 1993, floor stocks tax. However, the construction company would be eligible to claim a credit or payment equal to the tax under section 6427.

(3) *Aviation fuel.* The October 1, 1993, floor stocks tax does not apply to aviation fuel held exclusively for an exempt use. In determining whether aviation fuel is held exclusively for an exempt use, the following rules apply:

(i) An exempt use, with respect to aviation fuel, is any use of aviation fuel that is described in section 6427 and that entitles the ultimate purchaser to a credit or payment equal to the tax imposed by section 4091. Thus, for example, exempt use of aviation fuel includes any use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use other than use as a fuel in an aircraft in noncommercial aviation (as defined in section 4041(c)).

(ii) Aviation fuel is held exclusively for an exempt use only if the person that holds the aviation fuel at the first moment of October 1, 1993, actually uses the aviation fuel in an exempt use.

(iii) Aviation fuel is not held exclusively for an exempt use if, at the first moment of October 1, 1993, the aviation fuel is held for resale (including resale to a person that will use the aviation fuel in an exempt use). Thus, for example, aviation fuel held by a fixed-base operator for sale to an airline for use in commercial aviation is not exempt from the October 1, 1993, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for gasoline or diesel fuel held in vehicle fuel supply tank.* The October 1, 1993, floor stocks tax does not apply to gasoline or diesel fuel held at the first moment of October 1, 1993, in the fuel supply tank of a motor vehicle (as defined in § 48.4041–8(c) of this chapter) or motorboat. This exception does not apply to fuel held in the fuel supply tank of a train or an aircraft.

(c) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1993, floor stocks tax does not apply to—

(i) Gasoline that a person holds at the first moment of October 1, 1993, if the aggregate amount of gasoline held by that person at that moment does not exceed 4,000 gallons; and

(ii) Diesel fuel or aviation fuel that a person holds at the first moment of October 1, 1993, if the aggregate amount of diesel fuel or the aggregate amount of aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules*—(i) *Coordination with other exemptions.* In determining the aggregate amount of gasoline, diesel fuel, or aviation fuel held by a person at the first moment of October 1, 1993, there is excluded the amount of gasoline, diesel fuel, or aviation fuel exempt from the October 1, 1993, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for exempt uses), or paragraph (b) of this section (relating to gasoline and diesel fuel held in the fuel supply tank of a motor vehicle or motorboat).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1993, floor stocks tax applies to all amounts of gasoline, diesel fuel, or aviation fuel (as the case may be) held by a person (and not exempt from tax under paragraph (a) or (b) of this

section) if the aggregate amount of fuel held by the person at the first moment of October 1, 1993, exceeds 4,000 gallons in the case of gasoline or 2,000 gallons in the case of diesel fuel or aviation fuel.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2T) holds more than 4,000 gallons of gasoline if the aggregate amount of all gasoline held by all members of the controlled group exceeds 4,000 gallons. A member of a controlled group holds more than 2,000 gallons of diesel fuel or aviation fuel if the aggregate amount of all diesel fuel or aviation fuel, as the case may be, held by all members of the controlled group exceeds 2,000 gallons.

(3) *Examples.* The following examples illustrate the rules of this section:

Example 1. On October 1, 1993, A holds 10,000 gallons of gasoline, 6,000 gallons of which are held exclusively for use on a farm for farming purposes. The remaining 4,000 gallons are held for use in A's highway vehicles. A is not a member of a controlled group. A is not liable for the floor stocks tax on any of the 10,000 gallons because the aggregate amount of fuel held by A for uses other than exempt uses does not exceed 4,000 gallons.

Example 2. On October 1, 1993, B holds 1,900 gallons of diesel fuel and 3,900 gallons of gasoline. B is not a member of a controlled group. B is not liable for the floor stocks tax on diesel fuel because B's holdings of diesel fuel do not exceed 2,000 gallons. B is not liable for the floor stocks tax on gasoline because B's holdings of gasoline do not exceed 4,000 gallons.

Example 3. On October 1, 1993, C holds 4,100 gallons of gasoline for resale at a service station. C is liable for a floor stocks tax of $176.30 (4,100×$.043) on that gasoline.

§ 47.3–5T Requirements with respect to payment and return for the October 1, 1993, floor stocks tax (temporary).

(a) *Payment of tax.* The October 1, 1993, floor stocks tax is to be paid without assessment or notice on or before November 30, 1993.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1993, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before November 30, 1993, and is a return for the third calendar quarter of 1993. A first return reporting only the October 1, 1993, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the third calendar quarter of 1993 for other excise taxes earlier than November 30, 1993, that person files a single Form 720 for the quarter on or before November 30, 1993. This rule does not extend the time for making deposits or paying any excise tax.

§ 47.3–6T Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994 (temporary).

(a) *Fuel subject to tax.* Section 13243 of the Act imposes a floor stocks tax on diesel fuel held at the first moment of January 1, 1994, by any person if—

(1) No tax was imposed on the diesel fuel under section 4041(a) or 4091 as in effect on December 31, 1993; and

(2) Tax would have been imposed by section 4081, as amended by section 13242 of the Act, on any prior removal, entry, or sale of the diesel fuel had section 4081 applied to the diesel fuel for periods before January 1, 1994.

(b) *Rate of tax.* The rate of the January 1, 1994, floor stocks tax is 24.4 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any diesel fuel subject to the January 1, 1994, floor stocks tax is the wholesale distributor or other registered producer, recreational boat operator, or other person that holds the fuel at the first moment of January 1, 1994. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–7T Exception to the January 1, 1994, floor stocks tax (temporary).

(a) *In general.* The January 1, 1994, floor stocks tax does not apply to diesel fuel held exclusively for an exempt use. In determining whether diesel fuel is held exclusively for an exempt use, the following rules apply:

(1) An exempt use, with respect to diesel fuel, is any use of diesel fuel (other than in producing a diesel fuel/alcohol mixture or as fuel in a diesel-powered train) that is described in section 6427 (as in effect on January 1, 1994) and that would entitle the ultimate purchaser to a credit or payment equal to any tax imposed by section 4081 (as in effect on such date). Thus, for example, exempt uses of diesel fuel include use other than as a fuel in a diesel-powered highway vehicle (as defined in § 48.4041–8(b)(4) of this chapter), use on a farm for farming purposes, exclusive use by a State or local government or nonprofit educational organization, and use in an off-highway business use.

(2) Diesel fuel held for use in a diesel-powered train is not exempt from the January 1, 1994, floor stocks tax under paragraph (a)(1) of this section unless the fuel is held by a State or local government. Thus, the exemptions for use other than as fuel in a diesel-powered highway vehicle and off-highway business use do not apply to fuel used in a diesel-powered train. For circumstances in which diesel fuel held for use in a diesel-powered train may be exempt from the January 1, 1994, floor stocks tax, see paragraph (b) of this section (relating to the exemption for dyed fuel) and § 47.3–6T(a)(1), which exempts fuel that was previously taxed under section 4041(a) or 4091 (as in effect on December 31, 1993).

(3) Diesel fuel is held exclusively for an exempt use only if the person that holds the fuel at the first moment of January 1, 1994, actually uses the diesel fuel in an exempt use.

(4) Diesel fuel is not held exclusively for an exempt use if, at the first moment of January 1, 1994, the diesel fuel is held for resale (including resale to a person that will use the diesel fuel in an exempt use). Thus, for example, except in the case of dyed fuel described in paragraph (b) of this section, diesel fuel held by a heating oil retailer for sale for use as home heating oil is not exempt from the January 1, 1994, floor stocks tax. However, a homeowner who uses the fuel for heating purposes would be eligible to claim a credit or may be eligible for a payment equal to the tax under section 6427.

(b) *Exception for dyed fuel.* The January 1, 1994, floor stocks tax does not apply to diesel fuel that would have satisfied the requirements of section 4082 (relating to the exemption from the diesel fuel tax for dyed fuel) had that section, as amended by the Act, been in effect on the date the diesel fuel was removed from the terminal. (See § 47.3–6T(a)(2), which provides that the January 1, 1994, floor stocks tax applies only if tax would have been imposed by section 4081, as amended by section 13242 of the Act, on the removal of the fuel.) Thus, for example, diesel fuel held by a heating oil retailer for sale for use as home heating oil is exempt from the January 1, 1994, floor stocks tax if the fuel was removed from an approved terminal and, at the time of its removal, was dyed in the manner prescribed by section 4082.

§ 47.3–8T Requirements with respect to payment and return for the January 1, 1994, floor stocks tax (temporary).

(a) *Payment of tax.* The January 1, 1994, floor stocks tax is to be paid without assessment or notice on or before July 31, 1994.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the January 1, 1994, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before July 31, 1994, and is a return for the second calendar quarter of 1994. A first return reporting only January 1, 1994, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the second calendar quarter of 1994 for other excise taxes on or before July 31, 1994, that person files a single Form 720 for the quarter on or before July 31, 1994. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

§ 47.3–9T Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995 (temporary).

(a) *Fuel subject to tax.* Section 13245 of the Act imposes a floor stocks tax on commercial aviation fuel on which tax was imposed under section 4091 before October 1, 1995, and which is held on the first moment of that date by any person. Tax is imposed under section 4091 even if imposed only at the Leaking Underground Storage Tank Trust Fund financing rate under that section.

(b) *Rate of tax.* The rate of the October 1, 1995, floor stocks tax is 4.3 cents per gallon.

(c) *Person liable for tax.* The person liable for tax on any commercial aviation fuel subject to the October 1, 1995, floor stocks tax is the person that holds the commercial aviation fuel at the first moment of October 1, 1995. Fuel is held by a person if the person has title to the fuel (whether or not delivery to that person has been made) at such time, as determined under applicable local law.

§ 47.3–10T Exceptions to the October 1, 1995, floor stocks tax (temporary).

(a) *Exception for commercial aviation fuel held for use as supplies for vessels or aircraft.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel held exclusively for use as supplies for vessels or aircraft within the meaning of section 4221(d)(3). In determining whether commercial aviation fuel is held exclusively for such use, the following rules apply:

(1) Commercial aviation fuel is held exclusively for use as supplies for vessels or aircraft only if the person that holds the commercial aviation fuel at the first moment of October 1, 1995, actually uses the aviation fuel in that exempt use.

(2) Commercial aviation fuel is not held exclusively for use as supplies for vessels or aircraft if, at the first moment of October 1, 1995, the commercial aviation fuel is held for resale (including resale to a person that will use the aviation fuel as supplies for vessels or aircraft). Thus, for example, commercial aviation fuel held by a fixed base operator for sale to an airline for use in foreign trade is not exempt from the October 1, 1995, floor stocks tax. However, the airline would be eligible to claim a credit or payment equal to the tax under section 6427.

(b) *Exception for certain amounts of fuel*—(1) *In general.* The October 1, 1995, floor stocks tax does not apply to commercial aviation fuel that a person holds at the first moment of October 1, 1995, if the aggregate amount of commercial aviation fuel held by that person at that moment does not exceed 2,000 gallons.

(2) *Additional rules relating to the 2,000 gallon exception*—(i) *Coordination with other exemptions.* In determining the aggregate amount of commercial aviation fuel held by a person at the first moment of October 1, 1995, there is to be excluded the amount of commercial aviation fuel exempt from the October 1, 1995, floor stocks tax by reason of paragraph (a) of this section (relating to fuel held for an exempt use).

(ii) *All amounts held subject to tax if threshold exceeded.* The October 1, 1995, floor stocks tax applies to all amounts of commercial aviation fuel held by a person (and not exempt from tax under paragraph (a) of this section) if the aggregate amount of commercial aviation fuel held by the person at the first moment of October 1, 1995, exceeds 2,000 gallons.

(iii) *Controlled groups.* A member of a controlled group (as defined in § 47.3–2T) holds more than 2,000 gallons of commercial aviation fuel if the aggregate amount of all commercial aviation fuel held by all members of the controlled group exceeds 2,000 gallons.

(3) *Example.* The following example illustrates the rules of this paragraph (b):

Example. D, E, and F are members of the same controlled group. On October 1, 1995, D holds 2,000 gallons of commercial aviation fuel. E holds 1,500 gallons of commercial aviation fuel, and F holds 500 gallons of commercial aviation fuel. None of the commercial aviation fuel is held for an exempt use. Because the aggregate amount held by all members of the group is 4,000 gallons, which exceeds 2,000 gallons, all commercial aviation fuel held by each member is subject to the floor stocks tax. Thus, D is liable for tax of $86.00 (2,000 X $.043), E is liable for tax of $64.50 (1,500 X $.043), and F is liable for tax of $21.50 (500 X $.043).

§ 47.3–11T Requirements with respect to payment and return for the October 1, 1995, floor stocks tax (temporary).

(a) *Payment of tax.* The October 1, 1995, floor stocks tax is to be paid without assessment or notice on or before April 30, 1996.

(b) *Filing of returns*—(1) *Form 720.* Every person liable for the October 1, 1995, floor stocks tax must make a return of the tax on Form 720, Quarterly Federal Excise Tax Return. The return is to be prepared and filed in accordance with the instructions relating to the return.

(2) *Time for filing*—(i) *In general.* The Form 720 required by paragraph (b)(1) of this section must be filed on or before April 30, 1996, and is a return for the first calendar quarter of 1996. A first return reporting only October 1, 1995, floor stocks tax is also a final return and therefore, in accordance with the instructions to Form 720, the box for "final return" must be marked.

(ii) *Return reporting other taxes.* A person must file only one Form 720 for a quarter. If a person is required under part 40 of this chapter to file Form 720 for the first calendar quarter of 1996 for other excise taxes on or before May 31, 1996, that person files a single Form 720 for the quarter on or before May 31, 1996. This paragraph (b)(2)(ii) does not extend the time for making deposits or paying any excise tax.

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 10, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–28913 Filed 11–22–93; 3:46 pm]

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DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 117

[CGD09–93–034]

Drawbridge Operation Regulations, Chicago River, IL

AGENCY: Coast Guard, DOT.

ACTION: Notice of temporary deviation.

SUMMARY: Notice is hereby given that the Coast Guard has issued a temporary deviation to the regulations governing the opening of certain drawbridges over the Chicago River, from December 1 through December 31, 1993. This deviation requires the City to open the bridges on signal after receiving an advance notice of a vessel's intended time of passage through the draws without regard to the number of vessels to be afforded passage, and establishes specific periods of time in which these bridge openings are to be scheduled. The City is being granted this deviation to reduce the frequency with which it must open its drawbridges and provide time for necessary maintenance during the weekdays, Monday through Friday.

EFFECTIVE DATE: The period of deviation is effective from December 1, 1993, and continues through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District. Telephone number (216) 522–3933.

SUPPLEMENTARY INFORMATION: The flotillas of recreational sailboats have all returned to the boatyards for winter storage on the Chicago River system. This deviation is for the purpose of providing specific times on Saturdays and Sundays for sailboat movements on the river system, while providing the City with an uninterrupted period of Mondays through Fridays to perform maintenance on its bridges. The bridges affected by this deviation are listed below:

Main Branch

Lake Shore Drive
Columbus Drive
Michigan Avenue
Wabash Avenue
State Street
Dearborn Street
Clark Street
La Salle Street
Wells Street
Franklin-Orleans Street

South Branch

Lake Street
Randolph Street
Washington Street
Madison Avenue
Monroe Street
Adams Street
Jackson Boulevard
Van Buren Street
Eisenhower Expressway
Harrison Street
Roosevelt Road
18th Street
Canal Street
South Halsted Street
South Loomis Street
South Ashland Avenue

North Branch

Grand Avenue
Ohio Street
Chicago Avenue
North Halsted Street

This deviation from normal operating regulations is authorized in accordance with the provisions of title 33 of the Code of Federal Regulations, § 117.35, and applies only to the passage of recreational vessels. Under this deviation the bridges listed above operated by the City of Chicago shall operate as follows:

(a) The draws need open for the passage of recreational vessels only from 7 a.m. to 2 p.m. on Saturdays and on Sundays, and only after receiving a 24 hours advance notice.

(b) The Kinzie Street bridge, mile 1.81 across the North Branch, and Cermak Road bridge, mile 4.05 across the South Branch, shall continue to operate in accordance with requirements presently established in 33 CFR 117.391.

(c) All draws shall open for commercial vessels in accordance with current regulations in 33 CFR 117.391. In accordance with current regulations, including 33 CFR 117.391, government vessels of the United States, state and local vessels used for public safety, and vessels in distress shall be passed through the draws of all bridges as soon as possible at all times.

(d) This period of deviation is effective from December 1, 1993, through December 31, 1993.

Additional information may be obtained from Robert W. Bloom, Jr., Bridge Program Manager, Ninth Coast Guard District, room 2083D, 1240 East Ninth Street, Cleveland, Ohio 44199–2060, telephone (216) 522–3993.

Dated: November 22, 1993.

Rudy K. Peschel,

Rear Admiral, U.S. Coast Guard, Commander, Ninth Coast Guard District.

[FR Doc. 93–29037 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–14–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[CA 45–1–5978; FRL–4806–7]

Conditional Approval of California's Substitute Program for the Clean-Fuel Fleet Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice of final rulemaking (NFR).

SUMMARY: EPA is finalizing the conditional approval of revisions to the California state implementation plan (SIP) proposed in the **Federal Register** on May 7, 1993. EPA did not receive any written comments during the 30-day comment period.

The California Air Resources Board (CARB) requested EPA's conditional approval of its commitment to submit a substitute plan for the Clean Air Act (CAA or Act) Clean-Fuel Fleet program (fleet program). The CAA fleet program provisions require states, in order to opt-out of the fleet program, to submit a substitute program for all or a portion of the program(s) which achieve at least equal long-term emission reductions of ozone-producing and toxic air emissions. EPA has determined that, in limited circumstances, it may accept committal SIPs to perform CAA requirements. In this action, EPA is finalizing the conditional approval of California's commitment, thereby granting California the ability to opt-out of the fleet program.

EFFECTIVE DATE: This action is effective on December 29, 1993.

ADDRESSES: Copies of the committal SIP and Notice of Proposed Rulemaking are available for public inspection at the following EPA Region IX office during normal business hours: Mobile Sources Section, Air and Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105.

FOR FURTHER INFORMATION CONTACT: Roxanne Johnson, Mobile Sources Section, (A–2–1), Air & Toxics Division, U.S. Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, CA 94105, Telephone: (415) 744–1227.

SUPPLEMENTARY INFORMATION:

I. Background

On May 7, 1993 in 58 FR 27254, EPA proposed to conditionally approve the State of California's commitment to submit a substitute plan to "opt-out" of the CAA Clean-Fuel Fleet program. The

fleet program is to introduce (in 22 nonattainment cities) lower pollution emitting vehicles into centrally fueled fleets of (10 or more) vehicles in areas with the worst air quality problems. Section 246 of the Act directs certain states containing "covered areas," as defined in section 246(a), to revise their SIPs to require that "at least a specified percentage of all new covered fleet vehicles in model year 1998 and thereafter purchased by each covered fleet operated in each covered area shall be clean-fuel vehicles and shall use clean alternative fuels when operating in the covered area."

The goal of the fleet program is to reduce emissions of non-methane organic gases (NMOG) and oxides of nitrogen (NOx), and to demonstrate the feasibility of using clean-fuel vehicles in centrally-fueled fleets. A credit program for the fleet program along with transportation control measure exemptions for fleet vehicles was promulgated in a separate rulemaking (58 FR 11888, March 1, 1993).

California has proposed to opt-out of the fleet program by submitting California's low-emission vehicle (LEV) regulations as a substitute program. The SIP revision will commit California to achieve emission reductions equivalent to those predicted to occur with full implementation of the CAA fleet program.

II. Response to Comments

A 30-day public comment period was provided in the May 7, 1993, 58 FR 27253. EPA did not receive any written comments during the comment period, which ended on June 7, 1993.

III. EPA Evaluation and Final Action

EPA is finalizing action to conditionally approve the submittal revision for inclusion into the California SIP (see General Preamble for the Implementation of Title I of the Clean Air Act Amendments of 1990, April 16, 1992, 57 FR 13498, regarding the requirements of section 110(a) and part D of the CAA).

EPA determined that if California and other states are intending to opt-out of the fleet program they should do so by November 15, 1992, and should at that time submit and commit to a substitute plan. EPA conditionally approved California's commitment and the State will now be required to submit a fully adopted SIP revision fulfilling that commitment by May 15, 1994 (also the deadline for submitting SIP revisions to implement the fleet program pursuant to section 246(a) of the Act). If California fails to submit a SIP revision fulfilling its commitment of the substitute program by May 15, 1994, the conditional approval will be treated as a disapproval and the state will have an obligation to submit a fully-adopted SIP revision to implement the fleet program in accordance with section 246. EPA believes this approach is consistent with the provisions of the Act and will ensure that, by May 15, 1994, a SIP revision either implementing the fleet program or a substitute program achieving equivalent air quality benefits will have been submitted to EPA.

EPA will require much greater detail by May 15, 1994 describing why and how California's substitute program is sufficient to provide long-term reductions in ozone-producing, carbon monoxide and toxic air emissions equal to or greater than those provided by the CAA fleet program. EPA expects that California will consider its reasonable further progress goals (as defined in section 171 of the CAA) in deciding whether to opt-out of the fleet program. The State can still choose to implement part or all of the CAA fleet program by May 15, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory regulatory requirements.

IV. Regulatory Process

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the plan will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations less than 50,000.

Conditional approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the federal SIP-approval does not impose any new requirements, EPA certifies that this final action would not have a significant impact on any small entities affected. Moreover, due to the nature of the federal-state relationship under the CAA, preparation of a regulatory flexibility analysis would constitute federal inquiry into the economic reasonableness of State action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v *U.S. E.P.A.*, 427 U.S. 246, 256–266 (S.Ct. 1976); 42 U.S.C. 7410(a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Administrative practice and procedure, Air pollution control for Ozone, Hydrocarbons, Intergovernmental relations, Motor vehicles' pollution, Nitrogen oxide, Reporting and recordkeeping requirements.

Dated: November 2, 1993.

Felicia Marcus,

Regional Administrator.

Part 52, chapter I, title 40 of the Code of Federal Regulations is amended to read as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart F—California

2. Subpart F is amended by adding § 52.219 to read as follows:

§ 52.219 Identification of plan—Conditional approval.

The plan revision commitments listed in paragraph (a) of this section were submitted on the date specified.

(a) On November 13, 1992, California submitted a commitment to prepare a revision to the California State Implementation Plan (SIP) for the California ozone nonattainment areas to address the requirement in section 182(c)(4)(B) of the 1990 Clean Air Act Amendments that requires the States to develop a SIP revision for all ozone nonattainment areas classified as serious and above to opt-out of the Clean-Fuel Fleet Program by submitting for EPA approval a substitute program(s) resulting in as much or greater long-term reductions in ozone-producing and

toxic air emissions. The State submittal contained an interim milestone to supply more accurate emission reduction data demonstrating equivalence no later than one year after the publication date of the **Federal Register** Notice approving the States committal SIP revision. California is required to submit the final SIP revision by May 15, 1994. The State held a public meeting on this committal SIP on March 17, 1992. The California SIP revisions are met automatically when the SIP revision concerns a regulation previously adopted by the Board.

[FR Doc. 93-29053 Filed 11-26-93; 8:45 am]
BILLING CODE 6560-60-P

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40 CFR Part 52

[IN21-2-6157; FRL-4806-9]

Basic and Enhanced Vehicle Inspection and Maintenance Plan; Indiana

AGENCY: United States Environmental Protection Agency (U.S. EPA).

ACTION: Final rule.

SUMMARY: This action disapproves a revision to the Indiana State Implementation Plan (SIP) for the attainment of the National Ambient Air Quality Standard for ozone. This revision was intended to provide for the adoption and implementation of a vehicle inspection/maintenance (I/M) program meeting the requirements of U.S. EPA regulations, published in the **Federal Register** on November 5, 1992, concerning vehicle I/M programs (I/M Regulation) for the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas. The revision was submitted on December 2, 1992 and consisted of a commitment by the Governor's designee to the timely adoption and implementation of an I/M program meeting all the requirements of U.S. EPA's I/M regulations and a schedule for implementation of the required program. U.S. EPA's disapproval of the submittal is based on the failure by the State of Indiana to meet important milestones pertaining to the development and adoption of necessary rulemaking for the I/M program. Such failure prevented the State from meeting its commitment to submit a full revised I/M SIP by November 15, 1993. U.S. EPA proposed to disapprove the submittal on September 9, 1993.

EFFECTIVE DATE: The final rule is effective on December 29, 1993.

ADDRESSES: Materials relevant to this final rule are available at the following address: U.S. Environmental Protection Agency, Region 5, Air and Radiation Division, Regulation Development Branch, 77 West Jackson Boulevard, Chicago, Illinois 60604. The docket may be inspected between the hours of 8:30 a.m. until 12 noon and from 1:30 p.m. until 3:30 p.m. Monday through Friday. A reasonable fee may be charged by U.S. EPA for copying docket material.

FOR FURTHER INFORMATION CONTACT: Francisco J. Acevedo, Environmental Engineer, Regulation Development Section, Regulation Development Branch (5AR-18J), United States Environmental Protection Agency, Region 5, 77 West Jackson Boulevard, Chicago, Illinois 60604, (312) 886-6061.Anyone wishing to come to Region 5 offices should first contact Francisco J. Acevedo.

SUPPLEMENTARY INFORMATION:

I. Background

On November 5, 1992 (57 FR 52950) U.S. EPA published a final regulation establishing the I/M requirements, pursuant to section 182 of the Act. The I/M regulation was codified at 40 CFR part 51, subpart S, and requires, among other things, that each State that is required to implement an I/M program must submit by November 15, 1992, a SIP revision including two elements: (1) A commitment from the Governor or his/her designee to the timely adoption and implementation of an I/M program meeting all the requirements of the I/M regulation; and (2) a schedule of implementation. In addition, the commitment was to provide interim milestones that the State must meet with regard to the timely implementation of any necessary legislation and regulations required to have full legal authority to implement the program. Failure by the State to meet any of the above mentioned requirements is grounds for U.S. EPA to disapprove the commitment.

Under the authority of the Governor, the Commissioner of the Indiana Department of Environmental Management, on December 2, 1992, submitted a SIP revision to satisfy certain requirements of the I/M regulation to U.S. EPA. A public hearing on this submittal was held by the State on October 22, 1992, in Gary, Indiana. The submittal included a commitment to the timely adoption and implementation of an I/M program in the Lake, Porter, Clark, and Floyd Counties ozone nonattainment areas meeting all the requirements of the I/M regulation and the Act by November 15, 1993, and a schedule of implementation.

On June 30, 1993, the Indiana legislature adjourned without taking necessary action to enable implementation of the I/M provisions mandated in the Clean Air Act and the I/M rule for Lake and Porter Counties. This failure to provide necessary authority has prevented the State from submitting a complete SIP revision containing all the required elements of the program by November 15, 1993.

U.S. EPA reviewed the December 2, 1992 commitment and proposed to disapprove it on September 9, 1993 (58 FR 47415), based on the failure by the State to meet the commitment and schedule contained in the SIP submittal pertaining to the adoption of necessary authority to implement I/M requirements during the 1993 Indiana General legislative session.

On August 17, 1993, U.S. EPA sent a letter to Governor Bayh of Indiana and to the Federal Highway Administration advising them that U.S. EPA has decided to exercise its discretionary authority under section 110(m) of the Act to impose sanctions at any time once a finding of SIP deficiency is made. Because of the failure of the Legislature to provide necessary authority to implement an enhanced I/M program in Lake and Porter Counties, it is U.S. EPA's intent to publish a proposed rule in the **Federal Register** in the near future proposing to limit certain Federal highway funding assistance statewide and to impose 2:1 emissions offset growth limitations for new and modified major stationary sources of volatile organic compounds and oxides of nitrogen in the ozone nonattainment counties of Lake, Porter, Clark, Floyd, Marion, St. Joseph, Elkhart, and Vanderburgh Counties. A public comment period of at least 30 days and an opportunity for public hearing(s) will be provided to solicit comments on the proposed imposition of sanctions.

This final disapproval of the State's commitment initiates the sanctions process under section 179(a). Under section 179(a), U.S. EPA is required to impose one of the sanctions under section 179(b) 18 months after the final disapproval if the deficiencies are not corrected by that time. In addition, the final disapproval triggers the Federal implementation plan requirement under section 110(c). Further, as stated above, U.S. EPA in an August 17, 1993, letter to Governor Bayh of Indiana has indicated its decision to exercise its discretionary authority under section 110(m) of the Act in this situation. Such discretionary authority allows U.S. EPA to impose sanctions at any time once a finding of SIP deficiency is made.

II. Public Comment/U.S. EPA Response

U.S. EPA received only one comment during the comment period, which ended October 12, 1993. In a September 24, 1993 letter, the Natural Resources Defense Council (NRDC) strongly supported U.S. EPA's proposal to disapprove the Indiana submittal. It also urged U.S. EPA to make the disapproval finding retroactive to November 15, 1992. In addition, NRDC supported U.S. EPA's decision to propose sanctions, and urged U.S. EPA to impose such sanctions statewide. Finally, NRDC stated its opposition to U.S. EPA's use of conditional approvals.

In response to NRDC's comment on making the disapproval retroactive, U.S. EPA does not believe that such action is appropriate. With regard to NRDC's comment on sanctions, U.S. EPA notes that it will be publishing a notice of proposed rulemaking in the **Federal Register** concerning this matter; NRDC may wish to comment in the context of that rulemaking. Finally, since U.S. EPA is disapproving the Indiana submittal in this action, NRDC's comments pertaining to U.S. EPA's authority with regard to conditional approvals is moot.

III. Rulemaking Action

U.S. EPA is disapproving this revision to the Indiana Ozone State Implementation Plan which fails to meet the requirements necessary to develop the required I/M program in the Indiana required areas.

Nothing in this action should be construed as permitting, allowing or establishing a precedent for any future request for revision to any SIP. U.S. EPA shall consider each request for revision to the SIP in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Motor vehicle pollution control, Nitrogen oxide, Volatile organic compounds.

Dated: October 27, 1993.

David A. Ullrich,

Acting Regional Administrator.

For the reasons set out in the preamble, part 52, chapter 1, title 40 of the Code of Federal Regulations is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart P—Indiana

2. Section 52.786 is amended by adding paragraph (h) to read as follows:

§ 52.786 Inspection and maintenance program.

* * * * *

(h) The State's December 2, 1992, commitment to timely adopt and implement enhanced inspection and maintenance (I/M) rules for Lake and Porter Counties is disapproved based on the failure of the State of Indiana to meet important milestones pertaining to the development and adoption of necessary authority for the I/M program. This disapproval initiates the sanction process of section 179(a) of the Act.

[FR Doc. 93–29054 Filed 11–26–93; 8:45 am]

BILLING CODE 6560–50–F

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40 CFR Part 52

[NM–16–1–5735; FRL–4296–5]

Approval and Promulgation of Air Quality Implementation Plans; New Mexico; Revision to the State Implementation Plan Addressing Carbon Monoxide (CO) for Albuquerque/Bernalillo County

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rulemaking.

SUMMARY: This action approves a revision to the New Mexico State Implementation Plan (SIP) addressing CO for Albuquerque/Bernalillo County, outside the boundaries of Indian lands. Certain elements of the complete Albuquerque/Bernalillo County CO SIP were submitted by the Governor of New Mexico to the EPA by cover letter dated November 5, 1992, for the purpose of bringing about the attainment of the National Ambient Air Quality Standards (NAAQS) for CO. These elements satisfy certain Federal requirements for an approvable nonattainment area CO SIP for Albuquerque/Bernalillo County. Therefore, this **Federal Register** (FR) action only approves some of the elements of the complete Albuquerque/Bernalillo County CO SIP, specifically the 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program. The remaining elements of the complete Albuquerque/Bernalillo County CO SIP, to be submitted to the EPA by November 15, 1993, will be acted upon in separate FR actions.

EFFECTIVE DATE: This action will become effective on January 28, 1994, unless notice is received by December 29, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed, timely notice will be published in the **Federal Register.**

ADDRESSES: Written comments on this action should be addressed to Mr. Thomas H. Diggs, Chief, Planning Section, at the EPA Region 6 Office listed. Copies of the documents relevant to this action are available for public inspection during normal business hours at the following locations. The interested persons wanting to examine these documents should make an appointment with the appropriate office at least twenty-four hours before the visiting day.

U.S. Environmental Protection Agency, Region 6, Air Programs Branch (6T-AP), 1445 Ross Avenue, Suite 700,Dallas, Texas 75202–2733.

Mr. Jerry Kurtzweg (ANR–443), U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460.

Albuquerque Environmental Health Department, Air Pollution Control Division, P.O. Box 1293, Albuquerque, New Mexico 87103.

FOR FURTHER INFORMATION CONTACT: Mr. Mark Sather, Planning Section (6T-AP), Air Programs Branch, U.S. EPA Region 6,1445 Ross Avenue, Dallas, Texas 75202–2733, telephone(214) 655–7258.

SUPPLEMENTARY INFORMATION:

Albuquerque/Bernalillo County, New Mexico, was designated nonattainment for CO and classified as moderate with a design value below 12.7 parts per million (ppm.) (specifically 11.1 ppm.), under sections 107(d)(4)(A) and 186(a) of the Clean Air Act (CAA), upon enactment of the Clean Air Act Amendments (CAAA) of 1990. [1] Please

[1] The CAAA of 1990 made significant changes to the air quality planning requirements for areas that do not meet (or that significantly contribute to ambient air quality in a nearby area that does not

Continued

reference 56 FR 56694 (November 6, 1991) and 57 FR 13498 and 57 FR 13529 (April 16, 1992). The air quality planning requirements for moderate CO nonattainment areas with a design value less than or equal to 12.7 ppm. are set out in subparts one and three of part D, Title I of the CAA. Subpart one contains provisions generally applicable to all nonattainment areas and subpart three contains provisions specifically applicable to CO nonattainment areas. Section 104 of the CAAA of 1990 amended part D of Title I of the CAA by adding two additional sections to subpart three (sections 186 and 187), which pertain to the classification of CO nonattainment areas and to the submission requirements of the SIPs for these areas, respectively. At times, subparts one and three overlap or conflict. The EPA has attempted to clarify the relationship among these various provisions in the General Preamble and, as appropriate, in this FR action.

The EPA has issued a "General Preamble" describing the EPA's preliminary views on how the EPA intends to review SIPs and SIP revisions submitted under Title I of the CAA, including those State submittals containing moderate CO nonattainment area SIP requirements (see generally 57 FR 13498 (April 16, 1992) and 57 FR 18070 (April 28, 1992)). Because the EPA is describing its interpretations here only in broad terms, the reader should refer to the General Preamble for a more detailed discussion of the interpretations of Title I advanced in this action and the supporting rationale. In this rulemaking action on certain elements of the Albuquerque/Bernalillo County, New Mexico, complete moderate CO SIP, the EPA is applying its interpretations, taking into consideration the specific factual issues presented.

On November 5, 1992, the Governor of New Mexico submitted to the EPA a SIP revision for CO concerning Albuquerque/Bernalillo County that was intended to satisfy CAA requirements due on November 15, 1992. The CAA outlines certain required items to be included in CO SIPs. The required items for the Albuquerque/Bernalillo County CO SIP, due November 15, 1992, unless otherwise noted, include: (1) A comprehensive, accurate, and current inventory of actual emissions from all sources of CO in the nonattainment area (sections 172(c)(3) and 187(a)(1) of the CAA); (2) no later than September 30, 1995, and no later than the end of each three year period thereafter, until the area is redesignated to attainment, a revised inventory meeting the requirements of sections 187(a)(1) and 187(a)(5) of the CAA;(3) a permit program to be submitted by November 15, 1993, which meets the requirements of section 173 for the construction and operation of new and modified major stationary sources of CO (section 172(c)(5)); (4) contingency measures dueNovember 15, 1993, that are to be implemented if the EPA determines that the area has failed to attain the primary standards by the applicable date (section 172(c)(9)); (5) a commitment to upgrade and submit a SIP revision for the Inspection and Maintenance (I/M) program by November 15, 1993 (section 187(a)(4)); and (6) an oxygenated fuels program (section 211(m)). As outlined below, the State of New Mexico's November 5, 1992, SIP revision for CO concerning Albuquerque/Bernalillo County, a moderate CO nonattainment area, was reviewed against the applicable requirements. The reader is referred to the November 5, 1992, Albuquerque/Bernalillo County CO SIP submittal and the EPA's supporting technical information for pertinent details regarding each requirement. These items are available for public review at the EPA Region 6 address indicated above.

Section 110(k) of the CAA sets out provisions governing the EPA's review of SIP submittals (see 57 FR 13565–13566). In this FR action, the EPA is approving only some of the elements of the complete Albuquerque/Bernalillo County CO SIP, specifically the 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program. The remaining elements of the complete Albuquerque/Bernalillo County CO SIP, to be submitted to the EPA by November 15, 1993, will be acted upon in separate FR actions.

Analysis of City/County Submission

1. Procedural Background

The CAA requires States to observe certain procedural requirements in developing implementation plans and plan revisions for submission to the EPA. Section 110(a)(2) of the CAA provides that each implementation plan submitted by a State must be adopted after reasonable notice and public hearing.[2] See also section 110(l) of the CAA. Also, the EPA must determine whether a submittal is complete and therefore warrants further EPA review and action (see section 110(k)(1) and 57 FR 13565). The EPA's completeness criteria for SIP submittals are set out at 40 CFR part 51, appendix V (1991), as amended by 56 FR 42216 (August 26, 1991). The EPA attempts to make completeness determinations within 60 days of receiving a submission. However, a submittal is deemed complete by operation of law if a completeness determination is not made by the EPA six months after receipt of the submission.

After providing adequate notice, Albuquerque/Bernalillo County held public hearings on September 9, 1992, and onOctober 7, 1992, to entertain public comment on certain elements of the complete CO implementation plan Following the public hearings, these elements were adopted by the City/County and signed by the Governor on November 5, 1992, and submitted to the EPA as a proposed revision to the SIP.

The SIP revision was reviewed by the EPA to determine completeness shortly after its submittal, in accordance with the completeness criteria referenced above. A letter datedJanuary 15, 1993, was forwarded to the Governor indicating the completeness of the submittal and the next steps to be taken in the review process.

2. CO Emission Inventory

Section 172(c)(3) of the CAA requires that nonattainment plan provisions include a comprehensive, accurate, and current inventory of actual emissions from all sources of relevant pollutants in the nonattainment area. Albuquerque/Bernalillo County included the requisite inventory in the CO SIP. The base year for the inventory was 1990, using a three month CO season of November 1990 through January 1991. Stationary point sources, stationary area sources, on-road mobile sources, and nonroad mobile sources of CO were included in the inventory. Stationary sources with emissions of greater than 100 tons per year within a 25-mile buffer of the nonattainment area were also included in the inventory. The following list presents a summary of the CO peak season daily emissions estimates in tons per day by source category: Point Sources, 0.76 tons per day; Area Sources, 66.14 tons per day; Mobile On-Road Sources, 231.69 tons per day; Mobile Nonroad Sources, 41.18 tons per day; Total Sources, 339.77 tons per day. Available guidance for preparing emission inventories is provided in the General Preamble (57 FR 13498, April 16, 1992).

Section 110(k) of the CAA sets out provisions governing the EPA's review

meet) the CO NAAQS (see Pub. L. No. 101–549, 104 Stat. 2399). References herein are to the CAAA, 42 U.S.C. 7401 *et seq.*

[2] Section 172(c)(7) of the Act requires that plan provisions for nonattainment areas meet the applicable provisions of section 110(a)(2).

of base year emission inventory submittals in order to determine approval or disapproval under section 187(a)(1). The EPA is granting approval of the Albuquerque/Bernalillo County 1990 base year CO emissions inventory submitted on November 5, 1992, based on the Level I, II, and III review findings. The following paragraphs outline the review procedures performed on the inventory.

The Level I and II review process is used to determine that all components of the base year inventory are present. The review also evaluates the level of supporting documentation provided by the State, and assesses whether the emissions were developed according to current EPA guidance. The data quality is also evaluated.

The Level III review process is outlined here and consists of nine points that the inventory must include. For a base year emission inventory to be acceptable, it must pass all of the following criteria: (1) An approved Inventory Preparation Plan must be provided and the Quality Assurance contained in the Inventory Preparation Plan must be performed and its implementation documented; (2) adequate documentation must be provided that enables the reviewer to determine the emission estimation procedures and the data sources used to develop the inventory, and summary emissions by categories of source type must be provided; (3) the point source inventory must be complete; (4) point source emissions must have been prepared or calculated according to the current EPA guidance; (5) the area source inventory must be complete; (6) the area source emissions must have been prepared or calculated according to the current EPA guidance; (7) the methods used to develop vehicle miles traveled (VMT) estimates (e.g., a network transportation planning model) must follow EPA guidance, and the VMT methods must be adequately described and documented in the inventory report; (8) the MOBILE model must be correctly used to produce emission factors for each of the vehicle classes; and (9) nonroad mobile emissions must be prepared according to current EPA guidance for all of the source categories.

The base year emission inventory will be approved if it passes Levels I, II, and III of the review process. Detailed Level I and II review procedures can be found in the following document—"Quality Review Guidelines for 1990 Base Year Emission Inventories," U.S. Environmental Protection Agency, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, July 27, 1992. Level III review procedures are specified in a memorandum from John S. Seitz to the Regional Air Division Directors, entitled "Emission Inventory Issues," June 24, 1993.[3]

The EPA is approving this emission inventory as meeting the requirements of section 187(a)(1) of the CAA. The EPA's review of the Albuquerque 1990 base year CO emission inventory provided positive answers to all of the Level III review criteria.Please reference Appendix Two of the Albuquerque/ Bernalillo County CO SIP for specific details on the inventory, and the EPA's Technical Support Document for details of the EPA's evaluation of the inventory. Finally, it should be noted that no later than September 30, 1995, and no later than the end of each three year period thereafter (until the area is redesignated to attainment), Albuquerque/Bernalillo County will be required to submit to the EPA a revised inventory meeting the requirements of sections 187(a)(1) and 187(a)(5) of the CAA.

3. Nonattainment New Source Review Permit Program

Albuquerque/Bernalillo County has submitted new source review (NSR) regulatory revisions to the EPA. These revisions were proposed for approval by the EPA at 57 FR 43653(September 22, 1992). The revisions were due independently of the November 15, 1992, moderate CO nonattainment area SIP requirements addressed in this FR action. Please reference the above FR notice. In the proposed approval actions, the EPA outlined certain amendments to be made by the City of Albuquerque to their NSR program before the EPA could process the final approval actions. The City has adopted the required amendments and submitted them to the EPA by cover letter from the Governor dated May 17, 1993. The final approval action of the Albuquerque/ Bernalillo County nonattainment NSR permit program will be addressed in detail in a separate FR action.

4. Contingency Measures

As per section 172(c)(9) of the CAA, all nonattainment SIPs must contain contingency measures (due November 15, 1993) that are to be implemented if the area fails to make reasonable further progress (RFP) or to attain the NAAQS by the applicable date. These contingency measures are to be implemented immediately after the EPA determines failure of RFP or attainment of standards. The contingency measures for the Albuquerque/ Bernalillo County CO SIP, due independently of the November 15, 1992, moderate CO nonattainment area SIP requirements addressed in this FR action, will be addressed in a separate FR action after the November 15, 1993, submittal due date.

5. I/M SIP Revision

Section 187(a)(4) of the CAA provides a savings clause for vehicle I/M programs. All moderate CO nonattainment SIPs must include a vehicle I/M program as described in section 182(a)(2)(B). Albuquerque/ Bernalillo County has adopted and is currently implementing an I/M program. Albuquerque/Bernalillo County has also submitted a committal SIP to the EPA, per provisions of the General Preamble (57 FR 13530), stating that a comprehensive SIP revision will be submitted to the EPA by November 15, 1993, which will upgrade the existing Albuquerque/Bernalillo County I/M program to meet the new requirements mandated by the CAAA of 1990. The EPA will act on the committal SIP, and will act upon the final I/M program, in separate FR actions.

6. Oxygenated Fuels Program

Motor vehicles are significant contributors of CO emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen, contained within the oxygenate in the fuel, enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the CAA requires that various States submit revisions to their SIPs and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all States with CO nonattainment areas with design values of 9.5 ppm. or more, which is based generally on 1988 and 1989 data. Each State's oxygenated gasoline program must require gasoline sold or dispensed in the specified control area to contain not less than 2.7 percent oxygen by weight during that portion of the year in which the area is prone to high ambient concentrations of CO (the control period).

The EPA announced guidance on the establishment of control periods, by

[3] Memorandum from John S. Seitz, Director, Office of Air Quality Planning and Standards, to the Regional Air Division Directors, entitled "Emission Inventory Issues," U.S. EPA, Office of Air Quality Planning and Standards, Research Triangle Park, North Carolina, June 24, 1993.

area, in the FR on October 20, 1992.[4] The EPA also announced the availability of oxygenated gasoline credit program guidelines in the October 20, 1992, FR.[5] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e., an oxygen content greater than 2.7 percent by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. As an alternate to the credit program, the State may elect a program in which a minimum of 2.7 percent by weight oxygen must be present in every gallon of gasoline sold.

The EPA also issued labeling regulations under section 211(m)(4) of the CAA. These labeling regulations were published in the **Federal Register** on October 20, 1992.[6]

The City of Albuquerque has adopted an Oxygenated Fuel Program that covers the County of Bernalillo, New Mexico (the control area), which is also the Albuquerque Metropolitan Statistical Area. In this action, the EPA is approving the oxygenated fuel program, based on Albuquerque/Bernalillo County Regulation 35–*Alternative Fuels*. The control period for the program is from November 1 of one year to February 28 or 29 of the following year, and the program is one in which all oxygenated gasoline must contain a minimum oxygen content of 2.7 percent by weight of oxygen. The City/County has adopted labeling regulations, enforcement procedures, and oxygenate test methods in conformity with Federal regulations. For further details of the oxygenated fuels program, the reader is referred to the Technical Support Document.

7. Winter Woodburning Program

The City/County also included its episodic woodburning curtailment program in the November 5, 1992, CO SIP submittal. This program was not required to be submitted as a part of the CO SIP, but was included per an earlier separate request of the EPA regarding particulate control in the Albuquerque area. However, significant reductions of CO have also resulted from the implementation of this program, based on Regulation 34–*Woodburning*. In this action, the EPA is approving the provisions found in Regulation 34, as well as a commitment letter dated March 22, 1993, from Sarah B. Kotchian, Director, Albuquerque Environmental Health Department, to A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6, pertaining to the correction of an enforceability deficiency in Regulation 34. Please refer to the Technical Support Document for details regarding Regulation 34 and the commitment letter.

8. Enforceability Issues

All measures and other elements in the SIP must be enforceable by the State and the EPA (see sections 172(c)(6), 110(a)(2)(A) and 57 FR 13556). The EPA criteria addressing the enforceability of SIPs and SIP revisions were stated in a September 23, 1987, memorandum (with attachments) from J. Craig Potter, Assistant Administrator for Air and Radiation, et. al. (see 57 FR 13541). The criteria include, for example: ensuring that the rules contained in the SIP are explicit in their applicability to the regulated sources; ensuring that compliance dates are clearly specified; ensuring that compliance periods and test methods are clearly noted; ensuring that adequate recordkeeping is required; and ensuring that any exemptions or variances are clear in their applicability and in how they are triggered. In addition to enforceable requirements, nonattainment area plan provisions must contain a program that provides for enforcement of the control measures and other elements in the SIP (see section 110(a)(2)(C)).

The City of Albuquerque/Bernalillo County has an enforcement program that will ensure that certain control measures contained in the Albuquerque/Bernalillo County CO SIP (i.e., the oxygenated fuels and winter woodburning programs) are adequately enforced. The City/County has also submitted a commitment letter to the EPA pertaining to the correction of an enforceability deficiency in Regulation 34 regarding the winter woodburning program.

Final Action

The EPA in this action is approving the following elements of the complete Albuquerque/Bernalillo County CO SIP: The 1990 base year CO emissions inventory, the oxygenated fuels program, and the winter woodburning program, which were submitted by the Governor to the EPA by cover letter dated November 5, 1992. The remaining elements of the complete Albuquerque/Bernalillo County CO SIP, to be submitted to the EPA by November 15, 1993, will be acted upon in separate FR actions.

The EPA has reviewed these revisions to the New Mexico SIP and is approving them as submitted. The EPA is publishing this action without prior proposal because the Agency views this as a noncontroversial amendment and anticipates no adverse comments. This action will be effective January 28, 1994, unless, by December 29, 1993, notice is received that adverse or critical comments will be submitted.

If such notice is received, this action will be withdrawn before the effective date by publishing two subsequent notices. One notice will withdraw the final action, and another will begin a new rulemaking by announcing a proposal of the action and establishing a comment period. If no such comments are received, the public is advised that this action will be effective January 28, 1994.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economical, and environmental factors, and in relation to relevant statutory and regulatory requirements.

Miscellaneous

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, the EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities (5 U.S.C. 603 and 604). Alternatively, the EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D, of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of State action. The CAA forbids the EPA to base its actions concerning SIPs on such grounds

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[4] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the CAAA—Notice of Availability," 57 FR 47849 (October 20, 1992).

[5] See footnote 4. The EPA was issued guidelines for credit programs under section 211(m)(5) of the CAA.

[6] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended—Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found at 40 CFR part 80, § 80.35.

(*Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (1976); 42 U.S.C. 7410(a)(2)).

Under section 307(b)(1) of the CAA, petitions for judicial review of this action must be filed in the United States Court of Appeals for the appropriate circuit by January 28, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

Executive Order 12866

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Environmental protection, Incorporation by reference, Intergovernmental relations, Particulate matter, Reporting and recordkeeping requirements.

Note: Incorporation by reference of the SIP for the State of New Mexico was approved by the Director of the Federal Register on July 1, 1982.

Dated: October 25, 1993.

Myron O. Knudson,

Acting Regional Administrator.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart GG—New Mexico

2. Section 52.1620 is amended by adding paragraph (c)(52) to read as follows:

§ 52.1620 Identification of plan.

* * * * *

(c)* * *

(52) A revision to the New Mexico SIP addressing CO for Albuquerque/Bernalillo County was submitted by the Governor of New Mexico by letter dated November 5, 1992.

(i) Incorporation by reference.

(A) Albuquerque/Bernalillo County Regulation 34–Woodburning, section 34.00, "Purpose;" section 34.01, "Definitions;" section 34.02, "Sale of New Wood Heaters–Certification Required;" section 34.03, "No-burn Periods;" section 34.04, "Notice Required;" Section 34.05, "Exemptions;" section 34.06, "Visible Emissions;" section 34.07, "Test Procedures;" and section 34.08, "Misfueling of Solid Fuel Heating Devices Prohibited," as filed with the State Records and Archives Center on November 27, 1991.

(B) Albuquerque/Bernalillo County Regulation 35–Alternative Fuels, section 35.00, "Purpose;" section 35.01, "Definitions;" section 35.02, "Oxygenated Fuels;" section 35.03, "Oxygenated Fuels Procedures Manual;" and section 35.07, "Severability Clause," as filed with the State Records and Archives Center on June 25, 1992.

(ii) Additional material.

(A) November 5, 1992, narrative plan addressing the Albuquerque/Bernalillo County CO nonattainment area, including the Albuquerque/Bernalillo County 1990 base year CO emissions inventory.

(B) A letter dated March 22, 1993, from Sarah B. Kotchian, Director, Albuquerque Environmental Health Department (Department), to A. Stanley Meiburg, Director, Air, Pesticides and Toxics Division, EPA Region 6, in which the Department committed to submitting future amendments to Regulation 34 to correct an enforceability deficiency, and in which the Department committed to using only EPA approved test methods until the future amendment correcting the enforceability deficiency is approved by the EPA.

(C) A memorandum dated September 8, 1992, from Kent A. Salazar, Manager, Albuquerque Vehicle Pollution Management Division, to Albert Salas, Quality Assurance Specialist Supervisor, Albuquerque Vehicle Pollution Management Division, addressing the suspension of the oxygenated fuels program due to oxygenate shortage.

[FR Doc. 93–29055 Filed 11–26–93; 8:45 am]

BILLING CODE 6560–50–F

40 CFR Part 63

[AS-FRL–4806–2]

National Emission Standards for Hazardous Air Pollutants; Amendments to Compliance Extensions for Early Reductions

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to section 112(i)(5) of the Clean Air Act (Act), a rule was promulgated in the **Federal Register** on December 29, 1992 to implement granting extensions to compliance with section 112(d) emission standards to sources that have achieved early reductions of hazardous air pollutants (HAPs). This action makes several amendments to the original Early Reductions Rule including: (1) Revisions to the deadlines for submitting permit applications, reduction demonstrations, and source testing results, (2) a clarification of the status of an enforceable commitment under certain situations, and (3) correction of a typographical error regarding the high-risk weighting factor for hexachlorocyclopentadiene. As EPA began implementation of the Early Reductions Rule it became apparent that certain timing problems existed with respect to demonstrations that early reductions had been achieved and the issuance of permits to sources that qualify for a compliance extension. Additionally, some questions were posed by potential program participants on the nature of enforceable commitments. This action is needed to alleviate the timing problems and clarify EPA's treatment of enforceable commitments. The intended results are to improve EPA's ability to determine that actual reductions are achieved before a compliance extension is granted, to make the permit issuance process more workable, and make the provisions of the Early Reductions Program more clear to potential participants.

EFFECTIVE DATE: November 29, 1993.

Docket. All information used in the development of this final action is contained in the preamble below. However, Docket No. A–90–47, containing the supporting information for the original Early Reductions Rule, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at EPA's Air Docket Section, Waterside Mall, room M–1500, 1st floor, 401 M Street SW., Washington DC 20460. A

reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: Mr. David Beck, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 2771, telephone (919) 541–5421.

SUPPLEMENTARY INFORMATION: The information presented in this preamble is organized as follows:

I. Background
II. Summary of and Rationale for Rule Changes
A. Early Reductions Demonstration
B. Permit Application Deadlines
C. Enforceable Commitments
D. Hexachlorocyclopentadiene
E. Effective Date
F. Judicial Review
III. Administrative Requirements

I. Background

The Clean Air Act Amendments of 1990 revised section 112 of the Act, which directs EPA to establish national emission standards for sources of HAP. One of the new provisions, section 112(i)(5), offers sources that emit HAPs an incentive for achieving substantial emission reductions earlier than would be required by standards promulgated under section 112(d). Specifically, the early reductions provision allows granting an existing source emitting HAPs a six-year compliance date extension for an applicable section 112(d) standard, upon demonstration by the owner or operator that the source has achieved, prior to certain dates, a HAP reduction of 90 percent or more from established base year HAP emission levels (95 percent reduction is required for sources emitting particulate HAP).

Generally, participating sources would have to achieve the 90 (95) percent reduction prior to proposal of an applicable section 112(d) standard. However, sources that would be subject to early section 112(d) standards also have the option of participating by submitting to EPA, prior to proposal of an applicable section 112(d) standard, an enforceable commitment to achieve the 90 (95) percent reduction before January 1, 1994. Sources successfully demonstrating qualifying HAP reductions would be granted the compliance extension in a permit issued pursuant to title V of the Act. The permit would establish an alternative emission limitation to be met by the source to ensure that the early reductions are maintained.

On December 29, 1992, EPA promulgated in the **Federal Register** (57 FR 61970) an implementing rule for the early reductions provisions of the Act. As incorporated in the Code of Federal Regulations under title 40, part 63, subpart D, the Early Reductions Rule established procedures and requirements for source owners or operators wishing to obtain the six-year compliance extension. Among other provisions, the rule contains guidelines for demonstrating achievement of qualifying early reductions and established deadlines by which owners or operators must file permit applications to request a compliance extension.

II. Summary of Rule Changes and Rationale

A. Early Reductions Demonstration

According to section 112(i)(5), the early reductions are to be demonstrated with respect to verifiable and actual emissions in a base year not earlier than calendar year 1987. The EPA's interpretation of this language was that total actual HAP emissions from the source over the entire base year (calendar year basis) is the benchmark from which the early reductions will be measured. The Early Reductions Rule implemented this interpretation and required owners or operators to establish base year emissions using "the best available data accounting for actual emissions, during the base year, of all hazardous air pollutants from each emission point listed in the source * * *". As an example, an early reductions source may have actual HAP emissions of 100 tons in the base year selected.

To determine whether a source's reductions qualify for a compliance extension, post-reduction emissions must be established on a similar basis and compared to base year emissions. The Early Reductions Rule specifies post-reduction emissions as "the best available data on an annual basis accounting for actual emissions, after the base year and following employment of emission reduction measures, of all hazardous air pollutants from each emission point in the source * * *". Therefore, the source in the example from the preceding paragraph with base year emissions of 100 tons per year would be required to document actual post-reduction HAP emissions on a tons per year basis as well.

As stated previously, to obtain a compliance extension, a participating source must achieve sufficient reductions before proposal of an applicable section 112(d) standard or, for sources making enforceable commitments, before January 1, 1994. Emission reduction projects completed on the day before the applicable deadline would count toward the early reduction target of an overall 90 (95) percent reduction. However, after the deadline passes, the source would be expected to emit HAP at the 90 (95) percent reduced level on an annual basis. Therefore, a source having actual HAP emissions of 100 tons in the base year would be expected to emit 10 tons or less of actual HAP emissions during the year following the proposal date of an applicable 112(d) standard to qualify for a compliance extension. (And, of course, would have to maintain that level until the compliance extension expires). For sources making enforceable commitments, actual HAP emissions would have to be 10 tons or less during calendar year 1994 to qualify.

The Early Reductions Rule also required participants to request compliance extensions in the context of title V permit applications. The applications were to consist of two main parts: (1) The demonstration that early reductions had been achieved and (2) permit terms and conditions, including emission limits, monitoring methods, and recordkeeping and reporting requirements proposed by the owner or operator for the early reductions source. Applications had to be filed before proposal of an applicable standard or, for sources making enforceable commitments, by December 1, 1993. The combined requirements, to file permit applications on or before the date emission reductions have to be achieved and to include the reduction demonstration in the permit application, essentially precludes the source owner or operator from demonstrating post-reduction "actual" HAP emissions as envisioned by the early reductions provision of the Act. To provide a reduction demonstration under this scenario, the participant has to project what emissions will be for the post-reduction year. In most cases, this would mean that short-term emission rates for the emitting units in the early reductions source would have to be extrapolated using expected production conditions for the post-reduction year.

Such a situation is not satisfactory to ensure that sufficient early reductions actually are achieved before a compliance extension is granted. The HAP emission rate from a source can be expected to vary during a year due to seasonal factors, shifting production schedules, changing product mixes, or other factors. Therefore, it is possible that a source that can show a low emission rate the day before proposal of an applicable section 112(d) standard may have a much higher HAP emission

rate days, weeks, or months later. With the language in the Early Reductions Rule promulgated on December 29, 1992, it would be possible to grant a compliance extension to a source that never emits 90 (95) percent less than base year emissions, solely based on a "future-actual" extrapolation of a low, short-term, emission rate. Following through on the example of the source having base year emissions of 100 tons per year, suppose the source has made an enforceable commitment and on December 1, 1993 submits a permit application and a reduction demonstration showing that on November 20, 1993 emissions were 50 pounds per day. Based on that rate, the source projects 1994 emissions to be 18,250 lbs. or 9.1 tons per year (50 lbs. per day multiplied by 365 days) and would be eligible to obtain a compliance extension. However, since no permit would be in place for the source and wouldn't be until the title V permit is issued late in 1994, no monitoring and reporting requirements apply and EPA may never be sure that 1994 actual emissions would achieve the predicted level.

To rectify the apparent discrepancy between the promulgated Early Reductions Rule and the intent of the early reductions provisions of the Act regarding the demonstration of early reductions, EPA is making several changes to the rule. The demonstration of early reductions no longer will accompany the permit application. Rather, the reduction demonstration will be required after the end of the post-reduction year, which is the year following proposal of an applicable section 112(d) standard or calendar year 1994, for sources making enforceable commitments. Specifically, participants will have to submit reduction demonstrations after the end of the post-reduction year but within 13 months of the proposal date of an applicable emission standard or, for sources subject to enforceable commitments, by January 31, 1995. The description of post-reduction emissions from the promulgated Early Reductions Rule [§ 63.74(d)(2)] has been revised to state specifically that actual emissions for the post-reduction year must be demonstrated.

These changes ensure that EPA will receive an accounting of post-reduction emissions for the year immediately after the reduction deadline and ensure that no compliance extensions will be granted until actual post-reduction emissions are demonstrated and approved for the year after the reduction deadline. Early Reductions participants will have to track post-reduction emissions to make the year end demonstration, and EPA recommends that sources institute the monitoring procedures that the source will propose in the permit application to help in documenting post-reduction emissions.

Related to the revised requirement for demonstrating early reductions, two paragraphs from the original rule have been deleted. The first is § 63.74(d)(4) which required the owner or operator to submit evidence that emission reductions used to qualify for a compliance extension were achieved prior to the applicable reduction deadline. This provision was rendered superfluous by the change to require the post-reduction emission demonstration to represent actual emissions during the year after the applicable reduction deadline, instead of a projection of what actual post-reduction emissions likely would be. In other words, the criterion to determine whether the reduction deadline was met will be the showing that actual emissions in the post-reduction year were low enough to qualify the source for a compliance extension.

The second paragraph deleted is § 63.74(i), which instructed owners or operators to extrapolate post-reduction emission rates to an annual basis. Similar to the provision discussed in the above paragraph, this provision is now unnecessary because the post-reduction emissions demonstration no longer will be a prediction of emission levels for the post-reduction year.

B. Permit Application Deadlines

Two other date changes are being made to the Early Reductions Rule, primarily as a result of the change to the reduction demonstration submittal date. First, the permit application deadlines for sources participating in the Early Reductions Program have been revised. Originally, sources that had not made enforceable commitments were to submit applications by the date of proposal of the applicable section 112(d) standard or, if later, within 120 days of approval of the involved State's title V permit program. The revised deadline is 120 days after proposal of the applicable section 112(d) standard or, if later, within 120 days of establishment of a title V permit program (either a State or federal program). For sources that have made enforceable commitments, the application date is revised from December 1, 1993 to April 30, 1994.

Permits for early reductions sources are to be issued within 12 months of receipt of a complete application, and under the previously promulgated application dates, EPA technically could be required to issue permits before the post-reduction demonstration could be evaluated and a decision made on whether to grant a compliance extension. Moving the application submittal date to 120 days after proposal of an applicable section 112(d) standard, or April 30, 1994 for sources making enforceable commitments, would more closely match the date EPA must issue a permit with the date EPA would be ready to do so.

Another reason for delaying the December 1, 1993 application deadline for sources subject to enforceable commitments is that no title V permitting mechanism will be in place at that time. The December 1, 1993 deadline presumed that a title V permitting mechanism, either approved State title V programs or a promulgated federal title V program, would be operational by that time to process applications, and that such a program would be operational sufficiently ahead of the deadline to allow sources time to compose permit applications based on the permit program requirements. However, this is not the case. States likely will not obtain approval of their title V permit programs until late in 1994, or later, and a federal program for issuing title V permits probably will not be promulgated until 1995. Therefore, there will be no title V permitting mechanism in place before December 1, 1993.

To fill the permitting mechanism void, EPA intends to promulgate a specialty title V program solely for the purpose of processing and issuing permits for sources participating in the early reductions program. However, that program has not yet been promulgated, and probably won't be until mid-1994. At best, a specialty title V permit program will have just been proposed by the December 1, 1993 deadline, leaving little to no time for Early Reductions Program participants to see the proposed permit program requirements and prepare applications for submission. Revising the deadline to April 30, 1994 alleviates this problem.

Since the specialty permit program likely will not have been promulgated by the new April 30, 1994 deadline, participants will have to compose permit applications based on the proposed specialty program. In the event that there are significant changes between the proposed and promulgated versions of the specialty permit program, participants would be have to amend their permit applications to accommodate the changes.

The second change revises the deadline for submittal of source test results for sources subject to enforceable

commitments. The promulgated Early Reductions Rule, although requiring the post-reduction emission demonstration to accompany the permit application, allowed owners or operators to submit source test results in support of post-reduction emissions as late as 120 days after the deadline for submitting permit applications, or for sources subject to enforceable commitments, March 31, 1994. The later submittal of test results allowed sources that had implemented reduction measures just before the early reduction deadline time to perform source tests and analzye and compile the results. The test result submittal date for sources subject to enforceable commitments is being revised to April 30, 1994, coinciding with the revised permit application date for such sources. The date is not revised for other sources since it already coincides with the revised permit application date.

It may seem incongruent that the post-reduction emission demonstration does not have to be submitted until after the post-reduction year has ended, yet the results from any source testing done to support post-reduction emissions must be submitted well ahead of that time. However, the point of asking for test results earlier is to see that any planned source tests are performed early in the post-reduction year, thereby giving a timely indication of the performance of emission reduction measures. Allowing tests to be performed late in the post-reduction year would not ensure detection of initial emissions levels during the post-reduction year. It is emphasized that submittal of test results does not constitute the post-reduction emissions demonstration. Test results or other indications of short-term emission levels would have to be coupled with relevant monitoring information over the year to demonstrate actual, annual, post-reduction HAP emissions for the early reductions source. Relevant monitoring information could include monitoring emissions directly or monitoring process parameters or control device parameters that are related to emissions performance.

C. Enforceable Commitments

A new paragraph § 63.75(f) is added to clarify the status of enforceable commitments that have not been approved and are still undergoing the approval process. An enforceable commitment includes a description of the early reductions source, associated HAP emission estimates for the base year selected, and a commitment to reduce HAP emissions by 90 (95) percent before January 1, 1994. The EPA will review and approve/disapprove base year emissions contained in an enforceable commitment according to the procedures in § 63.76 of the Early Reductions Rule. This process was instituted to help verify the technical adequacy and representativeness of base year emission estimates and, in turn, assure that the resulting target post-reduction emission levels are appropriate to qualify sources for compliance extensions.

If EPA finds base year emissions to be deficient in some way, the source must revise the enforceable commitment to take into account EPA's comments. If the source owner or operator cannot or chooses not to respond to EPA comments on the base year emission estimates, the source will be considered withdrawn from the program. Without EPA approval of base year emissions, an enforceable commitment is not in effect and is not enforceable. The new language under § 63.75(f) clarifies this point and the fact that when an unapproved enforceable commitment is still undergoing the approval process after the date commitments can be withdrawn without penalty (December 1, 1993), the source does not have to continue to seek approval of the commitment and will not be subject to enforcement action. Once again, the enforceable commitment must be approved to be in effect and enforceable.

A related concern raised to EPA is whether a source that has made an enforceable commitment and that has demonstrated achieving the required reductions must actually receive the compliance extension and be issued the title V permit, or could the source give up the extension and simply meet the applicable section 112(d) standard on schedule and without penalty? This question arose from a concern expressed by potential participants that some of the terms and conditions imposed in a permit issued to an early reductions source may be rigorous to the point that the source owner or operator would prefer compliance with the applicable standard under section 112(d) of the Act. While EPA considers the possibility of such a scenario remote, it is acknowledged that the terms and conditions of permits issued to early reductions sources may be more individualized and subject to judgements made by the permitting authority than permits issued to similar sources complying with section 112(d) standards. For example, section 112(d) standards likely will specify monitoring requirements for subject sources, which will then be implemented in title V permits, whereas the monitoring requirements for emission reduction measures employed by an early reductions source must be generated through reasoned application of existing information on monitoring similar sources in similar situations.

Should the scenario in the above paragraph arise, the source owner or operator could withdraw from the Early Reductions Program without penalty provided that the terms of the enforceable commitment were met. In an enforceable commitment, an owner or operator commits to achieving before January 1, 1994 a 90 (95) percent reduction in emissions from the established base year HAP emission level at the early reductions source. If the owner or operator submits a demonstration (as defined by the amended Early Reductions Rule) that promised reductions had been achieved before the deadline and that demonstration is approved by EPA, then the terms of the enforceable commitment will have been met and the source could decide to forego receiving the compliance extension and instead meet the applicable section 112(d) standard on schedule, without penalty.

D. Hexachlorocyclopentadiene

Finally, the high-risk weighting factor for hexachlorocyclopentadiene (CAS No. 77474) as listed in Table 1 of § 63.74 is corrected to read "10" instead of "100." This change simply corrects a typographical error from the publication of the Early Reductions Rule.

E. Effective Date

The EPA is publishing this rule as a final rule, and it is effective immediately upon publication. The Agency believes that this action is supported by the "good cause" exception in the Administrative Procedures Act, which permits an agency for "good cause" to proceed directly to a final rule where issuing a proposed rule would be "impracticable, unnecessary, or contrary to the public interest" (5 U.S.C. 553(b)(B)) and for "good cause found" (5 U.S.C. 553(d)) to dispense with the general requirement that a rule be published 30 days before its effective date. The EPA believes that "good cause" exists here to issue a final, immediately effective rule because of the nearness of the December 1, 1993 permit application deadline (for sources that have made enforceable commitments) specified in the December 29, 1992 version of the Early Reductions Rule. If the changes in this rulemaking were only being proposed, then the December 1, 1993 application date would still be in effect and this would negate the intent of the changes such as delaying the permit application date until April 30, 1994 for sources that have made enforceable commitments.

Furthermore, EPA views this action, which delays information submissions but improves accounting measurements, as noncontroversial.

F. Judicial Review

Under section 307(b)(1) of the Act, judicial review of the actions taken by this final rule is available only by the filing of a petition for review in the U.S. Court of Appeals for the District of Columbia Circuit within 60 days of publication of this action. Under section 307(b)(2) of the Act, the requirements that are the subject of this final rule may not be challenged later in civil or criminal proceedings brought by EPA to enforce these requirements.

III. Administrative Requirements

A. Paperwork Reduction Act

The information collection requirements of the previously promulgated Early Reductions Rule (57 FR 61970) were submitted to and approved by the Office of Management and Budget. A copy of this Information Collection Request (ICR) document (OMB control number 2060–0222) may be obtained from Sandy Farmer, Information Policy Branch (PM–223Y); U.S. Environmental Protection Agency; 401 M Street, SW.; Washington, DC 20460 or by calling (202) 260–2740. Today's changes to the Early Reductions Rule do not affect the information collection burden estimates made previously, only the timing of submittal of the information requested has been affected somewhat. Therefore, the ICR has not been revised.

B. Executive Order 12866 Review

This rule was classified "non-significant" under Executive Order 12866 and, therefore was not reviewed by the Office of Management and Budget.

C. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires the identification of potentially adverse impacts of federal regulations upon small business entities. The Act specifically requires the completion of a Regulatory Flexibility Analysis in those instances where small business impacts are possible. Because this rulemaking imposes no adverse economic impacts, a Regulatory Flexibility Analysis has not been prepared.

Pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this rule will not have a significant economic impact on a substantial number of small business entities.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous air pollutants, Reporting and recordkeeping requirements.

Dated: November 22, 1993.

Carol M. Browner,

Administrator.

For the reasons set out in the preamble, 40 CFR part 63 is amended as follows:

PART 63—[AMENDED]

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401 et seq.

2. In § 63.74 paragraph (d)(2) is revised and paragraphs (d)(4) and (i) are removed and reserved as follows:

§ 63.74 Demonstration of early reduction.

* * * * *

(d) * * *

(2) The best available data accounting for actual emissions, during the year following the applicable emission reduction deadline as specified in § 63.72(a)(2), of all hazardous air pollutants from each emission point in the source listed pursuant to paragraph (b)(2) of this section.

* * * * *

(d)(4) (Reserved).

* * * * *

(i) (Reserved).

* * * * *

3. In § 63.74 Table 1 entitled "List of High-Risk Pollutants," the entry for "hexachlorocyclopentadiene" (CAS No. 77474) is revised to read as follows:

§ 63.74 Demonstration of early reduction.

* * * * *

TABLE 1.—LIST OF HIGH RISK POLLUTANTS

Cas. No.	Chemical	Weighting factor
.	.	.
77474 ...	Hexachlorocyclopentadiene.	10
.	.	.

4. Section 63.75 is amended by adding paragraph (f) to read as follows:

§ 63.75 Enforceable commitments.

* * * * *

(f) An enforceable commitment submitted under this section shall not be in effect and enforceable until the base year emissions contained in the commitment have been approved according to the procedures in § 63.76. An owner or operator is under no obligation to continue to seek approval of commitments that have not been approved by December 1, 1993.

5. Section 63.77 is revised to read as follows:

§ 63.77 Application procedures.

(a) To apply for an alternative emission limitation under § 63.72, an owner or operator of the source shall file a permit application with the appropriate permitting authority.

(b) Except as provided in paragraph (e) of this section, the permit application shall contain the information required by § 63.74, as applicable, and the additional information required for a complete permit application as specified by the applicable permit program established pursuant to title V of the Act.

(c) Permit applications under this section for sources not subject to enforceable commitments shall be submitted by the later of the following dates:

(1) 120 days after proposal of an otherwise applicable standard issued under section 112(d) of the Act; or

(2) 120 days after the date an applicable permit program is approved or established pursuant to title V of the Act.

(d) Permit applications for sources subject to enforceable commitments pursuant to § 63.75 shall be submitted no later than April 30, 1994.

(e) The post-reduction emissions information required under § 63.74 (d)(2), (d)(3), and (d)(5) shall not be filed as part of the initial permit application but shall be filed later as a supplement to the application. This supplementary information shall be filed no earlier than one year after the date early reductions had to be achieved according to § 63.72(a)(2) and no later than 13 months after such date.

(f) If a source test will be the supporting basis for establishing post-reduction emissions for one or more emissions units in the early reductions source, the test results shall be submitted by the applicable deadline for submittal of a permit application as specified in paragraph (c) or (d) of this section.

(g) Review and disposition of permit applications submitted under this section will be accomplished according to the provisions of the applicable permit program established pursuant to title V of the Act.

[FR Doc. 93–29143 Filed 11–26–93; 8:45 am]

BILLING CODE 6560–50–P

40 CFR Part 81

[CA-44-1-5804; FRL-4807-3]

Designation of Areas for Air Quality Planning Purposes; California

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: Pursuant to the Clean Air Act as amended November 15, 1990 (Act), the Environmental Protection Agency (EPA) is authorized to redesignate areas (or portions thereof) as nonattainment for the PM–10 (particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers) national ambient air quality standards (NAAQS). Additionally, under this section of the Act, the Governor of any state (or his/her designee) may, on the Governor's own motion, submit to EPA a revised designation of any area or portion of an area in a state. EPA, in turn, must approve or deny such redesignation.

In this final action, EPA is approving the California Air Resources Board's (CARB) (the Governor's designee) recommendation regarding the PM–10 designation for the Mono Basin portion of Mono County, California. EPA is taking final action to revise the PM–10 designation for this area from "unclassifiable" to "nonattainment." The redesignation is based upon recorded violations of the PM–10 NAAQS which occurred on or after January 1, 1989. A more detailed discussion regarding the Mono Basin portion of Mono County is provided in the following portions of this notice.

EFFECTIVE DATE: December 29, 1993.

ADDRESSES: Information supporting this final action can be obtained by contacting: Wallace Woo, Chief, Plans Development Section, Air Planning Branch (A–2–2), United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1207.

FOR FURTHER INFORMATION CONTACT:

Stephanie Valentine, Plans Development Section (A–2–2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1178.

Barbara A. Bates (PM–10), Plans Development Section (A–2–2), Air Planning Branch, United States Environmental Protection Agency, Region IX, 75 Hawthorne Street, San Francisco, California, 94105, (415) 744–1206.

SUPPLEMENTARY INFORMATION:

I. PM–10 Background

On July 1, 1987, EPA revised the NAAQS for particulate matter (52 FR 24634), replacing total suspended particulates as the indicator for particulate matter with a new indicator called "PM–10" that includes only those particles with an aerodynamic diameter less than or equal to a nominal 10 micrometers ("μ"). At the same time, EPA set forth regulations for implementing the revised particulate matter standards and announced EPA's State implementation plan (SIP) development policy elaborating PM–10 control strategies necessary to assure attainment and maintenance of the PM–10 NAAQS (see generally 52 FR 24672). EPA adopted a PM–10 SIP development policy dividing all areas of the country into three categories based upon their probability of violating the new NAAQS: (1) Areas with a strong likelihood of violating the new PM–10 NAAQS and requiring substantial SIP adjustments were placed in Group I; (2) areas that might well have been attaining the PM–10 NAAQS and whose existing SIP's most likely needed less adjustment were placed in Group II; (3) areas with a strong likelihood of attaining the PM–10 NAAQS and, therefore, needing adjustments only to their preconstruction review program and monitoring network were placed in Group III (52 FR 24672, 24679–24682).

Pursuant to sections 107(d)(4)(B) and 188(a) of the Act, areas previously identified as Group I, as well as Group II and Group III areas which had monitored violations of the PM–10 NAAQS prior to January 1, 1989 were, by operation of law upon enactment of the 1990 Amendments to the Clean Air Act (Pub. L. No. 101–549, 104 Stat. 2399), designated as moderate nonattainment areas for PM–10. All other areas of the country with no violations of the PM–10 NAAQS prior to January 1, 1989, including Mono Basin, were designated as unclassifiable for PM–10 by operation of law upon enactment of the 1990 Amendments [section 107(d)(4)(B)(iii) of the Act]. Formal codification in 40 CFR part 81 of those areas designated nonattainment and unclassifiable for PM–10 by operation of law upon enactment was announced in a **Federal Register** notice dated November 6, 1991 (56 FR 56694). See also 57 FR 56762 (November 30, 1992).

II. EPA's Final Action to Redesignate Mono Basin

On the basis of air quality data, planning and control considerations, or any other air quality-related considerations the Administrator deems appropriate, EPA is authorized to initiate redesignation of unclassifiable areas (or portions thereof) as nonattainment for PM–10 pursuant to section 107(d)(3) of the Act by notifying the state that available information indicates that the designation of the area should be revised. After providing an opportunity for the State to respond, EPA must promulgate the redesignation that EPA deems necessary and appropriate, consistent with section 107(d)(3)(C) of the Act. In addition, section 107(d)(3)(D) provides that a Governor of a state (or his/her designee) may, on his or her own initiative, submit to EPA a revised designation of an area within the state. EPA must approve or deny the redesignation.

In a letter to EPA, dated August 1, 1991, the California Air Resources Board (CARB), the Governor's designee, recommended that EPA redesignate the Mono Basin portion of Mono County as nonattainment for the 24-hour PM–10 NAAQS. In a **Federal Register** notice dated July 16, 1993 (58 FR 38331) EPA proposed to approve redesignation of the Mono Basin as nonattainment for PM–10 and solicited comments on this proposal. The public comment period closed August 16, 1993.

As described in more detail in the proposal, exceedances of the 24-hour PM–10 NAAQS were measured at the Warm Springs monitoring site in 1988 and 1990 (the monitor did not operate during 1989 for reasons unrelated to air quality). Two such exceedances were monitored in 1991. Four exceedances were measured in the area during 1992, two at the Warm Springs monitoring site and two at the Simis Ranch site.

Section 107(d)(1)(A) of the Act sets out definitions of nonattainment, attainment, and unclassifiable status. These definitions provide the applicable legal standard for designations or redesignations to the relevant attainment status. A nonattainment area is defined as any area that does not meet, or that significantly contributes to ambient air quality in a nearby area that does not meet, the national primary or secondary ambient air quality standard for the relevant pollutant [see section 107(d)(1)(A)(i) [1]]. The exceedance monitored in the Mono Basin area demonstrate that the area does not meet the 24-hour PM–10 NAAQS. Further, in determining appropriate boundaries for

[1] The EPA has construed the definition of nonattainment area to require some material or significant contribution to a violation in a nearby area. The Agency believes it is reasonable to conclude that something greater than a molecular impact is required.

the Mono Basin nonattainment area, EPA has considered not only areas where violations of the PM–10 NAAQS have been monitored, but nearby areas which significantly contribute to such violations. An unclassifiable area is defined as any area that cannot be classified on the basis of available information as meeting or not meeting the national primary or secondary ambient air quality standard for the pollutant [see section 107(d)(1)(A)(iii)].

III. Response to Comments

In the July 16, 1993 proposal for today's action, EPA provided a 30-day comment period ending August 16, 1993, in order to solicit public comments on "all aspects" of the proposal to redesignate the Mono Basin portion of Mono county, California, from "unclassifiable" to "nonattainment" for PM–10 (58 FR 38333). Comments from one party were received. The Department of Water and Power of the City of Los Angeles ("LADWP") submitted a letter dated August 16, 1993[2]. In this final rulemaking, EPA has considered and responded to LADWP's comments, below. EPA has determined that it is appropriate to finalize the redesignation in the manner proposed. The public is referred to the July 16, 1993 notice of proposed rulemaking for a full discussion of the action EPA is finalizing.

Comment 1: The LADWP describes the Mono Lake area and contends that: Only a relatively small amount of exposed lake bed produces PM–10 emissions; PM–10 emissions are produced only under certain windy conditions; and the area impacted by the PM–10 emissions is relatively desolate with little or no human habitation.

Response 1: This comment has no bearing on whether the area meets or does not meet the PM–10 NAAQS. Section 107 of the Act sets forth the procedures for designating the attainment status of an air basin and the criteria that the EPA must use in making that designation. Where the EPA has both received a request for redesignation from a Governor, or the Governor's designee, and available data demonstrates a violation of the relevant NAAQS, EPA believes it is appropriate to approve the State's request and to redesignate the area as nonattainment. As set forth in the notice of proposed rulemaking, both of these factors are present in this rulemaking action. The EPA has received from the California Air Resources Board, the designee for the Governor of California, a request to redesignate Mono Basin portion of Mono County to nonattainment for PM–10. In addition, ambient air monitoring data clearly establishes a violation of the NAAQS for PM–10. The EPA defines ambient air as that portion of the atmosphere, external to buildings, to which the public has access. See 40 CFR 50.1(e). The public has access to the Mono Basin areas in which air monitors have measured violations of the NAAQS for PM–10.

The role of wind conditions in Mono Basin is for consideration during the state implementation plan (SIP) development process that follows a nonattainment designation. See section 188(f) of the Act. In any event, the legislative report accompanying the addition of section 188(f) to the Act states that the emissions from exposed portions of the Mono Lake shoreline should be considered anthropogenic sources:

> The term anthropogenic sources is intended to include activities that are anthropogenic in origin. An example of such sources is the dry lake beds at Owens and Mono Lakes in California, which give rise to dust storms that are a result of the diversion of water that would otherwise flow to such lakes and should be considered anthropogenic sources. H.R. Rep. No. 490, 101st Cong., 2d Sess. 265–66 (1990).

Comment 2: The LADWP asserts that the air quality in the Mono Basin is excellent, and that the only population center in the Basin, the Town of Lee Vining, has never experienced an exceedance of the NAAQS for PM–10.

Response 2: See Response 1. The exceedances of the NAAQS for PM–10 experienced at the Warm Springs and Simis Ranch areas provide sufficient evidence that there is a PM–10 air quality problem in the Mono Basin.

Comment 3: The LADWP claims that designation of the Mono Basin as nonattainment for PM–10 could influence the California Water Resources Control Board's judgment or actions in balancing the uses of the Mono Lake area's public trust resources. The LADWP asserts that designation of the area as nonattainment would result in the Board "feeling obligated" to raise the level of Mono Lake without the benefit of the SIP development process. This in turn could negatively impact: the scenic resources of the Mono Lake area; water and hydroelectric supplies for the citizens of Los Angeles; and recreational resources along the Owens River and associated lakes.

Response 3: See Response 1. It is inappropriate for EPA to delay making its final technical judgment regarding the air quality status of the area because of the potential political implications outlined by the commenter. Further, upon final redesignation of the Mono Basin to nonattainment for PM–10, the appropriate California agencies will have 18 months to develop a SIP for the Mono Basin area. The SIP process serves to identify the sources of pollution which contribute to violations of the NAAQS and develop control strategies for those sources. While the reasonableness of implementing available control measures, including economic factors, are considered during the SIP development process, EPA's redesignation of the attainment status of the Mono Basin area is based upon the presence or absence of violations of the NAAQS in that air basin. See section 107(d)(1)(A)(i) of the Act.

Comment 4: The LADWP argues that environmental statutes should be implemented on a cost-benefit basis and that in the case of the Mono Basin the costs of bringing the area into attainment of the NAAQS for PM–10 would outweigh the health benefits of achieving attainment.

Response 4: See Responses 1 and 3; see also *Central Arizona Water Conservation Dist.* v. *EPA*, 990 F.2d 1531 at 1542, n.10 (9th Cir. 1993), cert. denied 62 U.S.L.W. 3245 (October 4, 1993).

IV. Significance of Today's Action

In taking final action to redesignate Mono Basin to nonattainment for PM–10, Mono Basin will by operation of law initially be classified as moderate [see section 188(a) of the Act]. For areas redesignated nonattainment for PM–10 and, classified as moderate, States must submit PM–10 SIP's to EPA within 18 months of the nonattainment redesignation meeting the applicable requirements of Part D, Title I of the Act [see, e.g., sections 172(c) and 189 of the Act]. In addition to meeting the general nonattainment area plan requirements identified in section 172(c) of the Act, the moderate area SIP must specifically include:

[2] Additionally, in a letter dated August 2, 1993, the Los Angeles Department of Water and Power (LADWP) requested a 90-day extension of the deadline for submitting comments on the proposed redesignation. The LADWP asserted that a "decision by the EPA regarding the PM–10 attainment/nonattainment status of the Mono Basin at this time may unduly influence the public trust balancing decision of the [California Water Resources Control] Board" in upcoming hearings regarding water rights in the Mono Basin. In a letter dated August 12, 1993, EPA denied the request for an extension of the comment period on the grounds that the EPA's action regarding the attainment or nonattainment designation of an air basin are made on the technical and legal merits of the situation, and that the Clean Air Act does not allow the EPA to "balance interests" when making such designations.

(A) Either: (i) A demonstration (including air quality modeling) that the plan will provide for attainment as expeditiously as practicable, but no later than the end of the sixth calendar year after the areas's designation as nonattainment; or (ii) a demonstration that attainment by such date is impracticable [see section 189(a)(1)(B)].

(B) Provisions to assure that reasonably available control measures (including reasonably available control technology) for the control of PM–10 shall be implemented no later than 4 years after designation [see section 189(a)(1)(C)].

(C) A new source review permit program, meeting the requirements of section 173 of the Act, for the construction and operation of new and modified major stationary sources of PM–10 [see section 189(a)(1)(A)].

(D) Quantitative milestones to be achieved every 3 years until the area is redesignated attainment and which demonstrate "reasonable further progress" towards attainment [see section 189(c)].

(E) Control requirements for PM–10 precursors. The control requirements applicable to major stationary sources of PM–10 (e.g., reasonably available control technology and nonattainment new source review control requirements) also must apply to major stationary sources of PM–10 precursors unless EPA determines that sources of precursors do not contribute significantly to PM–10 levels which exceed the NAAQS in the area [see section 189(e)].

EPA has issued detailed guidance on the Clean Air Act requirements applicable to moderate PM–10 nonattainment areas. See 57 FR 13498 (April 16, 1992) & 57 FR 18070 (April 28, 1992).

The State is also required to submit contingency measures, pursuant to section 172(c)(9) of the Act, which are to take effect without further action by the State or by EPA, upon a determination by EPA that an area has failed to make reasonable further progress or attain the PM–10 NAAQS by the applicable attainment date (see 57 FR 13510–13512, 13543–13544). The EPA is establishing the schedule for submission of contingency measures as called for in section 172(b) of the Act. The State is to submit contingency measures for Mono Basin within 18 months of the effective date of today's final rule. This is the same time the other moderate area SIP requirements described above are due.

The EPA also has the authority to reclassify Mono Basin to serious if EPA determines that the area cannot practically attain the PM–10 standards for moderate areas by the applicable attainment date or if the area fails to timely attain the NAAQS. See section 188(b) of the Act. In addition to meeting the requirements applicable to moderate nonattainment areas, areas reclassified as serious must implement more stringent control requirements.

VI. Miscellaneous

A. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (RFA), 5 U.S.C. 601–612, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. The requirement of preparing such analysis is inapplicable, however, if the Administrator certifies that the proposed rule will not have a significant economic impact on a substantial number of small entities (see 5 U.S.C. 605(b)). The final redesignation of Mono Basin will not impact or impose any significant requirements on a substantial number of small entities.

Redesignation of an area to nonattainment under section 107(d)(3) of the Act does not impose any new requirements on small entities. Redesignation is an action that affects the status of a geographical area and does not impose any regulatory requirements on sources. To the extent that the state must adopt new regulations, based on an area's nonattainment status, EPA will review the effect those actions have on small entities at the time the state submits these regulations. Accordingly, I hereby certify that the action proposed today will not have a significant economic impact on a substantial number of small entities.

B. Executive Order 12866

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

List of Subjects in 40 CFR Part 81

Environmental protection, Air pollution control, Intergovernmental relations, National parks, Wilderness areas.

Dated: November 12, 1993.

John Wise,

Acting Regional Administrator.

For reasons set forth in the preamble, part 81 of title 40, Code of Federal Regulations, is amended to read as follows:

PART 81—[AMENDED]

1. The authority citation for part 81 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Section 81.305 is amended in the table for "California—PM–10" by adding an entry for "Mono County" to read as follows:

§ 81.305 California.

* * * * *

CALIFORNIA—PM–10 NONATTAINMENT AREAS

Designated area	Designation		Classification	
	Date	Type	Date	Type
* * * *	*	*	*	*
Mono County				
Mammoth Lake planning area	November 15, 1990.	Nonattainment	November 15, 1990.	Moderate.

CALIFORNIA—PM–10 NONATTAINMENT AREAS—Continued

Designated area	Designation		Classification	
	Date	Type	Date	Type
Includes the following sections: a. Sections 1–12, 17, and 18 of Township T4S, R28E; b. Sections 25–36 of Township T3S, R28E; c. Sections 25–36 of Township T3S, R27E; d. Sections 1–18 of Township T4S, R27E; and e. Sections 25 and 36 of Township T3S, R26E				
Mono Basin Hydrologic Unit 1809010.	December 29, 1993.	Nonattainment	December 29, 1993.	Moderate.
•	•	•	•	•

[FR Doc. 93–29140 Filed 11–26–93; 8:45 am]
BILLING CODE 6560–50–P

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–162; FCC 93–458]

Financial Interest and Syndication Rules

AGENCY: Federal Communications Commission.

ACTION: Final rule; petitions for reconsideration.

SUMMARY: By this Memorandum Opinion and Order, the Commission generally affirms its decision in the Second Report and Order in this proceeding, which modified the financial interest and syndication (finsyn) rules. In addition, the Commission responds to petitions for reconsideration of the Second Report and Order; makes minor adjustments to the reporting requirements in § 73.661 of its Rules; makes a technical correction to § 73.660(a) of its Rules; and codifies in new § 73.663 the approach adopted in the Second Report and Order toward scheduling the expiration of the finsyn rules.

EFFECTIVE DATE: December 29, 1993, except for the amendments to § 73.661, which shall go into effect December 29, 1993, or upon approval by the Office of Management and Budget, whichever is later. The Commission will publish a document announcing the effective date of the § 73.661 amendments in the **Federal Register**.

FOR FURTHER INFORMATION CONTACT: David E. Horowitz or Kathleen O'Brien Ham, (202) 632–7792.

SUPPLEMENTARY INFORMATION: Public reporting burden for the collection of information under § 73.661 is estimated to average 182 hours per response. The recordkeeping for the collection of information under § 73.3526(a)(11) is estimated to average 12 hours per recordkeeper. These estimates include the time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Send comments regarding this burden estimate or any other aspect of this collection of information, including suggestions for reducing the burden, to the Federal Communications Commission, Office of Managing Director, AMD–PIRS, Records Management Division, Washington, DC 20554, and to the Office of Management and Budget, Paperwork Reduction Project (3060–0479), Washington, DC 20503.

This is a synopsis of the Commission's Memorandum Opinion and Order in MM Docket No. 90–162, adopted September 23, 1993, and released October 22, 1993. The complete text of this Memorandum Opinion and Order is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC, and also may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Synopsis of Memorandum Opinion and Order

1. In this Memorandum Opinion and Order, the Commission addresses the issues raised in petitions for reconsideration of its Second Report and Order (Second R&O), 58 FR 28927 (May 18, 1993), which amended the financial interest and syndication ("finsyn") rules. For the most part, the petitions and responsive pleadings reiterate arguments that the Commission considered and rejected in its Second R&O. After careful review, the Commission finds no new evidence warranting fundamental changes in the rules as adopted. To the extent that new arguments have made, particularly with respect to the Commission's decision in the Second R&O to exempt emerging networks from most finsyn restrictions and to schedule a timetable for expiration of all finsyn constraints, the Commission is, with a few minor exceptions, also unpersuaded that the rules should be changed. Thus, by this Memorandum Opinion and Order, the Commission denies most aspects of the petitions before it. The Commission does, however, make minor adjustments to the reporting requirements set forth in § 73.661 of its Rules, and makes a technical correction to the language of § 73.660(a) of its Rules. In addition, the Commission has decided to codify in new § 73.663 the approach adopted in the Second R&O toward scheduling the expiration of the finsyn rules.

2. The Commission initiated this proceeding in 1990 to determine whether modification of the finsyn rules was warranted. Those rules, originally adopted in 1970, placed significant restrictions on the ability of the established networks (ABC, CBS and NBC) to own programming and engage in the practice of syndication. The Commission had imposed these restraints to limit network control over television programming and thereby encourage the development of a diversity of programs through diverse and antagonistic sources of program services. In its 1991 Report and Order (R&O), 56 FR 26242 (June 6, 1991), the Commission declined to substantially repeal the 1970 finsyn rules, but did relax them, observing that the role and power of the three established networks had diminished, that cable television had emerged as a competitive force, and that the fundamental objectives of the rules—to foster a robust syndication industry and to prevent extraction of rights from non-network producers—

had been advanced. Despite these advances, a majority of Commissioners remained concerned that the underlying objectives of the rules could not be achieved fully in the absence of such rules. Accordingly, the Commission took a measured approach toward relieving the restrictions under which the networks operate.

3. On appeal, the United States Court of Appeals for the Seventh Circuit ("Court" or "Seventh Circuit") vacated the Commission's 1991 R&O, except insofar as the Commission abrogated the 1970 finsyn rules. See *Schurz Communications* v. *FCC (Schurz)*, 982 F.2d 1043 (7th Cir. 1992). In the Court's view, the R&O failed to explain adequately how the 1991 rules satisfied the Commission's goals of program source and outlet diversity, or why the Commission rejected certain network arguments raised during the course of the proceeding. In response to the Court's action, the Commission sought additional public comment on the general and specific issues cited in the *Schurz* decision. After due deliberation and review of the record, the Court's opinion and ongoing changes in the marketplace, the Commission amended the finsyn rules again, issuing the Second R&O under reconsideration here. The Commission stated its view that these new finsyn rules "comport more accurately with the weight of the evidence presented in this proceeding, address the concerns cited by the Seventh Circuit in *Schurz*, and constitute the best approach for furthering our goals of diversity and competition."

4. The current finsyn rules place no restrictions on network acquisition of financial interests and passive syndication rights ("back-end rights") in network programming, except for certain reporting requirements. There are also no limits on the amount of "in-house" [1] programming a network can produce and distribute through its network distribution system, and no restrictions on network ownership and syndication of all non-prime time network programming and all non-entertainment network programming (whether prime time or not). Active syndication by a network of prime time entertainment network programming, however, along with network participation in the first-run syndication market, is circumscribed. More specifically, the networks are prohibited from actively syndicating prime time entertainment network programming or first-run non-network programs to television stations within the United States. Any such program for which a network holds syndication rights must be syndicated domestically through an independent syndicator. Moreover, a network cannot hold or acquire a continuing financial interest or syndication right in any first-run non-network program distributed in the United States unless the network has solely produced that program.

5. With respect to foreign markets, the networks may purchase, without restriction, foreign syndication rights in off-network programming distributed outside of the United States and first-run programming distributed solely outside the United States. Under these same conditions, the networks may also engage in active syndication abroad. The networks may also purchase foreign syndication rights in, including active syndication of, first-run programming in foreign markets even if the program is also distributed domestically, so long as the network has produced the programming solely in-house.

6. In promulgating these rules, the Commission relaxed major aspects of the 1991 regime. Most significant was its decision to remove virtually all restrictions on network acquisition of back-end rights in network programming. While the 1991 rules allowed some such acquisitions, these rules required waiting and "cooling off" periods between stages of negotiation, barred network-initiated co-production arrangements with outside producers, and imposed certification requirements. Another significant change from the 1991 rules was the Commission's adoption of a mechanism for removing all remaining finsyn regulation. Specifically, the restrictions will expire two years after similar restrictions set forth in consent decrees that currently bind CBS, ABC, and NBC are lifted by the U.S. District Court that has jurisdiction over those decrees. The Commission also relaxed the 1991 rules by exempting emerging networks from finsyn constraints, except for reporting requirements that are triggered once the emerging network provides 16 hours of prime time programming per week to interconnected affiliates.

7. While the Commission created a less restrictive finsyn regime than the one it had adopted in 1991, it did extend the 1991 prohibition on active network syndication to all domestic syndication, regardless of whether the network had produced the program in-house or acquired it from an outside producer. Under the 1991 rules, the networks were permitted to syndicate actively their prime time entertainment shows that were produced in-house and aired on their own networks, although a companion restriction imposed a 40 percent cap on the use of such programming in a network's prime time schedule to counter the resulting incentive for networks to produce most of their own prime time schedules. To prevent the networks from abusing their 1991 opportunities to syndicate programming actively, however, the Commission imposed restrictions against affiliate favoritism and warehousing practices.

8. In the Second R&O, the Commission revisited its approach toward active network syndication and concluded that more cautious treatment was appropriate in the interests of diversity and competition, particularly in light of its companion decision to lift virtually all restrictions on acquisition of back-end rights in network programming. In addition, the Commission recognized that the revised restrictions on active syndication obviated the need for either the 40 percent programming cap or the affiliate favoritism restraints, both of which were consequently eliminated. In contrast, the Commission retained the anti-warehousing safeguard, recognizing that the network ban on active syndication would have no proscriptive effect on a network's ability to warehouse programming. The Commission also observed that under this new regime, the rules were not only simpler, but they also avoided interfering with the networks' prerogatives to compose their prime time schedules with as much in-house programming as they deemed appropriate. Finally, the Commission indicated that modification of the 1991 approach toward active syndication and the consequent return to a more restrictive regime in this area would not disrupt any network syndication activities undertaken between 1991 and 1993 because the consent decrees have independently barred the networks from active syndication during this period.

9. *Review and Expiration of Rules.* In the Second R&O, the Commission retained the remaining FCC finsyn restrictions until two years after the entry of an order by the U.S. District Court, Central District of California ("District Court"), granting the networks' motions to modify certain restrictions of the consent decrees that now limit, independent of FCC rule, network participation in the financial interest and syndication areas. The Commission stated that it would launch an inquiry eighteen months after the District Court removed these consent decree restrictions to provide an

[1] "In-house" productions refer to co-production arrangements between a network and an outside domestic or foreign producer, as well as programming produced solely by a network.

opportunity for comment to those who believe that retention of restrictions is warranted. The burden of proof in that proceeding will be on proponents of retaining the rules. The Commission states that unless it issued an order to the contrary, all remaining finsyn restrictions would expire six months after the Commission launched this review.

10. The non-network opponents of the Commission's review and expiration framework fundamentally misconstrue the basis for retention of restrictions on active network syndication and network participation in the first-run market. Based on a review of the entire record, the Commission had concluded that current market conditions alone do not justify retention of the 1991 finsyn restrictions. At the same time, the Commission recognized that it is impossible to be certain that the dangers discussed at length in this proceeding will not come to pass. The Commission was, however, able to identify those areas where it was certain that harm from such dangers would not occur. As the Commission states in the Second R&O:

> [W]e have identified and are removing the portion of the finsyn rules hose elimination appears least likely to cause such harm and most likely to create positive effects—i.e., the restraints on network acquisition of financial interests and passive syndication rights, and all restraints in connection with programs distributed in foreign markets.

11. With respect to active network syndication of prime time entertainment off-network programs and network involvement in the first-run market, however, the Commission viewed the risks of deregulation as having "a closer nexus to [the Commission's] traditional interest in diversity that could be adversely affected if [its] predictions prove inaccurate." The "predictions" to which the Commission referred were not simply predictions that the market would, in two years, develop to the point of justifying elimination of the remaining finsyn constraints. Indeed, the Commission determined that current market conditions would justify removal of these constraints were it not for several critical non-market factors. First, the Commission predicted that the networks would not behave in ways detrimental to diversity and competition if the constraints were lifted now, but it could not be absolutely certain that lifting the constraints would cause no harm. Second, a more cautious approach appeared to be warranted with respect to syndication because of the more significant risk of damage to outlet diversity in the event that the Commission prematurely removed these last restrictions. In addition, a third factor played into the Commission's decision to take a phased approach toward lifting the finsyn rules: The Commission recognized that immediate elimination of all the rules could be disruptive and have unintended and unforeseen negative effects, given the fact that the finsyn regulatory scheme has been in place for over two decades. During this time, industry participants have come to rely on the structure imposed by that regulatory scheme.

12. In view of these three factors, the Commission concluded that it would be irresponsible to remove all restrictions at the current time. Instead, the Commission deemed it appropriate to proceed somewhat cautiously, to ensure, insofar as possible, that the modifications of the restrictions would be smoothly integrated into industry practices without harming the public interest. Moreover, while recognizing that the first factor (lack of certainty) will always be present when an agency removes restrictions on a market, the Commission sought to reduce its force by taking a phased approach toward deregulating in this area. Thus, the Commission indicated that its lack of certainty regarding the danger of removing the active syndication and first-run constraints would be reduced if, after two years of network participation in the program acquisition market, there were no unintended negative consequences. Accordingly, the Commission scheduled a review as an additional safeguard to gauge as responsibly as possible whether its conclusion regarding the state of the 1993 market—that it can operate effectively without finsyn restrictions—and of developing market trends was accurate.

13. In view of the above, the Commission states that the principal objection to its review and expiration mechanism raised by the non-network petitioners is without merit. In essence, petitioners argue that the Commission has acted unlawfully by scheduling the elimination of rules without providing a reasoned basis to justify their elimination. The bases for the scheduled elimination of the rules are set forth in the Second R&O, which concluded that current market conditions alone do not justify continuation of the finsyn regime. Moreover, since the scheduled elimination of the rules is based upon the Commission's conclusions about the current state of the market—conclusions reached after extensive proceedings and full opportunity for comment—it is appropriate to place the burden of proof on those who seek to overturn these conclusions at the time of the review. Furthermore, the request to extend existing or modified portions of the finsyn rules past the expiration date (ie., the anti-warehousing safeguard, the reporting requirements and a behavioral restriction against affiliate favoritism) will be unnecessary unless it is demonstrated at the time of review that the Commission's conclusion in the Second R&O about the current market are in error.

14. Given its view of the market, the Commission states that it has tried to give the networks the greatest possible leeway while still crafting an approach that would give the Commission some indication how the market will, in practice, respond to network entry. Thus, the Commission rejects proposals to retain or add restrictions. While a number of petitioners have argued that the two-year period is too short for enough information to develop to enable the Commission to conduct a meaningful review, this time frame will allow the Commission to observe some degree of network acquisition of financial interests. In addition, the Commission expects the Fox network to qualify as an emerging network in the near future, and to begin, soon thereafter, to become subject to the reporting requirements. Since Fox is not otherwise constrained by the finsyn restrictions, the Commission expects to obtain useful information about that network's syndication activities. Moreover, since the three established networks will not necessarily limit themselves to purchasing syndication rights in newly-launched programs, the Commission may see their participation in syndication by the time of review. More importantly, the Commission is not using the review period as a testing ground for observing specifically how networks handle their limited role in syndication. Rather, it will review their behavior in the program acquisition market primarily, where the most discernible activity will occur. If that behavior appears to reflect an unanticipated degree of market power, the Commission will regard that evidence as a strong indication that its overall marketplace analysis may have been misplaced.

15. The networks' general opposition to the Commission's framework is based on the view that all finsyn restrictions should be eliminated at once. This course of action would be unwise and would unnecessarily jeopardize the public interest. There is also a network objection to the linkage between the end of the rules and the lifting of the consent decrees. This linkage, however, is an essential practical component of the Commission's decision not to strip a vay

all finsyn constraints until the Commission has had some opportunity to review an empirical showing by opponents of elimination about network market behavior under the modified rules. Until the consent decrees are lifted, it will be virtually impossible for the Commission to verify its predictions about such behavior. Thus, as was explained in the Second R&O, the Commission did not link the final review and expiration of the rules to the consent decrees because of any close relationship of the rules to antitrust principles, as the networks assert, but rather for very practical reasons. Thus, on this point, there is no inconsistency between the 1991 R&O and the Commission's decision in the Second R&O.

16. *Network Acquisition of Back-End Rights.* When the Commission eliminated the 1991 restrictions on network acquisition of back-end rights in network prime time entertainment programming, it concluded that its 1991 market analysis was too narrow, and that program producers are not so limited in finding buyers for their products to justify continued restraints on network participation in the purchase of these back-end rights. To the contrary, the record revealed a host of existing and emerging alternative outlets for program producers, serving to ensure that the three established networks cannot reduce producer profits below a competitive level or otherwise extract concessions that producers generally would not give in a competitive market.

17. Moreover, the Commission determined that competition among the networks themselves acts as an additional constraint on their exercise of market power, and it observed that the decline in network audience share demonstrates further erosion of their power. Furthermore, the Commission concluded that the 1991 restrictions in this area are not only inherently ineffective as a means of restraining any network power that might exist, but they also work to the detriment of the Commission's goal of fostering source and program diversity by eliminating the networks as effective sources of financing for producers. And, in fact, the Commission discerned from the record that the production community has become increasingly concentrated over the course of the finsyn regime.

18. The producers' fundamental premise in contesting the Second R&O is that the host of alternative outlets to which the production community can turn to avoid a given network's purported coercion—the 100 cable television networks; the burgeoning first-run market; the new Fox network; and the other established networks with which a producer is not dealing at the time—is insufficient to prevent each of the three established networks from extracting, on an ongoing basis, supra-competitive concessions from their suppliers of prime time entertainment programs. The Commission rejected this assessment of the market in the Second R&O, given such factors as the breadth of alternative outlets, their programming expenditures, the significant degree of commonality between their suppliers and those of the established networks, the increasing incidence of cross-over from the established networks to these alternative outlets, and the increasing similarity in budget and quality between prime time network entertainment programs and non-network entertainment programming.

19. The producers' response is to assert that neither cable network nor first-run syndication buyers purchase programming of a type and at a price sufficiently similar to that aired by the networks during prime time to offer a reasonable alternative outlet to producers of prime time network entertainment programming. Thus, the producers argue that cable networks primarily offer specialized programming, news, or low-budget topical or game shows, none of which fare well in subsequent domestic or foreign syndication, and that only a small amount of programming sold in first-run consists of entertainment programs that can be syndicated after their initial run. The Commission states that its appropriate regulatory focus is not on whether producers would generally prefer to strike deals with one of the established networks, but rather whether the overall demand for programming in the broadcast and cable marketplace limits a network's ability to control the market or dictate prices for prime time entertainment programs. The Commission affirms its conclusion that the marketplace does, in fact, place such limits on the networks, and states that the producers have provided insufficient evidence to call this conclusion into question.

20. The Commission observes that the producers have ignored or erroneously discounted several critical factors that led to the conclusion that the networks lack sufficient market power to justify regulation in this area. First, nothing was said about the emergence of Fox as a viable "fourth" network that provides program producers with a highly significant alternative outlet and thus operates as a check on the power of the traditional networks.

21. Second, the effect of the potential for competition in limiting market power was ignored. When competition looms on the horizon, established businesses will act and plan accordingly, recognizing that if they overreach, their potential competitors are better positioned to match or beat the terms they set. Thus, the potential for competition constrains the power of established entities such as the networks. Additionally, in the brief interval since the Commission adopted the Second R&O, there is increasing evidence that additional competition from new networks is more than just potential—it is becoming a reality.

22. Third, the producers discount the effect that internetwork competition has in limiting network power. They argue that the structure of the negotiations process between the networks and their program suppliers, coupled with similarities of contractual terms and the like, demonstrate that the networks do not compete for programming. The Commission has, however, previously considered and rejected the Coalition's bases for this argument.

23. Fourth, the producers improperly discount the significance of the networks' declining audience share when they argue that such a decline is irrelevant to the issue of the networks' market power in the program acquisition market. The broadside criticism that audience share is irrelevant to the networks' power in the program acquisition market lacks merit. Viewership is the direct measure by which advertisers pay stations, which translates into profits. Program expenditures, in turn, are a critical device for increasing audience. To the extent a network loses audience, it has an incentive to increase programming expenditures, which places it in a weaker position vis-a-vis its program suppliers. At the same time, however, losses in a network's audience could impair the network's ability to pay its suppliers, which can result in the loss of the best talent to other distributors.

24. The Commission also sees no merit in the producers' criticism of its conclusion that the 1991 finsyn restrictions—by preventing the free play of three additional sources of funds—limit the overall opportunities of the production community to secure financing, thus undermining the Commission's goal of fostering source and program diversity. The Commission reiterates that the constraints of the marketplace will prevent the networks from securing undue concessions from the production community as a whole, and that under the finsyn regime the

production community has grown increasingly concentrated since 1970.

25. In view of the Commission's conclusion that the networks lack the power to abuse their position in acquiring programming, the request for reinstatement of a negotiations separation requirement is rejected. Moreover, the Commission reiterates its finding that such a requirement would artificially impede producers' efforts to obtain network financing, thus working against diversity goals. Furthermore, the Commission remains unconvinced that such a requirement could, in any event, effectively prevent network exercise of undue market power. The Commission also sees no need to reinstate the 1991 requirement that a network certify that it has not conditioned the relinquishment of producer rights and interests on access to the network. Such a certification presupposes that the program acquisition market is not competitive. Since the Commission has expressly found to the contrary, the elimination of that certification requirement is affirmed. Moreover, the Commission agrees that there are costs associated with such a certification requirement; unless the Commission is persuaded that a certification requirement is necessary to further legitimate goals, it will not, as a primary tenet of regulatory policy and law, impose requirements that may create costs.

26. Finally, the Commission rejects the proposal to impose a strict passivity requirement on all financial interests purchased by the networks. The current rules are designed to ensure that the networks do not play an active role in syndicating prime time entertainment network programming. Thus, the networks are required to use an independent syndicator to syndicate any programming in which they hold syndication rights. Moreover, the Commission provided an additional safeguard when it stated in the Second R&O that it would consider complaints if a party can make a showing undermining the credibility of the "independence" of such a syndicator. The Commission also points out that if a network holds a financial interest in a program, without any accompanying syndication right, it has no legal say in the syndication of that program. To the extent that a network would attempt to exercise influence or control over the syndication of such a program, the Commission would view this as a violation of its ban on active network syndication. Accordingly, the Commission would consider complaints regarding this behavior as well, upon a proper showing that the network had exercised such control or influence.

27. *Network Syndication of Off-Network Programming.* The record in this proceeding supports the conclusion that current market conditions alone do not justify retention of finsyn restrictions. Thus, the Commission's decision in the Second R&O to retain some measure of finsyn regulation, such as the ban on active domestic syndication by networks of their prime time entertainment programming and the prohibition against warehousing, was generally premised on three critical non-market factors: (1) The impossibility of being certain that lifting finsyn constraints would cause no harm, (2) the more significant risk of damage to outlet diversity in the event the Commission improvidently removed the remaining restrictions, and (3) the danger that immediate elimination of all the rules would be disruptive and have unintended and unforeseen negative effects.

28. Accordingly, the Commission adopted a cautious approach that prohibits, *inter alia*, active syndication by networks of prime time entertainment programming in the off-network domestic syndication area until the scheduled expiration of the rules. This approach is especially appropriate while the Commission observes whether the concerns arising from its decision to remove restrictions on network acquisition of back-end rights will, in practice, prove unjustified. The Commission repealed the restrictions on acquisition of back-end rights because it was satisfied that such repeal would further its goals of competition and diversity. Nonetheless, recognizing the considerable dispute even in this area, along with the inherent uncertainty of predicting future events after repeal, the Commission deemed it appropriate to observe how the networks act in the disputed areas where it has deregulated before it proceeds with further deregulation. The line the Commission drew reflects both its greater surety that repeal of financial interest restrictions in the off-network context is warranted and its conclusion that removal of the other restrictions poses a risk of greater harm if the Commission's informed predictions about network activity in the syndication (and first-run) areas are wrong. Incorrect predictions about network behavior in the latter areas would most greatly affect independent stations and undermine the important role they play in providing service to the public.

29. Network petitioners mistakenly contend that the Commission imposed the active syndication ban merely to eliminate the 40 percent production cap and thus remove the networks' incentive to increase their in-house productions. In fact, the Commission first determined that the most responsible approach for phasing out the finsyn regime was to lift all restrictions in one area before lifting restrictions in others. Thus, the Commission removed all prohibitions on network acquisition of back-end rights to network programming, but circumscribed network activities in the active syndication and first-run areas. While the approach of the Second R&O is, admittedly, more restrictive with respect to active syndication than the 1991 approach, the Commission determined that maintaining restrictions on active network syndication has significant advantages as a method for phasing out the finsyn regime. Once this determination was made, the Commission was able to remove the 40 percent limit on network prime time in-house programming; given their blanket freedom to acquire passive interests in network programming, regardless of production arrangement, coupled with the restrictions on active syndication, the networks no longer have an incentive to inflate the amount of their in-house productions. Thus, any need for the 40 percent cap is obviated.

30. The Commission also disagrees with contentions that it relied on the simplicity of the active syndication ban as an independent basis for imposing it. In the Second R&O, the Commission recognized that the new regime (including the scheduled expiration of the rules) was not only warranted for the reasons discussed herein, but it also had the advantage of simplicity and thus responded to a specific concern (i.e., that the 1991 rules were overly complex and unwieldy) voiced by the *Schurz* Court in its decision vacating the 1991 rules.

31. The Commission also refutes the contention that it used the consent decrees—and the fact that the networks are prohibited from engaging in active syndication thereunder—as a justification for its own ban. Again, this argument is based on a misreading of the Second R&O. The purpose of the Commission's statements about the nugatory effect of modifying the 1991 rules' approach toward active syndication in light of the consent decrees was to signal that this change would not have any practical effect in disrupting any network syndication activities undertaken between 1991 and 1993, for the simple reason that the consent decrees will have barred any such activities during this period.

32. The Commission defends its decision to proceed cautiously before lifting the syndication restrictions by first waiting to observe network behavior in the program acquisition area. The Commission believes that what occurs in the deregulated financial interest side of the programming market will likely be relevant to the Commission's decision to phase out the remaining syndication rules. For example, if information gathered in the future concerning network acquisition of ownership rights suggests that the networks have, contrary to the Commission's predictions, acquired the syndication rights to most attractive network programs, the Commission might reconsider its decision to schedule repeal of the remaining rules. The Commission also believes that evidence of network abuses in the programming acquisition market could presage anticompetitive behavior in the off-network syndication market. Finally, the Commission believes that if the networks abuse their financial interest freedoms in the face of the Commission's deregulatory efforts, they could be found to be acting in bad faith. Such actions would weigh heavily against permitting the remaining rules to expire. Indeed, such actions could result in a tightening of the Commission's finsyn rules.

33. The Commission rejects network challenges to its warehousing position and its concerns about affiliate favoritism insofar as the Commission has focused on the ability of the networks to "steer hit shows" toward affiliates and away from independent stations. There is evidence in the record to raise concerns that the networks may have the ability and incentive to steer popular off-network shows toward affiliates or otherwise give them an advantage, either by withholding from syndication programs still in the network run or by favoring affiliates during the sale of off-network programs. If the networks do in fact behave in this manner, the record indicates that independent stations would be harmed, and that such harm could undermine the Commission's diversity goals. Moreover, the record provides strong evidence that independent stations rely quite heavily on hit programs for their competitive viability, and that the significant harm that would flow by impeding this source of programming would damage outlet diversity. While the networks' economic theory disputing the underpinnings of these charges—that networks will not and cannot inflict such harm by controlling access to hit programs—is well known, in an abundance of caution, the Commission appropriately decided in the Second R&O to postpone lifting the syndication restrictions until its theoretical analysis is tested by some degree of practical experience in the financial interest area. The Commission also rejects network contentions that affiliate favoritism restrictions are ineffective in light of a network's ability to achieve the same ends by directly compensating its affiliates (rather than by steering hit shows toward its affiliates). Direct compensation does not appear to be an effective tactic.

34. The Commission declines to amend its 1993 rules to expand its warehousing restriction to prohibit the networks from accomplishing, through network exclusivity clauses, results similar to those that could be achieved by warehousing programs in which the networks themselves hold syndication rights. There is not even a theoretical need for such a restriction until after the prohibition contained in the consent decrees expires in 1995. (Such exclusivity clauses are prohibited until 1995 under the consent decrees.) Moreover, the Commission believes that the occurrence of "back-door" warehousing practices are speculative. Should these types of practices pose a problem in the future, the Commission retains the right to revisit the issue.

35. Finally, on its own motion, the Commission makes a technical correction to language of the rule banning active syndication, 47 CFR 73.660(a). The first sentence of subsection (a) limits the ban to prime time entertainment network programs or first-run, non-network programs, while the second sentence imposes a requirement that the networks use an independent syndicator for "any programs for which a network holds syndication rights." The independent syndicator requirement was the complement to the active syndication ban, and the Commission intended the former to apply only to those programs covered by the ban. Accordingly, the Commission amends the second sentence to read: "Any *such* programs for which a network holds syndication rights * * *" (emphasis added).

36. *Network Participation in the First-Run Market.* As with off-network syndication, petitioners have generally failed to raise any new facts or convincing arguments that would cause the Commission to alter its views on network acquisition and syndication of first-run programming as set forth in the Second R&O. The Commission therefore affirms the limits that it placed on network participation in the first-run market.

37. The Commission states that constraints on network participation in the first-run market are critical to the overall framework established in the Second R&O for phasing out the finsyn regime. As stated above, a key component of the Commission's decision to remove restraints on network acquisition of back-end rights in network programming is the fact that the burgeoning first-run market constitutes a significant alternative outlet for program producers, which supports the Commission's predictive conclusion that the networks do not have the power to coerce anticompetitive concessions from the production community once they are free to purchase such back-end rights. Because the Commission will not know whether this prediction is accurate until the networks begin to exercise their new-found acquisition rights, it determined that any risk of compromising the critical first-run market during the transition toward a finsyn-free environment would be imprudent. Thus, in the Second R&O the Commission established a framework that permits network entry into the off-network program acquisition area, but which, through the period of transition, maintains the character of the first-run market as a fully alternative outlet for program producers. While the Commission has taken this action out of an abundance of caution, it expects that network behavior in the program acquisition area will confirm the Commission's prediction that continued restraint in the first-run area are unnecessary. Thus, the Commission has established a sunset for these remaining constraints.

38. Moreover, the Commission is particularly concerned that it does not jeopardize the goal of outlet diversity, which would be the case if the Commission is wrong in predicting that network involvement in syndication of first-run product would not adversely affect the market. For the reasons the Commission took a cautious approach toward active network syndication of off-network programming, it also concluded that it should proscribe network activity on the syndication side of the first-run market. Thus, the Commission has chosen not to remove syndication restraints without first observing network behavior in the network program acquisition market.

39. The Commission observes that network challenges to the first-run restrictions do not take proper account of the reasons for proceeding cautiously in this area. For example, networks assert that independent station demand alone can accommodate both the influx

of network-supplied first-run programming and the current levels of non-network programming. While this may prove true, the Commission is concerned that network participation in the first-run market could possibly reduce the overall supply of high-quality, first-run shows, given the structure of the market. As discussed before, the success of a first-run program depends upon achieving clearances by: (1) The most powerful stations in the two few markets and (2) a large number of markets throughout the country. The Commission fears that the networks could use their owned and affiliated stations to launch first-run programming and shut out the programming of their competitors. While the Commission believes such anti-competitive behavior is not the inevitable result of the networks' unique position, the Commission is not willing to take the risk until it has seen how the networks behave in the off-network program acquisition context, where the ability to control the market is less likely.

40. Additionally, until it has had some opportunity to witness network behavior in the areas it has relaxed, the Commission remains concerned about the effect of network participation in first-run syndication on the objectives of PTAR, 47 CFR 73.658(k). PTAR was adopted to promote the development of television programs by sources other than the three established networks. As a result, more original programming exists today from more non-network sources than at any time prior to the adoption of PTAR. The Commission is sensitive to concerns that allowing the networks to participate in first-run syndication may compromise the accomplishments of PTAR, especially if network syndicators affect the ability or incentive of broadcast stations to schedule independently produced programming during one of the four hours of prime time. As the Commission has stated before, a dramatic reduction in the sources and variety of access period programs would be contrary to the public interest.

41. In conclusion, the Commission believes the networks have ignored the unique role that top-market, network-owned stations, coupled with vast networks of affiliated stations operating primarily in the VHF band, play in determining the success or failure of first-run programs. In proceeding cautiously, the Commission will ensure, to the extent possible, that it is correct in predicting that the networks will not, by favoring network first-run programs over non-network, first-run shows, reduce the amount of independent first-run programming aired on local stations. Thus, the Commission is mindful of the risk that independent first-run syndicators may find themselves at a disadvantage once they begin to compete against network-produced first-run programs. While the Commission believes, however, that the network advantages alone are probably not sufficient to justify continued regulation, the need for caution warrants retention of the first-run constraints during the pendency of the transition period.

42. Reporting Requirements. In the Second R&O, the Commission adopted a set of reporting requirements tailored to facilitate its review of the effects that the finsyn rule changes would have on network behavior. Under these requirements, the networks must file semi-annual reports identifying all network prime time entertainment programs and first-run non-network programs in which they hold or acquire financial interests or syndication rights. In addition, the networks must provide various related information, such as details concerning the independent syndicators that market such programming, and lists of stations to which the networks themselves syndicate. The Commission stated that the networks not only must file these reports with the Commission, but also must place the reports in each network owned and operated station public file before the first regular business day of September and March of each year.

43. On reconsideration, the Commission has been asked to reconsider three discrete elements of these reporting requirements. Specifically, network petitioners oppose (a) reporting on programs where the only right or interest held by the network is in foreign syndication and the program was produced solely in-house, (b) reporting on programs where the network acquired the right or interest before the effective date of the original 1970 finsyn restrictions, and (c) listing sales to foreign stations of programs that a network actively syndicates abroad. These petitioners argue that this type of information is irrelevant to the Commission's planned review of network behavior under the new finsyn regime, and that collection of this information would be burdensome.

44. The Commission holds that the reporting requirements should be modified in certain regards, but not to the extent requested. With respect to the first element (programming produced solely in-house and syndicated exclusively abroad), the Commission makes no changes. The Commission believes that such information would be relevant for its scheduled review of network behavior under the current finsyn regime and that compliance with this element would not pose an undue burden on the networks. Information on network in-house productions distributed solely abroad will help provide a more complete picture of the scope of network in-house production activities, which will enable the Commission to place in perspective increased network activity in the program production and acquisition market once the networks are free to purchase back-end rights in off-network programming. In addition, throughout the review period prior to the expiration of the rules, it is imperative that the Commission attain thorough information that would reveal any potential for abuse in a finsyn-free environment. The networks' distribution and syndication behavior abroad may have an indirect unanticipated effect on the domestic production and distribution market. Thus, the Commission must obtain sufficient information to conduct a complete assessment of network activity, both domestically and overseas.

45. The Commission is, however, sensitive to the networks' concern that the reporting requirements may force them to disclose sensitive proprietary information. Accordingly, with respect to the third element of the reporting requirements (lists of sales to foreign stations of programs that they actively syndicate abroad), the Commission will modify the rules to clarify that the networks need not provide proprietary or confidential customer lists of foreign stations, but may either redact the identity of the stations (if contracts are provided as part of the reports) or report the market (city and country) to which a specific program is syndicated. However, the Commission is unconvinced that this requirement either places a significant burden on the networks during the eighteen-month review period or is irrelevant to the Commission's review.

46. The Commission sees no reason to make any major change to the remaining element of the reporting requirements (programs acquired before the effective date of the 1970 rules). One of the goals of the Commission's scheduled review of the finsyn rules is to assess the scope of the networks' program ownership under the relaxed regime. Since programming purchased by a network before the 1970 rules became effective and retained to date constitutes a portion of the network's current holdings, the Commission could not form an accurate picture of those holdings without the specific

information that this particular reporting requirement is designed to place on the record. Moreover, information about pre-1970 acquisitions will provide data on specific interests that the networks obtained before regulation, which will establish a baseline against which to compare network transactions in the post-deregulation period. Significantly parallel transactions from the pre-1970 and post-deregulation periods could be probative during the Commission's review of the remaining finsyn regulations. Thus, the Commission will continue to require that the networks provide this information. While the networks have failed to demonstrate that they would encounter any significant burden in doing so, the Commission observes that one aspect of the rule could be difficult or impossible to satisfy for pre-1970 programs: The § 73.661(a) obligation to identify the party who initiated negotiations that led to network acquisition of finsyn rights. Accordingly, the Commission will eliminate the obligation to provide this information for programs acquired by a network before the effective date of the 1970 finsyn rules.

47. Exemption for Emerging Networks. In the Second R&O, the Commission decided to exempt "emerging networks" from most of the remaining finsyn regulations. The Commission recognized that without such an exemption, entities on the threshold of becoming "networks," such as Fox, would be discouraged from programming to capacity, thereby depriving independent stations of access to quality first-run programming important to their ability to compete. The Commission observed that subjecting Fox to finsyn restrictions once its prime time offerings pass 15 hours, only to have the restrictions expire after the provisions in the network consent decrees are lifted, would serve no useful purpose and would likely only discourage Fox from expanding its prime time offerings to capacity. In sum, the Commission stated that adoption of this exemption would remove a significant impediment to the development of competition with the established networks, and would precipitate an increase in the amount of programming available to broadcast stations not affiliated with these established networks. Moreover, the Commission observed that the exemption would preserve a degree of competitive equilibrium in the video marketplace as the Commission proceeded through the phased transition toward elimination of all finsyn restrictions.

48. The objections to the exemption for emerging networks stem from contentions that the established networks do not differ in any material regard from Fox (and presumably any other entity that approaches the network definitional threshold). The Commission disagrees, stating that Fox operates its network on a decidedly different level than the major networks, due in large part to the fact that its distribution system is primarily UHF-based and it competes against three firmly entrenched, decades-old competitors. The Commission has nevertheless recognized that Fox is a significant competitive force and substantially contributes to the diversity of the marketplace on every level. Thus, the Commission has cited Fox's emergence in the marketplace as a significant factor in relaxing the finsyn regime and scheduling the elimination of the rules. Accordingly, while it is clear that the established networks operate at a distinct advantage compared to Fox, the Commission states that the critical question is whether this fact justifies different regulatory treatment. The differences, coupled with the critical role that the exemption plays in the Commission's conclusions about the dynamics of the marketplace and how the finsyn rules can be safely eliminated, lead inexorably to the conclusion that the distinction the Commission has drawn between the established and emerging networks is not only rationally based, but integral to its substantial governmental interest in fostering diversity and competition.

49. The Commission has temporarily retained certain finsyn restrictions on the established networks in large part to ensure that the Commission's conclusions about the marketplace are correct, to avoid significant harm to the market's diversity and competitive structure in the event the Commission has misjudged its dynamics, and to make a smooth transition toward a non-finsyn regime. Encouraging the continued growth of entities which is the function of the exemption clearly solidifies the bases for the marketplace conclusions. In contrast, regulation that discourages emerging competition undermines the conclusion that the market could function competitively and will increase in diversity if the Commission were to remove all finsyn constraints. Thus, removing the exemption would alter the framework of the Commission's analysis that led it to conclude that the finsyn rules should be phased out. Moreover, the exemption will allow the Commission to see how an entity that approaches the functioning of the established networks operates in the syndication market. In addition, the fact that Fox operates at a lower plane and did not participate in the market behaviors that led to the finsyn rules, makes the Commission more confident that no abuses will occur. Furthermore, as the Commission observed above, it would serve no useful purpose to subject Fox and other emerging networks to finsyn rules that are slated to expire shortly. In contrast, maintaining certain finsyn rules under which the established networks operate serves a substantial governmental interest—ensuring an orderly transition toward a non-finsyn regime so as to preserve a competitive equilibrium in the marketplace, avoid unintended and unforeseen negative effects and thus safeguard diversity and competition.

50. With respect to the proposals to impose warehousing constraints and anti-affiliate favoritism measures on emerging networks, the Commission believes such restraints would create an unnecessary layer of regulation on such networks' operations, and, therefore, the Commission declines to adopt such safeguards. As the Commission has indicated, its view of the market is that such networks could not create any damage to the public interest even if they were to engage in such practices, and the Commission is certain enough of this view to implement it at the current time, given the overall framework it has established for phasing out the finsyn rules.

Administrative Matters

Regulatory Flexibility Act

51. Pursuant to the Regulatory Flexibility Act of 1980, the Commission included a final analysis in the Second R&O detailing (1) the need for and purpose of the rules, (ii) the summary of issues raised by public comment in response to the initial regulatory flexibility analysis, Commission assessment, and changes made as a result, and (iii) significant alternatives considered and rejected. No substantive changes have occurred pertaining to the final analysis as a result of the petitions for reconsideration.

Ordering Clauses

52. Accordingly, *it is ordered*, That the petitions for reconsideration filed by the Association of Independent Television Stations, Inc., CBS Inc., Chris-Craft/Tribune et al., the Coalition to Preserve the Financial Interest and Syndication Rule, and National Broadcasting Company, Inc., are granted

to the extent indicated herein and are otherwise denied.

53. *It is further ordered,* That pursuant to authority contained in sections 4(i), 301, 303 (b), (f), (g), (i), and (j), 307(d), 308(b), 309(a), 310, 312, 313 and 314 of the Communications Act of 1934, as amended, part 73 of the Commission's Rules is amended as set forth below.

54. *It is further ordered,* That the amendments to 47 CFR part 73 adopted in this Memorandum Opinion and Order shall go into effect 30 days after publication in the **Federal Register**, except for the amendments to § 73.661, which shall go into effect 30 days after publication in the **Federal Register** or upon approval by the Office of Management and Budget, whichever is later.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Amendatory Text

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—RADIO BROADCAST SERVICES

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303, 334.

2. Section 73.660 is amended by revising paragraph (a) to read as follows:

§ 73.660 Television network participation in program syndication.

(a) No television network, other than an "emerging network" as defined in § 73.662(g), may actively syndicate any prime time entertainment or first-run non-network program to television stations within the United States. Any such programs for which a network holds syndication rights shall be syndicated domestically through an independent syndicator.

* * * * *

3. Section 73.661 is amended by revising paragraph (a) and the first sentence of paragraph (b) to read as follows:

§ 73.661 Network television program ownership and syndication reports.

(a) A television network shall maintain reports identifying all network prime time entertainment programs, whether aired on its own or another network, and all first-run non-network programs in which the network holds or acquires financial interests or syndication rights. The network shall identify the name of the program, the type of program (network or first-run), the nature of the interest or right held in the program, the dates the program (if a network program) began and ended its network run, and the date the program (if a first-run program) first appeared in syndication. Where a network has, before June 5, 1993, but not on or before August 1, 1972, acquired an interest or right in a program presented to the public, the network shall identify the party that initiated negotiations that led to network acquisition of such interest or right. Any contract or agreement creating or conveying a financial interest or syndication right shall be made available to the Commission upon request.

(b) For any television network that actively syndicates any prime time entertainment program or any first-run non-network program, the network shall maintain reports that list the sales to broadcast stations of any such programming it actively syndicates; provided, however, that with respect to sales of programs to broadcast stations outside the United States, the network may either redact the identity of such stations (if contracts are provided as part of the reports) or report the market (city and country) to which a specific program is syndicated rather than the identity of the station. * * *

* * * * * *

4. Section 73.663 is redesignated as § 73.664, and a new § 73.663 is added to read as follows:

§ 73.663 Expiration of the financial interest and syndication rules.

The Commission shall initiate a proceeding to review network activities in the financial interest and syndication areas no later than eighteen months after the entry of an Order by the United States District Court, Central District of California ("District Court") in Civ. Nos. 74–3599–R, 74–3600–R and 74–3601–R, lifting restrictions of the consent decrees administered therein that overlap the restrictions of 47 CFR 73.659, 73.660 and 73.661. In the Commission's review proceeding, the Commission shall presume that expiration of said Sections is warranted, and the burden of proof shall be placed on those who oppose the expiration. Unless the Commission takes affirmative action to the contrary, said Sections shall expire two years after the entry of the aforementioned Order by the District Court.

Note: The Commission shall publish a document in the **Federal Register** announcing the expiration of said Sections.

[FR Doc. 93–28434 Filed 11–26–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–204; RM–8266]

Radio Broadcasting Services; Provincetown, MA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document adds Channel *221A at Provincetown, Massachusetts, and modifies the license for Station WOMR to specify operation on Channel *221A in response to a petition filed by Lower Cape Communications, Inc. The coordinates for Channel *221A are 42–03–54 and 70–09–34. With this action, this proceeding is terminated.

EFFECTIVE DATE: December 27, 1993.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Report and Order, MM Docket No. 93–204, adopted October 29, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW, Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857–3800.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Massachusetts, is amended by adding Provincetown, Channel *221A.

Federal Communications Commission.

Victoria M. McCauley,

Assisstant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–28921 Filed 11–26–93; 8:45 am]

BILLING CODE 6712–01–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 1852

Change to the NASA FAR Supplement Promoting More Efficient Use of Contracts for Federal Information Processing Resources by Allowing Delivery of Such Resources to All NASA Installations; Correction

AGENCY: Office of Procurement, Procurement Policy Division, National Aeronautics and Space Administration (NASA).

ACTION: Correction to final rule.

SUMMARY: This notice corrects the final rule published in the **Federal Register** of November 8, 1993 (58 FR 59188). The final rule contained changes to the NASA FAR Supplement to allow broader agency-wide use of contracts for Federal Information Processing (FIP) resources.

EFFECTIVE DATE: This correction is effective on November 8, 1993.

FOR FURTHER INFORMATION CONTACT: Tom O'Toole, NASA Headquarters, Office of Procurement, Procurement Policy Division (Code HP), Washington, DC 20546. Telephone: (202) 358–0478.

SUPPLEMENTARY INFORMATION:

Background

On November 8, 1993, a final rule to amend the NASA FAR Supplement to allow more efficient use of contracts for FIP resources was published in the **Federal Register** (58 FR 59188). Under the new regulation, options or indefinite delivery/indefinite quantities on contracts for FIP resources that are in excess of the NASA contracting activity's ultimate requirements may be ordered for delivery to other NASA installations.

Need for Correction

As published, the final rule did not specify dates for the new Alternate Delivery Point clause and its Alternate I.

Correction of Publication

Accordingly, the publication on November 8, 1993 of the final rule which was the subject of FR Doc. 93–27413, is corrected as follows:

1852.239–70 [Corrected]

1. On page 59189, in the second column, in section 1852.239–70, the references to "[Date]" after the title of the Alternate Delivery Points clause and its Alternate I are corrected to read "[NOVEMBER 1993]" in both instances.

Tome Luedtke,

Acting Deputy Associate Administrator for Procurement.

[FR Doc. 93–29085 Filed 11–26–93; 8:45 am]

BILLING CODE 7510-01-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 625

[Docket No. 930815–3215; I.D. 111893D]

Summer Flounder Fishery

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Emergency interim rule, extension of effective date.

SUMMARY: An emergency interim rule is in effect through November 24, 1993, that allows two or more states, under mutual agreement and with the concurrence of the Director, Northeast Region, NMFS (Regional Director), to transfer or combine summer flounder commercial quota. The Secretary of Commerce (Secretary) extends the emergency interim rule from November 25, 1993, through December 31, 1993, because conditions warranting the emergency still exist.

DATES: The interim regulations amending part 625 published on August 26, 1993 (58 FR 45075) are extended from November 25, 1993, through December 31, 1993.

ADDRESSES: Copies of documents supporting this action may be obtained from: Richard B. Roe, Regional Director, National Marine Fisheries Service, Northeast Regional Office, One Blackburn Drive, Gloucester, MA 01930–3799.

FOR FURTHER INFORMATION CONTACT: Hannah Goodale, Fishery Policy Analyst, 508–281–9101.

SUPPLEMENTARY INFORMATION: Under section 305(c) of the Magnuson Fishery Conservation and Management Act (Magnuson Act), the Secretary promulgated an emergency interim rule (58 FR 45075, August 26, 1993) that allowed two or more states, under mutual agreement and with the concurrence of the Regional Director, to transfer or combine summer flounder commercial quota. The emergency rule was effective from August 23, 1993, through November 24, 1993. At the request of the Mid-Atlantic Fishery Management Council, the Secretary extends the emergency interim rule through December 31, 1993, or until superseded by the final rule implementing Amendment 5 to the Fishery Management Plan for the Summer Flounder Fishery. This action is taken under the authority of section 305(c)(3)(B) of the Magnuson Act because conditions warranting the emergency still exist.

Authority: 16 U.S.C. 1801 *et seq.*

List of Subjects in 50 CFR Part 625

Fisheries, Reporting and recordkeeping requirements.

Dated: November 23, 1993.

Nancy Foster,

Acting Assistant Administrator for Fisheries, NOAA, National Marine Fisheries Service.

[FR Doc. 93–29146 Filed 11–23–93; 4:15 pm]

BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 58, No. 227
Monday, November 29, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–69–AD]

Airworthiness Directives; Corporate Jets Limited Model BAe 125–1000A Series Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to all Corporate Jets Model BAe 125–1000A series airplanes. This proposal would require replacement of the white 'EMERG CONTCTRS' annunciator screen on roof panel 'CG' of the flight deck with an amber screen. This proposal is prompted by a report that the annunciator screen currently installed on these airplanes is not a color that would alert the flight crew that corrective action may be necessary. The actions specified by the proposed AD are intended to ensure that the flight crew is alerted to conditions when standby electrical power is not available.

DATES: Comments must be received by January 31, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056. Comments may be inspected at this location between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from Corporate Jets, Inc., 22070 Broderick Drive, Sterling, Virginia 20166. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington.

FOR FURTHER INFORMATION CONTACT: Stephen Slotte, Aerospace Engineer, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington 98055–4056; telephone (206) 227–2797; fax (206) 227–1320.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–69–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–69–AD, 1601 Lind Avenue, SW., Renton, Washington 98055–4056.

Discussion

The Civil Aviation Authority (CAA), which is the airworthiness authority for the United Kingdom, recently notified the FAA that an unsafe condition may exist on all Corporate Jets Model BAe 125–1000A series airplanes. The CAA advises that illumination of the 'EMERG CONTCTRS' annunciator light on the flight deck panel indicates that one (or both) of the emergency battery contactors is not closed and that future corrective action may be necessary. The emergency battery contactors connect the respective main aircraft battery to the busbar. When both contactors are not closed, the airplane cannot achieve the time requirement for operation without normal electrical power that is specified in the Federal Aviation Regulations (FAR). The 'EMERG CONTCTRS' annunciator is intended to alert the flight crew when standby electrical power is not available.

Currently, the 'EMERG CONTCTRS' annunciator screen on roof panel 'CG' at indicator position code 'HZ' on the flight deck of these airplanes has a white lens cover. Part 25 of the FAR requires, in part, that caution lights such as the 'EMERG CONTCTRS' annunciator that are installed in the cockpit must be amber in color. Illumination of an amber light indicates to the flight crew that possible future corrective action may be necessary. While dispatch of this airplane is not permitted when the 'EMERG CONTCTRS' annunciator is illuminated, illumination of the white 'EMERG CONTCTRS' annunciator screen during flight may not alert the flight crew that corrective action is necessary. This condition, if not corrected, could result in the flight crew being unaware that standby electrical power is not available.

Corporate Jets Limited has issued Service Bulletin SB.31–44–3645A, dated January 15, 1993, that describes procedures for replacement of the white 'EMERG CONTCTRS' annunciator screen on roof panel 'CG' of the flight deck with an amber screen. Installation of the amber screen will ensure that the appropriate flight deck indication requirements discussed previously are met, and that the flight crew is properly alerted to conditions when standby power is not available. The CAA classified this service bulletin as mandatory.

This airplane model is manufactured in the United Kingdom and is type certificated for operation in the United States under the provisions of Section 21.29 of the Federal Aviation Regulations and the applicable bilateral

airworthiness agreement. Pursuant to this bilateral airworthiness agreement, the CAA has kept the FAA informed of the situation described above. The FAA has examined the findings of the CAA, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other airplanes of the same type design registered in the United States, the proposed AD would require replacement of the white 'EMERG CONTCTRS' annunciator screen on roof panel 'CG' of the flight deck with an amber screen. The actions would be required to be accomplished in accordance with the service bulletin described previously.

The FAA estimates that 13 airplanes of U.S. registry would be affected by this proposed AD, that it would take approximately 1 work hour per airplane to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would be supplied by the manufacturer to operators at no cost. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $715, or $55 per airplane. This total cost figure assumes that no operator has yet accomplished the proposed requirements of this AD action.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

Corporate Jets Limited (formerly British Aerospace): Docket 93–NM–69–AD.

Applicability: All Model BAe 125–1000A series airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To ensure that the flight crew is aware that standby electrical power is not available, accomplish the following:

(a) Within 105 days after the effective date of this AD, replace the white "EMERG CONTCTRS" annunciator screen on roof panel "CG" of the flight deck with an amber screen in accordance with Corporate Jets Limited Service Bulletin SB.31–44–3645A, dated January 15, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Standardization Branch, ANM–113, FAA, Transport Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Standardization Branch, ANM–113.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Standardization Branch, ANM–113.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

Issued in Renton, Washington, on November 22, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29095 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–13–P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 47

[PS–50–93]

RIN 1545–AR95

Vaccine Floor Stocks Tax of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the Federal Register, the IRS is issuing temporary regulations relating to the floor stocks tax on vaccines held on August 10, 1993. These rules reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993. The temporary regulations provide guidance relating to the person liable for the tax, an exception to the tax, and the time for reporting and paying the tax. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 28, 1994.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Attn: CC:DOM:CORP:R (PS–50–93), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:DOM:CORP:R (PS–50–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward Madden (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations section of this issue of the Federal Register add a new 26 CFR part 47. This document proposes regulations the text of which is the same as the text of those temporary regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory

Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Edward Madden, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 47 is proposed to be added to read as follows:

PART 47—FLOOR STOCKS TAXES

Subpart A—[Reserved]

Sec.
47.1–1 through 47.1–5 [Reserved]

Subpart B—Vaccine Floor Stocks Tax of 1993

Sec.
47.2–1 Scope of subpart B.
47.2–2 Definitions relating to the vaccine floor stocks tax.
47.2–3 Imposition of vaccine floor stocks tax.
47.2–4 De minimis exception to vaccine floor stocks tax.
47.2–5 Requirements with respect to payment and return.

Authority: 26 U.S.C. 7805.

Section 47.2–5 also issued under section 13421(c) of the Omnibus Budget Reconciliation Act of 1993 (107 Stat. 312). [The text of this part 47, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,
Commissioner of Internal Revenue.

[FR Doc. 93–28911 Filed 11–22–93; 3:46 pm]
BILLING CODE 4830–01–U

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26 CFR Part 47

[PS–49–93]

RIN 1545–AR94

Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the floor stocks taxes on gasoline, diesel fuel, and aviation fuel held on October 1, 1993; on diesel fuel held on January 1, 1994; and on commercial aviation fuel held on October 1, 1995. These rules reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1993. The temporary regulations provide guidance relating to the persons liable for the taxes, exceptions to the taxes, and the times for reporting and paying the taxes. The text of those temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments and requests for a public hearing must be received by January 28, 1994.

ADDRESSES: Send submissions to: Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, room 5228, Attn: CC:DOM:CORP:R (PS–49–93), Washington, DC 20044. In the alternative, comments and requests may be hand delivered to: CC:DOM:CORP:R (PS–49–93), Internal Revenue Service, room 5228, 1111 Constitution Avenue, NW., Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Edward Madden, (202) 622–4537 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Background

The temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** amend 26 CFR part 47. This document proposes regulations the text of which is the same as the text of those temporary regulations. The preamble to the temporary regulations explains the temporary regulations.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Requests for a Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the Internal Revenue Service. All comments will be available for public inspection and copying. A public hearing will be scheduled and held upon written request by any person who timely submits written comments. If a public hearing is scheduled, notice of the date, time, and place for the hearing will be published in the **Federal Register**.

Drafting Information

The principal author of these regulations is Edward Madden, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Part 47

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR part 47 is proposed to be amended as follows:

PART 47—FLOOR STOCKS TAXES

Paragraph 1. The authority citation for part 47 continues to read in part as follows:

Authority: 26 U.S.C. 7805.

Par. 2. Subpart C is proposed to be added to read as follows:

Subpart C—Fuel Floor Stocks Taxes Under the Omnibus Budget Reconciliation Act of 1993

Sec.

47.3–1 Scope of subpart C and effective date.
47.3–2 Definitions relating to the floor stocks taxes under subpart C.
47.3–3 Imposition of floor stocks tax on fuel held on October 1, 1993.
47.3–4 Exceptions to the October 1, 1993, floor stocks tax.
47.3–5 Requirements with respect to payment and return for the October 1, 1993, floor stocks tax.
47.3–6 Imposition of the January 1, 1994, floor stocks tax on diesel fuel held on January 1, 1994.
47.3–7 Exception to the January 1, 1994, floor stocks tax.
47.3–8 Requirements with respect to payment and return for the January 1, 1994, floor stocks tax.
47.3–9 Imposition of the October 1, 1995, floor stocks tax on commercial aviation fuel held on October 1, 1995.
47.3–10 Exceptions to the October 1, 1995, floor stocks tax.
47.3–11 Requirements with respect to payment and return for the October 1, 1995, floor stocks tax.

(The text of this subpart C of part 47, as proposed, is the same as the text of the temporary regulations published elsewhere in this issue of the **Federal Register**.)

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–28912 Filed 11–22–93; 3:46 pm]

BILLING CODE 4830–01–U

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[PA 19–1–5500; A–1–FRL–4807–2]

Approval and Promulgation of Air Quality Implementation Plans; Pennsylvania; Stage II Vapor Recovery Regulations

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing two actions in this document. The first is a proposed limited approval/limited disapproval of a revision to the Pennsylvania State Implementation Plan (SIP) submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the use of Stage II vapor recovery at gasoline dispensing facilities in ozone nonattainment areas classified as moderate, serious, or severe in the Commonwealth. The second is a proposed approval of the Pennsylvania Stage II regulation as supplemented by Section 6.7 (b), (c), and (h) and Section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992. The intended effect of this document is to propose (a) limited approval/limited disapproval of the Pennsylvania regulation requiring Stage II vapor recovery gasoline dispensing facilities (Chapter 129.82), and (b) approval of the Pennsylvania regulation, Chapter 129.82, as supplemented with Section 6.7 (b), (c), and (h) and Section 17 (2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992.

DATES: Comments must be received on or before December 29, 1993.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director; Air, Radiation, and Toxics Division; U.S. Environmental Protection Agency, Region III; 841 Chestnut Building; Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107; U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460, Attention: Jerry Kurtzweg; and Commonwealth of Pennsylvania Department of Environmental Resources Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105–8468.

FOR FURTHER INFORMATION CONTACT: Cynthia H. Stahl, (215) 597–9337, at the EPA Region III address indicated in the **ADDRESSES** section.

SUPPLEMENTARY INFORMATION: On March 4, 1992, the Pennsylvania Department of Environmental Resources (PADER) submitted a revision to its State Implementation Plan (SIP) for Stage II vapor recovery. This submittal by Pennsylvania responds to the Clean Air Act requirement that States with moderate, serious, and severe ozone nonattainment areas submit regulations for Stage II vapor recovery by November 15, 1992. In Pennsylvania, these areas are the Pittsburgh moderate ozone nonattainment area, the Reading moderate ozone nonattainment area, and the Philadelphia severe ozone nonattainment area. The Pennsylvania revision consists of a regulation that requires gasoline dispensing facilities in moderate, serious, and severe ozone nonattainment areas in Pennsylvania to install and use Stage II vapor recovery according to the following schedule:

For facilities that commenced construction after November 15, 1990, compliance with the regulation is required by August 8, 1992, (six months after adoption of the Pennsylvania regulation).

For facilities that dispense more than 100,000 gallons of gasoline per month, based on the average monthly sales for the 2-year period immediately preceding February 8, 1992, compliance with the regulation is required by February 8, 1993 (one year after adoption of the Pennsylvania regulation).

All other facilities that dispense more than 10,000 gallons of gasoline per month are required to comply by February 8, 1994 (two years after adoption of the Pennsylvania regulation).

A separate provision specifically for the Philadelphia severe ozone nonattainment area requires gasoline dispensing facilities with annual throughputs of greater than 10,000 gallons to install Stage II vapor recovery equipment immediately upon addition or replacement of one or more underground storage tanks if such addition or replacement commenced after February 8, 1992.

The DER regulation states that independent small business marketers of gasoline as defined by section 305 of the CAA are exempt if their monthly throughput is less than 50,000 gallons. These schedules and requirements are consistent with the CAAA requirements.

Background

I. Pennsylvania Regulation, Chapter 129.82

The Pennsylvania Stage II regulation does not meet all of the requirements contained in EPA's October 1991 Stage II guidance document for enforcement and EPA's technical guidance documents (EPA–450/3–91–022a and EPA–450/3–91–022b). Specifically, the Pennsylvania regulation does not require that subject gasoline dispensing facilities pass functional testing requirements for the newly installed Stage II vapor recovery equipment, or that facilities be re-tested when suspected of violations or as a follow-up to a violation, or that recertification of the facility occur every fifth year or upon major facility modification (defined as a 75% or greater equipment change), whichever comes first. The functional testing includes performance of the Liquid Blockage Test, the Leak Test, and the Dynamic Backpressure Test, all of which are described in the guidance documents, referenced above. The EPA Stage II guidance documents also describe inspection frequency requirements and facility training requirements. These latter requirements must be included in the

Commonwealth's compliance manual or other enforceable document which is referenced by the regulation and incorporated into the Pennsylvania SIP.

The Pennsylvania regulation requires applicable gasoline dispensing facilities to use a Stage II vapor recovery system that collects at least 90% by weight of the vapors displaced or drawn from a vehicle fuel tank during refueling or a higher percent reduction required by EPA under section 182 of the CAAA. Pennsylvania proposed the Stage II vapor recovery regulations in June 1990, prior to enactment of the 1990 Clean Air Act Amendments. Between the time of initial proposal and the adoption of the Pennsylvania Stage II regulation, EPA issued its Stage II guidance. This guidance, among other requirements, requires 95% control of the vapors displaced during the refueling of a motor vehicle.

The Pennsylvania Stage II regulation is also deficient in that it does not specifically require that the Stage II equipment installed and used in the Commonwealth is certified by the California Air Resources Board (CARB) or is equivalent to such certification. The above mentioned requirement to change the emission control from 90% to 95% is not as critical if the certification specifications require CARB certified equipment since this equipment is expected to obtain 95% control. Each of these deficiencies, pertaining to functional testing and certification requirements must be corrected in order for EPA to fully approve the DER Stage II regulation.

II. Pennsylvania Air Pollution Control Act, Stage II Requirements

On June 29, 1992, the Pennsylvania Senate passed the Pennsylvania Air Pollution Control Act (Senate Bill No. 1650). This legislation was signed and made effective on July 9, 1992. The legislation includes all the language of the Pennsylvania DER Stage II regulation plus the necessary functional testing and certification requirements and emission control requirements. Specifically, the requirements pertaining to Stage II in the legislation differ from the Pennsylvania Stage II regulation in two major ways. The first is that it corrects the deficiencies in the Stage II regulation by requiring that the functional testing and certification requirements and emission control requirements based on EPA's guidance is to be used. Specifically, Section 6.7 (h) of the Pennsylvania Senate Bill No. 1650, Session of 1992, states that the functional testing and certification requirements to be used in Pennsylvania's regulation are those located in EPA's guidance documents developed under section 182 of the Clean Air Act for areas classified as moderate, serious, severe, or extreme ozone nonattainment. The second is that it extends the final compliance dates for the applicable sources built after November 15, 1990 to May 15, 1993 (six months from the effective date of the legislation), for facilities dispensing greater than 100,000 gallons per month to November 15, 1993 (one year from the effective date of the legislation), and for all other facilities to November 15, 1994 (two years from the effective date of the legislation). Section 17(2) made Section 6.7 of the legislation effective on November 15, 1992. The compliance dates in the DER Stage II regulation allow the last group of affected sources up to February 8, 1994 to comply with the regulation (two years from the effective date of the regulation).

The Clean Air Act requires that States adopt and submit to EPA Stage II vapor recovery regulations by November 15, 1992. The Stage II regulations are to require that, within 6 months after the adoption date of the regulation (but no later than May 15, 1993), gasoline dispensing facilities which were constructed after November 15, 1990, comply with the Stage II vapor recovery requirements. In addition, within one year after the adoption date of the regulation (but no later than November 15, 1993), gasoline dispensing facilities which dispense at least 100,000 gallons of gasoline per month, based on average monthly sales for the two year period before the adoption date comply with the Stage II requirements. Within two years after the adoption date of the regulation (but no later than November 15, 1994), all other gasoline dispensing facilities are required to comply with the Stage II vapor recovery requirements. Although the compliance dates in the Pennsylvania DER Stage II regulations and the Pennsylvania legislation are different, they are both consistent with the Clean Air Act requirements.

If the Pennsylvania legislation, Senate Bill No. 1650, when formally submitted, is substantially changed in areas other than those identified in this notice, EPA will evaluate those changes and may publish another notice of proposed rulemaking. If no substantial changes are made other than those areas cited in this notice, EPA will publish a Final Rulemaking Notice on the revisions. The final rulemaking action by EPA will occur only after the SIP revision has been adopted by the State and submitted formally to EPA for incorporation into the SIP.

Since the compliance dates in the DER Stage II regulation differ from those in the Pennsylvania legislation, EPA is soliciting comment on the compliance dates in the DER regulation and on the more distant compliance dates in the Pennsylvania legislation. If, between this proposed rulemaking notice and preparation of the final rulemaking notice, Pennsylvania supplements its Stage II regulation by submitting Section 6.7 (b), (c), (h), and section 17(2) of the Stage II portion of the Pennsylvania Air Pollution Control Act (Senate Bill No. 1650) as a SIP revision, EPA will approve the Stage II vapor recovery requirements of the legislation as a supplement to the DER Stage II regulation, including the more distant compliance dates and the specific testing, certification and emission control requirements. EPA is proposing to approve the compliance dates in the legislation and the specific functional testing and certification requirements in that legislation in addition to the DER Stage II regulation, Chapter 129.82, without further proposal in the **Federal Register**. If Pennsylvania chooses to submit the legislation as a supplement to the DER Stage II regulations, the SIP submittal of the legislation should be limited to those paragraphs cited above. If Pennsylvania does not submit any additional regulation or legislation to correct the deficiencies in its DER Stage II regulation prior to final rulemaking, EPA will complete its rulemaking action on the March 4, 1992 SIP revision request. The consequence of a final limited disapproval of this regulation will be that within 18 months of the final limited disapproval, EPA will be able to begin the sanctions process under section 179 of the Act.

EPA recognizes that the Pennsylvania legislation is now effective and enforceable in the Commonwealth. Therefore, although this legislation has not been submitted to EPA, EPA is structuring today's proposal to include the possibility of approving the DER Stage II regulation and disapproving the DER Stage II regulation for the limited purpose of allowing Pennsylvania the opportunity to correct its Stage II regulation, or fully approving the DER Stage II regulation with the functional testing and certification requirements of Section 6.7 (h) and the compliance dates in Section 6.7 (b) and (c) and Section 17 (2) of the legislation as a supplement to the DER regulation.

Further details pertaining to this proposed limited approval/limited disapproval action can be found in the accompanying Technical Support Document.

EPA is soliciting public comments on the issues discussed in this notice or on other relevant matters. In particular, EPA is soliciting comment on the limited approval of the DER Stage II regulation alone and on the approvability of the DER Stage II regulation as supplemented and modified by the Pennsylvania legislation, if that legislation is formally submitted to EPA prior to the final rulemaking of the DER Stage II regulation. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the **ADDRESSES** section of this document.

Proposed Action

EPA is proposing two actions in today's notice. The first is a proposed limited approval/limited disapproval of the Pennsylvania DER Stage II regulation, Chapter 129.82. The second is a proposed approval of the Pennsylvania Stage II regulation as supplemented by Section 6.7 (b), (c), (h), and Section 17(2) of the Pennsylvania Air Pollution Control Act, as amended on June 29, 1992.

I. Proposed Limited Approval/ Disapproval

EPA believes that it is warranted in proposing a limited approval of the Pennsylvania Stage II regulation because such approval would strengthen the SIP. The DER Stage II regulation, however, does not meet all applicable requirements under part D of the CAAA, and thus, EPA cannot grant full approval of this regulation pursuant to section 110(k)(3). Also, because the submitted regulation is not composed of separable parts that meet all the applicable requirements of the CAAA, EPA cannot grant partial approval of the regulation pursuant to section 110(k)(3). EPA may, however, grant a limited approval of the submitted regulation under section 110(k)(3) in light of EPA's authority pursuant to section 301(a) to adopt regulations necessary to further strengthen the SIP. Thus, in order to strengthen the SIP, EPA is proposing a limited approval of Pennsylvania's Stage II vapor recovery regulation, Chapter 129.82, under section 110(k)(3) and 301(a) of the CAAA. The approval is limited in the sense that the regulation is not being fully approved under 110(k)(3) and Part D of the CAAA since it does not meet the section 182(a)(2)(A) requirement found under part D of the CAAA. Under section 182(b)(3)(A), States with moderate and worse ozone nonattainment areas are required to submit their SIP revisions to EPA by November 15, 1992. Since Pennsylvania did not submit, by November 15, 1992, additional changes to the Stage II regulation in order to make it fully approvable, EPA is required to also propose a limited disapproval of the Pennsylvania DER Stage II regulation because it is missing the functional testing and certification as well as sufficient emission control requirements necessary for full approval of the regulation. Under section 179(a)(2), if the Administrator disapproves a submission under section 110(k) for an area designated nonattainment, based on the submission's failure to meet one or more of the elements required by the Act, the Administrator must apply one of the sanctions set forth in section 179(b) unless the deficiency has been corrected within 18 months of such disapproval. Section 179(b) provides two sanctions available to the Administrator: Highway funding and offsets. The 18 month period referred to in section 179(a) will begin at the time EPA publishes final notice of this disapproval. Moreover, the final disapproval triggers the federal implementation plan (FIP) requirement under section 110(c).

II. Proposed Approval of Chapter 129.82 as Supplemented by Section 6.7 (b), (c), (h), and Section 17(2) of the Pennsylvania Legislation

Due to circumstances surrounding the enforceability of the Stage II regulation, EPA is structuring today's proposal to include approving the DER Stage II regulation (Chapter 129.82) with the functional testing and certification requirements of Section 6.7(h) and the compliance dates in Section 6.7 (b) and (c) and Section 17 (2) of the legislation as a supplement to the DER regulation. As stated above, the legislation has not been formally submitted to EPA, and EPA will not delay its rulemaking action on the March 4, 1992 DER Stage II regulation SIP submittal. Therefore, if the legislation is not formally submitted to EPA prior to final rulemaking of the March 4, 1992 SIP submittal, EPA will complete its rulemaking action on the March 4, 1992 submittal without further consideration of the Pennsylvania legislation.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any state implementation plan. Each request for revision to the state implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under sections 110 and 301, and subchapter I, part D of the CAA do not create any new requirements, but simply approve requirements that the State is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, I certify that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The Regional Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements of section 110(a)(2)(A)–(K), 110(a)(3), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 10, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93-29141 Filed 11-26-93; 8:45 am]

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40 CFR Part 52

[PA26-1-5903; A-1-FRL-4799-5]

Approval And Promulgation Of Air Quality Implementation Plans; Commonwealth of Pennsylvania; Oxygenated Gasoline Program

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to approve a state implementation plan (SIP) revision submitted by the Commonwealth of Pennsylvania. This revision establishes and requires the implementation of an oxygenated gasoline program in the Pennsylvania portion of Philadelphia Consolidated Metropolitan Statistical Area (CMSA). This SIP revision was submitted to satisfy the Clean Air Act Amendments of 1990 (the Act) which requires all carbon monoxide nonattainment areas with a design value of 9.5 part per million (ppm) or greater based generally on 1988 and 1989 air quality monitoring data to implement an oxygenated gasoline program. The intended effect of this action is to propose approval of the oxygenated gasoline program. This action is being taken in accordance with section 110 of the Clean Air Act.

DATES: Comments must be received on or before December 29, 1993.

ADDRESSES: Comments may be mailed to Thomas J. Maslany, Director, Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107. Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, PA 19107 and the Commonwealth of Pennsylvania, Department of Environmental Resources, Bureau of Air Quality Control, P.O. Box 8468, 400 Market Street, Harrisburg, PA 17105.

FOR FURTHER INFORMATION CONTACT: Mrs. Kelly L. Bunker, (215) 597-4554.

SUPPLEMENTARY INFORMATION:

I. Introduction

Motor vehicles are significant contributors of carbon monoxide emissions. An important measure toward reducing these emissions is the use of cleaner-burning oxygenated gasoline. Extra oxygen enhances fuel combustion and helps to offset fuel-rich operating conditions, particularly during vehicle starting, which are more prevalent in the winter.

Section 211(m) of the Act requires that various states submit revisions to their SIPs, and implement oxygenated gasoline programs by no later than November 1, 1992. This requirement applies to all states with carbon monoxide nonattainment areas with design values of 9.5 parts per million or more based generally on 1988 and 1989 air quality monitoring data. Each state's oxygenated gasoline program must require gasoline for the specified control area(s) to contain not less than 2.7 percent (%) oxygen by weight during that portion of the year in which the areas are prone to high ambient concentrations of carbon monoxide. Under section 211(m)(2), the oxygenated gasoline requirements are to generally cover all gasoline sold or dispensed in the larger of the CMSA or the Metropolitan Statistical Area (MSA) in which the nonattainment area is located. Under section 211(m)(2), the length of the control period, to be established by the EPA Administrator, shall not be less than four months in length unless a state can demonstrate that, because of meteorological conditions, a reduced control period will assure that there will be no carbon monoxide exceedances outside of such reduced period. EPA announced guidance on the establishment of control periods by area in the **Federal Register** on October 20, 1992. [1]

In addition to the guidance on establishment of control period by area, EPA has issued additional guidance related to the oxygenated gasoline program. On October 20, 1992, EPA announced the availability of oxygenated gasoline credit program guidelines in the **Federal Register**. [2] Under a credit program, marketable oxygen credits may be generated from the sale of gasoline with a higher oxygen content than is required (i.e. an oxygen content greater than 2.7% by weight). These oxygen credits may be used to offset the sale of gasoline with a lower oxygen content than is required. Where a credit program has been adopted, EPA's guidelines provide that no gallon of gasoline should contain less than 2.0% oxygen by weight.

EPA issued labeling regulations under section 211(m)(4) of the Act. These labeling regulations were published in the **Federal Register** on October 20, 1992. [3]

II. Background

Part of Philadelphia County in the Commonwealth of Pennsylvania is designated nonattainment for carbon monoxide and classified as moderate with a design value of 11.6 ppm, based on 1988 and 1989 data. Under section 211(m) of the Act, the Commonwealth of Pennsylvania was required to submit a revised SIP under section 110 and part D of title I of the Act by November 15, 1992 which included an oxygenated gasoline program for the Pennsylvania portion of the Philadelphia CMSA. The counties in Pennsylvania which are impacted by this program are Bucks, Chester, Delaware, Montgomery and Philadelphia.

On November 12, 1992 the Commonwealth of Pennsylvania submitted a revision to its SIP for an oxygenated gasoline program. The revision included revisions to 25 PA Code Chapter 121, General Provisions, section 121.1 Definitions, and the additions of section 126.1 Oxygenate Content of Gasoline to 25 PA Code Chapter 126, Standards for Motor Fuels. These regulatory revisions were adopted by the Commonwealth on June 16, 1992. On February 16, 1993 an amendment to the November 12, 1992 SIP revision was officially submitted to EPA. The amendment corrected a typographical error in 25 PA Code Chapter 121, section 121.1 in the definition of "oxygenated gasoline". The corrected version of the definition was adopted by the Commonwealth on October 24, 1992. EPA summarizes its analysis of the state submittal below. A more detailed analysis of the state submittal is contained in a Technical Support Document (TSD) dated June 15, 1993, which is available from the Region III office listed in the Addresses section of this document.

III. EPA'S Analysis of Pennsylvania's Oxygenated Gasoline Program

As discussed above, section 211(m)(2) of the Act requires that gasoline sold or dispensed for use in the specified control areas contain not less than 2.7% oxygen by weight. Under section 211(m)(5), the EPA Administrator

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[1] See "Guidelines for Oxygenated Gasoline Credit Programs and Guidelines on Establishment of Control Periods under section 211(m) of the Clean Air Act as Amended--Notice of Availability," 57 FR 47853 (October 20, 1992).

[2] See foonote 1. EPA has issued guidelines for credit programs under section 211(m)(5) of the Act.

[3] See "Notice of Final Oxygenated Fuels Labeling Regulations under section 211(m) of the Clean Air Act as Amended--Notice of Final Rulemaking," 57 FR 47769. The labeling regulations may be found at 40 CFR part 80, § 80.35.

issued guidelines for credit programs allowing the use of marketable oxygen credits. The Commonwealth of Pennsylvania has elected to adopt a regulation allowing the use of marketable oxygen credits and establishing a 2.0% minimum oxygen content. Under EPA's credit program guidelines, all gasoline sold or dispensed during the control period by each control area responsible party (CAR or Blender CAR) [4] must contain an average oxygen content of not less than 2.7% by weight. The Commonwealth of Pennsylvania has adopted this type of oxygen content provision. The following sections of this document address some specific elements of the state's submittal. Parties desiring more specific information should consult the TSD.

Applicability and Program Scope

Section 211(m)(2) requires oxygenated gasoline to be sold during a control period based on air quality monitoring data and established by the EPA Administrator. The Commonwealth of Pennsylvania has established a November 1 to February 29 control period which is consistent with the EPA guidance.

All gasoline sold or dispensed for use within a given control area and during a given control period must comply with the average 2.7% oxygen content requirement and must contain not less than 2.0% oxygen by weight. Marketable oxygen credits may only be used or traded within the boundaries of the control area in which they were created, and only during the applicable control period. The Pennsylvania regulation complies with these guidelines.

Section 211(m)(2) requires that the oxygenated gasoline program apply to all gasoline sold or dispensed in the larger of the CMSA or MSA in which the nonattainment area is located. The Commonwealth of Pennsylvania's oxygenated gasoline regulations require oxygenated gasoline to be sold in Pennsylvania portion of the Philadelphia CMSA, which is consistent with the requirements of section 211(m)(2) of the Act. Specifically, the Pennsylvania regulation requires oxygenated gasoline to be sold in the counties of Bucks, Chester, Delaware, Montgomery and Philadelphia which make up the Pennsylvania portion of the Philadelphia CMSA.

Registration and Reporting Requirements

EPA's credit program guidelines specify that all parties intending to trade marketable oxygen credits should register with the state at least 30 days in advance of each control season. The 30 day time period is intended to allow the state flexibility, and is a suggested provision. Upon acceptance, Control Area Responsible Party [5] (CAR) identification numbers should be issued by the state. EPA guidelines specify that no party should be allowed to generate, trade, buy or sell credits without a CAR identification number.

The Commonwealth of Pennsylvania's registration requirements state that all parties intending to trade marketable oxygen credits shall submit an application to the Commonwealth at least 3 months prior to the start of the control period. The Pennsylvania regulation's registration requirements satisfy EPA's guidance.

EPA has also specified that records should be retained by all parties in the gasoline distribution system. EPA's guidelines impose the following responsibilities on various parties in the gasoline industry. Persons who produce or import gasoline (refiners and importers) are responsible for assuring that the gasoline is tested and that the accompanying documentation accurately reflects oxygen content. Persons who transport, store, or sell gasoline (refiners, importers, blenders, distributors, resellers, retailers, wholesale purchaser-consumers) have various responsibilities associated with assuring that only oxygenated gasoline is sold or dispensed for use in control areas. Terminal owners and operators are responsible for assuring that the oxygen content of the gasoline they receive, handle, or dispense is accurate. Retailers and wholesale purchaser-consumers are responsible for assuring that gasoline intended for sale during the control period contains at least 2.0% oxygen by weight.

According to EPA's guidance, all parties in the gasoline distribution network who are located or do business within a control area, and whose product is eventually sold into the control area for ultimate use, should be required to keep records concerning certain day-to-day activities. Under these guidelines, refiners and importers should be required to keep a copy of all the tests that are performed on batches of gasoline prior to shipment, as well as copies of the bills of lading or transfer documents for each batch. Carriers and distributors should be required to keep copies of the documents which accompany every batch of gasoline their employees handle. Terminal owners and operators and CARs and blender CARs should be required to keep records of both the gasoline they receive from upstream parties, as well as copies of all the tests performed and records created before the gasoline was transferred to a downstream party.

Pennsylvania's recordkeeping requirements for all parties comply with EPA guidelines on recordkeeping.

EPA guidelines also require that CARs commission an annual attest engagement [6], performed by either an internal auditor or independent Certified Public Account (CPA). The guidelines also specify that the standardized forms, specifying agreed-upon procedures for the conduct of the attest engagement, for use by the internal auditor or CPA be provided by the state.

The Pennsylvania regulations require each CAR and blender CAR to conduct or have conducted an attest engagement at the end of the control period. The Commonwealth's regulation requires that the attest engagement report be submitted to the Commonwealth within 60 days after the end of the control period. Pennsylvania has developed and provided a standardized report form for use by the internal auditor or CPA. The Pennsylvania regulation complies with EPA guidance on attest engagements.

Prohibited Activities

EPA's credit program guidelines contain provisions designed to ensure that gasoline that fails to meet the 2.0 % by weight minimum oxygen content requirement is not available for use within a control area. Generally, CARs or blender CARs may not transfer gasoline for use in a control area that contains less than the minimum percent of oxygen by weight to parties who are not themselves registered as CARs or blender CARs. Under EPA's credit program guidelines, regulated parties, including refiners, importers, oxygenate

[4] EPA's October 20, 1992 guidelines define a "Control Area Responsible party," or CAR, as a person who owns oxygenated gasoline which is sold or dispensed from a control area terminal. EPA also has a separate definition for a "Blended CAR" as a person who owns oxygenated gasoline which is sold or dispensed from a control area oxygenate blending facility. A Blender CAR is, in general, a party downstream from a terminal who blends oxygenates into gasoline or who otherwise changes the oxygen content of gasoline intended for use in a control area. Unless otherwise noted, the use of the term "CAR" in this notice refers to both CARs and Blender CARs.

[5] See footnote 6.

[6] When an averaging program is implemented, each CAR and Blender CAR should be required to submit reports to the states detailing certain activities during the control period. Information should be included specifying the following: The volumes of gasoline bought, sold and transferred; volumes and types of oxygenates bought, sold, and transferred; number of credits bought, sold or transferred; and a detailed demonstration of how credits were calculated.

blenders, carriers, distributors, or resellers may not fail to comply with recordkeeping requirements.[7] The Pennsylvania regulation complies with EPA's guidelines on these prohibited activities.

Transfer Documents

EPA's credit program guidelines specify that transfer documents should include the following information: Date of the transfer, name and address of the transferor, name and address of the transferee, the volume of gasoline which is being transferred, the proper identification of the gasoline as oxygenated or nonoxygenated, the location of the gasoline at the time of the transfer, the type of oxygenate, and for transfers upstream of the control area terminal and for transfers between CARs, include the oxygen content by weight and the oxygenate volume of the gasoline. Records are to be kept in a location where they are available for state review.

The Pennsylvania regulation complies with the EPA transfer document guidelines.

Enforcement and Penalty Schedules

State oxygenated gasoline regulations must be enforceable by the state oversight agency. EPA recommends that states visit at least 20% of regulated parties during a given control period. Inspections should consist of product sampling and record review. In addition, each state should devise a comprehensive penalty schedule. Penalties should reflect the severity of a party's violation, the compliance history of the party, as well as the potential environmental harm associated with the violation.

The Pennsylvania 25 PA Code Chapter 126, section 126.1 does not address enforcement provisions; however, enforcement provisions for the oxygenated gasoline program are found in section 9 of the Pennsylvania Air Pollution Control Act as amended on June 29, 1992. The Pennsylvania Air Pollution Control Act allows for the adoption of regulations for oxygenated gasoline. Section 9 of the Pennsylvania Air Pollution Control Act states that employees of the Department of Environmental Resources who are authorized to conduct inspections or investigations are declared to be law enforcement officers and are authorized to issue or file citations for violations of any regulation adopted under the Pennsylvania Air Pollution Control Act, and that the General Counsel is authorized to prosecute the offenses. This section provides for authority to enforce the oxygenated gasoline regulation. Section 9 also provides for penalty provisions. The provisions provided are both civil and criminal, depending on the type and severity of the violation. Pennsylvania's enforcement and penalty provisions are acceptable.

Test Methods and Laboratory Review

EPA's sampling procedures are detailed in appendix D of 40 CFR part 80. EPA has recommended, in its credit program guidelines, that states adopt these sampling procedures. The Commonwealth of Pennsylvania has adopted EPA sampling procedures.

Each state regulation must include a test method. The Pennsylvania regulation requires that compliance be determined in accordance with testing methodologies specified by the EPA. EPA's guidelines allow for the use of either the oxygenate flame ionization detector (OFID) test, preferred by EPA, or the American Society for Testing and Materials (ASTM) standards test method, Designation D 4815–89, although another method could be used if approved by EPA. Therefore, the Pennsylvania oxygenated gasoline regulation allows for the use of the either the OFID or the ASTM D 4815–89 test method, or any other method, if approved by EPA.

EPA has established an interim testing tolerance which states appropriate ranges for credit and per-gallon programs.[8] As EPA states in the memorandum, the purpose of the testing in a credit program is to determine if a sample meets the 2.0% minimum oxygen content requirement and to determine whether the documentation that accompanied that gasoline is correct. For a per-gallon (non-credit) program, the purpose of the testing is to determine whether the gasoline contains less than 2.7% oxygen by weight. The Pennsylvania regulation requires that compliance be determined in accordance with testing methodologies specified by the EPA. Therefore, the Pennsylvania oxygenated gasoline regulation requires the use of EPA's interim testing tolerance as stated in the October 5, 1992 memorandum and, when established, the use of EPA's final testing tolerance.

The Pennsylvania regulation requires that oxygen content compliance calculations be performed in accordance with procedures specified by the EPA. Therefore, the Pennsylvania oxygenated gasoline regulation requires the use of the compliance calculations as described in EPA's guidance document entitled "Guidelines for Oxygenated Gasoline Credit Programs under Section 211(m) of the Clean Air Act as Amended". The announcement of availability of this guidance document was published in the **Federal Register** on October 20, 1992 (57 FR 47853).

Labeling

EPA was required to issue Federal labeling regulations under section 211(m)(4) of the Act. These regulations, published in the **Federal Register** on October 20, 1992[9], required the following statement be posted for a per-gallon program or credit program with a minimum oxygen content requirement:

"The gasoline dispensed from this pump is oxygenated and will reduce carbon monoxide pollution from motor vehicles."

The Federal regulation also specifies the appearance and placement requirements for the labels.

EPA has strongly recommended that states adopt their own labeling regulations, consistent with the Federal regulation. The Commonwealth of Pennsylvania has adopted labeling requirements as part of its oxygenated gasoline regulation. The state requirement for the statement that is to be printed on the label is consistent with the Federal regulation. The portion of the state oxygenated gasoline regulation specifying the appearance and placement of the label differs from the Federal regulation in the following ways: (1) The Federal regulation requires that the posting be in block letters of no less than 20 point bold type whereas the Pennsylvania regulation requires that posting be in block letters of at least a 36 point bold type; and (2) the Federal regulation requires that the label be placed on the upper two-thirds of the vertical surface of the pump whereas the Pennsylvania regulation requires the label to be placed on the upper one-third of the vertical surface of the pump. These two differences in the State regulation are acceptable.

EPA's review of this material indicates the state has adopted an oxygenated gasoline regulation in accordance with the requirements of the Act. EPA is proposing to approve the Pennsylvania SIP revision for an oxygenated gasoline program, which was submitted on November 12, 1992 and February 16, 1993. EPA is soliciting

[7] EPA's recommended provisions for prohibited activities are found at pages 59-61 of the credit program guidelines.

[8] See Memorandum dated October 5, 1992 from Mary T. Smith, Director, Field Operations and Support Division to State/Local Oxygenated Fuels Contacts.

[9] See footnote 3.

public comments on the issues discussed in this document or on other relevant matters. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional office listed in the Addresses section of this document.

IV. This Action

Proposed Action

EPA is proposing to approve the amendments to 25 PA Code Chapter 121, section 121.1 Definitions, and 25 PA Code Chapter 126, section 126.1 Oxygenate Content of Gasoline as revisions to the Pennsylvania SIP.

Nothing in this action should be construed as permitting orallowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the Clean Air Act do not create any new requirements but simply approve requirements that the state is already imposing. Therefore, because the Federal SIP approval does not impose any new requirements, the Administrator certifies that it does not have a significant impact on any small entities affected. Moreover, due to the nature of the Federal-state relationship under the Act, preparation of a flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The Clean Air Act forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. EPA*, 427 U.S. 246, 255–66 (1976); 42 U.S.C. 7410(a)(2).

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

The Administrator's decision to approve or disapprove the SIP revision will be based on whether it meets the requirements ofsection 110(a)(2)(A)-(K), 110(a)(3), and part D of the Clean Air Act, as amended, and EPA regulations in 40 CFR part 51.

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Carbon monoxide, Intergovernmental relations, Reporting and recordkeeping requirements.

Authority: 42 U.S.C. 7401–7671q.

Dated: September 10, 1993.

W. T. Wisniewski,

Acting Regional Administrator, Region III.

[FR Doc. 93–29142 Filed 11–26–93; 8:45 am]

BILLING CODE 6560-50-F

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40 CFR Part 63

[AD-FRL–4804–4]

National Emission Standards for Hazardous Air Pollutants: Halogenated Solvent Cleaning

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule and test method; notice of public hearing.

SUMMARY: The EPA is proposing to regulate the emissions of certain organic hazardous air pollutants from new and existing halogenated solvent cleaning machines, which are among the sources being regulated under section 112 of the Clean Air Act. The proposed rule would require sources to achieve emission limits reflecting the application of the maximum achievable control technology consistent with section 112(d) of the Clean Air Act. The proposed rule would reduce the emissions of the halogenated organic chemicals identified in the Clean Air Act list of 189 hazardous air pollutants including methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, and chloroform. To determine the emissions from solvent cleaning machines, a new reference test method 307 is proposed.

A public hearing will be held, if requested, to provide interested persons an opportunity for oral presentation of data, views, or arguments concerning the proposed standards for halogenated solvent cleaning machines.

DATES: *Comments.* Comments must be received on or before January 28, 1994.

Public Hearing. If anyone contacts the EPA requesting to speak at a public hearing by December 20, 1993, a public hearing will be held on December 29, 1993 beginning at 9 a.m. Persons wishing to present oral testimony must contact Ms. Lina Hanzely of the EPA at (919) 541–5673 by December 20, 1993. Persons interested in attending the hearing should call Ms. Hanzely at the same number to verify that a hearing will be held.

ADDRESSES: *Comments.* Comments should be submitted (in duplicate, if possible), to: Air Docket (LE–131), ATTN: Docket No. A–92–39, Room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC 20460.

Public Hearing. Persons interested in attending the hearing or wishing to present oral testimony should notify Ms. Hanzely, Chemicals and Petroleum Branch, Emission Standards Division (MD–13), U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711, telephone number (919) 541–5673.

Background Information Documents. The background information and supporting documents for the proposed standards may be obtained from the U.S. Environmental Protection Agency Library (MD–35), Research Triangle Park, North Carolina 27711, telephone number (919) 541–2777. Please refer to one or all of the following documents.

Background Information Document: "Halogenated Solvent Cleaning National Emission Standards for Hazardous Air Pollutants Background Information Document":

Supporting Document: "Status of Alternative Solvents and Processes to Halogenated Solvent Cleaning"

Docket. Docket No. A–92–39, containing supporting information used in developing the proposed standards, is available for public inspection and copying between 8:30 a.m. and 3:30 p.m., Monday through Friday, at the EPA's Air Docket, Room M1500, U.S. Environmental Protection Agency, 401 M Street SW., Washington, DC. A reasonable fee may be charged for copying.

FOR FURTHER INFORMATION CONTACT: For information regarding the proposed standards, contact Mr. Paul Almodóvar at (919) 541–0283, Chemicals and Petroleum Branch (MD–13), Emission

Standards Division, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

SUPPLEMENTARY INFORMATION: The following outline is provided to aid in reading the preamble to the proposed regulation.

I. List of Source Categories and Subcategories
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B. Halogenated Solvent Cleaning Category and Subcategories
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III. National Emission Standards for Hazardous Air Pollutants Decision Process
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The following acronym and abbreviation list is provided as an aid in reading the preamble to the proposed standards.

Acronym and Units of Measure Abbreviation List

1990 Amendments=Clean Air Act as amended
Act=Clean Air Act
AEERL=Air and Energy Engineering Research Laboratory
C=chloroform
CFC–113=chlorofluorocarbon-113
CT=carbon tetrachloride
CTG=control techniques guideline
FBR=freeboard ratio
ft^2=square feet
ft/min=feet per minute
GACT=generally available control technology
HAP=hazardous air pollutant(s)
kWH=kilowatt hours
kg/hr=kilograms per hour
MACT=maximum achievable control technology
m^2=square meters
MC=methylene chloride
Mg=megagram
Mg/yr=megagrams per year
m/min=meters per minute
NAPCTAC=national air pollution control technology advisory committee
NESHAP=national emission standards for hazardous air pollutants
NPV=net present value
NSPS=new source performance standards
OMB=Office of Management and Budget
OSHA=Occupational Safety and Health Administration
OTVC=open top vapor cleaner
PCE=perchloroethylene
RCRA=Resource Conservation and Recovery Act
RFA=Regulatory Flexibility Act
RIA=regulatory impact analysis
SAGE=Solvent Alternative Guide
SIC=Standard Industrial Classification
TCA=1,1,1-trichloroethane
TCE=trichloroethylene
VOC=volatile organic compound

I. List of Source Categories and Subcategories

A. Halogenated Solvent Cleaning Operations: Major and Area Source Designation

Section 112 of the Act requires the EPA to evaluate and control emissions of HAP. The control of HAP is to be achieved through promulgation of emission standards under sections 112(d) and 112(f) for categories of sources that emit HAP. The EPA published a notice in the **Federal Register** outlining the procedures used to identify a preliminary draft list of categories of major sources and area sources of HAP on June 21, 1991 (56 FR 28548). On July 16, 1992 (57 FR 31592), a list of categories of sources was published. Halogenated solvent cleaning was listed as a category of both major and area sources. Accordingly, the EPA is today proposing emissions standards under section 112 of the Act for halogenated solvent cleaning operations applicable to both area and major sources of halogenated solvent cleaning machines.

In the preamble to the list of source categories, a finding of "threat of adverse effects" was made for the halogenated solvent cleaning source category.

Due to the high usage and emissions of these cleaners throughout industry, as well as the large number of cleaners, the EPA determined that there is a great potential for exposure to the HAP's used as solvents. One of the cleaning solvents, TCA, has also been implicated as causing stratospheric ozone depletion. Trichloroethane(1,1,1) will be phased out with other Agency regulations under Title VI of the CAA.

The health effects associated with halogenated solvent cleaners are best documented for MC, TCE, and PCE. Both MC and TCE are considered probable human carcinogens and are classified in Group B2, while PCE is still under review.

Evidence indicating the carcinogenicity of MC is available through animal studies. Animal inhalation studies on MC have shown significant increases in liver and lung adenomas and carcinomas in both males and females. Other animal studies have indicated that exposure to elevated levels of MC can cause benign mammary tumors. Based upon this available animal evidence, the Agency has determined that MC is a probable human carcinogen. In addition to these adverse effects, short-term exposure to MC has been known to cause impairments in central nervous system (CNS) functioning. Case reports of exposure to MC have shown that humans exposed to MC exhibited narcosis, irritability, analgesia, and fatigue.

Both PCE and TCE are moderately toxic substances that appear to target the CNS, causing dizziness, headaches and slowing of mental activity. Over longer periods of exposure, these adverse effects may also be seen in the liver and kidneys as well as the eyes and upper respiratory tract. The carcinogenic effects from both these chemicals has also been investigated, mostly through animal experiments. Results of TCE tests indicate that inhalation may result in the formation of renal tumors. Other TCE studies suggest that inhalation is fetotoxic and may cause litter resorption and reduced fetal body weight.

An Agency analysis has been conducted of nationwide exposures, individual lifetime risks, and population incidence from halogenated solvent cleaners emissions. This analysis estimates that as many as six increased cancer cases are attributable to halogenated solvent cleaners, annually, in the U.S. This study also suggests that upper-bound maximum individual lifetime risks in the proximity of these cleaners range from one in 1,000,000 (1×10^{-6}) to one in 10,000 (1×10^{-4}). Nationally, the maximum individual risk near a large facility with multiple conveyorized cleaners is as high as five in 10,000 (5×10^{-4}).

Based upon the evidence presented, the Agency found that cleaners using halogenated solvents present a threat of adverse impact to human health or the environment. The Agency therefore added them to the categories of area sources on their initial list of source categories (57 FR 31576).

B. Halogenated Solvent Cleaning Category and Subcategories

The halogenated solvent cleaner source category does not constitute a distinct industry, but is an integral part of many industries. The halogenated solvent cleaner source category consists of two basic types of solvent cleaning machines: batch and in-line cleaning machines (also called continuous cleaning machines). Both of these equipment types are designed to use solvent to clean parts. The solvent is either used to clean in its nonvapor form (referred to as cold cleaning) or heated and used to clean in its vapor form (referred to as vapor cleaning).

Most halogenated solvent use within the halogenated solvent cleaner source category is in vapor cleaning for both batch and in-line cleaning machines. The proposed standards cover the use of any halogenated HAP solvent (e.g., TCA, TCE, MC, PCE, CT, C), either by itself or in a blend, listed on the HAP list in section 112(b) of the Act and used in a solvent cleaning machine. The halogenated solvent CFC–113 is not listed on the HAP list; therefore, cleaners using this solvent are not covered by these proposed standards.

Most batch cold cleaning machines are small maintenance cleaning machines or parts washers that typically use mineral spirits, Stoddard solvents, and alcohols, which are all nonhalogenated solvents. Because this standard applies only to halogenated solvents, these nonhalogenated solvent processes are not included in the proposed standards. The only identified machines that use halogenated solvents in a batch cold cleaning machine application are carburetor cleaners.

Therefore, today's proposed regulations for batch cold cleaning machines are based on the control of carburetor cleaners, but apply to all cold cleaners using halogenated solvents or blends. It should be noted that nonvapor in-line (continuous) cleaning machines using halogenated solvents are covered by the proposed rule for in-line cleaning machines.

When the initial source category list was published (57 FR 31576), the Agency stated that the establishment of subcategories within a source category would be considered during the development of emission standards under authority of section 112(d). The initial source category list contained only one major and one area category for halogenated solvent cleaning. Solvent cleaning machine emissions and emissions reduction potential have been found to depend upon a number of variables, including size, operating schedule, and machine type. The appropriateness of specific controls is dependent on technical feasibility and emission reduction potential. The halogenated solvent cleaning source category has been divided into four size ranges of batch vapor cleaning machines, one in-line cleaning machine size, and one batch cold cleaning machine size considering the available data. It is the intent of the Agency to amend the initial source category list by substituting the following halogenated solvent cleaning subcategories for the categories published in the initial source category list when the halogenated solvent cleaning regulation is promulgated.

1. Small batch vapor cleaning machines <0.6 m^2 (6.5 ft^2); major and area source list;
2. Medium batch vapor cleaning machines 0.6 m^2 (6.5 ft^2) to 1.21 m^2 (13 ft^2); major and area source list;
3. Large batch vapor cleaning machines >1.21 m^2 (13 ft^2) to 2.51 m^2 (27 ft^2); major and area source list;
4. Very large batch vapor cleaning machines >2.51 m^2 (27 ft^2); major and area source list;
5. In-line cleaning machines (vapor and cold) (all sizes); major and area source list; and
6. Batch cold cleaning machines (all sizes); area source list.

The EPA requests comment on the appropriateness of the subcategorization proposed today. Comment is also requested concerning whether there is a basis for removing any of these subcategories from the source category list. Specific information is requested concerning whether the delisting criteria of section 112(c)(9) are met, or whether, in the alternative, it would be appropriate, in the case of any proposed subcategory, to conduct an assessment under section 112(c)(3) of the effect on human health or the environment before finally creating such subcategory and adding it to the source category list.

II. Background

A. Halogenated Solvent Cleaning Source Category Characterization

The five most commonly used halogenated solvents in solvent cleaning machines are MC, PCE, TCA, TCE, and CFC–113. These solvents are used alone and in blends that may contain two or more halogenated solvents or alcohol and other solvents. However, other halogenated solvents, including C and CT, are also used to a limited extent. With the exception of CFC–113, all are HAP covered by these standards. Although the technical analyses do not include data on C and CT halogenated HAP solvents, these solvents are covered under the proposed standards. The proposed standards would control C and CT halogenated solvent emissions from a solvent cleaning machine the same as for the halogenated HAP solvents included in the technical analyses (i.e., MC, PCE, TCA, TCE).

An estimated 199,700 Mg (219,670 tons) of halogenated solvents (i.e., MC, PCE, TCA, TCE) are used in solvent cleaning machines annually. This estimate represents an estimated 16,400 halogenated solvent batch vapor and 8,100 in-line (vapor and cold) cleaning machines nationwide. Of the 199,700 Mg (219,670 tons) consumed, an estimated 95,000 Mg (104,500 tons) are consumed by batch vapor cleaning machines (primarily OTVC's); and 45,800 Mg (50,380 tons) by in-line cleaning machines (including the use for photoresist stripping). An estimated 58,900 Mg (64,790 tons) of halogenated solvent is used in cold cleaning. This cold cleaning machines halogenated solvent consumption estimate is believed by the EPA to include carburetor cleaner (1,400 Mg [1,540 tons]) use and other cleaning operations such as wipe-cleaning and other clean-up solvent uses. These other operations are not included in the source category covered by today's proposed standards.

The use of TCA and CT is expected to decline as a result of the phaseout of these halogenated solvents mandated by Title VI of the Act and presidential order. However, since their use may extend into the future, CT and TCA are included in the proposed standards.

Halogenated solvent consumption has decreased over the last decade because of solvent recycling efforts, future mandated production phase-outs for TCA, and environmental and occupational health concerns surrounding the use of PCE and MC.

The estimated national baseline HAP emissions for the halogenated solvent cleaner source category are 128,600 Mg/yr (141,400 tons per year). Batch vapor cleaning machine emissions are estimated to represent 66 percent of the emissions, in-line cleaning machines represent 33 percent, and carburetor cleaners the remaining 1 percent. These emissions estimates reflect the level of emission control achieved by the affected industry in the absence of EPA standards.

B. Historical Overview

Control technique guidelines were established in 1977 for the control of VOC from solvent cleaning machines; recommended requirements were adopted by 33 States. In 1980, NSPS were proposed for the solvent cleaning machine industry. The NSPS were never promulgated. An alternative control technology document for halogenated solvent cleaning machines was published in 1989 after substantial review by industry.

The EPA was subsequently sued for not promulgating the NSPS and is under consent decree to propose a NESHAP within 3 years of the passage of the 1990 Amendments to be promulgated within 1 year of proposal. The required proposal date for the halogenated solvent cleaner source category NESHAP is November 15, 1993. The information from the alternative control technology document was updated, as appropriate, in developing the technical basis for the proposed NESHAP. These proposed standards fulfill the NESHAP proposal requirements under the consent decree.

III. National Emission Standards for Hazardous Air Pollutants Decision Process

A. Source of Authority for National Emission Standards for Hazardous Air Pollutants Development

Title III of the 1990 Amendments was enacted to help reduce the increasing amount of nationwide air toxics emissions. Under title III, section 112 of the Act was amended to give the EPA the authority to establish national standards to reduce air toxics from sources that emit one or more HAP. Section 112(b) contains a list of HAP that are the specific air toxics to be regulated by a NESHAP. Section 112(c) directs the EPA to use this pollutant list to develop and publish a list of source categories for which a NESHAP will be developed. The EPA must list all known categories and subcategories of "major sources" ("major sources" emit or have the potential to emit, considering controls, 9.1 Mg/yr [10 tons per year] or greater of any one HAP or 22.7 Mg/yr [25 tons per year] or greater of total HAP) that emit one or more of the listed HAP. Area source (i.e., nonmajor) categories and subcategories selected by the EPA for NESHAP development will be based on the Administrator's judgment that the sources, individually or in aggregate, pose a "threat of adverse effects to human health or the environment," or alternatively will be listed and regulated under authority of section 112.

B. Criteria for Development of National Emission Standards for Hazardous Air Pollutants

The NESHAP are to be developed to control HAP emissions from both new and existing sources according to the statutory directives set out in section 112, as amended. The statute requires the standards to reflect the maximum degree of reduction in emissions of HAP that is achievable for new or existing sources. The NESHAP must reflect consideration of the cost of achieving the emission reduction, and any nonair quality health and environmental impacts, and energy requirements for control levels more stringent than the MACT floors. (As described in section III.C. of this preamble, the MACT floor is the minimum stringency level for MACT standards, and is determined according to section 112(d) of the Act.) The emission reduction may be accomplished through application of measures, processes, methods, systems or techniques including, but not limited to, measures that:

1. Reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications;
2. Enclose systems or processes to eliminate emissions;
3. Collect, capture or treat such pollutants when released from a process, stack, storage, or fugitive emissions point;
4. Are design, equipment, work practice, or operational standards (including requirements for operator training or certification) as provided in section 112(h); or
5. Are a combination of the above [section 112(d)(2)].

To develop a NESHAP, the EPA collects information concerning the industry, including information on emission source characteristics, control technologies, data from HAP emission tests at well-controlled facilities, and information on the costs and other energy and environmental impacts of emission control techniques. The EPA uses this information to analyze possible regulatory approaches.

Although NESHAP are normally structured in terms of numerical emission limits, alternative approaches are sometimes necessary. In some cases, physically measuring emissions from a source may be impossible or at least impracticable due to technological and cost limitations. Section 112(h) authorizes the Administrator to promulgate a design, equipment, work practice, or operational standard, or combination thereof, in those cases where it is not feasible to prescribe or enforce an emissions standard.

C. Maximum Achievable Control Technology Floor Determination and Process of Developing Regulations for Major and Area Sources

The EPA must set MACT standards for each of the source categories listed under section 112(c) of the Act that contain major sources. Such standards must be set at a level at least as stringent as the "floor." Congress provides certain very specific directives to guide the EPA in the process of determining the regulatory floor. As described below, area sources may be regulated with either a MACT standard or a GACT standard. A GACT standard is not required to be as stringent as the MACT floor.

For MACT, Congress specified that the EPA shall establish standards that require "the maximum degree of reduction in emissions of the HAP * * * that the Administrator, taking into consideration the cost of achieving such emission reduction, and any nonair quality health and environmental impacts and energy requirements, determine is achievable for new or existing sources in the category or subcategory to which such emission standard applies * * *" [the Act section 112(d)(2)]. In addition, Congress limited the Agency's discretion by establishing a minimum baseline or "floor" for standards. For new sources, the standards for a source category or subcategory "shall not be less stringent than the emission control that is achieved in practice by the best controlled similar source, as determined by the Administrator" [the Act, section 112(d)(3)]. Congress provided that existing source standards could be less stringent than new source standards but could be no less stringent than the average emission limitation achieved by

the best performing 12 percent of the existing sources (excluding certain sources) for categories and subcategories with 30 or more sources or the best performing 5 sources for categories or subcategories with fewer than 30 sources [the Act, section 112(d)(3)].

Once the floor has been determined for new or existing sources for a category or subcategory, the Administrator must set a MACT standard that is no less stringent than the floor. Such standards must then be met by *all* sources within the category or subcategory. However, in establishing standards, the Administrator may distinguish among classes, types, and sizes of sources within a category or subcategory [the Act, section 112(d)(1)]. Thus, for example, the Administrator could establish two classes of sources within a category or subcategory based on size and establish a different emission standard for each class, provided both standards are at least as stringent as the MACT floor.

In addition, the Act provides the Administrator further flexibility to regulate area sources. Section 112(d)(5) provides that in lieu of establishing MACT standards under section 112(d), the Administrator may promulgate standards that provide for the use of "generally available control technologies or management practices." Area source standards promulgated under this authority (GACT standards) would not be subject to the MACT "floors" described above. Moreover, for source categories subject to standards promulgated under section 112(d)(5), the EPA is not required to conduct a residual risk analysis under section 112(f).

At the end of the data gathering and analysis, the EPA must decide whether it is more appropriate to follow the MACT or the GACT approach for regulating an area source category. An area source is "any stationary source of HAP that is not a major source." As stated previously, MACT is required for major sources. If all or some portion of the sources emits less than 9.1 Mg/yr (10 tons per year) of any one HAP (or less than 22.7 Mg/yr [25 tons per year] of total HAP), then it may be appropriate to define subcategories within the source category and apply a combination MACT/GACT approach, MACT for major sources and GACT for area sources. In other cases, it may be appropriate to regulate both major and area sources in a source category under MACT.

The next step in establishing a MACT or GACT standard is the investigation of regulatory alternatives. With MACT standards, only alternatives at least as stringent as the floor may be considered. Information about the industry is analyzed to develop model plant populations for projecting national impacts, including HAP emission reduction levels, costs, energy, and secondary impacts. Several regulatory alternative levels (which may be different levels of emissions control or different levels of applicability or both) are then evaluated to determine the appropriate MACT or GACT level.

The regulatory alternatives for new versus existing sources may be different, and separate regulatory decisions must be made for new and existing sources. For both source types, the selected alternative may be more stringent than the MACT floor. However, the control level selected must be technically achievable. In selecting a regulatory alternative to represent MACT or GACT, the Agency considers the achievable reduction in emissions of HAP (and possibly other pollutants that are co-controlled), the cost and economic impacts, energy impacts, and other environmental impacts. The objective is to achieve the maximum degree of emission reduction without unreasonable economic or other impacts.

The selected regulatory alternative is then translated into a proposed regulation. The regulation implementing the MACT or GACT decision typically includes sections of applicability, standards, test methods, and compliance demonstration, monitoring, reporting, and recordkeeping. The preamble to the proposed regulation provides an explanation of the rationale for the decision. The public is invited to comment on the proposed regulation during the public comment period. Based on an evaluation of these comments, the EPA reaches a final decision and promulgates the standard.

IV. Summary of Proposed Standards

A. Sources Covered by the Standard

Hazardous air pollutant emissions from the halogenated solvent cleaner source category and its subcategories are being regulated under sections 112(d) and (h) of the Act. The proposed standards cover the use of any halogenated solvent (e.g., TCA, TCE, MC, PCE, CT, C) listed on the HAP list in section 112(b) of the Act in a solvent cleaner. The proposed standards would regulate listed halogenated HAP emissions from each new and existing batch and in-line solvent cleaning machine. The regulated source is the individual halogenated solvent cleaning machine.

As authorized under section 112(h) of the Act, the proposed standards consist of a combination of equipment controls, work practices, and operational requirements to provide the best demonstrated HAP emissions control for halogenated solvent cleaning machines. Alternative emission limits are also proposed.

B. Proposed Standards

The standards proposed include multiple alternatives to allow owners or operators maximum compliance flexibility. These standards include an equipment standard, in conjunction with work practice requirements, and an alternative overall solvent emissions standard.

If an owner or operator elects to comply with the equipment standard, they must install one of the control combinations listed in the regulation, use an automated parts handling system to process all parts, and follow multiple work practices. The control combinations for new and existing batch and in-line cleaners are shown in table 1. As an alternative to selecting one of the control combinations listed in the regulation, an owner or operator may demonstrate that the batch vapor or in-line cleaning machine can meet the idling mode emission limit specified in the standards. The idling emission limits are also shown in table 1. In addition to maintaining this idling mode emission limit, the owner or operator of a batch vapor or in-line machine must use an automated parts handling system to process all parts and comply with the work practice standards. No idling standard is proposed for batch cold cleaning machines.

TABLE 1.—CONTROL COMBINATIONS OR IDLING LIMIT ALTERNATIVES FOR SOLVENT CLEANING MACHINES[a]

Cleaner type/size (m^2 solvent/air interface area)	Control combination options or	Idling limits (kg/hr per m^2 solvent/air interface area)
Batch vapor cleaning machines (≤1.21 m^2)	Freeboard ratio of 1.0, freeboard refrigeration device, reduced room draft or	0.15
	Bi-parting cover used during idling and working modes, freeboard refrigeration device, reduced room draft or.	
	Bi-parting cover used during idling and working modes, freeboard ratio of 1.0, reduced room draft or.	
	Freeboard refrigeration device, manual cover used during idling mode, reduced room draft	
Batch vapor cleaning machines (>1.2 m^2)	Bi-parting cover used during idling and working modes, freeboard refrigeration device, reduced room draft or.	0.15
	Dwell, freeboard refrigeration device, reduced room draft or	
	Bi-parting cover used during idling and working modes, freeboard refrigeration device, super heated vapor or.	
	Freeboard ratio of 1.0, reduced room draft, super heated vapor or	
	Dwell, reduced room draft, super heated vapor or	
	Bi-parting cover used during idling and working modes, reduced room draft, super heated vapor or.	
	Bi-parting cover used during idling and working modes, dwell, reduced room draft.	
All batch cold cleaning machines	Cover, water layer.	N/A
All existing in-line cleaning machines	1.0 freeboard ratio, freeboard refrigeration device	0.10
All new in-line cleaning machines	Superheated vapor system, freeboard refrigeration device	0.10

[a] Each owner or operator of a solvent cleaning machine would adopt one of the control combinations listed in table 1 or demonstrate that their solvent cleaning machine can achieve and maintain specified idling emission limits (kg/hr per m^2 solvent/air interface area). N/A = not applicable.

Compliance with the equipment standard for all batch vapor and in-line machines is demonstrated through the monitoring of process parameters. All controls must be monitored either weekly or monthly, as specified in the regulation. Annual reports of monitoring results, and quarterly reports of exceedances of monitored parameters are required. Any exceedance of a monitored parameter would be a violation of the standard. Batch vapor or in-line halogenated solvent cleaning machine operators are required to be trained in the proper operation (work practices) of the cleaning machine to ensure emissions reduction. If requested during an inspection by the Administrator, an owner or operator would need to demonstrate that all batch vapor or in-line solvent cleaning machine operators understand and follow the required work practices. This would be demonstrated by passing an operator test supplied by the inspector. No monitoring or operator test is proposed for batch cold cleaning machines.

As an alternative to the equipment and work practice standard, an owner or operator of a batch vapor or in-line machine may elect to demonstrate that the solvent cleaning machine emits less than the overall solvent emission limit specified in the standards. These specified emission limits are presented in table 2. Compliance is demonstrated by maintaining records of solvent additions and removals and using mass balance equations to calculate emissions. Annual reports including emission calculations, and quarterly reports of exceedances of the emission limit are required. A cleaning machine that meets the overall solvent emission limit is not subject to any other requirements, including monitoring process parameters or the work practice standards. No alternative emission standard is proposed for batch cold cleaning machines.

TABLE 2.—ALTERNATIVE COMPLIANCE EMISSION LIMITS FOR SOLVENT CLEANING MACHINES

Solvent cleaning machine	3-month rolling average monthly emission limit (kg/m^2-month)
Batch vapor solvent cleaning machines	109.8
Existing in-line solvent cleaning machines	153.2
New in-line solvent cleaning machines	98.5

C. Relationship of Standards to the Pollution Prevention Act

The Congress passed and the President signed into law the Pollution Prevention Act of 1990 (PPA) making pollution prevention a national policy. Section 6602 (b) identifies an environmental management hierarchy in which pollution "should be prevented or reduced whenever feasible; pollution that cannot be prevented should be recycled in an environmentally safe manner, whenever feasible; pollution that cannot be prevented or recycled should be treated in an environmentally safe manner whenever feasible; and disposal or other releases into the environment should be employed only as a last resort * * * " In short, preventing pollution before it is created is preferable to trying to manage, treat or dispose of it after it is created.

According to PPA section 6603(5), source reduction is defined as reducing the generation and release of hazardous substances, pollutants, wastes, contaminants or residuals at the source, usually within a process. The term includes equipment or technology modifications, process or procedure modifications, reformulation or redesign of products, substitution of raw materials, and improvements in housekeeping, maintenance, training or inventory control. Source reduction does not include any practice that alters the physical, chemical or biological characteristics or the volume of a hazardous substance, pollutant or contaminant through a process or activity that is not integral to or necessary for producing a product or providing a service.

Pertaining to this proposal, section 6604(b)(2) of the EPA directs the EPA to, among other things, "review regulations of the Agency prior and subsequent to

their proposal to determine their effect on source reduction." The EPA believes that this proposed rule is consistent with the purpose of the Act's requirement to consider source reduction technologies. The Agency's emphasis on source reduction hierarchy is also entirely consistent with Clean Air Act Amendments of 1990, particularly the air toxics provision (title III) that requires the maximum achievable emission reductions through measures that "reduce the volume of, or eliminate emissions of, such pollutants through process changes, substitution of materials or other modifications; * * * " etc.

In todays proposed standards, the EPA has incorporated the application of the environmental source reduction management hierarchy. These proposed standards encourage source reduction as follows:

1. Encourages elimination or reduction of the need to clean whenever feasible. Although the option is not widely available at this time, there are some emerging processes and technologies that facilitate the elimination or reduction of the need to clean and the industry should be encouraged to move toward this goal;

2. Increases the efficiency of cleaning operations to reduce the emissions, and thereby reduces the overall use of halogenated solvents; this may be achieved through modification of certain equipment (e.g., adding a cover, increasing the free board ratio, etc.) or through adoption of new technologies (e.g., totally enclosed or vacuum systems);

3. Improves the housekeeping measures, work practices and maintenance of equipment; and

4. Discourages the use of end-of-pipe or treatment technologies, such as carbon adsorption units that may have significant multi-media impacts.

In addition, a number of alternative solvents and cleaning processes exist that may further promote source reduction in this source category. Alternative solvents include aqueous, semi-aqueous, hydrochloro-fluorocarbons, and organic solvents. Alternative cleaning processes include the use of ice particles, plasma, pressurized gases, super critical fluids, ultraviolet/ozone, mechanical, thermal vacuum deoiling, and no-clean processes that eliminate the need for surface cleaning. However, there is no "drop-in" alternative to replace halogenated solvent cleaning operations at this time and selection of an alternative may depend largely on the substrate to be cleaned, the type of soil to be cleaned, level of cleanliness required and other factors. Although the switch-over to certain alternatives may eliminate the use and emission of halogenated solvents, or reduce an impact to one media, the substitute may not when considered from a multi-media perspective, lead to an overall environmental improvement. Generally speaking, many of the alternatives are not without some trade-offs and cross-media transfer problems. Sources contemplating switch-over to alternatives need to carefully weigh the trade-offs before a decision is made.

For further information regarding alternative solvents, the EPA has established an on-line Solvent Alternative Guide, referred to as SAGE. The SAGE is accessible through the EPA's Technology Transfer Network under the Control Technology Center Bulletin Board; modem number (919) 541–5742. The SAGE was established to be used as an analytical tool to assist persons with making an educated decision on potential alternative solvents based on their needs. Information accessible includes costs, potential secondary impacts, and requirements for use. Information included in SAGE is based on available case studies and is constantly evolving.

For further information regarding SAGE, contact Mr. Charles Darvin at (919) 541–7633, Air and Energy Engineering Research Laboratory (MD–61), Office of Research and Development, U.S. Environmental Protection Agency, Research Triangle Park, North Carolina 27711.

D. Regulatory Agenda

Although no one is expected to switch to alternative solvents as a direct result of today's proposed standards, the EPA recognizes the industry trend to reduce or eliminate halogenated solvent cleaning machines. Several ongoing Agency activities could potentially have an impact on owners or operators of halogenated solvent cleaning machines who elect to switch to alternative cleaning techniques. The following is a list of current projects and contact names; information on each of these programs is published twice a year in the EPA Agenda.

(1) Metal Products and Machinery Effluent Guideline—The EPA is currently developing effluent standards under the Clean Water Act for this industry. Solvent cleaning operations generating wastewater (e.g., aqueous or semi-aqueous operations) will likely be included. For more information, contact: Bill Cleary of the U. S. Environmental Protection Agency's Office of Water at (202) 260–9817.

(2) Aerospace Industry NESHAP—The EPA is currently developing emission standards under the Act for this industry. This standard will cover wipe cleaning operations performed in the aerospace industry. For more information, contact: Vicki Booth of the U. S. Environmental Protection Agency at (919) 541–0164.

(3) Solvent Alternative Guide (SAGE)—The EPA has developed SAGE, a computer program that provides suggestions for alternative industrial cleaning and degreasing technologies. Users of the program provide information regarding their surface cleaning requirements and SAGE provides cleaning options that can satisfy those requirements. Options include aqueous and semiaqueous systems, supercritical fluids systems, and low vapor pressure biodegradable cleaning systems. For more information, contact: Charles H. Darvin of the U. S. Environmental Protection Agency at (919) 541–7633.

V. Summary of Environmental, Energy, and Economic Impacts

A. Air

The proposed standards would reduce nationwide emissions of hazardous air pollutants from halogenated HAP solvent cleaning machines by 80,400 Mg/yr (88,440 tons per year), or 63 percent in 1996 compared to the emissions that would result in the absence of the proposed standards. No adverse secondary air impacts are expected from the implementation of control options.

B. Water and Solid Waste

There are no adverse water or solid waste impacts anticipated from the promulgation of these standards. However, the use of some halogenated solvents is expected to decline as a result of the phaseout mandated by the 1990 Amendments, the Montreal Protocol, and presidential order; and aqueous cleaners have been chosen by many owners or operators as a cleaning alternative. These standards have the potential to cause some owners or operators to switch to aqueous cleaners or other alternative cleaning technologies; although, this effect is expected to be minor compared to the other factors listed above. As discussed in section IV. C., sources contemplating switch-over to alternatives need to carefully weigh the trade-offs before a decision is made as there may be trade-offs and cross-media (i.e., water) transfer problems. There is a potential impact on water quality from the use of carbon adsorption from the regeneration of

carbon beds. The use of carbon adsorbers, however, is not recommended under these proposed standards. Carbon adsorbers are not expected to be selected by owners or operators to control halogenated HAP solvent emissions because of their expense relative to other control options. The quantity of waste solvent or carbon from existing carbon adsorption units disposed of as hazardous waste would not be affected by the proposed standards.

C. Energy Impacts

The anticipated energy impacts result from increased electricity usage for additional air pollution control devices, such as freeboard refrigeration devices, and automated parts handling systems. The national annual energy usage is expected to increase from 57.2 million kWH/yr to 117.1 million kWH/yr, which is equivalent to approximately 32.5 thousand barrels of oil.

D. Cost Impacts

The implementation of this regulation is expected to result in an overall annual national net savings of $30.4 million. This includes a net annualized savings from installation of control devices of $46.8 million and a total monitoring, reporting, and recordkeeping cost of $16.5 million. These savings will come from the significant decrease in solvent emissions and, therefore, solvent consumption, which outweigh the overall cost of air pollution control equipment and monitoring and recordkeeping costs. The only solvent cleaning machine subcategory that would incur an overall national cost is the small cleaning machine. The national annual cost for small cleaning machines is $6.3 million.

E. Economic Impacts

The analysis attempted to compute the impacts on the facilities with the highest control costs. Those facilities were the small facilities, and these facilities were defined using the specifications listed earlier for a small model solvent cleaning machine. Monitoring, recordkeeping, and reporting costs were included with the control costs as an input to the economic impact analysis. Economic impacts were not computed for facilities with negative costs, which include all the affected facilities except for small and medium solvent cleaning machines and new in-line solvent cleaning machines. The methodology for calculating economic impacts is discussed at length in the background information package (see the Background Information Documents section near the beginning of this preamble).

The economic impact analysis shows that the economic impacts from this proposed standard are insignificant. Since a majority of solvent cleaning facilities that will be affected by the standard will actually experience negative costs, the analysis calculated impacts only for those facilities that did not experience negative costs. With the chosen alternatives, and under the assumption that facilities experiencing positive costs cannot pass on any increase in costs from the standard to consumers, the increase in total cost of production for facilities in 39 SIC codes ranges from 0.02 to 0.61 percent (existing cleaning machines), and 0.01 to 0.58 percent (new cleaning machines). The major reason for such small increases in production cost is the small cost share that is attributable to solvent cleaning machines uses. This share ranges from 0.1 (SIC 376—Guided Missiles, Space Vehicles, Parts) to 9.7 percent (SIC 359—Industrial Machinery, n.e.c. [not elsewhere classified]). Due to the small increase in production cost, the impetus for facilities with positive costs to switch to substitutes for halogenated solvent cleaning operations is minor as a result of this standard alone. There will also be minimal effects on the markets for the solvents themselves. .

VI. Rationale

A. Selection of Pollutants and Source Categories for Regulation

1. Designated Pollutants

The source category for these proposed standards are solvent cleaning machines that use any of the listed halogenated HAP solvents. During the NSPS and NESHAP development, the HAP studied included MC, PCE, and TCE. The "Alternative Control Technology Document—Halogenated Solvent Cleaners" (EPA–450/3–89–030) also analyzed CFC–113, CT, C, and TCA. All of these solvents except for CFC–113 are HAP listed in the Act and are regulated under these proposed standards. As discussed earlier, the use of TCA and CT is expected to decline as a result of the phaseout mandated by the 1990 Amendments, the Montreal Protocol, and presidential order. However, since their use will extend sometime into the future, TCA and CT are included in proposed standards.

2. Halogenated Solvent Cleaning Machines.

The halogenated solvent cleaning source category does not constitute a distinct industrial category, but is an integral part of many major and minor industries. The largest quantities of halogenated solvents used for cleaning machines are in the following SIC codes.

1. SIC 25–Furniture and Fixtures;
2. SIC 34–Fabricated Metal Products;
3. SIC 36–Electric and Electronic Equipment;
4. SIC 37–Transportation Equipment; and
5. SIC 39–Miscellaneous Manufacturing.

Additional industries that use halogenated solvents in cleaning include the following.

1. SIC 20–Food and Kindred Products;
2. SIC 33–Primary Metals;
3. SIC 35–Nonelectric Machinery; and
4. SIC 38–Instruments and Clocks.

Nonmanufacturing industries such as railroad, bus, aircraft, and truck maintenance facilities; automotive and electric tool repair shops; automobile dealers; and service stations also use halogenated solvent cleaning machines.

Batch and in-line cleaning machines are subject to these proposed standards. Brief cleaning machine and process descriptions for these cleaning machine types are discussed in the following paragraphs. These process descriptions are discussed at length in the background information package (see Background Information Documents).

3. Batch Vapor Cleaners.

The most common type of batch vapor cleaning machine is the OTVC; however, other (non-OTVC) batch vapor cleaning machines such as the cross-rod batch vapor cleaning machine have been developed to accommodate varying industrial cleaning demands.

The basic OTVC tank is designed to generate and contain solvent vapor. The tank is equipped with a heating system that uses steam, electricity, hot water, or heat pumps to boil liquid solvent. As the solvent boils, dense solvent vapors rise and displace the air inside the tank. The solvent vapors rise to the level of the primary condensing coils. Coolant (e.g., water, refrigerant) is circulated or recirculated through the condensing coils to provide continuous condensation of rising solvent vapors, thereby creating a controlled vapor zone that prevents vapors from escaping the tank. Condensing coils are generally located around the inside walls of the cleaner, although in some equipment the primary coils are at one end or side of the cleaner.

During the vapor cleaning machine operation, solvent vapors condense on the cooler workload entering the vapor

zone. Condensing solvent dissolves some contaminants and flushes both dissolved and undissolved soils from the workload. Condensed solvent and dissolved or entrained contaminants then drain back into the sump below. When the temperature of the workload reaches that of the vapor, condensation ceases and the vapor phase cleaning machine process is complete. In some instances, the vapor cleaning machine cycle is supplemented, or even replaced, by the immersion of the part into the hot, liquid solvent.

There are numerous batch vapor cleaning machine process variations of the basic vapor cleaning cycle to accommodate differing parts cleaning requirements. Cleaning machine cleaning cycle variations include, but are not limited to, immersion-vapor-spray and vapor-spray-vapor cycles, and nonboiling solvent sections with vapor sections.

Parts are introduced into the cleaning machine manually or with the use of an automated parts handling system. In manual operations, the attendant lowers the parts basket into the cleaning machine and removes the basket once the cleaning has been completed. An automated parts handling system replaces manual operations and decreases potential worker exposure to HAP.

Variations to the basic design include dual or multiple chamber units and ultrasonics. Dual chamber units typically use one chamber for generating the solvent vapor, and the other for immersion cleaning or spraying applications. Some units with multiple chambers include ultrasonics in one of the chambers. Ultrasonics incorporates high frequency sound waves to produce pressure waves in the liquid solvent. Minute vapor pockets are formed in areas of low pressure within the liquid. These pockets collapse as the pressure in the zone cycles to high pressure. The constant creation and collapse of these vapor pockets provides a scrubbing action to aid cleaning.

Non-OTVC batch vapor cleaning machines are hybrids of an OTVC and an in-line cleaning machine. These batch vapor cleaning machines are generally larger and more enclosed than a typical OTVC and typically use conveyorized automated parts handling systems for moving parts through the cleaning cycle. For example, the cross-rod non-OTVC batch vapor cleaning machine is an enclosed cleaning machine that uses rods that suspend parts baskets as they are conveyed through the machine by a pair of power-driven chains.

Similar to OTVC batch vapor cleaning machines, cleaning chambers can contain halogenated solvent for vapor, spray, and immersion cleaning. Controls for OTVC's will be as effective, or more effective, on non-OTVC batch vapor cleaning machines as they are essentially more enclosed OTVC's. Therefore, analysis of the standards based on OTVC batch vapor cleaning machines is reasonable and representative.

4. Batch Cold Cleaning Machines

Batch cold cleaning machines typically use nonhalogenated solvents. Carburetor cleaning machines were the only batch cold cleaning machines identified that use halogenated solvents. In these cleaning machines, MC is blended with other solvents and additives to reduce flammability and increase dissolving power. Emissions from these cleaning machines are typically well controlled because the cleaning solution used contains water, which forms a water layer above the solvent mixture in the tank. The best known control used for carburetor cleaning machines is the use of a cover on the tank and a water layer on the solvent surface. These controls significantly reduce evaporation of MC.

Although in the past some other cold cleaning machines have been sold for use with halogenated solvents, no other cold cleaning machines other than carburetor cleaning machines were identified as using halogenated solvent HAP.

5. In-line (Vapor and Cold) Cleaning Machines.

In-line cleaning machines employ automated parts loading on a continuous basis. In-line cleaning machines can operate in the vapor or nonvapor phase; however, the majority of in-line cleaning machines using halogenated solvents are vapor cleaning machines. An in-line cleaning machine is usually individually designed for a specific workload and production rate. In-line cleaning machines are generally enclosed, except for parts and conveyor inlet and exit openings. The four main types of in-line cleaning machines using halogenated solvents are the monorail, belt, strip, and printed circuit board processing equipment (photoresist strippers, flux cleaners, and developers).

The same cleaning techniques are used in in-line cleaning machines as with batch cleaning machines but are typically larger scale operations than with batch units.

B. Selection of Emissions To Be Covered by the Standards

Halogenated solvent cleaning machines (batch and in-line cleaning machines) are characterized by three operating modes. These operating modes are idling, working, and downtime. Cold cleaners do not have an idling mode.

The three operating modes have characteristic emission mechanisms associated with them. In addition, miscellaneous fugitive emissions from several other loss mechanisms may also occur. Miscellaneous fugitive emissions include those emissions that occur as a result of leaks, filling/draining losses, wastewater losses, start-up/shutdown losses (losses that occur when a cleaning machine is turned on or off), distillation losses, and solvent decomposition losses.

1. Idling Emissions.

Idling emissions are emissions that occur when the cleaning machine is turned on and ready to operate, but is not actively processing parts. Air and solvent vapor interface losses that occur during the idling mode consist of solvent vapor diffusion (or evaporation from liquid solvent in a cold cleaning machine) and solvent vapor convection induced by a warm freeboard.

Diffusion occurs because molecules of solvent move from higher concentrations in the vapor zone to lower concentrations in the air. Because molecular activity increases at higher temperatures, diffusion rates are temperature dependent. Idling diffusion emissions plateau when vapor and air solvent concentrations reach a steady state. Disturbance of this steady state will result in an increase in emissions due to diffusion losses. The diffusion rate steady state can be disturbed if an air flow is introduced across the air and solvent vapor interface as the result of room drafts or a lip exhaust.

Convection occurs from the tank walls being heated from the heated liquid solvent and resulting vapor. The emissions occur as a result of the convective flow up along the freeboard that carries solvent vapor out of the cleaning machine. The amount of convective loss depends on how warm the freeboard walls become. Adequate cooling of the walls by cooling coils can reduce convective losses. Because idling losses can be significant and controls are available to reduce these emissions, idling losses will be controlled by these proposed standards.

2. Working Emissions

Working emissions are emissions that occur when the cleaning machine is

turned on and operating (parts are cycling through the cleaning process). Working emission mechanisms for vapor cleaning machines are the same as for idling emissions with additional emissions occurring from the disturbance of the solvent and vapor air interface caused by the introduction and extraction of parts being cleaned, cleaning process (e.g., spraying), the entrainment of solvent vapor on the part as a workload (parts being cleaned) is pulled out of the cleaning machine, and solvent liquid dragout (solvent that remains on the surfaces of clean parts after the parts are removed from the cleaning machine). Working emissions from cold cleaners (batch or in-line) include liquid dragout and cleaning process losses.

Halogenated solvent loss rates are typically the largest during this mode as compared with idling and downtime modes. Because of the large emission potential, working emissions will be controlled by these proposed standards.

3. Downtime Emissions

Downtime emissions are solvent emissions that occur when the heat to the sump (cleaning machine tank) is turned off and the cleaning machine is not operating. Downtime emission mechanisms include evaporation of solvent from the liquid solvent surface and subsequent diffusion into the ambient air. Halogenated solvent loss rates are typically the lowest during this mode as compared to idling and working modes. Generally, these emissions are minimized by the use of a cover, which is required by these standards when the cleaning machine is in the downtime mode. This requirement is considered to exist in the baseline.

4. Miscellaneous Fugitive Emissions

In addition to HAP halogenated solvent losses that occur when the machine is down, idling, or working, there are several other solvent loss mechanisms that contribute to overall losses from a halogenated solvent cleaning machine. These include filling and draining losses as well as machine start-up and shutdown losses. Work practices are included in the proposed standards to reduce these emissions.

C. Emission Control Options

Halogenated solvent cleaning machine emission control options include those controls added to the cleaning machine and those that apply to the cleaning machine operating practices. Alternative cleaning technologies and some emerging new technologies may also be potential options for the reduction of HAP halogenated solvent cleaning machine emissions. This section focuses on batch vapor and in-line (cold and vapor cleaners). Controls for batch cold cleaners are discussed in section VI.A.4.

1. Solvent Cleaning Machine Control Technologies

Emission control technologies for the halogenated solvent cleaning machine industry are classified as idling and/or working mode emission controls for both batch vapor and in-line cleaning machines. Table 3 presents the control efficiencies for various solvent vapor emission control techniques for idling and working modes. A description of these solvent vapor emission controls is summarized here. These emission control techniques are discussed at length in the background information document (see Background Information Documents).

TABLE 3.—SOLVENT VAPOR EMISSION CONTROL EFFICIENCIES FOR VARIOUS CONTROL TECHNIQUES

Cleaner	Control technique	Control efficiency[a] percent	
		Idling	Working
Batch vapor cleaner	Cover	40	0
	Bi-Parting Cover	40	40
	FBR 0.75—>1.0	20	20
	FBR 1.0—>1.25	10	10
	Freeboard refrigeration device	40	40
	Primary condenser temperature (30 to 40 percent of the solvent boiling point).	40	40
	Reduce wind speed 30.3 m/min (100 ft/min)—>calm (15.2 m/min [<50 ft/min]).	50	50
	Hoist	0	35
	Dwell	0	30
In-line cleaners	Freeboard refrigeration device	60	60
	Carbon adsorption system	60	60

[a] Control efficiency over a typical cleaner.
Typical batch cleaner: OTVC with a 0.75 freeboard ratio, circumferential water-cooled primary condensing coils, a manual cover, and located in a room with windspeeds in excess of 30.3 m/min (100 ft/min).
Typical in-line cleaner (vapor and cold): A typical in-line cleaner has water-cooled condenser coils.

Covers are used on halogenated solvent cleaning machines to eliminate drafts within the freeboard and to reduce diffusion losses. A bi-parting cover is a cover made to close around the cables holding parts baskets when the basket is inside the cleaner. A bi-parting cover allows for complete enclosure during the cleaning phase. Covers can be manually operated, or electronically powered.

The freeboard height on a batch vapor cleaning machine is the distance from the solvent/vapor air interface to the top of the tank walls. The freeboard zone serves to reduce solvent/vapor air interface disturbances caused by room drafts and provides a column through which diffusing solvent molecules must migrate before escaping into the ambient air. Higher freeboards reduce diffusional losses by diminishing the effects of air currents and lengthening the diffusion column.

In all vapor cleaning machines, solvent vapor created within the machine is prevented from overflowing through use of primary condenser coils. Freeboard refrigeration devices are a second set of cooling coils located above the primary condenser coils of the cleaning machine. Freeboard refrigeration devices have proven to be an effective control for diffusion losses.

Although a primary condenser is standard equipment on all OTVC's, the cooling temperature and design of the coils have an effect on idling losses. A lower cooling temperature, will lower diffusion losses. This is generally achieved by the use of a refrigerant rather than water.

Air movement over a batch vapor cleaning machine affects the solvent emission rate by sweeping away solvent vapors diffused into the freeboard area and creates turbulence in the freeboard area that increases solvent diffusion as well as solvent vapor and air mixing. By reducing the air speed over the cleaning machine, there is a reduction in these emissions.

The method employed for moving parts through the halogenated vapor cleaning machine cycle has a direct effect on the magnitude of workload related emissions. Rapid movement of parts will increase solvent loss due to carry-out of liquid solvent and entrainment of solvent vapor, and increased disturbance at the solvent/vapor air interface. Use of a mechanical parts handling system (hoist) can reduce emissions by consistently moving parts into and out of the machine at appropriate rates, such as 3.3 m/min (11 ft/min), thereby eliminating excess losses caused by manual operation. Manual operators can move parts at speeds in excess of 24.2 m/min (80 ft/min).

Another advantage of mechanical parts handling is the potential for precise control of the dwell time (i.e., the length of time the part remains in the vapor zone). Proper dwell time decreases emissions by ensuring that the parts have reached the solvent temperature prior to removal from the machine. If parts have not reached the solvent vapor temperature, condensation would still occur as parts are withdrawn from the machine and solvent carry-out losses would increase.

Carbon adsorption can be employed as a control technique in conjunction with a lip exhaust system. With these systems, peripheral exhaust ducts capture the diffusing solvent vapors and to some extent solvent evaporating from clean parts and directs them through an activated carbon bed. The solvent vapor molecules are adsorbed onto the activated carbon, removing the solvent from the vent stream before discharging to the atmosphere. However, the use of lip exhausts increases overall consumption and even when exhausted vapors are controlled by a carbon adsorption unit, does not reduce emissions any more than the other techniques discussed above. Therefore, use of lip exhausts, even those routed to carbon adsorbers, is discouraged. Available anecdotal test data support the EPA's belief that lip exhausts are not required to meet OSHA limits. Attaining OSHA limits is generally the rationale behind the use of a lip exhaust, however, OSHA does not require their use. Furthermore, there are increased cross-media transfer problems associated with the use of carbon adsorption, including increased air, solid/hazardous waste and wastewater impacts.

Control efficiencies for the listed control techniques were derived from emission tests performed on idling and working batch vapor and in-line cleaning machines. Data were available from multiple tests of control techniques on a wide variety of cleaning machines. The EPA evaluated these data and determined an overall average control efficiency for each control technique for the idling and working modes. These control efficiencies represent the average emission reduction attained over a typical cleaning machine. For purposes of calculating these efficiencies, a typical batch cleaning machine is an OTVC having a 0.75 FBR, circumferential water-cooled primary condensing coils, a manual cover (used during downtime), and located in a room with windspeeds in excess of 30.3 m/min (100 ft/min). It is assumed that no lip exhaust is present, unless already vented to a carbon adsorber. A typical in-line (vapor and cold) cleaning machine has water-cooled condenser coils.

It is believed that many of these techniques could also reduce downtime emissions. However, insufficient data were available to assign downtime control efficiencies to the control techniques. Therefore, a zero-percent control efficiency of downtime emissions was used in all analyses.

Generally, multiple control techniques are used in combination on a single cleaning machine. When controls are used in combination, there is an increase in the achievable control efficiency. However, the efficiencies of the two controls added to one cleaning machine are not additive. The net efficiency of two controls is less than the additive sum, because the second control is controlling only the emissions not already controlled by the first control (i.e., the controls are essentially acting in series). The formula for determining the net efficiency for two controls is as follows:

$$E_{en}=E_1 - + E_2 - E_1E_2$$

where:

E_{en}=net efficiency of the combined controls;

E_1=efficiency for control 1; and

E_2=efficiency for control 2.

Similar equations for determining the net efficiency of more than two control devices were also developed.

Redundancy among options occurs when control techniques control the same emissions using similar principles. For example, freeboard refrigeration devices and reduced primary condenser temperature controls both reduce vaporization losses by cooling the freeboard and have an associated 40 percent control efficiency under idling and working conditions. Tests have demonstrated that limited-to-no benefit is obtained by having both techniques employed on the same unit. Similarly, an enclosed design is considered to exert equivalent control as a reduced room draft and a cover; these control techniques may also be considered redundant.

2. Alternative Cleaning Technologies

Rather than reducing the emissions of halogenated solvents by controlling halogenated solvent cleaning machines, it is possible in some instances to replace halogenated solvent cleaning machines or the solvent itself with alternative cleaning technologies. Alternative cleaning technologies include the use of alternative solvents, alternative cleaning machines, and no-clean technologies. These proposed standards allow use of these alternatives in place of a halogenated solvent cleaning machine.

Alternative solvents are generally classified as hydrochlorofluorocarbons, aqueous, semi-aqueous, or organic. Alternative cleaning technologies or processes can also be used to replace common halogenated solvents. Many of these processes are still in the developmental stages. These processes include: (1) Ice particles; (2) plasma; (3) pressurized gases; (4) supercritical fluids; (5) ultraviolet/ozone; (6) mechanical; (7) thermal vacuum deoiling; and (8) no-clean technologies. No-clean technologies include process modifications that eliminate the need for surface cleaning, including the use of low solids flux and controlled atmosphere soldering.

In developing the regulatory approach for controlling this source category, the role of alternative cleaning agents and technologies was considered. However, the proposed NESHAP does not mandate a switch from halogenated solvents to an alternative solvent or technology for the following reasons:

1. Controls exist that can significantly and efficiently reduce the emissions of halogenated solvents from solvent cleaning machines. These controls can

reduce the emissions to a level more stringent than the MACT floor for these units.

2. Determination of an acceptable alternative cleaning technology is site and application specific and can take several years to develop. Not all of the applications are known, and it is uncertain whether an acceptable alternative technology exists for every application.

3. While HAP use could be eliminated or reduced, discharges of other pollutants, to wastewater or air could be increased. Because the switch from a halogenated solvent cleaning machine system to an alternative solvent system is application specific, the relative impacts of making a total switch cannot be confidently assessed.

The EPA has set up a solvent work group that has begun an investigation of the broader uses of alternative solvents and cleaning processes. This group will continue to address this issue after today's proposal. The EPA plans, between proposal and promulgation, to make a better assessment of the feasibility of the use of these alternative technologies and their magnitude of their multi-media impacts.

Currently available information concerning alternative cleaning agents and technologies is available for public inspection and copying from the docket (A–92–39) containing supporting information used in developing the proposed standards. This information is contained in a memo entitled "Status of Alternative Solvents and Processes to Halogenated Solvent Cleaning." The document number for this memo is II-B–14. The docket is available for public inspection and copying between 8:30 a.m and 3:30 p.m. Monday through Friday, at the EPA's Air Docket, Room M1500, U. S. Environmental Protection Agency, 401 M Street, SW, Washington, DC. A reasonable fee may be charged for copying.

As discussed in section II.C., a solvent alternative guide has been developed by the EPA's AEERL to assist users and State or local agencies in the case-by-case evaluation of alternative cleaning agents. The solvent alternative guide (called SAGE) is a computer on-line analytic tool that provides a facility with comprehensive information on some potential solvent alternatives and their associated impacts based on their cleaning needs. This computer system is evolving as further information is obtained. Refer to section IV.C. for further information on accessing SAGE.

The EPA is aware that there may be specific applications where these alternative cleaning agents and technologies are viable alternatives. The EPA requests comments and information on any known application of these agents or technologies and whether they should be considered in the MACT analysis. Information supplied needs to include specifics on applicability, costs, and multi-media impacts (i.e., air, water, soil). Information obtained will be considered by the EPA in the final rulemaking. The EPA may promulgate a rule that requires these technologies for specific applications.

3. New Technologies

Two new solvent cleaning machine technologies are currently being developed by industry. However, at present, these technologies are still under development and insufficient data are available to include these technologies in the MACT decision for these proposed standards.

One such system controls the total processing environment. This reportedly allows the use of many solvent alternatives, including compounds that are vapors at room temperature. The system is a closed loop comprising a processing chamber capable of withstanding both full vacuum and pressure, a gas liquid separator, a compressor or blower, a temperature swing solvent stripper, a gas accumulator, and a gas reheater. The system also contains a vacuum pump and a solvent recycle/supply system. This system is not expected to have idling or downtime emissions because the closed loop remains isolated during nonoperating periods.

The second technology is also applicable to conventional cleaning machine processes and can be retrofit to existing OTVC's. Vendors report that the use of solvents with boiling points as low as 10 °C (50 °F) are expected to be practical and cost effective. This system isolates the solvent process from the environment to avoid solvent loss and worker exposure. This is accomplished by the use of a lightweight perimeter enclosure to enclose the process, a closed-loop temperature swing solvent recovery, a gas accumulator (to accommodate fluctuations of vapor volume and control pressure in the perimeter), and a vacuum air lock to get parts in and out. This system, as with the first system discussed, is not expected to have idling or downtime emissions because the closed loop remains isolated during non-operating periods.

Because of the lack of data, and developmental nature of these technologies, they were not included in the selection of MACT for these proposed standards. These proposed standards, however, would allow the use of new and innovative technologies where they could be demonstrated to be equivalent to the control levels of the proposed NESHAP by complying with the alternative emission limit.

The EPA is currently evaluating enclosure technologies as described above at two facilities. The EPA is evaluating information on the solvents that these systems are designed to use, products that the systems can clean, ability to retrofit existing cleaning systems with the technology, and industries that use these systems.

The EPA is requesting any comments or information concerning new technologies that are feasible and can be justified as the basis for the final rule. Information supplied needs to include specifics on applicability, control efficiency, costs, and multi-media impacts (i.e., air, water, soil). Information obtained will be considered by the EPA in the final rulemaking. The EPA may promulgate a rule that requires these technologies for specific applications.

4. Fugitive Emission Controls

Fugitive emission control for the halogenated solvent cleaner industry vary according to the fugitive loss mechanism. These emission controls are discussed below.

Filling and draining losses occur from open handling procedures and are minimized by operating practices that require that the transfer of HAP solvent be by the use of a threaded or other leakproof coupling with the end of the pipe in the solvent sump being located beneath the liquid solvent surface.

Wastewater losses occur when water is decanted from the separator containing a slight amount of solvent. These losses are considered to be minimal if a separator is correctly designed, operated, and maintained. Provisions for the proper maintenance of the cleaner and controls are included in these proposed standards.

Start-up and shutdown losses are losses that occur during the transition time from when a solvent cleaning machine is turned on or off to the time when equilibrium is achieved. These losses are controlled by some of the same controls that control idling losses. For example, starting the condenser coolant prior to turning on the sump heater is a start-up procedure that facilitates solvent condensation in the saturated zone above the liquid solvent before solvent vapors rise out of the cleaner.

Distillation losses are losses that occur when solvent is regenerated through onsite distillation for reuse.

Losses that occur due to distillation are from evaporation during transfer and from leaks in the equipment; therefore, transfer and operating leak and detection provisions cover any losses that may occur from distillation processes.

Solvent decomposition losses result from the solvent mixture turning acidic due to reactions occurring with water. Emissions occur during handling and disposal of the solvent. This solvent is subject to controls under RCRA that serve to minimize losses by stringent handling and disposal guidelines. These proposed standards do not interfere with RCRA's handling and disposal guidelines to minimize HAP emissions.

D. Development of Regulatory Alternatives

With the exception of the batch cold cleaning machine subcategory, multiple regulatory alternatives were developed for each of the solvent cleaning machine source categories. The only batch cold cleaning machines that the EPA identified that use a halogenated solvent were carburetor cleaners, which are controlled with a cover and a water layer in the absence of a regulation. No additional control techniques were identified that could further reduce the emissions from these cleaning machines. The Administrator determined that the cover and the water layer represent GACT. Therefore, today's proposed standards require the use of a cover and a water layer on all batch cold cleaners. Since the only identified HAP cold cleaners using halogenated solvents are carburetor cleaners, the proposed standard will not have an associated control cost and will not result in an emission reduction because carburetor cleaning machines already incorporate the GACT level of control. Rather, the standard will ensure that new batch cold cleaning machines that use halogenated solvents have the appropriate emission controls. In order to ensure the proper operation of existing batch cold cleaning machines, the standard for cold cleaning machines requires that the cover and the water layer be in place whenever the batch cold cleaning machine is cleaning parts.

The only impact associated with the regulation of batch cold cleaning machines is the reporting cost. Each owner or operator of a batch cold cleaning machine is required to submit a report stating that they have a batch cold cleaning machine and are complying with the standard. This report is discussed in more detail in section VI.I. The estimated respondent cost of 100,000 initial notifications averaged over a 3-year period is $1.1 million. The estimated Federal government cost for 100,000 initial notifications averaged over a 3-year period is $308 thousand.

The EPA solicits comments and supporting data on the inclusion of batch cold cleaning machines in today's proposal. Specifically, the EPA requests comments on the reasonableness of setting GACT standards equal to the baseline level of control, which achieve no HAP emission reduction. Also, the EPA requests data and comment on the existence of other HAP batch cold cleaning machines and whether the proposed standards would be reasonable for those machines.

The regulatory alternatives developed for the five remaining solvent cleaning machine source subcategories are discussed below.

1. Selection of MACT Floor

Emission standards for new and existing sources promulgated under section 112(d) of the Act must represent the maximum degree of reduction achievable; this is typically referred to as the MACT. The Act establishes minimum levels, or "floors," for MACT standards. These floors are to be determined as follows:

(1) for new sources, the MACT floor cannot be "less stringent than the emission control that is achieved in practice by the best controlled similar source * * *."

(2) for existing sources with more than 30 sources, the MACT floor cannot be less stringent than "the average emission limitation achieved by the best performing 12 percent of the existing sources * * *."

The MACT floors for the halogenated solvent cleaning machine source subcategories are based on control efficiency and sales data obtained from section 114 questionnaires sent to solvent cleaning machine vendors. In this section 114 questionnaires data were gathered for cleaning machines in each subcategory. These data are assumed to be representative of the control levels achieved by the industry as a whole, and represent the best information available to the Administrator.

Using the control efficiencies for the individual control devices, the combined control efficiency formula, and the model cleaning machine operating schedules, a control efficiency was calculated for each reported cleaning machine. The control combination efficiencies were rounded to the nearest 10 percent increment (i.e., 10 percent control, 20 percent control, etc.) due to data and precision. The combinations were then grouped by their combined control efficiencies. All the cleaning machines were grouped based on control efficiencies and ranked from the highest control efficiency combination to the lowest control efficiency combination. The floor for existing sources in each subcategory was then determined by calculating the weighted-average level of control for the top performing 12 percent. The MACT floors, for batch vapor cleaning machine existing sources are as follows: 10 percent for small, 40 percent for medium, 40 percent for large, 60 percent for very large. The MACT floor is 30 percent for existing source in-line cleaners. The MACT floor for new sources in each subcategory was determined by determining the maximum control level achieved (control level of the best-controlled existing source) for each subcategory. The MACT floors for batch cleaning machine new sources are as follows: 40 percent for small, 50 percent for medium, 60 percent for large, 60 percent for very large. The MACT floor is 40 percent for new source in-line cleaning machines.

2. Development of Additional Regulatory Alternatives

Regulatory alternatives were developed for each of the five solvent cleaning machine subcategories. The least stringent regulatory alternative that was examined in detail is the MACT floor; therefore, the MACT floor is always presented as the first alternative. To develop the regulatory alternatives, potential control levels for each subcategory were developed and analyzed. First, all reasonable control combinations were evaluated for their emission reduction potential for each subcategory, based on a typical operating schedule. Then the control combinations were grouped into control levels, rounded to the nearest 10 percent increment. Next, the capital costs were evaluated and the median cost combination was determined for each control level. Median costs were selected instead of average costs because the median costs have a particular control combination associated with each, whereas an average cost may not correspond to any of the available control combinations. Median costs were selected as opposed to the lowest cost combination because some combinations may not be feasible for all cleaning machines. For each subcategory, the control combination cost that represented the median capital cost was chosen to represent the control level.

Once the median cost control combinations were selected, the costs of each control level were evaluated for each subcategory. The total annual cost

for each control level was estimated from the annualized capital costs, the annual operation costs; the monitoring, reporting and recordkeeping costs, and the solvent cost savings realized from reduced solvent consumption. The cost per unit of emissions reduction, or cost effectiveness, was then determined for each control level and inferior control options were identified. Inferior control options are defined as those control levels with higher costs than other levels that achieve the same or greater emission reductions. The remaining non-inferior control options made up the set of regulatory alternatives for each subcategory. Both the existing and the new small batch vapor cleaning machine control options at the MACT floor levels were identified as inferior options; however, because they are the MACT floor, they are included as the first regulatory alternatives for this subcategory. Table 4 presents the regulatory alternatives for each subcategory.

TABLE 4.—SOLVENT CLEANER SOURCE SUBCATEGORY REGULATORY ALTERNATIVES

	Existing	New
Batch vapor cleaner:		
Small	I—10% (floor) II—30% III—50% IV—60%	I—40% (floor). II—50% III—60%
Medium	I—40% (floor) II—50% III—60%	I—50% (floor). II—60%
Large	I—40% (floor) II—70%	I—60 (floor). II—70%
Very large	I—60% (floor) II—70%	I—60% (floor). II—70%
In-line	I—30% (floor) II—50%	I—40% (floor). II—50% III—70%

The control cost analysis for the regulatory alternatives indicates that a large number of solvent cleaning facilities will have negative costs for moving from the estimated current level of control to meeting each regulatory alternative. That is, the annualized cost of purchasing and operating the control device is less than the cost savings realized by the reduced solvent costs. This savings implies that many facilities have had the possibility of reducing their costs but have not yet taken the opportunity to do so in the absence of the standard. An important question for any analysis of the impact of the proposed regulation is what portion of the firms with this potential savings would realize the savings in the absence of the proposed regulation and what portion would only realize the savings if forced to by the regulation. The main analysis assumes that none of the firms would undertake the control in the absence of regulation requiring control. However, a sensitivity analysis addresses the implications if the firms with the greatest cost savings undertake the control even in the absence of regulation.

This sensitivity analysis uses a criterion of a savings of $25,000 in NPV above all costs of the purchase, operation, and maintenance of the emissions control equipment. The sensitivity analysis thus assumes that a net savings of $25,000 or more will assure that the firm will undertake the control. For these firms the sensitivity analysis does not attribute any emission reduction or cost to the regulation because it assumes the control would be undertaken whether or not there is a regulation. The criterion of $25,000, was chosen for it was a midpoint between the smallest capital investment ($11,200) and the largest capital investment ($38,100) necessary to comply with the standard. Thus, if a solvent cleaning machine operator would experience a return on investment of at least $25,000 in NPV from installing emissions control equipment, the operator would do so in the absence of the standard, and vice versa. Regardless of whether this investment is required by regulation, the level of emission reduction is the same, since solvent cleaning machine operators choosing to invest in control equipment in the absence of a standard will control emissions by the levels the standard requires. This sensitivity analysis did allow analysis of the impact on incremental cost effectiveness and benefit cost analysis of varying assumptions concerning this baseline control issue. There is no marked change in the values obtained for incremental cost effectiveness or benefit cost analysis. Therefore, the uncertainty concerning the baseline level of control does not change the relative attractiveness or the selection of regulatory alternatives. Because reducing this uncertainty would be both quite difficult and not helpful in making the selection among the regulatory alternatives, further analysis beyond the sensitivity analysis was not needed. More information on the baseline investment criterion is available in the background information document (see the Background Information Documents section near the beginning of this preamble).

3. Evaluation of National Costs

After the regulatory alternatives were determined, the national costs were estimated. Information on the location and number of batch and in-line cleaning machines in the United States is difficult to obtain because of the large number of solvent cleaning machines existing within many different industries. Therefore, a method to estimate the nationwide number of solvent cleaning machines was developed using available data such as nationwide solvent consumption and average cleaning machine emission rates. In general, the numbers of cleaning machines were estimated based on the quantity of solvent consumed at the national level, assumptions on the breakdown of the national cleaning machine population (i.e., sizes and percentage of controlled cleaners), and typical solvent consumption rates for each size and control combination. The population of halogenated solvent batch vapor and in-line cleaning machines was estimated to be 24,500.

Assuming an average 15-year lifespan for a solvent cleaning machine and that the number of cleaning machines will remain constant from 1993 to 1996, it was determined that in 1996 (first year of compliance), the cleaning machine population will be 20 percent new cleaning machines (4,900) and 80 percent existing cleaning machines (19,600).

Based on the responses to section 114 surveys, the distribution of cleaning machines among the different control levels (i.e., 10 percent, 20 percent, etc.) was determined for all cleaning machines sold in the last 10-year period. This distribution was used as the control efficiency distribution for existing cleaning machines. The control efficiency distribution of those cleaning machines sold in 1990 was used as the control efficiency distribution for new cleaning machines.

The national cost for cleaning machines to achieve a particular regulatory alternative comprised the sum of the capital; and monitoring, reporting and recordkeeping costs for all cleaning machines to move from their current levels of control to the regulatory alternative level. If a cleaning machine was at or above a regulatory alternative level, that cleaning machine incurred no capital costs; but did incur monitoring, reporting and recordkeeping costs. The corresponding total emission reductions were also estimated and, with the total national costs, used to calculate the average cost

effectiveness for each regulatory alternative. Then the incremental cost of moving from one regulatory alternative to the next regulatory alternative was determined. Table 5 presents the national costs, emission reductions, and the average and incremental cost effectiveness values for the regulatory alternatives with a cost credit for reductions in solvent usage.

TABLE 5 —NATIONAL COSTS AND EMISSION REDUCTIONS FOR SOLVENT CLEANERS—WITH SOLVENT RECOVERY CREDITS

Cleaner size	Regulatory alternative * (percent)	Net annualized cost ($/yr)	HAP emission reduction (MG)	Average cost effectiveness ($/MG)	Incremental cost effectiveness ($/MG)
Existing:					
Small	I–10	2,563,000	300	8,540	
	II–30	1,904,000	1,200	1,590	(730)
	III–50	4,073,000	2,100	1,940	2,410
	IV–60	5,202,000	2,500	2,080	2,820
Medium	I–40	3,214,000	2,900	1,110	
	II–50	2,123,000	3,900	540	(1,090)
	III–60	3,238,000	4,900	660	1,120
Large	I–40	(2,428,000)	4,300	(560)	
	II–70	(4,560,000	10,700	(430)	(330)
V. Large	I–60	(8,664,000)	10,100	(860)	
	II–70	(10,623,000)	14,200	(750)	(480)
In-Line	I–30	(16,210,000)	14,600	(1,110)	
	II–50	(23,218,000)	29,100	(800)	(480)
New:					
Small	I–40	965,000	400	2,410	
	II–50	836,000	500	1,670	(1,290)
	III–60	1,119,000	600	1,870	2,830
Medium	I–50	384,000	700	550	
	II–60	663,000	1,000	660	930
Large	I–60	(711,000)	1,900	(370)	
	II–70	(1,010,000)	2,400	(420)	600
V. Large	I–60	(2,410,000)	2,700	(890)	
	II–70	(2,900,000)	3,800	(760)	(450)
In-Line	I–40	(4,304,000)	5,500	(780)	
	II–50	(6,484,000)	7,400	(880)	(1,150)
	II–70	123,000	11,200	10	1,740

* = Regulatory alternative I is MACT floor. () = Negative values are shown in parentheses.

The costs in table 5 include a cost credit for reductions in solvent usage that result from increased emission control. Table 6 presents national costs, emission reductions, and the average and incremental cost effectiveness for the regulatory alternatives without a cost credit for reductions in solvent usage. The EPA solicits comments on operating experience from users of solvent cleaning machines concerning whether it is appropriate to include a credit for solvent not consumed when calculating the costs and cost effectiveness of the regulatory alternatives. For the remainder of this preamble, the cost effectiveness values from table 5 are presented, which include credits for the reduction in solvent usage.

TABLE 6.—NATIONAL COSTS AND EMISSION REDUCTIONS FOR SOLVENT CLEANERS—WITHOUT SOLVENT RECOVERY CREDITS

Cleaner size	Regulatory alternative* (percent)	Net annualized cost ($/yr)	HAP emission reduction (MG)	Average cost effectiveness ($/MG)	Incremental cost effectiveness ($/MG)
Existing:					
Small	I–10	3,043,000	300	10,140	
	II–30	3,557,000	1,200	2,960	570
	III–50	6,950,000	2,100	3,310	3,770
	IV–60	8,668,000	2,500	3,470	4,300
Medium	I–40	7,242,000	2,900	2,500	
	II–50	7,494,000	3,900	1,920	250
	III–60	9,979,000	4,900	2,040	2,490
Large	I–40	3,583,000	4,300	830	
	II–70	10,294,000	10,700	950	1,050
V. Large	I–60	5,416,000	10,100	540	
	II–70	9,154,000	14,200	640	910
In-Line	I–30	3,743,000	14,600	260	
	II–50	16,485,000	20,100	570	880
New:					
Small	I–40	1,467,000	400	3,670	

TABLE 6.—NATIONAL COSTS AND EMISSION REDUCTIONS FOR SOLVENT CLEANERS—WITHOUT SOLVENT RECOVERY CREDITS—Continued

Cleaner size	Regulatory alternative* (percent)	Net annualized cost ($/yr)	HAP emission reduction (MG)	Average cost effectiveness ($/MG)	Incremental cost effectiveness ($/MG)
	II–50	1,496,000	500	2,990	290
	III–60	1,927,000	600	3,210	4,310
Medium	I–50	1,407,000	700	2,010	
	II–60	2,029,000	1,000	2,030	2,070
Large	I–60	1,925,000	1,900	1,010	
	II–70	2,377,000	2,400	990	900
V. Large	I–60	1,393,000	2,700	520	
	II–70	2,329,000	3,800	610	850
In-Line	I–40	3,240,000	5,500	590	
	II–50	3,655,000	7,400	490	220
	III–70	15,409,000	11,200	1,380	3,090

* = Regulatory alternative I is MACT floor.

4. Benefits Analysis

A benefit analysis was undertaken to examine and illustrate the value of requiring control approaches more stringent than the MACT floor level. The analysis was not conducted on every affected solvent cleaning machine. The analysis started with a risk characterization study on two model solvent cleaning machines, one small and one medium, that were placed in the center of three large cities in different areas of the United States (Detroit, Atlanta, and New York City). Estimates of the total number of people exposed, potential risk to the most exposed, and potential number of cancer cases per year were generated. Applying the regulation to the model cleaning machines yielded emissions reductions, and the monetary benefits from the reductions were then calculated on a per Mg (ton) basis. It should be noted that this analysis assumes that the model plant configurations are representative of solvent cleaning machines in the nation and the population density of the three modelled cities is representative of the nation as a whole.

To complete the analysis required two stages: the first, valuing the reduction in annual cancer mortality risk; the second, valuing the reduction in non-cancer effects. Results from the first stage showed monetary benefits (all computed in 1990 dollars) ranging from $181 to $964 per Mg ($164.54 to $876.36 per ton). For the second stage, the implicit per Mg (ton) value needed to equate incremental costs and benefits was calculated. This showed that implicit benefits after removing credit for reducing cancer incidence for VOC per Mg (ton) must be in the range from $0 to $559 per Mg ($0 to $508.18 per ton) for new medium solvent cleaning machines, and $1,866 to $2,649 per Mg ($1,696.36 to $2,408.18 per ton) for existing and new small solvent cleaning machines. Ranges were computed based on the level of credit for reduction in cancer mortality risk. Methods to fully quantify the non-cancer human health and the ecological benefits of reduced exposures to these chemicals are complex, and in some cases, controversial.

Assuming a policy-based VOC reduction decision criterion of $2,000/Mg ($1,818.18 per ton), the benefits analysis supports emissions control at the selected regulatory alternatives unambiguously except for the small solvent cleaning machines and the new in-line solvent cleaning machines. The $2,000/Mg ($1,818.18 per ton) of VOC reduction decision criterion that has been used as a value for decision-making lies within the upper end of the range for these two solvent cleaning machine types. For these machines, the benefits analysis is not definitive, neither clearly supporting or refuting the proposed levels of control by the benefit/cost criterion. Further information is available in a background information document (see the Background Information Documents section near the beginning of this preamble).

E. Selection of Maximum Achievable Control Technologies

When establishing standards under section 112(d) of the Act, the Administrator must establish limits that reflect the maximum achievable emission reduction, or MACT. However, for area sources, section 112(d)(5) states that "the Administrator may * * * elect to promulgate standards or requirements * * * which provide for the use of generally available control technologies or management practices." This is typically referred to as GACT. Since these standards include area sources, an evaluation of the appropriate regulatory approach for area sources was needed.

The use of GACT as opposed to MACT for area sources is not required by the Act. A GACT approach might be warranted if significant adverse economic impact is expected on small sources. This might especially be the case where the small sources are also small businesses that could not afford the capital expenditure associated with meeting MACT. There could also be some concern that appropriately trained individuals would not be available to operate sophisticated controls. A GACT approach may also be warranted if there is a technological limitation to installing a control device on smaller emission sources.

In this source category, no reason that would lead to using a GACT approach for batch vapor and in-line cleaning machines is known to exist. Although a number of cleaning machines are expected to be located at small businesses, the use and operation of these cleaners do not represent a significant portion of their business. Batch vapor and in-line solvent cleaning operations typically represent only a small portion of the total operating expenses of a source; generally ranging from 0.1 to 9.7 percent. Therefore, any impact from the standards would not be likely to have a significant impact on the overall facility.

There is no technological barrier to the use of controls on smaller sources. When developing the standards for this source category, the determination of MACT was made for multiple cleaning machine size ranges. The levels selected are above the MACT floor and are equivalent to the levels that would have been established if a GACT approach were used.

While the technological sophistication of controls may increase as the level of control increases, proper operation is still relatively simple. Normal training procedures that would be present at any facility to ensure proper use of the cleaning machine would typically be sufficient to ensure proper control device operation. Some of the control devices are less prevalent on the smaller size cleaning machines; however, there is no technological reason why the controls cannot be applied to these units.

Since there are no significant economic, technological, or feasibility issues that would warrant selecting a GACT approach for batch vapor and in-line cleaning machine area sources in this industry, MACT is warranted for the batch vapor and in-line cleaning machines subcategories. This proposed standard is based on MACT control applied to all batch vapor and in-line cleaning machines and GACT control applied to all batch cold cleaning machines.

Requiring area sources to meet MACT as opposed to GACT means that the section 112(f) requirement, that EPA conduct a residual risk analysis 8 years after promulgation of the MACT standard, will apply to those sources. The EPA requests comment on whether this residual risk requirement should be a factor to be weighed in determining whether MACT or GACT should apply to a category or subcategory of area sources. For example, in the present case, where MACT and GACT would require the same level of control, is it permissible to call the standard GACT for area sources in order to exempt those sources from the requirements of 112(f)?

1. Evaluation of Regulatory Alternatives

The EPA has chosen the most stringent regulatory alternative for each solvent cleaning machine source subcategory for both existing and new cleaning machines, considering emission reduction, cost, economic, and other environmental impacts. As shown in table 5, the incremental cost effectiveness of moving from the next most stringent to the most stringent regulatory alternative for these subcategories ranged from an incremental cost-effectiveness savings of $600/Mg ($550 per ton) to a incremental cost effectiveness of $2,830/Mg ($2,570 per ton) of HAP emission reduction. No adverse economic or other environmental impacts are expected for any of the alternatives presented. Batch cold cleaning machines are not included in this table, but are proposed to be regulated under GACT, as discussed in section VI.D.

The analysis for existing and new small and medium batch vapor cleaning machines and new in-line cleaning machines revealed incremental cost-effectiveness estimates ranging from $1,120/Mg to $2,830/Mg associated with adopting the most stringent regulatory alternatives. For large and very large batch vapor cleaning machines, and existing in-line cleaning machines there were incremental cost savings for the most stringent regulatory alternative. Cost savings occur because the control techniques reduce solvent emissions from cleaning machines, thereby reducing the amount of new solvent that must be purchased. The savings in solvent purchase costs outweigh the cost of installing and operating the controls. In light of these incremental cost effectiveness estimates and because no adverse economic or environmental impacts are expected, the most stringent alternatives for the batch vapor and in-line cleaning machine source subcategories are selected as MACT.

The EPA requests comments on it's estimates of the cost, emission reduction benefits, and recovery credits, and solicits comments on the appropriateness of selecting the most stringent alternative for each of the subcategories (particularly for the small and medium subcategories).

Table 7 presents a summary of the MACT standards for existing and new solvent batch vapor and in-line cleaning machine source subcategories covered by these standards. The proposed standards are based on the EPA's evaluation of all data currently available. The EPA invites comment on all the regulatory alternatives presented in this preamble, ranging from the floor to the alternative technologies discussed in section VI.C. Before promulgating a final rule, the EPA will evaluate all additional information and data submitted. Based on this evaluation, the promulgated standards could be set at the MACT floor level, or at the level of any of the other regulatory alternatives presented in this preamble, but will not be less stringent than the floor. The EPA could also establish MACT based on the alternative technologies discussed in section VI.C.

TABLE 7.—SOLVENT CLEANER SOURCE SUBCATEGORY SELECTED REGULATORY ALTERNATIVES

	Existing (percent)	New (percent)
Batch vapor:		
Small	IV—60	III—60
Medium	III—60	II—60
Large	II—70	II—70

TABLE 7.—SOLVENT CLEANER SOURCE SUBCATEGORY SELECTED REGULATORY ALTERNATIVES—Continued

	Existing (percent)	New (percent)
Very large	II—70	II—70
In-line	II—50	III—70

F. Selection of Format for the Proposed Standards

Section 112(d) of the Act requires that emission standards for control of HAP be prescribed unless, in the judgment of the Administrator, it is not feasible to prescribe or enforce emission standards. Section 112(h) identifies two conditions under which it is not considered feasible to prescribe or enforce emission standards. These conditions include: (1) If the HAP cannot be emitted through a conveyance device, or (2) if the application of measurement methodology to a particular class of sources is not practicable due to technological or economic limitations. If emission standards are not feasible to prescribe or enforce, then the Administrator may instead promulgate equipment, work practice, design or operational standards, or a combination thereof.

Multiple approaches for regulating the halogenated solvent batch vapor cleaning and in-line source subcategories are being proposed. The formats include equipment standards (i.e., control technique requirements) coupled with work practices; idling emission limit standards coupled with equipment standards (i.e., use of a hoist) and work practices; and an alternative overall solvent emission limit standard. The owner or operator of a batch vapor or in-line cleaning machine would select one of these compliance approaches.

Multiple compliance alternative options are being proposed for batch vapor and in-line cleaning machines to allow these cleaning machine owners or operators flexibility. It was determined that a combination of standard formats best met the halogenated solvent batch vapor and in-line cleaning machine subcategories' compliance needs because of the vast number of different industries and operating schedules associated with the use of these cleaners.

An emission limit standard was considered initially, as required by the Act. Solvents are not generally emitted through a conveyance device. The only exception is when a lip exhaust is used at the edge of the cleaning machine to draw vapors away from the workers.

However, available information indicates that these devices increase losses from the machine unless controlled by a carbon adsorber. Carbon adsorbers are not a component of the regulatory alternatives selected as MACT. In addition, emissions from solvent cleaning machines are dependent on the working schedule, which varies widely within and across solvent cleaning subcategories. Since no conveyance device is used, and emissions are variable, establishing an emission standard for all solvent cleaning machines was not technologically possible. However, emission standards were used to the extent possible in these standards.

An emission limit based on a limited working schedule was established as an alternate standard for solvent batch vapor and in-line cleaning machines. This limit represents, at a minimum, the MACT level of control. For some cleaning machines the alternative emission limit could be more stringent than MACT. In particular, it is expected that this alternate standard will be more difficult to meet for larger machines and machines operating for more than one shift or that clean parts with difficult configurations. It was not possible to account for these variables when establishing alternative emission limits without making the alternative standard unenforceable or overburdensome. Sources meeting the alternative emission limits proposed today are subject to less burdensome monitoring, recordkeeping, and reporting requirements than sources meeting the other combinations of idling emission limits and equipment and work practice standards. The reduced burden provides an incentive for innovative emissions control strategies to limit solvent use.

An idling emission standard was then evaluated. An idling emission standard would allow a numerical standard to be set without considering workload and operating schedules of the solvent cleaning subcategories. However, maintaining an idling emission limit does not ensure maximum emission reductions at all times. Therefore, work practices and equipment standards (i.e., use of a hoist) were established as part of this compliance alternative. The idling emission limit compliance alternative may be economically impracticable for some owners and operators. A compliance test would need to be performed for each cleaning machine if vendors do not supply model cleaning machine test data indicating idling emission limit compliance. Therefore, the EPA concluded that establishing an idling emission limit for all sources would not be practicable. However, an idling emission limit was developed as an alternative compliance method because it allows for the development and use of new emission control techniques.

An emission reduction (percent) standard was also evaluated for the halogenated solvent batch vapor and in-line cleaning machine source subcategories. It was determined that this format was not feasible or practicable for halogenated solvent cleaning operations because the percent emission reduction from a cleaning machine would depend on the percentage of time working. A percentage emission reduction standard would be economically impracticable to determine because the percentage of time working varies within and across solvent cleaning operations. It would also be technologically impracticable to measure a percent emission reduction for the halogenated solvent cleaning source category as most control techniques for solvent cleaning machines prevent emissions from leaving the machine and therefore do not allow for simultaneous measurement of uncontrolled and controlled emissions.

Use of an equipment standard, in conjunction with work practices, was then evaluated for the halogenated solvent batch vapor and in-line cleaning source subcategories. An equipment standard would include requirements for control techniques or combinations of control techniques to meet MACT. This would be used in conjunction with work practice requirements to ensure MACT limits are met. The equipment standard compliance format allows an owner or operator flexibility in meeting the established MACT limits, and allows use of existing control devices an owner or operator may have in place. The equipment standard compliance format also allows for compliance without meeting a specified emission limit that may not be feasible to measure, or achievable to meet because of varying operating schedules.

Equipment standards were determined for the batch vapor and in-line halogenated solvent cleaning subcategories based on control efficiencies estimated for a "typical" operating schedule, and control efficiencies for individual controls based on tests. Work practice standards were established as a supplement to equipment standards to ensure that the desired emission reductions are met and maintained.

Work practice standards include proper operating and maintenance practices, and are proposed to minimize solvent emissions from poor operating and maintenance practices. Work practice standards would include reducing or preventing room drafts near the solvent cleaning machine, spray design and techniques, start-up and shutdown procedures, workload introduction and removal techniques, parts racking to facilitate drainage, solvent transfer practices, and operator qualification test requirements.

In summary, equipment and work practice standards are used as the basis of today's proposed standards. Under this format, a facility is required to monitor equipment control parameters and work practices to ensure compliance. Two additional compliance format alternatives are included: (1) An idling emissions limit, plus the use of a hoist and work practices, and (2) an emission limit standard. These format alternatives are proposed as alternative compliance methods for operator or owner flexibility.

The idling compliance emission level for the emission limit approach was set based on the solvent air interface (kg emissions per m^2 solvent air interface [lb emissions per ft^2 solvent air interface]) and on a 2-hour a day working schedule for batch cleaning machines and an 8-hour a day working schedule for in-line cleaning machines. The batch vapor cleaning machine working schedule is considered to be slightly more than "typical" for small and medium batch vapor cleaning machines, and less than "typical" for large and very large batch vapor cleaning machines.

The overall compliance emission levels for the batch vapor and in-line cleaning machine subcategories were determined by taking the idling emission rates for an uncontrolled cleaning machine and applying the maximum idling emission reduction component identified for the selected regulatory alternative control levels to get an idling emission standard.

The proposed batch cold cleaning machine source subcategory regulatory format approach consists of an equipment standard coupled with work practices. The owner or operator of a batch cold cleaning machine would follow the equipment standard and work practices in order to comply with the regulation.

G. Modification and Reconstruction Considerations

Section 112(g) of the Act establisnes requirements for sources that are modified or reconstructed. Provisions for modifications and reconstructions are being developed under separate rulemakings, and will be applicable to

all halogenated HAP sources subject to today's proposed regulations.

H. Selection of Monitoring Requirements

Section 114(a)(3) requires enhanced monitoring and compliance certification of all major stationary sources. The annual compliance certifications certify whether or not compliance has been continuous or intermittent. Enhanced monitoring shall be capable of detecting deviations from each applicable emission limitation or other standard with sufficient reliability and timeliness to determine continuous compliance over the applicable reporting period. Such monitoring data will be directly enforceable. If monitoring required under these standards is not performed the owner or operator would be in violation of the regulation. The best way to assure continuous compliance is through continuous emission monitoring. However, EPA must consider technical feasibility and cost when selecting enhanced monitoring systems. Section 504(b) states that continuous emission monitoring is not required for determining compliance if other means are sufficiently reliable and timely. Emission monitoring was considered for the emission limit portions of the standards. Continuous emissions monitoring was determined not to be feasible for the halogenated solvent cleaner source category because emissions are not ducted through a control device under these proposed standards and are not measured in a manner that allows for continuous emissions monitoring.

The batch cold cleaning machine subcategory is a subcategory of area sources. The machines in this subcategory are typically located at small businesses, such as automotive service stations. The emissions from individual cleaning machines are small and the controls required for this subcategory are already in place on all cleaning machines. Proper operation is relatively simple. In addition, if not properly operated, the facility would lose additional solvent. Since operation is relatively simple and there is an economic incentive to maintain proper operation, no periodic monitoring is proposed. Even though no monitoring is required, the owner or operator would be required to continuously meet the standards. Violations would be easily detected through random inspections.

Owners or operators choosing to comply with the alternative emission limit standards would be required to conduct monthly solvent consumption mass balance emissions estimates. This method would require the owner or operator to maintain a log of solvent additions and deletions for each cleaner and demonstrate that the emissions based on a 3-month rolling average, from each solvent cleaning machine (calculated from these records) are equal to or less than the established limits for their cleaner. If the 3-month rolling-average emissions from a solvent cleaning machine exceeds the established limits, or monitoring is not done, the owner or operator would be in violation of the regulation.

For owners or operators complying with the alternative idling emission standards in conjunction with the use of a hoist and work practices, the selected monitoring approach would require that the idling reference test method 307, also being proposed today, be used to demonstrate compliance with the idling limit and establish the monitoring parameters for the solvent cleaning machine. Method 307 uses a liquid level procedure, where the change in liquid level corresponds directly to the amount of solvent lost from the cleaner. The emissions compliance parameters to be monitored are determined by this test. The owner or operator would need to demonstrate that the frequency and types of parameters monitored on the solvent cleaning machine were sufficient to demonstrate continued compliance with the idling standard. A owner or operator that fails to monitor control parameters or does not maintain the same control system operating parameters as during the test is in violation of the regulation.

The proposed standards include equipment standards that require use of specific control techniques or control technique combinations. In order to ensure that the control efficiency level is maintained, monitoring requirements are required. Monitoring each control system operating parameter would be necessary to ensure effective and continuous emission reduction.

Control system monitoring entails the measurement or monitoring of a parameter that is determined to demonstrate compliance. Monitoring of control system operating parameters can entail visual inspection or control-specific measurement devices.

Monthly visual inspection monitoring would be required for automated or manual covers to ensure that covers completely cover the machine opening, are in place, secure, and closing properly.

Monitoring requirements for each control device that are necessary to ensure proper operation were determined. These monitoring requirements would include the use of a velometer to measure windspeed across a solvent cleaner for reduced room draft, and a thermometer or thermocouple to measure the center of the air blanket temperature for a freeboard refrigeration device or super-heated vapor system. These control parameters would be monitored weekly under these proposed standards. Failure to monitor control system operating parameters, or to maintain control system parameters as required, would be a violation of the regulation.

Proposed work practice standards have been set to minimize emissions associated with operating solvent cleaners. Direct monitoring of work practice standard compliance would be difficult. It was determined that an operator qualification test would be the best work practice monitoring technique. This test would be completed by an operator during inspection, if requested by the Administrator. The operator qualification test would include, but may not be limited to, the following information.

1. The correct way to determine the adequate cycle time;
2. How to determine if a specific control device is functioning;
3. The correct part entry and exit speed and a method for calculating this speed;
4. The proper use of a cover;
5. The impacts of room drafts on a cleaning machine and how to mitigate the impacts;
6. The proper parts orientation; and
7. The basic cleaning machine parts and their functions.
8. The procedures followed at halogenated solvent cleaning machine startup, shutdown, and during halogenated solvent cleaning machine malfunction.

I. Selection of Recordkeeping and Reporting Requirements

Under section 114(a) of the Act, the Administrator may require any person who owns or operates any emission source, who the Administrator believes may have information subject to any requirement of this Act on a one-time, periodic, or continuous basis, establish and maintain records; make reports; use and maintain monitoring equipment; and use such audit procedures, or methods; and provide such other information as the Administrator may reasonably require.

Owners of machines in the batch cold cleaning machine subcategory are typically small businesses, such as an automotive service station. As discussed in section VI.H., no monitoring is required for these sources. In order to eliminate unnecessary burden, these sources are required to submit only an

initial notification and are exempt from all other recordkeeping and reporting requirements in both the proposed standards and in the General Provisions of Part 63. The initial notification must contain the name and address of the facility as well as a certified statement that each batch cold cleaning machine at the facility meets the applicable requirements of Subpart T.

These proposed standards for the 5 remaining subcategories would require recordkeeping and reporting to verify emission limit standard compliance, and equipment and work standards compliance. All records must be kept for 5 years. The proposed recordkeeping provisions would require that each owner or operator electing to comply with the overall emission limit standard option maintain records of dates and amounts of solvent added to the tank, solvent composition of wastes removed from the cleaning machine, and materials balance calculation sheets documenting the 3-month rolling average solvent consumption estimates calculated each month for their solvent cleaning machine. Each owner electing to comply with the idling emission limit format, supported by equipment and work practice standards option, would be required to maintain records of equipment design, date of installation, and control device monitoring results for 5 years.

Each owner electing to comply with the equipment and work practice standards would be required to keep records of the monthly or weekly monitoring of control equipment parameters, owners's manuals for the solvent cleaning machine and controls, and the date of installation for the solvent cleaning machine and all of its control devices.

As proposed by the General Provisions (Subpart A of this part), a startup, shutdown, and malfunction plan will be determined, followed, and kept on-site for audit inspection.

An initial notification report would be required for each halogenated solvent cleaning machine HAP source. This report would include the name and address of the facility where the solvent cleaning machine is located; solvent cleaning machine design characteristics (type of cleaner, solvent air interface area); yearly halogenated solvent consumption for each cleaning machine; and existing solvent cleaning machine control devices.

An initial compliance report would be required within 30 days of the date of compliance (2 years after promulgation for existing sources). This report would indicate whether each solvent cleaning machine complies with the regulation, and the standard format the owner or operator elects to adopt to comply with the regulation. The initial compliance report would include an initial test report (vendor-supplied or using reference test method 307) for those owners or operators choosing to comply with the idling emission standard format. Along with the initial test report, an owner or operator would also report the control parameters to be maintained and monitored in order to comply with the standards. This initial compliance report would also include the 3-month solvent consumption rolling average for those owners or operators choosing to comply with the overall emission limit standard. If an owner or operator chooses the equipment and work practice standard format, the initial report would include control equipment verification information and a control parameter monitoring report within 30 days of the date of compliance.

After cleaning machine owners and operators verify compliance, they are only required to submit a compliance report to the Administrator annually, unless noncompliance with the standards is indicated. This report includes the startup, shutdown, and malfunction reporting requirements as proposed by the General Provisions (Subpart A of this part). If any exceedances occur, startup, shutdown and malfunction reporting requirements will be submitted as part of the exceedance report.

Exceedance of any of the regulatory standards, at any time after the applicable compliance date, would require that a report of noncompliance be submitted. This report would include regulation violations such as when any of the monitored operating parameters were outside the required values (e.g., a temperature recorded at the center of the air blanket that is above regulation-specified levels, or when visual observations reveal that a cover does not close properly). These reports would be submitted quarterly.

Additional reporting requirements for owners and operators that elect to comply with the overall emission limit include reports on solvent consumption materials balance emissions documenting the rolling 3-month average emissions every year. Solvent consumption records are often maintained as solvent purchase records by a facility operator or owner; therefore, it would not be a burden to record and report solvent consumption.

J. Operating Permit Program

Under title V of the Act, major sources of HAP as defined by section 112 would be required to obtain an operating permit. Often, emission limits, monitoring, and reporting and recordkeeping requirements are scattered among numerous provisions of SIP's or Federal regulations. As discussed in the promulgated regulation for the operating permit program published on July 21, 1992 (57 FR 32250), this new permit program includes all of the requirements that pertain to a single major stationary source in a single document. Sources subject to the program are required to submit complete permit applications within a year after a State program is approved by the EPA or, where a State program is not approved, within a year after a program is promulgated by the EPA. If an emission standard for area sources has been established under this part, the EPA can choose to exempt that area source from the requirement to obtain a permit if permitting them is determined by the EPA to be impracticable, infeasible, or unnecessarily burdensome. The EPA proposes in today's standards that the cold batch cleaning machine subcategory be exempt from the requirement to obtain a permit based on the reasons outlined above.

K. Solicitation of Comments

The EPA specifically requests comment on the following issues:

1. For this source category, the EPA is proposing that all area sources be regulated by MACT except the batch cold cleaner subcategory, which will be required to meet GACT. No specific criteria are statutorily prescribed to determine whether GACT is warranted for area sources in a particular source category. The EPA requests comments on criteria that were used in this proposal and any other(s) that the commenter believes should be used in making this determination. In addition, as discussed in section VI.E., the EPA requests comment on whether the application of section 112(f) should be a factor in deciding whether to apply MACT or GACT to an area source category or subcategory.

2. As discussed in section I.B., the EPA requests comment on its proposed subcategorization of the listed source category. Specific information is requested concerning whether the delisting criteria of section 112(c)(9) are met, or alternatively, whether a finding under section 112(c)(3) should be made for individual subcategories.

3. Standards for batch cold cleaning machines proposed today are based on carburetor cleaners, but apply to any HAP batch cold cleaning machines. The EPA could not identify any other use of

halogenated HAP solvents in cold cleaning machines. The EPA solicits comments and supporting data on the inclusion of batch cold cleaning machines in today's proposal or alternative strategies for addressing emissions from this subcategory that are consistent with the Act. Specifically, the EPA requests comments on the reasonableness of setting standards equal to the baseline level of control. Also, the EPA requests data and comments on the existence of other HAP batch cold cleaning machines and whether the proposed standards would be reasonable for those machines.

4. Limited data were identified by the EPA concerning downtime emission controls and control efficiencies for the halogenated solvent cleaning machine subcategories. The EPA solicits comments and data on downtime emission controls and control efficiencies.

5. At the NAPCTAC meeting in December 1992, there was concern expressed by industry that the control efficiencies used to evaluate the emission reductions and costs for the various options represent "typical" facilities as measured in the laboratory and may not match the operating conditions and schedules for each individual cleaning machine. However, multiple compliance alternatives are provided for this NESHAP, including equipment, work practice, and emission limit (idling and overall) standards since the data were generally obtained under laboratory conditions. The equipment standards, in conjunction with work practices, allows compliance without meeting a specified emission limit. No compliance method requires demonstration with a percent reduction standard. The EPA believes that the multiple compliance alternatives in today's proposal ensures maximum control while minimizing the potential impacts of the use of laboratory data for "typical" cleaning machines. The EPA requests comments on this issue and any available data on control techniques for halogenated solvent cleaners.

6. The EPA solicits comment and data on whether it is appropriate to include credits for reductions in solvent usage when calculating the annualized costs and cost effectiveness values of the regulatory alternatives.

7. Alternative cleaning technologies presented in the preamble include alternative solvents, alternative cleaning machines and no-clean technologies. The EPA is seeking information on specific applications of these cleaning technologies and whether they should be used as the basis for MACT in the promulgated standards. Information supplied needs to include specifics on applicability, costs, and multi-media impacts (i.e., air, water, soil). Information obtained will be considered by the EPA in the final rulemaking.

8. The EPA has not fully evaluated room enclosures as an option for reducing fugitive emissions. Room enclosures could potentially capture and control fugitive emissions from solvent cleaning machines. However, occupational exposure health risks, costs, available room space, and halogenated solvent cleaning machine accessibility could be potential problems associated with the use of room enclosures. The EPA is seeking comment on the cost, impacts, feasibility, and specific applicability of these controls and whether these controls should be considered as MACT for the promulgated standards.

9. The EPA is currently testing and gathering quantitative information on two low solvent emitting vapor cleaning systems. The EPA is also collecting information on the solvents that these systems are designed to use, products that the systems can clean, ability to retrofit existing cleaning systems with the technology, and industries that use these systems. The EPA requests comments or information concerning these new technologies that justify the feasibility of their inclusion in the final rule.

Any comments submitted to the Administrator on this proposed rule for existing and new halogenated solvent cleaners, however, should contain specific information and data pertinent to an evaluation of the magnitude and severity of its impact and suggested alternative courses of action that would avoid this impact.

VII. Administrative Requirements

A. Public Hearing

A public hearing will be held, if requested, to discuss the proposed standard in accordance with section 307(d)(5) of the Act. Persons wishing to make an oral presentation on the proposed standards for halogenated solvent cleaning machines should contact the EPA at the address given in the ADDRESSES section of this preamble. Oral presentations will be limited to 15 minutes each.

Any member of the public may file a written statement before, during, or within 30 days after the hearing. Written statements should be addressed to the Air Docket Section address given in the ADDRESSES section of this preamble and should refer to Docket No. A–92–39.

A verbatim transcript of the hearing and written statements will be available for public inspection and copying during normal working hours at the EPA's Air Docket Section in Washington, DC (see **ADDRESSES** section of this preamble).

B. Docket

The docket is an organized and complete file of all the information submitted to or otherwise considered by the EPA in the development of this proposed rulemaking. The principal purposes of the docket are: (1) To allow interested parties to readily identify and locate documents so that they can intelligently and effectively participate in the rulemaking process and (2) to serve as the record in case of judicial review (except for interagency review material [307(d)(7)(A)]).

C. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, 10/04/94), the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The order defines "significant" regulatory action as one that is likely to lead to a rule that may:

1. Have an annual effect on the economy of $100 million or more, or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities;

2. Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

3. Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligation of recipients thereof; or

4. Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant" regulatory action. This action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record to be included in the docket listed at the beginning of today's notice under **ADDRESSES.** The docket is available for public inspection at the EPA's Air Docket Section, which is listed in the **ADDRESSES** section of this preamble.

D. Paperwork Reduction Act

The information collection requirements in this proposed rule have

been submitted for approval to the OMB under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* An Information Collection Request document has been prepared by EPA (ICR No. 1652–01), and a copy may be obtained from Sandy Farmer, Information Policy Branch, EPA, 2136, 401 M Street, SW., Washington, DC 20460, or by calling (202) 260–2740. The public reporting and recordkeeping burden for this collection of information is estimated to average 57 hours (or to vary from 36 to 142 hours) the first year. This reporting and recordkeeping burden is estimated to average 42 hours (or to vary from 29 to 55 hours) annually, thereafter. This includes time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, PM–223Y, U. S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460, and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for the EPA." The final rule will respond to any OMB or pubic comments on the information collection requirements contained in this proposal.

E. Regulatory Flexibility Act

The RFA, (or Public Law 96–354, September 19, 1980) requires Federal agencies to give special consideration to the impact of regulation on small businesses. The RFA specifies that a regulatory flexibility analysis must be prepared if a proposed regulation will have a significant economic impact on a substantial number of small entities. Regulatory impacts are considered significant if:

1. Annual compliance costs increase total costs of production by more than 5 percent.
2. Annual compliance costs as a percent of sales are at least 20 percent (percentage points) higher for small entities.
3. Capital cost of compliance represent a significant portion of capital available to small entities.
4. The requirements of the regulation are likely to result in closures of small entities.

A "substantial number" of small entities is generally considered to be more than 20 percent of the small entities in the affected industry. Since the economic analysis deals only with small entities (in this case, facilities), conclusions can be drawn from what was done there already. Each of the criteria for significant impacts will be considered in turn.

The largest increase in total cost of production from increased emission control is 0.61 percent (SIC 359—Industrial Machinery, n.e.c.). This figure is well below the significant-impact threshold of five percent.

Assessing the differential impacts, measured by a comparison of compliance costs as a percent of sales for small and large entities, is more difficult as large model facilities were not analyzed in the economic impact analysis. Treatment of this small business impacts criterion involves creating two large model facilities.

If it is assumed that large facilities use large solvent cleaning machines, then compliance costs for large cleaning machines are negative, and are thus savings. To be conservative, it is assumed here that large model facilities possess five very large solvent cleaning machines, so that a "maximum savings" case is modelled. This case is important as it models the maximum cost differential between large and small facilities.

Large model facilities were created for SIC 359 (Industrial Machinery, n.e.c.) and SIC 254 (Partitions and Fixtures). SIC 359 was chosen because the small model facilities in this group experience the highest cost absorption impact when compared with other small model facilities. SIC 254 was used because it had the smallest average per-facility revenue of facilities with greater than 100 employees. Thus, if they incur the same absolute savings as other large facilities, their relative percentage savings will be the highest, and they will experience the greatest cost savings in percentage terms as a result of the standard. The cost differentials are in no case larger than one percentage point. Thus, by this criterion, small business impacts are not deemed significant.

The third criterion focuses on the amount of capital available to small businesses or facilities. Since the capital costs incurred as a result of investment in control equipment needed for small businesses to meet the standard was less than 10 percent of the businesses' total assets in all 39 affected SIC codes, it was concluded that the total assets of small facilities will not be so adversely affected as to prohibit the procurement of outside financing. (Examining an increase in capital costs as a percentage of total assets is a measure of the ability of a firm or facility to meet this capital costs increase.) The conclusion, then, is that lack of available capital will not be an obstacle for small facilities in complying with the regulation.

Criterion number four stipulates that small business impacts are significant if compliance leads to closure. The only implication of closure in the economic impact analysis is found in the section on earnings impacts. Here it was found that, under worst-case assumptions, closures might occur in only two SIC codes, 254 and 259 (Miscellaneous Furniture and Fixtures), given their low rate of profitability in the baseline. If this indeed occurs, the question of whether or not these closures make up a substantial portion of small entities must be addressed. The actual number of impacted facilities in the 39 impacted SIC codes is unknown. If it can be assumed that each SIC is impacted in the same proportion, a proxy for the share of impacted facilities represented by SIC codes 254 and 259 is the total number of facilities in these SIC codes as a share of the total number of potentially impacted firms. Standard Industrial Classification codes 254 and 259 hold a combined total 3,194 small facilities. This makes up 3.4 percent of the total 93,121 small facilities in all 39 SIC codes. Thus, in the extreme case that some closures result, the number of closures is estimated to far less than the amount required for substantial number of impacted facilities.

In conclusion, and pursuant to the provisions of 5 U.S.C. 605(b), I hereby certify that this proposed rule, if promulgated, will not have a significant economic impact on a substantial number of small entities, for the impacts do not meet or exceed the four previously stated criteria in the RFA guidelines.

Further information on the RFA screening effort is available in the background information package (see the Background Information Documents section near the beginning of this preamble).

F. Clean Air Act Procedural Requirements

In accordance with section 117 of the Act, publication of this proposal was preceded by consultation with appropriate advisory committees, independent experts, and Federal departments and agencies. The Administrator will welcome comments on all aspects of the proposed regulation, including health, economic and technological issues, and on the proposed liquid level procedure test method.

Section 112(d)(6) requires the Administrator to review this regulation no less often than every 8 years. In addition, section 112(f)(2) requires a

single review within 8 years of promulgation. This review will include an assessment of factors such as evaluation of the residual health risks, any overlap with other programs, the existence of alternative methods, enforceability, improvements in emission control technology and health data, and the recordkeeping and reporting requirements.

List of Subjects in 40 CFR Part 63

Environmental protection, Air pollution control, Hazardous substances, Halogenated solvent cleaning machines, Reporting and recordkeeping requirements.

Dated: November 15, 1993.

Carol M. Browner,

The Administrator.

For the reasons set out in the preamble, title 40, chapter I, part 63, of the Code of Federal Regulations is amended as set forth below:

PART 63—NATIONAL EMISSION STANDARDS FOR HAZARDOUS AIR POLLUTANTS FOR SOURCE CATEGORIES

1. The authority citation for part 63 continues to read as follows:

Authority: 42 U.S.C. 7401, 7412, 7414, 7416, and 7601.

2. Part 63 is amended by adding subpart T consisting of §§ 63.460 through 63.468 to read as follows:

Subpart T—National Emission Standards for Halogenated Solvent Cleaning

Sec.

63.460 Applicability and designation of source.
63.461 Definitions.
63.462 Standards.
63.463 Alternative standards.
63.464 Test methods.
63.465 Monitoring procedures.
63.466 Recordkeeping requirements.
63.467 Reporting requirements.
63.468 Equivalent methods of control.

Subpart T—National Emission Standards for Halogenated Solvent Cleaning

§ 63.460 Applicability and designation of source.

(a) The provisions of this subpart apply to each individual solvent cleaning machine that uses methylene chloride, perchloroethylene, trichloroethylene, 1,1,1-trichloroethane, carbon tetrachloride, chloroform, or any blend using a halogenated solvent as a cleaning solvent.

(b) The provisions of subpart A of this part apply to owners or operators of batch vapor and in-line cleaning machine sources.

(c) The owners or operators of batch cold cleaning machine sources are not subject to the provisions of subpart A of this part.

(d) Each solvent cleaning machine that commences construction or reconstruction on or after November 29, 1993 shall achieve compliance with the provisions of this subpart immediately upon startup or the date of promulgation of this subpart, whichever is later.

(e) Each solvent cleaning machine that commenced construction or reconstruction before November 29, 1993 shall achieve compliance with the provisions of the subpart no later than 24 months after the date of promulgation of this subpart.

(f) The following authorities shall be retained by the Administrator and not transferred to a State: (To be determined by EPA at the final rule stage.)

§ 63.461 Definitions.

Terms used in this subpart are defined as follows:

Air blanket means the layer of air inside the solvent cleaning machine freeboard which extends from the solvent/air interface to the top coil of the freeboard refrigeration device. The center of the air blanket is equidistant between the sides and between the top and bottom of the air blanket.

Automated parts handling system means a mechanical device that carries all parts and parts baskets from the initial loading of soiled parts through the removal of the cleaned parts at a controlled speed. Automated parts handling systems include, but are not limited to, hoists and conveyors.

Batch cleaning machine means a solvent cleaning machine in which individual parts or a set of parts move through the entire cleaning cycle before new parts are introduced into the solvent cleaning machine. An open top vapor cleaning machine is a type of batch cleaning machine.

Bi-parting cover means an automatic cover for a solvent cleaning machine that consists of two halves that slide horizontally when the cover is being opened or closed. A bi-parting cover can be closed while parts are in the solvent cleaning machine.

Carburetor cleaning machine means a small maintenance solvent cleaning machine or parts washer that uses room temperature liquid solvent and solvent blends to clean parts (typically carburetors). Carburetor cleaning machines have a water layer over the solvent that provides control of emissions. Carburetor cleaning machines typically consist of a pail containing the solvent and water layer, a basket in which the parts are placed, and a gasketed cover containing a motor which rotates the basket.

Clean liquid solvent means fresh unused solvent or used solvent that has been filtered, skimmed, and/or distilled to remove soils (e.g., skimmed of oils or sludge and strained of metal chips.)

Cold cleaning machine means any device or piece of equipment that contains and uses solvent in the liquid phase to clean and remove soils from the surfaces of materials.

Cover means a lid, top, or portal cover for a solvent cleaning machine. Types of covers include, but are not limited to, bi-parting, roll-top, and hinged covers.

Downtime mode means the time period when the solvent cleaning machine is turned off.

Dwell means the period of time when parts are held within the freeboard area of the solvent cleaning machine after cleaning to allow solvent to drain from the parts back into the solvent cleaning machine.

Existing means any solvent cleaning machine that commenced construction or reconstruction on or before November 29, 1993.

Freeboard area means for a batch cleaning machine the area within the solvent cleaning machine that extends from the solvent/air interface to the top of the solvent cleaning machine. For an in-line cleaning machine, it is the area within the solvent cleaning machine that extends from the solvent/air interface to the bottom of the entrance or exit opening, whichever is lower.

Freeboard height means for a batch cleaning machine the distance from the solvent/air interface to the top of the cleaning machine. For an in-line cleaning machine, it is the distance from the solvent/air interface to the bottom of the entrance or exit opening, whichever is lower.

Freeboard ratio means a ratio of the solvent cleaning machine freeboard height to the smaller interior dimension (length, width, or diameter) of the solvent cleaning machine.

Freeboard refrigeration device (also called a chiller) means a set of secondary coils mounted in the freeboard area which carry a refrigerant to provide a chilled air blanket above the solvent vapor.

Hoist means a mechanical device that carries the parts basket and the parts to be cleaned from the loading area, into the solvent cleaning machine, and to the unloading area at a controlled speed. A hoist can be operated by controls or can be programmed to cycle parts through the cleaning cycle automatically.

Hot vapor recycle means a solvent cleaning system for vapor cleaning

machines in which parts are cleaned using superheated solvent vapor that is recirculated in the vapor zone.

Idling mode means the time period when a solvent cleaning machine is turned on but is not actively cleaning parts.

In-line cleaning machine (also called a continuous cleaning machine) means a solvent cleaning machine that uses an automated parts handling system, typically a conveyor, to provide a continuous supply of parts to be cleaned. These units are fully enclosed except for the conveyor inlet and exit portals. In-line cleaning machines can be either cold or vapor cleaning machines.

Leak-proof coupling means a threaded or other type of coupling which prevents solvents from leaking while filling or draining solvent to/from the solvent cleaning machine.

Lip exhaust means a device installed around the top of the opening of a solvent cleaning machine that draws in air and solvent vapor emissions and ducts them away from the solvent cleaning area.

Manual cover means a lid, top, or portal cover for a solvent cleaning machine that is opened and closed by physically lifting, sliding, or pulling it (i.e., is not operated mechanically). Manual covers include, but are not limited to, hinged, sliding, and roll-top covers.

Monthly reporting period means the calendar month in which the owner or operator of a solvent cleaning machine is required to calculate and report the solvent emissions from each solvent cleaning machine.

New means any solvent cleaning machine, the construction or reconstruction of which is commenced after the Administrator first proposes a relevant standard under this part.

Open top vapor cleaning machine means a batch solvent cleaning machine that has its upper surface open to the air and boils solvent to create solvent vapor that is used to clean parts.

Primary condenser means a series of circumferential cooling coils on a vapor cleaning machine through which a refrigerant is circulated or recirculated to provide continuous condensation of rising solvent vapors and, thereby, create a controlled vapor zone which prevents vapors from escaping from the cleaning machine.

Reduced room draft means decreasing the flow or movement of air across the solvent cleaning machine to meet the specifications of § 63.462(e)(2)(ii).

Soils means water-insoluble contaminants that are removed from the parts being cleaned. Soils include, but are not limited to, grease, oils, waxes, metal chips, carbon deposits, fluxes, and tars.

Solvent cleaning machine means any device or piece of equipment that uses halogenated solvent in the liquid or gaseous phase to clean and remove soils from the surfaces of materials.

Solvent/air interface means for a vapor cleaning machine the location of contact between the concentrated solvent vapor layer and the air. For a cold cleaning machine it is the location of contact between the liquid solvent and the air.

Solvent/air interface area means for a vapor cleaning machine the surface area of the solvent vapor that is exposed to the air. For a cold cleaning machine it is the surface area of the liquid solvent that is exposed to the air.

Solvent vapor zone means for a vapor cleaning machine the area which extends from the liquid solvent surface to the solvent vapor/air interface.

Sump means the part of a solvent cleaning machine where the liquid solvent is located.

Sump heater coils means the heating system on a vapor cleaning machine which uses steam, electricity, or hot water to boil the liquid solvent.

Superheated vapor system means employing the use of heating coils that boil liquid solvent generating solvent vapors that are heated to temperatures that are more than 1.5 times greater than the solvent boiling point.

Vapor cleaning machine means a batch or in-line solvent cleaning machine that boils liquid solvent generating solvent vapor that is used as an integral part of the cleaning cycle.

Water cover means for a batch cold cleaning machine a layer of water which floats above the denser solvent and provides control of solvent emissions. In many cases, the solvent used in batch cold cleaning machines is sold containing the appropriate amount of water to create a water cover.

Working mode means the time period when the solvent cleaning machine is turned on and is actively cleaning parts.

§ 63.462 Standards.

(a) Except as provided in § 63.463, each existing, new, or reconstructed batch vapor or in-line solvent cleaning machine shall conform to the following design requirements:

(1) Each cleaning machine shall be equipped with a cover that may be readily opened or closed, completely covers the cleaner openings when in place, and is free of cracks, holes, and other defects.

(2) Each cleaning machine shall have a freeboard ratio of at least 0.75.

(3) Each cleaning machine shall use an automated parts handling system at a maximum speed of 3.3 meters per minute for transporting all parts and parts baskets from the initial loading of parts through removal of cleaned parts.

(4) Each vapor cleaning machine shall be equipped with a device that shuts off the sump heat if the sump liquid solvent level drops down to the height of the sump heater coils.

(5) Each vapor cleaning machine shall be equipped with a vapor level control device which shuts off sump heat if the vapor level in the vapor cleaning machine rises above the height of the primary condenser.

(6) No lip exhaust shall be used, unless all collected solvent vapors are routed through a carbon adsorber.

(b) Except as provided in § 63.463, each owner or operator of an existing or new batch vapor cleaning machine shall comply with either paragraph (b)(1) or (b)(2) of this section:

(1) Each owner or operator of a batch vapor cleaning machine with a solvent/air interface area of 1.21 square meters or less shall:

(i) Employ one of the control combinations listed in table 1 of this subpart, or

(ii) Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.15 kilograms per hour per square meter of solvent/air interface area, determined using the procedures in § 63.464(a).

(2) Each owner or operator of a batch vapor cleaning machine with a solvent/air interface area of greater than 1.21 square meters shall:

(i) Employ one of the control combinations listed in table 2 of this subpart, or

(ii) Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.15 kilograms per hour per square meter of solvent/air interface area, determined using the procedures in § 63.464(a).

(c) Except as provided in § 63.463, each owner or operator of an in-line cleaning machine shall comply with paragraph (c)(1) or (c)(2) of this section, as appropriate:

(1) Each owner or operator of an existing in-line cleaning machine shall:

(i) Employ a 1.0 freeboard ratio and a freeboard refrigeration device, or

(ii) Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.10 kilograms per hour per square meter of solvent/air interface area, as provided in § 63.464(a).

(2) Each owner or operator of a new in-line cleaning machine shall:

(i) Employ a super heated vapor system and a freeboard refrigeration device, or

(ii) Demonstrate that their solvent cleaning machine can achieve and maintain an idling emission limit of 0.10 kilograms per hour per square meter of solvent/air interface area, as determined using the procedures in § 63.464(a).

(d) Except as provided in § 63.463, each owner or operator of an existing or new batch vapor or in-line solvent cleaning machine shall meet all of the following required work and operational practices that are applicable to the type of cleaner:

(1) The cover(s) to each solvent cleaning machine shall be closed during the downtime mode.

(2) The parts baskets or the parts being cleaned in an open top batch vapor cleaner shall not occupy more than 50 percent of the solvent/air interface area, unless the parts baskets or parts are introduced at a speed of 0.9 meters per minute or less.

(3) Any spraying operations shall be done within the vapor zone or within a section of the solvent cleaning machine that is not directly exposed to the ambient air.

(4) Parts or parts baskets shall not be removed from any solvent cleaning machine until condensation or dripping has stopped.

(5) Parts shall be oriented so that the solvent drains from them freely. Parts having cavities or blind holes shall be tipped or rotated before being removed from any solvent cleaning machine.

(6) During startup of each vapor cleaning machine, the primary condenser shall be turned on before the sump heater.

(7) During shutdown of each vapor cleaning machine, the sump heater shall be turned off, and the solvent vapor layer allowed to collapse before the primary condenser is turned off.

(8) When solvent is added or drained from any solvent cleaning machine, the solvent shall be transferred using threaded or other leakproof couplings and the end of the pipe in the solvent sump shall be located beneath the liquid solvent surface.

(9) Each solvent cleaning machine and associated controls shall be maintained as recommended by the manufacturers of the equipment.

(10) Each owner or operator of a solvent cleaning machine shall complete and pass a test of solvent cleaning operating procedures if requested during an inspection by the Administrator.

(11) Waste solvent, still and sump bottoms shall be collected and stored in closed containers. The closed containers may contain a device that would allow pressure relief, but would not allow liquid solvent to drain from the container.

(e) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with paragraph (b)(1), (b)(2), (c)(1), or (c)(2) of this section shall:

(1) Conduct monitoring of each control device as provided in § 63.465.

(2) Operate each control device used to comply with these standards within the following parameters:

(i) If a freeboard refrigeration device is used to comply with these standards, the owner or operator shall ensure that the temperature at the center of the air blanket is 20 degrees below the ambient room temperature.

(ii) If a reduced room draft is used to comply with these standards, the owner or operator shall:

(A) Ensure that the movement of air across the solvent cleaning machine does not exceed 15.2 meters per minute at any time, and

(B) Establish and maintain the operating conditions under which the wind speed was demonstrated to be 15.2 meters per minute or less as described in § 63.465(a)(2).

(iii) If a bi-parting cover is used to comply with these standards, the owner or operator shall ensure that the cover opens only for part entrance and removal, completely covers the cleaner openings when closed, and is free of cracks, holes, and other defects.

(iv) If a manual cover is used to comply with these standards, the owner or operator shall ensure that the cover is in place whenever parts are not in the solvent cleaning machine, completely covers the cleaner openings when in place, and is free of cracks, holes, and other defects.

(v) If a dwell is used to comply with these standards, the owner or operator shall:

(A) Determine the appropriate dwell time for each part or parts basket as described in § 63.464(c), and

(B) Ensure that parts are held in the freeboard area of the solvent cleaning machine after cleaning for the determined dwell time.

(vi) If a super-heated vapor system is used to comply with these standards, the owner or operator shall ensure that the temperature at the center of the solvent vapor zone is 50 percent above the solvent's boiling point.

(f) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with paragraph (b)(1)(ii), (b)(2)(ii), (c)(1)(ii), or (c)(2)(ii) of this section shall:

(1) Conduct an initial performance test to:

(i) Demonstrate compliance with the applicable idling emission limit, and

(ii) Establish parameters that shall be monitored to demonstrate compliance.

(2) Conduct monitoring of the parameters identified in the initial performance test. The required monitoring frequency will be determined by the Administrator and will be based on the variability of the parameters that are established.

(3) Operate solvent cleaning machine within parameters identified in the initial performance test.

(g) Each owner or operator of a batch cold solvent cleaning machine shall:

(1) Employ a tightly fitting cover that shall be closed at all times except during parts entry and removal.

(2) Employ a water layer on the surface of the solvent within the cleaning machine.

(3) Collect and store waste solvent in closed containers. The closed container may contain a device that would allow pressure relief, but would not allow liquid solvent to drain from the container.

§ 63.463 Alternative standards.

(a) As an alternative to meeting the requirements in § 63.462, each owner or operator of a batch vapor or in-line solvent cleaning machine subject to the provisions of this subpart may:

(1) Maintain a log of solvent additions and deletions for each cleaner, and

(2) Ensure that the emissions from each solvent cleaning machine are equal to or less than the limits presented in table 3 of this subpart, as determined using the procedures in § 63.464(b).

(b) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with § 63.463(a) of this subpart shall demonstrate compliance with the applicable 3-month rolling average monthly emission limit in table 3 of this subpart on a monthly basis, as described in § 63.464(b).

§ 63.464 Test methods.

(a) Each owner or operator of a batch vapor or in-line solvent cleaning machine choosing to comply with § 63.462(b)(1)(ii), (b)(2)(ii), (c)(1)(ii), or (c)(2)(ii) shall determine the idling emission rate of the solvent cleaning machine using Reference Method 307 in appendix A of this part.

(b) Each owner or operator of a batch vapor or in-line solvent cleaning machine choosing to comply with § 63.463(a) shall, on the first day of every month:

(1) Ensure that the solvent cleaning machine system contains only clean liquid solvent,

(2) Using the records of all solvent additions and deletions for the previous monthly reporting period required under § 63.463(a), determine solvent emissions (E_i) using the following equation, except as provided in paragraph (b)(3) of this section:

$$E_i = SA_i - LSR_i - SSR_i \quad (1)$$

where:

E_i=the total solvent emissions from the solvent cleaning machine during the most recent monthly reporting period [kilograms of solvent].

SA_i=the total amount of liquid solvent added to the solvent cleaning machine during the most recent monthly reporting period i, [kilograms of solvent].

LSR_i=the total amount of clean liquid solvent removed from the solvent cleaning machine during the most recent monthly reporting period i, [kilograms of solvent].

SSR_i=the total amount of solvent removed from the solvent cleaning machine in solid waste, as supported by tests conducted using EPA reference method 25d, during the most recent monthly reporting period i, [kilograms of solvent].

(3) Owners or operators for which SSR_i is an unknown can, as an alternative to the method described in paragraph (b)(2) of this section, determine solvent emissions using the following procedure:

(i) Determine SSR_i using the following equation:

$$SSR_i = (EF)(SA_i) - LSR_i \quad (2)$$

where:

SSR_i=the total amount of solvent removed from the solvent cleaning machine in solid waste during the most recent monthly reporting period i, [kilograms of solvent].

EF = an emission factor which has the following values. For existing and new batch vapor cleaning machines: small and medium cleaning machines = 0.41, large and very large cleaning machines = 0.48. For existing in-line cleaning machines = 0.36. For new in-line cleaning machines = 0.48

SA_i=the total amount of liquid solvent added to the solvent cleaning machine during the most recent monthly reporting period i, [kilograms of solvent].

LSR_i=the total amount of clean liquid solvent removed from the solvent cleaning machine during the most recent monthly reporting period i, [kilograms of solvent].

(ii) Use the value of SSR_i obtained from equation (2) to solve for E_i in equation (1).

(4) Determine the monthly rolling average, EA, for the 3-month period ending with the most recent reporting period using the following equation:

$$EA = \frac{\sum_{j=1}^{3} E_j}{3} \quad (3)$$

where:

EA=the average solvent emissions over the preceding 3 monthly reporting periods, (kilograms of solvent/month).

E_j=solvent emissions for each month (j) for the most recent 3 monthly reporting periods (kilograms of solvent).

j=1 = the most recent monthly reporting period.

j=2 = the monthly reporting period immediately prior to j=1.

j=3 = the monthly reporting period immediately prior to j=2.

(c) Each owner or operator of a batch vapor or in-line solvent cleaning machine choosing to use a dwell to comply with § 63.462 shall determine the appropriate dwell for each part or parts basket using the following procedure:

(1) Determine the amount of time for the part or parts basket to cease dripping once placed in the vapor zone.

(2) The minimum proper dwell period is equal to 35 percent of the time determined in paragraph (c)(1) of this section.

§ 63.465 Monitoring procedures.

(a) Except as provided in paragraph (c) of this section, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with § 63.462(b)(1)(i), (b)(2)(i), (c)(1)(i), or (c)(2)(i) shall conduct weekly monitoring of the following control devices:

(1) If a freeboard refrigeration device is used to comply with these standards, the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the air blanket while the solvent cleaning machine is in the idling mode.

(2) If a reduced room draft is used to comply with these standards, the owner or operator shall measure the windspeed using the following procedure:

(i) Determine the direction of the wind current by slowly rotating a velometer until the maximum speed is located.

(ii) Orient a velometer in the direction of the wind current at each of the four corners of the machine.

(iii) Record the reading for each corner.

(iv) Average the values obtained at each corner and record the average wind speed.

(3) If a super-heated vapor system is used to comply with these standards, the owner or operator shall use a thermometer or thermocouple to measure the temperature at the center of the solvent vapor zone while the solvent cleaning machine is in the idling mode.

(b) Except as provided in paragraph (c) of this section, each owner or operator of a batch vapor or in-line solvent cleaning machine complying with § 63.462 (b)(1)(i), (b)(2)(i), (c)(1)(i), or (c)(2)(i) shall conduct monthly monitoring of the following control devices, as appropriate:

(1) If a bi-parting cover is used to comply with these standards, the owner or operator shall conduct a monthly visual inspection to determine if the bi-parting cover is opening and closing properly, completely covers the cleaning machine openings when closed, and is free of cracks, holes, and other defects.

(2) If a manual cover is used to comply with these standards, the owner or operator shall inspect the cover monthly to ensure that it is free of cracks, holes, or other defects.

(3) If a hoist is used to comply with these standards, the owner or operator shall determine the hoist speed by measuring the time it takes to travel a measured distance (meters per minute).

(4) If a dwell is used to comply with these standards, the owner or operator shall determine the dwell time by measuring the period of time that parts are held within the freeboard area of the solvent cleaning machine after cleaning.

(c) Each owner or operator using a control device listed in paragraph (a) or (b) of this section can use alternative monitoring procedures approved by the Administrator.

(d) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with § 63.462(b)(1)(ii), (b)(2)(ii), (c)(1)(ii), or (c)(2)(ii) shall establish monitoring parameters and procedures which demonstrate compliance, and submit such parameters and procedures and other rationale to the Administrator for approval.

§ 63.466 Recordkeeping requirements.

(a) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.462 shall maintain records of the following for the lifetime of the machine:

(1) Owner's manuals for the solvent cleaning machine and control equipment,

(2) The date of installation for the solvent cleaning machine and all of its control devices,

(3) If a dwell is used to comply with these standards, records of the tests, required in § 63.464(c), used to

determine an appropriate dwell time for each part or parts basket.

(4) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.462 (b)(1)(ii), (b)(2)(ii), (c)(1)(ii), or (c)(2)(ii) shall maintain records of the initial performance test, including the idling emission rate and values of the monitoring parameters measured during the test.

(b) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.462 shall maintain records of the results of control device monitoring required under § 63.465(a), (b), (c), and/or (d) either in computerized or written form for a period of 5 years.

(c) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.463 shall maintain records of the following for a period of 5 years:

(1) The dates and amounts of solvent that is added to the solvent cleaning machine;

(2) The solvent composition of wastes removed from cleaning machines as measured during batch specific tests or as calculated using the procedure described in § 63.464(b)(3); and

(3) Calculation sheets showing how monthly emissions and the rolling 3-month average emissions from the solvent cleaning machine were determined, and the results of all calculations.

§ 63.467 Reporting requirements.

(a) Each owner or operator of an existing batch vapor or in-line solvent cleaning machine subject to the provisions of this subpart shall submit an initial report to the Administrator no later than 90 days after the date of promulgation of this subpart. This report shall include the following:

(1) The name and address of the owner or operator; and

(2) The address (i.e., physical location) of the solvent cleaning machine(s); and

(3) A brief description of each solvent cleaning machine, including machine type (batch vapor, or in-line), solvent/air interface area, and existing controls; and

(4) An estimate of the yearly consumption of halogenated solvents for each solvent cleaning machine.

(b) Each owner or operator of an existing batch cold solvent cleaning machine subject to the provisions of this subpart shall submit an initial report to the Administrator no later than 90 days after the date of promulgation of this subpart. This report shall include the following:

(1) The name and address of the owner or operator; and

(2) The address (i.e., physical location) of the solvent cleaning machine(s); and

(3) A brief description of each solvent cleaning machine, including machine type (such as, carburetor cleaner), solvent/air interface area, and existing controls;

(4) An estimate of the yearly consumption of halogenated solvents for each solvent cleaning machine; and

(5) A statement, signed by the owner or operator of the solvent cleaning machine, stating that the solvent cleaning machine for which the report is being submitted, is in compliance with the provisions of this subpart.

(c) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.462 shall submit to the Administrator an initial statement of compliance for each solvent cleaning machine within 30 days after the compliance date specified in § 63.460 (b) and (c). This statement shall include the following:

(1) A list of the control equipment used to achieve compliance for each solvent cleaning machine; and

(2) For each piece of control equipment required to be monitored, a list of the parameters which are monitored and the values of these parameters measured on or during the first month after the compliance date; and

(3) Each owner or operator of a solvent cleaning machine complying with the provisions of § 63.462(b)(1)(ii), (b)(2)(ii), (c)(1)(ii), (c)(2)(ii) shall submit a test report for tests of idling emissions meeting the specifications in Method 307 of appendix A of this subpart.

(i) This test must be on the same specific model cleaner used at the source and can be done by the owner or operator or can be supplied by the vendor of that solvent cleaning machine.

(ii) This report must clearly state the monitoring parameters and monitoring frequency required to demonstrate continuous compliance.

(iii) If a solvent cleaning machine vendor test report is used to demonstrate compliance, it shall include the following for the solvent cleaning machine tested: Model name, the date the solvent cleaning machine was tested, serial number, a drawing of the solvent cleaner tested.

(iv) If a solvent cleaning machine vendor test report is used the owner or operator of the solvent cleaning machine shall:

(A) Submit a statement by the solvent cleaning machine vendor that the unit tested is the same as the unit the report is being submitted for; or

(B) Demonstrate to the Administrator's satisfaction that the solvent emissions from the solvent cleaning machine for which the test report is being submitted are equal to or less than the solvent emissions from the solvent cleaning machine in the vendor test report.

(4) Conditions to maintain the wind speed requirements of § 63.462(e)(2)(ii).

(d) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.463 shall submit to the Administrator an initial statement of compliance for each solvent cleaning machine within 30 days after the compliance date specified in § 63.460 (b) and (c). The statement shall include the results of the first 3-month average emissions calculation.

(e) Each owner or operator of a batch vapor or in-line solvent cleaning machine complying with the provisions of § 63.462 shall submit a control device monitoring report every year beginning one year after the compliance date specified in § 63.460 (b) and (c). This control device monitoring report should contain all of the following:

(1) The results of all control equipment monitoring recorded under § 63.466 (a); and

(2) A signed statement from the facility owner stating that, "All operators of solvent cleaning machines have received training on the proper operation of solvent cleaning machines and their control devices sufficient to pass the test required in § 63.462 (d)(10)."

(f) Each owner or operator of a batch vapor or in-line solvent cleaning machine electing to comply with the provisions of § 63.463 shall submit a solvent consumption report every year. This solvent consumption report shall contain all of the following:

(1) The average monthly solvent consumption for the solvent cleaning machine in kilograms/month; and

(2) The 3-month monthly rolling average solvent consumption estimates calculated each month using the method as described in § 63.464(b)(4).

(g) The owner or operator of an affected facility must submit an exceedance report if any required monitoring or emissions calculations indicate that any applicable requirements of § 63.462 or § 63.463 are not met. This report must be submitted on a quarterly basis for any quarter in which there is an exceedance. This report must include the reason for the exceedance and a description of the repairs performed, if applicable.

§ 63.468 Equivalent methods of control.

Upon written application, the Administrator may approve the use of equipment or procedures after they have been satisfactorily demonstrated to be equivalent, in terms of reducing emissions of halogenated solvents to the atmosphere, to those prescribed for compliance within a specified paragraph of this subpart. The application must contain a complete description of the equipment or procedure and the proposed equivalency testing procedure and the date, time, and location scheduled for the equivalency demonstration.

TABLE 1.—CONTROL COMBINATIONS FOR BATCH VAPOR SOLVENT CLEANING MACHINES WITH A SOLVENT/AIR INTERFACE AREA OF 1.21 SQUARE METERS OR LESS

Option	Control combinations
1	Freeboard ratio of 1.0, freeboard refrigeration device, reduced room draft.
2	Bi-parting cover used during idling and working modes, freeboard frigeration device, reduced room draft.
3	Bi-parting cover used during idling and working modes, freeboard ratio of 1.0, reduced room draft.
4	Freeboard refrigeration device, manual cover used during idling mode, reduced room draft.

TABLE 2.—CONTROL COMBINATIONS FOR BATCH VAPOR SOLVENT CLEANING MACHINES WITH A SOLVENT/AIR INTERFACE AREA GREATER THAN 1.21 SQUARE METERS

Option	Control combinations
1	Bi-parting cover used during idling and working modes, freeboard refrigeration device, reduced room draft.
2	Dwell, freeboard refrigeration device, reduced room draft.
3	Bi-parting cover used during idling and working modes, freeboard refrigeration device, super heated vapor.
4	Freeboard ratio of 1.0, reduced room draft, super heated vapor.
5	Dwell, reduced room draft, super heated vapor.
6	Bi-parting cover used during idling and working modes, reduced room draft, super heated vapor.
7	Bi-parting cover used during idling and working modes, dwell, reduced room draft.

TABLE 3.—EMISSION LIMITS FOR BATCH VAPOR AND IN-LINE SOLVENT CLEANING MACHINES

Solvent cleaning machine	3-month rolling average monthly emission limit (kilograms/square meters-month)
Batch vapor solvent cleaning machines	109.8
Existing in-line solvent cleaning machines	153.2
New in-line solvent cleaning machines	98.5

3. Appendix A to part 63 is amended by adding in numerical order Method 307 to read as follows:

Appendix A to Part 63—Test Methods

* * * * *

Method 307—Determination of Emissions from Halogenated Solvent Vapor Cleaning Machines Using a Liquid Level Procedure

1. Applicability and Principle

1.1 Applicability. This method is applicable to the determination of the halogenated solvent emissions from solvent vapor cleaners in the idling mode.

1.2 Principle. The solvent level in the solvent cleaning machine is measured using inclined liquid level indicators. The change in liquid level corresponds directly to the amount of solvent lost from the solvent cleaning machine.

2. Apparatus

Note: Mention of trade names or specific products does not constitute endorsement by the Environmental Protection Agency.

2.1 Inclined Liquid Level Indicator. A schematic of the inclined liquid level indicators used in this method is shown in Figure 307–1; two inclined liquid level indicators's having 0.05 centimeters divisions or smaller. Glass, Teflon, or any similar material that will not react with the solvent shall be used. A 6-in. x 1-in. slope is recommended; however the slope may vary depending on the size and design of the solvent cleaning machine. **Note:** It is important that the inclined liquid level indicators be constructed with ease of reading in mind. The inclined liquid level indicators should also be mounted such that they can be raised or lowered if necessary to suit the solvent cleaning machine size.

2.2 Horizontal Indicator. Device to check the inclined liquid level indicators orientation relative to horizontal.

2.3 Velocity Meter. Hot-wire and vane anemometers, or other devices capable of measuring the flow rates ranging from 0 to 15.2 meters per minute across the solvent cleaning machine.

3. Procedure

3.1 Connection of the Inclined Liquid Level Indicator. Connect one of the inclined liquid level indicators to the boiling sump drain and the other inclined liquid level indicator to the immersion sump drain using Teflon tubing and the appropriate fittings. A schematic diagram is shown in Figure 307–2.

3.2 Positioning of Velocity Meter. Position the velocity meter so that it measures the flow rate of the air passing directly across the solvent cleaning machine.

3.3 Level the Inclined Liquid Level Indicators.

3.4 Initial Inclined Liquid Level Indicator Readings. Open the sump drainage valves. Allow the solvent cleaning machine to operate long enough for the vapor zone to form and the system to stabilize (check with

manufacturer). Record the inclined liquid level indicators readings and the starting time on the data sheet. A sample data sheet is provided in Figure 307–3.

3.5 Final Inclined Liquid Level Indicators Readings. At the end of the 16 hour test run, check to make sure the inclined liquid level indicators are level; if not, make the necessary adjustments. Record the final inclined liquid level indicators readings and time.

3.6 Determination of Solvent Vapor/Air Interface Area for Each Sump. Determine the area of the solvent/air interface of the individual sumps. Whenever possible, physically measure these dimensions, rather than using factory specifications. A schematic of the dimensions of a solvent cleaning machine is provided in Figure 307–4.

4. Calculations

4.1 Nomenclature.

A_B=Area of boiling sump interface, m^2 (ft^2).
A_I=Area of immersion sump interface, m^2 (ft^2).
A_V=Area of solvent vapor/air interface, m^2 (ft^2).
E=Emission rate, g/m^3-hr (lb/ft^3-hr).
K=100 cm/m for metric units.
=12 in./ft for English units.
L_{Bf}=Final boiling sump inclined liquid level indicators reading, cm (in.).
L_{Bi}=Initial boiling sump inclined liquid level indicators reading, cm (in.).
L_{If}=Final immersion sump inclined liquid level indicators reading, cm (in.).
L_{Ii}=Initial immersion sump inclined liquid level indicators reading, cm (in.).
S_B=Length of the boiling sump, m (ft).
S_I=Length of the immersion sump, m (ft).
S_V=Length of the solvent vapor/air interface, m (ft).
W_B=Width of the boiling sump, m (ft).
W_I=Width of the immersion sump, m (ft).
W_V=Width of the solvent vapor/air interface, m (ft).
ρ=Density of solvent, g/m^3 (lb/ft^3).
θ=Test time, hr.

4.2 Area of Sump Interfaces. Calculate the areas of the boiling and immersion sump interfaces as follows:

$A_B=S_BW_B$ Eq. 307–1
$A_I=S_IW_I$ Eq. 307–2

4.3 Area of Solvent Vapor/air Interface. Calculate the area of the solvent vapor/air interface as follows:

$A_V=S_VW_V$ Eq. 307–3

4.4 Emission Rate. Calculate the emission rate as follows:

$$E = \frac{(L_{B_f} - L_{B_i})\,\rho\,A_B + (L_{I_f} - L_{I_i})\,\rho\,A_I}{K\,A_v\,\theta} \qquad \text{Eq. } 307-4$$

Figures to Appendix A to Part 63

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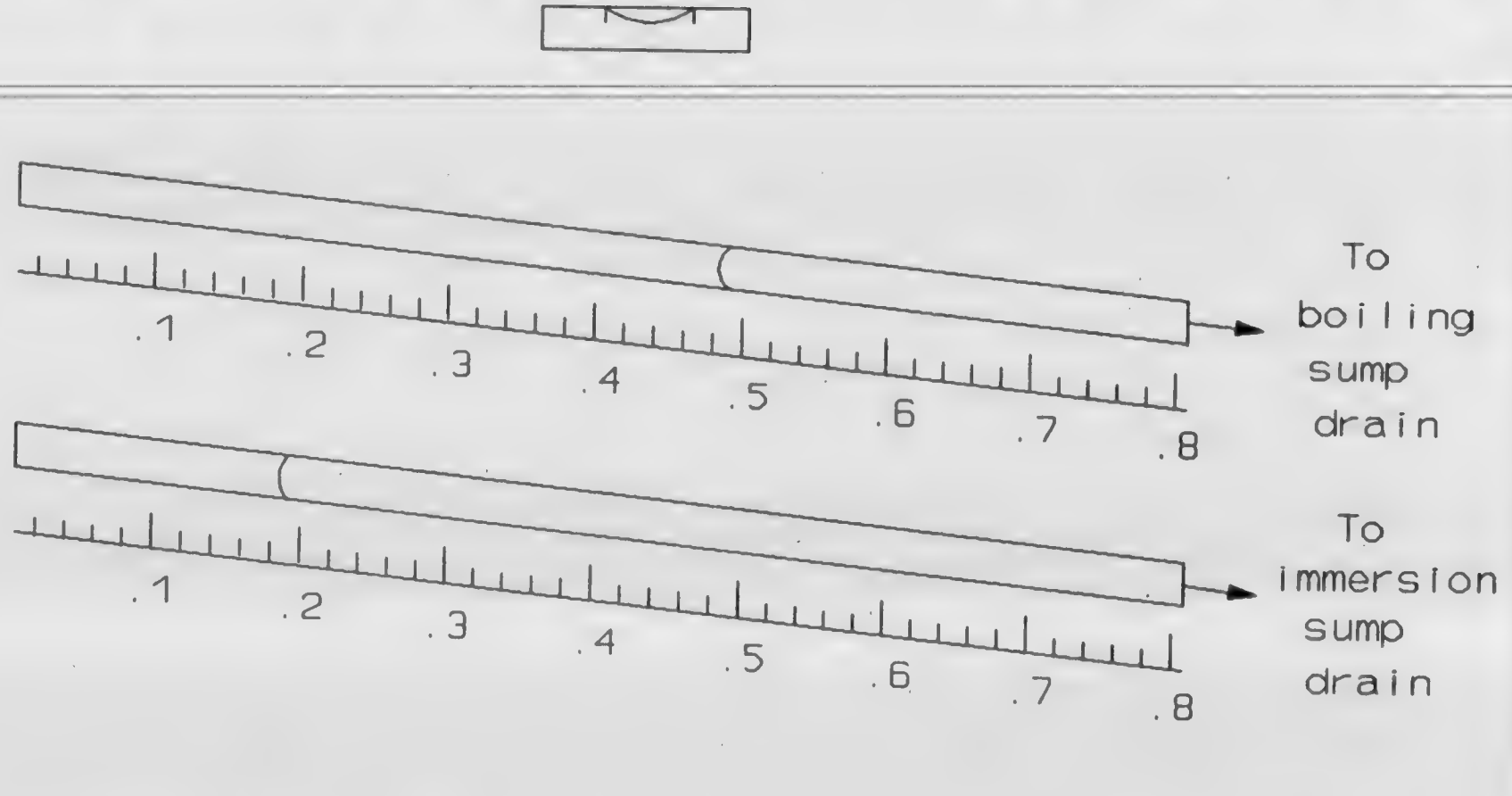

Figure 307-1. Inclined Liquid Level Indicator Apparatus.

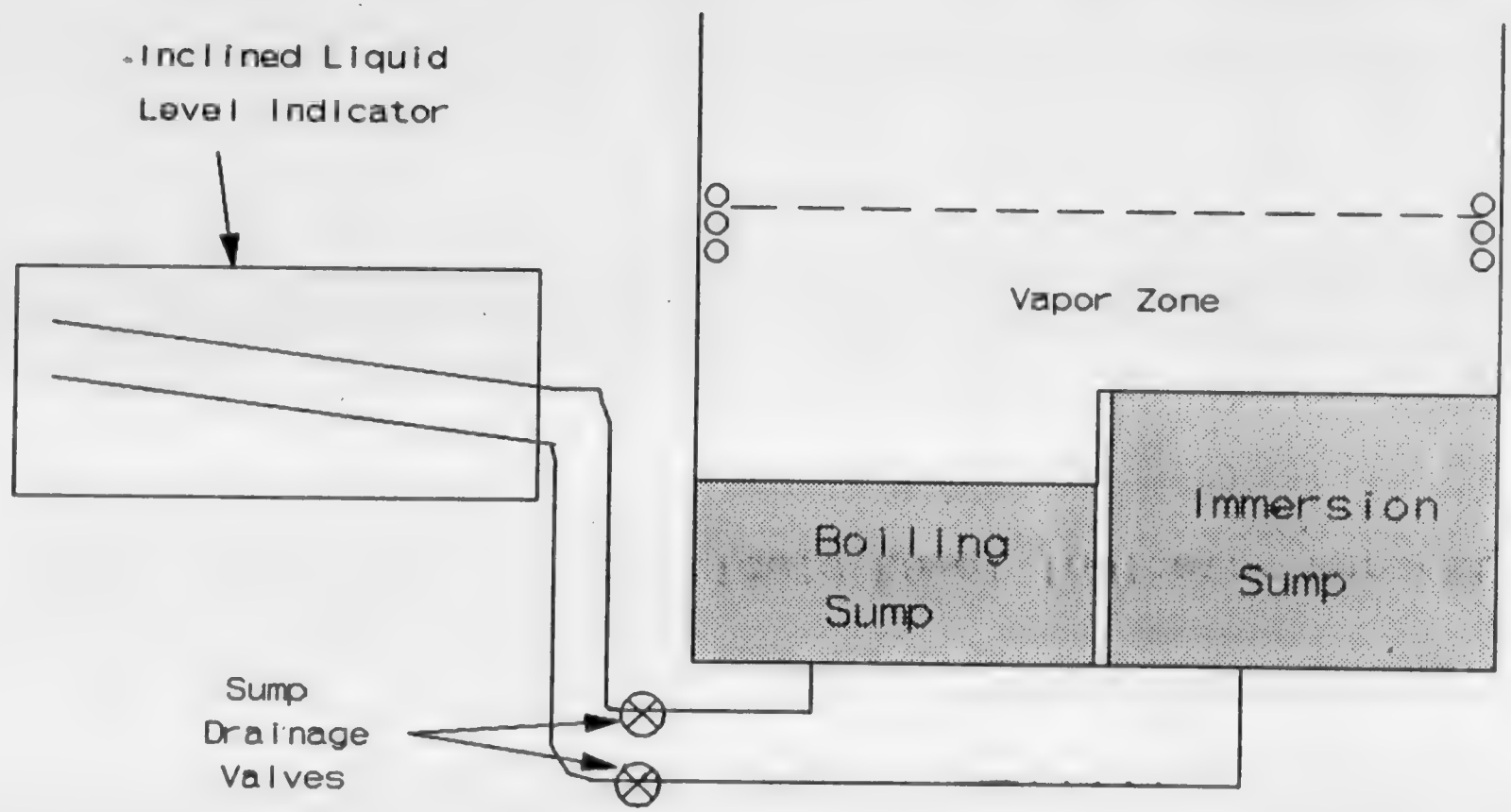

Figure 307-2. Solvent C'eaner Test Setup

153
~~146~~ 2

Date _____ Run _____

Solvent type _____
Solvent density g/m^3 (lb/ft^3) _____

Length of boiling sump (S_B), m (ft) _____
Width of boiling sump (W_B), m (ft) _____

Length of immersion sump (S_I), m (ft) _____
Width of immersion sump (W_I), m (ft) _____

Length of solvent vapor/air interface (S_V), m (ft) _____
Width of solvent vapor/air interface (W_V), m (ft) _____

Clock Time	Boiling Sump Reading	Immersion Sump Reading	Flow Rate Reading

Figure 307-3. Data sheet.

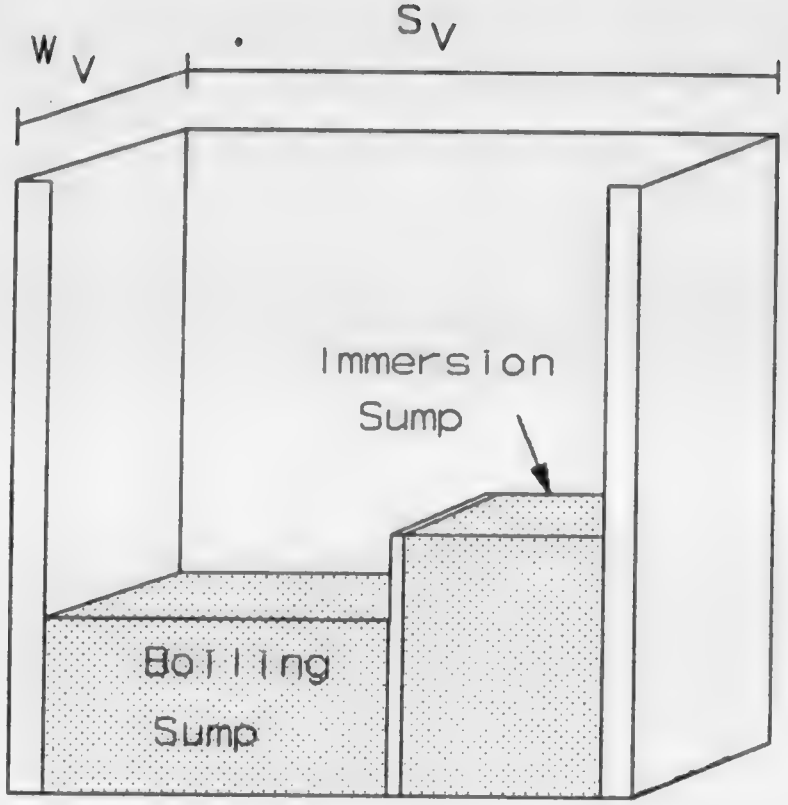

Front View

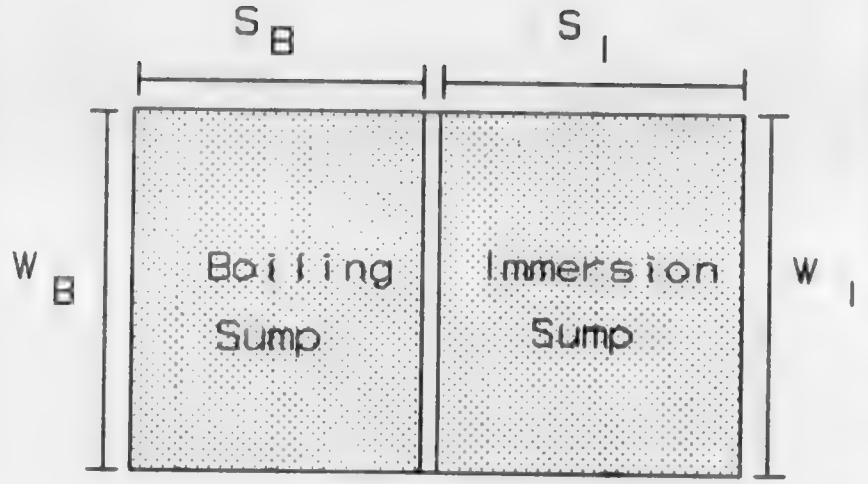

Top View

Figure 307-4. Solvent Cleaner Dimensions.

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BILLING CODE 6560-50-C

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Office of Child Support Enforcement

45 CFR Parts 302, 303, and 304

Child Support Enforcement Program: Paternity Establishment

AGENCY: Office of Child Support Enforcement (OCSE), HHS.

ACTION: Notice of proposed rulemaking.

SUMMARY: These proposed rules would implement the requirements of section 13721 of the Omnibus Budget Reconciliation Act of 1993 (Pub. L. 103–66) signed by the President on August 10, 1993, which amend title IV-D of the Social Security Act (the Act). The provisions amend the Act to require States to adopt procedures for a simple civil process for the voluntary acknowledgment of paternity, including early paternity establishment programs in hospitals. For paternity cases that remain contested, the new statutory provisions require States to adopt a variety of procedures designed to streamline the paternity establishment process. These include the use of default orders, a presumption of paternity based on inclusionary genetic test results, conditions for admission of genetic test results as evidence, and expedited decision-making processes for paternity cases in which title IV-D services are being provided.

DATES: Consideration will be given to written comments received by January 28, 1994.

The statute provides that the requirements become effective October 1, 1993, or later if enactment of State law is necessary to conform to the requirements. However, in no event shall the requirements be effective later than the first day of the first calendar quarter beginning after the close of the first regular session of the State legislature that begins after August 10, 1993. In the case of State that has a 2-year legislative session, each year of such session shall be deemed to be a separate regular session of the State legislature.

ADDRESSES: Address comments to: Office of Child Support Enforcement, Department of Health and Human Services, 370 L'Enfant Promenade SW., Washington, DC 20447, Attention: Director, Policy and Planning Division. Comments will be available for public inspection Monday through Friday, 8:30 a.m. to 5 p.m. on the 4th floor of the Department's offices at the above address.

FOR FURTHER INFORMATION CONTACT: Andrew Williams, OCSE Division of Policy and Planning, (202) 401–1467.

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

This rule does not require any information collection activities and, therefore, no approvals are necessary under the Paperwork Reduction Act.

Background

Paternity establishment is a necessary first step in the child support enforcement process in cases where a child is born out-of-wedlock. I addition to child support, paternity establishment may result in other financial benefits, including Social Security benefits, pension benefits, veterans' benefits, and other rights of inheritance. Furthermore, paternity establishment may give children social and psychological and a sense of family heritage, be a first step in creating a psychological and social bond between father and child, and provide important medical history information.

Congress and the Federal government have long recognized the importance of paternity establishment. In 1975, enactment of Title IV–D of the Social Security Act required States to establish public child support agencies. These agencies provided paternity establishment services. The Child Support Enforcement Amendments of 1984 required States to permit paternity to be established until a child's 18th birthday. In 1988, the Family Support Act contained several provisions designed to improve paternity establishment: A performance standard, timeframes for case processing, enhanced funding (90 percent Federal financial participation) for genetic testing, a requirement that States compel all parties in a contested paternity case to submit to genetic testing upon the request of a party, a requirement that states compel each parent to provide his or her social security number as part of the birth certificate issuance process, and a clarification of the expansion of the requirement permitting paternity establishment to 18 years of age.

Partly as a result of these Federal efforts, the number of paternities established each year by the IV–D Child Support Enforcement program has increased substantially from about 270,000 in FY 1987 to over 515,000 in FY 1992—an increase of over 90 percent in just five years. However, about 28 percent American children, over a million children each year, are born to unmarried mothers. Paternity is still not established in a sizable number of these cases. Even in cases where paternity is established, the process is often lengthy and adversarial in nature.

Therefore, the President and Congress decided to further reform the system with the Omnibus Budget Reconciliation Act of 1993. This new statute and these proposed implementing regulations are intended to increase both the number of paternities established for children born out-of-wedlock and the timeliness with which paternity establishment is accomplished. These provisions will increase the number of paternities established by voluntary acknowledgment. However, some cases will remain contested, and these reforms should expedite the process for resolving those cases as well.

Many of these reforms are based on innovative State practices and recommendations of the U.S. Commission on Interstate Child Support. The Interstate Commission was created by Congress as part of the Family Support Act of 1988 to recommend ways of improving the interstate establishment and enforcement of child support awards. In 1992, the Commission issued its comprehensive final report to the Congress which contained numerous recommendations, including recommendations for improving paternity establishment in both interstate and intrastate cases.

Because Congress added the newly-mandated practices to section 466(a) of the Act, they are requirements which States must meet as a condition of State plan approval under section 454 of the Act. We propose to add the new State plan requirements to 45 CFR 302.70. Each State's title IV–D plan must be approved for the State to receive Federal financial participation in the operation of its Child Support Enforcement program.

Statutory Authority

These proposed regulations are published under the authority of section 466(a) of the Social Security Act (the Act), as amended by the Omnibus Budget Reconciliation Act of 1993. Section 466(a)(2), as amended, eliminates the State option for including paternity establishment in expedited processes, thereby requiring States to include paternity establishment in expedited processes. New subsection 466(a)(5)(C) requires States to have laws and procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that

due process safeguards are afforded. Such procedures must include a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child. New subsection 466(a)(5)(D) requires States to have laws and procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity. New subsection 466(a)(5)(E) requires States to have laws and procedures under which the voluntary acknowledgment of paternity must be recognized as a basis for seeking a support order without first requiring any further proceedings to establishing paternity.

New subsection 466(a)(5)(F) requires States to have laws and procedures which provide that (i) any objection to genetic test results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence, and (ii) if no objection is made, the test results are admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy. New subsection 466(a)(5)(G) requires States to have laws and procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the Child.

New subsection 466(a)(5)(H) requires States to have laws and procedures requiring a default order to be entered in a paternity case upon a showing of service of process on the defendant and any additional showing required by State law. New section 466(a)(11) requires States to have laws and procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes. These proposed regulations are also published under the general authority of section 1102 of the Act, which requires the Secretary to publish regulations that may be necessary for the efficient administration of the functions for which she is responsible under the Act.

In addition to the provisions discussed in this proposed rule, the new statue also revises the paternity establishment performance standard which States must meet. The performance standard will be dealt with separately in another rule.

Description of Regulatory Provisions

In developing this proposed rule, we were cognizant of the fact that the President has created a White House Working Group on Welfare Reform, Family Support, and Independence that is examining how to strengthen the Child Support Enforcement program. However, this proposed rule is based on existing law and does not attempt to anticipate future statutory change or recommendations that may emanate from the Working Group.

Required State Laws—Section 302.70(a)

Section 466(a) of the Act requires a State to enact laws providing for these new requirements. Consistent with implementation of the Family Support Act requirements, however, States may implement provisions using regulation, procedure, or court rule, instead of law, if such regulation, procedure, or rule has the same force and effect under State law on the parties to whom they apply.

To simplify the regulatory language, we propose to delete effective dates of IV–D State plan requirements currently listed in 45 CFR 302.70(a). Each IV–D State plan requirement, including the new paternity ones, remains effective on the date indicated by the statute or implementing regulation.

Simple Civil Process for Voluntarily Acknowledging Paternity—Sections 302.70(a)(5)(iii) and 303.5(a)

We propose to implement the requirements of new section 466(a)(5)(C) of the Act by amending 45 CFR 302.70(a)(5) to add new paragraph (iii). This provision would require each State to have laws and procedures for a simple civil process for voluntarily acknowledging paternity. Under such process, the State must provide that the rights and responsibilities of acknowledging paternity are explained and ensure that due process safeguards are afforded. This requirement builds upon the Family Support Act of 1988, which encouraged simple civil procedures for the voluntary acknowledgment of paternity, by making such procedures mandatory. Studies and State experience have shown that many men will voluntarily acknowledge paternity if given the opportunity. When paternity is established voluntarily with the cooperation of both parents, the cost, conflict, and delays of contested cases can be avoided. Most, if not all, States already have some type of voluntary acknowledgment procedures in place, but this new law should ensure that these procedures are simple and are regularly used.

As part of the voluntary acknowledgment procedures, States would be required to explain to both parents the rights and responsibilities of acknowledging paternity and afford due process safeguards, including any due process requirements under State law. As long as the explanation meets State due process requirements, it may be verbal or in writing. However, we recommend that States list the rights and responsibilities of acknowledging paternity, including the duty to financially support the child, on the acknowledgment form or other written materials. This disclosure of rights should be clear and easily understood.

The statute requires that the voluntary acknowledgment procedures include hospital-based programs. (Such hospital-based programs are discussed more extensively later in this preamble). However, because the statute includes hospital-based programs as part of a broader requirement for voluntary acknowledgment procedures, we believe that Congress intended these procedures to encompass more than just the hospital-based programs. Therefore, we propose to require at new 45 CFR 302.70(a)(5)(iii)(B) that the procedures include a process for voluntarily acknowledging paternity outside of hospitals.

The voluntary acknowledgment process should be available at any time to any father who wants to voluntarily acknowledge paternity. Ideally, States will allow fathers multiple opportunities to voluntarily acknowledge at any stage in the process. Even if a man is initially reluctant to voluntarily acknowledge parentage because he is unsure whether he is actually the father, he may be willing to do so after receiving genetic test results which indicate a high probability of paternity.

Acknowledgment form. States may choose various simple civil methods for obtaining voluntary acknowledgments. At a minimum, however, proposed 45 CFR 302.70(a)(5)(iii)(D) would require each State to have a voluntary acknowledgment form or affidavit. Such forms are already used by many States. The voluntary acknowledgment form must include, at a minimum, instructions for filing the acknowledgment with the designated agency (see below for discussion on filing acknowledgments with the designated agency) and lines for the parents' social security numbers and addresses. In addition, proposed 45 CFR 302.70(a)(5)(iii)(C) would require States

to have laws and procedures requiring that a voluntary acknowledgment be signed by both parents, and that the parents' signatures be authenticated by a notary public or witness(es).

The requirements at proposed 45 CFR 302.70(a)(5)(iii)(C) and (D) are meant to ensure that States' voluntary acknowledgment contains these basic elements, States should be able to legally recognize and act upon acknowledgments obtained in other States, which should improve interstate case processing. In addition, the social security numbers and addresses may provide valuable locate and identifying information. States can meet the requirements of proposed 45 CFR 302.70(a)(5)(iii)(C) and (D) by developing and mandating the use of a form which contains the required elements, signature lines for both parents, and signature lines for a notary public or witness(es).

Filing acknowledgments. Proposed 45 CFR 302.70(a)(5)(iii)(E) would require the State to have laws and procedures for filing voluntary acknowledgments with either the State IV–D agency or a centralized State agency that provides the State IV–D agency access to copies of, and identifying information on, the acknowledgements. If the agency is not the IV–D agency, it may be the vital statistics agency, a registry of putative fathers, or some other type of registry or agency. Instead of allowing a State to have multiple filing agencies (such as local courts), we proposed to require that the filing agency be a centralized entity so that it will be easier to match acknowledgements with IV–D cases and control access to the acknowledgments.

If a State chooses its vital statistics agency (or similar agency responsible for birth registration) as its filing agency, it may want to link the filing process with procedures for including the father's name on the birth certificate. In some States, a voluntary acknowledgment is a sufficient basis to list the acknowledging man as the child's father on the birth certificate. The filing of voluntary acknowledgments with a vital statistics agency may also be a way of obtaining social security numbers from parents as required during the birth registration process by section 205(c)(2)(C)(ii) of the Social Security Act. Proposed 45 CFR 302.70(a)(5)(iii)(D) would require that voluntary acknowledgment forms include lines for parents' social security numbers.

Under this provision, a State's procedures would not have to require that a completed and notarized acknowledgment be filed with the appropriate agency in order to be a valid acknowledgement. Moreover, the procedures do not have to require that any particular party or agency file the acknowledgments (except for hospital-based programs as required by proposed 45 CFR 303.5(g)(2)(iv) and explained later in this preamble). However, proposed 45 CFR 302.70(a)(5)(iii)(D) would require that the State include on acknowledgment forms instructions for filing the acknowledgment with the designated agency. As a result, the parties would be aware of the filing procedures and could easily file the acknowledgment themselves. If a State's filing agency is its vital statistics agency (or similar agency responsible for birth registration), it may choose to link these filing instructions with instructions for adding the father's name to the birth certificate.

The purpose of filing acknowledgements with an agency is to ensure that the IV–D agency has access to copies of acknowledgments so that it can use the acknowledgments to establish and enforce child support in cases where the parents voluntarily acknowledged paternity prior to the case becoming a IV–D case. If the acknowledgments are filed with an agency other than the IV–D agency, that agency would be required to give the IV–D agency access to identifying information and copies of filed acknowledgements. This identifying information should include sufficient information to enable the IV–D agency to determine if an acknowledgment matches a IV–D case—for example, names and social security numbers. The identifying information should enable the IV–D agency to match IV–D cases needing paternity establishment with voluntary acknowledgments previously filed with the designated agency. If allowable under State law, a State may also choose to give access to other agencies, other than the IV–D agency, that may benefit from the paternity records (e.g., agencies which need the records to establish benefit claims, such as Social Security).

To ensure that voluntary acknowledgments are used in IV–D case processing, proposed 45 CFR 303.5(h) would compel each IV–D agency to determine, in cases needing paternity establishment, if a voluntary acknowledgment has been filed with the agency designated by the State in accordance with 45 CFR 302.70(a)(5)(iii)(E). This would include acknowledgments obtained through hospital-based programs. Once a IV–D agency matches a case with a voluntary acknowledgment filed with the designated agency, it would then use that acknowledgment to seek a support order in IV–D cases. A State may use any means it chooses to determine if a voluntary acknowledgment has been filed with the designated agency. A IV–D agency would not need to make this determination in cases where it already has a copy of a voluntary acknowledgment. Under proposed 45 CFR 302.70(a)(5)(iii)(E), the IV–D agency should have access to identifying information concerning men who have acknowledged paternity and copies of acknowledgments filed with the appropriate agency. We encourage States to develop automated means for matching cases and obtaining information from the appropriate agency where acknowledgments are filed. If necessary, the IV–D agency should enter into a cooperative agreement with the designated agency responsible for filing acknowledgments in order to obtain copies of acknowledgments and identifying information.

FFP Availability for filing Agency. Federal financial participation (FFP) would not be available for the costs of establishing or maintaining a separate agency where acknowledgments are filed, unless that agency is the IV–D agency. While we would not pay FFP for the operational costs of the filing agency, FFP would be available for the costs of determining if a filed acknowledgment matches a IV–D case and for establishing cooperative arrangements. Under current 45 CFR 304.20(b)(2)(i), which allows FFP for costs associated with reasonable efforts to determine the identity of a child's father, FFP would be available for costs the IV–D agency incurs in determining whether a voluntary acknowledgment has been filed with the designated agency in IV–D cases needing paternity establishment. Federal financial participation would also be available, under current 45 CFR 304.20(b)(1)(iii) for the costs of establishing a cooperative arrangement (in accordance with 45 CFR 302.34 and 303.107), governing the routine exchange of information regarding acknowledgments, between the IV–D agency and the agency where acknowledgments are filed.

IV–D agency activity. To reflect the newly-mandated procedures for the voluntary acknowledgment of paternity, proposed 45 CFR 303.5(a) would require, for all cases referred to the IV–D agency or applying for services under 45 CFR 302.33 in which paternity has not been established and a voluntary acknowledgment of paternity has not been obtained, the IV–D agency must: (1) Provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with 45 CFR

302.70(a)(5)(iii), and (2) attempt to establish paternity by legal process established under State law if he fails to voluntarily acknowledge paternity.

Under this requirement, the IV–D agency must offer the alleged father the opportunity to voluntarily acknowledge paternity. The IV–D agency should advise the man that the mother has named him as the father of the child, describe the procedures for voluntarily acknowledging paternity, and advise him of his rights. Before contacting the alleged father, States could require a sworn statement of the mother or some other evidence of paternity to substantiate the mother's claim.

In order to satisfy this requirement, the IV–D agency must document in the case record the date on which the alleged father is sent or given notice of the paternity action and the opportunity to voluntarily acknowledge. Child support staff may contact the alleged father by telephone, written notice, or in person as appropriate under the circumstances and State law.

Written notice may be given by mail, personal service, or other means; however, it must be addressed specifically to the individual alleged father. We strongly encourage that language in written notices be "reader-friendly": i.e., clear and easy to understand. Many of the States which currently use such notices ask the father to come to the IV–D agency for a conference or hearing where the may voluntarily acknowledge. The conference allows IV–D staff to explain, in person, the rights and responsibilities associated with the establishment of paternity. Designated agency personnel would be available to serve as witnesses for, or notarize, signatures on voluntary acknowledgments. Alternatively, at least one State allows the parents to return the completed acknowledgement form to the IV–D office by mail; the parents may have their signatures notarized at a local bank or other entity.

A IV–D agency might want to inform the alleged father at the time it provides him an opportunity to voluntarily acknowledge that formal paternity establishment action will begin if the alleged father does not voluntarily acknowledge within a specified timeframe. Furthermore, this proposed rule would not prevent a IV–D agency from combining service of process necessary for a legal paternity determination with the offer of the opportunity to voluntarily acknowledge. For example, some States serve a notice or claim of alleged paternity and support obligation on the putative father, informing him of the opportunity to voluntarily acknowledge he may consent to genetic testing and subsequently acknowledge paternity. If the man fails to voluntarily acknowledge, the State can then adjudicate paternity based on the initial notice without the need for serving process a second time.

If an alleged father refuses or is reluctant to voluntarily acknowledge paternity, States could encourage genetic testing. Some men who will not voluntarily acknowledge will consent to genetic testing. States could adopt procedures for conducting testing, if the alleged father consents, prior to a formal filing of an action to establish paternity with the court of administrative authority. Even in cases where the main is initially unwilling to voluntarily acknowledge, he may consent to genetic testing and subsequently acknowledge paternity if the test results show a high probability of paternity, without the need for a hearing or formal adjudication.

We propose to delete the existing program standard timeframes for establishing paternity at 45 CFR 303.5(a). These timeframes are no longer necessary given the proposed inclusion of paternity establishment in the expedited process timeframe. It would be duplicative to retain the paternity timeframe since the same time period is covered by the proposed expedited process timeframe. (See discussion under expedited process section later in this preamble.)

Hospital-Based Paternity Establishment Programs—Sections 302.70(a)(5)(iii)(A), 303.5(g), 304.20(b)(2), and 304.23(d)

Experience of States has indicated that a father of a child born to an unmarried mother is more likely to be present and to admit paternity during the time surrounding birth than later on. Early paternity establishment reduces location difficulties and administrative costs which can occur if paternity establishment is delayed. The earlier paternity is established, the sooner the child will have access to the father's medical benefits, medical history information, a relationship with the father, child support, and other benefits resulting from paternity establishment.

In enacting the Omnibus Budget Reconciliation Act of 1993, the President and Congress recognized the importance of establishing a child's paternity as close in time to birth as possible, but requiring hospital-based programs for obtaining voluntary acknowledgements. Proposed 45 CFR 302.70(a)(5)(iii)(A) would implement section 466(a)(5)(C) of the Act by requiring each State to have laws, regulations, and/or binding procedures for a hospital-based program for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child.

About half of the States already have or are developing hospital-based programs to obtain voluntary acknowlegments of paternity (although often on less than a statewide basis). Even some hospitals in States without organized programs have, for years, accepted voluntary acknowledgments of paternity from patients and alleged fathers. Typically, in an organized program, trained hospital employees provide information about paternity establishment to the parents, inform them of their rights, and give the putative father the opportunity to voluntarily acknowledge paternity. Such programs have been quite effective in obtaining voluntary paternity acknowledgments; some hospital-based programs have successfully obtained voluntary acknowledgments for about 40 percent of their out-of-wedlock births. Preliminary results from OCSE-funded program improvement projects in New York City and Denver confirm the success of hospital-based programs in obtaining voluntary acknowledgments. Some States with programs have also documented savings in administrative costs that would otherwise typically be incurred in paternity establishment. In developing these proposed regulations, OCSE met with officials from established hospital-based programs in several States.

Because Congress added the hospital-based program requirement to section 466(a) of the Act, all States must provide for a hospital-based program by law, regulation and/or binding procedures. This approach is consistent with implementation of Family Support Act requirements. It is also consistent with the differing experience of States that have already implemented hospital-based programs—some found legislation to be useful; others were successful in implementing programs administratively.

At a minimum, proposed 45 CFR 302.70(a)(5)(iii)(A) would require that State law, regulation, and/or binding procedure compel all public and private birthing hospitals to participate in hospital-based programs as defined in § 303.5(g)(2). At State option, State law may include an enforcement mechanism for dealing with noncompliance by hospitals. However, under existing 45 CFR 302.70(d), a State could apply for an exemption from enacting a law, regulation, or binding procedure providing for a hospital-based program, if the State documents that it has

already implemented a hospital-based program otherwise meeting Federal requirements in every birthing hospital in the State without the necessity of enacting binding laws or regulations.

We proposed to define birthing hospital in 45 CFR 301.1 as a hospital that has a licensed obstetric care unit or is licensed to provide obstetric services, or a licensed birthing center associated with a hospital. Since we do not believe programs should be mandated in hospitals (such as geriatric hospitals) that do not routinely provide maternity services, we propose limiting the hospital-based program requirement to hospitals with an obstetric care unit or licensed to provide obstetric services. In the definition of birthing hospital, we also include birthing centers associated with a hospital. A birthing center is a facility outside a hospital that provides maternity services. Generally, such centers use midwives and provide services for women who expect no complications during birth. Frequently, a hospital will provide back-up services to a birthing center if complications develop. Since in some localities, a significant number of births occur in birthing centers, we believe voluntary acknowledgment programs should be established in such centers that are associated with hospitals.

Proposed 45 CFR 303.5(g) describes the State's responsibilities in implementing the hospital-based program. To accommodate divergent State practices, we propose that the State as a whole rather than the IV–D agency in particular be responsible for meeting the hospital-based program requirements in proposed 45 CFR 303.5(g). In some States with an existing hospital-based program, the State health department, not the IV–D agency, has primary responsibility or shares responsibility for the program. In other States, the IV–D agency has primary responsibility. We do not want to interfere with or disrupt the operation of existing, successfully-functioning programs. Therefore, the requirements in proposed 45 CFR 303.5(g) place responsibility on "the State" rather than the "IV–D agency." This approach is consistent with the statute, which does not require that the IV–D agency be directly responsible for the implementation of hospital-based programs, but in no way relieves the State of the responsibility to meet Federal requirements as a condition of IV–D State plan approval.

First, proposed 45 CFR 303.5(g)(1) would require the State to establish, in cooperation with hospitals, a hospital-based program in every public and private birthing hospital. We recognize that States need some time to fully implement these programs. States must have laws, regulations and/or binding procedures in place on October 1, 1993 (or if legislation is required, the beginning of the first calendar quarter after the close of the first regular session of the State legislature that begins after August 10, 1993.

However, even if a State needs to enact legislation, it may begin working to implement the program immediately by contacting hospitals and appropriate agencies and developing forms, written materials, and training procedures. The programs must be operational in birthing hospitals statewide no later than January 1, 1995. Depending on their circumstances, this gives States over a full year after the Federal mandate's effective date to gear up to a statewide program. As of January 1, 1995, any State needing legislation for its hospital-based program will have completed its first legislative session (as defined by the statute) since enactment of the Omnibus Budget Reconciliation Act of 1993 and had the opportunity to pass legislation. We would view January 1, 1995 as an outer limit; States are encouraged to proceed more expeditiously in light of the magnitude of the problem this new law is intended to address.

As part of the process of establishing hospital-based programs, IV–D agencies could enter into cooperative arrangements (in accordance with 45 CFR 302.34 and 303.107) or other contracts with birthing hospitals or other State agencies. A State could also hire a contractor to implement the hospital-based program. We encourage the State to work closely with the State hospital association; State staff that have implemented existing programs indicate that the hospital association was a key player in implementation.

Elements of a hospital-based program. Proposed 45 CFR 303.5(g)(2) defines a hospital-based program by listing the services and functions that such a program must, at a minimum, provide during the period immediately preceding or following the birth of a child to an unmarried woman in the hospital. These services are based on the experience provided by States that have already implemented hospital-based programs. The State must ensure, in cooperation with the hospitals, that the program performs all of these functions.

We are proposing that each hospital-based program provide services to unmarried mothers and alleged fathers. A program would not be required to provide services to married mothers. In most cases where a child is born to a married mother, paternity is not at issue. If the mother of a newborn is married, her husband is presumed to be the father of the child. In some cases, the husband may not actually be the biological father and paternity may be an issue. We do not propose that a hospital-based program be required to intervene in such complex cases; however, it may do so at State option. At least one State has adapted its hospital-based program to address such cases. This State has developed forms which allow the husband to rebut the presumption that he is the father and allow the other man to acknowledge his paternity. Using these procedures, the State has been able to obtain a significant number of voluntary acknowledgments.

Under proposed 45 CFR 303.5(g)(2)(i), a hospital-based program would provide to both the mother and alleged father, if he is present in the hospital: (A) Written materials about paternity establishment, (B) the forms necessary to voluntarily acknowledge paternity, (C) a written description of the rights and responsibilities of acknowledging paternity, and (D) the opportunity, prior to discharge from the hospital, to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment.

The written description of rights and responsibilities may be included in either the written materials or on the forms, or may be a separate document. The written materials, forms, and description of rights and responsibilities should ensure that the parents of every child born in a birthing hospital to an unmarried couple receive information about paternity establishment, along with the forms necessary to pursue voluntary paternity establishment. Hospitals already distribute a variety of materials and forms to patients, and providing paternity materials and forms could be incorporated into their existing procedures. The State would provide the materials and forms to the birthing hospitals in accordance with proposed 45 CFR 303.5(g)(4).

The opportunity to speak with staff in person or via telephone, as required in proposed 45 CFR 303.5(g)(2)(i)(D), should allow the parents to ask questions or seek assistance in completing the voluntary acknowledgment forms, if necessary. The staff could either be hospital staff (e.g., medical social workers, medical records technicians, or medical provider staff), IV–D, or other agency staff. Most existing programs use hospital staff.

Under proposed 45 CFR 303.5(g)(2)(ii), a hospital-based program would provide the unmarried mother

and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital. Each program is encouraged to make staff available, including during evening and weekend visiting hours, to ensure that all unmarried mothers and alleged fathers present at the hospital are afforded this opportunity. If paternity acknowledgment forms must be notarized under State law or procedure, notaries (designated hospital staff in some ongoing programs) should be available to notarize acknowledgments in the hospital.

The parents must be given the chance to acknowledge paternity regardless of the child's public assistance status or whether an application has been filed for IV–D child support services. In many cases, a mother will not have applied for IV–D services or public assistance prior to her child's birth. However, if the case eventually enters the IV–D program, child support establishment and enforcement will be expedited and administrative costs avoided if the father has previously acknowledged paternity.

A hospital-based program, under proposed 45 CFR 303.5(g)(20(iii), would afford due process safeguards. As mentioned, proposed 45 CFR 303.5(g)(2)(i)(C) would require a hospital-based program to provide each unmarried mother and alleged father a written description of the rights and responsibilities of acknowledging paternity. Beyond this minimum requirement, a hospital-based program should ensure that State due process requirements are met. We recommend that staff be trained to ensure that the voluntary aspect is promoted and maintained. Alleged fathers should not be pressured into signing acknowledgments.

If either the mother or the man does not agree that the man is the father, the hospital-based program need not intervene. Hospital workers should not be required to mediate disputes between parties. If a party in a case wishes to establish paternity without the cooperation of the other party, he or she could contact the IV–D agency or a private attorney.

Under proposed 45 CFR 303.5(g)(2)(iv), a hospital-based program must forward completed acknowledgments to the agency designated by the State in accordance with proposed 45 CFR 302.70(a)(5)(iii)(E). This will ensure that the IV–D agency has access to and can use the acknowledgments in cases that become IV–D cases.

Although not a requirement, States may want to incorporate the opportunity for genetic testing into its hospital-based program. A readily available testing capability may encourage additional fathers to voluntarily acknowledge or expeditiously resolve any doubts as to paternity. At least one State plans to pilot-text genetic testing in hospitals. Another State routinely obtains stipulations in the hospital where both parties agree to undergo genetic testing at a later date.

Withholding services in some cases. Proposed 45 CFR 303.5(g)(3) would allow a hospital-based program to withhold services related to acknowledging paternity, when necessitated by State law, in cases where the mother or alleged father is a minor or a legal action (e.g., adoption) is already pending. Some States may have laws which prohibit voluntary acknowledgments of paternity by minors, or the State may want hospital-based personnel to avoid interference in cases where a legal action is pending. Therefore, the hospital-based program would not be required to provide services to the mother and alleged father in such cases, if provision of services is prohibited by State law. However the services listed in 45 CFR 303.5(g)(2) should be provided to other unmarried parents.

Written materials and forms. The State itself must provide certain services to support the hospital-based programs. Proposed 45 CFR 303.5(g)(4) would require the State to provide to all public and private birthing hospitals in the State written materials about paternity establishment, forms necessary to voluntarily acknowledge paternity, and a written description of the rights and responsibilities of acknowledging paternity. Hospital-based programs would then distribute these materials and forms to unmarried mothers and alleged fathers in accordance with proposed 45 CFR 303.5(g)(2)(i). The State would be responsible for ensuring that the birthing hospitals have a sufficient supply of these items to distribute them to unmarried mothers and alleged fathers upon birth of a child.

The written materials about paternity establishment could be brochures, pamphlets, or similar materials that describe the benefits of paternity establishment and the consequences of a voluntary acknowledgment.

The forms necessary to voluntarily acknowledge paternity may be the same forms that are used to voluntarily acknowledge paternity outside of the hospital setting. A voluntary acknowledgment form must meet the requirements in proposed 45 CFR 302.70(a)(5)(iii) (C) and (D)—i.e., a voluntary acknowledgment must be signed by both parents with their signatures authenticated by a notary public or witness(es), and the form must include, at a minimum: instructions for filing the acknowledgment with the designated agency in accordance with 45 CFR 302.70(a)(5)(iii)(E) and lines for the parents' social security numbers and addresses.

The description of rights and responsibilities may be a separate document or included on the other written materials or forms. It should describe rights that each party is giving-up by signing the acknowledgment. It should also describe the rights and responsibilities, including the duty to support the child financially, that each party will assume as a result of signing the acknowledgment. These rights and responsibilities will vary by State, depending on State law.

In order to ensure that the materials are easily understandable to the intended audience, they should be clearly written. States with large non-English speaking populations are encouraged to provide materials in languages other than English.

Although not a requirement, States may also want to provide applications for, and materials relating to, IV–D services to hospitals for distribution to maternity patients, in order to encourage unmarried mothers to apply for IV–D services. Although mothers may decide not to apply for IV–D services while in the hospital, they may decide to apply for services sometime after leaving the hospital. A mailing address on the application could indicate where the form should be mailed once completed.

Training, guidance, and written instructions. Proposed 45 CFR 303.5(g)(5) would require the State to provide training, guidance, and written instructions regarding the voluntary acknowledgment of paternity as necessary to operate the hospital-based program. State could use training sessions, written instructions or handbooks, audio or video tapes, technical assistance provided via telephone, or other means to meet this requirement. Regardless of the method, the State should ensure that staff, as they assume the responsibility, are instructed on the operations of the program. One State with an existing program has provided formal training every few years, while providing technical assistance and guidance via telephone and written instructions to supplement the training sessions. Another State is developing a videotape

for training hospital-based program staff.

Annual assessment. Finally, proposed 45 CFR 303.5(g)(6) would require the State to assess each birthing hospital's program on at least an annual basis. To assess each program, we suggest that States examine data regarding the number of out-of-wedlock births and the number of voluntary acknowledgments in each hospital. This data is already collected by vital statistics agencies in some States. At least one State with an existing program uses such data to monitor each hospital. If the State Identifies a birthing hospital with few or no acknowledgments, it contacts the hospital to identify the problem, if any, and takes action (e.g., staff training or technical assistance) to correct the problem. The intent of this requirement is not to establish performance quotas or to create pressure for hospitals to obtain acknowledgments, but rather to ensure that hospitals are operating effective programs.

FFP Availability for hospital-based programs. We propose that Federal financial participation (FFP) be available for certain costs associated with hospital-based programs. First, under current 45 CFR 304.20(b)(1)(iii), FFP would be available for the costs associated with establishing necessary agreements between the IV–D agency and birthing hospitals or other State agencies. Second, FFP would be available for IV–D staff that work on developing and implementing (e.g., training, drafting materials, meeting with hospital officials) the hospital-based program. Third, under an existing policy issuance, FFP is available for a nominal payment per acknowledgment to birthing hospitals to help defray administrative costs. We propose to codify this policy in regulation at 45 CFR 304.20(b)(2)(vi), which would make FFP available for payments of $20 or less to birthing hospitals for each voluntary acknowledgment obtained through a hospital-based program as defined by proposed 45 CFR 303.5(g)(2). Several States have found such payments to be successful in demonstrating "good faith" and obtaining the cooperation of hospitals. However, States would not be required to provide payments to hospitals, although FFP would only be available for payments actually made. The $20 per voluntary acknowledgment is also available for voluntary acknowledgments obtained in other entities that provide prenatal or birthing services. Fourth, proposed 45 CFR 304.20(b)(2)(vii) would make FFP available for the costs of developing and providing to birthing hospitals and other entities that provide prenatal or birthing services written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity.

Finally, proposed 45 CFR 304.20(b)(2)(viii) would make FFP available for reasonable and essential short-term training regarding voluntary acknowledgment of paternity associated with a State's hospital-based program as defined by 45 CFR 303.5(g)(2). Although the training must be short-term in order to eligible for FFP, the training may be provided on a periodic basis so that new staff will also receive the short-term training. We propose to revise 45 CFR 304.23(d), which limits the availability of FFP for training to specific circumstances, to allow for FFP as provided for in proposed 45 CFR 304.20(b)(2)(viii).

FFP would be available for the costs of developing and providing materials and forms as well as for the costs of training, as described above, regardless of whether these services are provided through a contractor or directly by the State.

Consistent with current policy, FFP would not be available for other costs, including hospital operational and staff costs. Except in limited and clearly defined circumstances as already enunciated, we do not believe that other costs of hospitals, health care providers, vital statistics agencies, or public educational programs should be financed through the IV–D program. If a public entity other than the IV–D agency develops or distributes the paternity establishment materials, provides nominal payments per acknowledgment, or provides training to hospital-based program staff, that entity must have a cooperative arrangement (in accordance with 45 CFR 302.34 and 303.107) in order for the State to receive FFP for these activities.

We encourage but do not require States to extend their hospital-based programs beyond birthing hospitals to clinics, health departments, and other facilities. Since a mother's stay in a hospital after birth is relatively short, parents may benefit from receiving information about paternity establishment before birth, in prenatal clinics for example. To encourage the expansion of early paternity establishment programs beyond hospitals, we are proposing that FFP be available for developing and providing materials about paternity establishment and forms necessary to acknowledge, not only to hospitals, but to other entities that provide prenatal or birthing services. Similarly, we propose that FFP be available for payments of $20 of less, not only to birthing hospitals, but to other entities that provide prenatal or birthing services and obtain a voluntary acknowledgment.

Effect of Voluntary Acknowledgment: Presumption of Paternity; Admissible as Evidence—Section 302.70(a)(5)(iv)

We are proposing to implement the requirements of new section 466(a)(5)(D) of the Act by adding 45 CFR 302.70(a)(5)(iv). This provision would require each State to have laws and procedures under which the voluntary acknowledgment of paternity creates a rebuttable or, at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity.

Currently, the legal effect of a voluntary acknowledgment varies from State-to-State. Under the Uniform Parentage Act, which has been adopted by 18 States, an acknowledgment filed with the appropriate court or agency creates a presumption of paternity. In other States, however, an acknowledgment may simply be considered some evidence of paternity. In a few States, a voluntary acknowledgment has the same force and effect as a paternity judgment. This proposed regulation would ensure that voluntary acknowledgments are meaningful and used to expedite paternity establishment in every State.

A presumption is a rule of evidence by which finding of a basic fact gives rise to a presumed fact, until the presumed fact is rebutted. In this situation, the existence of a voluntary acknowledgment of paternity gives rise to a presumption of paternity. A rebuttable presumption can be overturned by sufficient proof. In a paternity case, a rebuttable presumption of paternity would shift the burden of proof to the presumed father to disprove paternity, if he chooses to contest paternity after the acknowledgment. A conclusive presumption would have the same legal effect as a judgment for paternity. If a State enacts laws under which a voluntary acknowledgment creates a conclusive presumption, the State may still allow challenges, just as judgments can be challenged (e.g., in cases where there is evidence that the acknowledgment was obtained by fraud or coercion, or where signatures were forged).

Conditions for Admission of Genetic Test Results as Evidence—Section 302.70(a)(5)(v)

Although the combined effect of the various provisions discussed above should increase the number of

paternities established by voluntary acknowledgment, some cases will remain contested. The Omnibus Budget Reconciliation Act of 1993 and this proposed rule contain provisions designed to expedite such contested cases.

In recent years, scientific advancements in genetic testing have revolutionized the paternity determination process in contested cases. Genetic tests can produce exclusionary evidence eliminating a man from consideration as the biological father or provide convincing evidence reflecting the high probability that he is the alleged father (inclusionary results), leaving little or no doubt as to whether an alleged father is actually the biological father. Statutory or case law in virtually all States provides that genetic test results are admissible as evidence. However, in some States, the process for admitting such evidence can be cumbersome.

Proposed 45 CFR 302.70(a)(5)(v), which would implement new section 466(a)(5)(F) of the Act, would improve the process for admitting rest results in legal proceedings. It would require each State to have laws and procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which within a specified number of days before any hearing at which such results may be introduced into evidence. Further, laws and procedures must specify that if no objection is made, a written report of the test results is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy.

This provision would have two major benefits. First, it would prevent last-minute challenges to genetic test results. Last minute challenges are particularly difficult to meet since they may require testimony from laboratory technicians and experts who often live out-of-state and must travel long distances.

Second, in cases where no objection is timely raised, this provision would expedite the process of allowing a written report of the genetic test results to be admitted as evidence without the need for foundation testimony. Some States currently have cumbersome foundation requirements (e.g., requiring the testimony of every person involved with the chain of custody of the blood sample) that are unnecessary if no objection to the test results is raised. This proposed rule would not lower the standards for admission of genetic test results in evidence, but would prohibit a party from objecting to the admission of the test results, unless an objection is raised in a timely fashion.

Under the proposed regulation, States would have flexibility to set the timeframe within which objections must be made prior to a hearing. The U.S. Commission on Interstate Child Support recommended a 21-day timeframe. Several States already have requirements under which genetic test results are admissible as evidence without foundation testimony unless objected to within a specified timeframe. At least four States have a timeframe that requires an objection to genetic test results be made at least 20 days prior to trial; two States require objections to be made at least 30 days prior to trial.

At least four other States have timeframes, but these timeframes allow objections within a specified number of days of "receiving a copy of the testing report" on "after service of the written test results". Since these timeframes do not require objections to be raised within a specified period prior to the hearing, they will need to be modified in order to meet the requirements of the Omnibus Budget Reconciliation Act of 1993 and the proposed implementing regulations at 45 CFR 302.70(a)(5)(v). Some other States have statutes which require objections to be raised "within the time limit" or "within the time allowed by the court". Such statutes will need to be modified to include a specified number of days or, alternatively, court rules should specify the number of days allowed. Finally, some State statutes include timeframes for raising objections to genetic test results but do no explicitly indicate that a written report of such results is admissible as evidence without foundation testimony if no objection is raised. A State, through statute, regulation, or binding procedure, must meet both parts of this requirement.

While this proposed rule requires that genetic test results be admissible without foundation in cases where no objection is raised, the judge or decisionmaker who determines matters of fact still must decide what weight to accord the test results in a particular case in light of other evidence presented. Moreover, this provision does not prevent a State or its tribunals from setting standards for laboratory accreditation or procedures and parameters regarding what type of tests can be admissible as evidence. While we encourage all States to admit genetic testing results that have proven to be reliable, we recognize that as new testing technologies are developed, there may be a need to critically examine new procedures in the scientific community and in the courts before test results from such procedures are used on a widespread basis.

Presumption of Paternity Based on Genetic Test Results—Section 302.70(a)(5)(vi)

New section 466(a)(5)(G) of the Act and proposed implementing regulation 45 CFR 302.70(a)(5)(vi) would require each State to have laws and procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity based on genetic testing results which indicate a threshold probability of the alleged father being the father of the child.

Just as a voluntary acknowledgement would create a presumption of paternity (discussed earlier), genetic test results that meet or exceed a specific threshold probability, determined by the State, would create a presumption of paternity. A presumption of paternity should expedite paternity resolution in cases where a presumption is established. A rebuttable presumption would shift the burden of proof to the presumed father to disprove a paternity allegation. A conclusive presumption would have the same effect as a judgment for paternity. If a State chooses to adopt a conclusive presumption, it may provide for conditions under which the presumption, like a judgment, can be challenged and potentially overturned (e.g. in cases where the wrong man is tested or the test results, after timely objection, are proven to be incorrect). In the vast majority of cases, however, a threshold probability test result will eliminate the necessity of extensive hearings. If there is, on rare occasions, a serious allegation of fraudulent testing or inaccurate analysis, then, repeat testing should simply be ordered.

States would be allowed the flexibility to designate the specific threshold probability that creates a presumption of paternity. This threshold probability is the probability based upon analysis of genetic test results that the alleged father is the biological father of the child (i.e., the "inclusion" probability). It should not be confused with the laboratory's statistical capability of excluding a certain percentage of those men who are incorrectly identified as the father (i.e., the "exclusion" probability). A growing number of States, currently about half, have adopted a presumption of paternity standard based on genetic test results. State statutory threshold probabilities generally range from 95 to 99 percent. We recommend that the remaining States choose a standard within this range. If the inclusion

probability equals or exceeds the threshold, then the burden of proof shifts to require the alleged father to prove non-paternity. Many States have contracts with genetic testing laboratories that require a battery of tests to be performed sequentially and only as necessary until the alleged father has been excluded or the threshold probability for establishing a presumption of paternity under State law has been attained. Each additional genetic market that is examined eliminates an additional segment of the population from the pool of men who have the requisite genetic characteristics to be the child's biological father. If the alleged father remains in that genetic pool, each additional test performed incrementally increases the likelihood of inclusionary probability that he is the child's father.

The presumption based on genetic test results required by proposed 45 CFR 302.70(a)(5)(vi) and the presumption based on a voluntary acknowledgment required by proposed 45 CFR 302.70(a)(5)(iv) are minimum requirements. States may certainly establish or rely on additional presumptions. The Uniform Parentage Act (UPA), a model State law that has been adopted by approximately 18 States, contains several presumptions of paternity. For instance, under the UPA, if, while the child is under the age of majority, the man receives the child into his home and openly holds out the child as his natural child, he is presumed to be the natural father of the child.

In some cases, the presumption of paternity created by genetic test results may conflict with a presumption created by a voluntary acknowledgment, a presumption of legitimacy created by marriage, or another presumption. For example, a child born to a married woman is presumed to have been fathered by the woman's husband in most States; however, genetic test results could create a presumption that another man is actually the father. Several States have enacted choice of law provisions to address these conflicting presumptions. The Uniform Parentage Act provides that if two or more presumptions arise which conflict with each other, the presumption which, on the facts, is founded on the weightier considerations of policy and logic controls.

Voluntary Acknowledgment or Genetic Test Results Meeting or Exceeding State's Threshold Probability Is Basis for Seeking Support Order—Sections 302.70(a)(5)(vii) and 303.4(d)

We propose to implement new section 466(a)(5)(E) of the Act by adding 45 CFR 302.70(a)(5)(vii). This provision would require each State to have laws and procedures under which a voluntary acknowledgment or genetic test results meeting or exceeding the State's threshold probability (established in accordance with 45 CFR 302.70(a)(5)(vi)) must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity.

As a result, filing of a petition seeking a support order and information-gathering necessary for support order establishment should begin in a IV–D case as soon as a voluntary acknowledgment is obtained or genetic test results meeting or exceeding the State's threshold are received. This should help ensure that the child receives financial support at the earliest possible date.

In many States, once the father voluntarily acknowledges paternity or genetic test results establish a presumption of paternity, a court or administrative agency must legally establish paternity by taking further action, such as filing or ratifying the acknowledgment or issuing a paternity order. This proposed rule would not prohibit States from having such procedures as long as action to seek a child support order begins as soon as paternity is acknowledged or genetic test results meeting or exceeding a State's threshold are received. Moreover, we encourage States to combine paternity and support order establishment in the same proceeding, if both are needed in a case. In cases where a presumption of paternity has been created by a voluntary acknowledgment or genetic test results meeting or exceeding the State's threshold, a man seeking to challenge and rebut the presumption could be given the opportunity to do so during the support order proceeding. This would allow the State to collapse the final determination of paternity into the same proceeding as order establishment.

Alternatively, a State may choose to establish support awards on the basis of a rebuttable presumption of paternity, without converting the presumption to a paternity order. At least one State currently uses this approach for presumptions established by voluntary acknowledgment. However, advocates and some States have expressed concern that basing support orders on presumptions of paternity, without ever making a final determination of paternity, makes it easier for the father to deny paternity at a later point and may cause difficulty in interstate cases. Therefore, States that choose to establish a support order solely on the basis of a presumption of paternity may want to consider a one- or two-year statute of limitations for rebutting a presumption of paternity. On the other hand, even a judgment of paternity may be overturned under certain circumstances (e.g., if it was obtained under fraud or coercion), and the experience of States suggests that few men attempt to rebut presumptions of paternity, particularly in cases where the presumption was created by a voluntary acknowledgment.

To reflect that a voluntary acknowledgment or genetic test results meeting or exceeding the State's percentage threshold must serve as sufficient basis to seek establishment of a support order, we propose to revise 45 CFR 303.4. Proposed 45 CFR 303.4(d) would require the IV–D agency, in cases where a support order has not been established, to seek a support order based on a voluntary acknowledgment or genetic test results meeting or exceeding the State's threshold probability in accordance with 45 CFR 302.70(a)(5)(vii). Therefore, the IV–D agency would gather information and establish support administratively or by consent or file a petition for support order establishment upon receipt of a voluntary acknowledgment of paternity or genetic test results meeting or exceeding the State's threshold.

Proposed 45 CFR 303.4(d) would eliminate the existing program standard timeframe for support order establishment, in light of the proposed revisions to the timeframe for expedited process. The proposed expedited process timeframe would begin with location of the noncustodial parent, just as the existing program standard timeframe at 45 CFR 303.4(d) does. Therefore, the expedited process timeframe would include the period currently covered by the program standard timeframe. As a result, the program standard timeframe is unnecessary. (See more detailed explanation in section on expedited process later in this preamble).

Default Orders—Sections 302.70(a)(5)(viii) and 303.5(f)

We propose to implement the requirements of new section 466(a)(5)(H) of the Act by adding 45 CFR 302.70(a)(5)(viii). Under this provision, each State must have laws and procedures requiring a default order to be entered in a contested paternity case upon a showing that process has been served on the defendant in accordance with State law, that the defendant has failed to appear at a hearing or trial (if the notice required such an appearance) or respond within

a reasonable period of time specified by the State (if the notice required a response), and any additional showing required by State law. The use of default orders creates an incentive for alleged fathers to cooperate with the adjudication of contested paternity cases, resulting in fewer delays. In those cases where the man fails to appear or respond, default orders allow the paternity case to move forward. A State would be required to provide for judicial default orders if its court system handles contested paternity cases, and administrative default orders if an administrative entity processes its contested cases.

Most States already have provisions for entry of judgments by default as part of their civil procedure code or statute. At least eleven States also have default provisions that apply specifically to paternity cases. However, the circumstances under which a default order can be entered vary. Depending upon the State, a default order may be entered when the alleged father: (1) Fails to appear at a scheduled hearing, conference, or trial, (2) fails to respond to a notice that requires a response, such as a notice alleging the man's paternity, and/or (3) fails to appear for or refuses to submit to genetic testing. The extent to which default orders are actually used also varies from State to State. In many States with default provisions, the provision is permissive, allowing but not requiring the tribunal to enter a default order.

Under this proposed rule, State law, regulation, or binding procedure would have to require tribunals to enter default orders establishing paternity in cases where the alleged father failed to appear at a hearing or to respond to notice or service within the reasonable period of time specified by the State for answering or pleading. State law would have to require, not simply allow, tribunals to enter default orders under these conditions. States could choose to go beyond this minimum requirement, for example, by compelling tribunals to enter default orders in cases where a father fails to cooperate with blood or tissue drawing necessary for genetic testing.

Before entering a default order, however there would have to be a proper showing of service of process and any additional showing necessary under State law. We recommend that States require some evidence of paternity, perhaps a prima facie case based on the mother's testimony, before entering a default order. In interstate cases, an affidavit or a petition, signed by the mother, should be enough. States may want to specify in law, as at least one State currently does, that a default order may not be entered if there is more than one alleged father unless the default applies to only one of them and all others have been excluded by the results of genetic testing. We also recommend that States have procedures for challenging and overturning default orders, and notify the man of this process if a default order is entered. For example, under one State's law, a default order does not take effect until ten days after entry of the default, allowing time for the man to show good cause for his failure to take appropriate action (respond to notice or appear at hearing).

To reflect the new default order requirement, we propose to add 45 CFR 303.5(f). It would require that the IV–D agency must seek entry of a default order by the court or administrative authority in a paternity case by showing that process has been served on the defendant, that the defendant has failed to appear at a hearing or respond within a reasonable period of time specified by the State, and any additional showing required by State law, in accordance with proposed 45 CFR 302.70(a)(5)(viii).

Full Faith and Credit of Paternity Determinations—Sections 302.70(a)(11)

We are proposing to implement the requirements of new section 466(a)(11) of the Act by adding 45 CFR 320.70(a)(11). This provision would require each State to have laws and procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether establishment through voluntary acknowledgment or through administrative or judicial processes.

Under the principle of full faith and credit, an out-of-State paternity judgment is given the same force and effect in other States as it is given in the State of origin. When a State gives full faith and credit to another State's paternity judgment, it honors the terms of that judgment. This provision should improve interstate processing since a responding State, upon receiving a paternity determination made by another State, must recognize that determination and move forward with the next step (e.g., support order establishment or enforcement) without questioning or revisiting the paternity issue.

A responding State would have to recognize a determination of paternity made by another State if that determination constitutes a legal paternity establishment in the other State, regardless of the method (e.g., administrative process, judicial process, voluntary acknowledgment, or conclusive presumption based upon genetic test results) used for determining paternity. For example, in some States, a voluntary acknowledgment or genetic test results meeting or exceeding a specified threshold may have the same force and effect as a judgment for paternity. In such cases, the responding State would have to give full faith and credit to such acknowledgment or test results. In an interstate case, if paternity had been determined by an acknowledgment or test results having conclusive effect, the initiating State should notify the responding State that paternity had already been established in accordance with its or another State's law.

Expedited Processes for Paternity Establishment—Sections 302.70(a)(2) and 303.101

The Child Support Enforcement Amendment of 1984 required States to have expedited processes within their judicial or administrative systems for obtaining and enforcing child support orders. At the option of the State, expedited processes could also include action for establishment of paternity. Expedited process case processing timeframes, established by regulation, have been effective in promoting States to adopt expedited administrative and quasi-judicial processes for establishing and enforcing support orders. According to the IV–D State plans, 19 States have also opted to extend expedited processes to paternity establishment. However, in many jurisdictions the paternity establishment process, particularly in contested cases, is still protracted. Many jurisdictions process paternity primarily through the courts where both cumbersome procedures and dilatory tactics by the father can create delays.

To address this problem, the Omnibus Budget Reconciliation Act of 1993 amended section 466(a)(2) of the Act to mandate use of expedited processes for establishing paternity. We propose to implement this new provision by revising 45 CFR 302.70(a)(2) to require each State to have laws and procedures for expedited processes to establish paternities, in addition to the previously-mandated expedited processes for establishing and enforcing child support obligations.

As specified in section 466(a)(2) of the Act, expedited processes are defined in regulations of the Secretary. The provision of the Act regarding expedited processes for support order establishment and enforcement has been implemented by 45 CFR 303.101. We propose to amend these regulations to

require expedited processes for paternity establishment. We also propose to delete existing 45 CFR 303.101(b)(3), which gave States the option of including paternity establishment in their expedited processes, since expedited processes for handling paternity cases are now mandatory.

As with the existing expedited processes for support order establishment and enforcement, under expedited paternity establishment processes both interstate cases must be included as required by 45 CFR 303.101(b(1).

Paternity and support establishment timeframe. The regulatory definition of expedited process is based on timeframes—States must process IV–D cases within specified timeframes in order to be determined to be operating an expedited process. Because the Omnibus Budget Reconciliation Act of 1993 mandates that expedited processes by expanded to include paternity establishment, and because the regulatory definition of expedited process is based on timeframes, we have decided to reexamine existing expedited process and program standard timeframes.

Although paternity establishment is currently not included in expedited process under existent rules, there are two timeframes governing paternity under standards for program operations (see chart below). First, the current 45 CFR 303.5(a)(1) is an "Up-front" timeframe governing IV–D agency activity. It allows the IV–D agency 90 calendar days, from the date of location the absent father, to file for paternity establishment or serve process (or document unsuccessful efforts), whichever occurs later in accordance with State procedures. Second, existing 45 CFR 303.5(a)(2) is a "back-end" timeframe governing court or administrative agency activity. It allows an expedited process (quasi-judicial or administrative agency) one year, from successful service of process or the child turning six months of age, to establish paternity or exclude the alleged father.

There are also two sets of timeframes for support order establishment. First, there is an "up-front" timeframe at existing 45 CFR 303.4(d) for IV–D agency activity. It allow the IV–D agency 90 calendar days, from establishing paternity or locating the obligor, to establish a support order (by consent) or complete service of process (or document unsuccessful efforts) to establish an order. Second, there are expedited process timeframes for support order establishment at existing 45 CFR 303.101(b) governing activity within the States quasi-judicial or administrative agency. Expedited process timeframes were designed to ensure that cases are adjudicated expeditiously in the State's court or administrative system. Under current regulation, a State's process or combination of processes is expedited when it completes support order establishment from service of process to disposition in 90 percent of all cases in 3 months, 98 percent in 6 months, and 100 percent in 12 months. These timeframes also apply to enforcement actions.

EXISTING TIMEFRAMES FOR PATERNITY AND ORDER ESTABLISHMENT

Action needed	Reg cite	Starting point	Time period	Ending point
Paternity Establish	303.5(a)(1)	Located	90 calendar days	File for paternity or SOP, whichever later.
	303.5(a)(2)	SOP or child's sixth month	1 year	Paternity established or man excluded.
Support Order Establish	303.4(d)	Paternity establishment or locate.	90 calendar days	Support order established or SOP.
	303.101(b)	Service of process	90% in 3 months 98% in 6 months 100% in 1 year	Support order established/recorded or action dismissed.

SOP=Service of process; if agency is unable to serve process it may document unsuccessful efforts.

We considered adding paternity establishment to the existing expedited process timeframe structure, perhaps by requiring that paternity establishment be completed from service of process to disposition in 90 percent of cases in 3 months, 98 percent in 6 months, and 100 percent in 12 months. However, this approach would create a number of problems. First, having a separate timeframe with paternity establishment as an "endpoint" suggests that States may have separate proceedings for paternity establishment and support order establishment and potentially well over two years to complete both processes. To avoid this potential delay, we prefer, as mentioned, that States establish paternity and support orders in the same proceeding, if both actions are needed.

Second, the existing expedited process timeframes begin with service of process—a starting point that may be inappropriate in paternity cases. Under current practice, States serve process at various points in the paternity establishment proceeding. If the expedited paternity process timeframe started with service of process, States which serve process as a first step in case processing would count voluntary acknowledgments received as a response to service of process as "successes" under their expedited processes. On the other hand, States which only serve process after attempting and failing to obtain a voluntary acknowledgment would not be able to count voluntary acknowledgments received prior to service as "successes" under expedited process. Since a significant number of paternities are established via voluntary acknowledgment (and more will be as a result of this new statute), this difference would have an impact on States' compliance rates with the expedited paternity establishment requirement. It would be unfair to States that attempt to obtain voluntary acknowledgments prior to service and may encourage States to adjudicate cases without first attempting to obtain voluntary acknowledgments.

Third, the existing expedited process timeframe includes an absolute standard—100 percent of cases must be disposed of within the time period. This absolute standard is unrealistic in paternity cases given the complex nature of *some* contested cases. If a IV–D agency failed to process even one complex case within the timeframe, it would not meet the standard.

Given the foregoing difficulties with adding expedited paternity establishment to the existing timeframe structure, we propose to replace the existing timeframes for paternity and support order establishment at 45 CFR 303.4(d), 303.5(a)(1), 303.5(a)(2), and 303.101(b) with one new timeframe (see

chart below). A State would have to meet this proposed timeframe in order to have an expedited process for paternity establishment and support order establishment. The timeframe, at proposed 45 CFR 303.101(b)(2)(i), would apply to IV–D cases needing support order establishment, regardless of whether paternity has been established. It would require that actions to establish support obligations be completed from the date of locating the alleged father or noncustodial parent to the time of disposition within the following timeframes: (A) 75 percent in 9 months; (B) 85 percent in 12 months; and (C) 90 percent in 15 months. Disposition would be defined at 45 CFR 303.101(b)(2)(iv) as the date on which a support obligation is officially established and/or recorded or action is dismissed. In interstate cases, this timeframe would begin on the date of locating the alleged father or noncustodial parent in the responding State.

PROPOSED TIMEFRAME FOR PATERNITY AND/OR ORDER ESTABLISHMENT

Action needed	Starting point	Time period	Ending point
Paternity and/or Order Establish	Locate	75% in 9 months ..... 85% in 12 months 90% in 15 months	Support order established/recorded or action dismissed.

This proposed timeframe is based on the following goals and rationale. The proposed approach has several advantages over incorporating expedited paternity establishment into the existing timeframe structure. First, it avoids dual timeframes for paternity and support order establishment, thereby strongly encouraging States to establish paternity and support in the same proceeding in cases where both actions are needed. The endpoint of the timeframe is either the date a support order is established/recorded or the date action is dismissed. Therefore, in cases where paternity and support order establishment are needed, the IV–D agency must accomplish both actions within the timeframe (unless action is dismissed). In addition, having one timeframe that encompasses both paternity and support order establishment provides an incentive for States to aggressively pursue early paternity establishment through hospital-based and similar programs. If paternity is established or acknowledged in a case at-birth, the State will have a head-start on meeting the proposed expedited process timeframe if the case later becomes a IV–D case, since one timeframe applies regardless of whether or not paternity has been established.

Second, the proposed timeframe begins with location, not service of process. Therefore, the timeframe would have a uniform starting point no matter which procedures a State uses or at what point it serves process. The proposal would not penalize States for attempting to obtain a voluntary acknowledgment prior to service of process in a paternity case.

Third, by replacing four timeframes with one, the proposed rule makes time standards for paternity and support establishment simpler and easier to understand. All activity to establish paternity and support would be covered in one timeframe once location occurs. The timeframe governing paternity and support establishment would be in one section of the regulation (45 CFR 303.101) rather than spread-out over three sections (45 CFR 303.4, 303.5, and 303.101).

Fourth, the timeframe give States greater flexibility while still assuring expeditious results. By eliminating the program standard timeframe for establishing support orders at 45 CFR 303.4(d) and for paternity at 303.5(a), IV–D agencies will no longer have to achieve interim steps (such as service of process) within a specified timeframe, as long as they accomplish the end result (establish/record support order) within the overall timeframe. Therefore, the proposed timeframe is more results-oriented than the existing standards.

The tiered-nature of the proposed timeframe (75%, 85%, and 90%) is similar to the existing expedited process timeframe. These tiers recognize that some cases take longer than others; they require that a significant number of cases be processed within the shortest tier of the timeframe, but allow longer for some cases. The first tier is 75 percent—the traditional audit standard that has been used for evaluating criteria other than the expedited process timeframes. The highest standard in the proposed timeframe is 90 percent of cases, not 100 percent as in the existing expedited process requirement. By not imposing an absolute standard (100% of cases), the proposed rule recognizes that there are complex cases, particularly some contested paternity cases, that cannot be accomplished within this time period.

The 90% standard is also justified because we propose to delete existing provisions which allow IV–D agencies to exclude complex cases from expedited process and which exempt unsuccessful service of process cases from timeframes. We propose to delete existing 45 CFR 303.101(b)(4) which allows the State, if the case involves complex issues requiring judicial resolution, to establish a temporary support order under expedited processes and then refer the unresolved issues to the full judicial system for resolution. Since the proposed expedited process timeframe includes a 90 percent standard rather than a 100 percent standard, States should be able to handle all cases by expedited processes without establishing temporary orders.

As mentioned, we also propose to delete the program standard timeframes for paternity and support order establishment at 45 CFR 303.4(d) and 303.5(a). These timeframes exempt cases where the IV–D agency documents unsuccessful attempts to serve process in accordance with the State's guidelines defining diligent efforts under 45 CFR 303.3(c). The proposed timeframe would not exempt such cases. In cases where the IV–D agency is initially unsuccessful in serving process, the IV–D agency would have to continue attempting service until successful and complete case processing within the proposed timeframe unless the IV–D agency determines and documents that further locate activity is needed before process can be served.

The length of the proposed timeframe is based on careful consideration of several factors. We took into account all of the steps in the paternity and support establishment processes. For paternity establishment, we considered that in some cases time is needed for contacting the alleged father to offer the opportunity for him to voluntarily acknowledge; serving process; scheduling and conducting genetic testing; completing discovery; and scheduling and conducting trials or hearings. We also considered the amount of time that it takes for a IV–D agency to obtain test results from genetic testing laboratories in paternity

cases. According to laboratories that we contacted, it takes about 3 weeks to receive the written report of results from the lab in a typical case. We encourage States to seek a quicker turnaround time when negotiating contracts with laboratories.

For support order establishment, we considered that time may be needed for contacting the noncustodial parent; attempting stipulation to an order; serving process; collecting income data and other information needed to determine the award amount; calculating the guidelines amount; and scheduling and conducting trials or hearings. Many of these steps required for support order establishment can be accomplished in conjunction with paternity establishment in cases requiring both p. ternity and support order establishment. For example, a IV–D agency should be able to serve process necessary for paternity and support order establishment at the same time.

We contacted national organizations and State IV–D agencies to obtain whatever information exists regarding the amount of time it typically takes, overall, to establish paternity and support orders. We also looked at data gathered in OCSE audits.

However, few, if any, States currently have an array of laws which includes all of the required features of the revised Federal statute. Although each reform, by itself, should expedite paternity establishment, the combined effect of adopting the entire array of requirements holds tremendous potential for expediting the process.

In particular, the mandated voluntary acknowledgment procedures should allow States to establish paternity quickly in many cases. Studies show that about a third of alleged fathers will voluntarily acknowledge paternity simply as a result of being given the opportunity. Even more fathers will acknowledge if genetic testing is completed and the test results show a high probability of paternity. A study of one locality in the early 1980s, at a time when genetic testing was less powerful than it is using today's technology, found that about 90% of alleged fathers voluntarily acknowledged paternity after receiving genetic test results that showed a probability of paternity.

For those cases that remain contested, the proposed regulations regarding default orders, admissibility of genetic tests, and presumptions of paternity based on genetic test results should all help to expedite the paternity determination process in contested cases. According to conversations with representatives from genetic testing laboratories, genetic testing excludes approximately 25 to 30 percent of tested men; the IV–D agency will be able to count each exclusion as a completed action under expedited process if the paternity action is dismissed.

States may certainly go beyond the basic requirements of this proposed rule and utilize a variety of other reforms to expedite the process for both paternity establishment and support order establishment. These reforms include use of administrative procedures, court hearing officers, more efficient case scheduling, pretrial conferences, and improved coordination between the IV–D agency and the courts. In paternity cases, States may also want to seriously reexamine the necessity of allowing a jury trial. At least one State, for instance, has a law which provides that the alleged father does not have the right to demand a jury trial if genetic test results show a probability of paternity of 99 percent or higher.

Just as the use of voluntary acknowledgment procedures in paternity cases should facilitate expeditious establishment of paternity, the use of stipulations and consent judgments should help expedite support order establishment, helping IV–D agencies to meet the proposed timeframe. Some States have laws which permit the alleged father to a sign a stipulation both acknowledging paternity and consenting to entry of a child support judgment. In cases where such consent judgments are obtained, the amount of support must be determined in accordance with the State's guidelines for setting child support awards as specified under 45 CFR 302.56.

Encouraging the use of long-arm jurisdiction. In developing the proposed timeframe, we considered its impact on the use of long-arm jurisdiction. Federal policy has encouraged the use of long-arm jurisdiction over nonresidents in child support matters. Long-arm allows one State to maintain control over the case without having to rely on other States to take action. In paternity cases, Federal regulations at 45 CFR 303.7(b)(1) require a State to use its long-arm statute, if it has such a statute, where appropriate. The Federal Office of Child Support Enforcement has also encouraged States to use long-arm in support establishment cases. The Uniform Interstate Family Support Act (UIFSA), a model State statute designed to replace the Uniform Reciprocal Enforcement of Support Act (URESA) that has already been adopted by several States, contains a broad long-arm provision.

Cases brought under long-arm jurisdiction may require some additional work to establish jurisdiction over a nonresident. Therefore, IV–D agencies may have more difficulty meeting the proposed expedited process timeframe in long-arm cases. Because we do not want the proposed timeframe to force a IV–D agency to refer a case involving a nonresident alleged father/obligor to the State of his residence rather than asserting local jurisdiction over him whenever possible, we propose that a State be given "credit" for disposing of a case using long-arm jurisdiction. Under proposed § 303.101(b)(2)(iii), for purposes of the expedited process timeframe for paternity and support order establishment, in cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 15 months of locating the alleged father or noncustodial parent, the case may be counted as a success within either the 9, 12, or 15 month tier of the timeframe, regardless of when disposition occurs.

Disposition. As previously mentioned, disposition is the endpoint of the proposed expedition process timeframe for paternity and support establishment. We propose to define "disposition" in regulation at 45 CFR 303.102(b)(2)(iv) as the date on which a support obligation is officially established and/or recorded or action is dismissed. This definition codifies policy previously stated at OCSE–AT–88–19. There may be paternity establishment cases where, under State law or procedures, it is inappropriate to establish a support order (e.g., if the noncustodial parent is a minor, disabled, or incarcerated). Such a case would still be counted as a disposition if a duty to support is established within the timeframe.

Children younger than six months of age. The existing one-year paternity establishment timeframe at 45 CFR 303.5(a)(2) includes an exception for cases needing paternity establishment where the child is less than six months old. Under this exception, the timeframe does not begin in a case until the child reaches six months of age. The exception reflects the practice of waiting to draw blood samples for certain genetic tests until after the infant is at least six months old.

The proposed timeframe at 45 CFR 303.101(b)(2)(i) does not include this exception; the timeframe would begin with the date of locating the alleged father regardless of the age of the child. At the time that the six-month-old-child exception was included in regulation, we indicated, in the preamble to the Standards for Program Operations final rule, that in the future we would reexamine the exception in light of testing which does not require the child

to be six months old (54 FR 32301). We have now reexamined the exception and propose to delete it.

According to genetic testing laboratories that we contacted, genetic tests are valid when performed on a child under six months of age, as long as certain tests are not used. The American Association of Blood Banks (AABB) states that children under six months of age should not be tested for two serum protein genetic markers (Gm and Km). Testing for these markers could reveal maternal typings, rather than those of the child, in cases involving infants. However, many other tests, including red blood cell antigens, leukocyte antigens (HLA) and DNA can be accurately performed on infants.

Although difficulty may be encountered in drawing a sufficient quantity of blood from a small infant in some cases, new technology helps to address this problem. This technology includes: DNA testing which can be performed using a single spot of blood, DNA buccal swabs where samples are taken on a swab from the baby's mouth, and umbilical cord sampling where blood samples are taken from the newborn's umbilical cord.

In light of the availability of such technologies, we propose that the proposed timeframe begin with locating the alleged father, regardless of whether the child is younger than six months of age. We believe this will encourage States to initiate the paternity establishment process as soon as possible in each case. We invite comments on this change.

We are also interested in receiving comments on any other aspect of the proposed timeframe for paternity and support order establishment.

Enforcement timeframes. The current expedited process timeframes at existing 45 CFR 303.101(b)(2) apply to enforcement actions. Therefore, currently, from the date of service of process, disposition must occur within 3 months for 90 percent of cases, 6 months for 98 percent of cases, and 12 months for 100 percent of cases. As mentioned, we propose to delete this timeframe.

There are also enforcement timeframes at existing 45 CFR 303.6(c)(2) which apply to enforcement actions other than wage withholding and State/Federal income tax refund offset. These timeframes require enforcement action within no more than 30 calendar days (if service of process is not needed) of identifying a delinquency or other support-related noncompliance, or location of the absent parent, whichever is later.

Existing enforcement timeframes at 45 CFR 303.100 apply to wage withholding cases. These regulations, for example, include timeframes for sending advance notice to the obligor in initiated withholding cases, timeframes for procedures to contest withholding, and timeframes for interstate wage withholding.

For IV–D cases requiring enforcement action, we propose to replace the existing expedited process timeframe with existing timeframes at 45 CFR 303.6(c)(2) and 303.100. Proposed 45 CFR 303.101(b)(2)(ii) would require that, in order for a State to have an expedited process for enforcement, actions to enforce the support obligation must be completed within the timeframes specified in 45 CFR 303.6(C)(2) and 303.100 in IV–D cases where a support obligation has been established.

While the preamble to the Program Standards regulation indicated that the 30/60 calendar day timeframes at 45 CFR 303.6(c)(2) would apply to "consent procedures and administrative procedures such as debt collection, telephone contact, demand letters, or publication of names", we propose that this timeframe now apply to *all* enforcement techniques other than wage withholding and State/Federal income tax refund offset. This would include, but not be limited to imposing liens on real or personal property; requiring the obligor to post security, bond, or other guarantee to secure payment of overdue support; reporting delinquency information to a consumer credit agency; withholding unemployment compensation; and State remedies. The timeframes at 45 CFR 303.100 would apply to wage withholding cases.

Judges as Presiding Officers. We propose to delete the existing requirement at 45 CFR 303.101(a) which prohibits using a judge as a presiding officer in carrying out expedited processes by deleting the phrase "and under which the presiding officer in not a judge of the court." With this change, expedited processes would be defined in 45 CFR 303.101(a) as administrative or expedited judicial processes or both which increase effectiveness and meet processing timeframes. We are proposing that this definition apply to expedited processes for paternity establishment as well as support order establishment and enforcement.

With the addition of paternity establishment to expedited processes, it is necessary to remove the prohibition against the use of judges as presiding officers. Currently, most States use judges in the majority of paternity cases. Even States that effectively use an administrative process within the executive branch of government to process uncontested cases frequently transfer contested cases to the judicial system. If the Federal government were to suddenly and completely ban the use of judges as presiding officers in paternity establishment cases, the disruption caused by this abrupt change should offset the benefits of including paternity establishment in expedited process. Our proposed approach gives States more flexibility while still achieving the desired outcome—expeditious processing of cases. By allowing States to use judges, States will have the option to carry out the duties of a presiding officer by either a judge or a judge surrogate, according to their needs. A judge surrogate may be a hearing officer, referee, court master or other decision make outside of the traditional court system, by an extension of the court.

Allowing the use of judges as presiding officers is consistent with the statute. As specified in the Act, States already have the option of using processes in effect under the State judicial system or under State administrative processes for expedited processes as long as actions are performed in an effective and timely manner. The Act does not prohibit using a judge as the presiding officer for expedited processes.

The legislative history suggests that Congress did no intend to prevent the use of judges, but rather to expedite case processing. In enacting the 1984 Amendments, Congressional conferees specified that the expedited process provision "does not mandate a particular procedure nor authorize the Federal agency to impose its views on the details of State court organization. What is required is that States adopt structures and procedures which will ensure that child support and paternity actions are processed in an expeditious manner." As a result, we propose that the State be able to use judges to process cases as long as it meets the expedited timeframes and other Federal requirements.

Since judges can carry out more functions than judge surrogates, use of judges of the court may actually expedite the process in some jurisdictions, particularly in paternity establishment cases. As indicated in the final regulation implementing the Child Support Enforcement Amendments of 1984 (50 FR 19608), "We believe that Congress allowed States to exclude paternity establishment from their expedited processes to ensure that jurisdictions that wanted to have judges hear paternity cases were able to do so

* * *. States may * * * delegate more authority to (the presiding officer) based on their particular needs * * *. A State must delegate enough authority to presiding officers to allow them to perform in a truly expedited manner."

This proposed revision is in no way a suggestion that States abandon established quasi-judicial or administrative processes, nor is it meant to discourage other States from implementing such procedures. Many States have found administrative process to be crucial in expediting case processing. States currently using their judicial systems for paternity and child support cases may need to reconsider their present decision-making process in order to meet the proposed expedited process timeframes. Our intent in allowing judges to serve as presiding officers is to maximize the State's capability of operating a child support program that is effective and efficient and meets the needs of children.

By deleting the requirement that a presiding officer may not be a judge, the number of requests for exemptions for expedited processes will be reduced. In the case of expedited processes, a separate exemption is required for each political subdivision. Currently, over 640 jurisdictions in 24 States have individually applied for and justified an exemption to implementing an expedited process because their court system processes cases within the required timeframes. Each of these exemptions must be renewed every three years. Since exemptions are routinely granted to jurisdictions using judges that meet the expedited process timeframes, we propose to allow jurisdictions that meet the timeframes to use judges without having to go through the exemption process. Our proposal will save time and money for both local and State agencies and the Federal government, without sacrificing expediency in case processing.

This proposed revision does not alter the availability of Federal funding for administrative costs associated with decisionmakers in administrative and expedited judicial processes. Nor does it change the unavailability of Federal funding for costs of compensation (salary and fringe benefits) of judges as specified in 45 CFR 304.21(b)(2).

Other changes. We propose amending the safeguards required under 45 CFR 303.101(c) to cover paternity establishment as well as support order establishment and enforcement. We would revise 45 CFR 303.101(c)(1) to require that paternities as well as support orders established via expedited process, by means other than judicial process, must have the same effect under State law as paternities and orders established by full judicial process within the State. We also propose to amend 45 CFR 303.101(c)(3) to require that the parties be provided a copy of the paternity determination as well as the support order. Under this requirement, copies should be provided to both parents (regardless of whether the custodial parent is an AFDC or public assistance recipient) and any other State which has an assignment of support rights in the case. We propose that the remaining safeguards remain unchanged except that they would now also apply to expedited paternity processes: the due process rights of the parties involved must be protected as required by 45 CFR 303.101(c)(2); there must be written procedures for ensuring the qualification of presiding officers as required by 45 CFR 303.101(c)(4); recommendations of presiding officers may be ratified by a judge as allowed by 45 CFR 303.101(c)(5); and action taken may be reviewed under the State's generally applicable judicial procedures as provided by 45 CFR 303.101(c)(6).

We propose amending the functions of presiding officers in 45 CFR 303.101(d) to cover paternity establishment as well as support order establishment and enforcement. Proposed 45 CFR 303.101(d)(2) would require presiding officers to evaluate evidence and make recommendations to establish paternity as well as to establish and enforce orders. Proposed 45 CFR 303.101(d)(3) would require presiding officers to accept voluntary acknowledgments of paternity, in addition to voluntary acknowledgments of support liability and stipulated agreements setting the amount of support to be paid. As discussed, voluntary acknowledgements and consent judgments are valuable in expediting the process and reducing conflict. In cases where a consent judgment is obtained, guidelines for setting the support award amount must still be used in accordance with 45 CFR 302.56.

Presiding officers would continue to enter default orders as required. However, we propose to revise this requirement 45 CFR 303.101(d)(4) to reflect the language of the default order provision in proposed 45 CFR 302.70(a)(5)(viii) and 303.5(f). As amended, 45 CFR 303.101(d)(4) would require that, as one of their functions, presiding officers enter default orders not only in cases where the absent parent does not respond to service within a reasonable period of time specified by the State (as required under current regulation), but also in cases where the defendant fails to appear at a hearing. This default order provision applies to paternity as well as support order establishment and enforcement cases worked via expedited process. Before a default order could be entered, this proposed rule would require a showing of service of process in accordance with State law and any additional showing required by State law.

We also propose to add a new function for presiding officers in paternity cases at 45 CFR 303.101(d)(5)—ordering genetic tests in contested paternity cases in accordance with 45 CFR 303.5(d)(1). Genetic testing is essential to expediting paternity determination and should occur as soon as possible after an alleged father declines to voluntarily acknowledge paternity. Many fathers will voluntarily acknowledge paternity upon seeing test results which indicate a high probability of paternity. Even if a man does not voluntarily acknowledge paternity, tests results can offer convincing evidence that expedites the process in a contested case.

We also propose to amend 45 CFR 303.101(e) regarding exemptions from expedited process to recognize that expedited process now includes paternity establishment. Under the revised provision, a State would be able to request an exemption from any of the expedited process requirements for a political subdivision on the basis of the effectiveness and timeliness of paternity establishment, support order issuance or enforcement with the political subdivision in accordance with the provisions of 45 CFR 302.70(d).

Executive Order 12291

The Secretary has determined, in accordance with Executive Order 12291, that this proposed rule does not constitute a "major" rule. A major rule is one that is likely to result in:

(1) An annual effect on the economy of $100 million;

(2) A major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or

(3) Significant adverse effects on competition, employment, investment, productivity, innovation, or the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

This rule implements specific requirements of Pub. L. 103–66. We expect the additional costs to the States will be less than $100 million. Any costs will be administrative and can be minimized through careful State planning. The hospital-based programs mandated by new section 466(a)(5)(C) o

the Act should result in administrative cost savings that exceed increased administrative costs as well as increased collections through the initiation of child support collections earlier than might otherwise have occurred.

Regulatory Flexibility Analysis

The Secretary certifies, under 5 U.S.C. 605(b), as enacted by the Regulatory Flexibility Act (Pub. L. 96–354), that this proposed regulation will not result in a significant impact on a substantial number of small entities. The primary impact is on State governments and individuals, which are not considered small entities under the act. Also, while the Federal law requires States to pass laws that may impact hospitals, these regulations do not govern hospitals per se and therefore do not have a significant impact on a substantial number of small entities.

List of Subjects in 45 CFR Parts 302, 303, and 304

Child support, Grant progams—social programs, Reporting and record keeping requirements.

(Catalog of Federal Domestic Assistance Program No. 93.023, Child Support Enforcement Program)

Dated: October 13, 1993.

Mary Jo Bane,

Assistant Secretary for Children and Families.

Approved: October 17, 1993.

Donna E. Shalala,

Secretary.

For the reasons set out in the preamble, we propose to amend title 45 chapter III of the Code of Federal Regulations as follows:

PART 301—STATE PLAN APPROVAL AND GRANT PROCEDURES

1. The authority citation for part 301 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1301, and 1302.

2. Section 301.1 is amended by adding the following definition of the term "Birthing hospital" after the definition of the term "Assignment":

§ 301.1 General definitions.

* * * * *

Birthing hospital means a hospital that has a licensed obstetric care unit or is licensed to provide obstetric services, or a licensed birthing center associated with a hospital. A birthing center is a facility outside a hospital that provides maternity services.

* * * * *

PART 302—STATE PLAN REQUIREMENTS

3. The authority citation for part 302 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

4. Section 302.70 is amended by revising paragraphs (a), introductory text, and (a)(2), and by adding new paragraphs (a)(5)(iii) through (a)(5)(viii) and (a)(11) to read as follows:

§ 302.70 Required State laws.

(a) *Required Laws.* The State plan shall provide that, in accordance with sections 454(20) and 466 of the Act, the State has in effect laws providing for and has implemented the following procedures to improve program effectiveness:

* * * * *

(2) Expedited processes to establish paternity and to establish and enforce child support obligations having the same force and effect as those established through full judicial process, in accordance with the requirements set forth in § 303.101 of this chapter;

* * * * *

(5) * * *

(iii) Procedures for a simple civil process for voluntarily acknowledging paternity under which the State must provide that the rights and responsibilities of acknowledging paternity are explained, and ensure that due process safeguards are afforded. Such procedures must include:

(A) A hospital-based program in accordance with § 303.5(g) for the voluntary acknowledgment of paternity during the period immediately preceding or following the birth of a child to an unmarried mother, and a requirement that all public and private birthing hospitals participate in the hospital-based program defined in § 303.5(g)(2);

(B) A process for voluntarily acknowledging paternity outside of hospitals;

(C) A requirement that a voluntary acknowledgment be signed by both parents, and that the parents' signatures be authenticated by a notary or witness(es);

(D) A voluntary acknowledgment form that includes, at a minimum, instructions for filing the acknowledgement with the designated agency in accordance with paragraph (a)(5)(iii)(E) of this section, and lines for the parents' social security numbers and addresses; and

(E) Procedures for filing voluntary acknowledgments with either the State IV–D agency or a centralized State agency that provides the State IV–D agency access to copies of, and identifying information on, the acknowledgments.

(iv) Procedures under which the voluntary acknowledgment of paternity creates a rebuttable, or at the option of the State, conclusive presumption of paternity, and under which such voluntary acknowledgment is admissible as evidence of paternity;

(v) Procedures which provide that any objection to genetic testing results must be made in writing within a specified number of days before any hearing at which such results may be introduced into evidence; and if no objection is made, a written report of the test results is admissible as evidence of paternity without the need for foundation testimony or other proof of authenticity or accuracy;

(vi) Procedures which create a rebuttable or, at the option of the State, conclusive presumption of paternity upon genetic testing results indicating a threshold probability of the alleged father being the father of the child;

(vii) Procedures under which a voluntary acknowledgment or genetic test results meeting or exceeding the State's threshold probability established in accordance with paragraph (a)(5)(vi) of this section must be recognized as a basis for seeking a support order without first requiring any further proceedings to establish paternity; and

(viii) Procedures requiring a default order to be entered in a contested paternity case upon a showing that process was served on the defendant in accordance with State law, that the defendant has failed to appear at a hearing or respond within a reasonable period of time specified by the State, and any additional showing required by State law.

* * * * *

(11) Procedures under which the State must give full faith and credit to a determination of paternity made by any other State, whether established through voluntary acknowledgment or through administrative or judicial processes.

* * * * *

PART 303—STANDARDS FOR PROGRAM OPERATIONS

5. The authority citation for part 303 continues to read as follows:

Authority: 42 U.S.C. 651 through 658, 660, 663, 664, 666, 667, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

6. Section 303.4 is amended by revising paragraph (d) to read as follows:

§ 303.4 Establishment of support obligations.

* * * * *

(d) Seek a support order based on a voluntary acknowledgment or genetic test results meeting or exceeding the State's threshold probability in accordance with § 302.70(a)(5)(vii).

* * * * *

7. Section 303.5 is amended by revising paragraph (a) and by adding paragraphs (f), (g), and (h) to read as follows:

§ 303.5 Establishment of paternity.

(a) For all cases referred to the IV–D agency or applying for services under § 302.33 of this chapter in which paternity has not been established and a voluntary acknowledgment has not been obtained, the IV–D agency must:

(1) Provide an alleged father the opportunity to voluntarily acknowledge paternity in accordance with § 302.70(a)(5)(iii); and

(2) Attempt to establish paternity by legal process established under State law if he fails to voluntarily acknowledge paternity.

* * * * *

(f) The IV–D agency must seek entry of a default order by the court or administrative authority in a paternity case by showing that process has been served on the defendant in accordance with State law, that the defendant has failed to appear at a hearing or respond within a reasonable period of time specified by the State, and any additional showing required by State law, in accordance with § 302.70(a)(5)(viii).

(g) Hospital-based program:

(1) The State must establish, in cooperation with hospitals, a hospital-based program in every public and private birthing hospital. These programs must be operational in birthing hospitals statewide no later than January 1, 1995.

(2) During the period immediately preceding or following the birth of a child to an unmarried woman in the hospital, a hospital-based program must, at a minimum:

(i) Provide to both the mother and alleged father, if he is present in the hospital: (A) Written materials about paternity establishment, (B) the forms necessary to voluntarily acknowledge paternity, (C) a written description of the rights and responsibilities of acknowledging paternity, and (D) the opportunity, prior to discharge from the hospital, to speak with staff, either by telephone or in person, who are trained to clarify information and answer questions about paternity establishment;

(ii) Provide the mother and alleged father, if he is present, the opportunity to voluntarily acknowledge paternity in the hospital;

(iii) Afford due process safeguards; and

(iv) Forward completed acknowledgements to the agency designated by the State in accordance with § 302.70(a)(5)(iii)(E).

(3) A hospital-based program need not provide services specified in paragraph (g)(2) of this section in cases where the mother or alleged father is a minor or a legal action is already pending, if the provision of such services is precluded by State law.

(4) The State must provide to all public and private birthing hospitals in the State (i) Written materials about paternity establishment, (ii) forms necessary to voluntarily acknowledge paternity, and (iii) a written description of the rights and responsibilities of acknowledging paternity.

(5) The State must provide training, guidance, and written instructions regarding voluntary acknowledgment of paternity, as necessary to operate the hospital-based program.

(6) The State must assess each birthing hospital's program on at least an annual basis.

(h) In IV–D cases needing paternity establishment, the IV–D agency must determine if a voluntary acknowledgement has been filed with the agency designated by the State in accordance with § 302.70(a)(5)(iii)(E).

8. Section 303.101 is amended by revising paragraphs (a), (b), (c) (1) and (3), (d) (2) through (4), and (e), and by adding paragraph (d)(5) to read as follows:

§ 303.101 Expedited processes.

(a) *Definition. Expedited processes* means administrative or expedited judicial processes or both which increase effectiveness and meet processing times specified in paragraph (b)(2) of this section.

(b) *Basic requirement.* (1) The State must have in effect and use, in interstate and intrastate cases, expedited processes as specified under this section to establish paternity and to establish and enforce support orders.

(2) Under expedited processes:

(i) In IV–D cases needing support order establishment, regardless of whether paternity has been established, action to establish support obligations must be completed from the date of locating the alleged father or noncustodial parent to the time of disposition within the following timeframes: (A) 75 percent in 9 months; (B) 85 percent in 12 months; and (C) 90 percent in 15 months;

(ii) In IV–D cases where a support obligation has been established, actions to enforce the support obligation must be completed within the timeframes specified in §§ 303.6(c)(2) and 303.100;

(iii) For purposes of the timeframe at § 303.101(b)(2)(i), in cases where the IV–D agency uses long-arm jurisdiction and disposition occurs within 15 months of locating the alleged father or noncustodial parent, the case may be counted as a success within either the 9, 12, or 15 month tier of the timeframe, regardless of when disposition occurs.

(iv) Disposition, as used in paragraphs (b) (2)(i) and (iii) of this section, means the date on which support obligations is officially, established and/or recorded or action is dismissed.

(c) * * *

(1) Paternities and orders established by means other than full judicial process must have the same force and effect under State law as paternities and orders established by full judicial process within the State;

* * * * *

(3) The parties must be provided a copy of the paternity determination and support order;

* * * * *

(d) * * *

(2) Evaluating evidence and making recommendations or decisions to establish paternity and to establish and enforce orders;

(3) Accepting voluntary acknowledgment of paternity or support liability and stipulated agreements setting the amount of support to be paid;

(4) Entering default orders upon a showing that process has been served on the defendant in accordance with State law, that the defendant has failed to appear at a hearing or respond within a reasonable period of time specified by the State, and any additional showing required by State law; and

(5) Ordering genetic tests in contested paternity cases in accordance with § 303.5(d)(1).

* * * * *

(e) *Exemption for political subdivisions.* A State may request an exemption from any of the requirements of this section for a political subdivisions on the basis of the effectiveness and timeliness of paternity establishment, support order issuance or enforcement within the political subdivision in accordance with the provisions of § 302.70(d) of this chapter.

PART 304—FEDERAL FINANCIAL PARTICIPATION

9. The authority citation for part 304 continues to read as follows:

Authority: 42 U.S.C. 651 through 655, 657, 1302, 1396a(a)(25), 1396b(d)(2), 1396b(o), 1396b(p), and 1396(k).

10. Section 304.20 is amended by adding paragraph (b)(2)(vi) through (viii) to read as follows:

§ 304.20 Availability and rate of Federal financial participation.

* * * * *

(b) * * *

(2) The establishment of paternity including:

* * * * *

(vi) Payments up to $20 to birthing hospitals and other entities that provide prenatal or birthing services for each voluntary acknowledgment obtained;

(vii) Developing and providing to birthing hospitals and other entities that provide prenatal or birthing services written and audiovisual materials about paternity establishment and forms necessary to voluntarily acknowledge paternity; and

(viii) Reasonable and essential short-term training regarding voluntary acknowledgment of paternity associated with a State's hospital-based program as defined by § 303.5(g)(2).

* * * * *

11. Section 304.23 is amended by revising paragraph (d) to read:

§ 304.23 Expenditures for which Federal financial participation is not available.

* * * * *

(d) Education and training programs and educational services except direct cost of short term training provided to IV–D agency staff or pursuant to §§ 304.20(b)(2)(viii) and 304.21.

* * * * *

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BILLING CODE 4190–11–M

FEDERAL MARITIME COMMISSION

46 CFR Parts 571 and 572

[Docket No. 93–23]

Advance Notice of Proposed Rulemaking Concerning Section 6(g) of the Shipping Act of 1984

AGENCY: Federal Maritime Commission.

ACTION: Advance notice of proposed rulemaking.

SUMMARY: The Federal Maritime Commission is considering whether it should issue regulations or guidelines that would describe the Commission's enforcement policy with respect to section 6(g) of the Shipping Act of 1984, which authorizes the Commission to seek an injunction against substantially anticompetitive agreements. This Advance Notice of Proposed Rulemaking recounts the background and legislative history of section 6(g), describes the Commission's procedures for evaluating and monitoring agreements, sets forth a possible section 6(g) guideline, and seeks comment on whether published guidelines would be useful and appropriate and, if so, what form they should take.

DATES: Comments due on or before January 28, 1994.

ADDRESSES: Send comments (original and 20 copies) to: Joseph C. Polking, Secretary, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (202) 523–5725.

FOR FURTHER INFORMATION CONTACT:

Robert D. Bourgoin, General Counsel, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (202) 523–5740

Austin L. Schmitt, Director, Bureau of Trade Monitoring and Analysis, Federal Maritime Commission, 800 North Capitol Street, NW., Washington, DC 20573–0001 (202) 523–5787

SUPPLEMENTARY INFORMATION: The Federal Maritime Commission ("Commission" or "FMC") is considering the advisability of promulgating some form of public statement that would describe the Commission's analytic framework for determining whether an agreement filed pursuant to the Shipping Act of 1984 ("1984 Act") should be made the subject of an injunctive action under the standards of section 6(g) of that Act, i.e., whether the agreement, by a reduction in competition, is likely to produce or has produced "an unreasonable reduction in transportation service or an unreasonable increase in transportation cost." 46 U.S.C. app. 1705(g).

To date, statements by the Commission and opportunity for public comment regarding the section 6(g) general standard and the extent of the Commission's powers under it have been limited.[1] This Advance Notice of Proposed Rulemaking is intended both to provide a vehicle for increasing public awareness regarding the FMC's regulation of agreements under the 1984 Act, and to provide a means for input from shippers, carriers, government agencies and other interested persons on whether, in what form, and with what degree of specificity, publication of section 6(g) methodological guidelines would be helpful to the ocean transportation industry and the shipping public. The Notice recounts the background and legislative history of section 6(g) and describes the Commission's procedures for evaluating and monitoring agreements. It then sets forth a possible section 6(g) guideline and solicits comments on the guideline's contents and format.

Commenters may also suggest, if they wish, possible alternative methods of providing public guidance with regard to section 6(g). Such alternatives could include instituting a rulemaking such as that undertaken in FMC Docket No. 78–46, Financial Reports of Common Carriers by Water in the Domestic Offshore Trades, in which the Commission established its methodology for determining what constitutes a reasonable rate of return in the domestic offshore trades; publishing a set of specific guidelines similar in format to the Horizontal Merger Guidelines issued jointly by the Department of Justice and the Federal Trade Commission; or issuing a general statement of policy in the Commission's regulations under 46 CFR Part 571, Interpretations and Statements of Policy.

A. The Section 6(g) Standard

1. Background

Section 15 of the former Shipping Act, 1916 ("1916 Act"), required carriers to secure Commission approval for any agreement governing rates, conditions of service, or similar matters, before such an agreement could become effective. Under standards set forth in section 15, the Commission was permitted to disapprove, cancel, or modify any agreement which it found to be unjustly discriminatory or unfair, or to operate to the detriment of the commerce of the United States, or to be contrary to the public interest, or to be in violation of the Act. 46 U.S.C. 814 (1982).

The Commission, with Supreme Court approval, took the position that agreements to set rates, pool revenues, restrict capacity, or to engage in other

[1] On February 12, 1992, the Advisory Commission on Conferences in Ocean Shipping ("ACCOS") held a public session to consider alternative antitrust standards. The FMC's staff briefed ACCOS on the Commission's section 6(g) review and monitoring procedures and their underlying rationale. However, ACCOS's final report did not comment on the FMC's interpretation of section 6(g). (See Report of the Advisory Commission on Conferences in Ocean Shipping, April 1992, p. 82.)

activities that normally would be contrary to the antitrust laws were presumed to be contrary to the public interest, and would be approved only if they were shown to be "required by a serious transportation need, necessary to secure important public benefits or in furtherance of a valid regulatory purpose of the Shipping Act." *FMC* v. *Svenska Amerika Linien*, 390 U.S. 238, 243 (1968). The burden of making this showing was placed upon the carrier proponents of an agreement, on the theory that information regarding the operation and probable future impact of an agreement "[a]lmost uniformly * * * is in the hands of those seeking approval * * * and it is incumbent upon those in possession of such information to come forward with it." Mediterranean Pools Investigation, 9 F.M.C. 264, 290 (1966). Under these procedures, the implementation of agreements was often delayed for considerable amounts of time, especially if formal protests were made. See *Marine Space Enclosures, Inc.* v. *FMC*, 420 F.2d 577 (D.C. Cir. 1969) (requiring that the Commission hold a hearing where a protest raising substantial issues had been filed). In many cases, protests were filed by other carriers, who effectively delayed or blocked the approval of their competitors' business plans.

The 1984 Act removed the Commission's broad discretion to disapprove agreements. Instead, under section 6(c), properly filed agreements generally become effective automatically after forty-five days. 46 U.S.C. app. 1705(c). To balance this liberalized approach to agreement review, the 1984 Act sets forth an extensive list of prohibited acts, barring many anticompetitive practices which previously had been challenged under the general standards of section 15. This shift in regulatory approach reflects a decision by Congress "to strike the overall balance between competition and cooperation in specific provisions of the act," rather than to vest in the Commission broad discretion to approve agreements. H.R. Rep. No. 600, 98th Cong, 2d Sess. 34 (1984) ("Conference Report"). Section 10(c) of the 1984 Act prohibits conferences and groups of carriers from engaging in, inter alia, boycotts, predatory practices, unreasonable refusals to deal, and allocation of shippers among specific carriers. 46 U.S.C. app. 1709(c). Section 10(b) bars carriers from engaging in a variety of unfair practices, such as granting secret kickbacks to shippers, retaliating against a shipper who has patronized another carrier, and refusing to negotiate with a shippers' association. *Id.* 1709(b).

Further procompetitive provisions of the 1984 Act are set forth in section 5(b), 46 U.S.C. app. 1704(b), which includes a list of terms which must be incorporated in every conference agreement. For example, conferences must allow, on equal terms and conditions, open admission (and readmission) for any carrier willing to serve a particular trade, and must permit any member to withdraw without penalty. Especially noteworthy is the requirement that all conference agreements must clearly state that any member line may take "independent action" on any rate or service item required to be filed in a tariff with the Commission; that is, any member line may opt to set an individual rate below (or above) the conference rate. The conference is required to publish the independent action rate in its conference tariff upon ten days' notice. In addition, the 1984 Act authorized carriers and conferences to enter into service contracts with shippers covering cargo volume, rates and service.[2]

In addition to its authority to enforce the specific prohibitions and mandatory provisions in the 1984 Act, the Commission also has the power, under section 6(g), to seek an injunction in federal district court against an agreement which is "likely, by a reduction in competition, to produce an unreasonable reduction in transportation service or an unreasonable increase in transportation cost." This is the only way the Commission can prevent the operation of an agreement, either before or after it first goes into effect. Unlike the former agreement review process under the 1916 Act, the Commission carries the burden in an injunctive suit of showing that an agreement fails to meet the section 6(g) standard.

Although the language of section 6(g) is relatively brief and non-specific, the accompanying legislative history makes clear that the statute is not a mandate for the Commission to apply a broad "public interest" standard to maritime agreements. Instead, the Conference Report sets forth in uncommon detail the nature of the section 6(g) standard and the appropriate analysis to be performed pursuant to it. The Report also states unequivocally that it is intended to govern the interpretation of section 6(g). Conference Report at 32. The relevant section of the Conference Report (pages 31–37) is appended to this Notice for convenient public reference.

2. The Conference Report

The analysis prescribed by Congress has two distinct requirements—a substantial reduction in competition, and an unreasonable increase in transportation cost or an unreasonable decrease in transportation service.

The Report gives specific instructions to the FMC regarding substantial reductions in competition. The Commission is directed not to place undue emphasis on the market share of the parties. While the Commission can use market share analysis, it may be neither determinative nor necessary. This directive contrasts with traditional antitrust analysis, which posits that high levels of market concentration lead to significant market power. For example, Congress noted that although a conference may have a significant market share, its market power may be mitigated by the 1984 Act's mandatory independent action and open membership provisions. Further, the Report contemplates that some agreements might include all the carriers in the trade (i.e., 100 percent market share), without transgressing the overall purposes of the 1984 Act:

> In some forms of concerted activity, participation by all or virtually all the members of a trade is necessary if the agreement is to have the desired effect on problems of overcapacity or rate instability.

Conference Report at 34. Regarding the relevant competitive market, the Commission is instructed to consider an agreement's impact on shippers not only in the terms of competition between carriers in the subject trade, but also in terms of other competitive means of transport.[3]

Congress further stated that a substantial reduction in competition is a necessary but not a sufficient condition for the FMC to seek injunctive relief. Such relief may be obtained only if an unreasonable increase in transportation cost or an unreasonable reduction in service to shippers would likely result from the substantial reduction in competition. This unreasonableness requirement contains two distinct aspects—a finding of unreasonable harm to shippers and a balancing of that harm against the agreement's benefits to the industry.

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[2] Congress did not, however, extend the independent action requirement to conference member lines' ability to enter into service contracts with shippers. As part of the overall compromise underlying the 1984 Act, section 4(a)(7) expressly authorizes conferences to "regulate or prohibit" members' use of service contracts. 46 U.S.C. app. 1703(a)(7).

[3] Suggested competitive alternatives may include alternative liner routings, and service provided by bulk carriers, charter operators or air freight carriers.

Again, the Conference Report sets forth specific requirements for both aspects. The harm to shippers must be unreasonable "in a commercial context." Conference Report at 35. The likely changes in cost and service must be derived from the agreement, and be "material and meaningful." *Id.* Congress did not further define these concepts. It stated, however, that the Commission may not determine that rate increases are *per se* impermissible, since such actions "may be necessary to achieve other benefits of the Act," *id.*, such as allowing carriers "room to develop new and innovative cooperative ventures for dealing with changing technologies and customer needs," *id.* at 32–33, while still realizing a "reasonable return" on their investment. *Id.* at 34. Also, when determining unreasonableness, the FMC is barred from resorting to the public utility ratemaking analysis it applies to the domestic offshore trades.

The second aspect of the unreasonableness requirement involves determining whether the negative impact upon shippers may be offset by the benefits of an agreement. With respect to conferences, Congress stated:

> * * * the competitive harm ensuing from conferences, already diminished by the statutory limitations on conference activity, can and often will be offset by significant benefits of such activity.

Conference Report at 36.

Congress enumerated a number of benefits for Commission consideration: a conference's ability to address the problems of overcapacity and rate instability, an agreement's impact on foreign policy and international comity, U.S.-flag participation in a trade where restrictive cargo preference practices exist which would otherwise limit or prohibit their participation, and efficiency-creating aspects of agreements (e.g., cost reduction, economies of scale, and technological innovation).

Additionally, the Commission is not to "wear blinders" in its analysis under the general standard by ignoring other reasonable and commercially proven alternatives which may create less competitive harm with most or all of the essential benefits. Conference Report at 36. While the Commission may consider such alternatives and seek to enjoin an agreement if it knows of a less damaging arrangement, Congress did not wish a return to the "public interest" standard where proponents are compelled to show that no less anticompetitive alternatives are available. In general, the Commission is to discharge its responsibilities under section 6(g) "in light of the historic [sic] international acceptance of carrier conference agreements"[4] and with a view to the "long-term interests of carriers and shippers." *Id.* at 33.

B. The Commission's Agreement Review Program Under Section 6(g)

Bearing in mind the new responsibilities and limitations imposed by section 6(g) and the other provisions of the 1984 Act, the Commission has developed and refined its processes for evaluating and monitoring agreements. When an agreement is filed, it is immediately reviewed by attorneys in the Commission's Office of General Counsel and by transportation analysts and economists in the Bureau of Trade Monitoring and Analysis. These offices scrutinize agreements to insure that they contain the mandatory provisions set forth in the 1984 Act, and to determine whether they run afoul of the prohibited acts sections or the general standard of section 6(g). Some types of agreements are also subject to specific informational requirements; rate-fixing, revenue pooling, joint service and consortium agreements are required to submit an Information Form, which provides cargo carryings and market share information for the past year and identifies competitors and the nature and extent of that competition. Agreements that contain the authority to alter service are required to provide specific information on changed port calls or reduced sailings.

Because the Commission's responsibility under section 6(g) does not end with the initial filing of an agreement, the FMC maintains an extensive program of ongoing information collection and trade monitoring. Depending on each agreement's anticompetitive potential, monitoring is performed on either a periodic or a continuous basis. Most effective agreements are required to file reports, including Minutes of Meetings, Shippers' Request and Complaint Reports, Consultation Reports, and, if applicable, descriptions of space chartering activity. Also, the Commission's monitoring group routinely prepares economic reports on trade-wide and agreement-wide bases, as well as individual economic profiles on ocean carriers.

Both of these agreement oversight functions—pre-implementation review and post-implementation monitoring—are performed pursuant to the section 6(g) standard, as discussed below.

1. Substantial Reduction in Competition

In assessing whether or not an agreement substantially reduces competition, the Commission must first identify the relevant market. In the case of pre-implementation review of an agreement, the Commission generally will consider the relevant market to be defined by the scope of the agreement. However, if elements of the agreement suggest its major impact will be on a particular country, port range, or commodity group, the definition of relevant market can be adjusted accordingly. The market definition also could be adjusted in a case where a specific class of shippers appeared to be without alternative service options.

Once the appropriate market is defined, such factors as chronic overcapacity, barriers to entry or exit, pre- and post-implementation market concentration, recent rate and service trends, and foreseeable impacts of specific agreement activities will be considered in the Commission's analysis. Factors such as the type of the agreement (for example, pooling, conference, discussion) or its organizational structure (for example, inclusion of both conference members and non-conference carriers in a discussion agreement) also may be significant. Further, the statutory provision for independent action on tariff rates must be taken into account, because it fosters intra-agreement competition. The same would be true if the agreement allows for service contracts, and especially if it allows for independent action on service contracts.

In the case of post-implementation analysis of an agreement, market definition will depend on the identity of the class of any shippers allegedly harmed by the agreement. Thus, the relevant market definition may be either narrower or broader in terms of geographic scope or commodities than the scope of the agreement. Once the relevant market is defined, the Commission can then examine the evidence concerning capacity utilization, barriers to entry and exit, market concentration, independent action, etc., to determine if a substantial reduction in competition has occurred as a result of the agreement's actions.

2. Material and Meaningful Shipper Harm

As regards harm to shippers, the adjectives "material" and "meaningful" are qualitative rather than quantitative terms. Therefore, judgments about what

[4] The Report points out that "the major economic allies of the United States continue to tolerate or even support conference and other cooperative carrier activity, in many cases in a measure far stronger than our laws have tolerated." Conference Report at 33. For example, the Treaty of Rome extends a blanket exemption from its competition rules for liner conferences, without any equivalent to the 1984 Act's provision for independent action.

constitutes meaningful and material harm must be made in the context of the specific injury being alleged.[5] However, the Conference Report notes that increases in rates or decreases in frequency or variety of service cannot be viewed as per se violations of the section 6(g) standard. Conference Report at 35.[6]

In the case of pre-implementation review of agreements, there can be no evidence of actual shipper harm. Consequently, any Commission effort to enjoin an agreement prior to its implementation necessarily would involve an estimate of that agreement's likely economic impact. Such estimates ordinarily must be made without knowledge of what rate increases the parties to the agreement intend to enact. Furthermore, the 1984 Act's provision for independent action undercuts the application of simple market concentration assumptions (i.e., high concentration equals effective market power).

On the other hand, post-implementation monitoring offers the possibility of obtaining empirical evidence of anticompetitive behavior, and thus a greater likelihood of being able to demonstrate material and meaningful harm to some identifiable class of shippers. The extent of actual rate increases or service reductions can be calculated, as well as the effects of those increases or reductions on particular groups of shippers.

It should be noted that, in order for the Commission to convince a federal district court that an agreement should be enjoined because it has caused material and meaningful harm to shippers, active and voluntary shipper assistance almost certainly would be necessary. Information concerning such relevant factors as the extent of individual shippers' rate increases or service reductions, percentage increases in product costs, revenue losses, lost orders, lost market share, employment cutbacks, reduced investments, etc., is not otherwise available to the Commission. Unless shippers were able and willing to provide such information and to provide testimony in court if necessary, any injunctive suit by the Commission would likely be unsuccessful.

[5] Indeed, as previously discussed, the Conference Report specified that harm to shippers is "to be understood in a commercial context."

[6] In addition, the Commission no longer has authority to review the level of specific rates. The 1984 Act repealed section 18(b)(5) of the 1916 Act, which empowered the FMC to disapprove any rates found to be "so unreasonably high or low as to be detrimental to the commerce of the United States." 46 U.S.C. 817(b)(5) (1982).

3. Experience Under the Section 6(g) Standard Since 1984

To date, the Commission has not been presented with a situation which met Congress's standard for seeking an injunction under section 6(g). The chronic condition of excess capacity in many of the U.S. liner trades, and economic recessions in the United States, Japan and Western Europe, have placed pressure on carriers to keep rates and services at competitive levels. Moreover, the procompetitive provisions of the 1984 Act, especially the right to take independent action on tariff rates, have fostered competition among agreement parties and served to discourage unreasonable rate increases and service reductions. It has become apparent that, while the reforms of the 1984 Act greatly accelerated the effectiveness of ocean carrier agreements, they also substantially weakened the power of traditional conferences to maintain rate increases or other conference-wide pricing decisions.[7] In some cases, potentially problematic agreement provisions have been addressed through negotiation, or corrected after the Commission formally requested additional information or took other action. In particular, the Commission has not been presented with financial data or other substantial evidence from shippers or shippers' groups documenting actual "material and meaningful" harm from any agreement, which is an essential prerequisite for the final step in the section 6(g) analysis, i.e., a weighing of the agreement's economic costs against its benefits.

4. Analysis of Economic Costs and Benefits

If the Commission should encounter an agreement where there is evidence meeting Congress's requirement of material and meaningful harm to shippers, it would then be necessary to perform the final step in the section 6(g) analysis prior to seeking a court injunction. Convincing evidence of agreement-generated shipper harm, even substantial harm, is not sufficient to warrant Commission action under section 6(g). The Conference Report specifies that "the negative impact upon shippers may be offset by the benefits of the agreement." Conference Report at 35. Therefore, it would be necessary for the Commission to identify any such benefits, and to establish an appropriate process for weighing the benefits of the agreement against its costs before seeking an injunction.

The first task would be made somewhat easier by the fact that the Conference Report identifies, in general terms, some of the benefits that Congress wants the Commission to consider. These include, but need not be limited to, reducing overcapacity and improving rate stability, creating economic efficiencies (e.g., reducing costs, attaining economies of scale, promoting technological innovation), insuring that U.S. lines can compete with state-sponsored and controlled carriers, and assisting in the achievement of foreign policy goals and the maintenance of international comity.

The second step—comparison of the benefits purportedly flowing from an agreement with the demonstrable shipper harm that results from it—is analogous to the standard formerly applied to agreements under section 15 of the 1916 Act, which compared anticompetitive impact with public interest benefits. Actual reduction of overcapacity and identifiable technical and operational efficiencies that depend on cooperative action among agreement members should be relatively amenable to quantification. Evaluation of benefits of a less concrete nature (e.g.,

[7] In an effort to find a new way to stabilize rates, carriers in two major trades formed agreements with "capacity management programs." The Transpacific Stabilization Agreement ("TSA") is a cooperative working arrangement among thirteen carriers in the inbound trade from the Far East to the United States, which permits the carriers to withhold up to eighteen percent of their collective container capacity from the market, but has no binding ratemaking authority. The Trans-Atlantic Agreement ("TAA") is a conference with binding ratemaking authority among certain members and voluntary ratemaking authority applicable to others, and allows the fifteen members of the agreement to withhold up to twenty-five percent of their collective capacity in the inbound trade from North Europe to the United States.

Agreements that authorize capacity management programs raise significant regulatory concerns, because they potentially can create an artificial shortage of container space by reducing supply to a level below demand, which, in turn, may result in unreasonable rate increases. In addition, both TSA and TAA operate with substantial market shares in their respective trades.

When TSA and TAA were filed, the Commission formally requested historical and forecasted data on the parties' vessel deployment, cargo demand, and capacity utilization in the affected trades. From its analyses, the Commission concluded that neither of the Agreements' proposed capacity management programs should unduly impact on the supply of container space. However, because of the Agreements' importance, the Commission has continually monitored their impact on their respective trades using, among other resources, informational reports on the parties' rate activities, services, and capacity utilization. Thus far, the Agreements have not caused any shortage of vessel space; on the contrary, under both Agreements, there remained a significant margin between vessel space supply and cargo demand, even after the artificial reduction of supply effected by the capacity management programs. This has kept the TSA and TAA carriers under significant price and service pressures, and stimulates intra-conference competition.

international comity), or those attributed to some future period (e.g., long-term price and service stability) would be necessarily more subjective, but, again, would not represent a new task for the Commission. Under section 15, the issue of whether to approve an agreement was often resolved on the basis of anticipated benefits, e.g., Agreement No. 57–96, Pacific Westbound Conference Extension of Authority for Intermodal Services, 19 F.M.C. 291, 301–304 (1976), or international comity, e.g., Agreement No. 9932—Equal Access to Government-Controlled Cargo and Interim Cooperative Working Arrangement, 16 F.M.C. 293, 306 (1973). It should be noted, however, that to conduct an adequate analysis, the Commission would need specific information from the carriers, some of a proprietary nature. For example, information on carrier revenues, fixed and variable input costs, cost reduction and efficiency enhancement measures, anticipated rate levels and revenues, and projections on future cargo levels likely would be required.

Once all the relevant information had been obtained, the Commission could then conduct its analysis of the agreement's economic costs and benefits. In general terms, one way of conducting such an analysis would involve the following steps:

1. Identify the affected parties.
2. Identify the short-term and long-term costs of the agreement to each of the affected parties.
3. Identify the short-term and long-term benefits of the agreement to each of the affected parties.
4. Value the costs and benefits monetarily, where possible, and identify all non-quantifiable costs and benefits.
5. Discount all identified and valued costs and benefits occurring at different times at the appropriate discount rate.
6. Aggregate the present-valued costs and benefits.
7. Perform a sensitivity analysis[8] on the major costs and benefits (especially any that are unquantifiable or uncertain).
8. If the present-valued net benefits of the agreement are positive (i.e., if benefits outweigh costs), determine if there are any "reasonable and commercially proven alternative arrangements" that would achieve similar benefits at a lower net cost.

Technical issues such as the appropriate discount rates, inflation assumptions, multiplier effects, etc., could be handled, to the degree possible, in accord with the provisions in the Office of Management and Budget's benefit/cost analysis guidelines.[9]

[8] Sensitivity analysis involves changing the parameters of a decision problem and studying how this affects the outcome. It is particularly associated with cost-benefit analysis, where the most common form is the use of alternative discount rates.

C. Request for Comment

Interested members of the public, including carriers, shippers and governmental bodies, are invited to comment on the draft section 6(g) Guideline set forth below. As previously stated, commenters may also suggest alternative methods of providing guidance with regard to section 6(g).

Guideline

Upon filing with the Commission, an agreement and its information form will be subject to pre-implementation review to determine whether or not it should be made the subject of an injunctive action under the standards of section 6(g) of the 1984 Act. In addition, the agreement will be subject to on-going monitoring. The following guidelines outline the present pre- and post-implementation 6(g) review processes.

Pre-implementation 6(g) Review

A. The Commission will define the relevant market to be used in evaluating the agreement. Normally, at the pre-implementation review stage, that market will be determined by the geographical scope of the agreement and will be limited to the liner shipping industry. However, in some cases the market may be defined by country, port range, commodity group, or class of shipper most likely to be affected.

B. The Commission will assess the agreement's likely economic impact on the market. Consideration will be given to available vessel capacity in the market, barriers to entry or exit, pre- and post-implementation market concentration, the effect of mandatory IA provisions and other prescribed procompetitive requirements, recent rate and service trends, type of agreement involved (for example, pooling, conference, discussion), organizational structure of the agreement, and any foreseeable impacts of proposed agreement activities such as a capacity management program.

C. If the Commission determines that further information or clarification is needed to properly evaluate whether the agreement is likely to violate the section 6(g) standard, it may seek additional information from the filing party pursuant to section 6(d) of the 1984 Act.

D. In the event that the Commission determines that the agreement is likely, by a reduction in competition, to unreasonably increase transportation costs or decrease transportation service, it will inform the filing party of its objections. If those objections cannot be redressed by negotiation, the Commission may then seek an injunction in federal district court as provided in section 6(h) of the 1984 Act.

Post-implementation Agreement Monitoring

A. The Commission will define the relevant market to be used in monitoring the agreement. In the absence of specific shipper allegations of harm, the market will be defined in the same manner as for a pre-implementation review. If the Commission has received credible allegations of material and meaningful harm owing to activities undertaken by agreement members pursuant to the terms of the agreement, consideration will be given to the particulars of the allegations in defining the scope of the market.

B. The Commission will determine if the agreement has resulted in a reduction in competition that has increased transportation costs or decreased transportation service as applied to either (a) the market as a whole, or (b) specific groups of shippers alleging material and meaningful harm. In the case of a post-implementation review, consideration will be given to the actual behavior (for example, increases in transportation costs, decreases in transportation service, capacity limitations, etc.) of member lines under the agreement in addition to the elements considered in a pre-implementation review.

C. The Commission will determine whether evidence is available of material and meaningful harm to a specific class of shippers and the credibility and utility of such evidence for seeking injunctive action under section 6(g). Such evidence, which would by its nature have to be provided by shippers alleging harm, would include data on individual rate increases or service decreases, increases in product costs, revenue losses, lost orders, lost market share, employment cutbacks, reduced investments, etc., that are attributable to transportation cost increases or service decreases.

D. Should the Commission determine that the agreement has resulted in a reduction in competition leading to an increase in rates or decrease in service, and that, as a consequence, a specific group of shippers has suffered meaningful and material harm, it will undertake an economic analysis to determine if the short and/or long-term benefits of the agreement outweigh the

[9] Office of Management and Budget Circular No. A–94 Revised, (Transmittal Memorandum No. 64), October 29, 1992.

harm to shippers. Where possible, benefits will be expressed in monetary terms. Such analysis will give consideration to any subsidization that may exist, that is, where the rates charged shippers under the agreement do not cover the carrier-parties' variable costs.

E. Any economic analysis of costs and benefits would require specific information from the carriers which is not available from other sources. To obtain such information, the Commission may direct the carriers involved in the trade—possibly including carriers who are not members of the agreement—to provide the information pursuant to section 15 of the 1984 Act.

F. Based on all available information, and following the general method outlined in the Advanced Notice, the Commission will decide whether to bring suit in the United States District Court for the District of Columbia to enjoin the operation of the agreement.

By the Commission.

Joseph C. Polking,

Secretary.

Appendix—(Conference Report)

Section 6(g) and (h)

A. Background—Differing Approaches in House and Senate Bills

The new general standard in section 6(g) represents a compromise of approaches taken in the Senate and House Bills.

The provision would authorize the Federal Maritime Commission to seek injunctive relief against agreements that it determines do not meet the standard set forth in the subsection. This flexible standard permits the Commission to seek an injunction even when an agreement would not violate any of the prohibited acts set forth elsewhere in the bill.

The Senate bill contained no general standard. It did not authorize Commission disapproval of agreements except for violation of specified requirements (the Commission could also authorize special investigations of, but not immediately disapprove, certain pooling agreements). The Senate approach reflected a view that review of agreements under the general standard of the present Shipping Act, including the "public interest" test, places too much weight on antitrust principles and that the present standard is too vague to provide clear guidance to the regulated industry as to the extent of permissible activities. Believing that this vagueness and overemphasis on competition has not well served the public because it has denied carriers serving the U.S. foreign commerce opportunities to cooperate, rationalize services, and achieve rate stability, the Senate excluded a general standard from its bill.

The House bill, on the other hand, included a provision authorizing the Commission to intercede against substantially anticompetitive agreements, even if these agreements would not violate any specific prohibitions of the bill. The House provision grew out of the Judiciary Committee's conviction that it is impossible to draft a sufficiently comprehensive list of specific prohibited acts to cover all potentially injurious anticompetitive behavior: such behavior would, under the House approach, be weighed against beneficial effects under a flexible general standard. Problems with uncertainty and delay would be addressed through a streamlined review process that set shorter time limits for Commission action than those prescribed in the Senate bill. And the House bill placed the burden on the Commission to establish that an agreement would result in a harmful reduction in competition before it could enjoin the operation of an agreement.

Because of the strong views on the general standard, the conferees opted for a compromise provision differing in approach from either the House or Senate bills. Specifically, the Senate conferees agree to recede from the language of subsections 12(c)(8) and 13(d) of S. 47 and the House conferees agree to recede from the language of subsection 5(g) of the House amendment. The conferees intend that this report shall govern interpretation of the new section 6(g).

B. Nature of the Compromise General Standard

The new section 6(g) allows the Commission to seek an injunction if it determines that an agreement "is likely, by a reduction in competition, to produce an unreasonable reduction in transportation services or an unreasonable increase in transportation cost." The compromise accedes to the House position insofar as it would establish a flexible general standard to be applied by the regulatory agency with expertise in this industry. This standard provides a basis for Commission review of agreements other than for contravention of specific statutory proscriptions and recognizes that a substantial reduction in competition can, under certain circumstances, trigger Commission intercession to prevent agreements from becoming effective or remaining in effect. On the other hand, the standard in the Conference Bill responds to the Senate concern that the "public interest" test in the present law is vague and unworkable in its automatic application of certain antitrust principles to ocean shipping. The new standard removes any per se condemnation of concerted conduct such as might be applied under the antitrust laws. Consequently, the standard establishes a threshold for prompt approval of most generally accepted joint conduct in ocean shipping. Other significant changes from the public interest standard of the present law includes section 6(h), placing the burden of proof on the Commission in any application of the general standard.

The compromise will place in the hands of the Federal Maritime Commission, the expert agency charged by the Congress with regulating this industry, sole responsibility for enforcing the general standard. Although the Department of Justice will continue to represent the FMC in most other respects, the Commission is granted authority to represent itself in district court actions to seek an injunction. The expertise of the FMC in regulating this industry, the agency's experience in applying the standard, and the likely need for prompt action to stop threatening conduct, warrant a limited exception to the principle of centralized government litigation authority. In this case, the limited grant of litigation authority is to an independent agency, created by Congress with considerable autonomy from the Executive Branch. As new and evolving forms of cooperative conduct develop, the conferees believe that the Commission, rather than the antitrust agencies or the courts in the first instance, is in the best position to assess an agreement's benefits and detriments in light of the objectives of this Act.

The general standard leaves the carriers room to develop new and innovative cooperative ventures for dealing with rapidly changing technologies and customer needs. At the same time, it grants to the Commission the necessary authority to act to stop schemes that go beyond what is necessary to obtain such benefits and cause substantial anticompetitive effects.

The flexibility in the compromise provision eliminates the need for a longer list of possibly overreaching prohibitions. The conferees agree that selective provisions limiting joint ventures or pooling agreements might discourage arrangements that often enhance the quality, frequency, or efficiency of transportation services. These agreements, just as any others, should be permitted unless the FMC demonstrates that they are likely to cause concrete competitive harm evidenced in unreasonable and detrimental changes to transportation costs or services.

The language of this subsection must be interpreted in light of the historic international acceptance of carrier conference agreements. Conferences have been recognized in our laws at least since the Shipping Act of 1916. This legislation does place substantial limitations on that conference activity, including provisions that require open membership, a right of independent action on 10 days' notice for each member, and a substantial list of protective prohibitions, including a ban on boycotts, fighting ships, or other concerted practices designed to deny entry or drive existing competitors from the market. This legislation also prohibits the use of loyalty contracts not in conformity with the antitrust laws. But while limiting certain possible excesses of concerted activity, the compromise general standard clears the way for the conferences to perform concerted activities that serve the long-term interests of ocean carriers and shippers.

Economists and transportation experts differ as to whether conferences are the best means of attaining a modern and efficient transportation system and, if so, how conferences should be structured. After weighing these concerns, the conferees have approved a bill that, subject to the constraints already mentioned, permits the reasonable use of conferences and other concerted activity to address structural and competitive problems, such as severe rate instability and overcapacity that have long plagued this industry. Underlying this determination is

also a realization that the major economic allies of the United States continue to tolerate or even support conference and other cooperative carrier activity, in many cases in a measure far stronger than our laws have tolerated. Any major change in regulatory policy, although not precluded by these differences in approach, should be taken with a sensitivity to interests of friendly nations, and, insofar as possible, in tandem with them.

C. Analysis Under the General Standard

A critical factor enabling the Conferees to agree on a more narrowly drawn general standard is the inclusion in this bill of numerous other provisions which address the nation's interest in competition in the ocean common carrier industry. For example, prohibited acts in the Shipping Act of 1984 will continue the protections of the present law against predation and unreasonable refusals to deal. Even more importantly, the bill includes other specific and major procompetitive reforms that will affect the operation of ocean carriers and conferences—notably a strong requirement of independent action with a limited notice period and the elimination of conference authority to offer loyalty contracts (unless their use would not violate the antitrust laws). With these reforms and other provisions in the bill, the Conferees have determined that carrier agreements generally will serve this nation's interest in international liner shipping. Thus, the Conferees determined to strike the overall balance between competition and cooperation in specific provisions of the act and to allow for disapproval of agreements only under the carefully drawn circumstances set forth in subsection 6(g).

The new standard will permit conference agreements and amendments (including those providing intermodal ratemaking authority) to be reviewed promptly. Except in cases raising substantial issues under the standard, such agreements will enter into effect routinely, without the need for submitting additional information under section 6(d). Intermodal rate agreements have been used effectively throughout the world and are an important tool permitting the conferences to offer a through-rate, preferred by many shippers over segmented, port-to-port rates. Although some conferences serving U.S. trades have implemented intermodal rate agreements, the authority for such agreements is disputed. The Act recognizes that intermodal ratemaking authority is an important tool for the conferences to remain viable: no special stigma should attach to such agreements under the general standard.

The general standard also permits agreements providing for rationalization of services to be reviewed promptly and, except in cases raising substantial issues under the standard, to enter into effect routinely. Through these agreements, overcapacity (i.e., economic waste) can be reduced and efficiency enhanced, thereby better enabling carriers to respond with reasonable rates that afford them a reasonable return.

As suggested by the title of subsection (g), a likely reduction in competition should be substantial before triggering Commission intercession under the general standard. Unless the competitive threat is substantial, any reduction in service or increase in cost would not be unreasonable, as required by the general standard. The Commission should not, in any event, expend its limited resources to pursue insubstantial reductions.

The market share of parties participating in concerted action is a touchstone for traditional antitrust analysis. This form of analysis, although helpful in determining whether an agreement is likely to cause a substantial reduction in competition, is only one factor in the Commission's decision calculus. Its significance will depend on the circumstances. In the case of conference agreements, including those with intermodal ratemaking authority, the conferees believe that potential reductions in competition will be at least partially offset by a member carrier's right of independent action and ability to enter and leave the conference freely. In some forms of concerted action, participation by all or virtually all of the members of a trade is necessary if the agreement is to have the desired effect on problems of overcapacity or rate instability. Thus, although a market share analysis is available to the Commission, in many cases, depending on the circumstances, its outcome will not be determinative or necessary for application of the general standard.

In applying the general standard, the Commission also must consider whether the relevant competitive market includes more than just ocean common carriers providing direct service in a trade. The conferees intend that the Commission, in carrying its burden under the general standard, consider the impact on shippers of an agreement not only in view of competition between ocean common carriers providing direct service in a trade, but also in view of other competitive means of transport. In some cases, alternative liner routings, bulk carriers, charter operators, or air freight carriers may provide competitive alternatives to the direct service provided by ocean common carriers. In considering these alternatives, the Commission may gather relevant information from shippers, other carriers, and third parties. And although the Commission may use its information powers to request market information from the proponents of an agreement, such information must be relevant and readily available to the proponents.

Even if an agreement is likely to cause the requisite reduction in competition, the Commission can obtain injunctive relief only if the likely net result will be an unreasonable increase in costs to shippers, or an unreasonable reduction in the frequency or quality of service available to shippers. There are two distinct aspects to this requirement.

The first is whether the harm to shippers is unreasonable. The term "unreasonable" is to be understood in a commercial context. Unreasonableness refers to the cost of transportation to the shipper or the availability or quality of service to the shipper. The likely change in costs or services must arise from the agreement and be material and meaningful. The Commission may not determine that rate increases or service reductions are "per se" impermissible results of agreements. Rate increases or decreases in the frequency or variety of service may be necessary to achieve other benefits of the Act. The determination whether an agreement is likely to produce "an unreasonable increase in the price of transportation" does not authorize the FMC to engage in the type of ratemaking analysis undertaken by regulators of public utilities or as applied in the domestic offshore trades.

A second aspect of the unreasonableness requirement is that the negative impact upon shippers may be offset by the benefits of an agreement. For example, the competitive harm ensuing from conferences, already diminished by the statutory limitations on conference activity, can and often will be offset by the significant benefits of such activity. The privately-owned ocean common carriers that service U.S. foreign commerce are likely to be subjected to increasing competition from state-subsidized and controlled carriers. A conference's ability to address problems of overcapacity and rate instability is an important benefit that the Commission must weigh.

Another possible benefit to be considered by the Commission is the impact of an agreement on U.S. foreign policy and international comity. The Conferees agree that the United States should act with sensitivity to the interests of its trading partners when administering shipping regulation. One possible problem area arises from cargo reservation schemes in the laws or trading practices of some foreign nations. There are important policy considerations that have led the United States to oppose some cargo reservation schemes. The Conferees understand that these considerations may lead our Government to continue this opposition in many cases. At the same time, the Conferees recognize that some U.S.-flag carriers, through no fault of their own and despite such government opposition, may be confronted with a cargo reservation scheme that will exclude them from a trade entirely, or so limit their access to certain cargo as to make service of the trade commercially unattractive, unless they participate in a revenue or cargo sharing agreement with the carriers of such nations that preserves the right of the U.S.-flag parties to the agreement to compete for reserved cargo. Under such circumstances, the Conferees consider it a clear benefit to allow U.S.-flag carrier participation in the trade. Although the Commission might generally not approve such restrictive arrangements, the Commission, after giving due consideration to the maritime and trade policy views of the United States, may conclude that approval is necessary in order to maintain a viable U.S.-flag service, as it has in the past in similar circumstances.

Another important potential benefit to be considered is any efficiency-creating aspects of an agreement. Agreements involving significant carrier integration are, if properly limited to achieve such important benefits, to be favorably considered by the Commission and the courts. Joint ventures and other cooperative agreements can enable carriers to raise necessary capital, attain economies of scale, and rationalize their services. Pooling

arrangements can also offer significant benefits in reducing excess capacity and promoting efficiency.

In assessing the benefits of any of these agreements, however, the Commission need not wear blinders. If, in applying its expertise, the Commission establishes that reasonable and commercially proven alternative arrangements will provide most or all of the essential benefits without the same anticompetitive impact, it may weigh this fact in its decision calculus. The conferees agree, however, that this standard does not represent a return to existing law, under which proponents may have been compelled to show that no less anticompetitive alternative was available to obtain the benefits of the Act.

The Conferees intend that ocean carriers be free to structure their own affairs, except when such structuring violates specific statutory provisions or the new, more narrowly drawn, general standard. Even when an agreement raises potential issues under the general standard, the Conferees believe that the procedural framework for application of that standard will give carriers maximum flexibility. Carriers will be able to obtain a prompt ruling from the Commission under the new provisions for expedited review. If the Commission objects to an agreement under the general standard, the filing party may withdraw it, modify it, or force the Commission to make its showing in court. Even after such a court proceeding is initiated, the filing party retains the option of withdrawing or settling the matter with the Commission.

In sum, the general rules of operation and approval of agreements have been developed by the Congress with full awareness of the realities of international ocean carriage; a general standard has been retained to provide the necessary flexibility to deal with the unusual or severe cases not addressed by other prohibitions in the Act.

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DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Finding on Petition To Delist the Selkirk Mountains Woodland Caribou

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding on a petition to delist the endangered population of woodland caribou (*Rangifer tarandus caribou*) located in the Selkirk Mountains of northern Washington, northern Idaho, and southern British Columbia. The Service finds that the petition has not presented substantial scientific or commercial information indicating that the petitioned action may be warranted.

DATES: The finding announced in this document was made on November 10, 1993. Comments and materials related to this petition finding may be submitted to the Field Supervisor at the address below until further notice.

ADDRESSES: Data, information, comments, or questions concerning this petition should be submitted to the Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705. The petition finding, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Dr. Charles H. Lobdell at the above address (telephone 208/334–1931).

SUPPLEMENTARY INFORMATION:

Background

The U.S. Fish and Wildlife Service received a petition on December 10, 1992, to delist the endangered population of woodland caribou (*Rangifer tarandus caribou*) located in the Selkirk Mountains of northern Washington, northern Idaho, and southern British Columbia. The petition was received from Peter B. Wilson representing the Greater Bonners Ferry Chamber of Commerce, Bonners Ferry, Idaho. The petition, dated December 9, 1992, clearly identified itself as a petition, and contained the name, signature, and address of the petitioner.

The petition and other documentation have been reviewed to determine if substantial information has been presented to indicate that the requested action may be warranted. Section 4(b) of the Endangered Species Act of 1973, as amended (Act), requires that listing determinations be made ". . . solely on the basis of the best scientific and commercial data available. . . ."

The petition to delist the woodland caribou is based on 16 "Facts," 7 "Points," and a "Conclusion," as stated by the petitioner. These statements can be synthesized into eight main assertions, which are summarized below, and followed by the Service's response.

Assertion 1. "No biological reason or need for the listing has been established by research and conclusion" ("Point 1a," "Fact 6"). The determination to list and maintain the listing of the caribou is based solely on conjecture ("Point 7") and "inadequate research" ("Conclusion").

Service Response. Determinations to list are made on the basis of the best scientific and commercial data available. The assertion that listing the woodland caribou is based solely on conjectures is based on the petitioner's interpretation of the draft revised Recovery Plan. The Recovery Plan stated a number of unknowns about caribou biology, population factors, and habitat variables. These statements are made in the context of the scientific process and not of a legal debate. Though it is true there is much to learn about the caribou, the Service had and continues to have enough information to warrant the listing of the caribou, including substantial information on habitat fragmentation, poaching, and a genetic bottleneck.

Assertion 2. "Biologically there is no distinction between the mountain and woodland caribou" ("Fact 1"). The mountain and woodland caribou ranges overlap ("Fact 4"). The woodland, not mountain caribou "have been transplanted to the Selkirk mountains for the purposes of increasing the existing herd and creating new herds from distinctly different locations in Canada—Revelstoke and Williams Lake area, Anaheim Lake area" ("Fact 5"). "The transplant of woodland caribou will ultimately taint, and thereby destroy, the 'distinct' herd of mountain caribou indigenous to the Canadian Selkirks" ("Point 1b").

Service Response. Woodland caribou (*Rangifer tarandus caribou*) occur in two distinct ecotypes: the northern ecotype caribou and the mountain ecotype caribou. The endangered population of woodland caribou in the Selkirk Mountains is of the mountain ecotype. Transplants occurred within the mountain ecotype range, from the Revelstoke population to the Selkirk population. Transplants also occurred from the northern ecotype range to the mountain ecotype range, as the Anaheim population is a northern ecotype caribou. No caribou were transplanted from the Williams Lake area. Chesser *et al.* (in prep) state that the addition of Anaheim and Revelstoke animals to the Selkirk Mountains population would allow for additional genetic information while preserving alleles and genetic variation in the Selkirk Mountains caribou population.

Assertion 3. It was not determined if the continental United States ever had a resident herd, and if so, if such herd was extinct before transplants began ("Fact 3," "Point 4"). There is inconsistent documentation on whether Montana ever had a resident population ("Point 2"). There is no evidence that the caribou in Idaho in the 1950's were

resident or wanderers ("Fact 13"). A bull found in the United States was obviously a wanderer from Canada ("Fact 15"). At the time of listing there was no herd in Idaho, so the population in Idaho was extinct ("Fact 14").

Service Response. As to questions about the historical range of caribou in the western United States, it is well-documented that it was once more extensive than it is today. Caribou once occurred as far south as the Salmon River in Idaho and as far east as the North Fork of the Flathead River in Montana (Evans 1960). Before 1910, they occupied the Selkirk, Cabinet, Purcell, and Bitterroot Mountains (Evans 1960, Layser 1974). By the 1950's, caribou were reduced to about 100 animals occupying about 1,000 square miles in the Selkirk Mountains, with remnant bands in the Cabinet and Yaak Mountains (Flinn 1956, Evans 1960). Although by 1983 most caribou use in the Selkirk Mountains occurred in British Columbia, some caribou also used, and continue to use, habitats in the United States. Regarding the argument that there was no herd in Idaho at the time of listing, hence it should be considered extinct in Idaho, the Service did not distinguish the caribou population by State, but by the United States population. Caribou movement within home ranges may cross political boundaries but that does not change the fact that the Selkirk population was in danger of extinction at the time it was listed, nor that it is still in danger of extinction.

Assertion 4. Old growth forest was "not established as a requirement" for caribou habitat ("Point 5").

Service Response. As to the assertion that old growth forest is not a requirement by caribou for forage, seasonal habitat use patterns and forage requirements of caribou have been documented by research in northern Idaho and British Columbia. Occasionally, caribou have been observed feeding on succulent, newly emerging vegetation in clearcuts during the spring. However, data show that, even during spring, caribou preferentially use old-growth and mature forest habitats as a source of forage (Wakkinen *et al.* 1992, Allen-Johnson in prep.). As to use of old-growth during other seasons of the year, caribou nearly exclusively use old-growth forest during early winter through late spring (Scott and Servheen 1984).

Assertion 5. Most of the poaching occurred in Canada, so it is erroneous to imply that the Act contributed to the reduction of poaching, since Canada is not subject to our Act ("Point 6").

Service Response. Cases of poaching in the United States have been documented before and after the caribou listing, and there is no information to indicate that poaching in the United States is no longer a threat.

Assertion 6. It is normal for population trends of caribou to increase and decrease ("Point 12").

Service Response. It is true that population numbers are often cyclic in ungulates; however, the United States woodland caribou population significantly declined by 1900, has continued to decline since then, and has not begun to recover. The Service cannot assume that a prolonged population decline is part of a natural cycle, and that the population will rebound. Furthermore, its numbers are so low, that the population is close to extinction.

Assertion 7. No "environmental impact statement was prepared for the listing" ("Point 3", "Fact 16").

Service Response. The petitioner is correct in stating that an environmental impact statement was not prepared. As stated in the **Federal Register** on October 25, 1983 (48 FR 49244), the Service determined that an Environmental Assessment need not be prepared in connection with regulations adopted pursuant to section 4 of the Act.

Assertion 8. "Listing is inappropriate because there are thousands of woodland caribou existing in Canada" ("Point 1c," "Fact 2").

Service Response. There are thousands of northern ecotype caribou in northern Canada and Alaska. However, the mountain ecotype caribou are far less numerous. The listed population of woodland caribou in the Selkirk Mountains is in danger of extinction throughout its range.

The Service maintains that the listed population of woodland caribou continues to require the protection of the Act. The Service concludes that no new information was provided in the petition that would support the removal of the woodland caribou from the List of Endangered and Threatened Wildlife.

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Author

This document was prepared by Rich Howard, Boise Field Office, U.S. Fish and Wildlife Service, 4696 Overland Road, Room 576, Boise, Idaho 83705.

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: November 10, 1993.

Richard N. Smith,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–29101 Filed 11–26–93; 8:45 am]

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50 CFR Part 17

RIN 1018–AC10

Endangered and Threatened Wildlife and Plants; Proposed Rule To List the Flat-tailed Horned Lizard as Threatened

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The U.S. Fish and Wildlife Service (Service) proposes to list the flat-tailed horned lizard (*Phrynosoma mcallii*) as a threatened species pursuant to the Endangered Species Act of 1973, as amended (Act). The Service is taking this action because of documented and anticipated population declines associated with widespread habitat loss, fragmentation, and degradation due to human activities such as agricultural developments, urban expansion, off-highway vehicle use, energy developments, and military activities. Pesticide spraying from adjacent agricultural areas may have reduced ant populations, the primary prey of the flat-tailed horned lizard.

DATES: Comments from all interested parties must be received by January 28, 1994. Public hearing requests must be received by January 13, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address. The complete file for this rule is available for public inspection, by appointment, during normal business hours at the Ventura Field Office, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (805/644–1766).

FOR FURTHER INFORMATION CONTACT: Mr. Craig Faanes, Field Supervisor at the above address or at 805/644–1766.

SUPPLEMENTARY INFORMATION:

Background

The flat-tailed horned lizard was originally described as *Anota M'callii*, a monotypic genus (Hallowell 1852 in Johnson and Spicer 1985). The holotype was taken from the western Sonoran desert between Camp Yuma and Vallecito. Girard (1858 as cited by Bryant 1911) rejected the name *Anota* in favor of *Doliosaurus*, and included two other species in this genus. Cope (1866 as cited by Johnson and Spicer 1985) changed the name to *Phrynosoma macallii*. Cope (1900 as cited by Johnson and Spicer 1985) later returned the species to the genus *Anota*, along with other species of horned lizards. Bryant (1911) removed the other species from this genus, again leaving the flat-tailed horned lizard in the monotypic genus *Anota*. Norris and Lowe (1951 as cited by Johnson and Spicer 1985) placed the species in the genus *Phrynosoma*, again with other species of horned lizards. Funk (1981) clarified the spelling of the specific epithet as *mcallii*.

The flat-tailed horned lizard is a small, cryptically colored iguanid lizard that is restricted to flats and valleys of the western Sonoran desert. It has the typically flattened body shape of horned lizards, a dark mid-vertebral stripe, a somewhat flattened tail, relatively long head spines or horns, and two rows of fringed scales on each side of the body. Dorsally, the flat-tailed horned lizard is pale gray to light rusty brown; the animal's ventral surface is white and unmarked. Maximum length, excluding the tail, is about 3.2 inches (Stebbins 1985).

The range of the flat-tailed horned lizard includes the Coachella Valley in Riverside County, California; the Imperial and Borrego Valleys in Imperial and extreme eastern San Diego Counties, California; northeastern Baja California Norte east of the Sierra de Juarez, Mexico; south of the Gila River and west of the Gila and Tinajes Altas Mountains in Yuma County, Arizona; and north and west of Bahia de San Jorge in northwestern Sonora, Mexico (Johnson and Spicer 1985, Rorabaugh *et al.* 1987, Stebbins 1985, and Turner and Medica 1982). Within this range, the flat-tailed horned lizard typically occupies sandy, desert flatlands with sparse vegetation and low plant species diversity, but it is occasionally found in low hills or areas covered with small pebbles or desert pavement. Habitat with the greatest relative densities of flat-tailed horned lizards is characterized by surface soils containing some loose or windblown sand, but this species rarely occurs in dunes (Rorabaugh *et al.* 1987, Turner *et al.* 1980b).

Turner and Medica (1982) identified four areas of optimal habitat in California where flat-tailed horned lizard relative abundance indexes were relatively high. Three of those are located entirely within Imperial County, including southern East Mesa, southeastern Yuha Desert, and the Superstition Mountain area; and the fourth is located primarily within eastern San Diego County in the vicinity of Benson Dry Lake near Ocotillo Wells. In Arizona, an area southeast of Yuma also registered a relatively high abundance index (Rorabaugh *et al.* 1987).

About 29 percent of the lizard's historic range is in Mexico, but its distribution is not well known there. In Baja California Norte, flat-tailed horned lizards have been collected near the International Boundary, near Laguna Salada, and Mexicali, but its distribution is limited by extensive agriculture that extends from Mexicali to the Colorado River and by the wetland and riparian communities of the Colorado River Delta, the Rio Hardy, and Laguna Salada. South and east of San Luis, Sonora, and extending to the Gulf of California is a broad sandy plain that is similar to and contiguous with flat-tailed horned lizard habitat in Arizona. Records for the species exist from this area and at sandy flats near Puerto Penasco. Between these two areas is a region dominated by the large dune system of the Gran Desierto and volcanic or montane terrain in the Sierra Pinacate region, an area from which few locality records exist, and which probably has limited and patchy habitat for flat-tailed horned lizards (Gonzalez-Romero and Alvarez-Cardenas 1989, Johnson and Spicer 1985).

In California, remaining habitat is primarily administered by the Bureau of Land Management (43.4 percent), private landholders (42.2 percent), Department of the Navy (6.9 percent), and California Department of Parks and Recreation (5.8 percent) (Bolster and Nicol 1989). In Arizona, land supporting the species is administered by the Bureau of Reclamation, Bureau of Land Management, Department of the Air Force, State of Arizona, and private individuals.

The Service included *P. mcallii* as a category 2 candidate for listing in its original Review of Vertebrate Wildlife, published in the **Federal Register** of December 30, 1982 (47 FR 58454). Category 2 species are those for which data in the Service's possession indicate listing may be appropriate, but for which additional biological information is needed to support a proposed rule. This species was again included in category 2 in the Service's revised Vertebrate Notice of Review of September 18, 1985 (50 FR 37958). Subsequently, the status of the flat-tailed horned lizard was elevated to category 1 on January 6, 1989 (54 FR 554) as new data on this species became available (Carlson and Maybew 1988; Olech, undated; Rorabaugh 1987). Substantial information supporting the biological appropriateness of this proposed rule now exists (Bolster and Nichol 1989, Bureau of Land Management 1991).

Summary of Factors Affecting the Species

Section 4 of the Endangered Species Act (16 U.S.C. 1533 *et seq.*) and regulations (50 CFR part 424) promulgated to implement the listing provisions of the Act set forth the procedures for adding species to the Federal list. A species may be determined to be an endangered or threatened species due to one or more of the five factors described in section 4(a)(1). These factors and their application to the flat-tailed horned lizard (*Phrynosoma mcallii*) are as follows:

A. The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range.

Human impacts have resulted in the loss of roughly 34 percent of the historic flat-tailed horned lizard habitat. In California's Imperial and Coachella Valleys, a large portion of the flat-tailed horned lizard's habitat has been converted to urban or agricultural use or was flooded by the filling of the Salton Sea from 1905 to 1907 (Johnson and Spicer 1985, Rado 1981). The precise extent of this lizard's historic habitat cannot be quantified, because filling of

the Salton Sea and much of the agricultural development predates most collections of flat-tailed horned lizards. However, assuming that the flat-tailed horned lizard was well distributed within the areas of the Imperial Valley that are now occupied by agriculture, urban development, and the Salton Sea, about 40 percent of the flat-tailed horned lizard's habitat in California has been converted to other uses and no longer supports this species. Approximately 23 to 27 percent of the historic habitat in Arizona has been lost due to human uses (J. Rorabaugh, U.S. Fish and Wildlife Service, pers. comm., 1988). In Mexico, no estimates of habitat loss are available, but in Sonora less than 10 percent of the habitat has been converted to agriculture, urban, or other uses. Most of the impacts in Sonora are confined to the San Luis Valley. In Baja California Norte, Mexico, considerable habitat loss has occurred primarily in the Mexicali Valley where urban and agricultural development extends from Mexicali to the Colorado River.

Ninety-five percent of the remaining optimal habitat in California is threatened by one or more impacts including agricultural and urban development, off-highway vehicle use, geothermal development, sand and gravel operations, military maneuvers, and construction of roads and utility corridors (Carlson and Mayhew 1988). Urban growth is an important component of these threats. The 1990 human population estimate for the Coachella Valley was 227,000, which includes the Palm Springs metropolitan area and the northern portion of the flat-tailed horned lizard's range. The Coachella Valley Association of Governments (Lester Cleveland, pers. comm., 1993) projects that by the year 2010 over 497,000 people will reside in the Coachella Valley, plus 165,000 to 200,000 seasonal residents. In 1989, the population of Imperial County was 116,000. The cities of El Centro, Imperial, and Calexico all grew by about one-third between 1980 and 1989 (Bureau of Reclamation 1991). In addition to urban growth, a number of proposed projects threaten flat-tailed horned lizard habitat in California, including a planned prison, waste disposal sites, utility corridors, groundwater recharge projects, canal construction, and road construction associated with all the above. Gold mining and pesticide spraying are also potential threats (Bolster and Nicol 1989).

Of the remaining habitat in Arizona, 36 percent is threatened by various human impacts (Johnson and Spicer 1985). The Marine Corps Air Station at Yuma is proposing to locate a large munitions storage facility in flat-tailed horned lizard habitat. The communities of San Luis, Yuma, and The Foothills are expanding into the habitat of this species. Agricultural development and road construction continues to expand from the South Gila, Yuma, and San Luis valleys to the south and east to adjacent upland areas occupied by flat-tailed horned lizards (Johnson and Spicer 1985, Turner *et al.* 1980a). A sewage sludge disposal site, State of Arizona prison facility, groundwater well field, and a desalinization sludge disposal site have been recently constructed in flat-tailed horned lizard habitat southeast of Yuma. A landfill and a new highway to connect San Luis and The Foothills are also proposed. In addition, the Marine Corps Air Station conducts limited ground maneuvers at the southwest end of the Barry Goldwater Range, and the U.S. Border Patrol patrols this area intensively and often travels off-road to follow tracks and intercept illegal aliens (C. Bates, Marine Corps Air Station, pers. comm., 1992).

Activities that adversely affect the lizard and its habitat in the United States also occur in Mexico, albeit to a lesser degree. Cooperative farms or ejidos, geothermal development, groundwater pumping, sand and gravel removal, and off-highway vehicle activity have contributed to habitat destruction or degradation in Mexico. Johnson and Spicer (1985) estimated 66 and 14 percent of the remaining habitat in Baja California Norte and Sonora, respectively, were threatened with destruction.

The flat-tailed horned lizard has usually been described as uncommon or rare (Klauber 1932, Turner and Medica 1982, Turner *et al.* 1980b, Rorabaugh *et al.* 1987). However, evidence suggests it was once more abundant. In the early 1960's this species was one of the most common lizards along Highway 78 in East Mesa, Imperial County, California (Carlson and Mayhew 1988, Mayhew 1965). However, this area was identified as supporting low densities of flat-tailed horned lizards during more recent surveys (Turner and Medica 1982). Norris (1949) speculated the species was fairly common in an area of the Coachella Valley where, currently, flat-tailed horned lizards occur in low densities (Barrows 1986, Turner *et al.* 1980b).

Declining relative abundance indexes have been documented at one of the four flat-tailed horned lizard optimal habitat areas in California—the Yuha Desert (Bureau of Land Management 1991; Gavin Wright, Bureau of Land Management, pers. comm., 1993). Relative abundance is stable at two other areas in California, but data are inadequate to evaluate trends at the fourth area in California and in those areas in Arizona. Recreational off-highway vehicle activity, utility corridor construction, sand and gravel extraction, geothermal development, Border Patrol activity, and highway maintenance work are implicated in the declines of the flat-tailed horned lizard (Bolster and Nicol 1989, Bureau of Land Management 1991).

The Benson Dry Lake area was described by Turner *et al.* (1980b) as the most remarkable of the four optimal habitat areas in California. This area is managed by California Department of Parks and Recreation, and although not subjected to many of the impacts that occur on Bureau of Land Management lands, it is located within the Ocotillo Wells State Vehicular Use Area, and off-highway vehicular use there may be responsible for observed declines in flat-tailed horned lizards (Bolster and Nicol 1989). California Department of Parks and Recreation is in the process of expanding the Ocotillo Wells State Vehicular Use Area onto an additional 45 square miles of flat-tailed horned lizard habitat, currently under management by the Bureau of Land Management (California Department of Parks and Recreation 1986; K. Nicol, California Department of Fish and Game, pers. comm., 1992).

Habitat loss and other impacts have caused fragmentation of this species' distribution. Agricultural and urban development in the Imperial Valley have isolated populations in East Mesa from those west of the Salton Sea, in the Yuha Desert, and in the Superstition Mountain area. Flat-tailed horned lizards in the Coachella Valley may be geographically isolated from lizards in the Imperial Valley because of the filling of the Salton Sea and conversion of habitat to croplands (Turner *et al.* 1980b). The All American and Coachella Canals are likely barriers to movement, and major highways such as Interstate 8 in Imperial County and Interstate 10 in Riverside County further fragment populations. The importance of habitat fragmentation in determining the status of this species is linked to the insular properties of isolated populations (Shafer 1990). Fragmentation creates isolated populations that, because of reduced population size, have an increased probability of extirpation (Wilcox and Murphy 1985). Once a local population is extirpated, recolonization of that area by individuals from adjacent

populations is rendered unlikely due to its isolation (Frankel and Soule 1981).

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

Horned lizards have been popular in the pet trade for many years, but generally do poorly in captivity (Stebbins 1985). The extent to which this factor has contributed to the decline of the flat-tailed horned lizard is unknown. The cryptic nature of this species makes it difficult to find, thereby eliminating collection as a major factor in this species' decline (Bolster and Nicol 1989).

C. Disease or Predation

Parasitism by nematodes and red mites has been observed in some flat-tailed horned lizards (Norris 1949), but this is not believed to be a threat to the species (Bolster and Nicol 1989). Bolster and Nicol (1989) suggested that predation of flat-tailed horned lizards near agricultural areas and urban areas may be elevated because of the presence of house cats in urban areas and the abundance of loggerhead shrikes and other predatory birds in croplands.

D. The Inadequacy of Existing Regulatory Mechanisms

The States of California and Arizona prohibit the collection of flat-tailed horned lizards except by permit. Arizona has further designated the flat-tailed horned lizard as a threatened species, which includes "species or subspecies whose continued presence in Arizona could be in jeopardy in the near future. Serious threats have been identified and populations are (a) lower than they were historically or (b) extremely local and small" (Arizona Game and Fish Department 1988). Nevertheless, no State regulations protect the habitat of this species. State listing in Arizona has no regulatory requirements, but is used as a planning aid to prevent further population declines.

In California, the flat-tailed horned lizard occurs in several special management areas where it receives varying levels of protection. The Bureau of Land Management has designated three Areas of Critical Environmental Concern (ACEC) for protective management of the flat-tailed horned lizard and its habitat. These include the East Mesa, Yuha Desert, and West Mesa (Superstition Mountain area) ACECs. The East Mesa and Yuha Desert ACECs also fall within the boundaries of wildlife habitat areas that require preparation of habitat management plans to address protection of special status species, such as the flat-tailed horned lizard. This species also occurs within the boundaries of the San Sebastian Marsh ACEC and two wilderness study areas (WSAs): The North Algodones Dunes and South Algodones Dunes WSAs. In eastern San Diego County, the flat-tailed horned lizard occurs within the boundaries of Anza Borrego Desert State Park where resource protection is a high priority. In Riverside County, the flat-tailed horned lizard occurs at the Coachella Valley Preserve, an area managed jointly by the Bureau of Land Management, Fish and Wildlife Service, California Department of Fish and Game, and The Nature Conservancy for the preservation of the Coachella Valley fringe-toed lizard, a federally listed threatened species.

The ACEC and wildlife habitat area designations by the Bureau of Land Management have had limited success in protecting flat-tailed horned lizard habitat. ACEC management goals include a provision to: "Provide for other uses in the designated areas compatible with the protection and enhancement of the significant natural and cultural resources" (Bureau of Land Management 1980). Although management prescriptions for the ACECs include measures such as restricting off-highway vehicle use, a variety of human uses are allowed and the relative abundance of the flat-tailed horned lizard has declined in the Yuha Desert ACEC (Bureau of Land Management 1991; Gavin Wright, pers. comm., 1993).

The two WSAs in the Algodones Dunes are managed by the Bureau of Land Management under "interim management policy guidelines" that require these areas be managed "so as not to impair the suitability of such areas for preservation as wilderness" (Section 603(c), Federal Land Policy Management Act of 1976—43 U.S.C. 1782(c)). Limited habitat for the flat-tailed horned lizard exists in these two wilderness study areas, with the species probably afforded some protection by these designations. The flat-tailed horned lizard is not well represented or abundant in either Anza Borrego Desert State Park or the Coachella Valley Preserve (Turner *et al.* 1980b). Habitat in these areas is relatively well protected from human-caused impacts. Although human activities are regulated, habitat degradation and population declines continue.

In Arizona, the flat-tailed horned lizard occurs within the boundaries of the Gran Desierto Dunes ACEC. The Yuma Desert habitat management plan addresses protection of most flat-tailed horned lizard habitat on the Barry Goldwater Range. Implementation of management prescriptions in these areas is complicated due to joint management by the Bureau of Land Management and the Department of the Air Force.

In Sonora, Mexico, the species occurs within the Pinacate Protective Zone, an area administered by the Mexican government, and with use restrictions similar to a National Park in the United States. However, the boundaries of this area are not well established, enforcement of regulations is minimal, and the distribution and abundance of the flat-tailed horned lizard is not well known in this area. The Pinacate Protective Zone is primarily a volcanic zone that contains limited habitat for flat-tailed horned lizards (C. Wilson, Organ Pipe National Monument, Arizona, pers. comm., 1992; Johnson and Spicer 1985).

E. Other Natural or Manmade Factors Affecting Its Continued Existence

The California Department of Food and Agriculture has sprayed pesticides in flat-tailed horned lizard habitat in East Mesa and the Yuha Desert to control the beet leafhopper (*Circulifer tenellus*), an agricultural pest. The extent of pesticide treatment varies annually depending upon the predicted severity of the infestation, but treatment of any one area generally occurs every 3 to 5 years (California Department of Food and Agriculture 1991). Pesticide treatments in East Mesa and the Yuha Desert have occurred over a period of more than 30 years and have consisted of aerial spraying of DDT mixed with diesel oil, and in later years, aerial application of malathion (Bolster and Nicol 1989). These pesticide treatments may contribute to the observed decline of the flat-tailed horned lizard, particularly in East Mesa (Bolster and Nicol 1989, Edwards 1979, Olech 1984, Carlson and Mayhew 1988, Rado 1981). Populations of the blunt-nosed leopard lizard (*Gambelia silus*), a federally listed threatened species of the San Joaquin Valley in California have declined due to pesticide applications (Snow 1972). Of particular concern is the effect aerial pesticide application may have on harvester ants, which are the primary prey item of the flat-tailed horned lizard from May through July (Carlson and Mayhew 1988, Muth and Fisher 1991, Turner and Medica 1982). Pesticide drift from croplands may also adversely affect flat-tailed horned lizards in adjacent desert lands (Bolster and Nicol 1989). Recently proposed changes in the beet leafhopper control program may reduce impacts to the flat-tailed horned lizard and its prey base (California

Department of Food and Agriculture 1991).

Precipitation has been correlated with insect abundance and lizard densities (Mayhew 1965, Pianka 1986, Wisdom 1991, Turner *et al.* 1982). Within the range of the flat-tailed horned lizard, rainfall, particularly summer rainfall, is highly unpredictable both temporally and spatially (Turner and Brown 1982). Localized areas may experience long-term drought, which, in turn, may result in decreased local lizard populations. Because of the fragmented distribution of the flat-tailed horned lizard, this unpredictability in precipitation increases the chance of localized extirpations.

The Service has carefully assessed the best scientific and commercial information available regarding the past, present, and future threats to this species. Based on this evaluation, the preferred action is to list the flat-tailed horned lizard as threatened. The Act states that the term "threatened species" means any species likely to become an endangered species within the foreseeable future. The Act defines an "endangered species" as one that is in danger of extinction throughout all or a significant portion of its range. Much of the habitat of this species has been lost, fragmented, or degraded by human use, and relative densities of this lizard have declined in at least one of five optimal habitat areas. In addition, current regulatory mechanisms and special management actions by the Bureau of Land Management and others have been inadequate in stemming habitat loss or reversing these declines. However, flat-tailed horned lizard relative abundance is apparently stable in two optimal habitat areas in California, and although relative abundance trend data does not exist for Arizona, the habitat in Arizona is less threatened than in California, and threats are minimal in much of Sonora. The Service, therefore, believes the flat-tailed horned lizard meets the definition of a threatened species under the Endangered Species Act.

Critical Habitat

Section 4(a)(3) of the Act, as amended, requires that to the maximum extent prudent and determinable, the Secretary designate any habitat of a species that is considered to be critical habitat at the time the species is determined to be endangered or threatened. Furthermore, the Service is to designate critical habitat on the basis of the best scientific and commercial data available after taking into consideration the economic and other relevant impacts of specifying an area as critical habitat (16 U.S.C. 1533(b)(2)).

The Service finds that proposing critical habitat for the flat-tailed horned lizard is not determinable at this time. Designation of critical habitat must take into account the economic impact of specifying particular areas as critical habitat. The data to evaluate economic impacts resulting from such designation are not currently available. In addition, although five areas of optimal habitat have been identified (which could be appropriate as critical habitat), the data necessary to define boundaries are, in some cases, dated particularly in the case of the Benson Dry Lake area. In Arizona, data are lacking to clearly define an eastern boundary of any proposed critical habitat there. A delay in the proposed listing of the species to gather additional information and perform analyses would not serve the needs of this species. The Service will continue to gather information on the flat-tailed horned lizard and will publish a determination on the designation of critical habitat at a later date.

Available Conservation Measures

Conservation measures for species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain practices. Recognition through listing encourages and results in conservation actions by Federal, State, county, and private agencies; groups; and individuals. The Endangered Species Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Such actions are initiated prior to listing, conditions permitting. The protection required of Federal agencies and the prohibitions against taking and harm are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat, if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(4) of the Act requires Federal agencies to confer informally with the Service on any action that is likely to jeopardize the continued existence of a proposed species or result in destruction or adverse modification of proposed critical habitat. If a species is listed subsequently, section 7(a)(2) requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of such a species or to destroy or adversely modify its critical habitat. If a proposed Federal action may affect a listed species, the responsible Federal agency must enter into formal consultation with the Service.

Federal agencies likely to be affected by this proposal to list the flat-tailed horned lizard include the Bureau of Land Management, which administers most of the habitat in California, Bureau of Reclamation, Border Patrol, and Departments of the Air Force and Navy. The Department of the Navy manages several withdrawn parcels in the Imperial Valley, including lands in the Superstition Mountain area, southwest end of the Salton Sea, and East Mesa. Luke Air Force Base and the Bureau of Land Management jointly manage flat-tailed horned lizard habitat on the Barry Goldwater Range in Arizona. The Marine Corps Air Station at Yuma uses the western portion of the Barry Goldwater Range where the flat-tailed horned lizard occurs. The Bureau of Reclamation administers much of the habitat in Arizona west of the Barry Goldwater Range, as well as scattered parcels in the Imperial and Coachella Valleys. Most of these lands are managed jointly with the Bureau of Land Management. The Border Patrol does not administer any Federal lands, but carries out patrol and enforcement activities on lands along the international border in both California and Arizona.

The Act and its implementing regulations found at 50 CFR 17.21 and 17.31 set forth a series of general prohibitions and exceptions that apply to all threatened wildlife. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to take (including harass, harm, pursue, hunt, shoot, wound, kill, trap, or collect; or attempt any such conduct), import or export, transport in interstate commerce in the course of a commercial activity, or sell or offer for sale in interstate or foreign commerce any listed species. It is also illegal to possess, sell, deliver, carry, transport, or ship any such wildlife that has been taken illegally. Certain exceptions apply to agents of the Service and State conservation agencies.

Permits may be issued to carry out otherwise prohibited activities involving threatened wildlife species under certain circumstances. Regulations governing permits are at 50 CFR 17.22, 17.23, and 17.32. Such permits are available for scientific purposes, to enhance the propagation or survival of the species, and/or for incidental take in connection with

otherwise lawful activities. For threatened species, there are also permits for zoological exhibition, educational purposes, or special purposes consistent with the purposes of the Act. Requests for copies of the regulations and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, Room 432, Arlington, Virginia 22203–3507, (703) 358–2104.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, any comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning any aspect of this proposal are hereby solicited. Comments particularly are sought concerning:

(1) Biological, commercial trade, or other relevant data concerning any threat (or lack thereof) to the flat-tailed horned lizard;

(2) The location of any additional populations of this species and the reasons why any habitat should or should not be determined to be critical habitat for the flat-tailed horned lizard as provided by section 4 of the Act;

(3) Additional information concerning the range, distribution, and population density of the flat-tailed horned lizard; and

(4) Current or planned activities in the subject area and their possible impacts on the flat-tailed horned lizard.

Any final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Endangered Species Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Fish and Wildlife Service (see ADDRESSES section).

National Environmental Policy Act

The Fish and Wildlife Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Endangered Species Act of 1973, as amended. A notice outlining the Service's reasons for this determination was published in the **Federal Register** on October 25, 1983 (48 FR 48244).

References Cited

A complete list of all references cited herein, as well as others, is available upon request (see **ADDRESSES** section).

Authors

The primary authors of this proposed rule are Jim Rorabaugh and Judy Hohman, U.S. Fish and Wildlife Service, 2140 Eastman Avenue, Suite 100, Ventura, California 93003 (805/644–1766); and Karla Kramer, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 NE 11th Street, Portland, Oregon, 97232 (503/231–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17, subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

Part 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

2. Section 17.11(h) is amended by adding the following in alphabetical order under "Reptiles" to the List of Endangered and Threatened Wildlife to read as follows:

§ 17.11 Endangered and threatened wildlife.

* * * * *

(h) * * *

Species		Historic range	Vertebrate population where endangered or threatened	Status	When listed	Critical habitat	Special rules
Common name	Scientific name						
•	•	•	•	•	•		•
Reptiles							
•	•	•	•	•	•		•
Lizard, flat-tailed horned.	*Phrynosoma mcallii*	U.S.A. (CA, AZ), Mexico.	Entire	T		NA	NA
•	•	•	•	•	•		•

Dated: November 8, 1993.

Richard N. Smith,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–29102 Filed 11–26–93; 8:45 am]

BILLING CODE 4310–55–P

50 CFR Part 17

RIN 1018–AC14

Endangered and Threatened Wildlife and Plants; Proposed Reclassification of the Plant Eryngium constancei (Loch Lomond Coyote-thistle) From Endangered to Threatened Status

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Proposed rule.

SUMMARY: The Fish and Wildlife Service (Service) proposes to reclassify *Eryngium constancei* (Loch Lomond coyote-thistle) from endangered to threatened status. This action is proposed due to substantial improvement in the status of this species. The only known location of this plant is now owned by the California Department of Fish and Game and, therefore, its habitat is largely protected from dredging and off-road vehicle traffic, the primary threats that

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prompted emergency listing of the species in 1985. The plant is still threatened by occasional fence vandalism and vehicle trespass, logging and development within the lake watershed, and the risk of extirpation of the single population by chance events. This rule is proposed under the Endangered Species Act of 1973, as amended (Act), and is based on a thorough review of all available data. The proposed change in classification reflects an improvement in status and will not significantly alter the protection of this species under the Act. The Service seeks data and comments from the public on this proposal.

DATES: Comments from all interested parties must be received by January 28, 1994. Public hearing requests must be received by January 13, 1994.

ADDRESSES: Comments and materials concerning this proposal should be sent to the Field Supervisor, Sacramento Field Office, U.S. Fish and Wildlife Service, 2800 Cottage Way, room E–1803, Sacramento, California 95825–1846. Comments and materials received will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Jan Knight (see **ADDRESSES** section) at 916/978–4866.

SUPPLEMENTARY INFORMATION:

Background

Eryngium constancei (Loch Lomond coyote-thistle), a perennial herb of the parsley family (Apiaceae), annually produces slender, weak scapes (leafless flowering stalks) up to 30 centimeters (cm) (12 inches (in)) in height from its over-wintering rootstock (Sheikh 1983). The basal leaves, divided by septa (internal partitions), range from 10 to 20 cm (4 to 8 in) in length. Slender petioles, 8 to 12 cm (3 to 5 in) in length and usually longer than the leaf blade, bear diminutive spines. A dense "down" of minute hairs, unique to *E. constancei*, covers the leaves and especially the scapes. This character and the species' sparse flowers distinguish *E. constancei* from its closest relative, *E. aristulatum* var. *aristulatum*, and all other species of western North American *Eryngium* (Sheikh 1983).

Eryngium constancei was first collected by Robert Hoover in 1941 from the vernal lake near the community of Loch Lomond in southern Lake County, California. M. Yusuf Sheikh and Lincoln Constance recollected the plant in 1973. Later Sheikh (1983) described *E. constancei* along with two other *Eryngium* taxa. Sheikh, as part of his doctoral study completed in 1978, intensively searched for and failed to discover additional populations of the plant at other localities. Subsequent searches made in 1984 by two botanists employed by the State of California did not reveal any new populations of the plant.

In 1984, the owner of the species' habitat dredged and filled about 15 percent of the lakebed, and planned similar action for the rest of the lake. At that time, *E. constancei* habitat was also threatened by off-road vehicles and hikers, highway maintenance, and trash dumping. The Service was also concerned that an existing ditch that emptied into Cole Creek from the center of the lake might allow the escape of water needed to maintain high habitat quality.

The portion of the lakebed dredged and filled in 1984 was graded and reseeded with *Eryngium constancei* in late 1985. By 1992 *E. constancei* was firmly reestablished in this area (Ann Howald, California Department of Fish and Game, pers. comm., 1992). The 3-hectare (ha) (7-acre) vernal lake and an additional 0.4 ha (1 acre) of land surrounding the lake were purchased by the California Department of Fish and Game (CDFG) in 1988. A split-rail fence was constructed in 1989 with funds provided by the Service through section 6 of the Act. Vandals removed some rails from the fence in 1992, allowing motorcycle access to the lake. The fence was repaired later in the same year, and the rails were wired to the fenceposts to discourage further vandalism.

The Service published an emergency rule listing *E. constancei* an endangered species on August 1, 1985 (50 FR 31187). On March 26, 1986, the Service proposed *E. constancei* as an endangered species (51 FR 10412) prior to the expiration of the emergency rule on March 29, 1986. The Service determined *E. constancei* to be endangered with the publication of a final rule on December 23, 1986 (51 FR 45904).

Summary of Factors Affecting the Species

The Service proposes to reclassify *Eryngium constancei* from endangered to threatened status. Section 4 of the Endangered Species Act and regulations promulgated to implement the listing provisions of the Act (50 CFR part 424) require that certain factors be considered before a species can be listed, reclassified, or delisted. These factors and their application to *Eryngium constancei* Sheikh (Loch Lomond coyote-thistle) are as follows:

A. *The Present or Threatened Destruction, Modification, or Curtailment of Its Habitat or Range*

The predominant threat facing *Eryngium constancei* at the time it was listed as endangered was the landowner's plan to dredge and fill the lake. This threat has been removed by the purchase of the property by CDFG. The fencing around the lake has greatly reduced the incidence of off-road vehicle and pedestrian use of the lakebed. The fencing is not likely to be completely successful in excluding off-road vehicle users, however, given the proximity of the lakebed to vacation homes and recreation areas, the convenience of its location immediately adjacent to the highway, and the appeal of the open lakebed, which is unusual in the heavily forested region.

At the time of listing, highway maintenance presented an occasional threat to *Eryngium constancei* habitat. This threat has been diminished by the listing of the species. Because the California Department of Transportation uses funds from the Federal Highways Administration, any roadwork that might affect the plant likely would require consultation under section 7 of the Act.

No appreciable amount of trash has been dumped in the lakebed since the fence was built (Allan Buckman, CDFG, pers. comm., 1992), but given the proximity of the site to the highway, trash dumping could occur in the future. However, the amount of dumping likely to occur does not constitute a substantial threat to the survival and recovery of *Eryngium constancei*.

The manmade ditch running from the center of the lake to Cole Creek in the north decreases the water holding capacity of the lake. This channel could be blocked to increase the storage capacity of the lake. However, casual observations suggest that the population has remained stable, and such management actions have not been thought to be necessary (Allan Buckman, pers. comm., 1992).

Another threat to *Eryngium constancei* habitat is development on watershed lands to the west and south of the lake. Changes in drainage patterns caused by development could reduce the flow of water or increase the amount of sediment carried into the lake, either of which would have detrimental effects on the plant habitat. One project has been approved for construction within the watershed south of the lake. This project includes a mini-storage unit immediately to the south and southwest of the lake, and commercial storage units further south. The project has been

approved on condition that runoff from the site be directed away from the lake (Mark Phillips, Lake County Planning Department, pers. comm., 1992), as recommended by CDFG. Construction of the storage unit in accordance with permit conditions will eliminate the threat from runoff from this project. Operation of the facility is likely, however, to increase the threats to *Eryngium constancei* from pedestrian traffic and trash dumping.

A parcel immediately to the west of the lake was logged within the past 5 years. A shelterwood cut, in which tractors were used to remove the largest trees in the stand, was conducted on 135 ha (335 acres). The removal of trees and the disturbance caused by logging can increase erosion. Increased erosion likely would result in increased sediment deposition in the lake. The Service has no information regarding the changes in erosion and deposition due to the logging activity, or what effect further removal of tree cover might have on the vernal lake. At the request of CDFG, logging roads constructed on this parcel were designed to direct the flow of water away from the lake to avoid the deposition of sediment from the road surfaces (Allan Buckman, pers. comm., 1992).

CDFG would like to acquire the property west of the lake, but funding has not been available and is not likely to be forthcoming in the near future. Logging and development in the watershed will, therefore, continue to pose a threat to the vernal lake. This threat is reduced but not eliminated by CDFG's review of proposed activity in the area.

B. Overutilization for Commercial, Recreational, Scientific, or Educational Purposes

The Loch Lomond lakebed is visited by botanists and students but there is no evidence of overutilization of *Eryngium constancei*. The site is difficult for CDFG personnel to patrol regularly because of its distance from Department headquarters in Yountville, a town in a more urbanized area of the county 80 kilometers (km) (50 miles) away. For these reasons, vandalism and inappropriate use of the area are likely to occur occasionally. However, the present level of disturbance does not constitute a substantial threat to the survival and recovery of the species.

C. Disease or Predation

No Diseases or predators are known to affect *Eryngium constancei*. Livestock grazing is prevented by the fence.

D. The Inadequacy of Existing Regulatory Mechanisms

Under the Native Plant Protection Act (Chapter 10 sec. 1900 *et seq.* of the Fish and Game Code) and California Endangered Species Act (Chapter 1.5 sec. 2050 *et seq.*), the California Fish and Game Commission has listed *Eryngium constancei* as endangered. Both statutes prohibit the "take" of State-listed plants (Chapter 10 sec. 1908 and Chapter 1.5 sec. 2080). The one known location of *E. constancei* was purchased and is managed by CDFG to protect the plant and its habitat. If the proposed reclassification to threatened status becomes final, little change in the protection afforded this species under these regulatory mechanisms is anticipated. Existing regulatory mechanisms determined necessary to protect this species will remain in effect.

E. Other Natural or Manmade Factors Affecting Its Continued Existence

A landowner on the east side of State Route 175 periodically empties his swimming pool into a roadside ditch that delivers water into the western roadside ditch via a culvert under the road. The berm between the western ditch and the lake is 5 meters (15 feet) wide in some places, but only 1 meter (3 feet) wide in others (Ann Howald, pers. comm., 1992). It may be possible for water to breach or soak through the berm into the lake. Influx of water in late summer could cause regrowth of plants or germination of seeds that might not survive until the fall rains. In 1992, the water was released in late September, and did not enter the lake, but remained in the roadside ditch (Allan Buckman, pers. comm., 1992). Given current conditions, the emptying of this pool does not appear to be a threat to the plant. Regular monitoring of the ditch and berm system by CDFG would reveal any decline in its status, and would prevent an increase in threat from this source.

The greatest danger to the species at this time is its occurrence as a single population. The limited distribution of this plant means that a single local catastrophe (such as fire, flood, severe drought, or a pest or disease outbreak), or a combination of several such events, could destroy all the individuals of the species. Catastrophic events have destroyed populations of other rare plants. For example, a localized flood eliminated an entire population of *Oenothera organensis*, a rare plant endemic to riparian canyons in southern New Mexico (Katie Skaggs, The Nature Conservancy, pers. comm., 1992).

A local catastrophe is more likely to reduce the size of the *Eryngium constancei* population and the vigor of the individual plants than to completely eliminate the population. A decrease in population size increases the risk of extirpation due to genetic problems associated with small populations (Barrett and Kohn 1991, Menges 1991). Less vigorous plants are more susceptible to succeeding threats. A prolonged drought, for instance, may lower the resistance of plants to attacking pests.

The threats to plant populations of chance events such as fire, flood, drought, pest or disease outbreaks, or a combination of these factors, are serious and ever present. These events are usually restricted to a local area, smaller than the entire range of a plant species, and affect only one or a few populations of any given species. For most species, the loss of a single population presents no threat to the species as a whole. For *Eryngium constancei*, however, the loss of a single population would mean the extinction of the species.

In reviewing the progress toward recovery since listing, the Service concludes that *Eryngium constancei* is no longer in imminent danger of extinction. The purchase of the lake by CDFG has removed the greatest immediate threat to the plant, the proposed dredging and filling of the vernal lake. The fencing of the lake has greatly reduced the threat of habitat and plant destruction through off-road vehicle use of the lakebed. The plant appears to have recovered from the 1984 dredging action and from the extended off-road vehicle use of the lakebed. However, due to the continued though presently minor threats from off-road vehicles and hikers, highway maintenance, and watershed development, and the more serious threat presented by the occurrence of the species in a single population, the Service finds that the species continues to need the protection afforded by the Act and could become endangered. Based on a careful assessment of the best scientific and commercial information available regarding past, present, and future threats faced by this species, the preferred action is therefore to reclassify *Eryngium constancei* from endangered to threatened status. For reasons discussed under the Critical Habitat section, critical habitat is not being proposed for this species.

Critical Habitat

Section 4(a)(3) of the Act requires that to the maximum extent prudent and determinable, the Secretary designate critical habitat at the time a species is

determined to be endangered or threatened. At the time of listing of Eryngium constancei, the Service found that determination of critical habitat was not prudent for this species. The reasons given for that decision still apply. Discussion of the status of the plant publicizes its rarity and can make the plant attractive to collectors of rare plants, researchers, and vandals. Publication of precise maps and descriptions of critical habitat in the **Federal Register** would make this herb even more vulnerable and could contribute to the decline of the species. Furthermore, critical habitat designation is not prudent due to lack of benefit to the species. The only known population of *E. constancei* is confined to Loch Lomond. Because *E. constancei* has always been restricted to the single population at Loch Lomond, actions that would appreciably diminish the value of Loch Lomond for the survival and recovery of the species would also jeopardize the continued existence of this highly restricted plant. No areas outside of Loch Lomond are known to have supported this plant in the past; therefore, no additional sites exist that could be considered integral to the species' recovery. For these reasons, the Service finds that designation of critical habitat is not prudent because it would provide no additional benefit to the species beyond those it would receive by virtue of its designation as a threatened species.

Available Conservation Measures

Conservation measures provided to species listed as endangered or threatened under the Act include recognition, recovery actions, requirements for Federal protection, and prohibitions against certain activities. Recognition through listing encourages and results in conservation actions by Federal, State, and private agencies, groups, and individuals. The Act provides for possible land acquisition and cooperation with the States and requires that recovery actions be carried out for all listed species. Some recovery actions, such as purchase and fencing of the habitat, have been completed already for this species. Further recovery actions, such as ecological studies of the species, may be carried out by Federal or State agencies or interested groups or individuals. The protection required of Federal agencies and the prohibition against collecting are discussed, in part, below.

Section 7(a) of the Act, as amended, requires Federal agencies to evaluate their actions with respect to any species that is proposed or listed as endangered or threatened and with respect to its critical habitat if any is being designated. Regulations implementing this interagency cooperation provision of the Act are codified at 50 CFR part 402. Section 7(a)(2) of the Act requires Federal agencies to ensure that activities they authorize, fund, or carry out are not likely to jeopardize the continued existence of a listed species or to destroy or adversely modify its critical habitat. If a Federal action may affect a listed species or its critical habitat, the responsible Federal agency must enter into formal consultation with the Service. The only Federal activity potentially impacting *Eryngium constancei* is the funding by the Federal Highway Administration of maintenance or construction activities for State Route 175. Because the habitat is now owned and managed by CDFG, no applications to the U.S. Army Corps of Engineers for dredge and/or fill permits are anticipated.

The Act and its implementing regulations found at 50 CFR 17.71 and 17.72 set forth a series of general prohibitions and exceptions that apply to all threatened plants. All trade prohibitions of section 9(a)(2) of the Act, implemented by 50 CFR 17.71, apply. These prohibitions, in part, make it illegal for any person subject to the jurisdiction of the United States to import or export any threatened plant, transport it in interstate or foreign commerce in the course of a commercial activity, sell or offer it for sale in interstate or foreign commerce, or remove it from areas under Federal jurisdiction and reduce it to possession. Seeds of cultivated specimens of threatened plant species are exempt from these provisions, provided that a statement that the seeds are of "cultivated origin" accompanies the seeds or their container during the course of any activity otherwise subject to these provisions. Certain exceptions can apply to agents of the Service and State conservation agencies. The Act and 50 CFR 17.72 also provide for the issuance of permits to carry out otherwise prohibited activities involving threatened plant species under certain circumstances. International and interstate trade in *Eryngium constancei* is not known to exist. The Service anticipates few trade permits would ever be sought or issued because the species is not common in cultivation or in the wild. Requests for copies of the regulations on plants and inquiries regarding them may be addressed to the Office of Management Authority, U.S. Fish and Wildlife Service, 4401 North Fairfax Drive, room 432, Arlington, Virginia 22203–3507 (703/358–2104).

The proposed action would change the status of *Eryngium constancei* from endangered to threatened in recognition of the relative security of this species, which is no longer in imminent danger of extinction throughout its range. This proposed change in classification does not substantially alter the protection for this species under the Act. Federal agencies still would be required to consult with the Secretary of the Interior to insure that any action authorized, funded, or carried out by such agency is not likely to jeopardize the continued existence of *Eryngium constancei*. Federal prohibitions under section 9 of the Act still would apply.

Public Comments Solicited

The Service intends that any final action resulting from this proposal will be as accurate and as effective as possible. Therefore, comments or suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning this proposed rule are hereby solicited. Comments particularly are sought concerning:

(1) Biological or other relevant data concerning any threat (or lack thereof) to *Eryngium constancei*;

(2) The location of any additional populations of this species; and the reasons why any habitat should or should not be designated as critical habitat as provided by section 4 of the Act; and

(3) Current or planned activities in the subject area and their possible impacts on this species.

The final decision on this proposal will take into consideration the comments and any additional information received by the Service, and such communications may lead to adoption of a final regulation that differs from this proposal.

The Act provides for a public hearing on this proposal, if requested. Requests must be filed within 45 days of the date of the proposal. Such requests must be made in writing and addressed to the Field Supervisor of the Sacramento Office (see **ADDRESSES** section).

National Environmental Policy Act

The Service has determined that an Environmental Assessment, as defined under the authority of the National Environmental Policy Act of 1969, need not be prepared in connection with regulations adopted pursuant to section 4(a) of the Act. A notice outlining the Service's reasons for this determination

was published in the **Federal Register** on October 25, 1983 (48 FR 49244).

References Cited

Barrett, S.C.H., and J.R. Kohn. 1991. Genetic and evolutionary consequences of small population size in plants: Implications for conservation. In: Falk, D.A., and K.E. Holsinger, eds. *Genetics and Conservation of Rare Plants*. Center for Plant Conservation. Oxford University Press. pp. 45–61.

Menges, E.S. 1990. Population viability analysis for an endangered plant. Conservation Biology 4(1):52–62.

Menges, E.S. 1991. The application of minimum viable population theory to plants. In: Falk, D.A., and K.E. Holsinger, eds. *Genetics and Conservation of Rare Plants*. Center for Plant Conservation. Oxford University Press. pp. 45–61.

Sheikh, M.Y. 1983. New taxa of western North American *Eryngium* (Umbelliferae). Madroño 30:93–101.

Author

The primary author of this proposed rule is Jeanine Hardison (see **ADDRESSES** section).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, and Transportation.

Proposed Regulation Promulgation

Accordingly, the Service hereby proposes to amend part 17 subchapter B of chapter I, title 50 of the Code of Federal Regulations, as set forth below:

PART 17—[AMENDED]

1. The authority citation for part 17 continues to read as follows:

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500, unless otherwise noted.

§ 17.12(h) [Amended]

2. Section 17.12(h) for plants is amended by revising the entry under "Apiaceae—Parsley family" for *Eryngium constancei* to read "T" under "Status."

Dated: November 3, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–29103 Filed 11–26–93; 8:45 am]

BILLING CODE 4310–55–P

Notices

Federal Register
Vol. 58, No. 227
Monday, November 29, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Office of the Secretary

Privacy Act of 1974: Computer Matching Program for the Disqualified Recipient Subsystem—U.S. Department of Agriculture and State Welfare Agencies Administering the Food Stamp Program

AGENCY: Office of the Secretary, USDA.

ACTION: Second Notice of Computer Matching Programs for the Disqualified Recipient Subsystem—U.S. Department of Agriculture and State welfare agencies administering the Food Stamp Program.

SUMMARY: On June 16, 1993, the Food and Nutrition Service (FNS), U.S. Department of Agriculture (USDA) provided notice (58 FR 33246) of its intent to conduct a computer matching program with all fifty States as well as the District of Columbia, Guam, and the Virgin Islands. However, not all of the States were fully prepared to participate in the computer matching program at its inception and only those (28 States) that had completed technical preparations and executed computer matching agreements were included under that notice. This notice announces the participation of twelve additional States in the computer matching program. These include the States of Delaware, Guam, Hawaii, Illinois, Indiana, Michigan, North Carolina, New Jersey, Virginia, Vermont, Wisconsin, and Wyoming. As the remainder of the States complete technical preparations and execute computer matching agreements, FNS will once again publish additional notices to announce their inclusion in this matching program.

The matching program will enable State agencies to determine appropriate periods of disqualification from participation in the Food Stamp Program for intentional program violations. To assign appropriate periods of disqualification, State agencies will match data on individuals recently determined to have committed intentional program violations with an FNS-maintained, centralized data bank list of individuals previously disqualified. Then, based on the number of times an individual has been disqualified, an appropriate period of disqualification will be assigned for the latest violation.

The matching program will also enable State agencies to prevent the certification or detect the participation of individuals who are in a disqualified status. At their option, State agencies may match the FNS-supplied data against their records of applicants and/or recently-certified individuals to insure that those currently in a disqualified status do not participate. Matches will be conducted in accordance with written agreements between USDA and each of the State agencies.

This notice is required by Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988. The information provided is in accordance with paragraph 6.c. of the Final Guidance Interpreting Pub. L. 100–503 issued by the Office of Management and Budget, 54 FR 25818 (June 19, 1989). A copy of this notice has been provided to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget.

DATES: In accordance with section 2 of Pub. L. 100–503, the Computer Matching and Privacy Protection Act of 1988, 5 U.S.C. 552a(o)(2)(B) the matching programs will begin no sooner than 30 days after the signed agreements are transmitted to the Committee on Government Operations, U.S. House of Representatives, the Committee on Governmental Affairs, U.S. Senate, and the Office of Management and Budget. This matching program will continue for 18 months, the maximum time period allowed under section 2 of Pub. L. 100–503, 5 U.S.C. 552a(o)(2)(C). At the end of that period, with the approval of the USDA Data Integrity Board, this matching program may be extended for an additional year without further notice.

ADDRESSES: Comments and inquiries should be addressed to: Cecilia Fitzgerald, Supervisor, State Management Section, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 907, 3101 Park Center Drive, Alexandria, VA 22302, telephone (703) 305–2386.

SUPPLEMENTARY INFORMATION: Pub. L. 97–35, the Omnibus Budget Reconciliation Act of 1981, requires that individuals who intentionally violate Food Stamp Program regulations more than once be assigned increasingly longer periods of disqualification for each subsequent offense. To assign appropriate disqualification periods, State agencies must have access to information on individuals who have previously been disqualified in other jurisdictions as well as their own. Although Congress, in Pub. L. 97–35, did not specify a system for assuring State agencies access to information on disqualified individuals, it did require State agencies to report disqualification actions to FNS. Thus, to enable States to act on this information as Congress intended, FNS will make this information available to State agencies through the Disqualified Recipient Subsystem.

FNS will act as the central collection point for data on disqualified individuals, which States will then access through the Disqualified Recipient Subsystem. The data will include the name, social security number, date of birth, and sex of disqualified individuals. If data in the Disqualified Recipient Subsystem indicates that an individual has been disqualified previously, the information obtained from the Disqualified Recipient Subsystem will be verified before a new period of disqualification is assigned. If the information in the Disqualified Recipient Subsystem originated in another State, that State will be asked to verify the subject data. This procedure will also be followed before any action is taken to deny an individual's application or terminate an individual's participation based on a match with the Disqualified Recipient Subsystem.

Food Stamp Program regulations provide for notification and due-process rights for individuals adversely affected by computer match programs.

Name of participating agencies: Food and Nutrition Service, USDA, and the

States of Delaware, Guam, Hawaii, Illinois, Indiana, Michigan, North Carolina, New Jersey, Virginia, Vermont, Wisconsin, and Wyoming.

Purpose: To facilitate the Congressional mandate to increase the length of disqualification from the Food Stamp Program for repeated instances of fraudulently obtaining Food Stamp Program benefits and to verify eligibility of applicants for Food Stamp Program benefits.

Authority: 7 U.S.C. 2015, the Food Stamp Act of 1977, as amended.

Files to be used in this matching program are: (1) The FNS—maintained file of State-provided disqualification information is entitled "Information on Persons Disqualified from the Food Stamp Program" and designated as USDA/FNS–5. This Privacy Act System of Records consists of standardized records containing identifying information (first name, middle initial, last name; social security number; date of birth; and sex) on individuals disqualified from the Food Stamp Program and information identifying the location, date(s) and length(s) of any disqualification determined and imposed.

(2) State agency food stamp recipient information files for each State, the District of Columbia, Guam, and the Virgin Islands.

Inclusive dates: In accordance with Section 2 of Public Law No. 100–503, 5 U.S.C. 552a(o)(2)(B) the Computer Matching and Privacy Protection Act of 1988, the matching programs will begin no sooner than 30 days after the signed agreements are transmitted to the Committee on Government Operations, U.S. House of Representatives, the Committee on Government Affairs, U.S. Senate, and the Office of Management and Budget. They will continue for 18 months, the maximum time period allowed under section 2 of Pub L. 100–503, 5 U.S.C. 552a(o)(2)(C). At the end of that period, with the approval of the USDA Data Integrity Board, this matching program may be extended for an additional year without further notice.

Public comments or inquires: Comments and inquiries should be addressed to: Cecilia Fitzgerald, Supervisor, State Management Section, State Administration Branch, Program Accountability Division, Food and Nutrition Service, U.S. Department of Agriculture, Room 907, 3101 Park Center Drive, Alexandria, VA 22302, telephone (703) 305–2386.

Signed at Washington, DC, on November 17, 1993.

Mike Espy,

Secretary of Agriculture.

[FR Doc. 93–29134 Filed 11–26–93; 8:45 am]

BILLING CODE 3410–30–M

DEPARTMENT OF COMMERCE

Economics and Statistics Administration

Advisory Committee of the Task Force for Designing the Year 2000 Census and Census-Related Activities for 2000–2009; Meeting

AGENCY: Economics and Statistics Administration, Department of Commerce.

ACTION: Notice of public meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act (Public Law 92–463, as amended by Public Law 94–409) we are giving notice of a meeting of the Advisory Committee of the Task Force for designing the Year 2000 Census and Census-Related Activities for 2000–2009. The meeting will convene on Monday, December 13, 1993, at the Bureau of the Census' Conference Center, Federal Building 3, Suitland, Maryland.

The Advisory Committee is composed of a Chair, twenty-five member organizations, and nine ex officio members, all appointed by the Secretary of Commerce. The Advisory Committee will consider the goals of the census and user needs for information provided by the census, and provide a perspective from the standpoint of the outside user community on how proposed designs for the year 2000 census realize those goals and satisfy those needs. The Advisory Committee shall consider all aspects of the conduct of the census of population and housing for the year 2000, and shall make recommendations for improving that census.

DATES: The meeting will begin at 9 a.m. and adjourn at 5 p.m. on Monday, December 13, 1993.

ADDRESSES: The meeting will take place at the Bureau of the Census' Conference Center, Federal Building 3, Suitland, Maryland.

FOR FURTHER INFORMATION CONTACT: Persons wishing additional information regarding this meeting, or who wish to submit written statements or questions, may contact Thomas P. DeCair, Department of Commerce, Bureau of the Census, room 2066, Federal Building 3, Washington, DC 20233. Telephone: (301) 763–7298.

SUPPLEMENTARY INFORMATION: The agenda for the meeting includes discussion of integrated coverage measurement, the role of state and local governments, and other items that the Chair and Advisory Committee members deem appropriate for this meeting.

The meeting is open to the public. A brief period will be set aside for public comment and questions. However, persons with extensive questions or statements for the record must submit them in writing to the Commerce Department official named above at least three working days prior to the meeting.

The meeting is physically accessible to people with disabilities. Requests for sign language interpretation or other auxiliary aids should be directed to Susan Knight on (301) 763–7298.

Dated: November 19, 1993.

Paul London,

Acting Under Secretary for Economic Affairs, Economics and Statistics Administration.

[FR Doc. 93–29165 Filed 11–26–93; 8:45 am]

BILLING CODE 3510–EA–M

Foreign-Trade Zones Board

[Docket 57–93]

Foreign-Trade Zone 75—Phoenix, Arizona; Application for Subzone, Intel Corporation Plant, (Integrated Circuits/ Computer Products), Chandler, Arizona

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the City of Phoenix, Arizona, grantee of FTZ 75, requesting special-purpose subzone status for the integrated circuit and data processing products manufacturing facility of Intel Corporation located in Chandler, Arizona (Phoenix Customs port of entry area). The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a–81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 22, 1993.

The Intel plant (930 acres, 1.5 mil. sq. ft.) consists of four sites located in Chandler (Maricopa County), Arizona, some 15 miles south of downtown Phoenix: Site 1 (184 acres)—main manufacturing and distribution, 5000 W. Chandler Blvd.; Site 2 (723 acres)—proposed expanded manufacturing, 97th St. and Chandler Heights Rd.; Site 3 (12 acres)—research, development and testing, 145 S. 79th St.; and, Site 4 (10 acres)—manufacturing laboratories, 6500 W. Chandler Blvd.

The facilities (4,300 employees) are used to produce a range of integrated

circuits and related products (HTS 8542.11.00—duty free), including microprocessors, OEM processor modules, embedded control chips, flash memory and microcomputer enhancement products. Foreign-sourced materials, which account for approximately 20 percent of finished product value, include resins, adhesives, plastics, photographic chemicals, ceramic products and industrial gold. About 50 percent of the finished products are exported.

Subzone status is important for Intel's expansion plans in Chandler, Arizona. The plans call for the addition of over 7 million square feet of manufacturing space (mainly at Site 2), which, in addition to the expanded production of integrated circuits, would be used in the production of a variety of microcomputer and telecommunication products, including personal computers, modems, computer board assemblies and other computer enhancement, networking and multimedia products. Foreign-sourced components and materials would include processors, disk drives, displays, printers, keyboards, printed circuit boards, transformers, capacitors, resistors, diodes, integrated circuits, electrical switches, wire, adhesives, photographic chemicals, poly vinyl chloride, resins, plastics, industrial gold, glass and ceramic products, batteries, fasteners, recording media, video apparatus, microphones, speakers, lamps, optical elements, electrodes and packaging.

Zone procedures would exempt Intel from Customs duty payments on foreign materials used in production for export. On domestic sales, the company would be able to choose the duty rates that apply to the finished products (duty-free to 4.9%). The duty rates on foreign-sourced items range from duty-free to 20 percent. The application indicates that the savings from zone procedures will help improve the plant's international competitiveness.

In accordance with the Board's regulations, a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt January 28, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period February 14, 1994.

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce District Office, Tower One, Suite 970, 2901 N. Central Ave., Phoenix, AZ 85012.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, Room 3716, 14th and Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 22, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–29326 Filed 11–26–93; 8:45 am]

BILLING CODE 3510-DS-M

[Order No. 664]

Grant of Authority for Subzone Status; Consolidated Biscuit Company (Food Products) McComb, OH

Pursuant to its authority under the Foreign-Trade Zone Act of June 18, 1934, as amended (19 U.S.C. 81a-81u), the Foreign-Trade Zones Board (the Board) adopts the following Order:

Whereas, by an Act of Congress approved June 18, 1934, an Act "To provide for the establishment * * * of foreign-trade zones in ports of entry of the United States, to expedite and encourage foreign commerce, and for other purposes," as amended (19 U.S.C. 81a-81u) (the Act), the Foreign-Trade Zone (the Board) is authorized to grant to qualified corporations the privilege of establishing foreign-trade zones in or adjacent to U.S. Customs ports of entry;

Whereas, the Board's regulations (15 CFR part 400) provide for the establishment of special-purpose subzones when existing zone facilities cannot serve the specific use involved:

Whereas, an application from the Community Development Foundation (of Findlay, Ohio), grantee of Foreign-Trade Zone 151, for authority to establish a special-purpose subzone at the food products manufacturing plant of the Consolidated Biscuit Company in McComb, Ohio, was filed by the Board of November 6, 1991, and notice inviting public comment was given in the **Federal Register** (FTZ Docket 80-91, 56 FR 65041,12-13-91); and,

Whereas, the Board has found that the requirements of the FTZ Act and Board's regulations would be satisfied, and that approval of the application would be in the public interest if approval of full zone benefits were limited to export activity;

Now, therefore, the Board hereby authorizes the establishment of a subzone (Subzone 151C) at the Consolidated Biscuit Company plant in McComb, Ohio, at the location described in the application, subject to the FTZ Act and the Board's regulations, including § 400.28, and subject to a restriction requiring that privileged foreign status (19 CFR 146.41) shall be elected on all foreign merchandise admitted to the subzone.

Signed at Washington, DC, this 17th day of November, 1993.

Barbara R. Stafford,

Acting Assistant Secretary of Commerce for Import Administration, Chairman, Committee of Alternates, Foreign-Trade Zones Board.

[FR Doc. 93–29157 Filed 11–26–93; 8:45 am]

BILLING CODE 3510-DS-P

[Docket 53–93]

Foreign-Trade Zone 38—Spartanburg County, South Carolina Application for Expansion

Correction

In notice document 93–27431 beginning on page 59236 in the issue of Monday, November 8, 1993, make the following correction:

On page 59236, in the sixth paragraph of the notice, the address of the U.S. Customs Service office where the application and accompanying exhibits will be available for public inspection should read: Office of the Port Director, U.S. Customs Service, 150—A West Phillips Road, Greer, South Carolina 29650.

Dated: November 19, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–29156 Filed 11–26–93; 8:45 am]

BILLING CODE 3510-DS-P

International Trade Administration

[A–351–821]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod From Brazil

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone (202) 482–3773 or 482–0922.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain carbon and alloy steel wire rod (SWR) from Brazil are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as

amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 13, 1993 (58 FR 29195, May 19, 1993), the following events have occurred:

On June 7, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On July 2, 1993, petitioners in this investigation, Connecticut Steel Corporation, Co-Steel Raritan, and Keystone Steel & Wire Company, requested that the Department of Commerce (the Department) postpone the preliminary determination in accordance with section 733(c)(1) of the Act. We granted this request and postponed the date of the preliminary determination until not later than November 19, 1993 (58 FR 40112, July 27, 1993).

In July, the Department presented antidumping duty questionnaires to Siderurgica Mendes Junior (SMJ), Cia Siderurgica de Guanabara (COSIGUA) (the two mandatory respondents) and Siderurgica Belgo-Mineira (Belgo-Mineira), a voluntary respondent. SMJ and COSIGUA accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI).

During July and August, COSIGUA and SMJ submitted partial responses to the Department's questionnaire.

On August 16, 1993, Belgo-Mineira notified the Department that it would not be participating as a voluntary respondent in this investigation. On September 7, 1993, SMJ notified the Department that it too would not be participating in this investigation.

On the basis of an allegation filed by petitioners, the Department, on September 15, 1993, initiated an investigation of whether COSIGUA sold SWR in the home market at prices below the cost of production (COP) during the POI and subsequently requested additional information regarding COSIGUA's COP. On September 27, 1993, COSIGUA notified the Department that it would not be participating in this investigation.

On October 18, 1993, petitioners amended the petition to exclude from the scope of this investigation steel wire rod 5.5 mm in diameter, with tensile strength greater than or equal to 1040 Mega-Pascals (MPa), and the following chemical content, by weight: Carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorous plus sulphur less than or equal to 0.040 percent, and nitrogen less than or equal to 0.006 percent. On November 8, 1993, petitioners clarified their amended scope of investigation to exclude steel wire rod 5.5 mm or less in diameter. We have revised the scope of this investigation to reflect petitioners' amendment (see the "Scope of Investigation" section of this notice, below).

During November, the Rubber Manufacturers Association, Bridgestone/Firestone, Inc., Cooper Tire and Rubber Company, General Tire, Inc., Michelin Tire Corporation, Amercord Inc., National-Standard, Stelco, Inc., and petitioners submitted comments regarding the scope of this investigation. Time constraints precluded full consideration of these comments for the preliminary determination; however, we will consider these comments in the final determination.

Scope of Investigation

After incorporating petitioners' October 18, 1993, scope amendment, the products covered by this investigation are now as follows: Hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. Excluded from the scope of this investigation are steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: Carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorous plus sulfur less than or equal to 0.040 percent, and nitrogen less than or equal to 0.006 percent. Also excluded are free-matching steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Excluded as well are stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.90.6000, and7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is October 1, 1992, through March 31, 1993.

Such or Similar Comparisons

We have determined that the merchandise covered by this investigation constitutes a single category of "such or similar" merchandise.

Best Information Available

Because both mandatory respondents failed to respond to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act which states that the Department may use BIA when a party refuses to provide requested information.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to the Department's two-tiered BIA methodology outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium, 58 FR 37083, (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the highest margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, a margin of 28.36 percent, the only margin calculated in the petition (adjusted for calculation errors).

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SWR from Brazil that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a

bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All companies	28.36

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 5, 1994, and rebuttal briefs, no later than January 10, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 12, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by February 2, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: November 19, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29159 Filed 11–26–93; 8:45 am]

BILLING CODE 3510-DS-P

[A–588–830]

Preliminary Determination of Sales at Less Than Fair Value: Certain Carbon and Alloy Steel Wire Rod From Japan

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Ellen Grebasch or Erik Warga, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–3773 or 482–0922.

PRELIMINARY DETERMINATION: We preliminarily determine that imports of certain carbon and alloy steel wire rod (SWR) from Japan are being, or are likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 13, 1993, (58 FR 29195, May 19, 1993), the following events have occurred:

On June 7, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On July 2, 1993, petitioners in this investigation, Connecticut Steel Corporation, Co-Steel Raritan, and Keystone Steel & Wire Company, requested that the Department of Commerce (the Department) postpone the preliminary determination in accordance with section 733(c)(1) of the Act. We granted this request and postponed the date of the preliminary determination until not later than November 19, 1993 (58 FR 40112, July 27, 1993).

On July 14, 1993, the Department presented antidumping duty questionnaires to Nippon Steel Corporation (NSC) and Kobe Steel, Ltd. (Kobe). These firms accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation (POI). On July 27, 1993, both NCS and Kobe notified the Department that they would not participate in this investigation. No questionnaire responses were filed.

On October 6, 1993, petitioners amended the petition to provide additional pricing information.

On October 18, 1993, petitioners amended the petition to exclude from the scope of this investigation steel wire rod 5.5 mm in diameter, with tensile strength greater than or equal to 1040 Mega-Pascals (MPa), and the following chemical content, by weight: Carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005, phosphorous plus sulphur less than or equal to 0.040 percent, and nitrogen less than or equal to 0.006 percent. On November 8, 1993, petitioners clarified their amended scope of investigation to exclude steel wire rod 5.5 mm or less in diameter. We have revised the scope of this investigation to reflect petitioners' amendment (see the "Scope of Investigation" section of this notice, below).

During November, the Rubber Manufacturers Association, Bridgestone/Firestone, Inc., Cooper Tire and Rubber Company, General Tire, Inc., Michelin Tire Corporation, Amercord Inc., National-Standard, Stelco, Inc., the Goodyear Tire and Rubber Company, and petitioners submitted comments regarding the scope of this investigation. Time constraints precluded full consideration of these comments for the preliminary determination; however, we will consider these comments in the final determination.

Scope of Investigation

After incorporating petitioners' October 18, 1993, scope amendment, the products covered by this investigation are now as follows: Hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. Excluded from the scope of this investigation are steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: Carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorous plus sulphur less than or equal to 0.040 percent, and nitrogen less than or equal to 0.006 percent. Also excluded are free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Excluded as well are stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickle steel rods, and concrete reinforcing bars and rods.

The products under investigation are currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090,

7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.90.6000, and 7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation is October 1, 1992, through March 31, 1993.

Such or Similar Comparisons

We have determined that the merchandise covered by this investigation constitutes a single category of "such or similar" merchandise.

Best Information Available

Because both mandatory respondents failed to respond to our questionnaire, we based our determination on best information available (BIA) pursuant to section 776(c) of the Act.

In determining what rate to use as BIA, the Department follows a two-tiered methodology, whereby the Department normally assigns lower margins to those respondents who cooperated in an investigation and margins based on more adverse assumptions for those respondents who did not cooperate in an investigation. According to the Department's two-tiered BIA methodology outlined in the Final Determination of Sales at Less Than Fair Value: Certain Hot-Rolled Carbon Steel Flat Products, Certain Cold-Rolled Carbon Steel Flat Products, and Certain Cut-to-Length Carbon Steel Plate From Belgium, 58 FR 37083, (July 9, 1993), when a company refuses to provide the information requested in the form required, or otherwise significantly impedes the Department's investigation, it is appropriate for the Department to assign to that company the higher of (1) the margin alleged in the petition, or (2) the highest calculated rate of any respondent in the investigation. Because there were no cooperative respondents in this investigation, we are assigning to all exporters, as BIA, a margin of 47.71 percent, the highest margin calculated in the petition on merchandise that is within the scope of this investigation (as amended).

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SWR from Japan that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. The suspension of liquidation will remain in effect until further notice.

Manufacturer/producer/exporter	Margin percentage
All companies	47.71

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary for Import Administration no later than January 5, 1994, and rebuttal briefs, no later than January 10, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will be held on January 12, 1994, at 1 p.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs. If this investigation proceeds normally, we will make our final determination by February 2, 1994.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: November 19, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29162 Filed 11–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–824]

Preliminary Determination of Sales at Less Than Fair Value and Postponement of Final Determination: Certain Carbon and Alloy Steel Wire Rod From Canada

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: (November 29, 1993.

FOR FURTHER INFORMATION CONTACT: David J. Goldberger or Michelle A. Frederick, Office of Antidumping Investigations, Import Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–4136 or 482–0186, respectively.

PRELIMINARY DETERMINATION: We preliminarily determine that certain carbon and alloy steel wire rod (SWR) from Canada is being, or is likely to be, sold in the United States at less than fair value, as provided in section 733 of the Tariff Act of 1930, as amended (the Act). The estimated margins are shown in the "Suspension of Liquidation" section of this notice.

Case History

Since the initiation of this investigation on May 13, 1993, (58 FR 29195, May 19, 1993), the following events have occurred:

On June 7, 1993, the U.S. International Trade Commission (ITC) issued an affirmative preliminary injury determination in this case.

On July 2, 1993, petitioners in this investigation, Connecticut Steel Corporation, Co-Steel Raritan, and Keystone Steel & Wire Company, requested that the Department of Commerce (the Department) postpone the preliminary determination in accordance with section 733(c)(1) of the Act. We granted this request and postponed the date of the preliminary determination until not later than November 19, 1993 (58 FR 40112, July 27, 1993).

In July 1993, the Department of Commerce (the Department) presented an antidumping duty questionnaire to Ivaco Inc. (Ivaco) and Stelco Inc. (Stelco). These firms accounted for at least 60 percent of the exports of the subject merchandise to the United States during the period of investigation

(POI). The Department also presented a cost of production/constructed value (section D) questionnaire to both Ivaco and Stelco as the Department had reasonable grounds to believe or suspect that both companies had sold SWR in Canada at prices which were below their respective costs of production.

In addition, the Department presented to Ivaco and Stelco, section E of the antidumping questionnaire, regarding information on further manufacturing performed in the United States.

On July 22 and August 4, 1993, Ivaco and Stelco, respectively, requested that the Department not require reporting of certain sales. On July 30, 1993, we allowed Ivaco not to report certain sales through an unrelated party and certain further manufactured sales by a related party of non-subject merchandise and of secondary merchandise. On August 18, 1993, we allowed Stelco not to report certain secondary sales made in the U.S. market, tolled sales in the home market, and U.S. further manufactured sales through a related party (See Memorandum for Barbara R. Stafford from Richard Moreland (July 30, 1993) and Memorandum for Susan H. Kuhbach from Gary Taverman (August 18, 1993)).

Ivaco and Stelco submitted questionnaire responses in July and September 1993. Supplemental questionnaires were issued in September 1993; responses were received in October 1993.

On October 18, 1993, petitioners amended the petition to exclude from the scope of this investigation steel wire rod 5.5 mm. in diameter, with tensile strength greater than or equal to 1040 Mega-Pascals (MPa), and the following chemical content, by weight: Carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorous plus sulphur less than or equal to 0.040 percent, and nitrogen less than or equal to 0.006 percent. On November 8, 1993, petitioners clarified their amended scope of investigation to exclude steel wire rod 5.5 mm or less in diameter. We have revised the scope of this investigation to reflect petitioners' amendment (see the "Scope of Investigation" section of this notice, below).

On October 27, 1993, the Department requested that Ivaco submit a revised sales listing in order to correct its reporting of freight and credit expenses; it did so on November 3, 1993.

During November, the Rubber Manufacturers Association (RMA), Bridgestone/Firestone, Inc., Cooper Tire and Rubber Company, General Tire, Inc., Michelin Tire Corporation, Amercord Inc., National-Standard, Stelco, and petitioners submitted comments regarding the scope of this investigation. Time constraints precluded full consideration of these requests for the preliminary determination; however, we will consider this issue for the final determination.

Postponement of Final Determination

Pursuant to section 735(a)(2)(A) of the Act, on November 1, 1993, Ivaco requested that, in the event of an affirmative preliminary determination in this investigation, the Department postpone the final determination to 135 days after the date of publication of the affirmative preliminary determination. Pursuant to 19 CFR 353.20(b), if exporters who account for a significant proportion of exports of the merchandise under investigation request an extension in the event of an affirmative preliminary determination, we are required, absent compelling reasons to the contrary, to grant the request.

Given that the requirement of 19 CFR 353.20(b) has been met, we are postponing the final determination for this investigation until the 135th day after the publication of this notice in the **Federal Register**.

Scope of the Investigation

After incorporating petitioners' October 18, 1993, scope amendment, the product covered by this investigation is now as follows: Hot-rolled carbon steel and alloy steel wire rod, in coils, of approximately round cross section, between 0.20 and 0.75 inches in solid cross-sectional diameter. Excluded from the scope of this investigation are steel wire rod 5.5 mm or less in diameter, with tensile strength greater than or equal to 1040 MPa, and the following chemical content, by weight: Carbon greater than or equal to 0.79 percent, aluminum less than or equal to 0.005 percent, phosphorous plus sulfur less than or equal to 0.040 percent, and nitrogen less than or equal to 0.006 percent. Also excluded are free-machining steel containing 0.03 percent or more of lead, 0.05 percent or more of bismuth, 0.08 percent or more of sulfur, more than 0.4 percent of phosphorus, more than 0.05 percent of selenium, and/or more than 0.01 percent of tellurium. Excluded as well are stainless steel rods, tool steel rods, free-cutting steel rods, resulfurized steel rods, ball bearing steel rods, high-nickel steel rods, and concrete reinforcing bars and rods.

The product under investigation is currently classifiable under subheadings 7213.31.3000, 7213.31.6000, 7213.39.0030, 7213.39.0090, 7213.41.3000, 7213.41.6000, 7213.49.0030, 7213.49.0090, 7213.50.0020, 7213.50.0040, 7213.50.0080, 7227.90.6000, and 7227.90.6050 of the Harmonized Tariff Schedule of the United States (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Period of Investigation

The period of investigation (POI) is October 1, 1992, through March 31, 1993.

Such or Similar Comparisons

We have determined that the product covered by this investigation constitutes a single category of such or similar merchandise.

Where there were no sales of identical merchandise in the home market to compare to U.S. sales, we made similar merchandise comparisons on the basis of the criteria defined in Appendix V to the antidumping duty questionnaire, and the Appendix V amendment of August 12, 1993, both of which are on file in Room B-099 of the main building of the Department of Commerce.

Ivaco claimed that the Department should make its product comparisons first by considering level of trade and then the physical characteristics of the products. We rejected this argument because the Department consistently treats physical characteristics of the merchandise as the most important criteria in making model matches. Where we were not able to make an equally similar match at the same level of trade, we made comparisons at an alternative level of trade. (See Import Administration Policy Bulletin: Matching at Levels of Trade, (Number 92/1, July 29, 1992.))

Fair Value Comparisons

To determine whether sales of Ivaco and Stelco from Canada to the United States were made at less than fair value, we compared the United States price (USP) to the foreign market value (FMV), as specified in the "United States Price" and "Foreign Market Value" sections of this notice.

United States Price

For Ivaco and Stelco, we based USP on purchase price (PP), in accordance with section 772(b) of the Act, when the subject merchandise was sold to unrelated purchasers in the United States prior to importation. In addition, for Ivaco and Stelco, where certain sales to the first unrelated purchaser took

place after importation into the United states, we based USP on ESP, in accordance with section 772(c) of the Act. For Ivaco's consignment sales, where the terms of sale were not fixed until after importation, we also based USP on ESP in accordance with section 772(c) of the Act.

On March 19, 1993, the United States Court of Appeals for the Federal Circuit, in affirming the decision of the Court of International Trade in Zenith Electronics Corporation v. United States, Slip Op. 92–1043, –1044, –1045, –1046, ruled that section 772(d)(1)(C) of the Act provides for an addition to USP to account for taxes which the exporting country would have assessed on the merchandise had it been sold in the home market, and that section 773(a)(4)(B) of the Act does not allow circumstance-of-sale adjustments to FMV for differences in taxes. Accordingly, we have changed our practice and will no longer make a circumstance-of-sale adjustment. We will no longer calculate a hypothetical tax on the U.S. product, but will, for the time being, add to USP the absolute amount of tax assessed on the comparison merchandise sold in the country of exportation. By adding the amount of home market tax to USP, absolute dumping margins are not inflated or deflated by differences between taxes included in FMV and those added to USP.

We made additional, company-specific adjustments as follows:

A. Ivaco

For Ivaco, we calculated purchase price based on packed, delivered or freight prepaid prices to unrelated customers in the United States. We made deductions, where appropriate, for discounts, rebates, post-sale price adjustments, freight, U.S. brokerage and handling, and U.S. duty and customs fees, in accordance with section 772(d)(2) of the Act.

We calculated ESP based on packed, ex-U.S. warehouse prices to unrelated customers in the United States. We made the same deductions described above. We also made deductions, where appropriate, for direct selling expenses including credit and warranty expenses, and indirect selling expenses, including inventory carrying expenses.

For both PP and ESP, in accordance with section 772(d)(1)(B) of the Act, we increased U.S. price by the amount of import duties imposed by Canada on inputs for the subject merchandise which have not been collected by reason of the exportation of the subject merchandise to the United States.

Ivaco claimed a level of trade adjustment, based on the differences between the average price at each level of trade, when merchandise sold at different levels of trade are compared. We did not allow this adjustment because Ivaco provided insufficient support for the claimed adjustment.

Ivaco reported corrections to its warranty expense claim in a November 3, 1993, submission. These corrections were received too late for inclusion in the preliminary determination, but we may take them into consideration for the final determination.

In addition, we made further deductions, where appropriate, for all value added to the ESP sales of SWR in the United States, pursuant to section 772(e)(3) of the Act. The value added consists of the costs associated with the production of the further manufactured products, other than the costs associated with the imported SWR, and a proportional amount of any profit related to the further manufacture. Profit was calculated by deducting from the sales price of the finished product the total cost of production of the imported product, as well as all applicable movement charges, discounts, rebates, and commissions. The total profit was then allocated proportionately to all components of cost. Only the profit or loss attributable to the value added was deducted.

In determining the costs incurred to produce the SWR, we included (1) the costs of manufacture; (2) movement and packing expenses; and (3) general expenses, including selling, general, and administrative expenses, and interest expenses.

On November 8, 1993, Ivaco reported corrections to labor costs associated with its further manufacturing expenses. These corrections were received too late for inclusion in this preliminary determination, but we may take them into consideration for the final determination.

Ivaco reported certain further manufacturing sales as PP transactions. We intend to examine the appropriate treatment of these transactions for the final determination, including whether they should be analyzed as imported, or as sold, and the adjustments to be made. We have, for this preliminary determination, excluded these transactions from our analysis because of their limited number. We also excluded from our preliminary determination analysis a small quantity of further manufactured sales, for which we lacked sufficiently specific data to appropriately match to the value added expenses. The two types of sales excluded from our analysis account for less than two percent of the total U.S. sales of SWR during the POI.

B. Stelco

For Stelco, we calculated purchase price based on packed, freight pre-paid or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for post-sale price adjustments, U.S. brokerage and handling, U.S. duty and customs fees, and freight expenses in accordance with section 772(d)(2) of the Act.

We calculated ESP based on packed, freight pre-paid or delivered prices to unrelated customers in the United States. We made deductions, where appropriate, for U.S. brokerage and handling, U.S. duty and customs fees, freight expenses and direct selling expenses including: credit, technical services, and warranty expenses. In addition, we deducted indirect selling expenses and inventory carrying expenses.

Indirect selling expenses for both markets were recalculated because Stelco did not consolidate its reporting of indirect selling expenses incurred by Stelco Inc. and its related processors, Stelwire and McMaster. Stelco also did not allocate its indirect selling expenses between the U.S. and Canadian markets. Therefore, we recalculated the indirect selling expenses for each market based on information provided in the questionnaire responses.

We did not allow Stelco's post-sale warehousing expense claim for the preliminary determination because Stelco did not sufficiently provide support for its claim that these expenses were required as a condition of sale.

In addition, we made further deductions, where appropriate, for all value added to the SWR in the United States, pursuant to section 772(e)(3) of the Act, as described above (see discussion of Ivaco's USP).

Foreign Market Value

In order to determine whether there was a sufficient volume of sales in the home market to serve as a viable basis for calculating foreign market value ("FMV"), for each respondent we compared the volume of home market sales of the subject merchandise to the volume of third country sales of subject merchandise, in accordance with section 773(a)(1)(B) of the Act. We found that the home market was viable for sales of SWR by both Ivaco and Stelco.

Cost of Production

Based on petitioners' allegations, and in accordance with section 773(b) of the

Act, the Department initiated investigations to determine whether Ivaco and Stelco had home market sales that were made at less than their respective costs of production (COP).

A. Calculation of COP

We calculated COP based on the sum of the individual respondent's reported cost of materials, fabrication, labor, factory overhead, selling expenses, general & administrative (G&A) expenses, and home market packing. For each company, we derived selling expenses from its respective home market sales listing. We added home market packing expenses derived from the sales listing.

Except for one adjustment to the further manufacturing costs, Ivaco's submitted data was used for the preliminary determination. The Department recalculated the G&A expense rate of the further manufacturer, Sivaco New York, using its financial statements. The Sivaco New York's G&A was divided by Sivaco New York's cost of sales, and the rate was applied to the entire cost of manufacturing in order to fully allocate G&A.

Stelco's submitted cost of production and constructed value data was not adjusted for this determination.

B. Test of Home Market Sale Prices

After calculating COP, we tested whether home market sales of SWR were at prices below COP.

We compared model-specific COP to reported prices that were net of movement charges, discounts, and rebates. If over 90 percent of a respondent's sales of a given product were at prices above the COP, we did not disregard any below-cost sales because we determined that the respondent's below-cost sales were not made in substantial quantities. If between 10 and 90 percent of a respondent's sales of a given product were at prices above the COP, we discarded only the below-cost sales if made over an extended period of time. Where we found that more than 90 percent of respondent's sales of a given product were at prices below the COP over an extended period of time, we disregarded all sales for that model and calculated FMV based on constructed value (CV). In order to determine that below-cost sales were made over an extended period of time, we performed the following analysis on a product-specific basis: (1) If a respondent sold a product in only one month of the POI and there were sales in that month below the COP, or (2) if a respondent sold a product during two months or more of the POI and there were sales below the COP during two or more of those months, then below-cost sales were considered to have been made over an extended period of time.

C. Results of COP Test

For both Ivaco and Stelco, we found that for certain models more than 90 percent of home market sales were at below-COP prices over an extended period of time. No information has been provided regarding whether the below cost sales were at prices that would permit recovery of all costs within a reasonable period of time in the normal course of trade. For U.S. sales left without a match as a result of disregarding these below COP sales, we based FMV on CV.

D. Calculation of CV

In accordance with section 773(e)(1)(B) (i) and (ii) of the Act, we included in CV the greater of (1) respondent's reported SG&A, adjusted as detailed above; or (2) the statutory minimum of ten percent of cost of manufacture (COM). For profit, we used the statutory minimum of eight percent of the sum of COM and general expenses (because actual profit on home market sales was less than eight percent). Selling expenses (direct and, where appropriate, indirect) were derived from the individual respondent's home market sales database.

In instances where we compared Ivaco's U.S. prices to CV, we made circumstance of sale adjustments, where appropriate, for credit and warranty expenses. In instances where we compared Stelco's U.S. prices to CV, we made circumstance of sale adjustments, where appropriate, for credit, technical services, and warranty expenses.

Price-to-Price Comparisons

For those products for which there were an adequate number of sales at prices above the COP, we based FMV on home market prices. For Ivaco, we calculated FMV based on ex-factory prices, inclusive of packing, to unrelated customers. For Stelco, we calculated FMV based on ex-factory prices, inclusive of packing, to unrelated customers and/or to related customers whose sales were determined to be at arm's length.

For Ivaco, in accordance with 19 CFR 353.58, we compared U.S. sales to home market sales made at the same level of trade, where possible. Where we were not able to match at the same level of trade, we made comparisons at an alternative level of trade. Stelco did not report sales at differing levels of trade in the home market.

For all comparisons to purchase price sales, pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for differences in credit expenses. We also made adjustments, where appropriate, for physical differences in the merchandise, in accordance with 19 CFR 353.57.

We deducted home market packing costs and added U.S. packing costs.

A. Ivaco—Purchase Price Comparisons

For home market to purchase price comparisons, we made deductions, where appropriate, for discounts, rebates, post-sale price adjustments, and foreign inland freight, in accordance with section 773(a)(4) of the Act. We determined, for the preliminary determination, that early payment rebates should be treated as discounts because they were granted prior to payment.

Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance of sale adjustments, where appropriate, for warranty expenses.

Because no commissions were paid on home market sales, we deducted the lesser of either (1) the amount of the commission paid on the U.S. sale; or (2) the sum of the weighted average of indirect selling expenses paid on the home market sales, in accordance with 19 CFR 353.56(b)(1). Home market indirect selling expenses included inventory carrying expenses. Finally, the amount of the commission paid on the U.S. sale was added to FMV.

B. Ivaco—ESP Comparisons

For home market to ESP comparisons, we made deductions, where appropriate, for discounts, rebates, inland freight, and warranty expenses. We also deducted from FMV the weighted-average home market indirect selling expenses, including inventory carrying costs. The deduction for home market indirect selling expenses was capped by the sum of U.S. commissions paid (if any) and U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b) (1) and (2).

For home market to ESP comparisons that involved further manufacturing in the United States, the cap to the deduction for home market indirect selling expenses was the portion of U.S. indirect selling expenses and the portion of commissions (if any) attributable to the foreign-produced input product.

C. Stelco—Purchase Price Comparisons

For home market to purchase price comparisons, we made deductions, where appropriate, for foreign inland freight and insurance in accordance with section 773(a)(4) of the Act.

Pursuant to section 773(a)(4)(B) and 19 CFR 353.56(a)(2), we made circumstance-of-sale adjustments, where appropriate, for technical and warranty expenses, and commissions.

Because no commissions were paid on home market sales, we deducted the lesser of either (1) the amount of the commission paid on the U.S. sale; or (2) the sum of the weighted average of indirect selling expenses paid on the home market sales, in accordance with 19 CFR 353.56(b)(1). Home market indirect selling expenses included inventory carrying expenses. Finally, the amount of the commission paid on the U.S. sale was added to FMV.

In addition, Stelco reported the Canadian Goods and Services Tax (GST) amount on home market sales based on the full invoice price, which, in some cases, included an additional amount charged to the customer for freight. Therefore, the Department recalculated the GST amount based on a sales price net of this freight revenue.

We recalculated indirect selling expenses for both markets, as discussed above under "United States Price".

D. Stelco—ESP Comparisons

For home market to ESP comparisons, we made deductions, where appropriate, for foreign inland freight and insurance, warranty, and the direct portion of technical service expenses. We also deducted from FMV the weighted-average home market indirect selling expenses, including, where appropriate, inventory carrying costs. The deduction for home market indirect selling expenses was capped by the sum of U.S. commissions paid (if any) and U.S. indirect selling expenses, in accordance with 19 CFR 353.56(b)(1) and (2).

We recalculated the reported indirect selling expenses and GST as described above.

For home market to ESP comparisons that involved further manufacturing in the United States, the cap to the deduction for home market indirect selling expenses was the portion of U.S. indirect selling expenses and the portion of commissions (if any) attributable to the foreign-produced input product.

Currency Conversion

We made currency conversions based on the official exchange rates in effect on the dates of the U.S. sales as certified by the Federal Reserve Bank.

Verification

As provided in section 776(b) of the Act, we will verify all information that we determine is acceptable for use in making our final determination.

Suspension of Liquidation

In accordance with section 733(d)(1) of the Act, we are directing the Customs Service to suspend liquidation of all entries of SWR from Canada that are entered, or withdrawn from warehouse, for consumption on or after the date of publication of this notice in the **Federal Register**. The Customs Service shall require a cash deposit or posting of a bond equal to the estimated preliminary dumping margins, as shown below. This suspension of liquidation will remain in effect until further notice. The less than fair value margins are as follows:

Producer/manufacturer exporter	Weighted-average margin percentage
Ivaco Inc	9.62
Stelco Inc	13.09
All others	10.93

ITC Notification

In accordance with section 733(f) of the Act, we have notified the ITC of our determination. If our final determination is affirmative, the ITC will determine whether these imports are materially injuring, or threaten material injury to, the U.S. industry before the later of 120 days after the date of this preliminary determination or 45 days after our final determination.

Public Comment

Interested parties who wish to request a hearing must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, Room B–099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed.

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must be submitted to the Assistant Secretary no later than February 23, 1994, and rebuttal briefs no later than March 2, 1994. A hearing, if requested, will be held on March 4, 1994, at 9:30 a.m. at the U.S. Department of Commerce in room 3708. Parties should confirm by telephone the time, date, and place of the hearing 48 hours prior to the scheduled time. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

If this investigation proceeds normally, we will make our final determination not later than 135 days after the publication of this notice.

This determination is published pursuant to section 733(f) of the Act and 19 CFR 353.15(a)(4).

Dated: November 19, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29158 Filed 11–26–93; 8:45 am]

BILLING CODE 3510–DS–P

[A–122–814]

Pure Magnesium From Canada: Amendment of Final Determination of Sales at Less Than Fair Value and Order in Accordance With Decision on Remand

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

SUMMARY: On October 6, 1993, the U.S.-Canada Binational Panel ("Panel") affirmed the Department of Commerce's ("the Department") remand determination in this case. On November 10, 1993, the Binational Secretariat, United States Section, published a notice of completion of panel review and noted that no request for an extraordinary challenge committee had been filed. (Notice of Completion of Panel Review, 58 FR 59706). As a result, the Department is amending the final determination of sales at less than fair value with respect to pure and alloy magnesium from Canada. For all entries made on or after the date of publication of this notice, Commerce will direct the U.S. Customs Service ("Customs") to require a cash deposit for each entry in an amount equal to the estimated antidumping duty margin as described in the "Suspension of Liquidation" section of this notice.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Roy A. Malmrose, Office of Countervailing Investigations, U.S. Department of Commerce, room 3099, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone (202) 482–5414.

SUPPLEMENTARY INFORMATION:

Background

On July 13, 1992, the Department published notice of its Final Affirmative Determination; Rescission of Investigation and Partial Dismissal of Petition: Pure Magnesium from Canada,

57 FR 30930. That determination noted that the weighted-average margin for pure magnesium was 31.33 percent. Commerce subsequently published an antidumping duty order and instructed Customs to collect a cash deposit equal to 31.33 percent ad valorem on all entries of subject merchandise entered, or withdrawn from warehouse, on or after that date.

The Department's determination subsequently was appealed to a U.S.-Canada Binational Panel, pursuant to Article 1904 of the United States-Canada Free Trade Agreement and title IV of the United States-Canada Free Trade Implementation Act of 1988, 19 U.S.C. 1516a(g)(1989). On May 7, 1993, the Panel remanded the determination so that the Department could address certain issues regarding the calculation of the constructed value contained in the petition. On May 27, 1993, the Department issued its remand determination with a recalculated estimated margin of 21 percent ad valorem. The Panel affirmed the Department's remand determination on October 6, 1993. No request for an extraordinary challenge has been filed and a Notice of Completion of Panel Review has been published by the Binational Secretariat.

Suspension of Liquidation

Since the panel proceeding are now final, we are directing Customs to require a cash deposit in an amount equal to 21 percent ad valorem for all entries of pure magnesium from Canada entered, or withdrawn from warehouse for consumption, on or after the date of publication of this notice. The suspension of liquidation shall remain in effect until further notice.

Dated: November 18, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29160 Filed 11-26-93; 8:45 am]

BILLING CODE 3510-DS-P

[A-570-823]

Postponement of Final Antidumping Duty Determination: Nitronmethane From the People's Republic of China

AGENCY: Import Administration, International Trade Administration, U.S. Department of Commerce.

ACTION: Notice.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Erik Warga, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC 20230; telephone: (202) 482-0922.

POSTPONEMENT OF FINAL DETERMINATION: Shanghai Native Produce Import and Export Company, Sinochem Jiangsu Suzhou Export and Import Corporation, and Sinochem Liaoning, responding exporters in this proceeding, account for a significant proportion of exports of merchandise covered by this investigation. On November 8, 1993, these exporters requested that the Department of Commerce postpone its final determination until not later than 135 days after the date of publication of the preliminary determination. Our November 1, 1993, in this proceeding was affirmative.

In accordance with section 735(a)(2) of the Tariff Act of 1930, as amended (the Act), when, subsequent to an affirmative preliminary determination, we receive such a request from exporters who account for a significant proportion of the merchandise under investigation, we are required, absent compelling reasons for denial, to grant the request. Accordingly, we are postponing our final determination as to whether sales of nitromethane from the PRC have been made at less than fair value until not later than March 23, 1994.

Public Comment

In accordance with 19 CFR 353.38, case briefs or other written comments in at least ten copies must now be submitted to the Assistant Secretary for Import Administration no later than February 18, 1994, and rebuttal briefs, no later than February 25, 1994. In accordance with 19 CFR 353.38(b), we will hold a public hearing, if requested, to afford interested parties an opportunity to comment on arguments raised in case or rebuttal briefs. Tentatively, the hearing will now be held on March 1, 1994, at 10 a.m. at the U.S. Department of Commerce, room 3708, 14th Street and Constitution Avenue, NW., Washington, DC 20230. Parties should confirm by telephone the time, date, and place of the hearing 48 hours before the scheduled time.

Interested parties who wish to request a hearing, or to participate if one is requested, must submit a written request to the Assistant Secretary for Import Administration, U.S. Department of Commerce, room B-099, within ten days of the publication of this notice. Requests should contain: (1) The party's name, address, and telephone number; (2) the number of participants; and (3) a list of the issues to be discussed. In accordance with 19 CFR 353.38(b), oral presentations will be limited to issues raised in the briefs.

This notice is published pursuant to section 735(d) of the Act and 19 CFR 353.20(b)(2).

Dated: November 17, 1993.

Barbara R. Stafford,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29161 Filed 11-26-93; 8:45 am]

BILLING CODE 3510-DS-M

National Technical Information Service

NTIS Advisory Board; Meeting

AGENCY: National Technical Information Service, Technology Administration, Commerce.

ACTION: Notice of partially closed meeting.

SUMMARY: Pursuant to the Federal Advisory Committee Act, 5 U.S.C. app. 2, notice is hereby given that the National Technical Information Service Advisory Board (the "Board") will meet on Thursday, December 9, 1993, from 9 a.m. to 3:30 p.m. and on Friday, December 10, 1993, from 9 a.m. to 3 p.m. One 2-hour session on December 9 will be closed to the public.

The Board was established under the authority of 15 U.S.C. 370b(c), and was chartered on September 15, 1989. The Board is composed of five members appointed by The Secretary of Commerce who are eminent in such fields as information resources management, information technology, and library and information services. The purpose of the meeting is to review and make recommendations regarding general policies and operations of NTIS, including policies in connection with fees and charges for its services. The agenda will include presentations on NTIS modernization, a review of fiscal data, an update on the facility leasing process, and a review of the progress with FedWorld. The closed session discussion is schedule to begin at 1 p.m. and end at 3 p.m. on December 9, 1993. The session will be closed because premature disclosure of the information to be discussed would be likely to significantly frustrate implementation of NTIS' business plan.

DATES: The meeting will convene on December 9, 1993 at 9 a.m. and adjourn at 3:30 p.m., and will convene again on December 10, 1993 at 9 a.m. and adjourn at 3 p.m.

ADDRESSES: The meeting will be held on December 9, in room 1617M4, and on December 10, in room 1412, U.S. Department of Commerce, Herbert C. Hoover Building, 14th Street and

Constitution Avenue NW., Washington, DC 20230.

PUBLIC PARTICIPATION: Except for the closed session from 1 to 3 p.m. on December 9, 1993, the meeting will be open to public participation. Approximately thirty minutes each day will be set aside for oral comments or questions as indicated in the agenda. Seats will be available afar the public and for the media. Seats will be available on a first-come, first-served basis. Any member of the public may submit written comments concerning the Board's affairs at any time before and after the meeting. Copies of the minutes of the meeting will be available within thirty days from the address given below.

FOR FURTHER INFORMATION CONTACT: Barbara Hull, NTIS Advisory Board Secretary, National Technical Information Service, 5285 Port Royal Road, Springfield, Virginia 22161. Telephone: 703–487–4612; Fax 703–487–4093.

Dated: October 28, 1993.

Donald R. Johnson,

Director.

[FR Doc. 93–29152 Filed 11–26–93; 8:45 am]

BILLING CODE 3510–04–M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Amendment to the Export Licensing System for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in the People's Republic of China

November 23, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs providing for the use of export licenses/commercial invoices printed on purple paper.

EFFECTIVE DATE: January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Governments of the United States and the People's Republic of China have agreed to further amend the existing export licensing system to provide for the use of export licenses/commercial invoices, issued by the Government of the People's Republic of China, for shipments of goods produced or manufactured in China and exported from China on and after January 1, 1994, which are printed on a purple guilloche patterned background paper and include a manufacturer's identification (M.I.D.) section. The purple form replaces the brown licenses/invoices currently in use. The visa stamp is not been changed at this time. The Chinese Embassy in Washington will continue to issue the white pre-printed replacement visa now in use.

Textile products which are produced or manufactured in China and exported from China during the period January 1, 1994 through January 31, 1994 may be accompanied by visas printed on either brown or purple background paper.

See 49 FR 7269, published on February 28, 1984; and 52 FR 28741, published on August 3, 1987.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 23, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on February 23, 1984, as amended, by the Chairman, Committee for the Implementation of Textile Agreements. That directive establishes an export licensing system for certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in the People's Republic of China.

Effective on January 1, 1994, you are directed to amend further the directive dated February 23, 1984 to provide for the use of export licenses/commercial invoices issued by the Government of the People's Republic of China which are printed on purple guilloche patterned background paper and include a manufacturer's identification (M.I.D.) section. The purple form will replace the brown form currently being used. The Chinese Embassy in Washington will continue to use the white pre-printed replacement visa now in use.

To facilitate implementation of this amendment to the export licensing system, I request that you permit entry of textile products, produced or manufactured in China and exported from China during the period January 1, 1994 through January 31, 1994, for which the Government of the People's Republic of China has issued either a brown or purple export license/commercial invoice.

Goods exported from China on and after February 1, 1994 must be accompanied by an export visa issued by the Government of the People's Republic of China on the purple invoice form only.

Shipments entered or withdrawn from warehouse according to this directive which are not accompanied by an appropriate export visa shall be denied entry and a new visa must be obtained.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29164 Filed 11–26–93; 8:45 am]

BILLING CODE 3510–DR–F

The Correlation: Textile and Apparel Categories With the Harmonized Tariff Schedule of the United States for 1994

November 23, 1993

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Notice.

FOR FURTHER INFORMATION CONTACT: Lori E. Goldberg, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–3400.

SUPPLEMENTARY INFORMATION:

The Committee for the Implementation of Textile Agreements (CITA) announces that the 1994 Correlation, based on the Harmonized Tariff Schedule of the United States, will be available on November 22, 1993.

Copies of the Correlation may be purchased from the U.S. Department of Commerce, Office of Textiles and Apparel, 14th and Constitution Avenue, NW., room H3100, Washington, DC 20230, ATTN: Correlation, at a cost of $30 per copy. Checks or money orders should be made payable to the U.S. Department of Commerce.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29163 Filed 11–26–93; 8:45 am]

BILLING CODE 3510–DR–F

COMMITTEE FOR PURCHASE FROM PEOPLE WHO ARE BLIND OR SEVERELY DISABLED

Procurement List Additions

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Additions to procurement list.

SUMMARY: This action adds to the Procurement List services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

EFFECTIVE DATE: December 29, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: On July 16, October 1, 8 and 15, 1993, the Committee for Purchase from People who are Blind or Severely Disabled published notices (58 FR 38364, 51319, 52478 and 53503) of proposed additions to the Procurement List.

After consideration of the material presented to it concerning the capability of qualified nonprofit agencies to provide the services, fair market price, and the impact of the addition on the current or most recent contractor, the Committee has determined that the services listed below are suitable for procurement by the Federal Government under 41 U.S.C. 46–48c and 41 CFR 51–2.6.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the services to the Government.

2. The action will not have a severe economic impact on current contractors for the services.

3. The action will result in authorizing small entities to furnish the services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the services proposed for addition to the Procurement List.

Accordingly, the following services are hereby added to the Procurement List:

Electronic Image Conversion, Federal Bureau of Investigation, 9th & Pennsylvania Avenue, NW., Washington, DC

Janitorial/Custodial, Everett McKinley Dirksen Federal Building, 219 South Dearborn Street, Chicago, Illinois

Janitorial/Custodial, U.S. Naval Home, Gulfport, Mississippi

Janitorial/Custodial, Automated Flight Service Station, Seattle, Washington.

This action does not affect contracts awarded prior to the effective date of this addition or options exercised under those contracts.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–29170 Filed 11–26–93; 8:54 am]

BILLING CODE 6820–33–P

Procurement List Proposed Additions

AGENCY: Committee for Purchase from People who are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list.

SUMMARY: The Committee has received proposals to add to the Procurement List commodities and services to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 29, 1993.

ADDRESSES: Committee for Purchase from People who are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities and services listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following action will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities and services to the Government.

2. The action does not appear to have a severe economic impact on the current contractors for the commodities and services.

3. The action will result in authorizing small entities to furnish the commodities and services to the Government.

4. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities and services proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

It is proposed to add the following commodities and services to the Procurement List for production by the nonprofit agencies listed:

Commodities

Box, Seedling Growing
3990–00–NSH–0070
(Requirements for the U.S. Department of Agriculture)
Nonprofit Agency: Sunrise Enterprises, Inc., Roseburg, Oregon.

Pallet, Greenhouse
3990–00–NSH–0071
(Requirements for the U.S. Department of Agriculture)
Nonprofit Agency: Sunrise Enterprises, Inc., Roseburg, Oregon.

Lath, Wood
5510–00–NSH–0041
(Requirements for the U.S. Department of Agriculture)
Nonprofit Agency: Sunrise Enterprises, Inc., Roseburg, Oregon.

Sponge, Surgical
6510–00–559–3219
6510–00–116–1285
6510–00–119–9314
6510–00–998–3838
Nonprofit Agency: Industries for the Blind and Visually Impaired, Delhi, Louisiana.

Holder, Clinical Chart
6530–01–115–7835
Nonprofit Agency: Constructive Workshops, Inc., New Britain, Connecticut.

Fastener, Paper
7510–00–161–4284
7510–00–223–6813
7510–00–223–6814
7510–00–223–6815
7510–00–291–0140
7510–00–634–2463
Nonprofit Agency: Delaware County Chapter, NYSARC, Walton, New York.

Services

Janitorial/Custodial, Federal Building and U.S. Courthouse, 517 E. Wisconsin, Milwaukee, Wisconsin
Nonprofit Agency: Milwaukee Center for Independence, Inc., Milwaukee, Wisconsin.

Mailroom Operation, National Archives, 8601 Adelphi Road, College Park,

Maryland and all Washington, DC Metropolitan Area Locations.
Nonprofit Agency: Fairfax Opportunities Unlimited, Inc., Springfield, Virginia.
Painting Service
Family Quarters
Fort Sam Houston, Texas
Nonprofit Agency: Goodwill Industries of San Antonio, San Antonio, Texas.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–29171 Filed 11–26–93; 8:54 am]

BILLING CODE 6820–33–P

Procurement List; Proposed Additions

AGENCY: Committee for Purchase From People Who Are Blind or Severely Disabled.

ACTION: Proposed additions to procurement list

SUMMARY: The Committee has received proposals to add to the Procurement List commodities to be furnished by nonprofit agencies employing persons who are blind or have other severe disabilities.

COMMENTS MUST BE RECEIVED ON OR BEFORE: December 29, 1993.

ADDRESSES: Committee for Purchase From People Who Are Blind or Severely Disabled, Crystal Square 3, suite 403, 1735 Jefferson Davis Highway, Arlington, Virginia 22202–3461.

FOR FURTHER INFORMATION CONTACT: Beverly Milkman (703) 603–7740.

SUPPLEMENTARY INFORMATION: This notice is published pursuant to 41 U.S.C. 47(a)(2) and 41 CFR 51–2.3. Its purpose is to provide interested persons an opportunity to submit comments on the possible impact of the proposed actions.

If the Committee approves the proposed additions, all entities of the Federal Government (except as otherwise indicated) will be required to procure the commodities listed below from nonprofit agencies employing persons who are blind or have other severe disabilities.

I certify that the following actions will not have a significant impact on a substantial number of small entities. The major factors considered for this certification were:

1. The action will not result in any additional reporting, recordkeeping or other compliance requirements for small entities other than the small organizations that will furnish the commodities to the Government.

2. The action will result in authorizing small entities to furnish the commodities to the Government.

3. There are no known regulatory alternatives which would accomplish the objectives of the Javits-Wagner-O'Day Act (41 U.S.C. 46–48c) in connection with the commodities proposed for addition to the Procurement List.

Comments on this certification are invited. Commenters should identify the statement(s) underlying the certification on which they are providing additional information.

The following commodities have been proposed for addition to the Procurement List for production by the nonprofit agency listed:

Trousers, Desert Combat

8415–01–327–5324 thru –5344
Nonprofit Agency:
Goodwill Industries of Atlanta, Atlanta, Georgia
Goodwill Industries of South Florida Miami, Florida.

Beverly L. Milkman,

Executive Director.

[FR Doc. 93–29172 Filed 11–26–93; 8:45 am]

BILLING CODE 6820–33–P

DEPARTMENT OF EDUCATION

Office of Elementary and Secondary Education

[CFDA Nos.: 84.184A, 84.184B, 84.207A]

Drug-Free Schools and Communities Discretionary Grant Programs

AGENCY: Department of Education

ACTION: Notice of discretionary programs that will not invite applications for new awards for fiscal year (FY) 1994.

SUMMARY: The Department of Education advises potential applicants that competitions will not be held in FY 1994 for the following Drug-Free Schools and Communities discretionary grant programs:

- Demonstration Grants to Institutions of Higher Education (CFDA 84.184A).
- Federal Activities Grants Program (CFDA 84.184B).
- School Personnel Training Grants (CFDA 84.207A).

FOR FURTHER INFORMATION CONTACT: The Drug-Free Schools and Communities Staff, U.S. Department of Education, 400 Maryland Avenue SW., room 2123, FOB–6, Washington, DC 20202. Telephone: (202) 401–1258. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

Dated: November 18, 1993.

Thomas W. Payzant,

Assistant Secretary for Elementary and Secondary Education.

[FR Doc. 93–29174 Filed 11–26–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Floodplain Statement of Findings for Proposed Public Water Supply Near the Fernald Environmental Management Project, Fernald, OH

AGENCY: Department of Energy (DOE).

ACTION: Floodplain Statement of Findings.

SUMMARY: This is a Floodplain Statement of Findings for the proposed public water supply project near the Fernald Environmental Management Project (FEMP), prepared in accordance with 10 CFR Part 1022. DOE proposes to provide funding for the installation of a public water supply to be utilized by FEMP area residents whose groundwater supply may have been affected by, or has the potential to be affected by, the South Groundwater Contamination Plume (South Plume). This project would be implemented in cooperation with the Hamilton County Department of Public Works as a part of a larger project so supply water to the citizens of Crosby Township, Ohio. The proposed action involves the installation of approximately 13 miles of pipeline within the existing State and county road easements, in Hamilton and Butler Counties, Ohio. Approximately 8.2 acres of the Great Miami River floodplain will be temporarily disturbed during project construction. DOE prepared a floodplain and wetlands assessment describing the effects, alternatives, and measures designed to avoid or minimize potential harm to or within the affected floodplain. DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings before implementing the proposed action. Maps and further information on this proposed action are available from DOE at the address below.

FOR FURTHER INFORMATION CONTACT: For further information on this proposed action, contact:

Mr. Wally Quaider, Assistant Manager, Technical Support, Fernald Field Office, U.S. Department of Energy, P.O. Box 398704, Cincinnati, Ohio 45239–8704, (513) 648–3017 Fax number: (513) 648–3077

For further information on general DOE floodplain/wetlands

environmental review requirements, contact:

Ms. Carol M. Borgstrom, Director, Office of NEPA Oversight, EH–25, U.S. Department of Energy, 1000 Independence Avenue SW., Washington, DC 20585, (202) 586–4600 or (800) 472–2756

SUPPLEMENTARY INFORMATION: This is a Floodplain Statement of Findings for the proposed public water supply project near FEMP prepared in accordance with 10 CFR Part 1022. A Notice of Floodplain and Wetlands Involvement was published in the **Federal Register** on May 20, 1993, (58 FR 29401) and a Floodplain and Wetlands Assessment was prepared.

The primary objective of the proposed public water supply project near FEMP is to provide a permanent, reliable, and safe drinking water supply to local residents. DOE has agreed to participate in the provision of drinking water to the public as part of the Amended Consent Agreement entered into between DOE and the Environmental Protection Agency, dated September 1991. DOE would provide funding for the engineering and installation of transmission and distribution water mains from an existing public water supply source, a water reservoir, and service taps and connections for affected or potentially affected property owners.

The proposed action involves installing approximately 13 miles of pipeline within the existing State and county road easements in Hamilton and Butler Counties, Ohio. The pipeline will be installed along East Miami River Road from the Cincinnati Water Works (CWW) Bolton Plant to and across the Great Miami River bridge at the Cincinnati Brookville Road (SR 126), along SR 126 to its intersection with SR 128, and along SR 128 running south to the intersection with New Haven Road. The remainder of the pipeline will be installed within existing easements along Willey, New Haven, and Paddys Run Roads, ending with a 1-million gallon reservoir.

Construction of the public water supply transmission and distribution piping will take place adjacent to roads in existing rights-of-way. Installation of the varying size water mains will require excavations approximately 6 feet deep and 3 feet wide along the maintained portion of the road shoulder. The soil that is removed will be piled by the side of the excavation until needed for backfill.

Standard best management practices to control erosion during construction activities will be employed. Once installed, the pipeline will be surrounded by a compacted bed of gravel, covered with backfill soil, as seeded. Excess soil will be hauled away and disposed in accordance with Hamilton County requirements. No more than 8.2 acres of floodplain will be temporarily distributed during project construction.

An alternate pipeline route reviewed included routing through archaeological sites in the Great Miami River floodplain. Three alternate reservoir sites were considered in addition to the proposed reservoir site. Two of the alternate reservoir sites would have required the acquisition of private land east of the proposed tank site. The third site would have been on Hamilton County Park property (Miami Whitewater Forest Park) west of the proposed tank site. This third site could have impacted a State endangered species, the cave salamander (*Eurycea lucifuga*) and could have resulted in fragmentation of existing forest resources. The proposed reservoir site is located in the northeast portion of the Miami Whitewater Forest Park, at least 2,500 feet from the known location of the cave salamander. The water main to the reservoir will run south from New Haven Road about 50 yards into the Park.

The proposed route was selected because it is restricted to within 3 feet of the roadway pavement, except for the portion of Hamilton County park land. Based upon the review of the proposed action and alternatives, DOE determined that no practicable alternative is available for locating the proposed action within the floodplain/wetlands. The proposed action is not expected to result in permanent impacts to the floodplains or wetlands. The portions of the pipeline to be installed within the 100-year floodplain of the Great Miami River will occur along existing roadways and easements in areas that have been previously disturbed. Measures taken to minimize potential harm to or within the floodplains and wetlands include design and construction constraints, such as excavating within 3 feet of the pavement on the maintained road shoulder, employing erosion and sediment controls adjacent to the trench during construction, removing excess soil after the trench has been backfilled, regrading the surface to original elevations, and reseeding the disturbed surfaces. The extent of the potential flood hazard is minimal. The installation of the pipeline will be performed in such a manner as to avoid or minimize impacts to the 100-floodplain. The proposed action is not expected to result in permanent evaluation changes to the floodplain. The level of activity in the floodplain for this action is expected to be minimal. Therefore, impacts to the floodplain are not expected.

DOE will endeavor to allow 15 days of public review after publication of the Statement of Findings prior to implementing the proposed action.

Issued in Washington, DC, this 22 day of November, 1993.

Richard J. Guimond,

Assistant Surgeon General, USPHS, Principal Deputy Assistant Secretary for Environmental Restoration and Waste Management.

[FR Doc. 93–29166 Filed 11–26–93; 8:45 am]

BILLING CODE 6450–01–M

Chicago Operations Office; Denver Support Office

AGENCY: U.S. Department of Energy.

ACTION: Solicitation for Cooperative Agreement.

SUMMARY: Pursuant to the Department of Energy (DOE) Financial Assistance Rules 10 CFR 600.9, the Office of Energy Efficiency and Renewable Energy is issuing a solicitation numbered DE–SC48–94R810501 for developing market assessments and commercial evaluation reports for prospective Energy-Related Inventions Program (ERIP) grantees. The purpose of the proposed Cooperative Agreement is for the Participant, working in close cooperation with the Inventions and Innovation Division, to provide market assessments of technical, energy-related inventions that have been recommended for ERIP grant funding by the National Institute of Standards and Technology (NIST). The proposed work is designed to explore the market segments and market potential for technologies and inventions which have been recommended by NIST for grant funding support under ERIP. It is the DOE's expectation that this work will increase the effectiveness of the Energy-Related Inventions Program, and provide a better understanding of benefits and barriers of commercializing energy efficiency and renewable energy technologies and practices.

SUPPLEMENTARY INFORMATION: The Participant shall develop market intelligence information to provide high quality reports which will indicate the commercial potential and application areas for each invention recommended via NIST. These reports will integrate the technical features of each innovation with a situational analysis to determine the product, competitive market and commercial environment. The report will also identify the key opportunities, barriers and concerns which will affect

the introduction and success of the innovation when entered into the marketplace. Approximately 120 market analysis and commercial evaluations are expected to be performed over a 3-year period. Additionally, it is anticipated that about 30 of the 120 assessments will require a more in-depth analysis due to availability of data, the nature of the invention, or on request from DOE.

DOE's Office of Energy Efficiency and Renewable Energy, Inventions and Innovation Division, invites interested parties to submit applications in response to this solicitation. The funding level for this requirement is expected to be $775,000 over a 3-year period. The DOE reserves the right to make multiple awards. This solicitation will be issued on or about November 30, 1993. Applications will be due approximately forty-five (45) days after the solicitation is issued.

FOR FURTHER INFORMATION CONTACT: U.S. Department of Energy, Denver Support Office, 2801 Youngfield Street, suite 380, Golden, CO 80401. Dennis D. Maez, Contract Specialist (303) 231–5750, Extension 140.

Issued in Chicago, Illinois on November 17, 1993.

Alan E. Smith,

Director, Information Management and Support Division.

[FR Doc. 93–29168 Filed 11–26–93; 8:45 am]

BILLING CODE 6450–01–M

Federal Energy Regulatory Commission

[Docket No. QF93–148–000, et al.]

Dixie Valley, L.P., et al.

November 22, 1993.

Take notice that the following filings have been made with the Commission:

1. Dixie Valley, L.P.

[Docket No. QF93–148–000]

On November 16, 1993, Dixie Valley, L.P. tendered for filing a supplement to its filing in this docket. The supplement pertains to a change in the ownership of the facility, information relating to the ownership and proposed leasing arrangements of the interconnecting transmission lines, and technical aspects of the qualifying facility. No determination has been made that the submittal constitutes a complete filing.

Comment date: December 13, 1993 in accordance with Standard Paragraph E at the end of this notice.

2. Illinois Power Co.

[Docket No. EC94–3–000]

Take notice that on November 15, 1993, Illinois Power Company (Illinois Power) submitted an application pursuant to Section 203 of the Federal Power Act for authority to effect a "disposition of facilities" that would be deemed to occur as a result of a proposed corporate restructuring, all as more fully set forth in the application, which is on file with the Commission and open the public inspection.

The Application states that the proposed restructuring would be accomplished through the creation of a holding company, IP Holding Company, of which Illinois Power would become a subsidiary. It is stated that the proposed restructuring is intended to permit the establishment of non-utility businesses that can take advantage of new business opportunities on a timely basis and will not affect Illinois Power's jurisdictional facilities, rates or services.

Comment date: December 8, 1993 in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29109 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2519–003 Maine]

Central Maine Power Co.; Notice of Availability of Draft Environmental Assessment

November 22, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for major new license for the North Gorham Project, located on the Presumpscot River, in Cumberland County, Maine and has prepared an Environmental Assessment (EA) for the project.

On September 13, 1993, staff issued and distributed to all parties a draft EA, and requested that comments on the draft EA be filed within 30 days. All comments that were filed have been considered in the EA.

In the EA, the Commission's staff has analyzed the environmental effects of the existing project and has concluded that approval of the project, with appropriate mitigation and enhancement measures, would not constitute a major Federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3104 of the Commission's offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29081 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–82–000, et al.]

National Fuel Gas Supply Corporation, et al.; Natural Gas Certificate Filings

November 19, 1993

Take notice that the following filings have been made with the Commission:

1. National Fuel Gas Supply Corp.

[Docket No. CP94–94–82–000]

Take notice that on November 17, 1992, National Fuel Gas Supply Corporation (National Fuel), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–82–000 an application for a certificate of public convenience and necessity to refunctionalize seven segments of pipeline and fourteen regulating and measuring stations from production to transmission pursuant to Section 7(c) of the Natural Gas Act and a petition for a Commission order declaring that three previously certificated facilities should be refunctionalized from production to transmission, all as more fully set forth in the application and petition which is currently on file and open to public inspection.

National Fuel states that the facilities to be refunctionalized are pipeline facilities with a net book value of $1,231,729 and associated regulating and meter stations with a net book valu

of $50,246. National Fuel lists the pipeline facilities as follows:

Pipeline	Location	Net book value	FERC authorization
A–15	Pennsylvania	$300,404	CP83–4
D–68	Pennsylvania	216,308	CP80–463
K–1	New York	27,494	None.
K–2	New York	11,031	None.
K–3	New York	37,619	CP83–4
K–1	Pennsylvania	37,514	None.
K–2	Pennsylvania	331,283	None.
K–4	Pennsylvania	263,671	None.
K–182	Pennsylvania	206	None.
Z–67	New York	6,199	None.

National Fuel states that, although the pipelines identified above are currently functionalized as production, none meets the *Farmland* criteria used by the Commission to evaluate whether a pipeline should be considered a nonjurisdictional gathering facility. National Fuel indicates that it has included in its pleading a detailed schedule identifying each of the facilities, and its length, diameter, operations, pressure, number of receipt points, whether or not it comprises an extension beyond the central point in the field, and accounting detail.

National states that the authorization would ensure that its books and records reflect the actual use of the above-described facilities. National Fuel requests an effective date of April 1, 1994, for the requested refunctionalization.

Comment date: December 10, 1993, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

2. Transcontinental Gas Pipe Line Corp.

[Docket No. CP94–80–000]

Take notice that on November 15, 1993, Transcontinental Gas Pipe Line Corporation (TGPL), P.O. Box 1396, Houston, Texas 77251, filed in Docket No. CP94–80–000 a request pursuant to Sections 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to add an additional point of delivery for a certain existing transportation and sales customer; and to install and operate certain appurtenant facilities under TGPL's blanket certificate issued in Docket No. CP82–426–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

TGPL proposes to construct and operate a new point of delivery to the Greer Commission of Public Works (Greer), referred to as the Tryon Lateral Delivery Point, which will include inlet piping, a meter station, pressure regulators and appurtenant facilities in Spartanburg County, South Carolina. It is stated that Greer will construct, or cause to be constructed, appurtenant facilities to enable it to receive gas from TGPL at the new delivery point.

TGPL states that the Tryon Lateral Delivery Point will be used by Greer to receive up to 30,000 Mcf per day of gas from TGPL, on an interruptible basis, in order to enable Greer to provide additional gas supply delivery flexibility to its existing and proposed distribution system. TGPL also states that the authorized total transportation and sales service entitlement for Greer will not be altered from the current level and the addition of the Tryon Lateral Delivery Point will have no effect on TGPL's peak day or annual deliveries to Greer. It is maintained that Greer will continue to have total firm mainline sales and transportation capacity of 7,091 Mcf per day.

TGPL estimates the cost of construction to be $579,000, which will be reimbursed by Greer.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Arkla Energy Resources Co.

[Docket No. CP94–93–000]

Take notice that on November 18, 1993, Arkla Energy Resources Company (AER), Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP94–93–000 an application pursuant to Section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the replacement of certain existing metering facilities to provide transportation service to Arkansas Louisiana Gas Company (ALG) for redelivery to the Empire School located in Stephens County, Oklahoma, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

AER specifically proposes to replace an existing 1-inch U-Shaped meter setting with a 2-inch U-Shape meter setting at an existing delivery tap on AER's transmission Line 10–1. AER states that the modified meter would permit additional deliveries to ALG's existing rural extension No. 1015 to provide service to the Empire School. AER states that the volume of gas that would be delivered through the replacement facilities is approximately 8,000 Mcf annually and 144 Mcf on a peak day. AER estimates a facility cost of $9,961, which it indicates would be reimbursed by ALG.

Comment date: December 10, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. Northern Natural Gas Co.

[Docket No. CP94–84–000]

Take notice that on November 16, 1993, Northern Natural Gas Company (Northern), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed in Docket No. CP94–84–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to upgrade an existing delivery point to accommodate increased natural gas deliveries to Midwest Gas, a Division of Midwest Power Systems, Inc. (Midwest Gas) for delivery to the Arthur #1 TBS, located in Ida County, under the blanket certificate issued in Docket No. CP82–401–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Northern states that it requests authority to upgrade an existing delivery point in Iowa to accommodate increased natural gas deliveries to Midwest Gas under Northern's currently effective service agreements. Northern states that Midwest Gas has requested increased service at the Arthur #1 town border station (TBS) to handle

additional load requirements for the community of Arthur, Iowa.

Northern further states that the increase in proposed volumes to be delivered to the Arthur #1 TBS of 648 Mcf on a peak day and 16,857 Mcf on an annual basis. Northern estimates a cost of upgrading the delivery point of $4,000. Midwest Gas will reimburse Northern for the cost of upgrading this delivery point.

Comment date: January 3, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to Section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29074 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket Nos. ST93–5514–000 through ST93–6609–000]

Transwestern Pipeline Co.; Self-Implementing Transactions

November 22, 1993.

Take notice that the following transactions have been reported to the Commission as being implemented pursuant to Part 284 of the Commission's regulations, sections 311 and 312 of the Natural Gas Policy Act of 1978 (NGPA), Section 7 of the NGA and section 5 of the Outer Continental Shelf Lands Act.[1]

The "Recipient" column in the following table indicates the entity receiving or purchasing the natural gas in each transaction.

The "Part 284 Subpart" column in the following table indicates the type of transaction.

A "B" indicates transportation by an interstate pipeline on behalf of an intrastate pipeline or a local distribution company pursuant to § 284.102 of the Commission's regulations and section 311(a)(1) of the NGPA.

A "C" indicates transportation by an intrastate pipeline on behalf of an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.122 of the Commission's regulations and section 311(a)(2) of the NGPA.

A "D" indicates a sale by an intrastate pipeline to an interstate pipeline or a local distribution company served by an interstate pipeline pursuant to § 284.142 of the Commission's Regulations and section 311(b) of the NGPA. Any interested person may file a complaint concerning such sales pursuant to § 284.147(d) of the Commission's Regulations.

An "E" indicates an assignment by an intrastate pipeline to any interstate pipeline or local distribution company pursuant to § 284.163 of the Commission's regulations and section 312 of the NGPA.

A "G" indicates transportation by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.222 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–I" indicates transportation by an intrastate pipeline company pursuant to a blanket certificate issued under § 284.227 of the Commission's regulations.

A "G–S" indicates transportation by interstate pipelines on behalf of shippers other than interstate pipelines pursuant to § 284.223 and a blanket certificate issued under § 284.221 of the Commission's regulations.

A "G–LT" or "G–LS" indicates transportation, sales or assignments by a local distribution company on behalf of or to an interstate pipeline or local distribution company pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "G–HT" or "G–HS" indicates transportation, sales or assignments by a Hinshaw Pipeline pursuant to a blanket certificate issued under § 284.224 of the Commission's regulations.

A "K" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of another interstate pipeline pursuant to § 284.303 of the Commission's regulations.

A "K–S" indicates transportation of natural gas on the Outer Continental Shelf by an interstate pipeline on behalf of shippers other than interstate pipelines pursuant to § 284.303 of the Commission's regulations.

Lois D. Cashell,

Secretary.

[1] Notice of a transaction does not constitute a determination that the terms and conditions of the proposed service will be approved or that the noticed filing is in compliance with the Commission's regulations.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-5514	Transwestern Pipeline Co.	Sid Richardson Gasoline Co.	09-01-93	G-S	10,000	N	I	08-01-93	Indef.
ST93-5515	El Paso Natural Gas Co.	Mock Resources, Inc .	09-01-93	G-S	5,596	N	F	08-02-93	08-31-93
ST93-5516	El Paso Natural Gas Co.	Meridian Oil Marketing, Inc.	09-01-93	G-S	4,003	N	F	08-02-93	08-31-93
ST93-5517	El Paso Natural Gas Co.	San Diego Gas & Electric Co.	09-01-93	G-S	1,567	N	F	08-05-93	08-31-93
ST93-5518	El Paso Natural Gas Co.	Meridian Oil Marketing, Inc.	09-01-93	G-S	5,004	N	F	08-02-93	08-31-93
ST93-5519	Colorado Interstate Gas Co.	NGC Transportation, Inc.	09-01-93	G-S	10,000	N	I	08-01-93	Indef.
ST93-5520	Colorado Interstate Gas Co.	Grand Valley Gas Co .	09-01-93	G-S	20,000	N	I	08-01-93	Indef.
ST93-5521	Colorado Interstate Gas Co.	Interenergy Transmission Partners.	09-01-93	G-S	1,000	N	I	08-01-93	Indef.
ST93-5522	Colorado Interstate Gas Co.	Grand Valley Gas Co .	09-01-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5523	Colorado Interstate Gas Co.	Continental Natural Gas, Inc.	09-01-93	G-S	50,000	N	I	08-01-93	Indef.
ST93-5524	Corpus Christi Transmission Co.	Transcontinental Gas Pipeline Corp.	09-01-93	C	15,000	N	I	07-01-93	07-01-94
ST93-5525	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	09-01-93	G-S	250,000	N	I	08-23-93	Indef.
ST93-5526	Tennessee Gas Pipeline Co.	Appalachian Gas Sales.	09-01-93	G-S	100,601	N	I	08-27-93	Indef.
ST93-5527	Tennessee Gas Pipeline Co.	Energy Development Corp.	09-01-93	G-S	500,000	N	I	08-24-93	Indef.
ST93-5528	Colorado Interstate Gas Co.	KN Gas Marketing, Inc	09-02-93	G-S	10,000	N	I	08-06-93	Indef.
ST93-5529	Williams Natural Gas Co.	Post Oak Gas, Inc	09-01-93	G-S	500	N	I	08-01-93	Indef.
ST93-5530	Trunkline Gas Co	Coastal Gas Marketing Co.	09-02-93	G-S	50,000	N	I	08-28-93	Indef.
ST93-5531	Trunkline Gas Co	Tenaska Marketing Ventures.	09-02-93	G-S	100,000	N	I	08-24-93	Indef.
ST93-5532	Trunkline Gas Co	Eastex Hydrocarbons, Inc.	09-02-93	G-S	50,000	N	I	08-28-93	Indef.
ST93-5533	Trunkline Gas Co	Olympic Fuels Co	09-02-93	G-S	40,000	N	I	08-26-93	Indef.
ST93-5534	Colorado Interstate Gas Co.	Interenergy Transmission Partners.	09-02-93	G-S	5,000	N	I	08-09-93	Indef.
ST93-5535	Colorado Interstate Gas Co.	American Warrior, Inc	09-02-93	G-S	380	N	I	08-01-93	Indef.
ST93-5536	Colorado Interstate Gas Co.	Fuel Resource Development Co.	09-02-93	G-S	2,000	N	I	08-10-93	Indef.
ST93-5537	Colorado Interstate Gas Co.	Western Gas Resources, Inc.	09-02-93	G-S	10,000	N	I	08-11-93	Indef.
ST93-5538	Louisiana Intrastate Gas Corp.	Central La Ele. Co., Inc., et al.	09-02-93	C	200,000	N	I	08-01-93	01-01-96
ST93-5539	Oktex Pipeline Co	Lone Star Gas Co	09-02-93	G-S	50,000	N	I	08-07-93	Indef.
ST93-5540	ONG Transmission Co	Williams Natural Gas Co.	09-02-93	C	100,000	N	I	08-11-93	Indef.
ST93-5541	ONG Transmission Co	Ozark Pipeline Co	09-02-93	C	50,000	N	I	08-14-93	Indef.
ST93-5542	ONG Transmission Co	Oktex Pipeline Co	09-02-93	C	100,000	N	I	08-07-93	Indef.
ST93-5543	Exxon Gas System, Inc.	Transok gas Co	09-03-93	C	10,000	N	I	08-16-93	08-31-93
ST93-5544	Transco-Louisiana Intra. P/L Co.	Transcontinental Gas Pipe Line Corp.	09-03-93	C	50,000	N	I	07-16-92	Indef.
ST93-5545	Delhi Gas Pipeline Corp.	KN Energy, Inc	09-03-93	C	375,000	N	I	08-08-93	Indef.
ST93-5546	Enogex Inc	Riverside Pipeline Co., L.P.	09-03-93	C	15,000	N	I	08-07-93	Indef.
ST93-5547	Enogex Inc	Arkla Energy Resources.	09-03-93	C	50,000	N	I	08-07-93	Indef.
ST93-5548	Black Marlin Pipeline Co.	Houston Pipe Line Co	09-03-93	B	25,000	N	I	08-01-93	Indef.
ST93-5549	Transwestern Pipeline Co.	Production Gathering Co.	09-03-93	G-S	627	N	F	08-08-93	08-31-93
ST93-5550	Texas Eastern Transmission Corp.	National Fuel Gas Supply Corp.	09-03-93	G-S	3,077	N	I	08-01-93	10-31-99

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93–5551	Houston Pipeline Co ..	Natural Gas Pipeline Co. of America.	09–03–93	C	20,000	N	I	06–12–93	Indef.
ST93–5552	Houston Pipeline Co ..	Texas Eastern Transmission Co.	09–03–93	C	50,000	N	I	06–10–93	Indef.
ST93–5553	Houston Pipeline Co ..	Texas Eastern Transmission Co.	09–03–93	C	50,000	N	I	06–19–93	Indef.
ST93–5554	Northwest Pipeline Corp.	Salmon Resources, Ltd..	09–03–93	G–S	30,300	N	F	08–21–93	Indef.
ST93–5555	Northwest Pipeline Corp.	Cascade Natural Gas Corp.	09–03–93	G–S	1,232	N	F	08–19–93	Indef.
ST93–5556	Valero Transmission, L.P.	Texas Gas Transmission Corp.	09–07–93	C	4,000	N	I	08–21–93	Indef.
ST93–5557	KN Energy, Inc	KN Gas Marketing, Inc	09–07–93	G–S	10,501	A	F	09–01–93	Indef.
ST93–5558	Questar Pipeline Co ...	Universal Resources Corp.	09–07–93	G–S	350,000	A	I	08–20–93	Indef.
ST93–5559	Arkla Energy Resources Co.	Mississippi River Transmission Corp.	09–07–93	G–S	200,000	A	I	09–01–93	Indef.
ST93–5560	Arkla Energy Resources Co.	Petro-Chem Operating Co., Inc.	09–07–93	G–S	7,000	N	I	09–01–93	Indef.
ST93–5561	Arkla Energy Resources Co.	Rangeline Corp	09–07–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5562	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–07–93	B	502,000	A	F	09–01–93	Indef.
ST93–5563	Florida Gas Transmission Co.	Citrus World, Inc	09–07–93	G–S	3,452	N	I	08–07–93	Indef.
ST93–5564	Midwestern Gas Transmission Co.	Equitable Resources Marketing Co.	09–07–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5565	Tennessee Gas Pipeline Co.	Public Service Electric & Gas Co.	09–07–93	G–S	200,000	N	I	09–01–93	Indef.
ST93–5566	Texas Gas Transmission Corp.	NGC Transportation, Inc.	09–08–93	G–S	300,000	N	I	09–01–93	Indef.
ST93–5567	Texas Gas Transmission Corp.	CNG Producing Co	09–08–93	G–S	20,000	N	I	08–19–93	Indef.
ST93–5568	Sabine Pipe Line Co ..	Torch Gas, L.C.	09–08–93	G–S	10,000	N	I	08–20–93	Indef.
ST93–5569	Williams Natural Gas Co.	Tide West Trading & Transport Co.	09–08–93	G–S	100,000	N	I	08–11–93	Indef.
ST93–5570	U-T Offshore System .	Equitable Resources Marketing Co.	09–08–93	G–S	150,000	N	I	08–10–93	Indef.
ST93–5571	Transcontinental Gas P/L Corp.	CNG Producing Co	09–08–93	G–S	400,000	N	I	08–20–93	Indef.
ST93–5572	Transcontinental Gas P/L Corp.	Equitable Resources Marketing Co.	09–08–93	G–S	160,000	N	I	08–24–93	Indef.
ST93–5573	Northern Natural Gas Co.	Lone Star Gas Co	09–08–93	B	30,000	N	F/I	08–01–93	Indef.
ST93–5574	Northern Natural Gas Co.	Panda Resources, Inc	09–08–93	G–S	30,000	N	F/I	08–01–93	Indef.
ST93–5575	Northern Natural Gas Co.	Texas Utilities Fuel Co	09–08–93	B	100,000	N	F/I	09–01–93	Indef.
ST93–5576	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–09–93	G–S	151,000	A	F	09–01–93	Indef.
ST93–5577	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–09–93	G–S	52,000	A	F	09–01–93	Indef.
ST93–5578	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–09–93	G–S	139,720	A	F	09–01–93	Indef.
ST93–5579	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–09–93	G–S	35,280	A	F	09–01–93	Indef.
ST93–5580	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–09–93	G–S	70,000	A	F	09–01–93	Indef.
ST93–5581	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–09–93	G–S	100,000	A	I	09–01–93	Indef.
ST93–5582	Arkla Energy Resources Co.	Scana Hydrocarbons, Inc.	09–09–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5583	Arkla Energy Resources Co.	Arkansas Louisiana Gas Co.	09–09–93	G–S	150,000	A	I	09–01–93	Indef.
ST93–5584	Arkla Energy Resources Co.	Mangum Brick Co	09–09–93	G–S	250	N	F	09–01–93	Indef.
ST93–5585	Arkla Energy Resources Co.	Duer Wagner & Co	09–09–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5586	Arkla Energy Resources Co.	Jerrico Energy, Inc	09–09–93	G–S	20,000	N	I	09–01–93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date com-menced	Projected ter-mination date
ST93-5587	Arkla Energy Natural Gas Co.	Fina Natural Gas Co ..	09-09-93	G-S	1,000	N	I	09-03-93	Indef.
ST93-5588	Transok, Inc	ANR Pipeline Co., Et Al.	09-09-93	C	20,000	N	I	08-11-93	Indef.
ST93-5589	Lone Star Gas Co	Transwestern Pipeline Co.	09-09-93	C	100,000	N	I	08-10-93	Indef.
ST93-5590	Lone Star Gas Co	OKTEX Pipeline Co., Et Al.	09-09-93	C	100,000	N	I	08-17-93	Indef.
ST93-5591	Ozark Gas Trans-mission System.	Oklahoma Natural Gas Co.	09-09-93	B	100,000	N	F/I	08-14-93	Indef.
ST93-5592	Koch Gateway Pipe-line Co.	Excel Gas Marketing, Inc.	09-10-93	G-S	102,704	N	I	08-23-93	12-21-93
ST93-5593	Koch Gateway Pipe-line Co.	Citrus Marketing, Inc ..	09-10-93	G-S	250,000	N	I	08-23-93	12-21-93
ST93-5594	Koch Gateway Pipe-line Co.	Tauber Oil Co	09-10-93	G-S	50,000	N	I	08-23-93	12-21-93
ST93-5595	Koch Gateway Pipe-line Co.	Mobil Natural Gas Inc	09-10-93	G-S	52,400	N	I	08-27-93	12-25-93
ST93-5596	Koch Gateway Pipe-line Co.	Texaco Gas Marketing Inc.	09-10-93	G-S	55,000	N	F	09-01-93	12-30-93
ST93-5597	Koch Gateway Pipe-line Co.	Prior Intrastate Corp ..	09-10-93	G-S	524,000	N	I	08-23-93	12-21-93
ST93-5598	Koch Gateway Pipe-line Co.	Koch Gas Service Co	09-10-93	G-S	628,800	A	I	08-23-93	12-21-93
ST93-5599	Mobil Bay Pipeline Co	Enron Gas Marketing, Inc.	09-10-93	G-S	100,000	N	I	09-01-93	12-30-93
ST93-5600	Mobil Bay Pipeline Co	Exxon Corp	09-10-93	G-S	300,000	N	I	09-01-93	12-30-93
ST93-5601	Mobil Bay Pipeline Co	Bridgeline Gas Dis-tribution Co.	09-10-93	G-S	50,000	N	I	09-01-93	12-30-93
ST93-5602	Mobil Bay Pipeline Co	Arco Natural Gas Mar-keting.	09-10-93	G-S	150,000	N	I	08-23-93	12-21-93
ST93-5603	Mobil Bay Pipeline Co	Tauber Oil Co	09-10-93	G-S	50,000	N	I	09-01-93	12-30-93
ST93-5604	Oasis Pipe Line Co	Transwestern Pipeline Co.	09-09-93	C	20,000	N	I	07-01-93	Indef.
ST93-5605	Oasis Pipe Line Co	Northern Natural Gas Co.	09-09-93	C	20,000	N	I	07-02-93	Indef.
ST93-5606	Houston Pipe Line Co	Sabine Pipeline Co	09-09-93	C	100,000	N	I	07-01-93	Indef.
ST93-5607	Houston Pipe Line Co	Texas Eastern Trans-mission Corp.	09-09-93	C	100,000	N	I	07-01-93	Indef.
ST93-5608	Houston Pipe Line Co	Northern Natural Gas Co.	09-09-93	C	10,000	N	I	07-01-93	Indef.
ST93-5609	Florida Gas Trans-mission Co.	Fort Pierce Utilities Authority.	09-09-93	G-S	4,693	N	F	08-11-93	Indef.
ST93-5610	Florida Gas Trans-mission Co.	Onyx Gas Marketing Co., L.C..	09-09-93	G-S	20,000	N	I	08-11-93	Indef.
ST93-5611	Northern Natural Gas Co.	Mesa Operating, L.P. .	09-09-93	G-S	5,000	N	F/I	08-02-93	Indef.
ST93-5612	Northern Natural Gas Co.	Transok Gas Co	09-09-93	G-S	.....	N	F/I	09-01-93	Indef.
ST93-5613	Northern Natural Gas Co.	Arkla Energy Market-ing Co.	09-09-93	G-S	40,000	N	F/I	09-01-93	Indef.
ST93-5614	Houston Pipe Line Co	Northern Natural Gas Co.	09-09-93	C	25,000	N	I	07-01-93	Indef.
ST93-5615	Arkansas Western Pipeline Co.	Associated Natural Gas Co.	09-09-93	B	23,000	Y	I	07-30-93	06-30-94
ST93-5616	Arkansas Western Pipeline Co.	Associated Natural Gas Co.	09-09-93	B	33,000	Y	I	07-30-93	06-30-94.
ST93-5617	Oktex Pipeline Co	Anthem Energy Co., L.P.	09-10-93	C	50,000	N	I	08-20-93	Indef.
ST93-5618	Acadiam Gas Pipeline System.	Nat. Gas P/L Co. of American, et al.	09-10-93	C	50,000	N	I	08-17-93	Indef.
ST93-5619	ONG Transmission Co	ANR Pipeline Co	09-10-93	C	50,000	N	I	08-26-93	Indef.
ST93-5620	ONG Transmission Co	Arkla Energy Re-sources.	09-10-93	C	50,000	N	I	08-24-93	Indef.
ST93-5621	Transwestern Pipeline Co.	Tristar Gas Co	09-10-93	G-S	30,000	N	F	08-11-93	08-11-93
ST93-5622	Transwestern Pipeline Co.	Aquila Energy Market-ing Corp.	09-10-93	G-S	3,000	N	F	08-11-93	08-31-93
ST93-5623	El Paso Natural Gas Co.	Seagull Marketing Services, Inc.	09-10-93	G-S	51,500	N	I	09-13-93	Indef.

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ST93-5624	Williston Basin Inter. P/L Co.	Ratex Gathering Co., Inc..	09-10-93	G-S	33,000	Y	I	08-12-93	09-30-94
ST93-5625	Tennessee Gas Pipeline Co.	Conoco, Inc.	09-10-93	G-S	100,000	N	I	09-01-93	Indef.
ST93-5629	Trunkline Gas Co	KCS Energy Marketing, Inc..	09-10-93	G-S	50,000	N	I	08-24-93	Indef.
ST93-5630	Trunkline Gas Co.	Midcon Gas Services Corp..	09-10-93	G-S	100,000	N	I	08-24-93	Indef.
ST93-5631	Natural Gas P/L Co. of America.	DGS Trading, Inc	09-1-93	G-S	3,313	N	F	09-01-93	09-30-93
ST93-5632	Natural Gas P/L Co. of America.	American Central Gas Co., Inc.	09-10-93	G-S	100,000	N	I	04-01-89	Indef.
ST93-5633	Equitrans, Inc	Columbia Gas of Pennsylvania.	09-13-93	G-S	325	N	I	05-28-93	03-31-93
ST93-5634	Texas Gas Transmission Corp.	Transcontinental Gas Pipe Line Corp.	09-13-93	G	200,000	Y	I	09-01-93	Indef.
ST93-5635	Texas Gas Transmission Corp.	Associated Natural Gas, Inc.	09-13-93	G-S	250,000	Y	I	09-01-93	Indef.
ST93-5636	Texas Gas Transmission Corp.	CNG Producing Co	09-13-93	G-S	50,000	Y	I	09-02-93	Indef.
ST93-5637	Texas Gas Transmission Corp.	ARCO Natural Gas Marketing, Inc.	09-13-93	G-S	4,000	Y	I	09-03-93	Indef.
ST93-5638	Lone Star Gas Co	Transwestern Pipeline Co., et al.	09-13-93	C	4,000	N	I	08-14-93	Indef.
ST93-5639	Williams Natural Gas Co.	Arkla Energy Marketing Co.	09-13-93	G-S	50,000	N	I	08-15-93	Indef.
ST93-5640	Tennessee Gas Pipeline Co.	Santa Fe Minerals, Inc	09-13-93	G-S	10,000	N	I	09-01-93	Indef.
ST93-5641	Tennessee Gas Pipeline Co.	Energy Development Corp.	09-13-93	G-S	15,000	N	I	09-01-93	Indef.
ST93-5642	Tennessee Gas Pipeline Co.	Transcontinental Gas Pipe Line Co.	09-13-93	G-S	212,250	N	I	09-01-93	Indef.
ST93-5643	Tennessee Gas Pipeline Co.	Superior Natural Gas Corp.	09-13-93	G-S	400,000	N	I	09-01-93	Indef.
ST93-5644	Tennessee Gas Pipeline Co.	KCS Energy Marketing, Inc.	09-13-93	G-S	300,000	N	I	09-01-93	Indef.
ST93-5646	Tennessee Gas Pipeline Co.	Diamond Shamrock Offshore Partners.	09-13-93	G-S	132,000	N	I	09-01-93	Indef.
ST93-5647	Tennessee Gas Pipeline Co.	Polaris Pipeline Corp .	09-13-93	G-S	200,000	N	I	09-01-93	Indef.
ST93-5648	Tennessee Gas Pipeline Co.	Distrigas of Massachusetts Corp.	09-13-93	G-S	310,000	N	I	09-01-93	Indef.
ST93-5649	Tennessee Gas Pipeline Co.	Aluminum Co. of America.	09-13-93	G-S	50,000	N	I	09-01-93	Indef.
ST93-5650	Tennessee Gas Pipeline Co.	Phibro Energy	09-13-93	G-S	200,000	N	I	09-01-93	Indef.
ST93-5651	Tennessee Gas Pipeline Co.	Associated Natural Gas, Inc.	09-13-93	G-S	90,000	N	I	09-01-93	Indef.
ST93-5652	Tennessee Gas Pipeline Co.	Oryx Gas Marketing, L.P.	09-13-93	G-S	200,000	N	I	09-01-93	Indef.
ST93-5653	Tennessee Gas Pipeline Co.	Iroquois Gas Transmission System.	09-13-93	G-S	10,000	A	I	09-01-93	Indef.
ST93-5655	Tennessee Gas Pipeline Co.	Petroleum Source & Systems Group.	09-13-93	G-S	4,000	N	I	09-01-93	Indef.
ST93-5656	Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	09-13-93	G-S	92,000	N	I	09-01-93	Indef.
ST93-5657	Tennessee Gas Pipeline Co.	Enron Gas Marketing, Inc.	09-13-93	G-S	500,000	N	I	09-01-93	Indef.
ST93-5658	Tennessee Gas Pipeline Co.	Direct Gas Supply Corp.	09-13-93	G-S	91,500	N	I	09-01-93	Indef.
ST93-5659	Tennessee Gas Pipeline Co.	Brooklyn Interstate Nat. Gas Corp.	09-13-93	G-S	65,000	N	I	09-01-93	Indef.
ST93-5660	Transamerican Natural Gas Corp..	Trunkline Gas Co	09-14-93	C	25,000	N	I	03-01-92	Indef.
ST93-5661	Transamerican Natural Gas Corp.	Tennessee Gas Pipeline Co.	09-14-93	C	25,000	N	I	03-14-92	Indef.
ST93-5662	Transcontinental Gas P/L Corp.	Texas-Ohio Gas, Inc ..	09-14-93	G-S	112,000	N	I	08-27-93	Indef.
ST93-5663	Tennessee Gas Pipeline Co.	Valley Gas Co	09-14-93	G-S	7,168	N	F	09-01-93	Indef.

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ST93–5665	Tennessee Gas Pipeline Co.	TXG Gas Marketing Co.	09–14–93	G–S	500,000	N	I	09–01–93	Indef.
ST93–5666	Tennessee Gas Pipeline Co.	Aquila Energy Marketing Corp.	09–14–93	G–S	750,000	N	I	09–01–93	Indef.
ST93–5667	Tennessee Gas Pipeline Co.	Midcoast Energy Resources, Inc.	09–14–93	G–S	11,200	N	I	09–01–93	Indef.
ST93–5668	Tennessee Gas Pipeline Co.	Meridian Marketing & Trans. Corp.	09–14–93	G–S	2,000	N	I	09–01–93	Indef.
ST93–5669	Tennessee Gas Pipeline Co.	E.I. DuPont de Nemours.	09–14–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5670	Tennessee Gas Pipeline Co.	O & R Energy, Inc	09–14–93	G–S	345,000	N	I	09–01–93	Indef.
ST93–5672	Tennessee Gas Pipeline Co.	Energy Development Corp.	09–14–93	G–S	515,000	N	I	09–01–93	Indef.
ST93–5673	Tennessee Gas Pipeline Co.	Proctor & Gamble Paper Products Co.	09–14–93	G–S	40,000	N	I	09–01–93	Indef.
ST93–5674	Tennessee Gas Pipeline Co.	Texas Gas Transmission Corp.	09–14–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5675	Tennessee Gas Pipeline Co.	Cincinnati Gas & Elect. Co.	09–14–93	G–S	42,000	N	F	09–01–93	Indef.
ST93–5676	Tennessee Gas Pipeline Co.	New York State Elect. & Gas, Inc.	09–14–93	G–S	18,816	N	F	09–03–93	Indef.
ST93–5677	Tennessee Gas Pipeline Co.	Gaslantic Corp	09–14–93	G–S	10,000	N	I	09–01–93	Indef.
ST93–5678	Tennessee Gas Pipeline Co.	Middle Tennessee Natural Gas Util..	09–14–93	G–S	3,061	N	F	09–01–93	Indef.
ST93–5679	Tennessee Gas Pipeline Co.	Orange & Rockland Utilities, Inc.	09–14–93	G–S	25,000	N	F	09–01–93	Indef.
ST93–5680	Trunkline Gas. Co	Catex Energy, Inc	09–14–93	G–S	100,000	N	I	08–31–93	Indef.
ST93–5681	Midwestern Gas Transmission Co.	MG Natural Gas Corp	09–14–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5682	Midwestern Gas Transmission Co.	Brooklyn Interstate Nat. Gas Corp.	09–14–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5683	Midwestern Gas Transmission Co.	Enron Gas Marketing .	09–14–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5684	ANR Pipeline Co	Coastal Gas Marketing Co.	09–14–93	G–S	1,400,000	A	I	09–01–93	Indef.
ST93–5685	ANR Pipeline Co	Coastal Gas Marketing Co.	09–14–93	G–S	850,000	A	I	09–01–93	Indef.
ST93–5686	ANR Pipeline Co	Mountain Front Pipeline Co., Inc.	09–14–93	G–S	25,000	N	F	09–01–93	Indef.
ST93–5687	ANR Pipeline Co	Kerr-McGee Corp	09–14–93	G–S	40,000	N	I	09–01–93	Indef.
ST93–5688	ANR Pipeline Co	Associated Natural Gas, Inc.	09–14–93	G–S	150,000	N	F	09–01–93	10–31–93
ST93–5689	ANR Pipeline Co	Aquila Energy Marketing Corp.	09–14–93	G–S	100,000	N	F	09–01–93	Indef.
ST93–5690	ANR Pipeline Co	Eagle Natural Gas Co	09–14–93	G–S	25,000	N	I	08–27–93	Indef.
ST93–5691	ANR Pipeline Co	Twister Transmission Co.	09–14–93	G–S	25,000	N	F	09–01–93	Indef.
ST93–5692	Northern Natural Gas Co.	Midwest Gas, Div. Midwest Power.	09–15–93	B	194,400	N	I	07–01–93	Indef.
ST93–5693	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al..	09–15–93	C	25,000	N	I	08–21–93	Indef.
ST93–5694	Enogex Inc	Ozark Gas Transmission System.	09–15–93	C	10,000	N	I	08–21–93	Indef.
ST93–5695	Midwestern Gas Transmission Co.	O & R Energy, Inc	09–15–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5696	Midwestern Gas Transmission Co.	Associated Natural Gas, Inc.	09–15–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5697	Midwestern Gas Transmission Co.	Northern Canadian Marketing Corp.	09–15–93	G–S	150,000	N	I	09–01–93	Indef.
ST93–5698	Tennessee Gas Pipeline Co.	Elizabeth Natural Gas Co., Inc.	09–15–93	G–S	1,235	N	I	09–01–93	Indef.
ST93–5699	Tennessee Gas Pipeline Co.	Lawrence-Colbert Counties Gas Dist..	09–15–93	G–S	1,538	N	F	09–01–93	Indef.
ST93–5700	Tennessee Gas Pipeline Co.	Blackstone Gas Co	09–15–93	G–S	405	N	F	09–01–93	Indef.
ST93–5701	Tennessee Gas Pipeline Co.	Orange and Rockland Utilities, Inc.	09–15–93	G–S	14,000	N	F	09–01–93	Indef.
ST93–5702	Tennessee Gas Pipeline Co.	Lockport Energy Associates, L.P..	09–15–93	G–S	12,000	N	F	09–01–93	Indef.

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ST93-5704	Tennessee Gas Pipeline Co.	City of Shuqualak	09-15-93	G-S	453	N	F	09-01-93	Indef.
ST93-5705	Columbia Gas Transmission Corp.	Indeck-Olean Limited Partnership.	09-15-93	B	16,200	N	I	09-01-93	Indef.
ST93-5706	Columbia Gas Transmission Corp.	Anchor Glass Container Corp.	09-15-93	G-S	12,350	Y	I	08-20-93	Indef.
ST93-5707	Columbia Gas Transmission Corp.	Bakerwell, Inc	09-15-93	G-S	3,500	N	I	09-01-93	Indef.
ST93-5708	Columbia Gas Transmission Corp.	Columbia Energy Services Corp.	09-15-93	G-S	1,300	N	F	09-01-93	10-31-94
ST93-5709	Columbia Gas Transmission Corp.	National Gas Resources L.P.	09-15-93	G-S	50,000	Y	I	08-30-93	Indef.
ST93-5710	Columbia Gas Transmission Corp.	T.W. Phillips Gas & Oil Co.	09-15-93	G-S	10,000	N	I	09-02-93	Indef.
ST93-5711	CNG Transmission Corp.	Applichian Gas Sales .	09-15-93	G-S	50,000	N	I	09-09-93	Indef.
ST93-5712	CNG Transmission Corp.	City of Richmond	09-15-93	G-S	135,000	N	I	09-09-93	Indef.
ST93-5713	CNG Transmission Corp.	Catex Energy Inc	09-15-93	G-S	3,700	N	I	09-03-93	Indef.
ST93-5714	CNG Transmission Corp.	Atlas Gas Marketing ..	09-15-93	G-S	3,000	N	I	08-26-93	Indef.
ST93-5715	CNG Transmission Corp.	Arcadia Energy Corp .	09-15-93	G-S	1,500	N	I	09-08-93	Indef.
ST93-5716	CNG Transmission Corp.	Transport Gas, Inc	09-15-93	G-S	2,400	N	I	08-28-93	Indef.
ST93-5717	CNG Transmission Corp.	Transport Gas, Inc	09-15-93	G-S	2,400	N	I	09-25-93	Indef.
ST93-5718	CNG Transmission Corp.	National Fuel Dist. Gas Supply.	09-15-93	G-S	39,452	N	I	09-01-93	Indef.
ST93-5719	CNG Transmission Corp.	Transport Gas, Inc	09-15-93	G-S	2,400	N	I	08-25-93	Indef.
ST93-5720	CNG Transmission Corp.	Eastern Marketing Corp.	09-15-93	G-S	10,000	N	I	09-01-93	Indef.
ST93-5721	CNG Transmission Corp.	Fuel Resources Production & Dev.	09-15-93	G-S	6,000	N	I	09-01-93	Indef.
ST93-5722	Tennessee Gas Pipeline Co.	Arco Natural Gas Marketing, Inc.	09-16-93	G-S	173,000	N	I	09-01-93	Indef.
ST93-5723	Tennessee Gas Pipeline Co.	Koch Gateway Pipeline Co.	09-16-93	G-S	643,100	N	I	09-03-93	Indef.
ST93-5724	Tennessee Gas Pipeline Co.	American Steel & Wire Corp.	09-16-93	G-S	10,000	N	I	09-09-93	Indef.
ST93-5725	Tennessee Gas Pipeline Co.	Delta Natural Gas Co., Inc.	09-16-93	G-S	1,400	N	F	09-01-93	Indef.
ST93-5726	Tennessee Gas Pipeline Co.	Amerada Hess Corp ..	09-16-93	G-S	200,000	N	I	09-07-93	Indef.
ST93-5727	Tennessee Gas Pipeline Co.	Peoples Gas Light & Coke Co.	09-16-93	G-S	32,490	N	I	09-07-93	Indef.
ST93-5728	Koch Gateway Pipeline Co.	MG Natural Gas Corp	09-16-93	G-S	41,920	N	I	09-07-93	01-05-94
ST93-5729	Koch Gateway Pipeline Co.	Vesta Energy Co	09-16-93	G-S	104,800	N	I	09-02-93	12-31-93
ST93-5730	Midwestern Gas Transmission Co.	American Central Gas Marketing Co.	09-17-93	G-S	100,000	N	I	09-04-93	Indef.
ST93-5731	Midwestern Gas Transmission Co.	Midcon Gas Services Corp.	09-17-93	G-S	700,000	N	I	09-01-93	Indef.
ST93-5732	Williston Basin Inter. P/L Co.	Rainbow Gas Co	09-17-93	G-S	354,154	A	I	08-19-93	07-31-94
ST93-5733	Great Lakes Gas Transmission Co.	Coenergy Ventures, Inc.	09-17-93	G-S	30,000	N	F	09-01-93	09-30-93
ST93-5734	Great Lakes Gas Transmission Co.	Progas U.S.A., Inc	09-17-93	G-S	25,000	N	F	09-01-93	11-01-00
ST93-5735	Texas Eastern Transmission Corp.	Equitable Gas Co	09-17-93	G-S	109,207	N	F	09-01-93	10-31-12
ST93-5736	Equitrans, Inc	Capitol Oil & Gas Co	09-17-93	G-S	3,097	N	I	05-27-93	Indef.
ST93-5737	Equitrans, Inc	Equitable Gas Co	09-17-93	G-S	2,168	N	I	07-01-93	03-31-03
ST93-5738	Equitrans, Inc	Equitable Resources Energy Co.	09-17-93	G-S	2,168	N	I	06-01-93	Indef.
ST93-5739	Equitrans, Inc	Equitable Resources Marketing Co.	09-17-93	G-S	2,168	N	I	06-01-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date com-menced	Projected ter-mination date
ST93–5740	Equitrans, Inc	Peoples Natural Gas Co.	09–17–93	G–S	2,168	N	I	06–11–93	03–31–03
ST93–5741	Equitrans, Inc	Equitable Storage Co .	09–17–93	G–S	2,168	N	I	06–01–93	Indef.
ST93–5742	Equitrans, Inc	Industrial Energy Services Co.	09–17–93	G–S	2,168	N	I	08–04–93	Indef.
ST93–5743	Trailblazer Pipeline Co	Enron Oil & Gas Co ...	09–17–93	G–S	353,000	N	I	09–01–93	Indef.
ST93–5744	Transok, Inc	ANR Pipeline Co., et al.	09–17–93	C	270,000	N	I	09–01–93	Indef.
ST93–5745	Transok, Inc	ANR Pipeline Co., et al.	09–17–93	C	8,000	N	I	09–01–93	Indef.
ST93–5746	Transok, Inc	ANR Pipeline Co., et al.	09–17–93	C	100,000	N	I	09–01–93	Indef.
ST93–5747	Stingray Pipeline Co ..	Western Gas Re-sources, Inc.	09–17–93	K–S	100,000	N	I	09–01–93	Indef.
ST93–5748	Transcontinental Gas P/L Corp.	National Gas Re-sources L.P.	09–17–93	G–S	150,000	N	I	08–22–93	Indef.
ST93–5749	Delhi Gas Pipeline Corp.	El Paso Natural Gas Co.	09–20–93	C	14,000	N	I	08–22–93	Indef.
ST93–5750	Ozark Gas Trans-mission System.	Mississippi River Transmission Corp.	09–20–93	G–S	50,000	N	I	08–21–93	Indef.
ST93–5751	Westar Transmission Co.	Natural Gas Pipeline Co. of America.	09–20–93	C	50,000	N	I	08–01–93	Indef.
ST93–5752	Westar Transmission Co.	Northern Natural Gas Co.	09–20–93	C	25,000	N	I	08–01–93	Indef.
ST93–5753	Westar Transmission Co.	Transwestern Pipeline Co.	09–20–93	C	30,000	N	I	08–21–93	Indef.
ST93–5754	Transwestern Pipeline Co.	Landmark Gas Corp ..	09–20–93	B	3,000	N	I	09–01–93	Indef.
ST93–5755	Transwestern Pipeline Co.	Northern California Power Agency.	09–20–93	G–S	41,000	N	I	08–10–93	Indef.
ST93–5756	Transwestern Pipeline Co.	New Mexico Natural Gas, Inc.	09–20–93	G–S	2,000	N	I	05–21–93	Indef.
ST93–5757	Transwestern Pipeline Co.	Equitable Resources Marketing Co.	09–20–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5758	Colorado Interstate Gas Co.	Interenergy Corp	09–21–93	G–S	5,000	N	I	09–01–93	Indef.
ST93–5759	ANR Pipeline Co	United States Gypsum Co.	09–21–93	G–S	3,975	N	I	09–01–93	Indef.
ST93–5760	ANR Pipeline Co	United States Gypsum Co.	09–21–93	G–S	50,000	N	I	08–20–93	Indef.
ST93–5761	Neches Pipeline Sys-tem.	Natural Gas Pipeline Co. of America.	09–21–93	C	10,000	N	I	09–02–93	Indef.
ST93–5762	Northern Natural Gas Co.	Desoto Pipeline Co., Inc.	09–21–93	G–S	10,000	N	F/I	09–01–93	Indef.
ST93–5763	Northern Natural Gas Co.	Koch Hydrocarbon Co	09–21–93	G–S	2,000,000	N	F/I	08–16–93	Indef.
ST93–5764	Northern Natural Gas Co.	Koch Hydrocarbon Co	09–21–93	G–S	17,345	N	I	08–01–93	05–31–91
ST93–5765	Midwestern Gas Transmission Co.	Unigas Energy, Inc	09–21–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5766	Midwestern Gas Transmission Co.	Polaris Pipeline Corp .	09–21–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5767	Midwestern Gas Transmission Co.	Unified Natural Gas Group, Inc.	09–21–93	G–S	30,000	N	I	09–01–93	Indef.
ST93–5768	Midwestern Gas Transmission Co.	Valero Gas Marketing, L.P.	09–21–93	G–S	200,000	N	I	09–01–93	Indef.
ST93–5769	Midwestern Gas Transmission Co.	Hadson Gas Systems, Inc.	09–21–93	G–S	300,000	N	I	09–01–93	Indef.
ST93–5774	Tennessee Gas Pipe-line Co.	Atlas Gas Marketing, Inc.	09–21–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5775	Tennessee Gas Pipe-line Co.	M&B Industrial Gas Corp.	09–21–93	G–S	57,000	N	I	09–01–93	Indef.
ST93–5776	Tennessee Gas Pipe-line Co.	Yuma Gas Corp	09–21–93	G–S	125,000	N	I	09–01–93	Indef.
ST93–5777	Tennessee Gas Pipe-line Co.	Tenngasco Corp	09–21–93	G–S	4,000,000	A	I	09–01–93	Indef.
ST93–5778	Tennessee Gas Pipe-line Co.	Continental Energy Marketing, Inc.	09–21–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5779	Tennessee Gas Pipe-line Co.	NGC Transportation, Inc.	09–21–93	G–S	1,000,000	N	I	09–01–93	Indef.

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ST93–5780	Tennessee Gas Pipeline Co.	Midcon Gas Services Corp.	09–21–93	G–S	833,325	N	I	09–01–93	Indef.
ST93–5781	Tennessee Gas Pipeline Co.	Kerr-McGee Corp	09–21–93	G–S	500,000	N	I	09–01–93	Indef.
ST93–5782	Tennessee Gas Pipeline Co.	Equitable Resources Marketing Co.	09–21–93	G–S	300,000	N	I	09–01–93	Indef.
ST93–5784	Tennessee Gas Pipeline Co.	Coastal Gas Marketing Co.	09–21–93	G–S	500,000	N	I	09–01–93	Indef.
ST93–5786	Tennessee Gas Pipeline Co.	Catex Energy, Inc	09–21–93	G–S	152,600	N	I	09–01–93	Indef.
ST93–5787	Tennessee Gas Pipeline Co.	Endevco Oil & Gas Co	09–21–93	G–S	11,000	N	I	09–01–93	Indef.
ST93–5788	Tennessee Gas Pipeline Co.	Brooklyn Union Gas Co.	09–21–93	G–S	140,000	N	I	09–05–93	Indef.
ST93–5789	Tennessee Gas Pipeline Co.	Columbia Energy Services.	09–21–93	G–S	140,000	N	I	09–01–93	Indef.
ST93–5790	Tennessee Gas Pipeline Co.	Nerco Oil & Gas, Inc ..	09–21–93	G–S	200,000	N	I	09–01–93	Indef.
ST93–5791	Tennessee Gas Pipeline Co.	Encina Gas Marketing, Inc.	09–21–93	G–S	175,000	N	I	09–01–93	Indef.
ST93–5792	Tennessee Gas Pipeline Co.	Valero Gas Marketing, L.P.	09–21–93	G–S	100,000	N	I	09–01–93	Indef.
ST93–5793	Tennessee Gas Pipeline Co.	CNG Producing Co	09–21–93	G–S	500,000	N	I	09–01–93	Indef.
ST93–5794	Tennessee Gas Pipeline Co.	Unigas Energy, Inc	09–21–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5795	Tennessee Gas Pipeline Co.	Clinton Gas Marketing, Inc.	09–21–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5796	Tennessee Gas Pipeline Co.	Ocean State Power	09–21–93	G–S	110,000	N	I	09–02–93	Indef.
ST93–5799	Tennessee Gas Pipeline Co.	Mobil Natural Gas, Inc	09–21–93	G–S	200,000	N	I	09–01–93	Indef.
ST93–5800	Tennessee Gas Pipeline Co.	Koch Gas Services Co	09–21–93	G–S	250,000	N	I	09–01–93	Indef.
ST93–5801	Tennessee Gas Pipeline Co.	Exxon Corp	09–21–93	G–S	200,000	N	I	09–01–93	Indef.
ST93–5810	Williston Basin Inter. P/LCo.	Northern States Power Co.	09–22–93	G–S	461	N	F	08–23–93	08–01–13
ST93–5811	Columbia Gulf Transmission Co.	Coast Energy Group, Inc.	09–22–93	G–S	370,000	N	I	08–28–93	Indef.
ST93–5812	Columbia Gulf Transmission Co.	Louisiana Natural Gas Pipeline, Inc.	09–22–93	G–S	65,000	N	I	09–01–93	Indef.
ST93–5813	Columbia Gulf Transmission Co.	National Gas Resources L.R.	09–22–93	G–S	120,000	N	I	09–01–93	Indef.
ST93–5814	Columbia Gulf Transmission Co.	Torch Gas, L.C	09–22–93	G–S	50,000	N	I	09–01–93	Indef.
ST93–5815	Sea Robin Pipeline Co	Nerco Oil & Gas, Inc ..	09–22–93	G–S	100,000	N	I	09–18–93	Indef.
ST93–5816	Sea Robin Pipeline Co	Sonat Marketing Co ...	09–22–93	G–S	15,480	N	I	09–01–93	Indef.
ST93–5817	Tennessee Gas Pipeline Co.	Industrial Energy Services Co.	09–22–93	G–S	4,000	N	F	09–01–93	Indef.
ST93–5818	Tennessee Gas Pipeline Co.	Conoco Inc	09–22–93	G–S	6,000	N	F	09–01–93	Indef.
ST93–5820	Tennessee Gas Pipeline Co.	Kerr McGee Chemical Corp.	09–22–93	G–S	6,263	N	F	09–01–93	Indef.
ST93–5821	Tennessee Gas Pipeline Co.	Tejas Power Corp	09–22–93	G–S	10,000	N	F	09–02–93	Indef.
ST93–5823	Tennessee Gas Pipeline Co.	National Fuel Gas Distribution Corp.	09–22–93	G–S	30,750	N	F	09–01–93	Indef.
ST93–5824	Tennessee Gas Pipeline Co.	Northern Indiana Public Service Co.	09–22–93	G–S	70,707	N	F	09–01–93	Indef.
ST93–5825	Tennessee Gas Pipeline Co.	Masonite Corp	09–22–93	G–S	531	N	F	09–08–93	Indef.
ST93–5826	Tennessee Gas Pipeline Co.	Central Illinois Public Service Co.	09–22–93	G–S	109,140	N	F	09–10–93	Indef.
ST93–5827	Tennessee Gas Pipeline Co.	Eagle Natural Gas Co	09–22–93	G–S	45,235	N	I	09–12–93	Indef.
ST93–5828	Tennessee Gas Pipeline Co.	City of Lobelville	09–22–93	G–S	400	N	F	09–01–93	Indef.
ST93–5829	Tennessee Gas Pipeline Co.	Town of Ridgetop-Natural Gas System.	09–22–93	G–S	350	N	F	09–01–93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-5830	Tennessee Gas Pipeline Co.	City of Springfield	09-22-93	G-S	8,200	N	F	09-01-93	Indef.
ST93-5832	Tennessee Gas Pipeline Co.	City of Moulton	09-22-93	G-S	1,730	N	F	09-01-93	Indef.
ST93-5833	Tennessee Gas Pipeline Co.	O & R Energy, Inc	09-22-93	G-S	2,073	N	F	09-01-93	Indef.
ST93-5834	Tennessee Gas Pipeline Co.	Valley Gas Co	09-22-93	G-S	7,167	N	F	09-01-93	Indef.
ST93-5835	Tennessee Gas Pipeline Co.	Texas-Ohio Gas, Inc. .	09-22-93	G-S	195,000	N	I	09-02-93	Indef.
ST93-5836	Tennessee Gas Pipeline Co.	Central Hudson Gas & Electric Corp..	09-22-93	G-S	16,126	N	F	09-01-93	Indef.
ST93-5837	Tennessee Gas Pipeline Co.	City of Vina	09-22-93	G-S	155	N	F	09-01-93	Indef.
ST93-5838	Tennessee Gas Pipeline Co.	Orange & Rockland Utilities, Inc.	09-22-93	G-S	17,356	N	F	09-13-93	Indef.
ST93-5840	Tennessee Gas Pipeline Co.	Clarion River Gas Co .	09-22-93	G-S	38	N	F	09-10-93	Indef.
ST93-5842	Tennessee Gas Pipeline Co.	Western Gas Resources, Inc.	09-22-93	G-S	491,000	N	I	09-01-93	Indef.
ST93-5844	Tennessee Gas Pipeline Co.	Unifield Natural Gas Group, Inc.	09-22-93	G-S	19,000	N	I	09-01-93	Indef.
ST93-5845	Tennessee Gas Pipeline Co.	Transco Energy Marketing Co.	09-22-93	G-S	500,000	N	I	09-01-93	Indef.
ST93-5846	Tennessee Gas Pipeline Co.	Chevron U.S.A., Inc. ..	09-22-93	G-S	500,000	N	I	09-01-93	Indef.
ST93-5847	Tennessee Gas Pipeline Co.	MG Natural Gas Corp.	09-22-93	G-S	200,000	N	I	09-01-93	Indef.
ST93-5849	Tennessee Gas Pipeline Co.	Texaco Gas Marketing, Inc.	09-22-93	G-S	250,000	N	I	09-03-93	Indef.
ST93-5851	Tennessee Gas Pipeline Co.	Endevco Oil & Gas Co	09-22-93	G-S	2,550	N	I	09-01-93	Indef.
ST93-5853	Midwestern Gas Transmission Co.	Conoco Inc.	09-22-93	G-S	50,000	N	I	09-14-93	Indef.
ST93-5854	Enogex Inc.	Arkla Energy Resources.	09-22-93	C	100,000	N	I	09-01-93	Indef.
ST93-5855	Southern Natural Gas Co.	Riverside Energy Resources, Inc.	09-22-93	G-S	80,000	N	I	09-03-93	Indef.
ST93-5856	Southern Natural Gas Co.	Prior Intrastate	09-22-93	G-S	150,000	N	I	08-24-93	Indef.
ST93-5857	Southern Natural Gas Co.	Louis Dreyfus Natural Gas Corp.	09-22-93	G-S	40,000	N	I	09-18-93	Indef.
ST93-5858	Midwestern Gas Transmission Co.	Catex Energy, Inc.	09-22-93	G-S	100,000	N	I	09-01-93	Indef.
ST93-5859	Tennessee Gas Pipeline Co.	Clarion River Gas Co .	09-22-93	G-S	40	N	F	09-10-93	Indef.
ST93-5860	Tennessee Gas Pipeline Co.	Village of Provencal ...	09-22-93	G-S	292	N	F10	09-10-93	Indef.
ST93-5861	Tennessee Gas Pipeline Co.	City of Portland-Natural Gas System.	09-22-93	G-S	5,500	N	F	09-01-93	Indef.
ST93-5862	Tennessee Gas Pipeline Co.	Town of Walnut	09-22-93	G-S	800	N	F	09-01-93	Indef.
ST93-5863	Tennessee Gas Pipeline Co.	City of Corinth Pub. Utilities Comm.	09-22-93	G-S	2,715	N	F	09-16-93	Indef.
ST93-5864	Tennessee Gas Pipeline Co.	Orange & Rockland Utilities, Inc.	09-22-93	G-S	16,898	N	F	09-03-93	Indef.
ST93-5867	Tennessee Gas Pipeline Co.	UCAR Carbon Co. Inc	09-22-93	G-S	3,265	N	F	09-01-93	Indef.
ST93-5868	Tennessee Gas Pipeline Co.	Valley Gas Co	09-22-93	G-S	5,000	N	F	09-01-93	Indef.
ST93-5870	Tennessee Gas Pipeline Co.	North Coast Energy, Inc.	09-22-93	G-S	10,000	N	I	09-10-93	Indef.
ST93-5872	Tennessee Gas Pipeline Co.	Southern Connecticut Gas Co.	09-22-93	G-S	37,632	N	F	09-01-93	Indef.
ST93-5873	Tennessee Gas Pipeline Co.	Peoples Gas Light & Coke Co.	09-22-93	G-S	51,652	N	F	09-01-93	Indef.
ST93-5874	Tennessee Gas Pipeline Co.	Pennsylvania Gas & Water Co.	09-22-93	G-S	22,609	N	F	09-01-93	Indef.
ST93-5875	Tennessee Gas Pipeline Co.	Cherokee Water & Gas Dept.	09-22-93	G-S	359	N	F01	09-76-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-5876	Tennessee Gas Pipeline Co.	City of Baldwyn	09-22-93	G-S	1,900	N	F	09-01-93	Indef.
ST93-5877	Tennessee Gas Pipeline Co.	Rochester Gas & Electric Corp.	09-22-93	G-S	30,725	N	F	09-01-93	Indef.
ST93-5878	Tennessee Gas Pipeline Co.	OSRAM Sylvania, Inc	09-22-93	G-S	1,800	N	F	09-01-93	Indef.
ST93-5879	Tennessee Gas Pipeline Co.	O & R Energy, Inc	09-22-93	G-S	2,927	N	F	09-01-93	Indef.
ST93-5880	Tennessee Gas Pipeline Co.	T. W. Phillips Gas & Oil Co.	09-22-93	G-S	5,212	N	F	09-01-93	Indef.
ST93-5881	Tennessee Gas Pipeline Co.	National Fuel Gas Distribution Corp.	09-22-93	G-S	82,119	N	F	09-01-93	Indef.
ST93-5882	Tennessee Gas Pipeline Co.	Mountaineer Gas Services, Inc.	09-22-93	G-S	5,000	N	F	09-01-93	Indef.
ST93-5883	Tennessee Gas Pipeline Co.	AGF Direct Gas Sales, Inc.	09-22-93	G-S	10,000	N	I	09-11-93	Indef.
ST93-5884	Tennessee Gas Pipeline Co.	O & R Energy, Inc	09-22-93	G-S	2,073	N	F	09-01-93	Indef.
ST93-5887	Tennessee Gas Pipeline Co.	Industrial Energy Services Co.	09-22-93	G-S	150,000	N	I	09-10-93	Indef.
ST93-5888	Tennessee Gas Pipeline Co.	North Canadian Marketing Corp.	09-22-93	G-S	200,000	N	I	09-08-93	Indef.
ST93-5889	Tennessee Gas Pipeline Co.	Valley Gas Co	09-22-93	G-S	387	N	F	09-01-93	Indef.
ST93-5891	Tennessee Gas Pipeline Co.	East Tennessee Natural Gas Co.	09-22-93	G-S	174,599	Y	F	09-01-93	Indef.
ST93-5892	Tennessee Gas Pipeline Co.	Long Island Lighting Co.	09-22-93	G-S	5,202	N	F	09-01-93	Indef.
ST93-5893	Tennessee Gas Pipeline Co.	Knoxville Utilities Board.	09-22-93	G-S	5,102	N	F	09-01-93	Indef.
ST93-5894	Tennessee Gas Pipeline Co.	Loudon Utilities	09-22-93	G-S	1,531	N	F	09-01-93	Indef.
ST93-5895	Tennessee Gas Pipeline Co.	Ball-Incon Glass Packaging Corp.	09-22-93	G-S	3,000	N	F	09-01-93	Indef.
ST93-5896	Tennessee Gas Pipeline Co.	Arkla Energy Resources, et al.	09-22-93	G-HT	10,000	N	I	07-01-93	05-31-92
ST93-5897	Trailblazer Pipeline Co	K N Gas Marketing, Inc.	09-23-93	G-S	15,400	N	F	09-01-93	09-30-93
ST93-5898	Koch Gateway Pipeline Co.	Excel Gas Marketing, Inc.	09-23-93	G-S	102,704	N	I	09-15-93	01-13-94
ST93-5899	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	09-23-93	G-S	50,000	A	F	09-01-93	09-30-93
ST93-5900	Natural Gas P/L Co. of America.	Snyder Gas Marketing, Inc.	09-23-93	G-S	30,000	N	I	08-23-93	Indef.
ST93-5901	Natural Gas P/L Co. of America.	Olympic Fuels Co	09-23-93	G-S	17,278	N	F	09-01-93	11-30-93
ST93-5902	Williston Basin Inter. P/L Co.	Coastal Gas Marketing Co.	09-24-93	G-S	147,725	Y	I	09-21-93	06-18-94
ST93-5903	ANR Pipeline Basin Inter. P/L Co.	CMS Gas Marketing ..	09-24-93	G-S	25,000	N	I	09-01-93	Indef.
ST93-5904	ANR Pipeline Co	O & R Energy, Inc	09-24-93	G-S	300,000	N	I	09-01-93	Indef.
ST93-5905	ANR Pipeline Co	Nerco Oil & Gas, Inc ..	09-24-93	G-S	100,000	N	I	09-01-93	Indef.
ST93-5906	ANR Pipeline Co	MG Natural Gas Corp.	09-24-93	G-S	100,000	N	I	09-02-93	Indef.
ST93-5907	Delhi Gas Pipeline Corp..	ANR Pipeline Co. et al	09-24-93	C	5,000	N	I	08-25-93	Indef.
ST93-5908	Delhi Gas Pipeline Corp..	ANR Pipeline Co., et al.	09-24-93	C	7,000	N	I	08-25-93	Indef.
ST93-5909	Midcon Texas Pipeline Corp..	Florida Gas Transmission Co.	09-24-93	C	10,000	N	I	09-08-93	Indef.
ST93-5910	Midcon Texas Pipeline Corp..	Koch Gateway Pipeline Co.	09-24-93	C	50,000	N	I	09-03-93	10-01-93
ST93-5911	Transwestern Pipeline Co.	J.M. Huber Corp.	09-24-93	G-S	250	N	I	08-01-93	Indef.
ST93-5912	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-24-93	G-S	5,000	A	F	08-26-93	08-31-93
ST93-5913	Tennessee Gas Pipeline Co.	Pennsylvania & Southern Gas Co.	09-24-93	G-S	6,527	N	F	09-01-93	Indef.
ST93-5915	Tennessee Gas Pipeline Co.	Chevron USA, Inc	09-24-93	G-S	600,000	N	I	09-03-93	Indef.
ST93-5916	Tennessee Gas Pipeline Co.	City of Clarksville	09-24-93	G-S	5,900	N	F	09-01-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-5917	Tennessee Gas Pipeline Co.	City of Huntsville Util. Gas System.	09-24-93	G-S	5,281	N	F	09-15-93	Indef.
ST93-5918	Tennessee Gas Pipeline Co.	Elizabethtown Gas Co	09-24-93	G-S	3,385	N	F	09-13-93	Indef.
ST93-5919	Tennessee Gas Pipeline Co.	Ford Motor Co	09-24-93	G-S	10,000	N	F	09-01-93	Indef.
ST93-5920	Tennessee Gas Pipeline Co.	CNG Transmission Corp.	09-24-93	G-S	77,305	N	F	09-01-93	Indef.
ST93-5922	Tennessee Gas Pipeline Co.	Yankee Gas Services	09-24-93	G-S	29,419	N	F	09-01-93	Indef.
ST93-5923	Tennessee Gas Pipeline Co.	Village of Forest Hill ...	09-24-93	G-S	485	N	F	09-02-93	Indef.
ST93-5924	Tennessee Gas Pipeline Co.	North Alabama Gas District.	09-24-93	G-S	7,288	N	F	09-01-93	Indef.
ST93-5925	Tennessee Gas Pipeline Co.	Aluminum Co. of America.	09-24-93	G-S	14,500	N	F	09-08-93	Indef.
ST93-5926	Tennessee Gas Pipeline Co.	Transco Energy Marketing Co.	09-24-93	G-S	15,000	N	F	09-01-93	Indef.
ST93-5927	Tennessee Gas Pipeline Co.	Equitrans, Inc	09-24-93	G-S	65,134	N	F	09-01-93	Indef.
ST93-5928	Tennessee Gas Pipeline Co.	Calgon Carbon Corp. .	09-24-93	G-S	6,000	N	I	09-13-93	Indef.
ST93-5929	Tennessee Gas Pipeline Co.	Pennzoil Gas Marketing Co.	09-24-93	G-S	60,000	N	I	09-08-93	Indef.
ST93-5931	Tennessee Gas Pipeline Co.	Northern California Power Agency.	09-24-93	G-S	20,000	N	I	09-07-93	Indef.
ST93-5932	El Paso Natural Gas Co.	Mitchell & Mitchell Energy Group.	09-24-93	G-S	206	N	I	09-09-93	Indef.
ST93-5933	Natural Gas P/L Co. of America.	Midcon Gas Services Corp.	09-24-93	G-S	100,000	A	F	09-01-93	09-30-93
ST93-5934	El Paso Natural Gas Co.	Meridian Oil Trading, Inc.	09-24-93	G-S	25,750	N	I	09-04-93	Indef.
ST93-5935	Arkla Energy Resources Co.	Hallwood Petroleum, Inc.	09-27-93	G-S	1,500	N	I	09-03-93	Indef.
ST93-5936	Williams Natural Gas Co.	Mid-Continent Energy, Inc.	09-24-93	G-S	250	N	I	09-01-93	Indef.
ST93-5937	Williams Natural Gas Co.	United States Gypsum Co.	09-24-93	G-S	3,975	N	I	09-01-93	08-01-93
ST93-5938	Williams Natural Gas Co.	Polaris Pipeline Co	09-24-93	G-S	25,000	N	I	08-24-93	Indef.
ST93-5939	Panhandle Eastern Pipe Line Co.	Union Electric Co	09-27-93	G-S	10,000	N	F	08-25-93	10-31-95
ST93-5940	Panhandle Eastern Pipe Line Co.	Ford Motor Co	09-27-93	G-S	200	N	F	08-01-93	12-31-96
ST93-5941	Panhandle Eastern Pipe Line Co.	National Helium Corp.	09-27-93	G-S	29,032	A	F	07-01-93	10-31-93
ST93-5942	Midwestern Gas Transmission Co.	City of Morgantown	09-27-93	G-S	2,800	N	F	09-01-93	Indef.
ST93-5943	Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	09-27-93	G-S	236,522	N	F	09-01-93	Indef.
ST93-5944	Midwestern Gas Transmission Co.	Peoples Gas Light & Coke Co.	09-27-93	G-S	102,600	N	F	09-01-93	Indef.
ST93-5945	Midwestern Gas Transmission Co.	Central Illinois Light Co.	09-27-93	G-S	780	N	F	09-01-93	Indef.
ST93-5946	Midwestern Gas Transmission Co.	City of Casey	09-27-93	G-S	2,407	N	F	09-01-93	Indef.
ST93-5947	Midwestern Gas Transmission Co.	Aluminum Co. of America.	09-27-93	G-S	14,335	N	F	09-13-93	Indef.
ST93-5948	Midwestern Gas Transmission Co.	Koch Gas Services Co	09-27-93	G-S	100,000	N	I	09-01-93	Indef.
ST93-5949	Midwestern Gas Transmission Co.	Entrade Corp	09-27-93	G-S	5,300	A	F	09-14-93	Indef.
ST93-5950	Tennessee Gas Pipeline Co.	Procter & Gamble Paper Products Co.	09-27-93	G-S	4,000	N	F	09-01-93	Indef.
ST93-5951	Tennessee Gas Pipeline Co.	Procter & Gamble Paper Products Co.	09-27-93	G-S	4,444	N	F	09-01-93	Indef.
ST93-5952	Tennessee Gas Pipeline Co.	Corning Natural Gas Corp.	09-27-93	G-S	5,956	N	F	09-01-93	Indef.
ST93-5953	Tennessee Gas Pipeline Co.	Hope Gas, Inc	09-27-93	G-S	5,121	N	F	09-01-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-5954	Tennessee Gas Pipeline Co.	Niagara Mohawk Power Corp.	09-27-93	G-S	128,021	N	F	09-01-93	Indef.
ST93-5955	Tennessee Gas Pipeline Co.	Pennsylvania Gas & Water Co.	09-27-93	G-S	23,768	N	F	09-01-93	Indef.
ST93-5956	Tennessee Gas Pipeline Co.	New York State Electric & Gas Corp.	09-27-93	G-S	22,532	N	F	09-01-93	Indef.
ST93-5957	Tennessee Gas Pipeline Co.	Piedmont Natural Gas Co.	09-27-93	G-S	15,000	N	F	09-01-93	Indef.
ST93-5958	Tennessee Gas Pipeline Co.	Aluminum Co. of America.	09-27-93	G-S	18,367	N	F	09-01-93	Indef.
ST93-5959	Tennessee Gas Pipeline Co.	UGI Utilities, Inc	09-27-93	G-S	30,000	N	F	09-01-93	Indef.
ST93-5960	Tennessee Gas Pipeline Co.	Ward Manufacturing, Inc.	09-27-93	G-S	1,075	N	F	09-01-93	Indef.
ST93-5961	Tennessee Gas Pipeline Co.	Columbia Gas Transmission Corp.	09-27-93	G-S	263,998	N	F	09-01-93	Indef.
ST93-5962	Tennessee Gas Pipeline Co.	City of Huntsville Util. Gas System.	09-27-93	G-S	28,970	N	F	09-01-93	Indef.
ST93-5963	Tennessee Gas Pipeline Co.	SCM Chemicals, Inc ..	09-27-93	G-S	1,750	N	F	09-01-93	Indef.
ST93-5964	Tennessee Gas Pipeline Co.	Borden, Inc	09-27-93	G-S	219	N	F	09-01-93	Indef.
ST93-5965	Tennessee Gas Pipeline Co.	OSRAM Sylvania, Inc	09-27-93	G-S	531	N	F	09-01-93	Indef.
ST93-5966	Tennessee Gas Pipeline Co.	Pennsylvania & Southern Gas Co.	09-27-93	G-S	1,500	N	F	09-01-93	Indef.
ST93-5967	Tennessee Gas Pipeline Co.	Pennsylvania Gas & Water Co.	09-27-93	G-S	15,000	N	F	09-01-93	Indef.
ST93-5968	Tennessee Gas Pipeline Co.	Pennsylvania Gas & Water Co.	09-27-93	G-S	2,000	N	F	09-01-93	Indef.
ST93-5969	Tennessee Gas Pipeline Co.	Caledonia Natural Gas District.	09-27-93	G-S	450	N	F	09-16-93	Indef.
ST93-5970	Tennessee Gas Pipeline Co.	Trans Louisiana Gas Co.	09-27-93	G-S	144	N	F	09-03-93	Indef.
ST93-5972	Tennessee Gas Pipeline Co.	City of Corinth Pub. Utilities Comm.	09-27-93	G-S	7,285	N	F	09-16-93	Indef.
ST93-5974	Tennessee Gas Pipeline Co.	Town of Tishomingo Natural Gas Dept.	09-27-93	G-S	744	N	F	09-01-93	Indef.
ST93-5975	Tennessee Gas Pipeline Co.	Mississippi Valley Gas Co.	09-27-93	G-S	15,000	N	F	09-01-93	Indef.
ST93-5976	Tennessee Gas Pipeline Co.	City of Clarksville	09-27-93	G-S	25,000	N	F	09-01-93	Indef.
ST93-5977	Tennessee Gas Pipeline Co.	City of Decatur	09-27-93	G-S	1,690	N	F	09-13-93	Indef.
ST93-5978	Tennessee Gas Pipeline Co.	City of Linden	09-27-93	G-S	900	N	F	09-01-93	Indef.
ST93-5979	Tennessee Gas Pipeline Co.	Yankee Gas Services Co.	09-27-93	G-S	3,458	N	F	09-01-93	Indef.
ST93-5980	Tennessee Gas Pipeline Co.	Public Service Electric & Gas Co.	09-27-93	G-S	5,117	N	F	09-04-93	Indef.
ST93-5981	Tennessee Gas Pipeline Co.	Trans Louisiana	09-27-93	G-S	125	N	F	09-03-93	Indef.
ST93-5982	Tennessee Gas Pipeline Co.	City of Hohenwald	09-27-93	G-S	2,500	N	F	09-01-93	Indef.
ST93-5983	Tennessee Gas Pipeline Co.	Consolidated Edision Co. of New York.	09-27-93	G-S	31,212	N	F	09-08-93	Indef.
ST93-5984	Tennessee Gas Pipeline Co.	Selmer Utility Division	09-27-93	G-S	2,563	N	F	09-01-93	Indef.
ST93-5985	Tennessee Gas Pipeline Co.	Northeast Ohio Natural Gas Corp.	09-27-93	G-S	235	N	F	09-02-93	Indef.
ST93-5986	Tennessee Gas Pipeline Co.	Western Kentucky Gas Co.	09-27-93	G-S	8,282	N	F	09-01-93	Indef.
ST93-5988	Tennessee Gas Pipeline Co.	City of Savannah	09-27-93	G-S	4,000	N	F	09-01-93	Indef.
ST93-5990	Tennessee Gas Pipeline Co.	AFG Industries, Inc	09-27-93	G-S	7,480	N	F	09-01-93	Indef.
ST93-5992	Midcon Texas Pipeline Corp.	Texas Eastern Transmission Corp.	09-27-93	C	25,000	N	I	09-16-93	Indef.
ST93-5993	Valero Transmission, L.P.	Florida Gas Transmission Co.	09-27-93	C	786	N	I	09-01-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-5994	Valero Transmission, L.P.	Natural Gas Pipeline Co. of America.	09-27-93	C	25,000	N	I	09-01-93	Indef.
ST93-5995	Valero Transmission, L.P.	Florida Gas Transmission Co.	09-27-93	C	1,118	N	I	09-02-93	Indef.
ST93-5996	Valero Transmission, L.P.	Texas Eastern Transmission Corp.	09-27-93	C	35,713	N	I	09-01-93	Indef.
ST93-5997	Transtexas Pipeline ...	Texas Gas Transmission Corp.	09-27-93	C	10,000	N	I	09-01-93	Indef.
ST93-5998	Columbia Gas Transmission Corp.	Alliance Tubular Products.	09-27-93	G-S	500	Y	F	09-15-93	Indef.
ST93-5999	Columbia Gas Transmission Corp.	West Virginia Wesleyan College.	09-27-93	G-S	100	Y	I	09-10-93	Indef.
ST93-6000	Columbia Gas Transmission Corp.	Ohio Cumberland Gas Co.	09-27-93	B	975	N	I	08-30-93	Indef.
ST93-6001	Columbia Gas Transmission Corp.	Olympic Fuels Co	09-27-93	G-S	30,000	Y	I	09-03-93	Indef.
ST93-6002	Nattiesburg Indus. Gas Sales Co.	Transcontinental Gas Pipe Line Corp.	09-28-93	G-ST	20,000	N	N/A	09-01-93	10-31-05
ST93-6003	Koch Gateway Pipeline Co.	Shell Gas Trading Co	09-28-93	G-S	209,600	N	I	09-23-93	01-21-94
ST93-6004	Koch Gateway Pipeline Co.	Murphy Oil USA, Inc ..	09-28-93	G-S	100,000	N	I	09-01-93	12-30-93
ST93-6005	Koch Gateway Pipeline Co.	LL&E Gas Marketing, Inc..	09-28-93	G-S	10,000	N	I	09-05-93	01-03-94
ST93-6006	Koch Gateway Pipeline Co.	NGC Transportation, Inc.	09-28-93	G-S	157,200	N	I	09-22-93	01-20-94
ST93-6007	KN Energy, Inc	Tristar Gas Co	09-28-93	G-S	50,000	N	I	08-31-93	Indef.
ST93-6008	Equitrans, Inc	Public Service Electric & Gas Co.	09-28-93	G-S	50,061	N	I	07-17-93	Indef.
ST93-6009	Equitrans, Inc	Eastern American Energy Corp.	09-28-93	G-S	9,581	N	I	09-01-93	Indef.
ST93-6010	Trunkline Gas Co	Central Illinois Light Co.	09-28-93	G-S	5,694	N	I	09-01-93	Indef.
ST93-6011	Trunkline Gas Co	Alpha Resins Corp	09-28-93	G-S	465	N	F	09-01-93	Indef.
ST93-6012	Trunkline Gas Co	Central Illinois Public Service Co.	09-28-93	G-S	9,709	N	I	09-01-93	Indef.
ST93-6013	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	1,820	A	F	09-01-93	09-30-93
ST93-6014	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	1,700	A	F	09-01-93	09-30-93
ST93-6015	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	3,640	A	F	09-01-93	09-30-93
ST93-6016	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-28-93	G-S	3,325	N	F	09-01-93	09-30-93
ST93-6017	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-28-93	G-S	3,325	N	F	09-01-93	09-30-93
ST93-6018	Transwestern Pipeline Co.	Aquila Energy Marketing Corp.	09-28-93	G-S	19,500	N	F	09-03-93	09-30-93
ST93-6019	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	1,820	A	F	09-01-93	09-30-93
ST93-6020	Transwestern Pipeline Co.	Continental Natural Gas, Inc.	09-28-93	G-S	5,000	N	F	09-01-93	09-30-93
ST93-6021	Transwestern Pipeline Co.	Texaco Gas Marketing, Inc.	09-28-93	G-S	3,712	N	F	09-01-93	09-30-93
ST93-6022	Transwestern Pipeline Co.	Clayton Williams Energy, Inc.	09-28-93	G-S	3,000	N	F	09-01-93	09-30-93
ST93-6023	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-28-93	G-S	7,280	N	F	09-01-93	09-30-93
ST93-6024	Transwestern Pipeline Co.	Richardson Products Co.	09-28-93	G-S	7,280	N	F	09-01-93	09-30-93
ST93-6025	Transwestern Pipeline Co.	Richardson Products Co.	09-28-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6026	Transwestern Pipeline Co.	Mountain Front Pipeline Co.	09-28-93	G-S	1,748	N	F	09-04-93	09-30-93
ST93-6027	Transwestern Pipeline Co.	Tenneco Gas Marketing Co.	09-28-93	G-S	2,483	N	F	09-04-93	09-30-93
ST93-6028	Transwestern Pipeline Co.	Tristar Gas Co	09-28-93	G-S	25,480	N	F	09-01-93	09-30-93
ST93-6029	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	7,280	A	F	09-01-93	09-30-93

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-6030	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	3,640	A	F	09-01-93	09-30-93
ST93-6031	Transwestern Pipeline Co.	Richardson Products Co.	09-28-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6032	Transwestern Pipeline Co.	Richardson Products Co.	09-28-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6033	Transwestern Pipeline Co.	Richardson Products Co.	09-28-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6034	Transwestern Pipeline Co.	Premier Gas Co	09-28-93	G-S	6,000	N	F	09-01-93	09-30-93
ST93-6035	Transwestern Pipeline Co.	Production Gathering Co.	09-28-93	G-S	750	N	F	09-01-93	09-30-93
ST93-6036	Transwestern Pipeline Co.	Vintage Gas, Inc	09-28-93	G-S	7,280	N	F	09-01-93	09-30-93
ST93-6037	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	5,000	A	F	09-01-93	09-30-93
ST93-6038	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	3,640	A	F	09-01-93	09-30-93
ST93-6039	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	3,640	A	F	09-01-93	09-30-93
ST93-6040	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-28-93	G-S	3,325	N	F	09-01-93	09-30-93
ST93-6041	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-28-93	G-S	220	N	F	09-01-93	09-30-93
ST93-6042	Transwestern Pipeline Co.	GPM Gas Corp	09-28-93	G-S	10,000	N	F	09-01-93	09-30-93
ST93-6043	Transwestern Pipeline Co.	Richardson Products Co.	09-28-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6044	Transwestern Pipeline Co.	Richardson Products Co.	09-28-93	G-S	7,280	N	F	09-01-93	09-30-93
ST93-6045	Transwestern Pipeline Co.	Enron Oil & Gas Co ...	09-28-93	G-S	10,000	A	F	09-08-93	09-30-93
ST93-6046	Transwestern Pipeline Co.	Gas Co. of New Mexico.	09-28-93	G-S	5,000	N	F	09-04-93	09-30-93
ST93-6047	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	3,325	A	F	09-01-93	09-30-93
ST93-6048	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	5,000	A	F	09-01-93	09-30-93
ST93-6049	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	3,640	A	F	09-01-93	09-30-93
ST93-6050	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	3,640	A	F	09-01-93	09-30-93
ST93-6051	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	7,280	A	F	09-01-93	09-30-93
ST93-6052	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	7,280	A	F	09-01-93	09-30-93
ST93-6053	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-28-93	G-S	3,325	N	F	09-01-93	09-30-93
ST93-6054	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	7,280	A	F	09-01-93	09-30-93
ST93-6055	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-28-93	G-S	1,650	A	F	09-01-93	09-30-93
ST93-6056	Northern Natural Gas Co.	Coastal Gas Marketing Co.	09-28-93	G-S	100,000	N	F/I	06-03-93	Indef.
ST93-6057	Northern Natural Gas Co.	Superior Water, Light & Power Co.	09-28-93	G-S	5,245	N	F/I	06-11-93	Indef.
ST93-6058	Northern Natural Gas Co.	Fremont Dept. of Utilities.	09-28-93	B	7,000	N	F/I	07-01-93	Indef.
ST93-6059	Florida Gas Transmission Co.	Farmland Industries, Inc.	09-28-93	G-S	5,000	N	I	08-29-93	Indef.
ST93-6060	Texas Gas Transmission Corp.	Riverside Energy Resources.	09-28-93	G-S	1,500	N	I	09-03-93	Indef.
ST93-6061	Texas Gas Transmission Corp.	Polaris Pipeline Corp .	09-28-93	G-S	3,000	N	I	09-17-93	Indef.
ST93-6062	Midwestern Gas Transmission Co.	Northern Indiana Public Service Co.	09-28-93	G-S	100,000	N	F	09-01-93	Indef.
ST93-6063	Midwestern Gas Transmission Co.	City of Martinsville	09-28-93	G-S	725	N	F	09-01-93	Indef.
ST93-6064	Midwestern Gas Transmission Co.	Equitable Life Assurance Society.	09-28-93	G-S	1,500	N	F	09-01-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date com-menced	Projected ter-mination date
ST93-6065	Midwestern Gas Transmission Co.	City of Marshall	09-28-93	G-S	2,198	N	F	09-01-93	Indef.
ST93-6066	Midwestern Gas Transmission Co.	Town of Grandview	09-28-93	G-S	467	N	F	09-01-93	Indef.
ST93-6067	Midwestern Gas Transmission Co.	Northern Illinois Gas Co.	09-28-93	G-S	37,800	N	F	09-01-93	Indef.
ST93-6068	Midwestern Gas Transmission Co.	Central Illinois Public Service Co.	09-28-93	G-S	600	N	F	09-01-93	Indef.
ST93-6069	Midwestern Gas Transmission Co.	Community Natural Gas Co., Inc.	09-28-93	G-S	1,243	N	F	09-01-93	Indef.
ST93-6070	Midwestern Gas Transmission Co.	Triumph Natural Gas, Inc.	09-28-93	G-S	19,800	N	F	09-01-93	Indef.
ST93-6071	Midwestern Gas Transmission Co.	NGC Transportation, Inc.	09-28-93	G-S	400,000	N	I	09-01-93	Indef.
ST93-6072	Midwestern Gas Transmission Co.	Aluminum Co. of America.	09-28-93	G-S	50,000	N	I	09-01-93	Indef.
ST93-6073	Midwestern Gas Transmission Co.	Entrade Corp	09-28-93	G-S	300,000	A	I	09-01-93	Indef.
ST93-6136	Tennessee Gas Pipe-line Co.	Entrade Corp	09-28-93	G-S	4,000,000	A	I	09-22-93	Indef.
ST93-6155	Tennessee Gas Pipe-line Co.	Energy Consultants, Inc.	09-28-93	G-S	2,500	N	I	09-32-93	Indef.
ST93-6232	Tennessee Gas Pipe-line Co.	NGC Transportation Inc.	09-28-93	G-S	1,000	N	F	09-01-93	Indef.
ST93-6233	Tennessee Gas Pipe-line Co.	National Fuel Gas Dis-tribution Corp.	09-28-93	G-S	158,812	N	F	09-01-93	Indef.
ST93-6234	Tennessee Gas Pipe-line Co.	T.W. Phillips Gas & Oil Co.	09-28-93	G-S	3,000	N	F	09-08-93	Indef.
ST93-6256	Tennessee Gas Pipe-line Co.	City of New Albany	09-28-93	G-S	7,500	N	F	09-01-93	Indef.
ST93-6257	Tennessee Gas Pipe-line Co.	City of Sheffield	09-28-93	G-S	4,581	N	F	09-01-93	Indef.
ST93-6269	Tennessee Gas Pipe-line Co.	City of Springfield	09-28-93	G-S	1,800	N	F	09-01-93	Indef.
ST93-6278	Tennessee Gas Pipe-line Co.	Centran Corp	09-28-93	G-S	1,000	N	I	09-01-93	Indef.
ST93-6279	Tennessee Gas Pipe-line Co.	Flagg Energy Devel-opment Corp.	09-28-93	G-S	5,000	N	I	09-01-93	Indef.
ST93-6280	Tennessee Gas Pipe-line Co.	Pogo Producing Co	09-28-93	G-S	5,150	N	I	09-12-93	Indef.
ST93-6281	Tennessee Gas Pipe-line Co.	Woodward Marketing Inc.	09-28-93	G-S	150,000	N	I	09-15-93	Indef.
ST93-6374	Tennessee Gas Pipe-line Co.	Applachian Gas Sales, Inc.	09-28-93	G-S	45,018	N	I	09-01-93	Indef.
ST93-6376	Tennessee Gas Pipe-line Co.	American Central Gas Companies, Inc.	09-28-93	G-S	20,000	N	I	09-01-93	Indef.
ST93-6383	Tennessee Gas Pipe-line Co.	Tenngasco Corp	09-28-93	G-S	24,000	A	F	09-10-93	Indef.
ST93-6388	Tennessee Gas Pipe-line Co.	Greater Dickson Gas Authority.	09-28-93	G-S	3,500	N	F	09-16-93	Indef.
ST93-6389	Tennessee Gas Pipe-line Co.	City of Hartselle Utili-ties Board.	09-28-93	G-S	2,563	N	F	09-01-93	Indef.
ST93-6391	Seagas Pipeline Co	Phillips Gas Pipeline Co.	09-28-93	G-HT	50,000	N	I	06-01-93	Indef.
ST93-6404	Tennessee Gas Pipe-line Co.	City of Decatur	09-29-93	G-S	9,273	N	F	09-03-93	Indef.
ST93-6426	Tennessee Gas Pipe-line Co.	Fitchburg Gas & Elec-tric Light Co.	09-29-93	G-S	534	N	F	09-01-93	Indef.
ST93-6430	Tennessee Gas Pipe-line Co.	Kentucky Electric Steel Corp.	09-29-93	G-S	900	N	F	09-09-93	Indef.
ST93-6431	Tennessee Gas Pipe-line Co.	City of Holyoke Gas & Electric Dept.	09-29-93	G-S	685	N	F	09-24-93	Indef.
ST93-6465	Channel Industries Gas Co.	Florida Gas Trans-mission Co., et al.	09-29-93	C	75,000	Y	I	09-01-93	Indef.
ST93-6466	Channel Industries Gas Co.	Tennessee Gas Pipe-line Co., et al.	09-29-93	C	100,000	Y	I	09-01-93	Indef.
ST93-6467	Midwestern Gas Transmission Co.	Coastal Gas Market-ing Co.	09-29-93	G-S	400,000	N	I	09-16-93	Indef.
ST93-6468	Midwestern Gas Transmission Co.	Aquila Energy Market-ing Corp.	09-29-93	G-S	100,000	N	I	09-01-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 subpart	Est. max. daily quantity**	Aff. Y/A/N***	Rate sch.	Date commenced	Projected termination date
ST93-6470	Panhandle Eastern Pipe Line Co.	Access Energy Corp ..	09-29-93	G-S	120,000	N	I	08-01-93	04-30-98
ST93-6471	Panhandle Eastern Pipe Line Co.	Westplains Energy	09-29-93	G-S	5,000	N	F	09-01-93	11-30-93
ST93-6472	Panhandle Eastern Pipe Line Co.	Mobil Natural Gas, Inc	09-29-93	G-S	325,000	N	I	09-01-93	04-30-98
ST93-6473	Panhandle Eastern Pipe Line Co.	Ohio Gas Co	09-29-93	G-S	2,958	N	F	08-01-93	09-30-93
ST93-6474	Ozark Gas Transmission System.	Howard Energy Co., Inc.	09-29-93	G-S	50,000	N	F/I	09-01-93	Indef.
ST93-6475	Humble Gas Pipeline Co.	Texas Eastern Transmission Corp.	09-29-93	C	15,000	N	I	09-01-93	09-15-93
ST93-6476	Humble Gas Pipeline Co.	Texas Eastern Transmission Corp.	09-29-93	C	15,000	N	I	09-15-93	11-01-93
ST93-6477	Natural Gas P/L Co. of America.	Anadarko Trading Co .	09-29-93	G-S	50,000	N	I	09-01-93	Indef.
ST93-6478	Northern Illinois Gas Co.	Howard Energy	09-30-93	G-ST	653	N	N/A	09-01-93	09-30-93
ST93-6479	Northern Illinois Gas Co.	O&R Energy	09-30-93	G-ST	10,000	N	N/A	09-04-93	09-30-93
ST93-6480	Northern Illinois Gas Co.	Hadson Gas Systems	09-30-93	G-ST	5,000	N	N/A	09-01-93	09-30-93
ST93-6481	Northern Illinois Gas Co.	North Canadian Marketing.	09-30-93	G-ST	200,000	N	N/A	09-01-93	09-30-93
ST93-6482	Northern Illinois Gas Co.	UNIGAS	09-30-93	G-ST	10,155	N	N/A	08-21-93	08-26-93
ST93-6483	Delhi Gas Pipeline Corp.	ANR Pipeline Co., et al.	09-30-93	C	1,000	N	I	09-04-93	Indef.
ST93-6484	Delhi Gas Pipeline Corp.	Panchandle Eastern Gas Pipeline Co.	09-30-93	C	375,000	N	I	09-02-93	Indef.
ST93-6485	Delhi Gas Pipeline Corp.	KOCH Gateway Pipeline Co.	09-30-93	C	25,000	N	I	09-01-93	Indef.
ST93-6486	ENOGEX Inc	Panchandle Eastern Pipe Line Co.	09-03-93	C	20,000	N	I	09-17-93	Indef.
ST93-6487	Sabine Pipe Line Co ..	Union Oil Co. of California.	09-30-93	G-S	30,000	N	I	08-31-93	Indef.
ST93-6488	Williston Basin Inter. P/L Co.	Conoco Inc	09-30-93	G-S	20,993	A	I	08-31-93	05-31-94
ST93-6489	Iroquois Gas Trans. System, L.P.	Kamine/Besicorp Natural Dam L.P.	09-30-93	G-S	12,000	N	I	09-01-93	Indef.
ST93-6490	Iroquois Gas Trans. System, L.P.	JMC Fuel Services, Inc.	09-30-93	G-S	540,000	Y	I	09-23-93	Indef.
ST93-6516	Tennessee Gas Pipeline Co.	Pittsburgh Corning Corp.	09-30-93	G-S	1,000	N	F	09-01-93	Indef.
ST93-6578	Pandandle Eastern Pipe Line Co.	Howard Energy Co., Inc.	09-30-93	G-S	500,000	N	I	09-04-93	04-30-98
ST93-6579	Pandandle Eastern Pipe Line Co.	Phelps Enterprises	09-30-93	G-S	500	N	I	09-01-93	07-31-98
ST93-6580	Pandandle Eastern Pipe Line Co.	Union Pacific Fuels, Inc.	09-30-93	G-S	25,000	N	I	09-01-93	07-31-08
ST93-6581	Pandandle Eastern Pipe Line Co.	Enron Gas Marketing, Inc.	09-30-93	G-S	200,000	N	I	09-01-93	08-31-95
ST93-6582	Pandandle Eastern Pipe Line Co.	McGee Packing Co	09-30-93	G-S	100	N	I	09-01-93	04-30-98
ST93-6583	Pandandle Eastern Pipe Line Co.	Crest Ridge R-VII School District.	09-30-93	G-S	1,000	N	I	09-01-93	04-30-98
ST93-6584	Pandandle Eastern Pipe Line Co.	Tylex, Inc	09-30-93	G-S	100	N	F	09-01-93	08-31-94
ST93-6585	Pandandle Eastern Pipe Line Co.	Production Gathering Co.	09-30-93	G-S	5,000	N	I	09-01-93	04-30-98
ST93-6586	Pandandle Eastern Pipe Line Co.	Mobil Natural Gas, Inc	09-30-93	G-S	250,000	N	I	09-01-93	04-30-98
ST93-6587	Pandandle Eastern Pipe Line Co.	AMGAS, Inc	09-30-93	G-S	5,000	N	F	09-01-93	03-31-94
ST93-6588	Transcontinental Gas P/L Corp.	Excel Gas Marketing, Inc.	09-30-93	G-S	50,000	N	I	09-01-93	Indef.
ST93-6589	Transcontinental Gas P/L Corp.	LEDCO, Inc	09-30-93	G-S	300,000	N	I	09-03-93	Indef.
ST93-6590	Transcontinental Gas P/L Corp.	UNIMAKR, L.L.C	09-30-93	G-S	10,000	N	I	09-01-93	Indef.

Docket No.*	Transporter/seller	Recipient	Date filed	Part 284 sub-part	Est. max. daily quantity**	Aff. Y/A/ N***	Rate sch.	Date commenced	Projected termination date
ST93-6591	Transcontinental Gas P/L Corp.	CNG Producing Co	09-30-93	G-S	400,000	N	I	09-13-93	Indef.
ST93-6592	Mississippi River Trans. Corp.	Associated Natural Gas, Inc.	09-30-93	G-S	22,064	A	F	09-01-93	Indef.
ST93-6593	Mississippi River Trans. Corp.	Monsanto Co	09-30-93	G-S	1,000	N	F	09-01-93	Indef.
ST93-6594	Mississippi River Trans. Corp.	Brooklyn Interstate Nat. Gas Corp.	09-30-93	G-S	50,000	N	I	09-04-93	Indef.
ST93-6595	Natural Gas P/L Co. of America.	Enron Oil & Gas Co ...	09-30-93	G-S	50,000	N	I	09-01-93	Indef.
ST93-6596	Northern Natural Gas Co.	Minnegasco	09-30-93	B	402,734	N	F/I	09-01-93	Indef.
ST93-6597	Northern Natural Gas Co.	Nebraska Public Gas Agency.	09-30-93	G-S	245	N	F/I	06-22-93	Indef.
ST93-6598	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-30-93	G-S	5,000	N	F	09-01-93	09-30-93
ST93-6599	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-30-93	G-S	5,000	N	F	09-01-93	09-30-93
ST93-6600	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-30-93	G-S	5,000	N	F	09-01-93	09-30-93
ST93-6601	Transwestern Pipeline Co.	NGC Transportation, Inc.	09-30-93	G-S	5,000	N	F	09-01-93	09-30-93
ST93-6602	Transwestern Pipeline Co.	Richardson Products Co.	09-30-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6603	Transwestern Pipeline Co.	Richardson Products Co.	09-30-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6604	Transwestern Pipeline Co.	Richardson Products Co.	09-30-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6605	Transwestern Pipeline Co.	Richardson Products Co.	09-30-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6606	Transwestern Pipeline Co.	Richardson Products Co.	09-30-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6607	Transwestern Pipeline Co.	Richardson Products Co.	09-30-93	G-S	3,640	N	F	09-01-93	09-30-93
ST93-6608	Transwestern Pipeline Co.	Enron Gas Marketing, Inc.	09-30-93	G-S	10,000	N	F	09-18-93	09-30-93
ST93-6609	Transwestern Pipeline Co.	Anthem Energy Co	09-30-93	G-S	14,000	N	F	09-01-93	09-30-93

*Notice of Transactions does not constitute a determination that filings comply with commission regulations in accordance with order No. 436 (final rule and notice requesting supplemental comments, 50 FR 42,372,1.

**Estimated maximum daily volumes includes volumes reported by the filing company in MMBTU, MCF and DT.

***Affiliation of reporting company to entities involved in the transaction. A "Y" indicates affiliation, an "A" indicates marketing affiliation, and an "N" indicates no affiliation.

[FR Doc. 93-29107 Filed 11-26-93; 8:45 am]
BILLING CODE 6717-01-P

[Docket No. CP94-76-000, et al.]

Williams Natural Gas Co., et al.; Natural Gas Certificate Filings

November 22, 1993.

Take notice that the following filings have been made with the Commission:

1. Williams Natural Gas Company

[Docket No. CP94-76-000]

Take notice that on November 12, 1993, Williams Natural Gas Company (WNG), P.O. Box 3288, Tulsa, Oklahoma 74101, filed in Docket No. CP94-76-000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to utilize facilities originally installed for the delivery of NGPA section 311 transportation gas to Atchison Casting Corporation (Atchison), for purposes other than NGPA section 311 transportation, under WNG's blanket certificate issued in Docket No. CP82-479-000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

WNG proposes to utilize facilities originally installed for the delivery of NGPA section 311 transportation gas to Atchison in Atchison County, Kansas, for purposes other than NGPA section 311 transportation. The cost to construct the facilities was $2,280 which was reimbursed by Atchison. WNG states that this change is not prohibited by an existing tariff and it has sufficient capacity to accomplish the deliveries without detriment to its other customers.

Comment date: January 6, 1994, in accordance with Standard Paragraph G at the end of this notice.

2. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP94-87-000]

Take notice that on November 18, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, suite 1600, Detroit, Michigan 48226, filed in Docket No. CP94-87-000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations and Great Lakes' blanket certificate issued in Docket No. CP90-2053-000 pursuant to section 7 of the Natural Gas Act for authorization to construct and operate a delivery point near Watersmeet, Michigan, to provide natural gas

transportation service to Michigan Gas Company (MiGas) so it can commence natural gas service to the town of Watersmeet, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that it will provide up to 400 Mcf per day of firm backhaul transportation service to MiGas through the new meter station, in Great Lakes' Central Zone, and that equivalent volumes of gas will be received by it at Farwell, Michigan, in Great Lakes' Eastern Zone. Great Lakes states that the new delivery point will consist of a meter station and tap. Great Lakes estimates that the cost to construct the facilities will be about $450,000. Great Lakes states that it will provide the service under part 284 of the Commission's regulation pursuant to Rate Schedule FT of its FERC Gas Tariff, Original Volume No. 3. Great Lakes states that while it currently provides firm transportation services to MiGas under part 284 of the Commission's regulation, neither MiGas nor any other LDC provides natural gas service to the town of Watersmeet. Great Lakes states that the proposed transportation service will not impact its existing peak day and annual deliveries, and can be provided without detriment to service to any other shipper on its system.

Comment date: January 6, 1994, in accordance with Standard Paragraph G at the end of this notice.

3. Great Lakes Gas Transmission Limited Partnership

[Docket No. CP94–88–000]

Take notice that on November 18, 1993, Great Lakes Gas Transmission Limited Partnership (Great Lakes), One Woodward Avenue, Suite 1600, Detroit, Michigan 48226, filed in Docket No. CP94–88–000, a request pursuant to §§ 157.205 and 157.211 of the Commission's Regulations and Great Lakes' blanket certificate issued in Docket No. CP90–2053–000 pursuant to section 7 of the Natural Gas Act for authorization to construct and operate a delivery point near Escanaba, Michigan, to provide natural gas transportation service to Escanaba Paper Company (Escanaba), all as more fully set forth in the request that is on file with the Commission and open to public inspection.

Great Lakes states that Escanaba's natural gas transportation requirements are currently being served by Michigan Consolidated Gas Company. Great Lakes states that Escanaba has requested that Great Lakes construct a new delivery point to provide up to 8,000 Mcf per day of firm backhaul transportation service to Escanaba directly. Great Lakes states that the natural gas will be delivered in Great Lakes' Central Zone and that equivalent volumes of gas will be received by Great Lakes at various points in Great Lakes' Eastern Zone. Great Lakes states that the new delivery point will consist of a meter station and taps. Great Lakes estimates that the cost to construct the facilities will be about $1.1 million. Great Lakes states that it will provide the service under part 284 of the Commission's regulation pursuant to Rate Schedule FT of its FERC Gas Tariff, Original Volume No. 3. Great Lakes states that the proposed transportation service will not impact its existing peak day and annual deliveries, and can be provided without detriment to service to any other shipper on its system.

Comment date: January 6, 1994, in accordance with Standard Paragraph G at the end of this notice.

4. National Fuel Gas Supply Corporation

[Docket No. CP94–86–000]

Take notice that on November 17, 1993, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York 14203, filed in Docket No. CP94–86–000 a request pursuant to §§ 157.205 and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.212) for authorization to construct and operate a new delivery point to Myers Gas Company under National's blanket certificate issued in Docket No. CP83–4–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request that is on file with the Commission and open to public inspection.

National proposes to construct and operate a new delivery point to Myers Gas Company in Venango County, Pennsylvania, for residential heating purposes. National states that the annual volumes transported would be 2,000 Dth and no adverse impact would occur to its other customers.

Comment date: January 6, 1994, in accordance with Standard Paragraph G at the end of this notice.

Standard Paragraphs

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29108 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–P

[Project No. 2019–011]

Pacific Gas & Electric Co.; Notice of Effective Date of Withdrawal of Application for Amendment of License

November 22, 1993.

On February 27, 1991, Pacific Gas and Electric Company (PG&E) filed an application for amendment of license for the Utica Water Power Project No. 2019, located on the North Fork Stanislaus River, in Alpine, Calaveras, and Tuolumne Counties, California, to remove three upstream reservoirs from the project boundaries. On September 27, 1993, PG&E filed a motion to withdraw the amendment application.

No motion in opposition to the notice of withdrawal was filed, and the Commission took no action to disallow the withdrawal. Accordingly, pursuant to Rule 216 of the Commission's Rules of Practice and Procedure,[1] the withdrawal became effective on October 12, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29082 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–51–000]

Shell Western E&P Inc. v. Southern California Gas Co.; Notice of Complaint

November 22, 1993.

Take notice that on November 12, 1993, Shell Western E&P Inc. (SWEPI) filed a complaint against Southern California Gas Company (SoCalGas).

SWEPI argues that SoCalGas has implemented an illegal and discriminatory incremental access fee, which it is charging to interstate transportation shippers who deliver gas to SoCalGas at the Wheeler Ridge interconnection, where the facilities of SoCalGas interconnect with those of Kern River Gas Transmission Company (Kern River), Mojave Pipeline Company,

[1] 18 CFR 385.216 (1993).

and at Kern River Station were the facilities of SoCalGas interconnect with the pipeline expansion project of Pacific Gas Transmission Company (PGT) and Pacific Gas & Electric Company.

SWEPI asserts that it fully supports the arguments made by Southern California Utility Power Pool and Imperial Irrigation District in Docket No. RP93–194–000, and Union Pacific Fuels, Inc., in Docket No. RP93–197–000 but SWEPI is filing a separate complaint because the facts underlying SWEPI's relationship with SoCalGas differ slightly from those underlying the other complainants.

Any person desiring to be heard or to protest said complaint should file a motion to intervene or a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure 18 CFR 385.214, 385.211. All such motions or protests should be filed on or before December 13, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection. Answers to this complaint shall be due on or before December 13, 1993.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29083 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT94–2–000]

Texas Eastern Transmission Corp.; Notice of Proposed Changes in FERC Gas Tariff

November 22, 1993.

Take notice that on October 8, 1993, Texas Eastern Transmission Corporation (Texas Eastern) tendered for filing as part of its FERC Gas Tariff, Sixth Revised Volume No. 1, the tariff sheets listed on Appendix A of the filing.

Texas Eastern states that on September 30, 1993, it filed certain tariff sheets with the Commission which reflected the modification, clarifications and explanations required by the Commission's "Third Order on compliance Filing and Second Order on Rehearing" issued September 17, 1993. These tariff sheets reflected an effective date of June 1, 1993, as required by the September 17, order.

Texas Eastern states that as a result of the modifications to tariff sheets required by the September 17 order, Texas Eastern herewith submits substitute tariff sheets to incorporate the identical modifications into certain affected tariff sheets previously filed with the Commission between May 14, 1993, and September 30, 1993, in Docket Nos. RP93–125, TM93–6–17, GT93–61, TM94–1–17, RP93–181 and CP92–459–002. Appendix A to this filing specifically delineates the tariff sheets filed herewith by the appropriate docket number.

Texas Eastern states that copies of the filing were served on Texas Eastern's jurisdictional customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before November 30, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29078 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. GT93–48–000]

Transcontinental Gas Pipe Line Corp.; Notice of Technical Conference

November 22, 1993.

In the Commission's order issued on October 6, 1993, in the above-captioned proceeding, the Commission held that the filing raises issues for which a technical conference is to be convened. The conference to address the issues has been scheduled for Wednesday, December 1, 1993, at 2 p.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29080 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–175–000]

Williston Basin Interstate Pipeline Co.; Notice of Settlement Conference

November 22, 1993.

Pursuant to the Commission order which issued on September 30, 1993, a settlement conference will be held to resolve the issues raised in the above-captioned proceeding. The conference will be held on Wednesday, December 8, 1993, at 10 a.m. in a room to be designated at the offices of the Federal Energy Regulatory Commission, 810 First Street NE., Washington, DC 20426.

All interested persons and Staff are permitted to attend.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29079 Filed 11–26–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPP–00370; FRL–4744–7]

State FIFRA Issues Research and Evaluation Group (SFIREG); Open Meeting

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: The State FIFRA Issues Research and Evaluation Group (SFIREG) will hold a 2–day meeting, beginning on December 9, 1993, and ending on December 10, 1993. This notice announces the location and times for the meeting and sets forth tentative agenda topics. The meeting is open to the public.

DATES: The SFIREG will meet on Thursday, December 9, 1993, from 8:30 a.m. to 5 p.m. and on Friday, December 10, 1993, beginning at 8:30 a.m. and adjourning at approximately noon.

ADDRESSES: The meeting will be held at: DoubleTree Hotel National Airport-Crystal City, 300 Army-Navy Drive, Arlington, VA 22202, (703) 892–4100.

FOR FURTHER INFORMATION CONTACT: By mail: Shirley M. Howard, Office of Pesticide Programs (7506C), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number: Rm. 1109, Crystal Mall No. 2, 1921 Jefferson Davis Highway, Arlington, VA 22202, (703) 305–7371.

SUPPLEMENTARY INFORMATION: The tentative agenda of SFIREG includes the following:

1. Regional SFIREG reports.
2. Reports from the SFIREG Working Committees.

3. Discussion of old and new issue papers.
4. NAS follow-up.
5. Update on Office of Pesticide Program policies and regulations: certification and training, endangered species, groundwater protection, and worker protection.
6. Update from the Office of Compliance Monitoring.
7. Other topics as appropriate.

Dated: November 22, 1993.

Douglas D. Campt,

Director, Office of Pesticide Programs.

[FR Doc. 93-29148 Filed 11-26-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4807-6]

National Smelting & Refining Site; Proposed Settlement

AGENCY Environmental Protection Agency.

ACTION: Notice of proposed settlement.

SUMMARY: Under section 122(h) of the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA), the Environmental Protection Agency (EPA) has agreed to settle claims for response costs at the National Smelting & Refining Site, Atlanta, Georgia, with H&S Metals Corp. and Hartsoe Battery, Inc. EPA will consider public comments on the proposed settlement for thirty days. EPA may withdraw from or modify the proposed settlement should such comments disclose facts or considerations which indicate the proposed settlement is inappropriate, improper, or inadequate. Copies of the proposed settlement are available from: Ms. Carolyn McCall, Waste Programs Branch, Waste Management Division, U.S. EPA, Region IV, 345 Courtland Street, NE., Atlanta, Georgia 30365, (404) 347-5059.

Written comment may be submitted to the person above within 30 days of the date of publication.

Dated: November 10, 1993.

Richard D. Green,

Acting Director, Waste Management Division.

[FR Doc. 93-29149 Filed 11-26-93; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL MARITIME COMMISSION

Security for the Protection of the Public; Indemnification of Passengers for Nonperformance of Transportation; Issuance of Certificate (Performance)

Notice is hereby given that the following have been issued a Certificate of Financial Responsibility for Indemnification of Passengers for Nonperformance of Transportation pursuant to the provisions of section 3, Public Law 89-777 (46 U.S.C. 817(e)) and the Federal Maritime Commission's implementing regulations at 46 CFR part 540, as amended:

Royal Cruise Line Limited, One Maritime Plaza, suite 1400, San Francisco, California 94111.

Vessel: Star Odyssey.

Dated: November 22, 1993.

Joseph C. Polking,

Secretary.

[FR Doc. 93-29073 Filed 11-26-93; 8:45 am]

BILLING CODE 6730-01-M

FEDERAL RESERVE SYSTEM

Agency Forms Under Review

Background

Notice is hereby given of the final approval of proposed information collection(s) by the Board of Governors of the Federal Reserve System (Board) under OMB delegated authority, as per 5 CFR 1320.9 (OMB Regulations on Controlling Paperwork Burdens on the Public).

FOR FURTHER INFORMATION CONTACT:

Federal Reserve Board Clearance Officer: Mary M. McLaughlin (202-452-3829), Division of Research and Statistics, Board of Governors of the Federal Reserve System, Washington, DC 20551. For the hearing impaired *only*, Telecommunications Device for the Deaf (TDD), Dorothea Thompson (202-452-3544), Board of Governors of the Federal Reserve System, Washington, DC 20551.

OMB Desk Officer: Gary Waxman (202-395-3740), Office of Information and Regulatory Affairs, Office of Management and Budget, New Executive Office Building, Room 3208, Washington, DC 20503.

Proposal to approve under OMB delegated authority the extension, without revision, of the following report(s):

1. *Report title:* Consumer Satisfaction Questionnaire
Agency form number: FR 1379
OMB Docket number: 7100-0135
Frequency: On occasion
Reporters: Consumers who have filed complaints against state member banks
Annual reporting hours: 9
Estimated average hours per response: 0.25 (15 minutes)
Number of respondents: 34
Small businesses are affected.

General description of report

This information collection is voluntary to obtain or retain a benefit (15 U.S.C. 57(a)(f)(1)) and is not given confidential treatment.

The Federal Reserve Board sends this questionnaire to consumers whose complaints against state member banks were received by the Board and referred to Federal Reserve Banks for resolution, and to a sample of consumers whose complaints were received directly by the Federal Reserve Banks. Complainants are requested to answer the questions voluntarily about the effectiveness of the Reserve Bank's efforts in handling the consumer complaint.

2. *Report title:* OTC Margin Stock Report
Agency form number: FR 2048
OMB Docket number: 7100-0004
Frequency: Quarterly
Reporters: Certain corporations with over-the-counter stock
Annual reporting hours: 75
Estimated average hours per response: 0.25 (15 minutes)
Number of respondents: 75
Small businesses are not affected.

General description of report

This information collection is voluntary to obtain or retain a benefit (15 U.S.C. 78g, w) and is not given confidential treatment.

This report is used to gather stock information on certain corporations that have stock trading over-the-counter and that are being considered for inclusion on the Federal Reserve Board's List of Marginable OTC Stocks.

3. *Report title:* Report of Brokers Carrying Margin Accounts
Agency form number: FR 2240
OMB Docket number: 7100-0001
Frequency: Annually
Reporters: Brokers and dealers
Annual reporting hours: 267
Estimated average hours per response: 2.7
Number of respondents: 99
Small businesses are affected.

General description of report

This information collection is mandatory (15 U.S.C. 78q(g)) and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report is used to ensure compliance of brokers and dealers with the Federal Reserve Margin Regulations and Security Credit as authorized by section 17 of the Securities and Exchange Act of 1934. This report collects certain balance sheet information from securities brokers and dealers carrying margin accounts and is used by the Federal Reserve to regulate securities credit extended by brokers.

Proposal to approve under OMB delegated authority the extension, with revisions, of the following report:

1. *Report title:* Monthly Survey of Debits to Demand and Savings Deposits Accounts

Agency form number: FR 2573

OMB Docket number: 7100-0081

Frequency: Monthly

Reporters: Commercial banks

Annual reporting hours: 3,000

Estimated average hours per response: 1.0

Number of respondents: 250

Small businesses are affected.

General description of report

This information collection is voluntary (12 U.S.C. 248(a)(2)) to obtain or retain a benefit and is given confidential treatment (5 U.S.C. 552(b)(4)).

This report collects debits (total withdrawals during the month) to three categories of deposits accounts (demand deposits of individuals, partnerships, and corporations and state and political subdivisions; ATS and NOW accounts; and savings deposit accounts including money market deposit accounts) from a sample of commercial banks. The debits data from this report are used in conjunction with deposit balances from other reports for the calculation of universe estimates of bank debits and deposit turnover rates for the major types of deposit accounts that money stock holders can use directly or indirectly for transactions purposes. The turnover rates have been used by the Federal Reserve primarily in analysis of the behavior of the monetary aggregates and in money demand studies. The data are published in the monthly G.6 release, *Debits and Deposit Turnover at Commercial Banks.*

The authorized reporting panel will be reduced from 300 to 250 banks. The ATS and NOW accounts deposit category will be expanded to include telephone and preauthorized transfer accounts. In addition, the title of the report will be changed to "Survey of Debits to Selected Deposit Accounts" to reflect its content more accurately. A trillion-dollar column will be added to the reporting form, and the instructions will reflect changes corresponding to current definitions in Regulation D.

Board of Governors of the Federal Reserve System, November 22, 1993.

William W. Wiles,

Secretary of the Board.

[FR Doc. 93-29104 Filed 11-26-93; 8:45 am]

BILLING CODE 6210-01-F

The Bank of New York Company, Inc., et al.; Notice of Application to Engage de novo in Permissible Nonbanking Activities

The company listed in this notice has filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 10, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. *The Bank of New York Company, Inc.*, New York, New York; to make investment in The New York Equity Fund 1993 Limited Partnership, New York, New York, and thereby engage in making equity and debt investments in corporations or projects designed primarily to promote community welfare, such as economic rehabilitation and development of low-income areas by providing housing, services or jobs for residents, pursuant to § 225.25(b)(6) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board

[FR Doc. 93-29064 Filed 11-26-93; 8:45 am]

BILLING CODE 6210-01-F

CB Bancshares, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than December 20, 1993.

A. Federal Reserve Bank of San Francisco (Kenneth R. Binning, Director, Bank Holding Company) 101 Market Street, San Francisco, California 94105:

1. CB Bancshares, Inc., Honolulu, Hawaii; to acquire International Holding Capital Corp., Honolulu, Hawaii, and thereby acquire, own and operate a direct subsidiary, International Savings and Loan Association, pursuant to § 225.25(b)(9); to operate an indirect subsidiary, ISL Capital Corporation, engaged in mortgage lending pursuant to § 225.25(b)(1); and to operate an indirect subsidiary, DRI Assurance, Inc., engaged in the brokerage of mortgage life insurance pursuant to § 225.25(b)(8) of the Board's Regulation Y.

2. Cowlitz Bancorporation, Longview, Washington; to acquire BMN, Inc., Vancouver, Washington, and thereby engage in securities brokerage services pursuant to § 225.25(b)(15); and in investment advisory services pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, November 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29065 Filed 11-26-93; 8:45 am]

BILLING CODE 6210-01-F

Comerica Incorporated; Formation of, Acquisition by, or Merger of Bank Holding Companies

The company listed in this notice has applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that application or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Comments regarding this application must be received not later than November 29, 1993.

A. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. Comerica Incorporated, Detroit, Michigan; to exercise an option to acquire 19.90 percent of the voting shares of Pacific Western Bancshares, Inc., San Jose, California, and thereby indirectly acquire Pacific Western Bank, San Jose, California.

Board of Governors of the Federal Reserve System, November 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29066 Filed 11-26-93; 8:45 am]

BILLING CODE 6210-01-F

One Valley Bancorp of West Virginia, Inc.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies; Correction

This notice corrects a notice (FR Doc. 93-27387) published on page 59267 of the issue for Monday, November 8, 1993.

In the third column, under the Federal Reserve Bank of Richmond heading, the entry for One Valley Bancorp of West Virginia, Inc. is revised to read as follows:

1. One Valley Bancorp of West Virginia, Inc., Charleston, West Virginia; to merge with Mountaineer Bankshares of West Virginia, Inc., Martinsburg, West Virginia, and thereby indirectly acquire The Empire National Bank of Clarksburg, Clarksburg, West Virginia; City National Bank of Fairmont, Fairmont, West Virginia; The Bank of Wadestown, Fairview, West Virginia; Old National Bank, Martinsburg, West Virginia; Mercantile Banking and Trust Company, Moundsville, West Virginia; The Bank of Cameron, Inc., Cameron, West Virginia; and Sunrise Bancorp, Inc., Wheeling, West Virginia, and thereby indirectly acquire The Sunshine Bank of Wheeling, Wheeling, West Virginia.

Board of Governors of the Federal Reserve System, November 19, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29067 Filed 11-26-93; 8:45 am]

BILLING CODE 6210-01-F

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Centers for Disease Control and Prevention

Clinical Laboratory Improvement Advisory Committee and Subcommittee on Cytology: Meetings

In accordance with section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92-463), the Centers for Disease Control and Prevention (CDC) announces the following Federal advisory committee meetings.

Name: Clinical Laboratory Improvement Advisory Committee (CLIAC).

Times and Dates: 1 p.m.–5 p.m., December 14, 1993; 8:30 a.m.–4:30 p.m., December 15, 1993.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public limited only by the space available.

Purpose: This committee is charged with providing scientific and technical advice and guidance to the Secretary of Health and Human Services and the Assistant Secretary for Health regarding the need for, and the nature of, revisions to the standards under which clinical laboratories are regulated; the impact of proposed revisions to the standards; and the modification of the standards to accommodate technological advances.

Matters to be Discussed: The agenda will include a summary of the August meeting, a summary of the meeting of the Subcommittee on Cytology, presentation of the revised research strategy, review of implementation data, and presentation of preliminary results from the analysis to currently available data. Agenda items are subject to change as priorities dictate.

Name: Subcommittee on Cytology.

Time and Date: 8 a.m.–11:30 a.m., December 14, 1993.

Place: CDC, Auditorium B, Building 2, 1600 Clifton Road, NE, Atlanta, Georgia 30333.

Status: Open to the public, limited only by the space available.

Purpose: This subcommittee will advise CLIAC on issues related to national standards for quality assurance in cytology.

Matters to be Discussed: The subcommittee will review the deliberation of the Symposium on Cytology Proficiency Testing and discuss the implications on the future directions for cytology proficiency testing. Agenda items are subject to change a priorities dictate.

Contact Person for Additional Information: John C. Ridderhof, Dr.P.H., Division of Laboratory Systems, Public Health Practice Program Office, CDC, 4770 Buford Highway, NE, Mailstop F-11, Atlanta, Georgia 30341-3724, telephone 404/488-7870.

Dated: November 22, 1993.

Elvin Hilyer,

Associate Director for Policy Coordination, Centers for Disease Control and Prevention (CDC).

[FR Doc. 93–29093 Filed 11–26–93; 8:45 am]

BILLING CODE 4160–18–M

Food and Drug Administration

[Docket No. 93N–0190]

Padam C. Bansal; Denial of Hearing and Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarring Dr. Padam C. Bansal, 9 Powelson Lane, Bridgewater, NJ 08807, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Bansal was convicted of a felony under Federal law for conduct relating to the development or approval, including the process for development or approval, of a drug product; and relating to the regulation of a drug product under the act. Dr. Bansal has failed to file with the agency information and analyses sufficient to create a basis for a hearing concerning this action.

EFFECTIVE DATE: November 29, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

Dr. Padam C. Bansal, a former Director of Research and Development of Par Pharmaceutical, Inc. (Par), pled guilty and was sentenced on March 19, 1993, for one count of obstruction of justice, a Federal felony offense under 18 U.S.C. 1503. The basis for this conviction was the finding that Dr. Bansal knowingly gave false and misleading testimony to a grand jury concerning his knowledge of, and participation in, the submission to FDA of a false pilot batch record in support of approval of an abbreviated new drug application (ANDA) for a Par drug product.

In a certified letter received by Dr. Bansal on June 23, 1993, FDA offered Dr. Bansal an opportunity for a hearing on the agency's proposal to issue an order, under section 306(a) of the act, debarring him from providing services in any capacity to a person that has an approved or pending drug product application. FDA based the proposal to debar on its finding that Dr. Bansal was convicted of a felony under Federal law for conduct relating to: (1) The development or approval, including the process for development or approval, of a Par drug product; and (2) the regulation of a Par drug product.

The certified letter informed Dr. Bansal that his request for a hearing could not rest upon mere allegations or denials but must present specific facts showing that there is a genuine and substantial issue of fact requiring a hearing. The letter also notified Dr. Bansal that if it conclusively appeared from the face of the information and factual analyses in his request for a hearing that there was no genuine and substantial issue of fact that precluded the order of debarment, FDA would enter summary judgment against him and deny his request for a hearing.

In a letter dated July 15, 1993, Dr. Bansal requested a hearing, and in a letter dated August 11, 1993, Dr. Bansal submitted arguments and information in support of his hearing request. Dr. Bansal argues that his conviction for obstruction of justice under 18 U.S.C. 1503 may subject him to permissive debarment under section 306(b) of the act, but that this conduct is not covered by the section 306(a) mandatory debarment provisions. The Deputy Commissioner for Operations has considered Dr. Bansal's argument and concludes that it is unpersuasive and fails to raise a genuine and substantial issue of fact requiring a hearing.

II. Dr. Bansal's Argument in Support of a Hearing

Dr. Bansal asserts that he did not participate in the submission to FDA of a false pilot batch record and that he is thus not subject to mandatory debarment based on his conviction for obstruction of justice. While the offenses of false statement and obstruction of an investigation into a criminal offense are listed under a permissive debarment provision, section 306(b)(2)(B)(ii) of the act, this provision applies only when the felony for which the individual is convicted is not described in section 306(a)(2) of the act. As detailed below, Dr. Bansal's conduct is of the kind described in section 306(a)(2) of the act and thus subjects him to mandatory—not permissive—debarment.

Dr. Bansal pled guilty to obstruction of justice for intentionally giving false and misleading testimony to the Special Grand Jury for the United States District Court for the District of Maryland regarding his knowledge of, and participation in, the submission of a false pilot batch record for a Par product in support of an ANDA. Dr. Bansal had been privy to the fact that Par had falsified the pilot batch record and related paperwork to make it appear that the formulation that passed a bioequivalence study had included sodium bicarbonate, when in fact, Par had added this ingredient to the product when, subsequent to passing the bioequivalence study, the product failed accelerated stability testing.

In his plea agreement, Dr. Bansal stipulated to the following facts:

> * * * During his testimony before [the] grand jury in Baltimore, Maryland on May 22, 1990, Dr. Bansal claimed that he could not remember details about Par products that he had mentioned in his earlier interview [with FDA investigators], or claimed that he had heard about wrongdoing at Par second-hand and after the fact. Specifically, Dr. Bansal claimed that he did not remember any conversations with certain persons at Par about the creation of the false pilot batch record for triamterene/hydrochlorothiazide at the time the false batch record was submitted.
>
> In fact, certain persons at Par had informed Dr. Bansal that the triamterene/hydrochlorothiazide pilot batch record was false at the time it was made, and had enlisted his assistance in transmitting false paperwork for submission to the FDA related to that product. During his grand jury testimony, Dr. Bansal intentionally held back that information and other information that he remembered about other Par products.

An individual is subject to mandatory debarment, under section 306(a)(2)(A) of the act, if the individual is convicted of a Federal felony for conduct relating to the development or approval, including the process for development or approval, of any drug product. The statutory language "relating to * * *," by definition, encompasses all things that are logically connected with the development or approval of a drug (see Webster's Collegiate Dictionary, Merriam-Webster Inc., Springfield, MA, 1990, "relate").

Dr. Bansal's act of falsely testifying before the grand jury about his knowledge of misrepresentations in Par

records is unquestionably connected with the development or approval of a Par drug product. The falsified documents in question were for submission to FDA in support of approval of an ANDA for a Par drug product. FDA determined whether Par's generic drug products were approvable for marketing based, to a great extent, on the results of bioequivalence and stability tests as reflected in these ANDA's.

In addition, an individual is subject to mandatory debarment under section 306(a)(2)(B) of the act if the individual is convicted of a Federal felony for conduct relating to the regulation of any drug product under the act. Dr. Bansal's Federal felony conviction for withholding information from the grand jury was related to the regulation of a Par drug product because the falsified documents in question concerned the formulation, bioequivalence, and stability of a drug product—information that is vital to FDA's regulatory decisions about drug products.

Dr. Bansal urges FDA to weigh, in its decision whether to debar him, a letter from an Assistant U.S. Attorney for the District of Maryland advising FDA of Dr. Bansal's cooperation in obtaining convictions of three other defendants. Because Dr. Bansal's offense is of the kind described in section 306(a)(2) of the act (mandatory debarment provisions), FDA has no discretion regarding whether to debar him. The letter is relevant only to the issue of termination of debarment under the special termination provision, section 306(d)(4) of the act. FDA will consider Dr. Bansal's assistance in the investigation or prosecution of others upon his application for termination of debarment.

III. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Dr. Padam C. Bansal has been convicted of a felony under Federal law for conduct relating to: (1) The development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Dr. Padam C. Bansal is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 29, 1993, (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)). Any person with an approved or pending drug product application who knowingly uses the services of Dr. Bansal in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Bansal, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated human drug application submitted by or with the assistance of Dr. Bansal during his period of debarment.

Any application by Dr. Bansal for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 93N–0190 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 14, 1993.

Jane. E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93–29062 Filed 11–26–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93N–0264]

Mary Donnelly; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarring Ms. Mary Donnelly, 613 Green, Bay City, MI 48708, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Ms. Donnelly was convicted of a felony under Federal law for conduct relating to the regulation of a drug product under the act. Ms. Donnelly has failed to request a hearing and, therefore, has waived her opportunity for a hearing concerning this action.

EFFECTIVE DATE: November 29, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA–305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1–23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Tamar S. Nordenberg, Center for Drug Evaluation and Research (HFD–366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–594–2041.

SUPPLEMENTARY INFORMATION:

I. Background

On April 16, 1992, the United States District Court for the Eastern District of Michigan, Northern Division, entered judgment against Ms. Mary Donnelly for the Federal felony offense of knowingly selling and offering to sell drug samples as defined in, and in violation of, 21 U.S.C. 353(c)(1), 331(t), and 333(b)(1).

As a result of this conviction, FDA served Ms. Donnelly by certified mail on August 13, 1993, a notice proposing to permanently debar her from providing services in any capacity to a person that has an approved or pending drug product application and offered her an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(B) of the act, that she was convicted of a felony under Federal law for conduct relating to the regulation of a drug product. Ms. Donnelly did not request a hearing. Her failure to request a hearing constitutes a waiver of her opportunity for a hearing and a waiver of any contentions concerning her debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Ms. Mary Donnelly has been convicted of a felony under Federal law for conduct relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)). As a result of the foregoing findings, Ms. Mary Donnelly is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 29, 1993, (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)).

Any person with an approved or pending drug product application who knowingly uses the services of Ms. Donnelly, in any capacity, during her period of debarment, will be subject to civil money penalties. If Ms. Donnelly, during her period of debarment, provides services in any capacity to a person with an approved or pending drug product application, she will be

subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug applications submitted by, or with the assistance of, Ms. Donnelly during her period of debarment. Any application by Ms. Donnelly for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 93N-0264 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 14, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-29061 Filed 11-26-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93N-0253]

Mark B. Perkal; Debarment Order

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is issuing an order under section 306(a)(2) of the Federal Food, Drug, and Cosmetic Act (the act) (21 U.S.C. 335a(a)(2)) permanently debarring Mark B. Perkal, 3800 Labyrinth Rd., Baltimore, MD 21215, from providing services in any capacity to a person that has an approved or pending drug product application. FDA bases this order on a finding that Dr. Perkal was convicted of a felony under Federal law for conduct relating to the development and approval, including the process for development and approval, of a drug product; and relating to the regulation of a drug product under the act. Dr. Perkal has failed to request a hearing and, therefore, has waived his opportunity for a hearing concerning this action.

EFFECTIVE DATE: November 29, 1993.

ADDRESSES: Application for termination of debarment to the Dockets Management Branch (HFA-305), Food and Drug Administration, 12420 Parklawn Dr., rm. 1-23, Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Diane M. Sullivan, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION:

I. Background

On July 22, 1992, the United States District Court for the District of Maryland entered judgment against Mark B. Perkal for one count of obstruction of an agency proceeding, a Federal felony offense under 18 U.S.C. 1505.

As a result of this conviction, FDA served Dr. Perkal by certified mail on August 9, 1993, a notice proposing to permanently debar him from providing services in any capacity to a person that has an approved or pending drug product application and offered him an opportunity for a hearing on the proposal. The proposal was based on a finding, under section 306(a)(2)(A) and (a)(2)(B) of the act, that he was convicted of a felony under Federal law for conduct: (1) Relating to the development and approval, including the process for development and approval, of a drug product; and (2) relating to the regulation of a drug product under the act. Dr. Perkal did not request a hearing. His failure to request a hearing constitutes a waiver of his opportunity for a hearing and a waiver of any contentions concerning his debarment.

II. Findings and Order

Therefore, the Deputy Commissioner for Operations, under section 306(a) of the act, and under authority delegated to her (21 CFR 5.20), finds that Dr. Perkal has been convicted of a felony under Federal law for conduct: (1) Relating to the development and approval, including the process for development and approval, of a drug product (21 U.S.C. 335a(a)(2)(A)); and (2) relating to the regulation of a drug product (21 U.S.C. 335a(a)(2)(B)).

As a result of the foregoing findings, Dr. Perkal is permanently debarred from providing services in any capacity to a person with an approved or pending drug product application under section 505, 507, 512, or 802 of the act (21 U.S.C. 355, 357, 360b, or 382), or under section 351 of the Public Health Service Act (42 U.S.C. 262), effective November 29, 1993, (21 U.S.C. 335a(c)(1)(B) and (c)(2)(A)(ii) and 21 U.S.C. 321(ee)).

Any person with an approved or pending drug product application who knowingly uses the services of Dr. Perkal in any capacity, during his period of debarment, will be subject to civil money penalties. If Dr. Perkal, during his period of debarment, provides services in any capacity to a person with an approved or pending drug product application, he will be subject to civil money penalties. In addition, FDA will not accept or review any abbreviated new drug application or abbreviated antibiotic drug application submitted by or with the assistance of Dr. Perkal during his period of debarment.

Any application by Dr. Perkal for termination of debarment under section 306(d)(4) of the act should be identified with Docket No. 93N-0253 and sent to the Dockets Management Branch (address above). All such submissions are to be filed in four copies. The public availability of information in these submissions is governed by 21 CFR 10.20(j). Publicly available submissions may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 14, 1993.

Jane E. Henney,

Deputy Commissioner for Operations.

[FR Doc. 93-29060 Filed 11-26-93; 8:45 am]

BILLING CODE 4160-01-F

[Docket No. 93N-0444]

Clay-Park Labs, Inc.; Withdrawal of Approval of Two Abbreviated New Drug Applications

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is withdrawing approval of two abbreviated new drug applications (ANDA's) held by Clay-Park Labs, Inc., 1700 Bathgate Ave., Bathgate Industrial Park, Bronx, NY 10457 (Clay-Park). FDA is withdrawing approval of these applications because of questions raised about the reliability of the data and information submitted to FDA in support of the applications. Clay-Park has waived its opportunity for hearing.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: David T. Read, Center for Drug Evaluation and Research (HFD-366), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301-594-2041.

SUPPLEMENTARY INFORMATION: Recently, FDA became aware of discrepancies concerning the data used to support approval of the following ANDA's held by Clay-Park:

1. ANDA 72-526, Betamethasone Diproprionate Ointment, 0.05 percent; and

2. ANDA 72-536, Betamethasone Diproprionate Cream, 0.05 percent.

The discrepancies in the data submitted to obtain approval of the

applications listed above raise questions about the reliability of the data. In a letter dated October 2, 1992, Clay-Park requested withdrawal of these ANDA's.

Therefore, under section 505(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 355(e)) and under authority delegated to the Director, Center for Drug Evaluation and Research (21 CFR 5.82), approval of the applications listed above, and all their amendments and supplements, is hereby withdrawn, effective November 29, 1993. Distribution in interstate commerce of the drug products covered by these applications is unlawful.

Dated: November 4, 1993.

Roger L. Williams,

Acting Director, Center for Drug Evaluation and Research.

[FR Doc. 93–29059 Filed 11–26–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93D–0440]

Public Workshop on Issues Involved With Premarket Testing and Labeling for Hemodialyzers for Reuse; Availability of Draft Guidance; Request for Comments

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is sponsoring a public workshop on FDA requirements to be applied to the hemodialysis manufacturing community. This workshop will assist the industry in complying with regulations on adequate dialyzer labeling. FDA is also making available the "Draft Guidance Document for Premarket Approval Applications for Hemodialyzers for Reuse." Oral and written comments are sought for incorporation into the final document.

DATES: The public workshop will be held on December 10, 1993, 8:30 a.m. to 5 p.m. Anyone wishing to make a formal presentation for inclusion in the workshop should submit a request accompanied with an outline of the comments by December 1, 1993.

ADDRESSES: The public workshop will be held in the Regency Room, Holiday Inn Crowne Plaza, 1750 Rockville Pike, Rockville, MD. There is no registration fee but space is limited. Interested persons should preregister with Carolyn Crenshaw or Gwendolyn Brighthaupt at Sociometrics, Inc., suite 550, 8300 Colesville Rd., Silver Spring, MD 20910, 800–729–0890, FAX 301–608–3542. Single copies of the "Draft Guidance Document for Premarket Approval Applications for Hemodialyzers for Reuse" are available through the Division of Small Manufacturers Assistance (HFC–220), 1901 Chapman Ave., Rockville, MD 20857, and may be requested by phone at 800–638–2041, FAX 301–443–8818, or through the Center for Devices and Radiological Health electronic docket 301–594–4802. Send two self-addressed adhesive labels to assist that office in processing your requests. Submit written comments and requests to make a formal presentation on the guideline to the Division of Reproductive, Abdominal, Ear, Nose, and Throat and Radiological Devices (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, FAX 301–594–2353. Comments and requests should be identified with the docket number found in brackets in the heading of this document. A copy of the guideline is available for public examination in the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD, between 9 a.m. and 4 p.m., Monday through Friday.

FOR FURTHER INFORMATION CONTACT: Suzanne D. Parisian or Barbara I. McCool, Center for Devices and Radiological Health (HFZ–470), Food and Drug Administration, 1390 Piccard Dr., Rockville, MD 20850, 301–594–1220.

SUPPLEMENTARY INFORMATION: The draft guidance document is created to address the labeling of hemodialyzers. It has been motivated by the current accapted clinical practice of reprocessing and reusing hemodialyzers for a single patient. Clinical studies indicate that over 75 percent of hemodialysis facilities in the United States today practice some form of hemodialysis reprocessing and reuse. Hemodialyzer labeling must now be more reflective of current medical practice and must provide the health care professional with guidance in the hemodialyzer labeling to allow for safe and effective hemodialyzer reprocessing and reuse. This workshop is designed to assist the hemodialysis manufacturing community.

The entire document packet made available by the Center for Devices and Radiological Health consists of three components: (1) The "Draft Guidance Document for the Preparation of Premarket Approval Applications for Hemodialyzers for Reuse"; (2) "Appendix I—Rationale for the Draft Guidance Document for the Preparation of Premarket Approval Applications for Hemodializers for Reuse"; and (3) an informational note about the public workshop. It is recommend that copies of all three items be obtained; however, only the guidance document itself will be discussed at the December 10, 1993, public workshop. Written comments will be accepted on both components of the guidance document (address above).

Dated: November 19, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–29058 Filed 11–26–93; 8:45 am]

BILLING CODE 4160–01–F

National Institutes of Health

Prospective Grant of Exclusive License: Method for Detecting Aqueous Flare and CMV Retinitis in HIV Patients

AGENCY: National Institutes of Health, Public Health Service, HHS.

ACTION: Notice.

SUMMARY: This is notice in accordance with 35 U.S.C. 209(c)(1) and 37 CFR 404.7(a)(1)(i) that the National Institutes of Health (NIH), Department of Health and Human Services, is contemplating the grant of an exclusive license which includes worldwide rights to practice the invention embodied in U.S. Patent Application Number: 07/686,827, entitled, "Method for Detecting Aqueous Flare and CMV Retinitis In HIV Patients". The prospective licensee is: Kowa Company, Ltd., of Chuo-Ku, Tokyo 103, Japan. The patent rights in these inventions have been assigned to the United States of America.

The prospective exclusive license will be royalty-bearing and will comply with the terms and conditions of 35 U.S.C. 209 and 37 CFR 404.7. The prospective exclusive license may be granted unless, within 60 days from the date of this published Notice, NIH receives written evidence and argument that establishes that the grant of the license would not be consistent with the requirements of 35 U.S.C. 209 and 37 CFR 404.7.

The field of use for the subject technology is a proposed new use for Kowa's Laser Flare/Cell Meter instruments. Its major use is as a method for diagnosing retinitis caused by cytomegalovirus (CMV) in HIV-infected patients by detecting an increased flare measurement in the anterior chamber of the eye.

ADDRESSES: Requests for a copy of these patent applications, inquiries, comments and other materials relating to the contemplated license should be directed to: Mr. J.E. Fahner-Viitelic, Office of Technology Transfer, National Institutes of Health, Box OTT, Bethesda, MD 20892. Telephone: (301) 496–7735; Facsimile: (301) 402–0220. Properly

filed competing applications for a license filed in response to this notice will be treated as objections to the contemplated license. Only written comments and/or application for a license which are received by the NIH Office of Technology Transfer within sixty (60) days of this notice will be considered.

Dated: November 16, 1993.

Donald P. Christoferson,

Acting Director, Office of Technology Transfer.

[FR Doc. 93–29084 Filed 11–26–93; 8:45 am]

BILLING CODE 4140–01–M

National Institute on Aging; Amended Notice of Meeting

Notice is hereby given of a change in the schedule for the meeting of the Neuroscience, Behavior and Sociology of Aging Subcommittee A, National Institute on Aging, November 29, 30, and December 1, 1993, to be held at the Embassy Suites Hotel, 4300 Military Road, Washington, DC published in the **Federal Register** on October 1, (Vol. 58, #189, pg. 51365). This meeting was scheduled to be open to the public on Monday, November 29 from 7:30 to 8 p.m. The meeting was scheduled to be closed on Monday, November 29 from 8 p.m. until adjournment on December 1.

The meeting has been rescheduled for November 29–30. The meeting will be closed to the public on Monday, November 29 from 8 p.m. until adjournment.

Dated: November 23, 1993.

Susan K. Feldman,

Committee Management Officer, NIH.

[FR Doc. 93–29315 Filed 11–26–93; 8:45 am]

BILLING CODE 4140–01–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Fair Housing and Equal Opportunity

[Docket No. N–93–3542; FR–3348–N–05]

State and Local Fair Housing Laws: Notice of Final Determination Concerning Certification of Substantially Equivalent Agency—State of North Carolina

AGENCY: Office of the Assistant Secretary for Fair Housing and Equal Opportunity, HUD.

ACTION: Notice.

SUMMARY: This notice is a follow-up to the notice published in the **Federal Register** on December 18, 1992 (57 FR 60220), which announced that the Assistant Secretary for Fair Housing and Equal Opportunity had determined that the fair housing law of the State of North Carolina is substantially equivalent, on its face, to the Fair Housing Act, and solicited public comment on this determination. Today's notice announces that the agency administering the fair housing law for the State of North Carolina has been certified under 24 CFR part 115 of HUD's regulations, which set forth the procedures and requirements for certification of substantially equivalent agencies.

EFFECTIVE DATE: November 9, 1993.

FOR FURTHER INFORMATION CONTACT: Marcella O. Brown, Director, Funded Programs Division, Office of Fair Housing and Equal Opportunity, Department of Housing and Urban Development, 451 Seventh Street, SW., room 5234, Washington, DC 20410, telephone (202) 708–0455 (voice/TDD). (This is not a toll-free number.)

SUPPLEMENTARY INFORMATION:

Background

Under the Fair Housing Act (42 U.S.C. 3600–3619), the Department is authorized to investigate complaints alleging discrimination in housing. Section 810(f) of the Fair Housing Act requires the Department to refer complaints to State and local agencies that have "substantially equivalent" fair housing laws, as determined and certified by the Department. The certification standards are codified in 24 CFR part 115.

On December 18, 1992 (57 FR 60220), the Department published a notice announcing that the fair housing law of the State of North Carolina had been determined by the Assistant Secretary for Fair Housing and Equal Opportunity to be, on its face, substantially equivalent to the Fair Housing Act. The notice advised that the fair housing law of the State of North Carolina provided, on its face, substantive rights and remedies for alleged discriminatory housing practices that are substantially equivalent to those provided in the Fair Housing Act.

The December 18, 1992 notice also announced that following a review of performance standards and other materials, the Assistant Secretary for Fair Housing and Equal Opportunity expected to determine that the law in operation provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act, and that the Department intended to execute a written agreement with the agency charged with enforcement of the fair housing law of the State of North Carolina in accordance with 24 CFR 115.6(c).

The December 18, 1992 notice invited the public to comment, within 30 days from the date of publication of the notice, on the Assistant Secretary's determination that the fair housing law of the State of North Carolina is, on its face, substantially equivalent to the Fair Housing Act.

The December 18, 1992 notice also invited the public to comment on the proposed determination that the fair housing law of the State of North Carolina, in operation, provides rights and remedies substantially equivalent to those available under the Fair Housing Act. The comment period expired on January 19, 1993.

This Notice

One comment was received on the December 18, 1992 notice from the California Alliance for the Mentally Ill (CAMI). The CAMI commented that the definition of "unlawful discriminatory housing practices" in the fair housing law of the State of North Carolina did not include zoning laws and other land use laws. The CAMI was concerned that unless these types of laws were included in the definition of "unlawful discriminatory housing practices," zoning ordinances and other land use laws could be used to restrict the development or the use of existing housing as congregate housing or group housing—the type of housing frequently required by individuals with disabilities. The comment was referred to the North Carolina Human Relations Commission (Commission), the agency of the State of North Carolina which enforces the State's fair housing law, with a request for a response.

In a letter to the Department dated February 17, 1993, the Commission stated that it believes that the North Carolina State Fair Housing Act (SFHA) prohibits zoning or land use laws or actions that discriminate against group homes for people with disabilities. The Commission also advised that it has accepted and will continue to accept complaints from organizations seeking group housing for individuals with disabilities who claim that zoning regulations or actions prevent or interfere with their efforts in a discriminatory manner. Additionally, the Commission advised that as for State level enforcement action in zoning validity cases, the Commission is authorized to bring legal enforcement actions under the SFHA in State courts or administrative hearings. The Department found this response to be satisfactory. (Both the comment of the

CAMI and the response from the Commission are available for inspection during regular business hours in the Office of Regulations, room 10276, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410–0500.)

The Assistant Secretary for Fair Housing and Equal Opportunity has completed the review of performance standards and other materials, as provided in 24 CFR part 115, and has determined that the fair housing law of the State of North Carolina, in operation, provides rights and remedies that are substantially equivalent to those available under the Fair Housing Act.

On November, 9, 1993, the Department entered into a memorandum of understanding with the agency charged with enforcement of the fair housing law of the State of North Carolina. The purpose of this notice is to announce that this agency has received certification as a substantially equivalent agency under 24 CFR part 115.

Dated: July 15, 1993.

Leonore L. Guarraia,

General Deputy Assistant Secretary for Fair Housing and Equal Opportunity.

[FR Doc. 93–29063 Filed 11–26–93; 8:45 am]

BILLING CODE 4210–28–P

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT–930–4320–01]

Notice of Availability of Environmental Assessment, Decision Record, and Finding of No Significant Impact for Predator Management in Montana and Notice of Intent To Amend the Dillon Management Framework Plan (MFP); Butte District Office; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice, Notice of Intent to amend Dillon MFP.

SUMMARY: An Environmental Assessment (EA), a Decision Record (DR) and Finding of No Significant Impact (FONSI) have been completed for predator management in the Butte District. The EA was available for a 30-day public comment period. Comments and responses have been incorporated in a revised EA.

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, Project Lead, Montana State Office, P.O. Box 36800, Billings, Montana 59107; or contact by phone at (406) 255–2929.

SUPPLEMENTARY INFORMATION: The Environmental Assessment for Predator Management in Montana addresses four alternatives which affect predator management to varying degrees:

Alternative 1—Integrated Pest Management (Animal and Plant Health Inspection Service-Animal Damage Control (APHIS-ADC), Department of Livestock (DOL), and BLM Proposed Action): This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. IPM incorporates a variety of practical, lethal, and nonlethal methods for prevention and control to minimize animal damage to livestock or human health. The use of M–44s would be permitted after authorization is obtained. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative 2—No M–44s: This alternative would be similar to Alternative 1, except the use of M–44s would not be authorized. All other approved methods for control would be permitted. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative 3—No Action (Emergency Control Only): Preventive control measures would not be authorized, and corrective control would be applied only where APHIS-ADC or DOL have confirmed recent loss of livestock to predation. Emergency predator management would be requested by an operator when losses are occurring. The BLM would review and approve or disapprove these requests on a case-by-case basis. The requests would be handled using the emergency control procedures.

Alternative 4—No APHIS-ADC or DOL Predator Management on BLM Lands: Under this alternative, no APHIS-ADC or DOL predator management would be authorized on BLM land in Montana.

The Predator Management EA for Montana was available for public comment from September 15 to October 15, 1993. Twenty-seven letters were received and considered. Numerous changes to the EA were made as a result of some of the comments. The revised EA, FONSI, and DR are available upon request.

Based upon careful consideration of the analysis of alternatives documented within the Predator Management EA, including consideration of applicable laws, regulations, and public and agency comments, the decision is to implement Alternative 1—Integrated Pest Management (APHIS-ADC, DOL and BLM Proposed Action). Management actions will be directed towards localized populations and/or individual offending predators. Requests for control will come directly to APHIS-ADC from permittees. In response to public concern regarding the use of lethal methods, the following mitigating measure has been adopted as part of the decision: Livestock operators will be provided information on nonlethal methods. When services are requested by permittees, APHIS-ADC will provide a fact sheet to the operator on nonlethal methods. In addition, information on nonlethal methods will also be mailed out in the annual grazing applications. This will ensure that permittees who request control are aware of the variety of nonlethal methods available to them, such as animal husbandry practices, guard dogs, scare devices, etc.

Implementation of Alternative 1 will require strict adherence to reasonable and prudent measures developed by the U.S. Fish and Wildlife Service (USFWS) for the protection of threatened and endangered (T&E) species. The USFWS has concurred with the BLM finding that the proposed predator management strategy is not likely to adversely affect T&E species. Predator management will be prohibited in the Bear Trap Wilderness Area to reduce conflicts with recreation. All areas where human health or safety are a particular concern, as identified on Map No. 1 in the EA, will be closed to predator management. These areas include appropriate buffer zones. Bird hunting areas also have timing restrictions placed on some predator management activities.

It has been concluded that the proposed action will not result in significant environmental impacts, and that no species will be substantially or permanently reduced in numbers as a result of the decision. In addition, the predator population is not substantially impacted. Statewide, 7,847 coyotes were taken by APHIS-ADC and DOL on lands of all ownership, or 1.5 to 13.7 percent of the population statewide. In the Butte District, approximately 31 coyotes were taken on BLM lands, and no red fox were taken on BLM lands in the district. Based on the analysis in the EA, implementation of Alternative 1 will result in the smallest amount of livestock loss. This decision ensures that predator management will be carried out in a systematic manner which responds to resource protection, human health, and livestock protection needs while protecting public safety, domestic animals, and nontarget wildlife. This decision is compatible with resource objectives identified in the following land use plans: Garnet Resource Management Plan (RMP) (May

1986—ROD approved 1/86) and Headwaters RMP (November 1983—ROD approved 7/84). This decision amends the Dillon MFP—September 1979, to allow IPM to be implemented in areas previously limited to aerial gunning. In the Dillon MFP, it was decided that selective aerial predator control be the only means by which predatory animals, other than wolves be removed from the BLM land between the town of Lima and Bloody Dick Creek. The rationale was that the most positive indication of gray wolf occupancy recorded at that time had been documented in the Lemhi Pass area. It further states that the BLM would be negligent of the intent of the Endangered Species Act if it allowed steel traps or poisoning for predators to take place in the area of concern. Since then, however, the USFWS has provided APHIS-ADC with their biological opinion which states that the use of snares, steel traps, and aerial shooting is not likely to jeopardize the continued existence of the gray wolf. Use of M–44s is prohibited in occupied gray wolf range. The occupied gray wolf range has been better defined since the Dillon MFP decision. The reasonable and prudent measures provided by the USFWS will be followed. Therefore, the Dillon MFP will be amended by the final decision made on this EA. This **Federal Register** Notice, also announces the Notice of Intent to amend the Dillon MFP to allow for these changes. To protect the amendment of the Dillon MFP, please follow the protest procedures. To appeal the decision of the Predator Management EA, follow the appeal procedures. To obtain a copy of the protest or appeal procedures, please contact: Sandy Brooks, Project Lead, Montana State Office, (406) 255–2929.

Dated: November 22, 1993.

Robert H. Lawton,

State Director.

[FR Doc. 93–29151 Filed 11–26–93; 8:45 am]

BILLING CODE 4310–DN–M

[MT–930–4320–01]

Notice of Availability of Environmental Assessment, Decision Record and Finding of No Significant Impact for Predator Management in Montana; Lewistown District Office; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An Environmental Assessment (EA), a Decision Record (DR) and Finding of No Significant Impact (FONSI) have been completed for predator management in the Lewistown District. The EA was available for a 30-day public comment period. Comments and responses have been incorporated in a revised EA.

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, Project Lead, Montana State Office, P.O. Box 36800, Billings, Montana 59107, or contact by phone at (406) 255–2929.

SUPPLEMENTARY INFORMATION: The Environmental Assessment for Predator Management in Montana addresses four alternatives which affect predator management to varying degrees:

Alternative 1—Integrated Pest Management (Animal and Plant Health Inspection Service—Animal Damage Control (APHIS–ADC), Department of Livestock (DOL), and BLM Proposed Action): This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. IPM incorporates a variety of practical, lethal and nonlethal methods for prevention and control to minimize animal damage to livestock or human health. The use of M–44s would be permitted after authorization is obtained. Preventative control would be allowed in areas where historical livestock losses have been documented.

Alternative 2—No. M–44s: This alternative would be similar to Alternative 1, except the use of M–44s would not be authorized. All other approved methods for control would be permitted. Preventive control would be allowed in areas where historical livestock losses had been documented.

Alternative 3—No action (Emergency Control Only): Preventive control measures would not be authorized, and corrective control would be applied only where APHIS–ADC or DOL have confirmed recent loss of livestock to predation. Emergency predator management would be requested by an operator when losses are occurring. The BLM would review and approve or disapprove these requests on a case-by-case basis. The requests would be handled using the emergency control procedures.

Alternative 4—No APHIS–ADC or DOL Predator Management on BLM Lands: Under this alternative, no APHIS–ADC or DOL predator management would be authorized on BLM land in Montana.

The Predator Management EA for Montana was available for public comment from September 15 to October 15, 1993. Twenty-seven letters were received and considered. Numerous changes to the EA were made as a result of some of the comments. The revised EA, DR, and FONSI are available upon request.

Based upon careful consideration of the analysis of alternatives documented within the Predator Management EA, including consideration of applicable laws, regulations, and public and agency comments, the decision is to implement Alternative 1—Integrated Pest Management (APHIS–ADC, DOL, and BLM Proposed Action). Management actions will be directed towards localized populations and/or individual offending predators. Requests for control will come directly to APHIS–ADC from permittees. In response to public concern regarding the use of lethal methods, the following mitigating measure has been adopted as part of the decision: Livestock operators will be provided information on nonlethal methods. When services are requested by permittees, APHIS–ADC will provide a fact sheet to the operator on nonlethal methods. In addition, information on nonlethal methods will also be mailed out in the annual grazing applications. This will ensure that permittees are aware of the variety of nonlethal methods available to them, such as animal husbandry practices, guard dogs, scare devices, etc.

Implementation of Alternative 1 will require strict adherence to reasonable and prudent measures developed by the U.S. Fish and Wildlife Service (USFWS) for the protection of threatened and endangered (T&E) species. The USFWS has concurred with the BLM finding that the proposed predator management strategy is not likely to adversely affect T&E species. Restrictions will be placed on predator management activities within four Outstanding Natural Areas (ONAs) located west of Chouteau because of the presence of T&E species. The four ONAs are: Ear Mountain, Deep Creek, Blindhorse Creek, and Chute Mountain. In these areas, APHIS–ADC is not authorized to use toxicants (M–44s) and has special timing restrictions on checking the traps. The other special areas in the Lewistown District closed to predator management, except under Emergency Control are: Azure Cave, 140 acres in size; and Square Butte ONA, 1,947 acres in size. These areas are closed to predator management because of the high recreational values. All areas identified on the maps provided in the EA, where human health or safety are a particular concern, will be closed to predator management. These areas include appropriate buffer zones. Bird hunting areas also have timing restrictions placed on some predator management activities.

It has been concluded that the proposed action will not result in

significant environmental impacts, and that no species will be substantially or permanently reduced in numbers as a result of the decision. In addition, the predator population is not substantially impacted. Statewide, 7,847 coyotes were taken by APHIDS–ADC and DOL on lands of all ownership, or 1.5 to 13.7 percent of the population statewide. In the Lewistown District, approximately 160 coyotes were taken on BLM lands. Based on the analysis in the EA, the implementation of Alternative 1 will result in the smallest amount of livestock loss. This decision ensures that predator management will be carried out in a systematic manner which responds to resource protection, human health, and livestock protection needs while protecting public safety, domestic animals, and nontarget wildlife. This decision is compatible with resource objectives identified in the following land use plans: Judith/Valley/Phillips Resource Management Plan (RMP) (October 1992—ROD target date is early 1994); Belt Management Framework Plant (MFP) 1977; Fergus MFP, 1978; Petroleum MFP, 1977; Little Rockies MFP, 1977; Phillips MFP, 1977; UL Bend-Zortman MFP, 1977; Valley and Willow Creek MFP, 1977; West Hi-Line RMP (July 1988, ROD approved 9/88) and Headwaters RMP (November 1983, ROD approved 7/84). To appeal this decision of the Predator Management EA, the appeal procedures need to be followed. To obtain a copy of the appeal procedures, please contact: Sandy Brooks, Project Lead, Montana State Office, (406) 255–2929.

Dated: November 22, 1993.

Robert H. Lawton,

State Director.

[FR Doc. 93–29155 Filed 11–26–93; 8:45 am]

BILLING CODE 4310–DN–M

[MT–930–4320–01]

Notice of Availability of Environmental Assessment, Decision Record and Finding of No Significant Impact for Predator Management in Montana; Miles City District Office; Montana

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: An Environmental Assessment (EA), a Decision Record (DR) and Finding of No Significant Impact (FONSI) have been completed for predator management in the Miles City District. The EA was available for a 30-day public comment period. Comments and responses have been incorporated in a revised EA.

FOR FURTHER INFORMATION CONTACT: Sandy Brooks, Project Lead, Montana State Office, P.O. Box 36800, Billings, Montana 59107, or contact by phone at (406) 255–2929.

SUPPLEMENTARY INFORMATION: The Environmental Assessment for Predator Managements in Montana addresses four alternatives which affect predator management to varying degrees:

Alternative 1—Integrated Pest Management (Animal and Plant Health Inspection Service Animal Damage Control (APHIS–ADC), Department of Livestock (DOL), and BLM Proposed Action): This alternative emphasizes an Integrated Pest Management (IPM) approach to reduce animal damage. IPM incorporates a variety of practical, lethal and nonlethal methods for prevention and control to minimize animal damage to livestock or human health. The use of M–44s would be permitted after authorization is obtained. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative 2—No M–44s: This alternative would be similar to Alternative 1, except the use of M–44s would not be authorized. All other approved methods for control would be permitted. Preventive control would be allowed in areas where historical livestock losses have been documented.

Alternative 3—No Action (Emergency Control Only): Preventive control measures would not be authorized, and corrective control would be applied only where APHIS-ADC or DOL have confirmed recent loss of livestock to predation. Emergency predator management would be requested by an operator when losses are occurring. The BLM would review and approve or disapprove these requests on a case-by-case basis. The requests would be handled using the emergency control procedures.

Alternative 4—No APHIS–ADC or DOL Predator Management on BLM Lands: Under this alternative, no APHIS-ADC or DOL predator management would be authorized on BLM land in Montana.

The Predator Management EA for Montana was available for public comment from September 15 to October 15, 1993. Twenty-seven letters were received and considered. Numerous changes to the EA were made as a result of some of the comments. A copy of the revised EA, DR, and FONSI are available upon request.

Based upon careful consideration of the analysis of alternatives within the Predator Management EA, including consideration of applicable laws, regulations, and public and agency comments, the decision is to implement Alternative 1—Integrated Pest Management (APHIS-ADC, DOL and BLM Proposed Action). Management actions will be directed towards localized populations and/or individual offending predators. Requests for control will come directly to APHIS–ADC from permittees, or to the DOL in those counties with a DOL approved MOU. Those counties with an approved MOU with the DOL are: Carter, Powder River, McCone, Dawson, and Richland Counties. In response to public concern regarding the use of lethal methods, the following mitigating measure has been adopted as part of the decision: Livestock operators will be provided information on nonlethal methods. When services are requested by permittees, either APHIS–ADC or DOL will provide a fact sheet to the operator on nonlethal methods. In addition, information on nonlethal methods will also be mailed out in the annual grazing applications. This will ensure that permittees who request control are aware of the variety of nonlethal methods available to them, such as animal husbandry practices, guard dogs, scare devices, etc.

Implementation of Alternative 1 will require strict adherence to reasonable and prudent measures developed by the U.S. Fish and Wildlife Service (USFWS) for the protection of Threatened and Endangered (T&E) species. The USFWS has concurred with the BLM finding that the proposed predator management strategy is not likely to adversely affect T&E species. Predator management will be prohibited in the Powder River Special Recreation Management Area (SRMA), located within the Powder River Depot because of the high recreational values in the area. All areas as identified on the maps provided in the EA, where human health or safety are a particular concern, will be closed to predator management. These areas also have appropriate buffer zones. Bird hunting areas also have timing restrictions placed on some predator management activities.

It has been concluded that the proposed action will not result in significant environmental impacts, and that no species will be substantially or permanently reduced in numbers as a result of the decision. In addition, the predator population is not substantially impacted. Statewide, 7,847 coyotes were taken by APHIDS–ADC and DOL on lands of all ownership, or 1.5 to 13.7 percent of the population statewide. In the Miles City District, approximately 404 coyotes were taken on BLM lands. Based on the analysis, implementation

of Alternative 1 will result in the least amount of livestock loss. This decision ensures that predator management will be carried out in a systematic manner which responds to resource protection, human health, and livestock protection needs while protecting public safety, domestic animals, and nontarget wildlife. This decision is compatible with resource objectives identified in the following land use plans: Big Dry Resource Management Plan (RMP) (Draft 1993), Billings RMP (November 1983) and the Powder River RMP (December 1984). To appeal the decision of the Predator Management EA, the appeal procedures need to be followed. To obtain a copy of the appeal procedures, please contact Sandy Brooks, Project Lead, Montana State Office, (406) 255–2929.

Dated: November 22, 1993

Robert H. Lawton,

State Director.

[FR Doc. 93–29154 Filed 11–26–93; 8:45 am]

BILLING CODE 4310–DN–M

INTERNATIONAL TRADE COMMISSION

[Investigations Nos. 731–TA–675 and 676 (Preliminary)]

Saccharin From China and Korea; Preliminary Antidumping Investigations

AGENCY: International Trade Commission.

ACTION: Institution and scheduling of preliminary antidumping investigations.

SUMMARY: The Commission hereby gives notice of the institution of preliminary antidumping investigations Nos. 731–TA–675 and 676 (Preliminary) under section 733(a) of the Tariff Act of 1930 (19 U.S.C. 1673b(a)) to determine whether there is a reasonable indication that an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from China and Korea of saccharin, provided for in subheading 2925.11.00 of the Harmonized Tariff Schedule of the United States, that are alleged to be sold in the United States at less than fair value. The Commission must complete preliminary antidumping investigations in 45 days, or in this case by January 3, 1994.

For further information concerning the conduct of these investigations and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and B (19 CFR part 207).

EFFECTIVE DATE: November 18, 1993.

FOR FURTHER INFORMATION CONTACT: Brian Walters (202–205–3198), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

These investigations are being instituted in response to a petition filed on November 18, 1993, by PMC Specialties Group, Rocky River, OH.

Participation in the Investigations and Public Service List

Persons (other than petitioners) wishing to participate in the investigations as parties must file an entry of appearance with the Secretary to the Commission, as provided in sections 201.11 and 207.10 of the Commission's rules, not later than seven (7) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to these investigations upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to § 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in these preliminary investigations available to authorized applicants under the APO issued in the investigations, provided that the application is made not later than seven (7) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Conference

The Commission's Director of Operations has scheduled a conference in connection with these investigations for 9:30 a.m. on December 9, 1993, at the U.S. International Trade Commission Building, 500 E Street SW., Washington, DC. Parties wishing to participate in the conference should contact Brian Walters (202–205–3198) not later than December 7, 1993, to arrange for their appearance. Parties in support of the imposition of antidumping duties in these investigations and parties in opposition to the imposition of such duties will each be collectively allocated one hour within which to make an oral presentation at the conference. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the conference.

Written Submissions

As provided in §§ 201.8 and 207.15 of the Commission's rules, any person may submit to the Commission on or before December 14, 1993, a written brief containing information and arguments pertinent to the subject matter of the investigations. Parties may file written testimony in connection with their presentation at the conference no later than three (3) days before the conference. If briefs or written testimony contain BPI, they must conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigations must be served on all other parties to the investigations (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: These investigations are being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.12 of the Commission's rules.

Issued: November 23, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29145 Filed 11–23–93; 1:04 pm]

BILLING CODE 7020–02–P

INTERSTATE COMMERCE COMMISSION

Notice of Intent To Engage in Compensated Intercorporate Hauling Operations

This is to provide notice as required by 49 U.S.C. 10524(b)(1) that the named corporations intend to provide or use compensated intercorporate hauling operations as authorized in 49 U.S.C. 10524(b).

1. Parent corporation and address of principal office: Sand Mountain Brick Co., Inc., P.O. Box 95, Sylvania, AL 35988.
2. Wholly owned subsidiaries which will participate in the operations, and State(s) of incorporation: Sand Mountain Brick Haulers, Inc., incorporated in the State of Alabama.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29187 Filed 11–26–93; 8:45 am]

BILLING CODE 7035–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Commission on the Future of Worker-Management Relations; Notice of Meeting

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of public meeting.

SUMMARY: The Commission on the Future of Worker-Management Relations was established in accordance with the Federal Advisory Committee Act (FACA) Public Law 92–463. Pursuant to section 10 (a) of FACA, this is to announce that the Commission will meet at the time and place shown below.

TIME AND PLACE: The meeting will be held on Wednesday, December 15, 1993 from 10 a.m. to 4:30 p.m. in the Department of Labor Auditorium, 200 Constitution Avenue NW., Washington, DC.

AGENDA: The agenda for the meeting is as follows:

The day will be devoted to presentations on the questions posed in the mission statement of the Commission which are:

1. What (if any) new methods or institutions should be encouraged, or required, to enhance workplace productivity through labor-management cooperation and employee participation?
2. What (if any) changes should be made in the present legal framework and practices of collective bargaining to enhance cooperative behavior, improve productivity, and reduce conflict and delay?
3. What (if anything) should be done to increase the extent to which workplace problems are directly resolved by the parties themselves, rather than through recourse to state and federal courts and government regulatory bodies?

Presentations will be made on these questions in the morning by representatives of organizations of business, including small business. Also in the morning, a representative of the Women's Bureau will report on recent studies on women in the workplace.

In the afternoon, presentations will be made on the same questions by representatives of labor organizations that are in industries with small business.

The sessions will include questions and exchanges of views with the Commission Members with additional discussion by the Commission members at the conclusion of the presentations.

PUBLIC PARTICIPATION: The Commission will be in session from 10 a.m. to 12 noon when it will recess for lunch and will return at 2 p.m. Seating will be available to the public on a first-come, first-served basis. Handicapped individuals wishing to attend should contact the Commission to obtain appropriate accommodations. Individuals or organizations wishing to submit written statements should send 15 copies to Mrs. June M. Robinson, Designated Federal Official, Commission on the Future of Worker-Management Relations, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone (202) 219–9148.

Signed at Washington, DC this 22nd day of November, 1993.

Robert B. Reich,

Secretary of Labor.

[FR Doc. 93–29117 Filed 11–26–93; 8:45 am]

BILLING CODE 4510–23–M

Employment and Training Administration

[TA–W–28,598 and TA–W–28,607]

Occidental Chemical Corp., Swift Creek, and Suwannee River, FL; Affirmative Determination Regarding Application for Reconsideration

After being granted a filing extension the company, on October 4, 1993 requested administrative reconsideration of the Department of labor's Notice of Negative Determination Regarding Eligibility to Apply for Worker Adjustment Assistance for workers at the subject firm. The Department's Negative Determination was issued on July 2, 1993 and published in the **Federal Register** on July 27, 1993 (58 FR 40161).

The company states that imports of monammonium phosphate (MAP) in 1992 and 1993 resulted in decreased sales and production of diammonium phosphate (DAP) by the subject firm. The company, on November 8, 1993, submitted for survey a list of DAP customers thought to have purchased imported MAP.

Conclusion

After careful review of the application, I conclude that the claim is of sufficient weight to justify reconsideration of the Department of Labor's prior decision. The application is, therefore, granted.

Signed at Washington, DC, this day of November 18, 1993.

Stephen A. Wandner,

Deputy Director, Office of Legislation & Actuarial Services, Unemployment Insurance Service.

[FR Doc. 93–29118 Filed 11–26–93; 8:45 am]

BILLING CODE 4510–30–M

Determinations Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 U.S.C. 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of November, 1993.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA–W–28,989; Quiet Valley Forest Products, Inc., Myrtle Point, OR

TA–W–29,014; Kogap Manufacturing Co., Medford, OR

TA–W–28,944; Imperial Smelting Co., Chicago, IL

TA–W–28,994; El Paso Refinery, L.P., El Paso, TX

TA-W-29,044; Kardex Systems, Inc., Reno, OH

TA-W-29,015; Component Technology, Inc., Erie, PA

TA-W-29,053; Plaza Plastics, South Plainfield, NJ

TA-W-28,919; Andritz Sprout-Bauer Durametal Group, Muncy, PA

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-28,999; Phillips Petroleum Co., Lafayette, LA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,065, TA-W-29,066; Penetrators, Inc., Midland, TX and Houston, TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,122; Gitano, Edison, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,036; General Felt Industries, Trenton, NJ

Separations at General Felt Industries, Trenton, NJ were attributable to a corporate decision to consolidate operations shifting production from the subject firm to another domestic facility located in Cape Girardeau, MO.

TA-W-29,075; Chess King, Worcester, MA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,113; Sequoyah Fuels Corp., Gore, OK

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,010; Reynolds Aluminum Recycling, Salt Lake City, UT

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-29,048; The Dee Howard Co., San Antonio, TX

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-29,141; Lehigh Structural Steel Co., Allentown, PA

The workers' firm does not produce an article as required for certification under section 222 of the Trade Act of 1974.

TA-W-28,975; Patent Scaffolding Co., Uniontown, PA

U.S. imports of scaffolding declined in 1992 compared to 1991.

TA-W-28,859; Mead Corp., Fine Paper Div., Chillicothe, OH

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-29,080; Andmore Sportswear Corp., Port Jervis, NY

Declines in employment were attributed to a company separation into two separate companies. The separated company transferred to a new location without transferring the subject firm employees.

TA-W-29,058, TA-W-29,059, TA-W-29,060; Briggs & Stratton Corp., Wauwatosa, WI, West Allis, WI, Menomonee Falls, WI

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period for certification.

TA-W-28,817; Powell Electrical Manufacturing Co., Houston, TX

U.S. imports of power circuit breakers and transformers rated over 500 kva decreased absolutely in 1992 compared with 1991.

TA-W-28,993; Lennox Industries, Inc., Columbus, OH

U.S. imports of air-conditioning, refrigeration and heating equipment decreased relative to domestic production in 1992 compared in 1991, and in 1993 compared with 1992.

Affirmative Determinations

TA-W-29,051; CT Scanner, Inc., Concord, MA

A certification was issued covering all workers separated on or after September 9, 1992.

TA-W-28,964; After 6, Inc., Philadelphia, PA

A certification was issued covering all workers separated on or after September 9, 1992.

TA-W-29,132; Gerber Childrenswear, Inc., 401, West Main St. Ephrata, PA

A certification was issued covering all workers separated on or after October 6, 1992.

TA-W-29,140; Maner Sportswear, Sugarnotch, PA

A certification was issued covering all workers separated on or after October 7, 1992.

TA-W-29,125; Carole Hochman Designs, Williamsport, PA

A certification was issued covering all workers separated on or after September 30, 1992.

TA-W-29,042; Reynolds Metals Co., Massena, NY

A certification was issued covering all workers separated on or after September 10, 1992.

TA-W-29,040; Sundown Manufacturing Co., Larksville, PA

A certification was issued covering all workers separated on or after September 3, 1992.

TA-W-29,056A; Neles-Jamesbury, Inc., Lakeside Plant, Worcester, MA

A certification was issued covering all workers separated on or after August 24, 1992.

TA-W-29,050; Cedar Contract Cutters, Inc., Lake Stevens, WA

A certification was issued covering all workers separated on or after September 10, 1992.

TA-W-29,121; Sun Sportswear, Johnson City, TN

A certification was issued covering all workers separated on or after September 29, 1992.

I hereby certify that the aforementioned determinations were issued during the month of November, 1993. Copies of these determinations are available for inspection in room C-4318, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: November 18, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance

[FR Doc. 93-29120 Filed 11-26-93; 8:45 am]

BILLING CODE 4510-30-M

Investigations Regarding Certifications of Eligibility To Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under Title II, Chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or

threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than December 9, 1993.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than December 9, 1993.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, D.C. 20210.

Signed at Washington, D.C. this 15th day of November, 1993.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petition Union/workers/firm—	Location	Date received	Date of petition	Petition No.	Articles produced
Synergy Consultants, Inc (Co)	Denver, CO	11/15/93	11/01/93	29,216	Oil and gas.
Northrop Electronics Systems Div (Wkrs).	Hawthoren, CA	11/15/93	10/16/93	29,217	Aerospace guidance systems.
McDonnell Douglas Helicopter Co (ES&T).	Culvery City, CA	11/15/93	10/20/93	29,218	Helicopters.
O'Bryan Brothers, Inc (Wkrs)	Bedford, IA	11/15/93	10/28/93	29,219	Ladies' Lingerie
Spot-Bilt, Inc (Wkrs)	Bangor, ME	11/15/93	11/01/93	29,220	Athletic shoes.
Paris Sewing, Inc (Co)	Paris, TX	11/15/93	11/05/93	29,221	Ladies' dresses.
Mann Industries, Inc (ACTWU)	Williamsburg, VA	11/15/93	11/30/93	29,222	Acrylic yarns.
Fortifiber Corp (Wkrs)	Clackamas, OR	11/15/93	11/02/93	29,223	Lumber wrap.
J.I. Case Co (UAW)	Schofield, WI	11/15/93	11/03/93	29,224	Construction equipment.
Grove Communications/MGM Tower, Inc (Co).	Williston, ND	11/15/93	11/03/93	29,225	Radio communication systems.
DSC Communications Corp (Wkrs)	Planto, TX	11/15/93	10/29/93	29,226	Filters and voltage oscillators.
Bates Manufacturing Co (Co)	Hackettstown, NJ	11/15/93	10/29/93	29,227	Office products.
Ditto Apparel of California, Inc (Wkrs)	Leesville, LA	11/15/93	11/03/93	29,228	Ladies' blue jeans.
Ditto Apparel of California, Inc (Wkrs)	Colfax, LA	11/15/93	11/02/93	29,229	Ladies' blue jeans.
Ditto Apparel of California, Inc (Wkrs)	Oak Groove, LA	11/15/93	11/02/93	29,330	Ladies' blue jeans.
Poli-Twine Southern, Inc (Wkrs)	Scottsboro, AL	11/15/93	10/06/93	29,231	Rope, cordage and twine.
Ditto Apparel of California (Wkrs)	Bastrop, LA	11/15/93	11/02/93	29,232	Ladies' blue jeans.

[FR Doc. 93-29119 Filed 11-26-93; 8:45 am]

BILLING CODE 4510-30-M

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

Advisory Committee on the Records of Congress; Meeting

AGENCY: National Archives and Records Administration.

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, the National Archives and Records Administration (NARA) announces a meeting of the Advisory Committee on the Records of Congress. The committee advises NARA on the full range of programs, policies, and plans for the Center for Legislative Archives in the Office of Special and Regional Archives.

DATES: December 14, 1993, from 9 a.m. to 10:30 a.m.

ADDRESSES: United States Capitol Building, Rayburn Room (H-207).

FOR FURTHER INFORMATION CONTACT: Michael L. Gillette, Director, Center for Legislative Archives, (202) 501-5350.

SUPPLEMENTARY INFORMATION:

Agenda

Update—Legislative Agency Task Force
Update—The Move to Archives II
Update—Center for Legislative Archives
Other current issues and new business.

The meeting is open to the public.

Dated: November 19, 1983.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93-29114 Filed 11-26-93; 8:45 am]

BILLING CODE 7515-01-M

NUCLEAR REGULATORY COMMISSION

[Docket No. 50-250, 50-251, 50-335 and 50-389]

Florida Power & Light Co.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an exemption from certain requirements of its regulations to Facility Operating License Nos. DPR-31, DPR-41, DPR-67 and NPF-16 issued to Florida Power and Light Company, (the licensee), for operation of the Turkey Point Nuclear Generating Units 3 and 4, located in Dade County, Florida and St. Lucie Plant Units 1 and 2, located in St. Lucie County, Florida.

Environmental Assessment

Identification of Proposed Action

The proposed action is in accordance with the licensee's application dated October 13, and November 2, 1993 for exemption from certain requirements of 10 CFR 73.55, "Requirements for physical protection of licensed activities in nuclear power plant reactors against radiological sabotage." The exemption would allow implementation of a hand geometry biometric system of site access control such that photograph identification badges can be taken offsite.

The Need for the Proposed Action

Pursuant to 10 CFR 73.55, paragraph (a), the licensee shall establish and maintain an onsite physical protection system and security organization.

10 CFR 73.55(d), "Access Requirements," paragraph (1), specifies that "licensee shall control all points of personnel and vehicle access into a protected area." 10 CFR 73.55(d)(5) specifies that "A numbered picture badge identification system shall be used for all individuals who are

authorized access to protected areas without escort." 10 CFR 73.55(d)(5) also states that an individual not employed by the licensee (i.e., contractors) may be authorized access to protected areas without escort provided the individual "receives a picture badge upon entrance into the protected area which must be returned upon exit from the protected area * * *"

Currently, unescorted access into protected areas of the St. Lucie units is controlled through the use of a photograph on a badge and a separate keycard. At the Turkey Point units, unescorted access into protected areas is controlled through the use of a photograph on a combination badge and keycard. (Hereafter, these are referred to as badge). The security officers at each entrance station use the photograph on the badge to visually identify the individual requesting access. The badges for both licensee employees and contractor personnel who have been granted unescorted access are issued upon entrance at each entrance/exit location and are returned upon exit. The badges are stored and are retrievable at each entrance/exit location. In accordance with 10 CFR 73.55(d)(5), contractor individuals are not allowed to take badges offsite. In accordance with the plants' physical security plans, neither licensee employees nor contractors are allowed to take badges offsite.

The licensee proposes to implement an alternative unescorted access control system which would eliminate the need to issue and retrieve badges at each entrance/exit location and would allow all individuals with unescorted access to keep their badges with them when departing the site.

An exemption from 10 CFR 73.55(d)(5) is required to permit contractors to take their badges offsite instead of returning them when exiting the site.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the licensee's application. Under the proposed system, each individual who is authorized for unescorted entry into protected areas would have the physical characteristics of their hand (hand geometry) registered with their badge number in the access control system. When an individual enters the badge into the card reader and places the hand on the measuring surface, the system would record the individual's hand image. The unique characteristics of the extracted hand image would be compared with the previously stored template to verify authorization for entry. Individuals, including licensee employees and contractors, would be allowed to keep their badge with them when they depart the site.

Based on a Sandia report entitled "A Performance Evaluation of Biometric Identification Devices" (SAND91—0276 UC—906 Unlimited Release, Printed June 1991), and on its experience with the current photo-identification system, the licensee demonstrated that the proposed hand geometry system would provide enhanced site access control. Since both the badge and hand geometry would be necessary for access into the protected area, the proposed system would provide for a positive verification process. Potential loss of a badge by an individual, as a result of taking the badge offsite, would not enable an unauthorized entry into protected areas. The licensee will implement a process for testing the proposed system to ensure continued overall level of performance equivalent to that specified in the regulation. The Physical Security Plans for both sites will be revised to include implementation and testing of the hand geometry access control system and to allow licensee employees and contractors to take their badges offsite.

The access will continue to be under the observation of security personnel. A numbered picture badge identification system will continue to be used for all individuals who are authorized access to protected areas without escorts. Badges will continue to be displayed by all individuals while inside the protected area.

Accordingly, the Commission concludes that this proposed action would result in no significant radiological environmental impact. With regard to potential non-radiological impacts, the proposed change does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed action.

Alternative to the Proposed Action

As an alternative to the proposed action, the staff considered denial of the proposed action. Denial of the application would result in no change in current environmental impacts. The environmental impacts of the proposed action and the alternative action are similar.

Alternative Use of Resources

This action did not involve the use of any resources not previously considered in the Final Environmental Statements related to operation of Turkey Point plants, dated July 1972, and St. Lucie plants Unit 1, dated June 1972 and Unit 2, dated May 1974.

Agencies and Persons Consulted

The NRC staff consulted with the State of Florida regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed exemption. Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have significant effect on the quality of the human environment.

For further details with respect to this action, see the request for exemption dated October 13, and November 2, 1993 which are available for public inspection at the commission's Public Document Room, 2120 L Street, NW., Washington, DC and at the local public document rooms located at Florida International University, University Park, Miami, Florida 33199 and at Indian River Community College, Ft. Pierce, Florida.

Dated at Rockville, Maryland, this 17th day of November 1993.

For the Nuclear Regulatory Commission.

Herbert N. Berkow,

Director, Project Directorate II–2, Division of Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29122 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–354]

Public Service Electric and Gas Company, Atlantic City Electric Company; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF–57, issued to Public Service Electric and Gas Company, et al. (PSE&G or the licensee) for Hope Creek Generating Station, located in Salem County, New Jersey.

Enviromental Assessment

Identification of the Proposed Action

By letter dated July 7, 1993 (NLR–N93095), PSE&G requested a license amendment to reflect changes to Appendix B of the Facility Operating License NFP–57. The request concerned removal of Pages 4–1a and 4–1b from

Section 4.2.1, "Aquatic Monitoring," in the Environmental Protection Plan (EPP).

Under the Endangered Species Act of 1973, a Section 7 consultation was reopened to evaluate the occurrence of impinged sea turtles at the Salem Nuclear Generating Station main circulating water intake structure. On January 2, 1991, the National Marine Fisheries Service (NMFS) issued a biological opinion which included an incidental take statement (ITS) that specified measures that PSE&G should take to facilitate observance and rescue of impinged sea turtles at the intake structures of both Salem and Hope Creek. PSE&G incorporated these measures into the EPP as requested by the NRC staff. Because of a large number of sea turtles impinged at the Salem intake structure during the summer of 1991, a revised biological opinion was issued by NMFS on August 4, 1992. During the summer of 1992, the fatal take limit of one Kemp's ridley was exceeded at the Salem intake structure. NMFS reinitiated the Section 7 consultation and on May 14, 1993, the biological opinion was again revised and issued. Because there has been no documented takes of sea turtles at the Hope Creek intake structure, the revised ITS in the May 14, 1993 biological opinion, granted relief to Hope Creek from the monitoring requirement contained in the previous biological opinions.

The Need for the Proposed Action

The proposed changes to Section 4.2.1, "Aquatic Monitoring," of the Environmental Protection Plan is required in order to provide the licensee relief of the previously imposed monitoring requirements, as they are not necessary.

Environmental Impacts of the Proposed Action

The Commission has completed its evaluation of the proposed revision to the Environmental Protection Plan and concludes that the changes are consistent with the recommendations made by NMFS in the May 14, 1993, revised biological opinion. The Commission concludes that this proposed action would result in no significant radiological environmental impact because the change only affects monitoring for sea turtles.

The proposed amendment will not increase the probability or consequences of any reactor accidents because the change does not affect the operation or performance of any equipment assumed in the accident analyses. With regard to potential non-radiological impacts, the proposed change to the Environmental Protection Plan involves deletion of surveillance requirements of systems located within the restricted area, as defined in 10 CFR part 20. It does not affect non-radiological plant effluents and has no other environmental impact. Therefore, the Commission concludes that there are no significant non-radiological environmental impacts associated with the proposed amendment.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equal or greater environmental impacts need not be evaluated. The principal alternative would be to deny the requested amendment. This would not reduce environmental impacts of plant operation and would result in reduced operational flexibility.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statements for the Hope Creek Generating Station (NUREG–1074), dated December 1984.

Agencies and Persons Consulted

The NRC staff reviewed the licensee's request and consulted the State of New Jersey regarding the environmental impact of the proposed action.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, the Commission concludes that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 7, 1993. This letter is available for public inspection at the Commission's Public Document Room, the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Pennsville Public Library, 190 S. Broadway, Pennsville, New Jersey 08070.

Dated at Rockville, Maryland, this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Larry E. Nicholson,

Acting Director, Project Directorate I–2, Division of Reactor Project—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29123 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

Proposed Generic Communication; NRC Generic Letter 89–10, Safety-Related Motor-Operated Valve Testing and Surveillance; Public Meeting

AGENCY: Nuclear Regulatory Commission

ACTION: Notice of meeting.

SUMMARY: The United States Nuclear Regulatory Commission (NRC) has scheduled a public meeting to discuss Generic Letter (GL) 89–10, "Safety-Related Motor-Operated Valve Testing and Surveillance." This meeting will focus on potential pressure locking and thermal binding of gate valves installed in safety-related systems of both boiling water and pressurized water reactors. The NRC will present an evaluation of related industry experience and planned regulatory activities. In addition, utility representatives may provide a discussion of ongoing industry activities related to pressure locking and thermal binding. Following this, NRC staff will discuss its positions on these issues. The NRC discussion will include responses to questions received from interested parties, licensees and applicants.

DATE AND LOCATION: The meeting will be held on February 4, 1994, from 8 a.m. to 5 p.m. at the New Orleans Marriott, 555 Canal Street, New Orleans, Louisiana 70140, Telephone (504) 581–1000.

DIRECT QUESTIONS TO: Allen G. Hansen, United States Nuclear Regulatory Commission, Office of Nuclear Reactor Regulation, Washington, DC 20555, Telephone (301) 504–1390.

SUPPLEMENTARY INFORMATION: This meeting will focus on pressure locking and thermal binding of motor operated valves. NRC staff investigations of gate valve pressure locking and thermal binding events indicate that identifying those valves susceptible to the phenomena is a complex process involving knowledge of components, systems, and plant operations. Component aspects include understanding operation of the valve, knowledge of valve design that can affect thrust requirements to lift the discs off the seats, and knowledge of the process used to determine operator thrust requirements. System considerations involve knowledge of

system conditions during all modes of plant operation, pump and valve alignments and operations, and knowledge of pump and valve start signals during all modes of operation including transients, accidents, and recovery actions hours after an accident. Operations aspects relate to knowledge of plant operation from startup to shutdown throughout a full fuel cycle to include systems or trains used and when, system temperature and pressure conditions in various modes, interface conditions (especially temperature and pressure) between systems or trains (or modes of a system), and valve proximity to fluid temperature change (heatup or cooldown) or valve exposure to pressure difference.

An observation from NRC staff discussions with licensees was that those most successful in identifying valves susceptible to pressure locking and thermal binding utilized an interdisciplinary team composed of valve experts, systems engineers, and plant operations staff. We believe licensees could achieve optimum workshop benefit through team participation. This would enhance appreciation of plant operation effects on valve susceptibility to pressure locking and thermal binding.

In order to assist the NRC in preparing for this meeting, interested parties should mail questions to the above address by January 4, 1994. Questions on NRC positions raised during the meeting will be discussed to the extent practical. In addition, the meeting content will be made available to the public following the meeting.

Dated at Rockville, Maryland this 22nd day of November 1993.

For the Nuclear Regulatory Commission.

Allen G. Hansen,

Project Manager, Project Directorate III–3, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29124 File 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

Uranium Recovery Field Office

AGENCY: Nuclear Regulatory Commission.

ACTION: Notice of closure of the document reading room.

SUMMARY: The Nuclear Regulatory Commission is informing the public that the Document Reading Room located at the Uranium Recovery Field Office will be closed effective June 1, 1994, and that document availability will be limited during the period from February 1, 1994 through May 31, 1994. This action is necessary to facilitate the timely transfer of documents from the field office to headquarters.

ADDRESSES: Questions regarding this notice may be mailed to the Licensing Assistant at the Uranium Recovery Field Office, with a copy to the Director, Uranium Recovery Field Office, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225.

DATES: The Reading Room will be closed as of June 1, 1994.

FOR FURTHER INFORMATION CONTACT: Ramon E. Hall, Director, Uranium Recovery Field Office, Region IV, U.S. Nuclear Regulatory Commission, P.O. Box 25325, Denver, Colorado, 80225. Telephone: (303) 231–5800.

SUPPLEMENTARY INFORMATION: The Nuclear Regulatory Commission has established a closure schedule for the Uranium Recovery Field Office. To facilitate the planned closure on August 1, 1994, it will be necessary to begin shipping formal docket files and reference material to the headquarters of the Nuclear Regulatory Commission in February 1994. As a result, the availability of materials will be limited to those documents still available in the office, and not in the process of being readied for shipment. During and following the transfer of the documentation from the Uranium Recovery Field Office, all documentation will continue to be available at the Public Document Room of the Nuclear Regulatory Commission, located at 2120 L Street NW., Washington, DC 20037 (202) 634–3273. Individuals should contact the Licensing Assistant at the Uranium Recovery Field Office on (303) 231–5800 before visiting the reading room to ascertain the availabilify of desired documents during the transition period. As of June 1, 1994, all documentation will have been transferred, and the document reading room will be closed to the public.

Dated at Denver, Colorado, on the 17th day of November 1993.

For the Nuclear Regulatory Commission.

Ramon E. Hall,

Director, Uranium Recovery Field Office, Nuclear Regulatory Commission.

[FR Doc. 93–29126 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Enforcement, has issued a decision concerning a Petition filed by letter dated August 16, 1992 submitted by Ernest C. Hadley as counsel for Arnold Gundersen (Petitioner). The Petition and subsequent correspondence from the Petitioner requested: (1) Prompt and decisive enforcement action against Petitioner's former employer, Nuclear Energy Services (NES) for procedural and license violations, alleged harassment of Petitioner and alleged misstatements made to NRC inspectors; (2) an immediate review of all pending investigations and the reasons for delay in taking enforcement action against NES; (3) action to protect the Petitioner from alleged continuing harassment by NES; (4) action to protect the Petitioner from a lawsuit filed by NES; (5) additional action against NES, including revocation of its license; (6) a response by NRC to NES's dispute over facts outlined in a 1992 NRC inspection report; (7) a ruling by NRC that a settlement agreement between Petitioner and NES is illegal and thus null and void; (8) discipline of an NRC employee for alleged intimidation of Petitioner's wife; and (9) an investigation into an alleged "cozy relationship" between NRC and NES.

The Petition is granted with respect to the request that the NRC respond to NES' dispute over facts outlined in a 1992 NRC inspection report, but is denied with respect to the other requests. The reasons for the denial are explained in the "Director's Decision under 10 CFR 2.206" (DD–93–16) which is available for public inspection in the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

A copy of this Decision will be filed with the Secretary for the Commission's review in accordance with 10 CFR 2.206. As provided by this regulation, the Decision will constitute the final action of the Commission 25 days after the date of issuance of the Decision unless the Commission on its own motion institutes a review of the Decisions within that time.

Dated at Rockville, Maryland this 19th of November 1993.

For the Nuclear Regulatory Commission.

James Lieberman,

Director, Officer of Enforcement.

[FR Doc. 93–29125 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50-269, 50-270, and 50-287]

Duke Power Co.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License Nos. DPR-38, DPR-47, and DPR-55 issued to Duke Power Company (the licensee) for operation of the Oconee Nuclear Station, Units 1, 2, and 3 located in Oconee County, South Carolina.

The proposed amendments would provide an interim acceptance criteria for control rod drop time on Oconee Unit 1. Specifically, control rod Group 1, Rod 8, and Group 2, Rod 5, would be considered operable with an insertion time of less than or equal to 3.00 seconds provided that: (1) The average insertion time for the remaining rods in Group 1 and the average insertion time for the remaining rods in Group 2 is less than or equal to 1.5 seconds, and (2) the core average negative reactivity insertion rate is within the assumptions of the safety analysis. The acceptance criteria would apply until the end of the current fuel cycle for Oconee Unit 1. This acceptance criteria for rod drop time would apply for the two rods, rather than the existing Technical Specification 4.7.1 limit of 2.00 seconds from the fully withdrawn position to ¾ insertion.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated:

Each accident analysis addressed within the Oconee Final Safety Analysis Report (FSAR) has been examined with respect to the changes proposed within this amendment request. There is no significant increase in the probability of any Design Basis Accident (DBA) as a result of this change, nor is there a significant increase in the consequences of a DBA as a result of this change, since the revised test acceptance criteria assure the ability of the control rods to mitigate design basis accidents. Specifically, the revised test acceptance criteria assure that the negative reactivity insertion rate is within the assumptions of the safety analysis.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated:

Accident analysis associated with the drop time of control rods are based on a minimum negative reactivity insertion rate required to prevent and/or mitigate adverse accident conditions. Operation of ONS [Oconee Nuclear Station] in accordance with the revised control rod drop time test acceptance criteria will not create any failure modes not bounded by previously evaluated accidents. Consequently, this change will not create the possibility of a new or different kind of accident from any accident previously evaluated.

(3) Involve a significant reduction in a margin of safety:

The revised control rod drop time test acceptance criteria for Unit 1 Cycle 15 assure that the negative reactivity insertion rate assumed in the accident analysis is met. Thus existing margins of safety are preserved. Therefore, there will be no significant reduction in any margin of safety.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P-223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received my be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By December 29, 1993, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons

why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to David B. Matthews: Petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to J. Michael McGarry, III, Winston and Strawn, 1200 17th Street NW., Washington, DC 20036, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated November 11, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Oconee County Library, 501 West South Broad Street, Walhalla, South Carolina 29691.

Dated at Rockville, Maryland, this 22nd day of November 1993.

For the Nuclear Regulatory Commission.

L.A. Wiens,

Project Manager, Project Directorate II–3, Division of the Reactor Projects—I/II, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29127 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8989]

Envirocare of Utah, Inc.; Issuance of Facility License

Notice is hereby given that the U.S. Nuclear Regulatory Commission (the Commission or NRC), has issued Byproduct Material License N. SMC–1559 to Envirocare of Utah, Inc. which authorizes the receipt, storage, and disposal of 11e.(2) byproduct material (as defined in section 11e.(2) of the Atomic Energy Act of 1954, as amended) at a site near Clive, Utah.

The application for the license complies with the standards and requirements of the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations. The Commission has made appropriate findings as required by the Act and the Commission's Regulations in 10 CFR chapter I which are set forth in the license. Prior public notice of the overall action involving the proposed issuance of license was published in the **Federal Register** on January 25, 1991 (56 FR 2659).

The Commission has determined that the issuance of this license will not result in any environmental impacts other than those evaluated in the Final Environmental Statement since the activity authorized by this license is encompassed by the overall evaluation described in the Final Environmental Statement.

For further details with respect to this action, see (1) byproduct Material License SCM–1559; (2) the Commission's Final Safety Evaluation Report, dated June 18, 1993, and Supplement 1; (3) the License Application, and amendments thereto; (4) the Environmental Report, and amendments thereto; and (5) the Final Environmental Statement dated August 1993.

These items are available for inspection at the Commission's Public Document Room located in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC.

Dated at Rockville, Maryland this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Daniel M. Gillen,

Acting Chief, Uranium Recovery Branch, Division of Low-Level Waste Management and Decommissioning, Office of Nuclear Material Safety and Safeguards.

[FR Doc. 93–29128 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

Portland General Electric Co. et al. Trojan Nuclear Plant; Exemption

[Docket No. 50-344]

I

The Portland General Electric Company, et al., (PGE or the licensee), is the holder of Facility Operating (Possession Only) License No. NP–1, which authorizes possession and maintenance of the Trojan Nuclear Plant (Trojan or the plant). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The plant is a permanently shut down light water reactor, currently in the process of being decommissioned, and is located in Columbia County, Oregon, on the Columbia River.

II

The Trojan Nuclear Plant permanently ceased power operations in November 1992, fuel was removed from the reactor and placed into the spent fuel pool, and detailed plans to decommission the facility were developed. The license was modified to a possession only status on May 5, 1993. This license prohibits operation of the reactor. On March 24, 1993, the NRC staff issued a confirmatory order that prohibits movement of nuclear fuel into the reactor building without prior written NRC approval. As the Trojan Nuclear Plant is permanently shut down and defueled, the NRC is granting an exemption from the requirements of 10 CFR 50.120 which are applicable to plants licensed to operate. This rule states the following:

> * * * Each nuclear power plant licensee, by November 22, 1993, shall establish, implement, and maintain a training program derived from systems approach to training as defined in 10 CFR 55.4.

This exemption will relieve the licensee from all training program requirements of 10 CFR 50.120. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel to maintain the plant in a non-operating defueled condition.

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) where special circumstances are present when *inter alia*, application of the regulation in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule, or that compliance would result in undue hardship or costs significantly in excess of those contemplated when the regulation was adopted or those incurred by others similarly situated.

The purpose of 10 CFR 50.120 is to ensure that civilian nuclear power plant operating personnel are trained and qualified to safely operate and maintain the facility.

IV

The licensee in its letters dated August 10, October 14, and October 21, 1993, addressed the special circumstances related to why an exemption should be granted to the requirement that the Trojan training programs comply with 10 CFR 50.120. The reactor has been defueled and the fuel removed to the spent fuel pool. The reactor cannot be returned to operation because the licensee is prohibited from operating the facility under the current possession only license. The licensee has stated that the training requirements necessary to assure adequate protection of the public health and safety in a permanently shutdown and defueled facility are significantly less than the training requirements necessary to assure the public health and safety at an operating facility as required by 10 CFR 50.120.

In a letter dated October 21, 1993, the licensee stated that, in lieu of meeting 10 CFR 50.120, Trojan Technical Specification 6.3.1, shall be met, which requires that each member of the facility staff shall meet or exceed the minimum qualifications of ANSI N18.1–1971 for comparable positions to those listed in 10 CFR 50.120, except for the Radiation Protection Manager who shall meet or exceed the qualifications of Regulatory Guide 1.8, Rev. 2, April 1987. The licensee training programs for the personnel categories comparable to those required by 10 CFR 50.120 shall be as follows:

Non-Licensed Operators

In lieu of non-licensed operators, certified fuel handlers shall be trained in accordance with the April 27, 1993 NRC-approved certified fuel handler (CFH) training program. This program provides both initial and continuing training appropriate to the handling, storage, and cooling of

Radiation Protection and Chemistry Technician

Radiation protection and chemistry technicians shall have combined duties for individuals who were qualified in both chemistry and radiation protection. The radiation protection (RP) technician training consists of administrative, fundamentals, personnel monitoring, instruments, exposure control, respiratory protection, plant systems, radioactive materials, and on the job training. The Chem/RP technician program contains the RP training program plus additional topics in the area of chemistry, spectroscopy, chromatography, and sewage treatment. The training program for both groups is being implemented by a chemistry and radiation protection department individual.

Engineering Support

The licensee stated that engineering support personnel currently receive training on an as-needed basis, in 10 CFR 50.59, accident analysis, systems, technical specifications, and procedure technical reviewer.

The licensee maintains that with all of the Trojan spent fuel stored in the spent fuel pool, the principal tasks and activities performed on the site are those necessary to monitor and maintain the spent fuel pool and associated support equipment, and that the tasks and activities associated with maintaining the fuel are relatively simple compared to the tasks and activities required to maintain an operating nuclear power plant. For all categories of training described above, the license indicates that its training commitments provide the protection necessary to ensure public health and safety given the current shutdown and defueled status of the facility. Therefore, the licensee maintains that requiring Trojan to comply with the literal training requirements specified in 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

Further, the licensee has also stated that compliance with the requirements of 10 CFR 50.120 would present an undue financial and administrative hardship. Because the plant is permanently shut down, the licensee is dedicating its resources to safely decommissioning the plant once the NRC approves the decommissioning plan. The licensee no longer has instructors to maintain a systems approach to training (SAT) program, as defined in 10 CFR 55.4. The licensee

states that to require it to comply fully with the requirements of the SAT process would result in extreme hardship. Further, the licensee contends that the regulation was established for power operation conditions because such conditions could result in the potential for an accident with significant offsite consequences. Since there now is no credible event at Trojan that could result in exceeding the dose limits of 10 CFR Part 100, requiring Trojan to comply with the training requirements specified in 10 CFR 50.120 would not materially contribute to increasing public health and safety.

V

The NRC staff reviewed and agrees with the licensee analysis described above. In addition, the NRC has previously analyzed the limiting design basis accident for Trojan in this permanently shut down condition; a fuel handling accident in the spent fuel pool. The results of this analysis indicated that if a fuel handling accident were to occur at Trojan, the resulting offsite dose to the maximally exposed individual would be significantly less than the U.S. Environmental Protection Agency Protective Action Guidelines. The staff has also determined that the tasks that remain to be performed by the Trojan plant staff are fewer in number and significantly less complicated than the tasks performed by the staff of an operating nuclear plant. Thus, the NRC staff concludes the licensee justification for exemption is reasonable based on (1) the significantly reduced risk to the public health and safety due to Trojan being permanently shut down, and (2) the reduced number and complexity of tasks to be performed by the Trojan site staff.

VI

Based on the analyses presented in Sections IV and V above, the staff concludes that sufficient bases exist for approval of this exemption. The staff finds that the special circumstance present satisfies the requirement of 10 CFR 50.12(a)(2)(ii) in that requiring compliance with 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule where training will be provided commensurate with permanently shut down and defueled condition of the facility.

VII

Based on the above evaluation, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission, hereby grants an exemption to 10 CFR 50.120. This exemption does not relieve the licensee of any other training requirements or commitments which they have made to the NRC, including those set out above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 61106, dated November 19, 1993).

This exemption is effective on November 22, 1993, the implementation date of the rule.

Dated at Rockville, Maryland this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support Office of Nuclear Reactor Regulation.

[FR Doc. 93–29129 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

Southern California Edison Co., San Onofre Nuclear Generating Station, Unit 1; Exemption

[Docket No. 50–206]

I

The Southern California Edison Company (the licensee), is the holder of Facility Operating (Possession Only) License No. DPR–13 which authorizes possession and maintenance of the San Onofre Nuclear Generating Station, Unit 1 (SONGS 1 or the plant). The license provides, among other things, that the plant is subject to all rules, regulations, and orders of the Commission now or hereafter in effect.

The plant is a permanently shutdown light water reactor, currently in the process of being decommissioned, and is located at the site of the licensee in San Clemente, California.

II

The San Onofre Nuclear Generating Station, Unit 1 permanently ceased power operations in November 1992. Future operation of SONGS 1 is prohibited by License Amendment No. 150, dated October 23, 1992, which amended the Facility Operating License No. DPR–13 to remove the operating authority of the licensee and allows the licensee to possess but not operate SONGS 1. This license amendment became effective as of the date the licensee provided certification that operation of the reactor has been permanently terminated and all special nuclear material, such as reactor fuel, has been permanently removed from the reactor and stored in the spent fuel pool. The licensee completed removal of the fuel from the reactor to the spent fuel pool on March 6, 1993, and provided the required certification on March 9, 1993. As SONGS 1 is permanently shut down and defueled, the NRC on its own initiative, is granting an exemption from the requirements of 10 CFR 50.120 which are applicable to plants licensed to operate. This rule states the following:

• • • Each nuclear power plant licensee, by November 22, 1993, shall establish, implement, and maintain a training program derived from a systems approach to training as defined in 10 CFR 55.4.

This exemption will relieve the licensee from the training program requirements of 10 CFR 50.120, except for certified non-licensed operators. However, it does not relieve the licensee from previous requirements or commitments to train and qualify facility personnel to maintain the plant in a non-operating defueled condition.

III

The NRC may grant exemptions from the requirements of the regulations which, pursuant to 10 CFR 50.12(a), are (1) authorized by law, will not present an undue risk to the public health and safety, and are consistent with the common defense and security; and (2) present special circumstances.

Section 50.12(a)(2)(ii) of 10 CFR Part 50 provides that special circumstances exist when application of the regulations in the particular circumstances would not serve the underlying purpose of the rule or is not necessary to achieve the underlying purpose of the rule.

The purpose of 10 CFR 50.120 is to ensure that civilian nuclear power plant operating personnel are trained and qualified to safely operate and maintain the facility commensurate with the safety status of the facility.

IV

The licensee in its letter dated August 2, 1993, addressed the special circumstances related to why an exemption should be granted to the requirement that the SONGS 1 training programs comply with 10 CFR 50.120. The reactor has been defueled and the fuel removed from the containment to the spent fuel pool. The reactor cannot be returned to operation because of License Amendment No. 150, which prohibits operation of SONGS 1.

The licensee has stated that it believes that 10 CFR 50.120 was intended to apply primarily to operational plants. In publishing the regulation (58 FR 21904),

the NRC stated that "If permanent changes in the condition of the plant (i.e., decommissioning or Possession Only License) make some or all existing training programs unnecessary, the licensee would obtain relief from these requirements by applying for an exemption eliminating or modifying the affected programs." Further, the licensee stated that since the regulation was intended primarily for operational plants, and since a systems approach to training (SAT) program, as defined in 10 CFR 55.4, is not needed for SONGS 1 plant personnel, application of 10 CFR 50.120 to SONGS 1 would not serve the underlying purpose of the regulation. The current SONGS 1 training programs for the personnel categories required by 10 CFR 50.120 is as follows:

Non-Licensed Operators

Training for certified fuel handlers (certified non-licensed operators), will continue to be in accordance with the May 27, 1993, NRC-approved certified fuel handler training program. The licensee can make changes to this approved training under the provisions of 10 CFR 50.59 based on continued program conformance to 10 CFR 50.120.

Training for non-certified operators consists of training and qualification to monitor and manipulate plant equipment.

Shift Supervisor

The SONGS 1 shift supervisors are certified fuel handlers who are accountable for safe and efficient plant operation in the permanently defueled mode, as SONGS 1 will no longer operate. Shift supervisors, as certified fuel handlers, receive training in accordance with the May 27, 1993, NRC-approved certified fuel handler training program, discussed above.

Shift Technical Advisor (STA)

There are no longer any STA positions at SONGS 1 based on License Amendment No. 154, dated May 27, 1993.

Instrumentation and Control, Electrical, and Mechanical Maintenance

The licensee stated that at SONGS 1 Instrument and Control Technicians, and Electrical and Mechanical Maintenance personnel perform the types of functions which are typical of these positions at an operational plant, such as calibration, and preventative and corrective maintenance of plant equipment. However, the number of systems and components involved is far less than at an operational plant and the maintenance personnel need not be familiar with as many different types of equipment. The plant equipment which remains functional is not technically sophisticated and the skills required for maintenance are less complex. Further, the licensee states that these individuals will be subject to the training requirements of 10 CFR 50.120 for the remaining two operating units onsite, although not for SONGS 1.

Radiation Protection Technician

The licensee states that radiological protection personnel functions at SONGS 1 are much less likely to involve activities capable of producing substantial personnel exposures than at an operational plant, since many of these activities have been eliminated. There will be no movement of irradiated fuel into or out of containment. Containment entries while the plant is at power and the attendant neutron exposures have been eliminated. There are no plans for work in high radiation, contamination, or airborne areas, or in harsh environments such as steam generator primary side entries. The radiation levels of radioactive waste will be lower. Thus, the potential for personnel overexposure is much less at SONGS 1 than at an operational plant. Further, the licensee states that these individuals will be subject to the training requirements of 10 CFR 50.120 for the remaining two operating units onsite, but not for SONGS 1.

Chemistry Technician

The licensee states that the quantity of samples and types of analyses required of chemistry technicians at SONGS 1 are much less than at an operational plant. The only chemistry concerns are the quality of the spent fuel pool water and analyses of potential release pathways. Analyses of primary coolant, steam generator, and condensate water are not needed, and water quality is not as critical for the spent fuel as it was for these other systems and components. Further, the licensee states that these individuals will be subject to the training requirements of 10 CFR 50.120 for the remaining two operating units onsite, but not for SONGS 1.

Engineering Support

The licensee states that a much lower level of engineering support is needed at SONGS 1 than at an operational plant, and the support required is generally less technically sophisticated. There are far fewer systems which must be kept functional, and those which are functional are not technically complex. In particular, there are far fewer safety-related systems, and engineering support personnel knowledge of codes and standards, such as ASME Code, need not be as extensive. There are no significant modifications or major component overhauls planned which would impose a large complex work load on engineering support personnel. Further, the licensee states that these individuals will be subject to the training requirements of 10 CFR 50.120 for two operating units onsite, but not for SONGS 1.

Thus, for all categories of training described above, the licensee indicates that the existing training requirements and commitments provide the protection necessary to ensure public health and safety given the current shutdown and defueled status of the facility. Although SONGS 1 personnel are subject to the SAT-based training program for the onsite operating Units 2 and 3, when applied to Unit 1, such training does not fully comply with 10 CFR 50.120 since it was not formally developed considering all possible job tasks remaining at Unit 1. With all of the SONGS 1 spent fuel stored in the spent fuel pool, the principal tasks and activities performed on the site are those necessary to monitor and maintain the spent fuel pool and associated support equipment. The tasks and activities associated with maintaining the fuel are relatively simple compared to the tasks and activities required to maintain an operating nuclear power plant. Therefore, requiring SONGS 1 to comply with the literal training requirements specified in 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule.

The licensee states that to require it to comply fully with the requirements of the 10 CFR 50.120 would not serve the underlying purpose of the regulation. The licensee contends that the regulation was established for power operation conditions because such conditions could result in the potential for an accident with significant offsite consequences. Since there now is no credible event at SONGS 1 that could result in exceeding the dose limits of 10 CFR Part 100, traditional non-SAT training is adequate for the personnel listed in 10 CFR 50.120 at SONGS 1.

V

The NRC staff reviewed and agrees with the licensee analysis described above. In addition, the NRC has previously reviewed the limiting design basis accident for SONGS 1 in this permanently shutdown condition. This design basis accident is the fuel handling accident. The results of this analysis, presented in Chapter 15.17 of the Updated Final Safety Analysis Report, indicated that if a fuel handling accident were to occur at SONGS 1,

while the facility was still licensed to operate, the consequences would be less than the criteria provided in 10 CFR part 100. The licensee in its letter dated November 5, 1993, requesting approval to remove SONGS 1 from the site offsite emergency plan, provided the results of a fuel handling accident based on current plant conditions. The results of this new analysis are a two-hour dose to the thyroid of 0.5 mrem and a two-hour whole body dose of 1.3 mrem, at the exclusive area boundary. Thus, the consequences of the limiting design basis accident for the SONGS 1 facility are significantly less than 10 CFR part 100, and significantly less than the EPA protective action guidelines of 1 to 5 rem. The staff has also determined that the tasks that remain to be performed by the SONGS 1 plant staff are fewer in number and significantly less complicated than the tasks performed by the staff of an operating nuclear plant. Thus, the NRC staff concludes that an exemption is reasonable based on (1) the significantly reduced risk to the public health and safety due to SONGS 1 being permanently shut down, and (2) the reduced number and complexity of tasks to be performed by the SONGS 1 site staff.

VI

Based on the analyses presented in Section IV and V above, the staff concludes that sufficient bases exist for approval of this exemption. In addition, the staff finds that the special circumstances present satisfies the requirement of 10 CFR 50.12(a)(2)(ii) in that requiring compliance with 10 CFR 50.120 is not necessary to achieve the underlying purpose of the rule where training will be provided commensurate with permanently shutdown and defueled condition of the facility.

VII

Based on the above evaluation, the Commission has determined that, pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security.

Accordingly, the Commission, on its own motion, hereby grants an exemption to 10 CFR 50.120 for training programs mandated by 10 CFR 50.120, except for certified non-licensed operator training. This exemption does not relieve the licensee of any training requirements or commitments which they have made to the NRC, including those set out above.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment (58 FR 61106, dated November 19, 1993).

This exemption is effective on November 22, 1993, the implementation date of the rule.

Dated at Rockville, Maryland, this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of the Nuclear Reactor Regulation.

[FR Doc. 93-29130 Filed 11-26-93; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-29]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Exemption

I

The Yankee Atomic Electric Company (YAEC or the licensee), is the holder of Possession Only License No. DPR-3 which authorizes possession and maintenance of the Yankee Nuclear Power Station (YNPS or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a permanently shutdown pressurized water reactor, currently in the process of being prepared for decommissioning, and is located at the licensee site in Franklin County, Massachusetts.

II

The licensee, by letter dated February 27, 1992, informed the NRC that YAEC had permanently ceased power operations, removed the fuel from the reactor to the fuel pool and begun to develop detailed plans to decommission the facility. The NRC, in a license amendment dated August 5, 1992, modified License No. DPR-3 to a Possession Only License (POL). The license is conditioned so that YAEC is not authorized to operate the reactor and fuel may not be placed in the reactor vessel, thus formalizing the licensee commitment to permanently cease power operations.

By letter dated July 28, 1993, the licensee justified a partial exemption from the requirements of 10 CFR 50.120 related only to the training program establishment, implementation, and maintenance requirements for the category of personnel identified as the Shift Technical Advisor (STA). The purpose of the rule is stated as follows:

* * * Each nuclear power plant licensee, by November 22, 1993, shall establish, implement, and maintain a training program derived from a systems approach to training as defined in 10 CFR 55.4.

III

The YAEC justification for the exemption is that the NRC eliminated the STA position in License Amendment No. 141, dated July 22, 1992. The staff eliminated this position when the plant was placed in a permanently defueled status and the STA became unnecessary. This exemption would relieve the licensee from the STA training program requirements of 10 CFR 50.120 which would otherwise have to be implemented by November 22, 1993. However, it does not relieve the licensee from training other categories of personnel defined in the rule, existing requirements of the POL or other existing commitments to train and qualify facility personnel.

The Commission will not consider granting an exemption unless special circumstances are present. The Commission is granting this exemption on its own motion as permitted by 10 CFR 50.12(a). The special circumstances that we find appropriate are those in 10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule . . ." The purpose of 10 CFR 50.120 is to ensure that civilian nuclear power plant operating personnel are trained and qualified to safely operate and maintain the facility commensurate with the safety status of the facility. Since the conditions at this permanently shutdown and defueled reactor do not require the presence of a shift technical advisor, STA training is not required to serve the underlying purpose of the rule.

IV

The staff concludes, based on Section III above, that sufficient bases exist for our approval of the exemption request. In addition, the staff finds that there is an appropriate special circumstance that satisfies the requirements of 10 CFR 50.12.

V

Based on the above evaluation, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Accordingly, the Commission hereby grants an exemption to the portions of 10 CFR 50.120 that apply to the establishment, implementation, and maintenance of training programs for

the category of personnel identified as the Shift Technical Advisor. The exemption will become effective on the implementation date of the rule, November 22, 1993. This exemption does not relieve the licensee of any other training requirements for other categories of personnel defined in the rule, existing requirements of the POL or other existing commitments to train and qualify facility personnel.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have any effect on the quality of the human environment (58 FR 61108, dated November 19, 1993).

This exemption is effective as noted above.

Dated at Rockville, Maryland, this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29131 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–029]

Yankee Atomic Electric Co. (Yankee Nuclear Power Station); Exemption

I

The Yankee Atomic Electric Company (YAEC or the licensee), is the holder of Possession Only License No. DPR–3 which authorizes possession and maintenance of the Yankee Nuclear Power Station (YNPS or plant). The license provides, among other things, that the plant is subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The facility is a permanently shutdown pressurized water reactor, currently in the process of being prepared for decommissioning, and is located at the licensee site in Franklin County, Massachusetts.

II

The licensee, by letter dated February 27, 1992, informed the NRC that YAEC had permanently ceased power operations, removed the fuel from the reactor to the fuel pool and begun to develop detailed plans to decommission the facility. The reactor was actually shut down in early October 1991; thus, the fuel has undergone over two years of decay. The NRC in a license amendment dated August 5, 1992, modified License No. DPR–3 to a Possession Only License (POL). The license is conditioned so that YAEC is not authorized to operate the reactor and fuel may not be placed in the reactor vessel, thus formalizing the YAEC commitment to permanently cease power operations.

By letter dated September 24, 1993, the licensee requested an exemption from 10 CFR 50.54(y) which states that, as a minimum, a licensed senior operator may approve any emergency action that departs from either a license condition or technical specification when permitted by 10 CFR 50.54(x). The licensee requests that the certified fuel handlers (CFH), a position analogous to that of the 10 CFR part 55 senior licensed operators, be granted the authority provided in 10 CFR 50.54(y). The September 24, 1993, request is the action being considered herein.

III

The YAEC bases for the exemption request are that the reactor has been defueled, the fuel placed in the spent fuel storage pool and that the reactor cannot be returned to operation. The NRC staff in a letter dated June 16, 1992, approved the CFH programs at Yankee and stated, "We find that these programs provide the required level of training and certification that is consistent with the permanently shutdown and defueled condition of the plant." In a license amendment dated July 22, 1992, the NRC eliminated the licensed operator programs at the plant and replaced them with the CFH programs.

The Commission will not consider granting an exemption unless special circumstances are present. In the licensee letter of September 24, 1993, these special circumstances were addressed as follows:

10 CFR 50.12(a)(2)(ii)—"Application of the regulation in the particular circumstances would not serve the underlying purpose of the rule."

Licensee response: "Although it is highly unlikely that emergency actions as described by 10 CFR 50.54(x) will ever be needed given the permanently defueled condition of YNPS, it is important that the appropriate licensee personnel have the authority to take emergency actions if needed. Because the certified fuel handler position for a permanently defueled facility is analogous to a licensed senior operator for an operating facility, the underlying purpose of 10 CFR 50.54(y) would not be served unless certified fuel handlers are authorized to fulfill the requirements of 10 CFR 50.54(x)."

IV

The staff, based on our letter of June 16, 1992, the license amendment of July 22, 1992, and review of the licensee letter of September 24, 1993, concludes that sufficient bases exist for our approval of the exemption request. In addition, the staff finds that there are special circumstances presented that satisfy the requirements of 10 CFR 50.12(a)(2)(ii).

V

Based on sections III and IV, above, the Commission has determined that pursuant to 10 CFR 50.12(a)(1), this exemption is authorized by law, will not present an undue risk to the public health and safety and is consistent with the common defense and security.

Pursuant to 10 CFR 51.32, the Commission has determined that the granting of this exemption will not have any effect on the quality of the human environment (58 FR 61107, dated November 19, 1993).

Accordingly, the Commission hereby grants the requested exemption to 10 CFR 50.54(y). The exemption is effective immediately.

Dated at Rockville, Maryland this 19th day of November 1993.

For the Nuclear Regulatory Commission.

Brian K. Grimes,

Director, Division of Operating Reactor Support, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29132 Filed 11–26–93; 8:45 am]

BILLING CODE 7590–01–M

NUCLEAR WASTE TECHNICAL REVIEW BOARD

Board to Review DOE Task Force Studies, Top-Level System Studies, the Multipurpose Container Concept, and Performance Assessment—January 11–12, 1994

Pursuant to it's authority under section 5051 of the Nuclear Waste Policy Amendments Act of 1987 (Pub. L. 100–203), the Nuclear Waste Technical Review Board will hold its winter meeting January 11–12, 1994, in Arlington, Virginia. The meeting, which is open to the public, will be held at the Doubletree Hotel National Airport, 300 Army Navy Drive, Arlington, Virginia 22202; telephone (703) 892–4100, fax (703) 521–0286.

The major topics of the two-day meeting will include a review of two recent Department of Energy (DOE) task force studies, an update on top-level system studies, a review of the status of the multipurpose container concept, and updates on performance assessment (PA) efforts being conducted within the Office of Civilian Radioactive Waste Management. On January 11, sessions will focus on the results of two task force studies initiated by former Secretary of Energy James Watkins: one

on an alternative program strategy and one on public trust and confidence. The Board also will be hearing about DOE progress in conducting top-level system studies that encompass transportation, storage, and disposal of spent nuclear fuel and defense high-level waste, and about the current status of the multipurpose container concept. On January 12, the meeting will focus on the results of the latest iteration of the Yucca Mountain Total System Performance Assessment and other PA efforts. Round-table discussions will agument the presentations.

The Board has invited representatives from the DOE and its contractors, the Electric Power Research Institute, Edison Electric Institute, the Nuclear Regulatory Commission, the National Academy of Sciences, Sweden's KASAM (National Council for Radioactive Waste), the State of Nevada, the National Association of Regulatory Utility Commissioners, and other interested organizations to participate in the meeting.

The Nuclear Waste Technical Review Board was created by Congress in the Nuclear Waste Policy Amendments Act of 1987 to evaluate the technical and scientific validity of activities undertaken by the DOE in its program to manage the disposal of the nation's spent nuclear fuel and defense high-level waste. In that same legislation, Congress directed the DOE to characterize a site at Yucca Mountain, Nevada, for its suitability as a potential location for a permanent repository for disposal of that waste.

Transcripts of the meeting will be available on a library-loan basis from Victoria Reich, Board librarian, beginning February 23, 1994. For further information, contact Frank Randall, External Affairs, 1100 Wilson Boulevard, suite 910, Arlington, Virginia 22209; (703) 235–4473; (FAX) 703–235–4495.

Dated: November 23, 1993.

William D. Barnard,

Executive Director, Nuclear Waste Technical Review Board.

[FR Doc. 93–29169 Filed 11–26–93; 8:45 am]

BILLING CODE 6820–AM–M

OFFICE OF MANAGEMENT AND BUDGET

Accounting Standards for Inventory and Related Property

AGENCY: Office of Management and Budget.

ACTION: Notice of document availability.

SUMMARY: This Notice indicates the availability of another Statement of Federal Financial Accounting Standards, "Accounting for Inventory and Related Property," adopted by the Office of Management and Budget (OMB). The accounting standards were recommended by the Federal Accounting Standards Advisory Board (FASAB) and adopted in their entirety by OMB.

ADDRESSES: Copies of the Statement of Federal Financial Accounting Standards No. 3, "Accounting for Inventory and Related Property," may be obtained for $3.50 each from the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (telephone: 202–783–3238), Stock No. 041–001–00415–7.

FOR FURTHER INFORMATION CONTACT: Ronald Longo (telephone: 202–395–3993), Office of Federal Financial Management, Office of Management and Budget, 725–17th Street, NW.—room 10235, Washington, DC 20503.

SUPPLEMENTARY INFORMATION: This Notice indicates the availability of the Statement of Federal Financial Accounting Standards (SFFAS) entitled "Accounting for Inventory and Related Property," adopted by the Office of Management and Budget (OMB). The accounting standards were recommended by the Federal Accounting Standards Advisory Board (FASAB) in July 1993, and adopted in their entirety by OMB.

Publication of SFFAS No. 2, "Accounting for Direct Loans and Loan Guarantees," is pending completion of a technical guide that will append the statement. OMB will publish a notice in the **Federal Register** when SFFAS No. 2 is available, which is expected by December 15, 1993.

Under a Memorandum of Understanding among the General Accounting Office, the Department of the Treasury, and OMB on Federal Government Accounting Standards, the Comptroller General, the Secretary of the Treasury, and the Director of OMB decide upon principles and standards after considering the recommendations of FASAB. After agreement to specific principles and standards they are to be published in the **Federal Register** and distributed through the Federal Government.

John B. Arthur,

Assistant Director for Administration.

[FR Doc. 92–29076 Filed 11–26–93; 8:45 am]

BILLING CODE 3110–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33226; File No.SR-Amex–93–38]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the American Stock Exchange, Inc. Relating to a Proposal to List for Trading Interest Rate Warrants

November 19, 1993.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78(b)(1), notice is hereby given that on January 21, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Item I, II, and III below, which Items have been prepared by the Amex. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Amex has submitted a proposal to list for trading, under Section 106 of the Amex Company Guide, warrants based on interest rates. The text of the proposed rule change is available at the Office of the Secretary, the Amex, and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Amex included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The Amex has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.

(A) Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) Purpose

Under Section 106 of the Amex Company Guide, the Exchange may list non-traditional warrants (*i.e.*, warrants other than those issued by an entity involving its own stock). Pursuant to Section 106, the Amex currently lists and trades warrants based upon foreign currencies, a foreign currency basket, and various stock indexes.

The Exchange now proposes to list and trade interest rate warrants. The Exchange anticipates that the initial warrant issue will be based upon a swap rate ("Swap Rate") [1] prevailing in one of the "G–7 nations." [2]

Regulatory framework applicable to interest rate warrants. Interest rate warrants will conform to the listing guidelines under Section 106 of the Amex Company Guide, which provide that:

(1) The issuer shall have assets in excess of U.S. $100,000,000 and otherwise substantially exceed the size and earnings requirements of Section 101(a) of the Amex Company Guide;

(2) The term of the warrants shall be for a period ranging from one to five years from date of issuance; and

(3) The minimum public distribution of such issues shall be 1,000,000 warrants with 400 public holders and an aggregate market value of US$4,000,000.

Interest rate warrants will be direct obligations of their issuer subject to cash settlement in U.S. dollars, and exercisable either throughout their life (*i.e.*, American style) or exercisable only at expiration (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant will be entitled to a cash settlement value computed in accordance with a formula specified in the issuer's prospectus. If "out of the money" at the time of expiration, the warrants will expire worthless.

The Amex will apply the same regulatory framework to interest rate warrants as applicable to currency warrants. The Amex will require that member firms only may sell interest rate warrants to investors whose accounts have been approved for options trading pursuant to Amex Rule 921. The Exchange also will distribute a circular to its membership prior to the commencement of trading calling attention to the risks associated with the purchase and trading of interest rate warrants.

Description of proposed swap rate warrant. The Exchange anticipates that the first issue of interest rate warrants listed on the Exchange would entitle the holder to receive from the issuer upon exercise an amount in U.S. dollars computed on the applicable valuation date by reference to a formula ("Formula") specifying a notional amount, times a multiplier, times the specified current Swap Rate less the specified Swap Rate at the time of exercise.

According to the Exchange, the proposed warrant would permit investors forecasting a decline in the applicable interest rate to take a bullish position with a small initial investment, a leveraged payout at maturity, and an investment risk limited to the purchase price.[3]

It is anticipated that the proposed warrants would have a one year term and a European style exercise. The spot rate at the valuation date would be determined by reference to the Swap Rate as reflected in market quotes contained on an accepted page on Reuters or Telerate.[4]

The Exchange will consult with the SEC staff prior to listing interest rate warrants where: (1) The warrants are based upon interest rates prevailing in non-G–7 nations, (2) the formula for determining the payment to holders on exercise differs from the Formula stated above, or (3) the method for determining the spot interest rate at expiration is derived from a source other than a recognized independent vendor of financial information.

(2) Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act, in general, and furthers the objectives of Section 6(b)(5) in particular, in that it is designed to prevent fraudulent and manipulative acts and practices and to promote just and equitable principles of trade, and is not designed to permit unfair discrimination between customers, issuers, brokers, and dealers.

(B) Self-Regulatory Organization's Statement on Burden on Competition

The Amex does not believe that the proposed rule change will impose any inappropriate burden on competition.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR–Amex–93–38 and should be submitted by December 20, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[5]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29112 Filed 11–26–93; 8:45 am]

BILLING CODE 8010–01–M

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[1] A swap rate, for purposes of this filing, represents the fixed interest rate that a swap dealer is willing to receive from a counterparty versus paying a floating rate based on LIBOR (London Interbank Offered Rate) for a given term in a specified currency.

[2] The "G–7 nations" are: Canada; France; Germany; Italy; Japan; the United Kingdom; and the United States.

[3] Since all payments are in U.S. dollars, there would be no currency risk except to the extent that fluctuations in the value of the relevant currency affect the specified Swap rate.

[4] Swap Rates are widely quoted by dealers and brokers and are available through Telerate and Reuters. The Amex anticipates that the first warrant issue will determine the spot rate at valuation by utilizing a Swap Rate calculated by International Financial Review ("IFR"), a publisher of financial information. IFR calculates a daily Swap Rate by polling swap dealers to determine the rate that the dealers are willing to pay or receive from counterparties with respect to a fixed versus floating interest rate swap. IFR assembles this information and, excluding the received high and low quotes, publishes the average of the remaining quotes on Telerate.

[5] 17 CFR 200.30–3(a)(12) (1993).

[Rel. No. IC–19868; 812–8644]

Boston Capital Tax Credit Fund IV, et al.; Application for Exemption

November 19, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Boston Capital Tax Credit Fund IV L.P., a Delaware limited partnership (the "Partnership"), and its general partner, Boston Capital Associates IV L.P., a Delaware limited partnership (the "General Partner").

RELEVANT ACT SECTION: Exemption requested under section 6(c) of the Act from all provisions of the Act.

SUMMARY OF APPLICATION: Applicants seek an order that would exempt the Partnership from all provisions of the Act. The order would permit the Partnership to invest in limited partnerships that engage in the ownership and operation of housing for low and moderate income persons.

FILING DATE: The application was filed on October 20, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 14, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicants: 313 Congress Street, Boston, Massachusetts 02210–1232.

FOR FURTHER INFORMATION CONTACT: Deepak T. Pai, Law Clerk, at (202) 272–3809, or Robert A. Robertson, Branch Chief, at (202) 272–3030 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicants' Representations

1. The Partnership was organized on October 5, 1993, under the Delaware Revised Uniform Limited Partnership Act. The Partnership is intended to serve as a vehicle for equity investment in apartment complexes to be qualified for the low income housing tax credit under the Internal Revenue Code of 1986, as amended (the "Code").

2. The Partnership will operate as a "two-tier" entity, *i.e.*, the Partnership will invest as a limited partner in operating partnerships, which will acquire, operate and maintain the apartment complexes in accordance with the purposes and criteria set forth in Investment Company Act Release No. 8456 (August 9, 1974) ("Release No. 8456").

3. The Partnership's investment objectives are to realize (a) certain tax benefits including low-income housing tax credits, (b) potential capital appreciation through increases in value and, to the extent applicable, amortization of the mortgage indebtedness of the apartment complexes, (c) cash distributions for liquidation, sale or refinancing of the apartment complexes (except with respect to certain non-profit operating partnerships) and (d), to the extent available, limited cash flow from operations.

4. On October 19, 1993, the Partnership filed a registration statement under the Securities Act of 1933 (the "Securities Act"), for the sale of approximately 30,000,000 units of beneficial interest ("Units") at $10.00 per Unit with a minimum investment of $5,000 per investor.

5. Subscriptions for Units will be made conditional upon representations as to suitability of the investment for each subscriber. The form of subscription agreement for Units provides that each subscriber will represent, among other things, that he meets the general investor suitability standards established by the Partnership and set forth in the prospectus. Units will be sold in certain states only to persons who meet different standards which will be set forth in the prospectus. In no event shall the Partnership employ any such suitability standards which are less restrictive than those set forth in the application. The partnership agreement also imposes certain restrictions on the transfer and assignment of the Units, including that each proposed assignee must produce evidence of his suitability. The Partnership does not anticipate formation of a public market for the Units, and thus believes purchase of Units should be considered illiquid investments.

6. The Partnership will be controlled by the General Partner, Boston Capital Associates IV L.P. The limited partners, consistent with their limited liability status, will not be entitled to participate in the control of the Partnership's business. However, the majority in interest of the limited partners will have the right (subject to certain limitations) to amend the partnership agreement, dissolve the Partnership, and remove the General Partner and elect a replacement therefor. In addition, under the partnership agreement, each investor is entitled to review all books and records of the Partnership at any and all reasonable times.

7. The partnership agreement provides that certain significant actions cannot be taken by the General Partner without the express consent of a majority in interest of the limited partners. Such actions include: (a) sale at any one time of all or substantially all of the assets of the Partnership; (b) dissolution of the Partnership; (c) sale of a substantial portion of the apartment complexes by the operating partnerships; and (d) the admission of a successor or additional general partner.

8. The Partnership will normally attempt to acquire between 90% and 99% interest in the operating profits, losses and tax credits of each operating partnership, with the balance remaining with the operating general partner. The Partnership will normally attempt to acquire a substantial (50% to 99%) interest in the cash distributions of each operating partnership, with the balance remaining with the operating general partner. Regardless of the percentage interest the Partnership has in an operating partnership, the operating partnership agreement will include the right to: Approve or disapprove the sale or refinancing of the apartment complex; replace the operating general partner; approve or disapprove the dissolution of the operating partnership; approve or disapprove amendments to the operating partnership agreement; and direct the operating general partners to convene meetings and submit matters to a vote. The Partnership is expected to have access to the books and records of the operating partnership and to receive annual and quarterly reports. In addition, the Partnership will require that all operating partnerships provide to the limited partners substantially all of the rights required by section VII of the guidelines adopted by the North American Securities Administrators Association, Inc. ("NASAA").

9. Boston Capital Services, Inc. will receive commissions up to 7% of the aggregate gross proceeds on the sale of Units. Boston Capital Services also will receive an expense allowance of up to .5% of the gross proceeds to defray

accountable due diligence activities, up to a 2% dealer-manager fee, up to 1% for sales expenses, and an asset acquisition fee of up to 8.5%.

10. All compensation to be paid to the General Partner and its affiliates is specified in the partnership agreement and the prospectus. The fees and other forms of compensation that will be paid to the General Partner and its affiliates will not have been negotiated through arms-length negotiations. Terms of all such compensation, however, are believed by applicants to be fair and not less favorable to the Partnership than would be the case if such terms had been negotiated with independent third parties. Applicants state that the Partnership believes that such compensation meets all applicable guidelines necessary to permit the Units to be offered and sold in the various states which prescribe such guidelines. These guidelines include, without limitation, the statement of policy adopted by NASAA applicable to real estate programs in the form of limited partnerships.

11. All proceeds of the public offering of Units will initially be placed in an escrow account with the Wainwright Bank & Trust Company ("Escrow Agent"). The offering of Units will terminate approximately 24 months from the date upon which the Partnership's registration statement is declared effective. If subscriptions for at least 250,000 Units have not been received by one year from the date upon which the Partnership's registration statement is declared effective, no Units will be sold and funds paid by subscribers will be returned promptly, together with a *pro rata* share of any interest earned thereon. Upon receipt of the prescribed minimum number of subscriptions, funds in escrow will be released to the Partnership and held in trust pending investment in operating partnership interests. Any net proceeds not utilized to acquire operating partnership interests will be invested and held in highly liquid, nonspeculative securities, which provide adequately for the preservation of capital. The Partnership intends to apply capital raised in its public offering to the acquisition of operating partnership interests as soon as possible.

Applicants' Arguments

1. Section 6(c) authorizes the SEC to grant an exemption from the Act to the extent "necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of [the Act]." Applicants seek an order under section 6(c) exempting the Partnership from all provisions of the Act.

2. Applicants assert that the requested relief is consistent with the protection of investors and the purposes and policies underlying the Act. Applicants assert, among other things, that investment in low and moderate income housing in accordance with the national policy expressed in title IX of the Housing and Urban Development Act of 1968 is not economically suitable for private investors without the tax and organizational advantages of the limited partnership form.

3. Release No. 8456 lists two conditions, designed for the protection of investors, which must be satisfied in order to qualify for the type of exemptive relief which the Partnership seeks: (a) "Interests in the issuer should be sold only to persons for whom investments in limited profit, essentially tax-shelter, investments would not be unsuitable"; and (b) "requirements for fair dealing by the General Partners of the issuer should be included in the basic organizational documents of the company." The Partnership will comply with these conditions and will otherwise operate in a manner designed to insure investor protection. Interests in the Partnership will be sold only to, and transfers will be permitted only to, investors who meet specified suitability standards which the Partnership believes are consistent with the requirements in Release No. 8456, with the guidelines of those states which prescribe suitability standards, and with the securities laws of all states where the Units will be sold. Such investors will receive extensive reports concerning the Partnership's business and operations. In addition, all compensation to be paid to the General Partner and its affiliates is specified in the partnership agreement and the prospectus.

4. Applicants believe that the Partnership is not susceptible to the abuses the Act was designed to remedy. The suitability standards, the requirements for fair dealing provided by the Partnership's governing instruments, and the pertinent governmental regulations imposed on each operating partnership by various federal, state and local agencies, provide protection to investors in Units comparable to that provided by the Act.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29069 Filed 11–26–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25929]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

November 19, 1993.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by December 13, 1993, to the Secretary, Securities and Exchange Commission, Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

New England Energy Incorporated (70–7055)

New England Energy Incorporated ("NEEI"), 25 Research Drive, Westborough, Massachusetts 01582, an electric public-utility subsidiary company of New England Electric System ("NEES"), a registered holding company, have filed a post-effective amendment under sections 9(a) and 10 of the Act to their application-declaration filed under sections 9(a) and 10 of the Act.

By order dated October 30, 1974 (HCAR No. 18635), among other things, NEEI was authorized to enter into a partnership ("Partnership") with Samedan Oil Corporation ("Samedan"),

a subsidiary of Noble Affiliates, Inc., both unaffiliated companies. The Partnership was formed to explore for and develop oil and gas prospects in order to provide a fuel supply for NEES system companies.

An order dated July 19, 1978 (HCAR No. 20632) authorized NEEI's methods of accounting for the costs (including capital costs) of its oil and gas exploration and development program. The methods of accounting were devised for the purpose of amortizing the costs and determining the prices at which NEEI sold fuel to New England Power Company ("NEPCO"), an affiliated electric public-utility company, pursuant to section 13(b) of the Act ("Pricing Policy"). These costs include a return prescribed by the Commission on the equity investment in NEEI maintained by NEES from time-to-time. Under the Pricing Policy, the proceeds from the sale to nonaffiliates of production from all of NEEI's properties were applied first to recovery of amortization and production costs. Any excess was passed on to NEPCO through a reduction in the price charged by NEEI for fuel sold to NEPCO under a fuel purchase contract ("Purchase Contract"). Any deficiency in such proceeds below NEEI's costs was recoverable by NEEI from NEPCO by an addition to the price for fuel sold to NEPCO under the Purchase Contract.

An order dated October 22, 1985 (HCAR No. 23873) amended the Pricing Policy ("Modified Pricing Policy"). Among other things, the Modified Pricing Policy was made applicable only to oil and gas prospects recorded on NEEI's books prior to January 1, 1984 ("Pre-1984 Prospects"). All costs of the Pre-1984 Prospects, including exploration and development costs and capital costs, but excluding any return after 1982 on equity invested in the program, were capitalized into a full cost pool ("Full Cost Pool"). Amortization of the Full Cost Pool, in combination with low oil and gas prices, resulted in losses which were passed through to NEPCO and under the Purchase Contract in accordance with the Modified Pricing Policy. NEPCO was allowed to recover from its customers all amounts which it paid to NEEI in connection with the Pre-1984 Prospects.

By an amendment to the Partnership agreement dated February 5, 1985, NEEI elected not to participate in new oil and gas prospects initiated by Samedan after December 31, 1986, but NEEI remained obligated to pay its share of expenses for exploration, development and production of prospects acquired on or before December 31, 1986.

By order dated October 3, 1991 (HCAR No. 25390) ("1991 Order"), NEEI was authorized to contribute, through December 31, 1993, up to $30 million to the Partnership. The 1991 Order reserved jurisdiction over NEEI's proposal to contribute an additional $15 million to the Partnership through December 31, 1993.

Of this amount, NEEI states that it has used approximately $9 million. NEEI states that it plans to invest up to a total of $15 million in the Partnership, primarily to develop Old Prospects, during 1994.

NEEI now proposes to invest, through December 31, 1994, up to $15 million in the Partnership. NEEI does not request authorization for additional amounts of investment funds. Rather, NEEI proposes to use up to $15 million of its remaining, outstanding investment authorization, as extended by further Commission authorization requested herein.

CSW Credit, Inc., et al. (70–7113/70–7218)

CSW Credit, Inc. ("CSW Credit"), a non-utility subsidiary of Central and South West Corporation ("CSW"), a registered holding company, and CSW, both of 1616 Woodall Rodgers Freeway, Dallas, Texas 75202, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 42, 44, 50 and 50(a)(5) thereunder to its application-declaration filed with this Commission under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

By order dated July 19, 1985 (HCAR No. 23767) (File No. 70–7113) ("1985 Order"), CSW was authorized, among other things, to organize CSW Credit to purchase the accounts receivable of the operating companies of CSW at a discount and to finance these purchases with the issuance and sale of debt. CSW Credit was authorized to borrow up to $320 million, and CSW was authorized to make equity investments in CSW Credit of up to an aggregate of $80 million through December 31, 1986.

By order dated July 31, 1986 (HCAR No. 24157) (File No. 70–7218) ("1986 Order"), CSW Credit was authorized to expand its business to the factoring of accounts receivable of nonaffiliated electric utility companies. In order to finance such transactions, CSW Credit was authorized to borrow up to an additional $160 million and CSW to make additional equity investments in CSW Credit of up to an aggregate of $40 million, through December 31, 1988. The 1986 Order also provided that CSW Credit limit its acquisition of utility receivables from nonassociate utilities so that the average amount of such receivables for the preceding twelve-month period outstanding as of the end of any calendar month would be less than the average amount of receivables acquired from CSW associate companies outstanding as of the end of each calendar month during the preceding twelve-month period ("50% Restriction"). Further, the 1986 Order extended the authority of the 1985 Order until December 31, 1988.

By order dated February 8, 1988 (HCAR No. 24575) (File Nos. 70–7113 and 70–7218) ("1988 Order"), CSW Credit was authorized, among other things, to factor the accounts receivable of nonaffiliated utility companies, subject to the 50% Restriction, and CSW Credit also was authorized to borrow, through December 31, 1989, up to $320 million and $304 million to finance the factoring of affiliate and nonaffiliate receivables, respectively. CSW was authorized to make equity investments in CSW Credit of up to an aggregate of $80 million and $76 million in connection with the factoring of affiliate and nonaffiliate receivables, respectively.

The authority from the 1988 Order was extended through December 31, 1990 by order dated December 27, 1989 (HCAR No. 25009) ("1989 Order"). In addition, the 1989 Order authorized a reduction in CSW Credit's equity ratio requirement from approximately 20% to no less than 15%.

By order dated August 30, 1990 (HCAR No. 25138), CSW Credit was authorized to lower its equity ratio to no less than 5%.

By orders dated December 21, 1990, December 24, 1991 ("1991 Order"), and December 9, 1992 (HCAR Nos. 25228, 25443, and 25698, respectively), CSW Credit's existing authority was extended through December 31, 1991, December 31, 1992, and December 31, 1993, respectively. In addition, the 1991 Order granted CSW Credit the authorization to borrow up to an additional $200 million to finance the factoring of associate receivables.

Pursuant to the orders ("Orders") summarized above, the following authority has been granted: (1) CSW Credit has been authorized to borrow $824 million, of which $520 million could be used to purchase receivables of affiliated companies and $304 million could be used to purchase receivables of nonaffiliated companies; and (2) CSW has been authorized to make equity investments in CSW Credit of up to an aggregate of $156 million, of which $80 million could be used to purchase receivables of affiliated companies and

$76 million could be used to purchase receivables of nonaffiliated companies.

It is stated that the specific terms and conditions applicable to CSW Credit's borrowings are subject to negotiation with the particular lender or lenders. However, CSW Credit states that, without prior approval of the Commission, such terms and conditions will be no less favorable than the following, or, with respect to commercial paper, the equivalent thereof: (1) The principal amount of such borrowings from time to time outstanding shall bear interest at a rate up to the prime commercial rate plus 2% of the lending bank; (2) CSW Credit will be required either (a) to keep an amount equal to 5% of the commitment amount in the form of a depository relationship with the lending bank or (b) to pay to the lending bank a commitment fee of ½% per annum of the amount of the commitment of such lending bank; (3) CSW Credit will be allowed to prepay at any time all or any part of the outstanding principal amount of such borrowings without penalty; (4) no such borrowings will have a term in excess of 10 years; and (5) the other terms and conditions of the borrowings will be substantially equivalent to those authorized with respect to the CSW money pool, as authorized by HCAR Nos. 25777 and 25897 (March 31 and September 28, 1993, respectively).

For the twelve months ended September 30, 1993, CSW Credit had outstanding receivables purchases from affiliated companies of $364 million and from nonaffiliated companies of $24 million. (The outstanding receivable purchases from non-affiliated companies does not include the $267 million average receivable purchases for the twelve months ended September 30, 1993 from Houston Lighting and Power Company authorized by order dated December 29, 1992 (HCAR No. 25720).) Also, as of September 30, 1993, the amount of remaining authority that CSW Credit had available to purchase receivables from affiliated companies was $156 million and nonaffiliated companies was $280 million.

CSW Credit and CSW now propose to extend, through December 31, 1994, the authorization under the previously granted Orders.

National Fuel Gas Company, et al. (70–7376)

National Fuel Gas Company ("NFG"), 30 Rockefeller Plaza, New York, New York 10112, a registered public utility holding company, and Utility Constructors, Inc. ("UCI"), East Erie Extension, Linesville, Pennsylvania 16424, a wholly-owned non-utility subsidiary of NFG, have filed a post-effective amendment under sections 9(a) and 10 of the Act and section 2(b) of the Gas Related Activities Act of 1992 ("GRAA") to their application-declaration under sections 9(a) and 10 of the Act.

By order dated May 1, 1987 (HCAR No. 24381) ("May 1987 Order"), NFG was authorized to acquire 100% of the capital stock of UCI. UCI's operations involve the construction of new and replacement pipelines, well drilling and maintenance services, and site construction and auxiliary services. As authorized by the May 1987 Order, these services are provided to other NFG system subsidiaries and to non-associate companies.

Under the terms of the May 1987 Order, the Commission required that, during each three-year period following NFG's acquisition of UCI, the total revenues received by UCI from non-associate companies should be less than the total revenues received by UCI during the same period from associate companies ("50% Restriction"). From the date of NFG's acquisition of UCI through the end of its 1991 fiscal year (September 30, 1991), billings by UCI for construction and related services undertaken on behalf of NFG system companies represented about 54% of UCI's total revenues. However, during the 1992 fiscal year, billings to associate companies totalled approximately $4,364,000, and billing to non-associated companies totaled approximately $24,692,000, or approximately 85% of total revenues.

NFG proposes to continue the operations of UCI absent the Commission's 50% Restriction, as imposed by the May 1987 Order, by authority of section 2(b) of the GRAA. However, in the interests of investors, consumers and the proper functioning of the NFG system, UCI's activities will be limited to a geographic area comprised of the following states: Illinois, Indiana, Maryland, Michigan, New Jersey, New York, Ohio, Pennsylvania, Virginia and West Virginia.

General Public Utilities Corp., et al. (70–7727)

General Public Utilities Corporation ("GPU"), a registered holding company, 100 Interpace Parkway, Parsippany, New Jersey 07054, General Portfolios Corporation ("GPC"), Mellon Bank Center, Tenth and Market Streets, Wilmington, Delaware 19001, and Energy Initiatives, Inc. ("EII") (collectively, "Applicants"), One Upper Pond Road, Parsippany, New Jersey 07054, have filed a post-effective amendment under sections 6(a), 7, 9(a), 10, 12(b), and 33 of the Act and Rule 45 thereunder to their application-declaration under sections 6, 7, 9(a), 10, 12(b), and 12(c) of the Act and Rules 42, 45, 46, and 50(a)(5) thereunder.

By orders dated December 18, 1992 (HCAR No. 25715) ("1992 Order") and June 16, 1990 (HCAR No. 25108), the Commission authorized EII to, among other things, engage in preliminary project development and administrative activities ("Project Activities") in connection with its investments in qualifying generation and small power production facilities, as defined in the Public Utility Regulatory Policies Act of 1978, located anywhere in the United States, and exempt wholesale generators, as defined in section 32 of the Act, as amended by the Energy Policy Act of 1992, located in the United States and in foreign countries (collectively, "Projects"). The 1992 Order also authorized GPU, from time to time through December 31, 1994, to make capital contributions to GPC, which GPC would in turn make available to EII, in an aggregate amount of up to $60 million, for use by EII in connection with Project Activities. EII now proposes to engage in Project Activities for "foreign utility companies," as defined in section 33 of the Act.

The 1992 Order also authorized GPU and GPC from time to time through December 31, 1994, to enter in (i) letter of credit reimbursement agreements ("Reimbursement Agreements") in connection with irrevocable bank letters of credit ("LOC") furnished by EII as security for EII's agreements with project lenders to investment in particular projects and (ii) guarantees or similar obligations ("Guarantees") securing EII's agreements with lenders to make investments in particular projects.

The Applicants now propose to, from time to time through December 31, 1994, enter into Reimbursement Agreements in connection with Project Activities and acquisition of interests in Projects. In addition, GPU and GPC propose to enter into Guarantees, through December 31, 1994, for the same purposes. Drawings on the LOCs would bear interest at not more than 5% above the prime rate as in effect from time to time and any letter of credit fees would not exceed 1% annually of the face amount of the LOC. The total principal amount of Reimbursement Agreement and Guarantee obligations outstanding at any one time, together with the aggregate amount of cash capital contributions, will not exceed

$60 million. In addition, the total principal amount of Reimbursement Agreement obligations incurred by EII for which authorization is sought, together with the aggregate principal amount of borrowings incurred by EII as described below, would not exceed $10 million outstanding at any one time.

EII also proposes to issue, sell and renew from time to time through December 31, 1994 its promissory notes evidencing short-term borrowings from commercials banks and other financial institutions, in an aggregate principal amount at any one time outstanding (together with the aggregate amount of obligations outstanding under Reimbursement Agreements entered into by EII) not exceeding $10 million. Such notes would mature not later than nine months after issuance, bear interest at a rate (after giving notice to any fees and compensating balance requirements) not in excess of 125% of the lending bank's or other recognized prime rate, and would be prepayable only to the extent provided therein. In addition, such borrowings would be unsecured (except as described below) and would not be made as part of any public offering. Borrowings may be made pursuant to loan participation arrangement or lines of credit established by EII with commercial banks. (Such arrangements or lines of credit may include a letter of credit facility which would permit EII to obtain LOCs for the purposes and having the terms described above, in the aggregate face amount, together with the aggregate principal amount borrowed, not to exceed $10 million.)

To enable EII to effect short-term borrowings on more favorable rates and terms, GPU proposes from time to time through December 31, 1994 to enter into Guarantees with the lenders to secure EII's obligation to repay such borrowings (including pursuant to any letter of credit facility as described above). The total principal amount so guaranteed by GPU would not exceed $10 million, and would be in addition to the $60 million authorized under the 1992 Order.

Finally, in view of its expanding business operations, EII believes that it would be appropriate to consolidate its operation and maintenance services provided to affiliates and nonaffiliates within a wholly owned subsidiary of EII to be formed ("Services Sub"). Accordingly, EII proposes to acquire for $1,000 all of the capital stock of Services Sub, a Delaware corporation to be formed, and to contribute up to $1 million to Services Sub from time to time through December 31, 1994 to provide temporary working capital.

Consolidated Natural Gas Company, et al. (70–7761)

Consolidated Natural Gas Company ("CNG"), a registered holding company, its wholly-owned, nonutility subsidiary, CNG Energy Corp ("CNG Energy"), and CNG Technologies, Inc. ("CNGT"), a wholly owned non-utility subsidiary company of CNG Energy, each located at the CNG Tower, 625 Liberty Avenue, Pittsburgh, Pennsylvania 15222–3199, have filed a post-effective amendment to their application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 43, 45 and 50 thereunder.

By order dated December 21, 1990 (HCAR No. 25224) ("1990 Order"), CNG Energy was authorized to establish CNG Technologies ("CNGT"), a wholly-owned limited purpose subsidiary, to pursue and support the development of new gas related technologies. Pursuant to section 2(a) of the Gas Related Activities Act of 1990, Public Law 101–572 (1990), the Commission also authorized CNG Energy in the 1990 Order to acquire partnership interest in EnerTex Partners, L.P. ("EnerTek" or "Partnership"), for $2 million. EnerTek is a gas industry fund that invests in smaller companies developing innovative products, processes and techniques that enhance the supply, transportation and utilization of natural gas, and to assign its interest in EnerTek to CNGT.

To fund its investment in EnerTek, the Commission authorized CNGT through December 31, 1993 to issue and sell its common stock to and/or obtain a long-term loan from EnerTek, in any combination thereof, in an aggregate outstanding amount not to exceed $2 million. To support this funding, the Commission further authorized EnerTek through December 31, 1993 to issue and sell its common stock to and/or obtain a long-term loan from CNG, in any combination thereof, in an aggregate outstanding amount not to exceed $2 million. As of September 30, 1993, CNGT has invested $1 million in EnerTek.

To enable it to fulfill its obligation to invest a total of $2 million in the Partnership, CNG Energy and CNGT now seek an extension of the 1990 Order authorizations through December 31, 1995. Accordingly, CNGT requests authorization, from time-to-time through December 31, 1995, to issue and sell its common stock to CNG Energy, and/or obtain long-term loans from CNG Energy, in any combination thereof, in an aggregate outstanding amount not to exceed $2 million. CNG Energy, in turn, proposes, from time-to-time through December 31, 1995, to issue and sell its common stock, $1,000 par value per share, to CNG and/or obtain long-term loans from CNG, in any combination thereof, in an aggregate outstanding amount not to exceed $2 million.

Long-term loans to CNGT by CNG Energy and/or to CNG Energy by CNG shall be evidenced by long-term non-negotiable notes of CNG Energy or CNGT (documented by book entry only) maturing over a period of time not in excess of 30 years. The interest borne by such loans shall not exceed CNG's cost of funds for comparable borrowings by CNG. In the event CNG has not had recent comparable borrowings, the rates will not exceed the Solomon Brothers Inc. indicative rate for comparable debt issuances published in Solomon Brothers Inc. Bond Market Roundup or similar publication on the date nearest to the time of takedown.

CNG will obtain the funds required for CNG Energy through internal cash generation, issuance of long-term debt securities, borrowings under credit agreements or through other authorizations approved by the Commission subsequent to the effective date of this application-declaration.

Georgia Power Company (70–8085)

Georgia Power Company ("Georgia Power"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, an electric public-utility subsidiary of The Southern Company, a registered holding company, has filed an application requesting that an order be issued that finds that it is exempt from section 9(a) of the Act pursuant to section 9(c)(3).

Georgia Power proposes to invest up to $5 million to acquire all of the limited partnership units of ATV/GP Parallel Fund, Limited Partnership, a Delaware limited partnership ("Partnership") to be formed for the purpose of making venture capital investments in high-technology companies located in Georgia Power's service territory. The Partnership will operate in tandem with the Alliance Technology Ventures, Limited Partnership ("Ventures"), also a Delaware limited partnership, and at least one other parallel partnership.

Initially, the sole general partner ("General Partner") of the Partnership and of Ventures will be Michael A. Henos, a professional fund manager who has managed other venture capital funds similar to the Partnership. The General Partner will enter into a management agreement (the "Management Agreement") with Alliance Technology Management Corp., which is wholly-owned by Mr. Henos.

The organization of Ventures and the parallel partnership funds is being sponsored by the Georgia Research Alliance ("GRA"), a public-private effort supported by Georgia's research universities and business community. The GRA was created to promote science and technology-driven economic development in Georgia, particularly in the areas of advanced telecommunications, environmental technologies and genetics.

The objective of Ventures is to supply early stage venture capital to start-up companies organized to commercialize these and other new technologies, generally described as information and life sciences technologies. Through such investments, Ventures will help to stimulate business activity and economic development, primarily in Georgia, including the creation and retention of jobs, while seeking to realize attractive returns on invested funds.

Although the investments selected by Ventures will be Georgia-focused as well as focused on technologies which have been supported by the GRA, Ventures may, in appropriate cases, consider investment opportunities outside of Georgia in order to obtain superior returns and the benefits of geographical diversity. However, the general partner ("General Partner") may invest the capital of the Partnership only in companies which have (or propose to have) their principal executive offices or substantial operations within the state of Georgia. Further, under no circumstances will the Partnership acquire the securities of any "public utility company," "electric wholesale generator," or "foreign utility company," as defined under the Act, or of any "qualifying facility," as defined under the Public Utility Regulatory Policies Act.

The selection of the General Partner and fund manager ("Fund Manager") and negotiation of the terms of the separate partnership agreements and management agreement have been carried out under the guidance of the GRA executive committee. William Dahl, President and chief executive officer of Georgia Power, has served as a member of the GRA executive committee.

It is the objective of the General Partner and the GRA executive committee to establish a combined fund of $30 to $60 million. Aggregate commitments for at least $25 million of the partnership units to be offered by Ventures and any parallel partnership are required before the initial closing will occur. During the six months following the initial closing, if aggregate subscriptions of all limited partners are less than $60 million the General Partner may solicit subscriptions from additional limited partners. The offering of limited partnership interests by Ventures and the Partnership is intended to qualify as a private placement of securities that is exempt from registration under the federal securities laws.

The obligations of Ventures and each parallel partnership, including the Partnership, to fund investments in each qualifying venture selected by the General Partner will be in proportion to the aggregate of the "uninvested subscriptions" in each respective partnership. Thus, assuming aggregate commitments of all limited partners equal to $30 million, the Partnership would be obligated to advance ⅙ of the funds needed for any particular investment. However, should Ventures at any time elect to invest in a non-Georgia venture, the Partnership's proportionate "uninvested subscription" would automatically increase. Thus, if the General Partner were subsequently to select a qualifying Georgia-based investment, the partnership's percentage commitment would be proportionately greater. In this way, the investments by Ventures and each parallel partnership would be maintained approximately in the same proportion as their respective initial subscriptions.

In certain respects, actions that may be taken by the General Partner will require the consent of Georgia Power, as limited partner. Specifically, no term or provision of the partnership agreement may be waived, modified or amended, unless Georgia Power shall have given its written consent. Similarly, the Management Agreement may not be amended without the consent of Georgia Power.

It is intended that the Partnership and any other parallel partnership will be managed and operated in tandem with Ventures. Thus, certain actions of the General Partner that could have an effect upon the Partnership may require prior approval of the limited partners of Ventures (rather than Georgia Power) or of an advisory committee of Ventures ("ATV's Advisory Committee"). These actions include the right to:

(1) Resolve certain issues relating to potential conflicts of interest;

(2) Approve or disapprove of proposed valuations of assets, particularly with reference to valuations of securities which are deemed to be "freely tradeable";

(3) Approve or disapprove of any investments that would deviate from specified investment limitations; and,

(4) Approve any proposal by the General Partner to incur debt or make guarantees in an amount exceeding 10% of the aggregate subscriptions of all partners of the Partnership, or to reinvest proceeds attributable to the disposition of a Partnership investment.

The term of the Partnership shall be for ten years (until December 31, 2003). However, the term would be extended automatically for up to two additional two year periods if the limited partners of Ventures consent to the extension of the term of Ventures. Likewise, a voluntary or forced withdrawal of the General Partner under Ventures' partnership agreement would result automatically in a withdrawal of the General Partner under the Partnership Agreement.

The General Partner will make a capital commitment to the Partnership equal to 1% of the aggregate commitments of the partners. The balance of the contributed capital will be provided by Georgia Power, as the sole limited partner. At the initial closing, scheduled for December 15, 1993, the partners of Ventures and each parallel partnership (including the Partnership) will be obligated to contribute 10% of their commitments. Thereafter, during each succeeding twelve month period, the General Partner may call an amount not to exceed 22½% of the aggregate commitments of the partners.

All Partnership gains and losses (including gains and losses deemed to have been realized when securities are distributed in kind) will generally be allocated 80% to and among all partners in proportion to their respective capital contributions and 20 percent to the General Partner. Cash distributions to Georgia Power and the General Partner shall be made each year in an amount equal to their tax liability with respect to their interest in the Partnership. Cash distributions in excess of that amount shall then be made in the discretion of the General Partner in proportion to the partners' capital contributions until such time as Georgia Power shall have received aggregate distributions equal to its subscription. Except as may be approved by ATV's Advisory Committee, all distributions must be made in cash or in freely tradeable securities.

Georgia Power will not acquire directly or indirectly any interest in Ventures. Profits, losses and distributions to Georgia Power will be based solely upon the performance of the Partnership, without regard to the investment performance of Ventures.

Under the terms of the Management Agreement, the Management Company

will be reimbursed for all expenses incurred in connection with the organization of Ventures, the Partnership, and any other parallel partnership (which will include marketing costs, costs of outside counsel, and costs associated with the initial closing) in an amount not to exceed $400,000.

In addition, the Partnership will be obligated to pay an annual management fee equal to 2½% of the total commitment of the partners to the Partnership ("Base Amount").

The Base Amount will be reduced commencing on the seventh anniversary of the initial closing by an amount equal to the cost basis of securities distributed in kind to the partners, securities deemed to be worthless, and securities with respect to which the Partnership has realized a capital gain.

The management fee will cover the Partnership's share of all normal operating expenses of the Management Company, including costs of investigating and negotiating individual investments; fees and expenses of outside consultants relating to Partnership investments and portfolio management; fees and expenses of officers and employees of the Management Company; and other general and administrative costs. So long as the Management Agreement shall remain in effect, the General Partner will not be entitled to receive any salary from Ventures or the Partnership.

Georgia Power states that, as a limited partner of the Partnership, it will not acquire any "voting securities," as that term is defined in section 2(a)(17) of the Act. Thus, Georgia Power states, the Partnership will not be an "affiliate" or "subsidiary company" of Georgia Power within the meaning of the Act. Specifically, Georgia Power states, it will not be entitled to take part in the control, management of investment decisions of the Partnership or, through the Partnership, the control or management of any company in which the Partnership may invest. Georgia Power further states that, as a limited partner, it will only be entitled to receive notices and other information from the General Partner, to inspect the Partnership's books and records, and to vote on a limited number of actions that could fundamentally change the structure and purposes of the Partnership and its relationship with the General Partner and Ventures. Georgia Power also states that, as a limited partner of the Partnership, it will have no independent right to remove the General Partner, for cause or otherwise.

Monongahela Power Company, et al. (70–8259)

Monongahela Power Company ("Monongahela"), 1310 Fairmont Avenue, Fairmont, West Virginia 26554, The Potomac Edison Company ("Potomac Edison"), 10435 Downsville Pike, Hagerstown, Maryland 21740–1766, and West Penn Power Company ("West Penn"), 800 Cabin Hill Drive, Greensburg, Pennsylvania 15601 (each a "Declarant" or "Borrower", collectively, "Declarants" or "Borrowers"), each an electric public-utility subsidiary company of Allegheny Power System, Inc., a registered holding company, have filed a declaration under sections 6(a) and 7 of the Act and Rules 50 and 50(a)(5) thereunder.

Declarants propose to enter into a Competitive Advance and Revolving Credit Facility Agreement ("Agreement") with Chemical Bank and The Bank of New York as co-agents ("Co-Agents"), Chemical Bank as administrative agent ("Administrative Agent"), and certain lenders named in the agreement (each a "Lender", collectively, "Lenders") for borrowings under the Agreement through December 31, 1997.

Declarants also propose to grant and maintain a security interest in the outstanding stock of their subsidiary, Allegheny Generating Company ("Generating"), which is wholly-owned by Declarants in the following percentages: Monongahela—27%; Potomac Edison—28%; and, West Penn—45%. The Generating stock will secure Declarants' obligations under the Agreement. For each Declarant, the security interest granted by it in Generating's stock will expire on the later of December 31, 1997 or the day on which the last of its outstanding debt under the Agreement is repaid, which could be as late as December 31, 2000.

The Agreement provides that each of Declarants may borrow from the Lenders on a standby revolving credit basis, from time-to-time prior to the "maturity Date,"[1] a principal amount up to $300 million, but not in excess of $300 million in the aggregate at any time outstanding for all three Declarants.

Each Declarant's borrowing limit will be a percentage of the total aggregate principal amount ($300 million) available for borrowing under the Agreement. Such percentage will be equivalent to each Declarant's pro rata share of the stock of Generating. Consequently, the borrowing limitations are as follows: Monongahela—$81 million (27% of $300 million); Potomac Edison—$84 million (28% of $300 million); and, West Penn—$135 million (45% of $300 million).

The borrowings to be made by Declarants may be either: (i) Standby loans ("Standby Loans"); or, (ii) competitive loans ("Competitive Loans"). Regardless of the type of loan category, each time a Declarant makes a borrowing under the Agreement, there will be a note issued.

Each Standby Loan is made as part of a borrowing consisting of loans to a single Declarant made by the Lenders ratably in accordance with their commitments ("Commitments"). A standby Loan will consist of an aggregate principal amount which is an integral multiple of $1 million and not less than $10 million (or an aggregate principal amount equal to the remaining balance of the available Commitments). The aggregate amount of a Lender's Standby Loans cannot exceed its Commitment.

Each Standby Loan is either, at a Declarant's request: (i) A Eurodollar Standby Loan; or, (ii) an alternate base rate loan ("ABR Loan"). A Eurodollar Standby Loan is any Standby Loan of one, two, three or six-month duration bearing interest at a one, two, three or six-month rate, respectively. The interest rate for a Eurodollar Standby Loan of a given maturity will be equal to the London Interbank Offered Rate ("LIBOR")[2] for the same maturity plus the "Applicable Margin".[3]

Category 1 — AA/Aa2 or above	0.375
Category 2 — AA/Aa3 or A+/A1 or A/A2	0.4375
Category 3 — A-/A3 or BBB+/Baaa1 or BBB/Baa2	0.5625
Category 4 — BBB-/Baa3 or below	0.875

An ABR Loan is any Standby Loan of one day to three years duration bearing interest at the "Alternate Base Rate," as

[1] "Maturity Date" is defined in the Agreement as the third anniversary of the date of the Agreement. The Agreement provides that the Maturity Date may be extended in one-year increments.

[2] "LIBOR" is defined in the Agreement as an interest rate per annum equal to the rate at which dollar deposits approximately equal in principal amount to the Administrative Agent's portion of such borrowing by Eurodollar Standby Loan, and for a maturity comparable to such interest period are offered to the principal London office of the Administrative Agent in immediately available funds in the London interbank market two business days prior to the commencement of such interest period.

[3] "Applicable Margin" is defined in the Agreement as "on any date, * * * the applicable percentage set forth below based upon the [credit] ratings applicable on such date to the relevant Borrower's first mortgage bonds * * *"—

defined by the Agreement. The Alternate Base Rate is defined in the Agreement as, for any day, a rate per annum equal to the greatest of: (a) The prime rate publicly announced by the Administrative Agent in effect at its principal office in New York City on such day; (b) the "Base CD Rate" in effect on such day plus 1%; and, (c) the "Federal Funds Effective Rate"[4] in effect on such day plus ½ of 1%.

"Base CD Rate" is defined in the Agreement as the sum of (a) the product of (i) the "Three-Month Secondary CD Rate"[5] and (ii) Statutory Reserves and (b) the "Assessment Rate."[6]

A Declarant may not request any borrowing which, if made, would result in an aggregate of more than three separate Standby Loans of any Lender being outstanding at any one time.

Competitive Loans are not shared ratably by the Lenders and a Lender may exceed its Commitment to make a Competitive Loan. Each Competitive Loan may be from one day to three years' duration and is either a "Eurodollar Competitive Loan"[7] or a "Fixed Rate Loan,"[8] as a Declarant may request.

Each Declarant, in order to request competitive bids ("Bids"), must send a duly completed competitive bid request ("Request") to the Administrative Agent. The Request shall specify: (i) Borrowing under either a Eurodollar Competitive Loan or Fixed Rate Loan; (ii) the date of the borrowing and the aggregate principal amount thereof (an integral multiple of $1 million and not less than $10 million); and (iii) the interest period with respect thereto.

The Administrative Agent will invite the Lender to bid to make Competitive Loans pursuant to the Request. Each Lender may make one or more Bids in response to a Request. Each Bid must be an integral multiple of $1 million and not less than $5 million, an may equal the entire principal amount of the competitive borrowing requested. A Bid is irrevocable once submitted. The Bid shall specify: (i) The principal amount; (ii) the competitive bid rate; and (iii) the interest period and the last day thereof. The Administrative Agent shall promptly notify the applicable Declarant by telecopier of all the Bids made, the competitive bid rate, the principal amount of the Bid and the identity of the Lender that made each Bid. In a Declarant's sole discretion, it may accept or reject any Bid.

Declarants will utilize the procedure summarized above as their alternative competitive bidding procedure (*see* HCAR No. 22623) to be carried out in accordance with the requirements of Rule 50 under the Act.

Declarants also propose that, pursuant to a security agreement ("Security Agreement"), each Declarant will grant to the Lenders a security interest in the stock of Generating owned by it. The security interest in the Generating stock owned by each Declarant will secure the payment or performance, as the case may be, of that Declarant's obligations under the Agreement.

The Security Agreement provides that Chemical Bank will act as collateral agent ("Collateral Agent") for: (i) The Lenders, (ii) the Administrative Agent, (iii) The Collateral Agent, and (iv) successors and assigns of each of the foregoing (collectively, "Secured Parties"). The Generating stock certificates are to be delivered to the Collateral Agent, accompanied by stock powers, duly executed in blank.

In the absence of an event of default, as defined in the Security Agreement, each Declarant will be permitted to exercise all voting rights; provided, however, that no action will be permitted (regardless of whether an event of default has occurred and is continuing) if such action would adversely affect the rights inuring to the Secured Parties. Each Declarant will be entitled to receive and retain any cash dividends on the Generating stock pledged by it only to the extent that such cash dividends are permitted by, and are otherwise paid in accordance with, the terms and conditions of the loan documents and applicable laws. Upon the occurrence and during the continuance of an event of default, all rights of a Declarant to dividend payments shall cease, and all such rights will become vested in the Collateral Agent.

Borrowers also propose to pay to each Lender a commitment fee at a rate per annum equal to the "Applicable Commitment Fee Percentage," as defined in the Agreement, of such Borrower from time-to-time in effect on the average daily unused amount of such Borrower's borrowing percentage of the commitment of such Lender during the preceding quarter. The "Applicable Commitment Fee Percentage" is defined in the Agreement as "the applicable percentage set forth below based upon the ratings applicable on such date to the first mortgage bonds of such [Borrower]:"

Credit rating	Percentage
Category 1 ..... AA/Aa2 or above	0.15
Category 2 ..... AA−/Aa3 or A+/A1 or A/A2	.175
Category 3 ..... A−/A2 or BBB+/Baa1 or BBB/Baa2	.25
Category 4 ..... BBB−/Baa3 or below	.375

(For this purpose only, it is stated that Competitive Loans outstanding shall not be deemed to have used such commitment)

In addition to the commitment fee, Declarants propose to pay a $100,000 fee for the services of the Co-Agents, which they shall share equally. The Administrative Agent shall be paid an annual fee of $18,000 as well as a $2,000 fee for each Request received by it, as discussed above.

Declarants state that the proceeds from borrows under the Standby Loans and the Competitive Loans will be used:

(1) To construct flue-gas desulfurization equipment (also known as a "scrubber") at Generating (in compliance with the Clean Air Act Amendments of 1990);

(2) For the acquisition of property;

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[4] "Federal Funds Effective Rate" is defined in the Agreement as, for any day, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding business day by the Federal Reserve Bank of New York, or if such rate is not so published for any day which is a business day, the average of the quotations for the day of such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

[5] "Three-Month Secondary CD Rate" is defined in the Agreement as, for any day, the secondary market rate for three-month certificates of deposit reporting as being in effect on such day (or, if such day shall not be a business day, the next preceding business day) by the Federal Reserve Board through the public information telephone line of the Federal Reserve Bank of New York, or, if such rate shall not be so reported on such day or such next preceding business day, the average of the secondary market quotations for three-month certificates of deposit of major money center banks in New York City received at approximately 10 a.m., New York City time, on such day (or, if such day shall not be a business day, on the next preceding business day) by the Administrative Agent from three New York City negotiable certificate of deposit dealers of recognized standing selected by it.

[6] "Assessment Rate" is defined in the Agreement as, for any date, the annual rate (rounded upwards, if necessary, to the next 1/100 of 1%) most recently estimated by the Administrative Agent as the then current net annual assessment rate that will be employed in determining amounts payable by the Administrative Agent to the Federal Deposit Insurance Corporation ("FDIC") for insurance by the FDIC of time deposits made in dollars at the Administrative Agent's domestic offices.

[7] A "Eurodollar Competitive Loan" is defined in the Agreement as any Competitive Loan bearing interest at a rate per annum equal to the LIBOR rate for the same maturity plus a margin specified by the Lender making such loan in its competitive bid.

[8] A "Fixed Rate Loan" is defined in the Agreement as any Competitive Loan bearing interest at a fixed percentage rate per annum specified by the Lender making such loan in its competitive bid.

(3) For the construction, completion, extension and improvement of their facilities;

(4) For the improvement or maintenance of their electric service; and

(5) For other general corporate purposes including but not limited to tax payments, bond payments, common stock dividends, coal payments and construction payments

Entergy Corporation (70–8299)

Entergy Corporation, 225 Baronne Street, New Orleans, Louisiana 70112 ("Entergy"), a registered holding company, has filed an application-declaration with the Commission pursuant to sections 6(a), 7, 9(a), 10 and 12(c) of the Public Utility Holding Company Act of 1935, as amended ("Act") and Rules 42 and 50 thereunder.

Entergy requests authority through March 31, 1997 to issue from time to time up to 2 million shares of its common stock ("Stock"), par value of $5 per share in connection with a proposed nonstatutory Stock Investment Plan ("Plan"). Under the Plan, eligible employees ("Eligible Employees") of Entergy and of other participating companies (collectively, "Participating Employers") would be granted options ("Options") to purchase shares of Stock. In addition to Entergy, Participating Employers would include any corporation (a) 50% or more of the common stock of which is owned, directly or indirectly, by Entergy and (b) which is, from time to time, designated as a Participating Employer in the Plan. Designation as a Participating Employer would be made by a committee, more particularly described below ("Committee"), that is charged with administering the Plan. Eligible Employees generally would include all regular, full-time employees of a Participating Employer, including those employees who at the time of the grant of the applicable Option, are on paid leave of absence. For the purposes of the Plan, Eligible Employees would include eligible employees of any successor in interest to Entergy, including the surviving corporation following the proposed merger of Entergy and Gulf States Utilities Company.

The purpose of the Plan is to provide Eligible Employees of Entergy and other Participating Employers with an opportunity to acquire a proprietary interest in Entergy through the purchase of Stock. Entergy would make three consecutive annual offerings ("Offerings") of Stock, each corresponding to a twelve month period ("Plan Year") commencing on April 1 ("Commencement Date") and ending March 31 of the following year ("Termination Date"). The first Plan Year with respect to the Plan would be the twelve month period beginning April 1, 1994 and ending March 31, 1995. An Eligible Employee would become a participant with respect to any Offering ("Participant") by enrolling in the Offering prior to the applicable Commencement Date and authorizing payroll deductions during the course of the corresponding Plan Year. A Participant could authorize deductions up to a maximum level of 10% of the Participant's base pay to pay for the Stock which is covered by the Participant's option. Generally, each Participant would be granted an Option on each Commencement Date to purchase the most amount of Stock ("Option Shares") allowed by the amount credited to his account on the Termination Date with respect to that Offering at the Option exercise price. The Option exercise price ("Exercise Price") with respect to any Offering would be the lower of:

a. 85% of the closing price of the Common Stock on the Commencement Date for that Offering or the nearest prior business day on which trading occurs on the New York Stock Exchange; or

b. 85% of the closing price of the Common Stock on the Termination Date for that Offering or the nearest prior business day on which trading occurs on the New York Stock Exchange.

Unless a Participant elected to withdraw from the Plan with respect to any Offering, the Participant's Option would be deemed to be automatically exercised on the applicable Termination Date for the purchase of the number of Option Shares covered by the Option. Such purchase would be reflected by an appropriate entry on Entergy's books and records evidencing that the Option Shares purchased by a Participant with respect to the Offering had been acquired by the Participant as of that date. Any excess amount credited to the Participant's account would be paid to the Participant in cash. If a Participant withdrew from an Offering prior to the exercise of the applicable Option, he would receive a refund of funds paid, less administrative expenses.

The Plan would be administered by a committee whose members would be appointed by the Chairman of the Board of Directors of Entergy. The Committee would consist of no fewer than three members selected from directors, officers or employees of Entergy and of other Participating Employers ("Committee"). Subject to the express provisions of the Plan, the Committee would have the exclusive authority to interpret and construe any and all of its provisions and to make all other determinations deemed necessary or advisable for its administration. The Committee may, in its discretion, permit Participants to make contributions by one or more lump sum payments, in addition to payroll deductions. Such permission would be subject to, *inter alia*, the condition that the total of all amounts credited to a Participant's account in any Plan Year could in no event exceed 10% of the Participant's base pay.

Stock issued under the Plan would be issued out of Entergy's authorized but unissued shares, or from shares held by Entergy as treasury stock. It is currently intended that the Option Shares would be issued from treasury shares, rather than from newly issued shares, and that such treasury shares would be acquired from Common Stock purchased by Entergy on the open market. Therefore, Entergy requests authority under the Act to purchase from time to time during the period through March 31, 1997, up to a maximum of 2 million shares of Stock, to be held as treasury shares, pending resale to Participants, for the purpose of satisfying the anticipated requirements of the Plan. The timing of such purchases would depend upon the anticipated needs of the Plan and then existing market conditions. Funds for the purchase of shares of Stock from the open market to satisfy the requirements of the Plan would be obtained from internally generated funds. Proceeds from the sale of shares of Stock under the Plan will become part of the general corporate funds of Entergy and will be used (i) to purchase Stock of Entergy sold or to be sold by Entergy under the Plan, or (ii) for other general corporate purposes.

Entergy additionally requests an exemption from the competitive bidding requirements of Rule 50 under the Act pursuant to subsection (a)(5) thereof with respect to the issuance of the Options and the issuance and sale of Stock pursuant to the Plan.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29068 Filed 11–26–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1906]

Advisory Committee on International Law; Meeting

A meeting of the Advisory Committee on International Law will take place on December 13, 1993, from 1:30 through 5 p.m., as necessary, in room 1207 of the United States Department of State, Washington, DC. The meeting will be chaired by the Legal Adviser of the Department of State, Conrad K. Harper, and will be open to the public up to the capacity of the meeting room. The meeting will focus on the establishment of an international criminal court and on jurisdictional immunities of states, and review other current developments in international law.

Entry to the building is controlled and will be facilitated by advance arrangements. Members of the public desiring access to the session should, prior to December 10, 1993, notify the Office of the Assistant Legal Adviser for United Nations Affairs (telephone (202) 647–6771) of their name, affiliation, address and telephone number in order to arrange admittance.

Dated: November 22, 1993.

Bruce C. Rashkow,

Assistant Legal Adviser for United Nations Affairs; Executive Director, Advisory Committee on International Law.

[FR Doc. 93–29075 Filed 11–26–93; 8:45 am]

BILLING CODE 4710–08–M

DEPARTMENT OF TRANSPORTATION

Aviation Proceedings; Agreements Filed During the Week Ended November 19, 1993

The following Agreements were filed with the Department of Transportation under the provisions of 49 U.S.C 412 and 414. Answers may be filed within 21 days of date of filing.

Docket Number: 49270
Date filed: November 17, 1993
Parties: Members of the International Air Transport Association
Subject: TC3 Telex Mail Vote 655, Japan-Hong Kong fares; r-1—043i, r-4—063ii, r-7—085t, r-2—053i, r-5—070t, r-8—090jj, r-3—063i, r-6—076ee
Proposed Effective Date: December 15, 1993

Docket Number: 49271
Date filed: November 17, 1993
Parties: Members of the International Air Transport Association
Subject: PSC/Reso/072 dated November 4, 1993 Expedited Resolutions (15th IATA PSC—14th Joint ATA/IATA PSC)
Proposed Effective Date: Expedited December 1, 1993

Docket Number: 49272
Date filed: November 17, 1993
Parties: Members of the International Air Transport Association
Subject: Approval Of Amendment To IATA Articles Of Association. This Amendment reflects a re-allocation of the duties of the officers of the Association in light of the fact that the Managing Director's position is and will remain vacant for the foreseeable future.

Docket Number: 49274
Date filed: November 17, 1993
Parties: Members of the International Air Transport Association
Subject: TC2 Reso/P 1513 dated November 16, 1993, Europe-Africa Expedited Resos, r-1 to r-3, TC2 Reso/P 1514 dated November 16, 1993, Europe-Africa Expedited Resos r-4 to r-15
Proposed Effective Date: Expedited December 31, 1993/Jan. 1, 1994

Docket Number: 49276
Date filed: November 19, 1993
Parties: Members of the International Air Transport Association
Subject: COMP Telex Mail Vote 656 Amend charge for PTA Services/ Refund of Unused Tickets—Lebanon (Excluding USA/US Territories) r-1— 210, r-2— 211
Proposed Effective Date: December 1, 1993

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–29097 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–62–P

Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits Filed Under Subpart Q During the Week Ended November 19, 1993

The following Applications for Certificates of Public Convenience and Necessity and Foreign Air Carrier Permits were filed under subpart Q of the Department of Transportation's Procedural Regulations (See 14 CFR 302.1701 *et. seq.*). The due date for Answers, Conforming Applications, or Motions to Modify Scope are set forth below for each application. Following the Answer period DOT may process the application by expedited procedures. Such procedures may consist of the adoption of a show-cause order, a tentative order, or in appropriate cases a final order without further proceedings.

Docket Number: 49269
Date filed: November 16, 1993
Due Date for Answers, Conforming Applications, or Motion to Modify Scope: December 14, 1993
Description: Application of Sunbird Airways, Inc., pursuant to section 401(d)(1) of the Act and subpart Q of the Regulations applies for a certificate of public convenience and necessity authorizing Sunbird to provide scheduled interstate and overseas air transportation of persons, property and mail. Upon certification, Sunbird intends to provide service between Orlando, Florida, on the one hand, and Atlanta, Georgia, Detroit, Michigan, Washington, DC (Dulles), and Newark, New Jersey on the other hand.

Phyllis T. Kaylor,

Chief, Documentary Services Division.

[FR Doc. 93–29098 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–62–P

Research and Special Programs Administration

[Preemption Determination No. PD–5(R) (Docket No. PDA–2(R))]

Massachusetts Requirement for an Audible Back-up Alarm on Bulk Tank Carriers Used To Deliver Flammable Material

AGENCY: Research and Special Programs Administration (RSPA), Department of Transportation.

ACTION: Notice of administrative determination of preemption by RSPA's Associate Administrator for Hazardous Materials Safety.

APPLICANT: National Tank Truck Carriers, Inc. (NTTC).

STATE LAW AFFECTED: Massachusetts General Laws (M.G.L.) c. 90 § 7, paragraph 2.

APPLICABLE FEDERAL REQUIREMENTS: Hazardous Materials Transportation Act (HMTA), 49 App. U.S.C. 1801 *et seq.*, and the Hazardous Materials Regulations (HMR), 49 CFR parts 171–180.

MODE AFFECTED: Highway.

SUMMARY: The HMTA does not preempt Massachusetts' requirement for a back-up alarm on bulk tank carriers transporting gasoline or other flammable materials. That requirement does not concern a "covered subject." Since vehicles used in interstate commerce that meet Federal regulations are excluded from the requirement to have a back-up alarm, there is no situation where this requirement would create an

obstacle to the accomplishment and execution of the HMTA and the HMR.

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on a petition for reconsideration will be RSPA's final decision.

FOR FURTHER INFORMATION CONTACT: Frazer C. Hilder, Office of the Chief Counsel, Research and Special Programs Administration, U.S. Department of Transportation, 400 Seventh Street SW., Washington, DC 20590–0001, telephone (202) 366–4400.

SUPPLEMENTARY INFORMATION:

I. Application for a Preemption Determination

On January 2, 1992, RSPA received a request from NTTC, dated November 25, 1991, for a determination that the HMTA preempts the second paragraph of M.G.L. c. 90 § 7:

> Every commercial motor vehicle, or trailer weighing, with its load, more than twelve thousand pounds, and used to deliver gasoline or other flammable material, shall be equipped with an audible warning system when the vehicle's transmission is in reverse. For the purpose of this paragraph, the term commercial motor vehicle or trailer shall mean a bulk tank carrier delivering gasoline or other flammable material.

This requirement, which became effective January 1, 1991, is contained in a section of M.G.L. covering "Brakes, braking systems, mufflers, horns, lights, audible warning systems, and other equipment; compliance with safety standards; stickers and emblems." The fourth paragraph of the same section provides:

> Notwithstanding the preceding provisions of this section, any commercial motor vehicle, semi-trailer or trailer, used in interstate commerce, which shall conform as to its equipment with the regulations established from time to time by the bureau of motor carrier safety of the United States department of transportation, shall be deemed to conform to the requirements of this section.

The Federal Motor Carrier Safety Regulations (FMCSR), 49 CFR, subchapter B, specify in part 393 the "Parts and Accessories Necessary for Safe Operation," governing lights and other electrical equipment, brakes, windows, fuel systems, emergency equipment, frame and body construction, other miscellaneous equipment, and protection against shifting or falling cargo. The FMCSR do not require an audible reverse-gear warning device (or back-up alarm) for over-the-road vehicles. The only known Federal standard in this area is an Occupational Safety and Health Administration regulation that requires any motor vehicle equipment operated within non-public off-highway jobsites and having an obstructed rear view to have a "reverse signal alarm audible above the surrounding noise level or * * * [to back up] only when an observer signals that it is safe to do so." 29 CFR 1926.601(b)(4).

As discussed in more detail in Part III, below, NTTC contends that, because Massachusetts' requirement for a back-up alarm is particularly related to vehicle equipment used for the transportation of hazardous materials, that requirement falls within an area of regulation reserved exclusively to the Federal Government.

On March 23, 1992, RSPA published a Public Notice and Invitation to Comment (Notice) on NTTC's application for a preemption determination. 57 FR 10098. The Chemical Waste Transportation Institute (CWTI), an institute of the National Solid Wastes Management Association, filed the only comment. There were no rebuttal comments. NTTC sent a copy of its application to the Massachusetts Registry of Motor Vehicles, and CWTI certified that it had sent a copy of its comments to the same office (as required by the Notice), but no comments were received from Massachusetts.

II. Preemption Under the HMTA

The HMTA was enacted in 1975 to give the Department of Transportation greater authority "to protect the Nation adequately against the risks to life and property which are inherent in the transportation of hazardous materials in commerce." 49 App. U.S.C. 1801. It "replace[d] a patchwork of state and federal laws and regulations * * * with a scheme of uniform, national regulations." *Southern Pac. Transp. Co.* v. *Public Serv. Comm'n*, 909 F.2d 352, 353 (9th Cir. 1990); *see also Jersey Cent. Power & Light Co.* v. *Lucey*, 772 F.2d 1103, 1112 (3d Cir. 1985), *cert. denied*, 475 U.S. 1013 (1986). The HMR have been promulgated in accordance with the HMTA's direction that the Secretary of Transportation "issue regulations for the safe transportation of hazardous materials in intrastate, interstate, and foreign commerce." 49 App. U.S.C. 1804(a)(1).

"[U]niformity was the linchpin in the design of the [HMTA]," including the 1990 amendments to that statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, 951 F.2d 1571, 1575 (10th Cir. 1991). Congress believed that uniform regulations promote safety in the transportation of hazardous materials, specifically finding in 1990 that:

> (3) Many States and localities have enacted laws and regulations which vary from Federal laws and regulations pertaining to the transportation of hazardous materials, thereby creating the potential for unreasonable hazards in other jurisdictions and confounding shippers and carriers which attempt to comply with multiple and conflicting registration, permitting, routing, notification, and other regulatory requirements,
>
> (4) Because of the potential risks to life, property, and the environment posed by unintentional releases of hazardous materials, consistency in laws and regulations governing the transportation of hazardous materials is necessary and desirable,
>
> (5) In order to achieve greater uniformity and to promote the public health, welfare, and safety at all levels, Federal standards for regulating the transportation of hazardous materials in intrastate, interstate, and foreign commerce are necessary and desirable.

49 App. U.S.C. 1801 note.

Unless otherwise authorized by Federal law or unless a waiver of preemption is granted by DOT, the HMTA explicitly preempts "any requirement of a State or political subdivision thereof or Indian tribe" if:

> (1) Compliance with both the State or political subdivision or Indian tribe requirement and any requirement of [the HMTA] or of any regulation issued under [the HMTA] is not possible,
>
> (2) The State or political subdivision or Indian tribe requirement as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the regulations issued under [the HMTA], or
>
> (3) It is preempted under section 105(a)(4) [49 App. U.S.C. 1804(a)(4), describing five "covered subject" areas] or section 105(b) [49 App. U.S.C. 1804(b), dealing with highway routing requirements].

49 App. U.S.C. 1811(a).

The first two of these paragraphs set forth the "dual compliance" and "obstacle" criteria which RSPA had applied in issuing inconsistency rulings prior to the passage of the 1990 amendments to the HMTA. While advisory in nature, these inconsistency rulings were "an alternative to litigation for a determination of the relationship of Federal and State or local requirements" and also a possible "basis for an application * * * [for] a waiver of preemption pursuant to section 112(b) of the HMTA." Inconsistency Ruling (IR) No. 2, Rhode Island Rules and Regulations Governing the Transportation of Liquified Natural Gas and Liquefied Propane Gas, 44 FR 75566, 75567 (Dec. 20, 1979). The dual

compliance and obstacle criteria are based on U.S. Supreme Court decisions on preemption. *Hines* v. *Davidowitz*, 312 U.S. 52 (1941); *Florida Lime & Avocado Growers, Inc.* v. *Paul*, 373 U.S. 132 (1963); *Ray* v. *Atlantic Richfield, Co.*, 435 U.S. 151 (1978).

The third paragraph, 49 App. U.S.C. 1811(a)(3), refers to 49 App. U.S.C. 1804(a)(4), which provides that a non-Federal requirement in any of five "covered subject" areas is preempted unless it is "substantively the same as" a requirement in the HMTA or the HMR (or the non-Federal requirement is "otherwise authorized by Federal law"). These covered subjects are:

(i) The designation, description, and classification of hazardous materials;

(ii) The packing, repacking, handling, labeling, marking, and placarding of hazardous materials;

(iii) The preparation, execution, and use of shipping documents pertaining to hazardous materials and requirements respecting the number, content, and placement of such documents;

(iv) The written notification, recording, and reporting of the unintentional release in transportation of hazardous materials; and (v) the design, manufacturing, fabrication, marking, maintenance, reconditioning, repairing, or testing of a package or container which is represented, marked, certified, or sold as qualified for use in the transportation of hazardous materials.

In a final rule published in the **Federal Register** on May 13, 1992 (57 FR 20424, 20428), RSPA defined "substantively the same" to mean "that the non-Federal requirement conforms in every significant respect to the Federal requirement. Editorial and other similar *de minimis* changes are permitted." 49 CFR 107.202(d).

The HMTA authorizes any directly affected person to apply to the Secretary of Transportation for a determination whether a State, political subdivision, or Indian tribe requirement is preempted by the HMTA. 49 App. U.S.C. 1811(c)(1). This administrative determination replaced RSPA's process for issuing inconsistency rulings. The Secretary of Transportation has delegated to RSPA the authority to make determinations of preemption, except for those concerning highway routing which were delegated to the Federal Highway Administration. 49 CFR 1.53(b). Under RSPA's regulations, preemption determinations are issued by RSPA's Associate Administrator for Hazardous Materials Safety. 49 CFR 107.209(a).

Preemption determinations do not address issues of preemption arising under the Commerce Clause of the Constitution or under statutes other than the HMTA unless it is necessary to do so in order to determine whether a requirement is "otherwise authorized by Federal law." A State, local or Indian tribe requirement is not "otherwise authorized by Federal law" merely because it is not preempted by another Federal statute. *Colorado Pub. Util. Comm'n* v. *Harmon*, above, 951 F.2d at 1581 n.10.

In making determinations regarding preemption under the HMTA, RSPA is guided by the principles and policy set forth in Executive Order No. 12612, entitled "Federalism." 52 FR 41685 (Oct. 30, 1987). Section 4(a) of that Executive Order authorizes preemption of State laws only when a statute contains an express preemption provision, there is other firm and palpable evidence of Congressional intent to preempt, or the exercise of State authority directly conflicts with the exercise of Federal authority. The HMTA contains express preemption provisions, which RSPA has implemented through its regulations.

III. Comments Supporting Preemption

In its application, NTTC "acknowledges that neither the Hazardous Materials Regulations (HMR) nor the Federal Motor Carrier Safety Regulations (FMCSR) specify requirements for back up alarms." It relies directly on RSPA's consideration of New York City equipment regulations covering such items as bumpers, drive axles, fuel tanks, brakes and electrical systems on cargo tanks used to pick up or deliver flammable and combustible liquids in the city, in IR–22, City of New York Regulations Governing Transportation of Hazardous Materials, 52 FR 46574 (Dec. 8, 1987), corrections, 52 FR 49107 (Dec. 29, 1987), *aff'd*, IR–22(A), Decision on Appeal, 54 FR 26698 (Jun. 23, 1989).

According to NTTC, these "non-containment" equipment regulations were found to be "triggered" by the transportation of hazardous materials because they did not apply to all trucks, but rather "only to those carrying specified hazardous materials." As NTTC reads IR–22, these requirements fell "within these exclusively Federal regulatory areas, and, therefore, [were] inconsistent with the HMTA and HMR and thus preempted."

NTTC distinguishes as incomparable and irrelevant RSPA's finding in IR–22 that a requirement to keep rags or cotton waste in a metal container was consistent with the HMTA and the HMR, as well as the ruling in IR–2, above, that a requirement for certain vehicles to carry two-way radios was also consistent with the HMTA and the HMR. NTTC argues that, in contrast with the back-up alarm required by Massachusetts, the two-way (or citizens band) radio is not permanently installed in, and does not require any mechanical alteration to, the vehicle. NTTC also notes that Massachusetts could petition RSPA for a regulatory amendment, but has not exercised that option.

CWTI states that, since the "Massachusetts requirement is limited to vehicles used to deliver * * * flammable materials, it is clear that the genesis of the requirement is not vehicle safety generally, but its focus is safety in the transportation of hazardous materials." Therefore, according to CWTI, Massachusetts' adoption of the back-up alarm requirement must have originated from a concern about "hazard warning" or from "the belief that a back-up alarm would make a packaging, such as a cargo tank, more safe." CWTI argues that, in both areas of hazard communication and packaging, RSPA's regulations must prevail over non-Federal requirements.

CWTI alleges that "the addition of back-up alarms has no bearing on the quality of packagings otherwise conforming to DOT requirements." Citing the 1990 amendments to the HMTA, CWTI claims RSPA's position as the preeminent authority on packaging requirements was strengthened by language providing that any non-Federal requirement pertaining to the design, manufacture, or fabrication of packages is preempted unless "substantively the same" as the Federal standard. And since no Federal standard exists with regard to back-up alarms for any vehicle carrying hazardous materials, Massachusetts cannot satisfy the "substantively the same as" requirement. Furthermore, citing IR–17, Illinois Fee on Transportation of Spent Nuclear Fuel, 51 FR 20926 (Jun. 9, 1986), *aff'd*, IR–17(A), Decision on Appeal, 52 FR 36200 (Sep. 25, 1987), corrections, 52 FR 37399 (Nov. 6, 1987), CWTI states that RSPA found the "absence of a federal regulation is not determinative of the challenged state requirement's consistency." CWTI also notes that RSPA, in a series of inconsistency rulings, clearly determined that equipment requirements that differ from Federal standards are inconsistent, and that RSPA's regulatory authority in this area fully occupies the field.

CWTI also maintains that the intent of the Massachusetts requirement is "to accomplish the same purpose" as requirements for "labeling, marking, and placarding of hazardous materials," i.e., to communicate the hazardous nature of the cargo being transported. For that reason, CWTI argues, the

requirement is preempted under the "substantively the same as" standard. Quoting from IR–2, above, 44 FR at 75568, CWTI asserts that RSPA has held that "hazard warning systems are another area where [RSPA] perceives the Federal role to be exclusive * * * Additional, different requirements imposed by States or localities detract from the DOT systems and may confuse those to whom the DOT systems are meant to impart information."

In conclusion, CWTI states that Massachusetts is "not free to unilaterally impose its own view that back-up alarms, even if only on motor vehicles, are the best means to achieve" an improvement in hazardous materials communication and packaging. CWTI asserts that other jurisdictions would have to be allowed the same privilege to interpret hazardous materials safety, which would create an "obstacle to the accomplishment and execution of the HMTA or HMR 'to preclude a multiplicity of State and local regulations and the potential for varying as well as conflicting regulations in the area of hazardous materials transportation.'" Quoting from Senate Rep. No. 93–1192, 93rd Cong., 2d Sess. 37 (1974). CWTI states that Massachusetts should request a waiver of preemption or petition for a rulemaking if it so desires.

Neither NTTC nor CWTI contends that its members cannot comply with both the Massachusetts requirement for a back-up alarm and the HMR.

IV. Discussion

A. The Covered Subject Test

Based on its reading of IR–22, NTTC argues that requirements for certain equipment to transport hazardous materials are within an "exclusively Federal regulatory area." CWTI asserts that the intent of the back-up alarm requirement is either to improve the safety of the packaging of hazardous materials, or to communicate the hazardous nature of the cargo being transported, and is preempted because the "covered subject" areas in 49 App. U.S.C. 1804(a)(4)(B) include both packaging and hazard communications.

The 1990 amendments to the HMTA do not support these arguments. Congress delineated specific items as to which non-Federal requirements must be "substantively the same as" Federal standards. One is the "package or container which is represented, marked, certified or sold as qualified for use in the transportation of hazardous materials." 49 App. 1804(a)(4)(B)(v). However, this does not include the equipment or vehicle used to hold or transport that "package or container." There is no evidence that the back-up alarm required in Massachusetts is a part of the package or container in which flammable materials are transported. In actuality, Congress failed to adopt the position taken in IR–22 that any requirement governing any equipment used in connection with the transportation of hazardous materials falls within an area "of exclusive Federal jurisdiction . . ." 52 FR at 46580.

Similarly, with respect to measures for communication of the presence and nature of hazardous materials, Congress took a more narrow position than IR–22, which had also found all "hazard warning systems" to be within an area "of exclusive Federal jurisdiction . . ." *Id.* Rather, Congress included as covered subjects the specific items that make up the hazard communication system in the HMR: The "labeling, marking, and placarding of hazardous materials," and the "preparation, execution, and use of shipping documents pertaining to hazardous materials," 49 App. U.S.C. 1804(a)(4)(B) (ii), (iii). It is these specific matters which must be "substantively the same as" Federal regulations, not just any requirement on hazard communication.

Since the installation of a back-up alarm is unrelated to labeling, marking, and placarding of hazardous materials, or the preparation, execution, and use of shipping documents, this requirement does not fall within any of the covered subject areas of 49 App. U.S.C. 1804(a)(4)(B).

B. The Obstacle Test

NTTC and CWTI did not directly address whether the Massachusetts' back-up alarm requirement "as applied or enforced creates an obstacle to the accomplishment and execution of [the HMTA] or the [HMR]." 49 App. U.S.C. 1911(a)(2). Indeed, neither of them provided any information as to how Massachusetts has applied this requirement, and the State did not submit any comments.

In the absence of this information, it is impossible to find that the HMTA preempts the Massachusetts' back-up alarm requirement, especially since the fourth paragraph of M.G.L. c. 90 § 7 exempts from this requirement "any commercial motor vehicle, semi-trailer or trailer, used in interstate commerce," which complies with the equipment requirements in Part 393 of the FMCSR (which are incorporated in the HMR by 49 CFR 177.804). Assuming that this requirement applies only to bulk tank carriers that operate solely within the State of Massachusetts, there would not be any situation where a vehicle would be delayed at the Massachusetts border, or forced to detour around the State, because it lacked a back-up alarm. There is no indication that the Massachusetts' back-up alarm requirement has any adverse impact on hazardous materials transportation covered by the HMR (including those intrastate motor carriers that are already subject to the HMR, 49 CFR 171.1(a)(3), or that will become subject to the HMR if the proposed rule in Docket No. HM–200 becomes final. See Notice of Proposed Rulemaking, 58 FR 36920 (July 9, 1993), corrections, 58 FR 38111 (July 15, 1993)). Compare IR–4, State of Washington . . . Requirements for Red or Red Bordered Shipping Papers for Hazardous Materials, 47 FR 1231, 1233–34 (Jan. 11, 1982), appeal withdrawn, 47 FR 34074 (Aug. 5, 1982).

V. Ruling

For the reasons set forth above, the HMTA does not preempt the requirement in the second paragraph of M.G.L. c. 90 § 7, for an audible reverse-gear warning system on bulk tank carriers used to deliver gasoline or other flammable materials. That requirement does not concern a "covered subject." The exclusion of vehicles used in interstate commerce that meet Federal regulations, from the requirement to have a back-up alarm, does not present any situation where this requirement would create an obstacle to the accomplishment and execution of the HMTA and the HMR.

VI. Petition for Reconsideration/ Judicial Review

In accordance with 49 CFR 107.211(a), "[a]ny person aggrieved" by this decision may file a petition for reconsideration within 20 days of service of this decision. Any party to this proceeding may seek a review of RSPA's decision "by the appropriate district court of the United States . . . within 60 days after such decision becomes final." 49 App. U.S.C. 1811(e).

This decision will become RSPA's final decision 20 days after service if no petition for reconsideration is filed within that time. The filing of a petition for reconsideration is not a prerequisite to seeking judicial review of this decision under 49 App. U.S.C. 1811(e).

If a petition for reconsideration of this decision is filed within 20 days of service, the action by RSPA's Associate Administrator for Hazardous Materials Safety on the petition for reconsideration will be RSPA's final decision. 49 CFR 107.211(d).

Issued in Washington, DC, on November 22, 1993.

Alan I. Roberts,

Associate Administrator for Hazardous Materials Safety.

[FR Doc. 93–29099 Filed 11–26–93; 8:45 am]

BILLING CODE 4910–60–P

DEPARTMENT OF THE TREASURY

Office of Thrift Supervision

[AC–66; OTS No. 02478]

First Federal Savings & Loan Association of Peru, Peru, IN; Approval of Conversion Application

Notice is hereby given that on November 10, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of First Federal Savings and Loan Association of Peru, Peru, Indiana to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC. 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: November 22, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–29087 Filed 11–26–93; 8:45 am]

BILLING CODE 6720–01–M

First Federal Savings Bank of Georgia, F.A., Winder, GA; Notice of Replacement of Conservator With a Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of § 5(d)(2) of the Home Owners' Loan Act, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Bank of Georgia, F.A., Winder, Georgia ("Association"), with the Resolution Trust Corporation as sole Receiver for the Association on November 5, 1993.

Dated: November 5, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–29092 Filed 11–26–93; 8:45am]

BILLING CODE 6720–01–M

[AC–68; OTS No. 04567]

Peoples Savings Bank, Xenia, OH; Approval of Conversion Application

Notice is hereby given that on November 5, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Peoples Savings Bank, Xenia, Ohio to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: November 22, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–29089 Filed 11–26–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–67; OTS No. 03440]

The Potters Savings and Loan Company of East Liverpool, OH, East Liverpool, Ohio; Approval of Conversion Application

Notice is hereby given that on November 3, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Potters Savings and Loan Company of East Liverpool, Ohio, East Liverpool, Ohio to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601.

Dated: November 22, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–29086 Filed 11–26–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–65; OTS No. 07416]

Washington Savings Bank, FSB, Washington, MO; Approval of Conversion Application

Notice is hereby given that on November 9, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Washington Savings Bank, FSB, Washington, Missouri, to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Midwest Regional Office, Office of Thrift Supervision, 122 W. John Carpenter Fwy., Suite 600, Irving, TX 75039.

Dated: November 22, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–29086 Filed 11–26–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–70; OTS No. 01288]

Western Federal Savings Bank of Montana, Missoula, MT; Approval of Conversion Application

Notice is hereby given that on November 5, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of Western Federal Savings Bank of Montana, Missoula, Montana to convert to the stock form of organization. Copies of the application are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, N.W., Washington, D.C. 20552, and the West Regional Office, Office of Thrift Supervision, 1 Montgomery Street, Suite 400, San Francisco, California 94104

Dated: November 22, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–29091 Filed 11–26–93; 8:45 am]

BILLING CODE 6720–01–M

[AC–69; OTS No. 08093]

The Williamsburg Building and Loan Company, Williamsburg, OH; Approval of Conversion Application

Notice is hereby given that on November 5, 1993, the Deputy Assistant Director, Corporate Activities Division, Office of Thrift Supervision, or her designee, acting pursuant to delegated authority, approved the application of The Williamsburg Building and Loan Company, Williamsburg, Ohio to convert to the stock form of organization. Copies of the application

are available for inspection at the Information Services Division, Office of Thrift Supervision, 1700 G Street, NW., Washington, DC 20552, and the Central Regional Office, Office of Thrift Supervision, 111 East Wacker Drive, Suite 800, Chicago, Illinois 60601–4360.

Dated: November 22, 1993.

By the Office of Thrift Supervision.

Kimberly M. White,

Corporate Technician.

[FR Doc. 93–29090 Filed 11–26–93; 8:45 am]

BILLING CODE 6720–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 227
Monday, November 29, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FEDERAL DEPOSIT INSURANCE CORPORATION .

Notice of Agency Meeting

Recommendations concerning administrative enforcement proceedings.

Matters relating to the Corporation's self appointment as receiver.

Matters relating to certain insured financial institutions.

In calling the meeting, the Board determined, on motion of Mr. John F. Downey, acting in the place and stead of Director Jonathan L. Fiechter (Acting Director, Office of Thrift Supervision), seconded by Director Eugene A. Ludwig (Comptroller of the Currency), concurred in by Acting Chairman Andrew C. Howe, Jr., that Corporation business required its consideration of the matters on less than seven days' notice to the public; that no earlier notice of the meeting was practicable; that the public interest did not require consideration of the matters in a meeting open to public observation; and that the matters could be considered in a closed meeting by authority of subsections (c)(4), (c)(6), (c)(8), (c)(9)(A)(ii), and (c)(9) (B) of the "Government in the Sunshine Act" (5 U.S.C. 552b (c)(4), (c)(6), (c)(8), (c) (9) (A) (ii), and (c) (9) (B)).

The meeting was held in the Board Room of the FDIC Building located at 550—17th Street, N.W., Washington, D.C.

Dated: November 23, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–29229 Filed 11–24–93; 9:10 am]

BILLING CODE 6714–01–M

FEDERAL DEPOSIT INSURANCE CORPORATION

Notice of Agency Meeting

Pursuant to the provisions of the "Government in the Sunshine Act" (5 U.S.C. 552b), notice is hereby given that the Federal Deposit Insurance Corporation's Board of Directors will meet in open session at 10:00 a.m. on Tuesday, November 30, 1993, to consider the following matters:

Summary Agenda

No substantive discussion of the following items is anticipated. These matters will be resolved with a single vote unless a member of the Board of Directors requests that an item be moved to the discussion agenda.

Disposition of minutes of previous meetings.

Reports of actions approved by the standing committees of the Corporation and by officers of the Corporation pursuant to authority delegated by the Board of Directors.

Discussion Agenda

Memorandum and resolution re: Proposed amendments to Part 330 of the Corporation's rules and regulations, entitled "Deposit Insurance Coverage," which would (1) require that certain written disclosures be made by insured depository institutions to employee benefit plan depositors in certain situations in order to reduce the uncertainty about whether such accounts are eligible for "pass-through" deposit insurance coverage and to provide a timely disclosure to such depositors when such coverage no longer is available; and (2) make two technical amendments to Part 330 involving the insurance rules for joint accounts and the accounts for which an insured depository institution is acting as a fiduciary.

Memorandum and resolution re: Final amendments to Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," which require insured state banks to obtain the prior consent of the Corporation before directly, or indirectly through a subsidiary, engaging "as principal" in any activity that is not permissible for a national bank.

Memorandum and resolution re: Final amendments to the Corporation's rules and regulations, which eliminate Part 332, entitled "Powers Inconsistent with Purposes of Federal Deposit Insurance Law."

Memorandum and resolution re: Final amendments to Part 333 of the Corporation's rules and regulations, entitled "Extension of Corporate Powers," which eliminate section 333.3, which makes certain prohibitions applicable to state chartered savings associations applicable to state banks that are members of the Savings Association Insurance Fund.

Memorandum and resolution re: Final amendments to Part 303 of the Corporation's rules and regulations, entitled "Applications, Requests, Submittals, Delegations of Authority, and Notices Required to be Filed by Statute or Regulation," which (1) conform the definitions of "significant risk" and 'equity security" to the definitions of those terms found in Part 362 of the Corporation's rules and regulations, entitled "Activities and Investments of Insured State Banks," (2) allow insured state savings associations to conduct activities and make investments without the Corporation's prior approval provided that the activities and/or investments were found to be permissible for federal savings associations under an order or a written interpretation issued by the Office of Thrift Supervision, and (3) place insured state savings associations on a par with the treatment accorded insured state banks under the Corporation's rules and regulations.

The meeting will be held in the Board Room on the sixth floor of the FDIC Building located at 550–17th Street, N.W., Washington, D.C.

The FDIC will provide attendees with auxiliary aids (e.g., sign language interpretation) required for this meeting. Those attendees needing such assistance should call (202) 942–3132 (Voice); (202) 942–3111 (TTY), to make necessary arrangements.

Requests for further information concerning the meeting may be directed to Mr. Robert E. Feldman, Deputy Executive Secretary of the Corporation, at (202) 898–6757.

Dated: November 23, 1993.

Federal Deposit Insurance Corporation.

Robert E. Feldman,

Deputy Executive Secretary.

[FR Doc. 93–29230 Filed 11–24–93; 9:10am]

BILLING CODE 6714–01–M

LEGAL SERVICES CORPORATION

Board of Directors Meetings

TIME AND DATE: The Legal Services Corporation Board of Directors Operations and Regulations; Provision for the Delivery of Legal Services; and, Audit and Appropriations Committees will meet on December 4, 1993. The meetings will convene at the time and in the order noted below until all business has been concluded.

1. Operations and Regulations Committee (Commences at 10:00 a.m.);
2. Provision for the Delivery of Legal Services Committee (Commences at 1:00 p.m.); and
3. Audit and Appropriations Committee (Commences at 5:30 p.m.).

PLACE: The Legal Services Corporation, 750 First Street, NE., The Board Room, 11th Floor, Washington, DC 20002, (202) 336–8800.

OPERATIONS AND REGULATIONS COMMITTEE MEETING:

STATUS OF MEETING: Open.

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of February 22, 1993 Meeting.

3. President's Report.
4. General Counsel's Report.
5. Office of Administration and Human Resources Director's Report.
6. Consideration of Report on the Status of the Corporation's Regulations.
7. Consideration of the Status of Sections 1602, 1612, and Any Other Pending Sections of the Corporation's Regulations.
8. Consideration of Status Report on Reauthorization of the Corporation.
9. Consideration of Staff Report on Grant Assurances.
10. Consideration of Staff Report on Grantees Receiving Less than Annualized Funding.
11. Consideration of Staff Report on the Competition Demonstration Project.

PROVISION FOR THE DELIVERY OF LEGAL SERVICES COMMITTEE MEETING:

STATUS OF MEETING: Open.

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 9, 1993 Meeting.
3. Consideration of Presentations on the Corporation's Current Approach to Monitoring, Evaluation, Complaint Investigation and Technical Assistance.
   a. Presentation by Staff.
   b. Presentation by Panel of Field Program Representatives, Clients, Organized Bar Representatives and Other Interested Parties.
4. Consideration of Presentations on Possible New Approaches to Monitoring, Evaluation, Complaint Investigation and Technical Assistance.
   a. Presentation by Staff.
   b. Presentation by Panel of Field Program Representatives, Clients, Organized Bar Representatives and Other Interested Parties.
5. Consideration of Status Report on the Law School Clinical Grant Program.
6. Consideration of Presentations on the National Service Act and Its Implications for Legal Services Programs.
   a. Presentation by Staff.
   b. Presentation by Panel of Field Program Representatives, Clients, Organized Bar Representatives and Other Interested Parties.
7. Open Comment Period.

AUDIT AND APPROPRIATIONS COMMITTEE MEETING:

STATUS OF MEETING: Open.

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of September 9, 1993 Meeting.
3. Consideration of Report on the Corporation's Fiscal Year 1993 Consolidated Operating Budget.
   a. Carryover.
   b. Deferred Rent Incentive.
4. Consideration of Proposed Resolution That Will Authorize Expenditure of the Corporation's Fiscal Year 1994 Funds Until a Fiscal Year 1994 Budget is Adopted.
5. Consideration of Proposal on Development of the Corporation's Fiscal Year 1995 Budget Mark.
   a. Consideration of Public Comment.
   b. Consideration of Board Committees' Comments.
   c. Consideration of Proposed Content of Notice to be Issued to the Office of Management and Budget on the Fiscal Year 1995 Budget Mark of the Corporation.
6. Consideration of Proposal on Development of the Corporation's Fiscal Year 1995 Budget Request for Congress.
7. Consideration of the Inspector General's Report on the Office of the Inspector General.
8. Consideration of Status Report on the Corporation's Fiscal Year 1993 Annual Audit being Performed by the Firm Grant Thornton.
9. Consideration of Management's Proposed Response to the Inspector General's Semiannual Report for the Period Ending September 30, 1993.
10. Consideration of Fiscal Year 1995 Funding for the U.S. Court of Veterans Appeals Grant.

CONTACT PERSON FOR INFORMATION:
Patricia Batie (202) 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: November 24, 1993.

Patricia D. Batie,

Corporate Secretary.

[FR Doc. 93–29269 Filed 11–24–93; 1:14 pm]

BILLING CODE 7050–01–M:

LEGAL SERVICES CORPORATION

Board of Directors Meeting

TIME AND DATE: The Legal Services Corporation Board of Directors hold a two-day meeting commencing on December 5, 1993, and concluding on December 6, 1993. The meeting will commence at 10:30 a.m. on Sunday, December 5, 1993, and at 9:00 a.m. on Monday, December 6, 1993

PLACE:

December 5, 1993
The Legal Services Corporation, 750 First Street, N.E., The Board Room, Washington, D.C. 20002, (202) 336–8800
December 6, 1993 (10:30 a.m.–1:30 p.m.)
The Washington Court Hotel, 525 New Jersey Avenue, N.W., The Ashlawn Room, Washington, D.C. 20001, (202) 628–2100
December 6, 1993 (2:00 p.m.–Conclusion)
The Legal Services Corporation, The Board Room

BOARD OF DIRECTORS MEETING:

STATUS OF MEETING: *Open*, except that a portion of the meeting may be closed on the morning of Monday, December 6, 1993, pursuant to a vote of a majority of the Board of Directors to hold an executive session. At the closed session, in accordance with the aforementioned vote, the Board will consider and vote on approval of the draft minutes of the executive session held on November 8, 1993. The Board will hear and consider the report of the General Counsel on litigation to which the Corporation is, or may become, a party. Further, the Board will consult with the Inspector General on internal personnel, operational and investigative matters. The Board will also consult with the President on internal personnel and operational matters. Finally, the Board will deliberate regarding internal personnel and operational matters. The closing will be authorized by the relevant sections of the Government in the Sunshine Act [5 U.S.C. Sections 552b(c)(2)(5), (6), (7), and (10)], and the corresponding regulation of the Legal Services Corporation [45 C.F.R. Section 1622.5(a), (d), (e), (f), and (h)].[1] The closing will be certified by the Corporation's General Counsel as authorized by the above-cited provisions of law. A copy of the General Counsel's certification will be posted for public inspection at the Corporation's headquarters, located at 750 First Street, N.E., Washington, D.C., 20002, in its eleventh floor reception area, and will otherwise be available upon request.

Board of Directors Meeting, December 5, 1993, Agenda

MATTERS TO BE CONSIDERED:

OPEN SESSION:

1. Approval of Agenda.
2. Approval of Minutes of November 8, 1993 Meeting.
3. Chairman's and Members' Reports.
   a. Consideration of Board Committee Assignments.
4. Consideration of Panel Presentation By Representatives From the Legal Services Community On the Role and Mission of the Corporation and Key Issues Affecting the Delivery of Legal Services.
5. Consideration of Operations and Regulations Committee Report.
6. Consideration of Provision for the Delivery of Legal Services Committee Report.
7. Consideration of Audit and Appropriations Committee Report.

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[1] As to the Board's consideration and approval of the draft minutes of the executive session(s) held on the above-noted date(s) the closing is authorized as noted in the **Federal Register** notice(s) corresponding to that/those Board meeting(s).

a. Consideration of Management's Draft Response to the Inspector General's Semiannual Report for the Period Ending September 30, 1993.
b. Consideration of Proposed Fiscal Year 1994 Consolidated Operating Budget.
8. Consideration of Revised Fiscal Year 1995 Budget Mark for the Corporation.
a. Consideration of Presentation on Revision of the Corporation's Fiscal Year 1995 Budget Mark by Brooksley Borne on behalf of the Standing Committee on Legal Aid and Indigent Defendants ("SCLAID") of the American Bar Association.
b. Consideration of Presentation on Revision of the Corporation's Fiscal Year 1995 Budget Mark by Richard Taylor on Behalf of the Project Advisory Group ("PAG").
9. President's Report.
10. Inspector General's Report.
11. Consideration of Motion to Adjourn Meeting and Reconvene in Executive Session on Monday, December 6, 1993, at 9:00 a.m.

Board of Directors Meeting (Reconvened); Monday, December 6, 1993

MATTERS TO BE CONSIDERED:

CLOSED SESSION: [2]

12. Approval of Minutes of Executive Session Held on November 8, 1993.
13. Consideration of Internal Personnel and Operational Matters.
14. Consultation by Board with the Inspector General on Internal Personnel, Operational and Investigative Matters.
15. Consultation by Board with the President on Internal Personnel and Operational Matters.
16. Consideration of the General Counsel's Report on Pending Litigation to which the Corporation is, or May Become, a Party.

OPEN SESSION: (Resumed)

17. Consideration of Other Business.
18. Scheduling of 1994 Board and Committee Meetings.

CONTACT PERSON FOR INFORMATION: Patricia Batie 336–8800.

Upon request, meeting notices will be made available in alternate formats to accommodate visual and hearing impairments.

Individuals who have a disability and need an accommodation to attend the meeting may notify Patricia Batie at (202) 336–8800.

Date Issued: November 24, 1994.

Patricia Batie,

Corporate Secretary.

[FR Doc. 93–29270 Filed 11–24–93; 1:15 pm]

BILLING CODE 7050–01–M

[2] Upon receipt of a majority vote of the Board to close this portion of the meeting to the public, the Board will convene in executive session at 9:00 a.m., Monday, December 6, 1993, in the Ashlawn Room of the Washington Court Hotel. THe Board will return to the Board Room at the headquarters office of the Legal Services Corporation to conclude its meeting, in open session, at 2:00 p.m.

OVERSEAS PRIVATE INVESTMENT CORPORATION

Meeting of the Board of Directors

CHANGE: From now on, Board Meetings will begin with the Open Session at 1 p.m., and end with the Closed Session.

TIME AND DATE: Tuesday, December 7, 1993, 1:00 p.m. (Open Portion), 1:30 p.m. (Closed Portion).

PLACE: Offices of the Corporation, Twelfth Floor Board Room, 1100 New York Avenue, N.W., Washington, D.C.

STATUS: The first part of the meeting, from 1:00 p.m. to 1:30 p.m., will be OPEN to the public. The closed portion will commence at 1:30 p.m. (approximately).

MATTERS TO BE CONSIDERED:

1. President's Report.
2. Report on Growth Funds.
3. Recommendation for meeting schedule through end of June 1994.
4. Approval of 9/21/93 Minutes (Open Portion).

FURTHER MATTERS TO BE CONSIDERED: (Closed to the Public 1:30 p.m.)

1. Approval of the 9/21/93 Minutes (Closed Portion).
2. Finance Project in Poland.
3. Insurance Project in Argentina.
4. Insurance Project in Colombia.
5. Pending Major Project.

CONTACT PERSON FOR INFORMATION: Information with regard to the meeting may be obtained from the Corporation Secretary on (202)–336–8403.

Dated: November 23, 1993.

Anne H. Smart,

OPIC Corporate Secretary.

[FR Doc. 93–29238 Filed 11–24–93; 8:45 am]

BILLING CODE 3210–01–M

federal register

Monday
November 29, 1993

Part II

Federal Emergency Management Agency

Hotel and Motel Fire Safety Act National Master List, 1993; Notice

FEDERAL EMERGENCY MANAGEMENT AGENCY

Hotel and Motel Fire Safety Act National Master List, 1993

AGENCY: United States Fire Administration, FEMA.

ACTION: Notice.

SUMMARY: The Federal Emergency Management Agency (FEMA or Agency) gives notice of the national master list of places of public accommodations which meet the fire prevention and control guidelines under the Hotel and Motel Fire Safety Act. This updated list incorporates all changes made to the national master list since it was first published in 1992, and is current to November 16, 1993.

EFFECTIVE DATE: December 29, 1993.

ADDRESSES: Comments on the master list are invited and may be addressed to the Rules Docket Clerk, Federal Emergency Management Agency, 500 C Street, SW., room 840, Washington, DC 20472, (fax) (202) 646–4536. To be added to the National Master List, or to make a change to the list, see **SUPPLEMENTARY INFORMATION** below.

FOR FURTHER INFORMATION CONTACT: Larry Maruskin, Office of Fire Prevention and Arson Control, United States Fire Administration, Federal Emergency Management Agency, National Emergency Training Center, 16825 South Seton Avenue, Emmitsburg, MD 21727, (301) 447–1141.

SUPPLEMENTARY INFORMATION: Acting under the Hotel and Motel Fire Safety Act of 1990, 15 U.S.C. 2201 note, the United States Fire Administration has worked with each State to compile a national master list of all of the places of public accommodation affecting commerce located in each State that meet the requirements of the guidelines under the Act. FEMA published the national master list in the **Federal Register** on Tuesday, November 24, 1992, 57 FR 55314, and published changes approximately monthly since then.

This is the first annual publication of the complete, updated national master list, current as of November 16, 1993. FEMA will continue to publish changes to the national master list on an approximately monthly basis.

Parties wishing to be added to the national master list, or to make any other change, should contact the State office or official responsible for compiling listings of properties which comply with the Hotel and Motel Fire Safety Act. A list of State contacts was published in 58 FR 17020 on March 31, 1993. If the published list is unavailable to you, the State Fire Marshal's office can direct you to the appropriate office. Periodically FEMA will update and redistribute the national master list to incorporate additions and corrections/changes to the list, and deletions from the list, that are received from the State offices.

Copies of the national master list and its updates may be obtained by writing to the Government Printing Office, Superintendent of Documents, Washington, DC 20402–9325. When requesting copies please refer to stock number 069–001–00049–1, and ask for the November 1993 national master list dated November 29, 1993, and any subsequent updates.

The November 1993 national master list follows below.

Dated: November 18, 1993.

John P. Carey,

General Counsel.

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
Alaska				
ANCHORAGE CHELSEA INN CORP DBA CHELSEA INN.		3836 SPENARD RD	ANCHORAGE, AK 99517–	
ANCHORAGE HILTON HOTEL		500 W. 3RD AVE	ANCHORAGE, AK 99501–	907–265–7158
ANCHORAGE SUPER 8 MOTEL		3501 MINNESOTA DR	ANCHORAGE, AK 99503–	907–276–8884
BEST WESTERN INN		4616 SPENARD RD	ANCHORAGE, AK 99517–	907–243–3131
CAPTAIN COOK HOTEL		39 W. 5TH AVE	ANCHORAGE, AK 99501–	907–276–6000
DAYS INN ANCHORAGE		321 E. 5TH AVE	ANCHORAGE, AK 99501–	907–276–7226
HOLIDAY INN ANCHORAGE		239 W. 4TH AVE	ANCHORAGE, AK 99501–	
REGAL ALASKAN HOTEL		4800 SPENARD RD	ANCHORAGE, AK 99517–	907–243–2300
SHERATON ANCHORAGE HOTEL.		401 E. 6TH AVE	ANCHORAGE, AK 99501–	907–276–8700
THE VOYAGER HOTEL		501 K ST	ANCHORAGE, AK 99501–	907–277–9501
BARROW AIRPORT INN		1815 OKPIK ST	BARROW, AK 99723–	907–852–252[illegible]
TOP OF THE WORLD HOTEL		1200 AGVIK	BARROW, AK 99723–	907–852–3900
WALDO ARMS HOTEL	BOX 67	KAKTOVIK	BARTER ISLAND, AK 99647–	907–640–6513
ARCTIC ACRES INN		MILE 175 DALTON HWY	COLDFOOT, AK 99701–	907–678–5201
KENAI PRINCESS LODGE	PO BOX 676		COOPER LANDING, AK 99572–	907–595–1425
RELUCTANT FISHERMAN INN	PO BOX 150		CORDOVA, AK 99574–	
DENALI NATIONAL PARK HOTEL.		MILE 237 PARKS HWY	DENALI PARK, AK 99755–	907–279–2653
DENALI RIVERVIEW INN		MILE 238.4 PARKS HWY	DENALI PARK, AK 99755–	907–683–2663
FAIRBANKS PRINCESS HOTEL		4477 PIKE'S LANDING RD	FAIRBANKS, AK 99709–	
FAIRBANKS SUPER 8 MOTEL		1909 AIRPORT RD	FAIRBANKS, AK 99701–	907–451–8888
GOLDEN NORTH MOTEL		4888 OLD AIRPORT WAY	FAIRBANKS, AK 99701–	907–479–6201
KLONDIKE INN		3483 REWAK DR	FAIRBANKS, AK 99709–	907–479–6241
SUMMIT LAKE LODGE		MILE 195 RICHARDSON HWY	GLENNALLEN, AK 99588–	907–822–3969
TOTEM INN		MILE 248.7 PARKS HWY	HEALY, AK 99473–	907–683–2420
PEARSON'S POND LUXURY LODGING.		4541 SAWA CIR	JUNEAU, AK 99801–	907–789–3772
INGERSOLL HOTEL		303 MISSION ST	KETCHIKAN, AK 99901–	
ROYAL EXECUTIVE SUITES		1471 TONGASS AVE	KETCHIKAN, AK 99901–	907–225–1900
DENALI PRINCESS LODGE	PO BOX 110		MCKINLEY PARK, AK 99755–	907–683–2282
FAIRVIEW MOTEL		1930 GLEN HWY	PALMER, AK 99645–	907–745–1505

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MOUNTAIN VIEW BED & BREAKFAST.		201 CASCADE CREEK RD	SITKA, AK 99835–	907–747–8966
WIND VALLEY LODGE		STATE ST. AND 22ND AVE	SKAGWAY, AK 99840–	907–983–2236
TOK LODGE MOTEL		MILE 124½ GLENN HWY	TOK, AK 99780–	907–883–2951
OLGOONIK HOTEL	PO BOX 29		WAINWRIGHT, AK 99782–	907–763–2514
BEST WESTERN LAKE LUCILLE INN.		1300 W. LAKE LUCILLE DR	WASILLA, AK 99645–	
Alabama				
SHELBY MOTOR LODGE	PO BOX 279	HWY. 31 S	ALABASTER, AL 35007–	205–663–1070
SUPER 8 MOTEL		1104 280 BYPASS	ALEXANDER CITY, AL 35010–	205–329–8858
VOYAGER INN MOTEL		100 MOBILE RD	ALICEVILLE, AL 35442–	205–373–6344
CHARTER HOUSE INC		US RT. 84 BYPASS E	ANDALUSIA, AL 36420–	205–222–7511
TOWN LINE MOTEL		1160 BYPASS W	ANDALUSIA, AL 36420–	205–222–3191
ANNISTON EFFICIENCY MOTEL		107 G ST	ANNISTON, AL 36220–	205–238–0060
LENLOCK INN		6210 MCCLELLEN BLVD	ANNISTON, AL 36201–	205–820–1515
LIBERTY INN		6220 MCCLELLAN BLVD	ANNISTON, AL 36201–	205–820–1000
MCCLELLAN INN		5708 WEAVER RD	ANNISTON, AL 36201–	205–820–3144
NELFORD INN MOTEL		403 S. WILMER	ANNISTON, AL 36201–	205–237–2319
ATHENS TRAVELODGE		1325 HWY. 72 E	ATHENS, AL 35611–	205–233–1446
BEST WESTERN INN	PO BOX 816	INT. OF HWY. 72 & I–65	ATHENS, AL 35611–	205–233–4030
DAYS INN ATHENS		1322 HWY. 72 E	ATHENS, AL 35611–	205–233–7500
WELCOME INN		HWY. 31 S. US HWY. 72	ATHENS, AL 35611–1125	205–232–6944
HOLIDAY INN GADSDEN		801 CLEVELAND AVE	ATTALLA, AL 35954–	205–538–7861
AUBURN CONFERENCE CENTER & MOTOR LO.		1577 S. COLLEGE	AUBURN, AL 36830–	205–821–7001
AUBURN UNIVERSITY HOTEL & CONFERENCE.		241 S. COLLEGE ST	AUBURN, AL 36830–5400	205–821–8200
HEART OF AUBURN MOTEL & SUITES.		333 S. COLLEGE ST	AUBURN, AL 36830–	205–843–5634
#426 BESSEMER, AL MOTEL 6		1000 SHILOH LN	BESSEMER, AL 35020–	205–426–9646
ECONO LODGE HOTEL		1021 9TH AVE. SW	BESSEMER, AL 35203–	205–424–9780
ANCHOR MOTEL		8420 1ST AVE. N	BIRMINGHAM, AL 35206–	205–833–3414
COMFORT INN PERIMETER		4627 HWY. 280	BIRMINGHAM, AL 35242–	205–991–9977
CROWN STERLING SUITES HOTEL		2300 WOODCREST PL	BIRMINGHAM, AL 35209–	205–879–7400
DAYS INN SOUTH		1535 MONTGOMERY HWY	BIRMINGHAM, AL 35216–	205–822–6030
ECONO LODGE		103 GREENSPRINGS HWY	BIRMINGHAM, AL 35209–	205–942–1263
HAMPTON INN		1466 MONTGOMERY HWY	BIRMINGHAM, AL 35216–	205–870–7822
HAMPTON INN MT. BROOK		2731 US HWY. 280	BIRMINGHAM, AL 35223–	205–870–7822
HOLIDAY INN RED MONT CITY CENTRE.		2101 5TH AVE. N	BIRMINGHAM, AL 35203–	205–324–2101
HOLIDAY INN SOUTH GALLERIA AREA.		1548 MONTGOMERY HWY	BIRMINGHAM, AL 35216–	205–822–4350
ITT SHERATON CIVIC CENTER HOTEL.		2101 CIVIC CENTER BLVD	BIRMINGHAM, AL 35203–	205–324–5000
LA QUINTA MOTOR INN		905 11TH CT. W	BIRMINGHAM, AL 35204–	205–324–4510
MONTCLAIR MEDICAL INN		840 MONTCLAIR RD	BIRMINGHAM, AL 35213–	205–592–1395
MOTEL BIRMINGHAM		7905 CRESTWOOD BLVD	BIRMINGHAM, AL 35210–	205–956–4440
MT. BROOK INN		2800 HWY. 280 S	BIRMINGHAM, AL 35223–	205–870–3100
PICKWICK HOTEL		1023 20TH ST. S	BIRMINGHAM, AL 35205–	205–933–9555
RADISSON HOTEL BIRMINGHAM.		808 S. 20TH ST	BIRMINGHAM, AL 35205–	205–933–9000
RED ROOF INN		151 VULCAN RD	BIRMINGHAM, AL 35209–	205–942–9414
RELAX INN		6101 1ST AVE. N	BIRMINGHAM, AL 35244–	205–591–5575
RESIDENCE IN BY MARRIOTT		3 GREENHILL PKWY	BIRMINGHAM, AL 35242–	205–991–8686
RIME GARDEN SUITES		5320 BEACON DR	BIRMINGHAM, AL 35210–	205–951–1200
RIVERCHASE INN GALLERIA		1800 RIVERCHASE DR	BIRMINGHAM, AL 35244–	205–985–7500
SHERATON PERIMETER PARK SOUTH HOTEL.		8 PERIMETER DR	BIRMINGHAM, AL 35243–	205–967–2700
TOURWAY INN		101 6TH AVE. N	BIRMINGHAM, AL 35203–	205–252–3921
TRAVELODGE		2230 10TH AVE. N	BIRMINGHAM, AL 35203–	205–328–6320
TUTWILER HOTEL		PARK PL. 21ST ST. N	BIRMINGHAM, AL 35203–	205–322–2100
WYNFREY HOTEL		1000 RIVERCHASE GALLERIA	BIRMINGHAM, AL 35244–	205–987–1600
DAYS INN		12960 HWY. 431 S	BOAZ, AL 35957–	205–593–0000
KEY WEST INN		410 E. MILL AVE	BOAZ, AL 35957–	205–593–0800
WINDWOOD INN OF BRENT CENTREVILLE.		INTERSECTION OF HWY. 82 & 25.	BRENT, AL 35034–	205–926–4833
HOLIDAY INN CLANTON		I–65 & US HWY. 31	CLANTON, AL 35045–	205–755–0510
KEY WEST INN CLANTON		2045 7TH AVE. S	CLANTON, AL 35045–	205–755–8500
HOWARD JOHNSON LODGE		HWY. 278 W. & I–65	CULLMAN, AL 35056–	205–739–4503

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ECONO LODGE		241 DALEVILLE AVE	DALEVILLE, AL 36322–	205–598–6304
GREEN HOUSE INN AND LODGE.		501 S. DALEVILLE AVE	DALEVILLE, AL 36322–	205–798–1475
MALBIS MOTOR INN	PO BOX 639	9865 US HWY. 90	DAPHNE, AL 36526–	205–626–3050
AMBERLEY SUITE HOTEL		807 BONK ST. NE	DECATUR, AL 35601–	205–355–6800
ECONOMY INN		3424 HWY. 31 S	DECATUR, AL 35603–	205–353–8194
HOLIDAY INN DECATUR		1101 6TH AVE. N	DECATUR, AL 35601–	205–355–3150
BEST WESTERN MINT SUNRISE.		1034 HWY. 80	DEMOPOLIS, AL 36732–	205–289–5772
DAYS INN DEMOPOLIS		1005 HWY. 80 E	DEMOPOLIS, AL 36732–	205–289–2500
WINDWOOD INN OF DEMOPOLIS.		628 HWY. 80 E	DEMOPOLIS, AL 36732–	205–289–1760
BEST WESTERN DOTHAN INN		2325 MONTGOMERY HWY	DOTHAN, AL 36303–	205–793–4376
COMFORT INN		3591 ROSS CLARK CIR	DOTHAN, AL 36303–	205–793–9090
DAYS INN DOTHAN		2841 ROSS CLARK CIR	DOTHAN, AL 36301–	205–793–2550
HAMPTON INN DOTHAN		3071 ROSS CLARK CIR. SW	DOTHAN, AL 36301–	205–671–3700
HOLIDAY INN WEST		3053 ROSS CLARK CIR	DOTHAN, AL 36301–	205–794–6601
RAMADA INN		3001 ROSS CLARK CIR	DOTHAN, AL 36301–	205–792–0031
RIVERA MOTEL		154 YELVERTON HWY. 84 E	ELBA, AL 36323–	205–897–2204
COMFORT INN		615 BOLL WEEVIL CIR	ENTERPRISE, AL 36330–	205–393–2304
BEST WESTERN EUFAULA INN		1337 S. EUFAULA AVE	EUFAULA, AL 36027–	205–687–3900
ECONO LODGE	PO BOX 564		EVERGREEN, AL 36401–	205–578–4701
HOJO INN OF FLORENCE		1241 FLORENCE BLVD	FLORENCE, AL 35632–	205–764–5421
LAKEVIEW INN		HWY. 72	FLORENCE, AL 35631–1457	205–757–2167
BEST WESTERN FORT PAYNE		1828 GAULT AVE	FORT PAYNE, AL 35967–	205–845–0481
DAYS INN		I–59 & HWY. 35	FORT PAYNE, AL 35967–	205–845–2085
QUALITY INN		HWY. 35 & I–59 EXIT 218	FORT PAYNE, AL 35967–	205–845–4013
DAYS INN		616 DECATUR HWY	FULTONDALE, AL 35068–	205–849–0111
BROADWAY INN		2704 W. MEIGHAN BLVD	GADSDEN, AL 35904–	205–543–3790
DAYS INN GADSDEN		1600 RAINBOW DR	GADSDEN, AL 35901–	205–543–1105
FRIENDLY VILLAGE INN		2110 RAINBOW DR	GADSDEN, AL 35901–	205–547–9033
GADSDEN MOTOR INN	PO BOX 1051	200 ALBERT RAINS BLVD	GADSDEN, AL 35902–	205–543–7240
ECONO LODGE		946 FORT DALE RD	GREENVILLE, AL 36037–	205–382–3118
DEAVERS MOTEL		141 S. JACKSON ST	GROVE HILL, AL 36451–	205–275–3218
WINDWOOD INN OF GROVE HILL.	PO BOX 418	RT. 2 HWY. 43 N	GROVE HILL, AL 36451–	205–275–4121
GULF STATE PARK RESORT HOTEL & CONV.		21250 E. BEACH BLVD	GULF SHORES, AL 36547–	205–948–4853
HARDWICK HOUSE MOTEL		1060 W. BEACH	GULF SHORES, AL 36542–	205–948–7481
BEST WESTERN REGAL INN		HWY. 431 S	GUNTERSVILLE, AL 35976–	205–582–8444
DAYS INN GUNTERSVILLE		14040 HWY. 431 S	GUNTERSVILLE, AL 35976–	205–582–3200
HOLIDAY INN		2140 GUNTERS AVE	GUNTERSVILLE, AL 35967–	205–582–2220
LAKE GUNTERSVILLE STATE PARK & LODGE.		1155 LODGE DR	GUNTERSVILLE, AL 35976–9126.	205–571–5440
MAC'S LANDING LODGE AND MARINA.		7001 VAL MONTE DR	GUNTERSVILLE, AL 35976–	205–582–1000
WINDWOOD INN OF HARTSELLE.		907 HWY. 31 S	HARTSELLE, AL 35640–	205–773–3000
COURTYARD BY MARRIOTT HOMEWOOD.		500 SHADES CREEK PKWY	HOMEWOOD, AL 35209–	205–879–0400
FAIRFIELD INN BY MARRIOTT HOMEWOOD.		155 VULCAN DR	HOMEWOOD, AL 35209–	205–945–5600
SUPER 8 MOTEL		140 VULCAN RD	HOMEWOOD, AL 35209–	205–945–9888
COURTYARD BY MARRIOTT		1824 MONTGOMERY HWY. S	HOOVER, AL 35244–	205–988–5000
HO JO MONTGOMERY SOUTH		7725 MOBILE HWY	HOPE HULL, AL 36043–	205–281–7151
AMBERLEY SUITE HOTEL		4880 UNIVERSITY DR	HUNTSVILLE, AL 35816–	205–837–4070
BROOKS MOTEL		3800 GOVERNORS DR. NW	HUNTSVILLE, AL 35801–	205–539–6526
COURTYARD MARRIOTT		4804 UNIVERSITY DR	HUNTSVILLE, AL 35816–	205–837–1400
EXECUTIVE LODGE SUITE HOTEL.		1535 SPARKMAN DR	HUNTSVILLE, AL 35816–	205–830–8600
HAMPTON INN HUNTSVILLE		4815 UNIVERSITY DR	HUNTSVILLE, AL 35816–	205–830–9400
HOLIDAY INN RESEARCH PARK.		5903 UNIVERSITY DR	HUNTSVILLE, AL 35816–	205–830–0600
HOLIDAY INN SPACE CENTER		3810 UNIVERSITY DR	HUNTSVILLE, AL 35816–	205–837–7171
HUNTSVILLE MARRIOTT		#5 TRANQUILITY BASE	HUNTSVILLE, AL 35805–	205–830–2222
LA QUINTA INN #719		3141 UNIVERSITY DR	HUNTSVILLE, AL 35816–	205–533–0756
LA QUINTA MOTOR INN		4870 UNIVERSITY DR	HUNTSVILLE, AL 35811–	205–830–2070
PARKWAY ECONO LODGE		1304 N. MEMORIAL PKWY	HUNTSVILLE, AL 35801–	205–539–9671
RADISSON SUITE HOTEL		6000 MEMORIAL PKWY. S	HUNTSVILLE, AL 35802–	205–882–9400
RESIDENCE INN BY MARRIOTT.		4020 INDEPENDENCE DR	HUNTSVILLE, AL 35816–	205–837–8907

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SHERATON INN HUNTSVILLE AIRPORT.	PO BOX 20068	1000 GLENN HEARN BLVD	HUNTSVILLE, AL 35824–	205–772–9661
SUPER 8 MOTEL OF HUNTSVILLE.		3803 UNIVERSITY DR. NW	HUNTSVILLE, AL 35816–	205–539–8881
TOM BEVILL CENTER		1100 N. LOOP RD	HUNTSVILLE, AL 35816–	205–721–9428
UNIVERSITY INN		4404 UNIVERSITY DR	HUNTSVILLE, AL 35816–	205–837–3250
GAMECOCK MOTEL		1530 PELHAM RD. S	JACKSONVILLE, AL 36265–	205–435–3300
TRAVEL RITE INN		200 MALLWAY	JASPER, AL 35501–	205–221–1161
ECONO LODGE		12 E. 22ND ST	LANETT, AL 36863–	205–768–3500
BEST WESTERN HUNTSVILLE MADISON AIR.		8716 HWY. 20 W	MADISON, AL 35758–	205–772–0701
DAYS INN HUNTSVILLE AIRPORT.		102 ARLINGTON DR	MADISON, AL 35758–	205–772–9550
HOLIDAY INN HUNTSVILLE MADISON AIRPORT.		9035 HWY. 20 W	MADISON, AL 35758–	205–772–7170
HOWARD JOHNSON PARK SQUARE INN.		8721 HWY. 20 W	MADISON, AL 35758–	205–772–8855
CHARLES MOTEL		11603 HWY. 431 N	MERIDIANVILLE, AL 35759–	205–828–4801
BEST WESTERN INN		180 S. BELTLINE	MOBILE, AL 36608–	205–343–9645
DAYS INN SOUTH		1705 DAUPHIN ISLAND PKWY	MOBILE, AL 36605–	205–471–6114
DRURY INN		824 S. BELTLINE HWY	MOBILE, AL 36609–	205–344–7700
FAMILY INNS		900 S. BELTLINE	MOBILE, AL 36609–	205–344–5500
HAMPTON INN	PO BOX 16988		MOBILE, AL 36616–	205–344–4942
HOLIDAY INN DOWNTOWN HISTORIC DIST.		301 GOVERNMENT ST	MOBILE, AL 36602–	205–649–0100
HOWARD JOHNSON LODGE		3132 GOVERNMENT BLVD	MOBILE, AL 36606–	205–471–2402
LA QUINTA MOTOR INN		816 S. BELTLINE HWY	MOBILE, AL 36609–	205–343–4051
MOBILE DAYS INN		5550 I–10 SERVICE RD	MOBILE, AL 36619–	205–661–8181
MOBILE MIDTOWN ECONOLODGE.		1 S. BELTLINE HWY	MOBILE, AL 36606–	205–479–5333
RADISSON ADMIRAL SEMMES HOTEL.		251 GOVERNMENT ST	MOBILE, AL 36602–	205–432–8000
RED ROOF INN #98		33 S. BELTLINE HWY	MOBILE, AL 36606–	205–476–2004
RED ROOF INN 117 MOBILE SOUTH.		5450 COCA COLA RD	MOBILE, AL 36619–	205–666–1044
RIVERVIEW PLAZA		64 WATER ST	MOBILE, AL 36602–	205–433–4000
SHONEYS INN		6556 US HWY. 90	MOBILE, AL 36616–	205–660–1520
ECONO LODGE OF MONROEVILLE.		1750 S. ALABAMA AVE	MONROEVILLE, AL 36460–	205–575–3312
MONROE MOTOR COURT	PO BOX 519	HWY. 21 S	MONROEVILLE, AL 36460–	205–575–3101
SUNSET MOTEL	PO BOX 228	RT. 1 INT. OF HWY. 84 & 136	MONROEVILLE, AL 36460–	205–575–4601
RAMSAY CONFERENCE CENTER.	STATION 6280	UNIVERSITY OF MONTEVALLO	MONTEVALLO, AL 35115–	205–665–6280
BEST WESTERN MONTGOMERY LODGE.		977 W. S. BLVD	MONTGOMERY, AL 36105–	205–288–5740
BEST WESTERN PEDDLERS INN.		4231 MOBILE HWY	MONTGOMERY, AL 36108–	205–288–0610
BUDGET INN		4409 TROY HWY	MONTGOMERY, AL 36116–	205–281–3760
BUDGETEL INN		5225 CARMICHAEL RD	MONTGOMERY, AL 36108–	205–277–6000
CAPITOL INN		205 N. GOLDTHWAITE ST	MONTGOMERY, AL 36104–	205–265–0541
COLISEUM INN		1550 FEDERAL DR	MONTGOMERY, AL 36109–	205–265–0586
COMFORT INN MONTGOMERY		5175 CARMICHAEL RD	MONTGOMERY, AL 36106–	205–277–1919
COURTYARD BY MARRIOTT MONTGOMERY.		5555 CARMICHAEL RD	MONTGOMERY, AL 36117–	205–272–5533
DAYS INN AIRPORT		1150 W. S. BLVD	MONTGOMERY, AL 36105–	205–281–8000
FAIRFIELD INN BY MARRIOTT		5601 CARMICHAEL RD	MONTGOMERY, AL 36117–	205–270–0007
HAMPTON INN		1401 E. BLVD	MONTGOMERY, AL 36117–	205–277–2400
HOLIDAY INN EAST 0291		1185 EASTERN BYPASS	MONTGOMERY, AL 36117–	205–272–0370
HOWARD JOHNSON GOVERNORS HOUSE MOTEL.		2705 E. SOUTH BLVD	MONTGOMERY, AL 36116–	205–288–2800
HOWARD JOHNSON LODGE		1110 EASTERN BLVD	MONTGOMERY, AL 36117–	205–272–8830
INN SOUTH		4243 INN SOUTH AVE	MONTGOMERY, AL 36105–	205–285–7999
JOHN'S MOTEL		800 AIRBASE BLVD	MONTGOMERY, AL 36108–	205–263–0366
LA QUINTA INN		1280 E. BLVD	MONTGOMERY, AL 36117–	205–271–1620
MOTEL TOWN PLAZA		743 MADISON AVE	MONTGOMERY, AL 36104–	205–269–1561
RAMADA EASTSIDE		1365 EASTERN BYPASS	MONTGOMERY, AL 36117–	205–277–2200
RAMADA INN		3951 NORMAN BRIDGE RD	MONTGOMERY, AL 36105–	205–288–1120
RESIDENCE INN BY MARRIOTT.		1200 HILMAR CT	MONTGOMERY, AL 36117–	205–270–3300
RIVERFRONT INN		200 COOSA ST	MONTGOMERY, AL 36104–	205–834–4300
SCOTTISH INN		7237 TROY HWY	MONTGOMERY, AL 36064–	205–288–1501
VILLAGER INN		2750 CHESTNUT ST	MONTGOMERY, AL 36107–	205–834–4055

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUPER 8 MOTEL		2451 MOODY PKWY	MOODY, AL 35004–	205–640–7091
DAYS INN		2700 WOODWARD AVE	MUSCLE SHOALS, AL 35661–	205–383–3000
ECONO LODGE		2807 WOODWARD AVE	MUSCLE SHOALS, AL 35661–	205–381–0236
WINDWOOD INN OF ONEONTA		120 HIGH SCHOOL ST	ONEONTA, AL 35121–	205–625–3961
ECONO LODGE		1105 COLUMBUS PKWY	OPELIKA, AL 36801–	205–749–8377
GOLDEN CHERRY MOTEL		1010 2ND AVE	OPELIKA, AL 36801–	205–745–7623
HOLIDAY INN		1102 COLUMBUS PKWY	OPELIKA, AL 36830–	205–745–6331
DAYS INN		26032 PERDIDO BEACH BLVD .	ORANGE BEACH, AL 36561–	205–981–9888
ISLAND HOUSE HOTEL, THE		26650 PERDIDO BEACH BLVD .	ORANGE BEACH, AL 36561–	205–981–6100
PERDIDO BEACH HILTON RESORT.		27200 PERDIDO BEACH BLVD .	ORANGE BEACH, AL 36561–	205–981–9811
HAMPTON INN ANNISTON OXFORD AL.		1600 HWY. 21 S	OXFORD, AL 36203–	205–835–1492
HOLIDAY INN ANNISTON OXFORD.		US HWY. 78 & AL 21 S	OXFORD, AL 36203–	205–831–3410
HOWARD JOHNSON'S OXFORD.		US HWY. 78 & AL 21 S	OXFORD, AL 36203–	205–835–3968
SAVE INN		25 ELM ST	OXFORD, AL 36203–	205–831–9460
COMFORT INN		110 CAHABA VALLEY PKWY	PELHAM, AL 35124–	205–444–9200
TRAVELODGE PELHAM		410 OAK MOUNTAIN CIR	PELHAM, AL 35124–	205–987–2233
RAMADA INN-LIMITED		1418 PARKHILL PKWY	PELL CITY, AL 35125–	205–338–1314
BEST WESTERN AMERICAN MOTOR LODGE.		1600 280 BYPASS	PHENIX CITY, AL 36867–	205–793–4376
ECONO LODGE		1506 280 BYPASS	PHENIX CITY, AL 36867–	205–298–5255
PHENIX CITY HOLIDAY INN		1700 US 280 BYPASS	PHENIX CITY, AL 36867–	205–698–9321
LAMONT MOTEL		US HWY. 278 E	PIEDMONT, AL 36272–	205–447–6002
MARRIOTT'S GRAND HOTEL		SCENIC HWY. 98	POINT CLEAR, AL 36564–	205–928–9201
HOLIDAY INN PRATTVILLE		I–65 & COBBS FORD RD	PRATTVILLE, AL 36066–	205–285–3420
JUPITER INN		1940 HWY. 82 W	PRATTVILLE, AL 36067–	205–361–0499
JOE WHEELER STATE LODGE	PO BOX DRAWK	OFF HWY. 72 MCLEAN DR	ROGERSVILLE, AL 35652–	205–247–5461
BAMBOO MOTEL		1113 SARALAND BLVD	SARALAND, AL 36571–	205–675–5691
PLANTATION MOTEL		1010 HWY. 43	SARALAND, AL 36571–	205–675–5511
J & W MOTEL		206 W. WILLOW ST	SCOTTSBORO, AL 35768–	205–574–2330
LIBERTY INN		902 E. WILLOW ST	SCOTTSBORO, AL 35768–	205–574–1730
RAINBOW INN		1401 E. WILLOW ST	SCOTTSBORO, AL 35768–	205–574–1115
SCOTTSBORO DAYS INN		1106 JOHN T. REID PKWY	SCOTTSBORO, AL 35768–	205–574–1212
BEST WESTERN INN		1915 W. HIGHLAND AVE	SELMA, AL 36701–	205–872–1900
CRAIG MOTEL		1134 HWY. 80 E	SELMA, AL 36071–	205–875–3150
HOLIDAY INN SELMA		US HWY. 80 W	SELMA, AL 36701–	205–872–0461
TRAVELERS INN OF SELMA INC.		2006 W. HIGHLAND AVE	SELMA, AL 36701–	205–875–1200
TOWNE INN		US HWY. 280	SYLACAUGA, AL 35150–	205–249–3821
WINDWOOD INN MOTEL		1435 HWY. 43 N	THOMASVILLE, AL 36784–	205–636–0123
WINDWOOD INN OF THOMASVILLE.		1431 HWY. 43 N	THOMASVILLE, AL 36784–	205–636–0123
ECONO LODGE		1013 US HWY. 231 S	TROY, AL 36863–	205–566–4960
BEST WESTERN PARK PLAZA MOTOR INN.		3801 McFARLAND BLVD	TUSCALOOSA, AL 35405–	205–556–9690
HOLIDAY INN		3920 E. McFARLAND BLVD	TUSCALOOSA, AL 35405–	205–553–1550
LA QUINTA MOTOR INN 4564		4122 McFARLAND BLVD. E	TUSCALOOSA, AL 35405–	205–349–3270
SHERATON CAPSTONE INN		320 BRYANT DR	TUSCALOOSA, AL 35401–	205–752–3200
SLEEP INN		4300 SKYLAND BLVD	TUSCALOOSA, AL 35405–	205–556–5696
KEY WEST INN SHOALS		1800 HWY. 72	TUSCUMBIA, AL 35674–	205–383–0700
Arkansas				
HOLIDAY INN ARKADELPHIA		I–30 & HWY. 7 & 67	ARKADELPHIA, AR 71923–	501–246–5831
DAYS INN BENTON		1501 I–30	BENTON, AR 72015–	501–776–3200
RAMADA INN		16732 INTERSTATE 30	BENTON, AR 72015–	501–776–1900
HOLIDAY INN EXPRESS		3508 S. MOBERLE LYNE	BENTONVILLE, AR 72712–	501–273–2222
THRIFTY INN BLYTHEVILLE		201 N. I–55 SERVICE RD	BLYTHEVILLE, AR 72315–	501–763–2300
DAYS INN CLARKSVILLE	RT 1 BOX 410		CLARKSVILLE, AR 72830–	501–754–8555
COMFORT INN	PO BOX 88	150 HWY. 65 N	CONWAY, AR 72032–	501–329–0300
WOODLANDS RAMADA		1400 ARKANSAS HWY. & 133 T	CROSSETT, AR 71635–	501–364–4101
COMFORT INN EL DORADO		2320 JUNCTION CITY RD	EL DORADO, AR 71730–	501–863–6677
FAYETTEVILLE HILTON		70 N. EAST AVE	FAYETTEVILLE, AR 72701–	501–442–5555
HOLIDAY EXPRESS FAYETTEVILLE.		1251 N. SHILOH DR	FAYETTEVILLE, AR 72701–	501–444–6006
HOLIDAY INN FORREST CITY		#1 HOLIDAY DR	FORREST CITY, AR 72335–	501–633–6300
BUDGETEL INN		2123 BURNHAM RD	FORT SMITH, AR 72903–	501–484–5770
HOLIDAY INN CIVIC CENTER		700 ROGERS AVE	FORT SMITH, AR 72901–	501–783–1000
RAMADA INN		5103 TOWSON AVE	FORT SMITH, AR 72901–	501–646–2931
SHERATON INN		5711 ROGERS AVE	FORT SMITH, AR 72903–	501–452–4110

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN INN OF HOPE	.....	I–300 & HWY. 4	HOPE, AR 71801–	501–777–9222
QUALITY INN OF HOPE	.....	I–30 & HWY. 29	HOPE, AR 71801–	501–777–0777
AVANELLE MOTOR LODGE	.....	1204 CENTRAL AVE	HOT SPRINGS, AR 71901–	501–321–1332
HOT SPRINGS PARK HILTON ..	PO BOX 0	305 MALVERN AVE	HOT SPRINGS, AR 71901–5445	501–623–6600
LAKE HAMILTON RESORT	.....	2803 ALBERT PIKE	HOT SPRINGS, AR 71913–	501–767–5571
HOLIDAY INN	.....	3006	JONESBORO, AR 72401–	501–935–1625
COMFORT INN AIRPORT	.....	3200 BANKHEAD DR	LITTLE ROCK, AR 72206–	501–490–2010
COURTYARD BY MARRIOTT LITTLE ROCK.	.....	10900 FINANCIAL CENTER PKWY.	LITTLE ROCK, AR 72211–	501–227–6000
HAMPTON INN I–30	.....	6100 MITCHELL DR	LITTLE ROCK, AR 72209–	501–562–6667
HOLIDAY INN WEST	.....	201 S. SHACKLEFORD	LITTLE ROCK, AR 72211–	501–223–3000
LAQUINTA INN FAIR PARK #571.	.....	901 FAIR PARK BLVD	LITTLE ROCK, AR 72204–1754 .	501–664–7000
LAQUINTA INN WEST LITTLE ROCK #2806.	.....	200 S. SHACKELFORD	LITTLE ROCK, AR 72211–	501–244–0900
LITTLE ROCK HILTON	.....	925 S. UNIVERSITY	LITTLE ROCK, AR 72204–	501–664–5020
RED ROOF INN LITTLE ROCK .	.....	7900 SCOTT HAMILTON DR	LITTLE ROCK, AR 72209–	501–562–2694
BEST WESTERN REGENCY	.....	I–55 & US 64	MARION, AR 72364–	501–739–3278
MELBOURNE MOTEL INC	.....	HWY. 9 N	MELBOURNE, AR 72556–	501–368–4355
MOUNTAIN HOME HOLIDAY INN.	.....	1350 HWY. 62 SW	MOUNTAIN HOME, AR 72653– .	501–425–5101
BUDGETEL INN #781	.....	4311 WARDEN RD	NORTH LITTLE ROCK, AR 72116–.	501–758–8888
HAMPTON INN NORTH LITTLE ROCK.	.....	500 W. 29TH ST	NORTH LITTLE ROCK, AR 72114–.	501–771–2090
LAQUINTA MOTOR INN NORTH #578.	.....	4100 MCCAIN BLVD	NORTH LITTLE ROCK, AR 72117–.	501–945–0808
RIVERFRONT HILTON INN	.....	TWO RIVERFRONT PL	NORTH LITTLE ROCK, AR 72114–.	501–371–9000
BEST WESTERN INN	.....	210 N. BLAKE ST	PINE BLUFF, AR 71601–	501–534–7222
HOLIDAY INN CONVENTION CENTER.	.....	2 CONVENTION CENTER PLAZA.	PINE BLUFF, AR 71601–	501–535–3111
COMFORT INN RUSSELLVILLE	.....	3091 E. D ST	RUSSELLVILLE, AR 72801–	501–967–7500
SHONEY'S INN	.....	3204 E. RACE AVE	SEARCY, AR 72143–	501–268–0654
HOLIDAY INN NORTHWEST ARKANSAS.	.....	1500 S. 48TH ST	SPRINGDALE, AR 72762–	501–751–8300
BUDGETEL INN	.....	5102 N. STATE LINE AVE	TEXARKANA, AR 75502–	501–773–1000
HOLIDAY INN TEXARKANA	.....	5100 STATELINE	TEXARKANA, AR 75502–	501–774–3521
DAYS INN	.....	100 INGRAM BLVD	WEST MEMPHIS, AR 72301– ...	501–735–8600
ECONO LODGE	.....	2315 S. SERVICE RD	WEST MEMPHIS, AR 72301– ...	501–732–2830
HAMPTON INN	.....	I–55 & I–40 INGRAM BLVD	WEST MEMPHIS, AR 72301– ...	501–732–1102
HAMPTON INN WEST MEMPHIS.	.....	2003 SERVICE RD	WEST MEMPHIS, AR 72301– ...	501–732–1102
THE EXPRESS INN	.....	3700 SERVICE RD. LOOP	WEST MEMPHIS, AR 72301– ...	501–732–5688
Arizona				
STAGECOACH MOTEL	.....	823 PARK AVE	ASHFORK, AZ 86320–	602–637–2551
CLIFF CASTLE LODGE	PO BOX 3430	I–17 & MIDDLE VERDE RD	CAMP VERDE, AZ 86322–	602–567–6611
HOLIDAY INN CASA GRANDE ..	.....	777 N. PINAL AVE	CASA GRANDE, AZ 85222–	602–426–3500
CHANDLER SUPER 8 MOTEL ..	.....	7171 W. CHANDLER BLVD	CHANDLER, AZ 85226–	602–961–3888
SHERATON SAN MARCOS GOLF RESORT & CONF CENTER.	.....	1 SAN MARCOS PL	CHANDLER, AZ 85224–	602–963–6655
WYNDAHAM CHANDLER	.....	7475 W. CHANDLER BLVD	CHANDLER, AZ 85226–	602–961–4444
HOLIDAY INN CHINLE GARCIAS TRADING POST.	.....	VIA RT. 7	CHINLE, AZ 86503–	602–674–5000
RODE INN MOTEL	.....	186 S. CORONADO BLVD	CLIFTON, AZ 85533–	602–865–4536
COTTONWOOD QUALITY INN ..	.....	302 W. HWY. 89A	COTTONWOOD, AZ 86326–	602–634–4207
BEST WESTERN PONY SOLDIER.	.....	3030 E. SANTA FE	FLAGSTAFF, AZ 86004–	602–526–2388
BEST WESTERN WOODLANDS PLAZA HOTEL.	.....	1175 W. RT. 66	FLAGSTAFF, AZ 86001–	602–773–8888
DAYS INN FLAGSTAFF	.....	1000 W. HWY. 66	FLAGSTAFF, AZ 86001–	602–774–5221
ECONO LODGE WEST	.....	2355 S. BEULAH BLVD	FLAGSTAFF, AZ 86001–	602–774–2225
ECONOLODGE LUCKY LANE ...	.....	2480 E. LICKY LN	FLAGSTAFF, AZ 86001–	602–774–7701
FAIRFIELD INN BY MARRIOTT FLAGSTAFF.	.....	2005 S. MILTON RD	FLAGSTAFF, AZ 86001–	602–773–1300
HOWARD JOHNSON HOTEL	.....	2200 E. BUTLER AVE	FLAGSTAFF, AZ 86004–	602–779–6944
LITTLE AMERICA HOTEL	PO BOX 3900	2515 E. BUTLER AVE	FLAGSTAFF, AZ 86003–	602–779–2741
QUALITY SUITES HOTEL	.....	706 S. MILTON RD	FLAGSTAFF, AZ 86001–	602–774–4333
RESIDENCE INN BY MARRIOTT.	.....	3440 N. COUNTRY CLUB	FLAGSTAFF, AZ 86004–	602–526–5555

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
INN AT NAU THE NORTHERN AZ UNIVERSITY.	PO BOX 5606	SAN FRANCISCO & MCCREARY ST.	FLAGSTAFF, AZ 86011–	602–523–1616
FOREST LAKES LODGE	PO BOX 31489		FOREST LAKES, AZ 85931–	602–535–4727
CLOUD NINE MOTELS		1690 E. ASH	GLOBE, AZ 85502–	602–425–5741
MOQUI LODGE	PO BOX 369	HWY. 64	GRAND CANYON, AZ 86023–	602–638–2424
QUALITY INN GREEN VALLEY		111 S. LA CANADA	GREEN VALLEY, AZ 85614–	602–625–2250
BEST WESTERN ARIZONIAN INN.		2508 E. NAVAJO BLVD	HOLBROOK, AZ 86025–	602–524–2611
COMFORT INN		2602 E. NAVAJO BLVD	HOLBROOK, AZ 86025–	602–524–6131
ECONOLODGE		2596 NAVAJO BLVD	HOLBROOK, AZ 86025–	602–542–1448
HOLBROOK SUPER 8 MOTEL		1989 NAVAJO BLVD	HOLBROOK, AZ 86025–	602–524–2871
HOLIDAY INN KAYENTA		JCT 160 AND 163	KAYENTA, AZ 86033–	602–697–3221
KINGMAN SUPER 8 MOTEL		3401 E. ANDY DEVINE AVE	KINGMAN, AZ 86401–	602–757–4808
BLUE DANUBE INN		2176 BIRCH SQUARE	LAKE HAVASU CITY, AZ 86403–.	602–855–5566
ISLAND INN HOTEL		1300 W. MCCULLOCH BLVD	LAKE HAVASU CITY, AZ 86403–.	602–680–0606
PIONEER HOTEL & DANCE HALL.		271 LAKE HAVASU AVE	LAKE HAVASU CITY, AZ 86403–.	602–855–1111
RAMADA LONDON BRIDGE RESORT.		1477 QUEENS BAY	LAKE HAVASU CITY, AZ 86403–.	602–855–0888
SANDS RESORT		2040 MESQUITE AVE	LAKE HAVASU CITY, AZ 86403–.	800–521–0360
ARIZONA GOLF RESORT		425 S. POWER RD	MESA, AZ 85206–	602–832–3202
COURTYARD BY MARRIOTT MESA.		1221 S. WESTWOOD AVE	MESA, AZ 85210–	602–461–3000
HAMPTON INN MESA		1563 S. GILBERT RD	MESA, AZ 85204–	602–926–3600
HILTON PAVILION		1011 W. HOMES AVE	MESA, AZ 85210–	602–833–5555
HOLIDAY INN MESA		1600 S. COUNTRY CLUB	MESA, AZ 85210–	602–964–7000
LEXINGTON HOTEL SUITES		1410 S. COUNTRY CLUB DR	MESA, AZ 85210–	602–964–2897
SHERATON MESA HOTEL		200 N. CENTENNIAL WAY	MESA, AZ 85250–	602–898–8300
SUPER 8 MOTEL MESA		6733 E. MAIN ST	MESA, AZ 85205–	602–981–6181
HOLIDAY INN	1867	287 N. LAKE POWELL BLVD	PAGE, AZ 86040–	602–645–8851
INN AT LAKE POWELL INC		716 RIM VIEW DR	PAGE, AZ 86040–	602–645–2466
EL RANCHO PARKER MOTEL		709 CALIFORNIA AVE	PARKER, AZ 85344–	602–669–2231
PAYSON PUEBLO INN		809 E. HWY. 260	PAYSON, AZ 85541–	602–474–5241
PAYSON TRAVELODGE		101 W. PHOENIX ST	PAYSON, AZ 85541–	602–474–4526
BEST WESTERN AIRPORT INN		2425 S. 24 ST	PHOENIX, AZ 85034–	602–273–7251
BEST WESTERN BELL MOTEL		17211 N. BLACK CANYON HWY	PHOENIX, AZ 85023–	602–993–8300
BEST WESTERN INNSUITES		1615 E. NORTHERN AVE	PHOENIX, AZ 85020–	602–997–6285
COMFORT INN NORTH		1711 W. BELL RD	PHOENIX, AZ 85023–	602–866–2089
COURTYARD BY MARRIOTT CAMELBACK.		2621 E. CAMELBACK RD	PHOENIX, AZ 85016–	602–955–5200
COURTYARD BY MARRIOTT PHOENIX AIRPORT.		2621 S. 47 ST	PHOENIX, AZ 85034–	602–966–4300
COURTYARD BY MARRIOTT PHOENIX METRO CENTER.		9631 N. BLACK CANYON	PHOENIX, AZ 85021–	602–944–7373
FAIRFIELD INN BY MARRIOTT PHOENIX WEST.		1241 N. 53 AVE	PHOENIX, AZ 85043–	602–269–1919
FOUNTAIN SUITES HOTEL		2577 W. GREENWAY RD	PHOENIX, AZ 85023–	602–375–1777
HAMPTON INN		4234 S. 48 ST	PHOENIX, AZ 85040–	602–438–8688
HAMPTON INN		8101 N. BLACK CANYON HWY	PHOENIX, AZ 85021–	602–864–6233
HOLIDAY INN		1500 N. 51 AVE	PHOENIX, AZ 85043–	602–484–9009
HOLIDAY INN AIRPORT EAST		4300 E. WASHINGTON	PHOENIX, AZ 85034–	602–273–7778
HOLIDAY INN CORPORATE CENTER.		2532 W. PEORIA AVE	PHOENIX, AZ 85029–	602–943–2341
HOLIDAY INN NORTH CENTRAL.		4321 N. CENTRAL AVE	PHOENIX, AZ 85012–	602–277–6671
HOLIDAY INN WEST		1500 N. 51ST AVE	PHOENIX, AZ 85043–	602–484–9009
HOTEL WESTCOURT		10220 N. METRO PKWY. E	PHOENIX, AZ 85051–	602–997–5900
HYATT REGENCY PHOENIX		122 N. SECOND ST	PHOENIX, AZ 85004–	602–252–1234
LA QUINTA INN #704		2725 N. BLACK CANYON HWY	PHOENIX, AZ 85009–	602–258–6271
LOS OLIVOS EXECUTIVE HOTEL.		202 E. MCDOWELL RD	PHOENIX, AZ 85004–	602–258–6911
OMNI ADAMS HOTEL		111 N. CENTRAL AVE	PHOENIX, AZ 85004–	602–257–1525
PHOENIX AIRPORT HILTON		2435 S. 47TH ST	PHOENIX, AZ 85034–6410	602–894–1600
PHOENIX HILTON SUITES		10 E. THOMAS RD	PHOENIX, AZ 85012–	602–222–1111
POINT HILTON RESORT AT SQUAW PEAK.		7677 NORTH 16TH STREET	PHOENIX, AZ 85020–	602–997–2626
QUALITY HOTEL CENTRAL PHOENIX.		3600 N. SECOND AVE	PHOENIX, AZ 85013–	602–248–0222
RADISSON HOTEL AIRPORT		3333 E. UNIVERSITY DR	PHOENIX, AZ 85034–	602–437–8400

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RESIDENCE INN		8242 N. BLACK CANYON FRWY.	PHOENIX, AZ 85051–	602–864–1900
RITZ CARLTON PHOENIX HOTEL.		2401 E. CAMELBACK RD	PHOENIX, AZ 85016–	602–468–0700
ROYAL SUITES		10421 N. 33 AVE	PHOENIX, AZ 85051–	602–942–1000
SAN CARLOS HOTEL		202 N. CENTRAL AVE	PHOENIX, AZ 85004–	602–253–4121
TRAVELERS INN		8130 N. BLACK CANYON HWY	PHOENIX, AZ 85051–	602–995–8451
TRAVELERS INN		5102 W. LATHAM ST	PHOENIX, AZ 85043–	602–233–1988
WOOLLEY SUITES HOTEL		3211 E. PINCHOT AVE	PHOENIX, AZ 85018–	602–957–1350
WYNDHAM GARDEN HOTEL PHOENIX AIRPORT.		427 N. 44TH ST	PHOENIX, AZ 85008–	602–220–4400
WYNDHAM NORTH PHOENIX		2641 W. UNION HILLS DR	PHOENIX, AZ 85027–	602–978–2222
COLONY INN		1225 E. GURLEY ST	PRESCOTT, AZ 86301–	602–445–7057
COMFORT INN		1290 WHITE SPAR RD	PRESCOTT, AZ 86303–	602–778–5770
HOTEL VENDOME		230 S. CORTEZ ST	PRESCOTT, AZ 86303–	602–776–0900
SHERATON PRESCOTT RESORT & CONFERENCE CENTER.		1500 HWY. 69	PRESCOTT, AZ 86301–	602–776–1666
DAYS INN PRESCOTT VALLEY		7875 E. HWY. 69	PRESCOTT VALLEY, AZ 86314–.	602–772–8600
BEST WESTERN PAPAGO INN & RESORT.		7017 E. MCDOWELL RD	SCOTTSDALE, AZ 85257–	602–947–7335
BEST WESTERN THUNDERBIRD SUITES.		7515 E. BUTHERUS	SCOTTSDALE, AZ 85260–	602–951–4000
COURTYARD BY MARRIOTT SCOTTSDALE MAYO CLINIC.		13444 E. SHEA BLVD	SCOTTSDALE, AZ 85259–	602–860–4000
DAYS INN SCOTTSDALE		4710 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85251–	602–947–5411
FAIRFIELD INN BY MARRIOTT SCOTTSDALE.		13440 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85254–	602–483–0042
HOLIDAY INN HOTEL AT SCOTTSDALE MALL.		7353 E. INDIAN SCHOOL RD	SCOTTSDALE, AZ 85251–	602–994–9203
HOLIDAY INN SCOTTSDALE		5101 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85253–	602–945–4392
HOSPITALITY SUITE RESORT SCOTTSDALE.		409 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85257–	602–949–5115
HYATT REGENCY SCOTTSDALE.		2500 E. DOUBLETREET	SCOTTSDALE, AZ 85258–	602–991–3388
MARRIOTT SUITES SCOTTSDALE.		7325 E. THIRD AVE	SCOTTSDALE, AZ 85251–	602–945–5155
MARRIOTT'S CAMELBACK INN		5402 E. LINCOLN DR	SCOTTSDALE, AZ 85253–	602–948–1700
MARRIOTT'S MOUNTAIN SHADOW RESORT.		5641 E. LINCOLN DR	SCOTTSDALE, AZ 85253–	602–948–7111
ORANGE TREE GOLF RESORT		10601 N. 56 ST	SCOTTSDALE, AZ 85254–	602–948–6100
RED LION'S LAPOSADA RESORT HOTEL.		4949 E. LINCOLN DRIVE	SCOTTSDALE, AZ 85253–	602–952–0420
REGAL MCCORMICK RANCH		7401 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85253–	602–948–5050
REGISTRY RESORT		7171 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85253–	602–991–3800
RESIDENCE INN BY MARRIOTT SCOTTSDALE.		6040 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85253–	602–948–8666
RODEWAY INN OF SCOTTSDALE.		7110 E. INDIAN SCHOOL RD	SCOTTSDALE, AZ 85251–	602–946–3456
SAFARI RESORT		4611 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85253–	602–945–0721
SCOTTSDALE HILTON RESORT AND SPA.		6333 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85250–	602–948–7750
SCOTTSDALE INN AT ELDORADO PARK.		7707 E. MCDOWELL RD	SCOTTSDALE, AZ 85257–	602–941–1202
SCOTTSDALE PLAZA RESORT		7200 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85253–	602–948–5000
SUNBURST HOTEL & CONFERENCE CENTER.		4925 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85251–	602–945–7666
WYNDHAM PARADISE VALLEY		5401 N. SCOTTSDALE RD	SCOTTSDALE, AZ 85250–	602–947–5400
LOS ABRIGADOS RESORT		160 PORTAL LANE	SEDONA, AZ 86336–	602–282–1777
RAMADA INN SIERRA VISTA		2047 S. STATE HWY. 92	SIERRA VISTA, AZ 85635–	602–459–5900
SIERRA SUITES		391 E. FRY BLVD	SIERRA VISTA, AZ 85635–	602–454–4221
SUN CANYON INN		260 GARDEN AVE. N	SIERRA VISTA, AZ 85635–	602–459–0610
THUNDER MOUNTAIN INN		1621 S. HWY. 92	SIERRA VISTA, AZ 85635–	602–458–7900
VILLAGE INN MOTEL		2440 FRY BLVD	SIERRA VISTA, AZ 85635–	602–458–4315
WESTERN MOTEL		43 W. FRY BLVD	SIERRA VISTA, AZ 85635–	602–458–4303
WINDMILL INN AT SUN CITY WEST.		12545 W. BELL RD	SURPRISE, AZ 85374–	602–583–0133
COUNTRY SUITES BY CARLSON.		1660 W. ELLIOT RD	TEMPE, AZ 85282–	602–345–8585
EMBASSY SUITES HOTEL TEMPE.		4400 S. RURAL RD	TEMPE, AZ 85282–	602–897–7444

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
FIESTA INN		2100 S. PRIEST DRIVE	TEMPE, AZ 85282–	602–967–1441
INNSUITES TEMPE PHOENIX AIRPORT.		1651 W. BASELINE RD	TEMPE, AZ 85283–	602–897–7900
LA QUINTA MOTOR INN		911 S. 48 ST	TEMPE, AZ 85281–	602–967–4465
QUALITY INN & SUITES		1635 N. SCOTTSDALE RD	TEMPE, AZ 85281–	602–947–3711
RESIDENCE INN BY MARRIOTT.		5075 S. PRIEST DR	TEMPE, AZ 85282–	602–756–2122
ROADWAY INN PHOENIX AIRPORT EAST TEMPE.		1550 S. 52ND ST	TEMPE, AZ 85281–	602–967–3000
SHERATON TEMPE MISSION PALMS HOTEL.		60 E. FIFTH ST	TEMPE, AZ 85281–	602–894–1400
TEMPE MOTEL		974 E. APACHE BLVD	TEMPE, AZ 85281–	602–894–0909
THE BUTTES		2000 WESTCOURT WAY	TEMPE, AZ 85282–	602–225–9000
TUBA MOTEL		NW CORNER MAIN & MOEN AVE.	TUBA CITY, AZ 86045–	602–283–4545
CLAIRION HOTEL TUCSON AIRPORT.		6801 S. TUCSON BLVD	TUCSON, AZ 85706–	602–746–3932
COURTYARD BY MARRIOTT TUCSON AIRPORT.		2505 E. EXECUTIVE BLVD	TUCSON, AZ 85706–	602–573–0000
DAYS INN TUCSON		3700 E. IRVINGTON RD	TUCSON, AZ 85714–	602–571–1400
DOUBLETREE HOTEL TUCSON		445 S. ALVERNON	TUCSON, AZ 85711–	602–881–4200
EMBASSY SUITES		7051 S. TUCSON BLVD	TUCSON, AZ 85706–	602–573–0700
FLAMINGO SUN HOTEL		1300 N. STONE	TUCSON, AZ 85705–	602–770–1910
HAMPTON INN TUCSON AIRPORT.		6971 S. TUCSON BLVD	TUCSON, AZ 85706–	602–889–5789
HOLIDAY INN CITY CENTER		181 W. BROADWAY ROAD	TUCSON, AZ 85701–	602–624–8711
HOLIDAY INN PALO VERDE		4550 S. PALO VERDE BLVD	TUCSON, AZ 85714–	602–748–1161
HOWARD JOHNSON LODGE		750 W. 22 ST	TUCSON, AZ 85713–	602–624–4455
LA QUINTA MOTOR INN #4699		6404 E. BROADWAY	TUCSON, AZ 85710–	602–747–1414
LA QUINTA MOTOR INN #703		655 N. FRWY	TUCSON, AZ 85745–	602–622–6491
LOEWS VENTANA CANYON RESORT.		7000 N. RESORT DR	TUCSON, AZ 85715–	602–299–2020
NORTH CAMPBELL SUITES HOTEL.		2925 N. CAMPBELL AVE	TUCSON, AZ 85719–	602–323–7378
PARK INN INTERNATIONAL AIRPORT.		2803 E. VALENCIA RD	TUCSON, AZ 85706–	602–294–2500
PLAZA HOTEL & CONFERENCE CENTER.		1900 E. SPEEDWAY BLVD	TUCSON, AZ 85719–	602–327–7341
QUALITY INN UNIVERSITY AND CONFERENCE CENTER.		1601 N. ORACLE RD	TUCSON, AZ 85705–	602–623–6666
RADISSON SUITE HOTEL TUCSON.		6555 E. SPEEDWAY BLVD	TUCSON, AZ 85710–	602–721–7100
RAMADA INN FOOTHILLS		6944 E. TANQUE VERDE RD	TUCSON, AZ 85715–	602–886–9595
RAMADA PALO VERDE		5251 S. JULIAN DR	TUCSON, AZ 85706–	602–294–5250
RESIDENCE INN BY MARRIOTT TUCSON.		6477 E. SPEEDWAY BLVD	TUCSON, AZ 85710–	602–721–0991
ROADWAY INN NORTH		1365 W. GRANT RD	TUCSON, AZ 85745–	602–622–7791
SHERATON TUCSON EL CONQUISTADOR RESORT.		10,000 N. ORACLE RD	TUCSON, AZ 85737–7696	602–544–5000
SUN HOTEL		401 W. LAVERY LANE	TUCSON, AZ 85704–	602–742–2689
TANQUE VERDE INN		7007 E. TANQUE VERDE	TUCSON, AZ 85715–	602–298–2300
TUCSON EAST HILTON TOWERS.		7600 E. BROADWAY	TUCSON, AZ 85710–	602–721–5600
TUCSON NATIONAL GOLF & CONFERENCE RESORT.		2727 W. CLUB DR	TUCSON, AZ 85741–	602–297–2271
WESTIN LA PALOMA		3800 E. SUNRISE	TUCSON, AZ 85718–	602–742–6000
AMERICINN MOTEL		850 E. WICKENBURG WAY	WICKENBURG, AZ 85358–	602–684–5461
BEST WESTERN RANCHO GRANDE.		293 E. WICKENBURG WAY	WICKENBURG, AZ 85358–	602–684–5445
HOLIDAY INN EXPRESS		831 W. BILL WILLIAMS AVE	WILLIAMS, AZ 86046–	602–635–9000
BEST WESTERN CHILTON INN		300 E. 32ND ST	YUMA, AZ 85364–	602–344–1050
BEST WESTERN INNSUITES YUMA.		1450 CASTLE DOME AVE	YUMA, AZ 85365–	602–783–8341
HOLIDAY INN EXPRESS		3181 S. 4TH AVE	YUMA, AZ 85364–	602–344–1420
PARK INN SUITES HOTEL		2600 S. 4TH AVE	YUMA, AZ 85364–	602–726–4830
SHILO INN—YUMA		1550 S. CASTLE DOME RD	YUMA, AZ 85365–	602–641–6565
California				
RAMADA HOTEL AGOURA HILLS.		30100 AGOURA RD	AGOURA HILLS, CA 91301–	818–707–1220
MARINA VILLAGE INN		3 PACIFIC MARINA	ALAMEDA, CA 94501–	510–523–9450

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Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN ALHAMBRA INN.	.....	2451 W. MAIN ST	ALHAMBRA, CA 91801–	818–284–5522
QUALITY INN ALHAMBRA	.....	2221 W. COMMONWEALTH AVE.	ALHAMBRA, CA 91803–	818–300–0003
ANAHEIM DESERT PALM INN AND SUITES.	.....	631 W. KATELLA AVE	ANAHEIM, CA 92802–	714–535–1133
ANAHEIM HARBOR INN	.....	2171 S. HARBOR BLVD	ANAHEIM, CA 92802–	714–750–3100
ANAHEIM HILTON & TOWERS .	.....	777 CONVENTION WAY	ANAHEIM, CA 92802–	714–750–4321
ANAHEIM INTERNATIONAL INN	.....	2060 S. HARBOR BLVD	ANAHEIM, CA 92802–	714–971–9393
ANAHEIM MARRIOTT HOTEL ...	.....	700 W. CONVENTION WAY	ANAHEIM, CA 92802–3483	714–750–8000
ANAHEIM PLAZA HOTEL	.....	1700 S. HARBOR BLVD	ANAHEIM, CA 92802–	714–772–5900
ANAHEIM STADIUM TRAVELODGE.	.....	1700 E. KATELLA AVE	ANAHEIM, CA 92805–	714–634–1920
BEST WESTERN COURTESY INN.	.....	1200 S. W. ST	ANAHEIM, CA 92802–	714–772–2470
BEST WESTERN CRYSTAL SUITE HOTEL.	.....	1752 S. CLEMENTINE ST	ANAHEIM, CA 92802–	714–535–7773
CANDY CANE INN	.....	1747 S. HARBOR BLVD	ANAHEIM, CA 92802–	714–774–5284
CROWN STERLING SUITES	.....	3100 E. FRONTERA	ANAHEIM, CA 92806–	714–632–1221
CRYSTAL SUITES	.....	1752 S. CLEMENTINE	ANAHEIM, CA 92802–	714–535–7773
DISNEYLAND HOTEL	.....	1150 W. CERRITOS AVE	ANAHEIM, CA 92802–	714–778–6600
ECONO LODGE WEST	.....	837 S. BEACH BLVD	ANAHEIM, CA 92804–	714–952–0898
GRAND HOTEL	.....	7 FREEDMAN WAY	ANAHEIM, CA 92802–	714–772–7777
HAMPTON INN ANAHEIM	.....	300 E. KATELLA WAY	ANAHEIM, CA 92802–	714–772–8713
HOLIDAY INN ANAHEIM CENTER.	.....	1221 S. HARBOR BLVD	ANAHEIM, CA 92805–	714–758–0900
HOLIDAY INN EXPRESS ANAHEIM.	.....	435 W. KATELLA AVE	ANAHEIM, CA 92802–	714–772–7755
HOLIDAY INN MAINGATE ANAHEIM.	.....	1850 S. HARBOR BLVD	ANAHEIM, CA 92802–	714–750–2801
HYATT REGENCY ALICANTE ANAHEIM.	PO BOX 4669	AT HARBOR & CHAPMAN	ANAHEIM, CA 92803–	714–750–1234
JOLLY ROGER INN HOTEL	.....	640 W. KATELLA AVE	ANAHEIM, CA 92802–	714–772–7621
PENNY SLEEPER INN	.....	1441 S. MANCHESTER AVE	ANAHEIM, CA 92802–	714–991–8100
QUALITY HOTEL MAINGATE	.....	616 CONVENTION WAY	ANAHEIM, CA 92802–	714–750–3131
QUALITY INN ANAHEIM WEST .	.....	727 S. BEACH BLVD	ANAHEIM, CA 92804–	714–220–0100
QUALITY INN BROOKHURST ...	.....	711 S. BROOKHURST AVE	ANAHEIM, CA 92804–	714–999–1200
RAFFLES INN & SUITES	.....	2040 S. HARBOR BLVD	ANAHEIM, CA 92802–	714–750–6100
RESIDENCE INN BY MARRIOTT ANAHEIM.	.....	1700 S. CLEMENTINE ST	ANAHEIM, CA 92802–	714–533–3555
SCOTTISH INN	.....	2255 W. LINCOLN AVE	ANAHEIM, CA 92801–	714–774–7774
SHERATON ANAHEIM HOTEL ..	.....	1015 W. BALL RD	ANAHEIM, CA 92802–	714–778–1700
STAR MOTEL	.....	1250 W. MISSION BLVD	ANAHEIM, CA 91761–	714–391–3470
TRAVELODGE ANAHEIM BEACH BLVD.	.....	328 N. STANTON AVE	ANAHEIM, CA 92801–	714–229–0101
BEST WESTERN KNIGHTS INN	.....	2688 GATEWAY DR	ANDERSON, CA 96007–	916–365–2753
ANGELS INN MOTEL	PO BOX 521	600 N. MAIN	ANGELS CAMP, CA 95221–	209–736–4192
BEST WESTERN HERITAGE INN	.....	3210 DELTA FAIR BLVD	ANTIOCH, CA 94509–	510–778–2000
RAMADA INN	.....	2436 MAHOGANY WAY	ANTIOCH, CA 94509–	510–754–6600
EMBASSY SUITES	.....	211 E. HUNTINGTON DR	ARCADIA, CA 91006–	818–445–8525
HAMPTON INN ARCADIA	.....	311 E. HUNTINGTON DR	ARCADIA, CA 91006–	818–574–5600
ARCATA SUPER 8 MOTEL	.....	4887 VALLEY W. BLVD	ARCATA, CA 95521–	707–822–8888
COMFORT INN ARCATA	.....	4701 VALLEY W. BLVD	ARCATA, CA 95521–	707–826–2827
QUALITY INN MAD RIVER	.....	3535 JANES RD	ARCATA, CA 95521–	707–822–0409
BEST WESTERN CASA GRANDE INN.	.....	850 OAK PARK RD	ARROYO GRANDE, CA 93420–	805–481–7398
E Z 8 MOTELS INC	.....	555 CAMINO MERCADO	ARROYO GRANDE, CA 93420–	805–481–4774
BEST WESTERN PIONEER INN	.....	16905 S. PIONEER BLVD	ARTESIA, CA 90701–	310–402–2202
RAMADA INN ARTESIA CERRITOS.	.....	17510 S. PIONEER BLVD	ARTESIA, CA 90701–	310–924–6700
AUBURN INN	.....	1875 AUBURN RAVINE RD	AUBURN, CA 95603–	916–885–1800
BEST WESTERN GOLDEN KEY MOTEL.	.....	13450 LINCOLN WAY	AUBURN, CA 95603–	916–885–8611
CATALINA CANYON HOTEL	PO BOX 736	888 COUNTRY CLUB DR	AVALON, CA 90704–	310–510–0325
AVERY HOTEL	PO BOX 371	4573 MORAN RD	AVERY, CA 95224–	209–795–8935
STARDUST MOTEL	.....	666 E. FOOTHILL BLVD	AZUSA, CA 91702–	818–334–0251
BEST WESTERN INN	.....	2620 PIERCE RD	BAKERSFIELD, CA 93308–	805–327–9651
COMFORT INN BAKERSFIELD .	.....	2514 WHITE LN	BAKERSFIELD, CA 93304–	805–833–8000
COMFORT INN CENTRAL	.....	830 WIBLE RD	BAKERSFIELD, CA 93304–	805–831–1922
COURTYARD BY MARRIOTT BAKERSFIELD.	.....	3601 MARRIOTT DR	BAKERSFIELD, CA 93308–	805–324–6660

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DAYS INN HOTEL		3540 ROSEDALE HWY	BAKERSFIELD, CA 93308–	805–326–1111
E Z 8 MOTEL #47		2604 PIERCE RD	BAKERSFIELD, CA 93306–	805–322–1901
E Z 8 MOTELS INC		5200 OLIVE TREE CT	BAKERSFIELD, CA 93308–	805–392–1511
E Z 8 MOTELS INC		2604 PIERCE RD	BAKERSFIELD, CA 93308–	805–322–1901
ECONO LODGE		2700 WHITE LN	BAKERSFIELD, CA 93304–	805–832–3111
ECONOMY MOTELS OF AMERICA.		6501 COLONY ST	BAKERSFIELD, CA 93307–	805–831–9200
ECONOMY MOTELS OF AMERICA.		6100 KNUDSEN DR	BAKERSFIELD, CA 93308–	805–392–1800
GARDEN SUITES INN		2310 WIBLE RD	BAKERSFIELD, CA 93304–	805–833–6066
LA QUINTA INN #646		3232 RIVERSIDE DR	BAKERSFIELD, CA 93308–	805–325–7400
LONE OAK INN		10614 ROSEDALE HWY	BAKERSFIELD, CA 93312–	805–589–6600
OAK INN		889 OAK ST	BAKERSFIELD, CA 93304–	805–324–9686
RED LION HOTEL BAKERSFIELD.		3100 CAMINO DEL RIO CT	BAKERSFIELD, CA 93308–	805–323–7111
RESIDENCE INN BY MARRIOTT.		4241 CHESTER LN	BAKERSFIELD, CA 93309–	805–321–9800
RIO BRAVO RESORT		11200 LAKE MING RD	BAKERSFIELD, CA 93306–	805–872–5000
SHERATON INN BAKERSFIELD		5101 CALIFORNIA AVE	BAKERSFIELD, CA 93309–	805–325–9700
HILTON SAN GABRIEL VALLEY		14636 BALDWIN PARK TOWNE CTR.	BALDWIN PARK, CA 91706–	818–962–6000
THE BALLARD INN		2436 BASELINE AVE	BALLARD, CA 93463–	805–688–7770
BANNING SUPER 8 MOTEL		1690 W. RAMSEY ST	BANNING, CA 92220–	909–849–6887
BEST WESTERN DESERT VILLA.		1984 E. MAIN ST	BARSTOW, CA 92311–	619–256–1781
ECONOMY MOTELS OF AMERICA.		1590 COOLWATER LN	BARSTOW, CA 92311–	619–256–1737
HOLIDAY INN BARSTOW		1511 E. MAIN ST	BARSTOW, CA 92311–	619–256–5673
COMFORT INN BELLFLOWER		17111 CLARK AVE	BELLFLOWER, CA 90706–	310–920–8853
BERKELEY MARINA MARRIOTT		200 MARINA BLVD	BERKELEY, CA 94710–	510–548–7920
BERKELEY TRAVELODGE		1820 UNIVERSITY AVE	BERKELEY, CA 94703–	310–843–4262
BEVERLY HILTON HOTEL		9876 WILSHIRE BLVD	BEVERLY HILLS, CA 90210–	310–285–1329
BEVERLY HOUSE HOTEL		140 S. LASKY DR	BEVERLY HILLS, CA 90212–	310–271–2145
BEVERLY PAVILION HOTEL		9360 WILSHIRE BLVD	BEVERLY HILLS, CA 90212–	310–273–1400
THE PENINSULA BEVERLY HILLS.		9882 S. SANTA MONICA BLVD	BEVERLY HILLS, CA 90212–	310–273–4888
VENTANA INN		1	BIG SUR, CA 93920–	408–667–2331
BLYTHE SUPER 8 MOTEL		550 W. DONLON ST	BLYTHE, CA 92225–	619–922–8881
E Z 8 MOTELS INC		900 W. RICE ST	BLYTHE, CA 92225–	619–922–9191
THE TOLL HOUSE	PO BOX 268	15301 HWY. 253	BOONVILLE, CA 95415–	707–895–3630
LA CASA DEL ZORRO		3845 YAQUI PASS RD	BORREGO SPRINGS, CA 92004–.	619–767–5323
PALM CANYON RESORT	PO BOX 956	221 PALM CANYON DR	BORREGO SPRINGS, CA 92004–.	619–767–5341
TOWNHOUSE LODGE		135 MAIN ST	BRAWLEY, CA 92227–	619–344–5120
TRAVEL INN		300 W. MAIN ST	BRAWLEY, CA 92227–	619–344–2810
EMBASSY SUITES BREA		900 E. BIRCH ST	BREA, CA 92621–	714–990–6000
WOODFIN SUITE HOTEL		3100 E. IMPERIAL HWY	BREA, CA 92621–	714–579–3200
THE CAIN HOUSE		11 MAIN ST	BRIDGEPORT, CA 93517–	619–932–7040
FLYING DOUBLE A RANCH		700 RUTH STAR RT	BRIDGEVILLE, CA 95526–	707–574–6668
SOLVANG BUELLTON HOLIDAY INN.		555 MCMURRY RD	BUELLTON, CA 93427–	805–688–1000
COURTYARD BY MARRIOTT BUENA PARK.		7621 BEACH BLVD	BUENA PARK, CA 90620–	714–670–6600
EMBASSY SUITES HOTEL		7762 BEACH BLVD	BUENA PARK, CA 90620–	714–739–5600
FAIRFIELD INN BUENA PARK		7032 ORANGETHORPE AVE	BUENA PARK, CA 90621–	714–523–1488
TRAVELERS INN		7121 BEACH BLVD	BUENA PARK, CA 90620–	714–670–9000
BUENA VISTA MOTEL		2255 BUENA VISTA ST	BURBANK, CA 91504–3309	818–848–1680
BURBANK AIRPORT HILTON HOTEL & CONVENTION CTR.		2500 HOLLYWOOD WAY	BURBANK, CA 91505–	818–843–6000
HOLIDAY INN SUITES BURBANK.		150 E. ANGELENO	BURBANK, CA 91502–	818–841–4770
RAMADA INN BURBANK AIRPORT.		2900 N. SAN FERNANDO BLVD	BURBANK, CA 91504–	818–843–5955
SAFARI INNS INC		1911 W. OLIVE AVE	BURBANK, CA 91506–	818–845–8586
TOLUCAN MOTEL		3910 RIVERSIDE DR	BURBANK, CA 91505–	818–845–8517
DAYS INN SAN FRANCISCO AIRPORT.		777 AIRPORT BLVD	BURLINGAME, CA 94010–	415–342–7772
DOUBLETREE HOTEL AT SAN FRANCISCO AIRPORT.		835 AIRPORT BLVD	BURLINGAME, CA 94010–9949	415–344–5500
HOLIDAY INN CROWNE PLAZA		600 AIRPORT BLVD	BURLINGAME, CA 94010–	415–340–8500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HYATT REGENCY SAN FRANCISCO AIRPORT.		1333 BAYSHORE HWY	BURLINGAME, CA 94010–	415–347–1234
RAMADA SAN FRANCISCO AIRPORT.		1250 OLD BAYSHORE HWY	BURLINGAME, CA 94010–	415–347–2381
SAN FRANCISCO AIRPORT MARRIOTT.		1800 OLD BAYSHORE HWY	BURLINGAME, CA 94010–	415–692–9100
NICE INN	PO BOX 921	20681 TRACY AVE	BUTTONWILLOW, CA 93206–	805–764–5117
COUNTRY INN AT CALABASAS		23627 CALABASAS RD	CALABASAS, CA 91302–	818–222–5300
COMFORT INN		1865 LINCOLN AVE. N	CALISTOGA, CA 94515–	707–942–9400
COURTYARD BY MARRIOTT CAMARILLO.		4994 VERDUGO WAY	CAMARILLO, CA 93010–	805–388–1020
DEL NORTE INN		4444 CENTRAL AVE	CAMARILLO, CA 93010–	805–485–3999
MOTEL 6		1641 E. DAILY DR	CAMARILLO, CA 93010–	805–388–3467
THE COUNTRY INN AT CAMARILLO.		1405 DEL NORTE RD	CAMARILLO, CA 93010–	805–983–7171
WHITE WATER INN		6790 MOONSTONE BEACH DR	CAMBRIA, CA 93428–	805–927–1066
EXECUTIVE INN		1300 CAMDEN AVE	CAMPBELL, CA 95008–	408–559–3600
PRUNEYARD INN	PO BOX 925	1995 S. BASCOM AVE	CAMPBELL, CA 95008–	408–559–4300
RESIDENCE INN BY MARRIOTT SAN JOSE.		2761 S. BASCOM AVE	CAMPBELL, CA 95008–	408–559–1551
BEST WESTERN CANOGA PARK MOTOR INN.		20122 VANOWEN ST	CANOGA PARK, CA 91306–	818–883–1200
CLARION SUITES WARNER PALMS HOTEL.		20200 SHERMAN WAY	CANOGA PARK, CA 91306–	818–883–8250
COUNTRY SQUIRE INN		7631 TOPANGA CANYON BLVD	CANOGA PARK, CA 91304–	818–883–0240
DAYS INN SAN FERNANDO VALLEY.		20128 ROSCOE BLVD	CANOGA PARK, CA 91306–	818–341–7200
BEST WESTERN ANDERSENS INN.		850 PALOMAR AIRPORT RD	CARLSBAD, CA 92008–	619–438–7880
BEST WESTERN BEACH TERRACE INN.		2775 OCEAN ST	CARLSBAD, CA 92006–	619–729–5951
BEST WESTERN BEACH VIEW LODGE.		3180 CARLSBAD BLVD	CARLSBAD, CA 92008–	619–729–1151
CARLSBAD INN BEACH RESORT.		3075 CARLSBAD BLVD	CARLSBAD, CA 92008–	619–434–7020
INNS OF AMERICA		751 RAINTREE DR	CARLSBAD, CA 92009–	619–931–1185
LA COSTA RESORT AND SPA		2100 COSTA DEL MAR RD	CARLSBAD, CA 92009–	619–438–9111
RAMADA INN SUITES CARLSBAD.		751 MACADAMIA DR	CARLSBAD, CA 92009–	619–438–2285
CARMEL VALLEY RANCH RESORT.		ONE OLD RANCH RD	CARMEL, CA 93923–	408–625–9500
BEST WESTERN CARPINTERIA INN.		4558 CARPINTERIA AVE	CARPINTERIA, CA 93103–	805–684–0473
CLARION HOTEL CONFERENCE CENTER.		TWO CIVIC PLAZA DR	CARSON, CA 90745–	310–830–8200
COMFORT INN		1325 E. CARSON ST	CARSON, CA 90745–	310–830–8044
DAYS INN SUITES		69 151 E. PALM CANYON DR	CATHEDRAL CITY, CA 92234–	619–324–5934
DOUBLETREE RESORT AT THE DESERT PRINCESS.		67 967 VISTA CHINO	CATHEDRAL CITY, CA 92234–	619–322–7000
TIMBERHILL RANCH		35755 HAUSER BRIDGE RD	CAZADERO, CA 95421–	707–847–3258
STARS INN		10269 SANTA MONICA BLVD	CENTURY CITY, CA 90067–	310–556–3076
SHERATON CERRITOS HOTEL		12725 CTR. CT. DR	CERRITOS, CA 90701–	310–809–1500
7 STAR SUITES HOTEL		21603 DEVONSHIRE ST	CHATSWORTH, CA 91311–	818–998–8888
RAMADA INN		21340 DEVONSHIRE ST	CHATSWORTH, CA 91311–	818–998–5289
SUMMERFIELD SUITES HOTEL		21902 LASSEN	CHATSWORTH, CA 91311–	818–773–0707
THE CHATSWORTH HOTEL		9777 TOPANGA CANYON BLVD	CHATSWORTH, CA 91311–	818–709–7054
BEST WESTERN HERITAGE INN.		25 HERITAGE LN	CHICO, CA 95926–	916–894–8600
BEST WESTERN PINE TREE MOTEL.		12018 CENTRAL AVE	CHINO, CA 91710–	714–628–6021
ALL SEASONS INN		699 E. ST	CHULA VISTA, CA 91910–	619–585–1999
DAYS INN CHULA VISTA		225 BAY BLVD	CHULA VISTA, CA 91910–	619–425–8200
LA QUINTA #647		150 BONITA RD	CHULA VISTA, CA 91910–	619–691–1211
RIVIERA MOTEL		372 BROADWAY	CHULA VISTA, CA 91910–	619–422–1967
THE TRAVELER MOTEL KITCHEN SUITES.		235 WOODLAWN AVE	CHULA VISTA, CA 91910–	619–427–9170
INDUSTRY HILLS SHERATON RESORT.		#1 INDUSTRY HILLS PKWY	CITY OF INDUSTRY, CA 91744–.	818–854–2340
BEST WESTERN EL GRANDE INN.		15135 LAKESHORE DR	CLEARLAKE, CA 95422–	707–994–2000
HIGHLANDS INN		13865 LAKESHORE DR	CLEARLAKE, CA 95422–	707–944–8982
SUNSET LODGE		13961 LAKESHORE DR	CLEARLAKE, CA 95422–	707–994–6542

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE INN AT HARRIS RANCH	PO BOX 777	24485 W. DORRIS	COALINGA, CA 93210–	209–935–0717
RIO INN MOTEL		301 N. MOUNT VERNON AVE	COLTON, CA 92324–	714–824–7622
WYNDHAM COMMERCE		5757 TELEGRAPH RD	COMMERCE, CA 90040–	213–887–8100
MID-CITY TRAVELODGE		1116 S. LONG BEACH BLVD	COMPTON, CA 90221–	310–763–9700
CONCORD HILTON		1970 DIAMOND BLVD	CONCORD, CA 94520–	510–827–2000
E Z 8 MOTEL INC		1581 CONCORD AVE	CONCORD, CA 94520–	510–674–0888
HOLIDAY INN OF CONCORD		1050 BURNETT AVE	CONCORD, CA 94520–	510–687–5500
SHERATON HOTEL AND CONFERENCE CENTER.		45 JOHN GLENN DR	CONCORD, CA 94520–	510–825–7700
CORNING OLIVE INN MOTEL		2165 SOLANO ST	CORNING, CA 96021–	916–824–2468
CORNING SHILO INN		3350 SUNRISE WAY	CORNING, CA 96021–9748	503–641–6565
EL CORDOVA HOTEL		1351 ORANGE AVE	CORONADO, CA 92118–	619–435–4131
EL RANCHO MOTEL		370 ORANGE AVE	CORONADO, CA 92118–	619–435–2251
HOTEL DEL CORONADO		1500 ORANGE AVE	CORONADO, CA 92118–	619–435–6611
LE MERIDIEN SAN DIEGO AT CORONADO.		2000 SECOND ST	CORONADO, CA 92118–	619–435–3000
BEST WESTERN CORTE MADERA INN.		1815 REDWOOD HWY	CORTE MADERA, CA 94925–	415–924–1502
BEVERLY HERITAGE HOTEL		3350 AVENUE OF THE ARTS	COSTA MESA, CA 92626–	714–751–5100
COMFORT INN COSTA MESA		2430 NEWPORT BLVD	COSTA MESA, CA 92627–	714–631–7840
COSTA MESA MARRIOTT SUITES.		500 ANTON BLVD	COSTA MESA, CA 92626–	714–957–1100
COUNTRY SIDE INN & SUITES		325 BRISTOL ST	COSTA MESA, CA 92626–	714–549–0300
HOLIDAY INN ORANGE COUNTY AIRPORT.		3131 S. BRISTOL ST	COSTA MESA, CA 92626–	714–557–3000
LA QUINTA COSTA MESA #541		1515 S. COAST DR	COSTA MESA, CA 92626–	714–957–5841
RED LION HOTEL ORANGE COUNTY AIRPORT.		3050 BRISTOL ST	COSTA MESA, CA 92626–	714–540–7000
WESTIN SOUTH COAST PLAZA		686 ANTON BLVD	COSTA MESA, CA 92626–	714–540–2500
EMBASSY SUITES RESORT HOTEL.		1211 E. GARVEY ST	COVINA, CA 91724–	818–915–3441
DAYS INN		220 M ST	CRESCENT CITY, CA 95531–	707–464–9553
PACIFIC MOTOR HOTEL	PO BOX 595	440 HWY. 101 N	CRESCENT CITY, CA 95531–	707–464–4141
DEANO'S MOTEL		3868 S. SEPULVEDA BLVD	CULVER CITY, CA 90230–	310–390–3511
HOWARD JOHNSON'S PLAZA HOTEL.		5990 GREEN VALLEY CIRCLE	CULVER CITY, CA 90230–	310–641–7740
RED LION INN LOS ANGELES AIRPORT.		6161 CENTINELA AVE	CULVER CITY, CA 90231–3200	310–649–1776
COURTYARD BY MARRIOTT CUPERTINO.		10605 N. WOLFE RD	CUPERTINO, CA 95014–	408–252–9100
RAMADA HOTEL CYPRESS		5865 KATELLA AVE	CYPRESS, CA 90630–	714–827–1010
WOODFIN SUITE HOTEL		5905 CORPORATE AVE	CYPRESS, CA 90630–	714–828–4000
DANA POINT HILTON		34402 PACIFIC COAST HWY	DANA POINT, CA 92629–	714–661–1100
DANA POINT RESORT		25135 PARK LANTERN	DANA POINT, CA 92629–	714–661–5000
RAMADA INN OF DAVIS		110 F ST	DAVIS, CA 95616–	916–753–3600
DEL MAR HILTON NORTH SAN DIEGO.		15575 JIMMY DURANTE BLVD	DEL MAR, CA 92014–	619–792–5200
STRATFORD INN		710 CAMINO DEL MAR	DEL MAR, CA 92014–	619–755–1501
DELANO SHILO INN		2231 GIRARD ST	DELANO, CA 93215–1048	503–641–6565
BEST WESTERN HOTEL DIAMOND BAR.		259 GENTLE SPRING LN	DIAMOND BAR, CA 91765–	714–860–3700
RADISSON INN DIAMOND BAR		21725 E. GATEWAY DR	DIAMOND BAR, CA 91765–	714–860–5440
COMFORT INN		9438 E. FIRE STONE BLVD	DOWNEY, CA 90241–	310–803–3555
EMBASSY SUITES HOTEL		8425 E. FIRESTONE BLVD	DOWNEY, CA 90241–	310–861–1900
ST. FRANCIS MOTEL		1368 E. MAIN ST	EL CAJON, CA 92021–	619–444–8147
BRUNNERS MOTEL		215 N. IMPERIAL AVE	EL CENTRO, CA 92243–	619–352–6431
DEL CORONADO CROWN MOTEL.		330 N. IMPERIAL AVE	EL CENTRO, CA 92243–	619–353–0030
E Z 8 MOTELS INC		455 WAKE AVE	EL CENTRO, CA 92243–	619–352–6620
EXECUTIVE INN OF EL CENTRO.		725 STATE ST	EL CENTRO, CA 92243–	619–352–8500
VACATION INN EL CENTRO		2000 COTTONWOOD	EL CENTRO, CA 92243–	619–352–9523
HARBOR VIEW INN	PO BOX 127	51 AVE. ALHAMBRA	EL GRANADA, CA 94106–	415–726–2329
COMFORT INN		10038 E. VALLEY BLVD	EL MONTE, CA 91731–	818–575–7997
YOSEMITE MOTELS DBA CEDAR LODGE.		9966 HWY. 140	EL PORTAL, CA 95318–	209–379–2612
COURTYARD BY MARRIOTT LOS ANGELES AIRPORT.		2000 E. MARIPOSA AVE	EL SEGUNDO, CA 90245–	310–322–0700
CROWN STERLING SUITES LOS ANGELES AIRPORT.		1440 E. IMPERIAL AVE	EL SEGUNDO, CA 90245–	310–640–3600
DOUBLETREE CLUB HOTEL LAX.		1985 E. GRAND	EL SEGUNDO, CA 90245–	310–322–0999

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HACIENDA HOTEL AT LAX		525 N. SEPULVEDA BLVD	EL SEGUNDO, CA 90245–	310–615–0015
LAX HOTEL		1804 E. SYCAMORE AVE	EL SEGUNDO, CA 90245–	310–615–1073
IRVINE SUITES HOTEL		23192 LAKE CENTER DR	EL TORO, CA 92630–	714–380–9888
DAYS INN		1603 POWELL ST	EMERYVILLE, CA 94606–	510–547–7888
FRIENDSHIP INN		410 N. HWY. 101	ENCINITAS, CA 92024–	619–436–4999
RADISSON INN ENCINITAS		85 ENCINITAS BLVD	ENCINITAS, CA	619–942–7455
BEST WESTERN ESCONDIDO		1700 SEVEN OAKS RD	ESCONDIDO, CA 92026–	619–740–1700
ESCONDIDO WEST TRAVELODGE.		1290 W. VALLEY PKWY	ESCONDIDO, CA 92029–	619–489–1010
BUDGET HOST TOWN HOUSE MOTEL.		933 FOURTH ST	EUREKA, CA 95501–	707–443–4536
COMFORT INN EUREKA		2014 4TH ST	EUREKA, CA 95501–	707–444–0401
SEAFARER MOTOR INN		270 5TH ST	EUREKA, CA 95501–	707–443–2206
E Z 8 MOTELS INC		3331 N. TEXAS ST	FAIRFIELD, CA 94533–	707–426–6161
ECONOMY INNS OF AMERICA		4376 CENTRAL PL	FAIRFIELD, CA 94585–	707–864–1728
MARRIOTT'S TENAYA LODGE AT YOSEMITE.	159	1122 HWY. 41	FISHCAMP, CA 93623–	209–683–6555
COMFORT INN		16780 VALLEY BLVD	FONTANA, CA 92335–	714–822–3350
SEABIRD LODGE		191 S. ST	FORT BRAGG, CA 95437–	707–964–4731
HOLIDAY INN EXPRESS		1859 ALAMAR WAY	FORTUNA, CA 95540–	707–725–5500
COURTYARD BY MARRIOTT FOSTER CITY.		550 SHELL BLVD	FOSTER CITY, CA 94404–	415–377–0600
HOLIDAY INN FOSTER CITY		1221 CHESS DR	FOSTER CITY, CA 94404–	415–570–5700
COURTYARD BY MARRIOTT HUNTINGTON BEACH.		9950 SLATER AVE	FOUNTAIN VALLEY, CA 92708–	714–968–5775
BEST WESTERN THUNDER-BIRD INN.		5400 MOWRY AVE	FREMONT, CA 94538–	510–792–4300
COURTYARD BY MARRIOTT FREMONT.		47000 LAKEVIEW BLVD	FREMONT, CA 94536–	510–656–1800
RESIDENCE INN FREMONT		5400 FARWELL PL	FREMONT, CA 94536–	510–794–5900
BEST WESTERN TRADEWINDS INN.		2141 N. PARKWAY DR	FRESNO, CA 93705–	209–237–1881
BEST WESTERN WATER TREE INN.		4141 N. BLACKSTONE AVE	FRESNO, CA 93726–	209–222–4445
COURTYARD BY MARRIOTT FRESNO.		140 E. SHAW AVE	FRESNO, CA 93710–	209–221–6000
ECONOMY INNS OF AMERICA		2570 S. E. ST	FRESNO, CA 93706–	209–486–1188
ECONOMY INNS OF AMERICA		5021 N. BARCUS AVE	FRESNO, CA 93722–	209–276–1910
FRESNO HILTON		1055 VAN NESS	FRESNO, CA 93710–	209–485–9000
HAMPTON INN FRESNO		1551 N. PEACH AVE	FRESNO, CA 93710–	209–251–5200
HOLIDAY INN CENTRE PLAZA		2233 VENTURA AVE	FRESNO, CA 93720–	209–268–1000
HOLIDAY INN FRESNO AIR-PORT.		5090 E. CLINTON	FRESNO, CA 93727–	209–252–3611
LA QUINTA MOTOR INN		2926 TULARE ST	FRESNO, CA 93721–	209–442–1110
PICCADILLY INN UNIVERSITY		4961 N. CEDAR AVE	FRESNO, CA 93726–	209–224–4200
SAN JOAQUIN HOTEL		1309 W. SHAW	FRESNO, CA 93711–	209–225–1309
SHERATON SMUGGLER'S INN		3737 N. BLACKSTONE AVE	FRESNO, CA 93726–	209–226–2200
TRAVELERS INN		6730 N. BLACKSTONE	FRESNO, CA 93710–	209–431–3557
TRAVELERS INN		2640 S. SECOND ST	FRESNO, CA 93706–	209–237–6644
TRAVELERS INN		2655 E. SHAW AVE	FRESNO, CA 93710–	209–294–0224
FULLERTON MARRIOTT CALI-FORNIA STATE UNIV.		2701 E. NUTWOOD AVE	FULLERTON, CA 92631–	714–738–7800
HERITAGE INN		333 E. IMPERIAL HWY	FULLERTON, CA 92635–	714–447–9200
HOLIDAY INN FULLERTON		222 W. HOUSTON AVE	FULLERTON, CA 92632–	714–992–1700
RADISSON SUITE HOTEL FUL-LERTON.		2932 EAST NUTWOOD AVE-NUE.	FULLERTON, CA 92631–	714–579–7400
SHERWOOD FOREST MOTEL		814 REDWOOD DR	GARBERVILLE, CA 95542–	707–923–2724
PREMIER RESIDENTIAL SUITES.		18600 S. NORMANDIE AVE	GARDENA, CA 90248–	310–532–8200
BEST WESTERN GILROY		360 LEAVESLEY RD	GILROY, CA 95020–	408–848–1467
CIRCLE INN MOTEL		9220 GRANITE HILL DR	GLEN AVON, CA 92509–	714–360–1132
BEST WESTERN GOLDEN KEY MOTOR HOTEL.		123 W. COLORADO ST	GLENDALE, CA 91204–	818–247–0111
DAYS INN GLENDALE		600 N. PACIFIC	GLENDALE, CA 91203–	818–956–0202
FRIENDSHIP INN REGAL LODGE MOTEL.		200 W. COLORADO ST	GLENDALE, CA 91204–	818–246–7331
HOLIDAY INN GLENDALE		450 W. PIONEER DR	GLENDALE, CA 91203–	818–956–0202
RED LION HOTEL		221 E. GLENOAKS BLVD. STE 200.	GLENDALE, CA 91207–	818–956–5466
COMFORT INN GLENDORA		606 W. ALOSTA AVE	GLENDORA, CA 91740–	818–963–9361
TWENTIETH CENTURY MOTOR LODGE.		1345 E. ALOSTA AVE	GLENDORA, CA 91740–	818–335–3348

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN SOUTH COAST INN.		5620 CALLE REAL	GOLETA, CA 93117–	805–967–5200
HOLIDAY INN SANTA BARBARA.		5650 CALLE REAL	GOLETA, CA 93117–	805–964–6241
LAMPLIGHTER MOTEL		250 S. ALTA ST	GONZALES, CA 93926–	408–675–3691
HOLIDAY LODGE		1221 E. MAIN ST	GRASS VALLEY, CA 95945–	916–273–4406
BUCK MEADOWS LODGE YOSEMITE WESTGATE MOTEL.		7647 HWY. 120	GROVELAND, CA 95321–	209–962–5261
LEE'S MIDDLE FORK RESORT MOTEL.		11399 CHERRY OIL RD	GROVELAND, CA 95321–	209–962–7406
THE GROVELAND HOTEL	PO BOX 481	18767 MAIN ST	GROVELAND, CA 95321–	209–962–4000
COURTYARD BY MARRIOTT HACIENDA HEIGHTS.		1905 AZUSA AVE	HACIENDA HEIGHTS, CA 91745–.	818–965–1700
MILL ROSE INN		615 MILL ST	HALF MOON BAY, CA 94019–	415–726–9794
BEST WESTERN HANFORD INN.		755 CADILLAC LN	HANFORD, CA 93230–	209–583–7300
DOWNTOWN MOTEL		101 N. REDINGTON	HANFORD, CA 93230–	209–582–9036
HARBOR CITY TRAVELODGE		1665 W. PACIFIC COAST HWY	HARBOR CITY, CA 90710–	310–326–9026
RAMADA LAX AIRPORT SOUTH.		5250 W. EL SEGUNDO BLVD	HAWTHORNE, CA 90250–	310–536–9800
BEST WESTERN HAYWARD		360 W. A ST	HAYWARD, CA 94541–	510–785–8700
COMFORT INN		24997 MISSION BLVD	HAYWARD, CA 94544–	510–538–4466
PHOENIX LODGE		500 W. A ST	HAYWARD, CA 94541–	510–786–0417
BEST WESTERN DRY CREEK INN.		198 DRY CREEK RD	HEALDSBURG, CA 95448–	707–433–0300
CAMELLIA INN		211 N. ST	HEALDSBURG, CA 95448–	707–433–8182
VINEYARD VALLEY INN		178 DRY CREEK RD	HEALDSBURG, CA 95448–	707–433–0101
BEST WESTERN HEMET MOTOR INN.		2625 W. FLORIDA AVE	HEMET, CA 92545–	714–925–6605
HEMET SUPER 8 MOTEL		3510 W. FLORIDA	HEMET, CA 92545–	714–658–2281
RAMADA INN HEMET		3885 W. FLORIDA AVE	HEMET, CA 92545–	909–929–8900
SUPER 8 MOTEL		12033 OAKWOOD AVE	HESPERIA, CA 92345–	619–949–3231
RIDGEMARK GOLF & COUNTRY CLUB RESORT.		3800 AIRLINE HWY	HOLLISTER, CA 95023–	408–637–8151
BEST WESTERN HOLLYWOOD PLAZA INN.		2011 N. HIGHLAND AVE	HOLLYWOOD, CA 90068–	213–851–1800
FRENCH COTTAGE		6757 SUNSET BLVD	HOLLYWOOD, CA 90028–	213–464–9144
SUNSET 405 MOTEL		6826 SUNSET BLVD	HOLLYWOOD, CA 90028–	213–465–7186
SUNSET 8 MOTEL		6516 SUNSET BLVD	HOLLYWOOD, CA 90028–	213–469–5051
COMFORT SUITES		16301 BEACH BLVD	HUNTINGTON BEACH, CA 92647–.	714–841–1812
HUNTINGTON BEACH HOLIDAY INN.		7667 CENTER AVE	HUNTINGTON BEACH, CA 92647–.	714–891–0123
QUALITY INN		800 PACIFIC COAST HWY	HUNTINGTON BEACH, CA 92648–.	714–536–7500
THE WATERFRONT HILTON BEACH RESORT.		21100 PACIFIC COAST HWY	HUNTINGTON BEACH, CA 92648–.	714–960–7873
KNOTTY PINE CABINS	PO BOX 477	54340 PINE CREST	IDYLLWILD, CA 92549–	714–659–2933
TAHQUITZ MOTEL		25840 HWY. 243	IDYLLWILD, CA 92549–	714–659–4554
HYATT GRAND CHAMPIONS		44 600 INDIAN WELLS LN	INDIAN WELLS, CA 92210–	619–341–1000
STOUFFER ESMERALDA RESORT.		44 400 INDIAN WELLS LN	INDIAN WELLS, CA 92210–	619–773–4444
INDIO SUPER 8 MOTEL		81753 HWY. 111	INDIO, CA 92201–	619–342–0264
PALM SHADOW INN		80 761 HWY. 111	INDIO, CA 92201–	619–347–3476
BEST WESTERN AIRPARK HOTEL.		640 W. MANCHESTER BLVD	INGLEWOOD, CA 90301–	310–677–7378
BEST WESTERN AIRPORT PLAZA INN.		1730 CENTINELA AVE	INGLEWOOD, CA 90302–	310–568–0071
BEST WESTERN SUITES HOTEL.		5005 W. CENTURY BLVD	INGLEWOOD, CA 90304–	310–677–7733
DAYS INN AIRPORT CENTER		901 W. MANCHESTER BLVD	INGLEWOOD, CA 90301–	310–649–9276
HAMPTON INN LAX		10300 LA CIENEGA BLVD	INGLEWOOD, CA 90304–	310–337–1000
HOLIDAY INN EXPRESS LOS ANGELES AIRPORT.		4922 W. CENTURY BLVD	INGLEWOOD, CA 90304–	310–671–7213
ROYAL COMFORT MOTEL		4230 CENTURY BLVD	INGLEWOOD, CA 90304–	310–419–8041
COURTYARD BY MARRIOTT IRVINE ORANGE COUNTY.		2701 MAIN ST	IRVINE, CA 92714–	714–757–1200
EMBASSY SUITES HOTEL ORANGE COUNTY AIRPORT.		2120 MAIN ST	IRVINE, CA 92714–	714–553–8332
HOLIDAY INN IRVINE ORANGE COUNTY AIRPORT.		17941 VON KARMAN AVE	IRVINE, CA 92714–	714–863–1999
HYATT REGENCY IRVINE		17900 JAMBOREE BLVD	IRVINE, CA 92714–	714–975–1234

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
IRVINE MARRIOTT		18000 VON KARMAN AVE	IRVINE, CA 92715–	714–553–0100
LA QUINTA INN #663		14972 SAND CANYON AVE	IRVINE, CA 92718–	714–551–0909
RADISSON PLAZA HOTEL ORANGE COUNTY AIRPORT.		18800 MACARTHUR BLVD	IRVINE, CA 92715–	714–833–9999
RESIDENCE INN BY MARRIOTT.		10 MORGAN	IRVINE, CA 92718–	714–380–3000
BEST WESTERN AMADOR INN		200 S. HWY. 49	JACKSON, CA 95642–	209–223–0211
BEST WESTERN KING CITY INN.		1190 BROADWAY	KING CITY, CA 93930–	408–385–6733
COURTESY INN		4 BROADWAY CIR	KING CITY, CA 93930–	408–385–4646
KEEFER'S INN		615 CANAL ST	KING CITY, CA 93930–	408–385–4943
RADISSON HOTEL LA JOLLA		3299 HOLIDAY CT	LA JOLLA, CA 92037–	800–854–2900
RESIDENCE INN BY MARRIOTT LA JOLLA.		8901 GILMAN DR	LA JOLLA, CA 92037–	619–587–1770
SAN DIEGO MARRIOTT LA JOLLA.		4240 LA JOLLA VILLAGE DR	LA JOLLA, CA 92027–	619–587–1414
SHERATON GRANDE TORREY PINES.		10950 N. TORREY PINES RD	LA JOLLA, CA 92037–	619–558–1500
TORREY PINES INN		11480 N. TORREY PINES RD	LA JOLLA, CA 92037–	619–453–4420
U.S. SUITES IN LA JOLLA		8506 VILLA LA JOLLA DR	LA JOLLA, CA 92037–	619–554–0300
COMFORT INN LA MESA		8000 PARKWAY DR	LA MESA, CA 91942–	619–698–7747
E Z 8 MOTELS INC		7851 FLETCHER PKWY	LA MESA, CA 92042–	619–698–9444
ECONO LODGE #1410		4210 SPRING ST	LA MESA, CA 91941–	619–589–7286
TIME MOTEL		7682 EL CAJON BLVD	LA MESA, CA 92041–	619–470–0500
HOLIDAY INN GATEWAY PLAZA.		14299 FIRESTONE BLVD	LA MIRADA, CA 90638–	714–739–8500
RESIDENCE INN BY MARIOTT LA MIRADA.		14419 FIRESTONE BLVD	LA MIRADA, CA 90638–	714–523–2800
DAYS INN LA PALMA		3 CENTERPOINTE DR	LA PALMA, CA 90623–	714–670–1400
BEST WESTERN LAFAYETTE PARK HOTEL.		3287 MT. DIABLO BLVD	LAFAYETTE, CA 94549–	510–283–3700
INN AT LAGUNA BEACH		211 N. COAST HWY	LAGUNA BEACH, CA 92651–	714–497–9722
COURTYARD BY MARRIOTT LAGUNA HILLS.		23175 AVENIDA DE LA CARLOTA.	LAGUNA HILLS, CA 92653–	714–859–5500
RITZ CARLTON HOTEL LAGUNA NIGUEL.		33533 RITZ CARLTON DR	LAGUNA NIGUEL, CA 92629–	714–240–2000
LAKE ARROWHEAD HILTON RESORT.		27984 HWY. 189	LAKE ARROWHEAD, CA 92352–.	714–336–1511
SADDLEBACK INN	PO BOX 1890	300 S. STATE HWY. 173	LAKE ARROWHEAD, CA 92352–.	714–336–3571
CLEAR LAKE INN		1010 N. MAIN ST	LAKEPORT, CA 95453–	707–263–3551
BEST WESTERN ANTELOPE VALLEY INN.		44055 N. SIERRA HWY	LANCASTER, CA 93534–	805–948–4651
DESERT INN MOTOR HOTEL		44219 N. SIERRA HWY	LANCASTER, CA 93534–	805–942–8401
E Z 8 MOTELS INC		43530 N. 17TH ST. W	LANCASTER, CA 93534–	805–945–9477
ESSEX HOUSE HOTEL & RACQUET CLUB.		44916 N. 10TH ST. W	LANCASTER, CA 93534–	805–948–0961
RIO MIRADA MOTOR INN		1651 W. AVE. K	LANCASTER, CA 93534–	805–949–3423
TOWNHOUSE MOTEL		44125 N. SIERRA HWY	LANCASTER, CA 93534–	805–942–1195
COURTYARD BY MARRIOTT LARKSPUR LANDING.		2500 LARKSPUR LANDING CTR.	LARKSPUR LANDING, CA 94939–.	415–925–1800
BEST WESTERN SOUTH BAY HOTEL.		15000 HAWTHORNE BLVD	LAWNDALE, CA 90260–	310–973–0998
DAYS INN AIRPORT SOUTH		15636 HAWTHORNE BLVD	LAWNDALE, CA 90260–	310–676–7378
E Z 8 MOTELS INC		7458 BROADWAY	LEMON GROVE, CA 91945–	619–462–7022
OLIVE TREE INN		390 N. HWY. 65	LINDSAY, CA 93247–	209–562–5188
COMFORT INN		118 N. CHEROKEE LN	LODI, CA 95240–	209–367–4848
COMFORT INN		118 N. CHEROKEE LN	LODI, CA 95240–	209–367–4848
BEST WESTERN ELDORADO INN.		2037 PACIFIC COAST HWY	LOMITA, CA 90717–	310–534–0700
EMBASSY SUITES HOTEL		1117 N. H ST	LOMPOC, CA 93436–	805–735–8311
INN OF LOMPOC		1122 N. H ST	LOMPOC, CA 93436–	805–735–7744
QUALITY INN & EXECUTIVE SUITES.		1621 N. H ST	LOMPOC, CA 93436–	805–735–8555
BEST WESTERN GOLDEN SAILS HOTEL.		6285 E. PACIFIC COAST HWY	LONG BEACH, CA 90803–	310–5 6–1631
CLARION HOTEL EDGEWATER		6400 E. PACIFIC COAST HWY	LONG BEACH, CA 90803–	310–434–8451
FRIENDSHIP INN		50 ATLANTIC AVE	LONG BEACH, CA 90802–	310–435–8369
HOLIDAY INN CONVENTION WORLD TRADE CENTER.		500 E. FIRST ST	LONG BEACH, CA 90802–	310–435–8511
HYATT REGENCY LONG BEACH.		200 S. PINE AVE	LONG BEACH, CA 90802–4553,	310–491–1234

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LONG BEACH AIRPORT MARRIOTT.	.....	4700 AIRPORT PLAZA DR	LONG BEACH, CA 90815–	310–425–5210
LONG BEACH HILTON	.....	TWO WORLD TRADE CTR	LONG BEACH, CA 90831–3102	310–983–3400
RENAISSANCE HOTEL LONG BEACH.	.....	111 E. OCEAN BLVD	LONG BEACH, CA 90802–	310–437–5900
RESIDENCE INN BY MARRIOTT LONG BEACH.	.....	4111 E. WILLOW ST	LONG BEACH, CA 90815–	310–595–0909
SANDPIPER INN	.....	3624 E. PACIFIC COAST HWY .	LONG BEACH, CA 90804–	310–498–7544
SHERATON LONG BEACH HOTEL.	.....	333 E. OCEAN BLVD	LONG BEACH, CA 90802–	310–436–3000
AIRPORT CENTURY INN	.....	5547 W. CENTURY BLVD	LOS ANGELES, CA 90045–	310–649–4000
BEST WESTERN THE MAYFAIR	.....	1256 W. SEVENTH ST	LOS ANGELES, CA 90017–2315	213–484–9769
BEVONSHIRE LODGE MOTEL ..	.....	7575 BEVERLY BLVD	LOS ANGELES, CA 90036–	213–936–6154
BRENTWOOD SUITES HOTEL .	.....	199 N. CHURCH LN	LOS ANGELES, CA 90049–	310–476–6255
CARLYLE INN	.....	1119 S. ROBERTSON BLVD	LOS ANGELES, CA 90035–	310–275–4445
CENTURY PLAZA HOTEL AND TOWER.	.....	2025 AVE. OF THE STARS	LOS ANGELES, CA 90067–	310–277–2000
CLAREMONT HOTEL	.....	1044 TIVERTON AVE	LOS ANGELES, CA 90024–	310–208–5957
CLARK PLAZA HOTEL	.....	141 S. CLARK DR	LOS ANGELES, CA 90048–	310–278–9310
COMFORT INN EAGLE ROCK ..	.....	2300 W. COLORADO BLVD	LOS ANGELES, CA 90041–1145	213–256–1199
COURTYARD BY MARRIOTT CENTURY CITY.	.....	10320 W. OLYMPIC BLVD	LOS ANGELES, CA 90064–	310–556–2777
EMBASSY SUITES	.....	9801 AIRPORT BLVD	LOS ANGELES, CA 90045–	310–215–1000
FIGUEROA HOTEL	.....	939 S. FIGUEROA ST	LOS ANGELES, CA 90015–	213–627–8971
FOUR SEASONS HOTEL	.....	300 S. DOHENY DR	LOS ANGELES, CA 90048–	310–273–2222
GRAND MOTEL	.....	1479 S. LA CIENAGA BLVD	LOS ANGELES, CA 90035–	310–652–3644
HOLIDAY INN CROWNE PLAZA LOS ANGELES AIRPORT.	.....	5985 W. CENTURY BLVD	LOS ANGELES, CA 90045–5463	310–642–7500
HOLIDAY INN LOS ANGELES CONVENTION CENTER.	.....	1020 S. FIGUEROA ST	LOS ANGELES, CA 90015–	213–748–1291
HOLLYWOOD METROPOLITAN HOTEL.	.....	5825 SUNSET BLVD	LOS ANGELES, CA 90028–	213–962–5800
HOTEL INTER CONTINENTAL LOS ANGELES.	.....	251 S. OLIVE ST	LOS ANGELES, CA 90012–	213–617–3300
HOTEL NIKKO AT BEVERLY HILLS.	.....	465 S. LA CIENEGA BLVD	LOS ANGELES, CA 90048–	310–247–0400
J.W. MARRIOTT CENTURY CITY.	.....	2151 AVE. OF THE STARS	LOS ANGELES, CA 90067–	213–277–2777
JERRY'S MOTEL	.....	285 S. LUCAS AVE	LOS ANGELES, CA 90026–	213–481–0921
LOS ANGELES AIRPORT HILTON & TOWERS.	.....	5711 W. CENTURY BLVD	LOS ANGELES, CA 90045–5631	310–410–4000
LOS ANGELES AIRPORT MARRIOTT HOTEL.	.....	5855 W. CENTURY BLVD	LOS ANGELES, CA 90045–	310–641–5700
LOS ANGELES ATHLETIC CLUB.	.....	431 W. SEVENTH ST	LOS ANGELES, CA 90014–	213–895–0707
LOS ANGELES HILTON AND TOWERS.	.....	930 WILSHIRE BLVD	LOS ANGELES, CA 90017–	213–629–4321
ORCHID HOTEL	.....	819 S. FLOWER ST	LOS ANGELES, CA 90017–	213–624–5855
ORCHID SUITES HOTEL	.....	1753 N. ORCHID AVE	LOS ANGELES, CA 90028–	213–461–7260
PARK PLAZA HOTEL	.....	607 S. PARK VIEW ST	LOS ANGELES, CA 90057–	213–384–5281
QUALITY HOTEL LOS ANGELES AIRPORT.	.....	5249 W. CENTURY BLVD	LOS ANGELES, CA 90045–	310–645–2200
RAMADA RENAISSANCE HOTEL LOS ANGELES AIRPORT.	.....	9620 AIRPORT BLVD	LOS ANGELES, CA 90045–	310–337–2800
SHERATON GRANDE HOTEL ...	.....	333 S. FIGUEROA ST	LOS ANGELES, CA 90071–	213–617–1133
SHERATON LOS ANGELES AIRPORT HOTEL.	.....	6101 W. CENTURY BLVD	LOS ANGELES, CA 90045–	310–642–1111
SKYWAYS AIRPORT HOTEL	.....	9250 AIRPORT BLVD	LOS ANGELES, CA 90045–	310–670–2900
STOUFFER CONCOURSE HOTEL.	.....	5400 W. CENTURY BLVD	LOS ANGELES, CA 90045–	310–216–5858
THE BEVERLY PLAZA HOTEL ..	.....	8384 W. THIRD ST	LOS ANGELES, CA 90048–	213–658–6600
THE BILTMORE LOS ANGELES	.....	506 S. GRAND AVE	LOS ANGELES, CA 90071–	213–624–1011
THE KAWADA HOTEL	.....	200 S. HILL ST	LOS ANGELES, CA 90012–	213–621–4455
THE NEW OTANI HOTEL & GARDEN.	.....	120 S. LOS ANGELES ST	LOS ANGELES, CA 90012–	213–629–1200
THE WESTIN BONAVENTURE ..	.....	404 S. FIGUEROA ST	LOS ANGELES, CA 90071–	213–624–1000
UNIVERSITY HILTON LOS ANGELES.	.....	3540 S. FIGUEROA ST	LOS ANGELES, CA 90007–	213–748–4141
WILSHIRE CREST INN	.....	6301 ORANGE ST	LOS ANGELES, CA 90048–	213–936–5131
WILSHIRE MOTEL	.....	12023 WILSHIRE BLVD	LOS ANGELES, CA 90025–	310–478–3545
LODGE AT VILLA FELICE	.....	15350 S. WINCHESTER BLVD ..	LOS GATOS, CA 95030–	408–395–6710

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BLUE HERON		1899 9TH ST	LOS OSOS, CA 93401–	805–528–1493
ECONOMY MOTELS OF AMERICA.		14684 ALOMA ST	LOST HILLS, CA 93249–	805–797–2371
TRAVELODGE CENTURY FREEWAY.		11401 LONG BEACH BLVD	LYNWOOD, CA 90262–	310–763–4029
ECONOMY MOTELS OF AMERICA.		1855 W. CLEVELAND AVE	MADERA, CA 93637–	209–661–1131
MAMMOTH LAKES SHILO INN		2963 MAIN ST	MAMMOTH LAKES, CA 93546–2179.	503–641–6565
BARNABEY'S HOTEL		3501 SEPULVEDA BLVD	MANHATTAN BEACH, CA 90266–.	310–545–8466
RADISSON PLAZA HOTEL & GOLF COURSE.		1400 PARKVIEW AVE	MANHATTAN BEACH, CA 90266–.	310–546–7511
RESIDENCE INN BY MARIOTT MANHATTAN BEACH LAX.		1700 N. SEPULVEDA	MANHATTAN BEACH, CA 90266–.	310–546–7627
BEST WESTERN INN OF MANTECA.		1415 E. YOSEMITE AVE	MANTECA, CA 95336–	209–825–1415
MANTECA INN		150 NORTHWOODS AVE	MANTECA, CA 95336–	209–239–1291
DOUBLETREE HOTEL MARINA DEL REY.		4100 ADMIRALTY WAY	MARINA DEL REY, CA 90292–	310–301–3000
MARINA INTERNATIONAL HOTEL.		4200 ADMIRALTY WAY	MARINA DEL REY, CA 90292–	310–301–2000
MARINA SUITES HOTEL		737 WASHINGTON BLVD	MARINA DEL REY, CA 90292–	310–821–4455
RITZ CARLTON HOTEL MARINA DEL REY.		4375 ADMIRALTY WAY	MARINA DEL REY, CA 90292–	310–823–1700
THE MANSION INN		327 WASHINGTON ST	MARINA DEL REY, CA 90291–	310–821–2557
MARIPOSA LODGE	PO BOX 733	1052 HWY. 140	MARIPOSA, CA 95338–	209–966–3607
THE MINERS INN MOTEL	PO BOX 246	5155 HWY. 140	MARIPOSA, CA 95338–	209–742–7777
WOODFORDS INN	PO BOX 426		MARKLEVILLE, CA 96120–	916–694–2410
OXBOW MOTEL		1078 N. BEALE RD	MARYSVILLE, CA 95901–	916–742–8238
MENLO PARK INN		1315 EL CAMINO REAL	MENLO PARK, CA 94025–	415–326–7530
MERMAID INN MOTEL		727 EL CAMINO REAL	MENLO PARK, CA 94025–	415–323–9481
RIVIERA MOTOR LODGE		15 EL CAMINO REAL	MENLO PARK, CA 94025–	415–321–8772
STANFORD PARK HOTEL		100 EL CAMINO REAL	MENLO PARK, CA 94025–	415–322–1234
PARKWAY INN		1199 MOTEL DR	MERCED, CA 95340–	209–722–2726
BEST WESTERN EL RANCHO INN & EXECUTIVE SUITES.		1100 EL CAMINO REAL	MILLBRAE, CA 94030–	415–588–2912
MILLWOOD INN		1375 EL CAMINO REAL	MILLBRAE, CA 94030–	415–583–3935
THE CLARION HOTEL SAN FRANCISCO AIRPORT.		401 E. MILLBRAE AVE	MILLBRAE, CA 94030–	415–692–6363
WESTIN HOTEL SAN FRANCISCO AIRPORT.		1 OLD BAYSHORE HWY	MILLBRAE, CA 94030–	415–692–3500
COMFORT INN		665 MAIN ST	MILPITAS, CA 95035–	408–262–7666
CROWN STERLING SUITES HOTEL.		901 E. CALAVERAS BLVD	MILPITAS, CA 95035–	408–942–0400
ECONOMY INNS OF AMERICA		270 S. ABBOTT AVE	MILPITAS, CA 95035–	408–946–0889
HOLIDAY INN SAN JOSE NORTH.		777 BELLEW DR	MILPITAS, CA 95035–	408–321–9500
MILPITAS TRAVELODGE		378 W. CALAVERAS BLVD	MILPITAS, CA 95035–	408–263–0500
SHERATON SAN JOSE HOTEL		1801 BARBER LN	MILPITAS, CA 95035–	408–943–0600
HAMPTON INN		26328 OSO PKWY	MISSION VIEJO, CA 92691–	714–582–7100
BEST WESTERN MALLARDS INN.		1720 SISK RD	MODESTO, CA 95350–	209–577–3825
EL CAPITAN MOTEL		1121 NEEDHAM ST	MODESTO, CA 95354–	209–522–1021
HOLIDAY INN MODESTO		1612 SISK RD	MODESTO, CA 95350–2589	209–521–1612
RAMADA INN MODESTO		2001 W. ORANGEBURG AVE	MODESTO, CA 95350–	209–521–9000
RED LION HOTEL MODESTO		1150 9TH ST	MODESTO, CA 95354–	209–526–6000
HOLIDAY INN MONROVIA		924 W. HUNTINGTON DR	MONROVIA, CA 91016–	818–357–1900
HOWARD JOHNSON HOTEL		700 W. HUNTINGTON DR	MONROVIA, CA 91016–	818–357–5211
ARBOR INN		1058 MUNRAS AVE	MONTEREY, CA 93940–	800–351–8811
BAY PARK HOTEL		1425 MUNRAS AVE	MONTEREY, CA 93940–	408–649–1020
DOUBLETREE HOTEL AT FISHERMAN'S WHARF.		2 PORTOLA PLAZA	MONTEREY, CA 93940–	408–649–4511
HOLIDAY INN RESORT		1000 AQUAJITO RD	MONTEREY, CA 93940–	408–373–6141
HYATT REGENCY MONTEREY		ONE OLD GOLF COURSE RD	MONTEREY, CA 93940–	408–372–1234
MONTEREY BAY INN		242 CANNERY ROW	MONTEREY, CA 93940–	408–373–6242
MONTEREY CARMEL TRAVELODGE AT FAIRGROUNDS.		2030 N. FREMONT ST	MONTEREY, CA 93940–	408–373–3381
MONTEREY DOWNTOWN TRAVELODGE.		675 MUNRAS AVE	MONTEREY, CA 93940–	408–373–1876
MONTEREY MARRIOTT		350 CALLE PRINCIPAL	MONTEREY, CA 93940–	408–649–4234

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

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SAND DOLLAR INN		755 ABREGO ST	MONTEREY, CA 93940–	408–372–7551
SPINDRIFT INN		652 CANNERY ROW	MONTEREY, CA 93940–	408–646–8900
THE MARIPOSA INN		1386 MUNRAS AVE	MONTEREY, CA 93940–	408–649–1414
THE MONTEREY HOTEL		406 ALVARADO ST	MONTEREY, CA 93940–	408–375–3184
VICTORIAN INN		487 FOAM ST	MONTEREY, CA 93940–	408–373–6000
BEST WESTERN IMAGE SUITES.		24840 ELDER AVE	MORENO VALLEY, CA 92557–	714–924–4546
RODEWAY INN RIVERSIDE MORENO VALLEY.		23330 SUNNYMEAD BLVD	MORENO VALLEY, CA 92388–	714–242–0699
BAY VIEW LODGE		225 HARBOR ST	MORRO BAY, CA 93442–	805–772–2771
BLUE SAIL INN		851 MARKET AVE	MORRO BAY, CA 93442–	805–772–7132
ECONO LODGE		1100 MAIN ST	MORRO BAY, CA 93442–	805–772–5609
EMBARCADERO INN		456 EMBARCADERO	MORRO BAY, CA 93442–	805–772–2700
THE INN AT MORRO BAY		19 COUNTRY CLUB RD	MORRO BAY, CA 93442–	805–772–5651
BEST WESTERN INN		93 EL CAMINO REAL W	MOUNTAIN VIEW, CA 94040–	415–967–6957
COMFORT INN		1561 W. EL CAMINO REAL	MOUNTAIN VIEW, CA 94040–	415–967–7888
COUNTY INN		850 LEONG DR	MOUNTAIN VIEW, CA 94043–	415–961–1131
RESIDENCE INN BY MARRIOTT MOUNTAIN VIEW.		1854 EL CAMINO REAL W	MOUNTAIN VIEW, CA 94040–	415–940–1300
RODEWAY INN		55 FAIRCHILD DR	MOUNTAIN VIEW, CA 94043–	415–967–6856
CHABLIS LODGE		3360 SOLANO AVE	NAPA, CA 94558–	707–257–1944
CHURCHILL MANOR BED & BREAKFAST.		485 BROWN ST	NAPA, CA 94559–	707–253–7733
JOHN MUIR INN		1998 TROWER AVE	NAPA, CA 94558–	707–257–7220
LA RESIDENCE COUNTRY INN		4066 ST. HELENA HWY	NAPA, CA 94558–	707–253–0337
NAPA VALLEY TRAVELODGE		853 COOMBS ST	NAPA, CA 94559–	707–226–1871
SHERATON INN NAPA VALLEY		3425 SOLANO AVE	NAPA, CA 94558–	707–253–7433
STEELE PARK RESORT INC		1605 STEELE CANYON RD	NAPA, CA 94558–	707–966–2123
THE CHATEAU HOTEL		4195 SOLANO AVE	NAPA, CA 94558–	707–253–9300
THE INN AT NAPA VALLEY CROWN STERLING SUITES.		1075 CALIFORNIA BLVD	NAPA, CA 94559–	707–253–9540
E Z 8 MOTELS INC		607 ROOSEVELT AVE	NATIONAL CITY, CA 91950–	619–474–7502
E Z 8 MOTELS INC		1700 PLAZA BLVD	NATIONAL CITY, CA 91950–	619–474–6491
RADISSON INN & SUITES NATIONAL CITY.		700 NATIONAL CITY BLVD	NATIONAL CITY, CA 91950–	619–336–1100
TRAVELERS INN		1195 3RD ST. HILL	NEEDLES, CA 92362–	619–326–4900
E Z 8 MOTELS INC		5555 CEDAR ST	NEWARK, CA 94560–	510–794–7775
NEWARK FREMONT HILTON		39900 BALENTINE DR	NEWARK, CA 94560–	510–490–8390
WOODFIN SUITE HOTEL		39150 CEDAR BLVD	NEWARK, CA 94560–	510–795–1200
E Z 8 MOTELS INC		2434 W. HILLCREST DR	NEWBURY PARK, CA 91320–	805–499–0755
FOUR SEASONS HOTEL NEWPORT BEACH.		690 NEWPORT CENTER DR	NEWPORT BEACH, CA 92660–	714–759–0808
NEWPORT BEACH MARRIOTT HOTEL.		900 NEWPORT CENTER DR	NEWPORT BEACH, CA 92660–	714–640–4000
NEWPORT BEACH MARRIOTT SUITES.		500 BAYVIEW CIR	NEWPORT BEACH, CA 92660–	714–854–4500
MIKADO BEST WESTERN HOTEL.		12600 RIVERSIDE DR	NORTH HOLLYWOOD, CA 91607–.	818–763–9141
COMFORT INN NORWALK		12512 PIONEER BLVD	NORWALK, CA 90650–	310–868–3453
NORWALK SHERATON HOTEL		13111 SYCAMORE DR	NORWALK, CA 90650–	310–863–6666
QUALITY INN MARIN		215 ALAMEDA DEL PRADO	NOVATO, CA 94949–	415–883–4400
BEST WESTERN YOSEMITE GATEWAY INN.		40530 HWY. 41	OAKHURST, CA 93644–	209–683–2378
OAKHURST SHILO INN		40644 HWY. 41	OAKHURST, CA 93644–9621	503–641–6565
E Z 8 MOTELS INC		8471 ENTERPRISE WAY	OAKLAND, CA 94621–	510–562–4888
EXECUTIVE INN EMBARCADERO COVE.		1755 EMBARCADERO	OAKLAND, CA 94606–	510–536–6633
HAMPTON INN OAKLAND AIRPORT.		8465 ENTERPRISE WAY	OAKLAND, CA 94621–	510–632–8900
HOLIDAY INN OAKLAND AIRPORT.		500 HEGENBERGER RD	OAKLAND, CA 94621–	510–562–5311
OAKLAND AIRPORT HILTON HOTEL.		1 HEGENBERGER RD	OAKLAND, CA 94621–	510–635–5000
PARC OAKLAND HOTEL		1001 BROADWAY	OAKLAND, CA 94607–	510–451–4000
PARK PLAZA HOTEL		150 HEGENBERGER RD	OAKLAND, CA 94621–	510–635–5300
WASHINGTON INN		495 10TH ST	OAKLAND, CA 94607–	510–452–1776
VILLA MARINA SUITES HOTEL		2008 HARBOR DR. N	OCEANSIDE, CA 92054–	619–722–1561
BEST WESTERN CASA OJAI		1302 E. OJAI AVE	OJAI, CA 93023–	805–646–8175
POINT REYES SEASHORE LODGE.	PO BOX 39	10021 COASTAL HWY. 1	OLEMA, CA 94950–	415–663–9000
COUNTRY SUITES BY CARLSON.		231 N. VINEYARD AVE	ONTARIO, CA 91764–	714–983–8484

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DOUBLETREE CLUB HOTEL		429 N. VINEYARD AVE	ONTARIO, CA 91764–	714–391–6411
FAIRFIELD INN BY MARRIOTT ONTARIO.		3201 E. CENTERLAKE DR	ONTARIO, CA 91761–	714–395–9300
HOLIDAY INN ONTARIO INTERNATIONAL AIRPORT.		1801 E. G ST	ONTARIO, CA 91764–	909–983–3504
ONTARIO AIRPORT HILTON		700 N. HAVEN	ONTARIO, CA 91764–	714–980–0400
ONTARIO AIRPORT MARRIOTT		2200 E. HOLT BLVD	ONTARIO, CA 91761–	714–986–8811
RESIDENCE INN ONTARIO		2025 E. D ST	ONTARIO, CA 91764–	714–983–6788
ANAHEIM . ORANGE HILTON SUITES.		400 N. STATE COLLEGE BLVD	ORANGE, CA 92668–	714–938–1111
DAYS INN		279 S. MAIN ST	ORANGE, CA 92668–	714–771–6704
DOUBLETREE HOTEL		100 THE CITY DR	ORANGE, CA 92668–	714–634–4500
WOODFIN SUITE HOTEL		720 THE CITY DR. S	ORANGE, CA 92668–	714–740–2700
GRAND MANOR INN #36		1470 FEATHER RIVER BLVD	OROVILLE, CA 95965–	916–553–9673
CASA SIRENA MARINA RESORT.		3605 PENINSULA RD	OXNARD, CA 93035–	805–985–6311
FINANCIAL PLAZA HILTON		600 ESPLANADE DR	OXNARD, CA 93030–	805–485–9666
ASILOMAR CONFERENCE CENTER.	PO BOX 537	800 ASILOMAR BLVD	PACIFIC GROVE, CA 93950–	408–372–8016
PACIFIC GARDENS INN		701 ASILOMAR BLVD	PACIFIC GROVE, CA 93950–	408–646–9414
QUALITY INN PACIFIC GROVE		1111 LIGHTHOUSE AVE	PACIFIC GROVE, CA 93950–	408–646–8885
ROSEDALE INN		775 ASILOMAR BLVD	PACIFIC GROVE, CA 93950–	408–655–1000
THE MARTINE INN		255 OCEANVIEW BLVD	PACIFIC GROVE, CA 93950–	408–373–3388
EMBASSY SUITES PALM DESERT.		74 700 HWY. 111	PALM DESERT, CA 92260–	619–340–6800
HOLIDAY INN EXPRESS		74675 HWY. 111	PALM DESERT, CA 92260–	619–340–4303
MARRIOTT DESERT SPRINGS RESORT.		74855 COUNTRY CLUB DR	PALM DESERT, CA 92260–	619–341–2211
TRAVELERS INN		72 322 HWY. 111	PALM DESERT, CA 92260–	619–341–9100
BEST WESTERN HOST HOTEL		1633 S. PALM CANYON	PALM SPRINGS, CA 92264–	619–325–9177
CASA CODY BED AND BREAKFAST COUNTRY INN.		175 S. CAHUILLA RD	PALM SPRINGS, CA 92262–	619–320–9346
COURTYARD BY MARRIOTT PALM SPRINGS.		1300 TAHQUITZ CANYON WAY	PALM SPRINGS, CA 92262–	619–322–6100
GOLDEN PALM VILLA		601 GRENFALL RD	PALM SPRINGS, CA 92264–	619–327–1408
HOLIDAY INN PALM MOUNTAIN RESORT.		155 S. BELARDO	PALM SPRINGS, CA 92262–	619–325–1301
HYATT REGENCY SUITES PALM SPRINGS.		285 N. PALM CANYON DR	PALM SPRINGS, CA 92262–	619–322–9000
ORCHID TREE INN		261 S. BELARDO RD	PALM SPRINGS, CA 92262–5386.	619–325–2791
PALM SPRINGS HILTON		400 E. TAHQUITZ CANYON	PALM SPRINGS, CA 92262–	619–320–6868
PALM SPRINGS SHILO INN		1875 N. PALM CANYON DR	PALM SPRINGS, CA 92261–2913.	503–641–6565
QUALITY INN PALM SPRINGS		1269 E. PALM CANYON DR	PALM SPRINGS, CA 92264–	619–323–2775
RACQUET CLUB RESORT HOTEL.		2743 N. INDIAN CANYON DR	PALM SPRINGS, CA 92262–	619–325–1281
RAMADA HOTEL RESORT		1800 E. PALM CANYON DR	PALM SPRINGS, CA 92264–	619–323–1711
SUPER 8 LODGE		1900 N. PALM CANYON DR	PALM SPRINGS, CA 92262–	619–322–3757
TRAVELODGE PALM SPRINGS		333 E. PALM CANYON DR	PALM SPRINGS, CA 92264–	619–327–1211
VAGABOND INN		1699 S. PALM CANYON DR	PALM SPRINGS, CA 92262–	619–325–7211
WYNDHAM PALM SPRINGS HOTEL.		888 E. TAHQUITZ CANYON WAY.	PALM SPRINGS, CA 92262–	619–322–6000
E Z 8 MOTELS INC		430 W. PALMDALE BLVD	PALMDALE, CA 93551–	805–273–6400
HOLIDAY INN PALMDALE		38630 5TH ST. W	PALMDALE, CA 93550–	805–947–8055
HOTEL CALIFORNIA		2431 ASH ST	PALO ALTO, CA 94306–	415–322–7866
HYATT HOTEL PALO ALTO		4219 EL CAMINO REAL	PALO ALTO, CA 94306–	415–493–8000
LANTERN MOTEL		5799 WILDWOOD LN	PARADISE, CA 95969–	916–877–5553
PONDEROSA GARDENS MOTEL INC.		7010 SKYWAY	PARADISE, CA 95969–	916–872–9094
BEST WESTERN COLORADO INN.		2156 E. COLORADO BLVD	PASADENA, CA 91107–	818–793–9339
BEST WESTERN PASADENA INN.		3570 E. COLORADO BLVD	PASADENA, CA 91107–	818–796–9100
BEST WESTERN PASADENA ROYALE.		3600 E. COLORADO BLVD	PASADENA, CA 91107–	818–793–0950
COMFORT INN PASADENA EAST.		2462 E. COLORADO BLVD	PASADENA, CA 91107–	818–405–0811
DOUBLETREE HOTEL PASADENA.		191 N. LOS ROBLES AVE	PASADENA, CA 91101–	818–792–2727
PASADENA HILTON		150 S. LOS ROBLES AVE	PASADENA, CA 91101–	818–577–1000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE RITZ CARLTON HUNTINGTON HOTEL.		1401 S. OAK KNOLL AVE	PASADENA, CA 91106–	818–568–3900
ADELAIDE MOTOR INN		1215 YSABELL AVE	PASO ROBLES, CA 93446–	805–238–2770
BEST WESTERN BLACK OAK MOTOR LODGE.		1135 24TH ST	PASO ROBLES, CA 93446–	805–238–4740
TRAVELODGE PASO ROBLES		2701 SPRING ST	PASO ROBLES, CA 93446–	805–238–0078
THE INN AT SPANISH BAY		2700 17–MILE DR	PEBBLE BEACH, CA 93953–	408–647–7500
THE LODGE AT PEBBLE BEACH.		SEVENTEEN MILE DR	PEBBLE BEACH, CA 93953–	408–624–3811
BEST WESTERN PETALUMA INN.		200 S. MCDOWELL BLVD	PETALUMA, CA 94954–	707–763–0994
MOTEL 6		5135 MONTERO WAY	PETALUMA, CA 94954–	707–664–9090
QUALITY INN		5100 MONTERO WAY	PETALUMA, CA 94954–	707–664–1155
TRAVELODGE PICO RIVERA		7222 ROSEMEAD BLVD	PICO RIVERA, CA 90660–	310–949–6648
QUALITY SUITES		651 FIVE CITIES DR	PISMO BEACH, CA 93449–	805–773–3773
SANDCASTLE INN		100 STIMSON AVE	PISMO BEACH, CA 93449–	805–773–2422
FAIRFIELD INN BY MARRIOTT PLACENTIA.		710 W. KIMBERLY AVE	PLACENTIA, CA 92670–	714–996–4410
QUALITY HOTEL PLACENTIA		118 E. ORANGETHORPE AVE	PLACENTIA, CA 92670–	714–528–7778
BEST WESTERN PLACERVILLE INN.		6850 GREENLEAF DR	PLACERVILLE, CA 95667–	916–622–9100
RESIDENCE INN BY MARRIOTT PLEASANT HILL.		700 ELLINWOOD WAY	PLEASANT HILL, CA 94523–	510–689–1010
COURTYARD BY MARRIOTT PLEASANTON.		5059 HOPYARD RD	PLEASANTON, CA 94588–	510–463–1414
DOUBLETREE CLUB HOTEL		5990 STONERIDGE MALL RD	PLEASANTON, CA 94588–	510–463–3330
HOLIDAY INN PLEASANTON		11950 DUBLIN CANYON RD	PLEASANTON, CA 94588–	510–847–6000
PLEASANTON HILTON		7050 JOHNSON DR	PLEASANTON, CA 94588–	510–463–8000
SHERATON INN PLEASANTON		5115 HOPYARD RD	PLEASANTON, CA 94588–	510–460–8800
SHENANDOAH INN		17674 VILLAGE DR	PLYMOUTH, CA 95669–	209–245–4491
HA' PENNY INN		310 E. FOOTHILL BLVD	POMONA, CA 91767–	714–593–7617
POMONA DIAMOND BAR SHILO INN.		3200 TEMPLE ST	POMONA, CA 91768–3283	503–641–6565
POMONA HILLTOP SHILO INN		3101 TEMPLE ST	POMONA, CA 91768–3241	503–641–6565
SHERATON SUITES FAIRPLEX		601 W. MCKINLEY AVE	POMONA, CA 91768–	800–722–4055
CASA VIA MAR INN AND TENNIS CLUB.		377 W. CHANNEL ISLANDS BLVD.	PORT HUENEME, CA 93041–	805–984–6222
THE COUNTRY INN AT PORT HUENEME.		350 E. HUENEME RD	PORT HUENEME, CA 93041–	805–986–5353
GOLD PAN MOTEL	PO BOX 3646	200 CRESENT	QUINCY, CA 95971–	916–283–3686
RAMONA VALLEY INN		416 MAIN ST	RAMONA, CA 92065–	619–789–6433
BEST WESTERN HERITAGE INN.		11269 POINT E. DR	RANCHO CORDOVA, CA 95742–.	916–635–4040
COURTYARD BY MARRIOTT RANCHO CORDOVA.		10683 WHITE ROCK RD	RANCHO CORDOVA, CA 95670–.	916–638–3800
DAYS INN SUNRISE		11131 FOLSOM BLVD	RANCHO CORDOVA, CA 95670–.	916–635–0666
ECONOMY INNS OF AMERICA		12249 FOLSOM BLVD	RANCHO CORDOVA, CA 95670–.	916–351–1213
FAIRFIELD INN BY MARRIOTT RANCHO CORDOVA.		10713 WHITE ROCK RD	RANCHO CORDOVA, CA 95670–.	916–631–7500
QUALITY SUITES HOTEL		11260 POINT E. DR	RANCHO CORDOVA, CA 95742–.	916–638–4141
SHERATON HOTEL		11211 POINT E. DR	RANCHO CORDOVA, CA 95742–.	916–638–1100
BEST WESTERN HERITAGE INN.		8179 SPRUCE AVE	RANCHO CUCAMONGA, CA 91730–.	714–466–1111
MARRIOTT RANCHO LAS PALMAS.		41000 BOB HOPE DR	RANCHO MIRAGE, CA 92270–	619–568–2727
THE WESTIN MISSION HILLS RESORT.		DINAH SHORE & BOB HOPE DR.	RANCHO MIRAGE, CA 92270–	619–328–5955
RED BLUFF SUPER 8 MOTEL		203 ANTELOPE RD	RED BLUFF, CA 96080–	916–527–8882
DAYS HOTEL		2180 HILLTOP DR	REDDING, CA 96001–	916–221–8200
GRAND MANOR INN		850 MISTLETOE LN	REDDING, CA 96002–	916–221–4472
SUPER 8 MOTEL		5175 CHURN CREEK RD	REDDING, CA 96002–	916–221–8881
REDLANDS INN		1235 W. COLTON AVE	REDLANDS, CA 92374–	714–798–0880
BEST WESTERN GALLERIA INN.		2740 ARTESIA BLVD	REDONDO BEACH, CA 90278–	310–370–4353
BEST WESTERN SUNRISE AT REDONDO BEACH MARINA.		400 N. HARBOR DR	REDONDO BEACH, CA 90277–	310–376–0746
HOLIDAY INN CROWNE PLAZA REDONDO BEACH.		300 N. HARBOR DR	REDONDO BEACH, CA 90277–	310–318–8888

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
PORTOFINO HOTEL AND YACHT CLUB.		260 PORTOFINO WAY	REDONDO BEACH, CA 90277–	310–379–8481
DEAN CREEK RESORT	PO BOX 157		REDWAY, CA 95560–	707–923–2555
BEST WESTERN EXECUTIVE SUITES.		25 FIFTH AVE	REDWOOD CITY, CA 94063–	415–366–5794
HOWARD JOHNSON LODGE		7432 RESEDA BLVD	RESEDA, CA 91335–	818–344–0324
DAYS HOTEL		3150 GARRITY WAY	RICHMOND, CA 94806–	510–262–0700
CARRIAGE INN RIDGECREST		901 N. CHINA LAKE BLVD	RIDGECREST, CA 93555–	619–446–7910
HERITAGE INN		1050 N. NORMA	RIDGECREST, CA 93555–	619–446–6543
HERITAGE SUITES		919 N. HERITAGE DR	RIDGECREST, CA 93555–	619–446–7951
DAYS INN RIVERSIDE		1510 UNIVERSITY AVE	RIVERSIDE, CA 92507–	714–788–9999
SHERATON RIVERSIDE HOTEL		3400 MARKET ST	RIVERSIDE, CA 92501–	714–784–8000
FIRST CHOICE INNS HOTEL	1380	4420 ROCKLIN RD	ROCKLIN, CA 95677–	916–624–4500
RED LION INNS SONOMA COUNTY.		1 RED LION DR	ROHNERT PARK, CA 94928–	707–584–5466
BEST INN		8714 E. VALLEY BLVD	ROSEMEAD, CA 91770–	818–571–6942
RODEWAY INN OF ROSEMEAD		8832 GLENDON WAY	ROSEMEAD, CA 91770–	818–288–9801
SHERATON ROSEMEAD		888 MONTEBELLO BLVD	ROSEMEAD, CA 91770–	213–722–8800
HOLIDAY INN SAN FRANCISCO		275 S. AIRPORT BLVD	S. SAN FRANCISCO, CA 94080–.	415–873–3500
BEST WESTERN PONDEROSA INN.		1100 H ST	SACRAMENTO, CA 95814–	916–441–1341
BEVERLY GARLAND HOTEL		1780 TRIBUTE RD	SACRAMENTO, CA 95815–	916–929–7900
CANTERBURY INN		1900 CANTERBURY RD	SACRAMENTO, CA 95815–	916–927–3492
CAPITOL CENTER TRAVELODGE.		1111 H ST	SACRAMENTO, CA 95814–	916–444–6880
CLARION HOTEL SACRAMENTO.		700 16TH ST	SACRAMENTO, CA 95814–	916–444–8000
COURTYARD BY MARRIOTT SOUTH NATOMAS.		2101 RIVER PLAZA DR	SACRAMENTO, CA 95833–	916–922–1120
DAYS INN DOWNTOWN		200 JIBBON ST	SACRAMENTO, CA 95814–	916–448–8100
DELTA KING		1000 FRONT ST	SACRAMENTO, CA 95814–	916–444–5464
EXECUTIVE INN		2030 ARDEN WAY	SACRAMENTO, CA 95825–	916–929–5600
EXPO INN		1413 HOWE AVE	SACRAMENTO, CA 95825–	916–922–9833
GOVERNORS INN		210 RICHARDS BLVD	SACRAMENTO, CA 95814–	916–448–7224
GUEST SUITES		2264 COTTAGE WAY SUITE 1	SACRAMENTO, CA 95825–	916–925–4247
HOLIDAY INN CAPITOL PLAZA SACRAMENTO.		300 J. ST	SACRAMENTO, CA 95814–	916–446–0100
HOLIDAY INN SACRAMENTO NORTHEAST.		5321 DATE AVE	SACRAMENTO, CA 95841–2597	916–338–5800
HOST AIRPORT HOTEL BY MARRIOTT.		6945 AIRPORT BLVD	SACRAMENTO, CA 95837–	916–922–8071
HOWARD JOHNSON HOTEL		3343 BRADSHAW RD	SACRAMENTO, CA 95827–	916–366–1266
HYATT REGENCY SACRAMENTO.		1209 L ST	SACRAMENTO, CA 95814–	916–443–1234
INNS OF AMERICA		25 HOWE AVE	SACRAMENTO, CA 95826–	916–386–8408
LA QUINTA MOTOR INN #631		4604 MADISON AVE	SACRAMENTO, CA 95841–	916–348–0900
RADISSON HOTEL SACRAMENTO.		500 LEISURE LN	SACRAMENTO, CA 95815–	916–922–2020
RESIDENCE INN BY MARRIOTT.		2410 W. EL CAMINO	SACRAMENTO, CA 95833–	916–649–1300
SACRAMENTO HILTON INN		2200 HARVARD ST	SACRAMENTO, CA 95815–	916–922–4700
SUPER 8 MOTEL FLORIN LOCATION.		7216 55TH ST	SACRAMENTO, CA 95823–	916–427–7925
TRAVELERS INN		3796 NORTHGATE BLVD	SACRAMENTO, CA 95834–	916–927–7117
COMFORT INN		144 KERN ST	SALINAS, CA 93905–	408–758–8850
HOLIDAY INN EXPRESS SALEX		131 JOHN ST	SALINAS, CA 93901–	408–757–1020
LAUREL INN MOTEL		801 W. LAUREL DR	SALINAS, CA 93906–	408–449–2474
COMFORT INN		1909 S. BUSINESS CENTER DR.	SAN BERNARDINO, CA 92408–	714–889–0090
E Z 8 MOTELS INC		1750 S. WATERMAN AVE	SAN BERNARDINO, CA 92408–	714–888–4827
HILTON SAN BERNARDINO		285 HOSPITALITY LN	SAN BERNARDINO, CA 92408–	714–889–0133
LA QUINTA INN SAN BERNARDINO.		205 E. HOSPITALITY LN	SAN BERNARDINO, CA 92408–	714–888–7571
RAMADA INN SAN BERNARDINO.		2000 OSTREMS WAY	SAN BERNARDINO, CA 92407–	714–887–3001
VALLEY MOTEL		1640 N. MT. VERNON AVE	SAN BERNARDINO, CA 92411–	714–887–4258
COURTYARD BY MARRIOTT SAN FRANCISCO AIRPORT.		1050 BAYHILL DR	SAN BRUNO, CA 94066–	415–952–3333
SUMMERFIELD SUITES HOTEL		1350 HUNTINGTON AVE	SAN BRUNO, CA 94066–	415–588–0770
DAYS INN SAN CARLOS		26 EL CAMINO REAL	SAN CARLOS, CA 94070–	415–591–5771
SAN CARLOS INN		1562 EL CAMINO REAL	SAN CARLOS, CA 94070–	415–591–6655

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COMFORT SUITES		3701 S. EL CAMINO REAL	SAN CLEMENTE, CA 92672–	714–361–8600
HOLIDAY INN SAN CLEMENTE RESORT.		111 S. AVE. DE ESTRELLA	SAN CLEMENTE, CA 92672–	714–361–3000
BEST WESTERN HACIENDA HOTEL OLD TOWN.		4041 HARNEY ST	SAN DIEGO, CA 92110–	619–298–4707
BEST WESTERN INN MIRAMAR		9310 KEARNY MESA RD	SAN DIEGO, CA 92126–	619–578–5800
BEST WESTERN SEVEN SEAS		411 HOTEL CIRCLE S	SAN DIEGO, CA 92108–	619–291–1300
BUDGET MOTEL ALVARADO		4380 ALVARADO CANYON RD	SAN DIEGO, CA 92100–	619–280–1892
CARMEL HIGHLAND DOUBLETREE GOLF & TENNIS RESORT.		14455 PENASQUITOS DR	SAN DIEGO, CA 92129–	619–672–9100
CLARIONS HOTEL SAINT JAMES.		830 SIXTH AVE	SAN DIEGO, CA 92101–	619–234–0155
CLARKE'S FLAMINGO LODGE		1765 UNION ST	SAN DIEGO, CA 92101–	619–234–6787
COMFORT INN MISSION BAY		3747 MIDWAY DR	SAN DIEGO, CA 92110–	619–225–1295
COMFORT INN OLD TOWN SAN DIEGO AIRPORT.		1955 SAN DIEGO AVE	SAN DIEGO, CA 92110–	619–543–1130
COMFORT SUITES MISSION VALLEY.		631 CAMINO DEL RIO, S	SAN DIEGO, CA 92108–	619–294–3444
CORINTHIAN SUITES HOTEL		1840 FOURTH AVE	SAN DIEGO, CA 92101–	619–236–1600
COURTYARD BY MARRIOTT MIRA MESA LA JOLLA.		9650 SCRANTON RD	SAN DIEGO, CA 92121–	619–558–9600
DANA INN AND MARINA		1710 W. MISSION BAY DR	SAN DIEGO, CA 92109–	800–445–3339
DAYS INN DOWNTOWN		1449 9TH AVE	SAN DIEGO, CA 92101–	619–239–0113
DAYS INN HOTEL CIRCLE		543 HOTEL CIR. S	SAN DIEGO, CA 92108–	800–227–4743
DAYS INN MISSION BAY IMAGE INN.		2525 CLAIRMONT BLVD	SAN DIEGO, CA 92117–	619–275–5700
DOUBLETREE CLUB HOTEL		11915 EL CAMINO REAL	SAN DIEGO, CA 92130–	619–481–5800
DOUBLETREE CLUB HOTEL RANCHO BERNARDO.		11611 BERNARDO PLAZA CT	SAN DIEGO, CA 92128–	619–485–9250
DOUBLETREE HOTEL AT HORTON PLAZA.		910 BROADWAY CIR	SAN DIEGO, CA 92101–	619–239–2200
E Z 8 MOTELS INC		1010 OUTER RD	SAN DIEGO, CA 92154–	619–575–8808
E Z 8 MOTELS INC		3333 CHANNEL WAY	SAN DIEGO, CA 92110–	619–223–8500
E Z 8 MOTELS INC		4747 PACIFIC HWY	SAN DIEGO, CA 92110–	619–294–2512
E Z 8 MOTELS INC		3325 MIDWAY DR	SAN DIEGO, CA 92110–	619–224–3166
E Z 8 MOTELS INC		2484 HOTEL CIRCLE PL	SAN DIEGO, CA 92108–	619–291–8252
ECONO LODGE		3880 GREENWOOD	SAN DIEGO, CA 92110–	619–543–9944
ECONO LODGE		3880 GREENWOOD ST	SAN DIEGO, CA 92110–	619–543–9944
EMBASSY SUITES HOTEL		4550 LA JOLLA VILLAGE DR	SAN DIEGO, CA 92122–	619–453–0400
EMBASSY SUITES SAN DIEGO BAY.		601 PACIFIC HWY	SAN DIEGO, CA 92101–	619–239–2400
HAMPTON INN SAN DIEGO KEARNY MESA.		5434 KEARNY MESA RD	SAN DIEGO, CA 92111–	619–292–1482
HOLIDAY INN EXPRESS		3950 JUPITER ST	SAN DIEGO, CA 92110–	619–226–8000
HOLIDAY INN HARBOR VIEW		1617 FIRST AVE	SAN DIEGO, CA 92101–	619–239–6171
HOLIDAY INN MISSION VALLEY HOTEL CIRCLE.		595 HOTEL CIRCLE S	SAN DIEGO, CA 92108–	619–291–5720
HOLIDAY INN MONTGOMERY FIELD.		8110 AERO DR	SAN DIEGO, CA 92123–	619–277–6688
HOLIDAY INN NORTH MIRAMAR SAN DIEGO.		9335 KEARNY MESA RD	SAN DIEGO, CA 92126–	619–695–2300
HOLIDAY INN ON THE BAY		1355 N. HARBOR DR	SAN DIEGO, CA 92101–	619–232–2861
HOLIDAY INN RANCHO BERNARDO.		17065 W. BERNARDO DR	SAN DIEGO, CA 92127–	619–485–6530
HOWARD JOHNSON LODGE		4545 WARING RD	SAN DIEGO, CA 92120–	619–286–7000
HUMPHREY'S HALF MOON INN		2303 SHELTER ISLAND DR	SAN DIEGO, CA 92106–	619–224–3411
HYATT ISLANDIA HOTEL		1441 QUIVIRA RD	SAN DIEGO, CA 92109–7898	619–224–1234
HYATT REGENCY LA JOLLA		3777 LA JOLLA VILLAGE DR	SAN DIEGO, CA 92122–	619–552–1234
KINGS INN	PO BOX 8175	1333 HOTEL CIRCLE S	SAN DIEGO, CA 92108–	619–297–2231
KONA KAI RESORT		1551 SHELTER ISLAND DR	SAN DIEGO, CA 92106–	619–222–1191
LA QUINTA MOTOR INN #3657		10185 PASEO MONTRIL	SAN DIEGO, CA 92129–	619–484–8800
LAFAYETTE HOTEL		2223 EL CAJON BLVD	SAN DIEGO, CA 92104–	619–296–2101
LEXINGTON HOTEL AND SUITES.		3888 GREENWOOD ST	SAN DIEGO, CA 92110–	619–299–6633
PACIFIC SHORES INN		4802 MISSION BLVD	SAN DIEGO, CA 92109–	619–483–6300
PACIFIC TERRACE INN		610 DIAMOND ST	SAN DIEGO, CA 92109–	619–581–3500
PAN PACIFIC HOTEL SAN DIEGO.		400 W. BROADWAY	SAN DIEGO, CA 92101–	619–239–4500
QUALITY INN STADIUM		5343 ADOBE FALLS RD	SAN DIEGO, CA 92120–	619–297–1911
QUALITY SUITES SAN DIEGO NORTH.		9880 MIRA MESA BLVD	SAN DIEGO, CA 92131–	619–530–2000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RADISSON HOTEL HARBOR VIEW.		1646 FRONT ST	SAN DIEGO, CA 92101–	619–239–6800
RADISSON HOTEL SAN DIEGO		1433 CAMINO DEL RIO S	SAN DIEGO, CA 92708–	619–260–0111
RADISSON SUITE HOTEL RANCHO BERNARDO.		11520 W. BERNARDO CT	SAN DIEGO, CA 92127–1602	619–451–6600
RAMADA HOTEL BAY VIEW		660 K ST	SAN DIEGO, CA 92101–	619–696–0234
RAMADA INN HOTEL CIRCLE		2151 HOTEL CIR. S	SAN DIEGO, CA 92108–	800–532–4241
RAMADA LIMITED SUITES		12979 RANCHO PENASQUITOS BLVD.	SAN DIEGO, CA 92129–	619–484–3300
RAMADA SAN DIEGO		5550 KEARNY MESA RD	SAN DIEGO, CA 92111–	619–278–0800
RANCHO BERNARDO TRAVELODGE.		16929 W. BERNARDO DR	SAN DIEGO, CA 92127–	619–487–0445
RED LION HOTEL SAN DIEGO		7450 HAZARD CTR. DR	SAN DIEGO, CA 92108–	619–297–5466
RESIDENCE INN BY MARIOTT SAN DIEGO.		5400 KEARNY MESA RD	SAN DIEGO, CA 92111–	619–278–2100
RESIDENCE INN BY MARRIOTT SAN DIEGO NORTH.		11002 RANCHO CARMEL DR	SAN DIEGO, CA 92128–	619–673–1900
SAN DIEGO HILTON BEACH AND TENNIS RESORT.		1775 E. MISSION BAY DR	SAN DIEGO, CA 92109–	619–276–4010
SAN DIEGO MARRIOTT HOTEL AND MARINA.		333 W. HARBOR DR	SAN DIEGO, CA 92101–7709	619–234–1500
SAN DIEGO MARRIOTT MISSION VALLEY.		8757 RIO SAN DIEGO DR	SAN DIEGO, CA 92108–9607	619–692–3800
SAN DIEGO MARRIOTT SUITES DOWNTOWN.		701 A ST	SAN DIEGO, CA 92101–	619–696–9800
SAN DIEGO MISSION VALLEY HILTON.		901 CAMINO DEL RIO S	SAN DIEGO, CA 92108–	619–543–9000
SAN DIEGO PRINCESS RESORT.		1404 W. VACATION RD	SAN DIEGO, CA 92109–	619–274–4630
SEACOAST SUITES		4760 MISSION BLVD	SAN DIEGO, CA 92109–	619–483–6780
SHERATON HARBOR ISLAND HOTEL.		1380 HARBOR ISLAND DR	SAN DIEGO, CA 92101–	619–692–2215
THE HORTON GRAND HOTEL		311 ISLAND AVE	SAN DIEGO, CA 92101–	619–544–1886
THE WESTGATE HOTEL		1055 SECOND AVE	SAN DIEGO, CA 92101–	619–238–1818
TRAVELODGE HOTEL		1960 HARBOR ISLAND	SAN DIEGO, CA 92101–	619–291–6700
TRAVELODGE SPORTS ARENA		3737 SPORTS ARENA BLVD	SAN DIEGO, CA 92110–	619–226–3711
U.S. GRANT HOTEL		326 BROADWAY	SAN DIEGO, CA 92101–	619–232–3121
U.S. SUITES IN DEL MAR		12582 CARMEL CREEK	SAN DIEGO, CA 92130–	619–554–0300
U.S. SUITES IN RANCHO BERNARDO.		11880 CAMINITO RONALDO	SAN DIEGO, CA 92128–	619–554–0300
U.S. SUITES IN SAN DIEGO		7110 SHORELINE DR	SAN DIEGO, CA 92122–	619–554–0300
WYNDHAM NORTH SAN DIEGO.		5975 LUSK BLVD	SAN DIEGO, CA 92121–	619–558–1818
COMFORT SUITES HOTEL		501 W. BONITA AVE	SAN DIMAS, CA 91773–	909–592–0500
ADELAIDE INN		5 ISADORA DUNCAN	SAN FRANCISCO, CA 94102–	415–441–2261
ANA HOTEL SAN FRANCISCO		50 THIRD ST	SAN FRANCISCO, CA 94103–	415–974–6400
BEST WESTERN FLAMINGO		114 SEVENTH ST	SAN FRANCISCO, CA 94103–	415–621–0701
BEST WESTERN MIYAKO INN		1800 SUTTER ST	SAN FRANCISCO, CA 94115–	415–921–4000
BROADWAY MANOR MOTEL		2201 VAN NESS AVE	SAN FRANCISCO, CA 94109–	415–776–7900
CASTLE INN MOTEL		1565 BROADWAY	SAN FRANCISCO, CA 94109–	415–441–1155
CHELSEA MOTOR INN		2095 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–563–5600
COMFORT INN		240 7TH ST	SAN FRANCISCO, CA 94103–	415–861–6469
COVENTRY MOTOR INN		1901 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–567–1200
COW HOLLOW MOTOR INN AND SUITES.		2190 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–921–5800
DELBEX HOTEL		2126 MISSION ST	SAN FRANCISCO, CA 94110–	415–626–9406
DEVILLE MOTEL		2599 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–346–4664
EXECUTIVE SUITES CITY HEIGHTS.		840 POST ST	SAN FRANCISCO, CA 94133–	415–567–5151
EXECUTIVE SUITES POST STREET TOWERS.		737 POST ST	SAN FRANCISCO, CA 94133–	415–567–5151
EXECUTIVE SUITES ST. FRANCIS PLACE.		ONE ST. FRANCIS PL	SAN FRANCISCO, CA 94133–	415–567–5151
FAIRMONT HOTEL SAN FRANCISCO.		950 MASON ST	SAN FRANCISCO, CA 94108–	415–772–5217
FRIENDSHIP INN CIVIC CENTER.		860 EDDY ST	SAN FRANCISCO, CA 94109–	415–474–4374
GRAND HYATT SAN FRANCISCO ON UNION SQUARE.		345 STOCKTON ST	SAN FRANCISCO, CA 94108–	415–398–1234
GRANT PLAZA HOTEL		465 GRANT AVE	SAN FRANCISCO, CA 94108–	415–434–3883
HOLIDAY INN FISHERMAN'S WHARF.		1300 COLUMBUS AVE	SAN FRANCISCO, CA 94133–	415–771–9000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN UNION SQUARE		480 SUTTER ST	SAN FRANCISCO, CA 94108–	415–398–8900
HOTEL DIVA		440 GEARY ST	SAN FRANCISCO, CA 94102–	415–885–0206
HOTEL GRIFFON		155 STUART ST	SAN FRANCISCO, CA 94105–	415–495–2100
HOTEL NIKKO SAN FRANCISCO.		222 MASON ST	SAN FRANCISCO, CA 94102–	415–394–1111
HOTEL TRITON		342 GRANT AVE	SAN FRANCISCO, CA 94108–	415–394–0500
HOTEL VINTAGE COURT		650 BUSH ST	SAN FRANCISCO, CA 94108–	415–392–4666
HYATT AT, FISHERMAN'S WHARF.		555 N. POINT ST	SAN FRANCISCO, CA 94133–	415–563–1234
HYATT REGENCY SAN FRANCISCO.		5 EMBARCADERO CENTER	SAN FRANCISCO, CA 94111–	415–788–1234
INN AT THE OPERA		333 FULTON ST	SAN FRANCISCO, CA 94102–	415–863–8400
ITT SHERATON SHERATON PALACE HOTEL.		2 NEW MONTGOMERY ST	SAN FRANCISCO, CA 94105–	415–392–8600
LAYNE HOTEL		545 JONES ST	SAN FRANCISCO, CA 94102–	415–441–9317
LOMBARD PLAZA HOTEL		2026 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–921–2444
METRO PACIFIC SUITES		737 POST ST	SAN FRANCISCO, CA 94109–	415–928–7600
METRO PACIFIC SUITES		840 POST ST	SAN FRANCISCO, CA 94109–	415–928–7600
MIYAKO HOTEL		1625 POST ST	SAN FRANCISCO, CA 94115–	415–922–3200
MONTICELLO INN		127 ELLIS ST	SAN FRANCISCO, CA 94102–	415–392–8800
MOSSER VICTORIAN HOTEL OF ARTS AND MUSIC INC.		54 FOURTH ST	SAN FRANCISCO, CA 94103–	415–986–4400
MOTEL CAPRI		2015 GREENWICH ST	SAN FRANCISCO, CA 94123–	415–346–4667
NOB HILL MOTEL		1630 PACIFIC AVE	SAN FRANCISCO, CA 94109–	415–775–8160
PAN PACIFIC HOTEL SAN FRANCISCO.		500 POST ST	SAN FRANCISCO, CA 94102–	415–771–8600
PARC FIFTY FIVE HOTEL		55 CYRIL MAGNIN	SAN FRANCISCO, CA 94102–	415–392–8000
PARK HYATT SAN FRANCISCO		333 BATTERY ST	SAN FRANCISCO, CA 94111–	415–296–2909
PRESIDIO TRAVELODGE		2755 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–931–8581
QUALITY HOTEL AND CONFERENCE CENTER.		1101 VAN NESS AVE	SAN FRANCISCO, CA 94109–	415–776–8900
RAMADA HOTEL FISHERMAN'S WHARF.		590 BAY ST	SAN FRANCISCO, CA 94133–1706.	415–885–4700
REDWOOD INN MOTEL		1530 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–776–3800
RITZ CARLTON HOTEL SAN FRANCISCO.		600 STOCKTON ST	SAN FRANCISCO, CA 94108–	415–296–7465
ROBERTS AT THE BEACH MOTEL.		2828 SLOAT BLVD	SAN FRANCISCO, CA 94116–	415–564–2610
ROYAL MOTEL		2555 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–921–3105
SAN FRANCISCO AIRPORT HILTON HOTEL.	8355	SAN FRANCISCO INTL. AIRPORT.	SAN FRANCISCO, CA 94128–0355.	415–589–0770
SAN FRANCISCO HILTON & TOWERS.		333 O'FARRELL ST	SAN FRANCISCO, CA 94102–	415–771–1400
SAN FRANCISCO MARRIOTT FISHERMAN'S WHARF.		1250 COLUMBUS AVE	SAN FRANCISCO, CA 94133–	415–775–7555
SAN FRANCISCO MARRIOTT MOSCONE CENTER.		55 FOURTH ST	SAN FRANCISCO, CA 94103–	415–896–1600
SANDS MOTEL OR SUPER 8 MOTEL.		2440 LOMBARD ST	SAN FRANCISCO, CA 94123–	415–922–0244
SAVOY HOTEL		580 GEARY ST	SAN FRANCISCO, CA 94102–	415–441–2700
SHERATON AT FISHERMAN'S WHARF.		2500 MASON ST	SAN FRANCISCO, CA 94133–	415–362–5500
STANYAN PARK HOTEL		750 STANYAN ST	SAN FRANCISCO, CA 94117–	415–751–1000
STOUFFER STANFORD COURT HOTEL.		905 CALIFORNIA ST	SAN FRANCISCO, CA 94108–	415–989–3500
THE CHANCELLOR HOTEL		433 POWELL ST	SAN FRANCISCO, CA 94102–	415–362–2004
THE HARBOR COURT HOTEL		165 STEURAT ST	SAN FRANCISCO, CA 94105–	415–882–1300
THE PRESCOTT HOTEL		545 POST ST	SAN FRANCISCO, CA 94102–	415–563–0303
COMFORT INN		1215 S. FIRST ST	SAN JOSE, CA 95112–	408–280–5300
COURTYARD BY MARRIOTT SAN JOSE AIRPORT.		1727 TECHNOLOGY DR	SAN JOSE, CA 95110–	408–441–6111
E Z 8 MOTELS INC		2050 N. FIRST ST	SAN JOSE, CA 95131–	408–436–0636
E Z 8 MOTELS INC		1550 N. FIRST ST	SAN JOSE, CA 95112–	408–453–1630
EXECUTIVE INN		3930 MONTEREY RD	SAN JOSE, CA 95111–	408–281–8700
EXECUTIVE INN		16505 CONDIT RD	SAN JOSE, CA 95037–	408–778–0404
FAIRMONT HOTEL		170 S. MARKET ST	SAN JOSE, CA 95113–2394	408–998–1900
HOMEWOOD SUITES SAN JOSE.		10 W. TRIMBLE RD	SAN JOSE, CA 95131–	408–428–9900
HOTEL SAINTE CLAIRE		302 S. MARKET ST	SAN JOSE, CA 95113–	408–295–2000
HYATT SAN JOSE		1740 N. FIRST ST	SAN JOSE, CA 95112–	408–993–1234
PARKVIEW MOTEL		1140 S. SECOND ST	SAN JOSE, CA 95112–	408–297–8455
RED LION HOTEL SAN JOSE		2050 GATEWAY PL	SAN JOSE, CA 95110–	408–453–4000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SAN JOSE AREA DOWNTOWN TRAVELODGE.		1041 THE ALAMEDA	SAN JOSE, CA 95126–	408–295–0159
SAN JOSE HILTON AND TOWERS.		300 ALAMEDA BLVD	SAN JOSE, CA 95110–	408–287–2100
SANDS MOTEL		1787 MONTERY RD	SAN JOSE, CA 95112–	408–293–8025
SUMMERFIELD SUITES HOTEL		1602 CRANE CT	SAN JOSE, CA 95112–	408–436–1600
THE HENSLEY HOUSE BED AND BREAKFAST INN.		456 N. THIRD ST	SAN JOSE, CA 95112–	408–298–3537
THE PRESIDENT INN		3200 MONTEREY RD	SAN JOSE, CA 95111–	408–972–2200
SAN LEANDRO MARINA INN		68 SAN LEANDRO MARINA	SAN LEANDRO, CA 94577–	510–895–1311
LA CUESTA MOTOR INN		2074 MONTEREY ST	SAN LUIS OBISPO, CA 93401–	805–543–2777
QUALITY SUITES		1631 MONTEREY ST	SAN LUIS OBISPO, CA 93401–	805–541–5001
SANDS MOTEL		1930 MONTEREY ST	SAN LUIS OBISPO, CA 93401–	805–544–0500
SAN MARCOS TRAVELODGE		517 SAN MARCOS BLVD	SAN MARCOS, CA 92069–	619–471–2800
BEST WESTERN SAN MATEO		2940 S. NORFOLK ST	SAN MATEO, CA 94403–	415–344–3300
HOLIDAY INN		330 N. BAYSHORE BLVD	SAN MATEO, CA 94401–	415–344–3219
HOLIDAY INN EXPRESS		350 BAYSHORE BLVD	SAN MATEO, CA 94401–	415–344–6376
HOWARD JOHNSON LODGE		2210 S. EL CAMINO REAL	SAN MATEO, CA 94403–	415–341–9231
RESIDENCE INN SAN MATEO		2000 WINDWARD WAY	SAN MATEO, CA 94404–	415–574–4700
VILLA QUALITY HOTEL		4000 S. EL CAMINO REAL	SAN MATEO, CA 94403–	415–341–0966
BEST WESTERN SAN PEDRO GRAND HOTEL.		111 S. GAFFET ST,	SAN PEDRO, CA 90731–	310–514–1414
DOUBLETREE HOTEL AND MARINA.		2800 VIA CABRILLO MARINA	SAN PEDRO, CA 90731–	310–514–3344
SEAROCK MOTEL		354 W. 9TH ST	SAN PEDRO, CA 90731–	310–548–4616
SHERATON LOS ANGELES HARBOR HOTEL.		601 S. PALOS VERDES ST	SAN PEDRO, CA 90731–	310–519–8200
EMBASSY SUITES HOTEL & CONFERENCE CENTER.		101 MCINNIS PKWY	SAN RAFAEL, CA 94903–	415–499–9222
FRIENDSHIP VILLA INN		1600 LINCOLN AVE	SAN RAFAEL, CA 94901–	415–456–4975
RESIDENCE INN BY MARRIOTT.		1071 MARKET PL	SAN RAMON, CA 94583–	510–277–9292
SAN RAMON MARRIOTT HOTEL AT BISHOP RANCH.		2600 BISHOP DR	SAN RAMON, CA 94583–	510–867–9200
AMERICANA INN & SUITES		815 W. SAN YSIDRO BLVD	SAN YSIDRO, CA 92173–	619–428–5521
ECONOMY MOTELS OF AMERICA.		230 VIA DE SAN YSIDRO	SAN YSIDRO, CA 92173–	619–428–6191
COMFORT SUITES JOHN WAYNE AIRPORT.		2620 HOTEL TERRACE DR	SANTA ANA, CA 92705–	714–966–5200
COURTYARD BY MARRIOTT SOUTH COAST METRO.		3002 S. HARBOR BLVD	SANTA ANA, CA 92704–	714–545–1001
DAYS INN		1600 E. FIRST ST	SANTA ANA, CA 92701–	714–835–3051
DOUBLETREE CLUB HOTEL ORANGE COUNTY AIRPORT.		7 HUTTON CENTRE DR	SANTA ANA, CA 92707–	714–751–2400
HOWARD JOHNSON LODGE		939 E. 17TH ST	SANTA ANA, CA 92701–	714–558–3700
HOWARD JOHNSON LODGE		2700 HOTEL TERRACE DR	SANTA ANA, CA 92705–	714–432–8888
QUALITY SUITES ORANGE COUNTY AIRPORT.		2701 HOTEL TERRACE DR	SANTA ANA, CA 92705–	714–957–9200
RADISSON SUITE HOTEL SANTA ANA.		2720 HOTEL TERRACE DR	SANTA ANA, CA 92705–	714–556–3836
RAMADA GRANT AVENUE HOTEL.		2726 S. GRAND AVE	SANTA ANA, CA 92705–	714–966–1955
FESS PARKER'S RED LION RESORT.		633 E. CABRILLO BLVD	SANTA BARBARA, CA 93103–	805–564–4333
QUALITY SUITES SANTA BARBARA.		5490 HOLLISTER AVE	SANTA BARBARA, CA 93117–	805–683–6722
SANTA BARBARA BEACH TRAVELODGE.		22 CASTILLO	SANTA BARBARA, CA 93101–	805–965–6527
SANTA BARBARA INN		901 CABRILLO BLVD	SANTA BARBARA, CA 93103–	805–966–2285
SHERATON SANTA BARBARA HOTEL & SPA.		1111 E. CABRILLO BLVD	SANTA BARBARA, CA 93103–	805–963–0744
SIMPSON HOUSE INN		121 E. ARRELLAGA ST	SANTA BARBARA, CA 93101–	805–963–7067
DAYS INN SANTA CLARA		4200 GREAT AMERICA PKWY	SANTA CLARA, CA 95054–	408–980–1525
E Z 8 MOTELS INC		3550 EL CAMINO REAL	SANTA CLARA, CA 95051–	408–246–3119
EMBASSY SUITES HOTEL		2885 LAKESIDE DR	SANTA CLARA, CA 95054–	408–496–6400
HOWARD JOHNSON LODGE		5405 STEVENS CREEK BLVD	SANTA CLARA, CA 95051–	408–257–6600
QUALITY SUITES SILICON VALLEY.		3100 LAKESIDE DR	SANTA CLARA, CA 95054–	408–748–9800
SANTA CLARA MARRIOTT		2700 MISSION COLLEGE BLVD	SANTA CLARA, CA 95054–	408–988–1500
SANTA CLARA TRAVELODGE		3477 EL CAMINO REAL	SANTA CLARA, CA 95051–	408–984–3364
THE WESTIN HOTEL SANTA CLARA.		5101 GREAT AMERICA PKWY	SANTA CLARA, CA 95054–	408–968–0700

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE WOODCREST HOTEL		5415 STEVENS CREEK BLVD	SANTA CLARA, CA 95051–	408–446–9636
CASA BLANCA MOTEL		101 MAIN ST	SANTA CRUZ, CA 95060–	408–423–1570
MISSION INN MOTEL		2250 MISSION ST	SANTA CRUZ, CA 95060–	408–425–5455
MOTEL CONTINENTAL		414 OCEAN ST	SANTA CRUZ, CA 95060–	408–429–1221
PACIFIC INN		330 OCEAN ST	SANTA CRUZ, CA 95060–	408–425–3772
BEST WESTERN BIG AMERICA		1725 N. BROADWAY	SANTA MARIA, CA 93454–	805–922–5200
RAMADA SUITES		2050 N. PREISKER LN	SANTA MARIA, CA 93454–	805–928–6000
SANTA MARIA AIRPORT HILTON HOTEL.		3455 SKYWAY DR	SANTA MARIA, CA 93455–	805–928–8000
SANTA MARIA INN		801 S. BROADWAY	SANTA MARIA, CA 93454–	805–928–7777
GUEST QUARTERS SUITE HOTEL.		1707 FOURTH ST	SANTA MONICA, CA 90401–	310–395–3332
HOLIDAY INN BAY VIEW PLAZA.		530 W. PICO BLVD	SANTA MONICA, CA 90405–	310–399–9344
HOLIDAY INN SANTA MONICA BEACH AREA.		120 COLORADO BLVD	SANTA MONICA, CA 90401–	310–451–0676
LOEWS SANTA MONICA BEACH HOTEL.		1700 OCEAN AVE	SANTA MONICA, CA 90401–	310–458–6700
MIRAMAR SHERATON HOTEL		101 WILSHIRE BLVD	SANTA MONICA, CA 90401–	310–576–7777
OCEAN PARK INN		2452 LINCOLN BLVD	SANTA MONICA, CA 90405–	310–392–3966
RADISSON HUNTLEY HOTEL		1111 SECOND ST	SANTA MONICA, CA 90403–	310–394–5454
RESTHAVEN MOTEL		815 GRANT ST	SANTA MONICA, CA 90405–	310–452–3977
SANTA MONICA GATEWAY HOTEL.		1920 SANTA MONICA BLVD	SANTA MONICA, CA 90404–	310–829–9100
STARDUST MOTOR HOTEL		3202 WILSHIRE BLVD	SANTA MONICA, CA 90403–	310–828–4584
HOLIDAY INN MISSION DE ORO.		13070 S. HWY. 33	SANTA NELLA, CA 95322–	209–826–4444
LA FONTAINE INN		28976 W. PLAZA DR	SANTA NELLA, CA 95322–	209–826–8282
DAYS INN		175 RAILROAD ST	SANTA ROSA, CA 95401–	707–573–9000
DOUBLERTREE HOTEL		3555 ROUND BARN BLVD	SANTA ROSA, CA 95403–	707–523–7555
FLAMINGO RESORT HOTEL FITNESS CENTER.		2777 FOURTH ST	SANTA ROSA, CA 95403–	800–848–8300
RADISSON INN SEAL BEACH		600 MARINA DR	SEAL BEACH, CA 90740–	310–493–7501
SELMA SUPER 8 MOTEL		3142 HIGHLAND AVE	SELMA, CA 93662–	209–896–2800
SHAVER LAKE LODGE		44185 HWY. 168	SHAVER LAKE, CA 93664–	209–841–3538
CLIFFS AT SHELL BEACH		2757 SHELL BEACH RD	SHELL BEACH, CA 93449–	805–773–5000
CARRIAGE INN		5525 SEPULVEDA BLVD	SHERMAN OAKS, CA 91411–	818–787–2300
RADISSON VALLEY CENTER HOTEL.		15433 VENTURA BLVD	SHERMAN OAKS, CA 91403–	818–981–5400
CLARION HOTEL SIMI VALLEY		1775 MADERA RD	SIMI VALLEY, CA 93065–	805–584–6300
RADISSON HOTEL SIMI VALLEY.		999 ENCHANTED WAY	SIMI VALLEY, CA 93065–	805–583–4000
SIMI VALLEY TRAVELODGE		2550 ERRINGER RD	SIMI VALLEY, CA 93065–	805–584–6006
RAMADA INN SOLANA BEACH		717 S. HWY. 101	SOLANA BEACH, CA 92075–	619–792–8200
BEST WESTERN VALLEY HARVEST INN.		1155 FRONT ST	SOLEDAD, CA 93960–	408–678–3833
DANISH COUNTRY INN		1455 MISSION DR	SOLVANG, CA 93463–	805–688–2018
SOLVANG ROYAL SCANDINAVIAN INN.	PO BOX 30	400 ALISAL RD	SOLVANG, CA 93464–	805–688–8000
VIKING MOTEL		1506 MISSION DR	SOLVANG, CA 93463–	805–688–1337
EL DORADO HOTEL		405 FIRST ST. W	SONOMA, CA 95476–	707–996–3030
TROJAN HORSE INN		19455 SONOMA HWY	SONOMA, CA 95476–	707–996–2430
BEST WESTERN SONORA OAKS.		19551 HESS AVE	SONORA, CA 95370–	209–533–4400
SONORA ALADDIN MOTOR INN.		14260 MONO WAY	SONORA, CA 95370–	209–533–4971
SONORA GOLD LODGE		480 W. STOCKTON ST	SONORA, CA 95370–	209–532–3852
SONORA INN		160 S. WASHINGTON ST	SONORA, CA 95370–	209–532–2400
VALU INN		10352 ATLANTIC AVE	SOUTH GATE, CA 90280–	213–567–9218
VILLA MOTEL		8967 ATLANTIC AVE	SOUTH GATE, CA 90280–	213–564–2176
CASINO AREA TRAVELODGE	PO BOX 6500	4003 LAKE TAHOE BLVD	SOUTH LAKE TAHOE, CA 96157–.	916–541–5000
EMBASSY SUITES RESORT LAKE TAHOE.		4130 LAKE TAHOE BLVD	SOUTH LAKE TAHOE, CA 96150–.	916–544–5400
HOLIDAY LODGE	PO BOX 4007	4095 LAYREL AVE	SOUTH LAKE TAHOE, CA 96157–.	916–544–4101
INN BY THE LAKE		3300 LAKE TAHOE BLVD	SOUTH LAKE TAHOE, CA 96150–.	916–542–0330
SOUTH TAHOE TRAVELODGE	PO BOX 70512	3489 LAKE TAHOE BLVD	SOUTH LAKE TAHOE, CA 96156–.	916–544–5266
STATELINE TRAVELODGE	PO BOX 6600	4011 LAKE TAHOE BLVD	SOUTH LAKE TAHOE, CA 96157–.	916–544–6000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
TAHOE SEASONS RESORT	PO BOX 5656	3901 SADDLE RD	SOUTH LAKE TAHOE, CA 96157–.	916–541–6700
TAHOE VALLEY MOTEL		2241 LAKE TAHOE BLVD	SOUTH LAKE TAHOE, CA 96150–.	916–541–0353
COMFORT SUITES		121 E. GRAND AVE	SOUTH SAN FRANCISCO, CA 94080–.	415–589–7766
LA QUINTA INN SOUTH SAN FRANCISCO.		20 AIRPORT BLVD	SOUTH SAN FRANCISCO, CA 94080–.	415–583–2223
ECONO LODGE OF STOCKTON.		2210 S. MANTHEY RD	STOCKTON, CA 95206–2927	209–466–5741
HOLIDAY INN STOCKTON		111 E. MARCH LN	STOCKTON, CA 95207–	209–474–3301
LA QUINTA MOTOR INN #4625		2710 W. MARCH LN	STOCKTON, CA 95219–	209–952–7800
TRAVELERS INN		2654 W. MARCH LN	STOCKTON, CA 95207–	209–478–4300
BEST WESTERN CORDELIA INN.		4373 CENTRAL PL	SUISUN, CA 94585–	707–864–2029
INN ON SUMMER HILL		2520 LILLIE AVE	SUMMERLAND, CA 93067–	805–969–8996
COMFORT INN SUNNYVALE		595 N. MATHILDA AVE	SUNNYVALE, CA 94086–	408–749–8000
HOLIDAY INN SUNNYVALE		1217 WILDWOOD AVE	SUNNYVALE, CA 94089–	408–245–5330
QUALITY INN		1280 PERSIAN DR	SUNNYVALE, CA 94089–	408–744–0660
RADISSON HAUS INN		1085 E. EL CAMINO REAL	SUNNYVALE, CA 94087–	408–247–0800
RESIDENCE INN BY MARRIOTT SILICON VALLEY I.		750 LAKEWAY	SUNNYVALE, CA 94086–	408–720–1000
RESIDENCE INN BY MARRIOTT SILICON VALLEY II.		1080 STEWART DR	SUNNYVALE, CA 94086–	408–720–8893
SHERATON INN SUNNYVALE		1100 N. MATHILDA AVE	SUNNYVALE, CA 94089–	408–745–6000
SUMMERFIELD SUITES HOTEL		900 HAMLIN CT	SUNNYVALE, CA 94089–	408–745–1515
SUNDOWNER INN		504 ROSS DR	SUNNYVALE, CA 94089–1442	408–734–9900
SUNNYVALE HILTON		1250 LAKESIDE DR	SUNNYVALE, CA 94086–	408–738–4888
SUPER 8		1071 E. EL CAMINO REAL	SUNNYVALE, CA 94087–	408–244–9000
WOODFIN SUITE HOTEL		635 E. EL CAMINO REAL	SUNNYVALE, CA 94087–	408–738–1700
WYNDHAM SUNNYVALE		1300 CHESAPEAKE TERRACE	SUNNYVALE, CA 94089–	408–747–0999
BEST WESTERN TRAILSIDE INN.	PO BOX 759	2785 MAIN ST	SUSANVILLE, CA 96130–	916–257–4123
FRIENDSHIP INN		12783 SAN FERNANDO RD	SYLMAR, CA 91342–	818–367–1223
LAKE OF THE SKY MOTOR INN		955 N. LAKE BLVD	TAHOE CITY, CA 96145–	916–583–3305
TAHOE CITY TRAVELODGE	PO BOX 84	455 N. LAKE BLVD	TAHOE CITY, CA 96145–	916–583–3756
COMFORT INN TEMECULA		27338 JEFFERSON AVE	TEMECULA, CA 92590–	714–699–5888
DOUBLETREE SUITES HOTEL		29345 RANCHO CALIFORNIA RD.	TEMECULA, CA 92591–	714–767–5656
RAMADA INN		28980 FRONT ST	TEMECULA, CA 92590–	714–676–8770
TRAVELERS INN		72 215 VARNER RD	THOUSAND PALMS, CA 92276–	619–343–1381
COURTYARD BY MARRIOTT TORRANCE BUSINESS CTR.		1925 W. 190TH ST	TORRANCE, CA 90506–	310–532–1722
COURTYARD BY MARRIOTT TORRANCE PLAZA DEL AMO.		2633 SEPULVEDA BLVD	TORRANCE, CA 90505–	310–533–0564
HOLIDAY INN TORRANCE GATEWAY.		19800 S. VERMONT AVE	TORRANCE, CA 90502–	310–781–9100
RESIDENCE INN BY MARRIOTT TORRANCE.		3701 TORRANCE BLVD	TORRANCE, CA 90503–	310–543–4566
SUMMERFIELD SUITES HOTEL		19901 PRAIRIE AVE	TORRANCE, CA 90503–	310–371–6525
TORRANCE HOLIDAY INN		21333 HAWTHRONE BLVD	TORRANCE, CA 90503–	310–540–0500
TORRANCE MARRIOTT HOTEL		3635 FASHION WAY	TORRANCE, CA 90503–	310–316–3636
TRUCKEE SUPER 8 LODGE		11506 DEERFIELD DR	TRUCKEE, CA 96161–	916–587–8888
INNS OF AMERICA		1183 N. BLACKSTONE ST	TULARE, CA 93274–	209–686–0985
BEST WESTERN ORCHARD INN.		5025 GOLDEN STATE BLVD	TURLOCK, CA 95380–	209–667–2827
WILDWOOD INN MOTOR LODGE.		22960 MEADOW DR	TWAIN HARTE, CA 95383–	209–586–2900
29 PALMS INN		73950 INN AVE	TWENTY NINE PALMS, CA 92277–.	619–367–3505
CIRCLE C		6340 EL REY AVE	TWENTY NINE PALMS, CA 92277–.	619–367–7615
DISCOVERY INN		1340 N. STATE ST	UKIAH, CA 95482–	707–462–8873
HOLIDAY INN UNION CITY EAST BAY.		32083 ALVARADO NILES RD	UNION CITY, CA 94587–	510–489–2200
SHERATON UNIVERSAL HOTEL.		333 UNIVERSAL TERRACE PKWY.	UNIVERSAL CITY, CA 91608–	818–980–1212
UNIVERSAL CITY HILTON & TOWERS HOTEL.		555 UNIVERSAL TERRACE PKWY.	UNIVERSAL CITY, CA 91608–	818–506–2500
THE RANCH HOUSE INN		27413 N. TOURNEY RD	VALENCIA, CA 91355–	805–255–0555
VALENCIA HILTON GARDEN INN.		27710 THE OLD RD	VALENCIA, CA 91355–1053	805–254–8800

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
E Z 8 MOTELS INC		4 MARIPOSA ST	VALLEJO, CA 94590–	707–554–1840
HOLIDAY INN		1000 FAIRGROUNDS DR	VALLEJO, CA 94533–	707–644–1200
RAMADA INN VALLEJO		1000 ADMIRAL CALLAGHAN LN	VALLEJO, CA 94591–	707–643–2700
REGENCY INN		4326 SONOMA BLVD	VALLEJO, CA 94589–	707–643–4150
ROYAL BAY INN		44 ADMIRAL CALLAGHAN LN	VALLEJO, CA 94591–	707–643–1061
VALU INN		300 FAIRGROUNDS DR	VALLEJO, CA 94590–	707–554–8000
BEST WESTERN AIRTEL PLAZA HOTEL.		7277 VALJEAN AVE	VAN NUYS, CA 91406–	818–997–7676
TRAVELODGE VAN NUYS		6909 SEPULVEDA BLVD	VAN NUYS, CA 91405–	818–787–5400
VOYAGER MOTOR INN		6500 SEPULVEDA BLVD	VAN NUYS, CA 91411–	818–997–6007
MARINA MOTEL		3130 WASHINGTON BLVD	VENICE, CA 90291–	310–821–5086
COUNTRY INN AT VENTURA		298 S. CHESTNUT ST	VENTURA, CA 93001–	805–653–1434
DOUBLETREE HOTEL		2055 HARBOR BLVD	VENTURA, CA 93001–	805–643–6000
HARBORTOWN MARINA RESORT.		1050 SCHOONER DR	VENTURA, CA 93001–	805–658–1212
LA QUINTA MOTOR INN		5818 VALENTINE RD	VENTURA, CA 93003–	805–658–6200
BEST WESTERN GREEN TREE INN.		14173 GREEN TREE BLVD	VICTORVILLE, CA 92392–	619–245–3461
E Z 8 MOTELS INC		15366 LA PAZ AVE	VICTORVILLE, CA 92392–	619–243–2220
E Z 8 MOTELS INC		15401 PARK AVE. E	VICTORVILLE, CA 92392–	619–241–7516
ECONO LODGE		1400 S. MOONEY BLVD	VISALIA, CA 93277–	209–732–6641
RADISSON HOTEL VISALIA		300 S. CT. ST	VISALIA, CA 93291–	209–636–1111
LA QUINTA MOTOR INN #643		630 SYCAMORE AVE	VISTA, CA 92083–	619–727–8180
DOUBLETREE HOTEL		2355 N. MAIN ST	WALNUT CREEK, CA 94596–	510–934–2000
BEST WESTERN INN		740 FREEDOM	WATSONVILLE, CA 95076–	408–724–3367
WAWONA HOTEL		YOSEMITE NATIONAL PARK	WAWONA, CA 95389–	209–375–6437
BEST WESTERN WEST COVINA INN.		3275 E. GARVEY AVE	WEST COVINA, CA 91791–	818–915–1611
COMFORT INN		2804 E. GARVEY AVE. S	WEST COVINA, CA 91791–	818–916–6077
HAMPTON INN WEST COVINA		3145 E. GARVEY N	WEST COVINA, CA 91791–	818–967–5800
HYATT ON SUNSET		8401 SUNSET BLVD	WEST HOLLYWOOD, CA 90069–.	213–656–1234
RAMADA WEST HOLLYWOOD		8585 SANTA MONICA BLVD	WEST HOLLYWOOD, CA 90069–.	310–652–6400
ST. REGIS REGIS LODGES MOTOR HOTEL.		11955 WILSHIRE BLVD	WEST LOS ANGELES, CA 90025–.	310–477–6021
ECHO LODGE MOTEL		1810 W. CAPITOL AVE	WEST SACRAMENTO, CA 95691–.	916–371–5056
SILVEY'S MOTEL		1030 W. CAPITOL AVE	WEST SACRAMENTO, CA 95691–.	916–371–4601
HOWARD JOHNSON		8620 AIRPORT BLVD	WESTCHESTER, CA 90045–	310–645–7700
HYATT WESTLAKE PLAZA		880 S. WESTLAKE BLVD	WESTLAKE VILLAGE, CA 91361–.	805–497–9991
BEST WESTERN WESTMINSTER INN.		5755 WESTMINSTER BLVD	WESTMINSTER, CA 92683–	714–898–4043
WHITTIER HILTON		7320 GREENLEAF AVE	WHITTIER, CA 90602–	310–945–8511
TRAVELERS' MOTEL		215 SEVENTH ST	WILLIAMS, CA 95987–	916–473–5387
BAECHTEL CREEK INN		101 GREGORY LN	WILLITS, CA 95490–	707–459–9063
CROSS ROADS WEST INN		452 N. HUMBOLDT ST	WILLOWS, CA 95988–	916–934–7026
WILLOWS SUPER 8 MOTEL		457 N. HUMBOLDT AVE	WILLOWS, CA 95988–	916–934–2871
COMFORT INN		1562 E. MAIN ST	WOODLAND, CA 95695–	916–666–3050
COMFORT INN		1562 E. MAIN ST	WOODLAND, CA 95695–	916–666–3050
BEST WESTERN AKU AKU		21830 VENTURA BLVD	WOODLAND HILLS, CA 91364–	818–340–1000
WARNER CENTER HILTON & TOWERS.		6360 CANOGA AVE	WOODLAND HILLS, CA 91367–	818–595–1000
WARNER CENTER MARRIOTT WOODLAND HILLS.		21850 OXNARD ST	WOODLAND HILLS, CA 91367–	818–887–4800
WARNER GARDENS MOTEL		21706 VENTURA BLVD	WOODLAND HILLS, CA 91364–	818–992–4426
VINTAGE INN NAPA VALLEY		6541 WASHINGTON ST	YOUNTVILLE, CA 94599–	707–944–1112
BEST WESTERN BONANZA INN.		1001 CLARK AVE	YUBA CITY, CA 95991–	916–674–8824
YUCCA VALLEY SUPER 8 MOTEL.		57096 TWENTYNINE PALMS HWY.	YUCCA VALLEY, CA 92284–	619–228–1773
Colorado				
ALAMOSA SUPER 8 AMERICAN STAR INN.		2505 MAIN	ALAMOSA, CO 81101–	719–589–6447
HOLIDAY INN OF ALAMOSA COLORADO.		333 SANTA FE AVE	ALAMOSA, CO 81101–	719–589–5833
CRESTAHAUS LODGE		1301 COOPER AVE	ASPEN, CO 81611–	303–925–7081
HOTEL JEROME		330 E. MAIN ST	ASPEN, CO 81611–	303–920–1000
HOTEL LENADO		200 S. ASPEN ST	ASPEN, CO 81611–	303–925–6246

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LIMELITE LODGE		228 E. COOPER ST	ASPEN, CO 81611–	303–925–3025
MOUNTAIN HOUSE LODGE		905 E. HOPKINS	ASPEN, CO 81611–	303–920–2550
SARDY HOUSE		128 E. MAIN ST	ASPEN, CO 81611–	303–920–2525
SNOWFLAKE INN		221 E. HYMAN AVE	ASPEN, CO 81611–	303–925–3221
THE GANT		610 W. END ST	ASPEN, CO 81611–	303–925–5000
THE LITTLE NELL HOTEL		675 E. DURANT AVE	ASPEN, CO 81611–	303–920–4600
DOUBLETREE HOTEL AT HEATHER RIDGE.		13696 E. ILIFF PL	AURORA, CO 80014–	303–337–2800
HAMPTON INN AURORA		1500 S. ABILENE ST	AURORA, CO 80012–	303–369–8400
LA QUINTA INN		1011 S. ABILENE ST	AURORA, CO 80012–	303–337–0206
TRAVELERS INN		14200 E. 6TH AVE	AURORA, CO 80011–	303–366–7333
BEAVER CREEK LODGE	PO BOX 2578	26 AVONDALE LN	AVON, CO 81620–	303–845–9800
CHRISTIE LODGE	PO BOX 1196	0047 E. BEAVER CREEK BLVD	AVON, CO 81620–	303–949–7700
HYATT REGENCY BEAVER CREEK.	PO BOX 1595	136 E. THOMAS PL	AVON, CO 81620–1595	303–949–1234
KIVA AT BEAVER CREEK	PO BOX 5320		AVON, CO 81620–	303–949–5474
THE CHARTER AT BEAVER CREEK.	PO BOX 5310	120 OFFERSON RD	AVON, CO 81620–	303–949–6660
THE PINES LODGE AT BEAVER CREEK.	PO BOX 18450	141 SCOTT HILL RD	AVON, CO 81620–	303–845–7900
BORDERS LODGE		1120 VILLAGE RD	BEAVER CREEK, CO 81620–	303–845–5785
POSTE MONTANE		76 AVONDALE LN	BEAVER CREEK, CO 81620–	303–845–7500
SADDLERIDGE AT BEAVER CREEK.	PO BOX 1173	44 MEADOW LN	BEAVER CREEK, CO 81620–	303–949–4108
SAINT JAMES PLACE		210 OFFERSON RD	BEAVER CREEK, CO 81620–	303–845–9300
THE CENTENNIAL CONDOMINIUM ASSOCIATION.	PO BOX 348	180 OFFERSON RD	BEAVER CREEK, CO 81620–	303–845–7600
THE INN AT BEAVER CREEK	PO BOX 36	10 ELK TRACK LN	BEAVER CREEK, CO 81620–	303–845–7800
TOWNSEND PLACE		1206 VILLAGE RD	BEAVER CREEK, CO 81620–	303–845–5785
TRAPPERS CABIN		10 ELK TRACK	BEAVER CREEK, CO 81620–	303–845–5788
BEST WESTERN BOULDER INN.		770 28TH ST	BOULDER, CO 80303–	303–449–3800
BOULDER CONDOMINIUM RENTALS.		2400 28TH ST	BOULDER, CO 80301–	303–530–3173
BOULDER MOUNTAIN LODGE		91 FOUR MILE CANYON DR	BOULDER, CO 80302–	303–444–0882
BOULDER VICTORIA		1305 PINE ST	BOULDER, CO 80302–	303–938–1300
BRIAR ROSE BED AND BREAKFAST INC.		2151 ARAPAHOE AVE	BOULDER, CO 80302–	303–442–3007
COURTYARD BY MARRIOTT BOULDER.		4710 PEARL E. CIR	BOULDER, CO 80301–	303–440–4700
HOMEWOOD SUITES BOULDER.		4950 BASELINE RD	BOULDER, CO 80303–	303–499–9922
RESIDENCE INN BY MARRIOTT.		3030 CENTER GREEN DR	BOULDER, CO 80301–	303–449–5545
THE BROKER INN		555 30TH ST	BOULDER, CO 80303–	303–444–3330
THE MAGPIE INN ON MAPLETON HILL.		200 SPRUCE ST	BOULDER, CO 80302–	303–449–6528
UNIVERSITY INN		1632 BROADWAY	BOULDER, CO 80302–	303–442–3830
ALLAIRE TIMBERS INN	PO BOX 4653	9511 HWY. 9	BRECKENRIDGE, CO 80424–	303–453–7530
BRECKENRIDGE HILTON		550 VILLAGE RD	BRECKENRIDGE, CO 80424–	303–453–4500
RIVER MOUNTAIN LODGE	PO BOX 7186	100 S. PARK	BRECKENRIDGE, CO 80424–	303–453–4711
VILLAGE AT BRECKENRIDGE RESORT.	PO BOX 8329	535 S. PARK	BRECKENRIDGE, CO 80424–	303–453–3100
VILLAGE AT BRECKENRIDGE RESORT.	PO BOX 8329	605 S. PARK	BRECKENRIDGE, CO 80424–	303–453–3100
VILLAGE AT BRECKENRIDGE RESORT.	PO BOX 8329	405 S. PARK	BRECKENRIDGE, CO 80424–	303–453–3100
VILLAGE AT BRECKENRIDGE RESORT.	PO BOX 8329	655 COLUMBINE	BRECKENRIDGE, CO 80424–	303–453–3100
WEDGEWOOD LODGE TOWER	PO BOX 7489	535 FOUR O'CLOCK RD	BRECKENRIDGE, CO 80424–	303–453–1800
WEDGEWOOD LODGE TOWNHOMES.	PO BOX 7489	535 FOUR O'CLOCK RD	BRECKENRIDGE, CO 80424–	303–453–1800
WOODS MANOR CONDOMINIUMS.	PO BOX 3239	0290 BROKEN LANCE DR	BRECKENRIDGE, CO 80424–	303–453–6906
BEST WESTERN BRUSH		1208 N. COLORADO AVE	BRUSH, CO 80723–	303–842–5146
BUDGET HOST EMPIRE MOTEL.		1408 EDISON ST	BRUSH, CO 80723–	303–842–2876
CANON INN		3075 E. HWY. 50	CANON CITY, CO 81212–	719–275–8676
SUPER 8 MOTEL CANON CITY		209 N. 19TH	CANON CITY, CO 81212–	719–275–8687
DAYS INN		950 COWEN DR	CARBONDALE, CO 81623–	303–963–9111
ANTLERS DOUBLETREE HOTEL.		4 S. CASCADE PALMER CTR	COLORADO SPRINGS, CO 80903–1685.	719–473–5600

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CHEYENNE MOUNTAIN CONFERENCE RESORT.		3225 BROADMOOR VALLEY RD.	COLORADO SPRINGS, CO 80906–.	719–576–4600
COLORADO SPRINGS HILTON INN.		505 POPES BLUFF TRAIL	COLORADO SPRINGS, CO 80907–.	719–598–7656
COLORADO SPRINGS MARRIOTT.	PO BOX 39010	5580 TECH CENTER DR	COLORADO SPRINGS, CO 80949–9010.	719–260–1800
DAYS INN OF COLORADO SPRINGS.		4610 RUSINA RD	COLORADO SPRINGS, CO 80907–.	719–598–1700
DRURY INN PIKES PEAK		8155 N. ACADEMY BLVD	COLORADO SPRINGS, CO 80920–.	719–598–2500
EMBASSY SUITES HOTEL		7290 COMMERCE CENTER DR	COLORADO SPRINGS, CO 80919–.	719–599–9100
HAMPTON INN COLORADO SPRINGS.		7245 COMMERCE CENTER DR	COLORADO SPRINGS, CO 80919–.	719–593–9700
HAMPTON INN SOUTH		1410 HARRISON RD	COLORADO SPRINGS, CO 80906–.	719–579–8900
HOLIDAY INN EXPRESS		725 WEST CIMARRON	COLORADO SPRINGS, CO 80905–.	719–473–5530
HOLIDAY INN NORTH		3125 SINTON RD	COLORADO SPRINGS, CO 80907–.	719–633–4451
LA QUINTA MOTOR INN		4385 SINTON RD	COLORADO SPRINGS, CO 80907–.	719–528–5060
PEAK INN & R. V. RESORT		4950 N. NEVADA AVE	COLORADO SPRINGS, CO 80918–.	719–598–1545
RADISSON INN COLORADO SPRINGS AIRPORT.		1645 N. NEWPORT RD	COLORADO SPRINGS, CO 80916–.	719–597–7000
RADISSON INN COLORADO SPRINGS NORTH.		8110 N. ACADEMY BLVD	COLORADO SPRINGS, CO 80920–.	719–598–5770
RAMADA INN NORTH		4440 I–25 N	COLORADO SPRINGS, CO 80907–.	719–594–0700
RED LION HOTEL COLORADO SPRINGS.		1775 E. CHEYENNE MOUNTAIN BLVD.	COLORADO SPRINGS, CO 80906–.	719–576–8900
RESIDENCE INN BY MARRIOTT.		3880 N. ACADEMY BLVD	COLORADO SPRINGS, CO 80917–.	719–574–0370
SHERATON COLORADO SPRINGS HOTEL.		2886 S. CIRCLE DR	COLORADO SPRINGS, CO 80906–.	719–576–5900
SUPER 8 U S A F A NORTH		8135 N. ACADEMY BLVD	COLORADO SPRINGS, CO 80918–.	719–528–7100
THE ALIKAR GARDENS RESORT.		1123 VERDE DR	COLORADO SPRINGS, CO 80910–2199.	719–475–2564
THE HEARTHSTONE INN		506 N. CASCADE AVE	COLORADO SPRINGS, CO 80903–.	719–473–4413
CORTEZ SUPER 8 MOTEL		505 E. MAIN ST	CORTEZ, CO 81321–	303–565–8888
HOLIDAY INN EXPRESS		2121 E. MAIN ST	CORTEZ, CO 81321–	303–565–6000
HOLIDAY INN		300 S. HWY. 13	CRAIG, CO 81625–	303–824–9455
PALACE HOTEL AND CASINO		172 E. BENNETT AVE	CRIPPLE CREEK, CO 80813–	719–689–2992
BEST WESTERN SUNDANCE		903 MAIN ST	DELTA, CO 81416–	303–874–9781
RIVERWOOD INN		677 HWY. 50 N	DELTA, CO 81416–	303–874–5787
CASTLE MARNE BED AND BREAKFAST.		1572 RACE ST	DENVER, CO 80206–	303–331–0621
DENVER MARRIOTT HOTEL CITY CENTER.		1701 CALIFORNIA ST	DENVER, CO 80202–	303–297–1300
DENVER MARRIOTT HOTEL SOUTHEAST.		6363 E. HAMPDEN AVE	DENVER, CO 80222–	303–758–7000
DENVER WEST ECONO LODGE.		715 KIPLING ST	DENVER, CO 80215–	303–232–5000
DRURY INN		4400 PEORIA ST	DENVER, CO 80239–	303–373–1963
EMBASSY SUITES DENVER SOUTHEAST.		7525 E. HAMPDEN AVE	DENVER, CO 80231–	303–696–6644
EMBASSY SUITES HOTEL AT DENVER PLACE.		1881 CURTIS ST	DENVER, CO 80202–	303–297–8888
EMBASSY SUITES HOTEL DENVER AIRPORT.		4444 N. HAVANA ST	DENVER, CO 80239–	303–375–0400
EXECUTIVE TOWER INN		1405 CURTIS ST	DENVER, CO 80202–	303–571–0300
FAIRFIELD INN DENVER		1680 S. COLORADO BLVD	DENVER, CO 80222–	303–691–2223
HAMPTON INN DENVER		4685 QUEBEC ST	DENVER, CO 80216–	303–388–8100
HOLIDAY INN DENVER I–70 & CHAMBERS ROAD.		15500 E. 40TH AVE	DENVER, CO 80239–	303–371–9494
HYATT REGENCY DENVER		1750 WELTON ST	DENVER, CO 80202–3999	303–295–1234
HYATT REGENCY TECH CENTER.		7800 E. TUFTS AVE	DENVER, CO 80237–	303–779–1234

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LA QUINTA DENVER AIRPORT #520.	.....	3975 PEORIA WAY	DENVER, CO 80239–	303–371–5640
LA QUINTA MOTOR INN	.....	3500 FOX ST	DENVER, CO 80216–	303–458–1222
LA QUINTA MOTOR INN DENVER SOUTH #518.	.....	1975 S. COLORADO BLVD	DENVER, CO 80222–	303–756–8886
LOEWS GIORGIO HOTEL	.....	4150 E. MISSISSIPPI AVE	DENVER, CO 80222–	303–782–9300
MARRIOTT COURTYARD DENVER AIRPORT.	.....	7415 E. 41ST AVE	DENVER, CO 80216–	303–333–3303
QUALITY INN SOUTH	.....	6300 E. HAMPDEN AVE	DENVER, CO 80222–	303–758–2211
QUEEN ANNE INN LUXURY BED AND BREAKFAST.	.....	2147 TREMONT PL	DENVER, CO 80205–	303–296–6666
RADISSON HOTEL DENVER	.....	1550 COURT PL	DENVER, CO 80202–5189	303–893–3333
RAMADA INN	.....	1150 E. COLFAX AVE	DENVER, CO 80218–	303–831–7700
RED LION HOTEL DENVER	.....	3203 QUEBEC STREET	DENVER, CO 80207–	303–321–3333
RESIDENCE INN BY MARRIOTT.	.....	2777 ZUNI ST	DENVER, CO 80211–	303–458–5318
SHERATON DENVER TECH CENTER HOTEL.	.....	4900 DTC PKWY	DENVER, CO 80237–	303–779–1100
SHERATON INN DENVER AIRPORT.	.....	3535 QUEBEC ST	DENVER, CO 80207–	303–333–7711
STOUFFER CONCOURSE HOTEL DENVER.	.....	3801 QUEBEC ST	DENVER, CO 80207–	303–399–7500
THE OXFORD HOTEL	.....	1600 17TH ST	DENVER, CO 80202–	303–628–5400
THE WESTIN HOTEL TABOR CENTER DENVER.	.....	1672 LAWRENCE ST	DENVER, CO 80202–2010	303–572–9100
TRAVELERS INN	.....	7333 PECOS ST	DENVER, CO 80221–	303–427–9400
TRAVELERS INN	.....	3850 PEORIA ST	DENVER, CO 80239–	303–371–0551
KEYSTONE RESORT HOMESTEAD.	PO BOX 38	21716 US HWY. 6	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT KEY CONDO BUILDING A.	PO BOX 38	1473 SUMMIT COUNTY RD. 8 ..	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT KEYSTONE GULCH 1 2 3 4.	PO BOX 38	1904,28,44,58 SUMMIT CO. RD. 4.	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT KEYSTONE MOUNTAIN INN A & B.	PO BOX 38	1205–1211 SUMMIT CO. RD. 6 .	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT KEYSTONE RANCH CLUBHOUSE.	PO BOX 38	1259 SUMMIT COUNTY RD. 150.	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT LAKESHORE A AND B.	PO BOX 38	22138–174 US HWY. 6	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT MALL	PO BOX 38	0116 SUMMIT COUNTY RD. 8 ..	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT PINES 1 3 4 10.	PO BOX 38	21600–660,670,690 US HWY. 6	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT PLAZA	PO BOX 38	0165 SUMMIT COUNTY RD. 8 ..	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT QUICKSILVER 1–7.	PO BOX 38	21821–21901 US HWY. 6	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT RIVERBANK.	PO BOX 38	0024 SUMMIT COUNTY RD. 190.	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT SAGEBRUSH A B C D.	PO BOX 38	1440–70 SUMMIT COUNTY RD. 8.	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT SKI TIP RANCH.	PO BOX 38	0764 SUMMIT COUNTY RD. 5 ..	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT SODA SPRINGS 1–6.	PO BOX 38	342–412 SUMMIT COUNTY RD. 165.	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT SODA SPRINGS II AA BB CC.	PO BOX 38	2006–2027 SUMMIT CO RD. 4 ..	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT THE INN .	PO BOX 38	23044 US HWY. 6	DILLON, CO 80435–	303–468–4226
KEYSTONE RESORT TOWNHOMES 1–14.	PO BOX 38	22011–22075 US HWY. 6	DILLON, CO 80435–	303–468–4226
MOUNTAIN VIEW BED AND BREAKFAST.	.....	28050 COUNTY RD. P	DOLORES, CO 81323–	303–882–7861
BEST WESTERN LODGE AT PURGATORY.	.....	49617 HWY. 550	DURANGO, CO 81301–	303–247–9669
BEST WESTERN RIO GRANDE INN.	.....	400 E. SECOND AVE	DURANGO, CO 81301–	303–385–4980
COMFORT INN	.....	2930 MAIN AVE	DURANGO, CO 81301–	303–259–5373
DURANGO SUPER 8 MOTEL	.....	20 STEWART ST	DURANGO, CO 81301–	303–259–0590
HOLIDAY INN	.....	800 CAMINO DEL RIO	DURANGO, CO 81328–	303–247–5393
PURGATORY VILLAGE HOTEL	PO BOX 666	#1 SKIER PL	DURANGO, CO 81301–	303–247–9000
RED LION INN DURANGO	.....	501 CAMINO DEL RIO	DURANGO, CO 81301–	303–259–6580
CLARION HOTEL DENVER SOUTHEAST.	.....	7770 S. PEORIA ST	ENGLEWOOD, CO 80112–	303–790–7770

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COURTYARD BY MARRIOTT DENVER TECH CENTER.		6565 S. BOSTON ST	ENGLEWOOD, CO 80111–	303–721–0300
EMBASSY SUITES HOTEL DENVER TECH CENTER.		10250 E. COSTILLA AVE	ENGLEWOOD, CO 80112–	303–792–0433
HAMPTON INN SOUTHEAST		9231 E. ARAPAHOE RD	ENGLEWOOD, CO 80112–	303–792–9999
RADISSON HOTEL DENVER SOUTH.		7007 S. CLINTON ST	ENGLEWOOD, CO 80112–	303–799–8200
RAMADA INN DENVER TECH CENTER.		5150 S. QUEBEC ST	ENGLEWOOD, CO 80033–	303–721–1144
RESIDENCE INN BY MARRIOTT.		6565 S. YOSEMITE ST	ENGLEWOOD, CO 80111–	303–740–7177
HOBBY HORSE MOTOR LODGE.	PO BOX 40	800 BIG THOMPSON	ESTES PARK, CO 80517–	303–586–3336
PONDEROSA LODGE	MORAINE RT	1820 FALL RIVER RD	ESTES PARK, CO 80517–	303–586–4233
RIVERVIEW PINES MOTEL	PO BOX 690	1150 W. ELKHORN	ESTES PARK, CO 80517–	303–586–3627
SILVER SADDLE MOTOR LODGE.	PO BOX 1747	1260 BIG THOMPSON AVE	ESTES PARK, CO 80517–	303–586–4476
RIVER VALLEY INN		4540 STATE HWY. 67 S	FLORENCE, CO 81226–	719–784–4800
DAYS INN FORT COLLINS		3625 E. MULBERRY	FORT COLLINS, CO 80524–	303–221–5490
FORT COLLINS MARRIOTT		350 E. HORSETOOTH RD	FORT COLLINS, CO 80525–	303–226–5200
FORT COLLINS SUPER 8 MOTEL.		409 CENTRO WAY	FORT COLLINS, CO 80524–	303–493–7701
TWILIGHT INN	PO BOX 397	308 MAIN ST	FRISCO, CO 80443–	303–668–5009
GLENWOOD HOT SPRINGS LODGE AND POOL.	PO BOX 308	401 N. RIVER	GLENWOOD SPRINGS, CO 81601–.	303–945–6571
HOLIDAY INN		51359 HWY. 6 AND 24	GLENWOOD SPRINGS, CO 81601–.	303–945–8551
HOTEL DENVER		402 7TH ST	GLENWOOD SPRINGS, CO 81601–.	303–945–6565
SILVER SPRUCE MOTEL		162 W. 6TH ST	GLENWOOD SPRINGS, CO 81601–.	303–945–5458
DAYS INN SUITES DENVER WEST.		15059 W. COLFAX AVE	GOLDEN, CO 80401–	303–277–0200
DENVER MARRIOTT WEST HOTEL.		1717 DENVER W. MARRIOTT BLVD.	GOLDEN, CO 80401–	303–279–9100
HOLIDAY INN DENVER WEST		14707 W. COLFAX AVE	GOLDEN, CO 80401–	303–279–7611
LA QUINTA INN		3301 YOUNGFIELD SERVICE RD.	GOLDEN, CO 80401–	303–279–5565
GRAND JUNCTION HILTON		743 HORIZON DR	GRAND JUNCTION, CO 81506–	303–241–8888
HOLIDAY INN	PO BOX 1725	755 HORIZON DR	GRAND JUNCTION, CO 81506–	303–243–6790
HOWARD JOHNSON LODGE		752 HORIZON DR	GRAND JUNCTION, CO 81506–	303–243–5150
MOTEL 6 #261		776 HORIZON DR	GRAND JUNCTION, CO 81506–	303–243–2628
TRAVELERS INN		704 HORIZON DR	GRAND JUNCTION, CO 81506–	303–245–3080
LITTLETREE INN	PO BOX 800	62000 HWY. 40	GRANDBY, CO 80446–	303–887–2551
BEST WESTERN RAMKOTA INN & CONFERENCE CENTER.		701 8TH ST	GREELEY, CO 80631–	303–353–8444
FRIENDSHIP INN		400 E. TOMICHI AVE	GUNNISON, CO 81230–	303–641–1288
GUNNISON SUPER 8 MOTEL		411 E. TOMICHI AVE	GUNNISON, CO 81230–	303–641–1288
MARY LAWRENCE INN		601 N. TAYLOR	GUNNISON, CO 81230–	303–641–3343
GREEN MOUNTAIN CABINS		255 SCR 1782	HEENEY, CO 80498–	303–724–9748
COMFORT LODGE	PO BOX 37	406 HWY. 133	HOTCHKISS, CO 81419–	303–872–2200
6 AND 40 MOTEL		2920 COLORADO BLVD	IDAHO SPRINGS, CO 80452–	303–567–2691
THE LODGE AT IDAHO SPRINGS.	PO BOX 3394	1601 COLORADO BLVD	IDAHO SPRINGS, CO 80452–3394.	800–227–9391
VAN EDEN RANCH AND RETREAT.	PO BOX 1169	3001 VAN EDEN RD	IDAHO SPRINGS, CO 80452–	303–567–2586
FRIENDSHIP INN STAGECOACH MOTEL.		905 W. THIRD ST	LA JUNTA, CO 81050–	719–384–5476
MIDTOWN MOTEL		215 E. THIRD	LA JUNTA, CO 81050–	719–384–7741
QUALITY INN OF LA JUNTA	PO BOX 1180	1325 EAST THIRD STREET	LA JUNTA, CO 81050–1180	719–384–2571
ROCKY TOP LODGE	PO BOX 232	1450 N. HWY. 149	LAKE CITY, CO 81235–	303–944–2780
CHALET MOTEL		6051 W. ALAMEDA AVE	LAKEWOOD, CO 80226–	303–237–7775
DOUBLETREE CLUB HOTEL DENVER WEST.		137 UNION BLVD	LAKEWOOD, CO 80228–	303–969–9900
FOOTHILLS EXECUTIVE LODGING.		6565 W. JEWELL ST. #4B	LAKEWOOD, CO 80232–	303–936–3070
HAMPTON INN DENVER SOUTHWEST.		3605 S. WADSWORTH BLVD	LAKEWOOD, CO 80235–	303–989–6900
HOLIDAY INN LAKEWOOD		7390 W. HAMPDEN AVE	LAKEWOOD, CO 80227–5127	303–980–8200
RODEWAY INN DENVER WEST		11595 W. 6TH AVE	LAKEWOOD, CO 80215–	303–238–7751

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SHERATON DENVER WEST HOTEL & CONFERENCE CNTR.		360 UNION BLVD	LAKEWOOD, CO 80228–	303–987–2000
WHITE SWAN MOTEL		6060 W. COLFAX AVE	LAKEWOOD, CO 80214–	303–238–1351
ECONOMY INN		1201 N. MAIN	LAMAR, CO 81052–	719–336–7471
SUPER 8 MOTEL LAMAR		1202 N. MAIN ST	LAMAR, CO 81052–	719–336–3427
BENT'S FORT INN BEST WESTERN.		E. US HWY. 50	LAS ANIMAS, CO 81054–	719–456–0011
DELAWARE HOTEL		700 HARRISON AVE	LEADVILLE, CO 80461–	719–486–1418
LEADVILLE INN		25 JACKTOWN PL	LEADVILLE, CO 80461–	719–486–3637
BRIARWOOD INN MOTEL		1228 N. MAIN	LONGMONT, CO 80501–	303–776–6622
RAINTREE PLAZA HOTEL AND CONFERENCE CENTER.		1900 DIAGONAL HWY. 119	LONGMONT, CO 80501–	303–776–2000
BLUE SPRUCE MOTEL		40700 HWY. 160	MANCOS, CO 81328–	303–533–7073
ECHO BASIN DUDE RANCH AND RESORT.		43747 COUNTY RD. M	MANCOS, CO 81328–	602–997–7137
MANITOU SPRINGS SUPER 8 MOTEL INC.		229 MANITOU AVE	MANITOU SPRINGS, CO 80829–2503.	719–685–5898
VALLEY MOTEL	PO BOX 780	723 MARKET ST	MEEKER, CO 81641–	303–878–3856
COMFORT INN OF MONTE VISTA.		1519 GRANDE AVE	MONTE VISTA, CO 81144–	719–852–0612
MONTROSE SUPER 8 MOTEL INC.		1705 E. MAIN	MONTROSE, CO 81401–	303–249–9294
GRANDE BUTTE HOTEL	PO BOX 1639	500 GOTHIC	MOUNT CRESTED BUTTE, CO 81225–.	303–349–7561
DAYS INN NORTHGLENN		36 E. 120TH AVE	NORTHGLENN, CO 80233–	303–457–0686
HOLIDAY INN DENVER NORTHGLENN.		10 E. 120TH AVE	NORTHGLENN, CO 80233–	303–452–4100
ST. ELMO HOTEL INC	PO BOX 667	426 MAIN ST	OURAY, CO 81427–	303–325–4951
BEST WESTERN OAKRIDGE MOTOR INN.	PO BOX 1200	158 LIGHT PLANT RD	PAGOSA SPRINGS, CO 81147–	303–264–4173
PAGOSA LODGE AT THE FAIRFIELD RESORT.	PO BOX 4400	3505 W. HWY. 160	PAGOSA SPRINGS, CO 81157–	303–731–4141
ABRIENDO INN		300 W. ABRIENDO AVE	PUEBLO, CO 81004–	719–544–2703
HAMPTON INN		4703 N. FRWY	PUEBLO, CO 81008–	719–544–4700
PUEBLO HOLIDAY INN		4001 N. ELIZABETH ST	PUEBLO, CO 81008–	719–543–8050
RED RIVER INN		718 TAUGHENBAUGH BLVD	RIFLE, CO 81650–	303–625–3050
RAINBOW INN		105 E. HWY. 50	SALIDA, CO 81201–	719–539–4444
SALIDA MOTEL		1310 E. HWY. 50	SALIDA, CO 81201–	719–539–2895
WOODLAND MOTEL AND RESIDENCE INN.		903 W. 1ST	SALIDA, CO 81201–	719–539–4880
SILVERTHORNE DAYS INN		580 SILVERTHORNE LN	SILVERTHORNE, CO 80498–	303–468–6661
ASPENWOOD CONDOMINIUMS		600 CARRIAGEWAY RD	SNOWMASS VILLAGE, CO 81615–.	303–923–2711
CRESTWOOD LODGE INC	PO BOX 5460	400 WOOD RD	SNOWMASS VILLAGE, CO 81615–.	303–923–2450
LICHENHEARTH CONDOMINIUMS.	PO BOX 5550	150 CARRIAGE WAY	SNOWMASS VILLAGE, CO 81615–.	303–923–4350
SNOWMASS MOUNTAIN CONDOMINIUMS.		55 UPPER WOODBRIDGE RD	SNOWMASS VILLAGE, CO 81615–.	303–923–4350
SONNENBLICK TOWNHOMES	PO BOX 5550	600 GALLEN LN	SNOWMASS VILLAGE, CO 81615–.	303–923–4350
STONEBRIDGE CONDOMINIUMS.	PO BOX 5990	30 ANDERSON LN	SNOWMASS VILLAGE, CO 81615–.	303–923–4325
TERRACE HOUSE CONDOMINIUMS.		65 CAMPGROUND LN	SNOWMASS VILLAGE, CO 81615–.	303–923–4350
THE RIDGE CONDOMINIUMS	PO BOX 6450	229 FARAWAY RD	SNOWMASS VILLAGE, CO 81615–.	303–923–4700
THE SILVERTREE HOTEL	PO BOX 5009	100 ELBERT LN	SNOWMASS VILLAGE, CO 81623–.	303–923–3520
THE SNOWMASS LODGE AND CLUB.	PO BOX G–2	239 SNOWMASS CLUB CIR	SNOWMASS VILLAGE, CO 81615–.	303–923–5600
WOODBRIDGE CONDOMINIUMS.	PO BOX 5550	25 LOWER WOODBRIDGE RD	SNOWMASS VILLAGE, CO 81615–.	303–923–4350
CHINOOK LODGE AND SMOKEHOUSE.	PO BOX 530	29666 W. US HWY. 160	SOUTH FORK, CO 81154–	719–873–9993
HOLIDAY INN	PO BOX 5007	3190 S. LINCOLN	STEAMBOAT SPRINGS, CO 80477–.	303–879–2250
NORTH STAR CONDOMINIUMS	PO BOX881120	2250 COLUMBINE DR	STEAMBOAT SPRINGS, CO 80487–.	303–879–7654
RABBIT EARS MOTEL	PO BOX 77057	201 LINCOLN ST	STEAMBOAT SPRINGS, CO 80477–.	303–879–1150

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SHERATON STEAMBOAT RESORT CONFERENCE CENTER.	PO BOX774808		STEAMBOAT SPRINGS, CO 80477–.	303–879–2220
SKI TRAILS CONDOMINIUMS	PO BOX881120	2320 SKI TRAILS LN	STEAMBOAT SPRINGS, CO 80487–.	303–879–7654
SUB ALPINE CONDOMINIUMS	PO BOX881120	3070 COLUMBINE DR	STEAMBOAT SPRINGS, CO 80487–.	303–879–7654
THE CLERMONT INN BED AND BREAKFAST.	PO BOX 77492	917 LINCOLN AVE	STEAMBOAT SPRINGS, CO 80477–.	303–879–3083
THE INN AT STEAMBOAT BED AND BREAKFAST.	PO BOX775084		STEAMBOAT SPRINGS, CO 80477–.	303–879–2600
THE MEADOWS AT EAGLE RIDGE.		2800 EAGLE RIDGE DR	STEAMBOAT SPRINGS, CO 80477–.	303–879–0720
THE PHOENIX	PO BOX881120	2315 APRES SKI WAY	STEAMBOAT SPRINGS, CO 80487–.	303–879–4445
BEST WESTERN SUNDOWNER		OVERLAND TRAIL ST	STERLING, CO 80751–	303–522–6265
BEAR CREEK BED AND BREAKFAST.	PO BOX 2369	221 E. COLORADO AVE	TELLURIDE, CO 81435–	303–728–6681
NEW SHERIDAN HOTEL	PO BOX 960	231 W. COLORADO AVE	TELLURIDE, CO 81435–	303–728–4351
VICTORIAN INN	PO BOX 217	401 W. PACIFIC	TELLURIDE, CO 81435–	303–728–6601
SHERATON INN GRAYSTONE CASTLE.		83 E. 120TH AVE	THORNTON, CO 80233–	303–451–1002
HOLIDAY INN TRINIDAD		I–25 AND EXIT 11	TRINIDAD, CO	719–846–4491
BLACK BEAR INN		2405 ELLIOTT RD	VAIL, CO 81657–	303–476–1304
EAGLE POINT		1500 MATTERHORN CIR	VAIL, CO 81657–	303–476–6905
MARRIOTT'S MARK RESORT		715 W. LIONSHEAD	VAIL, CO 81657–	303–476–4444
THE WESTIN RESORT		1300 WESTHAVEN DR	VAIL, CO 81657–	303–476–7111
VICTOR HOTEL	PO BOX 185	4TH AND VICTOR AVE	VICTOR, CO 80860–	719–689–3553
DENVER NORTH SUPER 8 MOTEL.		12055 MELODY DR	WESTMINSTER, CO 80234–	303–451–7200
LA QUINTA INN		345 W. 120TH AVE	WESTMINSTER, CO 80234–	303–252–9800
LA QUINTA MOTOR INN #653		8701 TURNPIKE DR	WESTMINSTER, CO 80030–	303–425–9099
RAMADA HOTEL DENVER BOULDER TURNPIKE.		8773 YATES DR	WESTMINSTER, CO 80030–	303–427–4000
DENVER WEST SUPER 8 MOTEL.		10101 W. 48TH AVE	WHEAT RIDGE, CO 80033–	303–424–8300
TABOR LAKE INN		12100 W. 44TH AVE	WHEAT RIDGE, CO 80033–	303–467–2400
BEAVER VILLAGE CONDOMINIUMS.	PO BOX 3416	50 VILLAGE DR	WINTER PARK, CO 80482–	303–726–8813
IRON HORSE RESORT RETREAT BUILDINGS C AND D.	PO BOX 1286	257 WINTER PARK DR	WINTER PARK, CO 80482–	303–726–8851
SNOW BLAZE		79114 US HWY. 40	WINTER PARK, CO 80482–	303–726–5701
THE VINTAGE RESORT HOTEL	PO BOX 1369	100 WINTER PARK DR	WINTER PARK, CO 80482–	303–726–8801
Connecticut				
ASHFORD MOTEL		26 SNOW HILL RD	ASHFORD, CT 06076–	203–684–2221
AVON OLD FARMS HOTEL		279 AVON MOUNTAIN RD	AVON, CT 06001–	203–677–1651
KENILWORTH MOTEL		176 WILBUR CROSS HWY	BERLIN, CT 06037–	203–666–3306
BEST WESTERN STONY HILL MOTOR INN.		STONY HILL RD	BETHEL, CT 06801–	203–744–3200
ADVANCED MOTEL		81 LEFTES ISLAND RD	BRANFORD, CT 06405–	203–481–4528
BENTLEY INN		3 BUSINESS PARK DR	BRANFORD, CT 06405–	203–488–4991
BRANFORD MOTEL		470 E. MAIN ST	BRANFORD, CT 06405–	203–488–5442
MACDONALDS MOTEL		565 E. MAIN ST	BRANFORD, CT 06405–	203–488–4381
MOTEL SIX		320 E. MAIN ST	BRANFORD, CT 06405–	203–483–5828
HOLIDAY INN		1070 MAIN ST	BRIDGEPORT, CT 06604–	203–334–1234
RADISSON INN		42 CENTURY DR	BRISTOL, CT 06010–	203–589–7766
BROOKFIELD MOTOR LODGE		549 FEDERAL RD	BROOKFIELD, CT 06804–	203–775–2450
CANDLEWOOD GARDEN MOTEL.		370 CANDLEWOOD LAKE RD	BROOKFIELD, CT 06804–	203–431–0280
CANDLEWOOD INN		506 CANDLEWOOD LAKE RD	BROOKFIELD, CT 06804–	203–775–4517
DAYS INN		1030 FEDERAL RD	BROOKFIELD, CT 06804–	203–775–0220
CENTRAL HOTEL		4 PUTNAM RD	CENTRAL VILLAGE, CT 06332–	203–564–5062
INN AT CHESTER		318 W. MAIN ST	CHESTER, CT 06412–	203–526–1307
HAPPY DOLPHIN		345 E. MAIN ST	CLINTON, CT 06413–	203–669–2366
LAMPLIGHTER MOTEL		231 E. MAIN ST	CLINTON, CT 06413–	203–669–8486
VILLAGE MOTEL		143 E. MAIN ST	CLINTON, CT 06413–	203–669–8403
CORNWALL INN & MOTEL		KENT RD	CORNWALL BRIDGE, CT 06754–.	203–672–6884
ARBOR HOUSE		50 RIVER RD	COS COB, CT 06807–	203–661–5845
HOLIDAY INN OF CROMWELL		4 SEBETHE DR	CROMWELL, CT 06416–	203–635–1001
RADISSON HOTEL & CONFERENCE CENTER.		100 BERLIN RD	CROMWELL, CT 06416–	203–635–2000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUPER 8 MOTEL		1 INDUSTRIAL PARK RD	CROMWELL, CT 06416–	203–632–8808
DANBURY HILTON INN		18 OLD RIDGEBURY RD	DANBURY, CT 06810–	203–794–0600
DAYS INN		78 FEDERAL RD	DANBURY, CT 06810–	203–743–6701
ETHAN ALLEN INN		21 LAKE AVE. EXT	DANBURY, CT 06810–	203–744–1776
QUALITY INN		NEWTOWN RD	DANBURY, CT 06810–	203–748–6677
RAMADA INN		I–84 EXIT 8	DANBURY, CT 06810–	203–792–3800
BON AIRE MOTEL		771 HARTFORD TNPK. 101E	DAYVILLE, CT 06241–	203–774–4515
RIVERWIND INN		209 MAIN ST	DEEP RIVER, CT 06417–	203–526–2014
SELDEN HOUSE		30 READ ST	DEEP RIVER, CT 06417–	203–526–9195
ECONO LODGE		927 MAIN ST	EAST HARTFORD, CT 06108–	203–289–7781
EXECUTIVE MOTOR LODGE		490 MAIN ST	EAST HARTFORD, CT 06118–	203–569–1100
WELLESLEY INN		333 ROBERTS ST	EAST HARTFORD, CT 06108–	203–289–4950
COMFORT INN		260 MAIN ST	EAST WINDSOR, CT 06088–	203–627–8585
EAST WINDSOR RAMADA INN		161 BRIDGE ST	EAST WINDSOR, CT 06088–	203–623–9411
ENFIELD MOTOR INN		1543 KING ST	ENFIELD, CT 06082–	203–741–3636
MOTEL SIX		11 HAZARD AVE	ENFIELD, CT 06082–	203–741–3685
RED ROOF INN		5 HAZARD AVE	ENFIELD, CT 06082–	203–741–2571
BRIDGEPORT MOTOR INN		100 KINGS HWY. CUT-OFF	FAIRFIELD, CT 06430–	203–367–4404
FAIRFIELD MOTOR INN & RESTAURANT.		417 POST RD	FAIRFIELD, CT 06430–	203–255–0491
MERRITT PARKWAY MOTOR INN.		4180 BLACK ROCK TNPK	FAIRFIELD, CT 06430–	203–259–5265
PEQUOT MOTOR INN		3471 POST RD	FAIRFIELD, CT 06430–	203–259–7865
CENTENNIAL INN		5 SPRING LN	FARMINGTON, CT 06032–	203–677–4647
FARMINGTON INN		827 FARMINGTON AVE	FARMINGTON, CT 06032–	203–677–2821
HARTFORD MARRIOTT HOTEL FARMINGTON.		15 FARM SPRINGS RD	FARMINGTON, CT 06032–	203–678–1000
HOMESTEAD INN		420 FIELD POINT RD	GREENWICH, CT 06830–	203–869–7500
STANTON HOUSE INN		76 MAPLE AVE	GREENWICH, CT 06830–	203–863–2110
BENHAM MOTEL		107 BENHAM RD	GROTON, CT 06340–	203–449–5700
BEST WESTERN OLYMPIC INN		360 RT. 12	GROTON, CT 06340–	203–445–8000
ECONO LODGE		425 BRIDGE ST	GROTON, CT 06340–	203–445–6550
GOLD STAR INN		156 KINGS HWY	GROTON, CT 06340–	203–445–0660
GROTON MOTOR INN & SUITES.	PO BOX 807	RT. 184	GROTON, CT 06430–	203–445–9784
QUALITY INN		404 BRIDGE ST	GROTON, CT 06340–	203–445–8141
SOJOURNER INN		605 GOLDSTAR HWY	GROTON, CT 06340–	203–445–1986
SUPER 8 MOTEL		173 RT. 12	GROTON, CT 06430–	203–446–2818
THAMES HARBOUR INN		193 THAMES ST	GROTON, CT 06340–	203–445–8111
TRAILS CORNER MOTOR INN		580 POQUON-NOCK RD	GROTON, CT 06340–	203–445–0220
DAYSTOP MOTEL		3400 WHITNEY AVE	HAMDEN, CT 06518–	203–288–2505
HOWARD JOHNSON LODGE		2260 WHITNEY AVE	HAMDEN, CT 06518–	203–288–3831
ECONO LODGE		7 WESTON ST	HARTFORD, CT 06120–	203–525–4441
GOODWIN HOTEL		1 HAYNES ST	HARTFORD, CT 06103–	203–246–7500
HOLIDAY INN DOWNTOWN		50 MORGAN ST	HARTFORD, CT 06120–	203–549–2400
SHERATON HARTFORD HOTEL.		315 TRUMBULL ST	HARTFORD, CT 06103–	203–728–5151
BERLIN STATION CAFE & MOTEL.		845 FARMINGTON AVE	KENSINGTON, CT 06037–	203–828–7633
FIFE & DRUM INN		59 N. MAIN ST	KENT, CT 06757–	203–927–3509
INTERLAKEN INN		74 INTERLAKEN RD.7	LAKEVILLE, CT 06039–	203–435–9678
IRON MASTERS MOTOR INN		229 MAIN ST	LAKEVILLE, CT 06039–	203–435–9844
WAKE ROBIN INN		106 SHARON RD	LAKEVILLE, CT 06039–	203–435–2515
SPA AT GRAND LAKE		1667 EXETER RD	LEBANON, CT 06249–	203–642–4306
APPLEWOOD FARMS INN BED & BREAKFAST.		528 COL. LEDYARD HWY	LEDYARD, CT 06339–	203–536–2022
LITCHFIELD INN		RT. 202 BANTAN RD	LITCHFIELD, CT 06759–	203–567–4503
TOLLGATE HILL INN		RT. 202 TORRINGTON RD	LITCHFIELD, CT 06759–	203–567–4545
DOLLY MADISON INN		73 W. WHARF RD	MADISON, CT 06443–	203–245–7377
MADISON BEACH HOTEL		94 W. WHARF RD	MADISON, CT 06443–	203–245–1404
MANCHESTER VILLAGE INN		100 E. CENTER ST	MANCHESTER, CT 06040–	203–646–2300
BEST WESTERN REGENT INN		123 STORRS RD	MANSFIELD CENTER, CT 06250–.	203–423–8451
COLONIAL PARK MOTEL		1696 BERLIN TNPK	MERIDEN, CT 06450–	203–235–2877
HAMPTON INN MERIDEN		10 BEE ST	MERIDEN, CT 06450–	203–235–6154
PARKWAY MOTEL		1966 N. BROAD ST	MERIDEN, CT 06450–	203–235–5800
RAMADA INN		275 RESEARCH PKWY	MERIDEN, CT 06450–	203–238–2380
RESIDENCE INN BY MARRIOTT.		390 BEE ST	MERIDEN, CT 06450–	203–634–7770
MIDDLETOWN MOTEL		988 WASHINGTON ST. EXT	MIDDLETOWN, CT 06457–	203–346–9251
COMFORT INN		276 OLD GATE LN	MILFORD, CT 06460–	203–877–8411
DEVON MOTEL		436 BRIDGEPORT AVE	MILFORD, CT 06460–	203–874–5834

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HAMPTON INN		129 PLAINS RD	MILFORD, CT 06406–	203–874–4400
HOLIDAY INN		1212 BOSTON POST RD	MILFORD, CT 06460–	203–878–6561
MAYFLOWER MOTEL		219 WOODMONT RD	MILFORD, CT 06460–	203–878–6854
MILFORD INN		345 OLD GATE LN	MILFORD, CT 06460–	203–878–0685
MILFORD MOTEL		1015 BOSTON POST RD	MILFORD, CT 06460–	203–878–3575
POST MOTOR INN		1700 BOSTON POST RD	MILFORD, CT 06460–	203–874–3777
RED ROOF INN		10 ROWE AVE	MILFORD, CT 06460–	203–877–6060
SHORELINE MOTEL		735 BOSTON POST RD	MILFORD, CT 06406–	203–874–9975
SUSSE CHALET		111 SCHOOLHOUSE RD	MILFORD, CT 06460–	203–877–8588
TURNPIKE INN		1083 BOSTON POST RD	MILFORD, CT 06460–	203–874–3214
DAYS INN		1845 MERIDEN WATERBURY TNPK.	MILLDALE, CT 06467–	203–621–9181
PLAINFIELD MOTEL		66 E. MAIN ST	MOOSUP, CT 06354–	203–564–2791
COMFORT INN		132 GREENMANVILLE AVE	MYSTIC, CT 06355–	203–572–8531
DAYS INN		26 MICHELLE LN	MYSTIC, CT 06355–	203–572–0574
HOWARD JOHNSON LODGE		179 GREENMANVILLE AVE	MYSTIC, CT 06355–	203–536–2654
INN AT MYSTIC MOTOR INN GUEST HOUSE.		JCT. RT. 1 & 27	MYSTIC, CT 06355–	203–536–9604
MYSTIC HILTON		20 COOGAN BLVD	MYSTIC, CT 06355–	203–572–0731
RAMADA INN		183 GREENMANVILLE AVE	MYSTIC, CT 06355–	203–536–4281
STEAMBOAT INN		73 STEAMBOAT WHARF	MYSTIC, CT 06355–	203–536–7575
TABOR MOTEL		29 WILLIAMS AVE	MYSTIC, CT 06353–	203–536–4904
WHALER'S INN STONINGTON HOUSE.		20 E. MAIN ST	MYSTIC, CT 06355–	203–536–1506
NAUGATUCK MOTOR LODGE		732 NEW HAVEN RD	NAUGATUCK, CT 06770–	203–723–6931
INN AT CHAPEL WEST		1201 CHAPEL ST	NEW HAVEN, CT 06511–	203–777–1201
MOTEL SIX		270 FOXON BLVD. RT. 80	NEW HAVEN, CT 06513–	203–469–0643
NEW HAVEN MEDICAL HOTEL		229 GEORGE ST	NEW HAVEN, CT 06510–	203–498–3100
RESIDENCE INN BY MARRIOTT.		1 LONG WHARF DR	NEW HAVEN, CT 06511–	203–777–5337
ROYAL INN		1605 WHALLEY AVE	NEW HAVEN, CT 06515–	203–389–9504
THREE JUDGES MOTOR LODGE.		1560 WHALLEY AVE	NEW HAVEN, CT 06515–	203–389–2161
COLEMAN LODGE		14 COLMAN ST	NEW LONDON, CT 06320–	203–443–1723
HOLIDAY INN		I–95 FRONTAGE RD	NEW LONDON, CT 06320–	203–442–0631
NEW LONDON LODGINGS		380 BAYONET ST	NEW LONDON, CT 06320–	203–442–0631
QUEEN ANNE INN		265 WILLIAMS ST	NEW LONDON, CT 06320–	203–447–2600
RADISSON HOTEL		35 GOVERNOR WINTHROP BLVD.	NEW LONDON, CT 06320–	203–443–7000
RED ROOF INN		707 COLMAN ST	NEW LONDON, CT 06320–	203–444–0001
HERITAGE INN		34 BRIDGE ST	NEW MILFORD, CT 06776–	203–354–8883
MAPLE LEAF MOTOR LODGE		244 KENT RD	NEW MILFORD, CT 06776–	203–354–2777
ROCKY RIVER MOTEL		236 KENT RD	NEW MILFORD, CT 06776–	203–355–3208
BIRCHES INN		233 W. SHORE RD	NEW PRESTON, CT 06777–	203–868–0229
CARRIER MOTOR LODGE		2660 BERLIN TNPK	NEWINGTON, CT 06111–	203–666–1421
MAPLE MOTEL		2151 BERLIN TNPK	NEWINGTON, CT 06111–	203–666–5429
DAYS INN		239 FLANDERS RD	NIANTIC, CT 06357–	203–739–3951
MOTEL SIX		269 FLANDERS RD	NIANTIC, CT 06357–	203–739–6991
NIANTIC INN		345 MAIN ST	NIANTIC, CT 06357–	203–739–5451
BLACKBERRY RIVER INN		542 RT. 44	NORFOLK, CT 06058–	203–542–5100
MANOR HOUSE		MAPLE AVE	NORFOLK, CT 06058–	203–542–5690
COURTYARD BY MARRIOTT		474 MAIN AVE	NORWALK, CT 06851–	203–849–9111
DAYS INN		426 MAIN ST	NORWALK, CT 06850–	203–849–9828
GARDEN PARK MOTEL		351 WESTPORT AVE	NORWALK, CT 06851–	203–847–7303
GOLDEN CREST MOTOR INN		596 WESTPORT AVE	NORWALK, CT 06851–	203–847–3833
HAMAR INN		360 WESTPORT AVE	NORWALK, CT 06851–	203–847–3337
NEW CITY HOTEL		2 HAVILAND ST	NORWALK, CT 06854–	203–853–1112
NORWALK INN & CONFERENCE CENTER.		99 E. AVE	NORWALK, CT 06851–	203–838–5531
NORWALK WESTPORT MOTEL		344 WESTPORT AVE	NORWALK, CT 06851–	203–847–0665
ROUNDTREE INN		469 WESTPORT AVE	NORWALK, CT 06851–	203–847–5827
SILVERMINE TAVERN		194 PERRY AVE	NORWALK, CT 06850–	203–847–4558
NORWICH MOTEL BUILDING 4 OF 4.		181 W. TOWN ST	NORWICH, CT 06360–	203–889–2671
SHERATON NORWICH		10 LAURA PLAZA	NORWICH, CT 06360–	203–889–5201
CHESTERFIELD COUNTRY LODGE.		1596 HARTFORD RD	OAKDALE, CT 06370–	203–442–0039
HARBOR HOUSE INN		165 SHORE RD	OLD GREENWICH, CT 06870–	203–637–0145
HYATT REGENCY GREENWICH.		1800 E. PUTNAM RD	OLD GREENWICH, CT 06870–	203–637–1234
BEE & THISTLE INN		100 LYME ST	OLD LYME, CT 06371–	203–434–1667
OLD LYME INN		85 LYME ST	OLD LYME, CT 06371–	203–434–2600

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
OLD LYME MOTEL		236 SHORE RD	OLD LYME, CT 06371–	203–434–5320
OLD MYSTIC INN		58 MAIN ST	OLD MYSTIC, CT 06372–	203–572–9422
RED BROOK INN	PO BOX 237	WELLES RD	OLD MYSTIC, CT 06372–	203–572–0349
DAYS INN		1430 BOSTON POST RD	OLD SAYBROOK, CT 06475–	203–388–3453
SANDPIPER MOTOR INN		1750 BOSTON POST RD	OLD SAYBROOK, CT 06475–	203–399–7979
SAYBROOK POINT INN		2 BRIDGE ST	OLD SAYBROOK, CT 06475–	203–395–2000
PLAINFIELD YANKEE MOTOR INN.		55 LATHROP RD	PLAINFIELD, CT 06374–	203–564–4021
INN AT GWYNN CAREG		426B MASHAMOQUET RD	POMFRET CENTER, CT 06259–	203–928–7768
RIVERDALE MOTEL		1053 PORTLAND-COBALT RD	PORTLAND, CT 06480–	203–342–3498
ELMS INN		500 MAIN ST	RIDGEFIELD, CT 06877–	203–438–5241
STONEHENGE INN		RT. 7	RIDGEFIELD, CT 06877–	203–438–6511
HOWARD JOHNSON GREENWICH.		1114 BOSTON POST RD	RIVERSIDE, CT 06878–	203–637–3691
HARTFORD MARRIOTT HOTEL ROCKY HILL.		100 CAPITAL BLVD	ROCKY HILL, CT 06067–	203–257–6000
SUSSE CHALET		20 WATERCHASE DR	ROCKY HILL, CT 06067–	203–563–7877
RAGAMONT INN		8 MAIN ST	SALISBURY, CT 06068–	203–435–2372
SALISBURY INN		400 CANAAN RD	SALISBURY, CT 06068–	203–824–7797
UNDER MOUNTAIN INN		482 UNDERMOUNTAIN RD.	SALISBURY, CT 06068–	203–435–0242
WHITE HART		15 UNDERMOUNTAIN RD	SALISBURY, CT 06068–	203–435–0030
VILLA BIANCA INC.		312 ROOSEVELT DR	SEYMOUR, CT 06483–	203–735–4883
SHARON MOTOR LODGE		GAY ST.	SHARON, CT 06069–	203–364–0036
RAMADA INN HOTEL		780 BRIDGEPORT AVE	SHELTON, CT 06484–	203–929–1500
RESIDENCE INN BY MARRIOTT.		1001 BRIDGEPORT AVE	SHELTON, CT 06484–	203–929–9000
INN AT WOODSTOCK HILL		94 PLAINE HILL RD	SOUTH WOODSTOCK, CT 06267–.	203–928–0528
HERITAGE INN		HERITAGE RD	SOUTHBURY, CT 06488–	203–264–5200
RADISSON HOTEL		1284 STRONGTOWN RD	SOUTHBURY, CT 06488–	203–595–7600
COMFORT INN		120 LANING ST	SOUTHINGTON, CT 06489–	203–276–0736
HOWARD JOHNSON LODGE		30 LANING ST	SOUTHINGTON, CT 06489–	203–628–0921
MOTEL SIX		625 QUEEN ST	SOUTHINGTON, CT 06489–	203–621–7351
SUSSE CHALET MOTOR LODGE.		462 QUEEN ST	SOUTHINGTON, CT 06489–	203–621–0181
HOLIDAY INN CROWN PLAZA		700 MAIN ST.	STAMFORD, CT 06901–	203–358–8400
RADISSON TARA		2701 SUMMER ST	STAMFORD, CT 06905–	203–359–1300
SHERATON STAMFORD HOTEL.		ONE FIRST STAMFORD PL	STAMFORD, CT 06902–	203–967–2222
STAMFORD MARRIOT HOTEL		2 STAMFORD FORUM	STAMFORD, CT 06901–	203–357–9555
STAMFORD MOTOR INN		1209 E. MAIN ST	STAMFORD, CT 06902–	203–325–2655
STAMFORD SUITES		720 BEDFORD ST.	STAMFORD, CT 06901–	203–359–7300
SUPER 8 MOTEL		32 GRENHART RD	STAMFORD, CT 06902–	203–324–8887
COVE LEDGE		WHEWELL CIR. #1	STONINGTON, CT 06378–	203–599–4130
STONINGTON MOTEL		329 ELM ST	STONINGTON, CT 06378–	203–599–2336
CAMELOT MOTEL		1500 S. AVE	STRATFORD, CT 06497–	203–375–3057
HO JO INN		360 HONEYSPOT RD	STRATFORD, CT 06497–	203–375–5666
MARNICKS RESTAURANT MOTEL.		10 WASHINGTON PKWY	STRATFORD, CT 06497–	203–377–6288
STRATFORD RAMADA INN		225 LORDSHIP BLVD	STRATFORD, CT 06497–	203–375–8866
PLYMOUTH MOTOR LODGE		9 W. MAIN ST	TERRYVILLE, CT 06786–	203–582–6331
TOLLAND INN		63 TOLLAND GREEN	TOLLAND, CT 06084–	203–872–0800
DAYS INN		395 WINSTED RD	TORRINGTON, CT 06790–	203–496–8808
SUPER 8 MOTEL OF TORRINGTON.		492 E. MAIN ST	TORRINGTON, CT 06790–	203–496–0811
TRUMBULL MARRIOTT HOTEL		180 HAWLEY LN	TRUMBULL, CT 06611–	203–378–1400
COLONIAL VERNON INN		346 KELLY RD	VERNON, CT 06066–	203–644–1563
COMFORT INN		425 HARTFORD TNPK	VERNON, CT 06066–	203–871–2432
HOWARD JOHNSON		451 HARTFORD TNPK	VERNON, CT 06066–	203–875–0781
COURTYARD BY MARRIOTT		600 NORTHROP RD	WALLINGFORD, CT 06492–	203–284–9400
SUSSE CHALET		100 CHALET DR	WALLINGFORD, CT 06492–	203–284–0001
TOLL HOUSE MOTEL		5 RIVER RD	WALLINGFORD, CT 06492–	203–269–1677
MAYFLOWER INN		RT. 47	WASHINGTON, CT 06793–	203–868–9466
HOLIDAY INN		63 GRAND ST	WATERBURY, CT 06702–	203–596–1000
SHERATON HOTEL		3580 E. MAIN ST	WATERBURY, CT 06705–	203–573–1000
WATERBURY SUPER 8		I–84 & SCOTT RD	WATERBURY, CT 06705–	203–757–0888
SHERATON HAMILTON HEIGHTS CONFERENCE CENTER.		235 FERN ST	WEST HARTFORD, CT 06119–	203–241–4430
WEST HARTFORD INN		900 FARMINGTON AVE	WEST HARTFORD, CT 06119–	203–236–3221
DAYS HOTEL		490 SAWMILL RD	WEST HAVEN, CT 06516–	203–933–0344
DEBONAIR MOTEL		295 BEACH ST	WEST HAVEN, CT 06516–	203–934–3673

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ECONO LODGE		7 KIMBERLY AVE	WEST HAVEN, CT 06516–	203–932–8338
TREMONT MOTOR COURT		400 DERBY AVE	WEST HAVEN, CT 06516–	203–387–6671
YANKEE INN		370 HIGHLAND ST	WEST HAVEN, CT 06516–	203–934–6611
CAPTAIN STANNARD HOUSE		138 S. MAIN ST	WESTBROOK, CT 06498–	203–399–4634
WATERS EDGE INN & RESORT		1525 BOSTON POST RD	WESTBROOK, CT 06498–	203–399–5901
WESTBROOK INN		976 BOSTON POST RD	WESTBROOK, CT 06498–	203–399–4777
ALMAR MOTEL		35 ARROW RD	WETHERSFIELD, CT 06109–	203–529–8269
MOTEL SIX		1341 SILAS DEANE HWY	WETHERSFIELD, CT 06109–	203–563–5900
TERRA MOTEL		1809 BERLIN TNPK	WETHERSFIELD, CT 06109–	203–529–6804
AMERICAN MOTOR LODGE		29 WINDSOR AVE	WINDSOR, CT 06095–	203–525–1461
COURTYARD BY MARRIOTT		1 DAY HILL RD	WINDSOR, CT 06095–	203–683–0022
RESIDENCE INN		100 DUNFEY LN	WINDSOR, CT 06095–	203–686–7474
BRADLEY INTERNATIONAL INN		34 OLD COUNTY RD	WINDSOR LOCKS, CT 06096–	203–623–2533
BRADLEY RAMADA		3 ELLA GRASSO TNPK	WINDSOR LOCKS, CT 06096–	203–623–9494
DAYS INN		185 ELLA GRASSO TNPK	WINDSOR LOCKS, CT 06096–	203–623–8417
FAIRFIELD INN BY MARRIOTT		2 LOTEN RD	WINDSOR LOCKS, CT 06096–	203–627–8333
HOLIDAY INN		16 ELLA GRASSO TNPK	WINDSOR LOCKS, CT 06096–	203–627–5171
HOMEWOOD SUITES		65 ELLA GRASSO TNPK	WINDSOR LOCKS, CT 06096–	203–627–8463
MOTEL SIX		3 NATIONAL DR	WINDSOR LOCKS, CT 06096–	203–292–6700
SHERATON HOTEL BRADLEY INTERNATIONAL.		1 BRADLEY INT'L AIRPORT	WINDSOR LOCKS, CT 06096–	203–627–5311
WINDSOR COURT		383 S. CENTER	WINDSOR LOCKS, CT 06096–	203–623–9611
Washington DC				
ANA HOTEL		2401 M ST. NW	WASHINGTON, DC 20001–	202–429–2400
BELLEVUE HOTEL		#15 E ST. NW	WASHINGTON, DC 20001–	202–638–0900
BUDGET MOTEL		1615 NEW YORK AVE. NE	WASHINGTON, DC 20335–	202–523–3900
CAPITAL HILTON HOTEL		1001–16TH ST. NW	WASHINGTON, DC 20036–	202–393–1000
CHANNEL INN		650 WATER ST. SW	WASHINGTON, DC 20024–	202–554–2400
COMFORT INN DOWNTOWN		500 H ST. NW	WASHINGTON, DC 20001–	202–289–5959
DAYS INN		2700 NEW YORK AVE. NE	WASHINGTON, DC 20335–	202–832–5800
DOWNTOWN MOTEL		1345 4TH ST. NE	WASHINGTON, DC 20001–	202–544–2000
DUPONT PLAZA HOTEL		1500 NEW HAMPSHIRE AVE. NW.	WASHINGTON, DC 20036–	202–483–6000
EMBASSY SUITES HOTEL		4300 MILITARY RD. NW	WASHINGTON, DC 20015–	202–362–9300
FOUR SEASONS HOTEL		2800 PENNSYLVANIA AVE. NW	WASHINGTON, DC 20007–	202–342–0444
GEORGETOWN INN		1310 WISCONSIN AVE. NW	WASHINGTON, DC 20007–	202–333–8900
GEORGETOWN UNIVERSITY CONFERENCE CENTER.		3800 RESERVOIR RD. NW	WASHINGTON, DC 20057–	202–687–3243
GRAND HYATT WASHINGTON		1000 H ST. NW	WASHINGTON, DC 20001–	202–582–1234
HAYS ADAMS HOTEL		800–16TH ST. NW	WASHINGTON, DC 20006–	202–638–6600
HENLEY PARK HOTEL		926 MASSACHUSETTS AVE. NW.	WASHINGTON, DC 20001–	202–638–5200
HOLIDAY INN CAPITOL		550 C ST. SW	WASHINGTON, DC 20024–	202–479–4000
HOLIDAY INN CENTRAL		1501 RHODE ISLAND AVE. NW	WASHINGTON, DC 20005–	202–483–2000
HOLIDAY INN CROWN PLAZA		775–12TH STREET NW	WASHINGTON, DC 20004–	202–737–2200
HOLIDAY INN GEORGETOWN		2101 WISCONSIN AVE. NW	WASHINGTON, DC 20007–	202–338–4600
HYATT REGENCY CAPITOL HILL.		400 NEW JERSEY AVE. NW	WASHINGTON, DC 20001–	202–737–1234
JW MARRIOTT		1331 PENNSYLVANIA AVE. NW	WASHINGTON, DC 20004–	202–626–1337
KALAROMA GUEST HOUSE		2700 CATHEDRAL AVE. NW	WASHINGTON, DC 20008–	202–328–0850
LATHAM HOTEL		3000 M ST. NW	WASHINGTON, DC 20007–	202–726–5000
MASTER HOSTS INN		1917 BLADENSBURG RD. NW	WASHINGTON, DC 20002–	202–832–8600
MORRISON CLARK HOTEL		1015 L ST. NW	WASHINGTON, DC 20001–	202–898–1200
PARK HYATT		1201–24TH ST. NW	WASHINGTON, DC 20037–	202–789–1234
PHOENIX PARK HOTEL		520 N. CAPITOL ST. NW	WASHINGTON, DC 20001–	202–638–6900
PULLMAN HIGHLAND HOTEL		1914 CONNECTICUT AVE. NW	WASHINGTON, DC 20009–	202–797–2000
QUALITY HOTEL CAPITOL HILL		415 NEW JERSEY AVE. NW	WASHINGTON, DC 20001–	202–638–1616
RAMADA RENAISSANCE HOTEL.		999–9TH ST. NW	WASHINGTON, DC 20002–	202–898–9000
SHERATON CITY CENTRE		1143 NEW HAMPSHIRE AVE. NW.	WASHINGTON, DC 20037–	202–775–0800
SHERATON WASHINGTON HOTEL.		2660 WOODLEY RD. NW	WASHINGTON, DC 20008–	202–328–2000
THE GEORGETOWN DUTCH INN.		1075 THOMAS JEFFERSON ST. NW.	WASHINGTON, DC 20007–	202–337–0900
THE SHERATON CARLTON		923–16TH ST. NW	WASHINGTON, DC 20006–	202–638–2626
WALTER REED INN		6825 GEORGIA AVE. NW	WASHINGTON, DC 20307–	202–882–1000
WASHINGTON COURT HOTEL CAPITOL HILL.		525 NEW JERSEY AVE. NW	WASHINGTON, DC 20001–	202–626–2100
WASHINGTON HILTON AND TOWERS.		1919 CONNECTICUT AVE. NW	WASHINGTON, DC 20009–	202–483–3000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
WASHINGTON MARRIOTT		1221–22ND ST. NW	WASHINGTON, DC 20037–	202–872–1500
WASHINGTON VISTA MOTEL		1400 M ST. NW	WASHINGTON, DC 20005–	202–429–1700
WILLARD INTER CONTINENTAL.		1401 PENNSYLVANIA AVE. NW	WASHINGTON, DC 20004–	202–628–9100
Delaware				
BETHANY ARMS MOTEL		99 HOLLYWOOD ST	BETHANY BEACH, DE 19930–	302–539–9503
WILMINGTON HILTON		630 NAAMAN'S RD. @ I–95	CLAYMONT, DE 19703–2399	302–792–2700
ATLANTIC OCEANSIDE MOTEL		1700 HWY. ONE	DEWEY BEACH, DE 19971–	302–227–6811
DEWEY BEACH SUITES & MOTEL.		1406 HWY. 1	DEWEY BEACH, DE 19971–	302–226–0233
HOLIDAY INN DOVER		348 N. DUPONT HWY	DOVER, DE 19901–	302–734–5701
SHERATON INN		11570 N. DUPONT HWY	DOVER, DE 19901–	302–678–8500
FENWICK SEA CHARM HOTEL & APARTMENTS.		LIGHTHOUSE RD. & BETHANY AVE.	FENWICK, DE 19944–	302–539–9613
RIC MAR APARTMENTS		DELAWARE & BUNTING AVE	FENWICK, DE 19944–	302–539–9613
CAPTAIN'S QUARTERS MOTEL		406 SAVANNAH RD	LEWES, DE 19958–	302–645–9800
NEW DEVON INN	PO BOX 516	2ND & MARKET ST	LEWES, DE 19958–	302–645–5973
NEW CASTLE SUPER 8 MOTEL		215 SOUTH DUPONT HWY	NEW CASTLE, DE 19720–	302–322–9460
RAMADA INN	PO BOX 647	I–295 & RT. 13 MANOR BRANCH.	NEW CASTLE, DE 19720–	302–658–6511
RODEWAY INN		111 S. DUPONT HWY	NEW CASTLE, DE 19720–	302–328–6246
THE DAVID FINNEY INN		216 DELAWARE ST	NEW CASTLE, DE 19720–	302–322–6367
BEST WESTERN NEWARK		260 CHAPMAN RD	NEWARK, DE 19702–	302–738–3400
CHRISTIANA HILTON INN		100 CONTINENTAL DR	NEWARK, DE 19713–	302–454–1500
COMFORT INN		1120 S. COLLEGE AVE	NEWARK, DE 19713–	302–368–8715
HAMPTON INN		3 CONCORD LN	NEWARK, DE 19713–	302–737–3900
MCINTOSH INN OF NEWARK INC.		100 MCINTOSH PLAZA	NEWARK, DE 19713–	302–453–9100
NEWARK TRAVELODGE		268 E. MAIN ST	NEWARK, DE 19711–	302–737–5050
RED ROOF INN WILMINGTON		415 STANTON CHRISTIANA RD	NEWARK, DE 19713–	302–292–2870
RESIDENCE INN BY MARRIOTT.		240 CHAPMAN RD	NEWARK, DE 19702–	302–453–9200
ADMIRAL MOTEL		2 BALTIMORE AVE	REHOBOTH BEACH, DE 19971–.	302–227–2103
BOARD WALK PLAZA HOTEL		2 OLIVE AVE	REHOBOTH BEACH, DE 19971–.	302–227–7169
BRIGHTON SUITES HOTELS		34 WILMINGTON AVE	REHOBOTH BEACH, DE 19971–.	302–227–5760
COMFORT INN	PO BOX 1450	US 13 & BEAVER DAM DR	SEAFORD, DE 19973–	302–629–6385
BEST WESTERN BRANDYWINE VALLEY INN.		1907 CONCORD PIKE	WILMINGTON, DE 19803–	302–656–9436
CHRISTIANA HOUSE		707 N. KING ST	WILMINGTON, DE 19801–	302–656–9300
COURTYARD BY MARRIOTT WILMINGTON CHRISTIANA.		48 GEOFFRY DR	WILMINGTON, DE 19884–	302–456–3800
DAYS INN WILMINGTON DOWNTOWN.		1102 W. ST	WILMINGTON, DE 19801–	302–429–7600
FAIRFIELD INN BY MARRIOTT WILMINGTON CHRIST.		65 GEOFFREY DR	WILMINGTON, DE 19713–	302–292–1500
HOLIDAY INN DOWNTOWN		700 KING ST	WILMINGTON, DE 19801–	302–655–0400
HOTEL DUPONT		11TH MARKET ST	WILMINGTON, DE 19801–	302–594–3100
ITT SHERATON SUITES WILMINGTON.		422 DELAWARE AVE	WILMINGTON, DE 19801–	302–654–8300
SHERATON INN		4727 CONCORD PIKE	WILMINGTON, DE 19803–	302–478–6000
Florida				
COMFORT INN		I 75 AND 441	ALACHUA, FL 32615–	
DAYS INN		US 441 AND I 75	ALACHUA, FL 32615–	
TOWN COUNTRY MOTEL		5384 S. RIDGEWOOD AVE	ALLANDALE, FL 32119–6240	
TRIANGLE MOTEL		5080 S. RIDGEWOOD AVE	ALLENDALE, FL 32127–	
DAYS INN NORTHLAKE		2158 RANCHWOOD DR	ALTAMONTE, FL	
DAYS INN		235 S. WYMORE RD	ALTAMONTE SPRINGS, FL 32714–4295.	
DAYS LODGE OF ALTAMONTE 645.		450 N. DOUGLAS RD. & 436	ALTAMONTE SPRINGS, FL 32714–.	
EMBASSY SUITES HOTEL		225 E. ALTAMONTE DR	ALTAMONTE SPRINGS, FL 32701–4396.	
HOLIDAY INN		230 W. HWY. 436	ALTAMONTE SPRINGS, FL 32714–4296.	
LA QUINTA MOTOR INN 3683		150 S. WESTMONTE DR	ALTAMONTE SPRINGS, FL 32714–4255.	
ORLANDO NORTH HILTON & TOWERS.		350 S. NORTHLAKE BLVD	ALTAMONTE SPRINGS, FL 32715–9004.	407–830–1985

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ORLANDO NORTH HILTON AND TOWERS.		350 S. NORTHLAKE BLVD	ALTAMONTE SPRINGS, FL 32701–.	
RAMADA INN		151 N. DOUGLAS AVE	ALTAMONTE SPRINGS, FL 32714–3398.	
SUNDANCE INN		205 W. HWY. 436	ALTAMONTE SPRINGS, FL 32714–4201.	
THE RESIDENCE INN		270 DOUGLAS AVE	ALTAMONTE SPRINGS, FL 32714–3318.	
ALVA MOTEL		21421 SR 80	ALVA, FL 33920–	
RITZ CARLTON AMELIA ISLAND.		4750 AMELIA ISLAND PKWY	AMELIA ISLAND, FL 32034–9515.	
ANNA MARIA MOTEL		806 N. BAY BLVD	ANNA MARIA, FL 34216–9999	
BAY BREEZE MOTEL		617 N. BAY BLVD	ANNA MARIA, FL 34216–9999	
ROD & REEL MOTEL		877 N. SHORE DR	ANNA MARIA, FL 34216–9999	
SEA ISLE MOTEL		601 BAY BLVD. N	ANNA MARIA, FL 34216–9999	
APALACH MOTEL		W. US HWY. 98	APALACHICOLA, FL 32320–	
GIBSON INN		100 MARKET ST	APALACHICOLA, FL 32320–1774.	
PINK CAMELLIA INN		145 E AVE	APALACHICOLA, FL 32320–	
RAINBOW INN & MARINA		123 WATER	APALACHICOLA, FL 32320–1736.	
RANCHO INN		W. HWY. 98	APALACHICOLA, FL 32320–2038.	
HOLIDAY INN APOLLO BEACH		6414 SURFSIDE BLVD	APOLLO BEACH, FL 33570–	
BUDGET INN		429 E. MAIN ST	APOPKA, FL 32703–5351	
CROSBY'S MOTOR INN		1440 W. ORANGE BLOSSOM TRAIL.	APOPKA, FL 32712–2637	
ECONO LODGE		228 W. MAIN ST	APOPKA, FL 32703–5184	
HOJO INN		1317 S. ORANGE BLOSSOM TRAIL.	APOPKA, FL 32703–	407–886–1010
LAKE PAGE MOTEL		1317 S. ORANGE BLOSSOM TRAIL.	APOPKA, FL 32703–7605	
ARCADE HOTEL		107 W. OAK ST	ARCADIA, FL 33821–	
CITY MOTEL		324 S. BREVARD AVE	ARCADIA, FL 33821–4309	
DESOTO MOTEL		1021 BREVARD AVE	ARCADIA, FL 33821–4153	
HI WAY MOTEL		S. US HWY. 17	ARCADIA, FL 33821–	
M & M MOTEL OF ARCADIA		US HWY. 17	ARCADIA, FL 33821–	
WATERS MOTEL		S. HWY. 17	ARCADIA, FL 33821–	
DEER HAMMOCK LODGE		308 S. UNIVERSITY AVE. US	ARCHER, FL 32618–9755	
ASTORA MOTEL		1530 W. HWY. 40	ASTOR, FL 32102–7903	
COMFORT INN		2401 MAYPORT RD	ATLANTIC BEACH, FL 32233–5365.	
COMFORT INN MAYPORT		2401 MAYPORT RD	ATLANTIC BEACH, FL 32233–	904–249–0313
OCEAN VIEW MOTEL & APARTMENT.		30 OCEAN BLVD	ATLANTIC BEACH, FL 32233–5260.	
PALMS MOTEL		28 SHERRY DR	ATLANTIC BEACH, FL 32233–5270.	
SALT AIR MOTEL		425 ATLANTIC BLVD	ATLANTIC BEACH, FL 32233–4021.	
SEA TURTLE INN		1 OCEAN BLVD	ATLANTIC BEACH, FL 32233–5295.	
ATLANTIS INN		331 ORANGE TREE DR	ATLANTIS, FL 33462–1315	
LAKE FOREST MOTEL		1702 W. HWY. 92	AUBURNDALE, FL 33823–3915	
LAKE LENA MOTEL		1802 US 92 W	AUBURNDALE, FL 33823–3999	
AVON MOTEL		510 N. US HWY. 27	AVON PARK, FL 33825–2699	
BEACHFRONT MOTOR LODGE		301 GARRETT RD	AVON PARK, FL 33825–4825	
ECONO LODGE		2511 S. US HWY. 27	AVON PARK, FL 33825–9752	
JACARANDA HOTEL		19 E. MAIN ST	AVON PARK, FL 33825–3942	
LAKE BRENTWOOD MOTEL		2060 N. US 27	AVON PARK, FL 33825–	
OAK TREE INN		700 S. HWY. 27	AVON PARK, FL 33825–3550	
REEDS MOTEL		102 S. REST AVE	AVON PARK, FL 33825–	
SHARON MOTEL		2180 N. US HWY. 27	AVON PARK, FL 33825–9506	
SO GOOD MOTEL		1458 S. LAKE AVE. LACY HIL	AVON PARK, FL 33825–	
HILLCREST LODGE HOTEL		S. ALT 27	BABSON PARK, FL 33827–9638	
BEST WESTERN INN OF BALDWIN.		1088 US HWY. 301	BALDWIN, FL 32234–	
HAWKINS MOTEL		US HWY. 301 & 90	BALDWIN, FL 32234–	
EL JON MOTEL		1480 E. MAIN ST	BARTOW, FL 33830–5299	
TROPICAL MOTEL		1480 E. MAIN ST	BARTOW, FL 33830–5201	
BAY HARBOR INN		9660 E. BAY HARBOR DR	BAY HARBOR ISLAND, FL 33154–2104.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CONTEMPORY RESORT HOTEL.		THEME PARK	BAY LAKE, FL 32830–	
DISNEY'S YACHT & BEACH CLUB.		1700 EPCOT RESORT BLVD	BAY LAKE, FL 32830–	
FT WILDERNESS CAMP GROUND.		DISNEY CAMPGROUND	BAY LAKE, FL 32830–	
GRAND FLORIDIAN BEACH RESORT.		4401 FLORIDIAN WAY	BAY LAKE, FL 32830–	
POLYNESIAN VILLAGE HOTEL		THEME PARK	BAY LAKE, FL 32830–	
THE DISNEY INN		GOLF COURSE THEME	BAY LAKE, FL 32830–	
HOMESTEAD EFFICIENCY MOTEL.		13341 PHILLIPS HWY	BAYARD, FL 32224–	
BAY PORT INN MOTEL		4835 CORTEZ BLVD	BAYPORT, FL 34607–	
LAKESIDE AMERICAN INN		1075 S. MAIN ST	BELLE GLADE, FL 33430–4996	
RUTLEDGE MOTEL		120 S. MAIN ST	BELLE GLADE, FL 33430–3424	
SUNLAND MOTEL		HWY. 80	BELLE GLADE, FL 33430–4999	
WALDESSA MOTEL		890 STATE RD. 80	BELLE GLADE, FL 33430–4127	
BELLEVIEW MIDO RESORT HOTEL.		25 BELLEVIEW BLVD	BELLEAIR, FL 34616–1991	
BELLEAIR BEACH MOTEL		2040 GULF BLVD	BELLEAIR BEACH, FL 34648–	
KAZMIRA MOTEL		9946 SE HWY. 441	BELLEVIEW, FL 32620–	
VIN MAR MOTEL		5018 SE ABSHIER BLVD	BELLEVIEW, FL 32620–3921	
WEST VIRGINIA MOTEL		5203 SE ABSHIER BLVD	BELLEVIEW, FL 32620–3916	
BELLWOOD MOTEL		US HWY. 1	BELLWOOD, FL 32780–	
BEVERLY HILLS MOTEL		2 BEVERLY HILLS BLVD	BEVERLY HILLS, FL 32665–3240.	
BIG PINE MOTEL	RT 5	BOX 796	BIG PINE KEY, FL 33043–9507	
NEWFOUND HARBOR MOTEL		NEWFOUND BLVD	BIG PINE KEY, FL 33043–	
AIRPORT MOTEL	PO BOX	E. FLORIDA HWY. 20	BLOUNTSTOWN, FL 32424–	
CAL-CO MOTEL		W. HWY. 20	BLOUNTSTOWN, FL 32421–	
CHEROKEE MOTEL		628 W. CENTRAL AVE	BLOUNTSTOWN, FL 32424–1910.	
GAPARILLA INN HOTEL		PALM AVE	BOCA GRANDE, FL 33921–9999.	
GASPARILLA INN 48 51 52		PALM AVE	BOCA GRANDE, FL 33921–9999.	
GASPARILLA INN 53 & 54		5TH ST. & PALM	BOCA GRANDE, FL 33921–9999.	
GASPARILLA INN COTTAGES 41&.		5 5TH ST. & PALM	BOCA GRANDE, FL 33921–9999.	
PALMETTO INN		381 PALM DR	BOCA GRANDE, FL 33921–0624.	
WATERFRONT MOTEL		11TH ST	BOCA GRANDE, FL 33921–9999.	
BOCA RATON HOTEL & CLUB		501 E. CAMINO REAL	BOCA RATON, FL 33432–6196	
BOCA RATON MARRIOTT AT CROCKER CENTER.		5150 TOWN CENTER CIR	BOCA RATON, FL 33486–	407–392–4600
COURTYARD BY MARRIOTT		2000 NW EXECUTIVE CT	BOCA RATON, FL 33431–	407–241–7070
COURTYARD BY MARRIOTT		2000 NW EXECUTIVE CT	BOCA RATON, FL 33431–	
ECONO LODGE		2899 N. FEDERAL HWY	BOCA RATON, FL 33431–6801	
EMBASSY SUITES BOCA RATON.		661 NW 53RD ST	BOCA RATON, FL 33487–8293	
HOLIDAY INN		1950 GLADES RD	BOCA RATON, FL 33431–7384	
HOLIDAY INN—LAKESIDE		8144 GLADES RD	BOCA RATON, FL 33434–4004	
HOWARD JOHNSON LODGE		80 W. CAMINO REAL	BOCA RATON, FL 33432–6177	
OCEAN LODGE MOTEL		531 N. OCEAN BLVD	BOCA RATON, FL 33432–4213	
PARKER MOTEL & APARTMENT.		444 E. PALMETTO PARK RD	BOCA RATON, FL 33432–5018	
RADISSON SUITE HOTEL		7920 GLADES RD	BOCA RATON, FL 33434–4192	
RAMADA HOTEL		2901 N. FEDERAL HWY	BOCA RATON, FL 33431–6798	
RESIDENCE INN BY MARRIOTT.		525 NW 77TH ST	BOCA RATON, FL 33487–1388	
SHERATON OF BOCA RATON		2000 NW 19TH ST	BOCA RATON, FL 33431–7365	
SHORE EDGE MOTEL		425 N. OCEAN BLVD	BOCA RATON, FL 33432–4299	
THE BRIDGE HOTEL		999 E. CAMINO REAL	BOCA RATON, FL 33432–6399	
UNIVERSITY INN		2700 N. FEDERAL HWY	BOCA RATON, FL 33431–7799	
WHITE HOUSE MOTEL		641 S. FEDERAL HWY	BOCA RATON, FL 33432–6031	
BEST WESTERN TIVOLI INN		I 10 & HWY. 79	BONIFAY, FL 32425–	
BUDGET INN		114 W. HWY. 90	BONIFAY, FL 32425–2614	
ECONO LODGE		I–10 & ST JOHNS R	BONIFAY, FL 32425–	
RIDGEWOOD MOTEL		602 S. WEEKS ST	BONIFAY, FL 32425–3066	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ANGLER PARADISE MOTEL		27711 WINDSOR RD. SW	BONITA SPRINGS, FL 33923–4195.	
BEACH HOUSE MOTEL		26106 HICKORY BLVD	BONITA SPRINGS, FL 33923–3794.	
BONITA BEACH RESORT MOTEL.		26395 SW HICKORY BLVD	BONITA SPRINGS, FL 33923–3790.	
COMFORT INN HOTEL		9800 BONITA BEACH RD	BONITA SPRINGS, FL 33923– ..	813–922–5001
COMFORT INN OF BONITA SPRINGS.		9800 BONITA BEACH RD	BONITA SPRINGS, FL 33923–4627.	
DRIFTWOOD MOTEL		27091 OLD 41 RD	BONITA SPRINGS, FL 33923–5404.	
ECONO LODGE		28090 QUAIL'S NEST LN	BONITA SPRINGS, FL 33923– ..	813–947–3366
ECONO LODGE OF BONITA SPRINGS.		28090 QUAILS NEST LN	BONITA SPRINGS, FL 33923–6899.	
EMPIRE COURT MOTEL		26620 OLD US 41	BONITA SPRINGS, FL 33923–6637.	
FLAMINGO MOTEL		4330 BONITA BEACH RD	BONITA SPRINGS, FL 33923–4007.	
INN ON THE BAY		4701 W. BONITA BEACH RD	BONITA SPRINGS, FL 33923– ..	
MICHAEL MOTEL		9790 BEACH RD. SE	BONITA SPRINGS, FL 33923– ..	
PORPOISE PASS MOTEL		26210 HICKORY BLVD	BONITA SPRINGS, FL 33923–3703.	
SHANGRI LA HOTEL MOTEL		27580 OLD 41 RD	BONITA SPRINGS, FL 33923–5503.	
ANN MARIE MOTEL		911 S. FEDERAL HWY	BOYNTON BEACH, FL 33435–5612.	
BOYNTON BEACH MOTEL		623 S. FEDERAL HWY	BOYNTON BEACH, FL 33435– .	
BOYNTON LODGE MOTEL		222 N. FEDERAL HWY	BOYNTON BEACH, FL 33435–4117.	
GOLDEN SANDS INN		520 SE 21ST AVE	BOYNTON BEACH, FL 33435–7299.	
HOLIDAY INN		480 NW 2ND AVE	BOYNTON BEACH, FL 33435–4091.	
HOLIDAY-INN CATALINA		1601 N. CONGRESS AVE	BOYNTON BEACH, FL 33426–8707.	
HOMING INN		2821 S. FEDERAL HWY	BOYNTON BEACH, FL 33435–7796.	
LORAINE COURT MOTEL		2703 S. FEDERAL HWY	BOYNTON BEACH, FL 33435–7797.	
RAMADA INN BOYNTON BEACH.		1935 S. FEDERAL HWY	BOYNTON BEACH, FL 33435–6904.	
SUNSHINE COURT MOTEL		1900 N. FEDERAL HWY	BOYNTON BEACH, FL 33435–2834.	
WISHING WELL MOTEL		2505 S. FEDERAL HWY	BOYNTON BEACH, FL 33435–7721.	
53 AVENUE MOTEL		1403 E. 53RD AVE	BRADENTON, FL 34203–4811 ..	
BAXTER MOTEL		3225 W. 14TH ST	BRADENTON, FL 34205–6297 ..	
BRADENTON RESORT INN		2303 1ST ST	BRADENTON, FL 34208–3655 ..	
BUDGET INN		1800 W. 14TH ST	BRADENTON, FL 34205–7100 ..	
COMFORT MOTEL		1715 W. 14TH ST	BRADENTON, FL 34205–7132 ..	
DAYS INN BRADENTON		3506 1ST ST. W	BRADENTON, FL 34208–4402 ..	
DAYSTOP MOTEL		644 E. 67TH ST. CIR	BRADENTON, FL 34209–	
ECONO LODGE		6727 W. 14TH ST	BRADENTON, FL 34207–5807 ..	
ECONO LODGE		607 E. 67TH ST. CIR	BRADENTON, FL 34208–	
FREEDS MOTEL		1060 E. MANATEE AVE	BRADENTON, FL 34208–1248 ..	
HOJO INN BRADENTON		6511 W. 14TH ST	BRADENTON, FL 34207–	
HOLIDAY INN RIVERFRONT		100 RIVERFRONT DR	BRADENTON, FL 34205–8824 ..	
JONIWOOD MOTEL OF FLORIDA.		2003 W. 14TH ST	BRADENTON, FL 34205–7138 ..	
MANATEE MOTEL		3502 W. 14TH ST	BRADENTON, FL 34205–6213 ..	
MICHIANA MOTEL		3235 W. 14TH ST	BRADENTON, FL 34205–6298 ..	
MOTEL 6 678		660 E. 67TH ST. CIR	BRADENTON, FL 34208–9064 ..	
NINTH STREET W MOTEL		2308 W. 9TH ST	BRADENTON, FL 34205–7072 ..	
PALMER HOUSE MOTEL		1821 W. 13TH ST	BRADENTON, FL 34205–7126 ..	
PARK INN INTERNATIONAL BRADENTON.		4450 W. 47TH ST	BRADENTON, FL 34210–	
PARK INN LIMITED		668 E. 67TH ST. CIR	BRADENTON, FL 34208–	
PLAZA MOTEL		4410 W. 14TH ST	BRADENTON, FL 34207–1425 ..	
RIEDEL'S MOTEL & APARTMENTS.		1839 W. 14TH ST	BRADENTON, FL 34205–	
RIVER PARK RESIDENCE HOTEL.		309 W. 10TH ST	BRADENTON, FL 34205–8637 ..	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUNSHINE INN		1801 W. 14TH ST	BRADENTON, FL 34205–	
THRIFTY LODGE MOTEL		6516 W. 14TH ST	BRADENTON, FL 34207–5801	
EL BANDIDO MOTEL		2200 N. GULF DR	BRADENTON BEACH, FL 34217–2236.	
GULF PRIDE BEACH MOTEL		2201 N. GULF DR	BRADENTON BEACH, FL 34217–2237.	
PELICAN POST MOTEL		202 N. 1ST ST	BRADENTON BEACH, FL 34217–2402.	
SAND & SEA MOTEL		2412 GULF DR	BRADENTON BEACH, FL 34217–2240.	
SILVER SURF MOTEL		1301 S. GULF DR	BRADENTON BEACH, FL 34217–2519.	
TROPIC ISLE MOTEL		2103 N. GULF DR	BRADENTON BEACH, FL 34217–2235.	
VILLA DEL SOL MOTEL		2502 N. GULF DR	BRADENTON BEACH, FL 34217–2242.	
WILEY MOTEL		110 S. 6TH ST	BRADENTON BEACH, FL 34217–2504.	
RANDON MOTOR LODGE		906 E. BRANDON BLVD	BRANDON, FL 33511–5514	
TEAMBOAT DIVE INN		HWY. 27 & 129	BRANFORD, FL 32008–	
SNOWBIRD MOTEL		HWY. 20	BRISTOL, FL 32321–	
DAYS INN		31015 CORTEZ BLVD	BROOKSVILLE, FL 34602–	
HOLIDAY INN		SR 50 & I–75	BROOKSVILLE, FL 34602–	
JEFFERSON MOTEL		1030 W. JEFFERSON ST	BROOKSVILLE, FL 34601–2428	
OAKS MOTEL		630 S. BROAD ST	BROOKSVILLE, FL 34601–2841	
OLDE OAK INN MOTEL		22081 E. CORTEZ BLVD	BROOKSVILLE, FL 34601–2762	
SUNRISE MOTEL		250 E. BROAD ST	BROOKSVILLE, FL 34601–2924	
SUNSET MOTEL		301 W. BROAD ST	BROOKSVILLE, FL 34601–2834	
BUNNELL MOTOR LODGE/ MOTEL.		603 N. US HWY. 1	BUNNELL, FL 32010–	
MILTON MOTEL		1105 S. US 1	BUNNELL, FL 32010–	
BARNES MOTEL		S. US 301	BUSHNELL, FL 33513–	
GUEST HOUSE MOTEL		W. HWY. 48	BUSHNELL, FL 33513–	
CYPRESS VILLAGE INN		US HWY. 1 N. 6 MILE	CALLAHAN, FL 32011–	
FRIENDSHIP INN		HWY. 1 1 M N	CALLAHAN, FL 32011–	
PINES MOTEL		701 N. OLD KINGS RD	CALLAHAN, FL 32011–	
REGINA MOTEL		205 W. 1ST AVE	CALLAHAN, FL 32011–9757	
ROYAL INN		216 N. KINES RD	CALLAHAN, FL 32011–	
TRICIA MOTEL		N. US 1 & 301	CALLAHAN, FL 32011–	
BEACH INN AT THE PORT		8701 ASTRONAUNT BLVD	CAPE CANAVERAL, FL 32920–	
ADAR BAY MOTEL WATER-FRONT A.		4601 SE 5TH AVE	CAPE CORAL, FL 33904–8595	
ATLANTIC COURT MOTEL		4813 ATLANTIC CT	CAPE CORAL, FL 33904–9530	
BIKINI MOTEL		1623 EDITH ESPLANADE	CAPE CORAL, FL 33904–5624	
CASA LOMA MOTEL		3608 DEL PRADO BLVD	CAPE CORAL, FL 33904–7174	
COLONIAL RESORT MOTEL		4913 VINCENNES CT	CAPE CORAL, FL 33904–9119	
DEL PRADO INN		1502 MIRAMAR ST	CAPE CORAL, FL 33904–9737	
DEL PRADO INN EAST		1734 CAPE CORAL PKWY	CAPE CORAL, FL 33904–9620	
QUALITY INN FT MYERS CAPE CORAL		1536 CAPE CORAL PKWY	CAPE CORAL, FL 33904–9650	
QUALITY INN NAUTILUS		1538 CAPE CORAL PKWY	CAPE CORAL, FL 33904–	813–542–2121
TWEEN WATERS INN		15951 CAPTIVA DR	CAPTIVA, FL 33924–0249	
TWIN PALMS RESORT MARINA		15107 CAPTIVA DR	CAPTIVA, FL 33924–9999	
BEACHSIDE MOTEL		W. US HWY. 98	CARRABELLE, FL 32322–	
GEORGIAN MOTEL		CURTIS AVE	CARRABELLE, FL 32322–	
GULF WATERS MOTEL		HC 62 BOX 13	CARRABELLE, FL 32322–	
ISLAND VIEW MOTEL		E. US HWY. 319 STAR R	CARRABELLE, FL 32322–	
RIVERSIDE MOTEL		HWY. 319 BOX 736	CARRABELLE, FL 32322–	
CASSADAGA HOTEL		355 CASSADAGA RD	CASSADAGA, FL 32706–	
LU RAE MOTEL		3400 S. US HWY. 17 & 92	CASSELBERRY, FL 32707–	
BEACH FRONT MOTEL		W. 1ST ST	CEDAR KEY, FL 32625–	
CEDAR INN		2ND ST	CEDAR KEY, FL 32625–	
DOCK STREET MOTEL		109 DOCK ST	CEDAR KEY, FL 32625–	
FARAWAY INN MOTEL		3 G ST	CEDAR KEY, FL 32625–	
GULF SIDE MOTEL		END OF SR 24	CEDAR KEY, FL 32625–	
MARINA MOTEL		HWY 24	CEDAR KEY, FL 32625–	
SUNSET ISLE PARK IN MT		HWY. 24	CEDAR KEY, FL 32625–	
ANCHOR INN		22968 BAYSHORE RD	CHARLOTTE HARBOR, FL 33950–.	
BAYSHORE MOTEL		23285 BAYSHORE RD	CHARLOTTE HARBOR, FL 33980–.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COVE COURT MOTEL		23275 SE BAYSHORE RD	CHARLOTTE HARBOR, FL 33980–3211.	
GULF MOTEL		23223 BAYSHORE RD	CHARLOTTE HARBOR, FL 33980–.	
HARBOUR INN		5000 TAMIAMI TRAIL	CHARLOTTE HARBOR, FL 33950–.	
CHATTAHOOCHEE INN		516 W. WASHINGTON ST	CHATTAHOOCHEE, FL 32324–1332.	
MORGAN MOTEL		HWY. 90 E	CHATTAHOOCHEE, FL 32324–	
BEST WESTERN INN		US HWY. 19 N	CHIEFLAND, FL 32626–	
CEDAR OAKS MOTEL		US 19 1 M	CHIEFLAND, FL 32626–	
CRYSTAL OAKS MOTEL		N. US 19 8 M	CHIEFLAND, FL 32626–	
FANNING SPRINGS MOTEL		N. US 19 9 M	CHIEFLAND, FL 32626–	
HOLIDAY TIME MOTEL		N. US 19 2 M	CHIEFLAND, FL 32626–	
MANATEE SPRINGS MOTEL		N. US 19 1 M	CHIEFLAND, FL 32626–	
NEIGHBOR'S MOTEL		N. US HWY. 19 5M N	CHIEFLAND, FL 32626–	
TREASURE CAMP MOTEL		HWY. 347 FOWLERS B	CHIEFLAND, FL 32626–	
BUDGET INN		700 E. JACKSON AVE	CHIPLEY, FL 32428–2024	
CHIPLEY MOTEL		402 W. JACKSON ST	CHIPLEY, FL 32428–1702	
DAYS INN		S. HWY. 77	CHIPLEY, FL 32428–	
BLUE HERON MOTEL		MAMIE ST	CHOKOLOSKEE, FL 33925–9999.	
ORANGE BLOSSOM MOTEL		17575 S. US HWY. 301	CITRA, FL 32113–	
ALOHA MOTEL		1860 N. FT HARRISON AVE	CLEARWATER, FL 34615–1755	
AMERICAN INN		16045 N. US HWY. 19	CLEARWATER, FL 34624–6703	
AQUA CLARA MOTEL		1770 N. FT HARRISON AVE	CLEARWATER, FL 34615–	
ATRIUM HOTEL		1707 N. FT HARRISON AVE	CLEARWATER, FL 34615–1702	
BEST WESTERN CLW CENTRAL 1.		21252 N. US HWY. 19	CLEARWATER, FL 34625–2896	
BUDGET INN		1471 COURT ST	CLEARWATER, FL 34616–6190	
BUTTERFLY MOTEL		12500 US HWY. 19	CLEARWATER, FL 34624–7210	
CIMYS MOTEL		1379 GULF TO BAY BLVD	CLEARWATER, FL 34615–5310	
CLEARWATER BAY MOTEL		1824 N. FORT HARRISON AVE	CLEARWATER, FL 34615–	
CLEARWATER CENTRAL		21030 US 19 N	CLEARWATER, FL 34625–	813–797–6173
CLEARWATER - DOWNTOWN TRAVELODGE.		711 CLEVELAND ST	CLEARWATER, FL 34615–	813–446–913
CLEARWATER PALMS MOTEL		1735 GULF TO BAY BLVD	CLEARWATER, FL 34615–6503	
COMFORT INN CLEARWATER		3580 ULMERTON RD	CLEARWATER, FL 34622–4286	
COMFORT INN CLEARWATER/ ST. PETERSBURG.		3680 ULMERTON RD	CLEARWATER, FL 34622–	813–573–1171
COMFORT MOTEL		28596 N. US HWY. 19	CLEARWATER, FL 34621–2528	
CONTINENTAL INN		12810 US HWY. 19	CLEARWATER, FL 34624–7216	
COUNTRYSIDE MOTEL		27988 US HWY. 19	CLEARWATER, FL 34621–4905	
COURTYARD BY MARRIOTT		3131 EXECUTIVE DR	CLEARWATER, FL 34622–	813–572–8484
COURTYARD BY MARRIOTT		3131 EXECUTIVE DR	CLEARWATER, FL 34622–	
COURTYARD BY MARRIOTT ST. PETERSBURG/CLEARWATER.		3131 EXECUTIVE DR	CLEARWATER, FL 34622–	813–572–8484
DAYS INN CLEARWATER 192		3910 ULMERTON RD	CLEARWATER, FL 34622–4220	
DAYS INN MOTEL		22950 N. US HWY. 19	CLEARWATER, FL 34625–1595	
DELUX MOTEL		1477 S. FT HARRISON AVE	CLEARWATER, FL 34616–2099	
DIANA MOTEL		1814 GULF TO BAY BLVD	CLEARWATER, FL 34625–3412	
ECON INN OF CLEARWATER		18736 N. US HWY. 19	CLEARWATER, FL 34624–3101	
ECONOMY INN OF CLEARWATER.		1274 CLEVELAND ST	CLEARWATER, FL 34615–4911	
EDGEWATER DR MOTEL		1919 EDGEWATER DR	CLEARWATER, FL 34615–1465	
FLAMINGO MOTEL		1806 N. FT HARRISON AVE	CLEARWATER, FL 34615–1710	
FOUR OAKS MOTEL		2061 GULF TO BAY BLVD	CLEARWATER, FL 34625–3711	
GULF TO BAY MOTEL II		2960 GULF TO BAY BLVD	CLEARWATER, FL 34619–4222	
HAMPTON INN CLEARWATER/ ST P.		3655 HOSPITALITY LN	CLEARWATER, FL 34622–3802	
HILLCREST MOTEL		26 S. HILLCREST AVE	CLEARWATER, FL 34616–6097	
HILLTOP MOTEL		1466 GULF TO BAY BLVD	CLEARWATER, FL 34615–5319	
HOLIDAY INN EXPRESS		13625 ICOT BLVD	CLEARWATER, FL 34620–3703	
HOLIDAY INN EXPRESS GATEWAY.		13625 ICOT BLVD	CLEARWATER, FL 34620–	813–536–7275
HOLIDAY INN MOTEL		21030 US HWY. 19	CLEARWATER, FL 34625–4498	
HOLIDAY INN ST PETE AIRPORT.		3535 ULMERTON RD	CLEARWATER, FL 34622–4288	
HOWARD JOHNSON LODGE		20788 US HWY. 19	CLEARWATER, FL 34625–4496	
KENTUCKIAN MOTEL		1840 N. FT HARRISON AVE	CLEARWATER, FL 34615–1712	
LA QUINTA MOTOR INN 688		3301 ULMERTON RD	CLEARWATER, FL 34622–3314	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LE PARC INN		11333 US HWY. 19	CLEARWATER, FL 34624–7404	
MOTEL ANN		1630 GULF TO BAY	CLEARWATER, FL 34615–6420	
NEW RANCH MOTEL		2275 GULF TO BAY BLVD	CLEARWATER, FL 34625–4095	
ORANGE MOTEL		1736 GULF TO BAY BLVD	CLEARWATER, FL 34615–6564	
ORANGE MOTEL 400		400 SATURN AVE	CLEARWATER, FL 34615–	
PARK LAKE MOTEL		1520 GULF TO BAY BLVD	CLEARWATER, FL 34615–6313	
PLEASANT INN		1744 N. FT HARRISON AVE	CLEARWATER, FL 34615–	
RADDISSON SUITES—SAND KEY.		1201 GULF BLVD	CLEARWATER, FL 34630–	813–586–1100
RAMADA INN		26508 N. US HWY. 19	CLEARWATER, FL 34621–3429	
RED CARPET INN		2940 GULF TO BAY BLVD	CLEARWATER, FL 34619–4222	
REGAL MOTEL		1320 CLEVELAND ST	CLEARWATER, FL 34615–5199	
RESIDENCE INN HOTEL		5050 ULMERTON RD	CLEARWATER, FL 34620–4001	
RIO MOTEL		1488 GULF TO BAY BLVD	CLEARWATER, FL 34615–5383	
RODEWAY INN		20967 US HWY. 19	CLEARWATER, FL 34625–4497	
ROYAL PALM MOTEL		1250 CLEVELAND ST	CLEARWATER, FL 34615–4911	
SANDALWOOD MOTEL		407 S. JUPITER AVE	CLEARWATER, FL 34615–6518	
SHORELINE VIEW MOTEL		1941 EDGEWATER DR	CLEARWATER, FL 34615–1417	
ST. PETERSBURG SUPER 8 MOTEL.		13260 34TH ST	CLEARWATER, FL 34622–	813–572–8881
SUNCOAST INN		20162 N. US HWY. 19	CLEARWATER, FL 34624–5008	
SUNNY MOON MOTEL		12600 US HWY. 19	CLEARWATER, FL 34624–7212	
SUNSET PINES MOTEL		1800 N. FT HARRISON AVE	CLEARWATER, FL 34615–1710	
TUCKERS MOTEL		14650 66TH ST. N	CLEARWATER, FL 34624–7206	
400 MOTEL		401 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2599.	
AEGEAN SANDS MOTEL		421 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34530–2599.	
ALBATROSS MOTEL		346 HAMDEN DR	CLEARWATER BEACH, FL 34630–2474.	
ANN ESTHER INN		229 CORONADO DR	CLEARWATER BEACH, FL 34630–2477.	
BEACH MOORING MOTEL		620 BAYWAY BLVD	CLEARWATER BEACH, FL 34630–.	
BEST WESTERN SEA STONE SUIT.		445 HAMDEN DR	CLEARWATER BEACH, FL 34630–.	
BEST WESTERN SEA WAKE INN.		691 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2697.	
BREEZWAY MOTEL		602 POINSETTIA AVE	CLEARWATER BEACH, FL 34630–1648.	
CAMELOT MOTEL		603 MANDALAY AVE	CLEARWATER BEACH, FL 34630–1741.	
CARIBBEAN GULF HOTEL		430 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2598.	
CLEARWATER BEACH ECONO LODGE.		625 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2543.	
CLEARWATER BEACH HILTON INN.		715 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2964.	
CLEARWATER BEACH HOTEL .		490 N. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2008.	
CLEARWATER BEACH HOTEL .		500 MANDALAY AVE	CLEARWATER BEACH, FL 34630–.	
CLEARWATER BEACH HOTEL BEACH FR.		500 MANDALAY BLVD	CLEARWATER BEACH, FL 34630–1798.	
DAYS INN		100 CORONADO DR	CLEARWATER BEACH, FL 34630–.	
DOLPHIN WATCH MOTEL		607 BAY ESPLANADE	CLEARWATER BEACH, FL 34630–.	
DRIFTWOOD INN		460 E. SHORE DR	CLEARWATER BEACH, FL 34630–2034.	
DUNES MOTEL		514 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2538.	
FALCON MOTEL		415 CORONADO DR	CLEARWATER BEACH, FL 34630–2506.	
GEM TOWER MOTEL		342 HAMDEN DR	CLEARWATER BEACH, FL 34630–2473.	
GLASS HOUSE MOTEL		229 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2499.	
GULF BEACH MOTEL		419 CORONADO DR	CLEARWATER BEACH, FL 34630–2506.	
HO JO INN		656 BAYWAY BLVD	CLEARWATER BEACH, FL 34630–2696.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY HOUSE RESORT MOTELS.		463 N. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2005.	
HOLIDAY HOUSE RESORT MOTELS.		470 N. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2006.	
HOLIDAY HOUSE RESORT MOTELS.		495 N. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2042.	
HOLIDAY INN GULFVIEW		521 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2597.	
HOLIDAY INN GULFVIEW		521 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–.	813–447–64
HOLIDAY INN GULFVIEW		521 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34632–.	813–447–6461
HOLIDAY INN SURFSIDE		400 MANDALAY AVE	CLEARWATER BEACH, FL 34630–2096.	
ISLAND QUEEN MOTEL		158 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2455.	
IVY LEAGUE MOTEL		600 BAYWAY BLVD	CLEARWATER BEACH, FL 34630–2607.	
KING COLE MOTEL		401 E. SHORE DR	CLEARWATER BEACH, FL 34630–2056.	
LA FIESTA MOTEL		105 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2400.	
LAGOON RESORT MOTEL		619 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2654.	
MAR JAC MOTEL		144 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2455.	
MONACO MOTEL		648 POINSETTIA AVE	CLEARWATER BEACH, FL 34630–1552.	
NICKEY MOTEL		427 POINSETTIA AVE	CLEARWATER BEACH, FL 34630–2025.	
OLYMPIA MOTEL		423 E. SHORE DR	CLEARWATER BEACH, FL 34630–2062.	
PALM PAVILION INN		18 BAY ESPLANADE	CLEARWATER BEACH, FL 34630–1645.	
PARKER MANOR MOTEL		115 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2404.	
PELICAN COVE MOTEL & APARTMENTS.		125 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2453.	
PORT VUE MOTEL		101 CORONADO DR	CLEARWATER BEACH, FL 34630–2484.	
RADISSON RESORT HOTEL		1201 GULF BLVD	CLEARWATER BEACH, FL 34630–.	
RITZ MOTEL		355 GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2498.	
ROYAL CANADIAN MOTEL		653 MANDALAY AVE	CLEARWATER BEACH, FL 34630–1523.	
SAND DUNES MOTEL		19 ROCKAWAY ST	CLEARWATER BEACH, FL 34630–1739.	
SANDMAN MOTEL		300 HAMDEN DR	CLEARWATER BEACH, FL 34630–2467.	
SANDPIPER MOTEL		400 E. SHORE DR	CLEARWATER BEACH, FL 34630–2027.	
SEA AIR MOTEL		41 DEVON DR	CLEARWATER BEACH, FL 34630–2464.	
SEA CAPTAIN MOTEL		40 DEVON DR	CLEARWATER BEACH, FL 34630–2465.	
SEA CLOUD MOTEL		540 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2539.	
SEA COVE MOTEL		316 HAMDEN DR	CLEARWATER BEACH, FL 34630–2468.	
SEA PINES MOTEL		134 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2452.	
SEA SPRAY INN		331 CORONADO DR	CLEARWATER BEACH, FL 34630–2433.	
SEAGULL INN MOTEL		174 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2461.	
SHERATON SAND KEY HOTEL		1160 GULF BLVD	CLEARWATER BEACH, FL 34630–2799.	
SILVER SANDS MOTEL		415 HAMDEN DR	CLEARWATER BEACH, FL 34630–2543.	
SPY GLASS MOTEL		215 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2443.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STA N PLA MOTEL		345 HAMDEN DR	CLEARWATER BEACH, FL 34630–2472.	
SUN N WAVES MOTEL		170 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2411.	
SUNNY MOTEL		105 CORONADO DR	CLEARWATER BEACH, FL 34630–2429.	
SUNWEST BEACH MOTEL		409 HAMDEN DR	CLEARWATER BEACH, FL 34630–2540.	
SURF N SAND MOTEL		50 ROYAL WAY	CLEARWATER BEACH, FL 34630–1553.	
TARA MOTEL & APARTMENTS		123 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2405.	
THE WATERGATE MOTEL		445 S. GULFVIEW BLVD	CLEARWATER BEACH, FL 34630–2548.	
TRAVELER MOTEL		408 E. SHORE DR	CLEARWATER BEACH, FL 34630–2029.	
TROPIC AIR MOTEL		35 DEVON DR	CLEARWATER BEACH, FL 34630–2463.	
TROPICAL BREEZE RESORT MOTEL.		333 HAMDEN DR	CLEARWATER BEACH, FL 34630–2471.	
TROPICAL SKY RANCH MOTEL		333 CORONADO DR	CLEARWATER BEACH, FL 34630–2433.	
TROPICANA MOTELS		353 CORONADO DR	CLEARWATER BEACH, FL 34630–2434.	
TROPICANA RESORT MOTEL		350 HAMDEN DR	CLEARWATER BEACH, FL 34630–2475.	
VIKING MOTEL		124 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2401.	
VILLA VIENNA MOTEL		162 BRIGHTWATER DR	CLEARWATER BEACH, FL 34630–2409.	
FLAGSHIP INN		N. US 27 & FL 19	CLERMONT, FL 32711–	
FLORIDA MOTEL		HOOK ST. & HWY. 27	CLERMONT, FL 32711–	
MOTEL 6		135 N. HWY. 27	CLERMONT, FL 32711–2401	
RAMADA INN ORLANDO WESTGATE.		W. HWY. 192 & US 27	CLERMONT, FL 32711–	
SKYLINE MOTEL		GRAND HWY. & US 27	CLERMONT, FL 32711–	
ANGLERS MARINA MOTEL		910 OKEECHOBEE BLVD	CLEWISTON, FL 33440–2299	
CANE COURT MOTEL		335 W. SUGARLAND HWY	CLEWISTON, FL 33440–3017	
CLEWISTON INN HOTEL		SUGARLAND HWY	CLEWISTON, FL 33440–3096	
CLEWISTON MOTEL		330 W. SUGARLAND HWY	CLEWISTON, FL 33440–3018	
MOTEL 27		412 W. SUGARLAND HWY	CLEWISTON, FL 33440–3020	
PLAZA MOTEL		621 E. SUGARLAND HWY	CLEWISTON, FL 33440–3212	
PORTERHOUSE MOTEL EAST		820 E. SUGARLAND HWY	CLEWISTON, FL 33440–2621	
PORTERHOUSE MOTEL WEST		433 W. SUGARLAND HWY	CLEWISTON, FL 33440–3019	
ROLAND MARTINS LAKESIDE MO.		400 N. FRANCISCO ST	CLEWISTON, FL 33440–	
BEST WESTERN COCOA INN		4225 W. KING ST	COCOA, FL 32926–4160	
BREVARD HOTEL		112 RIVERSIDE DR	COCOA, FL 32922–7842	
BUDGET INN OF COCOA		901 N. COCOA BLVD	COCOA, FL 32922–7545	
CAMPBELL MOTEL		1084 N. COCOA BLVD	COCOA, FL 32922–7504	
CLARAMENT INN		11 OLIVE ST	COCOA, FL 32922–	
DAYS INN		5600 SR 524	COCOA, FL 32926–	
DIXIE MOTEL		301 FORREST AVE	COCOA, FL 32922–7796	
ECONO LODGE		3220 N. COCOA BLVD	COCOA, FL 32926–6699	
ECONO LODGE		3220 N. COCOA BLVD	COCOA, FL 32926–	407–632–4561
LE MAR MOTEL		4125 N. US 1	COCOA, FL 32922–	
MARLIN APTS MOTEL		2019 N. COCOA BLVD	COCOA, FL 32922–6997	
RAMADA INN		900 FRIDAY RD	COCOA, FL 32926–3325	
SATELLITE CITY MOTEL		957 N. COCOA BLVD	COCOA, FL 32922–7545	
SCOTTISH INN OF COCOA		4150 W. KING ST	COCOA, FL 32926–4166	
SPACE COAST INN		860 N. COCOA BLVD	COCOA, FL 32922–7546	
STAR MOTEL		2610 N. COCOA BLVD	COCOA, FL 32922–6661	
BEACH INN INTERNATIONAL		4001 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3595.	
COCOA BEACH HILTON		1550 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3268.	
COCOA BEACH OCEANSIDE INN.		1 HENRY AVE	COCOA BEACH, FL 32931–3991.	
CROSSWAY INN		3901 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3594.	
DAYS INN OCEANFRONT		5600 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3999.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DOLPHIN INN		2902 S. ATLANTIC AVE	COCOA BEACH, FL 32931–2127.	
ECONO LODGE OF COCOA BEACH.		5500 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3765.	
FAWLTY TOWERS MOTEL		100 E. COCOA BEACH CSWY	COCOA BEACH, FL 32931–3524.	
GUEST HOUSE MOTEL		5 MINUTEMAN CWSY	COCOA BEACH, FL 32931–	
HOLIDAY INN HOTEL		1300 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3299.	
HOWARD JOHNSON PLAZA HOTEL.		2080 N. ATLANTIC AVE	COCOA BEACH, FL 32931–5093.	
MOTEL 6 069		3701 N. ATLANTIC AVE	COCOA BEACH, FL 32931–5499.	
MOTEL FLORWIN		202 ROOSEVELT AVE	COCOA BEACH, FL 32931–3972.	
OCEAN SUITE HOTEL		5500 OCEAN BEACH BLVD	COCOA BEACH, FL 32931–3733.	
SAND DOLLAR MOTEL		1465 S. ATLANTIC AVE. UNIT	COCOA BEACH, FL 32931–2394.	
SATELLITE MOTEL		1600 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3229.	
SEA AIRE MOTEL		181 N. ATLANTIC AVE	COCOA BEACH, FL 32931–2905.	
SEA MISSILE MOTEL		4292 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3512.	
SILVER SANDS MOTEL		225 N. ATLANTIC AVE	COCOA BEACH, FL 32931–4315.	
SUNRISE MOTEL		3185 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3340.	
THE INN AT COCOA BEACH		4300 OCEAN BEACH BLVD	COCOA BEACH, FL 32931–3592.	
WAKULLA MOTEL		3550 N. ATLANTIC AVE	COCOA BEACH, FL 32931–3498.	
CHATEAU BLEAU INN		1111 PONCE DE LEON	CORAL GABLES, FL 33134–3392.	
CHATEAUBLEAU INN SOUTH		1211 E. PONCE DE. LEON	CORAL GABLES, FL 33134–3316.	
COLONNADE HOTEL		180 ARAGON AVE	CORAL GABLES, FL 33134–	
CORAL GABLES BILTMORE HOTEL.		1200 ANASTASIA AVE	CORAL GABLES, FL 33134–6300.	
GABLES INN		730 S. DIXIE HWY	CORAL GABLES, FL 33146–2602.	
HOLIDAY INN C GABLES DOWNTOWN.		2051 S. LE JEUNE RD	CORAL GABLES, FL 33134–4289.	
HOLIDAY INN CORAL GABLES		1350 S. DIXIE HWY	CORAL GABLES, FL 33146–2962.	
HOLIDAY INN UNIVERSITY OF MIAMI.		1350 S. DIXIE DR	CORAL GABLES, FL 33146–	305–662–5611
HOTEL PLACE ST MICHEL		162 ALCAZAR AVE	CORAL GABLES, FL 33134–4501.	
HOWARD JOHNSON MOTOR LODGE.		1430 S. DIXIE HWY	CORAL GABLES, FL 33146–3101.	
HYATT CORAL GABLES		50 ALHAMBRA PLAZA	CORAL GABLES, FL 33134–4667.	
MIRACLE MILE HOTEL		79 MIRACLE MILE	CORAL GABLES, FL 33134–5403.	
PONCE DE LEON HOTEL		1721 PONCE DE LEON BLVD	CORAL GABLES, FL 33134–4483.	
RIVIERA COURT MOTEL		5100 RIVIERA DR	CORAL GABLES, FL 33146–2799.	
VILLA CORTEZ MOTEL		4700 SW 8TH ST	CORAL GABLES, FL 33134–2547.	
HOLIDAY INN OF CORAL SPRINGS.		3701 N. UNIVERSITY DR	CORAL SPRINGS, FL 33065–1697.	
WELLESLEY INN		3100 N. UNIVERSITY DR	CORAL SPRINGS, FL 33065–5045.	
SHELL POINT MOTEL	RT 2	SHELL POINT BEACH	CRAWFORDVILLE, FL 32327–9802.	
SPRING CREEK MOTEL	RT 2	SPRING CREEK	CRAWFORDVILLE, FL 32327–9802.	
SILVER SANDS MOTEL		8448 S. HWY. A1A	CRESCENT BEACH, FL 32084–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LAKE VIEW MOTEL		1004 N. SUMMITT ST	CRESCENT CITY, FL 32012–1723.	
CRESTVIEW ECONO LODGE		3101 S. FERDON	CRESTVIEW, FL 32536–9457	
DAYS INN OF CRESTVIEW		4255 S. FERDON	CRESTVIEW, FL 32536–9468	
GREAT EASTERN MOTEL		3925 S. FERDON BLVD	CRESTVIEW, FL 32536–	
HILTON MOTEL		353 W. US HWY. 90 W	CRESTVIEW, FL 32536–2647	
HOLIDAY INN OF CRESTVIEW		4050 FERDON BLVD	CRESTVIEW, FL 32536–9466	
SCOTTISH INN		564 W. HWY. 90	CRESTVIEW, FL 32536–5129	
CARRIAGE INN MOTEL		HWY. 19	CROSS CITY, FL 32628–9999	
EL DORADO INN		N. US 19	CROSS CITY, FL 32628–9999	
FLORIDA MOTEL		S. HWY. 19	CROSS CITY, FL 32628–9999	
CROSS CREEK LODGE	SR 325	AT CROSS C	CROSS CREEK, FL 32640–	
COMFORT INN		4486 N. SUNCOAST BLVD	CRYSTAL RIVER, FL 32629–	
COMFORT INN		4486 N. SUNCOAST BLVD	CRYSTAL RIVER, FL 34428–	904–563–1500
DAYS INN RESORT		PO BOX	US HWY. 19	CRYSTAL RIVER, FL 32629–
ECONO LODGE CRYSTAL RESORT.		614 NW US HWY. 19	CRYSTAL RIVER, FL 32629–3952.	
HAYES MOTEL		N. US 19 1 M	CRYSTAL RIVER, FL 32629–	
PIRATES COVE RESORT MOTEL.		409 N. PIRATES PT	CRYSTAL RIVER, FL 32629–	
PLANTATION INN		W. SR 44	CRYSTAL RIVER, FL 32629–	
PORT PARADISE HOTEL		PARADISE BAY RD	CRYSTAL RIVER, FL 32629–	
SEVEN RIVERS INN		4201 N. SUNCOAST BLVD	CRYSTAL RIVER, FL 32629–	
VILLAGE INN MOTEL		310 S. CITRUS AVE	CRYSTAL RIVER, FL 32629–4013.	
CROWTHER PALMS MOTEL		505 S. 7TH ST	DADE CITY, FL 33525–4902	
GRAY MOSS INN		203 W. CHURCH ST	DADE CITY, FL 33525–4132	
L MOTEL ROOM HOUSE		517 N. 5TH ST	DADE CITY, FL 33525–3502	
RAINBOW FOUNTAIN MOTEL		2102 N. HWY. 301	DADE CITY, FL 33525–2441	
SHADOW OAKS MOTEL		3410 N. HWY. 301	DADE CITY, FL 33525–6814	
VALENCIA MOTEL		1913 US HWY. 301	DADE CITY, FL 33525–	
CAVEYS MOTEL		1150 S. FEDERAL HWY	DANIA, FL 33004–4343	
DANIA BEACH HOTEL		180 E. DANIA BEACH BLVD	DANIA, FL 33004–3085	
FEROS COURT MOTEL		338 S. FEDERAL HWY	DANIA, FL 33004–4102	
FLORIDA SANDS MOTEL		1290 S. FEDERAL HWY	DANIA, FL 33004–4345	
FT LAUDERDALE AIRPORT HILTO.		1870 GRIFFIN RD	DANIA, FL 33004–2214	
GARDENIA MOTEL		25 SW 10TH ST	DANIA, FL 33004–4310	
GOLFVIEW MOTEL		254 DANIA BEACH BLVD	DANIA, FL 33004–	
GRAND MOTEL		430 S. FEDERAL HWY	DANIA, FL 33004–4106	
LEMON COVE MOTEL		56 SE 2ND AVE	DANIA, FL 33004–3690	
LEO MOTEL		333 S. FEDERAL HWY	DANIA, FL 33004–4101	
LUCKEYS MOTEL		205 N. FEDERAL HWY	DANIA, FL 33004–2805	
MOTEL SIX 376		825 E. DANIA BEACH BLVD	DANIA, FL 33004–3019	
NISI MOTEL ROAD HOUSE		1005 S. FEDERAL HWY	DANIA, FL 33004–4340	
PIRATES INN HOTEL		4 N. FEDERAL HWY	DANIA, FL 33004–2894	
SHERATON DESIGN CENTER HOTEL.		1825 GRIFFIN RD	DANIA, FL 33004–2213	
SHERTON DESIGN CENTER HOTEL.		1825 GRIFFIN RD	DANIA, FL 33004–	305–920–3500
THUNDERBIRD MOTEL		900 SW 2ND AVE	DANIA, FL 33004–3962	
BEST WESTERN NEAR BRDWK BSB.		N. I–4 & US HWY. 27	DAVENPORT, FL 33837–9716	
BUDGET INN		3800 N. US HWY. 27	DAVENPORT, FL 33837–	
DAYS INN ORLANDO SOUTH		2425 FRONTAGE RD	DAVENPORT, FL 32837–	
DAYS INN SOUTH OF MAJIC KINGDOM.		2425 FRONTAGE RD	DAVENPORT, FL 33837–	813–424–2596
ECONO LODGE		5510 N. US HWY. 27	DAVENPORT, FL 33837–	
GUMMO MOTEL		N. US 27	DAVENPORT, FL 33837–	
HOLIDAY INN		S. 27 & I–4	DAVENPORT, FL 33837–	
HOWARD JOHNSON LODGE		5225 US 27 N. AT I–4	DAVENPORT, FL 33837–	813–424–2120
HOWARD JOHNSONS MOTOR LODGE		5225 N. US HWY. 27 & I–4	DAVENPORT, FL 33837–9717	
MOTEL 6 1060		5620 N. HWY. 27	DAVENPORT, FL 33837–	
RED CARPET INN		N. US HWY. 27	DAVENPORT, FL 33837–	
ROLLING HILLS HOTEL & CTY C.		3501 W. ROLLING HILLS CIR	DAVIE, FL 33328–1999	
DREAM INN		3217 S. ATLANTIC AVE	DAYTON BEACH SHORES, FL 32018–6225.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DAYTONA BEACH HILTON RESORT.	.....	2637 S. ATLANTIC AVE	DAYTONA, FL 32118–	904–767–7350
ALOHA BEACH MOTEL	.....	1431 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118–4805.	.....
ALPINE COURT MOTEL	.....	516 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4508.	.....
AMERICANO BEACH LODGE ...	.....	1260 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3692.	.....
ARUBA INN	.....	1254 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3631.	.....
BAMBOO BEACH MOTEL	.....	1619 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118–4903.	.....
BAY VIEW HOTEL	.....	124 ORANGE AVE	DAYTONA BEACH, FL 32014–4395.	.....
BEACHCOMER INN	.....	2000 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3399.	.....
BEACHSIDE BUDGET INN	.....	1717 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–5406.	.....
BEACON BY THE SEA MOTEL .	.....	1803 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–5086.	.....
BEAU RIVAGE MOTEL	.....	1621 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4903.	.....
BERMUDA VILLA MOTEL	.....	505 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4507.	.....
BOARDWALK MOTEL	.....	308 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3902.	.....
BREAKERS BEACH MOTEL	.....	27 S. OCEAN AVE	DAYTONA BEACH, FL 32118–4363.	.....
BUCCANEER MOTEL	.....	2301 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3300.	.....
BUDGET INN OF DAYTONA BEACH.	.....	640 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–4954.	.....
CABANA MOTEL	.....	616 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3798.	.....
CAMELLIA MOTEL	.....	1055 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–3626.	.....
CANDLELIGHT MOTEL	.....	1305 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–6188.	.....
CARAVEL MOTEL	.....	940 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3718.	.....
CARDINAL MOTEL	.....	738 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3872.	.....
CATALINA MOTEL	.....	1400 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3500.	.....
CONCH HOUSE MOTEL	.....	2001 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3303.	.....
COQUINA INN	.....	544 S. PALMETTO	DAYTONA BEACH, FL 32114– ..	.....
COVE MOTEL	.....	1306 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3680.	.....
DAY'S INN DAYTONA OCEAN FRONT.	.....	800 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3799.	.....
DAYS INN-DAYTONA BEACH 5608.	.....	2900 VOLUSIA AVE	DAYTONA BEACH, FL 32124– ..	.....
DAYTONA BEACH MARIOTT	.....	100 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	904–254–8200
DAYTONA BEACH MARRIOTT ..	.....	100 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018– ..	.....
DAYTONA BEACH MOTEL	.....	2071 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018– ..	.....
DAYTONA HIGHRIDGE MOTEL	.....	3753 US HWY. 92	DAYTONA BEACH, FL 32124–9801.	.....
DAYTONA INN MOTEL	.....	730 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3871.	.....
DAYTONA SHORE INN	.....	805 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3701.	.....
DEL AIRE MOTEL	.....	744 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–3873.	.....
DENURE TOURS NAUTILUS INN.	.....	1515 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	.....
DESERT INN RESORT MOTEL .	.....	900 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	.....
DESERT ISLE MOTEL	.....	133 S. OCEAN AVE	DAYTONA BEACH, FL 32118–4397.	.....
ECONO LODGE 2	.....	2250 VOLUSIA AVE	DAYTONA BEACH, FL 32014–1124.	.....

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ECONO LODGE BEACH FRONT	.....	301 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4500.	.....
EL MOROCCO BEACH MOTEL .	.....	817 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4792.	.....
EL RANCHO MOTEL	.....	1420 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–6167.	.....
ESQUIRE BEACH MOTEL	.....	422 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3987.	.....
FIESTA MOTEL	.....	999 N. ATLANTIC	DAYTONA BEACH, FL 32018–3717.	.....
FLAMINGO MOTEL	.....	1915 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–3301.	.....
FLORIDA PALMS RESORT HOTEL.	.....	930 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3796.	.....
GOLDEN EAGLE MOTEL	.....	2480 VOLUSIA AVE	DAYTONA BEACH, FL 32014–1198.	.....
HAMPTON INN	.....	1715 VOLUSIA AVE	DAYTONA BEACH, FL 32014–1303.	.....
HAPPY HOLIDAY MOTEL	.....	1617 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3404.	.....
HAWAII MOTEL	.....	1361 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–6129.	....
HEART OF DAYTONA MOTEL ..	.....	1225 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–7215.	.....
HOLIDAY INN AIRPORT	.....	1798 VOLUSIA AVE	DAYTONA BEACH, FL 32014–1399.	.....
HOLIDAY INN BOARDWALK	.....	400 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3966.	.....
HOLIDAY INN BOARDWALK OCEANFRONT.	.....	400 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	904–255–0251
HOLIDAY INN OCEANSIDE	.....	905 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	904–255–5432
HOLIDAY INN OCEANSIDE	.....	905 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4795.	.....
HOLIDAYS SANDS MOTEL	.....	200 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	.....
HORIZON MOTEL	.....	1405 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	.....
HOWARD JOHNSON 4904	.....	2725 VOLUSIA AVE	DAYTONA BEACH, FL 32114–1195.	.....
HOWARD JOHNSON HOTEL	.....	600 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	.....
HOWARD JOHNSON'S OCEAN-FRONT.	.....	2560 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3297.	.....
INDIGO LAKES HILTON GOLF & TENNIS RESORT.	.....	2620 VOLUSIA AVE	DAYTONA BEACH, FL 32114– ..	904–258–6333
INDIGP LAKES HILTON GOLF & TENNIS RESORT.	.....	2620 VOLUSIA AVE	DAYTONA BEACH, FL 32114– ..	904–258–6333
INN AT INDIGO LAKES	.....	2620 VOLUSIA AVE	DAYTONA BEACH, FL 32014–1196.	.....
INTERNATIONAL HOSTEL	.....	140 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4376.	.....
INTERNATIONAL INN	.....	313 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4585.	.....
ISLANDER MOTEL	.....	1233 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4894.	.....
LA PLAYA INN	.....	2500 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–3298.	.....
LAWANNA MOTEL	.....	237 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–4101.	.....
LIDO BEACH MOTEL	.....	1217 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4893.	.....
LINCOLN MOTEL	.....	1503 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4901.	.....
LODI MOTEL	.....	808 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4761.	.....
LOU RAY MOTEL	.....	400 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4595.	.....
MARINER APARTMENTS-MOTEL.	.....	1065 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3626.	.....
MAYAN INN	.....	103 S. OCEAN AVE	DAYTONA BEACH, FL 32118– ..	.....
MONTE CARLO MOTEL	.....	825 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	.....
NEW FRONTIER MOTEL	.....	1415 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4897.	.....
NOMAD MOTEL	.....	3101 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–6264.	.....

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
OCEAN HOLIDAY MOTEL		1800 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–5004.	
OCEAN INN		101 S. OCEAN AVE	DAYTONA BEACH, FL 32118– ..	
OCEAN QUEST INN		1425 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
OCEAN VILLA MOTEL		828 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–6600.	
ORTONA MOTEL		2401 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3201.	
PALMETTO HOTEL		336 S. PALMETTO AVE	DAYTONA BEACH, FL 32014–4996.	
PARKWAY MOTEL		1369 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–6129.	
PETER PAN MOTEL		1227 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3630.	
PLAYTONA MOTEL		1701 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–3406.	
PLEASURE ISLE MOTEL		1412 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4806.	
PROSPECT INN HOTEL		209 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–4383.	
RAINTREE MOTEL		530 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–4930.	
RAMADA LIMITED		1000 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
RAMADA RESORT		2700 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
RIO BEACH MOTEL		843 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4794.	
RIP VAN WINKLE MOTEL		1025 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3626.	
ROBIN HOOD MOTEL		1150 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3677.	
RODEWAY INN		1299 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
ROYAL ARMS MOTEL		801 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4791.	
ROYAL BEACH MOTEL		1601 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4997.	
SAFARI BEACH MOTEL		357 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4587.	
SAHARA MOTEL		1215 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3630.	
SAILMAKER'S INN		700 OAKRIDGE BLVD	DAYTONA BEACH, FL 32118–3936.	
SAINT REGIS HOTEL		509 SEABREEZE BLVD	DAYTONA BEACH, FL 32018–3918.	
SAN MARINA MOTEL		1001 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3626.	
SAN SOUCI MOTEL		1020 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–6108.	
SANDMAN MOTEL		1327 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–6129.	
SAXONY MOTEL		35 S. OCEAN AVE	DAYTONA BEACH, FL 32018–4392.	
SCOTTISH INN		1515 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32114– ..	
SEA DIP MOTEL		1233 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
SEABREEZE MOTEL		1108 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3673.	
SEAGATE MOTEL		39 S. OCEAN AVE	DAYTONA BEACH, FL 32018–4363.	
SEASHORE MOTEL		320 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3902.	
SEAVIEW MANOR MOTEL		154 S. OCEAN AVE	DAYTONA BEACH, FL 32118–4322.	
SEAVIEW MANOR MOTEL		153 S. OCEAN AVE	DAYTONA BEACH, FL 32118–4396.	
SHAMROCK MOTEL		414 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3985.	
SHOWBOAT INN		1220 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–3631.	
SI SI MOTEL		141 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4301.	
SIDE O SEA MOTEL		1451 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3501.	
SIERRA BEACH HOTEL		1809 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SIERRA MOTEL		1819 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
SKYWAY MOTEL		906 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4763.	
SPEEDWAY INN		2992 VOLUSIA AVE	DAYTONA BEACH, FL 32124–1003.	
SPLASH MOTEL		1100 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
SUN & SURF MOTEL		726 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3896.	
SUN MOTEL		1212 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4802.	
SUN PLAZA MOTEL		1011 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32014–6107.	
SUNRISE INN		1015 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
SUNSHINE BEACH MOTEL		45 S. OCEAN AVE	DAYTONA BEACH, FL 32018–4391.	
SURFVIEW MOTEL		401 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4508.	
THE DAYTONA INN BROADWAY.		219 S. ATLANTIC AVE	DAYTONA BEACH, FL 32118– ..	
THE INN ON THE BEACH		1615 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4998.	
THE REEF HOTEL		935 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4762.	
THUNDERBIRD BEACH MOTEL		500 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3965.	
TRAVELLERS INN		735 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3804.	
TROPIC AIRE MOTEL		1000 S. ATLANTIC AVE	DAYTONA BEACH, FL 32018–4765.	
TROPICAL WINDS HOTEL		1398 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3633.	
VOYAGER RESORT MOTEL		2424 N. ATLANTIC AVE	DAYTONA BEACH, FL 32118–3299.	
WHITE LADY MOTEL		1234 S. RIDGEWOOD AVE	DAYTONA BEACH, FL 32114– ..	
WHITE SANDS MOTEL		1122 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3676.	
WHITEHALL INN		640 N. ATLANTIC AVE	DAYTONA BEACH, FL 32018–3898.	
ACAPULCO INN		2505 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5500.	
AKI TIKE MOTEL		2225 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5319.	
ALADDIN INN		2323 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5350.	
ATLANTIC WAVES MOTEL		1925 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5090.	
BEACH HAVEN INN		2115 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5009.	
BEACH HOUSE MOTEL		3221 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–.	
BEACH HUT MOTEL		3247 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6278.	
BEACHSIDE MOTEL		3309 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6305.	
BLUE MIST MOTEL		3064 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–6102.	
CAIRO MOTEL		3235 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–6298.	
CAROL INN		1903 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5005.	
CARTERS MOTEL		3633 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32019–4601.	
CASBAH MOTEL		3417 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6310.	
COLONIAL PALMS MOTEL		3801 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–.	
COMFORT INN OCEAN FRONT		3135 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6288.	
DAY STAR MOTEL		3811 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–.	
DAYS INN		1909 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5005.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DAYS INN OCEANFRONT SOUTH.	.....	3209 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6294.	.....
DAYTONA BEACH HILTON	.....	2637 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–.	.....
DAYTONA SANDS MOTEL	.....	2524 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–.	.....
DAYTONA SANDS MOTEL	.....	2523 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5502.	.....
EL CARIBE MOTEL	.....	2125 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5018.	.....
FAMOUS SHORES MOTEL	.....	3738 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–.	.....
FLAMINGO INN	.....	2011 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5007.	.....
GRAND PRIX MOTEL	.....	2015 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5007.	.....
HAWAIIAN INN	.....	2301 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5349.	.....
HITCHING POST MOTEL	.....	3622 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–4502.	.....
JASMIN MOTEL	.....	3621 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–.	.....
LYNN SCOTT LEE MOTEL	.....	3707 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–.	.....
MAGIC CARPET MOTEL	.....	2601 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5605.	.....
MAYFAIR MOTEL	.....	2232 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5342.	.....
MERMAID BEACH MOTEL	.....	3337 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–6308.	.....
MONTEREY MOTEL	.....	2403 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5423.	.....
OASIS BEACH MOTEL	.....	3169 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–.	.....
OCEAN COURT MOTEL	.....	2315 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–.	.....
OLD SALTY'S INN	.....	1921 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5005.	.....
PALM PLAZA MOTEL	.....	3301 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–6308.	.....
PEACOCK MOTEL	.....	3720 S. ATLANTIC	DAYTONA BEACH SHORES, FL 32019–5202.	.....
PIER SIDE INN	.....	3703 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–5700.	.....
PIRATES COVE MOTEL	.....	3501 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–4640.	.....
POLYNESIAN MOTEL	.....	3635 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32019–4601.	.....
PONCE DE LEON MOTEL	.....	3425 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6397.	.....
RAMADA SURFSIDE INN	.....	3125 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6287.	.....
ROYAL HOLIDAY BEACH MOTEL.	.....	3717 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–5247.	.....
SAGE & SAND MOTEL	.....	3059 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6199.	.....
SAND CASTLE MOTEL	.....	3619 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32127–.	.....
SEA ESTA MOTEL	.....	3315 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6308.	.....
SEA OATS BEACH MOTEL	.....	2539 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5502.	.....
SEA SPRAY MOTEL 1	.....	2515 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5502.	.....
SEA SPRAY MOTEL 2	.....	2519 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5502.	.....
SEAGARDEN INN	.....	3161 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6223.	.....
SEASCAPE MOTEL	.....	3321 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–6308.	.....
SEASIDE HOLIDAY MOTEL	.....	2605 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–.	.....

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SHORE WINDS MOTEL		2240 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–.	
SHORELINE MOTEL		2435 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5426.	
SILVER SANDS INN		2119 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5009.	
SOUTH SHORE MOTEL		3225 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32118–5256.	
SOUTHERN SANDS MOTEL		2500 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5503.	
SUN TAN MOTEL		3167 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5291.	
SUNNY SHORES MOTEL		2037 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5007.	
TREASURE ISLAND INN		2025 S. ATLANTIC AVE	DAYTONA BEACH SHORES, FL 32018–5007.	
BEST WESTERN		I–10 & HWY. 331	DE FUNIAK SPRINGS, FL 32433–.	
DEBARY MOTEL		COLUMBO RD. & 17–9	DEBARY, FL 32713–	
HAPPY ACRES MOTEL		US 17 & 92	DEBARY, FL 32713–	
BEACH HAVEN MOTEL		381 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6002.	
CARRIAGE HOUSE RESORT MOTEL		250 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6091.	
COMFORT SUITES		1040 E. NEWPORT CTR. DR	DEERFIELD BEACH, FL 33442–7723.	
DAY'S INN		50 SE 20TH AVE	DEERFIELD BEACH, FL 33441–4587.	
DAYS INN		1250 W. HILLSBORO BLVD	DEERFIELD BEACH, FL 33442–1789.	
DEERFIELD BEACH INN		601 NE 21ST AVE	DEERFIELD BEACH, FL 33441–3815.	
DEERFIELD BEACH MOTEL		641 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6099.	
DEERFIELD BEACH RESORT		950 SE 20TH AVE	DEERFIELD BEACH, FL 33441–5134.	
GOLDEN SANDS MOTEL		512 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6081.	
HILTON HOTEL DRFLD BCH/ BOCA.		100 FAIRWAY DR	DEERFIELD BEACH, FL 33441–1694.	
HOWARD JOHNSON MOTOR LODGE.		2096 NE 2ND ST	DEERFIELD BEACH, FL 33441–3895.	
LA QUINTA MOTOR INN 658		349 W. HILLSBOROUGH BLVD	DEERFIELD BEACH, FL 33441–	
OCEAN PEARL MOTEL		817 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6009.	
OCEAN VILLA RESORT MOTEL		317 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6090.	
PANTHER MOTEL		715 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6098.	
QUALITY SUITES		1050 E. NEWPORT CTR. DR	DEERFIELD BEACH, FL 33442–7723.	
RAMADA INN		1401 S. FEDERAL HWY	DEERFIELD BEACH, FL 33441–7290.	
ROYAL PALMS MOTEL		10 NE 20TH AVE	DEERFIELD BEACH, FL 33441–4591.	
SANDMAN MOTEL		40 SE 19TH AVE	DEERFIELD BEACH, FL 33441–6199.	
SEA FAIR MOTEL		601 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6088.	
SHORE ROAD INN		460 SE 20TH AVE	DEERFIELD BEACH, FL 33441–6083.	
WELLESLEY INN		100 SW 12TH AVE	DEERFIELD BEACH, FL 33442–3196.	
ADAMS MOTEL		W. HWY. 90	DEFUNIAK SPRINGS, FL 32433–.	
COMFORT INN		1326 S. FREEPORT RD	DEFUNIAK SPRINGS, FL 32433–.	
DEFUNIAK MOTEL		W. HWY. 90	DEFUNIAK SPRINGS, FL 32433–.	
DREAMLAND MOTEL		W. US HWY. 90	DEFUNIAK SPRINGS, FL 32433–.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ECONO LODGE		1325 S. FREEPORT RD	DEFUNIAK SPRINGS, FL 32433–.	
SUNDOWN INN		S. HWY. 331	DEFUNIAK SPRINGS, FL 32433–.	
BLESSING MOTEL		3460 N. US 17	DELAND, FL 32720–	
BOULEVARD MOTEL		1349 N. WOODLAND BLVD	DELAND, FL 32720–2294	
CHIMNEY CORNER MOTEL		1727 S. WOODLAND	DELAND, FL 32720–7908	
DELAND COUNTRY INN		228 W. HOWRY	DELAND, FL 32720–	
DELAND HOTEL		350 INTERNATIONAL SPEEDWAY BLV.	DELAND, FL 32724–	
DELAND MOTEL		1340 N. WOODLAND BLVD	DELAND, FL 32720–2242	
HOLIDAY INN & CONVENTION CENTER DELAND.		350 E. INTERNATIONAL SPEEDWAY.	DELAND, FL 32724–	904–738–5200
ORANGE TREE INN		1010 N. WOODLAND BLVD	DELAND, FL 32720–2784	
QUALITY INN		I–4 & STATE RD. 44	DELAND, FL 32720–	
TANGERINE INN		HWY. 17	DELAND, FL 32720–	
UNIVERSITY INN MOTEL		644 N. WOODLAND BLVD	DELAND, FL 32720–3499	
BUDGET INN OF DELRAY BEACH.		2500 N. FEDERAL HWY	DELRAY BEACH, FL 33483–6129.	
CARLSON'S MOTEL		1600 N. FEDERAL HWY	DELRAY BEACH, FL 33483–5926.	
COLONY HOTEL		525 E. ATLANTIC AVE	DELRAY BEACH, FL 33483–5323.	
DELRAY INN		297 NE 6TH AVE	DELRAY BEACH, FL 33483–5514.	
HOLIDAY INN CAMINO REAL		1229 E. ATLANTIC AVE	DELRAY BEACH, FL 33444–	
LAFRANCE HOTEL		140 NW 4TH AVE	DELRAY BEACH, FL 33444–2672.	
OCEAN FRONT BERMUDA INN		64 S. OCEAN BLVD	DELRAY BEACH, FL 33483–6946.	
RIVIERA PALMS MOTEL		3960 N. OCEAN BLVD	DELRAY BEACH, FL 33483–7431.	
SEAGATE HOTEL		500 S. OCEAN BLVD	DELRAY BEACH, FL 33483–5641.	
TROPICAL HOTEL ROOMS		301 SE 6TH AVE	DELRAY BEACH, FL 33483–5228.	
VACATION HOUSE MOTEL		301 NE 6TH AVE	DELRAY BEACH, FL 33483–5516.	
DELTONA INN		481 DELTONA BLVD	DELTONA, FL 32725–8097	
ADMIRAL BENBOW INN		713 E. HWY. 98	DESTIN, FL 32541–2505	
BESTREST INN		402 HWY. 98	DESTIN, FL 32541–2326	
CLARYS SILVER BEACH MOTEL.		1050 E. HWY. 98	DESTIN, FL 32541–2902	
COMFORT INN		405 HWY. 98	DESTIN, FL 32541–2347	
CRYSTAL BEACH MOTEL		2931 E. HWY. 98	DESTIN, FL 32541–3509	
DAYS INN		1029 E. HWY. 98	DESTIN, FL 32541–	
FRANGISTA BEACH MOTEL		4150 W. HWY. 98	DESTIN, FL 32541–	
HENDERSON PARK INN & VILLAS.		2700 E. HWY. 98	DESTIN, FL 32541–	
HOLIDAY INN		E. HWY. 98	DESTIN, FL 32541–2399	
HOLIDAY INN DESTIN		1020 HWY. 98 E	DESTIN, FL 32541–	904–837–6181
KOKOMO MOTEL & MARINA		500 E. HWY. 98	DESTIN, FL 32541–	
OLD PIER MOTEL		3208 POMPANO ST	DESTIN, FL 32541–3610	
ROB ROY LODGE & MARINA MOTEL.	PO BOX 725	HWY. 98	DESTIN, FL 32541–	
SANDESTIN BEACH HILTON GOLF AND TENNIS RESORT.		5540 HWY. 98 E	DESTIN, FL 32541–4214	
SEA OATS MOTEL		E. STAR RT. HWY. 98	DESTIN, FL 32541–	
SLEEP INN		5000 EMERALD COAST PKWY	DESTIN, FL 32541–	
SUN & SAND MOTEL		4080 E. HWY. 98	DESTIN, FL 32541–3990	
SURF HIGH MOTEL		3000 HWY. 98 E	DESTIN, FL 32541–3508	
VILLAGE INN		215 HWY. 98	DESTIN, FL 32541–2313	
OAKLEA MANOR MOTEL		12783 E. US HWY. 92	DOVER, FL 33527–9521	
CASA CATALINA MOTEL		US 27	DUNDEE, FL 33838–	
ECONOMY MOTOR LODGE		US 27 AT ST. RD. 5	DUNDEE, FL 33838–	
HOLIDAY INN DUNDEE		339 NW US HWY. 27	DUNDEE, FL 33838–	
MONTICELLO MOTEL		315 US HWY. 27	DUNDEE, FL 33838–	
AMBERLEE MOTEL		1035 N. BROADWAY	DUNEDIN, FL 34698–5718	
BAY PALMS MOTEL		226 MAIN ST	DUNEDIN, FL 34698–5730	
HOLIDAY HOUSE MOTEL		1220 MAIN ST	DUNEDIN, FL 34698–5325	
JAMAICA INN		150 MARINA PLAZA	DUNEDIN, FL 34698–5798	
PALM COURT MOTEL		2090 BAYSHORE BLVD	DUNEDIN, FL 34698–2598	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
VERMONTER MOTEL		1064 BROADWAY	DUNEDIN, FL 34698–5713	
DINNER BELL MOTEL		208 S. WILLIAMS ST	DUNNELLON, FL 32630–9795	
OAKS MOTEL		US HWY. 17	EAST PALATKA, FL 32131–	
PALMETTO MOTEL		US 17	EAST PALATKA, FL 32131–	
RIVER CREST MOTEL		HWY. 17	EAST PALATKA, FL 32131–	
SIESTA MOTEL		S. HWY. 17	EAST PALATKA, FL 32131–	
ST JOHNS MOTEL		HWY. 17	EAST PALATKA, FL 32131–	
TELSTAR MOTEL		HWY. 17	EAST PALATKA, FL 32161–	
SEA BREEZE MOTEL		HWY. 98	EASTPOINT, FL 32328–0609	
SMITHS EATONVILLE MOTEL		421 W. KENNEDY AVE	EATONVILLE, FL 32751–5341	
EBRO MOTEL		HWY. 79 & 20	EBRO, FL 32437–	
ALL SUITE MOTEL		335 N. RIDGEWOOD AVE	EDGEWATER, FL 32132–1653	
CARTERS MOTEL		2450 S. RIDGEWOOD AVE	EDGEWATER, FL 32032–5906	
RESORT MOTEL		703 S. RIDGEWOOD AVE	EDGEWATER, FL 32132–	
ECONO LODGE OF ST AUGUSTINE.		2625 SR 207	ELKTON, FL 32033–	
BEST WESTERN INNS-ELLENTON.		5218 E. 17TH ST	ELLENTON, FL 34222–	
ECONO LODGE SOUTH		I–75 & US 441	ELLISVILLE, FL 32055–	
RED CARPET INN		I–75 & US HWY. 41	ELLISVILLE, FL 32055–	
BEACH CROFT MOTEL		2230 N. BEACH RD	ENGLEWOOD, FL 34223–5716	
DAYS LODGE OF ENGLEWOOD.		2540 S. MCCALL RD	ENGLEWOOD, FL 34224–5199	
ENGLEWOOD BAY MOTEL & APARTMENTS.		69 BAY ST	ENGLEWOOD, FL 34223–3713	
GROVE CITY MOTEL		2555 PLACIDA RD	ENGLEWOOD, FL 34224–5460	
MANASOTA BRIDGE MOTEL		1900 MANASOTA BEACH RD	ENGLEWOOD, FL 34223–6498	
PEARL MOTEL		7990 MANASOTA KEY RD	ENGLEWOOD, FL 34223–9321	
SEA BEACH RESORT MOTEL		5050 N. BEACH RD	ENGLEWOOD, FL 34223–9134	
SEAFARER BEACH MOTEL		8520 MANASOTA KEY RD	ENGLEWOOD, FL 34223–9505	
SUNSET BAY MOTEL		1225 S. MCCALL RD	ENGLEWOOD, FL 34223–4231	
THE PARROT INN		215 COWLES ST	ENGLEWOOD, FL 34223–	
VERANDA INN OF ENGLEWOOD.		2073 S. MC CALL RD	ENGLEWOOD, FL 34224–4541	
CYPRESS PARK MOTEL	RT 1	BOX 1300	ESTERO, FL 33928–9801	
COLONIAL INN MOTEL		1000 S. BAY ST	EUSTIS, FL 32726–5545	
LAKE SHORE ACRES MOTEL		926 N. BAY ST	EUSTIS, FL 32726–2834	
SPORTSMANS CLUB MOTEL		310 COLLIER BLVD	EVERGLADES CITY, FL 33929–9999.	
CADILLAC MOTEL		US HWY. 19	FANNING SPRINGS, FL 32680–	
COMFORT INN		8425 S. HWY. 17–92	FERN PARK, FL 32730–	407–339–3333
COMFORT INN FERN PARK		8245 S. HWY. 17–92	FERN PARK, FL 32730–	
ECONOLODGE		7400 S. HWY. 17–92	FERN PARK, FL 32730–2256	
FERN PARK MOTEL		7340 S. HWY. 17 & 92	FERN PARK, FL 32730–	
AMELIA MOTEL & APARTMENTS.		1997 FLETCHER	FERNANDINA BEACH, FL 32034–2394.	
BEACHSIDE MOTEL		3172 S. FLETCHER AVE	FERNANDINA BEACH, FL 32034–2397.	
FLORIDA HOUSE INN		20 S. 3RD ST	FERNANDINA BEACH, FL 32034–4206.	
GOLDEN ISLE MOTEL		2811 ATLANTIC AVE	FERNANDINA BEACH, FL 32034–2262.	
OCEAN VIEW MOTEL		2801 ATLANTIC AVE	FERNANDINA BEACH, FL 32034–2207.	
SEASIDE INN		1998 S. FLETCHER AVE	FERNANDINA BEACH, FL 32034–2330.	
SHONEYS INN		2707 SADLER RD	FERNANDINA BEACH, FL 32034–4456.	
SURF INN		3199 S. FLETCHER AVE	FERNANDINA BEACH, FL 32034–2396.	
ANCHOR MOTEL		909 N. US HWY. A1A	FLAGLER BEACH, FL 32036–3307.	
CHARLMARS A 1 A MOTEL		1204 S. A1A	FLAGLER BEACH, FL 32136–	
FLAGLER BEACH MOTEL		1820 S. OCEANSHORE BLVD	FLAGLER BEACH, FL 32036–3802.	
KEN MAR MOTEL		1544 S. HWY. A1A	FLAGLER BEACH, FL 32036–3805.	
LAZY HOURS MOTEL		1316 S. HWY. A1A	FLAGLER BEACH, FL 32036–3702.	
OCEANA VILLA MOTEL		2448 S. HWY. A1A	FLAGLER BEACH, FL 32036–	
TOPAZ MOTEL		1224 S. HWY. A1A	FLAGLER BEACH, FL 32036–3703.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
A–1 EXECUTIVE MOTEL		815 N. KROME AVE	FLORIDA CITY, FL 33030–	
COMFORT INN		333 SE 1ST AVE	FLORIDA CITY, FL 33030–	
CORAL ROC MOTEL		1100 N. KROME AVE	FLORIDA CITY, FL 33034–2426	
HAMPTON INN		124 E. PALM DR	FLORIDA CITY, FL 33034–	
KNIGHTS INN		401 US HWY. 1	FLORIDA CITY, FL 33034–	
LUCY'S MOTEL		651 N. KROME AVE	FLORIDA CITY, FL 33034–3419	
PALMS MOTEL R H		206 W. PALM DR	FLORIDA CITY, FL 33034–3424	
PARK ROYAL INN		100 US 1	FLORIDA CITY, FL 33034–	
SEA GLADES MOTEL		1223 NE 1ST AVE	FLORIDA CITY, FL 33030–4601	
SUNSHINE APARTMENTS & MOTEL.		145 SW 9TH AVE	FLORIDA CITY, FL 33030–	
SUPER 8 MOTEL		1202 N. KROME AVE	FLORIDA CITY, FL 33034–2428	
TOWN MOTEL INCORPORATED.		1405 N. KROME AVE	FLORIDA CITY, FL 33034–4208	
TROPICAL INN		905 W. PALM DR	FLORIDA CITY, FL 33034–3139	
FORT MYERS TRAVELODGE		2038 W. FIRST ST	FORT MYERS, FL 33901–	813–334–2284
SUN RAY MOTEL		1760 S. US HWY. 27	FROSTPROOF, FL 33843–	
TROPICAL MOTEL		426 N. SCENIC HWY	FROSTPROOF, FL 33843–1831	
A 1 A REGENT MOTEL		4041 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6419.	
AMBER TIDE MOTEL		3040 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–7399.	
ANCHOR MOTEL ANNEX		1215 S. FEDERAL HWY	FT LAUDERDALE, FL 33316–2038.	
ANTHONY MOTEL		3011 BAYSHORE DR	FT LAUDERDALE, FL 33304–4296.	
BAHAMA HOTEL		401 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4276.	
BAHIA CABANA MOTEL		3030 HARBOR DR	FT LAUDERDALE, FL 33316–2410.	
BAHIA HARBOR BEACH INN		3019 HARBOR DR	FT LAUDERDALE, FL 33316–2495.	
BAHIA MAR MOTOR INN & TOWER.		801 SEABREEZE BLVD	FT LAUDERDALE, FL 33316–1690.	
BEACH ANCHORAGE MOTEL & APARTMENT.		2918 BANYAN ST	FT LAUDERDALE, FL 33316–1528.	
BEACH BREEZE MOTEL & APTS.		550 BREAKERS AVE	FT LAUDERDALE, FL 33304–4128.	
BEACHSIDE HOTEL		1136 HOLIDAY DR	FT LAUDERDALE, FL 33316–	
BELA MAR MOTEL		3801 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6431.	
BELLS MOTEL		610 NE 7TH ST	FT LAUDERDALE, FL 33304–2712.	
BEST WESTERN		999 W. CYPRESS CREEK RD	FT LAUDERDALE, FL 33309–1903.	
BEST WESTERN CYPRESS CREEK ROAD.		999 W. CYPRESS CREEK RD	FT LAUDERDALE, FL 33309–	305–491–7666
BLARNEY CASTLE MOTEL		3086 HARBOR DR	FT LAUDERDALE, FL 33316–2489.	
BLUE CORAL MOTEL		1900 SE 6TH AVE	FT LAUDERDALE, FL 33316–3549.	
BLUE MARLIN INN		4221 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6140.	
BONAVENTURE HOTEL & SPA		250 RACQUET CLUB RD	FT LAUDERDALE, FL 33326–1114.	
BREAKERS OF FT LAUDERDALE T.		903 BREAKERS AVE	FT LAUDERDALE, FL 33304–3319.	
BREEZE INN		2360 NW 6TH ST	FT LAUDERDALE, FL 33311–7734.	
BREEZEWAY SOUTH MOTELS & APARTMENT.		3904 SW 13TH CT	FT LAUDERDALE, FL 33301–	
BROWN HOTEL RH		723 NW 19TH AVE	FT LAUDERDALE, FL 33311–7833.	
BUCCANEER MOTEL		350 N. BIRCH RD	FT LAUDERDALE, FL 33304–4285.	
BUDGET INN		1317 S. FEDERAL HWY	FT LAUDERDALE, FL 33316–2040.	
BUDGET INN		2731 N. FEDERAL HWY	FT LAUDERDALE, FL 33306–1423.	
CAMELOT RESORT BEACH MOTEL.		2900 BELMAR ST	FT LAUDERDALE, FL 33304–4003.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CANADIAN MOTEL & APARTMENTS.		1411 S. SR 7	FT LAUDERDALE, FL 33317–6404.	
CAPRI INN		420 N. BIRCH RD	FT LAUDERDALE, FL 33304–4283.	
CAROLINA COURT MOTEL		3001 SE 6TH AVE	FT LAUDERDALE, FL 33316–4025.	
CARRIAGE HOUSE MOTOR LODGE.		1180 N. FEDERAL HWY	FT LAUDERDALE, FL 33304–1486.	
CASCADES MOTEL		4117 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6015.	
CATALOGNA MOTEL		519 ANTIOCH AVE	FT LAUDERDALE, FL 33304–3907.	
COMFORT SUITES		1800 S. FEDERAL HWY	FT LAUDERDALE, FL 33316–2945.	
CORAL PLAZA MOTEL		2701 N. FEDERAL HWY	FT LAUDERDALE, FL 33306–1488.	
CORALIDO INN		4011 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6419.	
CORTLEIGH RESORT MOTEL		2100 NE 33RD AVE	FT LAUDERDALE, FL 33305–1824.	
CROSSROADS MOTOR LODGE		2460 W. STATE RD. 84	FT LAUDERDALE, FL 33312–4891.	
CROWN STERLING SUITES		1100 SE 17TH ST	FT LAUDERDALE, FL 33316–2187.	
CRYSTAL INN		2949 N. FEDERAL HWY	FT LAUDERDALE, FL 33306–1401.	
DAYS INN FT LAUDERDALE BROW.		1700 W. BROWARD BLVD	FT LAUDERDALE, FL 33312–1548.	
DAYS INN OCEANFRONT		4240 GALT OCEAN DR	FT LAUDERDALE, FL 33308–6199.	
DEAUVILLE INN		2916 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–7528.	
EAST GATE MOTEL		1045 NE 18TH AVE	FT LAUDERDALE, FL 33304–2407.	
ECONO LODGE		3711 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6498.	
ECONO LODGE APARTMENTS		3611 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6422.	
ECONOLODGE		1 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4383.	
FAIRWINDS MOTEL		2935 N. FEDERAL HWY	FT LAUDERDALE, FL 33306–1401.	
FLEUR DE LIS MOTEL		3821 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6431.	
FOOTPRINTS ON THE SAND MOTEL.		2020 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33305–3744.	
FOUR E'S MOTEL		1025 NE 18TH AVE	FT LAUDERDALE, FL 33304–2407.	
FRIENDSHIP INN		2201 N. FEDERAL HWY	FT LAUDERDALE, FL 33305–2597.	
FT LAUDERDALE EXECUTIVE AIRPORT TRAVELODGE.		1500 W. COMMERCIAL BLVD	FT LAUDERDALE, FL 33309–	305–776–4222
FT LAUDERDALE INN		5727 N. FEDERAL HWY	FT LAUDERDALE, FL 33308–2628.	
FT LAUDERDALE MARRIOTT CYPRESS CR.		6650 N. ANDREWS AVE	FT LAUDERDALE, FL 33309–2119.	
FT LAUDERDALE MARRIOTT HOTEL.		1881 SE 17TH ST	FT LAUDERDALE, FL 33316–3015.	
FT LAUDERDALE MOTEL & APARTMENTS.		501 SE 17TH ST	FT LAUCERDALE, FL 33316–2545.	
GALT OCEAN MANOR MOTEL		2985 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–2527.	
GARDEN COURT MOTEL		1040 N. VICTORIA PARK RD	FT LAUDERDALE, FL 33304–2414.	
GOLD COAST BEACH RESORT HOTEL.		545 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4182.	
GOLDEN WEST MOTEL		710 N. BIRCH RD	FT LAUDERDALE, FL 33304–4084.	
GRENADIER MOTEL		3011 GRANADA ST	FT LAUDERDALE, FL 33304–4317.	
GUEST QUARTERS SUITE HOTEL.		2670 E. SUNRISE BLVD	FT LAUDERDALE, FL 33304–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HAMPTON INN		720 E. CYPRESS CREEK RD	FT LAUDERDALE, FL 33334–3564.	
HAPPY HOLIDAY RESORT MOTEL.		3055 HARBOR DR	FT LAUDERDALE, FL 33316–2490.	
HARBOR BEACH MOTEL		1147 SEABREEZE BLVD	FT LAUDERDALE, FL 33316–2425.	
HARBOR HOUSE MOTEL		1441 CORDOVA RD	FT LAUDERDALE, FL 33316–2111.	
HARBOR INN		501 SE 26TH ST	FT LAUDERDALE, FL 33316–3945.	
HOLIDAY INN 3		2275 W. STATE RD. 84	FT LAUDERDALE, FL 33312–4897.	
HOLIDAY INN FT LAUDERDALE B.		999 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–3398.	
HOLIDAY INN FT LAUDERDALE N.		4900 POWERLINE RD	FT LAUDERDALE, FL 33309–3197.	
HOLIDAY INN OCEAN CLUB & MARINA.		440 SEABREEZE BLVD	FT LAUDERDALE, FL 33316–	305–462–5555
HOLIDAY INN WEST		5100 N. STATE RD. 7	FT LAUDERDALE, FL 33319–3399.	
HOLIDAY PARK MOTEL & APARTMENTS.		614 NE 6TH TERRACE	FT LAUDERDALE, FL 33304–4615.	
HORIZON HOTEL & APT		607 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4184.	
HOST MOTEL		1240 NE 13TH AVE	FT LAUDERDALE, FL 33304–2214.	
HOWARD JOHNSON MOTOR LODGE.		700 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4175.	
HOWARD JOHNSON MOTOR LODGE.		5001 N. FEDERAL HWY	FT LAUDERDALE, FL 33308–3885.	
HOWARD JOHNSON MOTOR LODGE.		2075 W. STATE RD. 84	FT LAUDERDALE, FL 33315–2296.	
HURRICANE MOTEL		2621 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–7521.	
IDLE HOUR MOTEL		3300 NE 27TH ST	FT LAUDERDALE, FL 33308–7498.	
IRELANDS INN		2220 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33305–1998.	
KEY LIME MOTEL		1227 NE 15TH AVE	FT LAUDERDALE, FL 33304–2314.	
LAFAYETTE MOTOR LODGE		2231 N. OCEAN BLVD	FT LAUDERDALE, FL 33305–1997.	
LAGO MAR HOTEL		1700 S. OCEAN LN	FT LAUDERDALE, FL 33316–3799.	
LAMBERT MOTEL		701 NW 21ST TERRACE	FT LAUDERDALE, FL 33311–	
LAMPLIGHTER MOTEL		2401 N. OCEAN BLVD	FT LAUDERDALE, FL 33305–1929.	
LAUDERDALE BEACH HOTEL		101 S. ATLANTIC BLVD	FT LAUDERDALE, FL 33316–1595.	
LAUDERDALE SURF HOTEL & MARINA.		440 SEABREEZE BLVD	FT LAUDERDALE, FL 33316–1893.	
LIVINGSTON MANOR MOTEL		1037 NE 17TH WAY	FT LAUDERDALE, FL 33304–2405.	
LORELEI APARTMENTS & MOTEL.		501 ORTON AVE	FT LAUDERDALE, FL 33304–4004.	
MARINA BAY RESORT		2175 W. STATE RD. 84	FT LAUDERDALE, FL 33312–4899.	
MARINA INN YACHT HARBOR		2150 SE 17TH ST	FT LAUDERDALE, FL 33316–3183.	
MARINE TERRACE MOTEL		527 N. BIRCH RD	FT LAUDERDALE, FL 33304–4092.	
MARK 2100 RESORT HOTEL		2100 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33305–1999.	
MARK 2100 RESORT MOTEL		2100 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33305–1999.	
MARRIOTT'S HARBOR BEACH RESORT.		3030 HOLIDAY DR	FT LAUDERDALE, FL 33316–2498.	
MERMAID INN		725 N. BIRCH RD	FT LAUDERDALE, FL 33304–4098.	
MOBY DICK MOTEL		3100 WINDAMAR ST	FT LAUDERDALE, FL 33304–4199.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MONTE CARLO INTERNATIONAL RESORT.		2025 N. OCEAN BLVD	FT LAUDERDALE, FL 33305–3729.	
MONTE CARLO MOTEL		717 BREAKERS AVE	FT LAUDERDALE, FL 33304–4195.	
MOTEL SIX #55		1901 W. STATE RD. 84	FT LAUDERDALE, FL 33315–2245.	
NINA LEE MOTEL		3048 HARBOR DR	FT LAUDERDALE, FL 33316–2486.	
NORTH BEACH MOTEL OF S FLOR		2197 N. OCEAN BLVD	FT LAUDERDALE, FL 33305–1915.	
NORTHWEST HOTEL RM		2602 NW 21ST AVE	FT LAUDERDALE, FL 33311–2906.	
OAKLAND EAST MOTOR INN		3001 N. FEDERAL HWY	FT LAUDERDALE, FL 33306–1403.	
OASIS MOTEL		1200 S. MIAMI RD	FT LAUDERDALE, FL 33316–2099.	
OCEAN HOLIDAY MOTEL		205 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4386.	
OCEAN MILE MOTOR LODGE		4101 N. OCEAN BLVD	FT LAUDERDALE, FL 33308–6015.	
OCEAN PARK MOTEL		2115 N. OCEAN BLVD	FT LAUDERDALE, FL 33305–1915.	
OCEANSIDE INN		1180 S. SEABREEZE BLVD	FT LAUDERDALE, FL 33316–2497.	
PALMS INN		2316 NW 6TH CT	FT LAUDERDALE, FL 33311–7742.	
PARKWAY MOTEL		1119 N. VICTORIA PARK RD	FT LAUDERDALE, FL 33304–2415.	
PIER 66 HOTEL & MARINA		2301 SE 17TH ST	FT LAUDERDALE, FL 33316–3194.	
PILLAR MOTEL		111 N. BIRCH RD	FT LAUDERDALE, FL 33304–4389.	
PLAZA MOTEL		3750 SW 1ST ST	FT LAUDERDALE, FL 33312–1043.	
PRESIDIO MOTEL		1601 N. FEDERAL HWY	FT LAUDERDALE, FL 33305–2528.	
RAMADA BEACH RESORT		4060 GALT OCEAN DR	FT LAUDERDALE, FL 33308–	305–565–6611
RAMADA BEACH RESORT-HOTEL.		4060 GALT OCEAN DR	FT LAUDERDALE, FL 33308–6597.	
RASHELLE HOTEL		825 NW 27TH AVE	FT LAUDERDALE, FL 33311–6767.	
RELAX INN		1851 S. FEDERAL HWY	FT LAUDERDALE, FL 33316–2939.	
RIMAR MOTEL		3101 SE 6TH AVE	FT LAUDERDALE, FL 33316–4113.	
RIVERSIDE HOTEL		620 E. LAS OLAS BLVD	FT LAUDERDALE, FL 33301–2287.	
RIVIERA HOTEL		505 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4179.	
SANDI SHORES MOTEL		3008 BAYSHORE DR	FT LAUDERDALE, FL 33304–4293.	
SHERATON EXECUPORT		2440 W. CYPRESS CREEK RD	FT LAUDERDALE, FL 33309–	
SHERATON TOWERS		1101 SEABREEZE AVE	FT LAUDERDALE, FL 33316–2425.	
SHERATON YANKEE TRADER HOTEL.		303 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4275.	
SHERATON YANKEE TRADER HOTEL.		321 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4204.	
SKY MOTEL		1531 SW 26TH ST	FT LAUDERDALE, FL 33315–2214.	
SOUTHERN SHORE MOTEL		3017 BAYSHORE DR	FT LAUDERDALE, FL 33304–4297.	
SOUTHERN SHORES MOTEL		3016 RIOMAR ST	FT LAUDERDALE, FL 33304–4216.	
SPIN DRIFT MOTEL		2501 N. OCEAN BLVD	FT LAUDERDALE, FL 33305–1923.	
SUN COAST MOTEL		2130 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33305–1904.	
SUN RAY HOUSE MOTEL		728 NE 13TH CT	FT LAUDERDALE, FL 33304–4711.	
SUN TOWER RESORT MOTEL		2030 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33305–3799.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUNRISE INN		1055 N. FEDERAL HWY	FT LAUDERDALE, FL 33304–1466.	
SWIFTY MOTEL		1118 NW 31ST AVE	FT LAUDERDALE, FL 33311–5640.	
THE RESORT MOTEL		2851 N. FEDERAL HWY	FT LAUDERDALE, FL 33306–1425.	
THE RETREAT MOTEL		2916 BAYSHORE DR	FT LAUDERDALE, FL 33304–4207.	
TRAVELODGE MOTEL EXEC AIRPO.		1500 W. COMMERCIAL BLVD	FT LAUDERDALE, FL 33309–3076.	
TROPIC CAY RESORT MOTEL		529 N. ATLANTIC BLVD	FT LAUDERDALE, FL 33304–4181.	
TROPICANA MOTEL		711 NE 6TH AVE	FT LAUDERDALE, FL 33304–2789.	
TROPICANA MOTEL		711 NE 5TH TERRACE	FT LAUDERDALE, FL 33304–2713.	
VILLA VENICE RESORT MOTEL		2900 TERRAMAR ST	FT LAUDERDALE, FL 33304–4013.	
WELLESLEY INN EAST		4800 NW 9TH AVE	FT LAUDERDALE, FL 33309–3808.	
WELLESLEY INN WEST		5070 N. SR 7	FT LAUDERDALE, FL 33319–	
WESTIN CYPRESS CREEK		400 CORPORATE DR	FT LAUDERDALE, FL 33334–3642.	
YANKEE CLIPPER HOTEL		1140 SEABREEZE AVE	FT LAUDERDALE, FL 33316–2459.	
ORANGE MOTEL		525 N. CHARLESTON AVE	FT MEADE, FL 33841–2406	
BUCHANAN MOTEL		4719 PALM BEACH BLVD	FT MYERS, FL 33905–3646	
BUDGET INN		3715 CLEVELAND AVE	FT MYERS, FL 33901–7905	
BUDGETEL INN		2717 COLONIAL BLVD	FT MYERS, FL 33907–	
COCONUT MOTEL		3358 CLEVELAND AVE	FT MYERS, FL 33901–7107	
COMFORT INN		11501 S. CLEVELAND AVE	FT MYERS, FL 33907–2839	
COMFORT SUITES		13651 INDIAN PAINT LN	FT MYERS, FL 33912–1837	
COURTYARD BY MARRIOTT HOTEL.		4455 METRO PKWY	FT MYERS, FL 33901–	
DAYS INN 7155		11435 S. CLEVELAND AVE	FT MYERS, FL 33907–2398	
FLORIDAN MOTEL		2939 CLEVELAND AVE	FT MYERS, FL 33901–6005	
FORT MYERS SHORES MOTEL		13814 PALM BEACH BLVD. S	FT MYERS, FL 33905–2126	
FORT MYERS TRAVELODGE		2038 W. 1ST ST	FT MYERS, FL 33901–3109	
FOUNTAIN MOTEL		14621 SW MCGREGOR BLVD	FT MYERS, FL 33908–1947	
FT MYERS INN		3511 S. CLEVELAND AVE	FT MYERS, FL 33901–7902	
GOLFVIEW MOTEL		3523 CLEVELAND AVE	FT MYERS, FL 33901–7902	
HIGHLANDER MOTEL		3893 PALM BEACH BLVD	FT MYERS, FL 33916–3727	
HOLIDAY INN CENTRAL		2431 CLEVELAND AVE	FT MYERS, FL 33901–4904	
HOLIDAY INN CENTRAL		2431 CLEVELAND AVE	FT MYERS, FL 33901–	813–332–3232
HOLIDAY INN FT MYERS AIRPORT.		13051 BELL TOWER DR	FT MYERS, FL 33907–5897	
HOLIDAY INN FT. MYERS, U.S.41 SOUTH(AIRPORT).		13051 BELL TOWER DR	FT MYERS, FL 33907–	813–482–2900
LA QUINTA MOTOR INN 819		4850 CLEVELAND AVE	FT MYERS, FL 33907–1320	
PALM CITY MOTEL		4541 PALM BEACH BLVD	FT MYERS, FL 33905–3453	
POINSETTIA MOTEL		2937 PALM BEACH BLVD	FT MYERS, FL 33916–1594	
RADISSON INN SANIBEL GATEWAY.		20091 SUMMERLIN RD	FT MYERS, FL 33908–3717	
RAMADA AIRPORT HOTEL		12635 S. CLEVELAND AVE	FT MYERS, FL 33907–3873	
RED CARPET INN		4811 S. CLEVELAND AVE	FT MYERS, FL 33907–1384	
RIVERFRONT INN		2066 W. 1ST ST	FT MYERS, FL 33901–3194	
RODEWAY INN		4760 CLEVELAND AVE	FT MYERS, FL 33907–1318	
ROYAL PALM MOTEL		2507 CLEVELAND AVE	FT MYERS, FL 33901–4906	
SAN CARLOS INN		18051 S. TAMIAMI TRAIL	FT MYERS, FL 33908–4612	
SEA CHEST MOTEL		2571 1ST ST	FT MYERS, FL 33901–2409	
SHERATON HARBOR PLACE HOTEL.		2500 EDWARDS DR	FT MYERS, FL 33901–2817	
SLEEP INN		13651 INDIAN PAINT LN	FT MYERS, FL 33912–1837	
TA KI KI MOTEL		2631 1ST ST	FT MYERS, FL 33916–1805	
TICE MOTEL		4560 PALM BEACH BLVD	FT MYERS, FL 33905–3456	
TIDES MOTEL		2621 1ST ST	FT MYERS, FL 33901–	
TOWNE HOUSE MOTEL		2568 1ST ST	FT MYERS, FL 33901–2410	
WONDERLAND MOTEL		2000 N. TAMIAMI TRAIL	FT MYERS, FL 33903–2803	
BEACH BEST WESTERN MOTEL.		684 ESTERO BLVD	FT MYERS BEACH, FL 33931–2095.	
BEACON MOTEL OF FT MYERS BEACH.		1240 ESTERO BLVD	FT MYERS BEACH, FL 33931–2709.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BUCCANEER RESORT INN		4864 ESTERO BLVD	FT MYERS BEACH, FL 33931–3997.	
CAROUSEL MOTEL		6230 ESTERO BLVD	FT MYERS BEACH, FL 33931–4497.	
DAY'S INN ISLAND BEACH RESORT.		1130 ESTERO BLVD	FT MYERS BEACH, FL 33931–2626.	
DAYS INN AT LOVER'S KEY		8701 ESTERO BLVD	FT MYERS BEACH, FL 33901–	
EDGEWATER RESORT MOTEL		1100 ESTERO BLVD	FT MYERS BEACH, FL 33931–2626.	
EVENTIDE RESORT HOTEL		1160 ESTERO BLVD	FT MYERS BEACH, FL 33931–2692.	
FLAMINGO INN		6090 ESTERO BLVD	FT MYERS BEACH, FL 33931–4326.	
GULF ECHO MOTEL		2610 ESTERO BLVD	FT MYERS BEACH, FL 33931–3396.	
GULF MOTEL		2700 ESTERO BLVD	FT MYERS BEACH, FL 33931–3503.	
HOLIDAY COURT MOTEL		925 ESTERO BLVD	FT MYERS BEACH, FL 33931–2192.	
HOLIDAY INN FT MYERS		6890 ESTERO BLVD	FT MYERS BEACH, FL 33931–4698.	
ISLAND MOTEL		201 SAN CARLOS BLVD	FT MYERS BEACH, FL 33931–2127.	
LA FONTAINE INN		6950 ESTERO BLVD	FT MYERS BEACH, FL 33931–4610.	
LANI KAI ISLAND RESORT		1400 ESTERO BLVD	FT MYERS BEACH, FL 33931–2798.	
MATANZAS INN		414 CRESCENT ST	FT MYERS BEACH, FL 33931–2697.	
NEPTUNE INN MOTEL		2310 ESTERO BLVD	FT MYERS BEACH, FL 33931–3297.	
TAHITIAN INN MOTEL		2030 SAN CARLOS BLVD	FT MYERS BEACH, FL 33931–3093.	
TIKI RESORT MOTEL		4360 ESTERO BLVD	FT MYERS BEACH, FL 33931–3642.	
TROPICAL INN RESORT		5210 ESTERO BLVD	FT MYERS BEACH, FL 33931–4199.	
BEACHWOOD MOTEL		2041 SEAWAY DR	FT PIERCE, FL 34949–3299	
COLONY COURT MOTEL		1007 S. 4TH ST	FT PIERCE, FL 34950–5129	
COMFORT INN-FT PIERCE		3236 S. US 1	FT PIERCE, FL 34982–	
DAYS INN		6651 DARTER CT	FT PIERCE, FL 34945–2722	
ECONO LODGE		7050 OKEECHOBEE RD	FT PIERCE, FL 34945–2606	
ECONOMY INN		3425 S. US HWY. 1	FT PIERCE, FL 33482–	
EDGEWATER MOTEL		1156 SEAWAY DR	FT PIERCE, FL 34949–3194	
FARRELLS ROSE MOTEL		3625 S. US HWY. 1	FT PIERCE, FL 33482–	
FISHERMAN'S INN		5559 N. US HWY. 1	FT PIERCE, FL 34946–	
GARDEN STATE MOTEL		5220 S. FEDERAL HWY. US 1	FT PIERCE, FL 34982–	
GOODFELLOW MOTEL		6823 N. US 1	FT PIERCE, FL 33450–	
GRAND VIEW MOTEL		1921 N. US 1	FT PIERCE, FL 34946–1458	
HARBOR LIGHT INN		1160 SEAWAY DR	FT PIERCE, FL 34949–3146	
HOLIDAY BEACH MOTEL		1750 SEAWAY DR	FT PIERCE, FL 34949–3296	
HOLIDAY INN OF FT PIERCE		7151 OKEECHOBEE RD	FT PIERCE, FL 34945–2699	
HOLIDAY INN SURFSIDE		2600 N. A1A	FT PIERCE, FL 33447–	
HOLIDAY INN SURFSIDE		2600 N. A–1–A	FT PIERCE, FL 34949–	407–465–6000
KING'S INN		414 AVE. D	FT PIERCE, FL 34950–3045	
LAKE PARK MOTEL		5501 S. US HWY. 1	FT PIERCE, FL 33450–	
MOTEL 6 1207		2500 PETERS RD	FT PIERCE, FL 34945–	
NOWALK MOTEL		531 S. US 1	FT PIERCE, FL 34950–8385	
OLIVERS MOTEL		3261 S. US HWY. 1	FT PIERCE, FL 33450–	
RENO MOTEL		1921 AVE. D	FT PIERCE, FL 34950–2745	
ROYAL FOUNTAIN MOTEL		4891 S. US HWY. 1	FT PIERCE, FL 34946–	
SKYWAY MOTEL		3455 N. US HWY. 1	FT PIERCE, FL 34946–	
SMALLWOOD MOTEL		5504 S. US 1	FT PIERCE, FL 34982–7372	
STARLITE MOTEL		2601 S. US HWY. 1	FT PIERCE, FL 34982–	
SUNSET INN		1802 S. US HWY. 1	FT PIERCE, FL 34950–	
TREASURE COAST INN		7025 OKEECHOBEE RD	FT PIERCE, FL 34945–2605	
WATER FRONT MOTEL		3103 AVE. T	FT PIERCE, FL 34947–2057	
DAYS INN FT PIERCE BEACH		1920 SEAWAY DR	FT PIERCE BEACH, FL 34949–3299.	
BEACHMARK INN		573 SANTA ROSA BLVD	FT WALTON BEACH, FL 32548–6925.	

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Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEACHMARK INN		560 CORAL CT	FT WALTON BEACH, FL 32548–6936.	
BEST WESTERN ALOHA VILLAGE.		868 SANTA ROSA BLVD	FT WALTON BEACH, FL 32548–6027.	
CONQUISTADOR INN		874 VENUS CT	FT WALTON BEACH, FL 32548–6099.	
DAYS INN		135 SW MIRACLE STRIP PKWY	FT WALTON BEACH, FL 32548–6614.	
DRIFTWOOD MOTEL & APARTMENTS.		682 NAUTILUS CT	FT WALTON BEACH, FL 32548–6002.	
ECONO LODGE		100 SW MIRACLE STRIP	FT WALTON BEACH, FL 32548–6615.	
ECONOMY MOTEL		1 SE MIRACLE STRIP PKWY	FT WALTON BEACH, FL 32548–5815.	
EDGEWATER MOTEL		1284 MARLER DR	FT WALTON BEACH, FL 32548–6299.	
EDGEWATER MOTEL		1284 MARLER DR	FT WALTON BEACH, FL 32548–6299.	
GREENWOOD MOTEL		US HWY. 98 E	FT WALTON BEACH, FL 32548–6290.	
GULF BEACH MOTEL		670 NAUTILUS CT	FT WALTON BEACH, FL 32548–6090.	
HOLIDAY INN FORT WALTON BEACH.		1110 SANTA ROSA BLVD	FT WALTON BEACH, FL 32548–.	904–243–9181
HOLIDAY INN OF FT WALTON BC.		1110 SANTA ROSA BLVD	FT WALTON BEACH, FL 32548–.	
HOWARD JOHNSON MOTOR LODGE.		314 MIRACLE STRIP	FT WALTON BEACH, FL 32548–5295.	
KNIGHT INN		209 SW MIRACLE STRIP PKWY	FT WALTON BEACH, FL 32548–6615.	
LEESIDE INN		1350 E. HWY. 98	FT WALTON BEACH, FL 32548–6292.	
MARINA MOTEL		E. US 98 OKALOOSA	FT WALTON BEACH, FL 32548–6299.	
MARINER INN MOTEL		206 SANTA ROSA BLVD	FT WALTON BEACH, FL 32548–6197.	
PLAYGROUND MOTOR INN		195 BROOKS ST. SE	FT WALTON BEACH, FL 32548–5826.	
RAMADA BEACH RESORT		US HWY. 98 E	FT WALTON BEACH, FL 32548–.	
SANDMAN MOTEL-SUITES INC		480 SANTA ROSA BLVD	FT WALTON BEACH, FL 32548–6922.	
SANDMAN MOTEL-SUITES INC		482 SANTA ROSA BLVD	FT WALTON BEACH, FL 32548–6932.	
SEA ISLE MOTEL		1214 E. HWY. 98	FT WALTON BEACH, FL 32548–6296.	
SHERATON INN		1325 E. MIRACLE STRIP PKWY	FT WALTON BEACH, FL 32548–6295.	
SHONEYS INNS		203 MIRACLE STRIP PKWY	FT WALTON BEACH, FL 32548–.	
SUPER 8 MOTEL		333 MIRACLE STRIP PKWY	FT WALTON BEACH, FL 32548–5209.	
TEXAS 7S INN		3 SW MIRACLE STRIP PKWY	FT WALTON BEACH, FL 32548–6612.	
ANCHOR LODGE		205 NW 14TH ST	GAINESVILLE, FL 32603–1938 .	
BAMBI MOTEL		2119 SW 13TH ST	GAINESVILLE, FL 32608–1534 .	
CABOT LODGE		3726 SW 40TH BLVD	GAINESVILLE, FL 32608–2349 .	
CAPE COD INN		3820 SW 13TH ST	GAINESVILLE, FL 32608–3510 .	
CASA LOMA LODGE		2000 SW 13TH ST	GAINESVILLE, FL 32608–1533 .	
COMFORT INN		2435 SW 13TH ST	GAINESVILLE, FL 32608–	904–373–6500
COMFORT INN OF GAINESVILLE.		2435 SW 13TH ST	GAINESVILLE, FL 32608–2008 .	
DAYS INN		2620 NW 13TH ST	GAINESVILLE, FL 32609–2632 .	
ECONO LODGE		2649 SW 13TH ST	GAINESVILLE, FL 32608–2012 .	
ECONO TRAVEL MOTOR HOTEL.		700 NW 75TH ST	GAINESVILLE, FL 32607–1608 .	
ELDER INN		3904 NW 15TH ST	GAINESVILLE, FL 32605–1910 .	
FAIRFIELD INN		6901 NW 4TH BLVD	GAINESVILLE, FL 32607–	
GAINESVILLE HILTON INN		2900 SW 13TH ST	GAINESVILLE, FL 32608–3099 .	
GAINESVILLE LODGE		413 UNIVERSITY AVE	GAINESVILLE, FL 32601–	904–376–1224
GAINESVILLE LODGE		413 W. UNIVERSITY AVE	GAINESVILLE, FL 32601–5207 .	
HOJO INN		1900 SW 13TH ST	GAINESVILLE, FL 32608–1531 .	

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Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN MOTEL 2		7417 NW 8TH AVE	GAINESVILLE, FL 32605–4394	
HOLIDAY INN UNIVERSITY CENTER.		1250 W. UNIVERSITY AVE	GAINESVILLE, FL 32601–	GEN–ERA–L MR
HOLIDAY INN-UNIVERSITY CENTER.		1250 W. UNIVERSITY AVE	GAINESVILLE, FL 32601–5197	
HOWARD JOHNSON MOTOR LODGE.		7400 NW 8TH AVE	GAINESVILLE, FL 32605–4323	
KNIGHTS INN		4021 SW 40TH BLVD	GAINESVILLE, FL 32608–2373	
LA QUINTA MOTOR INN 4669		920 NW 69TH TERRACE	GAINESVILLE, FL 32601–3105	
MOTEL 6 414		4000 SW 40TH BLVD	GAINESVILLE, FL 32608–2372	
RED CARPET INN		3461 SW WILLISTON RD. AT I	GAINESVILLE, FL 32601–	
RESIDENCE INN		4001 SW 13TH ST	GAINESVILLE, FL 32608–3599	
RUSH LAKE MOTEL		1410 SW 16TH AVE	GAINESVILLE, FL 32608–1150	
SCOTTISH INN		4155 NW 13TH ST	GAINESVILLE, FL 32609–1808	
SUPER 8 MOTEL		4202 SW 40TH BLVD	GAINESVILLE, FL 32608–	
UNIVERSITY CENTRE HOTEL		1535 SW ARCHER RD	GAINESVILLE, FL 32608–1196	
UNIVERSITY INN		1901 SW 13TH ST	GAINESVILLE, FL 32608–1530	
BUDGET INN		I–75 AND HWY. 26	GAINESVILLES, FL 32601–	
BUDGET INN		6901 NW 8TH AVE	GAINESVILLES, FL 32605–4393	
FAIRFIELD INN GAINESVILLE		6901 NW 4TH BLVD	GAINESVILLE, FL 32607–	904–332–6292
GARDENVILLE MOTEL		11549 US HWY. 41	GIBSONTON, FL 33534–	
GULL HAVEN MOTEL & TRAILER.		12125 US 41 S	GIBSONTON, FL 33534–	
RED GABLES MOTEL		11545 S. US HWY. 41	GIBSONTON, FL 33534–9720	
GOLDEN GATE INN		4100 GOLDEN GATE PKWY	GOLDEN GATE, FL 33999–6599	
COLADA INN		212 HARBOR PL	GOODLAND, FL 33933–9999	
PINK HOUSE MOTEL		310 PEAR TREE AVE	GOODLAND, FL 33933–	
GROVE MOTEL		22540 SW 177TH AVE	GOULDS, FL 33170–3702	
KENT MOTEL		22345 S. US HWY. BOX 103	GOULDS, FL 33170–	
MERITA MOTEL		21831 OLD DIXIE HWY	GOULDS, FL 33170–	
HO JO'S INN		HWY. 69 & I–10	GRAND RIDGE, FL 32442–	
GLEN OAK MOTEL		6275 US HWY. 1	GRANT, FL 32905–	
GRANT MOTEL		4660 US HWY. 1	GRANT, FL 32949–9999	
GULF VIEW MOTEL		MM 58 1/2 US HWY	GRASS KEY, FL 33050–	
SEA SHELL MOTEL	RT 1 BOX 154		GRASSEY KEY, FL 33050–9703	
FLAMINGO INN	RT 1	BOX 522A	GRASSY KEY, FL 33050–	
CAREYS ANTIQUES & MOTEL		22 S. ORANGE AVE	GREEN COVE SPRINGS, FL 32043–3405.	
GREEN COVE SPRINGS INN NORTH.		1100 ORANGE AVE	GREEN COVE SPRINGS, FL 32043–.	
GREEN COVE SPRINGS INN WEST.		1225 IDLEWILD AVE	GREEN COVE SPRINGS, FL 32043–3802.	
LAKE DAVID HOTEL		308 S. MAIN ST	GROVELAND, FL 32736–2557	
LAKEFRONT MOTEL		21726 US 27	GROVELAND, FL 34736–	
GULF COAST INN		843 GULF BREEZE PKWY	GULF BREEZE, FL 32561–4722	
HOLIDAY INN		51 GULF BREEZE PKWY	GULF BREEZE, FL 32561–	
HOLIDAY INN BAY BEACH		51 GULF BREEZE PKWY	GULF BREEZE, FL 32561–	904–932–2214
BEL AIRE MOTEL		612 HINSON AVE	HAINES CITY, FL 33844–	
BEST WESTERN RESORT MOTEL.		1504 S. US HWY. 27	HAINES CITY, FL 33844–	
ECONO LODGE MOTOR INN AND RESTAURANT.		1504 US HWY. 27 S	HAINES CITY, FL 33844–	813–422–8021
HAINES CITY MOTEL		1010 HINSON AVE	HAINES CITY, FL 33844–	
HOLIDAY MOTEL		801 HINSON AVE	HAINES CITY, FL 33844–	
RIDGE PLAZA MOTEL		HWY. 27 BOX 397	HAINES CITY, FL 33844–	
STATE MOTEL		905 N. US HWY. 27	HAINES CITY, FL 33844–3712	
SUNNY'S MOTEL		35 N. US 17 & 92	HAINES CITY, FL 33844–	
VAN-ROOK INN		106 S. 1ST ST	HAINES CITY, FL 33844–	
EL RANCHO MOTEL		424 N. FEDERAL HWY	HALLANDALE, FL 33009–3449	
EL RIO MOTEL		611 NE 2ND CT	HALLANDALE, FL 33009–3504	
FLAMINGO MOTEL		709 NE 2ND CT	HALLANDALE, FL 33009–3504	
FLORAL MOTEL		701 NE 3RD ST	HALLANDALE, FL 33009–3511	
FREDOLA MOTEL		900 S. FEDERAL HWY	HALLANDALE, FL 33009–7125	
HOWARD JOHNSON HALLANDALE.		101 ANSIN BLVD	HALLANDALE, FL 33009–3992	
KARL MOTEL & APARTMENTS		425 SE 9TH ST	HALLANDALE, FL 33009–7114	
MAMIE'S MOTEL		622 NE 4TH ST	HALLANDALE, FL 33009–3519	
MIRAMAR MOTEL		725 NE 7TH ST	HALLANDALE, FL 33009–3542	
ORCHID MOTEL		823 NE 10TH ST	HALLANDALE, FL 33009–2664	
PAMELA ARMS MOTEL		701 NE 5TH ST	HALLANDALE, FL 33009–3530	
PARKVIEW MOTEL		804 S. FEDERAL HWY	HALLANDALE, FL 33009–7123	
PITTSBURGH MOTEL		708 NE 3RD ST	HALLANDALE, FL 33009–3512	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RAMADA GOLF & RACQUET	.....	26 DIPLOMAT PKWY	HALLANDALE, FL 33009–3721 .	.....
RIVIERA RESORT HOTEL	.....	2080 S. OCEAN DR	HALLANDALE, FL 33009–	.....
SAUNDERS MOTEL	.....	700 NE 6TH ST	HALLANDALE, FL 33009–3537 .	.....
SUN & FUN MOTEL	.....	308 NE 2ND ST	HALLANDALE, FL 33009–4324 .	.....
SUNRISE MOTEL	.....	709 NE 4TH CT	HALLANDALE, FL 33009–	.....
SUNSHINE MOTEL	.....	708 NE 5TH ST	HALLANDALE, FL 33009–3531 .	.....
TAPPS MOTEL	.....	620 NE 2ND CT	HALLANDALE, FL 33009–3505 .	.....
THE LODGE MOTEL	.....	1008 NE 10TH ST	HALLANDALE, FL 33009–2661 .	.....
WATER'S EDGE RESORT & MARIN.	.....	1945 S. OCEAN DR	HALLANDALE, FL 33009–5993 .	.....
FAIRVIEW MOTEL	.....	5964 S. RIDGEWOOD AVE	HARBOR OAKS, FL 32127–	.....
SUNNYBROOK MOTEL	.....	3020 SUNNYBROOK RD	HARBOUR HEIGHTS, FL 33983–.	.....
WALDORF MOTEL	.....	HWY. 27	HAVANA, FL 32333–	.....
EL RANCHO MOTEL	.....	2350 N. FLORIDA AVE	HERNANDO, FL 32642–4482	.....
MID FLORIDA MOTEL	.....	2355 N. FLORIDA AVE	HERNANDO, FL 32642–4424	.....
AIRLINE HOTEL	.....	932 PALM AVE	HIALEAH, FL 33010–4096	.....
ANCHOR HOTEL	.....	903 W. 1ST AVE	HIALEAH, FL 33010–4097	.....
BOME MOTEL	.....	3280 PALM AVE	HIALEAH, FL 33012–5429	.....
DIXIE ROSS HOTEL	.....	100 E. 17TH ST	HIALEAH, FL 33010–3107	.....
DP M II MOTEL	.....	1300 W. OKEECHOBEE RD	HIALEAH, FL 33010–2811	.....
FANTASY MOTEL	.....	845 E. OKEECHOBEE RD	HIALEAH, FL 33010–5927	.....
HIALEAH CABANA HOTEL	.....	508 W. 1ST AVE	HIALEAH, FL 33010–4704	.....
HIALEAH EXECUTIVE EFFCY MOT.	.....	161 W. OKEECHOBEE RD	HIALEAH, FL 33010–4723	.....
HIALEAH EXECUTIVE MOTEL ..	.....	131 W. OKEECHOBEE RD	HIALEAH, FL 33010–4723	.....
HIALEAH MOTEL	.....	555 E. OKEECHOBEE RD	HIALEAH, FL 33010–5352	.....
HOLIDAY INN	.....	6650 W. 20TH AVE	HIALEAH, FL 33016–	.....
HOLIDAY INN HIALEAH	.....	1950 W. 49TH ST	HIALEAH, FL 33012–2973	.....
HOLIDAY INN HIALEAH MIAMI LAKES.	.....	6650 W. 20 AVE	HIALEAH, FL 33016–	305–362–7777
HOLIDAY MOTEL	.....	500 E. 25TH ST	HIALEAH, FL 33013–3627	.....
NEW CHESAPEAKE MOTEL	.....	935 W. OKEECHOBEE RD	HIALEAH, FL 33010–2911	.....
OKEECHOBEE INN	.....	699 E. OKEECHOBEE RD	HIALEAH, FL 33010–5696	.....
PISLES MOTEL	.....	1104 W. OKEECHOBEE RD	HIALEAH, FL 33010–2916	.....
RAINBOW INN MOTEL	.....	2801 W. OKEECHOBEE RD	HIALEAH, FL 33010–1056	.....
STAR MOTEL	.....	1651 W. OKEECHOBEE RD	HIALEAH, FL 33010–2325	.....
PARK PLAZA HOTEL	.....	7707 NW 103RD ST	HIALEAH GARDENS, FL 33016–2473.	.....
BLOOMSBURY INN	.....	30 NE 1ST AVE	HIGH SPRINGS, FL 32643–	.....
CADILLAC MOTEL	.....	N. US 41 AND 441	HIGH SPRINGS, FL 32643–	.....
MAYFLOWER MOTEL	.....	HWY. 441	HIGH SPRINGS, FL 32643–2643	.....
SUNSET MOTEL	.....	N. US 41 AND 441	HIGH SPRINGS, FL 32643–	.....
THE GREAT OUTDOORS INN ..	.....	HWY. 27 AND 41 S. 2 M	HIGH SPRINGS, FL 32643–	.....
HOLIDAY INN OF DELRAY BEACH.	.....	2809 S. OCEAN BLVD	HIGHLAND BEACH, FL 33487–1899.	.....
DIXIE MOTEL	.....	129 S. KINGS RD	HILLIARD, FL 32046–	.....
HI LITE MOTEL	RT 1	BOX 1 HWY. 1	HILLIARD, FL 32046–9725	.....
HO LO KA MOTEL	.....	HWY. 1 4 M N	HILLIARD, FL 32046–	.....
HOLIDAY TERRACE MOTEL	.....	N. US HWY. 1 1 MILE N	HILLIARD, FL 32046–	.....
BAREFOOT MAILMAN HOTEL & RESORT.	.....	1061 HWY. A1A	HILLSBORO BEACH, FL 33062–	.....
HERITAGE INN SUITES	.....	8605 SE FEDERAL HWY	HOBE SOUND, FL 33455–6026	.....
JUPITER ISLAND CLUB HOTEL	.....	JUPITER ISLAND	HOBE SOUND, FL 33455–	.....
PALMS MOTEL	.....	10825 SE US HWY. 1	HOBE SOUND, FL 33455–	.....
BEN TRAILER PARK MOTEL	.....	1045 HICKORY LN	HOLIDAY, FL 34691–9781	.....
BEST WESTERN TAHITIAN RESORT.	.....	2337 N. US HWY. 19	HOLIDAY, FL 34691–3940	.....
HOLIDAY MOTEL	.....	1131 US HWY. 19	HOLIDAY, FL 34691–5638	.....
LA RUE 19 MOTEL	.....	2018 US HWY. 19	HOLIDAY, FL 34691–4345	.....
ANCHOR MOTEL	.....	216 RIDGEWOOD AVE	HOLLY HILL, FL 32017–4932	.....
COLONIAL MOTEL	.....	208 RIDGEWOOD AVE	HOLLY HILL, FL 32017–4932	.....
COZY VILLA MOTEL	.....	502 RIDGEWOOD AVE	HOLLY HILL, FL 32017–4424	.....
DAYTONA BEACH TRAVELODGE.	.....	749 RIDGEWOOD AVE	HOLLY HILL, FL 32017–3619	.....
DAYTONA BEACH/HOLLY HILL TRAVELODGE.	.....	749 RIDGEWOOD AVE	HOLLY HILL, FL 32017–	904–255–6511
DELUXE MOTEL	.....	500 RIDGEWOOD AVE	HOLLY HILL FL 32017–4424	.....
FLORIDA INN	.....	810 RIDGEWOOD AVE	HOLLY HILL, FL 32117–	.....
FLORIDA MOTEL	.....	1147 RIDGEWOOD AVE	HOLLY HILL, FL 32117–2719	.....
HAPPY TIME MOTEL	.....	403 RIDGEWOOD AVE	HOLLY HILL, FL 32017–4421	.....
HOLLY HILL MOTOR INN	.....	721 RIDGEWOOD AVE	HOLLY HILL, FL 32017–3619	.....

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HOLLY HOUSE MOTEL		1400 RIDGEWOOD AVE	HOLLY HILL, FL 32117–	
INDIAN PALMS MOTEL		828 RIDGEWOOD AVE	HOLLY HILL, FL 32017–3518	
QUALITY MOTEL		801 RIDGEWOOD AVE	HOLLY HILL, FL 32017–3517	
RANCH MOTEL		1028 N. RIDGEWOOD AVE	HOLLY HILL, FL 32117–2834	
RIDGEWOOD INN		128 RIDGEWOOD AVE	HOLLY HILL, FL 32017–5028	
TENA'S MOTEL		1034 RIDGEWOOD AVE	HOLLY HILL, FL 32117–	
TROPICAL GABLES COURT MOTEL.		1245 RIDGEWOOD AVE	HOLLY HILL, FL 32017–2721	
TWI LIGHT MOTEL		712 RIDGEWOOD AVE	HOLLY HILL, FL 32117–3620	
TWI-LITE 2 MOTEL		1125 RIDGEWOOD AVE	HOLLY HILL, FL 32017–2719	
TWIN OAKS MOTEL		163 RIDGEWOOD AVE	HOLLY HILL, FL 32017–5040	
A TOUCH OF CLASS MOTEL		4054 SW 42ND AVE	HOLLYWOOD, FL 33023–	
ADOBE HACIENDA MOTEL		1223 N. FEDERAL HWY	HOLLYWOOD, FL 33020–3629	
ADRIATIC MOTEL		1747 FUNSTON ST	HOLLYWOOD, FL 33020–6413	
ALPINE INN		309 OKLAHOMA ST	HOLLYWOOD, FL 33019–3442	
ANCHORAGE MOTEL		1515 N. OCEAN DR	HOLLYWOOD, FL 33019–3316	
ANCHORAGE MOTEL II		1500 N. OCEAN DR	HOLLYWOOD, FL 33019–3317	
ANCHORAGE MOTEL III		1725 TAYLOR ST	HOLLYWOOD, FL 33020–4683	
ANTIQUE MOTEL		2342 N. FEDERAL HWY	HOLLYWOOD, FL 33020–2232	
ASPLUND COURT MOTEL		808 N. 17TH AVE	HOLLYWOOD, FL 33020–3512	
BAHAMA MOTEL		800 N. FEDERAL HWY	HOLLYWOOD, FL 33020–3598	
BARBIZON MOTEL		350 MONROE ST	HOLLYWOOD, FL 33019–2004	
BEACH & TOWN MOTEL		1010 S. FEDERAL HWY	HOLLYWOOD, FL 33020–6095	
BEACH HOUSE MOTOR INN		1215 N. OCEAN DR	HOLLYWOOD, FL 33019–3310	
BEACH INN		350 PALM ST	HOLLYWOOD, FL 33019–4504	
BERNARD MOTEL		1819 WILSON ST	HOLLYWOOD, FL 33020–2725	
BERNARD MOTEL		1832 TAFT ST	HOLLYWOOD, FL 33020–2721	
BUDGET MOTEL		2000 N. FEDERAL HWY	HOLLYWOOD, FL 33020–2226	
CALIFORNIA DREAM INN		300 WALNUT ST	HOLLYWOOD, FL 33019–4604	
CALIFORNIA DREAM INN		315 WALNUT ST	HOLLYWOOD, FL 33019–4603	
CANADA MOTEL		2223 WASHINGTON ST	HOLLYWOOD, FL 33020–5962	
CAPE COD MOTEL		3001 N. OCEAN DR	HOLLYWOOD, FL 33019–3709	
CATHY'S MOTEL & APARTMENTS.		338 WALNUT ST	HOLLYWOOD, FL 33019–4604	
CHARM MOTEL		1856 SHERMAN ST	HOLLYWOOD, FL 33020–2123	
CHELSEA HOTEL		2021 PIERCE ST	HOLLYWOOD, FL 33020–4026	
COLONIAL MOTEL		700 S. FEDERAL HWY	HOLLYWOOD, FL 33020–5424	
COMFORT INN		2520 STIRLING RD	HOLLYWOOD, FL 33020–1122	
CURTIS MOTEL		1501 S. FEDERAL HWY	HOLLYWOOD, FL 33020–6343	
CURTIS MOTEL		1750 MAYO ST	HOLLYWOOD, FL 33020–6543	
DAYS INN FT LAUDERDALE HOLLY AIRPORT.		2601 N. 29TH AVE	HOLLYWOOD, FL 33020–	
DAYS INN HOLLYWOOD 0254		2711 S. OCEAN DR	HOLLYWOOD, FL 33019–2798	
DIXIANA MOTEL		1822 DIXIANA ST	HOLLYWOOD, FL 33020–3114	
ECONOMY STAR INN		1323 N. FEDERAL HWY	HOLLYWOOD, FL 33020–2846	
ELITE MOTEL		1735 ARTHUR ST	HOLLYWOOD, FL 33020–3625	
ELMS APARTMENTS MOTEL		316 ELM ST	HOLLYWOOD, FL 33019–4504	
ENTRADA MOTEL		509 N. FEDERAL HWY	HOLLYWOOD, FL 33020–4699	
FLETCHER STREET MOTEL		1714 FLETCHER ST	HOLLYWOOD, FL 33020–6503	
GOLDEN SAND MOTEL APARTMENTS.		707 N. BROADWALK	HOLLYWOOD, FL 33019–1203	
GREEN SEAS MOTEL		1419 S. FEDERAL HWY	HOLLYWOOD, FL 33020–6341	
GREENBRIAR MOTEL		1901 S. SURF RD	HOLLYWOOD, FL 33019–2418	
GREENBRIAR MOTEL		1901 S. SURF RD	HOLLYWOOD, FL 33019–	
HAPPY DAYS MOTEL		1950 TAFT ST	HOLLYWOOD, FL 33020–2723	
HILL MOTEL		418 S. FEDERAL HWY	HOLLYWOOD, FL 33020–5114	
HO JO INN-HOLLYWOOD		2900 POLK ST	HOLLYWOOD, FL 33020–4289	
HOLIDAY BEACH INN		4111 S. OCEAN DR	HOLLYWOOD, FL 33019–3011	
HOLIDAY INN		1925 HARRISON ST	HOLLYWOOD, FL 33020–5061	
HOLIDAY MOTEL		1104 S. FEDERAL HWY	HOLLYWOOD, FL 33020–6093	
HOLLY HILL MOTEL		3806 HOLLYWOOD BLVD	HOLLYWOOD, FL 33021–6730	
HOLLYWOOD BEACH HILTON		4000 S. OCEAN DR	HOLLYWOOD, FL 33019–3010	
HOLLYWOOD HILLS MOTOR LODGE.		4900 HOLLYWOOD BLVD	HOLLYWOOD, FL 33021–6508	
HOLLYWOOD MOTEL		410 N. FEDERAL HWY	HOLLYWOOD, FL 33020–4619	
HOLLYWOOD PLAZA		2035 VAN BUREN ST	HOLLYWOOD, FL 33020–5029	
HOWARD JOHNSON MOTOR LODGE.		2501 N. OCEAN DR	HOLLYWOOD, FL 33019–3600	
ILLINOIS COURT MOTEL		2000 WASHINGTON ST	HOLLYWOOD, FL 33020–6930	
INN ON THE PARK		325 N. FEDERAL HWY	HOLLYWOOD, FL 33020–4691	
IRIS MOTEL		1858 DEWEY ST	HOLLYWOOD, FL 33020–6018	
JACLYNE APARTMENT & MOTEL.		2606 N. OCEAN DR	HOLLYWOOD, FL 33019–3612	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
KENT MOTEL		1120 S. FEDERAL HWY	HOLLYWOOD, FL 33020–6092	
KING COLE MOTEL		3415 N. OCEAN DR	HOLLYWOOD, FL 33019–3805	
LILI MOTEL		326 MINNESOTA ST	HOLLYWOOD, FL 33019–3349	
LUCKY BOY MOTEL		610 S. FEDERAL HWY	HOLLYWOOD, FL 33020–5422	
MARINER MOTEL		702 N. SURF RD	HOLLYWOOD, FL 33019–1212	
MAYO MOTEL		1745 MAYO ST	HOLLYWOOD, FL 33020–6542	
MONTREAL INN AT HOLLYWOOD BEACH.		336 BALBOA ST	HOLLYWOOD, FL 33019–4602	
MOON CREST MOTEL		345 INDIANA ST	HOLLYWOOD, FL 33019–1239	
NEVADA MOTEL		322 NEVADA ST	HOLLYWOOD, FL 33019–3532	
OCEAN DRIVE VILLAS MOTEL		1701 N. OCEAN DR	HOLLYWOOD, FL 33019–3411	
OCEAN GATE MOTEL		308 PIERCE ST	HOLLYWOOD, FL 33019–1240	
OCEAN HOUSE MOTEL		4053 S. SURF RD	HOLLYWOOD, FL 33019–3015	
OCEAN MANOR MOTEL		338 BUCHANAN ST	HOLLYWOOD, FL 33019–1236	
OCEAN QUEEN MOTEL		5600 N. SURF RD	HOLLYWOOD, FL 33019–4511	
OCEAN TERRACE MOTEL		6040 N. 4TH TERRACE	HOLLYWOOD, FL 33019–4601	
OCEANSIDE MOTEL & APARTMENTS.		315 CLEVELAND ST	HOLLYWOOD, FL 33019–3436	
PATIO APARTMENTS & MOTEL		335 NEW YORK ST	HOLLYWOOD, FL 33019–1432	
PLANET MOTEL		1406 N. OCEAN DR	HOLLYWOOD, FL 33019–3315	
RICCARDO MOTEL		323 ELM	HOLLYWOOD, FL 33019–4503	
RICHARD'S MOTEL		1219 S. FEDERAL HWY	HOLLYWOOD, FL 33020–6029	
RIO MOTEL		1823 DEWEY	HOLLYWOOD, FL 33020–6017	
RIO MOTEL		1824 WASHINGTON ST	HOLLYWOOD, FL 33020–6089	
RIO MOTEL		1843 DEWEY ST	HOLLYWOOD, FL 33020–6088	
RIO THUNDERBIRD MOTEL		1831 PLUNKETT ST	HOLLYWOOD, FL 33020–6347	
RUFFY'S MOTEL & MARINA		2308 N. OCEAN DR	HOLLYWOOD, FL 33019–1122	
SAND DUNES MOTEL		1724 MCKINLEY ST	HOLLYWOOD, FL 33020–2852	
SANDPEBBLE MOTEL		327 FRANKLIN ST	HOLLYWOOD, FL 33019–4417	
SEA LODGE MOTEL		312 MINNESOTA ST	HOLLYWOOD, FL 33019–3349	
SHELDON HOTEL		1000 BROADWALK	HOLLYWOOD, FL 33019–1299	
SHELL MOTEL		1201 S. FEDERAL HWY	HOLLYWOOD, FL 33020–6029	
SIERRA MOTEL		1743 RODMAN ST	HOLLYWOOD, FL 33020–6449	
SIESTA MOTEL		1734 MCKINLEY ST	HOLLYWOOD, FL 33020–2852	
SILVER SPRAY MTL & APTS		2115 N. OCEAN DR	HOLLYWOOD, FL 33019–3504	
SKY HARBOR MOTEL		2900 N. OCEAN DR	HOLLYWOOD, FL 33019–3708	
SUN MANOR MOTEL		333 OKLAHOMA ST	HOLLYWOOD, FL 33019–3442	
SUN RAY LODGE MOTEL		1747 WASHINGTON ST	HOLLYWOOD, FL 33020–6122	
SUNNY PINES MOTEL		530 NW 62ND AVE	HOLLYWOOD, FL 33024–7830	
SUNSHINE MOTEL		346 PALM ST	HOLLYWOOD, FL 33019–4506	
TAFT MOTEL & APARTMENTS		1748 TAFT ST	HOLLYWOOD, FL 33020–2836	
TALLY HO MOTEL		5501 N. OCEAN DR	HOLLYWOOD, FL 33019–4405	
THE 600 PLAZA & MOTEL		600 N. BROADWALK	HOLLYWOOD, FL 33019–	
TOWN VIEW MOTEL & APARTMENT.		2222 VAN BUREN ST	HOLLYWOOD, FL 33020–4925	
TOWNE CABANA MOTEL		1720 TAYLOR ST	HOLLYWOOD, FL 33020–4682	
TRADE WINDS MOTEL		2742 JOHNSON ST	HOLLYWOOD, FL 33020–3824	
TRIO MOTEL		2501 S. STATE RD. 7	HOLLYWOOD, FL 33023–4170	
TROPIC ISLE MOTEL & APTS		315 TAYLOR ST	HOLLYWOOD, FL 33019–1434	
TROPICAL BREEZE MOTEL		2007 N. OCEAN DR	HOLLYWOOD, FL 33019–3416	
TYLER HOTEL		218 N. 20TH AVE	HOLLYWOOD, FL 33020–4503	
U S 1 MOTEL		910 N. FEDERAL HWY	HOLLYWOOD, FL 33020–	
VAGABOND MOTEL		1725 TAFT ST	HOLLYWOOD, FL 33020–2835	
VENEZIA INN		1203 N. FEDERAL HWY	HOLLYWOOD, FL 33020–3629	
VENTURA INN MOTEL		720 N. FEDERAL HWY	HOLLYWOOD, FL 33020–4096	
WAVES MOTEL & APARTMENTS.		313 OAK ST	HOLLYWOOD, FL 33019–4402	
WONDERFUL TIME MOTEL		348 INDIANA ST	HOLLYWOOD, FL 33019–1238	
YONDER'S MOTEL		1610 N. FEDERAL HWY	HOLLYWOOD, FL 33020–2824	
YOUNG'S MOTEL & APTS		1915 N. OCEAN DR	HOLLYWOOD, FL 33019–3405	
AQUARIUS MOTEL		105 39TH ST	HOLMES BEACH, FL 34217–	
DRIFTWOOD MOTEL		5108 N. GULF DR	HOLMES BEACH, FL 34217–	
HALEYS MOTEL		8102 GULF DR. N	HOLMES BEACH, FL 34217–	
RESORT 66 MOTEL		6600 N. GULF DR	HOLMES BEACH, FL 34217–	
WHITE SANDS MOTEL ANNEX		6802 N. GULF DR	HOLMES BEACH, FL 34217–	
ANHINGA MOTEL		250 S. KROME	HOMESTEAD, FL 33030–7202	
BEL AIR MOTEL		1202 N. KROME AVE	HOMESTEAD, FL 33030–4205	
CARIBE MOTEL		841 N. KROME AVE	HOMESTEAD, FL 33030–4494	
DAYS INN		51 HOMESTEAD BLVD	HOMESTEAD, FL 33030–7497	
ECONO LODGE		27707 S. DIXIE HWY	HOMESTEAD, FL 33032–6221	
EVERGLADES MOTEL		605 S. KROME AVE	HOMESTEAD, FL 33030–7209	
GREEN STONE MOTEL		304 N. KROME AVE	HOMESTEAD, FL 33030–6039	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN		990 HOMESTEAD BLVD	HOMESTEAD, FL 33030–5092	
HOWARD JOHNSON MOTOR LODGE.		1020 HOMESTEAD BLVD	HOMESTEAD, FL 33030–5029	
LAND MARK HOTEL		55 S. FLAGLER AVE	HOMESTEAD, FL 33030–7397	
PARK MOTEL		600 S. KROME AVE	HOMESTEAD, FL 33030–7210	
REDLAND HOTEL		5 S. FLAGLER AVE	HOMESTEAD, FL 33030–7396	
TRADEWINDS MOTEL		846 N. KROME AVE	HOMESTEAD, FL 33030–4407	
WHITE HERON MOTEL		30600 S. DIXIE HWY	HOMESTEAD, FL 33030–	
WILLIAMS HOTEL		402 SW 6TH ST	HOMESTEAD, FL 33030–7145	
HUEYS MOTEL		9566 S. SUNCOAST BLVD	HOMOSASSA, FL 32646–	
RIVERSIDE INN		W. SR 490	HOMOSASSA, FL 32646–6038	
RIVERSIDE INN		W. SR 490	HOMOSASSA, FL 32646–6038	
BELL VILLA MOTEL		3450 S. SUNCOAST BLVD	HOMOSASSA SPRINGS, FL 32647–9999.	
FISH NET MOTEL		8925 HALL RIVER RD	HOMOSASSA SPRINGS, FL 32647–9999.	
SHERATON HOMOSASSA SPRINGS INN.		US HWY. 19	HOMOSASSA SPRINGS, FL 32647–.	
THREE RIVERS MOTEL		S. US 19 1 M	HOMOSASSA SPRINGS, FL 32647–9999.	
HORSESHOE MARINA MOTEL		HORSESHOE MARINA	HORSESHOE BEACH, FL 32648–.	
CRACKERS COVE MOTEL		S. LAKESHORE DR	HOWEY IN THE HILLS, FL 32737–.	
MISSION INN		FLA 19 & FLA 48	HOWEY IN THE HILLS, FL 32737–.	
CORAL SANDS MOTEL		7806 MARYLAND AVE	HUDSON, FL 34667–3261	
FLORIDA WEST MOTEL		15800 N. US HWY. 19	HUDSON, FL 34667–3601	
INN ON THE GULF		6330 CLARK AVE	HUDSON, FL 34667–	
STAR MOTEL		15210 US HWY. 19	HUDSON, FL 34667–3607	
SUNCOAST MOTEL		14920 US HWY. 19	HUDSON, FL 34667–3355	
WORD OF LIFE MOTEL		14800 HUDSON AVE	HUDSON, FL 34669–	
BOBS MOTEL		HWY. 82 BOX 9A	IMMOKALEE, FL 33934–	
MOTEL HWY 29		504 MAIN ST	IMMOKALEE, FL 33934–	
PALMS MOTEL & EFFICIENCIES.		324 S. 2ND ST	IMMOKALEE, FL 33934–4005	
PINE RIDGE MOTEL EFFICIENCIES.		407 S. 3RD ST. REAR	IMMOKALEE, FL 33934–4010	
THE IMMOKALEE INN		721 N. 15TH ST	IMMOKALEE, FL 33934–2805	
BEACH HOUSE MOTEL		405 N. MIRAMAR AVE	INDIALANTIC, FL 32903–3125	
BEACH TROPICS MOTEL		501 N. HWY. A1A	INDIALANTIC, FL 32903–	
HOLIDAY INN MELB OCEANFRONT.		2605 N. HWY. A1A	INDIALANTIC, FL 32903–	
MELBOURNE BEACH HILTON		3003 N. HWY. A1A	INDIALANTIC, FL 32903–	
MONTEREY MOTEL		409 S. MIRAMAR AVE	INDIALANTIC, FL 32903–3260	
OCEAN SHORE MOTEL		1805 N. HWY. A1A	INDIALANTIC, FL 32903–	
OCEAN VIEW MOTEL		2900 N. HWY. A1A	INDIALANTIC, FL 32903–	
OCEANSIDE MOTEL		745 N. HWY. A1A	INDIALANTIC, FL 32903–	
QUALITY SUITES HOTEL		1665 N. SR A1A	INDIALANTIC, FL 32903–	
RADISSON SUITE HOTEL OCEANF.		3101 N. HWY. A1A	INDIALANTIC, FL 32903–	
SEA JOY MOTEL		601 N. MIRAMAR AVE	INDIALANTIC, FL 32903–3129	
SEA SCAPE MOTEL		1745 N. HWY. A1A	INDIALANTIC, FL 32903–	
SHARROCK SHORES MOTEL		1441 S. MIRAMAR AVE	INDIALANTIC, FL 32903–3465	
ALPAUGHS GULF BEACH MOTEL.		68 GULF BLVD	INDIAN ROCKS BEACH, FL 34635–2593.	
HAMLINS LANDING RESORT HOTEL.		401 E. 2ND ST	INDIAN ROCKS BEACH, FL 34635–2531.	
SANDY SHORE MOTEL & APARTMENTS.		816 N. GULF BLVD	INDIAN ROCKS BEACH, FL 34635–2698.	
SEA RESORT MOTEL		102 GULF BLVD	INDIAN ROCKS BEACH, FL 34635–2594.	
SEA STAR MOTEL		1805 N. GULF BLVD	INDIAN ROCKS BEACH, FL 34635–2955.	
WHISPERING WATERS MOTEL		604 N. GULF BLVD	INDIAN ROCKS BEACH, FL 34635–2636.	
LAREGINA MOTEL		19600 GULF BLVD	INDIAN SHORES, FL 34635–2306.	
SUN BURST INN		19204 S. GULF BLVD	INDIAN SHORES, FL 34635–2113.	
INGLIS MOTEL		US 19 & HWY. 40	INGLIS, FL 32649–	
WITHLACOOCHEE MOTEL		66 HWY. 19 S	INGLIS, FL 32649–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
INLET INN MOTEL		HWY. 98	INLET BEACH, FL 32407–	
CENTRAL MOTEL		721 S. US HWY. 41	INVERNESS, FL 32650–6032	
CROWN HOTEL		109 SEMINOLE AVE	INVERNESS, FL 32650–4100	
FLORIDA MOTEL		1301 N. US HWY. 41	INVERNESS, FL 32650–3958	
INVERNESS MOTEL		510 W. MAIN ST	INVERNESS, FL 32650–4749	
CHEECA LODGE		81801 OVERSEAS HWY	ISLAMORADA, FL 33036–	
GOLDEN KEY MOTEL		MM 82 HWY. ONE	ISLAMORADA, FL 33036–	
HARBOR LIGHTS MOTEL		84951 OVERSEAS HWY	ISLAMORADA, FL 33036–	
HOLIDAY ISLE'S H JOHNSON MO.		OVERSEAS HWY	ISLAMORADA, FL 33036–	
ISLANDER MOTEL		MILE MARKER 82 1	ISLAMORADA, FL 33036–9712	
ISLANDER MOTEL		821 MM OVERSEAS HWY	ISLAMORADA, FL 33036–	
KEY LANTERN MOTEL & TRAVEL.		82150 OVERSEAS HWY	ISLAMORADA, FL 33036–	
LA JOLLA RESORT MOTEL		MM 82 3 OVERSEAS	ISLAMORADA, FL 33036–	
LA SIESTA RESORT MOTEL		805 MM HWY. ONE	ISLAMORADA, FL 33036–	
OCEAN VIEW MOTEL & LOUNGE.		MM 84 5 HWY. ONE	ISLAMORADA, FL 33036–	
OCEANSIDE INN		82749 OVERSEAS HWY	ISLAMORADA, FL 33036–9502	
OCEANSIDE INN 2		82749 OVERSEAS HWY	ISLAMORADA, FL 33036–9502	
PLANTATION HARBOR MOTEL		87000 OVERSEAS HWY	ISLAMORADA, FL 33036–9551	
SANDBAR MOTEL		85361 OVERSEAS HWY	ISLAMORADA, FL 33060–	
SHORELINE MOTEL		61 OVERSEAS HWY. 57	ISLAMORADA, FL 33036–	
ADMIRAL BENBOW INN		14691 AIR PORT RD	JACKSONVILLE, FL 32218–	
ADMIRAL BENBOW INN		10550 BALMORAL CIR	JACKSONVILLE, FL 32218–	
AIRPORT LODGE		1153 AIRPORT RD	JACKSONVILLE, FL 32218–2496.	
AIRPORT MOTOR INN N		1500 AIRPORT RD	JACKSONVILLE, FL 32218–2495.	
AMBASSADOR HOTEL & APT		420 JULIA ST	JACKSONVILLE, FL 32202–4199.	
BEST INNS OF AMERICA		8220 DIX ELLIS TRAIL	JACKSONVILLE, FL 32256–8209.	
BEST WESTERN BRADBURY SUITE.		8277 WESTERN WAY	JACKSONVILLE, FL 32256–8323.	
BEST WESTERN EXECUTIVE INN.		10888 HARTS RD	JACKSONVILLE, FL 32218–3705.	
BEST WESTERN INN		5221 W. UNIVERSITY BLVD	JACKSONVILLE, FL 32216–5941.	
BUDGET LODGE OF JACKSONVILLE.		5929 RAMONA BLVD	JACKSONVILLE, FL 32205–4755.	
BUDGETEL INN-JACKSONVILLE.		3199 HARTLEY RD	JACKSONVILLE, FL 32557–	
CITY CENTER MOTEL		2414 PHILLIPS HWY	JACKSONVILLE, FL 32207–3550.	
COMFORT INN OCEANFRONT		1515 N. FIRST ST	JACKSONVILLE, FL 32250–	904–241–2311
COMFORT SUITES HOTEL		8333 DIX ELLIS TRAIL	JACKSONVILLE, FL 32256–	
COMFORT SUITES HOTEL		8333 DIX ELLIS TRAIL	JACKSONVILLE, FL	904–739–1155
COURTYARD BY MARRIOTT		4600 SAN PABLO RD	JACKSONVILLE, FL 32224–1865.	
COURTYARD BY MARRIOTT JACKSONVILLE/MAYO CLINC.		4600 SAN PABLO RD	JACKSONVILLE, FL 32224–	904–223–1700
DAP INN		8142 NEW KINGS RD	JACKSONVILLE, FL 32219–3610.	
DAYS INN		1057 BROWARD RD	JACKSONVILLE, FL 32218–5307.	
DAYS INN		1181 AIRPORT RD	JACKSONVILLE, FL 32218–2401.	
DAYS INN 41		5649 CAGLE RD	JACKSONVILLE, FL 32216–5972.	
DOUBLETREE CLUB HOTEL		4700 SALISBURY RD	JACKSONVILLE, FL 32256–	904–281–9700
DOUBLETREE CLUB HOTEL		4700 SALISBURY RD	JACKSONVILLE, FL 32256–	
ECONO LODGE		6560 RAMONA BLVD	JACKSONVILLE, FL 32205–4624.	
ECONO LODGE		2300 PHILLIPS HWY	JACKSONVILLE, FL 32207–3598.	
ECONO LODGE		5018 W. UNIVERSITY BLVD	JACKSONVILLE, FL 32216–5936.	
ECONO LODGE		2301 PHILLIPS HWY	JACKSONVILLE, FL 32207–	
ECONOMY INNS OF AMERICA		4300 SALISBURY RD	JACKSONVILLE, FL 32216–6124.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ECONOMY MOTELS OF AMERICA.	.....	5959 YOUNGERMAN CIR. E	JACKSONVILLE, FL 32244–6191.	.....
EMBASSY SUITE HOTEL	.....	9300 BAYMEADOWS RD	JACKSONVILLE, FL 32256–7710.	.....
EMERSON INN	.....	3558 PHILLIPS HWY	JACKSONVILLE, FL 32207–5698.	.....
ETTA MOTEL	.....	5913 W. MONCRIEF RD	JACKSONVILLE, FL 32219–3438.	.....
EXPRESSWAY INN MOTEL	.....	3332 SOUTHSIDE BLVD	JACKSONVILLE, FL 32216–4630.	.....
FIGURE 8 MOTEL	.....	8562 NEW KINGS RD	JACKSONVILLE, FL 32219–3618.	.....
FLORIDA MOTEL	.....	10462 NEW KINGS RD	JACKSONVILLE, FL 32219–2418.	.....
GATOR BOWL INN MOTEL	.....	455 HAINES ST	JACKSONVILLE, FL 32202–1599.	.....
HAMPTON INN	.....	6135 YOUNGERMAN CIR	JACKSONVILLE, FL 32244–5607.	.....
HAMPTON INN HOTEL	.....	1170 AIRPORT RD	JACKSONVILLE, FL 32218–2402.	.....
HAMPTON INN-JAX SOUTH	.....	4690 SALISBURY RD	JACKSONVILLE, FL 32256–	.....
HARDTIME MOTEL	.....	154 MC CARGO ST	JACKSONVILLE, FL 32220–2544.	.....
HOLIDAY INN	.....	I–95 & AIRPORT RD	JACKSONVILLE, FL 32229–0409.	.....
HOLIDAY INN—JAX AIRPORT ..	.....	14670 DUVAL RD	JACKSONVILLE, FL 32218–	904–741–4404
HOLIDAY INN BAYMEADOWS ..	.....	9150 BAYMEADOWS RD	JACKSONVILLE, FL 32256–7797.	.....
HOLIDAY INN COMMONWEALTH AV.	.....	I–295 COMMONWEALTH	JACKSONVILLE, FL 32236–	.....
HOLIDAY INN EAST	.....	5865 ARLINGTON EXPRWY	JACKSONVILLE, FL 32211–5627.	.....
HOLIDAY INN EAST AND CONFERENCE CENTER.	.....	5865 ARLINGTON EXPRWY	JACKSONVILLE, FL 32211–	904–724–3410
HOLIDAY INN OCEANFRONT ...	.....	1617 N. FIRST ST	JACKSONVILLE, FL 32250–	904–247–9071
HOMEWOOD SUITES	.....	8737 BAYMEADOWS RD	JACKSONVILLE, FL 32256–	.....
HOSPITALITY INN	.....	7071 103RD ST	JACKSONVILLE, FL 32210–6872.	.....
HOWARD JOHNSON AIRPORT LODGE.	.....	1153 AIRPORT RD	JACKSONVILLE, FL 32229–	904–741–4600
HOWARD JOHNSON LODGE	.....	1055 GOLFAIR BLVD	JACKSONVILLE, FL 32209–4072.	.....
HOWARD JOHNSON MTR LDG 400.	.....	6545 RAMONA BLVD	JACKSONVILLE, FL 32205–4445.	.....
JACKSONVILLE SUPER 8 MOTEL.	.....	10901 HARTS RD	JACKSONVILLE, FL 32218–3704.	.....
JAMES HOTEL	.....	521 W. BAY ST	JACKSONVILLE, FL 32202–4408.	.....
JAX AMERICAN MOTEL	.....	5912 NEW KINGS RD	JACKSONVILLE, FL 32209–2127.	.....
JOE MOTEL	.....	4400 PHILLIPS HWY	JACKSONVILLE, FL 32207–6734.	.....
KINGS INN	.....	8016 ARLINGTON EXPRWY	JACKSONVILLE, FL 32211–7422.	.....
LA QUINTA MOTOR INN 2818 ..	.....	8255 DIX ELLIS TRAIL	JACKSONVILLE, FL 32256–8216.	.....
LA QUINTA MOTOR INN 551	.....	8555 BLANDING BLVD	JACKSONVILLE, FL 32244–5797.	.....
LA QUINTA MOTOR INN 637	.....	812 DUNN AVE	JACKSONVILLE, FL 32218–4803.	.....
LEGETTES MOTEL	.....	6243 COOLIDGE RD	JACKSONVILLE, FL 32219–3030.	.....
MALABAR MOTEL	.....	8375 NEW KINGS RD	JACKSONVILLE, FL 32219–3697.	.....
MARINA HOTEL AT ST JOHNS PL.	.....	1515 PRUDENTIAL DR	JACKSONVILLE, FL 32207–8153.	.....
MARRIOTT HOTEL-JACKSONVILLE.	.....	4670 SALISBURY RD	JACKSONVILLE, FL 32256–0978.	.....
MONTEREY MOTEL	.....	5214 NEW KINGS RD	JACKSONVILLE, FL 32209–2733.	.....
MOTEL 6	.....	6107 YOUNGERMAN CIR	JACKSONVILLE, FL 32244–8607.	.....

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MOTEL 6 0417		10885 HARTS RD	JACKSONVILLE, FL 32218–3704.	
MOTEL 6 1232		8285 DIX ELLIS TRAIL	JACKSONVILLE, FL 32256–8216.	
MT VERNON MOTOR LODGE		3201 PHILLIPS HWY	JACKSONVILLE, FL 32207–4309.	
OMNI JACKSONVILLE HOTEL		245 WATER ST	JACKSONVILLE, FL 32202–4403.	
PALM GARDEN MOTEL		5101 N. MAIN ST	JACKSONVILLE, FL 32208–5319.	
PLANTATION MANOR INN		1630 COPELAND ST	JACKSONVILLE, FL 32204–4320.	
PLAZA MOTOR LODGE		3333 PHILLIPS HWY	JACKSONVILLE, FL 32207–4311.	
QUALITY INN SOUTHSIDE		4660 SALISBURY RD	JACKSONVILLE, FL 32256–	
RADISSON INN		14000 DIXIE CLIPPER RD	JACKSONVILLE, FL 32229–	
RAMADA INN		510 S. LANE AVE	JACKSONVILLE, FL 32205–3591.	
RAMADA INN CONFERENCE CENTER.		3130 HARTLEY RD	JACKSONVILLE, FL 32257–6299.	
RAMADA INN EAST		6237 ARLINGTON EXPRWY	JACKSONVILLE, FL 32211–5798.	
RAMADA INN SOUTH		5624 CAGLE RD	JACKSONVILLE, FL 32216–5971.	
RED CARPET INN		5331 W. UNIVERSITY BLVD	JACKSONVILLE, FL 32216–5997.	
RED CARPET INN		820 DUNNS AVE	JACKSONVILLE, FL 32218–4803.	
RED ROOF INN 81		14701 DUVAL RD	JACKSONVILLE, FL 32218–2461.	
RED ROOF INNS		6099 YOUNGERMAN CIR	JACKSONVILLE, FL 32244–6606.	
RELAX INN		5020 N. MAIN ST	JACKSONVILLE, FL 32206–1446.	
RESIDENCE INN		8365 DIX ELLIS TRAIL	JACKSONVILLE, FL 32256–8224.	
RODEWAY INN		3233 EMERSON ST	JACKSONVILLE, FL 32207–6894.	
SCOTTISH INN		1351 AIRPORT RD	JACKSONVILLE, FL 32218–2403.	
SHAKIR ECONOMY MOTEL		7992 NEW KINGS RD	JACKSONVILLE, FL 32219–3631.	
SIESTA MOTOR INN		3155 PHILLIPS HWY	JACKSONVILLE, FL 32207–4307.	
SIMMONS MOTEL		12208 NEW KINGS RD	JACKSONVILLE, FL 32219–1727.	
SUNSHINE INN		460 S. LANE AVE	JACKSONVILLE, FL 32205–3530.	
THE INN AT BAYMEADOWS		8050 BAYMEADOWS CIR. W	JACKSONVILLE, FL 32256–7769.	
THE PALM VIEW INN		129 N. MARKET ST	JACKSONVILLE, FL 32202–2804.	
TRAVEL INN		747 ARLINGTON RD	JACKSONVILLE, FL 32211–7300.	
TRAVELODGE JAX 1958 BAYMEAD.		8765 BAYMEADOWS RD	JACKSONVILLE, FL 32256–7425.	
TRAVELODGE/BAYMEADOWS		8765 BAYMEADOWS RD	JACKSONVILLE, FL 32206–	904–731–7317
WILSON INN		4580 COLLINS RD	JACKSONVILLE, FL 32073–	
ATLANTIC SHORES MOTEL		923 S. 1ST ST	JACKSONVILLE BEACH, FL 32250–6501.	
CATALINA MOTEL		917 S. 1ST ST	JACKSONVILLE BEACH, FL 32250–6501.	
COMFORT INN OCEANFRONT		1515 N. 1ST ST	JACKSONVILLE BEACH, FL 32250–7399.	
DAYS INN OCEANFRONT RESORT.		1031 S. 1ST ST	JACKSONVILLE BEACH, FL 32250–6525.	
EASTWINDS MOTEL		1505 S. 1ST ST	JACKSONVILLE BEACH, FL 32250–6303.	
EASTWINDS MOTEL		1506 S. 1ST ST	JACKSONVILLE BEACH, FL 32250–6304.	
GOLDEN SANDS MOTEL		127 S. 1ST AVE	JACKSONVILLE BEACH, FL 32250–6823.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HILSMOORE MOTEL		831 N. 1ST ST	JACKSONVILLE BEACH, FL 32250-7105.	
HOLIDAY INN OF JAX BCH		1617 N. 1ST ST	JACKSONVILLE BEACH, FL 32250-7499.	
IN PLACE MOTEL		922 S. 1ST ST	JACKSONVILLE BEACH, FL 32250-6502.	
OCEAN AIR MOTEL		209 BEACH BLVD	JACKSONVILLE BEACH, FL 32250-6899.	
RAMADA RESORT		1201 N. 1ST ST	JACKSONVILLE BEACH, FL 32250-7299.	
SEA BREEZE MOTEL		117 N. 1ST AVE	JACKSONVILLE BEACH, FL 32250-5995.	
SEA RANCH MOTEL		27 S. 1ST ST	JACKSONVILLE BEACH, FL 32250-6897.	
SEASIDE STUDIO MOTEL		222 N. 14TH AVE	JACKSONVILLE BEACH, FL 32250-7333.	
SILVER SEA MOTEL		405 S. 1ST ST	JACKSONVILLE BEACH, FL 32250-6706.	
SUNDECK MOTEL		224 N. BOARDWALK	JACKSONVILLE BEACH, FL 32250-5936.	
SURF SIDE MOTEL		1236 N. 1ST ST	JACKSONVILLE BEACH, FL 32250-7206.	
ECONO LODGE		I-75 & HWY. 6	JASPER, FL 32052-	
MOTEL 6 OF JASPER		I-75 & SR 6	JASPER, FL 32052-	
SCOTTISH INN EAST		175 & SR 6	JASPER, FL 32052-	
SCOTTISH INN WEST		I-75 & SR 6	JASPER, FL 32052-	
TRIANGLE MOTEL	RT 1 BOX 23	S. HWY. 41	JASPER, FL 32052-9761	
HOLIDAY INN		I-75 & STATE RD. 14	JENNINGS, FL 32053-	
HOLIDAY INN OF JENNINGS/ INN OF LAKE CITY, INC.	POST OFFICE 9	I-75 & STATE RD. #143	JENNINGS, FL 32053-	904-938-3501
JENNINGS HOUSE INN		I-75 & SR 143	JENNINGS, FL 32053-	
ROADMASTER INN		I-75 & 143	JENNINGS, FL 32053-	
CORAL REEF MOTEL		2680 NE INDIAN RIVER DR	JENSEN BEACH, FL 34957-5208.	
COURTYARD BY MARRIOTT JENSEN BEACH.		10976 S. OCEAN BLVD	JENSEN BEACH, FL 34957-	407-229-1000
COURTYARD BY MARRIOTT, JENSEN BEACH.		10978 S. OCEAN BLVD	JENSEN BEACH, FL 34957-	407-229-1000
EB8 TIDE MOTEL & APARTMENTS.		2100 NE INDIAN RIVER DR	JENSEN BEACH, FL 34957-5898.	
HOLIDAY INN HUTCHINSON ISLAND.		HWY. A1A	JENSEN BEACH, FL 33457-	
HUTCHINSON INN		9750 S. OCEAN DR	JENSEN BEACH, FL 34957-2345.	
INDIAN RIVER MOTEL		2500 NE INDIAN RIVER DR	JENSEN BEACH, FL 34957-5297.	
JENSEN BEACH MOTEL		3670 NE INDIAN RIVER DR	JENSEN BEACH, FL 34957-4137.	
_AND MARK MOTEL		2135 NE DIXIE HWY	JENSEN BEACH, FL 34957-6496.	
PELICAN REST MOTEL		3580 NE INDIAN RIVER DR	JENSEN BEACH, FL 34957-4136.	
SHERATON INN		10978 S. A1A	JENSEN BEACH, FL 34957-2611.	
HOWARD JOHNSON'S OCEANSIDE.		930 US HWY. 1	JUNO BEACH, FL 33408-1697	
CLUB OF ADMIRALS COVE HOTEL.		200 ADMIRALS COVE BLVD	JUPITER, FL 33477-	
WELLESLEY INN JUPITER		34 FISHERMANS WHARF	JUPITER, FL 33477-9999	
KEATON BEACH MOTEL		SR 361	KEATON BEACH, FL 32347-	
SHERATON ROYAL BISCAYNE HOT.		555 OCEAN DR	KEY BISCAYNE, FL 33149-2307.	
SONESTA BEACH HOTEL		350 OCEAN DR	KEY BISCAYNE, FL 33149-1600.	
KEY COLONY BEACH MOTEL		K C BEACH OCEAN DR	KEY COLONY BEACH, FL 33051-.	
BAY COVE MOTEL		99446 OVERSEAS HWY	KEY LARGO, FL 33037-2494	
BEST WESTERN-SUITES OF KL T.		201 OCEAN DR. MM 100	KEY LARGO, FL 33037-	
BLUE LAGOON RESORT MOTEL.		99096 OVERSEAS HWY	KEY LARGO, FL 33037-	
HOLIDAY INN		100 OVERSEAS HWY. MM	KEY LARGO, FL 33037-	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN KEY LARGO RESORT & MARINA.		99701 OVERSEAS HWY	KEY LARGO, FL 33037–	305–451–2121
HOWARD JOHNSON LODGE		MM 102–5 OVERSEA	KEY LARGO, FL 33037–	
KEY LARGO INN		99201 OVERSEAS HWY	KEY LARGO, FL 33037–1252	
SEA TRAIL MOTEL		OVERSEAS HWY, MM99	KEY LARGO, FL 33037–2203	
SEA VIEW HOTEL		99751 OVERSEAS HWY	KEY LARGO, FL 33037–	
SEAFARER RESORT MOTEL		97820 OVERSEAS HWY	KEY LARGO, FL 33037–	
SHERATON KEY LARGO RESORT.		97000 OVERSEAS HWY	KEY LARGO, FL 33037–2210	
STONELEDGE MOTEL		95320 OVERSEAS HWY	KEY LARGO, FL 33037–2098	
SUNSET COVE MOTEL INCORPORATED.		99860 OVERSEAS HWY	KEY LARGO, FL 33037–	
ATLANTIC SHORES MOTEL		510 SOUTH ST	KEY WEST, FL 33040–3190	
BEST WESTERN KEY AMBASSADOR.		1000 S. ROOSEVELT BLVD	KEY WEST, FL 33040–	
BLUE LAGOON MOTEL		3101 ROOSEVELT BLVD	KEY WEST, FL 33040–4118	
BLUE MARLIN MOTEL		1320 SIMONTON ST	KEY WEST, FL 33040–3114	
COMFORT INN KEY WEST		3824 N. ROOSEVELT BLVD	KEY WEST, FL 33040–4598	
CURRY MANSION INN		811 CAROLINE ST	KEY WEST, FL 33040–	
DAYS INN		3852 ROOSEVELT BLVD	KEY WEST, FL 33040–4596	
ECONO LODGE OF KEY WEST		3820 N. ROOSEVELT BLVD	KEY WEST, FL 33040–4599	
EL RANCHO MOTEL		830 TRUMAN AVE	KEY WEST, FL 33040–5426	
FAIRFIELD INN BY MARRIOTT KEY WEST.		2400 N. ROOSEVELT BLVD	KEY WEST, FL 33040–	305–296–5700
FAIRFIELD INN BY MARRIOTT KEY WEST.		2400 N. ROOSEVELT BLVD	KEY WEST, FL 33040–3897	
HALFRED MOTEL		512 TRUMAN AVE	KEY WEST, FL 33040–3141	
HAMPTON INN		2801 N. ROOSEVELT BLVD	KEY WEST, FL 33040–7799	
HEARTBREAK HOTEL		716 DUVAL ST	KEY WEST, FL 33040–	
HIBISCUS MOTEL		1313 SIMONTON ST	KEY WEST, FL 33040–3113	
HILTON HAVEN MOTEL		N. ROOSEVELT BLVD	KEY WEST, FL 33040–	
HOLIDAY INN BEACHSIDE		3841 ROOSEVELT BLVD	KEY WEST, FL 33040–4549	
HOLIDAY INN BEACHSIDE		3841 N. ROOSEVELT BLVD	KEY WEST, FL 33040–	
HOLIDAY INN LA CONCHA		430 DUVAL ST	KEY WEST, FL 33040–6583	
HOLIDAY INN LA CONCHA		430 DUVAL ST	KEY WEST, FL 33040–	305–296–2991
HOWARD JOHNSON MOTOR LODGE.		3031 N. ROOSEVELT BLVD	KEY WEST, FL 33040–4099	
HYATT KEY WEST		601 FRONT ST	KEY WEST, FL 33040–6620	
KEY LODGE MOTEL		1004 DUVAL ST	KEY WEST, FL 33040–3197	
KEY WESTER RESORT INN		A1A ON THE OCEAN	KEY WEST, FL 33040–	
LA PENSIONE HISTORIC INN		809 TRUMAN AVE	KEY WEST, FL 33040–	
MARRIOTT CASA MARINA RESORT.		1500 REYNOLDS ST	KEY WEST, FL 33040–4768	
PIER HOUSE MOTEL		1 DUVAL ST	KEY WEST, FL 33040–6697	
PIER HOUSE MOTEL NEW BEACH WI.		1 DUVAL ST	KEY WEST, FL 33040–6697	
QUALITY INN OF KEY WEST		3850 N. ROOSEVELT BLVD	KEY WEST, FL 33040–4597	
RAMADA KEYS END		3420 ROOSEVELT BLVD	KEY WEST, FL 33040–4299	
RIVIERA HOTEL & APARTMENTS.		3101 RIVIERA DR	KEY WEST, FL 33040–4673	
SANTA MARIA MOTEL		1401 SIMONTON ST	KEY WEST, FL 33040–3116	
SEASHELL MOTEL KEY WEST YOUTH.		718 SOUTH ST	KEY WEST, FL 33040–4770	
SHERATON SUITES KEY WEST		2001 S. ROOSEVALT BLVD	KEY WEST, FL 33040–	305–292–9800
SHIP AHOY HARBORSIDE MOTEL.		903 EISENHOWER DR	KEY WEST, FL 33040–7209	
SOUTH BEACH OCEAN FRONT MOTEL.		508 SOUTH ST	KEY WEST, FL 33040–3118	
SOUTH BEACH OCEAN FRONT MOTEL.		508 SOUTH ST	KEY WEST, FL 33040–3118	
SOUTHERN CROSS HOTEL		326 DUVAL ST	KEY WEST, FL 33040–6510	
SOUTHERNMOST MOTEL		1300 SIMONTON ST	KEY WEST, FL 33040–3114	
SOUTHERNMOST MOTEL		1319 DUVAL ST	KEY WEST, FL 33040–3193	
SPANISH GARDENS MOTEL		1325 SIMONTON ST	KEY WEST, FL 33040–3113	
SPANISH GARDENS MOTEL		509 SOUTH ST	KEY WEST, FL 33040–3117	
SPINDRIFT MOTEL		1212 SIMONTON ST	KEY WEST, FL 33040–3159	
TROPICAL INN		812 DUVAL ST	KEY WEST, FL 33040–7406	
A–1 MOTEL		4030 W. VINE ST	KISSIMMEE, FL 34741–4631	
ADVENTURE MOTEL		4501 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9063	
ALOHA MOTEL		4643 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9002	
AMBASSADOR MOTEL		4107 W. VINE ST	KISSIMMEE, FL 32741–4503	
APOLLO INN		670 E. VINE ST	KISSIMMEE, FL 32743–4292	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN		2661 E. IRLO BRONSON HWY .	KISSIMMEE, FL 34744–	
BEST WESTERN EAST GATE		5565 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9489	
BEST WESTERN MAINGATE		8600 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
BRAHMAN INN		110 E. DAKIN AVE	KISSIMMEE, FL 34741–	
BUDGET INN EAST		307 E. VINE ST	KISSIMMEE, FL 34744–4308	
BUDGET INN WEST		4686 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
BUENA VISTA MOTEL		5200 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
CASA ROSA INN		4600 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9027	
CENTRAL MOTEL		4598 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–7812	
CHALET MOTEL		4741 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–8582	
CHATEAU MOTEL 2		3516 W. VINE ST	KISSIMMEE, FL 32741–4627	
COMFORT INN MAIN GATE		7571 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9406	
COMFORT INN MAIN GATE		7671 W. IRLO BRONSON MEM. H.	KISSIMMEE, FL 34747–	407–396–7500
COMFORT INN, MAINGATE SOUTH.	450850	I–4 & US 27 N	KISSIMMEE, FL 34745–0850	813–424–2811
COMFORT SUITES		4018 W. VINE ST	KISSIMMEE, FL 34741–	
CONTINENTAL MOTEL		4650 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9027	
CROWN MOTEL		3834 W. VINE ST	KISSIMMEE, FL 32741–4635	
DAYS INN		2095 E. IRLO BRONSON HWY .	KISSIMMEE, FL 34743–	
DAYS INN		2050 E. IRLO BRONSON HWY .	KISSIMMEE, FL 34743–	
DAYS INN AIRPORT		4102 W. VINE ST	KISSIMMEE, FL 32741–9662	
DAYS INN DISNEY EAST		5840 W. IRLO BRONSON HWY	KISSIMMEE, FL 32746–	
DAYS INN DOWNTOWN NORTH.		4125 W. VINE ST	KISSIMMEE, FL 32741–4503	
DAYS INN WEST 6101		7980 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–8511	
DAYS SUITES EAST OF MAGIC KINGDOM.		5820 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9420	
EAST GATE MOTEL		900 E. VINE ST	KISSIMMEE, FL 34744–4551	
ECONO LODGE		4985 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–7847	
ECONO LODGE MAINGATE EAST.		4311 W. VINE ST	KISSIMMEE, FL 34746–	
ECONOLODGE MAIN GATE RESORT.		7514 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9492	
ECONOLODGE MAIN GATE WEST.		8620 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
ECONOLODGE MAINGATE CENTRAL.		4985 W. IRLO BRONSON HWY. WSY2.	KISSIMMEE, FL 34746–	407–368–4343
ECONOMY MOTEL 7		5367 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–7903	
EMBASSY MOTEL		4880 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
ENTERPRISE MOTEL		4121 W. VINE ST	KISSIMMEE, FL 32741–4503	
FAMOUS HOST INN		5875 W. IRLO BRONSON MEM	KISSIMMEE, FL 32741–7917	
FLAMINGO INN		801 E. VINE ST	KISSIMMEE, FL 34744–	
FOUR WINDS MOTEL		4596 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–7843	
FRIENDLY VILLAGE INN		2550 E. IRLO BRONSON HWY .	KISSIMMEE, FL 34744–8659	
GALA VISTA MOTOR INN		5995 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9402	
GATOR MOTEL		4576 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
GEMINI MOTEL		4624 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
GOLDEN LINK MOTEL		4914 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
HAMPTON INN		3104 PARKWAY BLVD	KISSIMMEE, FL 34746–	
HAWAIIAN VILLAGE INN		4559 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–8596	
HILTON INN GATEWAY		7470 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9413	
HO JO INN		9240 W. IRLO BRONSON	KISSIMMEE, FL 34711–	
HO JO'S MAIN GATE EAST		6051 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
HOJO FOUNTAIN PARK PLAZA HO.		5150 W. US 192	KISSIMMEE, FL 34746–	
HOLIDAY INN E OF D W		5678 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9418	
HOLIDAY INN KISSIMMEE		2145 E. IRLO BRONSON HWY .	KISSIMMEE, FL 32743–8948	
HOLIDAY INN MAIN GATE EAST.		5678 IRLO BRONSON HWY	KISSIMMEE, FL 34746–	407–396–4488
HOLIDAY INN MAINGATE WEST.		7601 BLACK LAKE RD	KISSIMMEE, FL 34746–	
HOLIDAY INN MAINGATE WEST.		7601 BLACK LAKE RD	KISSIMMEE, FL 34747–	407–396–1100
HOLIDAY INN-DISNEY-WEST		7300 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9412	
HOWARD JOHNSON EXIT 65		2323 E. IRLO BRONSON HWY .	KISSIMMEE, FL 32743–8942	
HOWARD JOHNSON FOUNTAIN PARK PLAZA HOTEL.		5150 W. US 192	KISSIMMEE, FL 34746–	407–396–1111
HOWARD JOHNSON MAINGATE.		7600 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9410	
HYATT ORLANDO		6375 W. IRLO BRONSON MEM. HWY.	KISSIMMEE, FL 34747–	407–396–1234

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HYATT ORLANDO HOTEL		6375 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9403	
INNS OF AMERICA		2945 ENTRY POINT BLVD	KISSIMMEE, FL 34746–	
JOHNSTONS INN		804 W. BRYAN ST	KISSIMMEE, FL 34741–	
KEY MOTEL		4810 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9090	
KING'S MOTEL		4836 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
KISSIMMEE INN		512 W. VINE ST	KISSIMMEE, FL 32741–4157	
KNIGHTS INN		2800 POINCIANA BLVD	KISSIMMEE, FL 32741–9021	
KNIGHTS INN		7475 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
LAKEVIEW MOTEL		4840 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
LAMBERT INN		410 W. VINE ST	KISSIMMEE, FL 32741–4200	
MAPLE LEAF MOTEL		4647 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9002	
MONTE CARLO MOTEL		4733 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
MOTEL 6 0436		7455 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9639	
MOTEL 6 464		5731 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9486	
MOTEL 9		321 E. VINE ST	KISSIMMEE, FL 32743–4299	
OASIS MOTEL		4736 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–7850	
OLYMPIC MOTEL		4669 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
ORANGE BLOSSOM HOTEL		203 BROADWAY	KISSIMMEE, FL 32741–5715	
ORLANDO/KISSIMMEE HILTON INN GATEWAY.		7470 W. 192	KISSIMMEE, FL 34747–	407–396–4400
PARK INN INTERNATIONAL		4960 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–7816	
PARK INN INTERNATIONAL		2039 E. IRLO BRONSON HWY	KISSIMMEE, FL 32743–8616	
PARK PLANTATION INN		5055 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
PARKWAY MOTEL		4529 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
QUALITY INN LAKE CECILE		4944 W. IRLO BRONSON MEM. HWY.	KISSIMMEE, FL 34746–	407–396–4455
QUALITY INN MAINGATE		7675 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
QUALITY MAINGATE WEST		8660 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
QUALITY SUITES MAINGATE EAST.		5876 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–	
RADISSON INN MAINGATE		7501 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9497	
RAMADA RESORT MAINGATE		2950 REEDY CREEK BLVD	KISSIMMEE, FL 32741–9435	
RAMADA RESORT PARKWAY		2900 PARKWAY BLVD	KISSIMMEE, FL 34746–9448	
RECORD MOTEL		4651 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9002	
RED CARPET INN EAST		4700 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–7804	
RED ROOF INN 204		4970 KYNG'S HEATH RD	KISSIMMEE, FL 32741–	
RIVIERA MOTEL		2248 E. IRLO BRONSON HWY	KISSIMMEE, FL 34743–4420	
RODEWAY INN EAST		201 SIMPSON RD	KISSIMMEE, FL 34743–	
RODEWAY INN EASTGATE		5245 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9018	
SAVE INN		2225 E. IRLO BRONSON HWY	KISSIMMEE, FL 34744–8944	
SEVILLA INN		4640 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
SHERATON-LAKESIDE INN		7769 W. US 192	KISSIMMEE, FL 34747–	
SHONEYS INN		4156 W. VINE ST	KISSIMMEE, FL 32742–	
SLEEP INN MAINGATE		8536 W. IRLO BRONSON HWY	KISSIMMEE, FL 34747–	
SUN MOTEL		5020 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–9004	
SUNRISE MOTEL		801 W. VINE ST	KISSIMMEE, FL 32741–4162	
THE HASTEN INN		2385 N. ORANGE BLOSSOM TRAIL.	KISSIMMEE, FL 34744–	
THE PALM MOTEL		4519 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9063	
THE RESIDENCE INN BY MARRIOTT ON LAKE CECILE.		4786 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–7806	
THRIFTY INN		1620 W. VINE ST	KISSIMMEE, FL 32741–4055	
TRAVELER'S INN		4900 W. IRLO BRONSON HWY	KISSIMMEE, FL 34741–	
TRAVELODGE GOLDEN TRIANGLE.		4944 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–7815	
TRAVELODGE KISSIMMEE FLAGS.		2407 W. VINE ST	KISSIMMEE, FL 32741–3976	
TRAVELODGE MAIN GATE EAST.		5711 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9488	
TRAVELODGE MAIN GATE INN		7785 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–8494	
TRAVELODGE SUITES KISSIMMEE.		4692 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–	
TROPICANA MOTEL		4131 W. VINE ST	KISSIMMEE, FL 34741–	
UNICORN INN		8 S. ORLANDO AVE	KISSIMMEE, FL 34741–5674	
VENTURE MOTEL		1307 MAIN ST	KISSIMMEE, FL 32743–4288	
VIKING MOTEL		4539 W. IRLO BRONSON HWY	KISSIMMEE, FL 34726–	
WILSON WORLD HOTEL MAIN GATE.		7491 W. IRLO BRONSON HWY	KISSIMMEE, FL 34746–8202	
WYNFIELD INN MAINGATE EAST.		5335 W. IRLO BRONSON HWY	KISSIMMEE, FL 32741–9490	
SLEEP INN MAINGATE		8536 W. IRLO BRONSON HWY	KISSIMMEE, FL 34747–	407–396–1600
STAR LITE MOTEL		HWY. 80	LA BELLE, FL 33935–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BIG V MOTEL		32 HALL ST	LABELLE, FL 33935–	
RIVERS EDGE MOTEL		285 N. RIVER RD	LABELLE, FL 33935–6217	
LA HACIENDA HOTEL		1201 AVENIDA CENTRAL	LADY LAKE, FL 32159–	
MELODY MOTOR INN		US HWY. 441–27	LADY LAKE, FL 32659–	
SEAVUE MOTEL		128 LAKE PL	LAGUNA BEACH, FL 32413–2418.	
LAKESIDE VILLAS MOTEL		1255 S. LAKESHORE WAY	LAKE ALFRED, FL 33850–	
BUENA VISTA PALACE		1900 BUENA VISTA DR	LAKE BUENA VISTA, FL 32830–	
COMFORT INN LAKE VUENA VISTA.		8442 PALM PKWY	LAKE BUENA VISTA, FL 32830–	
DAYS INN		12799 APOPKA VINELAND R	LAKE BUENA VISTA, FL 32820–	
DAYS INN BUENA VISTA III 40		12490 APOPKA VINELAND R	LAKE BUENA VISTA, FL 32830–	
DISNEY'S CARRIBBEAN BEACH RESORT.		900 CAYMEN WAY	LAKE BUENA VISTA, FL 32830–	
DISNEY'S DIXIE LANDINGS RES.		1251 DIXIE DR	LAKE BUENA VISTA, FL 32830–	
GROSVENOR RESORT HOTEL		1850 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	
HOTEL ROYAL PLAZA		1905 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	
HOWARD JOHNSON HOTEL		1805 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	
HOWARD JOHNSON RESORT HOTEL.		1805 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	407–828–8888
PORT ORLEANS DIXIE LANDINGS.		2201 ORLEANS DR	LAKE BUENA VISTA, FL 32830–	
THE HILTON AT WALT DISNEY WORLD VILLAGE.		1751 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	
TRAVELODGE HOTEL		2000 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	
TRAVELODGE HOTEL—WALT DISNEY WORLD.		2000 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	407–828–2424
TRAVLEODGE HOTEL/WALT DISNEY WORLD VILLAGE.		2000 HOTEL PLAZA BLVD	LAKE BUENA VISTA, FL 32830–	407–828–2424
W D W VACATION VILLAS		4301 PREVIEW BLVD	LAKE BUENA VISTA, FL 32830–	
WALT DISNEY WORLD DOLPHIN H.		1500 EPCOT RESORT BLVD	LAKE BUENA VISTA, FL 32830–	
WALT DISNEY WORLD SWAN		1200 EPCOT RESORT BLVD	LAKE BUENA VISTA, FL 32830–	
A–1 INN		E. I–75 & 90	LAKE CITY, FL 32055–	
AMERICAN INN		US 90 & I–75	LAKE CITY, FL 32055–	
BEST WESTERN INN		I–75 & US 90	LAKE CITY, FL 32055–	
CYPRESS INN		HWY. 90 & I–75	LAKE CITY, FL 32055–	
DAYS INN OF LAKE CITY		I–75 & US 90	LAKE CITY, FL 32055–	
DIPLOMAT MOTEL		I–75 & 41	LAKE CITY, FL 32055–	
DRIFTWOOD MOTEL		W. US 90	LAKE CITY, FL 32055–	
ECONO LODGE		HWY. 1 75 & US 90	LAKE CITY, FL 32055–	
EXECUTIVE INN		I–75 & US 90	LAKE CITY, FL 32055–	
FRIENDSHIP INN		I–75 & HWY. 90	LAKE CITY, FL 32056–	
GATEWAY INN MOTEL		HWY. 90 & I75	LAKE CITY, FL 32055–	
GOLFERS INN		I–75 & 90	LAKE CITY, FL 32055–	
HOLIDAY INN		W. I–75 & US 90	LAKE CITY, FL 32055–	
HOLIDAY INN, LAKE CITY	PO BOX. 1239	US HWY.90 W.@I–75	LAKE CITY, FL 32055–	904–752–3901
HOLIDAY MOTEL	RT 6 BOX	S. HWY. 441 & 41	LAKE CITY, FL 32055–	
HOWARD JOHNSON MOTOR LODGE 400.	RT 8 BOX	I–75 & 90	LAKE CITY, FL 32055–	
MOTEL 6 419		I–75 & US 90	LAKE CITY, FL 32055–	
MOTEL 8		I–75 & SR 47	LAKE CITY, FL 32055–	
QUALITY INN		W. I–75 & US 90	LAKE CITY, FL 32055–	
RAIN BO INN		246½ RAILROAD ST	LAKE CITY, FL 32055–	
RODEWAY INN		HWY. 90 & I–75	LAKE CITY, FL 32055–	
SANDS MOTEL		2780 E. HWY. 90 DUVAL ST	LAKE CITY, FL 32055–3118	
SCOTTISH INNS		I–75 & 90	LAKE CITY, FL 32055–	
SEMINOLE MOTEL		S. US 41	LAKE CITY, FL 32055–	
SUNDIAL MOTEL		S. HWY. 41 & 441	LAKE CITY, FL 32055–	
SUPER 8 MOTEL		I–75 & STATE RD. 4	LAKE CITY, FL 32055–	
THUNDERBIRD MOTOR LODGE & EFFICIENCIES.		S. HWY. 41	LAKE CITY, FL 32655–	
TRAVELERS INN MOTEL		US 41 & I–75	LAKE CITY, FL 32055–	
TRAVELODGE		I–75 & HWY. 90	LAKE CITY, FL 32055–	
KING EDWARD'S MOTEL		CR 491 & I–75	LAKE PANASOFFKEE, FL 33538–.	
LAKESHORE RESORT MOTEL		SUNSET DR	LAKE PLACID, FL 33852–	
LEISURE LAKES MOTEL		1040 LAKE JUNE BLVD	LAKE PLACID, FL 33852–8936	
SUNSHINE MOTEL & APARTMENTS.		410 PLAZA AVE	LAKE PLACID, FL 33852–9502	
VERANDA INN		2165 S. US 27	LAKE PLACID, FL 33852–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BUDGET MOTEL		1418 HWY. 27 S	LAKE WALES, FL 33853–8159	
CHALET SUZANNE COUNTRY INN.		3800 CHALET SUZANNE DR	LAKE WALES, FL 33859–9003	
ECONO LODGE		501 S. HWY. 27	LAKE WALES, FL 33853–4518	
EMERALD MOTEL		530 S. SCENIC HWY	LAKE WALES, FL 33853–4840	
GROVE MOTEL		430 S. SCENIC HWY	LAKE WALES, FL 33853–4814	
HOLIDAY MOTEL		915 S. HWY. 27	LAKE WALES, FL 33853–4508	
KNIGHTS INN		541 W. CENTRAL AVE	LAKE WALES, FL 33853–4019	
LAKE SIDE MOTEL		629 HWY. 27 S	LAKE WALES, FL 33853–4550	
LANTERN MOTEL		3949 N. HWY. 27	LAKE WALES, FL 33853–7833	
LAUREL MOTEL		801 S. HWY. 27	LAKE WALES, FL 33853–4555	
MOUNTAIN LAKE CLUB HOTEL		N. ALT HWY. 27	LAKE WALES, FL 33853–	
RIDGE MOTOR INN EAST		513 S. SCENIC HWY	LAKE WALES, FL 33853–4833	
RIDGE MOTOR INN WEST		500 S. SCENIC HWY	LAKE WALES, FL 33853–4834	
RIVER RANCH MOTEL		24700 E. HWY. 60	LAKE WALES, FL 33853–	
ROYAL INN		1747 N. HWY. 27	LAKE WALES, FL 33853–7801	
SEMINOLE HOTEL		207 N. 1ST ST	LAKE WALES, FL 33853–4134	
STARR LAKE MOTEL		3901 N. ALT 27	LAKE WALES, FL 33853–4802	
THE BIG OAK MOTEL		3618 N. ALT 27	LAKE WALES, FL 33853–	
THE GRAND HOTEL		115 N. 1ST ST	LAKE WALES, FL 33853–4184	
TOWER VIEW MOTEL		1518 N. ALT HWY. 27	LAKE WALES, FL 33853–3272	
TRAVELERS INN		830 US 27 S	LAKE WALES, FL 33853–	
VILLAGE MOTEL		10 W. BULLARD AVE	LAKE WALES, FL 33853–4150	
AIRWAY MOTEL & APARTMENTS.		409 N. 6TH AVE	LAKE WORTH, FL 33460–3107	
BREEZE WAY MOTEL		2001 N. DIXIE HWY	LAKE WORTH, FL 33460–6293	
BUDGET INN		828 S. DIXIE HWY	LAKE WORTH, FL 33460–5042	
CADET MOTOR INN		1104 S. DIXIE	LAKE WORTH, FL 33460–5299	
CARIBBEAN VILLAS MOTEL		1528 S. FEDERAL HWY	LAKE WORTH, FL 33460–5764	
CEDAR MOTEL		524 S. FEDERAL HWY	LAKE WORTH, FL 33460–4699	
COLONIAL LODGE MOTEL		507 S. DIXIE HWY	LAKE WORTH, FL 33460–4444	
COLONIAL VILLAGE MOTEL		7448 LAKE WORTH RD	LAKE WORTH, FL 33467–2531	
CONGRESS MOTEL & APARTMENTS.		4787 S. CONGRESS AVE	LAKE WORTH, FL 33461–4735	
F-LAND MOTEL		714 N. FEDERAL HWY	LAKE WORTH, FL 33460–2645	
FINLANDIA HOTEL		605 N. FEDERAL HWY. APARTMENT.	LAKE WORTH, FL 33460–3166	
GULFSTREAM HOTEL		1 LAKE AVE	LAKE WORTH, FL 33460–3990	
HOLIDAY INN		7859 LAKE WORTH RD	LAKE WORTH, FL 33467–3299	
IXORA MOTEL 1		722 N. DIXIE HWY	LAKE WORTH, FL 33460–2590	
LAGO MOTOR INN		714 S. DIXIE	LAKE WORTH, FL 33460–4951	
MECCA INN		1402 S. FEDERAL HWY	LAKE WORTH, FL 33460–5759	
NEW MCCARTY HOTEL		629 LUCERNE AVE	LAKE WORTH, FL 33460–3884	
NORTH DIXIE MOTEL		1131 N. DIXIE HWY	LAKE WORTH, FL 33460–2186	
NOVA MOTEL		1114 N. FEDERAL HWY	LAKE WORTH, FL 33460–2320	
PAUL'S MOTEL		5445 LAKE WORTH RD	LAKE WORTH, FL 33463–3355	
PAULA MOTEL		1132 S. FEDERAL HWY	LAKE WORTH, FL 33460–5244	
SEA WULF INN		1016 S. FEDERAL HWY	LAKE WORTH, FL 33460–5139	
SOUTHGATE MOTEL		709 S. DIXIE	LAKE WORTH, FL 33460–4997	
SUN GATE MOTEL		901 S. FEDERAL HWY	LAKE WORTH, FL 33460–5136	
SUN N SAND MOTEL & APARTMENTS.		1616 N. FEDERAL HWY	LAKE WORTH, FL 33460–6639	
SWISS CHALET MOTEL		531 S. FEDERAL HWY	LAKE WORTH, FL 33460–4696	
THREE PALMS MOTEL		1601 S. FEDERAL HWY	LAKE WORTH, FL 33460–5841	
TIP TOP MOTEL		504 S. DIXIE HWY	LAKE WORTH, FL 33460–4489	
TRAVEL INN MOTEL & APARTMENTS.		611 N. FEDERAL HWY	LAKE WORTH, FL 33460–3161	
TREETOPS MOTEL		5475 W. LAKE WORTH RD	LAKE WORTH, FL 33463–3396	
WHITE MANOR MOTEL		1618 S. FEDERAL HWY	LAKE WORTH, FL 33460–5694	
BRADLEY MOTEL		3208 E. US 92	LAKELAND, FL 33801–	
BUDGET INN		1601 GEORGE JENKINS BL	LAKELAND, FL 33801–3729	
COZY COURT MOTEL		US 92 E	LAKELAND, FL 33801–	
ECONO LODGE		1817 E. MEMORIAL BLVD	LAKELAND, FL 33801–2226	
EVERGREEN MOTEL		6650 NEW TAMPA HWY	LAKELAND, FL 33801–3127	
HOLIDAY INN NORTH		I–4 & STATE 33	LAKELAND, FL 33809–	
HOLIDAY INN SOUTH		3405 S. FLORIDA AVE	LAKELAND, FL 33803–4798	
LUELL MOTEL		1337 E. MAIN ST	LAKELAND, FL 33801–5714	
MARYLAND MOTEL		1433 LAKELAND HILLS BL	LAKELAND, FL 33805–3201	
MOTEL 6 677		3120 N. US 98	LAKELAND, FL 33805–	
PASSPOLT INN		740 E. MAIN ST	LAKELAND, FL 33801–5083	
PRESTLER MOTEL		2435 NEW TAMPA HWY	LAKELAND, FL 33801–3456	
QUALITY INN LAKELAND		3311 N. US 98	LAKELAND, FL 33805–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RAMA INN		601 E. MEMORIAL BLVD	LAKELAND, FL 33801–1645	
RAMADA INN		910 E. MEMORIAL BLVD	LAKELAND, FL 33801–1999	
RAMADA INN		3260 S. US HWY. 98	LAKELAND, FL 33809–	
RED CARPET INN		3410 US 98 N	LAKELAND, FL 33805–	
RED CARPET INN		1539 E. MEMORIAL BLVD	LAKELAND, FL 33801–2297	
ROYALTY INN		3425 I–4 & US 98 N	LAKELAND, FL 33805–	
SCOTTISH INN		244 N. FLORIDA AVE	LAKELAND, FL 33801–4902	
SHALAMAR INN		508 E. MEMORIAL BLVD	LAKELAND, FL 33801–1899	
SHERATON HOTEL		4141 S. FLORIDA AVE	LAKELAND, FL 33813–1626	
SHERATON INN & CONFERENCE CENTER.		4141 S. FLORIDA AVE	LAKELAND, FL 33813–	813–647–3000
SIESTA MOTEL		1527 GEORGE JENKINS BL	LAKELAND, FL 33801–1371	
SUNSET MOTEL		2301 NEW TAMPA HWY	LAKELAND, FL 33801–3454	
THOMPSON 40 ACRE MOTEL		2025 W. MEMORIAL BLVD	LAKELAND, FL 33801–1111	
TIGER VILLA MOTEL		6000 NEW TAMPA HWY	LAKELAND, FL 33801–3138	
WHITE SWAN MOTEL		1136 E. ROSE ST	LAKELAND, FL 33801–2018	
SUNNY PALMS MOTEL		4339 LAND-O-LAKES BLVD	LAND-O-LAKES, FL 34639–3603	
BAREFOOT MAILMAN MOTEL		138 S. DIXIE HWY	LANTANA, FL 33462–3211	
KNIGHTS INN		1255 HYPOLUXO RD	LANTANA, FL 33462–4223	
MOTEL 6 688		1310 W. LANTANA RD	LANTANA, FL 33462–	
BELLEAIR VILLAGE MOTEL		1025 CLEARWATER LARGO	LARGO, FL 34640–4149	
BIRDSONGS MOTEL		12930 SEMINOLE BLVD	LARGO, FL 34648–2311	
HERITAGE VILLAGE & INN		12840 SEMINOLE BLVD	LARGO, FL 34648–2303	
LARGO HOTEL		69 SW 1ST ST	LARGO, FL 34640–3654	
MICHIANA MOTEL		12976 SEMINOLE BLVD	LARGO, FL 34648–2390	
PINE GROVE MOTEL		4630 E. BAY DR	LARGO, FL 34624–5703	
SUNBEAM MOTEL		264 CLEARWATER LARGO	LARGO, FL 34640–	
A 1 A ATLANTIC INN		4132 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–5423.	
A LITTLE INN		4546 ELMAR DR	LAUDERDALE BY SEA, FL 33308–3608.	
BLACK DOLPHIN MOTEL		4536 POINCIANA ST	LAUDERDALE BY SEA, FL 33308–3517.	
CAPTAINS QUARTERS RESORT MT.		4628 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3620.	
CAROUSEL RESORT MOTEL		4245 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–5479.	
CASTLE BY THE SEA MOTEL		4520 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3611.	
EGRET RESORT MOTEL		4220 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–5425.	
GREENLANTERN MOTEL		4529 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3610.	
HOLIDAY INN		4116 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–5498.	
HOWARD JOHNSON MOTOR LODGE.		4660 OCEAN DR	LAUDERDALE BY SEA, FL 33308–3687.	
HOWARD JOHNSON MOTOR LODGE.		4660 ELMAR DR	LAUDERDALE BY SEA, FL 33308–3618.	
KULEANA BY THE SEA MOTEL		4105 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–5422.	
LA CELE MOTEL		4553 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3610.	
LAUDERDALE BY THE SEA MOTEL.		4229 OCEAN DR	LAUDERDALE BY SEA, FL 33308–5424.	
MARDI GRAS MOTEL		4312 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–5026.	
SEA GARDEN MOTEL		4625 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3619.	
SEA GULL MOTEL		4413 ELMAR DR	LAUDERDALE BY SEA, FL 33308–3657.	
SEA LORD RESORT MOTEL		4140 ELMAR DR	LAUDERDALE BY SEA, FL 33308–5400.	
SEA SPRAY INN		4245 ELMAR DR	LAUDERDALE BY SEA, FL 33308–5466.	
SEASCAPE MOTEL		4425 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3634.	
SEASIDE AND OCEAN ECHO MOTEL.		4605 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3619.	
SHORE HAVEN MOTOR INN		4433 OCEAN DR	LAUDERDALE BY SEA, FL 33308–3634.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SILVER SWAN MOTEL		4208 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–5425.	
SKYLARK MOTEL		4620 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3620.	
THUNDERBIRD MOTEL		4521 OCEAN DR	LAUDERDALE BY SEA, FL 33308–3610.	
TIDES INN		4628 ELMAR DR	LAUDERDALE BY SEA, FL 33308–3618.	
TROPICASA MOTEL & APARTMENT.		4641 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3619.	
VILLA ORLEANS MOTEL		4513 N. OCEAN DR	LAUDERDALE BY SEA, FL 33308–3610.	
DESERT ISLE MOTEL		N. US 301	LAWTEY, FL 32058–	
TRAIL MOTEL		N. US 301 1 M	LAWTEY, FL 32058–	
BIG BASS MOTEL		108 N. 14TH ST	LEESBURG, FL 32748–4820	
BUDGET HOST INN		1225 N. 14TH ST	LEESBURG, FL 34748–3896	
CANDLELIGHT MOTEL		1306 S. 14TH ST	LEESBURG, FL 32748–6623	
DAYS INN		1308 N. 14TH ST	LEESBURG, FL 32748–3499	
DELUXE MOTEL		113 N. 14TH ST	LEESBURG, FL 32748–4819	
ECONO LODGE		1115 W. NORTH BLVD	LEESBURG, FL 32748–3952	
LAKE SIDE MOTEL		2474 CITRUS BLVD	LEESBURG, FL 32748–7201	
LEE MOTEL		201 S. 14TH ST	LEESBURG, FL 34748–5613	
MARIETTA MOTEL		1911 CITRUS BLVD	LEESBURG, FL 32748–3097	
OAKWOOD MOTEL		2110 N. CITRUS BLVD	LEESBURG, FL 32748–3007	
OHIO MOTEL		2010 CITRUS BLVD	LEESBURG, FL 32748–3005	
PALMS MOTEL		1412 S. 14TH ST	LEESBURG, FL 32748–6625	
RANDYS MOTEL		802 S. 14TH ST	LEESBURG, FL 32748–5620	
SCOTTISH INNS		1321 N. 14TH ST	LEESBURG, FL 32748–3408	
SUPER 8 MOTEL		1392 W. NORTH BLVD	LEESBURG, FL 32748–	
TOPPER MOTEL		2204 CITRUS BLVD	LEESBURG, FL 32748–3009	
WINDMILL MOTEL		24926 HWY. 27	LEESBURG, FL 32748–	
LEHIGH RESORT MOTEL		225 E. JOEL BLVD	LEHIGH ACRES, FL 33936–5298.	
BEST WESTERN INN		N. HWY. 129 & I–10	LIVE OAK, FL 32060–	
ECONO LODGE		I 75 & HWY. 129	LIVE OAK, FL 32060–	
LIVE OAK MOTEL		827 W. HOWARD ST. US 90	LIVE OAK, FL 32060–	
PARKER MOTEL		966 N. OHIO	LIVE OAK, FL 32060–1859	
SCOTTISH INN		827 W. HOWARD ST. US 90	LIVE OAK, FL 32060–	
BIG BEND TRUCKS STOP INN		SR 59 AT I–10	LLOYD, FL 32337–9999	
HOLIDAY INN		4949 GULF OF MEXICO DR	LONGBOAT KEY, FL 34228–2091.	
LONGBOAT KEY HILTON		4711 GULF OF MEXICO DR	LONGBOAT KEY, FL 34228–2103.	
RIVIERA BEACH MOTEL		5451 GULF OF MEXICO DR	LONGBOAT KEY, FL 34228–1990.	
STARFISH MOTEL		2929 GULF OF MEXICO DR	LONGBOAT KEY, FL 34228–2895.	
LAKE FAIRY MOTEL		1190 S. HWY. 17–92	LONGWOOD, FL 32750–5598	
LAKE KATHRYN MOTEL		1995 S. HWY. 17–92	LONGWOOD, FL 32750–6557	
QUALITY INN NORTH		2025 STATE RD. 434	LONGWOOD, FL 32759–	407–862–4000
QUALITY INN OF LONGWOOD		2025 W. SR 434	LONGWOOD, FL 32779–	
STATEN MOTEL		1046 S. HWY. 17–92	LONGWOOD, FL 32750–5597	
DAYS INN		1499 S. 6TH ST	MACCLENNY, FL 32063–	
ECONO LODGE		I–10 W. OF HWY. 121	MACCLENNY, FL 32063–	
EXPRESSWAY MOTEL		I–10 AND HWY. 121 S	MACCLENNY, FL 32063–	
ARROW MOTEL		13398 GULF LN	MADEIRA BEACH, FL 33708–	
GREEN TURTLE INN		12850 E. GULF BLVD	MADEIRA BEACH, FL 33708–	
GULF STREAM MOTEL		13007 GULF BLVD	MADEIRA BEACH, FL 33708–2636.	
HOLIDAY INN OF MADEIRA BEACH.		15208 GULF BLVD	MADEIRA BEACH, FL 33708–1815.	
HOLIDAY MADEIRA BEACH		15208 GULF BLVD	MADEIRA BEACH, FL 33708–	813–392–2275
JOHNS PASS MOTEL		12991 WILLIAMS AVE	MADEIRA BEACH, FL 33708–2640.	
LIGHTHOUSE MOTEL & APARTMENTS.		13355 E. 2ND ST	MADEIRA BEACH, FL 33708–2409.	
SCHOONER RESORT MOTEL		14500 GULF BLVD	MADEIRA BEACH, FL 33708–2148.	
SEA SHORE MOTEL		13646 GULF BLVD	MADEIRA BEACH, FL 33708–2520.	
SHORELINE ISLAND RESORT MOTEL.		14231 GULF BLVD	MADEIRA BEACH, FL 33708–2236.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SHORELINE ISLAND RESORT MOTEL		14200 GULF BLVD	MADEIRA BEACH, FL 33708–2264.	
SKYLINE MOTEL & APARTMENTS.		13999 GULF BLVD	MADEIRA BEACH, FL 33708–2525.	
SURFS INN		14010 GULF BLVD	MADEIRA BEACH, FL 33708–2213.	
TARPON MOTEL		13015 GULF BLVD	MADEIRA BEACH, FL 33708–2636.	
WAVES MOTEL & APARTMENTS.		13343 GULF BLVD	MADEIRA BEACH, FL 33708–2513.	
WHITE SANDS MOTEL		13701 GULF BLVD	MADEIRA BEACH, FL 33708–2521.	
WITS END MOTEL		13600 GULF BLVD	MADEIRA BEACH, FL 33708–2520.	
FRIENDSHIP INN		SR 53 & I 10	MADISON, FL 32340–	
FRIENDSHIP INN		RT. 1, BOX 3095	MADISON, FL 32340–	904–973–2504
MADISON INN MOTEL		W. HWY. 90	MADISON, FL 32340–	
EL RANCHO MOTEL		250 N. ORLANDO AVE	MAITLAND, FL 32751–5506	
SHERATON ORLANDO NORTH		600 LAKE DESTINY DR	MAITLAND, FL 32751–4145	
THE RITZ-CARLTON PALM BEACH.		100 S. OCEAN BLVD	MANALAPAN, FL 33462–3311	
ANCHOR LITE HOTEL		11699 OVERSEAS HWY	MARATHON, FL 33050–3632	
BLUEWATERS MOTEL		2222 OVERSEAS HWY	MARATHON, FL 33050–2298	
COCONUT GROVE MOTEL		4900 OVERSEAS HWY. B61	MARATHON, FL 33050–	
CORAL LAGOON RESORT MOTEL		12399 OVERSEAS HWY	MARATHON, FL 33050–3585	
HOWARD JOHNSON RESORT		13351 OVERSEAS HWY	MARATHON, FL 33050–3550	
JO JOS MOTEL	RT 1 BOX 419		MARATHON, FL 33050–9765	
KINGSAIL RESORT MOTEL		7076 OVERSEAS HWY	MARATHON, FL 33050–3143	
KINGSAIL RESORT MOTEL		7050 OVERSEAS HWY	MARATHON, FL 33050–3140	
MARATHON INN		13201 OVERSEAS HWY	MARATHON, FL 33050–3597	
PEACE INN		7931 OVERSEAS HWY. BOX 2	MARATHON, FL 33050–3120	
PELICAN MOTEL	RT 1 BOX 528		MARATHON, FL 33050–9763	
RANCH HOUSE MOTEL		7251 OVERSEAS HWY	MARATHON, FL 33050–3134	
ROYAL HAWAIIAN HOTEL		12020 OVERSEAS HWY	MARATHON, FL 33050–3525	
SANDPIPER MOTEL		2443 OVERSEAS HWY	MARATHON, FL 33050–2246	
SEADELL MOTEL		5000 OVERSEAS HWY	MARATHON, FL 33050–2694	
SEAWARD RESORT MOTEL		8700 HWY. ONE	MARATHON, FL 33050–	
SIESTA MOTEL		7425 OVERSEAS HWY	MARATHON, FL 33050–3130	
VACA KEY MOTEL		HWY. ONE	MARATHON, FL 33050–	
DAYS INN		13201 OVERSEAS HWY	MARATHON SHORES, FL 33050–3597.	
MARRIOTT MARCO BEACH HOTEL.		400 S. COLLIER BLVD	MARCO, FL 33937–5397	
LAKESIDE INN		155 1ST AVE	MARCO ISLAND, FL 33937–3613.	
MARCO BEACH HILTON		560 S. COLLIER BLVD	MARCO ISLAND, FL 33937–5503.	
RADISSON SUITE RESORT		600 S. COLLIER BLVD	MARCO ISLAND, FL 33937–5604.	
COUNTRY HAVEN MOTEL		1100 SR 7	MARGATE, FL 33063–2839	
LAKESHORE MOTEL		1000 N. STATE RD. 7	MARGATE, FL 33063–3640	
SETON VILLAS MOTEL		1311 N. STATE RD. 7	MARGATE, FL 33063–	
BEST WESTERN MARIANNA		I–10 & SR 71	MARIANNA, FL 32446–	
BUDGET INN		4135 W. LAFAYETTE ST	MARIANNA, FL 32446–2504	
BUDGET INN		4135 W. LAFAYETTE ST	MARIANNA, FL 32446–2503	
COMFORT INN		SR 71 & I–10	MARIANNA, FL 32446–	
ECONO LODGE		4113 W. LAFAYETTE ST	MARIANNA, FL 32446–2500	
HOLIDAY INN OF MARIANA	PO BOX 979	E. HWY. 90	MARIANNA, FL 32446–	
LEES MOTEL	RT 7 BOX 29		MARIANNA, FL 32446–8901	
SANDUSKY MOTEL		4168 LAFAYETTE ST	MARIANNA, FL 32446–2654	
DOLORES MOTEL		S. HWY. A1A 3M	MARINELAND, FL 32084–	
QUALITY INN MARINELAND		HWY. A1A	MARINELAND, FL 32086–	
DETROIT RESORT MOTEL		US. 41–4M S. HERN C	MASARYKTOWN, FL 34610–7453.	
KING MOTEL		S S US 41–HERN CO LI	MASARYKTOWN, FL 34610–	
LA SIESTA MOTEL		371 BROAD ST	MASARYKTOWN, FL 34609–7310.	
MARY ANN MOTEL		212 S. BROAD ST	MASARYKTOWN, FL 34609–	
GROVELAND MOTEL		S. FL 50 & 33	MASCOTTE, FL 32753–9999	
GUSTAFSON MOTEL		11458 MAY ST	MATLACHA, FL 33909–	
COLONIAL MOTEL		1310 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–3249	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COMFORT INN		8298 N. WICKHAM RD	MELBOURNE, FL 32904–	
COURTYARD BY MARRIOTT/ MELBOURNE.		2101 W. NEW HAVEN	MELBOURNE, FL 32904–	407–724–6400
DAYS INN		4455 W. NEW HAVEN AVE	MELBOURNE, FL 32904–3399	
ECONO LODGE MOTEL		420 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–1326	
ECONO TRAVEL MOTEL HOTEL.		10911 W. NEW HAVEN AVE	MELBOURNE, FL 32901–	
FLAMINGO MOTEL		1809 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–4743	
HOLIDAY INN WEST		4500 W. NEW HAVEN AVE	MELBOURNE, FL 32904–3398	
INDIANOLA MOTEL EFF		3915 N. HARBOR CITY BLVD	MELBOURNE, FL 32935–5757	
LYNN HAVEN MOTEL		4018 HARBOR CITY BLVD	MELBOURNE, FL 32935–4838	
MELBOURNE HARBOR MOTEL		1207 E. NEW HAVEN AVE	MELBOURNE, FL 32901–7392	
MELBOURNE HILTON AT RIALTO.		200 RIALTO BLVD	MELBOURNE, FL 32901–	
MELBOURNE RIVERVIEW INN		440 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–1397	
RAMADA RIVER FRONT MELBOURN.		964 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–1995	
RIO VISTA MOTEL		1046 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–1911	
RIVER OAKS MOTEL EFF		1437 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–3235	
RIVERSIDE INN		1423 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–3293	
ROYALTY INN		1515 S. HARBOR CITY BLVD	MELBOURNE, FL 32901–4695	
TOPPER MOTEL		58 HARBOR CITY BLVD	MELBOURNE, FL 32935–6760	
WATERWAY MOTEL		6191 N. HARBOUR CITY BLVD	MELBOURNE, FL 32940–7433	
FLORIDANA BEACH MOTEL		6580 S. HWY. A1A	MELBOURNE BEACH, FL 32905–2218.	
JOLLY ROGER MOTEL		5685 S. HWY. A1A	MELBOURNE BEACH, FL 32905–2014.	
MELBOURNE BEACH MOTEL		3120 S. HWY. A1A	MELBOURNE BEACH, FL 32905–1627.	
SAMPERTON'S INN		3135 S. HWY. A1A	MELBOURNE BEACH, FL 32951–.	
SANDGATE MOTEL		4835 S. HWY. A1A	MELBOURNE BEACH, FL 32905–1916.	
SANDY BROOKE MOTEL		8795 HWY. A1A	MELBOURNE BEACH, FL 32951–.	
SANDY SHOES MOTEL		3455 S. HWY. A1A	MELBOURNE BEACH, FL 32905–1832.	
SEA VIEW RESORT MOTEL		4215 S. HWY. A1A	MELBOURNE BEACH, FL 32905–1904.	
SEBASTIAN BEACH INN		7035 S. HWY. A1A	MELBOURNE BEACH, FL 32951–.	
SURF CASTER MOTEL		5935 S. HWY. A1A	MELBOURNE BEACH, FL 32905–2110.	
ALADDIN MOTEL		430 W. MERRITT ISLAND CS	MERRITT ISLAND, FL 32952–4810.	
HOLIDAY INN MERRITT ISLAND.		260 E. MERRITT ISLAND CSWY	MERRITT ISLAND, FL 32952–3697.	
BLUE WATER INN & MARINA		102 MIRAMAR DR	MEXICO BEACH, FL 32410–	
BUENA VISTA MOTEL & APARTMENTS.		HWY. 98	MEXICO BEACH, FL 32410–	
DRIFTWOOD MOTEL	PO BOX 1344	HWY. 98	MEXICO BEACH, FL 32410–	
EL GOVERNOR MOTEL		HWY. 98	MEXICO BEACH, FL 32410–	
GULFVIEW MOTEL		US 98 AND 15TH ST	MEXICO BEACH, FL 32410–	
MEXICO BEACH MOTEL		HWY. 98	MEXICO BEACH, FL 32410–	
PELICAN POINTE MOTEL		HWY. 98	MEXICO BEACH, FL 32410–	
SANDMAN MOTEL AND APARTMENTS.		HWY. 98	MEXICO BEACH, FL 32410–	
SURF SIDE MOTEL		S. 38TH ST	MEXICO BEACH, FL 32410–	
27 AVENUE MOTEL		8929 NW 27TH AVE	MIAMI, FL 33147–3557	
7 SEAS MOTEL		5940 BISCAYNE BLVD	MIAMI, FL 33137–2296	
77 MOTEL		3021 SW 8TH ST	MIAMI, FL 33135–4531	
AIRLINER MOTEL		4155 NW 24TH ST	MIAMI, FL 33142–6717	
AIRPORT LAKES HOLIDAY INN		1101 NW 57TH AVE	MIAMI, FL 33126–2009	
AIRPORT REGENCY HOTEL		1000 NW 42ND AVE	MIAMI, FL 33126–3697	
BARLINGTON HOTEL		1350 NW 2ND ST	MIAMI, FL 33125–5699	
BAY POINT MOTEL		3530 N. BISCAYNE BLVD	MIAMI, FL 33137–3895	
BAYSIDE MOTOR INN		5125 BISCAYNE BLVD	MIAMI, FL 33137–3219	
BEST VALUE INN		5255 N. BISCAYNE BLVD	MIAMI, FL 33137–3231	
BUDGET INN		5215 BISCAYNE BLVD	MIAMI, FL 33137–3221	
BURKES MOTEL		4445 SW 8TH ST	MIAMI, FL 33134–2562	
CARL'S PADRE MOTEL		5950 BISCAYNE BLVD	MIAMI, FL 33137–2297	
CHERRY LANE MOTEL		2451 NW 79TH ST	MIAMI, FL 33147–4929	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COLLEGE INN-DOWNTOWN		226 NE 1ST AVE	MIAMI, FL 33132–2100	
CONGRESS HOTEL		126 NE 6TH ST	MIAMI, FL 33132–1921	
COURTYARD BY MARRIOTT HOTEL.		3929 NW 79TH AVE	MIAMI, FL 33166–6517	
CROSSWAY AIRPORT INN		1850 NW 42ND AVE	MIAMI, FL 33126–1489	
DAVIS MOTEL		6500 BISCAYNE BLVD	MIAMI, FL 33138–6230	
DAYS INN CENTRAL		660 NW 81ST ST	MIAMI, FL 33150–	
DAYS INN HOTEL		3401 NW LEJEUNE RD	MIAMI, FL 33142–5628	
DAYS INN MIAMI CIVIC CENTER.		1050 NW 14TH ST	MIAMI, FL 33136–2138	
DELUXE INN		28475 S. DIXIE HWY	MIAMI, FL 33033–	
DORAL HOTEL & COUNTRY CLUB.		4400 NW 87TH AVE	MIAMI, FL 33148–0001	
DOUBLETREE HOTEL		2649 S. BAYSHORE DR	MIAMI, FL 33133–5496	
EL NIDO MOTEL		3141 SW 8TH ST	MIAMI, FL 33135–4533	
ELDEN MOTEL		115 SW 8TH ST	MIAMI, FL 33130–3509	
ERNESTO MOTEL		4001 W. FLAGLER ST	MIAMI, FL 33134–1609	
EVERGLADE MOTEL		6495 SW 8TH ST	MIAMI, FL 33144–4843	
EVERGLADES HOTEL		244 BISCAYNE BLVD	MIAMI, FL 33132–2278	
EXECUTIVE AIRPORT HOTEL		6700 NW 13TH ST	MIAMI, FL 33126–2036	
EXECUTIVE INN		7422 BISCAYNE BLVD	MIAMI, FL 33138–5122	
FAIRFIELD INN BY MARRIOT		3959 NW 79TH AVE	MIAMI, FL 33166–	
FAIRFIELD INN BY MARRIOTT MIAMI WEST.		3959 NW 79TH AVE	MIAMI, FL 33166–	305–599–5200
G G MOTEL		5121 W. FLAGLER ST	MIAMI, FL 33134–1220	
GOLDDUST MOTEL		7700 BISCAYNE BLVD	MIAMI, FL 33138–5168	
GRAND BAY HOTEL		2669 S. BAYSHORE DR	MIAMI, FL 33133–	305–858–9600
GRAND BAY HOTEL		2669 S. BAYSHORE DR	MIAMI, FL 33133–5497	
HAMPTON INN		2500 BRICKELL AVE	MIAMI, FL 33129–2463	
HOLIDAY INN AIRPORT LAKES		1101 NW 57 AVE	MIAMI, FL 33126–	305–266–0000
HOLIDAY INN CALDER/JOE ROBBIE STADIUM.		21485 NW 27TH AVE	MIAMI, FL 33056–	305–621–5801
HOLIDAY INN CIVIC CENTER MOTEL.		1170 NW 11TH ST	MIAMI, FL 33136–2296	
HOLIDAY INN CROWNE PLAZA		950 NW LEJEUNE RD	MIAMI, FL 33126–3695	
HOLIDAY INN GOLDEN GLADES.		148 NW 167TH ST	MIAMI, FL 33169–6080	
HOLIDAY MOTOR COURT		7290 SW 8TH ST	MIAMI, FL 33144–4654	
HOLLIDAY INN		10775 SW 200TH ST	MIAMI, FL 33189–1238	
HOTEL AMERICA		273 NE 2ND ST	MIAMI, FL 33132–2212	
HOTEL ARENA		532 NW MIAMI AVE	MIAMI, FL 33136–4110	
HOTEL GRAND PRIX		1717 N. BAYSHORE DR	MIAMI, FL 33132–	
HOTEL QUALITY AIRPORT		2373 NW LEJEUNE RD	MIAMI, FL 33142–6789	
HOWARD JOHNSON		1980 NW LE JEUNE RD	MIAMI, FL 33126–1488	
HOWARD JOHNSON CONVENTION CENTER.		200 SE 2ND AVE	MIAMI, FL 33131–	305–374–3000
HOWARD JOHNSON CONVENTION CENTER.		200 SE 2ND AVE	MIAMI, FL 33131–	305–374–3000
HOWARD JOHNSON HOTEL		1100 BISCAYNE BLVD	MIAMI, FL 33132–1799	
HOWARD JOHNSON MOTOR LODGE.		7330 NW 36TH ST	MIAMI, FL 33166–6776	
HOWARD JOHNSON MOTOR LODGE.		10201 S. DIXIE HWY	MIAMI, FL 33156–3147	
HOWARD JOHNSON MOTOR LODGE.		16500 NW 2ND AVE	MIAMI, FL 33169–6089	
HOWARD JOHNSON MOTOR LODGE.		200 SE 2ND AVE	MIAMI, FL 33131–2124	
HURRICANE MOTEL		4911 W. FLAGLER ST	MIAMI, FL 33134–1236	
HYATT REGENCY MIAMI		400 SE 2 AVE	MIAMI, FL 33131–	305–358–1234
HYATT REGENCY MIAMI HOTEL.		400 SE 2ND AVE	MIAMI, FL 33131–2197	
IMPERIAL MOTEL		5180 W. FLAGLER ST	MIAMI, FL 33134–1251	
INTERCONTINENTAL HOTEL MIAMI.		100 CHOPIN PLAZA	MIAMI, FL 33131–2305	
JAMAICA MOTEL		4601 SW 8TH ST	MIAMI, FL 33134–2544	
JOCKEY CLUB-HOTEL ROOM		11111 BISCAYNE BLVD	MIAMI, FL 33181–3494	
JULIA MOTEL		3030 W. FLAGLER ST	MIAMI, FL 33135–1299	
KING MOTEL		7150 BISCAYNE BLVD	MIAMI, FL 33138–5702	
LA CAMPINA MOTEL		4431 SW 8TH ST	MIAMI, FL 33134–2562	
LA FIERA HOTEL		1865 W. FLAGLER ST	MIAMI, FL 33135–1939	
LA QUINTA MOTOR INN 2667		7401 NW 36TH ST	MIAMI, FL 33166–6706	
LAUREL INN		5445 BISCAYNE BLVD	MIAMI, FL 33137–3225	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LE JEUNE MOTEL		4315 SW 8TH ST	MIAMI, FL 33134–2654	
LEAMINGTON HOTEL		307 NE 1ST ST	MIAMI, FL 33132–2505	
LEEWARD MOTEL		11790 BISCAYNE BLVD	MIAMI, FL 33181–3110	
MALIBU HOTEL		2936 SW 37TH CT	MIAMI, FL 33134–7342	
MARINA PARK HOTEL		340 BISCAYNE BLVD	MIAMI, FL 33132–2224	
MARRIOTT PLAZA VENETIA HOTEL.		1633 N. BAYSHORE DR	MIAMI, FL 33132–1215	
METRO HOTEL		7126 BISCAYNE BLVD	MIAMI, FL 33138–5702	
MIAMI AIRPORT HILTON		5101 BLUE LAGOON DR	MIAMI, FL 33126–0888	
MIAMI AIRPORT INN		1550 NW LE JEUNE RD	MIAMI, FL 33126–1414	
MIAMI AIRPORT MARRIOTT		1201 NW LEJEUNE RD	MIAMI, FL 33126–	305–649–5000
MIAMI AMBASSADOR MOTEL		6290 SW 8TH ST	MIAMI, FL 33144–4810	
MIAMI EXECUTIVE MOTEL		4350 SW 8TH ST	MIAMI, FL 33134–2620	
MIAMI INTERNATIONAL AIRPORT HOTEL.		MIAMI INTERNATIONAL AIRPORT.	MIAMI, FL 33159–	
MIAMI LAKES INN MOTEL		7450 NW 154TH ST	MIAMI, FL 33157–2423	
MIAMI MARRIOTT DADELAND		9090 S. DADELAND BLVD	MIAMI, FL 33156–7820	
MIAMI MARRIOTT MTR HOTEL		1201 NW 42ND AVE	MIAMI, FL 33126–2656	
MIAMI PRINCESS HOTEL		4251 NW 11TH ST	MIAMI, FL 33126–	
MIAMI RIVER INN		118 SW SOUTH RIVER DR	MIAMI, FL 33130–	
MIAMI SHORES MOTEL		10450 BISCAYNE BLVD	MIAMI, FL 33138–	
MOON HOTEL		439 NW 4TH AVE	MIAMI, FL 33128–1613	
MORRIS HOTEL R H		161 NE 23RD ST	MIAMI, FL 33137–4826	
MR KELLY'S MOTEL		21440 BISCAYNE BLVD	MIAMI, FL 33180–1244	
NEW DEAL MOTEL		5061 BISCAYNE BLVD	MIAMI, FL 33137–3230	
OCCIDENTAL HTLS RIVER PARC.		100 SE 4TH ST	MIAMI, FL 33131–2110	
OMNI INTERNATIONAL HOTEL MI.		1601 BISCAYNE BLVD	MIAMI, FL 33132–1240	
ORANGE GROVE MOTEL		7160 SW 8TH ST	MIAMI, FL 33144–4660	
PALM MOTEL		8425 BISCAYNE BLVD	MIAMI, FL 33138–3522	
PALM PLAZA MOTEL		7331 N. MIAMI AVE	MIAMI, FL 33150–3507	
PARACLETE MOTEL		7350 BISCAYNE BLVD	MIAMI, FL 33138–5151	
PARKSIDE INN		1511 NE 116TH ST	MIAMI, FL 33161–6907	
PLAZA VENETIA HOTEL		555 NE 15TH ST	MIAMI, FL 33132–1428	
PORTAL POINTE HOTEL		8840 NE 2ND AVE	MIAMI, FL 33138–3011	
PRINCESS MOTEL		4995 W. FLAGLER ST	MIAMI, FL 33134–1236	
QUALITY INN SOUTH		14501 S. DIXIE HWY	MIAMI, FL 33176–7988	
QUALITY INN SOUTH		14501 S. DIXIE HWY	MIAMI, FL 33176–	305–251–2020
RADISSON MART PLAZA HOTEL.		711 NW 72ND AVE	MIAMI, FL 33126–3095	
RAINBOW MOTEL		835 SW 24TH AVE	MIAMI, FL 33135–4836	
RAMA INN		16805 NW 12TH AVE	MIAMI, FL 33169–5784	
RAMADA INN		7600 N. KENDALL DR	MIAMI, FL 33156–7699	
RAMADA INN WEST		7250 NW 11TH ST	MIAMI, FL 33126–1981	
RAMONA MOTEL		3301 W. FLAGLER ST	MIAMI, FL 33135–1136	
RAYS MOTEL		6241 SW 8TH ST	MIAMI, FL 33144–4809	
RESIDENCE INN MIAMI AIRPORT.		1212 NW 82ND AVE	MIAMI, FL 33126–	
ROYAL MOTEL		7411 BISCAYNE BLVD	MIAMI, FL 33138–5121	
ROYALTON HOTEL		131 SE 1ST ST	MIAMI, FL 33131–1421	
SAN JUAN MOTEL		2390 SW 8TH ST	MIAMI, FL 33135–4916	
SANBORN MOTEL		106 SW 8TH ST	MIAMI, FL 33130–3510	
SATURN MOTEL		6991 N. BISCAYNE BLVD	MIAMI, FL 33138–5733	
SEMINOLE HOTEL		35 SE 8TH ST	MIAMI, FL 33131–2700	
SHALIMAR MOTEL		6200 BISCAYNE BLVD	MIAMI, FL 33138–6224	
SHERATON BRICKELL POINT MIA.		495 BRICKELL AVE	MIAMI, FL 33131–2401	
SHERATON RIVERHOUSE		3900 NW 21ST ST	MIAMI, FL 33142–6791	
SILVER SANDS OCEANFRONT MOTEL.		301 OCEAN DR	MIAMI, FL 33149–1608	
SINBAD MOTEL		6150 BISCAYNE BLVD	MIAMI, FL 33137–2227	
SOUTH PACIFIC MOTEL		6300 BISCAYNE BLVD	MIAMI, FL 33138–6226	
STARDUST MOTEL		6730 BISCAYNE BLVD	MIAMI, FL 33138–6298	
STARLITE MOTEL		135 SW 8TH ST	MIAMI, FL 33130–3509	
SUN AIRE MOTEL		4871 W. FLAGLER ST	MIAMI, FL 33134–1490	
SUN N SURF MOTEL		11102 BISCAYNE BLVD	MIAMI, FL 33181–3405	
SUNNYSIDE MOTEL		6024 SW 8TH ST	MIAMI, FL 33144–5046	
SYLVANIA HOTEL		226 SW 5TH AVE	MIAMI, FL 33130–1309	
TAMIAMI INN		4391 SW 8TH ST	MIAMI, FL 33134–	
THE DUPONT PLAZA HOTEL		300 BISCAYNE BLVD. WAY	MIAMI, FL 33131–2200	
THE EMPEROR MOTEL		6581 SW 8TH ST	MIAMI, FL 33144–4815	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE RAMADA RENAISSANCE ..		3941 NW 22ND ST	MIAMI, FL 33142–6752	
TOPS MOTEL		3151 SW 8TH ST	MIAMI, FL 33135–4533	
TRADE WINDS MOTEL		4525 SW 8TH ST	MIAMI, FL 33134–2542	
TRAVELERS INN		5501 BISCAYNE BLVD	MIAMI, FL 33137–2633	
TRIO MOTEL		3622 SW 8TH ST	MIAMI, FL 33135–4112	
TROPIC GARDEN MOTEL		6925 SW 8TH ST	MIAMI, FL 33144–4743	
TURF MOTEL		7000 NW 27TH AVE	MIAMI, FL 33147–6820	
VAGABOND MOTEL		7301 BISCAYNE BLVD	MIAMI, FL 33138–5186	
VENUS MOTEL		6891 SW 8TH ST	MIAMI, FL 33144–4742	
WELLESLEY INN		7925 NW 154TH ST	MIAMI, FL 33016–	
WELLESLEY INN		8436 NW 36TH ST	MIAMI, FL 33166–	
WELLESLEY INN KENDALL		11750 MILLS DR	MIAMI, FL 33183–4800	
WESTHAVEN MOTEL & TRAVEL COURT.		6020 SW 8TH ST	MIAMI, FL 33144–5003	
WILLARD GARDEN HOTEL		124 NE 14TH ST	MIAMI, FL 33132–1313	
WYNWOOD HOTEL		2706 NE 2ND AVE	MIAMI, FL 33137–4417	
YAHWEH ECONOMY INN		6320 BISCAYNE BLVD	MIAMI, FL 33138–6226	
42ND STREET MOTEL		4210 COLLINS AVE	MIAMI BEACH, FL 33140–3222 .	
501 MIAMI BEACH RESORT HOTEL		3925 COLLINS AVE	MIAMI BEACH, FL 33140–3749 .	
ADRIAN HOTEL		1060 OCEAN DR	MIAMI BEACH, FL 33139–5014 .	
ALDEN HOTEL		2925 INDIAN CREEK DR	MIAMI BEACH, FL 33140–4167 .	
ANCHOR HOTEL		1587 WASHINGTON AVE	MIAMI BEACH, FL 33139–7802 .	
ANGLERS HOTEL		634 WASHINGTON AVE	MIAMI BEACH, FL 33139–6208 .	
AVALON HOTEL		700 OCEAN DR	MIAMI BEACH, FL 33139–6290 .	
BARBIZON HOTEL		530 OCEAN DR	MIAMI BEACH, FL 33139–6694 .	
BARCLAY PLAZA HOTEL		1940 PARK AVE	MIAMI BEACH, FL 33139–1989 .	
BAY HARBOR INN		9601 E. BAY HARBOUR DR	MIAMI BEACH, FL 33154–	
BEACH HAVEN HOTEL		819 5TH ST	MIAMI BEACH, FL 33139–6588 .	
BEACH PARADISE HOTEL		600 OCEAN DR	MIAMI BEACH, FL 33139–6286 .	
BEACH PLAZA HOTEL		1401 COLLINS AVE	MIAMI BEACH, FL 33139–4195 .	
BEACHARBOUR MOTEL SOUTH.		18901 COLLINS AVE	MIAMI BEACH, FL 33160–2398 .	
BEACHCOMBER HOTEL		1340 COLLINS AVE	MIAMI BEACH, FL 33139–4289 .	
BEACON HOTEL		720 OCEAN DR	MIAMI BEACH, FL 33139–6200 .	
BEL AIRE HOTEL		6515 COLLINS AVE	MIAMI BEACH, FL 33141–4693 .	
BELLAMAR HOTEL		220 31ST ST	MIAMI BEACH, FL 33140–4103 .	
BENTLEY HOTEL		510 OCEAN DR	MIAMI BEACH, FL 33139–6673 .	
BERKELEY SHORE HOTEL		1610 COLLINS AVE	MIAMI BEACH, FL 33139–3178 .	
BETSY ROSS HOTEL		1440 OCEAN DR	MIAMI BEACH, FL 33139–4186 .	
BLUE MIST RESORT MOTEL		19111 COLLINS AVE	MIAMI BEACH, FL 33160–9936 .	
BLUE SEAS RESORT MOTEL		17315 COLLINS AVE	MIAMI BEACH, FL 33160–3496 .	
BOULEVARD HOTEL		740 OCEAN DR	MIAMI BEACH, FL 33139–6293 .	
BREAKWATER HOTEL		940 OCEAN DR	MIAMI BEACH, FL 33139–5091 .	
CADET HOTEL		1701 JAMES AVE	MIAMI BEACH, FL 33139–7506 .	
CARAVAN MOTEL		19101 COLLINS AVE	MIAMI BEACH, FL 33160–2396 .	
CARDOZO HOTEL		1300 OCEAN DR	MIAMI BEACH, FL 33139–4282 .	
CARIBBEAN HOTEL		3737 COLLINS AVE	MIAMI BEACH, FL 33140–4067 .	
CARLTON HOTEL		1433 COLLINS AVE	MIAMI BEACH, FL 33139–4193 .	
CARLYLE HOTEL		1250 OCEAN DR	MIAMI BEACH, FL 33139–4684 .	
CASTLE HOTEL & RESTAURANT.		5445 COLLINS AVE	MIAMI BEACH, FL 33141–	
CAT DORSET HOTEL		1720 COLLINS AVE	MIAMI BEACH, FL 33139–2000 .	
CATALINA DORSET HOTEL		1732 COLLINS AVE	MIAMI BEACH, FL 33139–2080 .	
CAVALIER HOTEL		1320 OCEAN DR	MIAMI BEACH, FL 33139–4283 .	
CENTURY HOTEL		140 OCEAN DR	MIAMI BEACH, FL 33139–7213 .	
CENTURY HOTEL		150 OCEAN DR	MIAMI BEACH, FL 33139–	
CHESTERFIELD HOTEL		855 COLLINS AVE	MIAMI BEACH, FL 33139–5887 .	
CHURCHILL HOTEL & APARTMENTS INC.		3801 INDIAN CREEK DR	MIAMI BEACH, FL 33140–3795 .	
CLAREMONT HOTEL		1700 COLLINS AVE	MIAMI BEACH, FL 33139–2096 .	
CLAY HOTEL		406 ESPANOLA WAY	MIAMI BEACH, FL 33139–8123 .	
CLEVELANDER HOTEL		1020 OCEAN DR	MIAMI BEACH, FL 33139–5093 .	
CLIFTON HOTEL		1343 COLLINS AVE	MIAMI BEACH, FL 33139–4286 .	
CLINTON HOTEL		825 WASHINGTON AVE	MIAMI BEACH, FL 33139–5898 .	
COLONIAL HOTEL		719 1ST ST	MIAMI BEACH, FL 33139–6702 .	
COLONIAL INN MOTEL		18101 COLLINS AVE	MIAMI BEACH, FL 33160–2700 .	
COLONY HOTEL		736 OCEAN DR	MIAMI BEACH, FL 33139–6292 .	
COMPOSTELA MOTEL		9040 COLLINS AVE	MIAMI BEACH, FL 33154–3298 .	
COPLEY PLAZA HOTEL		3900 COLLINS AVE	MIAMI BEACH, FL 33140–3798 .	
CORAL SANDS HOTEL		7800 ABBOTT AVE	MIAMI BEACH, FL 33141–2099 .	
CORONADO MOTEL		9501 COLLINS AVE	MIAMI BEACH, FL 33154–2686 .	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CREST HOTEL		1670 JAMES AVE	MIAMI BEACH, FL 33139–3183	
CROWN HOTEL		4041 COLLINS AVE	MIAMI BEACH, FL 33140–3799	
DAYS INN		4299 COLLINS AVE	MIAMI BEACH, FL 33140–3290	
DAYS INN BROADMOOR		7450 OCEAN TERRACE	MIAMI BEACH, FL 33141–2797	
DEAUVILLE HOTEL		6701 COLLINS AVE	MIAMI BEACH, FL 33141–3285	
DI LIDO HOTEL		155 LINCOLN RD	MIAMI BEACH, FL 33139–2008	
DORAL BEACH HOTEL		4833 COLLINS AVE	MIAMI BEACH, FL 33140–2799	
DORCHESTER HOTEL		1850 COLLINS AVE	MIAMI BEACH, FL 33139–7499	
DRIFTWOOD MOTEL		17121 COLLINS AVE	MIAMI BEACH, FL 33160–3692	
DUCHES MOTEL		8420 HARDING AVE	MIAMI BEACH, FL 33141–1258	
EASTERN SUN SHOPPES INN TH.		900 OCEAN DR	MIAMI BEACH, FL 33139–	
EDEN ROC HOTEL & MARINA		4525 COLLINS AVE	MIAMI BEACH, FL 33140–3286	
EDISON HOTEL		960 OCEAN DR	MIAMI BEACH, FL 33139–5092	
ESPLANADE HOTEL		100 21ST ST	MIAMI BEACH, FL 33139–1786	
ESSEX HOUSE HOTEL		1001 COLLINS AVE	MIAMI BEACH, FL 33139–5082	
FAIRFAX APARTMENTS & HOTEL.		1776 COLLINS AVE	MIAMI BEACH, FL 33139–2094	
FAIRMONT HOTEL		1000 COLLINS AVE	MIAMI BEACH, FL 33139–5088	
FLAMINGO HOTEL		5875 COLLINS AVE	MIAMI BEACH, FL 33140–2299	
FLOREL HOTEL		926 COLLINS AVE	MIAMI BEACH, FL 33139–5010	
FOUNTAINEBLEAU HILTON HOTEL.		4441 COLLINS AVE	MIAMI BEACH, FL 33140–3287	
FOUNTAINHEAD MOTEL		16001 COLLINS AVE	MIAMI BEACH, FL 33160–4503	
FRANKLIN HOTEL		860 COLLINS AVE	MIAMI BEACH, FL 33139–5891	
GOLDEN EAGLE HOTEL		8601 HARDING AVE	MIAMI BEACH, FL 33141–1294	
GOLDEN SANDS HOTEL		6901 COLLINS AVE	MIAMI BEACH, FL 33141–3200	
GOVERNOR HOTEL		435 21ST ST	MIAMI BEACH, FL 33139–1704	
GRAND PLAZA HOTEL		3025 INDIAN CREEK DR	MIAMI BEACH, FL 33140–4190	
GREENBRIAR HOTEL & APARTMENTS.		3101 INDIAN CREEK DR	MIAMI BEACH, FL 33140–4191	
GREENVIEW HOTEL		1671 WASHINGTON AVE	MIAMI BEACH, FL 33139–3126	
GREYSTONE HOTEL		1920 COLLINS AVE	MIAMI BEACH, FL 33139–1947	
HADDON HALL HOTEL		1500 COLLINS AVE	MIAMI BEACH, FL 33139–3175	
HARDING HOTEL		210 63RD ST	MIAMI BEACH, FL 33141–5801	
HARRISON HOTEL		411 WASHINGTON AVE	MIAMI BEACH, FL 33139–6617	
HEATHWOOD RESORT MOTEL		18671 COLLINS AVE	MIAMI BEACH, FL 33160–2494	
HENROSA HOTEL		1435 COLLINS AVE	MIAMI BEACH, FL 33139–4192	
HENRY HOTEL		536 WASHINGTON AVE	MIAMI BEACH, FL 33139–6697	
HILYARD MANOR MOTEL		9533 COLLINS AVE	MIAMI BEACH, FL 33154–2612	
HOLIDAY INN 704		2201 COLLINS AVE	MIAMI BEACH, FL 33139–1799	
HOTEL 100		100 LINCOLN RD	MIAMI BEACH, FL 33139–	
HOTEL BRAZIL		6525 COLLINS AVE	MIAMI BEACH, FL 33141–4698	
HOTEL NORMAN		6770 COLLINS AVE	MIAMI BEACH, FL 33141–3241	
HOTEL OCEAN GRANDE		100 37TH ST	MIAMI BEACH, FL 33140–4004	
HOWARD JOHNSON		6261 COLLINS AVE	MIAMI BEACH, FL 33140–	
HOWARD JOHNSON HOTEL		4000 ALTON RD	MIAMI BEACH, FL 33140–3896	
IMPERIAL HOTEL		650 OCEAN DR	MIAMI BEACH, FL 33139–6288	
INN AT THE SURFCOMBER		1725 COLLINS AVE	MIAMI BEACH, FL 33139–2006	
INTERNATIONAL INN MOTEL		2301 NORMANDY DR	MIAMI BEACH, FL 33141–4410	
JAMES HOTEL INCORPORATED.		1680 JAMES AVE	MIAMI BEACH, FL 33139–3104	
KENMORE HOTEL		1050 WASHINGTON AVE	MIAMI BEACH, FL 33139–	
KENT HOTEL		1131 COLLINS AVE	MIAMI BEACH, FL 33139–4686	
LA FLORA HOTEL		1238 COLLINS AVE	MIAMI BEACH, FL 33139–4678	
LAFAYETTE HOTEL		944 COLLINS AVE	MIAMI BEACH, FL 33139–5087	
LESLIE HOTEL		1244 OCEAN DR	MIAMI BEACH, FL 33139–4683	
LIDO SPA HOTEL		40 ISLAND AVE	MIAMI BEACH, FL 33139–1397	
LINCOLN CENTER HOTEL		1637 EUCLID AVE	MIAMI BEACH, FL 33139–7779	
LOMBARDY HOTEL		6305 COLLINS AVE	MIAMI BEACH, FL 33141–4690	
LOMBARDY INN		6300 COLLINS AVE	MIAMI BEACH, FL 33141–4689	
LORD BALFOUR HOTEL		350 OCEAN DR	MIAMI BEACH, FL 33139–6977	
LUCERNE HOTEL		4101 COLLINS AVE	MIAMI BEACH, FL 33140–3299	
MAJESTIC HOTEL		660 OCEAN DR	MIAMI BEACH, FL 33139–6289	
MANDALAY MOTEL		16275 COLLINS AVE	MIAMI BEACH, FL 33160–4536	
MANTELL PLAZA HOTEL		255 24TH ST	MIAMI BEACH, FL 33140–4697	
MARCO POLO HOTEL		19201 COLLINS AVE	MIAMI BEACH, FL 33160–2299	
MARSEILLES HOTEL		1741 COLLINS AVE	MIAMI BEACH, FL 33139–2092	
MATANZAS HOTEL		506 ESPANOLA WAY	MIAMI BEACH, FL 33139–4009	
MAXINE HOTEL		1756 COLLINS AVE	MIAMI BEACH, FL 33139–2095	
MAYFAIR HOTEL		1960 PARK AVE	MIAMI BEACH, FL 33139–1992	
MERIDIAN HOTEL		530 MERIDIAN AVE	MIAMI BEACH, FL 33139–6428	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MILJEAN HOTEL		1817 JAMES AVE	MIAMI BEACH, FL 33139–7494	
MONTE CARLO OCEANFRONT HOTEL.		6551 COLLINS AVE	MIAMI BEACH, FL 33141–4692	
NATIONAL HOTEL		1677 COLLINS AVE	MIAMI BEACH, FL 33139–3192	
NEW BEACHARBOUR MOTEL		18925 COLLINS AVE	MIAMI BEACH, FL 33160–2398	
NEWPORT HOTEL		16701 COLLINS AVE	MIAMI BEACH, FL 33160–4299	
OCEAN BLUE HOTEL		334 OCEAN DR	MIAMI BEACH, FL 33139–6975	
OCEAN HAVEN HOTEL		155 OCEAN DR	MIAMI BEACH, FL 33139–7293	
OCEAN ROC RESORT MOTEL		19505 COLLINS AVE	MIAMI BEACH, FL 33160–2297	
OCEAN SPRAY HOTEL		4130 COLLINS AVE	MIAMI BEACH, FL 33140–3296	
OCEAN SURF HOTEL		7436 OCEAN TERRACE	MIAMI BEACH, FL 33141–2774	
OLYMPIA MOTEL		15701 COLLINS AVE	MIAMI BEACH, FL 33160–4700	
PALMER HOUSE HOTEL		1119 COLLINS AVE	MIAMI BEACH, FL 33139–4687	
PAN AMERICAN MOTEL		17875 COLLINS AVE	MIAMI BEACH, FL 33160–2741	
PARADISE INN MOTEL		8520 HARDING AVE	MIAMI BEACH, FL 33141–1296	
PARK CENTRAL HOTEL		640 OCEAN DR	MIAMI BEACH, FL 33139–6287	
PARK TIFFANY HOTEL		801 COLLINS AVE	MIAMI BEACH, FL 33139–5888	
PARK WASHINGTON HOTEL		1020 WASHINGTON AVE	MIAMI BEACH, FL 33139–5018	
PARKSIDE HOTEL		235 WASHINGTON AVE	MIAMI BEACH, FL 33139–7196	
PENGUIN HOTEL		1418 OCEAN DR	MIAMI BEACH, FL 33139–4108	
PETER MILLER HOTEL		1900 COLLINS AVE	MIAMI BEACH, FL 33139–1998	
PINK VILLA HOTEL & APTS		7451 HARDING AVE	MIAMI BEACH, FL 33141–	
PLAZA HOTEL		426 MERIDIAN AVE	MIAMI BEACH, FL 33139–6592	
PLYMOUTH HOTEL		2035 PARK AVE	MIAMI BEACH, FL 33139–1923	
PREMIER HOTEL		745 COLLINS AVE	MIAMI BEACH, FL 33139–6278	
PRIMROSE HOTEL		1120 COLLINS AVE	MIAMI BEACH, FL 33139–4690	
PRINCESS ANN HOTEL		920 COLLINS AVE	MIAMI BEACH, FL 33139–5065	
PRINCESS BEACH MOTEL		17451 COLLINS AVE	MIAMI BEACH, FL 33160–3496	
QUALITY INN SURFSIDE BEACH HOTEL.		8701 COLLINS AVE	MIAMI BEACH, FL 33154–3499	
QUALITY SHAWNEE BEACH RESORT.		4343 COLLINS AVE	MIAMI BEACH, FL 33140–	305–532–3311
RACQUET CLUB HOTEL & MARINA.		7930 EAST DR	MIAMI BEACH, FL 33141–3397	
RALEIGH HOTEL		1777 COLLINS AVE	MIAMI BEACH, FL 33139–2091	
RENDALE HOTEL & STUDIO APARTMENTS.		3120 COLLINS AVE	MIAMI BEACH, FL 33140–4192	
RICHMOND HOTEL		1757 COLLINS AVE	MIAMI BEACH, FL 33139–2003	
RITZ PLAZA HOTEL		1701 COLLINS AVE	MIAMI BEACH, FL 33139–2093	
RONEY PLAZA HOTEL		2301 COLLINS AVE	MIAMI BEACH, FL 33139–	
ROOSEVELT HOTEL		1255 PENNSYLVANIA AVE	MIAMI BEACH, FL 33139–4499	
ROWE MOTEL		6600 COLLINS AVE	MIAMI BEACH, FL 33141–4697	
ROYAL PALM HOTEL		1545 COLLINS AVE	MIAMI BEACH, FL 33139–3172	
SAGAMORE HOTEL		1671 COLLINS AVE	MIAMI BEACH, FL 33139–3136	
SAN JUAN HOTEL		1680 COLLINS AVE	MIAMI BEACH, FL 33139–3186	
SANS SOUCI HOTEL		3101 COLLINS AVE	MIAMI BEACH, FL 33140–4198	
SANTA BARBARA HOTEL & APARTMENTS.		230 20TH ST	MIAMI BEACH, FL 33139–1986	
SASSON HOTEL		2001 COLLINS AVE	MIAMI BEACH, FL 33139–1996	
SAXONY HOTEL		3201 COLLINS AVE	MIAMI BEACH, FL 33140–4086	
SEA BREEZE HOTEL NORTH BUILDING.		16201 COLLINS AVE	MIAMI BEACH, FL 33160–4507	
SEA DECK HOTEL		1530 COLLINS AVE	MIAMI BEACH, FL 33139–3176	
SEABREEZE HOTEL CENTER BUILDING.		16151 COLLINS AVE	MIAMI BEACH, FL 33160–4597	
SEABREEZE HOTEL SOUTH BUILDING.		16051 COLLINS AVE	MIAMI BEACH, FL 33160–4503	
SEVILLE HOTEL		2901 COLLINS AVE	MIAMI BEACH, FL 33140–4199	
SHAWNEE RESORT HOT OF M B.		4343 COLLINS AVE	MIAMI BEACH, FL 33140–3212	
SHELBORNE HOTEL		1801 COLLINS AVE	MIAMI BEACH, FL 33139–7498	
SHELLEY HOTEL		844 COLLINS AVE	MIAMI BEACH, FL 33139–5890	
SHERATON BAL HARBOUR		9701 COLLINS AVE	MIAMI BEACH, FL 33154–2254	
SHORE CLUB HOTEL		1901 COLLINS AVE	MIAMI BEACH, FL 33139–1995	
SHORECREST HOTEL		1535 COLLINS AVE	MIAMI BEACH, FL 33139–3110	
SHOREHAVEN MOTEL		8505 HARDING AVE	MIAMI BEACH, FL 33141–1295	
SILVER PALM HOTEL APTS		3710 COLLINS AVE	MIAMI BEACH, FL 33140–4091	
SIMONE HOTEL		321 OCEAN DR	MIAMI BEACH, FL 33139–6904	
SINCLAIR HOTEL		507 ESPANOLA WAY	MIAMI BEACH, FL 33139–4008	
SORRENTO HOTEL		335 OCEAN DR	MIAMI BEACH, FL 33139–6976	
SOUTH BEACH HOTEL		236 21ST ST	MIAMI BEACH, FL 33139–1785	
SOUTH SEAS HOTEL		1751 COLLINS AVE	MIAMI BEACH, FL 33139–2099	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SOVEREIGN HOTEL		4385 COLLINS AVE	MIAMI BEACH, FL 33140–3288	
SUEZ MOTEL NORTH		18275 COLLINS AVE	MIAMI BEACH, FL 33160–2726	
SUEZ RESORT MOTEL		18215 COLLINS AVE	MIAMI BEACH, FL 33160–2715	
SUNRISE MOTEL		9340 COLLINS AVE	MIAMI BEACH, FL 33154–2609	
SUNSET CITY RESORT MOTEL		17375 COLLINS AVE	MIAMI BEACH, FL 33160–3497	
SURF CLUB HOTEL		9011 COLLINS AVE	MIAMI BEACH, FL 33154–3299	
SURF VISTA BEACH HOTEL		18001 COLLINS AVE	MIAMI BEACH, FL 33160–2722	
SURFCOMBER HOTEL		1717 COLLINS AVE	MIAMI BEACH, FL 33139–2081	
TAHITI MOTEL		16901 COLLINS AVE	MIAMI BEACH, FL 33160–4297	
TARLETON HOTEL		2469 COLLINS AVE	MIAMI BEACH, FL 33140–4702	
TERRY'S VARIETY HOTEL		1201 17TH ST	MIAMI BEACH, FL 33139–2399	
THE ADRIAN HOTEL		1036 OCEAN DR	MIAMI BEACH, FL 33139–5014	
THE ALEXANDER HOTEL		5225 COLLINS AVE	MIAMI BEACH, FL 33140–2596	
THE INN ON THE BAY		1819 79TH ST. CAUSEWAY	MIAMI BEACH, FL 33141–	
THE MONACO MOTEL		17501 COLLINS AVE	MIAMI BEACH, FL 33160–2800	
THE REVERE HOTEL		1100 OCEAN DR	MIAMI BEACH, FL 33139–4679	
THE SEA VIEW HOTEL		9909 COLLINS AVE	MIAMI BEACH, FL 33154–1899	
THE WATERSIDE INN		2360 COLLINS AVE	MIAMI BEACH, FL 33139–1696	
TRAVELERS MOTEL		901 ALTON RD	MIAMI BEACH, FL 33139–5295	
TRAYMORE HOTEL		2445 COLLINS AVE	MIAMI BEACH, FL 33139–	
TROPICAL HOUSE HOTEL		1240 71ST ST	MIAMI BEACH, FL 33141–3648	
TROPICS HOTEL		1550 COLLINS AVE	MIAMI BEACH, FL 33139–3177	
TUDOR HOTEL		1111 COLLINS AVE	MIAMI BEACH, FL 33139–4688	
ULTRAVILLE APARTMENTS & HOTEL.		9048 COLLINS AVE	MIAMI BEACH, FL 33154–3245	
VILLA LUISA HOTEL		125 OCEAN DR	MIAMI BEACH, FL 33139–7224	
WALDORF TOWERS HOTEL		860 OCEAN DR	MIAMI BEACH, FL 33139–5897	
WATERWAY INN G H		3746 CHASE AVE	MIAMI BEACH, FL 33140–	
WELWORTH HOTEL		7326 COLLINS AVE	MIAMI BEACH, FL 33141–2770	
WHITELAW HOTEL		808 COLLINS AVE	MIAMI BEACH, FL 33139–5889	
WINDSOR HOTEL		7130 HARDING AVE	MIAMI BEACH, FL 33141–3219	
WINTER HAVEN HOTEL		1400 OCEAN DR	MIAMI BEACH, FL 33139–4182	
YORK HOTEL		321 COLLINS AVE	MIAMI BEACH, FL 33139–6902	
COURTYARDS BY MARRIOTT		15700 NW 77TH CT	MIAMI LAKES, FL 33016–	
MIAMI LAKES INN		15255 BULL RUN RD	MIAMI LAKES, FL 33014–2074	
MIAMI SHORES MOTEL		10500 BISCAYNE BLVD	MIAMI SHORES, FL 33138–2202.	
BUDGETEL INN MIAMI SPRINGS.		3501 LE JEUNE RD	MIAMI SPRINGS, FL 33142–	
COUEENS INN		5325 NW 36TH ST	MIAMI SPRINGS, FL 33166–5924.	
CROWN STERLING SUITES HOTEL		3974 NW SOUTH RIVER DR	MIAMI SPRINGS, FL 33142–5600.	
EASTERN MOTEL		4585 NW 36TH ST	MIAMI SPRINGS, FL 33166–6140.	
HAMPTON INN		5125 NW 36TH ST	MIAMI SPRINGS, FL 33166–5050.	
HOLIDAY INN HOTEL		1111 S. ROYAL POINCIANA	MIAMI SPRINGS, FL 33166–7398.	
KINGS INN HOTEL		5335 NW 36TH ST	MIAMI SPRINGS, FL 33166–5924.	
MIAMI SPRINGS MOTEL		661 EAST DR	MIAMI SPRINGS, FL 33166–6111.	
PARKWAY INN		777 CURTIS PKWY	MIAMI SPRINGS, FL 33166–7198.	
ROYAL POINCIANA MOTEL		901 S. ROYAL POINCIANA	MIAMI SPRINGS, FL 33166–7314.	
RUNWAY INN		656 EAST DR	MIAMI SPRINGS, FL 33166–6100.	
TRAVELERS MOTEL		4767 NW 36TH ST	MIAMI SPRINGS, FL 33166–6172.	
VISCOUNT HOTEL AX		500 DEER RUN	MIAMI SPRINGS, FL 33166–5843.	
PALMER MOTEL		SR 268½ MI S U	MIDWAY, FL 32343–9999	
CLUCKER'S MOTEL		4905 HWY. 87	MILTON, FL 32570–	
HOSPITALITY INN		732 W. HWY. 90	MILTON, FL 32570–4561	
SANTA ROSA MOTEL		W. HWY. 90	MILTON, FL 32570–	
THRIFT MOTEL		329 CAROLINE ST	MILTON, FL 32570–	
SANDMAN MOTEL		3910 N. US HWY. 1	MIMS, FL 32754–	
LAKE MINNEOLA INN		508 MAINIAVG	MINNEOLA, FL 34755–	
ORANGE MOTEL		800 S. US 27	MINNEOLA, FL 32755–9999	
741 MOTEL		2550 S. STATE RD. 7	MIRAMAR, FL 33023–4171	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BRAHMAN INN		1530 W. WASHINGTON ST	MONTICELLO, FL 32344–1134	
CAPRI MOTEL		N. HWY. 19	MONTICELLO, FL 32344–	
DERBY MOTEL		N. HWY. 19	MONTICELLO, FL 32344–	
HOOSIER BASS INN		HWY. 27	MOORE HAVEN, FL 33471–	
RICES MOTEL	PO BOX 847	HWY. 27	MOORE HAVEN, FL 33471–	
COMFORT INN		3600 W. HWY. 441	MOUNT DORA, FL 32757–	
LAKESIDE INN HOTEL		100 N. ALEXANDER ST	MOUNT DORA, FL 32757–6570	
MOUNT DORA MOTEL LODGE		300 N. STATE RD. 441	MOUNT DORA, FL 32757–	
ISLAND HOUSE MOTOR HOTEL.		17103 GULF BLVD	N REDINGTON BEACH, FL 33708–1470.	
SAILS RESORT MOTEL		17004 GULF BLVD	N REDINGTON BEACH, FL 33708–1441.	
SEA ROCKET MOTEL		17250 GULF BLVD	N REDINGTON BEACH, FL 33708–1366.	
BAY HAVEN INN MOTEL		2600 BAYVIEW DR. S	NAPLES, FL 33962–5864	
BEACH CLUB HOTEL		851 N. GULFSHORE BLVD	NAPLES, FL 33940–	
BEL AIR MOTEL		2995 E. TAMIAMI TRAIL	NAPLES, FL 33962–5712	
CLASSIC DINER MOTEL		11157 E. TAMIAMI TRAIL	NAPLES, FL 33962–7753	
COMFORT INN & EXECUTIVE SUITE.		3660 TOLLGATE BLVD	NAPLES, FL 33942–5444	
COMFORT INN EXECUTIVE SUITES.		3660 TOLLGATE BLVD	NAPLES, FL 33942–	813–353–9500
COMFORT INN NAPLES		1221 S. 5TH AVE	NAPLES, FL 33940–6417	
CYPRESS MOTEL		4090 N. 9TH ST	NAPLES, FL 33940–3508	
DAYS LODGE		1925 DAVIS BLVD	NAPLES, FL 33942–4292	
EAST TRAIL MOTEL		11381 FLORIDAN AVE	NAPLES, FL 33962–7765	
EDGEWATER BEACH HOTEL		1901 GULF SHORE BLVD	NAPLES, FL 33940–4899	
FAIRWAYS MOTEL RESORT		103 PALM RIVER BLVD	NAPLES, FL 33942–5798	
GLADES MOTEL		3115 E. TAMIAMI TRAIL	NAPLES, FL 33962–5769	
GOLFING BUCCANEER RESORT INC.		2329 N. 9TH ST	NAPLES, FL 33940–4404	
GULFSTREAM MOTEL		4520 GULF STREAM DR	NAPLES, FL 33962–6899	
HAMPTON INN HOTEL		3210 N. TAMIAMI TRAIL	NAPLES, FL 33940–4105	
HOLIDAY INN OF NAPLES		1100 N. 9TH ST	NAPLES, FL 33940–5496	
HOWARD JOHNSON LODGE		221 NINTH ST., S	NAPLES, FL 33940–	813–262–6181
HOWARD JOHNSONS MOTOR LODGE.		221 S. 9TH ST	NAPLES, FL 33940–6282	
INN BY THE SEA		287 S. 11TH AVE	NAPLES, FL 33940–7022	
KEEWAYDIN CLUB HOTEL		260 BAY RD	NAPLES, FL 33940–7950	
LA PLAYA MOTOR INN		9891 GULF SHORE DR	NAPLES, FL 33963–2097	
LIGHTHOUSE INN		9140 GULF SHORE DR	NAPLES, FL 33963–2099	
NAPLES MOTOR LODGE		250 S. 9TH ST	NAPLES, FL 33940–6259	
PENT HOUSE HOTEL		851 N. GULF SHORE BLVD	NAPLES, FL 33940–5332	
QUALITY INN GOLF & COUNTRY CLUB.		4100 GOLDEN GATE PKWY	NAPLES, FL 33999–	813–455–1010
QUALITY INN GULFCOAST		2555 N. 9TH ST	NAPLES, FL 33940–4493	
ROYAL PALM MOTEL		70 N. 9 TAMIAMI TRAIL N	NAPLES, FL 33940–6201	
SEA SHELL MOTEL		82 S. 9TH ST	NAPLES, FL 33940–6262	
SILVER SANDS MOTEL		9765 N. TAMIAMI TRAIL	NAPLES, FL 33963–1996	
SPINNAKER INN OF NAPLES		6600 DUDLEY DR	NAPLES, FL 33999–3850	
STONEY'S COURTYARD INN		2630 N. 9TH ST	NAPLES, FL 33940–4498	
SUNRAY MOTEL		11103 E. TAMIAMI TRAIL	NAPLES, FL 33962–7753	
SUPER 8 MOTEL		3880 TOLL GATE BLVD	NAPLES, FL 33942–	
TAMIAMI MOTEL		2164 E. TAMIAMI TRAIL	NAPLES, FL 33962–4704	
THE INN OF NAPLES		4055 N. TAMIAMI TRAIL	NAPLES, FL 33940–3509	
THE RITZ CARLTON NAPLES		280 VANDERBILT BEACH RD	NAPLES, FL 33963–2371	
TIDES MOTOR INN		1801 GULF SHORE BLVD	NAPLES, FL 33940–	
TIKI MOTEL & APARTMENTS		2486 TAMIAMI TRAIL E	NAPLES, FL 33962–4710	
TRAILS END MOTEL		301 S. TAMIAMI TRAIL	NAPLES, FL 33940–5804	
VANDERBILT BEACH MOTEL		9225 GULF SHORE DR	NAPLES, FL 33963–2098	
WELLESLEY INN AT NAPLES		1555 S. 5TH AVE	NAPLES, FL 33942–3437	
WHITE'S MOTEL		11238 E. TAMIAMI TRAIL	NAPLES, FL 33962–7798	
ISLA GOLD MOTEL		26401 S. US HWY. BOX 278	NARANJA, FL 33032–7496	
ROYAL TERN MOTEL		26476 S. US HWY	NARANJA, FL 33032–7497	
COMFORT INN NAVARRE		8680 NAVARRE PKWY	NAVARRE, FL 32566–	
COMFORT INN NAVARRE		8670 NAVARRE PKWY	NAVARRE, FL 32566–	904–939–1761
HOLIDAY INN		ALT 399	NAVARRE BEACH, FL 32561–	
NAVARRE BEACH MOTEL		8525 GULF BLVD	NAVARRE BEACH, FL 32561–	
DAYS INN-BEACHES		1401 ATLANTIC BLVD	NEPTUNE BEACH, FL 32233–1700.	
SEA HORSE MOTEL		120 ATLANTIC BLVD	NEPTUNE BEACH, FL 32266–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BENCHLEY MOTEL		7541 US HWY. 19	NEW PORT RICHEY, FL 34652–1244.	
ECONOLODGE		7631 US HWY. 19	NEW PORT RICHEY, FL 34652–1249.	
GREEN KEY MOTEL		6434 US HWY. 19	NEW PORT RICHEY, FL 34652–2234.	
HO JO INN		6523 US HWY. 19	NEW PORT RICHEY, FL 34652–2237.	
HOLIDAY INN		5015 US HWY. 19	NEW PORT RICHEY, FL 34652–4254.	
HOLIDAY INN NEW PORT RICHEY.		5015 US 19	NEW PORT RICHEY, FL 34652–	813–849–8551
LAPLAZA MOTEL		7532 US HWY. 19	NEW PORT RICHEY, FL 34652–1243.	
PINES MOTEL		7403 US HWY. 19 N	NEW PORT RICHEY, FL 34652–1240.	
SHERATON INN-NEW PORT RICHEY.		5316 US HWY. 19	NEW PORT RICHEY, FL 34652–3946.	
COMFORT INN GATEWAY		6826 US HWY. 19 N	NEW PORT RITCHEY, FL 34652–.	813–842–6801
AIM MOTEL		835 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6413.	
AIRPORT MOTEL		1300 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6008.	
ALBA COURT INN HOTEL		115 WASHINGTON ST	NEW SMYRNA BEACH, FL 32168–7068.	
BLUE HERON MOTEL		1204 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6006.	
BOTTOMS UP MOTEL		2396 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–5928.	
BUENA VISTA MOTEL		500 N. CAUSEWAY	NEW SMYRNA BEACH, FL 32168–5304.	
COASTAL WATERS INN		3509 S. ATLANTIC AVE	NEW SMYRNA BEACH, FL 32069–3698.	
MARK CHARLES HOTEL SUITES.		1401 S. ATLANTIC AVE	NEW SMYRNA BEACH, FL 32069–3172.	
MOTEL 44		1108 W. CANAL ST	NEW SMYRNA BEACH, FL 32069–8506.	
NETHERLAND TULIP MOTEL		1157 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32168–.	
NOCTURNE MOTEL		1104 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6051.	
OCEAN AIR MOTEL		1161 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6070.	
OCEANIA SUITE HOTEL		421 S. ATLANTIC AVE	NEW SMYRNA BEACH, FL 32169–.	800–874–1931
OCEANIA SUITE HOTEL NORTH.		421 S. ATLANTIC AVE	NEW SMYRNA BEACH, FL 32069–2576.	
POOLE'S MOTEL		635 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6057.	
RIVERVIEW HOTEL		103 FLAGLER AVE	NEW SMYRNA BEACH, FL 32169–.	
SEA HORSE MOTEL		421 FLAGLER AVE	NEW SMYRNA BEACH, FL 32069–2696.	
SEA HORSE MOTEL		421 FLAGLER AVE	NEW SMYRNA BEACH, FL 32069–2696.	
SHANGRI LA MOTEL		805 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6413.	
SMYRNA MOTEL		1050 N. DIXIE FRWY	NEW SMYRNA BEACH, FL 32069–6222.	
WARD'S OCEAN VIEW MOTEL		301 S. BUENAS AIRES	NEW SMYRNA BEACH, FL 32069–2613.	
SUNNY SOUTH MOTEL		105 S. MAIN ST	NEWBERRY, FL 32669–	
AMERICANO MOTEL		626 JOHN SIMS PKWY	NICEVILLE, FL 32578–	
COMFORT INN OF NICEVILLE		101 N. HWY. 85	NICEVILLE, FL 32578–1905	
FRIENDSHIP INN		626 JOHN SIMS PKWY	NICEVILLE, FL 32578–	904–678–4164
SEMINOLE MOTEL	RT 1	HWY. 20	NICEVILLE, FL 32578–9801	
BEACHCOMBER MOTEL		129 CASEY KEY RD	NOKOMIS, FL 34275–3304	
BEACOM MOTEL & EFFICIENCIES.		330 N. TAMIAMI TRAIL	NOKOMIS, FL 34275–2132	
CASEY COVE MOTEL & APTS		200 N. TAMIAMI TRAIL	NOKOMIS, FL 34275–2124	
CASEY KEY MOTEL		328 CASEY KEY RD	NOKOMIS, FL 34275–3305	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
GULF SURF RESORT MOTEL		3905 CASEY KEY RD	NOKOMIS, FL 34275–3332	
LAUREL VILLA MOTEL		1409 N. TAMIAMI TRAIL	NOKOMIS, FL 34275–1570	
NOKOMIS MOTOR INN		119 N. TAMIAMI TRAIL	NOKOMIS, FL 34275–2120	
SEA GRAPE MOTEL		106 CASEY KEY RD	NOKOMIS, FL 34275–3303	
SUN TAN TERRACE BEACH MOTEL.		117 CASEY KEY RD	NOKOMIS, FL 34275–3304	
HARBOR ISLAND SPA HOTEL		7900 HARBOR ISLAND	NORTH BAY VILLAGE, FL 33141–.	
CACTUS COURT HOTEL		1677 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–5504.	
CHICAGO MOTEL		1547 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–5502.	
COURTESY COURT MOTEL		1349 RIVER RD	NORTH FT MYERS, FL 33903–3838.	
CUB MOTEL		17951 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–1407.	
DAYS INN NORTH		13353 CLEVELAND AVE	NORTH FT MYERS, FL 33903–4899.	
ECONO LODGE		13301 N. CLEVELAND AVE	NORTH FT MYERS, FL 33903–	
EL RANCHO MOTEL		1359 RIVER RD	NORTH FT MYERS, FL 33903–3836.	
HAMPTON INN HOTEL		13000 N. CLEVELAND AVE	NORTH FT MYERS, FL 33903–4883.	
JONES MOTEL		1895 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–3367.	
KNIGHTS INN NORTH		3350 MARINATOWN LN	NORTH FT MYERS, FL 33903–4832.	
PARK MOTEL		2020 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–2803.	
RAINBOW LODGE MOTEL		2631 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–2350.	
RAINBOW LODGE MOTEL 2		2642 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–2351.	
ROBERT E LEE MOTOR INN		13021 N. CLEVELAND AVE	NORTH FT MYERS, FL 33903–4898.	
SABAL MOTEL		1652 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–5505.	
SHELL MOTOR INN	RT 40	17281 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–	
STARLITE MOTEL		17801 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–1497.	
SUNCOAST MOTEL		2541 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–2348.	
SUNNY COURT MOTEL		1596 N. TAMIAMI TRAIL	NORTH FT MYERS, FL 33903–5598.	
HOLIDAY INN GOLDEN GLADES.		148 NW 167TH ST	NORTH MIAMI, FL 33169–	305–949–1411
HOLIDAY INN GOLDEN GLADES.		148 NW 167TH ST	NORTH MIAMI, FL 33169–	305–949–1411
HOWARD JOHNSON HOTEL		12210 BISCAYNE BLVD	NORTH MIAMI, FL 33161–2748	
MOTEL SEVEN		13405 NW 7TH AVE	NORTH MIAMI, FL 33168–2815	
SUN GARDEN MOTEL		13503 BISCAYNE BLVD	NORTH MIAMI, FL 33161–1698	
WHITEHOUSE INN		2305 NE 123RD ST	NORTH MIAMI, FL 33181–2986	
CHAPARRAL MOTEL		19790 W. DIXIE HWY	NORTH MIAMI BEACH, FL 33180–2258.	
FLORIDA VILLAS MOTEL		13645 BISCAYNE BLVD	NORTH MIAMI BEACH, FL 33181–1617.	
MAGNOLIA HOTEL		19999 W. COUNTRY CLUB DR	NORTH MIAMI BEACH, FL 33180–.	
MIAMI MOON MOTEL		14005 BISCAYNE BLVD	NORTH MIAMI BEACH, FL 33161–1629.	
NEW HAVEN MOTEL		13585 BISCAYNE BLVD	NORTH MIAMI BEACH, FL 33161–1615.	
RAFFY'S MOTEL		16375 BISCAYNE BLVD	NORTH MIAMI BEACH, FL 33160–3903.	
TURNBERRY HOTEL		19999 W. COUNTRY CLUB DR	NORTH MIAMI BEACH, FL 33180–2401.	
TURNBERRY HOTEL HIBISCUS		19999 COUNTRY CLUB DR	NORTH MIAMI BEACH, FL 33180–.	
FLORA SUN MOTEL		HWY. 41 & 95TH AVE	NORTH NAPLES, FL 33940–	
VANDERBILT INN ON THE GULF.		11000 N. GULF SHORE DR	NORTH NAPLES, FL 33963–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COMFORT INN		11360 US HWY. 1	NORTH PALM BEACH, FL 33408–.	407–624–7186
ECONO LODGE		757 N. US HWY. 1	NORTH PALM BEACH, FL 33408–.	
NORTH REDINGTON BEACH HILTON RESORT.		17120 GULF BLVD	NORTH REDINGTON, FL 33708–.	813–391–4000
MALIBU MOTEL		17001 GULF BLVD	NORTH REDINGTON BCH, FL 33708–.	
NORTH REDINGTON BEACH HILTON.		17120 GULF BLVD	NORTH REDINGTON BCH, FL 33708–1400.	
NORTH REDINGTON BEACH HILTON RESORT.		17120 GULF BLVD	NORTH REDINGTON BCH., FL 33708–.	813–391–4000
SANTA MARIA MOTEL		481 N. US HWY. 1	OAK HILL, FL 32759–9680	
DAYS INN—FORT LAUDERDALE.		3355 N. FEDERAL HWY	OAKLAND PARK, FL 33306–1089.	
DAYS INN 7158		1595 W. OAKLAND PARK BLVD	OAKLAND PARK, FL 33307–	
JOHNNIE'S INN RM		341 NE 34TH CT	OAKLAND PARK, FL 33334–2105.	
ROMAN MOTEL		240 W. OAKLAND PARK BLVD .	OAKLAND PARK, FL 33308–	
ALAMO MOTEL		2809 E. SILVER SPRINGS BLVD.	OCALA, FL 32670–7003	
COMFORT MOTEL		1850 S. PINE AVE	OCALA, FL 32670–4168	
DAYS INN		4040 SW BROADWAY	OCALA, FL 32671–	
DAYS INN-PADDOCK PARK		3434 SW COLLEGE RD	OCALA, FL 32674–7407	
DIXIE MOTEL		1539 SW PINE AVE	OCALA, FL 32671–4313	
ECONO LODGE		3951 NW BLITCHTON RD	OCALA, FL 32675–4065	
FAIRWAYS MOTEL		2829 NE SILVER SPRINGS BLVD.	OCALA, FL 32670–7003	
FLAMINGO MOTEL		719 E. SILVER SPRINGS	OCALA, FL 32670–6711	
GOLDEN SPUR MOTEL		2210 S. PINE AVE	OCALA, FL 32670–4005	
HILL TOP MOTEL		5801 S. PINE AVE	OCALA, FL 32671–7514	
HOLIDAY INN WEST		I–75 & HWY. 40	OCALA, FL 32678–	
HOLIDAY MOTEL—T		1048 SW PINE AVE	OCALA, FL 32671–4214	
HOWARD JOHNSON OCALA NORTH.		3811 NW BLITCHTON RD	OCALA, FL 32675–4061	
HOWARD JOHNSON PARK SQUARE INN.		3712 SW 38TH AVE	OCALA, FL 32674–	
JOHNSON'S JOURNEY'S END MOT.		7710 NE JACKSONVILLE RD	OCALA, FL 32670–8300	
OCALA BUDGETEL INN		3701 SW 38TH AVE	OCALA, FL 32674–4378	
OCALA HILTON		3600 SW 36TH AVE	OCALA, FL 32674–4474	
OCALA SOUTH TRAVELODGE .		1626 SW PINE AVE	OCALA, FL 32670–	904–622–4121
OCALA TRAVELODGE		1626 S. PINE AVE	OCALA, FL 32671–4310	
PALMS MOTEL		2340 S. PINE AVE	OCALA, FL 32670–4003	
PAN AMERICAN MOTEL		723 S. PINE AVE	OCALA, FL 32670–5703	
PIONEER MOTEL		6800 S. PINE AVE	OCALA, FL 32671–	
QUALITY INN OF OCALA		3767 NW BLITCHTON RD	OCALA, FL 32675–4635	
RADISSON INN		3620 W. SILVER SPRINGS BLVD.	OCALA, FL 32675–5675	
RAMADA S'BRENNER'S YANKEE I.		3810 NW BLITCHTON RD	OCALA, FL 32675–4062	
RED CARPET INN		3960 NW BLITCHTON RD	OCALA, FL 32675–4060	
ROSS COUNTRY MOTOR LODGE.		5100 S. PINE AVE	OCALA, FL 32671–7120	
SCOTTISH INNS		2900 S. PINE AVE	OCALA, FL 32671–6624	
SEVEN SISTERS INN		820 SE FT KING ST	OCALA, FL 32671–	
SHAMROCK MOTEL		215 S. PINE AVE	OCALA, FL 32671–2023	
SHANGRI LA MOTEL		2230 S. PINE AVE	OCALA, FL 32671–8701	
SILVER PRINCESS MOTEL		3041 S. PINE AVE	OCALA, FL 32670–2609	
SILVER SPRINGS BUDGET MOTEL.		4121 E. SILVER SPRINGS BLVD.	OCALA, FL 32670–5082	
SOUTHLAND MOTEL		1260 SILVER SPRINGS BLVD ..	OCALA, FL 32671–	
SOUTHWOOD MOTEL		2801 SW PINE AVE	OCALA, FL 32671–6625	
STAR MOTEL		814 SW PINE AVE	OCALA, FL 32671–3613	
STEVENS MOTEL		3231 S. PINE AVE	OCALA, FL 32670–2605	
SUN DAYS MOTEL		3351 S. PINE AVE	OCALA, FL 32670–2603	
TOWN PLAZA MOTEL		1110 S. PINE AVE	OCALA, FL 32670–	
TRAVELODGE OCALA NORTH .		4020 NW BLITCHTON RD	OCALA, FL 32675–4064	
TROPICAL MOTEL		2259 SE PINE AVE	OCALA, FL 32670–4004	
VACATION HOST INN		3330 S. PINE AVE	OCALA, FL 32671–9612	
WASHINGTON MOTEL		3280 NW MARTIN LUTHER KING.	OCALA, FL 32670–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
WESTERN MOTEL		4013 NW BLITCHTON RD	OCALA, FL 32675–4063	
OCEAN RIDGE MOTEL		11 ADAMS DR	OCEAN RIDGE, FL 33435–6233	
COLONY PLAZA HOTEL		6200 W. HWY. 50	OCOEE, FL 32761–2971	
HOLIDAY INN ORLANDO WEST		HWY. 50 & MAGUIRE	OCOEE, FL 32761–2967	
BUDGET INN		201 S. PARROTT AVE	OKEECHOBEE, FL 34974–4338	
DEW DROP INN		8761 W. HWY. 78	OKEECHOBEE, FL 34974–9796	
FLAMINGO MOTEL		4101 S. HWY. 441	OKEECHOBEE, FL 34974–	
FORD'S WANTA LINGA MOTEL		3225 SE HWY. 441	OKEECHOBEE, FL 34974–	
MOTEL PIER II		2200 SE HWY. 441	OKEECHOBEE, FL 34974–7322	
OHIO MOTEL		507 N. PARROTT AVE	OKEECHOBEE, FL 34972–2615	
PALM MOTEL		3190 S. HWY. 441	OKEECHOBEE, FL 34974–	
RAY'S SPORT HAVEN MOTEL		ONE 6 ST. RT. 4	OKEECHOBEE, FL 34974–	
SPORTSMAN NORTH MOTEL		601 N. PARROTT AVE	OKEECHOBEE, FL 34972–2616	
TREASURE ISLAND MOTEL		3525 SE HWY. 441	OKEECHOBEE, FL 34974–7198	
TROPIC MOTEL		1012 S. PARROTT AVE	OKEECHOBEE, FL 34974–5268	
SUWANNEE GABLES MOTEL		S. US 19 2 M	OLD TOWN, FL 32680–	
DAY MOTEL		501 BAYVIEW BLVD	OLDSMAR, FL 34677–3509	
301 ONECO MOTEL		5427 E. 15TH ST	ONECO, FL 34264–9999	
CRIS CROSS MOTEL		141 SHARAZAD BLVD	OPA LOCKA, FL 33054–3819	
COMFORT INN OF ORANGE CITY.		445 S. VOLUSIA	ORANGE CITY, FL 32763–	
DAYS INN		2501 N. VOLUSIA	ORANGE CITY, FL 32763–2899	
DEYARMAN INN		300 S. VOLUSIA AVE	ORANGE CITY, FL 32763–	
ORANGE CITY MOTEL		725 S. VOLUSIA AVE	ORANGE CITY, FL 32763–6578	
DAYS END MOTEL		US HWY. 441	ORANGE LAKE, FL 32681–9999	
ORANGE LAKE RESORT MOTEL.	PO BOX 125	HWY. 441	ORANGE LAKE, FL 32681–9999	
RANCH MOTEL	PO BOX 216	US 441	ORANGE LAKE, FL 32681–9999	
BEST WESTERN MOTOR INN		300 PARK AVE	ORANGE PARK, FL 32073–2997.	
COMFORT INN		341 PARK AVE	ORANGE PARK, FL 32073–2931.	
ECONO LODGE		141 PARK AVE	ORANGE PARK, FL 32073–2930.	
HOLIDAY INN		100 PARK AVE	ORANGE PARK, FL 32073–2998.	
INN OF WINTERBOURNE		2104 W. WINTERBOURNE	ORANGE PARK, FL 32073–5621.	
PARKSIDE MOTEL		538 PARK AVE	ORANGE PARK, FL 32073–3132.	
SUPER 8 MOTEL		4280 ELDRIDGE AVE	ORANGE PARK, FL 32073–	
ORANGE SPRINGS INN		1 MAIN ST	ORANGE SPRINGS, FL 32182–	
ARROW MOTEL		5425 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–2797	
BEL AIR MOTEL		6119 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–4686	
BEST WESTERN EXECUTIVE INN.		8750 E. COLONIAL DR	ORLANDO, FL 32817–	
BEST WESTERN PLAZA INTERNATIONAL.		8738 INTERNATIONAL DR	ORLANDO, FL 32819–8317	
BRYAN HOTEL		330 W. CHURCH ST	ORLANDO, FL 32801–2548	
BUDGET INN		3600 W. COLONIAL DR	ORLANDO, FL 32808–7904	
BUDGET LODGE		2904 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32805–6374	
BUDGET MOTEL		1647 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32805–4561	
BUDGETEL INN ORLANDO		2051 CONSULATE	ORLANDO, FL 32921–	
CARLTON HOTEL		432 S. HUGHEY ST	ORLANDO, FL 32801–2545	
CAROLINA MOON MOTEL		498 N. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32805–1788	
CATALINA INN		3401 L B MCLEOD RD	ORLANDO, FL 32805–5745	
CELESTE MOTEL		11285 E. COLONIAL DR	ORLANDO, FL 32817–4602	
CHOICE INN		4201 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–1238	
CLARION PLAZA HOTEL		9700 INTERNATIONAL DR	ORLANDO, FL 32819–	
COLONIAL PLAZA INN		2801 E. COLONIAL DR	ORLANDO, FL 32803–5068	
COMFORT INN		8421 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–7997	
COMFORT INN		3956 W. COLONIAL DR	ORLANDO, FL 32808–7926	
COMFORT INN		830 LEE RD	ORLANDO, FL 32810–	407–629–4000
COMFORT INN INTERNATIONAL.		5825 INTERNATIONAL DR	ORLANDO, FL 32819–8201	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COMFORT INN LAKE BUENA VISTA.		8442 PALM PKWY	ORLANDO, FL 32830–	407–239–7300
COMFORT INN ORLANDO		8421 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–	407–855–6060
COMFORT SUITE ORLANDO		9360 TURKEY LAKE RD	ORLANDO, FL 32819–	
COMFORT SUITES SAND LAKE		9360 TURKEY LAKE RD	ORLANDO, FL 32819–	
CONTINENTAL PLAZA MOTOR INN.		6825 VISITORS CIR	ORLANDO, FL 32819–8227	
COURTYARD BY MARRIOTT		7155 N. FRONTAGE RD	ORLANDO, FL 32812–	407–240–7200
COURTYARD BY MARRIOTT ORLANDO.		8600 AUSTRIAN CT	ORLANDO, FL 32819–	
COURTYARD BY MARRIOTT ORLANDO AIRPORT.		7155 N. FRONTAGE RD	ORLANDO, FL 32812–	
DAVIS PARK MOTEL		221 E. COLONIAL DR	ORLANDO, FL 32801–1285	
DAYS INN EAST		11639 E. COLONIAL DR	ORLANDO, FL 32817–4608	
DAYS INN		2323 MCCOY RD	ORLANDO, FL 32809–7899	
DAYS INN		1851 W. LANDSTREET RD	ORLANDO, FL 34875–6240	
DAYS INN		4919 W. COLONIAL DR	ORLANDO, FL 32808–7795	
DAYS INN		650 LEE RD	ORLANDO, FL 32810–5687	
DAYS INN		7200 INTERNATIONAL DR	ORLANDO, FL 32821–6240	
DAYS INN		9990 INTERNATIONAL DR	ORLANDO, FL 32819–6240	
DAYS INN 6543		2500 33RD ST	ORLANDO, FL 32809–8705	
DAYS INN 6830		5827 CARAVAN CT	ORLANDO, FL 32819–7987	
DAYS INN LAKE BUENA VISTA RES.		12205 APOPKA VINELAND R	ORLANDO, FL 32808–7904	
DAYS INN MIDTOWN		3300 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–8968	
DAYS INN ORLANDO LAKE-SIDE.		7335 SAND LAKE RD	ORLANDO, FL 32819–5207	
DAYS INN SOUTH		4049 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–8977	
DELTA ORLANDO RESORT		5715 MAJOR BLVD	ORLANDO, FL 32819–7988	
DOUBLETREE CLUB HOTEL ORLANDO.		8688 PALM PKWY	ORLANDO, FL 32819–	
ECONO LODGE		5870 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–3916	
ECONO LODGE		606 LEE RD	ORLANDO, FL 32810–5685	
ECONO LODGE 4		9401 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32821–8303	
ECONO LODGE CENTRAL		3300 W. COLONIAL DR	ORLANDO, FL 32808–8087	
ECONO LODGE CENTRAL		3300 W. COLONIAL DR	ORLANDO, FL 32808–	407–293–7221
ECONO LODGE UNIVERSITY		11731 E. COLONIAL DR	ORLANDO, FL 32817–4698	
ECONOLODGE		2601 MCCOY RD	ORLANDO, FL 32809–	
EMBASSY STES HOTEL ORLANDO.		8978 INTERNATIONAL DR	ORLANDO, FL 32819–9321	
EMBASSY SUITE HOTEL		8250 JAMAICAN CT	ORLANDO, FL 32819–9397	
EMBASSY SUITES HOTEL		8100 LAKE AVE	ORLANDO, FL 32819–	
EXPRESSWAY MOTEL		3550 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–8972	
EXPRESSWAY MOTEL 2		1218 35TH ST	ORLANDO, FL 32805–7006	
FAIRFIELD INN		1850 LANDSTREET RD	ORLANDO, FL 32809–	
FAIRFIELD INN		8342 JAMAICAN CT	ORLANDO, FL 32819–	
FAIRFIELD INN WINTER PARK		951 WYMORE RD	ORLANDO, FL 32789–	
FLAMINGO MOTEL		1721 N. MILLS AVE	ORLANDO, FL 32803–1889	
GATEWAY INN MOTEL		7050 KIRKMAN RD	ORLANDO, FL 32819–8284	
GENEVA MOTEL		6401 N. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32810–4119	
GOLD KEY INN		7100 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–5774	
GUEST QUARTERS SUITE HOTEL.		7550 AUGUSTA NATIONAL	ORLANDO, FL 32822–	
H J PLAZA INN		603 LEE RD	ORLANDO, FL 32810–5609	
HAMPTON INN		7110 S. KIRKMAN RD	ORLANDO, FL 32819–	
HARLEY HOTEL		151 E. WASHINGTON ST	ORLANDO, FL 32801–2398	
HOLIDAY INN		5905 KIRKMAN RD	ORLANDO, FL 32819–7985	
HOLIDAY INN AT UNIVERSAL STUDIOS.		5905 KIRKMAN RD	ORLANDO, FL 32819–	407–351–3333
HOLIDAY INN CENTRAL PARK		7900 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–6998	
HOLIDAY INN CENTROPLEX		929 W. COLONIAL DR	ORLANDO, FL 32804–7396	
HOLIDAY INN CENTROPLEX		929 W. COLONIAL DR	ORLANDO, FL 32804–	407–843–1360

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN EXPRESS/MID-TOWN.		3330 W. COLONIAL DR	ORLANDO, FL 32811–	407–299–6710
HOLIDAY INN HOTEL		626 W. LEE RD	ORLANDO, FL 32810–5686	
HOLIDAY INN L.B.V		13351 STATE RD. 535	ORLANDO, FL 32830–	407–239–4500
HOLIDAY INN LAKE BUERA VISTA.		13351 STATE RD. 535	ORLANDO, FL 32821–	
HOLIDAY INN ORLANDO AIR-PORT.		5750 T.G. LEE BLVD	ORLANDO, FL 32822–	407–851–6700
HOLIDAY INN ORLANDO INTERNATIONAL AIRPORT.		5750 T G LEE BLVD	ORLANDO, FL 32822–4458	
HOLIDAY INN RESORT		6515 INTERNATIONAL DR	ORLANDO, FL 32819–8296	
HOLIDAY INN UCF		12125 HIGH TECH AVE	ORLANDO, FL 32817–1475	
HOLIDAY INN UNIVERSAL STUDIOS.		5905 KIRKMAN RD	ORLANDO, FL 32819–	407–351–3333
HOLIDAY INN UNIVERSITY OF CENTRAL FLORIDA.		12125 HIGH TECH AVE	ORLANDO, FL 32817–	407–275–9000
HOLIDAY INN WINTER PARK		626 LEE RD	ORLANDO, FL 32810–	407–645–5600
HOST INN OF ORLANDO		919 W. COLONIAL DR	ORLANDO, FL 32804–7313	
HOWARD JOHNSON		5905 INTERNATIONAL DR	ORLANDO, FL 32819–8287	
HOWARD JOHNSON INTER-NATIONAL DRIVE.		8020 INTERNATIONAL DR	ORLANDO, FL 32819–	407–351–1730
HOWARD JOHNSON LODGE		6603 INTERNATIONAL DR	ORLANDO, FL 32819–8295	
HOWARD JOHNSON MIDTOWN ORLANDO.		2014 W. COLONIAL DR	ORLANDO, FL 32804–	407–841–8600
HOWARD JOHNSON MOTOR		8820 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–7995	
HOWARD JOHNSON MOTOR LODGE.		2014 W. COLONIAL DR	ORLANDO, FL 32804–6993	
HOWARD JOHNSON MOTOR LODGE.		8020 INTERNATIONAL DR	ORLANDO, FL 32819–8399	
HOWARD JOHNSON MOTOR LODGE.		304 W. COLONIAL DR	ORLANDO, FL 32801–1196	
HOWARD JOHNSON PARK SQUARE.		8501 PALM PKWY	ORLANDO, FL 32819–	
HOWARD JOHNSON PARK SQUARE INN & SUITES.		8501 PALM PKWY	ORLANDO, FL 32836–	407–239–8900
HOWARD JOHNSON UNIVER-SAL TOWER.		5905 INTERNATIONAL DR	ORLANDO, FL 32819–	407–351–2100
HOWARD VERNON MOTEL		600 W. COLONIAL DR	ORLANDO, FL 32804–7369	
HOWRAD JOHNSON DOWN-TOWN WESTPARK HOTELS.		304 W. COLONIAL DR	ORLANDO, FL 32801–	407–843–8700
HYATT REGENCY GRAND CY-PRESS.		1 GRAND CYPRESS BLVD	ORLANDO, FL 32836–	
HYATT REGENCY ORLANDO INTERNATIONAL AIRPORT.		9300 AIRPORT BLVD	ORLANDO, FL 32827–	
INNS OF AMERICA		8222 JAMAICAN CT	ORLANDO, FL 32819–9313	
INTERNATIONAL GATEWAY INN.		5859 AMERICAN WAY	ORLANDO, FL 32819–8201	
INTERNATIONAL INN		6327 INTERNATIONAL DR	ORLANDO, FL 32819–8297	
LA QUINTA MOTOR INN 642		7931 DAETWYLER DR	ORLANDO, FL 32812–4809	
LAKESHORE LODGE MOTEL		27 W. COLUMBIA ST	ORLANDO, FL 32806–1171	
LAMAR HOTEL		409 W. CENTRAL BLVD	ORLANDO, FL 32801–2586	
LAMAR HOTEL		18 N. BRYAN. ST	ORLANDO, FL 32801–2203	
LAS PALMAS HOTEL		6233 INTERNATIONAL DR	ORLANDO, FL 32819–	
LINCOLN ARMS HOTEL		434 W. CHURCH ST	ORLANDO, FL 32801–2546	
LOCH HAVEN MOTOR INN		1820 N. MILLS ST	ORLANDO, FL 32803–1854	
MARRIOTT'S ORLANDO WORLD CENTER.		1 WORLD CENTER DR	ORLANDO, FL 32821–6398	
MELODY MOTEL		3842 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–8963	
MIC LAKEFRONT INN		6500 INTERNATIONAL DR	ORLANDO, FL 32819–8218	
MOTEL 6 1079		5909 AMERICAN WAY	ORLANDO, FL 32819–8201	
MOTEL 6 791		5350 ADANSON	ORLANDO, FL 32810–	
OHIO MOTEL		2260 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32805–5355	
OMNI INTERNATIONAL HOTEL		400 W. LIVINGSTON ST	ORLANDO, FL 32801–1414	
ORLANDO AIRPORT MAR-RIOTT.		7499 AUGUSTA NATIONAL	ORLANDO, FL 32822–5015	
ORLANDO DOWNTOWN TRAVELODGE.		409 MAGNOLIA AVE	ORLANDO, FL 32801–	
ORLANDO HERITAGE INN 160		9861 INTERNATIONAL DR	ORLANDO, FL 32819–8198	
ORLANDO INN WEST		3330 W. COLONIAL DR	ORLANDO, FL 32808–8067	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ORLANDO MARRIOTT		8001 INTERNATIONAL DR	ORLANDO, FL 32819–8285	
ORLANDO MOTEL		6510 W. COLONIAL DR	ORLANDO, FL 32818–6822	
ORLANDO MOTOR LODGE		1825 N. MILLS AVE	ORLANDO, FL 32803–1888	
ORLANDO PENTA HOTEL		5445 FORBES PL	ORLANDO, FL 32812–	
ORLANDO TWIN TOWERS HOTEL.		5780 MAJOR BLVD	ORLANDO, FL 32819–7904	
PALMS COURT HOTEL		9301 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32821–8398	
PALOMINO MOTEL		3839 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–6962	
PARK INN INTERNATIONAL NORTH.		736 LEE RD	ORLANDO, FL 32810–5612	
PARLIAMENT HOUSE INN		410 N. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32805–1789	
PLANTATION MANOR & ORLANDO INTERNATIONAL HTL.		227 N. EOLA DR	ORLANDO, FL 32801–2036	
QUALITY HOTEL ORLANDO AIRPORT.		3835 BEELINE EXPRWY	ORLANDO, FL 32812–4199	
QUALITY HOTEL ORLANDO AIRPORT.		3635 MCCOY RD	ORLANDO, FL 32812–	407–859–2711
QUALITY INN EXECUTIVE SUITE.		4855 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–1776	
QUALITY INN LEE ROAD		830 LEE RD	ORLANDO, FL 32810–5519	
QUALITY INN MOTEL		7600 INTERNATIONAL DR	ORLANDO, FL 32819–8293	
QUALITY INN PLAZA		9000 INTERNATIONAL DR	ORLANDO, FL 32819–8395	
QUALITY INN PLAZA		9000 INTERNATIONAL DR	ORLANDO, FL 32819–	407–345–8585
QUALITY SUITES UNIVERSAL STUDIOS.		7400 CANADA AVE	ORLANDO, FL 32819–	407–363–0332
RACEWAY MOTEL		4724 N. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32810–1603	
RADISSON HOTEL AIRPORT		5555 HAZELTINE DR	ORLANDO, FL 32812–	
RADISSON INN & AQUATIC CENTER.		8444 INTERNATIONAL DR	ORLANDO, FL 32819–8329	
RADISSON INN LAKE BUENA VISTA.		8686 PALM PKWY	ORLANDO, FL 32819–	
RADISSON PLAZA HOTEL ORLANDO.		60 S. IVANHOE BLVD	ORLANDO, FL 32804–6493	
RAMADA		3200 W. COLONIAL DR	ORLANDO, FL 32808–8088	
RAMADA HOTEL RESORT		7400 INTERNATIONAL DR	ORLANDO, FL 32819–	407–351–4600
RAMADA HOTEL RESORT		7400 INTERNATIONAL DR	ORLANDO, FL 32819–	407–351–4600
RAMADA INN		7400 INTERNATIONAL DR	ORLANDO, FL 32819–8294	
RAMADA INN PLAZA INTERNATIONAL.		8300 JAMAICAN CT	ORLANDO, FL 32819–9341	
RAMADA INN SOUTH		8700 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–7996	
RED ROOF INN 200		9922 HAWAIIAN CT	ORLANDO, FL 32819–	
RESIDENCE INN		7975 CANADA AVE	ORLANDO, FL 32819–	
RESIDENCE INN LAKE BUENA VISTA.		8800 MEADOW CREEK DR	ORLANDO, FL 32821–	
ROADWAY INN		8601 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–7993	
RODEWAY INN		6323 INTERNATIONAL DR	ORLANDO, FL 32819–8298	
RODEWAY INN		9956 HAWAIIAN CT	ORLANDO, FL 32819–8101	
RODEWAY INN/CONVENTION CENTER.		9956 HAWAIIAN CT	ORLANDO, FL 32819–	407–351–5100
SANDS MOTEL		2400 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32805–5453	
SCOTTISH INN		5735 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–3915	
SHERATON PLAZA HOTEL		1500 SAND LAKE RD	ORLANDO, FL 32809–7081	
SHERATON UNIVERSITY INN		1724 ALAFAYA TRAIL	ORLANDO, FL 32826–	
SHERATON WORLD		10100 INTERNATIONAL DR	ORLANDO, FL 32821–8095	
STOUFFER ORLANDO RESORT.		6677 SEA HARBOUR DR	ORLANDO, FL 32821–	
SUMMERFIELD SUITES HOTEL LP.		8480 INTERNATIONAL DR	ORLANDO, FL 32819–	
SUPER 8 MOTEL ORLANDO		5900 AMERICAN WAY	ORLANDO, FL 32819–8202	
THE PEABODY ORLANDO		9801 INTERNATIONAL DR	ORLANDO, FL 32819–8197	
TRAVELODGE		5858 INTERNATIONAL DR	ORLANDO, FL 32819–8204	
TRAVELODGE FLORIDA MALL		8296 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
TRAVELODGE GARDENS AT ORLANDO JETP.		7101 S. ORANGE BLOSSOM TRAIL.	ORLANDO, FL 32809–5773	
TRAVELODGE ORLANDO AIRPORT.		1853 MCCOY RD	ORLANDO, FL 32809–7817	
TRAVELODGE ORLANDO AIRPORT.		1853 MCCOY RD	ORLANDO, FL 32809–	407–851–1113
TRAVELODGE ORLANDO CENTROPLEX.		409 N. MAGNOLIA AVE	ORLANDO, FL 32801–	407–423–1671
VILLAGE INN		17883 E. COLONIAL DR	ORLANDO, FL 32820–2218	
WASHINGTON INN		536 W. WASHINGTON ST	ORLANDO, FL 32801–2217	
WYNFIELD INN WESTWOOD		6263 WESTWOOD BLVD	ORLANDO, FL 32821–8099	
AQUA TERRACE MOTEL		599 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–7792.	
ARGOSY MOTEL		1255 OCEAN SHORE BLVD	ORMOND BEACH, FL 32074–5699.	
COMFORT INN BEACHSIDE		507 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–7129.	
CORAL BEACH MOTEL		711 S. ATLANTIC AVE	ORMOND BEACH, FL 32176–	
CORAL SANDS INN & SEASIDE C.		1009 OCEAN SHORE BLVD	ORMOND BEACH, FL 32176–	
DAYS INN		839 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–7895.	
DRIFTWOOD BEACH MOTEL		657 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–7795.	
ECONO LODGE 3		1634 N. US 1	ORMOND BEACH, FL 32074–2525.	
ECONO LODGE ON THE BEACH.		295 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–8197.	
GRANADA INN		51 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–6618.	
HOLIDAY HARBOR BEACH MOTEL.		1537 N. OCEAN SHORE BLVD	ORMOND BEACH, FL 32176–	
HOLIDAY INN I95 NORTH		1614 N. US HWY. 1	ORMOND BEACH, FL 32174–	
HOWARD JOHNSON LODGE		1633 N. US HWY. 1	ORMOND BEACH, FL 32174–	
JAMACIAN BEACH MOTEL		505 S. ATLANTIC AVE	ORMOND BEACH, FL 32176–6193.	
MAINSAIL MOTEL		281 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–8196.	
MAKAI MOTEL		707 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–7893.	
OCEAN CREST MOTEL		2040 OCEAN SHORE BLVD	ORMOND BEACH, FL 32074–3195.	
OCEAN DUNES MOTEL		565 S. ATLANTIC AVE	ORMOND BEACH, FL 32176–	
OCEAN SHORE MOTEL		1896 OCEAN SHORE BLVD	ORMOND BEACH, FL 32074–3199.	
OCEANIC MOTEL		1057 OCEAN SHORE BLVD	ORMOND BEACH, FL 32074–4197.	
ORMOND INN	RT 1	372 S. YONGE ST	ORMOND BEACH, FL 32074–	
QUALITY INN OCEANSIDE		251 S. ATLANTIC AVE	ORMOND BEACH, FL 32176–8195.	
QUALITY INN-DAVIS BROTHERS.		1567 N. US HWY. 1	ORMOND BEACH, FL 32074–	
SCOTTISH INNS		1606 N. US 1	ORMOND BEACH, FL 32174–	
SUN DECK MOTEL		1285 OCEAN SHORE BLVD	ORMOND BEACH, FL 32176–	
SURFSIDE MOTEL		484 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–7176.	
SYMPHONY BEACH MOTEL		453 S. ATLANTIC AVE	ORMOND BEACH, FL 32176–7127.	
TOMOKA MOTEL		900 N. US HWY. 1	ORMOND BEACH, FL 32074–	
TREASURE COVE MOTEL		145 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–6620.	
VANGUARD MOTEL		650 S. YONGE ST	ORMOND BEACH, FL 32074–7654.	
VILLAGE MOTEL		342 S. ATLANTIC AVE	ORMOND BEACH, FL 32074–8148.	
VIENNA MOTEL		1732 OCEAN SHORE BLVD	ORMOND BY THE SEA, FL 32176–3297.	
HOLIDAY INN		1660 S. TAMIAMI TRAIL	OSPREY, FL 34229–9762	
HOLIDAY INN SARASOTA—SOUTH.		1660 S. TAMIAMI TRAIL	OSPREY, FL 34229–	813–966–2121
SEALS COVE MOTEL		139 S. TAMIAMI TRAIL	OSPREY, FL 34229–9211	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SCOTTISH INN		I–75 & SR 136	PO WHITE SPRINGS, FL 32096–.	
DALLAS MOTEL		491 HWY. 90 W	PACE, FL 32571–1050	
EVERGLADES INN		164 E. 2ND ST	PAHOKEE, FL 33476–1814	
GRASSY WATERS MOTEL		2264 E. MAIN ST	PAHOKEE, FL 33476–1124	
HOLIDAY INN PALATKA		201 N. 1ST ST	PALATKA, FL 32177–3798	
HOLIDAY INN RIVERFRONT		201 N. FIRST ST	PALATKA, FL 32177–	904–328–3481
SUBURBAN INN		N. HWY. 17 1M	PALATKA, FL 32177–	
TOWN HOUSE MOTEL		100 MOSLEY AVE	PALATKA, FL 32177–4499	
WILLIAM PENN MOTEL		100 FEDERAL ST	PALATKA, FL 32177–3799	
DAYS INN PALM BAY		4700 DIXIE HWY. NE	PALM BAY, FL 32905–6036	
HOLIDAY INN PALM BAY		1881 PALM BAY RD., NE	PALM BAY, FL 32905–	407–723–8181
HOLIDAY INN PALM BAY		1881 PALM BAY RD. NE	PALM BAY, FL 32905–7541	
PALM BAY INN		1170 MALABAR RD. SE	PALM BAY, FL 32907–2177	
PALM TERRACE MOTEL		5154 NE DIXIE HWY	PALM BAY, FL 32905–6097	
RIVERSIDE MOTEL		6225 S. US 1	PALM BAY, FL 32905–	
SHORELINE MOTEL		3370 DIXIE HWY. NE	PALM BAY, FL 32905–2597	
BRAZILIAN COURT HOTEL		301 AUSTRALIAN AVE	PALM BEACH, FL 33480–4623	
BREAKERS HOTEL		S. COUNTY RD	PALM BEACH, FL 33480–4024	
CHESTERFIELD HOTEL DE-LUXE P.		363 COCOANUT ROW	PALM BEACH, FL 33480–	
COLONY HOTEL		155 HAMMOND AVE	PALM BEACH, FL 33480–4799	
HEART OF PALM BEACH HOTEL.		160 ROYAL PALM WAY	PALM BEACH, FL 33480–4254	
HOWARD JOHNSONS MOTOR LODGE.		2870 S. OCEAN BLVD	PALM BEACH, FL 33480–5597	
PALM BEACH HILTON		2842 S. OCEAN BLVD	PALM BEACH, FL 33480–5540	
PALM BEACH SEA LORD MOTOR HOTEL.		2315 S. OCEAN BLVD	PALM BEACH, FL 33480–5399	
PLAZA INN		215 BRAZILIAN AVE	PALM BEACH, FL 33480–4682	
TESTAS HOTELS & RES-TAURANTS INCORPORATED.		231 SUNSET	PALM BEACH, FL 33480–3814	
THE BRAZILIAN COURT		301 AUSTRAILIAN AVE	PALM BEACH, FL 33480–	407–655–7740
COMFORT INN		11360 US HWY. 1	PALM BEACH GARDENS, FL 33410–3224.	
ECONOMY INNS OF AMERICA		4123 NORTHLAKE BLVD	PALM BEACH GARDENS, FL 33407–6258.	
HOLIDAY INN PALM BEACH GARDENS.		4431 PGA BLVD	PALM BEACH GARDENS, FL 33410–6545.	
PALM BEACH GARDENS MAR-RIOTT.		4000 RCA BLVD	PALM BEACH GARDENS, FL 33410–.	
PGA RESORT HOTEL		400 AVE. OF THE CHAMPIONS	PALM BEACH GARDENS, FL 33410–.	
RADISSON SUITE HOTEL		4350 PGA BLVD	PALM BEACH GARDENS, FL 33410–6524.	
BEST WESTERN SEASPRAY		117 OCEAN AVE	PALM BEACH SHORES, FL 33404–5736.	
BON AIRE YACHT CLUB MOTEL.		188 LAKE DR	PALM BEACH SHORES, FL 33404–5787.	
EMBASSY SUITES HOTEL		181 OCEAN AVE	PALM BEACH SHORES, FL 33404–.	
PARADISE INN		151 OCEAN AVE	PALM BEACH SHORES, FL 33404–5795.	
TROPICAL ISLES APT—MOTEL		100 INLETWAY	PALM BEACH SHORES, FL 33404–6214.	
SHERATON PALM COAST RE-SORT.		300 CLUBHOUSE DR	PALM COAST, FL 32051–	
CLEARWATER ECONO LODGE		32000 N. US HWY. 19	PALM HARBOR, FL 34684–3711	
ECONO LODGE		32000 US HWY. 19 N	PALM HARBOR, FL 34684–	813–786–2529
KNIGHTS INN		34106 US HWY. 19	PALM HARBOR, FL 34684–2100	
INNISBROOK HILTON RESORT		36750 US HWY. 19 N	PALM HARBOUR, FL 34684–	813–942–2000
PALM SHORES MOTEL		5120 N. HARBOUR CITY BLVD	PALM SHORES, FL 32935–	
BAYSHORE INN		3512 US 41 N	PALMETTO, FL 34221–9689	
FIVE OAKS INN		1102 RIVERSIDE DR	PALMETTO, FL 34221–4929	
LEE MOTEL		3311 N. US HWY. 41	PALMETTO, FL 34221–8362	
PARKWAY MOTEL		713 17TH ST. W	PALMETTO, FL 34221–3103	
RIVERSIDE MOTEL		325 W. 8TH AVE	PALMETTO, FL 34221–5117	
STILLS MOTEL		1419 US HWY. 301	PALMETTO, FL 34221–	
QUALITY IN OCEANSIDE RE-SORT.		1208 N. OCEAN BLVD	POMPANO BEACH, FL 33062–	305–782–5300
OAKS MOTEL		S. HWY. 98	PANACEA, FL 32346–	
PANACEA MOTEL		HWY. 98	PANACEA, FL 32346–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
POSEY'S MOTEL		HWY. 98	PANACEA, FL 32346–9640	
BAY VILLA MOTEL		4501 W. HWY. 98	PANAMA CITY, FL 32401–1026	
BEST WESTERN BAYSIDE INN		711 W. BEACH DR	PANAMA CITY, FL 32401–2319	
BLUE BAY MOTOR LODGE		3407 W. HWY. 98	PANAMA CITY, FL 32401–1257	
BUDGET INN		3910 W. HWY. 98	PANAMA CITY, FL 32401–1167	
CANNON MOTEL		2111 US HWY. 231	PANAMA CITY, FL 32405–5242	
CLASSIC INN		4903 W. HWY. 98	PANAMA CITY, FL 32401–1034	
COMFORT INN		1013 E. 23RD ST	PANAMA CITY, FL 32405–5313	
DAYS INN		301 W. 23RD ST	PANAMA CITY, FL 32405–4538	
DAYS INN PANAMA CITY		4111 HWY. 98 W	PANAMA CITY, FL 32401–1170	
DOWNTOWN MOTEL		836 HARRISON AVE	PANAMA CITY, FL 32401–2526	
EAGLE INN MOTEL		6319 OAK SHORE DR	PANAMA CITY, FL 32404–	
ECONOLODGE		4411 W. HWY. 98	PANAMA CITY, FL 32401–1024	
EL PANAMA MOTEL		1131 HARRISON AVE	PANAMA CITY, FL 32401–2430	
EXPRESS INN		4810 W. HWY. 98	PANAMA CITY, FL 32401–1098	
FAIRWAY INN		3400 W. HWY. 98	PANAMA CITY, FL 32401–	
FARR INN		1306 BECK AVE	PANAMA CITY, FL 32401–1341	
HOLIDAY INN		2001 COVE BLVD	PANAMA CITY, FL 32405–5316	
HOLIDAY INN BEACH RESORT (HILTON, INC.).		11127 FRONT BEACH RD	PANAMA CITY, FL 32407–	904–234–1111
HOLIDAY INN MALL		2001 N. COVE BLVD	PANAMA CITY, FL 32405–	904–785–0000
HOWARD JOHNSON'S LODGE		4601 W. HWY. 98A	PANAMA CITY, FL 32401–1099	
HOWARDS MOTEL		4911 W. HWY. 98	PANAMA CITY, FL 32401–1077	
JETAIRE MOTEL		6249 E. HWY. 98	PANAMA CITY, FL 32404–7434	
LA BRISA INN		9424 FRONT BEACH RD	PANAMA CITY, FL 32407–	904–871–2345
LA BRISA INN		5711 E. HWY. 98	PANAMA CITY, FL 32404–	904–871–2345
LA BRISA INN TYNDALL EAST		5711 E. TYNDALL PKWY	PANAMA CITY, FL 32404–7230	
LEES MOTEL		1342 COVE BLVD	PANAMA CITY, FL 32401–3374	
MARIE MOTEL		545 MAGNOLIA AVE	PANAMA CITY, FL 32401–3086	
MATTIES MOTEL		1127 BECK AVE	PANAMA CITY, FL 32401–1456	
NEOTA MOTEL		726 E. 14TH CT	PANAMA CITY, FL 32401–3310	
PANAMA CITY SUPER 8 MOTEL.		207 HWY. 231	PANAMA CITY, FL 32405–4701	
PARKER INN		4933 W. BUS 98	PANAMA CITY, FL 32404–	
PASSPORT INN		5003 W. HWY. 98	PANAMA CITY, FL 32401–1036	
RAMADA INN MOTEL		3001 W. 10TH ST	PANAMA CITY, FL 32401–1496	
REBA MOTEL		323 S. TYNDALL PKWY	PANAMA CITY, FL 32404–6725	
RELAX INN		900 HARRISON AVE	PANAMA CITY, FL 32401–2528	
SCOTTISH INN		4907 W. HWY. 98	PANAMA CITY, FL 32401–1034	
SOUTHERN OAKS MOTEL		4128 W. HWY. 98	PANAMA CITY, FL 32401–1171	
STACEY'S MOTEL		4636 E. US BUSINESS HWY. 9	PANAMA CITY, FL 32404–	
THRIFTY INN BY THE BAY		1212 BECK AVE	PANAMA CITY, FL 32401–1459	
TWEEN BAYS MOTEL		4506 W. HWY. 98	PANAMA CITY, FL 32401–	
UNICORN MOTEL		4208 W. HWY. 98	PANAMA CITY, FL 32401–	
USA INN 1		710 E. 15TH ST	PANAMA CITY, FL 32405–5417	
WALDREP MOTEL		3513 W. HWY. 98	PANAMA CITY, FL 32401–1259	
ADMIRAL MOTEL		16815 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2499.	
ALTAN'S BEACH MOTEL		5700 THOMAS DR	PANAMA CITY BEACH, FL 32408–6716.	
AMERICANA MOTEL		11807 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3698.	
AQUA VIEW MOTEL		4909 HISPANOLA ST	PANAMA CITY BEACH, FL 32407–6910.	
BAHAMA MOTEL		618 EVERGREEN ST	PANAMA CITY BEACH, FL 32407–3202.	
BAREFOOT BEACH INN		9450 SW THOMAS DR	PANAMA CITY BEACH, FL 32408–4296.	
BARNEY GRAYS MOTEL		10840 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3914.	
BARNEY GRAYS MOTEL		10901 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3914.	
BEACH HOLIDAY MOTEL		15401 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–.	
BEACH MOTEL		10996 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3950.	
BEACHCOMBER MOTEL		17101 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2343.	
BEACHSIDE MOTEL 2		10713 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3910.	
BEACHWAY MOTEL		604 FERNWOOD ST	PANAMA CITY BEACH, FL 32407–3204.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEL-AIR MOTEL		8507 SURF DR	PANAMA CITY BEACH, FL 32408–4796.	
BEST ECONO INN PANAMA CITY.		11000 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3917.	
BIKINI BEACH MOTEL		11001 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3916.	
BLUE DOLPHIN MOTEL		19919 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1708.	
BRIGHT STAR MOTEL		14705 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3587.	
CALADIUM VILLAGE MOTEL		644 CALADIUM CIR	PANAMA CITY BEACH, FL 32413–2699.	
CASA LOMA MOTEL		13615 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3502.	
CASA PLACE MOTEL		121 CASA PL	PANAMA CITY BEACH, FL 32413–1744.	
CASTLE MOTEL		20417 BACK BEACH RD	PANAMA CITY BEACH, FL 32413–.	
CATALINA COURT MOTEL		20014 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1601.	
CHAR BETT MOTEL		291 S. ARNOLD BLVD	PANAMA CITY BEACH, FL 32413–.	
CHATEAU MOTEL		12525 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3397.	
COOKS MOTEL		9300 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–4033.	
DAYS INN		12907 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–.	
DEL MAR MOTEL		8511 SURF DR	PANAMA CITY BEACH, FL 32408–4716.	
DESERT PALMS MOTEL		17729 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1942.	
DRIFTING SANDS MOTEL		5530 THOMAS DR	PANAMA CITY BEACH, FL 32408–6712.	
EBB TIDE MOTEL		6009 GULF DR	PANAMA CITY BEACH, FL 32408–.	
EL CENTRO MOTEL & GIFT SHOP.		17120 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–.	
EL PINE MOTEL		8901 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32408–4025.	
ELDORADO TRAVEL INN NORTH.		10812 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3913.	
ELDORADO TRAVEL INN SOUTH.		10811 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3912.	
FIESTA MOTEL		13623 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3589.	
FLAMINGO MOTEL		15524 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2598.	
FLAMINGO MOTEL BEACHSIDE.		15525 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2598.	
FLORIDA PALMS MOTEL		17784 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1993.	
GALA INN		17674 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1930.	
GEORGIAN TERRACE MOTEL		14415 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3591.	
GRANDE GULF MOTEL		6014 THOMAS DR	PANAMA CITY BEACH, FL 32408–6196.	
GULF BREEZE MOTEL		10720 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3911.	
GULF CREST MOTEL		8715 SURF DR	PANAMA CITY BEACH, FL 32408–4799.	
GULFSIDE MIRACLE MILE INN		9600 S. THOMAS DR	PANAMA CITY BEACH, FL 32408–4293.	
GULFVIEW MOTEL		14501 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3514.	
HERITAGE MOTEL		15000 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3525.	
HI TIDE MOTEL		10708 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3911.	
HOLIDAY HILLS MOTEL		380 HILL RD	PANAMA CITY BEACH, FL 32413–.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY HILLS MOTEL		15328 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3528.	
HOLIDAY INN BEACH		11127 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–.	
HOLIDAY LODGE MOTEL		6400 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–5698.	
HOLIDAY TERRACE MOTEL		11831 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3601.	
HOLLOWAY HOUSE MOTEL		15405 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2591.	
HOTEL CALIFORNIA		10624 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3909.	
IMPALA MOTEL		17751 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–.	
IMPERIAL INN MOTEL		16819 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2439.	
INN PARADISE		15727 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2595.	
J P STEPHENSON MOTEL		10710 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3999.	
JUNGLE BEACH MOTEL RETREAT.		15325 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3527.	
KISKA MOTEL COTTAGE 18		22202 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–1209.	
LABRISA INN BEACH WEST		9424 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–4128.	
LAGOON MOTEL		5915 N. LAGOON DR	PANAMA CITY BEACH, FL 32408–.	
LAMPLIGHTER INN		10714 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3996.	
LONG BEACH INN		10515 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3906.	
MARLIN MOTEL		7906 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32408–4816.	
MARRIOTTS BAY POINT RESORT.		100 DELWOOD RD	PANAMA CITY BEACH, FL 32407–7207.	
MERRIMAC MOTEL		5301 THOMAS DR	PANAMA CITY BEACH, FL 32408–6793.	
MIRACLE STRIP BEACH MOTEL.		11827 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3601.	
MONTERY MOTEL		5501 THOMAS DR	PANAMA CITY BEACH, FL 32408–6711.	
NAUTICUS BEACH MOTEL		22217 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1207.	
OSPREY MOTEL		15801 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2509.	
PANA ROC MOTEL		5507 THOMAS DR	PANAMA CITY BEACH, FL 32408–6796.	
PANAMA INN		16328 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2521.	
PANAMA INN WEST		16328 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2521.	
PANAMA PALMS MOTEL		5607 THOMAS DR	PANAMA CITY BEACH, FL 32408–6713.	
PIER 99 MOTOR INN		9900 BEACH BLVD	PANAMA CITY BEACH, FL 32408–4208.	
PIER HOUSE MOTEL		16320 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–.	
PLAZA MOTEL		12830 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3312.	
PORT OF CALL MOTEL		15817 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2597.	
RAMADA INN BEACH		12907 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3398.	
REEF MOTEL		12011 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3403.	
RENDEZVOUS INN		17281 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2195.	
REST A WHILE MOTEL		613 EVERGREEN ST	PANAMA CITY BEACH, FL 32407–3201.	
RIVIERA MOTEL		21504 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1309.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SANDOLLAR INN		8003 SURF DR	PANAMA CITY BEACH, FL 32408–7594.	
SANDPIPER-BEACON MOTEL		17403 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2097.	
SANDS INN		9500 S. THOMAS DR	PANAMA CITY BEACH, FL 32408–4295.	
SEA AQUA MOTEL		17643 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–.	
SEA FOAM MOTEL		6010 W. THOMAS DR	PANAMA CITY BEACH, FL 32408–6197.	
SEA OATS MOTEL		8708 SURF DR	PANAMA CITY BEACH, FL 32408–4759.	
SEA STAR INN		900 GULF SIDE DR	PANAMA CITY BEACH, FL 32408–3901.	
SEABREEZE MOTEL		16810 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2440.	
SEASCAPE INN		15505 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2599.	
SEAWITCH MOTEL		21905 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1205.	
SEVEN SEAS MOTEL		8013 THOMAS DR	PANAMA CITY BEACH, FL 32408–7518.	
SHALIMAR PLAZA MOTEL		17545 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2098.	
SHERATON MIRACLE MILE		9400 S. THOMAS DR	PANAMA CITY BEACH, FL 32408–4213.	
SHIPSHAPE INN		3821 THOMAS DR	PANAMA CITY BEACH, FL 32408–7304.	
SIESTA MOTEL		9113 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32408–4029.	
SILVER SANDS MOTEL		8601 SURF DR	PANAMA CITY BEACH, FL 32408–4798.	
SKY WAY MOTEL		16801 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2439.	
SOUTH PACIFIC MOTEL		16701 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2498.	
SPARTAN INN		8614 W. SURF DR	PANAMA CITY BEACH, FL 32408–4719.	
SPYGLASS INN		5004 THOMAS DR	PANAMA CITY BEACH, FL 32408–6999.	
SUGAR SAND MOTEL		20723 FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1416.	
SUMMER BREEZE MOTEL		9227 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32408–4031.	
SUN GLO MOTEL		5401 THOMAS DR	PANAMA CITY BEACH, FL 32408–6795.	
SUNDIAL MOTEL		15625 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2594.	
SUNNY SANDS MOTEL		8501 W. SURF DR	PANAMA CITY BEACH, FL 32408–4716.	
SUNSET INN		8109 SURF DR	PANAMA CITY BEACH, FL 32408–4709.	
SUNSET INN NORTH		8100 SURF DR	PANAMA CITY BEACH, FL 32408–4736.	
SURF HIGH INN		10611 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3908.	
TOURWAY MOTEL		14701 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3518.	
TRADE WINDS MOTEL		12513 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3396.	
TREASURE COVE MOTEL & APARTMENTS.		2603 THOMAS DR	PANAMA CITY BEACH, FL 32408–6246.	
TREASURE ISLAND MOTEL		5005 W. GULF DR	PANAMA CITY BEACH, FL 32406–6998.	
TRIPS MOTEL		14929 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3522.	
TWIN PALMS MOTEL		10601 FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3908.	
VOYAGER MOTEL		16410 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–2432.	
WATERS EDGE MOTEL		10995 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32407–3914.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
WAVE CREST MOTEL		22209 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1207.	
WHITE SAND MOTEL		17757 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–1942.	
WIND DRIFT MOTEL		14521 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–3514.	
WISTERIA INN		20404 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–6240.	
WYE MOTEL		258 S. ARNOLD RD	PANAMA CITY BEACH, FL 32413–.	
YOUNGS MOTEL		19969 W. FRONT BEACH RD	PANAMA CITY BEACH, FL 32413–.	
CIRCLE ECONY MOTEL		4222 W. MOBILE HWY	PENSACOLA, FL 32506–4206	
CIVIC INN		200 N. PALAFOX ST	PENSACOLA, FL 32501–4841	
CIVIC INN NORTH		8500 UNIVERSITY PKWY	PENSACOLA, FL 32514–4905	
COMFORT INN		6919 PENSACOLA BLVD	PENSACOLA, FL 32505–1266	
COMFORT INN		13585 PERDIDO KEY DR	PENSACOLA, FL 32507–9606	
COMFORT INN-N A S CORRY		3 NEW WARRINGTON RD	PENSACOLA, FL 32506–	
DAYS INN		710 N. PALAFOX ST	PENSACOLA, FL 32501–3999	
DAYS INN MOTEL		7051 N. PENSACOLA BLVD	PENSACOLA, FL 32505–1298	
ECONO LODGE		7194 PENSACOLA BLVD	PENSACOLA, FL 32505–1262	
EXECUTIVE INN		6954 PENSACOLA BLVD	PENSACOLA, FL 32505–1222	
GRIERS GRAND HOTEL R H		2618 N. GUILLEMARDE ST	PENSACOLA, FL 32503–3714	
HAMPTON INN		7330 PLANTATION	PENSACOLA, FL 32504–6336	
HOLIDAY INN EXPRESS		6501 PENSACOLA BLVD	PENSACOLA, FL 32505–	
HOLIDAY INN UNIVERSITY MALL.		7200 PLANTATION RD	PENSACOLA, FL 32504–6334	
HOMESTEAD INN		7830 PINE FOREST RD	PENSACOLA, FL 32506–8226	
HOSPITALITY INN		6900 PENSACOLA BLVD	PENSACOLA, FL 32505–1222	
HOSPITALITY INNS OF AMERICA.		4910 W. MOBILE HWY	PENSACOLA, FL 32506–3230	
LA QUINTA MOTOR INN 598		7750 N. DAVIS HWY	PENSACOLA, FL 32514–7573	
LANDMARK INN		6891 N. PENSACOLA BLVD	PENSACOLA, FL 32505–1267	
LONGS MOTEL		5021 MOBILE BLVD	PENSACOLA, FL 32506–3231	
LYON'S MOTEL		3114 N. ALCANIZ ST	PENSACOLA, FL 32503–3551	
MARBLE MANOR MOTEL		1700 W. CERVANTES ST	PENSACOLA, FL 32501–2796	
MARIA MOTEL		4551 MOBILE HWY	PENSACOLA, FL 32506–3537	
MAYFAIR MOTEL		4540 MOBILE HWY	PENSACOLA, FL 32506–3538	
MONA LISA MOTEL		4950 MOBILE HWY	PENSACOLA, FL 32506–3230	
MOTEL 6 0175		5829 PENSACOLA BLVD	PENSACOLA, FL 32505–2523	
MOTEL 6 1105		7226 PLANTATION RD	PENSACOLA, FL 32504–6334	
MOTEL 6 1183		7827 N. DAVIS HWY	PENSACOLA, FL 32514–7560	
OSCEOLA RANCH MOTEL		4735 W. MOBILE HWY	PENSACOLA, FL 32506–3570	
PARK INN		221 E. GARDEN ST	PENSACOLA, FL 32501–6038	
PARK INN MOTEL		223 E. GARDEN ST	PENSACOLA, FL 32501–6065	
PENSACOLA HILTON		200 E. GREGORY ST	PENSACOLA, FL 32501–4878	
PENSACOLA MOTOR LODGE		2305 W. CERVANTES ST	PENSACOLA, FL 32505–7148	
PENSACOLA SUPER 8 MOTEL		7220 PLANTATION RD	PENSACOLA, FL 32504–6334	
QUALITY INN		6911 PENSACOLA BLVD	PENSACOLA, FL 32505–1294	
RAMADA INN BAYVIEW		7601 SCENIC HWY	PENSACOLA, FL 32504–6841	
RAMADA INN NORTH		6550 PENSACOLA BLVD	PENSACOLA, FL 32505–1794	
RANCHO VILLA MOTEL		4970 MOBILE HWY	PENSACOLA, FL 32506–3230	
RED CARPET INN		4448 MOBILE HWY	PENSACOLA, FL 32506–4210	
RED ROOF INN		7340 PLANTATION RD	PENSACOLA, FL 32504–6336	
RELAX INN		3725 MOBILE HWY	PENSACOLA, FL 32505–6122	
RESIDENCE INN BY MARRIOTT.		7230 PLANTATION RD	PENSACOLA, FL 32504–	904–479–1000
RODEWAY INN		8500 PINE FOREST RD	PENSACOLA, FL 32506–8234	
ROYAL ARMS MOTEL		3730 W. MOBILE HWY	PENSACOLA, FL 32505–6123	
SMITHS MOTEL		5350 MOBILE HWY	PENSACOLA, FL 32506–2102	
SPANISH TRAIL MOTEL		6400 MOBILE HWY	PENSACOLA, FL 32526–	
THE KNIGHTS INN		1953 NORTHCROSS LN	PENSACOLA, FL 32514–6100	
THE PENSACOLA GRAND HOTEL.		200 E. RGORY ST	PENSACOLA, FL 32501–	904–433–3336
TOWN & COUNTRY MOTEL		1717 W. CERVANTES	PENSACOLA, FL 32501–2754	
TRAVEL INN		1801 W. CERVANTES	PENSACOLA, FL 32501–2756	
TRAVEL INN		1905 W. CERVANTES ST	PENSACOLA, FL 32501–2758	
VILLAGE INN		8240 N. DAVIS HWY	PENSACOLA, FL 32514–6045	
VILLAGE INN CONDOMINIUMS		8240 N. DAVIS HWY	PENSACOLA, FL 32514–6045	
WEST FLORIDA MOTEL		550 E. 9 MILE RD	PENSACOLA, FL 32514–1467	
BARBARY COAST MOTEL		24 VIA DE LUNA	PENSACOLA BEACH, FL 32561–2004.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN MOTEL PCOLA B.		16 VIA DELUNA	PENSACOLA BEACH, FL 32561–.	
FIVE FLAGS INN MOTEL		299 FT PICKENS RD	PENSACOLA BEACH, FL 32561–0039.	
GULFAIRE MOTEL		21 VIA DE LUNA DR	PENSACOLA BEACH, FL 32561–2003.	
HOLIDAY BEACH RESORT SOUNDSID.		19 VIA DELUNA	PENSACOLA BEACH, FL 32561–2003.	
HOLIDAY INN		165 FORT PICKENS RD	PENSACOLA BEACH, FL 32561–2098.	
SANDPIPER MOTEL		23 VIA DE LUNA	PENSACOLA BEACH, FL 32561–2003.	
SUNSET LODGE		14 VIA DELUNA DR	PENSACOLA BEACH, FL 32561–2098.	
THE DUNES MOTEL		333 FORT PICKENS RD	PENSACOLA BEACH, FL 32561–2011.	
AIRPORT MOTEL		3206 S. HWY. 19	PERRY, FL 32347–6403	
BAMBI MOTEL		1629 S. BYRON BUTLER PKWY	PERRY, FL 32347–5507	
BEST BUDGET INN		2220 HWY. 19 S	PERRY, FL 32347–6193	
CHAPARRAL INN		2159 HWY. 19 S	PERRY, FL 32347–6101	
DAYS INN MOTEL		2277 S. HWY. 19	PERRY, FL 32347–6197	
KINGSWOOD INN MOTEL		2755 S. BYRON BUTLER PKWY	PERRY, FL 32347–6398	
OLD PAVILION MOTEL		S. HWY. 361 KEATON BC	PERRY, FL 32347–	
SERVILLA MOTEL		HWY. 27	PERRY, FL 32347–	
SKYLARK MOTEL		317 N. HWY. 19	PERRY, FL 32347–	
SOUTHERN INN		2238 S. BYRON BUTLER PKWY	PERRY, FL 32347–6194	
SUN N SAND MOTEL		1708 S. HWY. 19	PERRY, FL 32347–5597	
CHARLES LA MARK MOTEL		6200 34TH ST. N	PINELLAS PARK, FL 34665–6231.	
CHIEF MOTEL		8490 HWY. 19	PINELLAS PARK, FL 34665–1711.	
DAYS INN GATEWAY		9359 N. US HWY. 19	PINELLAS PARK, FL 34666–5498.	
EVERS MOTEL		6800 N. US HWY. 19	PINELLAS PARK, FL 34665–6244.	
KENVIN MOTEL		6801 HAINES RD	PINELLAS PARK, FL 34666–6228.	
LA QUINTA MOTOR INN 2638		7500 N. US HWY. 19	PINELLAS PARK, FL 34665–2746.	
HOLIDAY INN PALM BEACH GARDENS.		4431 P.G.A. BLVD	PALM BEACH GARDENS, FL 33410–.	407–622–2260
ECONOLODGE		301 S. FRONTAGE RD	PLANT CITY, FL 33566–1915	
HIGHWAY 92 MOTEL		5805 HWY. 92 W	PLANT CITY, FL 33566–8291	
HOLIDAY INN PLANT CITY		2011 N. WHEELER ST	PLANT CITY, FL 33566–1860	
PARKEDALE MOTEL		4504 W. US HWY. 92	PLANT CITY, FL 33566–8278	
WILSON COURT MOTEL		301 THOMAS ST	PLANT CITY, FL 33566–3221	
AMBLE INN MOTEL OF PLANTATION.		790 S. 40TH AVE	PLANTATION, FL 33314–	
AMBLE INN MOTEL OF PLANTATION.		1010 SW 40TH AVE	PLANTATION, FL 33314–	
COURTYARD BY MARRIOTT		7780 SW 6TH ST	PLANTATION, FL 33324–	
COURTYARD NY MARRIOTT FT. LAUDERDALE PLANTATN.		7780 SW 6TH ST	PLANTATION, FL 33324–	305–475–1100
HAVEN MOTEL		1001 S. SR 7	PLANTATION, FL 33317–4524	
HOLIDAY INN		1711 N. UNIVERSITY DR	PLANTATION, FL 33322–4187	
HOLIDAY INN FT. LAUDERDALE, PLANTATION.		1711 N. UNIVERSITY DR	PLANTATION, FL 33322–	305–472–5600
PLANTATION INN		375 N. SR 7	PLANTATION, FL 33317–	
PLANTATION MOTEL		950 SW 40TH AVE	PLANTATION, FL 33317–4523	
SHERATON SUITES PLANTATION.		311 N. UNIVERSITY DR	PLANTATION, FL 33324–	
TOWN MOTEL		1140 SW 40TH AVE	PLANTATION, FL 33317–4527	
ISLAMORADA INN		87760 OVERSEAS HWY	PLANTATION KEY, FL 33036–9536.	
TONYS MOTEL		9290 OVERLAND RD	APOPKA, FL 32703–9485	
ANCHOR INN		3229 NE 5TH ST	POMPANO BEACH, FL 33062–4706.	
ATLANTIC INN		151 NW 17TH AVE	POMPANO BEACH, FL 33069–2813.	
BLUE HERON MOTEL		421 SUNSET DR	POMPANO BEACH, FL 33062–5008.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BUDGET INN OCEAN RESORT		300 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5812.	
COLONIAL ACRES MOTEL		4211 N. FEDERAL HWY	POMPANO BEACH, FL 33064–6096.	
DAYS INN 6524		1411 NW 31ST AVE	POMPANO BEACH, FL 33069–1196.	
ECONOMY INN		555 S. FEDERAL HWY	POMPANO BEACH, FL 33062–5903.	
HOLIDAY GARDEN MOTEL		4661 N. FEDERAL HWY	POMPANO BEACH, FL 33064–6510.	
HOLIDAY INN POMPANO BEACH.		1350 S. OCEAN BLVD	POMPANO BEACH, FL 33062– .	305–941–7300
HOTEL GRISHAM		407 NW 4TH AVE	POMPANO BEACH, FL 33060–5022.	
HOTEL POMPANO QUEBEC		1301 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5999.	
HOWARD JOHNSON MOTOR LODGE.		9 N. POMPANO BEACH BLVD	POMPANO BEACH, FL 33062–5795.	
JASMIN VILLA & MOTEL		3309 SE 8TH ST	POMPANO BEACH, FL 33062–6211.	
JASMIN VILLA & MOTEL		801 S. OCEAN BLVD	POMPANO BEACH, FL 33062–6315.	
LE CABANON MOTEL		504 N. OCEAN BLVD	POMPANO BEACH, FL 33062–4607.	
LONE PALM MOTEL		740 N. OCEAN BLVD	POMPANO BEACH, FL 33062–4695.	
LUCAYA HOTEL		1200 N. OCEAN BLVD	POMPANO BEACH, FL 33062–4012.	
MOTEL 6 371		1201 NW 31ST AVE	POMPANO BEACH, FL 33069–1111.	
OCEAN RANCH HOTEL & VILLAS.		1110 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5697.	
OCEAN RETREAT MOTEL		1508 N. OCEAN BLVD	POMPANO BEACH, FL 33062–3493.	
OCEAN VIEW MOTEL		317 BRINY AVE	POMPANO BEACH, FL 33062–5803.	
POMPANO BEACH HOLIDAY INN.		1350 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5996.	
POMPANO BEACH HOLIDAY INN.		1333 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5996.	
POMPANO BEACH MOTOR LODGE.		1112 N. OCEAN BLVD	POMPANO BEACH, FL 33062–4097.	
QUALITY INN OCEANSIDE		1208 N. OCEAN BLVD	POMPANO BEACH, FL 33062–4012.	
RONNY DEE MOTEL		717 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5396.	
SAN TANDA MOTEL		901 N. OCEAN BLVD	POMPANO BEACH, FL 33062–4005.	
SANDS HARBOR HOTEL & MARINA.		125 N. RIVERSIDE DR	POMPANO BEACH, FL 33062–5000.	
SANTA ROSA MOTEL		308 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5899.	
SEA CASTLE RESORT MOTEL		730 N. OCEAN BLVD	POMPANO BEACH, FL 33062–4696.	
SEA COVE MOTEL		213 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5895.	
SHERWOOD INN		1460 S. OCEAN BLVD	POMPANO BEACH, FL 33062–7306.	
SPA HOTEL		2601 N. PALM AIRE DR	POMPANO BEACH, FL 33060– .	
SUNSET MOTEL		412 SUNSET DR	POMPANO BEACH, FL 33062–5098.	
SURFSIDE MOTEL		710 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5395.	
TERRACE PLAZA APARTMENTS & MOTEL.		701 BRINY AVE	POMPANO BEACH, FL 33062–5394.	
THREE SISTERS ECONOMY INN.		2300 NE 10TH ST	POMPANO BEACH, FL 33062–4100.	
VILLA NOVA MOTEL		812 S. OCEAN BLVD	POMPANO BEACH, FL 33062–5396.	
MARTINS MOTEL		HWY. 90 & 81	PONCE DE LEON, FL 32455– ...	
PONCE DE LEON MOTOR LODGE.		HWY. 81 & I–10	PONCE DE LEON, FL 32455– ...	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MARIOTT AT SAWGRASS RESORT.	.....	1000 TPC BLVD	PONTE VEDRA, FL 32082–	.....
MARRIOTT AT SAWGRASS	.....	1000 TPC BLVD	PONTE VEDRA BEACH, FL 32082–8118.	.....
PONTE VEDRA INN & CLUB	.....	200 PONTE VEDRA BLVD	PONTE VEDRA BEACH, FL 32082–1810.	.....
PONTE VEDRA INN & CLUB I H	.....	200 PONTE VEDRA BLVD	PONTE VEDRA BEACH, FL 32082–1810.	.....
DAYS INN OF PORT CHARLOTTE.	.....	1941 TAMIAMI TRAIL	PORT CHARLOTTE, FL 33948–2198.	.....
KNIGHT INN	.....	4100 TAMIAMI TRAIL	PORT CHARLOTTE, FL 33952–	.....
PORT CHARLOTTE MOTEL	.....	3491 TAMIAMI DR	PORT CHARLOTTE, FL 33952–8196.	.....
PORT CHARLOTTE RAMADA INN.	.....	3400 TAMIAMI TRAIL	PORT CHARLOTTE, FL 33952–8193.	.....
SANDPIPER MOTEL	.....	3291 TAMIAMI TRAIL	PORT CHARLOTTE, FL 33952–8095.	.....
PORT LA BELLE INN & COUNTRY C.	.....	1 OXBOW DR	PORT LA BELLE, FL 33935–9713.	.....
DUSK TO DAWN MOTEL	.....	4545 S. RIDGEWOOD AVE	PORT ORANGE, FL 32019–4524.	.....
ALLAMANDA MOTEL	.....	8621 US HWY. 19	PORT RICHEY, FL 34668–5346	.....
COMFORT INN OF PORT RICHEY.	.....	11810 N. US HWY. 19	PORT RICHEY, FL 34668–1053	.....
COMFORT INN OF PORT RICHEY.	.....	11810 US HWY. 19	PORT RICHEY, FL 34668–	813–863–3336
DAYS INN	.....	11736 US HWY. 19	PORT RICHEY, FL 34668–1049	.....
GULF COAST INN	.....	10826 US HWY. 19	PORT RICHEY, FL 34668–2561	.....
GULF SANDS MOTEL	.....	10840 US HWY. 19	PORT RICHEY, FL 34668–2561	.....
SUNNY BREEZE MOTEL	.....	7031 COLFAX AVE	PORT RICHEY, FL 34668–	.....
DIXIE BELLE MOTEL	RT 3 BOX A	W. HWY. 98	PORT SAINT JOE, FL 32456– ...	.....
GULF SANDS MOTEL	.....	W. HWY. 98	PORT SAINT JOE, FL 32456–9601.	.....
MOTEL SAINT JOE	.....	501 MONUMENT AVE	PORT SAINT JOE, FL 32456–1913.	.....
PHANTRY HOTEL	.....	302 REID AVE	PORT SAINT JOE, FL 32456–1825.	.....
PIRATE'S COVE HOTEL	.....	4307 SE BAYVIEW ST	PORT SALERNO, FL 34997–6807.	.....
BEST WESTERN PORT ST LUCIE.	.....	7900 S. US 1	PORT ST LUCIE, FL 34952–	.....
RADISSON INN PORT ST LUCIE.	.....	10120 S. FEDERAL HWY	PORT ST LUCIE, FL 34952–	.....
RAINBOW MOTEL & EFFICIENCIES.	.....	6490 S. US HWY. 1	PORT ST LUCIE, FL 34952–	.....
BEST WESTERN INN	.....	26560 N. JONES LOOP RD	PUNTA GORDA, FL 33950–4708.	.....
CADILLAC MOTEL	.....	10151 TAMIAMI TRAIL	PUNTA GORDA, FL 33950–4308.	.....
FERN VIEW EFFICIENCIES MOTEL.	.....	305 DUNCAN RD	PUNTA GORDA, FL 33982–8442.	.....
FLAMINGO MOTEL	.....	12420 TAMIAMI TRAIL	PUNTA GORDA, FL 33955–2401.	.....
HOLIDAY INN OF PUNTA GORDA.	.....	300 RETTA ESPLANADE	PUNTA GORDA, FL 33950–3698.	.....
HOWARD JOHNSON'S	.....	33 TAMIAMI TRAIL	PUNTA GORDA, FL 33950–3692.	.....
JO-EL MOTEL	.....	11603 TAMIAMI TRAIL	PUNTA GORDA, FL 33955–9293.	.....
KNIGHTS INN	.....	9300 KNIGHTS DR	PUNTA GORDA, FL 33950–4736.	.....
MARINA INN & CONFERENCE CENTER.	.....	3150 MATECUMBE KEY RD	PUNTA GORDA, FL 33955–	.....
NORTH STAR MOTEL	.....	11109 TAMIAMI TRAIL	PUNTA GORDA, FL 33955–9299.	.....
PINE TERRACE MOTEL	.....	2310 TAMIAMI TRAIL	PUNTA GORDA, FL 33950–5969.	.....
PUNTA GORDA ECONO LODGE.	.....	1520 TAMIAMI TRAIL	PUNTA GORDA, FL 33950–5910.	.....
SEA COVE MOTEL	.....	25000 E. MARION AVE	PUNTA GORDA, FL 33950–3999.	.....

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
TRIANGLE MOTEL		11573 TAMIAMI TRAIL	PUNTA GORDA, FL 33955–8284.	
ALLISON HOUSE INN		215 N. MADISON ST	QUINCY, FL 32351–	
DOWNTOWN MOTEL		322 E. JEFFERSON	QUINCY, FL 32351–2530	
QUINCY MOTOR LODGE		368 E. JEFFERSON ST	QUINCY, FL 32351–2530	
BREEZESWEPT ISLE MOTEL & MARI.		MM 27 HWY. 1	RAMROD KEY, FL 33042–	
EL MOROCCO MOTEL		16333 GULF BLVD	REDINGTON BEACH, FL 33708–1564.	
TIDES MOTOR INN		16500 GULF BLVD	REDINGTON BEACH, FL 33708–1429.	
BAYSHORES MOTEL		17495 GULF BLVD	REDINGTON SHORES, FL 33708–1368.	
CAROUSEL MOTEL		18202 GULF BLVD	REDINGTON SHORES, FL 33708–1045.	
MARLIN RESORT MOTEL		17566 GULF BLVD	REDINGTON SHORES, FL 33708–1296.	
PARSLEY MOTEL		17701 GULF BLVD	REDINGTON SHORES, FL 33708–1233.	
SINBADS MOTEL		17819 GULF BLVD	REDINGTON SHORES, FL 33708–1133.	
RIDGE MANOR MOTEL		5205 N. TREIMAN BLVD	RIDGE MANOR, FL 33525–	
BIANCHI MOTEL		6425 US 301 S	RIVERVIEW, FL 33569–	
BUDGET MOTEL OF RIVIERA BEACH.		2135 BROADWAY	RIVIERA BEACH, FL 33404–5649.	
DAYS INN OCEANFRONT RESORT.		2700 OCEAN DR	RIVIERA BEACH, FL 33404–4702.	
EBONY MOTEL		1101 OLD DIXIE HWY	RIVIERA BEACH, FL 33404–7399.	
HOWARD JOHNSON OCEAN FRONT.		3800 N. OCEAN DR	RIVIERA BEACH, FL 33404–2897.	
ISLAND QUEEN MOTEL & APARTMENTS.		1257 ISLAND RD	RIVIERA BEACH, FL 33404–4709.	
KELLEY MOTEL		116 W. 15TH ST	RIVIERA BEACH, FL 33404–6104.	
MOTEL 6 683		3651 BLUE HERON BLVD	RIVIERA BEACH, FL 33404–	
OCEAN LANE MOTEL & APARTMENTS.		186 E. BLUE HERON BLVD	RIVIERA BEACH, FL 33404–4599.	
OLEANDER MOTEL & APARTMENTS.		2620 EAST WAY	RIVIERA BEACH, FL 33404–3806.	
RIVIERA BEACH MOTEL		3124 BROADWAY	RIVIERA BEACH, FL 33404–2389.	
ROCK GARDEN MOTEL & APARTMENTS.		29 W. 14TH ST	RIVIERA BEACH, FL 33404–6802.	
RUTLEDGE INN RESORT-MOTEL&A.		3730 OCEAN DR	RIVIERA BEACH, FL 33404–2898.	
SAMS MOTEL		949 W. 9TH ST	RIVIERA BEACH, FL 33404–7346.	
SANDS HOTEL		2401 BEACH CT	RIVIERA BEACH, FL 33404–4799.	
SHERATON OCEAN INN		3200 N. OCEAN DR	RIVIERA BEACH, FL 33404–3298.	
SINGER ISLAND HOLIDAY INN		3700 N. OCEAN DR	RIVIERA BEACH, FL 33404–2806.	
SINGER ISLAND MOTEL		1166 N. OCEAN DR	RIVIERA BEACH, FL 33404–4732.	
SUPER 8 MOTEL		4112 W. BLUE HERON BLVD	RIVIERA BEACH, FL 33404–4855.	
SUPERIOR QUALITY INN		3501 BROADWAY	RIVIERA BEACH, FL 33404–2331.	
GARDEN COURT MOTEL		3880 S. US HWY. 1	ROCKLEDGE, FL 32955–4924	
SPITZER'S SWISS MOTEL		3220 S. FISKE BLVD	ROCKLEDGE, FL 32955–	
VAN WINKLE MOTEL		1020 FLORIDA AVE	ROCKLEDGE, FL 32955–2132	
ROYAL INN		675 ROYAL PALM BEACH BL	ROYAL PALM BEACH, FL 33411–7698.	
BAHIA BCH ISLAND RESORT HOT.		611 DESTINY DR	RUSKIN, FL 33570–9385	
CAROL MOTEL		1202 US HWY. 41	RUSKIN, FL 33570–	
RUSKIN MOTEL		1804 US 41 S	RUSKIN, FL 33570–	
SAFETY HARBOR HOTEL		454 MAIN ST	SAFETY HARBOR, FL 34695–3647.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SAFETY HARBOR MOTEL		1106 MAIN ST	SAFETY HARBOR, FL 34695–3458.	
WOOD HAVEN MOTEL EFFICIENCI.		1845 MAIN ST	SAFETY HARBOR, FL 34695–3324.	
SALT SPRINGS MOTEL		HWY. 314	SALT SPRINGS, FL 32134–	
DAYS INN SANFORD		I–4 & FLA 46	SANFORD, FL 32771–	
FLORIDA HOTEL		500 S. OAK AVE	SANFORD, FL 32771–1880	
FOUNTAIN LODGE MOTEL		2706 ORLANDO DR	SANFORD, FL 32773–5312	
HOLIDAY INN I–4 SANFORD		I–4 & S R 46	SANFORD, FL 32771–	
HOLIDAY INN OF SANFORD		530 N. PALMETTO	SANFORD, FL 32771–1354	
HOLIDAY INN SANFORD		530 N. PALMETTO AVE	SANFORD, FL 32771–	407–232–1910
INN ON THE LAKE		3200 S. ORLANDO DR	SANFORD, FL 32773–5604	
SUPER 8		4750 SR 46 W	SANFORD, FL 32771–	
SUPER 8 MOTEL, ORLANDO NORTH.		4750 STATE RD. 46 W	SANFORD, FL 32771–	407–323–3443
THE GABLES HOTEL		401 S. MAGNOLIA AVE	SANFORD, FL 32771–1982	
BLUE HERON MOTEL		642 E. GULF DR	SANIBEL, FL 33957–7198	
GALLERY MOTEL		541 E. GULF DR	SANIBEL, FL 33957–5098	
GULF BREEZE COTTAGE & MOTEL.		1081 SHELLBASKET LN	SANIBEL, FL 33957–6899	
JOLLY ROGER RESORT MOTEL.		3287 W. GULF DR	SANIBEL, FL 33957–5699	
KONA KAI MOTEL		1539 PERIWINKLE WAY	SANIBEL, FL 33957–4596	
RAMADA INN SANIBEL		1231 MIDDLE GULF DR	SANIBEL, FL 33957–4601	
SANIBEL INN		937 GULF DR	SANIBEL, FL 33957–6994	
SHALIMAR MOTEL		2818 W. GULF DR	SANIBEL, FL 33957–5702	
VILLA CAPRI MOTEL		1245 PERIWINKLE WAY	SANIBEL, FL 33957–4703	
WESTWIND INN		3345 W. GULF DR	SANIBEL, FL 33957–5501	
41 MOTEL		8071 N. TAMIAMI TRAIL	SARASOTA, FL 34243–1405	
AIRPORT INN		5340 N. TAMIAMI TRAIL	SARASOTA, FL 34234–2796	
ALINA MOTEL		6926 US HWY. 301ST BLVD	SARASOTA, FL 34234–	
ALLAMANDA MOTEL		4014 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3856	
AMERICANA MOTEL		611 S. WASHINGTON BLVD	SARASOTA, FL 34236–6950	
BAY MOTEL		8110 N. TAMIAMI TRAIL	SARASOTA, FL 34243–2097	
BEACH HIDEAWAY MOTEL		124 COLUMBUS BLVD	SARASOTA, FL 34242–2086	
BEL-AIR MOTEL		1080 N. TAMIAMI TRAIL	SARASOTA, FL 34236–2428	
BON HI MOTEL		209 S. OSPREY AVE	SARASOTA, FL 34236–6823	
CABANA INN MOTEL		2525 S. TAMIAMI TRAIL	SARASOTA, FL 34239–4598	
CADILLAC MOTEL		4021 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3855	
CAVALIER MOTOR INN		3916 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3854	
CHERI MOTEL		1715 N. TAMIAMI TRAIL	SARASOTA, FL 34234–8394	
COASTWOOD MOTEL		2309 N. TAMIAMI TRAIL	SARASOTA, FL 34234–5805	
COMFORT INN-SARASOTA		4800 N. TAMIAMI TRAIL	SARASOTA, FL 34234–	
DAYS INN		6600 S. TAMIAMI TRAIL	SARASOTA, FL 34231–4832	
DAYS INN 7156		4900 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3873	
DESOTO MOTEL		924 N. WASHINGTON BLVD	SARASOTA, FL 34236–4248	
ECONO LODGE		5311 OCEAN BLVD	SARASOTA, FL 34242–2077	
ECONO LODGE		215 CALLE MIRA MAR	SARASOTA, FL 34242–2076	
FLAMINGO COLONY MOTEL		4703 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3869	
GALAXY MOTEL		1716 N. TAMIAMI TRAIL	SARASOTA, FL 34234–8337	
GULF SIDE MOTEL		138 GARFIELD DR	SARASOTA, FL 34236–2023	
GULF SUN APARTMENTS & MOTEL.		6722 MIDNIGHT PASS RD	SARASOTA, FL 34242–2503	
HAMPTON INN HOTEL		5000 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3875	
HARLEY SANDCASTLE MOTEL		1540 BEN FRANKLIN DR	SARASOTA, FL 34236–2301	
HOLIDAY INN		7150 N. TAMIAMI TRAIL	SARASOTA, FL 34243–1496	
HOLIDAY INN DOWNTOWN		1 N. TAMIAMI TRAIL	SARASOTA, FL 34236–5599	
HOLIDAY INN LIDO BEACH		233 BEN FRANKLIN DR	SARASOTA, FL 34236–1299	
HOLIDAY INN SARASOTA/BRADENTON AIRPORT/MARINA.		7150 N. TAMIAMI TRAIL	SARASOTA, FL 34243–	813–355–2781
HYATT SARASOTA		1000 BLVD. OF THE ARTS	SARASOTA, FL 32436–	813–366–9000
IMPERIAL MOTEL		4807 N. TAMIAMI TRAIL	SARASOTA, FL 34234–	
ISLANDER INN		1725 STICKNEY POINT RD	SARASOTA, FL 34231–6897	
LYNNE MOTEL		6212 S. TAMIAMI TRAIL	SARASOTA, FL 34231–3987	
MAPLE LEAF MOTEL		1312 N. TAMIAMI TRAIL	SARASOTA, FL 34236–2496	
MIDTOWN MOTOR INN		1425 S. TAMIAMI TRAIL	SARASOTA, FL 34239–2995	
MONTEREY VILLAGE MOTEL		2413 N. TAMIAMI TRAIL	SARASOTA, FL 34234–5807	
NORMANDY MOTEL		400 N. TAMIAMI TRAIL	SARASOTA, FL 34236–4822	
PALM TREE MOTEL		4415 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3863	
PALMS 3 MOTEL		2329 N. TAMIAMI TRAIL	SARASOTA, FL 34234–5805	
PARADISE MOTEL		2121 N. TAMIAMI TRAIL	SARASOTA, FL 34234–8344	
PHILLIPPI CREST INN		2549 ASHTON RD	SARASOTA, FL 34231–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
PIONEER MOTEL		1188 N. TAMIAMI TRAIL	SARASOTA, FL 34236–2429	
R H THOMAS HOTEL		717 CENTRAL AVE	SARASOTA, FL 34236–4018	
RAINBOW MOTOR LODGE		4200 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3860	
RAMADA INN AIRPORT		8440 N. TAMIAMI TRAIL	SARASOTA, FL 34243–2099	
RHOADS MOTEL		1770 N. TAMIAMI TRAIL	SARASOTA, FL 34234–8337	
ROYAL PALMS MOTEL		1701 N. TAMIAMI TRAIL	SARASOTA, FL 34234–8393	
SARA SAND INN		1400 N. TAMIAMI TRAIL	SARASOTA, FL 34236–2435	
SARA SEA INN		6760 SARASEA CIR	SARASOTA, FL 34242–2521	
SARASOTA HYATT HOUSE		1000 BLVD. OF THE ARTS	SARASOTA, FL 34236–4898	
SARASOTA MOTOR INN		7251 N. TAMIAMI TRAIL	SARASOTA, FL 34243–2055	
SARASOTA THRIFTLODGE		270 N. TAMIAMI TRAIL	SARASOTA, FL 32436–	813–393–0414
SCOTTISH INNS		4309 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3861	
SEA CASTLE MOTEL 5		1011 SEASIDE DR	SARASOTA, FL 34242–2522	
SOUTHLAND INN		2229 N. TAMIAMI TRAIL	SARASOTA, FL 34234–8346	
ST ARMAND INN OF LIDO BEACH.		700 BEN FRANKLIN DR	SARASOTA, FL 34236–2099	
SUNCOAST INN		270 N. TAMIAMI TRAIL	SARASOTA, FL 34236–4819	
SUNDIAL MOTOR INN		4108 N. TAMIAMI TRAIL	SARASOTA, FL 34234–3858	
SUNNYSIDE MOTEL		2601 S. TAMIAMI TRAIL	SARASOTA, FL 34239–4522	
SURF VIEW MOTEL		1121 BEN FRANKLIN DR	SARASOTA, FL 34236–2295	
THE CAPRI MOTEL		6782 SARASEA CIR	SARASOTA, FL 34242–2521	
THE DOWNTOWN MOTEL		600 N. WASHINGTON BLVD	SARASOTA, FL 34236–4242	
THE TOSCANY MOTEL		129 TAFT DR	SARASOTA, FL 34236–2293	
TIDES INN MOTEL		1800 STICKNEY POINT RD	SARASOTA, FL 34231–3847	
TROPICAL POINT MOTEL		2304 N. TAMIAMI TRAIL	SARASOTA, FL 34234–5806	
TROPICAL SHORES INN		6717 SARA SEA CIR	SARASOTA, FL 34242–2520	
TROPICAL SHORES INN		6724 SARASEA CIR	SARASOTA, FL 34242–2521	
TWIN MOTEL		1750 N. TAMIAMI TRAIL	SARASOTA, FL 34234–8337	
WELLESLEY INN		1803 N. TAMIAMI TRAIL	SARASOTA, FL 34234–	
WHITFIELD MOTEL		1280 WHITFIELD AVE	SARASOTA, FL 34233–1232	
DAYS INN		180 HWY. A1A	SATELLITE BEACH, FL 32937–	
DAYS INN SATELLITE BEACH		180 HWY. A–1–A	SATELLITE BEACH, FL 32937–	407–777–3552
RAMADA OCEANFRONT RESORT.		1035 SR A1A	SATELLITE BEACH, FL 32937–	
CORONET MOTEL		6010 US HWY. 1	SCOTTSMOOR, FL 32775–9999	
PALMER MOTEL		11330 US HWY. 1	SEBASTIAN, FL 32978–	
SANDRIFT MOTEL		14415 US 1	SEBASTIAN, FL 32958–	
HARBORVIEW MOTEL & EFFICIEN.		8800 US 1	SEBASTION, FL 32958–	
BUDGET INN		2803 S. HWY. 27	SEBRING, FL 33870–5053	
ECONN INN		2919 S. US 27	SEBRING, FL 33870–5059	
HOLIDAY INN		6525 US 27 N	SEBRING, FL 33870–	813–385–4500
HOLIDAY INN		6525 US 27 N	SEBRING, FL 33870–	813–385–4500
HOLIDAY INN OF SEBRING		6525 N. US 27	SEBRING, FL 33870–	
INN ON THE LAKES		3100 GULFVIEW DR	SEBRING, FL 33870–	
NAN CES O WEE HOTEL		139 N. RIDGEWOOD DR	SEBRING, FL 33870–7299	
PARKSHORE MOTEL		125 PARK ST	SEBRING, FL 33870–3170	
POINSETTA INN		610 LEMON ST	SEBRING, FL 33870–6915	
SAFARI INN		1406 N. HWY. 27	SEBRING, FL 33870–1952	
SANTA ROSA INN & CAFE		509 N. RIDGEWOOD DR	SEBRING, FL 33870–7212	
SEBRING INN		3751 S. HWY. 27	SEBRING, FL 33870–5459	
SUN EN SAND MOTEL		1131 S. 27 US HWY	SEBRING, FL 33870–2132	
SUNSET BEACH MOTEL		2221 SE LAKEVIEW DR	SEBRING, FL 33870–4939	
WINTER SET MOTEL		5272 S. HWY. 27	SEBRING, FL 33870–5659	
BROOK MOTEL		11120 E. US HWY. 92	SEFFNER, FL 33584–3224	
E & L MOTEL		11507 E. US HWY. 92	SEFFNER, FL 33584–3303	
MASTERS ECONOMY INN TAMPA E.		6010 SR 579 N	SEFFNER, FL 33584–3302	
DAYS INN		7545 N. 83RD ST	SEMINOLE, FL 34647–	
SEMINOLE VILLAGE MOTEL		7901 SEMINOLE BLVD	SEMINOLE, FL 34642–4827	
CRAFT MOTEL		5401 NE SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	
DAYS INN		5001 E. SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	
HOLIDAY INN MOTEL		5751 E. SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	
HOWARD JOHNSON MTR LDG		5565 E. SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	
SCOTTISH INNS		5331 NE SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	
SPRING SIDE MOTEL		5440 E. SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STAGE STOP INN		5131 E. SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	
SUN PLAZA MOTEL		5461 E. SILVER SPRINGS BLVD.	SILVER SPRINGS, FL 32688–	
OKEECHOBEE INN		255 N. US HWY. 27	SOUTH BAY, FL 33493–	
STARLING MOTEL		240 S. HWY. 27	SOUTH BAY, FL 33493–	
BEL AIRE SCOTTISH INN		1855 S. RIDGEWOOD AVE	SOUTH DAYTONA, FL 32019–2236.	
MIAMI VILA HOTEL		5959 SW 71ST ST	SOUTH MIAMI, FL 33143–	
P B HAWAIIAN OCEAN INN		3560 S OCEAN BLVD	SOUTH PALM BEACH, FL 33480–5762.	
HERNANDO BEACH MOTEL		4291 SHOAL LINE BLVD	SPRING HILL, FL 34607–3228	
HOLIDAY INN WEEKIWACHEE		6172 COMMERCIAL WAY	SPRING HILL, FL 34606–1120	
WEEKI WACHEE GARDENS MOTEL.		7300 SHOAL LINE RD	SPRING HILL, FL 34607–	
AMERICAN INN		42 S. SAN MARCO AVE	ST AUGUSTINE, FL 32084–3275.	
BALI HAI MOTEL		601 ANASTASIA BLVD	ST AUGUSTINE, FL 32084–4613.	
BEST WESTERN/HISTORICAL INN.		2015 N. PONCE DE LEON BLVD.	ST AUGUSTINE, FL 32084–2689.	
BUDGET INN		12 ANASTASIA BLVD	ST AUGUSTINE, FL 32084–4502.	
BUDGET MOTEL		304 SAN MARCO	ST AUGUSTINE, FL 32084–1625.	
CARAVAN MOTEL		2500 N. PONCE DE LEON BLVD.	ST AUGUSTINE, FL 32084–2698.	
COMFORT INN HISTORIC DOWNTOWN.		1111 PONCE DE LEON BLVD	ST AUGUSTINE, FL 32084–3190.	
DAY'S INN 39		2560 SR 16	ST AUGUSTINE, FL 32092–	
DAYS INN DOWNTOWN		2800 PONCE DELEON BLVD	ST AUGUSTINE, FL 32084–1649.	
ECONO LODGE		3101 N. PONCE DE LEON	ST AUGUSTINE, FL 32084–1642.	
EDGEWATER INN		2 N. ST AUGUSTINE BLVD	ST AUGUSTINE, FL 32084–3753.	
EQUINOX MOTEL		306 SAN MARCO	ST AUGUSTINE, FL 32084–1625.	
FLORIDA MOTEL		253 SAN MARCO AVE	ST AUGUSTINE, FL 32084–2730.	
HOLIDAY INN EXPRESS		2310 SR 16	ST AUGUSTINE, FL 32095–	
HOLIDAY INN MOTEL		1300 PONCE DE LEON AVE	ST AUGUSTINE, FL 32084–3199.	
HOLIDAY INN, ST. AUGUSTINE BEACH.		3250 AIA S	ST AUGUSTINE, FL 32804–	904–471–2555
HOWARD JOHNSON MOTOR LODGE.		2550 SR 16	ST AUGUSTINE, FL 32084–	
HOWARD JOHNSON'S MOTOR LODGE.		137 SAN MARCO AVE	ST AUGUSTINE, FL 32084–3264.	
I-95 QUALITY INN		2445 SR 16	ST AUGUSTINE, FL 32084–	
ISLANDER MOTEL		215 ANASTASIA BLVD	ST AUGUSTINE, FL 32084–4504.	
KENWOOD INN		38 MARINE ST	ST AUGUSTINE, FL 32084–4439.	
LION MOTEL		420 ANASTASIA BLVD	ST AUGUSTINE, FL 32084–4509.	
MERIDA MOTEL		2150 PONCE DE LEON BLVD	ST AUGUSTINE, FL 32084–2624.	
MONSON MOTOR LODGE		32 AVENIDA MENENDEZ	ST AUGUSTINE, FL 32084–3644.	
MONTEREY MOTEL		16 AVENIDA MENENDEZ	ST AUGUSTINE, FL 32084–3601.	
OLD CITY HOUSE INN		115 CORDOVA ST	ST AUGUSTINE, FL 32084–4458.	
OLD POWDER HOUSE INN		38 CORDOVA ST	ST AUGUSTINE, FL 32084–3668.	
PONCE DE LEON GOLF AND CONFERENCE RESORT.		4000 US HWY. 1 N	ST AUGUSTINE, FL 32095–	904–824–2821
PONCE DELEON GOLF & CONFERENCE RESORT.		4000 US HWY. 1 N	ST AUGUSTINE, FL 32095–	904–824–2821
QUALITY INN ALHAMBRA		2500 N. PONCE DE LEON BLVD.	ST AUGUSTINE, FL 32084–2643.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
QUALITY INN ALHAMBRA		2700 N. PONCE DE LEON BLVD.	ST AUGUSTINE, FL 32084–2641.	
RAMADA INN		116 SAN MARCO AVE	ST AUGUSTINE, FL 32084–3296.	
RED CARPET INN		2365 SR 16	ST AUGUSTINE, FL 32085–0197.	
RED CARPET INN		94 N. SAN MARCO AVE	ST AUGUSTINE, FL 32084–3297.	
RED CARPET INN		6 CASTILLO DR	ST AUGUSTINE, FL 32084–	
ROADWAY INN		3552 N. PONCE DE LEON BLVD.	ST AUGUSTINE, FL 32084–1601.	
SAN MARCO INN		231 N. SAN MARCO	ST AUGUSTINE, FL 32084–2725.	
SCANDINAVIAN VILLAGE MOTEL.		2665 S. US 1	ST AUGUSTINE, FL 32086–6192.	
SCOTTISH INN		110 N. SAN MARCO AVE	ST AUGUSTINE, FL 32084–3261.	
SCOTTISH INN OF ST AUGUSTINE.		2535 SR 16	ST AUGUSTINE, FL 32084–	
SEABREEZE MOTEL		208 ANASTASIA BLVD	ST AUGUSTINE, FL 32084–4505.	
ST AUGUSTINE SCOTTISH INN		427 ANASTASIA BLVD	ST AUGUSTINE, FL 32084–4508.	
ST FRANCIS INN		279 ST GEORGE ST	ST AUGUSTINE, FL 32084–5031.	
SUNRISE INN		512 S. ANASTASIA BLVD	ST AUGUSTINE, FL 32084–4511.	
SUNSHINE INN		2580 SR 16	ST AUGUSTINE, FL 32084–	
THE COZY INN		202 SAN MARCO AVE	ST AUGUSTINE, FL 32084–2703.	
WHETSTONES BAY FRONT INN.		138 AVENIDA MENENDEZ	ST AUGUSTINE, FL 32084–5048.	
BEST WESTERN OCEAN INN		3955 S. HWY. A1A	ST AUGUSTINE BEACH, FL 32084–.	
COMFORT INN		3401 S. A1A	ST AUGUSTINE BEACH, FL 32084–5720.	
DAYS INN ST AUGUSTINE BEACH.		2475 S. HWY. A1A	ST AUGUSTINE BEACH, FL 32084–.	
ECONO LODGE		2035 S. A1A	ST AUGUSTINE BEACH, FL 32084–5901.	
ENCORE ISLAND INN RESORT		3400 S. HWY. A1A	ST AUGUSTINE BEACH, FL 32084–.	
HOLIDAY INN ST AUGUSTINE BEACH.		3250 S. HWY. A1A	ST AUGUSTINE BEACH, FL 32084–.	
HOLIDAY RESORT MOTEL		2450 S. A1A S	ST AUGUSTINE BEACH, FL 32084–7950.	
HOLIDAY RESORT MOTEL		2450 S. A1A S	ST AUGUSTINE BEACH, FL 32084–7950.	
HOWARD JOHNSON RESORT HOTEL.		2050 S. HWY. A1A	ST AUGUSTINE BEACH, FL 32084–.	
LA FIESTA OCEANSIDE INN		3050 S. HWY. A1A	ST AUGUSTINE BEACH, FL 32084–.	
SEASHORE MOTEL		2370 S. HWY. A1A	ST AUGUSTINE BEACH, FL 32084–6381.	
SEAWAY MOTEL		2375 A1A S	ST AUGUSTINE BEACH, FL 32084–6317.	
WINDSWEPT MOTEL		5385 A1A S	ST AUGUSTINE BEACH, FL 32084–7109.	
ALLIGATOR LAKE SIDE INN		6264 IRLO BRONSON HWY	ST CLOUD, FL 32769–9072	
BUDGET INN OF ST CLOUD		602 E. 13TH ST	ST CLOUD, FL 32769–4711	
COLONIAL MOTEL		5575 E. IRLO BRONSON HWY	ST CLOUD, FL 32769–8736	
COZY COVE INN		5790 E. IRLO BRONSON HWY	ST CLOUD, FL 34769–	
DIXIE MOTEL		1222 CAROLINA AVE	ST CLOUD, FL 32769–3819	
POLYNESIAN INN		2900 W. 13TH ST	ST CLOUD, FL 32769–	
ST CLOUD HOTEL		1004 NEW YORK AVE	ST CLOUD, FL 32769–3798	
SUNSHINE MOTEL & EFFICIENCY APTS.		1220 GEORGIA AVE	ST CLOUD, FL 34769–4160	
BUCCANEER INN		STAR RT. BOX 7	ST GEORGE ISLAND, FL 32328–.	
DRAGGIN TAIL INN		E. GORRIE DR	ST GEORGE ISLAND, FL 32328–.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ST GEORGE INN		FRANKLIN BLVD	ST GEORGES ISLAND, FL 32326–.	
SHEARWATER INN		2960 OLEANDER	ST JAMES CITY, FL 33956–2155.	
ST MARKS MOTEL		MAIN ST	ST MARKS, FL 32355–9999	
A A A MOTEL		6345 N. 4TH ST	ST PETERSBURG, FL 33702–7511.	
ADMIRAL BENBOW INN		4600 S. 34TH ST	ST PETERSBURG, FL 33711–4553.	
AMERICAN OWNED MOTEL		451 N. 34TH ST	ST PETERSBURG, FL 33713– ..	
BANYAN TREE MOTEL		610 N. 4TH ST	ST PETERSBURG, FL 33701–2320.	
BAY BREEZE MOTEL		3900 S. 34 ST	ST PETERSBURG, FL 33711–4348.	
BAY PLAZA HOTEL		419 N. 3 AVE	ST PETERSBURG, FL 33701–3295.	
BAYWAY INN		4400 S. 34TH ST	ST PETERSBURG, FL 33711–4549.	
BEACH DRIVE HOTEL		656 NE BEACH DR	ST PETERSBURG, FL 33701– ..	
BEACH PARK MOTOR INN		300 NE BEACH DR	ST PETERSBURG, FL 33701–3406.	
BEST WESTERN MIRAGE MOTEL.		5005 N. 34 ST	ST PETERSBURG, FL 33714–2497.	
BEST WESTERN NORTH		2595 N. 54TH AVE	ST PETERSBURG, FL 33714–1999.	
BLUE MOON MOTEL		4764 N. 4TH ST	ST PETERSBURG, FL 33703–3815.	
CACTUS MOTEL		1600 N. 34TH ST	ST PETERSBURG, FL 33713–5441.	
CADILLAC MOTEL		3405 N. 34TH ST	ST PETERSBURG, FL 33713–1514.	
COMFORT INN CENTRAL		1400 N. 34TH ST	ST PETERSBURG, FL 33713– ..	
COURTYARD HOTEL		660 S. 3RD AVE	ST PETERSBURG, FL 33701–4108.	
CRYSTAL MOTEL		1057 N. 7TH AVE	ST PETERSBURG, FL 33705–1305.	
DAY'S INN MARINA BEACH RESORT.		6800 S. 34TH ST	ST PETERSBURG, FL 33711–4999.	
DERBY LANE MOTEL		8600 N. 4TH ST	ST PETERSBURG, FL 33702–3192.	
DESOTO MOTEL		2410 S. 4TH ST	ST PETERSBURG, FL 33705–3125.	
DETROIT HOTEL		215 CENTRAL AVE	ST PETERSBURG, FL 33701–3386.	
DIPLOMAT MOTEL		800 N. 34TH ST	ST PETERSBURG, FL 33713–6540.	
DRIFTWOOD MOTEL		1600 S. 34TH ST	ST PETERSBURG, FL 33711– ..	
ECONO LODGE & TENNIS RESORT.		3000 34TH ST. S	ST PETERSBURG, FL 33711– ..	813–867–1111
EL RIO MOTEL		3120 N. 4TH ST	ST PETERSBURG, FL 33704–2125.	
EXECUTIVE MOTOR LODGE		3080 N. 34TH ST	ST PETERSBURG, FL 33713–2494.	
GATEWAY MOTEL		4990 N. 34TH ST	ST PETERSBURG, FL 33714–3031.	
GORDON HOTEL		526 N. 5 AVE	ST PETERSBURG, FL 33701–2699.	
GRANT MOTEL & APARTMENTS.		9046 N. 4TH ST	ST PETERSBURG, FL 33702–3188.	
HERITAGE HOTEL		234 N. 3RD AVE	ST PETERSBURG, FL 33701–3360.	
HOLIDAY HOTEL		600 NE BEACH DR	ST PETERSBURG, FL 33701–2621.	
HOLIDAY INN SOUTH		4601 S. 34TH ST	ST PETERSBURG, FL 33711–4599.	
HOTEL RAVELL		325 N. 6TH AVE	ST PETERSBURG, FL 33701– ..	
HOWARD JOHNSON		3600 S. 34TH ST	ST PETERSBURG, FL 33711– ..	
HUNTINGTON HOTEL		226 N. 4TH AVE	ST PETERSBURG, FL 33701–2996.	
INN ON THE HILL		275 S. 34TH ST	ST PETERSBURG, FL 33711–1325.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
KENTUCKY MOTEL		4246 N. 4TH ST	ST PETERSBURG, FL 33703–4740.	
KEVIN MOTEL		1311 N. 9TH ST	ST PETERSBURG, FL 33701–1008.	
KINGS REST MOTEL		7330 N. 4TH ST	ST PETERSBURG, FL 33702–5924.	
LA QUINTA MOTOR INN 684		4999 N. 34TH ST	ST PETERSBURG, FL 33714–3050.	
LAMP POST INN		1200 N. 34TH ST	ST PETERSBURG, FL 33713–5499.	
LAMP POST INN		1190 N. 34TH ST	ST PETERSBURG, FL 33713–5499.	
LANDMARK MOTEL		1930 N. 4TH ST	ST PETERSBURG, FL 33704–4396.	
MAGNOLIA HOTEL		444 N. 1ST AVE	ST PETERSBURG, FL 33701–3856.	
MOULTON HOTEL		342 N. 3RD AVE	ST PETERSBURG, FL 33701–3821.	
MURPHY'S MOTEL		4900 N. 34TH ST	ST PETERSBURG, FL 33714–3031.	
NEW PLAZA INN		400 N. 34TH ST	ST PETERSBURG, FL 33713–9051.	
P J S VILLA ROYAL MOTEL		3540 N. 4TH ST	ST PETERSBURG, FL 33704–1310.	
PALM AIR MOTEL		3250 N. 34 ST	ST PETERSBURG, FL 33713–2408.	
PALMS MOTEL		6730 N. 4TH ST	ST PETERSBURG, FL 33702–5896.	
PAMELA'S BAYVIEW INN		126 NE 4TH AVE	ST PETERSBURG, FL 33701– ..	
PARK MOTEL		6638 N. 4TH ST	ST PETERSBURG, FL 33702–6899.	
PENN MOTEL		3067 N. 9TH ST	ST PETERSBURG, FL 33704–2091.	
PENNSYLVANIA HOTEL		300 N. 4TH ST	ST PETERSBURG, FL 33701–2802.	
PLANTATION MOTEL		5720 N. 4TH ST	ST PETERSBURG, FL 33703–2256.	
PRESIDENTIAL INN		100 S. 2ND AVE	ST PETERSBURG, FL 33701–4307.	
PRIDE OF ST PETE MOTOR INN.		3501 S. 54TH AVE	ST PETERSBURG, FL 33711– ..	
RAINBOW MOTEL		4241 N. 4TH ST	ST PETERSBURG, FL 33703–4799.	
RAND MOTEL		4800 N. 34TH ST	ST PETERSBURG, FL 33714–3029.	
RANDOLPH HOTEL		200 N. 4TH ST	ST PETERSBURG, FL 33701–3286.	
RODEWAY INN		401 N. 34TH ST	ST PETERSBURG, FL 33713–9005.	
RUSTY ANCHOR MOTEL		2301 N. 4TH ST	ST PETERSBURG, FL 33704–2899.	
SAHARA MOTEL INCORPORATED.		10910 GANDY BLVD	ST PETERSBURG, FL 33702–1430.	
SANDMAN MOTEL		570 N. 34TH ST	ST PETERSBURG, FL 33713–9060.	
SCOTTISH INNS OF ST PETERSBURG FLORIDA.		1201 N. 34TH ST	ST PETERSBURG, FL 33713–5433.	
SHIRLEY ANN HOTEL		936 N. 1ST AVE	ST PETERSBURG, FL 33705–1547.	
SIESTA MOTEL		701 N. 34TH ST	ST PETERSBURG, FL 33713– ..	
SOUTHERN COMFORT MOTEL		4845 N. 4TH ST	ST PETERSBURG, FL 33703–3840.	
ST PETE INN		433 N. 2ND ST	ST PETERSBURG, FL 33701–3064.	
ST PETERSBURG HILTON & TOWERS.		333 FIRST ST. S	ST PETERSBURG, FL 33701–4342.	
ST PETERSBURG SUPER 8 MOTEL.		13260 N. 34TH ST	ST PETERSBURG, FL 33716– ..	
STANTON HOTEL		225 N. 3RD ST	ST PETERSBURG, FL 33701–3844.	
STARDUST MANOR MOTEL		3100 N. 4TH ST	ST PETERSBURG, FL 33704–2125.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STOUFFER VINOY RESORT		501 NE 5TH AVE	ST PETERSBURG, FL 33701–	
SUN COURT MOTEL		4320 N. 4TH ST	ST PETERSBURG, FL 33703–4727.	
SUNCOAST EXECUTIVE ECONO LODGE.		3000 S. 34TH ST	ST PETERSBURG, FL 33711–3823.	
SUNCREST MOTEL		4946 N. 4TH ST	ST PETERSBURG, FL 33703–3819.	
SUNDAZE MOTEL		1590 S. 34TH ST	ST PETERSBURG, FL 33711–2819.	
SUNSET HOTEL & RES CLB		7401 CENTRAL AVE	ST PETERSBURG, FL 33710–7499.	
SUNSHINE SKYWAY MOTEL		2330 S. 34TH ST	ST PETERSBURG, FL 33711–	
SYL MAR MOTEL		5000 N. 34TH ST	ST PETERSBURG, FL 33714–2431.	
THE HOLIDAY MOTEL		2422 N. 4TH ST	ST PETERSBURG, FL 33704–2804.	
THE MCCARTHY HOTEL		326 N. 1ST AVE	ST PETERSBURG, FL 33701–3830.	
TOPS MOTEL		7141 N. 4TH ST	ST PETERSBURG, FL 33702–5998.	
TROPIC MOTEL		2800 N. 4TH ST	ST PETERSBURG, FL 33704–2102.	
TROPICAL INN		3601 S. 34TH ST	ST PETERSBURG, FL 33711–3822.	
VALLEY FORGE MOTEL		6625 CENTRAL AVE	ST PETERSBURG, FL 33710–8394.	
VENICE MOTEL		3301 N. 34TH ST	ST PETERSBURG, FL 33713–2409.	
VILLA NOVA MOTEL		1001 N. 34TH ST	ST PETERSBURG, FL 33713–6543.	
WHITNEY HOTEL		241 N. 3RD ST	ST PETERSBURG, FL 33701–3843.	
ALL SUITE MOTEL		3751 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3915.	
BAY N GULF MOTEL		5195 GULF BLVD	ST PETERSBURG BEACH, FL 33706–2489.	
BAY PALMS MOTEL		7241 BAY ST	ST PETERSBURG BEACH, FL 33706–1928.	
BAY WINDS SPORTS MOTEL		7345 BAY ST	ST PETERSBURG BEACH, FL 33706–1898.	
BEST WESTERN SIRATE BEACH RESORT.		5390 GULF BLVD	ST PETERSBURG BEACH, FL 33706–2394.	
BRECKENRIDGE RESORT HOTEL.		5700 GULF BLVD	ST PETERSBURG BEACH, FL 33706–2295.	
COLONIAL GATEWAY INN		6300 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3796.	
COREY LANDINGS HOTEL		524 COREY AVE	ST PETERSBURG BEACH, FL 33706–3603.	
COREY MOTEL & APARTMENTS.		600 COREY AVE	ST PETERSBURG BEACH, FL 33706–3637.	
DAYS INN BEACH RESORT		6200 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3798.	
DON CE SAR RESORT HOTEL		3400 GULF BLVD	ST PETERSBURG BEACH, FL 33706–4098.	
FIESTA MOTEL & APARTMENTS.		7901 BLIND PASS RD	ST PETERSBURG BEACH, FL 33706–1614.	
GARDEN STATE MOTEL		550 COREY AVE	ST PETERSBURG BEACH, FL 33706–3603.	
GULF TIDES MOTEL		600 68TH AVE	ST PETERSBURG BEACH, FL 33706–2005.	
HARMONY HOUSE MOTEL		4132 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3887.	
HOLIDAY INN OF ST PETE BEACH.		5300 GULF BLVD	ST PETERSBURG BEACH, FL 33706–2393.	
HOLIDAY INN ST. PETERSBUR BEACH.		5300 GULF BLVD	ST PETERSBURG BEACH, FL 33706–.	813–360–6911
HOLIDAY INN ST. PETERSBURG BEACH.		5300 GULF BLVD	ST PETERSBURG BEACH, FL 33706–.	813–360–6911
HOWARD JOHNSONS ST PETE BEACH.		6100 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3794.	
ISLAND END MOTEL		1 PASS A GRILLE WAY	ST PETERSBURG BEACH, FL 33706–4349.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
KEYSTONE HOTEL		801 8TH AVE	ST PETERSBURG BEACH, FL 33706–.	
MIRAMAR MOTEL		4200 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3888.	
PALM CREST MOTEL		3848 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3993.	
PASS A GRILLE BEACH MOTEL.		709 GULFWAY	ST PETERSBURG BEACH, FL 33706–4352.	
PLAZA BEACH MOTEL		4506 GULF BLVD	ST PETERSBURG BEACH, FL 33706–2491.	
SANDPIPER RESORT INN		6000 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3799.	
ST. PETERSBURG BEACH HILTON RESORT.		5250 GULF BLVD	ST PETERSBURG BEACH, FL 33706–2408.	
SUN ISLAND MOTEL		8301 BLIND PASS RD	ST PETERSBURG BEACH, FL 33706–1515.	
SUNDIAL MOTEL & APARTMENTS.		7205 SUNSET WAY	ST PETERSBURG BEACH, FL 33706–3631.	
THE ISLANDER MOTEL		4321 GULF BLVD	ST PETERSBURG BEACH, FL 33706–3809.	
TROPICAL SHORE MOTEL		635 COREY AVE	ST PETERSBURG BEACH, FL 33706–3675.	
BEST WESTERN MOTOR INN STAR.		1290 N. TEMPLE AVE	STARKE, FL 32091–2116	
BRADFORD MOTEL		1757 N. TEMPLE	STARKE, FL 32091–1968	
DAYS INN		1101 N. TEMPLE AVE	STARKE, FL 32091–2114	
DEMPSEY MOTEL		425 N. TEMPLE AVE	STARKE, FL 32091–3207	
DIXIE MOTEL		744 N. TEMPLE AVE	STARKE, FL 32091–2614	
JO LU MOTEL		S. US 301	STARKE, FL 32091–	
SLEEPY HOLLOW MOTEL		2317 N. TEMPLE AVE	STARKE, FL 32091–1615	
STARKE MOTOR COURT		739 N. TEMPLE AVE	STARKE, FL 32091–2613	
SUNSHINE MOTEL		2100 N. TEMPLE	STARKE, FL 32091–1967	
TEMPLE MOTEL		880 N. TEMPLE AVE	STARKE, FL 32091–2109	
TO RENA MOTEL		1900 N. TEMPLE AVE	STARKE, FL 32091–1963	
UNDERWOOD MOTEL		N. US 301 4 M	STARKE, FL 32091–	
JOLLY SAILOR MOTEL	PO B	RIVERSIDE DR	STEINHATCHEE, FL 32359–	
LYNN-RICH MOTEL		2 AVE. S. & 15TH ST. E	STEINHATCHEE, FL 32359–	
PALM GROVE MOTEL		HWY. 51	STEINHATCHEE, FL 32359–	
RIVERSIDE INN		600 RIVERSIDE DR	STEINHATCHEE, FL 32659–	
SEXTONS RIVERSIDE MOTEL		800 RIVERSIDE DR	STEINHATCHEE, FL 32359–	
HARBOR INN		307 N. RIVER DR	STUART, FL 34994–1119	
HOLIDAY INN OF STUART		1209 S. US HWY. 1	STUART, FL 34995–	
HOWARD JOHNSON'S MOTOR LODGE.		950 S. FEDERAL HWY	STUART, FL 34994–3796	
INDIAN RIVER PLANTATION HOTEL.		660 NE OCEAN BLVD	STUART, FL 34996–1699	
INDIAN RIVER PLANTATION RES.		385 NE PLANTATION RD	STUART, FL 34996–1799	
MONTEREY MOTEL & MARINA		300 SW MONTEREY RD	STUART, FL 34994–4699	
ROYAL PALMS MOTEL		622 S. US HWY. 1	STUART, FL 34994–	
SOUTHWIND MOTEL		603 S. US HWY	STUART, FL 34994–2990	
STUART ECONOLODGE		1200 S. US HWY. 1	STUART, FL 33494–	
COMFORT INN		718 CYPRESS VILLAGE B	SUN CITY CENTER, FL 33570–	
SUN CITY CENTER INN MOTEL		25 PEBBLE BEACH BLVD	SUN CITY CENTER, FL 33570–5350.	
GULFVIEW INN		21722 W. FRONT BEACH RD	SUNNYSIDE, FL 32413–	
SUNRISE HILTON INN		3003 N. UNIVERSITY DR	SUNRISE, FL 33322–1600	
SEABROOK HOTEL AND APARTMENTS.		9401 COLLINS AVE	SURFSIDE, FL 33154–2610	
SURF SIDE SIX MOTEL		9224 COLLINS AVE	SURFSIDE, FL 33154–3097	
BILL'S FISH CAMP & MOTEL		RIVER RD	SUWANNEE, FL 32692–9999	
CLARK'S SUWANNEE MARINA & M.		HWY. 349	SUWANNEE, FL 32692–9999	
SUWANNEE SHORES MOTOR LODGE.		CANAL ST	SUWANNEE, FL 32692–9999	
ABNER VIRGINIA MOTEL		115 BRAGG DR	TALLAHASSEE, FL 32310–6801	
ALVANI INCORPORATED DBA LAFAYETTE MOTEL.		1525 W. TENNESSEE ST	TALLAHASSEE, FL 32304–3404	
AMERICAN INN		2726 N. MONROE ST	TALLAHASSEE, FL 32303–4030	
APALACHEE MOTOR LODGE		809 APALACHEE PKWY	TALLAHASSEE, FL 32301–4536	
BEST INNS		2738 CRAVES RD	TALLAHASSEE, FL 32303–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN PRIDE INN & SU.		2016 APALACHEE PKWY	TALLAHASSEE, FL 32301–4818	
BUDGET INN		1402 W. TENNESSEE ST	TALLAHASSEE, FL 32304–3460	
CABOT LODGE		2735 N. MONROE ST	TALLAHASSEE, FL 32303–4029	
CABOT LODGE		1653 RAYMOND DIEHL RD	TALLAHASSEE, FL 32308–	
CACTUS MOTEL		2633 W. TENNESSEE ST	TALLAHASSEE, FL 32304–2517	
COLONY INN MOTEL		2191 W. TENNESSEE ST	TALLAHASSEE, FL 32304–3118	
COURTYARD BY MARRIOTT		1018 APALACHEE PKWY	TALLAHASSEE, FL 32301–	904–222–6822
COURTYARD BY MARRIOTT		1018 APALACHEE PKWY	TALLAHASSEE, FL 32301–4540	
DAYS INN CAPITOL CENTER		722 E. APALACHEE PKWY	TALLAHASSEE, FL 32301–4564	
DAYS INN DOWNTOWN		7221 APALACHEE PKWY	TALLAHASSEE, FL 32301–	904–224–2181
DAYS INN NORTH		2800 N. MONROE ST	TALLAHASSEE, FL 32303–3635	
DAYS INN TALLAHASSEE SOUTH.		3100 APALACHEE PKWY	TALLAHASSEE, FL 32301–5299	
DUTCH INN MOTEL		2997 APALACHEE PKWY	TALLAHASSEE, FL 32301–3674	
ECONO LODGE		2681 N. MONROE ST	TALLAHASSEE, FL 32303–4027	
ECONOLODGE		1350 W. TENNESSEE ST	TALLAHASSEE, FL 32304–7780	
EL CAMINO MOTEL		3705 WOODVILLE HWY	TALLAHASSEE, FL 32311–	
EXECUTIVE INN		522 SCOTTYS LN	TALLAHASSEE, FL 32303–4899	
EXECUTIVE INN PART 2		521 SCOTTY'S LN	TALLAHASSEE, FL 32303–4899	
GOVERNORS INN		209 S. ADAMS ST	TALLAHASSEE, FL 32301–1720	
HOLIDAY INN NORTHWEST		2714 GRAVES RD	TALLAHASSEE, FL 32303–	904–562–2000
HOLIDAY INN NW		2714 GRAVES RD	TALLAHASSEE, FL 32303–2829	
HOLIDAY INN PARKWAY		1302 E. APALACHEE PKWY	TALLAHASSEE, FL 32301–3098	
HOLIDAY INN UNIVERSITY CENT.		316 W. TENNESSEE ST	TALLAHASSEE, FL 32301–1394	
HOWARD JOHNSON HOTEL		1355 APALACHEE PKWY	TALLAHASSEE, FL 32301–3097	
KILLEARN COUNTRY CLUB INN.		100 TYRON CIR	TALLAHASSEE, FL 32308–3397	
KNIGHTS INN TALLAHASSEE		2728 GRAVES RD	TALLAHASSEE, FL 32303–2829	
LA CASA MOTOR INN		2801 N. MONROE ST	TALLAHASSEE, FL 32303–3604	
LA QUINTA MOTOR INN 2641		2850 APALACHEE PKWY	TALLAHASSEE, FL 32301–3608	
LA QUINTA MOTOR INN 538		2905 N. MONROE ST	TALLAHASSEE, FL 32303–3636	
MAI'S MOTEL		E. US HWY. 27	TALLAHASSEE, FL 32301–	
MOTEL 6 1073		1027 E. APALACHEE PKWY	TALLAHASSEE, FL 32301–4583	
MOTEL 6 1191		2738 N. MONROE ST	TALLAHASSEE, FL 32303–4030	
MOTEL 6 420		1481 TIMBERLANE DR	TALLAHASSEE, FL 32308–	
PONCE DE LEON MOTEL		1801 W. TENNESSEE ST	TALLAHASSEE, FL 32304–3347	
PRINCE MURAT MOTEL		745 N. MONROE ST	TALLAHASSEE, FL 32303–6138	
RADISSON HOTEL TALLAHASSEE.		415 N. MONROE ST	TALLAHASSEE, FL 32301–1222	
RAMADA INN NORTH		2900 N. MONROE ST	TALLAHASSEE, FL 32303–3637	
RED ROOF INN 120		2930 N. MONROE ST	TALLAHASSEE, FL 32303–3637	
SEMINOLE INN		6737 MAHAN DR	TALLAHASSEE, FL 32301–	
SHERATON TALLAHASSEE		101 S. ADAMS ST	TALLAHASSEE, FL 32301–7774	
SKY LINE MOTOR LODGE		2400 W. TENNESSEE ST	TALLAHASSEE, FL 32304–2649	
SLEEP INN		1695 NW CAPITAL CIR	TALLAHASSEE, FL 32303–	
SOUTHLAND MOTEL		3217 E. APALACHEE PKWY	TALLAHASSEE, FL 32301–5298	
STERLING INN & SUITES		2020 APALACHEE PKWY	TALLAHASSEE, FL 32301–4853	
SUNSET MOTEL		2750 W. TENNESSEE	TALLAHASSEE, FL 32304–2840	
SUPER 8 MOTEL OF TALLAHASSEE.		2702 N. MONROE ST	TALLAHASSEE, FL 32303–4030	
TALLAHASSEE MOTOR HOTEL		1630 N. MONROE	TALLAHASSEE, FL 32303–5533	
TALLAHASSEE TRAVELODGE		691 W. TENNESSEE ST	TALLAHASSEE, FL 32304–7908	
TALLAHASSEE TRAVELODGE		691 W. TENNESSEE ST	TALLAHASSEE, FL 32304–	904–222–8161
TALQUIN MOTEL		HWY. 20	TALLAHASSEE, FL 32310–	
TRAVELERS MOTEL		6030 APALACHEE PKWY	TALLAHASSEE, FL 32301–4121	
UNIVERSITY INN		2121 W. TENNESSEE ST	TALLAHASSEE, FL 32304–3199	
BUDGETEL INN		3800 W. COMMERCIAL BLVD	TAMARAC, FL 33309–	
A–1 MOTEL		12007 NEBRASKA AVE	TAMPA, FL 33612–5343	
ALAMO MOTEL		6110 NEBRASKA AVE	TAMPA, FL 33604–6858	
ALASKA MOTEL		1307 E. HILLSBOROUGH AVE	TAMPA, FL 33604–7209	
AMERICAN MOTEL		3314 S. DALE MABRY	TAMPA, FL 33629–7842	
AMERICANA INN		321 E. FLETCHER AVE	TAMPA, FL 33612–3408	
ANTIGUA MOTEL		1106 E. HILLSBOROUGH AVE	TAMPA, FL 33604–7206	
BASE MOTEL		6409 S. DALE MABRY	TAMPA, FL 33611–5103	
BAYVIEW MOTEL		4620 GANDY BLVD	TAMPA, FL 33611–3306	
BEL AIR MOTEL		609 S. DALE MABRY	TAMPA, FL 33609–3948	
BELMONT MOTEL		734 S. DALE MABRY	TAMPA, FL 33609–4491	
BEST WESTERN		9331 E. ADAMO DR	TAMPA, FL 33619–2697	
BUDGET INN		2001 E. BUSCH BLVD	TAMPA, FL 33612–	
BUDGETEL INN		4811 N. US HWY. 301	TAMPA, FL 33610–7300	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BUDGETEL INN		602 FALKENBURG RD	TAMPA, FL 33619–9638	
BUDGETEL INN		602 S. FAULKENBURG RD	TAMPA, FL 33619–	813–684–4002
CANNELLA MOTEL		3660 GANDY BLVD	TAMPA, FL 33611–2608	
CARIBE MOTEL		3102 NEBRASKA AVE	TAMPA, FL 33603–6030	
CARNIVAL MOTEL		6817 N. FLORIDA AVE	TAMPA, FL 33604–5595	
CASA GRANDE SUITES HOTEL		10007 PRINCESS PALM BLVD	TAMPA, FL 33619–	
CASA LOMA MOTEL		6500 NEBRASKA AVE	TAMPA, FL 33604–5655	
COLUMBIA MOTEL		1042 E. HILLSBOROUGH AVE	TAMPA, FL 33604–7204	
COMFORT INN		2106 E. BUSCH BLVD	TAMPA, FL 33612–	
COMFORT INN		2106 E. BUSH BLVD	TAMPA, FL 33612–	813–931–3313
CORAL MOTEL		215 W. HILLSBOROUGH AVE	TAMPA, FL 33604–	
COURTYARD BY MARRIOTT		3805 W. CYPRESS AVE	TAMPA, FL 33607–4802	
CROSSTOWN INN		3688 GANDY BLVD	TAMPA, FL 33611–2608	
CROWN STERLING SUITES		11310 N. 30TH ST	TAMPA, FL 33612–6444	
CROWN STERLING SUITES		4400 W. CYPRESS ST	TAMPA, FL 33607–4007	
CROWNE PLAZA SABAL PALM		10221 PRINCESS PALM AVE	TAMPA, FL 32610–	813–623–6362
DAYS INN		9942 ADAMO DR	TAMPA, FL 33619–2611	
DAYS INN 7125		701 E. FLETCHER AVE	TAMPA, FL 33612–2699	
DAYS INN AIRPORT		2522 N. DALE MABRY	TAMPA, FL 33607–2409	
DAYS INN BUSCH GARDENS EAST.		2520 N. 50TH ST	TAMPA, FL 33619–2799	
DAYS INN BUSCH GARDENS MAIN.		2901 E. BUSCH BLVD	TAMPA, FL 33612–8798	
DAYS INN DOWNTOWN		515 E. CASS ST	TAMPA, FL 33602–3499	
DAYS INN ROCKY POINT		7627 COURTNEY CAMPBELL	TAMPA, FL 33607–1431	
DOWNTOWN MOTEL		2733 FLORIDA AVE	TAMPA, FL 33602–1521	
EAST GATE MOTEL		1301 E. HILLSBOROUGH AVE	TAMPA, FL 33604–7209	
EAST LAKE INN		6529 E. HILLSBOROUGH AVE	TAMPA, FL 33610–4104	
ECONOLODGE		1701 E. BUSCH BLVD	TAMPA, FL 33612–8661	
ECONOLODGE BUSCH GARDENS EA.		2905 N. 50TH ST	TAMPA, FL 33619–2399	
ECONOMY INN		1810 E. BUSCH BLVD	TAMPA, FL 33612–8664	
ECONOMY INNS OF AMERICA		6606 E. BUFFALO AVE	TAMPA, FL 33619–1118	
EL RANCHO MOTEL		7100 NEBRASKA AVE	TAMPA, FL 33604–4992	
EXPRESSWAY INN NORTH		3693 GANDY BLVD	TAMPA, FL 33611–2607	
GARDEN VIEW MOTEL		2500 E. BUSCH BLVD	TAMPA, FL 33612–8412	
GOLDEN KEY MOTEL		2523 E. BUSCH BLVD	TAMPA, FL 33612–8411	
GOLDEN MOTEL		4011 E. COLUMBUS DR	TAMPA, FL 33605–3289	
GOOD SAMARITAN INN		3302 N. FLORIDA AVE	TAMPA, FL 33603–5851	
GRANADA MOTEL		717 S. STERLING AVE	TAMPA, FL 33609–4506	
GUEST QUARTERS ON TAMPA BAY.		3050 NW ROCKY POINT DR	TAMPA, FL 33607–1438	
GUEST QUARTERS TAMPA		555 N. WESTSHORE	TAMPA, FL 33609–1991	
H & H INN		813 E. 7TH AVE	TAMPA, FL 33602–2505	
HACIENDA MOTEL COURT		4109 E. HILLSBOROUGH AVE	TAMPA, FL 33610–5242	
HAMPTON INN		4817 W. LAUREL ST	TAMPA, FL 33629–	
HARBOR LIGHT MOTEL		3301 W. KENNEDY BLVD	TAMPA, FL 33609–2903	
HARBOUR ISLAND HOTEL		725 S. HARBOUR ISLAND BL	TAMPA, FL 33602–5731	
HAVEN MOTEL		7007 NEBRASKA AVE	TAMPA, FL 33604–4998	
HAYES MOTEL		4712 E. HILLSBOROUGH AVE	TAMPA, FL 33610–4753	
HOLIDAY INN AIRPORT		4500 W. CYPRESS ST	TAMPA, FL 33607–4084	
HOLIDAY INN ASHLEY PLAZA		111 W. FORTUNE ST	TAMPA, FL 33602–3299	
HOLIDAY INN BUSCH GARDENS.		2701 E. FOWLER AVE	TAMPA, FL 33612–6298	
HOLIDAY INN BUSCH GARDENS.		2701 E. FOWLER AVE	TAMPA, FL 33612–	813–971–4710
HOLIDAY INN SABAL PARK		10221 E. PRINCESS PALM AVE	TAMPA, FL 33610–9612	
HOLIDAY INN TAMPA STATE FAI.		2708 N. 50TH ST	TAMPA, FL 33619–2498	
HOLIDAY INN WEST		4732 N. DALE MABRY	TAMPA, FL 33614–6596	
HOWARD JOHNSON LODGE		720 E. FOWLER AVE	TAMPA, FL 33612–5332	
HYATT REGENCY		2 TAMPA CITY CTR	TAMPA, FL 33602–5127	
HYATT REGENCY TAMPA		211 N. TAMPA ST	TAMPA, FL 33603–	813–225–1234
HYATT REGENCY WESTSHORE.		6200 COURTNEY CAMPBELL	TAMPA, FL 33607–5916	
IDEAL MOTEL		3402 E. HILLSBOROUGH AVE	TAMPA, FL 33610–4534	
INTERCHANGE MOTOR LODGE.		109 E. FOWLER AVE	TAMPA, FL 33612–5227	
JAY HAWK MOTEL		3415 NEBRASKA AVE	TAMPA, FL 33603–6035	
LA QUINTA MOTOR INN 590		2904 MELBOURNE BLVD	TAMPA, FL 33605–2400	
LA QUINTA MOTOR INN 597		4730 W. SPRUCE ST	TAMPA, FL 33607–1497	
LOMA LINDA MOTEL		6408 NEBRASKA AVE	TAMPA, FL 33604–6261	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LOTUS MOTEL		5302 E. FOWLER AVE	TAMPA, FL 33617-2222	
LUXURY MOTEL		4600 E. HILLSBOROUGH AVE	TAMPA, FL 33610-5250	
MACDILL MOTEL		6227 S. DALE MABRY	TAMPA, FL 33611-4807	
MACS MOTEL		5606 NEBRASKA AVE	TAMPA, FL 33604-7123	
MARRIOTT AIRPORT HOTEL		TAMPA AIRPORT	TAMPA, FL 33607-	
MAYFLOWER MOTEL		7510 N. FLORIDA AVE	TAMPA, FL 33604-4104	
MOROCCO MOTEL		4610 S. DALE MABRY	TAMPA, FL 33611-2602	
MOTEL 301		3411 N. US HWY. 301	TAMPA, FL 33619-2213	
MOTEL 6 1192		6510 N. US HWY. 301	TAMPA, FL 33610-9560	
MOTEL 6 483		333 E. FOWLER AVE	TAMPA, FL 33612-5231	
NEW CIGAR CITY MOTEL		6804 E. HILLSBOROUGH AVE	TAMPA, FL 33610-4198	
OASIS MOTEL		6720 N. NEBRASKA AVE	TAMPA, FL 33604-5659	
OMNI HOTEL		700 N. WESTSHORE BLVD	TAMPA, FL 33609-1123	
OPEN GATE MOTEL		4810 FLORIDA AVE	TAMPA, FL 33603-2118	
ORANGE MOTEL		7800 N. NEBRASKA AVE	TAMPA, FL 33604-4241	
PARK MOTEL		2709 W. KENNEDY	TAMPA, FL 33609-3298	
PRINCESS MOTEL		6435 W. HILLSBORO AVE	TAMPA, FL 33634-5000	
QUALITY INN		210 E. FOWLER AVE	TAMPA, FL 33612-5297	
QUALITY SUITES BUSCH GARDEN.		3001 UNIVERSITY CTR	TAMPA, FL 33612-	
QUALITY SUITES HOTEL		3001 UNIVERSITY CTR. DR	TAMPA, FL 33612-	813-971-8930
RADISSON BAY HARBOR INN		7700 COURTNEY CAMPBELL	TAMPA, FL 33607-1430	
RAMADA HOTEL		820 E. BUSCH BLVD	TAMPA, FL 33612-8000	
RAMADA HOTEL-TAMPA AIRPORT.		5303 W. KENNEDY BLVD	TAMPA, FL 33609-2414	
RAMADA INN USF		400 E. BEARSS AVE	TAMPA, FL 33613-1699	
RANCH HOUSE MOTEL		2909 S. 50TH ST	TAMPA, FL 33619-6045	
RED ROOF INN		5001 N. US HWY. 301	TAMPA, FL 33610-	
RED ROOF INN		2307 E. BUSCH BLVD	TAMPA, FL 33612-8407	
RED ROOF INN 173		10121 HORRACE AVE	TAMPA, FL 33619-8015	
RESIDENCE INN BY MARRIOTT.		3705 N. ROCKY POINT DR	TAMPA, FL 33607-	813-281-5677
REX MOTEL		2939 W. HILLSBORO AVE	TAMPA, FL 33614-6081	
RIVERSIDE HOTEL		200 ASHLEY DR	TAMPA, FL 33602-5138	
RODEWAY SAFARI INN		4139 E. BUSCH BLVD	TAMPA, FL 33617-5998	
ROYAL PALM MOTEL		5809 N. NEBRASKA	TAMPA, FL 33604-7127	
SCOTTISH INN		11414 N. CENTRAL AVE	TAMPA, FL 33612-5615	
SCOTTISH INN		4530 E. COLUMBUS DR	TAMPA, FL 33605-3235	
SEMINOLE MOTEL		7200 N. FLORIDA AVE	TAMPA, FL 33604-4896	
SHAWS MOTEL		1509 E. HILLSBOROUGH AVE	TAMPA, FL 33610-8229	
SHERATON GRAND HOTEL		4860 W. KENNEDY	TAMPA, FL 33609-2591	
SHERATON TAMPA EAST		7401 E. HILLSBOROUGH AVE	TAMPA, FL 33610-4227	
SHONEY'S INN		8602 MORRIS BRIDGE RD	TAMPA, FL 33617-	813-985-8525
SHONEY'S INN		8602 MERRIS BRIDGE RD	TAMPA, FL 33617-	813-985-8525
STAR MOTEL		10809 E. US HWY. 92	TAMPA, FL 33610-	
SUNNY SOUTH MOTEL		3206 W. HILLSBORO AVE	TAMPA, FL 33614-5995	
SUNSHINE MOTEL		3666 GANDY BLVD	TAMPA, FL 33611-2608	
SUPER 8 TAMPA AIRPORT		2055 N. DALE MABRY	TAMPA, FL 33607-	
SWAN MOTEL		6411 NEBRASKA AVE	TAMPA, FL 33604-6260	
TAHITIAN INN		601 S. DALE MABRY	TAMPA, FL 33609-3994	
TAMPA AIRPORT HILTON AT METRO CENTER.		2225 N. LOIS AVE	TAMPA, FL 33607-2395	
TAMPA MARRIOTT HOTEL		1001 N. WESTSHORE BLVD	TAMPA, FL 33607-4796	
TAMPA MOTEL 1		3110 W. HILLSBOROUGH AVE	TAMPA, FL 33614-	
TAMPA MOTOR LODGE		1020 S. DALE MABRY	TAMPA, FL 33629-5043	
THE DUTCH MOTEL		108 W. HILLSBOROUGH AVE	TAMPA, FL 33604-6925	
THE LAMPLIGHTER MOTEL		12208 N. FLORIDA AVE	TAMPA, FL 33612-4214	
THE OAKS MOTEL		3801 N. NEBRASKA AVE	TAMPA, FL 33603-5015	
THE RESIDENCE INN		3075 ROCKY POINT DR	TAMPA, FL 33607-5804	
TOPICANA INN		4528 E. COLUMBUS DR	TAMPA, FL 33605-3292	
TRAVEL INN		830 W. KENNEDY BLVD	TAMPA, FL 33606-1419	
TRAVELERS MOTEL		12400 NEBRASKA	TAMPA, FL 33612-5357	
TRAVELODGE		9202 N. 30TH ST	TAMPA, FL 33612-8717	
VILLAGE MOTEL		4100 E. HILLSBOROUGH AVE	TAMPA, FL 33610-5243	
WYRDHAM HARBOUR ISLAND		725 S. HABOUR ISLAND BLVD	TAMPA, FL 33602-	813-229-5000
EMBASSY SUITES HOTEL AIRPORT.		555 W. SHORE BLVD	TAMPMA, FL 33609-	813-875-1555
DAYS INN TARPON SPRINGS		40050 S. US HWY. 19	TARPON SPRINGS, FL 34689-9306.	
GOLFVIEW MOTEL		1475 S. PINELLAS AVE	TARPON SPRINGS, FL 34689-3723.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
GULF MANOR MOTEL		548 WHITECOMB BLVD	TARPON SPRINGS, FL 34689-2604.	
QUALITY INN TARPON SPRINGS.		38724 US HWY. 19	TARPON SPRINGS, FL 34689-3842.	
SCOTTISH INNS		110 W. TARPON AVE	TARPON SPRINGS, FL 34689-3434.	
SPRING BAYOU INN		32 W. TARPON AVE	TARPON SPRINGS, FL 34689-3432.	
SUNBAY MOTEL		57 W. TARPON AVE	TARPON SPRINGS, FL 34689-3431.	
TARPON SHORES INN		40346 US HWY. 19	TARPON SPRINGS, FL 34689-4821.	
HOSPITALITY INN		700 E. BURLEIGH BLVD	TAVARES, FL 32778-2299	
PINK TOP MOTEL		14915 OLD HWY. 441 44	TAVARES, FL 32778-5099	
SCOTTISH INN		102 E. BURLEIGH BLVD	TAVARES, FL 32778-2402	
TAVA DORA MOTEL		1401 E. ALFRED ST	TAVARES, FL 32778-3505	
VILLA LAGOON INN		901 W. LAKESHORE BLVD	TAVARES, FL 32778-2398	
KEYS MOTEL		90611 OVERSEAS HWY	TAVERNIER, FL 33070-	
TAVERNIER HOTEL		OVERSEAS HWY. MM 9	TAVERNIER, FL 33070-	
TROPIC VISTA MOTEL	RT 1	BOX 88 MM 90	TAVERNIER, FL 33070-	
SHONEYS INN		8602 NEW MORRIS BRIDGE	TEMPLE TERRACE, FL 33617-	
COLOGNE MOTEL		US HWY. 1	TEQUESTA, FL 33458-	
COMFORT SUITES		18903 SW US 1	TEQUESTA, FL 33469-1715	
DEL RIO MOTEL		US 301 E. WALKER	THONOTOSASSA, FL 33592-	
GREEN WAVE MOTEL		4523 PALM BEACH BLVD	TICE, FL 33905-3452	
BEST WESTERN		3455 CHENEY HWY	TITUSVILLE, FL 32780-2502	
DAYS INN		3480 W. GARDEN ST	TITUSVILLE, FL 32796-3099	
EL PATIO MOTEL	RT 1 BOX 253		TITUSVILLE, FL 32780-	
HOLIDAY INN KENNEDY SPACE C.		4951 S. WASHINGTON AVE	TITUSVILLE, FL 32780-7396	
HOLIDAY INN KENNEDY SPACE CENTER.		4951 S. WASHINGTON AVE	TITUSVILLE, FL 32780-	407-269-2121
HOWARD JOHNSON LODGE KENNEDY SPACE CENTER.		1829 RIVERSIDE DR	TITUSVILLE, FL 32780-	407-267-7900
HOWARD JOHNSON MOTOR LODGE.		1829 RIVERSIDE DR	TITUSVILLE, FL 32780-4791	
PASSPORT INN		612 S. WASHINGTON AVE	TITUSVILLE, FL 32796-7691	
QUALITY INN KENNEDY SPACE C.		3755 W. CHENEY HWY	TITUSVILLE, FL 32780-2507	
RAMADA INN KENNEDY SPACE COURT.		3500 CHENEY HWY	TITUSVILLE, FL 32780-2503	
RODEWAY INN		3655 CHENEY HWY	TITUSVILLE, FL 32780-2507	
SEMINOLE MOTEL		1301 S. WASHINGTON AVE	TITUSVILLE, FL 32780-4260	
SIESTA MOTEL		2006 S. WASHINGTON AVE	TITUSVILLE, FL 32780-4739	
SOUTHWIND MOTEL		1540 S. WASHINGTON AVE	TITUSVILLE, FL 32780-4714	
THREE OAKS MOTEL		707 S. HOPKINS AVE	TITUSVILLE, FL 32780-4203	
ALGIERS RESORT MOTEL		11600 GULF BLVD	TREASURE ISLAND, FL 33706-4596.	
BEACH HOUSE EAST MOTEL		12035 GULF BLVD	TREASURE ISLAND, FL 33706-5123.	
BELLAMAR MOTEL & APARTMENTS.		10088 GULF BLVD	TREASURE ISLAND, FL 33706-4807.	
BILMAR MOTEL		10650 GULF BLVD	TREASURE ISLAND, FL 33706-4859.	
BLUE WATERS MOTEL		8105 W. GULF BLVD	TREASURE ISLAND, FL 33706-3599.	
BUCCANEER II MOTEL		10836 GULF BLVD	TREASURE ISLAND, FL 33706-4745.	
BUCCANEER RESORT MOTEL		10800 GULF BLVD	TREASURE ISLAND, FL 33706-4790.	
CHERI LYN MOTEL		11705 GULF BLVD	TREASURE ISLAND, FL 33706-5199.	
EBB TIDE MOTEL		11903 GULF BLVD	TREASURE ISLAND, FL 33706-5196.	
EL REY & EL NOR MOTEL		240 108TH AVE	TREASURE ISLAND, FL 33706-4704.	
ELDORADO MOTEL		11360 GULF BLVD	TREASURE ISLAND, FL 33706-4693.	
FARGO MOTEL		10810 GULF BLVD	TREASURE ISLAND, FL 33706-4791.	
FORBES MOTEL & APARTMENTS.		279 104TH AVE	TREASURE ISLAND, FL 33706-4805.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HARBOUR INN & MARINE		212 108TH AVE	TREASURE ISLAND, FL 33706–4743.	
HOLIDAY INN-TREASURE ISLAND.		11908 GULF BLVD	TREASURE ISLAND, FL 33706–5122.	
HOWARD JOHNSONS MOTOR LODGE.		11125 GULF BLVD	TREASURE ISLAND, FL 33706–4795.	
ISLAND INN SHORES		9980 GULF BLVD	TREASURE ISLAND, FL 33706–3218.	
JEFFERSON MOTEL		10116 GULF BLVD	TREASURE ISLAND, FL 33706–4891.	
JOHNS PASS BEACH MOTEL & AP.		12600 GULF BLVD	TREASURE ISLAND, FL 33706–5027.	
JOLLY ROGER MOTEL		11525 GULF BLVD	TREASURE ISLAND, FL 33706–4696.	
KINGFISH MOTEL EFFICIENCY		12725 KINGFISH DR	TREASURE ISLAND, FL 33706–5021.	
MAPLE LEAF MOTEL & APARTMENTS.		125 119TH AVE	TREASURE ISLAND, FL 33706–	
MITCHELL MOTEL		8801 HARRELL AVE	TREASURE ISLAND, FL 33706–3339.	
MOLLOY GULF MOTEL		10164 GULF BLVD	TREASURE ISLAND, FL 33706–4847.	
RAMADA INN		12000 GULF BLVD	TREASURE ISLAND, FL 33706–5193.	
RICHARD III MOTEL		10225 GULF BLVD	TREASURE ISLAND, FL 33706–	
SAN DUNE MOTEL		12620 GULF BLVD	TREASURE ISLAND, FL 33706–5018.	
SAN TAN APT & MOTEL		7901 W. GULF BLVD	TREASURE ISLAND, FL 33706–3539.	
SATELLITE MOTEL		11205 GULF BLVD	TREASURE ISLAND, FL 33706–4699.	
SEA CHEST MOTEL		11790 GULF BLVD	TREASURE ISLAND, FL 33706–5191.	
SEA LORE MOTEL		10089 GULF BLVD	TREASURE ISLAND, FL 33706–4806.	
SEASPIRE MOTEL		11799 GULF BLVD	TREASURE ISLAND, FL 33706–5198.	
SHIFTING SANDS MOTEL		10232 GULF BLVD	TREASURE ISLAND, FL 33706–4611.	
SKYLARK MOTEL		10149 GULF BLVD	TREASURE ISLAND, FL 33706–4808.	
SUNCOAST MOTEL		10264 GULF BLVD	TREASURE ISLAND, FL 33706–4883.	
SUNNY SOUTH MOTEL		12501 GULF BLVD	TREASURE ISLAND, FL 33706–5015.	
SUNRISE MOTEL		9630 GULF BLVD	TREASURE ISLAND, FL 33706–3210.	
SWASHBUCKLER MOTEL & APARTMENTS.		11875 GULF BLVD	TREASURE ISLAND, FL 33706–5119.	
THE BAYSIDE INN		11365 GULF BLVD	TREASURE ISLAND, FL 33706–4678.	
THUNDERBIRD MOTEL		10700 GULF BLVD	TREASURE ISLAND, FL 33706–4788.	
TRADEWINDS MOTEL		10300 GULF BLVD	TREASURE ISLAND, FL 33706–4894.	
TREASURE ISLAND MOTEL		10315 GULF BLVD	TREASURE ISLAND, FL 33706–4812.	
VAGABOND MOTEL		11325 GULF BLVD	TREASURE ISLAND, FL 33706–4641.	
WINDJAMMER APARTMENTS-MOTEL.		10450 GULF BLVD	TREASURE ISLAND, FL 33706–4857.	
FOX DEN MOTEL		27 S. CENTRAL AVE. BOX 31	UMATILLA, FL 32784–	
EAST GATE MOTOR LODGE		79 JOHN SIMS PKWY	VALPARAISO, FL 32580–	
HILTOP MOTEL		434 HWY. 190	VALPARAISO, FL 32580–	
BEST WESTERN VENICE RESORT.		456 N. VENICE BYPASS	VENICE, FL 34292–1095	
CANDLE LITE MOTEL		1602 S. TAMIAMI TRAIL	VENICE, FL 34293–1633	
EL PATIO HOTEL		229 W. VENICE AVE	VENICE, FL 34285–2002	
GONDOLIER MOTEL		340 S. TAMIAMI TRAIL	VENICE, FL 34285–2422	
KON TIKI MOTEL		609 S. TAMIAMI TRAIL	VENICE, FL 34285–	
MOTEL 6 364		281 N. VENICE BYPASS	VENICE, FL 34292–	
PALOS HEIGHTS MOTEL		616 GOLF DR	VENICE, FL 34285–3206	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUN GLO MOTEL		1748 S. TAMIAMI TRAIL	VENICE, FL 34293–1635	
THE INN AT THE BEACH		101 ESPLANADE AVE	VENICE, FL 34285–	
VERANDA INN OF VENICE		625 S. TAMIAMI TRAIL	VENICE, FL 34285–3250	
YAKKA RIVER INN		121 PLAMORE DR	VENICE, FL 34293–7508	
AQUARUS RESORT MOTEL		3544 OCEAN DR	VERO BEACH, FL 32960–	
BEACH VUE MOTEL		3005 S. OCEAN DR	VERO BEACH, FL 32963–1953	
BEST WESTERN VERO BEACH INN.		4700 N. A1A	VERO BEACH, FL 32963–1346	
BUDGET INN OF VERO BEACH		2022 8TH AVE	VERO BEACH, FL 32960–5420	
CITRUS MOTEL		3256 N. US HWY. 1	VERO BEACH, FL 32960–4505	
DAYS HOTEL VERO BEACH		3244 OCEAN DR	VERO BEACH, FL 32963–1996	
DAYS INN OF VERO BEACH		8800 20TH ST	VERO BEACH, FL 32966–1706	
DOLPHIN MOTEL		1850 US HWY. 1	VERO BEACH, FL 32960–	
HOLIDAY INN COUNTRY SIDE		8727 20TH ST	VERO BEACH, FL 32966–	
HOLIDAY INN OCEANSIDE		3364 OCEAN DR	VERO BEACH, FL 32963–1696	
HOWARD JOHNSON MOTOR LODGE.		1725 US HWY. 1	VERO BEACH, FL 32960–	
HOWARD JOHNSON LODGE		1725 US 1	VERO BEACH, FL 32960–	407–562–5171
ISLANDER RESORT MOTEL		3101 OCEAN DR	VERO BEACH, FL 32963–1955	
LANDMARK MOTOR LODGE		1706 US HWY. 1	VERO BEACH, FL 32960–5545	
OCEANAIRE MOTEL		1021 US 1	VERO BEACH, FL 32960–	
REXTON INN		1985 90TH AVE	VERO BEACH, FL 32966–6621	
RIVIERA INN		1605 S. OCEAN DR	VERO BEACH, FL 32963–2252	
ROYAL PARK MOTOR INN		1055 ROYAL PALM BLVD	VERO BEACH, FL 32960–648	
SOUTH BEACH MOTEL		1705 S. OCEAN DR	VERO BEACH, FL 32963–2263	
VEROS MOTEL		3116 N. US HWY. 1	VERO BEACH, FL 32960–4503	
CASA DE VILANO MOTEL		150 VILANO RD	VILANO BEACH, FL 32095–	
NEWTS MOTEL		155 VILANO RD	VILANO BEACH, FL 32095–	
OCEAN BLUE MOTEL		10 VILANO RD	VILANO BEACH, FL 32084–	
TOWN & COUNTRY MOTEL & APTS.		125 VILANO RD	VILANO BEACH, FL 32084–	
VILANO BEACH MOTEL		50 E. VILANO RD	VILANO BEACH, FL 32084–	
PEACOCK LOUNGE RESTURANT & HOTEL.		6285 85TH ST	WABASSO, FL 32970–9999	
PENNWOOD MOTOR LODGE	PO BOX 696	US HWY	WABASSO, FL 32970–0696	
SHADY ACRES MOTEL		HWY. 1 BOX 82	WABASSO, FL 32970–9999	
WARM MINERAL SPRINGS MOTEL.		12597 S. TAMIAMI TRAIL	WARM MINERAL SPRINGS, FL 34287–.	
GATEWAY INN MOTEL		607 S. 1ST ST	WARRINGTON, FL 32507–3309	
PEACE VALLEY MOTEL		409 N. 6TH AVE	WAUCHULA, FL 33873–2201	
TROPICANA MOTEL	RT 1 BOX	N. US HWY. 17	WAUCHULA, FL 33873–9704	
WAUCHULA MOTEL	RFD 1 BOX 25	HWY. 17	WAUCHULA, FL 33873–9724	
WAUKEENAH MOTEL		HWY. 27	WAUKEENAH, FL 32344–	
WEEKI WACHEE RESORT MOTEL		8285 COMMERCIAL WAY	WEEKI WACHEE, FL 34613–4511.	
SHELL HARBOR MOTEL		HWY. 309 5 M E	WELAKA, FL 32093–9999	
HARRIS MOTELS		5724 PEMBROKE RD	WEST HOLLYWOOD, FL 33023–2338.	
LIVE AND LET LIVE MOTEL		5700 PEMBROKE RD	WEST HOLLYWOOD, FL 33023–2338.	
COURTYARD BY MARRIOTT WEST.		2101 W. NEW HAVEN AVE	WEST MELBOURNE, FL 32904–3803.	
SHONEYS INN		4431 W. NEW HAVEN AVE	WEST MELBOURNE, FL 32904–	
AQUA MOTEL		7802 S. DIXIE	WEST PALM BEACH, FL 33405–4820.	
BEST WESTERN PALM BEACH LAKES.		1800 P B LAKES BLVD	WEST PALM BEACH, FL 33401–2098.	
BOULEVARD MOTEL		5497 SOUTHERN BLVD	WEST PALM BEACH, FL 33415–1970.	
COMFORT INN		5981 OKEECHOBEE BLVD	WEST PALM BEACH, FL 33417–4323.	
COQUINA MOTEL		2919 BROADWAY	WEST PALM BEACH, FL 33407–5131.	
COURTYARD MARRIOTT HOTEL.		600 NORTHPOINT PKWY	WEST PALM BEACH, FL 32407–.	
DAYS INN—WEST PALM BEACH.		2300 W. 45TH ST	WEST PALM BEACH, FL 33407–2073.	
DAYS INN TURNPIKE		6255 OKEECHOBEE BLVD	WEST PALM BEACH, FL 33417–.	
EVERNIA HOTEL		609 EVERNIA ST	WEST PALM BEACH, FL 33401–5740.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
FLAGLER COURT HOTEL		535 CLEMATIS ST	WEST PALM BEACH, FL 33401–5303.	
GRANADA INN		3805 BROADWAY	WEST PALM BEACH, FL 33407–4398.	
HAMPTON INN		1505 BELVEDERE RD	WEST PALM BEACH, FL 33406–1576.	
HELEN APARTMENTS & MOTEL.		3507 BROADWAY	WEST PALM BEACH, FL 33407–4892.	
HELEN WILKES RES HOTEL		100 N. FLAGLER DR	WEST PALM BEACH, FL 33401–.	
HOLIDAY INN P B INTERNATIONAL AIRPORT.		1301 BELVEDERE RD	WEST PALM BEACH, FL 33405–1090.	
HOLIDAY INN PALM BEACH INTR. AIRPORT.		1301 BELVEDERE RD	WEST PALM BEACH, FL 33405–.	407–659–3880
HOLIDAY INN WEST PALM BEACH, INT. AIRPORT.		1301 BELVEDERE RD	WEST PALM BEACH, FL 33405	11
HOWARD JOHNSON MOTOR LODGE HO-JO INN.		1901 OKEECHOBEE BLVD	WEST PALM BEACH, FL 33409–4197.	
KNIGHTS INN		2200 45TH ST	WEST PALM BEACH, FL 33407–2016.	
OMNI HOTEL		1601 BELVEDERE	WEST PALM BEACH, FL 33406–1583.	
PALM BEACH AIRPORT HILTON HOTEL.		150 AUSTRALIAN AVE	WEST PALM BEACH, FL 33406–1473.	
POOL MOTEL		3012 BROADWAY	WEST PALM BEACH, FL 33407–5197.	
PRINCESS MOTEL		6915 S. DIXIE HWY	WEST PALM BEACH, FL 33405–4603.	
RADISSON SUITES PBIA		1808 S. AUSTRALIAN AVE	WEST PALM BEACH, FL 33409–6487.	
RAMADA HOTEL RESORT-PALM BEACH.		630 CLEARWATER PARK R	WEST PALM BEACH, FL 33401–6236.	
ROYAL LIONS HOTEL		816 13TH ST	WEST PALM BEACH, FL 33401–2861.	
SEA GRAPE MOTEL		2618 BROADWAY	WEST PALM BEACH, FL 33407–5495.	
SHERATON INN WEST PALM BEACH.		1901 PALM BEACH LAKES BLVD.	WEST PALM BEACH, FL 33409–3543.	
SOUTHERN PINES MOTEL		4869 SOUTHERN BLVD	WEST PALM BEACH, FL 33415–2095.	
VALI MOTEL		5515 S. DIXIE	WEST PALM BEACH, FL 33405–3627.	
VAN WINK MOTEL		3411 BROADWAY	WEST PALM BEACH, FL 33407–4898.	
WELLESLEY INN AT WEST PALM BEACH.		1910 PALM BEACH LAKES	WEST PALM BEACH, FL 33409–.	
WEWA MOTEL		S. HWY. 71	WEWAHITCHKA, FL 32465–	
COLONIAL HOUSE INN MOTEL		I–75 & SR 136	WHITE SPRINGS, FL 32096–	
SUWANNEE RIVER MOTEL	PO BOX 412	US 41	WHITE SPRINGS, FL 32096–0412.	
BUDGET MOTOR LODGE		75 & FLA 44	WILDWOOD, FL 32785–	
DAYS INN OF WILDWOOD		I–75 & FLA 44	WILDWOOD, FL 32785–	
ECONO LODGE		W. I–75 & HWY. 44	WILDWOOD, FL 32785–	
RED CARPET INN 2		HWY. 301	WILDWOOD, FL 34785–	
WILDWOOD RESORT		I–75 & HWY. 44	WILDWOOD, FL 32785–	
RAINTREE MOTEL		US HWY. 27 1 MILE	WILLISTON, FL 32696–	
WILLISTON MOTOR INN		606 W. NOBLE AVE	WILLISTON, FL 32696–2038	
DROP ANCHOR MOTEL		84959 OVERSEAS HWY	WINDLEY KEY, FL 33036–9713	
ADMIRAL'S INN		5651 CYPRESS GARDENS B	WINTER HAVEN, FL 33884–	
BANYAN BEACH MOTEL		1630 NW 6TH ST	WINTER HAVEN, FL 33881–2167.	
BUDGET INN OF WINTER HAVEN.		401 6TH ST. NW	WINTER HAVEN, FL 33881–4061.	
CAMELLIA MOTEL		620 6TH ST. NW	WINTER HAVEN, FL 33881–4015.	
CYPRESS MOTEL		5651 SE CYPRESS GARDEN BL.	WINTER HAVEN, FL 33884–2273.	
DAYS INN		200 SE CYPRESS GARDENS B	WINTER HAVEN, FL 33880–4346.	
FLORIDA GARDEN MOTEL		2345 8TH ST. NW	WINTER HAVEN, FL 33881–1333.	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLER DAY INN		112 FLORIDA DR	WINTER HAVEN, FL 33881–2707.	
HOLIDAY HOUSE MOTEL		1900 CYPRESS GARDENS	WINTER HAVEN, FL 33884–1551.	
HOLIDAY INN OF WINTER HAVEN.		1150 SW 3RD ST	WINTER HAVEN, FL 33880–3999.	
HOWARD JOHNSON MOTOR LODGE.		1300 S. US 17	WINTER HAVEN, FL 33880–	
LAKMAR RESORT MOTEL		2520 W. HWY. 92	WINTER HAVEN, FL 33881–9135.	
MARIANNA LAKE MOTEL		2508 W. HWY. 92	WINTER HAVEN, FL 33880–	
MILLIES MOTEL		2850 LAKE ALFRED RD	WINTER HAVEN, FL 33881–4923.	
OLDE ENGLISH MOTEL		1901 SE CYPRESS GARDENS B.	WINTER HAVEN, FL 33884–1552.	
ONE HUNDRED LAKES MOTEL		2275 NW 8TH ST	WINTER HAVEN, FL 33881–1331.	
ORBIT MOTEL		950 NW 6TH ST	WINTER HAVEN, FL 33881–4017.	
RANCH HOUSE MOTOR INN		1911 CYPRESS GARDENS BLVD.	WINTER HAVEN, FL 33884–1553.	
RED CARPET INN		2000 SE CYPRESS GARDENS B.	WINTER HAVEN, FL 33884–1554.	
REGENCY INN		3525 N. US HWY. 17	WINTER HAVEN, FL 33880–	
ROSE MOTEL		815 6TH ST. NW	WINTER HAVEN, FL 33881–4014.	
SUNSHINE MOTEL		3560 N. HWY. 17	WINTER HAVEN, FL 33881–4925.	
WIS FLO HOTEL		635 NW CENTRAL AVE	WINTER HAVEN, FL 33880–	
BEST WESTERN MT VERNON INN.		110 S. ORLANDO AVE	WINTER PARK, FL 32789–3698	
DAYS INN ORLANDO/WINTER PARK.		901 N. ORLANDO AVE	WINTER PARK, FL 32789–2923	
FORTNIGHTLY INN B&B		377 E. FAIRBANKS AVE	WINTER PARK, FL 32289–	
LAKEVIEW INN		131 N. ORLANDO AVE	WINTER PARK, FL 32789–3675	
LANGFORD HOTEL		E. NEW ENGLAND	WINTER PARK, FL 32789–4430	
TROPICAL COURT MOTEL		271 S. ORLANDO AVE	WINTER PARK, FL 32789–	
VENTURE INN MOTEL		3095 E. 60TH HWY	YEEHAW JUNCTION, FL 34972–.	
YOUNGSTOWN MOTEL		12434 N. HWY. 231	YOUNGSTOWN, FL 32466–	
BEST WESTERN INN		N. US HWY. 17	YULEE, FL 32097–	
KOUNTRY INN		HWY. 17 S	YULEE, FL 32097–	
NASSAU HOLIDAY MOTEL		HWY. 17	YULEE, FL 32097–	
PINE FOREST MOTEL		N. HWY. 17	YULEE, FL 32097–	
STEVENS MOTEL		HWY. 17 2 M S	YULEE, FL 32097–	
TROPIC MOTEL		S. HWY. 17 2M BOX 485	YULEE, FL 32097–	
LAKE OLA BEACH MOTEL		US HWY. 441	ZELLWOOD, FL 32798–	
BEST WESTERN MOTEL		5734 GALL BLVD	ZEPHYRHILLS, FL 34248–3452	
FLORIDA PLAZA MOTEL		5615 GALL BLVD	ZEPHYRHILLS, FL 33541–	
HAPPY HILL MOTEL		8744 N. GALL BLVD	ZEPHYRHILLS, FL 33541–9720	
MASTERS ECONOMY INN TAMPA N.		27807 SR 54	ZEPHYRHILLS, FL 33543–	
RICHARDS MOTEL		8133 GALL BLVD	ZEPHYRHILLS, FL 33541–9724	
SIESTA MOTEL		4429 GALL BLVD	ZEPHYRHILLS, FL 34248–6128	
TWILITE MOTEL		4040 GALL BLVD	ZEPHYRHILLS, FL 34248–6219	
Georgia				
DAYS INN ACWORTH		5035 COWAN RD	ACWORTH, GA 30101–	404–974–1700
DAYS INN ADEL		1200 W. 4TH ST	ADEL, GA 31620–	912–896–4574
ECONO LODGE ADEL		1102 W. 4TH ST	ADEL, GA 31620–	912–896–4523
HOWARD JOHNSON ADEL		1103 W. 4TH ST	ADEL, GA 31620–	912–896–2244
COMFORT SUITES MERRY ACRES.		1400 DAWSON RD	ALBANY, GA 31708–	912–888–3939
SUPER 8 MOTEL ALBANY		2444 NORTH SLAPPEY BLVD	ALBANY, GA 31702–	912–886–8388
RESIDENCE INN BY MARRIOTT ALPHARETTA.		5465 WINDWARD PKWY. W	ALPHARETTA, GA 30201–	404–664–0664
JAMESON INN AMERICUS		1605 CORDELE HWY	AMERICUS, GA 31709–	912–924–2726
WINDSOR HOTEL		125 W. LAMAR	AMERICUS, GA 31709–	912–924–1555
BEST WESTERN COLONIAL INN.		170 N. MILLEDGE AVE	ATHENS, GA 30601–	706–546–7311
HOWARD JOHNSON ATHENS		2465 W. BROAD ST	ATHENS, GA 30606–	706–548–1111
RAMADA INN ATHENS		513 W. BROAD ST	ATHENS, GA 30601–	706–546–6122

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ATLANTA AIRPORT HILTON		1031 VIRGINIA AVE	ATLANTA, GA 30354–	404–767–9000
ATLANTA HILTON AND TOWERS.		255 COURTLAND ST. NE	ATLANTA, GA 30303–	404–659–2000
ATLANTA MARRIOTT LENOX		3300 LENOX RD. NE	ATLANTA, GA 30326–	404–262–3344
ATLANTA MARRIOTT MARQIOS.		265 PEACHTREE CTR. AVE. NE.	ATLANTA, GA 30303–	404–521–0000
ATLANTA MARRIOTT NORTHWEST.		200 INTERSTATE N. PKWY. NE	ATLANTA, GA 30339–	404–952–7900
ATLANTA MARRIOTT SUITES MIDTOWN.		35 FOURTEENTH ST	ATLANTA, GA 30309–	404–876–8888
ATLANTA MARRIOTT SUITES PERIMETER CENTER.		6120 PEACHTREE DUNWOODY RD.	ATLANTA, GA 30328–	404–668–0808
ATLANTA PENTA HOTEL		590 W. PEACHTREE ST. NW	ATLANTA, GA 30308–	404–881–6000
ATLANTA PERIMETER CENTER.		246 PERIMETER CTR. PKWY. NE.	ATLANTA, GA 30346–	404–394–6500
BEVERLY HILLS INN		65 SHERIDAN DR. NE	ATLANTA, GA 30305–	404–233–8520
BILTMORE SUITES		30 5TH ST	ATLANTA, GA 30308–	404–874–0824
CASTLEGATE HOTEL & CONFERENCE CENTER.		1750 COMMERCE DR. NW	ATLANTA, GA 30318–	404–351–6100
COMFORT INN ATLANTA		3701 JONESBORO RD	ATLANTA, GA 30354–	404–361–1111
COMFORT INN DOWNTOWN		101 INTERNATIONAL BLVD	ATLANTA, GA 30303–	404–524–5555
COURTYARD BY MARRIOTT ATLANTA DUNWOODY.		5601 PEACHTREE DUNWOODY RD.	ATLANTA, GA 30342–	404–843–2300
COURTYARD BY MARRIOTT ATLANTA EXECUTIVE PARK.		1236 EXECUTIVE PARK DR	ATLANTA, GA 30329–	404–728–0708
COURTYARD BY MARRIOTT ATLANTA MIDTOWN.		1132 TECHWOOD DR	ATLANTA, GA 30318–	404–607–1112
COURTYARD BY MARRIOTT ATLANTA PERIMETER CTR.		6250 PEACHTREE DUNWOODY RD.	ATLANTA, GA 30328–	404–393–1000
COURTYARD BY MARRIOTT ATLANTA WINDY HILL.		2045 S. PARK PL	ATLANTA, GA 30339–	404–955–3838
COURTYARD BY MARRIOTT CUMBERLAND CENTER.		3000 CUMBERLAND CIR	ATLANTA, GA 30339–	404–952–2555
DAYS INN LENOX		3377 PEACHTREE RD	ATLANTA, GA 30326–	404–264–1111
DOUBLETREE HOTEL ATLANTA CONCOURSE.		7 CONCOURSE PKWY	ATLANTA, GA 30328–	404–395–3900
ECONO LODGE AIRPORT		1360 VIRGINIA AVE	ATLANTA, GA 30344–	404–761–5201
EMBASSY SUITES HOTEL BUCKHEAD.		3285 PEACHTREE RD. NE	ATLANTA, GA 30305–	404–261–7733
EMBASSY SUITES HOTEL GALLERIA.		2815 AKERS MILL RD	ATLANTA, GA 30339–	404–984–9300
EMBASSY SUITES HOTEL PERIMETER.		1030 CROWN POINT PKWY	ATLANTA, GA 30338–	404–394–5454
FAIRFIELD INN BY MARRIOTT ATLANTA NORTHLAKE.		2155 RANCHWOOD DR	ATLANTA, GA 30345–	404–491–7444
FRENCH QUARTER SUITES HOTEL.		2780 WHITLEY RD. NW	ATLANTA, GA 30339–	404–980–1900
HAMPTON INN AIRPORT		1888 SULLIVAN RD	ATLANTA, GA 30337–	404–996–2220
HAMPTON INN ATLANTA NORTH DRUID HILL.		1975 N. DRUID HILL	ATLANTA, GA 30329–	404–320–6600
HAMPTON INN BUCKHEAD		3398 PIEDMONT RD. NE	ATLANTA, GA 30305–	404–233–5656
HAMPTON INN CUMBERLAND MALL.		2775 CUMBERLAND PKWY	ATLANTA, GA 30339–	404–333–6006
HAMPTON INN NORTHLAKE		3400 NORTHLAKE PKWY	ATLANTA, GA 30345–	404–493–1966
HAWTHORN SUITES HOTEL		1500 PARKWOOD CIR	ATLANTA, GA 30339–	404–952–9595
HOLIDAY INN CROWNE PLAZA RAVINIA.		4355 ASHFORD DUNWOODY	ATLANTA, GA 30346–	404–395–7700
HOLIDAY INN HOWELL MILL		1810 HOWELL MILL RD	ATLANTA, GA 30318–	404–351–3831
HOLIDAY INN PERIMETER DUNWOODY.		4386 CHAMBLEE DUNWOODY RD.	ATLANTA, GA 30341–	404–457–6363
HOMEWOOD SUITES ATLANTA CUMBERLAND.		3200 COBB PKWY. SW	ATLANTA, GA 30339–	404–988–9449
HOTEL NIKKO ATLANTA		3300 PEACHTREE RD	ATLANTA, GA 30305–	404–365–8100
HYATT REGENCY ATLANTA		265 PEACHTREE ST. NE	ATLANTA, GA 30303–	404–577–1234
LENOX INN BUCKHEAD		3387 LENOX RD	ATLANTA, GA 30326–	404–261–5500
OAKWOOD HOUSE BED & *BREAKFAST.		951 EDGEWOOD AVE. NE	ATLANTA, GA 30307–	404–521–9320
OCCIDENTAL GRAND HOTEL		75 14TH ST	ATLANTA, GA 30309–	404–881–9898
OMNI HOTEL CNN CENTER		100 CNN CTR	ATLANTA, GA 30335–	404–659–000
RAMADA INN DOWNTOWN		175 PIEDMONT AVE. NE	ATLANTA, GA 30303–	404–569–2727
RED ROOF INN DRUID HILL		1960 N. DRUID HILLS RD	ATLANTA, GA 30329–	404–321–1653
RED ROOF INN SIX FLAGS		4265 SW SHIRLEY DR	ATLANTA, GA 30336–	404–696–4391

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
REGENCY SUITES HOTEL		975 W. PEACHTREE ST. NE	ATLANTA, GA 30309–	404–876–5003
RESIDENCE INN BY MARRIOTT DUNWOODY.		1901 SAVOY DR	ATLANTA, GA 30341–	404–455–4446
RESIDENCE INN BY MARRIOTT PERIMETER.		6096 BARFIELD RD	ATLANTA, GA 30328–	404–252–5066
RESIDENCE INN BY MARRIOTT PIEDMONT.		2960 PIEDMONT RD	ATLANTA, GA 30305–	404–239–0677
RITZ CARLTON BUCKHEAD		3434 PEACHTREE RD. NE	ATLANTA, GA 30326–	404–237–2700
SHELLMONT BED & BREAKFAST LODGE.		821 PIEDMONT AVE. NE	ATLANTA, GA 30308–	404–872–0290
SHERATON ATLANTA AIRPORT.		3601 N. DESERT DR	ATLANTA, GA 30344–	404–762–5141
SHERATON ATLANTA AIRPORT HOTEL.		1325 VIRGINIA AVE	ATLANTA, GA 30344–	404–768–6660
SHERATON CENTURY CENTER HOTEL.		2000 CENTURY BLVD. NE	ATLANTA, GA 30345–	404–325–0000
SHERATON COLONY SQUARE HOTEL.		188 FOURTEENTH ST. NE	ATLANTA, GA 30361–	404–892–6000
SHERATON CUMBERLAND		2844 COBB PKWY	ATLANTA, GA 30339–	404–955–3900
STOUFFER WAVERLY HOTEL		2450 GALLERIA PKWY	ATLANTA, GA 30339–	404–953–4500
SUITE HOTEL UNDERGROUND ATLANTA.		54 PEACHTREE ST	ATLANTA, GA 30303–	404–223–5555
SUMMERFIELD SUITES HOTEL		505 PHARR RD	ATLANTA, GA 30305–	404–262–7880
SUPER 8 MOTEL ATLANTA		301 FULTON INDUSTRIAL CIR	ATLANTA, GA 30336–	404–696–9713
TERRACE GARDEN INN		3405 LENOX RD. NE	ATLANTA, GA 30326–	404–261–9250
TRAVELODGE ATLANTA DOWNTOWN.		311 COURTLAND ST. NE	ATLANTA, GA 30303–	404–659–4545
WYNDHAM MIDTOWN		PEACHTREE & 10TH ST	ATLANTA, GA 30309–	404–873–4800
WYNDHAM PERIMETER		800 HAMMOND DR	ATLANTA, GA 30329–	404–252–3344
WYNDHAM VININGS		2857 PACES FERRY RD	ATLANTA, GA 30339–	404–432–5555
COURTYARD BY MARRIOTT AUGUSTA.		1045 STEVENS CREEK RD	AUGUSTA, GA 30397–	404–737–3737
DAYS INN AUGUSTA		3654 WHEELER RD	AUGUSTA, GA 30909–	706–868–8610
FAIRFIELD INN BY MARRIOTT AUGUSTA.		201 BOY SCOUT RD	AUGUSTA, GA 30909–	404–733–8200
HAMPTON INN AUGUSTA		3030 WASHINGTON RD	AUGUSTA, GA 30907–	706–737–1122
HOLIDAY INN WEST AUGUSTA		1075 STEVENS CREEK RD	AUGUSTA, GA 30909–	706–736–8811
HOWARD JOHNSON AUGUSTA		601 BOBBY JONES EXPRWY	AUGUSTA, GA 30907–	706–863–2652
LA QUINTA MOTOR INN #594		3020 WASHINGTON RD	AUGUSTA, GA 30907–	706–733–2660
PARTRIDGE INN		2110 WALTON WAY	AUGUSTA, GA 30904–	706–737–8888
RADISSON AUGUSTA		3038 WASHINGTON RD	AUGUSTA, GA 30907–	706–868–1800
RADISSON RIVERFRONT HOTEL AUGUSTA.		TWO TENTH ST	AUGUSTA, GA 30901–	706–722–8900
SUPER 8 MOTEL AUGUSTA		2137 GORDON HWY	AUGUSTA, GA 30906–	706–738–5018
WHEELER VILLAGE INN		3654 WHEELER RD	AUGUSTA, GA 30909–	706–868–8610
LA QUINTA MOTOR INN #4648		7377 N. SERVICE RD	AUSTELL, GA 30001–	404–944–2110
GLYNN MALL SUITES HOTELS		500 MALL BLVD	BRUNSWICK, GA 31525–	912–264–6100
HAMPTON INN BRUNSWICK		112 TOURIST DR	BRUNSWICK, GA 31520–	912–261–0002
HOLIDAY INN BRUNSWICK		3302 GLYNN AVE	BRUNSWICK, GA 31520–	912–264–9111
HOWARD JOHNSON BRUNSWICK I–95.		INTERSTATE 95 & HWY. 341	BRUNSWICK, GA 31520–	912–264–4720
AMERICAN INN OF BUFORD		4267 HWY. 20	BUFORD, GA 30518–	404–932–0111
HOLIDAY INN CALHOUN	PO BOX 252	I–75 RED BUD RD	CALHOUN, GA 30701–	706–629–9191
JAMESON INN CALHOUN		189 JAMESON ST. SE	CALHOUN, GA 30701–	706–629–8133
DAYS INN CANTON		291 BALL GROUND RD	CANTON, GA 30114–	404–479–0301
HOLIDAY INN CARTERSVILLE		2336 HWY. 411 NE	CARTERSVILLE, GA 30120–	404–386–0830
RED TOP MOUNTAIN STATE PARK LODGE.		653 RED TOP MOUNTAIN RD	CARTERSVILLE, GA 30120–	404–975–0055
STONEBROOK INN	PO BOX 341	HWY. 441	CLAYTON, GA 30525–	706–782–2214
DAYS INN CLEVELAND	PO BOX 339	HWY. 129	CLEVELAND, GA 30528–	706–865–4079
ATLANTA AIRPORT MARRIOTT		4711 BEST RD	COLLEGE PARK, GA 30337–	404–766–7900
BEST WESTERN AIRPORT MOTOR INN.		4979 OLD NATIONAL HWY	COLLEGE PARK, GA 30349–	404–669–8616
BUDGETELL INN ATLANTA AIRPORT.		2480 OLD NATIONAL PKWY	COLLEGE PARK, GA 30349–	404–766–0000
COMFORT SUITES ATLANTA AIRPORT.		4820 MASSACHUSETTS BLVD	COLLEGE PARK, GA 30337–	404–996–0000
COURTYARD BY MARRIOTT ATLANTA AIRPORT SOUTH.		2050 SULLIVAN RD	COLLEGE PARK, GA 30337–	404–997–2220
DAYS INN COLLEGE PARK		4601 BEST RD	COLLEGE PARK, GA 30337–	404–761–6500
EMBASSY SUITES HOTEL ATLANTA AIRPORT.		4700 SOUTHPORT RD	COLLEGE PARK, GA 30337–	404–767–1988

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
FAIRFIELD INN BY MARRIOTT ATLANTA AIRPORT.		2451 OLD NATIONAL PKWY	COLLEGE PARK, GA 30349–	404–761–8371
HYATT ATLANTA AIRPORT		1900 SULLIVAN RD	COLLEGE PARK, GA 30337–	404–991–1234
LA QUINTA MOTOR INN #2535		4874 OLD NATIONAL HWY	COLLEGE PARK, GA 30337–	404–768–1241
RAMADA RENAISSANCE HOTEL.		4736 BEST RD	COLLEGE PARK, GA 30337–	404–762–7676
RED ROOF INN AIRPORT		2471 OLD NATIONAL PKWY	COLLEGE PARK, GA 30349–	404–761–8701
SUPER 8 MOTEL ATLANTA GEORGIA.		2010 SULLIVAN RD	COLLEGE PARK, GA 30337–	404–991–8985
COLUMBUS HILTON		800 FHONT AVE	COLUMBUS, GA 31901–	706–324–1800
COURTYARD BY MARRIOTT COLUMBUS.		3501 COURTYARD WAY	COLUMBUS, GA 31904–	404–323–2323
ECONO LODGE COLUMBUS		4483 VICTORY DR	COLUMBUS, GA 31903–	706–682–3803
HAMPTON INN COLUMBUS		5585 WHITESVILLE RD	COLUMBUS, GA 31904–	706–576–5303
HOLIDAY INN COLUMBUS		2800 MANCHESTER EXPRWY	COLUMBUS, GA 31904–	706–324–0231
LA QUINTA MOTOR INN #549		3201 MACON RD	COLUMBUS, GA 31906–	706–568–1740
HOWARD JOHNSON COMMERCE.	PO BOX 163–D	RT. 2	COMMERCE, GA 30529–	706–335–5581
COMFORT INN CONYERS		1363 KLONDIKE RD	CONYERS, GA 30207–	404–760–0300
HOLIDAY INN CONYERS		1351 DOGWOOD DR	CONYERS, GA 30207–	404–483–3220
RAMADA INN OF CORDELE		2016 16TH AVE. E	CORDELE, GA 31015–	912–273–5000
COMFORT INN CORNELIA		RT. #2 B9	CORNELIA, GA 30531–	706–778–9273
BEST WESTERN WHITE COLUMNS INN COVINGTON.		10130 ALCOVY RD	COVINGTON, GA 30209–	404–786–5800
JAMESON INN COVINGTON		10225 HWY. 142 N	COVINGTON, GA 30209–	706–784–1849
DAYS INN DAHLONEGA		1065 CHESTATEE ST	DAHLONEGA, GA 30533–	706–864–2338
HOWARD JOHNSON DAHLONEGA.		1010 MOUNTAIN DR	DAHLONEGA, GA 30533–	706–864–4343
HAMPTON INN DALTON		1000 MARKET ST	DALTON, GA 30720–	706–226–4333
HOLIDAY INN DALTON		515 HOLIDAY DR	DALTON, GA 30720–	706–278–0500
HOLIDAY INN I–20 EAST		4300 SNAPFINGER WOODS WAY.	DECATUR, GA 30032–	404–981–5670
SUPER 8 MOTEL DOUGLAS		1610 S. PETERSON AVE	DOUGLAS, GA 31533–	912–384–0886
ATLANTA MARRIOTT GWINNETT PLACE.		1775 I–85 PLEASNAT HILL RD	DULUTH, GA 30136–	404–923–1775
COURTYARD BY MARRIOTT GWINNETT MALL.		3550 VENTURE PKWY	DULUTH, GA 30136–	404–476–4666
FAIRFIELD INN BY MARRIOTT ATLANTA GWINNETT.		3500 VENTURE PKWY	DULUTH, GA 30136–	404–623–9300
JAMESON INN EASTMAN		103 PINE RIDGE RD	EASTMAN, GA 31023–	912–374–7925
JAMESON INN GREENSBORO		2252 S. MAIN ST	GREENSBORO, GA 30642–	706–453–9135
VALLEY INN RESORT HAMILTON.		14420 HWY. 27	HAMILTON, GA 31811–	706–628–4454
COURTYARD BY MARRIOTT ATLANTA AIRPORT NORTH.		3399 INTERNATIONAL BLVD	HAPERVILLE, GA 30354–	404–559–1043
JAMESON INN HARTWELL		941 ANDERSON HWY	HARTWELL, GA 30643–	706–376–7298
COMFORT INN HELEN		EDELWEISS DR	HELEN, GA 30545–	706–878–6000
DAYS INN HELEN		S. MAIN ST	HELEN, GA 30545–	706–878–4079
HOLIDAY INN HINESVILLE		726 OGLETHORPE HWY	HINESVILLE, GA 31313–	912–368–2275
JEKYLL ISLAND CLUB HOTEL		371 RIVERVIEW DR	JEKYLL ISLAND, GA 31527–	912–635–2600
JAMESON INN JESUP		205 N. HWY.301	JESUP, GA 31545–	912–427–6800
COMFORT INN JONESBORO		6370 OLD DIXIE HWY	JONESBORO, GA 30236–	404–961–6336
HOLIDAY INN EXPRESS TOWN CENTER MALL.		2485 GEORGE BUSBEE PKWY. NW.	KENNESAW, GA 30144–	404–427–5210
RED ROOF INN KENNESAW		520 ROBERTS CT. NW	KENNESAW, GA 30144–	404–429–0323
COMFORT INN KINGS BAY		I–95 & SR 40	KINGSLAND, GA 31548–	912–729–6979
DAYS INN KINGSLAND		1050 E. KING AVE	KINGSLAND, GA 31548–	912–729–5454
HOLIDAY INN KINGSLAND		I–95 930 HWY. 40 E	KINGSLAND, GA 31548–1869	912–729–3000
RAMADA INN KINGSLAND		985 BOONE ST	KINGSLAND, GA 31548–	912–729–4363
SUPER 8 MOTEL KINGSLAND		I–98 & HWY. 40 EXIT 2	KINGSLAND, GA 31548–	912–729–6888
DAYS INN LAGRANGE		2606 WHITESVILLE RD	LAGRANGE, GA 30240–	404–882–8881
LAKE LANIER ISLANDS HILTON RESORT.		7000 HOLIDAY RD	LAKE LANIER ISLANDS, GA 30518–.	404–945–8787
STOUFFER PINEISLE RESORT		9000 HOLIDAY RD	LAKE LANIER ISLANDS, GA 30518–.	404–945–8921
DAYS INN LAKEPARK		4913 TIMBER DR	LAKE PARK, GA 31636–	912–559–0229
SHONEY'S INN LAKE PARK		1075 LAKES BLVD	LAKE PARK, GA 31636–	912–559–5660
LA QUINTA MOTOR INN #593		2859 PANOLA RD	LITHONIA, GA 30058–	404–981–6411
COMFORT INN MACON		4951 EISENHOWER PKWY	MACON, GA 31206–	912–788–5500
COMFORT INN MACON		2690 RIVERSIDE DR	MACON, GA 31204–	912–746–8855
COURTYARD BY MARRIOTT MACON.		3990 SHERATON DR	MACON, GA 31210–	912–477–8899

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN MACON		4775 CHAMBERS RD	MACON, GA 31206–	912–788–0120
RAMADA INN MACON		5009 HARRISON RD	MACON, GA 31206–	912–474–0871
RODEWAY INN		4999 EISENHOWER PKWY	MACON, GA 31206–	912–781–4343
DAYS INN MADISON		2001 EATONTON HWY	MADISON, GA 30650–	706–342–1839
TRAVELODGE MADISON		2091 EATONTON RD	MADISON, GA 30650–	706–342–7800
COMFORT INN MARIETTA		3000 NW PKWY	MARIETTA, GA 30067–	404–952–3000
COURTYARD BY MARRIOTT MARIETTA.		2455 DELK RD	MARIETTA, GA 30067–	404–956–1188
FAIRFIELD INN BY MARRIOTT ATLANTA NORTHWEST.		2191 NW PKWY	MARIETTA, GA 30067–	404–952–9863
HAMPTON INN MARIETTA		455 FRANKLIN RD	MARIETTA, GA 30067–	404–425–9977
HYATT REGENCY SUITES PERIMETER.		2999 WINDY HILL RD	MARIETTA, GA 30067–	404–956–1234
LA QUINTA MOTOR INN #720		2170 DELK RD	MARIETTA, GA 30067–	404–951–0026
SHERATON ATLANTA NORTHWEST.		1775 PKWY. PL	MARIETTA, GA 30067–	404–428–4400
TRAVELODGE NW ATLANTA		1940 LELAND DR	MARIETTE, GA 30067–	404–952–0052
HOWARD JOHNSON MCDONOUGH.		1279 HAMPTON RD	MCDONOUGH, GA 30253–	404–957–2651
JAMESON INN MILLEDGEVILLE		2551 N. COLUMBIA ST	MILLEDGEVILLE, GA 31061–	912–453–8471
FAIRFIELD INN BY MARRIOTT ATLANTA SOUTHLAKE.		1599 ADAMSON PKWY	MORROW, GA 30260–	404–961–6044
HAMPTON INN ATLANTA SOUTHLAKE.		1533 SOUTHLAKE PKWY	MORROW, GA 30260–	404–968–8990
RED ROOF INN MORROW		1348 SOUTHLAKE PLAZA DR	MORROW, GA 30260–	404–968–1483
ATLANTA HILTON NORTHEAST		5993 PEACHTREE INDUSTRIAL BLVD.	NORCROSS, GA 30092–	404–447–4747
ATLANTA MARRIOTT NORCROSS.		475 TECHNOLOGY PKWY	NORCROSS, GA 30092–	404–263–8556
COURTYARD BY MARRIOTT ATLANTA NORCROSS.		6235 MCDONOUGH DR	NORCROSS, GA 30093–	404–242–7172
COURTYARD BY MARRIOTT ATLANTA PEACHTREE CRNRS.		3209 HOLCOMB BRIDGE RD	NORCROSS, GA 30092–	404–446–3777
FAIRFIELD INN BY MARRIOTT ATLANTA P TREE CRNR.		6650 BAY CIR. DR	NORCROSS, GA 30071–	404–441–1999
HOLIDAY INN PEACHTREE CORNERS.		6050 PEACHTREE IND BLVD. NW.	NORCROSS, GA 30071–	404–448–4400
HOMEWOOD SUITES ATLANTA PEACHTREE.		450 TECHNOLOGY PKWY	NORCROSS, GA 30092–	404–448–4663
LA QUINTA MOTOR INN #645		5375 PEACHTREE INDUSTRIAL BLVD.	NORCROSS, GA 30092–	404–449–5144
LA QUINTA MOTOR INN #718		6187 DAWSON BLVD	NORCROSS, GA 30093–	404–448–8686
RED ROOF INN NORCROSS		5171 INDIAN TRAIL IND. PKWY	NORCROSS, GA 30071–	404–448–8944
TRAVELODGE NE ATLANTA		6045 OAKBROOK PKWY	NORCROSS, GA 30093–	404–449–7322
PEACTREE EXECUTIVE CONFERENCE CENTER.		2443 HWY 54 W	PEACHTREE CITY, GA 30269–	404–487–2000
TRAVELODGE PERRY		100 WESTVIEW LN	PERRY, GA 31069–	912–987–7355
CALLAWAY GARDENS	PO BOX 2000		PINE MOUNTAIN, GA 31822–	706–663–2281
COURTYARD BY MARRIOTT ATLANTA ROSWELL.		1500 MARKET BLVD	ROSWELL, GA 30076–	404–992–7200
HAMPTON INN ROSWELL		9995 OLD DOGWOOD RD	ROSWELL, GA 30076–	404–587–5161
HOLIDAY INN ROSWELL		1075 HOLCOMB BRIDGE RD	ROSWELL, GA 30075–	404–992–9600
BUDGET INN SAVANNAH		3702 OGEECHEE RD	SAVANNAH, GA 31405–	912–233–3633
BUDGETEL INN SAVANNAH		8484 ABERCORN ST	SAVANNAH, GA 31406–	912–927–7660
COURTYARD BY MARRIOTT SAVANNAH.		6703 ABERCORN ST	SAVANNAH, GA 31405–	912–354–7878
DAYS INN ABERCORN		11750 ABERCORN ST	SAVANNAH, GA 31419–	912–927–7720
DAYS INN AIRPORT		2500 DEAN FOREST RD	SAVANNAH, GA 31408–	912–966–5000
DAYS INN SAVANNAH		6 GATEWAY BLVD. S	SAVANNAH, GA 31419–	912–925–9505
ECONO LODGE SAVANNAH		7500 ABERCORN ST	SAVANNAH, GA 31406–	912–352–1657
FAIRFIELD INN BY MARRIOTT SAVANNAH.		2 LEE BLVD	SAVANNAH, GA 31405–	912–353–7100
HAMPTON INN SAVANNAH ABERCORN.		17007 ABERCORN ST	SAVANNAH, GA 31419–	912–920–2503
HAMPTON INN SAVANNAH STEPHENSON.		201 STEPHENSON AVE	SAVANNAH, GA 31406–	912–355–4100
HOLIDAY INN SAVANNAH		601 E. BAY ST	SAVANNAH, GA 31401–	912–238–1200
HOLIDAY INN SAVANNAH SOUTH.		I–95 & GA. HWY. 204	SAVANNAH, GA 31419–	912–925–2770
HOWARD JOHNSON SAVANNAH I–95.		I–95 & HWY. 204	SAVANNAH, GA 31419–	912–925–3680

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOWARD JOHNSON SAVANNAH WEST BOUNDARY.		224 WEST BOUNDARY ST	SAVANNAH, GA 31401–	912–232–4371
HYATT REGENCY SAVANNAH		TWO WEST BAY ST	SAVANNAH, GA 31401–	912–238–1234
LA QUINTA MOTOR INN #565		6805 ABERCORN	SAVANNAH, GA 31405–	912–355–3004
PLANTERS INN		29 ABERCORN ST	SAVANNAH, GA 31401–	912–232–5678
SAVANNAH DESOTO HILTON		15 E. LIBERTY ST	SAVANNAH, GA 31402–3979	912–232–9000
SHERATON SAVANNAH RESORT AND COUNTRY CLUB.		612 WILMINGTON ISLAND RD	SAVANNAH, GA 31410–	912–897–1612
RED ROOF INN SMYRNA		2200 CORPORATE PLAZA	SMYRNA, GA 30080–	404–952–5956
RESIDENCE INN BY MARRIOTT CUMBERLAND.		2771 HARGROVE RD	SMYRNA, GA 30080–	404–433–8877
CHARTER HOUSE INN		2710 OSBORNE RD	ST. MARY'S, GA 31558–	912–882–6250
KINGS BAY LODGES		603 SAN BAR DR	ST. MARYS, GA 31558–	912–882–8900
KING & PRINCE BEACH RESORT.		201 ARNOLD RD	ST. SIMON'S ISLAND, GA 31522–.	912–638–3631
JAMESON INN STATESBORO		1 JAMESON AVE	STATESBORO, GA 30458–	912–681–7900
HAMPTON INN STONE MOUNTAIN.		1737 MOUNTAIN INDUSTRIAL BLVD.	STONE MOUNTAIN, GA 30083–	404–934–5004
JAMESON INN THOMASTON		1010 HWY. 19 N	THOMASTON, GA 30286–	706–648–2232
EVANS HOUSE BED & BREAKFAST.		725 S. HANSELL ST	THOMASVILLE, GA 31792–	912–226–1343
BEST WESTERN WHITE COLUMNS INN THOMSON.		1890 WASHINGTON RD	THOMSON, GA 30824–	706–595–8000
TRAVELODGE THOMSON		1847 WASHINGTON RD	THOMSON, GA 30824–	706–595–8700
COURTYARD BY MARRIOTT ATLANTA NORTHLAKE.		4083 LAVISTA RD	TUCKER, GA 30084–	404–938–1200
LA QUINTA MOTOR INN #3668		1819 MOUNTAIN INDUSTRIAL BLVD.	TUCKER, GA 30084–	404–496–1317
RED ROOF INN TUCKER		2810 LAWRENCEVILLE HWY	TUCKER, GA 30084–	404–496–1311
DAYS INN UNION CITY		6840 SHANNON PKWY. S	UNION CITY, GA 30291–	404–964–3777
ECONO LODGE UNION CITY		7410 OAKLEY RD	UNION CITY, GA 30291–	404–964–9999
HOWARD JOHNSON UNION CITY.		3860 FLATSHOALS RD	UNION CITY, GA 30291–	404–964–0110
CLUBHOUSE INN		1800 CLUBHOUSE DR	VALDOSTA, GA 31601–	912–247–7755
COMFORT INN VALDOSTA	PO BOX 1191	I–75 & US 84 W	VALDOSTA, GA 31602–	912–242–1212
HOWARD JOHNSON VALDOSTA.		N. VALDOSTA RD. EXIT #6	VALDOSTA, GA 31602–	912–244–4460
QUALITY INN VALDOSTA		1209 ST. AUGUSTINE RD	VALDOSTA, GA 31601–	912–244–8510
SHONEY'S INN VALDOSTA		1828 W. HILL AVE	VALDOSTA, GA 31601–	912–244–7711
HOLIDAY INN VIDALIA		2619 E. FIRST ST	VIDALIA, GA 30474–	912–537–9000
RAMADA INN WARNER ROBINS.		2725 WATSON BLVD	WARNER ROBINS, GA 31093–	912–953–3000
JAMESON INN WASHINGTON		115 ANN DENARD DR	WASHINGTON, GA 30673–	706–678–7925
HOLIDAY INN WAYCROSS		1725 MEMORIAL DR	WAYCROSS, GA 31501–	912–283–4490
PINECREST MOTEL		1761 MEMORIAL DR	WAYCROSS, GA 31501–	912–283–3580
JAMESON INN WINDER		405 S. BROAD ST	WINDER, GA 30680–	404–867–1880
Guam				
ISLAND HOTEL		WEST O'BRIEN DR	ANIGUA, GU 96910–	671–477–7380
HOTEL PALMRIDGE		122 HASALAO ST	BARRIGADA, GU 96921–	671–477–6666
GUAM HILTON	PO BOX 1119	202 HILTON RD	TAMUNING, GU 96911–	671–646–1835
PALACE HOTEL GUAM		470 FAHRENHOLT AVE	TAMUNING, GU 96911–	671–646–2222
GRAND HOTEL		1024 SAN VITORES RD	TUMON, GU 96911–	671–649–1161
GUAM HOTEL OKURA		185 GUN BEACH	TUMON, GU 96911–	671–646–6811
GUAM PLAZA HOTEL		1328 SAN VITORES RD	TUMON, GU 96911–	671–646–7803
HOTEL NIKKO GUAM		245 GUN BEACH	TUMON, GU 96911–	671–649–8815
PACIFIC ISLAND CLUB		210 PALE SAN VITORES RD	TUMON, GU 96911–	671–646–9171
TERRAZA TUMON VILLA HOTEL.	PO BOX 8588	168 FUJITA RD	TUMON, GU 96931–	671–649–6904
TUMON BAY CAPITAL HOTEL		1448 PALE SAN VITORES ST	TUMON, GU 96911–	671–646–3903
Hawaii				
HOTEL HANA MAUI			HANA, MAUI, HI 96713–	808–
ALA MOANA HOTEL		410 ATKINSON DR	HONOLULU, OAHU, HI 96815–	808–955–4811
ALA WAI TERRACE		1684 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–949–7384
ALOHA SURF HOTEL		444 KANEKAPOLEI ST	HONOLULU, OAHU, HI 96815–	808–923–0222
COCONUT PLAZA HOTEL		450 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–923–8828
COLONY SURF HOTEL COLONY EAST.		2895 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–5751
COLONY SURF HOTEL MAIN COLONY SURF.		2895 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–5751
COLONY'S DIAMOND HEAD BEACH HOTEL.		2947 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–1928

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CONTINENTAL SURF		2426 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–2755
CORAL REEF HOTEL		2299 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–1262
DRIFTWOOD HOTEL		1696 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–949–0061
HALE KOA HOTEL		2055 KALIA RD	HONOLULU, OAHU, HI 96815–	808–955–0555
HALEKULANI HOTEL DIAMOND HEAD.		2199 KALIA RD	HONOLULU, OAHU, HI 96815–	808–923–2311
HALEKULANI HOTEL EWA		2199 KALIA RD	HONOLULU, OAHU, HI 96815–	808–923–2311
HALEKULANI HOTEL MAKAI		2199 KALIA RD	HONOLULU, OAHU, HI 96815–	808–923–2311
HALEKULANI HOTEL MAUKA		2199 KALIA RD	HONOLULU, OAHU, HI 96815–	808–923–2311
HAWAII DYNASTY HOTEL		1830 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–955–1111
HAWAII PRINCE HOTEL ALA MOANA.		100 HOLOMOANA ST	HONOLULU, OAHU, HI 96815–	808–956–1111
HAWAII PRINCE HOTEL DIAMOND HEAD.		100 HOLOMOANA ST	HONOLULU, OAHU, HI 96815–	808–956–1111
HAWAIIAN MONARCH HOTEL		444 NIU ST	HONOLULU, OAHU, HI 96815–	808–949–3811
HAWAIIAN REGENT HOTEL KALAKAUA.		2552 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–6511
HAWAIIAN REGENT HOTEL KUHIO.		2552 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–6611
HAWAIIAN WAIKIKI BEACH HOTEL MAIN.		2570 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–2511
HAWAIIAN WAIKIKI BEACH HOTEL MAUKA.		2570 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–2511
HILTON HAWAIIAN VILLAGE HOTEL ALII.		2005 KALIA RD	HONOLULU, OAHU, HI 96815–	808–949–4321
HILTON HAWAIIAN VILLAGE HOTEL DIAMOND HEAD.		2005 KALIA RD	HONOLULU, OAHU, HI 96815–	808–949–4321
HILTON HAWAIIAN VILLAGE HOTEL RAINBOW.		2005 KALIA RD	HONOLULU, OAHU, HI 96815–	808–949–4321
HILTON HAWAIIAN VILLAGE HOTEL TAPA.		2005 KALIA RD	HONOLULU, OAHU, HI 96815–	808–949–4321
HOLIDAY ISLE HOTEL		270 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–923–0777
HONOLULU PRINCE HOTEL		415 NAHUA ST	HONOLULU, OAHU, HI 96815–	808–922–1616
HYATT REGENCY WAIKIKI DIAMOND HEAD.		2424 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–1234
HYATT REGENCY WAIKIKI EWA.		2424 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–1234
ILIKAI HOTEL MAIN		1777 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–949–3811
ILIKAI HOTEL MARINA		1777 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–923–1877
ILIMA HOTEL		445 NOHONANI ST	HONOLULU, OAHU, HI 96815–	808–923–1877
IMPERIAL HAWAII RESORT HOTEL.		205 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–923–1827
INN ON THE PARK		1920 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–946–8355
ISLAND COLONY HOTEL		445 SEASIDE AVE	HONOLULU, OAHU, HI 96815–	808–923–2345
KAHALA HILTON HOTEL		5000 KAHALA AVE	HONOLULU, OAHU, HI 96816–	808–734–2211
KAULANA KAI HOTEL		2425 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–7777
LILIUOKALANI GARDENS		300 WAI NANI WAY	HONOLULU, OAHU, HI 96815–	808–926–3636
MIRAMAR HOTEL		2345 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–2077
MOANA HOTEL BANYAN		2365 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–3111
MOANA HOTEL DIAMOND		2365 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–3111
MOANA HOTEL MAIN TOWER		2365 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–3111
NEW OTANI HOTEL		2863 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–1555
OCEAN RESORT HOTEL WAIKIKI DIAMOND HEAD.		175 PAOAKALANI AVE	HONOLULU, OAHU, HI 96815–	808–922–3861
OCEAN RESORT HOTEL WAIKIKI PALI.		175 PAOAKALANI AVE	HONOLULU, OAHU, HI 96815–	808–922–3861
OUTRIGER PRINCE KUHIO HOTEL.		2500 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–0811
OUTRIGGER EAST HOTEL		150 KAIULANI AVE	HONOLULU, OAHU, HI 96815–	808–922–5353
OUTRIGGER HOBRON DAYS INN.		343 HOBRON LN	HONOLULU, OAHU, HI 96815–	808–842–7777
OUTRIGGER HOTEL MAIN		2335 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–0711
OUTRIGGER MAILA HOTEL LUANA TOWER.		2211 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–4769
OUTRIGGER MAILE SKY COURT.		2058 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–947–2929
OUTRIGGER REEF HOTEL DIAMOND HEAD TOWER.		2169 KALIA RD	HONOLULU, OAHU, HI 96815–	808–923–3111
OUTRIGGER REEF HOTEL OCEAN TOWER.		2169 KALIA RD	HONOLULU, OAHU, HI 96815–	808–923–3111
OUTRIGGER REEF HOTEL PACIFIC TOWER.		2169 KALIA RD	HONOLULU, OAHU, HI 96815–	808–923–3111

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
OUTRIGGER REEF LANAIS HOTEL.		225 SARATOGA RD	HONOLULU, OAHU, HI 96815–	808–923–3881
OUTRIGGER REEF TOWERS MAIN TOWER.		227 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–924–6844
OUTRIGGER REEF TOWERS PLANTATION TOWER.		227 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–924–6844
OUTRIGGER ROYAL ISLANDER.		2164 KAILA RD	HONOLULU, OAHU, HI 96815–	808–922–1961
OUTRIGGER SURF		2280 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–5777
OUTRIGGER VILLAGE HOTEL		240 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–923–3881
OUTRIGGER WAIKIKI SURF		2200 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–923–7671
OUTRIGGER WAIKIKI SURF EAST.		422 ROYAL HAWAIIAN AVE	HONOLULU, OAHU, HI 96815–	808–923–7671
OUTRIGGER WAIKIKI SURF WEST.		412 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–923–7671
OUTRIGGER WAIKIKI TOWERS		200 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–922–6424
OUTRIGGER WEST HOTEL		2330 KUHIO AVE	HONOLULU, OAHU, HI 96815–	808–922–5022
PACIFIC BEACH HOTEL BEACH TOWER.		2490 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–1233
PACIFIC BEACH HOTEL OCEAN TOWER.		2490 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–1233
PACIFIC MONARCH HOTEL		142 ULUNIU AVE	HONOLULU, OAHU, HI 96815–	808–923–9805
PAGODA HOTEL		1525 RYCROFT ST	HONOLULU, OAHU, HI 96815–	808–941–6611
PARK PLAZA WAIKIKI HOTEL GRC BUILDING.		1956 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–941–7275
PARK SHORE HOTEL		2586 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–0411
PLAZA INN		3253 NORTH NIMITZ HWY	HONOLULU, OAHU, HI 96819–	808–836–3636
ROYAL HAWAIIAN HOTEL MAIN BUILDING.		2259 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–7311
ROYAL HAWAIIAN HOTEL TOWER BUILDING.		2259 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–923–7311
SAT GRAND HOTEL		440 OLOHANA ST	HONOLULU, OAHU, HI 96815–	808–943–0202
SEASIDE HOTEL		342 SEASIDE AVE	HONOLULU, OAHU, HI 96815–	808–923–9277
SHERATON WAIKIKI HOTEL		2255 WAIKIKI HOTEL	HONOLULU, OAHU, HI 96815–	808–922–4422
SHERRY WAIKIKI JOY HOTEL		334 LEWERS ST	HONOLULU, OAHU, HI 96815–	808–923–2300
TRADEWINDS PLAZA		2572 LEMON RD	HONOLULU, OAHU, HI 96815–	808–922–4555
WAIKIKI BEACHCOMBER HOTEL.		2300 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–4646
WAIKIKI BEACHSIDE HOTEL		2452 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–931–2180
WAIKIKI GATEWAY HOTEL		2070 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–955–9741
WAIKIKI GRAND HOTEL		134 KAPAHULU AVE	HONOLULU, OAHU, HI 96815–	808–923–1511
WAIKIKI PARKSIDE HOTEL		1850 ALA MOANA BLVD	HONOLULU, OAHU, HI 96815–	808–955–1567
WAIKIKI RESORT HOTEL		2460 KOA AVE	HONOLULU, OAHU, HI 96815–	808–922–4911
WAIKIKI SAND VILLA		2375 ALA WAI BLVD	HONOLULU, OAHU, HI 96815–	
WAIKIKI SUNSET HOTEL		229 PAOAKALANI AVE	HONOLULU, OAHU, HI 96815–	
WAIKIKI TERRACE HOTEL		2045 KALAKAUA AVE	HONOLULU, OAHU, HI 96815–	808–922–0511
TURTLE BAY HILTON	PO BOX 187	57–091 KAMEHAMEHA HWY	KAHUKU, OAHU, HI 96731–	808–955–6000
DIAMOND RESORT		555 KAUKAHI	KIHEI, MAUI, HI 96753–	808–293–8811
FOUR SEASONS RESORT WAILEA.		3900 WAILEA ALANUI	KIHEI, MAUI, HI 96753–	
GRAND HYATT WAILEA		3850 WAILEA ALANUI DR	KIHEI, MAUI, HI 96753–	
KAMAOLE SANDS		2695 S. KIHEI RD	KIHEI, MAUI, HI 96753–	
KEA LANI HOTEL		4100 WAILEA ALANUI DR	KIHEI, MAUI, HI 96753–	
MANA KAI MAUI		2960 S. KIHEI RD	KIHEI, MAUI, HI 96753–	
MAUI PRINCE HOTEL		5400 MAKENA ALANUI	KIHEI, MAUI, HI 96753–	
MAUI SUN HOTEL		175 E. LIPOA	KIHEI, MAUI, HI 96753–	
STOUFFER WAILEA BEACH		3550 WAILEA ALANUI	KIHEI, MAUI, HI 96753–	
THE RITZ CARLTON		1 NORTH KANIKU DR	KOHALA COAST, HI 96743–	808–885–2000
HYATT REGENCY KAUAI		1571 POIPU RD	KOLOA, KAUAI, HI 96756–	808–742–1234
SHERATON KAUAI BEACH RESORT.		2400 HOONANI ST	KOLOA, KAUAI, HI 96756–	808–742–1661
STOUFFER WAIOHAI BEACH RESORT.		2249 POIPU RD	KOLOA, KAUAI, HI 96756–	808–742–9511
EMBASSY SUITES HOTEL		104 KAANAPALI SHORES PL	LAHAINA, MAUI, HI 96761–	
KAANAPALI ALII		50 NOHEA DR	LAHAINA, MAUI, HI 96761–	
KAANAPALI BEACH HOTEL		2525 KAANAPALI PKWY	LAHAINA, MAUI, HI 96761–	
KAHANA BEACH RESORT		4221 LOWER HONAPIILANI	LAHAINA, MAUI, HI 96761–	
LAHAINA HOTEL		127 LAHAINALUNA RD	LAHAINA, MAUI, HI 96761–	
MAUI KAI		106 KAANAPALI SHORES DR	LAHAINA, MAUI, HI 96761–	
MAUI MARRIOTT		100 NOHEA DR	LAHAINA, MAUI, HI 96761–	
ROYAL KAHANA RESORT		4365 LOWER HONOAPIILANI	LAHAINA, MAUI, HI 96761–	
ROYAL LAHAINA		2780 KEKAA DR	LAHAINA, MAUI, HI 96761–	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
WESTIN MAUI		2365 KAANAPALI PKWY	LAHAINA, MAUI, HI 96761–.	
THE PLANTATION INN		174 LAHAINALUNA RD	LAHIANA, MAUI, HI 96761–.	
MANELE BAY HOTEL	PO BOX L		LANAI CITY, LANAI, HI 96779–.	
KAUAI HILTON HOTEL		4331 KAUAI BEACH DR	LIHUE, KAUAI, HI 96715–	808–245–1955
THE WESTIN KAUAI		3610 RICE ST	LIHUE, KAUAI, HI 96766–	808–245–5050
PRINCEVILLE HOTEL	PO BOX 3069	5520 KA HAKU RD	PRINCEVILLE, KAUAI, HI 96722–.	808–826–9644
MAALAEA YACHT MARINA		30 HAUOLI	WAILUKU, MAUI, HI 96793–.	
Iowa				
INDIAN HILLS INN		100 HWY. 34	ALBIA, IA 52531–	515–932–7181
HEARTLAND INN		5000 NE 56TH ST	ALTOONA, IA 50009–	515–967–2400
GUEST HOUSE MOTOR INN INC.	PO BOX 514	RR 1	AMANA, IA 52203–	319–622–3599
AMES BUDGETEL INN		2500 ELWOOD DR	AMES, IA 50010–	515–296–2500
HEARTLAND INN		I–35 & NEW HWY. 30	AMES, IA 50010–	515–233–6060
IOWA STATE MEMORIAL UNION.		IOWA STATE UNIVERSITY	AMES, IA 50011–	515–294–2300
NEW FRONTIER MOTEL	RR 3	W. LINCOLN WAY	AMES, IA 50010–	515–532–2344
UNIVERSITY INN		316 S. DUFF	AMES, IA 50010–	515–232–0280
BEST WESTERN STARLITE VILLAGE OF ANKENY.	PO BOX 378	I–35 & 1ST	ANKENY, IA 50021–	515–964–1217
ECONOLODGE		103 N. DELAWARE	ANKENY, IA 50021–	515–965–1995
HEARTLAND INN		201 SE DELAWARE	ANKENY, IA 50021–	515–964–8202
WEST OAKS CONDO ASSN. PHASE 3.	PO BOX 98	25 LAKESHORE DR	ARNOLDS PARK, IA 51331–	712–332–7711
WEST OAKS CONDO ASSN. PHASE 4.	PO BOX 98	25 LAKESHORE DR	ARNOLDS PARK, IA 51331–	712–332–7711
INN AT BATTLE CREEK		201 MAPLE ST	BATTLE CREEK, IA 51006–	712–653–2277
COURTYARD BY MARRIOTT		895 GOLDEN VALLEY DR	BETTENDORF, IA 52722–	319–355–3999
HEARTLAND INN		815 GOLDEN VALLEY DR	BETTENDORF, IA 52722–	319–355–6336
ARROWHEAD MOTEL		2520 MT. PLEASANT ST	BURLINGTON, IA 52601–2118	319–752–6353
CARROLLTON INN		HWY. N	CARROLL, IA 51401–	712–792–5800
ECONOLODGE CARROLL INC		1225 PLAZA DR	CARROLL, IA 51401–	712–792–5156
COLLINS PLAZA HOTEL		1200 COLLINS RD. NE	CEDAR RAPIDS, IA 52402–	319–393–6600
COMFORT INN		390 33RD ST. SW	CEDAR RAPIDS, IA 52402–	319–363–7634
FAIRFIELD INN		3243 S. RIDGE DR. SW	CEDAR RAPIDS, IA 52404–	319–364–2000
FIVE SEASONS HOTEL		350 1ST AVE. NE	CEDAR RAPIDS, IA 52401–	319–363–8161
HEARTLAND INN		3315 SOUTHGATE CT. SW	CEDAR RAPIDS, IA 52404–	319–362–9012
HOLIDAY INN		2501 WILLIAMS BLVD. SW	CEDAR RAPIDS, IA 52404–	319–365–6441
RED ROOF INN		3325 SOUTHGATE CT. SW	CEDAR RAPIDS, IA 52404–	319–366–7533
SHERATON INN		525 33RD AVE. SW	CEDAR RAPIDS, IA 52404–	319–366–8671
CENTERVILLE SUPER 8 MOTEL.		1021 N. 18TH	CENTERVILLE, IA 52544–	515–856–8888
IRON HORSE INN OF CLARION		1001 W. CENTRAL AVE	CLARION, IA 50525–	515–532–6647
BLUE HORIZON INN		467 N. SHORE DR	CLEAR LAKE, IA 50428–	515–270–1111
HEARTLAND INN		1603 S. SHORE DR	CLEAR LAKE, IA 50401–	515–357–5123
FRONTIER MOTOR INN		2300 LINCOLNWAY	CLINTON, IA 52732–	319–242–7112
RAMADA INN		1522 LINCOLNWAY	CLINTON, IA 52732–	319–243–8841
SUPER 8 MOTEL		1711 LINCOLNWAY	CLINTON, IA 52732–	319–242–8870
BUDGETEL INN CLIVE		1390 NW 118TH ST	CLIVE, IA 50325–	515–221–9200
COURTYARD BY MARRIOTT		1520 114TH ST	CLIVE, IA 50325–	515–225–1222
FAIRFIELD INN BY MARRIOTT DES MOINES.		1600 NW 114TH ST	CLIVE, IA 50325–	515–226–1600
HEARTLAND INN		11414 FOREST AVE	CLIVE, IA 50325–	515–226–0414
SHERATON INN DES MOINES		11040 HICKMAN RD	CLIVE, IA 50325–	515–278–5575
HEARTLAND INN		87 2ND ST	CORALVILLE, IA 52241–	319–351–8132
COMFORT INN		3208 S. 7TH ST	COUNCIL BLUFFS, IA 51501–	712–366–9699
DAYS INN COUNCIL BLUFFS		3619 9TH AVE	COUNCIL BLUFFS, IA 51501–	712–323–2200
HEARTLAND INN		1000 WOODBURY AVE	COUNCIL BLUFFS, IA 51501–	712–322–8400
HOLIDAY INN		2325 AVE. N	COUNCIL BLUFFS, IA 51501–	712–328–3881
HOWARD JOHNSON LODGE & SUITES.		3537 W. BROADWAY	COUNCIL BLUFFS, IA 51501–	712–328–3171
INTERSTATE INN		2717 S. 24TH ST	COUNCIL BLUFFS, IA 51501–	712–328–8895
SUPER 8 MOTEL		2712 S. 24TH ST	COUNCIL BLUFFS, IA 51501–	712–322–2888
WESTERN INN		1841 MADISON AVE	COUNCIL BLUFFS, IA 51501–	712–322–4499
WILLOWS MOTEL		3802 WSOBR	COUNCIL BLUFFS, IA 51501–	712–366–9950
BEST WESTERN STEEPLEGATE INN.		100 W. 76TH ST	DAVENPORT, IA 52806–	319–386–6900
DAVENPORT SUPER 8		410 E. 65TH ST	DAVENPORT, IA 52806–	319–386–8810
FAIRFIELD INN BY MARRIOTT DAVENPORT.		3206 E. KIMBERLY RD	DAVENPORT, IA 52807–	319–355–2264

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HAMPTON INN		3330 E. KIMBERLY RD	DAVENPORT, IA 52807–	319–359–3921
HOLIDAY INN DAVENPORT		5202 BRODY	DAVENPORT, IA 52806–	315–391–1230
HEARTLAND INN		705 COMMERCE DR	DECORAH, IA 52101–	319–382–2269
BEST WESTERN DENISON'S INN.		HWY. 30 & 59	DENISON, IA 51442–	712–263–5081
RATH INN	RR 3 BX 261B	HWY 30 & 59	DENISON, IA 51442–	712–263–2500
COMFORT INN SOUTH		5231 FLEUR DR	DES MOINES, IA 50321–	515–287–3434
HEARTLAND INN		1901 HACKLEY AVE	DES MOINES, IA 50321–	515–256–0603
HOLIDAY INN MERLE HAY		5000 MERLE HAY RD	DES MOINES, IA 50322–	515–278–0271
HOLIDAY INN SOUTH		2101 FLEUR DR	DES MOINES, IA 50315–	515–283–1711
MARRIOTT HOTEL		700 GRAND AVE	DES MOINES, IA 50309–	515–245–5500
SUPER 8 LODGE		4755 MERLE HAY RD	DES MOINES, IA 50323–	515–278–8858
CLARION HOTEL		450 MAIN	DUBUQUE, IA 52001–	800–421–1213
HEARTLAND INN SOUTH		2090 SOUTHPART CT	DUBUQUE, IA 52001–	319–556–6555
MIDWAY HOTEL		3100 DODGE ST	DUBUQUE, IA 52001–	319–557–8000
SUPER 8 MOTEL		2730 DODGE ST	DUBUQUE, IA 52001–	319–582–8898
THE HANCOCK HOUSE		1105 GROVE TERRACE	DUBUQUE, IA 52001–	319–557–8989
THE RICHARDS HOUSE		1492 LOCUST ST	DUBUQUE, IA 52001–	319–557–1002
DYERSVILLE SUPER 8 MOTEL		925 15TH AVE. SE	DYERSVILLE, IA 52040–	319–875–8885
THE LODGE	PO BOX 152	RR 2	FOREST CITY, IA 50436–	515–582–4351
SUPER 8 MOTEL		3040 5TH AVE. S	FORT DODGE, IA 50501–	515–576–8000
GRINNELL SUPER 8 MOTEL	PO BOX 479	HWY. 146 & I–80	GRINNELL, IA 50112–	515–236–7888
DELUX MOTEL		HWY. 59 & 175	IDA GROVE, IA 51445–	800–342–0335
ALEXIS PARK INN		1165 S. RIVERSIDE DR	IOWA CITY, IA 52240–	319–337–8665
HOLIDAY INN IOWA CITY		210 S. DUBUQUE ST	IOWA CITY, IA 52240–	319–337–4058
MIDLAND INN		839 S. OAK	IOWA FALLS, IA 50126–	515–648–4618
BEST INNS OF AMERICA		5050 MERLE HAY RD	JOHNSTON, IA 50131–	515–270–1111
KNOXVILLE SUPER 8 MOTEL		2205 N. LINCOLN	KNOXVILLE, IA 50138–	515–828–8808
KEY MOTEL		119 MCKINSEY AVE	MAQUOKETA, IA 52060–	319–652–5131
BEST WESTERN REGENCY INN.		3303 S. CTR. ST	MARSHALLTOWN, IA 50158–	515–752–6321
HOSPITALITY INN		403 E. CHURCH ST	MARSHALLTOWN, IA 50158–	515–753–7777
SUPER 8 MOTEL		3010 S. CTR. ST	MARSHALLTOWN, IA 50158–	515–753–8181
COMFORT INN		410 5TH ST. SW	MASON CITY, IA 50401–	515–423–4444
RATH INN	PO BOX 130R	RR 3 HWY. I–29 & HWY. 30	MISSOURI VALLLEY, IA 51054–	712–642–4011
FERKIN'S MOTEL	PO BOX 249	HWY. 3 S	NEW HAMPTON, IA 50659–	515–394–4145
VILLAGE EAST RESORT	PO BOX 499	HWY. 71	OKOBOJI, IA 51351–	712–332–2161
DUTCH COLONY INN		HWY. 10 E	ORANGE CITY, IA 51041–	712–737–3490
DAY'S INN		206 CHURCH ST	OTTUMWA, IA 52502–	515–682–8131
HEARTLAND INN MOTEL		125 W. JOSEPH AVE	OTTUMWA, IA 52501–	515–682–8526
PARKVIEW PLAZA		107 E. SECOND ST	OTTUMWA, IA 52501–	515–682–8051
SUPER 8 MOTEL		2823 N. CT. RD	OTTUMWA, IA 52501–	515–684–5055
THE INN TOWER		111 N CT	OTTUMWA, IA 52501–	515–682–8075
STRAWTOWN INN		1111 W. WASHINGTON ST	PELLA, IA 50219–	515–628–4043
RATH INN	PO BOX 685	AIRPORT EXIT	SERGEANT BLUFF, IA 51054–	712–943–5079
IRON HORSE INN		1111 S. HWY. 60	SHELDON, IA 51201–	712–324–5353
59ER MOTEL EXECUTIVE SUITES.		HWY. 59 & AIRPORT RD	SHENANDOAH, IA 51601–	712–246–2925
ECONO LODGE		86 9TH ST. CIR. NE	SIOUX CENTER, IA 51250–	712–722–4000
FAIRFIELD INN BY MARRIOTT SIOUX CITY.		4716 SOUTHERN HILLS DR	SIOUX CITY, IA 51106–	712–276–5600
SIOUX CITY HILTON HOTEL		707 4TH ST	SIOUX CITY, IA 51101–	712–277–4101
VILLAGE RESORTS	PO BOX OR		SPIRIT LAKE, IA 51360–	712–337–3223
COMFORT INN		5900 SUTTON PL	URBANDALE, IA 50322–	515–270–1037
HOLIDAY INN NORTH		5000 MERLE HAY RD	URBANDALE, IA 50322–	515–278–0271
SUPER 8 MOTEL	PO BOX 769	I–80 & INDUSTRIAL PARK	WALCOTT, IA 52773–	319–284–5083
EXCEL INN OF WATERLOO		3350 UNIVERSITY AVE	WATERLOO, IA 50701–	319–235–2165
HEARTLAND INN CROSS-ROADS.		1800 LA PORTE RD	WATERLOO, IA 50702–	319–235–4461
WATERLOO HOLIDAY INN CIVIC CENTER.	PO BOX 87	4TH & COMMERCIAL ST	WATERLOO, IA 50704–	319–233–7560
WAVERLY SUPER 8 MOTEL		301 13TH AVE	WAVERLY, IA 50677–	319–352–0888
SUPER 8 MOTEL		305 CLOSZ DR	WEBSTER CITY, IA 50595–	515–832–2000
EXECUTIVE INN		3530 WESTOWN PKWY	WEST DES MOINES, IA 50265–	515–225–1144
UNIVERSITY PARK HOLIDAY INN.		1800 50TH ST	WEST DES MOINES, IA 50265–	515–223–1800
BEST WESTERN NORSEMAN INN.		I–35 & US 20	WILLIAMS, IA 50271–	515–854–2281
Idaho				
ATHOL MOTEL		E. 5950 HWY. 54	ATHOL, ID 83801–	208–683–3476
SCENIC BAY MARINA			BAYVIEW, ID 83803–	208–683–2243

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STONERIDGE RESORT		BLANCHARD RD	BLANCHARD, ID 83804–	208–437–2451
AIRPORT MOTOR INN		2660 AIRPORT WAY	BOISE, ID 83705–	208–344–2003
BEST WESTERN SAFARI		1072 GROVE	BOISE, ID 83702–	208–343–6822
BOISE PARK SUITES		424 E. PARK CTR	BOISE, ID 83704–	208–342–1044
BOISEAN MOTEL		1300 S CAPITOL	BOISE, ID 83701–	208–345–7300
CAPRI MOTEL		2600 FAIRVIEW AVE	BOISE, ID 83702–	
COMFORT INN		2526 AIRPORT WAY	BOISE, ID 83705–	208–322–1650
DOUBLETREE CLUB HOTEL		475 PARKCENTER BLVD	BOISE, ID 83706–	208–345–2002
HOLIDAY INN		3300 VISTA	BOISE, ID 83705–	208–344–8365
IDANHA HOTEL		928 MAIN	BOISE, ID 83702–	
NENDELS		2155 GARDEN	BOISE, ID 83706–	208–322–0046
OWYHEE PLAZA		1109 MAIN	BOISE, ID 83702–	208–342–7760
PLAZA SUITE HOTEL		409 S. COLE RD	BOISE, ID 83709–	208–378–7500
QUALITY INN		2717 VISTA	BOISE, ID 83706–	208–336–0077
RED LION BOISE DOWNTOWNER.		1800 FAIRVIEW	BOISE, ID 83702–	208–344–7691
RESIDENCE INN		1401 LUSK	BOISE, ID 83706–	208–344–1200
RODEWAY INN		1115 N. CURTIS	BOISE, ID 83704–	
RODEWAY INN OF BOISE		1115 N. CURTIS RD	BOISE, ID 83706–	208–376–2700
SHILO INN		4111 BROADWAY AVE	BOISE, ID 83705–	
SLEEP INN		2799 AIRPORT WAY	BOISE, ID 83705–	208–344–2003
STATEHOUSE INN		981 GROVE ST	BOISE, ID 83702–	208–342–4622
SUPER 8 MOTEL		2773 ELDER	BOISE, ID 83705–	208–344–8871
UNIVERSITY INN		2360 UNIVERSITY	BOISE, ID 83706–	208–345–7300
VISTA INN		2645 AIRPORT WAY	BOISE, ID 83706–	208–344–2003
BONNERS FERRY RESORT		HWY. 95 S	BONNERS FERRY, ID 83805–	208–257–2422
KOOTENAI MOTEL		SOUTH STATE HWY. 95 S	BONNERS FERRY, ID 83805–	208–267–7567
KOOTENAI RIVER INN		KOOTENAI RIVER PLAZA	BONNERS FERRY, ID 83805–	208–257–8511
BEST WESTERN BURLEY INN		800 N. OVERLAND AVE	BURLEY, ID 83318–	208–678–3501
CREEK SIDE INN		1341 E. MAIN	BURLEY, ID 83318–	208–678–5542
EVERGREEN		635 W. MAIN	BURLEY, ID 83318–	208–678–5824
GREENWELL		904 E. MAIN	BURLEY, ID 83318–	208–678–3231
COMFORT INN		901 SPECHT	CALDWELL, ID 83605–	208–454–2222
HOLIDAY MOTEL		512 FRONTAGE	CALDWELL, ID 83605–	208–454–3888
NORTHGATE INN	PO BOX 1665	HC 63	CHALLIS, ID 83301–	208–879–2490
DAYS INN		133 BURNSIDE	CHUBBUCK, ID 83202–	208–237–0020
MOTEL 6		291 BURNSIDE	CHUBBUCK, ID 83202–	208–237–3880
NENDELS INN		4333 YELLOWSTONE AVE	CHUBBUCK, ID 83202–	208–237–3100
COEUR D'ALENE RESORT		111 S. FIRST	COEUR D'ALENE, ID 83814–	208–765–4000
COMFORT INN		280 W. APPLEWAY	COEUR D'ALENE, ID 83814–	208–765–5000
DAYS INN		2200 NW BLVD	COEUR D'ALENE, ID 83814–	208–667–8668
HOLIDAY INN		414 W. APPLEWAY	COEUR D'ALENE, ID 83814–	208–765–3200
MOTEL 6		416 W. APPLEWAY	COEUR D'ALENE, ID 83814–	208–664–6600
RED ROSE MOTEL		621 SHERMAN	COEUR D'ALENE, ID 83814–	208–667–5030
SHILO INN		702 W. APPLEWAY	COEUR D'ALENE, ID 83814–	208–664–2300
SILVER LAKE MOTEL		6160 SUNSHINE	COEUR D'ALENE, ID 83814–	208–772–5956
SUNDOWNER		2113 SHERMAN	COEUR D'ALENE, ID 83814–	208–667–9789
SUPER 8		505 W. APPLEWAY	COEUR D'ALENE, ID 83814–	208–765–4683
TETON WEST SUPER 8		STATE HWY. 33	DRIGGS, ID 83422–	208–354–2363
COUNTRY INN MOTEL	PO BOX 393	SOLDIER RD. & HWY. 20	FAIRFIELD, ID 83327–	208–764–2247
BLACK CANYON MOTEL		103 N. MAIN	GRACE, ID 83241–	208–425–3497
HILLSIDE MOTOR INN		240 ROOSEVELT ST	GRAND VIEW, ID 83624–	208–834–8360
HAGERMAN VALLEY INN		610 S. STATE ST	HAGERMAN, ID 83332–	208–837–6196
AMERITEL INN		900 LINDSEY	IDAHO FALLS, ID 83402–	208–529–3428
BEST WESTERN STARDUST MOTOR LODGE.		700 LINDSAY BLVD	IDAHO FALLS, ID 83402–	208–522–2910
IDAHO FALLS MOTEL 6		1448 W. BROADWAY	IDAHO FALLS, ID 83402–2636	208–522–0112
LITTLETREE INN		888 N. HOLMES	IDAHO FALLS, ID 83401–	208–523–5993
QUALITY INN		850 LINDSAY BLVD	IDAHO FALLS, ID 83402–	208–523–6260
SHILO INN		780 LINDSAY BLVD	IDAHO FALLS, ID 83402–	208–523–0088
WESTBANK INN AT THE FALLS		475 RIVER PKWY	IDAHO FALLS, ID 83402–	208–523–8000
A-BAR, MOTEL & SUPPER CLUB.	PO BOX 452	HC 66	ISLAND PARK, ID 83429–	208–558–7358
HARRIMAN STATE PARK DORM.	PO BOX 500	HC 66	ISLAND PARK, ID 83429–	208–556–7368
ISLAND PARK VILLAGE RESORT.	PO BOX 12	HC 66	ISLAND PARK, ID 83429–	208–558–7502
CREST MOTEL		2983 S. LINCOLN	JEROME, ID 83338–	208–324–2670
KAMIAH INN MOTEL (DAN DEE MOTEL).	PO BOX 106	HWY. 12 RT.1	KAMIAH, ID 83536–	208–935–0040
SILVER HORN MOTOR INN		699 W. CAMERON	KELLOGG, ID 83837–	
ALPENROSE HOTEL		124 SADDLE RD	KETCHUM, ID 83340–	208–726–5945

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BALD MOUNTAIN LODGE		151 MAIN ST. S	KETCHUM, ID 83340–	208–726–9963
BEST WESTERN TYROLEAN LODGE		260 COTTONWOOD	KETCHUM, ID 83340–	208–726–5336
BOULDER MOUNTAIN HOTEL		600 MAIN ST. N	KETCHUM, ID 83340–	208–726–7998
CHRISTOPHER CONDO & HOTEL		351 2ND AVE. S	KETCHUM, ID 83340–	208–726–5801
HEIDELBIERG INN		1908 WARMSPRINGS RD	KETCHUM, ID 83340–	208–726–5351
IDAHO COUNTRY INN		134 LATIGO LN	KETCHUM, ID 83340–	208–726–5718
KNOB HILL INN		960 MAIN ST. N	KETCHUM, ID 83340–	208–726–5205
LIFT TOWER LODGE		703 MAIN ST. S	KETCHUM, ID 83340–	208–726–5163
POWDERHORN LODGE		300 SKIWAY DR	KETCHUM, ID 83340–	208–726–2342
TAMARACK LODGE		291 WALNUT AVE. N	KETCHUM, ID 83340–	208–726–3344
THE PINNACLE CLUB INN		100 LLOYD DR	KETCHUM, ID 83340–	208–726–5700
THE RIVER STREET INN		100 RIVER ST. W	KETCHUM, ID 83340–	208–726–3611
HOME HOTEL		306 E. MAIN	LAVA HOT SPRINGS, ID 83246–.	208–776–5507
LAVA HOT SPRINGS INN		5 E. PORTNEUF	LAVA HOT SPRINGS, ID 83246–.	208–776–5830
RIVERSIDE INN		255 PORTNEUF	LAVA HOT SPRINGS, ID 83246–.	
BEL AIR MOTEL		2018 NS HWY	LEWISTON, ID 83501–	208–743–5946
CHURCH HILL INN		1021 MAIN	LEWISTON, ID 83501–	208–743–4501
EL RANCHO		2240 3RD AVE. N	LEWISTON, ID 83501–	208–743–8517
EVERGREEN MOTEL		2125 3RD AVE. N	LEWISTON, ID 83501–	
HILLARY MOTEL		2030 NS HWY	LEWISTON, ID 83501–	208–743–8514
HO HUM MOTEL		2015 NS HWY	LEWISTON, ID 83501–	208–743–2978
HOLLYWOOD INN		3001 NS HWY	LEWISTON, ID 83501–	208–743–9424
MINDEN MOTEL		516 20TH N	LEWISTON, ID 83501–	208–743–1968
RAMADA INN		621 21ST ST	LEWISTON, ID 83501–	208–799–1000
SACAJAWEA MOTOR INN		1824 MAIN	LEWISTON, ID 83501–	208–746–1393
SUPER 8 MOTEL		3120 NS HWY	LEWISTON, ID 83501–	208–743–8506
WAGON WHEEL		809 W. CASTER	MACKAY, ID 83251–	208–588–3331
HOTEL MCCALL		1101 N. 3RD	MCCALL, ID 83638–	208–634–5729
SCANDIA INN MOTEL		403 N. 3RD	MCCALL, ID 83638–	208–634–7384
SHORE LODGE		501 W. LAKE ST	MCCALL, ID 83638–	208–634–2244
MR. SANDMAN		1575 S. MERIDIAN RD	MERIDIAN, ID 83642–	208–375–1285
BEST WESTERN CREST		243 N. 4TH ST	MONTPELIER, ID 83254–	208–847–1782
BUDGET MOTEL		240 N. 4TH ST	MONTPELIER, ID 83254–	208–847–1273
HILLCREST MOTEL		706 N. MAIN	MOSCOW, ID 83843–	208–882–7579
MARK IV MOTEL INN		414 N. MAIN	MOSCOW, ID 83843–	208–882–7557
MOTEL 6		101 BAKER	MOSCOW, ID 83843–	208–882–5511
ROYAL MOTOR INN		120 W. 6TH	MOSCOW, ID 83843–	208–882–2581
SUPER 8 MOTEL		175 PETERSON DR	MOSCOW, ID 83843–	208–883–1503
UNIVERSITY INN BEST WESTERN.		1516 W. PULLMAN RD	MOSCOW, ID 83843–	208–882–0550
VALUE INN BY CAVANAUGHS		645 W. PULLMAN RD	MOSCOW, ID 83843–	208–882–1611
BEST WESTERN FOOTHILS		HWY. 20 & I–84	MOUNTAIN HOME, ID 83647–	208–587–8477
SAGEBRUSH HOTEL		MOUNTAIN HOME AIR FORCE BASE.	MOUNTAIN HOME, ID 83648–	208–828–4796
SLEEP INN		1180 HWY. 20	MOUNTAIN HOME, ID 83647–	208–587–9743
SHILO SUITES		1401 SHILO DR	NAMPA, ID 83687–	208–455–3250
STARLITE MOTEL		320 11TH AVE. N	NAMPA, ID 83651–	208–466–9244
SUPER 8 MOTEL		624 NAMPA BLVD	NAMPA, ID 83687–	208–467–2888
TAHITIAN VILLAGE		1636 GARRITY	NAMPA, ID 83687–	208–466–4606
NEZPERCE INN		312 OAK ST	NEZPERCE, ID 83543–	208–937–2655
HELGESON PLACE HOTEL		125 JOHNSON AVE	OROFINO, ID 83544–	208–476–3509
RIVERSIDE MOTEL		10560 HWY. 12	OROFINO, ID 83544–	208–476–5711
WHITE PINE MOTEL		222 BROWN AVE	OROFINO, ID 83544–	208–476–7093
BIDWELL MOTEL		1335 S. 5TH	POCATELLO, ID 83201–	208–232–3114
COMFORT INN		1333 BENCH RD	POCATELLO, ID 83201–	208–237–8155
COTTONTREE INN		1415 BENCH RD	POCATELLO, ID 83201–	208–237–7650
QUALITY INN		1555 POCATELLO CREEK RD	POCATELLO, ID 83201–	208–233–2200
SUNDIAL INN		835 S. 5TH	POCATELLO, ID 83201–	208–233–0451
SUPER 8		1330 BENCH RD	POCATELLO, ID 83201–	208–234–0888
THUNDERBIRD		1415 S. 5TH	POCATELLO, ID 83201–	208–232–6330
NENDELS INN AT RIVERBEND		W. 4105 RIVERBEND AVE	POST FALLS, ID 83854–	208–773–3258
SUNTREE INN 8		3705 5TH ST	POST FALLS, ID 83854–	208–773–4541
TEMPLINS RESORT		414 E. FIRST	POST FALLS, ID 83854–	208–773–9070
FLAMINGO LODGE MOTEL		406 E. 8TH ST	RUPERT, ID 83350–	208–436–4321
MOTEL DELUXE		112 S. CHURCH ST	SALMON, ID 83467–	208–756–2231
STAGE COACH INN MOTEL		201 HWY. 93 N	SALMON, ID 83467–	208–756–4251
ANGEL OF THE LAKE		410 RAILROAD AVE	SANDPOINT, ID 83864–	208–263–0816

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CONNIE'S BEST WESTERN		323 CEDAR	SANDPOINT, ID 83864–	208–263–5931
COUNTRY INN		7360 HWY. 95 S	SANDPOINT, ID 83864–	208–263–3333
LAKESIDE MOTEL		106 BRIDGE	SANDPOINT, ID 83864–	208–263–2717
MONARCH INN		HWY. 95 N	SANDPOINT, ID 83864–	208–263–1222
SANDPOINT SUPER 8 MOTEL		3245 HWY. 95 N	SANDPOINT, ID 83864–	208–263–2210
CREEKSIDE LODGE	PO BOX 110		STANLEY, ID 83278–	208–774–2213
AA MOTEL		1906 KIMBERLY RD	TWIN FALLS, ID 83301–	208–733–9240
AMERITEL INN		1377 BLUE LAKES BLVD. N	TWIN FALLS, ID 83301–	208–736–8000
APOLLO MOTEL		296 ADDISON W	TWIN FALLS, ID 83301–	208–825–5144
BEST WESTERN CANYON SPRINGS INN.		1357 BLUE LAKES N	TWIN FALLS, ID 83301–	208–324–8125
CANYON SPRINGS INN		1357 BLUE LAKES BLVD. N	TWIN FALLS, ID 83301–	208–734–5000
COMFORT INN TWIN FALLS		1893 CANYON SPRINGS RD	TWIN FALLS, ID 83301–	208–734–7494
MOTEL 6		1472 BLUE LAKES N	TWIN FALLS, ID 83301–	208–734–3993
MOTEL 8		1260 BLUE LAKES BLVD. N	TWIN FALLS, ID 83301–	208–733–0861
WESTON PLAZA HOTEL & CONVENTION CENTER.		1350 BLUE LAKES BLVD. N	TWIN FALLS, ID 83301–	208–733–0650
BROOKS HOTEL		500 CEDAR ST	WALLACE, ID 83873–	208–753–7061
STARDUST MOTEL		410 PINE ST	WALLACE, ID 83873–	208–752–1213
WALLACE INN BESTWESTERN		100 FRONT ST	WALLACE, ID 83873–	208–752–1131
STATE STREET MOTEL		1279 STATE ST	WEISER, ID 83672–	208–549–1390
ILLINOIS				
DAYS INN OF CHICAGO ADDISON.		600 E. LAKE ST	ADDISON, IL 60101–	708–834–8600
HOLIDAY INN ALSIP		5000 W. 127TH ST	ALSIP, IL 60658–	708–371–7300
ALOHA INN MOTEL	PO BOX 296	RT. 2	ALTAMONT, IL 62411–	618–483–6300
SUPER 8 MOTEL ALTON		1800 HOMES ADAMS PKWY	ALTON, IL 62202–	618–465–6865
ARCOLA INN		236 S. JACQUES ST	ARCOLA, IL 61910–	217–268–4971
DAYS INN ARCOLA		640 E. SPRINGFIELD RD	ARCOLA, IL 61910–	217–268–3031
COURTYARD BY MARRIOTT ARLINGTON HTS. NORTH.		3700 N. WILKE DR	ARLINGTON HEIGHTS, IL 60004.	708–394–9999
COURTYARD BY MARRIOTT ARLINGTON HTS. SOUTH.		100 W. ALGONQUIN RD	ARLINGTON HEIGHTS, IL 60005.	708–437–3344
HOLIDAY INN EXPRESS ARLINGTON HEIGHTS.		2120 S. ARLINGTON HEIGHTS	ARLINGTON HEIGHTS, IL 60005.	708–593–9400
LA QUINTA MOTOR INN #679		1415 W. DUNDEE RD	ARLINGTON HEIGHTS, IL 60004.	708–253–8777
RADISSON HOTEL ARLINGTON HEIGHTS.		75 W. ALGONQUIN RD	ARLINGTON HEIGHTS, IL 60005.	708–364–7600
RED ROOF INN ARLINGTON HEIGHTS.		22 W. ALGONQUIN RD	ARLINGTON HEIGHTS, IL 60005.	708–228–5650
WOODFIELD HILTON & TOWER.		3400 W. EUCLID	ARLINGTON HEIGHTS, IL 60005.	708–394–2000
ARTHUR'S COUNTRY INN		RT. 133 E	ARTHUR, IL 61911	
COMFORT INN AURORA		4005 GABRIELLE LN	AURORA, IL 60504–	708–820–3400
BARRINGTON MOTOR LODGE INC.		405 W. NORTHWEST HWY	BARRINGTON, IL 60010–	708–381–2640
AMERICAN INN MOTEL		39018 SHERIDAN RD	BEACH PARK, IL 60099–	708–746–2095
HAMPTON INN MIDWAY AIRPORT.		6540 S. CICERO AVE	BEDFORD PARK, IL 60638–	708–496–1900
BELLEVILLE MOTEL		931 S. BELT W	BELLEVILLE, IL 62221–	618–233–4551
EXECUTIVE INN		1234 CENTREVILLE AVE	BELLEVILLE, IL 62220–	618–233–1234
IMPERIAL 400 MOTOR INN		600 E. MAIN	BELLEVILLE, IL 62220–	618–234–9670
RANDOM HOUSE MOTEL		4205 ST. CHARLES RD	BELLWOOD, IL 60104–	708–544–5585
CAMBRIDGE INN		1605 N. STATE ST	BELVIDERE, IL 61008–	815–544–7111
OXFORD INN		1605 N. STATE ST	BELVIDERE, IL 61008–	815–544–7111
BLOOMINGTON DAYS INN		1707 W. MARKET ST	BLOOMINGTON, IL 61701–	309–829–6292
DAYS INN EAST		1803 E. EMPIRE	BLOOMINGTON, IL 61704–	309–663–1361
HAMPTON INN BLOOMINGTON NORMAL.		604½ IAA DR	BLOOMINGTON, IL 61701–	309–662–2800
HO JO INN		401 BROCK DR	BLOOMINGTON, IL 61701–	309–829–3100
JUMER'S CHATEAU		1601 JUMER DR	BLOOMINGTON, IL 61704–	309–662–2020
RAMADA INN BLOOMINGTON		1219 HOLIDAY LN	BLOOMINGTON, IL 61704–	309–662–5311
RAMADA INN WEST		403 BROCK DR	BLOOMINGTON, IL 61701–	309–829–7602
LEES INN KANKAKEE		1500 N. SR 50	BOURBONNAIS, IL 60914–	815–932–6060
SUPER 8 KANKAKEE		1390 LOCK DR	BOURBONNAIS, IL 60914–	815–939–7888
KNOTTY PINE INN & MOTEL		215 N. 4TH ST	BREESE, IL 62230–	618–526–4556
CLOUD 9 MOTEL		8440 S. HARLEM	BRIDGEVIEW, IL 60455–	708–430–2198
EXEL INN OF BRIDGEVIEW		9625 S. 76TH AVE	BRIDGEVIEW, IL 60455–	708–430–1818
SUPER 8 MOTEL BRIDGEVIEW		7887 W. 79TH ST	BRIDGEVIEW, IL 60455–	708–458–8008
HILTON GARDEN INN		900 W. LAKE COOK RD	BUFFALO GROVE, IL 60089–	708–215–8883

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CROWN II MOTEL		8450 S. CICERO AVE	BURBANK, IL 60459–	708–499–6262
BYRON MOTEL		511 W. BLACKHAWK DR	BYRON, IL 61010–	815–234–4500
TRAILS END MOTEL		600 WATER ST	CAHOKIA, IL 62206–	618–337–2010
ECONOLODGE CALUMET CITY		510 E. END AVE	CALUMET CITY, IL 60409–	708–862–2500
BEST INNS OF AMERICA		1345 E. MAIN	CARBONDALE, IL 62901–	618–529–4801
HERITAGE MOTEL		1209 W. MAIN ST	CARBONDALE, IL 62901–	618–457–4142
SUPER 8 MOTEL CARBONDALE.		1180 E. MAIN ST	CARBONDALE, IL 62901–	618–457–8822
HOLIDAY INN CARLINVILLE		I–55 AND RT. 108	CARLINVILLE, IL 62626–	217–324–2100
CARLYLE L N RESTAURANT & MOTEL.		RT. 127 N	CARLYLE, IL 62231–	618–594–2474
HOLIDAY INN CAROL STREAM		150 S. GARY AVE	CAROL STREAM, IL 60188–	708–665–3000
CASEY MOTEL	PO BOX 62	RT. 40E AND NE 13TH	CASEY, IL 62420–	217–932–4044
CASEYVILLE BEST INNS		2423 OLD COUNTRY INN RD	CASEYVILLE, IL 62232–	618–397–3300
BELL TOWER INN		200 E. NOLEMAN RT.161 E & 51 S.	CENTRALIA, IL 62801–	618–533–1300
MOTEL CENTRALIA		215 S. POPLAR	CENTRALIA, IL 62801–	618–532–7357
BUDGETEL INN CHAMPAIGN		302 W. ANTHONY	CHAMPAIGN, IL 61821–	217–356–8900
CHAMPAIGN COMFORT INN		305 MARKETVIEW DR	CHAMPAIGN, IL 61821–	217–352–4055
HOLIDAY INN CHAMPAIGN		1505 N. NEIL	CHAMPAIGN, IL 61820–	217–359–1601
LAQUINTA INN #553		1900 CENTER DR	CHAMPAIGN, IL 61820–7821	217–356–4000
RADDISSON SUITE HOTEL CHAMPAIGN URBANA.		101 TRADE CENTER DR	CHAMPAIGN, IL 61820–	217–398–3400
RED ROOF INN CHAMPAIGN		212 W. ANTHONY DR	CHAMPAIGN, IL 61820–	217–352–0101
SUPER 8 MOTEL CHAMPAIGN		202 MARKETVIEW DR	CHAMPAIGN, IL 61820–	217–359–2388
ECONO LODGE		810 W. LINCOLN	CHARLESTON, IL 61920–	217–345–7689
HI 3 MOTEL	PO BOX 322	RT. 2	CHESTER, IL 62233–	618–826–4415
APACHE MOTEL		5535 N. LINCOLN	CHICAGO, IL 60625–	312–728–9400
CAMELOT MOTEL		9118 S. COTTAGE GROVE	CHICAGO, IL 60619–	312–488–3100
CHICAGO HILTON & TOWERS		720 S. MICHIGAN AVE	CHICAGO, IL 60605–	312–922–4400
CHICAGO MARRIOTT DOWNTOWN.		540 N. MILWAUKEE AVE	CHICAGO, IL 60611–	312–836–0100
CHICAGO O'HARE MARRIOTT HOTEL.		8535 W. HIGGINS ST	CHICAGO, IL 60631–	312–693–4444
COURTYARD BY MARRIOTT CHICAGO DOWNTOWN.		30 E. HUBBARD ST	CHICAGO, IL 60611–	312–329–2500
DAYS INN LAKE SHORE CHICAGO.		644 N. LAKE SHORE DR	CHICAGO, IL 60611–	312–943–9200
EDGEBROOK MOTEL		6401 W. TOUHY	CHICAGO, IL 60646–	312–774–4200
EMBASSY SUITES HOTEL CHICAGO DOWNTOWN.		600 N. STATE ST	CHICAGO, IL 60610–	312–943–3800
ESSEX INN ON GRANT PARK		800 S. MICHIGAN AVE	CHICAGO, IL 60605–	312–939–2800
FAIRMONT HOTEL AT ILLINOIS CENTER.		200 NORTH COLUMBUS DR	CHICAGO, IL 60601–	312–565–8000
FORUM HOTEL CHICAGO		525 N. MICHIGAN AVE	CHICAGO, IL 60611–	312–321–8709
FOUR SEASONS HOTEL CHICAGO.		120 E. DELAWARE PL	CHICAGO, IL 60611–1428	312–280–8800
HEART OF CHICAGO MOTEL		5990 N. RIDGE AVE	CHICAGO, IL 60660–	312–271–9181
HOLIDAY INN CHICAGO MART PLAZA.		350 N. ORLEANS	CHICAGO, IL 60654–	312–836–5000
HOTEL INTER CONTINENTAL CHICAGO.		505 N. MICHIGAN AVE	CHICAGO, IL 60611–	312–321–8709
HOTEL NIKKO CHICAGO		320 N. DEARBORN	CHICAGO, IL 60610–	312–744–1900
HOWARD JOHNSON		8201 W. HIGGINS RD	CHICAGO, IL 60631–	312–693–2323
HUDSON HOTEL		5522 S. INDIANA	CHICAGO, IL	312–363–8422
HYATT REGENCY CHICAGO		151 E. WACKER DR	CHICAGO, IL 60601–	312–616–6878
HYATT REGENCY SUITES ON MICHIGAN AVENUE.		676 N. MICHIGAN AVE	CHICAGO, IL 60611–	312–337–1234
LAKESIDE MOTEL		5440 N. SHERIDAN RD	CHICAGO, IL 60640–	312–275–2700
LE MERIDIEN HOTEL		21 E. BELLEVUE PL	CHICAGO, IL 60611–	312–266–2100
MC CORMICK CENTER HOTEL		LAKE SHORE DR. & 23RD ST	CHICAGO, IL 60616–	312–791–1900
O'HARE HILTON HOTEL		11601 W. TOUHY AVE	CHICAGO, IL 60666–	312–686–8000
O'HARE PLAZA HOTEL		5615 N. CUMBERLAND	CHICAGO, IL 60631–	312–693–5800
PALMER HOUSE HILTON		17 E. MONROE ST	CHICAGO, IL 60603–	312–726–7500
RAINBOW MOTEL INC		7050 W. ARCHER AVE	CHICAGO, IL 60638–	312–229–0707
RAMADA INN LAKE SHORE		4900 S. LAKE SHORE DR	CHICAGO, IL 60615–	312–288–5800
REGENCY CASTLE LODGE		1140 W. 95TH ST	CHICAGO, IL 60643–	312–238–8500
RESIDENCE INN OF MARRIOTT.		201 E. WALTON PL	CHICAGO, IL 60611–	312–942–9800
SHERATON CHICAGO HOTEL AND TOWERS.		301 E. WATER ST	CHICAGO, IL 60611–	312–464–1000
SHERATON PLAZA HOTEL		160 E. HURON	CHICAGO, IL 60611–	312–787–2900

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STOUFFER RIVIERE HOTEL		1 W. WACKER DR	CHICAGO, IL 60601–	312–372–7200
THE HYATT ON PRINTERS ROW.		500 S. DEARBORN	CHICAGO, IL 60605–	312–986–1234
THE INN AT UNIVERSITY VILLAGE.		625 S. ASHLAND AVE	CHICAGO, IL 60607–	312–243–7200
THE MIDLAND HOTEL		172 W. ADAMS	CHICAGO, IL 60603–	312–332–1200
THE RITZ CARLTON CHICAGO		160 E. PEARSON	CHICAGO, IL 60611–	312–266–1000
THE STOUFFER RIVIERE HOTEL.		1 W. WACKER DR	CHICAGO, IL 60601–	312–372–7200
VILLA MOTEL		5952 N. LINCOLN	CHICAGO, IL 60659–	312–561–9509
COVE MOTEL		2019 S. CICERO AVE	CICERO, IL 60650–	708–656–2260
KARAVAN MOTEL		1620 S. CICERO AVE	CICERO, IL 60650–	708–656–4220
PLAZA MOTEL		3030 S. CICERO	CICERO, IL 60650–	708–656–0300
KLIF MOTEL		1403 WEST AVE	COAL VALLEY, IL 61264–	309–799–5151
BEST WESTERN HERITAGE INN.		2003 MALL RD	COLLINSVILLE, IL 62234–	618–345–5660
DAYS INN COLLINSVILLE		1803 RAMADA BLVD	COLLINSVILLE, IL 62234–	618–345–8100
DRURY INN COLLINSVILLE		602 N. BLUFF RD	COLLINSVILLE, IL 62234–	618–345–7700
HO JO INN		301 N. BLUFF	COLLINSVILLE, IL 62234–	618–345–1530
HOLIDAY INN COLLINSVILLE		1000 E. PORT PLAZA DR	COLLINSVILLE, IL 62234–	618–345–2500
PEAR TREE INN		552 RAMADA	COLLINSVILLE, IL 62234–	618–345–9500
SUPER 8 MOTEL COLLINSVILLE.		#2 GATEWAY DR	COLLINSVILLE, IL 62234–	618–345–8008
BEST WESTERN INN OF COUNTRYSIDE.		5631 S. LAGRANGE RD	COUNTRYSIDE, IL 60525–	708–352–8480
HAMPTON INN COUNTRYSIDE		6251 JOLIET RD	COUNTRYSIDE, IL 60525–	708–354–5200
HOLIDAY INN COUNTRYSIDE		6201 JOLIET RD	COUNTRYSIDE, IL 60525–	708–354–5200
WISHING WELL MOTEL		JOLIET RD. & BRAINARD AVE	COUNTRYSIDE, IL 60525–	708–352–3615
HOLIDAY INN CRYSTAL LAKE		800 S. RT. 31	CRYSTAL LAKE, IL 60014–	815–477–7000
CANDLELITE MOTEL		3626 N. VERMILION ST	DANVILLE, IL 61832–	217–442–1988
DANVILLE COMFORT INN		383 WINCH RD	DANVILLE, IL 61832–	217–443–8004
RAMADA INN		388 EASTGATE DR	DANVILLE, IL 61832–	217–446–2400
SUPER 8 MOTEL DANVILLE		327 LYNCH	DANVILLE, IL 61832–	217–443–4499
BEST WESTERN SHELTON MOTOR INN.		450 E. PERSHING RD	DECATUR, IL 62526–	217–877–7255
DAYS INN DECATUR		333 N. WYCKLES RD	DECATUR, IL 62522–	217–422–5900
DECATUR BUDGETEL INN		5100 HICKORY POINT FRONTAGE RD.	DECATUR, IL 62526–	217–875–5800
GREEN VALLEY MOTEL		145 W. PERSHING RD	DECATUR, IL 62526–	217–877–3123
HOLIDAY INN CONFERENCE HOTEL.	RT. 36 W	WYCKLES RD	DECATUR, IL 62522–	217–422–6800
RED CARPET INN		3035 N. WATER ST	DECATUR, IL 62526–	217–877–3380
TRI MANOR MOTEL		3420 N. 22ND ST	DECATUR, IL 62526–	217–877–6900
CHICAGO MARRIOTT SUITES DEERFIELD.		TWO PARKWAY N	DEERFIELD, IL 60015–	708–405–9666
COURTYARD BY MARRIOTT DEERFIELD.		800 LAKE COOK RD	DEERFIELD, IL 60015–	708–940–8222
HYATT DEERFIELD HOTEL		1750 LAKE COOK RD	DEERFIELD, IL 60015–	708–945–3400
RESIDENCE INN BY MARRIOTT.		530 LAKE COOK RD	DEERFIELD, IL 60015–	708–940–4644
OXFORD INN		2675 SYCAMORE RD	DEKALB, IL 60115–	815–756–3552
COMFORT INN O'HARE		2175 E. TOUHY AVE	DES PLAINES, IL 60018–	708–635–1300
COURTYARD BY MARRIOTT CHICAGO O'HARE.		2950 SOUTH RIVER RD	DES PLAINES, IL 60018–	708–824–7000
TRAVELODGE CHICAGO O'HARE.		3003 MANNHEIM RD	DES PLAINES, IL 60018–	708–296–5541
BEST WESTERN BRANDYWINE HOTEL.		443 IL. RT. 2	DIXON, IL 61021–	815–284–1890
SUPER 8 MOTEL DIXON		1800 S. GALENA	DIXON, IL 61021–	815–284–1800
THE PRESIDENTIAL INN		1231 N. GALENA AVE	DIXON, IL 61021–	815–284–3351
CHICAGO MARRIOTT SUITES DOWNERS GROVE.		1500 OPUS PL	DOWNERS GROVE, IL 60515–	708–852–1500
HOLIDAY INN EXPRESS CHICAGO DOWNERS GROVE.		3031 FINLEY RD	DOWNERS GROVE, IL 60515–1117.	708–810–9500
MARRIOTT SUITES DOWNERS GROVE.		1500 OPUS PL	DOWNERS GROVE, IL 60515–	708–852–1500
RADISSON SUITES HOTEL		2111 BUTTERFIELD	DOWNERS GROVE, IL 60515–	708–971–2000
RED ROOF INN DOWNERS GROVE.		1113 BUTTERFIELD RD	DOWNERS GROVE, IL 60615–	708–963–4205
HUB MOTEL		423 W. MAIN ST	DUQUOIN, IL 62832–	618–542–2108
ROYAL INN		1010 S. JEFFERSON ST	DUQUOIN, IL 62832–	618–542–4335
CAREFREE MOTEL		320 OLD RT. 66	DWIGHT, IL 60420–	815–584–3079

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LEWIS AND CLARK MOTOR LODGE.	.....	530 LEWIS AND CLARK BLVD .	EAST ALTON, IL 62024–	618–254–0683
CAPTAIN MERRY GUEST HOUSE.	.....	399 SINSINAWA AVE	EAST DUBUQUE, IL 61025–	815–747–3644
SUPER 8 MOTEL EAST MOLINE.	RR. 2	2201 JOHN DEERE RD	EAST MOLINE, IL 61244–	309–796–1999
SUPER 8 MOTEL EAST PEORIA.	.....	725 TAYLOR ST	EAST PEORIA, IL 61611–	309–698–8889
BEST INNS EFFINGHAM	.....	1209 N. KELLER DR	EFFINGHAM, IL 62401–	217–347–5141
BUDGETEL INN	.....	1103 AVE. OF MID AMERICA ...	EFFINGHAM, IL 62401–	217–342–2525
DAYS INN EFFINGHAM	PO BOX 1168	WEST FAYETTE AVE	EFFINGHAM, IL 62401–	217–342–9271
ECONO LODGE MOTEL	.....	1205 N. KELLER DR	EFFINGHAM, IL 62401–	217–347–7132
EFFINGHAM MOTEL	.....	702 E. FAYETTE	EFFINGHAM, IL 62401–	217–342–3991
HOLIDAY INN EFFINGHAM	.....	1600 W. LAFAYETTE	EFFINGHAM, IL 62401–	217–342–4161
HOWARD JOHNSON LODGE	.....	1606 FAYETTE AVE. EXIT 159 .	EFFINGHAM, IL 62401–	217–342–4667
SUPER 8 MOTEL EFFINGHAM .	.....	1400 THELMA KELLER DR	EFFINGHAM, IL 62401–	217–342–6888
HOLIDAY INN ELGIN	.....	345 W. RIVER RD	ELGIN, IL 60123–	708–695–5000
SUPER 8 MOTEL	.....	425 AIRPORT RD	ELGIN, IL 60123–	708–697–8828
CHICAGO MARRIOTT SUITES ELK GROVE VILLAGE.	.....	121 NORTHWEST POINT BLVD	ELK GROVE, IL 60007–	708–290–1600
HAMPTON INN ELK GROVE	.....	100 BUSSE RD	ELK GROVE, IL 60007–	708–593–8600
BEST WESTERN MIDWAY HOTEL.	.....	1600 OAKTON ST	ELK GROVE VILLAGE, IL 60007	708–981–0010
EXEL INN OF ELK GROVE VILLAGE.	.....	1000 W. DEVON AVE	ELK GROVE VILLAGE, IL 60007	708–894–2085
EXEL INN OF O'HARE	.....	2881 TOUHY AVE	ELK GROVE VILLAGE, IL 60007	708–803–9400
LA QUINTA INN #634	.....	1900 E. OAKTON ST	ELK . GROVE VILLAGE, IL 60007–2123.	708–439–6767
SHERATON SUITES ELK GROVE VILLAGE.	.....	121 NW POINT BLVD	ELK GROVE VILLAGE, IL	708–290–1600
COMFORT INN OF ELMHURST	.....	370 N. RT. 83	ELMHURST, IL 60126–	708–941–9444
HOLIDAY INN EXPRESS CHICAGO.	.....	933 S. RT. 83	ELMHURST, IL 60126–	708–279–0700
GREEN TREE INN	.....	15 MILL ST.	ELSAH, IL 62028–	618–374–2821
OMNI ORRINGTON HOTEL	.....	1710 ORRINGTON	EVANSTON, IL 60201–3855	708–866–8700
INDIAN MOUND MOTEL	.....	4700 COLLINSVILLE RD	FAIRMONT CITY, IL 62201–	618–279–570
SUPER 8 MOTEL FAIRVIEW HEIGHTS.	.....	#45 LUDWIG DR	FAIRVIEW HEIGHTS, IL 62208–	618–398–8338
COLONIAL MOTEL	.....	RT. 54 BOX 197	FARMER CITY, IL 61842–	309–928–2157
THE INN AT EAGLE CREEK	.....	EAGLE CREEK STATE PARK ...	FINDLAY, IL 62534–	217–756–3456
FAIRFIELD INN BY MARRIOTT FORSYTH.	.....	1417 HICKORY POINT RD	FORSYTH, IL 62526–	217–875–3337
FORSYTH COMFORT INN	.....	134 BARNETT AVE	FORSYTH, IL 62535–	217–875–1166
FOX LAKE MOTEL	.....	25 S. RT. 12	FOX LAKE, IL 60020–	708–587–8282
ABE LINCOLN MOTEL	.....	10841 W. LINCOLN HWY	FRANKFORT, IL 60423–	815–469–5114
THE WHITNEY	.....	1630 WHITNEY ROAD	FRANKLIN GROVE, IL 61031– ..	815–456–2526
LIDO MOTEL INC	.....	2415 N. MANNHEIM RD	FRANKLIN PARK, IL 60131–	708–455–7800
GABRIEL MOTEL	.....	600 N. STATE ST	FREEBURG, IL 62243–	618–539–5588
WESTERFIELD HOUSE INN	.....	8059 JEFFERSON RD	FREEBURG, IL 62243–	618–539–5643
BEST WESTERN QUIET HOUSE SUITES.	.....	9923 US RT. 20 W	GALENA, IL 61036–	815–777–2577
CARL JOHNSON GALLERY GUEST SUITE.	.....	202 S. MAIN ST	GALENA, IL 61036–2227	815–777–1222
EAGLE RIDGE INN AND RESORT.	.....	PO BOX 777	GALENA, IL 61036	815–777–2444
EARLY AMERICAN SETTLEMENT.	.....	940 W. HART JOHN RD	GALENA, IL 61036–	815–777–4200
FOUR OAKS GUEST HOUSE	.....	6594 RT. 84N	GALENA, IL 61036–	815–777–9567
LEFEVRE INN AND RESORT	.....	9917 W. DEININGER LN	GALENA, IL 61036–	815–777–3929
MOTHER'S COUNTRY INN	.....	349 SPRING ST	GALENA, IL 61036–	815–777–3153
PINE HOLLOW INN AND BED & BREAKFAST.	.....	4700 NORTH COUNCIL HILL	GALENA, IL 61036–	815–777–2975
RENAISSANCE SUITES & ROOMS.	.....	324 & 328 SPRING ST	GALENA, IL 61036–	815–777–0123
STEAMBOAT HOUSE	.....	605 S. PROSPECT	GALENA, IL 61036–	815–777–3128
THE DESOTO HOUSE	.....	230 S. MAIN ST	GALENA, IL 61036–	815–777–0090
MOTEL 6 GALESBURG	.....	1487 N. HENDERSON	GALESBURG, IL 61401–	309–344–2401
OAKWOOD MOTEL	.....	725 US HWY. 6E	GENESEO, IL 61254–	309–944–366
OSCAR SWAN COUNTRY INN .	.....	1800 W. STATE ST	GENEVA, IL 60134–	708–232–0173
DEL MAR MOTEL	.....	45 & 24E JUNCTION	GILMAN, IL 60938–	815–265–7283
BUDGETEL INN OF GLENVIEW	.....	1625 MILWAUKEE AVE	GLENVIEW, IL 60025–	708–635–8300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COURTYARD BY MARRIOTT GLENVIEW.		1801 MILWAUKEE AVE	GLENVIEW, IL 60025–	708–803–2500
FAIRFIELD INN BY MARRIOTT CHICAGO GLENVIEW.		4514 W. LAKE AVE	GLENVIEW, IL 60025–	708–299–1600
RADISSON GLENVIEW		1400 MILWAUKEE AVE	GLENVIEW, IL 60025–	708–803–9800
MOTEL REDWOOD		5609 GODFREY RD	GODFREY, IL 62035–	618–466–3715
MICHAEL'S MOTEL		ADAM'S ST	GOLCONDA, IL 62938–	618–683–2424
PERE MARQUETTE LODGE AND CONFERENCE CENTER.	PO BOX 429	RT. 100	GRAFTON, IL 62037–	618–786–2331
CHAIN OF ROCKS MOTEL		3228 CHAIN OF ROCKS MOTEL:	GRANITE CITY, IL 62040–	618–931–6600
GRANITE CITY LODGE		1200 19TH ST	GRANITE CITY, IL 62040–	618–876–2600
LAND OF LINCOLN MOTEL		3220 W. CHAIN OF ROCKS RD	GRANITE CITY, IL 62040–	618–931–1414
MIDWEST MOTEL		912 THORNGATE	GRANITE CITY, IL 62040–	618–797–2400
BEST WESTERN WINDSOR OAKS INN.		2200 SOUTH COURT ST	GRAYVILLE, IL 62844–	618–375–7930
2 ACRES MOTEL & RESTAURANT.		I–70 & RT. 127	GREENVILLE, IL 62246–	618–664–3131
ADVENTURE INNS		3732 GRAND AVE	GURNEE, IL 60031–	708–623–7777
GURNEE COMFORT INN		6080 GURNEE MILLS BLVD. E	GURNEE, IL 60031–	708–855–8866
GURNEE FAIRFIELD INN		6090 GURNEE MILLS BLVD. E	GURNEE, IL 60031–	708–855–8866
HAMPTON INN GURNEE		5550 GRAND AVE	GURNEE, IL 60031–	708–662–1100
SWEET BASIL HILL FARM		15937 W. WASHINGTON	GURNEE, IL 60031–	708–244–3333
INN KEEPER MOTEL		HWY. 140 & I–55	HAMEL, IL 62046–	618–633–2111
UPTOWN MOTEL		605 E. POPLUR	HARRISBURG, IL 62946–	618–253–7022
RED LION MOTOR LODGE		US 136 E	HAVANA, IL 62644–	309–543–4407
SYCAMORE MOTOR LODGE		271 E. DEARBORN	HAVANA, IL 62644–	309–543–4454
HI DE HO MOTEL INC		10513 HWY. 47. N	HEBRON, IL 60034–	815–648–2203
CARDINAL INN		RT. 40 & 143	HIGHLAND, IL 62249–	618–654–4433
MICHAEL'S SWISS INN		425 BROADWAY	HIGHLAND, IL 62249–	618–654–8646
COURTYARD BY MARRIOTT HIGHLAND PARK.		1505 LAKE COOK RD	HIGHLAND PARK, IL 60035–	708–831–3338
COUNTRYSIDE INN	PO BOX 386	RT. 126 S	HILLSBORO, IL 62049–	217–532–6176
HOFFMAN ESTATES BUDGETEL INN.		2075 BARRINGTON RD	HOFFMAN ESTATES, IL 60195–	708–882–8848
LA QUINTA INN #4678		2280 BARRINGTON RD	HOFFMAN ESTATES, IL 60195–3312.	708–882–3312
RED ROOF INN #199 HOFFMAN ESTATES.		2500 HASSELL RD	HOFFMAN ESTATES, IL 60195–	708–885–7877
SKYLINE MOTEL		32550 N. HWY. 12	INGLESIDE, IL 60041–	815–385–4243
HOLIDAY INN ITASCA		860 IRVING PARK RD	ITASCA, IL 60143–	708–773–2340
WYNDHAM NORTHWEST CHICAGO.		400 PARK BLVD	ITASCA, IL 60143–	708–773–4000
HOLIDAY INN JACKSONVILLE		1717 W. MORTON	JACKSONVILLE, IL 62650–	217–245–9571
JACKSONVILLE SUPER 8 MOTEL.		1003 W. MORTON	JACKSONVILLE, IL 62650–	217–479–0303
BEL AIR MOTEL		1103 PLAINFIELD RD	JOLIET, IL 60435–	815–723–8340
COMFORT INN OF JOLIET NORTH.		3235 NORMAN AVE	JOLIET, IL 60435–	815–436–5141
FAIRFIELD INN BY MARRIOTT JOLIET.		3239 NORMAN AVE	JOLIET, IL 60435–	815–443–1000
JOLIET COMFORT INN SOUTH		135 S. LARKIN AVE	JOLIET, IL 60435–	815–744–1770
JOLIET SUPER 8 MOTEL		1730 MCDONOUGH ST	JOLIET, IL 60436–	815–725–9855
RED ROOF INN JOLIET		1750 MCDONOUGH	JOLIET, IL 60436–	815–741–2304
LEE'S INN		1500 N. STATE RD. 50	KANKAKEE, IL 60914–	815–932–8080
BEST WESTERN INN LAGRANGE.		5631 S. LAGRANGE RD	LAGRANGE, IL 60525–	708–352–2480
HOLIDAY INN LAGRANGE COUNTRYSIDE.		6201 JOLIET RD	LAGRANGE, IL 60525–	708–354–4200
HARRISON CONFERENCE CENTER.		136 GREEN BAY RD	LAKE BLUFF, IL 60044–	708–295–1100
DEER PATH INN		255 E. ILLINOIS RD	LAKE FOREST, IL 60045–	708–234–2280
BEST WESTERN CHICAGO SOUTH LANSING.		2505 BERNICE RD	LANSING, IL 60438–	708–895–7810
FAIRFIELD INN BY MARRIOTT CHICAGO LANSING.		17301 OAK AVE	LANSING, IL 60438–	708–474–6900
HOLIDAY INN CHICAGO SOUTH LANSING.		17356 TORRENCE AVE	LANSING, IL 60438–	708–474–6300
RED ROOF INN #078		2450 E. 173RD ST	LANSING, IL 60438–	708–895–9570
TIKI MOTEL		206 LASALLE RD	LASALLE, IL 61301–	815–224–1109
BEST INNS LIBERTYVILLE		1809 N. MILWAUKEE AVE	LIBERTYVILLE, IL 60048–	708–816–8006

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN HITCH INN POST.	.....	1765 N. MILWAUKEE AVE	LIBERTYVILLE, IL 60048–	708–362–8700
COMFORT INN LINCOLN	.....	2811 WOODLAWN RD	LINCOLN, IL	217–735–3960
DAYS INN LINCOLN	.....	2019 N. KICKAPOO	LINCOLN, IL 62656–	217–735–1202
LINCOLN COUNTRY INN	.....	1750 5TH	LINCOLN, IL 62656–	.....
LINCOLN MOTEL	.....	918 WOODLAWN	LINCOLN, IL 62656–	217–732–2154
COURTYARD BY MARRIOTT LINCOLNSHIRE.	.....	505 MILWAUKEE AVE	LINCOLNSHIRE, IL 60069–	708–634–9555
MARRIOTT'S LINCOLNSHIRE RESORT.	.....	TEN MARRIOTT DR	LINCOLNSHIRE, IL 60069–	708–634–0100
RADISSON HOTEL LINCOLNWOOD.	.....	4500 W. TOUHY AVE	LINCOLNWOOD, IL 60646–	708–677–1234
HYATT LISLE	.....	1400 CORPORETUM DR	LISLE, IL 60532–	708–852–1234
LISLE NAPERVILLE HILTON	.....	3003 CORPORATE W. DR	LISLE, IL 60532–	708–505–0900
RADISSON HOTEL LISLE-NAPERVILLE.	.....	3000 WARRENVILLE RD	LISLE, IL 60532–	708–505–1000
LITCHFIELD SUPER 8 MOTEL ..	.....	110 OHREN LN. I–55 AND RT. 16.	LITCHFIELD, IL 62056–	217–324–7788
COUNTRY INN MOTEL AND CAFE.	.....	I–55 EXIT 37	LIVINGSTON, IL 62058–	618–637–2600
EMBASSY SUITES LOMBARD ..	.....	707 E. BUTTERFIELD RD	LOMBARD, IL 60148–	700–896–9750
HAMPTON INN LOMBARD	.....	222 E. 22ND ST	LOMBARD, IL 60148–	708–916–9000
RESIDENCE INN BY MARRIOTT LOMBARD.	.....	2001 S. HIGHLAND	LOMBARD, IL 60148–	708–629–7800
CLAYTON HOUSE MOTEL	.....	4800 N. 2ND ST	LOVES PARK, IL 61111–	815–877–1401
CHALET MOTEL	.....	8640 W. OGDEN AVE	LYONS, IL 60534–	708–447–6363
PLANK ROAD INN	.....	7307 W. OGDEN	LYONS, IL 60534–	708–442–5120
PRESIDENTIAL INN	.....	3922 S. HARLEM AVE	LYONS, IL 60534–	708–447–2890
HOLIDAY INN OF MACOMB	.....	1400 N. LAFAYETTE	MACOMB, IL	309–833–5511
GIANT CITY STATE PARK LODGE AND CABINS.	.....	PO BOX 70	MAKANDA, IL 62958–	618–457–4836
BOHEMIA MOTEL	.....	7N938 RT. 47	MAPLE PARK, IL 60151–	708–365–6564
BEST WESTERN AIRPORT INN	PO BOX 348–1	RT. 3	MARION, IL 62959–	618–993–3222
COMFORT INN MARION	.....	2600 W. MAIN	MARION, IL 62959–	618–993–6221
COMFORT SUITES MARION	PO BOX 70	2608 W. MAIN	MARION, IL 62959–	618–997–9133
SUPER 8 MOTEL MARION	.....	2601 W. DEYOUNG ST	MARION, IL 62959–	618–993–5577
LINCOLN MOTEL	PO BOX 14A	RR. 3	MARSHALL, IL 62441–	217–826–2941
PEAK'S MOTOR INN	PO BOX 115A	RT. 3	MARSHALL, IL 62441–	217–826–3031
BUDGETEL INN MATTESON	.....	5210 W. SOUTHWICK RD	MATTESON, IL 60443–	708–503–0999
HAMPTON INN MATTESON	.....	5200 W. LINCOLN HWY	MATTESON, IL 60443–	708–481–3900
BUDGET INN	.....	S. RT. 45	MATTOON, IL 61938–	217–235–4011
HOLIDAY INN OF MATTOON	.....	300 BROADWAY AVE. E	MATTOON, IL 61938–	217–235–0313
MATTOON SUPER 8 MOTEL	.....	205 MCFALL RD. I–57 & RT. 16	MATTOON, IL	217–235–8888
US GRANT MOTEL LTD. PTSHP.	.....	1313 LAKELAND BLVD	MATTOON, IL 61938–	217–235–5695
SKYLINE MOTEL	.....	8136 JOLIET RD	MC COOK, IL 60525–	708–447–3566
O'HARE KITCHENETTE MOTEL	.....	2301 N. MANNHEIM RD	MELROSE PARK, IL 60160–	708–455–0100
MENDOTA SUPER 8 MOTEL	.....	508 HWY. 34E	MENDOTA, IL 61342–	815–539–7429
METROPLIS INN	PO BOX 668	EXIT 37 US 45 & I–24 RT. 3	METROPOLIS, IL 62960–	618–524–3723
SUPER 8 MOTEL MOKENA	.....	9485 W. 191ST ST	MOKENA, IL 60448–	708–479–7808
BEST WESTERN AIRPORT INN	.....	2550 52ND AVE	MOLINE, IL 61265–	309–762–9191
EXEL INN OF MOLINE	.....	2501 52ND AVE	MOLINE, IL 61265–	309–797–5580
FAIRFIELD INN MOLINE	.....	2705 48TH AVE	MOLINE, IL 61265–	309–762–9083
HAMPTON INN	.....	6920 27TH ST	MOLINE, IL 61265–	309–762–1711
HOLIDAY INN MOLINE	.....	6902 27TH ST	MOLINE, IL 61265–309–762–11.	
LA QUINTA INN i673	.....	AIRPORT CORNERS	MOLINE, IL 61265–9702	309–762–9008
LA QUINTA INN i673	.....	AIRPORT CORNERS	MOLINE, IL 61265–9702	309–762–9008
MOLINE BEST WESTERN	.....	2520 52ND AVE	MOLINE, IL 61265–	309–762–9191
MOLINE COMFORT INN	.....	2600 52ND AVE	MOLINE, IL 61265–	309–762–7000
MOTEL 6	.....	2359 69TH AVE	MOLINE, IL 61265–	309–764–8711
RAMADA INN QCA	.....	2620 AIRPORT RD	MOLINE, IL 61265–	309–797–1211
THE STARDUST	.....	19TH ST. AND 12TH AVE	MOLINE, IL 61265–	309–764–9644
COUNTRY HOST MOTEL	.....	MONEE-MANHATTEN RD. AT I–57.	MONEE, IL 60449–	708–534–2150
FOSTER'S PLAZA & INN	PO BOX 109–A	RT. 105 N	MONTICELLO, IL 61856–	217–762–9835
MOTEL MONTAROSA	PO BOX 86	EXIT 105 I–70	MONTROSE, IL 62445–	217–924–4117
HOLIDAY INN MORRIS	.....	I–80 & ILL. 47	MORRIS, IL 60450–	815–942–6600
MORRIS COMFORT INN	.....	70 GORE RD. W	MORRIS, IL 60450–	815–942–1433
SUPER 8 MOTEL MORRIS	.....	70 GREEN ACRES DR	MORRIS, IL 60450–	815–942–3200
WHITE PINES FOREST STATE PARK INN.	.....	6712 W. PINE RD	MT. MORRIS, IL 61054–	815–946–3717
RAMADA HOTEL	PO BOX 2148	222 POTOMAC	MT. VERNON, IL 62864–	618–244–7100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUPER 8 MOTEL MT. VERNON		401 S. 44TH ST	MT. VERNON, IL 62864–	618–242–8800
THRIFTY INN MT. VERNON		I–57 & I–64	MT. VERNON, IL 62864–	618–244–7750
ROUND ROBIN GUESTHOUSE BED & BREAKFAST INN.		231 E. MAPLE AVE	MUNDELEIN, IL	708–566–7664
SUPER 8 MOTEL MUNDELEIN		1950 S. LAKE ST	MUNDELEIN, IL 60060–	708–949–8842
RIVERSIDE INN MOTEL	PO BOX 429	RT. 5	MURPHYSBORO, IL	18–687–2244
COURTYARD BY MARRIOTT CHICAGO NAPERVILLE.		1155 E. DIEHL RD	NAPERVILLE, IL 60563–	708–505–0550
EXEL INN OF NAPERVILLE		1585 NAPERVILLE WHEATON RD.	NAPERVILLE, IL 60563–	708–357–0022
HAMPTON INN NAPERVILLE		1087 DIEHL RD	NAPERVILLE, IL 60563–	708–505–1400
HOLIDAY INN-NAPERVILLE		1801 N. NAPER BLVD	NAPERVILLE, IL 60563–	708–505–4900
RED ROOF INN NAPERVILLE		1698 W. DIEHL RD	NAPERVILLE, IL 60563–	708–369–2600
TRAVELODGE NAPERVILLE		1617 NAPERVILLE RD	NAPERVILLE, IL 60563–	708–505–0200
WYNDHAM GARDEN HOTEL NAPERVILLE.		1837 CENTRE POINT CIR	NAPERVILLE, IL 60563–	708–505–3353
US INN		I–64 AT IL. RT. 127	NASHVILLE, IL 62263–	618–478–5341
HOTEL NAUVOO		1290 MULHOLLAND	NAUVOO, IL 62354–0398	217–453–2211
MOTEL NAUVOO		1610 MULHOLLAND ST	NAUVOO, IL 62354–0398	217–453–2219
DAVIS MOTEL	RT. 1	HWY. US 36	NEWMAN, IL 61942–	217–837–2641
DAYS INN NILES		6450 W. TOUHY	NILES, IL 60714–	708–647–7700
BEST WESTERN UNIVERSITY INN.		6 TRADER CIR	NORMAL, IL 61761–	309–454–4070
FAIRFIELD INN BY MARRIOTT NORMAL.		202 LANDMARK DR	NORMAL, IL 61761–	309–454–6600
SUPER 8 MOTEL NORMAL		21 TRADER CIR	NORMAL, IL	309–454–5858
NORTHBROOK HILTON		2855 N. MILWAUKEE AVE	NORTHBROOK, IL 60062–	708–480–7500
RED ROOF INN NORTHBROOK		340 WAUKEGAN RD	NORTHBROOK, IL 60062–	708–205–1755
SHERATON NORTH SHORE INN.		933 SKOKIE BLVD	NORTHBROOK, IL 60062–	708–498–6500
COMFORT INN O'FALLON		1100 S. EASTGATE DR	O'FALLON, IL 62269–	618–624–6060
CHICAGO MARRIOTT OAK BROOK.		1401 W. 22ND ST	OAK BROOK, IL 60521–	708–573–8555
HYATT REGENCY OAK BROOK		1090 SPRING RD	OAK BROOK, IL 60521–	708–573–1234
OAK BROOK HILLS HOTEL		3500 MIDWEST RD	OAK BROOK, IL 60522–	708–850–5555
STOUFFER OAK BROOK HOTEL.		2100 SPRING RD	OAK BROOK, IL 60521–	708–573–2800
HOLIDAY INN OF OAK LAWN		4140 W. 95TH ST	OAK LAWN, IL 60453–	708–425–7900
OAK LAWN HILTON INN		9333 S. CICERO AVE	OAK LAWN, IL 60453–2517	708–425–7800
COMFORT SUITES OAKBROOK TERRACE.		17W445 ROOSEVELT RD	OAKBROOK TERRACE, IL 60181–.	708–916–1000
COURTYARD BY MARRIOTT CHICAGO OAKBROOK TERR.		6 TRANS AM PLAZA DR	OAKBROOK TERRACE, IL 60181–.	708–691–1500
HILTON SUITES		10 DRURY LN	OAKBROOK TERRACE, IL 60181–.	708–941–0100
LA QUINTA INN 584		1 S666 MIDWEST ROAD	OAKBROOK TERRACE, IL 60181–4429.	708–495–4600
TRAVELERS INN MOTEL		1801 E. MAIN ST	OLNEY, IL 62450–	618–393–2186
ORLAND PARK INN		14455 S. LAGRANGE RD	ORLAND PARK, IL 60462–	708–403–3300
THE PINNELL MOTEL	PO BOX 313	RT. 6	PARIS, IL 61944–	217–465–6441
TIARA MANOR BED & BREAKFAST.		403 W. COURT ST	PARIS, IL 61944–	217–465–1865
COMFORT INN		3240 VANDEVER AVE	PEKIN, IL 61554–	309–353–4047
BEST WESTERN MARK TWAIN HOTEL.		225 NE ADAMS	PEORIA, IL 61602–	309–676–3600
DAYS INN PEORIA		2726 WEST LAKE	PEORIA, IL 61615–	309–688–7000
FAIRFIELD INN BY MARRIOTT PEORIA.		4203 NORTH WAR MEMORIAL DR.	PEORIA, IL 61614–	309–686–7600
HO JO INN		202 NE WASHINGTON ST	PEORIA, IL 61602–	309–676–8961
HOLIDAY INN BRANDYWINE		4400 BRANDYWINE DR	PEORIA, IL 61603–	309–686–8000
HOLIDAY INN CITY CENTRE		500 HAMILTON BLVD	PEORIA, IL 61602–	309–674–2500
HOLIDAY INN CITY CENTRE		500 HAMILTON BLVD	PEORIA, IL 61602–	309–674–2500
HOLIDAY INN CITY CENTRE CONTINENTAL REGENCY.		500 HAMILTON	PEORIA, IL 61602–	309–674–2500
HOTEL PERE MARQUETTE		501 MAIN ST	PEORIA, IL 61602–	309–637–6500
MANOR MOTOR LODGE		1500 N. KNOXVILLE	PEORIA, IL 61603–	309–688–4194
PEORIA COMFORT SUITES		4021 WAR MEMORIAL DR	PEORIA, IL 61614–	309–688–3800
RED ROOF INN PEORIA		4031 N. WAR MEMORIAL DR	PEORIA, IL 61614–	309–685–3911
SIGNATURE INN PEORIA		4112 N. BRANDYWINE	PEORIA, IL 61614–	309–685–2556
SUNSHINE INN		2726 W. LAKE	PEORIA, IL 61615–	309–688–7000
SUPER 8 MOTEL PEORIA		4025 W. WAR MEMORIAL DR	PEORIA, IL 61614–	309–688–8074
DAYS INN PERU	PO BOX 626	I–80 & 251	PERU, IL 61354–	815–224–1060

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
FOUNTAIN MOTEL		112 S. MAIN ST	PINCKNEY-VILLE, IL 62274–	618–357–2126
TAHOE MOTEL		I–70 AND RT. 40	POCAHONTAS, IL 62275–	618–669–2404
SUPER 8 MOTEL		601 S. DEERFIELD RD	PONTIAC, IL 61764–	815–844–6889
LAMAISON DE ROCHER COUNTRY INN.		#2 DUCLOS AND MAIN	PRAIRE DU ROCHER, IL 62277–.	618–284–3463
PRINCETON SUPER 8 MOTEL		2929 N. MAIN ST	PRINCETON, IL 61356–	815–872–8888
EXEL INN OF PROSPECT HEIGHTS.		540 MILWAUKEE AVE	PROSPECT HEIGHTS, IL 60070–.	708–459–0545
COMFORT INN QUINCY		4100 BROADWAY	QUINCY, IL 62301–	217–226–2700
HOLIDAY INN QUINCY		201 S. 3RD	QUINCY, IL 62301–	217–222–2666
QUINCY SUPER 8 MOTEL		224 N. 36TH ST	QUINCY, IL 62301–	217–228–8808
THE KAUFMANN HOUSE		1641 HAMPSHIRE	QUINCY, IL 62301–	217–223–2502
BEST WESTERN HERITAGE INN.		420 S. MURRAY RD	RANTOUL, IL 61866–	217–892–9292
SUPER 8 RANTOUL		207 S. MURRAY	RANTOUL, IL 61866–	217–893–8888
RED BUD MOTEL		1103 S. MAIN	RED BUD, IL 62278–	618–282–3962
DRAKE MOTEL		US RT. 12 & 31	RICHMOND, IL 60071–	815–678–3501
LIGHTHOUSE MOTEL INC		3160 N. RIVER RD	RIVER GROVE, IL 60171–	708–456–3600
MIL PAU MOTOR INN		204 N. JACKSON	ROBINSON, IL 62454–	618–544–2308
ROBINSON DAYS INN		1500 W. MAIN	ROBINSON, IL 62454–	618–544–8448
ROCHELLE SUPER 8 MOTEL		601 HWY. 38E	ROCHELLE, IL 61068–	815–562–2468
RAMADA INN ROCK FALLS		2105 S. 1ST AVE	ROCK FALLS, IL 61071–	815–626–5500
SUPER 8 MOTEL ROCK FALLS		2100 1ST AVE	ROCK FALLS, IL 61071–	815–626–8800
PLAZA ONE HOTEL		THIRD AVE. AND 17TH ST	ROCK ISLAND, IL 61201–	309–794–1212
THE POTTER HOUSE		1906 7TH AVE	ROCK ISLAND, IL 61201–	309–788–1906
VICTORIAN INN BED AND BREAKFAST INC.		702 20TH ST	ROCK ISLAND, IL 61201–	309–788–7068
AIRPORT BUDGET INN		4419 S. 11TH ST	ROCKFORD, IL 61109–	815–397–4000
BEST WESTERN CLOCK TOWER RESORT & CONF. CTR.		7801 E. STATE ST	ROCKFORD, IL 61108–	815–398–6000
COMFORT INN ROCKFORD		7392 ARGUS DR	ROCKFORD, IL 61107–	815–398–7061
COURTYARD BY MARRIOTT ROCKFORD.		7676 E. STATE RD	ROCKFORD, IL 61108–	815–397–6222
FAIRFIELD INN BY MARRIOTT ROCKFORD.		7712 POTAWATOMI TRAIL	ROCKFORD, IL 61107–	815–397–8000
HAMPTON INN ROCKFORD		615 CLARK DR	ROCKFORD, IL 61107–5816	815–229–0404
HOWARD JOHNSON LODGE		3909 ELEVENTH ST	ROCKFORD, IL 61109–	815–397–9000
RAMADA INN OF ROCKFORD		7550 E. STATE ST	ROCKFORD, IL 61125–	815–398–2200
RED ROOF INN #035 ROCKFORD.		7434 E. STATE ST	ROCKFORD, IL 61108–	815–398–9750
SUPER 8 MOTEL		7646 COLOSSEUM DR	ROCKFORD, IL 61107–	815–229–5522
HOLIDAY INN ROLLING MEADOWS.		3405 ALGONQUIN RD	ROLLING MEADOWS, IL 60008–.	708–259–5000
SUPER 8 MOTEL ROMEOVILLE		1301 MARQUETTE DR	ROMEOVILLE, IL 60441–	708–759–8880
BEST WESTERN AT O'HARE		10300 W. HIGGINS RD	ROSEMONT, IL 60018–	708–296–4471
CHICAGO MARRIOTT SUITES O'HARE.		6155 N. RIVER RD	ROSEMONT, IL 60018–	708–698–4400
HOLIDAY INN O'HARE INTERNATIONAL.		5440 N. RIVER RD	ROSEMONT, IL 60018–	708–671–6350
HOTEL SOFITEL CHICAGO		5550 N. RIVER RD	ROSEMONT, IL 60018–	708–678–4488
HYATT REGENCY O'HARE		9300 WEST BRYN MAWR AVE	ROSEMONT, IL 60018–	708–696–1234
QUALITY INN AT O'HARE		6810 N. MANNHEIM RD	ROSEMONT, IL 60018–	708–297–1234
RADISSON SUITE HOTEL O'HARE.		5500 N. RIVER RD	ROSEMONT, IL 60018–	708–678–4000
RAMADA HOTEL O'HARE		6600 N. MANNHEIM RD	ROSEMONT, IL 60018–	708–827–5131
WESTIN HOTEL O'HARE		6100 N. RIVER RD	ROSEMONT, IL 60018–	708–696–6000
CONTINENTAL MOTEL	RT. 50 E	1600 E. MAIN ST	SALEM, IL 62881–	618–548–3090
SUPER 8 MOTEL SALEM	RT. 50 W	I–57	SALEM, IL 62881–	618–548–5882
BEST WESTERN PARADISE INN.		1001 N. DUNLAP AVE	SAVOY, IL 61874–	217–356–1624
CHICAGO MARRIOTT SCHAUMBURG.		50 N. SCHAUMBURG	SCHAUMBURG, IL 60173–	708–240–0100
EMBASSY SUITES HOTEL SCHAUMBURG WOODFIELD.		1939 N. MEACHAM RD	SCHAUMBURG, IL 60173–	708–397–1313
HAMPTON INN SCHAUMBURG		1300 E. HIGGINS RD	SCHAUMBURG, IL 60173–	708–619–1000
HOLIDAY INN SCHAUMBURG WOODFIELD.		1550 N. ROSELLE RD	SCHAUMBURG, IL 60195–	708–310–0500
HOMEWOOD SUITES SCHAUMBURG.		815 E. AMERICAN LN	SCHAUMBURG, IL 60173–	708–605–0400
HYATT REGENCY WOODFIELD		1800 E. GOLF RD	SCHAUMBURG, IL 60173–	708–605–1234
LA QUINTA INN #562		1730 E. HIGGINS RD	SCHAUMBURG, IL 60173–	708–517–8484

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SCHAUM-BURG MARRIOTT HOTEL.		50 N. MARTINGALE RD	SCHAUMBURG, IL 60173–	708–240–0100
DAYS INN O'HARE SOUTH		3801 N. MANNHEIM RD	SCHILLER PARK, IL 60176–	708–678–0670
HAMPTON INN SCHILLER PARK.		3939 N. MANNHEIM RD	SCHILLER PARK, IL 60176–	708–671–1700
SPILLWAY MOTEL	PO BOX 1	RR. 1	SHELBYVILLE, IL 62565–	217–774–9591
THE SHELBY HISTORIC HOUSE AND INN.		816 W. MAIN ST	SHELBYVILLE, IL 62565–	217–774–3991
FLAGG STOPP INN		OLD TIPTON SCHOOL RD	SHERMAN, IL 62684–	217–527–1500
NORTH SHORE HILTON		9599 N. SKOKIE BLVD	SKOKIE, IL 60077–	708–679–7000
BUDGETEL INN		17225 S. HALSTED ST	SOUTH HOLLAND, IL 60473–	708–596–8700
HAMPTON INN CHICAGO SOUTH.		17355 TOLLVIEW DR	SOUTH HOLLAND, IL 60473–	708–321–3200
RED ROOF INN-SOUTH HOLLAND #067.		17301 S. HALSTED	SOUTH HOLLAND, IL 60473–	708–331–1621
POOLSIDE MOTEL AND APARTMENTS.		402 E. BROADWAY	SPARTA, IL 62286–	618–443–3187
BEST INNS SPRINGFIELD		500 N. FIRST	SPRINGFIELD, IL 62702–	217–522–1100
BEST WESTERN LINCOLN PLAZA.		101 E. ADAMS	SPRINGFIELD, IL 62701–	217–523–5661
BEST WESTERN SKY HARBOR INN.		1701 J. DAVID JONES PRKWY	SPRINGFIELD, IL 62702–	217–753–3446
BEST WESTERN SPRINGFIELD EAST.		3090 STEVENSON DR	SPRINGFIELD, IL 62703–	217–529–6611
COMFORT INN SPRINGFIELD		3442 FREEDOM DR	SPRINGFIELD, IL 62704–	217–787–2250
DAYS INN SPRINGFIELD		3000 STEVENSON DR	SPRINGFIELD, IL 62703–	217–529–0171
DRURY INN		3180 S. DIRKSEN PKWY	SPRINGFIELD, IL 62703–	217–529–3900
FAIRFIELD INN BY MARRIOTT SPRINGFIELD.		3446 FREEDOM DR	SPRINGFIELD, IL 62704–	217–793–9277
HAMPTON INN SPRINGFIELD		3185 S. DIRKSEN PRKWY	SPRINGFIELD, IL 62703–	217–529–1100
HOLIDAY INN EAST		3100 S. DIRKSEN PKWY	SPRINGFIELD, IL 62703–	217–529–7171
HOLIDAY INN SPRINGFIELD SOUTH.		625 E. ST. JOSEPH ST	SPRINGFIELD, IL 62703–	217–529–7131
MOTEL 6 SPRINGFIELD		3125 WIDE TRACK DR	SPRINGFIELD, IL 62703–	217–789–1063
RAMADA RENAISSANCE HOTEL.		701 E. ADAMS ST	SPRINGFIELD, IL 62701–	217–544–8800
RED ROOF INN SPRINGFIELD		3200 SINGER AVE	SPRINGFIELD, IL 62703–	217–753–4302
SILVER FOUNTAIN INN		2917 PEORIA RD	SPRINGFIELD, IL 62702–	217–525–9520
SPRINGFIELD HILTON HOTEL		700 E. ADAMS ST	SPRINGFIELD, IL 62701–	217–789–1530
SUPER 8 LODGE SOUTH		3675 S. 6TH ST	SPRINGFIELD, IL 62703–	217–529–8898
DEER HAVEN I & II		37W222 RT. 64 SUITE 155	ST. CHARLES, IL 60175–	708–513–0115
SUPER 8 MOTEL ST. CHARLES		1520 E. MAIN ST	ST. CHARLES, IL 60174–	708–377–8388
VALLEY VU MOTEL		400 E. NORTH AVE	STOCKTON, IL 61085–	815–947–2529
ELDORADO MOTEL		1735 N. MANNHEIM RD	STONE PARK, IL 60165–	708–344–8622
TOWN AND COUNTRY INN		2110 N. BLOOMINGTON ST	STREATOR, IL 61364–	815–672–3183
CAROL HOUSE INN		909 EDWARDSVILLE RD	TROY, IL 62294–	618–667–9969
THE ROADHOUSE INN		700 EDWARDSVILLE RD	TROY, IL 62294–1318	618–667–9911
TUSCOLA SUPER 8 MOTEL		RT. 36 E	TUSCOLA, IL	800–800–8000
BEST WESTERN CHEEKWOOD-INN.		EXIT 18 I–57	ULLIN, IL 62992–	618–845–3700
BEST WESTERN CUNNINGHAM PLACE.		1907 N. CUNNINGHAM	URBANA, IL 61801–	217–367–8331
SHURTS HOUSE BED & BREAKFAST.		710 W. OREGON ST	URBANA, IL 61801–	217–367–8793
URBANA TRAVELODGE		409 W. UNIVERSITY	URBANA, IL 61801–	217–328–3521
DAYS INN VANDALIA		RT. 40 W., EXIT 61 I–70	VANDALIA, IL 62471–	618–283–1400
JAY'S INN		720 GOCHENOUR ST	VANDALIA, IL 62471–	618–283–1200
VANDALIA TRAVELODGE		1500 N. 6TH ST	VANDALIA, IL 62471–	618–283–2363
SUPER 8 WASHINGTON		1884 WASHINGTON RD	WASHINGTON, IL 61571–	309–444–8881
WATSEKA MOTEL		814 E. WALNUT ST	WATSEKA, IL 60970–	815–432–2426
BEST INNS WAUKEGAN		31 N. GREEN BAY RD	WAUKEGAN, IL 60085–	708–366–9000
BUDGET LODGE FAMILY INN		619 S. GREENBAY	WAUKEGAN, IL 60085–	708–662–3200
COURTYARD BY MARRIOTT CHICAGO WAUKEGAN.		800 LAKEHURST RD	WAUKEGAN, IL 60085–	708–689–8000
RAMADA INN WAUKEGAN GURNEE.		200 N. GREENBAY RD	WAUKEGAN, IL 60085–	708–244–2400
GRAY PLAZA MOTEL		1010 W. MAIN ST	WEST FRANKFORT, IL 62896–	618–932–3116
HAMPTON INN WESTCHESTER		2222 ENTERPRISE DR	WESTCHESTER, IL 60154–	708–409–1000
REND LAKE RESORT	PO BOX 738	RT. 1	WHITTINGTON, IL 62897–	618–629–2211
FAIRFIELD INN BY MARRIOTT CHICAGO WILLOWBROOK.		820 W. 79TH ST	WILLOWBROOK, IL 60521–	708–789–6300
HOLIDAY INN WILLOWBROOK		7800 S. KINGERY RD	WILLOWBROOK, IL 60521–	708–325–6400

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RED ROOF INN WILLOWBROOK.	RT. 83	7535 KINGERY HWY	WILLOWBROOK, IL	708-323-8911
WILLOWBROOK BUDGETEL		855 79TH ST	WILLOWBROOK, IL 60521-	708-654-0077
COURTYARD BY MARRIOTT CHICAGO WOOD DALE.		900 WOOD DALE RD	WOOD DALE, IL 60191-	708-766-7775
WYNDHAM WOOD DALE		1200 N. NITTEL BLVD	WOOD DALE, IL 60191-	708-860-2900
SUPER 8 MOTEL OF WOODSTOCK.		1200 DAVIS RD	WOODSTOCK, IL 60098-	815-337-8808
Indiana				
HOLIDAY INN ANDERSON		5920 SCATTERFIELD RD	ANDERSON, IN 46013-	317-644-2581
LEES INN		2114 E. 59TH ST	ANDERSON, IN 46013-	317-649-2500
POTAWATOMI INN		6 LN. 100A LAKE JAME	ANGOLA, IN 46703-	219-833-1077
HILLCREST MOTEL		HWY. US 50	AURORA, IN 47001-	812-926-1991
ROSEMOUNT MOTEL		1532 M ST	BEDFORD, IN 47421-	812-275-5953
SLEEP HOLLOW INN MOTEL		550 S. WASHINGTON	BLOOMFIELD, IN 47424-	812-384-3583
CENTURY SUITES		300 SR 446	BLOOMINGTON, IN 47401-	812-336-7777
DIAMOND INN		1300 N. WALNUT	BLOOMINGTON, IN 47401-	812-332-9491
DOWNTOWN MOTEL		509 N. COLLEGE	BLOOMINGTON, IN 47401-	812-336-6861
ECONO LODGE		4501 E. 3RD	BLOOMINGTON, IN 47401-	812-332-2141
ECONOMY INN		4805 S. OLD HWY. 37	BLOOMINGTON, IN 47401-	812-824-8311
FOURWINDS RESORT HOTEL	PO BOX 160		BLOOMINGTON, IN 47402-	812-824-9904
HAMPTON INN		2100 N. WALNUT	BLOOMINGTON, IN 47404-	812-334-2100
MOTEL 6		126 S. FRANKLIN RD	BLOOMINGTON, IN 47401-	812-332-0337
MOTEL 6		1800 N. WALNUT	BLOOMINGTON, IN 47402-	812-332-0620
SUPER 8 MOTEL		1000 W. SR 46 BYPASS	BLOOMINGTON, IN 47404-	812-323-8000
TRAVEL LODGE		2615 E. 3 RD	BLOOMINGTON, IN 47401-	812-339-6191
UNIVERSITY INN		2601 N. WALNUT ST	BLOOMINGTON, IN 47401-	812-332-9453
BOSWELL MOTEL	PO BOX 137	RT. 1	BOSWELL, IN 47921-	317-869-5060
HOWARD JOHNSON	PO BOX 579	RR #14	BRAZIL, IN 47834-	812-446-2345
VILLA MOTEL	PO BOX 2	RR 12	BRAZIL, IN 47834-	812-448-1666
MOUND HAVEN MOTEL		9238 US HWY. #52	BROOKVILLE, IN 47012-	317-647-4149
CHEZ JEAN INN		9027 S. SR 67	CAMBY, IN 46113-	317-831-0670
COUNTRY LODGE		PO BOX 205	CARLISLE, IN 47837-	812-398-2500
COURTYARD MARRIOTT		10290 N. MERIDIAN	CARMEL, IN 46290-	317-571-1110
CRESTVIEW MOTEL		12551 WICKER AVE	CEDAR LAKE, IN 46303-	219-374-5434
BUDGET MOTEL		I-70 CENTERVILLE RD	CENTERVILLE, IN 47330-	317-855-5461
CITY VIEW MOTEL		5149 US 40	CENTERVILLE, IN 47330-	317-962-2943
RICHMOND MOTEL		HWY. 40 E	CENTERVILLE, IN 47330-	317-855-5616
ECONO LODGE HOTEL		713 PLAZA RD	CHESTERTON, IN 46304-	219-929-4416
INDIAN OAK INN WEST BLDG		558 INDIAN BOUNDRY	CHESTERTON, IN 46304-	219-926-2200
SUPER 8 MOTEL		418 COUNCIL DR	CHESTERTON, IN 46304-	219-929-5549
LINCOLN LODGE		11426 US 52 S	CLARKS HILL, IN 47930-	317-523-2112
BEST WESTERN GREEN TREE		1429 BROADWAY	CLARKSVILLE, IN 47129-	812-285-9281
DOLLAR INN		1020 COREY BLVD	CLARKSVILLE, IN 47933-	812-284-4800
GEN. LEW WALLACE INN		309 W. PIKE	CLARKSVILLE, IN 47933-	317-362-8400
GREEN TREE INN		I-65 & HWY. 131	CLARKSVILLE, IN 47129-	812-288-9281
RENATTO INN		JCT. ST. RD. 63 & 163	CLINTON, IN 47942-	317-832-3557
BRIANA INN	PO BOX 219	RT. 22	CLOVERDALE, IN 46120-	317-795-3000
DAYS INN GREEN CASTLE	PO BOX 79 BB	RR # 1	CLOVERDALE, IN 46120-	317-795-6400
DOLLAR INN	PO BOX 212 B	RR #2	CLOVERDALE, IN 46120-	317-795-6900
HOLIDAY INN CLOVERDALE	PO BOX 79 CC	RR # 1	CLOVERDALE, IN 46120-	317-795-3500
MIDWAY MOTEL	PO BOX 70R	RR 1	CLOVERDALE, IN 46120-	317-795-6342
WALKER MOTEL	PO BOX 1	RR #1	CLOVERDALE, IN 46170-	317-653-3317
LEES INN		235 FRONTAGE RD	COLUMBIA CITY, IN 46725-	219-244-5300
WHITINGTON HOUSE		2170 N. 650 W	COLUMBIA CITY, IN 46725-	219-327-3214
COLUMBUS IMPERIAL 400		101 THIRD ST	COLUMBUS, IN 47201-	812-372-2835
COLUMBUS MOTEL		2345 NATIONAL RD	COLUMBUS, IN 47201-	812-372-2835
DOLLAR INN		161 CARRIE LN	COLUMBUS, IN 47201-	812-372-6888
HOLIDAY INN COLUMBUS		2480 JONATHON MOORE	COLUMBUS, IN 47201-	812-373-1581
KNIGHTS INN		101 CARRIE LN	COLUMBUS, IN 47201-	812-378-3100
RAMADA INN		2485 JONATHAN MOORE	COLUMBUS, IN 47201-	812-376-3051
SUPER 8 MOTEL		110 BREX PARK DR	COLUMBUS, IN 47201-	812-372-9828
GRAY HAVEN MOTEL		1200 W. 3RD ST	CONNERSVILLE, IN 47331-	317-825-2151
HEIM HOTEL		SR 1 N	CONNERSVILLE, IN 47331-	317-825-5118
WOODRIDGE INN		3700 WESTERN AVE	CONNERSVILLE, IN 47331-	317-825-4800
CRAWFORDSVILLE MOTEL		2404 INDIANAPOLIS RD	CRAWFORDSVILLE, IN 47933-	317-362-5740
DAYS INN CRAWFORDSVILLE		1040 COREY BLVD	CRAWFORDSVILLE, IN 47933-	317-362-0300
HOLIDAY INN CRAWFORDSVILLE.		2500 LAFAYETTE RD	CRAWFORDSVILLE, IN 47933-	317-362-8700
RIVIERA MOTEL		1510 S. WASHINGTON	CRAWFORDSVILLE, IN 47933-	317-362-9925
SCOTTISH INN	PO BOX 431		DALE, IN 47523-	812-937-2816

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STONE'S MOTEL		HWY. 231 S	DALE, IN 47523–	812–937–4448
DECATUR INN		1033 N. 13TH ST	DECATUR, IN 46733–	219–728–2196
MATADOR INN		922 N. 13TH ST	DECATUR, IN 46733–	219–728–2101
MILLER'S MOTEL		630 N. 13TH ST	DECATUR, IN 46733–	219–724–7151
DAYS INN		2820 CASSOPOLIS ST	ELKHART, IN 46515–	219–262–3541
DIPLOMAT		52162 STREET RD	ELKHART, IN 46515–	219–264–4118
ECHO MOTEL		801 BRISTOL AVE	ELKHART, IN 46515–	219–264–6269
ECONO LODGE		SR 19 N	ELKHART, IN 46515–	219–262–0540
HIGHLANDER MOTEL		614 N. NAPPANER	ELKHART, IN 46515–	219–293–5356
KNIGHTS INN		52186 SR 19	ELKHART, IN 46515–	219–264–4262
QUALITY INN		300 S. MAIN ST	ELKHART, IN 46515–	219–264–0404
RAMADA INN		3011 BELVEDERE	ELKHART, IN 46514–	219–262–1581
RED ROOF INN		2902 CASSOPOLIS ST	ELKHART, IN 46515–	219–262–3691
SHAMROCK MOTEL		3214 S. MAIN	ELKHART, IN 46515–	219–293–8922
SHONEY'S INN		26434 N. PONTE	ELKHART, IN 46515–	219–266–1940
SIGNATURE INN		33010 BRITTANY CT	ELKHART, IN 46515–	219–264–7222
SLEEPY HOLLOW MOTEL		1800 CASSOPOLIS ST	ELKHART, IN 46515–	219–264–2181
WESTON HOTEL		2725 CASSOPOLIS ST	ELKHART, IN 46515–	219–264–7502
COMFORT INN		5006 E. MORGAN	EVANSVILLE, IN 47715–	812–477–2211
DRURY INN		3901 US 40 N	EVANSVILLE, IN 47711–	812–423–5818
HAMPTON INN EVANSVILLE		8000 EAGLE CREST BLVD	EVANSVILLE, IN 47715–	812–473–5000
HOLIDAY INN EAST		100 S. GREEN RIVER RD	EVANSVILLE, IN 47715–	812–473–0171
HOLIDAY INN EVANSVILLE		2508 US 41 N	EVANSVILLE, IN 47708–	812–425–1092
LEE'S INN		5538 E. INDIANA	EVANSVILLE, IN 47715–	812–477–6663
OAK MEADOW LODGE		11503 BROWNING	EVANSVILLE, IN 47711–	812–867–6431
RAMADA INN		4101 US 41 N	EVANSVILLE, IN 47711–	812–424–6400
SUN TRAVEL MOTEL		HWY. 41 N	EVANSVILLE, IN 47711–	812–867–5306
SUPER 8 MOTEL		4600 MORGAN AVE	EVANSVILLE, IN 47715–	812–476–4008
BEST INNS OF AMERICA		3017 W. COLISEUM BLVD	FORT WAYNE, IN 46808–	219–483–0091
BUDGETEL INN		1005 W. WASH CENTER RD	FORT WAYNE, IN 46825–	219–489–2220
CARLTON LODGE		1619 W. WASH CENTER RD	FORT WAYNE, IN 46818–	219–891–500
COMFORT INN		2908 GOSHEN RD	FORT WAYNE, IN 46808–	219–484–6262
DAYS INN		5250 DISTRIBUTION DR	FORT WAYNE, IN 46825–	219–484–9681
DON HALLS GUESTHOUSE		1313 W. WASH CENTER RD	FORT WAYNE, IN 46825–	219–489–2524
ECONOMY INN		1401 W. WASH CENTER RD	FORT WAYNE, IN 46825–	219–489–3588
FAIR OAK MOTEL		6511 BLUFFTON RD	FORT WAYNE, IN 46825–	219–747–6915
FAIRFIELD INN		5710 CHALLENGER PKWY	FORT WAYNE, IN 46818–	219–489–0050
FORT WAYNE HILTON		1020 S. CALHOUN	FORT WAYNE, IN 46802–	219–420–1100
HILTON INN FT. WAYNE AIRPORT.		3939 FERGUSON RD	FORT WAYNE, IN 46809–	219–747–9171
HOLIDAY INN NORTHWEST		3330 W. COLISEUM BLVD	FORT WAYNE, IN 46808–	219–484–7711
LEES INN		5707 CHALLENGER PKWY	FORT WAYNE, IN 46818–	219–489–8888
LUXBURY HOTEL		5501 COVENTRY LN	FORT WAYNE, IN 46804–	219–436–0242
PLAZA INN		3527 W. COLISEUM BLVD	FORT WAYNE, IN 46808–	219–482–4511
RAMADA INN		1212 MAGNAVOX WAY	FORT WAYNE, IN 46804–	219–432–0511
RED CARPET INN		4606 LINCOLN HWY. E	FORT WAYNE, IN 46803–	219–422–9511
RED ROOF INN		2920 GOSHEN RD	FORT WAYNE, IN 46808–	219–484–8641
RESIDENCE INN		4919 LIMA RD	FORT WAYNE, IN 46808–	219–484–4700
SUPER 8 MOTEL		522 COLISEUM BLVD. E	FORT WAYNE, IN 46805–	219–484–8326
PRAIRIE MOTEL	PO BOX 384		FRANCESVILLE, IN 46946–	219–567–9107
LIGHT HOUSE INN MOTEL		2050 E. WABASH	FRANKFORT, IN 46041–	317–654–5592
SMITH MOTEL		1408 E. WABASH	FRANKFORT, IN 46041–	317–654–8771
HILLTOP MOTEL	PO BOX 214	RR #5	FRANKLIN, IN 46131–	812–526–6555
SLEEP N TIME MOTEL		2540 US 31 SD	FRANKLIN, IN 46131–	317–738–2263
TEARMAN MOTEL		501 S. MORTON	FRANKLIN, IN 46131–	317–736–5021
WALDEN INN		2 E. SEMINARY ST	GREEN CASTLE, IN 46135–	317–653–2761
COLLAGE CASTLE MOTEL		315 BLOOMINGTON ST	GREENCASTLE, IN 46135–	317–653–4167
GREEN CASTLE MOTEL		1233 S. BLOOMINGTON'S	GREENCASTLE, IN 46135–	317–653–8424
HOWARD HUGHES MOTOR LODGE.		1310 W. MAIN ST	GREENFIELD, IN 46140–	317–462–4493
LEE'S INN		2270 NORTH ST	GREENFIELD, IN 47140–	317–462–7112
LIBERTY MOTEL		1039 E. MAIN ST	GREENFIELD, IN 46140–	317–462–5555
SUPER 8 MOTEL		2100 N. STATE	GREENFIELD, IN 46140–	317–462–8889
LABOLTS MOTEL		405 E. NORTH ST	GREENSBURG, IN 47240–	812–663–4786
LEE'S INN		2211 N. SR 3	GREENSBURG, IN 47240–	812–663–9998
PINES INN	PO BOX 61 E	RR #1	GREENSBURG, IN 47240–	812–663–6055
COMFORT INN OF GREENWOOD.		110 SHEEK RD	GREENWOOD, IN 46143–	317–887–1515
GREENWOOD FANTA SUITE		1117 E. MAIN ST	GREENWOOD, IN 46142–	317–882–2211
INDIANA MOTOR LODGE		110 SHEEK RD	GREENWOOD, IN 46143–	317–887–1515
WILSONIAN MOTEL		785 US 31 S	GREENWOOD, IN 46142–	317–881–2577
HOLLOWAY MOTEL		2340 E. US HWY	HAMLET, IN 46532–	219–867–9021

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HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
WILDWOOD MOTEL		6660 E. OLD 30	HAMLET, IN 46532–	219–867–6020
AMERICAN INN		4000 CALUMET AVE	HAMMOND, IN 46320–	219–931–0900
SUPER 8 MOTEL		4111 CALUMET AVE	HAMMOND, IN 46320–	219–932–8888
SUPER 8 MOTEL		3844 179TH ST	HAMMOND, IN 46323–	219–932–8888
THE OLYMPIA PLAZA MOTEL		4141 CALUMET AVE	HAMMOND, IN 46327–	219–933–0500
BEST WESTERN MOTEL		US HWY. 231 & 22ND ST	HUNTINGBURG, IN 47542–	812–683–2334
HOOSIER MOTEL		OLD US 24 & SR 37	HUNTINGTON, IN 46750–	219–356–5326
6 & 7 MOTEL		11551 PENDLETON PIKE	INDIANAPOLIS, IN 46236–	317–823–4415
ADAMS MARK HOTEL		2544 EXECUTIVE DR	INDIANAPOLIS, IN 46241–	317–248–2481
ALWAYS INN		7410 E. 21ST ST	INDIANAPOLIS, IN 46219–	317–356–1036
AMERI SUITES		9104 KEYSTONE CROSSING	INDIANAPOLIS, IN 46240–	317–843–0064
AMERICAN INN		7202 E. 82ND ST	INDIANAPOLIS, IN 46256–	317–849–6910
AMERICAN INN EAST		7262 PENDLETON PIKE	INDIANAPOLIS, IN 46226–	317–542–1261
ASHLEY MOTEL		11110 W. WASHINGTON ST	INDIANAPOLIS, IN 46231–	812–839–6584
BEST WESTERN		2930 WATERFRONT PKWY	INDIANAPOLIS, IN 46224–	317–299–8400
BUDGETEL		2650 EXECUTIVE DR	INDIANAPOLIS, IN 46241–	317–244–8100
COMFORT INN		5040 S. EAST ST	INDIANAPOLIS, IN 46227–	317–783–6711
COMFORT INN		3880 W. 92ND ST	INDIANAPOLIS, IN 46268–	317–872–3100
COUNTRY HEARTH INN		3851 SHORE DR	INDIANAPOLIS, IN 46254–	317–297–1848
COURTYARD BY MARRIOTT		5525 FORTUNE CIR. E	INDIANAPOLIS, IN 46241–	317–248–0300
COURTYARD BY MARRIOTT		501 W. WASHINGTON ST	INDIANAPOLIS, IN 46204–	317–635–4443
COURTYARD MARRIOTT		8670 ALLISONVILLE RD	INDIANAPOLIS, IN 46250–	317–576–9559
DAYS INN		401 E. WASHINGTON	INDIANAPOLIS, IN 46204–	317–637–6464
DAYS INN PLAINFIELD		6111 CAMBRIDGE WAY	INDIANAPOLIS, IN 46231–	317–839–5000
DAYS INN SOUTH		450 BIXLER RD	INDIANAPOLIS, IN 46227–	317–788–0811
DILLON INN		9090 WESLAYAN RD	INDIANAPOLIS, IN 46268–	317–875–7676
DOLLAR INN		4585 S. HARDING ST	INDIANAPOLIS, IN 46217–	317–788–9561
DOLLAR INN		6331 CRAWSFORSVILLE	INDIANAPOLIS, IN 46224–	317–248–8500
DOLLAR INN		3401 S. KEYSTONE AVE	INDIANAPOLIS, IN 46237–	317–788–0500
DOLLAR INN		3510 S. POST RD	INDIANAPOLIS, IN 46239–	317–862–5700
DOLLAR INN		9350 N. MICHIGAN RD	INDIANAPOLIS, IN 46268–	317–872–0500
DOLLAR INN MOTEL		2150 N. POST RD	INDIANAPOLIS, IN 46219–	317–899–1499
DOLLAR INNS		4630 LAFAYETTE RD	INDIANAPOLIS, IN 46254–	317–293–9060
ECONO LODGE		4326 SELLERS ST	INDIANAPOLIS, IN 46226–	317–542–1031
EL KAY MOTEL		11030 W. WASHINGTON ST	INDIANAPOLIS, IN 46231–	317–839–3910
EMBASSY SUITES HOTEL		3912 VINCENNES RD	INDIANAPOLIS, IN 46268–	317–872–7700
FAIRFIELD INN		8325 BASH RD	INDIANAPOLIS, IN 46256–	317–577–0455
FAIRFIELD INN		9251 WESLEYAN RD	INDIANAPOLIS, IN 46268–	317–879–9100
FAIRGROUNDS INN		1501 E. 38TH ST	INDIANAPOLIS, IN 46205–	317–926–4401
FORT MOTEL		8805 PENDLETON PIKE	INDIANAPOLIS, IN 46226–	317–898–6222
HAMPTON INN		2311 N. SHADELAND AVE	INDIANAPOLIS, IN 46219–	317–359–9900
HAMPTON INN		6817 E. 82ND ST	INDIANAPOLIS, IN 46250–	317–576–0200
HAMPTON INN		7220 WOODLAND DR	INDIANAPOLIS, IN 46278–	317–290–1212
HAMPTON INN AIRPORT		5601 FORTUNE CIR. W	INDIANAPOLIS, IN 46241–	317–244–1221
HAMPTON INN SOUTH		7045 MCFARLAND BLVD	INDIANAPOLIS, IN 46237–	317–889–0722
HILTON INDIANAPOLIS		31 W. OHIO ST	INDIANAPOLIS, IN 46204–	317–635–2000
HOLIDAY INN AIRPORT		2501 S. HIGH SCHOOL RD	INDIANAPOLIS, IN 46241–	317–244–6861
HOLIDAY INN EXPRESS		3514 S. KEYSTONE	INDIANAPOLIS, IN 46227–	317–788–3100
HOLIDAY INN NORTH		3850 DEPAUW BLVD	INDIANAPOLIS, IN 46268–	317–872–9790
HOLIDAY INN UNION STATION		123 W. LOUISIANA ST	INDIANAPOLIS, IN 46225–	317–631–2221
HOMEWOOD SUITES AT THE C.		2501 E. 86TH ST	INDIANAPOLIS, IN 46240–	317–253–1919
HYATT REGENCY		1 S. CAPITOL AVE	INDIANAPOLIS, IN 46204–	317–632–1234
HYLTON MOTEL		11006 W. WASHINGTON ST	INDIANAPOLIS, IN 46231–	
INDPLS. MOTOR SPEEDWAY MOTEL.		4400 W. 16TH ST	INDIANAPOLIS, IN 46219–	317–241–2500
KNIGHTS INN		4909 KNIGHTS WAY	INDIANAPOLIS, IN 46217–	317–788–0125
KNIGHTS INN		7101 E. 21ST	INDIANAPOLIS, IN 46219–	317–353–8484
LA QUINTA INN		5316 W. SOUTHERN AVE	INDIANAPOLIS, IN 46241–	317–247–4281
LA QUINTA MOTOR INN		7304 E. 21ST ST	INDIANAPOLIS, IN 46219–	317–359–1021
LEE'S INN		5011 LAFAYETTE RD	INDIANAPOLIS, IN 46254–	317–297–8880
MARRIOTT INDIANAPOLIS		7202 E. 21ST ST	INDIANAPOLIS, IN 46219–	317–352–1231
MAYFAIR MOTEL		2040 LAFAYETTE RD	INDIANAPOLIS, IN 46222–	317–634–5940
MOTEL 6		6330 DEBONAIR LN	INDIANAPOLIS, IN 46224–	317–293–3220
MOTEL 6		5241 W. BRADBURY ST	INDIANAPOLIS, IN 46241–	317–248–1231
OMNI HOTEL		8181 N SHADELAND	INDIANAPOLIS, IN 46250–	317–849–6668
OMNI SEVERIN HOTEL		40 W. JACKSON PL	INDIANAPOLIS, IN 46225–	317–634–6664
RADISSON		8787 KEYSTONE AT THE	INDIANAPOLIS, IN 46240–	317–846–2700
RED ROOF INN		6415 DEBONAIR LN	INDIANAPOLIS, IN 46224–	317–293–6881
RED ROOF INN		9520 VALPARAISO CT	INDIANAPOLIS, IN 46268–	317–872–3030
RED ROOF INN		5221 VICTORY DR	INDIANAPOLIS, IN 46203–	317–788–9551
RESIDENCE INN		3553 FOUNDERS RD	INDIANAPOLIS, IN 46268–	317–872–0462

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SIGNATURE INN		7610 OLD TRAILS RD	INDIANAPOLIS, IN 46219–	317–353–6966
SIGNATURE INN		8380 KELLY LN	INDIANAPOLIS, IN 46250–	317–849–8555
SIGNATURE INN		3850 EAGLE VIEW DR	INDIANAPOLIS, IN 46254–	317–299–6165
SKYLINE MOTEL		6617 E. WASHINGTON ST	INDIANAPOLIS, IN 46219–	317–359–8201
ST. VINCENT MARTEN HOUSE		1801 W. 86TH ST	INDIANAPOLIS, IN 46260–	317–872–4111
SUPER 8 MOTEL		4530 S. EMERSON AVE	INDIANAPOLIS, IN 46203–	317–788–0955
SUPER 8 MOTEL		4502 S. HARDING ST	INDIANAPOLIS, IN 46217–	317–788–4774
THE TOWER INN		1633 N. CAPITOL	INDIANAPOLIS, IN 46202–	317–925–9831
U S A INN		6990 PENDLETON PIKE	INDIANAPOLIS, IN 46226–	317–545–7200
UNIVERSITY PLACE HOTEL		850 W. MICHIGAN ST	INDIANAPOLIS, IN 46206–	317–269–9000
WESTIN HOTEL		50 S. CAPITOL AVE	INDIANAPOLIS, IN 46204–	317–262–8100
WHITE HOUSE MOTEL		10606 W. WASHINGTON ST	INDIANAPOLIS, IN 46231–	317–839–9358
CAMELOT INN MOTEL		220 N. MILL ST	JASPER, IN 47547–	812–482–3529
DAYS INN		JCT. HWY. 162 & 164	JASPER, IN 47546–	812–482–5000
HOLIDAY INN		951 WERNSING RD	JASPER, IN 47546–	812–482–5555
BEL AIR MOTEL		US 31 E	JEFFERSONVILLE, IN 47130–	812–283–3525
DAYS INN		621 PROFESSIONAL WAY	KENDALLVILLE, IN 46755–	219–347–5263
KENT LODGE MOTEL		HWY. 41 & 52 N	KENTLAND, IN 47951–	219–474–5191
SUN DOWN MOTEL	PO BOX 50	RR # 1	KNOX, IN 46534–	219–772–9933
WHITE HOUSE MOTEL		301 E. DANKER HWY. 3	KNOX, IN 46534–	219–772–6244
FAIRFIELD INN		1717 E. LINCOLN RD	KOKOMO, IN 46902–	317–453–8822
KOKO MOTEL		4112 N. 00 EW	KOKOMO, IN 46981–	317–452–6715
SHELTON INN		829 W. MAIN	KOKOMO, IN 46970–	219–472–1925
SIGNATURE INN		4021 S. LA FOUNTAIN	KOKOMO, IN 46902–	317–455–1000
WORLD INN		HWY. 31 BYPASS	KOKOMO, IN 46902–	317–453–7100
DAYS INN		400 SACAMORE PKWY	LAFAYETTE, IN 47905–	317–447–4131
DEVON PLAZA		2371 N. 26TH	LAFAYETTE, IN 47904–	317–742–7394
DOLLAR INN		4301 SR 26 E	LAFAYETTE, IN 47905–	317–447–5551
HOMEWOOD SUITES		3939 STREET RD. 26 E	LAFAYETTE, IN 47905–	317–448–9700
KNIGHTS INN		4110 SR 26TH E	LAFAYETTE, IN 47905–	317–447–5611
SIGNATURE INN		4320 SR 26 E	LAFAYETTE, IN 47905–	317–447–4142
CASSIDY MOTEL		3845 N. STATE RD. 39	LAPORTE, IN 46350–	219–362–6536
MAYFLOWER MOTEL		2652 W. SR 2	LAPORTE, IN 46350–	219–362–2092
MOONGLO MOTEL		1408 E. LINCOLNWAY	LAPORTE, IN 46350–	219–362–3217
SUPER 8 MOTEL		438 PINE LAKE AVE	LAPORTE, IN 46350–	219–325–3808
HOLIDAY INN		I–65 & SR 39	LEBANON, IN 46052–	317–482–0500
LEES INN		1245 W. SR 32	LEBANON, IN 46052–	317–482–9611
LIGONAIR MOTEL		LIGONIER MOTEL	LIGONIER, IN 46767–	219–894–3323
ALLENS MOTEL		S. RT. 54 W	LINTON, IN 47441–	812–847–8613
PARK INN		SR 54	LINTON, IN 47441–	812–847–8631
HOLIDAY INN		3550 HWY. 24 E	LOGANSPORT, IN 46947–	219–753–6351
MANOR MOTEL		3315 HWY. 24 E	LOGANSPORT, IN 46947–	219–722–4885
PLEASANT INN	PO BOX 813	HWY. 24 E	LOGANSPORT, IN 46947–	219–722–1273
BEST WESTERN OF MADISON		700 CLIFTY DR	MADISON, IN 47250–	812–273–5151
COURTESY ECONOMY INN		1370 N. BALDWIN AVE	MARION, IN 46952–	317–664–0571
DAYS INN		1615 N. BALDWIN AVE	MARION, IN 46952–	317–664–9021
SHERATON INN MARION		501 E. 4TH ST	MARION, IN 46952–	317–668–8801
TURKEY RUN INN	PO BOX 444	RR #1	MARSHALL, IN 47859–	317–597–2211
HILLVIEW MOTEL		2600 SR. 37 S	MARTINSVILLE, IN 46151–	317–342–6272
LEES INN		50 BILL'S BLVD	MARTINSVILLE, IN 46151–	812–342–1842
ROYAL MOTEL		60 STATE RD. 67 N	MARTINSVILLE, IN 46151–	317–342–6671
DEBONAIR MOTEL		5881 SR 67 & US 36	MCCORDSVILLE, IN 46055–	317–335–2347
CARLTON LODGE MERRILLVILLE.		7850 RHODE ISLAND AVE	MERRILLVILLE, IN 46410–	219–756–1600
ECONOMY INN OF AMERICA		8275 LOUISIANA ST	MERRILLVILLE, IN 46410–	219–736–2355
FAIRFIELD INN		8275 GEORGIA ST	MERRILLVILLE, IN 46410–	219–736–0500
GATEWAY MOTEL		8 W. 81ST ST	MERRILLVILLE, IN 46410–	219–769–2413
KNIGHTS INN		8250 LOUISIANA DR	MERRILLVILLE, IN 46410–	219–736–5100
LA QUINTA MOTOR INN		8210 LOUISIANA ST	MERRILLVILLE, IN 46410–	219–738–2870
LEE'S INN		6201 OPPORTUNITY LN	MERRILLVILLE, IN 46410–	219–924–8555
RED ROOF INN #015 BLDG B		8290 GEORGIA ST	MERRILLVILLE, IN 46410–	219–738–2430
RED ROOF INN'S BLDG A		8290 GEORGIA ST	MERRILLVILLE, IN 46410–	219–738–2430
SUPER EIGHT MOTEL		8300 LOUISIANA	MERRILLVILLE, IN 46410–	219–763–8383
ABC MOTEL		3948 S. FRANKLIN	MICHIGAN CITY, IN 46360–	219–879–0335
AL AND SALLY'S MOTEL WEST		3221 W. DUNES HWY	MICHIGAN CITY, IN 46360–	219–872–9131
BLACK HAWK MOTEL		3651 W. DUNES HWY	MICHIGAN CITY, IN 46360–	219–872–8656
CITY MANOR MOTEL		5225 S. FRANKLIN	MICHIGAN CITY, IN 46360–	219–872–9149
CREEKWOOD INN		RT. 30–35 AT I–94	MICHIGAN CITY, IN 46360–	219–872–8357
GOLDEN SANDS MOTEL		4411 US 12 E	MICHIGAN CITY, IN 46360–	219–874–6253
HOLIDAY INN		582 S. FRANKLIN ST	MICHIGAN CITY, IN 46360–	219–879–0311
KNIGHTS INN MOTEL BLDG. 10		201 W. KIEFFER RD	MICHIGAN CITY, IN 46360–	219–874–9500
KNIGHTS INN MOTEL BLDG. 20		201 W. KIEFFERS	MICHIGAN CITY, IN 46360–	219–874–9500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
KNIGHTS INN MOTEL BLDG. 30	.....	201 W. KIEFFERS	MICHIGAN CITY, IN 46360–	219–874–9500
KNIGHTS INN MOTEL BLDG. 40	.....	201 W. KIEFFER RD	MICHIGAN CITY, IN 46360–	219–874–9500
KNIGHTS INN MOTEL BLDG. 50	.....	201 W. KIEFFER RD	MICHIGAN CITY, IN 46360–	219–874–9500
NORBERT MOTEL	.....	45 N. SR 421	MICHIGAN CITY, IN 46360–	219–872–0993
SANDS INN	.....	1630 MAPLE ST	MICHIGAN CITY, IN 46360–	219–872–0717
SUPER EIGHT MOTEL	.....	5724 S. FRANKLIN ST	MICHIGAN CITY, IN 46360–	219–879–0411
TRAVEL INN MOTEL	.....	3944 S. FRANKLIN ST	MICHIGAN CITY, IN 46360–	219–872–9441
100 CENTER MOTEL	.....	100 CTR	MISHAWAKA, IN 46544–	219–256–1501
MISHAWAKA INN	.....	2754 LINCOLNWAY E	MISHAWAKA, IN 46544–	219–256–2300
INDIANA BEACH BUNK HOUSE	.....	306 INDIANA BEACH	MONTICELLO, IN 47960–	219–583–4141
INDIANA BEACH HOUSE INN ...	.....	306 INDIANA BEACH RD	MONTICELLO, IN 47960–	219–583–4141
INDIANA BEACH PENTHOUSE .	.....	306 INDIANA BEACH RD	MONTICELLO, IN 47960–	219–583–4141
PINE VIEW MOTEL	.....	905 W. NORWAY RD	MONTICELLO, IN 47960–	219–583–7733
LEES INN	.....	3302 EVERBROOK IN	MUNCIE, IN 47304–	317–282–7557
ABE MARTIN LODGE	PO BOX 547	.....	NASHVILLE, IN 47448–	812–988–4418
GREEN VALLEY LODGE	PO BOX 166 K	RR #5	NASHVILLE, IN 47448–	812–988–0231
HOTEL NASHVILLE RESORT ...	.....	245 JEFFERSON ST	NASHVILLE, IN 47448–	812–988–0740
MICHAEL'S MOTEL	PO BOX 178	RR #3	NASHVILLE, IN 47448–	812–988–2381
ORCHARD HILL MOTEL	PO BOX 115	RR #3 SR/35/NO	NASHVILLE, IN 47448–	812–988–4455
RED BUD INN	PO BOX 166	RR #5 M	NASHVILLE, IN 47448–	812–988–1661
SALT CREEK INN	PO BOX 397	.....	NASHVILLE, IN 47448–	812–988–1149
BEST WESTERN RAINTREE INN.	.....	2836 S. STREET RD. 3	NEW CASTLE, IN 47302–	317–521–0100
OAKVIEW MOTEL	.....	605 W. TALMER	NORTH JUDSEN, IN 46366–	219–896–3301
RITZ MOTEL	.....	RT. 3	PAOLI, IN 47454–	812–723–2530
SKYVIEW MOTEL	.....	502 BUS 31 S	PERU, IN 46970–	317–473–3455
DAYS INN PLAINFIELD	.....	6111 CAMBRIDGE WAY	PLAINFIELD, IN 46231–	317–839–5000
HOLIDAY INN	.....	2550 N. MICHIGAN	PLYMOUTH, IN 46563–	219–936–4013
MOTEL 6	.....	2535 N. MICHIGAN	PLYMOUTH, IN 46563–	219–935–5911
SUPER 8 MOTEL	.....	2160 N. OAK RD	PLYMOUTH, IN 46563–	219–936–8856
DAYS INN	.....	6161 MELTON RD	PORTAGE, IN 46368–	219–762–2136
DONS MOTEL	.....	5500 MILTON RD	PORTAGE, IN 46368–	219–762–3317
HOLIDAY INN	.....	6200 MELTON RD	PORTAGE, IN 46368–	219–762–5546
LEE INNS	.....	2300 WILLOWCREEK	PORTAGE, IN 46368–	219–763–7177
MOTEL 6	.....	6101 MELTON RD	PORTAGE, IN 46368–	219–763–3121
SPRING HOUSE INN HOTEL	.....	303 N. MINERAL SPRING	PORTER, IN 46304–	219–929–4600
DAY'S INN	.....	RT. #2 240 B E	REMINGTON, IN 47977–	812–261–3273
INTERSTATE MOTEL	PO BOX 78	RT. 3	RENSSELAER, IN 47978–	219–866–4164
PARKVIEW MOTEL	.....	US 24 E. RR #1	REYNOLDS, IN 47980–	219–984–5380
BUDGET INN	.....	TUUT NATIONAL RD. E	RICHMOND, IN 47374–	.....
COMFORT INN	.....	912 MENDELSON DR	RICHMOND, IN 47374–	317–935–4766
DAYS INN	.....	540 W. EATON PIKE	RICHMOND, IN 47374–	317–966–7591
HOWARD JOHNSON	.....	2525 N. CHESTER B	RICHMOND, IN 47374–	317–962–7576
KNIGHTS INN	.....	419 COMMERCE DR	RICHMOND, IN 47374–	317–966–6682
LEES INN	.....	6030 NATIONAL ROAD E	RICHMOND, IN 47374–	317–966–6559
COMFORT INN	.....	HWY. 31225	ROCHESTER, IN 46975–	219–223–7300
ROSE DALE MOTEL	PO BOX 280	R 1	ROCHESTER, IN 46975–	219–223–3185
LOCUST HILL MOTEL	PO BOX 32	RT. 3	ROCKPORT, IN 47635–	812–649–9918
MOTEL FORREST	PO BOX 25	US 41 N. R3	ROCKVILLE, IN 47872–	317–569–5250
PARK BRIDGE MOTEL	.....	304 E. OHIO ST	ROCKVILLE, IN 47872–	317–569–3525
PARKVIEW MOTEL	PO BOX 218	.....	ROCKVILLE, IN 47872–	317–569–5048
LEE'S MOTEL	.....	1234 LINCOLN HWY	SCHERERVILLE, IN 46375–	219–865–8413
PLAZA MOTEL	.....	1850 US 41	SCHERERVILLE, IN 46375–	219–865–1040
SCHEREVILLE INN	.....	1108 LINCOLN HWY	SCHERERVILLE, IN 46375–	219–865–2451
MARIANN TRAVEL INN	.....	SR 56 & I–65	SCOTTSBURG, IN 47170–	812–752–3396
LEES INN	.....	2075 E. TIPTON	SEYMOUR, IN 47274–	812–523–1850
HOLIDAY INN & RESTAURANT	PO BOX #180	SR #9	SHELBYVILLE, IN 46176–	317–392–3221
LEE'S INN	.....	2880 E. SR 44	SHELBYVILLE, IN 46176–	317–392–2299
RASHER MOTEL	.....	1835 E. MICHIGAN RD	SHELBYVILLE, IN 46176–	317–392–2585
SUPER 8 MOTEL	.....	20 RAMPART RD	SHELBYVILLE, IN 46176–	317–392–6239
DAY INN	.....	52757 US 31 N	SOUTH BEND, IN 46637–	219–277–0510
DRAKE MOTEL	.....	60971 US 31 S	SOUTH BEND, IN 46637–	219–291–3100
ECONO LODGE	.....	3233 LINCOLNWAY W	SOUTH BEND, IN 46601–	219–232–9019
HICKORY INN	.....	50520 US 31 N	SOUTH BEND, IN 46637–	219–272–7555
HOLIDAY INN	.....	515 N. DIXIEWAY	SOUTH BEND, IN 46637–	219–272–6600
HOLIDAY INN	.....	213 W. WASHINGTON AVE	SOUTH BEND, IN 46601–	219–232–3941
HOWARD JOHNSON	.....	52939 US 33	SOUTH BEND, IN 46637–	219–272–1500
KNIGHTS INNS	.....	236 DIXIE HWY. N	SOUTH BEND, IN 46637–	219–277–2960
MOTEL 6	.....	52624 US 31 N	SOUTH BEND, IN 46637–	219–272–7072
RAMADA INN	.....	52890 US 33 N	SOUTH BEND, IN 46637–	219–272–5220
RANDALL'S INN	.....	130 DIXIE WAY S	SOUTH BEND, IN 46637–	219–272–7900
RESIDENCE INN	.....	716 N. NILES AVE	SOUTH BEND, IN 46601–	219–289–5555

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SAINT MARY'S INN		53993 US 31 33 N	SOUTH BEND, IN 46637–	219–232–4000
SIGNATURE INN		215 S. DIXIE HWY	SOUTH BEND, IN 46637–	219–277–3211
THE WORKS MOTEL		475 N. NILE AVE	SOUTH BEND, IN 46601–	219–234–1954
BUDGETEER INN		52825 US 33 N	SOUTHBEND, IN 46637–	219–272–9000
MARRIOT		123 N. ST. JOSEPH	SOUTHBEND, IN 46601–	219–234–2000
PATRIOT INN		10 S. CRANE ST	SPENCER, IN 47460–	812–829–0400
DAYS INN		US 41 S. & AND SR 154 W	SULLIVAN, IN 47882–	812–268–6391
WAWASEE MOTEL		707 S. HUNTINGTON	SYRACUSE, IN 46567–	219–457–4407
COMFORT INN OF COLUMBUS	PO BOX 506		TAYLORSVILLE, IN 47280–	812–526–9747
DOLLAR INNS		101 MARGARET AVE	TERRE HAUTE, IN 47802–	812–232–8006
HOLIDAY INN TERRE HAUTE		3300 DIXIE BEE HWY	TERRE HAUTE, IN 47802–	812–232–6081
KNIGHTS INN		401 MARGARET AVE	TERRE HAUTE, IN 47802–	812–234–9931
MAPLE LEAF MOTEL		2150 N. 3RD ST	TERRE HAUTE, IN 47804–	812–234–1006
MIDTOWN MOTEL		400 S. 3RD ST	TERRE HAUTE, IN 47802–	812–232–0383
MOTEL 6		1 HONEY CREEK W	TERRE HAUTE, IN 47802–	812–238–1586
SIGNATURE INN		3033 DIXIE BEE RD	TERRE HAUTE, IN 47802–	812–238–1461
SUPER 8 LODGE		3089 S. 1ST ST	TERRE HAUTE, IN 47802–	812–232–4890
TERRE HAUTE TRAVELODGE		530 S. 3RD ST	TERRE HAUTE, IN 47807–	812–232–7075
EAST STREET INN		127 S. EAST ST	TIPTON, IN 46072–	317–675–7505
CARLTON LODGE		2301 E. MORTHLAND	VALPARAISO, IN 46383–	219–465–1700
COMFORT INN		3605 E. CENTER	WARSAW, IN 46580–	219–267–7337
BLACK OAK MOTEL	PO BOX 414	RT. 3	WASHINGTON, IN 47501–	812–486–3271
CITY MOTEL		1115 E. NATIONAL HWY	WASHINGTON, IN 47501–	812–254–4696
TWI LITE MOTEL		412 E. SOUTH ST	WASHINGTON, IN 47501–	812–254–5816
FAMILY INNS		1920 N. WESTERN AVE	WEST LAFAYETTE, IN 47900–	317–463–9511
TRAVEL LODGE		NORTH RIVER RD	WEST LAFAYETTE, IN 47900–	317–743–9661
UNIVERSITY INN		3001 N. WESTERN AVE	WEST LAFAYETTE, IN 47906–	317–463–5511
WISHING WELL MOTEL	PO BOX 93	R #1	WHITELAND, IN 46184–	317–535–7548
SIXTY SEVEN INN MOTEL	PO BOX 36–B	RT. 1	WORTHINGTON, IN 47471–	812–875–3195
Kansas				
ABILENE SUPER 8 MOTEL INC		2207 N. BUCKEYE	ABILENE, KS 67410–	913–263–4545
BEST WESTERN INN		2210 N. BUCKEYE	ABILENE, KS 67410–	913–263–2050
REGENCY COURT INN		3232 N. SUMMIT	ARKANSAS CITY, KS 67005–	316–442–7700
BAXTER INN 4 LESS		2451 MILITARY AVE	BAXTER SPRINGS, KS 66713–	316–856–2106
BEST WESTERN BEL VILLA MOTEL.		215 US 36 HWY	BELLEVILLE, KS 66935–	913–527–2231
PLAZA MOTEL		901 28TH	BELLEVILLE, KS 66935–	913–527–2228
APPLETREE INN		820 E. ELEVENTH	COFFEYVILLE, KS 67337–	316–251–0002
TOWNSMAN INN		600 NE ST	COFFEYVILLE, KS 67337–	316–251–2010
COLBY SUPER 8 MOTEL		1040 ZELFER AVE	COLBY, KS 67701–	913–462–8248
ECONO LODGE		1985 S. RANGE RD	COLBY, KS 67701–	913–462–8201
SUPER 8 MOTEL		1320 LINCOLN	CONCORDIA, KS 66901–	913–243–4200
EL RANCHO INN		32550 LEXINGTON AVE	DESOTO, KS 66018–	913–585–1926
CHAPEL LANE MOTEL		215 W. LONG ST	DIGHTON, KS 67839–	316–397–5359
GOLDEN BELL INN MOTEL		2110 E. WYATT EARP	DODGE CITY, KS 67801–	316–225–2654
SUPER 8		1708 W. WYATT EARP	DODGE CITY, KS 67801–	316–225–3924
BEST WESTERN RED COACH ELDORADO.		2529 W. CENTRAL	ELDORADO, KS 67042–	316–321–4500
SUPER 8 MOTEL		2530 W. CENTRAL	ELDORADO, KS 67042–	316–321–[illegible]388
DAYS INN		3032 W. HWY. 50	EMPORIA, KS 66801–	316–342–1787
ECONO LODGE		2630 W. 18TH AVE	EMPORIA, KS 66801–	316–343–1240
HOLIDAY INN		2700 W. 18TH ST	EMPORIA, KS 66801–	316–343–2200
QUALITY INN		3021 W. HWY. 50	EMPORIA, KS 66801–	316–342–3770
SUPER 8 MOTEL		2808 N. TAYLOR	GARDEN CITY, KS 67846–	316–275–9625
BEST WESTERN BUFFALO INN		830 W. HWY. 24	GOODLAND, KS 67735–	913–899–3621
INN 4 LESS		4701 10TH	GREAT BEND, KS 67530–	316–792–8235
BEST WESTERN J HAWK		515 W. KANSAS AVE	GREENSBURG, KS 67054–	316–723–2121
COMFORT INN		2810 VINE	HAYS, KS 67601–	913–625–8008
HAMPTON INN OF HAYS		3801 VINE ST	HAYS, KS 67601–	913–625–8103
HOLIDAY INN OF HAYS		3603 VINE ST	HAYS, KS 67601–	913–625–7371
INN 4 LESS		3503 VINE ST	HAYS, KS 67601–	913–625–4839
SUPER 8 MOTEL		3730 VINE ST	HAYS, KS 67601–	913–625–8048
HIAWATHA HEART RESTAURANT AND INN.		HWY. 36 & 73	HIAWATHA, KS 66434–	913–742–7401
POMEROY INN BED AND BREAKFAST.		224 W. MAIN	HILL CITY, KS 67642–	913–674–2098
COMFORT INN		1621 SUPER PLAZA	HUTCHINSON, KS 67501–	316–663–7822
HOLIDAY INN		1400 N. LORRAINE	HUTCHINSON, KS 67501–	316–669–8311
QUALITY INN		15 W. 4TH ST	HUTCHINSON, KS 67501–	316–663–1211
SCOTSMAN 8 INN		322 E. 4TH ST	HUTCHINSON, KS 67501–	316–669–8281
APPLETREE INN		201 N. EIGHTH	INDEPENDENCE, KS 67301–	316–331–5500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LIBERTY INN		I–70 & WASHINGTON ST. EXIT	JUNCTION CITY, KS 66441–	913–238–1141
BEST WESTERN INN		501 SW BLVD	KANSAS CITY, KS 66103–	913–677–3060
COPA MOTEL		1113 E. HWY. 54	KINGMAN, KS 67068–	316–532–3118
CONDOTELS INC		499 EISENHOWER RD	LANSING, KS 66043–	913–727–6590
LANSING INN 4 LESS		504 N. MAIN	LANSING, KS 66043–	913–727–2777
BISMARK INN L.P		1100 N. THIRD	LAWRENCE, KS 66044–	913–749–4040
DAYS INN		2309 IOWA ST	LAWRENCE, KS 66044–	913–843–9100
HOLIDAY INN HOLIDOME		200 MCDONALD DR	LAWRENCE, KS 66044–	913–841–7077
COMMANDER'S INN		1118 N. 6TH ST	LEAVENWORTH, KS 66048–	913–651–5800
RAMADA INN LEAVENWORTH		3RD & DELAWARE	LEAVENWORTH, KS 66048–	913–651–5500
DAYS INN LENEXA		9630 ROSEHILL RD	LENEXA, KS 66215–	913–492–7200
GUESTHOUSE APARTMENT HOTEL.		9775 LENEXA DR	LENEXA, KS 66215–	913–541–4000
SUPER 8 MOTEL		9601 WESTGATE	LENEXA, KS 66215–	913–888–8899
LIBERAL SUPER 8		747 E. PANCAKE	LIBERAL, KS 67901–	316–624–8880
LYONS INN 4 LESS		817 W. MAIN	LYONS, KS 67554–	316–257–5185
CONTINENTAL INN		100 BLUEMONT	MANHATTAN, KS 66502–	913–776–4771
HOLIDAY INN HOLIDOME		530 RICHARDS DR	MANHATTAN, KS 66502–	913–539–5311
SUPER 8 MOTEL		200 TUTTLE CREEK BLVD	MANHATTAN, KS 66502–	913–537–8468
BEST WESTERN SURF MOTEL		E. HWY. 36	MARYSVILLE, KS 66508–	913–562–2354
MCPHERSON RED COACH INN INC.		2111 E. KANSAS	MCPHERSON, KS 67460–	316–241–2480
COMFORT INN		6401 E. FRONTAGE RD	MERRIAM, KS 66202–	913–262–2622
FAIRFIELD INN BY MARRIOT KANSAS CITY MERRIAM.		6601 FRONTAGE RD	MERRIAM, KS 66202–	913–262–4448
BEST WESTERN RED COACH NEWTON.		1301 E. FIRST	NEWTON, KS 67114–	316–283–1806
DAYS INN PRAIRIE INN		105 MANCHESTER	NORTH NEWTON, KS 67117–	316–283–3330
BUDGET HOST HILLCREST MOTEL.		W. HWY. 36	NORTON, KS 67654–	913–877–3343
HOLIDAY INN		101 W. 151 ST	OLATHE, KS –	913–829–4000
BEST WESTERN HALLMARK INN EXECUTIVE CENTER.		7000 W. 108TH I–435 & METCALF.	OVERLAND PARK, KS 66211–	913–383–2550
COURTYARD MARRIOT		11301 METCALF AVE	OVERLAND PARK, KS 66212–	913–339–9900
DOUBLETREE HOTEL		10100 COLLEGE BLVD	OVERLAND PARK, KS 66201–	913–451–6100
EMBASSY SUITES HOTEL		10601 METCALF RD	OVERLAND PARK, KS 66212–	913–649–7060
FAIRFIELD INN BY MARRIOT KANSAS CITY OVERLAND.		4401 W. 107TH ST	OVERLAND PARK, KS 66207–	913–381–5700
HAMPTON INN		10591 METCALF FRONTAGE RD.	OVERLAND PARK, KS 66212–	913–341–1551
HOLIDAY INN EXPRESS		7200 W. 107TH ST	OVERLAND PARK, KS 66212–	913–648–7858
HOLIDAY INN OVERLAND PARK.		7240 SHAWNEE MISSION PKWY.	OVERLAND PARK, KS 66202–	913–262–3010
OVERLAND PARK MARRIOT		10800 METCALF AVE	OVERLAND PARK, KS 66210–	913–451–8000
RED ROOF INN #061		6800 W. 108TH ST	OVERLAND PARK, KS 66211–	913–341–0100
RESIDENCE INN HOTEL		6300 W. 110TH ST	OVERLAND PARK, KS 66211–	913–491–3333
MARK V MOTEL		320 W. STATE	PHILLIPSBURG, KS 67661–	913–543–5223
SUPER 8 MOTEL		3108 N. BROADWAY	PITTSBURG, KS 66762–	316–232–1881
PRATT SUPER 8	PO BOX 347	1906 E. 1ST	PRATT, KS 67124–	316–672–5945
SEVILLE INN	PO BOX 452	W. HWY. 54	PRATT, KS 67124–	316–672–9433
DAYS INN		407 W. DIAMOND DR	SALINA, KS 67401–	913–823–9791
HOLIDAY INN OF SALINA		1616 W. CRAWFORD	SALINA, KS 67401–	913–823–1739
RED COACH OF SALINA		2110 W. CRAWFORD	SALINA, KS 67401–	913–825–2111
SALINA INN		222 E. DIAMOND DR	SALINA, KS 67401–	913–825–1571
OWL MOTEL		521 N. FIRST	STOCKTON, KS 67669–	913–425–6772
BEST WESTERN CANDELIGHT		2831 SW FAIRLAWN	TOPEKA, KS 66614–	913–272–9550
BEST WESTERN MEADOW ACRES.		2950 S. TOPEKA BLVD	TOPEKA, KS 66611–	913–267–1681
FAIRFIELD INN BY MARRIOT TOPEKA.		1530 SW WESTPORT DR	TOPEKA, KS 66604–	913–273–6800
LIBERTY INN		I–470 & S. TOPEKA AVE	TOPEKA, KS 66609–	913–266–4700
RAMADA INN SOUTH		I–470 & S. TOPEKA AVE	TOPEKA, KS 66609–	913–267–1800
THE HERITAGE HOUSE		3535 SW 6TH	TOPEKA, KS 66606–	913–233–3800
TOPEKA SUPER 8 MOTEL		5968 SW 10TH	TOPEKA, KS 66604–	913–273–5100
SIMMER MOTEL		1215 W. HWY. 24	WAMEGO, KS 66547–	913–456–2304
STEAKHOUSE MOTEL		1311 E. 16TH ST. HWY. 160	WELLINGTON, KS 67152–	316–326–2266
BEST WESTERN RED COACH WICHITA.		915 E. 53RD ST. N	WICHITA, KS 67219–	316–832–9387
'ECONO LODGE		6245 W. KELLOGG	WICHITA, KS 67209–	316–945–5261
EXECUTIVE INN		8401 KELLOGG DR	WICHITA, KS 67207–	316–684–5261
FAIRFIELD INN BY MARRIOT WICHITA.		333 S. WEBB RD	WICHITA, KS 67207–	316–685–3777

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
GRAND PALACE INN		607 E. 47TH ST. S	WICHITA, KS 67216–	316–529–4100
KNIGHTS INN		6125 W. KELLOGG	WICHITA, KS 67209–	316–942–1341
MARK 8 INN		1130 N. BROADWAY	WICHITA, KS 67214–	316–265–4679
MARK 8 LODGE		8136 E. KELLOGG	WICHITA, KS 67207–	316–685–9415
RAMADA HOTEL AT BROADVIEW PLACE.		400 W. DOUGLAS	WICHITA, KS 67202–	316–262–5000
RAMADA INN AIRPORT		5805 W. KELLOGG	WICHITA, KS 67209–	316–942–7911
RESIDENCE INN EAST		411 S. WEBB	WICHITA, KS 67207–	316–686–7331
SCOTSMAN INN EAST		465 S. WEBB RD	WICHITA, KS 67207–	316–684–6363
SCOTSMAN INN WEST		5922 W. KELLOGG	WICHITA, KS 67209–	316–943–3800
STRATFORD HOUSE INNS		5505 W. KELLOGG	WICHITA, KS 67209–	316–942–0900
SUPER 8 MOTEL		527 S. WEBB RD	WICHITA, KS 67207–	316–686–3888
WICHITA EAST		549 S. ROCK RD	WICHITA, KS 67207–	316–686–7131
WICHITA INN EAST		8220 E. KELLOGG	WICHITA, KS 67207–	316–685–8291
WICHITA INN WEST		6150 W. KELLOGG DR	WICHITA, KS 67209–	316–943–2373
WICHITA MARRIOT		9100 CORPORATE HILLS DR	WICHITA, KS 67207–	316–651–0333
CAMELOT MOTOR INN		1710 MAIN ST	WINFIELD, KS 67156–	316–221–9050
Kentucky				
WEBB'S MOTEL		7536 ALEXANDRIA PIKE	ALEXANDRIA, KY 41001–	606–635–9344
ASHLAND PLAZA HOTEL		ONE ASHLAND PLAZA	ASHLAND, KY 41101–	606–329–0055
DAYS INN		12700 HWY. 180	ASHLAND, KY 41101–	606–928–3600
FOUR SEASONS MOTEL		2317 WINCHESTER AVE	ASHLAND, KY 41101–	606–324–0330
KNIGHTS INN		7216 US 60	ASHLAND, KY 41101–	606–928–9501
MOTEL QUEEN		3020 WINCHESTER AVE	ASHLAND, KY 41101–	606–325–4761
LAMPLIGHTER INN		103 W. 2ND ST	AUGUSTA, KY 41002–	606–756–2603
BEST WESTERN GENERAL NELSON.		411 W. STEPHEN FOSTER	BARDSTOWN, KY 40004–	502–348–3977
HOLIDAY INN MOTEL	PO BOX 387	HWY. 31 E. & BG PKWY	BARDSTOWN, KY 40004–	502–348–9253
KUNTRY KLASSIC MOTEL		1714 NEW HAVEN RD	BARDSTOWN, KY 40004–	502–348–1112
OLD BARDSTOWN INN		512 E. STEPHEN FOSTER AVE	BARDSTOWN, KY 40004–	502–348–1700
TRAVEL WISE MOTOR INN		HWY. 11 N	BEATTYVILLE, KY 41311–	606–464–2225
DANIEL'S MOTEL		US 231 RT. 3	BEAVER DAM, KY 42320–	502–274–7121
BOONE TAVERN MOTEL		MAIN ST	BEREA, KY 40403–	606–986–9358
COLLEGE INN MOTEL		HWY. 21 W	BEREA, KY 40403–	606–986–2384
DAYS INN		1202 WALNUT MEADOW DR	BEREA, KY 40403–	606–986–7373
ECONO LODGE		I–75 & US 21	BEREA, KY 40403–	606–986–9323
HOLIDAY MOTEL		I–75 & US 25	BEREA, KY 40403–	606–986–9311
RED CARPET INN		I–75 EXIT	BEREA, KY 40403–	606–986–8426
BEST WESTERN MOTOR INN		US 231 & CUMBERLAND TRACE RD.	BOWLING GREEN, KY 42101–	502–782–3800
BOWLING GREEN MOTEL		US 31W N	BOWLING GREEN, KY 42101–	502–842–2424
BOWLING GREEN TRAVEL LODGE.		409 31 W. BYPASS	BOWLING GREEN, KY 42101–	502–843–3254
BUDGETEL		125 THREE SPRINGS RD	BOWLING GREEN, KY 42101–	502–843–3200
CARDINAL MOTEL		1310 31 W. BYPASS	BOWLING GREEN, KY 42101–	502–842–0328
COLLETDALE MOTEL		802 31 W. BYPASS	BOWLING GREEN, KY 42101–	502–842–0321
CONTINENTAL INN BLDGS 1 & 2.		I–65 N	BOWLING GREEN, KY 42101–	502–781–5200
CROSSLAND MOTEL		421 31W BYPASS	BOWLING GREEN, KY 42101–	502–842–0351
DAYSTOP		RT. 9 SCOTTSVILLE RD	BOWLING GREEN, KY 42101–	502–781–6470
ECONO TRAVEL LODGE	PO BOX 61	RT. 14	BOWLING GREEN, KY 42101–	502–781–6181
FAIRFIELD INN MARRIOTT		1940 MEL BROWNING RD	BOWLING GREEN, KY 42101–	502–782–6933
HAMPTON INN		US 23 & THREE SPRINGS RD	BOWLING GREEN, KY 42101–	502–842–4100
HOLIDAY INN		US 231 & I–65	BOWLING GREEN, KY 42101–	502–781–1500
HOWARD JOHNSONS BLDG 2		523 31W BYPASS	BOWLING GREEN, KY 42101–	502–842–9453
MOTEL 6		3139 SCOTTSVILLE RD	BOWLING GREEN, KY 42101–	502–781–2639
NEW FRIENDSHIP INN		3160 SCOTTSVILLE RD	BOWLING GREEN, KY 42101–	502–781–3460
QUALITY MOTEL		3820 SCOTTSVILLE RD	BOWLING GREEN, KY 42101–	502–843–1163
RAMADA INN		3929 SCOTTSVILLE RD	BOWLING GREEN, KY 42101–	502–781–3000
SCOTTISH INN		3410 SCOTTSVILLE RD	BOWLING GREEN, KY 42101–	502–781–6550
SUPER 8 MOTEL		250 CUMBERLAND TRACE RD	BOWLING GREEN, KY 42101–	502–781–9594
TOPPER MOTEL		427 31 W. BYPASS	BOWLING GREEN, KY 42101–	502–842–4273
WESTERN HILLS MOTEL		HWY. 68 & 231	BOWLING GREEN, KY 42101–	502–842–5633
ABES CONTRY VILLAGE		HWY. 448	BRANDENBURG, KY 40108–	502–422–2282
BUCKHORN LAKE STATE RESORT PARK.	PO BOX 1000	HC 36	BUCKHORN, KY 41721–	800–325–0058
RIVERFRONT LODGE	PO BOX 417		BURKESVILLE, KY 42717–	502–864–3300
ALDRAY MOTEL	PO BOX 955	HWY. 68 E	CADIZ, KY 42211–	502–522–9953
COUNTRY INN		5909 HOPKINSVILLE RD	CADIZ, KY 42211–	502–522–7007
FOX FIRE MOTOR INN		US 62 & I–24	CALVERT CITY, KY 42029–	502–395–7162
BEST WESTERN MOTEL		1400 E. BROADWAY	CAMPBELLSVILLE, KY 42718–	502–465–7001

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LAKEVIEW MOTEL		1501 N. US HWY. 68	CAMPBELLSVILLE, KY 42718–	502–465–6139
TOWNE MOTEL		505 S. COLUMBIA	CAMPBELLSVILLE, KY 42718–	502–465–8171
DAYS INN		I–71 & HWY. 227	CARROLLTON, KY 41008–	502–732–6301
GENERAL BUTLER STATE RESORT PK.	PO BOX 325	HWY. 227	CARROLLTON, KY 41008–	800–325–0078
HOLIDAY INN CARROLLTON		I71 & HWY. 227	CARROLLTON, KY 41008–	502–732–6661
HOLIDAY INN CARROLLTON	PO BOX 108		CARROLLTON, KY 41008–	502–732–6551
STAR MOTEL I		US 31 W. SOUTH	CAVE CITY, KY 42127–	502–773–2963
CARONODA MOTEL	PO BOX 159	RT. 4	CENTRAL CITY, KY 42330–	502–754–1320
ECONOMY INN		US 62 AT 431	CENTRAL CITY, KY 42330–	502–754–2421
BEST WESTERN COLUMBIA		1102 JAMESTOWN RD	COLUMBIA, KY 42728–	502–384–9744
LAKEWAY MOTEL		705 RUSSELL RD	COLUMBIA, KY 42728–	502–384–2161
CORBIN MOTEL		HWY. 25 W	CORBIN, KY 40701–	606–549–1500
CUMBERLAND FALLS CABINS SRP.		HWY. 90	CORBIN, KY 40701–	606–528–4121
CUMBERLAND FALLS LODGE SRP.		HWY. 90	CORBIN, KY 40701–	606–528–4121
HOLIDAY INN CORBIN		1910 CUMBERLAND FALLS HWY.	CORBIN, KY 40701–	606–528–6301
KNIGHTS INN MOTEL	PO BOX 256	RT. 11	CORBIN, KY 40701–	606–523–1500
RED CARPET INN		1891 CUMBERLAND FALLS HWY.	CORBIN, KY 40701–	606–526–7100
SUPER 8 MOTEL		256 AL CUMB. PKWY	CORBIN, KY 40701–	606–526–6888
RIVERCENTER HOTEL		10 E. SECOND	COVINGTON, KY 41011–	606–261–6400
CUMBERLAND MOTEL		2203 E. MAIN ST	CUMBERLAND, KY 40823–	606–589–2123
KOAL TOWN MOTEL		US 119	CUMBERLAND, KY 40823–	606–589–2123
EVERGREEN MOTEL	PO BOX 86	US 27	CYNTHIANA, KY 41031–	606–239–5460
CONSTITUTIONAL CT MOTEL		135 E. MAIN ST	DANVILLE, KY 40422–	606–325–4761
SUPER 8 MOTEL		3363 HWY. 150	DANVILLE, KY 40422–	606–236–8881
BIG SAVINGS MOTEL		175 EXIT 159	DRY RIDGE, KY 41035–	606–824–4774
DRY RIDGE MOTOR INN		SR 22 EXIT 69 BROADWAY	DRY RIDGE, KY 41035–	606–837–5150
SUPER 8 MOTEL		88 BLACKBURN LN	DRY RIDGE, KY 41035–	606–824–3700
LAKE MALONE INN	PO BOX 56	HWY. 973	DUNMORE, KY 42339–	502–657–2121
EDDY CREEK RESORT		HWY. 93	EDDYVILLE, KY 42038–	502–388–2271
HOLIDAY HILLS RESORT	PO BOX 406	RT. 1	EDDYVILLE, KY 42038–	502–388–7236
TWIN TIKI MOTEL	PO BOX 800	HWY. 62 & 641	EDDYVILLE, KY 42038–	502–388–2281
BUDGET HOLIDAY MOTEL		715 E. DIXIE	ELIZABETHTOWN, KY 42701–	502–765–2111
COMFORT INN		1043 EXECUTIVE DR	ELIZABETHTOWN, KY 42701–	502–769–3030
HOLIDAY INN NORTH MOTEL		JCT I–65 & US 62	ELIZABETHTOWN, KY 42701–	502–769–2344
MOTEL SIX INC		HWY. 62 E KY TNPK	ELIZABETHTOWN, KY 42701–	502–769–3102
RED CARPET INN		711 E. DIXIE	ELIZABETHTOWN, KY 42701–	502–765–2194
ROADWAY INN & MOTEL		656 E. DIXIE	ELIZABETHTOWN, KY 42701–	
SUPER 8 MOTEL		US 62	ELIZABETHTOWN, KY 42701–	502–737–1088
AIRPORT INN		648 DONALDSON	ERLANGER, KY 41018–	606–342–6200
HOLIDAY INN CINCINNATI AIRPORT.		1717 AIRPORT EXCHANGE BLVD.	ERLANGER, KY 41018–	606–371–2233
ROUGH RIVER STATE PARK			FALLS OF ROUGH, KY 40119–	800–325–1713
ST CLAIR MOTEL		RT. 1 HWY. 79	FALLS OF ROUGH, KY 40119–	502–257–2561
CINCINNATI AIRPORT TRAVEL LODGE.		7915 US 42	FLORENCE, KY 41042–	606–371–4700
DEVON MOTOR LODGE		8318 DIXIE HWY	FLORENCE, KY 41042–	606–371–6763
HAMPTON INN		I–75 & EX 182	FLORENCE, KY 41042–	606–283–1600
HILTON INN		7373 TURFWAY RD	FLORENCE, KY 41042–	606–371–4400
HOLIDAY INN MOTEL		8050 US 42	FLORENCE, KY 41042–	606–371–2700
KNIGHTS INN 5 BLDGS		8049 DREAM ST	FLORENCE, KY 41042–	606–371–9711
MARRIOTT FAIRFIELD INN		50 CAVALIER BLVD	FLORENCE, KY 41042–	606–371–4800
MOTEL SIX		7937 DREAM ST	FLORENCE, KY 41042–	606–283–0909
SIGNATURE INN		30 CAVALIER BLVD	FLORENCE, KY 41042–	606–371–0081
SOUTHWAY MOTEL		8151 DIXIE HWY	FLORENCE, KY 41042–	606–525–2767
SUPER EIGHT MOTEL		7928 DREAM ST	FLORENCE, KY 41042–	606–283–1221
TURFSIDE MOTEL		6501 DIXIE HWY	FLORENCE, KY 41042–	606–371–6181
WILDWOOD MOTOR INN BLDG II.		7809 US 42	FLORENCE, KY 41042–	606–371–6300
BEST WESTERN PARKSIDE		VERSAILLES RD. & I–64	FRANKFORT, KY 40601–	502–695–6111
HOLIDAY INN CAPITAL		405 WILKINSON BLVD	FRANKFORT, KY 40601–	502–227–5100
RAMADA STATE CAPITAL		855 LOUISVILLE RD	FRANKFORT, KY 40601–	502–227–2282
SUPER 8 MOTEL		1225 127 S	FRANKFORT, KY 40601–	502–875–3220
EXECUTIVE INN		RT. 4 31 W. S	FRANKLIN, KY 42134–	502–586–3291
KY MOTEL BLDG 7		US 31W N	FRANKLIN, KY 42134–	502–586–4486
SUPER 8 MOTEL		2805 SCOTTSVILLE RD	FRANKLIN, KY 42134–	502–586–8885
CROSS COUNTRY INN		2350 ROYAL INN	FT. MITCHELL, KY 41017–	606–341–2090

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DRAWBRIDGE MOTOR INN THE GARRISON BLDG.		ROYAL DRIVE & BUTTERMILK PIKE.	FT. MITCHELL, KY 41017–	606–341–2800
HOLIDAY INN SOUTH		2100 DIXIE HWY	FT. MITCHELL, KY 41017–	606–331–1500
LOOKOUT MOTEL		1700 DIXIE HWY	FT. WRIGHT, KY 41011–	606–431–5141
QUALITY INN		HWY. 51 N	FULTON, KY 42041–	502–472–2342
DAYS INN		I–75	GEORGETOWN, KY 40324–	502–863–5000
ECONO LODGE		3075 PARIS PIKE	GEORGETOWN, KY 40324–	502–863–4235
RAMADA INN		401 DELEPLAIN	GEORGETOWN, KY 40324–	502–863–1156
SHONEY'S INN		200 SHONEY DR	GEORGETOWN, KY 40324–	502–868–9800
SUPER 8 MOTEL		250 SHONEY DR	GEORGETOWN, KY 40324–	502–863–4888
KEN BAR INN	PO BOX 66	HWY. 641	GILBERTSVILLE, KY 42044–	502–362–8652
RAMADA INN RESORT		HWY. 62	GILBERTSVILLE, KY 42044–	502–362–4278
FOUR SEASONS INN		HWY. 31 E	GLASGOW, KY 42141–	502–678–1000
TOWN MOTEL		604 HAPPY VALLEY RD	GLASGOW, KY 42141–	505–651–2168
KY BARKLEY LAKES INN		I–24 EXIT 31	GRAND RIVERS, KY 42045–	502–928–2700
ECONO LODGE	PO BOX 44 C		GRAYSON, KY 41143–	606–474–7854
GREENBO LAKE STATE PARK LODGE.	PO BOX 562	HC 6	GREENUP, KY 41121–	606–473–7324
WRIGHTS MOTEL		US 23 BYPASS	GREENUP, KY 41144–	606–473–7782
DANDEE MOTEL		217 HOPKINSVILLE RD	GREENVILLE, KY 42345–	502–338–4621
KENLAKE STATE RESORT PARK.	PO BOX 522	RT. 1	HARDIN, KY 42048–	800–325–0143
BRECKINRIDGE INN		4TH & MAIN ST	HARDINSBURG, KY 40143–	502–756–8234
ACKLEY MOTEL		S. MAIN ST	HARLAN, KY 40831–	606–573–1668
BAYS MOTEL	PO BOX 999	HWY. 421	HARLAN, KY 40831–	606–573–4660
JONES MOTEL		HWY. 421	HARLAN, KY 40831–	606–573–1140
BEST WESTERN MOTEL		HWY. 127	HARRODSBURG, KY 40330–	606–734–9431
CARDINAL MOTEL		814 N. COLLEGE	HARRODSBURG, KY 40330–	502–734–4218
SHAKER TOWN		LEXINGTON RD	HARRODSBURG, KY 40330–	606–734–5411
HOLIDAY INN		DANIEL BOONE PKWY	HAZARD, KY 41701–	606–436–4428
PLEASURE COVE MOTEL		524 MAIN ST	HAZARD, KY 41701–	606–439–2345
SUPER 8 MOTEL		DANIEL BOONE PKWY	HAZARD, KY 41701–	606–436–8888
DAYS INN		2044 US 41 N	HENDERSON, KY 42420–	502–826–6600
HENDERSON DOWNTOWN MOTEL.		425 N. GREEN ST	HENDERSON, KY 42420–	502–877–2577
HENDERSON HOTEL		601 WASHINGTON ST	HENDERSON, KY 42420–	502–827–2577
HOLIDAY MOTEL		1759 S. GREEN ST	HENDERSON, KY 42420–	502–827–2577
SCOTTISH INN		2820 US 41 N	HENDERSON, KY 42420–	502–827–1806
SUGAR CREEK INN		2077 US 41 N	HENDERSON, KY 42420–	502–827–0127
MOTEL 80	PO BOX 896	HWY. 80	HINDMAN, KY 41822–	606–785–3126
QUILTMAKERS INN		MAIN ST	HINDMAN, KY 41822–	606–785–5622
CRUISE INN MOTEL		US 31 E	HODGENVILLE, KY 42748–	502–358–9998
BELMONT LODGE		1201 E. 9TH ST	HOPKINSVILLE, KY 42240–	502–886–8191
BEST WESTERN OF HOPKINSVILLE.		4101 FT. CAMPBELL BLVD	HOPKINSVILLE, KY 42240–	502–886–9000
CHICAGOAN MOTEL		1013 N. MAIN ST	HOPKINSVILLE, KY 42240–	502–886–0525
HOLIDAY INN MOTEL		2910 FT. CAMPBELL BLVD	HOPKINSVILLE, KY 42240–	502–886–4413
MOTOR HOST INN		2916 FT. CAMPBELL BLVD	HOPKINSVILLE, KY 42240–	502–886–5242
TRAVEL INN OF HOPKINSVILLE.		2625 FT. CAMPBELL BLVD	HOPKINSVILLE, KY 42240–	502–886–5317
BLUE GRASS MOTEL		RT. 2 HWY. 90 & 31 W	HORSE CRAVE, KY 42749–	502–786–2316
OAK TREE INN		HWY. 52 RICHMOND RD	IRVINE, KY 40336–	606–723–2500
JACKSON INN		OLD RT. 15	JACKSON, KY 41339–	606–666–7551
PAUL'S MOTEL BLDG. A		OLD RT. 151168 MAIN ST	JACKSON, KY 41339–	606–666–2471
JAMESTOWN COURT	PO BOX 366		JAMESTOWN, KY 42629–	502–343–2364
LAKE CUMBERLAND STATE PARK		5465 STATE PARK RD	JAMESTOWN, KY 42629–	800–325–1709
RELAX INN	PO BOX 35	RT. 2	KUTTAWA, KY 42055–	502–388–2285
LUXBURY HOTEL		1005 NEW MOODY LN	LAGRANGE, KY 40031–	502–222–5500
HOLLY HILL MOTEL		459 W. MAIN	LEBANON, KY 40033–	502–692–2175
ECONO LODGE		COMMERCE DR. & WK PKWY .	LEITCHFIELD, KY 42754–	
BEST WESTERN REGENCY		2241 ELKHORN	LEXINGTON, KY 40505–	606–293–2202
BRYAN STATION INN		273 NEW CIR. NE	LEXINGTON, KY 40505–	606–299–4162
CAMPBELL HOUSE INN		1375 HARRODSBURG	LEXINGTON, KY 40505–	606–255–4281
CATALINA MOTEL		208 NEW CIR. NW	LEXINGTON, KY 40505–	606–299–5281
CONGRESS INN MOTEL		1700 N. BROADWAY	LEXINGTON, KY 40505–	606–299–5226
CONTINENTAL INN MOTEL		801 NEW CIR. NE	LEXINGTON, KY 40505–	606–299–5281
COURTYARD BY MARRIOTT		775 NEWTOWN	LEXINGTON, KY 40505–	606–253–4646
DAYS INN		826 NEW CIR. NE	LEXINGTON, KY 40505–	606–252–2262
DAYS INN MOTEL SOUTH		5575 ATHENS BOONESBORO .	LEXINGTON, KY 40505–	606–263–3100
DAYS MOTEL		1420 VERSAILLES	LEXINGTON, KY 40505–	606–252–5561
ECONO LODGE		5527 ATHENS BOONESBORO .	LEXINGTON, KY 40505–	606–263–5101

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ECONO LODGE		925 NEWTOWN	LEXINGTON, KY 40505–	606–231–6300
ECONOMY INN		1675 N. BROADWAY	LEXINGTON, KY 40505–	606–293–1421
ELDORADO MOTEL		3440 VERSAILLES	LEXINGTON, KY 40505–	606–255–9451
FRENCH QUARTER INN		2601 RICHMOND	LEXINGTON, KY 40505–	606–268–0060
GRATZ PARK INN		120 W. SECOND	LEXINGTON, KY 40505–	606–231–1777
GREENLEAF INN		2280 NICHOLASVILLE	LEXINGTON, KY 40505–	606–277–1191
HAMPTON INN		2251 ELKHORN	LEXINGTON, KY 40505–	606–299–2813
HARLEY MOTEL		2143 N. BROADWAY	LEXINGTON, KY 40505–	606–299–1261
HILTON SUITES HOTEL OF LEXINGTON GREEN.		3195 NICHOLASVILLE	LEXINGTON, KY 40503–3309	606–271–4000
HOLIDAY INN NORTH		1950 NEWTOWN	LEXINGTON, KY 40505–	606–233–0512
HOLIDAY INN SOUTH		5532 ATHENS BOONESBORO	LEXINGTON, KY 40505–	606–263–5241
HYATT REGENCY HOTEL		400 W. VINE	LEXINGTON, KY 40505–	606–253–1234
KEENELODGE MOTOR INN		5556 VERSAILLES	LEXINGTON, KY 40505–	606–254–6699
KNIGHTS INN		1935 STANTON WAY	LEXINGTON, KY 40511–	606–231–0232
KNIGHTS INN		2250 ELKHORN	LEXINGTON, KY 40505–	606–299–8481
LAQUINTA INN		1919 STATON	LEXINGTON, KY 40511–	606–231–7551
LEXINGTON MOTOR LODGE		1205 NEW CIR. NE	LEXINGTON, KY 40511–	606–255–3337
LEXINGTON RAMADA		1938 STANTON	LEXINGTON, KY 40511–	606–259–1311
MARRIOTTS GRIFFIN GATE RESORT.		1800 NEWTOWN	LEXINGTON, KY 40511–	606–231–5100
MICROTEL		2240 BUENA VISTA	LEXINGTON, KY 40505–	606–299–9600
MOTEL 6		2260 ELKHORN	LEXINGTON, KY 40505–	606–293–1431
NEW CIRCLE INN		588 NEW CIR. NE	LEXINGTON, KY 40505–	606–233–3538
QUALITY INN NORTHWEST		1050 NEWTON	LEXINGTON, KY 40511–	606–253–0561
RADISSON PLAZA LEXINGTON		369 W. VINE	LEXINGTON, KY 40507–	606–231–9000
RED ROOF INN		2651 WILHITE	LEXINGTON, KY 40505–	606–277–9400
RED ROOF INN		483 HAGGARD	LEXINGTON, KY 40505–	606–293–2626
RESIDENCE INN		1080 NEWTOWN	LEXINGTON, KY 40505–	606–231–6191
SHONEY'S INN		2753 RICHMOND	LEXINGTON, KY 40505–	606–269–4999
SIGNATURE INN		E. 2381 BUENA VISTA	LEXINGTON, KY 40505–	606–299–0302
SPORTSMAN MOTEL		1107 WINCHESTER	LEXINGTON, KY 40505–	606–252–4401
SPRINGS INN		2020 HARRODSBURG	LEXINGTON, KY 40503–	606–277–5751
SUPER 8 MOTEL		2351 BUENA VISTA	LEXINGTON, KY 40505–	606–299–6241
THE KENTUCKY INN		525 WALLER	LEXINGTON, KY 40505–	606–254–1177
TRAVELODGE		1987 N. BROADWAY	LEXINGTON, KY 40505–	606–299–1202
WILSON INN		2400 BUENA VISTA	LEXINGTON, KY 40505–	606–293–6113
BEST WESTERN MOTEL HARVEST INN.		HWY. 80 & I–75	LONDON, KY 40741–	606–864–2222
DAYS INN MOTEL		HWY. 80 & I–75	LONDON, KY 40741–	606–878–9800
ECONOMY INN		1232 N. MAIN	LONDON, KY 40741–	606–864–8867
RAMADA INN		HWY. 192 & I–75	LONDON, KY 40741–	606–864–7331
TOWN CENTER MOTEL		500 N. MAIN	LONDON, KY 40741–	606–864–4101
WEST GATE INN	PO BOX 4	RT. 13	LONDON, KY 40741–	606–878–7300
ARCHWAY MOTEL BLDG 4		10615 DIXIE HWY	LOUISVILLE, KY 40272–	502–937–0937
BROWN HOTEL		675 S. 4TH ST	LOUISVILLE, KY 40202–	502–583–1234
BROWN MOTEL		335 W. BROADWAY	LOUISVILLE, KY 40202–	502–583–1234
CAPRI MOTEL		10517 DIXIE	LOUISVILLE, KY 40272–	502–937–4420
COURTYARD BY MARRIOTT		9608 BLAIRWOOD RD	LOUISVILLE, KY 40222–	502–429–0006
DAYS INN EAST		4621 SHELBYVILLE RD	LOUISVILLE, KY 40207–	502–896–8871
EXECUTIVE INN		978 PHILLIPS LN	LOUISVILLE, KY 40213–	
EXECUTIVE INN WEST		830 PHILLIPS LN	LOUISVILLE, KY 40213–	502–367–2251
FAIRFIELD INN MARRIOTT		9400 BLAIRWOOD RD	LOUISVILLE, KY 40222–	502–339–1900
GALT HOUSE EAST		140 N. 4TH AVE	LOUISVILLE, KY 40202–	502–589–5200
HAMPTON INN		1902 EMBASSY SQ. BLVD	LOUISVILLE, KY 20369–	502–491–2577
HOLIDAY INN AIRPORT EAST		1465 GARDINER LN	LOUISVILLE, KY 40213–	502–452–6361
HOLIDAY INN AIRPORT SOUTH		3317 FERN VALLEY RD	LOUISVILLE, KY 40213–	502–964–3311
HOLIDAY INN DOWNTOWN		120 W. BROADWAY	LOUISVILLE, KY 40202–	502–582–2241
HOLIDAY INN HURSTBOURNE		1325 S. HURSTBOURNE PKWY	LOUISVILLE, KY 40222–	502–426–2600
HOLIDAY INN RIVERMONT		1041 ZORN AVE	LOUISVILLE, KY 40206–	502–897–5101
HYATT REGENCY		320 W. JEFFERSON	LOUISVILLE, KY 40202–	502–587–3434
HYATT REGENCY		301 S. 4TH AVE	LOUISVILLE, KY 40202–	502–587–3434
KNIGHTS INN		1850 EMBASSY SQ. BLVD	LOUISVILLE, KY 40269–	502–491–1040
LITTLE BIFFS MOTEL		13305 DIXIE HWY	LOUISVILLE, KY 40272–	502–937–1970
LOUISVILLE MANOR MOTEL		4600 DIXIE HWY	LOUISVILLE, KY 40216–	502–447–2440
MOTEL 6 BLDG A		3304 BARDSTOWN RD	LOUISVILLE, KY 40218–	502–456–2861
MOTEL 6 BLDG B		3304 BARDSTOWN RD	LOUISVILLE, KY 40218–	502–456–2861
MOTEL 6 BLDG C		3304 BARDSTOWN RD	LOUISVILLE, KY 40218–	502–456–2861
OLD LOUISVILLE INN		1359 S. THIRD ST	LOUISVILLE, KY 40208–	502–635–1574
RADISSON HOTEL EAST		1903 EMBASSY SQ. BLVD	LOUISVILLE, KY 40269–	502–499–6220
RAMADA AIRPORT EAST		1921 BISHOP LN	LOUISVILLE, KY 40218–	502–456–4411
RAMADA INN BROWNSBORO EAST.		4805 BROWNSBORO	LOUISVILLE, KY 40207–	502–893–2551

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RED ROOF INN		4704 PRESTON HWY	LOUISVILLE, KY 40213–	502–966–0151
RED ROOF INN		9330 BLAIRWOOD RD	LOUISVILLE, KY 40222–	502–426–7621
RED ROOF INN		3322 NEWBURG RD	LOUISVILLE, KY 40218–	502–456–2993
RESIDENCE INN MARRIOTT		120 N. HURSTBOURNE PKWY .	LOUISVILLE, KY 40222–	502–425–1821
SEELBACH HOTEL		500 S. 4TH AVE	LOUISVILLE, KY 40202–	502–585–3200
SIGNATURE INN		6515 SIGNATURE DR	LOUISVILLE, KY 40213–	502–968–4100
STUDIO PLUS		1401 BROWNS LN	LOUISVILLE, KY 40207–	502–897–2559
STUDIO PLUS HURSTBOURNE		9801 BUNSEN PKWY	LOUISVILLE, KY 40299–	502–499–6215
SUPER 8 MOTEL		4800 PRESTON HWY	LOUISVILLE, KY 40213–	502–968–0088
THRIFTY DUTCHMAN		3357 FERN VALLEY RD	LOUISVILLE, KY 40213–	502–968–8124
TRAVEL LODGE		200 E. LIBERTY ST	LOUISVILLE, KY 40202–	502–583–2841
TRAVEL LODGE		9340 BLAIRWOOD RD	LOUISVILLE, KY 40222–	502–425–8010
TRAVEL LODGE CON. CTR		401 S. 2ND ST	LOUISVILLE, KY 40202–	502–583–2841
TRIMER'S VALLEY MOTEL		11905 DIXIE HWY	LOUISVILLE, KY 40272–	502–937–2172
WILSON INN AIRPORT		3209 KEMMONS DR	LOUISVILLE, KY 40218–	502–473–0000
WILSON INN EAST		9800 BUNSEN PKWY	LOUISVILLE, KY 40299–	502–473–0000
BARREN RIVER STATE RESORT PARK.		1149 STATE PARK RD	LUCAS, KY 42156–	800–325–0057
BIG SPRING INN		HWY. 70 & 85 PENNYRILE PKWY.	MADISONVILLE, KY 42431–	502–821–8700
DAYS INN		1900 LANTAFF BLVD	MADISONVILLE, KY 42431–	502–821–8620
RED CARDINAL INN		HWY. 41 N	MADISONVILLE, KY 42431–	502–821–0009
BOONE PARKWAY MOTEL	PO BOX 38	HWY. 80	MANCHESTER, KY 40962–	606–598–5122
COZY MOTEL		MAIN ST	MANCHESTER, KY 40962–	606–598–2366
TOBIN MOTEL		225 STURGIS RD	MARION, KY 42064–	502–965–5241
RAMADA INN		US 68 MODDY DR	MAYSVILLE, KY 41056–	606–564–6793
RIGGS MOTEL		502 FOREST AVE	MAYSVILLE, KY 41056–	606–564–6036
SUPER 8 MOTEL		550 TUCKER DR	MAYSVILLE, KY 41056–	606–759–8888
BEST WESTERN MOTEL		1623 CUMBERLAND AV	MIDDLESBORO, KY 40965–	606–248–5630
ANCHOR MOTEL		N. MAIN ST	MONTICELLO, KY 42633–	606–348–8441
MONTICELLO MOTEL		254 N. MAIN	MONTICELLO, KY 42633–	606–348–5756
TIFFANY INN	PO BOX 57	RT. 1	MONTICELLO, KY 42633–	606–348–8325
DAYS INN		I–64 & KY 32	MOREHEAD, KY 40351–	606–783–1484
HOLIDAY INN		I–64 & KY 32	MOREHEAD, KY 40351–	606–784–7591
MOUNTAIN LODGE		205 FRALEY DR	MOREHEAD, KY 40351–	606–783–1555
SUPER 8 MOTEL		602 FRALEY DR	MOREHEAD, KY 40351–	606–784–8882
LARRY'S MOTEL	PO BOX 214	RT. 4	MORGANFIELD, KY 42437–	502–389–4701
GREENRIVER MOTEL	PO BOX 252		MORGANTOWN, KY 42261–	502–526–3386
BEST WESTERN MOTEL		PENNYRILE PKWY	MORTONS GAP, KY 42440–	502–258–5201
DAYS INN 2 BLDGS		US 460 & I–64	MT. STERLING, KY 40353–	606–498–4680
NORTH SIDE MOTEL		402 N. MAYSVILLE ST	MT. STERLING, KY 40353–	606–498–5314
BEST WESTERN MOTEL		HWY. 25 S	MT. VERNON, KY 40456–	606–256–5156
DAYS INN MOTEL		HWY. 25 & I–75	MT. VERNON, KY 40456–	606–256–3300
ECONO LODGE RENFRO VALLEY.		1375 RICHMOND RD	MT. VERNON, KY 40456–	606–256–4521
GREGORY MOTEL	PO BOX 101	RT. 4 RICHMOND ST	MT. VERNON, KY 40456–	606–256–2929
MCKENZIE COURT		RICHMOND ST	MT. VERNON, KY 40456–	606–256–4000
ECONOMY SUITES MOTEL		101 WALKER RD	MULDRAUGH, KY 40155–	502–942–9525
GOLDEN MANOR MOTEL		346 DIXIE HWY. 31 W	MULDRAUGH, KY 40155–	502–942–2800
SUPER 8 MOTEL		I–65 ENTERC 88 STOCK PEN RD.	MUNFORDVILLE, KY 42765–	502–524–4888
HOLIDAY INN MURRAY		HWY. 641 N	MURRAY, KY 42071–	502–753–5986
SHONEY'S INN		HWY. 641 N	MURRAY, KY 42071–	502–753–5353
CINCINNATI RIVERFRONT TRAVELODGE.		222 YORK ST	NEWPORT, KY 41071–	606–291–4434
PRINCESS MOTEL		US 27	NICHOLASVILLE, KY 40356–	606–885–6808
WINDMILL MOTEL		US 27 N	NICHOLASVILLE, KY 40356–	606–885–3228
CARROLL'S MOTEL		US 60 E	OLIVE HILL, KY 41164–	606–286–4141
CARTER CAVES LODGE BLDG	PO BOX 120	RT. 5	OLIVE HILL, KY 41164–	606–286–4411
GOOSE LODGE		RT. 1 HWY. 1105	OSCAR, KY 42056–	502–224–2222
CADILLAC MOTEL		1311 W. 2ND ST	OWENSBORO, KY 42301–	502–684–2343
COLONEL HOUSE MOTEL		1829 TRIPLETT ST	OWENSBORO, KY 42301–	502–684–5271
DAYS INN		3720 HARTFORD RD	OWENSBORO, KY 42301–	502–684–9621
EXECUTIVE INN		1 EXECUTIVE BLVD	OWENSBORO, KY 42301–	502–926–8000
HOLIDAY INN		3136 W. 2ND ST	OWENSBORO, KY 42301–	502–685–3941
IMPERIAL INN		2609 NEW HARTFORD	OWENSBORO, KY 42301–	502–684–9621
MOTEL 6		455 FREDERICA ST	OWENSBORO, KY 42301–	505–686–7231
MOTEL 8		1027 GOETZ DR	OWENSBORO, KY 42301–	502–685–3388
MOTOR LODGE		1640 TRIPLETT ST	OWENSBORO, KY 42301–	502–683–8805
OWENSBORO MOTEL		1420 TRIPLETT ST	OWENSBORO, KY 42301–	502–683–8805
TOWNE MOTEL		316 3RD ST	OWENSBORO, KY 42301–	502–683–7311
TOOLE MOTEL		RR 3 1550 HWY. 22 E	OWENTON, KY 40359–	502–484–3406

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST INNS		5001 HINKLEVILLE	PADUCAH, KY 42001–	502–442–3334
COMFORT INN		5106 OLD CAIRO RD	PADUCAH, KY 42001–	502–442–1616
DAYS INN		3901 HINKLEVILLE	PADUCAH, KY 42001–	502–442–7501
DENTON MOTEL		2550 LONE OAK RD	PADUCAH, KY 42003–	502–554–1626
DRURY INN		4910 HINKLEVILLE RD	PADUCAH, KY 42001–	502–443–3313
ECONO LODGE		5120 HINKLEVILLE	PADUCAH, KY 42001–	
EXECUTIVE INN RIVERFRONT		1 EXECUTIVE BLVD	PADUCAH, KY 42001–	502–443–8000
INNS USA		1379 IRVIN COBB	PADUCAH, KY 42001–	502–442–7341
MAYFAIR MOTEL		6600 BENTON RD	PADUCAH, KY 42001–	502–898–7146
QUALITY INN		1350 IRVIN COBB DR	PADUCAH, KY 42001–	502–443–8751
RAMADA INN		727 JOE CLIFTON DR	PADUCAH, KY 42001–	502–443–7521
SUNSET INN		2308 HINKLEVILLE	PADUCAH, KY 42001–	502–554–2196
THRIFTY INN		4930 HINKLEVILLE	PADUCAH, KY 42001–	502–442–4500
WESTOWNE INN		3851 HINKLEVILLE	PADUCAH, KY 42001–	502–442–5666
CARRIAGE HOUSE MOTOR INN.		JAMES TRIMBLE BLVD	PAINTSVILLE, KY 41240–	606–789–4242
HEART O HIGHLANDS BLDG B		RT. 23	PAINTSVILLE, KY 41240–	502–789–3551
COLONIAL MOTEL		1493 S. MAIN	PARIS, KY 40361–	606–987–3250
DANIEL BOONE MOTOR INN		US 23 N	PIKEVILLE, KY 41501–	606–432–0365
DAYS INN PIKEVILLE	PO BOX 1517	518 S. MAYO TRAIL	PIKEVILLE, KY 41501–	606–432–0314
PINSON MOTEL		PIKE AVE	PIKEVILLE, KY 41501–	606–437–7346
PINE MOUNTAIN LODGE SRP		HWY. 190	PINEVILLE, KY 40977–	606–337–3068
HOLIDAY INN		575 US 23 S	PRESTONSBURG, KY 41643–	606–886–0001
JENNY WILEY STATE RESORT PARK.	PO BOX 200	HC 68	PRESTONSBURG, KY 41653–	800–325–0142
SUPER 8 MOTEL		US 23	PRESTONSBURG, KY 41643–	606–886–3355
PRINCETON PKWY INN		112 HWY. 62 W	PRINCETON, KY 42445–	502–365–2001
STRATTON INN		HWY. 91 N & W. KY PKWY	PRINCETON, KY 42445–	502–365–2828
BEST WESTERN GOLD VAULT INN.		1225 N. DIXIE BLVD	RADCLIFF, KY 40160–	502–351–1141
ECONO LODGE		261 N. DIXIE BLVD	RADCLIFF, KY 40160–	502–351–4488
FORT KNOX INN		1400 N. DIXIE BLVD	RADCLIFF, KY 40160–	502–351–3199
QUALITY INN		444 S. DIXIE BLVD	RADCLIFF, KY 40160–	502–351–8211
SUPER 8 MOTEL		395 REDMAR PLAZA	RADCLIFF, KY 40160–	502–352–1888
BEL AIR MOTEL 2 BLDGS		1509 LEXINGTON RD	RICHMOND, KY 40475–	206–623–5919
BEST WESTERN 2 BLDGS		US 25 & I–75	RICHMOND, KY 40475–	606–623–9121
COYLES MOTEL BLDG A		502 BIG HILL AVE	RICHMOND, KY 40475–	606–624–0320
COYLES MOTEL BLDG B		502 BIG HILL AVE	RICHMOND, KY 40475–	606–624–0320
DAYS INN		2109 BELLMONT DR	RICHMOND, KY 40475–	606–624–5769
HOLIDAY INN		100 EASTERN BYPASS	RICHMOND, KY 40475–	606–623–9220
KNIGHTS INN		I–75 & US 421	RICHMOND, KY 40475–	
MOTEL 6		I–75 & 421	RICHMOND, KY 40475–	606–623–0880
SAVE INN 5 BLDGS		I–75 & US 421	RICHMOND, KY 40475–	606–624–2621
SUPER 8 MOTEL		I–75 & US 25	RICHMOND, KY 40475–	606–624–1550
THRIFTY DUTCHMAN 2 BLDGS		230 EASTERN BYPASS	RICHMOND, KY 40475–	606–623–8813
WISE MOTEL		105 KILLARNEY LN	RICHMOND, KY 40475–	606–623–6126
CUMBERLAND LODGE	PO BOX 348		RUSSELL SPRINGS, KY 42642–	606–866–4208
LYMONS MOTEL		HWY. 80 E	RUSSELL SPRINGS, KY 42642–	502–866–5068
SHILOH MOTOR INN		HWY. 80	RUSSELL SPRINGS, KY 42642–	502–866–5920
APPALACHIAN MOTEL		RT. 460	SALYERSVILLE, KY 41465–	606–349–3141
BEST WESTERN		HWY. 55	SHELBYVILLE, KY 40065–	502–633–4400
DAYS INN		HWY. 55	SHELBYVILLE, KY 40065–	502–633–4005
SHELBY MOTEL		US 60 W	SHELBYVILLE, KY 40065–	502–633–3350
BEST WESTERN MOTEL		I–65 KY HWY. 44	SHEPHERDSVILLE, KY 40165–	502–543–7097
RAMADA LIMITED MOTEL		I–65 & HWY. 44	SHEPHERDSVILLE, KY 40165–	502–543–2291
NATURAL BRIDGE STATE PARK.		2135 NATURAL BRIDGE RD	SLADE, KY 40375–	800–325–1710
CAREY'S CORNER MOTEL		W. HWY. 80	SOMERSET, KY 42501–	606–636–6855
HOLIDAY INN		S. HWY. 27	SOMERSET, KY 42501–	606–678–8115
PARKWAY INN		101 HWY. 27 N	SOMERSET, KY 42501–	606–678–2052
SOMERSET LODGE MOTEL		S. HWY. 27	SOMERSET, KY 42501–	606–678–4195
SUPER 8 MOTEL		302 S. HWY. 27	SOMERSET, KY 42501–	606–679–9279
EL MAR MOTEL		406 E. MAIN ST	SPRINGFIELD, KY 40069–	606–336–7063
HALLS GAP MOTEL		5620 SOMERSET	STANFORD, KY 40484–	606–365–9982
PARKLAND MOTEL	PO BOX 48	HC 69	STEARNS, KY 42647–	606–876–5046
SOUTH FORK MOTEL	PO BOX 252	BRUCE ST	STEARNS, KY 42647–	606–376–3156
TRAVELERS MOTEL		HWY. 641	SUWANEE, KY 42055–	502–388–7241
TOMPKINSVILLE INN		1500 EDMONTON RD	TOMPKINSVILLE, KY 42167–	502–487–9228
SULLIVAN'S MOTEL		31 W. JCT 224	UPTON, KY 42784–	
OTTER CREEK PARK VANBUREN LODGE.		RT. 1	VINE GROVE, KY 40175–	502–942–3641
PON DE LON MOTEL		US 25	WALTON, KY 41094–	606–356–3200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RED CARPET FOUNTAIN INN ..	.....	KY 338 & I–75	WALTON, KY 41094–	606–485–4123
WALTONIA HOTEL	.....	10 N. MAIN ST	WALTON, KY 41094–	.....
PARKWAY INN	.....	HWY. 15	WHITESBURG, KY 41858–	606–633–4441
SUBURBAN MOTEL	.....	236 E. MAIN ST	WHITESBURG, KY 41858–	606–633–9381
BEST WESTERN MOTEL	.....	HWY. 92 & I–75	WILLIAMSBURG, KY 40769–	606–549–1500
HOLIDAY INN WILLIAMSBURG .	PO BOX 712	RT. 4	WILLIAMSBURG, KY 40769–	606–549–3450
WILLIAMSBURG MOTEL	.....	50 BALLTOWN RD	WILLIAMSBURG, KY 40769–	606–549–2300
BIG SAVINGS MOTEL	.....	175 EXIT 159	WILLIAMSTOWN, KY 41097–	606–824–4774
HO JO INN	.....	10 SKYWAY DR	WILLIAMSTOWN, KY 41097–	606–824–7177
BEST WESTERN MOTEL 2 BLDGS.	.....	1307 LEXINGTON RD	WINCHESTER, KY 40391–	606–744–7210
DAYS INN MOTEL	.....	3400 OLIVER RD	WINCHESTER, KY 40391–	606–745–0751
HOLIDAY INN	.....	1100 HOLIDAY DR	WINCHESTER, KY 40391–	606–744–9111
RED CARPET INN 2 BLDGS	.....	1510 W. LEXINGTON RD	WINCHESTER, KY 40391–	606–744–9220
Louisiana				
HERITAGE INN	.....	2115 CHARITY	ABBEVILLE, LA 70510–	318–893–6420
HOLIDAY INN CONVENTION CENTER ALEXANDRIA.	.....	701 4TH STREET	ALEXANDRIA, LA 71301–	318–442–9000
HOTEL BENTLEY	.....	200 DE SOTO ST	ALEXANDRIA, LA 71301–	318–448–9600
RAMADA INN	.....	2211 N. MACARTHUR DR	ALEXANDRIA, LA 71301–	318–443–2561
SPORTSMAN LODGE	.....	700 N. MACARTHUR DR	ALEXANDRIA, LA 71301–	318–445–6541
ARCADIA MOTEL	.....	HWY. 80 E	ARCADIA, LA 71001–	318–263–8444
NOB HILL INN	PO BOX 275	EXIT 69 & I–20	ARCADIA, LA 71101–	318–263–2013
BATON ROUGE HILTON	.....	5500 HILTON AVE	BATON ROUGE, LA 70808–	504–924–5000
BEST WESTERN CHATEAU LOUISIANA.	.....	710 N. LOBDELL	BATON ROUGE, LA 70806–	504–927–6700
BUDGETEL INN 744	.....	10555 RIEGER RD	BATON ROUGE, LA 70809–	504–291–6600
BUDGETEL INN 744	.....	10555 RIEGER RD	BATON ROUGE, LA 70809–	504–291–6600
COURTYARD BY MARRIOTT BATON ROUGE.	.....	2421 S. ACADIAN	BATON ROUGE, LA 70808–	504–924–6400
CROWN STERLING SUITES HOTEL.	.....	4914 CONSTITUTION AVE	BATON ROUGE, LA 70808–	504–924–6566
HAMPTON INN	.....	4646 CONSTITUTION	BATON ROUGE, LA 70808–	504–925–9990
HOLIDAY INN BATON ROUGE EAST.	.....	10455 RIEGER RD	BATON ROUGE, LA 70809–	504–293–5880
LA QUINTA MOTOR #574	.....	2333 S. ACADIAN THRUWAY ...	BATON ROUGE, LA 70808–2304.	504–924–9600
RED ROOF INN #141	.....	11314 BOARDWALK DR	BATON ROUGE, LA 70816–	504–275–6600
RESIDENCE INN BY MARRIOTT.	.....	5522 CORPORATE BLVD	BATON ROUGE, LA 70808–	504–927–5630
SHERATON MOTEL	.....	4728 CONSTITUTION AVE	BATON ROUGE, LA 70808–	504–925–2244
WILSON INN	.....	3045 VALLEY CREEK RD	BATON ROUGE, LA 70808–	504–923–3377
RESIDENCE INN BY MARRIOTT.	.....	1001 GOULD DR	BOSSIER, LA 71111–	318–747–6220
LA QUINTA INN #568	.....	309 PRESTON BLVD	BOSSIER CITY, LA 71111–4969	318–747–4400
SHERATON INN	.....	2015 OLD MINDEN RD	BOSSIER CITY, LA 71111–	318–742–9700
SUNDOWNER INN	.....	4300 INDUSTRIAL DR	BOSSIER CITY, LA 71112–	318–746–5050
QUALITY INN MARINA	.....	5353 PARIS RD	CHALMETTE, LA 70043–	504–277–5353
HOLIDAY INN COVINGTON	.....	501 N. HWY. 190	COVINGTON, LA 70433–	504–893–3580
HOLIDAY INN WESTBANK	.....	100 WESTBANK EXPRWY	GRETNA, LA 70053–	504–366–2361
LA QUINTA INN #579	.....	50 TERRY PKWY	GRETNA, LA 70056–2599	504–368–5600
COLONIAL INN	.....	200 SEALE DR. I–10 & HWY. 51	HAMMOND, LA 70404–	504–345–2953
CYPRESS INN	.....	3020 HWY. 190 W	HAMMOND, LA 70401–	504–542–8555
EXECUTIVE INN	.....	2500 HWY. 51 BY PASS	HAMMOND, LA 70401–	504–542–1000
HOLIDAY INN HOLIDOME	.....	210 S. HOLLYWOOD RD	HOUMA, LA 70360–	504–868–5851
RAMADA INN HOUMA	.....	1400 W. TUNNEL BLVD	HOUMA, LA 70360–	504–879–4871
AIRPORT HILTON	.....	901 AIRLINE HWY	KENNER, LA 70062–	504–469–5000
COMFORT INN AIRPORT	.....	1700 I–10 SERVICE RD	KENNER, LA 70065–	504–464–1300
CONTEMPRA INN	.....	2820 WILLIAMS BLVD	KENNER, LA 70062–	504–468–7700
GARDEN VUE SQUARE HOTEL	.....	2438 VETERANS BLVD	KENNER, LA 70062–	504–469–2800
PARK PLAZA INN	.....	2125 VETERANS BLVD	KENNER, LA 70062–	504–464–6464
SHERATON INN	.....	2150 VETERANS MEMORIAL BLVD.	KENNER, LA 70062–	504–467–3111
HOLIDAY INN LA PLACE	.....	3900 MAIN ST	LA PLACE, LA 70068–	504–652–5544
COMFORT INN LAFAYETTE	.....	1421 SE EVANGELINE THRUWAY.	LAFAYETTE, LA 70501–	318–232–9000
HOLIDAY INN EXPRESS	.....	2503 SE EVANGELINE THWY ..	LAFAYETTE, LA 70508–	318–234–2000
HOLIDAY INN NORTH	.....	2716 NE EVANGELINE THWY ..	LAFAYETTE, LA 70507–	318–233–0003
HOTEL ACADIANA	.....	1801 W. PINHOOK RD	LAFAYETTE, LA 70508–	318–233–8120
LA QUINTA MOTOR INN #4221	.....	2100 NE EVANGELINE THRUWAY.	LAFAYETTE, LA 70501–1928	318–233–5610

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LAFAYETTE HILTON & TOWERS.		1521 W. PINHOOK RD	LAFAYETTE, LA 70505–	318–235–6111
QUALITY INN		1605 N. UNIVERSITY AVE	LAFAYETTE, LA 70501–	318–232–6131
BEST WESTERN RICHMOND SUITES OF LAKE CHARLES.		920 N. HWY. 171 I–10	LAKE CHARLES, LA 70601–	318–433–5213
HOLIDAY INN LAKE CHARLES		505 N. LAKESHORE DR	LAKE CHARLES, LA 70601–	318–433–7121
BEST WESTERN INN		1055 WASHINGTON AVE	MANSFIELD, LA 71052–	318–872–5034
BURTON'S GATEHOUSE INN INC.		604 S. WASHINGTON	MANSFIELD, LA 71052–	318–872–3601
LA QUINTA #580		5900 VETERANS MEMORIAL BLVD.	METAIRIE, LA 70003–	504–456–0003
LA QUINTA CAUSEWAY #2508		3100 I–10 SERVICE RD	METAIRIE, LA 70001–2091	504–835–8511
RAMADA INN CAUSEWAY		2713 N. CAUSEWAY BLVD	METAIRIE, LA 70002–	504–835–4141
SHERATON NEW ORLEANS NORTH.		3838 N. CAUSEWAY BLVD	METAIRIE, LA 70002–	504–836–5253
COMFORT INN		5650 FRONTAGE RD	MONROE, LA 71202–	318–345–2220
HOLIDAY INN PROFESSIONAL CENTRE ATRIUM.		2001 LOUISVILLE AVE	MONROE, LA 71201–	318–325–0641
LA QUINTA AIRPORT #592		1035 US 165 BYPASS S	MONROE, LA 71203–5542	318–322–3900
HOLIDAY INN		HWY. 1 BY PASS	NATCHITOCHES, LA 71457–	318–357–8281
SUPER 8		HWY. 3110	NATCHITOCHES, LA 71457–	318–352–1700
BIENVILLE HOUSE		320 DECATUR ST	NEW ORLEANS, LA 70130–	504–529–2345
CLARION HOTEL		1500 CANAL ST	NEW ORLEANS, LA 70111–	504–522–4500
COMFORT INN EAST		6322 CHEF HWY	NEW ORLEANS, LA 70126–	504–241–5650
COMFORT INN EAST		6322 CHEF HWY	NEW ORLEANS, LA 70126–	504–241–5650
DOUBLETREE HOTEL		300 CANAL ST	NEW ORLEANS, LA 70140–	504–581–1300
HILTON HOTEL TOWERS		2 POYDRAS ST	NEW ORLEANS, LA 70111–	504–561–0500
HISTORIC FRENCH MARKET INN.		501 DECATUR ST	NEW ORLEANS, LA 70130–	504–561–5621
HOJO INN EAST		4200 OLD GENTILLY RD	NEW ORLEANS, LA 70126–	504–944–0151
HOLIDAY INN CROWN PLAZA		333 POYDRAS ST	NEW ORLEANS, LA 70130–	504–505–9444
HOLIDAY INN DOWNTOWN		330 LOYOLA AVE	NEW ORLEANS, LA 70111–	504–581–1600
HOLIDAY INN NEW ORLEANS FRENCH QUARTER.		124 ROYAL ST	NEW ORLEANS, LA 70130–	504–529–7211
HOTEL INTERCONTINENTAL OF NEW ORLEANS.		444 ST. CHARLES AVE	NEW ORLEANS, LA 70130–	504–525–5566
HYATT HOTEL		500 POYDRAS ST	NEW ORLEANS, LA 70140–	504–561–1234
LA QUINTA INN #721		12001 I–10 SERVICE RD	NEW ORLEANS, LA 70128–2443.	504–246–3003
LAFAYETTE HOTEL		600 ST. CHARLES AVE	NEW ORLEANS, LA 70130–	504–524–4441
LE MERIDIEN HOTEL NEW ORLEANS.		614 CANAL ST	NEW ORLEANS, LA 70130–	504–525–6500
LE PAVILLION HOTEL		833 POYDRAS ST	NEW ORLEANS, LA 70112–	504–581–3111
LE RICHELIEU IN THE FRENCH QUARTER.		1234 CHARTRES ST	NEW ORLEANS, LA 70116–	504–529–2492
NEW ORLEANS HILTON RIVERSIDE.		#2 POYDRAS ST. MISS. RIVER	NEW ORLEANS, LA 70140–	504–561–0500
NEW ORLEANS MARRIOTT HOTEL.		555 CANAL ST	NEW ORLEANS, LA 70140–	504–553–5536
PRYTANIA PARK HOTEL		1525 PRYTANIA ST	NEW ORLEANS, LA 70130–	504–524–0427
RADISSON SUITE HOTEL		315 JULIA ST	NEW ORLEANS, LA 70130–	504–525–1993
SHERATON NEW ORLEANS HOTEL.		500 CANAL ST	NEW ORLEANS, LA 70130–	504–592–5616
ST. CHARLES INN		3636 ST. CHARLES AVE	NEW ORLEANS, LA 70115–	504–899–8888
WESTIN CANAL PLACE HOTEL		100 RUE IBERVILLE	NEW ORLEANS, LA 70130–	504–556–7006
WINDSOR COURT		300 GRAVIER ST	NEW ORLEANS, LA 70130–	504–523–6000
QUALITY INN		4501 I–49	OPELOUSAS, LA 70570–	318–948–9500
BEST WESTERN		I–20 AT HWY. 167 S	RUSTON, LA 71270–	318–251–0000
COMFORT INN		I–20 FRONTAGE RD	RUSTON, LA 71270–	318–251–2360
BEST WESTERN CHATEAU SUITE HOTEL OF S'PORT.		201 LAKE ST	SHREVEPORT, LA 71101–	318–222–7620
BEST WESTERN RICHMOND SUITES OF SHREVEPORT.		5101 MONKHOUSE DR	SHREVEPORT, LA 71109–	318–635–6431
MOTEL 6		4915 MONKHOUSE	SHREVEPORT, LA 71109–	318–631–9691
RED ROOF INN #163		7296 GREENWOOD RD	SHREVEPORT, LA 71119–	318–938–5342
REMINGTON SUITE MOTEL		220 TRAVIS ST	SHREVEPORT, LA 71101–	318–425–5000
SHERATON PIERREMONT		1419 E. 70TH ST	SHREVEPORT, LA 71105–	318–797–9900
SUPER 8		5204 MONKHOUSE	SHREVEPORT, LA 71109–	318–635–8886
LA QUINTA INN #4910		794 E. I–10 SERVICE RD	SLIDELL, LA 70458–	504–643–9770
LA QUINTA INN #588		2600 S. RUTH	SULPHUR, LA 70663–7465	318–527–8303
HOLIDAY CAPRI		204 N. CEDAR ST	TALLULAH, LA 71282–	318–574–1154
SOUTHWAY INN		204 W. CEDAR ST	TALLULAH, LA 71282–	318–574–2000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RED ROOF INN		102 CONSTITUTION DR	WEST MONROE, LA 71292–	318–388–2420
NOTTOWAY PLANTATION HOME.		MISSISSIPPI RIVER RD	WHITE CASTLE, LA 70788–0160.	504–545–2730
Massachusetts				
SUSSE CHALET INN		CLARK RD. & RT. 110	AMESBURY, MA 01913–	508–388–3400
CAMPUS CENTER HOTEL		UNIVERSITY OF MASS	AMHERST, MA 01003–	413–549–6000
ANDOVER MARRIOTT HOTEL		123 OLD RIVER RD	ANDOVER, MA 01810–	508–975–3600
COURTYARD BY MARRIOTT ANDOVER.		10 CAMPANELLI DR	ANDOVER, MA 01810–	508–794–0700
RAMADA HOTEL ROLLING GREEN.		311 LOWELL ST	ANDOVER, MA 01810–	508–475–5400
BULL FROG BED & BREAKFAST.		CONWAY RD	ASHFIELD, MA 01330–	413–628–4493
EMMA C'S BED & BREAKFAST		18 FRENCH FARM RD	ATTLEBORO, MA 02703–	508–226–6365
BUDGETEL INN		444 SOUTHBRIDGE ST	AUBURN, MA 01501–	508–832–7000
RAMADA INN WORCESTER		624 SOUTHBRIDGE ST	AUBURN, MA 01501–	508–832–3221
RAMADA INN BEDFORD—BOSTON.		340 GREAT RD	BEDFORD, MA 01730–	617–275–6700
STOUFFER BEDFORD GLEN HOTEL.		44 MIDDLESEX TNPK	BEDFORD, MA 01730–	617–275–5500
LAKEVIEW MOTOR LODGE		5 LAKEVIEW AVE	BEVERLY, MA 01906–	508–922–7535
BACK BAY HILTON		40 DALTON ST	BOSTON, MA 02115–	617–236–1100
BEST WESTERN BOSTON		342 LONGWOOD AVE	BOSTON, MA 02215–	617–731–4700
BOSTON LONG WHARF MARRIOTT.		296 STATE ST	BOSTON, MA 02109–	617–227–0800
BOSTON MARRIOTT COPLEY PLACE.		110 HUNTINGTON AVE	BOSTON, MA 02116–	617–236–5800
COPLEY PLAZA HOTEL		138 ST. JAMES AVE	BOSTON, MA 02116–	617–267–5300
COPLEY SQUARE HOTEL		47 HUNTINGTON AVE	BOSTON, MA 02116–	617–536–9000
FOUR SEASONS HOTEL		200 BOYLSTON ST	BOSTON, MA 02341–	617–447–4210
GUEST QUARTERS SUITE HOTEL.		400 SOLDIERS FIELD RD	BOSTON, MA 02134–	617–783–0090
HARBORSIDE HYATT CONFERENCE CENTER AND HOTEL.		101 HARBORSIDE DR	BOSTON, MA 02128–	617–568–1234
HOLIDAY INN BOSTON GOVT. CTR.		5 BLOSSOM ST	BOSTON, MA 02114–	617–742–7630
HOWARD JOHNSON LODGE		1271 BOYLSTON ST	BOSTON, MA 02215–	617–267–8300
LE MERIDIEN HOTEL		250 FRANKLIN ST	BOSTON, MA 02110–	617–451–1900
LENOX HOTEL		710 BOYLSTON ST	BOSTON, MA 02116–	617–536–5300
MIDTOWN HOTEL		220 HUNTINGTON AVE	BOSTON, MA 02115–	617–262–1000
RAMADA AIRPORT HOTEL		228 McCLELLAN HWY	BOSTON, MA 02128–	617–569–5250
SHERATON BOSTON HOTEL & TOWERS.		39 DALTON ST	BOSTON, MA 02199–	617–236–2000
SWISSOTEL BOSTON LAFAYETTE HOTEL.		1 AVE. DE LAFAYETTE	BOSTON, MA 02111–	617–451–2600
THE RITZ CARLTON		15 ARLINGTON ST	BOSTON, MA 02117–	617–536–5700
WESTIN HOTEL COPLEY PLACE.		10 HUNTINGTON AVE	BOSTON, MA 02116–	617–262–9600
SHERATON TARA HOTEL BRAINTREE.		37 FORBES RD	BRAINTREE, MA 02184–	617–848–0600
GREAT VACATIONS	PO BOX 1748	2660 RT. 6 A	BREWSTER, MA 02631–	508–896–2090
ISAIAH CLARK HOUSE		1187 MAIN ST	BREWSTER, MA 02631–	508–896–2223
HOLIDAY INN BROCKTON		WESTGATE MALL	BROCKTON, MA 02401–	508–588–6300
HOLIDAY INN BROOKLINE		1200 BEACON ST	BROOKLINE, MA 02146–	617–277–1200
BOSTON BURLINGTON MARRIOTT.		ONE MALL RD	BURLINGTON, MA 01803–	617–229–6565
BEST WESTERN HOMESTEAD INN.		220 ALEWIFE BROOK PKWY	CAMBRIDGE, MA 02138–1102	617–491–8000
BOSTON CAMBRIDGE MARRIOTT.		2 CAMBRIDGE CTR	CAMBRIDGE, MA 02142–	617–494–6600
HYATT REGENCY CAMBRIDGE		575 MEMORIAL DR	CAMBRIDGE, MA 02139–	617–492–1234
ROYAL SONESTA HOTEL		5 CAMBRIDGE PKWY	CAMBRIDGE, MA 02142–	617–491–3600
SHERATON COMMANDER HOTEL.		16 GARDEN ST	CAMBRIDGE, MA 02138–	617–547–4800
SUSSE CHALET CAMBRIDGE		211 CONCORD TURNPIKE	CAMBRIDGE, MA 02140–	617–861–7800
THE CHARLES HOTEL		1 BENNET ELIOT ST	CAMBRIDGE, MA 02138–	617–864–1200
THE INN AT HARVARD		1201 MASSACHUSETTS AVE	CAMBRIDGE, MA 02138–	617–491–2222
CHATHAM TOWN HOUSE INN		11 LIBRARY LN	CHATHAM, MA 02633–	508–945–2180
CYRUS KENT HOUSE INN		63 CROSS ST	CHATHAM, MA 02633–	508–945–9104
DOLPHIN OF CHATHAM INN & MOTEL.		352 MAIN ST	CHATHAM, MA 02633–	508–945–0070

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE OLD HARBOR INN		22 OLD HARBOR RD	CHATHAM, MA 02633–	508–945–4434
RADISSON HERITAGE HOTEL		10 INDEPENDENCE DR	CHELMSFORD, MA 01824–	508–256–0800
BEST WESTERN CHICOPEE MOTOR LODGE.		463 MEMORIAL DR	CHICOPEE, MA 01020–	413–592–6171
COMFORT INN		450 MEMORIAL DR	CHICOPEE, MA 01020–	413–739–7311
COLONIAL INN		48 MONUMENT SQUARE	CONCORD, MA 01742–	508–369–9200
HOWARD JOHNSON LODGE		740 ELM ST	CONCORD, MA 01742–	508–369–6100
CRAIGVILLE CONFERENCE CENTER.		VILLAGE OF CRAIGVILLE	CRAIGVILLE, MA 02636–	508–775–1265
COURTYARD BY MARRIOTT DANVERS.		275 INDEPENDENCE WAY	DANVERS, MA 01923–	508–777–8630
KING'S GRANT INN CORP	PO BOX 274	TRASK LN	DANVERS, MA 01923–	508–774–6800
SHERATON TARA HOTEL		50 FERNCROFT DR	DANVERS, MA 01923–	508–777–2500
COMFORT INN OF DARTMOUTH.		171 FAUNCE CORNER RD	DARTMOUTH, MA 02747–	508–996–0800
COMFORT INN		235 ELM ST	DEDHAM, MA 02026–	617–326–6700
HILTON AT DEDHAM PLACE		95 DEDHAM PL	DEDHAM, MA 02026–	617–329–7900
HOLIDAY INN DEDHAM		55 ARIADNE RD	DEDHAM, MA 02026–	617–329–1000
ISAIAH HALL B & B INN		152 WHIG ST	DENNIS, MA 02638–	508–385–9928
THE FOUR CHIMNEYS INN		946 MAIN ST	DENNIS, MA 02638–	508–385–6317
COLONIAL VILLAGE MOTEL		426 LOWER COUNTY RD	DENNISPORT, MA 02639–	508–396–2071
SEA SHELL MOTEL		45 CHASE AVE	DENNISPORT, MA 02639–	508–398–8965
SUSSE CHALET INN BOSTON		900 MORRISSEY BLVD	DORCHESTER, MA 02122–	617–287–9200
SUSSE CHALET MOTOR LODGE BOSTON.		800 MORRISSEY BLVD. #1	DORCHESTER, MA 02122–	617–287–9100
LOGAN AIRPORT HILTON		75 SERVICE RD	EAST BOSTON, MA 02128–	617–569–9300
EAGLE WING MOTEL		RT. 6	EASTHAM, MA 02642–	508–255–0222
SHERATON OCEAN PARK INN		RT. 6	EASTHAM, MA 02642–	508–255–5000
THE CRANBERRY COTTAGES	PO BOX 146	RR 1 RT. 6 #785	EASTHAM, MA 02642–	508–255–0602
CAPT. DEXTER HOUSE OF EDGARTOWN.		35 PEASE'S POINT WAY	EDGARTOWN, MA 02539–	508–627–7289
DAGGET HOUSE		59 N. WATER ST	EDGARTOWN, MA 02539–	508–627–4600
GOV BRADFORD INN OF EDGARTOWN.		128 MAIN ST	EDGARTOWN, MA 02539–0239	508–627–9510
DAYS INN FALL RIVER		332 MILLIKEN BLVD	FALL RIVER, MA 02721–	508–676–1991
CAPT. TOM LAWRENCE HOUSE.		75 LOCUST ST	FALMOUTH, MA 02540–	508–540–1445
FALMOUTH SQUARE INN		40 N. MAIN ST	FALMOUTH, MA 02540–	508–457–0606
MARINER MOTEL		555 MAIN ST	FALMOUTH, MA 02540–	508–548–1331
QUALITY INN FALMOUTH		291 JONES RD	FALMOUTH, MA 02540–	508–540–2000
THE COONAMESSETT INN		JONES RD. & GIFFORD ST	FALMOUTH, MA 02541–	508–548–2300
THE PALMER HOUSE INN		81 PALMER AVE	FALMOUTH, MA 02540–	508–548–1230
BEST WESTERN ROYAL PLAZA HOTEL.		150 ROYAL PLAZA DR	FITCHBURG, MA 01420–	508–342–7100
ANCYENT MARINER		9 MECHANIC ST	FOXBOROUGH, MA 02035–	508–543–5564
COURTYARD BY MARRIOTT FOXBORO.		35 FOXBORO BLVD	FOXBOROUGH, MA 02035–	508–543–5222
RED ROOF INN INC		650 COCHICHUATE RD	FRAMINGHAM, MA 01701–	508–872–4499
SHERATON TARA HOTEL FRAMINGHAM.		1657 WORCESTER RD	FRAMINGHAM, MA 01701–	508–879–7200
SUPER 8 MOTEL		22 PEARSON BLVD	GARDNER, MA 01440–	508–630–2888
CAPE ANN MOTOR INN		33 ROCKPORT RD	GLOUCESTER, MA 01930–	508–281–2900
CAPTAINS LODGE MOTEL		237 EASTERN AVE	GLOUCESTER, MA 01930–	508–281–2420
HOWARD JOHNSON LODGE		401 RUSSELL ST	HADLEY, MA 01035–	413–586–0114
SANDPIPER BEACH INN		16 BANK ST	HARWICHPORT, MA 02646–	508–432–0485
SEADAR INN		BANK ST. @ BRADDOCK LN	HARWICHPORT, MA 02646–	508–432–0264
THE COACH HOUSE B & B		74 SISSON RD	HARWICHPORT, MA 02646–	508–432–9452
TROY COURT GUESTHOUSE MOTEL.		28 SEA ST	HARWICHPORT, MA 02646–	508–432–1275
COMFORT SUITES HOTEL		106 BANK RD	HAVERHILL, MA 01832–	508–374–7755
ATLANTIC INN INC		120 NANTASKET AVE	HULL, MA 02045–	617–925–4832
CAPE COD PLAZA HOTEL & CONF CTR.		RT. 132 BEARSE'S WAY	HYANNIS, MA 02601–	508–771–3000
HOLIDAY INN		RT 132	HYANNIS, MA 02601–	508–775–6600
TARA HYANNIS HOTEL & RESORT.		W. END CIR	HYANNIS, MA 02601–	508–775–7775
BAY VIEW MOTEL		20 MAIN ST	KINGSTON, MA 02364–	617–585–2268
HAMPTON INN		224 WINTHROP AVE	LAWRENCE, MA 01843–	508–975–4050
BLACK SWAN INN INC		RT. 20 @ LAUREL LAKE	LEE, MA 01238–	413–243–2700
QUALITY INN		390 PITTSFIELD RD	LENOX, MA 01240–	413–637–4244
THE VILLAGE INN		16 CHURCH ST	LENOX, MA 01240–	413–637–0020

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN LEOMINSTER FITCHBURG.		ONE LINDELL AVE	LEOMINSTER, MA 01453–	508–537–1661
SHERATON LEOMINSTER INN CONFERENCE.		99 ERDMAN WAY	LEOMINSTER, MA 01453–	508–534–9000
SUPER 8 MOTEL		428 N. MAIN ST	LEOMINSTER, MA 01453–	508–537–2800
SHERATON TARA LEXINGTON INN.		727 MARRETT RD	LEXINGTON, MA 02173–	617–862–8700
LOWELL MARIOTT COURTYARD.		30 INDUSTRIAL AVE	LOWELL, MA 01851–	508–458–7575
MOTEL REALTY CO INC		735 BROADWAY	MALDEN, MA 02148–	617–324–7400
HOLIDAY INN OF MANSFIELD		31 HAMPSHIRE ST	MANSFIELD, MA 02048–	508–339–2200
BEST WESTERN ROYAL PLAZA HOTEL.		181 BOSTON POST RD. W	MARLBORO, MA 01752–	508–460–0700
DAYS INN PLYMOUTH MIDDLEBORO.		CLARK ST. E	MIDDLEBORO, MA 02346–	508–946–4400
SUSSE CHALET		3 HARDING ST	MIDDLEBORO, MA 02346–	508–946–4000
MILFORD COURTYARD		10 FORTUNE BLVD	MILFORD, MA 01757–	508–634–8500
SHERATON INN		11 BEAVER ST	MILFORD, MA 01757–	508–478–7010
TAGE INN		24 BEAVER ST	MILFORD, MA 01757–	508–478–8243
CLIFF LODGE STILLDOCK APTS.		9 CLIFF RD	NANTUCKET, MA 02554–	508–228–9480
CORNER HOUSE INN		49 CENTRE ST	NANTUCKET, MA 02554–	508–228–1530
HOUSE OF SEVEN GABLES		32 CLIFF RD	NANTUCKET, MA 02554–	508–228–4706
HUSSEY HOUSE 1795		15 N. WATER ST	NANTUCKET, MA 02554–	508–228–0747
JARED COFFIN HOUSE	PO BOX 1580	29 BROAD ST	NANTUCKET, MA 02554–1580	508–228–2400
MARTIN HOUSE INN	PO BOX 743	61 CENTRE ST	NANTUCKET, MA 02554–	508–228–0678
SAFE HARBOR GUEST HOUSE		2 HARBORVIEW WAY	NANTUCKET, MA 02554–	508–228–3222
THE CARRIAGE HOUSE		5 RAY'S CT	NANTUCKET, MA 02554–	508–228–0326
THE FOLGER HOTEL		71 EASTON ST	NANTUCKET, MA 02554–	508–228–0313
THE WAUWINET		120 WAUWINET RD	NANTUCKET, MA 02554–	508–228–0145
WINTHROP HOTELS & RESORTS.		0 MAIN ST	NANTUCKET, MA 02554–	508–228–8100
NATICK TRAVELODGE		1350 WORCESTER RD	NATICK, MA 01760–	508–655–2222
SHERATON NEEDHAM HOTEL		100 CABOT ST	NEEDHAM, MA 02194–	617–444–1110
CARRIAGE HOUSE MOTEL		US RT. 7	NEW ASHFORD, MA 01237–	413–458–5359
DUBLIN HOUSE MOTEL BRODIE MT.		RESORT US RT. 7	NEW ASHFORD, MA 01237–	413–443–4752
KERRY HOUSE MOTEL BRODIE MT.		RESORT US RT. 7	NEW ASHFORD, MA 01237–	413–443–4752
THE SPRINGS MOTOR INN BEST WESTERN.		US RT. 7	NEW ASHFORD, MA 01237–	800–528–1234
DAYS INN		500 HATHAWAY RD	NEW BEDFORD, MA 02740–	508–997–1231
DURANT SAIL LOFT INN		ONE MERRILL'S WHARF	NEW BEDFORD, MA 02740–	508–999–2700
NEW SEABURY RESORT & CONF CTR.		ROCK LANDING RD	NEW SEABURY, MA 02649–	508–477–9111
THE WINDSOR HOUSE IN NEWBURYPORT.		38 FEDERAL ST	NEWBURYPORT, MA 01950–	508–462–3778
BOSTON MARRIOTT HOTEL NEWTON.		2345 COMMONWEALTH AVE	NEWTON, MA 02166–	617–969–1000
SHERATON TARA HOTEL		320 WASHINGTON ST	NEWTON, MA 02158–	617–969–3010
CAPTAIN'S QUARTERS MOTEL	PO BOX Y	RT. 6	NORTH EASTHAM, MA 02651–	508–255–5686
SEA CREST RESORT & CONF CTR.		350 QUAKER RD	NORTH FALMOUTH, MA 02556–.	508–540–9400
NORTHAMPTON QUALITY HOTEL.		ONE ATWOOD DR	NORTHAMPTON, MA 01060–	413–586–1211
FRIENDSHIP INN		380 SW CUTOFF RT. 20 & 9	NORTHBORO, MA 01532–	508–842–8541
COURTYARD BY MARRIOTT		300 RIVER RIDGE DR	NORWOOD, MA 02062–	617–762–4700
FACTORY MUTUAL CONFERENCE CENTER.	PO BOX 9102	1151 BOSTON-PROVIDENCE TNPK.	NORWOOD, MA 02062–	617–769–7900
ORLEANS HOLIDAY MOTEL		48 RT. 6A	ORLEANS, MA 02653–	508–255–1514
HOLIDAY INN PEABODY		ONE NEWBURY ST	PEABODY, MA 01960–	508–535–4600
PEABODY MARRIOTT		8 A CENTENNIAL DR	PEABODY, MA 01960–	508–977–9700
BERKSHIRE HILTON		S. ST. BERK COMMON	PITTSFIELD, MA 01201–	413–499–2000
TRAVELODGE PITTSFIELD		16 CHESHIRE RD	PITTSFIELD, MA 01201–	413–443–5661
GOV BRADFORD MOTOR INN		98 WATER ST	PLYMOUTH, MA 02360–	508–746–6200
JOHN CARVER INN		25 SUMMER ST	PLYMOUTH, MA 02360–	508–746–7100
PILGRIM SANDS MOTEL		RT. 3A 150 WARREN AVE	PLYMOUTH, MA 02360–	508–747–0900
PLYMOUTH MOTEL		RT. 44 155 SAMOSET ST	PLYMOUTH, MA 02360–	508–746–2800
SHERATON PLYMOUTH INN		180 WATER ST	PLYMOUTH, MA 02360–	508–747–4900
HOLIDAY INN OF PROVINCETOWN.	PO BOX 392	RT. 6A	PROVINCETOWN, MA 02657–	508–487–1711
LAMPLIGHTER INN		26 BRADFORD ST	PROVINCETOWN, MA 02657–	508–487–2529

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
PROVINCETOWN INN		1 COMMERCIAL ST	PROVINCETOWN, MA 02657–	508–487–9500
RICHMOND INN		4 CONANT ST	PROVINCETOWN, MA 02657–	508–487–9193
WHITE WIND INN INC		174 COMMERCIAL ST	PROVINCETOWN, MA 02657–	508–487–1526
DAYS INN		RT. 44 NEW STATE HWY	RAYNHAM, MA 02767–	508–824–8647
COMFORT INN SOUTH SHORE		909 HINGHAM ST	ROCKLAND, MA 02370–	617–871–5660
CLIPPER SHIP INN		40 BRIDGE ST	SALEM, MA 01970–	508–745–8022
SANDWICH MOTOR LODGE		54 RT. 6A	SANDWICH, MA 02563–	508–888–2275
DAYS INN		999 BROADWAY	SARGUS, MA 01906–	617–233–1800
DAYS INN		US RT. 1 999 BROADWAY	SAUGUS, MA 01906–	617–233–1800
RAMADA INN		940 FORBES RD	SEEKONK, MA 02771–	508–336–7300
SUSSE CHALET HOTEL SEEKONK.		341 HIGHLAND AVE	SEEKONK, MA 02771–	508–336–7900
DAYS INN		889 BOSTON TNPK	SHREWSBURY, MA 01545–	508–842–8500
4 D MOTEL		1693 G.A.R. HWY. RT. 6	SOMERSET, MA 02725–	508–678–9071
HOLIDAY INN		30 WASHINGTON ST	SOMERVILLE, MA 02143–	617–628–1000
BAYBERRY MOTEL		10 OLD COUNTY RD	SOUTH HARWICH, MA 02661–	508–432–2937
HANDERCHIEF SHOALS MOTEL INC.		888 MAIN ST	SOUTH HARWICH, MA 02661–	508–432–2200
MOBY DICK MOTEL		767 RT. 28	SOUTH HARWICH, MA 02661–	508–432–1434
EVENTIDE MOTEL & COTTAGES.		RT. 6	SOUTH WELLFLEET, MA 02663–	508–349–3410
AMBASSADOR MOTOR INN		1314 RT. 28 BOX 777	SOUTH YARMOUTH, MA 02664–	508–394–4000
BESTWESTERN BLUEWATER ON OCEAN.	PO BOX 276	291 S. SHORE DR	SOUTH YARMOUTH, MA 02664–	508–398–2288
GULL WING SUITES HOTEL INC.		822 MAIN ST	SOUTH YARMOUTH, MA 02664–	508–394–9300
JOLLY CAPTAIN MOTOR LODGE.		1376 MAIN ST	SOUTH YARMOUTH, MA 02664–	508–398–2253
OCEAN MIST RESORT MOTEL		97 S. SHORE DR	SOUTH YARMOUTH, MA 02664–	800–248–6478
THE OCEAN CLUB SMUGGLERS BEACH.		329 S. SHORE DR	SOUTH YARMOUTH, MA 02664–	508–398–6955
WINDJAMMER MOTEL		192 S. SHORE DR	SOUTH YARMOUTH, MA 02664–	800–446–9744
RED ROOF INN		367 TNPK. RD	SOUTHBORO, MA 01772–	508–481–3904
SOUTHBORO MOTOR LODGE		50 TURNPIKE RD	SOUTHBORO, MA 01745–	508–481–7061
SPRINGFIELD MARRIOTT		1500 MAIN ST	SPRINGFIELD, MA 01115–	413–781–7111
STERLING INN INC		240 WORCESTER RD	STERLING, MA 01564–	508–422–6592
COURTYARD MARRIOTT		200 TECHNOLOGY CTR. DR	STOUGHTON, MA 02072–	617–297–7000
PUBLICK HOUSE HISTORIC RESORT.		MAIN ST	STURBRIDGE, MA 01566–	508–347–3313
QUALITY INN COLONIAL		RT. 20	STURBRIDGE, MA 01566–	508–347–3306
STURBRIDGE COUNTRY INN		530 MAIN ST	STURBRIDGE, MA 01566–	508–347–5503
LONGFELLOW'S WAYSIDE INN		WAYSIDE INN RD	SUDBURY, MA 01776–	508–443–1776
CAP'N JACKS WATERFRONT INN.		253 HUMPHREY ST	SWAMPSCOTT, MA 01907–	617–595–7910
SWANSEA MOTOR INN		999 G.A.R. HWY	SWANSEA, MA 02777–	508–675–7700
HOLIDAY IN TAUNTON		700 MYLES STANDISH BLVD	TAUNTON, MA 02780–	508–823–0430
RESIDENCE INN BY MARRIOTT.		1775 ANDOVER ST	TEWKSBURY, MA 01876–	508–640–1003
SUSSE CHALET TEWKSBURY		1695 ANDOVER ST	TEWKSBURY, MA 01876–	508–640–0700
STONEHEDGE INN		160 PAWTUCKET BLVD	TYNGSBORO, MA 01879–	508–649–4400
CAPT. DEXTER HOUSE VINEYRD HVN.	PO BOX 2457	100 MAIN ST	VINEYARD HAVEN, MA 02568–	508–693–6564
THE HANOVER HOUSE	PO BOX 2107	10 EDGARTOWN RD	VINEYARD HAVEN, MA 02568–	508–693–1066
COLONIAL HILTON HOTEL		RT. 128 95 AUDUBON RD	WAKEFIELD, MA 01880–	617–245–9300
SHARON MOTEL	PO BOX 122	US RT. 1	WALPOLE, MA 02081–	617–784–5800
SUSSE CHALET OF WALTHAM		385 WINTER ST	WALTHAM, MA 02154–	617–890–2800
FRIENDSHIP INN NORTH		90 STERLING ST	WEST BOYLSTON, MA 01853–	508–835–6247
MASTER MARINER MOTEL		1547 MAIN ST	WEST CHATHAM, MA 02669–	508–945–2244
COMMODORE INN		30 EARLE RD	WEST HARWICH, MA 02671–	508–432–1180
ECONO LODGE		1533 ELM ST	WEST SPRINGFIELD, MA 01089–	414–734–8278
HAMPTON INN		1011 RIVERDALE ST	WEST SPRINGFIELD, MA 01089–	413–732–1300
KNOLL MOTEL		572 RIVERDALE ST	WEST SPRINGFIELD, MA 01089–	413–788–9648
RAMADA HOTEL		1080 RIVERDALE ST	WEST SPRINGFIELD, MA 01089–	413–781–8750
RED ROOF INN		1254 RIVERDALE ST	WEST SPRINGFIELD, MA 01089–	413–731–1010

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SHAKER MILL TAVERN		2 OAK ST	WEST STOCKBRIDGE, MA 01266–.	413–232–8575
WILLIAMSVILLE INN		RT. 41	WEST STOCKBRIDGE, MA 01266–.	413–274–6118
ALADDIN MOTOR INN		225 RT. 28	WEST YARMOUTH, MA 02673–	508–775–5669
FLAGSHIP MOTOR INN		343 RT. 28	WEST YARMOUTH, MA 02673–	508–775–5155
THE CAPE POINT HOTEL		476 MAIN ST	WEST YARMOUTH, MA 02673–	508–778–1500
THE COVE AT YARMOUTH		183 MAIN ST	WEST YARMOUTH, MA 02673–	508–771–3666
TIDEWATER MOTOR LODGE		RT. 28 135 MAIN ST	WEST YARMOUTH, MA 02673–	508–775–8322
BOSTON MARRIOTT WESTBORO.		5400 COMPUTER DR	WESTBOROUGH, MA 01581–	508–366–5511
RESIDENCE INN BY MARRIOTT.		25 CONNECTOR RD	WESTBOROUGH, MA 01581–	508–366–7700
WESTFIELD MOTOR INN		21 SOUTHAMTON RD	WESTFIELD, MA 01085–	413–568–2821
HAMPTON INN FALL RIVER WESTPORT.		53 OLD BEDFORD RD	WESTPORT, MA 02790–	508–675–8500
FOUR ACRES MOTEL		213 MAIN ST	WILLIAMSTOWN, MA 01267–2608.	413–458–8158
THE ORCHARDS		222 ADAMS RD	WILLIAMSTOWN, MA 01267–	413–458–9611
THE WILLIAMS INN		1090 MAIN ST	WILLIAMSTOWN, MA 01267–	413–458–9371
GOVERNOR WINTHROP MOTEL.		600 SHIRLEY ST	WINTHROP, MA 02152–	617–846–9700
RADISSON HOTEL BOSTON NORTH.		2 FORBES RD	WOBURN, MA 01801–	617–932–0999
WOBURN COURTYARD BY MARRIOTT.		240 MISHAWUM RD	WOBURN, MA 01801–	617–932–3200
HOLIDAY INN WORCESTER		500 LINCOLN ST	WORCESTER, MA 01605–	508–852–4000
WORCESTER MARRIOTT		10 LINCOLN SQUARE	WORCESTER, MA 01608–	508–791–1600
Maryland				
DAYS INN ABERDEEN		783 W. BEL AIR AVE	ABERDEEN, MD 21001–	410–272–8500
ECONO LODGE OF ABERDEEN		820 W. BEL AIR AVE	ABERDEEN, MD 21001–	410–272–5500
HOLIDAY INN CHESAPEAKE HOUSE.	1007 BEARDS HILL RD.		ABERDEEN, MD 21001–	410–272–8100
HOWARD JOHNSON LODGE		793 W. BELAIR AVE	ABERDEEN, MD 21001–	410–272–6000
MOTEL CAVALIER		1109 S. PHILADELPHIA BLVD	ABERDEEN, MD 21001–	410–272–4100
RED ROOF INN ABERDEEN		988 BEARDS HILL RD	ABERDEEN, MD 21001–	410–273–7606
SHERATON INN ABERDEEN	PO BOX V	980 BEARDS HILL RD	ABERDEEN, MD 21001–	410–273–8300
KEYSERS RIDGE AUTO TRUCK STOP INC.		US RT. 40 & US RT. 29	ACCIDENT, MD 21520–	301–746–8710
ANNAPOLIS COURTYARD BY MARRIOTT.		2559 RIVA RD	ANNAPOLIS, MD 21401–	410–266–1555
ANNAPOLIS MARRIOTT WATERFRONT.		80 COMPROMISE ST	ANNAPOLIS, MD 21401–	410–268–7555
ANNAPOLIS RAMADA HOTEL		173 JENNIFER RD	ANNAPOLIS, MD 21401–	410–266–3131
DAYS INN ANNAPOLIS		1542 WHITEHALL RD	ANNAPOLIS, MD 21401–	410–974–4440
GOVERNOR CALVERT HOUSE		58 STATE CIR	ANNAPOLIS, MD 21401–	410–263–2641
HOLIDAY INN ANNAPOLIS		210 HOLIDAY CT	ANNAPOLIS, MD 21401–	410–224–3150
LOEWS ANNAPOLIS HOTEL		126 WEST ST	ANNAPOLIS, MD 21401–	410–263–7777
MARYLAND INN		16 CHURCH CIR	ANNAPOLIS, MD 21401–	410–263–2641
RESIDENCE INN BY MARRIOTT ANNAPOLIS.		170 ADMIRAL COCHRANE DR	ANNAPOLIS, MD 21401–	410–573–0300
ROBERT JOHNSON		23 STATE CIR	ANNAPOLIS, MD 21401–	410–263–2641
STATE HOUSE INN		17 STATE CIR	ANNAPOLIS, MD 21401–	410–263–2641
ADMIRAL FELL INN		888 S. BROADWAY	BALTIMORE, MD 21231–	410–522–7377
BALTIMORE COMFORT INN		24 W. FRANKLIN ST	BALTIMORE, MD 21201–5090	410–727–2000
BALTIMORE MARRIOTT INNER HARBOR.		PRATT & EUTAW ST	BALTIMORE, MD 21201–	410–962–0202
BELTWAY MOTEL & RESTAURANT.		3648 WASHINGTON BLVD	BALTIMORE, MD 21227–	410–242–2363
BEST WESTERN BALTIMORE EAST.		5625 O'DONNELL ST	BALTIMORE, MD 21224–	410–633–9500
BEST WESTERN WELCOME INN.		1660 WHITEHEAD CT	BALTIMORE, MD 21207–	800–424–4667
BROOKSHIRE INNER HARBOR SUITES HOTEL.		120 E. LOMBARD ST	BALTIMORE, MD 21202–	410–625–1300
BUDGET PLAZA MOTEL		4806 RITCHIE HWY	BALTIMORE, MD 21225–	410–789–3776
BWI AIRPORT MARRIOTT		1743 W. NURSERY RD	BALTIMORE, MD 21240–	410–859–8300
CLARION INN INNER HARBOR		711 EASTERN AVE	BALTIMORE, MD 21202–	410–783–5553
COMFORT INN BWI AIRPORT		6921 BALTIMORE ANNAPOLIS BLVD.	BALTIMORE, MD 21225–	410–789–9100
CONTINENTAL INN		8731 PULASKI HWY	BALTIMORE, MD 21237–	410–686–0300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DAYS HOTEL TIMONIUM		9615 DEERCO RD	BALTIMORE, MD 21093–	410–560–1000
DAYS INN		6700 SECURITY BLVD	BALTIMORE, MD 21207–	410–281–1800
DAYS INN INNER HARBOR		100 HOPKINS PL	BALTIMORE, MD 21201–	410–576–1000
DOUBLETREE INN AT THE COLONNADE.		4 W. UNIVERSITY PKWY	BALTIMORE, MD 21218–	410–235–5400
HARBOR COURT HOTEL		550 LIGHT ST	BALTIMORE, MD 21202–	410–234–0550
HOLIDAY INN INNER HARBOR		301 W. LOMBARD ST	BALTIMORE, MD 21201–	410–685–3500
HOLIDAY INN SECURITY BELMONT.		1800 BELMONT AVE	BALTIMORE, MD 21244–	410–265–1400
HYATT REGENCY BALTIMORE		300 LIGHT STREET	BALTIMORE, MD 21202–	410–528–1234
MARYLANDER MOTEL INC		6401 PULASKI HWY	BALTIMORE, MD 21205–	410–485–3600
OMNI INNER HARBOR HOTEL		101 W. FAYETTE ST	BALTIMORE, MD 21201–	410–752–1100
PARK PLAZA MOTEL		4900 RITCHIE HWY	BALTIMORE, MD 21225–	410–789–0500
RADISSON PLAZA LORD BALTIMORE HOTEL.		20 W. BALTIMORE ST	BALTIMORE, MD 21201–	410–539–8400
SHERATON INNER HARBOR HOTEL.		300 S. CHARLES ST	BALTIMORE, MD 21201–	410–962–8300
SHIRLEY MADISON INN PARK BLDG.		205 W. MADISON ST	BALTIMORE, MD 21201–	410–728–6550
STAR MOTEL		9619 PULASKI HWY	BALTIMORE, MD 21220–	410–687–3169
STOUFFER HARBORPLACE HOTEL.		202 E. PRATT ST	BALTIMORE, MD 21202–	410–547–1200
SUSSE CHALET		4 PHILADELPHIA CT	BALTIMORE, MD 21237–	410–574–8100
TIP TOP MOTOR COURT INC		6251 WASHINGTON BLVD	BALTIMORE, MD 21227–	410–796–0227
BEL ALTON MOTEL INC		9295 CRAIN HWY	BEL ALTON, MD 20611–	301–934–9505
THUNDERBIRD APARTMENTS		9265 CRAIN HWY	BEL ALTON, MD 20611–	301–932–6255
HOLIDAY INN CALVERTON		4095 POWDER MILL RD	BELTSVILLE, MD 20705–	301–937–4422
RAMADA INN CALVERTON		4050 POWDER MILL RD	BELTSVILLE, MD 20705–	301–572–7100
ATLANTIC HOTEL INN & RESTAURANT.		2 N. MAIN ST	BERLIN, MD 21811–	410–641–3589
MARRIOTT SUITES BETHESDA		6711 DEMOCRACY BLVD	BESTHESDA, MD 20817–	301–897–5600
AMERICAN INN OF BETHESDA		8130 WISCONSIN AVE	BETHESDA, MD 20814–	301–656–9300
BETHESDA MARRIOTT HOTEL		5151 POOKS HILL RD	BETHESDA, MD 20814–	301–897–9400
BETHESDA RAMADA HOTEL & CONFERENCE CENTER.		8400 WISCONSIN AVE	BETHESDA, MD 20814–	301–654–1000
HOLIDAY INN BETHESDA		8120 WISCONSIN AVE	BETHESDA, MD 20814–	301–652–2000
HYATT REGENCY BETHESDA		ONE BETHESDA METRO CTR	BETHESDA, MD 20814–	301–657–1234
MANOR INN		1761 REGENTS PARK RD	BETHESDA, MD 20814–	301–656–0100
RESIDENCE INN BY MARRIOTT.		7335 WISCONSIN AVE	BETHESDA, MD 20814–	301–718–0200
COMFORT INN HOTEL & CONFERENCE CENTER.		4500 CRAIN HWY	BOWIE, MD 20718–	301–464–2200
ECONO LODGE	PO BOX 730	US 50 & 301 AT MD 3	BOWIE, MD 20718–	301–464–2200
SHERATON INTERNATIONAL HOTEL ON BWI AIRPORT.		7032 ELM RD	BWI AIRPORT, MD 21240–	410–859–3300
LEXINGTON PARK SUPER 8 MOTEL.		9290 THREE NOTCH RD	CALIFORNIA, MD 20619–	301–862–9822
ECONO LODGE		RT. 50 & OAKHILL RD	CAMBRIDGE, MD 21613–	410–221–0800
DAYS INN CAMP SPRINGS ANDREWS AFB.		5001 MERCEDES BLVD	CAMP SPRINGS, MD 20746–	301–423–2323
HOLIDAY INN CAMP SPRINGS ANDREWS AFB.		4783 ALLENTOWN RD	CAMP SPRINGS, MD 20746–	301–420–2800
RAMADA INN CAMPSPRING		5151 ALLENTOWN RD	CAMP SPRINGS, MD 20746–	301–899–7700
CAPITOL HEIGHTS SUPER 8 MOTEL.		150 HAMPTON PARK BLVD	CAPITOL HEIGHTS, MD 20743–	301–350–8801
DAYS INN		55 HAMPTON PARK BLVD	CAPITOL HEIGHTS, MD 20743–	301–336–8900
BRAMPTON BED & BREAKFAST.		25227 CHESTERTOWN RD	CHESTERTOWN, MD 21620–	410–778–1860
IMPERIAL HOTEL		208 HIGH ST	CHESTERTOWN, MD 21620–	410–778–5000
CHEVY CHASE HOLIDAY INN		5520 WISCONSIN AVE	CHEVY CHASE, MD 20815–	301–656–1500
COLONY SOUTH HOTEL		7401 SURRATTS RD	CLINTON, MD 20735–	301–856–4500
COMFORT INN CLINTON		7979 MALCOLM RD	CLINTON, MD 20735–	301–856–5200
ECONO LODGE CLINTON		7851 MALCOLM RD	CLINTON, MD 20735–	301–856–2800
COLLEGE MOTOR INN		5043 BRANCHVILLE RD	COLLEGE PARK, MD 20740–	301–441–3707
RODEWAY INN		9624 BALTIMORE AVE	COLLEGE PARK, MD 20740–	301–474–2797
COLLEGE PARK SUPER 8 MOTEL.		9150 BALTIMORE AVE	COLLEGE PARK AVENUE, MD 20740–.	301–474–0884
COLUMBIA HILTON		5485 TWIN KNOLLS RD	COLUMBIA, MD 21045–	410–997–1060
COLUMBIA INN		10207 WINCOPIN CIR	COLUMBIA, MD 21044–	410–730–3900
COURTYARD BY MARRIOTT COLUMBIA.		8910 STANFORD BLVD	COLUMBIA, MD 21045–	410–290–0002
HOLIDAY INN COLUMBIA		7900 WASHINGTON BLVD	COLUMBIA, MD 20794–	410–799–7500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CONTINENTAL MOTOR INN		15001 NATIONAL HWY	CUMBERLAND, MD 21502–	301–729–2201
INN AT WALNUT BOTTOM		120 GREENE ST	CUMBERLAND, MD 21502–	301–777–0003
MT. VIEW MOTEL & APARTMENTS.	PO BOX 366	RT. 3 220 N. BEDFORD RD	CUMBERLAND, MD 21502–	310–724–6900
TRAVELER MOTEL		RT. 13	DELMAR, MD 21875–	410–742–8701
COMFORT INN OF EASTON		8523 OCEAN GATEWAY	EASTON, MD 21601–	410–820–8333
DAYS INN EASTON		7018 OCEAN GATEWAY	EASTON, MD 21601–	410–822–4600
TIDEWATER INN		101 E. DOVER ST	EASTON, MD 21601–	410–822–1300
BEST WESTERN INVITATION INN.		1709 EDGEWOOD RD	EDGEWOOD, MD 21040–	410–679–9700
COMFORT INN EDGEWOOD		1700 VAN BIBBER RD	EDGEWOOD, MD 21040–	410–679–0770
DAYS INN EDGEWOOD		2116 EMMORTON PARK RD	EDGEWOOD, MD 21040–	410–671–9990
MOTEL EDGEWOOD		2209 PULASKI HWY	EDGEWOOD, MD 21040–	410–676–4468
ECONO LODGE		5895 BONNIEVIEW LN	ELKRIDGE, MD 21227–	410–796–1020
EXEC MOTEL		6265 WASHINGTON BLVD	ELKRIDGE, MD 21227–5236	410–796–4466
ELKTON LODGE		200 BELLE HILL RD	ELKTON, MD 21921–5042	410–398–9400
MOTEL 6		223 BELLE HILL RD	ELKTON, MD 21921–	301–392–5020
SUTTON MOTEL		405 E. PULASKI HWY	ELKTON, MD 21921–	410–398–3830
TURF VALLEY HOTEL & COUNTRY CLUB.		2700 TURF VALLEY RD	ELLICOTT CITY, MD 21042–	410–465–1500
TOWN N COUNTRY MOTEL		10870 CRAIN HWY	FAULKNER, MD 20632–	301–934–8252
COMFORT INN		420 PROSPECT BLVD	FREDERICK, MD 21701–	301–695–6200
DAYS INN FREDERICK		5646 BUCKEYSTOWN PIKE	FREDERICK, MD 21701–	301–694–5600
FREDERICK HOLIDAY INN		I–270 AT RT. 85 5400 HOLIDAY D.	FREDERICK, MD 21701–	301–694–7500
HAMPTON INN FREDERICK		RT. 85 5311 BUCKEYSTOWN PIKE.	FREDERICK, MD 21701–	301–698–2500
HOLIDAY INN FREDERICK FORT DETRICK.		999 W. PATRICK ST	FREDERICK, MD 21702–	301–662–5141
MASSER'S MOTEL & RESTAURANT.		1505 W. PATRICK ST	FREDERICK, MD 21702–	301–663–3698
SUPER 8 MOTEL		5579 SPECTRUM DR	FREDERICK, MD 21701–	301–695–2881
YOUGH VALLEY MOTEL & RESTAURANT.		RT. 2 BOX 9, 138 WALNUT ST	FRIENDSVILLE, MD 21531–	301–746–5836
COMFORT INN		RT. 36	FROSTBURG, MD 21532–	301–689–2050
FAIRLINGERS HOTEL GUNTER		11 W. MAIN ST	FROSTBURG, MD 21532–	301–689–6511
COMFORT INN SHADY GROVE GAITHERSBURG.		16216 FREDERICK RD	GAITHERSBURG, MD 20877–	301–330–0023
COURTYARD BY MARRIOTT GAITHERSBURG.		805 RUSSELL AVE	GAITHERSBURG, MD 20879–	301–670–0008
ECOND LODGE GAITHERSBURG.		18715 N. FREDERICK AVE	GAITHERSBURG, MD 20879–	301–963–3640
GAITHERSBURG HILTON HOTEL.		620 PERRY PKWY	GAITHERSBURG, MD 20877–	301–977–8900
HOLIDAY INN GAITHERSBURG		2 MONTGOMERY VILLAGE AVE.	GAITHERSBURG, MD 20879–	301–948–8900
HOLIDAY INN GAITHERSBURG		2 MONTGOMERY VILLAGE AVE.	GAITHERSBURG, MD 20879–	301–948–8900
RED ROOF INN		497 QUINCE ORCHARD RD	GAITHERSBURG, MD 20878–	301–977–3311
COMFORT INN GERMANTOWN		20260 GOLDEN ROD LN	GERMANTOWN, MD 20874–	301–428–1300
HAMPTON INN BALTIMORE SOUTH.		6617 RITCHIE HWY	GLEN BURNIE, MD 21061–	410–761–7666
HOLIDAY INN SOUTH		6600 RITCHIE HWY	GLEN BURNIE, MD 21061–	410–761–6300
CASSELMAN INC		MAIN ST	GRANTSVILLE, MD 21536–	310–895–5055
HOLIDAY INN GRANTSVILLE		RT. 2 BOX 35 H	GRANTSVILLE, MD 21536–	301–895–5993
SLEEP INN KENT ISLAND GRASONVILLE.		RT. 50 & 301	GRASONVILLE, MD 21638–	410–827–8921
COURTYARD BY MARRIOTT		6301 GOLDEN TRIANGLE DR	GREENBELT, MD 20770–	301–441–3311
GREENBELT MARRIOTT		6400 IVY LN	GREENBELT, MD 20770–	301–441–3700
HOLIDAY INN GREENBELT		7200 HANOVER DR	GREENBELT, MD 20770–	301–982–7000
BEST WESTERN VENICE INN		431 DUAL HWY	HAGERSTOWN, MD 21740–	301–733–0830
HOWARD JOHNSON PLAZA HOTEL.		107 UNDERPASS WAY	HAGERSTOWN, MD 21740–	301–797–2500
RAMADA INN		901 DUAL HWY	HAGERSTOWN, MD 21740–	301–733–5100
SHERATON INN HAGERSTOWN CONFERENCE CENTER.		1910 DUAL HWY	HAGERSTOWN, MD 21740–	301–790–3010
WELLESLEY INN		1101 DUAL HWY	HAGERSTOWN, MD 21740–	301–733–2700
COMFORT INN		118 LIMESTONE RD	HANCOCK, MD 21750–	301–678–6101
DAYS INN BWI AIRPORT		7481 NEW RIDGE RD	HANOVER, MD 21076–	410–684–3368
RAMADA HOTEL BWI AIRPORT		7253 PARKWAY DR	HANOVER, MD 21076–	410–712–4300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RED ROOF INN #107 BW PARKWAY.		7306 PARKWAY DR	HANOVER, MD 21076–	410–712–4070
HAVRE DE GRACE SUPER 8 MOTEL.		929 PULASKI HWY	HAVRE DE GRACE, MD 21078–	410–939–1880
HAMPTON INN HUNT VALLEY		11200 YORK RD	HUNT VALLEY, MD 21031–	410–527–1500
HUNT VALLEY COURTYARD BY MARRIOTT.		221 INTERNATIONAL CIR	HUNT VALLEY, MD 21030–	410–584–7070
MARRIOTT'S HUNT VALLEY INN.		245 SHAWAN RD	HUNT VALLEY, MD 21031–	410–785–7000
RESIDENCE INN HUNT VALLEY.		10710 BEAVER DAM RD	HUNT VALLEY, MD 21030–	410–584–7370
INDIAN HEAD INN		874 STRAUSS AVE	INDIAN HEAD, MD 20640–	301–753–6090
COMFORT INN JESSUP		8828 WASHINGTON BLVD	JESSUP, MD 20794–	410–880–3133
RED ROOF INN COLUMBIA JESSUP.		8000 WASHINGTON BLVD	JESSUP, MD 20794–	410–796–0380
SUSSE CHALET JESSUP		7300 CRESTMOUNT RD	JESSUP, MD 20794–	410–799–1500
COURTYARD BY MARRIOTT LANDOVER.		8330 CORPORATE DR	LANDOVER, MD 20785–	301–577–3373
HAMPTON INN		9421 W. LARGO DR	LANDOVER, MD 20785–	301–499–4600
HOLIDAY INN CAPITAL CENTRE.		9100 BASIL CT	LANDOVER, MD 20785–	301–773–0700
COMFORT INN		6205 ANNAPOLIS RD	LANDOVER HILLS MD	301–322–6000
RED ROOF INN		9050 LANHAM SEVERN RD	LANHAM, MD 20706–	301–731–8830
301 PROPERTY MANAGEMENT VENTURES ECONO LODGE.	PO BOX 1661	RTES 301 & 6	LAPLATA, MD 20646–	301–934–1400
BEST WESTERN LAPLATA INN		400 US 301 S	LAPLATA, MD 20646–	301–934–4900
BEST WESTERN MARYLAND INN.		15101 SWEIZER LN	LAUREL, MD 20705–	301–776–5300
COMFORT SUITES		14402 LAUREL AVE	LAUREL, MD 20707–	301–206–7600
ECONO LODGE LAUREL		9750 WASHINGTON BLVD	LAUREL, MD 20723–	301–766–8008
HOLIDAY INN LAUREL		3400 FT. MEADE RD	LAUREL, MD 20724–	301–498–0900
RED ROOF INN LAUREL		12525 LAUREL BOWIE RD	LAUREL, MD 20708–	301–498–8811
VALENCIA MOTEL & EFFICIENCIES.		10131 WASHINGTON BLVD	LAUREL, MD 20723–	301–725–4200
BEST WESTERN BRADDOCK MOTOR INN.		1268 NATIONAL HWY	LAVALE, MD 21502–	301–729–3300
SCOTTISH INNS		1262 NATIONAL HWY	LAVALE, MD 21502–	301–729–2880
BELVEDERE MOTOR INN		60 MAIN ST	LEXINGTON PARK, MD 20653–	301–863–6666
PATUXENT INN	PO BOX 778		LEXINGTON PARK, MD 20653–	301–862–4100
COURTYARD BY MARRIOTT BALTIMORE BWI AIRPORT.		1671 W. NURSERY RD	LINTHICUM, MD 21090–	410–859–8855
GUEST QUARTERS SUITE HOTEL BWI AIRPORT.		1300 CONCOURSE DR	LINTHICUM, MD 21090–	410–850–0747
HAMPTON INN BWI		829 ELKRIDGE LANDING RD	LINTHICUM, MD 21090–	410–850–0600
HOLIDAY INN BWI AIRPORT		890 ELKRIDGE LANDING RD	LINTHICUM, MD 21090–	410–859–8400
SUSSE CHALET BWI		1734 W. NURSERY RD	LINTHICUM, MD 21090–	410–859–2333
MOTEL 6		5193 RAYNOR AVE	LINTHICUM HEIGHTS, MD 21090–.	410–636–9070
RED ROOF INN #140		827 ELKRIDGE LANDING RD	LINTHICUM HTS, MD 21090–	
INNLET MOTOR LODGE		DEEP CREEK DR	MCHENRY, MD 21541–	301–387–5596
ROYAL OAKS INN	PO BOX 11	HCR 2 DEEP CREEK DR	MCHENRY, MD 21541–	301–387–4200
WISP RESORT HOTEL	PO BOX 35	MARSH HILL RD	MCHENRY, MD 21541–	301–387–5581
HILL MOTEL		351 VETERANS HWY	MILLERSVILLE, MD 21108–	410–923–6417
WHITE GABLES MOTEL	PO BOX 357	RT. 3 N	MILLERSVILLE, MD 21108–	410–923–2222
ALPINE VILLAGE	PO BOX 5200	RT. 6	OAKLAND, MD 21550–	301–387–5534
OAK LAND MOTEL		435 N. THIRD ST	OAKLAND, MD 21550–	301–334–2171
ALBRIGHT'S ASSOC. ALBRIGHT MOTEL.	PO BOX 425	# 3 N. 1ST ST	OCEAN CITY, MD 21842–	410–289–9205
BEACHMARK MOTEL	PO BOX 540	73RD ST. & COASTAL HWY	OCEAN CITY, MD 21842–	800–638–1600
BEST WESTERN FLAGSHIP		2600 BALTIMORE AVE	OCEAN CITY, MD 21842–	410–289–3384
COASTAL INN		2601 PHILADELPHIA AVE	OCEAN CITY, MD 21842–	410–289–7722
COCONUT MALORIE HOTEL		201 60TH ST. IN THE BAY	OCEAN CITY, MD 21842–	410–723–6100
DAYS INN		4201 COASTAL HWY	OCEAN CITY, MD 21842–	410–289–6488
ECONO LODGE OCEANSIDE		145TH ST. & COASTAL HWY	OCEAN CITY, MD 21842–	800–443–4557
EXECUTIVE MOTEL		30TH ST. BALTIMORE AVE	OCEAN CITY, MD 21842–	800–638–1600
FRANCIS SCOTT KEY MOTEL	PO BOX 468	US 50 AT ELM ST	OCEAN CITY, MD 21842–	410–213–0088
GEORGIA BELLE SUITES HOTEL.		12000 COASTAL HWY	OCEAN CITY, MD 21842–	410–250–4000
HARRISON HALL HOTEL		1409 BOARDWALK	OCEAN CITY, MD 21842–	410–289–6222
HOLIDAY INN OCEANFRONT	PO BOX 160	6600 COASTAL HWY	OCEAN CITY, MD 21842–	410–524–1600
KITTIWAKE MOTEL		45TH ST. & OCEANFRONT	OCEAN CITY, MD 21842–	800–638–3244
LIGHTHOUSE CLUB HOTEL		56TH ST. IN-THE-BAY	OCEAN CITY, MD 21842–	410–524–5400

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MADISON BEACH MOTEL		FIRST ST. & BALTIMORE AVE	OCEAN CITY, MD 21842–	410–289–6282
MARSHALL INN MOTEL		6104 62ND ST	OCEAN CITY, MD 21043–	410–524–6666
OCEAN PARK MOTEL		1701 ATLANTIC AVE	OCEAN CITY, MD 21842–	410–289–7262
OCEANIC MOTEL		710 S. PHILADELPHIA AVE	OCEAN CITY, MD 21842–	410–289–6494
PHILLIPS BEACH PLAZA HOTEL.		OCEANFRONT AT 13TH ST	OCEAN CITY, MD 21842–0300	410–289–9121
PLIM PLAZA HOTEL		109 N. BOARDWALK	OCEAN CITY, MD 21842–	410–289–6181
PRINCESS ROYALE OCEANFRONT HOTEL & CONF. CNTR.		9100 COASTAL HWY	OCEAN CITY, MD 21842–	410–524–7777
QUALITY INN BEACHFRONT		3301 33RD ST	OCEAN CITY, MD 21842–	410–289–1234
QUALITY INN OCEANFRONT		5400 COASTAL HWY	OCEAN CITY, MD 21842–	410–524–7200
RED CARPET INN		12534 OCEAN GATEWAY	OCEAN CITY, MD 21842–	410–213–0376
SAHARA MOTEL		19TH ST. & BALTIMORE AVE	OCEAN CITY, MD 21842–	800–638–1600
SANDYHILL MOTEL		1710 BALTIMORE AVE	OCEAN CITY, MD 21842–	410–289–6151
SEABONAY MOTEL		2711 ATLANTIC AVE	OCEAN CITY, MD 21842–	410–289–9194
SHERATON OCEAN CITY RESORT & CONF. CNTR.		10100 OCEAN HWY	OCEAN CITY, MD 21842–	410–524–3535
STARDUST MOTEL		3200 BALTIMORE AVE	OCEAN CITY, MD 21842–	410–289–6444
SUMMER BEACH CONDOMINIUM.		#3 35TH ST	OCEAN CITY, MD 21842–	410–289–1600
TIDES MOTEL		71ST ST. & OCEANSIDE	OCEAN CITY, MD 21842–	800–638–1600
WINDJAMMER APT MOTEL		4503 ATLANTIC AVE	OCEAN CITY, MD 21842–	410–289–6409
RAMADA HOTEL AT OXON HILL.		6400 OXON HILL RD	OXON HILL, MD 20745–	301–630–4050
RED ROOF INN #181 OXON HILL.		6170 OXON HILL RD	OXON HILL, MD 20745–	301–567–8030
SUSSE CHALET		6363 OXON HILL RD	OXON HILL, MD 20745–	301–839–0001
WELCOME INN		8729 LOCH BEND DR	PARKVILLE, MD 21234–	410–663–7100
COMFORT INN OF PERRYVILLE.		61 HEATHER LN	PERRYVILLE, MD 21903–	410–642–2966
COMFORT INN NW		10 WOODED WAY	PIKESVILLE, MD 21208–	410–484–7700
HOLIDAY INN PIKESVILLE		1721 REISTERSTOWN RD	PIKESVILLE, MD 21208–	410–486–5600
PIKESVILLE HILTON INN		1726 REISTERSTOWN RD	PIKESVILLE, MD 21208–	410–653–1100
QUALITY INN		825 OCEAN HWY	POCOMOKE, MD 21851–	410–957–1300
ECONO LODGE PRINCESS ANNE.		10936 MARKET LN	PRINCESS ANNE, MD 21853–	410–651–9400
SWANN POINT INN		RT. 20 & COLEMAN RD	ROCKHALL, MD 21661–	410–639–2500
COLONIAL MANOR INN		11410 ROCKVILLE PIKE	ROCKVILLE, MD 20852–	301–881–5200
COURTYARD BY MARRIOTT ROCKVILLE.		2500 RESEARCH BLVD	ROCKVILLE, MD 20850–	301–670–6700
DAYS INN		16001 SHADY GROVE RD	ROCKVILLE, MD 20850–	301–948–4300
HOLIDAY INN CROWNE PLAZA		1750 ROCKVILLE PIKE	ROCKVILLE, MD 20852–	301–468–1100
HOWARD JOHNSON HOTEL		1251 W. MONTGOMERY AVE	ROCKVILLE, MD 20850–	301–424–4940
RAMADA INN ROCKVILLE		1775 ROCKVILLE PIKE	ROCKVILLE, MD 20852–	301–881–2300
WOODFIN SUITES HOTEL		1380 PICCARD DR	ROCKVILLE, MD 20850–	301–590–9880
PASADENA INN & CONFERENCE CENTER.		25876 ROYAL OAK RD	ROYAL OAK, MD 21662–	410–745–5053
BEST WESTERN STATESMAN MOTEL.		712 N. SALISBURY BLVD	SALISBURY, MD 21801–	410–749–7155
COMFORT INN	PO BOX 235	RT. 11	SALISBURY, MD 21801–	410–543–4668
DAYS INN SALISBURY	PO BOX 978	RT. 13 RR #6	SALISBURY, MD 21801–	301–749–6200
HAMPTON INN SALISBURY		1735 N. SALISBURY BLVD	SALISBURY, MD 21801–	410–546–1300
HOLIDAY INN OF SALISBURY		RT. 11, BOX 226 US RT. 13 N	SALISBURY, MD 21801–	410–742–7194
SALISBURY SUPER 8 MOTEL		2615 N. SALISBURY BLVD	SALISBURY, MD 21801–	410–749–5131
SHERATON SALISBURY INN		300 S. SALISBURY BLVD	SALISBURY, MD 21801–	410–546–4400
COURTYARD BY MARRIOTT SILVER SPRING.		12521 PROSPERITY DR	SILVER SPRING, MD 20904–	301–680–8500
QUALITY HOTEL SILVER SPRING.		8727 COLESVILLE RD	SILVER SPRING, MD 20910–	301–589–5200
SILVER SPRING MOTOR INN		7927 GEORGIA AVE	SILVER SPRING, MD 20910–	301–587–3200
HOLIDAY INN SOLOMONS		155 HOLIDAY DR	SOLOMONS, MD 20688–	410–326–6311
SOLOMONS COMFORT INN		LORE RD	SOLOMONS, MD 20688–	410–326–6303
KEMP HOUSE INN		412 TALBOT ST	ST. MICHAELS, MD 21663–	410–745–2243
PARSONAGE INN		210 N. TALBOT	ST. MICHAELS, MD 21663–	410–745–5519
ST. MICHAELS HARBOUR INN & MARINA.		101 N. HARBOR RD	ST. MICHAELS, MD 21663–	410–745–9001
KENT MANOR INN		500 KENT MANOR DR	STEVENSVILLE, MD 21666–	410–643–5757
THURMONT SUPER 8 MOTEL		300 TIPPIN DR	THURMONT, MD 21788–	301–271–7888
HARRISON'S COUNTRY INN & SPORTFISHING CENTER.	PO BOX 310	5831 TILGHMAN ISLAND RD	TILGHMAN, MD 21671–	410–886–2121

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN TIMONIUM PLAZA.		2004 GREENSPRING DR	TIMONIUM, MD 21093–	410–252–7373
RED ROOF INN #209		111 W. TIMONIUM RD	TIMONIUM, MD 21093–	410–666–0380
QUALITY INN TOWSON CONFERENCE CENTER.		1015 YORK RD	TOWSON, MD 21204–	410–825–9190
SHERATON BALTIMORE NORTH HOTEL.		903 DULANEY VALLEY RD	TOWSON, MD 21204–	410–321–7400
ECONO LODGE WALDORF		#4 BUSINESS PARK DR	WALDORF, MD 20601–	301–645–0022
WALDORF HOLIDAY INN		1 ST. PATRICKS DR	WALDORF, MD 20603–	301–645–8200
WALDORF SUPER 8 MOTEL		3550 CRAIN HWY	WALDORF, MD 20602–	301–932–8957
COMFORT INN WESTMINISTER.		451 WMC DR	WESTMINISTER, MD 21158–	410–857–1900
DAYS INN WESTMINISTER		25 S. CRANBERRY RD	WESTMINISTER, MD 21157–	410–857–0500
WESTMINISTER INN		5 S. CENTER ST	WESTMINISTER, MD 21157–	410–857–4445
DAYS INN WILLIAMSPORT		310 E. POTOMAC ST	WILLIAMSPORT, MD 21795–	301–582–3500
Maine				
COASTLINE INN		170 CENTER ST	AUBURN, ME 04210–	207–784–1331
COMFORT INN CIVIC CENTER		281 CIVIC CENTER DR	AUGUSTA, ME 04330–	207–623–1000
DAYS INN		390 WESTERN AVE	AUGUSTA, ME 04330–	207–622–6371
HOWARD JOHNSON		110 COMMUNITY DR	AUGUSTA, ME 04330–	207–622–4751
SUSSE CHALET MOTOR LODGE AUGUSTA.		WHITTEN RD	AUGUSTA, ME 04330–	207–622–3776
BANGOR AIRPORT MARRIOT		308 GODFREY BLVD	BANGOR, ME 04401–	207–947–6721
BEST WESTERN WHITE HOUSE INN.		155 LITTLEFIELD AVE	BANGOR, ME 04401–	207–862–3737
COMFORT INN BANGOR		750 HOGAN RD	BANGOR, ME 04401–	207–942–7899
ECONO LODGE		482 ODLIN RD	BANGOR, ME 04401–	207–942–6301
FAIRFIELD INN BY MARRIOTT BANGOR.		300 ODLIN RD	BANGOR, ME 04401–	207–990–0001
QUALITY INN PHENIX		20 BROAD ST	BANGOR, ME 04401–	207–947–3850
RAMADA INN BANGOR		375 ODLIN RD	BANGOR, ME 04401–	207–947–6961
ECONO LODGE		RT. 1 & I–95	BRUNSWICK, ME 04011–	207–729–9991
COMFORT INN		199 PLEASANT ST	BRUNSWICK, ME 04011–	207–729–1129
DAYS INN CARIBOU		PO BOX 57	CARIBOU, ME 04736–	207–493–3311
COASTLINE INN		209 RT. 1 S	FREEPORT, ME 04032–	207–865–3777
HARRASEEKET INN		162 MAIN ST	FREEPORT, ME 04032–	207–865–9377
ECONO LODGE OF KENNEBUNK.		55 YORK ST	KENNEBUNK, ME 04043–	207–985–6100
THE CAPTAIN LORD MANSION	PO BOX 800		KENNEBUNKPORT, ME 04046–	207–967–3141
DAYS INN		2 CORGES RD	KITTERY, ME 03904–	207–439–5555
BEST WESTERN BLACK BEAR INN.		4 GODFREY DR	ORONO, ME 04473–	207–866–7120
DAYS INN		1150 BRIGHTON AVE	PORTLAND, ME 04102–	207–775–3711
HOLIDAY INN BY THE BAY		88 SPRING ST	PORTLAND, ME 04101–	207–775–2311
QUALITY SUITES HOTEL		1050 WESTBROOK ST	PORTLAND, ME 04102–	207–775–2200
SUSSE CHALET		340 PARK AVE	PORTLAND, ME 04102–	207–871–0611
COMFORT INN		90 MAINE MALL RD	S. PORTLAND, ME 04106–	207–775–0409
FAIRFIELD INN BY MARRIOTT PORTLAND SCARBORO.		66 SPRING ST	SCARBOROUGH, ME 04074–	207–883–0300
COASTLINE INN		80 JOHN ROBERTS RD	SOUTH PORTLAND, ME 04106–.	207–772–3838
HAMPTON INN		171 PHILBROOK AVE	SOUTH PORTLAND, ME 04106–.	207–773–4400
HOWARD JOHNSON HOTEL		675 MAIN ST	SOUTH PORTLAND, ME 04106–.	207–775–5343
PORTLAND MARRIOTT		200 SABLE OAKS DR	SOUTH PORTLAND, ME 04106–.	207–871–8000
SHERATON TARA HOTEL		363 MAIN MALL RD	SOUTH PORTLAND, ME 04106–.	207–775–6161
YORK COMMONS INN	PO BOX 427	12 BRICK YARD LN	YORK, ME 03909–	207–363–8903
Michigan				
GRAND TRAVERSE RESORT CONDOMINIUM COMPLEX.		6300 US 31 N	ACME, MI 49610–0404	616–938–2100
GRAND TRAVERSE RESORT HOTEL.		6300 US 31 N	ACME, MI 49160–0404	616–938–2100
GRAND TRAVERSE RESORT TOWER.		6300 US 31 N	ACME, MI 49610–0404	616–938–2100
GRAND TRAVERSE RESORT VALLEYVIEW CONDOS.		6300 US 31 N	ACME, MI 49610–0404	616–938–2100
TORCH TIMBERS INN		9260 SE TORCH LAKE DR	ALDEN, MI 49612–	616–331–4050
COMFORT INN		3110 W. MONROE	ALMA, MI 48801–	517–463–4400

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ALPENA HOLIDAY INN		615 E. FRONT ST	ALPENA, MI 49707–	517–356–2151
HOLIDAY INN ALPENA		1000 US 23 N	ALPENA, MI 49707–	517–356–2151
TOWER MOTOR INN		1496 M–32 W	ALPENA, MI 49707–	517–356–6118
BELL TOWER HOTEL		300 S. THAYER ST	ANN ARBOR, MI 48104–	313–769–3010
COMFORT INN & BUSINESS CENTER.		2455 CAPTENTER RD	ANN ARBOR, MI 48108–	313–973–6100
COURTYARD BY MARRIOTT ANN ARBOR.		3205 BOARDWALK	ANN ARBOR, MI 48108–	313–995–5900
FAIRFIELD INN BY MARRIOTT ANN ARBOR.		3285 BOARDWALK	ANN ARBOR, MI 48108–	313–995–5200
GLADSTONE HOUSE BED & BREAKFAST.		2865 GLADSTONE	ANN ARBOR, MI 48104–	313–769–0404
HAMPTON INN ANN ARBOR NORTH.		2300 GREEN RD	ANN ARBOR, MI 48105–	313–996–4444
HAMPTON INN ANN ARBOR SOUTH.		25 VICTORS WAY	ANN ARBOR, MI 48105–	313–665–5000
HILTON INN ANN ARBOR		610 HILTON BLVD	ANN ARBOR, MI 48108–	313–761–7800
RED ROOF INN		3621 PLYMOUTH RD	ANN ARBOR, MI 48105–	313–996–5800
RESIDENCE INN BY MARRIOTT ANN ARBOR.		800 VICTORS WAY	ANN ARBOR, MI 48108–	313–995–5666
SHERATON INN ANN ARBOR		3200 BOARDWALK	ANN ARBOR, MI 48108–	313–996–0600
WEBER'S INN		3050 JACKSON AVE	ANN ARBOR, MI 48103–1997	313–769–2500
REST ALL INN AUBURN MIDLAND.		4955 S. GARFIELD RD	AUBURN, MI 48611–	517–662–7888
COURTYARD BY MARRIOTT AUBURN HILLS.		1296 OPDYKE RD	AUBURN HILLS, MI 48326–	313–373–4100
FAIRFIELD INN BY MARRIOTT DET. AUBURN HILLS.		1294 OPDYKE RD	AUBURN HILLS, MI 48326–	313–373–2226
HILTON SUITES		2300 FEATHER-STONE	AUBURN HILLS, MI 48326–	313–334–2233
HOLIDAY INN AUBURN HILLS		1500 OPDYKE RD	AUBURN HILLS, MI 48326–	313–373–4550
OJIBWA RESORT MOTEL	PO BOX 284 A	RT. 1 M–38	BARAGA, MI 49908–	906–353–7611
SUPER 8 MOTEL		790 MICHIGAN AVE	BARAGA, MI 49908–	906–353–6680
HOWARD JOHNSON LODGE		2590 CAPITOL AVE. SW	BATTLE CREEK, MI 49015–	616–965–3201
STOUFFER BATTLE CREEK HOTEL.		50 CAPITAL AVE. SW	BATTLE CREEK, MI 49017–	616–963–7050
THE OLD LAMPLIGHTER		276 NE CAPITAL AVE	BATTLE CREEK, MI 49017–	616–963–2603
BELLEVILLE SUPER 8 MOTEL		45707 S I–94 SERVICE RD	BELLEVILLE, MI 48111–	313–699–1888
RED ROOF INN DETROIT AIRPORT.		45501 N. EXPRWY. SERVICE DR.	BELLEVILLE, MI 48111–	313–697–2244
BENTON HARBOR SUPER 8 MOTEL.		1950 E. HAPIER AVE	BENTON HARBOR, MI 49022–	616–926–1371
DAYS INN		RT. 139 2699 MICHIGAN	BENTON HARBOR, MI 49022–	616–925–7021
HOLIDAY INN OF BENTON HARBOR.		2860 S. MICHIGAN HWY. 139	BENTON HARBOR, MI 49022–	616–925–3234
MOTEL 6		2063 PIPESTONE	BENTON HARBOR, MI 49022–	616–925–5100
SUPER 8 MOTEL BENTON HARBOR.		1950 E. NAPIER AVE	BENTON HARBOR, MI 49022–	616–926–1371
CRYSTAL BEACH RESORT		222 CENTER ST	BEULAH, MI 49617–	616–882–7229
CLARION HOTEL & CONFERENCE CENTER.		1005 PERRY ST	BIG RAPIDS, MI 49307–	616–796–4400
CLEARWATER HOTEL & CONDOMINIUMS.	PO BOX 1588	5400 SHORE RD	BREVORT, MI 49760–	906–292–5506
WHITE SWAN MOTEL		690 W. CHICAGO RD	BRONSON, MI 49028–	517–369–3485
BILL OLIVER BEST WESTERN		855 S. LAKE MITCHELL DR	CADILLAC, MI 49601–	616–775–2458
CADILLAC INN HAMPTON INN		US 131 1650 S. MITCHELL	CADILLAC, MI 49601–	616–779–2900
DAYS INN		6001 MILLS	CADILLAC, MI 49601–	616–775–4414
MCGUIRE'S RESORT		7880 MACKINAW TRAIL	CADILLAC, MI 49601–	616–775–9947
BUDGITEL INN 757		41211 FORD RD	CANTON, MI 48187–	313–981–1606
CANTON SUPER 8 MOTEL		3933 LOTZ RD	CANTON, MI 48188–	313–722–8880
FAIRFIELD INN BY MARRIOTT DET WEST CANTON.		5700 HAGGERTY RD	CANTON, MI 48187–	313–981–2440
CLAWSON SUPER 8 MOTEL		1145 W. MAPLE	CLAWSON, MI 48017–	313–435–8881
SUPER 8 MOTEL		600 ORLEANS BLVD	COLDWATER, MI 49036–	517–278–8833
COURTYARD BY MARRIOTT DEARBORN.		5200 MERCURY DR	DEARBORN, MI 48126–	313–271–1400
DEARBORN INN MARRIOTT HOTEL.		20301 OAKWOOD BLVD	DEARBORN, MI 48242–	313–941–9400
HAMPTON INN		20061 MICHIGAN AVE	DEARBORN, MI 48124–	313–436–9500
HYATT REGENCY DEARBORN		FAIRLANE TOWN CTR	DEARBORN, MI 48126–	313–593–1234
RED ROOF INN		24130 MICHIGAN AVE	DEARBORN, MI 48124–	313–278–9732
THE RITZ CARLTON HOTEL		300 TOWN CENTER DR	DEARBORN, MI 48126–	313–441–2000
ATHENEUM SUITE HOTEL		1000 BRUSH	DETROIT, MI 48226–	313–962–2323

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DEARBORN TRAVELODGE		23730 MICHIGAN AVE	DETROIT, MI 48124–	313–565–7250
DETROIT AIRPORT MARRIOTT		DETROIT METRO AIRPORT	DETROIT, MI 48242–	313–941–9400
HOLIDAY INN DETROIT FAIRLANE.		5801 SOUTHFIELD SERVICE DR.	DETROIT, MI 48228–	313–336–3340
OMNI INTERNATIONAL HOTEL		333 E. JEFFERSON	DETROIT, MI 48226–	313–222–7700
RADISSON HOTEL PONTCHARTRAIN.		2 WASHINGTON BLVD	DETROIT, MI 48226–	313–965–0200
RESIDENCE INN BY MARRIOTT.		5777 SOUTHFIELD SERVICE DR.	DETROIT, MI 48228–	313–441–1700
RIVER PLACE INN		1000 STROH'S RIVER PL. DR	DETROIT, MI 48228–	313–259–2500
SHORECREST MOTOR INN		1316 E. JEFFERSON AVE	DETROIT, MI 48207–	313–568–3000
THE WESTIN HOTEL RENAISSANCE CENTER.		RENAISSANCE CENTER	DETROIT, MI 48243–	313–568–8000
WINDMILL TRUCK STOP & MOTEL.		7262 LANSING RD	DIMONDALE, MI 48821–	517–646–6752
HOLIDAY INN UNIVERSITY PLACE.		300 MAC AVE	EAST LANSING, MI 48823–	517–337–4440
RESIDENCE INN BY MARRIOTT.		1600 E. GRAND RIVER	EAST LANSING, MI 48823–	517–332–7711
HOLIDAY INN TAWAS BAY RESORT.		300 E. BAY ST	EAST TAWAS, MI 48730–	517–362–8601
CAIRN HOUSE BED & BREAKFAST.		8160 CAIRN HWY	ELK RAPIDS, MI 49629–	616–264–8894
ELK RAPIDS BEACH RESORT		8975 N. BAYSHORE DR	ELK RAPIDS, MI 49629–	616–264–6400
CLARION HOTEL & EXECUTIVE SUITES.		31525 W. 12 MILE RD	FARMINGTON HILLS, MI 48334–.	313–553–0000
COMFORT INN OF FARMINGTON HILLS.		30715 TWELVE MILE RD	FARMINGTON HILLS, MI 48334–.	313–471–9220
KNIGHTS INN		37527 GRAND RIVER AVE	FARMINGTON HILLS, MI 48335–.	313–477–3200
RADISSON SUITE HOTEL		37529 GRAND RIVER AVE	FARMINGTON HILLS, MI 48335–.	313–477–7800
RED ROOF INN		24300 SINACOLA CT	FARMINGTON HILLS, MI 31347–8860.	313–476–8640
J. PAULES FENN INN BED & BREAKFAST.		2254 S. 58TH ST	FENNVILLE, MI 49408–	616–561–2836
COMFORT INN FLINT		2361 AUSTINS PKWY	FLINT, MI 48507–	313–232–4222
DAYS INN		2207 W BRISTOL RD	FLINT, MI 48507–	313–239–4681
ECONO LODGE FLINT		932 S. CENTER RD	FLINT, MI 48503–	313–744–0200
FLINT SUPER 8 MOTEL		3033 CLAUDE AVE	FLINT, MI 48507–	313–230–7888
HAMPTON INN FLINT		1150 ROBERT T. LONGWAY BLVD.	FLINT, MI 48503–	313–238–7744
RED ROOF INN #004 FLINT		G–3219 MILLER RD	FLINT, MI 48507–	313–733–1660
BLUE LAKE RESORT		6199 LARSON RD	FOUNTAIN, MI 49410–	616–462–3466
BAVARIAN INN LODGE		ONE COVERED BRIDGE LN	FRANKENMUTH, MI 48734–	517–652–2651
HARBOR LIGHTS MOTEL		15 SECOND ST	FRANKFORT, MI 49635–	616–352–5614
PINEVIEW MOTEL		7328 N. OLD 27	FREDERIC, MI 49733–	517–348–8300
THE HOMESTEAD		WOOD RIDGE RD	GLEN ARBOR, MI 49636–	616–334–5000
DAYS INN		1500 S. BEACON BLVD	GRAND HAVEN, MI 49417–	616–842–1999
BUDGITEL INN		2873 KRAFT AVE. SE	GRAND RAPIDS, MI 49512–	616–956–3300
COMFORT INN GRAND RAPIDS.		4155 28TH ST	GRAND RAPIDS, MI 49512–	616–957–2080
DAYS INN OF GRAND RAPIDS		310 PEARL ST. NW	GRAND RAPIDS, MI 49504–	616–235–7611
EASTBANK WATERFRONT TOWERS RADISSON HOTEL.		11 MONROE NW	GRAND RAPIDS, MI 49502–	616–242–6000
GRAND RAPIDS HAMPTON INN		4981 28TH ST. SE	GRAND RAPIDS, MI 49512–	616–956–9304
HOLIDAY INN CROWNE PLAZA		5700 28TH ST. SE	GRAND RAPIDS, MI 49546–	616–957–1770
LEXINGTON HOTEL SUITES		5401 78TH STREET CT. SE	GRAND RAPIDS, MI 49546–	616–940–8100
QUALITY INN TERRACE CLUB		4495 28TH ST. SE	GRAND RAPIDS, MI 49512–	616–945–3551
RED ROOF INN		5131 28TH ST. SE	GRAND RAPIDS, MI 49517–	616–942–0600
RESIDENCE INN BY MARRIOTT.		2701 E. BELTLINE SE	GRAND RAPIDS, MI 49546–	616–957–8111
LANDS INN SUITES		3825 28TH ST. SW	GRANDVILLE, MI 49418–	616–531–5263
CHIEF SHOPPENAGONS		103 MICHIGAN AVE	GRAYLING, MI 49738–	517–348–6071
NORTH COUNTRY LODGE INC	PO BOX 290	N. I–75 BUSINESS LOOP	GRAYLING, MI 49738–	517–348–8471
HARBOR HILLS MOTOR LODGE.		8514 M–119	HARBOR SPRINGS, MI 49740–	616–347–9050
COUNTRY INN BY CARLSON		12260 JAMES ST	HOLLAND, MI 49424–	616–396–5677
HOLIDAY INN		650 E. 24TH ST	HOLLAND, MI 49423–	616–394–0111
KNIGHTS COURT		422 E. 32ND ST	HOLLAND, MI 49423–	616–392–1000
DOWNTOWNER MOTEL		110 SHELDEN AVE	HOUGHTON, MI 49931–	906–482–4421

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Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BLACK RIVER LODGE MOTEL CONDO LODGING.		N12390 BLACK RIVER RD	IRONWOOD, MI 49938–	906–932–3857
COUNTRY INN BY CARLSON		850 US 41 W	ISHPEMING, MI 49849–	906–485–6345
BUDGETEL INN #741		2035 SERVICE DR	JACKSON, MI 49201–	517–788–6000
HOJO INN		6027 ANN ARBOR RD	JACKSON, MI 49201–	517–764–3820
40 WINKS MOTEL		2605 DOUGLAS	KALAMAZOO, MI 49007–	616–382–5737
BUDGETEL INN		2203 S. 11TH ST	KALAMAZOO, MI 49009–	616–372–7999
FAIRFIELD INN BY MARRIOTT		3800 E. CORK ST	KALAMAZOO, MI 49001–	616–344–8300
HALL || HOUSE BED & BREADFAST.		106 THOMPSON ST	KALAMAZOO, MI 49006–	616–343–2500
KALAMAZOO EXPRESSWAY HOTEL.		3600 E. CORK ST	KALAMAZOO, MI 49001–	616–385–3922
LA QUINTA INN		3750 EASY ST	KALAMAZOO, MI 49002–	616–388–3551
LEES INN KALAMAZOO		2615 FAIRFIELD RD	KALAMAZOO, MI 49002–	616–382–6100
RADISSON PLAZA HOTAL AT KALAMAZOO CENTER.		100 W. MICHIGAN AVE	KALAMAZOO, MI 49007–	616–343–3333
RESIDENCE INN		1500 E. KILGORE	KALAMAZOO, MI 49001–	616–349–0855
STUART AVENUE INN		229 237 STUARD AVE	KALAMAZOO, MI 49007–	616–342–0230
THE HOLIDAY INN AIRPORT		3522 SPRINKLE RD	KALAMAZOO, MI 49002–	616–381–7070
BEST || WESTERN MIDAY HOTEL.		7711 W. SAGINAW HWY	LANSING, MI 48917–	517–627–8471
DAYS INN LANSING SOUTH		6501 S. PENNSYLVANIA	LANSING, MI 48911–	517–393–1650
HAMPTON INN LANSING		525 NORTH CANAL RD	LANSING, MI 48917–9755	517–627–6381
HARLEY HOTEL OF LANSING		3600 DUNCKEL DR	LANSING, MI 48910–	517–351–7600
HOLIDAY INN SOUTH CONVENTION CENTER.		6820 S. CEDAR ST	LANSING, MI 48910–	517–694–8123
KNIGHTS INN		11200 RAMADA DR	LANSING, MI 48911–	517–394–7200
LANSING SUPER 8 MOTEL		910 AMERICAN RD	LANSING, MI 48911–	517–393–6008
RADISSON HOTEL LANSING		111 N. GRAND AVE	LANSING, MI 48933–	517–482–0188
RED ROOF INN		3615 DUNCKEL RD	LANSING, MI 48910–	517–332–2575
RED ROOF INN WEST		7412 W. SAGINAW HWY	LANSING, MI 48917–	517–321–7246
SHERATON LANSING HOTEL		925 S. CREYTS RD	LANSING, MI 48917–	517–323–7100
COURTYARD BY MARRIOTT DETROIT LIVONIA.		17200 N. LAUREL PARK DR	LIVONIA, MI 48152–	313–462–2000
DETROIT MARRIOTT LIVONIA		17100 LAUREL PARK DR. N	LIVONIA, MI 48152–	313–462–3100
HOLIDAY INN LIVONIA WEST		17123 LAUREL PARK DR. N	LIVONIA, MI 48152–	313–464–1300
LIVONIA SUPER 8 MOTEL		28512 SCHOOLCRAFT	LIVONIA, MI 48150–	313–425–5150
RAMADA INN		30375 PLYMOUTH RD	LIVONIA, MI 48150–	313–261–6800
HOLIDAY INN EXTRESS HOTEL.		364 LOWINGNEY	MACKINAW CITY, MI 49701–	616–436–7100
HOLIDAY WATERFRONT MOTEL.		723 S. HURON AVE	MACKINAW CITY, MI 49701–	616–436–5055
SUPER 8 MOTEL		601 N. HURON	MACKINAW CITY, MI 49701–	616–436–5252
BEST WESTERN INN TROY MADISON HEIGHTS.		1331 W. 14 MILE	MADISON HEIGHTS, MI 48071–	313–583–7000
FAIRFIELD INN BY MARRIOTT DET. MADISON HGTS.		32800 STEPHENSON HWY	MADISON HEIGHTS, MI 48071–	313–588–3388
HAMPTON INN MADISON HEIGHTS.		32420 STEPHENSON HWY	MADISON HEIGHTS, MI 48071–	313–585–6881
RED ROOF INN		32511 CONCORD	MADISON HEIGHTS, MI 48071–	313–583–4700
RESIDENCE INN BY MARRIOTT TROY SOUTHEAST.		32650 STEPHENSON HWY	MADISON HEIGHTS, MI 48071–	313–583–4322
DAYS INN OF MANISTEE		1462 US 31 S	MANISTEE, MI 49660–	616–723–8385
MANISTEE INN		378 RIVER ST	MANISTEE, MI 49660–	616–723–4000
RAMADA INN	P.O. BOX 485	LAKESHORE DR	MANISTIQUE, MI 49854–	906–341–6911
LEELANAU COUNTRY INN		149 E. HARBOR HWY	MAPLE CITY, MI 49664–	616–228–5060
BRENTWOOD MOTOR INN		2603 US 41 W	MARQUETTE, MI 49855–	906–228–7494
MARQUETTE MOTOR LODGE		1010 M–28 E	MARQUETTE, MI 49855–	906–249–1712
MARQUETTE SUPER 8 MOTEL		1275 US 41 W. 5	MARQUETTE, MI 49855–	906–228–8100
VILLAGE INN OF MARQUETTE		1301 N. THIRD ST	MARQUETTE, MI 49855–	906–226–9400
FERRIS CHALET MOTEL		1484 GRATIOT BLVD	MARYSVILLE, MI 48040–	313–364–7500
FAIRVIEW INN		2200 W. WACKERLY ST	MIDLAND, MI 48640–	517–631–0070
HOLIDAY INN MIDLAND		1500 W. WACKERLY ST	MIDLAND, MI 48640–	517–631–4220
RAMADA INN		1815 S. SAGINAW RD	MIDLAND, MI 48640–	517–631–0570
COMFORT INN		2424 S. MISSION	MT. PLEASANT, MI 48858–	517–772–4000
HOLIDAY INN MT. PLEASANT		5865 E. PICKARD	MT. PLEASANT, MI 48858–	517–772–2905
COMFORT INN		M–28 EAST	MUNISING, MI 49862–	906–387–5292
COMFORT INN MUSKEGON		1675 E. SHERMAN	MUSKEGON, MI 49444–	616–739–9092
CORNERHOUSE MOTOR INN		3350 GLADE ST	MUSKEGON, MI 49444–	616–733–1056
HOLIDAY INN MUSKEGON HARBOR.		939 THIRD ST	MUSKEGON, MI 49440–	616–722–0100
COMFORT INN		JCT. M–123 & M–28	NEWBERRY, MI 49868–	906–293–3210

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DETROIT NOVI TRAVELODGE		21100 HAGGERTY RD	NORTHVILLE, MI 48167–	313–349–7400
HAMPTON INN NORTHVILLE		20600 HAGGERTY RD	NORTHVILLE, MI 48167–	313–462–1119
NOVI HILTON		21111 HAGGERTY RD	NOVI, MI 48375–	313–349–4000
SHERATON OAKS NOVI		27000 SHERATON DR	NOVI, MI 48377–	313–348–5000
COMFORT INN OKEMOS		2209 UNIVERSITY PARK DR	OKEMOS, MI 48864–	517–349–8700
REST ALL INN OSCODA		4270 N. US 23	OSCODA, MI 48750–	517–739–8822
RED ROOF INN		39700 ANN ARBOR RD	PLYMOUTH, MI 48170–	313–459–3300
EL RANCHO MOTEL & RESTAURANT.		3756 LAPEER RD	PORT HURON, MI 48060–	313–985–3228
THOMAS EDISON INN		500 EDISON PKWY	PORT HURON, MI 48060–	313–984–8000
ALL SEASONS MOTEL		9911 HWY. 2	RAPID RIVER, MI 49878–	906–474–6062
DRIFTWOOD MOTEL		540 W. THIRD ST	ROGERS CITY, MI 49779–	517–734–4777
BUDGETEL INN		9000 WICKHAM RD	ROMULUS, MI 48174–	313–722–6000
COURTYARD BY MARRIOTT DETROIT AIRPORT.		30653 FLYNN DR	ROMULUS, MI 48174–	313–721–3200
DAYS HOTEL		8800 WICKHAM	ROMULUS, MI 48174–	313–729–9000
DETROIT MARRIOTT ROMULUS.		30559 FLYNN DR	ROMULUS, MI 48174–	313–729–7555
FAIRFIELD INN BY MARRIOTT DETROIT AIRPORT.		31119 FLYNN DR	ROMULUS, MI 48174–	313–728–2322
HILTON SUITE DETROIT METRO.		8600 WICKHAM RD	ROMULUS, MI 48174–	313–728–9200
HOLIDAY INN METRO		31200 INDUSTRIAL EXPRWY	ROMULUS, MI 48174–313–728–280.	
MERRIMAN EXECUTIVE INN		7600 MERRIMAN RD	ROMULUS, MI 48174–	313–728–2430
QUALITY INN METRO AIRPORT		31800 WICK RD	ROMULUS, MI 48174–	313–326–2100
RADISSON HOTEL DETROIT METRO AIRPORT.		8000 MERRIMAN RD	ROMULUS, MI 48174–	313–729–2600
ROMULUS SUPER 8 MOTEL		9863 MIDDLEBELT RD	ROMULUS, MI 48174–	313–946–8808
BUDGETEL INN		20675 13 MILE RD	ROSEVILLE, MI 48066–	313–296–6910
KNIGHTS INN ROSEVILLE		31842 LITTLE MACK	ROSEVILLE, MI 48066–	313–294–6140
RED ROOF INN		31800 LITTLE MACK	ROSEVILLE, MI 48066–	313–296–0310
ROSEVILLE SUPER 8 MOTEL		20445 ERIN ST	ROSEVILLE, MI 48066–	313–296–1730
CURRY'S MOTEL		6307 STATE	SAGINAW, MI 48603–	517–793–1400
HAMPTON INN SAGINAW		2222 TITTABAWASSEE RD	SAGINAW, MI 48604–	517–792–7666
KNIGHTS INN		2225 TITTABAWASSEE RD	SAGINAW, MI 48604–	517–791–1411
RED ROOF INNS		966 S. OUTER DR	SAGINAW, MI 48601–	517–754–8414
SHERATON INN FASHION SQUARE.		4960 TOWNE CENTRE RD	SAGINAW, MI 48604–	517–790–5050
TIMBERLINE MOTEL	PO BOX 666		SAUGATUCK, MI 49453–	
COMFORT INN		4404 I–75 BUSINESS SPUR	SAULT STE MARIE, MI 49783–	906–635–1118
CRESTVIEW THRIFTY INN	PO BOX 361	1200 ASHMUN	SAULT STE MARIE, MI 49783–	906–635–5213
SEAWAY MOTEL		1800 ASHMUN ST	SAULT STE MARIE, MI 49783–	906–632–8201
OLD HARBOR INN		515 WILLIAMS ST	SOUTH HAVEN, MI 49090–	616–637–8480
THE COLONIAL HOTEL		532 DYCKMAN	SOUTH HAVEN, MI 49090–	616–637–2867
THE FRIENDSHIP INN		9817 M–140 HWY	SOUTH HAVEN, MI 49090–	616–637–5141
COURTYARD BY MARRIOTT DETROIT SOUTHFIELD.		27027 NORTHWESTERN HWY	SOUTHFIELD, MI 48034–	313–358–1222
DETROIT MARRIOTT SOUTHFIELD.		27033 NORTHWESTERN HWY	SOUTHFIELD, MI 40834–	313–356–7400
DETROIT SOUTHFIELD TRAVEL LODGE.		27650 NORTHWESTERN HWY	SOUTHFIELD, MI 48034–	313–353–6777
EMBASSY SUITE HOTEL SOUTHFIELD.		28100 FRANKLIN RD	SOUTHFIELD, MI 48034–	313–350–2000
RED ROOF INN		27660 NORTHWESTERN HWY	SOUTHFIELD, MI 48034–	313–353–7200
RESIDENCE INN BY MARRIOTT SOUTHFIELD.		26700 CENTRAL PARK BLVD	SOUTHFIELD, MI 48076–	313–352–8900
SOUTHFIELD HILTON GARDEN INN.		26000 AMERICAN DR	SOUTHFIELD, MI 48034–	313–357–1100
BUDGETEL INN		12888 REECH RD	SOUTHGATE, MI 48195–	313–374–3000
ST. CLAIR INN		500 N. RIVERSIDE	ST. CLAIR, MI 48079–	313–329–2222
AURORA BOREALIS MOTOR INN.		635 W. US 2	ST. IGNACE, MI 49781–	906–643–7488
ECONO LODGE		927 N. STATE ST	ST. IGNACE, MI 49781–	906–643–7733
THUNDERBIRD MOTOR INN		10 S. STATE ST	ST. IGNACE, MI 49781–	906–643–8800
SNOW FLAKE INN INC		3822 RED ARROW HWY	ST. JOSEPH, MI 49085–	616–429–3261
BEST WESTERN STERLING INN.		34911 VAN DYKE	STERLING HEIGHTS, MI 48312–.	313–979–1400
STERLING HEIGHTS SUPER 8 MOTEL.		34550 VAN DYKE	STERLING HEIGHTS, MI 48312–.	313–283–8830
VILLAGER LODGE		34858 VAN DYKE	STERLING HEIGHTS, MI 48312–.	313–939–5555

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
PARK INN INTERNATIONAL		4290 RED ARROW HWY	STEVENSILLE, MI 49127–	616–429–3218
HOLIDAY INN TAYLOR		20777 EUREKA RD	TAYLOR, MI 48180–	313–283–2200
RED ROOF INN TAYLOR		21230 EUREKA RD	TAYLOR, MI 48180–	313–374–1150
TAYLOR SUPER 8 MOTEL		15101 HURON ST	TAYLOR, MI 48180–	313–283–8830
BEST WESTERN FOUR SEASONS MOTEL.		305 MUNSON AVE	TRAVERSE CITY, MI 49684–	616–946–8424
DAYS INN AND SUITES		420 MUNSON AVE	TRAVERSE CITY, MI 49684–	616–941–0208
HAMPTON INN TRAVERSE CITY.		100 US 31 N	TRAVERSE CITY, MI 49684–	616–946–6900
PARK PLACE HOTEL		300 E. STATE ST	TRAVERSE CITY, MI 49684–	616–946–5000
COURTYARD BY MARRIOTT DETROIT TROY.		1525 E. MAPLE RD	TROY, MI 48083–	313–528–2800
HOLIDAY INN		2737 ROCHESTER CT	TROY, MI 48084–	313–689–7500
NORTHFIELD HILTON		5500 CROOKS RD	TROY, MI 48098–	313–879–2100
RED ROOF INNS #021		2350 ROCHESTER CT	TROY, MI 48083–	313–689–4391
SOMERSET INN		2601 W. BIG BEAVER	TROY, MI 48084–	800–228–8769
TROY MARRIOTT		200 W. BIG BEAVER	TROY, MI 48084–	313–680–9797
BUDGETEL INN		30900 VAN DYKE	WARREN, MI 48093–	313–574–0550
COURTYARD BY MARRIOTT DETROIT WARREN.		30190 VAN DYKE AVE	WARREN, MI 48093–	313–751–5777
DAYS INN		30000 VAN DYKE AVE	WARREN, MI 48093–	313–573–7600
FAIRFIELD INN BY MARRIOTT DETROIT WARREN.		7454 CONVENTON BLVD	WARREN, MI 48093–	313–939–1700
HAMPTON INN DETROIT-WARREN.		7447 CONVENTION RD	WARREN, MI 48092–	313–977–7270
HOLIDAY INN		11500 ELEVEN MILE	WARREN, MI 48089–	313–754–9400
HOMEWOOD SUITES DETROIT WARREN.		30180 N. CIVIC CENTER BLVD	WARREN, MI 48093–	313–558–7870
RED ROOF INN		26300 DEQUINDRE RD	WARREN, MI 48091–	313–573–4300
RESIDENCE INN WARREN		30120 CIVIC CENTER BLVD	WARREN, MI 48093–	313–558–8050
QUALITY INN CONFERENCE CENTER.	PO BOX 369	2980 COOK RD	WEST BRANCH, MI 48661–	517–345–3503
SUPER 8 MOTEL GRAND RAPIDS.		727 44TH ST. SW	WYOMING, MI 49509–	616–530–8588
RADISSON ON THE LAKE		1275 HURON ST. SOUTH	YPSILANTI, MI 48197–	313–487–2000
Minnesota				
AFTON HOUSE INN		3291 ST. CROIX TRAIL	AFTON, MN 55001–	612–436–8883
SAND'S MOTEL		820 SHAMROCK LN	ALBANY, MN 56307–	612–845–2145
ALBERT LEA SUPER 8 MOTEL		2019 E. MAIN ST	ALBERT LEA, MN 56007–	507–377–0591
AMERICAN MOTEL		4520 HWY. 29 S	ALEXANDRIA, MN 56308–	612–763–6808
LUTHER CREST BIBLE CAMP ADULT FAMILY RETREAT.		8231 COUNTY RD. 11 NE	ALEXANDRIA, MN 56308–	612–846–2431
SUPER 8 MOTEL		4620 HWY. 29 S	ALEXANDRIA, MN 56308–	612–763–6552
PIERCE MOTEL		1520 S. FERRY	ANOKA, MN 55303–	612–421–7000
NORTHRIDGE EMERALD INN		1125 RED FOX RD	ARDEN HILLS, MN 55434–	612–484–6557
FOREST GARDEN MOTEL		413 S. MAIN ST	AURORA, MN 55705–	218–229–3676
DAYS INN AUSTIN		700 16TH AVE. NW	AUSTIN, MN 55912–	507–433–8600
HOLIDAY INN AUSTIN		1701 FOURTH ST. NW	AUSTIN, MN 55912–	507–433–1000
AMERICINN		304 BLATTNER DR	AVON, MN 56310–	612–356–2211
CYRUS RESORT	PO BOX 226F	RR 1	BAUDETTE, MN 56623–	218–634–2548
LAKEROAD LODGE INC	PO BOX 165A1	RR 1	BAUDETTE, MN 56623–	218–634–2336
SPORTSMAN'S LODGE	PO BOX 167	RR 1	BAUDETTE, MN 56623–	218–634–1342
AMERICINN MOTEL		600 DELLWOOD DR. N	BAXTER, MN 56425–	218–829–3080
STRAWBERRY MOTEL	PO BOX 265	120 RYE ST	BECKER, MN 55308–	612–261–4440
COMFORT INN		3500 COMFORT INN	BEMIDJI, MN 56601–	218–751–7700
HOLIDAY INN		HWY. 2 W	BEMIDJI, MN 56601–	218–751–6500
ROYAL MOTEL		1025 PAUL BUNYAN DR. NW	BEMIDJI, MN 56601–	218–751–2781
RUTTGER'S BIRCHMONT LODGE.		530 BIRCHMONT BEACH RD. NE.	BEMIDJI, MN 56601–	213–751–1630
GIANT'S RIDGE TRAINING CENTER.	PO BOX 190		BIWABIK, MN 55708–	218–865–4143
AMERICINN MOTEL		HWY. 71 AND LAKE RD	BLACKDUCK, MN 56630–	218–835–4500
BLOOMINGTON SUPER 8 MOTEL.		7800 SECOND AVE. S	BLOOMINGTON, MN 55420–1206.	612–888–8800
BRADBURY SUITES HOTEL		7770 JOHNSON AVE. S	BLOOMINGTON, MN 55435–	612–893–9999
EMBASSY SUITES BLOOMINGTON MPLS AIRPORT.		2800 W. 80TH ST	BLOOMINGTON, MN 55431–	612–884–4811
HAMPTON INN MINNEAPOLIS AIRPORT.		4201 W. 80TH ST	BLOOMINGTON, MN 55437–1120.	612–835–6643
HOLIDAY INN BLOOMINGTON CENTRAL.		1201 W. 94TH ST	BLOOMINGTON, MN 55431–	612–884–8211

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN EXPRESS MINNEAPOLIS AIRPORT.		814 E. 79TH ST	BLOOMINGTON, MN 55420–1120.	612–854–5558
HOLIDAY INN INTERNATIONAL		3 APPLETREE SQUARE	BLOOMINGTON, MN 55425–	612–854–9000
MINNEAPOLIS AIRPORT MARRIOTT BLOOMINGTON.		2020 E. 79TH ST	BLOOMINGTON, MN 55425–	612–854–7441
RADISSON HOTEL SOUTH AND PLAZA TOWER.		7800 NORMANDALE BLVD	BLOOMINGTON, MN 55439–	612–835–7800
SELECT INN OF BLOOMINGTON.		7651 NORMANDALE BLVD	BLOOMINGTON, MN 55435–	612–835–7400
SHERATON INN AIRPORT		2500 E. 79TH ST	BLOOMINGTON, MN 55425–	612–854–1771
THE REGISTRY HOTEL		7901 24TH AVE. S	BLOOMINGTON, MN 55425–	612–854–2244
THE THUNDERBIRD HOTEL AND CONVENTION CENTER.		2201 E. 78TH ST	BLOOMINGTON, MN 55428–1228.	612–854–3411
WYNDHAM BLOOMINGTON		4460 W. 78TH ST. CIR	BLOOMINGTON, MN 55435–	612–831–3131
BLUE EARTH SUPER 8 MOTEL	PO BOX 394	JCT. I–90 & US HWY. 169	BLUE EARTH, MN 56013–	507–526–7376
BEST WESTERN PAUL BUNYAN INN.		1800 FAIRVIEW DR. N	BRAINERD, MN 56401–	218–829–3571
BRAINERD DAYS INN		1630 FAIRVIEW DR. N	BRAINERD, MN 56401–	218–829–0391
CRAGUN'S CONFERENCE CENTER.		2001 PINE BEACH	BRAINERD, MN 56401–	218–829–3591
ECONO LODGE		2655 HWY. 371 S	BRAINERD, MN 56401–	218–828–0027
HOLIDAY INN		2115 S. 6TH ST	BRAINERD, MN 56401–	218–829–1441
BREEZY POINT RESORT TIME SHARE UNITS.	PO BOX 70	HCR 2	BREEZY POINT, MN 56472–	218–562–7811
PELICAN LAKE MOTEL	PO BOX 1219	HC 83	BREEZY POINT, MN 56472–	218–562–4080
HOLIDAY INN MINNEAPOLIS NORTH.		2200 FREEWAY BLVD	BROOKLYN CENTER, MN 55430–.	612–566–8000
SUPER 8 MOTEL MINNEAPOLIS NORTH.		6445 JAMES CIR	BROOKLYN CENTER, MN 55430–.	612–566–9810
BEST WESTERN NORTHWEST INN.		6900 LAKELAND AVE	BROOKLYN PARK, MN 55428–	612–566–8855
THE NORTHLAND INN & EXECUTIVE CONFERENCE CTR.		7025 NORTHLAND DR	BROOKLYN PARK, MN 55428–	612–536–8300
BURNSVILLE FANTASUITE HOTEL.		250 RIVER RIDGE CIR	BURNSVILLE, MN 55337–	612–890–9550
HOLIDAY INN BURNSVILLE		14201 NICOLLET AVE. S	BURNSVILLE, MN 55337–	612–435–2100
PRIME RATE MOTEL		12850 W. FRONTAGE RD	BURNSVILLE, MN 55337–	612–894–8554
RED ROOF INN		12920 ALDRICH AVE. S	BURNSVILLE, MN 55337–	612–890–1420
IMPERIAL MOTOR LODGE-MAIN BUILDING.		843 N. HWY. 65	CAMBRIDGE, MN 55008–	612–689–2200
SUPER 8 MOTEL CHASKA		830 YELLOW BRICK RD	CHASKA, MN 55318–	612–448–7030
AMERICINN MOTEL		111 BIG LAKE RD	CLOQUET, MN 55720–	218–879–1231
AMERICINN		118 THIRD ST. S	COLD SPRING, MN 56320–	612–685–4539
MOTEL COUNTRY CLUB		719 GROVELAND AVE	CROOKSTON, MN 56716–	218–281–1607
LO KIANDY INN	PO BOX 33	S. LANDING RD	CROSSLAKE, MN 56442–	218–692–2714
SHADY INN RESORT	PO BOX 310	RT. 1	CUSHING, MN 56443–	218–575–2181
RUTTGER'S BAY LAKE LODGE	PO BOX 400	RT. 2	DEERWOOD, MN 56444–	218–678–2885
59ER MOTEL	PO BOX 78	RT. 3 HWY. 59 N	DETROIT LAKES, MN 56501–	218–847–3144
BEST WESTERN HOLLAND MOTEL.		615 HWY. #10 E	DETROIT LAKES, MN 56501–	800–338–8547
LAKECREST RESORT	PO BOX E	RT 1	DETROIT LAKES, MN 56501–	218–847–5459
COMFORT INN		3900 W. SUPERIOR ST	DULUTH, MN 55807–	218–628–1464
COMFORT SUITES OF CANAL PARK.		408 CANAL PARK DR	DULUTH, MN 55802–	218–727–1378
DULUTH SUPER 8 MOTEL		4100 W. SUPERIOR ST	DULUTH, MN 55807–	218–628–2241
FITGER'S INN		600 E. SUPERIOR ST	DULUTH, MN 55802–	218–722–8826
HOLIDAY INN DULUTH		200 W. 1ST ST	DULUTH, MN–	218–722–1202
MOUNTAIN VILLAS OWNERS' ASSOCIATION.		9525 W. SKYLINE PKWY	DULUTH, MN 55810–	218–624–5784
PRIME RATE MOTEL		4197 HAINES RD	DULUTH, MN 55811–	218–722–5522
SKYLINE COURT MOTEL		4880 MILLER TRUNK HWY	DULUTH, MN 55811–	218–727–1563
BEST WESTERN YANKEE SQUARE INN.		3450 WASHINGTON DR	EAGAN, MN 55122–	612–452–0100
HOLIDAY INN MINNEAPOLIS AIRPORT.		2700 PILOT KNOB RD	EAGAN, MN 55121–	612–454–3434
RESIDENCE INN BY MARRIOTT.		3040 EAGANDALE PL	EAGAN, MN 55121–	612–688–0363
COURTYARD BY MARRIOTT EDEN PRAIRIE.		11391 VIKING DR	EDEN PRAIRIE, MN 55344–	612–942–9100
RESIDENCE INN BY MARRIOTT.		7780 FLYING CLOUD DR	EDEN PRAIRIE, MN 55344–	612–829–0033
RED CARPET INN		17291 HWY. 10	ELK RIVER, MN 55330–	612–441–2424

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LOTUS LODGE MOTEL	PO BOX 128A	RT. 1	ELYSIAN, MN 56028–	507–267–4211
SLOVENE MOTEL		301 HAT TRICK AVE	EVELETH, MN 55734–	218–744–3427
SUPER 8 MOTEL EVELETH	PO BOX 555		EVELETH, MN 55734–	218–744–1661
CHRISTOPHER INN		201 MILL ST	EXCELSIOR, MN 55331–	612–474–6816
SUPER 8 FAIRMONT	PO BOX 922	TORGERSON DR	FAIRMONT, MN 56031–	507–238–9444
THE ROSE BED & BREAKFAST		2129 LARPENTEUR W	FALCON HEIGHTS, MN 55113–	612–642–9417
SILVER HOOK RESORT	PO BOX 60	HCR 1	FEDERAL DAM, MN 56641–	218–654–5521
CROOKED LAKE RESORTS TRESTLE INN.	PO BOX 548		FINLAND, MN 55603–	218–365–2124
BUDGET HOST SUNLINER INN		6881 HWY. 65 NE	FRIDLEY, MN 55432–	612–571–0420
BEST WESTERN GOLDEN VALLEY HOUSE.		4820 OLSON MEMORIAL HWY .	GOLDEN VALLEY, MN 55422– .	612–588–0511
LAKESIDE BED & BREAKFAST	PO BOX 472	113 W. SECOND ST	GRACEVILLE, MN 56240–	612–748–7657
BEST WESTERN SUPERIOR INN.		HWY. #61 E	GRAND MARAIS, MN 55604–	800–842–8439
LUND'S MOTEL	PO BOX 126	919 HWY. 61 W	GRAND MARAIS, MN 55604–	218–387–2155
SHORELINE MOTEL		20 S. BROADWAY	GRAND MARAIS, MN 55604–	218–387–2633
SPRUCEGLEN ECONO LODGE		HWY. 61 E	GRAND MARAIS, MN 55604–	218–387–2633
SUPER 8 GRAND MARAIS		W. HWY 61	GRAND MARAIS, MN 55604–	218–387–2633
GRAND RAPIDS SUPER 8 MOTEL.	PO BOX 335	1902 S. POKEGAMA	GRAND RAPIDS, MN 55744–	218–327–1108
SUPER 8 MOTEL OF GRANITE FALLS.		845 W. HWY. 212	GRANITE FALLS, MN 56241–	612–564–4075
COUNTRY LODGE MOTEL CORP.	PO BOX 96		HARMONY, MN 55939–	507–886–2515
ROSEWOOD INN		620 RAMSEY	HASTINGS, MN 55035–	612–437–3297
KAHLER PARK HOTEL		1402 E. HOWARD ST	HIBBING, MN 55746–	218–262–3481
DAYSTOP MOTEL		104 GRINDSTONE CT	HINCKLEY, MN 55037–	612–384–7751
BUNKHOUSE LODGE BED & BREAKFAST.		501 S. JEFFERSON	HOUSTON, MN 55943–	507–896–2080
HOLIDAY INN OF INTERNATIONAL FALLS.		1810 HWY. 11 & 71	INTERNATIONAL FALLS, MN 56649–.	218–283–4451
RAMBLER MOTEL		1901 SECOND W	INTERNATIONAL FALLS, MN 56649–.	218–283–3454
PRAIRIE WINDS BUDGET HOST MOTEL.		950 N. HWY. 71	JACKSON, MN 56143–	507–847–2020
LAKE CITY AMERIC INN MOTEL.		1615 N. LAKESHORE DR	LAKE CITY, MN 55041–	612–345–5611
SUPER 8 LAKEVILLE		20800 KENRICK AVE	LAKEVILLE, MN 55044–	612–469–1134
LE SUEUR DOWNTOWN MOTEL.		510 N. MAIN	LE SUEUR, MN 56058–	612–665–6245
BEST WESTERN CLIFF DWELLER.		HWY. 61	LUTSEN, MN 55612–	218–663–7273
CASCADE LODGE	PO BOX 445	HC 3	LUTSEN, MN 55612–	218–387–1112
VIKING INN MOTEL		I–90 AND US 75	LUVERNE, MN 56156–	507–283–9541
MADELIA MANOR		127 W. MAIN	MADELIA, MN 56062–	507–642–3211
NU MADISON MOTEL	PO BOX 196	RR 3	MADISON, MN 56256–	612–598–3655
MANKATO DAYS INN		1285 RANGE ST	MANKATO, MN 56001–	507–387–3332
REDWOOD MOTEL		BELLE AVE. & HOPE ST	MANKATO, MN 56001–	507–388–1621
MOTEL 22		507 STATE HWY. 22 S	MAPLETON, MN 56065–	507–524–3535
BEST WESTERN MAPLEWOOD INN.		1780 E. COUNTY RD. D	MAPLEWOOD, MN 55109–	612–770–2811
EMERALD INN		2025 E. COUNTY RD. D	MAPLEWOOD, MN 55109–	612–777–8131
RICHIE'S MARCELL INN	PO BOX 36		MARCELL, MN 56657–	218–832–3906
VETERAN'S REST CAMP ASSOCIATION INC.		11300 180TH ST. N	MARINE ON ST. CROIX, MN 55047–.	612–433–2699
WILDER FOREST		14189 OSTLUND TRAIL N	MARINE ON ST. CROIX, MN 55047–.	612–433–5198
LYON MOTEL CORPORATION DBA COMFORT INN.		1511 E. COLLEGE DR	MARSHALL, MN 56258–	507–532–3070
STONY LAKE CAMP	PO BOX 435	RT. 4	MENAHGA, MN 56464–	218–732–8127
COURTYARD BY MARRIOTT MINNEAPOLIS AIRPORT.		1352 NORTHLAND DR	MENDOTA HEIGHTS, MN 55120–.	612–452–2000
CAMPUS INN ECONO-LODGE		2500 UNIVERSITY AVE. SE	MINNEAPOLIS, MN 55414–	612–331–6000
HOLIDAY INN METRODOME		1500 WASHINGTON AVE. S	MINNEAPOLIS, MN 55454–	612–333–4646
HOTEL LUXEFORD SUITES		1101 LASALLE AVE	MINNEAPOLIS, MN 55403–	612–332–6800
HYATT REGENCY MINNEAPOLIS.		1300 NICOLLET MALL	MINNEAPOLIS, MN 55403–	612–370–1234
LE BLANC HOUSE BED & BREAKFAST.		302 UNIVERSITY AVE. NE	MINNEAPOLIS, MN 55118–	612–379–2570
MINNEAPOLIS MARRIOTT CITY CENTER.		30 S. SEVENTH ST	MINNEAPOLIS, MN 55403–	612–349–4000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MINNEAPOLIS ST. PAUL AIRPORT HILTON.		3800 E. 80TH ST	MINNEAPOLIS, MN 55425–	612–854–2100
RADISSON HOTEL METRODOME.		615 WASHINGTON AVE. SE	MINNEAPOLIS, MN 55414–	612–379–8888
SHERATON MINNEAPOLIS METRODOME.		1330 INDUSTRIAL AVE	MINNEAPOLIS, MN 55413–	612–331–1900
SHERATON PARK PLACE HOTEL.		5555 WAYZATA BLVD	MINNEAPOLIS, MN 55416–	612–542–8600
SNELLING MOTOR INN		5346 MINNEHAHA AVE	MINNEAPOLIS, MN 55417–	612–721–4841
STARLITE MOTEL		4720 CENTRAL AVE. NE	MINNEAPOLIS, MN 55421–	612–571–8656
THE MINNEAPOLIS HILTON AND TOWERS.		1001 MARQUETTE AVE	MINNEAPOLIS, MN 55403–	612–376–1000
HAMPTON INN MINNEAPOLIS MINNETONKA.		10420 WAYZATA BLVD	MINNETONKA, MN 55343–	612–541–1094
MINNEAPOLIS MARRIOTT SOUTHWEST.	2 OFFICE PK	5801 OPUS PKWY	MINNETONKA, MN 55343–	612–935–5500
THE RADISSON HOTEL MINNEAPOLIS WEST.		12201 RIDGEDALE DR	MINNETONKA, MN 55305–	612–593–0000
BEST WESTERN ROYALE INN		207 N. FIRST ST	MONTEVIDEO, MN 56265–	612–269–5554
RIVERWOOD CONFERENCE CENTER.		10990 95TH ST. NE	MONTICELLO, MN 55362–	612–441–6833
SUPER 8 MOTEL		3621 S. EIGHTH ST	MOORHEAD, MN 56560–	218–233–8880
MOUNDS VIEW INN	JCT 35W & 10	2149 PROGRAM AVE	MOUNDS VIEW, MN 55112–	612–786–9151
HOLIDAY INN NEW ULM		2101 S. BROADWAY	NEW ULM, MN 56073–	507–359–2941
BOYD'S MOTEL		1700 HASTINGS AVE	NEWPORT, MN 55055–	612–459–9896
DAYSTOP		45 N. SMILEY	NISSWA, MN 56468–	218–963–3500
GRAND VIEW LODGE GOLF AND TENNIS CLUB.		S. 134 NOKOMIS AVE	NISSWA, MN 56468–	218–963–2234
WILDERNESS POINT RESORT & CAMPGROUND.	PO BOX 84		NISSWA, MN 56468–	218–568–5642
ROYAL SHOOKS MOTEL	PO BOX 54	HC 62	NORTHOME, MN 56661–	218–647–6379
THE SHEEP SHEDDE INN		2425 W. LINCOLN AVE	OLIVIA, MN 56277–	612–523–5000
CAMP ONOMIA	PO BOX 68	HC 67	ONAMIA, MN 56359–	612–532–3767
AMERICINN MOTEL OF OWATONNA.		245 FLORENCE AVE	OWATONNA, MN 55060–	507–455–1142
COUNTRY HEARTH MOTEL		745 STATE AVE	OWATONNA, MN 55060–	507–451–8712
WESTERN INN		1212 I–35	OWATONNA, MN 55060–	507–455–0606
C'MON INN	PO BOX 189	HWY. 34 E	PARK RAPIDS, MN 56470–	218–732–1471
SUPER 8 MOTEL	PO BOX 388	HWY. 34 E	PARK RAPIDS, MN 56470–	218–732–9704
JUNGLE SHORES RESORT	PO BOX 115	RT. 1	PERHAM, MN 56573–	218–346–3085
KNOTTY PINE CAFE & MOTEL	PO BOX 426		PIERZ, MN 56364–	612–468–9992
CHALET MOTEL	PO BOX 288	RT. 2	PINE CITY, MN 55063–	612–629–7684
SUPER 8 MOTEL		605 EIGHTH AVE. SE	PIPESTONE, MN 56164–	507–825–4217
THE CALUMET INN		104 W. MAIN	PIPESTONE, MN 56164–	507–825–5871
PLAINVIEW HOTEL		305 W. BROADWAY	PLAINVIEW, MN 55964–	507–534–3883
BEST WESTERN KELLY INN PLYMOUTH.		2705 ANNAPOLIS LN	PLYMOUTH, MN 55441–	612–553–1600
HOLIDAY INN PLYMOUTH		3000 HARBOR LN	PLYMOUTH, MN 55447–	612–559–1222
RADISSON HOTEL AND CONFERENCE CENTER.		3131 CAMPUS DR	PLYMOUTH, MN 55441–	612–559–6600
RED ROOF INN		2600 ANNAPOLIS LN. N	PLYMOUTH, MN 55441–	612–553–1751
THE HISTORIC JAILHOUSE INN		109 HOUSTON 3 NW	PRESTON, MN 55965–	507–765–2181
THE OLD BARN RESORT	PO BOX 57	RT. 3	PRESTON, MN 55965–	507–467–2512
RUM RIVER COUNTRY INN BED & BREAKFAST.	PO BOX 114	RT. 6 5002 85TH AVE	PRINCETON, MN 55371–	612–389–2699
CANDLE LIGHT INN		818 W. THIRD ST	RED WING, MN 55066–	612–388–8034
RED CARPET INN		235 WITHERS HARBOR DR	RED WING, MN 55066–	612–388–1502
ST. JAMES HOTEL		406 MAIN ST	RED WING, MN 55066–0071	612–388–2846
SUPER 8 MOTEL		232 WITHERS HARBOR DR	RED WING, MN 55066–	612–388–0491
DAKOTA INN		410 W. PARK RD	REDWOOD FALLS, MN 56283–	507–637–5444
REDWOOD FALLS SUPER 8		1305 E. BRIDGE	REDWOOD FALLS, MN 56283–	507–637–2456
CLINIC VIEW INN AND SUITES		9 NW THIRD AVE	ROCHESTER, MN 55901–	507–289–8646
COMFORT INN		111 28TH ST. SE	ROCHESTER, MN 55904–	507–286–1001
HOLIDAY INN DOWNTOWN		220 S. BROADWAY	ROCHESTER, MN 55904–	507–288–3231
HOTEL MINNESOTA		519 SECOND AVE. SW	ROCHESTER, MN 55902–	507–282–7425
HOWARD JOHNSON LODGE		435 16TH AVE. NW	ROCHESTER, MN 55901–	507–288–9090
KAHLER PLAZA HOTEL		101 SW SECOND AVE	ROCHESTER, MN 55902–	507–280–6000
LANGDON'S UPTOWN MOTEL		526 THIRD AVE. SW	ROCHESTER, MN 55902–	507–282–7425
RADISSON HOTEL CENTERPLACE.		150 S. BROADWAY	ROCHESTER, MN 55904–	507–281–8000
THE KAHLER HOTEL		20 SW SECOND AVE	ROCHESTER, MN 55902–	507–282–2581

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
TWINS MOTEL AND APARTMENTS.		1013 SECOND ST. SW	ROCHESTER, MN 55902–	507–289–1675
SUPER 8 MOTEL DBA ROGERS INN INC.		21130 134TH AVE. N	ROGERS, MN 55374–	612–428–4000
AMERICINN MOTEL	PO BOX 39	HWY. 11 W	ROSEAU, MN 56751–	218–463–1045
COMFORT INN ROSEVILLE		2715 LONG LAKE RD	ROSEVILLE, MN 55113–	612–636–5800
DAYS INN ROSEVILLE		2550 CLEVELAND AVE. N	ROSEVILLE, MN 55113–	612–636–6730
HOLIDAY INN ST. PAUL ROSEVILLE.		2540 N. CLEVELAND AVE	ROSEVILLE, MN 55113–	612–636–4567
MOTEL 6		2300 CLEVELAND AVE. N	ROSEVILLE, MN 55113–	612–639–9999
SUPER 8 HOTEL		2401 PRIOR AVE. N	ROSEVILLE, MN 55113–	612–636–8888
NORTHEAST REGIONAL CORRECTIONS CENTER.		6102 ABRAHAMSON RD	SAGINAW, MN 55779–	218–729–8673
SHAKOPEE VALLEY MOTEL		1251 E. FIRST AVE	SHAKOPEE, MN 55379–	612–445–5074
SUPER 8 OF SHAKOPEE		581 S. MARSCHALL RD	SHAKOPEE, MN 55379–	612–445–4221
HOLIDAY INN SHOREVIEW		1000 GRAMSIE RD	SHOREVIEW, MN 55126–	612–482–0402
BEST WESTERN DROVERS INN.		701 S. CONCORD ST	SOUTH ST. PAUL, MN 55075–	612–455–3600
SPICER CASTLE BED & BREAKFAST.		11600 INDIAN BEACH RD	SPICER, MN 56288–	612–796–5870
BEST WESTERN AMERICANNA INN.		520 S. HWY. 10	ST. CLOUD, MN 56304–	612–252–8700
BUDGETEL INN		70 S. 37TH AVE	ST. CLOUD, MN 56301–	612–253–4444
COMFORT INN OF ST. CLOUD	PO BOX 7125	4040 S. SECOND ST	ST. CLOUD, MN 56302–7125	612–251–1500
FAIRFIELD INN BY MARRIOTT ST. CLOUD.		4120 SECOND ST. S	ST. CLOUD, MN 56301–	612–654–1681
HOLIDAY INN NEW SECTION		75 S. 37TH AVE	ST. CLOUD, MN 56301–	612–253–9000
SUNWOOD INN HOTEL		ONE SUNWOOD PLAZA	ST. CLOUD, MN 56301–	612–253–0606
BEST WESTERN KELLY INN		161 ST. ANTHONY	ST. PAUL, MN 55103–	612–227–8711
CROWN STERLING SUITES		175 E. 10TH ST	ST. PAUL, MN 55101–	612–224–5400
EXEL INN OF ST. PAUL		1739 OLD HUDSON RD	ST. PAUL, MN 55106–	612–771–5566
HOLIDAY INN ST. PAUL EAST		2201 BURNS AVE	ST. PAUL, MN 55117–	612–731–2220
NORTHERNAIRE MOTEL		2441 HWY. 61	ST. PAUL, MN 55109–	612–484–3336
SHERATON INN MIDWAY		400 N. HAMLINE AVE	ST. PAUL, MN 55104–	612–642–1234
THE SAINT PAUL HOTEL		350 MARKET ST	ST. PAUL, MN 55102–	612–292–9292
BEST WESTERN STILLWATER INN.		1750 W. FRONTAGE RD	STILLWATER, MN 55082–	612–430–1300
STILLWATER SUPER 8 MOTEL	PO BOX 2116	2190 W. FRONTAGE RD	STILLWATER, MN 55082–	612–430–3990
BEST WESTERN INN		HWY. 32	THIEF RIVER FALLS, MN 56701–.	218–681–7555
C'MON INN MOTEL		1586 HWY. 59 SE	THIEF RIVER FALLS, MN 56701–.	218–681–3000
HARTWOOD MOTEL		1010 N. MAIN	THIEF RIVER FALLS, MN 56701–.	218–681–2640
SUPER 8 MOTEL		1915 HWY. 59 SE	THIEF RIVER FALLS, MN 56701–.	218–681–6205
BLUEFIN BAY		HWY. 61	TOFTE, MN 55615–	800–258–3346
KOLLARS' CHARTER AND LODGE.		1446 HWY. 61 E	TWO HARBORS, MN 55616–	218–226–4100
SUPERIOR SHORES LODGE		10 SUPERIOR SHORES LODGE.	TWO HARBORS, MN 55616–	218–834–4948
THE PATCH MOTEL		HWY. 11 W	WARROAD, MN 56763–	218–386–2723
WARROAD SUPER 8 MOTEL	PO BOX 505	909 N. STATE ST. HWY. 11	WARROAD, MN 56763–	218–386–3723
AMERICINN MOTEL		1313 HWY. 13 N	WASECA, MN 56093–	507–835–4300
AMERICINN OF WILLMAR		2404 E. HWY. 12	WILLMAR, MN 56201–	612–231–1962
CARRIAGE HOUSE BED & BREAKFAST.		420 MAIN	WINONA, MN 55987–	507–452–8256
RIVER PORT INN & SUITES		900 BRUSKI DR	WINONA, MN 55987–	507–452–0606
WINSTED MOTEL		461 SIXTH ST. N	WINSTED, MN 55395–	612–485–4441
RED ROOF INN		1806 WOODDALE DR	WOODBURY, MN 55125–	612–738–7110
HOLIDAY INN		2015 HUMISTON AVE	WORTHINGTON, MN 56187–	507–372–2991
SUPER 8 MOTEL ZUMBROTA		1435 N. STAR DR	ZUMBROTA, MN 55992–	507–732–7652
Missouri				
COMFORT INN		I–70 & HWY. 5	BOONVILLE, MO 65233–	816–882–5317
SUPER 8 MOTEL		420 AMERICANA	BOONVILLE, MO 65233–	816–882–2900
BUDGET INN	PO BOX 449 D	RT. 1	BOURBON, MO 65441–	314–732–4626
ALPINE LODGE		HCR 1 BOX 795	BRANSON, MO 65616–	417–338–2514
AMBER LIGHT MOTOR INN	PO BOX 177		BRANSON, MO 65616–	417–334–7200
BEST WESTERN KNIGHTS INN		3215 W. HWY. 76	BRANSON, MO 65616–	417–334–1894
BEST WESTERN MUSIC CAPITAL INN.	BOX 731	HCO 1	BRANSON, MO 65616–	417–335–8378

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BRIGHTON PLACE		3514 W. HWY. 76	BRANSON, MO 65616–	417–334–5510
D J'S MOTEL		1325 W. HWY. 76	BRANSON, MO 65616–	417–334–0500
FIDDLER'S INN		HCR 1 BOX 710–20	BRANSON, MO 65616–	417–334–2212
FOXBOROUGH INN		HC 1 BOX 3380	BRANSON, MO 65616–	417–335–4369
LODGE OF THE OZARKS		3431 W. HWY. 76	BRANSON, MO 65616–	417–334–7535
MOUNTAIN OAK LODGE	PO BOX 1106		BRANSON, MO 65616–	417–338–2141
PEACH TREE INN		2450 GREEN MOUNTAIN DR	BRANSON, MO 65616–	417–335–5900
REGIS INN		HCR 1 BOX 754	BRANSON, MO 65616–	417–335–6776
ROCKIN' B RESORT		HCR 9 BOX 1482	BRANSON, MO 65616–	417–334–5071
VICTORIAN INN		STAR RT. 1 BOX 706–20	BRANSON, MO 65616–	417–334–1711
WHISPERING HILL INN	PO BOX 1128		BRANSON, MO 65616–	417–335–4922
BEN FRANKLIN MOTEL		4645 N. LINDBERGH	BRIDGETON, MO 63044–	314–731–1010
HENRY VIII INN & LODGE		4690 N. LINDBERGH	BRIDGETON, MO 63044–	314–731–3040
HOLIDAY INN AIRPORT WEST		3551 PENNRIDGE	BRIDGETON, MO 63044–	314–291–5100
KNIGHTS INN ST. LOUIS BRIDGETON.		12433 ST. CHAS RD	BRIDGETON, MO 63044–	314–291–8545
RED ROOF INN		3470 HOLLENBERG DR	BRIDGETON, MO 63044–	314–291–3350
HOLIDAY INN (WEST PARK AREA).	BOX 1570	I–55 & WILLIAM STREET, RT K	CAPE GIRARDEAU, MO 63702–1570.	314–334–4491
VICTORIAN INN	PO BOX 1570		CAPE GIRARDEAU, MO 63701–	314–334–4486
RESIDENCE INN BY MARRIOTT.		15431 CONWAY RD	CHESTERFIELD, MO 63017–	314–537–1444
GRAND RIVER INN		606 W. BUS 36	CHILLICOTHE, MO 64601–	816–646–6590
RITZ CARLTON		1 RITZ CARLTON DR	CLAYTON, MO 63105–	314–863–6300
BUDGETEL INN		2500 I–70 DR. SW	COLUMBIA, MO 65201–	314–445–1899
CAMPUS INN		1112 STADIUM DR	COLUMBIA, MO 65201–	314–449–2731
DAYS INN HOTEL & CONFERENCE CENTER.		1900 I–70 DRIVE SW	COLUMBIA, MO 65203–	314–445–8511
DRURY INN COLUMBIA		1000 KNIFE ST	COLUMBIA, MO 65203–	314–445–1200
GUESTHOUSE INN		801 KEANE ST	COLUMBIA, MO 65201–	314–474–1408
RAMADA COLUMBIA		1100 VANDIVER DR	COLUMBIA, MO 65202–	314–449–0051
SUPER 8		3216 CLARK LN	COLUMBIA, MO 65202–	314–474–8488
BEST WESTERN HEIDELBERG INN.	PO BOX 147		CONCORDIA, MO 64020–	816–463–2114
CONCORDIA INN	PO BOX 151		CONCORDIA, MO 64020–	816–463–7987
COURTYARD BY MARRIOTT		828 N. NEW BALLAS	CREVE COUER, MO 63146–	314–993–0515
BEST WESTERN CUBA INN	PO BOX 2983	RR 2	CUBA, MO 65453–	314–885–7707
DEXTER INN		1707 BUS 60 W	DEXTER, MO 63841–	314–624–7465
HARLEY HOTEL OF ST. LOUIS		3400 RIDER TRAIL S	EARTH CITY, MO 63045–	314–291–6800
BON AIR	RR 3 BOX 2		EDINA, MO 63537–	816–397–2202
BUDGET HOST INN WAY STATION HOTEL.	PO BOX 278		EDINA, MO 65775–	417–256–4135
ST. LOUIS AIRPORT MARRIOTT.		10700 PEARTREE LN	EDMUNDSON, MO 63134–	314–423–9700
DAYS INN		1400 W. LIBERTY	FARMINGTON, MO 63640–	314–756–8951
THRIFTY INN		1100 S. HWY. DR	FENTON, MO 63026–	314–343–8820
DRURY INN		1001 VETERAN BLVD	FESTUS, MO 63028–	314–933–2400
HAMPTON INN		55 DUNN RD	FLORISSANT, MO 63031–	314–839–2200
RED ROOF INN		307 DUNN RD	FLORISSANT, MO 63031–	314–831–7900
BEST WESTERN WEST 70 INN	PO BOX 10		FORISTELL, MO 63348–	314–673–2900
SUPER 8 MOTEL	PO BOX 669	120 HUCKLEBERRY HEIGHTS	HANNIBAL, MO 63401–	314–221–5863
BEST WESTERN HARRISONVILLE.		JCT. 71 & HWY. 291	HARRISONVILLE, MO 64701–	816–884–3200
SUPER 8 MOTEL		2400 ROCK HAVEN RD	HARRISONVILLE, MO 64701–	816–887–2999
FAIRFIELD INN		9079 DUNN RD	HAZELWOOD, MO 63042–	314–731–7700
HOWARD JOHNSON		4200 S. NOLAND RD	INDEPENDENCE, MO 64055–	816–373–8856
RED ROOF INN #32		13712 E. 42ND TERRACE	INDEPENDENCE, MO 64055–	816–373–2800
WOODSTOCK INN		1212 W. LEXINGTON	INDEPENDENCE, MO 64050–	816–833–2233
DAYS INN		517 HWY. 61 E	JACKSON, MO 63755–	314–243–3577
CAPITOL PLAZA HOTEL		415 W. MCCARTY	JEFFERSON CITY, MO 65101–	314–635–1234
COMFORT INN		1926 JEFFERSON ST	JEFFERSON CITY, MO 65101–	314–636–2797
MOTEL 6 #797		1624 JEFFERSON ST	JEFFERSON CITY, MO 65109–	314–634–4200
MOTEL 6 1168		806 STADIUM DR	JEFFERSON CITY, MO 65101–	314–634–2848
RAMADA INN HOTEL		1510 JEFFERSON	JEFFERSON CITY, MO 65101–	314–635–7171
SUPER 8		1710 JEFFERSON	JEFFERSON CITY, MO 65101–	314–636–5456
VEIT'S VILLAGE		1309 JEFFERSON	JEFFERSON CITY, MO 65101–	314–636–6167
DAYS INN OF JOPLIN		3500 RANGELINE	JOPLIN, MO 64804–4431	417–623–0100
DRURY INN		3601 RANGELINE	JOPLIN, MO 64804–	417–781–8000
WESTWOOD MOTEL		1700 W. 30TH ST	JOPLIN, MO 64804–	417–782–7212
ADAM'S MARK HOTEL		9103 E. 39TH ST	KANSAS CITY, MO 64113–	816–737–0200
ALLIS PLAZA HOTEL		200 W. 12TH ST	KANSAS CITY, MO 64105–	816–421–6800

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN COUNTRY INN KCI AIRPORT.	.....	11900 PLAZA CIR	KANSAS CITY, MO 64153–	816–464–2002
BEST WESTERN COUNTRY INN NORTH.	.....	2633 NE 43RD ST	KANSAS CITY, MO 64117–	816–459–7222
BEST WESTERN COUNTRY INN WORLDS OF FUN.	.....	7100 NE PARVIN RD	KANSAS CITY, MO 64117–	816–453–3355
BUDGETEL INN #794 KANSAS CITY SOUTH.	.....	8601 HILLCREST RD	KANSAS CITY, MO 64138–	816–822–7000
COURTYARD BY MARRIOTT	.....	7901 NW TIFFANY SPGS	KANSAS CITY, MO 64153–	816–891–7500
COURTYARD BY MARRIOTT SOUTH KANSAS CITY.	.....	500 E. 105TH ST	KANSAS CITY, MO 64131–	816–941–3333
ECONO LODGE KCI	.....	11300 NW PRAIRIE VIEW RD ...	KANSAS CITY, MO 64153–	816–464–5082
EMBASSY SUITES COUNTRY CLUB PLAZA.	.....	220 W. 43RD ST	KANSAS CITY, MO 64111–	816–756–1720
EMBASSY SUITES KC INTERNATIONAL AIRPORT.	.....	7640 NW TIFFANY SPRINGS PKWY.	KANSAS CITY, MO 64153–	816–891–7788
FAIRFIELD INN	.....	8101 N. CHURCH	KANSAS CITY, MO 64158–	816–792–4000
HAMPTON INN	.....	11212 N. NEWARK CIR	KANSAS CITY, MO 64153–	816–464–5454
HILTON AIRPORT HOTEL	.....	8801 NW 112TH ST	KANSAS CITY, MO 64195–	816–891–8900
HOLIDAY INN CROWNE PLAZA K C.	.....	4445 MAIN ST	KANSAS CITY, MO 64111–	816–531–3000
HOLIDAY INN NORTHEAST	.....	7333 NE PARVIN RD	KANSAS CITY, MO 64117–	816–455–1060
HYATT REGENCY CROWN CENTER.	.....	2345 MCGEE	KANSAS CITY, MO 64108–	816–421–1234
INN TOWNE LODGE	.....	2650 NE 43RD ST	KANSAS CITY, MO 64117–	816–453–6550
KANSAS CITY AIRPORT MARRIOTT.	.....	775 NW BRASILIA DR	KANSAS CITY, MO 64153–	816–464–2200
MARRIOTT RESIDENCE INN	.....	2975 MAIN	KANSAS CITY, MO 64108–	816–561–3000
QUALITY INN	.....	1600 NE PARVIN RD	KANSAS CITY, MO 64116–	816–453–5210
QUARTERAGE HOTEL	.....	560 WESTPORT RD	KANSAS CITY, MO 64111–	816–931–0001
RED ROOF INN #51	.....	3636 RANDOLPH RD. NE	KANSAS CITY, MO 64117–	816–452–8585
RESIDENCE INN BY MARRIOTT.	.....	9900 NW PRAIRIE VIEW	KANSAS CITY, MO 64153–	816–891–9009
SHERATON SUITES COUNTRY CLUB PLACE.	.....	770 W. 47TH ST	KANSAS CITY, MO 64112–	816–931–4400
WESTIN CROWN CENTER	.....	1 PERSHING RD	KANSAS CITY, MO 64108–	816–474–4400
OXFORD INN	.....	110 INDEPENDENCE	KENNET, MO 63857–	314–888–9660
KIMBERLING INN	PO BOX 159	.....	KIMBERLING CITY, MO 65686–	417–739–4311
DAYS INN	PO BOX 32	.....	KINGDOM CITY, MO 65262–	314–642–0050
SUPER 8	.....	HWY. 54	KINGDOM CITY, MO 65262–	314–642–2888
DAYS INN	PO BOX M	.....	KIRKSVILLE, MO 63501–	816–665–8244
SUPER 8	.....	1101 COUNTRY CLUB DR	KIRKSVILLE, MO 63501–	816–665–8826
VILLAGE INN MOTEL	.....	1304 S. BALTIMORE	KIRKSVILLE, MO 63501–	816–665–3722
WHITEMAN INN	.....	2340 W. IRISH LN	KNOB NOSTER, MO 65336–	816–563–3000
DAYS INN ON THE LAKE	.....	2560 S. OUTER RD	LAKE SAINT LOUIS, MO 63367–.	314–625–1711
LAKEVIEW INN	PO BOX 2072	.....	LAKEVIEW, MO 65737–	417–272–8195
ECONO LODGE	PO BOX 992	.....	LEBANON, MO 65536–	417–588–3226
BEST WESTERN SUMMIT INN .	.....	625 N. MURRAY RD	LEE'S SUMMIT, MO 64081–	816–525–1400
LEE'S SUMMIT COMFORT INN	.....	607 SE OLDHAM PKWY	LEE'S SUMMIT, MO 64063–	816–524–8181
SKYVUE INN	RT. 4	.....	MACON, MO 63552–	816–385–2125
SUPER 8 MOTEL	PO BOX 513	.....	MACON, MO 63552–	816–385–5788
MALDEN AIRPORT INN	PO BOX 353	.....	MALDEN, MO 63863–	314–276–5144
SUPER 8	.....	1355 W. COLLEGE DR	MARSHALL, MO 65340–	816–886–3359
DOUBLETREE CLUB HOTEL RIVERPORT.	.....	13735 RIVERPORT DRIVE	MARYLAND HEIGHTS, MO 63043–.	314–298–3400
DRURY INN WESTPORT	.....	12220 DORSET RD	MARYLAND HEIGHTS, MO 63043–.	314–576–9966
HAMPTON INN	.....	2454 OLD DORSETT RD	MARYLAND HEIGHTS, MO 63043–.	314–298–7878
BEST WESTERN STEPHENSON MOTEL.	.....	1010 E. LIBERTY	MEXICO, MO 65265–	314–581–1440
SUPER 8	.....	N. 300 HWY. 24 E	MOBERLY, MO 65270–	816–263–8662
OXFORD INN	.....	RT. 2 BOX 340–A	MONETT, MO 65708–	417–235–8039
RAINBOW MOTEL	.....	308 5TH ST	MONROE CITY, MO 63456–	314–735–4526
SUPER 8 MOTEL	PO BOX 529	.....	NEVADA, MO 64772–	417–667–8880
BELL AIRE MOTEL	PO BOX 248	RR 1	NOEL, MO 64854–	417–475–3851
BARBARA'S 'OTEL EURO STYLE B & B.	.....	2000 CLAY	NORTH KANSAS CITY, MO 64116–.	816–221–6544
DAYS INN NORTH KANSAS CITY.	.....	2232 TANEY ST	NORTH KANSAS CITY, MO 64116–.	816–421–6000
INN AT GRAND GLAIZE	PO BOX 969	.....	OSAGE BEACH, MO 65065–	314–384–4731

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
KNOLLS		RT. 1 BOX 190-43	OSAGE BEACH, MO 65065-	314-348-2236
MARIOTT'S TAN TAR A RESORT.	PO BOX 188		OSAGE BEACH, MO 65065-	314-348-3131
SUPER 8 MOTEL	PO BOX 370		OZARK, MO 65721-	417-485-6800
LAKE VILLAGE MOTOR INN		HWY. 15 S	PARIS, MO 65275-	816-327-5151
COLONIAL INN		1500 LIBERTY ST	PERRYVILLE, MO 63775-	314-547-1091
COMFORT INN	PO BOX 1093	1200 HWY. 92	PLATTE CITY, MO 64079-	816-431-5430
DRURY INN		2220 WESTWOOD BLVD	POPLAR BLUFF, MO 63901-	314-686-2451
HOLIDAY INN		2115 N. WESTWOOD	POPLAR BLUFF, MO 63901-	314-785-7711
RICHLANDER MOTEL	PO BOX 429		RICHLAND, MO 65556-	314-765-3631
SCHOOL HOUSE BED AND BREAKFAST.	PO BOX 88		ROCHEPORT, MO 65279-	314-698-2020
OAK GROVE INN	PO BOX 216		ROCK PORT, MO 64482-	816-744-5357
DRURY INN		2006 N. BISHOP	ROLLA, MO 65401-	314-364-4000
HOWARD JOHNSON MOTOR LODGE.		127 HOWARD JOHNSON	ROLLA, MO 65401-	314-364-7111
ZENO'S STEAKHOUSE MOTEL		1821 MARTIN SPRINGS DR	ROLLA, MO 65401-	314-364-1301
KNIGHTS COURT		3501 W. BROADWAY	SEDALIA, MO 65301-	816-826-8400
SUPER 8		3402 W. BROADWAY	SEDALIA, MO 65301-	816-827-5890
STAR LODGE		HWY. YY	SHELL KNOB, MO 65747-	417-858-3737
HAMPTON INN		1330 S. MAIN	SIKESTON, MO 63801-	314-471-3930
LAKE HILLS MOTEL		OLD 65 LOOP OFF NEW 65	SOUTH WARSAW, MO 65355-	816-438-5191
BEST INNS OF AMERICA SPRINGFIELD.		2355 N. GLENSTONE	SPRINGFIELD, MO 65803-	417-866-6776
BEST WESTERN DEERFIELD INN.		3343 E. BATTLEFIELD	SPRINGFIELD, MO 65804-	417-887-2323
DAYS INN		2700 N. GLENSTONE	SPRINGFIELD, MO 65803-	417-865-5511
ECONO LODGE		2611 N. GLENSTONE	SPRINGFIELD, MO 65802-	417-864-3585
HAMPTON INN		222 N. INGRAM MILL RD	SPRINGFIELD, MO 65804-	417-863-1440
HOLIDAY INN NORTH I-44		2720 N. GLENSTONE	SPRINGFIELD, MO 65803-	417-865-8800
MANSION AT ELFINDALE		1701 S. FORT	SPRINGFIELD, MO 65807-	417-831-5400
PARK INN INTERNATIONAL		1772 S. GLENSTONE	SPRINGFIELD, MO 65804-	417-882-1113
RAMADA HAWTHORNE PARK		2431 N. GLENSTONE	SPRINGFIELD, MO 65803-	417-831-3131
RED ROOF INN #175		2655 N. GLENSTONE	SPRINGFIELD, MO 65803-	417-831-2100
RESIDENCE INN		1550 E. RAYNELL	SPRINGFIELD, MO 65804-	417-883-7300
SHERATON INN		3333 S. GLENSTONE	SPRINGFIELD, MO 65804-	417-883-8550
UNIVERSITY PLAZA HOTEL		333 JOHN Q. HAMMONS	SPRINGFIELD, MO 65806-	417-864-7333
CONGRESS AIRPORT INN		3433 N. LINDBERGH BLVD	ST ANN, MO 63074-	314-739-5100
BUDGETEL INN ST CHARLES		1425 S FIFTH ST	ST CHARLES, MO 63301-	314-946-6936
BOONE'S LICK TRAIL INN		1000 S. MAIN ST	ST. CHARLES, MO 63301-	314-947-7000
COMFORT INN		2750 PLAZA WAY DR	ST. CHARLES, MO 63303-	314-949-8700
RED ROOF INN		2010 ZUMBEHL	ST. CHARLES, MO 63303-	314-947-7770
BUDGET LODGING		868 S. I-44 OUTER RD	ST. CLAIR, MO 63077-	314-629-1000
ST. CLAIR SUPER 8		1010 S. OUTER RD	ST. CLAIR, MO 63077-	314-629-8080
HOLIDAY INN		102 S. THIRD	ST. JOSEPH, MO 64501-	816-279-8000
RAMADA INN ST. JOSEPH		4016 FREDERICK	ST. JOSEPH, MO 64501-	816-233-8192
ADAMS MARK HOTEL		112 N. 4TH ST	ST. LOUIS, MO 63102-	314-241-7400
BEST WESTERN AIRPORT INN		10232 NATURAL BRIDGE	ST. LOUIS, MO 63134-	314-427-5855
BEST WESTERN INN AT THE PARK.		4630 LINDELL BLVD	ST. LOUIS, MO 63108-	314-367-7500
BEST WESTERN WESTPORT PARK HOTEL.		2434 OLD DORSETT	ST. LOUIS, MO 63043-	314-291-8700
COMFORT INN		3730 S. LINDBERGH	ST. LOUIS, MO 63127-	314-842-1200
COURTYARD BY MARRIOTT		11888 WESTLINE INDUSTRIAL DR.	ST. LOUIS, MO 63146-	314-997-1200
COURTYARD BY MARRIOTT		2340 MARKET ST	ST. LOUIS, MO 63103-	314-241-8111
DOUBLE TREE HOTEL CONF CTR.		16625 SWINGLEY RIDGE	ST. LOUIS, MO 63017-	314-532-5000
DRURY INN GATEWAY ARCH		711 N. BROADWAY	ST. LOUIS, MO 63101-	314-231-8100
DRURY INN ST. LOUIS AIRPORT.		10490 NATURAL BRIDGE RD	ST. LOUIS, MO 63134-	314-423-7700
DRURY INN UNION STATION		201 S. TWENTIETH	ST. LOUIS, MO 63103-	314-231-3900
ECONO LODGE		4575 NO LINDBEREL BLVD AT I-70.	ST. LOUIS, MO 63044-	314-731-3000
EMBASSY SUITES HOTEL		901 N. FIRST ST	ST. LOUIS, MO 63102-	314-241-6200
FRONTENAC HILTON		1335 S LINDBERGH BLVD	ST. LOUIS, MO 63131-	314-993-1100
HAMPTON INN UNION STATION.		2211 MARKET ST	ST. LOUIS, MO 63103-	314-241-3200
HOLIDAY INN I-55 SOUTH		4234 BUTLER HILL RD	ST. LOUIS, MO 63129-	314-894-0700
HOLIDAY INN RIVERFRONT		200 N. 4TH ST	ST. LOUIS, MO 39102-	314-621-8200
HOLIDAY INN SOUTH COUNTY CNTWAY.		6921 S. LINDBERGH	ST. LOUIS, MO 63125-	314-469-0880

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN ST. LOUIS CONVENTION CENTER.		811 N. 19TH ST	ST. LOUIS, MO 63101–	314–421–4000
HOLIDAY INN WESTPORT		1973 CRAIGSHIRE	ST. LOUIS, MO 63146–	314–434–0100
HYATT REGENCY		#1 ST. LOUIS UNION STATION	ST. LOUIS, MO 63103–	314–231–1234
MARRIOTT PAVILION HOTEL		#1 BROADWAY	ST. LOUIS, MO 63102–	314–421–1776
MAYFAIR SUITES		806 ST. CHARLES ST	ST. LOUIS, MO 63101–	314–421–2500
OAK GROVE INN		6602 S. LINDBERGH	ST. LOUIS, MO 63123–	314–894–9449
RED ROOF INN HAMPTON		5823 WILSON AVE	ST. LOUIS, MO 63110–	314–645–0101
RED ROOF INN WESTPORT		11837 LACKLAND RD	ST. LOUIS, MO 63146–	314–991–4900
REGAL RIVERFRONT HOTEL ST. LOUIS.		200 S. FOURTH ST	ST. LOUIS, MO 63102–	314–241–9500
RESIDENCE INN BY MARRIOTT.		1100 MCMORROW	ST. LOUIS, MO 63117–	314–862–1900
RESIDENCE INN WESTPORT		1881 CRAIGSHIRE	ST. LOUIS, MO 63146–	314–469–0060
SEVEN GABLES INN		26 N. MERAMEC	ST. LOUIS, MO 63105–	314–863–8400
SHERATON PLAZA		900 WEST PORT PLAZA	ST. LOUIS, MO 63146–	314–434–5010
SHERATON WEST PORT INN		191 WEST PORT PLAZA	ST. LOUIS, MO 63146–	314–848–1500
ST. LOUIS MARRIOTT WEST		660 MARYVILLE CTR	ST. LOUIS, MO 63141–	314–878–2742
STOUFFER CONCOURSE		9801 NATURAL BRIDGE	ST. LOUIS, MO 63134–	314–429–1100
SUMMERFIELD SUITES HOTEL		1855 CRAIGSHIRE RD	ST. LOUIS, MO 63146–	314–878–1555
HOLIDAY INN OF ST. CHARLES.	PO BOX 310	4221 S. OUTER RD	ST. PETERS, MO 63376–	314–928–1500
BEST WESTERN MONTIS INN		HC 2, BOX 97	ST. ROBERTS, MO 65583–	314–336–4299
ECONO LODGE		I–44 & JCT. HWY. 2	ST. ROBERTS, MO 65583–	314–336–7272
BEST WESTERN PENBERTHY		307 N. SERVICE RD	SULLIVAN, MO 63080–	314–468–3136
BIG T MOTEL		JCT. 136 & 59	TARKIO, MO 64491–	816–736–4174
SUPER 8 MOTEL		1845 E. 28	TRENTON, MO 64683–	816–359–2988
SMALLEY'S CABINS	PO BOX 358		VAN BUREN, MO 63965–	314–323–4263
FAMILY INN		RT. 2 BOX 180–B	WAYNESVILLE, MO 65583–	314–336–3285
RAMADA INN		DRAWER L	WAYNESVILLE, MO 65583–	314–336–3121
HOLIDAY INN WENTZVILLE		900 CORPORATE PKWY	WENTZVILLE, MO 63385–	314–327–7001
SUPER 8 MOTEL		1210 PORTER WAGONER	WEST PLAINS, MO 65775–	417–256–8088
WAY STATION MOTEL	PO BOX 278		WEST PLAINS, MO 65775–	417–256–4135
ST. LOUIS AIRPORT HILTON		10330 NATURAL BRIDGE	WOODSON TERRACE, MO 63134–.	314–426–5500
ST. LOUIS AIRPORT INN		10232 NATURAL BRIDGE	WOODSON TERRACE, MO 63134–.	314–427–5955
Mississippi				
EDGEWATER INN	PO BOX 1936	BEACH BLVD	BILOXI, MS 39531–	601–388–1100
HOLIDAY INN EXPRESS		2416 BEACH BLVD	BILOXI, MS 39531–	601–388–1000
MOTEL 6	PO BOX 2476	BEACH BLVD	BILOXI, MS 39531–	601–388–5130
HOLIDAY INN BROOKHAVEN		1210 BROOKWAY BLVD	BROOKHAVEN, MS 39601–	601–833–1341
COMFORT INN CLARKSDALE		710 S. STATE ST	CLARKSDALE, MS 38614–	601–627–9292
COLUMBUS HOLIDAY INN		506 HWY. 45 N	COLUMBUS, MS 39701–	601–328–4202
THE CROSSROADS INN	PO BOX 802	HWY. 72 W	CORINTH, MS 38834–	601–287–8051
DAYS INN FOREST	PO BOX 1523	RT. 2	FOREST, MS 39074–	601–469–2500
HAMPTON INN GREENVILLE	PO BOX 2701	HWY. 82 E	GREENVILLE, MS 38701–	601–334–1818
ECONO LODGE	PO BOX 1632	FRONTAGE RD	GRENADA, MS 38901–	601–226–6666
HAMPTON INN	PO BOX 1622	FRONTAGE RD	GRENADA, MS 38901–	601–226–5555
HOLIDAY INN AIRPORT		9415 HWY. 49	GULFPORT, MS 39503–	601–868–8200
HOLIDAY INN GULFPORT BEACHFRONT.		1600 E. BEACH	GULFPORT, MS 39501–	601–864–4310
MOTEL 6	PO BOX 9355	US 49	GULFPORT, MS 39503–	601–863–1890
BEST WESTERN NORTHGATE	PO BOX 6757	HWY. 49	HATTIESBURG, MS 39402–	601–268–8816
HAMPTON INN	PO BOX 4301	HARDY ST	HATTIESBURG, MS 39401–	601–264–8080
MOTEL 6	PO BOX 6508	US HWY. 49	HATTIESBURG, MS 39401–	601–544–6096
RAMADA INN	PO BOX 6595	US HWY. 49	HATTIESBURG, MS 39401–	601–268–2170
HERITAGE INN		HWY. 78 & 7	HOLLY SPRINGS, MS 38635–	601–252–1120
COMFORT INN MOTEL	PO BOX 910	HWY. 82 E	INDIANOLA, MS 38751–	601–887–6611
KEY WEST INN	RT. 3	BOX 659	IUKA, MS 38852–	601–423–9221
BEST WESTERN METRO	PO BOX 1520	ELLIS AVE	JACKSON, MS 39204–	601–355–7483
CABOT LODGE MEDICAL CENTER.	PO BOX 2375	N. STATE ST	JACKSON, MS 39202–1196	601–948–6650
HAMPTON INN BRIARWOOD		465 BRIARWOOD DR	JACKSON, MS 39206–	601–956–3611
HOLIDAY INN NORTH		I–55 N	JACKSON, MS 39206–	601–366–9411
HOLIDAY INN SOUTHWEST		2649 US 80 W	JACKSON, MS 39204–	601–355–3472
MOTEL 6	PO BOX 9701	N. FRONTAGE RD	JACKSON, MS 39201–	601–969–3423
MOTEL 6	PO BOX 6145	I–55 NORTH COUNTYLINE RD	JACKSON, MS 39213–	601–956–6848
PASSPORT INN	PO BOX 5035	I–55 N	JACKSON, MS 39206–	601–982–1011
QUALITY INN NORTH		4641 I–55 N	JACKSON, MS 39206–	601–982–1044
RAMADA INN COLISEUM	PO BOX 400	GREYMONT AVE	JACKSON, MS 39202–	601–969–2141

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RAMADA INN METRO	PO BOX 1525	ELLIS AVE	JACKSON, MS 39204–	601–944–1150
RAMADA RENAISSANCE	PO BOX 1001	E. COUNTY LINE RD	JACKSON, MS 39211–	601–957–2800
RED ROOF INN		700 LARSON ST	JACKSON, MS 39202–	601–956–5006
RESIDENCE INN BY MARRIOTT.		661 E. RIVER PL	JACKSON, MS 39202–	601–355–3599
SUN N SAND MOTOR HOTEL	PO BOX 401	N. LAMAR ST	JACKSON, MS 39202–	601–354–2501
DAYS INN		1000 S. HWY. 35	KOSCIUSKO, MS 39090–	601–289–2271
LAKE TIAK O'KHATA	PO BOX 190	SMYTH RD	LOUISVILLE, MS 39339–	601–773–7853
HOLIDAY INN MCCOMB	PO BOX 1900	DELAWARE AVE	MCCOMB, MS 39648–	601–684–6211
RAMADA INN MCCOMB	I–55	DELAWARE AVE	MCCOMB, MS 39648–	601–684–5566
BEST WESTERN MERIDIAN	PO BOX 2219	S. FRONTAGE RD	MERIDIAN, MS 39301–	601–693–3210
BUDGETEL INN		1400 ROEBUCK DR	MERIDIAN, MS 39301–	601–693–2300
HAMPTON INN MERIDIAN	PO BOX 618	US HWY 11 & 80	MERIDIAN, MS 39302–	601–483–3000
HOLIDAY INN MERIDIAN SOUTH.	I 20 59	HWY. 45 S	MERIDIAN, MS 39301–	601–693–4521
HOLIDAY INN NORTHEAST	PO BOX 610	US HWY. 11 & 80	MERIDIAN, MS 39302–	601–485–5101
M & R OF MERIDIAN INC. DBA HOWARD JOHNSON.		613 HWY. 80 E	MERIDIAN, MS 39305–	601–483–8281
MOTEL 6	PO BOX 2309	S. FRONTAGE RD	MERIDIAN, MS 39301–	601–482–1182
BEST WESTERN RIVER PARK HOTEL.	PO BOX 645	S. CANAL ST	NATCHEZ, MS 39120–	601–446–6666
SCOTTISH INNS	PO BOX 40557	PRENTISS DR	NATCHEZ, MS 39720–	601–442–9141
BEST WESTERN OXFORD INN	PO BOX 1101	FRONTAGE RD	OXFORD, MS 38655–	601–234–9500
UNIVERSITY INN	PO BOX 2201	W. JACKSON AVE	OXFORD, MS 38655–	601–234–7013
LA FONT INN		2703 DENNY AVE	PASCAGOULA, MS 39568–	601–762–7111
LA FONT INN	PO BOX 2703	DENNY AVE	PASCAGOULA, MS 39568–	601–762–7111
COMFORT INN		235 PEARSON RD	PEARL, MS 39208–	601–932–6009
CABOT LODGE	PO BOX 120	DYESS RD	RIDGELAND, MS 39157–	601–957–0757
RED ROOF INN #128	PO BOX 810	ADCOCK ST	RIDGELAND, MS 39157–	601–956–7707
BEST WESTERN MOTEL & REST.	PO BOX 279	EXIT 252 I–55	SARDIS, MS 38666–	601–487–2424
ALL AMERICAN COLISEUM MOTEL.	PO BOX 767	E. MAIN ST	TUPELO, MS 38801–	601–844–5610
HOLIDAY INN	PO BOX 923	923 N. GLOSTER	TUPELO, MS 38801–	601–842–8611
RAMADA INN & CONVENTION CENTER.		854 N. GLOSTER ST	TUPELO, MS 38801–	601–844–4111
DAYS INN		1025 HWY. 45 N. ALT	WEST POINT, MS 39773–	601–494–1995
YAZOO MOTEL		HWY. 49 AND 16	YAZOO CITY, MS 39194–	601–746–2161
Montana				
SAGEBRUSH INN		518 W. MONTANA AVE	BAKER, MT 59313–	406–778–3341
RAINBOW RANCH LODGE		42950 GALLATIN RD	BIG SKY, MT 59716–	406–995–4132
BILLINGS COMFORT INN		2030 OVERLAND AVE	BILLINGS, MT 59102–	406–652–5200
DAYSTOP MOTEL		843 PARKWAY LN	BILLINGS, MT 59109–	406–252–4007
DUDE RANCHER LODGE & RESTAURANT.		415 N. 29TH ST	BILLINGS, MT 59101–	406–259–5561
ELLIOT INN		1345 MULLOWNEY LN	BILLINGS, MT 59101–	406–252–2584
HOLIDAY INN BILLINGS PLAZA		5500 MIDLAND RD	BILLINGS, MT 59101–	406–248–7701
LAZY K T MOTEL		1403 1ST AVE. N	BILLINGS, MT 59101–	406–252–6066
QUALITY INN HOMESTEAD		2036 OVERLAND AVE	BILLINGS, MT 59012–	406–652–1320
RIMROCK INN		1203 N. 27TH AVE	BILLINGS, MT 59101–	406–252–7107
SHERATON BILLINGS HOTEL		27 N. 27TH ST	BILLINGS, MT 59101–	406–252–7401
SUPER 8 LODGE		5400 S. GATE DR	BILLINGS, MT 59102–	406–248–8842
THE RADISSON NORTHERN HOTEL.		FIRST AVE. N. & BROADWAY	BILLINGS, MT 59101–	406–245–5121
ROCKY KNOB LODGE #2	HC 33 BOX 35		BONNER, MT 59827–	406–821–3520
BEST WESTERN GRANTREE INN.		1325 N. 7TH AVE	BOZEMAN, MT 59715–	406–587–5261
BOZEMAN COMFORT INN		1370 N. 7TH AVE	BOZEMAN, MT 59715–	406–587–2322
CONTINENTAL MOTOR INN		1324 E. MAIN	BOZEMAN, MT 59715–	406–587–9231
FAIRFIELD INN BY MARIOTT BOZEMAN.		828 WHEAT DR	BOZEMAN, MT 59715–	406–587–2222
HOLIDAY INN		5 BAXTER LN	BOZEMAN, MT 59715–	406–587–4561
LEWIS & CLARK MOTEL		824 W. MAIN	BOZEMAN, MT 59715–	406–586–3341
WESTERN HERITAGE INN		1200 E. MAIN	BOZEMAN, MT 59715–	406–586–8534
BEST WESTERN COPPER KING INN.		4655 HARRISON AVE	BUTTE, MT 59701–	406–494–6666
SUPER 8 MOTEL OF BUTTE		2929 HARRISON AVENUE	BUTTE, MT 59701–	406–494–8000
TOWNHOUSE INNS OF BUTTE		2777 HARRISON AVE	BUTTE, MT 59701–	406–494–8850
GLACIER MOUNTAIN SHADOWS RESORT.		7285 HWY.2 E	COLUMBIA FALLS, MT 59912–	406–892–7666
CONRAD SUPER 8		215 N. MAIN	CONRAD, MT 59425–	406–278–7676

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE KINGS INN MOTEL		408 6TH ST. E	CULBERTSON, MT 59218–	406–787–6277
DEER LODGE SUPER 8		1150 N. MAIN	DEER LODGE, MT 59722–	406–846–2370
SILVERTIP LODGE		309 MAIN	ENNIS, MT 59729–	406–682–4354
RAILS INN MOTEL		3RD AND FRONT ST	FORSYTH, MT 59327–	406–356–2240
WESTWIND MOTOR INN		WEST END MAIN	FORSYTH, MT 59327–	406–356–2038
BIGHORN ANGLER	PO BOX 577		FORT SMITH, MT 59635–	406–666–2253
GALLATIN GATEWAY INN	PO BOX 376		GALLATIN GATEWAY, MT 59715–.	406–763–4672
YELLOWSTONE VILLAGE		HWY. 89	GARDINER, MT 59030–0297	406–848–7417
COTTONWOOD INN		HWY. 2 E	GLASGOW, MT 59230–	406–228–8213
DAYS INN		2000 N. MERRILL	GLENDIVE, MT 59330–	406–365–6011
FOX HOLLOW INN		1700 10TH ST. SW	GREAT FALLS, MT 59403–	406–727–0702
GREAT FALLS COMFORT INN		1120 9TH ST	GREAT FALLS, MT 59403–	406–454–2727
GREAT FALLS FAIRFIELD INN		1000 9TH AVE. S	GREAT FALLS, MT 59403–	406–454–3000
SHERATON HOTEL		400 10TH AVE	GREAT FALLS, MT 59405–	406–727–7200
SUPER 8 LODGE		1214 13TH ST. S	GREAT FALLS, MT 59405–	406–727–7600
TOWNHOUSE INNS OF GREAT FALLS.		1411 10TH AVE. S	GREAT FALLS, MT 59405–	406–761–4600
BEST WESTERN HAMILTON INN.		409 S. FIRST ST	HAMILTON, MT 59840–	406–363–2142
TOWNHOUSE INN OF HAMILTON.		1115 N. FIRST	HAMILTON, MT 59840–	406–363–6600
TOWNHOUSE INNS OF HAVRE		629 W. FIRST ST	HAVRE, MT 59501–	406–265–6711
BEST WESTERN COLONIAL INN.		2301 COLONIAL DR	HELENA, MT 59601–	406–443–2100
DAYS INN		2001 PROSPECT AVE	HELENA, MT 59601–	406–442–3280
HELENA COMFORT INN		750 FEE ST	HELENA, MT 59623–	406–443–1000
HELENA SUPER 8		2201 11TH AVE	HELENA, MT 59601–	406–443–2450
KINGS CARRIAGE INN		910 N. LAST CHANCE GULCH	HELENA, MT 59601–	406–442–6080
LAMPLIGHTER INN		1006 MADISON AVE	HELENA, MT 59601–	406–442–9200
HOT SPRINGS LODGE AND MOTEL.		406 BROADWAY	HOT SPRINGS, MT 59845–	406–741–5642
AERO INN		1830 HWY. 93 S	KALISPELL, MT 59901–	406–755–3798
BEST WESTERN OUTLAW INN		1701 HWY. 93 S	KALISPELL, MT 59901–	406–755–6100
BLUE AND WHITE MOTEL INC		640 E. IDAHO	KALISPELL, MT 59901–	406–755–4311
CAVANAUGH'S AT THE KALISPELL CENTER.		20 N. MAIN ST	KALISPELL, MT 59901–	406–752–6660
DAYS INN		1550 HWY. 93 N	KALISPELL, MT 59901–	406–756–3222
MOTEL 6		1540 HWY. 93 S	KALISPELL, MT 59901–	406–752–6355
LAKESIDE MOTEL	PO BOX 293		LAKESIDE, MT 59422–	406–844–3570
BEST WESTERN LOCOMOTIVE INN.		310 S. FIRST	LAUREL, MT 59044–	406–628–8281
LIBBY SUPER 8		448 HWY. 2 W	LIBBY, MT 59923–	406–293–2771
ROSE RIVER INN		101 WOOD'S BEACH RD	LOMA, MT 59460–	406–739–4242
4 B'S INN NORTH		4953 N. RESERVE ST	MISSOULA, MT 59806–	406–542–7550
4 B'S INN SOUTH		3803 BROOKS	MISSOULA, MT 59806–	406–251–2665
BROWNIES PLUS MOTEL		1540 W. BROADWAY	MISSOULA, MT 59802–	406–549–2937
DAYS INN WESTGATE		HWY. 93 AND I90 RR2	MISSOULA, MT 59802–	406–721–9776
HOLIDAY INN PARKSIDE		700 S. PATTEE	MISSOULA, MT 59802–	406–721–8550
RED LION MISSOULA VILLAGE		100 MADISON	MISSOULA, MT 59802–	406–728–3100
SUPER 8 MOTEL RESERVE STREET.		4703 N. RESERVE	MISSOULA, MT 59802–	406–549–1199
TRAVELERS INN MOTEL		4850 N. RESERVE	MISSOULA, MT 59802–	406–728–8330
VALU INN		3001 BROOKS	MISSOULA, MT 59801–	406–721–9600
BORG MOTEL		1005 W. BROADWAY	PHILLIPSBURG, MT 59858–	406–859–3959
SHERWOOD INN		515 W. 1ST AVE	PLENTYWOOD, MT 59254–	406–765–2810
SLEEPY TIGER INN		914 HWY. 93	POLSON, MT 59860–	406–883–3120
BEST WESTERN LUPINE INN		702 S. HAUSER	RED LODGE, MT 59068–	406–446–1321
SUPER 8 MOTEL		1223 S. BROADWAY	RED LODGE, MT 59068–	406–446–2288
THE POLLARD MOTEL		2 N. BROADWAY AVE	RED LODGE, MT 59068–	406–446–2860
WILDERNESS GATEWAY INN	PO BOX 661	HWY. 83	SEELEY LAKE, MT 59868–	406–677–2095
MORIAH MOTEL		220 S. MAIN	SHERIDAN, MT 59749–	406–842–5491
SUNSET MOTEL		93 ACCESS	ST IGNATIUS, MT 59865–	406–745–3900
SACAJAWEA INN	PO BOX 648	5 N. MAIN	THREE FORKS, MT 59750–	406–285–6515
STARDUST COUNTRY INN		409 MAIN ST	TWIN BRIDGES, MT 59754–	406–684–5648
WESTWARD HO		16 BOUNDARY	WEST YELLOWSTONE, MT 59758–.	406–646–7331
GROUSE MOUNTAIN LODGE		1205 HWY. 93 W	WHITEFISH, MT 59937–	406–862–3000
KANDAHAR LODGE	PO BOX 1659	BIG MOUNTAIN RD	WHITEFISH, MT 59937–	406–862–6098
PINE LODGE QUALITY INN		920 SPOKANE AVE	WHITEFISH, MT 59937–	406–862–7600
HOLTER LAKE LODGE	PO BOX 7	BEARTOOTH RD	WOLF CREEK, MT 59648–	406–235–4331

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
North Carolina				
COMFORT INN		735 HWY. 24/27 BYPASS	ALBEMARLE, NC 28001–	704–983–6990
COMFORT INN		825 WEST DIXIE DR	ASHEBORO, NC 27204–	919–626–4414
AMERICAN COURT MOTEL		85 MERRIMON AVE	ASHEVILLE, NC 28801–	704–253–4427
ASHEVILLE COMFORT SUITES		890 BREVARD ST	ASHEVILLE, NC 28806–	704–665–4000
BEST INNS ASHEVILLE		1445 TUNNEL RD	ASHEVILLE, NC 28805–	704–298–4000
COMFORT INN		800 FAIRVIEW RD	ASHEVILLE, NC 28803–	704–298–9141
ECONO LODGE	RT. 6 BOX 62	I–85 AND BESSEMER CITY RD	ASHEVILLE, NC 28052–	704–667–1821
ECONO LODGE		1430 TUNNEL RD., I–40 EXIT 55.	ASHEVILLE, NC 28815–	704–298–5519
ECONO LODGE ASHEVILLE		190 TUNNEL RD	ASHEVILLE, NC 28805–	704–254–9521
ECONO LODGE EAST		I–40 EXIT 55	ASHEVILLE, NC 28815–	704–298–5519
HOLIDAY INN TUNNEL ROAD		201 TUNNEL RD	ASHEVILLE, NC 28805–	704–252–4000
HOWARD JOHNSON BILTMORE.		190 HENDERSONVILLE RD	ASHEVILLE, NC 28042–	704–274–2300
MOTEL 6 ASHEVILLE		1415 TUNNEL RD	ASHEVILLE, NC 28805–	704–299–3040
RED ROOF INN #146		16 CROWELL RD	ASHEVILLE, NC 28806–	704–667–9803
DAYS INN		602 W. FORT MACON RD	ATLANTIC BEACH, NC 28512–	919–247–6400
HOLLOWELLS MOTEL	PO BOX 216	114 E. FORT MACON RD	ATLANTIC BEACH, NC 28512–	919–726–5227
SHERATON ATLANTIC BEACH RESORT.		SALTER PATH RD	ATLANTIC BEACH, NC 28512–	919–240–1155
TRIPLE "S" MOTEL		502 HENDERSON BLVD	ATLANTIC BEACH, NC 28512–	919–726–8156
BALSAM MOUNTAIN INN	PO BOX 40	BALSAM MOUNTAIN INN RD	BALSAM, NC 28707–	704–456–9498
SUGAR MOUNTAIN SKI AND COUNTRY CLUB.	RT 1 BOX169B		BANNER ELK, NC 28604–	704–898–9784
BEST WESTERN MOTEL 145	RT 1 BOX 121		BATTLEBORO, NC 27809–	919–985–1450
BEAUFORT INN		101 ANN ST	BEAUFORT, NC 28516–	919–728–2600
DAYS INN BLOWING ROCK		HWY. 321 BYPASS	BLOWING ROCK, NC 28605–	704–295–4422
RIDGEWAY MOTOR INN		HWY. 221	BLOWING ROCK, NC 28605–	704–295–7321
ECONOLODGE OF BOONE	RT. 6 BOX 46	HWY. 105	BOONE, NC 28607–	704–264–4133
HAMPTON INN BOONE		208 LINVILLE RD., HWY. 105	BOONE, NC 28607–	704–264–0077
HOLIDAY INN OF BOONE		710 BLOWING ROCK RD	BOONE, NC 28607–	704–264–2451
BREVARD MOTOR LODGE		750 N. CALDWELL ST	BREVARD, NC 28712–	704–884–3456
IMPERIAL MOTOR LODGE	PO BOX 586	HWY. 64 & 276 N	BREVARD, NC 28712–	704–884–2887
LLOYD'S ON THE RIVER	PO BOX 429	HWY. 19 N	BRYSON CITY, NC 28713–	704–488–3767
COMFORT INN HATTERAS ISLAND.	PO BOX 1089	OLD LIGHTHOUSE RD. STATE RD 12.	BUXTON, NC 27920–	919–995–6100
COMFORT INN OF CANTON	PO BOX 866	I–40 AT EXIT 31 CHAMPION DR.	CANTON, NC 28716–	704–648–4881
BEST WESTERN CARY INN		1722 WALNUT ST	CARY, NC 27511–	919–481–1200
COURTYARD BY MARRIOTT RALEIGH CARY.		102 EDINBURG DR. S	CARY, NC 27511–	919–481–9666
HAMPTON INN RALEIGH CARY		201 ASHEVILLE AVE	CARY, NC 27511–	919–859–5559
COTTAGE INN		HWY. 64 E	CASHIERS, NC 28717–	704–743–3033
THE VALLEY AIRE MOTEL		HWY. 107 N	CASHIERS, NC 28717–	704–743–3998
HAMPTON INN CHAPEL HILL		1740 NORTH FORDHAM BLVD	CHAPEL HILL, NC 27514–	919–968–3000
HOLIDAY INN	US 15–501	1301 N. FORDHAM BLVD	CHAPEL HILL, NC 27514–	919–929–2171
THE CAROLINA INN		211 PITTSBORO ST	CHAPEL HILL, NC 27514–	919–933–2001
ADAM'S MARK HOTEL CHARLOTTE.		555 S. MCDOWELL ST	CHARLOTTE, NC 28204–	704–372–4100
CHARLOTTE HOLIDAY INN		8520 UNIVERSITY EXEC. PK. DR.	CHARLOTTE, NC 28262–	704–547–0999
CHARLOTTE MARRIOTT CITY CENTER.		100 W. TRADE ST	CHARLOTTE, NC 28202–	704–333–9000
CHARLOTTE MARRIOTT EXECUTIVE PARK.		5700 W. PARK DR	CHARLOTTE, NC 28217–	704–527–9650
CHARLOTTE UNIVERSITY RED ROOF INN.		5116 N. I–85	CHARLOTTE, NC 28206–	704–596–8222
COMFORT INN MERCHANDISE MART.		2721 E. INDEPENDENCE BLVD	CHARLOTTE, NC 28205–	704–375–8444
COMFORT INN SUGAR CREEK		5111 N. I–85 SERVICE RD	CHARLOTTE, NC 28213–	704–586–0007
CONTINENTAL INN		1100 W. SUGAR CREEK RD	CHARLOTTE, NC 28213–	704–597–8100
COURTYARD BY MARRIOTT ARROWOOD.		800 ARROWOOD RD	CHARLOTTE, NC 28217–	704–527–5055
COURTYARD BY MARRIOTT CHARLOTTE SOUTHPARK.		6023 PARK S. DR	CHARLOTTE, NC 28210–	704–552–7333
COURTYARD BY MARRIOTT CHARLOTTE UNIVERSITY.		333 W. WT HARRIS BLVD	CHARLOTTE, NC 28213–	704–549–4888
DAYS INN AIRPORT		3101 S. I–85 SERVICE RD	CHARLOTTE, NC 28208–	704–394–3381
ECONO LODGE AIRPORT		4325 S. I–85 SERVICE RD	CHARLOTTE, NC 28214–	704–394–0172
ECONO LODGE SUGAR CREEK.		1415 TOM HUNTER RD	CHARLOTTE, NC 28213–	704–597–0470

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
EMBASSY SUITES HOTEL		4800 S. TRYON ST	CHARLOTTE, NC 28217–	704–527–8400
FAIRFIELD INN BY MARRIOTT		3400 S. I–85 SERVICE RD	CHARLOTTE, NC 28208–	704–392–0600
FAIRFIELD INN BY MARRIOTT CHARLOTTE NORTHEAST.		5415 N. I–85 SERVICE RD	CHARLOTTE, NC 28262–	704–596–2999
FAIRFIELD INN CHARLOTTE NE.		5415 N. I–85 SERVICE RD	CHARLOTTE, NC 28213–	704–596–2999
HAMPTON INN AIRPORT		3127 SLOAN DR	CHARLOTTE, NC 28208–	704–392–1600
HAMPTON INN CHARLOTTE UNIVERSITY PLACE.		8419 N. TRYON ST	CHARLOTTE, NC 28262–	704–548–0905
HAMPTON INN EXECUTIVE PARK I–77 SOUTH.		440 GRIFFITH RD	CHARLOTTE, NC 28217–	704–525–0747
HILTON AT UNIVERSITY PLACE.		8629 JM KEYNES DR	CHARLOTTE, NC 28213–8425	704–547–7444
HOLIDAY INN CENTER CITY		230 N. COLLEGE ST	CHARLOTTE, NC 28202–	704–335–5400
HOLIDAY INN EXPRESS		575 CLANTON RD	CHARLOTTE, NC 28217–	704–523–0633
HOLIDAY INN WOODLAWN		212 WOODLAWN RD	CHARLOTTE, NC 28217–	704–525–6350
HOMEWOOD SUITES		7920 S. TRYON	CHARLOTTE, NC 28217–	704–525–2600
HOMEWOOD SUITES HOTEL		8340 N. TYSON ST	CHARLOTTE, NC 28213–	704–549–8800
HYATT CHARLOTTE		5501 CARNEIGE BLVD	CHARLOTTE, NC 28209–	704–554–1234
KNIGHTS INN CHARLOTTE NORTH.		2909 N. I–85 SERVICE RD	CHARLOTTE, NC 28213–	704–598–6822
LAQUINTA CHARLOTTE AIRPORT #629.		3100 S. I–85 SERVICE RD	CHARLOTTE, NC 28208–	704–393–5306
LAQUINTA MOTOR INN #656		7000 NATIONS FORD RD	CHARLOTTE, NC 28217–4929	704–522–7110
LUXBURY HOTEL SUGAR CREEK.		4904 N. I–85 SERVICE RD	CHARLOTTE, NC 28206–	704–596–9229
OMNI CHARLOTTE HOTEL		222 E. THIRD ST	CHARLOTTE, NC 28202–	704–377–6664
QUALITY INN CENTRAL		2400 WILKINSON BLVD	CHARLOTTE, NC 28208–	704–377–6961
RED ROOF INN		3300 I–85 S	CHARLOTTE, NC 28208–	704–392–2316
RED ROOF INN CHARLOTTE COLISEUM (#124).		131 RED ROOF DR	CHARLOTTE, NC 28217–	704–529–1020
RESIDENCE INN BY MARRIOTT CHARLOTTE NORTH.		8503 N. TRYON ST	CHARLOTTE, NC 29262–	704–547–1122
RESIDENCE INN BY MARRIOTT TYVOLA EXECUTIVE.		5800 WESTPARK DR	CHARLOTTE, NC 28217–	704–527–8110
ROSWELL INN		2320 ROSWELL AVE	CHARLOTTE, NC 28207–	704–332–4915
SHERATON AIRPORT PLAZE		3315 S. I85 BILLY GRAHAM PKWY.	CHARLOTTE, NC 28208–	704–392–1200
THE PARK HOTEL		2200 REXFORD RD	CHARLOTTE, NC 28211–	704–364–8220
TRAVELODGE		I–77 & CLANTON RD	CHARLOTTE, NC 28217–	704–523–0633
VILLAGER LODGE		7901 NATIONS FORD RD	CHARLOTTE, NC 28217–	704–522–0364
WYNDHAM CHARLOTTE		4200 WILMOUNT RD	CHARLOTTE, NC 25208–	704–357–9100
HOLIDAY INN CHEROKEE	PO BOX 1929	HWY. 19 W	CHEROKEE, NC 28719–	704–497–9181
THE JOHNSTON-IAN MOTEL		510 HWY. 70 W	CLAYTON, NC 27520–	919–553–7258
FRIENDSHIP INN		724 KANNAPOLIS HWY	CONCORD, NC 28025–	704–788–8550
FRIENDSHIP INN		2451 KANNAPOLIS HWY	CONCORD, NC 28025–	704–788–8550
HAMPTON INN LAKE NORMAN		19501 STATESVILLE RD	CORNELIUS, NC 28031–	704–892–9900
MOUNTAIN CREEK COTTAGES	RT 2 BOX 162	162 DICKS CREEK RD	DILLSBORO, NC 28789–	704–586–6042
BEST WESTERN OF DUNN	R1 BOX 1000	I–95 EXIT 72	DUNN, NC 28334–	919–892–2162
HOJO INN BY HOWARD JOHNSON.		I–95 & POPE RD. EXIT 72	DUNN, NC 28334–	919–892–8711
COMFORT INN UNIVERSITY		3508 MT. MORIAH RD	DURHAM, NC 27707–	919–490–4949
CRICKET INN UNIVERSITY		2306 ELBA ST	DURHAM, NC 27705–	919–286–3111
DURHAM FAIRFIELD INN BY MARRIOTT.		3710 HILLSBOROUGH RD	DURHAM, NC 27705–	919–382–3388
DURHAM HILTON		3800 HILLSBOROUGH RD	DURHAM, NC 27705–	919–383–8033
HOLIDAY INN DURHAM WEST		3460 HILLSBOROUGH RD	DURHAM, NC 27705–	919–383–1551
MEREDITH SUITES AT THE PARK.		300 MEREDITH DR	DURHAM, NC 27713–	919–361–1234
OMNI DURHAM HOTEL AND DURHAM CIVIC CENTER.		201 FOSTER ST	DURHAM, NC 27701–	919–683–6664
RED ROOF INN		5623 CHAPEL HILL BLVD	DURHAM, NC 27707–	919–489–9421
RED ROOF INN #155		4405 HWY. 55 E	DURHAM, NC 27713–	919–361–1950
RED ROOF INN DURHAM II		2000 I–85 SERVICE RD	DURHAM, NC 27705–	919–471–9882
RESIDENCE INN BY MARRIOTT.		1919 HWY. 54 E	DURHAM, NC 27713–	919–361–1266
SHERATON INN UNIVERSITY CENTER.		2800 MIDDLETON AVE	DURHAM, NC 27705–	919–383–8575
SUPER 8 MOTEL		507 E. KNOX ST	DURHAM, NC 27701–	919–688–8868
WASHINGTON DUKE INN AND GOLF CLUB.		3001 CAMERON BLVD	DURHAM, NC 27706–	919–490–0999
ARBORGATE INN EDEN		115 W. KINGS HWY	EDEN, NC 27288–	919–623–1500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN		522 S. HUGHES BLVD	ELIZABETH CITY, NC 27909–	919–338–3951
COMFORT INN		1957 CEDAR CREEK RD	FAYETTEVILLE, NC 28301–	919–323–6330
COURTYARD BY MARRIOTT		4282 SYCAMORE DAIRY RD	FAYETTEVILLE, NC 28303–	919–487–5557
DAYS INN		2065 CEDAR CREEK RD	FAYETTEVILLE, NC 28301–	919–483–6191
DAYS INN CENTRAL		301 BRAGG BLVD	FAYETTEVILLE, NC 28301–	919–323–0220
ECONO LODGE I–55		1952 CEDAR CREEK RD	FAYETTEVILLE, NC 28302–	919–433–2100
FAIRFIELD INN BY MARRIOTT FAYETTEVILLE.		562 CROSS CREEK MALL	FAYETTEVILLE, NC 28303–	919–487–1400
HOLIDAY INN FAYETTEVILLE I–95.		1944 CEDAR CREEK RD	FAYETTEVILLE, NC 28302–	919–323–1600
INNKEEPER OF FAYETTEVILLE INC.		1720 SKIBO RD	FAYETTEVILLE, NC 28303–	919–867–7659
ECONO LODGE AIRPORT		198 UNDERWOOD RD	FLETCHER, NC 28732–	704–684–1200
HOLIDAY INN AIRPORT		550 AIRPORT RD	FLETCHER, NC 28732–	704–684–1213
HENDERSON INN	RT 4 BOX 300	HWY. 74 BYPASS	FOREST CITY, NC 28043–	704–248–1711
ECONO LODGE		I–85 & BESSEMER CITY RD	GASTONIA, NC 28052–	704–867–1621
KNIGHTS INN		1721 BROADCAST ST	GASTONIA, NC 28052–	704–868–6900
MID TOWN MOTOR INN		210 S. CHESTER ST	GASTONIA, NC 28052–	704–864–8751
ECONO LODGE		704 HWY. 70 BYPASS E	GOLDSBORO, NC 27532–	919–736–4510
THE COMFORT INN		209 N. SPENCE AVE	GOLDSBORO, NC 27532–	919–751–1999
AIRPORT MARRIOTT HOTEL		ONE MARRIOTT DR	GREENSBORO, NC 27409–	919–852–6450
BEST INNS OF AMERICA AIRPORT.		5452 BURNT POPLAR RD	GREENSBORO, NC 27409–	919–668–9400
COURTYARD BY MARRIOTT GREENSBORO.		4440 W. WENDOVER AVE	GREENSBORO, NC 27407–	919–294–3600
FAIRFIELD INN BY MARRIOTT		2003 ATHENA CT	GREENSBORO, NC 27407–	919–294–9922
GREENSBORO COLISEUM TRAVELODGE.		2112 W. MEADOWVIEW RD	GREENSBORO, NC 27403–	919–292–2029
GREENSBORO MARRIOTT		1 MARRIOTT DR	GREENSBORO, NC 27409–	919–852–6450
HAMPTON INN GREENSBORO		2004 VEASLEY ST	GREENSBORO, NC 27407–	919–854–6000
RED ROOF INN #99		2101 W. MEADOWVIEW RD	GREENSBORO, NC 27403–	919–852–6580
RED ROOF INNS		615 REGIONAL RD	GREENSBORO, NC 27409–	919–271–2638
RESIDENCE INN BY MARRIOTT.		2000 VEASLEY ST	GREENSBORO, NC 27407–	919–294–5900
SHERATON GREENSBORO HOTEL & CONFERENCE CENTER.		303 NORTH ELM ST	GREENSBORO, NC 27401–	919–379–8000
CRICKET INN		821 S. MEMORIAL DR	GREENVILLE, NC 27834–	919–758–5544
EAST CAROLINA INN		2095 STANTONSBURG RD	GREENVILLE, NC 27834–	919–752–2122
HILTON INN		207 SW GREENVILLE BLVD	GREENVILLE, NC 27834–	919–355–5000
HOLIDAY INN HAVELOCK		400 HWY. 70 W	HAVELOCK, NC 28532–	919–444–1111
GARNETT INN		1727 N. GARNETT ST	HENDERSON, NC 27536–	919–492–2013
HOLIDAY INN		I–85 & PARHAM RD	HENDERSON, NC 27536–	919–492–1126
COMFORT INN HENDERSONVILLE		206 MITCHELLE DR	HENDERSONVILLE, NC 28792–	704–693–6806
HAMPTON INN HENDERSONVILLE		155 SUGARLOAF RD	HENDERSONVILLE, NC 28793–	704–697–2333
COMFORT SUITES		1125 13TH AVE. DR. SE	HICKORY, NC 28602–	704–323–1211
HAMPTON INN		1520 13TH AVE. DR. SE	HICKORY, NC 28601–	704–329–1159
HO JO INN	PO BOX 129	483 HWY. 70 SW	HICKORY, NC 28601–	704–322–1980
HOLIDAY INN HICKORY		1385 LENOIR RHYNE BLVD	HICKORY, NC 28602–	704–323–1000
RED ROOF INN		1184 LENOIR RHYNE BLVD	HICKORY, NC 28602–	704–323–1590
HOLIDAY INN MARKET SQUARE.		236 S. MAIN ST	HIGH POINT, NC 27260–	919–889–7011
RADISSON HOTEL		135 S. MAIN ST	HIGH POINT, NC 27260–	919–889–9999
MOUNTAIN HIGH MOTEL	PO BOX 939	MAIN ST. AND SECOND ST	HIGHLANDS, NC 28741–	704–526–2700
DAYS INN		1723 LEJEUNE BLVD	JACKSONVILLE, NC 28540–	919–353–3336
HAMPTON INN JACKSONVILLE		474 WESTERN BLVD	JACKSONVILLE, NC 28546–	919–347–6500
ONSLOW INN		201 MARINE BLVD	JACKSONVILLE, NC 28540–	919–347–3151
BEST WESTERN ELDRETH INN AT MT. JEFFERSON.		HWY. US 221 & NC 88	JEFFERSON, NC 28640–	919–246–6845
COMFORT INN		HWY. 67 & I–77	JONESVILLE, NC 28642–	919–835–9400
HOLIDAY INN	PO BOX 66	INTERSECTION I–77 & HWY. 67.	JONESVILLE, NC 28642–	919–835–9000
DAYS INN KENLY		I–95 EXIT 106	KENLY, NC 27542–	919–284–3400
COMFORT INN NORTH OCEANFRONT.	PO BOX 3437	401 N. VIRGINIA TRAIL	KILL DEVIL HILLS, NC 27948–	919–480–2580
DAYS INN OCEANFRONT WILBUR ORVILLE WRIGHT.		101 N. VIRGINIA DARE TRAIL	KILL DEVIL HILLS, NC 27948–	919–441–7211
ECONO LODGE MOTEL	PO BOX 1064	1 VESTA ST	KING, NC 27021–	919–983–6800
COMFORT INN		720–A YORK RD	KINGS MOUNTAIN, NC 28086–	704–739–7070
SHERATON INN KINSTON		1403 RICHLANDS RD	KINSTON, NC 28501–	919–522–1466

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEACH HAVEN MOTEL		4104 VA. DARE TRAIL	KITTY HAWK, NC 27949–	919–261–4785
DAYS INN KITTY HAWK	PO BOX 1096	3919 CROATAN HWY	KITTY HAWK, NC 27949–	919–261–4888
THE DOCKSIDER INN OCEAN-FRONT.	PO BOX 373	202 N. NC RT. 421	KURE BEACH, NC 28449–	919–458–4200
TRADEWINDS MOTEL	PO BOX 143	309 FORT FISHER BLVD	KURE BEACH, NC 28449–	919–458–6742
BED & BREAKFAST BY THE LAKE.		404 LAKE SHORE DR	LAKE WACCAMAW, NC 28450–	919–646–4764
COMFORT INN		1705 401 BYPASS	LAURINBURG, NC 28352–	919–277–7788
HOLIDAY INN LAURINBURG		15401 BY PASS	LAURINBURG, NC 28352–	919–276–6555
R & R HIDEAWAY	R 1 BOX 404P	HWY. 18 WILKSBORO BLVD	LENOIR, NC 28645–	704–754–5600
COMFORT SUITES OF LEXINGTON.		1620 COTTON GROVE RD	LEXINGTON, NC 27292–	704–352–2333
COMFORT INN AT LINCOLNTON.	PO BOX 814	1550 E. MAIN ST	LINCOLNTON, NC 28092–	704–732–0011
PIXIE INN		US. 221	LINVILLE, NC 28646–	704–733–2597
CAPTAINS COVE MOTEL		6401 E OAK ISLAND DR	LONG BEACH, NC 28465–	919–278–5026
COMFORT SUITES		215 WINTERGREEN DR	LUMBERTON, NC 28358–	919–739–6900
HOLIDAY INN		301 ROSLYN DR	LUMBERTON, NC 28358–	919–671–1166
HOLIDAY INN NORTH		5201 FAYETTEVILLE RD	LUMBERTON, NC 28358–	919–671–1166
COMFORT INN		848 SOCO RD	MAGGIE VALLEY, NC 28751–	704–926–9106
MAGGIE VALLEY HOLIDAY MOTEL INC.		851 SECO RD	MAGGIE VALLEY, NC 28751–	704–926–1186
ELIZABETHAN INN NAUTICS HALL COURT.		814 HWY. 64	MANTEO, NC 27954–	919–473–2101
SCARBOROUGH INN	PO BOX 1310	RT. 64/264 (NO. 524)	MANTEO, NC 27954–	919–473–3979
PARK INN INTERNATIONAL HOTEL.		I–40 EXIT US 221 S	MARION, NC 28752–	704–659–2567
BAIRD HOUSE, LTD. BED AND BREAKFAST INN.		41 S. MAIN ST	MARS HILL, NC 28754–	704–689–5722
COMFORT INN		1500 YADKINVILLE RD	MOCKSVILLE, NC 27028–	704–634–7310
SPRING RUN BED & BREAKFAST.		24 SPRING RUN LAKE NORMAN.	MOORESVILLE, NC 28115–	704–664–6686
ECONO LODGE MOREHEAD CITY.		3410 BRIDGES ST	MOREHEAD CITY, NC 28557–	919–247–2940
HAMPTON INN		4035 ARENDELL ST	MOREHEAD CITY, NC 28557–	919–240–2300
SLEEP INN		2400 A S. STERLING ST	MORGANTOWN, NC 28655–	704–433–9000
BEST WESTERN HOTEL CROWN PARK.		4620 S. MIAMI BLVD	MORRISVILLE, NC 27560–	919–941–6066
COURTYARD BY MARRIOTT RALEIGH DURHAM AIRPORT.		2001 HOSPITALITY CT	MORRISVILLE, NC 27560–	919–467–9444
RALEIGH RESEARCH PARK MARRIOTT.		4700 GUARDIAN DR	MORRISVILLE, NC 27560–	919–941–6200
COMFORT INN		114 HWY. 64 W	MURPHY, NC 28906–	704–837–8030
COMFORT INN NC 160		HWY. 114 64 W	MURPHY, NC 28906–	704–837–8030
ECONO LODGE		100 TERRACE ST	MURPHY, NC 28906–	704–837–8880
FIRST COLONY INN		6720 S. VA. DARE TRAIL	NAGS HEAD, NC 27959–	919–441–5340
NAGS HEAD INN		4701 S. VIRGINIA DARE TRAIL	NAGS HEAD, NC 27959–	919–441–0454
THE BOYETTE HOUSE		HWY. NC 12	OCRACOKE, NC 27960–	919–928–4261
TAR HEEL INN		205 CHURCH ST	ORIENTAL, NC 28571–	919–249–1078
ATLANTIS LODGE, INC	PO BOX 310	123 SALTER PATH RD	PINE KNOLL SHORES, NC 28512–.	919–726–5168
MAGNOLIA INN		CORNER MAGNOLIA RD	PINEHURST, NC 28374–	919–295–6900
COURTYARD BY MARRIOTT NORTH RALEIGH.		1041 WAKE TOWNE DR	RALEIGH, NC 27609–	919–821–3400
ECONO LODGE		3804 NEWBERN AVE	RALEIGH, NC 27610–	919–231–8818
FAIRFIELD INN RALEIGH NORTHEAST.		2641 APPLIANCE CT	RALEIGH, NC 27604–	919–856–9600
HAMPTON INN CRABTREE		6209 GLENWOOD AVE	RALEIGH, NC 27612–	919–782–1112
HAMPTON INN RALEIGH		1001 WAKE TOWNE DR	RALEIGH, NC 27609–	919–828–1813
RADISSON PLAZA HOTEL RALEIGH.		421 S. SALISBURY ST	RALEIGH, NC 27601–	919–834–9300
RALEIGH CRABTREE MARRIOTT.		4500 MARRIOTT DR	RALEIGH, NC 27612–	919–781–7000
RAMADA INN BLUE RIDGE		1520 BLUE RIDGE RD	RALEIGH, NC 27607–	919–832–4100
RED ROOF INNS		3520 MAITLAND DR	RALEIGH, NC 27610–	919–231–0200
RESIDENCE INN BY MARRIOTT RALEIGH.		1000 NAVAHO DR	RALEIGH, NC 27609–	919–878–6100
SHERATON INN RALEIGH AT CRABTREE VALLEY.		4501 CREEDMOOR RD	RALEIGH, NC 27612–	919–787–7111
HOLIDAY INN REIDSVILLE		2100 BARNES ST	REIDSVILLE, NC 27320–	919–342–0341
HOLIDAY INN RALEIGH DURHAM AIRPORT.	PO BOX 13816	I–40 EXIT 282 AT PAGE RD	RESEARCH TRIANGLE PK, NC 27709–3816.	919–941–6000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 18, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RADISSON GOVERNOR'S INN	PO BOX 12168		RESEARCH TRIANGLE PK, NC 27709–.	919–549–8631
RALEIGH DURHAM HOTEL CROWN PARK.	PO BOX 13568	I–40 @ MIAMI BLVD	RESEARCH TRIANGLE PK, NC 27709–3568.	919–941–6066
COMFORT INN		1911 WELDON RD	ROANOKE RAPIDS, NC 27870–	919–537–8252
HAMPTON INN		1914 WELDON RD	ROANOKE RAPIDS, NC 27870–	919–537–7555
HOLIDAY INN		100 HOLIDAY DR	ROANOKE RAPIDS, NC 27870–	919–537–1031
COMFORT INN GATEWAY		200 GATEWAY BLVD	ROCKY MOUNT, NC 27804–	919–937–7785
FAIRFIELD INN BY MARRIOTT ROCKY MOUNT.		1200 BENVENUE RD	ROCKY MOUNT, NC 27804–	919–972–0400
HOLIDAY INN DORTCHES	PO BOX 7215	1–95 S350 DORTCHES BLVD	ROCKY MOUNT, NC 27804–	919–937–6300
HOLIDAY INN ROCKY MOUNT	PO BOX 7577	651 WINSTEAD AVE. EXIT	ROCKY MOUNT, NC 27804–	919–937–6888
SUPER 8 MOTEL		307 MOSS CT	ROCKY MOUNT, NC 27801–	919–977–2858
INKEEPER OF ROXBORO		906 DURHAM RD	ROXBORO, NC 27573–	919–599–3800
HAMPTON INN SALISBURY		1001 KLUMAC RD	SALISBURY, NC 28144–	704–637–8000
HOLIDAY INN SALISBURY	PO BOX 1925	530 JAKE ALEXANDER BLVD. S.	SALISBURY, NC 28144–	704–639–0311
SLEEP INN		321 BENDIX DR	SALISBURY, NC 28146–	704–633–5981
COMFORT INN		US 421 N. COMFORT LN	SANFORD, NC 27330–	703–774–8411
COMFORT INN SELMA		I–95 EXIT 97	SELMA, NC 27576–	919–965–5200
TWILIGHT MOTEL	BOX 1948	4520 N. MAIN ST	SHALLOTTE, NC 28459–	919–754–6901
FREEDOM LODGE MOTEL INC		1718 E. DIXON BLVD	SHELBY, NC 28152–	704–484–2102
HAMPTON INN SOUTHERN PINES PINEHURST.		1675 HWY. #1 S	SOUTHERN PINES, NC 28394–	919–692–9266
HOLIDAY INN SOUTHERN PINES.		US HWY. 1 AT MORGANTOWN RD.	SOUTHERN PINES, NC 28387–	919–692–8585
HOTEL BELVEDERE		120 W. PENN AVE	SOUTHERN PINES, NC 28387–	919–692–2240
THE FAIRWAY MOTEL		1410 US #1 S	SOUTHERN PINES, NC 28387–	919–692–2711
ALLEGHANY INN		531 N MAIN ST	SPARTA, NC 28675–	919–372–2501
RUTHERFORD INN		210 RESERVATION DR	SPINDALE, NC 28160–	704–286–3691
COMFORT INN		1214 MONROE ST	STATESVILLE, NC 28677–	704–873–2044
COMFORT INN		1214 GREENLAND DR	STATESVILLE, NC 28677–	704–873–2044
HAMPTON INN STATESVILLE		715 SULLIVAN RD	STATESVILLE, NC 28677–	704–878–2721
HOLIDAY INN STATESVILLE		740 SULLIVAN RD	STATESVILLE, NC 28677–	704–872–4101
HOWARD JOHNSON LODGE		1209 MONROE ST	STATESVILLE, NC 28677–	704–878–9691
RED ROOF INN #113		1508 E. BROAD ST	STATESVILLE, NC 28677–	704–878–2051
CLARION RESORT AT SEA TRAIL PLANTATION.		211 CLUBHOUSE RD	SUNSET BEACH, NC 28468–	919–579–4359
DAYS INN THOMASVILLE	RT. 5 BOX 40		THOMASVILLE, NC 27360–	919–472–6600
BREEZWAY MOTEL		CORNER & BARBS & CHANNEL BLVD.	TOPSAIL BEACH, NC 28445–	919–328–7751
FRIENDSHIP INN		1201 E. CASWELL ST	WADESBORO, NC 28170–	704–694–4616
THE COUNTRY SQUIRE VINTAGE INN.		RT. 2 BOX 130R	WARSAW, NC 28398–	919–296–1727
ECONO LODGE		1202 RUSS AVE	WAYNESVILLE, NC 28786–	704–452–0353
GRANDVIEW LONDGE		809 VALLEYVIEW CIRCLE RD	WAYNESVILLE, NC 28786–	704–456–5212
HOLIDAY INN EXPRESS		1700 WINKLER ST	WILKESBORO, NC 28697–	919–838–1800
COMFORT INN WILLIAMSTON		HWY. 64 BY PASS	WILLIAMSTON, NC 27892–	919–792–8400
ANDERSON GUEST HOUSE		520 ORANGE ST	WILMINGTON, NC 28401–	919–343–8126
BEST WESTERN CAROLINIAN		2916 MARKET ST	WILMINGTON, NC 28409–	919–763–4653
COMFORT INN		HWY. 64 BYPASS	WILMINGTON, NC 27892–	919–792–8400
DAYS INN WILMINGTON NC		5040 MARKET ST	WILMINGTON, NC 28405–	919–799–6300
FAIRFIELD INN BY MARRIOTT		306 S. COLLEGE RD	WILMINGTON, NC 28403–	919–392–6767
HAMPTON INN		5107 MARKET ST	WILMINGTON, NC 28403–	919–395–5045
HOWARD JOHNSON PLAZA HOTEL		5032 MARKET ST	WILMINGTON, NC 28405–	919–392–1101
THE INN AT ST. THOMAS COURT.		101 S. SECOND ST	WILMINGTON, NC 28401–	919–343–1800
WILMINGTON HILTON		301 N. WATER ST	WILMINGTON, NC 28401–	919–763–5900
HAMPTON WILSON		1601 S. TARBORO ST	WILSON, NC 27893–	919–243–3171
QUALITY INN SOUTH		HWY. 301 S	WILSON, NC 27893–	919–243–5165
WINDSOR MOTEL		1523 S. KING ST	WINDSOR, NC 27983–	919–794–3444
HOLIDAY INN WEST		2006 S. HAWTHORNE RD	WINSTON SALEM, NC 27103–	919–765–6870
RESIDENCE INN BY MARRIOTT.		7835 N. POINT BLVD	WINSTON SALEM, NC 27106–	919–759–0777
STOUFFER WINSTON PLAZA HOTEL.		425 N. CHERRY ST	WINSTON SALEM, NC 27101–	919–725–3500
HOLIDAY INN		1706 N. LUMINA AVE	WRIGHTSVILLE BEACH, NC 28480–.	919–256–2231
North Dakota				
ASHLEY MOTEL INC		201 W. MAIN	ASHLEY, ND 58413–	701–288–3441

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN FLECK HOUSE.		122 E. THAYER	BISMARCK, ND 58501–	701–255–1460
BISMARCK FAIRFIELD INN		1120 CENTURY AVE	BISMARCK, ND 58501–	701–223–9022
COMFORT INN		1030 INTERSTATE AVE	BISMARCK, ND 58501–	701–223–1811
FAIRFIELD INN SOUTH		135 IVY AVE	BISMARCK, ND 58504–	701–223–9293
HOLIDAY INN HOTEL BISMARCK.		605 E. BROADWAY AVE	BISMARCK, ND 58501–	701–255–6000
KELLY INN BISMARCK		1800 N. 12TH ST	BISMARCK, ND 58501–	701–223–9001
RADISSON INN BISMARCK		800 S. 3RD ST	BISMARCK, ND 58504–	701–258–7700
SELECT INN OF BISMARCK		I–94 & US 83	BISMARCK, ND 58501–	701–223–8060
EL VU MOTEL		HWY. 12 & 85 S	BOWMAN, ND 58623–	701–523–5224
GOLDEN HUB MOTEL		HWY. 5 E	CROSBY, ND 58730–	701–965–6368
SUPER 8 OF DEVILS LAKE		HWY. 2 E	DEVILS LAKE, ND 58301–	701–662–8656
TRAILS WEST MOTEL INC		HWY. 2 W	DEVILS LAKE, ND 58301–	701–662–5011
BUDGET INN OF DICKINSON INC.	I–94 EXIT 61	529 12TH ST. W	DICKINSON, ND 58601–	701–225–9123
COMFORT INN		493 ELK DR	DICKINSON, ND 58601–	701–264–7300
DICKINSON HOSPITALITY INN		532 15TH ST. W	DICKINSON, ND 58601–	701–227–1853
EVERGREEN INN		2143 6TH AVE. W	DICKINSON, ND 58601–	701–225–8606
RED COACH INN		71 W. 12TH ST	DICKINSON, ND 58601–	701–227–4310
MOTEL 66	PO BOX 118		DRAYTON, ND 58225–	701–454–6454
EDGELEY SUPER 8 MOTEL		INDUSTRIAL PARK HWY. 281 & 13.	EDGELEY, ND 58433–	701–493–2075
DOUBLEWOOD INN		3333 13TH AVE. S	FARGO, ND 58103–	701–235–3333
ECONOLODGE		2516 11TH AVE. NW	FARGO, ND 58103–	701–232–3412
EXPRESSWAY INN		1340 21ST AVE. S	FARGO, ND 58103–	701–235–3141
FAIRFIELD INN BY MARRIOTT FARGO.		3902 9TH AVE	FARGO, ND 58103–	701–235–1167
FARGO COMFORT INN EAST		1407 35TH ST. S	FARGO, ND 58103–	701–280–9666
FARGO COMFORT INN WEST		3825 9TH AVE. SW	FARGO, ND 58103–	701–282–9586
FARGO COMFORT SUITES		1415 35TH ST. S	FARGO, ND 58103–	701–237–5911
FARGO ECONO LODGE		1401 35TH ST	FARGO, ND 58103–	701–232–3412
KELLY INN FARGO		3800 MAIN AVE	FARGO, ND 58103–	701–282–2143
RADISSON HOTEL FARGO		201 5TH ST. N	FARGO, ND 58102–	701–232–7363
SELECT INN OF FARGO		I–29 & 13TH AVE. S	FARGO, ND 58103–	701–282–6300
SUPER 8 MOTEL		3518 INTERSTATE BLVD	FARGO, ND 58103–	701–232–9202
SUPER 8 MOTEL		948 W. 12TH ST	GRAFTON, ND 58237–	701–352–0688
COUNTRY INN AND SUITES BY CARLSON.		3350 32ND AVE. S	GRAND FORKS, ND 58201–	701–775–5000
GRAND FORKS COMFORT INN		3251 30TH AVE. S	GRAND FORKS, ND 58201–	701–775–7503
GRAND FORKS DAYS INN		3101 34TH ST. S	GRAND FORKS, ND 58201–	701–775–0060
GRAND FORKS FAIRFIELD INN		3051 34TH ST. S	GRAND FORKS, ND 58201–	701–775–7910
HOLIDAY INN GRAND FORKS		1210 N. 43RD ST	GRAND FORKS, ND 58203–	701–772–7131
RAMADA INN		1205 N. 43RD ST	GRAND FORKS, ND 58203–	701–775–3951
ROADKING INN COLUMBIA MALL		3300 30TH AVE. S	GRAND FORKS, ND 58201–	701–746–1391
ROADKING INN INC		1015 N. 43RD ST	GRAND FORKS, ND 58201–	701–775–0691
SELECT INN		1000 N. 42ND ST	GRAND FORKS, ND 58201–	701–775–0565
AMIGO MOTEL		404 W. 10TH ST	HARVEY, ND 58341–	701–324–2510
JAMESTOWN COMFORT INN		811 20TH ST. SW	JAMESTOWN, ND 58401–	701–252–7125
STARLITE MOTEL	PO BOX 100	1610 BUSINESS LOOP E	JAMESTOWN, ND 58401–	701–252–5111
SWANEE MOTEL		1009 12TH AVE. SE	JAMESTOWN, ND 58401–	701–252–2363
CENTRAL FLYWAY OUTFITTERS.		RR BOX K6	KRAMER, ND 58748–	701–359–4422
DON'S MOTEL		HWY. 83RD S	LINTON, ND 58552–	701–254–5457
BEST WESTERN SEVEN SEAS INN & CONFERENCE CTR.		2611 OLD RED TRAIL	MANDAN, ND 58554–	701–663–7401
RIVER RIDGE INN	PO BOX 578	2630 OLD RED TRAIL	MANDAN, ND 58554–	701–663–0001
BEST WESTERN SAFARI INN		1510 26TH AVE. SW	MINOT, ND 58701–	701–852–4300
DAYS INN MINOT		2100 4TH ST. SW	MINOT, ND 58701–	701–852–3646
ECONO LODGE		1937 N. BROADWAY US HWY. 83.	MINOT, ND 58701–	701–852–5600
HO HUM MOTEL		2805 HWY 2 & 52 BYPASS W	MINOT, ND 58701–	701–852–2191
HOLIDAY INN MINOT		2315 N. BROADWAY	MINOT, ND 58701–	701–852–4161
MINOT FAIRFIELD INN		900 24TH AVE. SW	MINOT, ND 58701–	701–838–2424
SELECT INN OF MINOT		US 83 & 22ND AVE. NW	MINOT, ND 58701–	701–852–3411
SHERATON INN RIVERSIDE		2200 BURDICK EXPRESSWAY E.	MINOT, ND 58701–	701–852–2504
FETTIG MOTEL		HWY. 3	NAPOLEON, ND 58561–	701–754–2560
TRAVEL HOST MOTEL OF OAKES INC.		401 MAIN AVE	OAKES, ND 58474–1240	701–742–3403
THE BUNKHOUSE MOTEL	PO BOX 47		POWERS LAKE, ND 58773–	701–464–5200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
NORTHERN LIGHTS MOTEL		HWY. 5 E	ROLLA, ND 58376–	701–477–6164
LINCOLN PARK MOTEL		94 LINCOLN AVE	UNDERWOOD, ND 58576–	701–442–3486
SUPER EIGHT MOTEL		822 11TH ST. SW	VALLEY CITY, ND 58072–	701–845–1140
WAHPETON COMFORT INN		209 13 ST. S	WAHPETON, ND 58075–	701–642–1115
SCOTTWOOD MOTEL INC			WASHBURN, ND 58577–	701–352–0888
SUPER 8 MOTEL		825 E. MAIN	WEST FARGO, ND 58078–	701–282–7121
GATEWAY INN		103 1ST AVE. W	WESTHOPE, ND 58593–	701–245–6441
EL RANCHO MOTOR HOTEL		1623 2ND AVE. W	WILLISTON, ND 58801–	701–572–6321
SUPER 8 LODGE		2324 2ND AVE. W	WILLISTON, ND 58801–	701–572–8371
THE KENSINGTON		1001 W. 24TH ST	WILLISTON, ND 58801–	701–774–0424
TRAVEL HOST MOTEL		3801 2ND AVE. W	WILLISTON, ND 58801–	701–774–0041
Nebraska				
SUPER 8 MOTEL		1025 E. 4TH ST	AINSWORTH, NE 69210–	402–387–0700
SUPER 8 MOTEL		3210 N. 6TH ST	BEATRICE, NE 68310–	402–223–3536
AMERICAN FAMILY INN		1110 FORT CROOK RD. S	BELLEVUE, NE 68005–	402–291–0804
BELLEVUE SUPER 8 MOTEL		303 S. FORT CROOK RD	BELLEVUE, NE 68005–	402–291–1518
BEST WESTERN WHITE HOUSE INN.		305 N. FORT CROOK RD	BELLEVUE, NE 68005–	402–293–1600
BELL MOTOR INN & REST	PO BOX 854		BRIDGEPORT, NE 69336–	308–262–0557
SUPER 8		215 E. S. E ST	BROKEN BOW, NE 68822–	800–848–8888
BUNKHOUSE MOTEL		E. HWY. 6 & 34	CAMBRIDGE, NE 69022–	308–697–4540
ECONOMY 9 MOTEL		1201 W. HWY. 20	CHADRON, NE 69337–	308–432–3119
THE COTTONWOOD INN	PO BOX 446		CHAPPELL, NE 69129–	308–874–3250
ECONO LODGE		3803 23RD ST	COLUMBUS, NE 68601–	402–564–9955
NEW WORLD INN		HWY. 30 & 81 S	COLUMBUS, NE 68601–	402–564–1492
SUPER 8 MOTEL COLUMBUS		3324 20TH ST	COLUMBUS, NE 68602–	402–563–3456
FREMONT COMFORT INN		1649 E. 23RD AVE	FREMONT, NE 68025–	402–721–1109
HOLIDAY LODGE	PO BOX 409	1220 E. 23RD ST	FREMONT, NE 68025–	402–727–1110
BUNK HOUSE BED & BREAKFAST.	PO BOX 29	HC 91	GORDON, NE 69343–	308–282–0679
DAYS INN		2620 N. DIERS AVE	GRAND ISLAND, NE 68803–	308–384–8624
ECONO LODGE		3205 S. LOCUST ST	GRAND ISLAND, NE 68801–	308–384–1333
INTERSTATE HOLIDAY INN		7838 S. US HWY. 281	GRAND ISLAND, NE 68801–	308–384–7770
SUPER 8 MOTEL		1250 N. DIERS AVE	GRAND ISLAND, NE 68803–	402–727–4445
RATH TRAVELERS INN	PO BOX 138		GRENWOOD, NE 68366–	402–944–3313
PLAINS MOTEL		619 W. HWY. 6	HOLDREGE, NE 68949–	308–995–8646
HOLIDAY INN		301 SECOND AVE	KEARNEY, NE 68848–	308–237–3141
SUPER 8 MOTEL	PO BOX 117		KIMBALL, NE 69145–	308–235–4888
ECONO LODGE	PO BOX 775		LEXINGTON, NE 68850–	308–324–5601
SUPER 8 MOTEL	PO BOX 149U	RR 2	LEXINGTON, NE 68850–	308–324–7434
CORNHUSKER HOTEL		333 S. 13TH ST	LINCOLN, NE 68508–	402–474–7474
DAYS INN OF LINCOLN		2920 NW 12TH ST	LINCOLN, NE 68521–	402–475–3616
HAMPTON INN		1301 W. BOND CIR	LINCOLN, NE 68521–	402–474–2080
KINGS INN MOTEL		3[illegible]10 CORNHUSKER HWY	LINCOLN, NE 68504–	402–466–2324
LINCOLN COMFORT INN		2940 NW 12TH ST	LINCOLN, NE 68521–	402–475–2200
RAMADA HOTEL DOWNTOWN		141 N. 9TH ST	LINCOLN, NE 68508–	402–475–4011
RESIDENCE INN BY MARRIOTT.		200 S. 68TH PL	LINCOLN, NE 68510–	402–483–4900
SHARON MOTEL		1717 CORNHUSKER HWY	LINCOLN, NE 68521–	402–475–2691
TOWN HOUSE MOTEL		1744 M ST	LINCOLN, NE 68508–	402–475–3000
CEDAR MOTEL		1300 E. C ST	MCCOOK, NE 69001–	308–345–7091
SUPER 8 MOTEL		1103 E. B ST	MCCOOK, NE 69001–	308–345–1141
APPLE INN		502 S. 11TH ST	NEBRASKA CITY, NE 68410–	402–873–6616
TWO RIVERS SALOON AND HOTEL.		254–12 PARK AVE	NIOBRARA, NE 68760–	402–857–3340
ECO LUX INN		1909 KRENZIEN DR	NORFOLK, NE 68701–	402–371–7157
HOLIDAY INN NORTH PLATTE		JCT. US 83 & I–80	NORTH PLATTE, NE 69101–	308–532–8080
LUXURY INN		3102 S. JEFFERS	NORTH PLATTE, NE 69101–	308–532–8321
MOTEL 6		1520 S. JEFFERS ST	NORTH PLATTE, NE 69101–	308–534–6200
SUPER 8 MOTEL		220 EUGENE AVE	NORTH PLATTE, NE 69101–	308–532–4224
THE STOCKMAN INN	PO BOX 2003		NORTH PLATTE, NE 69103–	308–534–3630
TRAVELERS INN		602 E. 4TH ST	NORTH PLATTE, NE 69101–	308–534–4020
GOLDEN HOTEL		406 E. DOUGLAS ST	O'NEILL, NE 68763–	402–336–4436
SUPER 8 MOTEL		E. HWY. 20	O'NEILL, NE 68763–	402–336–3100
OGALLALA COMFORT INN		110 PONY EXPRESS RD	OGALLALA, NE 69153–	308–284–4028
SUPER 8 MOTEL		500 E. A ST. S	OGALLALA, NE 69153–	308–284–2076
BEN FRANKLIN MOTEL		144TH ST. & I–80	OMAHA, NE 68138–	402–895–2200
BEST WESTERN—CENTRAL		3650 S. 72ND ST	OMAHA, NE 68124–3586	402–397–3700
BEST WESTERN NEW TOWER INN.		7764 DODGE ST	OMAHA, NE 68114–	402–393–5500
BEST WESTERN REGENCY WEST.		909 S. 107TH ST	OMAHA, NE 68114–	402–397–8000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
CLUBHOUSE INN		11515 MIRACLE HILLS DR	OMAHA, NE 68154–	402-496-7500
DAYS INN DOWNTOWN		3001 CHICAGO ST	OMAHA, NE 68131–	402-345-2222
EMBASSY SUITES OMAHA		7270 CEDAR ST	OMAHA, NE 68124–	402-397-5141
FIRESIDE SUITES		11025 N ST	OMAHA, NE 68137–	402-331-0101
HAMPTON INN		9720 W. DODGE RD	OMAHA, NE 68114–	402-391-5300
HAMPTON INN		3301 S. 72ND ST	OMAHA, NE 68124–	402-391-8129
HAMPTON INN SW		10728 L ST	OMAHA, NE 68127–	402-593-2360
HOMEWOOD SUITES		7010 HASCALL ST	OMAHA, NE 68106–	402-397-7500
LA QUINTA MOTOR INN		3330 N. 104TH AVE	OMAHA, NE 68134–	402-493-1990
LEISURE INN		4815 L ST	OMAHA, NE 68117–	402-733-4000
MOTEL 6		10706 M ST	OMAHA, NE 68127–	402-331-3161
OAK CREEK INN		2808 S. 72ND ST	OMAHA, NE 68124–	402-397-7137
OMAHA COMFORT INN		10919 S. ST	OMAHA, NE 68137–	402-592-2992
OMAHA MARRIOTT HOTEL		10220 REGENCY CIR	OMAHA, NE 68114–	402-399-9000
OMAHA SLEEP INN		2525 ABBOTT DR	OMAHA, NE 68110–	401-342-2525
PARK INN HOTEL		9305 S. 145TH ST	OMAHA, NE 68138–	402-895-2555
RADISSON REDICK TOWER HOTEL.		1504 HARNEY ST	OMAHA, NE 68102–	402-342-1500
RED LION HOTEL		1616 DODGE ST	OMAHA, NE 68102–	402-346-7600
RESIDENCE INN BY MARRIOTT.		6990 DODGE ST	OMAHA, NE 68132–	402-553-9000
SAVANNAH SUITES HOTEL		4809 S. 107 AVE	OMAHA, NE 68127–	402-592-8000
SHERATON INN OMAHA		4888 S. 118TH ST	OMAHA, NE 68137–	402-895-1000
TOWN HOUSE INN		13929 GOLD CIR	OMAHA, NE 68144–	402-333-9777
WAYSIDE INN MOTEL		7633 DODGE ST	OMAHA, NE 68114–	402-391-7100
AIRPORT MOTEL		N. HWY. 11	ORD, NE 68862–	308-728-3640
PUMP & PANTRY MOTEL		2320 L ST	ORD, NE 68862–	308-728-7908
LIBERTY LODGE MOTEL		1409 GOLD COAST RD	PAPILLION, NE 68128–	402-339-0505
WAYWARD INN MOTEL		117 S. NEBRASKA ST	PONCA, NE 68770–	402-755-2237
MEADOWLARK MANOR		241 W. 9TH AVE	RED CLOUD, NE 68970–	402-746-3550
JOHNNIE'S MOTEL		222 W. 16TH ST	SCHUYLER, NE 68661–	402-352-5454
SCOTTSBLUFF COMFORT INN		2018 DELTA DR	SCOTTSBLUFF, NE 69361–	308-632-7510
SUPER 8 MOTEL		2202 DELTA DR	SCOTTSBLUFF, NE 69361–	308-635-1600
SUPER 8 MOTEL		S. HWY. 15	SEWARD, NE 68434–	800-848-8888
SIDNEY ECONO LODGE		730 E. JENNIFER LN	SIDNEY, NE 69162–	308-254-5011
THE OLD BOARDING HOUSE B & B.		1300 11TH AVE	SIDNEY, NE 69162–	402-000-0000
ECONO LODGE		4402 DAKOTA AVE	SOUTH SIOUX CITY, NE 68776–.	402-494-4114
MARINA INN	PO BOX 219		SOUTH SIOUX CITY, NE 68776–.	402-494-4009
PLAINS MOTEL		1540 IDAHO ST	SUPERIOR, NE 68978–	402-879-3245
K D INN MOTEL		311 E. 7TH ST	WAYNE, NE 68787–	402-375-1770
HOTEL WILBER B&B		203 S. WILSON	WILBER, NE 68465–	402-000-0000
SUPER 8 LODGE	PO BOX 532		YORK, NE 68467–	402-362-3388
YORKSHIRE MOTEL	PO BOX 188	RR. 3	YORK, NE 68467–	402-362-6633
New Hampshire				
GLYNN HOUSE INN	PO BOX 719	43 HIGHLAND ST	ASHLAND, NH 03217–	603-968-3775
ATTITASH MT VILLAGE			BARTLETT, NH	
EAST BRANCH RESORT LTD		RT. 16A	BARTLETT, NH 03838–	603-356-9060
NEW ENGLAND INN			BARTLETT, NH	
NORTH COLONY MOTEL			BARTLETT, NH	
OLD FIELD HOUSE	PO BOX 1		BARTLETT, NH 03838–	603-356-5478
PERRY'S MOTEL & COTTAGES			BARTLETT, NH	
SKY VALLEY MOTEL			BARTLETT, NH	
SWISS CHALET MOTEL		RT. 16A	BARTLETT, NH 03838–	603-356-2232
THE COUNTRY INN AT BARTLETT.			BARTLETT, NH	
THE FOREST A COUNTRY INN		RT. 16A	BARTLETT, NH 03838–	603-356-9772
VILLAGER MOTEL	RT. 302		BARTLETT, NH 03838–	
BEDFORD MOTOR INN		410 S. RIVER RD	BEDFORD, NH 03102–	603-627-6800
BEDFORD VILLAGE INN		2 OLD BEDFORD RD	BEDFORD, NH 03102–	603-472-2001
HILLBROOK MOTEL		360 RT. 101	BEDFORD, NH 03102–	603-472-3788
SHARATON WAYFARER INN		121 S. RIVER RD	BEDFORD, NH 03102–	603-622-3794
BERLIN MOTOR INN			BERLIN, NH	
TRAVELER MOTEL			BERLIN, NH	
PINEWOOD MOTEL			BETHLEHEM, NH	
DANIEL WEBSTER MOTOR LODGE.		168 KING ST	BOSCAWEN, NH 03301–	603-796-2136
KETTLE & CRANE INN		215 KING ST	BOSCAWEN, NH 03301–	603-796-2281
HAMPTON INN		515 S. ST	BOWCAWEN, NH 03301–	603-224-5322

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BRETTON ARMS INN		RT. 302	BRETTON WOODS, NH 03575–	603–278–1000
BRETTON WOODS MOTOR INN.		RT. 302	BRETTON WOODS, NH 03575–	603–278–1000
MOUNT WASHINGTON HOTEL			BRETTON WOODS, NH	
MAPLE HEDGE BED & BREAKFAST.		S. MAIN ST	CHARLESTOWN, NH 03603–	603–826–5237
DEL E MOTEL		24 SULLIVAN ST	CLAREMONT, NH 03743–	603–542–9657
COLEBROOK COUNTY CLUB & MOTEL.	PO BOX 2	RR. 1	COLEBROOK, NH 03576–	603–237–5566
COLEBROOK HOUSE & MOTEL			COLEBROOK, NH	
NORDIC MOTEL			COLEBROOK, NH	
NORTHERN COMFORT MOTEL			COLEBROOK, NH	
BRICK TOWER MOTOR INN		414 S. MAIN ST	CONCORD, NH 03301–	603–224–9565
COMFORT INN		71 HALL ST	CONCORD, NH 03301–	603–226–4100
RAMADA INN			CONCORD, NH	
CONWAY VALLEY INN		RT. 16	CONWAY, NH 03818–	603–447–3858
LABNON'S MOTOR LODGE		WILDER ST	CONWAY, NH 03818–	603–447–6216
MERRILL FARM RESORT		RT. 16	CONWAY, NH 03818–	603–447–3866
WHITE DEER MOTEL		RT. 16	CONWAY, NH 03818–	603–447–5366
ROBERT FROST MOTOR INN		185 ROCKINGHAM RD	DERRY, NH 03038–	603–432–5567
THE BALSAMS HOTEL			DIXVILLE NOTCH, NH	
DOVER DAYS INN BLDG 2		481 CENTRAL AVE	DOVER, NH 03820–	603–742–0400
DOVER DAYS INN BLDG 1		481 CENTRAL AVE	DOVER, NH 03820–	603–742–0400
FRIENDSHIP INN		181 SILVER ST	DOVER, NH 03820–	603–742–4100
HIGHLAND FARM BED & BREAKFAST.			DOVER, NH	
SILVER ST INN		103 SILVER ST	DOVER, NH 03820–	603–743–3000
THE NEW ENGLAND CENTER			DURHAM, NH	
SNOW VILLAGE INN			EATON, NH	
THE INN AT CRYSTAL LAKE	PO BOX 12	RT. 153	EATON CENTER, NH 03832–	603–447–2120
CHEBACCO RANCH			EFFINGHAM, NH	
EFFINGHAM INN			EFFINGHAM, NH	
EXETER INN		90 FRONT ST	EXETER, NH 03833–	603–772–5901
ELLA RIVER MOTEL		RT. 11	FARMINGTON, NH 03835–	
LEDGELAND			FRANCONIA, NH	
RED COACH INN		WALLACE HILL RD	FRANCONIA, NH 03580–	603–823–7422
SUGAR HILL INN			FRANCONIA, NH	
DAIRY KING MOTEL		394 N. MAIN ST	FRANKLIN, NH 03235–	603–934–3311
FRANKLIN MOTEL		N. MAIN ST	FRANKLIN, NH 03235–	603–934–4744
FREEDOM HOUSE BED & BREAKFAST.			FREEDOM, NH	
B MAE'S RESORT INN		17 HARRIS SHORE RD	GILFORD, NH 03246–	603–293–7526
GUNSTOCK COUNTRY INN		580 CHERRY VALLEY RD	GILFORD, NH 03246–	603–293–4307
MISTY HARBOR RESORT HOTEL.		RT. 11 B	GILFORD, NH 03246–	603–293–4500
ONE GILFORD PLACE		144 LAKE ST	GILFORD, NH 03246–	603–527–0566
COVERED BRIDGE HOUSE		RT. 302	GLEN, NH 03838–	603–383–9109
LINDERHOF MOTOR INN		RT. 16	GLEN, NH 03838–	603–383–4334
NORDIC VILLAGE RESORT		RT. 16	GLEN, NH 03838–	603–383–9101
STORYBROOK MOTEL		RT. 16 & 302	GLEN, NH 03838–	603–383–6800
THE BERNERHOF INN			GLEN, NH	
APPALACHIAN MOUNTAIN CLUB.			GORHAM, NH	
ARIES MOTOR INN			GORHAM, NH	
COLONIAL COMFORT INN			GORHAM, NH	
GORHAM MOTOR INN			GORHAM, NH	
MT. MADISON MOTEL			GORHAM, NH	
STONE HOUSE MOTEL			GORHAM, NH	
TOURIST VILLAGE MOTEL			GORHAM, NH	
TOURIST VILLAGE MOTEL		130 MAIN ST	GORHAM, NH 03581–	603–466–3312
TOWN & COUNTRY MOTEL		RT. 2 SHELBURNE	GORHAM, NH 03581–	603–466–3315
BUDGET HOST STONE GABLE INN.		859 LAFAYETTE RD	HAMPTON, NH 03842–	603–926–6883
HAMPTON MOTOR INN		815 LAFAYETTE RD	HAMPTON, NH 03842–	603–926–6771
HAMPTON VILLAGE RESORT		660 LAFAYETTE RD	HAMPTON, NH 03842–	603–926–6775
OCEANSIDE HOTEL		365 OCEAN BLVD	HAMPTON, NH 03842–	603–926–3542
SEA SPIRAL SUITES		449 OCEAN BLVD	HAMPTON, NH 03842–	603–926–2222
SEA SQUIRE MOTOR LODGE		1088 OCEAN BLVD	HAMPTON, NH 03842–	603–926–2571
ASHWORTH HOTEL INC		295 OCEAN BLVD	HAMPTON BEACH, NH 03842–	603–926–6762
HAMPTON HOUSE HOTEL	PO BOX 578	333 OCEAN BLVD	HAMPTON BEACH, NH 03842–	603–926–1033
KENTVILLE HOTEL		315 OCEAN BLVD	HAMPTON BEACH, NH 03842–	603–926–3950
JOHN HANCOCK INN		MAIN ST	HANCOCK, NH 03449–	603–525–3318

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HANOVER INN	PO BOX 151		HANOVER, NH 03755–	603–643–4300
MAPLE TREE BED & BREAKFAST.		CASS MILL RD	HILL, NH 03243–	603–744–6566
BLACK HORSE MOTOR COURT.			HOLDERNESS, NH	
BOULDERS MOTEL			HOLDERNESS, NH	
LITTLE HOLLAND COURT			HOLDERNESS, NH	
OLD COLONIAL EAGLE MOTEL			HOLDERNESS, NH	
THE INN ON GOLDEN POND			HOLDERNESS, NH	
THE MANOR ON GOLDEN POND.			HOLDERNESS, NH	
WHITE OAK MOTEL			HOLDERNESS, NH	
YANKEE TRAIL MOTEL			HOLDERNESS, NH	
DOLLY DIMPLE MOTEL		1396 HOOKSETT RD	HOOKSETT, NH 03106–	603–622–0720
FIREBIRD MOTEL		10 BELL AVE	HOOKSETT, NH 03106–	603–622–6263
KOZY 7 MOTEL		175 LONDONDERRY TURNPIKE.	HOOKSETT, NH 03106–	603–669–6744
PARK PLACE MOTEL		1375 HOOKSETT RD	HOOKSETT, NH 03106–	603–668–4430
SUNSET MOTEL		1334 HOOKSETT RD	HOOKSETT, NH 03106–	
DAYS INN		90 DERRY ST	HUDSON, NH 03051–	603–880–1700
HUDSON MOTOR INN		220 DERRY ST	HUDSON, NH 03051–	603–889–2169
THE GREAT EAGLE MOTEL			HUDSON, NH	
INTERVALE MOTEL	PO BOX 9		INTERVALE, NH 03845–	603–356–9776
DANA PLACE INN	PO BOX L	RT. 16 PINKHAM NOTCH	JACKSON, NH 03846–	603–383–6822
EAGLE MT RESORT		CARTER NOTEL RD	JACKSON, NH 03846–	603–383–9111
NORDICA VILLAGE RESORT		RT. 16	JACKSON, NH 03846–	603–383–9156
LANTERN MOTOR INN	PO BOX 97	RT. 2	JEFFERSON, NH 03583–	603–586–7151
PEACOCK INN			KEARSARGE, NH	
DAYS INN		175 KEY RD	KEENE, NH 03431–	603–352–7616
RAMADA INN OF KEENE		401 WINCHESTER ST	KEENE, NH 03431–	603–357–3038
ROCKY BROOK MOTEL	PO BOX 159	RT. 101	KEENE, NH 03431–	603–352–4236
SUPER 8 MOTEL		3 ASHBROOK RD	KEENE, NH 03431–	603–352–9780
WINDING BROOK LODGE	PO BOX 372	631 PARK AVE	KEENE, NH 03431–	603–352–3111
CHRISTINE'S ISLAND MOTEL		630 WEIRS BLVD	LACONIA, NH 03246–	603–366–4376
MARGATE RESORT INN		76 LAKE ST	LACONIA, NH 03246–	603–524–5210
DAYS INN	RT. 120		LEBANON, NH 03766–	603–448–5070
SHERATON INN		AIRPORT HILL	LEBANON, NH 03766–	603–298–5906
INDIAN HEAD RESORT		RT. 3	LINCOLN, NH 03251–	603–745–8000
MOUNTIN CLUB ON LOON	PO BOX 41	RR 1	LINCOLN, NH 03251–	603–745–8111
RED DOORS MOTEL			LINCOLN, NH	
MAPLE LEAF MOTEL		297 W. MAIN ST	LITTLETOWN, NH 03561–	603–444–5105
THE INN AT THE HIGHLANDER		1 HIGHLANDER WAY	LONDONDERRY, NH 03053–	603–625–6426
106 MOTEL & APARTMENTS		EXIT 11 EVERETT TNPK	LOUDON, NH 03054–	603–424–6161
DOWDS COUNTRY INN		ON THE COMMON	LYME, NH 03768–	603–795–4712
LYME INN ON THE COMMON			LYME, NH	
HOLIDAY INN CENTER OF NH		700 ELM ST	MANCHESTER, NH 03103–	603–625–1000
THE INN AT MILL FALLS		RT. 3	MEREDITH, NH 03253–	600–279–7006
BEST WESTERN MERRIMACK INN.		EXIT 11 EVERETT TNPK	MERRIMACK, NH 03054–	603–424–6161
FAIRFIELD INN		4 AMHERST RD	MERRIMACK, NH 03054–	603–424–7500
MERRIMACK INN		4 EXECUTIVE PARK	MERRIMACK, NH 03054–	603–424–6181
RESIDENCE INN		246 D.W. HWY	MERRIMACK, NH 03054–	603–424–8100
MILFORD MOTOR MOTEL			MILFORD, NH	
CARRIAGE MOTEL			N. WOODSTOCK, NH	
BEST WESTERN HALLMARK MTR INN.			NASHUA, NH	
CATON HOUSE MOTEL		RAIL ROAD SQ	NASHUA, NH 03062–	603–886–9273
CLARION		2 SOMERSET PKWY	NASHUA, NH 03062–	603–883–5031
COMFORT INN		10 ST. LAURENT ST	NASHUA, NH 03062–	603–883–7700
COUNTRY BARN MOTEL			NASHUA, NH	
HOLIDAY INN			NASHUA, NH	
HOWARD JOHNSON MOTOR LODGE.		170 MAIN DUNSTABLE RD	NASHUA, NH 03062–	603–889–0173
LILLIANS MOTEL		168 CONCORD ST	NASHUA, NH 03062–	603–882–3451
MARRIOTT HOTEL		2200 SOUTHWOOD RD	NASHUA, NH 03062–	603–880–9100
MOTEL 6		2 PROGRESS AVE	NASHUA, NH 03062–	603–889–4151
MOUNT WASHINGTON HOTEL			NASHUA, NH	
RED ROOF INN		77 SPITBROOK RD	NASHUA, NH 03062–	603–888–1893
SHERATON TARA HOTEL			NASHUA, NH	
TAVERN HOTEL			NASHUA, NH	
THE MAIN HOUSE		355 MAIN ST	NASHUA, NH 03062–	603–883–9749

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
OLD MILL HOUSE BED & BREAKFAST.	PO BOX 224	RT. 9 MUNSONVILLE	NELSON, NH 03457–	603–847–3224
NEW LONDON INN	PO BOX 8		NEW LONDON, NH 03257–	603–526–2791
THE INN AT NEWINGTON		20 NIMBLE HILL RD	NEWINGTON, NH 03801–	603–431–0777
HILLTOP MOTEL			NEWPORT, NH	
NEWPORT MOTEL			NEWPORT, NH	
1768 COUNTRY INN	PO BOX 1785		NORTH CONWAY, NH 03860–	603–356–9025
1785 INN			NORTH CONWAY, NH	
BEST WESTERN FOX RIDGE		20 N. MAIN ST	NORTH CONWAY, NH 03860–	603–356–3151
BRIARCLIFF MOTEL	RT. 16		NORTH CONWAY, NH 03860–	603–356–5584
BUTTONWOOD INN			NORTH CONWAY, NH	
CHIMNEY HOUSE GUEST-HOUSE.			NORTH CONWAY, NH	
CLARENDON MOTEL	PO BOX 895		NORTH CONWAY, NH 03860–	603–356–3551
COLONIAL MOTEL	PO BOX 463		NORTH CONWAY, NH 03860–	603–356–5176
CRANMORE INN	PO BOX 1349		NORTH CONWAY, NH 03860–	603–356–5502
CRANMORE MOUNTAIN LODGE.	PO BOX 1194		NORTH CONWAY, NH 03860–	603–356–2044
EASTERN INNS OF NH			NORTH CONWAY, NH	
EASTERN SLOPE INN	PO BOX 359		NORTH CONWAY, NH 03860–	603–356–6321
FOREST GLEN INN	PO BOX 438		NORTH CONWAY, NH 03860–	603–356–6311
GREEN GRANITE MOTEL		MAIN ST	NORTH CONWAY, NH 03860–	603–356–6901
HALES WHITE MOUNTAIN HOTEL.		WEST SIDE RD	NORTH CONWAY, NH 03860–	603–356–7100
JUNGES MOTEL	PO BOX 164	RFD #1	NORTH CONWAY, NH 03860–	603–356–2886
MAPLE LEAF MOTEL	PO BOX 917		NORTH CONWAY, NH 03860–	603–356–5388
MT. WASHINGTON VALLEY MTR LODGE.	PO BOX 1647		NORTH CONWAY, NH 03860–	603–356–5486
NERELEDGE INN			NORTH CONWAY, NH	
NORTH CONWAY MOUNTAIN INN.		RT. 16	NORTH CONWAY, NH 03860–	603–356–2083
OLDE EASTMAN VILLAGE	PO BOX 882		NORTH CONWAY, NH 03860–	603–356–6707
PRESIDENTIAL MOTEL	PO BOX 65	RFD 2	NORTH CONWAY, NH 03860–	603–356–9744
RED JACKET		20 N. MAIN ST	NORTH CONWAY, NH 03860–	603–356–5411
SCHOOL HOUSE MOTEL	PO BOX 368		NORTH CONWAY, NH 03860–	603–356–6829
SCOTTISH LION	PO BOX 1527		NORTH CONWAY, NH 03860–	603–356–6381
SHERATON WHITE MOUNTAIN INN.	PO BOX 3189		NORTH CONWAY, NH 03860–	603–356–9300
STONEHURST			NORTH CONWAY, NH	
SUNNYSIDE LODGE			NORTH CONWAY, NH	
SYLVAN PINES MOTEL		S. MAIN ST	NORTH CONWAY, NH 03860–	603–356–2878
VICTORIAN HARVEST INN	PO BOX 1763		NORTH CONWAY, NH 03860–	603–356–3548
WHITE TRELLIS	PO BOX 441		NORTH CONWAY, NH 03860–	603–356–2492
YANKEE CLIPPER MOTEL	PO BOX 479		NORTH CONWAY, NH 03860–	603–356–5736
HA PENNY MOTEL			NORTH HAMPTON, NH	
PINE HAVEN MOTEL		183 LAFAYETTE RD	NORTH HAMPTON, NH 03862–	603–964–8187
SEASIDE VILLAGE			NORTH HAMPTON, NH	
SLUMBER MANOR MOTEL		53 LAFAYETTE RD	NORTH HAMPTON, NH 03862–	603–964–5707
MEADOWLARK MOTOR COURT.			NORTH WOODSTOCK, NH	
THREE RIVERS HOUSE	PO BOX 72	RR #1	NORTH WOODSTOCK, NH 03262–.	603–745–2711
LAKE SHORE FARM INC		JENNESS POND RD	NORTHWOOD, NH 03261–	603–942–5521
NORTHWOOD MOTEL		RT. 4	NORTHWOOD, NH 03261–	603–942–5476
PINE COVE MOTEL			OSSIPEE, NH	
CRAB APPLE INN		RT. 25	PLYMOUTH, NH 03264–	603–536–4476
DAYS INN WHITE MOUNTAIN	PO BOX 355	RT. 3	PLYMOUTH, NH 03264–	603–536–3520
DEEP RIVER MOTOR INN		HIGHLAND ST	PLYMOUTH, NH 03264–	603–536–2155
KNOLL MOTEL		RT. 3	PLYMOUTH, NH 03264–	603–536–1245
PILGRIM MOTEL		RT. 3	PLYMOUTH, NH 03264–	603–536–1319
PLYMOUTH INN			PLYMOUTH, NH	
SUISSE CHALET		RT. 3	PLYMOUTH, NH 03264–	603–536–2330
WREN'S NEST MOTEL		3548 LAFAYETTE RD	PORRTSMOUTH, NH 03801–	603–436–2481
ACHORAGE MOTOR INN		417 WOODBURY AVE	PORTSMOUTH, NH 03801–	603–431–8111
COMFORT INN AT YOKENS		1390 LAFAYETTE RD	PORTSMOUTH, NH 03801–	603–433–3338
ECONO LODGE		383 WOODBURY AVE	PORTSMOUTH, NH 03801–	603–431–2500
HOLIDAY INN			PORTSMOUTH, NH	
HOWARD JOHNSON'S		520 INTERSTATE HWY	PORTSMOUTH, NH 03801–	603–436–7600
MEADOWBROOK INN		549 RT. 1 BYPASS	PORTSMOUTH, NH 03801–	603–436–2000
SHERATON HOTEL		250 MARKET ST	PORTSMOUTH, NH 03801–	603–431–2300
SISE INN		40 COURT ST	PORTSMOUTH, NH 03801–	603–433–1200
SUISSE CHALET			PORTSMOUTH, NH	

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE PORT MOTOR INN		505 INTERSTATE HWY	PORTSMOUTH, NH 03801–	603-436-4378
JEFFERSON NOTCH MOTEL			RANDOLF, NH	
GRANDVIEW LODGE & CABINS			RANDOLPH, NH	
LOWE'S CABINS			RANDOLPH, NH	
ACHORAGE INN	PO BOX 7325	RT. 125	ROCHESTER, NH 03867–	603-332-3350
CRESS MOTEL		119 MILTON RD	ROCHESTER, NH 03867–	603-324-5462
FRIENDSHIP INN		10 FARMINGTON RD	ROCHESTER, NH 03867–	603-332-1902
HI VU MOTOR INN		157 ROCHESTER HILL RD	ROCHESTER, NH 03867–	603-332-1230
RIVERIA MOTEL		RT. 125	ROCHESTER, NH 03867–	603-332-3491
ROCHESTER MOTEL			ROCHESTER, NH	
QUINCY HOUSE BED & BREAKFAST.			RUMNEY, NH	
CROWN COLONY		1381 OCEAN BLVD	RYE, NH 03870–	603-436-8923
DUNES MOTEL			RYE, NH	
HOSANNAS MOTEL			RYE, NH	
PEBBLE BEACH MOTEL		741 OCEAN BLVD	RYE, NH 03870–	
RYE BEACH MOTEL			RYE, NH	
RYE HARBOR MOTEL		2000 OCEAN BLVD	RYE, NH 03870–	603-964-9054
STAR ISLAND CONFERENCE CENTER.		STAR ISLAND	RYE, NH 03870–	603-964-7252
BEST WESTERN PARKVIEW		RT. 28 109 S. BROADWAY	SALEM, NH 03079–	603-896-5832
SUISSE CHALET HOTEL			SALEM, NH	
SUISSE CHALET HOTEL		9 KEEWAYDIN DR	SALEM, NH 03079–	603-893-4722
BEST WESTERN			SEABROOK, NH	
BURGESS MOTOR INN			SEABROOK, NH	
HAMPSHIRE MOTOR INN		22 SPUR RD	SEABROOK, NH 03874–	603-474-5700
KING COTTAGES		131 LAFAYETTE	SEABROOK, NH 03874–	603-474-2252
SOMERSWORTH HOTEL			SOMERSWORTH, NH	
DEXTER'S INN			SUNAPEE, NH	
MT. CHOCORUA VIEW HOUSE		RT. 16	TAMWORTH, NH 03897–	603-323-8350
RIVERHEAD INN		RT. 16	TAMWORTH, NH 03897–	603-323-7440
STAFFORD'S IN THE FIELD		PHILBROOK NEIGHBORHOOD RD.	TAMWORTH, NH 03897–	603-323-7766
TAMWORTH INN			TAMWORTH, NH	
THE GILMAN TAVERN			TAMWORTH, NH	
WHITE LAKE INN		RT. 16	TAMWORTH, NH 03897–	603-323-8585
BLACK BEAR LODGE		VILLAGE RD	WATERVILLE VALLEY, NH 03215–.	603-236-4501
GOLDEN EAGLE LODGE	PO BOX 495	SNOWSBOROUGH RD	WATERVILLE VALLEY, NH 03215–.	603-236-4551
SILVER SQUIRELL INN			WATERVILLE VALLEY, NH	
SNOWY OWL INN		VILLAGE RD	WATERVILLE VALLEY, NH 03215–.	603-236-8383
VALLEY INN & TAVERN		TECUMSEH RD	WATERVILLE VALLEY, NH 03215–.	603-236-8336
HOBSON HOUSE			WENTWORTH, NH	
MARIE A. KAWK			WENTWORTH, NH	
MOUNTAIN LAUREL INN			WENTWORTH, NH	
WENTWORTH INN & GALLERY		ELLSWORTH HILL RD	WENTWORTH, NH 03282–	603-764-9923
CHESTERFIELD INN		RT. 9	WEST CHESTERFIELD, NH 03466–.	603-256-3211
ECONOMY INN		7 AIRPORT RD	WEST LEBANON, NH 03784–	603-298-8686
SUNSET MOTEL		RT. 10	WEST LEBANON, NH 03784–	603-298-8721
PIONEER MOTEL			WEST THORNTON, NH	
MIRROR LAKE MOTEL	PO BOX 17	RR 2	WHITEFIELD, NH 03598–	603-837-2544
WOLFEBORO INN	PO BOX 1270	44 N. MAIN ST	WOLFEBORO, NH 03894–	603-569-3016
JACK O'LANTERN RESORT			WOODSTOCK, NH	
SIX B MOTEL			WOODSTOCK, NH	
THE LEDGES	PO BOX B	RT. 3	WOODSTOCK, NH 03262–	603-745-8430
WHEELOCK MOTOR COURT			WOODSTOCK, NH	
New Jersey				
CASINO INN		RT. 30 E. ABSECON BLVD	ABSECON, NJ 08201–	609-646-2711
HOWARD JOHNSON HOTEL		539 ABSECON BLVD	ABSECON, NJ 08201–	609-641-7272
MARRIOTT'S SEAVIEW GOLF RESORT.		401 S. YORK RD	ABSECON, NJ 08201–	609-652-2307
INN AT PANTHER VALLEY	RT. 517		ALLAMUCHY, NJ 07820–	908-852-6000
OCEANIC INN		201 6TH AVE	ASBURY PARK, NJ 07712–	908-988-0300
AIRPORT MOTOR INN		500 N. ALBANY AVE	ATLANTIC CITY, NJ 08401–	609-344-6085
ATLANTIC CITY DIPLOMAT		115 CHELSEA AVE. & BOARDWALK.	ATLANTIC CITY, NJ 08401–	609-348-2200
BALLY'S GRAND CASINO HOTEL		BOSTON AND PACIFIC AVES	ATLANTIC CITY, NJ 08404–	609-347-1111

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BALLY'S PARK PLACE CASINO HOTEL AND TOWER.		PARK PLACE & THE BOARDWALK.	ATLANTIC CITY, NJ 08401–	609–340–2000
DUNES MOTEL INC		2819 PACIFIC AVE	ATLANTIC CITY, NJ 08401–	609–344–5271
HARRAH'S CASINO HOTEL ATLANTIC CITY.		1725 BRIGANTINE BLVD	ATLANTIC CITY, NJ 08401–	609–441–5000
QUALITY INN ATLANTIC CITY		S. CAROLINA & PACIFIC AVE	ATLANTIC CITY, NJ 08401–	609–345–7070
RAMADA RENAISSANCE SUITES.		1507 BOARDWALK @ NY AVE	ATLANTIC CITY, NJ 08401–	609–344–1200
TRUMP PLAZA HOTEL & CASINO.		MISSISSIPPI & BOARDWALK	ATLANTIC CITY, NJ 08401–	609–441–6070
TRUMP'S CASTLE CASINO RESORT.		HURON AVE. & BRIGANTINE BLVD.	ATLANTIC CITY, NJ 08401–	609–441–8650
BELMAR MOTOR LODGE		HWY. 35 & 10TH AVE	BELMAR, NJ 07719–	908–681–6600
ECONO LODGE		RT. 130 & 206	BORDENTOWN, NJ 08505–	609–298–5000
HOLIDAY INN	PO BOX 304	CENTER SQ RD	BRIDGEPORT, NJ 08014–	609–467–3322
HOLIDAY INN BRIDGEWATER		1260 RT. 22	BRIDGEWATER, NJ 08807–	908–526–9500
DAYS INN BROOKLAWN		801 RT. 130	BROOKLAWN, NJ 08030–	609–456–6688
GRAND HOTEL'S PALACE		OCEANFRONT AT PHILADELPHIA.	CAPE MAY, NJ 08204–	800–257–8550
SANDPIPER BEACH INN		BEACH & GRANT ST	CAPE MAY, NJ 08204–	609–884–4256
THE QUEEN VICTORIA		102 OCEAN ST	CAPE MAY, NJ 08204–	609–884–8702
DAYS INN	525 RT. 38 E	E. CUTHBERT BLVD.	CHERRY HILL, NJ 08002–	609–663–0100
HOLIDAY INN CHERRY HILL		RT. 70 & SAYER AVE	CHERRY HILL, NJ 08034–	609–663–5300
HYATT CHERRY HILL		2349 W MARLTON PIKE	CHERRY HILL, NJ 08002–	609–662–1234
RESIDENCE INN BY MARRIOTT CHERRY HILL.		1821 OLD CUTHBERT RD	CHERRY HILL, NJ 08003–	609–429–6111
SHERATON POSTE INN		1450 RT. 70	CHERRY HILL, NJ 08034–	609–428–2300
DAYS INN		10 JACKSON DR	CRANFORD, NJ 07016–	908–272–4700
DAYS INN OF SOUTH BRUNSWICK.		2316 RT. 130	DAYTON, NJ 08810–	908–329–3000
BRUNSWICK HILTON		3 TOWER CENTER BLVD.	EAST BRUNSWICK, NJ 08816–	908–828–2000
MCINTOSH INN OF EAST BRUNSWICK INC.		764 RT. 18	EAST BRUNSWICK, NJ 08816–	908–238–4900
DAYS INN MEADOWLANDS		850 RT. 120 PATTERSON PLANK RD.	EAST RUTHERFORD, NJ 07073–.	201–507–5222
SHERATON MEADOWLANDS		2 MEADOWLANDS PLAZA	EAST RUTHERFORD, NJ 07073–.	201–896–0500
CRYSTAL MOTOR LODGE		170 HWY 35	EATONTOWN, NJ 07724–	908–542–4900
EATONTOWN MOTOR LODGE		269 ST. HWY 35	EATONTOWN, NJ 07724–	908–542–6284
PAN AMERICAN MOTEL		71 HWY. 35	EATONTOWN, NJ 07724–	908–542–4322
SHERATON EATONTOWN HOTEL & CONFERENCE CTR.		RT. 35 & INDUSTRIAL WAY E	EATONTOWN, NJ 07724–	908–542–6500
HOLIDAY INN AT RARITAN CENTER.		125 RARITAN CENTER PKWY	EDISON, NJ 08837–	908–225–8300
RAMADA HOTEL		3050 WOODBRIDGE AVE	EDISON, NJ 08837–	908–494–2000
RED CARPET INN EDISON		610 US RT. 1 N	EDISON, NJ 08817–	908–985–2666
RED ROOF INN EDISON		860 NEW DURHAM RD	EDISON, NJ 08817–	908–248–8300
WELLESLEY INN EDISON		831 RT. 1 S	EDISON, NJ 08817–	908–287–0171
HAMPTON INN NEWARK		1128–38 SPRING ST	ELIZABETH, NJ 07207–	908–355–0500
NEWARK AIRPORT HILTON		1170 SPRING ST	ELIZABETH, NJ 07201–2114	908–351–3900
SHERATON INN NEWARK AIRPORT.		901 SPRING ST	ELIZABETH, NJ 07201–	908–527–1600
RADISSON HOTEL ENGLEWOOD.		401 S. VAN BRUNT ST	ENGLEWOOD, NJ 07631–	201–871–2020
FAIRFIELD EXECUTIVE INN/ BEST WESTERN.		216–234 RT 46 E	FAIRFIELD, NJ 07004–	201–575–7700
SHERATON FAIRFIELD HOTEL		690 RT. 46 E	FAIRFIELD, NJ 07004–	201–227–9200
BAY HARBOUR MOTOR LODGE.	PO BOX 507	419 RT. 9	FORKED RIVER, NJ 08731–	609–693–8065
HOLIDAY INN FORT LEE		2117 RT. 4 E	FORT LEE, NJ 07024–	201–461–3100
BEST WESTERN GLOUCESTER INN.		RT 130 & NS FRWY	GLOUCESTER, NJ 08030–1699	609–456–7400
THE BEST WESTERN ORITANI HOTEL.		414 HACKENSACK AVE	HACKENSACK, NJ 07601–	201–488–8900
RAMADA INN HAMMONTON		308 WHITE HORSE PIKE	HAMMONTON, NJ 08037–	609–561–5700
SHERATON HASBROUCK HEIGHTS.		650 TERRACE AVE	HASBROUCK HEIGHTS, NJ 07604–.	201–288–6100
RAMADA INN		2879 HWY. 35	HAZLET, NJ 07730–	908–264–2400
WELLESLEY INN		3215 HWY. 35	HAZLET, NJ 07730–	908–886–2800
IRVINGTON MOTOR LODGE		100 UNION AVE	IRVINGTON, NJ 07111–	201–371–3000
SHERATON AT WOODBRIDGE PLACE.		515 RT. 1 S	ISELIN, NJ 08830–	908–634–3600

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
WOOD-BRIDGE HILTON HOTEL.		120 WOOD AVE. S	ISELIN, NJ 08830–	908–494–8200
ECONOLODGE		2016 RT. 37 W	LAKEHURST, NJ 08733–	908–657–7100
HOWARD JOHNSON LODGE		2991 BRUNSWICK PIKE	LAWRENCEVILLE, NJ 08648–	609–896–1100
RED ROOF INN PRINCETON		3203 BRUNSWICK PIKE	LAWRENCEVILLE, NJ 08648–	609–896–3388
OCEAN COURT MOTEL		170 OCEAN AVE	LONG BRANCH, NJ 07740–	908–222–8008
OCEAN PLACE HILTON RESORT & SPA.		ONE OCEAN BLVD	LONG BRANCH, NJ 07740–	908–571–4000
NOVOTEL MEADOWLANDS HOTEL.		1 POLITO AVE	LYNDHURST, NJ 07071–	201–896–0666
QUALITY INN SPORTS COMPLEX.		RT. 3 & 17	LYNDHURST, NJ 07071–	201–933–9800
COURTYARD BY MARRIOTT MAHWAH.		140 RT. 17 S	MAHWAH, NJ 07430–	201–529–5200
CROSSROADS MOTOR LODGE		RT 73 N & RT 38	MAPLE SHADE, NJ 08052–	609–235–3200
DAYS INN		4191 RT. 1	MONMOUTH JUNCTION, NJ 08852–.	908–329–4555
RED ROOF INN PRINCETON NORTH.		206 NEW RD	MONMOUTH JUNCTION, NJ 08852–.	908–821–8800
TOMAC MOTOR LODGE		2100 RT. 10 W	MORRIS PLAINS, NJ 07950–	201–539–7000
HEADQUARTERS PLAZA HOTEL.		3 HEADQUARTERS PLAZA	MORRISTOWN, NJ 07960–	201–898–9100
MORRISTOWN INN		270 SOUTH ST	MORRISTOWN, NJ 07960–	201–540–1700
BEST WESTERN MOTOR INN		2020 RT. 541 RD. #1	MT HOLLY, NJ 08060–	609–261–3900
COURTYARD BY MARRIOTT MT. LAUREL.		1000 CENTURY PKWY	MT LAUREL, NJ 08054–	609–273–4400
GUEST QUARTERS SUITE HOTEL.		515 FELLOWSHIP RD. N	MT LAUREL, NJ 08054–	609–778–8999
HAMPTON INN PHILADELPHIA/MT LAUREL.		4000 CRAWFORD PL	MT LAUREL, NJ 08054–	609–778–5535
MCINTOSH INN OF MT LAUREL INC.		1132 RT. 73	MT LAUREL, NJ 08054–	609–234–7194
RAMADA MT LAUREL		555 FELLOWSHIP RD	MT LAUREL, NJ 08054–	609–273–1900
RED ROOF INN #66		503 FELLOWSHIP RD	MT LAUREL, NJ 08054–	609–234–5599
TRAVELODGE HOTEL		1111 RT. 73	MT LAUREL, NJ 08054–	609–234–7000
HORIZON MOTOR INN		401 E. 21ST AVE	N WILDWOOD, NJ 08260–	609–729–2049
ECONO LODGE UNIVERSITY CENTER.		26 US HWY. 1 N	NEW BRUNSWICK, NJ 08901–	908–828–8000
HYATT REGENCY NEW BRUNSWICK.		2 ALBANY ST	NEW BRUNSWICK, NJ 08901–	908–873–1234
COMFORT INN NEWARK		50 PORT ST	NEWARK, NJ 07114–	201–344–1500
COURTYARD BY MARRIOTT NEWARK AIRPORT.		600 RT. 1 & 9 S. AT RT 78	NEWARK, NJ 07114–	201–643–8500
DAYS INN NEWARK AIRPORT		450 US RT. 1 S	NEWARK, NJ 07114–	201–242–0900
HILTON GATEWAY		GATEWAY CENTER RAYMOND BLVD.	NEWARK, NJ 07102–	201–622–5000
NEWARK AIRPORT MARRIOTT HOTEL.		NEWARK INTERNATIONAL AIRPORT.	NEWARK, NJ 07114–	201–623–0006
SUITCASE MOTEL		1500 NEW JERSEY AVE	NORTH WILDWOOD, NJ 08260–.	609–522–7208
PORT O CALL HOTEL	PO BOX 69	1510 BOARDWALK	OCEAN CITY, NJ 08226–	609–399–6812
WATSONS REGENCY SUITES		901 OCEAN AVE	OCEAN CITY, NJ 08226–	609–399–4300
SHAWMONT HOTEL		17 OCEAN AVE	OCEAN GROVE, NJ 07756–	908–776–6965
HOLIDAY INN PARAMUS		90 RT. 17 N	PARAMUS, NJ 07652–	201–843–5400
HOWARD JOHNSON LODGE		383 RT. 17	PARAMUS, NJ 07652–	201–265–8200
RADISSON INN PARAMUS		601 FROM RD	PARAMUS, NJ 07652–	201–262–6900
PARK RIDGE MARRIOTT HOTEL.		300 BRAE BLVD	PARK RIDGE, NJ 07656–	201–307–0800
CONCORD PLACE HOTEL		3535 RT. 46 AT CHERRY HILL RD.	PARSIPPANY, NJ 07054–	201–263–0095
EMBASSY SUITES HOTEL PARSIPPANY.		909 PARSIPPANY BLVD	PARSIPPANY, NJ 07054–	201–334–1440
HOJO INN BY HOWARD JOHNSON.		625 RT 46E	PARSIPPANY, NJ 07054–	201–882–8999
PARSIPPANY HILTON		ONE HILTON CT	PARSIPPANY, NJ 07054–	201–267–7373
RED ROOF INN PARSIPPANY		855 RT. 46	PARSIPPANY, NJ 07054–	201–334–3737
SHERATON TARA HOTEL		199 SMITH RD	PARSIPPANY, NJ 07054–	201–515–2000
DAYS INN ATLANTIC CITY PLEASANTVILLE.		6708 TILTON RD	PLEASANTVILLE, NJ 08232–	609–641–4500
SURFSIDE MOTEL		101 BROADWAY	POINT PLEASANT BEACH, NJ 08742–.	908–899–1227
HYATT REGENCY PRINCETON		102 CARNEGIE CTR. RT. 1	PRINCETON, NJ 08540–6293	609–987–1234

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
PRINCETON MARRIOTT		201 VILLAGE BLVD	PRINCETON, NJ 08540–	609–452–7900
RESIDENCE INN PRINCETON	PO BOX 8388	4225 RT. 1	PRINCETON, NJ 08543–	908–329–9600
GULL ISLAND INN		205 BROADWAY	PT PLEASANT BEACH, NJ 08742–.	908–295–5500
HARBOR LIGHTS INN		301 BROADWAY	PT PLEASANT BEACH, NJ 08742–.	908–295–3440
HOWARD JOHNSON LODGE		1255 RT. 17 S	RAMSEY, NJ 07446–	201–327–4500
WELLESLEY INN		946 RT. 17 N	RAMSEY, NJ 07446–	201–934–9250
GATEWAY MOTOR LODGE		119 ROUTE 202	RARITAN, NJ 08869–	908–722–5400
COURTYARD BY MARRIOTT LINCROFT RED BANK.		225 HALF MILE RD	RED BANK, NJ 07701–	908–530–5552
OYSTER POINT HOTEL		146 BODMAN PL	RED BANK, NJ 07701–	908–530–8200
RIDGEFIELD PARK MOTOR LODGE.		RT. 46 E	RIDGEFIELD PARK, NJ 07660–	201–641–2900
HOLIDAY INN & CONFERENCE CTR.		50 KENNEY PL	SADDLE BROOK, NJ 07662–	201–843–0600
SADDLE BROOK MARRIOTT HOTEL.		GARDEN ST. PKWY. & I–80	SADDLE BROOK, NJ 07662–	201–843–9500
MARK III MOTEL		207 CARTERET AVE	SEASIDE HEIGHTS, NJ 08751–	908–793–4000
DAYS HOTEL SECAUCUS		455 HARMON MEADOW BLVD	SECAUCUS, NJ 07094–	201–617–8888
EMBASSY SUITES SECAUCUS		455 PLAZA DR	SECAUCUS, NJ 07094–	201–864–7300
HAMPTON INN SECAUCUS		250 HARMON MEADOWS BLVD	SECAUCUS, NJ 07094–	201–867–4400
HILTON MEADOWLANDS		2 HARMON PLAZA	SECAUCUS, NJ 07094–	201–348–6900
HOLIDAY INN HARMON MEADOW.		300 PLAZA DR	SECAUCUS, NJ 07094–	201–348–2000
RED ROOF INN #150		15 MEADOWLANDS PKWY	SECAUCUS, NJ 07094–	201–319–1000
SECAUCUS MOTOR LODGE		875 PATERSON PLANK RD.	SECAUCUS, NJ 07094–	201–864–1400
HILTON AT SHORT HILLS		41 JOHN F KENNEDY PKWY	SHORT HILLS, NJ 07078–	201–379–0100
AIRPORT MOTEL		RT. 46 & HUYLER ST	SO HACKENSACK, NJ 07606–	201–440–1690
CONGRESS INN MOTEL		370 RT. 46	SO HACKENSACK, NJ 07606–	201–440–1200
HORIZON MOTEL		325 RT. 46 E	SO HACKENSACK, NJ 07606–	201–440–2112
RESIDENCE INN BY MARRIOTT.		900 MAYS LANDING RD	SOMERS POINT, NJ 08244–	609–927–6400
HOLIDAY INN SOMERSET		195 DAVIDSON AVE	SOMERSET, NJ 08873–	908–356–1700
QUALITY INN SOMERSET		1850 EASTON AVE	SOMERSET, NJ 08873–	908–469–5050
RADISSON HOTEL SOMERSET		200 ATRIUM DR	SOMERSET, NJ 08873–	908–469–2600
SOMERSET MARRIOTT		110 DAVIDSON AVE	SOMERSET, NJ 08873–	908–560–0500
COMFORT INN SOUTH PLAINFIELD.		101 NEW WORLD WAY	SOUTH PLAINFIELD, NJ 07080–.	908–561–4488
SHAMROCK LODGE		414 CENTRAL AVE	SPRING LAKE, NJ 07762–	908–449–9729
HOJO INN		305 RT. 22	SPRINGFIELD, NJ 07081–	201–376–1110
GLENPOINTE MARRIOTT TEANECK.		100 FRANK WEST BURR BLVD	TEANECK, NJ 07666–	201–836–0600
HIGHWAY MOTEL	PO BOX 357	27 CROWN POINT RD	THOROFARE, NJ 08086–0357	609–845–8520
QUALITY INN		101 GROVE RD	THOROFARE, NJ 08086–	609–848–4111
HOLIDAY INN AT TINTON FALLS.		700 HOPE RD	TINTON FALLS, NJ 07724–	908–544–8300
RESIDENCE INN BY MARRIOTT TINTON FALLS.		90 PARK RD	TINTON FALLS, NJ 07724–	908–389–8100
TINTON FALLS COURTYARD BY MARRIOTT.		600 HOPE RD	TINTON FALLS, NJ 07724–	908–389–2100
HOWARD JOHNSON LODGE		955 HOOPER AVE	TOMS RIVER, NJ 08753–	908–244–1000
QUALITY INN		815 RT. 37 W	TOMS RIVER, NJ 08755–	908–341–2400
HAMPTON INN		121 LAUREL OAK RD	VOORHEES, NJ 08043–	609–346–4500
SOMERSET HILLS HOTEL		200 LIBERTY CORNER RD	WARREN, NJ 07059–	908–647–6700
ST CLOUD HOTEL		33 W. WASHINGTON AVE	WASHINGTON, NJ 07882–	908–689–1667
SHERATON INN ATLANTIC CITY WEST.		6821 BLACK HORSE PIKE	WEST ATLANTIC CITY, NJ 08232–.	609–272–0200
COURTYARD BY MARRIOTT HANOVER.		157 RT. 10	WHIPPANY, NJ 07981–	201–887–8700
HANOVER MARRIOTT HOTEL		1401 RT. 10 E	WHIPPANY, NJ 07981–	201–538–8811
New Mexico				
ABIQUIU INN	BOX A	HWY. 84	ABIQUIU, NM 87510–	505–685–4378
ALAMO INN		1400 N. WHITE SANDS BLVD	ALAMOGORDO, NM 88310–	505–437–1000
CLOVIS INN		1020 S. WHITE SANDS	ALAMOGORDO, NM 88310–	505–762–5600
DAYS INN		907 S. WHITE SANDS BLVD	ALAMOGORDO, NM 88310–	505–437–5090
THE TOWNSMAN MOTEL		710 N. WHITE SANDS BLVD	ALAMOGORDO, NM 88310–	505–437–0210
WHITE SANDS INN		1020 S. WHITE SANDS BLVD	ALAMOGORDO, NM 88310–	505–434–4200
ALBUQUERQUE BUDGET INN		2412 CARLISLE NE	ALBUQUERQUE, NM 87110–	505–880–0080
ALBUQUERQUE HILTON HOTEL.		1901 UNIVERSITY BLVD	ALBUQUERQUE, NM 87102–	505–884–2500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ALBUQUERQUE MARRIOTT HOTEL.		2101 LOUISIANA NE	ALBUQUERQUE, NM 87110–	505–881–6800
AMBERLEY SUITE HOTEL		7620 PAN AMERICAN HWY. NE	ALBUQUERQUE, NM 87109–	505–823–1300
BARCELONA COURT ALL SUITE HOTEL.		900 LOUISIANA NE	ALBUQUERQUE, NM 87110–	505–255–5566
BEST WESTERN AIRPORT INN		2400 YALE SE	ALBUQUERQUE, NM 87106–	505–242–7022
BEST WESTERN AMERICAN MOTOR INN.		12999 CENTRAL AVE. NE	ALBUQUERQUE, NM 87101–	505–296–7426
BEST WESTERN FRED HARVEY HOTEL.	PO BOX 9126		ALBUQUERQUE, NM 87119–	505–843–7000
BEST WESTERN WINROCK INN.		18 WINROCK CTR NW	ALBUQUERQUE, NM 87110–	505–883–5252
COMFORT INN MIDTOWN		2015 MENAUL NE	ALBUQUERQUE, NM 87107–	505–881–3210
COURTYARD BY MARRIOTT		1920 YALE SE	ALBUQUERQUE, NM 87106–	505–843–6600
DAYS INN		10321 HOTEL AVE	ALBUQUERQUE, NM 87123–	505–275–0529
DOUBLETREE HOTEL	PO BOX 1927		ALBUQUERQUE, NM 87103–	505–247–3344
ECONOLODGE EAST		13211 CENTRAL AVE. NE	ALBUQUERQUE, NM 87123–	505–292–7600
FAIRFIELD INN BY MARRIOTT .		1760 MENAUL RD. NE	ALBUQUERQUE, NM 87102–	505–889–4000
HAMPTON INN		7433 PAN AMERICAN FRWY NE.	ALBUQUERQUE, NM 87109–	505–344–1555
HOLIDAY INN PYRAMID		5151 SAN FRANCISCO RD. NE	ALBUQUERQUE, NM 87109–	505–821–3333
HORNES' HOWARD JOHNSON EAST.		15 HOTEL CIR	ALBUQUERQUE, NM 87123–	505–296–4852
HOWARD JOHNSON PLAZA HOTEL NORTH.		6000 PAN AMERICAN FRWY NE.	ALBUQUERQUE, NM 87109–	505–821–9451
HYATT REGENCY HOTEL		330 TIJERAS NW	ALBUQUERQUE, NM 87102–	505–842–1234
LA QUINTA MOTOR INN AIRPORT.		2116 YALE BLVD SE	ALBUQUERQUE, NM 87106–	505–243–5500
LA QUINTA MOTOR INN SAN ANTONIO.		5241 SAN ANTONIO NE	ALBUQUERQUE, NM 87109–	505–821–9000
LA QUINTA MOTOR INN SAN MATEO.		2424 SAN MATEO NE	ALBUQUERQUE, NM 87110–	505–884–3581
LE BARON INN		2120 MENUAL BLVD. NE	ALBUQUERQUE, NM 87107–	505–884–0250
MOTEL 1		2001 CANDELARIA NE	ALBUQUERQUE, NM 87107–	505–884–2826
RADISSON INN		1901 UNIVERSITY SE	ALBUQUERQUE, NM 87106–	505–247–0512
RAMADA CLASSIC HOTEL		6815 MENAUL BLVD. NE	ALBUQUERQUE, NM 87110–	505–881–0000
RAMADA INN MARKET CENTER.		25 HOTEL CIR. NE	ALBUQUERQUE, NM 87123–	505–271–1000
RESIDENCE INN BY MARRIOTT.		3300 PROSPECT ST. NE	ALBUQUERQUE, NM 87107–	505–881–2661
SHERATON OLD TOWN INN		800 RIO GRANDE BLVD. NW	ALBUQUERQUE, NM 87104–	505–843–6300
THE VILLAGE LODGE AT INNSBROOK RUIDOSO.		1911 WYOMING BLVD. NE	ALBUQUERQUE, NM 87112–	505–292–6635
TRAVELERS INN		411 MCKNIGHT AVE.	ALBUQUERQUE, NM 87102–	505–242–5228
THE LEGENDS HOTEL		DRAWER B	ANGEL FIRE, NM 87710–	505–377–6401
BEST WESTERN PECOS INN		2209 W. MAIN	ARTESIA, NM 88210–	505–748–3324
ENCHANTMENT LODGE		1800 W. AZTEC BLVD	AZTEC, NM 87410–	505–334–6143
BELEN SUPER 8 MOTEL		428 SOUTH MAIN	BELEN, NM 87002–	505–864–8186
BEST WESTERN MOTEL STEVENS.	PO BOX 580		CARLSBAD, NM 88220–	505–887–2851
CARLSBAD TRAVELODGE SOUTH.		3817 NATIONAL PARKS HWY	CARLSBAD, NM 88220–	505–887–8888
CONTINENTAL INN		3820 NATIONAL PARKS HWY	CARLSBAD, NM 88220–	505–887–0341
HOLIDAY INN		601 S. CANAL ST	CARLSBAD, NM 88220–	505–885–8500
INNKEEPERS OF NEW MEXICO.	PO BOX 1897		CARLSBAD, NM 88220–	505–885–4874
PARK INN INTERNATIONAL	PO BOX 5037		CARLSBAD, NM 88220–	505–887–2861
RODEWAY INN		3804 NATIONAL PARKS HWY	CARLSBAD, NM 88220–	505–887–5535
BRANDING IRON MOTEL	PO BOX 557	W. MAIN ST	CHAMA, NM 87520–	505–756–2162
SPRUCE LODGE	PO BOX 365		CHAMA, NM 87520–	505–756–2593
SUNSET MOTEL		702 S. FIRST ST	CLAYTON, NM 88415–	505–374–2589
THE LODGE AT CLOUD CROFT	PO BOX 497		CLOUDCROFT, NM 88317–	505–682–2566
CLOVIS INN		2912 MABRY	CLOVIS, NM 88101–	505–762–5600
HOLIDAY INN OF CLOVIS		2700 E. MABRY DR	CLOVIS, NM 88101–	505–762–4491
VILLA INN		1001 E. MAIN	CONSEQ. TUCUMCARI, NM 88401–.	505–461–2250
CUBA LODGE	PO BOX 238		CUBA, NM 87103–	505–289–3269
BEST WESTERN MIMBRES VALLEY INN.	PO BOX 1159		DEMING, NM 88030–	505–546–4544
DEMING SUPER 8 MOTEL		1217 W. PINE	DEMING, NM 88031–	505–546–0461
HOLIDAY INN OF DEMING	PO BOX 1138		DEMING, NM 88031–	505–546–2661

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN JICARILLA INN.	PO BOX 233		DULCE, NM 87528–	505–759–3663
BEST WESTERN THE INN		700 SCOTT AVE	FARMINGTON, NM 87401–	505–327–5221
BLUFFVIEW MOTEL		3700 BLOOMFIELD HWY	FARMINGTON, NM 87401–	505–327–6231
COMFORT INN		555 SCOTT AVE	FARMINGTON, NM 87401–	505–325–2626
HOLIDAY INN		600 E. BROADWAY	FARMINGTON, NM 87499–	505–327–9811
LA QUINTA MOTOR INN		675 SCOTT AVE	FARMINGTON, NM 87401–	505–327–4706
BEST WESTERN THE INN		3009 W. 66	GALLUP, NM 87301–	505–722–2221
COMFORT INN		3208 W. HWY. 66	GALLUP, NM 87301–	505–722–0982
DAYS INN WEST		3201 W. HWY. 66	GALLUP, NM 87301–	505–863–5889
RODEWAY INN		2003 W. HWY. 66	GALLUP, NM 87301–	505–863–9385
TRAVELERS INN		3304 W. HWY. 66	GALLUP, NM 87301–	505–722–7765
BEST WESTERN THE INN		1501 E. SANTA FE AVE	GRANTS, NM 87020–	505–287–7901
GRANTS SUPER 8 MOTEL		1604 E. SANTA AVE	GRANTS, NM 87020–	505–287–8811
SANDS MOTEL		112 MCARTHUR DR	GRANTS, NM 87020–	505–287–2996
INNKEEPERS OF NEW MEXICO.		309 N. MARLAND BLVD	HOBBS, NM 88240–	505–397–7171
PECOS RIVER CONFERENCE		STAR RT	ILFELD, NM 87538–	505–421–7018
A DAY'S END LODGE		755 N. VALLEY DR	LAS CRUCES, NM 88005–	505–524–7753
DAYS INN		2600 S. VALLEY DR	LAS CRUCES, NM 88001–	505–526–4441
HAMPTON INN	PO BOX 2736		LAS CRUCES, NM 88004–	505–526–8311
LA QUINTA MOTOR INN		790 AVENIDA DE MESILLA	LAS CRUCES, NM 88005–	505–524–0331
LAS CRUCES HILTON		705 S. TELSHOR BLVD	LAS CRUCES, NM 88001–	505–522–4300
PLAZA SUITES		301 E. UNIVERSITY BLVD	LAS CRUCES, NM 88004–	505–525–5500
ROYAL HOST MOTEL		2146 W. PICACHO	LAS CRUCES, NM 88001–	505–524–8536
SUPER 8 MOTEL EAST		4411 N. MAIN	LAS CRUCES, NM 88001–	505–382–1490
LAS VEGAS SUPER 8 MOTEL		2029 N. HWY. 85	LAS VEGAS, NM 87701–	505–425–5288
PLAZA HOTEL		230 OLD TOWN PLAZA	LAS VEGAS, NM 87701–	505–425–3591
REGAL MOTEL		1809 N. GRAND AVE	LAS VEGAS, NM 87701–	505–454–1456
BEST WESTERN SKIES MOTOR INN.		1303 S. MAIN	LORDSBURG, NM 88045–	505–542–8807
HILLTOP HOUSE HOTEL	PO BOX 250		LOS ALAMOS, NM 87544–	505–662–2441
LOS ALAMOS INN		2201 TRINITY DR	LOS ALAMOS, NM 87544–	505–662–7211
LOS LUNAS COMFORT INN		1711 MAIN ST. SW	LOS LUNAS, NM 87031–	505–865–5100
INN OF THE MOUNTAIN GODS		CARRIZO CANYON RD	MESCALERO, NM 88340–	505–257–5141
MESON DE MESILLA	PO BOX 1212		MESILLA, NM 88046–	505–525–9212
SUPER 8 MOTEL		1805 W. 2ND ST	PORTALES, NM 88130–	505–356–8518
MELODY LANE & TRAVELHOST MOTEL.		136 CANYON RD	RATON, NM 87740–	505–445–3655
CARIBEL CONDOMINIUMS	PO BOX 590		RED RIVER, NM 87558–	505–754–2313
LIFTS WEST CONDOMINIUM RESORT HOTEL.	PO BOX 318		RED RIVER, NM 87558–	505–754–2778
PONDEROSA LODGE	PO BOX 528		RED RIVER, NM 87558–	505–754–2988
RODE INN MOTEL	PO BOX 167		RESERVE, NM 87830–	505–533–6456
BEST WESTERN INN AT RIO RANCHO.		1465 RIO RANCHO DR	RIO RANCHO, NM 87124–	505–892–1700
BELMONT MOTEL		2100 WEST 2ND	ROSWELL, NM 88201–	505–623–4522
BEST WESTERN EL RANCHO PALACIO MOTEL.		2205 N. MAIN	ROSWELL, NM 88201–	505–622–2721
BEST WESTERN SALLY PORT INN.		2000 N. MAIN ST	ROSWELL, NM 88201–	505–622–6430
BUDGET INN WEST		2200 W. 2ND	ROSWELL, NM 88201–	505–623–3811
COMFORT INN		2803 W. 2ND ST	ROSWELL, NM 88201–	505–623–9440
DAYS INN		1310 N. MAIN ST	ROSWELL, NM 88201–	505–623–4021
FRONTIER MOTEL		3010 N. MAIN ST	ROSWELL, NM 88201–	505–622–1400
BEST WESTERN SWISS CHALET INN.		1451 MECHEM DR	RUIDOSO, NM 88345–	505–258–3333
CARRIZO LODGE	PO DRAWER A		RUIDOSO, NM 88345–	505–257–9131
SUPER 8 MOTEL	PO BOX 2600		RUIDOSO, NM 88345–	505–378–8180
ALEXANDER'S INN		529 E. PALACE AVE	SANTA FE, NM 87501–	505–986–1431
BEST WESTERN INN AT LORETTO.		211 OLD SANTA FE TRAIL	SANTA FE, NM 87501–	505–988–5531
CACTUS LODGE MOTEL		2864 CERRILLOS RD	SANTA FE, NM 87501–	505–471–7699
EL PARADERO BED & BREAKFAST.		220 W. MANHATTAN	SANTA FE, NM 87501–	505–986–1177
ELDORADO HOTEL		309 W. SAN FRANCISCO ST	SANTA FE, NM 87501–	505–988–4455
FORT MARCY COMPOUND CONDOMINIUMS.		320 ARTIST RD.	SANTA FE, NM 87501–	505–982–9480
HILTON OF SANTA FE	PO BOX 2387		SANTA FE, NM 87504–	505–988–2811
HOTEL PLAZA REAL		125 WASHINGTON AVE	SANTA FE, NM 87501–	505–988–4900
HOTEL SANTA FE		1501 PASEO DE PERALTA	SANTA FE, NM 87501–	505–982–1200
INN OF THE ANASAZI		113 WASHINGTON AVE	SANTA FE, NM 87501–	505–988–3030

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LA QUINTA MOTOR INN		4298 CERRILLOS RD	SANTA FE, NM 87501–	505–471–1142
LUXURY INN		3752 CERRILLOS RD	SANTA FE, NM 87501–	505–473–0567
PARK INN LIMITED		2900 CERILLOS RD	SANTA FE, NM 87501–	505–473–4281
RAMADA INN		2907 CERRILLOS RD	SANTA FE, NM 87501–	505–471–3000
RANCHO ENCANTADO	RT 4 BOX 57C		SANTA FE, NM 87501–	505–982–3537
RESIDENCE INN BY MARRIOTT.	PO BOX 5248		SANTA FE, NM 87502–	505–988–7300
SANTA FE BUDGET INN		725 CERRILLOS RD	SANTA FE, NM 87501–	505–982–5952
TERRITORIAL INN		215 WASHINGTON AVE	SANTA FE, NM 87501–	505–989–7737
THE BISHOP'S LODGE	PO BOX 2367		SANTA FE, NM 87501–	505–983–6377
SAN MIGUEL MOTEL		916 CALIFORNIA AVE. N	SOCORRO, NM 87801–	505–835–0211
SUPER 8 MOTEL		1121 FRONTAGE RD. NW	SOCORRO, NM 87801–	505–835–4526
HOLIDAY INN DON FERNANDO DE TAOS.	PO BOX V		TAOS, NM 87571–	505–758–4444
QUALITY INN OF TAOS	PO BOX 2319		TAOS, NM 87571–	505–758–2200
RANCHO RAMADA TAOS	PO BOX 6257		TAOS, NM 87571–	505–758–2900
SAGEBRUSH INN	PO BOX 557		TAOS, NM 87571–	505–758–2254
SONTERRA CONDOMINIUMS	PO BOX 5244		TAOS, NM 87571–	505–758–7999
TAOS SUPER 8 MOTEL	PO BOX 6008	1347 S. SANTA FE RD	TAOS, NM 87571–	505–758–1068
BEST WESTERN HOT SPRINGS MOTOR INN.		2270 N. DATE ST	TRUTH OR CONSEQ., NM 87901–.	505–894–5555
BANDELIER INN	PO BOX 250	STATE ROAD 4	WHITE ROCK, NM 87544–	505–672–3836
BEST WESTERN CAVERN INN	PO BOX 128		WHITE'S CITY, NM 88268–	505–785–2291
Nevada				
MEADOW LANE MOTEL		US HWY. #93	ALAMO, NV 89001–	702–725–3371
HOLIDAY INN EXPRESS		521 E. FRONT ST	BATTLE MOUNTAIN, NV 89820–.	702–635–5880
BURRO INN		HWY. 95 S	BEATTY, NV 89003–	702–553–2445
EXCHANGE CLUB OF BEATTY	PO BOX 97	604 MAIN ST	BEATTY, NV 89003–	702–553–2333
STARVIEW MOTEL		1017 NV HWY	BOULDER CITY, NV 89005–	702–293–1656
CARSON MOTOR LODGE		1421 N. CARSON	CARSON CITY, NV 89701–	702–882–3572
CARSON STATION HOTEL CASINO.		900 S. CARSON ST	CARSON CITY, NV 89701–	702–883–0900
DAYS INN CARSON CITY		3103 N. CARSON HWY	CARSON CITY, NV 89406–	702–423–7859
CAL NEVA LODGE RESORT HOTEL SPA & CASINO.	PO BOX 368	#2 STATELINE RD.	CRYSTAL BAY, NV 39402–	702–832–4000
GOLD HILL HOTEL	PO BOX 304	HWY. 342 MAIN ST	DOUG MCQUIDE, NV 89440–	702–847–0111
RODEWAY INN		1349 IDAHO ST	ELKO, NV 89801–	702–738–7000
COOPER QUEEN HOTEL AND CASINO.		805 E. 7TH ST	ELY, NV 89301–	702–289–4884
SUNDOWN LODGE INC.	PO BOX 324	MAIN ST	EUREKA, NV 89316–	702–237–5334
MAY INN FALLON		60 ALLEN RD	FALLON, NV 89406–	702–423–7859
TOPAZ LODGE & CASINO		1979 US 395 S	GARDNERVILLE, NV 89410–	702–266–3338
GOLD HILL HOTEL		HWY. 342 MAIN ST	GOLD HILL, NV 89440–	702–847–0111
HYATT REGENCY LAKE TAHOE.		111 COUNTRY CLUB	INCLINE VILLAGE, NV 89850–3239.	702–832–1243
INN AT INCLINE CONDOMINIUMS.		1003 LAKE BLUE	INCLINE VILLAGE, NV 89451–	702–831–1052
PRIMADONNA RESORT AND CASINO.	PO BOX 19129	I–15 S	JEAN, NV 89109–	702–382–1212
WHISKEY PETE'S HOTEL AND CASINO.	PO BOX 19129	I–15 S	JEAN, NV 89109–	702–382–1212
AIRPORT INN		5100 PARADISE RD	LAS VEGAS, NV 89119–	702–798–2777
BARCELONA HOTEL CASINO		5011 E. CRAIG RD	LAS VEGAS, NV 89115–	702–644–6300
BEST WESTERN MARDI GRAS INN.		3500 PARADISE ROAD	LAS VEGAS, NV 89109–	702–731–2020
BEST WESTERN MCCARRAN INN.		4970 PARADISE RD	LAS VEGAS, NV 89119–	702–798–5530
BLAIR HOUSE HOTEL		344 E. DESERT INN RD	LAS VEGAS, NV 89109–	702–792–2222
CAL DAN PRTNRS LTD PRNTR. DBA TOWN HALL HOTEL.		4155 KOVAL LN	LAS VEGAS, NV 89109–	702–731–2111
CALIFORNIA HOTEL & CASINO		12 ODEN	LAS VEGAS, NV 89101–	702–385–1222
CEASAR'S PALACE		3570 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–731–7368
CIRCUS CIRCUS MANOR		2880 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–734–0410
CIRCUS CIRCUS SKYRISE		2880 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–734–0410
CIRCUS CIRCUS TOWERS		2880 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–734–0410
CONVENTION INN HOTEL		735 E. DESERT INN RD	LAS VEGAS, NV 89109–	702–737–1555
COURTYARD BY MARRIOTT LAS VEGAS.		3275 PARADISE RD	LAS VEGAS, NV 89109–	702–791–3600
FAIRFIELD INN BY MARRIOTT		3850 PARADISE RD	LAS VEGAS, NV 89109–	702–791–0899

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Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
FITZGERALDS CASINO HOTEL		301 E. FREMONT ST	LAS VEGAS, NV 89101–	702–388–2400
FLAMINGO HILTON LAS VEGAS.		3555 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–733–3320
FOUR QUEENS HOTEL CASINO.		202 E. FREMONT ST	LAS VEGAS, NV 89101–	702–385–4011
GLASS POOL INN		4613 LAS VEGAS BLVD. S	LAS VEGAS, NV 89119–	702–739–8636
GOLDEN NUGGET HOTEL AND CASINO.		129 E. FREMONT ST	LAS VEGAS, NV 89101–	702–385–7111
HARRAH'S LAS VEGAS CASINO HOTEL.		3475 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–369–5000
HOLIDAY INN		325 E. FLAMINGO RD	LAS VEGAS, NV 89109–	702–732–9100
HOLIDAY INN EXPRESS		5265 INDUSTRIAL	LAS VEGAS, NV 89118–	702–369–1988
HOWARD JOHNSON PLAZA SUITE HOTEL.		4255 S. PARADISE RD	LAS VEGAS, NV 89109–	702–369–4400
IMPERIAL PALACE HOTEL & CASINO.		3535 LAS BLVD. S	LAS VEGAS, NV 89109–	702–731–3311
LA QUINTA MOTOR INN 4536		3782 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–739–7457
LAS VEGAS CLUB HOTEL & CASINO.		18 E. FREMONT ST	LAS VEGAS, NV 89101–	702–385–1664
LAS VEGAS HILTON		3000 PARADISE RD	LAS VEGAS, NV 89109–	702–732–5111
RAMADA HOTEL SAN REMO		115 E. TROPICANA AVE	LAS VEGAS, NV 89109–7304	702–739–9000
RESIDENCE INN BY MARRIOTT LAS VEGAS.		3225 PARADISE RD	LAS VEGAS, NV 89109–	702–796–9300
RIO SUITE HOTEL & CASINO		3700 W. FLAMINGO RD	LAS VEGAS, NV 89103–	702–252–7777
SHEFFIELD INN		3970 PARADISE RD	LAS VEGAS, NV 89109–	702–796–9000
SILVER SANDS MOTEL		4617 LAS VEGAS BLVD. S	LAS VEGAS, NV 89119–	702–736–2545
SOMERSET HOUSE MOTEL		294 CONVENTION CENTER DR	LAS VEGAS, NV 89109–	370–735–4411
SPORTSMANS MANOR		5660 BOULDES HWY	LAS VEGAS, NV 89122–	702–458–7071
SUPER 8 MOTEL		4435 LAS VEGAS BLVD. N	LAS VEGAS, NV 89115–	702–644–5666
THE MIRAGE		3400 LAS VEGAS BLVD. S	LAS VEGAS, NV 89109–	702–791–7111
WARREN MOTEL APTS		3965 LAS VEGAS BLVD. S	LAS VEGAS, NV 89119–	702–736–6235
COLORADO BELLE HOTEL & CASINO.		2100 S. CASINO DR	LAUGHLIN, NV 89028–	702–298–4000
EDGEWATER HOTEL AND CASINO.		2020 CASINO DR	LAUGHLIN, NV 89029–	702–298–2453
FLAMINGO HILTON LAUGHLIN		1900 S. CASINO DR	LAUGHLIN, NV 89028–	702–298–5111
GOLD RIVER GAMBLING HALL RESORT.		2700 S. CASINO DR	LAUGHLIN, NV 89029–	702–298–2242
HARRAH'S CASINO HOTEL LAUGHLIN.	PO BOX 10097		LAUGHLIN, NV 89028–	702–298–6826
RAMADA EXPRESS HOTEL & CASINO.		2121 CASINO DR	LAUGHLIN, NV 89029–	702–298–4200
BEST WESTERN STURGEON'S MOTEL REST & CASINO.	PO BOX 56	1420 CORNELL AVE	LOVELOCK, NV 89419–	702–273–2971
SUPER 10 MOTEL	PO BOX 819	1390 CORNELL AVE	LOVELOCK, NV 89419–	702–273–2224
PEPPERMILL RESORT HOTEL AND CASINO.		1134 MESQUITE BLVD	MESQUITE, NV 89024–	702–346–5232
VIRGIN RIVER HOTEL & CASINO.		I–15 AND N. MESQUITE BLVD	MESQUITE, NV 89024–	702–346–7777
CARSON VALLEY INN		1627 HWY. 395	MINDEN, NV 89423–	702–782–9711
MINDEN BEST WESTERN		1795 IRON WOOD	MINDEN, NV 89423–	
PAHRUMP STATION DAYS INN	PO BOX 38	2021 E. LOOP RD	PAHRUMP, NV 89041–	702–727–5100
CIRCUS CIRCUS HOTEL CASINO.		516 WEST ST	RENO, NV 89503–	702–329–0711
CIRCUS CIRCUS HOTEL CASINO.		500 N. SIERRA ST	RENO, NV 89503–	702–329–0711
FLAMINGO HILTON RENO		255 N. SIERRA ST	RENO, NV 89501–	702–785–7020
GOLDEN ROAD MOTOR INN INC.		3800 S. VIRGINIA ST	RENO, NV 89502–	702–825–4700
HOLIDAY INN CONVENTION CENTER.		5851 S. VIRGINIA ST	RENO, NV 89502–	702–825–2940
HOLIDAY INN DOWNTOWN RENO.		1000 E. 6TH ST	RENO, NV 89512–	702–786–5151
JUNIPER COURT HOTEL		320 EVANS AVE	RENO, NV 89501–	702–329–7002
LA QUINTA MOTOR INN		4001 MARKET ST	RENO, NV 89502–	702–348–610
PEPPERMILL HOTEL & CASINO.		2707 S. VIRGINIA	RENO, NV 89502–	702–826–2121
RENO HILTON		2500 E. SECOND ST	RENO, NV 89595–	702–789–2000
RENO RAMADA HOTEL CASINO.		200 E. 6TH ST	RENO, NV 89512–	702–788–2000
RODEWAY INN		2050 MARKET ST	RENO, NV 89502–	702–786–2500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SANDS REGENCY HOTEL & CASINO.	.....	345 N. ARLINGTON AVE	RENO, NV 89501–	702–348–2200
VIRGINIAN HOTEL & CASINO ..	.....	140 N. VIRGINIA ST	RENO, NV 89501–	702–329–4564
EL REY LODGE	.....	430 S. HOBSON AT HWY. 95 ...	SEARCHLIGHT, NV 89046–	702–297–1144
SILVER CLUB HOTEL CASINO .	.....	1040 C ST	SPARKS, NV 89431–	702–358–4771
WESTERN VILLAGE INN & CASINO.	.....	815 NICHOLS	SPARKS, NV 89431–	702–331–1069
LAKE TAHOE HORIZON CASINO RESORT.	.....	HWY. 50	STATELINE, NV 89449–	702–588–6211
JIM BUTLER MOTEL INC	.....	100 S. MAIN ST	TONOPAH, NV 89049–	702–482–3577
THE STATION HOUSE AND CASINO.	PO BOX 1351	1100 ERIE MAIN ST	TONOPAH, NV 89049–	702–482–9777
CHOLLAR MANSON	PO BOX 880	.....	VIRGINIA CITY, NV	.....
SILVER SMITH CASINO RESORT.	.....	100 WENDOVER BLVD	WENDOVER, NV 89883–	702–664–2231
LAVILLA MOTEL	.....	244 W. 4TH ST	WINNEMUCCA, NV 89445–	702–623–2334
MODEL T MOTEL	.....	1122 WINNEMUCCA BLVD	WINNEMUCCA, NV 89445–	702–623–0222
MOTEL 6 #213	.....	1600 W. WINNEMUCCA BLVD ..	WINNEMUCCA, NV 89445–	702–623–1180
CASINO WEST MOTEL	.....	11 N. MAIN ST	YERINGTON, NV 89447–	702–463–3144
New York				
ALBANY INN	.....	1579 CENTRAL AVE	ALBANY, NY 12205–	518–869–8471
ALBANY MARRIOTT	.....	189 WOLF RD	ALBANY, NY 12205–	518–458–8444
AMBASSADOR MOTOR INN	.....	1600 CENTRAL AVE	ALBANY, NY 12205–	518–456–8982
ECONO LODGE	.....	1632 CENTRAL AVE	ALBANY, NY 12205–	518–456–6811
HAMPTON INN	.....	10 ULENSKI DR	ALBANY, NY 12205–	518–438–2822
HOLIDAY INN TURF ON WOLF ROAD.	.....	205 WOLF RD	ALBANY, NY 12205–	518–458–7250
HOWARD JOHNSON HOTEL	.....	1614 CENTRAL AVE	ALBANY, NY 12205–	518–869–0261
HOWARD JOHNSON LODGE	.....	416 SOUTHERN BLVD	ALBANY, NY 12209–	518–462–6555
NORTHWAY INN	.....	1517 CENTRAL AVE	ALBANY, NY 12205–	518–869–0277
RED ROOF #112	.....	188 WOLF RD	ALBANY, NY 12205–	518–459–1971
SHERATON INN ALBANY AIRPORT.	.....	200 WOLF RD	ALBANY, NY 12205–	518–458–1000
DOLLINGER'S MOTEL	.....	213 S. MAIN ST	ALBION, NY 14411–	716–589–5541
NEWPORT LANDING MOTEL ...	.....	438 W. AVE	ALBION, NY 14411–	716–589–6308
NORTH STAR MOTEL	PO BOX 605	RT 12	ALEXANDRIA BAY, NY 13607– .	315–482–9332
OTTER CREEK INN	.....	2 CROSSMON ST. EXTENSION	ALEXANDRIA BAY, NY 13607– .	315–482–5248
RIVEREDGE RESORT HOTEL ..	.....	17 HOLLAND ST	ALEXANDRIA BAY, NY 13607– .	315–482–9917
SAXON INN	.....	ONE PARK ST	ALFRED, NY 14802–	607–871–2600
HERMITAGE AT NAPEAGUE	.....	MONTAUK HWY. AND NAVAJO LN.	AMAGANSETT, NY 11930–	516–267–6151
MILL GARTH COUNTRY INN	.....	23 WINDMILL LN	AMAGANSETT, NY 11990–	516–264–3757
OCEAN DUNES	.....	BLUFF RD	AMAGANSETT, NY 11930–	516–267–8121
WINWARD SHORES	.....	MONTAUK HWY	AMAGANSETT, NY 11930–	516–267–8500
TROUTBECK	.....	40 SPINGARN RD	AMENIA, NY 12501–	914–372–9681
WILLOWS MOTEL	.....	RT. 343	AMENIA, NY 12501–	914–373–8090
BUFFALO MARRIOTT	.....	1340 MILLERSPORT HWY	AMHERST, NY 14221–	716–689–5900
HAMPTON INN BUFFALO AMHERST.	.....	10 FLINT RD	AMHERST, NY 14226–	716–689–4414
HOLIDAY INN BUFFALO AMHERST.	.....	1881 NIAGARA FALLS BLVD	AMHERST, NY 14228–	716–691–8181
RED ROOF #104	.....	42 FLINT RD	AMHERST, NY 14226–	716–689–7474
SUPER 8 MOTEL OF AMHERST	.....	1 FLINT RD	AMHERST, NY 14226–	716–688–0811
SUPER 8 MOTEL	.....	RT. 30 S	AMSTERDAM, NY 12010–	518–843–5888
DREAMERS COVE MOTEL	.....	PECONIC BAY BLVD. & BAY AVE.	AQUEBOGUE, NY 11931–	516–727–3212
ARDEN HOMESTEAD	.....	.....	ARDEN, NY 10910–	914–351–5181
DAYS INN AUBURN	.....	37 WILLIAM ST	AUBURN, NY 13021–	315–252–7567
SUPER 8 MOTEL OF AUBURN .	.....	9 MCMASTER ST	AUBURN, NY 13021–	315–253–8886
AVON INN	.....	55 E. MAIN ST	AVON, NY 14414–	716–226–8181
COCCA'S MOTEL	.....	2624 RT. 9	BALLSTON SPA, NY 12020–	518–581–1033
SHERATON INN	.....	8250 PARK RD	BATAVIA, NY 14020–	716–344–2100
TREADWAY INN OF BATAVIA ..	.....	8204 PARK RD	BATAVIA, NY 14020–	716–343–1000
OLD NATIONAL HOTEL	.....	13 E. STEUBEN ST	BATH, NY 14810–	607–776–4104
SUPER 8 MOTEL OF BATH	.....	333 W. MORRIS ST	BATH, NY 14810–	607–776–2187
SWISS CHALET MOTEL	.....	12 W. WASHINGTON ST	BATH, NY 14810–	607–776–7800
CAPRI BAYSHORE MOTOR INN	.....	300 BAYSHORE RD	BAY SHORE, NY 11706–	516–666–7275
FIRE ISLAND HOTEL AND RESORT.	.....	20 WEST MAIN STREET	BAYSHORE, NY 11706–	516–583–8000
LAKE CHAUTAUQUA LUTHERAN CAMP RETREAT CNTR.	PO BOX 260	RD. #1	BEMUS POINT, NY 14712–	716–386–4125

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BANNER MOTEL		1169 FRONT ST	BINGHAMTON, NY 13905–	607–723–8211
BINGHAMTON REGENCY BEST WESTERN.		225 WATER ST. 1 SUBURBAN .	BINGHAMTON, NY 13901–	607–722–7575
BINGHAMTON SUPER 8 MOTEL.		650 FRONT ST	BINGHAMTON, NY 13905–	607–773–8111
BROOME COUNTY YMCA		61 SUSQUEHANNA ST	BINGHAMTON, NY 13901–	607–772–0560
DAYS INN BINGHAMTON		1000 FRONT ST	BINGHAMTON, NY 13905–	607–724–3297
FOOTHILLS MOTEL		591 UPPER COURT ST	BINGHAMTON, NY 13904–	607–775–1515
HOJO INN BINGHAMTON		700 FRONT ST	BINGHAMTON, NY 13905–	607–724–1341
RAMADA INN		65 FRONT ST	BINGHAMTON, NY 13905–	607–724–2412
THRU WAY MOTEL		399 COURT ST	BINGHAMTON, NY 13904–	607–724–2401
GLEASON'S GATE II MOTEL	PO BOX 348E	RD #1	BLACK RIVER, NY 13612–	315–773–4135
BUFFALO SOUTH MOTOR INN		4344 MILESTRIP RD	BLASDELL, NY 14219–	716–825–7530
MCKINLEY PARK INN		S. 3950 MCKINLEY PKWY	BLASDELL, NY 14219–	716–648–5700
EAGLE'S NEST			BLOOMINGBURG, NY 12721–	914–733–4561
OMNI SAGAMORE RESORT		SAGAMORE RD	BOLTON LANDING, NY 12814–	518–644–9400
SAGAMORE RESORT HOTEL		SAGAMORE RD	BOLTON LANDING, NY 12814–	518–644–9400
RED ROOF INN		146 MAPLE DR	BOWMANSVILLE, NY 14026–	716–633–1100
BEL AIR MOTEL		8961 RT. 11	BREWERTON, NY 13029–	315–699–5991
BUFFALO HILTON		120 CHURCH ST	BUFFALO, NY 14202–	716–845–5100
COMFORT SUITES BUFFALO AIRPORT.		901 DICK RD	BUFFALO, NY 14225–	716–633–6000
DAYS INN OF BUFFALO		4345 GENESEE ST	BUFFALO, NY 14225–	716–631–0800
HOLIDAY INN BUFFALO DOWNTOWN.		620 DELAWARE AVE	BUFFALO, NY 14202–	716–886–2121
HOLIDAY INN BUFFALO GATEWAY.		601 DINGEMS ST	BUFFALO, NY 14206–	716–869–2900
HYATT REGENCY BUFFALO		2 FOUNTAIN PLAZA	BUFFALO, NY 14202–	716–856–1234
LORD AMHERST MOTOR HOTEL.		5000 MAIN STREET	BUFFALO, NY 14226–	716–839–2200
SHERATON INN BUFFALO AIRPORT.		2040 WALDEN AVE	BUFFALO, NY 14225–	716–681–2400
WELLESLEY INN		4630 GENESEE ST	BUFFALO, NY 14225–	716–631–8866
ESSEX MICROTEL LERAY		8000 VIRGINIA SMITH DR	CALCIUM, NY 13616–	315–629–5000
BUDGET LODGE HERITAGE MOTOR INN.		4360 LAKESHORE DR	CANANDAIGUA, NY 14424–	716–394–2800
CAMPUS LODGE MOTOR INN		4341 LAKESHORE DR	CANANDAIGUA, NY 14424–	716–394–1250
ECONO LODGE MUAR LAKES		170 EASTERN BLVD	CANANDAIGUA, NY 14424–	716–394–9000
ONANDA PARK		W. LAKE RD	CANANDAIGUA, NY 14424–	716–396–2252
SHERATON CANANDAIGUA INN.		770 S. MAIN ST	CANANDAIGUA, NY 14424–	716–394–7800
CANASTOTA DAYSTOP		N. PETERBORO ST	CANASTOTA, NY 13032–	315–697–3309
MIDWAY MOTEL	PO BOX 44	RT. 5	CANASTOTA, NY 13032–	516–697–7928
GLEN IRIS INN		7 LETCHWORTH STATE PARK	CASTILE, NY 14427–	716–493–2622
CATSKILL MOTOR LODGE		RT. 23 B	CATSKILL, NY 12414–	518–943–5800
FRIAR TUCK INN	PO BOX 184	RD #1	CATSKILL, NY 12414–	518–678–2271
BRAE LOCH INN		5 ALBANY ST	CAZENOVIA, NY 13035–	315–655–3431
CAZENOVIA MOTEL		2364–2392 RT. 20 E	CAZENOVIA, NY 13035–	315–655–9101
CHALET MOTOR INN		23 CENTERSHORE RD. & RT. 25A.	CENTERPORT, NY 11721–	516–757–4600
CRABTREE'S KITTLE HOUSE		11 KITTLE RD	CHAPPAQUA, NY 10514–	914–666–8044
MAPLE INN	PO BOX 46	8 BOWMAN AVE	CHAUTAUQUA, NY 14722–	716–357–4583
SUMMER HOUSE INN	PO BOX 43	22 PECK ST	CHAUTAUQUA, NY 14722–	716–357–2101
UNITED METHODIST MISSIONARY VACATION HOME.	PO BOX 997	S. LAKE DR	CHAUTAUQUA, NY 14722–	716–357–9544
BUFFALO AIRPORT HOLIDAY INN.		4600 GENESEE ST	CHEEKTOWAGA, NY 14225–	716–634–6989
QUALITY INN		4217 GENESEE ST	CHEEKTOWAGA, NY 14225–	716–633–5500
BALSAM HOUSE		ATATEKA DR. FRIENDS LAKE	CHESTERTOWN, NY 12817–	518–494–2828
FRIENDS LAKE INN		FRIENDS LAKE RD	CHESTERTOWN, NY 12817–	518–494–7840
LODGE MOTEL		RT. 5 & 13	CHITTENANGO, NY 13037–	315–687–5009
FROST VALLEY YMCA		HC 55 FROST VALLEY RD	CLARYVILLE, NY 12725–	914–985–2291
BERTRAND'S MOTEL		229 JAMES ST	CLAYTON, NY 13624–	315–686–3641
HAMPTON INN ALBANY LATHAM.		981 NEW LOUDON RD	COHOES, NY 12047–	518–785–0000
ALL SEASONS MOTOR LODGE		1126 JERICHO TNPK	COMMACK, NY 11725–	516–864–3500
HAMPTON INN		680 COMMACK RD	COMMACK, NY 11725–	516–462–5700
COOPER INN		MAIN AND CHESTNUT STS	COOPERSTOWN, NY 13326–	607–547–9931
COOPERSTOWN MOTEL		CHESTNUT AND BEAVER STS	COOPERSTOWN, NY 13326–	607–547–2301
LAKE FRONT MOTEL		10 FAIR ST	COOPERSTOWN, NY 13326–	607–547–9511
LAKE N PINES MOTEL INC	PO BOX 784	RD. #2	COOPERSTOWN, NY 13326–	607–547–2790
OTESAGA HOTEL		LAKE ST	COOPERSTOWN, NY 13326–	607–547–9931

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
THE INN AT COOPERSTOWN ..	.....	16 CHESTNUT ST	COOPERSTOWN, NY 13326– ...	607–547–5758
ECONO LODGE DARIEN LAKES.	.....	8493 ALEGHENS RD	CORFU, NY 14036–	716–599–3040
COMFORT INN	.....	66 W. PULTENEY ST	CORNING, NY 14830–	607–962–1515
CORNING DAYS INN	.....	23 RIVERSIDE DR	CORNING, NY 14830–	607–936–9370
CORNING HILTON INN	.....	125 DENISON PKWY. E	CORNING, NY 14830–	607–962–5000
COMFORT INN HOTEL	.....	2½ LOCUST AVE	CORTLAND, NY 13045–	607–753–7721
SUPER 8 MOTEL	.....	188 CLINTON AVE	CORTLAND, NY 13045–	607–756–5522
ROCKING DUCK INN	.....	28 GENESEE PKWY	CUBA, NY 14727–	716–968–3335
DEWITT INN	.....	3400 ERIE BLVD. E	DEWITT, NY 13214–	315–446–3300
ECONO LODGE	.....	310 LAKE SHORE DR. W	DUNKIRK, NY 14048–	716–366–2200
QUALITY INN VINEYARD	.....	3929 VINEYARD DR	DUNKIRK, NY 14048–	716–366–4400
SHERATON HARBORFRONT INN.	.....	30 LAKE SHORE DR. E	DUNKIRK, NY 14048–	716–366–8350
WAYBACK INN	.....	BIG MOOSE RD	EAGLE BAY, NY 13331–	315–357–6000
HOLIDAY INN CROWNE PLAZA LAGUARDIA AIRPORT.	.....	104–04 DITMARS BLVD	EAST ELMHURST, NY 11369– ..	718–457–6300
LAGUARDIA MARRIOTT	.....	102–05 DITMARS BLVD	EAST ELMHURST, NY 11369– ..	718–565–8900
SUSSE CHALET	BOX 103	ROAD #2 TROY RD	EAST GREENBUSH, NY 12061–	518–477–7984
1770 HOUSE	.....	143 MAIN ST	EAST HAMPTON, NY 11937– ...	516–324–1770
COUNTY COTTAGE INN AT EAST HAMPTON PT.	.....	295 THREE MILE HARBOR RD	EAST HAMPTON, NY 11937– ...	516–324–9191
DUTCH MOTEL	.....	488 MONTAUK HWY	EAST HAMPTON, NY 11937– ...	516–324–4550
EAST HAMPTON HOUSE	.....	226 PANTIGO RD	EAST HAMPTON, NY 11937– ...	516–324–4300
SHADY PINES	PO BOX 1357	.....	EAST HAMPTON, NY 11937– ...	516–537–1037
BLUE DOLPHIN MOTEL	.....	MAIN RD	EAST MARION, NY 11939–	516–477–0907
MARINE HAMPTON OCEAN RESORT.	.....	148 DUNE RD	EAST QUOGUE, NY 11942–	516–653–5714
EMBASSY SUITES SYRACUSE	.....	6646 OLD COLLAMER RD	EAST SYRACUSE, NY 13057– ..	315–446–3200
FAIRFIELD INN	.....	6611 OLD COLLAMER RD	EAST SYRACUSE, NY 13057– ..	315–432–8333
HAMPTON INN SYRACUSE	.....	6605 OLD COLLAMER RD	EAST SYRACUSE, NY 13057– ..	315–463–6443
HOLIDAY INN	.....	COLLEGE DR. AND COURT ST	EAST SYRACUSE, NY 13057– ..	315–437–2761
RESIDENCE INN SYRACUSE ...	.....	6420 YORKTOWN CIR	EAST SYRACUSE, NY 13057– ..	315–432–4488
SYRACUSE MARRIOTT	.....	6302 CARRIER PKWY	EAST SYRACUSE, NY 13057– ..	315–432–0200
POINT LOOKOUT MOUNTAIN INN.	PO BOX 33	RT. 23	EAST WINDHAM, NY 12439–	518–734–3381
COACHMAN MOTOR LODGE ...	.....	908 PENNA AVE	ELMIRA, NY 14904–	607–733–5526
ECONO LODGE	.....	1339 RT. 64	ELMIRA, NY 14903–	607–739–2000
HOLIDAY INN ELMIRA	.....	ONE HOLIDAY PLAZA E. WATER ST.	ELMIRA, NY 14901–	607–734–4211
RED JACKET MOTEL	PO BOX 489	RT. 17	ELMIRA, NY 14902–	607–734–1616
ELMSFORD MOTEL	.....	19 TARRYTOWN RD	ELMSFORD, NY 10523–	914–592–5300
RAMADA INN	.....	540 SAW MILL RIVER RD	ELMSFORD, NY 10523–	914–592–3300
SAW MILL RIVER MOTEL	.....	25 VALLEY AVE	ELMSFORD, NY 10523–	914–592–7500
EXECUTIVE INN HOTEL AND CONFERENCE CENTER.	.....	1 DELAWARE AVE	ENDICOTT, NY 13760–	607–754–7570
ENDWELL MOTEL	.....	3211 E. MAIN ST	ENDWELL, NY 13760–	607–748–7388
KINGS INN	.....	2603 E. MAIN ST	ENDWELL, NY 13760–	607–754–8020
NORTH STREET MOTOR LODGE.	.....	2100 N. ST	ENDWELL, NY 13760–	607–754–8258
LODGE AT WOODCLIFF	.....	199 WOODCLIFF DR	FAIRPORT, NY 14450–	716–381–4000
COURTYARD BY MARRIOTT FISHKILL.	.....	WESTAGE BUSINESS CENTER DR.	FISHKILL, NY 12524–	914–897–2400
RESIDENCE INN BY MARRIOTT.	.....	2481 RT. 9	FISHKILL, NY 12524–	914–896–5210
WELLESLEY INN	.....	2477 RT. 9	FISHKILL, NY 12524–	914–896–4995
FLORAL PARK MOTOR LODGE	.....	30 JERICHO TNPK	FLORAL PARK, NY 11001–	516–775–7777
RIOSLYN CLAREMONT HOTEL	.....	1221 OLD NORTHERN BLVD	FLUSHING, NY 11354–	516–625–2700
SHERATON LA GUARDIA EAST HOTEL.	.....	135–20 39TH AVE	FLUSHING, NY 11354–	718–460–6666
MAJOR LEAGUE MOTOR INN ..	PO BOX 141	RT. 28	FLY CREEK, NY 13337–	607–547–2266
FREEPORT MOTOR INN AND BOATEL.	.....	445 S. MAIN ST	FREEPORT, NY 11520–	516–623–9100
FULTON MOTOR LODGE	.....	163 S. FIRST ST	FULTON, NY 13069–	315–598–6100
MINI MOTEL	PO BOX 160	RR. #8	FULTON, NY 13069–	315–592–7238
QUALITY INN RIVERSIDE	.....	930 S. FIRST ST	FULTON, NY 13069–	315–593–2444
GENEVA ON THE LAKE	.....	RT. 14 S. 1001 LOCHLAND RD	GENEVA, NY 14456–	315–789–7190
ECONO LODGE	.....	29 AVIATION RD	GLENS FALLS, NY 12801–	518–793–3491
LANDMARK MOTOR INN	PO BOX 376	.....	GLENS FALLS, NY 12801–	518–793–3441
SUSSE CHALET HOTEL	.....	BIG BOOM RD	GLENS FALLS, NY 12804–	518–793–8891
CLEARVIEW MOTEL	.....	RT. 11	GOUVERNEUR, NY 13642–	315–287–2800

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUPER 8 MOTEL OF GOVERNORS ISLAND.		COMFORT RD	GOVERNORS ISLAND, NY 10004–.	212–269–6878
TOWNSEND MANOR INN		714 MAIN ST	GREENPORT, NY 11944–	516–477–2000
SUNSHINE INN	PO BOX 225	RD. #1	GREENWICH, NY 12834–	518–692–2997
HOJO INN		5245 CAMP RD	HAMBURG, NY 14075–	716–648–2000
RED ROOF INN #55		5370 CAMP RD	HAMBURG, NY 14075–	716–648–7222
COLGATE INN		1–5 PAYNE ST	HAMILTON, NY 13346–	315–824–2300
HAMMONDSPORT MOTEL		WATER WILLIAM	HAMMONDSPORT, NY 14840–	607–569–2600
VINEHURST MOTEL	PO BOX 203	RT. 54	HAMMONDSPORT, NY 14840–	607–569–2300
COLONIAL SHORES RESORT AND MARINA.		83 W. TIANA RD	HAMPTON BAYS, NY 11946–	516–728–0011
HAMPTON STAR MOTEL		293 E. MONTAUK HWY	HAMPTON BAYS, NY 11946–	516–728–6051
SMITH'S COLONIAL MOTEL	PO BOX 172 D	RT. 97	HANCOCK, NY 13783–	607–637–2989
MARRIOTT'S WIND WATCH HOTEL AND GOLF CLUB.		1717 MOTOR PKWY	HAUPPAUGE, NY 11788–	516–232–6600
RADISSON HOTEL ISLANDIA		3635 EXPRESS DR. N	HAUPPAUGE, NY 11788–	516–232–3000
ASPINWALL HOUSE		RT. 187 MILITARY RD	HENDERSON HARBOR, NY 13651–.	315–938–5421
WESTVIEW LODGE		3998 HARBOR RD	HENDERSON HARBOR, NY 13651–.	315–938–5722
MICROTEL LEHIGH		905 LEHIGH STATION RD	HENRIETTA, NY 14467–	716–334–3400
RED ROOF INN #042		4820 W. HENRIETTA RD	HENRIETTA, NY 14467–	716–359–1100
ROCHESTER SUPER 8 MOTEL		10000 LEHIGH STATION RD	HENRIETTA, NY 14467–	716–359–1630
HERKIMER MOTEL		100 MARGINAL RD	HERKIMER, NY 13350–	315–866–0490
DAYS INN HICKSVILLE		828 S. OYSTER BAY RD	HICKSVILLE, NY 11801–	516–433–1900
CHRISTIANNA HOTEL		52 MAIN ST	HIGHLAND FALLS, NY 10928–	914–446–5798
PALISADE MOTEL		RT. 218 & 9 W	HIGHLAND FALLS, NY 10928–	914–446–9400
RAMAPO HILLSIDE MOTEL	PO BOX 324	RT. 17S	HILLBURN, NY 10931–	914–357–4770
STRATHMORE HOTEL		1730 N. OCEAN AVE	HOLTSVILLE, NY 11742–	516–758–2900
LE CHAMBORD		2075 RT. 52	HOPEWELL JUNCTION, NY 12533–.	914–221–1941
COACH LIGHT MOTEL	PO BOX 486		HORNELL, NY 14843–	607–324–0800
WILLIAMS INN		22 MAIN ST	HORNELL, NY 14843–	607–324–2993
SUPER 8 MOTEL OF HORNELL		RT. 36 WEBBS CROSSING	HORNELLSVILLE, NY 14843–	607–324–6222
HOLIDAY INN ELMIRA HORSEHEADS.		602 CORNING RD	HORSEHEADS, NY 14845–	607–739–3681
HOWARD JOHNSON LODGE		RT. 17 AND 14	HORSEHEADS, NY 14845–	607–739–5636
TERRACE CARDEN MOTEL	PO BOX 434	RT. 23A	HUNTER GREEN, NY 12442–	518–263–4422
HOWARD JOHNSON LODGE		270 JERICHO TNPK	HUNTINGTON STATION, NY 11746–.	516–421–3900
SUPER 8 MOTEL HYDE PARK		526 ALBANY POST RD	HYDE PARK, NY 12538–	914–229–0088
HAMPTON INN ISLANDIA		1600 VETERANS MEMORIAL HWY.	ISLANDIA, NY 11722–	516–234–0400
COLLEGETOWN MOTOR LODGE.		312 COLLEGE AVE	ITHACA, NY 14850–	607–273–3542
ECONO LODGE		2303 N. TRIPHAMMER RD	ITHACA, NY 14850–	607–257–1400
HOLIDAY INN—EXECUTIVE TOWERS OF ITHACA.		222 S. CAYUGA ST	ITHACA, NY 14850–	607–272–1000
HOWARD JOHNSON LODGE		2300 N. TRIPHAMMER RD	ITHACA, NY 14850–	607–257–1212
ITHACA HOLIDAY INN		2310 N. TRIPHAMMER RD	ITHACA, NY 14850–	607–257–3100
MEADOW COURT INN		529 S. MEADOW ST	ITHACA, NY 14850–	607–273–3885
SHERATON INN AND CONFERENCE CENTER.		ONE SHERATON DR	ITHACA, NY 14850–	607–257–2000
STATLER HOTEL		11 E. AVE. CORNELL UNIVER	ITHACA, NY 14853–	607–254–2530
SUPER 8 MOTEL ITHACA		400 S. MEADOW	ITHACA, NY 14850–	607–273–8088
HOLIDAY INN JFK AIRPORT		144–02 135TH ST	JAMAICA, NY 11436–	718–659–0200
JFK AIRPORT HILTON		138–10 135TH AVE	JAMAICA, NY 11436–	718–322–8700
COMFORT INN		2800 N. MAIN ST. EXT	JAMESTOWN, NY 14701–	716–664–5920
BEAVER HOLLOW CONFERENCE CENTER.		1083 PIT RD	JAVA CENTER, NY 14082–	716–457–3700
RED ROOF INN #203		590 FAIRVIEW ST	JOHNSON CITY, NY 13790–	607–729–8940
HOLIDAY INN JOHNSTOWN GLOVERSVILLE.		308 N. COMRIE AVE	JOHNSTOWN, NY 12905–	518–762–4686
SUPER 8 MOTEL OF JOHNSTOWN.		301 N. COMRIE RD	JOHNSTOWN, NY 12095–	518–762–3567
CONCORD INN		1288 SHERIDAN DR	KENMORE, NY 14217–	716–876–4020
GRANIT HOTEL AND COUNTRY CLUB.		LOWER GRANIT RD	KERHONKSON, NY 12446–	914–626–3141
DAYS INN		RT. 28	KINGSTON, NY 12401–	914–331–1919
HOLIDAY INN		503 WASHINGTON AVE	KINGSTON, NY 12401–	914–338–0400
SUPER 8 MOTEL		487 WASHINGTON AVE	KINGSTON, NY 12401–	914–338–3078
BALMORAL MOTEL		444 CANADA ST	LAKE GEORGE, NY 12845–	518–668–2673

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN OF LAKE GEORGE.	.....	EXIT 21 AT I-H 87	LAKE GEORGE, NY 12845–	518–668–5701
COLONIAL MANOR MOTOR INN.	PO BOX 528	.....	LAKE GEORGE, NY 12845–	518–668–4984
DAYS INN LAKE GEORGE	PO BOX 3202	RR. #3	LAKE GEORGE, NY 12845–	518–793–3196
FORT WILLIAM HENRY MOTOR INN.	.....	CANADA ST	LAKE GEORGE, NY 12845–	518–668–3081
FRENCH MOUNTAIN MOTEL	PO BOX 3094	RR #3	LAKE GEORGE, NY 12845–	518–792–5904
HOLIDAY INN TURF LAKE GEORGE.	.....	RT. 9 CANADA ST	LAKE GEORGE, NY 12845–	518–668–5781
MARINE VILLAGE RESORT	.....	350 CANADA ST	LAKE GEORGE, NY 12845–	518–668–5478
O' SULLIVAN'S MOTEL	.....	410 CANADA ST	LAKE GEORGE, NY 12845–	518–668–5424
SCOTTY'S MOTEL AND CABIN COURT INC.	.....	12 LAKE SHORE DR	LAKE GEORGE, NY 12845–	518–668–2467
SUPER 8 MOTEL OF WARRENSBURG.	PO BOX 2541	RD. #2	LAKE GEORGE, NY 12845–	518–623–2811
ELMS WATERFRONT LODGE ..	PO BOX 95	RT. 9 N. AT BAY RD	LAKE LUZERNE, NY 12846–	518–696–3072
LAMPLIGHT INN BED AND BREAKFAST.	PO BOX 70	2129 LAKE AVE	LAKE LUZERNE, NY 12846–	518–696–5294
ADIRONDACK INN	.....	217 MAIN ST	LAKE PLACID, NY 12946–	518–523–2424
ADIRONDAK LOJ	.....	ADIRONDACK LOJ RD	LAKE PLACID, NY 12946–	518–523–3441
BEST WESTERN GOLDEN ARROW HOTEL.	.....	150 MAIN ST	LAKE PLACID, NY 12946–	518–523–3353
CARRIAGE HOUSE MOTOR INN.	.....	CASCADE RD	LAKE PLACID, NY 12946–	518–523–2260
ECONO LODGE	.....	CASCADE RD	LAKE PLACID, NY 12946–	518–523–2817
EDGE OF THE LAKE MOTEL	.....	56 SARANAC AVE	LAKE PLACID, NY 12946–	518–523–9430
GRANDVIEW HOLIDAY INN	.....	1 OLYMPIC DR	LAKE PLACID, NY 12946–	518–523–2550
HOWARD JOHNSON RESORT LODGE.	.....	90 SARANAC AVE	LAKE PLACID, NY 12946–	518–523–9555
SCHULTE'S MOTOR INN	.....	RT. 73 CASCADE RD	LAKE PLACID, NY 12946–	518–523–3532
THUNDERBIRD MOTOR INN	.....	MAIN ST	LAKE PLACID, NY 12946–	518–523–2439
WATERSEDGE MOTEL	.....	RT. 8	LAKE PLEASANT, NY 12108– ...	518–548–6031
J J LEASURE RESTAURANT AND MOTOR INN.	.....	6001 BIG TREE RD	LAKEVILLE, NY 14480–	716–346–2120
COMFORT INN	.....	866 ALBANY SHAKER RD	LATHAM, NY 12110–	518–783–1900
HOWARD JOHNSON MOTOR LODGE.	.....	611 TROY SCHENECTADY RD	LATHAM, NY 12110–	518–785–5891
INN AT THE CENTURY	.....	997 NEW LOUDEN RD	LATHAM, NY 12110–	518–785–0931
QUALITY INN AIRPORT	.....	622 WATERVLIET SHAKER RD	LATHAM, NY 12110–	518–785–1414
RESIDENCE INN BY MARRIOTT.	.....	1 RESIDENCE INN DR	LATHAM, NY 12110–	516–783–0600
SUPER 8 MOTEL OF LATHAM .	.....	681 TROY SCHENECTADY RD	LATHAM, NY 12110–	518–783–8808
CARL'S RIP VAN WINKLE MOTOR LODGE.	PO BOX 45	RT. 23 B HC #2	LEEDS, NY 12451–	518–943–3303
PORTAGE HOUSE MOTEL	.....	280 PORTAGE RD	LEWISTON, NY 14092–	716–754–8295
LEXINGTON HOTEL	PO BOX 117	.....	LEXINGTON, NY 12452–	518–989–5463
DAYS INN OF LIBERTY	.....	RT. 17	LIBERTY, NY 12754–	914–292–7600
LIBERTY MOTEL	.....	204 S. MAIN ST	LIBERTY, NY 12754–	914–292–7272
LINDENHURST MOTEL	.....	150 W. MONTAUK HWY	LINDENHURST, NY 11757–	516–226–5850
BEST WESTERN MOTOR INN ..	.....	20 ALBANY ST	LITTLE FALLS, NY 13365–	313–823–4954
ARBORGATE INN SALINA	.....	430 ELECTRONICS PKWY	LIVERPOOL, NY 13088–	315–453–6330
DAYS INN NORTH	.....	400 SEVENTH N. ST	LIVERPOOL, NY 13088–	315–451–1511
ECONO LODGE SYRACUSE LIVERPOOL.	.....	401–407 7TH N. ST	LIVERPOOL, NY 13088–	315–451–8000
HOMEWOOD SUITES HOTEL ...	.....	275 ELMWOOD DAVIS RD	LIVERPOOL, NY 13088–	315–451–3800
SHERATON INN SYRACUSE	.....	ELECTRONICS PKWY	LIVERPOOL, NY 13088–	315–457–1122
LANZA'S COUNTRY INN	PO BOX 446	RD. #2	LIVINGSTON MANOR, NY 12758–.	914–439–5070
MOTEL ON THE LAKE	.....	RT. 52	LOCH SHELDRAKE, NY 12759–	914–434–5177
RIDGE VIEW MOTOR LODGE INC.	PO BOX 14M	RT. 1	LOWVILLE, NY 13367–	315–376–2252
CAPRI LYNBROOK MOTOR INN	.....	5 FREER ST	LYNBROOK, NY 11563–	516–599–8500
GATEWAY MOTEL OF MALONE	PO BOX 11	HCR–01 FINNEY BLVD	MALONE, NY 12953–	518–483–4200
SUNSET MOTEL	.....	E. MAIN ST	MALONE, NY 12953–	518–483–3367
ECONO LODGE	PO BOX 261	RR. #1	MASSENA, NY 13662–	315–764–6246
SUPER 8 MOTEL OF MASSENA	.....	84 GROVE ST	MASSENA, NY 13662–	315–764–1065
MAGNOLIA HOTEL	PO BOX 257	RD #2	MAYVILLE, NY 14757–	716–789–2935
ECONO LODGE OF CORTLAND	PO BOX 628	3775 US RT. 11	MCGRAW, NY 13101–	607–753–7594
INN AT MEDFORD	.....	2695 RT. 112	MEDFORD, NY 11763–	516–654–3000
DOLLINGER'S COURTYARD MOTEL.	.....	11360 MAPLE RIDGE RD	MEDINA, NY 14103–	716–798–0016

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HUNTINGTON HILTON HOTEL .	.....	598 BROADHOLLOW RD	MELVILLE, NY 11747–	516–845–1000
RADISSON PLAZA HOTEL	.....	1350 OLD WALT WHITMAN RD	MELVILLE, NY 11747–	516–423–1600
GATEWAY INN	.....	1780 SUNRISE HWY	MERRICK, NY 11566–	516–378–7100
MEXBECK INC	.....	MAIN ST	MEXICO, NY 13114–	315–963–7360
HERITAGE MOTEL	PO BOX 180	RT. 17 RD. #8	MIDDLETOWN, NY 10940–	914–361–1211
BORN FREE MOTEL I	.....	S. EMERSON AVE	MONTAUK, NY 11954–	516–668–2896
BORN FREE MOTEL II	.....	S. EMERSON AVE	MONTAUK, NY 11954–	516–668–2896
BREAKERS MOTEL	PO BOX 293	OLD MONTAUK HWY	MONTAUK, NY 11954–	516–668–2525
CLUB MONTAUK	.....	E. LAKE DR	MONTAUK, NY 11954–	516–668–3200
LENHART COTTAGES	.....	OLD MONTAIN HWY. & SHERMAN RD.	MONTAUK, NY 11954–	516–668–2356
MONTAUK SOUNDVIEW	.....	WESTLAKE AND DOUNDVIEW DR.	MONTAUK, NY 11954–	516–668–2771
MONTAUK YACHT CLUB RESORT AND MARINA.	PO BOX 5048	STAR ISLAND RD	MONTAUK, NY 11954–	516–668–3100
ROUGH RIDERS LANDING	.....	EDGEMERE RD	MONTAUK, NY 11954–	516–668–3650
SANDS MOTEL	.....	S. EMERY ST	MONTAUK, NY 11954–	516–668–5100
SANDS MOTEL EAST	.....	SOUTH EMERSON AVE	MONTAUK, NY 11954–	516–668–5100
SEAWIND MOTEL	PO BOX 261A	R #1 W. LAKE DR	MONTAUK, NY 11954–	516–668–4949
SHEPHARDS NECK INN	.....	SECOND HOUSE RD	MONTAUK, NY 11954–	516–668–2105
SNUG HARBOR MOTEL AND MARINA.	.....	156 WESTLAKE DR	MONTAUK, NY 11954–	516–668–2860
SURF CLUB	.....	SURFSIDE AVE. & S. ESSEX ...	MONTAUK, NY 11954–	516–668–3000
DAYSTOP OF MONTGOMERY .	.....	125 NEELYTOWN RD	MONTGOMERY, NY 12549–	914–457–3163
MAYBROOK MONTGOMERY SUPER 8 MOTEL.	.....	207 MONTGOMERY RD	MONTGOMERY, NY 12549–	914–457–3143
BEST WESTERN MONTICELLO	.....	21 RACEWAY RD	MONTICELLO, NY 12701–	914–796–4000
MONTOUR MOTEL	.....	100 CLAWSON BLVD	MONTOUR FALLS, NY 14865– .	607–535–7183
HOLIDAY INN	.....	ONE HOLIDAY DR	MT KISCO, NY 10549–	914–241–2600
HOTEL MT. PLEASANT	.....	MT. PLEASANT RD	MT. PLEASANT, NY 12457–	914–688–9919
SHERATON INN NANUET	.....	415 E. RT. 59	NANUET, NY 10954–	914–623–6000
DAYS INN MIDDLETOWN	PO BOX 279	RT. 17 M	NEW HAMPTON, NY 10958–	914–374–2411
HOLIDAY INN UTICA	.....	1777 BURRSTONE RD	NEW HARTFORD, NY 13413– ..	315–797–2131
SPINNERS MOTEL	PO BOX 60	NY 10413 & COUNTY RT. 6	NEW HAVEN, NY 13121–	315–963–3949
DAYSTOP BY DAYS INN	.....	601 MAIN ST	NEW PALTZ, NY 12561–	914–883–7373
LAKE MOHONK MOUNTAIN HOUSE.	.....	1000 MOUNTAIN REST RD	NEW PALTZ, NY 12561–	914–255–1000
SUPER 8 MOTEL OF NEW PALTZ.	.....	7 TERWILLIGER LN	NEW PALTZ, NY 12561–	914–255–8665
ALGONQUIN, A WESTIN HOTEL.	.....	59 WEST 44TH STREET	NEW YORK, NY 10036–	212–840–6800
BARBIZON HOTEL	.....	140 E. 63 ST	NEW YORK, NY 10021–	212–838–5700
DRAKE SWISSOTEL	.....	440 PARK AVE	NEW YORK, NY 10022–	212–756–3888
EMBASSY SUITES HOTEL	.....	1568 BROADWAY	NEW YORK, NY 10036–	212–719–1600
ESSEX HOUSE NIKKO NEW YORK.	.....	160 CENTRAL PARK S	NEW YORK, NY 10019–	212–484–5129
GORHAM HOTEL	.....	136 W. 55TH ST	NEW YORK, NY 10019–	212–245–1800
GRAND HYATT NEW YORK	.....	PARK AVE. AT GRAND CENTRAL.	NEW YORK, NY 10017–	212–883–1234
HOLIDAY INN CROWNE PLAZA	.....	1605 BROADWAY	NEW YORK, NY 10019–	212–315–6100
HOTEL MACKLOWE MACKLOWE CONFERENCE CENTER.	.....	145 W. 44TH ST	NEW YORK, NY 10036–	212–768–4400
HOTEL MARIA	.....	138 LAFAYETTE ST	NEW YORK, NY 10013–	212–966–8898
HOTEL MILLENIUM	.....	55 CHURCH ST	NEW YORK, NY 10007–	212–693–2001
HOTEL PLAZA ATHENEE	.....	37 E. 64TH ST	NEW YORK, NY 10021–	212–734–9100
ITT SHERATON NEW YORK HOTEL AND TOWERS.	.....	811 SEVENTH AVE	NEW YORK, NY 10019–	212–581–1000
JOURNEY'S END HOTEL	.....	3 E. 40TH ST	NEW YORK, NY 10016–	212–447–1500
NEW YORK HELMSLEY HOTEL	.....	212 E. 42ND ST	NEW YORK, NY 10017–	212–490–8900
NEW YORK HILTON AND TOWERS.	.....	1335 AVE. OF THE AMERICAS	NEW YORK, NY 10019–	212–586–7000
NEW YORK MARRIOTT EAST SIDE.	.....	525 LEXINGTON AVE	NEW YORK, NY 10017–	212–755–4000
NEW YORK MARRIOTT FINANCIAL CENTER.	.....	85 W. ST	NEW YORK, NY 10006–	212–385–4900
NEW YORK MARRIOTT MARQUIS.	.....	1535 BROADWAY	NEW YORK, NY 10036–	212–398–1900
NEW YORK RENAISSANCE HOTEL.	.....	2 TIMES SQUARE	NEW YORK, NY 10036–	212–765–7676
NOVOTEL HOTEL	.....	226 W. 52ND ST	NEW YORK, NY 10019–	212–315–0100
PENINSULA HOTEL	.....	700 FIFTH AVE	NEW YORK, NY 10019–	212–247–2200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
PIERRE HOTEL		2 E. 61ST ST	NEW YORK, NY 10021–	212–838–8000
RIHGA ROYAL HOTEL		151 W. 54TH ST	NEW YORK, NY 10019–	212–376–2252
RITZ CARLTON		112 CENTRAL PARK S	NEW YORK, NY 10019–	212–757–1900
ROOSEVELT HOTEL		45 E. 45TH ST	NEW YORK, NY 10017–	212–661–9600
SHERATON MANHATTAN HOTEL.		790 SEVENTH AVE	NEW YORK, NY 10019–	212–581–3300
SHERATON NEW YORK HOTEL AND TOWERS.		811 SEVENTH AVE	NEW YORK, NY 10019–	212–581–1000
SHERATON PARK AVENUE		45 PARK AVE	NEW YORK, NY 10016–	212–685–7676
ST. REGIS HOTEL		2 E. 55TH ST	NEW YORK, NY 10022–	212–753–4500
THE MICHELANGELO		152 W. 51ST ST	NEW YORK, NY 10019–	212–765–1900
TUDOR HOTEL		304 E. 42ND ST	NEW YORK, NY 10017–	212–986–8800
WALDORF ASTORIA HOTEL		301 PARK AVE	NEW YORK, NY 10022–	212–355–3000
WELLINGTON HOTEL		871 7TH AVE. @ 55TH ST	NEW YORK, NY 10019–	212–247–3900
COMFORT INN NEWBURGH		5 LAKESIDE RD	NEWBURGH, NY 12550–	914–567–0567
DAYS INN		845 UNION AVE	NEWBURGH, NY 12550–	914–564–7550
HOLIDAY INN OF NEWBURGH		90 RT. 17K	NEWBURGH, NY 12550–	914–564–9020
HOWARD JOHNSON MOTOR LODGE.		95 RT. 17K	NEWBURGH, NY 12550–	914–564–4000
ORANGE LAKE MOTEL		RT. 52	NEWBURGH, NY 12550–	914–564–1770
SUPER 8 MOTEL OF NEWBURGH.		10588 UNION AVE	NEWBURGH, NY 12550–	914–564–5700
BUDGET HOST INN		219 FOURTH ST. AND RAINBOW.	NIAGARA FALLS, NY 14303–	716–282–1734
COMFORT INN THE POINTE		ONE PROSPECT POINTE	NIAGARA FALLS, NY 14303–	716–284–6853
ECONO LODGE		7708 NIAGARA FALLS BLVD	NIAGARA FALLS, NY 14304–	716–283–2538
FALLS MOTEL		5850 BUFFALO AVE	NIAGARA FALLS, NY 14304–	716–283–3239
HOLIDAY INN CONVENTION CENTER.		231 THIRD ST	NIAGARA FALLS, NY 14303–	716–282–2211
HOWARD JOHNSON LODGE AT THE FALLS.		454 MAIN ST	NIAGARA FALLS, NY 14301–	716–285–5261
HOWARD JOHNSON LODGE EAST.		6505 NIAGARA FALLS BLVD	NIAGARA FALLS, NY 14304–	716–283–8791
INN AT THE FALLS		240 RAINBOW BLVD	NIAGARA FALLS, NY 14303–	716–282–1212
NIAGARA FALLS CAMPGROUND AND MOTEL.		2405 NIAGARA FALLS BLVD	NIAGARA FALLS, NY 14302–	716–731–3434
NIAGARA FALLS TRAVELODGE		200 RAINBOW BLVD	NIAGARA FALLS, NY 14303–	716–285–7316
QUALITY INN RAINBOW RIDGE		443 MAIN ST	NIAGARA FALLS, NY 14301–	716–284–8801
RADISSON HOTEL		THIRD AND OLD FALLS ST	NIAGARA FALLS, NY 14303–	716–285–3361
COPPERFIELD INN		224 N. MAIN ST	NORTH CREEK, NY 12853–	518–251–2500
BEST WESTERN SYRACUSE AIRPORT INN.		HANCOCK INTERNATIONAL AIRPORT.	NORTH SYRACUSE, NY 13212–.	315–455–7362
HOLIDAY INN		6701 BUCKLEY RD	NORTH SYRACUSE, NY 13212–.	315–457–4000
QUALITY INN NORTH		1308 BUCKLEY RD	NORTH SYRACUSE, NY 13212–.	315–451–1212
RED CARPET INN		NORTHERN LIGHTS ON RT. 11	NORTH SYRACUSE, NY 13212–.	315–454–3266
GROVE PARK RESTAURANT AND MOTEL.	PO BOX 167	RD #3	NORWICH, NY 13815–	607–334–2251
SUPER 8 MOTEL OF NORWICH		HWY. 12	NORWICH, NY 13815–	607–336–8880
SUPER 8 MOTEL OF NYACK		RT. 59 WALDRON AVE	NYACK, NY 10960–	914–353–3380
POWELL HOUSE	PO BOX 160	RD. #1 PITT HALL RD	OLD CHATHAM, NY 12136–	518–794–8811
WATER'S EDGE INN AND CONFERENCE CENTER.		1141 EAGLE BAY RD	OLD FORGE, NY 13420–	315–369–2454
SUPER 8 MOTEL OF ONEIDA		215 GENESEE ST	ONEIDA, NY 13421–	315–363–5168
HOLIDAY INN REGISTRY CLUB		329 RT. 303	ORANGEBURG, NY 10962–	914–359–7000
HUDSON RIVER INN AND CONFERENCE CENTER.		321 N. HIGHLAND AVE	OSSINING, NY 10562–	914–762–5600
BEST WESTERN CAPTAINS QUARTERS HOTEL.		26 E. FIRST ST	OSWEGO, NY 13126–	315–342–4040
DAYS INN OSWEGO		181 STATE RD	OSWEGO, NY 13126–	315–343–3136
THOMAS MOTOR LODGE		309 W. SENECA ST	OSWEGO, NY 13126–	315–343–4900
CORNING PAINTED POST HOLIDAY INN.		304 S. HAMILTON ST	PAINTED POST, NY 14870–	607–962–5021
ECONO LODGE		200 ROBERT DANN DR	PAINTED POST, NY 14870–	607–962–4444
ERWIN MOTEL		896 ADDISON RD	PAINTED POST, NY 14870–	607–962–7471
LAMPLITER MOTEL		543 VICTORY HWY	PAINTED POST, NY 14870–	607–962–1184
LODGE ON THE GREEN	PO BOX 150	RT. 15 & 17 BOX 150	PAINTED POST, NY 14870–	607–962–2456
STILES MOTEL		9239 VICTORY HWY	PAINTED POST, NY 14870–	607–962–5521
SUPER 8 MOTEL		255 S. HAMILTON ST	PAINTED POST, NY 14870–	607–937–5383

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HANS COUNTY LINE MOTEL AND RESTAURANT.		RT. 32A	PALENVILLE, NY 12463–	518–678–3101
IBM ADVANCED BUSINESS INSTITUTE.		RT. 9 W	PALISADES, NY 10904–	914–732–6200
PARAMONT HOTEL		TANZMAN RD	PARKSVILLE, NY 12768–	914–292–4700
PARKWAY MOTEL OF VESTAL		900 VESTAL PKWY. E	PARKSVILLE, NY 13850–	607–785–3311
PEARL RIVER HILTON HOTEL .		500 VETERAN'S MEMORIAL DR.	PEARL RIVER, NY 10965–	914–735–9000
CAMP SMITH TRAINING SITE ..		BLVD. 49 SENIOR NCO QUARTERS.	PEEKSKILL, NY 10566–	914–737–2111
PEEKSKILL MOTOR INN		634 MAIN ST	PEEKSKILL, NY 10566–	914–739–1500
TOWNE MOTEL		206 ELM ST	PENN YAN, NY 14527–	315–536–4474
BROOKWOOD INN		800 PITTSFORD VICTOR RD	PITTSFORD, NY 14534–	716–248–9000
HOLIDAY INN		215 SUNNYSIDE BLVD	PLAINVIEW, NY 11803–	516–349–7400
RESIDENCE INN BY MARRIOTT.		9 GERHARD RD	PLAINVIEW, NY 11803–	516–433–6200
COMFORT INN		495 CORNELIA ST	PLATTSBURGH, NY 12901–	518–562–2730
DAYS'S INN		587 CORNELIA ST	PLATTSBURGH, NY 12901–	518–561–0403
ECONO LODGE		610 UPPER CORNELIA ST	PLATTSBURGH, NY 12901–	518–561–1500
PLATTSBURGH SUPER 8 MOTEL.		601 N. MARGARET ST	PLATTSBURGH, NY 12901–	518–562–8886
VALLEY MOTEL		RT. 44	PLEASANT VALLEY, NY 12569–	914–635–8251
DANFORDS INN MARINA & EXECUTIVE CONF. CENTER.		25 E. BROADWAY	PORT JEFFERSON, NY 11777–	516–928–5200
AUTUMN HOUSE MOTEL		166 S. MAIN ST	PORTVILLE, NY 14770–	716–933–6322
CLARKSON INN		ONE MAIN ST	POTSDAM, NY 13676–	315–265–3050
COURTYARD BY MARRIOTT POUGHKEEPSIE.		408 SOUTH RD	POUGHKEEPSIE, NY 12601–	914–485–6514
DAYS INN POUGHKEEPSIE		62 HAIGHT AVE	POUGHKEEPSIE, NY 12603–	914–454–1010
HOLIDAY INN EXPRESS		341 SOUTH RD	POUGHKEEPSIE, NY 12601–	914–473–1151
RADISSON HOTEL POUGHKEEPSIE.		40 CIVIC CENTER PLAZA	POUGHKEEPSIE, NY 12601–	914–485–5300
ECHO VALLEY MOTEL	PO BOX 179	RT. 23A	PRATTSVILLE, NY 12468–	518–989–6511
DEER CREEK MOTEL	PO BOX 8341	RT. 3	PULASKI, NY 13142–	315–298–3730
LAURDON HEIGHTS		7489 90 LEWIS ST	PULASKI, NY 13142–	315–298–6091
LOG CABIN INN INC	PO BOX 24	7540 SALINA ST	PULASKI, NY 13142–	315–298–6658
PORT LODGE MOTEL		7469 SCENIC HWY	PULASKI, NY 13142–	315–298–5876
REDWOOD MOTEL	PO BOX 315	181 & RT. 13	PULASKI, NY 13142–	315–298–4717
SUPER 8 MOTEL OF PULASKI .	PO BOX 532	76007 ROME RD	PULASKI, NY 13142–	315–298–4888
DELLWOOD HOTEL		MOUNTAIN AVE	PURLING, NY 12470–	518–622–9571
HOWARD JOHNSON LODGE		54 AVIATION RD	QUEENSBURY, NY 12801–	518–793–4173
MARTHA'S MOTEL	PO BOX 229	RR. #5 LAKE GEORGE RD	QUEENSBURY, NY 12804–	518–793–0372
RAMADA INN GLENS FALLS		187 & AVIATION RD	QUEENSBURY, NY 12804–	518–793–7701
SUPER 8 MOTEL OF GLENS FALLS.	PO BOX 583	RD #4 CORINTH RD	QUEENSBURY, NY 12804–	518–761–9780
BEEKMAN ARMS		4 MILL ST	RHINEBECK, NY 12572–	914–876–7077
VILLAGE INN OF RHINEBECK ..		6 RT. 9 S	RHINEBECK, NY 12572–	914–876–7000
PINE RIDGE MOTEL		6019 MIDDLE COUNTY RD	RIDGE, NY 11961–	516–924–7033
VILLAGE MOTEL	PO BOX 766	E. MAIN ST	RIDGEFIELD SPRINGS, NY 13439–.	315–858–1540
BUDGET HOST COLONIAL SQUIRE MOTEL.		SHORTMAN RD	RIPLEY, NY 14775–	716–736–8500
BEST WESTERN INN AT RIVERHEAD.		30 E. MORICHES RD	RIVERHEAD, NY 11901–	516–727–6200
RIVERHEAD MOTEL		1433 W. MAIN ST	RIVERHEAD, NY 11901–	516–727–7800
BEST WESTERN DIPLOMAT HOTEL.		1956 LYELL AVE	ROCHESTER, NY 14606–	716–254–1000
COMFORT INN AIRPORT		395 BUELL RD	ROCHESTER, NY 14624–	716–436–4400
COMFORT INN WEST		1501 W. RIDGE RD	ROCHESTER, NY 14615–	716–621–5700
COURTYARD BY MARRIOTT		33 CORPORATE WOODS	ROCHESTER, NY 14623–	716–292–1000
DAYS INN DOWNTOWN		384 EAST AVE	ROCHESTER, NY 14607–	716–325–5010
ECONO LODGE ROCHESTER SOUTH.		940 JEFFERSON RD	ROCHESTER, NY 14623–	716–427–2700
HAMPTON INN ROCHESTER		717 E. HENRIETTA RD	ROCHESTER, NY 14623–	716–272–7800
HOLIDAY INN AIRPORT		911 BROOKS AVE	ROCHESTER, NY 14624–	716–328–6000
HOLIDAY INN HOLIDOME		1111 JEFFERSON RD	ROCHESTER, NY 14623–	716–475–1510
HOWARD JOHNSON AIRPORT HOTEL.		1100 BROOKS AVE	ROCHESTER, NY 14624–	716–235–6030
HOWARD JOHNSON LODGE		3350 W. HENRIETTA RD	ROCHESTER, NY 14623–	716–475–1661
HYATT REGENCY ROCHESTER.		125 E. MAIN ST	ROCHESTER, NY 14604–	716–546–1234
RESIDENCE INN ROCHESTER		1300 JEFFERSON RD	ROCHESTER, NY 14623–	716–272–8850

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ROCHESTER MARRIOTT THRUWAY HOTEL.		5257 W. HENRIETTA RD	ROCHESTER, NY 14623–	716–359–1800
STOUFFER ROCHESTER PLAZA HOTEL.		70 STATE ST	ROCHESTER, NY 14614–	716–546–3450
TOWPATH MOTEL OF ROCHESTER.		2323 MONROE AVE	ROCHESTER, NY 14618–	716–271–2147
WELLESLEY INN		1635 W. RIDGE RD	ROCHESTER, NY 14615–	716–621–2060
WELLESLEY INN		797 E. HENRIETTA RD	ROCHESTER, NY 14623–	716–427–0130
HOLIDAY INN		173 SUNRISE HWY	ROCKVILLE CENTRE, NY 11570–.	516–678–1300
ADIRONDACK 13 PINES MOTEL.		7353 RIVER RD	ROME, NY 13440–	315–337–4930
AMERICAN HERITAGE MOTOR INN.		799 LOWER LAWRENCE ST	ROME, NY 13440–	315–339–3610
ESQUIRE MOTOR LODGE		1801 BLACK RIVER BLVD	ROME, NY 13440–	315–336–5320
PAUL REVERE MOTEL		7900 TWIN RD	ROME, NY 13440–	315–336–1775
QUALITY INN OF ROME		200 S. JAMES ST	ROME, NY 13440–	315–336–4300
ROME MOTEL		RT. 26 N. 8257 TURINI RD	ROME, NY 13440–	315–336–4200
HOLIDAY INN RONKONKOMA		3845 VETERANS MEMORIAL HWY.	RONKONKOMA, NY 11779–	516–585–9500
TENNANAH LAKE GOLF AND TENNIS CLUB.		ROSCOE HANKINS RD	ROSCOE, NY 12776–	607–498–4588
GRAND PRIX MOTOR INN	PO BOX 5		ROUND LAKE, NY 12151–	518–899–2020
COURTYARD BY MARRIOTT RYE.		631 MIDLAND AVE	RYE, NY 10580–	914–921–1110
WESTCHESTER COUNTRY CLUB.		NORTH ST	RYE, NY 10580–	914–967–6000
DORAL ARROWWOOD		ANDERSON HILL RD	RYE BROOK, NY 10573–	914–939–5500
RYE TOWN HILTON		699 WESTCHESTER AVE	RYE BROOK, NY 10573–	914–939–8300
OLD STONE ROW COUNTRY INN.		85 WORTH RD	SACKETS HARBOR, NY 13685–	315–646–1234
ONTARIO PLACE	PO BOX 434		SACKETS HARBOR, NY 13685–	315–646–8000
AMERICAN HOTEL		MAIN ST	SAG HARBOR, NY 11963–	516–725–3535
ADIRONDACK COMFORT INN		148 LAKE FLOWER AVE	SARANAC LAKE, NY 12983–	518–891–1970
INN AT SARATOGA		231 BROADWAY	SARATOGA SPRINGS, NY 12866–.	518–583–1890
RAMADA RENAISSANCE HOTEL.		534 BROADWAY	SARATOGA SPRINGS, NY 12866–.	518–584–4000
SARATOGA DOWNTOWNER MOTEL.		413 BROADWAY	SARATOGA SPRINGS, NY 12866–.	518–584–6160
SPRINGS MOTEL		165 S. BROADWAY	SARATOGA SPRINGS, NY 12866–.	518–584–8433
CARRIAGE HOUSE MOTEL		204 BURT ST	SAUGERTIES, NY 12477–	914–246–3104
CLOVERLEAF MOTEL	PO BOX 534		SAUGERTIES, NY 12477–	914–246–2878
LANDS END MOTEL		70 BROWNS RIVER RD	SAYVILLE, NY 11782–	516–589–2040
SAYVILLE MOTOR LODGE		5494 SUNRISE HWY	SAYVILLE, NY 11782–	516–589–7000
DAYS INN SCHENECTADY		167 NOTT TERRACE	SCHENECTADY, NY 12308–	518–370–0851
HOLIDAY INN SCHENECTADY		100 NOTT TERRACE	SCHENECTADY, NY 12308–	518–393–4141
SCOTTISH CHALET MOTOR LODGE.		1616 STATE ST	SCHENECTADY, NY 12304–	518–370–3000
COPPER HOOD INN		RT. 28	SHANDAKEN, NY 12480–	914–688–9962
SYLVAN LODGE		6 SYLVAN PL	SHELTER ISLAND, NY 11965–	516–749–2044
SHELTER ISLAND RESORT		35 SHORE RD	SHELTER ROAD, NY 11965–	516–749–2001
SUPER 8 MOTEL OF SIDNEY		4 MANG DR	SIDNEY, NY 13838–	607–563–8880
SHERATON SMITHTOWN HOTEL.		110 VANDERBILT MOTOR PKWY.	SMITHTOWN, NY 11788–	516–231–1100
PINES RESORT HOTEL		LAUREL AVE	SOUTH FALLSBURG, NY 12779–.	914–434–6000
EASTERNER MOTEL		639 MONTAUK HWY	SOUTHAMPTON, NY 11968–	516–283–9292
OLD POST HOUSE INN		136 MAIN ST	SOUTHAMPTON, NY 11968–	516–283–1917
SHINNECOCK MOTEL		240 MONTAUK HWY	SOUTHAMPTON, NY 11968–	516–283–2406
ECONO LODGE		RT. 59	SPRING VALLEY, NY 10977–	914–623–3838
SUSSE CHALET		100 SPRING VALLEY MARKETPLACE.	SPRING VALLEY, NY 10977–	914–426–2000
COSMOPOLITAN MOTEL		1276 HYLAN BLVD	STATEN ISLAND, NY 10305–	718–979–7000
HOLIDAY INN SUFFREN		#3 EXECUTIVE BLVD	SUFFREN, NY 10901–	914–357–4800
WELLESLEY INN		17 N. AIRMONT RD	SUFFREN, NY 10901–	914–368–1900
TWIN SWAN LAKE MOTEL	PO BOX 337		SWAN LAKE, NY 12783–	914–292–5323
COMFORT INN HOTEL		7010 INTERSTATE ISLAND RD	SYRACUSE, NY 13209–	315–453–0045
COMFORT INN HOTEL		454 JAMES ST	SYRACUSE, NY 13203–	315–425–0015
COURTYARD BY MARRIOTT SYRACUSE.		6415 YORKTOWN CIR	SYRACUSE, NY 13057–	315–432–0300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DAYS INN SYRACUSE EAST		6609 THOMPSON RD	SYRACUSE, NY 13206–	315–437–5998
HILTON AT SYRACUSE SQUARE.		500 S. WARREN ST	SYRACUSE, NY 13202–	315–471–7300
HOLIDAY INN SYRACUSE FAIRGROUNDS.		STATE FAIR BLVD. & FARRELL RD.	SYRACUSE, NY 13209–	315–457–8700
HOWARD JOHNSON LODGE		CARRIER CIR	SYRACUSE, NY 13206–	315–437–2711
JOHN MILTON INN		CARRIER CIR	SYRACUSE, NY 13206–	315–463–8555
RAMADA INN SYRACUSE		1305 BUCKLEY RD	SYRACUSE, NY 13212–	315–457–9670
RED CARPET INN		6590 THOMPSON RD	SYRACUSE, NY 13206–	315–463–0202
RED ROOF INN #157		6614 N. THOMPSON RD	SYRACUSE, NY 13206–	315–437–3309
SHERATON UNIVERSITY INN AND CONFERENCE CENTER.		801 UNIVERSITY AVE	SYRACUSE, NY 13210–	315–475–3000
SYRACUSE MOTEL ON JAMES STREET.		940 JAMES ST	SYRACUSE, NY 13203–	315–472–6281
UNIVERSITY MOTEL		4406 S. SALINA ST	SYRACUSE, NY 13205–	315–492–1714
VILLA VOSILLA		RT. 23A	TANNERSVILLE, NY 12485–	518–589–5060
COURTYARD BY MARRIOTT TARRYTOWN.		475 WHITE PLAINS RD	TARRYTOWN, NY 10591–	914–631–1122
TARRYTOWN HILTON INN		455 S. BROADWAY	TARRYTOWN, NY 10591–	914–631–5700
TARRYTOWN HOUSE		E. SUNNYSIDE LN	TARRYTOWN, NY 10591–	914–591–8200
WESTCHESTER MARRIOTT		670 WHITE PLAINS RD	TARRYTOWN, NY 10591–	914–631–2200
VAN AUKENS INNE	PO BOX 206		THENDARA, NY 13472–	315–369–3033
BELFRED MOTEL		341 MONTCALM ST	TICONDEROGA, NY 12883–	518–585–7000
SUPER 8 MOTEL OF TICONDEROGA.		RT. 74 & 9N	TICONDEROGA, NY 12883–	518–585–2617
CAVALIER MOTOR LODGE		1120 NIAGARA FALLS BLVD	TONAWANDA, NY 14150–	716–835–5916
MICROTEL TONAWANDA		1 HOSPITALITY CENTRE WAY	TONAWANDA, NY 14150–	716–693–8100
SUPER 8 MOTEL OF TROY		1 FOURTH ST	TROY, NY 12180–	518–274–8600
LONG ISLAND MARRIOTT HOTEL.		101 JAMES DOOLITTLE BLVD	UNIONDALE, NY 11554–	516–794–3600
HAPPY JOURNEY MOTEL		300 GENESSE ST. N	UTICA, NY 13502–	315–738–1959
HOWARD JOHNSON LODGE		302 N. GENESEE ST	UTICA, NY 13502–	315–724–4141
RED CARPET INN		309 N. GENESSE ST	UTICA, NY 13502–	315–797–0964
RED ROOF INN #180		20 WEAVER ST	UTICA, NY 13502–	315–724–7128
UTICA TRAVELODGE		1700 GENESEE ST	UTICA, NY 13502–	315–724–2101
BLUE SPRUCE MOTEL	PO BOX 120	RT. 9	VALATIE, NY 12584–	518–758–9711
BRYNCLIFF RESORT AND CONF. CENTER.		RT. 20 AND HUMPHREY RD	VARYSBURG, NY 14167–	716–535–7300
HOJO INN SUNY		3601 VESTAL PKWY. E	VESTAL, NY 13850–	607–729–6181
RESIDENCE BY MARIOTT		4610 VESTAL PKWY	VESTAL, NY 13850–	607–770–8500
MEKEEL LODGE RETREAT CENTER.	PO BOX 200	RD. #1	VOORHEESVILLE, NY 12186–	518–872–1053
WADING RIVER MOTEL	PO BOX 247	RT. 25	WADING RIVER, NY 11792–	516–727–8000
WAINSCOTT MOTEL	PO BOX 6	3720 MONTAUK HWY	WAINSCOTT, NY 11975–	516–537–0878
JERONIMO RESORT AND CONFERENCE CENTER.	PO BOX 155		WALKER VALLEY, NY 12588–	914–733–5852
CROWN MOTEL		80 LIBERTY ST	WALTON, NY 13856–	607–865–7167
DUTCHESA AIRPORT INN MOTEL.		1915 RT. 376	WAPPINGERS FALLS, NY 12590–.	914–462–7801
ADIRONDACK EFFICIENCIES		1030 ARSENAL ST	WATERTOWN, NY 13601–	315–785–9028
ALLEN'S BUDGET MOTEL		RT. 342 RD. #5	WATERTOWN, NY 13601–	315–782–5319
CITY LINE MOTEL		5780 WASHINGTON ST	WATERTOWN, NY 13607–	315–782–9619
DAYS INN WATERTOWN		1142 ARSENAL ST	WATERTOWN, NY 13601–	315–782–2700
HOLIDAY INN WATERTOWN		300 WASHINGTON ST	WATERTOWN, NY 13601–	315–782–8000
INN YOUR BUDGET		104 BREEN AVE	WATERTOWN, NY 13601–	315–786–8666
QUALITY INN		1190 ARSENAL ST	WATERTOWN, NY 13601–	315–788–6800
RAINBOW MOTEL	PO BOX 20	RD. #6 BRADLEY ST	WATERTOWN, NY 13601–	315–788–2830
WATERTOWN ECONO LODGE		1030 ARSENAL ST	WATERTOWN, NY 13601–	315–782–5500
CHIEFTAIN MOTEL		3815 STATE RT. 14	WATKINS GLEN, NY 14891–	607–535–4759
GORGEOUS VIEW		3355 RT. 14	WATKINS GLEN, NY 14891–	607–535–2081
O' BRIENS'S INN	PO BOX 108	6312 COUNTY RD. 60	WAVERLY, NY 14892–	607–565–2017
BEST WESTERN WEEDSPORT INN.		2709 ERIE DR	WEEDSPORT, NY 13166–	315–834–6623
MARIE'S DREAM HOUSE		RT. 42	WEST KILL, NY 12492–	518–989–6565
HOWARD JOHNSON LODGE		120 JERICHO TNPK	WESTBURY, NY 11753–	516–333–9700
ISLAND INN HOTEL		OLD COUNTRY RD	WESTBURY, NY 11590–	516–228–9500
CARRIAGE MOTOR INN		RT. 233 S	WESTMORELAND, NY 13490–	315–853–3561
WESTPORT HOTEL		PLEASANT ST	WESTPORT, NY 12993–	518–962–4501
CENTRAL MOTEL		441 CENTRAL AVE	WHITE PLAINS, NY 10606–	914–948–8717
HOLIDAY INN CROWNE PLAZA		66 HALE AVE	WHITE PLAINS, NY 10601–	914–682–0050
LARESERVE HOTEL		5 BARKER AVE	WHITE PLAINS, NY 10601–	914–761–7700

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STOUFFER WESTCHESTER HOTEL.		80 W. RED OAK LN	WHITE PLAINS, NY 10604–	914–694–5400
FAIRFIELD INN BY MARRIOTT BUFFALO AIRPORT.		52 FREEMAN DR	WILLIAMSVILLE, NY 14221–	716–626–1500
MICROTEL		50 FREEMAN RD	WILLIAMSVILLE, NY 14221–	716–633–6200
RESIDENCE INN BY MARRIOTT.		100 MAPLE RD	WILLIAMSVILLE, NY 14221–	716–632–5622
ALLADDIN HOTEL			WOODBURNE, NY 12788–	914–434–7700
QUALITY INN		7758 JERICHO TNPK	WOODBURY, NY 11797–	516–921–6900
TANGLEWOOD MOTEL		21 PERRAN DR	WURTSBORO, NY 12790–	914–888–2415
HOLIDAY INN OF YONKERS		125 TUCKAHOE RD	YONKERS, NY 10710–	914–476–3600
Ohio				
DANIEL BOONE MOTEL	PO BOX 13	1830 US 52	ABERDEEN, OH 45101–	513–795–2203
COMFORT INN WEST		130 MONTROSE W. AVE	AKRON, OH 44321–	216–666–5050
DAYS INN		3150 W. MARKET ST	AKRON, OH 44313–	216–836–8431
HOLIDAY INN		4073 MEDINA RD	AKRON, OH 44313–	216–666–4131
HOLIDAY INN SOUTH AIRPORT		2940 CHENOWETH RD	AKRON, OH 44312–	216–644–7128
KNIGHTS INN		3237 S. ARLINGTON	AKRON, OH 44321–	216–644–1204
MARRIOTT RESIDENCE INN		120 MONTROSE WEST DR	AKRON, OH 44321–	216–666–4811
MIDTOWN MOTOR INN		219 E. MARKET ST	AKRON, OH 44308–	216–434–6601
PIERRE RADISSON INN AKRON.		200 MONTROSE W. AVE	AKRON, OH 44321–	216–535–9091
QUAKER SQUARE HILTON		135 S. BROADWAY	AKRON, OH 44308–	216–253–5970
RED ROOF INN		99 ROTHROCK RD	AKRON, OH 44321–	216–666–0566
RED ROOF INN AKRON		2939 S. ARLINGTON RD	AKRON, OH 44312–	216–644–7748
AMERICAN ECONOMY LODGING LP SUPER 8 MOTEL.		2330 W. STATE ST	ALLIANCE, OH 44601–	216–821–5588
COMFORT INN ALLIANCE		CARNATION TOWER ASSOCIATION.	ALLIANCE, OH 44601–	216–823–4421
DON PANCHOS MOTOR INN		9 S. UNION AVE	ALLIANCE, OH 44601–	216–823–4360
ECONO LODGE	PO BOX 108	2220 US 35	ALPHA, OH 45301–	513–426–5822
SURREY INN HOTEL		1065 CLAREMONT AVE	ASHLAND, OH 44805–	419–289–7700
AMERIHOST INN		20 HOME ST	ATHENS, OH 45701–	614–594–3000
DAYS INN ATHENS		330 COLUMBUS RD	ATHENS, OH 45701–	614–592–4000
THE OHIO UNIVERSITY INN	PO BOX 713	331 RICHLAND AVE	ATHENS, OH 45701–	614–593–6449
AURORA HOUSE SPA		34 N. CHILLICOTHE RD	AURORA, OH 44202–	216–562–9171
AURORA WOODLANDS INN		800 N. AURORA RD	AURORA, OH 44202–	216–562–9151
THE AURORA INN OPERATING PRTN LP.	PO BOX 197	RT. 82 & 306	AURORA, OH 44202–	216–562–6121
ASHTABULA AUSTINBURG TRAVELODGE.		2352 SR 45 N	AUSTINBURG, OH 44010–	216–275–2011
HOLIDAY INN ASHTABULA		I–90 AND SR 45	AUSTINBURG, OH 44010–	216–835–5014
CLEVELAND BEACHWOOD TRAVELODGE.		3796 ORANGE PL	BEACHWOOD, OH 44122–	216–831–7200
COMFORT INN		260 NORTHVIEW DR	BELLEFONTAINE, OH 43311–	513–599–6666
COMFORT INN		855 COMFORT PLAZA DR	BELLVILLE, OH 44813–	419–886–4000
AMISH COUNTRY INN	PO BOX 95	5336 CR 201	BERLIN, OH 44610–	216–893–3000
BERLIN VILLAGE INN INC		3135 SR 39	BERLIN, OH 44610–	216–893–2475
COMFORT SUITES		11349 REED HARTMAN RD	BLUE ASH, OH 45242–	513–530–5999
COURTYARD BY MARRIOTT		4625 LAKE FOREST DR	BLUE ASH, OH 45242–	513–753–4334
EMBASSY SUITES HOTEL		4554 LAKE FOREST DR	BLUE ASH, OH 45242–	513–733–8900
RED ROOF INN		5900 PFEIFFER RD	BLUE ASH, OH 45242–	513–793–8811
RESIDENCE INN BY MARRIOTT.		11401 REED HARTMAN HWY	BLUE ASH, OH 45241–	513–530–5060
HOLIDAY INN BOARDMAN		7410 SOUTH AVE	BOARDMAN, OH 44512–	216–726–1611
THE ANGEL MOTEL		1024 N. MAIN ST	BOWLING GREEN, OH 43402–	419–352–3170
DAYS INN BRIMFIELD KENT		4422 EDSEN RD	BRIMFIELD, OH 44240–	216–672–9400
CHARTER HOUSE INN AIRPORT.		15541 BROOKPARK RD	BROOKPARK, OH 44142–	216–331–4897
FAIRFIELD INN		16644 SNOW RD	BROOKPARK, OH 44142–	216–676–5200
BROOKVILLE DAYS INN		100 PARKVIEW DR	BROOKVILLE, OH 45309–	513–833–4003
COLONIAL MANOR MOTEL		924E HIGH ST	BRYAN, OH 43506–	419–636–3123
BEST WESTERN CAMBRIDGE		1945 SOUTHGATE PKWY	CAMBRIDGE, OH 43725–	614–685–6575
CAMBRIDGE TRAVELODGE		I–70 AND SR 209	CAMBRIDGE, OH 43725–	614–432–7375
HOLIDAY INN CAMBRIDGE		OHIO 209 AND I–70	CAMBRIDGE, OH 43725–	614–432–7313
AMBASSADOR MOTEL		2901 LINCOLN ST. E.	CANTON, OH 44707–	216–488–1281
AMERICAS BEST INNS INC		4914 EVERHARD RD. NW	CANTON, OH 44718–	216–499–1011
AULTMAN INN		2515 9TH ST. SW	CANTON, OH 44710–	216–452–9911
CANTON HILTON		320 MARKET AVE. S	CANTON, OH 44702–	216–453–1619
CANTON INN		1031 W. TUSCARAWAS ST	CANTON, OH 44702–	216–452–9703
COUNTRY HEARTH INN		4475 EVERHARD RD. NW	CANTON, OH 44718–	216–494–6360

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HAMPTON INN		4335 BROADMOOR CIR	CANTON, OH 44709–	216–492–0151
HOLIDAY INN NORTH CANTON		4520 EVERHARD RD. NW	CANTON, OH 44718–	216–499–9410
KNIGHTS INN		2950 CONVENIENCE CIR. NW	CANTON, OH 44718–	216–492–5030
PARKE HOTEL CANTON		4343 EVERHARD RD. NW	CANTON, OH 44718–	216–499–9410
SIGNATURE INN		5345 BROADMOOR CIR. NW	CANTON, OH 44709–	216–492–1331
SUPER 8 MOTEL CANTON		3970 CONVENIENT CIR. NW	CANTON, OH 44718–	216–493–8883
TOWNE MANOR MOTEL		1031 W. TUSCARAWAS ST	CANTON, OH 44702–	216–456–7391
COMFORT INN		1421 RT. 703 E	CELINA, OH 45822–	419–586–4656
BASS LAKE INN		400 SOUTH ST. UNITS 1–12	CHARDON, OH 44024–	216–285–3100
CHARM COUNTRYVIEW INN	PO BOX 100	3334 SR 557	CHARM, OH 44617–	216–893–3003
CHILLICOTHE INN		24 N. BRIDGE ST	CHILLICOTHE, OH 45601–	614–774–2512
COMFORT INN		20 N. PLAZA BLVD	CHILLICOTHE, OH 45601–	614–775–3500
HOLIDAY INN		1250 N. BRIDGE ST	CHILLICOTHE, OH 45601–	614–775–7000
MEYER MOTEL APARTMENTS		799 EASTERN AVE	CHILLICOTHE, OH 45601–	614–775–9950
WILLIAMS MOTEL		360 E. MAIN ST	CHILLICOTHE, OH 45601–	614–324–0011
AJ ROADHOUSE		6735 KELLOGG AVE	CINCINNATI, OH 45230–	513–231–2447
AMERISUITES		11435 REED HARTMAN HWY	CINCINNATI, OH 45241–	513–489–3666
CINCINNATI MARRIOTT		11320 CHESTER RD	CINCINNATI, OH 45246–	513–772–1720
CLARION HOTEL CINCINNATI		141 W. 6TH ST	CINCINNATI, OH 45202–	513–352–2100
COLONIAL INN MOTEL		10200 READING RD	CINCINNATI, OH 45241–	513–563–1700
CONDONS MOTEL		10172 READING RD	CINCINNATI, OH 45241–	513–563–1151
CROSS COUNTRY INN		4004 WILLIAMS DR	CINCINNATI, OH 45255–	513–528–7702
GATEWAY LODGE MOTEL		4453 READING RD	CINCINNATI, OH 45229–	513–242–2593
HAMPTON INN		10900 CROWNE POINT DR	CINCINNATI, OH 45241–	513–771–6888
HARLEY HOTEL CINCINNATI		8020 MONTGOMERY RD	CINCINNATI, OH 45236–	513–793–4300
HOLIDAY INN I–275 N		3855 HAUCK RD	CINCINNATI, OH 45241–	513–563–8330
HOWARD JOHNSON'S MOTOR LODGE.		5410 RIDGE AVE	CINCINNATI, OH 45213–	513–631–8500
HYATT REGENCY HOTEL		151 W. 5TH ST	CINCINNATI, OH 45202–	513–579–1234
MOTEL 6		3960 NINE MILE RD	CINCINNATI, OH 45230–	513–752–2262
NEW DENNISON HOTEL		716 MAIN ST	CINCINNATI, OH 45202–	513–241–7035
OMNI NETHERLAND PLAZA		35 W. 5TH ST	CINCINNATI, OH 45202–	513–421–9100
RAMADA HOTEL BLUE ASH		5901 PFEIFFER RD	CINCINNATI, OH 45242–	513–793–4500
RAMADA INN CINCINNATI		5901 PFEIFFER RD	CINCINNATI, OH 45242–	513–793–4500
RED ROOF INN		4035 MT CARMEL TOBASCO RD.	CINCINNATI, OH 45230–	513–528–2741
RED ROOF INN		5300 KENNEDY DR	CINCINNATI, OH 45213–	513–531–6589
RED ROOF INN SHARON		2301 E. SHARON RD	CINCINNATI, OH 45241–	513–771–5552
RESIDENCE INN BY MARRIOTT.		11689 CHESTER RD	CINCINNATI, OH 45246–	513–771–2525
SIGNATURE INN NORTHEAST		8870 GOVENORS HILL DR	CINCINNATI, OH 45249–	513–683–3086
TERRACE HILTON		15 W. 6TH ST	CINCINNATI, OH 45202–	513–381–4000
THE CINCINNATIAN HOTEL		601 VINE ST	CINCINNATI, OH 45202–	513–381–3000
THE GARFIELD HOUSE		2 GARFIELD PL	CINCINNATI, OH 45202–	513–421–3355
THE WESTIN HOTEL CINCINNATI.		FOUNTAINVIEW SQUARE S	CINCINNATI, OH 45202–	513–621–7700
HOMETOWN INN		23897 US RT. 23 S	CIRLEVILLE, OH 43113–	614–474–6006
CLEVELAND CLINIC GUESTHOUSE.		9601 EUCLID AVE	CLEVELAND, OH 44106–	216–791–5700
CLEVELAND MARRIOTT SOCIETY CENTER.		127 PUBLIC SQUARE	CLEVELAND, OH 44114–	216–696–9200
ECONO LODGE CLEVELAND AIRPORT.		13930 BROOKPARK RD	CLEVELAND, OH 44135–	216–267–5700
HOLIDAY INN CLEVELAND		4181 W. 150TH ST	CLEVELAND, OH 44135–	216–252–7700
HOLIDAY INN LAKESIDE		1111 LAKESIDE AVE	CLEVELAND, OH 44114–	216–351–7100
MARRIOTT INN		4277 W. 150TH ST	CLEVELAND, OH 44135–	216–252–5333
OMNI HOTEL		2065 96TH ST	CLEVELAND, OH 44106–	216–791–1900
RADISSON HOTEL CLEVELAND.		1701 E. 12TH ST	CLEVELAND, OH 44114–	216–621–9516
SHERATON CLEVELAND CITY CTR.		777 ST. CLAIR AVE	CLEVELAND, OH 44114–	216–771–7600
SHERATON HOPKINS AIRPORT HOTEL.		5300 RIVERSIDE DR	CLEVELAND, OH 44135–	216–267–1500
STOUFFER TOWER CITY PLAZA.		24 PUBLIC SQUARE	CLEVELAND, OH 44113–	216–696–5600
THE JAY HOTEL		2515 JAY AVE	CLEVELAND, OH 44113–	216–621–1675
THE RITZ CARLTON HOTEL		1515 W. 3RD ST	CLEVELAND, OH 44113–	216–623–1300
WEST SIDE YMCA		3200 FRANKLIN BLVD	CLEVELAND, OH 44113–	216–961–3277
ARBORGATE INN		4320 GROVES RD	COLUMBUS, OH 43232–	614–864–0600
BEST WESTERN COLUMBUS NORTH.		888 E. DUBLIN GRANVILLE RD	COLUMBUS, OH 43229–	614–888–8230
BEST WESTERN DOWNTOWN		35 W. SPRING ST	COLUMBUS, OH 43215–	614–228–3200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BRANINGANS HOTEL		1949 PARSON AVE	COLUMBUS, OH 43207–	614–444–7658
BUCKEYE MOTEL		1300 HARRISBURG PARK	COLUMBUS, OH 43223–	614–279–7427
COMFORT SUITES		1001 SCHROCK RD	COLUMBUS, OH 43229–	614–431–0206
CONCOURSE HOTEL		4300 E. 17TH AVE	COLUMBUS, OH 43219–	614–237–2515
COURTYARD BY MARRIOTT		7411 VANTAGE DR	COLUMBUS, OH 43085–	614–436–7070
CROSS COUNTRY INN		1313 W. ST JAMES LUTHERAN LN.	COLUMBUS, OH 43228–	614–870–7090
CROSS COUNTRY INN		1445 OLENTANGY RIVER RD	COLUMBUS, OH 43212–	614–291–2983
CROSS COUNTRY INN		4240/4242 E. 17TH AVE	COLUMBUS, OH 43219–	614–237–3403
CROSS COUNTRY INN		4875 SINCLAIR RD	COLUMBUS, OH 43029–	614–431–3870
CROSS COUNTRY INN		3246 OLENTANGY RIVER RD	COLUMBUS, OH 43202–	614–267–4546
CROSS COUNTRY INN		6225 ZUMSTEIN DR	COLUMBUS, OH 43229–	614–848–3619
DAYS INN		1700 CLARA ST	COLUMBUS, OH 43211–	614–299–4300
DAYS INN OSU		3232 OLENTANGY RIVER RD	COLUMBUS, OH 43202–	614–261–7141
E Z SLEEP MOTEL		1940 S. HIGH ST	COLUMBUS, OH 43207–	614–444–0687
ECONO LODGE		920 WILSON RD	COLUMBUS, OH 43204–	614–274–8581
EMBASSY SUITES HOTEL		2700 CORPORATE EXCHANGE DR.	COLUMBUS, OH 43229–	614–890–9600
FAIRFIELD INN BY MARRIOTT		887 MORSE RD	COLUMBUS, OH 43229–	614–262–4000
FAIRFIELD INN BY MARRIOTT		1309 ST. JAMES LUTHERAN LN.	COLUMBUS, OH 43228–	614–870–2880
FAWCETT CENTER FOR TOMORROW.		2400 OLENTANGY RIVER RD	COLUMBUS, OH 43210–	614–422–1342
GRANDVIEW MOTOR LODGE		1070 DUBLIN RD	COLUMBUS, OH 43215–	614–486–4554
GUEST QUARTERS SUITE HOTEL.		50 S. FRONT ST	COLUMBUS, OH 43215–	614–228–4800
HAMPTON INN		1100 MEDITERRANEAN AVE	COLUMBUS, OH 43229–	614–848–8686
HOLIDAY INN AIRPORT		750 STELZER RD	COLUMBUS, OH 43219–	614–761–7748
HOLIDAY INN COLUMBUS		175 HUTCHISON AVE	COLUMBUS, OH 43085–	614–885–3334
HOLIDAY INN COLUMBUS WEST.		2350 WESTBELT DR	COLUMBUS, OH 43228–	614–771–1104
HOLIDAY INN EAST I–70		4560 HILTON CORPORATE DR	COLUMBUS, OH 43232–	614–868–1380
HOLIDAY INN OHIO CENTER		33 NATIONWIDE BLVD	COLUMBUS, OH 43215–	614–461–4100
HOLIDAY INN ON THE LANE		328 W. LANE AVE	COLUMBUS, OH 43201–	614–294–4848
HOMEWOOD SUITES COLUMBUS.		115 HUTCHINSON AVE	COLUMBUS, OH 43235–	614–785–0001
HYATT ON CAPITAL SQUARE		75 E. STATE ST	COLUMBUS, OH 43215–	614–228–1234
HYATT REGENCY HOTEL		350 N. HIGH ST	COLUMBUS, OH 43215–	614–463–1234
KNIGHTS INN		5950 SCARBOROUGH BLVD	COLUMBUS, OH 43227–	614–864–4670
KNIGHTS INN		3160 OLENTANGY RIVER RD	COLUMBUS, OH 43202–	614–261–0523
KNIGHTS INN		1300 E. DUBLIN-GRANVILLE RD.	COLUMBUS, OH 43229–	614–866–1569
KNIGHTS INN WEST		1559 W. BROAD ST	COLUMBUS, OH 43222–	614–866–1596
MARRIOTT INN		6500 DOUBLETREE AVE	COLUMBUS, OH 43229–	614–885–1885
MICROTEL WORTHINGTON NORTH.		7500 VANTAGE DR	COLUMBUS, OH 43235–	614–436–0556
MOTEL 6		5910 SCARBOROUGH BLVD	COLUMBUS, OH 43232–	614–866–1933
MOTEL 6		5500 RENNER RD	COLUMBUS, OH 43228–	614–870–0993
MOTEL 6 #554		1289 E. DUBLIN GRANVILLE RD.	COLUMBUS, OH 43229–	614–468–1200
NEW ROME MOTEL		5246 W. BROAD ST	COLUMBUS, OH 43228–	614–878–5125
PARKE UNIVERSITY HOTEL		3025 OLENTANGY RIVER RD	COLUMBUS, OH 43202–	614–267–1111
QUALITY INN EAST		4801 E. BROAD ST	COLUMBUS, OH 43213–	614–861–0321
QUALITY INN NORTH		1213 GRANVILLE RD	COLUMBUS, OH 43229–	614–885–4084
RADISSON HOTEL AND CONFERENCE CENTER.		1375 CASSADY AVE	COLUMBUS, OH 43219–	614–475–7551
RADISSON HOTEL COLUMBUS NORTH.		4900 SINCLAIR RD	COLUMBUS, OH 43229–	614–846–0300
RAMADA INN WEST		4601 W. BROAD ST	COLUMBUS, OH 43228–	614–878–5301
RAMADA UNIVERSITY INN		3110 OLENTANGY RIVER RD	COLUMBUS, OH 43202–	614–267–7461
RED CARPET INN NORTH		1212 E. DUBLIN GRANVILLE RD.	COLUMBUS, OH 43229–	614–885–9696
RED ROOF INN COLUMBUS		750 MORSE RD	COLUMBUS, OH 43229–	614–876–3200
RED ROOF INN COLUMBUS		5001 RENNER RD	COLUMBUS, OH 43228–	614–878–9245
RED ROOF INN COLUMBUS		7474 N. HIGH ST	COLUMBUS, OH 43235–	614–846–3001
RED ROOF INN OSU		441 ACKERMAN RD	COLUMBUS, OH 43202–	614–537–9941
RESIDENCE INN BY MARRIOTT.		6191 ZUMSTEIN DR	COLUMBUS, OH 43229–	614–431–1819
SHERATON INN COLUMBUS		2124 S. HAMILTON RD	COLUMBUS, OH 43227–	614–861–7220
SIGNATURE INN NORTH		6767 SCHROCK HILL CT	COLUMBUS, OH 43229–	614–890–8111
STUDIO PLUS BRICE ROAD INC.		2200 LAKE CLUB DR	COLUMBUS, OH 43232–	614–759–1451

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STUDIO PLUS SAWMILL		6601 RELECTIONS DR	COLUMBUS, OH 43017–	614–764–0159
SUPER MOTOR LODGE		4444 E. MAIN ST	COLUMBUS, OH 43213–	614–237–3348
THE COMFORT INN		1221 E. DUBLIN GRANVILLE RD.	COLUMBUS, OH 43279–	614–885–4084
THE GERMAN VILLAGE INN MOTEL INC.		920 S. HIGH ST	COLUMBUS, OH 43206–	614–443–6506
THE TRUEMAN CLUB HOTEL		900 E. DUBLIN GRANVILLE	COLUMBUS, OH 43229–	614–888–7440
TRAVEL LODGE COLUMBUS WORTHINGTON.		7480 N. HIGH ST	COLUMBUS, OH 43085–	614–431–2525
FAIRFIELD INN BY MARRIOTT		70 ROTHROCK RD	COPLEY, OH 44321–	216–668–2700
ROSCOE MOTOR INN		421 S. WHITEWOMAN ST	COSHOCTON, OH 43812–	614–622–0556
ROSCOE VILLAGE INN		200 N. WHITEWOMAN ST	COSHOCTON, OH 43812–	614–622–2222
TRAVELODGE		275 S. WHITEWOMAN ST	COSHOCTON, OH 43812–	614–387–0300
ECONO LODGE MOTEL		10530 CORDUROY RD	CURTICE, OH 43412–	419–836–2822
ECONOMY INN		1070 GRAHAM RD	CUYAHOGA FALLS, OH 44223–	216–979–8200
RANCH MOTEL		3608 AKRON CLEVELAND RD	CUYAHOGA FALLS, OH 44223–	216–827–4611
SHERATON SUITES CUYAHOGA FALLS.		1989 FRONT ST	CUYAHOGA FALLS, OH 44221–	216–929–3000
TALLYHO TEL		1760 STATE RD	CUYAHOGA FALLS, OH 44223–	216–923–0457
BEST INN DAYTON INC		5551 SPRINGFIELD ST	DAYTON, OH 45431–	513–258–2233
COUNTRY HEARTH INN		1944 MIAMISBURG CENTERVILLE RD.	DAYTON, OH 45459–	513–435–1550
CROSS COUNTRY INN		9325 N. MAIN ST	DAYTON, OH 45415–	513–836–8339
DAYS INN		330 W. 1ST ST	DAYTON, OH 45402–	513–223–7131
DAYS INN OF DAYTON		7470 MILLER LN	DAYTON, OH 45414–	606–331–0091
DAYTON MARRIOTT HOTEL		1414 S. PATTERSON BLVD	DAYTON, OH 45409–	513–223–1000
ECONO LODGE DAYTON		2221 WAGONER-FORD RD	DAYTON, OH 45414–	216–278–1500
FAIRFIELD INN		6960 MILLER LN	DAYTON, OH 45414–	513–898–1120
HAMPTON INN DAYTON SOUTH.		8099 OLD YANKEE ST	DAYTON, OH 45459–	513–436–3700
HOLIDAY INN DAYTON		2301 WAGONER FORD RD	DAYTON, OH 45414–	513–278–4871
KNIGHTS INN NORTH		3663 MAXTON RD	DAYTON, OH 45414–	513–454–0550
MOTEL 6		7130 MILLER LN	DAYTON, OH 45414–	513–898–3606
PLAZA MOTEL		1728 STANLEY AVE	DAYTON, OH 45404–	513–224–1266
QUALITY INN		2140 EDWIN MOSES BLVD	DAYTON, OH 45408–	513–233–0166
RAMADA INN		4079 LITTLE YORK RD	DAYTON, OH 45414–	513–890–9500
RED ROOF INN		7370 MILLER LN	DAYTON, OH 45414–	513–898–1054
RELAX INN		3333 S. DIXIE DR	DAYTON, OH 45439–	513–299–3581
RESIDENCE INN BY MARRIOTT.		7070 POE AVE	DAYTON, OH 45414–	513–898–7764
RIVERSIDE MOTEL INC		5441 SPRINGFIELD PARK	DAYTON, OH 45431–	513–228–6656
RODEWAY INN		7575 POE RD	DAYTON, OH 45414–	513–821–1990
ROYAL PLAZA		1450 N. KEOWEE ST	DAYTON, OH 45404–	513–224–9636
SIGNATURE INN		250 BYERS RD	DAYTON, OH 45342–	513–865–0077
STOUFFERS CENTER PLAZA HOTEL.		5TH AND JEFFERSON ST	DAYTON, OH 45402–	513–224–0800
STUDIO PLUS DAYTON INC		7851 LOIS CIR	DAYTON, OH 45459–	513–439–2022
THE DAYTONIAN HILTON		11 S. LUDLOW ST	DAYTON, OH 45402–	513–461–4700
TRAVELERS MOTEL NORTH		2833 N. DIXIE DR	DAYTON, OH 45414–	513–277–6585
ATWOOD RESORT	PO BOX 96	2650 LODGE RD	DELLROY, OH 44620–	216–735–2211
KNIGHTS INN		889 COMMERICAL PKWY	DOVER, OH 44622–	216–364–7724
COURTYARD BY MARRIOTT		5175 POST RD	DUBLIN, OH 43017–	614–764–9393
CROSS COUNTRY INN		6384 FRANTZ RD	DUBLIN, OH 43017–	614–764–4545
HAMPTON INN DUBLIN		3920 TULLER RD	DUBLIN, OH 43017–	614–889–0573
MARRIOTT RESIDENCE INN		435 METRO PL. S	DUBLIN, OH 43017–	614–791–0403
NEW ENGLAND SUITES HOTEL.		3950 TULLER RD	DUBLIN, OH 43017–	614–848–3819
RED ROOF INN DUBLIN		5125 POST RD	DUBLIN, OH 43017–	614–764–3993
STOUFFERS DUBLIN HOTEL		600 METRO PLACE N	DUBLIN, OH 43017–	614–764–2200
WOODFIN SUITES DUBLIN		4130 TULLER RD	DUBLIN, OH 43017–	614–766–7762
MCCALLS MOTOR IN		14660 EUCLID AVE	EAST CLEVELAND, OH 44112–	216–681–8500
TOWN HOUSE MOTEL		15661 EUCLID AVE	EAST CLEVELAND, OH 44112–	216–541–1762
EAST LIVERPOOL MOTOR LODGE.		2340 DRESDEN AVE	EAST LIVERPOOL, OH 43920–	216–386–5858
ECONO LODGE		I–70 AND US RT. 35 E.	EATON, OH 45320–	513–456–4183
HAMPTON INN NORTHWEST		20 ROCKRIDGE RD	ENGLEWOOD, OH 45322–	513–832–2222
MOTEL 6		1212 S. MAIN ST	ENGLEWOOD, OH 45322–	513–832–3770
ENVOY INN		27861 EUCLID AVE	EUCLID, OH 44132–	216–731–2400
COMFORT INN WRIGHT PATTERSON.		616 N. BROAD ST	FAIRBORN, OH 45324–	513–879–7666
HOLIDAY INN CONFERENCE CENTER I–675.		2800 PRESIDENTIAL DR	FAIRBORN, OH 45324–	513–426–7800

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RAMADA INN		800 N. BROAD ST	FAIRBORN, OH 45324–	513–879–3920
RED ROOF INN INC		2580 COLUMBUS GLENN HWY	FAIRBORN, OH 45324–	513–426–6116
THE WRIGHT MOTEL		18 S. BROAD ST	FAIRBORN, OH 45324–	513–878–8395
CAPRI MOTEL		3256 DIXIE HWY. RT. 4	FAIRFIELD, OH 45014–	513–863–3460
CARRIAGE INN MOTEL		6419 DIXIE HWY	FAIRFIELD, OH 45014–	513–874–4774
RAMADA INN		4670 DIXIE HWY	FAIRFIELD, OH 45014–	513–829–7000
STUDIO PLUS FAIRFIELD INC		9651 SEWARD RD	FAIRFIELD, OH 45014–	513–860–5733
COUNTRY HEARTH INN		1020 INTERSTATE CT	FINDLAY, OH 45840–	419–423–4303
CROSS COUNTRY INN		1951 BROAD AVE	FINDLAY, OH 45840–	419–424–0466
DAYS INN		1305 W. MAIN CROSS ST	FINDLAY, OH 45840–	419–423–7171
ECONO LODGE		316 EMMA ST	FINDLAY, OH 45840–	419–422–0154
FINDLAY FAIRFIELD INN		2000 TIFFIN AVE	FINDLAY, OH 45839–	419–424–9940
FINDLAY INN AND CONFERENCE CENTER.		200 E. MAIN CROSS	FINDLAY, OH 45840–	419–422–5682
FINDLAY SUPER 8 MOTEL		1600 FOX ST	FINDLAY, OH 45839–	419–422–8863
KNIGHTS INN		1901 BROAD AVE	FINDLAY, OH 45840–	419–866–3550
KNIGHTS STOP		820 TIFFIN AVE	FINDLAY, OH 45480–	419–422–5516
COMFORT INN MIDDLETOWN		3458 COMMERCE DR	FRANKLIN, OH 45005–	513–420–9379
ECONO LODGE		4385 E. 2ND ST	FRANKLIN, OH 45005–	513–746–3627
HOLIDAY INN MIDDLETOWN	RT. 122	6147 W. OHIO	FRANKLIN, OH 45005–	513–424–1201
HOWARD JOHNSON MOTOR LODGE.		I–75 AND SR 122	FRANKLIN, OH 45005–	513–424–3551
KNIGHTS INN		8500 CLAUDE THOMAS RD	FRANKLIN, OH 45005–	513–746–2841
BEST WESTERN HOTEL FREMONT.		3701 N. SR 53	FREMONT, OH 43420–	419–334–9551
HOLIDAY INN FREMONT	PO BOX 527		FREMONT, OH 43420–	419–334–2682
KENYON INN		100 W. WIGGIN ST	GAMBIER, OH 43022–	216–951–7933
ELDORADO MOTEL		13701 BROADWAY	GARFIELD HEIGHTS, OH 44125–.	216–581–3333
GREENVILLE INN		851 MARTIN ST	GREENVILLE, OH 45331–	513–548–3613
BEST WESTERN EXECUTIVE INN.		4026 JACKPOT RD	GROVE CITY, OH 43123–	614–875–7710
CROSS COUNTRY INN		4055 JACKPOT RD	GROVE CITY, OH 43123–	614–871–9617
RAMADA INN SOUTH		1879 STRINGTOWN RD	GROVE CITY, OH 43123–	614–871–2990
RED ROOF INN GROVE CITY		1900 STRINGTOWN RD	GROVE CITY, OH 43123–	614–875–8543
EATONS HAMILTON INN		1767 DIXIE HWY	HAMILTON, OH 45011–	513–863–4212
GRAYSTONE MOTEL		615 N. RIVERSIDE DR	HAMILTON, OH 45011–	513–863–2900
HAMILTONIAN		ONE RIVERFRONT PLAZA	HAMILTON, OH 45011–	513–896–8200
INN TOWN MOTEL		20 S. ERIE HWY	HAMILTON, OH 45011–	513–896–6500
QUALITY INN		1137 STONE DR	HARRISON, OH 45030–	513–574–6000
QUALITY INN EDWARDS		10900 NEW HAVEN RD	HARRISON, OH 45030–	513–367–5200
MOTEL 6		3950 PARKWAY LN	HILLIARD, OH 43206–	614–771–1500
GREYSTONE MOTEL		8190 US RT. 50 E.	HILLSBORO, OH 45133–	513–393–1966
PARAGON INN	PO BOX 225	883 W. MAIN ST	HILLSBORO, OH 45133–	513–393–4730
COURTYARD BY MARRIOTT		1435 E. MALL DR	HOLLAND, OH 43528–	419–868–1001
CROSS COUNTRY INN		1201 E. MALL DR	HOLLAND, OH 43528–	419–866–8565
FAIRFIELD INN BY MARRIOTT		1401 E. MALL DR	HOLLAND, OH 43528–	419–867–1144
RED ROOF INN		1214 CORPORATE DR	HOLLAND, OH 43528–	419–866–5512
RESIDENCE INN BY MARRIOTT.		6101 TRUST DR	HOLLAND, OH 43528–	419–867–9555
TRUCK WORLD MOTOR INN		7010 TRUCK WORLD BLVD.	HUBBARD, OH 44425–	216–534–8191
SUPER 8 MOTEL HUBER HEIGHTS.		8110 OLD TROY PIKE	HUBER HEIGHTS, OH 45424–	513–271–8888
HOLIDAY INN HUDSON		240 HINES HILLS RD	HUDSON, OH 44236–	216–653–6306
COMFORT INN		2119 W. CLEVELAND RD	HURON, OH 44839–	419–433–5359
BUDGETEL INN		6161 QUARRY LN	INDEPENDENCE, OH 44131–	216–447–1133
CLEVELAND HILTON SOUTH		6200 QUARRY LN	INDEPENDENCE, OH 44131–	216–447–1300
COMFORT INN		6191 QUARRY LN	INDEPENDENCE, OH 44131–	216–328–7777
HARLEY HOTEL		5300 ROCKSIDE RD	INDEPENDENCE, OH 44131–	216–623–3900
HOLIDAY INN CLEVELAND INDEPENDENCE.		6001 ROCKSIDE RD	INDEPENDENCE, OH 44131–	216–867–4013
RED ROOF INN		6020 QUARRY LN	INDEPENDENCE, OH 44131–	216–447–0030
COMFORT INN		605 E. MAIN ST	JACKSON, OH 45640–	614–286–7581
DAYS INN JACKSON		972 E. MAIN ST	JACKSON, OH 45640–	614–286–3464
SUPER 8 KENT		4380 EDSON RD	KENT, OH 44240–	216–678–8817
KINGS ISLAND INN AND CONFERENCE CTR.		5691 KINGS ISLAND DR	KINGS ISLAND, OH 45040–	513–241–5800
THE FOUNTAIN INN MOTEL		225 MAPLE AVE	LAKESIDE, OH 43440–	419–798–4461
ARBORGATE INN		1327 RIVER VALLEY BLVD.	LANCASTER, OH 43130–	614–755–6230
HOLIDAY INN LANCASTER		1858 N. MEMORIAL DR	LANCASTER, OH 43130–	614–653–3040
SHAWS RESTAURANT AND INN.		123 N. BROAD ST	LANCASTER, OH 43130–	614–653–5522

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BEST WESTERN HERITAGE INN.	PO BOX 303	674 N. BROADWAY	LEBANON, OH 45036–	419–932–4111
KNIGHTS INN		725 E. MAIN ST	LEBANON, OH 45036–	614–932–3034
THE GOLDEN LAMB		27 BROADWAY	LEBANON, OH 45036–	513–932–5065
DAYS INN MOTEL		1250 NUEBRECHT RD	LIMA, OH 45801–	419–227–6515
HOLIDAY INN LIMA		1816 HARDING HWY	LIMA, OH 45804–	419–222–0004
KNIGHTS COURT		1430 BELLEFONTAINE AVE	LIMA, OH 45801–	419–227–2221
KNIGHTS INN		2285 N. EASTOWN RD	LIMA, OH 45801–	419–331–9215
MOTEL 6 #586		1800 HARDING HWY	LIMA, OH 45801–	419–226–0456
SHAWNEE INN		30916 LAKE LOGAN RD	LOGAN, OH 43138–	614–385–5674
THE INN AT CEDAR FALLS		21190 SR 374	LOGAN, OH 43138–	614–985–7489
TRAILS INN		870 US 42 NE	LONDON, OH 43140–	614–852–9415
LITTLE BROWN INN		940 S. MARKET ST	LOUDONVILLE, OH 44842–	419–994–5525
KNIGHTS INN		240 E. HIGHLAND RD	MACEDONIA, OH 44056–	216–467–1981
MOTEL 6 #525		311 E. HIGHLAND RD	MACEDONIA, OH 44056–	216–386–6161
COMFORT INN NORTH		500 N. TRIMBLE RD	MANSFIELD, OH 44906–	419–474–1000
HOLIDAY INN		116 PARK AVE. W	MANSFIELD, OH 44902–	419–525–6000
KNIGHTS INN		555 N. TRIMBLE RD	MANSFIELD, OH 44906–	419–529–2100
SUPER 8 MOTEL MANSFIELD		2425 INTERSTATE CIR	MANSFIELD, OH 44903–	419–756–8875
BEST WESTERN MARIETTA		279 MUSKINGUM DR	MARIETTA, OH 45751–	614–374–7211
HOLIDAY INN		701 PIKE ST	MARIETTA, OH 45750–	614–374–9660
KNIGHTS INN		I–77 AND SR 7	MARIETTA, OH 45750–	614–373–7373
SUPER 8 MOTEL MARIETTA		46 ACME ST. WASHINGTON CENTER.	MARIETTA, OH 45750–	614–374–8888
THE LAFAYETTE HOTEL INC		101 FRONT ST	MARIETTA, OH 45750–	614–373–5522
FAIRFIELD INN MARION	PO BOX 42	227 JAMESWAY	MARION, OH 43302–	614–389–6636
HARDING MOTOR LODGE		1065 DELAWARE AVE	MARION, OH 43302–	614–383–6771
COUNTRY HEARTH INN		SQUARE DR	MARYSVILLE, OH 43040–	614–387–0300
DAYS INN		16420 ALLENBY DR	MARYSVILLE, OH 43040–	513–644–0400
BEST WESTERN KINGS ISLAND.		9815 MASON MONTGOMERY RD.	MASON, OH 45040–	513–398–3297
HOLIDAY INN		10561 MASON MONTGOMERY RD.	MASON, OH 45040–	513–721–2634
BUCKEYE MOTEL		12061 LINCOLN WAY	MASSILLON, OH 44646–	216–832–5222
CROWN MOTEL		4001 LINCOLN WAY E.	MASSILLON, OH 44646–	216–477–4591
LANE MOTEL		4331 LINCOLN WAY E.	MASSILLON, OH 44646–	216–477–8476
MILLS MOTEL		4531 LINCOLN WAY E.	MASSILLON, OH 44646–	216–477–3471
SUPER 8 MOTEL MASSILLON		242 LINCOLNWAY W	MASSILLON, OH 44646–	216–837–8880
COMFORT INN		1426 REYNOLDS RD	MAUMEE, OH 43537–	419–893–2800
CROSS COUNTRY INN		1704 TOLLGATE DR	MAUMEE, OH 43537–	419–891–0880
DAYS INN TOLEDO		150 DUSSEL DR	MAUMEE, OH 43537–	419–893–9960
HAMPTON INN TOLEDO SOUTH.		1409 REYNOLDS RD	MAUMEE, OH 43537–	419–893–1004
KNIGHTS INN TOLEDO WEST		1520 S. HOLLAND SYLVANIA RD.	MAUMEE, OH 43537–	419–865–1380
RED ROOF INN		1570 REYNOLDS RD	MAUMEE, OH 43537–	419–893–0292
ST LUKE HOSPITAL		5901 MONCLOVA RD	MAUMEE, OH 43537–	419–893–5903
ARBORGATE INN MOTEL		7677 REYNOLDS RD	MENTOR, OH 44060–	216–946–0749
KNIGHTS INN		8370 BROADMOOR	MENTOR, OH 44060–	216–953–9835
SUPER 8 MOTEL MENTOR		7325 PALLISADES PKWY.	MENTOR, OH 44060–	216–951–8558
BEST WESTERN CONTINENTAL INN.		155 MONARCH LN	MIAMISBURG, OH 45342–	513–866–5500
COURTYARD BY MARRIOTT		100 PRESTIGE PL	MIAMISBURG, OH 45342–	513–433–3131
GUEST QUARTERS SUITE INN		300 PRESTIGE LN	MIAMISBURG, OH 45342–	513–436–2520
HOLIDAY INN DAYTON MALL		7999 PRESTIGE PLAZA	MIAMISBURG, OH 45342–	513–434–8030
KNIGHTS INN		185 BYERS RD	MIAMISBURG, OH 45342–	513–859–8797
MOTEL 6 561#		8101 SPRINGBORO	MIAMISBURG, OH 45342–	513–434–8750
RED ROOF INN		222 BYERS RD	MIAMISBURG, OH 45342–	513–866–0705
RESIDENCE INN BY MARRIOTT.		155 PRESTIGE PL	MIAMISBURG, OH 45342–	513–434–7881
CROSS COUNTRY INN		7233 ENGLE RD	MIDDLEBURG HEIGHTS, OH 44130–.	216–786–0037
HARLEY OF CLEVELAND WEST.		17000 BAGLEY RD	MIDDLEBURG HEIGHTS, OH 44130–.	216–243–5200
HOLIDAY INN HOPKINS INTERNATIONAL.		7230 ENGLE RD	MIDDLEBURG HEIGHTS, OH 44130–.	216–243–4040
MOTEL 6 1111#		7219 ENGLE RD	MIDDLEBURG HEIGHTS, OH 44130–.	216–234–0990
RED ROOF INN		17555 BAGLEY RD	MIDDLEBURG HEIGHTS, OH 44130–.	216–243–2441
RESIDENCE INN BY MARRIOTT		17525 ROSBOUGH DR	MIDDLEBURG HEIGHTS, OH 44130–.	216–662–8500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SIGNATURE INN MIDDLEBURG HEIGHTS.		17550 ROSBOUGH DR	MIDDLEBURG HEIGHTS, OH 44130–.	216–234–3131
TRUEBROOKE INN		9637 SR 534	MIDDLEFIELD, OH 44062–	216–693–4200
DIXIE MOTOR COURT		2760 CINCINNATI DAYTON RD	MIDDLETOWN, OH 45044–	513–425–8486
FANTASY FARM MOTEL		5885 HAMILTON MIDDLETOWN	MIDDLETOWN, OH 45044–	513–539–9706
SUPER 8 MOTEL MIDDLETOWN.		3553 COMMERCE DR	MIDDLETOWN, OH 45042–	513–422–4888
DAYS INN		11410 SR 250	MILAN, OH 44848–	419–499–4951
SUPER 8 MOTEL		11313 MILAN RD	MILAN, OH 44870–	419–499–4671
THE INN AT HONEY RUN		6920 CR 203	MILLERSBURG, OH 44654–	216–667–4011
HOLIDAY INN		RR 3	MONTPELIER, OH 43543–	419–485–5555
ECONOLODGE		2450 DRYDEN RD	MORAINE, OH 45439–	513–296–0380
BEST WESTERN VALLEY INN		131 BLUEBELL DR. SW	NEW PHILADELPHIA, OH 44663–.	216–339–7730
DELPHIAN MOTOR INN		1281 W. HIGH AVE	NEW PHILADELPHIA, OH 44663–.	216–339–6644
L K MOTEL	PO BOX 727	1256 W. HIGH EXTENTION	NEW PHILADELPHIA, OH 44663–.	216–339–6671
MOTEL 6 #254		181 BLUEBELL DR	NEW PHILADELPHIA, OH 44663–.	216–339–6530
DUKES INN MOTEL		299 ADENA DR	NEWCOMERSTOWN, OH 43832–.	614–498–4116
MOTEL 6 #1135		6880 SUNSET STRIP AVE. NW	NORTH CANTON, OH 44720–	216–494–7611
RARLEIGH INN		500 N. MAIN ST	NORTH CANTON, OH 44720–	216–499–9900
RED ROOF INN		5353 INN CIRCLE CT. NW	NORTH CANTON, OH 44720–	216–499–1970
SHERATON BELDEN INN		4375 METRO CIR	NORTH CANTON, OH 44720–	216–494–6494
HAMPTON INN NORTH OLMSTED.		25105 COUNTRY CLUB BLVD	NORTH OLMSTED, OH 44070–	216–734–4477
PIERRE RADISSON INN CLEVELAND.		25070 COUNTRY CLUB RD	NORTH OLMSTED, OH 44070–	216–585–9091
COMFORT INN SOUTH		2426 OREGON RD	NORTHWOOD, OH 43619–	419–666–2500
PIERRE RADISSON INN		3695 ORANGE PL	ORANGE VILLAGE, OH 44122–	216–953–0500
COMFORT INN EAST		2930 NAVARRE AVE	OREGON, OH 43616–	419–691–8911
MAUMEE BAY RESORT		1750 PARK RD. #2	OREGON, OH 43618–	419–836–1466
DAYS INN OXFORD		6 E. SYCAMORE	OXFORD, OH 45056–	513–523–0000
MARCUM CONFERENCE CENTER.		MIAMI UNIVERSITY	OXFORD, OH 45056–	513–529–4226
MARCUM CONFERENCE CENTER.		100 PATTERSON AVE	OXFORD, OH 45056–	513–523–6353
OXFORD MOTEL		5399 COLLEGE CORNER RD	OXFORD, OH 45056–	513–523–1680
BEST WESTERN EXECUTIVE INN.		2741 HELEN DR	PERRYSBURG, OH 43351–	419–874–9181
HOLIDAY INN I 75		10621 FREMONT PARK	PERRYSBURG, OH 43551–	419–874–1933
COMFORT INN		987 E. ASH ST	PIQUA, OH 45356–	513–778–8100
BEST WESTERN PORT CLINTON.		1734 E. PERRY ST	PORT CLINTON, OH 43452–	419–734–2274
COMFORT INN		1723 E. PERRY ST	PORT CLINTON, OH 43452–	419–732–2929
DAYS INN PORT CLINTON		2149 E. GILL RD	PORT CLINTON, OH 43452–	419–734–4945
HARBORMASTER MOTEL		1735 E. PERRY ST	PORT CLINTON, OH 43452–	419–734–5633
ISLAND HOUSE HOTEL		102 MADISON ST	PORT CLINTON, OH 43452–	419–734–2165
LAKELAND MOTEL		121 E. PERRY ST	PORT CLINTON, OH 43452–	419–734–2101
PHILS INN		1704 E. PERRY ST	PORT CLINTON, OH 43452–	419–734–2912
HOLIDAY INN PORTSMOUTH	PO BOX 11900	US 23 N.	PORTSMOUTH, OH 45662–	614–354–2851
PERRY HOLIDAY MOTEL	PO BOX 180	99 CONCORD AVE	PUT IN BAY, OH 43456–	419–285–2107
CROSS COUNTRY INN		2055 BRICE RD	REYNOLDSBURG, OH 43068–	614–864–3880
LA QUINTA INN		2447 BRICE RD	REYNOLDSBURG, OH 43068–	614–866–6456
LENNOX INN		13700 REYNOLDSBURG BALTIMORE.	REYNOLDSBURG, OH 43147–	614–861–7900
RAMADA INN		2100 BRICE RD	REYNOLDSBURG, OH 43068–	614–864–1280
RED ROOF INN REYNOLDSBURG.		2448 BRICE RD	REYNOLDSBURG, OH 43068–	614–864–3683
LAKE MOTEL		5145 BRECKSVILLE RD	RICHFIELD, OH 44286–	216–659–3951
RICHFIELD HOLIDAY INN		4742 BRECKSVILLE RD	RICHFIELD, OH 44286–	216–835–5014
SUMMIT MOTEL		5175 BRECKSVILLE RD	RICHFIELD, OH 44286–	216–659–6661
DAYS INN WEST		52601 HOLIDAY DR	SAINT CLAIRSVILLE, OH 43950–.	614–695–0100
HOSPITALITY INN		I–70 AND BANFIELD RD	SAINT CLAIRSVILLE, OH 43950–.	614–695–3961
RED ROOF INN #101		68031 RED ROOF LN	SAINT CLAIRSVILLE, OH 43950–.	614–695–4057
ST CLAIRSVILLE SUPER 8 MOTEL.		68400 MATTHEWS DR	SAINT CLAIRSVILLE, OH 43950–.	614–695–1994

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
S & W MOTEL	PO BOX 251	1321 CELINA RD	SAINT MARYS, OH 45885–	419–394–2341
A NIGHT INN		5410 MILAN RD	SANDUSKY, OH 44870–	419–627–9770
ALL AMERICAN MOTOR INN		1711 CLEVELAND RD	SANDUSKY, OH 44870–	419–625–4700
BEST BUDGET INN		5918 MILAN RD	SANDUSKY, OH 44870–	419–626–8148
COLONIAL INN RESORT		2405 CLEVELAND RD	SANDUSKY, OH 44870–	419–621–9000
DAYS INN		4315 MILAN RD	SANDUSKY, OH 44870–	419–627–8884
DAYS INN NORTH		1932 CLEVELAND RD	SANDUSKY, OH 44870–	419–625–1333
ECONO LODGE		1904 CLEVELAND RD	SANDUSKY, OH 44870–	419–627–5000
FAIRFIELD INN BY MARRIOTT SANDUSKY.		6220 MILAN RD	SANDUSKY, OH 44670–	419–621–9500
FRIENDSHIP INN		1021 CLEVELAND RD	SANDUSKY, OH 44870–	419–527–2884
FRIENDSHIP INN		3309 MILAN RD	SANDUSKY, OH 44870–	419–626–8720
GREENTREE INN		1935 CLEVELAND RD	SANDUSKY, OH 44870–	419–626–6761
HOLIDAY INN SANDUSKY		5513 MILAN RD	SANDUSKY, OH 44870–	419–626–6671
NORTH COAST INN INC		3304 MILAN RD	SANDUSKY, OH 44870–	419–626–6766
RADISSON HARBOUR INN		2001 CLEVELAND RD	SANDUSKY, OH 44870–	419–627–2500
RAMADA INN SANDUSKY		5608 MILAN RD	SANDUSKY, OH 44870–	419–626–9890
SANDCASTLE SUITES HOTEL	PO BOX 5006		SANDUSKY, OH 44871–	419–627–2112
SANDUSKY TRAVELODGE		5906 MILAN RD	SANDUSKY, OH 44870–	419–627–8971
SHERATON SANDUSKY		1119 SANDUSKY MALL BLVD	SANDUSKY, OH 44870–	419–625–5280
VACATION INN		2218 CLEVELAND RD	SANDUSKY, OH 44870–	419–625–6542
ENVOY INN SHARONVILLE		11620 CHESTER RD	SHARONVILLE, OH 45246–	513–771–0370
FAIRFIELD INN MARRIOTT		11171 DOWLIN DR	SHARONVILLE, OH 45241–	513–772–4114
GUEST QUARTERS SUITE INN		6300 E. KEMPER RD	SHARONVILLE, OH 45241–	513–489–3636
HOLIDAY INN I–275 N		3855 HAUCK RD	SHARONVILLE, OH 45241–	513–563–8330
HOMEWOOD SUITES		2670 KEMPER RD	SHARONVILLE, OH 45241–	513–891–1066
MOTEL 6		2000 E. KEMPER RD	SHARONVILLE, OH 45241–	513–792–5944
MOTEL 6		3850 HAUCK RD	SHARONVILLE, OH 45241–	513–563–1123
RED ROOF INN		11345 CHESTER RD	SHARONVILLE, OH 45241–	513–771–5141
SIGNATURE INN		11385 CHESTER RD	SHARONVILLE, OH 45241–	513–772–7877
COMFORT INN SIDNEY		1959 W. MICHIGAN AVE	SIDNEY, OH 45365–	513–492–3001
SIDNEY HOLIDAY INN		I–75 & SR 47	SIDNEY, OH 45365–	513–492–1131
MIDWESTERN INN		6110 SOM CENTER RD	SOLON, OH 44139–	216–248–3110
COUNTRYSIDE INN		3802 DRY RUN RD	SOUTH LEBANON, OH 45065–	513–494–1001
ARBORGATE INN MOTEL		10110 PRINCETON GLENDALE RD.	SPRINGDALE, OH 45246–	513–874–3345
BUDGETEL INN		12150 SPRINGFIELD PARK	SPRINGDALE, OH 45246–	513–671–2300
CROSS COUNTRY INN		330 GLENSPRINGS DR	SPRINGDALE, OH 45246–	513–671–0556
SHERATON SPRINGDALE		11911 SHERATON LN	SPRINGDALE, OH 45246–	513–671–6600
STUDIO PLUS		11645 CHESTERDALE RD	SPRINGDALE, OH 45246–	513–771–2457
DAYS INN SPRINGFIELD WEST		1715 W. NORTH ST	SPRINGFIELD, OH 45504–	513–324–5561
DRAKE MOTEL		3200 E. MAIN ST	SPRINGFIELD, OH 45505–	513–325–7334
HEARTLAND MOTEL		325 W. COLUMBIA	SPRINGFIELD, OH 45504–	513–324–5601
HOLIDAY INN SPRINGFIELD SOUTH.		383 E. LEFFEL LN	SPRINGFIELD, OH 45505–	513–322–8797
HOWARD JOHNSON		11 W. LEFFEL LN	SPRINGFIELD, OH 45506–	513–322–4941
IMPERIAL HOUSE MOTEL		2 W. LEFFEL LN	SPRINGFIELD, OH 45506–	513–324–5501
SPRINGFIELD INN		100 S. FOUNTAIN AVE	SPRINGFIELD, OH 45502–	513–322–3600
HOLIDAY INN STEUBENVILLE		UNIVERSITY BLVD	STEUBENVILLE, OH 43952–	614–282–0901
ST JOHN MEDICAL CENTER		ST. JOHN HEIGHTS	STEUBENVILLE, OH 43952–	614–264–8000
SUPER 8 MOTEL STEUBENVILLE.		1505 UNIVERSITY BLVD	STEUBENVILLE, OH 43952–	614–282–9534
COUNTRY PRIDE	PO BOX 207	I–280 AND LIBBEK RD	STONEY RIDGE, OH 43463–	419–837–5392
COMFORT INN		9789 SR 14	STREETSBORO, OH 44241–	216–626–5511
HOLIDAY INN STRONGSVILLE		15471 ROYALTON RD	STRONGSVILLE, OH 44136–	216–238–8800
RED ROOF INN		15385 ROYALTON RD	STRONGSVILLE, OH 44136–	216–238–0170
BED AND BREAKFAST BARN	PO BOX 454	RT. 1 CR 70	SUGARCREEK, OH 44681–	216–852–2337
TOLEDO AIRPORT MOTEL		11201 AIRPORT RD	SWANTON, OH 43558–	419–865–5531
RIVERVIEW INN MOTEL		1927 S. SR 53	TIFFIN, OH 44883–	419–447–6313
CROWN INN		1727 W. ALEXIS RD	TOLEDO, OH 43216–	419–473–1485
ECONOLODGE		1800 MIAMI ST	TOLEDO, OH 43605–	419–666–5120
HOLIDAY INN SOUTHWYCK		2429 REYNOLDS RD. S.	TOLEDO, OH 43614–	419–381–8765
MANHATTEN INN		1821 E. MANHATTAN BLVD	TOLEDO, OH 43608–	419–729–3901
MOTEL 6 #794		5335 HEATHERDOWNS BLVD	TOLEDO, OH 43614–	419–865–2308
PROMEDICA INN		2121 HUGHES	TOLEDO, OH 43606–	419–471–4660
RADISSON HOTEL TOLEDO		101 N. SUMMIT ST	TOLEDO, OH 43604–	419–241–3000
RED ROOF INN #196		3530 EXECUTIVE PKWY	TOLEDO, OH 43606–	419–536–0118
SECOR INN		3560 SECOR RD	TOLEDO, OH 43606–	419–531–2666
SHERATON WESTGATE		3536 SECOR RD	TOLEDO, OH 43606–	419–535–7070
TOLEDO HILTON		3100 GLENDALE AVE	TOLEDO, OH 43614–	419–381–6800
TOLEDO MARRIOTT PORTSIDE.		TWO SEAGATE	TOLEDO, OH 43604–	419–241–1411

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ARBORGATE INN TROY		30 TROYTOWN DR	TROY, OH 45375–	513–339–1515
MICROTEL		1210 BRUKNER DR	TROY, OH 45373–	513–335–0013
SUPER 8 MOTEL TWINSBURG		8848 TWIN HILLS DR	TWINSBURG, OH 44087–	216–425–2669
COUNTRY HEARTH INN	PO BOX 130	111 MCCAULEY DR	UHRICHSVILLE, OH 44683–	614–387–0300
COMFORT INN UPPER SANDUSKY.		7050 SR 30	UPPER SANDUSKY, OH 43351–.	419–294–1971
CROSS COUNTRY INN		550 E. NATIONAL RD	VANDALIA, OH 45377–	513–898–7636
DAYTON AIRPORT INN		DAYTON INTERNATIONAL AIRPORT.	VANDALIA, OH 45377–	513–898–1000
DAYS INN AKRON WADSWORTH.		FIVE PARK CENTRE BLVD	WADSWORTH, OH 44281–	216–336–7692
PARK HOTEL		136 N. PARK AVE	WARREN, OH 44481–	216–393–1200
KNIGHTS INN		1820 COLUMBUS AVE	WASHINGTON CH, OH 45160–	614–866–1569
EXIT THREE MOTEL		8224 SR 108	WAUSEON, OH 43567–	419–335–5766
SCIOTO MOTEL		10954 S US 23	WAVERLY, OH 45690–	614–947–8947
CREEKWOOD MOTEL	PO BOX 552	401 S. MAIN ST	WAYNESVILLE, OH 45068–	513–897–1000
SIMMONS MOTEL		812 S. PENN AVE. & 8TH ST	WELLSTON, OH 45692–	614–384–3230
SUNDOWN MOTEL		2871 US RT. 35 E.	WEST ALEXANDRIA, OH 45381–.	513–456–3000
ECONOLODGE		8367 CINCINNATI DAYTON RD	WEST CHESTER, OH 45069–	513–777–5121
KNIGHTS INN		7313 KINGSGATE WAY	WEST CHESTER, OH 45069–	513–859–8797
CROSS COUNTRY INN		909 S. STATE ST	WESTERVILLE, OH 43081–	614–890–1244
KNIGHTS INN		32 HEATHERDOWN DR	WESTERVILLE, OH 43081–	614–755–8230
CROSS COUNTRY INN		25200 SPERRY DR	WESTLAKE, OH 44145–	216–871–3893
HAMPTON INN		29690 DETROIT RD	WESTLAKE, OH 44145–	216–892–0333
HOLIDAY INN WESTLAKE		1100 CROCKER RD	WESTLAKE, OH 44145–	216–871–6000
RED ROOF INN		29595 CLEMMES RD	WESTLAKE, OH 44145–	216–892–7920
RESIDENCE INN BY MARRIOTT.		30100 CLEMENS RD	WESTLAKE., OH 44145–	216–892–2254
HAMPTON INN		28611 EUCLID AVE	WICKLIFFE, OH 44092–	216–944–7400
FAIRFIELD INN BY MARRIOTT		35110 MAPLEGROVE	WILLOUGHBY, OH 44094–	216–975–9922
RED ROOF INN		4166 SR 306	WILLOUGHBY, OH 44094–	216–946–9872
TRAVELODGE CLEVELAND WILLOUGHBY.		34600 MAPLEGROVE RD	WILLOUGHBY, OH 44094–	216–953–0500
WILMINGTON INN		909 FIFE AVE	WILMINGTON, OH 45177–	513–382–6000
ECONO LODGE WOOSTER		2139 LINCOLN WAY	WOOSTER, OH 44691–	216–264–8863
L K MOTEL		969 TIMKEN RD	WOOSTER, OH 44691–	216–264–8222
THE WOOSTER INN		810 E. WAYNE AVE	WOOSTER, OH 44691–	216–264–2341
HILTON INN NORTH		7007 N. HIGH ST	WORTHINGTON, OH 43085–	614–436–0700
THE WORTHINGTON INN		649 HIGH ST	WORTHINGTON, OH 43085–	614–885–2600
ALLENGATE		38 S. ALLISON AVE	XENIA, OH 45385–	513–435–9905
HOLIDAY INN XENIA		300 XENIA TOWNE SQUARE	XENIA, OH 45385–	513–372–9921
AUSTINTOWN SUPER 8 MOTEL		5280 76TH DR. W.	YOUNGSTOWN, OH 44515–	216–793–7788
BEST WESTERN MEANDER INN.		870 N. CANFIELD NILES RD	YOUNGSTOWN, OH 44515–	216–544–2378
WICK POLLOCK INN		603 WICK AVE	YOUNGSTOWN, OH 44503–	216–744–4401
COMFORT INN		500 MONROE ST	ZANESVILLE, OH 43701–	614–454–4144
ZANESVILLE FAIRFIELD INN		725 ZANE ST	ZANESVILLE, OH 43701–	614–453–8770
ZANESVILLE SUPER 8 MOTEL		2440 NATIONAL RD	ZANESVILLE, OH 43701–	614–455–3124
Oklahoma				
RAMADA INN		2515 E. BROADWAY	ALTUS, OK 73521–	405–477–3000
HOLIDAY INN ARDMORE		2705 W. BROADWAY	ARDMORE, OK 73401–	405–223–7130
RAMADA INN		2700 W. BROADWAY	ARDMORE, OK 73401–	405–226–1250
HOLIDAY INN		1410 SE WASHINGTON BLVD	BARTLESVILLE, OK 74006–	918–333–8320
ECONO LODGE		1401 N. ELM PL	BROKEN ARROW, OK 74012–	918–258–6617
HOLIDAY INN SOUTH		2600 N. ASPEN	BROKEN ARROW, OK 74012–	918–258–7065
TRAVELERS INN		19250 TIMBERCREST CIR	CATOOSA, OK 74105–	918–266–7000
COMFORT INN		2247 GARY BLVD	CLINTON, OK 73601–	405–323–6840
LA QUINTA MOTOR INN		5501 TINKER DIAGONAL	DEL CITY, OK 73115–	405–672–0076
HOLIDAY INN		2015 N. HWY. 81	DUNCAN, OK 73533–	405–252–1500
HOLIDAY INN		I–40 & HWY. 6	ELK CITY, OK 73648–	405–225–5537
QUALITY INN		14831 S. CASPER	GLENPOOL, OK 74033–	918–322–5201
HOLIDAY INN		HWY. 75 & TRUDGEON	HENRYETTA, OK 74437–	918–652–2581
CENTURY INN		906 HWY. 81 S.	MARLOW, OK 73055–	405–658–6695
HOLIDAY INN EAST		5701 TINKER DIAGONAL	MIDWEST CITY, OK 73110–	405–737–4481
DAYS INN MUSKOGEE		900 S. 32ND ST	MUSKOGEE, OK 74401–	918–683–3911
NORMAN INN		2545 W. MAIN	NORMAN, OK 73069–	405–360–1234
RESIDENCE INN BY MARRIOTT.		2681 JEFFERSON	NORMAN, OK 73072–	405–366–0900
SHERATON INN NORMAN		1000 N. INTERSTATE DR	NORMAN, OK 73072–	405–364–2882

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COURTYARD BY MARRIOTT		4301 HIGHLINE BLVD	OKLAHOMA CITY, OK 73108–	405–946–6500
EMBASSY SUITES HOTEL		1815 S. MERIDIAN	OKLAHOMA CITY, OK 73108–	405–682–6000
HAMPTON INN		1905 S. MERIDIAN AVE	OKLAHOMA CITY, OK 73108–1719.	405–682–2080
HILTON INN		2945 NW EXPRWY.	OKLAHOMA CITY, OK 73112–	405–848–8411
HOLIDAY INN		801 S. MERIDIAN	OKLAHOMA CITY, OK 73108–	405–942–8511
HOWARD JOHNSON AIRPORT WEST.		400 S. MERIDIAN	OKLAHOMA CITY, OK 73108–	405–943–9841
HOWARD JOHNSON REMINGTON PARK NORTH.		5301 N. LINCOLN BLVD	OKLAHOMA CITY, OK 73105–	405–528–7653
LA QUINTA MOTOR INN		8315 S. I–35	OKLAHOMA CITY, OK 73149–	405–631–8661
LEXINGTON HOTEL SUITES		1200 S. MERIDIAN AVE	OKLAHOMA CITY, OK 73108–1706.	405–943–7800
OKLAHOMA CITY MARRIOTT		3233 NW EXPRWY.	OKLAHOMA CITY, OK 73112–	405–842–6633
QUALITY INN		720 S. MACARTHUR BLVD	OKLAHOMA CITY, OK 73128–	405–943–2393
RADISSON INN		401 S. MERIDIAN AVE	OKLAHOMA CITY, OK 73108–	405–947–7681
RESIDENCE INN BY MARRIOTT.		4361 W. RENO	OKLAHOMA CITY, OK 73107–	405–942–4500
RICHMOND SUITES		1600 NW EXPRWY.	OKLAHOMA CITY, OK 73118–	405–840–1440
SADDLEBACK INN		4300 SW 3RD ST	OKLAHOMA CITY, OK 73108–	405–947–7000
TRAVELERS INN		504 S. MERIDIAN	OKLAHOMA CITY, OK 73108–	405–942–8294
WATERFORD HOTEL		6300 WATERFORD BLVD	OKLAHOMA CITY, OK 73118–	405–848–4782
BEST WESTERN OKMULGEE		3499 N. WOOD DR	OKMULGEE, OK 74447–	918–756–9200
HOLIDAY INN		2215 N. 14TH	PONCA CITY OK	405–762–8311
ECONO LODGE		2500 HWY. 74 I–35 EXIT 91	PURCELL, OK 73080–	405–527–5603
CINDERELLA MOTOR INN		623 KICKAPOO SPAR	SHAWNEE, OK 74801–	405–273–7010
HOLIDAY INN		2515 W. SIXTH ST	STILLWATER, OK 74074–	405–372–0800
OKLA. STATE UNIVERSITY STUDENT UNION HOTEL.		H103 SU OSU	STILLWATER, OK 74078–	405–744–6835
BEST WESTERN TRADE WINDS CENTRAL INN.		3141 E. SKELLY DR	TULSA, OK 74107–	918–749–5561
BEST WESTERN TRADE WINDS EAST INN.		3337 E. SKELLY DR	TULSA, OK 74315–	918–743–7931
DOUBLETREE HOTEL AT WARREN PLACE.		6110 S. YALE	TULSA, OK 74136–	918–495–1000
DOUBLETREE HOTEL DOWNTOWN.		616 W. SEVENTH ST	TULSA, OK 74127–8983	918–587–8000
ECONO LODGE		11620 E. SKELLY DR	TULSA, OK 74128–	918–437–9200
HAMPTON INN		3209 S. 79TH E. AVE	TULSA, OK 74145–	918–663–1000
HAWTHORN SUITES		3509 S. 79TH E. AVE	TULSA, OK 74145–	918–663–3900
HOLIDAY INN EXPRESS		3131 E. 51ST	TULSA, OK 74105–	918–743–9611
HOLIDAY INN TULSA CENTER I–44.		8181 E. SKELLY	TULSA, OK 74129–	918–663–4541
HOLIDAY INN TULSA EAST AIRPORT.		1010 N. GARNETT RD	TULSA, OK 74116–	918–437–7660
LA QUINTA MOTOR INN		12525 E. 52ND ST. S	TULSA, OK 74146–	918–254–1626
LA QUINTA MOTOR INN		35 N. SHERIDAN RD	TULSA, OK 74115–	918–836–3931
LA QUINTA MOTOR INN		10829 E. 41ST ST	TULSA, OK 74146–	918–665–0220
LEXINGTON HOTEL SUITES		8525 E. 41ST ST	TULSA, OK 74145–	918–627–0030
RESIDENCE INN BY MARRIOTT.		8181 E. 41ST ST	TULSA, OK 74145–	918–664–7241
SHERATON KENSINGTON HOTEL.		1902 E. 71ST ST	TULSA, OK 74136–	918–493–7000
THE WESTIN HOTEL WILLIAM CENTER.		100 E. 2ND ST	TULSA, OK 74103–	918–582–9000
TRAVELERS INN		5811 S. 49TH W. AVE	TULSA, OK 74107–	918–446–6000
TULSA AIRPORT NORTH		35 N. SHERIDAN RD	TULSA, OK 74115–	918–836–3931
TULSA MARRIOTT		10918 E. 41ST ST	TULSA, OK 74146–	918–627–5000
NORTHWEST INN		HWY. 270 & 1ST ST	WOODWARD, OK 73801–	405–256–7600
COMFORT INN WEST		321 N. MUSTANG RD	YUKON, OK 73099–	405–324–1000
Oregon				
CIA INC COMFORT INN		251 AIRPORT RD. SE	ALBANY, OR 97321–	503–928–0921
REGENCY INN		50 LOWE RD	ASHLAND, OR 97520–	503–482–4700
BAYSHORE MOTOR INN		555 HAMBURG	ASTORIA, OR 97103–	503–325–2205
BEST WESTERN SUNRIDGE INN.		ONE SURRIDGE LN	BAKER CITY, OR 97814–	503–523–6444
ELDORADO INN		695 CAMPBELL ST	BAKER CITY, OR 97814–	503–523–6454
QUALITY INN		810 CAMPBELL ST	BAKER CITY, OR 97814–	503–523–2242
SUPER 8 MOTEL BAKER CITY		250 CAMPBELL ST	BAKER CITY, OR 97814–	503–523–8282
COURTYARD BY MARRIOTT PORTLAND-BEAVERTON.		8500 SW NIMBUS DR	BEAVERTON, OR 97005–	503–641–3200

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RAMADA INN BEAVERTON		13455 SW TUALATTIN VALLEY HWY.	BEAVERTON, OR 97005–	503–643–9100
THE GREENWOOD INN		10700 SW ALLEN BLVD	BEAVERTON, OR 97005–	503–643–7444
PEPPERTREE MOTEL		10720 SW ALLEN	BEAVERTON, OR 97005–	503–641–7477
BEST WESTERN ENTRADA LODGE.		19221 CENTURY DR	BEND, OR 97702–	503–382–1515
BEST WESTERN WOODSTONE INN.		721 NE 3RD ST	BEND, OR 97701–	503–382–1515
COMFORT INN BEND		61200 S HWY	BEND, OR 97702–	503–388–2227
HAMPTON INN BEND		15 NE BUTLER RD	BEND, OR 97701–	503–388–4114
THE RIVERHOUSE		3075 N. HWY. 97	BEND, OR 97701–	503–389–3111
NUGGET INN		105 FRONT ST. SW	BOARDMAN, OR 97818–	503–481–2375
HARBOR INN MOTEL		15991 HWY. 101 S	BROOKINGS, OR 97415–	503–469–3194
HOUSE ON THE METOLIUS	PO BOX 682	FOREST RD. 1420	CAMP SHERMAN, OR 97730–	503–595–6620
DESERT INN MOTEL	PO BOX 148		CHRISTMAS VALLEY, OR 97641–.	503–576–2262
BEST WESTERN SUNNYSIDE INN.		12855 SE 97TH	CLACKAMAS, OR 97015–	503–652–1500
CLACKAMAS INN		16010 SE 82ND DR	CLACKAMAS, OR 97015–	503–650–5340
CYPRESS INN CLACKAMAS		9040 SE ADAMS	CLACKAMAS, OR 97015–	503–655–0062
DAYS INN PORTLAND SOUTH		9717 SE SUNNYSIDE RD	CLACKAMAS, OR 97015–	503–654–1699
MONARCH HOTEL & CONFERENCE CENTER.		12566 SE 93RD AVE	CLACKAMAS, OR 97015–	503–652–1515
CORVALLIS BUDGET INN MOTEL.		1480 SW 3RD ST	CORVALLIS, OR 97333–	503–752–6756
SHANIEO INN		1113 NW 9TH	CORVALLIS, OR 97330–	503–754–7474
MOTEL ORLEANS	PO BOX 988	345 E. OREGON AVE	CRESWELL, OR 97426–	503–895–3341
BALCH HOTEL		40 S. MAIN	DUFUR, OR 97021–	503–467–2277
EUGENE HILTON HOTEL		66 E. SIXTH AVE	EUGENE, OR 97401–	503–342–2000
FRANKLIN INN		1857 FRANKLIN BLVD	EUGENE, OR 97403–	503–342–4804
GETTY'S EMERALD GARDEN BED & BREAKFAST.		640 AUDEL AVE	EUGENE, OR 97404–	503–688–6344
HOLIDAY INN EUGENE		225 COBURG RD	EUGENE, OR 97401–	503–342–5181
MOTEL 6		3690 GLENWOOD DR	EUGENE, OR 97403–	503–687–2395
RED LION EUGENE		205 COBURG ROAD	EUGENE, OR 97401–	503–342–5201
AHLF HOUSE BED & BREAKFAST.		762 NW 6TH ST	GRANTS PASS, OR 97526–	503–474–1374
BEST WESTERN GRANTS PASS INN.		111 NE AGNESS AVE	GRANTS PASS, OR 97526–	503–476–1117
INN AT THE ROGUE BEST WESTERN.		8959 ROGUE RIVER HWY	GRANTS PASS, OR 97527–	503–582–2200
PONY SOLDIER MOTOR INN		1060 NE CLEVELAND AVE	GRESHAM, OR 97030–	503–665–1591
QUALITY INN		1545 NE BURNSIDE ST	GRESHAM, OR 97030–	503–666–9545
BEST WESTERN BEACHFRONT INN.		16008 BOAT BASIN RD	HARBOR, OR 97418–	504–469–7779
HOOD RIVER HOTEL		102 OAK ST	HOOD RIVER, OR 97031–	503–386–1900
LOVE'S RIVERVIEW LODGE		1505 OAK ST	HOOD RIVER, OR 97031–	503–386–8719
BEST WESTERN INN		315 W. MAIN ST	JOHN DAY, OR 97845–	503–575–1700
BUDGET 8 MOTEL		711 W. MAIN	JOHN DAY, OR 97845–	
BEST WESTERN KLAMATH INN		4061 S. 6TH ST	KLAMATH FALLS, OR 97603–	503–882–1200
BEST WESTERN OLYMPIC INN		2627 S. 6TH ST	KLAMATH FALLS, OR 97603–	503–882–9665
COMFORT INN		2500 S. 6TH ST	KLAMATH FALLS, OR 97601–	503–884–9999
ECONO LODGE		75 MAIN ST	KLAMATH FALLS, OR 97601–	503–884–7735
RESIDENCE INN BY MARRIOTT PORTLAND SOUTH.		15200 SW BANGY RD	LAKE OSWEGO, OR 97035–	503–684–2503
LINCOLN CITY SHILO INN		1501 NW 40TH ST	LINCOLN CITY, OR 97367–4811	503–641–6565
LONG CREEK LODGE MOTEL		171 W. MAIN	LONG CREEK, OR 97856–	503–421–9212
JUNIPER MOTEL		414 N. HWY. 26	MADRAS, OR 97741–	503–475–6166
SONNY'S MOTEL REST		1539 SW HWY. 97	MADRAS, OR 97741–	503–475–7217
SAFARI MOTOR INN		345 M HWY. 99 W	MCMINNVILLE, OR 97128–	504–725–5167
HORIZON MOTOR INN		1154 BARNETT RD	MEDFORD, OR 97504–	503–779–5085
QUALITY INN AT ROGUE VALLEY.		2345 CRATER LAKE HWY	MEDFORD, OR 97504–	503–770–1234
ECONOLODGE		17330 SE MCLOUGHLIN	MILWAUKIE, OR 97267–	503–654–2222
MAYNARD'S MOTEL		14015 SE MCLOUGHLIN	MILWAUKIE, OR 97267–	503–659–2125
COURTESY INN		270 N. PACIFIC AVE. 99W	MONMOUTH, OR 97361–	503–838–4436
PARKSIDE MOTEL		1480 SHERMAN AVE	NORTH BEND, OR 97459–	
HOTEL NEWPORT		3019 N. COAST HWY. 101	NEWPORT, OR 97365–	503–265–9411
SYLVIA BEACH HOTEL		267 NW CLIFF ST	NEWPORT, OR 97365–	503–265–5428
THE WAVES MOTEL		820 NW COAST ST	NEWPORT, OR 97365–	503–265–4661
VAL U INN		531 SW FALL ST	NEWPORT, OR 97365–	503–265–8303
VIKING'S CONDOMINIUMS		729 NW COAST ST	NEWPORT, OR 97365–	503–265–2477

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
OAK RIDGE INN BEST WESTERN.		47445 HWY. 58	OAK RIDGE, OR 97463–	503–782–2212
BEST WESTERN INN		251 GOODFELLOW ST	ONTARIO, OR 97915–	503–889–2600
HOWARD JOHNSON LODGE #1201.		1249 TAPADEKA AVE	ONTARIO, OR 97914–	503–889–8621
SUPER 8		266 GOODFELLOW ST	ONTARIO, OR 97914–	503–889–8282
VAL U INN OREGON CITY		1900 CLACKAMETTE DR	OREGON CITY, OR 97045–	503–655–7141
RED LION INDIAN HILLS		304 SE NYE AVE	PENDLETON, OR 97801–	503–276–6111
99 MOTEL		405 NE COLUMBIA BLVD	PORTLAND, OR 97211–	503–289–9999
ALADDIN MOTOR INN		8905 SW 30TH	PORTLAND, OR 97219–	503–246–8241
BEST WESTERN HERITAGE INN.		4319 NW YEON	PORTLAND, OR 97210–	503–497–9044
BEST WESTERN INN AT THE MEADOWS.		1215 N. HAYDEN MEADOWS DR.	PORTLAND, OR 97217–	503–286–9600
CHESTNUT TREE INN		9699 SE STARK ST	PORTLAND, OR 97216–	503–255–4444
COMFORT INN LLOYD CENTER.		431 NE MULTNOMAH	PORTLAND, OR 97232–	503–233–7933
CYPRESS INN		9707 SE STARK	PORTLAND, OR 97216–	503–252–8247
DAYS HOTEL		11550 NE AIRPORT WAY	PORTLAND, OR 97220–	503–252–3200
GOVERNOR HOTEL		SW 10TH AT ALDER	PORTLAND, OR 97205–	503–224–3400
HOTEL VINTAGE PLAZA		422 SW BROADWAY	PORTLAND, OR 97205–	503–226–1212
LLOYD CENTER SHILO INN		1506 NE 2ND AVE	PORTLAND, OR 97232–	503–641–6565
NOKYO USA INC. KABUTO MOTEL.		18323 SE STARK ST	PORTLAND, OR 97233–	503–666–6464
PONY SOLDIER MOTOR INN		9901 NE SANDY BLVD	PORTLAND, OR 97220–	503–256–1504
PORTLAND HILTON HOTEL		921 SW 6TH AVE	PORTLAND, OR 97204–	503–226–1611
PORTLAND MARRIOTT		1401 SW FRONT AVE	PORTLAND, OR 97201–	503–226–7600
RAMADA INN PDX		6221 NE 82ND AVE	PORTLAND, OR 97220–	503–255–6511
RED LION HOTEL COLUMBIA RIVER.		1401 N. HAYDEN ISLAND DR	PORTLAND, OR 97217–	503–283–2111
RED LION HOTEL LLOYD CENTER.		1000 NE MULTNOMAH	PORTLAND, OR 97232–	503–281–6111
RESIDENCE INN BY MARRIOTT PORTLAND DOWNTOWN.		1710 NE MULTNOMAH ST	PORTLAND, OR 97232–	503–288–1400
RIVER PLACE HOTEL		1510 SW HARBOR WAY	PORTLAND, OR 97201–	503–228–3233
SCANDIA LODGE		10450 SW BARBUR	PORTLAND, OR 97219–	503–244–0151
SHERATON PORTLAND AIRPORT HOTEL.		8235 NE AIRPORT WAY	PORTLAND, OR 97220–	503–249–7601
SHILO INN PORTLAND AIRPORT 82ND AVENUE.		3828 NE 82ND AVE	PORTLAND, OR 97220–	503–641–6565
SHILO INN PORTLAND AIRPORT SUITES HOTEL.		11707 NE AIRPORT WAY	PORTLAND, OR 97220–	350–641–6565
ST. FRANCIS HOTEL INC.		1110 SW 11TH AVE	PORTLAND, OR 97205–2097	503–223–2161
SUPER 8 MOTEL		11011 NE HOLMAN	PORTLAND, OR 97220–	503–257–8988
THE BENSON HOTEL		309 SW BROADWAY	PORTLAND, OR 97205–	503–228–2000
THE HEATHMAN HOTEL		SW BROADWAY AT SALMON	PORTLAND, OR 97205–	503–241–4100
BEST WESTERN RAMADA INN		2630 SW 17TH PL	REDMOND, OR 97756–	503–548–8080
INN AT EAGLE CREST		1512 CLINE FALLS RD	REDMOND, OR 97756–	503–923–2453
NENDELS NEW REDMOND HOTEL.		521 S 6TH ST	REDMOND, OR 97756–	503–923–7378
BEST WESTERN SALBASGEON INN OF REEDSPORT.		1400 HWY. AVE	REEDSPORT, OR 97467–	503–271–4831
SALBASGEON INN OF UMPQUA.		45209 HWY. 38	REEDSPORT, OR 97467–	503–271–2025
BONITA HOTEL	RRR		RRR, OR 88909–	
CITY CENTER MOTEL		510 LIBERTY ST. SE	SALEM, OR 97301–	503–364–0121
MOTEL 6 OLP SOUTH		2250 MISSION ST. SE	SALEM, OR 97302–	503–588–7191
PACIFIC HIGHWAY INN		4526 PORTLAND RD. NE	SALEM, OR 9730 –	503–390–3200
QUALITY INN		3301 MARKET ST. NE	SALEM, OR 97301–	503–370–7888
SALEM SUITES SHILO INN		3304 MARKET NE	SALEM, OR 97301–1818	503–641–6565
SALEM SUPER 8 MOTEL		1288 HAWTHORNE AVE. NE	SALEM, OR 97301–	503–370–8888
SEASIDE BEACH CLUB		561 S. PROM	SEASIDE, OR 97138–	503–738–7113
BEST WESTERN PONDEROSA LODGE.	PO BOX 218		SISTERS, OR 97759–	503–549–1234
SPRINGFIELD SHILO INN		3350 GATEWAY	SPRINFIELD, OR 97477–1094	503–641–6565
PACIFIC 9 MOTOR INN		3550 GATEWAY ST	SPRINGFIELD, OR 97477–	503–726–8266
RED LION SPRINGFIELD		3280 GATEWAY ROAD	SPRINGFIELD, OR 97477–	503–726–8181
EMBASSY SUITES PORTLAND CONFERENCE CENTER.		9000 SW WASHINGTON SQUARE RD.	TIGARD, OR 97223–	503–644–4000
MOTEL 6		17950 SW MCEWAN RD	TIGARD, OR 97224–	503–620–2065

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
PORTLAND I-5 SOUTH SHILO INN.		7300 SW HAZEL FERN RD	TIGARD, OR 97223-7715	503-641-6565
WASHINGTON SQUARE SHILO INN.		10830 SW GREENBERG RD	TIGARD, OR 97223-1409	503-641-6565
BURNS WEST MOTEL		790 NW FRONTAGE	TROUTDALE, OR 97060-	503-667-8212
PHOENIX INN		477 NW PHOENIX DR	TROUTDALE, OR 97060-	503-669-6500
COMFORT INN		8855 SW CITIZENS DR	WILSONVILLE, OR 97070-	503-682-9000
WOOD VILLAGE SHILO INN		2522 NE 238TH DR	WOOD VILLAGE, OR 97060-1011.	503-641-6565
FLYING M RANCH		23029 NW FLYING M RD	YAMHILL, OR 97148-	503-662-3222
Pennsylvania				
ALTLAND HOUSE INC.		RT. 30 CENTER SQ	ABBOTTSTOWN, PA 17301-	717-259-9535
ALLENTOWN HILTON HOTEL		904 HAMILTON MALL	ALLENTOWN, PA 18101-	215-433-2221
COMFORT INN		7625 IMPERIAL WAY	ALLENTOWN, PA 18106-	215-391-0344
COMFORT SUITES OF ALLENTOWN.		3712 HAMILTON BLVD	ALLENTOWN, PA 18103-	215-437-9100
DAYS INN		2622 LEHIGH ST	ALLENTOWN, PA 18103-	215-797-1234
ECONO LODGE	TEST	2115 DOWNYFLAKE LN	ALLENTOWN, PA 18103-	215-797-2200
HAMPTON INN ALLENTOWN		7471 KEEBLER WAY	ALLENTOWN, PA 18106-	215-391-1500
RED ROOF INN		1846 CATASAQUA RD	ALLENTOWN, PA 18103-	215-264-5404
SHERATON		3400 AIRPORT RD	ALLENTOWN, PA 18103-	215-266-1000
WALP'S GUEST HOUSE		AIRPORT RD. AT UNION BLVD	ALLENTOWN, PA 18103-	215-437-4841
DAYS INN		3306 PLEASANT VALLEY BLVD	ALTOONA, PA 16602-	814-944-9661
ECONO LODGE		2906 PLEASANT VALLEY BLVD	ALTOONA, PA 16602-	814-944-3555
HOJO INN		1500 STERLING ST	ALTOONA, PA 16602-	814-946-7601
PENN HILLS RESORT	PO BOX 309	RT. 447	ANALOMICK, PA 18320-	717-421-6464
BAINBRIDGE INN	PO BOX 502	FRONT AND RACE ST	BAINBRIDGE, PA 17502-	717-426-9931
COMFORT INN	PO BOX 184	RT. 611	BARTONSVILLE, PA 18321-	717-467-1500
BEAVER VALLEY MOTEL		RT. 18 N	BEAVER FALLS, PA 15010-	412-843-0630
HILLTOP MOTEL		RT. 18 BIG BEAVER BLVD	BEAVER FALLS, PA 15010-	412-846-3400
HOLIDAY INN	PO BOX 696	RT. 18	BEAVER FALLS, PA 15010-	412-846-3700
RON DEL MOTEL		RT. 70 & 51	BELLE VERNON, PA 15012-	412-929-6677
SCOTTISH INN		RT. 70 & 51	BELLE VERNON, PA 15012-	412-929-4501
COMFORT INN		3660 STREET RD	BENSALEM, PA 19020-	215-245-0100
COURTYARD BY MARRIOTT		3327 STREET RD	BENSALEM, PA 19020-	215-639-9100
HOLIDAY INN		3499 STREET RD	BENSALEM, PA 19020-	215-638-1500
RESIDENCE INN MARRIOTT		600 W. SWEDESFORD RD	BERWYN, PA 19312-	215-640-9494
TOBY VALLEY LODGE	PO BOX 431	RT. 940	BLAKESLEE, PA 18610-	717-646-4893
BUDGET HOST PATRIOT INN		6305 NEW BERWICK HWY	BLOOMSBURG, PA 17815-	717-387-1776
INN AT TURKEY HILL		991 CENTRAL RD	BLOOMSBURG, PA 17815-	717-387-1500
CROSS ROADS MOTOR INN		1750 DEKALB PIKE	BLUE BELL, PA 19422-	215-279-1250
DE SOTO HOLIDAY HOUSE		515 SOUTH AVE	BRADFORD, PA 16701-	814-362-4511
MOTEL DO SOTO		920 E. MAIN ST	BRADFORD, PA 16701-	814-362-3567
RAMADA INN BREEZEWOOD	PO BOX 157	EXIT 12 PA TNPK. & US 30	BREEZEWOOD, PA 15533-	814-735-4005
KNIGHTS INN		111 HICKORY GRADE RD	BRIDGEVILLE, PA 15017-	412-221-6110
ECONO LODGE		235 ALLEGHENY BLVD	BROOKVILLE, PA 15825-	814-849-6381
HOJO INN BROOKVILLE	PO BOX 150	RD #5	BROOKVILLE, PA 15825-	814-849-3051
SUPER 8 MOTEL	PO BOX 149B	RD #5	BROOKVILLE, PA 15825-	814-849-8840
FLORENCE MOTEL	PO BOX 28	OLD RT. 28 RR 3	BURGETTSTOWN, PA 15021-	412-947-3144
COLONIAL MOTEL	PO BOX 1504	193 NEW CASTLE RD	BUTLER, PA 16003-	412-287-6726
MICHAEL'S LAKE ARTHUR		970 NEW CASTLE RD	BUTLER, PA 16001-	412-865-9336
SUPER 8 MOTEL		128 PITTSBURGH RD	BUTLER, PA 16001-	412-287-8888
PENN HARRIS HOTEL	PO BOX 839	RTS. 11 & 15	CAMP HILL, PA 17011-	717-763-7117
DAYS INN CARLISLE		101 ALEXANDER SPRING RD	CARLISLE, PA 17013-	717-258-4147
ECONO LODGE		1460 HARRISBURG PIKE	CARLISLE, PA 17013-	717-249-7775
RODEWAY INN		1239 HARRISBURG PIKE	CARLISLE, PA 17013-	717-249-2800
VALLEY MOTEL		1580 RITNER HWY	CARLISLE, PA 17013-	717-249-2296
CENTER VALLEY MOTOR LODGE.		4942 RT. 309	CENTER VALLEY, PA 18034-	215-797-0128
BRANDYWINE RIVER HOTEL	PO BOX 1058	RT. 1 AND RT. 100	CHADDS FORD, PA 19317-	215-388-1200
OLD ARCADIA INN		181 PARK AVE	CHALFONT, PA 18914-	215-822-1818
CHAMBERSBURG TRAVELODGE.		565 LINCOLN WAY E	CHAMBERSBURG, PA 17201-	717-264-4167
DAYS INN OF CHAMBERSBURG.		30 FALLING SPRING RD	CHAMBERSBURG, PA 17201-	717-263-1288
HOLIDAY INN		1095 WAYNE AVE	CHAMBERSBURG, PA 17201-	717-263-3400
HOWARD JOHNSON		1123 LINCOLN WAY E	CHAMBERSBURG, PA 17201-	717-263-9191
SEVEN SPRINGS RESORT		RD #1	CHAMPION, PA 15622-	814-352-7777
CAPTAIN LOOMIS INN HOTEL		540 MAIN ST	CLARION, PA 16214-	814-226-6400
HOLIDAY INN OF CLARION		RT. 68 & I-80	CLARION, PA 16214-	814-226-8650
KNIGHTS INN	PO BOX 253	RT. 3	CLARION, PA 16214-	814-226-4550

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
INN AT NICHOLS VILLAGE		1101 NORTHERN BLVD	CLARKS SUMMIT, PA 18411–	717–587–1135
CHAL MAR INC	PO BOX 14A	TWO W. MAIN ST. RR #1	CLEARVILLE, PA 15535–	814–652–9494
HATFIELD MOTEL		792 BETHLEHEM PIKE	COLMAR, PA 18915–	215–822–9836
CONCORDVILLE HOTEL		RT. 322 & RT. 1	CONCORDVILLE, PA 19331–	215–358–9400
COURTYARD BY MARRIOTT		450 CHERRINGTON PKWY	CORAOPOLIS, PA 15108–	412–264–5000
EMBASSY SUITES HOTEL		550 CHEERINGTON PKWY	CORAOPOLIS, PA 15108–	412–269–9070
LA QUINTA INN		1433 BEERS SCHOOL RD	CORAOPOLIS, PA 15108–	412–269–0400
PITTSBURGH AIRPORT MARRIOTT.		100 ATEN RD	CORAOPOLIS, PA 15108–	412–788–8800
RED ROOF INN		1454 BEERS SCHOOL RD	CORAOPOLIS, PA 15108–	412–264–5678
IV KING'S INN	PO BOX 99	478 E. SECOND ST	COUDERSPORT, PA 16915–	814–274–0805
PINE BARN INN INC		ONE PINE BARN PL	DANVILLE, PA 17821–	717–275–2071
RED ROOF INN	PO BOX 88	RD #2	DANVILLE, PA 17821–	717–275–7600
PENNA DUTCH MOTEL		2275 N. READING RD	DENVER, PA 17517–	215–267–5559
DAYS INN DONEGAL	PO BOX 184		DONEGAL, PA 15628–	412–593–7536
ECONO LODGE OF DOUGLASVILLE.		387 BEN FRANKLIN HWY. RT. 422W.	DOUGLASVILLE, PA 19518–	215–385–3016
COURT HOUSE MOTOR INN		625 N. MAIN ST	DOYLESTOWN, PA 18901–	215–348–9222
DOYLESTOWN INN		18 W. STATE ST	DOYLESTOWN, PA 18901–	215–345–6610
ECONO LODGE	PO BOX 304	RR #2	DRUMS, PA 18222–	717–788–5887
ECONO LODGE MOUNTAIN VIEW.	PO BOX 1470	RR #1	DRUMS, PA 18222–	717–788–5383
HOLIDAY INN		US 219 & I–80	DU BOIS, PA 15801–	814–371–5100
RAMADA INN	RT. 255	I–80 EXIT 17	DU BOIS, PA 15801–	814–371–7070
BEL AIRE LOUNGE & MOTEL	PO BOX 54A	RD #2	DUNBAR, PA 15431–	412–628–9962
ECONOMY LODGE		1035 O'NEILL HWY	DUNMORE, PA 18512–	717–346–6511
HOLIDAY INN		200 TIGUE ST	DUNMORE, PA 18512–	717–343–4771
SUPER BUDGET INN		1027 O'NEILL HWY	DUNMORE, PA 18512–	717–346–8782
BECHTEL MANSION INN		400 W. KING ST	EAST BERLING, PA 17316–	717–259–7760
HILLSIDE INN	PO BOX 6000	RR #6	EAST STROUDSBURG, PA 18301–.	717–223–8238
PARAMOUNT MOTEL	PO BOX 2058	RT. 209 N. RD 2	EAST STROUDSBURG, PA 18301–.	717–421–2141
INN AT ELIZABETH	PO BOX V	30 W. MAIN ST	ELIZABETHVILLE, PA 17023–	717–362–3476
DONECKERS THE GUEST HOUSE.		318–324 N. STATE ST	EPHRATA, PA 17522–	717–733–6696
EPHRATA MOTEL		535 S. STATE ST	EPHRATA, PA 17522–	717–733–0566
THE 1777 HOUSE AT DONECKERS.		301 W. MAIN ST	EPHRATA, PA 17522–	717–733–6696
THE GERHART HOUSE B & B		287 DUKE ST	EPHRATA, PA 17522–	
BEL AIRE HOTEL		2800 W. 8TH ST	ERIE, PA 16505–	814–833–1118
COMFORT INN		8051 PEACH ST	ERIE, PA 16509–	814–866–6666
HOWARD JOHNSON		7575 PEACH ST	ERIE, PA 16509–	814–864–4811
RAMADA INN		6101 WATTSBURG RD	ERIE, PA 16509–	814–825–3100
RED ROOF INN		7865 PERRY HWY	ERIE, PA 16509–	814–868–5246
SWANVILLE MOTEL		5455 W. RIDGE RD	ERIE, PA 16506–	814–833–3157
COMFORT INN PHILADELPHIA AIRPORT.		53 INDUSTRIAL HWY	ESSINGTON, PA 19029–	215–521–9800
KNIGHTS INN		43 INDUSTRIAL HWY	ESSINGTON, PA 19029–	215–521–6650
ECONO LODGE		70 ROBINHOOD DR	ETTERS, PA 17319–	717–938–6200
HOLIDAY INN		120 N. POTTSTOWN PIKE	EXTON, PA 19341–	215–524–9000
CARROLL VALLEY RESORT HOTEL.	PO BOX 715	121 SANDERS RD	FAIRFIELD, PA 17320–	717–642–8212
ACE MOTEL		216 LINCOLN HWY	FAIRLESS HILLS, PA 19030–	215–945–9919
NEMACOLIN WOODLANDS RESORT.	PO BOX 188	RT. 40 E	FARMINGTON, PA 15437–	412–329–8555
SUMMIT INN RESORT		2 SKYLINE DR	FARMINGTON, PA 15437–	412–438–8594
GLASBERN	PO BOX 350	PACK HOUSE RD. 1	FOGELSVILLE, PA 18051–	215–285–4723
FRANKLIN MOTEL		1421 LIBERTY ST	FRANKLIN, PA 16323–	814–437–3061
SHERATON GREAT VALLEY HOTEL.		707 LANCASTER PIKE	FRAZER, PA 19355–	215–524–5500
SUMMERFIELD SUITES MOTEL		20 MOREHALL RD	FRAZER, PA 19355–	215–296–4343
BEST WESTERN GETTYSBURG 1797.		ONE LINCOLN SQUARE	GETTYSBURG, PA 17325–	717–337–2000
COMFORT INN GETTYSBURG		871 YORK RD	GETTYSBURG, PA 17325–	717–337–2400
HOWARD JOHNSON		301 STEINWEHR AVE	GETTYSBURG, PA 17325–	717–334–1188
QUALITY INN		401 BUFORD AVE	GETTYSBURG, PA 17325–	717–334–3141
QUALITY INN		380 STEINWEHR AVE	GETTYSBURG, PA 17325–	717–334–1103
FRIENDSHIP INN		10835 JOHN WAYNE DR	GREENCASTLE, PA 17225–	717–597–7762
QUALITY INN		50 PINE DR	GREENCASTLE, PA 17225–	717–597–8164
COMFORT INN		1129 E. PITTSBURGH ST	GREENSBURG, PA 15601–	412–832–2600
KNIGHTS INN		1215 S. MAIN ST	GREENSBURG, PA 15601–	412–836–7100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SHERATON INN GREENSBURG		RT. 30 E. 100 SHERATON DR	GREENSBURG, PA 15601–	412–836–6060
SETTLERS INN LTD		FOUR MAIN AVE	HAHLEY, PA 18428–	717–226–2993
COLONIAL BRICK MOTEL	PO BOX AD	RT. 11	HALLSTEAD, PA 18822–	717–879–2162
AMERICAN INN		495 EISENHOWER BLVD	HARRISBURG, PA 17111–	717–561–1885
BUDGETEL HARRISBURG HERSHEY.		200 N. MOUNTAIN RD	HARRISBURG, PA 17112–	717–540–9339
BUDGETEL INN		990 EISENHOWER BLVD	HARRISBURG, PA 17111–	717–939–8000
COMFORT INN HARRISBURG EAST.		4021 UNION DEPOSIT RD	HARRISBURG, PA 17109–	717–561–8100
ECONO LODGE		150 NATIONWIDE DR	HARRISBURG, PA 17110–	717–790–0525
HARRISBURG HILTON & TOWERS.		ONE N. 2ND ST	HARRISBURG, PA 17101–	717–233–6000
HARRISBURG HOTEL CROWN PARK.		765 EISENHOWER BLVD	HARRISBURG, PA 17111–	717–558–8500
HARRISBURG MARRIOTT		4650 LINDLE RD	HARRISBURG, PA 17111–	717–564–5511
HOLIDAY INN HARRISBURG EAST.		4751 LINDLE RD	HARRISBURG, PA 17111–	717–939–7841
HOWARD JOHNSON MOTOR LODGE.		473 S. EISENHOWER BLVD	HARRISBURG, PA 17111–	717–564–4730
RED ROOF INN		950 EISENHOWER BLVD	HARRISBURG, PA 17111–	717–939–1331
RED ROOF INN		400 CORPORATE CIR	HARRISBURG, PA 17110–	717–657–1445
RESIDENCE INN		4480 LEWIS RD	HARRISBURG, PA 17111–	717–561–1900
SHERATON INN HARRISBURG		800 E. PARK DR	HARRISBURG, PA 17102–	717–561–2800
SUPER 8 MOTEL		4131 EXECUTIVE PARK DR	HARRISBURG, PA 17111–	717–564–7790
DAYS INN BARKEYVILLE		RT. 8 & I–80 EXIT 3 GIBB RD	HARRISVILLE, PA 16038–	814–786–7901
GRESHAM'S LAKEVIEW MOTEL.	PO BOX 6150	HC 6	HAWLEY, PA 18428–	717–226–4621
SILVER BIRCHES	PO BOX 6275	HC 6	HAWLEY, PA 18428–	717–226–4388
BEST WESTERN INN	PO BOX 250	32ND & N. CHURCH ST	HAZLETON, PA 18201–	717–454–2494
HOLIDAY INN		RT. 309	HAZLETON, PA 18201–	717–455–2061
HOLIDAY INN		3200 S. HERMITAGE RD	HERMITAGE, PA 16159–	412–981–1530
ECONO LODGE HERSHEY	PO BOX 737	115 LUCY AVE	HERSHEY, PA 17033–	717–533–2515
FRIENDSHIP INN HERSHEY		43 W. AREBA AVE	HERSHEY, PA 17033–	717–533–7054
PINEHURST INN BED & BREAKFAST.		50 NORTHEAST DR	HERSHEY, PA 17033–	717–533–2603
THE HERSHEY LODGE & CONV CENTER.	PO BOX 446	W. CHOCOLATE AVE. & UNIVERSIT.	HERSHEY, PA 17033–	717–543–3006
TRIANGLE MOTEL		1518 E. CHOCOLATE AVE	HERSHEY, PA 17033–	717–533–2384
FIFE & DRUM MOTOR INN		100 TERRACE ST	HONESDALE, PA 18431–	717–253–1392
RESIDENCE INN BY MARRIOTT.		3 WALNUT GROVE DR	HORSHAM, PA 19044–	215–443–7330
DAYS INN HUNTINGDON	PO BOX 353	4TH ST. & US RT. 22	HUNTINGDON, PA 16652–	814–643–3934
HOLIDAY INN		1395 WAYNE AVE	INDIANA, PA 15701–	412–463–3561
INN TOWNER MOTEL		REAR 886 WAYNE AVE	INDIANA, PA 15701–	412–463–8726
HARVEST DRIVE FAMILY MOTEL.		3370 HARVEST DR	INTERCOURSE, PA 17534–	717–768–7186
TRAVELERS REST MOTEL	PO BOX 128	3701 OLD PHILADELPHIA PIKE	INTERCOURSE, PA 17534–	717–768–8731
KNIGHTS COURT OF IRWIN	PO BOX 365	7990 RT. 30	IRWIN, PA 15642–	412–863–2600
HARRY PACKER MANSION INN	PO BOX 458	PACKER HILL	JIM THORPE, PA 18229–	717–325–8566
INN AT JIM THORPE		24 BROADWAY	JIM THORPE, PA 18229–	717–325–2599
COMFORT INN		455 THEATER DR	JOHNSTOWN, PA 15904–	814–266–3678
MURPHY INN		3203 PENMAR LN	JOHNSTOWN, PA 15904–	814–266–4800
SUPER 8 MOTEL		1440 SCALP AVE	JOHNSTOWN, PA 15904–	814–266–8789
LONGWOOD INN		815 E. BALTIMORE PIKE	KENNETT SQUARE, PA 19348–	215–444–3515
COMFORT INN		550 W. DEKALB PIKE	KING OF PRUSSIA, PA 19406–	215–962–0700
HOWARD JOHNSON		RT. 202 N. 127 S. GULPH RD	KING OF PRUSSIA, PA 19406–	215–265–4500
SHERATON PLAZA VALLEY FORGE.		1150 FIRST AVE	KING OF PRUSSIA, PA 19406–	215–337–2000
STOUFFER VALLEY FORGE HOTEL.		480 N. GULPH RD	KING OF PRUSSIA, PA 19403–	215–337–1800
VALLEY FORGE HILTON		251 W. DE KALB PIKE	KING OF PRUSSIA, PA 19406–	215–337–1200
VALLEY FORGE SHERATON HOTEL.		1150 FIRST AVE	KING OF PRUSSIA, PA 19406–	215–337–2000
QUALITY INN		405 BUTLER RD	KITTANNING, PA 16201–	412–543–1159
LAHASKA HOTEL	PO BOX 500	5775 YORK RD	LAHASKA, PA 18931–	215–794–0440
COMFORT INN LAKE ARIEL	RD #5	I–84 EXIT 5 & PA 191	LAKE ARIEL, PA 18436–	717–689–4148
CANADIANA MOTEL		2390 LINCOLN HWY. E	LANCASTER, PA 17602–	717–397–6531
CONTINENTAL INN		2285 LINCOLN HWY. E	LANCASTER, PA 17602–	717–299–0421
ECONO LODGE NORTH		2165 US HWY. 30 E	LANCASTER, PA 17602–	717–299–6900
ECONO LODGE SOUTH		2140 US HWY. 30 E	LANCASTER, PA 17602–	717–397–1900
EDEN RESORT INN		222 EDEN RD	LANCASTER, PA 17601–	717–569–6444
FULTON STEAMBOAT INN	PO BOX 333	RT. 30 E. & 896	LANCASTER, PA 17602–	717–299–9999

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HAMPTON INN		545 GREENFIELD RD	LANCASTER, PA 17601–	717–299–1200
HOLIDAY INN NORTH		1492 LITITZ PIKE	LANCASTER, PA 17601–	717–393–0771
HOWARD JOHNSON		2100 LINCOLN HWY. E	LANCASTER, PA 17602–	717–397–7781
ITALIAN VILLA EAST		2331 LINCOLN HWY. E	LANCASTER, PA 17602–	717–397–4973
LANCASTER HILTON GARDEN INN.		101 GRANITE RUN DR	LANCASTER, PA 17601–	717–560–0660
LANCASTER HOST RESORT		2300 LINCOLN HWY. E	LANCASTER, PA 17602–	717–299–5500
MC INTOSH INNS		2307 LINCOLN HWY. E	LANCASTER, PA 17602–	717–299–9700
OLDE HICKORY INN		600 OLDE HICKORY RD	LANCASTER, PA 17601–	717–569–0477
ROCKVALE VILLAGE INN		24 S. WILLOWDALE DR	LANCASTER, PA 17602–	717–293–9500
SUPER 8 MOTEL		2129 LINCOLN HWY. E	LANCASTER, PA 17602–	717–393–8888
TRAVELODGE LANCASTER		2101 COLUMBIA AVE	LANCASTER, PA 17603–	717–397–4201
WESTFIELD MOTOR INN		2929 HEMPLAND RD	LANCASTER, PA 17601–	717–397–6300
YOUR PLACE COUNTRY INN		2133 LINCOLN HWY. E	LANCASTER, PA 17602–	717–393–3413
RED ROOF INN		3100 CABOT BLVD. W	LANGHORNE, PA 19047–	215–750–6200
SHERATON BUCKS COUNTY HOTEL.		400 OXFORD VALLEY RD	LANGHORNE, PA 19047–	215–547–4100
HOLIDAY INN CONF CENTER	PO BOX 22226	7736 ADRIENNE DR	LEHIGH VALLEY, PA 18002–	215–391–1001
RADISSON HOTEL PHILADELPHIA AIRPORT.		500 STEVENS DR	LESTER, PA 19113–	215–521–5900
COUNTRY CUPBOARD INN	PO BOX 46	RT. 15 N	LEWISBURG, PA 17837–	717–524–5500
A B C MOTEL	PO BOX 434	RT. 30 E	LIGONIER, PA 15658–	412–238–9541
GENERAL WARREN INNE		9 VILLAGE WAY	MALVERN, PA 19355–	215–296–3637
GREAT VALLEY HILTON		ONE LIBERTY BLVD	MALVERN, PA 19355–	215–296–9900
MC INTOSH MOTOR INNS INC		ONE MOREHALL RD	MALVERN, PA 19355–	215–279–6000
COMFORT INN MANSFIELD		300 GATEWAY DR	MANSFIELD, PA 16933–	717–662–3000
MANSFIELD MOTOR INN		26 S. MAIN ST	MANSFIELD, PA 16933–	717–662–2136
KELLY HOTEL	PO BOX 330	102 S. FOREST ST	MARIENVILLE, PA 16239–	814–927–6652
MARCO'S MOTOR INN	PO BOX 183	HWY. 441 & BANK ST	MARIETTA, PA 17547–	717–426–1354
FAIRFIELD INN BY MARRIOTT		30 SAINT FRANCIS WAY	MARS, PA 16046–	412–772–0600
SHERATON		910 SHERATON DR	MARS, PA 16046–	412–776–6900
JOHNNIE'S MOTEL		709 LINCOLNWAY E	MCCONNELLSBURG, PA 17233–.	717–485–3116
SUPER 8 MOTEL		845 CONNEAUT LAKE RD	MEADVILLE, PA 16335–	814–333–8833
COMFORT INN		6325 CARLISLE PIKE RT. 11	MECHANICSBURG, PA 17055–	717–790–0924
FAIRVILLE INN	PO BOX 219	RT. 52 KENNETT PIKE	MENDENHALL, PA 19357–	215–388–5900
MENDENHALL HOTEL		RT. 52	MENDENHALL, PA 19357–	215–388–1181
HOWARD JOHNSON		RT. 19 & I–80 RD #6	MERCER, PA 16137–	412–748–3308
DAYS INN AIRPORT HARRISBURG.		815 EISENHOWER BLVD	MIDDLETOWN, PA 17057–	717–939–1600
RODEWAY INN		800 EISENHOWER BLVD	MIDDLETOWN, PA 17057–	717–939–4147
ECONO LODGE	PO BOX 202		MIFFLINTOWN, PA 17059–	717–436–8941
SUPER 8 MOTEL	PO BOX E	I–80 EXIT 37	MIFFLINVILLE, PA 18631–	717–752–2452
CLIFF PARK INN	PO BOX 7200	CLIFF PARK RD	MILFORD, PA 18337–	717–296–6491
HILLTOP MOTEL	PO BOX 576	RT. 6	MILFORD, PA 18337–	717–296–9444
A COUNTRY INN		330 E. WYOMISSING AVE	MOHNTON, PA 19540–	215–484–4242
RED ROOF INN		2729 MOSSIDE BLVD	MONROEVILLE, PA 15146–	412–856–4736
BEST WESTERN MONTGOMERYVILLE.		969 BETHLEHEM PIKE	MONTGOMERYVILLE, PA 18936–.	215–699–8800
COMFORT INN MONTGOMERYVILLE.		678 BETHLEHEM PIKE	MONTGOMERYVILLE, PA 18936–.	215–361–3600
SUPER 8 MOTEL		2815 OLD MONTOURSVILLE RD.	MONTOURSVILLE, PA 17754–	717–368–8111
INN AMERICA	PO BOX D	GROW AVE	MONTROSE, PA 18801–	717–278–9284
HOLIDAY INN		EXIT 22 PA TNPK	MORGANTOWN, PA 19543–	215–296–3000
PENN HOTEL	PO BOX 75		MORRIS, PA 16938–	717–724–2478
COUNTRY HOUSE MOTEL		US RT. 1 S	MORRISVILLE, PA 19067–	215–295–7331
PINE BURR INN		RT. 61 ATLAS	MT CARMEL, PA 17851–	717–339–3870
VISINTAINER'S MOTEL		50 W. FOURTH ST	MT CARMEL, PA 17851–	717–339–1262
MUFFLINBURG HOTEL MOTEL		264 CHESTNUT ST	MUFFLINBURG, PA 17844–	717–966–3003
LANTERN MOTOR LODGE		RT. 209 & 93	NESQUEHONING, PA 18240–	717–669–9433
COMFORT INN		1740 NEW BUTLER RD	NEW CASTLE, PA 16101–	412–658–7700
COMFORT INN NEW COLUMBIA.	PO BOX 62	I–80 AT US 15	NEW COLUMBIA, PA 17856–	717–568–8000
DAYS INN		353 LEWISBERRY RD	NEW CUMBERLAND, PA 17070–.	717–774–4156
FAIRFIELD INN MARRIOTT		175 BEACON HILL BLVD	NEW CUMBERLAND, PA 17070–.	717–774–6200
MC INTOSH INN		130 LIMEKILN RD	NEW CUMBERLAND, PA 17070–.	717–774–8886
MOTEL 6		200 COMMERCE AVE	NEW CUMBERLAND, PA 17070–.	717–774–8910

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DAYS INN NEW STANTON		127 W. BYERS AVE	NEW STANTON, PA 15672–	412–925–3591
HOWARD JOHNSON	PO BOX 214	112 W. BYERS AVE	NEW STANTON, PA 15672–	412–925–3511
KNIGHTS COURT	PO BOX 747	110 N. MAIN ST	NEW STANTON, PA 15672–	412–925–6755
SUMMERSON'S FOUR SEASONS.	PO BOX 73	RT. 120	NORTH BEND, PA 17760–	717–923–1398
COMFORT INN		7011 STEUBENVILLE PIKE	OAKDALE, PA 15071–	412–787–2600
HOWARD JOHNSON		2101 MONTOUR CHURCH RD	OAKDALE, PA 15071–	412–923–2244
PALMYRA MOTEL		1071 E. MAIN ST	PALMYRA, PA 17078–	717–838–1324
KEYSTONE MOTEL	PO BOX 325	RT. 30 RD 2	PARKESBURG, PA 19365–	717–442–8800
ATOP THE BELLEVUE		1415 CHANCELLOR CT	PHILADELPHIA, PA 19102–	215–893–1776
BEST WESTERN		11580 ROOSEVELT BLVD	PHILADELPHIA, PA 19116–	215–464–9500
CHESTNUT HILL HOTEL		8229 GERMANTOWN AVE	PHILADELPHIA, PA 19118–	215–242–5905
COMFORT INN PENN'S LANDING.		100 N. DELAWARE AVE	PHILADELPHIA, PA 19106–	215–627–7900
COURTYARD PHILADELPHIA		8900 BARTRAM AVE	PHILADELPHIA, PA 19153–	215–365–2200
DAYS INN		4200 ROOSEVELT BLVD	PHILADELPHIA, PA 19124–	215–289–9200
EMBASSY SUITES HOTEL		9000 BARTRAM AVE	PHILADELPHIA, PA 19153–	215–365–4500
FOUR SEASON'S HOTEL		1810–34 RACE ST	PHILADELPHIA, PA 19103–	215–963–1500
GUEST QUARTERS SUITE HOTEL.		4101 ISLAND AVE	PHILADELPHIA, PA 19153–	215–365–6600
HOLIDAY INN		440 ARCH ST	PHILADELPHIA, PA 19106–	215–923–8660
HOLIDAY INN INDEPENDENCE MALL.		400 ARCH ST	PHILADELPHIA, PA 19106–	215–923–8660
INDEPENDENCE PARK INN		235 CHESTNUT ST	PHILADELPHIA, PA 19106–	215–922–4443
KORMAN SUITES HOTEL		2001 HAMILTON ST	PHILADELPHIA, PA 19130–	215–569–7000
OMNI HOTEL		401 CHESTNUT ST	PHILADELPHIA, PA 19106–	215–925–0000
PENN'S VIEW INN		14 N. FRONT ST	PHILADELPHIA, PA 19106–	215–922–7600
PHILADELPHIA AIRPORT MARRIOTT.		4509 ISLAND AVE	PHILADELPHIA, PA 19153–	215–365–4150
PHILADELPHIA COURT HOTEL		10TH ST. & PACKER AVE	PHILADELPHIA, PA 19148–	215–755–9500
PHILADELPHIA HILTON & TOWERS.		BROAD & LOCUST ST	PHILADELPHIA, PA 19107–	215–893–1600
QUALITY INN		1010 RACE ST	PHILADELPHIA, PA 19107–	215–922–1730
RITZ CARLTON HOTEL		17TH & CHESTNUT	PHILADELPHIA, PA 19103–	215–563–8215
SHERATON INN NORTHEAST		9461 ROOSEVELT BLVD	PHILADELPHIA, PA 19114–	215–671–9600
SHERATON SOCIETY HILL HOTEL.		ONE DOCK ST	PHILADELPHIA, PA 19106–	215–238–6000
SHERATON UNIVERSITY CITY		36TH & CHESTNUT ST	PHILADELPHIA, PA 19104–	215–387–8000
THE HUB MOTOR LODGE INC		7605 ROOSEVELT BLVD	PHILADELPHIA, PA 19152–	215–332–4300
THE RITTENHOUSE		210 W. RITTENHOUSE SQUARE.	PHILADELPHIA, PA 19103–	215–546–9000
WYNDHAM FRANKLIN PLAZA		TWO FRANKLIN PLAZA	PHILADELPHIA, PA 19102–	215–448–2000
COLONY PARK MOTOR INN	PO BOX 585	R D #1	PINE GROVE, PA 17963–	717–345–8095
COMFORT INN		I–81 RR 443	PINE GROVE, PA 17963–	717–345–8031
ECONO LODGE	PO BOX 581	RR 1	PINE GROVE, PA 17963–	717–345–4099
FORGE B&B	PO BOX 438	RR 1	PINE GROVE, PA 17963–	717–345–8349
AVALON MOTEL	RT. 65	512 OHIO RIVER BLVD	PITTSBURGH, PA 15202–	412–761–4212
CLUBHOUSE INN		5311 CAMPBELLS RUN RD	PITTSBURGH, PA 15205–	412–788–8400
DAYS INN		SIX LANDINGS DR	PITTSBURGH, PA 15238–	412–828–5400
DAYS INN PITTSBURGH		100 KISOW DR	PITTSBURGH, PA 15205–	
HARLEY HOTEL OF PITTSBURGH.		699 RODI RD	PITTSBURGH, PA 15235–	412–244–1600
HOLIDAY INN		100 LYTTON AVE	PITTSBURGH, PA 15213–	412–682–6200
MOTEL 6		211 BEECHAM DR	PITTSBURGH, PA 15205–	412–922–9400
PARKWAY CENTER INN		875 GREENTREE RD	PITTSBURGH, PA 15220–	412–992–7070
PITTSBURGH HILTON & TOWERS.		600 COMMONWEALTH PL	PITTSBURGH, PA 15230–	412–594–5141
PITTSBURGH MOTEL		4270 STEUBENVILLE PIKE	PITTSBURGH, PA 15205–	412–922–1618
RED ROOF INN		6404 STEUBENVILLE PIKE	PITTSBURGH, PA 15205–	412–787–7870
RESIDENCE INN		700 MANSFIELD AVE	PITTSBURGH, PA 15205–	412–279–6300
SHERATON HOTEL		7 STATION SQUARE DR	PITTSBURGH, PA 15219–	412–261–2000
SHERATON SOUTH HILLS		164 FORT COUCH RD	PITTSBURGH, PA 15241–	412–343–4600
VISTA HOTEL PITTSBURGH		1000 PENN AVE	PITTSBURGH, PA 15222–	412–281–3700
HOWARD JOHNSON		5300 CLAIRTON BLVD	PLEASANT HILLS, PA 15236–	412–884–8000
GUEST QUARTER'S HOTEL		640 W. GERMANTOWN PIKE	PLYMOUTH MEETING, PA 19462–.	215–834–8300
PARKWAY MOTEL	PO BOX 516	RD 1	PORTAGE, PA 15946–	814–736–3378
COMFORT INN		RT. 100 & SHOEMAKER RD	POTTSTOWN, PA 19464–	215–326–5000
HOLIDAY INN EXPRESS		1600 INDUSTRIAL HWY	POTTSTOWN, PA 19464–	215–970–7863
RAMADA INN		RT. 100 & KING ST	POTTSTOWN, PA 19464–	215–326–6545
PATIO COURT MOTEL		720 N. WESTEND BLVD	QUAKERTOWN, PA 18951–	215–536–7000
QUAKERTOWN MOTEL		1920 RT. 663	QUAKERTOWN, PA 18951–	215–536–7600

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COMFORT INN		2200 STACY DR	READING, PA 19605–	215–371–0500
DUTCH COLONY MOTOR INN		4635 PERKIOMEN AVE	READING, PA 19606–	215–799–2345
HOLIDAY INN		2545 N. 5TH ST. HWY	READING, PA 19605–	215–929–4741
INN AT READING		1040 PARK RD	READING, PA 19610–	215–372–7811
RIVEREDGE INCORPORATED		2017 BERNVILLE RD	READING, PA 19601–	215–376–6711
KEYSTONE HOTEL		400 ERIE AVE	RENOVO, PA 17764–	717–923–2329
SPORTSMAN HOTEL		FARWELL AVE	RENOVO, PA 17764–	717–923–9966
CHERRY LANE MOTOR INN		84 N RONKS RD	RONKS, PA 17572–	717–687–7646
HERSHEY FARM MOTOR INN	PO BOX 89	240 HARTMAN BRIDGE RD	RONKS, PA 17579–	717–687–8635
OLDE AMISH INN		33 E. BROOK RD	RONKS, PA 17572–	717–393–3100
BEST WESTERN GUTHRIE INN	PO BOX 400	255 SPRING ST	SAYRE, PA 18840–	717–888–7711
LACKAWANNA STATION HOTEL.		700 LACKAWANNA AVE	SCRANTON, PA 18503–	717–342–8300
APPLEBUTTER INN		152 APPLEWOOD LN	SLIPPER ROCK, PA 16057–	412–794–1844
DAYS INN		200 WATERWORKS RD	SOMERSET, PA 15501–	814–445–9200
HIGHLANDER MOTEL		799 N. CENTER AVE	SOMERSET, PA 15501–	814–445–7988
KNIGHTS INN		I–70 76 AT EXIT 10	SOMERSET, PA 15501–	814–445–8933
R & W MOTEL OF SOMERSET	PO BOX 191	202 SHAFFER ST	SOMERSET, PA 15501–	814–445–9611
ALPINE INN MOTOR LODGE		650 BALTIMORE PIKE	SPRINGFIELD, PA 19064–	215–544–4700
EXECUTIVE MOTOR INN		675 BALTIMORE PIKE	SPRINGFIELD, PA 19064–	215–543–0555
ATHERTON HILTON		125 S. ATHERTON ST	STATE COLLEGE, PA 16801–	814–231–2100
HAMPTON INN		1101 E. COLLEGE AVE	STATE COLLEGE, PA 16801–	814–231–1590
NITTANY BUDGET MOTEL		1274 N. ATHERTON ST	STATE COLLEGE, PA 16803–	814–237–7636
TOFTREES HOTEL RESORT		ONE COUNTRY CLUB LN	STATE COLLEGE, PA 16803–	814–234–8000
SHERATON POCONO INN		1220 W. MAIN ST	STROUDSBURG, PA 18360–	717–424–1830
HOJO INN POCONO		RT. 715	TANNERSVILLE, PA 18372–	717–629–4100
CROSS CREEK RESORT	PO BOX 432	RT. 8 S	TITUSVILLE, PA 16354–	814–827–9611
LOPSIDED INN		RT. 196	TOBYHANNA, PA 18466–	717–839–8421
HOLIDAY INN BUCKS COUNTY		4700 STREET RD	TREVOSE, PA 19053–	215–364–2000
HOWARD JOHNSON		2779 RT. 1 N	TREVOSE, PA 19053–	215–638–4554
PENN MOTEL		2921 LINCOLN HWY	TREVOSE, PA 19047–	215–639–5200
RAMADA HOTEL & CONF CENTER.		2400 OLD LINCOLN HWY	TREVOSE, PA 19053–	215–638–8300
RED ROOF INN		3100 LINCOLN HWY	TREVOSE, PA 19053–	215–244–9422
FOREST INN	PO BOX 98	HC 64	TROUT RUN, PA 17771–	717–995–6330
SHADOWBROOK RESORT	PO BOX 133	RT. 6 E.	TUNKHANNOCK, PA 18657–	717–836–5417
CANADOHTA LAKE MOTEL	PO BOX 2554	RD. 2	UNION CITY, PA 16438–	814–694–3219
HOLIDAY INN		700 W. MAIN ST	UNIONTOWN, PA 15401–	412–437–2816
M G MOTEL	PO BOX 130	RD 6	UNIONTOWN, PA 15401–	412–437–0506
BRIDGETON HOUSE	PO BOX 167	RIVER RD	UPPER BLACK EDDY, PA 18972–.	215–982–5856
DAYS INN		RD #2	WARFORDSBURG, PA 17267–	814–735–4347
REGENCY 265 MOTOR INN		265 E. ST. RD	WARMINSTER, PA 18974–	215–674–2200
PENN LAUREL INN		706 PENN AVE. W	WARREN, PA 16365–	814–723–8300
SUPER 8 MOTEL		204 STRUTHERS ST	WARREN, PA 16365–	814–723–8881
DAYS INN		909 SHERATON DR	WARRENDALE, PA 15086–	412–772–2700
WARRINGTON MOTOR LODGE		701 EASTON RD	WARRINGTON, PA 18976–	215–343–0373
INTERSTATE HOTEL		1396 W. CHESTNUT ST	WASHINGTON, PA 15301–	412–225–9900
RED ROOF INN		1399 W. CHESTNUT ST	WASHINGTON, PA 15301–	412–228–5750
PINE CREEK VALLEY LODGE	PO BOX 123	RT. 44 N	WATERVILLE, PA 17776–	717–753–3254
WATSON INN		100 MAIN ST	WATSONTOWN, PA 17777–	717–538–1832
COURTYARD BY MARRIOTT		1100 DRUMMERS LN	WAYNE, PA 19087–	215–687–6700
DEVON COURTYARD BY MARRIOTT.		762 W. LANCASTER AVE	WAYNE, PA 19087–	215–687–6633
GUEST QUARTER'S HOTEL		888 CHESTERBROOK BLVD	WAYNE, PA 19087–	215–647–6700
BEST WESTERN INN		239 W. MAIN ST	WAYNESBORO, PA 17268–	717–762–0113
ECONO LODGE OF WAYNESBURG.		350 MILLER LN	WAYNESBURG, PA 15370–	412–627–5544
TRIANGLE HOTEL		120 BILL GEORGE DR	WAYNESBURG, PA 15370–	412–627–3150
CANYON MOTEL		18 E. AVE	WELLSBORO, PA 16901–	717–724–1681
PENN WELLS HOTEL		62 MAIN ST	WELLSBORO, PA 16901–	717–724–2111
PENN WELLS LODGE		FOUR MAIN ST	WELLSBORO, PA 16901–	717–724–2111
SHERWOOD MOTEL		2 MAIN ST	WELLSBORO, PA 16901–	717–724–3424
WEST CHESTER INN		943 S. HIGH ST	WEST CHESTER, PA 19382–	215–692–1900
PHILADELPHIA MARRIOTT WEST.		111 CRAWFORD AVE	WEST CONSHOHOCKEN, PA 19428–.	215–941–5600
COMFORT INN	PO BOX 301	RT. 93 & KIWANIS BLVD. RR #1.	WEST HAZLETON, PA 18201–	717–455–9300
PENN VIEW MOTEL		250 PENN AVE	WEST READING, PA 19611–	215–376–8011
BUCKTAIL LODGE	PO BOX 83	RT. 120 W	WESTPORT, PA 17778–	717–923–2472
ECONO LODGE		107 VIP DR	WEXFORD, PA 15090–	412–935–1000

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
MOUNTAIN LAUREL RESORT EAST.	PO BOX 126	I–80 AND PA TNPK	WHITE HAVEN, PA 18661–	717–443–8411
MOUNTAIN LAUREL RESORT WEST.	PO BOX 126	I–80 & PA TNPK	WHITE HAVEN, PA 18661–	717–443–8411
RAMADA INN		1500 MACARTHUR RD	WHITEHALL, PA 18052–	215–439–1037
BEST WESTERN INN		2400 E. END BLVD	WILKES-BARRE, PA 18702–	717–822–1011
FOX RIDGE INN		1145 RT. 315	WILKES-BARRE, PA 18702–	717–825–3477
HAMPTON INN WILKES-BARRE		1063 HWY. 315	WILKES-BARRE, PA 18702–	717–825–3838
RED ROOF INN		1035 HWY. 315	WILKES-BARRE, PA 18702–	717–829–6422
COLONIAL MOTOR LODGE		1959 E. THIRD ST	WILLIAMSPORT, PA 17701–	717–322–6161
FARR'S MOTEL		2295 LYCOMING CREEK RD	WILLIAMSPORT, PA 17701–	717–323–8591
QUALITY INN		234 MONTGOMERY PIKE	WILLIAMSPORT, PA 17701–	717–323–9801
RIDGEMONT MOTEL	PO BOX 536	RD 4	WILLIAMSPORT, PA 17701–	717–321–5300
SHERATON INN		100 PINE ST	WILLIAMSPORT, PA 17701–	717–327–8231
COURTYARD BY MARRIOTT		RT. 611 2350 EASTON RD	WILLOW GROVE, PA 19090–	215–830–0550
FIESTA MOTOR INN		1130 N. EASTON RD	WILLOW GROVE, PA 19090–	215–659–0300
HAMPTON INN WILLOW GROVE.		1500 EASTON RD	WILLOW GROVE, PA 19090–	215–659–3535
VICKI & HANK'S HOTEL		1412 GRAHAM AVE	WINBER, PA 15963–	814–467–7859
TRAVEL INN OF WINDY GAP	PO BOX 163	RT. 33 & 512	WINDGAP, PA 18091–	215–863–4146
SHERATON		VAN REED & WOODLAND RD	WYOMISSING, PA 19610–	215–376–3811
CHATEAU MOTEL		3951 E. MARKET ST	YORK, PA 17402–	717–757–1714
DAYS INN		1415 KENNETH RD	YORK, PA 17404–	717–767–6931
HOLIDAY INN		334 ARSENAL RD	YORK, PA 17402–	717–845–5671
HOLIDAY INN		2000 LOUCKS RD	YORK, PA 17404–	717–846–9500
HOLIDAY INN EAST MARKET		2600 E. MARKET ST	YORK, PA 17402–	717–755–1966
HOWARD JOHNSON		ARSENAL RD. I–83 & US 30	YORK, PA 17402–	717–843–9971
RED ROOF INN		323 ARSENAL RD	YORK, PA 17402–	717–843–8181
SPIRIT OF 76 MOTEL		1162 HAINES RD	YORK, PA 17402–	717–755–1068
SUPER 8 MOTEL		40 ARSENAL RD	YORK, PA 17404–	717–852–8686
YORK TRAVELODGE MOTEL		132–140 N. GEORGE ST	YORK, PA 17401–	717–843–8974
Puerto Rico				
HOTEL PLAZA	PO BOX 2210	DE DIEGO AVE	ARECIBO, PR 00613–	809–878–2295
ADAMARIS APARTMENTS	PO BOX 588	DE DIEGO & GIL BOUGET	BOQUERON, PR 00622–	809–851–6860
EDWIN'S HOTEL	PO BOX 849	RD. 101 INT. BALNEARIO BOQUERON.	CABO ROJO, PR 00623–	809–851–7110
HOTEL LA BAHIA	HC 02–21118	RD. 101 KM. 17 HM. 1	CABO ROJO, PR 00680–	809–832–0499
HOLIDAY INN CROWNE PLAZA	PO BOX 38079	RD. 187 KM. 1 HM. 5	CAROLINA, PR 00937–8079	809–253–2929
SANDS HOTEL & CASINO	PO BOX 6676	RD. 187 ISLA VERDE	CAROLINA, PR 00914–	809–791–6100
HOTEL PARADOR BANOS DE COAMO.	PO BOX 540	RT. 546 KM. 1 HM. 6	COAMO, PR 00769–	809–825–2239
HYATT REGENCY CERROMAR		RD. 693	DORADO, PR 00646–	809–796–1234
THE HYATT DORADO BEACH	RT. 693	DORADO, PR 00646–	809–796–1234.	
POSADA GUAYAMA	PO BOX 2393	RD. 3 KM. 138.5 SECTOR VIVES.	GUAYAMA, PR 00785–	809–866–1515
PICHIS HOTEL & CONVENTION CENTER.	PO BOX 115	RD. 2 KM. 204 HM. 6	GUAYANILLA, PR 00656–	809–835–3335
PAN AMERICAN MOTEL INC	PO BOX 641	RD. 2 KM. 84 HM. 9	HATILLO, PR 00659–	809–898–4396
HOTEL EL ROSAL	PO BOX 7		HORMIGUEROS, PR 00660–	
EL PASO	PO BOX 682	RD. 2 KM. 109 HM. 8	ISABELA, PR 00662–	809–872–7277
LA HACIENDA JUANITA	PO BOX 777	RD. 105 KM. 23 HM. 5	MARICAO, PR 00606–	809–838–2550
HOLIDAY INN MAYAGUEZ	PO BOX 2701	RD. 2 KM. 149 HM. 9	MAYAGUEZ, PR 00680–6328	809–833–1100
HOTEL JOYUDA BEACH	PO BOX 1660	RD. 102 KM. 117	MAYAGUEZ, PR 00681–	809–851–5650
HOTEL LA PALMA	PO BOX 1660	MENDEZ VIGO & PERAL	MAYAGUEZ, PR 00681–	809–834–3800
DAY'S INN		RT. 1 KM. 123 HM. 5	MERCEDITA-PONCE, PR 00715–.	809–841–1000
HOTEL CARIBE PLAYA INC	HC 764–8490	RD. 3 KM. 112 HM. 1	PATILLAS, PR 00723–	809–838–6339
PONCE HILTON & CASINO	PO BOX 7419	STGO. DE LOS CABALLEROS-PLAYA.	PONCE, PR 00732–	809–259–7777
THE HORNED DORSET PRIMAVERA HOTEL.	PO BOX 1132	BO. BARRERO RD. 429 KM. 3.0	RINCON, PR 00677–	809–823–4030
MARINA DE SALINAS INC	PO BOX 364386	G–8 BO. PLAYA	SALINAS, PR 00936–4386	809–752–6484
ARCADE INN		8 TAFT	SAN JUAN, PR 00911–	809–725–0655
HOTEL RADISSON NORMANDIE.	PO BOX 50059	MUNOZ RIVERA & ROSALES	SAN JUAN, PR 00902–	809–729–2929
RADISSON AMBASADOR PLAZA HOTEL & CASINO.		1369 ASHFORD AVE	SAN JUAN, PR 00907–	809–721–7300
RAMADA HOTEL CONDADO		1045 ASHFORD AVE	SAN JUAN, PR 00908–	809–723–8000
HOTEL PARADOR CASA GRANDE.	PO BOX 616	RT. 612 KM. 0 HM. 3	UTUADO, PR 00641–	809–894–3939
HOTEL EL CACIQUE	PO BOX 3046	RT. 368 KM. 10 HM. 3	YAUCO, PR 00698–	809–856–0345

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
Republic of Palau				
PALAU PACIFIC RESORT	PO BOX 308	KOROR	REPUBLIC OF PALAU, PW 96940–.	680–488–2591
Rhode Island				
THE BAY VOYAGE NEWPORT OVERLOOK.		150 BAY VIEW DR	JAMESTOWN, RI 02835–	401–423–1886
COURTYARD BY MARRIOTT		9 COMMERCE DR	MIDDLETOWN, RI 02840–	401–849–8000
HOWARD JOHNSON LODGE		351 W. MAIN RD	MIDDLETOWN, RI 02840–	401–849–2000
THE GREENHOUSE INN		30 WAVE AVE	MIDDLETOWN, RI 02840–	401–846–0310
ADMIRAL BENBOW INN		93 PELHAM ST	NEWPORT, RI 02840–	401–846–4256
ADMIRAL FITZROY INN		398 THAMES ST	NEWPORT, RI 02840–	401–846–4256
BEST WESTERN MAINSTAY INN.		151 ADMIRAL KALBFUS RD	NEWPORT, RI 02840–	401–849–9880
CLIFFSIDE INN		2 SEAVIEW AVE	NEWPORT, RI 02840–	401–847–1811
INN ON LONG WHARF		142 LONG WHARF	NEWPORT, RI 02840–	401–847–7800
INN ON THE HARBOR		359 THAMES ST	NEWPORT, RI 02840–	401–849–6789
JAILHOUSE INN		13 MARLBOROUGH ST	NEWPORT, RI 02840–	401–847–4638
MILL STREET INN		75 MILL ST	NEWPORT, RI 02840–	401–849–9500
MOTEL 6		249 CONNELL HWY	NEWPORT, RI 02840–	401–848–0600
NEWPORT BAY CLUB & HOTEL.		337 THAMES ST	NEWPORT, RI 02840–	401–849–8600
NEWPORT ISLANDER DOUBLETREE HOTEL.		GOAT ISLAND	NEWPORT, RI 02840–	401–849–2600
NEWPORT MARRIOTT HOTEL		25 AMERICA'S CUP AVE	NEWPORT, RI 02840–	401–849–1000
NEWPORT ON SHORE		405 THAMES ST	NEWPORT, RI 02840–	401–849–1500
OCEAN CLIFF I & I I TIME SHARE.		RIDGE RD	NEWPORT, RI 02840–	401–846–6667
SUSSE CHALET		NETC BUILDING 1290 NAVY BASE.	NEWPORT, RI 02840–	401–841–0800
VILLA LIBERTY		22 LIBERTY ST	NEWPORT, RI 02840–	401–846–7444
WELLINGTON YACHT AND RACQUET CLUB.		543 THAMES ST	NEWPORT, RI 02840–	401–849–1770
YANKEE PEDDLER INN		113 TOURO ST	NEWPORT, RI 02840–	401–846–1323
FOUNDER'S BROOK MOTEL & SUITES.		314 BOYD'S LN	PORTSMOUTH, RI 02871–	401–683–1244
RAMADA INN		144 ANTHONY RD	PORTSMOUTH, RI 02871–	401–683–3600
DAYS HOTEL		200 INDIA ST	PROVIDENCE, RI 02903–	401–272–5577
MARRIOTT HOTEL		CHARLES AT ORMS ST	PROVIDENCE, RI 02804–	401–272–2400
THE ADMIRAL DEWEY INN		68 MATUNUCK BEACH RD	SOUTH KINGSTOWN, RI 02879–.	401–783–2090
HOLIDAY INN AT THE CROSSING.		801 GREENWICH AVE	WARWICK, RI 02886–	401–732–6000
HOWARD JOHNSON LODGE		20 JEFFERSON BLVD	WARWICK, RI 02888–	401–467–9800
MARRIOTT RESIDENCE INN		504 KILVERT ST	WARWICK, RI 02886–	401–737–7100
SHERATON TARA		1850 POST RD	WARWICK, RI 20886–	401–738–4000
WOONSOCKET MOTOR INN		333 CLINTON ST	WOONSOCKET, RI 02895–	401–762–1224
South Carolina				
COMFORT INN		2660 COLUMBIA HWY	AIKEN, SC 29801–	803–642–5692
DAYS INN		1204 RICHLAND AVE. W	AIKEN, SC 29801–	803–649–5524
DELUXE INN	PO BOX 2875		AIKEN, SC 29802–	803–642–2840
HO JO INN		1936 WHISKEY RD. S	AIKEN, SC 29803–	803–649–5000
HOLLEY HOUSE INN		235 RICHLAND AVE	AIKEN, SC 29801–	803–648–4265
THE WILLCOX INN		100 COLLETON AVE	AIKEN, SC 29801–	803–649–1377
CAPE COD INN		4020 CLEMSON BLVD	ANDERSON, SC 29621–	803–224–4464
HOWARD JOHNSON'S	PO BOX 5022		ANDERSON, SC 29623–	803–226–3457
PARK INN INTERNATIONAL UNIVERSITY.		3430 N. MAIN ST	ANDERSON, SC 29621–	803–225–3721
QUALITY INN		3509 CLEMSON BLVD	ANDERSON, SC 29621–	803–226–1000
HOLIDAY MOTEL		701 N. MAIN ST	BAMBERG, SC 29003–	803–245–2426
WINTON INN		1003 MARLBORO AVE	BARNWELL, SC 29812–	803–259–7181
HOWARD JOHNSON		US HWY. 21	BEAUFORT, SC 29902–	803–524–5020
MARLBORO INN		HWY. 15 & 401 BYPASS	BENNETTSVILLE, SC 29902–	803–479–4051
COLONY INN		2020 W. DEKALB ST	CAMDEN, SC 29020–	803–432–5506
BRASINGTON HOUSE B & B		328 E. BAY ST	CHARLESTON, SC 29401–	803–722–1274
COMFORT INN		5055 N. ARCO LN	CHARLESTON, SC 29418–	803–554–6485
COMFORT INN RIVERVIEW		144 BEE ST	CHARLESTON, SC 29401–	803–577–2224
DAYS INN		155 MEETING ST	CHARLESTON, SC 29401–	803–722–8411
HAMPTON INN		345 MEETING ST	CHARLESTON, SC 29403–	803–723–4000
HAMPTON INN AIRPORT		4701 ARCO LN	CHARLESTON, SC 29418–	803–554–7154
HOLIDAY INN RIVERVIEW		SAVANNAH HWY	CHARLESTON, SC 29407–	803–556–7100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOWARD JOHNSON'S ENTERPRISE.		250 SPRING ST	CHARLESTON, SC 29403–	803–722–4000
INDIGO INN		ONE MAIDEN LN	CHARLESTON, SC 29401–	803–577–5900
KING CHARLES INN BEST WESTERN.		237 MEETING ST	CHARLESTON, SC 29401–	803–723–7451
KINGS COURTYARD INN		198 KING ST	CHARLESTON, SC 29401–	803–723–7000
LA QUINTA INN		2499 LA QUINTA LN	CHARLESTON, SC 29420–	803–797–8181
LODGE ALLEY INN		195 E. BAY ST	CHARLESTON, SC 29401–	803–722–1611
MAISON DU PRE'		317 E. BAY ST	CHARLESTON, SC 29401–	803–723–8591
MOTEL 6		2058 SAVANNAH HWY	CHARLESTON, SC 29407–	803–556–5144
OMNI HOTEL		130 MARKET ST	CHARLESTON, SC 29401–	803–722–4900
QUEEN VICTORIA INN		208 KING ST	CHARLESTON, SC 29401–	803–720–2944
TOWN AND COUNTRY INN		2008 SAVANNAH HWY	CHARLESTON, SC 29407–	803–571–1000
VENDUE INN		19 VENDUE RANGE	CHARLESTON, SC 29401–	803–577–7970
OMNI HOTEL		130 MARKET ST	CHAS, SC 29401–	
INN CHERAW		321 SECOND ST	CHERAW, SC 29520–	803–833–6600
DAYS INN		I–26 & HWY. 56	CLINTON, SC 29325–	803–833–6600
BRADBURY SUITES		7525 TWO NOTCH RD	COLUMBIA, SC 29223–	803–736–6566
BUDGETEL INN WEST		911 BUSH RIVER RD	COLUMBIA, SC 29210–	803–798–3222
CHESTNUT COTTAGE BED AND BREAKFAST.		1718 HAMPTON ST	COLUMBIA, SC 29201–	803–256–1718
CLAUSSENS INN		2003 GREENE ST	COLUMBIA, SC 29205–	803–765–0440
COMFORT INN		499 PINEY GROVE RD	COLUMBIA, SC 29210–	803–798–0500
CORONET MOTEL		6320 N. MAIN ST	COLUMBIA, SC 29203–	803–754–1510
DAYS INN		827 BUCH RIVER RD	COLUMBIA, SC 29210–	803–772–9672
ECONO LODGE NORTHEAST		7700 TWO NOTCH RD	COLUMBIA, SC 29206–	803–788–5544
ECONOMY INNS OF AMERICA		1776 BURNING TREE RD	COLUMBIA, SC 29210–	803–798–9210
EMBASSY SUITES		200 STONERIDGE DR	COLUMBIA, SC 29210–	803–252–8700
FAIRGROUND PLAZA HOTEL		621 S. ASSEMBLY ST	COLUMBIA, SC 29201–	803–252–2000
HOLIDAY INN NORTHEAST		7510 TWO NOTCH RD	COLUMBIA, SC 29206–	803–736–3000
KINGS MOTOR LODGE		5321 FOREST DR	COLUMBIA, SC 29206–	803–790–1133
LA QUINTA MOTOR INN		1335 GARNER LN	COLUMBIA, SC 29210–	803–798–9590
MARRIOTT COURTYARD		347 ZIMALCREST DR	COLUMBIA, SC 29210–	803–731–2300
MARRIOTT HOTEL		1200 HAMPTON ST	COLUMBIA, SC 29201–	803–771–7000
MOTEL 6		1144 BUSH RIVER RD	COLUMBIA, SC 29210–	803–772–4910
RAMADA HOTEL		8105 TWO NOTCH RD	COLUMBIA, SC 29223–	803–736–5600
RED ROOF INN COLUMBIA WEST.		10 BERRYHILL RD	COLUMBIA, SC 29210–	803–798–9220
RED ROOF INN NORTHEAST		7580 TWO NOTCH RD	COLUMBIA, SC 29223–	803–735–0850
RESIDENCE INN		150 STONE RIDGE DR	COLUMBIA, SC 29210–	803–779–7000
TRAVEL LODGE		2210 BUSH RIVER RD	COLUMBIA, SC 29210–	803–798–9665
BUDGET INN		HWY. 501 BYPASS	CONWAY, SC 29526–	803–347–3151
BIG APPLE INN		706 WASHINGTON ST	DARLINGTON, SC 29532–	803–393–8990
HOLIDAY INN EXPRESS		I–95 EXIT 193 & SC HWY. 9	DILLON, SC 29536–	803–774–5111
DAYS INN AIRPORT		1386 E. MAIN ST	DUNCAN, SC 29334–	803–433–1122
DAYS INN EASLEY		121 DAYS INN DR	EASLEY, SC 29640–	803–859–9902
STAR MOTEL		4237 CALHOUN MEMORIAL HWY.	EASLEY, SC 29640–	803–269–1311
CARNOOSIE INN		407 COLUMBIA RD	EDGEFIELD, SC 29824–	803–637–5544
THE INN ON MAIN		305 MAIN ST	EDGEFIELD, SC 29824–	803–637–3679
COMFORT INN	PO BOX 5688	I–95 & US 52	FLORENCE, SC 29502–	803–665–4558
ECONO LODGE		2251 W. LUCAS ST	FLORENCE, SC 29502–	803–665–8558
FAIRFIELD INN BY MARRIOTT		140 DUNBARTON DR	FLORENCE, SC 29501–	803–669–1666
HAMPTON INN		1826 W. LUCAS ST	FLORENCE, SC 29501–	803–662–7000
HERITAGE PLACE		309 S. IRBY ST	FLORENCE, SC 29501–	803–662–0461
HOLIDAY INN	PO BOX 4009		FLORENCE, SC 29502–	803–665–4555
RED ROOF INN		2690 DAVID MCLEOD BLVD	FLORENCE, SC 29501–	803–678–9000
SLEEP INN	PO BOX 5688	I–95 & US 52	FLORENCE, SC 29502–	803–662–8558
SUPER 8 MOTEL		1832 W. LUCAS ST	FLORENCE, SC 29501–	803–661–7267
TRAVELERS INN		JUNCTION I–95 & US 52	FLORENCE, SC 29502–	803–665–2575
YOUNGS PLANTATION INN		I–95 & US 76	FLORENCE, SC 29502–	803–669–4171
BEST WESTERN CAROWINDS		3482 HWY. 21	FORT MILL, SC 29715–	803–548–8000
BEST WESTERN GAFFNEY		100 ELLIS FERY RD	GAFFNEY, SC 29340–	803–489–1699
COMFORT INN		143 CORONO DR	GAFFNEY, SC 29341–	803–487–4200
CAROLINIAN INN A CLARION		706 CHURCH ST	GEORGETOWN, SC 29440–	803–546–5191
DAYS INN		210 CHURCH ST. HWY. 17 N	GEORGETOWN, SC 29440–	803–546–5441
HOLIDAY INN EXPRESS		103 REDBANK RD	GOOSE CREEK, SC 29445–	803–572–9500
BEST WAY MOTEL		1304 POINSETT HWY	GREENVILLE, SC 29609–	803–271–1700
CAMELOT INN		4500 AUGUSTA RD	GREENVILLE, SC 29605–	803–277–8430
COURTYARD BY MARRIOTT		70 ORCHARD PARK DR	GREENVILLE, SC 29615–	803–234–0300
DAYS INN		3905 AUGUST RD	GREENVILLE, SC 29604–	803–277–4010
FAIRFIELD INN BY MARRIOTT		60 ROPER MOUNTAIN RD	GREENVILLE, SC 29615–	803–297–9996

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
GREENVILLE HILTON HOTEL ..	.....	45 W. ORCHARD PARK DR	GREENVILLE, SC 29615–	803–232–4747
HAMPTON INN	.....	246 CONGAREE RD	GREENVILLE, SC 29607–	803–288–1200
HOLIDAY INN HAYWOOD AREA.	.....	860 CONGAREE RD	GREENVILLE, SC 29607–	803–297–6300
HYATT REGENCY HOTEL	.....	220 N. MAIN ST	GREENVILLE, SC 29604–	803–235–1234
LA QUINTA	.....	31 OLD COUNTRY RD	GREENVILLE, SC 29607–	803–296–3500
MARRIOTT AIRPORT	.....	1 PKWY. E	GREENVILLE, SC 29607–	803–297–0300
MOTEL 6	.....	224 BRYCE RD	GREENVILLE, SC 29606–	803–277–8630
RED ROOF INN #095	.....	2801 LAURENS RD	GREENVILLE, SC 29607–	803–297–4456
HOLIDAY INN	.....	1014 MONTAGUE AVE	GREENWOOD, SC 29646–	803–223–4231
INN ON THE SQUARE	.....	104 E. COURT ST	GREENWOOD, SC 29646–	803–223–4488
COMFORT INN	PO BOX 544	.....	HARDEEVILLE, SC 29927–	803–784–2188
LANDMARK MOTOR INN	.....	US 15 & SC 151	HARTSVILLE, SC 29550–	803–332–2511
CRYSTAL SANDS	.....	130 SHIPYARD DR	HILTON HEAD, SC 29928–	803–842–2400
HOLIDAY INN EXPRESS	.....	40 WATERSIDE DR	HILTON HEAD, SC 29928–	803–842–8888
FAIRFIELD INN BY MARRIOTT .	.....	9 MARINA SIDE DR	HILTON HEAD ISLAND, SC 29928–.	803–842–4800
HYATT REGENCY HILTON HEAD.	.....	ONE HYATT CIR	HILTON HEAD ISLAND, SC 29928–.	803–785–1234
MOTEL 6	.....	830 WILLIAM HILTON PKWY	HILTON HEAD ISLAND, SC 29928–.	803–785–2700
RED ROOF INN	.....	5 REGENCY PKWY	HILTON HEAD ISLAND, SC 29928–.	803–686–6808
SHONEY'S INN	.....	200 MUSEUM ST	HILTON HEAD ISLAND, SC 29928–.	803–681–3655
WESTIN RESORT & VILLAS	.....	2 GRASSLAWN AVE	HILTON HEAD ISLAND, SC 29938–.	803–681–4000
OCEAN INN APARTMENTS	.....	1100 PAVILION BLVD	ISLE OF PALMS, SC 29451–	803–886–4687
TRAVEL INN	.....	621 N. HARPER ST	LAURENS, SC 29360–	803–984–0558
DAYS INN	.....	S. 601 & I–20	LUGOFF, SC 29078–	803–438–6990
HOLIDAY INN OF CAMDEN	.....	US 1 S	LUGOFF, SC 29078–	803–438–9441
SHONEY'S INN	PO BOX 970	.....	LUGOFF, SC 29078–	803–438–4961
MANNING ECONOMY INN	PO BOX 97	.....	MANNING, SC 29102–	803–473–4021
COMFORT INN	.....	US 76 AND 501 BYPASS	MARION, SC 29571–	803–423–0516
COMFORT INN EAST	.....	310 US HWY. 17 N. BYPASS	MT. PLEASANT, SC 29464–	803–884–5853
GUILDS INN	.....	101 PITT ST	MT. PLEASANT, SC 29464–	803–881–0510
HAMPTON INN MT. PLEASANT	.....	255 JOHNNIE DODDS BLVD	MT. PLEASANT, SC 29464–	803–881–3300
HOLIDAY INN CHARLESTON	.....	250 JOHNNIE DODDS BLVD	MT. PLEASANT, SC 29464–	803–884–6000
RAMADA INN	.....	301 JOHNNIE DODDS BLVD	MT. PLEASANT, SC 29464–	803–884–1411
SHEM CREEK INN	.....	1401 SHRIMP BOAT LN	MT. PLEASANT, SC 29464–	803–881–1000
CADILLAC COURT	.....	202 N. OCEAN BLVD	MYRTLE BEACH, SC 29577–	803–448–5143
EMERALD SHORES MOTEL	.....	404 N. OCEAN BLVD	MYRTLE BEACH, SC 29577–	803–448–3276
HENDRIX HOUSE	.....	404 14TH AVE. S	MYRTLE BEACH, SC 29577–	803–448–2768
HOLIDAY INN OCEANFRONT ...	.....	415 S. OCEAN BLVD	MYRTLE BEACH, SC 29577–	803–448–4481
KNIGHTS INN	.....	3622 HWY. 501 W	MYRTLE BEACH, SC 29577–	803–236–7400
MYRTLE BEACH HILTON	.....	10,000 BEACH CLUB DR	MYRTLE BEACH, SC 29577–	803–448–5000
OCEAN FRONT MOTEL	.....	510 N. OCEAN BLVD	MYRTLE BEACH, SC 29577–	803–626–9473
RADISSON RESORT	.....	9800 LAKE DR	MYRTLE BEACH, SC 29577–	803–449–0006
SHERATON MYRTLE BEACH RESORT.	.....	2701 S. OCEAN BLVD	MYRTLE BEACH, SC 29577–	803–448–2518
YACHTSMAN RESORT HOTEL .	.....	1400 N. OCEAN BLVD	MYRTLE BEACH, SC 29577–	803–448–1441
BEST WESTERN NEWBERRY INN.	RT 1 BOX 405	.....	NEWBERRY, SC 29108–	803–276–5850
DAYS INN	.....	I–26 & HWY. 34	NEWBERRY, SC 29108–	803–276–2294
ECONOMY INN	.....	2721 WINNSBORO RD	NEWBERRY, SC 29108–	803–276–2212
CHARLESTON SUPER 8 MOTEL.	.....	2311 ASHLEY PHOSPHATE RD	NORTH CHARLESTON, SC 29418–.	803–572–2228
CRICKET INN	.....	7415 NORTHSIDE DR	NORTH CHARLESTON, SC 29418–.	803–572–6677
HOLIDAY INN EXPRESS NORTH CHARLESTON.	.....	2070 MCMILLAN AVE	NORTH CHARLESTON, SC 29405–.	803–554–1600
MASTERS ECONOMY INN	.....	6100 RIVERS AVE	NORTH CHARLESTON, SC 29418–.	803–744–3530
MOTEL 6	.....	2551 ASHLEY PHOSPHATE RD	NORTH CHARLESTON, SC 29418–.	803–572–6590
NORTHWOODS ATRIUM INN ...	.....	7401 NORTHWOODS BLVD	NORTH CHARLESTON, SC 29418–.	803–572–2200
QUALITY SUITES	.....	5225 N. ARCO LN	NORTH CHARLESTON, SC 29418–.	803–747–7300
RADISSON INN CHARLESTON AIRPORT.	.....	5991 RIVERS AVE	NORTH CHARLESTON, SC 29418–.	803–744–2501

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RAMADA INN		2934 W. MONTAGUE AVE	NORTH CHARLESTON, SC 29418–.	803–744–8281
RED ROOF INN		7480 NORTHWOOD BLVD	NORTH CHARLESTON, SC 29418–.	803–572–9100
RESIDENCE INN		7645 NORTHWOODS BLVD	NORTH CHARLESTON, SC 29405–.	803–572–5757
SIESTA MOTOR LODGE		4044 RIVERS AVE	NORTH CHARLESTON, SC 29405–.	803–747–3659
CHERRY GROVE MANOR		2104 N. OCEAN BLVD	NORTH MYRTLE BEACH, SC 29582–.	803–249–2731
HOLIDAY INN		415 JOHN C. CALHOUN DR	ORANGEBURG, SC 29115–	803–531–4600
LIBERTY HALL INN		621 S. MECHANIC ST	PENDLETON, SC 29670–	803–646–7500
DAYS INN		1809 S. RIBAUT RD	PORT ROYAL, SC 29935–	803–524–1551
BESTWAY INN		825 RIVERVIEW RD	ROCK HILL, SC 29730–	803–329–1177
DAYS INN		914 RIVERVIEW RD	ROCK HILL, SC 29730–	803–329–6581
HAMPTON INN		2111 TABER DR	ROCK HILL, SC 29731–	803–325–1100
HOLIDAY INN ROCK HILL		2640 N. CHERRY RD	ROCK HILL, SC 29730–	803–329–1122
REGENCY INN		1037 RIVERVIEW RD	ROCK HILL, SC 29730–	803–329–3150
THE BOOK & SPINDLE B & B		626 OAKLAND AVE	ROCK HILL, SC 29730–	803–328–1913
ASHLEY INN	RT 3 BX 1410		SANTEE, SC 29142–	803–854–3870
HOWARD JOHNSON RESORT HOTEL.	PO BOX 130	I–95 EXIT 102 RD. 400	SANTEE, SC 29142–	803–478–7676
RAMADA INN	PO BOX 501		SANTEE, SC 29142–	803–854–2191
TARA INN	RT 3 BX 1405		SANTEE, SC 29142–	803–854–3537
DAYS INN		11015 N. RADIO STATION RD	SENECA, SC 29678–	803–885–0710
COMFORT INN		600 FAIRVIEW RD	SIMPSONVILLE, SC 29681–	803–963–2777
COMFORT INN WEST		I–26 & 2070 NEW CUT RD	SPARTANBURG, SC 29303–	803–576–2992
COURTYARD BY MARRIOTT		110 MOBILE DR	SPARTANBURG, SC 29303–	803–585–2400
ECONO LODGE		710 SUNBEAM RD	SPARTANBURG, SC 29301–	803–578–9450
HAMPTON INN		4930 COLLEGE DR	SPARTANBURG, SC 29301–	803–576–6080
HOLIDAY INN SPARTANBURG WEST.		200 INTERNATIONAL DR	SPARTANBURG, SC 29301–	803–576–5220
MOTEL 6		105 JONES RD	SPARTANBURG, SC 29303–	803–573–6303
RAMADA INN		1000 HEARON CIR	SPARTANBURG, SC 29303–	803–578–7170
RESIDENCE INN SPARTANSBURG.		9011 FAIRFOREST RD	SPARTANBURG, SC 29305–	803–576–3333
WILSON WORLD		9027 FAIRFOREST RD	SPARTANSBURG, SC 29301–	803–574–2111
BEST WESTERN	PO BOX 386		ST. GEORGE, SC 29477–	803–563–2277
ECONO LODGE #SC141		128 INTERSTATE DR. I–95 & US78.	ST. GEORGE, SC 29448–	803–563–4027
ST. GEORGE ECONOMY MOTEL.		125 MOTEL DR	ST. GEORGE, SC 29477–	803–563–2360
EAST BRIDGE INN		120 E. BRIDGE ST. HWY. 6	ST. MATTHEWS, SC 29135–	803–874–4017
COMFORT INN	PO BOX 938		SUMMERTON, SC 29148–	803–485–2865
COMFORT INN		1005 JOCKEY CT	SUMMERVILLE, SC 29483–	803–851–2333
HAMILTON MOTEL		415 S. MAIN ST	SUMMERVILLE, SC 29483–	803–873–0220
HOLIDAY INN		2390 BROAD ST	SUMTER, SC 29150–	803–469–9001
RAMADA INN		226 N. WASHINGTON ST	SUMTER, SC 29150–	803–775–2323
COMFORT INN		1109 SNIDERS HWY	WALTERBORO, SC 29488–	803–538–5403
HAMPTON INN		1094 CHRIS DR	WEST COLUMBIA, SC 29169–	803–791–8940
HOLIDAY INN COLUMBIA AIRPORT.		500 CHRIS DR	WEST COLUMBIA, SC 29169–	803–794–9440
SUPER 8		2516 AUGUST RD	WEST COLUMBIA, SC 29169–	803–796–4833
FAIRFIELD MOTEL		PO DRAWER 449	WINNSBORO, SC 29180–	803–635–4681
South Dakota				
ABERDEEN EAST SUPER 8 MOTEL.	PO BOX 4090	2405 SE 6TH AVE	ABERDEEN, SD 57402–4090	605–229–5005
BEST WESTERN RAMKOTA INN ABERDEEN.		1400 8TH AVE. NW	ABERDEEN, SD 57401–2696	605–229–4040
NORTH ABERDEEN SUPER 8 MOTEL.	PO BOX 4090	770 NW HWY. 281	ABERDEEN, SD 57401–4090	605–226–2288
WEST ABERDEEN SUPER 8 MOTEL.	PO BOX 4090	714 S. HWY. 281	ABERDEEN, SD 57402–4090	605–225–1711
NORTH VUE MOTEL	RR2 BOX 29		AVON, SD 57315–9248	605–286–3202
HUNTERS INN	PO BOX 269	E. HWY. 10	BRITTON, SD 57430–0269	605–448–5723
BEAL HOUSE BED & BREAKFAST INN.		1302 SIXTH ST	BROOKINGS, SD 57006–2310	605–692–6889
BEST WESTERN STAUROLITE INN.	PO BOX 522	2515 E. 6TH ST	BROOKINGS, SD 57006–0522	605–692–9421
BULLOCK HOTEL		633 MAIN ST	DEADWOOD, SD 57732–9999	605–578–1745
DEADWOOD GULCH RESORT	PO BOX 643	10 TIMM LN	DEADWOOD, SD 57732–0643	605–578–1294

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
GOLDIGGERS HOTEL & GAMING.		629 MAIN ST	DEADWOOD, SD 57732–1105	605–578–3213
JACKPOT INN DAKOTA AMERICAN PARTNERSHIPS.	PO BOX 364	HWY. 385 S	DEADWOOD, SD 57732–0364	605–578–7791
PRAIRIE VISTA INN	PO BOX 575	1ST ST. & E. 1ST AVE	FAITH, SD 57626–0575	605–967–2343
LANTERN INN MOTEL	PO BOX 744	131 MAIN ST	HILL CITY, SD 57745–0744	605–574–2582
PALMER GULCH LODGE	PO BOX 295		HILL CITY, SD 57745–0295	605–574–2525
HOT SPRINGS SUPER 8 MOTEL INC.	PO BOX 612	800 MAMMOTH ST	HOT SPRINGS, SD 57747–0612	605–745–3888
CROSSROADS HOTEL & CONVENTION CENTER.	PO BOX 833	100 4TH ST. SW	HURON, SD 57350–0833	605–352–3204
RIVERSIDE MOTEL		710 3RD ST. SE	HURON, SD 57350–2605	605–352–8748
KELLY INN	PO BOX 654	HWY. 16A & CEMETERY RD	KEYSTONE, SD 57751–0654	605–666–4483
BEST WESTERN GOLDEN HILLS RESORT.	PO BOX 880	900 MINERS AVE	LEAD, SD 57754–0880	605–584–1800
CROSS ROADS INN	PO BOX 970		MARTIN, SD 57551–0970	605–685–1070
SUPER 8 MOTEL	PO BOX 86	E. HWY. 12	MILBANK, SD 57252–0086	605–432–9288
COMFORT INN	PO BOX 447	HWY. 37 & I–90	MITCHELL, SD 57301–0447	605–996–1333
HOLIDAY INN OF MITCHELL SD.		1525 W. HAVENS ST	MITCHELL, SD 57301–4104	605–996–6501
COMFORT INN	PO BOX 38	W. HWY. 16	OACOMA, SD 57365–0038	605–734–5593
OASIS INN	PO BOX 39	HWY. 16	OACOMA, SD 57365–0039	605–734–6061
FORT RANDALL INN		HWY. 281 & 18	PICKSTOWN, SD 57367–9999	605–487–7801
CAPITOL INN MOTEL		815 WELLS AVE	PIERRE, SD 57501–3307	605–224–6387
GOVERNORS INN		700 W. SIOUX AVE	PIERRE, SD 57501–9999	605–224–4200
RAMKOTA INN PIERRE PARKSIDE DEVELOPMENT.		920 W. SIOUX	PIERRE, SD 57501–1805	605–224–6577
SUPER 8 MOTEL		320 W. SIOUX	PIERRE, SD 57501–2443	605–224–1617
AVANTI MOTEL		102 N. MAPLE	RAPID CITY, SD 57701–1535	605–348–1112
CASTLE INN		15 E. NORTH ST	RAPID CITY, SD 57701–9999	605–348–4120
HOWARD JOHNSON LODGE	PO BOX 1795	2211 LACROSSE ST	RAPID CITY, SD 57709–1795	605–343–8550
RAPID CITY HILTON INN		445 MT RUSHMORE RD	RAPID CITY, SD 57701–2754	605–348–8300
RUSHMORE PLAZA HOLIDAY INN.		505 N. 5TH ST	RAPID CITY, SD 57701–2702	605–348–4000
SUPER 8 MOTEL		2124 LACROSSE ST	RAPID CITY, SD 57701–7859	605–348–8070
AIRPORT HOLIDAY INN		1301 W. RUSSELL	SIOUX FALLS, SD 57104–1309	605–336–1020
COMFORT INN		3216 S. CAROLYN AVE	SIOUX FALLS, SD 57106–9999	605–361–2822
COMFORT SUITES		3208 CAROLYN AVE	SIOUX FALLS, SD 57106–9999	605–362–9711
HOLIDAY INN CITY CENTRE		100 W. 8TH ST	SIOUX FALLS, SD 57102–0532	605–339–2000
HOWARD JOHNSON HOTEL		3300 W. RUSSELL	SIOUX FALLS, SD 57107–1214	605–336–9000
KELLY INN	PO BOX 84711	3101 W. RUSSELL	SIOUX FALLS, SD 57118–4711	605–338–6242
RADISSON ENCORE INN		4300 EMPIRE PL	SIOUX FALLS, SD 57116–0141	605–361–6684
RAMKOTA INN		2400 N. LOUISE EXIT 81	SIOUX FALLS, SD 57107–0789	605–336–0650
SIOUX FALLS TRAVELODGE		809 W. AVE. N	SIOUX FALLS, SD 57104–5719	605–336–0230
SUPER 8 MOTEL		4808 N. CLIFF AVE	SIOUX FALLS, SD 57104–0597	605–339–9212
SUPER 8 MOTEL		4100 W. 41ST ST	SIOUX FALLS, SD 57106–0717	605–361–9719
LAKEVIEW PARK	PO BOX 622		SOUTH SHORE, SD 57263–0622.	605–756–4402
DAYS INN SPEARFISH		240 RYAN RD	SPEARFISH, SD 57783–1211	605–642–7101
KELLY INN	PO BOX 989	540 E. JACKSON	SPEARFISH, SD 57783–0989	605–642–7795
THE COMFORT INN		701 W. CHERRY	VERMILLION, SD 57069–1139	605–624–8333
THE PRAIRIE INN	PO BOX 394	916 N. DAKOTA	VERMILLION, SD 57069–0394	605–624–2824
BEST WESTERN RAMKOTA INN.	PO BOX 346	1901 9TH AVE. SW	WATERTOWN, SD 57201–0346	605–886–8011
TRAVEL HOST MOTEL		1714 9TH AVE. SW	WATERTOWN, SD 57201–5013	605–886–8120
TRAVELERS INN INC	PO BOX 426	920 14TH ST. SE	WATERTOWN, SD 57201–0426	605–882–2243
HOLIDAY MOTEL	PO BOX 478	W. HWY. 12	WEBSTER, SD 57274–0478	605–345–3323
BUFFALO TRAIL MOTEL		W. HWY. 18	WINNER, SD 57580–9999	605–842–2212
SUPER 8		902 E. HWY. 44	WINNER, SD 57580–1321	605–842–0991
YANKTON INN AND CONVENTION CENTER.	PO BOX 157	1607 E. HWY. 50	YANKTON, SD 57078–0157	605–665–2906
Tennessee				
FAMILY INNS OF AMERICA		2450 AIRPORT HWY	ALCOA, TN 37701–	615–970–2006
HAMPTON INN KNOXVILLE AIRPORT.		148 INTERNATIONAL AVE	ALCOA, TN 37701–	615–983–1101
KNOXVILLE AIRPORT HILTON		2001 ALCOA HWY	ALCOA, TN 37701–	615–970–4300
KNOXVILLE AIRPORT HILTON	ALCOA HWY.	MCGHEE TYSON AIPORT	ALCOA, TN 37701–	615–970–4300
QUALITY INN AIRPORT	PO BOX 477	2306 ALCOA HWY	ALCOA, TN 37701–	615–970–3140
DAYS INN		501 COLLINS PARK RD	ANTIOCH, TN 37013–	615–731–7800
QUARTERS MOTOR INN		1100 BELL RD	ANTIOCH, TN 37013–	615–731–5990
BRENTWOOD HILTON SUITES		9000 OVERLOOK BLVD	BRENTWOOD, TN 37027–	615–370–0111

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COURTYARD BY MARRIOTT NASHVILLE BRENTWOOD.		103 E. PARK DR	BRENTWOOD, TN 37027–	615–371–9200
HOLIDAY INN BRENTWOOD		760 OLD HICKORY BLVD	BRENTWOOD, TN 37027–	615–373–2600
RESIDENCE INN BY MARRIOTT.		206 WARD CIR	BRENTWOOD, TN 37027–	615–371–0100
HOJO INN BY HOWARD JOHNSON.		975 VOLUNTEER PKWY	BRISTOL, TN 37620–	615–968–9474
HOLIDAY INN—I 81		111 HOLIDAY DRIVE	BRISTOL, TN 37620–	615–968–1101
COMFORT INN		2600 ANDERSON AVE	BROWNSVILLE, TN 38012–	901–772–4082
COREY HOTELS INC. HOLIDAY INN.	PO BOX 14	RT. 1 OLD HWY. 25 W. EXIT 134.	CARYVILLE, TN 37714–	615–562–8476
CHATT. CHOO CHOO HOLIDAY INN BLDG 1–2.		1400 MARKET ST	CHATTANOOGA, TN 37402–	615–266–5000
CHATTANOOGA MARRIOTT AT THE CONVENTION CENTER.		TWO CARTER PLAZA	CHATTANOOGA, TN 37402–	615–756–0002
COURTYARD BY MARRIOTT CHATTANOOGA.		2210 BAMS DR	CHATTANOOGA, TN 37402–	615–499–4400
FAIRFIELD INN BY MARRIOTT CHATTANOOGA.		2350 SHALLOWFORD VILLAGE DR.	CHATTANOOGA, TN 37421–	615–499–3800
HOLIDAY INN I–75 AIRPORT		2345 SHALLOWFORD VILLAGE DR.	CHATTANOOGA, TN 37421–	615–855–2896
HOLIDAY INN SOUTHEAST		6700 RINGGOLD RD	CHATTANOOGA, TN 37412–	615–892–8100
DAYS INN OF CLARKSVILLE		3065 GUTHRIE HWY	CLARKSVILLE, TN 37040–	615–552–1155
HOLIDAY INN DOWNTOWN		803 N. 2ND ST	CLARKSVILLE, TN 37040–	615–645–9084
HOLIDAY INN I–24		3095 GUTHRIE HWY	CLARKSVILLE, TN 37040–	615–648–4848
RAMADA INN RIVERVIEW		50 COLLEGE ST	CLARKSVILLE, TN 37040–	615–552–3331
CLINTON SUPER 8 MOTEL		HWY. 61 & I–75	CLINTON, TN 37716–	615–457–0565
SUPER 8		HWY. 61 AND I–75	CLINTON, TN 37716–	615–457–0585
PLANTATION INN		1230 POPLAR HWY. #72	COLLIERVILLE, TN 38017–	901–853–1235
RICHLAND INN COLUMBIA		2407 HWY. 31 S	COLUMBIA, TN 38401–	615–381–4500
HOLIDAY INN COOKEVILLE		HWY. 42 AT I–40	COOKEVILLE, TN 38501–	615–526–7125
HOLIDAY INN OF COOKEVILLE		970 S. JEFFSON	COOKEVILLE, TN 38501–	615–526–7125
HOWARD JOHNSON LODGE		2021 E. SPRING ST	COOKEVILLE, TN 38501–	615–526–3333
THE SCARECROW COUNTRY INN.		1720 E. SPRING ST	COOKEVILLE, TN 38501–	615–526–3431
ECONO LODGE		HWY. 31–A & I–65, EXIT 22	CORNERSVILLE, TN 37047–	615–293–2111
BEST WESTERN COVINGTON		873 HWY. 51 N	COVINGTON, TN 38019–	901–476–8561
INN AT THUNDER HOLLOW		RT. 9 SPARTA HWY., HWY. 70 S.	CROSSVILLE, TN 38555–	615–484–7190
DOVER INN MOTEL		1545 DONELSON PKWY	DOVER, TN 37058–	615–232–5556
COMFORT INN		815 REELFOOT DRIVE	DYERSBURG, TN 38024–	901–285–8951
VOLUNTEER INN		1004 HWY. 51 BYPASS	DYERSBURG, TN 38024–	901–285–8730
BEST WESTERN		3021 THORTON TAYLOR PKWY.	FAYETTEVILLE, TN 37334–	615–433–0100
HOLIDAY INN		1307 MURFREESBORO RD	FRANKLIN, TN 37064–	615–794–7591
FOUR SEASON FAMILY INN	HWY. 31 E	101 BROADWAY ST	GALLATIN, TN 37066–	615–452–4521
MT. HERITAGE INN		575 RIVER RD	GATLINBURG, TN 37738–	800–343–7953
PARK VISTA HOTEL		AIRPORT ROAD	GATLINBURG, TN 37738–	615–436–9211
RIVER TERRACE RESORT AND CONVENTION CENTER.	PO BOX 747	240 RIVER RD	GATLINBURG, TN 37738–	615–436–5161
RIVER TERRANCE RESORT & CONVENTION CENTER.		240 RIVER ROAD	GATLINBURG, TN 37738–	615–436–5161
BUDGETEL INN		120 CARTWRIGHT CT	GOODLETTSVILLE, TN 37072–	615–851–1891
RED ROOF INN #115		110 NORTHGATE DR	GOODLETTSVILLE, TN 37072–	615–859–2537
ANDREW JOHNSON INN		HWY. 321 & 11 E. BYPASS	GREENEVILLE, TN 37743–	615–638–8124
BEST WESTERN SUNDANCER	PO BOX 1421	I–40 & HWY. 27	HARRIMAN, TN 37748–	615–882–8200
HERITAGE INN OF HUMBOLDT INC.		3350 EAST END DR	HUMBOLDT, TN 38343–	901–784–2278
HERITAGE INN INC		499 LEXINGTON ST	HUNTINGDON, TN 38344–	901–986–2281
FAIRFIELD INN		535 WILEY PARKER RD	JACKSON, TN 38305–	901–668–1400
FAIRFIELD INN BY MARRIOTT JACKSON.		535 WILEY PARKER RD	JACKSON, TN 38305–	901–668–1400
GARDEN PLAZA HOTEL		1770 HWY. 45 BYPASS	JACKSON, TN 38305–	901–664–6900
HAMPTON INN		1890 HWY. 45 BYPASS	JACKSON, TN 38305–	901–664–4312
BILLYS MOTEL		HWY. 25 W	JELLICO, TN 37762–	615–784–4352
FAIRFIELD INN		207 E. MOUNTCASTLE DR	JOHNSON CITY, TN 37601–	615–282–3335
FAIRFIELD INN BY MARRIOTT JOHNSON CITY.		207 E. MOUNTCASTLE DR	JOHNSON CITY, TN 37601–	615–282–3335
GARDEN PLAZA HOTEL		211 MOCKINGBIRD LN	JOHNSON CITY, TN 37601–	615–929–2000
GARDEN PLAZA HOTEL		211 MOCKINGBIRD LANE	JOHNSON CITY, TN 37604–	615–929–2000
RED ROOF INN		210 BROYLES DR	JOHNSON CITY, TN 37601–	615–282–3040
SHERATON PLAZA		101 W. SPRINGBROOK DR	JOHNSON CITY, TN 37604–	615–282–4611

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COMFORT INN		100 INDIAN CENTER COURT	KINGSPORT, TN 37660–	615–378–4418
ECONO LODGE OF KINGSTON		905 N. KENTUCKY ST	KINGSTON, TN 37763–	615–376–4965
FAMILY INNS OF AMERICA		I–40 AT GALLAHER RD	KINGSTON, TN 37763–	615–376–5573
BLAKELY HOTEL		407 UNION AVE	KNOXVILLE, TN 37902–	615–523–6500
COMFORT INN		5334 CENTRAL AVENUE PIKE	KNOXVILLE, TN 37912–	615–688–1010
COMFORT INN-WEST		11748 SNYDER RD. I–40 EXIT 373.	KNOXVILLE, TN 37922–	615–675–5566
ECONO LODGE		402 LOVELL ROAD	KNOXVILLE, TN 37922–1909	615–675–7200
FAMILY INNS OF AMERICA		4300 RUTLEDGE PIKE	KNOXVILLE, TN 37914–	615–546–3010
HAMPTON INN KNOXVILLE WEST.		9128 EXECUTIVE PARK DR	KNOXVILLE, TN 37923–	615–693–1011
HAMPTON INN NORTH KNOXVILLE.		119 CEDAR LN	KNOXVILLE, TN 37912–	615–689–1011
HOLIDAY INN WORLD'S FAIR		525 HENLEY AT CLINCH ST	KNOXVILLE, TN 37902–	615–522–2800
HYATT REGENCY KNOXVILLE		500 HILL AVE. SE	KNOXVILLE, TN 37915–	615–637–1234
KNOXVILLE HILTON DOWNTOWN.		501 W. CHURCH ST	KNOXVILLE, TN 37902–2591	615–523–2300
LA QUINTA INNS #651		258 N. PETERS RD	KNOXVILLE, TN 37923–	615–690–9777
MIDDLEBROOK INN		1234 HILTON RD	KNOXVILLE, TN 37921–	615–588–1982
MOTEL 6 INC		10115 WATKINS BLVD	KNOXVILLE, TN 37922–	615–675–5700
QUALITY INN EAST		1500 CHERRY ST	KNOXVILLE, TN 37917–	615–546–7110
RADISSON HOTEL KNOXVILLE		401 SUMMIT HILL DR	KNOXVILLE, TN 37902–	615–522–2600
RED ROOF INN		5640 MERCHANTS CENTER BLVD.	KNOXVILLE, TN 37912–	615–689–7100
RED ROOF INN INC. KNOXVILLE WEST.		209 ADVANTAGE PL	KNOXVILLE, TN 37922–	615–691–1664
WEST PARK INN		11320 OUTLET DR	KNOXVILLE, TN 37922–	615–966–7500
QUALITY INN	PO BOX 250	3385 WINFIELD DUNN PKWY. I–40.	KODAK, TN 37764–	615–933–7378
WINNERS CIRCLE MOTEL		3430 FORT CAMPBELL BLVD	LARKSVILLE, TN 37042–	615–431–4906
RICHLAND INN LAWRENCEBURG.		2125 N. LOCUST AVE	LAWRENCEBURG, TN 38464–	615–762–0061
HAMPTON INN		704 S. CUMBERLAND ST	LEBANON, TN 37087–	615–444–7400
HOLIDAY INN EXPRESS		641 S. CUMBERLAND ST	LEBANON, TN 37087–	615–444–7020
ECONO LODGE OF LENOIR CITY.		1211 HWY. 321 N	LENOIR CITY, TN 37771–	615–986–0295
COMFORT INN	PO BOX 8140	RT. 8 US HWY. 41 S. EXIT 114	MANCHESTER, TN 37355–	615–728–0800
ECONO LODGE		853 UNIVERSITY ST	MARTIN, TN 38237–	901–587–4241
MCGHEE TYSON INN		134 SVH 225 POST AVE	MCGHEE TYSON ANGBASE, TN 37777–6214.	615–985–3300
HOLIDAY INN EXPRESS		809 SPARTA ST	MCMINNVILLE, TN 37110–	615–473–2159
MCMINNVILLE HOLIDAY INN EXPRESS.		809 SPARTA ST	MCMINNVILLE, TN 37110–	615–473–2159
SCOTTISH INN		1105 SPARTA RD	MCMINNVILLE, TN 37110–	615–473–2181
ADAM'S MARK HOTEL MEMPHIS.		939 RIDGE LAKE BLVD	MEMPHIS, TN 39120–	901–684–6664
COUNTRY SUITES BY CARLSON.		4300 AMERICAN WAY	MEMPHIS, TN 38118–	901–366–8333
COURTYARD BY MARRIOTT MEMPHIS AIRPORT.		1780 NONCONNAH BLVD	MEMPHIS, TN 38132–	901–396–3600
COURTYARD BY MARRIOTT MEMPHIS PARK AVENUE.		6015 PARK AVE	MEMPHIS, TN 38119–	901–761–0330
EAST MEMPHIS HILTON		5069 SANDERLIN AVE	MEMPHIS, TN 38117–	901–767–6666
EMBASSY SUITES MEMPHIS		1022 S. SHADY GROVE RD	MEMPHIS, TN 38120–	901–684–1777
HAMPTON INN AIRPORT		2979 MILLBRANCH RD	MEMPHIS, TN 38116–	901–396–2200
HAMPTON INN I–40 EAST		1585 SYCAMORE VIEW RD	MEMPHIS, TN 38134–	901–388–4881
HAMPTON INN MEDICAL CENTER.		1180 UNION AVE	MEMPHIS, TN 38104–	901–276–1175
HAMPTON INN POPLAR		5320 POPLAR AVE	MEMPHIS, TN 38119–	901–683–8500
HAMPTON INN WALNUT GROVE.		33 HUMPHREY CENTER DR	MEMPHIS, TN 38120–	901–747–3700
HOLIDAY INN CROWNE PLAZA		250 N. MAIN ST	MEMPHIS, TN 38103–	901–527–7300
HOLIDAY INN EXPRESS		5225 SUMMER AVE	MEMPHIS, TN 38122–	901–685–0704
HOLIDAY INN MEMPHIS DOWNTOWN CONV. CENTER.		250 NORTH MAIN STREET	MEMPHIS, TN 38103–	901–527–7300
HOLIDAY INN MEMPHIS EAST		5795 POPLAR AVE	MEMPHIS, TN 38119–	901–682–7881
HOLIDAY INN MIDTOWN/MEDICAL CENTER.		1837 UNION AVENUE	MEMPHIS, TN 38104–	901–278–4100
HOLIDAY INN OVERTON SQUARE.		1837 UNION AVE	MEMPHIS, TN 38104–	901–278–4100
HOMEWOOD SUITES POPLAR		5811 POPLAR AVE	MEMPHIS, TN 38119–	901–763–0500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOWARD JOHNSON LODGE EAST.		1541 SYCAMORE VIEW	MEMPHIS, TN 38134–	901–388–1300
LA QUINTA MOTOR INN #661		6068 MACON COVE	MEMPHIS, TN 38134–	901–382–2323
MEMPHIS AIRPORT #575		2745 AIRWAYS BLVD	MEMPHIS, TN 38116–	901–396–1000
MEMPHIS AIRPORT HOTEL		2240 DEMOCRAT RD	MEMPHIS, TN 38132–	901–322–1130
MEMPHIS MARRIOTT		2625 THOUSAND OAKS BLVD	MEMPHIS, TN 38118–	901–362–6200
MOTEL 6 LP		1360 SPRINGBROOK RD	MEMPHIS, TN 38116–	901–396–3620
RADISSON HOTEL MEMPHIS		185 UNION AVE	MEMPHIS, TN 38103–	901–528–1800
RED ROOF INN #186		210 S. PAULINE	MEMPHIS, TN 38104–	901–528–0650
RED ROOF INN—MEMPHIS EAST.		6055 SHELBY OAKS DR	MEMPHIS, TN	901–388–6111
RED ROOF INN—SOUTH		3875 AMERICAN HWY	MEMPHIS, TN 38118–	901–363–2335
RESIDENCE INN BY MARRIOTT.		6141 POPLAR PIKE	MEMPHIS, TN 38119–	901–685–9595
SHERATON INN MEMPHIS AIRPORT.		2411 WINCHESTER RD	MEMPHIS, TN 38112–	901–332–2370
VILLA INN		3283 S. 3RD ST	MEMPHIS, TN 38109–	901–345–1123
GREYSTONE MOTEL		118 VAN HOOK	MILAN, TN 38358–	901–686–0824
BEST WESTERN MILLINGTON		7726 HWY. 51 N	MILLINGTON, TN 38053–	901–873–2222
ECONOMY INN		8193 HWY. 51 N	MILLINGTON, TN 38053–	901–873–4400
RAMADA INN		INTERSTATE 81 & HWY. 25 E	MORRISTOWN, TN 37814–	615–587–2400
SUPER 8 MOTEL		2430 E. ANDREW JOHNSON HWY.	MORRISTOWN, TN 37814–	615–586–8880
4 G'S MOTEL	RT. 3 BOX 11	HWY. 57 14430	MOSCOW, TN 38057–	901–877–3313
GARDEN PLAZA HOTEL		1850 OLD FORT PKWY	MURFREESBORO, TN 37130–	615–895–5555
GARDEN PLAZA HOTEL		1850 OLD FORT PARKWAY	MURFREESBORO, TN 37129–	615–895–5555
HOLIDAY INN MURFREESBORO.		2227 OLD FORT PARKWAY	MURFREESBORO, TN 37129–	615–896–2420
SHONEY'S INN		1954 S. CHURCH ST	MURFREESBORO, TN 37130–	615–896–5030
BEST WESTERN CALUMET INN LAKEVIEW.		701 STEWARTS FERRY PIKE	NASHVILLE, TN 37214–	615–889–9199
BUDGETEL INN		531 DONELSON PIKE	NASHVILLE, TN 37214–	615–885–3100
BUDGETEL INN WEST		5612 LENOX AVE	NASHVILLE, TN 37209–	615–353–0700
CLUB HOUSE INN AIRPORT		2436 ATRIUM WAY	NASHVILLE, TN 37210–	615–883–0500
COURTYARD BY MARRIOTT NASHVILLE AIRPORT.		2508 ELM HILL PIKE	NASHVILLE, TN 37214–	615–883–9500
DAYS INN BRILEY PARKWAY		2345 ATRIUM WAY	NASHVILLE, TN 37214–	615–885–3000
DAYS INN NORTH		3312 DICKERSON RD	NASHVILLE, TN 37207–	615–226–3421
DAYS INN—EAST		3445 PERCY PRIEST DR	NASHVILLE, TN 37214–	615–889–8881
DOUBLETREE HOTEL		315 4TH AVE. N	NASHVILLE, TN 37219–	615–244–8200
EMBASSY SUITES		10 CENTURY BLVD	NASHVILLE, TN 37214–	615–871–0033
FAMILY INNS OF AMERICA		3430 PERCY PRIEST DR	NASHVILLE, TN 37214–	615–889–5090
HALLMARK INN IV		309 W. TRINITY LN	NASHVILLE, TN 37207–	615–226–2624
HALLMARK INN V		6924 CHARLOTTE PIKE	NASHVILLE, TN 37209–	615–356–8005
HAMPTON INN		1919 WEST END AVE	NASHVILLE, TN 37203–	615–329–1144
HAMPTON INN BRILEY PARKWAY OPRYLAND.		2350 ELM HILL PKWY	NASHVILLE, TN 37210–	615–871–0222
HAMPTON INN NORTH		2407 BRICK CHURCH PIKE	NASHVILLE, TN 37207–	615–226–3300
HERMITAGE HOTEL		231 6TH AVE. N	NASHVILLE, TN 37219–	615–244–3121
HOLIDAY INN BRILEY PARKWAY.		2200 ELM HILL PIKE	NASHVILLE, TN 37214–	615–883–9770
HOLIDAY INN BRILEY PARKWAY.		2200 ELM HILL PIKE	NASHVILLE, TN 37214–	615–883–9770
HOLIDAY INN CROWNE PLAZA		623 UNION ST	NASHVILLE, TN 37219–	615–259–2000
HOLIDAY INN CROWNE PLAZA		623 UNION ST	NASHVILLE, TN 37219–	615–259–2000
HOLIDAY INN EXPRESS		981 MURFREESBORO RD	NASHVILLE, TN 37217–	615–367–9150
HOLIDAY INN EXPRESS AIRPORT.		1111 AIRPORT CENTER DR	NASHVILLE, TN 37214–	615–883–1366
HOLIDAY INN EXPRESS—OPRYLAND AREA.		2516 MUSIC VALLEY DR	NASHVILLE, TN 37214–	615–889–0096
HOLIDAY INN EXPRESS/AIRPORT.		1111 AIRPORT CENTER DRIVE	NASHVILLE, TN 37214–	615–883–1366
HOLIDAY INN NORTH		230 W. TRINITY LN	NASHVILLE, TN 37207–	615–226–0111
LA QUINTA INN		2001 METRO CENTER BLVD	NASHVILLE, TN 37228–	615–259–2130
LA QUINTA MOTOR INN #559		4311 SIDCO DR	NASHVILLE, TN 37204–	615–834–8900
LAQUINTA MOTOR INN—METRO CENTER #802.		2001 METRO CENTER BLVD	NASHVILLE, TN 37228–	615–259–2130
LAQUINTA MOTOR INNS (NASHVILLE SOUTH).		4311 SIDCO DRIVE	NASHVILLE, TN 37204–	615–834–8900
LOEWS VANDERBILT PLAZA HOTEL.		2100 WEST END AVE	NASHVILLE, TN 37203–	615–320–1700
NASHVILLE MARRIOTT		ONE MARRIOTT DR	NASHVILLE, TN 37210–	615–889–9300

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
NASHVILLE SUPER 8 MOTEL		3320 DICKERSON PIKE	NASHVILLE, TN 37207–	615–226–1897
RAMADA INN		2401 MUSIC VALLEY DR	NASHVILLE, TN 37214–	615–889–0800
RAMADA INN NORTH		1412 BRICK CHURCH PIKE	NASHVILLE, TN 37207–	615–226–3230
RAMADA INN—AIRPORT		709 SPENCE LANE	NASHVILLE, TN 37217–	615–361–0102
RED ROOF INN #161		4271 SIDCO DR	NASHVILLE, TN 37204–	615–832–0093
RED ROOF INN #206		510 CLARIDGE DR	NASHVILLE, TN 37214–	615–872–0735
RESIDENCE INN BY MARRIOTT.		2300 ELM HILL PIKE	NASHVILLE, TN 37214–	615–889–8600
SHERATON MUSIC CITY HOTEL.		777 MCGAVOCK PIKE	NASHVILLE, TN 37214–	615–885–2200
SHONEY'S INN MOTEL		1521 DEMONBREUN ST	NASHVILLE, TN 37203–	615–255–8977
STOUFFER NASHVILLE HOTEL		611 COMMERCE ST	NASHVILLE, TN 37203–	615–255–8400
WILSON INN		600 ERMAC DR	NASHVILLE, TN 37214–	615–889–4466
WYNDHAM NASHVILLE AIRPORT.		1112 AIRPORT CENTER DRIVE	NASHVILLE, TN 37214–	615–889–9090
COMFORT INN		433 S. RUTGERS AVE	OAK RIDGE, TN 37830–	615–481–8200
GARDEN PLAZA HOTEL		215 S. ILLINOIS AVE	OAK RIDGE, TN 37830–	615–481–2468
HOLIDAY INN OAK RIDGE		420 S. ILLINOIS AVE	OAK RIDGE, TN 37830–	615–483–4371
OAK RIDGE COMFORT INN		433 SOUTH RUTGERS AVENUE.	OAK RIDGE, TN 37830–	615–481–8200
DAYS INN OF PIGEON FORGE	PO BOX 1230	2760 PKWY	PIGEON FORGE, TN 37863–	615–453–4707
HOLIDAY INN		HWY. 441	PIGEON FORGE, TN 37863–	615–428–2700
HOWARD JOHNSON	PO BOX 1110	2826 PKWY	PIGEON FORGE, TN 37868–	615–453–9151
MOUNTAIN VALLEY LODGE		4010 PKWY	PIGEON FORGE, TN 37863–	615–453–1823
WILLOW BROOK LODGE		3035 PKWY	PIGEON FORGE, TN 37863–	615–453–5334
RICHLAND INN PULASKI		1020 W. COLLEGE ST	PULASKI, TN 38478–	615–363–0006
DAYS INN RIPLEY	RT. 3 BOX 5		RIPLEY, TN 38024–	901–635–7378
SOUTHWOOD INN		HWY. 45 S	SELMER, TN 38375–	901–645–4801
OAK TREE LODGE		1620 PKWY	SEVIERVILLE, TN 37862–	615–428–7500
ECONO LODGE	RT 5 BOX 52		SWEETWATER, TN 37874–	615–337–8357
TAZEWELL MOTOR LODGE		2140 HWY. 25 E	TAZEWELL, TN 37879–	615–626–7229
FAMILY INNS OF AMERICA		7239 E. LAMAR ALEXANDER PKWY.	TOWNSEND, TN 37882–	615–488–9100
HAMPTON INN	PO BOX 28	7829 E. LAMAR ALEXANDER PKWY.	TOWNSEND, TN 37882–	615–448–9000
STEEPLECHASE INN		1410 N. JACKSON ST	TULLAHOMA, TN 37388–	615–455–4501
TWIN PINES MOTEL		1061 STATE ST	WHITE PINE, TN 37890–	615–674–0706
NATCHEZ TRACE STATE PARK		RT. 1	WILDERSVILLE, TN 38388–	901–968–3742
Texas				
EMBASSY SUITES HOTEL ABILENE.		4250 RIDGEMONT DR	ABILENE, TX 79606–	915–698–1234
HOLIDAY INN EXPRESS ABILENE.		1625 STATE HWY. 351	ABILENE, TX 79601–	915–673–5271
KIVA INN		5403 S. 1ST	ABILENE, TX 79605–	915–695–2150
LA QUINTA MOTOR INNS INC. #544.		3501 W. LAKE RD	ABILENE, TX 79601–	915–672–8323
ADDISON INN		4103 BELTLINE RD	ADDISON, TX 75244–	214–991–8888
COURTYARD BY MARRIOTT ADDISON DALLAS.		4165 PROTON FR	ADDISON, TX 75244–	214–490–7390
HAMPTON INN ADDISON		4555 BELTWAY	ADDISON, TX 75224–	214–991–2800
HOMEWOOD SUITES DALLAS ADDISON.		4451 BELTLINE RD	ADDISON, TX 75244–	214–788–1342
AMORISVITOS		6800 I–40 W	AMARILLO, TX 79106–	806–358–7943
COMFORT INN AIRPORT		1515 I–40 E	AMARILLO, TX 79102–	806–376–9993
HAMPTON INN AMARILLO		1700 I–40 E	AMARILLO, TX 79103–	806–372–1425
HARVEY HOTEL AMARILLO		3100 W. IH–40	AMARILLO, TX 79102–	806–358–6161
LA QUINTA MOTOR INN #639 MEDICAL CENTER.		2108 COUITER	AMARILLO, TX 79106–	806–352–6311
LA QUINTA MOTOR INN AIRPORT #454.		1708 I–40 EAST	AMARILLO, TX 79103–	806–373–7486
TRAVELODGE EAST		3205 I–40 E	AMARILLO, TX 79104–	806–372–8171
ARLINGTON HILTON		2401 E. LAMAR BLVD	ARLINGTON, TX 76006–	817–640–3322
COMFORT INN		1601 E. DIVISION	ARLINGTON, TX 76011–	817–261–2300
COUNTRY SUITES		1075 WET N. WILD WAY	ARLINGTON, TX 76011–	817–261–8900
COURTYARD BY MARRIOTT ARLINGTON.		1500 PENNANT DR	ARLINGTON, TX 76011–	817–277–2774
HAMPTON INN		121 E. I–20	ARLINGTON, TX 76018–	817–467–3535
HAWTHORNE SUITES HOTEL		2401 BROOKHOLLOW PLAZA DR.	ARLINGTON, TX 76006–	817–640–1188
HOWARD JOHNSON NEAR SIX FLAGS.		903 N. COLLINS	ARLINGTON, TX 76011–	817–261–3621

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LEXINGTON HOTEL SUITES		1607 N. WATSON RD	ARLINGTON, TX 76006–	817–640–4444
OASIS MOTEL		818 W. DIVISION ST	ARLINGTON, TX 76012–	817–274–1816
RADISSON SUITE HOTEL		700 AVE H. E	ARLINGTON, TX 75050–	817–640–0440
AUSTIN EXECUTIVE LODGING		8312 FATHOM CIRCLE #1201	AUSTIN, TX 78750–	512–258–6976
AUSTIN MARRIOTT AT THE CAPITOL.		701 E. 11TH ST	AUSTIN, TX 78701–	512–478–1111
AUSTIN NORTH HILTON AND TOWERS.		6000 MIDDLE FISKVILLE RD	AUSTIN, TX 78752–	512–451–5757
COURTYARD BY MARRIOTT		5660 N. IH–35	AUSTIN, TX 78751–	512–458–2340
DRURY INN AUSTIN NORTH		6511 IH 35 N	AUSTIN, TX 78752–	512–467–9500
ECONOLODGE NORTH AUSTIN		820 E. ANDERSON LN	AUSTIN, TX 78753–	512–835–4311
EMBASSY SUITES AUSTIN DOWNTOWN TOWN LAKE.		300 S. CONGRESS	AUSTIN, TX 78704–	512–469–9000
EMBASSY SUITES NORTH		5901 N. IH–35	AUSTIN, TX 78723–	512–454–8004
FRIENDSHIP INN		6201 HWY. 290 E	AUSTIN, TX 78723–	512–458–4759
GUEST QUARTERS SUITE HOTEL AUSTIN.		303 W. 15TH ST	AUSTIN, TX 78701–	512–478–7000
HAMPTON INN AUSTIN		7619 I–35 N	AUSTIN, TX 78752–	512–452–3300
HAWTHORN SUITES AUSTIN CENTRAL.		935 LA POSADA	AUSTIN, TX 78752–	512–459–3335
HAWTHORN SUITES NORTHWEST AUSTIN.		8888 TALLWOOD DR	AUSTIN, TX 78759–	512–343–0008
HOLIDAY INN AUSTIN AIRPORT.		6911 N. IH–35	AUSTIN, TX 78752–	512–459–4251
HOLIDAY INN EXPRESS AIRPORT.		7622 N. INTERSTATE 35	AUSTIN, TX 78752–	512–467–1701
HOLIDAY INN NORTHWEST PLAZA		8901 BUSINESS PARK DR	AUSTIN, TX 78759–	512–343–0888
HOLIDAY INN TOWN LAKE		20 N. INTERREGIONAL	AUSTIN, TX 78701–	512–472–8211
HOWARD JOHNSON PLAZA HOTEL NORTH.		7800 N. IH–35	AUSTIN, TX 78753–	512–836–8520
HYATT REGENCY AUSTIN		208 BARTON SPRINGS RD	AUSTIN, TX 78704–	512–477–1234
LA QUINTA #478		4200 IH–35 S	AUSTIN, TX 78745–	512–443–1774
LA QUINTA AUSTIN NORTH		7100 I–35 N	AUSTIN, TX 78752–	512–452–9401
LA QUINTA INN #2522		1603 E. OLTORF	AUSTIN, TX 78741–	512–447–6661
LA QUINTA MOTOR INN HIGHLAND MALL #530.		5812 N. IH–35	AUSTIN, TX 78751–	512–459–4381
LAKEWAY INN A CONFERENCE RESORT.		101 LAKEWAY DR	AUSTIN, TX 78734–	512–261–7340
OMNI AUSTIN HOTEL		700 SAN JACINTO	AUSTIN, TX 78701–	512–476–3700
RADISSON HOTEL ON TOWN LAKE.		111 E. FIRST ST	AUSTIN, TX 78701–	512–478–9611
RAMADA INN NORTH		9220 N. IH–35	AUSTIN, TX 78753–	512–837–7372
RODEWAY INN AIRPORT		5526 N. IH–35	AUSTIN, TX 78751–	512–451–7001
RODEWAY INN AT UNIVERSITY.		2900 IH–35 N	AUSTIN, TX 78705–	512–477–6395
STOUFFER AUSTIN HOTEL		9721 ARBORETUM BLVD	AUSTIN, TX 78759–	512–219–1448
THE DRISKILL HOTEL		604 BRAZOS ST	AUSTIN, TX 78701–	512–474–5911
WOODFIN SUITES HOTEL OF AUSTIN.		7685 NORTHCROSS DR	AUSTIN, TX 78757–	512–452–9391
WYNDAM AUSTIN HOTEL		4140 GOVERNOR'S ROW	AUSTIN, TX 78744–	512–448–2222
BAY CITY INN	PO BOX 129	RT. 1	BAY CITY, TX 77414–	409–245–0985
MATAGORDA HOTEL & CONFERENCE CENTER.		407 7TH ST	BAY CITY, TX 77414–	409–244–5400
LA QUINTA MOTOR INN #4587		4911 E. I–10	BAYTOWN, TX 77521–	713–421–5566
BEAUMONT HILTON		2355 I–10 S	BEAUMONT, TX 77705–	409–842–3600
BEAUMONT MIDTOWN		2095 N. 11TH ST	BEAUMONT, TX 77703–	409–892–2222
BEAUMONT SUPER 8 MOTEL		2850 I–10 E	BEAUMONT, TX 77703–	409–899–3040
BEST WESTERN BEAUMONT INN.		2155 N. 11TH ST	BEAUMONT, TX 77703–	409–898–8150
HOLIDAY INN BEAUMONT PLAZA.		3950 I–10 SOUTH AT WALDEN	BEAUMONT, TX 77705–	409–842–5995
LA QUINTA INN		220 I–10 N	BEAUMONT, TX 77702–	409–838–9991
COURTYARD BY MARRIOTT FT. WORTH BEDFORD.		2201 AIRPORT FRWY	BEDFORD, TX 76021–	817–545–2202
LA QUINTA MOTOR INN #4903		1450 W. AIRPORT FRWY	BEDFORD, TX 76022–	817–267–5200
RODEWAY INN		1520 SW. HWY IH–35	BELTON, TX 76513–	817–939–0745
CHISM LODGES INC	PO BOX 60	RT. 1	BLUFFTON, TX 78607–	915–379–6331
HOLIDAY INN		1945 N. EXPRWY	BROWNSVILLE, TX 78520–	210–546–4591
LA QUINTA BROWNSVILLE		55 SAM PERL BLVD	BROWNSVILLE, TX 78520–	512–546–0381
SHERATON INN PLAZA ROYALE.		3777 N. EXPRWY	BROWNSVILLE, TX 78520–	210–350–9191

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN BROWNWOOD		515 E. COMMERCE	BROWNWOOD, TX 76801–	915–646–2551
VARSITY MOTEL	PO BOX 714	1004 E. 1ST ST	CAMERON, TX 76520–	817–697–6446
RED ROOF INN #147 CARROLLTON.		1720 S. BROADWAY	CARROLLTON, TX 75227–	214–245–1700
SAGAMAR INN		2107 N. MAIN	CLEBURNE, TX 76031–	817–556–3631
COLLEGE STATION HILTON		801 UNIVERSITY DR. E	COLLEGE STATION, TX 77840–	409–693–7500
COMFORT INN		104 S. TEXAS AVE	COLLEGE STATION, TX 77840–	409–846–7333
LA QUINTA MOTOR INN #2539		607 TEXAS AVE. S	COLLEGE STATION, TX 77840–	409–696–7777
QUAILTY INN		2514 TEXAS AVE. S	COLLEGE STATION, TX 77840–	409–696–6966
RAMADA INN		1502 S. TEXAS AVE	COLLEGE STATION, TX 77840–	409–693–9891
HOLIDAY INN CONROE THE WOODLANDS.		1601 I–45 S	CONROE, TX 77301–	409–758–8941
CORPUS CHRISTI MARRIOTT BAYFRONT.		900 N. SHORELINE BLVD	CORPUS CHRISTI, TX 78401–	512–887–1600
DAYS INN CORPUS CHRISTI		901 NAVIGATION	CORPUS CHRISTI, TX 78408–	512–886–6599
DRURY INN CORPUS CHRISTI		2021 N. PADRE ISLAND	CORPUS CHRISTI, TX 78408–	512–289–8200
EMBASSY SUITES		4337 S. PADRE ISLAND DR	CORPUS CHRISTI, TX 78411–	512–853–7899
HOLIDAY INN EMERALD BEACH.		1102 S. SHORELINE BLVD	CORPUS CHRISTI, TX 78401–	512–883–5731
ISLAND HOUSE CONDOS		15340 LEEWARD DR	CORPUS CHRISTI, TX 78418–	512–949–8166
LA QUINTA #477		6225 S. PADRE ISLAND DR	CORPUS CHRISTI, TX 78412–	512–991–5736
LA QUINTA CORPUS CHRISTI NORTH #702.		5155 N. I–37	CORPUS CHRISTI, TX 78408–	512–888–5721
RACE TRACK INN		6255 I.H. 37	CORPUS CHRISTI, TX 78409–2717.	512–289–0991
RAMADA INN GREYHOUND RACEWAY.		5501 IH 37	CORPUS CHRISTI, TX 78408–	512–289–5861
SHERATON HOTEL CORPUS CHRISTI.		707 N. SHORELINE BLVD	CORPUS CHRISTI, TX 78401–	512–882–1700
ARISTOCRAT HOTEL		1933 MAIN ST	DALLAS, TX 75201–	214–741–7700
BEST WESTERN WINDSOR SUITES.		2363 STEMMONS TRAIL	DALLAS, TX 75220–	214–350–2300
BRISTOL SUITES HOTEL		7800 ALPHA RD	DALLAS, TX 75240–	214–233–7600
CLARION HOTEL		1241 W. MOCKINGBIRD LN	DALLAS, TX 75247–	214–630–7000
CLASSIC MOTOR INN		9229 CARPENTER FRWY	DALLAS, TX 75247–	214–631–6633
COURTYARD BY MARRIOTT DALLAS LBJ AT JOSEY.		2930 FOREST LN	DALLAS, TX 75234–	214–620–8000
COURTYARD BY MARRIOTT DALLAS LOVE FIELD.		2383 STEMMONS TRAILS	DALLAS, TX 75220–	214–352–7676
COURTYARD BY MARRIOTT DALLAS MARKET CENTER.		2150 MARKET CENTER BLVD	DALLAS, TX 75207–	214–653–1166
COURTYARD BY MARRIOTT DALLAS NORTHPARK.		10325 N. CENTRAL EXPRWY	DALLAS, TX 75231–	214–739–2500
DALLAS MARRIOTT QUORUM		14901 DALLAS PKWY	DALLAS, TX 75240–	214–661–2800
DALLAS MARRIOTT SUITES MARKET CENTER.		2101 STEMMONS FRWY	DALLAS, TX 75207–	214–747–3000
DALLAS PARKWAY HILTON		4801 LBJ FRWY	DALLAS, TX 75244–	214–661–3600
DALLAS RICHARDSON HILTON		1981 N. CENTRAL EXPRWY	DALLAS, TX 75080–	214–644–4000
DOUBLETREE HOTEL AT LINCOLN CENTRE.		5410 LBJ FRWY	DALLAS, TX 75240–	214–934–8400
DOUBLETREE HOTEL CANABELL CENTRE.		8250 N. CENTRAL EXPRWY	DALLAS, TX 75206–	214–691–8700
DOUBLETREE HOTEL PARK WEST.		1590 LBJ FRWY	DALLAS, TX 75234–	214–869–4300
DRURY INN DALLAS NORTH		2421 WALNUT HILL LN	DALLAS, TX 75229–	214–484–3330
ECONOLODGE DALLAS AIRPORT NORTH.		2275 VALLEY VIEW LN	DALLAS, TX 75234–	214–243–5500
EMBASSY SUITES HOTEL		2727 STEMMONS FRWY	DALLAS, TX 75207–	214–630–5332
EMBASSY SUITES HOTEL DALLAS PARK CENTRAL AREA.		13131 N. CENTRAL EXPRWY	DALLAS, TX 75243–	214–234–3300
EMBASSY SUITES HOTEL LOVE FIELD.		3880 W. NW. HWY	DALLAS, TX 75220–	214–357–4500
GRAND KEMPINKSI DALLAS HOTEL.		15201 DALLAS PKWY	DALLAS, TX 75248–	214–386–6000
GUEST LODGE AT THE AEROBIC CENTER.		12230 PRESTON RD	DALLAS, TX 75230–	214–386–0306
HAMPTON INN		4154 PREFERRED PL	DALLAS, TX 75237–	214–298–4747
HAMPTON INN DALLAS GARLAND.		12670 E. NW HWY	DALLAS, TX 75220–	214–613–5000
HAMPTON INN DALLAS NORTH.		11069 COMPOSITE DR	DALLAS, TX 75229–	214–484–6557
HARVEY HOTEL ADDISON		14315 MIDWAY RD	DALLAS, TX 75244–	214–980–8877

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HARVEY HOTEL DALLAS		7815 LBJ FRWY	DALLAS, TX 75251–	214–960–7000
HOLIDAY INN BROOK HOLLOW		7050 STEMMONS FRWY	DALLAS, TX 75247–	214–630–8500
HOLIDAY INN NORTHPARK PLAZA.		10650 N. CENTRAL EXPRWY	DALLAS, TX 75231–	214–373–8000
HOTEL ST. GERMAIN		2516 MAPLE AVE	DALLAS, TX 75201–	214–871–2516
HYATT REGENCY DALLAS		300 REUNION BLVD	DALLAS, TX 75207–	214–651–1234
LA QUINTA INN NORTHWEST FARMERS BRANCH.		13235 STEMMONS FRWY	DALLAS, TX 75234–	214–620–7333
LA QUINTA MOTOR INN #524		1625 REGAL ROW	DALLAS, TX 75247–	214–630–5701
LA QUINTA MOTOR INN #706		10001 N. CENTRAL EXPRWY	DALLAS, TX 75231–	214–361–8200
LA QUINTA MOTOR INN #717 RICHARDSON.		13685 N. CENTRAL EXPRWY	DALLAS, TX 75243–	214–234–1016
PLAZA OF THE AMERICAS HOTEL.		650 N. PEARL	DALLAS, TX 75201–	214–979–9000
RADISSON HOTEL & SUITES DALLAS.		2330 W. NW HWY	DALLAS, TX 75220–	214–351–4477
RADISSON HOTEL CENTRAL DALLAS.		6060 N. CENTRAL EXPRWY	DALLAS, TX 75206–	214–750–6060
RED ROOF INN #138 DALLAS EAST.		8106 RL THORNTON FRWY	DALLAS, TX 75228–	214–388–8741
RED ROOF INN #153		10335 GARDNER RD	DALLAS, TX 75220–	214–506–8100
RED ROOF INN #82		1550 EMPIRE CENTRAL DR	DALLAS, TX 75235–	214–638–5151
RESIDENCE INN BY MARRIOTT.		6950 N. STEMMONS FRWY	DALLAS, TX 75247–	214–631–2472
RESIDENCE INN BY MARRIOTT DALLAS CENTRAL N. PK.		10333 N. CENTRAL EXPRWY	DALLAS, TX 75231–	214–750–8220
RESIDENCE INN DALLAS NORTH CENTRAL.		13636 GOLDMARK DR	DALLAS, TX 75240–	214–669–0478
SHERATON MOCKINGBIRD HOTEL.		1893 W. MOCKINGBIRD LN	DALLAS, TX 75235–	214–634–8850
SHERATON PARK CENTRAL HOTEL.		12720 MERIT DR	DALLAS, TX 75251–	214–385–3000
SHERATON SUITES MARKET CENTER.		2101 STEMMONS FRWY	DALLAS, TX 75207–	214–747–3000
STOUFFER DALLAS HOTEL		2222 STEMMONS FRWY	DALLAS, TX 75207–	214–631–2222
THE SOUTHLAND CENTER HOTEL.		400 N. OLIVE ST	DALLAS, TX 75201–	214–922–8000
DELUX INN #948 DENTON		601 I–35 E	DENTON, TX 76205–	817–566–1990
RADISSON HOTEL RESORT		2211 N. I–35	DENTON, TX 76205–	817–565–8499
SHERATON DENTON HOTEL & AT U. OF NORTH TEXAS.		2211 I–35 E. N	DENTON, TX 76205–	817–565–8499
HOLIDAY INN		1515 N. BECKLEY	DESOTO, TX 75115–	214–224–9100
BEST WESTERN DUMAS INN		1712 S. DUMAS AVE	DUMAS, TX 79029–	806–935–6441
MOORE REST INN		119 W. 17TH ST	DUMAS, TX 79029–	806–935–6222
HOLIDAY INN DALLAS SOUTHWEST.		711 E. CAMP WISDOM RD	DUNCANVILLE, TX 75116–	214–298–8911
LA QUINTA INN		2525 MAIN ST	EAGLE PASS, TX	512–773–7000
AMORISVITOS		8250 GATEWAY E	EL PASO, TX 79907–	915–591–9600
COMFORT INN		900 N. YARBROUGH	EL PASO, TX 79915–	915–594–9111
DAYS INN #165		9125 GATEWAY W	EL PASO, TX 79925–	915–593–6400
EL PASO AIRPORT HILTON		2027 AIRWAY BLVD	EL PASO, TX 79925–	915–778–4241
EL PASO RESIDENCE INN		6791 MONTANA AVE	EL PASO, TX 79925–	915–772–8000
GARDNER HOTEL EL PASO INT'L. YOUTH HOSTEL.		311 E. FRANKLIN AVE	EL PASO, TX 79901–	915–532–3661
HOLIDAY INN AIRPORT		6655 GATEWAY WEST	EL PASO, TX 79925–	915–778–6411
HOLIDAY INN SUNLAND PARK		900 SUNLAND PARK DR	EL PASO, TX 79922–	915–833–2900
HOWARD JOHNSON LODGE		8887 GATEWAY W	EL PASO, TX	915–591–9471
LA QUINTA INN EL PASO AIRPORT #4507.		6140 GATEWAY BLVD	EL PASO, TX 79905–	915–778–9321
LA QUINTA MOTOR INN #452		11033 GATEWAY W	EL PASO, TX 79935–	915–591–2244
LA QUINTA MOTOR INN #596		7550 REMCON CIR	EL PASO, TX 79912–	915–833–2522
MARRIOTT HOTEL		1600 AIRWAY BLVD	EL PASO, TX 79925–	915–779–3300
WESTIN PASO DEL NORTE HOTEL.		101 S. EL PASO ST	EL PASO, TX 79901–	915–534–3000
QUALITY INN ENNIS		I–45 AT HWY. 34	ENNIS, TX 75119–	214–875–9641
LA QUINTA MOTOR INN		1001 W. AIRPORT FRWY	EULESS, TX 76040–	817–540–0233
SUMMIT HOTEL		2645 LBJ FRWY	FARMERS BRANCH, TX 75234–	214–243–3363
COMFORT INN		2601 W. IH–10	FORT STOCKTON, TX 79735–	915–336–9761
HOLIDAY INN FORT WORTH SOUTH.		100 ALTA MESA BLVD	FORT WORTH, TX 76134–	817–293–3068
MISS MOLLY'S HOTEL		109½ W. EXCHANGE AVE	FORT WORTH, TX 76106–	817–626–1522

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Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BUTTERFIELD INN		2000 MAIN ST	FT. DAVIS, TX 79734–	915–426–3252
CLARION HOTEL		2000 BEACH ST	FT. WORTH, TX 76103–	817–534–4801
COUNTRY SUITES BY CARLSON.		8401 W. I–30	FT. WORTH, TX 76116–	817–560–0060
COURTYARD BY MARRIOTT FT. WORTH.		3150 RIVERFRONT DR	FT. WORTH, TX 76107–	817–335–1300
HOLIDAY INN NORTH CONFERENCE CENTER.		2540 MEACHAM BLVD	FT. WORTH, TX 76106–	817–625–9911
LA QUINTA MOTOR INN FT. WORTH WEST.		7888 I–30 W	FT. WORTH, TX 76108–	817–246–5511
BEST WESTERN ROCKPORT REBEL.		3902 N. HWY. 35	FULTON, TX 78358–	512–729–6351
HOLIDAY INN		600 FAIR PARK BLVD	GAINESVILLE, TX 76240–	817–665–8800
BEST WESTERN BEACHFRONT INN.		5914 SEAWALL BLVD	GALVESTON, TX 77550–	409–740–1261
BOB SMITH YACHT CLUB		601 HOLIDAY DR. N	GALVESTON, TX 77550–	409–762–1253
ECONO LODGE		2825 61ST ST	GALVESTON, TX 77551–	409–744–7133
INN ON THE STRAND		2021 STRAND	GALVESTON, TX 77550–	409–762–4444
LA QUINTA MOTOR INN #687		1402 SEAWALL BLVD	GALVESTON, TX 77550–	409–763–1224
MANOR HOUSE MOTOR INN		2300 SEAWALL BLVD	GALVESTON, TX 77550–	409–762–1166
THE TREMANT HOUSE		2300 SHIP'S MECHANIC ROW	GALVESTON, TX 77550–	409–763–0300
THE VICTORIAN CONDO HOTEL.		6300 SEAWALL BLVD	GALVESTON, TX 77551–	409–740–3555
LA QUINTA INN #2546		12721 LBJ FRWY	GARLAND, TX 75041–	214–271–7581
HISTORIC PAGE HOUSE TEA ROOM & BED & BRKFST.		1000 LEANDER RD	GEORGETOWN, TX 78628–	512–863–8979
RAMADA INN GEORGETOWN		333 NORTH IH–35	GEORGETOWN, TX 78628–	512–869–2541
ECONO LODGE		HWY. 290 E	GIDDINGS, TX 78942–	409–542–9666
HAMPTON INN ARLINGTON		2050 N. HWY. 360 & CARRIER PKWY.	GRAND PRAIRIE, TX 75050–	214–988–8989
LA QUINTA GRAND PRAIRIE		1410 NW 19TH ST	GRAND PRAIRIE, TX 75050–	214–641–3021
DFW HILTON EXECUTIVE CONFERENCE CENTER.		1800 HWY. 26 E	GRAPEVINE, TX 76051–	817–481–8444
BEST WESTERN INN & SUITES		1216 I–30 W	GREENVILLE, TX 75401–	903–454–1792
HOLIDAY INN		1215 I–30	GREENVILLE, TX 75401–	903–454–7000
LA QUINTA INN		1002 S. EXPRWY. 83	HARLINGEN, TX 78550–	512–428–6888
ADAM'S MARK HOTEL HOUSTON.		2900 BRIARPARK AT WESTHEIMER.	HOUSTON, TX 77042–	713–978–7400
CLARION INN		500 N. SAM HOUSTON PKWY	HOUSTON, TX 77060–	713–931–0101
COMFORT INN GREENSPOINT		12500 N. FRWY	HOUSTON, TX 77060–	713–876–3888
DAYS INN CAVALCADE		100 W. CAVALCADE	HOUSTON, TX 77009–	713–869–7121
DAYS INN HOUSTON NORTH		9025 N. FRWY. I–45	HOUSTON, TX 77037–	713–820–1500
DOUBLETREE HOTEL AT INTERCONTINENTAL AIRPORT.		15747 JFK BLVD	HOUSTON, TX 77032–	713–442–8000
DOUBLETREE HOTEL AT THE ALLEN CENTER.		400 DALLAS ST	HOUSTON, TX 77002–	713–759–0202
HAMPTON INN AT IH–10 EAST		828 MERCURY DR	HOUSTON, TX 77013–	713–673–4200
HARVEY SUITES HOUSTON MEDICAL CENTER.		6800 MAIN ST	HOUSTON, TX 77030–	713–528–7744
HILTON SOUTHWEST		6780 SW FRWY	HOUSTON, TX 77074–	713–977–7911
HOBBY AIRPORT HILTON		8181 AIRPORT HILTON	HOUSTON, TX 77061–	713–645–3000
HOLIDAY INN CROWNE PLAZA		2222 WEST LOOP S	HOUSTON, TX 77027–	713–961–7272
HOLIDAY INN EXPRESS INTERCONTINENTAL AIRPORT.		702 N. SAM HOUSTON PKWY	HOUSTON, TX 77060–	713–999–9942
HOLIDAY INN HOBBY AIRPORT		9100 GULF FRWY	HOUSTON, TX 77017–	713–943–7979
HOLIDAY INN HOUSTON EAST		15157 I–10 E	HOUSTON, TX 77530–	713–452–7304
HOLIDAY INN HOUSTON NASA		1300 NASA RD. ONE	HOUSTON, TX 77058–	713–333–2500
HOLIDAY INN HOUSTON NORTH.		16510 IH–45 N	HOUSTON, TX 77090–	713–821–2570
HOLIDAY INN HOUSTON WEST		14703 PARK ROW	HOUSTON, TX 77079–	713–558–6580
HOLIDAY INN MEDICAL CENTER.		6701 S. MAIN ST	HOUSTON, TX 77030–	713–797–1110
HOLIDAY INN NEAR GREENWAY PLAZA.		2712 SW FRWY	HOUSTON, TX 77098–	713–523–8448
HOLIDAY INN NORTHWEST		14996 NW FRWY	HOUSTON, TX 77040–	713–939–9955
HOLIDAY INN SOUTHWEST		11160 SW FRWY	HOUSTON, TX 77031–3698	713–530–1400
HOTEL SOFITEL HOUSTON		425 N. SAM HOUSTON PKWY. E.	HOUSTON, TX 77060–	713–445–9000
HOUSTON AIRPORT MARRIOTT.		18700 JOHN F. KENNEDY BLVD.	HOUSTON, TX 77032–	713–443–2310

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOUSTON ASTRODOME MARRIOTT.		2100 S. BRASESWOOD	HOUSTON, TX 77030–	713–797–9000
HOUSTON MARRIOTT NORTH AT GREENSPOINT.		255 N. SAM HOUSTON PWKY. E.	HOUSTON, TX 77060–	713–875–4000
HOUSTON MARRIOTT WEST LOOP GALLERIA.		1750 W. LOOP S	HOUSTON, TX 77027–	713–960–0111
HOUSTON MARRIOTT WESTSIDE.		13210 KATY FRWY	HOUSTON, TX 77079–	713–558–8338
HOUSTON MEDICAL CENTER		6580 FANNIN ST	HOUSTON, TX 77030–	713–796–0080
HOUSTON WEST HILTON INN		12401 KATY FRWY	HOUSTON, TX 77079–1401	713–496–9090
HOUSTON'S JW MARRIOTT BY THE GALLERIA.		5150 WESTHEIMER RD	HOUSTON, TX 77057–	713–961–1500
HYATT REGENCY HOUSTON		1200 LOUISIANA ST	HOUSTON, TX 77002–	713–654–1234
LA QUINTA ASTRODOME		9911 BUFFALO SPEEDWAY	HOUSTON, TX 77054–	713–668–8062
LA QUINTA GREENWAY PLAZA		4015 SW FRWY	HOUSTON, TX 77027–	713–623–4750
LA QUINTA HOUSTON BROOKHOLLOW #715.		11002 NW FRWY	HOUSTON, TX 77092–	713–688–2581
LA QUINTA INN #4693		10552 SW FRWY	HOUSTON, TX 77074–	713–270–9559
LA QUINTA INN 4591 HOBBY		9902 GULF FRWY	HOUSTON, TX 77034–	713–941–0900
LA QUINTA MOTOR INN #4649		13290 FM 1960 W	HOUSTON, TX 77065–	713–469–4018
LA QUINTA MOTOR INN #515		8017 KATY FRWY	HOUSTON, TX 77024–	713–686–8941
LA QUINTA MOTOR INN #529		11113 KATY FRWY	HOUSTON, TX 77079–	713–932–0806
LA QUINTA MOTOR INN #531		6 N. BELT E	HOUSTON, TX 77060–	713–447–6888
LA QUINTA SHARPSTOWN		8201 SW FRWY	HOUSTON, TX 77074–	713–772–3626
NASSAU BAY HILTON AND MARINA.		3000 NASSAU RD. ONE	HOUSTON, TX 77058–	713–333–6300
OMNI HOUSTON HOTEL		FOUR RIVERWAY	HOUSTON, TX 77056–	713–871–8181
PLAZA HILTON HOTEL		6633 TRAVIS	HOUSTON, TX 77030–	713–524–6533
RADISSON SUITE HOUSTON WEST.		10655 KATY FRWY	HOUSTON, TX 77024–	713–461–6000
RAMADA INN HOBBY		9005 AIRPORT BLVD	HOUSTON, TX 77061–	713–943–3300
RAMADA INN HOUSTON SOUTH NASA.		1301 NASA RD. 1	HOUSTON, TX 77058–	713–488–0220
RESIDENCE INN BY MARRIOTT HOUSTON.		525 BAY AREA BLVD	HOUSTON, TX 77058–	713–486–2424
RESIDENCE INN BY MARRIOTT HOUSTON.		6910 SW FRWY	HOUSTON, TX 77074–	713–785–3415
RESIDENCE INN BY MARRIOTT HOUSTON ASTRODOME.		7710 S. MAIN ST	HOUSTON, TX 77030–	713–660–7995
RIER INN INC		6701 S. MAIN ST	HOUSTON, TX 77030–	713–797–1110
RODEWAY INN NORTH		13611 RANKIN CIR W	HOUSTON, TX 77073–	713–821–0410
SHERATON ASTRODOME HOTEL.		8686 KIRBY DR	HOUSTON, TX 77054–	713–748–3221
SHERATON CROWN HOTEL AND CONFERENCE CENTER.		15700 JOHN F. KENNEDY BLVD.	HOUSTON, TX 77032–	713–442–5100
SHERATON GRAND HOTEL		2525 WEST LOOP S	HOUSTON, TX 77027–	713–961–3000
STOUFFER PRESIDENTE HOTEL.		6 GREENWAY PLAZA E	HOUSTON, TX 77046–	713–629–1200
TURLEY INNS INC		9799 KATY RD	HOUSTON, TX 77024–	713–468–7001
WESTCHASE HILTON AND TOWERS.		9999 WESTHEIMER	HOUSTON, TX 77042–	713–974–1000
WYNDHAM GREENSPOINT HOTEL.		12400 GREENSPOINT	HOUSTON, TX 77060–1998	713–875–2222
WYNDHAM WARWICK HOTEL		5701 MAIN ST	HOUSTON, TX 77005–	713–526–1991
AMORISVITOS		3950 W. AIRPORT FRWY	IRVING, TX 75062–	214–790–1950
BEST WESTERN DFW		2611 W. AIRPORT FRWY	IRVING, TX 75062–	214–570–7500
COURTYARD BY MARRIOTT DALLAS LAS COLINAS.		1151 W. WALNUT HILL	IRVING, TX 75038–	214–550–8100
DALLAS FORT WORTH AIRPORT MARRIOTT.		8440 FREEPORT PKWY	IRVING, TX 75063–	214–929–8800
DRURY INN DFW AIRPORT SOUTH.		4210 W. AIRPORT FRWY	IRVING, TX 75062–	214–986–1200
EXCEL INN		8205 ESTERS BLVD	IRVING, TX 75063–	214–929–0066
HARVEY HOTEL DFW AIRPORT.		4545 W. JOHN CARPENTER FRWY.	IRVING, TX 75063–	214–929–4500
HARVEY SUITES DFW AIRPORT.		4550 W. JOHN CARPENTER FRWY.	IRVING, TX 75063–	214–929–4499
HOMEWOOD SUITES DALLAS AS COLINAS.		4300 WINGREN DR	IRVING, TX 75039–	214–556–0665
OMNI MANDALAY HOTEL AT LAS COLINAS.		221 E. LAS COLINAS BLVD	IRVING, TX 75039–	214–556–0800

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RAMADA INN DFW SOUTH		4110 W. AIRPORT FRWY	IRVING, TX 75062–	214–399–2005
RED ROOF INN #129		8150 ESTERS BLVD	IRVING, TX 75063–	214–929–0020
RESIDENCE INN BY MARRIOTT LAS COLINAS.		950 WALNUT HILL LN	IRVING, TX 75038–	214–580–7773
SHERATON GRAND HOTEL		4440 W. JOHN CARPENTER FRWY.	IRVING, TX 75062–	214–929–8400
WILSON WORLD HOTEL		4600 W. AIRPORT FRWY	IRVING, TX 75062–	214–513–0600
WYNDHAM LAS COLINAS		110 W. CARPENTER FRWY	IRVING, TX 75039–	214–650–1600
DOC'S ONE STOP		I–35 ACCESS RD. & 5TH ST	JARRELL, TX 76537–	512–746–2096
RAMADA INN JASPER		239 E. GIBSON	JASPER, TX 75951–	409–384–9021
DAYS INN	PO BOX 384	111 S. MARTINEZ	JUNCTION, TX 76849–	915–446–3730
HOLIDAY INN Y.O. RANCH		2033 SIDNEY BAKER	KERRVILLE, TX 78028–	210–257–4440
RAMADA INN		3501 HWY. 259 N	KILGORE, TX 75662–	903–983–3456
ECONO LODGE		606 E. CENTRAL TEXAS EXPRWY.	KILLEEN, TX 76542–	817–634–6868
PARK INN INTERNATIONAL		803 E. CENTRAL TEXAS EXPWY.	KILLEEN, TX 76541–	817–526–4343
SHERATON INN PLAZA		1721 CENTRAL TEXAS EXPRWY.	KILLEEN, TX 76541–	817–634–1555
LA QUINTA MOTOR INN #599		1105 HWY. 146 S	LA PORTE, TX 77571–	713–470–0760
BRAZOSPORT HILTON INN		925 HWY. 322 W	LAKE JACKSON, TX 77566–	409–297–1161
CIRCLE MOTEL		1502 S. KEY AVE	LAMPASAS, TX 76550–	512–556–6201
LA QUINTA MOTOR INN #506		3610 S. URSULA	LAREDO, TX 78041–	512–722–0511
SOUTH SHORE HARBOUR RESORT & CONFERENCE CNTR.		2500 S. SHORE BLVD	LEAGUE CITY, TX 77573–	713–334–1000
HOLIDAY INN EXPRESS DALLAS LEWISVILLE.		200 N. STEMMONS FRWY	LEWISVILLE, TX 75067–	214–434–1000
LA QUINTA MOTOR INN #586		1657 S. STEMMONS FRWY	LEWISVILLE, TX 75067–	214–221–7525
BEST WESTERN LONGVIEW INN.		605 ACESS RD	LONGVIEW, TX 75602–	903–753–0350
LA QUINTA MOTOR INN #476		502 S. ACESS RD	LONGVIEW, TX 75602–	903–757–3663
ASTRO MOTEL REENA INC		501 AVE. Q	LUBBOCK, TX 79401–	806–762–8726
HOLIDAY INN LUBBOCK SOUTH.		6624 I–27	LUBBOCK, TX 79404–	806–745–2208
LA QUINTA MOTOR INN #2521		601 AVE. Q	LUBBOCK, TX 79401–	806–763–9441
LUBBOCK PLAZA HOTEL		3201 LOOP 289 S	LUBBOCK, TX 79423–	806–797–3241
RESIDENCE INN BY MARRIOTT LUBBOCK TEXAS.		2551 S. LOOP 289	LUBBOCK, TX 79423–	806–745–1963
SHERATON INN LUBBOCK AT THE CIVIC CENTER.		505 AVE. Q	LUBBOCK, TX 79401–	806–747–0171
LA QUINTA MOTOR INN #581		2119 S. 1ST ST	LUFKIN, TX 75901–	409–634–3351
HOLIDAY CAPRI INN THUNDERBIRD MOTEL.		517 W. SAN ANTONIO	MARFA, TX 79843–	915–729–4326
HOLIDAY INN EXPRESS		100 IH–20 W. HWY. 59 & IH–2	MARSHALL, TX 75670–	903–935–7923
BEST WESTERN ROSE GARDEN INN & SUITE.		300 E. EXPRWY. 83	MCALLEN, TX 78503–	512–630–3333
DOUBLETREE CLUB HOTEL CASA DE PALMAS.		101 N. MAIN ST	MCALLEN, TX 78501–	512–631–1101
DRURY INN MCALLEN		612 W. EXPRWY. 83	MCALLEN, TX 78501–	512–687–5100
EMBASSY SUITES MCALLEN		1800 S. 2ND	MCALLEN, TX 78503–	210–686–3000
HAMPTON INN MCALLEN		300 W. EXPRWY. 83	MCALLEN, TX 78501–	512–682–4900
HOLIDAY INN LA PLAZA MALL		2000 S. 10TH ST	MCALLEN, TX 78501–	210–686–1741
HOLIDAY INN MCALLEN CIVIC CENTER.		200 W. EXPRWY. 83	MCALLEN, TX 78501–	210–686–2471
LA QUINTA INN #1111		1100 S. 10TH	MCALLEN, TX 78501–	512–687–1101
MCALLEN AIRPORT HILTON INN.		2721 S. 10TH ST	MCALLEN, TX 78503–	210–687–1161
THRIFTY INN MCALLEN		620 W. EXPRWY. 83	MCALLEN, TX 78501–	512–631–6700
HOLIDAY INN MCKINNEY		1300 N. CENTRAL EXPRWY	MCKINNEY, TX 75069–	214–542–9471
HOLIDAY INN COUNTRY VILLA		4300 W. WALL	MIDLAND, TX	915–697–3181
LA QUINTA MOTOR INN MIDLAND.		4130 W. WALL ST	MIDLAND, TX 79703–	915–697–8900
MIDLAND HILTON AND TOWERS.		117 W. WALL AVE	MIDLAND, TX 79701–	915–683–6131
PLAZA INN		4108 N. BIG SPRING	MIDLAND, TX 79705–	915–686–8733
ECONO LODGE		2020 NW LOOP 224	NACOGDOCHES, TX 75961–	409–569–0880
HOLIDAY INN NACOGDOCHES		3400 S. 1ST	NACOGDOCHES, TX 75961–	409–569–8100
LA QUINTA #576 NACOGDOCHES.		3215 S. ST	NACOGDOCHES, TX 75961–	409–560–5453
MOUND STREET BED & BREAKFAST.		408 N. MOUND ST	NACOGDOCHES, TX 75961–	409–569–2211

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
STRATFORD HOUSE INN		3612 N. ST	NACOGDOCHES, TX 75961–	409–560–6036
HOLIDAY INN NEW BRAUNFELS.		1051 IH–35 E	NEW BRAUNFELS, TX 78130–	512–625–8017
RODEWAY INN		1209 IH–35 E	NEW BRAUNFELS, TX 78130–	512–629–5991
STRATFORD HOUSE INN		1063 IH–35 N	NEW BRAUNFELS, TX 78130–	512–629–5967
HOLIDAY INN CENTRE		6201 E. BUSINESS IH–20	ODESSA, TX 79762–	915–362–2311
HOLIDAY INN PARKWAY		3001 E. BUSINESS IH–20	ODESSA, TX 79761–	915–333–3931
LA QUINTA INN #453		5001 E. BUS. 20	ODESSA, TX 79761–	915–333–2820
ODESSA HILTON		5200 E. UNIVERSITY	ODESSA, TX 79751–	915–368–5885
HOLIDAY INN PARIS		3560 NE LOOP 286 & PINE MILL.	PARIS, TX 75460–	903–785–5545
VICTORIAN INNS		425 35TH NE	PARIS, TX 75460–	903–785–3871
FOUR HORSEMEN MOTOR LODGE.		1301 N. HWY. 377	PILOT POINT, TX 76258–	817–686–2256
CARSON HOUSE INN		302 MT. PLEASANT ST	PITTSBURG, TX 75686–	903–856–2468
BEST WESTERN CONESTOGA INN.		600 N. I–27	PLAINVIEW, TX 79072–	806–293–9454
COURTYARD BY MARRIOTT		4901 W. PLANO PKWY	PLANO, TX 75093–	214–867–6000
HARVEY HOTEL PLANO		1600 N. CENTRAL EXPRWY	PLANO, TX 75074–	214–578–8555
HOLIDAY INN PLANO		700 E. CENTRAL PKWY	PLANO, TX 75074–	214–881–1881
LA QUINTA MOTOR INN		1820 N. CENTRAL EXPRWY	PLANO, TX 75074–	214–423–1300
PORT ROYAL OCEAN RESORT CONDOMINIUMS.		PARK RD. 53	PORT ARANSAS, TX 78373–	512–749–5011
HOLIDAY ON TEXOMA MOTEL	PO BX 501A	RT. 3 HIGHPORT RD	POTTS BONO, TX 75076–	903–786–9694
COURTYARD BY MARRIOTT DALLAS RICHARDSON.		1000 S. SHERMAN	RICHARDSON, TX 75081–	214–235–5000
HAMPTON INN RICHARDSON		1577 GATEWAY BLVD	RICHARDSON, TX 75080–	214–234–5400
RENAISSANCE HOTEL		701 E. CAMPBELL RD	RICHARDSON, TX 75081–	214–231–9600
RICHARDSON HILTON		1981 N. CENTRAL EXPRWY	RICHARDSON, TX 75080–	214–644–4000
LA QUINTA INN #4905		2004 N. IH–35	ROUND ROCK, TX 78681–	512–255–5660
THE STAGECOACH INN		1 MAIN ST	SALADO, TX 76571–	817–947–5111
HOLIDAY INN CONVENTION CENTER HOTEL.		441 RIO CONCHO DR	SAN ANGELO, TX 76903–	915–658–2828
LA QUINTA INN		2307 LOOP 306	SAN ANGELO, TX	915–949–0515
AMORISVITOS		10950 LAVRSATE DR	SAN ANTONIO, TX 78249–	512–691–1103
AMORISVITOS		11221 SAN PEDRO AVE	SAN ANTONIO, TX 78216–	512–342–4800
COURTYARD BY MARRIOTT		600 SANTA ROSA S	SAN ANTONIO, TX 78204–	210–229–9449
COURTYARD BY MARRIOTT S.A. MEDICAL CENTER.		8585 MARRIOTT DR	SAN ANTONIO, TX 78229–	512–614–7100
COURTYARD BY MARRIOTT SAN ANTONIO AIRPORT.		8615 BROADWAY ST	SAN ANTONIO, TX 78217–	512–828–7200
COURTYARD BY MARRIOTT SAN ANTONIO DOWNTOWN.		600 SANTA ROSA	SAN ANTONIO, TX 78204–	512–229–9449
DRURY INN SAN ANTONIO EAST #41.		8300 IH 35 N	SAN ANTONIO, TX 78239–	210–654–1144
DRURY SUITES SAN ANTONIO AIRPORT.		8811 JONES MALTSBERGER RD.	SAN ANTONIO, TX 78216–	210–308–8100
EMBASSY SUITES HOTEL AIRPORT.		10110 US HWY. 281 N	SAN ANTONIO, TX 78216–	512–525–9999
EMBASSY SUITES HOTEL NW		7750 BRIARRIDGE	SAN ANTONIO, TX 78230–	210–340–5421
HAMPTON INN AIRPORT		8818 JONES MALTSBERGER	SAN ANTONIO, TX 78216–	210–366–1800
HAMPTON INN FIESTA PARK		11010 I–10 W	SAN ANTONIO, TX 78230–	512–561–9058
HAMPTON INN NW SEAWORLD AREA.		4803 MANITOU DR	SAN ANTONIO, TX 78228–	512–684–9966
HILTON PALACIO DEL RIO		200 S. ALAMO ST	SAN ANTONIO, TX 78205–	512–222–1400
HOLIDAY INN		217 N. ST. MARY'S	SAN ANTONIO, TX 78205–	512–224–2500
HOLIDAY INN AIRPORT		77 N.E. LOOP 410	SAN ANTONIO, TX 78216–	512–349–9900
HOLIDAY INN DOWNTOWN MARKET SQUARE.		318 W. DURANGO	SAN ANTONIO, TX 78204–	210–225–3211
HOLIDAY INN EXPRESS		6023 NW EXPRWY	SAN ANTONIO, TX 78201–	210–736–1900
HOLIDAY INN NORTHWEST		3233 NW LOOP 410	SAN ANTONIO, TX 78213–	210–377–3900
HOLIDAY INN RIVERWALK NORTH.		110 LEXINGTON AVE	SAN ANTONIO, TX 78205–	210–223–9461
HYATT REGENCY SAN ANTONIO.		123 LASOYA	SAN ANTONIO, TX 78205–	512–222–1234
LA QUINTA CONVENTION CENTER #501.		1001 E. COMMERCE ST	SAN ANTONIO, TX 78205–	512–222–9181
LA QUINTA INGRAM PARK #4589.		7134 NW LOOP 410	SAN ANTONIO, TX 78238–	512–780–8883
LA QUINTA INN #525		219 NE LOOP 410	SAN ANTONIO, TX	512–342–4291
LA QUINTA INN #567 MARKET SQUARE.		900 DOLOROSA	SAN ANTONIO, TX 78207–	512–271–0001

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LA QUINTA LACKLAND #523		6511 MILITARY DR. W	SAN ANTONIO, TX 78227–	512–674–3200
LA QUINTA MOTOR INN		9542 IH–10 W	SAN ANTONIO, TX 78230–	512–593–0338
LA QUINTA VANCE JACKSON #710.		5922 NW EXPRWY	SAN ANTONIO, TX 78201–	512–734–7931
LA QUINTA WINDSOR PARK #556.		6410 I–35 N	SAN ANTONIO, TX 78218–	512–653–6619
LACKLAND LODGE		6815 HWY. 90 W	SAN ANTONIO, TX 78227–	512–675–9690
MARRIOTT RIVERCENTER		101 BOWIE ST	SAN ANTONIO, TX 78205–	512–554–5073
PANCOAST CARRIGE HOUSE BED & BREAKFAST.		102 TURNER ST	SAN ANTONIO, TX 78204–	210–225–4045
QUALITY INN & SUITES		3817 IH–35 N	SAN ANTONIO, TX 78219–	210–224–3030
RODEWAY INN		11591 IH 35 N	SAN ANTONIO, TX 78233–	210–646–6400
RODEWAY INN FIESTA PARK		19793 IH 10 W	SAN ANTONIO, TX 78257–	210–698–3991
SAN ANTONIO AIRPORT HILTON.		611 NW LOOP 410	SAN ANTONIO, TX 78216–	512–340–6060
SAN ANTONIO MARRIOTT RIVERWALK.		711 E. RIVER WALK	SAN ANTONIO, TX 78205–	512–223–1000
SCOTSMAN INN		5710 INDUSTRY PARK DR	SAN ANTONIO, TX 78218–	512–662–7400
SCOTSMAN INN EAST		211 N. W.W. WHITE RD	SAN ANTONIO, TX 78219–	210–359–7268
SHERATON FIESTA HOTEL		37 NE LOOP 410	SAN ANTONIO, TX 78216–	512–366–2424
SHERATON GUNTER HOTEL		205 E. HOUSTON	SAN ANTONIO, TX 78205–	512–227–3241
STRATFORD HOUSE INN		6364 IH–35 N. AT RITTIMAN RD	SAN ANTONIO, TX 78218–	210–657–0808
WYNDHAM SAN ANTONIO		9821 COLONNADE BLVD	SAN ANTONIO, TX 78230–	210–691–8686
OAKRIDGE MOTOR INN		IH–10 & HWY. 77 NW CORNER	SCHULENBURG, TX 78956–	409–743–4192
BEST WESTERN IRISH INN		301 I–40 E	SHAMROCK, TX 79079–	806–256–2106
SHERATON INN		3605 HWY. 75 S	SHERMAN, TX 75090–	903–868–0555
BEST WESTERN FIESTA ISLES		5701 PADRE BLVD	SOUTH PADRE ISLAND, TX 78597–.	512–761–4913
SHERATON SOUTH PADRE ISLAND BEACH RESORT.		310 PADRE BLVD	SOUTH PADRE ISLAND, TX 78597–.	512–761–6551
LA QUINTA MOTOR INN STAFFORD #4696.		12727 SW FRWY	STAFFORD, TX 77477–	713–240–2300
HOLIDAY INN		2865 W. WASHINGTON	STEPHENVILLE, TX 76401–	817–968–5256
LA QUINTA MOTOR INNS TEMPLE.		1604 W. BARTON AVE	TEMPLE, TX 76504–	817–771–2980
STRATFORD HOUSE INN		1602 N. GENERAL BRUCE DR	TEMPLE, TX 76504–	817–771–1495
HOLIDAY INN EXPRESS		5401 N. STATE LINE	TEXARKANA, TX 75503–	903–729–3366
LA QUINTA INN #563		5201 STATE LINE AVE	TEXARKANA, TX 75503–	903–794–1900
SHERATON INN TEXARKANA		5301 N. STATELINE AVE	TEXARKANA, TX 75503–	903–792–3222
LA QUINTA #533 TEXAS CITY		1121 HWY. 146 N	TEXAS CITY, TX 77590–	409–948–3101
LA QUINTA MOTOR INN #654		28673 I–45 N	THE WOODLANDS, TX 77381–	713–367–7722
HOLIDAY INN SOUTHEAST CROSSING TYLER.		3310 TROUP HWY	TYLER, TX 75701–	903–593–3600
LA QUINTA INN #457		1601 WSW LOOP 323	TYLER, TX 75701–	903–561–2223
RESIDENCE INN BY MARRIOTT TYLER.		3303 TROUP HWY	TYLER, TX 75701–	903–595–5188
SHERATON HOTEL		5701 S. BROADWAY	TYLER, TX 75703–	903–561–5800
STRAFFORD HOUSE INN		2600 W.N.W. LOOP 323	TYLER, TX 75702–	903–597–2756
TOWN HOUSE MOTEL		2420 E. GENTRY PKWY	TYLER, TX 75702–	903–593–5873
TRAVELODGE OF TYLER		2616 N.N.W. LOOP 323	TYLER, TX 75702–	903–593–8361
COMFORT INN		200 PALISADES	UNIVERSAL CITY, TX 78148–	512–659–5851
HOLIDAY INN UVALDE		920 E. MAIN ST	UVALDE, TX 78801–	512–278–4511
BEST WESTERN SANDS MOTEL.		1800 W. VEGA BLVD	VEGA, TX 79092–	806–267–2131
HAMPTON INN		3112 E. HOUSTON HWY	VICTORIA, TX 77901–	512–578–2030
HOLIDAY INN		2705 E. HOUSTON HWY	VICTORIA, TX 77901–	512–575–0251
LA QUINTA INN		7603 N. NAVARRO	VICTORIA, TX 77904–	512–572–3585
BEST WESTERN CLASSIC INN		6624 HWY. 84 W	WACO, TX 76712–	817–776–3194
ECONO LODGE		1430 IH–35 S	WACO, TX 76706–	817–752–1991
LA QUINTA UNIVERSITY #2511		1110 S. 9TH ST	WACO, TX 76706–2399	817–752–9741
QUALITY INN WACO		801 S. 4TH ST	WACO, TX 76706–	817–757–2000
RAMADA INN WACO		4201 FRANKLIN AVE	WACO, TX 76710–	817–772–9440
VICTORIAN INNS		720 S. LAKE BRAZOS DR	WACO, TX 76704–	817–752–3388
WACO HILTON INN		113 S. UNIVERSITY PARKS DR	WACO, TX 76701–	817–754–8484
BED & BATH BASIC LODGING		1709 I–20 E	WEATHERFORD, TX 76086–	817–599–5150
BEST WESTERN PALM AIRE		415 S. INTERNATIONAL BLVD	WESLACO, TX 78696–	512–969–2411
MARRIOTT SOLANA HOTEL		S. VILLAGE CIR	WESTLAKE, TX 76262–	817–430–3848
LA QUINTA MOTOR INN #516		1128 CENTRAL FRWY. N	WICHITA FALLS, TX 76305–	817–322–6971
MOUNTAIN VIEW MOTEL		3 MILES S. OF WIMBERLEY RR12.	WIMBERLEY, TX 78676–0877	512–847–2992
Utah				
COMFORT INN OF BLANDING		711 S. MAIN	BLANDING, UT 84511–	801–678–3271

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOJO INN		1167 S. MAIN ST	BRIGHAM CITY, UT 84302–	801–723–8511
CEDAR CITY HOLIDAY INN		1575 W. 200 N	CEDAR CITY, UT 84720–	801–586–6888
BEST WESTERN MOTOR INN		527 E. TOPAZ BLVD	DELTA, UT 84624–	801–864–3882
WEST WINDS RODEWAY INN		525 E. MAIN ST	GREEN RIVER, UT 84525–	801–564–3421
BUDGET HOST K MOTEL		330 S. 100 E	KANAB, UT 84741–	801–644–2611
BULLFROG RESORT & MARINA.	PO BOX 4055		LAKE POWELL, UT 84533–	801–684–2233
LA QUINTA INN #686		1965 N. 1200 W	LAYTON, UT 84041–	801–776–6700
LA QUINTA INN #803		530 CATALPA RD	MIDVALE, UT 84047–	801–566–3291
THE HOMESTEAD		700 N. HOMESTEAD DR	MIDWAY, UT 84049–	801–654–1102
BOWEN MOTEL		169 N. MAIN ST	MOAB, UT 84532–	801–259–7132
COMFORT SUITES		800 S. MAIN	MOAB, UT 84532–	801–259–5252
RESTON HOTEL		5335 COLLEGE DR	MURRAY, UT 84123–	801–264–1054
BEST WESTERN COTTONTREE INN.		1030 N. 400 E	NORTH SALT LAKE, UT 84054–	801–292–7666
BEST WESTERN HIGH COUNTRY INN.		1335 W. 1200 S	OGDEN, UT 84404–	801–394–9474
BEST WESTERN OGDEN PARK HOTEL.		247 24TH ST	OGDEN, UT 84401–	801–627–1190
FLYING J INN		1206 W. 2100 S	OGDEN, UT 84401–	801–393–8644
RADISSON SUITE HOTEL		2510 WASHINGTON BLVD	OGDEN, UT 84401–	801–627–1900
ALL SEASONS CONDOS	PO BOX 2818	1575 EMPIRE AVE	PARK CITY, UT 84060–	801–649–5500
OLYMPIA RESORT HOTEL AND CONVENTION CENTER.	PO BOX 4439	1895 SIDEWINDER DR	PARK CITY, UT 84060–	801–649–2900
RADDISON RESORT		2121 PARK AVE	PARK CITY, UT 84060–	801–649–5000
SILVER CLIFF VILLAGE	PO BOX 2818	1375 WOODSIDE AVE	PARK CITY, UT 84060–	801–649–5500
SILVER KING HOTEL	PO BOX 2818	1485 EMPIRE AVE	PARK CITY, UT 84060–	801–649–5500
THE OLD MINER'S LODGE A BED & BREAKFAST INN.	PO BOX 2639	615 WOODSIDE AVE	PARK CITY, UT 84060–2639	801–645–8069
YARROW HOTEL	PO BOX 1840	1800 PARK AVE	PARK CITY, UT 84060–	801–649–7000
COMFORT INN		830 N. MAIN ST	PAYSON, UT 84651–	801–465–4861
CARRIAGE HOUSE INN		590 E. MAIN	PRICE, UT 84501–	801–637–5660
COMFORT INN UNIVERSITY		1555 N. CANYON RD	PROVO, UT 84604–	801–374–5020
DAYS INN		1675 N. 200 W	PROVO, UT 84604–	801–375–6600
HOLIDAY INN PROVO		1460 S. UNIVERSITY AVE	PROVO, UT 84646–	801–374–9750
SEVEN PEAKS RESORT HOTEL		101 W. 100 N	PROVO, UT 84601–	801–377–4700
BEST WESTERN EXECUTIVE INN.		280 W. 7200 S	SALT LAKE CITY, UT 84088–	801–566–4141
BONNEVILLE INN		315 W. 3300 S	SALT LAKE CITY, UT 84115–	801–486–8790
DAYS INN AIRPORT		1900 W. NORTH TEMPLE	SALT LAKE CITY, UT 84116–	801–539–8538
DOUBLETREE HOTEL		215 W. SOUTH TEMPLE	SALT LAKE CITY, UT 84101–	801–531–7500
EMBASSY SUITES HOTEL		600 SW TEMPLE ST	SALT LAKE CITY, UT 84101–	801–359–7800
HOLIDAY INN AIRPORT		1659 W. NORTH TEMPLE	SALT LAKE CITY, UT 84116–	801–533–9000
HOLIDAY INN DOWNTOWN		999 S. MAIN ST	SALT LAKE CITY, UT 84111–	801–359–8600
HOWARD JOHNSON HOTEL		122 W. SOUTH TEMPLE	SALT LAKE CITY, UT 84101–	801–521–0130
PEERY HOTEL		110 W. 300 S	SALT LAKE CITY, UT 84101–	801–521–4300
QUALITY INN AIRPORT		5575 W. AMELIA EARHART DR	SALT LAKE CITY, UT 84116–	801–537–7020
QUALITY INN SOUTH		4465 CENTURY DR	SALT LAKE CITY, UT 84123–	801–268–2533
RADDISON HOTEL AIRPORT		2177 W. NORTH TEMPLE ST	SALT LAKE CITY, UT 84116–	801–364–5800
RED LION SALT LAKE		255 S. WEST TEMPLE ST	SALT LAKE CITY, UT 84101–	801–328–2000
SALT LAKE CITY MARRIOTT		75 SW TEMPLE	SALT LAKE CITY, UT 84101–	801–531–0800
SALT LAKE HILTON		150 W. 500 S	SALT LAKE CITY, UT 84101–	801–532–3344
SALT LAKE RESIDENCE INN BY MARRIOT.		765 E. 400 S	SALT LAKE CITY, UT 84102–	801–532–5511
SKYLINE INN		2475 E. 1700 S	SALT LAKE CITY, UT 84108–	801–582–5350
SNOWBIRD CORPORATION CLIFF LODGE.			SNOWBIRD, UT 84092–	801–521–6040
BUDGET 8 MOTEL		1230 S. BLUFF ST	ST. GEORGE, UT 84770–	801–628–5234
COMFORT INN		999 E. SKYLINE DR	ST. GEORGE, UT 84770–	801–628–4271
COMFORT SUITES		1239 S. MAIN ST	ST. GEORGE, UT 84770–	801–673–7000
HOLIDAY INN RESORT HOTEL		850 S. BLUFF	ST. GEORGE, UT 74770–	801–628–[illegible]235
RAMADA INN		1440 E. ST. GEORGE BLVD	ST. GEORGE, UT 84770–	801–628–[illegible]825
REGENCY INN		770 E. ST. GEORGE BLVD	ST. GEORGE, UT 84770–	801–673–6119
SLEEP INN		1481 S. SUNLAND DR	ST. GEORGE, UT 84770–	801–628–5234
ST. GEORGE HILTON INN		1450 S. HILTON DR	ST. GEORGE, UT 84770–	801–628–0453
SUPER 8 MOTEL		915 S. BLUFF	ST. GEORGE, UT 84770–	801–628–4251
COMFORT INN		491 S. MAIN ST	TOOELE, UT 84074–	801–882–6100
Virginia				
COMFORT INN		I–81 EXIT 14	ABINGDON, VA 24210–0000	703–676–2222
MARTHA WASHINGTON INN		150 WEST MAIN STREET	ABINGDON, VA 24210–0000	703–628–3161

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
COMFORT INN—MOUNT VERNON.		7212 RICHMOND HWY	ALEXANDRIA, VA 22306–0000	703–765–9000
COMFORT INN LANDMARK		6254 DUKE STREET	ALEXANDRIA, VA 22304–0000	703–642–3422
COMFORT INN VAN DORN		5716 S. VAN DORN STREET	ALEXANDRIA, VA 22310–0000	703–922–9200
COURTYARD BY MARRIOTT		2700 EISENHOWER AVENUE	ALEXANDRIA, VA 22314–0000	703–329–2323
HAMPTON INN—ALEXANDRIA		4800 LEESBURG PIKE	ALEXANDRIA, VA 22302–0000	703–671–4800
HOLIDAY INN OLD TOWN ALEXANDRIA.		480 KING STREET	ALEXANDRIA, VA 22314–0000	703–549–6080
HOLIDAY INN TELEGRAPH ROAD EISENHOWER AVE.		2460 EISENHOWER AVE	ALEXANDRIA, VA 22314–	703–960–3400
OLD COLONY INN		625 FIRST STREET	ALEXANDRIA, VA 22314–	703–548–6300
RAMADA HOTEL OLD TOWN		901 N. FAIRFAX ST	ALEXANDRIA, VA 22314–	703–683–6000
SHERATON SUITES ALEXANDRIA.		801 NORTH SAINT ASAPH STREET.	ALEXANDRIA, VA 22314–	703–836–4700
TRAVELERS MOTEL		5916 RICHMOND HIGHWAY	ALEXANDRIA, VA 22303–0000	703–329–1310
BEST WESTERN ROSSLYN WESTPARK HOTEL.		1900 N FORT MYER DRIVE	ARLINGTON, VA 22209–	703–527–4814
CHERRY BLOSSOM TRAVELODGE.		3030 COLUMBIA PIKE	ARLINGTON, VA 22204–0000	703–521–5570
COMFORT INN BALLSTON		1211 NORTH GLEBE ROAD	ARLINGTON, VA 22201–	703–247–3399
COURTYARD BY MARRIOTT ARLINGTON/ROSSLYN.		1533 CLARENDON BLVD	ARLINGTON, VA 22209–	703–528–2222
COURTYARD BY MARRIOTT CRYSTAL CITY/NATL AIRPT.		2899 JEFFERSON DAVIS HWY	ARLINGTON, VA 22202–	703–549–3434
CRYSTAL CITY MARRIOTT HOTEL.		1999 JEFFERSON DAVIS HIGHWAY.	ARLINGTON, VA 22202–3564	703–413–5500
DAYS HOTEL CRYSTAL CITY		2000 JEFFERSON DAVIS HWY	ARLINGTON, VA 22202–0000	703–920–8600
DOUBLETREE HOTEL NATIONAL AIRPORT NORTH TOWER.		300 ARMY NAVY DRIVE	ARLINGTON, VA 22202–	703–892–4100
DOUBLETREE HOTEL NATIONAL AIRPORT SOUTH TOWER.		300 ARMY NAVY DRIVE	ARLINGTON, VA 22202–	703–892–4100
EMBASSY SUITES		1300 JEFFERSON DAVIS HWY	ARLINGTON, VA 22202–0000	703–979–9799
EXECUTIVE CLUB SUITES IN ARLINGTON.		108 S. COURTHOUSE RD	ARLINGTON, VA 22204–0000	703–522–2582
HOLIDAY INN—KEY BRIDGE		1850 N FT. MEYER DRIVE	ARLINGTON, VA 22209–	703–522–0400
HOLIDAY INN ARLINGTON AT BALLSTON.		4610 N FAIRFAX DRIVE	ARLINGTON, VA 22203–0000	703–243–9800
HOWARD JOHNSON NATIONAL AIRPORT.		2650 JEFFERSON DAVIS HIGHWAY.	ARLINGTON, VA 22202–	703–684–7200
HYATT ARLINGTON		1325 WILSON BLVD	ARLINGTON, VA 22209–	703–525–1234
HYATT REGENCY CRYSTAL CITY.		2799 JEFFERSON DAVIS HWY	ARLINGTON, VA 22202–	703–418–1234
MARRIOTT CRYSTAL CITY		1999 JEFFERSON DAVIS HWY	ARLINGTON, VA 22202–	703–521–5500
MARRIOTT CRYSTAL GATEWAY.		1700 JEFFERSON DAVIS HWY	ARLINGTON, VA 22202–	703–920–3230
MARRIOTT KEY BRIDGE		1401 LEE HWY	ARLINGTON, VA 22209–	703–524–6400
QUALITY INN IWO JIMA		1501 ARLINGTON BLVD	ARLINGTON, VA 22209–	703–524–5000
RANDOLPH TOWERS		4001 N 9TH STREET	ARLINGTON, VA 22203–	703–525–9000
SHERATON NATIONAL HOTEL		COLUMBIA PIKE & WASHINGTON BLV.	ARLINGTON, VA 22204–0000	703–521–1900
STOUFFER CONCOURSE NATIONAL AIRPORT.		2399 JEFFERSON DAVIS HWY	ARLINGTON, VA 22202–	703–418–6800
THE RITZ-CARLTON PENTAGON CITY.		1250 SOUTH HAYES STREET	ARLINGTON, VA 22202–	703–415–5000
THE RITZ-CARLTON PENTAGON CITY.		1250 SOUTH HAYES ST	ARLINGTON, VA 22202–	703–415–5000
HO JO INN		101 S CARTER ROAD	ASHLAND, VA 23005–0000	804–798–9291
COMFORT INN—BLACKSBURG		3705 SOUTH MAIN STREET	BLACKSBURG, VA 24060–0000	703–951–1500
COMFORT INN	PO BOX 550	2368 LEE HWY	BRISTOL, VA 24201–	703–466–3881
COMFORT INN		4050 WESTFAX DR	CHANTILLY, VA 22021–	703–818–8200
COURTYARD BY MARRIOTT CHANTILLY/DULLES AIRPT.		3935 CENTERVIEW DRIVE	CHANTILLY, VA 22021–	703–709–7100
WASHINGTON DULLES AIRPORT MARRIOTT.		333 WEST SERVICE ROAD	CHANTILLY, VA 22021–	703–471–9500
WESTFIELDS INTERNATIONAL CONFERENCE CENTER.		14750 CONFERENCE CENTER DRIVE.	CHANTILLY, VA 22021–	703–818–0300
BEST WESTERN CAVALIER INN.		105 N. EMMET STREET	CHARLOTTESVILLE, VA 22903–0000.	804–296–8111
BEST WESTERN OF MT. VERNON.	PO BOX 7284		CHARLOTTESVILLE, VA 22906–0000.	804–296–5501

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
BOARS HEAD INN & SPORTS CLUB.	PO BOX 5307	2 BOAR'S HEAD LANE	CHARLOTTESVILLE, VA 22905–.	804–296–2181
COURTYARD BY MARRIOTT		638 HILLSDALE DRIVE	CHARLOTTESVILLE, VA 22901–0000.	804–973–7100
HOLIDAY INN—UNIVERSITY		1600 EMMET STREET	CHARLOTTESVILLE, VA 22901–.	804–243–9111
KNIGHTS INN OF CHARLOTTESVILLE.		1300 SEMINOLE TRAIL	CHARLOTTESVILLE, VA 22901–.	804–973–8133
OMNI CHARLOTTESVILLE HOTEL.		235 WEST MAIN STREET	CHARLOTTESVILLE, VA 22901–.	804–971–5500
SHERATON INN CHARLOTTESVILLE.		2350 SEMINOLE TRAIL	CHARLOTTESVILLE, VA 22901–0000.	804–973–2121
SUPER 8 MOTEL		390 GREENBRIAR DRIVE	CHARLOTTESVILLE, VA 22901–.	804–973–0888
THOMAS JEFFERSON MOTOR LODGE.		1330 SEMINOLE TRAIL	CHARLOTTESVILLE, VA 22901–.	804–973–2111
COMFORT SUITES		1550 CROSSWAY S BLVD	CHESAPEAKE, VA 23320–0000	804–420–1600
DAYS INN GREENBRIAR		1433 NORTH BATTLEFIELD BLVD.	CHESAPEAKE, VA 23320–	804–547–9262
HAMPTON INN		3235 WESTERN BRANCH BLVD.	CHESAPEAKE, VA 23321–	804–484–5300
WELLESLEY INN		1750 SARA DRIVE	CHESAPEAKE, VA 23320–0000	804–366–0100
COMFORT INN	PO BOX 980		CHESTER, VA 23831–0000	804–751–0000
ANCHOR INN MOTEL		3775 MAIN STREET	CHINCOTEAGUE, VA 23336–	804–336–6313
ASSATEAGUE INN	PO BOX 1038	COACHES LANE	CHINCOTEAGUE, VA 23336–	804–336–3736
ISLAND BELLE MOTOR LODGE	PO BOX 585		CHINCOTEAGUE, VA 23336–0000.	804–336–3600
REFUGE MOTOR INN	PO BOX 378	7058 MADDOX BLVD	CHINCOTEAGUE, VA 23336–	804–336–5511
THE ISLAND BELLE MOTOR LODGE.	PO BOX 585		CHINCOTEAGUE, VA 23336–	804–336–5293
THE WATSON HOUSE BED & BREAKFAST.		4240 MAIN STREET	CHINCOTEAGUE, VA 23336–	804–336–1564
WATERSIDE MOTOR INN		3761 SOUTH MAIN ST	CHINCOTEAGUE, VA 23336–	804–336–3434
ISLAND MOTOR INN	PO BOX 957		CHINCOTEAGUE ISLAND, VA 23336–.	804–336–3141
HOLIDAY INN	PO BOX 920	RT 60 AND 220	COVINGTON, VA 24426–	703–962–4951
COMFORT INN		890 WILLIS LN	CULPEPER, VA 22701–	703–825–4900
COMFORT INN	PO BOX 1810	ROUTE 301	DAHLGREN, VA 22448–	703–663–3060
KINGS QUARTERS / BEST WESTERN.	PO BOX 100	I–95 @ DOSWELL	DOSWELL, VA 23047–	804–876–3321
COMFORT INN DUBLIN	PO BOX 123–F	I–81 & SR 100 (RR1)	DUBLIN, VA 24084–	703–674–1100
HOLIDAY INN EMPORIA		311 FLORIDA AVE	EMPORIA, VA 23847–0000	804–634–4191
COURTYARD BY MARRIOTT FAIRFAX / FAIR OAKS.		11220 LEE JACKSON HWY	FAIRFAX, VA 22030–	703–273–5161
HAMPTON INN		10860 LEE HWY	FAIRFAX, VA 22030–0000	703–385–2600
HYATT—FAIR LAKES		12777 FAIR LAKES CIRCLE	FAIRFAX, VA 22033–0000	703–818–1234
FAIRVEIW PARK MARRIOTT		311 FAIRVIEW PARK DRIVE	FALLS CHURCH, VA 22042–0000.	
MARRIOTT—FAIRVIEW PARK		3111 FAIRVIEW PARK DRIVE	FALLS CHURCH, VA 22042–	703–849–9400
RAMADA—TYSONS		7801 LEESBURG PIKE	FALLS CHURCH, VA 22043–	703–893–1340
COMFORT INN		HWY 15 PRINCE EDWARD COUNTY.	FARMVILLE, VA 23901–0000	804–392–8163
DAYS INN FRANKLIN		1660 ARMORY DRIVE	FRANKLIN, VA 23851–	804–562–2225
BEST WESTERN JOHNNY APPLESEED INN.		543 WARRENTON ROAD	FREDERICKSBURG, VA 22406–0000.	703–373–0000
SHERATON FREDERICKSBURG RESORT & CONF CENTER.		2801 PLANK ROAD	FREDERICKSBURG, VA 22404–	703–786–8321
QUALITY INN OF FRONT ROYAL.		10 COMMERCE AVENUE	FRONT ROYAL, VA 22630–	703–635–3161
ARROW INN		7 SEMPLE FARM ROAD	HAMPTON, VA 23666–	804–865–0300
COURTYARD BY MARRIOTT		1917 COLISEUM DRIVE	HAMPTON, VA 23666–0000	804–838–3300
DAYS INN		1918 COLISEUM DRIVE	HAMPTON, VA 23666–0000	804–826–4810
FAIRFIELD INN BY MARRIOTT HAMPTON.		1905 COLISEUM DRIVE	HAMPTON, VA 23666–	804–827–7400
HAMPTON INN		1813 WEST MERCURY BLVD	HAMPTON, VA 23666–0000	804–838–8484
HOLIDAY INN HAMPTON COLISEUM.		1815 WEST MERCURY BLVD	HAMPTON, VA 23666–0000	804–838–0200
HOLIDAY INN HAMPTON COLISEUM.		1815 WEST MERCURY BLVD	HAMPTON, VA 23666–0000	804–838–0200
LAQUINTA MOTOR INN		2138 W. MERCURY BLVD	HAMPTON, VA 23666–3111	804–827–8680

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RADISSON HOTEL		700 SETTLERS LANDING ROAD.	HAMPTON, VA 23669–	804–727–9700
SHERATON INN COLISEUM		1215 WEST MERCURY BLVD	HAMPTON, VA 23666–0000	804–838–5011
COMFORT INN		1400 EAST MARKET STREET	HARRISONBURG, VA 22801–0000.	703–433–6066
COMFORT INN		1440 E. MARKET STREET	HARRISONBURG, VA 22801–	703–433–6066
HAMPTON INN		1400 EAST MARKET STREET	HARRISONBURG, VA 22801–0000.	703–432–1111
SHERATON HARRISONBURG		1440 EAST MARKET STREET	HARRISONBURG, VA 22801–	703–433–2521
COMFORT INN—HERNDON		200 ELDEN STREET	HERNDON, VA 22070–0000	703–437–7555
COURTYARD BY MARRIOTT HERNDON / RESTON.		533 HERNDON PARKWAY	HERNDON, VA 22070–	703–478–3628
DAYS INN—DULLES AIRPORT		2200 CENTREVILLE ROAD	HERNDON, VA	703–471–6700
HOLIDAY INN EXPRESS		485 ELDEN STREET	HERNDON, VA 22707–0000	703–478–9777
HYATT—DULLES		2300 DULLES CORNER BLVD	HERNDON, VA 22070–	703–713–1234
RENAISSANCE HOTEL WASHINGTON DULLES.		13871 PARK CENTER ROAD	HERNDON, VA 22071–0000	703–478–2900
SUMMERFIELD SUITES—HERNDON.		13700 COOPERMINE ROAD	HERNDON, VA 22011–	703–713–6800
WASHINGTON DULLES MARRIOTT SUITES.		13101 WORLDGATE DRIVE	HERNDON, VA 22070–	703–709–0400
THE TIDES INN	P.O. BOX 480	KINGS CHARTER DRIVE	IRVINGTON, VA 22480–	804–438–5000
THE TIDES LODGE	PO BOX 309	#1 ST ANDREWS LANE	IRVINGTON, VA 22480–0309	804–438–6000
SHELDON'S MOTEL AND RESTAURANT.		ROUTE 2, BOX 189	KEYSVILLE, VA 23947–0000	804–736–8434
HILTON—LYNCHBURG		2900 CHANDLERS MT. ROAD	LYNCHBURG, VA 24502–0000	804–237–6333
COURTYARD BY MARRIOTT MANASSAS.		10701 BATTLEVIEW PARKWAY	MANASSAS, VA 22110–	703–335–1300
DAYS INN MANASSAS		10653 BALLS FORD ROAD	MANASSAS, VA 22110–0000	703–368–2800
HAMPTON INN		7295 WILLIAMSON ROAD	MANASSAS, VA 22110–	703–369–1100
QUALITY INN		7295 WILLIAMSON BLVD	MANASSAS, VA 22110–	703–369–1100
RAMADA INN		10820 BALLS FORD ROAD	MANASSAS, VA 22110–	703–361–8000
RED ROOF INN		10610 AUTOMOTIVE DRIVE	MANASSAS, VA 22110–0000	703–335–9333
COMFORT INN	BOX 4268	ROUTE 2	MAX MEADOWS, VA 24360–	703–637–4141
BEST WESTERN TYSONS WESTPARK HOTEL.		8401 WESPARK DRIVE	MCLEAN, VA 22102–0000	703–734–2800
HILTON—MCLEAN		7920 JONES BRANCH DRIVE	MCLEAN, VA 22102–0000	703–847–5000
THE RITZ CARLTON—TYSONS CORNER.		1700 TYSONS BLVD	MCLEAN, VA 22102–	703–506–4300
WAYSIDE INN		7783 MAIN STREET	MIDDLETOWN, VA 22645–	703–869–1797
NATURAL BRIDGE OF VIRGINIA INC.		U.S. HIGHWAY 11	NATURAL BRIDGE, VA 24578–0000.	703–291–2121
QUALITY INN NEW MARKET	PO BOX 100	I–81 EXIT 264 JUNCTION 211	NEW MARKET, VA 22844–0000	703–740–3141
COMFORT INN		12330 JEFFERSON AVENUE	NEWPORT NEWS, VA 23602–	804–249–0200
ECONO LODGES		11841 CANON BLVD	NEWPORT NEWS, VA 23606–0000.	804–873–0400
MULBERRY INN		16890 WARWICK BLVD	NEWPORT NEWS, VA 23603–	804–887–3000
OMNI NEWPORT NEWS HOTEL		1000 OMNI BOULEVARD	NEWPORT NEWS, VA 23606–0000.	804–873–6664
COMFORT INN / TOWN POINT		930 VIRGINIA BEACH BLVD	NORFOLK, VA 23504–0000	804–623–5700
COMFORT INN NAVAL BASE		8051 HAMPTON BOULEVARD	NORFOLK, VA 23505–	804–451–0000
ECONO LODGE		9601 4TH VIEW STREET	NORFOLK, VA 23503–0000	804–480–9611
ECONO LODGE		8901 HAMPTON BLVD	NORFOLK, VA 23505–	804–489–0801
ECONO LODGE (AIRPORT)		333 N MILITARY HWY	NORFOLK, VA 23503–	804–480–9611
ECONO LODGE OCEANVIEW BEACH EAST.		1111 EAST OCEANVIEW AVENUE.	NORFOLK, VA 23503–	804–480–1111
ECONOLODGE AIRPORT		3342 NORTH MILITARY HIGHWAY.	NORFOLK, VA 23518–	804–855–3116
HAMPTON INN—NAVAL BASE		8501 HAMPTON BLVD	NORFOLK, VA 23505–0000	804–489–1000
NORFOLK AIRPORT HILTON		1500 N. MILITARY HIGHWAY	NORFOLK, VA 23502–0000	804–466–8000
NORFOLK WATERSIDE MARRIOTT.		235 E MAIN STREET	NORFOLK, VA 23510–	804–627–4200
OLD DOMINION INN		4111 HAMPTON BLVD	NORFOLK, VA 23508–	804–440–5100
OMNI INTERNATIONAL NORFOLK.		777 WATERSIDE DRIVE	NORFOLK, VA 23510–0000	804–622–6644
QUALITY INN—LAKE WRIGHT RESORT & CONF CNTR.		6280 NORTHAMPTON BLVD	NORFOLK, VA 23502–	804–461–6251
SHERATON INN—MILITARY CIRCLE.		880 N MILITARY HIGHWAY	NORFOLK, VA 23502–0000	804–461–9192
LODGE AT LITTLE CREEK		7969 SHORE DRIVE	NORFOLK, VA 23518–	804–588–3600
HOLIDAY INN		551 HIGHWAY 58 EAST	NORTON, VA 24273–0000	703–679–7000
NORTON SUPER 8 MOTEL		425 WHARTON WAY	NORTON, VA 24273–0000	703–679–0893

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUPER 8 MOTEL		425 WHARTON WAY	NORTON, VA 24273–	703–679–7921
ANCHOR MOTEL	PO BOX 69		ONLEY, VA 23418–0000	804–787–8000
DAYS INN/PETERSBURG SOUTH.	PO BOX 1509	12208 SOUTH CRATER ROAD	PETERSBURG, VA 23805–	804–733–4400
QUALITY INN		11025 S CRATER ROAD	PETERSBURG, VA 23805–	804–733–0600
HYATT—RESTON TOWN CENTER.		1800 PRESIDENT STREET	RESTON, VA 22090–	703–709–1234
BERKELEY HOTEL		1200 E CARY STREET	RICHMOND, VA 23210–	804–780–1300
COMFORT INN CORPORATE GATEWAY.		8710 MIDLOTHIAN TURNPIKE	RICHMOND, VA 23235–	804–320–8900
COURTYARD BY MARRIOTT RICHMOND WEST.		6400 W BROAD STREET	RICHMOND, VA 23230–	804–282–1881
EMBASSY SUITES HOTEL		2925 EMERYWOOD PARKWAY	RICHMOND, VA 23294–0000	804–672–8585
HOLIDAY INN CENTRAL		3207 N BLVD	RICHMOND, VA 23230–	804–359–9441
HOLIDAY INN KOGER CENTER SOUTH EXEC CONF CTR.		1021 KOGER CENTER BOULEVARD.	RICHMOND, VA 23235–	804–379–3800
HOLIDAY INN RICHMOND		6531 W BROAD STREET	RICHMOND, VA 23230–0000	804–285–9951
HYATT RICHMOND		6624 W BROAD STREET	RICHMOND, VA	804–285–1234
LAQUINTA MOTOR INN		6910 MIDLOTHIAN PIKE	RICHMOND, VA 23225–5635	804–745–7100
LINDEN ROW INN		100 E. FRANKLIN STREET	RICHMOND, VA 23219–	804–783–7000
MARRIOTT HOTEL		500 E BROAD STREET	RICHMOND, VA 23219–	804–343–6900
OMNI RICHMOND HOTEL		100 S 12TH STREET	RICHMOND, VA 23219–0000	804–344–7000
RADISSON HOTEL		555 E CANAL STREET	RICHMOND, VA 23219–	804–788–0900
RED ROOF INN #086		4350 COMMERCE ROAD	RICHMOND, VA 23234–	804–271–7240
RICHMOND MARRIOTT		500 E BROAD STREET	RICHMOND, VA 23219–	804–643–3400
RICHMOND SUPER 8 MOTEL		7200 W BROAD STREET	RICHMOND, VA 23294–	804–672–8128
SHERATON INN—RICHMOND AIRPORT.		4700 S LABURNUM AVENUE	RICHMOND, VA 23231–0000	804–226–4300
THE JEFFERSON		104 W FRANKLIN STREET	RICHMOND, VA 23220–	804–788–8000
HOLIDAY INN AIRPORT		6626 THIRLANE ROAD	ROANOKE, VA 24019–0000	703–366–8861
HOLIDAY INN CENTRAL		1927 FRANKLIN ROAD	ROANOKE, VA 24016–	703–343–0121
SHERATON INN ROANOKE AIRPORT.		2727 FERNDALE DRIVE NW	ROANOKE, VA 24017–	703–362–4500
SLEEP INN—TANGLEWOOD		4045 ELECTRIC ROAD	ROANOKE, VA 24014–	703–772–1500
THE MARRIOTT ROANOKE AIRPORT.		2801 HERSHBERGER ROAD NW.	ROANOKE, VA 24017–	703–563–9300
COMFORT INN ROCKY MT. SMITH MTN. LAKE.		950 NORTH MAIN STREET	ROCKY MOUNT, VA 24151–	703–489–4000
COMFORT INN—CARMEL CHURCH.	P.O. BOX 105	RT 207 & I–95 @ EXIT 104	RUTHER GLEN, VA 22546–	804–448–2828
QUALITY INN ROANOKE/SALEM.		179 SHERATON DRIVE	SALEM, VA 24153–	703–562–1912
RICHMOND AIRPORT HILTON		5501 EUBANK ROAD	SANDSTON, VA 23150–1909	
RICHMOND AIRPORT HILTON		5501 EUBANK ROAD	SANDSTON, VA 23150–0000	804–226–6400
HILTON—SPRINGFIELD		6550 LOISDALE ROAD	SPRINGFIELD, VA 22150–0000	703–971–8900
DAYS INN AQUIA		2868 JEFFERSON DAVIS HWY	STAFFORD, VA 22554–	703–659–0022
COMFORT INN		1302 RICHMOND AVENUE	STAUNTON, VA 24401–0000	703–886–5000
SHERATON INN STAUNTON	PO BOX 3209		STAUNTON, VA 24401–	703–248–5020
COMFORT INN—STEPHENS CITY.	RT 1 BOX406B		STEPHENS CITY, VA 22655–0000.	703–869–6500
HAMPTON INN DULLES AIRPORT.		45440 HOLIDAY DRIVE	STERLING, VA 22170–	703–471–8300
HOLIDAY INN DULLES AIRPORT.		1000 SULLEY ROAD	STERLING, VA 22170–	703–471–7411
HOLIDAY INN—SUFFOLK		2864 PRUDEN BOULEVARD	SUFFOLK, VA 23434–	804–934–2311
VA MOTOR LODGES, INC T/A HOWARD JOHNSON LODGE.	PO BOX 100	I–81 EXIT 150—B	TROUTVILLE, VA 24175–	703–992–3000
EMBASSY SUITES—TYSONS		8517 LEESBURG PIKE	VIENNA, VA 22182–0000	703–883–0707
TYSONS CORNER MARRIOTT		8028 LEESBURG PIKE	VIENNA, VA 22180–	703–734–3200
VIENNA WOLFTRAP MOTEL		430 MAPLE AVENUE WEST	VIENNA, VA 22180–	703–281–2330
BREAKERS RESORT		1503 ATLANTIC AVENUE	VIRGINIA BEACH, VA 23451–0000.	804–428–1821
COLONIAL INN MOTEL		2809 ATLANTIC AVENUE	VIRGINIA BEACH, VA 23451–	804–428–8163
COMFORT INN		2800 PACIFIC AVENUE	VIRGINIA BEACH, VA 23451–0000.	804–428–2203
COMFORT INN LYNNHAVEN		804 LYNNHAVEN PARKWAY	VIRGINIA BEACH, VA 23952–	804–427–5500
COURTYARD BY MARRIOTT VIRGINIA BEACH NORFOLK.		5700 GREENWICH ROAD	VIRGINIA BEACH, VA 23462–	804–490–2002
DAYS INN OCEANFRONT		3107 ATLANTIC AVENUE	VIRGINIA BEACH, VA 23451–	804–428–7233
ECONO LODGE CHESAPEAKE BEACH.		2968 SHORE DRIVE	VIRGINIA BEACH, VA 23451–	804–481–0666

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
FAIRFIELD INN BY MARRIOTT VIRGINIA BEACH.	.....	4760 EUCLID ROAD	VIRGINIA BEACH, VA 23462– ...	804–499–1935
FOUNDERS INN & CONFERENCE CENTER.	.....	5641 INDIAN RIVER ROAD	VIRGINIA BEACH, VA 23464–0000.	804–424–5511
HILTON—VIRGINIA BEACH	.....	0710 ATLANTIC AVENUE	VIRGINIA BEACH, VA 24121– ...	703–721–8870
HOLIDAY INN EXECUTIVE CENTER.	.....	5655 GREENWICH ROAD	VIRGINIA BEACH, VA 23462– ...	804–499–4400
HOWARD JOHNSON LODGE	.....	5173 SHORE DRIVE	VIRGINIA BEACH, VA 23455– ...	804–460–1151
LA QUINTA MOTOR INN	.....	192 NEWTOWN ROAD	VIRGINIA BEACH, VA 23462–2401.	804–497–6620
OCEANFRONT INN	.....	2901 ATLANTIC AVENUE	VIRGINIA BEACH, VA 23451– ...	804–440–5100
PARK INN	.....	0424 ATLANTIC AVENUE	VIRGINIA BEACH, VA 23451– ...	840–425–2200
RAMADA INN	.....	5700 ATLANTIC AVENUE	VIRGINIA BEACH, VA 23451– ...	804–428–7025
SHERATON BEACH INN	.....	3601 ATLANTIC AVENUE	VIRGINIA BEACH, VA 23451– ...	804–425–8000
VIRGINIA BEACH HILTON INN .	.....	8TH ST. AND ATLANTIC AVE ...	VIRGINIA BEACH, VA 23451–3528.	804–428–8935
COMFORT INN	.....	6633 LEE HIGHWAY	WARRENTON, VA 22186–	703–349–8900
HOJO INN	.....	6 BROADVIEW AVE	WARRENTON, VA 22186–	703–347–4141
HOLIDAY INN AFTON WAYNESBORO.	PO BOX 849	.....	WAYNESBORO, VA 22980–	.....
HOLIDAY INN WAYNESBORO ..	PO BOX 849	I–64 RT. 250	WAYNESBORO, VA 22980–	703–942–5200
COURTYARD BY MARRIOTT WILLIAMSBURG.	.....	470 MCLAWS CIRCLE	WILLIAMSBURG, VA 23187–	804–221–0700
DAYS INN HISTORIC AREA	.....	331 BYPASS ROAD	WILLIAMSBURG, VA 23185–	804–253–1166
FAIRFIELD INN WILLIAMSBURG.	.....	6493 RICHMOND ROAD	WILLIAMSBURG, VA 23185–	804–565–1111
GOVERNOR'S INN	.....	506 NORTH HENRY STREET ...	WILLIAMSBURG, VA 23185–	804–229–1000
HOLIDAY INN DOWNTOWN & HOLIDOME.	.....	814 CAPITOL LANDING ROAD .	WILLIAMSBURG, VA 23185–	804–229–0200
HOLIDAY INN EXPRESS	.....	119 BYPASS ROAD	WILLIAMSBURG, VA 23185–	804–253–1665
HOLIDAY INN PATRIOT	.....	3032 RICHMOND ROAD	WILLIAMSBURG, VA 23185–	804–565–2600
HOSPITALITY HOUSE	.....	415 RICHMOND ROAD	WILLIAMSBURG, VA 23185–	804–229–4020
HOWARD JOHNSON HISTORIC HOTEL.	.....	7135 POCAHONTAS TRAIL	WILLIAMSBURG, VA 23185–	804–229–6900
QUALITY INN KINGSMILL	.....	480 MCLAWS CIRCLE	WILLIAMSBURG, VA 23187–0000	804–220–1100
THE WOODLANDS WINGS D, E, F, & G.	PO BOX B	.....	WILLIAMSBURG, VA 23185–	804–229–1000
WILLIAMSBURG DAYS INN EAST.	.....	90 OLD YORK ROAD	WILLIAMSBURG, VA	804–253–6444
ECHO VILLAGE MOTEL	.....	3632 VALLEY PIKE	WINCHESTER, VA 22602–0000	703–869–1900
HAMPTON INN	.....	1655 APPLE BLOSSOM DRIVE	WINCHESTER, VA 22601–0000	703–667–8011
HOLIDAY INN EAST	.....	1054 MILLWOOD PIKE	WINCHESTER, VA 22601–	703–667–3300
SUPER 8 MOTEL—WINCHESTER.	RT 250 E	1077 MILLWOOD PIKE	WINCHESTER, VA 22602–0000	703–665–4450
TRAVELODGE OF WINCHESTER.	.....	160 FRONT ROYAL PIKE	WINCHESTER, VA 22602–0000	703–665–0685
COMFORT INN	.....	1109 HORNER ROAD	WOODBRIDGE, VA 22191–0000	703–494–0300
DAYS INN POTOMAC MILLS	.....	14619 POTOMAC MILLS ROAD	WOODBRIDGE, VA 22192–	703–494–4433
RAMADA INN	.....	1130 MOTEL DRIVE	WOODSTOCK, VA 22664–	703–459–5000
Virgin Islands				
HYATT REGENCY	.....	GREAT CRUZ BAY	ST. JOHN, VI 00830–	809–776–7171
MARRIOT FRENCHMAN'S REEF RESORT.	.....	#4 ESTATE BAKKEROE	ST. THOMAS, VI 00802–	809–776–8500
MARRIOTT'S MORNINGSTAR BEACH RESORT.	.....	5 ESTATE BAKKEROE	ST. THOMAS, VI 00802–	809–776–8500
SUGAR BAY PLANTATION RESORT.	.....	6500 ESTATE SMITH BAY	ST. THOMAS, VI 00802–	809–777–7100
THE GRAND PALAZZO HOTEL	.....	GREAT BAY ESTATE NAZARETH.	ST. THOMAS, VI 00802–	809–775–3333
Vermont				
VILLAGE HOUSE INN OF ALBANY.	.....	RT. 14	ALBANY, VT 05820–	.....
WHIMSEY FARM BED & BREAKFAST.	.....	OLD DEPOT RD	ARLINGTON, VT 05250–	802–375–6654
YANKEE VILLAGE MOTEL	.....	RT. 5N	ASCUTNEY, VT 05030–	.....
HO JO INN	.....	573 N. MAIN ST	BARRE, VT 05678–	.....
KNOLL MOTEL MAIN LODGE ...	.....	1015 N. MAIN ST	BARRE, VT 05678–	.....
ROCKINGHAM MOTOR INN	.....	RT. 5	BELLOWS FALLS, VT 05101– ...	.....
APPLE VALLEY INN AND CAFE	.....	RT. 7 S	BENNINGTON, VT 05201–	.....
SOUTHSHIRE INN	.....	124 ELM ST	BENNINGTON, VT 05201–	.....

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Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
LAGUE INN		AIRPORT RD	BERLIN, VT 05602–	802–229–5765
MAPLEWOOD MOTEL COMFORT INN.		BERLIN FOUR CORNERS	BERLIN, VT 05602–	802–329–5291
EDGEWATER MOTEL		RT. 30	BOMOSEEN, VT 05732–	
BRADFORD MOTEL		RT. 5	BRADFORD, VT 05033–	
BRANDON INN		20 PARK ST	BRANDON, VT 05733–	
LILAC INN		53 PARK ST	BRANDON, VT	–247–5463
COLONIAL MOTEL		PUTNEY RD	BRATTLEBORO, VT 05301–	802–254–3377
HOLLY HOTEL		CANAL ST	BRATTLEBORO, VT 05301–	
SUPER 8 MOTEL		PUTNEY RD	BRATTLEBORO, VT 05301–	
WEST VILLAGE MOTEL		480 WESTERN AVE	BRATTLEBORO, VT 05301–	802–254–5610
CEDARBROOK MOTEL		JCT. RT. 4 100 S	BRIDGEWATER CORNERS, VT 05035–.	
CORNER INN		RT. 4	BRIDGEWATER CORNERS, VT 05035–.	802–672–9968
BRISTOL COMMONS INN UNITS 1–6.		JCT. RT. 116 & 117	BRISTOL, VT 05443–	802–453–2326
BRISTOL COMMONS INN UNITS 7–12.		JCT. RT. 116 & 117	BRISTOL, VT 05443–	802–453–2326
GREEN TRAILS INN			BROOKFIELD, VT 05036–	
GREEN TRAILS LODGE			BROOKFIELD, VT 05036–	
BEL AIRE MOTEL		111 SHELBURN RD	BURLINGTON, VT 05401–	802–863–3116
MID TOWN MOTEL		230 MAIN ST	BURLINGTON, VT	
STERLING RIDGE BED & BREAKFAST.		25 TOWN RD	CAMBRIDGE, VT 05444–	802–527–7173
LAKE WALLACE MOTEL	PO BOX 18	HCR 60	CANNAN, VT 05903–	802–266–3311
CAVENDISH VERANDA INN		MAIN ST	CAVENDISH, VT 05142–	
GREEN LEAF INN		DEPOT ST	CHESTER, VT 05143–	802–875–3171
SECOND WIND BED & BREAKFAST.		GRAFTON ST	CHESTER, VT 05143–	802–875–3438
THE VICTORIA INN		MAIN ST	CHESTER, VT 05143–	609–737–4994
COLCHESTER DAYS INN		23 COLLEGE PKWY	COLCHESTER, VT 05446–	802–553–4622
FAIRFIELD INN		15 S. PARK DR	COLCHESTER, VT 05446–	802–655–9031
HAMPTON INN		RT. 7 EXIT 16 I–89	COLCHESTER, VT 05446–	802–655–0611
GOOSE GREEN LODGE		GOOSE GREEN	CORINTH, VT 05039–	
CRAFTSBURY BED & BREAKFAST.		CRAFTSBURY COMMON	CRAFTSBURY COMMON, VT 05827–.	
CRAFTSBURY CENTER LARGE DORM.	PO BOX 31		CRAFTSBURY COMMON, VT 05827–.	
CRAFTSBURY CENTER SMALL DORM.	PO BOX 31	CRAFTSBURY COMMON	CRAFTSBURY COMMON, VT 05827–.	
INN ON THE COMMON NORTH ANNEX.			CRAFTSBURY COMMON, VT 05827–.	517–729–1600
PEPINS MOTEL		RT. 5	DERBY, VT 05829–	802–334–6080
SUPER 8 MOTEL		RT. 5 DERBY RD	DERBY, VT 05829–	
MOUNTAIN VIEW CREAMERY BED & BREAKFAST.		DARLING FARM	EAST BURKE, VT 05832–	517–729–1600
ANNEX		RT. 125	EAST MIDDLEBURY, VT 05740–.	
ESSEX MOTOR INN		65 PEARL ST	ESSEX JUNCTION, VT	802–878–3343
ALOHA MANOR		LAKE MOREY	FAIRLEE, VT 05045–	
LAKE MOREY INN	PO BOX 48		FAIRLEE, VT 05045–	802–333–4311
THE GARRISON		RT. 17	FAYSTON, VT 05660–	
SEYON MAIN LODGE		VERMONT GROTON STATE PARK.	GROTON, VT 05046–	802–244–8711
QUECHEE GORGE MOTEL		RT. 4	HARTFORD, VT 05047–	802–295–2654
TELEMARK GORE BED & BREAKFAST.		ELLISON RD	HARTLAND, VT 05048–	802–436–3246
TYLER PLACE		RT. 78	HIGHGATE SPRINGS, VT 05460–.	
BRICK HOUSE BED & BREAKFAST.		RT. 14	IRASBURG, VT 05845–	802–754–2108
LAKEFRONT MOTEL		CROSS ST	ISLAND POND, VT 05846–	
INGLENOOK LODGE INC		RT. 242	JAY PEAK, VT 05859–	802–988–2880
SLOPESIDE CONDOMINIUMS BUILDING H.		RT. 242	JAY PEAK, VT 05859–	802–988–2611
ALPENHOF		ACCESS RD	KILLINGTON, VT 05751–	
CHALET SALZBURG		KILLINGTON RD	KILLINGTON, VT	
CORTINA INN		RT. 4 KILLINGTON RD	KILLINGTON, VT 05751–	802–773–3331
INN OF THE SIX MOUNTAINS		KILLINGTON RD	KILLINGTON, VT 05751–	
DOSTALS RESORT LODGE		MAGIC MOUNTAIN	LONDONDERRY, VT 05148–	
SWISS INN		RT. 11	LONDONDERRY, VT 05148–	802–824–3442

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
ANDRIE ROSE INN		13 PLEASANT ST	LUDLOW, VT 05149–	802–228–4948
BLACK RIVER INN		100 MAIN ST	LUDLOW, VT 05149–	
COLONIAL MOTEL ANNEX #1		1 GLEA SCOTT AVE	LUDLOW, VT 05149–	
GOVERNOR'S INN		86 MAIN ST	LUDLOW, VT 05149–	
LUDLOW COLONIAL MOTEL		93 MAIN ST	LUDLOW, VT 05149–	
TIMBER INN		RT. 103	LUDLOW, VT 05149–	802–228–8866
BRANCH BROOK BED & BREAKFAST.		S. WEELOCK RD	LYNDON, VT 05849–	802–825–8316
DAYS INN		RT. 5	LYNDONVILE, VT 05851–	
BIRCH HILL INN		WEST RD	MANCHESTER, VT	
SETH WARNER INN		RT. 7A	MANCHESTER, VT	802–362–3830
MOUNTAIN SON MOTOR INN		RT. 4	MENDON, VT 05701–	
MOUNTAIN VIEW HOTEL		RT. 4	MENDON, VT 05701–	802–773–4311
MIDDLEBURRY INN & MOTEL		17–19 N. PLEASANT ST	MIDDLEBURY, VT 05753–	
SWIFT HOUSE INN		57 N. PLEASANT ST	MIDDLEBURY, VT 05753–	
MIDDLETOWN SPRINGS INN			MIDDLETOWN SPRINGS, VT 05757–.	802–235–2198
SLOVAKIA INN		1 MAIN ST	MONTGOMERY CENTER, VT	
ECONO LODGE		101 NORTHFIELD ST	MONTPELIER, VT	
INN AT MONTPELIER ANNEX		145 MAIN ST	MONTPELIER, VT	802–229–4184
THE INN AT MONTPELIER		147 MAIN ST	MONTPELIER, VT	-229–4184
FARM RESORT INC		RT. 100	MORRISVILLE, VT 05661–	802–888–3525
PLAZA HOTEL	PO BOX 590	RR. 1	MORRISVILLE, VT 05661–	
SUNSET MOTEL		RT. 15 & 100	MORRISVILLE, VT 05661–	
SUNSET MOTEL UNIT 88	RT. 15		MORRISVILLE, VT	
SUNSET MOTEL UNIT 89	RT. 15		MORRISVILLE, VT	-888–4956
SUGAR HOUSE MOTOR INN		RT. 7	NEW HAVEN, VT 05472–	802–388–2770
NEWFANE INN		RT. 30	NEWFANE, VT 05345–	
NEWPORT CITY MOTEL		974 E. MAIN ST	NEWPORT, VT	
JIMMOS FOUR CORNER MOTEL BLDG. 1.		RT. 7	NORTH FERRISBURG, VT 05473–.	802–425–2967
JIMMOS FOUR CORNER MOTEL BLDG. 2.		RT. 7	NORTH FERRISBURG, VT 05473–.	802–425–2967
JIMMOS FOUR CORNER MOTEL BLDG. 3.		RT. 7	NORTH FERRISBURG, VT 05473–.	802–425–2967
CARRIAGE HOUSE INN		RT. 105	NORTH TROY, VT 05859–	
NORTHFIELD INN		HIGHLAND AVE	NORTHFIELD, VT 05663–	
NORWICH INN		225 MAIN ST	NORWICH, VT 05055–	802–649–1143
NORWICH INN MOTEL		MAIN ST	NORWICH, VT 05055–	802–649–1143
GWENDOLYN'S INN		RT. 106	PERKINSVILLE, VT 05151–	
FARM & WILDERNESS CAMP			PLYMOUTH, VT 05056–	
PLYMOUTH TOWNE INN			PLYMOUTH, VT 05056–	802–673–4059
SALT ASH INN		RT. 100 & 100A	PLYMOUTH, VT 05056–	802–672–3748
LADD BROOK MOTOR INN		RT. 7	POWNAL, VT 05261–	802–823–7341
ALLEN'S INN		DEPOT ST	PROCTORSVILLE, VT 05153–	
OLIVER B & B ABEL BARRON HOUSE.		37 MAIN ST	QUECHEE, VT 05059–	802–296–6978
QUECHEE GORGE MOTEL BLDG. C.		RT. 4	QUECHEE, VT 05059–	802–295–2654
THE CROSSING MOTEL		14 PROVINCE ST	RICHFORD, VT 05476–	802–848–3383
MAMA BOWERS B & B		MAIN ST	RICHMOND, VT 05477–	802–434–2632
RICHMOND VICTORIAN INN		RT. 2	RICHMOND, VT 05477–	802–434–4440
WINSLOW HOUSE		N. PARK ST	ROCHESTER, VT 05767–	
MADRIGAL INN & FINE ARTS CENTER.		RT. 103	ROCKINGHAM, VT 05101–	802–463–1339
COMFORT INN		19 ALLEN ST	RUTLAND, VT	
HOGGE PENNY MOTOR INN		RT. 4	RUTLAND, VT	
HOLIDAY INN		RT. 7S	RUTLAND, VT	
HOWARD JOHNSONS MOTOR LODGE.		RT. 7S	RUTLAND, VT	
INN AT RUTLAND		70 N. MAIN ST	RUTLAND, VT	
SUNSET MOTEL		238 S. MAIN ST	RUTLAND, VT	
LONGMEADOW FARM BED & BREAKFAST TOURIST.	PO BOX 5	RFD #1	RYEGATE, VT 05042–	802–757–2538
HILLBROOK MOTEL		RT. 7A	SHAFTSBURY, VT 05262–	
DUTCH MILL MOTEL BLDG. 14–20.		2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568
DUTCH MILL MOTEL BLDG. UNITS 1–5.		2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568
DUTCH MILL MOTEL BLDG. UNITS 6–12.		2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568
DUTCH MILL MOTEL CABIN 21		2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
DUTCH MILL MOTEL CABIN 22	.....	2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568
DUTCH MILL MOTEL CABIN 23	.....	2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568
DUTCH MILL MOTEL CABIN 24	.....	2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568
DUTCH MILL MOTEL CABIN 25	.....	2056 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3568
ECONO LODGE (HEMLOCK)	.....	1961 SHELBURNE RD	SHELBURNE, VT	802–985–3377
ECONO LODGE (MAPLE BUILDING).	.....	1961 SHELBURNE RD	SHELBURNE, VT	802–985–3377
ECONO LODGE (SPRUCE BUILDING).	.....	1961 SHELBURNE RD	SHELBURNE, VT	802–985–3377
ECONO LODGE (WILLOW BUILDING).	.....	1961 SHELBURNE RD	SHELBURNE, VT	802–985–3377
ECONO LODGE ELM BUILDING	.....	1961 SHELBURNE RD	SHELBURNE, VT	802–985–3377
ECONO LODGE OFFICE	.....	1960 SHELBURNE RD	SHELBURNE, VT	.....
NORTH STAR MOTEL	.....	1904 SHELBURNE RD	SHELBURNE, VT 05482–	802–863–3421
SHELBURNE HOUSE	.....	HARBOR RD	SHELBURNE, VT 05482–	802–985–3556
T BIRD MOTEL BLDG. 1	.....	2062 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3663
T BIRD MOTEL BLDG. 2	.....	2062 SHELBURNE RD	SHELBURNE, VT 05482–	802–985–3663
PICO RESORT HOTEL	.....	SHERBURNE PASS	SHERBURNE, VT 05751–	.....
COMFORT INN	.....	1285 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–865–3400
ECONO LODGE	.....	1076 WILLISTON RD	SOUTH BURLINGTON, VT 11198–.	.....
ECONOMY INNS	.....	2040 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–658–5660
FLIGHT INN	.....	1710 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–985–8002
FRIENDSHIP LAKEVIEW INN	.....	1860 SHELBURNE RD	SOUTH BURLINGTON, VT	.....
HANDYS TOWN HOUSE	.....	1330 SHELBURNE RD	SOUTH BURLINGTON, VT 05403–.	.....
HARBOR SUNSET MOTEL	.....	1700 SHELBURNE RD	SOUTH BURLINGTON, VT 05403–.	802–864–5080
HO HUM MOTEL	.....	1200 SHELBURNE RD	SOUTH BURLINGTON, VT	.....
HOLIDAY INN	.....	1068 WILLISTON RD	SOUTH BURLINGTON, VT	.....
HOWARD JOHNSON HOTEL AND QUALITY INN.	.....	1720 SHELBURNE RD	SOUTH BURLINGTON, VT 05403–.	.....
HOWARD JOHNSON MOTOR LODGE.	.....	1 DORSET ST	SOUTH BURLINGTON, VT 05403–.	.....
RAMADA INN	.....	1117 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–656–0250
SHERATON BURLINGTON HOTEL.	.....	870 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–863–6576
SWISS HOST MOTEL CABINS ..	.....	1272 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–862–5734
SWISS HOST MOTEL OFFICE BUILDING.	.....	1272 WILLISTON RD	SOUTH BURLINGTON, VT	802–862–5734
SWISS HOST MOTEL UNIT	.....	1272 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–862–5734
SWISS HOST MOTEL UNIT 9 BUILDING.	.....	1272 WILLISTON RD	SOUTH BURLINGTON, VT 05403–.	802–862–5734
TOWN & COUNTRY MOTEL BLDG. 1.	.....	490 SHELBURNE RD	SOUTH BURLINGTON, VT 05403–.	802–862–5785
PAL O MAR MOTEL	.....	2 LINHALE DR	SPRINGFIELD, VT	.....
SUNRISE TAVERN BED & BREAKFAST.	.....	RT. 2A	ST. GEORGE, VT 05495–	802–482–3135
AIMES MOTEL	.....	JCT. RT. 2 & 18	ST. JOHNSBURY, VT	.....
FAIRBANKS MOTOR INN	.....	32 WESTERN AVE	ST. JOHNSBURY, VT 05819– ...	.....
HOLIDAY MOTEL	.....	HASTINGS ST	ST. JOHNSBURY, VT 05819– ...	802–748–2393
MAPLE CENTER MOTEL	.....	20 HASTINGS ST	ST. JOHNSBURY, VT 05819– ...	802–748–2393
RIVERSIDE MOTOR COURT	.....	RT. 5	ST. JOHNSBURY, VT 05819– ...	802–748–9404
YANKEE TRAVELER MOTEL ANNEX.	.....	66 PORTLAND ST	ST. JOHNSBURY, VT 05819– ...	802–748–8127
YANKEE TRAVELER MOTEL MAIN BLDG.	.....	.....	ST. JOHNSBURY, VT 05819– ...	802–748–2393
ALPENROSE MOTEL	.....	2619 MOUNTAIN RD	STOWE, VT 05672–	802–253–7277
COMMODORES	.....	.....	STOWE, VT 05672–	.....
DIE ALPENROSE	.....	2619 MOUNTAIN RD	STOWE, VT 05672–	.....
FIDDLERS GREEN INN	.....	4859 MOUNTAIN RD	STOWE, VT 05672–	.....
GABLES INN	.....	1457 MOUNTAIN RD	STOWE, VT 05672–	802–253–7730
GOLDEN EAGLE MOTEL MAIN BUILDING.	.....	MOUNTAIN RD	STOWE, VT 05672–	802–253–4811
GOLDEN EAGLE MOTEL NORTH WING.	.....	RT. 108 MOUNTAIN RD	STOWE, VT 05672–	.....

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GOLDEN EAGLE MOTEL TERRACE.		RT. 108 MOUNTAIN RD	STOWE, VT 05672–	
GOLDEN EAGLE RESORT EAST WING.		1110 MOUNTAIN RD	STOWE, VT 05672–	802–253–4811
GOLDEN KITZ MOTEL		1965 MOUNTAIN RD	STOWE, VT 05672–	802–253–4217
HONEYWOOD COUNTRY LODGE.		4527 MOUNTAIN RD	STOWE, VT 05672–	802–253–4124
INN AT TURNER MILL		56 TURNER MILL LN	STOWE, VT 05672–	
INNSBRUCK MOTOR INN		4361 MOUNTAIN RD	STOWE, VT 05672–	
MOUNTAIN ROAD RESORT AT STOWE.		ON THE MOUNTAIN RD	STOWE, VT 05672–	802–253–4566
PEACOCK MOTEL & LODGE		RT. 100	STOWE, VT 05672–	
PINES MOTEL UPPER BUILDING.		1203 WATERBURY RD	STOWE, VT 05672–	
SALZBURG INN		RT. 108	STOWE, VT 05672–	
SCANDINAVIAN INN	RR. 1	RT. 108	STOWE, VT 05672–	802–253–8541
SPRUCE POND INN		1250 WATERBURY RD	STOWE, VT 05672–	
THE INN AT THE MOUNTAIN		5781 MOUNTAIN RD	STOWE, VT 05672–	802–253–4236
TOSCANA COUNTRY INN		MOUNTAIN RD	STOWE, VT 05672–	802–253–7311
TOWN & COUNTRY MOTOR LODGE.		MOUNTAIN RD	STOWE, VT 05672–	802–253–2313
LIFTLINE LODGE BERGHAUS		STRATTON MOUNTAIN RD	STRATTON MOUNTAIN, VT 05360–.	
LIFTLINE LODGE GLOCKEN HOFF.		STRATTON MOUNTAIN RD	STRATTON MOUNTAIN, VT 05155–.	
LIFTLINE LODGE MAIN LODGE		STRATTON MOUNTAIN RD	STRATTON MOUNTAIN, VT 05155–.	
INN AT SUNDERLAND		RT. 7A	SUNDERLAND, VT 05250–	802–362–4213
BOARDMAN HOUSE		TOWNSHEND COMMON	TOWNSHEND, VT 05353–	
CARPENTER FARM INN		MEADOW RD	WAITSFIELD, VT 05673–	
MAD RIVER INN		PINE RD	WAITSFIELD, VT 05673–	802–496–7900
MIGUELS STOWE AWAY		SUGARBUSH ACCESS RD	WARREN, VT 05674–	
POWDERHOUND INN		RT. 100	WARREN, VT 05674–	
SUGAR LODGE		SUGARBUSH ACCESS RD	WARREN, VT 05674–	
SUGARTREE A COUNTRY INN	PO BOX 38	SUGARBUSH ACCESS RD	WARREN, VT 05674–	802–583–3211
GATEWAY MOTEL		73 S. MAIN ST	WATERBURY, VT 05676–	802–229–4195
HOLIDAY INN		BLUSH HILL RD	WATERBURY, VT 05676–	802–244–7822
INN AT WEATHERSFIELD		RT. 106	WEATHERSFIELD, VT 05151–	
P & H TRUCK STOP		RT. 302 & I–91	WELLS RIVER, VT 05081–	802–429–2141
DALEM CHALET		16 SOUTH ST	WEST BRATTLEBORO, VT	
ANDIRONS MOTOR LODGE	RT. 100		WEST DOVER, VT	
AUSTIN HILL INN		RT. 100	WEST DOVER, VT 05356–	
AUSTRIAN HAUS		RT. 100	WEST DOVER, VT 05356–	802–464–3911
DOVEBERRY INN		RT. 100	WEST DOVER, VT 05356–	802–464–5652
INN AT SAWMILL FARM		RT. 100	WEST DOVER, VT 05356–	
SHIELD INN		RT. 100	WEST DOVER, VT 05356–	802–464–3984
SNOW DEN INN		RT. 100	WEST DOVER, VT 05356–	802–464–9355
THE LODGE	RT. 100		WEST DOVER, VT 05356–	802–464–5904
WEST DOVER INN		RT. 100	WEST DOVER, VT 05356–	
OTTAUQUECHEE MOTEL		RT. 4	WEST WOODSTOCK, VT 05091–.	
KURN HATTIN JENNY BALL COTTAGE.			WESTMINSTER, VT 05158–	
CHENEY WILLOUGHBY HOUSE CAMP FOR YOUTH.		OFF VERMONT RT. 5A	WESTMORE, VT 05860–	802–244–8711
1830 INN ON THE GREEN		MAIN ST	WESTON, VT 05161–	802–824–6789
FRIENDLY ACRES MOTEL & INN.		RT. 100	WESTON, VT 05161–	
INN AT WESTON		RT. 100	WESTON, VT 05161–	
WILDER HOMESTEAD INN		LAWRENCE HILL RD	WESTON, VT 05161–	
COACH AN' FOUR MOTEL		RT. 5S	WHITE RIVER JUNCTION, VT 05001–.	
GREEN MOUNTAINEER MOTEL		RT. 5S	WHITE RIVER JUNCTION, VT 05001–.	
HOTEL COOLIDGE		15–23 MAIN ST	WHITE RIVER JUNCTION, VT 05001–.	
PINE CREST MOTEL	RT. 5	457 N. HARTLAND RD	WHITE RIVER JUNCTION, VT 05001–.	
SHADY LAWN MOTEL		RT. 14 89 MAPLE ST	WHITE RIVER JUNCTION, VT 05001–.	
SUSSE CHALET INN		SYKES AVE	WHITE RIVER JUNCTION, VT 05001–.	

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WILDER MOTEL		RT. 5	WILDER, VT 05088–	
AUTUMN CREST INN		CLARK RD	WILLIAMSTOWN, VT 05679–	
BRYANTS TOURIST HOME	PO BOX 52	PARTRIDGE HILL	WILLISTON, VT 05495–	802–878–4741
RESIDENCE INN GATE HOUSE		1 HURRICANE LN	WILLISTON, VT 05495–	914–896–5210
SUSSE CHALET		590 ST. GEORGE RD	WILLISTON, VT 05495–	
AVERILL STAND		RT. 100	WILMINGTON, VT 05363–	
CRAFTS INN ALONZO'S		MAIN ST	WILMINGTON, VT 05363–	
MISTY MOUNTAIN LODGE		STOWE HILL RD	WILMINGTON, VT 05363–	
NUTMEG INN		RT. 9	WILMINGTON, VT 05363–	
TRAILS END LODGE		SMITH RD	WILMINGTON, VT 05363–	
VINTAGE MOTEL		RT. 9	WILMINGTON, VT 05363–	802–464–8824
WHITE HOUSE OF WILMINGTON.		RT. 9	WILMINGTON, VT 05363–	802–464–2135
MOUNTAINEER LODGE		RT. 11	WINHALL, VT 05340–	
1830 SHIRE TOWN INN		31 SOUTH ST	WOODSTOCK, VT 05091–	802–457–1830
BRAESIDE MOTEL		RT. 4	WOODSTOCK, VT 05091–	
CANTERBURY HOUSE B & B		43 PLEASANT ST	WOODSTOCK, VT 05091–	802–457–3843
CARRIAGE HOUSE OF WOODSTOCK.		15 RT. 4 W	WOODSTOCK, VT 05091–	
CHARLESTON HOUSE		21 PLEASANT ST	WOODSTOCK, VT 05091–	802–457–3843
PAINE BED & BREAKFAST		3 CHURCH ST	WOODSTOCK, VT 05091–	
SHIRE MOTEL		46 PLEASANT ST	WOODSTOCK, VT 05091–	802–457–2211
VILLAGE INN OF WOODSTOCK		41 PLEASANT ST	WOODSTOCK, VT 05091–	802–457–1255
WINSLOW HOUSE		RT. 4	WOODSTOCK, VT 05091–	802–457–1820
WOODSTOCK BED & BREAKFAST.		61 RIVER ST	WOODSTOCK, VT 05091–	802–457–3896
WOODSTOCK INN & RESORT		14 THE GREEN	WOODSTOCK, VT 05091–	802–457–1100
Washington				
MAJESTIC HOTEL		419 COMMERCIAL AVE	ANACORTES, WA 98221–	206–293–3355
THE MARINA INN		3300 COMMERCIAL AVE	ANACORTES, WA 98221–	206–293–1100
ARLINGTON MOTOR INN	PO BOX 3367	2214 STATE RT. 530	ARLINGTON, WA 98223–	206–652–9595
NENDELS VALU INN		102 15TH ST. NE	AUBURN, WA 98002–	206–833–9007
PONY SOLDIER MOTOR INN		1521 D ST. NE	AUBURN, WA 98002–	206–939–5950
VAL U INN AUBURN		9 14TH NW	AUBURN, WA 98001–	206–735–9600
BELFAIR MOTEL	PO BOX 1135	NE 23322 HWY. #3	BELFAIR, WA 98528–	206–275–4485
BELLEVUE HILTON HILL		100 112TH AVE. NE	BELLEVUE, WA 98004–	206–455–3330
BELLEVUE INN		11211 MAIN ST	BELLEVUE, WA 98004–	206–455–5240
COURTYARD BY MARRIOTT SEATTLE BELLEVUE.		14615 NE 29TH PL	BELLEVUE, WA 98007–	206–869–5300
HYATT REGENCY BELLEVUE		900 BELLEVUE WAY NE	BELLEVUE, WA 98004–	206–462–1234
RED LION BELLEVUE		300 12TH AVE. SE	BELLEVUE, WA 98004–	206–455–1300
RED LION BELLEVUE CENTER		81 112TH AVE. NE	BELLEVUE, WA 98004–	206–455–1515
RESIDENCE INN SEATTLE EAST.		14455 NE 29TH PL	BELLEVUE, WA 98007–	206–882–1222
BEST WESTERN HERITAGE INN.		151 E. MCLEOD RD	BELLINGHAM, WA 98226–	206–647–1912
HAMPTON INN BELLINGHAM AIRPORT.		3985 BENNETT DR	BELLINGHAM, WA 98225–	206–676–7700
QUALITY INN BARON SUITES		100 E. KELLOGG	BELLINGHAM, WA 98226–	206–647–8000
RAMADA INN		215 SAMISH WAY	BELLINGHAM, WA 98225–	206–734–6830
TRAVELERS INN		3750 MERIDIAN ST	BELLINGHAM, WA 98225–	206–671–4600
VAL U INN BELLINGHAM		805 LAKEWAY DR	BELLINGHAM, WA 98226–	206–671–9600
BIRCH BAY ATH HOSTEL		4639 ALDERSON RD	BLAINE, WA 98230–	206–371–2180
THE INN AT SEMIAHMOO		9565 SEMIAHMOO PKWY	BLAINE, WA 98230–	206–371–2000
ST. THOMAS CONFERENCE CENTER.		14500 JUANITA DR. NE	BOTHELL, WA 98011–	206–823–1300
THE RESIDENCE INN BY MARRIOTT BOTHELL.		11920 NE 195TH ST	BOTHELL, WA 98011–	206–485–3030
WYNDHAM GARDEN HOTEL BOTHELL.		19333 N. CREEK PKWY	BOTHELL, WA 98011–	206–485–5557
THE MADRONA INN MOTEL SEARLE ST. ESTATES, INC.		4910 AUTO CENTER WAY	BREMERTON, WA 98312–	206–479–1300
COMFORT INN		100 HWY. 410	BUCKLEY, WA 98321–	206–829–1100
THE COUNTRY KEEPER BED & BREAKFAST INN.	PO BOX 35	61 MAIN ST	CATHLAMET, WA 98612–	206–795–3030
APPLE INN MOTEL		1002 E. WOODIN AVE	CHELAN, WA 98816–	509–682–4044
MIDTOWNER MOTEL		721 E. WOODIN	CHELAN, WA 98816–	509–682–4051
THE WESTVIEW RESORT MOTEL	RT. 1 BOX 14	2312 W. WOODIN AVE	CHELAN, WA 98816–	509–682–4396
WILLOW SPRINGS MOTEL		5 B ST	CHENEY, WA 99004–	509–235–5138
NORDIG MOTEL		W. 101 GRANT ST	CHEWELAH, WA 99109–	509–935–6704

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NENDELS INN		222 BRIDGE ST	CLARKSTON, WA 99403–	509–758–1631
STAGE COACH INN		107 W. 1ST ST	CLE ELUM, WA 98922–	509–674–4735
COLONEL CROCKET FARM BED & BREAKFAST INN.		1012 S. FORT CASEY RD	COUPEVILLE, WA 98239–	206–678–3711
COUPEVILLE INN		200 COVELAND	COUPEVILLE, WA 98239–	206–678–7015
BLUE MOUNTAIN MOTEL		414 W. MAIN ST	DAYTON, WA 99328–	509–382–3040
RAMADA LTD		22300 7TH AVE. S	DES MOINES, WA 98198–	206–824–9920
THREE BEARS MOTEL		2717 S. 216TH ST	DES MOINES, WA 98198–	206–824–2331
FOUR SEASONS INN		11 WEST GRANT RD	EAST WENATCHEE, WA 98802–.	509–884–6611
RIVERS INN		580 VALLEY MALL PKWY	EAST WENATCHEE, WA 98802–.	509–884–1474
EDMONDS HARBOR INN		130 W. DAYTON	EDMONDS, WA 98020–	206–771–5021
ST. FRANCIS MOTEL		2390 HWY. 99	EDMONDS, WA 98020–	206–775–0496
NITES INN MOTEL		1200 S. RUBY	ELLENSBURG, WA 98926–	509–962–9600
EPHRATA TRAVELODGE		31 BASIN ST. SW	EPHRATA, WA 98823–	509–754–4651
CYPRESS INN EVERETT WASHINGTON.		12619 4TH AVE. N	EVERETT, WA 98208–	206–347–9699
MARINA VILLAGE INN		1728 W. MARINE VIEW DR	EVERETT, WA 98201–	206–259–3136
NENDELS EVERETT		2800 PACIFIC AVE	EVERETT, WA 98201–	206–258–4141
WELCOME MOTOR INN		1205 N. BROADWAY	EVERETT, WA 98201–	206–252–2691
BEST WESTERN FEDERAL WAY EXECUTEL.		31611 20TH AVE. S	FEDERAL WAY, WA 98003–	206–941–6000
FEDERAL WAY SUPER 8 MOTEL.		1688 S. 348TH ST	FEDERAL WAY, WA 98003–	206–838–8808
ECONO LODGE		3518 PACIFIC HWY. E	FIFE, WA 98424–	206–982–0550
TRAVELERS INN		3100 PACIFIC HWY. E	FIFE, WA 98424–	206–922–9520
FORKS MOTEL		432 FORKS AVE. S	FORKS, WA 98331–	206–374–6243
PACIFIC INN MOTEL	PO BOX 1997	FORKS AVE. S	FORKS, WA 98331–	206–374–9400
ISLANDS WEST ALL SUITES INN.		680 SPRING ST. W	FRIDAY HARBOR, WA 98250–	206–378–3031
STATES INN		2039 W. VALLEY RD	FRIDAY HARBOR, WA 98250–	206–378–6240
WESTWYND MOTEL & APARTMENTS.		6703 144TH ST. NW	GIG HARBOR, WA 98332–	206–857–4047
ALTA CRYSTAL RESORT		68317 STATE RT. 410 E	GREENWATER, WA 98022–	206–663–2500
KOLA HOUSE BED & BREAKFAST.	PO BOX 646	211 PEARL	ILWACO, WA 98624–	206–642–2819
THE INN AT ILWACO		120 WILLIAMS ST. NE	ILWACO, WA 98624–	206–642–8686
RED LION KESON		510 KELSO DR	KELSO, WA 98626–	206–636–4400
COMFORT INN		440 THREE RIVERS DR	KELSON, WA 98626–	206–425–4600
CAVANAUGH'S AT COLUMBIA CENTER.		1101 N. COLUMBIA CENTER BLVD.	KENNEWICK, WA 99336–	509–783–0611
NENDELS INN		2811 W. SECOND ST	KENNEWICK, WA 99336–	509–735–9511
SHANIKO SUITES MOTEL		321 N. JOHNSON ST	KENNEWICK, WA 99336–	509–735–6385
BEST WESTERN PONY SOLDIER MOTOR INN.		1233 N. CENTRAL	KENT, WA 98032–	206–852–7224
CYPRESS INNS		22218 S. 84TH AVE	KENT, WA	206–395–0219
HOMECOURT SUITES HOTEL		6329 S. 212TH ST	KENT, WA 98032–	206–395–3800
VAL U INN KENT		22420 84TH AVE. S	KENT, WA 98032–	206–872–5525
MY PARENTS' ESTATE	PO BOX 724	719 HWY. 395	KETTLE FALLS, WA 99141–	509–738–6220
ARNOLDS BEST WESTERN MOTOR INN.		12223 NE 116TH ST	KIRKLAND, WA 98034–	206–488–8734
CLARION INN		12233 TOTEM LAKE WAY	KIRKLAND, WA 98034–	206–821–2202
SHUMWAY MANSION BED & BREAKFAST INN.		11410 99TH PLACE NE	KIRKLAND, WA 98033–	206–823–2303
THE HERON INN LACONNER	PO BOX 716	117 MAPLE ST	LACONNER, WA 98257–	206–466–4626
INN AT LANGLEY	PO BOX 835	400 FIRST ST	LANGLEY, WA 98260–0835	206–221–3033
ENZIAN MOTOR INN		590 HWY. 2	LEAVENWORTH, WA 98826–	509–548–5269
ICICLE INN BEST WESTERN ICICLE INN.		505 HWY. 2	LEAVENWORTH, WA 98226–	509–548–7000
WEDGE MOUNTAIN INN	PO BOX 401	7335 STATE HWY. 2	LEAVENWORTH, WA 98226–	509–548–6694
BOREAS BED & BREAKFAST		607 N. BLVD	LONG BEACH, WA	206–642–8069
FORT LEWIS & CLARK MOTEL	PO BOX 388	700 N. PACIFIC HWY	LONG BEACH, WA 98631–	206–642–8458
NENDELS EDGEWATER INN		409 SW 10TH ST	LONG BEACH, WA 98631–	206–642–2311
SUPER 8 MOTEL DBA HOLEMAN INVESTMENT CO.		500 OCEAN BEACH BLVD	LONG BEACH, WA 98631–	206–642–8988
LEWIS AND CLARK MOTOR INN.		838 15TH AVE	LONGVIEW, WA 98632–	206–423–6460
EDEN WILD INN		EADS LN	LOPEZ, WA 98261–	206–468–3238
HOTEL LOPEZ ISLANDER	PO BOX 197		LOPEZ, WA 98261–	206–468–2233
HOTEL DE MOLEN		655 FRONT ST	LYNDEN, WA 98264–	206–354–4440
EMBASSY SUITES HOTEL		20610 44TH AVE. W	LYNNWOOD, WA 98036–	206–775–2500

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
NENDELS VALU INN		4117 196TH ST. SW	LYNNWOOD, WA 98036–	206–775–8030
RESIDENCE INN BY MARRIOTT SEATTLE NORTH.		18200 ALDERWOOD MALL BLVD.	LYNNWOOD, WA 98037–	206–771–1100
THE VILLAGE MOTOR INN		235 BEECH ST	MARYSVILLE, WA 98270–	206–659–0005
MOSES LAKE SHILO INN		1819 E. KITTLESON	MOSES LAKE, WA 98837–9719	503–641–6565
NENDELS INN		2801 W. BROADWAY	MOSES LAKE, WA 98837–	509–765–1777
OASIS BUDGET INN		466 MELVA LN	MOSES LAKE, WA 98837–	509–765–8636
BEST WESTERN COTTON TREE INN.		2300 MARKET PL	MOUNT VERNON, WA 98273–	206–428–5678
MT. VERNON TRAVELODGE		1910 FREEWAY DR	MOUNT VERNON, WA 98273–	206–428–7020
TOWNE AND COUNTRY MOTOR INN.		2009 RIVERSIDE DR	MOUNT VERNON, WA 98273–	206–424–4141
SQUAW ROCK RESORT		15070 HWY. 410	NACHES, WA 98937–	509–658–2926
GOLDEN SPUR MOTEL		US HWY. 2	NEWPORT, WA 99156–	509–447–3823
BEST WESTERN HARBOR PLAZA.		5691 SR 20	OAK HARBOR, WA 98277–	206–679–4567
NORTH WHIDBEY INN		1175 MIDWAY BLVD	OAK HARBOR, WA 98277–	206–675–5911
PONDEROSA MOTOR LODGE	RT. 1	1034 2ND S	OKANOGAN, WA 98840–	509–422–0400
HARBINGER INN		1136 E. BAY DR	OLYMPIA, WA 98506–	206–754–0389
KING CITY TRUCK STOP MOTEL.		2100 E. HILLSBORO	PASCO, WA 99301–	509–547–0373
AGGIES INN		602 E. FRONT ST	PORT ANGELES, WA 98362–	206–457–0471
PORT ANGELES SUPER 8 MOTEL.		2104 E. FIRST	PORT ANGELES, WA 98362–	206–452–8401
PORTSIDE INN BY TRAVELERS INN.		1510 E. FRONT ST	PORT ANGELES, WA 98362–	206–452–4015
ALADDIN MOTOR INN		2333 WASHINGTON ST	PORT TOWNSEND, WA 98368–	206–385–3747
BISHIP VICTORIAN GUEST SUITES.		714 WASHINGTON ST	PORT TOWNSEND, WA 98368–	206–385–6122
HARBORSIDE INN		3300 BENEDICT ST	PORT TOWNSEND, WA 98368–	206–385–7909
WATER STREET HOTEL		635 WATER ST	PORT TOWNSEND, WA 98368–	206–385–5467
CYPRESS INN POULSBO WASHINGTON.		19801 NE 7TH AVE	POULSBO, WA 98370–	206–697–2119
QUALITY INN PARADISE CREEK.		SE 1050 BISHOP BLVD	PULLMAN, WA 99163–	509–332–0500
NORTHWEST MOTOR INN		1409 S. MERIDAN	PUYALLUP, WA 98371–	206–841–2600
MAPLE GROVE MOTEL	PO BOX 144	61 MAPLE GROVE RD	QUILCENE, WA 98376–	206–765–3410
TRADITIONAL INNS INC		500 SW F ST	QUINCY, WA 98848–	509–787–3525
THE REDMOND INN		17601 REDMOND WAY	REDMOND, WA 98052–	206–883–4900
HOLIDAY INN RENTON		800 RAINIER AVE. S	RENTON, WA 98057–	206–226–7700
HOLIDAY INN RENTON		800 RAINIER AVE. S	RENTON, WA 98055–	206–226–7700
TRAVELERS INN		4710 LAKE WASHINGTON BLVD. NE.	RENTON, WA 98056–	206–228–2858
KLONDIKE MOTEL		150 N. CLARK	REPUBLIC, WA 99166–	509–775–3555
NENDELS INN		612 JADWIN ST	RICHLAND, WA 99352–	509–943–4611
SHILO INN RICHLAND RIVERSHORE.		50 COMSTOCK	RICHLAND, WA 99352–	503–641–6565
BEST WESTERN HERITAGE INN.		1405 SMITTY'S BLVD	RITZVILLE, WA 99169–	509–659–1007
COLWELL MOTOR INN		501 W	RITZVILLE, WA 99169–	509–659–1620
WYNDHAM GARDEN HOTEL—SEA TAC.		18118 PACIFIC HWY S	SEA TAC, WA 98118–	206–244–6666
2300 ELLIOT AVENUE		2300 ELLIOT AVE	SEATTLE, WA 98104–	206–329–8000
AIRPORT MOTOR INN		13910 PACIFIC HWY. S	SEATTLE, WA 98168–	206–244–0810
AIRPORT PLAZA HOTEL		18601 PACIFIC HWY. S	SEATTLE, WA 98188–	206–433–0400
ALEXIS HOTEL & RESTAURANT.		1007 FIRST AVE	SEATTLE, WA 98104–	206–624–4844
BEST WESTERN AIRPORT EXECUTEL.		20717 PACIFIC HWY. S	SEATTLE, WA 98198–	206–878–3300
BEST WESTERN EVERGREEN MOTOR INN.		13700 AURORA AVE. N	SEATTLE, WA 98133–	206–361–3700
CHELSEA STATION BED & BREAKFAST INN.		4915 LINDEN AVE. N	SEATTLE, WA 98103–	206–547–6077
COMFORT INN SEA TAC		19333 PACIFIC HWY. S	SEATTLE, WA 98188–	206–878–1100
ELLIOT BAY EAST		2415 WESTERN AVE	SEATTLE, WA 98104–	206–329–8000
EMBASSY SUITES HOTEL SEA TAC INT'L. AIRPORT.		15920 W. VALLEY HWY	SEATTLE, WA 98188–	206–227–8844
EXECUTIVE COURT SUITES		300 10TH AVE	SEATTLE, WA 98122–	206–223–9300
EXECUTIVE RESIDENCE		2400 ELLIOTT AVE	SEATTLE, WA 98013–1400	206–329–8000
FOUR SEASONS OLYMPIC HOTEL.		411 UNIVERSITY ST	SEATTLE, WA 98101–	206–621–1700

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HAMPTON INN SEATTLE AIRPORT.		19445 INTERNATIONAL BLVD ..	SEATTLE, WA 98188–	206–878–1700
HOLIDAY INN CROWNE PLAZA		1113 6TH AVE	SEATTLE, WA 98101–	206–464–1980
HOLIDAY INN SEA TAC		17338 PACIFIC HWY. S	SEATTLE, WA 98188–	206–248–1000
INN AT THE MARKET		86 PINE ST	SEATTLE, WA 98101–	206–443–3600
RADISSON HOTEL SEATTLE AIRPORT.		17001 PACIFIC HWY. S	SEATTLE, WA 98188–	206–244–6000
RAMADA INN DOWNTOWN		2200 5TH AVE	SEATTLE, WA 98121–	206–441–9785
RESIDENCE INN BY MARRIOTT SEATTLE SOUTH.		16201 W. VALLEY HWY	SEATTLE, WA 98188–	206–226–5500
RESIDENCE INN LAKE UNION SEATTLE DOWNTOWN.		800 FAIRVIEW AVE. N	SEATTLE, WA 98109–	206–624–6000
SEATTLE AIRPORT HILTON		17620 PACIFIC HWY. S	SEATTLE, WA 98188–	206–244–4800
SEATTLE DOWNTOWN TRAVELODGE.		2213 8TH AVE	SEATTLE, WA 98121–	206–624–6300
SEATTLE HILTON	PO BOX 1927	1301 6TH AVE	SEATTLE, WA 98101–	206–624–0500
SEATTLE MARRIOTT SEA TAC		3201 S. 176TH ST	SEATTLE, WA 98188–	206–241–2000
SHADOW MOTEL AT SEA TAC		2930 S. 176TH	SEATTLE, WA 98188–	206–246–9300
SHERATON SEATTLE HOTEL AND TOWERS.		1400 6TH AVE	SEATTLE, WA 98101–	206–621–9000
STOUFFER MADISON HOTEL ..		515 MADISON ST	SEATTLE, WA 98104–	206–583–0300
THE ROOSEVELT HOTEL		1531 7TH AVE	SEATTLE, WA 98101–	206–621–1200
THE WESTIN HOTEL SEATTLE		1900 5TH AVE	SEATTLE, WA 98101–	206–728–1000
TUK INNS LTD. PARTNERSHIP DBA DOUBLETREE INN.		205 STRANDER BLVD	SEATTLE, WA 98188–	220–246–8220
UNIVERSITY INN		4140 ROOSEVELT WAY NE	SEATTLE, WA 98105–	202–632–5055
WEST COAST PLAZA PARK SUITES HOTEL.		1011 PIKE ST	SEATTLE, WA 98101–	206–682–8282
BEST WESTERN SEQUIM BAY LODGE.		1788 HWY. 101 E	SEQUIM, WA 98382–	206–683–0691
GREYWOLF INN		177 KEELER RD	SEQUIM, WA 98382–	206–683–5869
CIMARRON MOTEL		9734 NW SILVERDALE WAY	SILVERDALE, WA 98383–	206–692–7777
POPLARS MOTEL		9800 SILVERDALE WAY NW	SILVERDALE, WA 98383–9403 .	206–692–6126
THE SALISH LODGE		37807 FALL CITY RD	SNOQUALMIE, WA 98065–	206–888–2556
CAVANAUGH'S RIVER INN		N. 700 DIVISION ST	SPOKANE, WA 99202–	093–326–5577
COMFORT INN NORTH		N. 7111 DIVISION	SPOKANE, WA 99208–	509–467–7111
COURTYARD BY MARRIOTT SPOKANE.		N. 401 RIVERPOINT BLVD	SPOKANE, WA 99202–	509–456–7600
HAMPTON INN		S. 2010 ASSEMBLY RD	SPOKANE, WA 99204–	509–747–1100
HOLIDAY INN		4212 SUNSET BLVD	SPOKANE, WA 99204–	509–747–2021
QUALITY INN OAKWOOD		N. 7919 DIVISION	SPOKANE, WA 99208–	509–467–9400
QUALITY INN VALLEY SUITES .		8923 E. MISSION	SPOKANE, WA 99212–	509–928–5218
SHERATON SPOKANE HOTEL .		N. 322 SPOKANE FALLS CT	SPOKANE, WA 99201–	509–455–9600
SPOKANE SHILO INN		E. 923 THIRD AVE	SPOKANE, WA 99202–2215	503–641–6565
SUNTREE INN		S. 123 POST	SPOKANE, WA 99204–	509–838–8504
SUPER WEST SPOKANE		W. 11102 WESTBOW BLVD	SPOKANE, WA 99204–	509–838–8800
DUTCH CUP MOTEL		918 MAIN ST. POB 369	SULTAN, WA 98294–	206–793–2215
CORPORATE SUITES		219 DIVISION COURT SUITE A	TACOMA, WA 98404–	206–473–4105
DAYS INN PORTAGE INN		3021 PACIFIC HWY. E	TACOMA, WA 98424–	206–922–3500
ECONO LODGE		9325 S. TACOMA WAY	TACOMA, WA 98499–	206–582–7550
LA QUINTA MOTOR INN		1425 E. 27TH ST	TACOMA, WA 98421–	206–383–0146
LAKEWOOD MOTOR INN		6125 MOTOR AVE. SW	TACOMA, WA 98499–1596	206–584–2212
NENDELS INN		8702 S. HOSMER	TACOMA, WA 98444–	206–535–3100
SHERATON TACOMA HOTEL		1320 BROADWAY PLAZA	TACOMA, WA 98402–	206–572–3200
TACOMA SHILO INN		7414 S. HOSMER	TACOMA, WA 98408–1246	503–641–6565
COMFORT INN		5601 PACIFIC HWY. E	TALOMA (FIFE), WA 98424–	206–926–2301
GEE GEE'S INC. TRUCK STOP		123 FOSTER CIRCLE RD	TOLEDO, WA 98591–	206–864–4300
MIA AMORE PENSIONE		#53 LITTLE MOUNTAIN RD	TROUT LAKE, WA 98650–	509–395–2264
COURTYARD BY MARRIOTT SEATTLE SOUTH.		400 ANDOVER PARK W	TUKWILA, WA 98188–	206–575–2500
HAMPTON INN SEATTLE SOUTHCENTER.		7200 S. 156TH ST	TUKWILA, WA 98188–	206–228–5800
HOMEWOOD SUITES		6955 SOUTHCENTER BLVD	TUKWILA, WA 98188–	206–433–8000
JET INN MOTEL		3747 142ND S	TUKWILA, WA 98188–	206–431–0085
NENDELS SEATTLE AT SOUTHCENTER.		15901 W. VALLEY RD	TUKWILA, WA 98188–	206–226–1812
SEA TAC NORTH TRAVELODGE.		14845 PACIFIC HWY. S	TUKWILA, WA 98168–	206–242–1777
SUPER 8 MOTEL		2605 RUDKIN ROAD	UNION GAP, WA 98903–	509–248–8880
COMFORT SUITES		4714 NE 94TH AVE	VANCOUVER, WA 98662–	206–253–3100
HAZEL DELL SHILO INN		13206 HWY. 99	VANCOUVER, WA 98686–2795	503–641–6565
MARK 205 MOTOR INN		221 NE CHKALOV	VANCOUVER, WA 98684–	204–256–7044

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RESIDENCE INN BY MARRIOTT PORTLAND NORTH.		8005 NE PARKWAY DR	VANCOUVER, WA 98662–	206–253–4800
THE GUEST HOUSE MOTEL		11504 NE 2ND ST	VANCOUVER, WA 98684–	206–254–4511
VANCOUVER SHILO INN		401 E. 13TH ST	VANCOUVER, WA 98660–3233	503–641–6565
COMFORT INN VALLEY		N. 905 SULLIVAN RD	VERADALE, WA 99037–	509–924–3636
RED LION INN SPOKANE		N. 1100 SULLIVAN RD	VERADALE, WA 99037–	509–924–9000
COMFORT INN		520 N. 2ND	WALLA WALLA, WA 99362–	509–525–2522
WALLA WALLA SUPER 8 MOTEL.		2315 EASTGATE ST. N	WALLA WALLA, WA 99362–	509–525–8800
CHIEFTAIN MOTEL & RESTAURANT INC.		1005 N. WENATCHEE AVE	WENATCHEE, WA 98801–	509–663–8141
FORGET ME NOT BED & BREAKFAST.		1133 WASHINGTON ST	WENATCHEE, WA 98801–	509–663–6114
RED LION WENATCHEE		1225 N. WENATCHEE AVE	WENATCHEE, WA 98801–	509–663–0711
WESTCOAST WENATCHEE CENTER HOTEL.		201 N. WENATCHEE AVE	WENATCHEE, WA 98801–	509–662–1234
MARINERS COVE INN		303 OCEAN AVE	WESTPORT, WA 98595–	206–268–0531
BROWN'S FARM INN	HC 74 BX 29	WOLF CREEK RD	WINTHROP, WA 98862–	509–996–2571
CHEWUCH INN		223 WHITE AVE	WINTHROP, WA 98862–	509–996–3107
SUN MOUNTAIN LODGE	PO BOX 1000	PATTERSON LAKE RD	WINTHROP, WA 98862–	509–996–2211
TRAILS END MOTEL	PO BOX 189	130 RIVERSIDE AVE	WINTHROP, WA 98862–	509–996–2303
WESTAR RETREAT & LODGING.	RT 1 BOX 464	WINTHROP, WA 98862–	509–996–2697.	
WINTHROP MTN. VIEW CHALETS.	PO BOX 280	HWY. 20 & KOA RD	WINTHROP, WA 98862–	509–996–3113
LEWIS RIVER INN		1100 LEWIS RIVER RD	WOODLAND, WA 98674–	206–225–6257
COMFORT INN OF YAKIMA		1700 N. FIRST ST	YAKIMA, WA 98901–	509–248–5650
DAY'S INN		2408 RUDKIN RD	YAKIMA, WA 98903–	509–248–9700
HOLIDAY INN OF YAKIMA		9 N. 9TH ST	YAKIMA, WA	509–452–6511
RED LION YAKIMA VALLEY		1507 N. FIRST ST	YAKIMA, WA 98901–	509–248–7850
Wisconsin				
ABBY INN HOTEL	PO BOX 455	HWY. 29 E	ABBOTSFORD, WI 54405–	715–223–3332
ALGOMA BEACH MOTEL		1500 LAKE ST	ALGOMA, WI 54201–	414–487–2828
SCENIC SHORE INN		2221 LAKE ST	ALGOMA, WI 54201–	414–487–3214
SUPER 8 MOTEL ANITGO		535 CENTURY AVE	ANTIGO, WI 54409–	715–623–4188
AMORA VILLA MOTOR LODGE	PO BOX 9050	200 N. PERKINS ST	APPLETON, WI 54911–	414–735–2733
BEST WESTERN MIDWAY HOTEL APPLETON.		3033 W. COLLEGE AVE	APPLETON, WI 54914–	414–731–4141
FAIRFIELD INN APPLETON		132 MALL DR	APPLETON, WI 54915–	414–954–0202
HOLIDAY INN OF APPLETON		150 NICOLET RD	APPLETON, WI 54914–	414–735–9955
SUPER 8 MOTEL APPLETON		3624 W. COLLEGE AVE	APPLETON, WI 54914–	414–731–0880
HOTEL CHEQUAMEGON		101 LAKESHORE DR	ASHLAND, WI 54806–	715–682–9095
HARBOR'S EDGE MOTEL	PO BOX 106	33 N. FRONT ST	BAYFIELD, WI 54814–0106	715–779–3962
SEAGULL BAY MOTEL	RT 1 BOX 304		BAYFIELD, WI 54814–	715–779–5558
SUPER 8		711 PARK AVE	BEAVER DAM, WI 53916–	414–887–8880
COMFORT INN BELOIT		2786 MILWAUKEE RD	BELOIT, WI 53511–	806–362–2666
HOLIDAY INN EXPRESS BELOIT.		2790 MILWAUKEE RD	BELOIT, WI 53511–	608–365–6000
TRAVELERS REST MOTEL OF BERLIN.		227 RIPON RD	BERLIN, WI 54923–	414–361–4411
OASIDE MOTEL	PO BOX 42	HWY. 53 & 40	BLOOMER, WI 54724–	715–568–3234
BOULDER JUNCTION MOTOR LODGE.	PO BOX 294	10432 MAIN ST	BOULDER JUNCTION, WI 54512–.	715–385–2825
RIVER RETREAT RESORT	PO BOX 272	5656 WOOL LAKE LN	BOULDER JUNCTION, WI 54512–.	715–385–2120
COURTYARD BY MARRIOTT MILWAUKEE BROOKFIELD.		16865 W. BLUEMOUND RD	BROOKFIELD, WI 53005–	414–821–1800
EMBASSY SUITES	PO BOX 731	1200 S. MOORLAND RD	BROOKFIELD, WI 53008–0731	414–782–2900
RESIDENCE INN MILWAUKEE BROOKFIELD.		950 PINEHURST CT	BROOKFIELD, WI 53005–	414–782–5990
WYNDHAM GARDEN HOTEL		18155 W. BLUEMOUND RD	BROOKFIELD, WI 53005–	414–792–1212
SHERATON INN MILWAUKEE NORTH.		8900 N. KILDEER CT	BROWN DEER, WI 53209–	414–355–8585
COUNTRYSIDE MOTEL		545 LAVORATA RD	CADOTT, WI 54727–	715–289–4000
CECIL FIRESIDE INN		400 N. LAKE DR	CECIL, WI 54111–	715–745–6444
STAGECOACH INN BED & BREAKFAST.		W61 N520 N. WASHINGTON AVE.	CEDARBURG, WI 53012–	414–375–3035
WASHINGTON HOUSE INN		W62 N573 WASHINGTON AVE	CEDARBURG, WI 53012–	414–375–3550
ISLAND INN MOTEL		HWY. 63 N	CUMBERLAND, WI 54829–	715–822–8540
COUNTRY PRIDE INN	PO BOX 240	2412 MILWAUKEE ST	DELAFIELD, WI 53018–	414–646–3300
LAKE LAWN LODGE		HWY. 50	DELAVAN, WI 53115–	414–728–5511

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
SUPER 8 MOTEL DELAVAN		518 BORG RD	DELAVAN, WI 53115–	414–728–1700
SUPER 8 MOTEL DODGEVILLE	1308 JOHNS ST		DODGEVILLE, WI 53533–	608–935–3888
RIVERDALE MOTEL		5012 HWY. 70 W	EAGLE RIVER, WI 54521–	715–479–4373
BEST WESTERN MIDWAY HOTEL EAU CLAIRE.		2851 HENDRICKSON DR	EAU CLAIRE, WI 54701–	715–835–2242
COMFORT INN EAU CLAIRE		3117 CRAIG RD	EAU CLAIRE, WI 54701–	715–833–9798
HAMPTON INN		2722 CRAIG RD	EAU CLAIRE, WI 54701–	715–833–0003
HEARTLAND INN		4075 COMMONWEALTH AVE	EAU CLAIRE, WI 54701–	715–839–7100
HOLIDAY INN CONVENTION CENTER.		205 S. BARSTOW ST	EAU CLAIRE, WI 54701–	715–835–6121
HOWARD JOHNSON LODGE		809 W. CLAIREMONT AVE	EAU CLAIRE, WI 54701–	715–834–6611
ASHBROOKE SUITES		7942 EGG HARBOR RD	EGG HARBOR, WI 54209–	414–868–3113
CAPE COD MOTEL		7682 EGG HARBOR RD	EGG HARBOR, WI 54209–	414–868–3271
EPHRAIM INN		9994 PIONEER LN	EPHRAIM, WI 54211–	
FENMORE HILLS MOTEL		5814 HWY. 18 W	FENNIMORE, WI 53809–	608–822–3281
FOND DU LAC SHERATON HOTEL.		ONE N. MAIN ST	FOND DU LAC, WI 54935–	414–923–3000
HOLIDAY INN FOND DU LAC		625 ROLLING MEADOWS DR	FOND DU LAC, WI 54937–	414–923–1440
SUPER 8 MOTEL FOND DU LAC.		391 N. PIONEER RD	FOND DU LAU, WI 54935–	414–922–1068
BEST WESTERN COURTYARD		1225 JANESVILLE AVE	FORT ATKINSON, WI 53538–	414–563–6444
SUPER 8 MOTEL MILWAUKEE GERMANTOWN.		N96 W17490 COUNTY LINE RD	GERMANTOWN, WI 53022–	414–255–0880
BUDGETEL INN		5110 N. PORT WASHINGTON RD.	GLENDALE, WI 53217–	414–964–8484
MANCHESTER EAST HOTEL & SUITES.		7065 N. PORT WASHINGTON RD.	GLENDALE, WI 53217–	414–351–6960
RESIDENCE INN MILWAUKEE GLENDALE.		7275 N. PORT WASHINGTON RD.	GLENDALE, WI 53217–	414–352–0070
BEST WESTERN MIDWAY HOTEL.		780 PACKER DR	GREEN BAY, WI 54304–	414–499–3161
BUDGETEL INN		2840 S. ONEIDA ST	GREEN BAY, WI 54304–	414–494–7887
COMFORT INN GREEN BAY		2841 RAMADA WAY	GREEN BAY, WI 54304–	414–498–2060
HAMPTON INN		2840 RAMADA WAY	GREEN BAY, WI 54304–	414–498–9200
RADISSON INN GREEN BAY		2040 AIRPORT DR	GREEN BAY, WI 54313–	414–494–7300
RESIDENCE INN BY MARRIOTT GREEN BAY.		335 WEST ST. JOSEPH	GREEN BAY, WI 54301–	414–435–2222
BAY VIEW MOTEL & RESORT		439 LAKE ST	GREEN LAKE, WI 54941–	414–294–6504
SUPER 8 MOTEL HARTFORD		1539 E. SUMNER ST	HARTFORD, WI 53027–	414–673–7431
SUPER 8 MOTEL HAYWARD		317 S. DAKOTA AVE	HAYWARD, WI 54843–	715–634–2646
BEST WESTERN HUDSON HOUSE INN.		1616 CRESTVIEW DR	HUDSON, WI 54016–	715–386–2394
COMFORT INN		811 DOMINION DR	HUDSON, WI 54016–	715–386–6355
FAIRFIELD INN BY MARRIOTT HUDSON.		2400 CENTER DR	HUDSON, WI 54016–	715–386–6686
SUPER 8 MOTEL HUDSON		808 DOMINION DR	HUDSON, WI 54016–	715–386–8800
LUMBERMEN'S INN		PO BOX 127	IRON RIVER, WI 54847–	715–372–4515
HILLTOP MOTEL		200 E. TRUMAN ST	JEFFERSON, WI 53549–	414–674–4610
KNIGHTS INN		7221 122ND AVE	KENOSHA, WI 53142–	414–857–2622
AMERICAN CLUB		HIGHLAND DR	KOHLER, WI 53044–	414–457–8000
BW MIDWAY HOTEL		1835 ROSE ST	LA CROSSE, WI 54603–	608–781–7000
DAYS INN HOTEL		2325 BAINBRIDGE ST	LA CROSSE, WI 54603–	608–785–0420
HAMPTON INN HOTEL		2110 ROSE ST	LA CROSSE, WI 54603–	608–781–5100
NIGHT SAVER INN		1906 ROSE ST	LA CROSSE, WI 54603–	608–781–0200
RADISSON HOTEL LA CROSSE		200 HARBORVIEW PLAZA	LA CROSSE, WI 54601–	608–784–6680
SUPER 8 MOTEL LA CROSSE		1625 ROSE ST	LA CROSSE, WI 54603–	608–781–8880
FENCE LAKE LODGE RESORT		12919 FRYING PAN CAMP LN	LAC DU FLAMBEAU, WI 54538–	715–588–3255
HI WAY 8 MOTEL		420 E. EDGEWOOD AVE	LADYSMITH, WI 54555–	715–532–3346
T C SMITH HISTORIC INN BED & BREAKFAST.		865 MAIN ST	LAKE GENEVA, WI 53147–	414–248–1097
PYRAMID MOTEL		W7659 HWY. V	LAKE MILLS, WI 53551–	414–648–5909
BEST WESTERN WELCOME INN LANCASTER.		420 W. MAPLE ST	LANCASTER, WI 53813–	608–723–4162
LODI VALLEY SUITES		N1440 HWY. 113	LODI, WI 53555–	608–592–7331
LUCK COUNTRY INN	PO BOX 179	HWY. 35 & 48	LUCK, WI 54853–	715–472–2000
BUDGETEL INN		8102 ESCELSIOR DR	MADISON, WI 53717–	608–831–7711
EAST TOWN SUITES		4801 ANNAMARK DR	MADISON, WI 53704–	608–244–2020
FAIRFIELD INN BY MARRIOTT MADISON.		4765 HAYES RD	MADISON, WI 53704–	608–249–5300
HAMPTON INN		4820 HAYES RD	MADISON, WI 53714–	608–244–9400
HAMPTON INN MADISON WEST.		516 GRAND CANYON DR	MADISON, WI 53719–	608–833–3511

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HAMPTON INN WEST		516 GRAND CANYON DR	MADISON, WI 53719–	608–833–3511
HOLIDAY INN EAST TOWNE		4402 E. WASHINGTON AVE	MADISON, WI 53704–	608–244–4703
HOMEWOOD SUITE HOTEL		501 D'ONOFRIO DR	MADISON, WI 53719–	608–833–8333
MANSION HILL INN		424 N. PINCKNEY ST	MADISON, WI 53703–	608–255–3999
MIDWAY HOTEL		3710 E. WASHINGTON AVE	MADISON, WI 53704–	608–244–2424
RADISSON INN		517 GRAND CANYON DR	MADISON, WI 53719–	608–833–0100
RED ROOF INN		4830 HAYES RD	MADISON, WI 53704–	608–241–1783
SHERATON INN & CONFERENCE CENTER.		706 JOHN NOLEN DR	MADISON, WI 53713–	608–251–2300
SUPER 8 MOTEL MADISON		1602 W. BELTLINE HWY	MADISON, WI 53713–	608–258–8882
COMFORT INN MANITOWOC		2200 [illegible]TH ST	MANITOWOC, WI 54220–	414–683–0220
HOLIDAY INN MANITOWOC		4601 [illegible]ET AVE	MANITOWOC, WI 54220–	414–682–6000
INN ON MARITIME BAY		10[illegible]E DR	MANITOWOC, WI 54220–	414–682–7000
SUPER 8 MOTEL MARINETTE		1508 [illegible]TE AVE	MARINETTE, WI 54143–	715–735–7887
MARSHFIELD SUPER 8		1651 N. CENTRAL AVE	MARSHFIELD, WI 54449–	715–387–2233
MALIBU INN MOTEL		854 N. 8TH ST	MEDFORD, WI 54451–	715–748–3995
SUPER 8 MOTEL MENOMONIE		1622 N. BROADWAY	MENOMONIE, WI 54751–	715–235–8889
GREAT NORTHERN MOTEL		HWY. 51 S	MERCER, WI 54547–	715–476–2440
HOLIDAY INN MADISON WEST		1313 JOHN Q HAMMONS DR	MIDDLETON, WI 53562–3500	608–831–2000
BEST WESTERN WOODSVIEW INN.		5501 W. NATIONAL AVE	MILWAUKEE, WI 53214–	414–671–6400
HAMPTON INN MILWAUKEE NORTHWEST.		5601 N. LOVER'S LN	MILWAUKEE, WI 53225–2201	414–466–8881
HOSPITALITY INN (HOSPITALITY SUITES).		4400 S. 27TH ST	MILWAUKEE, WI 53221–	414–282–8800
HYATT REGENCY MILWAUKEE		333 W. KILBOURN AVE	MILWAUKEE, WI 53203–	414–276–1234
MIDWAY HOTEL MILWAUKEE		251 N. MAYFAIR RD	MILWAUKEE, WI 53226–	414–774–3600
MILWAUKEE AIRPORT SUPER 8.		5253 S. HOWELL AVE	MILWAUKEE, WI 53207–	414–481–8488
WINDHAM MILWAUKEE CENTER.		139 E. KILBOURN AVE	MILWAUKEE, WI 53202–	414–291–4784
ISLAND COVE RESORT & MOTEL.		8616 LAKEVIEW DR	MINOCQUA, WI 54548–	715–356–5026
POINTE HOTEL & CONFERENCE CENTER.	PO BOX 880	8269 S. HWY. 51	MINOCQUA, WI 54548–	715–356–4431
HEARTLAND MOTEL		7 S. HEWITT ST	NEILLSVILLE, WI 54456–	715–743–4004
SHERMALOT MOTEL		1148 QUEENSWAY	NEKOOSA, WI 54457–	715–325–2626
AMERICINN MOTEL		1020 S. KNOWLES AVE	NEW RICHMOND, WI 54017–	715–246–3993
RED ROOF INN		6360 S. 13TH ST	OAK CREEK, WI 53154–	414–764–3500
BUDGET INN MOTEL		114 2ND AVE. N	ONALASKA, WI 54650–	608–783–6183
COMFORT INN OF ONALASKA		1223 CROSSING MEADOWS	ONALASKA, WI 54650–	608–781–7500
FAIRFIELD INN OSHKOSH		1800 S. KOELLER RD	OSHKOSH, WI 54901–	414–233–8504
HOLIDAY INN HOLIDOME & MEETING CENTER.		500 S. KOELLER	OSHKOSH, WI 54901–	414–233–1511
OSHKOSH HILTON & CONVENTION CENTER.		1 N. MAIN ST	OSHKOSH, WI 54901–	414–231–5000
FRIENDSHIP INN ALAN HOUSE		US HWY. 10 & I–90	OSSEO, WI 54758–	715–597–3175
MASON MOTEL		798 S. 4TH AVE	PARK FALLS, WI 54552–	715–762–3780
NORTHWAY MOTOR LODGE	PO BOX 503	HWY. 13 S	PARK FALLS, WI 54552–	715–762–2406
HIDDEN VALLEY INN		W7724 CTY W	PHILLIPS, WI 54555–	715–339–2757
RED PINES MOTEL RESORT		850 ELK LAKE DR	PHILLIPS, WI 54555–	715–339–4333
TIMBER INN MOTEL	PO BOX 7	606 N. LAKE AVE	PHILLIPS, WI 54555–	715–339–3071
SUPER 8 MOTEL PLATTEVILLE		100 HWY. 80–81 S	PLATTEVILLE, WI 53818–	608–348–8800
BEST WESTERN HARBORSIDE MOTOR INN.		135 E. GRAND AVE	PORT WASHINGTON, WI 53074–.	414–284–9461
SUPER 8 MOTEL PORTAGE		3000 NEW PINERY RD	PORTAGE, WI 53901–	608–742–8330
BAYVIEW LODGE		N3135 COUNTY HWY. V	POYNETTE, WI 53955–	608–635–4089
BEST WESTERN QUIET HOUSE.		HWY. 18 & 35 S	PRAIRIE DU CHIEN, WI 53821–	608–326–4777
BRIDGEPORT INN		HWY. 18 35 60 S	PRAIRIE DU CHIEN, WI 53821–	608–326–6082
SUPER 8 MOTEL PRAIRIE DU CHIEN.		HWY. 18 & 35 S	PRAIRIE DU CHIEN, WI 53821–	608–326–8777
COUNTRYSIDE MOTEL INC	PO BOX 286	W5370 GRANBERG RD	PRENTICE, WI 54556–	715–428–2333
MID AMERICA SUITES		1140 PEARL ST	PRESCOTT, WI 54021–	715–262–4112
COMFORT INN RACINE		1154 PRAIRIE DR	RACINE, WI 53406–	414–886–6055
FAIRFIELD INN BY MARRIOTT RACINE.		6421 WASHINGTON AVE	RACINE, WI 54306–	414–886–5000
HOLIDAY INN RACINE		3700 NORTHWESTERN AVE	RACINE, WI 53405–	414–637–9311
KNIGHTS INN RACINE		1149 OAKES RD	RACINE, WI 53406–	414–886–6867
RACINE MARRIOTT		711 WASHINGTON AVE	RACINE, WI 53406–	414–886–6100
BEST WESTERN CLARIDGE MOTOR INN.		70 N. STEVENS ST	RHINELANDER, WI 54501–	715–362–7100

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
HOLIDAY INN RHINE-LANDER .	PO BOX 675	668 W. KEMP ST	RHINELANDER, WI 54501–	715–369–3600
TRAVELERS REST MOTEL		HWY. 23	RIPON, WI 54971–	414–748–2253
SUPER 8 MOTEL RIVER FALLS		1207 ST. CROIX ST	RIVER FALLS, WI 54022–	715–425–8388
CEDARBERRY INN		855 PHILLIPS BLVD	SAUK CITY, WI 53583–	608–643–6625
SUPER 8 MOTEL SAUKVILLE		180 S. FOSTER RD	SAUKVILLE, WI 53080–	414–284–9399
BEST WESTERN VILLAGE HAUS MOTOR LODGE.		201 AIRPORT RD	SHAWANO, WI 54166–	715–526–9595
SUPER 8 MOTEL SHAWANO		211 WAUKECHON ST	SHAWANO, WI 54166–	715–526–6688
COMFORT INN SHEBOYGAN		4332 N. 40TH ST	SHEBOYGAN, WI 53083–	414–457–7724
HARBOR INN		905 S. 8TH ST	SHEBOYGAN, WI 53081–	414–452–2424
ROCHESTER INN		504 WATER ST	SHEBOYGAN, WI 53085–	414–467–3123
COUNTRY HOUSE RESORT		715 N. HIGH	SISTER BAY, WI 54234–	414–854–4561
ST. CROIX INN		LAKE & 5TH	SOLON SPRINGS, WI 54873–	715–378–4444
SOMERSET MOTEL	PO BOX 365	470 MAIN ST	SOMERSET, WI 54025–0365	715–247–5487
COUNTRY HOSPITALITY INN		737 AVON RD	SPARTA, WI 54656–	608–269–3110
DALLES HOUSE MOTEL	PO BOX 664	HWY. 35 S. & US 8	ST. CROIX FALLS, WI 54024–	715–483–3070
HEARTHSIDE INN INC		355 SUNRISE LN	ST. GERMAINE, WI 54558–	715–479–2500
RUSTIC MANOR MOTOR LODGE.		6343 HWY. 70 E	ST. GERMAINE, WI 54558–	715–479–9776
BEST WESTERN ROYALE		5110 MAIN ST	STEVENS POINT, WI 54481–	715–341–5110
BUDGETEL INN		4917 MAIN ST	STEVENS POINT, WI 54481–	715–344–1900
COMFORT SUITES		300 DIVISION ST. N	STEVENS POINT, WI 54481–	715–341–6000
CHOSE FAMILY INN		1124 W. MAIN ST	STOUGHTON, WI 53589–	608–873–0330
BEST WESTERN MARITIME INN.		1001 N. 14TH AVE	STURGEON BAY, WI 54235–	414–743–7231
WHITE LACE INN		16 N. 5TH AVE	STURGEON BAY, WI 54235–	414–743–1105
SUPER 8 MOTEL SUPERIOR		4901 E. 2ND ST	SUPERIOR, WI 54880–	715–398–7686
COMFORT INN TOMAH		305 WITTIG RD	TOMAH, WI 54660–	608–372–6600
ECONO LODGE		2005 N. SUPERIOR AVE	TOMAH, WI 54660–	608–372–9100
PLEASANT KNOLL MOTEL		361 MAIN ST	TREMPELEAU, WI 54661–	608–534–6615
SUPER 8 MOTEL WATER-TOWN.		1728 S. CHURCH ST	WATERTOWN, WI 53094–	414–261–1188
FAIRFIELD INN BY MARRIOTT MILWAUKEE WEST.		20150 W. BLUE MOUND RD	WAUKESHA, WI 53186–	414–785–0500
HAMPTON INN BROOKFIELD		575 N. BARKER RD	WAUKESHA, WI 53186–	414–796–1500
BEST WESTERN GRAND SEA-SONS HOTEL & CON-FERENCE.		110 GRAND SEASONS DR	WAUPACA, WI 54981–	715–258–9212
BUDGETEL INN		1910 STEWART AVE	WAUSAU, WI 54401–	715–842–0421
MIDWAY HOTEL WAUSAU		2901 MARTIN AVE	WAUSAU, WI 54401–	715–842–1616
HOLIDAY INN EXPRESS MIL-WAUKEE MAYFAIR.		1111 W. NORTH AVE	WAUWATOSA, WI 53226–2233	414–778–0333
HOLIDAY INN MILWAUKEE WEST.		201 N. MAYFAIR RD	WAUWATOSA, WI 53226–	414–771–4400
SHERATON MAYFAIR INN		2303 N. MAYFAIR RD	WAUWATOSA, WI 53226–	414–257–3400
HIDE A WAY MOTEL		3065 LAKE 26 RD	WEBB LAKE, WI 54830–	715–259–3567
JULIDA MOTEL		2357 S. 108 ST	WEST ALLIS, WI 53227–	414–541–0300
OLD TOWNE MOTEL		RFD 2 BOX 10A	WESTBY, WI 54667–	608–634–2111
WESTFIELD PIONEER MOTOR INN.		130 PIONEER PARK RD	WESTFIELD, WI 53964–	608–296–2135
SUPER 8 MOTEL WHITEWATER.		917 E. MILWAUKEE ST	WHITEWATER, WI 53190–	414–473–8818
AZTEL MOTEL		425 S. VINE ST	WISCONSIN DELLS, WI 53965–	608–254–7404
BEST WESTERN AMBAS-SADOR INN.		610 FRONTAGE RD. S	WISCONSIN DELLS, WI 53965–	608–254–4477
DAYS INN		944 HWY. 12	WISCONSIN DELLS, WI 53965–	608–254–6444
HOLIDAY INN WISCONSIN DELLS.		HWY. 13 I90–94	WISCONSIN DELLS, WI 53965–	608–254–8306
PINE AIRE MOTEL		511 WISCONSIN DELLS PKWY	WISCONSIN DELLS, WI 53965–	608–254–2131
POLYNESIAN HOTEL		857 N. FRONTAGE RD	WISCONSIN DELLS, WI 53965–	608–254–2883
SUPER 8 MOTEL WISCONSIN DELLS.	PO BOX 467	800 CO HWY. H	WISCONSIN DELLS, WI 53965–	608–254–6464
TROPIC INN	PO BOX 118	1073 WISCONSIN DELLS PKWY. S.	WISCONSIN DELLS, WI 53965–	608–254–2218
BEST WESTERN RAPIDS MOTOR INN.		911 HUNTINGTON AVE	WISCONSIN RAPIDS, WI 54494–.	715–423–2577
CHALET MOTEL & RES-TAURANT.		3300 8TH ST. S	WISCONSIN RAPIDS, WI 54494–.	715–423–7000
WILBERNS MOTEL		3120 8TH ST. S	WISCONSIN RAPIDS, WI 54494–.	715–423–5506
WOODVILLE MOTEL		543 COUNTY RD. B	WOODVILLE, WI 54028–	715–698–2481

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HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
West Virginia				
RIVER VIEW MOTEL	RT. 2 BOX O		ALDERSON, WV 24910–	304–445–2550
COMFORT INN		3441 RT. 60 E	BARBOURSVILLE, WV 25504–	304–736–8772
HOLIDAY INN GATEWAY		6007 RT. 60 E	BARBOURSVILLE, WV 25504–	304–736–8974
COMFORT INN LOWER		1909 HARPER RD	BECKLEY, WV 25801–	304–255–2161
COMFORT INN MAIN		1909 HARPER RD	BECKLEY, WV 25801–	304–255–2161
DAYS INN		300 HARPER PARK DR	BECKLEY, WV 25801–	304–255–5291
HAMPTON INN		110 HARPER PARK DR	BECKLEY, WV 25801–	304–252–2121
SUPER 8 MOTEL		2014 HARPER RD	BECKLEY, WV 25801–	304–253–0902
THE COUNTRY INN WEST BLDG. ONLY.		207 S. WASHINGTON ST	BERKELEY SPRINGS, WV 25411–.	304–258–2210
ECONO LODGE	PO BOX 168	RT. 2 BARNETT RUN RD	BRIDGEPORT, WV 26330–	304–842–7381
HOLIDAY INN		100 LODGE [illegible] RD	BRIDGEPORT, WV 26330–	304–842–5411
KNIGHTS INN		1235 W. MAIN ST	BRIDGEPORT, WV 26330–	304–842–7115
NORTH BEND STATE PARK CABINS.	RT. 1		CAIRO, WV 26337–	304–643–2931
FRIENDSHIP INN	RT. 119	PO BOX 1566	CHAPMANVILLE, WV 25508–	304–855–7182
NORTHGATE INN		188 PATRICK HENRY WAY	CHARLES TOWN, WV 25414–	304–725–1402
TOWNE HOUSE MOTEL 300 BUILDING ONLY.		E. WASHINGTON ST	CHARLES TOWN, WV 25414–	304–725–8441
WEST RIDGE INN		907 E. WASHINGTON ST	CHARLES TOWN, WV 25414–	304–725–2041
CUTLIPS MOTOR INN		1607 BIGLEY AVE	CHARLESTON, WV 25302–	304–345–3500
DIPLOMAT MOTEL		2380 SISSONVILLE DR	CHARLESTON, WV 25312–	304–343–1611
EXECUTIVE INN		3320 MACCORKLE AVE	CHARLESTON, WV 25312–	304–345–8820
IVY TERRACE MOTEL		5311 MACCORKLE AVE	CHARLESTON, WV 25304–	304–925–4736
KANAWHA CITY MOTOR LODGE.		3103 MACCORKLE AVE	CHARLESTON, WV 25304–	304–344–2461
KNIGHTS INN		6401 MACCORKLE AVE	CHARLESTON, WV 25304–	304–925–0451
MARRIOTT HOTEL		200 LEE ST. E	CHARLESTON, WV 25302–	304–345–6500
MOTEL 6		6311 MACCORKLE AVE	CHARLESTON, WV 25304–	304–925–0471
RED ROOF INN		6305 MACCORKLE AVE	CHARLESTON, WV 25304–	304–925–6953
SUNSET MOTEL		2298 SISSONVILLE DR	CHARLESTON, WV 25312–	304–342–4961
COMFORT INN		250 EMILY DR	CLARKSBURG, WV 26301–	304–623–2600
DAYS INN		112 TOLLEY ST	CLARKSBURG, WV 26301–	304–842–7371
COMFORT INN		102 LAKEWOOD DR	CROSS LANES, WV 25313–	304–776–8070
MOTEL 6		330 GOFF MOUNTAIN RD	CROSS LANES, WV 25313–	304–776–5917
GLADE SPRINGS RESORT BUILDINGS A–H.		3000 LAKE DR	DANIELS, WV 25832–	304–763–2000
PARK AVENUE MOTEL		PARK AVE	DANVILLE, WV 25053–	304–369–3732
BEAVER RIDGE CONDO'S	PO BOX 50	RT. 1	DAVIS, WV 26260–	304–866–4572
BEST WESTERN ALPINE LODGE.	PO BOX 520		DAVIS, WV 26260–	304–259–5245
BLACKBEAR WOODS RESORT	PO BOX 55	RT. 1	DAVIS, WV 26260–	304–866–4391
BRIGHT MORNING INN		WILLIAMSON AVE	DAVIS, WV 26260–	304–259–5119
MOUNTAIN AIRE LODGE	PO BOX 493		DAVIS, WV 26260–	304–259–5211
VILLAGE INN MOTEL	PO BOX 190	RT. 1	DAVIS, WV 26260–	304–866–4166
DUNBAR SUPER 8 MOTEL		911 DUNBAR AVE	DUNBAR, WV 25064–	304–768–6888
TRAVELODGE		1007 DUNBAR AVE	DUNBAR, WV 25064–	304–768–1000
BEST WESTERN MOTEL	RT 219 & 250		ELKINS, WV 26241–	304–636–7711
ECONO LODGE	RT. 33 E		ELKINS, WV 26241–	304–636–5311
SUPER 8 MOTEL	PO BOX 284	RT. 3	ELKINS, WV 26421–	304–636–6500
DAYS INN		1185 AIRPORT RD	FAIRMONT, WV 26554–	304–367–1370
HOLIDAY INN		930 E. GRAFTON RD	FAIRMONT, WV 26554–	304–366–5500
RED ROOF INN	PO BX 602	RT. 1	FAIRMONT, WV 26554–	304–366–6800
COMFORT INN	RT. 19	PO BOX 929 LAUREL CREEK RD.	FAYETTEVILLE, WV 25840–	304–574–3443
HICKORY HILL CABINS	RT. 220 N		FRANKLIN, WV 26807–	304–358–2078
APPALACHIAN RESORT INN		FLATTOP MOUNTAIN RD	GHENT, WV 25843–	304–787–5559
ECONO LODGE		EXIT 28 OFF I–77	GHENT, WV 25843–	304–787–3250
COMPTON INN	RT. 52		GILBERT, WV 25621–	304–664–2298
REILLY'S R'ARMS INN		1307 WASHINGTON AVE	GLEN DALE, WV 26038–	304–845–5322
GLEN FERRIS INN	RT. 60	PO BOX 119	GLEN FERRIS, WV 25090–	304–632–1111
TYGART LAKE STATE PARK LODGE.	PO BOX 258	RT. 1	GRAFTON, WV 26354–	304–265–2320
CLIFFSIDE MOTOR LODGE	PO BOX 786	US RT. 340	HARPERS FERRY, WV 25425–	304–535–6302
COMFORT INN		POLK ST. & RT. 340	HARPERS FERRY, WV 25425–	304–535–6391
HILLTOP HOUSE HOTEL		400 RIDGE ST	HARPERS FERRY, WV 25425–	304–535–6321
THE WOODS RESORT	PO BOX 5		HEDGESVILLE, WV 25427–	304–754–7977
ECONO LODGE		3325 RT. 60 E	HUNTINGTON, WV 25705–	304–529–1331
HIDDEN TRAILS		5601 PEYTON CT	HUNTINGTON, WV 25705–	304–736–1415
RADISSON HOTEL		1001 3RD AVE	HUNTINGTON, WV 25701–	304–525–1001
RAMADA INN		5600 RT. 60 E	HUNTINGTON, WV 25705–	304–736–3451

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HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RED ROOF INN		5190 RT. 60 E	HUNTINGTON, WV 25705–	304–733–3737
DAYS INN		PUTNAM VILLAGE DR	HURRICANE, WV 25521–	304–757–8721
RED ROOF INN		PUTNAM VILLAGE DR	HURRICANE, WV 25521–	304–757–6392
WILDERNESS PLANTATION	PO BOX 96		JANE LEW, WV 26378–	304–884–7095
GATEWAY MOTEL	PO BOX 838	MINGO & WV ST	KERMIT, WV 25674–	304–393–3221
CANDLEWYCK INN		65 S. MINERAL	KEYSER, WV 26726–	304–788–6594
KEYSER INN	RT. 220 S	PO BOX 160	KEYSER, WV 26726–	304–788–0913
LEWISBURG SUPER 8 MOTEL		550 N. JEFFERSON ST	LEWISBURG, WV 24901–	304–647–3188
OLD COLONY INN		635 N. JEFFERSON ST	LEWISBURG, WV 24901–	304–645–2345
LOGAN MOTOR LODGE		RT. 10 S. BOX 1290	LOGAN, WV 25601–	304–752–8110
SUPER 8 MOTEL		316 RIVERVIEW AVE	LOGAN, WV 25601–	304–752–8787
COLONIAL MOTEL	PO BOX 84	RT. 80	MAN, WV 25635–	304–583–6138
ARBORGATE INN		1599 EDWIN MILLER BLVD	MARTINSBURG, WV 25401–	304–267–2211
COMFORT INN		2800 AIKENS CTR	MARTINSBURG, WV 25401–	304–263–6200
DAYS INN SHENANDOAH		209 VIKING WAY	MARTINSBURG, WV 25401–	304–263–1800
KRISTA LITE MOTEL	PO BX 249A	RT. 1	MARTINSBURG, WV 25401–	304–260–0906
MARTINSBURG MOTEL		1403 N. QUEEN ST	MARTINSBURG, WV 25401–	304–263–4771
OAK CREST MOTEL	PO BOX 166A	RFD 5	MARTINSBURG, WV 25401–	304–267–2118
SHERATON INN MARTINSBURG.		301 FOXCROFT AVE	MARTINSBURG, WV 25401–	304–267–5500
SUPER 8 MOTEL		1600 EDWIN MILLER BLVD	MARTINSBURG, WV 25401–	304–263–0801
MASON MOTEL	PO BX 457	RT. 33	MASON, WV 25260–	304–773–9000
VALLEY VIEW MOTEL	PO BOX 306		MILLCREEK, WV 26280–	304–335–6226
COMFORT INN		RT. 14 & I–77	MINERAL WELLS, WV 26150–	304–489–9600
LIBERTY MOTEL	PO BOX 14		MINERAL WELLS, WV 26150–	304–489–9201
EVANS MOTEL		508 N. MAIN ST	MOOREFIELD, WV 26836–	304–538–7771
COMFORT INN MORGANTOWN	PO BOX 225	RT. 9	MORGANTOWN, WV 26505–	304–296–9364
EURO SUITES		501 CHESTNUT RIDGE	MORGANTOWN, WV 26505–	304–598–1000
HOLIDAY INN STAR CITY BLDGS. A & C ONLY.		1400 SARATOGA AVE	MORGANTOWN, WV 26505–	304–599–1680
HOLIDAY MOTEL		1712 MILEGROUND RD	MORGANTOWN, WV 26505–	304–292–3303
THE HAMPTON INN		1053 VANVOORHIS RD	MORGANTOWN, WV 26505–	304–599–1200
GRANDVIEW PARK	PO BOX 1	RD. 4	MOUNDSVILLE, WV 26041–	304–845–9810
MOUNDSVILLE PLAZA		1400 LAFAYETTE	MOUNDSVILLE, WV 26041–	304–845–9650
PLAZA INN		219 N. STATE RT. 2	NEW MARTINSVILLE, WV 26155–.	304–455–4490
TRAVELERS INN	PO BOX 99	519 N. STATE RT. 2	NEW MARTINSVILLE, WV 26155–.	304–455–3355
HOLIDAY INN		340 VIRGINIA ST	OAK HILL, WV 25901–	304–465–0571
ECONOMY MOTEL		530 S. 4TH	PADEN CITY, WV 26159–	304–337–8558
BLENNERHASSETT	PO BOX 51	320 MARKET ST	PARKERSBURG, WV 26101–	304–422–3131
ECONO LODGE		RT. 50 & I–77	PARKERSBURG, WV 26101–	304–422–5401
RED ROOF INN		3714 7TH ST	PARKERSBURG, WV 26101–	304–485–1741
TUCKER COUNTRY INN	RT. 72 N		PARSONS, WV 26287–	304–478–2100
PENCE SPRINGS LODGE	PO BOX 90	RT. 3	PENCE SPRINGS, WV 24962–	304–445–2606
HOMESTEAD INN	PO BOX 146	RT. 3	PETERSBURG, WV 26847–	304–257–1049
COMFORT INN	RT. 460	AMBROSE LN	PRINCETON, WV 24740–	304–487–6101
DAYS INN		RT. 460 I–77	PRINCETON, WV 24740–	304–425–8100
LAND MARK INN		409 THORN ST	PRINCETON, WV 24740–	304–425–3585
TURNPIKE MOTEL		1119 OAKVALE RD	PRINCETON, WV 24740–	304–425–2268
PONDEROSA LODGE	PO BOX 14B	RT. 60 & RT. 2	RAINELLE, WV 25962–	304–438–7113
SERENITY MOTEL		401 N. MILDRED ST	RANSON, WV 25438–	304–725–1447
BEST RATE MOTEL	RT. 2 BOX 33		RAVENSWOOD, WV 26164–	304–273–3445
WASHINGTON MOTEL		410 WASHINGTON ST	RAVENSWOOD, WV 26164–	304–273–5356
ECONO LODGE		1 HOSPITALITY DR	RIPLEY, WV 25271–	304–372–5000
SUPER 8		102 DUKE ST	RIPLEY, WV 25271–	304–372–8880
HEDRICKS 4 U MOTEL OLD & MAIN SECTION.	RT. 33		SENECA ROCKS, WV 26884–	304–567–2111
SMOKE HOLE CABINS	HC 59 BOX 39		SENECA ROCKS, WV 26884–	304–257–4442
YOKUMS VACATIONLAND MOTEL & CABINS.			SENECA ROCKS, WV 26884–	304–567–2351
BAVARIAN INN & LODGE	RT. 1 BOX 30		SHEPHERDSTOWN, WV 25443–.	304–876–2551
SILVER CREEK RESORT		1 SILVER CREEK PKWY	SLATYFORK, WV 26291–	304–572–4000
SPRUCE LODGE	PO BOX 10		SNOWSHOE, WV 26209–	304–572–2900
THE INN AT SNOWSHOE	PO BOX 10		SNOWSHOE, WV 26209–	304–572–2900
TIMBERLINE LODGE	PO BOX 10		SNOWSHOE, WV 26209–	304–572–2900
WHISTLE PUNK VILLAGE & INN.	PO BOX 10		SNOWSHOE, WV 26209–	304–572–2900
RAMADA INN MOTORLODGE & BLDG. 3 ONLY.		2ND AVE. & B ST	SOUTH CHARLESTON, WV 25303–.	304–744–4641

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
RED ROOF INN 2		4006 MCCORKLE AVE. SW	SOUTH CHARLESTON, WV 25309–.	304–744–1500
RED ROOF INN MAIN		4006 MCCORKLE AVE	SOUTH CHARLESTON, WV 25309–.	304–744–1500
DAYS INN STAR CITY		366 BOYERS AVE	STAR CITY, WV 26505–	304–598–2120
BEST WESTERN		1203 S. BROAD ST	SUMMERSVILLE, WV 26651–	304–872–6900
COMFORT INN		903 INDUSTRIAL DR. N	SUMMERSVILLE, WV 26651–	304–872–6500
ECONO LODGE	RT 19 BX 969		SUMMERSVILLE, WV 26651–	304–872–5151
SUPER 8 MOTEL		306 MERCHANTS WALK	SUMMERSVILLE, WV 26651–	304–872–4888
DAY'S INN SUTTON		2000 SUTTON LN	SUTTON, WV 26601–	304–765–5055
LLOYD'S MOTEL		2210 SUTTON LN	SUTTON, WV 26601–	304–765–5779
DAYS INN WHEELING		I–70 & DALLAS PIKE	TRIADELPHIA, WV 26059–	304–547–0610
MID TOWN MOTEL	RT. 2 BOX 31		WELLSBURG, WV 26070–	304–394–5343
MATHIS MOTEL		207 2ND AVE. RT. 10 & RT 119 N.	WEST LOGAN, WV 25601–	304–752–5252
COMFORT INN	PO BOX 666		WESTON, WV 26452–	304–269–7000
SUPER 8 MOTEL		12 MARKET PL	WESTON, WV 26452–	304–843–1991
ECONO LODGE WESTOVER		15 COMMERCE DR	WESTOVER, WV 26505–	304–296–8774
FORT HENRY MOTOR INN		2501 NATIONAL RD	WHEELING, WV 26003–	304–242–3131
HAMPTON INN		795 NATIONAL RD	WHEELING, WV 26003–	304–233–0440
MCCLURE HOUSE		1206 MARKET ST	WHEELING, WV 26003–	304–232–0300
OGLEBAY WILSON LODGE		OGLEBAY PARK	WHEELING, WV 26003–	304–243–4000
CSX HOTELS THE GREENBRIER.		STATION H BOX 2025	WHITE SULPHUR SPGS., WV 24986–.	304–536–1110
OLD WHITE MOTEL		865 E. MAIN ST	WHITE SULPHUR SPGS., WV 24986–.	304–536–2441
SYCAMORE INN		201 W. 2ND AVE	WILLIAMSON, WV 25661–	304–235–3656
DAYS INN		I–77 & RT. 31	WILLIAMSTOWN, WV 26187–	304–375–3730
Wyoming				
ALPEN HAUS	PO BOX 258		ALPINE, WY 83128–	307–654–7545
FLYING SADDLE LODGE	PO BOX 220		ALPINE, WY 83218–	307–654–7561
MARBLETON INN		405 WINKLEMAN	BIG PINEY, WY 83113–	307–276–5331
HO JO INN	PO BOX 639		BUFFALO, WY 82834–	307–684–2256
SUPER 8 MOTEL	CLEARMONT RT	BOX 10	BUFFALO, WY 82834–	307–684–2531
DAYS INN		400 W. F ST	CASPER, WY 82601–	307–235–6668
HOLIDAY INN CASPER		300 W. F ST	CASPER, WY 82601–	307–235–2531
LA QUINTA INN		301 E. E ST	CASPER, WY 82601–	307–234–1159
MOTEL 6		1150 WILKENS	CASPER, WY 828601 –	307–234–3903
SUPER 8 LODGE		3838 CY AVE	CASPER, WY 82601–	307–266–3480
THE KELLY		821 N. POPLAR	CASPER, WY 82601–	307–266–2400
AMERICAN FAMILY LODGE		5401 WALKER RD	CHEYENNE, WY 82009–	307–632–8901
BURNS WEST MOTEL	EXIT I–80	HILLSDALE RD	CHEYENNE, WY 82060–	307–547–3557
DAYS INN		2360 W. LINCOLNWAY	CHEYENNE, WY 82001–	307–778–8877
FLYING J COMFORT INN		2245 ETCHEPARE	CHEYENNE, WY 82009–	307–638–7202
HOLDING'S LITTLE AMERICA		2800 W. LINCOLNWAY	CHEYENNE, WY 82001–	307–634–2771
LA QUINTA INN		2410 W. LINCOLNWAY	CHEYENNE, WY 82009–	307–632–7117
LUXURY MOTEL		1805 WESTLAND RD	CHEYENNE, WY 82009–	307–638–2550
MOTEL 6		1735 WESTLAND RD	CHEYENNE, WY 82009–	307–635–6806
SUPER 8 MOTEL		1900 W. LINCOLNWAY	CHEYENNE, WY 82009–	307–635–8741
BEST WESTERN SUNRISE		1407 8TH ST	CODY, WY 82414–	307–587–5566
BEST WESTERN SUNSET		1601 SHERIDAN AVE	CODY, WY 82414–	307–587–4265
CODY MOTOR LODGE		1455 SHERIDAN AVE	CODY, WY 82414–	307–527–6291
COMFORT INN AT BUFFALO BILL VILLAGE/CODY.		1601 SHERIDAN AVE	CODY, WY 82414–	307–587–5556
KELLY INN		2513 GREYBULL HWY	CODY, WY 82414–	307–527–5505
SUPER 8 MOTEL		730 YELLOWSTONE AVE	CODY, WY 82414–	307–527–6214
ENERGY INN		360 N. US HWY. 30	DIAMONDVILLE, WY 83116–	307–877–6901
CHIEFTAIN MOTEL		815 E. RICHARDS ST	DOUGLAS, WY 82633–	307–358–2673
SUPER 8 MOTEL		314 RUSSELL AVE	DOUGLAS, WY 82633–	307–358–6800
BEAR RIVER INN		261 BEAR RIVER DR	EVANSTON, WY 82930–	307–789–0791
DUNMAR MOTEL		1601 HARRISON DR	EVANSTON, WY 82930–	307–789–3770
EVANSTON INN		247 BEAR RIVER DR	EVANSTON, WY 82930–	307–789–2612
SUPER 8 MOTEL		70 BEAR RIVER DR	EVANSTON, WY 82930–	307–789–7510
WESTON PLAZA HOTEL		1983 HARRISON DR	EVANSTON, WY 82930–	307–789–0783
WHIRL INN MOTEL		1724 HARRISON DR	EVANSTON, WY 82930–	307–789–9610
DAYS INN		JUNCTION HWY. 59 & I–90	GILLETTE, WY 82716–	307–682–3999
HIGH PLAINS LODGE		109 N. US HWY. 14–16	GILLETTE, WY 82716–	307–686–1989
HOLIDAY INN		2009 S. DOUGLAS HWY	GILLETTE, WY 82716–	307–686–3000
PRIME RATE MOTEL		2105 RODGERS DR	GILLETTE, WY 82716–	307–686–8600
RAMADA LIMITED GILLETTE		608 E. 2ND ST	GILLETTE, WY 82716–	307–682–9341
SUPER 8 MOTEL		208 DECKER CT	GILLETTE, WY 82716–	307–682–8078

HOTEL AND MOTEL FIRE SAFETY ACT NATIONAL MASTER LIST NOVEMBER 16, 1993—Continued

Property name	PO Box/Rt No.	Street address	City/State/Zip	Telephone
TOWER WEST LODGE		109 N. US HWY. 14–16	GILLETTE, WY 82716–	307–686–2210
SUPER 8 MOTEL		280 N. FLAMING GORGE	GREEN RIVER, WY 82935–	307–875–8330
ANTLER MOTEL		43 W. PEARL	JACKSON, WY 83001–	307–733–2535
ANVIL MOTEL		215 N. CACHE	JACKSON, WY 83001–	307–733–3668
CACHE CREEK MOTEL		390 N. GLENWOOD	JACKSON, WY 83001–	307–733–7781
COWBOY VILLAGE RESORT		120 S. FLAT CREEK DR	JACKSON, WY 83001–	307–733–3121
DAYS INN		1280 W. BROADWAY	JACKSON, WY 83001–	307–733–9010
ELK COUNTRY INN		480 W. PEARL	JACKSON, WY 83001–	307–733–2364
EXECUTIVE INN		340 W. PEARL	JACKSON, WY 83001–	307–733–4340
FLAT CREEK MOTEL		1935 N. HWY. 89/191	JACKSON, WY 83001–	307–733–5276
FORTY NINER MOTEL		330 W. PEARL	JACKSON, WY 83001–	307–733–7550
LAZY X MOTEL		325 N. CACHE	JACKSON, WY 83001–	307–733–3673
RANCH INN		45 E. PEARL	JACKSON, WY 83001–	307–733–6363
RUSTY PARROT LODGE		175 N. JACKSON	JACKSON, WY 83001–	307–733–2000
WORT HOTEL		50 N. GLENWOOD	JACKSON, WY 83001–	307–733–2190
WYOMING INN		N. HWY. 189	LABARGE, WY 83123–	307–386–2654
PRONGHORN LODGE		150 E. MAIN	LANDER, WY 82520–	307–332–3940
CAMELOT MOTEL		523 S. ADAMS	LARAMIE, WY 82070–	307–721–8860
FOSTER'S COUNTRY INN		1561 JACKSON ST	LARAMIE, WY 82070–	307–742–8371
MOTEL 6		621 PLAZA LN	LARAMIE, WY 82070–	307–742–2307
LITTLE AMERICA HOTEL	PO BOX 1		LITTLE AMERICA, WY 82929–	307–875–2400
SUPER 8 MOTEL		595 E. MAIN	LOVELL, WY 82431–	307–548–2725
COVERED WAGON MOTEL		730 S. MAIN	LUSK, WY 82225–	307–334–2836
THE ZZZZ INN		327 S. HWY. 187	PINEDALE, WY 82941–	307–367–2121
SLEEP INN		I–80 HWY	RAWLINS, WY 82301–	307–328–1732
SUPER 8 MOTEL		2338 WAGON CIRCLE RD	RAWLINS, WY 82301–	307–328–0630
CIRCLE B MOTEL		909 W. MAIN	RIVERTON, WY 82501–	307–856–9677
HOLIDAY INN		N. FEDERAL AT SUNSET DR	RIVERTON, WY 82501–	307–856–8100
MOUNTAIN VIEW MOTEL		720 W. MAIN	RIVERTON, WY 82501–	307–856–2418
SUPER 8 MOTEL		1040 N. FEDERAL BLVD	RIVERTON, WY 82501–	307–857–2400
INN AT ROCK SPRINGS		2518 FOOTHILL BLVD	ROCK SPRINGS, WY 82901–	307–362–9600
LA QUINTA INN		2717 DEWAR DR	ROCK SPRINGS, WY 82901–	307–362–1770
MOTEL 6		2615 FOOTHILL BLVD	ROCK SPRINGS, WY 82901–	307–362–1850
MOTEL 8		108 GATEWAY BLVD	ROCK SPRINGS, WY 82901–	307–362–8200
BEST WESTERN SHERIDAN CENTER.		612 N. MAIN	SHERIDAN, WY 82801–	307–674–7421
HOLIDAY INN SHERIDAN		1809 SUGARLAND DR	SHERIDAN, WY 82801–	307–672–8931
MILL INN		2161 COFFEEN AVE	SHERIDAN, WY 82801–	307–672–6401
DOR RAY MOTEL		550 W. 2ND	SHOSHONI, WY 82649–	307–876–9358
SUPER 8 MOTEL		1548 S. MAIN	TORRINGTON, WY 82240–	307–334–2836
SETTLERS INN		2200 BIG HORN AVE	WORLAND, WY 82401–	307–347–8201
SUPER 8 MOTEL		2500 BIG HORN AVE	WORLAND, WY 82401–	307–347–9236

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BILLING CODE 8718–26–U

federal register

Monday
November 29, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming

AGENCY: Bureau of Indian Affairs, Interior.

ACTION: Notice of Approved Tribal-State Compact.

SUMMARY: Pursuant to 25 U.S.C. 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary—Indian Affairs, Department of the Interior, through her delegated authority, has approved the Second Amendment to the March 24, 1993 Agreement Between the Crow Tribe and the State of Montana Concerning Class III Gaming, executed on August 31, 1993.

DATES: This action is effective on November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 5, 1993.

Marshall M. Cutsforth,

Acting Assistant Secretary—Indian Affairs.

[FR Doc. 93–29057 Filed 11–26–93; 8:45 am]

BILLING CODE 4310–02–P

federal register

Monday
November 29, 1993

Part IV

Office of Management and Budget

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations; Notice

OFFICE OF MANAGEMENT AND BUDGET

Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations

AGENCY: Office of Management and Budget.

ACTION: Final Revision to OMB Circular A–110, "Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals and Other Non-Profit Organizations."

SUMMARY: Office of Management and Budget (OMB) Circular A–110 provides standards for obtaining consistency and uniformity among Federal agencies in the administration of grants and agreements with institutions of higher education, hospitals, and other non-profit organizations.

OMB issued Circular A–110 in 1976 and, except for a minor revision in February 1987, the Circular contains its original provisions. To update the Circular, OMB established an interagency task force to review the Circular. The task force solicited suggestions for changes to the Circular from university groups, non-profit organizations and other interested parties and compared, for consistency, the provisions of similar provisions applied to State and local governments. The revised Circular reflects the results of these efforts.

DATES: Provisions that affect Federal agencies are effective December 29, 1993. Provisions that affect grantees will be adopted by agencies in codified regulations by May 30, 1994. Earlier implementation is encouraged.

ADDRESSES: Office of Management and Budget, Office of Federal Financial Management, Financial Standards and Reporting Branch, room 10235, New Executive Office Building, Washington, DC 20503. For a copy of this Circular, contact Office of Administration, Publication Office, room 2200, New Executive Office Building, Washington, DC 20503, or telephone (202) 395–7332.

FOR FURTHER INFORMATION CONTACT: Palmer Marcantonio, Financial Standards and Reporting Branch, Office of Federal Financial Management, Office of Management and Budget (telephone: 202–395–3993).

SUPPLEMENTARY INFORMATION:

A. Background

OMB published a notice in the **Federal Register** (57 FR 39018) on August 27, 1992, requesting comments on proposed revisions to OMB Circular A–110. Interested parties were invited to submit comments. OMB received over 200 comments from Federal agencies, non-profit organizations, professional organizations and others. All comments were considered in developing this final revision.

The following section presents a summary of the major comments, grouped by subject, and a response to each comment. Other changes have been made to increase clarity and readability.

B. Comments and Responses

General

Comment: Provide Federal agencies the necessary discretion to grant waivers on a case-by-case basis.

Response: Amended Circular to provide Federal agencies the authority to grant exceptions on a case-by-case basis.

Comment: Clarify the provisions concerning the allowability of fees or profits.

Response: No change. Generally fees and profits are not paid to recipients unless authorized by legislation. Fees and profits are discussed in the various cost principles.

Pre-Award Requirements

Comment: Delete or revise section on "Advance Public Notice and Priority Setting."

Response: Amended the section to give Federal agencies more flexibility.

Comment: Amend the section on "Special Award Conditions" to: (1) include quantifiable, objective measures which may trigger special award conditions; (2) provide for an appeals process; and, (3) conform to the grants management common rule covering State and local governments to the extent practicable.

Response: OMB expanded this section to require Federal agencies to provide more information to recipients including an explanation of how recipients may request reconsideration of additional requirements. However, OMB does not believe it is practical to provide quantifiable measures. Most of the additional requirements are based on qualitative considerations rather than quantitative ones. Also, OMB amended this section to conform to the grants management common rule to the extent practicable.

Post-Award Requirements

Comment: The definition of "in-kind contribution" is not the same as the one used in the grants management common rule for State and local governments.

Response: Redefined third party in-kind contributions to mean the value of non-cash contributions from third parties. All grantee contributions whether in the form of property or cash are referred to as "contributions" and are subject to the respective cost principles. This change is consistent with the provisions of the Common Rule.

Comment: Allow grantees to use unrecovered indirect cost as cost sharing or matching.

Response: Added a provision to the Circular which provides that unrecovered indirect cost may be included as part of cost sharing or matching with the Federal agency's prior approval.

Comment: In identifying contributed services to federally-funded programs, university recipients should be entitled to assign fringe benefits on the same basis as they would if services were compensated, as long as such costs meet all other stated criteria.

Response: No change. The Circular provides that paid fringe benefits for volunteer services that are reasonable, allowable and allocable may be included in the valuation of the services. This is a liberalization of the current Circular. It recognizes that some donated services originate from third parties that pay fringe benefits.

Comment: The requirement to develop unit cost information is not applicable to scientific research and related activities.

Response: No change. The Circular covers many programs, other than research where unit cost data are useful. The Circular does not require the development of unit cost data for those programs where it is not practical to do so.

Comment: The criteria for informing the Federal agency of unneeded property should be changed to conform to the criteria in the grants management common rule for State and local governments.

Response: Changed the criteria used for reporting unneeded property. The Circular now provides for recipients to use the fair market value of unneeded property rather than its acquisition cost to determine whether the property must be reported to the Federal agency. This change is consistent with the provisions of the Common Rule.

Comment: Interest earned on Federal advances of grant funds should be returned to a single entity (e.g., the Department of the Treasury) rather than each individual Federal awarding agency.

Response: Amended Circular to provide that all interest earned on

Federal advances shall be remitted to the Department of Health and Human Services (DHHS). DHHS is the largest granting agency and administers a sophisticated payment management system.

Comment: The definition of program income should provide for deduction of costs incidental to program income.

Response: No change. Because of the different amounts and types of program income, OMB believes the accounting for costs incurred in connection with program income should be considered on a program-by-program basis.

Comment: All program income regardless of whether the deductive, matching, or additive alternative is authorized, should be used by recipients before they request additional cash payments.

Response: Amended the Circular to clarify that all program income should be used by recipients before they request additional cash payments.

Comment: The requirement for recipients to ". . . follow a procedure to avoid purchasing unnecessary or duplicative items" is resulting in costly delays in purchasing research equipment. Federal auditors have interpreted this requirement to mean recipients must establish a costly equipment screening process.

Response: Amended the Circular to provide that recipients must determine, through an appropriate process, that existing equipment is not available to meet the new requirement. The original requirement was not intended to establish a costly equipment screening process.

Comment: Authority to incur pre-award costs, to initiate one time extensions of assistance agreements, and to carry forward unobligated balances should not require prior approval unless specifically required by the Federal agency.

Response: Amended the Circular to provide that recipients of research awards, because of the nature of the programs, are not required to obtain prior approval to: (1) incur pre-award costs, (2) extend an assistance program, or (3) carry forward unobligated balances unless specifically required by the Federal agency.

After-the-Award Requirements

Comment: The Circular allows Federal agencies to recover funds on the basis of a later audit or review. A number of commenters said the only way funds should be recovered after the closeout of an award is on the basis of an audit.

Response: No change. Grantees which certify that rate agreements contain no unallowable cost are required to reimburse the Federal Government for any cost that is later found to be unallowable through legal means other than audit.

John B. Arthur,

Assistant Director for Administration.

Circular No. A–110 Revised

To the Heads of Executive Departments and Establishments

Subject: Uniform Administrative Requirements for Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

1. *Purpose.* This Circular sets forth standards for obtaining consistency and uniformity among Federal agencies in the administration of grants to and agreements with institutions of higher education, hospitals, and other non-profit organizations.

2. *Authority.* Circular A–110 is issued under the authority of 31 U.S.C. 503 (the Chief Financial Officers Act), 31 U.S.C. 1111, 41 U.S.C. 405 (the Office of Federal Procurement Policy Act), Reorganization Plan No. 2 of 1970, and E.O. 11541 ("Prescribing the Duties of the Office of Management and Budget and the Domestic Policy Council in the Executive Office of the President").

3. *Policy.* Except as provided herein, the standards set forth in this Circular are applicable to all Federal agencies. If any statute specifically prescribes policies or specific requirements that differ from the standards provided herein, the provisions of the statute shall govern.

The provisions of the sections of this Circular shall be applied by Federal agencies to recipients. Recipients shall apply the provisions of this Circular to subrecipients performing substantive work under grants and agreements that are passed through or awarded by the primary recipient, if such subrecipients are organizations described in paragraph 1.

This Circular does not apply to grants, contracts, or other agreements between the Federal Government and units of State or local governments covered by OMB Circular A–102, "Grants and Cooperative Agreements with State and Local Governments," and the Federal agencies' grants management common rule which standardized and codified the administrative requirements Federal agencies impose on State and local grantees. In addition, subawards and contracts to State or local governments are not covered by this Circular. However, this Circular applies to subawards made by State and local governments to organizations covered by this Circular. Federal agencies may apply the provisions of this Circular to commercial organizations, foreign governments, organizations under the jurisdiction of foreign governments, and international organizations.

4. *Definitions.* Definitions of key terms used in this Circular are contained in Section _____.2 in the Attachment.

5. *Required Action.* The specific requirements and responsibilities of Federal agencies and institutions of higher education, hospitals, and other non-profit organizations are set forth in this Circular. Federal agencies responsible for awarding and administering grants to and other agreements with organizations described in paragraph 1 shall adopt the language in the Circular unless different provisions are required by Federal statute or are approved by OMB.

6. *OMB Responsibilities.* OMB will review agency regulations and implementation of this Circular, and will provide interpretations of policy requirements and assistance to insure effective and efficient implementation. Any exceptions will be subject to approval by OMB, as indicated in Section _____.4 in the Attachment. Exceptions will only be made in particular cases where adequate justification is presented.

7. *Information Contact.* Further information concerning this Circular may be obtained by contacting the Office of Federal Financial Management, Office of Management and Budget, Washington, DC 20503, Telephone (202) 395–3993.

8. *Termination Review Date.* This Circular will have a policy review three years from date of issuance.

9. *Effective Date.* The standards set forth in this Circular which affect Federal agencies will be effective 30 days after publication of the final revision in the **Federal Register**. Those standards which Federal agencies impose on grantees will be adopted by agencies in codified regulations within six months after publication in the **Federal Register**. Earlier implementation is encouraged.

Leon E. Panetta,

Director.

Grants and Agreements With Institutions of Higher Education, Hospitals, and Other Non-Profit Organizations

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Subpart A—General

_____.1 Purpose. This Circular establishes uniform administrative requirements for Federal grants and agreements awarded to institutions of higher education, hospitals, and other non-profit organizations. Federal awarding agencies shall not impose additional or inconsistent requirements, except as provided in Sections _____.4, and _____.14 or unless specifically required by Federal statute or executive order. Non-profit organizations that implement Federal programs for the States are also subject to State requirements.

_____.2 Definitions.

(a) *Accrued expenditures* means the charges incurred by the recipient during a given period requiring the provision of funds for: (1) Goods and other tangible property received; (2) services performed by employees, contractors, subrecipients, and other payees; and, (3) other amounts becoming owed under programs for which no current services or performance is required.

(b) *Accrued income* means the sum of: (1) Earnings during a given period from (i) services performed by the recipient, and (ii) goods and other tangible property delivered to purchasers, and (2) amounts becoming owed to the recipient for which no current services or performance is required by the recipient.

(c) *Acquisition cost of equipment* means the net invoice price of the equipment, including the cost of modifications, attachments, accessories, or auxiliary apparatus necessary to make the property usable for the purpose for which it was acquired. Other charges, such as the cost of installation, transportation, taxes, duty or protective in-transit insurance, shall be included or excluded from the unit acquisition cost in accordance with the recipient's regular accounting practices.

(d) *Advance* means a payment made by Treasury check or other appropriate payment mechanism to a recipient upon its request either before outlays are made by the recipient or through the use of predetermined payment schedules.

(e) *Award* means financial assistance that provides support or stimulation to accomplish a public purpose. Awards include grants and other agreements in the form of money or property in lieu of money, by the Federal Government to an eligible recipient. The term does not include: technical assistance, which provides services instead of money; other assistance in the form of loans, loan guarantees, interest subsidies, or insurance; direct payments of any kind to individuals; and, contracts which are required to be entered into and administered under procurement laws and regulations.

(f) *Cash contributions* means the recipient's cash outlay, including the outlay of money contributed to the recipient by third parties.

(g) *Closeout* means the process by which a Federal awarding agency determines that all applicable administrative actions and all required work of the award have been completed by the recipient and Federal awarding agency.

(h) *Contract* means a procurement contract under an award or subaward, and a procurement subcontract under a recipient's or subrecipient's contract.

(i) *Cost sharing or matching* means that portion of project or program costs not borne by the Federal Government.

(j) *Date of completion* means the date on which all work under an award is completed or the date on the award document, or any supplement or amendment thereto, on which Federal sponsorship ends.

(k) *Disallowed costs* means those charges to an award that the Federal awarding agency determines to be unallowable, in accordance with the applicable Federal cost principles or other terms and conditions contained in the award.

(l) *Equipment* means tangible nonexpendable personal property including exempt property charged directly to the award having a useful life of more than one year and an acquisition cost of $5000 or more per unit. However, consistent with recipient policy, lower limits may be established.

(m) *Excess property* means property under the control of any Federal awarding agency that, as determined by the head thereof, is no longer required for its needs or the discharge of its responsibilities.

(n) *Exempt property* means tangible personal property acquired in whole or in part with Federal funds, where the Federal awarding agency has statutory authority to vest title in the recipient without further obligation to the Federal Government. An example of exempt property authority is contained in the Federal Grant and Cooperative Agreement Act (31 U.S.C. 6306), for property acquired under an award to conduct basic or applied research by a non-profit institution of higher education or non-profit organization whose principal purpose is conducting scientific research.

(o) *Federal awarding agency* means the Federal agency that provides an award to the recipient.

(p) *Federal funds authorized* means the total amount of Federal funds obligated by the Federal Government for use by the recipient. This amount may include any authorized carryover of unobligated funds from prior funding periods when permitted by agency regulations or agency implementing instructions.

(q) *Federal share* of real property, equipment, or supplies means that percentage of the property's acquisition costs and any improvement expenditures paid with Federal funds.

(r) *Funding period* means the period of time when Federal funding is available for obligation by the recipient.

(s) *Intangible property and debt instruments* means, but is not limited to, trademarks, copyrights, patents and patent applications and such property as loans, notes and other debt instruments, lease agreements, stock and other instruments of property ownership, whether considered tangible or intangible.

(t) *Obligations* means the amounts of orders placed, contracts and grants awarded, services received and similar transactions during a given period that require payment by the recipient during the same or a future period.

(u) *Outlays or expenditures* means charges made to the project or program. They may be reported on a cash or accrual basis. For reports prepared on a cash basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense charged, the value of third party in-kind contributions applied and the amount of cash advances and payments made to subrecipients. For reports prepared on an accrual basis, outlays are the sum of cash disbursements for direct charges for goods and services, the amount of indirect expense incurred, the value of in-kind contributions applied, and the net increase (or decrease) in the amounts owed by the recipient for goods and other property received, for services performed by employees, contractors, subrecipients and other payees and other amounts becoming owed under programs for which no current services or performance are required.

(v) *Personal property* means property of any kind except real property. It may be tangible, having physical existence, or intangible, having no physical existence, such as copyrights, patents, or securities.

(w) *Prior approval* means written approval by an authorized official evidencing prior consent.

(x) *Program income* means gross income earned by the recipient that is directly generated by a supported activity or earned as a result of the award (see exclusions in paragraphs _____.24 (e) and (h)). Program income includes, but is not limited to, income from fees for services performed, the use or rental of real or personal property acquired under federally-funded projects, the sale of commodities or items fabricated under an award, license fees and royalties on patents and copyrights, and interest on loans made with award funds. Interest earned on advances of Federal funds is not program income. Except as otherwise provided in Federal awarding agency regulations or the terms and conditions of the award, program income does not include the receipt of principal on loans, rebates, credits, discounts, etc., or interest earned on any of them.

(y) *Project costs* means all allowable costs, as set forth in the applicable Federal cost principles, incurred by a recipient and the value of the contributions made by third parties in accomplishing the objectives of the award during the project period.

(z) *Project period* means the period established in the award document during which Federal sponsorship begins and ends.

(aa) *Property* means, unless otherwise stated, real property, equipment, intangible property and debt instruments.

(bb) *Real property* means land, including land improvements, structures and appurtenances thereto, but excludes movable machinery and equipment.

(cc) *Recipient* means an organization receiving financial assistance directly from Federal awarding agencies to carry out a project or program. The term includes public and private institutions of higher education, public and private hospitals, and other quasi-public and private non-profit organizations such as, but not limited to, community action agencies, research institutes, educational associations, and health centers. The term may include commercial organizations, foreign or international organizations (such as agencies of the United Nations) which are recipients, subrecipients, or contractors or subcontractors of recipients or subrecipients at the discretion of the Federal awarding agency. The term does not include government-owned contractor-operated facilities or research centers providing continued support for mission-oriented, large-scale programs that are government-owned or controlled, or are designated as federally-funded research and development centers.

(dd) *Research and development* means all research activities, both basic and applied, and all development activities that are supported at universities, colleges, and other non-profit institutions. "Research" is defined as a systematic study directed toward fuller scientific knowledge or understanding of the subject studied. "Development" is the systematic use of knowledge and understanding gained from research directed toward the production of useful materials, devices, systems, or methods, including design and development of prototypes and processes. The term research also includes activities involving the training of individuals in research techniques where such activities utilize the same facilities as other research and development activities and where such activities are not included in the instruction function.

(ee) *Small awards* means a grant or cooperative agreement not exceeding the small purchase threshold fixed at 41 U.S.C. 403(11) (currently $25,000).

(ff) *Subaward* means an award of financial assistance in the form of money, or property in lieu of money, made under an award by a recipient to an eligible subrecipient or by a subrecipient to a lower tier subrecipient. The term includes financial assistance when provided by any legal agreement, even if the agreement is called a contract, but does not include procurement of goods and services nor does it include any form of assistance which is excluded from the definition of "award" in paragraph ____(e).

(gg) *Subrecipient* means the legal entity to which a subaward is made and which is accountable to the recipient for the use of the funds provided. The term may include foreign or international organizations (such as agencies of the United Nations) at the discretion of the Federal awarding agency.

(hh) *Supplies* means all personal property excluding equipment, intangible property, and debt instruments as defined in this section, and inventions of a contractor conceived or first actually reduced to practice in the performance of work under a funding agreement ("subject inventions"), as defined in 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts, and Cooperative Agreements."

(ii) *Suspension* means an action by a Federal awarding agency that temporarily withdraws Federal sponsorship under an award, pending corrective action by the recipient or pending a decision to terminate the award by the Federal awarding agency. Suspension of an award is a separate action from suspension under Federal agency regulations implementing E.O.s 12549 and 12689, "Debarment and Suspension."

(jj) *Termination* means the cancellation of Federal sponsorship, in whole or in part, under an agreement at any time prior to the date of completion.

(kk) *Third party in-kind contributions* means the value of non-cash contributions provided by non-Federal third parties. Third party in-kind contributions may be in the form of real property, equipment, supplies and other expendable property, and the value of goods and services directly benefiting and specifically identifiable to the project or program.

(ll) *Unliquidated obligations*, for financial reports prepared on a cash basis, means the amount of obligations incurred by the recipient that have not been paid. For reports prepared on an accrued expenditure basis, they represent the amount of obligations incurred by the recipient for which an outlay has not been recorded.

(mm) *Unobligated balance* means the portion of the funds authorized by the Federal awarding agency that has not been obligated by the recipient and is determined by deducting the cumulative obligations from the cumulative funds authorized.

(nn) *Unrecovered indirect cost* means the difference between the amount awarded and the amount which could have been awarded under the recipient's approved negotiated indirect cost rate.

(oo) *Working capital advance* means a procedure where by funds are advanced to the recipient to cover its estimated disbursement needs for a given initial period.

_____.3 Effect on other issuances. For awards subject to this Circular, all administrative requirements of codified program regulations, program manuals, handbooks and other nonregulatory materials which are inconsistent with the requirements of this Circular shall be superseded, except to the extent they are required by statute, or authorized in accordance with the deviations provision in Section _____.4.

_____.4 Deviations. The Office of Management and Budget (OMB) may grant exceptions for classes of grants or recipients subject to the requirements of this Circular when exceptions are not prohibited by statute. However, in the interest of maximum uniformity, exceptions from the requirements of this Circular shall be permitted only in unusual circumstances. Federal awarding agencies may apply more restrictive requirements to a class of recipients when approved by OMB. Federal awarding agencies may apply less restrictive requirements when awarding small awards, except for those requirements which are statutory. Exceptions on a case-by-case basis may also be made by Federal awarding agencies.

_____.5 Subawards. Unless sections of this Circular specifically exclude subrecipients from coverage, the provisions of this Circular shall be applied to subrecipients performing work under awards if such subrecipients are institutions of higher education, hospitals or other non-profit organizations. State and local government subrecipients are subject to the provisions of regulations implementing the grants management common rule, "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments," published at 53 FR 8034 (3/11/88).

Subpart B—Pre-Award Requirements

_____.10 Purpose. Sections _____.11 through _____.17 prescribes forms and instructions and other pre-award matters to be used in applying for Federal awards.

_____.11 Pre-award policies.

(a) Use of Grants and Cooperative Agreements, and Contracts. In each instance, the Federal awarding agency shall decide on the appropriate award instrument (i.e., grant, cooperative agreement, or contract). The Federal Grant and Cooperative Agreement Act (31 U.S.C. 6301–08) governs the use of grants, cooperative agreements and contracts. A grant or cooperative agreement shall be used only when the principal purpose of a transaction is to accomplish a public purpose of support or stimulation authorized by

Federal statute. The statutory criterion for choosing between grants and cooperative agreements is that for the latter, "substantial involvement is expected between the executive agency and the State, local government, or other recipient when carrying out the activity contemplated in the agreement." Contracts shall be used when the principal purpose is acquisition of property or services for the direct benefit or use of the Federal Government.

(b) Public Notice and Priority Setting. Federal awarding agencies shall notify the public of its intended funding priorities for discretionary grant programs, unless funding priorities are established by Federal statute.

_____.12 Forms for applying for Federal assistance.

(a) Federal awarding agencies shall comply with the applicable report clearance requirements of 5 CFR part 1320, "Controlling Paperwork Burdens on the Public," with regard to all forms used by the Federal awarding agency in place of or as a supplement to the Standard Form 424 (SF–424) series.

(b) Applicants shall use the SF–424 series or those forms and instructions prescribed by the Federal awarding agency.

(c) For Federal programs covered by E.O. 12372, "Intergovernmental Review of Federal Programs," the applicant shall complete the appropriate sections of the SF–424 (Application for Federal Assistance) indicating whether the application was subject to review by the State Single Point of Contact (SPOC). The name and address of the SPOC for a particular State can be obtained from the Federal awarding agency or the Catalog of Federal Domestic Assistance. The SPOC shall advise the applicant whether the program for which application is made has been selected by that State for review.

(d) Federal awarding agencies that do not use the SF–424 form should indicate whether the application is subject to review by the State under E.O. 12372.

_____.13 Debarment and suspension. Federal awarding agencies and recipients shall comply with the nonprocurement debarment and suspension common rule implementing E.O.s 12549 and 12689, "Debarment and Suspension." This common rule restricts subawards and contracts with certain parties that are debarred, suspended or otherwise excluded from or ineligible for participation in Federal assistance programs or activities.

_____.14 Special award conditions. If an applicant or recipient: (a) has a history of poor performance, (b) is not financially stable, (c) has a management system that does not meet the standards prescribed in this Circular, (d) has not conformed to the terms and conditions of a previous award, or (e) is not otherwise responsible, Federal awarding agencies may impose additional requirements as needed, provided that such applicant or recipient is notified in writing as to: the nature of the additional requirements, the reason why the additional requirements are being imposed, the nature of the corrective action needed, the time allowed for completing the corrective actions, and the method for requesting reconsideration of the additional requirements imposed. Any special conditions shall be promptly removed once the conditions that prompted them have been corrected.

_____.15 Metric system of measurement. The Metric Conversion Act, as amended by the Omnibus Trade and Competitiveness Act (15 U.S.C. 205) declares that the metric system is the preferred measurement system for U.S. trade and commerce. The Act requires each Federal agency to establish a date or dates in consultation with the Secretary of Commerce, when the metric system of measurement will be used in the agency's procurements, grants, and other business-related activities. Metric implementation may take longer where the use of the system is initially impractical or likely to cause significant inefficiencies in the accomplishment of federally-funded activities. Federal awarding agencies shall follow the provisions of E.O. 12770, "Metric Usage in Federal Government Programs."

_____.16 Resource Conservation and Recovery Act (RCRA) (Pub. L. 94–580 codified at 42 U.S.C. 6962). Under the Act, any State agency or agency of a political subdivision of a State which is using appropriated Federal funds must comply with Section 6002. Section 6002 requires that preference be given in procurement programs to the purchase of specific products containing recycled materials identified in guidelines developed by the Environmental Protection Agency (EPA) (40 CFR parts 247–254). Accordingly, State and local institutions of higher education, hospitals, and non-profit organizations that receive direct Federal awards or other Federal funds shall give preference in their procurement programs funded with Federal funds to the purchase of recycled products pursuant to the EPA guidelines.

_____.17 Certifications and representations. Unless prohibited by statute or codified regulation, each Federal awarding agency is authorized and encouraged to allow recipients to submit certifications and representations required by statute, executive order, or regulation on an annual basis, if the recipients have ongoing and continuing relationships with the agency. Annual certifications and representations shall be signed by responsible officials with the authority to ensure recipients' compliance with the pertinent requirements.

Subpart C—Post-Award Requirements

Financial and Program Management

_____.20 Purpose of financial and program management. Sections _____.21 through _____.28 prescribe standards for financial management systems, methods for making payments and rules for: satisfying cost sharing and matching requirements, accounting for program income, budget revision approvals, making audits, determining allowability of cost, and establishing fund availability.

_____.21 Standards for financial management systems.

(a) Federal awarding agencies shall require recipients to relate financial data to performance data and develop unit cost information whenever practical.

(b) Recipients' financial management systems shall provide for the following.

(1) Accurate, current and complete disclosure of the financial results of each federally-sponsored project or program in accordance with the reporting requirements set forth in Section _____.52. If a Federal awarding agency requires reporting on an accrual basis from a recipient that maintains its records on other than an accrual basis, the recipient shall not be required to establish an accrual accounting system. These recipients may develop such accrual data for its reports on the basis of an analysis of the documentation on hand.

(2) Records that identify adequately the source and application of funds for federally-sponsored activities. These records shall contain information pertaining to Federal awards, authorizations, obligations, unobligated balances, assets, outlays, income and interest.

(3) Effective control over and accountability for all funds, property and other assets. Recipients shall adequately safeguard all such assets and assure they are used solely for authorized purposes.

(4) Comparison of outlays with budget amounts for each award. Whenever appropriate, financial information should be related to performance and unit cost data.

(5) Written procedures to minimize the time elapsing between the transfer of funds to the recipient from the U.S. Treasury and the issuance or redemption of checks, warrants or payments by other means for program purposes by the recipient. To the extent that the provisions of the Cash Management Improvement Act (CMIA) (Pub. L. 101–453) govern, payment methods of State agencies, instrumentalities, and fiscal agents shall be consistent with CMIA Treasury-State Agreements or the CMIA default procedures codified at 31 CFR part 205, "Withdrawal of Cash from the Treasury for Advances under Federal Grant and Other Programs."

(6) Written procedures for determining the reasonableness, allocability and allowability of costs in accordance with the provisions of the applicable Federal cost principles and the terms and conditions of the award.

(7) Accounting records including cost accounting records that are supported by source documentation.

(c) Where the Federal Government guarantees or insures the repayment of money borrowed by the recipient, the Federal awarding agency, at its discretion, may require adequate bonding and insurance if the bonding and insurance requirements of the recipient are not deemed adequate to protect the interest of the Federal Government.

(d) The Federal awarding agency may require adequate fidelity bond coverage where the recipient lacks sufficient coverage to protect the Federal Government's interest.

(e) Where bonds are required in the situations described above, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties, as prescribed in 31 CFR part 223, "Surety Companies Doing Business with the United States."

_____.22 Payment.

(a) Payment methods shall minimize the time elapsing between the transfer of funds

from the United States Treasury and the issuance or redemption of checks, warrants, or payment by other means by the recipients. Payment methods of State agencies or instrumentalities shall be consistent with Treasury-State CMIA agreements or default procedures codified at 31 CFR part 205.

(b) Recipients are to be paid in advance, provided they maintain or demonstrate the willingness to maintain: (1) written procedures that minimize the time elapsing between the transfer of funds and disbursement by the recipient, and (2) financial management systems that meet the standards for fund control and accountability as established in Section _____.21. Cash advances to a recipient organization shall be limited to the minimum amounts needed and be timed to be in accordance with the actual, immediate cash requirements of the recipient organization in carrying out the purpose of the approved program or project. The timing and amount of cash advances shall be as close as is administratively feasible to the actual disbursements by the recipient organization for direct program or project costs and the proportionate share of any allowable indirect costs.

(c) Whenever possible, advances shall be consolidated to cover anticipated cash needs for all awards made by the Federal awarding agency to the recipient.

(1) Advance payment mechanisms include, but are not limited to, Treasury check and electronic funds transfer.

(2) Advance payment mechanisms are subject to 31 CFR part 205.

(3) Recipients shall be authorized to submit a requests for advances and reimbursements at least monthly when electronic fund transfers are not used.

(d) Requests for Treasury check advance payment shall be submitted on SF–270, "Request for Advance or Reimbursement," or other forms as may be authorized by OMB. This form is not to be used when Treasury check advance payments are made to the recipient automatically through the use of a predetermined payment schedule or if precluded by special Federal awarding agency instructions for electronic funds transfer.

(e) Reimbursement is the preferred method when the requirements in paragraph (b) cannot be met. Federal awarding agencies may also use this method on any construction agreement, or if the major portion of the construction project is accomplished through private market financing or Federal loans, and the Federal assistance constitutes a minor portion of the project.

(1) When the reimbursement method is used, the Federal awarding agency shall make payment within 30 days after receipt of the billing, unless the billing is improper.

(2) Recipients shall be authorized to submit a request for reimbursement at least monthly when electronic funds transfers are not used.

(f) If a recipient cannot meet the criteria for advance payments and the Federal awarding agency has determined that reimbursement is not feasible because the recipient lacks sufficient working capital, the Federal awarding agency may provide cash on a working capital advance basis. Under this procedure, the Federal awarding agency shall advance cash to the recipient to cover its estimated disbursement needs for an initial period generally geared to the awardee's disbursing cycle. Thereafter, the Federal awarding agency shall reimburse the recipient for its actual cash disbursements. The working capital advance method of payment shall not be used for recipients unwilling or unable to provide timely advances to their subrecipient to meet the subrecipient's actual cash disbursements.

(g) To the extent available, recipients shall disburse funds available from repayments to and interest earned on a revolving fund, program income, rebates, refunds, contract settlements, audit recoveries and interest earned on such funds before requesting additional cash payments.

(h) Unless otherwise required by statute, Federal awarding agencies shall not withhold payments for proper charges made by recipients at any time during the project period unless (1) or (2) apply.

(1) A recipient has failed to comply with the project objectives, the terms and conditions of the award, or Federal reporting requirements.

(2) The recipient or subrecipient is delinquent in a debt to the United States as defined in OMB Circular A–129, "Managing Federal Credit Programs." Under such conditions, the Federal awarding agency may, upon reasonable notice, inform the recipient that payments shall not be made for obligations incurred after a specified date until the conditions are corrected or the indebtedness to the Federal Government is liquidated.

(i) Standards governing the use of banks and other institutions as depositories of funds advanced under awards are as follows.

(1) Except for situations described in paragraph (i)(2), Federal awarding agencies shall not require separate depository accounts for funds provided to a recipient or establish any eligibility requirements for depositories for funds provided to a recipient. However, recipients must be able to account for the receipt, obligation and expenditure of funds.

(2) Advances of Federal funds shall be deposited and maintained in insured accounts whenever possible.

(j) Consistent with the national goal of expanding the opportunities for women-owned and minority-owned business enterprises, recipients shall be encouraged to use women-owned and minority-owned banks (a bank which is owned at least 50 percent by women or minority group members).

(k) Recipients shall maintain advances of Federal funds in interest bearing accounts, unless (1), (2) or (3) apply.

(1) The recipient receives less than $120,000 in Federal awards per year.

(2) The best reasonably available interest bearing account would not be expected to earn interest in excess of $250 per year on Federal cash balances.

(3) The depository would require an average or minimum balance so high that it would not be feasible within the expected Federal and non-Federal cash resources.

(l) For those entities where CMIA and its implementing regulations do not apply, interest earned on Federal advances deposited in interest bearing accounts shall be remitted annually to Department of Health and Human Services, Payment Management System, Rockville, MD 20852. Interest amounts up to $250 per year may be retained by the recipient for administrative expense. State universities and hospitals shall comply with CMIA, as it pertains to interest. If an entity subject to CMIA uses its own funds to pay pre-award costs for discretionary awards without prior written approval from the Federal awarding agency, it waives its right to recover the interest under CMIA.

(m) Except as noted elsewhere in this Circular, only the following forms shall be authorized for the recipients in requesting advances and reimbursements. Federal agencies shall not require more than an original and two copies of these forms.

(1) SF–270, Request for Advance or Reimbursement. Each Federal awarding agency shall adopt the SF–270 as a standard form for all nonconstruction programs when electronic funds transfer or predetermined advance methods are not used. Federal awarding agencies, however, have the option of using this form for construction programs in lieu of the SF–271, "Outlay Report and Request for Reimbursement for Construction Programs."

(2) SF–271, Outlay Report and Request for Reimbursement for Construction Programs. Each Federal awarding agency shall adopt the SF–271 as the standard form to be used for requesting reimbursement for construction programs. However, a Federal awarding agency may substitute the SF–270 when the Federal awarding agency determines that it provides adequate information to meet Federal needs.

_____.23 Cost sharing or matching.

(a) All contributions, including cash and third party in-kind, shall be accepted as part of the recipient's cost sharing or matching when such contributions meet all of the following criteria.

(1) Are verifiable from the recipient's records.

(2) Are not included as contributions for any other federally-assisted project or program.

(3) Are necessary and reasonable for proper and efficient accomplishment of project or program objectives.

(4) Are allowable under the applicable cost principles.

(5) Are not paid by the Federal Government under another award, except where authorized by Federal statute to be used for cost sharing or matching.

(6) Are provided for in the approved budget when required by the Federal awarding agency.

(7) Conform to other provisions of this Circular, as applicable.

(b) Unrecovered indirect costs may be included as part of cost sharing or matching only with the prior approval of the Federal awarding agency.

(c) Values for recipient contributions of services and property shall be established in accordance with the applicable cost principles. If a Federal awarding agency authorizes recipients to donate buildings or land for construction/facilities acquisition

projects or long-term use, the value of the donated property for cost sharing or matching shall be the lesser of (1) or (2).

(1) The certified value of the remaining life of the property recorded in the recipient's accounting records at the time of donation.

(2) The current fair market value. However, when there is sufficient justification, the Federal awarding agency may approve the use of the current fair market value of the donated property, even if it exceeds the certified value at the time of donation to the project.

(d) Volunteer services furnished by professional and technical personnel, consultants, and other skilled and unskilled labor may be counted as cost sharing or matching if the service is an integral and necessary part of an approved project or program. Rates for volunteer services shall be consistent with those paid for similar work in the recipient's organization. In those instances in which the required skills are not found in the recipient organization, rates shall be consistent with those paid for similar work in the labor market in which the recipient competes for the kind of services involved. In either case, paid fringe benefits that are reasonable, allowable, and allocable may be included in the valuation.

(e) When an employer other than the recipient furnishes the services of an employee, these services shall be valued at the employee's regular rate of pay (plus an amount of fringe benefits that are reasonable, allowable, and allocable, but exclusive of overhead costs), provided these services are in the same skill for which the employee is normally paid.

(f) Donated supplies may include such items as expendable equipment, office supplies, laboratory supplies or workshop and classroom supplies. Value assessed to donated supplies included in the cost sharing or matching share shall be reasonable and shall not exceed the fair market value of the property at the time of the donation.

(g) The method used for determining cost sharing or matching for donated equipment, buildings and land for which title passes to the recipient may differ according to the purpose of the award, if (1) or (2) apply.

(1) If the purpose of the award is to assist the recipient in the acquisition of equipment, buildings or land, the total value of the donated property may be claimed as cost sharing or matching.

(2) If the purpose of the award is to support activities that require the use of equipment, buildings or land, normally only depreciation or use charges for equipment and buildings may be made. However, the full value of equipment or other capital assets and fair rental charges for land may be allowed, provided that the Federal awarding agency has approved the charges.

(h) The value of donated property shall be determined in accordance with the usual accounting policies of the recipient, with the following qualifications.

(1) The value of donated land and buildings shall not exceed its fair market value at the time of donation to the recipient as established by an independent appraiser (e.g., certified real property appraiser or General Services Administration representative) and certified by a responsible official of the recipient.

(2) The value of donated equipment shall not exceed the fair market value of equipment of the same age and condition at the time of donation.

(3) The value of donated space shall not exceed the fair rental value of comparable space as established by an independent appraisal of comparable space and facilities in a privately-owned building in the same locality.

(4) The value of loaned equipment shall not exceed its fair rental value.

(5) The following requirements pertain to the recipient's supporting records for in-kind contributions from third parties.

(i) Volunteer services shall be documented and, to the extent feasible, supported by the same methods used by the recipient for its own employees.

(ii) The basis for determining the valuation for personal service, material, equipment, buildings and land shall be documented.

_____.24 Program income.

(a) Federal awarding agencies shall apply the standards set forth in this section in requiring recipient organizations to account for program income related to projects financed in whole or in part with Federal funds.

(b) Except as provided in paragraph (h) below, program income earned during the project period shall be retained by the recipient and, in accordance with Federal awarding agency regulations or the terms and conditions of the award, shall be used in one or more of the ways listed in the following.

(1) Added to funds committed to the project by the Federal awarding agency and recipient and used to further eligible project or program objectives.

(2) Used to finance the non-Federal share of the project or program.

(3) Deducted from the total project or program allowable cost in determining the net allowable costs on which the Federal share of costs is based.

(c) When an agency authorizes the disposition of program income as described in paragraphs (b)(1) or (b)(2), program income in excess of any limits stipulated shall be used in accordance with paragraph (b)(3).

(d) In the event that the Federal awarding agency does not specify in its regulations or the terms and conditions of the award how program income is to be used, paragraph (b)(3) shall apply automatically to all projects or programs except research. For awards that support research, paragraph (b)(1) shall apply automatically unless the awarding agency indicates in the terms and conditions another alternative on the award or the recipient is subject to special award conditions, as indicated in Section _____.14.

(e) Unless Federal awarding agency regulations or the terms and conditions of the award provide otherwise, recipients shall have no obligation to the Federal Government regarding program income earned after the end of the project period.

(f) If authorized by Federal awarding agency regulations or the terms and conditions of the award, costs incident to the generation of program income may be deducted from gross income to determine program income, provided these costs have not been charged to the award.

(g) Proceeds from the sale of property shall be handled in accordance with the requirements of the Property Standards (See Sections _____.30 through _____.37).

(h) Unless Federal awarding agency regulations or the terms and condition of the award provide otherwise, recipients shall have no obligation to the Federal Government with respect to program income earned from license fees and royalties for copyrighted material, patents, patent applications, trademarks, and inventions produced under an award. However, Patent and Trademark Amendments (35 U.S.C. 18) apply to inventions made under an experimental, developmental, or research award.

_____.25 Revision of budget and program plans.

(a) The budget plan is the financial expression of the project or program as approved during the award process. It may include either the Federal and non-Federal share, or only the Federal share, depending upon Federal awarding agency requirements. It shall be related to performance for program evaluation purposes whenever appropriate.

(b) Recipients are required to report deviations from budget and program plans, and request prior approvals for budget and program plan revisions, in accordance with this section.

(c) For nonconstruction awards, recipients shall request prior approvals from Federal awarding agencies for one or more of the following program or budget related reasons.

(1) Change in the scope or the objective of the project or program (even if there is no associated budget revision requiring prior written approval).

(2) Change in a key person specified in the application or award document.

(3) The absence for more than three months, or a 25 percent reduction in time devoted to the project, by the approved project director or principal investigator.

(4) The need for additional Federal funding.

(5) The transfer of amounts budgeted for indirect costs to absorb increases in direct costs, or vice versa, if approval is required by the Federal awarding agency.

(6) The inclusion, unless waived by the Federal awarding agency, of costs that require prior approval in accordance with OMB Circular A–21, "Cost Principles for Institutions of Higher Education," OMB Circular A–122, "Cost Principles for Non-Profit Organizations," or 45 CFR part 74 Appendix E, "Principles for Determining Costs Applicable to Research and Development under Grants and Contracts with Hospitals," or 48 CFR part 31, "Contract Cost Principles and Procedures," as applicable.

(7) The transfer of funds allotted for training allowances (direct payment to trainees) to other categories of expense.

(8) Unless described in the application and funded in the approved awards, the subaward, transfer or contracting out of any work under an award. This provision does not apply to the purchase of supplies, material, equipment or general support services.

(d) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(e) Except for requirements listed in paragraphs (c)(1) and (c)(4) of this section, Federal awarding agencies are authorized, at their option, to waive cost-related and administrative prior written approvals required by this Circular and OMB Circulars A–21 and A–122. Such waivers may include authorizing recipients to do any one or more of the following.

(1) Incur pre-award costs 90 calendar days prior to award or more than 90 calendar days with the prior approval of the Federal awarding agency. All pre-award costs are incurred at the recipient's risk (i.e., the Federal awarding agency is under no obligation to reimburse such costs if for any reason the recipient does not receive an award or if the award is less than anticipated and inadequate to cover such costs).

(2) Initiate a one-time extension of the expiration date of the award of up to 12 months unless one or more of the following conditions apply. For one-time extensions, the recipient must notify the Federal awarding agency in writing with the supporting reasons and revised expiration date at least 10 days before the expiration date specified in the award. This one-time extension may not be exercised merely for the purpose of using unobligated balances.

(i) The terms and conditions of award prohibit the extension.

(ii) The extension requires additional Federal funds.

(iii) The extension involves any change in the approved objectives or scope of the project.

(3) Carry forward unobligated balances to subsequent funding periods.

(4) For awards that support research, unless the Federal awarding agency provides otherwise in the award or in the agency's regulations, the prior approval requirements described in paragraph (e) are automatically waived (i.e., recipients need not obtain such prior approvals) unless one of the conditions included in paragraph (e)(2) applies.

(f) The Federal awarding agency may, at its option, restrict the transfer of funds among direct cost categories or programs, functions and activities for awards in which the Federal share of the project exceeds $100,000 and the cumulative amount of such transfers exceeds or is expected to exceed 10 percent of the total budget as last approved by the Federal awarding agency. No Federal awarding agency shall permit a transfer that would cause any Federal appropriation or part thereof to be used for purposes other than those consistent with the original intent of the appropriation.

(g) All other changes to nonconstruction budgets, except for the changes described in paragraph (j), do not require prior approval.

(h) For construction awards, recipients shall request prior written approval promptly from Federal awarding agencies for budget revisions whenever (1), (2) or (3) apply.

(1) The revision results from changes in the scope or the objective of the project or program.

(2) The need arises for additional Federal funds to complete the project.

(3) A revision is desired which involves specific costs for which prior written approval requirements may be imposed consistent with applicable OMB cost principles listed in Section _____.27.

(i) No other prior approval requirements for specific items may be imposed unless a deviation has been approved by OMB.

(j) When a Federal awarding agency makes an award that provides support for both construction and nonconstruction work, the Federal awarding agency may require the recipient to request prior approval from the Federal awarding agency before making any fund or budget transfers between the two types of work supported.

(k) For both construction and nonconstruction awards, Federal awarding agencies shall require recipients to notify the Federal awarding agency in writing promptly whenever the amount of Federal authorized funds is expected to exceed the needs of the recipient for the project period by more than $5000 or five percent of the Federal award, whichever is greater. This notification shall not be required if an application for additional funding is submitted for a continuation award.

(l) When requesting approval for budget revisions, recipients shall use the budget forms that were used in the application unless the Federal awarding agency indicates a letter of request suffices.

(m) Within 30 calendar days from the date of receipt of the request for budget revisions, Federal awarding agencies shall review the request and notify the recipient whether the budget revisions have been approved. If the revision is still under consideration at the end of 30 calendar days, the Federal awarding agency shall inform the recipient in writing of the date when the recipient may expect the decision.

_____.26 Non-Federal audits.

(a) Recipients and subrecipients that are institutions of higher education or other non-profit organizations shall be subject to the audit requirements contained in OMB Circular A–133, "Audits of Institutions of Higher Education and Other Non-Profit Institutions."

(b) State and local governments shall be subject to the audit requirements contained in the Single Audit Act (31 U.S.C. 7501–7) and Federal awarding agency regulations implementing OMB Circular A–128, "Audits of State and Local Governments."

(c) Hospitals not covered by the audit provisions of OMB Circular A–133 shall be subject to the audit requirements of the Federal awarding agencies.

(d) Commercial organizations shall be subject to the audit requirements of the Federal awarding agency or the prime recipient as incorporated into the award document.

_____.27 Allowable costs. For each kind of recipient, there is a set of Federal principles for determining allowable costs. Allowability of costs shall be determined in accordance with the cost principles applicable to the entity incurring the costs. Thus, allowability of costs incurred by State, local or federally-recognized Indian tribal governments is determined in accordance with the provisions of OMB Circular A–87, "Cost Principles for State and Local Governments." The allowability of costs incurred by non-profit organizations is determined in accordance with the provisions of OMB Circular A–122, "Cost Principles for Non-Profit Organizations." The allowability of costs incurred by institutions of higher education is determined in accordance with the provisions of OMB Circular A–21, "Cost Principles for Educational Institutions." The allowability of costs incurred by hospitals is determined in accordance with the provisions of Appendix E of 45 CFR part 74, "Principles for Determining Costs Applicable to Research and Development Under Grants and Contracts with Hospitals." The allowability of costs incurred by commercial organizations and those non-profit organizations listed in Attachment C to Circular A–122 is determined in accordance with the provisions of the Federal Acquisition Regulation (FAR) at 48 CFR part 31.

_____.28 Period of availability of funds. Where a funding period is specified, a recipient may charge to the grant only allowable costs resulting from obligations incurred during the funding period and any pre-award costs authorized by the Federal awarding agency.

Property Standards

_____.30 Purpose of property standards. Sections _____.31 through _____.37 set forth uniform standards governing management and disposition of property furnished by the Federal Government whose cost was charged to a project supported by a Federal award. Federal awarding agencies shall require recipients to observe these standards under awards and shall not impose additional requirements, unless specifically required by Federal statute. The recipient may use its own property management standards and procedures provided it observes the provisions of Sections _____.31 through _____.37.

_____.31 Insurance coverage. Recipients shall, at a minimum, provide the equivalent insurance coverage for real property and equipment acquired with Federal funds as provided to property owned by the recipient. Federally-owned property need not be insured unless required by the terms and conditions of the award.

_____.32 Real property. Each Federal awarding agency shall prescribe requirements for recipients concerning the use and disposition of real property acquired in whole or in part under awards. Unless otherwise provided by statute, such requirements, at a minimum, shall contain the following.

(a) Title to real property shall vest in the recipient subject to the condition that the recipient shall use the real property for the authorized purpose of the project as long as it is needed and shall not encumber the property without approval of the Federal awarding agency.

(b) The recipient shall obtain written approval by the Federal awarding agency for the use of real property in other federally-sponsored projects when the recipient

determines that the property is no longer needed for the purpose of the original project. Use in other projects shall be limited to those under federally-sponsored projects (i.e., awards) or programs that have purposes consistent with those authorized for support by the Federal awarding agency.

(c) When the real property is no longer needed as provided in paragraphs (a) and (b), the recipient shall request disposition instructions from the Federal awarding agency or its successor Federal awarding agency. The Federal awarding agency shall observe one or more of the following disposition instructions.

(1) The recipient may be permitted to retain title without further obligation to the Federal Government after it compensates the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project.

(2) The recipient may be directed to sell the property under guidelines provided by the Federal awarding agency and pay the Federal Government for that percentage of the current fair market value of the property attributable to the Federal participation in the project (after deducting actual and reasonable selling and fix-up expenses, if any, from the sales proceeds). When the recipient is authorized or required to sell the property, proper sales procedures shall be established that provide for competition to the extent practicable and result in the highest possible return.

(3) The recipient may be directed to transfer title to the property to the Federal Government or to an eligible third party provided that, in such cases, the recipient shall be entitled to compensation for its attributable percentage of the current fair market value of the property.

_____.33 Federally-owned and exempt property.

(a) Federally-owned property.

(1) Title to federally-owned property remains vested in the Federal Government. Recipients shall submit annually an inventory listing of federally-owned property in their custody to the Federal awarding agency. Upon completion of the award or when the property is no longer needed, the recipient shall report the property to the Federal awarding agency for further Federal agency utilization.

(2) If the Federal awarding agency has no further need for the property, it shall be declared excess and reported to the General Services Administration, unless the Federal awarding agency has statutory authority to dispose of the property by alternative methods (e.g., the authority provided by the Federal Technology Transfer Act (15 U.S.C. 3710 (I)) to donate research equipment to educational and non-profit organizations in accordance with E.O. 12821, "Improving Mathematics and Science Education in Support of the National Education Goals.") Appropriate instructions shall be issued to the recipient by the Federal awarding agency.

(b) Exempt property. When statutory authority exists, the Federal awarding agency has the option to vest title to property acquired with Federal funds in the recipient without further obligation to the Federal Government and under conditions the Federal awarding agency considers appropriate. Such property is "exempt property." Should a Federal awarding agency not establish conditions, title to exempt property upon acquisition shall vest in the recipient without further obligation to the Federal Government.

_____.34 Equipment.

(a) Title to equipment acquired by a recipient with Federal funds shall vest in the recipient, subject to conditions of this section.

(b) The recipient shall not use equipment acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute, for as long as the Federal Government retains an interest in the equipment.

(c) The recipient shall use the equipment in the project or program for which it was acquired as long as needed, whether or not the project or program continues to be supported by Federal funds and shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the original project or program, the recipient shall use the equipment in connection with its other federally-sponsored activities, in the following order of priority: (i) Activities sponsored by the Federal awarding agency which funded the original project, then (ii) activities sponsored by other Federal awarding agencies.

(d) During the time that equipment is used on the project or program for which it was acquired, the recipient shall make it available for use on other projects or programs if such other use will not interfere with the work on the project or program for which the equipment was originally acquired. First preference for such other use shall be given to other projects or programs sponsored by the Federal awarding agency that financed the equipment; second preference shall be given to projects or programs sponsored by other Federal awarding agencies. If the equipment is owned by the Federal Government, use on other activities not sponsored by the Federal Government shall be permissible if authorized by the Federal awarding agency. User charges shall be treated as program income.

(e) When acquiring replacement equipment, the recipient may use the equipment to be replaced as trade-in or sell the equipment and use the proceeds to offset the costs of the replacement equipment subject to the approval of the Federal awarding agency.

(f) The recipient's property management standards for equipment acquired with Federal funds and federally-owned equipment shall include all of the following.

(1) Equipment records shall be maintained accurately and shall include the following information.

(i) A description of the equipment.

(ii) Manufacturer's serial number, model number, Federal stock number, national stock number, or other identification number.

(iii) Source of the equipment, including the award number.

(iv) Whether title vests in the recipient or the Federal Government.

(v) Acquisition date (or date received, if the equipment was furnished by the Federal Government) and cost.

(vi) Information from which one can calculate the percentage of Federal participation in the cost of the equipment (not applicable to equipment furnished by the Federal Government).

(vii) Location and condition of the equipment and the date the information was reported.

(viii) Unit acquisition cost.

(ix) Ultimate disposition data, including date of disposal and sales price or the method used to determine current fair market value where a recipient compensates the Federal awarding agency for its share.

(2) Equipment owned by the Federal Government shall be identified to indicate Federal ownership.

(3) A physical inventory of equipment shall be taken and the results reconciled with the equipment records at least once every two years. Any differences between quantities determined by the physical inspection and those shown in the accounting records shall be investigated to determine the causes of the difference. The recipient shall, in connection with the inventory, verify the existence, current utilization, and continued need for the equipment.

(4) A control system shall be in effect to insure adequate safeguards to prevent loss, damage, or theft of the equipment. Any loss, damage, or theft of equipment shall be investigated and fully documented; if the equipment was owned by the Federal Government, the recipient shall promptly notify the Federal awarding agency.

(5) Adequate maintenance procedures shall be implemented to keep the equipment in good condition.

(6) Where the recipient is authorized or required to sell the equipment, proper sales procedures shall be established which provide for competition to the extent practicable and result in the highest possible return.

(g) When the recipient no longer needs the equipment, the equipment may be used for other activities in accordance with the following standards. For equipment with a current per unit fair market value of $5000 or more, the recipient may retain the equipment for other uses provided that compensation is made to the original Federal awarding agency or its successor. The amount of compensation shall be computed by applying the percentage of Federal participation in the cost of the original project or program to the current fair market value of the equipment. If the recipient has no need for the equipment, the recipient shall request disposition instructions from the Federal awarding agency. The Federal awarding agency shall determine whether the equipment can be used to meet the agency's requirements. If no requirement exists within that agency, the availability of the equipment shall be reported to the General Services Administration by the Federal awarding agency to determine whether a requirement for the equipment exists in other Federal

agencies. The Federal awarding agency shall issue instructions to the recipient no later than 120 calendar days after the recipient's request and the following procedures shall govern.

(1) If so instructed or if disposition instructions are not issued within 120 calendar days after the recipient's request, the recipient shall sell the equipment and reimburse the Federal awarding agency an amount computed by applying to the sales proceeds the percentage of Federal participation in the cost of the original project or program. However, the recipient shall be permitted to deduct and retain from the Federal share $500 or ten percent of the proceeds, whichever is less, for the recipient's selling and handling expenses.

(2) If the recipient is instructed to ship the equipment elsewhere, the recipient shall be reimbursed by the Federal Government by an amount which is computed by applying the percentage of the recipient's participation in the cost of the original project or program to the current fair market value of the equipment, plus any reasonable shipping or interim storage costs incurred.

(3) If the recipient is instructed to otherwise dispose of the equipment, the recipient shall be reimbursed by the Federal awarding agency for such costs incurred in its disposition.

(4) The Federal awarding agency may reserve the right to transfer the title to the Federal Government or to a third party named by the Federal Government when such third party is otherwise eligible under existing statutes. Such transfer shall be subject to the following standards.

(i) The equipment shall be appropriately identified in the award or otherwise made known to the recipient in writing.

(ii) The Federal awarding agency shall issue disposition instructions within 120 calendar days after receipt of a final inventory. The final inventory shall list all equipment acquired with grant funds and federally-owned equipment. If the Federal awarding agency fails to issue disposition instructions within the 120 calendar day period, the recipient shall apply the standards of this section, as appropriate.

(iii) When the Federal awarding agency exercises its right to take title, the equipment shall be subject to the provisions for federally-owned equipment.

_____.35 Supplies and other expendable property.

(a) Title to supplies and other expendable property shall vest in the recipient upon acquisition. If there is a residual inventory of unused supplies exceeding $5000 in total aggregate value upon termination or completion of the project or program and the supplies are not needed for any other federally-sponsored project or program, the recipient shall retain the supplies for use on non-Federal sponsored activities or sell them, but shall, in either case, compensate the Federal Government for its share. The amount of compensation shall be computed in the same manner as for equipment.

(b) The recipient shall not use supplies acquired with Federal funds to provide services to non-Federal outside organizations for a fee that is less than private companies charge for equivalent services, unless specifically authorized by Federal statute as long as the Federal Government retains an interest in the supplies.

_____.36 Intangible property.

(a) The recipient may copyright any work that is subject to copyright and was developed, or for which ownership was purchased, under an award. The Federal awarding agency(ies) reserve a royalty-free, nonexclusive and irrevocable right to reproduce, publish, or otherwise use the work for Federal purposes, and to authorize others to do so.

(b) Recipients are subject to applicable regulations governing patents and inventions, including government-wide regulations issued by the Department of Commerce at 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements."

(c) Unless waived by the Federal awarding agency, the Federal Government has the right to (1) and (2).

(1) Obtain, reproduce, publish or otherwise use the data first produced under an award.

(2) Authorize others to receive, reproduce, publish, or otherwise use such data for Federal purposes.

(d) Title to intangible property and debt instruments acquired under an award or subaward vests upon acquisition in the recipient. The recipient shall use that property for the originally-authorized purpose, and the recipient shall not encumber the property without approval of the Federal awarding agency. When no longer needed for the originally authorized purpose, disposition of the intangible property shall occur in accordance with the provisions of paragraph .34(g).

_____.37 Property trust relationship. Real property, equipment, intangible property and debt instruments that are acquired or improved with Federal funds shall be held in trust by the recipient as trustee for the beneficiaries of the project or program under which the property was acquired or improved. Agencies may require recipients to record liens or other appropriate notices of record to indicate that personal or real property has been acquired or improved with Federal funds and that use and disposition conditions apply to the property.

Procurement Standards

_____.40 Purpose of procurement standards. Sections _____.41 through _____.48 set forth standards for use by recipients in establishing procedures for the procurement of supplies and other expendable property, equipment, real property and other services with Federal funds. These standards are furnished to ensure that such materials and services are obtained in an effective manner and in compliance with the provisions of applicable Federal statutes and executive orders. No additional procurement standards or requirements shall be imposed by the Federal awarding agencies upon recipients, unless specifically required by Federal statute or executive order or approved by OMB.

_____.41 Recipient responsibilities. The standards contained in this section do not relieve the recipient of the contractual responsibilities arising under its contract(s). The recipient is the responsible authority, without recourse to the Federal awarding agency, regarding the settlement and satisfaction of all contractual and administrative issues arising out of procurements entered into in support of an award or other agreement. This includes disputes, claims, protests of award, source evaluation or other matters of a contractual nature. Matters concerning violation of statute are to be referred to such Federal, State or local authority as may have proper jurisdiction.

_____.42 Codes of conduct. The recipient shall maintain written standards of conduct governing the performance of its employees engaged in the award and administration of contracts. No employee, officer, or agent shall participate in the selection, award, or administration of a contract supported by Federal funds if a real or apparent conflict of interest would be involved. Such a conflict would arise when the employee, officer, or agent, any member of his or her immediate family, his or her partner, or an organization which employs or is about to employ any of the parties indicated herein, has a financial or other interest in the firm selected for an award. The officers, employees, and agents of the recipient shall neither solicit nor accept gratuities, favors, or anything of monetary value from contractors, or parties to subagreements. However, recipients may set standards for situations in which the financial interest is not substantial or the gift is an unsolicited item of nominal value. The standards of conduct shall provide for disciplinary actions to be applied for violations of such standards by officers, employees, or agents of the recipient.

_____.43 Competition. All procurement transactions shall be conducted in a manner to provide, to the maximum extent practical, open and free competition. The recipient shall be alert to organizational conflicts of interest as well as noncompetitive practices among contractors that may restrict or eliminate competition or otherwise restrain trade. In order to ensure objective contractor performance and eliminate unfair competitive advantage, contractors that develop or draft specifications, requirements, statements of work, invitations for bids and/or requests for proposals shall be excluded from competing for such procurements. Awards shall be made to the bidder or offeror whose bid or offer is responsive to the solicitation and is most advantageous to the recipient, price, quality and other factors considered. Solicitations shall clearly set forth all requirements that the bidder or offeror shall fulfill in order for the bid or offer to be evaluated by the recipient. Any and all bids or offers may be rejected when it is in the recipient's interest to do so.

_____.44 Procurement procedures.

(a) All recipients shall establish written procurement procedures. These procedures shall provide for, at a minimum, that (1), (2) and (3) apply.

(1) Recipients avoid purchasing unnecessary items.

(2) Where appropriate, an analysis is made of lease and purchase alternatives to determine which would be the most economical and practical procurement for the Federal Government.

(3) Solicitations for goods and services provide for all of the following.

(i) A clear and accurate description of the technical requirements for the material, product or service to be procured. In competitive procurements, such a description shall not contain features which unduly restrict competition.

(ii) Requirements which the bidder/offeror must fulfill and all other factors to be used in evaluating bids or proposals.

(iii) A description, whenever practicable, of technical requirements in terms of functions to be performed or performance required, including the range of acceptable characteristics or minimum acceptable standards.

(iv) The specific features of "brand name or equal" descriptions that bidders are required to meet when such items are included in the solicitation.

(v) The acceptance, to the extent practicable and economically feasible, of products and services dimensioned in the metric system of measurement.

(vi) Preference, to the extent practicable and economically feasible, for products and services that conserve natural resources and protect the environment and are energy efficient.

(b) Positive efforts shall be made by recipients to utilize small businesses, minority-owned firms, and women's business enterprises, whenever possible. Recipients of Federal awards shall take all of the following steps to further this goal.

(1) Ensure that small businesses, minority-owned firms, and women's business enterprises are used to the fullest extent practicable.

(2) Make information on forthcoming opportunities available and arrange time frames for purchases and contracts to encourage and facilitate participation by small businesses, minority-owned firms, and women's business enterprises.

(3) Consider in the contract process whether firms competing for larger contracts intend to subcontract with small businesses, minority-owned firms, and women's business enterprises.

(4) Encourage contracting with consortiums of small businesses, minority-owned firms and women's business enterprises when a contract is too large for one of these firms to handle individually.

(5) Use the services and assistance, as appropriate, of such organizations as the Small Business Administration and the Department of Commerce's Minority Business Development Agency in the solicitation and utilization of small businesses, minority-owned firms and women's business enterprises.

(c) The type of procuring instruments used (e.g., fixed price contracts, cost reimbursable contracts, purchase orders, and incentive contracts) shall be determined by the recipient but shall be appropriate for the particular procurement and for promoting the best interest of the program or project involved. The "cost-plus-a-percentage-of-cost" or "percentage of construction cost" methods of contracting shall not be used.

(d) Contracts shall be made only with responsible contractors who possess the potential ability to perform successfully under the terms and conditions of the proposed procurement. Consideration shall be given to such matters as contractor integrity, record of past performance, financial and technical resources or accessibility to other necessary resources. In certain circumstances, contracts with certain parties are restricted by agencies' implementation of E.O.s 12549 and 12689, "Debarment and Suspension."

(e) Recipients shall, on request, make available for the Federal awarding agency, pre-award review and procurement documents, such as request for proposals or invitations for bids, independent cost estimates, etc., when any of the following conditions apply.

(1) A recipient's procurement procedures or operation fails to comply with the procurement standards in the Federal awarding agency's implementation of this Circular.

(2) The procurement is expected to exceed the small purchase threshold fixed at 41 U.S.C. 403 (11) (currently $25,000) and is to be awarded without competition or only one bid or offer is received in response to a solicitation.

(3) The procurement, which is expected to exceed the small purchase threshold, specifies a "brand name" product.

(4) The proposed award over the small purchase threshold is to be awarded to other than the apparent low bidder under a sealed bid procurement.

(5) A proposed contract modification changes the scope of a contract or increases the contract amount by more than the amount of the small purchase threshold.

_____.45 Cost and price analysis. Some form of cost or price analysis shall be made and documented in the procurement files in connection with every procurement action. Price analysis may be accomplished in various ways, including the comparison of price quotations submitted, market prices and similar indicia, together with discounts. Cost analysis is the review and evaluation of each element of cost to determine reasonableness, allocability and allowability.

_____.46 Procurement records. Procurement records and files for purchases in excess of the small purchase threshold shall include the following at a minimum: (a) basis for contractor selection, (b) justification for lack of competition when competitive bids or offers are not obtained, and (c) basis for award cost or price.

_____.47 Contract administration. A system for contract administration shall be maintained to ensure contractor conformance with the terms, conditions and specifications of the contract and to ensure adequate and timely follow up of all purchases. Recipients shall evaluate contractor performance and document, as appropriate, whether contractors have met the terms, conditions and specifications of the contract.

_____.48 Contract provisions. The recipient shall include, in addition to provisions to define a sound and complete agreement, the following provisions in all contracts. The following provisions shall also be applied to subcontracts.

(a) Contracts in excess of the small purchase threshold shall contain contractual provisions or conditions that allow for administrative, contractual, or legal remedies in instances in which a contractor violates or breaches the contract terms, and provide for such remedial actions as may be appropriate.

(b) All contracts in excess of the small purchase threshold shall contain suitable provisions for termination by the recipient, including the manner by which termination shall be effected and the basis for settlement. In addition, such contracts shall describe conditions under which the contract may be terminated for default as well as conditions where the contract may be terminated because of circumstances beyond the control of the contractor.

(c) Except as otherwise required by statute, an award that requires the contracting (or subcontracting) for construction or facility improvements shall provide for the recipient to follow its own requirements relating to bid guarantees, performance bonds, and payment bonds unless the construction contract or subcontract exceeds $100,000. For those contracts or subcontracts exceeding $100,000, the Federal awarding agency may accept the bonding policy and requirements of the recipient, provided the Federal awarding agency has made a determination that the Federal Government's interest is adequately protected. If such a determination has not been made, the minimum requirements shall be as follows.

(1) A bid guarantee from each bidder equivalent to five percent of the bid price. The "bid guarantee" shall consist of a firm commitment such as a bid bond, certified check, or other negotiable instrument accompanying a bid as assurance that the bidder shall, upon acceptance of his bid, execute such contractual documents as may be required within the time specified.

(2) A performance bond on the part of the contractor for 100 percent of the contract price. A "performance bond" is one executed in connection with a contract to secure fulfillment of all the contractor's obligations under such contract.

(3) A payment bond on the part of the contractor for 100 percent of the contract price. A "payment bond" is one executed in connection with a contract to assure payment as required by statute of all persons supplying labor and material in the execution of the work provided for in the contract.

(4) Where bonds are required in the situations described herein, the bonds shall be obtained from companies holding certificates of authority as acceptable sureties pursuant to 31 CFR part 223, "Surety Companies Doing Business with the United States."

(d) All negotiated contracts (except those for less than the small purchase threshold) awarded by recipients shall include a provision to the effect that the recipient, the Federal awarding agency, the Comptroller General of the United States, or any of their duly authorized representatives, shall have access to any books, documents, papers and

records of the contractor which are directly pertinent to a specific program for the purpose of making audits, examinations, excerpts and transcriptions.

(e) All contracts, including small purchases, awarded by recipients and their contractors shall contain the procurement provisions of Appendix A to this Circular, as applicable.

Reports and Records

_____.50 Purpose of reports and records. Sections _____.51 through _____.53 set forth the procedures for monitoring and reporting on the recipient's financial and program performance and the necessary standard reporting forms. They also set forth record retention requirements.

_____.51 Monitoring and reporting program performance.

(a) Recipients are responsible for managing and monitoring each project, program, subaward, function or activity supported by the award. Recipients shall monitor subawards to ensure subrecipients have met the audit requirements as delineated in Section _____.26.

(b) The Federal awarding agency shall prescribe the frequency with which the performance reports shall be submitted. Except as provided in paragraph _____.51(f), performance reports shall not be required more frequently than quarterly or, less frequently than annually. Annual reports shall be due 90 calendar days after the grant year; quarterly or semi-annual reports shall be due 30 days after the reporting period. The Federal awarding agency may require annual reports before the anniversary dates of multiple year awards in lieu of these requirements. The final performance reports are due 90 calendar days after the expiration or termination of the award.

(c) If inappropriate, a final technical or performance report shall not be required after completion of the project.

(d) When required, performance reports shall generally contain, for each award, brief information on each of the following.

(1) A comparison of actual accomplishments with the goals and objectives established for the period, the findings of the investigator, or both. Whenever appropriate and the output of programs or projects can be readily quantified, such quantitative data should be related to cost data for computation of unit costs.

(2) Reasons why established goals were not met, if appropriate.

(3) Other pertinent information including, when appropriate, analysis and explanation of cost overruns or high unit costs.

(e) Recipients shall not be required to submit more than the original and two copies of performance reports.

(f) Recipients shall immediately notify the Federal awarding agency of developments that have a significant impact on the award-supported activities. Also, notification shall be given in the case of problems, delays, or adverse conditions which materially impair the ability to meet the objectives of the award. This notification shall include a statement of the action taken or contemplated, and any assistance needed to resolve the situation.

(g) Federal awarding agencies may make site visits, as needed.

(h) Federal awarding agencies shall comply with clearance requirements of 5 CFR part 1320 when requesting performance data from recipients.

_____.52 Financial reporting.

(a) The following forms or such other forms as may be approved by OMB are authorized for obtaining financial information from recipients.

(1) SF–269 or SF–269A, Financial Status Report.

(i) Each Federal awarding agency shall require recipients to use the SF–269 or SF–269A to report the status of funds for all nonconstruction projects or programs. A Federal awarding agency may, however, have the option of not requiring the SF–269 or SF–269A when the SF–270, Request for Advance or Reimbursement, or SF–272, Report of Federal Cash Transactions, is determined to provide adequate information to meet its needs, except that a final SF–269 or SF–269A shall be required at the completion of the project when the SF–270 is used only for advances.

(ii) The Federal awarding agency shall prescribe whether the report shall be on a cash or accrual basis. If the Federal awarding agency requires accrual information and the recipient's accounting records are not normally kept on the accrual basis, the recipient shall not be required to convert its accounting system, but shall develop such accrual information through best estimates based on an analysis of the documentation on hand.

(iii) The Federal awarding agency shall determine the frequency of the Financial Status Report for each project or program, considering the size and complexity of the particular project or program. However, the report shall not be required more frequently than quarterly or less frequently than annually. A final report shall be required at the completion of the agreement.

(iv) The Federal awarding agency shall require recipients to submit the SF–269 or SF–269A (an original and no more than two copies) no later than 30 days after the end of each specified reporting period for quarterly and semi-annual reports, and 90 calendar days for annual and final reports. Extensions of reporting due dates may be approved by the Federal awarding agency upon request of the recipient.

(2) SF–272, Report of Federal Cash Transactions.

(i) When funds are advanced to recipients the Federal awarding agency shall require each recipient to submit the SF–272 and, when necessary, its continuation sheet, SF–272a. The Federal awarding agency shall use this report to monitor cash advanced to recipients and to obtain disbursement information for each agreement with the recipients.

(ii) Federal awarding agencies may require forecasts of Federal cash requirements in the "Remarks" section of the report.

(iii) When practical and deemed necessary, Federal awarding agencies may require recipients to report in the "Remarks" section the amount of cash advances received in excess of three days. Recipients shall provide short narrative explanations of actions taken to reduce the excess balances.

(iv) Recipients shall be required to submit not more than the original and two copies of the SF–272 15 calendar days following the end of each quarter. The Federal awarding agencies may require a monthly report from those recipients receiving advances totaling $1 million or more per year.

(v) Federal awarding agencies may waive the requirement for submission of the SF–272 for any one of the following reasons: (1) When monthly advances do not exceed $25,000 per recipient, provided that such advances are monitored through other forms contained in this section; (2) If, in the Federal awarding agency's opinion, the recipient's accounting controls are adequate to minimize excessive Federal advances; or, (3) When the electronic payment mechanisms provide adequate data.

(b) When the Federal awarding agency needs additional information or more frequent reports, the following shall be observed.

(1) When additional information is needed to comply with legislative requirements, Federal awarding agencies shall issue instructions to require recipients to submit such information under the "Remarks" section of the reports.

(2) When a Federal awarding agency determines that a recipient's accounting system does not meet the standards in Section _____.21, additional pertinent information to further monitor awards may be obtained upon written notice to the recipient until such time as the system is brought up to standard. The Federal awarding agency, in obtaining this information, shall comply with report clearance requirements of 5 CFR part 1320.

(3) Federal awarding agencies are encouraged to shade out any line item on any report if not necessary.

(4) Federal awarding agencies may accept the identical information from the recipients in machine readable format or computer printouts or electronic outputs in lieu of prescribed formats.

(5) Federal awarding agencies may provide computer or electronic outputs to recipients when such expedites or contributes to the accuracy of reporting.

_____.53 Retention and access requirements for records.

(a) This section sets forth requirements for record retention and access to records for awards to recipients. Federal awarding agencies shall not impose any other record retention or access requirements upon recipients.

(b) Financial records, supporting documents, statistical records, and all other records pertinent to an award shall be retained for a period of three years from the date of submission of the final expenditure report or, for awards that are renewed quarterly or annually, from the date of the submission of the quarterly or annual financial report, as authorized by the Federal awarding agency. The only exceptions are the following.

(1) If any litigation, claim, or audit is started before the expiration of the 3-year

period, the records shall be retained until all litigation, claims or audit findings involving the records have been resolved and final action taken.

(2) Records for real property and equipment acquired with Federal funds shall be retained for 3 years after final disposition.

(3) When records are transferred to or maintained by the Federal awarding agency, the 3-year retention requirement is not applicable to the recipient.

(4) Indirect cost rate proposals, cost allocations plans, etc. as specified in paragraph _____.53(g).

(c) Copies of original records may be substituted for the original records if authorized by the Federal awarding agency.

(d) The Federal awarding agency shall request transfer of certain records to its custody from recipients when it determines that the records possess long term retention value. However, in order to avoid duplicate recordkeeping, a Federal awarding agency may make arrangements for recipients to retain any records that are continuously needed for joint use.

(e) The Federal awarding agency, the Inspector General, Comptroller General of the United States, or any of their duly authorized representatives, have the right of timely and unrestricted access to any books, documents, papers, or other records of recipients that are pertinent to the awards, in order to make audits, examinations, excerpts, transcripts and copies of such documents. This right also includes timely and reasonable access to a recipient's personnel for the purpose of interview and discussion related to such documents. The rights of access in this paragraph are not limited to the required retention period, but shall last as long as records are retained.

(f) Unless required by statute, no Federal awarding agency shall place restrictions on recipients that limit public access to the records of recipients that are pertinent to an award, except when the Federal awarding agency can demonstrate that such records shall be kept confidential and would have been exempted from disclosure pursuant to the Freedom of Information Act (5 U.S.C. 552) if the records had belonged to the Federal awarding agency.

(g) Indirect cost rate proposals, cost allocations plans, etc. Paragraphs (g) (1) and (g)(2) apply to the following types of documents, and their supporting records: indirect cost rate computations or proposals, cost allocation plans, and any similar accounting computations of the rate at which a particular group of costs is chargeable (such as computer usage chargeback rates or composite fringe benefit rates).

(1) If submitted for negotiation. If the recipient submits to the Federal awarding agency or the subrecipient submits to the recipient the proposal, plan, or other computation to form the basis for negotiation of the rate, then the 3-year retention period for its supporting records starts on the date of such submission.

(2) If not submitted for negotiation. If the recipient is not required to submit to the Federal awarding agency or the subrecipient is not required to submit to the recipient the proposal, plan, or other computation for negotiation purposes, then the 3-year retention period for the proposal, plan, or other computation and its supporting records starts at the end of the fiscal year (or other accounting period) covered by the proposal, plan, or other computation.

Termination and Enforcement

_____.60 Purpose of termination and enforcement. Sections _____.61 and _____.62 set forth uniform suspension, termination and enforcement procedures.

_____.61 Termination.

(a) Awards may be terminated in whole or in part only if (1), (2) or (3) apply.

(1) By the Federal awarding agency, if a recipient materially fails to comply with the terms and conditions of an award.

(2) By the Federal awarding agency with the consent of the recipient, in which case the two parties shall agree upon the termination conditions, including the effective date and, in the case of partial termination, the portion to be terminated.

(3) By the recipient upon sending to the Federal awarding agency written notification setting forth the reasons for such termination, the effective date, and, in the case of partial termination, the portion to be terminated. However, if the Federal awarding agency determines in the case of partial termination that the reduced or modified portion of the grant will not accomplish the purposes for which the grant was made, it may terminate the grant in its entirety under either paragraphs (a)(1) or (2).

(b) If costs are allowed under an award, the responsibilities of the recipient referred to in paragraph _____.71(a), including those for property management as applicable, shall be considered in the termination of the award, and provision shall be made for continuing responsibilities of the recipient after termination, as appropriate.

_____.62 Enforcement.

(a) Remedies for noncompliance. If a recipient materially fails to comply with the terms and conditions of an award, whether stated in a Federal statute, regulation, assurance, application, or notice of award, the Federal awarding agency may, in addition to imposing any of the special conditions outlined in Section _____.14, take one or more of the following actions, as appropriate in the circumstances.

(1) Temporarily withhold cash payments pending correction of the deficiency by the recipient or more severe enforcement action by the Federal awarding agency.

(2) Disallow (that is, deny both use of funds and any applicable matching credit for) all or part of the cost of the activity or action not in compliance.

(3) Wholly or partly suspend or terminate the current award.

(4) Withhold further awards for the project or program.

(5) Take other remedies that may be legally available.

(b) Hearings and appeals. In taking an enforcement action, the awarding agency shall provide the recipient an opportunity for hearing, appeal, or other administrative proceeding to which the recipient is entitled under any statute or regulation applicable to the action involved.

(c) Effects of suspension and termination. Costs of a recipient resulting from obligations incurred by the recipient during a suspension or after termination of an award are not allowable unless the awarding agency expressly authorizes them in the notice of suspension or termination or subsequently. Other recipient costs during suspension or after termination which are necessary and not reasonably avoidable are allowable if (1) and (2) apply.

(1) The costs result from obligations which were properly incurred by the recipient before the effective date of suspension or termination, are not in anticipation of it, and in the case of a termination, are noncancellable.

(2) The costs would be allowable if the award were not suspended or expired normally at the end of the funding period in which the termination takes effect.

(d) Relationship to debarment and suspension. The enforcement remedies identified in this section, including suspension and termination, do not preclude a recipient from being subject to debarment and suspension under E.O.s 12549 and 12689 and the Federal awarding agency implementing regulations (see Section _____.13).

Subpart D—After-the-Award Requirements

_____.70 Purpose. Sections _____.71 through _____.73 contain closeout procedures and other procedures for subsequent disallowances and adjustments.

_____.71 Closeout procedures.

(a) Recipients shall submit, within 90 calendar days after the date of completion of the award, all financial, performance, and other reports as required by the terms and conditions of the award. The Federal awarding agency may approve extensions when requested by the recipient.

(b) Unless the Federal awarding agency authorizes an extension, a recipient shall liquidate all obligations incurred under the award not later than 90 calendar days after the funding period or the date of completion as specified in the terms and conditions of the award or in agency implementing instructions.

(c) The Federal awarding agency shall make prompt payments to a recipient for allowable reimbursable costs under the award being closed out.

(d) The recipient shall promptly refund any balances of unobligated cash that the Federal awarding agency has advanced or paid and that is not authorized to be retained by the recipient for use in other projects. OMB Circular A–129 governs unreturned amounts that become delinquent debts.

(e) When authorized by the terms and conditions of the award, the Federal awarding agency shall make a settlement for any upward or downward adjustments to the Federal share of costs after closeout reports are received.

(f) The recipient shall account for any real and personal property acquired with Federal funds or received from the Federal Government in accordance with Sections _____.31 through _____.37.

(g) In the event a final audit has not been performed prior to the closeout of an award,

the Federal awarding agency shall retain the right to recover an appropriate amount after fully considering the recommendations on disallowed costs resulting from the final audit.

_____.72 Subsequent adjustments and continuing responsibilities.

(a) The closeout of an award does not affect any of the following.

(1) The right of the Federal awarding agency to disallow costs and recover funds on the basis of a later audit or other review.

(2) The obligation of the recipient to return any funds due as a result of later refunds, corrections, or other transactions.

(3) Audit requirements in Section _____.26.

(4) Property management requirements in Sections _____.31 through _____.37.

(5) Records retention as required in Section _____.53.

(b) After closeout of an award, a relationship created under an award may be modified or ended in whole or in part with the consent of the Federal awarding agency and the recipient, provided the responsibilities of the recipient referred to in paragraph _____.73(a), including those for property management as applicable, are considered and provisions made for continuing responsibilities of the recipient, as appropriate.

_____.73 Collection of amounts due.

(a) Any funds paid to a recipient in excess of the amount to which the recipient is finally determined to be entitled under the terms and conditions of the award constitute a debt to the Federal Government. If not paid within a reasonable period after the demand for payment, the Federal awarding agency may reduce the debt by (1), (2) or (3).

(1) Making an administrative offset against other requests for reimbursements.

(2) Withholding advance payments otherwise due to the recipient.

(3) Taking other action permitted by statute.

(b) Except as otherwise provided by law, the Federal awarding agency shall charge interest on an overdue debt in accordance with 4 CFR Chapter II, "Federal Claims Collection Standards."

Appendix A—Contract Provisions

All contracts, awarded by a recipient including small purchases, shall contain the following provisions as applicable:

1. *Equal Employment Opportunity*—All contracts shall contain a provision requiring compliance with E.O. 11246, "Equal Employment Opportunity," as amended by E.O. 11375, "Amending Executive Order 11246 Relating to Equal Employment Opportunity," and as supplemented by regulations at 41 CFR part 60, "Office of Federal Contract Compliance Programs, Equal Employment Opportunity, Department of Labor."

2. *Copeland "Anti-Kickback" Act (18 U.S.C. 874 and 40 U.S.C. 276c)*—All contracts and subgrants in excess of $2,000 for construction or repair awarded by recipients and subrecipients shall include a provision for compliance with the Copeland "Anti-Kickback" Act (18 U.S.C. 874), as supplemented by Department of Labor regulations (29 CFR part 3, "Contractors and Subcontractors on Public Building or Public Work Financed in Whole or in Part by Loans or Grants from the United States"). The Act provides that each contractor or subrecipient shall be prohibited from inducing, by any means, any person employed in the construction, completion, or repair of public work, to give up any part of the compensation to which he is otherwise entitled. The recipient shall report all suspected or reported violations to the Federal awarding agency.

3. *Davis-Bacon Act, as amended (40 U.S.C. 276a to a–7)*—When required by Federal program legislation, all construction contracts awarded by the recipients and subrecipients of more than $2,000 shall include a provision for compliance with the Davis-Bacon Act (40 U.S.C. 276a to a–7) and as supplemented by Department of Labor regulations (29 CFR part 5, "Labor Standards Provisions Applicable to Contracts Governing Federally Financed and Assisted Construction"). Under this Act, contractors shall be required to pay wages to laborers and mechanics at a rate not less than the minimum wages specified in a wage determination made by the Secretary of Labor. In addition, contractors shall be required to pay wages not less than once a week. The recipient shall place a copy of the current prevailing wage determination issued by the Department of Labor in each solicitation and the award of a contract shall be conditioned upon the acceptance of the wage determination. The recipient shall report all suspected or reported violations to the Federal awarding agency.

4. *Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333)*—Where applicable, all contracts awarded by recipients in excess of $2,000 for construction contracts and in excess of $2,500 for other contracts that involve the employment of mechanics or laborers shall include a provision for compliance with Sections 102 and 107 of the Contract Work Hours and Safety Standards Act (40 U.S.C. 327–333), as supplemented by Department of Labor regulations (29 CFR part 5). Under Section 102 of the Act, each contractor shall be required to compute the wages of every mechanic and laborer on the basis of a standard work week of 40 hours. Work in excess of the standard work week is permissible provided that the worker is compensated at a rate of not less than 1½ times the basic rate of pay for all hours worked in excess of 40 hours in the work week. Section 107 of the Act is applicable to construction work and provides that no laborer or mechanic shall be required to work in surroundings or under working conditions which are unsanitary, hazardous or dangerous. These requirements do not apply to the purchases of supplies or materials or articles ordinarily available on the open market, or contracts for transportation or transmission of intelligence.

5. *Rights to Inventions Made Under a Contract or Agreement*—Contracts or agreements for the performance of experimental, developmental, or research work shall provide for the rights of the Federal Government and the recipient in any resulting invention in accordance with 37 CFR part 401, "Rights to Inventions Made by Nonprofit Organizations and Small Business Firms Under Government Grants, Contracts and Cooperative Agreements," and any implementing regulations issued by the awarding agency.

6. *Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act (33 U.S.C. 1251 et seq.), as amended*—Contracts and subgrants of amounts in excess of $100,000 shall contain a provision that requires the recipient to agree to comply with all applicable standards, orders or regulations issued pursuant to the Clean Air Act (42 U.S.C. 7401 et seq.) and the Federal Water Pollution Control Act as amended (33 U.S.C. 1251 et seq.). Violations shall be reported to the Federal awarding agency and the Regional Office of the Environmental Protection Agency (EPA).

7. *Byrd Anti-Lobbying Amendment (31 U.S.C. 1352)*—Contractors who apply or bid for an award of $100,000 or more shall file the required certification. Each tier certifies to the tier above that it will not and has not used Federal appropriated funds to pay any person or organization for influencing or attempting to influence an officer or employee of any agency, a member of Congress, officer or employee of Congress, or an employee of a member of Congress in connection with obtaining any Federal contract, grant or any other award covered by 31 U.S.C. 1352. Each tier shall also disclose any lobbying with non-Federal funds that takes place in connection with obtaining any Federal award. Such disclosures are forwarded from tier to tier up to the recipient.

8. *Debarment and Suspension (E.O.s 12549 and 12689)*—No contract shall be made to parties listed on the General Services Administration's List of Parties Excluded from Federal Procurement or Nonprocurement Programs in accordance with E.O.s 12549 and 12689, "Debarment and Suspension." This list contains the names of parties debarred, suspended, or otherwise excluded by agencies, and contractors declared ineligible under statutory or regulatory authority other than E.O. 12549. Contractors with awards that exceed the small purchase threshold shall provide the required certification regarding its exclusion status and that of its principal employees.

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Monday
November 29, 1993

Part V

Department of Education

National Assessment of Educational Progress, Applications for FY 1994; Notice

DEPARTMENT OF EDUCATION

[CFDA No.: 84.999J]

National Assessment of Educational Progress (NAEP) Program, Notice Inviting Applications for New Awards for Fiscal Year 1994

PURPOSE OF PROGRAM: To conduct test development, field testing, and planning for the 1996 National Assessment of Educational Progress (NAEP). It is projected that the 1996 NAEP will be conducted in mathematics, science and the arts in grades 4, 8, and 12 at the national level. NAEP supports National Education Goal 3 by providing measures of progress for American students' mastery of challenging subject matter.

ELIGIBLE APPLICANTS: Public, private, for-profit, and non-profit institutions, agencies, and other qualified organizations or consortia of such institutions, agencies, and organizations.

DEADLINE FOR TRANSMITTAL OF APPLICATIONS: January 13, 1994.

DEADLINE FOR INTERGOVERNMENTAL REVIEW: March 14, 1994.

APPLICATIONS AVAILABLE: December 3, 1993.

AVAILABLE FUNDS: The Department estimates that about $1,700,000 can be made available in fiscal year 1994 for the development of the 1996 NAEP.

ESTIMATED NUMBER OF AWARDS: 1.

PROJECT PERIOD: Up to 22 months.

APPLICABLE REGULATIONS: (a) The Education Department General Administrative Regulations (EDGAR) 34 CFR parts 74, 75, 77, 79, 80, 81, 82, 85, 86; and (b) the regulations in 34 CFR part 98 (Students Rights in Research, Experimental Activities, and Testing).

SUPPLEMENTARY INFORMATION: The National Assessment of Educational Progress (NAEP) is currently authorized by section 406 of the General Education Provisions Act (20 U.S.C. 1221e–1). This legislation is awaiting reauthorization by Congress, and may be modified. The current law provides for the establishment of the National Assessment Governing Board (NAGB). The law requires that NAGB, among other responsibilities, formulate the policy guidelines for the NAEP and select the subject areas to be assessed. Copies of these guidelines are available from the Department.

The Department currently has four cooperative agreements in effect for the 1994 NAEP: one to develop assessment instruments for the 1994 assessment; a second to conduct data collection for the national component of 1994 NAEP; a third to score, analyze, and report data from the national component of the 1994 NAEP; and a fourth to conduct training, monitor data collection, score, analyze, and report data from the State component of the 1994 NAEP.

This notice seeks applications to carry out the planning, test development, and field testing aspects of NAEP for 1996.

Priorities

ABSOLUTE PRIORITY: Under 34 CFR 75.105(c)(3), the Secretary gives an absolute preference to applications that meet the following priority. The Secretary funds under this competition only applications that meet this absolute priority:

Test development, field testing, and planning for the national component of the 1996 NAEP.

The test development, field testing, and planning for the 1996 National Assessment of Educational Progress must be performed in accordance with the guidelines developed by NAGB and implemented by the National Center for Education Statistics.

SELECTION CRITERIA: In evaluating applications for grants under this competition, the Secretary uses the selection criteria in EDGAR, 34 CFR 75.210.

The regulations in 34 CFR 75.210(c) provide that the Secretary may award up to 100 points for the selection criteria, including a reserved 15 points. For this competition, the Secretary distributes these 15 points as follows:

Plan of operation (34 CFR 75.210(b)(3). Fifteen points are added to this criterion for a possible total of 30 points.

FOR APPLICATIONS OR INFORMATION CONTACT: Steve Gorman, U.S. Department of Education, 555 New Jersey Avenue, N.W., Room 308b, Washington, D.C. 20208–5653. Telephone (202) 219–1937. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

PROGRAM AUTHORITY: 20 U.S.C. 1221e–1.

Dated: November 23, 1993.

Sharon P. Robinson,

Assistant Secretary for Educational Research and Improvement.

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Federal Register

Monday
November 29, 1993

Part VI

Securities and Exchange Commission

17 CFR Part 228, et al.
Executive Compensation Disclosure; Securityholder Lists and Mailing Requests; Final Rule

17 CFR Part 240
Preliminary Proxy Materials Under Certain Circumstances; Elimination of Filing Requirements; Proposed Rule

SECURITIES AND EXCHANGE COMMISSION

17 CFR Parts 228, 229, and 240

[Release No. 33–7032; 34–33229]

RIN 3235–AF92

Executive Compensation Disclosure; Securityholder Lists and Mailing Requests

AGENCY: Securities and Exchange Commission.

ACTION: Final rules.

SUMMARY: The Securities and Exchange Commission ("Commission") has adopted several refinements of, and technical changes to, the executive compensation disclosure requirements applicable to proxy and information statements, registration statements and periodic reports under the Securities Exchange Act of 1934 ("Exchange Act"), and to registration statements under the Securities Act of 1933 ("Securities Act"). These amendments are intended to make compensation disclosure clearer, more comprehensive and more useful to shareholders. The release also addresses related questions that have arisen under the proxy rules.

DATES: Effective Date: These rules are effective November 29, 1993.

Transition Provisions: The new rules are effective November 29, 1993, and any registrant may use the amended rules at any time thereafter.

To facilitate a smooth transition, however, the following transitional provisions will be allowed by the Commission. Registrants are required to comply with the new rules for: (1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act filed on or after January 1, 1994; and (2) any new proxy or information statements filed on or after January 1, 1994, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1993 are required to comply with the amended rules whenever filed.

FOR FURTHER INFORMATION CONTACT: Gregg W. Corso, Paula Dubberly, Brian L. Henry or Thomas D. Twedt at (202) 272–3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission has adopted amendments to Item 402 of Regulation S–K [1] and corresponding amendments to Item 402 of Regulation S–B,[2] as well as to Item 10 of Schedule 14A.[3] These amendments modify the executive compensation disclosure requirements applicable to proxy and information statements,[4] registration statements and periodic reports under the Exchange Act,[5] and to registration statements under the Securities Act.[6]

I. Introduction

In October 1992, the Commission adopted extensive revisions to its rules governing disclosure of executive compensation in proxy and information statements as well as other Commission filings.[7] In August 1993, the Commission reported on the results of the review by the Division of Corporation Finance ("Division") of filings during the initial proxy season after adoption of the new rules.[8] Based on that review, the Commission proposed for comment several refinements to the executive compensation disclosure requirements,[9] and certain technical amendments to such disclosure rules and the proxy rules. The amendments are being adopted, substantially as proposed.[10]

The Division plans to review the proxy statements of those registrants requested during the 1993 proxy season to make changes in future filings, as well as proxy statements of additional registrants. To manage the review process to minimize delay in clearing preliminary proxy material, the staff may review definitive proxy statements even where the statement is filed in preliminary form. Registrants that wish to assure that any comments on their executive compensation disclosure are received prior to delivery of the proxy statement to shareholders may request staff review of their executive compensation disclosure prior to filing with the Commission. In order to ensure adequate time for staff review, drafts must be submitted to the attention of John Bernas, Securities and Exchange Commission, 450 Fifth Street NW., Mail Stop 3–7, Washington, DC 20549 at least 20 days before the date comments are necessary.[11] In order to review the draft, the staff would have to be provided all of the disclosure required by Items 402 and 404 of Regulation S–K and Item 10 of Schedule 14A. Submission of the entire draft proxy statement would not be necessary.

II. Amendments to Item 402 of Regulation S–K and Item 10 of Schedule 14A

A. Persons Covered

Item 402(a)(3) previously required compensation disclosure of the CEO and each of the four most highly paid executive officers (whose compensation exceeded $100,000) employed at fiscal year end. Finding that these requirements provided an incomplete picture of the registrant's compensation package when highly paid executives departed prior to fiscal year end, the Commission proposed to amend the rule to apply as well to any person who served as CEO during the latest fiscal year and any other executive officer who departed during such year but whose reportable salary and bonus would place them in the group of four highest paid executive officers. In determining the salary and bonus reportable, the amounts to be included are those paid, earned or accrued. The amounts are not to be annualized for the period after departure.

Comments received on the proposal ranged from those who suggested the rule cover more executives to those who not only opposed but suggested reducing the named executives to three. Several of the commenters suggested that the departed executives be included but that the total number remain at five; some suggested that only departed CEOs be added to the table. After review of the comments, the Commission has determined that the proposal strikes the right balance and is adopting the revisions as proposed.[12]

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[1] 17 CFR 229.402.

[2] 17 CFR 228.402. Throughout this release, whenever the requirements of Regulation S–K are addressed, the discussion is also applicable to analogous items of Regulation S–B.

[3] 17 CFR 240.14a-101, Item 10.

[4] Throughout this release, any reference to proxy statement shall include an information statement required under Regulation 14C.

[5] 15 U.S.C. 78a *et seq.*

[6] 15 U.S.C. 77a *et seq.*

[7] Release No. 33–6962 (October 16, 1992) (57 FR 48126), *as corrected* in Release No. 33–6966 (November 9, 1992) (57 FR 53985).

[8] Release No. 33–7009 (August 6, 1993) (58 FR 42882) ("Proposing Release").

[9] Id.

[10] The changes from the proposed rules include conforming changes to the Option/SARs column headings in all the applicable tables and clarification that the changes in instruction 9 to Item 402(c) apply to the binomial pricing model. The Commission received 40 letters of comment, which may be inspected and copied at the Commission's Public Reference Room, 450 Fifth Street NW., Washington, DC 20549, File No. S7–23–93.

[11] Registrants submitting this information electronically should use the document tag "CORRESP," which will ensure that the information remains non-public. The designated staff contact should be informed of such an electronic submission.

[12] Items 402(a)(3)(i) and (iii) of Regulation S–K (17 CFR 229.402(a)(3)(i) and (iii)).

B. Restricted Stock Portfolio Information

The proposal to require all registrants to disclose year-end restricted stock holdings regardless of whether any such grants occurred during the period covered by the Summary Compensation Table was supported by most commenters. The amendment is adopted, as proposed.[13]

C. Grant-Date Present Value

Based on its experience with the disclosures made with respect to grant date valuations, the Commission proposed to require disclosure of specified assumptions and adjustments underlying a calculation using the Black-Scholes or binomial pricing model. The proposal reflected both the importance of the assumptions underlying the valuation as well as the clarity of the disclosure provided by those registrants that voluntarily disclosed assumptions during the last proxy season.

Most commenters acknowledged the importance of the information. Some expressed concern over the potential liability. The Commission notes that the option value is a projection of a financial item entitled to safe harbor protections, as are the underlying assumptions.[14] The amendment is adopted as proposed.[15]

D. Performance Graph: Weighting of Self-Constructed Indices

When registrants use a self-constructed peer group index or a market capitalization index in the performance graph, the returns of each component company must be weighted according to their respective stock market capitalization.[16] Most commenters expressed strong support for the proposal to change the timing of the weighting from the end to the beginning of the period, as providing a more accurate measurement of total return. The amendment has been adopted, as proposed.

E. Technical Amendments

The Commission has adopted substantially as proposed the following technical amendments to clarify the application of Item 402 and to correct certain inconsistencies in the rules.

- The instruction to the Summary Compensation Table requiring restricted stock portfolio information has been revised to clarify that such holdings should be valued using the stock value at year end.[17]
- The caption to column (b) to the Options Grants Table now reads: "Number of Securities Underlying Options/SARs Granted."[18] In addition, conforming changes were made to the appropriate captions in the Summary Compensation Table,[19] the Option Exercise Table[20] and the Ten-year Option/SAR Repricings Table[21].
- It also has been clarified that estimated future payouts in the Long-Term Incentive Plan Awards Table may be provided in dollars or in shares.[22]
- Disclosure regarding defined benefit or actuarial plans shall include the relationship of covered compensation to the annual compensation reported in the Summary Compensation Table.[23]
- The instructions to the performance graph have been revised to clarify that registrants must assume a fixed investment, stated in dollars (*e.g.*, $100), in the stocks and indices plotted.[24]
- Instruction 3 to Item 10 of Schedule 14A[25] now correctly references paragraphs (a) or (b) to Rule 14a-6[26] for the appropriate time to file.

III. Other Issues

As part of the October 1992 proxy rule revisions, the Commission adopted certain amendments affecting the presentation of matters on the form of proxy.[27] Rule 14a–4 was revised to require an "unbundling" of groups of related matters in the form of proxy.[28] The amended rule requires that each separate matter be clearly and impartially identified[29] and that the form of proxy provide for a separate vote on each matter presented.[30]

Companies have asked whether in the case of shareholder approval of amendments to an existing compensation plan, the "separate matter" referred to in Rule 14a–4 applies to each amendment to the plan or only the plan as amended. Registrants have been advised that it is appropriate to provide for a single vote on the plan, as amended, rather than a vote on each amendment in a given plan.

There have also been questions about the need to file in preliminary form a proxy statement related to the amendment of an existing compensation plan pursuant to Rule 14a–6(a).[31] As noted in the release adopting the amendments to the rules under section 16 of the Exchange Act,[32] proposals to amend an existing employee benefit plan do not require a registrant to file the proxy or information statement in preliminary form.[33] This interpretation is being codified in a companion release.[34]

Finally, questions have been raised as to the need for the Compensation Committee Report to address the deductibility of executive compensation under the new provisions of the Internal Revenue Code.[35] The report should in its discussion of executive compensation policies[36] address the registrant's policy with respect to qualifying compensation paid to its executive officers for deductibility under section 162(m) of the Internal Revenue Code.[37]

IV. Cost-Benefit Analysis

No specific data were provided in response to the Commission's request regarding the costs and benefits of these amendments. The Commission believes that the benefits to be gained by amending the executive compensation disclosure rules to require registrants to provide the enhanced information to shareholders as well as to clarify the disclosure requirements outweighs the costs associated with implementing these proposals.

V. Summary of Final Regulatory Flexibility Analysis

A final regulatory flexibility analysis has been prepared regarding the amendments in accordance with 5 U.S.C. 604. A copy of the analysis may be obtained from Thomas D. Twedt, Division of Corporation Finance, U.S.

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[13] Instruction 2 to Item 402(b)(2)(iv) of Regulation S–K (17 CFR 229.402(b)(2)(iv)).

[14] Rule 175(c)(1) and (c)(4) (17 CFR 230.175(c)(1) and (c)(4)); Rule 3b-6(c)(1) and (c)(4) (17 CFR 240.3b-6(c)(1) and (c)(4)).

[15] Instruction 9 to Item 402(c) of Regulation S–K (17 CFR 229.402(c)).

[16] See Instruction 5 to Item 402(l) of Regulation S–K (17 CFR 229.402(l)).

[17] Instruction 2(a) of Item 402(b)(2)(iv) (17 CFR 229.402(b)(2)(iv)).

[18] Item 402(c)(1) of Regulation S–K, column (b) (17 CFR 229.402(c)(1)).

[19] Item 402(b)(1) of Regulation S–K, column (g) (17 CFR 229.402(b)(1)).

[20] Item 402(d)(1) of Regulation S–K, column (d) (17 CFR 229.402(d)(1)).

[21] Item 402(i)(3)(i) of Regulation S–K, column (c) (17 CFR 229.402(i)(3)(i)).

[22] Item 402(e)(2)(iv) of Regulation S–K (17 CFR 229.402(e)(2)(iv)).

[23] Item 402(f)(1)(ii)(A) of Regulation S–K (17 CFR 229.402(f)(1)(ii)(A)).

[24] Instruction 2 to Item 402(l) of Regulation S–K (17 CFR 229.402(l)).

[25] 17 CFR 240.14a-101 (Schedule 14A, Item 10).

[26] 17 CFR 240.14a-6.

[27] Release No. 34–31326 (October 22, 1992) (57 FR 48276).

[28] *Id.* at section H (57 FR 48276, 48287).

[29] Rule 14a–4(a) (17 CFR 240.14a–4(a)).

[30] Rule 14a–4(b)(1) (17 CFR 240.14a–4(b)(1)).

[31] Rule 14a–6(a) (17 CFR 240.14a–6(a)).

[32] 15 U.S.C. 78p.

[33] Rule 14a–6 (a) and (b) (17 CFR 240.14a–6 (a) and (b)) and Release 34–28869 (February 8, 1991) (56 FR 7242) at note 244.

[34] Release No. 34–33232 (November 22, 1993).

[35] Omnibus Budget Reconciliation Act of 1993, Pub. L. No. 103–66, Title XIII (August 10, 1993).

[36] See Item 402(k)(1) of Regulation S–K (17 CFR 229.402(k)(1)).

[37] 26 U.S.C. 162(m).

Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. A summary of the corresponding Initial Regulatory Flexibility Analysis appears at 58 FR 42892 (Securities Act Release No. 7009).

VI. Effective Date

The amendments are effective upon publication in the **Federal Register**, in accordance with the Administrative Procedure Act, which allows for effectiveness in less than 30 days after publication, *inter alia*, "as provided by the agency for good cause found and published with the rule." 5 U.S.C. 553(d)(3). There is good cause for the amendments to become effective immediately in order to assure that this improved disclosure will be in place for the 1994 proxy season.

Some registrants have indicated an interest in being able to satisfy the revised executive compensation requirements as soon as possible. Immediate effectiveness will afford them that option.

For other registrants, the Commission has provided transition provisions. Registrants are required to comply with the new rules for: (1) Any new registration statement under the Securities Act, and any new registration statement or periodic report under the Exchange Act filed on or after January 1, 1994; and (2) any new proxy or information statements filed on or after January 1, 1994, except that proxy or information statements filed with respect to the annual election of directors by registrants whose current fiscal year ends on or after December 15, 1993 are required to comply with the amended rules whenever filed.

VII. Statutory Basis

The amendments contained herein are being adopted pursuant to sections 3(b), 6, 7, 8, 10, and 19(a) of the Securities Act and sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Parts 228, 229 and 240

Reporting and recordkeeping requirements, Securities.

Text of Amendments

In accordance with the foregoing, Title 17, chapter II of the Code of Federal Regulations, is amended as follows:

PART 228—INTEGRATED DISCLOSURE SYSTEM FOR SMALL BUSINESS ISSUERS

1. The authority citation for part 228 continues to read as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77jjj, 77nnn, 77sss, 78l, 78m, 78n, 78o, 78w, 78ll, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

2. By amending § 228.402 by revising paragraph (a)(2); the table following paragraph (b)(1); paragraph (b)(2)(iv)(B); Instruction 2 to Instructions to Item 402(b)(2)(iv); the table following paragraph (c)(1); paragraph (c)(2)(ii); the table following paragraph (d)(1); paragraph (d)(2)(iv); and paragraph (e)(2)(iv) to read as follows:

§ 228.402 (Item 402) Executive compensation.

(a) * * *

(2) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year ("CEO"), regardless of compensation level;

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(2)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

* * * * *

(b) * * *

(1) * * *

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Annual compensation			Long term compensation			
					Awards		Payouts	
		Salary ($)	Bonus ($)	Other annual compensation ($)	Restricted stock award(s) ($)	Securities underlying options/SARs (#)	LTIP payouts ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
CEO								
A								
B								
C								
D								

(2) * * *

(iv) * * *

(B) The sum of the number of securities underlying stock options granted, with or without tandem SARs, and the number of freestanding SARs (column (g)); and

* * * * *

Instructions to Item 402(b)(2)(iv)

1. * * *

2. The registrant shall, in a footnote to the Summary Compensation Table (appended to column (f), if included), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. The value shall be calculated in the manner specified in paragraph (b)(2)(iv)(A) of this item using the value of the registrant's shares at the end of the last completed fiscal year;

b. For any restricted stock award reported in the Summary Compensation Table that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in column (f).

* * * * *

(c) * * *

(1) * * *

OPTION/SAR GRANTS IN LAST FISCAL YEAR

[Individual Grants]

Name (a)	Number of securities underlying options/ SARs granted (#) (b)	Percent of total options/SARs granted to employees in fiscal year (c)	Exercise or base price ,$/Sh) (d)	Expiration date (e)
CEO				
A				
B				
C				
D				

(2) * * *

(ii) number of securities underlying option/SARs granted (column (b)).

* * * * *

(d) * * *

(1) * * *

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

Name (a)	Shares acquired on exercise (#) (b)	Value realized ($) (c)	Number of securities underlying unexercised options/ SARs at FY-end (#) Exercisable/ Unexercisable (d)	Value of unexercised in-the-money options/SARs at FY-end ($) Exercisable/ Unexercisable (e)
CEO				
A				
B				
C				
D				

(2) * * *

(iv) The total number of securities underlying unexercised options and SARs held at the end of the last completed fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (d)); and

* * * * *

(e) * * *

(2) * * *

(iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f)).

* * * * *

PART 229—STANDARD INSTRUCTIONS FOR FILING FORMS UNDER SECURITIES ACT OF 1933, SECURITIES EXCHANGE ACT OF 1934 AND ENERGY POLICY AND CONSERVATION ACT OF 1975—REGULATION S–K

3. The authority citation for part 229 continues to read in part as follows:

Authority: 15 U.S.C. 77e, 77f, 77g, 77h, 77j, 77k, 77s, 77aa(25), 77aa(26), 77ddd, 77eee, 77ggg, 77hhh, 77iii, 77jjj, 77nnn, 77sss, 78c, 78i, 78j, 78*l*, 78m, 78n, 78o, 78w, 78*ll*(d), 79e, 79n, 79t, 80a–8, 80a–29, 80a–30, 80a–37, 80b–11, unless otherwise noted.

* * * * *

4. By amending § 229.402 by revising paragraph (a)(3); the table following paragraph (b)(1); paragraph (b)(2)(iv)(B); Instruction 2 to Instructions to Item 402(b)(2)(iv); the table following paragraph (c)(1); paragraph (c)(2)(ii); Instruction 9 to Instructions to Item 402(c); the table following paragraph (d)(1); paragraph (d)(2)(iv); paragraph (e)(2)(iv); paragraph (f)(1)(ii)(A); the table following paragraph (i)(3)(i); paragraph (i)(3)(ii)(C); and Instruction 2 and Instruction 5 to Instructions to Item 402(*l*) to read as follows:

§ 229.402 (Item 402) Executive compensation.

(a) * * *

(3) *Persons covered.* Disclosure shall be provided pursuant to this item for each of the following (the "named executive officers"):

(i) All individuals serving as the registrant's chief executive officer or acting in a similar capacity during the last completed fiscal year ("CEO"), regardless of compensation level;

(ii) The registrant's four most highly compensated executive officers other than the CEO who were serving as executive officers at the end of the last completed fiscal year; and

(iii) Up to two additional individuals for whom disclosure would have been provided pursuant to paragraph (a)(8)(ii) of this item but for the fact that the individual was not serving as an executive officer of the registrant at the end of the last completed fiscal year.

* * * * *

SUMMARY COMPENSATION TABLE

Name and principal position	Year	Annual compensation			Long term compensation			
					Awards		Payouts	
		Salary ($)	Bonus ($)	Other annual compensation ($)	Restricted stock award(s)	Securities under-lying options/SARs (#)	LTIP payouts ($)	All other compensation ($)
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(h)	(i)
CEO	—							
	—							
	—							
A	—							
	—							
	—							
B	—							
	—							
	—							
C	—							
	—							
	—							
D	—							
	—							
	—							

(2) * * *

(iv) * * *

(B) The sum of the number of securities underlying stock options granted, with or without tandem SARs, and the number of freestanding SARs (column (g)); and

* * * * *

Instructions to Item 402(b)(2)(iv)

1. * * *

2. The registrant shall, in a footnote to the Summary Compensation Table (appended to column (f), if included), disclose:

a. The number and value of the aggregate restricted stock holdings at the end of the last completed fiscal year. The value shall be calculated in the manner specified in paragraph (b)(2)(iv)(A) of this item using the value of the registrant's shares at the end of the last completed fiscal year;

b. For any restricted stock award reported in the Summary Compensation Table that will vest, in whole or in part, in under three years from the date of grant, the total number of shares awarded and the vesting schedule; and

c. Whether dividends will be paid on the restricted stock reported in column (f).

* * * * *

(c) * * *

(1) * * *

OPTION/SAR GRANTS IN LAST FISCAL YEAR

Name	Individual grants				Potential realizable value at assumed annual rates of stock price appreciation for option term		Alternative to (f) and (g): grant date value
	Number of securities underlying options/SARs granted (#)	Percent of total options/ SARs granted to employees in fiscal year	Exercise of base price ($/Sh)	Expiration date	5% ($)	10% ($)	Grant date present value $
(a)	(b)	(c)	(d)	(e)	(f)	(g)	(f)
CEO							
A							
B							
C							
D							

(2) * * *

(ii) Number of securities underlying option/SARs granted (column (b)).

* * * * *

Instructions to Item 402(c).

* * * * *

9. Where the registrant chooses to use the grant-date valuation alternative specified in paragraph (c)(2)(vi)(B) of this item, the valuation shall be footnoted to describe the valuation method used. Where the registrant has used a variation of the Black-Scholes or binomial option pricing model, the description shall identify the use of such pricing model and describe the assumptions used relating to the expected volatility, risk-free rate of return, dividend yield and time of exercise. Any adjustments for non-transferability or risk of forfeiture also shall be disclosed. In the event another valuation method is used, the registrant is required to

describe the methodology as well as any material assumptions.

* * * * *

(d) * * *

(1) * * *

AGGREGATED OPTION/SAR EXERCISES IN LAST FISCAL YEAR AND FY-END OPTION/SAR VALUES

Name (a)	Shares acquired on exercise (#) (b)	Value realized ($) (c)	Number of securities underlying unexercised options/SARs at FY-end (#) Exercisable/ Unexercisable (d)	Value of unexercised in-the-money options/SARs at FY-end ($) Exercisable/ Unexercisable (e)
CEO				
A				
B				
C				
D				

(2) * * *

(iv) The total number of securities underlying unexercised options and SARs held at the end of the last completed fiscal year, separately identifying the exercisable and unexercisable options and SARs (column (d)); and

* * * * *

(e) * * *

(2) * * *

(iv) For plans not based on stock price, the dollar value of the estimated payout, the number of shares to be awarded as the payout or a range of estimated payouts denominated in dollars or number of shares under the award (threshold, target and maximum amount) (columns (d) through (f)).

* * * * *

(f) *Defined Benefit or Actuarial Plan Disclosure*

(1) * * *

(ii) * * *

(A) The compensation covered by the plan(s), including the relationship of such covered compensation to the annual compensation reported in the Summary Compensation Table required by paragraph (b)(2)(iii) of this item, and state the current compensation covered by the plan for any named executive officer whose covered compensation differs substantially (by more than 10%) from that set forth in the annual compensation columns of the Summary Compensation Table;

* * * * *

(i) * * *

(3)(i) * * *

TEN-YEAR OPTION/SAR REPRICINGS

Name (a)	Date (b)	Number of securities underlying options/SARs repriced or amended (#) (c)	Market price of stock at time of repricing or amendment ($) (d)	Exercise price at time of repricing or amendment ($) (e)	New exercise price ($) (f)	Length of original option term remaining at date of repricing or amendment (g)

(ii) * * *

(C) The number of securities underlying replacement or amended options or SARs (column (c));

* * * * *

(*l*) * * *

Instructions to Item 402(l)

* * * * *

2. In constructing the graph:

(a) The closing price at the measurement point must be converted into a fixed investment, stated in dollars, in the registrant's stock (or in the stocks represented by a given index), with cumulative returns for each subsequent fiscal year measured as a change from that investment; and

(b) Each fiscal year should be plotted with points showing the cumulative total return as of that point. The value of the investment as of each point plotted on a given return line is the number of shares held at that point multiplied by the then-prevailing share price.

* * * * *

5. If the registrant uses a peer issuer(s) comparison or comparison with issuer(s) with similar market capitalizations, the identity of those issuers must be disclosed and the returns of each component issuer of the group must be weighted according to the respective issuer's stock market capitalization at the beginning of each period for which a return is indicated.

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

5. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78*l*, 78m, 78n, 78*o*, 78p, 78s, 78w, 78x, 78*ll*(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise noted.

* * * * *

6. By amending § 240.14a–101 by revising Instruction 3 to Item 10 of Schedule 14A to read as follows:

§ 240.14a–101 Schedule 14A. Information required in proxy statement.

SCHEDULE 14A INFORMATION

* * * * *

Item 10. Compensation Plans.

* * * * *

Instructions

* * * * *

3. If the plan to be acted upon is set forth in a written document, three copies thereof shall be filed with the Commission at the time copies of the proxy statement and form

of proxy are first filed pursuant to paragraph (a) or (b) of § 240.14a–6.

* * * * *

Dated: November 22, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29110 Filed 11–26–93; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

17 CFR Part 240

[Release No. 34–33232; IC–19887; File No. S7–31–93]

RIN 3235–AG01

Elimination of Filing Requirements for Preliminary Proxy Materials Under Certain Circumstances

AGENCY: Securities and Exchange Commission.

ACTION: Proposed Rules.

SUMMARY: The Securities and Exchange Commission ("Commission") is proposing amendments to the proxy and information statement filing requirements codifying a prior interpretation of Rule 14a–6 that submitting amendments to an existing compensation plan for shareholder approval does not affect the exclusions from the preliminary proxy and information statement filing requirements. By codifying and publicizing this interpretation, the Commission hopes to remove any ambiguity regarding the scope of this exclusion from the filing of preliminary materials.

DATES: Comments should be received on or before December 13, 1993.

ADDRESSES: Comments should be submitted in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–31–93. All comments received will be available for public inspection and copying at the Commission's Public Reference Room, 450 Fifth Street, NW., Washington, DC 20549.

FOR FURTHER INFORMATION CONTACT: Gregg W. Corso, Paula Dubberly, Brian L. Henry or Thomas D. Twedt, (202) 272–3097, Division of Corporation Finance, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549.

SUPPLEMENTARY INFORMATION: The Commission is proposing an amendment to Rule 14a–6 [1] and Rule 14c–5 [2] of the Securities Exchange Act of 1934 ("Exchange Act").[3] In a companion release the Commission is adopting several refinements of, and technical changes to, the executive compensation disclosure rules.[4]

[1] 17 CFR 240.14a–6.

[2] 17 CFR 240.14c–5.

[3] 15 U.S.C. 78a *et seq.*

[4] Release No. 33–7032 (November 2, 1993).

I. Proposed Rule Changes

In 1987, the Commission adopted amendments to the proxy rules to eliminate the requirement to file preliminary proxy or information statements in certain circumstances.[5] In their present form, Rules 14a–6 and 14c–5 provide that a preliminary statement shall not be filed if it relates to an annual, or special meeting held in lieu of the annual, meeting of security holders at which the only matters to be acted upon are (1) the election of directors, (2) the election, approval or ratification of auditors, and/or (3) a security holder proposal.[6] In adopting amendments to section 16 of the Exchange Act,[7] the Commission noted that "where a plan amendment is submitted for shareholder approval, whether or not such amendment is for the purpose of conforming a plan to [the new section 16 rules], the proposal will no longer trigger the requirement to file the proxy or information statement in preliminary form."[8]

During the comment period for the recent proposed amendments to the executive compensation rules, the Commission received numerous inquiries regarding the application of this interpretation.[9] In order to clarify and publicize this position, the Commission proposes to codify the noted interpretation.

The proposal revises Rules 14a–6(a) and 14c–5(a) specifically to include compensation plan amendments among the matters for which a preliminary filing is not necessary. The proposed amendment, like the staff's interpretation, applies to existing compensation plans. The Commission, however, is considering extending this position to votes on new plans and requests commenters' views as to whether this should be done.

[5] Release No. 34–25217 (December 21, 1987) (52 FR 48977).

[6] 17 CFR 240.14a–6(a); 17 CFR 240.14c–6(a). The exclusion from filing preliminary material in Rule 14a–6(a) also covers, with respect to an investment company registered under the Investment Company Act of 1940 or a business development company, a proposal to continue, without change, an advisory or other contract or agreement that previously has been subject to a solicitation for which proxy material was filed pursuant to Rule 14a–6 as well as a proposal to increase the number of shares authorized to be issued in an open-end investment company registered under the Investment Company Act of 1940.

[7] 15 U.S.C. 78p.

[8] Release No. 34–28869 (February 8, 1991) (56 FR 7242) at note 244. *See, e.g., Thompson, Hine and Flory* (avail. March 29, 1991) (affirming that plan amendments do not trigger the preliminary filing requirement of Rule 14a–6).

[9] File No. S7–23–93.

II. General Request for Comment

Any interested persons wishing to submit written comments on the proposed amendments to Rule 14a–6 and Rule 14c–5 of the Exchange Act are invited to do so by submitting them in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Stop 6–9, Washington, DC 20549. Comment letters should refer to File No. S7–31–93. Comment is requested as to the potential impact of the proposals on such matters as tax planning and regulatory burdens. The Commission also requests comment on whether the proposals, if adopted, would have an adverse effect on competition that is neither necessary nor appropriate in furthering the Exchange Act. Comments responsive to this inquiry will be considered by the Commission in complying with its responsibilities under section 23(a) of the Exchange Act.[10] All comments received will be available for public inspection and copying in the Commission's Public Reference Room, 450 Fifth Street, NW, Washington, DC 20549. Since the proposal formally eliminates a filing burden and merely codifies an existing interpretation, the proposal provides for a comment period of 21 days.

III. Cost Benefit Analysis

As an aid in the evaluation of the costs and benefits of these proposals, the Commission requests the views of and other supporting information from the public. It appears to the Commission that the benefit to be gained by amending the proxy rules to clarify that preliminary proxy and information statements are not necessary where the only matters to be voted upon at an annual meeting are the election of directors; the election, approval or ratification of auditors; a shareholder proposal; and one or more amendments to an existing compensation plan outweighs any costs associated with implementing these proposals.

IV. Initial Regulatory Flexibility Analysis

The Commission has prepared the following Initial Regulatory Flexibility Analysis in accordance with 5 U.S.C. 603.

1. The Commission is proposing amendments to Rules 14a–6 and 14c–5 under the Exchange Act to codify an interpretive position.

2. The Commissions objective is to publicize and clarify its interpretation in order to remove any ambiguity

[10] 15 U.S.C. 78w(a).

regarding the scope of the exemption from filing preliminary materials.

3. The proposed amendments would affect all registrants, including small businesses, that are reporting companies under the Exchange Act. The Commission does not have a basis for estimating the number of small businesses that will file proxy or information statements under the Exchange Act.

4. Since the proposal simply codifies current practice, it is expected that the proposed amendments will have no effect on recordkeeping, reporting and compliance requirements.

5. No current federal rules duplicate, overlap or conflict with the proposals.

6. A number of significant alternatives to the proposed amendments have been considered. One alternative would be to provide differing or simplified requirements for small businesses that are based on performance rather than design standards. However, the adoption of performance standards would not be consistent with the Commission's statutory mandate to require disclosure to investors of material information necessary to make informed investment decisions. The proposed amendments clarifies an interpretation that simplifies reporting requirements for all registrants, including small businesses. Other alternatives would involve the establishment of different compliance or reporting requirements or timetables to take into account the resources available to small businesses and to provide an exemption from coverage of the provisions for small businesses. Since the proposals impose no added burden on small business issuers, different treatment is not warranted.

Written comments are encouraged with respect to any aspect of the Analysis. Such comments will be considered in the preparation of the Final Regulatory Flexibility Analysis if the proposed amendments are adopted.

V. Statutory basis

The amendments contained herein are being proposed pursuant to sections 12, 13, 14(a), 15(d) and 23(a) of the Exchange Act.

List of Subjects in 17 CFR Part 240

Reporting and recordkeeping requirements, Securities.

Text of Proposed Amendment

In accordance with the foregoing, title 17, chapter II of the Code of Federal Regulations is proposed to be amended as follows:

PART 240—GENERAL RULES AND REGULATIONS, SECURITIES EXCHANGE ACT OF 1934

1. The authority citation for part 240 continues to read in part as follows:

Authority: 15 U.S.C. 77c, 77d, 77g, 77j, 77s, 77eee, 77ggg, 77nnn, 77sss, 77ttt, 78c, 78d, 78i, 78j, 78l, 78m, 78n, 78o, 78p, 78s, 78w, 78x, 78ll(d), 79q, 79t, 80a–20, 80a–23, 80a–29, 80a–37, 80b–3, 80b–4 and 80b–11, unless otherwise note.

* * * * *

2. By amending § 240.14a–6 by revising paragraph (a) preceding the notes to read as follows:

§ 240.14a–6 Filing requirements.

(a) *Preliminary proxy statement.* Five preliminary copies of the proxy statement and form of proxy shall be filed with the Commission at least 10 calendar days prior to that date definitive copies of such material are first sent or given to security holders, or such shorter period prior to the date as the Commission may authorize upon a showing of good cause thereunder. A registrant, however, shall not file with the Commission a preliminary proxy statement, form of proxy or other soliciting material to be furnished to security holders concurrently therewith if the solicitation relates to an annual (or special meeting in lieu of the annual) meeting, or for an investment company registered under the Investment Company Act of 1940 (15 U.S.C. 80a–1 *et seq.*) or a business development company, if the solicitation relates to any meeting of security holders at which the only matters to be acted upon are:

(1) The election of directors;

(2) The election, approval or ratification of accountant(s);

(3) A security holder proposal included pursuant to § 240.14a–8;

(4) The approval of amendments to a plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(7)(ii) of this chapter);

(5) With respect to an investment company registered under the Investment Company Act of 1940 or a business development company, a proposal to continue, without change, any advisory or other contract or agreement that previously has been the subject of a proxy solicitation for which proxy material was filed with the Commission pursuant to this section; and/or

(6) with respect to an open-end investment company registered under the Investment Company Act of 1940, a proposal to increase the number of shares authorized to be issued.

This exclusion from filing preliminary proxy material does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its proxy material.

* * * * *

3. By amending § 240.14c–5 to revise paragraph (a) preceding the notes to read as follows:

§ 240.14c–5 Filing requirements.

(a) *Preliminary information statement.* Five preliminary copies of the information statement shall be filed with the Commission at least 10 calendar days prior to the date definitive copies of such statement are first sent or given to security holders, or such shorter period prior to that date as the Commission may authorize upon a showing of good cause therefor. In computing the 10-day period, the filing date of the preliminary copies is to be counted as the first day and the 11th day is the date on which definitive copies of the information statement may be mailed to security holders. A registrant, however, shall not file with the Commission a preliminary information statement if it relates to an annual (or special meeting in lieu of the annual) meeting, of security holders at which the only matters to be acted upon are:

(1) The election of directors;

(2) The election, approval or ratification of accountant(s);

(3) A security holder proposal identified in the registrant's information statement pursuant to Item 4 of Schedule 14C (§ 240.14c–101); and/or

(4) The approval of amendments to a plan as defined in paragraph (a)(7)(ii) of Item 402 of Regulation S–K (§ 229.402(a)(7)(ii) of this chapter). This exclusion from filing a preliminary information statement does not apply if the registrant comments upon or refers to a solicitation in opposition in connection with the meeting in its information statement.

* * * * *

Dated: November 22, 1993.

By the Commission.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29111 Filed 11–26–93; 8:45 am]

BILLING CODE 8010–01–P

federal register

Monday
November 29, 1993

Part VII

The President

Proclamation 6629—National Adoption Week, 1993 and 1994

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Title 3—

The President

Proclamation 6629 of November 24, 1993

National Adoption Week, 1993 and 1994

By the President of the United States of America

A Proclamation

Our Nation's families are the guardians and first teachers of our most valuable resource and our primary responsibility—our children. Unfortunately, too many children do not have the opportunity to live and flourish in a family of their own. They have been orphaned, abandoned, neglected, or abused. They have been denied the protection and nurturing that a loving family environment can best provide. Now is the time to break the grip of the great crisis of the spirit that has far too long held our Nation. Now we can begin to bring about a change. There is much for each of us to contribute.

During National Adoption Week, it is vitally important for all of us to recognize the joys adoption can bring to the lives of children who are in need. For children who have been deprived of belonging to a secure, loving, and permanent home, an adoptive family can provide the most important ingredient in a child's life—love.

This Thanksgiving week, families across America will gather to give thanks to God for the blessings we all enjoy as individuals and as a Nation. Children who have no permanent families, who are waiting to be adopted, may not have as much to be thankful for this year. At this happy time of family celebration, we must not forget the children for whom the affection of a family remains only a dream.

These children have so much to offer. They deserve our best efforts to remove the public and private barriers to their adoption into permanent, loving families. We must reach out to the many Americans who long for children to love, and we must find homes for the thousands of children who are waiting for adoptive parents to take them into their lives and into their hearts. And we must also acknowledge the unselfish sacrifice made by many birth parents to ensure a better life for their child.

Every effort should be made to inform the public and prospective parents that there are many thousands of children available for adoption. We must involve the media, private and public agencies, adoptive parents, advocacy groups, civic and church groups, and businesses. We must ask them to provide publicity and information to heighten community awareness of the crucial needs of these children and of all those who work tirelessly to place them in loving families.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, by virtue of the authority vested in me by the Constitution and laws of the United States, do hereby proclaim the week of November 21, 1993, and the week of November 20, 1994, as National Adoption Week. I call upon all Americans to observe these weeks with appropriate programs, activities, and ceremonies.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-fourth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-29365
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CFR CHECKLIST

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An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

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Title	Stock Number	Price	Revision Date
1, 2 (2 Reserved)	(869–019–00001–1)	$15.00	Jan. 1, 1993
3 (1992 Compilation and Parts 100 and 101)	(869–019–00002–0)	17.00	[1] Jan. 1, 1993
4	(869–019–00003–8)	5.50	Jan. 1, 1993
5 Parts:			
1–699	(869–019–00004–6)	21.00	Jan. 1, 1993
700–1199	(869–019–00005–4)	17.00	Jan. 1, 1993
1200–End, 6 (6 Reserved)	(869–019–00006–2)	21.00	Jan. 1, 1993
7 Parts:			
0–26	(869–019–00007–1)	20.00	Jan. 1, 1993
27–45	(869–019–00008–9)	13.00	Jan. 1, 1993
46–51	(869–019–00009–7)	20.00	Jan. 1, 1993
52	(869–019–00010–1)	28.00	Jan. 1, 1993
53–209	(869–019–00011–9)	21.00	Jan. 1, 1993
210–299	(869–019–00012–7)	30.00	Jan. 1, 1993
300–399	(869–019–00013–5)	15.00	Jan. 1, 1993
400–699	(869–019–00014–3)	17.00	Jan. 1, 1993
700–899	(869–019–00015–1)	21.00	Jan. 1, 1993
900–999	(869–019–00016–0)	33.00	Jan. 1, 1993
1000–1059	(869–019–00017–8)	20.00	Jan. 1, 1993
1060–1119	(869–019–00018–6)	13.00	Jan. 1, 1993
1120–1199	(869–019–00019–4)	11.00	Jan. 1, 1993
1200–1499	(869–019–00020–8)	27.00	Jan. 1, 1993
1500–1899	(869–019–00021–6)	17.00	Jan. 1, 1993
1900–1939	(869–019–00022–4)	13.00	Jan. 1, 1993
1940–1949	(869–019–00023–2)	27.00	Jan. 1, 1993
1950–1999	(869–019–00024–1)	32.00	Jan. 1, 1993
2000–End	(869–019–00025–9)	12.00	Jan. 1, 1993
8	(869–019–00026–7)	20.00	Jan. 1, 1993
9 Parts:			
1–199	(869–019–00027–5)	27.00	Jan. 1, 1993
200–End	(869–019–00028–3)	21.00	Jan. 1, 1993
10 Parts:			
0–50	(869–019–00029–1)	29.00	Jan. 1, 1993
51–199	(869–019–00030–5)	21.00	Jan. 1, 1993
200–399	(869–019–00031–3)	15.00	Jan. 1, 1993
400–499	(869–019–00032–1)	20.00	Jan. 1, 1993
500–End	(869–019–00033–0)	33.00	Jan. 1, 1993
11	(869–019–00034–8)	13.00	Jan. 1, 1993
12 Parts:			
1–199	(869–019–00035–6)	11.00	Jan. 1, 1993
200–219	(869–019–00036–4)	15.00	Jan. 1, 1993
220–299	(869–019–00037–2)	26.00	Jan. 1, 1993
300–499	(869–019–00038–1)	21.00	Jan. 1, 1993
500–599	(869–019–00039–9)	19.00	Jan. 1, 1993
600–End	(869–019–00040–2)	28.00	Jan. 1, 1993
13	(869–019–00041–1)	28.00	Jan. 1, 1993
14 Parts:			
1–59	(869–019–00042–9)	29.00	Jan. 1, 1993
60–139	(869–019–00043–7)	26.00	Jan. 1, 1993
140–199	(869–019–00044–5)	12.00	Jan. 1, 1993
200–1199	(869–019–00045–3)	22.00	Jan. 1, 1993
1200–End	(869–019–00046–1)	16.00	Jan. 1, 1993
15 Parts:			
0–299	(869–019–00047–0)	14.00	Jan. 1, 1993
300–799	(869–019–00048–8)	25.00	Jan. 1, 1993
800–End	(869–019–00049–6)	19.00	Jan. 1, 1993
16 Parts:			
0–149	(869–019–00050–0)	7.00	Jan. 1, 1993
150–999	(869–019–00051–8)	17.00	Jan. 1, 1993
1000–End	(869–019–00052–6)	24.00	Jan. 1, 1993
17 Parts:			
1–199	(869–019–00054–2)	18.00	Apr. 1, 1993
200–239	(869–019–00055–1)	23.00	June 1, 1993
240–End	(869–019–00056–9)	30.00	June 1, 1993
18 Parts:			
1–149	(869–019–00057–7)	16.00	Apr. 1, 1993
150–279	(869–019–00058–5)	19.00	Apr. 1, 1993
280–399	(869–019–00059–3)	15.00	Apr. 1, 1993
400–End	(869–019–00060–7)	10.00	Apr. 1, 1993
19 Parts:			
1–199	(869–019–00061–5)	35.00	Apr. 1, 1993
200–End	(869–019–00062–3)	11.00	Apr. 1, 1993
20 Parts:			
1–399	(869–019–00063–1)	19.00	Apr. 1, 1993
400–499	(869–019–00064–0)	31.00	Apr. 1, 1993
500–End	(869–019–00065–8)	30.00	Apr. 1, 1993
21 Parts:			
1–99	(869–019–00066–6)	15.00	Apr. 1, 1993
100–169	(869–019–00067–4)	21.00	Apr. 1, 1993
170–199	(869–019–00068–2)	20.00	Apr. 1, 1993
200–299	(869–019–00069–1)	6.00	Apr. 1, 1993
300–499	(869–019–00070–4)	34.00	Apr. 1, 1993
500–599	(869–019–00071–2)	21.00	Apr. 1, 1993
600–799	(869–019–00072–1)	8.00	Apr. 1, 1993
800–1299	(869–019–00073–9)	22.00	Apr. 1, 1993
1300–End	(869–019–00074–7)	12.00	Apr. 1, 1993
22 Parts:			
1–299	(869–019–00075–5)	30.00	Apr. 1, 1993
300–End	(869–019–00076–3)	22.00	Apr. 1, 1993
23	(869–019–00077–1)	21.00	Apr. 1, 1993
24 Parts:			
0–199	(869–019–00078–0)	38.00	Apr. 1, 1993
200–499	(869–019–00079–8)	36.00	Apr. 1, 1993
500–699	(869–019–00080–1)	17.00	Apr. 1, 1993
700–1699	(869–019–00081–0)	39.00	Apr. 1, 1993
1700–End	(869–019–00082–8)	15.00	Apr. 1, 1993
25	(869–019–00083–6)	31.00	Apr. 1, 1993
26 Parts:			
§§ 1.0-1-1.60	(869–019–00084–4)	21.00	Apr. 1, 1993
§§ 1.61-1.169	(869–019–00085–2)	37.00	Apr. 1, 1993
§§ 1.170-1.300	(869–019–00086–1)	23.00	Apr. 1, 1993
§§ 1.301-1.400	(869–019–00087–9)	21.00	Apr. 1, 1993
§§ 1.401-1.440	(869–019–00088–7)	31.00	Apr. 1, 1993
§§ 1.441-1.500	(869–019–00089–5)	23.00	Apr. 1, 1993
§§ 1.501-1.640	(869–019–00090–9)	20.00	Apr. 1, 1993
§§ 1.641-1.850	(869–019–00091–7)	24.00	Apr. 1, 1993
§§ 1.851-1.907	(869–019–00092–5)	27.00	Apr. 1, 1993
§§ 1.908-1.1000	(869–019–00093–3)	26.00	Apr. 1, 1993
§§ 1.1001-1.1400	(869–019–00094–1)	22.00	Apr. 1, 1993
§§ 1.1401-End	(869–019–00095–0)	31.00	Apr. 1, 1993
2–29	(869–019–00096–8)	23.00	Apr. 1, 1993
30–39	(869–019–00097–6)	18.00	Apr. 1, 1993
40–49	(869–019–00098–4)	13.00	Apr. 1, 1993
50–299	(869–019–00099–2)	13.00	Apr. 1, 1993
300–499	(869–017–00100–0)	23.00	Apr. 1, 1993
500–599	(869–019–00101–8)	6.00	[4] Apr. 1, 1990

Title	Stock Number	Price	Revision Date
600-End	(869-019-00102-6)	8.00	Apr. 1, 1993
27 Parts:			
1-199	(869-019-00103-4)	37.00	Apr. 1, 1993
200-End	(869-019-00104-2)	11.00	[6] Apr. 1, 1991
28 Parts:			
1-42	(869-019-00105-1)	27.00	July 1, 1993
43-end	(869-019-00106-9)	21.00	July 1, 1993
29 Parts:			
0-99	(869-019-00107-7)	21.00	July 1, 1993
100-499	(869-019-00108-5)	9.50	July 1, 1993
500-899	(869-019-00109-3)	36.00	July 1, 1993
900-1899	(869-019-00110-7)	17.00	July 1, 1993
1900-1910 (§§ 1901.1 to 1910.999)	(869-019-00111-5)	31.00	July 1, 1993
1910 (§§ 1910.1000 to end)	(869-017-00110-4)	16.00	July 1, 1992
1911-1925	(869-019-00113-1)	22.00	July 1, 1993
1926	(869-017-00112-1)	14.00	July 1, 1992
1927-End	(869-017-00113-9)	30.00	July 1, 1992
30 Parts:			
1-199	(869-019-00116-6)	27.00	July 1, 1993
200-699	(869-019-00117-4)	20.00	July 1, 1993
700-End	(869-019-00118-2)	27.00	July 1, 1993
31 Parts:			
0-199	(869-019-00119-1)	18.00	July 1, 1993
200-End	(869-019-00120-4)	29.00	July 1, 1993
32 Parts:			
1-39, Vol. I		15.00	[2] July 1, 1984
1-39, Vol. II		19.00	[2] July 1, 1984
1-39, Vol. III		18.00	[2] July 1, 1984
1-190	(869-019-00121-2)	30.00	July 1, 1993
191-399	(869-019-00122-1)	36.00	July 1, 1993
400-629	(869-019-00123-9)	26.00	July 1, 1993
630-699	(869-019-00124-7)	14.00	[6] July 1, 1991
700-799	(869-019-00125-5)	21.00	July 1, 1993
800-End	(869-019-00126-3)	22.00	July 1, 1993
33 Parts:			
1-124	(869-019-00127-1)	20.00	July 1, 1993
125-199	(869-019-00128-0)	25.00	July 1, 1993
200-End	(869-019-00129-8)	24.00	July 1, 1993
34 Parts:			
1-299	(869-019-00130-1)	27.00	July 1, 1993
300-399	(869-019-00131-0)	20.00	July 1, 1993
400-End	(869-019-00132-8)	37.00	July 1, 1993
35	(869-019-00133-6)	12.00	July 1, 1993
36 Parts:			
1-199	(869-019-00134-4)	16.00	July 1, 1993
200-End	(869-019-00135-2)	35.00	July 1, 1993
37	(869-019-00136-1)	20.00	July 1, 1993
38 Parts:			
0-17	(869-019-00137-9)	31.00	July 1, 1993
18-End	(869-019-00138-7)	30.00	July 1, 1993
39	(869-019-00139-5)	17.00	July 1, 1993
40 Parts:			
1-51	(869-017-00138-4)	31.00	July 1, 1992
52	(869-017-00139-2)	33.00	July 1, 1992
53-60	(869-017-00140-6)	36.00	July 1, 1992
61-80	(869-017-00141-4)	16.00	July 1, 1992
81-85	(869-017-00142-2)	17.00	July 1, 1992
86-99	(869-017-00143-1)	33.00	July 1, 1992
100-149	(869-017-00144-9)	34.00	July 1, 1992
150-189	(869-017-00145-7)	21.00	July 1, 1992
190-259	(869-017-00146-5)	16.00	July 1, 1992
260-299	(869-017-00147-3)	36.00	July 1, 1992
300-399	(869-017-00148-1)	15.00	July 1, 1992
400-424	(869-017-00149-0)	26.00	July 1, 1992
425-699	(869-017-00150-3)	26.00	July 1, 1992
700-789	(869-017-00151-1)	23.00	July 1, 1992
790-End	(869-017-00152-0)	25.00	July 1, 1992

Title	Stock Number	Price	Revision Date
41 Chapters:			
1, 1-1 to 1-10		13.00	[3] July 1, 1984
1, 1-11 to Appendix, 2 (2 Reserved)		13.00	[3] July 1, 1984
3-6		14.00	[3] July 1, 1984
7		6.00	[3] July 1, 1984
8		4.50	[3] July 1, 1984
9		13.00	[3] July 1, 1984
10-17		9.50	[3] July 1, 1984
18, Vol. I, Parts 1-5		13.00	[3] July 1, 1984
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18, Vol. III, Parts 20-52		13.00	[3] July 1, 1984
19-100		13.00	[3] July 1, 1984
1-100	(869-019-00156-5)	10.00	July 1, 1993
101	(869-019-00157-3)	30.00	July 1, 1993
102-200	(869-019-00158-1)	11.00	[6] July 1, 1991
201-End	(869-019-00159-0)	12.00	July 1, 1993
42 Parts:			
1-399	(869-017-00157-1)	23.00	Oct. 1, 1992
400-429	(869-017-00158-9)	23.00	Oct. 1, 1992
430-End	(869-017-00159-7)	31.00	Oct. 1, 1992
43 Parts:			
1-999	(869-017-00160-1)	22.00	Oct. 1, 1992
1000-3999	(869-017-00161-9)	30.00	Oct. 1, 1992
4000-End	(869-017-00162-7)	13.00	Oct. 1, 1992
44	(869-017-00163-5)	26.00	Oct. 1, 1992
45 Parts:			
1-199	(869-017-00164-3)	20.00	Oct. 1, 1992
200-499	(869-017-00165-1)	14.00	Oct. 1, 1992
500-1199	(869-017-00166-0)	30.00	Oct. 1, 1992
1200-End	(869-017-00167-8)	20.00	Oct. 1, 1992
46 Parts:			
1-40	(869-017-00168-6)	17.00	Oct. 1, 1992
41-69	(869-017-00169-4)	16.00	Oct. 1, 1992
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90-139	(869-017-00171-6)	14.00	Oct. 1, 1992
140-155	(869-017-00172-4)	12.00	Oct. 1, 1992
156-165	(869-017-00173-2)	14.00	[7] Oct. 1, 1991
166-199	(869-017-00174-1)	17.00	Oct. 1, 1992
200-499	(869-017-00175-9)	22.00	Oct. 1, 1992
500-End	(869-017-00176-7)	14.00	Oct. 1, 1992
47 Parts:			
0-19	(869-017-00177-5)	22.00	Oct. 1, 1992
20-39	(869-017-00178-3)	22.00	Oct. 1, 1992
40-69	(869-017-00179-1)	12.00	Oct. 1, 1992
70-79	(869-017-00180-5)	21.00	Oct. 1, 1992
80-End	(869-017-00181-3)	24.00	Oct. 1, 1992
48 Chapters:			
1 (Parts 1-51)	(869-017-00182-1)	34.00	Oct. 1, 1992
1 (Parts 52-99)	(869-017-00183-0)	22.00	Oct. 1, 1992
2 (Parts 201-251)	(869-017-00184-8)	15.00	Oct. 1, 1992
2 (Parts 252-299)	(869-017-00185-6)	12.00	Oct. 1, 1992
3-6	(869-017-00186-4)	22.00	Oct. 1, 1992
7-14	(869-017-00187-2)	30.00	Oct. 1, 1992
15-28	(869-017-00188-1)	26.00	Oct. 1, 1992
29-End	(869-017-00189-9)	16.00	Oct. 1, 1992
49 Parts:			
1-99	(869-017-00190-2)	22.00	Oct. 1, 1992
100-177	(869-017-00191-1)	27.00	Oct. 1, 1992
178-199	(869-017-00192-9)	19.00	Oct. 1, 1992
200-399	(869-017-00193-7)	27.00	Oct. 1, 1992
400-999	(869-017-00194-5)	31.00	Oct. 1, 1992
1000-1199	(869-017-00195-3)	19.00	Oct. 1, 1992
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50 Parts:			
1-199	(869-017-00197-0)	23.00	Oct. 1, 1992
200-599	(869-017-00198-8)	20.00	Oct. 1, 1992
600-End	(869-017-00199-6)	20.00	Oct. 1, 1992
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[1] Because Title 3 is an annual compilation, this volume and all previous volumes should be retained as a permanent reference source.

[2] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

[3] The July 1, 1985 edition of 41 CFR Chapters 1–100 contains a note only for Chapters 1 to 49 inclusive. For the full text of procurement regulations in Chapters 1 to 49, consult the eleven CFR volumes issued as of July 1, 1984 containing those chapters.

[4] No amendments to this volume were promulgated during the period Apr. 1, 1990 to Mar. 31, 1993. The CFR volume issued April 1, 1990, should be retained.

[5] No amendments to this volume were promulgated during the period Apr. 1, 1991 to Mar. 31, 1993. The CFR volume issued April 1, 1991, should be retained.

[6] No amendments to this volume were promulgated during the period July 1, 1991 to June 30, 1993. The CFR volume issued July 1, 1991, should be retained.

[7] No amendments to this volume were promulgated during the period October 1, 1991 to September 30, 1992. The CFR volume issued October 1, 1991, should be retained.

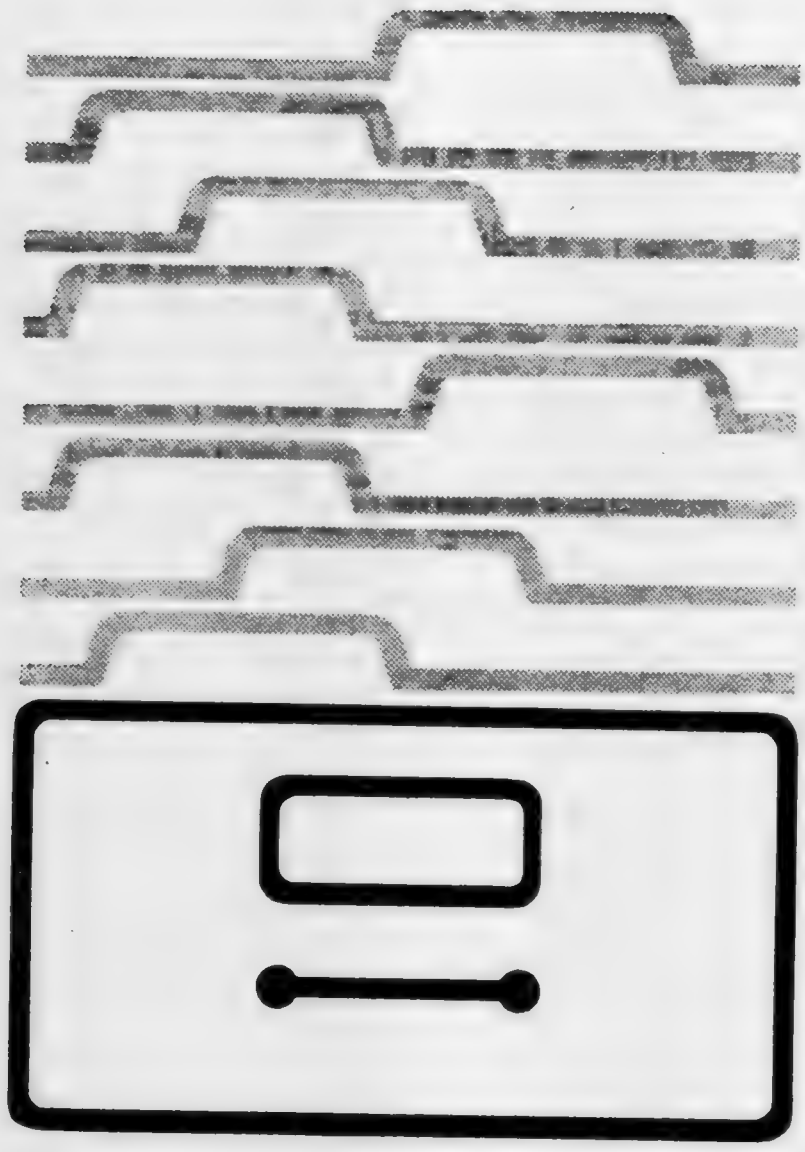

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Tuesday
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Federal Register
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This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

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OFFICE OF GOVERNMENT ETHICS

5 CFR Part 2634

RIN 3209–AA00

Executive Branch Financial Disclosure, Qualified Trusts, and Certificates of Divestiture

AGENCY: Office of Government Ethics (OGE).

ACTION: Final rule.

SUMMARY: This final rule makes effective a proposed amendment to 5 CFR part 2634, which was published on September 1, 1993, at 58 FR 46096–46097. No changes are necessary, based on the public comments which were received. However, one minor technical addition is being included for internal consistency.

The rule amends subpart I of 5 CFR part 2634, an interim rule on executive branch financial disclosure. The amendment exempts certain assets and income from disclosure on confidential financial disclosure reports. Specifically, it eliminates the requirement that confidential filers disclose the existence of and income from cash accounts in depository institutions, money market mutual funds and accounts, and U.S. Government obligations and securities.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: G. Sid Smith, Office of Government Ethics, telephone (202) 523–5757, FAX (202) 523–6325.

SUPPLEMENTARY INFORMATION: Executive branch employees who serve in positions which are designated for filing confidential financial disclosure reports must, according to the current requirements of subpart I of 5 CFR part 2634, disclose information about cash accounts in depository institutions, such as banks, savings and loan associations, credit unions, and similar depository financial institutions; money market mutual funds and accounts; U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and Government securities issued by U.S. Government agencies. However, for most confidential filers, the disclosure of this information was not considered by agencies to be critical in assessing the possibility of conflicts of interest. Furthermore, some concerns had been expressed about privacy, and disclosure of such information creates extra work for both filers and agency reviewing officials and could detract from the effectiveness and limited purpose of the confidential disclosure program.

These concerns were communicated to OGE by numerous confidential filers and agency reviewing officials over the eleven months between the time that subpart I of 5 CFR part 2634 became effective in October 1992, and the publication of this proposed amendment on September 1, 1993. Then during the public comment period on the proposed amendment, OGE received eight letters from agencies and one from a Federal employee, all very supportive of the change. During the comment period, OGE also received many phone calls and 16 letters which, though not directly responsive to this rulemaking, criticized various aspects of the confidential disclosure system, including the subject matter of this amendment.

One letter which commented on the proposal suggested that we clarify whether investment funds devoted to Federal Government obligations would be exempt from disclosure under the amendment. We do not believe that any modification to the amendment is necessary; any fund or other investment vehicle which is composed exclusively of these obligations would be exempt, since it is the underlying assets of a fund with which financial disclosure is concerned. Another comment letter suggested that the exemption for disclosure of Government securities should not apply automatically to employees of agencies which issue such securities. However, since none of the agencies which issue Government securities commented on that matter, we believe that it can be handled by separate agency rules or policies prohibiting such holdings or specially requiring their disclosure, in accordance with the appropriate procedures under 5 CFR part 2634 and part 2635.

The remaining comment letters were either general statements in favor of the amendment or suggesting that OGE expand the scope of the amendment to encompass other subject areas. Those recommendations for additional exemptions will be addressed by separate future rulemaking, if necessary.

For internal consistency, we have added the parenthetical phrase "including both demand and time deposits" to modify the phrase "accounts in depository institutions" in the text of the amendment to § 2634.907(a)(2)(i). This replicates the language already contained in the text of the proposed amendment to § 2634.907(a)(1)(i).

Accordingly, this rule amends § 2634.907 of subpart I of 5 CFR, effective November 30, 1993, to exempt all confidential filers from the requirement to disclose the specific assets detailed in the first paragraph of this Supplementary Information discussion, as well as the income therefrom. The Office of Government Ethics will also make conforming modifications to the SF 450 (Executive Branch Personnel Confidential Financial Disclosure Report), subject to Office of Management and Budget paperwork approval and General Services Administration standard form approval. If an agency finds that disclosure of the information which this rule eliminates for confidential filers is nonetheless necessary for an effective confidential disclosure system within that agency because of its mission or other special circumstances, it may seek approval from OGE, pursuant to § 2634.901(b) of subpart I of 5 CFR, for a supplemental reporting requirement, to include any or all of these elements for its employees.

Administrative Procedure Act

Pursuant to 5 U.S.C. 553(d), as Director of the Office of Government Ethics, I find good cause for waiving the 30-day delayed effective date as to this final rule amendment. The Office of Government Ethics already published a notice of this amendment as a proposed rule at 58 FR 46096–46097 (September 1, 1993) and received highly favorable comments on it. As a result, OGE is making only one technical clarification of the amendment, as proposed, for consistency in adopting it as final. In

addition, this amendment relieves the burden of confidential reporting as to the items identified for removal. It is important that this relief be provided promptly and, if possible, in time for the January 1, 1994 cut-off for inclusion in the 1994 edition of OGE's part of volume 5 of the Code of Federal Regulations.

Executive Order 12866

In promulgating this final rule amendment to the executive branch-wide Government financial disclosure regulation, the Office of Government Ethics has adhered to the regulatory philosophy and the applicable principles of regulation set forth in section 1 of Executive Order 12866, Regulatory Planning and Review. This amendment has not been reviewed by the Office of Management and Budget under that Executive order, as it is not deemed "significant."

Regulatory Flexibility Act

As Director of the Office of Government Ethics, I certify under the Regulatory Flexibility Act (5 U.S.C. chapter 6) that this amendment to the interim rule will not have a significant economic impact on a substantial number of small entities because it will affect only Federal executive branch agencies and employees.

Paperwork Reduction Act

The Paperwork Reduction Act (5 U.S.C. chapter 35) does not apply to this amendment to the interim rule because the amendment does not contain any additional information collection requirements which require the approval of the Office of Management and Budget.

List of Subjects in 5 CFR Part 2634

Administrative practice and procedure, Certificates of divestiture, Conflict of interests, Financial disclosure, Government employees, Penalties, Privacy, Reporting and recordkeeping requirements, Trusts and trustees.

Approved: November 19, 1993.

Stephen D. Potts,

Director, Office of Government Ethics.

Accordingly, for the reasons set forth in the preamble, the Office of Government Ethics is amending part 2634 of subchapter B of Chapter XVI of title 5 of the Code of Federal Regulations as follows:

PART 2634—[AMENDED]

1. The authority citation for part 2634 continues to read as follows:

Authority: 5 U.S.C. App. (Ethics in Government Act of 1978); 26 U.S.C. 1043; E.O. 12674, 54 FR 15159, 3 CFR, 1989 Comp., p. 215, as modified by E.O. 12731, 55 FR 42547, 3 CFR, 1990 Comp., p. 306.

Subpart I—Confidential Financial Disclosure Reports

2. Section 2634.907 is amended by revising paragraphs (a)(1) and (a)(2) to read as follows:

§ 2634.907 Report contents.

(a) * * *

(1) *Interests in property.* All the interests in property specified by § 2634.301, except:

(i) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(ii) Money market mutual funds and accounts;

(iii) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and

(iv) Government securities issued by U.S. Government agencies;

(2) *Income.* All the income items specified by § 2634.302, except from:

(i) Accounts (including both demand and time deposits) in depository institutions, including banks, savings and loan associations, credit unions, and similar depository financial institutions;

(ii) Money market mutual funds and accounts;

(iii) U.S. Government obligations, including Treasury bonds, bills, notes, and savings bonds; and

(iv) Government securities issued by U.S. Government agencies;

* * * * *

[FR Doc. 93–29322 Filed 11–29–93; 8:45 am]

BILLING CODE 6345–01–U

DEPARTMENT OF AGRICULTURE

Animal and Plant Health Inspection Service

7 CFR Part 301

[Docket No. 92–139–5]

Pine Shoot Beetle

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the pine shoot beetle regulations by adding Cook, Du Page, Iroquois, Kankakee, and Livingston Counties, IL; De Kalb, Delaware, and Grant Counties, IN; Branch, Hillsdale, Lenawee, Washtenaw, Jackson, Calhoun, Van Buren, Wayne, Oakland, Macomb, Genesee, Shiawassee, Ionia, Montcalm, Saginaw, Isabella, Midland, Tuscola, and Allegan Counties, MI; Erie and Knox Counties, OH; and Chautauqua, Cattaraugus, Livingston, Wyoming, Genesee, Ontario, Orleans, and Monroe Counties, NY, to the list of quarantined areas. This action is necessary on an emergency basis to prevent the spread of the pine shoot beetle, a highly destructive pest of pine trees, into noninfested areas of the United States.

We are also adding a new schedule of methyl bromide fumigation treatments to the list of treatments available for cut pine Christmas trees that are to be moved interstate from pine shoot beetle quarantined areas.

DATES: Interim rule effective November 23, 1993. Consideration will be given only to comments received on or before January 31, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 92–139–5. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Robert Foster, Assistant Operations Officer, Plant Protection and Quarantine, APHIS, USDA, room 642, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The pine shoot beetle is a highly destructive pest of pine trees. The pine shoot beetle can cause damage in weak and dying trees, where reproduction and immature stages of pine shoot beetle occur, and in the new growth of healthy trees. The "maturation feeding" of young beetles takes the form of boring up the center of pine shoots (usually of the current year's growth), causing stunted and distorted growth in the host trees. The pine shoot beetle is also an important vector of several diseases of pine trees. Adults can fly at least 1 kilometer, and the wood, nursery stock, and Christmas trees they infest are often transported long distances. This pest damages urban trees, and can cause

economic losses to the timber, Christmas tree, and nursery industries.

The regulations in 7 CFR 301.50 (referred to below as the regulations) impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the pine shoot beetle into noninfested areas of the United States. The regulations were established in a document effective on November 13, 1992, and published in the **Federal Register** on November 19, 1992 (57 FR 54492–54499, Docket No. 92–139–1). In a document effective on January 19, 1993, and published in the **Federal Register** on January 28, 1993, 1993 (58 FR 6346–6348, Docket No. 92–139–2), we amended the regulations by adding Will County, IL, to the list of quarantined areas and by allowing all pine nursery stock to be moved interstate after cold treatment. In a document effective and published in the **Federal Register** on May 13, 1993 (58 FR 28333–28335, Docket No. 93–139–3), we further amended the regulations by adding Ingham County, MI, to the list of quarantined areas; by removing restrictions on logs and lumber, with bark attached, of fir, larch, and spruce; by relieving certain restrictions on the interstate movement of logs and lumber of pine; by adding pine stumps and pine bark nuggets, including bark chips, to the list of regulated articles; and by providing for certification of certain pine seedlings up to 36 inches high. And, in a document effective and published in the **Federal Register** on June 29, 1993 (58 FR 34681–34683, Docket No. 93–139–4), we further amended the regulations by allowing certain pine transplants to be certified for interstate movement and by adding 5 counties in Indiana and 6 counties in Michigan to the list of quarantined areas.

Surveys recently conducted by State and Federal inspectors revealed that Cook, Du Page, Iroquois, Kankakee, and Livingston Counties, IL; De Kalb, Delaware, and Grant Counties, IN; Branch, Hillsdale, Lenawee, Washtenaw, Jackson, Calhoun, Van Buren, Wayne, Oakland, Macomb, Genesee, Shiawassee, Ionia, Montcalm, Saginaw, Isabella, Midland, Tuscola, and Allegan Counties, MI; Erie and Knox Counties, OH; and Chautauqua, Cattaraugus, Livingston, Wyoming, Genesee, Ontario, Orleans, and Monroe Counties, NY, are infested with the pine shoot beetle. The regulations in § 301.50–3 provide that the Administrator of the Animal and Plant Health Inspection Service (APHIS) will list as a quarantined area each State, or each portion of a State, in which the pine shoot beetle has been found by an inspector, in which the Administrator has reason to believe the pine shoot beetle is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the pine shoot beetle has been found.

In accordance with these criteria, we are designating Cook, Du Page, Iroquois, Kankakee, and Livingston Counties, IL; De Kalb, Delaware, and Grant Counties, IN; Branch, Hillsdale, Lenawee, Washtenaw, Jackson, Calhoun, Van Buren, Wayne, Oakland, Macomb, Genesee, Shiawassee, Ionia, Montcalm, Saginaw, Isabella, Midland, Tuscola, and Allegan Counties, MI; Erie and Knox Counties, OH; and Chautauqua, Cattaraugus, Livingston, Wyoming, Genesee, Ontario, Orleans, and Monroe Counties, NY, as quarantined areas, and adding them to the list of quarantined areas provided in § 301.50–3(c).

We are also adding a new schedule of methyl bromide fumigation treatments for cut pine Christmas trees to the list of treatments available under § 301.50–10. Under the regulations, we require certain regulated articles to be treated for pine shoot beetle infestation in order to be certified for interstate movement from quarantined areas. Currently, we allow both methyl bromide fumigation and cold treatment for cut pine Christmas trees. However, the intensity of the currently listed methyl bromide treatments causes premature needle fall and effectively destroys the trees; they can only be used as means of killing the pine shoot beetle in unsold Christmas trees as an alternative to chipping or burning. Similarly, producers have experienced premature needle fall problems with the listed cold treatment.

Based on research conducted at the APHIS Plant Protection and Quarantine Hoboken Methods Development Center, we believe the new methyl bromide fumigation treatments effectively eliminate pine shoot beetle infestations in cut pine Christmas trees while leaving the trees in saleable condition. These treatments will, therefore, expand markets for producers who have infested trees in quarantined areas. APHIS assumes no responsibility, however, for damage to cut pine Christmas trees due to any phytotoxic effects of the methyl bromide treatments. We also recommend that trees be cut at least 14 days prior to treatment in order to reduce the possibility of phytotoxic effects.

Accordingly, we are also eliminating cut pine Christmas trees from the list of regulated articles eligible for the already listed methyl bromide fumigation treatments under § 301.50–10(a). Considering that no cut pine tree producers used these treatments due to their destructive effects, we see no reason to maintain them as treatment options for cut pine Christmas trees.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency situation exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the pine shoot beetle from spreading to noninfested areas of the United States.

Immediate action is also necessary to relieve unnecessarily burdensome restrictions on pine Christmas tree growers. Many growers in the newly quarantined areas already have negotiated 1993 sale contracts for their trees. Others intend to sell a number of their trees interstate this year. Without the addition of the new schedule of fumigation treatments, these growers will have to divert to local markets or destroy cut pine Christmas trees originally intended for interstate shipment, but now found to be infested with the pine shoot beetle. With the addition of the new fumigation treatments, however, these growers will be able to ship their infested trees interstate after treatment and thus experience only minimal economic losses.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

This rule has been reviewed under Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

About 387 small nurseries and 594 Christmas tree farms are located in the 37 newly quarantined counties.

Most of the small nurseries in these counties specialize in production of deciduous landscape products. However, some also produce rooted

pine Christmas trees and pine nursery stock. About 85 of these nurseries ship approximately 30,000 rooted pine Christmas trees and pine nursery stock products interstate annually. If inspected and found to be infested with the pine shoot beetle, these trees and nursery stock products either can be diverted for sale within local markets or cold treated before interstate shipment. We estimate that about 3 per cent, or 900, of these rooted pine Christmas trees and pine nursery stock products may be found to be infested and thus would need to be cold treated before being shipped interstate.

The cold treatments for interstate shipments of rooted pine Christmas trees and pine nursery stock cost producers between $3.10 and $12.50 per plant. Per-unit treatment costs vary due to tree size and treatment facility capacity. So, as a result of this rule, we expect that cold treatment costs could increase annual expenditures of each of the 85 small nurseries by $35 to $135. Therefore, we anticipate that this interim rule will have a negligible economic impact on small nurseries within the newly quarantined counties.

Most of the small Christmas tree farms in these counties depend on the local choose-and-cut market for their annual sales and so will not be affected by this rule. However, about 100 of these farms ship approximately 650,000 cut pine Christmas trees interstate annually. If inspected and found to be infested with the pine shoot beetle, these trees either can be diverted for sale within local markets or treated in accordance with § 301.50–10 before interstate shipment. We estimate that about 3 per cent, or 19,500 of these cut pine Christmas trees may be found to be infested and thus would need to be treated before being shipped interstate.

Prior to this interim rule, the only viable treatment option available to farms wishing to ship infested cut pine Christmas trees interstate was cold treatment before shipment, at a cost of approximately $15.40 per tree. This cost makes interstate shipment of treated trees impractical, as the average value of a cut pine Christmas tree is only about $13.

We believe, therefore, that farms within the newly quarantined areas wishing to ship infested trees interstate will choose to employ one of the five new fumigation treatments also established by this rule, since each costs only about $1 per tree. Using this cost, we estimate that treatment costs will increase the annual expenditures of each of the 100 affected farms by about $195. Therefore, we anticipate a minimal economic impact on cut pine Christmas tree farms in the new quarantined areas as a result of this rule. And, the new fumigation treatments established in this rule will offer these farmers inexpensive treatment alternatives previously unavailable.

We are unable to quantify the interstate movement from the 37 newly quarantined counties of the other regulated articles affected by this rule, including pine logs, lumber, and pine bark chips and nuggets. We have determined, however, that these counties import more of these articles than they harvest or manufacture themselves. Therefore, we anticipate that this interim rule will have a minimal economic impact on producers of these regulated articles within the 37 newly quarantined counties.

Prior to this rule, approximately 27 farmers in the 55 already quarantined counties produced annually about 6,505 cut pine Christmas trees that required treatment in order to be shipped interstate. But, as stated above, the prohibitive costs of cold treatment forced these producers to either divert their infested trees to local markets or destroy the trees. We expect that the new fumigation treatments established by this rule will allow these farmers to market these 6,505 trees outside of the quarantined counties at a treatment cost of only about $1 per tree. Again assuming an average price of $13 per tree, we estimate that use of the new treatments could result in an approximate net sales increase of about $2911 per farmer in the counties quarantined prior to this rule.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0088.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for the conclusion that the treatment of cut pine Christmas trees, under the conditions specified in this rule, will not present a risk of introducing or disseminating plant pests and will not have a significant impact on the quality of the human environment. Based on the finding of no significant impact, the Administrator of the Animal and Plant Health Inspection Service has determined that an environmental impact statement will not be prepared.

The environmental assessment and finding of no significant impact were prepared in accordance with:

(1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 et seq.),

(2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508),

(3) USDA Regulations Implementing NEPA (7 CFR Part 1b), and

(4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under **FOR FURTHER INFORMATION CONTACT.**

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended to read as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff, 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.50–3, paragraph (c), under Illinois, Indiana, Michigan, New York, and Ohio, new counties are added, in alphabetical order, to read as follows:

§ 301.50–3 Quarantined areas.

* * * * *

(c) * * *

Illinois

Cook. The entire county.
Du Page. The entire county.
Iroquois. The entire county.

* * * * *

Kankakee. The entire county.
Livingston. The entire county.

* * * * *

Indiana

* * * * *

De Kalb. The entire county.
Delaware. The entire county.

* * * * *

Grant. The entire county.

* * * * *

Michigan

Allegan. The entire county.

* * * * *

Branch. The entire county.
Calhoun. The entire county.

* * * * *

Genesee. The entire county.

* * * * *

Hillsdale. The entire county.

* * * * *

Ionia. The entire county.
Isabella. The entire county.
Jackson. The entire county.

* * * * *

Lenawee. The entire county.

* * * * *

Macomb. The entire county.
Midland. The entire county.

* * * * *

Montcalm. The entire county.
Oakland. The entire county.
Saginaw. The entire county.
Shiawassee. The entire county.

* * * * *

Tuscola. The entire county.
Van Buren. The entire county.
Washtenaw. The entire county.
Wayne. The entire county.

New York

Cattaraugus. The entire county.
Chautauqua. The entire county.

* * * * *

Genesee. The entire county.
Livingston. The entire county.
Monroe. The entire county.

* * * * *

Ontario. The entire county.
Orleans. The entire county.
Wyoming. The entire county.

Ohio

* * * * *

Erie. The entire county.

* * * * *

Knox. The entire county.

* * * * *

§ 301.50–10 [Amended]

3. In § 301.50–10, paragraph (a) is amended by removing the phrase "pine stumps, and pine Christmas trees," and adding "and pine stumps," in its place, and removing the phrase "stumps, and trees" and adding "and stumps" in its place.

4. In § 301.50–10, a new paragraph (c) is added to read as follows:

§ 301.50–10 Treatments.

* * * * *

(c) Any one of these fumigation treatments is authorized for use on cut pine Christmas trees. Cut pine Christmas trees may be treated with methyl bromide at normal atmospheric pressure as follows:

Temperature	Dosage: pounds per 1000 feet³	Exposure: hours	Concentration readings: ounces per 1000 feet³			
			2.0 hr	3.0 hr	3.5 hr	4.0 hr
40–49 °F	4.0	4.0	57	—	—	48
50–59 °F	4.0	3.5	57	—	48	—
50–59 °F	3.5	4.0	50	—	—	42
60 °F+	4.0	3.0	57	48	—	—
60 °F+	3.0	4.0	43	—	—	36

NOTE: APHIS assumes no responsibility for damage to cut pine Christmas trees due to possible phytotoxic effects of these treatments. Trees should be cut at least 14 days before treatment to reduce the possibility of phytotoxic effects.

Done in Washington, DC, this 23rd day of November 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29252 Filed 11–29–93; 8:45 am]
BILLING CODE 3410–34–P

7 CFR Part 301

[Docket 91–155–9]

Mediterranean Fruit Fly; Addition to the Quarantined Areas; Treatments

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Interim rule and request for comments.

SUMMARY: We are amending the Mediterranean fruit fly regulations by expanding the previously quarantined areas of Los Angeles and Orange Counties, CA, and Los Angeles and San Bernardino Counties, CA, and by adding three treatments for regulated citrus fruit. These actions are necessary on an emergency basis to prevent the spread of the Mediterranean fruit fly into noninfested areas of the United States and to lessen the restrictions on the interstate movements of regulated articles for which treatments are added.

DATES: Interim rule effective November 22, 1993. Consideration will be given only to comments received on or before January 31, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 91–155–9. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Mr. Michael B. Stefan, Operations Officer, Domestic and Emergency Operations, Plant Protection and Quarantine, APHIS, USDA, room 640, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–8247.

SUPPLEMENTARY INFORMATION:

Background

The Mediterranean fruit fly, *Ceratitis capitata* (Wiedemann), is one of the world's most destructive pests of numerous fruits and vegetables. The Mediterranean fruit fly (Medfly) can

cause serious economic losses. Heavy infestations can cause complete loss of crops, and losses of 25 to 50 percent are not uncommon. The short life cycle of this pest permits the rapid development of serious outbreaks.

We established the Mediterranean fruit fly regulations (7 CFR 301.78 through 301.78–10; referred to below as the regulations), and quarantined the Hancock Park area of Los Angeles County, CA, in an interim rule effective on November 5, 1991, and published in the **Federal Register** on November 13, 1991 (56 FR 57573–57579, Docket No. 91–155). The regulations impose restrictions on the interstate movement of regulated articles from quarantined areas in order to prevent the spread of the Medfly to noninfested areas of the United States. We have published a series of interim rules amending these regulations by adding or removing certain portions of Los Angeles, Santa Clara, Orange, San Bernardino, and San Diego Counties, CA, from the list of quarantined areas. Amendments affecting California were made effective on September 10, and November 12, 1992; and on January 19, July 16, August 3, September 22, and October 14, 1993 (57 FR 42485–42486, Docket No. 91–155–2; 57 FR 54166–54169, Docket No. 91–155–3; 58 FR 6343–6346, Docket No. 91–155–4; 58 FR 39123–39124, Docket No. 91–155–5; 58 FR 42489–42491, Docket No. 91–155–6; 58 FR 49186–49190, Docket No. 91–155–7; and 58 FR 53105–53109, Docket No. 91–155–8).

Recent trapping surveys by inspectors of California State and county agencies and by inspectors of the Animal and Plant Health Inspection Service (APHIS) have revealed that additional infestations of Medfly have been discovered in the South Central Los Angeles, La Puente, and East Los Angeles areas in Los Angeles County, CA, and a portion of the Los Serranos area in San Bernardino County, CA.

The regulations in § 301.78–3 provide that the Administrator of APHIS will list as a quarantined area each State, or each portion of a State, in which the Medfly has been found by an inspector, in which the Administrator has reason to believe that the Medfly is present, or that the Administrator considers necessary to regulate because of its inseparability for quarantine enforcement purposes from localities in which the Medfly has been found.

In accordance with these criteria and the recent Medfly findings described above, we are amending § 301.78–3 by expanding the area that extends through both Los Angeles and San Bernardino Counties with the addition of an area of approximately 29 square miles in the Los Serranos area in San Bernardino County and by expanding the area which extends through both Los Angeles and Orange Counties with the addition of an area of approximately 58 square miles in the South Central, La Puente, and East Los Angeles areas in Los Angeles County. The quarantined areas as revised are as follows:

Los Angeles and Orange Counties

That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City Limits to the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Prairie Avenue; then south along Prairie Avenue to its intersection with State Highway 91; then east along State Highway 91 to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then south along Valley View Street to its intersection with Bolsa Chica Road; then south along Bolsa Chica Road to its intersection with Bolsa Chica Street; then south along Bolsa Chica Street to its intersection with Los Patos Avenue; then southeast along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then east along Ellis Avenue to its intersection with Edwards Street; then south along Edwards Street to its intersection with Garfield Avenue; then east along Garfield Avenue to its intersection with North Golden West Street; then south along North Golden West Street to its intersection with Yorktown Avenue; then east along Yorktown Avenue to its intersection with Main Street; then south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then north along Fairview Road to its intersection with Interstate Highway 405; then east and south along Interstate Highway 405 to its intersection with Culver Drive; then northeast along Culver Drive to its intersection with Walnut Avenue; then northwest along Walnut Avenue to its intersection with Jamboree Road; then northeast along Jamboree Road to its intersection with Tustin Ranch Road; then west along Tustin Ranch Road to its intersection with Pioneer Way; then north along Pioneer Way to its intersection with Pioneer Road; then, northwest on Pioneer Road to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with Old Foothill Boulevard; then northwest on Old Foothill Boulevard to its intersection with Hewes Street; then north on Hewes Street to its intersection with Chapman Avenue; then west along Chapman Avenue to its intersection with West Street; then north along West Street to its intersection with Katella Avenue; then west along Katella Avenue to its intersection with Western Avenue; then north along Western Avenue to its intersection with Commonwealth Avenue; then east along Commonwealth Avenue to its intersection with Beach Boulevard; then north along Beach Boulevard to its intersection with La

Mirada Boulevard; then northwest and north along La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to the Forest Lawn Memorial Park, Covina Hills, boundary; then northeast along that boundary to Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north along an imaginary line to its intersection with the Angeles National Forest boundary; then west along this boundary to the point of beginning.

Los Angeles and San Bernardino Counties

That portion of the counties beginning at the intersection of College Way and State Highway 30 (Base Line Road); then east along State Highway 30 to its intersection with Carnelian Street; then south along Carnelian Street to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Holt Boulevard; then west along Holt Boulevard to its intersection with Grove Avenue; then south along Grove Avenue to its intersection with Mission Boulevard; then southeast along Mission Boulevard to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Riverside Drive; then west along Riverside Drive to its intersection with Walker Avenue; then south along Walker Avenue to its intersection with Eucalyptus Avenue; then west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then south along State Highway 83 to its intersection with State Highway 71; then southwest from this intersection, along an imaginary line to the northern intersection of the Yorba Linda City Limits and the San Bernardino County line; then northwest and north along the San Bernardino County line to its intersection with State Highway 60; then east along Highway 60 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then northeast along College Way to the point of beginning.

Treatments

We are also amending § 301.78–10 of the regulations, which sets forth treatments for certain regulated articles, by adding additional treatments for citrus fruit. Under the regulations, a regulated article from a quarantined area is eligible for interstate movement pursuant to a certificate if, among other things, it has been treated in accordance with § 301.78–10 of the regulations, and is eligible for interstate movement with a limited permit if it is moving under certain conditions to a specified destination for the treatment. Based on research, it has been determined that there are three additional treatments for citrus fruit that are adequate to destroy the Mediterranean fruit fly. These treatments are as follows:

Regulated Citrus Fruit That Has Been Harvested

(1) Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) for 3½ hours at 21 °C. (70 °F.) or above.

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

(2) Fumigation plus refrigeration: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) at 21 °C. (70 °F.) or above.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55 to 0.7 °C. (33 to 37 °F.); or 11 days at 3.33 to 8.3 °C. (38 to 47 °F.).
2½ hours.	4 days at 1.11 to 4.44 °C. (34 to 40 °F.); or 6 days at 5.0 to 8.33 °C. (41 to 47 °F.); or 10 days at 8.88 to 13.33 °C. (48 to 56 °F.).
3 hours	3 days at 6.11 to 8.33 °C. (43 to 47 °F.); or 6 days at 9.88 to 13.33 °C. (48 to 56 °F.).

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

Time lapse between fumigation and start of cooling not to exceed 24 hours. Chamber load not to exceed 80 percent of volume.

(3) Cold treatment: 10 days at 0 °C. (32 °F.) or below; or 11 days at 0.55 °C. (33 °F.) or below; 12 days at 1.11 °C (34 °F.) or below: 14 days at 1.66 °C. (35 °F.) or below; or 16 days at 2.22 °C. (36 °F.) or below.

Adding these treatments relieves unnecessary restrictions by allowing the interstate movement of citrus fruit from quarantined areas in those instances where the risk of spreading the pest to noninfested areas can be eliminated.

Emergency Action

The Administrator of the Animal and Plant Health Inspection Service has determined that an emergency exists that warrants publication of this interim rule without prior opportunity for public comment. Immediate action is necessary to prevent the Mediterranean fruit fly from spreading to noninfested areas of the United States. Immediate action is also necessary to prevent economic losses to shippers who, without the treatments added by this rule, would be unable to move their harvested citrus fruit interstate.

Because prior notice and other public procedures with respect to this action are impracticable and contrary to the public interest under these conditions, we find good cause under 5 U.S.C. 553 to make it effective upon signature. We will consider comments that are received within 60 days of publication of this rule in the **Federal Register**. After the comment period closes, we will publish another document in the **Federal Register**. It will include a discussion of any comments we receive and any amendments we are making to the rule as a result of the comments.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule:

(1) Will have an effect on the economy of less than $100 million;

(2) Will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) Will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) Will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) Will not raise novel legal or policy issues arising out of legal mandates, the

President's priorities, or principles set forth in Executive Order 12866.

For this action, the Office of Management and Budget has waived the review process required by Executive Order 12866.

This interim rule affects the interstate movement of regulated articles from the South Central Los Angeles, La Puente, and East Los Angeles areas of Los Angeles County, CA, and the Los Serranos area of San Bernardino County, CA. There are approximately 1,554 small entities that could be affected, including 501 fruit sellers, 55 nurseries, 356 distributor/wholesalers, 8 growers, 9 swapmeets, 1 certified farmers market, 575 vendors, 4 community gardens, and 35 food banks.

These small entities comprise less than 1 percent of the total number of similar small entities operating in the State of California. In addition, most of these small entities sell regulated articles primarily for local intrastate, not interstate, movement and the sale of these articles would not be affected by this interim regulation.

In the new quarantined areas in Los Angeles, Orange, and San Bernardino Counties, the effect on those few small entities that do move regulated articles interstate from parts of the quarantined areas will be minimized by the availability of various treatments that, in most cases, will allow these small entities to move regulated articles interstate with very little additional cost. Also, many of these entities sell other items in addition to the regulated articles so that the effect, if any, of this regulation on these entities should be minimal. Further, the number of affected entities is small compared with the thousands of small entities that move these articles interstate from nonquarantined areas in California and other States.

Moreover, the conditions in the Mediterranean fruit fly regulations and treatments in the Plant Protection and Quarantine Treatment Manual, incorporated by reference in the regulations, allow interstate movement of most articles without significant added costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action will not have a significant economic impact on a substantial number of small entities.

Executive Order 12372

This program/activity is listed in the Catalog of Federal Domestic Assistance under No. 10.025 and is subject to Executive Order 12372, which requires intergovernmental consultation with State and local officials. (See 7 CFR part 3015, subpart V.)

Executive Order 12778

This rule has been reviewed under Executive Order 12778, Civil Justice Reform. This rule: (1) Preempts all State and local laws and regulations that are inconsistent with this rule; (2) has no retroactive effect; and (3) does not require administrative proceedings before parties may file suit in court challenging this rule.

National Environmental Policy Act

An environmental assessment and finding of no significant impact have been prepared for this rule. The assessment provides a basis for our conclusion that implementation of integrated pest management to achieve eradication of the Medfly would not have a significant impact on human health and the natural environment.

The environmental assessment and finding of no significant impact were prepared in accordance with: (1) The National Environmental Policy Act of 1969 (NEPA) (42 U.S.C. 4321 *et seq.*), (2) Regulations of the Council on Environmental Quality for Implementing the Procedural Provisions of NEPA (40 CFR Parts 1500–1508), (3) USDA Regulations Implementing NEPA (7 CFR part 1b), and (4) APHIS Guidelines Implementing NEPA (44 FR 50381–50384, August 28, 1979, and 44 FR 51272–51274, August 31, 1979).

Copies of the environmental assessment and finding of no significant impact are available for public inspection at USDA, room 1141, South Building, 14th Street and Independence Avenue SW, Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. In addition, copies may be obtained by writing to the individual listed under "FOR FURTHER INFORMATION CONTACT."

Paperwork Reduction Act

The information collection and recordkeeping requirements contained in Subpart 301.78 have been approved by the Office of Management and Budget (OMB) under the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*) under OMB control number 0579–0088.

List of Subjects in 7 CFR Part 301

Agricultural commodities, Plant diseases and pests, Quarantine, Reporting and recordkeeping requirements, Transportation.

Accordingly, 7 CFR part 301 is amended as follows:

PART 301—DOMESTIC QUARANTINE NOTICES

1. The authority citation for 7 CFR part 301 continues to read as follows:

Authority: 7 U.S.C. 150bb, 150dd, 150ee, 150ff; 161, 162, and 164–167; 7 CFR 2.17, 2.51, and 371.2(c).

2. In § 301.78–3, paragraph (c), the designation of the quarantined areas are amended by revising the entry for Los Angeles and Orange Counties, and the entry for Los Angeles and San Bernardino Counties, as follows:

§ 301.78–3 Quarantined areas.

* * * * *

(c) * * *

California

* * * * *

Los Angeles and Orange Counties. That portion of the counties beginning at the intersection of the Angeles National Forest boundary and Sage Hill Road; then north from the intersection along an imaginary line to its intersection with Brown Mountain Road at Millard Campground; then west along Brown Mountain Road to its intersection with El Prieto Road; then southwest along El Prieto Road to its intersection with the Pasadena City Limits; then north and west along the Pasadena City limits to its intersection with the La Canada Flintridge City Limits; then west and south along the La Canada Flintridge City Limits to its intersection with Foothill Boulevard; then northwest along Foothill Boulevard to its intersection with La Crescenta Avenue; then south along La Crescenta Avenue to its intersection with Shirley Jean Street; then southwest from this intersection along an imaginary line to the end of Allen Avenue; then southwest along Allen Avenue to its intersection with Mountain Street; then northwest along Mountain Street to its intersection with Sunset Canyon Drive; then northwest along Sunset Canyon Drive to its intersection with Olive Avenue; then southwest along Olive Avenue to its intersection with Barham Boulevard; then south along Barham Boulevard to its intersection with State Highway 101; then southeast along State Highway 101 to its intersection with Highland Avenue; then south along Highland Avenue to its intersection with Sunset Boulevard; then west along Sunset Boulevard to its intersection with La Cienega Boulevard; then south along La Cienega Boulevard to its intersection with Washington Boulevard; then southwest along Washington Boulevard to its intersection with Culver Boulevard; then southwest along Culver Boulevard to its intersection with Vista Del Mar; then southeast along Vista Del Mar to its intersection with Rosecrans Avenue; then east along Rosecrans Avenue to its intersection with Prairie Avenue; then south along Prairie Avenue to its intersection with State Highway 91; then east along State Highway 91 to its intersection with Paramount Boulevard; then south on Paramount Boulevard to its intersection with

Carson Street; then east on Carson Street to its intersection with Lakewood Boulevard; then south on Lakewood Boulevard to its intersection with Willow Street; then east on Willow Street to its intersection with Katella Avenue; then east along Katella Avenue to its intersection with Valley View Street; then, south along Valley View Street to its intersection with Bolsa Chica Road; then, south along Bolsa Chica road to its intersection with Bolsa Chica Street; then, south along Bolsa Chica Street to its intersection with Los Patos Avenue; then, southeast from this intersection along an imaginary line to the intersection of East Garden Grove Wintersburg Channel and the Bolsa Chica Ecological Reserve boundary; then, southeast along the Bolsa Chica Ecological Reserve boundary to its intersection with Ellis Avenue; then, east along Ellis Avenue to its intersection with Edwards Street; then, south along Edwards Street to its intersection with Garfield Avenue; then, east along Garfield Avenue to its intersection with North Golden West Street; then, south along North Golden West Street to its intersection with Yorktown Avenue; then, east along Yorktown Avenue to its intersection with Main Street; then, south along Main Street to its intersection with Adams Avenue; then, east along Adams Avenue to its intersection with Fairview Road; then, north along Fairview Road to its intersection with Interstate Highway 405; then, east and south along Interstate Highway 405 to its intersection with Culver Drive; then, northeast along Culver Drive to its intersection with Walnut Avenue; then, northwest along Walnut Avenue to its intersection with Jamboree Road; then, northeast along Jamboree Road to its intersection with Tustin Ranch Road; then, west along Tustin Ranch Road to its intersection with Pioneer Way; then, north along Pioneer Way to its intersection with Pioneer Road; then, northwest on Pioneer Road to its intersection with Foothill Boulevard; then, northwest along Foothill Boulevard to its intersection with Old Foothill Boulevard; then, northwest on Old Foothill Boulevard to its intersection with Hewes Street; then, north on Hewes Street to its intersection with Chapman Avenue; then, west along Chapman Avenue to its intersection with West Street; then, north along West Street to its intersection with Katella Avenue; then west along Katella Avenue to its intersection with Western Avenue; then north on Western Avenue to its intersection with Commonwealth Avenue; then east on Commonwealth Avenue to its intersection with Beach Boulevard; then north on Beach Boulevard to its intersection with La Mirada Boulevard; then northwest and north on La Mirada Boulevard to its intersection with Colima Road; then northeast on Colima Road to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with Amar Road; then east along Amar Road to its intersection with Temple Avenue; then northeast along Temple Avenue to its intersection with the Walnut City Limits; then north and northeast along the Walnut City Limits to the Forest Lawn Memorial Park, Covina Hills, boundary; then northeast along that boundary to Interstate Highway 10; then east along Interstate Highway 10 to its intersection with Interstate Highway 210; then northwest along Interstate Highway 210 to its intersection with San Dimas Avenue; then east and north along San Dimas Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Alosta Avenue; then west along Alosta Avenue to its intersection with Foothill Boulevard; then west along Foothill Boulevard to its intersection with Azusa Avenue; then north along Azusa Avenue to its intersection with San Gabriel Canyon Road; then due north from the intersection along an imaginary line to its intersection with the Angeles National Forest boundary; then west along the boundary to the point of beginning.

Los Angeles and San Bernardino Counties. That portion of the counties beginning at the intersection of College Way and State Highway 30 (Base Line Road); then east along State Highway 30 to its intersection with Carnelian Street; then south along Carnelian Street to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Holt Boulevard; then west along Holt Boulevard to its intersection with Grove Avenue; then south along Grove Avenue to its intersection with Mission Boulevard; then southeast along Mission Boulevard to its intersection with Vineyard Avenue; then south along Vineyard Avenue to its intersection with Riverside Drive; then west along Riverside Drive to its intersection with Walker Avenue; then south along Walker Avenue to its intersection with Eucalyptus Avenue; then west along Eucalyptus Avenue to its intersection with State Highway 83 (Euclid Avenue); then south along State Highway 83 to its intersection with State Highway 71; then southwest from this intersection, along an imaginary line to the northern intersection of the Yorba Linda City Limits and the San Bernardino County line; then northwest and north along the San Bernardino County line to its intersection with State Highway 60; then east along Highway 60 to its intersection with Garey Avenue; then north along Garey Avenue to its intersection with College Way; then northeast along College Way to the point of beginning.

* * * * *

3. In § 301.78–10, paragraphs (b) and (c), are redesignated as paragraphs (c) and (d), and a new paragraph (b) is added to read as follows:

§ 301.78–10 Treatments

* * * * *

(b) *Regulated citrus fruit that has been harvested.* (1) Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) for 3½ hours at 21 °C. (70 °F.) or above.

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

(2) Fumigation plus refrigeration: Fumigation with methyl bromide at normal atmospheric pressure with 32 g/m³ (2 pounds per 1000 cubic feet) at 21 °C. (70 °F.) or above.

Fumigation exposure time	Refrigeration
2 hours	4 days at 0.55 to 0.7 °C. (33 to 37 °F.); or 11 days at 3.33 to 8.3 °C. (38 to 47 °F.).
2½ hours	4 days at 1.11 to 4.44 °C. (34 to 40 °F.); or 6 days at 5.0 to 8.33 °C. (41 to 47 °F.); or 10 days at 8.88 to 13.33 °C. (48 to 56 °F.).
3 hours	3 days at 6.11 to 8.33 °C. (43 to 47 °F.); or 6 days at 9.88 to 13.33 °C. (48 to 56 °F.).

Note: Some varieties of fruit may be injured by methyl bromide exposure. Shippers should test treat before making commercial shipments.

Time lapse between fumigation and start of cooling not to exceed 24 hours. Chamber load not to exceed 80 percent of volume.

(3) Cold treatment: 10 days at 0 °C. (32 °F.) or below; or 11 days at 0.55 °C. (33 °F.) or below; 12 days at 1.11 °C (34 °F.) or below: 14 days at 1.66 °C. (35 °F.) or below; or 16 days at 2.22 °C. (36 °F.) or below.

* * * * *

Done in Washington, DC, this 22nd day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29253 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–34–P

Agricultural Marketing Service

7 CFR Part 1096

[DA–93–31]

Milk in the Greater Louisiana Marketing Area; Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Suspension of rule.

SUMMARY: This action suspends certain portions of a provision of the Greater Louisiana Federal milk marketing order (Order 96), beginning November 1993 and continuing through May 1995. The action will allow a plant that qualifies as a pool plant under Order 96 to retain its pool status regardless of whether a greater proportion of its route disposition is made in another order marketing area in succeeding months. The suspension was requested by Mid-America Dairymen, Inc. (Mid-America),

on behalf of Southern Milk Sales (SMS). The action is necessary to assure that producer milk which historically has been associated with the market will continue to be pooled under the order.

EFFECTIVE DATES: November 1, 1993, through May 31, 1995.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, Room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: Prior document in this proceeding:

Notice of Proposed Suspension: Issued October 15, 1993; published October 22, 1993 (58 FR 54530).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. This action will lessen the regulatory impact of the order on certain milk handlers and will ensure that dairy farmers will continue to have their milk priced under the order with which they have historically been associated and thereby receive the benefits that accrue from such pricing.

The Department is issuing this rule in conformance with Executive Order 12866.

This final rule also has been reviewed under Executive Order 12778, Civil Justice Reform. This action in not intended to have a retroactive effect, and it will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice of proposed rulemaking was published in the **Federal Register** on October 22, 1993 [58 FR 54530], concerning a proposed suspension of certain provisions of the order. Interested persons were afforded opportunity to file written data, views, and arguments thereon. One comment was submitted in support of the action.

After consideration of all relevant material, including the proposal in the notice, the comments received, and other available information, it is hereby found and determined that for the months of November 1993 through May 1995 the following provisions of the order do not tend to effectuate the declared policy of the Act:

In § 1096.7(d)(3), the words "until the third consecutive month in which a greater proportion of such route disposition is made in such other marketing area".

Statement of Consideration

This action will suspend for the months of November 1993 through May 1995 a part of the pool plant definition which requires that plants having greater route disposition in another marketing area for three consecutive months be considered as pool plants under the other order.

According to Mid-America, SMS historically has pooled milk on the Greater Louisiana marketing order through sales to Guth Dairy, a pool distributing plant located in Lake Charles, Louisiana. Mid-America stated that Guth Dairy recently was awarded school milk contracts in Houston, Texas, and that, as a result, a greater portion of the plant's packaged milk sales will be distributed in the Texas marketing order, causing the plant to switch regulation from Order 96 to the Texas marketing order.

Mid-America pointed out that for the twelve-month period ending August 1993 the Texas order blend price at Lake Charles averaged 63 cents per hundredweight less than the Greater Louisiana Federal order blend price at Lake Charles. The proponent stressed that producers supplying milk to Guth Dairy and pooled on the Greater Louisiana order could not continue to afford to supply milk to Guth Dairy if Guth Dairy became regulated under the Texas order. Likewise, Guth Dairy could not afford to pay 63 cents more to producers to compete with other handlers in the Greater Louisiana marketing area for a supply of milk.

In recent months, the disparity in blend prices has increased even more than the 12-month average. In August and September 1993, for example, the blend price per hundredweight under the Greater Louisiana order was $1.15 and $1.00, respectively, higher than the Texas order's blend price at the Lake Charles, Louisiana, location. In view of the price disparity between the two orders, the fact that Guth Dairy is located within the Greater Louisiana marketing area, the historical association of the dairy farmers supplying this plant with Order 96, and the lack of any opposition to the proposal, it is appropriate to suspend the language that would cause the plant to shift to the Texas order.

It is hereby found and determined that thirty days' notice of the effective date hereof is impractical, unnecessary, and contrary to the public interest in that:

(a) The suspension is necessary to reflect current marketing conditions and to assure orderly marketing conditions in the marketing area;

(b) This suspension does not require of persons affected substantial or extensive preparation prior to the effective date; and

(c) Notice of proposed rulemaking was given interested parties, and they were afforded opportunity to file written data, views, or arguments concerning this suspension.

Therefore, good cause exists for making this order effective November 1, 1993.

List of Subjects in 7 CFR Part 1096

Milk marketing orders.

For the reasons set forth in the preamble, title 7 part 1096 is amended as follows:

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. The authority citation for 7 CFR part 1096 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

§ 1096.7 [Temporarily suspended in part]

2. In § 1096.7(d)(3), the words "until the third consecutive month in which a greater portion of such route disposition is made in such other marketing area" are suspended.

Dated: November 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29287 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–02–P

Food Safety and Inspection Service

9 CFR Part 381

[Docket No. 89-008F]

RIN 0583-AB09

Use of Tricalcium Phosphate in Mechanically Deboned Chicken

AGENCY: Food Safety and Inspection Service, USDA.

ACTION: Final rule.

SUMMARY: The Food Safety and Inspection Service (FSIS) is amending the poultry products inspection regulations to permit the use of tricalcium phosphate in mechanically deboned chicken, in accordance with current good manufacturing practices, during the dehydration process to preserve the color of such dehydrated products. The final rule will allow tricalcium phosphate at a level not to exceed 2 percent of the weight of the mechanically deboned chicken before dehydration. Use of tricalcium phosphate at such level will sequester the iron present in the blood of mechanically deboned chicken during the dehydration process, thus preventing discoloration (browning) of the product. The final rule regulation is in response to a petition submitted by Henningsen Foods, Inc.

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Charles Edwards, Director, Product Assessment Division, Regulatory Programs, Food Safety and Inspection Service, U.S. Department of Agriculture, Washington, DC 20250, (202) 254-2565.

SUPPLEMENTARY INFORMATION:

Executive Order 12291

The Agency has determined that this final rule is not a major rule under Executive Order 12291. It will not result in an annual effect on the economy of $100 million or more; a major increase in costs or prices for consumers, individual industries, Federal, State or local government agencies or geographic regions; or significant adverse effects on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in export or domestic markets.

Executive Order 12778

This final rule has been reviewed pursuant to Executive Order 12778, Civil Justice Reform. This final rule concerns the use of substances in poultry products. States are precluded from imposing any marking, labeling, packaging, or ingredient requirements on federally inspected poultry products that are in addition to, or different than, those imposed under the Poultry Products Inspection Act (PPIA) (21 U.S.C. 467e). States may, however, exercise concurrent jurisdiction over poultry products that are outside official establishments for the purpose of preventing the distribution of poultry products that are misbranded or adulterated under the PPIA, or, in the case of imported articles which are not at such an establishment, after their entry into the United States. States that conduct poultry inspection programs must impose requirements at least equal to those imposed on federally inspected products and establishments under the PPIA. These States may, however, impose stringent requirements on such State inspected products and establishments.

No retroactive effect is to be given to this final rule. There are no administrative procedures which must be exhausted prior to any judicial challenge to the provisions of this rule. Prior to any judicial challenge to the application of its provisions to an inspector's decision relating to any inspection, applicable administrative procedures set forth in 9 CFR 381.35 must be exhausted.

Effect on Small Entities

The Administrator, FSIS, has determined that this final rule will not have a significant economic impact on a substantial number of small entities. The final rule will permit the use of an additional substance at the manufacturer's option.

For purposes of determining the potential impact of this final rule on small entities, FSIS estimates that 10 percent of the approximate 505 manufacturers that produce mechanically deboned chicken are small entities (approximately 50). Manufacturers opting to use tricalcium phosphate in mechanically deboned chicken, as prescribed in this final rule, will be required to revise the ingredients statement on product labels to show the presence of such substance (9 CFR 381.118). This would entail approximately $1,000 in labeling costs for each product. Provided all eligible small entities opt to use tricalcium phosphate in mechanically deboned chicken, small entities would incur an estimated $50,000 overall as a result of this rulemaking.

The costs associated with new label applications are covered under existing approved paperwork burdens of FSIS's prior label approval system. Thus, this final rule does not impose new paperwork requirements on the industry.

Background

Henningsen Foods Petition

On March 4, 1988, FSIS received a petition from Henningsen Foods, Inc., Omaha, Nebraska, to amend the poultry products inspection regulations to allow the use of tricalcium phosphate in mechanically deboned chicken during dehydration to avoid discoloration of the dehydrated product. During the process of dehydrating mechanically deboned chicken, the product becomes dark brown, resulting in a dehydrated product that is aesthetically unacceptable to the petitioner's customers who purchase the product for use in further processed products such as gravies, sauces, and dehydrated soups.

The petitioner claimed that the addition of tricalcium phosphate to mechanically deboned chicken would sequester the iron present in the blood of the poultry product during dehydration and prevent discoloration of the mechanically deboned poultry product.

Supporting data submitted by the petitioner was based on a series of color tests of samples of dehydrated mechanically deboned chicken with variable amounts of tricalcium phosphate added before dehydration ranging from 0 to 3 percent of the weight of the mechanically deboned chicken. (A copy of the supporting data is available for review in the FSIS Hearing Clerk's Office.) The data showed that the color of the mechanically deboned chicken was fully preserved during dehydration with the addition of tricalcium phosphate at the 2 percent level.

Current Regulations

The Food and Drug Administration (FDA) lists tricalcium phosphate as generally recognized as safe (GRAS) in 21 CFR 182.1217 when used in accordance with current good manufacturing practices. The poultry products inspection regulations currently do not permit the use of tricalcium phosphate in any poultry product.

Proposed Rule

On August 25, 1992, FSIS published a proposed rule (57 FR 38450) to permit the use of tricalcium phosphate in mechanically deboned chicken during the dehydration process, in accordance with current good manufacturing practices, to preserve the color of such dehydrated products. FSIS proposed to

amend the table of approved substances in 9 CFR 381.147(f)(4) to allow the use of tricalcium phosphate to preserve the color of mechanically deboned chicken during dehydration by preventing the development of a brown color. Tricalcium phosphate would be permitted in such product at a level not to exceed 2 percent of the ingoing weight of the product, i.e., before dehydration.

Discussion of Comments

FSIS received two comments in response to the August 25, 1992 proposed rule. The comments were submitted by a food processor and a trade association. Both commenters fully supported the proposal and suggested that the Agency act expeditiously in promulgating the final rule.

On the basis of the record in this proceeding, the Administrator has determined that (1) the use of tricalcium phosphate in mechanically deboned chicken is in compliance with applicable FDA requirements, (2) its use is functional and suitable for the intended purpose, (3) the substance is used at the lowest level necessary to accomplish its intended technical effect, and (4) the use of this substance in mechanically deboned chicken at the stated level will not render the treated product adulterated, misbranded, or otherwise not in accordance with the requirements of the Poultry Products Inspection Act. Accordingly, FSIS is adopting the proposed rule as published.

List of Subjects in 9 CFR 381

Food additives, Food labeling, Poultry inspection.

Final Rule

For the reasons set forth in the preamble, FSIS is amending 9 CFR part 381 to read as follows:

PART 381—POULTRY PRODUCTS INSPECTION REGULATIONS

1. The authority citation for part 381 continues to read as follows:

Authority: 7 U.S.C. 450, 21 U.S.C. 451–470, 7 CFR 2.17, 2.55.

2. In the table in § 381.147(f)(4), the Class of substance "Miscellaneous" is amended by adding at the end thereof the following:

§ 381.147 Restriction on the use of substances in poultry products.

* * * * *

(f) * * *

(4) * * *

Class of substance	Substance	Purpose	Products	Amount
•	•	•	•	•
Miscellaneous * * *				
	Tricalcium phosphate	To preserve product color during dehydration process.	Mechanically deboned chicken to be dehydrated.	Not to exceed 2 percent of the weight of the mechanically deboned chicken prior to dehydration, in accordance with 21 CFR 182.1217.

* * * * *

Done at Washington, DC, on November 22, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29136 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–DM–M

FARM CREDIT ADMINISTRATION

12 CFR Part 615

RIN 3052–AB25

Funding and Fiscal Affairs, Loan Policies and Operations, and Funding Operations; Management of Investments, Liquidity, Interest Rate Risk, and Eligible Investments

AGENCY: Farm Credit Administration.

ACTION: Final rule.

SUMMARY: The Farm Credit Administration (FCA), by the Farm Credit Administration Board (Board) adopts final regulations that amend the regulations which govern the investment activities of Farm Credit System (FCS, System, or Farm Credit) banks. The final regulations allow Farm Credit Banks (FCBs), banks for cooperatives (BCs), and agricultural credit banks (ACBs) to hold specified eligible investments, in an amount not to exceed 30 percent of the total outstanding loans of such banks, for:

(1) Maintaining a liquidity reserve;

(2) Investing short-term surplus funds; and

(3) Managing interest rate risk (IRR). These regulations also establish a liquidity reserve requirement for all FCS banks. These regulations require FCBs, BCs, and ACBs to measure and manage IRR in their portfolios. The FCA has also strengthened existing requirements that necessitate the board of directors of each bank to adopt investment policies and procedures that ensure that the bank's investment activities are conducted in a safe and sound manner. These regulations expand the list of eligible investments so FCS banks will further diversify their investment portfolios, but the FCA has placed limits on the amount, maturity, and credit rating of eligible investments in order to ensure the safety and soundness of such investment portfolios. The FCA is also adopting regulations governing investments by System banks in mortgage-related securities that are fully guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation (Farmer Mac).

EFFECTIVE DATE: The regulation shall become effective upon the expiration of 30 days after publication in the **Federal Register** during which either or both Houses of Congress are in session. Notice of the effective date will be published in the **Federal Register.**

FOR FURTHER INFORMATION CONTACT:

Michael J. LaVerghetta, Senior Financial Analyst, Technical and Operations Division, Office of Examination, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4231,

or

Richard A. Katz, Senior Attorney, Regulatory Operations Division, Office of General Counsel, Farm Credit Administration, McLean, VA 22102–5090, (703) 883–4020, TDD (703) 883–4444.

SUPPLEMENTARY INFORMATION:

I. General

On December 18, 1991, the FCA proposed amendments to its regulations governing the investment activities of System banks. See 56 FR 65691. Essentially, the FCA proposed regulations that would have restricted the amount that each FCB, BC, or ACB could invest in certain eligible investments to 20 percent of its total outstanding loans. Under the FCA's

proposal, these eligible investments could only be used to maintain a liquidity reserve, manage short-term surplus funds, and reduce IRR. The FCA also proposed, for the first time, regulations that established a liquidity reserve and authorized investments for reducing IRR at all System banks. The proposed regulations would have also strengthened existing regulatory requirements that require the board of directors of each System bank to adopt investment policies and procedures that conform with applicable law, and ensure that competent personnel conduct the bank's investment activities in a safe and sound manner. The FCA also proposed to expand the list of eligible investments that Farm Credit banks could use to achieve permissible investment objectives. Under the proposed regulations, eligible investments would be subject to percentage of asset limitations, as well as maturity and credit rating requirements. The FCA's proposal would have required System banks to divest all ineligible investments within 6 months after final regulations became effective unless the Director of the Office of Examination granted an extension.

Although the initial comment period expired on February 18, 1992, the FCA subsequently extended the comment period until May 1, 1992, in response to the economic growth initiative of the former President of the United States. See 57 FR 7276 (March 4, 1992). The President's initiative required all Federal agencies to review their regulations, pursuant to five enumerated criteria, in order to: (1) Identify those regulations that impede economic growth; and (2) accelerate action on those regulations that promote growth. In extending the comment period, the FCA also invited commenters to evaluate the impact of the proposed regulations on economic growth by applying the five criteria in the President's initiative.

The FCA received comments about the proposed regulations from the Farm Credit Council (FCC), six FCS banks, Farmer Mac, the American Bankers' Association (ABA) and an investment banking firm. Some commenters, on their own initiative, submitted additional letters or information to supplement their original responses. The FCA received a second letter from the FCC that specifically evaluated the impact of the proposed regulations on economic growth pursuant to the criteria set forth in the President's initiative.

The FCC and one FCB requested that the FCA repropose these regulations instead of adopting final regulations. These commenters reasoned that they should have an additional opportunity to comment because: (1) The investment regulations have potentially far-reaching implications on the future management and direction of the FCS; and (2) some commenters seek substantial revisions to the FCA's proposal.

After carefully considering this request, the FCA declines to repropose these regulations. Two separate comment periods have afforded interested parties ample opportunity to communicate their views and recommendations about these regulations to the FCA. Indeed, some commenters have responded to the FCA's proposal more than once. As a result, the FCA is aware of both FCS and non-System concerns about these regulations. Accordingly, the FCA incorporated many of the commenters' substantive and technical recommendations into the final regulations, while other suggestions were rejected for the reasons set forth below. The final regulations that the FCA adopts today are the logical outgrowth of its original proposal. Differences between the proposed and final regulations are primarily attributed to comments received from interested parties.

Reproposed regulations are unlikely to provide the FCA with additional information or guidance that would be useful in crafting these final regulations. Reproposal, however, would substantially delay implementation of new investment regulations. In the interim, Farm Credit banks would continue to operate under existing regulations which all System commenters judged as obsolete.

II. Economic Impact

As noted earlier, the former President of the United States unveiled an initiative for economic growth on January 30, 1992.[1] This initiative established five criteria for determining if a regulation promoted or impeded economic growth. First, the expected benefits of the regulation to society should clearly outweigh its costs. Second, the regulation should be fashioned to maximize the net benefits to society. Third, the regulation should rely, to the maximum extent possible, on performance standards instead of prescriptive command-and-control requirements. Fourth, the regulation should, to the maximum extent possible, rely on market mechanisms. Finally, the regulation should be expressed with clarity and certainty to guide regulated entities, and it should be designed to avoid needless litigation.

Only the FCC commented on the economic impact of the FCA's proposed investment regulations by applying the five criteria. Specifically, the FCC asserted that the fixed liquidity reserve requirement of proposed § 615.5134 failed to maximize net benefits to society under the second criterion. Because proposed § 615.5133 would require the board of directors to establish limits on the amount of investments that could be placed through individual obligors, the FCC characterized the rule as imposing command-and-control requirements, instead of relying on performance standards, as suggested in the third criterion. The FCC argued that the investment ceiling in proposed § 615.5132 and the high credit ratings and constraints on mortgage-backed securities (MBSs) in proposed § 615.5140 ignored market mechanisms, in violation of the fourth criterion of the economic growth package. Finally, the FCC claimed that proposed § 615.5133, which would require the board of directors to formulate investment management policies at their banks, was not expressed with clarity or certainty, as required by the fifth criterion of the initiative.

The FCA has carefully reviewed these comments. In response, the FCA notes that its authority to promulgate regulations that promote economic growth under the guidelines is constrained by the Act. In this context, the FCA interprets the Act as requiring the cooperatively owned FCS to channel most of its funds into agricultural loans. Similarly, the FCA is responsible for ensuring that the activities of System banks are compatible with their status as government-sponsored enterprises (GSEs). These restraints make it difficult for the FCA to fully apply the criteria concerning market mechanisms and performance standards to these regulations. Nevertheless, the final investment regulations that the FCA adopts today should promote economic growth by enhancing the liquidity and financial strength of the FCS so it remains a reliable source of credit for rural America.

III. Investment Purposes

A. The FCA's Proposal

The FCA proposed to revise and redesignate an existing regulation, § 615.5135, which authorized Farm Credit banks to hold investment

[1] Presidential Memorandum dated January 28, 1992, addressed to certain Department and Agency Heads. The subject of the memorandum was "Reducing the Burden of Government Regulation."

portfolios solely for the purposes of maintaining sufficient liquidity, investing short-term funds, and managing short-term debt. The existing regulation specifically prohibited System banks from maintaining "investment portfolios primarily as a means of generating additional income."

As proposed by the FCA, redesignated § 615.5132 would have limited the size of a bank's investment portfolio to 20 percent of its outstanding loans. Farm Credit banks would be allowed to hold these investments solely for the purposes of: (1) Complying with a new liquidity reserve requirement in proposed § 615.5134; (2) managing short-term cashflow needs; and (3) reducing interest rate risk pursuant to proposed § 615.5135.

The FCA reasoned that the 20-percent limit on investments would balance two competing objectives by providing management with greater flexibility to reduce IRR and maintain adequate liquidity, while simultaneously ensuring that Farm Credit banks operated in a manner that is consistent with their GSE status. From the FCA's perspective, a liquid pool of investments affords some protection to Farm Credit banks in the event of market disruptions. Furthermore, carefully planned investment strategies enable System banks to combat maturity mismatches and interest rate fluctuations that threaten their solvency. However, the FCA proposed restrictions on the size and uses of the investment portfolio so System banks could not use their GSE status to borrow funds from the capital markets during periods of favorable interest rate spreads for the purpose of accumulating large investment portfolios for arbitrage activities. Furthermore, the proposed regulations were designed to ensure that System banks maintain adequate levels of liquidity even during times when interest rate spreads have a negative impact on balance sheets.

B. The Comments

The FCA received comments about proposed § 615.5132 from the FCC, four FCBs, two BCs, ABA, and an investment banking firm. Two other FCBs endorsed the FCC's position without further comment. Except for ABA, all commenters opined that the proposal to limit the investment portfolio to 20 percent of gross loans was too restrictive. Several commenters asserted that the FCA's approach concerning investment purposes was inflexible.

The ABA generally supported proposed § 615.5132. Since this commenter complained that System banks rely on investments to generate earnings rather than contain risks, it endorsed those provisions in proposed § 615.5132 that restricted investments to the following purposes: (1) Maintenance of a liquidity reserve; (2) IRR reduction; and (3) short-term surplus funds management. While the ABA did not specifically comment about the proposed 20-percent investment-to-loan ratio, it strongly supported the fixed 15-day liquidity reserve requirement.

The FCC claimed that it was unreasonable for the FCA to impose overall restrictions on the aggregate investment holdings of Farm Credit banks unless specific facts and circumstances demonstrated that the System engaged in unsafe and unsound investment practices. The commenter asserted that federally regulated financial institutions and other GSEs are not subject to similar restrictions. The FCC argued that any regulatory limitation on the size of System investment portfolios actually threatens safety and soundness by impeding the ability of the banks to: (1) Maintain adequate liquidity; (2) manage IRR; and (3) build capital.

As an alternative, the FCC suggested that the size of the investment portfolio be limited to 30 to 35 percent of total outstanding loans at each bank. According to the commenter, a 30 to 35-percent limit would enhance management's flexibility to safely and soundly manage the investment portfolio without unduly increasing the risks to the banks' liquidity or solvency.

The FCC also suggested that the FCA amend provisions in § 615.5132 concerning investment purposes by authorizing System banks to hold investments for the purpose of "managing," rather than "reducing" IRR. The FCC requested that the regulation explicitly state that the objectives of § 615.5132 are not violated when Farm Credit banks produce net interest income (NII) to build capital.

The FCC urged the FCA to modify its positions on how banks calculate and fund their liabilities for liquidity. Specifically, FCC requested that the FCA exclude Farm Credit investment bonds, and the Contractual Interbank Performance Agreement (CIPA) from the overall investment limit.

The Farm Credit Bank of Texas (Texas Bank) endorsed the FCC's position, but it also expressed independent opinions about proposed § 615.5132. The bank opined that the proposed regulation is arbitrary and unobjective. Although the Texas Bank stated that it could accept an investment cap of 30 to 35 percent, it viewed regulatory restrictions on the size of investment portfolios as an impediment to the maintenance of a liquidity reserve. The commenter noted the direct relationship between liquidity and refunding risk exposure at System banks. As the refunding risk exposure changes, the bank needs to adjust its actual level of liquidity. In this context, the liquidity formula also correlates to the bank's IRR.

The Texas Bank also believes that the FCA should recognize that it is not inherently wrong for Farm Credit banks to produce NII and increase capital as a by-product of managing their investments. Since Farm Credit banks must increase capital, build an insurance fund, meet CIPA targets, and retire Farm Credit System Financial Assistance Corporation (FAC) debt, the commenter argues that the FCA should allow System banks to use all of their assets to maximize their profitability.

The Texas Bank urged the FCA to amend § 615.5132 so System banks could hold investments for the purpose of managing IRR, rather than reducing it. In the commenter's opinion, the effective management of IRR is a discipline. The Texas Bank noted that there could be sound reasons for a Farm Credit bank to increase its IRR tolerance in certain scenarios.

The Farm Credit Bank of Columbia (Columbia Bank) expressed strong opposition to proposed § 615.5132. Essentially, this commenter complains that the proposed regulation: (1) Invades the legitimate commercial prerogatives of the board and managers of each bank; (2) is premised on the FCA's misunderstanding of the role of liquidity in the safe and sound management of Farm Credit banks; (3) misperceives the appropriate uses of investments in managing the risks that System banks face in a competitive market environment; and (4) imposes an arbitrary percentage limit on the size of the banks' investment portfolios.

The FCA also received a joint comment letter from the Farm Credit Bank of Springfield and the Springfield Bank for Cooperatives (Springfield Banks). The Springfield Banks agreed with the System's position that a maximum limit on investments should not be imposed by regulation. But if a limit were required, this commenter indicated that the FCA should consider the composition of each bank's loan portfolio. The Springfield Banks acknowledged that they primarily originate variable rate loans that reprice within 1 year. As a result, these banks fund their operations with short-term liabilities. This approach requires the Springfield Banks to maintain a high level of liquidity. According to the comment letter, the investment portfolios of both Springfield Banks

already exceed the proposed 20-percent limit. In this context, proposed § 615.5132 would require the Springfield Banks to adopt a different funding strategy in order to operate safely and soundly. The commenter recommended that the FCA limit the size of the investment portfolio to: (1) Forty-five (45) percent of variable rate loans and fixed rate loans that reprice within 1 year; and (2) fifteen (15) percent of all fixed rate loans with a maturity that is greater than 1 year.

The National Bank for Cooperatives (CoBank) endorsed the FCC's position on § 615.5132. However, CoBank requested that the FCA exclude Farm Credit investment bonds from the investment cap. This commenter reasoned that Farm Credit investment bonds are merely "pass through" items, and are neutral as to their effect on liquidity.

The investment banking firm supported the proposed diversification requirements as a sound basis for managing liquidity and IRR. The commenter suggested that the FCA limit the size of the investment portfolio to 50 percent of outstanding loans and further suggested suspension of this 50-percent limit if: (1) Interest rates fluctuate by more than 200 basis points during the prior 12 months; or (2) if borrowing capacity is restricted and the cost of System funds increases by more than 100 basis points in the same 12-month period.

The investment banking firm worried that the proposed 20-percent limit would actually inhibit the ability of bank portfolio managers to manage IRR. The investment banking firm also opined that proposed § 615.5132 would deprive the banks of sufficient liquidity during times of crisis, when the cost of System funds increases, and when the spreads between Farm Credit securities and United States Treasuries widen. The commenter noted that the net interest margins between the yield on earning assets and the cost of funds is narrower for the FCS banks than for commercial banks. According to information supplied by the investment banking firm, net margins for commercial banks have historically ranged from 300 to 400 basis points. Since the commenter contends that Farm Credit banks do not operate with the same profit motive as the private sector, net margins are 100 to 200 basis points narrower. The commenter argues that these compressed margins justify a limit of 50 percent of outstanding loans. From the perspective of the investment banking firm, proposed § 615.5132 exposes Farm Credit banks to margin compression, credit risk, and liquidity crisis during periods of interest rate volatility since 80 percent of bank assets are allocated to agricultural loans.

C. FCA's Revisions to § 615.5132

After carefully considering all of these comments, the FCA now adopts final § 615.5132, which authorizes each Farm Credit bank to hold eligible investments, pursuant to § 615.5140, in an amount that does not exceed 30 percent of its total outstanding loans solely for the purposes of: (1) Maintaining a liquidity reserve pursuant to § 615.5134; (2) managing surplus short-term funds; and (3) managing interest rate risk pursuant to § 615.5135. In formulating the final regulation, the FCA accepted System recommendations to: (1) Increase the size of the investment portfolio from 20 to 30 percent; and (2) recognize IRR management, rather than IRR reduction, as a sound investment purpose.

For the reasons explained below, the FCA declines to add a provision to final § 615.5132 that would explicitly authorize Farm Credit banks to hold investments for the purpose of building capital. The FCA will respond to recommendations about the treatment of certain liabilities, such as Farm Credit investment bonds and CIPA in the preamble to the liquidity regulation, § 615.5134. Similarly, the FCA will address liquidity and IRR issues at length in the preambles to §§ 615.5134 and 615.5135 respectively.

The commenters have persuaded the FCA that System banks will be better able to manage their liquidity requirements, IRR, and surplus short-term funds if their investment level is 30 percent of their total outstanding loans.

In considering alternative approaches for final § 615.5132, the FCA carefully studied the options proposed by the commenters. All FCS commenters, except Farmer Mac, advised the FCA not to impose any regulatory restrictions on the size of bank investment portfolios. These commenters implied that this matter should be left to the discretion of the bank's board of directors. If this approach is followed through to its logical conclusion, any Farm Credit bank, at the discretion of its board, could hold most of its assets in investments that are unrelated to agricultural credit.

The FCA rejects this option because it is fundamentally incompatible with the charter, status, and purpose of the FCS. Congress enacted the Federal Farm Loan Act of 1916 [2] after it concluded that commercial banks were unable to furnish adequate credit to America's farmers on a sustainable basis.[3] Congress acknowledged that its efforts to address the credit needs of farmers through the Federal Reserve Act of 1913 were largely unsuccessful, and agricultural credit was scarce because commercial banks primarily loaned money to borrowers who basically had different credit requirements than farmers.[4] The cooperative Federal Land Bank System was established to ensure that farmers had a dependable, stable, and responsive source of credit.[5] Although the scope of the FCS expanded over the years, its fundamental mission of meeting the credit needs of agricultural producers has never changed. In fact, section 1.1(a) of the Act declares that the policy of Congress is to promote a farmer-owned cooperative banking system that furnishes sound, adequate, and constructive credit to agricultural producers.

The FCA is also unable to reconcile the commenters' proposal with the FCS's cooperative principles.

Cooperatives, by law, conduct most of their business with their members, and earn most of their income from such transactions.[6] From the FCA's perspective, a Farm Credit bank is not using its charter primarily to serve the credit needs of agricultural producers and rural communities once agricultural loans to its borrower-members no longer comprise a majority of its assets.

On the funding side of the equation, the commenters' proposal also conflicts with the GSE status of the FCS. Farm Credit banks borrow money on the capital markets to fund their assets. According to recent reports by the United States Treasury Department and the General Accounting Office (GAO), GSE status significantly enhances the creditworthiness of the FCS.[7] Without GSE status, System banks would incur a substantially higher cost of funds.[8] Under these circumstances, the FCA believes that it is inappropriate for System banks, as GSEs, to borrow funds

[2] Public Law 158, 64th Cong., 1st. Sess., July 17, 1916.

[3] See H.R. 630, 64th Cong., 1st Sess., (May 3, 1916), pp. 3–4. Also see S. Rep. 144, 64th Cong., 1st Sess. (Feb. 15, 1916) pp. 2–3.

[4] *Id.*

[5] *Id.*

[6] Legal Phases of Farmer Cooperatives, United States Department of Agriculture, p. 4, 1976.

[7] See Report of the Secretary of the Treasury on Government-Sponsored Enterprises, April, 1991, p. xxi. See also Government Accounting Office, Government-Sponsored Enterprises: A Framework for Limiting the Government's Exposure to Risks, May, 1991, pp. 18–19. See also Government Accounting Office, Government-Sponsored Enterprises: The Government's Exposure to Risk, August, 1990, pp. 83–89.

[8] *Id.*

at favorable rates, and then invest most of the money in assets other than agricultural loans.

The FCA interprets the Act and its legislative history as requiring each Farm Credit bank to hold a majority of its assets in agricultural loans. Pursuant to its authorities under sections 5.17(a)(4) and (9) of the Act, 12 U.S.C. 2252(a)(4) and (9),* the FCA determines that a regulatory limit on investments ensures that Farm Credit banks abide by their: (1) Statutory mission of financing agriculture; and (2) cooperative principles. Accordingly, final § 615.5132 will impose a 30-percent limit on investments so that agricultural loans continue to comprise the majority of each FCS bank's assets.

Since an investment ceiling enforces compliance with the Act, the FCA rejects System arguments that only compelling safety and soundness reasons can justify restrictions on the size of bank investment portfolios. For the same reason, the FCA cannot accept the claim that an investment ceiling constitutes an unwarranted interference by the regulator in the business affairs of System banks.

System commenters also complained that an investment ceiling is unprecedented among GSEs and Federal regulators of financial institutions. In the FCA's opinion, this argument lacks merit because the FCS and these entities have fundamentally different missions, regulatory frameworks, funding mechanisms, and organizational structures. For example, commercial banks and credit unions are not legally required to furnish credit primarily to a specific economic sector. In the same context, commercial banks are predominantly stock corporations that do not operate under cooperative principles. Similarly, comparisons to other GSEs, such as the Federal National Mortgage Association (FNMA) and the Federal Home Loan Mortgage Corporation (FHLMC), are not useful here because the FCS makes loans directly to borrowers, whereas the other two GSEs operate secondary markets that provide liquidity and credit enhancements to primary mortgage lenders.

However, a comparison between the FCS and the Federal Home Loan Bank (FHLB) System and its constituent savings associations has merit. FHLBs make no retail loans. Instead, they lend to member savings associations and banks. See 12 U.S.C. 1421 *et seq.* A provision of the Federal Home Loan Bank Act, 12 U.S.C. 1431(h), authorizes FHLBs to invest only in obligations of the United States, securities backed by residential mortgages, and FNMA debt instruments. In contrast to the FCS, FHLBs are prohibited by statute from investing in any assets (except United States obligations) that are unrelated to their statutory mission of providing credit to primary residential mortgage lenders. Similarly, a comparison can be drawn between the FCS and savings associations because both are legally required to make most of their loans to specific types of borrowers. A provision in the Home Owners Loan Act (HOLA), 12 U.S.C. 1467a(m), mandates that all savings associations maintain "qualified thrift lender" status by holding at least 65 percent of their assets in home mortgages, securities backed by residential mortgages, FHLB stock, and other housing-related investments.

The FCA now responds to the Springfield banks' proposal that final § 615.5132 establish separate investment limits for loans that mature or reprice within 1 year, and fixed rate loans that have a longer term to maturity. This approach could, in effect, encourage all System banks to shift to a strategy where they would fund mostly short-term assets with short-term liabilities. The FCA is concerned that the resulting surge in short-term borrowings by the entire System could place substantial stress on the capital markets, which in turn, could widen the spread between FCS obligations and Treasury securities. Since amendments to § 615.5132 increase the investment level from 20 to 30 percent and authorize banks to manage IRR, the FCA believes that the final regulation should provide boards of directors with greater flexibility to devise funding strategies that meet the needs of their banks.

The investment banking firm advised the FCA to set the investment ceiling at 50 percent of loans, which would be suspended if: (1) Interest rates fluctuate by more than 200 basis points during the prior 12 months; or (2) cost of System funds increases by more than 100 basis points in the same 12-month period. After careful consideration, the FCA declines to adopt this commenter's recommendation. The FCA does not believe that the regulation should automatically suspend the regulatory cap on the size of bank investment portfolios if market rates rise, or the System's cost of funds increases by a certain percentage in a 12-month period. Instead, the FCA adopts final § 615.5136, which empowers the FCA Board to waive or modify restrictions on the size of the investment portfolio and/or the liquidity reserve during times of economic or financial stress. The FCA prefers the flexibility of this approach which enables this agency to tailor a specific remedy for a particular problem. The FCA does not adopt the recommendation of the investment banking firm because it allows Farm Credit banks to shift most of their assets from agricultural loans to investments simply because interest rates rise above a certain threshold.

The FCA also denies the commenter's request to allow Farm Credit banks to hold investments in an amount that does not exceed 50 percent of their total outstanding loans. As noted earlier, the investment banking firm contends that this 50-percent investment-to-loan ratio margin is justified because Farm Credit banks have historically experienced narrower net interest margins than their commercial bank competitors. The FCA declines to adopt the investment banking firm's recommendation because investments have never approached 50 percent of loans at Farm Credit banks. Furthermore, no System commenter supported the position of the investment banking firm. Although no FCS commenter endorsed a regulatory limit on the size of bank investment portfolios, these commenters recommended, in the alternative, investment ceilings that were well below the 50 percent proposed by the investment banking firm.

As noted above, § 615.5132 will restrict the investment portfolios of each System bank to 30 percent of its outstanding loans. The FCA finds several justifications for this 30-percent level. First, all System commenters, except one, assured the FCA that an investment limit of 30 to 35 percent would provide management with sufficient flexibility to safely and soundly manage risks to bank liquidity or solvency. Second, the higher investment level recognizes that the balance sheets of System banks will be better diversified against risk for a one-industry lender, and will provide sufficient cushion for System banks to maintain adequate liquidity and manage IRR. Third, the higher level of investments should help stabilize earnings and will also provide higher quality assets to improve balance sheet credit risk. In this context, the FCA believes that final § 615.5132 will actually strengthen the ability of the FCS to finance agriculture because this 30-percent investment level should enable Farm Credit banks to better

* Section 5.17(a)(4) of the Act authorizes the FCA to approve the issuance of System debt obligations under sections 4.2 (c) and (d) of the Act for the purpose of funding the authorized operations of FCS institutions. Section 5.17(a)(9) of the Act authorizes the FCA to prescribe rules and regulations that are necessary and appropriate for carrying out the Act.

withstand periodic stagnation in the agricultural economy.

Some commenters sought revisions to those provisions in § 615.5132 that restrict the investment activities of Farm Credit banks to specific purposes. As requested by the FCC and the Texas Bank, the FCA amended § 615.5132 so IRR management, rather than IRR reduction, is a purpose for System banks to hold investments. The FCA accepts the rationale of the Texas Bank that the effective management of IRR is a discipline, and that it could be prudent for a Farm Credit bank to increase IRR tolerances in certain scenarios. By authorizing FCBs, BCs, and ACBs, under § 615.5135, to manage their IRR with the use of investments, final § 615.5132 recognizes that IRR is one of the major risks in managing a financial institution because it impacts a major portion of net operating revenue.

In response to comments by the FCC and the Texas Bank, the FCA will now clarify its policy concerning the role of investments in building bank capital. The FCA has taken the position that the use of investments are essential for sound asset/liability management practices. Farm Credit banks could not maintain adequate liquidity, invest short-term surplus funds, or remain solvent in a constantly changing interest rate environment without liquid investments.

Investments and the income they generate help protect the viability of Farm Credit banks during times when the agricultural economy is in recession, or experiencing slow growth. However, the FCA believes, for the reasons discussed above, that Farm Credit banks should not use their GSE status to generate income from investments primarily for the purposes of building capital. Therefore, the FCA refuses requests to insert language in final § 615.5132 that would expressly recognize income generation and capital enhancement as a primary reason for Farm Credit banks to hold investments. Nevertheless, the FCA acknowledges that Farm Credit banks are likely to accumulate additional income and capital as an ancillary benefit of their compliance with the regulations in subpart E of part 615, which should improve their financial position.

IV. Investment Management

The FCA now adopts final § 615.5133, which governs investment management practices at System banks. The FCA adopted two minor revisions to this regulation in order to address concerns raised by the commenters.

Proposed § 615.5133 would require the board of directors of each FCB, BC, and ACB to adopt a comprehensive written investment management policy that complies with the Act, FCA regulations, and other applicable provisions of law. While the FCA's proposal would expressly prohibit the board of directors from delegating its responsibility to supervise and review the bank's investment practices, the board would be responsible for ensuring that portfolio managers perform their duties in accordance with board policies. Board policies adopted under the proposed regulation should preclude investment management practices that expose the bank to excessive levels of risks. Proposed § 615.5133 would also require the board of directors of each Farm Credit bank to annually review: (1) Investment policies to determine whether current investment strategies are achieving portfolio objectives; and (2) the performance and quality of the investment portfolio.

Proposed § 615.5133 would require the investment policy of each bank to address, at a minimum, the following eight areas:

(1) The purpose and objectives of the bank's investment portfolio;

(2) Liquidity requirements pursuant to § 615.5134;

(3) IRR management pursuant to § 615.5135;

(4) Permissible brokers, dealers and institutions for investing bank funds pursuant to § 615.5140 and limitations on the amount of funds that may be invested or placed with any individual intermediary;

(5) The size and quality of the investment portfolio;

(6) Risk diversification;

(7) Delegation of authority to manage investments to specific personnel and the scope of their authority; and

(8) Internal controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized activities.

Comments about proposed § 615.5133 were received from the FCC, a BC, an FCB, and the ABA. The other System commenters either endorsed the FCC's position, or offered no opinion about proposed § 615.5133.

The ABA urged the FCA to adopt proposed § 615.5133 as a final regulation. This commenter believes that the FCA's proposal establishes proper board of director control over the investment operations at Farm Credit banks. According to the commenter, commercial banks operate under similar requirements.

The FCB expressed general support for proposed § 615.5133, but it opposed the provision that would require "System banks to place a specific dollar limit on liquidity investments that would cause such investments to be limited to 15 days of coverage." This comment apparently reflects the bank's opposition to a passage in the preamble to the proposed regulation which interpreted § 615.5133(b) as requiring board policy to identify those investments that are held in the liquidity reserve. See 56 FR 65691, 65693 (December 18, 1991). Although the FCA defers substantive discussion about the liquidity reserve requirement until the preamble to final § 615.5134, it still adheres to its position that § 615.5133(b) mandates bank board policies to identify those investments free of lien, that are held for liquidity management.

The FCC concurred that boards of directors are responsible for: (1) Adopting comprehensive investment policies; and (2) ensuring that portfolio managers conduct the bank's investment operations in accordance with such policies. The commenter also endorsed the eight broad areas that proposed § 615.5133 would require bank boards to address in an acceptable investment policy. The FCC, however, sought modifications to certain provisions in the proposed regulation.

The FCC requested clarification of the sentence that prohibits the board of directors from delegating its responsibility to supervise and review the bank's investment practices. The commenter asserted that the term "supervise" connotes day-to-day management. Accordingly, the commenter recommended that the FCA clarify this provision by substituting the term "monitor" for "supervise."

In response, the FCA agrees that § 615.5133 requires boards of directors to oversee, rather than to engage in day-to-day management, of their banks' investment activities. However, the FCA emphasizes that portfolio managers must, at all times, operate under the direction of the board, and adhere to board policies pertaining to investment operations. Similarly, boards of directors bear responsibility under § 615.5133 for enforcing compliance with its written policies.

The FCA has occasionally detected situations at some Farm Credit banks where portfolio managers have engaged in investment transactions without clear authority, and then sought ratification from the board of directors. One of the purposes of § 615.5133 is to prevent such practices. For this reason, the FCA believes that the term "monitor" does not adequately convey the intent of this regulation. Instead, the final regulation

will prohibit board of directors from delegating their responsibility to oversee and review their banks' investment practices.

The FCC also objected to a provision in proposed § 615.5133(d) that would require boards of directors to establish the amount of funds that portfolio managers are authorized to invest or place with individual brokers, dealers, or financial institutions. The commenter asserted that the board of directors should review, but not approve investment decisions made by management. Instead, the FCC believes the board should approve the overall policy that guides management in: (1) Selecting brokers, dealers, and financial institutions; and (2) establishing limits on individual investments. The commenter compared the requirements in proposed § 615.5133(d) to a hypothetical situation where bank boards would approve all individual loans originated in their Farm Credit district.

One BC commenter joined the FCC in opposition to proposed § 615.5133(d). This commenter argued that the board of directors should establish credit policy and delegate its administration to management. According to the BC's interpretation of proposed § 615.5133(d), the board of directors would be required to independently judge the creditworthiness of each institution where bank funds would be invested or placed.

The FCA responds that the board of directors, not the portfolio managers, bear ultimate responsibility for bank solvency. For this reason, § 615.5133(d) places the burden on the board of each Farm Credit bank to develop and implement appropriate policies that ensure that: (1) Bank funds are only placed through solvent brokers, dealers, and financial institutions; and (2) investment portfolios are diversified to minimize loss exposure. In this context, the board of directors must affirmatively guide the bank's investment activities, rather than passively review and "rubber stamp" investment decisions of portfolio managers.

The FCA's policy on this issue is consistent with the position of other Federal financial institutions regulators. According to a policy statement released by the Federal Financial Institutions Examination Council (FFIEC), the board of directors of commercial banks, savings associations, and credit unions are now required to periodically review and approve: (1) Lists of securities firms with whom portfolio managers are authorized to do business; and (2) limits on the amounts and types of transaction to be executed with each authorized securities firm. See 57 FR 4028, 4034 (February 3, 1992).

The FCA now explains its reasons for requiring board approval of specific brokers, dealers, and financial institutions. Frequently, small and remote depository institutions or securities firms offer attractive rates to potential investors. Information about the financial stability of these institutions can be scarce, inaccurate, incomplete, or outdated. Furthermore, a Farm Credit bank may have little knowledge of, and no investment experience with the party who is soliciting its funds. These investments may offer investors a higher rate of return because they entail a higher degree of risk. Under these circumstances, careful and deliberate investigation, research, and analysis should be conducted before the bank purchases such investments. By requiring portfolio managers to invest only through pre-approved brokers, dealers, and financial institutions, this regulation precludes hasty investment decisions that increase the risk of loss to the bank. Additionally, bank investment officers are sheltered from pressure by sales representatives of parties who are not authorized to engage in investment transactions with the bank.

The comment letters of the FCC and the BC indicate confusion in the FCS about the ambit of § 615.5133(d), and therefore, the FCA seeks to clarify the requirements of this provision. Contrary to the BC's comment, § 615.5133(d) envisions that portfolio managers will assist the board of directors in selecting brokers, dealers, and financial institutions where bank funds will be invested or placed. Bank directors may rely on information supplied by portfolio managers, nationally recognized credit rating services, and other credible sources, in ascertaining the creditworthiness of potential counterparties in investment transactions. Section 615.5133(d) does not preclude portfolio managers from recommending securities firms and financial institutions, or otherwise consulting with the board about such matters. Instead, the regulation prohibits the board of directors from delegating its ultimate responsibility to ensure that bank funds are invested solely through solvent parties, and that the investment portfolio is diversified.

Similarly, § 615.5133(d) does not require the board of directors to approve each and every investment transaction. Instead, the regulation requires board policy to establish broad parameters under which portfolio managers will conduct the bank's investment operations on a daily basis. Thus, the board will approve securities firms and financial institutions where bank funds may be invested or placed, and it will impose a maximum limit on transactions with each party, but the portfolio managers will select, purchase, manage, monitor, and sell individual investments.

Finally, the FCA is adding a new paragraph (i) to final § 615.5133, which requires the board of directors of each FCB, BC, or ACB to establish policies governing investments in mortgage-related securities and asset-backed securities pursuant to final §§ 615.5140(a)(2) and 615.5140(a)(8)(ii) of this subpart. Section 615.5133(i) requires a board policy to address such issues as maximum exposure to the MBS category, minimum pool sizes, number of loans in a pool, geographic diversity of pools, and maximum allowable premiums to be paid. This new provision is necessary because the FCA, in response to the FCC and the investment firm, significantly expanded the authorities of System banks to invest in mortgage-related securities under § 615.5140(a)(2) and asset-backed securities under § 615.5140(a)(8)(ii). The preamble to §§ 615.5140(a)(2) and 615.5140(a)(8)(ii) will explain these new authorities in greater detail.

V. Liquidity Reserve Requirement

A. The FCA's Original Proposal on Liquidity

On December 18, 1991, the FCA proposed a regulation that, for the first time, would establish a fixed liquidity reserve requirement for all FCS banks. The proposed regulation would have required all Farm Credit banks to maintain a liquidity reserve sufficient to fund their operations for approximately 15 days. More specifically, proposed § 615.5134(a) contained a formula that would require each FCB, BC, and ACB to maintain a liquidity reserve to fund: (1) Fifty (50) percent of its bonds and interest due within the next 90 days divided by 3; and (2) fifty (50) percent of discount notes due within the next 30 days. This provision would have also required each Farm Credit bank to calculate its liquidity reserve requirement as of the last calendar day of March, June, September, and December, based upon the average daily balance of outstanding loans during the same quarter. Proposed § 615.5134(b) would have prohibited Farm Credit banks from maintaining liquidity reserves in excess of authorized requirements unless the FCA Board modified or waived the requirement during an agricultural, economic,

financial, or national defense emergency.

The preamble to proposed § 615.5134 explained the FCA's policy on the role of liquidity in the FCS. The FCA noted that liquidity is based upon the ability to fund assets and pay liabilities. Since the Farm Credit System is funded through the sale of debt obligations, the liquidity of Farm Credit banks depends largely upon daily access to money and capital markets. In the event that access to these money and capital markets is totally or partially denied during a crisis, Farm Credit banks draw upon their liquidity reserve, which is an emergency source of funds, in order to meet their short-term funding needs.

Historically, the level of liquidity in the FCS and the demand for System obligations in the money and capital markets has been influenced by the Federal Reserve Board, the United States Treasury, and external economic events. If investor confidence in Systemwide obligations erodes during a crisis, Farm Credit banks can experience difficulty raising funds in the money and capital markets. As a result, System banks will be compelled to offer investors a higher rate of return in order to attract capital. This, in turn, could cause interest rate spreads relative to Treasuries to widen. When this situation occurs, Farm Credit banks generally increase their liquidity reserve so that they will be able to fund their operations for an extended period of time, if their access to the money and capital markets becomes impeded.

Conversely, several studies that the FCS conducted since 1975 determined that Farm Credit banks should maintain a minimum liquidity reserve to fund their operations for approximately 15 days when the basis point spreads to comparable maturity United States Treasuries are near their historical levels. Accordingly, System banks, acting in concert through the Board of Directors of the Federal Farm Credit Banks Funding Corporation, devised a formula that requires all FCBs, BCs, and ACBs, at a minimum, to maintain sufficient liquidity to fund a portion of their maturing obligations, interest payments, and discount notes for the next 15 days.

As noted in the preamble to the proposed regulation, most Farm Credit banks exceed this minimum liquidity requirement, on average, by at least 1.4 times, while the liquidity at some banks is between 2 and 5 times above this requirement. Although Farm Credit banks have attempted to justify these investment levels, the FCA criticized this practice in the preamble to the proposed regulation. See 56 FR 65691, 65694 (December 18, 1991). More specifically, the FCA questioned whether FCS banks should use their GSE status to build and maintain an investment portfolio for the purpose of generating additional income. The FCA also objected to the practice of issuing short-term debt obligations to fund current operations. The FCA noted that this practice actually increases the bank's short-term debt load, and thus increases the amount of liquidity that a bank must maintain in order to meet the minimum Systemwide liquidity requirement.

B. The Comments

The liquidity component was the most controversial part of the proposed investment regulations. The FCC and two FCBs opposed the FCA's position while the ABA supported it. Other Farm Credit banks endorsed the FCC's position, while the investment banking firm offered no opinion about proposed § 615.5134.

The FCC stated that the FCA's approach toward liquidity lacks flexibility. The commenter notes that liquidity "is an ever present basic and paramount risk for any bank," and that there is direct relationship between inadequate liquidity and insolvency. The commenter further asserts that during times of financial stress, both bank management and the FCA are powerless to stop investor flight that will cause illiquidity in the FCS. The FCC complains that the proposed regulation wrongfully assumes that the FCS will always have access to financial markets "under all circumstances and for whatever amounts and maturities may be required." In this context, the FCC argues that the 15-day liquidity reserve requirement in proposed § 615.5134 is inadequate and imprudent.

The FCC also expressed misgivings about the provision in proposed § 615.5134 which would enable the FCA to modify the liquidity level whenever a financial, economic, agricultural, or national defense crisis impedes the FCS's access to the capital markets. The commenter contends that the FCA cannot accurately forecast such crises until well after the fact. From the commenter's perspective, once System access to the markets is disrupted, the FCA will be unable to preempt funding problems at System banks by belatedly allowing the banks to increase their liquidity reserves.

The FCC observed that the 15-day fixed liquidity requirement of § 615.5134 would be subject to § 615.5132, which restricts the size and purpose of each bank's investment portfolio. The commenter noted that once a System bank complied with its liquidity reserve requirement by allocating certain investments to retire liabilities maturing in the next 15 days, it could manage IRR and short-term surplus funds with other investments, so long as the investment portfolio did not exceed 20 percent (now 30 percent) of its total outstanding loans. In this context, the commenter stated that the FCA's proposal precludes System banks from adopting a strategy of funding their operations primarily with short-term debt. Since a short-term funded bank needs a large pool of liquid assets in order to retire its maturing liabilities and pay operating expenses, the commenter expressed concern that §§ 615.5132 and 615.5134 will compel such a bank to allocate most or all of its investment portfolio toward its liquidity reserve requirement. As a result, a short-term funded bank may not be able to effectively manage its IRR or short-term surplus funds because the amount of investments allotted to the liquidity reserve may approach 20 percent of the bank's total outstanding loans. The commenter argues that the FCA's approach deprives FCS banks of flexibility to establish their own asset/liability management (ALM) strategy.

Since the FCC believes that access to the financial and capital markets is wholly unpredictable, it advises the FCA to adopt a final regulation that encourages System banks to constantly build more liquidity as protection against potential market disruptions. The commenter suggests that final § 615.5134 should establish a minimum liquidity reserve requirement of 15 days while allowing each bank's board of directors to determine the maximum liquidity level "consistent with [its] unique circumstances." Additionally, the FCC petitioned the FCA to adopt a final regulation that exempts the liquidity reserve requirement from the investment ceiling in § 615.5132.

The FCC also recommends several revisions to the formula for calculating the liquidity reserve requirement. First, the commenter suggests that the final regulation enable System banks to include actual cash needs in their calculation of their liquidity reserve requirement. In the FCC's view, cash needs include expected loan volume changes and other operational needs of the bank. Second, the FCC objected that System debt obligations are the only liabilities that the proposed regulation authorizes Farm Credit banks to include in their liquidity reserve calculations. The commenter suggests that the FCA amend § 615.5134(a) so that FCS banks can include other debt, such as Federal

funds purchased, stockholder debt, repurchase agreements, and commercial bank borrowings, in the calculation of their liquidity reserve. Third, the FCC advises the FCA to exclude investments which are pledged as collateral or restricted by contract (i.e. CIPA) from both the liquidity reserve requirement and the overall ceiling on investments. Fourth, the commenter requests that the final regulation require Farm Credit banks to calculate their liquidity reserve requirement at least monthly using month-end data.

The Texas Bank endorsed the FCC's position that the minimum liquidity reserve requirement should be established by FCA regulation, while the maximum liquidity reserve level of each Farm Credit bank would be determined solely by its board of directors. However, the commenter also proposed a compromise to bridge the positions of the FCA and System banks. Under the Texas Bank's alternative, the final regulation would establish a fixed liquidity reserve requirement of 30 days. This compromise would incorporate the FCC's proposal to revise the formula for calculating each bank's liquidity reserve requirement.

The Columbia Bank expressed strong opposition to proposed § 615.5134. This commenter asserted that the FCA's proposed liquidity regulation is "premised on a misunderstanding of the role of liquidity in the prudent, safe and sound management of System Banks." According to the Columbia Bank, the FCA fails to comprehend that liquidity is a primary mechanism for System banks to maintain stable income. The commenter contends that narrow spreads between System debt obligations and United States Treasury issues, in large measure, reflect investor confidence in the FCS when it generates consistent and stable earnings and return on capital. The spread between FCS debt obligations and Treasuries widens when the capital and financial markets perceive deterioration in the stable earnings and income of System banks.

In this context, the Columbia Bank notes that additional liquidity enables Farm Credit banks to offset adverse spreads between System debt obligations and United States Treasury issues. Accordingly, the commenter does not view the liquidity reserve solely as an emergency source of funds. Instead, the Columbia Bank relies on liquid investments to hedge against potential increases in the cost of System funds. Under this strategy, the bank can, in its discretion, pay operating expenses and retire maturing debt by selling liquid investments instead of issuing new debt obligations in the financial markets.

The Columbia Bank disputes FCA's contention that Farm Credit banks will abuse their GSE status by arbitraging the financial markets with their excess liquidity. This commenter claims that today's sophisticated and diversified financial markets offer Farm Credit banks no incentive to engage in arbitrage activities. The Columbia Bank argues that the FCA has adequate enforcement powers under title V of the Act to discipline any bank that arbitrages the financial markets.

The Columbia Bank recommends that final § 615.5134 require all System banks to maintain sufficient liquidity to fund their operations for no less than 15 days, but no more than 90 days. Under the commenter's proposal, a System bank that maintained a 90-day liquidity reserve could not hold an investment portfolio that exceeds 35 percent of total outstanding loans.

In contrast, the ABA praised the FCA's proposal as well crafted and balanced. From the ABA's perspective, the proposed regulations promote portfolio diversification and effective risk management at FCS banks. The commenter also opined that proposed § 615.5134 would ensure that FCS banks always maintain adequate liquidity, during both normal economic times and periods of economic and financial stress.

The ABA expressed concern that many FCS banks use investments "primarily for the purpose of increasing earnings rather than providing liquidity." The commenter complained that excess liquidity in the FCS results in abuse of GSE status. The ABA concurred with the FCA's observation that the practice of issuing short-term discount notes to fund operations actually increases the debt load of System banks, which in turn increases their need for additional liquidity. In the commenter's opinion, these short-term discount notes are "acting as the functional equivalents of deposit taking and check clearing operations." The ABA also complained that System banks channel their earnings from investments into risky "extraneous activities," instead of agriculture. The commenter concluded that proposed § 615.5134 would end these practices while enhancing the safety and soundness of the FCS.

C. FCA's Revisions to § 615.5134

The FCA continues to adhere to its original position that Farm Credit banks should maintain sufficient liquidity to fund their maturing debt and interest obligations for approximately the next 15 days, except during times of crisis when this agency shall authorize System banks to increase their liquidity reserves and/or the size of their investment portfolios. As requested by the FCC, the FCA has modified this regulation so that Farm Credit banks are required to calculate their liquidity reserve requirement on a monthly basis utilizing month-end data. Furthermore, the final regulation shall authorize Farm Credit banks to include cash, commercial bank borrowing, and shareholder investment bonds in their liquidity reserve calculation.

The FCA emphasizes that the liquidity reserve is an emergency source of funds that Farm Credit banks draw upon solely for the purpose of retiring maturing debt obligations, making current interest payments, and paying operating expenses, whenever their access to capital and financial markets is impeded as a result of a financial, economic, agricultural, or national defense crisis.

The FCA's policy contrasts sharply with the position of System commenters who assert that § 615.5134 should authorize FCS banks to use their liquidity reserves for other functions besides emergency funding. As already discussed, some Farm Credit banks issue short-term obligations to fund their current operations. This short-term funding strategy requires such banks to increase their liquidity needs in order to service their increased short-term debt load. Other FCS banks hedge against potential increases in the cost of funding FCS debt obligations by building investment portfolios that could be used to bypass the financial and capital markets.

These practices cause most Farm Credit banks to exceed the 15-day liquidity reserve requirement that the FCS banks established through the auspices of the Federal Farm Credit Banks Funding Corporation. System commenters oppose the FCA's efforts to incorporate a 15-day liquidity reserve requirement into this regulation because it would effectively require Farm Credit banks to use their liquidity reserves solely as an emergency source of funds. For this reason, System commenters petitioned the FCA to expand the size of the liquidity reserve in § 615.5134. While the FCC and two FCBs offered various alternatives to the FCA, no commenter repudiated the premise in several System studies that Farm Credit banks require a liquidity reserve to fund their operations for approximately the next 15 days, during stable economic times, when the basis point spreads between Systemwide debt obligations and comparable maturity United States

Treasury issues are near their historical levels.

From the FCA's viewpoint, Farm Credit banks can accomplish their other ALM objectives without drawing down their liquidity reserves. For example, Farm Credit banks could rely on investments held for IRR management, not liquidity, to address their exposure to basis risk, which is caused by fluctuations in the spread between System debt and competitive market securities or indicies. The FCA notes that basis risk is a form of IRR. Basis risk exposures should be addressed in loan pricing mechanisms that incorporate premiums to ensure profitability objectives are met. From FCA's perspective, Farm Credit banks should strive to manage basis risk in a disciplined manner rather than tapping into their liquidity reserve.

The FCC claims that Farm Credit banks should perpetually build their liquidity reserves to protect themselves against any potential market disruption. The FCC's approach may allow System banks to accumulate large portfolios of liquid investments during stable economic times when the spread between FCS debt obligations and Treasuries is narrow. Within time, FCS banks would accumulate large liquidity reserves that, in all likelihood, would disproportionately exceed their need for funds in the event that System access to money markets becomes impeded.

The FCA reaffirms its basic position that the practice of buying investments solely to generate additional income is not compatible with GSE status. The mission of the FCS is to finance agriculture and other specified rural credit needs. Since the FCS operates on cooperative principles, loans to member-borrowers are supposed to be the primary source of income to Farm Credit institutions. As the FCA has previously stated, investments are ALM tools to combat risks to bank solvency and liquidity.

The United States Budget for fiscal year 1992 contained a section that focused on the role of GSEs in providing credit to specific sectors of the American economy, and the financial risk they pose to the Federal government. As part of its budget review, the Office of Management and Budget (OMB) identified specific risks that each GSE poses to the United States Treasury, and it proposed reforms to reduce these risks. The following passage from the budget articulates the OMB's position:

> A System-wide standard for sound asset/liability management should be adopted. . . . Liquidity guidelines for FCS institutions should be clarified and enforced. Currently, the FCS has $51 billion in outstanding loans and well over $54 billion in outstanding debt. Some institutions have over 400 percent of the liquidity required by the Funding Corporation. . . . This implies that some institutions are creating arbitrage profits from the issuance of federally backed FCS debt.[10]

Clearly, FCA is not the only governmental agency concerned about FCS institutions' ability to arbitrage profits from the issuance of FCS debt, which is implicitly backed by the United States.

The FCA does not agree with the Columbia Bank's claim that liquidity is a primary mechanism for System banks to maintain stable earnings and return on capital, which in turn, inspires investor confidence in FCS bonds. Instead, the FCA notes that the competent management of agricultural and rural development loans should generate the earnings and returns on capital which inspire investor confidence in FCS obligations.

Accordingly, the FCA retains in final § 615.5134 a provision that requires all FCS banks to maintain a liquidity reserve sufficient to fund their operations for approximately the next 15 days. Furthermore, final § 615.5134 shall not exempt the liquidity reserve from the provision in § 615.5132 that restricts overall investments of each bank to 30 percent of its total outstanding loans.

The FCA has revised § 615.5134 so that the final regulation reinforces the concept that the liquidity reserve shall only be used as an emergency source of funds. As a result, final § 615.5134(b) shall now require each FCB, BC, and ACB to segregate investments held for liquidity from investments that are maintained for the management of IRR and short-term funds. Furthermore, final § 615.5134 shall only authorize Farm Credit banks to hold investments that are unencumbered by (free of) lien in their liquidity reserve.

Since commenters have expressed concern that the liquidity reserve formula is inflexible, the FCA now explains its approach towards enforcing § 615.5134. As noted earlier, the FCA expects Farm Credit banks to maintain a liquidity reserve that is sufficient to fund their operations for approximately 15 days. Every month, Farm Credit banks shall calculate the amount of debt that will mature within the time period prescribed by § 615.5134. This calculation determines the size of the liquidity reserve at each bank. The FCA recognizes that the size of the liquidity reserve shall fluctuate from one month to the next. FCA examiners shall exercise discretion so that Farm Credit banks will not be subject to criticism when the value of the assets held in the liquidity reserve periodically varies from the value prescribed by § 615.5134 due to the timing and deliberations required for the purchase and sale of assets and liabilities.

If a financial, economic, agricultural, or national defense crisis disrupts the capital and financial markets that provide funds for the FCS, the FCA shall waive or modify the liquidity reserve requirement by resolution of the FCA Board. Despite FCC concerns, the FCA is confident that it will be able to respond expeditiously to a crisis. The FCA constantly monitors the financial conditions of the FCS, as well as the economic environment in which it operates. Similarly, System banks and the Federal Farm Credit Banks Funding Corporation can petition the FCA to increase or waive the liquidity reserve requirement if they believe that their access to the money markets may become impeded. The FCA redesignates proposed § 615.5134(c) as final § 615.5136. In order to provide the FCA with greater flexibility in an emergency, final § 615.5136 also authorizes the FCA Board to increase the size of the investment portfolio.

As requested by the FCC, the FCA adjusts the formula in § 615.5134(a) for calculating the liquidity reserve requirement to include Farm Credit Investment Bonds within the liquidity reserve formula by amending § 615.5134(a)(1), which establishes the liquidity calculation for bonds, notes, and interest. Farm Credit investment bonds are debt obligations of individual banks that are sold directly to borrower/shareholders rather than through brokers and dealers. Furthermore, a new provision in the final regulation, § 615.5134(a)(3), requires each FCB, BC, and ACB to maintain liquidity sufficient to fund 50 percent of its commercial bank borrowing due within the next 30 days. These two revisions to § 615.5134(a) are justified because section 4.2(a) of the Act clearly contemplates that Farm Credit banks shall fund their operations by: (1) Issuing debt obligations; and (2) borrowing from commercial banks.

The FCA is amending § 615.5134 so that the final regulation permits FCS banks to include cash in their liquidity reserve. Conversely, the FCA declines the FCC's request to include Federal funds purchased, repurchase agreements, and similar instruments in the liquidity reserve formula because section 4.2 of the Act does not recognize

[10] Budget of the United States Government for fiscal year 1992; Part Two, p. 241.

these instruments as a source of FCS funding.

The FCA denies the FCC's request to exclude assets pledged under CIPA from both the liquidity reserve requirement in § 615.5134 and the overall investment ceiling in § 615.5132. CIPA requires Farm Credit banks that fail to comply with certain contractually agreed upon performance standards to establish a segregated account that consists entirely of United States government securities. CIPA forbids Farm Credit banks from drawing upon these segregated assets for current operational purposes. Accordingly, these instruments would not be available for use in a liquidity reserve.

The FCA revises § 615.5134 to require Farm Credit banks to calculate their liquidity reserve requirements monthly, rather than quarterly. This revision should enable System banks to more accurately gauge their liquidity needs.

VI. Management of Interest Rate Risk

The FCA proposed a new regulation, § 615.5135, which for the first time, identified IRR reduction as an authorized reason for holding investments for System banks. From the FCA's perspective, the effective management of IRR is among the most difficult and important challenges facing boards of directors and bank managers. Interest rate volatility can undermine the solvency of Farm Credit banks. Sudden interest rate fluctuations may significantly impact the NII and market value of equity (MVE) of Farm Credit banks. Accordingly, the FCA sought to ensure bank managers measure the impact of changing interest rates on their balance sheets so they could devise an effective investment strategy to insulate the bank from excessive IRR.

In this context, the FCA reasoned that interest rate shock tests enable bank management to gauge the bank's exposure to IRR on a continual basis, and understand its impact on NII and MVE over extended periods of time. The proposed regulation would have incorporated a provision of the FCA's current policy statement on IRR management,[1] which encourages System banks to simulate the impact of a instantaneous and sustained 200-basis-points (interest rate shock or shocking) increase and decrease in interest rates on its projected NII and MVE.

As proposed by the FCA, § 615.5135(a) would require the board of directors of each bank to adopt IRR management sections under ALM policies which establish IRR exposure limits. Under proposed § 615.5135(b), all FCBs, BCs, and ACBs would simulate, on a quarterly basis, the impact of an instantaneous and sustained 200-basis-points increase and decrease in interest rates over the next 12 months on the bank's NII and MVE. Proposed § 615.5135(c) would require each Farm Credit bank to develop, at least every quarter, the following three projections of the impact of interest rate changes on the bank's NII and MVE: (1) A best case scenario; (2) a worst case scenario; and (3) a most likely case scenario. Section 615.5135(d) of the proposed regulation would authorize Farm Credit banks to purchase and hold the eligible investments listed in § 615.5140 of this subpart in order to reduce IRR resulting from the bank's normal lending operations. Under the FCA's proposal, each bank would be required to document, prior to purchase, the reasons why a particular investment is needed to meet IRR objectives. Furthermore, the proposed regulation would require subsequent quarterly reports which indicate whether such investments are satisfying the IRR objectives of the bank.

The FCC and two FCBs commented on proposed § 615.5135. The other FCS commenters endorsed the FCC's position, while the two non-System commenters refrained from commenting on § 615.5135. As noted in the preamble to final § 615.5132, the FCC and one FCB recommended that the FCA amend § 615.5135 so it mandated the management, rather than the reduction of IRR.

Although the FCC did not fundamentally oppose proposed § 615.5135, it perceived some provisions of the regulation as prescribing management practices rather than promoting safety and soundness. While the FCC acknowledged that the FCA, as a safety and soundness regulator, has the responsibility to fully examine ALM processes at all Farm Credit banks, it asserted that the agency should not prescribe specific methods and procedures for measuring IRR. The commenter warned that proposed § 615.5135 would not necessarily provide the most accurate gauge of IRR at a System bank at a particular point in time.

Accordingly, the FCC advocated an alternative approach that would require each bank to determine the most appropriate methods for measuring the level of IRR in its portfolio. In this context, the commenter recommended an amendment to § 615.5135(a) that would require each System bank to establish the criteria for determining compliance with the IRR exposure limits of its ALM policy. The FCC asserted that its approach was less rigid and more insightful than the proposed regulation because it would enable the FCA to evaluate the risk measurement processes of all FCS banks, and to hold each bank accountable for supporting its method and conclusions.

The FCC did not oppose the quarterly 200-basis-point shock tests of proposed § 615.5135(b), but it urged the FCA to delete proposed § 615.5135(c), which would require all Farm Credit banks to develop quarterly projections of a best case, a worst case, and a most likely case scenarios concerning the impact of interest rate fluctuations on NII and MVE during the next 12 months. The FCC opined that proposed § 615.5135(c) "is ambiguous and probably not very informative." Since the commenter doubted that these three selected scenarios would realistically reflect actual future movements in interest rates, it claimed that System banks would derive little benefit from conducting the analysis required by proposed § 615.5135(c).

The FCC also opposed those provisions in § 615.5135(d) that would require each System bank to evaluate in writing, both before and after purchase, how a selected investment achieves its IRR objectives. The commenter asserted that these matters are managerial disciplines that fall exclusively within the purview of the board and management, and therefore, they do not warrant detailed procedural instructions in a regulation. The FCC also proposed a technical amendment to the first sentence in proposed § 615.5135(d), which would authorize Farm Credit banks to hold eligible investments in order to reduce IRR resulting from their normal "lending" operations. The commenter advised the FCA to delete the term "lending" from § 615.5135(d) because the regulation focuses on IRR that results from all operations at System banks.

A FCB concurred with the FCC that proposed § 615.5135 would shift FCA regulation from general oversight toward detailed bank management. This commenter complained that the proposed regulation would impose extremely burdensome documentation requirements on System banks concerning IRR management. Since the commenter claimed that the costs of proposed § 615.5135 outweighed its benefits, it urged the FCA to eliminate or substantially reduce the paperwork and simulation requirements of this regulation.

[1] See bookletter 281–OE (January 15, 1991) Re: Asset/Liability Management Practices.

Furthermore, this FCB viewed proposed § 615.5135 as impractical because liquidity maintenance and IRR management are often so closely related that it may be difficult, if not impossible, to separate the purposes behind a particular investment transaction. This commenter felt that evaluating each investment transaction to meet specific interest rate sensitivities used in the process of managing IRR imposed micro-level evaluation. This FCB warned FCA that FCS banks may not be able to meaningfully isolate IRR management functions of individual investments.

The commenters have persuaded the FCA to modify § 615.5135 so it provides System banks with more flexibility to resolve their IRR exposure within established safety and soundness parameters. As a result, the final regulation permits FCBs, BCs, and ACBs to "manage" rather than "reduce" IRR. Moreover, while final § 615.5135 sets forth fundamental safety and soundness criteria for IRR management, it no longer dictates detailed management practices to System banks.

As noted earlier, the FCA has amended §§ 615.5132 and 615.5135 so that the final regulations require FCS banks to "manage" rather than "reduce" IRR. The regulations in subpart E of part 615 require bank management to establish a framework of policies, procedures, controls, and reporting practices for safeguarding the solvency and liquidity of the bank. In this context, these practices should effectively help an institution manage its IRR, not necessarily reduce it. Reduction of IRR may be the result of managing IRR, but it may not always be the sole objective of the bank. In certain scenarios, it may be prudent for a Farm Credit bank to increase its IRR tolerance levels. By amending this regulation, the FCA is providing System banks with greater flexibility to combat their exposure to IRR.

System commenters suggested that the FCA could ensure that Farm Credit banks safely and soundly manage IRR without prescribing specific methods and procedures for measuring IRR exposure in § 615.5135. In response, the FCA acknowledges that a more flexible regulatory approach will permit System banks to incorporate other IRR strategies into their ALM practices. Since the FCA agrees with the commenters that other risk evaluation techniques may also effectively assist bank managers in their task of managing IRR, the FCA now adopts the FCC's proposed amendment to § 615.5135 which will enable each System bank to establish criteria for determining compliance with the IRR exposure limits of its ALM policy.

In crafting final § 615.5135, the FCA sought to balance the banks' need for managerial flexibility in containing IRR in their balance sheets with the agency's responsibility to ensure that all FCS institutions operate safely and soundly. For this reason, the final regulation requires each System bank to comply with certain criteria when it develops and implements an IRR management section to its ALM policy. From the FCA's perspective, final § 615.5135 establishes the minimum requirements necessary to ensure that: (1) Farm Credit banks manage their IRR in a safe and sound manner; and (2) the FCA is able to discharge its responsibility to effectively examine the ALM practices at System banks for safety and soundness.

Under final § 615.5135, each System bank shall, at a minimum, address five specific areas in the IRR management section of its ALM policy. Under § 615.5135(a), each bank shall identify and analyze the causes of risks within its existing balance sheet structure. Section 615.5135(b) requires System banks to measure the potential impact of these risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis. Although § 615.5135 continues to require Farm Credit banks to perform interest rate shock tests and develop simulations of multiple economic scenarios, it no longer specifies exact tests and simulation models. Instead, the IRR management section of each bank's ALM policy shall identify the shock tests and simulations that the bank shall use to measure its IRR exposure. System banks are required by § 615.5135(c) to explore and implement actions needed to obtain its desired risk management objectives.

Final § 615.5135(d) states that a System bank shall document the objectives it is attempting to achieve by purchasing eligible investments, while § 615.5135(e) requires quarterly evaluation and documentation to determine whether these investments have actually met the bank's objectives. The FCA emphasizes that final § 615.5135(d) and (e) do not require System banks to document, before and after purchase, how each individual investment transaction in an investment position performed in managing a specific IRR exposure. Instead, these provisions only require a bank to evaluate and document the performance of a block of investments that was acquired to manage a specific IRR exposure.

Finally, the FCA addresses the FCB's complaint that it is difficult to separate the investment purposes supporting a particular investment transaction. The FCA does not agree with this point of view. The regulations in subpart E of part 615 authorize Farm Credit banks to hold investments solely for the purposes of maintaining a liquidity reserve and managing IRR and short-term surplus funds. Furthermore, these regulation accord different treatments for investments held for IRR and liquidity. Section 615.5134 requires FCS banks to segregate investments that are held in the liquidity reserve. Conversely, Farm Credit banks must comply with the evaluative process set forth in final § 615.5135 for investments that are held to manage IRR. Since these regulations require each bank to identify whether an investment is used for liquidity or IRR management, the same investment cannot simultaneously be used for both purposes.

VII. Eligible Investments

Final § 615.5140 expands the list of eligible investments that Farm Credit banks are authorized to hold in order to comply with the requirements of § 615.5132 pertaining to liquidity, IRR, and the investment of surplus short-term funds. As the FCA noted in the preamble to the proposed regulation, only investments that can be promptly converted into cash on an established secondary market are suitable for liquidity, IRR management, and the investment of surplus short-term funds. See 56 FR 65691, 65695 (December 18, 1991). Therefore, all eligible investments listed in final § 615.5140 share the following characteristics: (1) Short-term maturities or short-term repricing mechanism; (2) a high investment grade credit rating by a nationally recognized credit rating service; (3) an active and universally recognized secondary market exists for trading these investments; and (4) these investments are valuable as collateral. Furthermore, the regulation that the FCA adopts today promotes portfolio diversification by establishing percentage limits on most eligible investments that FCBs, BCs, and ACBs may hold at any particular time.

The input that the FCA received from System commenters and the investment banking firm about eligible investments proved extremely useful in crafting final § 615.5140. The preamble to the individual provisions of § 615.5140 will analyze specific recommendations by the commenters and explain the FCA's positions concerning the final regulation.

A. Obligations of the United States, Its Agencies and Instrumentalities

As proposed by the FCA, § 615.5140(a)(1) would implement sections 1.5(15) and 3.1(13)(A) of the Act by authorizing Farm Credit banks to invest in obligations other than mortgage-backed securities MBSs issued or fully guaranteed as to principal and interest by the United States, or any of its agencies and instrumentalities. Such obligations are suitable for managing liquidity, reducing IRR, and investing short-term surplus funds, because they pose virtually no risk of default, and are marketable investments within the meaning of proposed § 615.5131(i). The FCA did not propose any restrictions on the percentage of Federal obligations that Farm Credit banks could hold in their investment portfolios because these obligations are, from a regulatory perspective, inherently safe and sound.

The FCA proposed to exclude MBSs that are issued or insured by an instrumentality of the United States from coverage under proposed § 615.5140(a)(1). Instead, these investments would be governed by proposed § 615.5140(a)(2).

The FCC suggested that § 615.5140(a)(1), not § 615.5140(a)(2), should cover MBSs that are issued by the Government National Mortgage Association (GNMA). The commenter reasoned that the provision in § 615.5140(a)(2) which limits the size of the MBS portfolio should not apply to GNMA mortgage-related securities because they are fully guaranteed as direct obligations of the United States. However, the FCC proposed revisions to § 615.5140(a)(2) that would impose a three-pronged interest rate sensitivity test for GNMA, FNMA, and FHLMC mortgage-related securities. The FCA agrees with the FCC's basic approach toward GNMA securities. Although final § 615.5140(a)(2) will continue to govern investments in GNMA mortgage-related securities, it will no longer restrict the amount of these securities that System banks may hold.

An FCB suggested that final § 615.5140(a)(1) should expressly authorize System banks to invest in MBSs that are issued by the Small Business Administration (SBA). The FCA's research reveals that the SBA provides financial assistance to small businesses, and then sells direct or guaranteed loans to investors through five separate programs. Some of these SBA securities are backed by the full faith and credit of the United States, while others are not. Similarly, while some SBA securities are backed by commercial real estate mortgages, other instruments are secured by chattels.

The FCB has not identified which SBA securities it seeks to qualify as eligible investments under § 615.5140(a)(1). The FCA notes that SBA securities could, depending on the circumstances, qualify as eligible investments under either § 615.5140(a)(1),(a)(2), or (a)(11). It is conceivable that certain SBA securities are ineligible investments under this regulation. Farm Credit banks should be vigilant so that they do not purchase or hold SBA securities that are not backed by the full faith and credit of the United States.

B. Mortgage-Backed Securities

Proposed § 615.5140(a)(2) would have authorized FCBs, BCs, and ACBs to hold MBSs issued by, or fully guaranteed as to principal and interest by the GNMA, FNMA, FHLMC, and Farmer Mac so long as: (1) All adjustable rate MBSs reprice within 12 months; or (2) all fixed-rate MBSs have an absolute final maturity of 5 years from the time of purchase. Prime derivative products of MBSs, such as Collateralized Mortgage Obligations (CMOs), Real Estate Mortgage Investment Conduits (REMICs), and Stripped Mortgage-Backed Securities (SMBSs), were excluded from coverage under proposed § 615.5140(a)(2). Although certain CMO and REMIC tranches are effective in managing IRR, the FCA concluded in the preamble to the proposed regulation that the universe of CMO and REMIC tranches available in the marketplace was too diverse for effective regulation. See 56 FR 65691, 65695 (December 18, 1991). The FCA also proposed to limit investments in qualified MBSs to 30 percent of the total investment portfolio of the bank.

The FCC, a BC, an FCB, Farmer Mac, and the investment banking firm criticized proposed § 615.5140(a)(2) as unduly restrictive. Most criticism of proposed § 615.5140(a)(2) focused on provisions that: (1) Imposed an absolute final maturity of 5 years on all fixed-rate MBSs; (2) precluded MBSs where the underlying adjustable rate mortgages (ARMs) could convert into fixed-rate mortgages; (3) prohibited all investments in CMOs and REMICs; and (4) limited MBSs to 30 percent of the investment portfolio.

All commenters recommended extensive revisions to proposed § 615.5140(a)(2). The FCA incorporated many of these changes into the final regulation because they are consistent with the FCA's objective of allowing System banks to invest only in MBSs that: (1) Have little or no risk; and (2) are suitable for maintaining a liquidity reserve, managing IRR, and investing surplus short-term funds. These amendments to the final regulations should provide bank managers with more flexibility in managing risks, and enhance the quality and diversity of investment portfolios throughout the FCS.

For these reasons, the FCA now adopts as final § 615.5140(a)(2) an alternative that was offered in part by the FCC. MBSs, CMOs, and REMICs that are issued by, or guaranteed as to both principal and interest by GNMA, FNMA, or FHLMC qualify as eligible investments under final § 615.5140(a)(2). The FCA emphasizes that CMOs and REMICs that are collateralized by the MBSs of GNMA, FNMA, or FHLMC are expressly included within the ambit of this regulation even though they are packaged and sold by a private sector investment banker. All eligible securities, except those that are issued by or guaranteed as to both principal and interest on the full faith and credit of the United States, shall be rated AAA or its equivalent by a nationally recognized credit rating service.

Final § 615.5140(a)(2) imposes certain threshold requirements for ARMs and fixed-rate mortgages that back these securities. ARMs that back eligible securities shall have a repricing mechanism of 12 months or less tied to an index. The final regulation requires that the underlying fixed-rate mortgages of MBSs, CMOs, and REMICs meet the following three conditions at the time of purchase and each quarter thereafter: (1) The expected weighted average life (WAL) [12] of the instrument does not exceed 5 years; (2) the expected WAL does not extend for more than 2 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and (3) the estimated change in price is not more than 10 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. The FCA deleted the provision in the proposed regulation that precluded System banks from investing in securities where the underlying ARMs are convertible into fixed-rate mortgages.

[12] The FCA adopts § 615.5131(v), which defines weighted average life as the average time to receipt of principal, weighted by the size of each principal payment. Weighted average life for MBSs, CMOs or REMICs is calculated under some specific prepayment assumption.

The FCC proposed that the final regulation adopt "weighted average maturity" (WAM) as the standard for measuring the average life and average life sensitivity of mortgage-related securities. However, the FCA's research reveals that both the industry and other Federal regulators rely on WAL as the appropriate standard for gauging the average life and average life sensitivity of these instruments. WAL calculations include some prepayment assumptions, whereas WAM assumes no prepayments.

Final § 615.5140(a)(2) requires Farm Credit banks to document both their assumptions concerning the mortgage-related security and its underlying collateral, and any subsequent changes in those assumptions. The bank shall also analyze the security prior to purchase and on a quarterly basis thereafter. The final regulation compels System banks to divest any mortgage-related security that, subsequent to purchase, fails any of the aforementioned three tests concerning interest rate sensitivity.

The final regulation also allows System banks to invest in CMO floaters. Furthermore, final § 615.5140(a)(2) exempts CMO floaters that bear a rate of interest below their contractual cap from the above-cited requirements concerning the WAL. The FCA has also expanded the definition of a CMO in § 615.5131(e) so it expressly includes a CMO floating-rate debt class. According to final § 615.5131(e), the interest rate of a CMO floater adjusts at least annually pursuant to a conventional index. Inverse CMO floaters do not qualify as eligible investments under final § 615.5140(a)(2).

Two commenters dissented from the FCC's proposal. These commenters urged the FCA to adopt the FFIEC's three-pronged test for identifying high-risk mortgage-derivative products. Under the FFIEC standards, a mortgage derivative, such as a CMO, REMIC, or SMBS, shall be classified as a high-risk security if it fails any of the following three tests: (1) The expected WAL exceeds 10 years; (2) the expected WAL of the security extends by more than 4 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in yield curve of minus 300 basis points; or (3) the estimated change in the price of the mortgage-derivative product is more than 17 percent, due to an immediate and sustained parallel shift in interest rates of plus or minus 300 basis points. See 57 FR 4028, 4038–39 (February 3, 1992).

One System commenter urged the FCA to elect the FFIEC's approach over the FCC's proposal. This commenter asserted that all federally regulated financial institutions should operate under the same rule concerning mortgage derivatives, and that there is no justification for applying a different regulatory treatment to System banks.

The FCA prefers the FCC's proposal to the FFIEC policy for several reasons. First, the conservative standards advocated by the FCC apply to both securities backed by fixed-rate mortgages, and to CMOs and REMICs, whereas the FFIEC policy statement covers high-risk mortgage-derivative products, including SMBSs. Second, the FCC's approach is specifically tailored to the needs of Farm Credit banks because § 615.5140(a)(2) establishes standards for mortgage-related securities that are compatible with the investment objectives of § 615.5132. Third, the FCA notes that § 615.5140(a)(2) and the FFIEC policy statement are geared to entirely different objectives. Depository institutions, in their capacity as primarily lenders, routinely originate the residential mortgages that collateralize these securities, whereas Farm Credit institutions have only limited statutory authority to make (rural) residential loans that back these mortgage-related instruments. Thus, depository institutions are exposed to the risks of loss on the types of loans that underline these securities, while the FCS generally is not. In this context, the FCA's regulation establishes the parameters of an eligible investment. In contrast, the FFIEC policy does not prohibit depository institutions from investing in high-risk mortgage derivatives. Instead, it only establishes a three-pronged test for determining if individual mortgage-derivative products should be classified as high-risk securities.

Most commenters judged the proposed 30-percent limit on mortgage-related securities as inadequate. The FCC and all System commenters advanced the following arguments in support of their position for a higher limit: (1) The regulation already imposes the highest credit quality standards on eligible mortgage-related securities; (2) these investments are effective tools for managing IRR and enhancing liquidity; and (3) advanced computer technology provides System banks with continual access to analytical information about the performance of these securities.

As noted in the preamble to § 615.5140(a)(1), the FCC opposed any ceiling on investments by System banks in GNMA mortgage-related securities. This commenter also encouraged the FCA to raise the limit on FNMA and FHLMC mortgage-related securities from 30 to 60 percent. Another commenter advised the FCA to abolish all regulatory restrictions on the percentage of GNMA, FNMA, or FHLMC mortgage-related securities that System banks may hold in their investment portfolios. This commenter warned that other regulators and the marketplace may misconstrue the FCA's position, and conclude that the FCA is questioning the creditworthiness of GNMA, FNMA, and FHLMC. The commenter also expressed concern that other regulators may retaliate by imposing limits on the purchase of System obligations by other financial institutions or GSEs.

Final § 615.5140(a)(2)(vi) eliminates all restrictions on the amount of GNMA mortgage-related securities that Farm Credit banks may hold in their investment portfolios. The FCA notes that private sector investment firms often convert GNMA MBSs into CMOs and REMICs. The investor purchases a private label security which is fully collateralized with GNMA securities, which in turn are backed by the full faith and credit of the United States. Since GNMA mortgage-related securities pose no credit risk (insofar as principal and interest income is concerned) to the investor, the FCA has decided to authorize System banks to purchase and hold these investments without regulatory restriction as to amount. In this context, management should determine how GNMA mortgage-related securities best meet the investment objectives of the bank. Similarly, this provision applies to mortgage-related securities of the SBA or other Federal government agencies which: (1) Are backed by the full faith and credit of the United States; (2) secured by real estate; and (3) comply with the other requirements of § 615.5140(a)(2). The FCA reiterates that Farm Credit banks should be vigilant so that they do not purchase or hold mortgage-related securities that are issued or guaranteed by the SBA or another government agency unless they are backed by the full faith and credit of the United States.

The FCA has decided to raise the ceiling on FNMA and FHLMC mortgage-related securities from 30 to 50 percent of the total investment portfolio of banks. The commenters have convinced the FCA that the high credit quality of these securities warrants a more liberal approach toward System participation in this market. However, the FCA rejects a 60-percent limit because it is concerned that the investment portfolios of System banks could become too

heavily concentrated in mortgage-related securities.

Several months after the second comment period expired, Farmer Mac submitted a comment letter to the FCA concerning proposed § 615.5140(a)(2). More specifically, Farmer Mac objected to FCA's decision to include Farmer Mac securities within the ambit of this regulation. The commenter asserted that the secondary agricultural mortgage market is a logical extension of the System's agricultural lending operations. In the commenter's opinion, Farmer Mac securities enhance the credit quality and liquidity of System loan portfolios, but they do not satisfy the asset/liability management objectives of § 615.5132. For this reason, Farmer Mac argued that its securities should not be accorded the same regulatory treatment as investments which are unrelated to agricultural lending. The commenter also complained that other Federal bank regulatory agencies did not similarly impede participation by their institutions in the Farmer Mac securities market.

The FCC implied that Farmer Mac securities should be excluded from § 615.5140(a)(2) because it proposed regulatory language for § 615.5140(a)(2) that omitted all of FCA's references to Farmer Mac.

After careful reflection, the FCA has decided to exclude Farmer Mac securities from coverage under final § 615.5140(a)(2). The FCA agrees with the commenter that Farmer Mac securities fulfill a different set of investment criteria for System banks than GNMA, FNMA, and FHLMC mortgage-related securities. Accordingly, the FCA adopts new regulations in subpart F of part 615 that shall govern investments by FCS institutions in guaranteed Farmer Mac securities. This new authority shall be addressed at length in the preamble to subpart F.

C. Negotiable Certificates of Deposit

The FCA proposed substantial revision to the existing regulation governing investments by Farm Credit banks in negotiable certificates of deposit (CDs). The FCA expressed concern that: (1) The investment portfolios of Farm Credit banks are too heavily concentrated in commercial banks; and (2) CDs expose Farm Credit banks to undue financial risks because the commercial banking and thrift industries have recently experienced significant difficulties. See 56 FR 65691, 65697 (December 18, 1991). Accordingly, the FCA proposed amendments to this regulation that would remedy these problems by limiting System bank investment in negotiable CDs, and imposing credit quality standards on these instruments.

The proposed regulation would retain the existing requirement that Farm Credit banks only hold negotiable CDs. Proposed § 615.5140(a)(5) would require all FCBs, BCs, and ACBs to limit their holdings of negotiable CDs to 30 percent of their investment portfolio, while proposed § 615.5140(b) would prohibit Farm Credit banks from concentrating their CD investments in a limited number of depository institutions. The FCA also proposed that all negotiable CDs held by Farm Credit banks mature within 1 year or less. To the extent that a domestic, Yankee, or Eurodollar CD is not insured by an agency of a Federal or national government, the proposed regulation would require that: (1) The depository institution maintain at least a B, or equivalent credit rating by a nationally recognized credit rating service; and (2) the foreign country where Eurodollar CDs are held to maintain an AAA, or equivalent rating for political and economic stability from a nationally recognized credit rating service.

The FCC and a FCB offered amendments to both proposed § 615.5131(l), which defines negotiable CDs, and proposed § 615.5140(a)(5). As requested by these commenters, final (and redesignated) § 615.5131(m) defines negotiable CDs as instruments issued as "evidenced by definitive or book-entry form," rather than instruments "evidenced by a certificate." This revision is designed to conform the final regulation to current industry practices and standards concerning the issuance of negotiable CDs.

These two commenters also urged the FCA to expand this category of investments to include Eurodollar deposits at foreign banks and overseas branches of American banks. Although the commenters conceded that Eurodollar deposits are non-negotiable and less liquid than other investments, they asserted that these instruments are suitable for managing short-term cashflows at System banks. The FCC and the FCB had different views about the maximum maturity that the final regulation should impose on Eurodollar deposits.

The final regulation does not authorize System banks to hold Eurodollar deposits because they are not negotiable instruments. A non-negotiable CD contains restrictions on its transferability, which in turn, adversely impacts its marketability and liquidity. In this context, non-negotiable CDs do not accomplish the FCA's goal of reducing the exposure of System banks to the risks of the commercial banking industry.

The commenters also requested that the FCA reduce the credit ratings in § 615.5140(a)(5) to: (1) B/C for depository institutions; and (2) AA for political and economic stability of the host country where the funds are deposited. The FCA agrees to lower the credit rating for depository institutions to B/C which represents a larger universe of commercial banks that are of acceptable short-term investment grade. However, the FCA shall only permit System banks to hold Eurodollar CDs in foreign countries that achieve the highest rating for political and economic stability, and therefore, System requests to lower this standard are denied. Similarly, the FCA declines advice to expand the maximum maturity on negotiable CDs to 24 months because a time deposit with a shorter maturity is more liquid. Accordingly, final § 615.5140(a)(5) will require negotiable CDs to mature within 1 year or less.

The commenters requested that FCA further revise § 615.5140(a)(5) by doubling the limit on negotiable CDs from 30 to 60 percent. As recommended by these commenters, Farm Credit banks would be authorized to hold 30 percent of their investments in domestic CDs, 30 percent in Eurodollar and Yankee CDs, and 30 percent in Federal funds under § 615.5140(a)(6). Under the System's proposal, accounts at depository institutions could comprise 90 percent of any System bank's investment portfolio.

The System's proposal cannot be reconciled with the FCA's objective of prompting Farm Credit banks to diversify their investment portfolios so they no longer remain heavily concentrated in depository institutions. Interestingly, the ABA expressed no objection to the FCA's proposal to impose restrictions on System bank investments in CDs and Federal funds. Yet, System commenters ignored the FCA's safety and soundness concerns, and instead advocated greater concentration of System investments in the commercial banking sector.

Final § 615.5140(a)(5) prohibits FCBs, BCs, and ACBs from holding more than 25 percent of their investments in negotiable CDs. Since the FCA raised the investment ceiling in § 615.5132 from 20 to 30 percent, it lowered the limit on negotiable CDs from 30 to 25 percent. In spite of this modification, the overall level of permissible System bank investment in negotiable CDs is still slightly higher under the final

regulation than it was under the proposed regulation.

D. Federal Funds

Proposed § 615.5131(f) would define Federal funds as loans, for 1 business day or under a continuing contract, to a federally insured depository institution. Based on this definition, proposed § 615.5140(a)(6) would authorize Farm Credit banks to hold Federal funds that mature within 1 business day, or are subject to a callable contract. The proposed regulation would also limit Federal funds to 30 percent of the bank's investment portfolio in order to encourage risk diversification. From the FCA's perspective, the short maturity on Federal funds are suitable for managing liquidity and investing surplus short-term funds.

The FCC, two FCBs, and a BC proposed revisions to §§ 615.5131(f) and 615.5140(a)(6). All commenters recommended that the FCA amend § 615.5131(f) so System banks are permitted to engage in Federal funds transactions with other GSEs. The FCA adopts this amendment so System banks can more fully participate in the Federal funds market.

System commenters also urged the FCA to expand this definition to include Term Federal funds that are not subject to a callable contract, but mature within 2 to 100 days. One commenter requested that the final regulation authorize System banks to invest in callable Federal funds that mature within 2 years. In response, the FCA will amend the regulation so System banks can hold Term Federal funds that, subject to a callable contract, mature within 2 to 100 days.

From a regulatory perspective, a callable feature provides liquidity for such instruments. Investors in non-callable Term Federal fund contracts sacrifice liquidity in exchange for a higher return. The investors are exposed to loss if the issuer defaults at any time before the instrument matures. In contrast, a callable Term Federal funds contract enables the holder to withdraw its funds at any time. By restricting System bank investments to callable Term Federal funds, the FCA continues to bar the use of non-negotiable investments in subpart E.

The FCA has decided to impose a maximum maturity of 100 days on Term Federal funds for two separate reasons. First, research by the FCA reveals that the market for Term Federal funds with a maturity that exceeds 100 days is sparse. Second, a maximum maturity of 100 days is a standard that would require System banks to periodically review the creditworthiness of the issuer.

The final regulation also requires depository institutions that engage in Term Federal fund transactions with any Farm Credit bank to maintain a B/C credit rating. This safety and soundness standard is a logical extension of the System proposals to expand coverage of the regulation to Term Federal funds.

Two commenters petitioned the FCA to raise the limit on Federal funds from 30 to 60 percent. Although these commenters acknowledged that their proposal would further concentrate System investments in the commercial banking industry, they asserted that Farm Credit banks could effectively contain the attendant risks through internal credit quality control standards. These commenters urged the FCA to increase this limit in order to accommodate those System banks that depend upon large holdings of Federal funds to perpetuate short-term funding strategies. These commenters complained that the FCA's proposal would arbitrarily force such banks to abandon their current funding strategies, and divest a significant portion of their Federal funds. These two commenters claimed, without explanation, that diversification away from commercial bank investments will actually increase, rather than decrease, the exposure of Farm Credit banks to loss.

The FCA responds that no financial institution can effectively reduce its loss exposure without relying on both portfolio diversification and stringent credit quality standards. From a safety and soundness perspective, high credit ratings, short maturities, and geographic or institutional diversification cannot sufficiently alleviate the risks inherent in an investment portfolio that is heavily concentrated in a single industry.

Final § 615.5140(a)(6) authorizes Farm Credit banks to hold up to 25 percent of their investments in Federal funds and Term Federal funds. The FCA has lowered the limit on Federal funds and Term Federal funds from 30 to 25 percent in order to partially offset the increase in the overall investment ceiling in § 615.5132 from 20 to 30 percent.

E. Prime Commercial Paper

The FCA defined prime commercial paper in proposed § 615.5131(n) as an unsecured promissory note of a corporation that has a fixed maturity of no more than 270 days, and is rated A–1 or P–1 by a nationally recognized credit rating service. Proposed § 615.5140(a)(7) would authorize Farm Credit banks to hold prime commercial paper in an amount that does not exceed 30 percent of their investment portfolios, while proposed § 615.5140(b) would restrict the amount that any System bank could invest in commercial paper issued by a single issuer. In situations where the commercial paper is issued by a foreign corporation, or the overseas subsidiary of a United States corporation, the country where the issuer is incorporated would be required by proposed § 615.5140(a)(7) to receive the highest possible rating (AAA) for political and economic stability from a nationally recognized credit rating service.

The FCA received comments about proposed §§ 615.5131(n) and 615.5140(a)(7) from the FCC. As recommended by the commenter, the FCA revises the definition of prime commercial paper in redesignated § 615.5131(o) to include both secured and unsecured promissory notes of corporation. The exclusion of secured promissory notes from the proposed regulation was an inadvertent error.

The FCA rejects the FCC's advice to downgrade the credit rating for political and economic stability of foreign host countries from an AAA to an AA. The commenter's assertion that an AAA rating is "unduly restrictive" appears to be unfounded. The FCA notes that Canada, Japan, Austria, Germany, France, Luxembourg, Netherlands, Switzerland, and the United Kingdom currently qualify for an AAA rating.

F. Corporate Debt Obligations

The FCA proposed § 615.5140(a)(8), which would authorize Farm Credit banks to hold corporate debt obligations that: (1) Mature within 3 years or less; (2) are rated in the two highest investment grades (AA or AAA) by a nationally recognized credit rating service; and (3) are not convertible into equity securities. Additionally, the proposed regulation would limit corporate debt obligations to 15 percent of the bank's total investment portfolio.

The FCA proposed this new authority in order to encourage Farm Credit banks to diversify their investment portfolios. From a regulatory perspective, a short-term maturity deadline and a superior credit rating ensures that Farm Credit banks only purchase highly liquid corporate debt obligations with limited IRR. The proposed regulation would also prohibit Farm Credit banks from holding corporate debt obligations that are convertible into equity securities, because FCA believes that it is inappropriate for the banks to maintain

an ownership interest in commercial enterprises.

The FCC, one FCB, and the investment banking firm commented about proposed § 615.5140(a)(8). The FCC recommended that the FCA increase the maturity for corporate bonds from 3 to 5 years. According to this commenter, the proposed regulation would actually inhibit System banks from exercising this new investment power because corporate obligations with a 3-year maturity are rarely available in the market. This commenter also opined that a maximum maturity of 5 years is a reasonable limitation that still affords adequate safety of principal risk. The FCA is persuaded by these arguments, and therefore, it amends § 615.5140(a)(8) so that corporate obligations that mature within 5 years or less are eligible investments under the final regulation. For the reasons explained in the preambles to §§ 615.5140(a)(5) and 615.5140(a)(7), the FCA, rejects the FCC's request to downgrade the credit rating for political and economic stability of host foreign countries from AAA to AA.

In response to another FCC comment, the FCA clarifies that corporate debt obligations under § 615.5140(a)(8) include bonds, debentures, medium-term notes, and similar forms of indebtedness.

The FCB requested that the FCA modify § 615.5140(a)(8)(iv), which prohibits FCBs, BCs, and ACBs from holding corporate obligations that are convertible into equity securities. While the commenter conceded that it is inappropriate for Farm Credit banks to acquire an ownership interest in commercial enterprises, it argued that the FCA's approach was too rigid. Accordingly, the FCB suggested that the final regulation accord convertible corporate debt the status of eligible investments, but prohibit System banks from exercising the conversion option. The commenter claimed that the convertible feature on corporate debt actually adds value to the investment in certain situations.

The FCA denies the commenter's request. From the FCA's perspective, convertible corporate debt investments are not effective for IRR management because the price performance of these obligations fluctuates with the price of the underlying common stock. Additionally, investors in convertible bonds traditionally are influenced by the equity factor, and as indicated by the commenter, equity holdings are inappropriate investments for Farm Credit banks.

The FCC and the investment banking firm petitioned the FCA to expand the list of eligible investments to include asset-backed securities (ABSs). The FCC specifically recommended that the FCA classify ABSs as corporate obligations and include them within the ambit of § 615.5140(a)(8), while the investment banking firm noted the similarity between ABSs and corporate debt securities. Both commenters suggested that the regulation impose a credit rating of AAA or its equivalent on ABSs, and the FCC proposed that eligible ABSs have an absolute final maturity of 5 years. These commenters emphasized that: (1) A broad secondary market for these securities has developed in recent years; and (2) ABSs possess the characteristics that make them effective instruments for safely and soundly managing liquidity and interest rate risks. The FCC pointed out that the cashflow structures of most ABSs are simpler and more dependable than MBSs.

The FCA accedes to the commenters' request, subject to certain modifications. ABSs are similar to MBSs, except that they are backed by collateral other than real estate mortgages. A diverse array of ABSs is available in the marketplace. According to the FCA's research, investors can purchase ABSs that are collateralized by credit card receivables, accounts receivables, automobile loans, home equity loans, boat loans, recreational vehicle loans, manufactured home loans, equipment leases, delinquent loans, and junk bonds.[13]

As noted earlier, the FCA's investment policy is based on the premise that only those investments that can be promptly converted into cash on an established secondary market are suitable for liquidity, IRR management, and the investment of surplus short-term funds. In order to qualify as an eligible investment under § 615.5140(a), an asset must: (1) Have a short maturity or a repricing mechanism; (2) maintain a high investment credit rating; (3) trade on an active and universally recognized secondary market; and (4) be valuable as collateral.

After careful analysis, the FCA concludes that only public issues of ABSs that are collateralized by either credit card receivables (CARDs) or automobile loans (CARs) meet these criteria. CARDs and CARs represent approximately 80 percent of the ABS market.[14] ABSs that are collateralized by other types of assets do not qualify as eligible investments under this regulation because the FCA's research reveals that: (1) Supply is limited; (2) their market is fragmented; (3) they are not liquid; and (4) it is difficult to appraise their market value.

Accordingly, final § 615.5140(a)(8)(ii) authorizes all FCBs, BCs, and ACBs to invest in ABSs, as defined by new § 615.5131(c) that: (1) Are collateralized by CARDs and CARs; (2) mature within 5 years or less; and (3) maintain a credit rating of AAA or its equivalent by a nationally recognized credit service. Upon the FCC's recommendation, final § 615.5140(a)(8) will combine ABSs and corporate bonds into a single investment category. As a result, investments under § 615.5140(a)(8) cannot exceed 15 percent of the total investments of any Farm Credit bank.

G. Repurchase Agreements

As adopted today by the FCA, final § 615.5140(a)(9) enables FCBs, BCs, and ACBs to invest in repurchase agreements, as defined by final § 615.5131(q), that are collateralized by eligible investments authorized by § 615.5140, and mature within 100 days (generally known in the industry as "reverse repurchase agreements").

The FCA originally proposed that repurchase agreements mature within 1 business day, or are by a continuing contract. The FCA expanded the term "to maturity of 100 days or less" in response to a comment from the FCC. The commenter advised the agency that System banks usually engage in repurchase transactions near the end of a quarter, when short-term investment assets may not be readily obtainable. The FCC also noted that a shorter term to maturity would severely restrict the ability of Farm Credit banks to effectively use repurchase agreements for hedging. The FCA adopts the amendment proposed by the FCC so System banks have greater flexibility to use repurchase agreements to meet their investment objectives.

H. Other Investments

The FCA recognized in the preamble to the proposed regulation that new financial instruments are constantly being developed in financial markets, and many of these new instruments may be suitable for managing liquidity, managing interest rate risk, and investing surplus short-term funds. See 56 FR 65691, 65698 (December 18, 1991). Accordingly, the FCA proposed § 615.5140(a)(11) which would authorize Farm Credit banks to purchase, subject to FCA approval, other financial instruments that: (1) Have short maturities; (2) are marketable investments pursuant to proposed § 615.5131(j); and (3) maintain a high

[13] Lehman Brothers, Mortgage Strategies Group, (January 1993), p. 70.

[14] *Id.*

rating from a nationally recognized credit rating service. The FCA received no comments about this proposal. Accordingly, the FCA has decided to adopt § 615.5140(a)(11) as a final regulation, without any amendments. Under the regulatory framework of § 615.5140(a)(11), the FCA shall determine on a case-by-case basis whether a new financial instrument qualifies as an eligible investment.

One FCB, however, submitted a long list of instruments that it wanted the FCA to classify as eligible investments under final § 615.5140. This commenter urged the FCA to approve these investments at this time, because any postponement in resolving this issue would inevitably create confusion among System banks. Although this recommendation was not specifically made in reference to § 615.5140(a)(11), the FCA will address this comment in the context of this provision.

While the FCA wishes to accommodate the FCB's request, it is unable to do so. Unfortunately, the commenter failed to describe these instruments with enough specificity so that the FCA could properly evaluate these investments under the criteria of § 615.5140(a)(11). The commenter used generic terms that encompass several differing subcategories of investments. Sometimes the commenter referred to accounting or financing techniques rather than actual investment instruments.

The FCA is prepared to issue interpretive bookletters that respond to inquiries concerning whether particular securities qualify as eligible investment under § 615.5140(a)(11). However, petitioners should, at a minimum, submit information pertaining to: (1) The cashflow structures of such securities; (2) terms to maturity; (3) credit ratings; (4) the scope of the secondary markets where these instruments are traded; and (5) the value of such instruments as collateral. Furthermore, a party that submits an inquiry should evaluate whether the proposed investment will enable System banks to achieve their objectives of maintaining an adequate liquidity reserve, managing IRR, and prudently investing short-term funds. Without such information, the FCA will probably be unable to determine whether the proposed investment complies with the criteria of § 615.5140(a)(11).

VIII. Risk Management and Diversification

In order to compel System banks to diversify the risks in their investment portfolios for safety and soundness purposes, the FCA proposed percentage limits on the amount of capital that each bank could invest with a single obligor, issuer or financial institution. As originally proposed by the FCA, § 615.5140(b) would limit investments with individual domestic issuers, obligors or financial institutions to 20 percent of the bank's total capital, while investments with each foreign issuer, obligor or financial institution could not exceed 10 percent of a bank's total capital. The FCA justified the more stringent limit on overseas investments in the preamble to the proposed regulation by noting the political and/or economic risks in many foreign countries. See 56 FR 65691, 65698 (December 18, 1991).

The FCC objected to the disparate treatment of domestic and foreign investments. This commenter asserted that the obligor's creditworthiness, not its nationality, is the relevant issue from a safety and soundness perspective. In this context, the FCC pointed out that foreign obligors, (particularly in the commercial banking sector) are often more creditworthy than their American competitors. Accordingly, the FCC recommended that final § 615.5140(b) limit investments with individual issuers, obligors or financial institutions, whether domestic or foreign, to 20 percent of the total capital of each Farm Credit bank.

The FCA is persuaded by the FCC's arguments, and therefore, it amends § 615.5140(b) so that investments with each institution, issuer, or obligor, whether domestic or foreign, does not exceed 20 percent of the total capital of any System bank.

IX. Divestment of Impermissible Investments

The FCA realizes that some Farm Credit banks may currently hold investments that will no longer be permissible after final § 615.5140 becomes effective. Certain investments will become ineligible because they do not comply with the investment criteria (such as credit ratings or maturity deadlines) of § 615.5140(a). Conversely, other investments qualify as eligible investments under final § 615.5140, but the bank currently exceeds the percentage limitations that the regulation imposes on a certain category of investments. While the FCA intends that all Farm Credit banks dispose of ineligible investments as quickly as possible, the agency seeks to avoid situations where the banks are exposed to heavy losses.

The FCA anticipated this problem, and it originally proposed § 615.5142, which would require System banks either to dispose of all prohibited investments within 6 calendar months from the effective date of the final regulation, or in the alternative, to obtain approval from the Director of the Office of Examination for a comprehensive plan to bring the bank's portfolio into compliance with § 615.5140 over a longer period of time. Under the FCA's proposal, all applications, and all subsequent approvals or denials would be in writing. The proposed regulation would require the Director of the Office of Examination to consider all relevant factors, such as earnings and capital, when deciding whether to approve a compliance plan. Under the regulatory framework of proposed § 615.5142, an acceptable compliance program would enable a bank to divest of impermissible investments as soon as possible, without substantial loss.

The FCC endorsed the FCA's position about the divestiture of investments that will become ineligible once final § 615.5140 takes effect. Furthermore, this commenter advised the FCA that the final regulation should also apply to situations where an investment complied with final § 615.5140(a) at the time of purchase, but subsequently became ineligible. Thus, the FCC's proposal would similarly require a System bank to complete divestiture within 6 months after the investment became ineligible, unless the Director of the Office of Examination approved a comprehensive written compliance plan that authorized divestiture over a longer period of time. As recommended by the commenter, the regulation would also require the portfolio managers to report, on a quarterly basis, to the board of directors about: (1) The conditions that rendered the investment ineligible; (2) the status of the investment; and (3) the divestiture plan.

The FCA appreciates the FCC's support concerning divestiture of ineligible investments. The FCA agrees with the commenter that § 615.5142 should also apply to those assets that qualified as eligible investments under final § 615.5140(a) at the time of purchase, but later became ineligible. Several factors could cause an asset to lose its status as an eligible investment. Most investments listed in § 615.5140(a) could become ineligible after purchase if a nationally recognized credit rating service downgrades their credit rating. Mortgage-related securities would be rendered ineligible under final § 615.5140(a)(2) if, in a quarter subsequent to purchase, an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points either: (1) Extends the WAL for more than 2 years; (2) shortens the WAL for

more than 3 years; or (3) changes the price of the instrument by more than 10 percent. The FCA adopts the FCC's proposal with minor modifications and stylistic edits that enhance its clarity.

One FCB dissented from the FCC's position. This commenter advised the FCA to "grandfather" those securities that were eligible investments under the pre-existing regulation. The FCA rejects this suggestion because the FCA's approach affords Farm Credit banks protection against loss while they diversify and enhance the credit quality of their investment portfolios under the new regulation.

X. Impact of Statement of Financial Accounting Standard No. 115

System institutions are required to follow the Statement of Financial Accounting Standard No. 115 (SFAS No. 115), Accounting for Certain Investments in Debt and Equity Securities, for fiscal years beginning after December 15, 1993. The FCA now addresses the potential impact of SFAS No. 115 on investments at System institutions. SFAS No. 115 establishes generally accepted accounting principles (GAAP) for investments that System institutions are authorized to invest in accordance with §§ 615.5140 and 615.5174. All institutions are to follow GAAP in preparing their financial statements. In this regard, the FCA is of the opinion that SFAS No. 115 would generally consider most of investments held by System institutions authorized by §§ 615.5140 and 615.5174 to be considered "available-for-sale securities" as defined in SFAS No. 115. As a result of this classification, such securities considered would be measured at fair value in the statement of financial position. It is possible that some investments held by System institutions may be classified as "held-to-maturity securities" as defined in SFAS No. 115, and carried at amortized cost in the statement of financial position. Such a classification will require documentation that an institution has the positive interest and ability to hold such securities to maturity as further defined in SFAS No. 115. In summary, where an investment is classified as a "held-to-maturity security," § 615.5141 provides for divestiture in a manner that protects the bank from loss to capital and earnings. However, when an investment in an "available-for-sale" classification must be divested pursuant to § 615.5141, the mark-to-market requirements of SFAS No. 115 should cause the impact on capital to be insignificant because the security should have already been reflective of the market price.

XI. Investments in Farmer Mac Securities

As discussed earlier, System commenters opposed the FCA's original proposal to include guaranteed Farmer Mac MBSs within the ambit of § 615.5140(a)(2), which authorizes Farm Credit banks to invest in the mortgage-related securities of GNMA, FNMA, and FHLMC and other Federal Government agencies. Farmer Mac asserted that its mortgage-related securities merit a more liberal treatment under these regulations than comparable GNMA, FNMA, and FHLMC instruments, because Farmer Mac advances the mission of Farm Credit banks to provide credit to agricultural producers and rural homeowners. Farmer Mac argued that proposed § 615.5140(a)(2) would severely impede the ability of Farm Credit banks to participate in a secondary market that Congress established in order to minimize the risks inherent in agricultural lending. This commenter also complained that the FCA's proposal would place greater restrictions on FCS investments in Farmer Mac guaranteed securities than the other Federal bank regulatory agencies currently impose on their institutions. Accordingly, this commenter suggested that the FCA remedy this problem in the final regulations by exempting guaranteed Farmer Mac securities from restrictions that § 615.5140(a)(2) imposes on securities that are collateralized by mortgages that FCS institutions cannot originate. The FCC and individual Farm Credit banks implied that final § 615.5140(a)(2) should not cover Farmer Mac securities because their comments about this provision omitted all references to Farmer Mac, and instead, focused exclusively on mortgage-related securities that are issued by GNMA, FNMA, FHLMC, and the SBA.

In response, the FCA concurs that guaranteed Farmer Mac securities serve a different purpose for Farm Credit banks than the mortgage-related securities of GNMA, FNMA, FHLMC, and other Federal government agencies. In contrast to GNMA, FNMA, and FHLMC, Farmer Mac furthers the FCS's statutory mission of lending to agricultural producers and rural homeowners. As a secondary market for agricultural and rural housing loans, Farmer Mac enables FCS institutions and other agricultural lenders to reduce various credit risks that are inherent in their agricultural loan portfolios. As such, FCS institutions are unlikely to hold guaranteed Farmer Mac mortgage-related securities in order to achieve the objectives listed in § 615.5132.

For these reasons, the FCA will accede to the commenters' request to accord guaranteed Farmer Mac mortgage-related securities a different regulatory treatment in the final regulations than comparable mortgage-related securities of GNMA, FNMA, and FHLMC and other Federal agencies. While both the primary and secondary market sectors of the FCS rejected the FCA's approach in the proposed regulations for Farmer Mac securities, no commenter offered any affirmative advice about how Farmer Mac securities should be treated in the final regulations. As result, the FCA devised final § 615.5174 without the benefit of guidance from the FCS or other commenters.

The FCA decided to address FCS bank investment in guaranteed Farmer Mac securities in subpart F, rather than subpart E, of part 615. This approach will exempt guaranteed Farmer Mac securities from many of the requirements of regulations in subpart E of part 615, which establish the criteria by which Farm Credit banks purchase, hold, and divest of financial investments that are unrelated to their statutory mission of financing agriculture and rural housing.

Final § 615.5174, which the FCA adopts today, is not a comprehensive regulation that governs all aspects of System participation in the Farmer Mac secondary market. Although provisions in titles I, II, and VIII of the Act authorize FCBs and associations to originate, pool, and securitize agricultural and rural housing loans, final § 615.5174 does not implement these authorities. Instead, final § 615.5174 authorizes FCBs, BCs, and ACBs to purchase and hold guaranteed Farmer Mac mortgage-related securities as investments pursuant to sections 1.5(15), 3.1(13)(A) and 7.2(a) of the Act. In this context, final § 615.5174 authorizes BCs to purchase and hold mortgage-related securities that are guaranteed as to both principal and interest by Farmer Mac, even though such banks lack statutory authority to originate, pool, or securitize the types of agricultural and rural housing loans that collateralize Farmer Mac securities. Similarly, final § 615.5174 clarifies that ACBs are authorized to invest in guaranteed Farmer Mac securities under section 7.2 of the Act. Pursuant to sections 2.2(11), 2.2(18), 7.6(c) and 7.8(b) of the Act, § 615.5141 permits FCS associations to purchase and hold guaranteed Farmer Mac securities to the extent authorized under final

§ 615.5174, subject to the approval of their supervising banks.

A mortgage-related security qualifies as an eligible investment for Farm Credit banks under § 615.5174 to the extent that Farmer Mac guarantees the investor timely payment of both principal and interest in the event of default by either the borrower or the pooler. Conversely, this regulation does not apply to the subordinated participation interest in the pool of qualified mortgages that the originator or pooler retains under section 8.6(b) and 8.7(b) of the Act. Farmer Mac securities are eligible investments for Farm Credit banks under § 615.5174 only if they are collateralized by qualified loans, which are defined by section 8.0 of the Act as: (1) Agricultural real estate mortgages and rural housing loans that comply with specific requirements; and (2) loans guaranteed by the Farmers' Home Administration (FmHA) under the Consolidated Farm and Rural Development Act, 7 U.S.C. 1921 *et seq.* Furthermore, fixed-rate mortgages or ARMs, which reprice within 12 months pursuant to an index, shall collateralize MBSs, CMOs, and REMICs that are authorized by this regulation. Stripped MBSs, as defined by § 615.5131(r), and residuals, as defined by § 615.5131(s) are ineligible investments under § 615.5174(c) because they are extremely volatile to interest rate and price fluctuations.

This regulation allows each FCB, BC, and ACB to purchase and hold guaranteed Farmer Mac securities in an amount that does not exceed 20 percent of its total outstanding loans. The FCA has decided to limit the overall investment by Farm Credit banks in these securities for several reasons. First, recent studies of the secondary market for agricultural mortgages indicate that only about 20 percent of FCS loans will comply with Farmer Mac underwriting standards. Second, the FCA interprets Farmer Mac's comment letter as indicating that a 20-percent ceiling is appropriate for FCS investment in these instruments. In this context, the FCA notes that it has followed the recommendation of various System commenters to significantly increase, in the final regulation, the amount that Farm Credit banks may invest in the mortgage-related securities of GNMA, FNMA, FHLMC, and Farmer Mac. Third, this limit reinforces the cooperative principles of the FCS. Although Farmer Mac securities are agriculturally based financial assets, they no longer constitute loans to the shareholders of System institutions. An FCS institution, at its option, may retire the borrower's stock once the loan is sold into a Farmer Mac pool.

Final § 615.5174(d) requires the board of directors of each Farm Credit bank to adopt and enforce written policies and procedures that will guide portfolio managers whenever the bank invests in guaranteed Farmer Mac securities. Furthermore, the regulation mandates that the board of each FCB, BC, and ACB shall review these policies and procedures, and evaluate the performance of the Farmer Mac securities in its portfolio, on an annual basis. In this context, final § 615.5174(d) tailors the requirements of § 615.5133 to FCS investments in guaranteed Farmer Mac securities. This regulatory approach toward guaranteed Farmer Mac securities is consistent with the investment policy that the FCA has espoused throughout this rulemaking.

An acceptable board policy shall address, at a minimum, eight broad areas related to the bank's investment in guaranteed Farmer Mac securities. Section 615.5174(d)(1) requires the board's policy to identify the objectives that the bank plans to achieve by purchasing and holding guaranteed Farmer Mac securities. Credit enhancement, and geographic and product diversification of the bank's agricultural credit portfolio are examples of the purposes and objectives that should be addressed in the policy statement. Under § 615.5174(d)(2), the policy should establish parameters concerning the size, characteristics, and quality of the bank's investment in guaranteed Farmer Mac securities. More specifically, § 615.5174(d)(2) requires the board's policy, at a minimum, to establish: (1) The mix of guaranteed Farmer Mac securities collateralized by agricultural real estate mortgages, rural home loans, and FmHA loans; (2) product and geographic diversification in the loans that underlie the securities; (3) minimum pool sizes, the minimum number of loans in each pool, and the maximum allowable premium the bank shall pay for CMOs, REMICs, and ARMs; and (4) the mix of guaranteed Farmer Mac securities that are collateralized by either fixed-rate loans, or ARMs that are tied to an index and reprice within 12 months. While Farmer Mac underwriting standards establish basic benchmark characteristics for the mortgage pools that underlie these securities, final § 615.5174(c)(2) requires boards of directors to set criteria that guides portfolio managers in selecting Farmer Mac securities that best enhance the quality of the banks' assets.

Under § 615.5174(d)(3), the board's policy shall delegate authority to manage the bank's portfolio of guaranteed Farmer Mac securities to specific personnel or committees. The board is required by § 615.5174(d)(4) to select permissible brokers, dealers, and other intermediaries for conducting purchase and sale transactions involving guaranteed Farmer Mac securities. Section 615.5174(d)(5) incorporates the provision in § 615.5133(h) which requires the board of each Farm Credit bank to establish internal controls that prevent loss, fraud, embezzlement, and unauthorized investments.

Final § 615.5174(d)(6) requires the board of directors of each Farm Credit bank to adopt a policy pursuant to § 615.5174(e), for managing the IRR that is inherent in guaranteed Farmer Mac securities. In a related context, the board's policy under § 615.5174(d)(7) shall establish procedures to prevent losses to the capital and earnings of the bank resulting from transactions in Farmer Mac securities. Finally, § 615.5174(d)(8) requires the board's policy to establish procedures selling these securities prior to maturity, without causing financial loss to the bank.

Section 615.5174(e) requires each System bank to develop and implement a comprehensive policy for combatting IRR in guaranteed Farmer Mac securities that are collateralized by fixed-rate mortgages. Farmer Mac securities may contain IRR. If market interest rates increase, the market value of the mortgage-related security declines, and as a result, the investor may be forced to sell the instrument at a discount. However, a significant decline in market interest rates may not necessarily increase the market value of the security because many borrowers will probably exercise their contractual option to prepay their underlying mortgages. Prepayments deprive investors in mortgage-related securities of interest income. While Farmer Mac guarantees timely principal and interest payments to investors in the event of default by either the borrowers or the holders of the subordinated participation interests, it does not protect investors against prepayment or interest rate risks.

The FCA received no comments about how the final regulation should address IRR in Farmer Mac securities. The proposed regulation sought to contain the IRR exposure of Farm Credit banks to mortgage-backed securities by allowing them to invest only in GNMA, FNMA, FHLMC, and Farmer Mac pass-through securities that were collateralized by either: (1) ARMs that reprice within 12 months or less; or (2) fixed-rate mortgages with an absolute final maturity of 5 years. See 56 FR

65691, 65695–65697 (December 18, 1991). The FCC responded with an alternative that would authorize Farm Credit banks to purchase and hold certain GNMA, FNMA, and FHLMC mortgage-derivative securities that satisfied three requirements for limiting interest rate risk in their underlying fixed-rate mortgages. However, the FCC excluded Farmer Mac securities from its proposal. Farmer Mac was silent about how the regulation should treat IRR in these securities.

After careful consideration, the FCA determines that Farmer Mac securities merit a different regulatory treatment concerning IRR than comparable GNMA, FNMA, and FHLMC securities. Except for those rural housing loans that comply with FNMA or FHLMC underwriting standards, Farm Credit banks, as a general rule, lack statutory authority to originate, purchase, or hold the types of residential mortgages that back GNMA, FNMA or FHLMC mortgage-related securities. In contrast, Farmer Mac securities are collateralized with the types of agricultural and rural housing loans that FCBs and ACBs originate, hold, participate in, service, and sell in the normal course of business. As Farmer Mac warned in its comment letter, it would be illogical for the FCA to unduly restrict the ability of Farm Credit banks to hold these securities when they are authorized to originate and hold the underlying loans.

For this reason, the FCA now adopts a regulatory approach that prohibits Farm Credit banks from purchasing and holding Farmer Mac securities that contain greater IRR than the underlying loans. Final § 615.5174 requires the board of directors to establish the maximum level of interest rate risk exposure that the bank shall incur from Farmer Mac MBSs, CMOs and REMICs that are backed by fixed-rate mortgages. This regulation permits boards of directors to adopt conservative policies which significantly limit their banks' exposure to IRR from guaranteed Farmer Mac securities. For example, Farm Credit banks may adopt the standards that § 615.5140(a)(2)(iii) applies to GNMA, FNMA, and FHLMC mortgage-related securities.

Final § 615.5174(e)(1) requires the board of each Farm Credit bank to define the maximum acceptable level of IRR for guaranteed Farmer Mac securities by the: (1) Expected WAL of these securities; (2) maximum number of years that the expected WAL of these instruments will extend or shorten assuming an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points; and (3) maximum change in the price of these securities due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

The FCA's policy modifies the three-pronged FFIEC test for gauging IRR in mortgage derivative products that are backed by fixed-rate mortgages. Essentially, the FFIEC test determines the point where mortgage derivative products assume greater IRR than an underlying pool of 30-year fixed-rate loans by measuring each security for its: (1) WAL; (2) WAL sensitivity to a 300-basis point shift in interest rates; and (3) price sensitivity to a 300-basis point change in interest rates. See 57 FR 4028, 4038–39 (February 3, 1992).

As stated earlier, final § 615.5174 forbids Farm Credit banks from incurring greater IRR from guaranteed Farmer Mac securities than from the underlying loans. Since the IRR of stripped MBSs and residuals typically exceeds the IRR of the underlying mortgages, § 615.5174(c) prohibits Farm Credit banks from investing in these types of Farmer Mac securities under any circumstances.

For guaranteed Farmer Mac CMOs and REMICs that are exclusively collateralized by fixed-rate, rural housing loans, final § 615.5174(e)(3) states that no Farm Credit bank shall be exposed to IRR beyond the level where: (1) The expected WAL of security exceeds 10 years; (2) the expected WAL of the security extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or (3) the estimated change in the price of the security is more than 17 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points. Section 615.5174(e)(3) derives from the FFIEC standards. This FFIEC test, which is based on the historical experience of the secondary residential mortgage market, demarcates where a mortgage derivative product exhibits greater price volatility than a benchmark, fixed-rate, 30-year residential, mortgage-backed pass-through security. See 57 FR 4028, 4038 (February 3, 1992).

The FCA determines that this three-pronged FFIEC approach is also appropriate for guaranteed Farmer Mac CMOs and REMICs that are backed by fixed-rate agricultural mortgages. However, since this secondary market is not sufficiently developed at the present time, there is no publicly available benchmark data which pinpoints the WAL, WAL sensitivity, and price sensitivity thresholds for agricultural mortgage-related securities. These three criteria determine where the IRR of a CMO or REMIC surpasses the IRR of the underlying loans. As the secondary market for agricultural mortgages develops over time, market participants and the regulatory agencies will eventually assemble, process and disseminate information which profiles the sensitivity of agricultural real estate loans to interest rate fluctuations. In the interim, final § 615.5174(e)(2) requires Farm Credit banks to apply the three-pronged test in § 615.5174(e)(1), and determine, on a case-by-case basis, whether the IRR of a Farmer Mac security backed by fixed-rate agricultural mortgages exceeds the IRR of the underlying loans.

The FCA's approach toward guaranteed Farmer Mac securities is similar to the treatment that other Federal financial institution regulators accord to securities which are collateralized by residential mortgages that commercial banks, savings associations, and credit unions routinely originate in their capacity as primary lenders.

Final § 615.5174(e)(4) addresses situations where, subsequent to purchase, a guaranteed Farmer Mac security no longer complies with the board of directors' IRR policy. This provision requires portfolio managers to report to the bank's board of directors about the status of those Farmer Mac securities which contain interest rate risk exposure in excess of the board's policy under § 615.5174(e)(1). Furthermore, the portfolio managers shall recommend to the board a comprehensive strategy for preventing the security from causing loss to the bank's capital and earnings. This regulation requires the board of directors of each FCB, BC, or ACB to approve and implement a plan (including any amendments thereto) for preventing loss to the bank's capital and earnings.

The FCA emphasizes that § 615.5174(e)(4) does not compel the bank to divest of Farmer Mac securities which, subsequent to purchase, develop interest rate risk in excess of the level authorized by board policy, provided that there are other options for insulating the bank's capital and earnings from loss. The accounting treatment for guaranteed Farmer Mac securities is governed by SFAS No. 115, for fiscal years beginning after December 15, 1993. The application of SFAS No. 115 to bank investments was discussed in detail in Section X of the preamble.

As long as the guaranteed Farmer Mac security remains in the bank's portfolio, the portfolio managers shall report, at

least quarterly, to the board about changes in the status of the investment, and progress toward containing loss. All of the bank's documentation concerning its strategy to prevent such securities from causing loss to the bank's capital and earning shall be available for review by the Office of Examination at the FCA.

XI. Miscellaneous

The FCA received no comments about proposed § 615.5141, which addresses investment activities by FCS associations, and proposed § 615.5173, which would explicitly authorize Farm Credit banks and associations to purchase and hold Class B common stock of Farmer Mac pursuant to section 8.4 of the Act. The FCA now adopts § 615.5173 as a final regulation without any revision. The FCA now makes a technical correction to § 615.5141 so that the final regulation reflects the statutory authority of ACBs to supervise the investment activities of their affiliated associations. References to the ACBs were inadvertently excluded from the proposed regulation. Additionally, the FCA's proposal to rename subpart F as "Property and Other Investments" and to redesignate § 615.5150 as § 615.5170, § 615.5151 as § 615.5171, and § 615.5160 as § 615.5172 elicited no comments. Accordingly, these amendments are now incorporated into the final regulations. Subpart F shall contain final §§ 615.5170, 615.5171, 615.5172, 615.5173, and 615.5174.

The FCC sought a technical amendment to proposed § 615.5131(h), which defines the term "loans." Under the proposed regulation, Farm Credit banks would use the average daily balance of loans outstanding for the previous 90 days to calculate, every quarter, the investment-to-loan ratio under § 615.5132. The commenter asserted that this calculation should be based on the average daily balance of loans outstanding for the quarter then ended, rather than the previous 90 days, because a quarter may not necessarily correspond to a 90-day cycle. The FCA incorporates this revision into final (and redesignated § 615.5131(i)) because it enhances the clarity of the regulation.

List of Subjects in 12 CFR Part 615

Accounting, Agriculture, Banks, banking, Government securities, Investments, Rural areas.

For the reasons stated in the preamble, part 615 of chapter VI, title 12 of the Code of Federal Regulations is amended to read as follows:

PART 615—FUNDING AND FISCAL AFFAIRS, LOAN POLICIES AND OPERATIONS, AND FUNDING OPERATIONS

1. The authority citation for part 615 is revised to read as follows:

Authority: Secs. 1.5, 1.7, 1.10, 1.11, 1.12, 2.2, 2.3, 2.4, 2.5, 2.12, 3.1, 3.7, 3.11, 3.25, 4.3, 4.9, 4.14B, 4.25, 5.9, 5.17, 6.20, 6.26, 8.0, 8.4, 8.6, 8.7, 8.8, 8.10, 8.12 of the Farm Credit Act; 12 U.S.C. 2013, 2015, 2018, 2019, 2020, 2073, 2074, 2075, 2076, 2093, 2122, 2128, 2132, 2146, 2154, 2160, 2202b, 2211, 2243, 2252, 2278b, 2278b–6, 2279aa, 2279aa–4, 2279aa–6, 2279aa–7, 2279aa–8, 2279aa–10, 2279aa–12; sec. 301(a) of Pub. L. 100–233, 101 Stat. 1568, 1608.

2. The heading of subpart E is revised to read as follows:

Subpart E—Investment Management

§§ 615.5141 and 615.5142 [Removed]

3. Subpart E is amended by removing §§ 615.5141 and 615.5142.

4. A new § 615.5131 is added to subpart E to read as follows:

§ 615.5131 Definitions.

(a) *Absolute final maturity* means the date on which the remaining principal amount of a mortgage-backed security or asset-backed security is due and payable (matures) to the registered owner. It shall not mean the average life, the expected average life, the duration, or the weighted average maturity.

(b) *Adjustable rate mortgage (ARM)* means a mortgage-backed security that features a predetermined adjustment of the interest rate at regular intervals tied to an index.

(c) *Asset-backed security (ABS)* means investment securities that provide for ownership of a fractional undivided interest, or collateral interests, in a specific asset of a trust that are sold and traded in the capital markets. For the purposes of this subpart, all eligible ABSs shall be collateralized with either loans for the sale of automobiles (CARs) or credit card receivables (CARDs).

(d) *Asset/liability management* means the process used to plan, acquire, and direct the flow of funds through a Farm Credit bank in order to generate adequate and stable earnings and to steadily build equity, while taking reasonable and measured business risks.

(e) *Collateralized mortgage obligation (CMO)* means a multi-class, pay-through bond representing a general obligation of the issuer backed by mortgage collateral. Each CMO consists of a set of, at least, four tranches of bonds with different maturities and cashflow patterns. An accrual bond is last tranche. *Floating Rate CMO* means a CMO or REMIC tranche that pays an adjustable rate of interest that is tied to a representative interest rate index.

(f) *Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise for 1 business day which increases or decreases that institution's reserve account of immediately available funds with a Federal Reserve Bank. *Term Federal funds* means funds sold to or bought from a federally insured depository institution or government-sponsored enterprise under a callable contract with a term to maturity of 100 days or less.

(g) *Interest rate risk* means the risk of loss resulting from the impact of interest rate fluctuations upon the net interest income and market value of equity of a bank.

(h) *Liquid investments* are assets that can be promptly converted into cash without significant loss to the investor. In the money market, a security is liquid if the spread between bid and ask prices is narrow, and a reasonable amount can be sold at those prices.

(i) *Loans* is defined as in § 621.2(a)(13) of this chapter, and is calculated quarterly (as the last day of March, June, September, and December) by using the average daily balance of loans for the quarter then ended.

(j) *Marketable investment* is an asset that can be sold with reasonable promptness at a price that reasonably reflects its fair value in an active and universally recognized secondary market.

(k) *Market value of equity* measures the impact that interest rate changes have upon the market value of the bank's assets, liabilities and off-balance-sheet items.

(l) *Mortgage-backed securities (MBSs)* means investment securities collateralized with mortgage loans. MBSs provide for ownership of a fractional undivided interest in a specific pool of mortgages. Each MBS has a stated maturity, weighted average maturity, and coupon rate.

(m) *Negotiable certificates of deposit* means a negotiable large-denomination time deposit with a specific maturity, as evidenced by definitive or book-entry form. *Yankee certificate of deposit* means a certificate of deposit issued in the United States by the American branch of a foreign bank. *Eurodollar certificate of deposit* means a certificate of deposit denominated in United States dollars and issued by an overseas branch of a United States bank or by a foreign bank outside the United States.

(n) *Net interest income* means the difference between interest income and interest expense.

(o) *Prime commercial paper* means a secured or unsecured promissory note of a corporation with a fixed maturity of no more than 270 days that is rated A–1 or P–1 or an equivalent rating by a nationally recognized credit rating service.

(p) *Real estate mortgage investment conduit (REMIC)* means a nontaxable entity (created under the Tax Reform Act of 1986) formed for the sole purpose of holding a fixed pool of mortgages (both residential and commercial) secured by an interest in real property and issuing multiple classes of interests in the underlying mortgages.

(q) *Repurchase agreement* means a transaction where any Farm Credit Bank, bank for cooperatives, or agricultural credit bank agrees to purchase a security from a counterparty and to subsequently sell the same or identical security back to that counterparty for a specified price with a term to maturity of 100 days or less.

(r) *Stripped mortgage-backed securities* means securities created by segregating the cashflows from the underlying mortgages or mortgage securities to create two or more new securities, each with a specified percentage of the underlying security's principal payments, interest payments, or combination of the two. In their purest form, stripped mortgage-backed securities represent mortgage-backed securities that have been converted into interest-only (IO) securities, where the investor receives 100 percent of the interest flows, and principal-only (PO) securities, where the investor receives 100 percent of the principal cashflows.

(s) *Residual* means a "residual" interest tranche from a CMO or REMIC security that collects any cashflows remaining from the collateral after the obligations to the other tranches have been met.

(t) *Total capital* is defined as in Subpart H—Capital Adequacy, § 615.5201(l) of this chapter.

(u) *Weighted average maturity (WAM)* means the weighted average number of months to the final payment of each loan backing a mortgage security, weighted by the size of the principal loan balances.

(v) *Weighted average life (WAL)* means the average time to receipt of principal, weighted by the size of each principal payment. Weighted average life for CMOs and mortgage-backed securities is calculated under some specific prepayment assumptions.

5. The following sections in part 615 are redesignated as set forth in the table below:

REDESIGNATION TABLE

Existing section	New section	New subpart
615.5135(a)	615.5132	E
615.5135(b)	615.5133	E
615.5150	615.5170	F
615.5151	615.5171	F
615.5160	615.5172	F
615.5180	615.5141	E

6. Newly designated §§ 615.5132 and 615.5133 are revised to read as follows:

§ 615.5132 Investment purposes.

Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold eligible investments, listed under § 615.5140, in an amount not to exceed 30 percent of the total outstanding loans of such banks, for the purposes of complying with the liquidity reserve requirement of § 615.5134, managing surplus short-term funds, and for managing interest rate risk under § 615.5135.

§ 615.5133 Investment management.

The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall adopt written policies regarding the management of the bank's investments that are consistent with the Farm Credit Act of 1971, Farm Credit Administration regulations, and all other applicable statutes and regulations. The board of directors shall also ensure that the bank's investments are safely and soundly managed in accordance with these written policies, and that appropriate internal controls are in place to preclude investment actions that undermine the solvency and liquidity of the bank. The board of directors shall not delegate its responsibility to oversee and review the investment practices of the bank. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies, as well as the objectives and performance of the investment portfolio. At a minimum, the written policy should address:

(a) The purpose and objectives of the bank's investment portfolio;

(b) The liquidity needs of the bank pursuant to the requirements of § 615.5134;

(c) Interest rate risk management pursuant to § 615.5135;

(d) Permissible brokers, dealers, and institutions for investing bank funds and limitations consistent with § 615.5140 of this subpart, and the amount of funds that shall be invested or placed with any broker, dealer or institution;

(e) The size and quality of the investment portfolio;

(f) Risk diversification of the investment portfolio;

(g) Delegation of authority to manage bank investments to specific personnel or committees and a statement about the extent of their authority and responsibilities;

(h) Controls to monitor the performance of the bank's investments and to prevent loss, fraud, embezzlement, and unauthorized investments. Quarterly reports about the performance of all investments in the portfolio shall be made to the board of directors.

(i) Controls on investments in MBSs, CMOs, REMICs, and ABSs that are consistent with either §§ 615.5140(a)(2) or 615.5140(a)(8)(ii) of this subpart, as applicable, including parameters concerning the maximum amount of exposure to each category in the investment portfolio, minimum pool sizes, minimum number of loans in a pool, geographic diversification of loans in a pool, maximum allowable premiums (particularly as related to CMOs, REMICs, and ARMs).

7. Sections 615.5134, 615.5135 and 615.5136 are added to read as follows:

§ 615.5134 Liquidity reserve requirement.

(a) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall use cash and the eligible investments under § 615.5140 of this subpart to maintain liquidity sufficient to fund:

(1) Fifty (50) percent of the bank's bonds, notes, Farm Credit Investment Bonds, and interest due within the next 90 days divided by 3;

(2) Fifty (50) percent of the bank's discount notes due within the next 30 days; and

(3) Fifty (50) percent of the bank's commercial bank borrowing due within the next 30 days.

(b) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall separately identify all investments that are held for the purpose of meeting its liquidity reserve requirement under this section. All investments held in the liquidity reserve shall be free of lien.

(c) The liquidity reserve requirement shall be calculated as of the last day of each month utilizing month end data.

§ 615.5135 Management of interest rate risk.

The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt an

interest rate risk management section of an asset/liability management policy which establishes interest rate risk exposure limits as well as the criteria to determine compliance with these limits. At a minimum, the interest rate risk management section shall establish policies and procedures for the bank to:

(a) Identify and analyze the causes of risks within its existing balance sheet structure;

(b) Measure the potential impact of these risks on projected earnings and market values by conducting interest rate shock tests and simulations of multiple economic scenarios at least on a quarterly basis.

(c) Explore and implement actions needed to obtain its desired risk management objectives;

(d) Document the objectives that the bank is attempting to achieve by purchasing eligible investments that are authorized by § 615.5140 of this subpart;

(e) Evaluate and document, at least quarterly, whether these investments have actually met the objectives stated under paragraph (d) of this section.

§ 615.5136 Emergencies impeding normal access of Farm Credit banks to capital markets.

An emergency shall be deemed to exist whenever a financial, economic, agricultural or national defense crisis could impede the normal access of Farm Credit banks to the capital markets. Whenever the Farm Credit Administration determines after consultations with the Federal Farm Credit Banks Funding Corporation that such an emergency exists, the Farm Credit Administration Board shall, in its sole discretion, adopt a resolution that:

(a) Increases the amount of eligible investments that Farm Credit Banks, banks for cooperatives and agricultural credit banks are authorized to hold pursuant to § 615.5132 of this subpart; and/or

(b) Modifies or waives the liquidity reserve requirement in § 615.5134 of this subpart.

8. Section 615.5140 is amended by revising the section heading and paragraph (a); redesignating paragraph (b) as paragraph (d); and adding new paragraphs (b) and (c) to read as follows:

§ 615.5140 Eligible investments and risk diversification.

(a) In order to comply with §§ 615.5132, 615.5134, and 615.5135 of this subpart, each Farm Credit Bank, bank for cooperatives, and agricultural credit bank is authorized to hold the following eligible investments, denominated in United States dollars:

(1) Obligations of the United States and obligations, other than mortgage-backed securities, issued and guaranteed as to both principal and interest by an agency or instrumentality of the United States;

(2) Mortgage-backed securities (MBSs), as defined by § 615.5131(l), Collateralized Mortgage Obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p), that comply with the following requirements:

(i) The MBS, CMO, or REMIC shall either be:

(A) Issued by the Government National Mortgage Association or be backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States; or

(B) Issued by and guaranteed as to both principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation and be rated not lower than AAA (or equivalent) by a nationally recognized credit rating service;

(ii) Securities that are backed by adjustable rate mortgages, as defined by § 615.5131(b), shall have a repricing mechanism of 12 months or less tied to an index.

(iii) CMOs, REMICs, and fixed-rate MBSs shall satisfy the following three tests at the time of purchase and each quarter thereafter:

(A) The expected weighted average life (WAL) of the instrument does not exceed 5 years;

(B) The expected WAL does not extend for more than 2 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, nor shorten for more than 3 years assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(C) The estimated change in price is not more than 10 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

In applying the tests of paragraphs (a)(2)(iii) (A), (B), and (C) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall rely on verifiable information to support all of its assumptions (including prepayment assumptions) concerning the collateral mortgages that back the security. All assumptions that form the basis of the bank's analysis of the security and its underlying collateral shall be available for review by the Office of Examination of the Farm Credit Administration. Subsequent changes in the bank's assumptions about the MBS, CMO, or REMIC, shall be documented in writing. The analysis of each security shall be performed prior to purchase, and each quarter subsequent to purchase. If at any time after purchase, a MBS, CMO, or REMIC, no longer complies with any requirement in paragraphs (a)(2)(iii) (A), (B), or (C) of this section, the bank shall divest the security in accordance with § 615.5142 of this part.

(iv) A floating-rate CMO debt class shall not be subject to paragraphs (a)(2)(iii) (A) and (B) of this section if at the time of purchase, or each subsequent quarter, it bears a rate of interest that is below the contractual cap on the instrument.

(v) The following instruments do not qualify as eligible investments for the purpose of this section:

(A) Stripped mortgage-backed securities, as defined in § 615.5131(r), including Interest Only (IO) and Principal Only (PO) classes;

(B) Inverse floating rate debt classes investments.

(vi) MBSs, CMOs, and REMICs that are issued by the Government National Mortgage Association, or are backed solely by mortgages that are guaranteed as to both principal and interest by the full faith and credit of the United States shall not be subject to restrictions on the amount that a bank may hold in its investment portfolio;

(vii) MBSs, CMOs, and REMICs that are issued or guaranteed as to principal and interest by the Federal National Mortgage Association or the Federal Home Loan Mortgage Corporation shall not exceed 50 percent of the bank's total investment portfolio.

(3) Obligations of the International Bank for Reconstruction and Development (The World Bank);

(4) Bankers acceptances, not to exceed 30 percent of the bank's total investment portfolio;

(5) Negotiable certificates of deposit, as defined in § 615.5131(m), that mature within 1 year or less, in an amount not to exceed 25 percent of the total investment portfolio of any Farm Credit Bank, bank for cooperatives, or agricultural credit bank. Any portion of a domestic or Yankee certificate of deposit that is not insured by either the Federal Deposit Insurance Corporation or the National Credit Union Administration, shall be held in a depository institution that maintains at least a rating of B/C, or its equivalent by a nationally recognized credit rating service. Eurodollar certificates of deposit that are not insured by the Federal or national government of the host country shall be held at banks maintaining a rating of B/C or better, and the country where the account is

located shall receive an AAA rating (or equivalent) for political and economic stability from a nationally recognized credit rating service;

(6) Federal funds and Term Federal funds, as defined in § 615.5131(f) of this subpart, that are held either in federally insured depository institutions that maintain a rating of B/C or better, or with other government-sponsored enterprises. Federal funds and Term Federal funds shall not exceed 25 percent of the bank's total investment portfolio;

(7) Prime commercial paper, as defined by § 615.5131(o) of this subpart, shall not exceed 30 percent of the bank's total investment portfolio. In the event that the prime commercial paper is issued by a corporation located outside the United States, the country where the corporation is incorporated shall maintain a rating for political and economic stability of AAA or its equivalent by a nationally recognized credit rating service.

(8) Corporate debt obligations and ABSs, not to exceed 15 percent of the bank's investment portfolio, pursuant to the following requirements:

(i) Corporate debt obligations shall:

(A) Maintain at least a rating of AA, or its equivalent, by a nationally recognized credit rating service, and when applicable, the foreign country where the corporate debtor is incorporated shall maintain an AAA rating or its equivalent for political and economic stability;

(B) Qualify as a marketable investment pursuant to § 615.5131(i);

(C) Mature within 5 years or less from the time of purchase;

(D) Not be convertible into equity securities.

(ii) Asset-backed securities, as defined by § 615.5131(c) shall:

(A) Mature within 5 years or less from the time of purchase;

(B) Maintain at least a rating of AAA, or its equivalent, by a nationally recognized credit rating service.

(9) Repurchase agreements, as defined in § 615.5131(q), collateralized by eligible investments authorized by this section that mature within 100 days or less.

(10) Full faith and credit obligations of any State, territory, or possession of the United States, or political subdivision thereof, including any agency, corporation, or instrumentality of any State, territory, possession, or political subdivision thereof, provided that the obligations:

(i) Maintain at least a rating of A, or the equivalent, by a nationally recognized credit rating service;

(ii) Mature within 10 years from the date of purchase; and

(iii) Qualify as marketable investments within the meaning of § 615.5131(j) of this subpart.

(11) Other investments, as authorized by the Farm Credit Administration, that manifest the following characteristics:

(i) A short maturity;

(ii) Qualify as a marketable investment pursuant to § 615.5131(i) of this subpart;

(iii) Maintain a high investment rating by a nationally recognized credit rating service.

(b) Except for eligible investments covered by paragraphs (a)(1) and (2) of this section, each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall not invest more than twenty (20) percent of its total capital in eligible investments issued by any single institution, issuer, or obligor.

(c) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall perform ongoing evaluations of all eligible investments held in its portfolio. Each bank shall support its evaluation with the most recent credit rating of each investment by at least one nationally recognized credit rating service.

* * * * *

9. Newly designated § 615.5141 is revised to read as follows:

§ 615.5141 Association investment portfolios.

Each Farm Credit Bank and agricultural credit bank shall review annually as of June 30 or December 31 the investment portfolios of every Federal land bank association, production credit association, agricultural credit association, and Federal land credit association in the district. Associations are authorized to hold eligible investments pursuant to §§ 615.5140 and 615.5174 as authorized by their Farm Credit Bank or agricultural credit bank. Each Farm Credit Bank and agricultural credit bank shall assist the associations in managing their investment portfolios to reduce interest rate risk and to invest surplus short-term funds.

10. A new § 615.5142 is added to read as follows:

§ 615.5142 Disposal of ineligible investments.

(a) Any Farm Credit Bank, bank for cooperatives, or agricultural credit bank that holds investments that are not in compliance with § 615.5140 shall dispose of such investments within 6 months of the effective date of the final regulation unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank.

(b) Each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall dispose of investments that complied with § 615.5140 at the time of purchase, but subsequently became ineligible, within 6 months after the date that such investments became ineligible unless the director of the Office of Examination approves in writing a comprehensive written plan to comply with § 615.5140. The Office of Examination shall consider whether the proposed plan will enable the bank to dispose of impermissible investments within a reasonable period of time, without a substantial loss to the earnings or capital of the bank. Prior to the time that the investment is actually divested, the managers of the bank's investment portfolio shall report to the board of directors, at least quarterly, the status of the investment, including the conditions causing ineligibility, and divesture plans.

11. The heading for subpart F is revised to read as follows:

Subpart F—Property and Other Investments

12. Sections 615.5173 and 615.5174 are added to read as follows:

§ 615.5173 Stock of the Federal Agricultural Mortgage Corporation.

Banks and associations of the Farm Credit System are authorized to purchase and hold Class B common stock of the Federal Agricultural Mortgage Corporation pursuant to section 8.4 of the Farm Credit Act.

§ 615.5174 Mortgage-related securities issued or guaranteed by the Federal Agricultural Mortgage Corporation.

(a) Pursuant to sections 1.5(15), 3.1(13)(A), and 7.2(a) of the Farm Credit Act, Farm Credit Banks, banks for cooperatives, and agricultural credit banks are authorized to purchase and hold mortgage-backed securities (MBSs), as defined by § 615.5131(l), collateralized mortgage obligations (CMOs), as defined by § 615.5131(e), and Real Estate Mortgage Investment Conduits (REMICs), as defined by § 615.5131(p), that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation, in an amount that does not exceed 20 percent of the total outstanding loans of such banks.

(b) Eligible securities under paragraph (a) of this section shall be backed by either:

(1) Adjustable rate mortgages, as defined by § 615.5131(b), that have a repricing mechanism of 12 months or less that are tied to an index; or

(2) Fixed-rate mortgages.

(c) Stripped mortgage-backed securities, as defined in § 615.5131(r) of this part, including Interest Only (IO) and Principal Only (PO) classes, and residuals, as defined by § 615.5131(s) are not eligible investments for the purposes of this section;

(d) The board of directors of each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall adopt written policies and procedures that bank managers shall follow in purchasing, holding and managing eligible mortgage-related securities that are fully guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation. Quarterly reports about the performance of all investments in securities that are guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation shall be made to the board of directors. The board of directors of each Farm Credit Bank, bank for cooperatives, or agricultural credit bank shall, on an annual basis, review these policies and procedures, as well as the performance of eligible Federal Agricultural Mortgage Corporation securities that such bank holds as an investment pursuant to this section. At a minimum, the written policy should address:

(1) The purpose and objectives of the bank's investment in securities of the Federal Agricultural Mortgage Corporation;

(2) Parameters concerning the size, characteristics, and quality of guaranteed Federal Agricultural Mortgage Corporation securities that the Farm Credit bank shall purchase and hold. At a minimum, this policy should address:

(i) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by qualified agricultural mortgages, rural housing loans, and loans guaranteed by the Farmers' Home Administration pursuant to 7 U.S.C. 1921 *et seq.*

(ii) Product and geographic diversification in the loans that underlie the securities;

(iii) Minimum pool sizes, minimum number of loans in each pool, and maximum allowable premiums for CMOs, REMICs, and ARMs; and

(iv) The mix of guaranteed Federal Agricultural Mortgage Corporation securities that are collateralized by either fixed-rate loans or adjustable rate loans that reprice at least annually, based on changes in a published index.

(3) Delegation of authority to manage bank investments in guaranteed securities of the Federal Agricultural Mortgage Corporation to specific personnel or committees and a statement about the extent of their authority and responsibility.

(4) Permissible brokers, dealers, and other intermediaries for conducting purchase and sale transactions involving securities that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation;

(5) Controls to monitor the performance of the bank's investments in guaranteed Federal Agricultural Mortgage Corporation securities for the purposes of preventing loss, fraud, embezzlement, and unauthorized investments;

(6) Management of interest rate risk in these securities pursuant to paragraph (e) of this section;

(7) Procedures to prevent losses to the capital and earnings of the bank;

(8) Procedures for the orderly sales of these securities prior to maturity.

(e) Each Farm Credit Bank, bank for cooperatives, and agricultural credit bank shall manage interest rate risk inherent in guaranteed mortgage-related securities of the Federal Agricultural Mortgage Corporation pursuant to the written policy that its board of directors adopts under paragraph (c)(5) of this section, subject to the following requirements:

(1) The policy of the board of directors shall establish, pursuant to the following formula, the maximum level of interest rate risk exposure that the bank shall incur from CMOs and REMICs that are backed by fixed-rate mortgages:

(i) The expected weighted average life (WAL) of the instrument;

(ii) The maximum number of years that the expected WAL of these instruments will extend assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shorten assuming an immediate and sustained parallel shift in the yield curve of minus 300 basis points; and

(iii) The maximum change in the price of these securities due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(2) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are collateralized by fixed-rate agricultural loans, the board of directors of each Farm Credit bank shall implement a policy, pursuant to the requirements of paragraph (e)(1) of this section, where at the time of purchase or any quarter thereafter, the interest rate risk of the security never exceeds the interest rate risk in the underlying mortgages.

(3) For CMOs and REMICs that are guaranteed as to principal and interest by the Federal Agricultural Mortgage Corporation, and are exclusively collateralized by fixed-rate rural housing loans, the board of directors of each Farm Credit bank shall not, under any circumstances, implement a policy pursuant to paragraph (d)(1) of this section where, at the time of purchase or each quarter thereafter:

(i) The expected WAL of security exceeds 10 years;

(ii) The expected WAL of the security extends by more than 4 years, assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points, or shortens by more than 6 years assuming an immediate and sustained parallel shift in the yield curve of plus 300 basis points; or

(iii) The estimated change in the price of the security is more than 17 percent due to an immediate and sustained parallel shift in the yield curve of plus or minus 300 basis points.

(4) If at any time subsequent to purchase, a mortgage-related security that is guaranteed as to both principal and interest by the Federal Agricultural Mortgage Corporation no longer complies with the interest rate risk policy that the bank's board of directors adopted under paragraph (d)(1) of this section:

(i) The portfolio managers shall report to the board of directors about the status of the investment, and the conditions that are causing excessive interest rate risk in the security. The portfolio managers shall also recommend to the board of directors a comprehensive plan to prevent loss to the bank's capital and earnings.

(ii) The board of directors of each Farm Credit bank shall adopt and implement a comprehensive policy to prevent the investment from causing loss to the bank's capital and earnings. Any amendment to the plan shall also be approved by the bank's board of directors;

(iii) Until the security is actually divested, the portfolio managers shall report to the board of directors, at least quarterly, about changes in the status of the investment, and the effect of the policy to prevent loss to the bank's capital and earnings.

(iv) All documentation regarding the formulation, adoption, implementation,

and revision of the plan to prevent the security from causing loss to the bank's capital and earnings shall be available for review by the Office of Examination of the Farm Credit Administration.

Dated: November 18, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–29138 Filed 11–29–93; 8:45 am]

BILLING CODE 6705–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–NM–191–AD; Amendment 39–8748; AD 93–23–12]

Airworthiness Directives; Learjet Inc. Model 60 Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule; request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to all Learjet Model 60 airplanes. This action requires deactivation of the auxiliary cabin and cockpit heating systems and installation of placards. This amendment is prompted by a report of a fire in the aft fuselage, resulting from miswiring that was installed in an auxiliary cabin heater during manufacture. The actions specified in this AD are intended to prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire.

DATES: Effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 31, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Transport Airplane Directorate, ANM–103, Attention: Rules Docket No. 93–NM–191–AD, 1601 Lind Avenue SW., Renton, Washington 98055–4056.

The service information referenced in this AD may be obtained from Learjet Inc., P.O. Box 7707, Wichita, Kansas 67277–7707. This information may be examined at the FAA, Transport Airplane Directorate, 1601 Lind Avenue SW., Renton, Washington; or at the FAA, Small Airplane Directorate, Wichita Aircraft Certification Office (ACO), 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: C. Dale Bleakney, Aerospace Engineer, Systems and Equipment Branch, ACE–130W, FAA, Small Airplane Directorate, Wichita ACO, 1801 Airport Road, room 100, Mid-Continent Airport, Wichita, Kansas 67209; telephone (316) 946–4135; fax (316) 946–4407.

SUPPLEMENTARY INFORMATION: The FAA has recently received a report of a fire that broke out in the aft fuselage of a Learjet Model 60 airplane during regularly scheduled ground maintenance of the airplane. A short circuit occurred in the thermal fuses, which allowed electrical current to continue to flow to the auxiliary cabin and cockpit heaters. The heaters apparently had been wired incorrectly during manufacture; therefore, when overheating occurred, the fan turned off, but the heating elements still received power. The airplane manufacturer has confirmed other cases in its fleet of miswiring of these heaters during manufacture. Normally, these heaters are wired in such a manner that they will only operate on the ground. However, in light of this incident, it is possible that a miswired heater could operate while a Model 60 airplane is in-flight. This condition, if not corrected, could result in overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire.

The FAA has reviewed and approved Learjet Alert Service Bulletin SB A60–21–1, dated November 1, 1993, that describes procedures for deactivation of the auxiliary cabin and cockpit heating systems and installation of a placard that reads, "Cabin and Cockpit Heat Inop." The deactivation procedure entails disconnecting the electrical connectors or wiring to the auxiliary cabin and cockpit heaters. Accomplishment of this procedure will prevent overheating of the auxiliary cabin and cockpit heaters.

Since an unsafe condition has been identified that is likely to exist or develop on other Model 60 airplanes of the same type design, this AD is being issued to prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire. This AD requires deactivation of the auxiliary cabin and cockpit heating systems and installation of a placard stating, "Cabin and Cockpit Heat Inop." The actions are required to be accomplished in accordance with the service bulletin described previously.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications shall identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "**ADDRESSES**." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–NM–191–AD." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to

correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. It has been determined further that this action involves an emergency regulation under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979). If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93-23-12 Learjet Inc.: Amendment 39-8748. Docket 93-NM-191-AD.

Applicability: All Model 60 airplanes, certificated in any category.

Compliance: Required as indicated, unless accomplished previously.

To prevent overheating of the auxiliary cabin and cockpit heaters, which could potentially result in a fire, accomplish the following:

(a) Within 10 flight hours after the effective date of this AD, deactivate the auxiliary cabin and cockpit heating systems; and install a placard stating, "Cabin and Cockpit Heat Inop" adjacent to the AUX HT Switch (S44) on the co-pilot's switch panel; in accordance with Learjet Alert Service Bulletin SB A60-21-1, dated November 1, 1993.

(b) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Wichita Aircraft Certification Office (ACO), FAA, Small Airplane Directorate. Operators shall submit their requests through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Wichita ACO.

Note: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita ACO.

(c) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the requirements of this AD can be accomplished.

(d) The deactivation and placard installation shall be done in accordance with Learjet Alert Service Bulletin SB A60-21-1, dated November 1, 1993. This incorporation by reference was approved by the Director of the **Federal Register** in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Learjet Inc., P.O. Box 7707, Wichita, Kansas 67277-7707. Copies may be inspected at the FAA, Transport Airplane Directorate, 1601 Lind Avenue, SW., Renton, Washington; or at the FAA, Wichita ACO, 1801 Airport Road, Room 100, Mid-Continent Airport, Wichita, Kansas; or at the Office of the **Federal Register**, 800 North Capitol Street, NW., suite 700, Washington, DC.

(e) This amendment becomes effective on December 15, 1993.

Issued in Renton, Washington, on November 22, 1993.

Darrell M. Pederson,

Acting Manager, Transport Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93-29100 Filed 11-29-93; 8:45 am]

BILLING CODE 4910-13-P

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14 CFR Part 39

[Docket No. 93-ANE-58; Amendment 39-8745; AD 93-23-09]

Airworthiness Directives; Turbomeca Arriel 1 Series Turboshaft Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Final rule, request for comments.

SUMMARY: This amendment adopts a new airworthiness directive (AD) that is applicable to certain Turbomeca Arriel 1 series turboshaft engines. This action requires repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day. This amendment is prompted by a report of an engine failure due to cracking and axial movement of the 2nd stage nozzle guide vane causing a rub with the 2nd stage turbine disk. The actions specified in this AD are intended to prevent engine failure due to rubbing of the 2nd stage turbine nozzle guide vane with the 2nd stage turbine disk, which could result in complete engine failure and damage to the aircraft.

DATES: Effective December 15, 1993.

The incorporation by reference of certain publications listed in the regulations is approved by the Director of the Federal Register as of December 15, 1993.

Comments for inclusion in the Rules Docket must be received on or before January 31, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93-ANE-58, 12 New England Executive Park, Burlington, MA 01803-5299.

The service information referenced in this AD may be obtained from Turbomeca, 64511 Bordes Cedex, France. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street, NW., suite 700, Washington, DC.

FOR FURTHER INFORMATION CONTACT: Mark Rumizen, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803-5299; telephone (617) 238-7137, fax (617) 238-7199.

SUPPLEMENTARY INFORMATION: The Direction Generale de L'Aviation Civile (DGAC), which is the airworthiness authority for France, recently notified the Federal Aviation Administration (FAA) that an unsafe condition may exist on certain Turbomeca Arriel 1 series turboshaft engines. The DGAC advises that they have received a report of a Turbomeca Arriel 1B engine failure, which resulted in the crash of an Aerospatiale AS350B helicopter. Turbomeca's investigation revealed that the engine failed due to thermal low cycle fatigue cracking and associated displacement of the 2nd stage turbine nozzle guide vane, which resulted in rubbing with, and failure of, the 2nd stage turbine disk. This condition, if not corrected, could result in engine failure due to rubbing of the 2nd stage turbine nozzle guide vane with the 2nd stage turbine disk, which could result in complete engine failure and damage to the aircraft.

Turbomeca has issued Service Bulletin (SB) No. 292 72 0181, dated July 23, 1993, that specifies checking for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day. The cracking and axial movement of the 2nd stage nozzle guide vane rubbing with the 2nd stage turbine disk can be detected in advance of failure by determining if a rubbing noise exists during engine coastdown. The

DGAC classified this service bulletin as mandatory and issued AD 93–114(B) in order to assure the airworthiness of these Turbomeca Arriel 1 series turboshaft engines in France.

This engine model is manufactured in France and is type certificated for operation in the United States under the provisions of § 21.29 of the Federal Aviation Regulations and the applicable bilateral airworthiness agreement in effect at the time of type certification. The DGAC has kept the FAA informed of the situation described above. The FAA has examined the findings of the DGAC, reviewed all available information, and determined that AD action is necessary for products of this type design that are certificated for operation in the United States.

Since an unsafe condition has been identified that is likely to exist or develop on other Turbomeca Arriel 1 series turboshaft engines of the same type design registered in the United States, the AD would require repetitive checks for engine rubbing noise during gas generator shutdown, and for free rotation of the gas generator by rotating the compressor manually after the last flight of the day.

The checks for engine rubbing noise during gas generator shutdown must be accomplished daily for the Turbomeca Arriel turboshaft engines Models 1B that have modification TU 76 but do not have modification TU 197 or modification TU 202; and Arriel Models 1D and 1D1 that do not have modification TU 197 or modification TU 202. For Arriel Models 1A, 1A1, 1A2 that have modification TU 76 but do not have modification TU 197 or modification TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or modification TU 202; the checks for engine rubbing noise during shutdown must be accomplished at intervals not to exceed 50 hours time in service. For all affected models, however, the check for free rotation of the gas generator must be accomplished after the last flight of every day. Finally, a check for engine rubbing noise must be accomplished during each check for free rotation of the gas generator. If a rubbing noise is detected during any of the checks required by this AD, module M03 must be replaced with a serviceable part. The actions would be required to be accomplished in accordance with the service bulletin described previously.

This AD allows pilots to perform the checks for rubbing noises during gas generator shutdown. This action does not require special training beyond that already incurred by pilots of the aircraft having affected engines, or the use of tools, special measuring equipment, or reference to technical data. Accordingly, the FAA has determined that pilots may perform the checks required by paragraphs (a)(1) and (b)(1) and (2) of this AD as an exception to FAR 43.3 regarding the performance of maintenance.

Since a situation exists that requires the immediate adoption of this regulation, it is found that notice and opportunity for prior public comment hereon are impracticable, and that good cause exists for making this amendment effective in less than 30 days.

Comments Invited

Although this action is in the form of a final rule that involves requirements affecting flight safety and, thus, was not preceded by notice and an opportunity for public comment, comments are invited on this rule. Interested persons are invited to comment on this rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified under the caption "ADDRESSES." All communications received on or before the closing date for comments will be considered, and this rule may be amended in light of the comments received. Factual information that supports the commenter's ideas and suggestions is extremely helpful in evaluating the effectiveness of the AD action and determining whether additional rulemaking action would be needed.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the rule that might suggest a need to modify the rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this AD will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket Number 93–ANE–58." The postcard will be date stamped and returned to the commenter.

The regulations adopted herein will not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

The FAA has determined that this regulation is an emergency regulation that must be issued immediately to correct an unsafe condition in aircraft, and is not a "significant regulatory action" under Executive Order 12866. If it is determined that this emergency regulation otherwise would be significant under DOT Regulatory Policies and Procedures, a final regulatory evaluation will be prepared and placed in the Rules Docket. A copy of it, if filed, may be obtained from the Rules Docket at the location provided under the caption "ADDRESSES."

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Incorporation by reference, Safety.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration amends 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

93–23–09 Turbomeca: Amendment 39–8745. Docket 93–ANE–58.

Applicability: Turbomeca Arriel turboshaft engines Models 1B that do have modification TU 76 but do not have modification TU 197 or TU 202; Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; Arriel Models 1A, 1A1, 1A2 that have had modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have TU 197 or TU 202. These engines are installed on but not limited to Aerospatiale Models AS350B, SA365, and AS565 helicopters.

Compliance: Required as indicated, unless accomplished previously.

To prevent engine failure due to rubbing of the 2nd stage turbine nozzle guide vane with the 2nd stage turbine disk, which could result in engine failure and damage to the aircraft, accomplish the following:

(a) For Turbomeca Arriel turboshaft engines Models 1B that have modification

TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1D and 1D1 that do not have modification TU 197 or TU 202; accomplish the following:

(1) After the last flight of each day, perform a check for unusual engine rubbing noises during gas generator shutdown.

(2) After the last flight of each day check for free rotation of the gas generator by rotating the compressor manually in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(3) While checking for free rotation of the gas generator, perform a check for engine rubbing noise in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(b) For Turbomeca Arriel turboshaft engines Models 1A, 1A1, 1A2 that have modification TU 76 but do not have modification TU 197 or TU 202; and Arriel Models 1C, 1C1, and 1C2 that do not have modification TU 197 or TU 202; accomplish the following:

(1) Within 50 hours time in service (TIS) after the effective date of this AD, perform a check for unusual engine rubbing noise during gas generator shutdown.

(2) Thereafter, at intervals not to exceed 50 hours TIS since the last check, perform a check for unusual engine rubbing noise during gas generator shutdown.

(3) After the last flight of each day check for free rotation of the gas generator by rotating the compressor manually in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(4) While checking for free rotation of the gas generator, perform a check for engine rubbing noise in accordance with Section 2 of Turbomeca SB No. 292 72 0181, dated July 23, 1993.

(c) If any engine rubbing noise is detected during the checks required by paragraphs (a) and (b) of this AD, prior to further flight replace module M03 with a serviceable module.

(d) The checks required by paragraphs (a)(1) and (b)(1) and (2) of this AD may be performed by the pilot. The checks must be recorded in accordance with FAR § 43.9 and FAR § 91.417(a)(2)(v), and the records must be maintained as required by the applicable FAR.

(e) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(f) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

(g) The checks shall be done in accordance with the following service document:

Document No.	Pages	Revision	Date
Turbomeca SB 292 72 0181	1–3	Original	July 23, 1993 .

Total pages: 3.

This incorporation by reference was approved by the Director of the Federal Register in accordance with 5 U.S.C. 552(a) and 1 CFR part 51. Copies may be obtained from Turbomeca, 64511 Bordes Cedex, France. Copies may be inspected at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA; or at the Office of the Federal Register, 800 North Capitol Street NW., suite 700, Washington, DC.

(h) This amendment becomes effective on December 15, 1993. Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–29239 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–AGL–7]

Amended Class E2 Airspace Area; Dickinson, ND; Correction

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; correction.

SUMMARY: This action corrects an error in the airspace designation of the Dickinson, North Dakota, Class E2 airspace area published in a final rule on October 19, 1993, Airspace Docket Number 93–AGL–7.

EFFECTIVE DATE: 0901, UTC, March 3, 1994.

SUPPLEMENTARY INFORMATION:

History

Federal Register Document 93–25634, Airspace Docket 93–AGL–7, published on October 19, 1993, (58 FR 53859), modified the description of the Dickinson, North Dakota Class E2 airspace area. An error was discovered in the grammar used for the effective dates and times of the airspace. This action corrects that error by correcting the grammar in the effective dates and times of the airspace. This change does not affect the description of the Class E2 airspace area.

Correction to Final Rule

Accordingly, pursuant to the authority delegated to me, the airspace designation for the Dickinson, North Dakota, Class E2 airspace, as published in the **Federal Register** on October 19, 1993 (58 FR 53859), (**Federal Register** Document 93–25634; page 53859, column 3), is corrected in the amendment to the incorporation by reference 14 CFR 71.1 as follows:

PART 71.1—[CORRECTED]

Paragraph 6002 Class E airspace areas designated as a surface area for an airport.

* * * * *

AGL ND E2 Dickinson, ND [Corrected]

By replacing the word "terms" in the last sentence with the word "times".

* * * * *

Issued in Des Plaines, Illinois on November 16, 1993.

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–29290 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 97

[Docket No. 27530; Amdt. No. 1573]

Standard Instrument Approach Procedures; Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of the adoption of new or revised criteria, or because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference—approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matters incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which the affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, U.S. Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description of each SIAP is contained in official FAA form documents which are incorporated by reference in this amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviation Regulations (FAR). The applicable FAA Forms are identified as FAA Forms 8260–3, 8260–4, and 8260–5. Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction on charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

This amendment to part 97 is effective upon publication of each separate SIAP as contained in the transmittal. Some SIAP amendments may have been previously issued by the FAA in a National Flight Data Center (FDC) Notice to Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for some SIAP amendments may require making them effective in less than 30 days. For the remaining SIAPs, an effective date at least 30 days after publication is provided.

Further, the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these SIAPs, the TERPS criteria were applied to the conditions existing or anticipated at the affected airports. Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making some SIAPs effective in less than 30 days.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Airports, Incorporation by reference, Navigation (Air), Standard instrument approaches, Weather.

Issued in Washington, DC on November 19, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (Revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49(b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

* * * *Effective February 3, 1994*

Monroeville, AL, Monroe County, VOR RWY 3, Amdt. 8
Monroeville, AL, Monroe County, VOR RWY 21, Amdt. 8
Charlotte, NC, Charlotte/Douglas Intl, VOR/DME RWY 18R, Amdt. 6
Charlotte, NC, Charlotte/Douglas Intl, LOC BC RWY 23, Amdt. 9
Dayton, TN, Mark Anton, VOR/DME–A, Amdt. 2, CANCELLED
Dayton, TN, Mark Anton, NDB RWY 3, Amdt. 1
Dayton, TN, Mark Anton, RNAV RWY 21, Amdt. 1, CANCELLED

* * * *Effective January 6, 1994*

Mount Sterling, IL, Mount Sterling Muni, VOR/DME–A, Orig.
Indianapolis, IN, Indianapolis Terry, VOR RWY 36, Amdt. 8
Indianapolis, IN, Indianapolis Terry, NDB RWY 36, Amdt. 4
Indianapolis, IN, Indianapolis Terry, ILS RWY 36, Amdt. 4
Indianapolis, IN, Indianapolis Terry, VOR/DME RNAV RWY 18, Amdt. 6

Great Bend, KS, Great Bend Muni, NDB–A, Amdt. 5
Great Bend, KS, Great Bend Muni, NDB RWY 35, Amdt. 2
Iola, KS, Allen County, NDB RWY 35, Amdt. 1, CANCELLED
Louisville, KY, Bowman Field, VOR RWY 14, Amdt. 9
Louisville, KY, Bowman Field, VOR RWY 24, Amdt. 6
Louisville, KY, Bowman Field, VOR RWY 32, Amdt. 14
Louisville, KY, Bowman Field, NDB RWY 32, Amdt. 15
Frenchville, ME, Northern Aroostook Regional, NDB RWY 32, Amdt. 4
Waterville, ME, Waterville Robert Lafleur, VOR/DME RWY 5, Amdt. 7
Waterville, ME, Waterville Robert Lafleur, NDB RWY 5, Amdt. 1
Waterville, ME, Waterville Robert Lafleur, ILS RWY 5, Amdt. 2
Greenville, MI, Greenville Muni, VOR/DME A, Orig.
Moose Lake, MN, Moose Lake Carlton County, NDB RWY 4, Orig.
Kansas City, MO, Kansas City Intl, ILS RWY 19R, Amdt. 9
Claremont, NH, Claremont Muni, NDB–A, Orig.
Ithaca, NY, Tompkins County, ILS RWY 32, Amdt. 4
Tiffin, OH, Seneca County, VOR RWY 6, Amdt. 8
Tiffin, OH, Seneca County, NDB RWY 24, Amdt. 7
Goldsby, OK, David Jay Perry, VOR/DME RWY 31, Orig.
Cumberland, WI, Cumberland Muni, VOR/DME RWY 27, Amdt. 2
Cumberland, WI, Cumberland Muni, NDB RWY 9, Amdt. 1
Fort Atkinson, WI, Fort Atkinson Muni, VOR–A, Orig.
Land O'Lakes, WI, Kings Land O'Lakes, NDB RWY 14, Amdt. 8
Manitowish Waters, WI, Manitowish Waters, NDB RWY 32, Orig.

* * * *Effective December 9, 1993*

Jonesboro, AR, Jonesboro Muni, ILS RWY 23, Orig.
San Bernardino, CA, San Bernardino International, ILS RWY 6, Orig.
Chicago, IL, Chicago-O'Hare Intl, ILS RWY 32R, Amdt. 20
Indianapolis, IN, Indianapolis Intl, ILS RWY 23R, Amdt. 9
Kansas City, MO, Kansas City Int'l, ILS RWY 19L, Orig.
San Angelo, TX, Mathis Field, Radar–1, Orig.

* * * *Effective November 15, 1993*

Fredericksburg, VA, Shannon, VOR RWY 24, Amdt. 7
Fredericksburg, VA, Shannon, NDB RWY 24, Amdt. 1

* * * *Effective November 11, 1993*

Tuscaloosa, AL, Tuscaloosa Muni, ILS RWY 4, Amdt. 14

* * * *Effective November 9, 1993*

Chicago, IL, Chicago Midway, VOR/DME RNAV RWY 22L, Amdt. 3

[FR Doc. 93–29292 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 97

[Docket No. 27531; Amdt. No. 1574]

Standard Instrument Approach Procedures: Miscellaneous Amendments

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This amendment establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs) for operations at certain airports. These regulatory actions are needed because of changes occurring in the National Airspace System, such as the commissioning of new navigational facilities, addition of new obstacles, or changes in air traffic requirements. These changes are designed to provide safe and efficient use of the navigable airspace and to promote safe flight operations under instrument flight rules at the affected airports.

DATES: *Effective:* An effective date for each SIAP is specified in the amendatory provisions.

Incorporation by reference-approved by the Director of the Federal Register on December 31, 1980, and reapproved as of January 1, 1982.

ADDRESSES: Availability of matter incorporated by reference in the amendment is as follows:

For Examination—

1. FAA Rules Docket, FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591;
2. The FAA Regional Office of the region in which affected airport is located; or
3. The Flight Inspection Field Office which originated the SIAP.

For Purchase—

Individual SIAP copies may be obtained from:

1. FAA Public Inquiry Center (APA–200), FAA Headquarters Building, 800 Independence Avenue, SW., Washington, DC 20591; or
2. The FAA Regional Office of the region in which the affected airport is located.

By Subscription—

Copies of all SIAPs, mailed once every 2 weeks, are for sale by the Superintendent of Documents, US Government Printing Office, Washington, DC 20402.

FOR FURTHER INFORMATION CONTACT: Paul J. Best, Flight Procedures Standards Branch (AFS–420), Technical Programs Division, Flight Standards Service, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–8277.

SUPPLEMENTARY INFORMATION: This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes Standard Instrument Approach Procedures (SIAPs). The complete regulatory description on each SIAP is contained in the appropriate FAA Form 8260 and the National Flight Data Center (FDC)/Permanent (P) Notices to Airmen (NOTAM) which are incorporated by reference in the amendment under 5 U.S.C. 552(a), 1 CFR part 51, and § 97.20 of the Federal Aviations Regulations (FAR). Materials incorporated by reference are available for examination or purchase as stated above.

The large number of SIAPs, their complex nature, and the need for a special format make their verbatim publication in the **Federal Register** expensive and impractical. Further, airmen do not use the regulatory text of the SIAPs, but refer to their graphic depiction of charts printed by publishers of aeronautical materials. Thus, the advantages of incorporation by reference are realized and publication of the complete description of each SIAP contained in FAA form documents is unnecessary. The Provisions of this amendment state the affected CFR (and FAR) sections, with the types and effective dates of the SIAPs. This amendment also identifies the airport, its location, the procedure identification and the amendment number.

The Rule

This amendment to part 97 of the Federal Aviation Regulations (14 CFR part 97) establishes, amends, suspends, or revokes SIAPs. For safety and timeliness of change considerations, this amendment incorporates only specific changes contained in the content of the following FDC/P NOTAM for each SIAP. The SIAP information in some previously designated FDC/Temporary (FDC/T) NOTAMs is of such duration as to be permanent. With conversion to FDC/P NOTAMs, the respective FDC/T NOTAMs have been cancelled. The FDC/P NOTAMs for the SIAPs contained in this amendment are based on the criteria contained in the U.S. Standard for Terminal Instrument Approach Procedures (TERPs). In developing these chart changes to SIAPs by FDC/P NOTAMs, the TERPs criteria were applied to only these specific

conditions existing at the affected airports.

This amendment to part 97 contains separate SIAPs which have compliance dates stated as effective dates based on related changes in the National Airspace System or the application of new or revised criteria. All SIAP amendments in this rule have been previously issued by the FAA in a National Flight Data Center (FDC) Notice Airmen (NOTAM) as an emergency action of immediate flight safety relating directly to published aeronautical charts. The circumstances which created the need for all these SIAP amendments requires making them effective in less than 30 days.

Further, the SIAPs contained in this amendment are based on the criteria contained in the US Standard for Terminal Instrument Approach Procedures (TERPs). Because of the close and immediate relationship between these SIAPs and safety in air commerce, I find that notice and public procedure before adopting these SIAPs are unnecessary, impracticable, and contrary to the public interest and, where applicable, that good cause exists for making these SIAPs effective in less than 30 days.

Conclusion

The FAA has determined that this regulation only involves and established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. For the same reason, the FAA certifies that this amendment will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 97

Air traffic control, Standard Instrument Approaches, Incorporation by reference, Navigation (Air), Weather.

Issued in Washington, DC on November 19, 1993.

Thomas C. Accardi,

Director, Flight Standards Service.

Adoption of the Amendment

Accordingly, pursuant to the authority delegated to me, part 97 of the Federal Aviation Regulations (14 CFR part 97) is amended by establishing, amending, suspending, or revoking Standard Instrument Approach Procedures, effective at 0901 UTC on the dates specified, as follows:

PART 97—STANDARD INSTRUMENT APPROACH PROCEDURES

1. The authority citation for part 97 continues to read as follows:

Authority: 49 U.S.C. App. 1348, 1354(a), 1421 and 1510; 49 U.S.C. 106(g) (revised Pub. L. 97–449, January 12, 1983); and 14 CFR 11.49 (b)(2).

2. Part 97 is amended to read as follows:

§§ 97.23, 97.25, 97.27, 97.29, 97.31, 97.33, and 97.35 [Amended]

By amending: § 97.23 VOR, VOR/DME, VOR or TACAN, and VOR/DME or TACAN; § 97.25 LOC, LOC/DME, LDA, LDA/DME, SDF, SDF/DME; § 97.27 NDB, NDB/DME; § 97.29 ILS, ILS/DME, ISMLS, MLS, MLS/DME, MLS/RNAV; § 97.31 RADAR SIAPs; § 97.33 RNAV SIAPs; and § 97.35 COPTER SIAPs, identified as follows:

Effective	State	City	Airport	FDC No.	SIAP
11/03/93	AL	Selma	Craig Field	FDC 3/6018	ILS Rwy 32 Orig–A...
11/08/93	CA	Ontario	Ontario Intl	FDC 3/6089	ILS Rwy 26L Amdt 6...
11/08/93	CA	Redding	Redding Muni	FDC 3/6088	LOC/DME BC Rwy 16 Amdt 6...
11/08/93	CA	Sacramento	Sacramento Metropolitan	FDC 3/6090	ILS Rwy 16R Amdt 12...
11/09/93	IL	Chicago	Chicago Midway	FDC 3/6106	ILS Rwy 31C, Amdt 5...
11/09/93	IL	Chicago	Chicago Midway	FDC 3/6114	VOR/DME RNAV Rwy 22L Amdt 2...
11/09/93	LA	Alexandria	Alexandria Esler Regional	FDC 3/6101	NDB Rwy 26 Amdt 7B...
11/09/93	LA	Opelousas	St. Landry Parish-Ahart Field	FDC 3/6102	NDB Rwy 17 Amdt 1...
11/09/93	LA	Winnfield	David G. Joyce	FDC 3/6100	NDB Rwy 8 Amdt 2A...
11/09/93	MO	Kansas City	Kansas City Downtown	FDC 3/6108	ILS Rwy 3, Amdt 1B...
11/09/93	OK	Tulsa	Tulsa Intl	FDC 3/6111	VOR/DME or TACAN Rwy 8 Amdt 3...
11/09/93	OK	Tulsa	Tulsa Intl	FDC 3/6112	RADAR–1 Amdt 16...
11/10/93	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6126	ILS Rwy 5L Amdt 3...
11/10/93	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6127	ILS Rwy 5R Amdt 25...
11/10/93	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6128	ILS Rwy 23L Amdt 5...
11/10/93	NC	Raleigh-Durham	Raleigh-Durham Intl	FDC 3/6129	ILS Rwy 23R Amdt 8...
11/10/93	NE	Omaha	Eppley Airfield	FDC 3/6134	ILS Rwy 14R Amdt 3...
11/12/93	CO	Montrose	Montrose Regional	FDC 3/6175	ILS/DME Rwy 17, Orig...
11/15/93	VA	Fredericksburg	Shannon	FDC 3/6206	VOR Rwy 23, Amdt 6...

[FR Doc. 93-29293 Filed 11-29-93; 8:45 am]
BILLING CODE 4210-13-M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Housing Federal Housing Commissioner

24 CFR Part 207

[Docket No. R-93-1635; FR-3393-F-02]

RIN 2502-AF95

Expedited Procedures for RTC Multifamily Properties

AGENCY: Office of the Assistant Secretary for Housing—Federal Housing Commissioner, HUD.

ACTION: Final rule.

SUMMARY: The Department adopts as a final rule the interim rule which implements section 512 of the Housing and Community Development Act of 1992. Section 512 requires that the Secretary promulgate regulations to expedite the procedure for processing applications for FHA insurance for multifamily residential properties purchased from and owned by the Resolution Trust Corporation (RTC).

EFFECTIVE DATE: December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Jessica Franklin, Director, Policies and Procedures Division, Office of Insured Multifamily Housing Development, 451 Seventh Street, SW., Washington, DC 20410-0500, telephone: voice (202) 708-2556; the telecommunications device for the deaf (TDD) telephone number is (202) 708-4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION:

I. Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501-3520), the information collection requirements have been assigned OMB Control Number 2502-0490.

II. Background

Section 512 of the Housing and Community Development Act of 1992, Pub. L. 102-550, approved October 28, 1992 (HCD Act of 1992), requires that HUD establish an expedited procedure to assist the RTC in disposing of property in which the RTC acquires title and to ensure the timely processing of applications for loans and mortgages that will be used to purchase multifamily residential property from the RTC.

In compliance with section 512 of the HCD Act of 1992, the Department published an interim rule on February 22, 1993 (58 FR 9541) which authorized the FHA Commissioner to accept an RTC-prepared report of required repairs, additional improvements proposed by the sponsor, cost estimate of the work, and real estate appraisal—if the RTC-prepared report is completed in accordance with HUD program requirements.

In the interim rule, we explained that upon receiving an application for mortgage insurance under section 207 pursuant to section 223(f), HUD usually performs an architectural inspection of the property. During this inspection, HUD determines the required repairs and replacements necessary to place the property in an acceptable condition; assesses additional sponsor proposed improvements; determines the cost of such work; performs an environmental assessment of the site and neighborhood; and performs a real estate appraisal of the property to establish the maximum mortgage amount.

The Department either performs these tasks with its own staff, or contracts, on a project basis, with a technical discipline contractor or a delegated processor to perform some or all of these tasks, except for the environmental assessment. HUD does not use contract services for the environmental assessment.

In addition to preparing the environmental assessment when the Department uses contract services, the Department also reviews the work of the contract technical discipline or delegated processor; makes any necessary corrections to the work; makes the final underwriting decision; and determines whether to issue a conditional or firm commitment, as applicable.

The RTC also performs an architectural inspection of the property to establish required repairs and repair costs, a phase 1 environmental site assessment, and a real estate appraisal of the property.

To eliminate this duplication of work, the Department implemented the interim rule which, with some restrictions, authorizes the FHA Commissioner to accept the RTC-prepared reports. Under the interim rule, the FHA Commissioner is authorized to accept an RTC-prepared report of required repairs, additional improvements proposed by the sponsor, cost estimate of the work, and real estate appraisal—if the RTC-prepared report is completed in accordance with HUD program requirements. In the interim rule, and this final rule, HUD retains the absolute right to review the RTC-prepared report in the same manner as a report prepared under HUD contract with a technical discipline contractor or a delegated processor. If HUD determines that any RTC-prepared report is unacceptable, HUD will prepare a new report.

Although this rule allows the Department to use the RTC environmental assessment report, the Department will continue to perform its own environmental assessment. HUD is merely using the RTC-prepared report to assist the HUD appraiser in completing the HUD environmental assessment. The Department will also continue to make the final underwriting determination, as currently is done when the Department uses contract services.

Finally, this expedited procedure only applies to projects covered by section 512 of the HCD Act of 1992, i.e. multifamily residential properties purchased from the RTC. This rule does not make the RTC a delegated processor for projects that are not within the scope of section 512. However, this expedited procedure may apply to the refinancing of an RTC project to retire an RTC bridge loan on the initial purchase transaction.

III. Discussion of Public Comments from Proposed Rule

The Department received one public comment from a nonprofit developer. The following discussion summarizes that comment and provides HUD response. The commenter believed that the interim rule will assist an applicant in getting the application for FHA insurance to HUD. However, the commenter felt that the interim rule will do little to actually expedite HUD's review of the mortgage insurance application, and that HUD had not fully utilized the broad discretion granted the Department by the statute.

The Department does not agree. The interim rule provides the means for reducing the period required by HUD to review section 223(f) applications for mortgage insurance for RTC held/sold multifamily properties. This is done by allowing the RTC to complete reports consistent with HUD program and underwriting standards, thereby eliminating the need for HUD to perform duplicate field work and report preparation. Moreover, under existing procedures, the RTC may apply for a conditional commitment on properties for which it expects section 223(f) mortgage insurance to be utilized. This existing procedure permits HUD to complete all property reviews before the

RTC secures a project buyer, leaving only buyer qualification and the closing documents for review after the RTC secures a project buyer.

The commenter also proposed that the Department accelerate the application review process by treating an FHA insurance application for a property held by the RTC with the same priority given to section 202 applications in the past. The commenter believes that giving priority to RTC held properties will allow the RTC to dispose of its multifamily residential property significantly faster.

The Department's practice is to review applications as they are submitted. On occasion priority guidelines have been issued by a Notice to the Regional and Field Offices. These are to address short term problems, such as unusually heavy workloads, or to remedy inordinate pipeline delays in certain programs, including the section 202 loan program. Notices are short-lived with a one-year maximum effective period. As such, any priority guidelines are only in effect long enough to address an immediate problem or concern.

Establishing regulatory provisions giving application review preference for one category of section 223(f) mortgage insurance applicants over other section 223(f) mortgage insurance applicants, and over applicants under other programs does not appear to be supported by the text of section 512 of the HCD Act of 1992, nor congressional comment leading to its enactment.

The Department believes that application processing on the basis of the application submission date (first-come, first-served) is the most equitable procedure. The Department will, however, continue to issue short term priority guidelines in the future, where an emergency or other condition warrants prioritized staffing attention.

As a final comment, the commenter suggested that HUD refrain from using delegated processing for RTC project loans unless an expedited process is developed. The commenter stated that in its experience delegated processing actually slows down the procedure for processing FHA insured mortgages.

Delegated processing was authorized by section 328 of the Cranston-Gonzalez Affordable Housing Act of 1990, and was implemented in April 1991. It provides a system of mortgage insurance for mortgages insured under section 207, 221, 223, 232 and 241 that delegates processing functions (application review) to selected approved mortgagees. This system allows use of contract services for application review, where the workload exceeds staffing capabilities. Technical Disciplines Contracting also provides Field Offices with an additional contracting tool for bridging staffing limitations. In selecting the means for reviewing applications, Field Offices must consider overall workloads, project location in relation to the Field Office and the location of other projects in the pipeline, and the skills needed for a particular application in relation to available staff.

There is a learning period for any new program, including delegated processing. Currently, however, delegated processing is relied upon by many Field Offices for project application review. The suggested regulatory restrictions against the use of delegated processing for certain categories of section 223(f) projects appear inconsistent with section 328 of the Cranston-Gonzalez National Affordable Housing Act of 1990. It would also deny Field Offices the ability to accomplish application review responsibilities, where other means might not be readily available. The Department concludes that the Field Offices must have full use of delegated processing for the programs for which it is currently authorized in order to effectively manage the workloads of the Field Offices.

IV. Other Matters

A. Executive Order 12866

This rule was reviewed and approved without change by the Office of Management and Budget (OMB) under Executive Order 12866 on Regulatory Planning and Review, issued by the President on September 30, 1993.

B. Regulatory Flexibility Act

The Secretary in accordance with the Regulatory Flexibility Act (5 U.S.C. 605(b)), has reviewed and approved this rule, and in so doing certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule only affects mortgagor entities that purchase multifamily properties from RTC. Such entities will not constitute a significant number of the mortgagors of FHA-insured mortgages.

C. Environmental Impact

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environmental Policy Act of 1969. The finding is available for public inspection during regular business hours in the Office of General Counsel, the Rules Docket Clerk, room 10276, 451 Seventh Street, SW, Washington, D.C. 20410.

D. Executive Order 12612, Federalism

The General Counsel, as the Designated Official under section 6(a) of Executive order 12612, Federalism, has determined that the policies contained in this rule will not have substantial direct effects on states or their political subdivisions, or the relationship between the Federal government and the states, or on the distribution of power and responsibilities among the various levels of government. Specifically, the rule is directed to borrowers and RTC, and will not impinge upon the relationship between the Federal Government and State and local governments. As a result, the rule is not subject to review under the order.

E. Executive Order 12606, The Family

The General Counsel, as the Designated Official under Executive Order 12606, The Family, has determined that this rule does not have potential for significant impact on family formation, maintenance, and general well-being, and, thus, is not subject to review under the order. No significant change in existing HUD policies or programs will result from promulgation of this rule, as those policies and programs relate to family concerns.

F. Regulatory Agenda

This rule was listed as item no. 1534 in the Department's Semiannual Agenda of Regulations published on October 25, 1993 (58 FR 56402, 56429) in accordance with Executive Order 12866 and the Regulatory Flexibility Act.

G. The Catalog of Federal Domestic Assistance program numbers are 14.134 and 14.555.

List of Subjects in 24 CFR Part 207

Manufactured homes, Mortgage insurance, Reporting and recordkeeping requirements, Solar energy.

Final Rule

Accordingly, the interim rule which amends title 24 of the Code of Federal Regulations to add a new paragraph (n) to § 207.32a, which was published on February 22, 1993 at 58 FR 9541, is hereby adopted as a final rule, and is amended by adding the OMB approval number to the end of the section to read as follows:

§ 207.32a [Amended]

(Approved by the Office of Management and Budget under control number 2502–0490).

Authority: 12 U.S.C. 1701z-11(e), 1713, 1715b, and 1735f-12; 42 U.S.C. 3535(d).

Dated: November 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing, Federal Housing Commissioner.

[FR Doc. 93-29227 Filed 11-29-93; 8:45 am]

BILLING CODE 4210-27-P

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40, 48, and 602

[T.D. 8496]

RIN 1545-AS13

Diesel Fuel Excise Tax; Registration Requirements Relating to Gasoline and Diesel Fuel Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Temporary regulations.

SUMMARY: This document contains temporary regulations relating to the tax on diesel fuel and registration requirements for the gasoline and diesel fuel excise taxes. The temporary regulations reflect and implement certain changes made by the Omnibus Budget Reconciliation Act of 1990 (the 1990 Act) and the Omnibus Budget Reconciliation Act of 1993 (the 1993 Act). The temporary regulations affect certain blenders, enterers, refiners, terminal operators, throughputters and persons that sell, buy, or use diesel fuel for a nontaxable use. The text of these temporary regulations also serves as the text of the proposed regulations set forth in the notice of proposed rulemaking on this subject in the Proposed Rules section of this issue of the **Federal Register**.

EFFECTIVE DATE: These regulations are effective January 1, 1994.

ADDRESSES: Send comments to: CC:DOM:CORP:T:R (PS-52-93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, comments may be hand delivered to: CC:DOM:CORP:T:R (PS-52-93), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW, Washington, DC 20224.

FOR FURTHER INFORMATION CONTACT: Frank Boland (202) 622-3130 (not a toll-free call).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

These regulations are being issued without prior notice and public procedure pursuant to the Administrative Procedure Act (5 U.S.C. 553). For this reason, the collections of information contained in these regulations have been reviewed and, pending receipt and evaluation of public comments, approved by the Office of Management and Budget under control number 1545-1418. The estimated annual burden per respondent or recordkeeper varies from 2 hours to .1 hour, depending on individual circumstances, with an estimated average of .1 hour.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual respondents or recordkeepers may require more or less time, depending on their particular circumstances.

For further information concerning this collection of information, and where to submit comments on this collection of information, the accuracy of the estimated burden, and suggestions for reducing this burden, please refer to the preamble to the cross-referencing notice of proposed rulemaking published in the Proposed Rules section of this issue of the **Federal Register**.

Background

On August 26, 1993, the IRS published in the **Federal Register** (58 FR 45081) an advance notice of proposed rulemaking (ANPRM) that invited comments from the public on any issue that should be addressed in regulations relating to the 1993 Act's changes to the diesel fuel tax. The IRS received a number of comments in response to the ANPRM that were considered in drafting these temporary regulations.

This document contains temporary regulations that are effective January 1, 1994. It provides rules relating to the imposition of, and liability for, the diesel fuel tax under section 4081; the exemption for dyed diesel fuel; the back-up tax on dyed fuel used for a taxable purpose; credits and payments relating to taxed diesel fuel used for a nontaxable purpose; and registration requirements relating to both the diesel fuel and gasoline taxes. A future notice of proposed rulemaking will propose conforming amendments to the gasoline tax regulations (§§ 48.4081-1 through 48.4081-8) so that those rules will also generally apply to diesel fuel.

Fuel Distribution System and Structure of the Diesel Fuel Tax Under the Internal Revenue Code (Code)

Diesel fuel and gasoline generally are distributed from refineries and points of entry into the United States through the "bulk transfer/terminal system" to wholesale distributors and then to retailers. For a further description of this distribution system, see the preamble to the proposed gasoline regulations that were published in the **Federal Register** on August 27, 1991 (56 FR 42287).

Pre-1994. Before January 1, 1994, the federal diesel fuel tax is imposed by section 4091. Tax is imposed on the sale of diesel fuel by the producer or importer thereof. A producer is defined in section 4092 to include a registered wholesale distributor. Thus, in practice, tax is not imposed until a registered wholesale distributor sells the diesel fuel to a retailer or at the wholesaler's own retail pumps.

A producer or importer that is registered by the IRS can sell diesel fuel tax free to (1) other registered producers, (2) registered heating oil retailers for resale for use as heating oil, and (3) a buyer for any of the following uses by the buyer: (a) Use other than as a fuel in a diesel-powered highway vehicle or diesel-powered train, (b) an off-highway business use, (c) use on a farm for farming purposes, (d) the exclusive use of a State or local government, (e) export, (f) the exclusive use of a nonprofit educational organization, (g) in certain aircraft museum uses, and (h) use in certain school buses and qualified local buses. A reduced rate of tax applies to a producer's sale for use by the buyer in trains and certain intercity buses.

Congress has found that considerable evasion may be occurring under the pre-1994 taxing structure. See Shortfall in Highway Trust Fund Collections: Hearing before the Subcommittee on Investigations and Oversight of the House Committee on Public Works and Transportation, 102d Cong., 2d Sess. (1992). Congress sought to correct the weaknesses of pre-1994 law by amendments made to the Code by section 13242 of the 1993 Act.

After 1993. Effective January 1, 1994, the 1993 Act amends section 4081 to impose the diesel fuel tax in the same manner as the gasoline tax. Thus, tax will be imposed on (1) the removal of gasoline and diesel fuel (collectively *taxable fuel*) from any refinery, (2) the removal of taxable fuel from any terminal, (3) the entry of taxable fuel into the United States for consumption, use, or warehousing, and (4) the sale of taxable fuel to an unregistered person unless there was a prior taxable removal, entry, or sale of the taxable fuel. However, the tax will not apply to any entry or removal of taxable fuel transferred in bulk to a refinery or

terminal if the persons involved (including the terminal operator) are registered.

Under section 4081, there are no nonbulk removals or entries of gasoline that are exempt from tax. However, under section 4082, as amended by the 1993 Act, the tax under section 4081 does not apply to diesel fuel that (1) the IRS determines is destined for a nontaxable use (such as use on a farm for farming purposes), (2) is indelibly dyed in accordance with IRS regulations, and (3) meets any marking requirements that may be prescribed in regulations. For this purpose, nontaxable use generally includes the same uses that are exempt from tax under pre-1994 law, plus certain uses that are taxed at a reduced rate (use in any train and in certain buses). However, under section 6421, as amended by section 13163 of the 1993 Act, diesel fuel used in noncommercial boats is no longer exempt from tax. The pre-1994 exemption continues, however, for diesel fuel used in boats for commercial fishing, transportation of persons or property for compensation or hire, or for business use other than use predominantly for entertainment, amusement, or recreation.

If diesel fuel that was exempt from tax under section 4082 is later sold for use or used for a purpose that is not a nontaxable use (for example, use as a fuel in a registered diesel-powered highway vehicle), revised section 4041(a)(1) imposes a tax on such sale or use. A reduced rate of tax applies to diesel fuel sold for use or used as a fuel in trains and certain intercity buses.

New section 6714 imposes an assessable penalty if (1) any dyed fuel is sold or held for sale by any person for any use that such person knows or has reason to know is not a nontaxable use of such fuel, (2) any dyed fuel is held for use or used by any person for a use other than a nontaxable use and such person knew, or had reason to know, that such fuel was so dyed, or (3) any person willfully alters, or attempts to alter, the strength or composition of any dye or marker in any dyed fuel. Under this section, dyed fuel means any dyed diesel fuel, whether or not dyed pursuant to section 4082.

The amount of the penalty is $10 for every gallon of fuel involved or $1,000, whichever is greater. The penalty increases with subsequent violations by multiplying the penalty amount by the number of prior violations. Also, if the penalty is imposed on any business entity, each officer, employee, or agent of the entity who willfully participated in any act giving rise to the penalty is jointly and severally liable with the entity for the penalty.

As under pre-1994 law, a credit or payment may be allowed if diesel fuel on which tax has been imposed is used in a nontaxable use. Under pre-1994 law, only the ultimate purchaser of the fuel (that is, the person that bought the fuel for consumption or export and not for resale) is eligible to claim the credit or payment. If at least $750 is payable to a purchaser at the end of any of the first three quarters of its income tax year, the purchaser may make a quarterly claim for that payment if the claim is filed during the first quarter following the last quarter included in the claim. Any amounts not claimed for these quarters and any amounts for the fourth quarter of the claimant's income tax year generally must be claimed as a credit against the claimant's income tax.

The 1993 Act continues these rules after 1993 except for taxed fuel used on a farm for farming purposes or by a State or local government. In these two cases, revised section 6427(l) provides that only the registered ultimate vendor of diesel fuel (rather than the farmer or governmental unit) may obtain the credit or payment. The ultimate vendor may file a claim for any period for which $200 or more is payable and which is not less than one week. The claim must be filed by the end of the quarter following the earliest quarter included in the claim. If the claim is not paid within 20 days after it is filed, interest will be paid on the claim.

The 1993 Act gives the IRS additional authority to enforce the diesel fuel tax. For example, new section 4083(c) provides that the IRS has the authority to inspect terminals, dyes and dyeing equipment, and fuel storage facilities; to stop, detain and inspect vehicles; and to establish inspection sites. Also, new section 4082(c) provides that the IRS may require conspicuous labeling of retail diesel fuel pumps and other delivery facilities where dyed diesel fuel is dispensed.

Explanation of the Temporary Regulations; Diesel Fuel Tax

Definition of diesel fuel. The temporary regulations define diesel fuel as any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of the vehicle, train, or boat.

Kerosene is not treated as diesel fuel before July 1, 1994. Thus, the dyeing requirements of the temporary regulations do not apply to kerosene. However, a person that blends previously-taxed diesel fuel with kerosene outside the bulk transfer/terminal system is liable for tax on its removal or sale of the resulting blend. Only the untaxed portion of the mixture (that is, the added kerosene) is subject to tax.

Comments are requested on the treatment of kerosene after June 30, 1994.

Imposition of tax; the position holder rule. As under the gasoline tax regulations, these temporary regulations provide that tax is imposed on diesel fuel removed from the terminal at the rack. The position holder is liable for this tax and the terminal operator may be jointly and severally liable for the tax if the position holder is not registered under section 4101. Also, tax is imposed on the nonbulk removal of diesel fuel from a refinery, on the entry of diesel fuel into the United States, and on the sale or removal of blended diesel fuel by the blender thereof.

Exemption for dyed diesel fuel. Under the temporary regulations, tax is not imposed on the removal, entry, or sale of diesel fuel if (1) the person otherwise liable for tax (for example, the position holder) is a taxable fuel registrant, (2) in the case of removal from a terminal, the terminal is operated by a taxable fuel registrant, and (3) the fuel contains either a blue dye (if high sulfur fuel) or red dye (if low sulfur fuel) of a prescribed type and concentration. Other dyes may be used in low sulfur fuel but only if they are approved by the Commissioner.

The blue dye described in the temporary regulations is the same dye prescribed by the Environmental Protection Agency (EPA) as an identifier of high sulfur diesel fuel, which, under EPA rules, is not to be used in diesel motor vehicles. However, the EPA does not require the blue dye to be of a specific concentration. The temporary regulations, although requiring a specific concentration, provide a transitional rule permitting a lower concentration for stocks of fuel previously dyed for EPA purposes. Comments are requested on these standards.

The temporary regulations do not require that dyed fuel also contain a colorless marker. A colorless marker is a material that does not reveal its presence until the fuel into which it is introduced is subjected to a special test. The IRS believes, however, that the use of markers is a valuable enforcement tool and will require markers beginning July 1, 1994. Further comment is

requested on the type and concentration of marker to be required. Ideally, any required marker should be economical to use, easy to detect in diesel fuel by use of a roadside test, difficult and expensive to remove from the fuel, and capable of manufacture by different producers.

The person receiving dyed fuel at the terminal rack is not required to be registered by the IRS and is not required to give the terminal operator or position holder an exemption certificate. However, under the temporary regulations, each terminal operator must keep records sufficient to identify each person that receives dyed diesel fuel at the rack of each terminal it operates. If the terminal operator provides any person with any bill of lading, shipping paper, or similar document that indicates that diesel fuel removed at the rack is dyed when in fact it is not dyed, then the terminal operator is jointly and severally liable for tax on the removal.

Notice relating to sales and removals of dyed diesel fuel. Under section 4082, dyed diesel fuel may only be used for nontaxable purposes; tax and a penalty may be imposed on any other use. The temporary regulations provide that terminal operators and others who sell dyed fuel are responsible for informing their customers of this restriction on the use of dyed diesel fuel. Any person that fails to provide this information as required by the temporary regulations will, for purposes of the penalty imposed by section 6714, be presumed to know that the dyed diesel fuel will be used for a taxable use.

Dye injection systems. The temporary regulations do not require the use of dye injection systems or visual inspection devices. The IRS believes, however, that such systems and devices can contribute to effective tax enforcement. Thus, a future notice of proposed rulemaking will propose rules regarding these systems and devices. These rules will be proposed to be effective July 1, 1994. Until specific dye injection systems are required, any means of dyeing, including "splash" dyeing at the terminal, is acceptable.

Back-up tax. Under section 4041, a back-up tax applies to dyed diesel fuel or diesel fuel on which a credit or payment has been allowed under section 6427 if the fuel is delivered into the fuel supply tank of a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat for a taxable use. The operator of the vehicle, boat, or train is liable for the tax. In addition, the seller of the diesel fuel generally is jointly and severally liable for the tax if the seller knows or has reason to know that the fuel will be used for a taxable use. However, a seller of diesel fuel is not jointly and severally liable for tax on fuel delivered into the fuel supply tank of a bus or train.

Because the back-up tax is imposed only on the delivery of diesel fuel into the fuel supply tank of a vehicle, boat, or train, tax is not imposed on the use of diesel fuel as heating oil or in stationary engines. In addition, the tax does not apply to a delivery of diesel fuel for several enumerated uses.

Exemption for use in certain boats. Generally, the pre-1994 exemption for diesel fuel used in a boat continues for a boat employed in (1) the business of commercial fishing or transporting persons or property for compensation or hire, or (2) any other trade or business unless the boat is used in any activity of a type generally considered to constitute entertainment, amusement, or recreation. This limitation on entertainment, amusement, or recreation activities does not apply to a boat used in a trade or business of commercial fishing or transporting persons or property for compensation or hire. Thus, diesel fuel used in a boat in the conduct of a trade or business of transporting passengers for compensation or hire (such as a cruise ship, sightseeing boat, or any charter vessel that includes a captain who is responsible for operating the boat) is exempt from tax even if the passengers engage in activities that could be considered entertainment, amusement, or recreation.

Administrative authority. The temporary regulations provide rules relating to inspections of terminals, dyes and dyeing equipment, fuel storage facilities, and vehicles. Credits and payments. The temporary regulations set forth the conditions that must be met before a claim for credit or payment is allowed with respect to taxed diesel fuel that has been used for nontaxable uses. Only the ultimate purchaser may make the claim with respect to taxed fuel used in nontaxable uses other than use on a farm for farming purposes or by a State or local government.

Only a registered ultimate vendor may make the claim with respect to taxed diesel fuel sold for use on a farm for farming purposes or by a State or local government. Generally, a person becomes registered for this purpose only if it meets the tests set forth in the temporary regulations. As a transitional rule, however, a person that is registered as a diesel fuel producer on December 31, 1993, generally will be considered to be a registered ultimate vendor during 1994.

As a condition to making a claim, a registered ultimate vendor must have received a prescribed certificate from the farmer or State or local government to whom it sold the fuel. As a transitional rule, however, claims relating to sales before April 1, 1994, may be supported with certain exemption certificates used to support tax-free sales of diesel fuel under pre-1994 law.

Registration and Reporting Provisions of the Code

The Code provisions relating to registration with respect to the gasoline and diesel fuel taxes are sections 4101, 4222, 7232, and 7272.

Section 4101(a), as amended by the 1990 Act, provides that every person required by the IRS to register with respect to the tax imposed by section 4081 must register with the IRS at the time, in the form and manner, and subject to the terms and conditions, as may be prescribed by regulations.

Section 4101(b) provides that the IRS may require, as a condition of permitting any person to be registered, that the person give the IRS a bond in a sum that the IRS deems appropriate and agree to the imposition of a lien on property of such person used in the trade or business for which the registration is sought.

Section 4101(c) provides that, with regard to the denial, revocation, or suspension of registration, rules similar to the rules of section 4222(c) apply. Section 4222(c) provides that the registration of any person can be denied, revoked, or suspended if the IRS determines that (1) the person has used its registration to avoid payment of tax, or to postpone or in any manner to interfere with the collection of tax, or (2) denial, revocation, or suspension is necessary to protect the revenue.

Section 4101(d) provides that the IRS may require information reporting by persons registered under section 4101.

Section 7232 imposes a criminal penalty on any person that fails to register as required by section 4101, falsely represents itself to be registered, or willfully makes any false statement in an application for registration. Section 7272 imposes a civil penalty on any person that fails to register as required by section 4101.

Explanation of the Temporary Regulations; Registration and Reporting

Overview. The temporary regulations update and clarify the rules under section 4101 relating to registration for purposes of the taxable fuel excise tax imposed under section 4081. The temporary regulations describe persons that must be or are allowed to be registered for these purposes, the

standards for qualification to be registered, and the terms and conditions of registration. Submission of an application for registration does not make the applicant a registrant; a person becomes a registrant only if the district director approves the application and issues the person a registration letter.

Registration standards. The district director will register an applicant only if the district director determines that the applicant meets certain prescribed tests: the activity test, the acceptable risk test, and the adequate security test. However, a district director will register an applicant as an ultimate vendor of diesel fuel if the applicant meets only the activity test and the district director is satisfied with the tax history of the applicant and any person related to the applicant.

Action on the application by the district director. If the district director determines that an applicant meets all of the applicable registration tests, the district director is to register the applicant and issue the applicant a letter of registration containing the effective date of the registration. The effective date will be no earlier than the date on which the letter of registration is signed by the district director.

The letter of registration replaces the certificate of registry that is issued by the district director under present practice. Unlike present practice, the letter of registration will not be a copy of the applicant's approved application for registration.

Terms and conditions of registration. After an applicant has been registered, it must follow certain rules to retain its registration and avoid certain other adverse consequences. For example, a registrant must make deposits, file returns, and pay taxes as required, and must notify the district director that issued its letter of registration of any changes in the information it has submitted in connection with its application. In addition, a registrant may not make any false statement on, or violate the terms of, a notification certificate, or allow another person to use its registration. It is expected that the district director will regularly review each registration to ensure that each registrant has followed these rules.

Effective July 1, 1994, additional conditions apply to terminal operators, throughputters, and gasohol blenders. Under the temporary regulations, these registrants must report specified information at the time, place, and in the manner prescribed by the IRS.

The district director must revoke or suspend a registration if the district director determines that a registrant has used its registration to evade the taxable fuel tax or interfere with the collection of the tax. Revocation or suspension also is required if the district director determines that the registrant does not meet one or more of the registration tests and the deficiency has not been corrected within a reasonable period of time after notification by the district director.

If the district director determines that a registrant has failed to comply with other terms and conditions of its registration, has made a false statement in its application, or otherwise has used its registration in a manner that creates a significant threat to the revenue, the district director may revoke or suspend registration. Alternatively, the district director may require the registrant to give a bond as a condition of retaining its registration, require the registrant to file monthly or semimonthly returns, or both.

Special Analyses

It has been determined that this Treasury Decision is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, these regulations will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on their impact on small business.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects

26 CFR parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

26 CFR part 602

Reporting and recordkeeping requirements.

Adoption of Amendments to the Regulations

Accordingly, 26 CFR parts 40, 48, and 602 are amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6011(a)–3T also issued under 26 U.S.C. 6011(a). * * *

Par. 2. Section 40.6011(a)–3T is added to read as follows:

§ 40.6011(a)–3T Monthly and semimonthly returns from certain persons liable for tax on taxable fuel (temporary).

(a) *In general.* The district director may require a person to make a return of tax for a monthly or semimonthly period in the manner prescribed in § 40.6011(a)–1(b) if the person—

(1) Is a bonded registrant (described in § 48.4101–3T(b)(2) of this chapter) at any time during the period;

(2) Has been registered under section 4101 for less than one year at the beginning of the period;

(3) Meets the acceptable risk test of § 48.4101–3T(f)(3) of this chapter by reason of § 48.4101–3T(f)(3)(i)(B) of this chapter at any time during the period;

(4) Has failed to comply with the applicable provisions of § 48.4101–3T(h) of this chapter (relating to the terms and conditions of registration); or

(5) Is liable for tax under § 48.4082–4T(a) of this chapter (relating to the back-up tax on diesel fuel) at any time during the period.

(b) *Effective date.* This section is effective January 1, 1994.

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 is amended by removing the entry for "Section 48.4101–2T" and adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 48.4082–1T and 48.4082–2T also issued under 26 U.S.C. 4082.

Section 48.4101–3T also issued under 26 U.S.C. 4101(a) and (b).

Section 48.4101–4T also issued under 26 U.S.C. 4101(d).

Sections 48.6427–8T and 48.6427–9T also issued under 26 U.S.C. 6427(n).

Par. 4. Section 48.4041–0T is added to read as follows:

§ 48.4041–0T Applicability of regulations relating to diesel fuel after December 31, 1993 (temporary).

Sections 48.4041–1 through 48.4041–17 do not apply to sales or uses of diesel fuel after December 31, 1993. For rules relating to the diesel fuel tax imposed

by section 4041 after December 31, 1993, see § 48.4082–4T.

Par. 5. Sections 48.4081–10T through 48.4081–12T are added to read as follows:

§ 48.4081–10T Diesel fuel tax; definitions (temporary).

(a) *Definitions.*

Diesel fuel means any liquid that is commonly or commercially known or sold as a fuel that is suitable for use in a diesel-powered highway vehicle, diesel-powered train, or diesel-powered boat. A liquid meets this requirement if, without further processing or blending, the liquid has practical and commercial fitness for use in the propulsion engine of the vehicle, train, or boat. A liquid may possess this practical and commercial fitness even though the specified use is not the liquid's predominant use. However, a liquid does not possess this practical and commercial fitness solely by reason of its possible or rare use as a fuel in the propulsion engine of such a vehicle, train, or boat.

(1) *Kerosene; before July 1, 1994.* Before July 1, 1994, kerosene is not treated as diesel fuel. For rules relating to the imposition of tax on kerosene that is blended with diesel fuel, see § 48.4081–12T.

(2) *Kerosene; after June 30, 1994.* [Reserved]

Diesel-powered boat means any waterborne vessel of any size or configuration that is propelled, in whole or in part, by a diesel-powered engine.

Diesel-powered highway vehicle means a highway vehicle, as defined in § 48.4041–8(b), that is propelled by a diesel-powered engine.

Diesel-powered train means any diesel-powered equipment or machinery that rides on rails, including equipment or machinery that transports passengers, freight, or a combination of both passengers and freight, and equipment or machinery that only carries freight or passengers of the operator thereof. Thus, the term includes a locomotive, work train, switching engine, and track maintenance machine.

(b) *Effective date.* This section is effective January 1, 1994.

§ 48.4081–11T Diesel fuel tax; tax on removal at a terminal rack (temporary).

(a) *Imposition of tax.* Except as provided in § 48.4082–1T (relating to exemption for dyed diesel fuel), tax is imposed on the removal of diesel fuel from a terminal if the diesel fuel is removed at the rack.

(b) *Liability for tax*—(1) *In general.* The position holder with respect to the diesel fuel is liable for the tax imposed under paragraph (a) of this section.

(2) *Joint and several liability of terminal operator; unregistered position holder*—(i) *In general.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (a) of this section if—

(A) The position holder with respect to the diesel fuel is a person other than the terminal operator and is not a taxable fuel registrant; and

(B) The terminal operator has not met the conditions of paragraph (b)(2)(ii) of this section.

(ii) *Conditions for avoidance of liability.* A terminal operator is not liable for tax under paragraph (b)(2)(i) of this section if, at the time of the removal, the terminal operator—

(A) Is a taxable fuel registrant;

(B) Has an unexpired notification certificate (described in § 48.4081–5) from the position holder; and

(C) Has no reason to believe that any information in the certificate is false.

(3) *Joint and several liability of terminal operator; incorrect information provided.* The terminal operator is jointly and severally liable for the tax imposed under paragraph (a) of this section if, in connection with the removal of diesel fuel that is not dyed and marked in accordance with § 48.4082–1T, the terminal operator provides any person with any bill of lading, shipping paper, or similar document indicating that the diesel fuel is dyed and marked in accordance with § 48.4082–1T.

(c) *Rate of tax.* For the rate of tax, see section 4081(a).

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4081–12T Diesel fuel tax; taxable events other than removal at the terminal rack (temporary).

(a) *Tax on removal from a refinery*—(1) *In general.* Except as provided in § 48.4082–1T (relating to exemption for dyed diesel fuel) and paragraph (a)(2) of this section (relating to an exemption for certain refineries), tax is imposed on the removal of diesel fuel from a refinery if—

(i) The removal is by bulk transfer and the refiner or the owner of the diesel fuel immediately before the removal is not a taxable fuel registrant; or

(ii) The removal is at the refinery rack.

(2) *Exemption for certain refineries.* The tax imposed under paragraph (a)(1)(ii) of this section does not apply to a removal of diesel fuel if—

(i) The diesel fuel is removed by rail car from an approved refinery and is received at an approved terminal;

(ii) The refinery and the terminal are operated by the same taxable fuel registrant; and

(iii) The refinery is not served by pipeline (other than a pipeline for the receipt of crude oil) or vessel.

(3) *Liability for tax.* The refiner is liable for the tax imposed under paragraph (a)(1) of this section.

(4) *Rate of tax.* For the rate of tax, see section 4081(a).

(b) *Tax on entry into the United States*—(1) *Imposition of tax.* Except as provided in § 48.4082–1T (relating to dyed diesel fuel), tax is imposed on the entry of diesel fuel into the United States if—

(i) The entry is by bulk transfer and the enterer is not a taxable fuel registrant; or

(ii) The entry is not by bulk transfer.

(2) *Liability for tax.* The enterer is liable for the tax imposed under paragraph (b)(1) of this section.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(c) *Blended diesel fuel; tax on removal or sale by the blender*—(1) *Imposition of tax.* Blended diesel fuel is any mixture of diesel fuel with respect to which tax has been imposed under section 4041(a)(1) or 4081(a), and any other liquid (such as kerosene) on which tax has not been imposed under section 4081 (other than diesel fuel dyed in accordance with § 48.4082–1T(b)). Tax is imposed on the removal or sale of blended diesel fuel by the blender thereof. The number of gallons of blended diesel fuel subject to tax is the difference between the total number of gallons of blended diesel fuel removed or sold and the number of gallons of previously taxed diesel fuel used to produce the blended diesel fuel.

(2) *Liability for tax.* The person that produces the blended diesel fuel outside the bulk transfer/terminal system (the blender) is liable for the tax imposed under paragraph (c)(1) of this section.

(3) *Rate of tax.* For the rate of tax, see section 4081(a).

(d) *Effective date.* This section is effective January 1, 1994.

Par. 6. Sections 48.4082–1T through 48.4083–1T are added to read as follows:

§ 48.4082–1T Diesel fuel tax; exemption (temporary).

(a) *Exemption.* Tax is not imposed by section 4081 on the removal, entry, or sale of any diesel fuel if—

(1) The person otherwise liable for tax is a taxable fuel registrant;

(2) In the case of a removal from a terminal, the terminal is an approved terminal; and

(3) The diesel fuel satisfies the dyeing and marking requirements of paragraph (b) of this section.

(b) *Dyeing and marking requirements*—(1) *Dyeing; high sulfur*

fuel. Diesel fuel that is required to be dyed blue pursuant to the Environmental Protection Agency's high sulfur diesel fuel requirement (40 CFR 80.29) satisfies the dyeing requirement of this paragraph (b) only if it contains the blue dye 1,4 dialkyamino-anthraquinone in a concentration of at least 10 pounds (3 pounds before April 1, 1994) of active liquid Solvent Blue 98 per thousand barrels of diesel fuel.

(2) *Dyeing; low sulfur fuel.* Diesel fuel that is not described in paragraph (b)(1) of this section satisfies the dyeing requirement of this paragraph (b) only if it contains—

(i) The red dye red disazo in a concentration of at least 5.6 pounds of active liquid Solvent Red 164 per thousand barrels of diesel fuel; or

(ii) Any other dye of a type and in a concentration that is approved by the Commissioner.

(3) *Marking.* [Reserved]

(c) *Effective date.* This section is effective January 1, 1994.

§ 48.4082–2T Diesel fuel tax; notice required with respect to dyed diesel fuel (temporary).

(a) *In general.* A notice stating: *DYED DIESEL FUEL, NONTAXABLE USE ONLY, PENALTY FOR TAXABLE USE* must be—

(1) Provided by the terminal operator to any person that receives dyed diesel fuel at a terminal rack of that operator;

(2) Provided by any seller of dyed diesel fuel to its buyer if the fuel is located outside the bulk transfer/terminal system and is not sold from a retail pump posted in accordance with the requirements of paragraph (a)(3) of this section; and

(3) Posted by a seller on any retail pump where it sells dyed diesel fuel for use by its buyer.

(b) *Form.* The notice required under paragraph (a)(1) or (2) of this section must be provided by the time of the removal or sale and must appear on shipping papers, bills of lading, and invoices accompanying the sale or removal of the fuel.

(c) *Penalty.* Any person that fails to provide or post the required notice with respect to any dyed diesel fuel is, for purposes of the penalty imposed by section 6714, presumed to know that the fuel will be used for a taxable use.

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4082–3T Diesel; dye injection systems and visual inspection devices (temporary). [Reserved]

§ 48.4082–4T Diesel fuel; back-up tax (temporary).

(a) *Imposition of tax*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of a diesel-powered highway vehicle (other than an automobile bus) or diesel-powered boat of—

(i) Any diesel fuel that contains a dye;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel on which tax has not been imposed by section 4081.

(2) *Liability for tax*—(i) *In general.* The operator of the vehicle or boat into which the fuel is delivered is liable for the tax imposed under paragraph (a)(1) of this section.

(ii) *Joint and several liability of the seller.* The seller of the diesel fuel is jointly and severally liable for the tax imposed under paragraph (a)(1) of this section if the seller knows or has reason to know that the fuel will not be used in a nontaxable use.

(3) *Rate of tax.* The rate of tax is the rate imposed on diesel fuel by section 4081(a).

(b) *Tax on diesel fuel; buses and trains*—(1) *In general.* Tax is imposed by section 4041 on the delivery into the fuel supply tank of the propulsion engine of an automobile bus or a diesel-powered train of—

(i) Any diesel fuel that contains a dye;

(ii) Any diesel fuel on which a credit or payment has been allowed under section 6427; or

(iii) Any liquid other than gasoline or diesel fuel on which tax has not been imposed by section 4081.

(2) *Liability for tax.* The operator of the bus or train into which the fuel is delivered is liable for the tax imposed under paragraph (b)(1) of this section.

(3) *Rate of tax*—(i) *Buses*—(A) *In general.* The rate of tax on the delivery of diesel fuel into an automobile bus is the sum of the rates described in sections 4041(a)(1)(C)(iii)(I) and 4041(d)(1) (the bus rate), if the bus is used to furnish (for compensation) passenger land transportation available to the general public and either such transportation is scheduled and along regular routes or the seating capacity of the bus is at least 20 adults (not including the driver). A bus is available to the general public if the bus is available for hire to more than a limited number of persons, groups, or organizations.

(B) *Other uses.* The rate of tax on the delivery of diesel fuel into an automobile bus is the rate of tax imposed by section 4081(a) if the bus is used for a purpose other than that described in paragraph (b)(3)(i)(A) of this section.

(ii) *Trains.* The rate of tax on the delivery of diesel fuel into a diesel-powered train is the rate prescribed in section 4041 for diesel fuel sold for use in a train (the train rate).

(4) *Cross reference.* For the registration requirement relating to certain bus and train operators, see § 48.4101–3T(c)(2).

(c) *Exemptions.* The taxes imposed under paragraphs (a) and (b) of this section do not apply to a delivery of diesel fuel for—

(1) Use on a farm for farming purposes as that term and related terms are defined in § 48.6420–4(a) through (g);

(2) The exclusive use of a State, any political subdivision of a State, or the District of Columbia;

(3) Use described in section 4041(h) (relating to use in a vehicle owned by an aircraft museum);

(4) The exclusive use of the American Red Cross;

(5) Use in a boat employed in—

(A) The business of commercial fishing;

(B) The business of transporting persons or property for compensation or hire; or

(C) Any other trade or business, unless the boat is used in any activity of a type generally considered to constitute entertainment, amusement, or recreation (within the meaning of section 274(a)(1)(A) and the regulations under that section);

(6) Use in an automobile bus while the bus is engaged in the transportation of students and employees of schools (as defined in the last sentence of section 4221(d)(7)(C));

(7) Use in a qualified local bus (described in section 6427(b)(2)(D)) while the bus is engaged in furnishing (for compensation) intracity passenger land transportation that is available to the general public and is scheduled and along regular routes;

(8) Use in a highway vehicle that is not registered (and is not required to be registered) for highway use under the laws of any State or foreign country;

(9) The exclusive use of a nonprofit educational organization, as defined in § 48.4221–6(b);

(10) Use in a highway vehicle owned by the United States that is not used on the highway; or

(11) Use in a vessel of war of the United States or any foreign nation, as described in § 48.4221–4(b)(5).

(d) *Effective date.* This section is effective January 1, 1994.

§ 48.4083 Administrative authority (temporary).

(a) *In general*—(1) *Authority to inspect.* Officers or employees of the IRS

designated by the Commissioner, upon presenting appropriate credentials and a written notice to the owner, operator, or agent in charge, are authorized to enter any place and to conduct inspections in accordance with paragraphs (a) through (c) of this section.

(2) *Reasonableness.* Inspections will be performed in a reasonable manner and at times that are reasonable under the circumstances, taking into consideration the normal business hours of the place to be entered.

(b) *Place of inspection*—(1) *In general.* Inspections may be at any place at which taxable fuel is (or may be) produced or stored or at any inspection site where evidence of activities described in section 6714(a) may be discovered. These places may include, but are not limited to—

(i) Any terminal;

(ii) Any fuel storage facility that is not a terminal;

(iii) Any retail fuel facility; or

(iv) Any designated inspection site.

(2) *Designated inspection sites.* A designated inspection site is any State highway inspection station, weigh station, agricultural inspection station, mobile station, or other location designated by the Commissioner to be used as a fuel inspection site. A designated inspection site will be identified as a fuel inspection site.

(c) *Scope of inspection*—(1) *Inspection.* Officers or employees may physically inspect, examine or otherwise search any tank, reservoir, or other container that can or may be used for the production, storage, or transportation of fuel, fuel dyes, or fuel markers. Inspection may also be made of any equipment used for, or in connection with, production, storage, or transportation of fuel, fuel dyes or fuel markers. This includes any equipment used for the dyeing or marking of fuel. This also includes the books and records kept to determine excise tax liability under section 4081.

(2) *Detainment.* Officers or employees may detain any vehicle, train, or boat for the purpose of inspecting its fuel tanks and storage tanks. Detainment will be either on the premises under inspection or at a designated inspection site. Detainment may continue for such reasonable period of time as is necessary to determine the amount and composition of the fuel.

(3) *Removal of samples.* Officers or employees may take and remove samples of fuel in such reasonable quantities as are necessary to determine its composition.

(d) *Refusal to submit to inspection—(1) Imposition of penalty.* Any person that refuses to allow an inspection will be fined $1,000 for each refusal. This penalty is in addition to any other penalty or tax that may be imposed upon that person or any other person liable for tax under section 4081 or penalty under section 6714.

(2) *Assessment of penalty.* This penalty is an assessable penalty and is assessed in accordance with section 6671.

(e) *Effective date.* This section is effective January 1, 1994.

Par. 7. Sections 48.4101–3T and 48.4101–4T are added to read as follows:

§ 48.4101–3T Registration (temporary).

(a) *Overview.* This section provides rules relating to registration under section 4101 for purposes of the federal excise tax on taxable fuel imposed by section 4081 and the credit or payment allowed to registered ultimate vendors of diesel fuel under section 6427. This section describes persons that must be, or are allowed to be, registered; standards for qualification to be registered; and the terms and conditions of registration. A person is registered under section 4101 only if the district director has issued a registration letter to the person and the registration has not been revoked or suspended. Each business unit that has, or is required to have, a separate employer identification number is treated as a separate person. Thus, two business units (for example, a parent corporation and a subsidiary corporation, or a proprietorship and a related partnership), each of which has a different employer identification number, are two persons.

(b) *Definitions*—(1) *Applicant.* An *applicant* is a person that has applied for registration under paragraph (e) of this section.

(2) *Bonded registrant.* A *bonded registrant* is a person that has given a bond to the district director under paragraph (j) of this section as a condition of registration.

(3) *Gasohol bonding amount.* The *gasohol bonding amount* is the product of—

(i) The rate of tax applicable to later separation, as described in § 48.4081–6(g)(1)(iii); and

(ii) The total number of gallons of gasoline expected to be bought at the gasohol production tax rate by the gasohol blender during a representative 6-month period (as determined by the district director).

(4) *Penalized for a wrongful act.* A person has been *penalized for a wrongful act* if the person has—

(i) Been assessed any penalty under chapter 68 of the Internal Revenue Code (or similar provision of the law of any State or the District of Columbia) for fraudulently failing to file any return or pay any tax, and the penalty has not been wholly abated, refunded, or credited;

(ii) Been assessed any penalty under chapter 68 of the Internal Revenue Code, such penalty has not been wholly abated, refunded, or credited, and the district director determines that the conduct resulting in the penalty is part of a consistent pattern of failing to deposit, pay, or pay over a substantial amount of tax;

(iii) Been convicted of a crime under chapter 75 of the Internal Revenue Code (or similar provision of the law of any State or the District of Columbia), or of conspiracy to commit such a crime, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(iv) Been convicted, under the laws of the United States, any State, or the District of Columbia, of a felony for which an element of the offense is theft, fraud, or the making of false statements, and the conviction has not been wholly reversed by a court of competent jurisdiction;

(v) Been assessed any tax under section 4103 and the tax has not been wholly abated, refunded, or credited; or

(vi) Had its registration under section 4101 or 4222 revoked.

(5) *Related person.* A person is related to an applicant if the person—

(i) Directly or indirectly exercises control over an activity of the applicant and the activity is described in paragraph (c)(1) or (d) of this section;

(ii) Owns, directly or indirectly, five percent or more of the applicant;

(iii) Is under a duty to assure the payment of a tax for which the applicant is responsible;

(iv) Is a member, with the applicant, of a group of organizations (as defined in § 1.52–1(b) of this chapter) that would be treated as a group of trades or businesses under common control for purposes of § 1.52–1 of this chapter; or

(v) Distributed or transferred assets to the applicant in a transaction in which the applicant's basis in the assets is determined by reference to the basis of the assets in the hands of the distributor or transferor.

(6) *Registrant.* A *registrant* is a person that the district director has, in accordance with paragraph (g)(3) of this section, registered under section 4101 and whose registration has not been revoked or suspended.

(c) *Persons required to be registered*—(1) *In general.* A person is required to be registered under section 4101 if the person is engaged in the activity of a—

(i) Blender, as defined in § 48.4081–1(d);

(ii) Enterer, as defined in § 48.4081–1(g);

(iii) Refiner, as defined in § 48.4081–1(o);

(iv) Terminal operator, as defined in § 48.4081–1(t); or

(v) Throughputter, as defined in § 48.4081–1(u)(2) (a throughputter that is a position holder).

(2) *Bus and train operators.* Every operator of a bus or train is required to be registered under section 4101 at any time it incurs any liability for tax under § 48.4082–4T at the bus rate (as described in § 48.4082–4T(b)(3)(i)) or the train rate (as described in § 48.4082–4T(b)(3)(ii)).

(3) *Consequences of failing to register.* For the criminal penalty imposed for failure to register, see section 7232. For the civil penalty imposed for failure to register, see section 7272.

(d) *Persons that may, but are not required to, be registered.* A person may, but is not required to, be registered under section 4101 if the person is engaged in the activity of—

(1) A gasohol blender, as defined in § 48.4081–6(b)(3);

(2) An industrial user, as defined in § 48.4081–1(l);

(3) A throughputter, as defined § 48.4081–1(u)(1) (a throughputter that is not a position holder); or

(4) An ultimate vendor of diesel fuel, as defined in § 48.6427–9T(a)(1).

(e) *Application instructions.* Application for registration under section 4101 must be made in accordance with the instructions for Form 637 (or such other form as the Commissioner may designate).

(f) *Registration tests*—(1) *In general*—(i) *Persons other than ultimate vendors.* Except as provided in paragraph (f)(1)(ii) of this section, the district director will register an applicant only if the district director determines that the applicant meets the three following tests (collectively, the registration tests):

(A) The activity test of paragraph (f)(2) of this section;

(B) The acceptable risk test of paragraph (f)(3) of this section; and

(C) The adequate security test of paragraph (f)(4) of this section.

(ii) *Ultimate vendors.* The district director will register an applicant as an ultimate vendor of diesel fuel only if the district director—

(A) Determines that the applicant meets the activity test of paragraph (f)(2) of this section; and

(B) Is satisfied with the filing, deposit, payment, and claim history for all federal taxes of the applicant and any related person.

(2) *The activity test.* An applicant meets the activity test of this paragraph (f)(2) only if the district director determines that the applicant—

(i) Is, in the course of its trade or business, regularly engaged in an activity described in paragraph (c)(1) or (d) of this section; or

(ii) Is likely to be (because of such factors as the applicant's business experience, financial standing, or trade connections), in the course of its trade or business, regularly engaged in an activity described in paragraph (c)(1) or (d) of this section within a reasonable time after becoming registered under section 4101.

(3) *Acceptable risk test*—(i) *In general.* An applicant meets the acceptable risk test of this paragraph (f)(3) only if—

(A) Neither the applicant nor a related person has been penalized for a wrongful act; or

(B) Even though the applicant or a related person has been penalized for a wrongful act, the district director determines, after review of evidence offered by the applicant, that the registration of the applicant does not create a significant risk of nonpayment or late payment of the tax imposed by section 4081.

(ii) *Significant risk of nonpayment or late payment of tax.* In making the determination described in paragraph (f)(3)(i)(B) of this section, the district director may consider factors such as the following:

(A) The time elapsed since the applicant or related person was penalized for a wrongful act.

(B) The present relationship between the applicant and any related person that was penalized for any wrongful act.

(C) The degree of rehabilitation of the person penalized for any wrongful act.

(D) The amount of bond given by the applicant. In this regard, the district director may accept a bond under paragraph (j) of this section, without regard to the limits on the amount of the bond set by paragraph (j)(2) of this section.

(4) *Adequate security test*—(i) *In general.* An applicant meets the adequate security test of this paragraph (f)(4) only if the district director determines that the applicant has both adequate financial resources and a satisfactory tax history, or the applicant gives the district director a bond (under the provisions of paragraph (j) of this section).

(ii) *Adequate financial resources*—(A) *In general.* An applicant has adequate financial resources only if the district director determines that the applicant is financially capable of paying—

(*1*) Its expected tax liability under section 4081 for a representative 6-month period (as determined by the district director);

(*2*) In the case of a terminal operator, the expected tax liability under section 4081 of persons other than the terminal operator with respect to taxable fuel removed at the racks of its terminals during a representative 1-month period (as determined by the district director); and

(*3*) In the case of a gasohol blender, the gasohol bonding amount.

(B) *Basis for determination.* The determination under this paragraph (f)(4)(ii) must be based on financial information such as the applicant's income statement, balance sheet or bond ratings, or other information related to the applicant's financial status.

(iii) *Satisfactory tax history.* An applicant has a satisfactory tax history only if the district director is satisfied with the filing, deposit, and payment history for all federal taxes of the applicant and any related person.

(g) *Action on the application by the district director*—(1) *Review of application.* The district director may investigate the accuracy and completeness of any representations made by an applicant, request any additional relevant information from the applicant, and inspect the applicant's premises during normal business hours without advance notice.

(2) *Denial.* If the district director determines that an applicant does not meet all of the applicable registration tests described in paragraph (f) of this section, the district director must notify the applicant, in writing, that its application for registration is denied and state the basis for the denial.

(3) *Approval.* If the district director determines that an applicant meets all of the applicable registration tests described in paragraph (f) of this section, the district director must register the applicant under section 4101 and issue the applicant a letter of registration containing the effective date of the registration. The effective date of the registration must be no earlier than the date on which the district director signs the letter of registration. A copy of an application for registration (Form 637) is not a letter of registration.

(h) *Terms and conditions of registration*—(1) *Affirmative duties.* Each registrant must—

(i) Make deposits, file returns, and pay taxes required by the Internal Revenue Code and the regulations thereunder;

(ii) Keep records sufficient to show the registrant's tax liability under

section 4081 and payments or deposits of such liability;

(iii) Make all information reports required under section 4101(d) and § 48.4101–4T;

(iv) Make available for inspection on demand by the Internal Revenue Service during normal business hours records relevant to a determination of tax liability under section 4081; and

(v) Notify the district director of any change (such as a change in ownership) in the information the registrant submitted in connection with its application for registration, or previously submitted under this paragraph (h)(1)(v), within 10 days after the change occurs.

(2) *Prohibited actions.* A registrant may not—

(i) Sell, lease or otherwise allow another person to use its registration;

(ii) Make any false statement to the district director in connection with a submission under paragraph (h) (1) or (3) of this section; or

(iii) Make any false statement on, or violate the terms of—

(A) A notification certificate of a taxable fuel registrant (as described in § 48.4081–5(b)); or

(B) A certificate of a registered gasohol blender (as described in § 48.4081–6(c)(2)).

(3) *Additional terms and conditions for terminal operators*—(i) *Records to be maintained relating to removals of diesel fuel.* Each terminal operator described in § 48.4081–1(t) must keep the following information with respect to each rack removal of diesel fuel at each terminal it operates:

(A) The bill of lading or other shipping document.

(B) The record of whether the fuel was dyed in accordance with § 48.4082–1T(b).

(C) The volume and date of the removal.

(D) The identity of the person that received the fuel.

(E) Any other information required by the Commissioner.

(ii) *Retention of information.* In addition to any other requirement relating to the retention of records, the terminal operator must maintain the information described in paragraph (h)(3)(i) of this section at the terminal from which the removal occurred for at least 3 months after the removal to which it relates.

(i) *Adverse actions by the district director against a registrant*—(1) *Mandatory revocation or suspension.* The district director must revoke or suspend the registration of any registrant if the district director determines that the registrant, at any time—

(i) Does not meet one or more of the applicable registration tests under paragraph (f) of this section and has not corrected the deficiency within a reasonable period of time after notification by the district director;

(ii) Has used its registration to evade, or attempt to evade, the payment of any tax imposed by section 4081, or to postpone or in any manner to interfere with the collection of any such tax, or to make a fraudulent claim for a credit or payment;

(iii) Has aided or abetted another person in evading, or attempting to evade, payment of any tax imposed by section 4081, or in making a fraudulent claim for a credit or payment; or

(iv) Has sold, leased, or otherwise allowed another person to use its registration.

(2) *Remedial action permitted in other cases.* If the district director determines that a registrant, at any time, has failed to comply with the terms and conditions of registration under paragraph (h) of this section, made a false statement to the district director in connection with its application for registration or retention of registration, or otherwise used its registration in a manner that creates a significant risk of nonpayment or late payment of tax, then the district director may—

(i) Revoke or suspend the registrant's registration;

(ii) In the case of a registrant other than an ultimate vendor, require the registrant to give a bond under the provisions of paragraph (j) of this section as a condition of retaining its registration; and

(iii) In the case of a registrant other than an ultimate vendor, require the registrant to file monthly or semimonthly returns under § 40.6011(a)–3T of this chapter as a condition of retaining its registration.

(3) *Action by the district director to revoke or suspend a registration.* If the district director revokes or suspends a registration, the district director must so notify the registrant in writing and state the basis for the revocation or suspension. The effective date of the revocation or suspension may not be earlier than the date on which the district director notifies the registrant.

(j) *Bonds*—(1) *Form.* Each bond given to the district director as a condition of registration under paragraph (f)(4)(i) or (i)(2)(ii) of this section must be executed in the form prescribed by the district director. Each bond must be—

(i) A public debt obligation of the United States Government;

(ii) An obligation the principal and interest of which are unconditionally guaranteed by the United States Government;

(iii) A bond executed by a surety company listed in Department of the Treasury Circular 570 as an acceptable surety or reinsurer of federal bonds (a surety bond); or

(iv) Any other bond with security (including liens under section 4101(b)(1)(B)) considered acceptable by the district director.

(2) *Amount of bond.* A bond given under this paragraph (j) must be in an amount that the district director determines will ensure timely collection of the taxes imposed by section 4081, taking into account the applicant's financial capabilities, tax history, and expected liability under section 4081. The district director may increase or decrease the amount of the required bond to take into account changes in the applicant's financial capabilities, tax history, and expected liability under section 4081. However, in no case may the amount of the bond be greater than the amount that the district director determines is equal to—

(i) The applicant's expected tax liability under section 4081 for a representative 6-month period (as determined by the district director);

(ii) In the case of a terminal operator, the expected tax liability of persons other than the terminal operator under section 4081 with respect to taxable fuel removed at the racks of its terminals during a representative 1-month period (as determined by the district director); and

(iii) In the case of a gasohol blender, the gasohol bonding amount.

(3) *Collection of taxes from a bond.* If a bonded registrant does not pay the amount of tax it incurs under section 4081 by the time prescribed in section 6151 for paying that tax, the district director may collect the amount of the unpaid tax (including penalties and interest with respect to that tax) from the bonded registrant's bond.

(4) *Termination of bonds*—(i) *Surety bonds.* A surety on a bond may give written notice to the district director and the bonded registrant that the surety desires to be relieved of liability under the bond after a certain date, which date must be at least 60 days after the receipt of the notice by the district director. The surety will be relieved of any liability that the bonded registrant incurs after the date named in the notice. However, the surety remains liable for the amount of tax that the bonded registrant incurred under section 4081 during the term of the bond and for penalties and interest with respect to that tax.

(ii) *Other bonds.* A bond (other than a surety bond) given to the district

director may be returned to the bonded registrant only after the earlier of—

(A) The district director's determination that the bonded registrant has paid all taxes that the bonded registrant incurred under section 4081 during the period covered by the bond and any penalties and interest with respect to the taxes;

(B) The expiration of the period for assessment of the section 4081 tax of the bonded registrant, as determined under the provisions of subchapter A of chapter 66 of the Internal Revenue Code, for the period covered by the bond; or

(C) The date that the district director receives from the registrant a substitute bond given under this paragraph (j).

(5) *Determination that bond is no longer required.* If the district director determines that the bonded registrant meets the adequate security test of paragraph (f)(4) of this section without a bond, the registrant is to be released from the obligation to give a bond as a condition of registration under section 4101.

(k) *Cross references*—(1) For a rule relating to the filing of monthly and semimonthly returns by certain persons that are registered under section 4101, see § 40.6011(a)–3T of this chapter.

(2) For regulations relating to the gasoline tax imposed by section 4081, see §§ 48.4081–0 through 48.4081–8. For regulations relating to the diesel fuel tax imposed by section 4081, see §§ 48.4081–10T through 48.4081–12T.

(l) *Effective date*—(1) Except as otherwise provided in this paragraph (l), this section is effective January 1, 1994.

(2) Paragraph (c)(1) of this section (relating to persons required to be registered) is effective January 1, 1995.

(3) A registration in effect on December 31, 1993, with respect to the tax on gasoline or diesel fuel is subject to the district director's review, and to revocation or suspension, under the standards set forth in this section, but remains in effect until the earlier of—

(i) The effective date of a registration issued under paragraph (g)(3) of this section; or

(ii) The effective date of the revocation or suspension of the registration under paragraph (i) of this section.

§ 48.4101–4T Information reporting (temporary).

(a) *In general*—(1) *Terminal operators.* Each terminal operator described in § 48.4081–1(t) must make a return showing—

(i) The name and registration number of any person that is a position holder (as described in § 48.4081–1(m)) at any terminal it operates;

(ii) The identity of the position holder with respect to—

(A) All rack removals of taxable fuel from each terminal it operates, and the volume and dates of the removals; and

(B) In the case of rack removals of diesel fuel, whether the fuel was dyed at the operator's terminal in accordance with § 48.4082–1T(b); and

(iii) Any other information required by the Commissioner.

(2) *Throughputters.* Each throughputter described in § 48.4081–1(u) must make a return showing—

(i) The name and registration number of the operator of each terminal at which it holds an inventory position in taxable fuel; and

(ii) Any other information required by the Commissioner.

(3) *Gasohol blenders.* Each registered gasohol blender described in § 48.4081–6(b)(4) must make a return showing, with respect to each batch of gasohol it produced from gasoline it bought at the gasohol production tax rate—

(i) The name and registration number of the person that sold the blender the gasoline;

(ii) The date and location of the purchase of the gasoline;

(iii) The volume of the gasoline;

(iv) The name, address, and employer identification number of the person that sold the blender the alcohol;

(v) The date and location of the purchase of the alcohol;

(vi) The volume and type of the alcohol; and

(vii) Any other information required by the Commissioner.

(b) *Form and time of return.* Each return required under this section must be made at the time and in the form required by the Commissioner.

(c) *Consequences for failure to make a return.* For the consequences for failing to make an information return required by this section, see § 48.4101–3T(i) (relating to adverse actions against a registrant) and section 6721 (relating to a penalty for failure to file an information return).

(d) *Effective date.* This section is effective July 1, 1994.

Par. 8. Sections 48.6427–8T and 48.6427–9T are added to read as follows:

§ 48.6427–8T Credit or payment with respect to diesel fuel used in a nontaxable use (other than on a farm for farming purposes or by a State or local government) (temporary).

(a) *Conditions to allowance of credit or payment.* A claim for credit or payment with respect to diesel fuel is allowed under this section only if—

(1) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(2) The claimant bought the fuel and did not resell it in the United States;

(3) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (c) of this section; and

(4) The fuel was either—

(i) Used in a use described in §§ 48.4082–4T(c)(3) through (11);

(ii) Exported;

(iii) Used other than as a fuel in a propulsion engine of a diesel-powered highway vehicle or diesel-powered boat;

(iv) Used as a fuel in a propulsion engine of a diesel-powered train; or

(v) Used as a fuel in the propulsion engine of an automobile bus if the bus was used in a use described in section 6427(b)(1) (after the application of section 6427(b)(3)).

(b) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136, Credit for Federal Tax Paid on Fuels, or on such other form as the Commissioner may designate, in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 843, Claim for Refund and Request for Abatement, or on such other form as the Commissioner may designate, in accordance with the instructions for that form.

(c) *Content of claim*—(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(i) The name, address, telephone number, and employer identification number of the person(s) that sold the diesel fuel to the claimant and the date(s) of the purchase(s).

(ii) A statement by the claimant that the diesel fuel covered by the claim did not contain visible evidence of dye.

(iii) A statement (which may appear on the invoice or similar document) by the person that sold the fuel to the claimant that the diesel fuel sold did not contain visible evidence of dye.

(iv) The total amount of diesel fuel covered by the claim.

(v) The use made of the diesel fuel covered by the claim described by reference to specific categories listed in paragraph (a)(4) of this section (such as use in a boat employed in commercial fishing or use by a nonprofit educational organization).

(vi) If the diesel fuel covered by the claim was exported, a statement that the claimant has the proof of exportation described in § 48.4221–3(d)(1).

(d) *Time and place for filing claim.* For rules relating to the time for filing

a claim under section 6427, see section 6427(i).

(e) *Effective date.* This section is effective January 1, 1994.

§ 48.6427–9T Credit or payment with respect to diesel fuel sold for use on a farm for farming purposes or by a State or local government (temporary).

(a) *Definitions*—(1) An *ultimate vendor,* as used in this section, is a person that sells undyed diesel fuel to the user of the fuel (the ultimate purchaser) for use on a farm for farming purposes or for the exclusive use of any State, political subdivision of a State, or the District of Columbia.

(2) A *registered ultimate vendor* is—

(i) An ultimate vendor that is registered under section 4101 as an ultimate vendor; or

(ii) With respect to a claim filed before January 1, 1995, an ultimate vendor that is registered as a producer of diesel fuel on December 31, 1993, if the registration has not been revoked or suspended.

(b) *Conditions to allowance of credit or payment.* A claim for credit or payment with respect to diesel fuel is allowed under this section only if—

(1) Tax was imposed by section 4081 on the diesel fuel to which the claim relates;

(2) The claimant sold the diesel fuel to the ultimate purchaser for—

(i) Use on a farm for farming purposes (as defined in § 48.6420–4); or

(ii) The exclusive use of a State, political subdivision of a State, or the District of Columbia;

(3) The claimant is a registered ultimate vendor; and

(4) The claimant has filed a timely claim for a credit or payment that contains the information required under paragraph (d) of this section.

(c) *Form of claim.* Each claim for an income tax credit under this section must be made on Form 4136, Credit for Federal Tax Paid on Fuels, or on such other form as the Commissioner may designate, in accordance with the instructions for that form. Each claim for a payment under this section must be made on Form 843, Claim for Refund and Request for Abatement, or on such other form as the Commissioner may designate, in accordance with the instructions for that form.

(d) *Content of claim*—(1) *In general.* Each claim for credit or payment under this section must contain the following information with respect to all the diesel fuel covered by the claim:

(i) A copy of the claimant's letter of registration or, if applicable, its certificate of registration.

(ii) The name, address, telephone number, and employer identification number of each person that sold the diesel fuel to the claimant and the date of the purchase.

(iii) The name, address, telephone number, and taxpayer identification number of each farmer or governmental unit that bought the diesel fuel from the claimant and the number of gallons that the claimant sold to each.

(iv) A statement that the diesel fuel covered by the claim did not contain visible evidence of dye.

(v) The total amount of diesel fuel covered by the claim.

(vi) A statement that the claimant has not included the amount of the tax in its sales price of the diesel fuel and has not collected the amount of tax from its buyer.

(vii) For claims relating to sales by the claimant after March 31, 1994, a statement that the claimant has in its possession an unexpired certificate described in paragraph (d)(2) of this section and the claimant has no reason to believe any information in the certificate is false.

(viii) For claims relating to sales by the vendor before April 1, 1994, either the statement described in paragraph (d)(1)(vii) of this section or a statement that—

(A) The claimant has in its possession an unexpired exemption certificate relating to tax-free sales of diesel fuel for use on a farm for farming purposes or for the exclusive use of a State, political subdivision of a State, or the District of Columbia;

(B) The certificate was received from the buyer before January 1, 1994; and

(C) The claimant has no reason to believe any information in the certificate is false.

(2) *Certificate*—(i) *In general.* The certificate to be provided to the ultimate vendor consists of a statement that is signed under penalties of perjury by a person with authority to bind the buyer, is in substantially the same form as the model certificate provided in paragraph (d)(2)(ii) of this section, and contains all information necessary to complete such model certificate. A new certificate must be given if any information in the current certificate changes. The certificate may be included as part of any business records normally used to document a sale. The certificate expires on the earliest of the following dates:

(A) The date one year after the effective date of the certificate (which may be no earlier than the date it is signed).

(B) The date a new certificate is provided to the seller.

(ii) *Model certificate.*

CERTIFICATE OF FARMER OR STATE OR LOCAL GOVERNMENTAL UNIT

(To support vendor's claim for a credit or payment under section 6427 of the Internal Revenue Code.)

_____

_____

Name, address, and employer identification number of seller

The undersigned buyer ("Buyer") hereby certifies the following under penalties of perjury:

Buyer will use the diesel fuel to which this certificate relates either—(check one)

_____On a farm for farming purposes (as that term is defined in § 48.6420–4 of the Manufacturers and Retailers Excise Tax Regulations); or

_____For the exclusive use of a State, political subdivision of a State, or the District of Columbia.

This certificate applies to the following (complete as applicable):

If this is a single purchase certificate, check here ____ and enter:

1. Invoice or delivery ticket number _____
2. _____ (number of gallons)

If this is a certificate covering all purchases under a specified account or order number, check here _____ and enter:

1. Effective date _____
2. Expiration date _____

(period not to exceed 1 year after the effective date)

3. Buyer account or order number _____

Buyer will provide a new certificate to the seller if any information in this certificate changes.

If Buyer uses the diesel fuel to which this certificate relates for a purpose other than stated in the certificate Buyer will be liable for tax.

Buyer understands that the fraudulent use of this certificate may subject Buyer and all parties making such fraudulent use of this certificate to a fine or imprisonment, or both, together with the costs of prosecution.

_____

Signature and date signed

_____

Printed or typed name of person signing

_____

Title of person signing

_____

Name of Buyer

_____

Employer identification number

_____

Address of Buyer

(e) *Time and place for filing claim.* For rules relating to the time for filing a claim under section 6427, see section 6427(i). A claim under this section is not filed unless it contains all the information required by paragraph (d) of this section and is filed at the place required by the form.

(f) *Effective date.* This section is effective January 1, 1994.

PART 602—OMB CONTROL NUMBERS UNDER THE PAPERWORK REDUCTION ACT

Par. 9. The authority citation for part 602 continues to read as follows:

Authority: 26 U.S.C. 7805.

Par. 10. Section 602.101(c) is amended by adding the following entries in numerical order to the table to read as follows:

§ 602.101 OMB control numbers.

* * * * *

(c) * * *

CFR part or section where identified and described	Current OMB control No.
* * * * *	
48.4082–2T	1545–1418
48.4101–3T	1545–1418
48.4101–4T	1545–1418
48.6427–8T	1545–1418
48.6427–9T	1545–1418
* * * * *	

Margaret Milner Richardson,

Commissioner of Internal Revenue.

Approved: November 10, 1993.

Leslie Samuels,

Assistant Secretary of the Treasury.

[FR Doc. 93–28647 Filed 11–23–93; 2:30 pm]

BILLING CODE 4830–01–U

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Parts 2603, 2606, 2607, 2608, 2610, 2615, 2616, 2617, 2618, 2622, 2641, 2642, 2643, 2645, 2646, 2648, 2672, 2673, 2674, 2675, and 2677

Change of Address and Telephone Numbers

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation is amending its regulations to reflect the agency's anticipated move to a new location in Washington, DC, and changes in the agency's organization.

EFFECTIVE DATE: December 6, 1993.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006–1860, 202–778–8850 (202–778–1958 for TTY and TDD); 202–326–4024 (as of December 20, 1993) (202–326–4179 for TTY and TDD (as of January 24, 1994)). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: As indicated in a notice published elsewhere in today's **Federal Register**, the Pension Benefit Guaranty Corporation ("PBGC"), which currently is located at 2020 K Street, NW., Washington, DC 20006–1860, is relocating during the months of December 1993 and January 1994. The PBGC's new address is: Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. (This change is limited to the PBGC's offices; post office box numbers and other addresses (e.g., the Georgia addresses used for filing premium forms and payments) are not affected. Telephone numbers will be changing, as indicated in the PBGC's notice.)

The PBGC will begin accepting mail and delivery at the new 1200 K Street address on December 6, 1993. By the time the move has been completed in late January 1994, the United States Postal Service will not be delivering mail to the old 2020 K Street address, and the PBGC will not be accepting hand delivery at that address.

Most of the amendments in the final rule simply substitute the address of the new location of the PBGC's offices for the old address. In many instances, the address appears in rules for submitting notices and other documents and information to the PBGC. The filing rules in the PBGC's regulations generally fall into one of two categories: (1) The filing date is determined by the date of receipt at the PBGC (see, e.g., 29 CFR 2616.7(a) and 2617.8(a)), or (2) the filing date is determined by the postmark, with a receipt-based date as the "alternative" filing date in the absence of a legible postmark (see, e.g., 29 CFR 2615.6(a), 2622.10(a), and 2673.4). In the second category, a document is generally considered filed on the date of the United States Postal Service postmark only if it "was mailed postage prepaid, properly packaged and addressed to the PBGC"; otherwise, a receipt-based deadline applies.

The PBGC recognizes that some persons may not become aware of the address change for a period of time. Accordingly, for approximately the next year (i.e., with respect to filings due no later than December 31, 1994, when the 1994 Code of Regulations including the regulations, as amended by this rule, will be generally available), the PBGC will not consider a submission to be improperly addressed if it is addressed to the agency at the 2020 K Street, NW., address. Similarly, with respect to a receipt-based filing requirement, when the facts and circumstances of a particular delivery addressed to 2020 K Street, NW., indicate that delivery at that address would have occurred by the deadline if the PBGC had not relocated, the PBGC will, during this period, consider the submission to have been timely received.

The PBGC also is amending several regulations to reflect organizational changes that have occurred since they were last modified (see, e.g., 29 CFR 2607.2, 2641.13(c), and 2643.2(c)).

Finally, one of the amendments needs further explanation. Section 2610.4 of the PBGC's premium regulation is amended in this final rule, although it did not include a street address for the PBGC. That section provided that all premium forms and payments should be mailed to a post office box or delivered to a lockbox in Georgia. In order to more readily deal with possible future change in either address, § 2610.4 is amended in this final rule to provide that forms and payments should be filed at the address specified in the PBGC's Annual Premium Payment Package.

Because the amendments made by this rule are limited to the location of the agency's offices, its organization, and rules of practice or procedure, the notice and comment and delayed effective date requirements of the Administrative Procedure Act do not apply (5 U.S.C. 533 (a)(2) and (b)(B) and (d)), and the PBGC is issuing these amendments as a final rule, effective December 6, 1993.

E.O. 12866

The PBGC has determined that this action is not a "significant regulatory action" under the criteria set forth in Executive Order 12866 because it will not have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in Executive Order 12866.

List of Subjects

29 CFR Part 2603

Freedom of Information.

29 CFR Part 2606

Administrative practice and procedure, Organization and functions

(Government agencies), Pension insurance, Pensions.

29 CFR Part 2607

Privacy.

29 CFR Part 2608

Blind, Civil rights, Deaf, Disabled, Discrimination against handicapped, Equal employment opportunity, Federal buildings and facilities, Handicapped, Nondiscrimination, Physically handicapped.

29 CFR Part 2610

Employee benefit plans, Penalties, Pension insurance, Pensions, Reporting requirements.

29 CFR Parts 2615, 2616, 2617, and 2642

Employee benefit plans, Pension insurance, Pensions, Reporting requirements.

29 CFR Part 2618

Employee benefit plans, Pension insurance, Pensions.

29 CFR Parts 2622 and 2643

Business and industry, Employee benefit plans, Pension insurance, Pensions, Reporting requirements, Small businesses.

29 CFR Part 2641

Business and industry, Employee benefit plans, Pensions, Small businesses.

29 CFR Parts 2645 and 2677

Employee benefit plans, Pensions.

29 CFR Parts 2646 and 2675

Employee benefit plans, Pensions, Reporting requirements.

29 CFR Parts 2648 and 2672

Employee benefit plans, Pensions, Reporting and recordkeeping requirements.

29 CFR Part 2673

Employee benefit plans, Pension insurance.

29 CFR Part 2674

Employee benefit plans, Pension insurance, Pensions, Reporting and recordkeeping requirements.

For the reasons set forth above, the PBGC is amending 29 CFR parts 2603, 2606, 2607, 2608, 2610, 2615, 2616, 2617, 2618, 2622, 2641, 2642, 2643, 2645, 2646, 2648, 2672, 2673, 2674, 2675, and 2677 as follows:

PART 2603—EXAMINATION AND COPYING OF PENSION BENEFIT GUARANTY CORPORATION RECORDS

1. The authority citation for part 2603 continues to read as follows:

Authority: 5 U.S.C. 552; 29 U.S.C. 1302(b)(3); E.O. 12600, 52 FR 23781.

§ 2603.28 [Amended]

2. Section 2603.28 is amended by removing "2020 K Street NW., Washington, DC" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

§§ 2603.32 and 2603.39 [Amended]

3. Sections 2603.32(a) and 2603.39 are amended by removing "2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2606—RULES FOR ADMINISTRATIVE REVIEW OF AGENCY DECISIONS

4. The authority citation for part 2606 continues to read as follows:

Authority: 29 U.S.C. 1302(b)(3).

§§ 2606.9 and 2606.54 [Amended]

5. Sections 2606.9(b) and 2606.54 are amended by removing "2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

§ 2606.56 [Amended]

6. Section 2606.56 is amended by removing "2020 K Street NW., Washington, DC" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2607—DISCLOSURE AND AMENDMENT OF RECORDS UNDER THE PRIVACY ACT

7. The authority citation for part 2607 is revised to read as follows:

Authority: 5 U.S.C. 552a.

§§ 2607.2 through 2607.8 [Amended]

8. In § 2607.2(a), the definition of disclosure officer is amended by removing "Office of the Executive Director of the" and adding, in its place, "Communications and Public Affairs Department,".

9. Sections 2607.3(a), 2607.4(a), 2607.6(a), and 2607.8(c) are amended by removing "to the Disclosure Officer, Office of the Executive Director, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "to the Disclosure Officer, Communications and Public Affairs Department, Pension Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

10. Sections 2607.3(a), 2607.4(a), and 2607.6(a) are further amended by removing "at the Office of the Executive Director, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC" and adding, in its place, "at the above address".

11. Section 2607.5(a) is amended by removing "Office of the Executive Director, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC" and adding, in its place, "Communications and Public Affairs Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

12. Sections 2607.6(c), 2607.7(c), and 2607.8(a) are amended by removing "2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2608—ENFORCEMENT OF NONDISCRIMINATION ON THE BASIS OF HANDICAP IN PROGRAMS OR ACTIVITIES CONDUCTED BY THE PENSION BENEFIT GUARANTY CORPORATION

13. The authority citation for part 2608 is revised to read as follows:

Authority: 29 U.S.C. 794, 1302(b)(3).

§ 2608.170 [Amended]

14. Section 2608.170(c) is amended by removing "Pension Benefit Guaranty Corporation, 2020 K Street NW., Room 3700–A, Washington, DC 20006" and adding, in its place, "Equal Opportunity Manager, Human Resources Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2610—PAYMENT OF PREMIUMS

15. The authority citation for part 2610 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1306, 1307.

16. Section 2610.4 is revised to read as follows:

§ 2610.4 Filing address.

Plan administrators shall file all forms required to be filed under this part and all payments for premiums, interest, and penalties required to be made under this part at the address specified in the PBGC Annual Premium Payment Package.

PART 2615—CERTAIN REPORTING AND NOTIFICATION REQUIREMENTS

17. The authority citation for part 2615 is revised to read as follows:

Authority: 29 U.S.C. 1082(f), 1302(b)(3), 1343, 1365.

§ 2615.3 [Amended]

18. Section 2615.3(e) is amended by removing "Room 5500 (Code 45000), 2020 K Street NW., Washington, DC 20006" and adding, in its place, "1200 K Street NW., Washington, DC 20005–4026".

PART 2616—DISTRESS TERMINATION OF SINGLE-EMPLOYER PLANS

19. The authority citation for part 2616 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

§ 2616.7 [Amended]

20. Section 2616.7(b) is amended by removing "Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street NW., Washington, DC 20006–1806" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2617—STANDARD TERMINATIONS OF SINGLE-EMPLOYER PLANS

21. The authority citation for part 2617 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341, 1344.

§ 2617.8 [Amended]

22. Section 2617.8(b) is amended by removing "Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street NW., Washington, DC 20006–1806" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

§ 2617.25 [Amended]

23. Section 2617.25(b)(2) is amended by removing "Pension Benefit Guaranty Corporation, Case Operations and Compliance Department, Code 45000, 2020 K Street NW., Washington, DC 20006–1860" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2618—ALLOCATION OF ASSETS IN NON-MULTIEMPLOYER PLANS

24. The authority citation for part 2618 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1344.

§ 2618.31 [Amended]

25. Section 2618.31(d) is amended by removing "Office of Program Operations, Code 500, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Insurance Operations Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026".

PART 2622—LIABILITY ON TERMINATION OF OR WITHDRAWAL FROM A SINGLE-EMPLOYER PLAN

26. The authority citation for part 2622 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1362–1364, 1367–1368.

§ 2622.10 [Amended]

27. Section 2622.10(b) is amended by removing "2020 K Street, N.W., Washington, DC 20006 (202–778–8802)" and adding, in its place, "1200 K Street, NW., Washington, DC 20005–4026" and by removing "(Code 33500)" and "(Code 41000)".

PART 2641—ARBITRATION OF DISPUTES IN MULTIEMPLOYER PLANS

28. The authority citation for part 2641 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1401.

§ 2641.13 [Amended]

29. Section 2641.13(c) is amended by removing "Case Classification and Control Division, Code 542, Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026".

PART 2642—ALLOCATING UNFUNDED VESTED BENEFITS

30. The authority citation for part 2642 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3); 1391(c)(1), (c)(2)(D), (c)(5)(A), (c)(5)(B), (c)(5)(D), and (f).

§ 2642.12 [Amended]

31. Section 2642.12(c) is amended by removing "Insurance Operations Department, Control Branch (Code 25420), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026" and by removing "Room 5300A at that address" and adding, in its place, "the above address".

PART 2643—VARIANCES FOR SALE OF ASSETS

32. The authority citation for part 2643 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1384(c).

§ 2643.2 [Amended]

33. Section 2643.2(c) is amended by removing "Office of Program Operations (542), Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street, NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2645—EXTENSION OF SPECIAL WITHDRAWAL LIABILITY RULES

34. The authority citation for part 2645 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1383(f), 1388(e)(3).

§ 2645.3 [Amended]

35. Section 2645.3(c) is amended by removing "Division of Case Classification and Control, Office of Program Operations (542), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2646—REDUCTION OR WAIVER OF PARTIAL WITHDRAWAL LIABILITY

36. The authority citation for part 2646 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1388 (c) and (e).

§ 2646.8 [Amended]

37. Section 2646.8(c) is amended by removing "Case Operations and Compliance Department (45200), Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2648—REDETERMINATION OF WITHDRAWAL LIABILITY UPON MASS WITHDRAWAL

38. The authority citation for part 2648 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1389 (c) and (d), 1399(c)(1)(D).

§ 2648.8 [Amended]

39. Section 2648.8(d) is amended by removing "Case Classification and Control Division (25400) [hand deliveries to Room 5300], Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2672—MERGERS AND TRANSFERS BETWEEN MULTIEMPLOYER PLANS

40. The authority citation for part 2672 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1411.

§ 2672.7 [Amended]

41. Section 2672.7(c) is amended by removing "Division of Case Classification and Control (542), Office of Program Operations, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2673—NOTICE OF TERMINATION FOR MULTIEMPLOYER PLANS

42. The authority citation for part 2673 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a(f)(2).

§ 2673.2 [Amended]

43. Section 2673.2(d) is amended by removing "Office of Program Operations, Division of Case Classification and Control (542), Pension Benefit Guaranty Corporation, Room 5300A, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2674—NOTICE OF INSOLVENCY

44. The authority citation for part 2674 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1426(e).

§ 2674.6 [Amended]

45. Section 2674.6 is amended by removing "Case Classification and Control Division (542), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2675—POWERS AND DUTIES OF PLAN SPONSOR OF PLAN TERMINATED BY MASS WITHDRAWAL

46. The authority citation for part 2675 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1341a, 1441.

§ 2675.2 [Amended]

47. Section 2675.2(b) is amended by removing "Case Classification and Control Division (25400), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

PART 2677—PROCEDURES FOR PBGC APPROVAL OF PLAN AMENDMENTS

48. The authority citation for part 2677 is revised to read as follows:

Authority: 29 U.S.C. 1302(b)(3), 1400.

§ 2677.2 [Amended]

49. Section 2677.2(c) is amended by removing "Case Classification and Control Division (542), Insurance Operations Department, Pension Benefit Guaranty Corporation, 2020 K Street NW., Washington, DC 20006" and adding, in its place, "Case Operations and Compliance Department, Pension Benefit Guaranty Corporation, 1200 K Street NW., Washington, DC 20005–4026".

Issued in Washington, DC, on this 23rd day of November 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–29267 Filed 11–29–93; 8:45 am]

BILLING CODE 7708–01–M

DEPARTMENT OF THE TREASURY

Office of Foreign Assets Control

31 CFR Part 500

Foreign Assets Control Regulations

AGENCY: Office of Foreign Assets Control, Treasury.

ACTION: Final rule; amendments.

SUMMARY: This rule amends the Foreign Assets Control Regulations to announce the availability of specific licenses authorizing on a case-by-case basis the provision of training and orientation services by U.S. entities to Vietnamese nationals.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Steven I. Pinter, Chief of Licensing, tel.: 202/622–2480, or William B. Hoffman, Chief Counsel, tel.: 202/622–2410, Office of Foreign Assets Control, Department of the Treasury, Washington, DC 20220.

SUPPLEMENTARY INFORMATION:

Electronic Availability: This document is available as an electronic file on *The Federal Bulletin Board* the day of publication in the **Federal Register**. By modem dial 202/512–1387 or call 202/512–1530 for disks or paper copies. This file is available in Postscript, WordPerfect 5.1 and ASCII.

Background: The Office of Foreign Assets Control ("FAC") is amending the Foreign Assets Control Regulations, 31 CFR part 500 (the "Regulations"), to add § 500.575, announcing the availability of specific licenses authorizing the provision of training and orientation services by U.S. companies to Vietnamese nationals. Upon the issuance of a specific license, Vietnamese nationals may participate in general orientation programs in the United States or a third country concerning particular industries or commercial processes, or receive training with regard to the maintenance and operation of specific equipment and related technical data both of which are eligible for export under general license to Country Group Y as set forth in Supplement No. 1 to part 770 of the Export Administration Regulations, 15 CFR parts 768–799, administered by the Bureau of Export Administration of the U.S. Department of Commerce. Training with respect to the design and manufacture of equipment will not be authorized. Section 500.566 is also being revised to permit the payment of travel and maintenance expenses on behalf of Vietnamese nationals authorized to participate in such programs. It is anticipated that this

licensing policy will better enable U.S. companies to establish contacts with Vietnamese nationals and organizations to facilitate future commercial transactions at such time as the Vietnam embargo is modified to permit such transactions.

Because the Regulations involve a foreign affairs function, the Executive order on regulatory review and the provisions of the Administrative Procedure Act, 5 U.S.C. 553, requiring notice of proposed rulemaking, opportunity for public participation, and delay in effective date, are inapplicable. Because no notice of proposed rulemaking is required for this rule, the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, does not apply.

List of Subjects in 31 CFR Part 500

Services, Travel restrictions, Vietnam.

For the reasons set forth in the preamble, 31 CFR part 500 is amended as set forth below:

PART 500—FOREIGN ASSETS CONTROL REGULATIONS

1. The authority citation for part 500 continues to read as follows:

Authority: 50 U.S.C. App. 1–44; E.O. 9193, 3 CFR, 1938–1943 Comp., p. 1174; E.O. 9989, 3 CFR, 1943–1948 Comp., p. 748.

Subpart E—Licenses, Authorizations and Statements of Licensing Policy

2. Section 500.566 is amended by revising the section heading, by amending paragraph (a) introductory text to revise "paragraph (b)" to read "paragraph (c) of this section", by redesignating paragraph (b) as paragraph (c) and revising it, and by adding new paragraph (b), to read as follows:

§ 500.566 Certain transactions authorized on behalf of designated nationals incident to their travel and maintenance expenses.

* * * * *

(b) Except as provided in paragraph (c) of this section, the following transactions are authorized on behalf of nationals of Vietnam when directly related to the orientation and training of such nationals in a third country pursuant to § 500.575:

(1) All transactions ordinarily incident to travel between Vietnam and a third country, except transactions involving a carrier that is owned, controlled, or chartered by Vietnam, or a carrier that is owned or controlled by a person subject to the jurisdiction of the United States with respect to flights into or out of Vietnam;

(2) All transactions ordinarily incident to travel and maintenance within such third country, including payment of living expenses and the acquisition of goods for personal use;

(3) Normal banking transactions involving foreign currency drafts, traveler's checks, or other instruments negotiated incident to travel and maintenance in such third country.

(c) This section does not authorize any debit to a blocked account.

3. Section 500.575 is added to read as follows:

§ 500.575 Certain services to Vietnamese nationals authorized.

(a) Specific licenses may be issued on a case-by-case basis for the provision in the United States or a third country of business orientation or training services to Vietnamese nationals. The orientation or training program may pertain only to industrial or commercial processes, or to specific equipment and related technical data both of which are eligible for export under a general license to Country Group Y, as set forth in Supplement No. 1 to part 770 of the Export Administration Regulations, 15 CFR parts 768–799. Licenses issued pursuant to this section will not authorize Vietnamese participation in orientation and training programs with respect to specific equipment and related technical data that may not be exported under a general license to Country Group Y pursuant to the Export Administration Regulations. Training programs may involve instruction on the maintenance or operation of a particular product, but may not involve instruction in a product's design or manufacture.

Note: The transfer of mass-market software and certain technical data eligible for export to most destinations under General License GTDU to Vietnamese nationals may require additional authorization from the U.S. Department of Commerce pursuant to the Export Administration Regulations.

(b) Transactions directly incident to the travel and maintenance expenses of the Vietnamese nationals for purposes of orientation or training programs are authorized pursuant to § 500.566. Payment of salaries or other fees to Vietnamese nationals participating in orientation or training programs is not authorized. (c) Applications for specific licenses should be submitted by the orientation or training program sponsor and should include a full description of the program to be offered, including the participants, the identity of their employers, and the capacities in which the participants are employed.

Dated: July 13, 1993.

R. Richard Newcomb,

Director, Office of Foreign Assets Control.

Approved: July 31, 1993.

Ronald K. Noble,

Assistant Secretary for Enforcement.

[FR Doc. 93–29241 Filed 11–24–93; 11:18 am]

BILLING CODE 4810–25–F

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 290

[DCAA 5410.8]

Defense Contract Audit Agency (DCAA) Freedom of Information Act Program

AGENCY: Office of the Secretary, Department of Defense (DOD).

ACTION: Final rule.

SUMMARY: The Defense Contract Audit Agency is amending its implementation of the Freedom of Information Act of 1974, as amended (5 U.S.C. 552) (32 CFR part 290). This administrative change updates the availability of publications cited in the miscellaneous section of Appendix B to part 290.

DATES: This change will be effective January 25, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Dave Henshall, (703) 274–4400.

SUPPLEMENTARY INFORMATION: The Agency's final rule was published in the **Federal Register** on Tuesday, October 1, 1991 (56 FR 49685). It was amended on November 7, 1991 (56 FR 56932), April 27, 1992 (57 FR 15254), and July 13, 1992 (57 FR 30904).

List of Subjects in 32 CFR Part 290

Freedom of Information.

Accordingly 32 CFR part 290 is amended as follows:

PART 290—DEFENSE CONTRACT AUDIT AGENCY (DCAA) FREEDOM OF INFORMATION ACT PROGRAM

1. The authority citation for 32 CFR part 290 continues to read as follows:

Authority: 5 U.S.C. 552.

Appendix B to part 290 [Amended]

2. Appendix B to part 290 is amended by revising the entry VIRGINIA, paragraph (a) and reserving paragraph (b) to read as follows:

(a) Miscellaneous.

(1) The following publications may be obtained from the Defense Contract Audit Agency, ATTN: CMO, Cameron Station,

Alexandria, VA 22304–6178, (703) 274–5821. Since these materials are publicly available, requesters need not invoke the Freedom of Information Act to obtain copies of the publications selected.

(i) Contractor Alpha Listing. This product identifies contractors audited by the Agency by name, address, city, state, zip code, and telephone number. The alpha listing is available both in a 8½" × 11" hard copy version or a 3½" disk set. The disk version includes instructions for manipulating data to specific sorts (e.g. contractors by state, etc. * * *).

(ii) DCAAI 5025.2, Index of Numbered Publications, lists Agency publications.

(iii) DCAAP 1421.3, Catalog of Training Courses, lists training courses available from the Defense Contract Audit Institute. Specific training courses are also available.

(2) Although the following publication is publicly available, the memorandums listed may or may not be subject to withholding under the Freedom of Information Act. Those memorandums marked with an "(R)", denoting releasable (e.g. 94–PFD–063R)), are available from the above address. However, Memorandums for Regional Directors (MRDs) marked "(NR)", meaning not releasable, cannot be obtained from this source. Requests for (NR) MRDs should be sought under the auspices of the Freedom of Information Act from the Defense Contract Audit Agency, ATTN: CMR, Cameron Station, Alexandria, VA 22304–6178.

(i) DCAAI 5025.13, Index of DCAA Memorandums for Regional Directors (MRDs), lists numbered memorandums pertaining to Agency policy, procedure, and informational topics.

(3) Requesters should plainly display the words "Freedom of Information Act Request" on the lower left hand corner of the envelope to ensure prompt handling.

(b) [Reserved].

Dated: November 24, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29283 Filed 11–29–93; 8:45 am]

BILLING CODE 5000–04–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[MD3–3–5904; A–1–FRL–4797–6]

Approval and Promulgation of Air Quality Implementation Plans; Maryland–COMAR 26.11.19.15C; Standards for Adhesive Application

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is approving a State Implementation Plan (SIP) revision submitted by the State of Maryland. This revision establishes and requires the emission standards for adhesive application. This revision contains additions and corrections to volatile organic compound (VOC) regulations applicable in the Baltimore and Washington, DC nonattainment areas in Maryland, including Baltimore City and Anne Arundel, Baltimore, Carroll, Harford, Howard, Montgomery, and Prince George's Counties. The intended effect of this action is to approve Maryland's revised VOC regulations to correct deficiencies in Maryland's ozone SIP. This action is being taken in accordance with the SIP submittal and the provisions in the Clean Air Act (the Act) regarding SIP submittal and approval.

EFFECTIVE DATE: This rule will become effective on December 30, 1993.

ADDRESSES: Copies of the documents relevant to this action are available for public inspection during normal business hours at the Air, Radiation, and Toxics Division, U.S. Environmental Protection Agency, Region III, 841 Chestnut Building, Philadelphia, Pennsylvania 19107; Jerry Kurtzweg ANR–443, U.S. Environmental Protection Agency, 401 M Street, SW., Washington, DC 20460; and Maryland Department of the Environment, 2500 Broening Highway, Baltimore, Maryland, 21224.

FOR FURTHER INFORMATION CONTACT: Ms. Maria A. Pino at: (215) 597–9337.

SUPPLEMENTARY INFORMATION: On February 16, 1993 (58 FR 8565), EPA published a notice of proposed rulemaking (NPR) for the State of Maryland. The NPR proposed approval of revisions to Maryland's VOC reasonably available control technology (RACT) regulations, pursuant to section 182(a)(2)(A) of the Act, U.S.C. 7511(a)(2)(A). The formal SIP revision was submitted by Maryland on April 5, 1991. Specifically, these changes pertain to COMAR 26.11.19.15C, Standards for Adhesive Application.

EPA proposed approval of COMAR 26.11.19.15C under a procedure known as parallel processing. The NPR for this rulemaking was published while Maryland was in the process of correcting an administrative error found in the version of COMAR 26.11.19.15C contained in the official April 5, 1991 SIP revision submittal. Maryland has adopted the correction to this administrative error, and formally submitted it to EPA as a SIP revision on January 18, 1993.

This action is approving into the Maryland SIP the addition of COMAR 26.11.19.15C as contained in Maryland's April 5, 1991 submittal, and the correction to COMAR 26.11.19.15C contained in Maryland's January 18, 1993 submittal. Both the April 5, 1991 and January 18, 1993 submittals contained revisions to other Maryland SIP regulations. These other SIP revisions are the subject of separate rulemaking actions. The provisions of COMAR 26.11.19.15C are summarized as follows:

(a) The adoption of a RACT regulation for honeycomb core installations which apply VOC-containing adhesive to flat aluminum sheets, which are then corrugated to produce a honeycomb structure. Honeycomb core manufacturing is a source category for which EPA has not issued a CTG, a so called "non-CTG" source category. This non-CTG RACT regulation: (1) Requires installations discharging >50 lbs VOC/day (9.125 tons/year (TPY)) to use adhesive with ≤5.8 lbs VOC/gal as applied (minus water); and (2) contains a 200 lbs VOC/day (36.5 TPY) emissions cap (COMAR 26.11.19.15C(1));

(b) Adoption of regulations applicable to footwear manufacturing, including a maximum allowable VOC emission level (0.5 lbs VOC/pair of boots) for specialty footwear manufacturers and a requirement to maintain records and submit monthly reports to Maryland on total materials used and VOC emissions (COMAR 26.11.19.15C(2));

(c) Adoption of a non-CTG RACT regulation for spiral tube winding and impregnating sources. This regulation prohibits spiral tube winding and impregnating installations from: (1) Using adhesive with >5 lbs VOC/gal as applied (minus water) to manufacture specialty spiral tubes, (2) using adhesive with >2.9 lbs VOC/gal as applied (minus water) to manufacture non-specialty spiral tubes, (3) discharging >200 lbs VOC/day (36.5 TPY) from any specialty spiral tube winding, or (4) using resin with >4 lbs VOC/gal as applied (minus water) (COMAR 26.11.19.15C(3)); and

(d) The adoption of a general emission standard for adhesive applications not regulated under COMAR 26.11.19.15A-C or COMAR 26.11.19.03 to .14. This regulation prohibits all adhesive application installations at the same source from discharging >3.8 lbs VOC/gal of adhesive applied (minus water) unless emissions are reduced by 80% overall if they discharge >50 lbs VOC/day (9.125 TPY) and are not otherwise regulated (COMAR 26.11.19.15C(4)).

Other specific requirements of COMAR 26.11.19.15C, Standards for Adhesive Application, and the rationale for EPA's action are explained in the NPR and the accompanying technical support document (TSD) and will not be restated here. No public comments were received on the NPR. A detailed

evaluation of these SIP revisions has been performed by EPA in a TSD for this action. A copy of this TSD is available upon request from the EPA Regional Office listed in the ADDRESSES section of this document.

Final Action

EPA is approving the addition of COMAR 26.11.19.15C, Standards for Adhesive Application, as a revision to the Maryland ozone SIP. This SIP revision was submitted to EPA on April 5, 1991. EPA is also approving a revision to COMAR 26.11.19.15C formally submitted on January 18, 1993.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any SIP. Each request for revision to the SIP shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under section 307(b)(1) of the Clean Air Act, petitions for judicial review of this action, pertaining to the addition of COMAR 26.11.19.15C, Standards for Adhesive Application, into the Maryland ozone SIP, must be filed in the United States Court of Appeals for the appropriate circuit by January 31, 1994. Filing a petition for reconsideration by the Administrator of this final rule does not affect the finality of this rule for the purposes of judicial review nor does it extend the time within which a petition for judicial review may be filed, and shall not postpone the effectiveness of such rule or action. This action may not be challenged later in proceedings to enforce its requirements. (See section 307(b)(2).)

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental relations, Ozone, Reporting and recordkeeping requirements.

Dated: September 10, 1993.

W.T. Wisniewski,

Acting Regional Administrator, Region III.

40 CFR part 52 is amended as follows:

PART 52—[AMENDED]

1. The authority citation for part 52 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

Subpart V—Maryland

2. Section 52.1070 is amended by adding paragraph (c)(98) to read as follows:

§ 52.1070 Identification of plan.

* * * * *

(c) * * *

(98) Revisions to the Maryland State Implementation Plan submitted on April 5, 1991 and amended on January 18, 1993 by the Maryland Department of the Environment:

(i) Incorporation by reference.

(A) Letters of April 5, 1991 and January 18, 1993 from the Maryland Department of the Environment transmitting additions and revisions to Maryland's State Implementation Plan, pertaining to volatile organic compound regulations in Maryland's air quality regulations, Code of Maryland Administrative Regulations (COMAR) 26.11.

(B) The addition of COMAR 26.11.19.15C (proposed as COMAR 10.18.19.15C), Standards for Adhesive Application, adopted by the Secretary of Health and Hygiene on June 10, 1987, effective August 10, 1987;

(C) Amendments to COMAR 26.11.19.15C adopted by the Secretary of the Environment on March 9, 1991, effective May 8, 1991; and

(D) Amendments to COMAR 26.11.19.15C(4) adopted by the Secretary of the Environment on January 18, 1992, effective February 15, 1993.

(ii) Additional material.

(A) Remainder of April 5, 1991 and January 18, 1993 State submittals pertaining to COMAR 26.11.19.15C, Standards for Adhesive Application.

(B) Letter of April 17, 1992 from the Maryland Department of the Environment clarifying the intent of its April 5, 1991 letter transmitting revisions and additions to Maryland's State Implementation Plan.

(C) Letter of July 10, 1992 from the Maryland Department of the Environment clarifying Maryland's intent regarding COMAR 26.11.19.15C(4) and stating that Maryland was working to correct the administrative error in COMAR 26.11.19.15C(4) contained in the April 5, 1991 submittal.

[FR Doc. 93–29236 Filed 11–29–93; 8:45 am]

BILLING CODE 6560–60–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Chapter 1

[PR Docket No. 90–34; FCC 93–439]

Waivers of the Commission's Rules for Applicants in the Specialized Mobile Radio Service

AGENCY: Federal Communications Commission.

ACTION: Final rule; Petition for reconsideration.

SUMMARY: On October 21, 1992, Motorola, Inc. (Motorola) filed a Petition for Partial Further Reconsideration of the Memorandum Opinion and Order (MO&O) adopted August 4, 1992, in this proceeding. Specifically, Motorola sought reconsideration of the standard the Commission uses to evaluate short-spacing waiver requests in the Specialized Mobile Radio service. The Commission found that Motorola's concerns had been specifically addressed on reconsideration in the MO&O and, therefore, dismissed Motorola's petition.

EFFECTIVE DATE: September 15, 1993.

FOR FURTHER INFORMATION CONTACT: Steve Sharkey, Private Radio Bureau, (202) 632–7125.

SUPPLEMENTARY INFORMATION:

1. This item was adopted on September, 15, 1993, and released October 27, 1993. On October 21, 1992, Motorola, Inc. (Motorola) filed a Petition for Partial Further Reconsideration (Petition) of the Memorandum Opinion and Order (MO&O) adopted August 4, 1992, in this proceeding.[1] The MO&O affirmed our Report and Order (R&O) adopted July 19, 1991,[2] codifying two methods of short-spacing Specialized Mobile Radio (SMR) facilities and clarifying the standard we use to evaluate short-spacing waiver requests.[3] Motorola seeks reconsideration of this standard. For the following reasons we dismiss Motorola's petition.

[1] Memorandum Opinion and Order, PR Docket No. 90–34, 57 FR 43408, September 21, 1992.

[2] Report and Order, PR Docket No. 90–34, 56 FR 41467, August 21, 1991.

[3] See 47 CFR 90.621(b) identifying the co-channel distance separation criteria for systems operating on SMRS Category frequencies.

2. Motorola petitions us to reconsider the short-spacing waiver policy for SMR stations based upon the 40/30 dBu contour protection ratio. The MO&O addressed this very issue, and affirmed the waiver standard established in the R&O.[4] On reconsideration, we did not modify the rule adopted by the R&O. Therefore, pursuant to § 1.429(i) of the Commission's Rules, 47 CFR 1.429(i), we dismiss Motorola's Petition as repetitious.[5] We note, however, that on March 11, 1993, we adopted a Notice of Proposed Rule Making in PR Docket No. 93–60,[6] proposing modification of the co-channel protection criteria for all 800 MHz and 900 MHz systems regulated under 47 CFR part 90, subpart S. Because Motorola's Petition contains information relevant to the disposition of PR Docket No. 93–60, we will treat the Petition as a comment to be incorporated into the record of PR Docket No. 93–60.[7]

3. Accordingly, pursuant to the authority contained in 47 CFR 1.429(i), it is ordered that the Petition for Partial Further Reconsideration is dismissed as repetitious.

4. It is further ordered that this proceeding is terminated.

5. For further information concerning this Order, contact Steve Sharkey, Land Mobile and Microwave Division, Private Radio Bureau, (202) 634–2443, or Freda Lippert Thyden, Land Mobile and Microwave Division, Private Radio Bureau, (202) 632–7125.

Federal Communications Commission.

William F. Caton.

Acting Secretary.

[FR Doc. 93–29183 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

[4] MO&O at 6070.

[5] For other Commission decisions dismissing petitions for reconsideration as repetitious, See Order on Further Reconsideration, CC Docket No. 85–166, 6 FCC Rcd 76 (1991), and Order, MM Docket No. 87–121, 7 FCC Rcd 2954 (1992).

[6] 58 FR 19397, April 14, 1993.

[7] Subsequent to adoption of this Order a Report and Order was adopted in PR Docket No. 93–60. Report and Order, PR Docket No. 93–60, 58 FR 53431, October 15, 1993.

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47 CFR Part 1

[FCC 93–448]

Format Requirements for Pleadings and Documents

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission is amending its rules to establish a uniform standard for Commission filings. The intended effect will ensure that parties do not circumvent the page limitations contained in other parts of the Commission's Rules by utilizing printing reduction processes.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: A. Holly Berland, Office of General Counsel, Federal Communications Commission, (202) 254–6530

SUPPLEMENTARY INFORMATION:

Order

In the matter of Amendment of § 1.49 of the Commission's Rules.

Adopted: September 17, 1993.
Released: September 29, 1993.

1. The Commission on its own motion is issuing this Order to amend § 1.49 of its rules. Section 1.49 specifies the general format requirements to which most pleadings and other documents filed with the Commission must conform. By this Order, we are amending § 1.49 to require that Commission filings utilize 10- or 12-point type print.

2. Since by definition 10- and 12-point type print consists of 10 and 12 characters per inch, respectively, adoption of the type print requirement will ensure that the page-limitations for filings, contained in other sections of the Commission's rules, will not be circumvented by the use of printing reduction processes. The type print requirement adopted here also is consistent with that relating to briefs contained in § 1.50 of the Commission's rules and thus will establish a uniform standard for Commission filings.

3. Accordingly, pursuant to sections 4(i), 4(j) and 303(r) of the Communications Act of 1934, as amended, *it is ordered*, That part 1 of the Commission's Rules is amended as set forth below, effective upon publication in the **Federal Register**. This proceeding involves agency practice and procedure, and thus the notice and comment effective date provisions of the Administrative Procedure Act are inapplicable. See 5 U.S.C. 553(b)(A), (d).

List of Subjects in 47 CFR Part 1

Administrative practice and procedure.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

Rule Change

Part 1 of Chapter 1 of title 47 of the Code of Federal Regulations is amended as follows:

PART 1—PRACTICE AND PROCEDURE

1. The authority citation for part 1 continues to read as follows:

Authority: Secs. 4, 303, 48 Stat. 1066, 1082, as amended; 47 U.S.C. 154, 303: Implement, 5 U.S.C. 552 and 21 U.S.C. 853a, unless otherwise noted.

2. Section 1.49 is amended by revising the first sentence of paragraph (a) to read as follows:

§ 1.49 Specifications as to pleadings and documents.

(a) All pleadings and documents filed in any proceeding shall be on A4 (21 cm × 29.7 cm) or 8.5 in × 11 in (21.6 cm × 27.9 cm) paper, and shall be typewritten or prepared by mechanical processing methods, in 10- or 12-point type. * * *

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[FR Doc. 93–29184 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 76

[MM Docket No. 92–266; FCC 93–519]

Cable Act of 1992—Rate Regulation

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: By this *Third Report and Order*, the Commission amends its Rules to require cable operators facing regulation of both the basic and cable programming services tiers to select the same method of initial rate regulation for both tiers. Specifically, the Commission will require that if an operator subject to rate regulation for the first time selects the benchmark rate-setting approach for one tier, the operator must also adopt the benchmark approach for all other tiers that become subject to regulation in the same year. This requirement is necessary to avoid inconsistent rate-setting methods of rate regulation during the initial rate-setting process.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Amy Zoslov, (202) 632–3922, Mass Media Bureau, or Kathleen O'Brien Ham, (202) 632–7792.

SUPPLEMENTARY INFORMATION:

Synopsis of Third Report and Order

I. Introduction

1. By this Third Report and Order ("*Third R & O*") we amend § 76.922(b) of the Commission's Rules to require cable operators facing regulation of both the basic and cable programming

services tiers to select the same method of initial rate regulation for both tiers.[1] Specifically, the *Third R & O* will require that if an operator subject to rate regulation for the first time selects the benchmark rate-setting approach for one tier, the operator must also adopt the benchmark approach for all other tiers that become subject to regulation in the same year.[2] Similarly, if an operator chooses to justify rates for one regulated tier based upon a cost-of-service showing, the operator must also seek a cost-of-service determination on all other regulated tiers that same year. This requirement of applying a consistent rate evaluation approach across tiers is taken as a precautionary measure to prevent operators from engaging in retiering and cost-shifting strategies during the initial rate-setting process that would undermine the tier neutral rate-setting principles underlying the benchmark regulatory framework.[3]

II. Background

2. In the *Rate Order*, we established a benchmark and price cap approach as the primary method for setting the rates of regulated cable services.[4] We based our adoption of this regulatory regime on an evaluation of its advantages over traditional cost-of-service regulation. Under the benchmark approach, existing rates for cable service are compared to a benchmark that reflects the rates charged by cable systems that are subject to effective competition, with a given number of subscribers, regulated channels, and satellite-delivered signals. Once initial rates are determined by comparison to the benchmark, rates are governed on a going-forward basis by a price cap mechanism. The price cap permits annual adjustments for inflation and a recovery of increases in external costs, including programming costs, costs of franchise requirements, taxes, and franchise fees. As a "backstop" to the benchmark/price cap approach, we established an opportunity for cable operators to justify rates above benchmark or capped levels based on costs. In this regard, we recently sought comment on adoption of uniform cost-of-service standards for application to this alternative method of rate determination.[5]

3. The Commission also determined in the *Rate Order* that the regulatory framework for rate regulation based on the benchmark approach should be "tier neutral." In other words, we stated that we would apply the same substantive standard for calculating reasonable rates for both the basic and cable programming services tiers. The practical outcome of this approach is that it achieves a permitted charge per channel that, prior to adjustments for inflation and external costs, is the same for all tiers of regulated service. We found this approach to be preferable to one that would, for example, suppress rates for the basic service tier and allow higher earnings for cable programming services tiers. In this regard, we determined that the potential benefits of a low-priced basic tier were outweighed by the fact that such an approach would create incentives for cable operators to move programming to higher tiers where they would charge higher rates to the detriment of subscribers. We also indicated that different rate standards for the basic and cable programming services tiers could significantly increase the complexity of rate regulation.[6]

4. In the *Rate Order*, we did not specify whether a cable operator is permitted to choose the cost-of-service approach for one tier and the benchmark approach for another regulated tier, or whether parallel treatment for both tiers is required in setting initial rates. Several parties identified this as a problem on reconsideration for our *Rate Order* and we issued a *Third Further Notice of Proposed Rulemaking* ("*Third Further NPRM*") seeking comment on the matter.[7] Specifically, we requested comment on whether cable operators should be permitted to choose the cost-of-service approach for one regulated tier of cable service and the benchmark approach for another regulated cable service tier, or whether consistent treatment for both tiers is required in setting initial rates. We tentatively concluded that cable operators should be required to elect the same regulatory approach for all regulated tiers. Thus, if a system became subject to regulation at the local level, and sought to justify its basic service rates using the benchmark system, the reasonableness of its cable programming services rates would also be based on the benchmark, if the Commission were considering a complaint filed against those rates. In reaching this tentative conclusion, we sought to prevent cable operators from moving more expensive programming services from the benchmark-regulated tier to the tier regulated by a cost-of-service showing and ultimately recovering more than compensatory rates. We tentatively concluded that this was the best way to preserve the tier neutral approach to rate setting adopted in the *Rate Order*.[8]

5. We also requested comment on what procedural requirements, if any, we should adopt to provide for coordination between local franchising authorities and the Commission in the event that a cable operator chooses to make concurrent cost-of-service showings before each jurisdiction. We inquired as to whether we should require that the determination of one jurisdiction will govern, or be given considerable weight in setting rates for the tier subject to the oversight of the other jurisdiction. We solicited comment on whether cable operators should be allowed to switch from benchmarking to cost-of-service and *vice-versa*. We also questioned whether we should impose a specific timetable for any sort of "switching" activity that is allowed.[9]

III. Comments

6. In response to the *Third Further NPRM*, cable operator commenters uniformly oppose enforcement of a consistent rate approach for all regulated tiers.[10] They make four primary arguments in support of their position. First, they argue that allowing

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[1] *See* the rule amendments.

[2] Thus, an operator that becomes subject to basic rate regulation on December 1, 1993 and selects the benchmark rate-setting approach must also choose the benchmark approach if the operator becomes subject to regulation of its non-basic tiers at any time up until December 1, 1994. Upon expiration of this one year time frame after initial rates have been set, the operator can adopt different rate determination methods for its service tiers.

[3] In order to avoid the application of inconsistent rate-setting methods by operators during this early phase of rate regulation when initial permitted per channel charges are being established, we find the need to make the rule changes adopted herein operative immediately. Accordingly, we find good cause for making our amendments to Section 76.922(b) effective upon publication in the Federal Register. 5 U.S.C. Section 553(d)(3).

[4] *See Report and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92–266, FCC 93–177, 8 FCC Rcd 5631 (1993) ("*Rate Order*"), 58 FR 29736, May 21, 1993.

[5] *See Notice of Proposed Rulemaking* in MM Docket No. 93–215, FCC 93–353 (released July 16, 1993), 58 FR 40762 (July 30, 1993) ("*Cost-of-Service Notice*").

[6] The benchmark formula is based on prices that are averaged across all tiers of regulated services. We indicated in the *Rate Order* that a "tier neutral" per channel rate calculated as an average of charges across all tiers and compared to the benchmark is simpler for cable operators and regulators to administer and would discourage the shifting of programming services away from the basic services tier. *Rate Order*, 8 FCC Rcd at 5759–60 and n. 501.

[7] *See Third Further Notice* in MM Docket No. 92–266, FCC 93–428 (released Aug. 27, 1993), 58 FR 46737 (Sept. 2, 1993).

[8] *Id.* at paras. 146–152. *See also Rate Order*, 8 FCC Rcd at 5759.

[9] *Third Further NPRM* at paras. 146–52.

[10] *See* Appendix for a complete list of commenting parties.

operators to choose between the different rate-setting methods for the different tiers does not promote "gaming" because the Commission can consider overall costs and rates for all regulated services in setting rates for the cable programming services tier. Second, they contend that the Commission's price cap rules provide a disincentive to shift costs between tiers. Third, they argue that consistent rate treatment abandons the Cable Act's dichotomy between local and federal regulation of the different tiers. Fourth, they believe that requiring a consistent rate-setting approach will promote more cost-of-service showings for the tiers for which the cable operator would otherwise have adopted the benchmark approach.[11]

7. Holding the opposite view on this issue, municipalities and one telephone company support enforcement of a consistent rate-setting methodology. These commenters argue that such a requirement will reduce hidden costs passed on to subscribers due to "gaming"; lead to fewer cost-of-service proceedings, which will only be initiated if the benchmarks overall are inadequate; and promote the same initial permitted per-channel rates on each tier.[12]

8. Commenters' suggestions on procedural requirements were varied in nature. These suggestions include: (1) Consolidating all cost-of-service hearings at the Commission; (2) requiring the sharing of cost-of-service data between the franchising authorities and the Commission; (3) allowing either the local franchising authority or the Commission to use the other jurisdiction's rate determination as binding or informative; and (4) requiring notification to all other local jurisdictions in which the same company has initiated a cost-of-service proceeding for the purpose of consolidation.[13] The commenters generally advocate imposing some type of time limitation on a consistent rate structure requirement, suggesting that cable operators should be able to switch from one rate-setting method to another after a period of six months[14], one year[15], or whenever there is a reasonable basis for doing so.[16]

IV. Decision

9. After carefully considering the record before us, we affirm our tentative conclusion that cable operators facing regulation of the basic and cable programming services tiers should be required to select the same method of initial rate-setting for both tiers. Thus, if a cable operator's basic service tier becomes subject to regulation at the local level (or in some instances, at the federal level), and the cable operator selects the benchmark approach, it must also adopt the benchmark approach if its cable programming services tier becomes subject to a complaint at the Commission within the same year. Similarly, if the cable operator chooses to make a cost-of-service showing in response to regulation of the basic service tier, then the operator must also make a cost-of-service showing in response to a cable programming services complaint filed within that year. On balance, we believe this approach is a necessary part of the tier neutral and rate averaging principles built into the benchmark system, particularly because it eliminates the incentive for cable operators to shift costs among tiers to the detriment of consumers.

10. Requiring operators to select the same rate determination method for all regulated tiers when initial rates are being set is necessary because it bolsters our ability to ensure that subscribers to all regulated tiers of service pay reasonable rates. Asymmetric treatment of the two tiers would hamper the ability of both local franchising authorities and the Commission to apply the benchmark's permitted per channel rate in a consistent manner across tiers. In particular, operators able to choose a different rate-setting approach for each of its cable services tiers could selectively apply the benchmark in a manner that would enable the operator to charge higher overall rates than would be allowed if either the benchmark or the cost-of-service approach had been applied consistently across all program tiers. Specifically, an operator could retier its services and place its most expensive programming on the tier regulated by a cost-of-service determination. The operator would then be allowed to charge a per channel rate for the low cost tier based on the benchmark (which is an average rate) that actually far exceeds its costs for that tier (and, thus, the rate it would be able to charge under a cost-of-service showing). At the same time, the operator may be able to charge a higher-than-benchmark rate for the other service tier through a cost-of-service showing, based on its higher costs for that tier. The end result would be rates that exceed the reasonableness standard set forth in the 1992 Cable Act.[17] Thus, we conclude that a requirement that operators apply consistent rate-setting approaches across tiers is needed to uphold the concept of tier neutrality and prevent cost-shifting, thereby making the process of setting initial benchmark rates work effectively and as intended.[18] We will, however, review this policy after 18 months to determine whether it is necessary and appropriate to serve the purposes for which we are adopting it.

11. Additionally, we note that we are restricting our requirement that operators must use the same rate-setting method to one year from the date that the operator first becomes subject to regulation at either the local or federal level. Thus, after the expiration of its first year of initial rate regulation on a service tier, an operator is free to adopt different rate determination methods for its other service tiers. We take this approach for two reasons. First, we have given operators the ability to use either of two rate-setting methodologies on the possibility that there may be some systems for which benchmark rates may not provide adequate recompense because of that system's particular cost structure. Any system's cost structure

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[11] *See e.g.*, Comments of Cablevision Industries Corp., *et al.* ("Joint Parties") at 11–14; National Cable Television Association ("NCTA") at 15–17; Tele-Communications, Inc. ("TCI") at 4–6; Continental Cablevision ("Continental") at 2–5; Media General Cable of Fairfax County, Inc. ("Media General") at 2–3; Time Warner Entertainment Co., L.P. ("Time Warner"); Falcon Cable TV, *et al.* ("Falcon") at 14–17; Cable Operators and Associations ("Cable Operators") at 6. *See also* Reply Comments of Continental at 11–12; Joint Parties at 10–12; Time Warner at 6–7.

[12] *See, e.g.*, Comments of Municipal Franchising Authorities ("MFA") at 3–7; Austin, Texas, *et al.* ("Coalition") at 9–13; National Association of Telecommunications Officers and Advisors, *et al.* ("NATOA") at 11–12; New York State Commission on Cable Television ("New York") at 5–7; GTE Service Corp. ("GTE") at 10–11. *See also* Reply Comments of Coalition at 15–16; GTE at 7–10.

[13] *See e.g.*, Comments of MFA at 7–8; Massachusetts Community Antenna Television Commission ("MCATC") at 8; NATOA at 12–14. *See also* Reply Comments of Joint Parties at 13–14; KBLCOM, *et al.*, at 1–3; Viacom International, Inc. at 9–11.

[14] Comments of Falcon at 18.

[15] *See* Comments of NATOA at 11 n.6.

[16] *See, e.g.*, Comments of Coalition at 11–12; Time Warner at 10.

[17] Indeed, in the *First Order On Reconsideration*, we stated that one reason for the adoption of tier neutrality was to eliminate any incentive for operators to move services to other tiers where they could charge relatively higher prices without necessarily corresponding higher costs. *See First Order on Reconsideration* in MM Docket No. 92–266, FCC 93–428 (58 FR 46716, September 2, 1993) (released August 27, 1993) at para. 31. *See also Rate Order* at para. 196.

[18] We have adopted similar safeguards to address concerns of cost-shifting in other regulatory contexts. *See, e.g., Policy and Rules Concerning Rates for Dominant Carriers*, 5 FCC Rcd 6786, 6819 (para. 271) 1990, *recon.*, 6 FCC Rcd 2537 (1991), *aff'd sub nom. National Rural Telecom Ass'n v. FCC*, 988 F.2d 174 (D.C. Cir. 1993) (Commission adopted "all-or-nothing" rule to eliminate incentive for local exchange carriers to shift costs from affiliates subject to price cap regulation to rate of return affiliates).

may vary substantially over time, however, so that a rate-setting methodology that is appropriate at the initial date of regulation for both tiers of service may not be appropriate much later for both tiers of service. Moreover, after the initial rates have been set for a tier, those rates will change over time, pursuant to the going forward rules governing rate increases. As this occurs, our concern for tier neutrality in rates and rate-setting will likely not be as acute as in this period of transition to regulation. We recognize that over time, the cost structure of cable services from tier to tier may legitimately evolve to the point where consistent rate treatment across tiers might be overly restrictive. Accordingly, we have decided to grant cable operators the flexibility to use different rate-setting methods across tiers after the passage of one year of initial rate regulation so that bona fide structural and operational changes may be made as rate-making proceeds.

12. We take this opportunity to respond to the specific arguments that cable operators have made in support of differential treatment of basic and cable programming tiers. The first is that a tier-neutral approach is not necessary to achieve the goals of rate regulation. Specifically, cable commenters contend that as long as regulators are entitled to consider a cable system's overall costs and rates for all regulated services, then operators will be unable to shift costs from tier to tier.[19] One commenter suggests that the Commission should require any operator who elects cost-of-service treatment of the non-basic tier to demonstrate that its overall return for both basic and cable programming services is reasonable.[20]

13. We acknowledge that, in reviewing the cost-of-service showings made by operators for cable services, regulators will need to examine how costs are allocated among the regulated tiers. We have adopted and are in the process of developing additional cost allocation rules that will help to accomplish this goal.[21] However, even with cost allocation rules in place, the Commission, in evaluating a cost-of-service showing for non-basic service, cannot call into question the rates charged for basic service without undermining the Cable Act's shared jurisdictional scheme. Basic tier rates generally are regulated by local franchising authorities. Therefore, in most instances, even where we uncover unreasonable cost-shifting, we could not compel the operators to justify their rates across all tiers and adjust them accordingly.[22]

14. The second argument made by cable commenters has to do with the creation of rules that remove incentives for cost-shifting. Specifically, cable commenters argue that they have no incentive to manipulate the rate process under the Commission's price cap regime. Specifically, they allege that since operators can pass through programming costs directly to subscribers as external to the benchmark rates, they can effectively recover such costs without having to shift them disproportionately to the tier regulated by cost-of-service.[23] They also observe that if an operator attempts to lower its programming costs on the basic tier, the Commission's external price cap adjustment rules require the operator to decrease the price of its basic service to reflect the reduction in costs.[24] Thus, operators believe it is not possible for them to manipulate costs between tiers under price cap rate regulation.

15. These arguments address the ability of operators potentially to manipulate the rate process in the context of our future price cap regime, but they do not address the probability that operators might engage in such practices now, while initial rates are being set. We believe that a tier-neutral approach is important to diminish any incentive or opportunity for operators to manipulate the initial rate-setting process to warrant the adoption of a requirement of consistent rate approaches as a solution to the problem. As the cable operators suggest, the future price cap regime may effectively prevent operators from shifting basic service programming costs to the non-basic tier. As we gain experience in rate regulation, we will reevaluate our position in light of these arguments. For the time being, however, we will require consistent rate approaches across tiers to guard against cost-shifting retiering strategies that subvert the initial rate-setting process.

16. We are also not persuaded that consistent rate treatment abandons the Cable Act's dichotomy between local and federal regulation of the different tiers, as cable operators allege. We have previously rejected the argument that the statute requires different substantive rate-setting standards.[25] As we have observed before, the Cable Act establishes different procedural regulatory schemes rather than a dichotomy of substantive rate standards for the regulation of service tiers. Accordingly, the statute's procedural dichotomy does not require that we allow cable operators to pick and choose substantive rate-setting standards.

17. Cable commenters also have not demonstrated that requiring consistent rate-setting across tiers will increase the number of cost-of-service showings made either at the Commission or at the local level. Indeed, other commenters contend the opposite.[26] We expect cable operators to submit cost-of-service showings in every case where such a showing is essential to ensure that systems are allowed to recover their costs plus a reasonable return. Furthermore, even if consistent rate treatment were to produce a greater number of cost-of-service proceedings, the preservation of the tier neutral benchmark system and the protection it affords subscribers (*i.e.*, elimination of the incentive for operators to shift costs), outweighs the administrative burden posed by such additional proceedings.

18. In essence, the cable operators urge us to allow them flexibility to pick and choose between benchmark and cost-of-service regulation in order to enable them to maximize total revenues derived from all regulated tiers. However, as we have noted previously in this docket, there is no "constitutional or statutory requirement that the Commission's regulatory scheme must enable operators to select the option that maximizes their

[19] Joint Parties Comments at 12; Continental Cablevision Comments at 4; Media General Comments at 3.

[20] Continental Cablevision Comments at 4.

[21] *See Cost-of-Service Notice supra* at note 5.

[22] If we required operators electing cost-of-service for the upper tier and benchmark for the lower tier to justify their overall return for both basic and cable programming services, as Continental Cablevision suggests, we would effectively be imposing a cost-of-service showing for both services. Not only would this be undermining the jurisdiction of the local franchising authority to regulate rates, but it would also be second-guessing the authority's benchmark analysis. The Cable Act vests in franchising authorities the primary responsibility to regulate basic rates and only in limited instances do we regulate basic rates. *See Rate Order* at para. 55.

[23] NCTA Comments at 16; TCI Comments at 8. We reject TCI's argument that the Commission's proposed solutions to the "gaming" problem come "dangerously close to taking editorial control over the placement of programming." TCI Comments at 8. To the extent that TCI raises First Amendment concerns, we have found that rate regulation under the 1992 Cable Act pursuant to content-neutral standards does not implicate the First Amendment. *See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in MM Docket 92-266, 8 FCC Rcd at 5588 n. 30. (1993). *See also Daniels Cablevision, Inc. v. FCC*, Civil Action No. 92-2292, slip op. at 13 (D.D.C. Sept. 16, 1993) (holding that the rate regulation provisions of the 1992 Cable Act are compatible with the First Amendment).

[24] TCI Comments at 16.

[25] *See Rate Order*, 8 FCC Rcd at 5875-76; *First Order on Reconsideration* at paras. 31-36.

[26] *See supra* note 12.

financial position."[27] Moreover, as discussed above, the cable operators' proposal would undermine our policies regarding tier neutrality and cost shifting, which are designed to protect consumers from excessive rates. We therefore will require cable operators to use a consistent method of rate-setting for all regulated tiers during the first year of regulation.

19. For any cable operators that have become subject to regulation of basic or cable programming services and have filed rate justifications before the effective date of the amendment to Section 76.922(b) adopted herein, we will apply the following procedures. Where the cable operator has selected one rate-setting approach for one tier, the operator is bound to select the same rate-setting approach for all other tiers that become subject to regulation within one year of the date of initial regulation. Any such cable operator will have thirty (30) days from the effective date of this *Third R & O* to change a rate-setting justification filed prior to the effective date of this order. In such cases, the amended filing will govern initial rates as of the date it is filed. In this circumstance, the operator may rely, if it chooses, on its initial rate justification to justify its rates from September 1, 1993, (when potential refund liability would begin) until the date of its amended filing. Where a cable operator has already filed justifications for both basic and cable programming service tiers, and has selected different rate-setting approaches for different tiers of service, we will require such operators to establish consistent rate-setting methodologies for the period after the effective date of this order. Specifically, in such cases, the operator must refile within thirty (30) days of the effective date of this order, the rate-setting approach for one of the tiers, and this rate-setting election will govern initial rates for that tier as of the date it is filed. As in the first circumstance described above, cable operators who have filed inconsistent rate justifications may rely on those initial rate justifications to justify rates from September 1, 1993, until the date of their amended filings.

20. Finally, because we are not requiring consistent rate justification indefinitely, we perceive no need to adopt rules today to govern the sharing of cost-of-service data among franchising authorities or between franchising authorities and the Commission. Rather, as we stated in the *Rate Order* at para. 149, we will review the franchising authority's cost-of service determination on appeal pursuant to Section 76.944 of our rules to determine if there is a rational basis for that decision. To resolve any uniformity problems, if there is a complaint on file at the Commission regarding cable programming services tier rates at the same time an appeal is filed, we will endeavor to consider the complaint and the appeal simultaneously. We will, however, reverse the franchising authority's determination, and remand the case to the franchising authority, only if there is a misapplication of an existing Commission rule or policy.[28] If the Commission makes a determination on a cable programming services complaint based on a cost-of-service showing, the local franchising authority should use the analysis developed by the Commission with respect to the allocation of costs among tiers when evaluating any subsequent cost-of-service showing for the basic tier.

V. Administrative Matters

21. Pursuant to the Regulatory Flexibility Act of 1980, the Commission's final analysis with respect to the *Third Report and Order* is as follows:

Need and purpose for this action: This action is taken to preserve the integrity of the tier neutrality and rate averaging principles underlying the benchmark regulatory approach established in the *Report and Order and Further Notice of Proposed Rulemaking* in MM Docket 92–266.

Summary of issues raised by comments in response to the Initial Regulatory Flexibility Analysis: No comments were received in response to the request for comments to the Initial Regulatory Flexibility Analysis.

Significant alternatives considered and rejected: The Commission considered and rejected allowing cable operators to choose different rate-setting methods across tiers when establishing initial rates.

VI. Ordering Clauses

22. Accordingly, *it is Ordered* That, pursuant to authority granted in Sections 4(i), 4(j), 303(r), and 623 of the Communications Act of 1934, as amended, 47 U.S.C. §§ 154(i), 154(j), 303(r), and 543, this Third Report and Order *is Adopted* amending Part 76 of the Commission's rules, 47 CFR Part 76, as indicated.

23. *It is further ordered* That, the Secretary shall send a copy of this Third Report and Order to the Chief Counsel for Advocacy of the Small Business Administration in accordance with paragraph 603(a) of the Regulatory Flexibility Act. Pub. L. No. 96–354, 94 Stat. 1164, 5 U.S.C. §§ 601 *et seq.* (1981).

24. *It is further ordered* That the requirements and regulations established in this *Third Report and Order* shall become effective upon publication in the Federal Register.[29]

List of Subjects in 47 CFR Part 76

Cable television.

Federal Communications Commission.
William F. Caton,
Acting Secretary.

Rule Change

Part 76 of Title 47 of the Code of Federal Regulations is amended as follows:

PART 76 CABLE TELEVISION SERVICE

1. The authority citation for part 76 continues to read as follows:

Authority: Secs. 2, 3, 4, 301, 303, 307, 308, 309, 48 Stat., as amended, 1064, 1065, 1066, 1081, 1082, 1083, 1084, 1085, 1101; 47 U.S.C. Secs. 152, 153, 154, 301, 303, 307, 308, 309, 532, 533, 535, 542, 543, 553 as amended, 106 Stat. 1460.

2. Section 76.922 is amended by revising paragraph (b)(1)(i) and the introductory text of paragraph (b)(1)(ii) to read as follows:

§ 76.922 Rates for the basic service tier and cable programming services tiers.

* * * * *

(b) * * *

(1) The permitted per channel charge on the initial date of regulation shall be, at the election of the cable operator, either

(i) A charge determined pursuant to a cost-of-service proceeding; or

(ii) The charge specified in paragraphs (b)(1)(ii) (A), (B) or (C) of this section as applicable. Provided, however, that if within one year of becoming subject to initial regulation of one service tier, a cable operator becomes subject to initial regulation of another service tier or tiers, the cable operator must elect the same method of determining the permitted per channel charge for all

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[27] *See Memorandum Opinion and Order and Further Notice of Proposed Rulemaking* in MM Docket No. 92–266, 8 FCC Rcd 5585, 5588 (1993), 58 FR 43816, August 18, 1993.

[28] Although this may on occasion result in different resolutions of question of fact by the Commission and the local franchising authority, this is a result contemplated by the Act in creating a dual jurisdiction regulatory scheme for cable rates. Moreover, we anticipate that in most cases, the second regulater will be informed by the decision reached by the first regulator.

[29] For reasons set forth in note 3 *supra*, we find good cause for making our amendments to Section 76.922(b) effective upon publication in the Federal Register. *See* 5 U.S.C. 553(d)(3).

regulated service tiers. The cable operator must maintain a consistent method for determining the permitted per channel charge across all service tiers for a period of one year from the date that the cable operator first becomes subject to regulation on either the basic service or cable programming service tiers.

* * * * *

Appendix

Note: This appendix will not appear in the Code of Federal Regulations.

Comments

MM Docket No. 92–266

Austin, Texas, *et. al*
Cable Operators and Associations
Cablevision Industries, *et. al*
Community Antenna Television Association
Continental Cablevision, Inc.
Falcon Cable TV, *et. al*
GTE Service Corporation
Massachusetts Community Antenna Television Commission
Media General Cable of Fairfax County, Inc.
Municipal Franchising Authorities
National Association of Telecommunications Officers and Advisors, *et. al*
National Cable Television Association
New York State Commission on Cable Television
Tele-Communications, Inc.
Time Warner Entertainment Co., L.P.

Reply Comments

Austin, Texas, *et. al*
Cable Industries Corp., *et. al*
Continental Cablevision, Inc.
GTE Service Corporation
KBLCOM, *et. al*
Media General Cable of Fairfax County, Inc.
National Cable Television Association
Time Warner Entertainment Co., L.P.
Viacom International, Inc.

[FR Doc. 93–29325 Filed 11–29–93; 8:45 am]
BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

49 CFR parts 37 and 38

[Docket No. 48463]

RIN 2105–AB53

Transportation for Individuals with Disabilities

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Final rule.

SUMMARY: The Department is amending its rules implementing the Americans with Disabilities Act (ADA) in several respects. The first change would extend until July 1994 the compliance date for retrofitting key rail station platforms with detectable warnings. The second modification would except a particular model of lifts from the requirement that transportation providers permit standees to use lifts. The third change would modify the Department's procedures for responding to requests for equivalent facilitation determinations. The fourth change clarifies the responsibility of transit providers to make seat or wheelchair securement space available to people who need it: The fifth amendment would reflect a recent statutory change in the name of the Department's transit agency from the Urban Mass Transportation Administration (UMTA) to the Federal Transit Administration (FTA). The sixth change would modify the good faith efforts that Amtrak and commuter rail operators would have to make in order to lease used rail vehicles. The Department is also making two minor technical corrections to its rule establishing standards for accessible vehicles.

EFFECTIVE DATE: This rule is effective December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC. 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD). Copies of the final rule are available in alternative formats on request.

SUPPLEMENTARY INFORMATION:

I. Introduction

The Department published its notice of proposed rulemaking (NPRM) on the issues covered by this rule on November 17, 1992. At the request of commenters, the original January 19, 1993, comment closing date was extended through February 19, 1993. The Department received over 550 comments on the NPRM, most of which came from individuals with disabilities or organizations representing them, state and local agencies working on disability matters, state and local transportation agencies, and equipment manufacturers.

I. Detectable Warnings

Background

Under appendix A of part 37, which adopts as part of a DOT regulation the Architectural and Transportation Barriers Compliance Board (Access Board) guidelines for accessible facilities, sections 10.3.1 and 10.3.2, require that an accessible rail station have a 24-inch wide detectable warning strip running the entire length of the platform edge. The warning strip must include a pattern of "truncated domes" (i.e., small raised rounded surfaces) as required by section 4.29 of appendix A. The purpose of the detectable warning is to inform blind or visually impaired passengers that they are nearing the platform edge. The warning must be of a contrasting color (i.e., dark vs. light) and texture (i.e., truncated domes vs. smooth surface), as well as (in the case of interior surfaces) differing from the platform in resiliency and sound-on-cane contact.

The Department stated in the NPRM that having an adequate detectable warning system to warn blind and visually impaired passengers that they are near a platform edge is a vital safety matter for these passengers. For example, in one rapid rail system lacking adequate detectable warnings, according to testimony from blind passengers at a 1992 public hearing on the system's proposed key station plan, 15 blind or visually impaired passengers have fallen off the platform in recent years (at least one of them was killed by a train). At the same time, the Department was aware that rail operators had expressed a number of concerns about the detectable warnings requirement. For example, a petition that the Access Board and the Department received, prior to the issuance of the NPRM, from several rail operators cited what they called "extraordinary costs" and unanswered questions about the materials' "durability, maintainability * * * safety, and usability by persons with visual and mobility impairments." The petition requested that the detectable warnings standard be suspended, pending further research.

In issuing the NPRM, the Department stated that the existing design for detectable warnings standard fulfills detectability and safety requirements. Nevertheless, the Department said that rail operators may have legitimate concerns about the installation of detectable warning materials as they retrofit key stations for accessibility. These concerns include the possibility of adhesive failures and "lift-off" (i.e., the corners of segments of the materials may come up) as well as durability. For example, if the corners of a tile segment curl up, people can trip on them. If passengers expect detectable warning materials to be on the edge of the entire platform, and several feet of material is missing because the adhesive has failed, someone could fall off the platform because the expected warning was absent.

In the NPRM, the Department emphasized that its concerns were neither about the basic design of the

detectable warnings or their usefulness to people with vision impairments. Rather, they went to the question of how best to apply detectable warning materials to an existing station platform in a retrofit situation. The Department said that these concerns do not apply with the same force to a new construction situation, where detectable warnings can be made an integral part of the platform design (e.g., through concrete stamping or other methods not involving retrofit). The NPRM also noted that the Department's concerns did not relate to the cost of installing detectable warnings in key stations. To the extent that installation of detectable warnings involves an extraordinarily expensive structural change to a particular station, the rail operator could use the cost of the installation as part of its rationale for requesting an extension of time to make the key station accessible.

The Department's proposal was based on a belief that rail operators may need additional time to resolve concerns over adhesion, durability, and maintainability of detectable warning materials in the context of key station modifications. Consequently, the NPRM proposed to extend for 18 months the key station compliance date with respect to detectable warnings. Under the present rule, except where the Department has extended time for completion of modifications to a key station, rail operators had to make key stations accessible by July 26, 1993. This means, of course, that detectable warnings were to be in place by that date. Under the proposal, rail operators would have had until January 26, 1995, to *complete* installation of detectable warnings.

Comments

A substantial number of commenters opposed the Department's proposal, asserting that the detectable warnings requirement, as written, should go into effect without any postponement. We received this comment from 101 commenters, 80 of whom were disability organizations or individuals with disabilities. These were primarily, but not exclusively, from the blind community. Thirteen of the remaining comments were from manufacturers of detectable warnings and associated products, with four from state or local agencies working on disability matters and two each from state or local transportation agencies and other commenters.

The comments from the disability community emphasized the safety need for detectable warnings, particularly for blind and visually impaired persons. They mentioned numerous cases of persons falling off platforms in various rail systems (18 in a system other than the one mentioned in the NPRM), sometimes resulting in death or injury. These situations, some of which were recounted by fall victims themselves in detail, were in addition to cases in which visually-impaired passengers almost fell off, or had become very fearful of walking on, rail station platforms.

Some letters mentioned the need for detectable warnings for persons who use dogs, as well as those who use canes, as a mobility aid. A number mentioned the crowded, noisy, distracting atmosphere of rush hour train stations as being a situation in which a tactile cue like a detectable warning is particularly important. Comments mentioned successful experiences with detectable warnings in some systems. They also asked why we seemed to assume that detectable warnings shouldn't be installed until we were sure they were maintenance-free, when we do not assume this for any other component of a rail system.

The manufacturers said that the problems the NPRM had cited with adhesion, lift-up, etc. of detectable warning materials had been the result of a combination of first-generation materials and improper installation and/or maintenance by rail properties. Current products (including some developed specifically for the rail platform market), they asserted, had solved these problems, and no delay in installation requirements was needed.

Fourteen commenters supported the NPRM provision as drafted. Nine of these were state or local transportation agencies, four were disability community commenters, and one was a state or local agency working on disability matters. Seven additional commenters favored longer delays.

The basic view of these commenters was that the proposed extension of the completion date was needed to address the concerns cited in the NPRM. In particular, transit authorities said that safety (e.g., a potential tripping hazard), durability, and maintainability questions about detectable warnings had not been answered satisfactorily. (Since few transit authorities have actually installed detectable warnings to date, most commenters could not assert that they had directly experienced problems, however.) One rail operator cited a 1991 study performed by a consultant for DOT that noted a number of problems that had occurred in early installations of detectable warnings. Some commenters expressed particular concern about detectable warnings at outdoor stations in the winter, with respect to snow and ice removal and potential slipping hazards to passengers.

Some commenters pointed out that the American National Standards Institute (ANSI) had not adopted a detectable warnings standard, drawing the conclusion that this placed the viability of the current Federal standard in question. Others said that they did not want to spend substantial sums of money on detectable warnings until there was certainty about what design would best answer the concerns that have been raised. Two organizations that represent a constituency consisting primarily of persons with mobility impairments said that additional research was needed on the issue of whether detectable warnings were an obstacle or hazard to persons with mobility impairments.

In support of its request for an indefinite, or, alternatively, five-year, postponement of the requirement, a rail operator cited the need to look at safety, durability, and maintainability issues, which it said current DOT research has not addressed. It said that while new products have been developed, they have not yet been independently tested. Another transit property also asked for a 5-year delay, while a third suggested making the requirement effective in July 1995, to coincide with the one-car-per-train requirement. Making the requirements effective at the same time made sense, they said, because they relate to an accessible car-station interface. Four rail operators suggested that the 18 months should start to run from the time that FTA or the Access Board completed its research on detectable warnings.

A few comments alluded to reported opposition to detectable warnings on the part of one organization representing individuals with visual impairments. However, this organization did not comment on the NPRM, and there were no comments to the NPRM from any blind or visually impaired individuals or organizations representing them opposing detectable warnings on rail station platform edges.

Among other comments on this subject, one of the rail operators mentioned above thought that the postponement should apply to new and altered platforms as well as those being retrofitted. It also mentioned a technical safety concern relating to the interface of the detectable warning strip and the yellow safety stripe at the platform edge. A disability community commenter suggested handrails, as well as detectable warnings, at intervals along platforms. Another commenter said the Access Board specification for

detectable warnings should be made more precise, and that the "pathfinder" design had some international acceptance. A transit provider said that, in case the Access Board changed its standard, detectable warnings that had been installed in the meantime should be grandfathered.

DOT Response

This issue is a difficult one, because the comments favoring and opposing the proposed 18-month delay both make reasonable and persuasive points. It is important to remember that the NPRM never raised the issue of *whether* detectable warnings should be installed on rail platform edges, only the issue of *when* installation should be completed. The discussion below pertains to this timing issue.

While manufacturers' and consumers' comments assert that cited problems concerning the materials have largely been solved, it is clear that rail operators are not persuaded that their concerns about installation, safety, durability, and maintainability have been fully addressed. From a transportation policy point of view, requiring materials to be installed without providing a reasonable amount of time for rail operators to resolve these very practical issues could be counterproductive. Disability group comments expressing concern about the effects of detectable warnings on transit accessibility for persons with mobility impairments are also worthy of consideration. Finally, the need of transit properties for time to determine which specific detectable warning product is best for their systems and to go through their procurement processes is reasonable to take into account.

The rulemaking record also provides a sound basis for the propositions that detectable warnings address a significant safety need for persons with impaired vision and that an effective tactile cue that a person is reaching the platform edge is very important, particularly given factors in the rail station environment that may diminish the utility of aural and other cues to persons with impaired vision. It is fair to conclude from comments to the rule that one of the consequences of having a serious visual impairment is the need to concentrate very hard on mobility and orientation matters that sighted persons handle routinely. All it takes is a brief moment of fatigue, or distraction, or disorientation, in the complex and sometimes confusing environment of a rail station, and even a very experienced blind rail system user can make what, in context, is a fatal misstep. Detectable warnings can prevent that last mistaken step.

The drop-offs at the edges of rail station platforms create a clear, documented, and unacceptable hazard to persons with visual impairments. The Department believes that existing research adequately documents the detectability of warning materials meeting or exceeding the current Access Board requirement, and, therefore, that the materials will mitigate this hazard. These factors make a persuasive case for not unduly postponing the installation of detectable warning materials that can prevent death, injuries, and narrow escapes of the kind cited in the record.

The case of installing detectable warnings sooner, rather than later, is made stronger by three publicly reported deaths of visually impaired passengers in the time since the comment period for this rulemaking closed, of which the Department takes notice. In none of these cases did the platform edge have a detectable warning. In Boston, a blind individual received fatal injuries when she fell off a platform and received a shock from the electrified "third rail." According to a press report of the incident, the individual asserted that, had a detectable warning strip been in place, her fall would have been prevented. In New York, a blind passenger using a guide dog fell off a platform and was killed by an oncoming train. In this case, according to a press report, the platform's edge was "marked with abrasive material" in an attempt to provide a warning to persons with vision impairments. It is the Department's understanding that this material involves a flat, painted-on surface with a sandpaper-like texture, which does not meet the Federal standard for a detectable warning. In the most recent case, a visually impaired individual apparently fell onto the tracks of a Maryland commuter rail system and was also fatally injured by a train. In addition, in December 1992, a visually impaired passenger fell to the tracks on Baltimore's subway system, and was struck and injured by a train.

The 1991 study referred to by a commenter ("Innovative Solutions for Disabled Transit Accessibility" Thomas J. McGean, October 1991) evaluates detectable warning materials that had been installed up to that time. The study affirms the excellent detectability of materials meeting Federal standards. The study does not point to any safety problems created by the materials for passengers, beyond those that can be inferred from "lift-off." Different transit properties that have installed the tiles reported different experiences with cleaning and maintenance, some reporting substantial difficulty and others having few problems. (The study suggests that frequent cleaning is important.) Lift-off problems were reported in some stations (for example, one BART station had a high lift-off rate, of about a third of tiles after 18 months, while other BART stations had low lift-off rates in the 1–10 percent range.) The study identified cleaning, maintenance, and installation deficiencies as factors leading to lift-off, in addition to adhesive failure and temperature effects. The study also noted ongoing efforts at improving detectable warning materials. The conclusion the Department draws from this study is that there are documented practical problems with the installation and maintenance of some detectable warning materials, which it is necessary for transit properties to address if their installation of detectable warnings is to be successful. However, nothing in the study suggests that these problems appear insuperable; nor does the study suggest that a prolonged period of time (e.g., five years) is needed for rail operators to solve these problems.

Any decision in a matter of this kind requires the Department to strike a balance between the legitimate concerns that commenters have expressed. We believe that a reasonable balance is best achieved, in this case, by allowing transit authorities a limited period of time to resolve practical problems concerning detectable warnings. Doing so will increase the likelihood that, when installed, detectable warnings do their intended job well without creating unnecessary problems for either passengers or transit providers. In other words, we believe it is more important to do the job right than to do it immediately. Given the urgency of the concerns expressed by disability community comments and the strong safety rationale for installing detectable warnings, the Department will not adopt the proposed 18-month extension, however.

The Department will extend the required completion date for the installation of detectable warnings in existing key stations to July 26, 1994. The Department believes that this period should give transit properties sufficient time to work out the installation and related problems to which the comments referred, without unduly delaying the addition of this important safety feature. The Department encourages rail operators to install detectable warnings before the required date.

This extension applies only to detectable warnings. Other key station accessibility requirements, if not covered by a time extension for

"extraordinarily expensive" changes, must still have been completed by July 26, 1993. For any key station modification which, because of an extension of time for extraordinarily expensive changes, does not have to be completed until after July 26, 1994, detectable warnings would have to be installed on the same date as other modifications had to be completed.

The existing detectable warning requirement, without change or postponement, will continue to apply to construction of new stations and alterations of existing stations platforms. One commenter suggested that the postponement apply here, as well. Given that installation methods not raising the technical problems said to affect retrofit are possible in this situation (even though retrofit-like methods could also be used), the Department does not believe that a postponement is necessary.

The Department believes that, given the safety-related reasons for a detectable warning requirement documented in the rulemaking record, deleting the requirement postponing it indefinitely, or postponing it for a lengthy period (e.g., five years) would be inadvisable. (Deletion or indefinite suspension, in any case, would appear to exceed the scope of the notice for this rulemaking.) Moreover, unlike the falls of visually-impaired persons from platforms, allegations mentioned by some commenters that properly installed detectable warnings cause safety problems (e.g., for persons using crutches or walkers, or pedestrians wearing high heels) are not supported by any evidence of these problems actually having occurred. It would not be appropriate for the Department to indefinitely suspend a requirement that addresses a known safety problem on the basis of speculation about a safety problem that has not been shown to exist.

The Department is aware that the Access Board (along with the Department of Justice and Department of Transportation) proposed to suspend, until January 1995, the requirement for detectable warnings in contexts such as curb ramps and parking lots, with the expectation of conducting further research. The Access Board's proposed action does not apply to detectable warnings on rail platform edges. Even should the ultimate result of the Access Board's rulemaking process be to delete or modify the requirement for detectable warnings in other contexts, there would not be any inconsistency between the Access Board guidelines and DOT regulations, since the guidelines serve as minimum requirements that DOT may exceed in its standards.

The situations covered by the Access Board proposal are distinguishable from the situation of rail platform edges, and a decision by the Access Board to delete the detectable warning requirement in the former would not affect the requirement in the latter for detectable warnings on platform edges, particularly given the safety consequences of falls from rail station platforms. The Department is free to consider safety or reliability information that may be developed by the Access Board as it reviews detectable warnings.

If, as the result of research the Department is conducting, or further research or determinations by the Access Board, some change in the technical standard for detectable warnings may be indicated, the Department is free to propose changes, which can exceed the minimum requirements of the Access Board guidelines. If the technical standard changes at this or any future point, the Department could, in appropriate situations, apply the grandfathering provision in the Department's ADA rule (49 CFR 37.9) to avoid making rail operators re-install detectable warnings meeting the revised standard.

We decline to adopt suggestions that the completion date for installation of detectable warnings be established only after certain research is completed. Rail properties need to begin working now with manufacturers and construction contractors to ensure that materials are installed in the way that best serves everyone's interest in adhesion, durability, and maintainability. (It is our understanding that a number of rail properties have begun this task.) It is not fair to burden research with the expectation that it will solve all practical problems, which probably are best worked out in actual planning and installation. The extension we have provided in this rule should be adequate to permit an aggressive effort by rail properties to address successfully practical concerns about installation. We also do not believe there is a strong connection between the July 1995 one car per train deadline (which pertains mostly to making service for persons with mobility impairments accessible) and the installation of detectable warnings (which pertains mostly to making platforms safe for visually impaired passengers).

In response to the disability group concerns about possible problems detectable warnings may create for people with mobility impairments, the FTA is available to work with rail properties that have installed or are testing detectable warning systems (and users of these systems who have mobility impairments) to determine whether such problems exist and merit any change in the detectable warning requirement. The ability to gather this information is an additional reason for providing the extension.

The Department believes that one commenter's concerns about the relationship of the yellow safety strip or "bumpers" (i.e., strips of material along the outward-facing edges of platforms to protect the rail cars and platform edges from abrasion) on some of its platforms can be addressed successfully without regulatory change, and the Department will work with rail operators to that end. Safety railings on platforms, while perhaps useful for safety of visually impaired passengers, could create crowding and obstacles for other passengers, and might not be practical given that train doors do not always stop at the same point on a platform.

II. Use of Lifts by Standees

Background

The background of this issue is the following: § 37.165 of the Department's final ADA rule (49 CFR part 37; 56 FR 45584, 45640; September 6, 1991) provides that

> The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle.

In the preamble to the final rule, the Department made the following comments on the origin of this provision:

> In the NPRM, the Department neglected to discuss the use of lifts by standees, an oversight that was brought to our attention by a substantial number of disability community commenters. Some comments from transit providers suggested there be limits on the use of lifts by standees (e.g., only where there are handrails, only in a wheelchair provided by the transit authority). Other transit provider comments opposed all standee lift use on safety grounds.
>
> Consistent with requirements of the ADA discussed above, persons who use canes or walkers and other standees with disabilities who cannot readily climb steps into a vehicle must be permitted to use lifts. This is important, among other reasons, because based on the premise that standees can use lifts, the Access Board found it unnecessary to establish a standard for stair riser heights in vehicles that use lifts. Lifts meeting Access Board standards will have handrails. We have some doubts about the practicality of providers carrying wheelchairs on their vehicles to use for standees who are trying to access a vehicle via the lift. (56 FR 45618).

The explanatory appendix to part 37 made the following comment on the regulatory requirement:

People using canes or walkers and other standees with disabilities who do not use wheelchairs but have difficulty using steps (e.g., an elderly person who can walk on a plane without use of a mobility aid but cannot raise his or her legs sufficiently to climb bus steps) must also be permitted to use the lift, on request. (56 FR 45755).

Before the issuance of the NPRM, the Department of Transportation received a number of inquiries from transportation providers concerning whether the regulatory provision on standees applies to all existing bus lifts, or only to lifts meeting the requirements of 49 CFR part 38 (the Department's adoption as its standards of the Architectural and Transportation Barriers Compliance Board accessibility guidelines for vehicles). The concern expressed by these providers was essentially that some older models of lifts have no handrails or other means of preventing a standee user from losing his or her balance and falling while the lift is in operation. For safety and liability reasons, they would prefer not to carry standees on such lifts. DOT staff were also contacted by a disability group representative who believes that standees should be accommodated on all lifts.

The NPRM proposed to modify the existing regulatory language to require transit providers to allow standees on lifts which meet part 38 specifications, or which are equipped with handrails or other devices that can assist standees in maintaining their balance. The Department sought comment on whether this change would improve safety significantly, what the effect would be on consumer access to vehicles, and any other measures that could mitigate any potential safety problems involved with the use of existing lifts while having less significant effects on access.

Comments

This issue attracted, by far, the greatest number of comments of any issue raised by the NPRM. A total of 434 commenters opposed the NPRM's proposal, asserting that the existing regulatory provision should be retained. The bulk of these—388 comments—were from individuals with disabilities or organizations representing them. Many of these letters appeared to be generated by a letter-writing campaign organized by the Disability Rights Education and Defense Fund (DREDF), whose comment is probably the most thorough and typical statement of the disability community's objections to the proposal.

The DREDF comment asserted, first, that there was no documentation of actual safety problems—data or even anecdotes—necessitating a restriction on the kinds of lifts that standees should be allowed to use. It is inappropriate under a nondiscrimination statute like the ADA, DREDF argued, to restrict the availability of a service to persons with disabilities based only on speculation or apprehension about possible risks. DREDF also cited ADA legislative history favoring use of lifts by standees, the practices of some transit agencies which allow standees to use lifts, extra costs to paratransit systems if ridership on fixed route systems by standees were limited, and a general concern that ADA regulations' protections should not be weakened. DREDF also alluded to a DOT study which found that standees could use lifts successfully.

Five transit agencies noted that they provided lift service to standees without significant problems. Thirty-one state and local agencies working with disability matters, three private transportation providers, three members of Congress (Senators Harkin and Kennedy and Representative Mineta), and four other commenters also advocated not changing the existing rule.

Seventeen commenters supported restricting the access of standees to lifts. Thirteen of these, including ten state or local transportation agencies, supported the NPRM proposal. (An equipment manufacturer, a person with a disability, and one other commenter also took this position). Four transit agencies went further, asserting that standees should be permitted to use only those buses that fully meet the requirements of 49 CFR part 38 (the Department's ADA vehicle standards). The latter group of commenters said that, in a vehicle that did not meet part 38 standards, there were safety concerns relating to door height, smoothness of operation etc. that continued to exist even if the lift had a handrail.

The main point of all commenters supporting a restriction on the use of lifts by standees was the safety risk that they believe to exist. That is, they were concerned that passengers would lose their balance and fall, hit their head, or otherwise suffer injury, as the result of using the lift. These commenters, while making clear their concern about safety, did not present any data or anecdotal information that would demonstrate that an actual safety problem existed. Their focus was on what could happen.

One partial exception to this pattern was a comment from the New York State Public Transportation Safety Board (PTSB). PTSB described, in some detail, how the design and operation of a particular lift model (a front door "arcing" lift manufactured by EEC, Inc., Model 141) could create specific hazards for standees. The problematical features of this lift, as described by the PTSB, include an unusually low head clearance, the tilting action of the lift as it enters the bus, and a "pit" between the lift and the bus entrance when the lift is fully raised but has not entered the bus. All of these, in PTSB's view, present clear safety hazards to standees. The Department understands that this lift model is no longer being manufactured, but remains in use on some buses.

Three commenters suggested that buses carry an on-board wheelchair that standees could choose to use. Five requested that handrails be retrofitted on existing lifts, and one commenter opposed this idea. One disability community commenter said it was inappropriate for a transit authority to require a standee to use the handrail (i.e., because it might be more dangerous for the passenger to release his or her grip on a walker or crutch to grasp the handrail); one transit authority wanted to be able to impose such a requirement. A disability community commenter suggested that if a passenger decided using a lift was too dangerous, that passenger should be eligible for paratransit.

DOT Response

The key point in the comments, from the Department's point of view, is the absence of information documenting a safety problem resulting from standees' use of lifts. The ADA is a nondiscrimination statute, intended to ensure, among other things, that people with disabilities have access to transportation services. To permit a transportation provider to exclude a category of persons with disabilities from using a device that provides access to a vehicle on the basis of a perceived safety hazard, absent information in the rulemaking record that the hazard is real, would be inconsistent with the statute (c.f., the discussion of the transportation of three-wheeled mobility devices in the preamble to the Department's September 6, 1991, final ADA rule (56 FR 45617)). While we understand the concerns of transit agency commenters about the potential safety risks that may be involved, the Department does not have a basis in the rulemaking record for authorizing a restriction on lift use by standees.

The DOT study alluded to by commenters, with some qualifications, does support the proposition that standees may use lifts safely and successfully. The qualifications are that, in the situations studied, both drivers

and standee users were trained in the proper use of lifts, handrails were available on the lifts, and operators were not required to transport a standee who refused to use the handrail. The Department strongly urges such training programs to transit providers, both as a way of improving customer service and of reducing any risks which transit providers believe may be created by the use of lifts by standees.

With the exception noted below, the existing § 37.165(g)—which requires transportation providers to permit standees to use lifts, without restriction—will remain in effect. The one exception concerns the EEC, Inc. "arcing" lift cited in the New York PTSB comment. The information cited in the comment—which is consistent with the Department's information about this lift model—provides a reasonable basis for believing that its operation may be particularly hazardous to standees. For this reason, the final rule will permit transit providers who operate buses having this lift model to deny its use to standees (who would, of course, be eligible for paratransit as a result). The transit provider would notify users (e.g., via signage on affected buses) that this particular bus lift was not available to standees.

Transit providers may, if they choose, provide additional accommodations, such as retrofitted handrails on existing lifts or on-board wheelchairs. The Department encourages the use of such accommodations, in the interest of improving safe and convenient service to passengers. We do not believe that such accommodations should be required, however. Requirements by transportation providers that passengers use a particular accommodation are also inappropriate under the ADA. For example, if a transit authority provides an on-board wheelchair for use by standees on lifts, the transit authority could not insist that a standee sit in the wheelchair in order to use the lift.

III. Equivalent Facilitation

Background

Part 38 and appendix A to part 37 both contain provisions concerning equivalent facilitation. The language reads as follows:

> Departures from particular technical and scoping requirements of these guidelines by the use of other designs or technologies are permitted where the alternative designs and technologies used will provide substantially equivalent or greater access to and usability of the facility [vehicle]. (49 CFR part 37, Appendix A, § 2.2; 49 CFR part 38, 38.2)

Further, 49 CFR 37.7 and 37.9 establish a procedure through which an entity may obtain a determination of equivalent facilitation for vehicles and facilities, respectively:

> For purposes of implementing the equivalent facilitation provision * * * a determination of compliance will be made by the (Federal Transit) Administrator or the Federal Railroad Administrator, as applicable, on a case-by-case basis. An entity wishing to employ equivalent facilitation * * * shall submit a request to UMTA or FRA, as applicable, and include the following information: (list of five items of information).

When it drafted these provisions, the Department contemplated a small number of requests from transit providers concerning individual facility or vehicle problems on which flexibility in applying accessibility standards could be provided without negative effects on accessibility. The Department, instead, received a substantial number of requests for equivalent facilitation determinations from manufacturers relating to approvals of particular products. The NPRM proposed to amend the rule to reflect this situation, allowing equivalent facilitation requests to be made by manufacturers and by transportation entities in other modes.

In drafting the existing regulatory language, the Department also assumed that equivalent facilitation requests would be made in the rail and transit contexts. Consequently, the rule gives equivalent facilitation authority to the FTA and FRA Administrators. There could be other situations in which requests were made pertaining to airport, highway, or other DOT programs. To cover these situations, we proposed changing the rule to authorize the Administrator of the concerned operating Administration to make such a determination, with the concurrence of the Assistant Secretary for Policy and International Affairs in order to ensure consistency.

The NPRM also proposed to clarify the public participation obligations of parties asking for equivalent facilitation determinations. The obligations would differ depending on whether the requester is a transportation entity or a manufacturer (in the latter case, the requirement would be a consultation requirement, since there is not a single community whose representatives could be involved in the normal sense of public participation).

Comments

Commenters had a variety of points of view on this proposal. Sixteen commenters—including both transportation agencies and disability community commenters, among others—favored the NPRM's proposal. Most of these commenters did not provide a detailed basis for their position, essentially endorsing the NPRM's rationale. One of these commenters opposed the public hearing requirement, while another said public participation should receive greater emphasis.

Nine commenters, eight of whom were equipment manufacturers, said that there should not be separate equivalent facilitation procedures for public and private entities. They viewed the separate provision for private entities (such as manufacturers) as being a less stringent standard, which would allow manufacturers to circumvent the standards in the rule. The less stringent standard could also encourage misleading or unethical practices, they said. They suggested that public and private entities be subject to the same procedures. One of these commenters simply said that the current rule should be left in place, without change. Two manufacturers thought equivalent facilitation should be deleted from the rule altogether.

Four state or local transportation agencies asked that FTA (or perhaps APTA) publish, in the **Federal Register** or elsewhere, its approvals of requests for equivalent facilitation, so that other transit authorities would know what products or accommodations were acceptable.

Other comments addressed a variety of concerns. One transit authority thought it should be able to self-certify as to an equivalent facilitation, without FTA approval. A manufacturer said it should not have to consult with disability groups: it had tried, and had a hard time finding anyone who would respond or who was technically qualified to help. A transit authority and an "elderly and handicapped" advisory committee sought assurance that transit authorities and advisory committees, respectively, would be part of the public participation process. Other commenters expressed concern about delay (one suggesting a 90-day FTA deadline) or about misleading manufacturer claims of "DOT approved" products.

Four commenters—three disability community commenters and one manufacturer—said that there should be no equivalent facilitation available for detectable warning materials. The main reason for this was that, in the commenters' view, detectable warning materials need to be uniform nationwide. Moreover, some fairly subtle differences among designs could produce differences in effectiveness that might not be apparent to manufacturers or DOT.

DOT Response

The first issue to be considered is whether the Department should continue making equivalent facilitation determinations. The Department of Justice and the Access Board do not: In non-transportation contexts, if a facility owner determines that it has made an equivalent facilitation, if need not seek approval or confirmation from any Federal agency. The facility owner simply makes its own determination, which may be challenged in court or administrative proceedings as failing to comply with ADA requirements. The commenters who suggested that DOT not make equivalent facilitation determinations are suggesting, in effect, that DOT adopt this approach.

Taking this approach would have the advantage of reducing the Department's administrative workload. However, the Department continues to believe that making equivalent facilitation determinations available also has important advantages. It is a way of encouraging innovation and the application of newer technologies. It is a way of providing needed flexibility as entities find ways to achieve accessibility in ways that differ from existing design standards. It is a way of providing a reasonable sense of security to regulated parties that accessibility modifications they make will comply with ADA requirements. Making decisions about equivalent facilitation in advance, through an agency administrative process, seems more efficient than making them after the fact, through litigation.

For these reasons, the Department will continue to make equivalent facilitation determinations. We believe the changes to the process suggested in the NPRM—concerning the ability of the various DOT operating administrations to make these determinations and having different procedural steps for manufacturers and transportation providers—are reasonable. Manufacturers and transit providers are different kinds of entities, in different situations (e.g., a transit authority has a local "public" for which it makes sense to hold a public hearing; a manufacturer probably does not). Consequently, we have not adopted the comments of manufacturers that opposed different procedures for manufacturers and transportation providers. While the procedures differ, the substantive standard is not less stringent for manufacturers: any party seeking a determination of equivalent facilitation must convince the Department that its proposal really results in equivalent or greater access. If manufacturers or other parties have a problem in obtaining disability group input, they can document their efforts as part of their application for an equivalent facilitation determination. The Department can also attempt to assist in obtaining disability group input.

The equivalent facilitation sections for vehicles and facilities are basically parallel. In view of the close relationship between the coverage of airport facilities under the ADA, section 504 of the Rehabilitation Act, and the Air Carrier Access Act, the Department is clarifying the facilities section to specifically include requests for equivalent facilitation that arise concerning airport facilities under all three statutes. Since the situation of air carriers making equivalent facilitation requests concerning facilities at public airports is very similar to that of the airport sponsors themselves, we decided to apply the same procedural requirements to both.

The Department believes that the suggestion to publish its equivalent facilitation determinations is a good one. While it need not be part of this rule, the Department will take appropriate steps to provide general notice of these decisions. The Department will also endeavor to respond to requests for equivalent facilitation as soon as possible. A regulatory deadline would not be that useful, in our view.

We do not believe that it is necessary to prohibit applications for equivalent facilitation concerning detectable warnings. Equivalent facilitation is a useful provision of the Access Board guidelines and the Department's rules that applies to all accessibility features. Technology and product differentiation in the detectable warnings field does not stand still, and equivalent facilitation is an appropriate means to recognize evolution and innovation in these products. At the same time, as a matter of policy, the Department will scrutinize closely applications for equivalent facilitation concerning detectable warning materials to make sure that, in all respects, a proposed "equivalent" material truly provides equal or greater detectability and safety benefits. The uniformity considerations mentioned by commenters will be taken into account in this process.

The Department also wants to clarify an equivalent facilitation decision it had earlier made concerning detectable warnings. Engineered Plastics, Inc. (EPI) requested a finding of equivalent facilitation for its detectable warning product, "Armor-Tile." This product did not meet the original Access Board design requirement for detectable warnings. On January 10, 1992, the FTA Administrator determined that the criteria under 49 CFR 37.9 had been met, and he advised EPI that the detectability of the Armor-Tile warning strip was equivalent to those meeting the Access Board guidelines.

At the time the Access Board guidelines were published, the specifications for detectable warning surfaces were ambiguous, particularly concerning the pattern and design of the surfaces. This was due, in part, to the absence of a diagram illustrating the required pattern. Several manufacturers of detectable warning surfaces requested clarification. The FTA Administrator sent letter to a number of manufacturers to inform them that their designs appeared to meet the dimensional requirements intended by the Access Board.

The FTA has learned that some manufacturers have been marketing products as "U.S. Government-Approved" or "ADA-Approved." Other firms claim that their products comply, even though the products differ from those diagrams which were submitted to FTA. The FTA never intended its letters to be used as product endorsements or certifications of compliance. Any such use of these letters, or reliance on these letters in marketing materials, is unauthorized, and potential customers for these products should disregard claims of this kind. The final rule specifically bars claims by manufacturers that an equivalent facilitation determination constitutes a product endorsement by the Department.

Since the FTA issued these letters, the Access Board published Bulletin #1 in May 1992, clarifying many of the ambiguities left by its original guidelines and containing a diagram illustrating the pattern prescribed for detectable warning surfaces. Bulletin #1 also contains a list of products which are claimed by their manufacturers to meet the technical specifications for detectable warnings, but the Access Board neither reviews products for compliance nor certifies the suitability of such products or systems for the purposes for which they are intended.

The Department believes that the ambiguities in the original Access Board guidelines have been resolved by Bulletin #1, and that FTA letters concerning compliance with the Access Board requirements are no longer necessary. Prospective purchasers are advised to evaluate carefully all proposed products and designs against the Access Board requirements for compliance with technical

specifications, applications, designs, and installations.

IV. Obligation To Ensure the Availability of Seating

Background

An FTA regulation (49 CFR 609.15(d)) requires FTA-assisted public transit authorities to designate priority seating near the front of vehicles for elderly and handicapped persons. Parts 37 and 38 require wheelchair securement locations in vehicles, though transit providers may have fold-down seats that other persons can use when there are no wheelchair users on the vehicle. Transit providers have asked the Department whether they have an obligation under the ADA to direct other passengers to move from designated priority seats or from fold-down seats over a wheelchair securement location when a passenger with a disability enters the vehicle.

There are reasons to have such a requirement. For example, a wheelchair user may not be able to use a bus safely and securely if he or she does not have access to the securement location. An ambulatory person with a disability may be unable to stand for long periods, meaning that the person would be effectively denied access to transportation if he or she could not sit down on a crowded bus. It is not enough, under the ADA, to permit a passenger with a disability to enter a vehicle; the person must be able to use the vehicle for transportation. The availability of seating or securement space is an integral part of accessibility (i.e., having a vehicle that is "readily * * * usable by" an individual with a disability).

To clarify this point, the NPRM proposed adding to § 37.167 a new paragraph spelling out this obligation, which would apply to private as well as public transportation entities.

Comments

Twenty-six commenters favored the NPRM approach. The proposal received support from both disability community commenters (12) and state or local transportation agencies (10), with the remainder of comments (4) coming from state or local agencies working on disability matters. These commenters generally viewed the proposal as a necessary step to make sure that passengers with disabilities actually received transportation service they could use. Only one commenter, a person with a disability, opposed the proposal, saying it could cause litigation and a backlash against disabled riders.

There were several suggestions for refining the NPRM proposal, some of which came from some of the same commenters who endorsed the proposal in general. Nine transit agencies and one state or local agency working on disability matters suggested that the final rule require the driver to ask someone sitting in a priority seat to move, or to make good faith efforts to clear the seat, but not to have to enforce the request. Some of these commenters expressed the concern that requiring enforcement could lead to confrontations between drivers and passengers or could disrupt service.

Two commenters suggested that it would help matters if the standard language on the sign above the priority seats was reworded to say that other passengers were expected to move if a disabled person showed up and needed the space. Two commenters suggested that, when possible, the driver seat disabled passengers on the right side of the bus, so that the driver could see if a passenger had problems with the securement device or needed a stop announcement. One transit agency asked that the rule state that non-disabled passengers do not have to get off the bus to let a disabled passenger on.

One transit agency suggested explicitly excluding paratransit vans used for passengers with disabilities from this policy. A disability community commenter objected to the "to the extent practicable" clause for rail systems. Commenters also asked for more clarification or guidance on certain subjects. Four transit agencies asked for guidance on how to identify people with hidden disabilities for priority seating purposes (one of these commenters suggested that such passengers self-disclose). Three transit agencies asked how to prioritize among different disabled passengers (e.g., ambulatory vs. non-ambulatory). One of these commenters also asked for guidance on how to treat non-disabled personal care attendants who may want to sit next to a disabled passenger.

DOT Response

Virtually all commenters supported the proposal, agreeing with the rationale articulated above. The Department will adopt the proposal, believing that requests by drivers that other passengers move from priority seats will assist in making transportation genuinely accessible for passengers with disabilities. At the same time, given the modification discussed below, it will not impose onerous new duties on transit personnel.

We agree with the commenters who suggested modifying the proposal to specify that drivers or other personnel on vehicles not be required to enforce a request for someone to move from a priority seat (e.g., by physically removing a recalcitrant passenger or parking the bus and calling the police.) This "ask, don't tell" approach should help to avoid confrontations and disruptions of service while resulting in seating being made available for passengers who need priority seating in the vast majority of instances. The rule would not impose a uniform procedure; each transit system may devise a means best suited to its operations to carry out the requirement. It would be appropriate for transit operators to establish a mechanism based on local circumstances, consultation with drivers, and input from the local community. The FTA will oversee such mechanisms as part of the triennial review process.

We also agree with the commenters who suggested that priority seating signs should specify that non-disabled persons should move to make room for someone who needs a priority seat. This will inform passengers that such a request may be made and that they should comply. The requirement will apply to newly acquired vehicles and to new or replacement signs in existing vehicles.

The Department is not making other suggested changes in the regulatory language, believing that reasonable implementation of the provision can address the issues commenters raised. As a matter of guidance, we believe it is reasonable that if a passenger with a "hidden" disability wants a driver to ask someone to make room for use of a priority seat, the individual should tell the driver about the disability. A driver cannot be expected to intuit the existence of a disability that is not apparent. A personal care attendant (as distinct from a friend or traveling companion) should be permitted to sit near a person with a disability, since the attendant may be needed to perform personal tasks for the individual with a disability during the course of the ride.

Priority seats are intended for people with disabilities in general; a seat near the front of the bus may be as important to a blind individual as to an individual with a mobility impairment. Obviously, a wheelchair user needs access to a securement location. It is appropriate for a driver, under this provision, to ask an ambulatory passenger with a disability to move to clear a wheelchair securement location when needed to accommodate a wheelchair user. If a van is being used for specialized paratransit service for individuals with disabilities, then this provision—which addresses only to those vehicles covered by FTA

regulations concerning priority seating—would not apply.

The language which applies the "driver request" provision to rail systems only to the extent practicable seems necessary. If, as in many systems, the only transit employee aboard the train is in the driver's compartment in the front car, the employee will not be in a position to see who is sitting in a priority seat in the third car in the train, let alone ask someone to move from it. If there are conductors or other transit personnel present in the passenger compartments, they would make the request when they saw a situation calling for it.

V. Name Change

The Intermodal Surface Transportation Efficiency Act of 1991 (ISTEA) changed the name of the former Urban Mass Transportation Administration (UMTA) to Federal Transit Administration (FTA). The NPRM proposed updating the terms used in the Department's ADA rules to conform to the ISTEA changes. FTA previously made this change for all the regulations in Subchapter VI of Title 49 of the Code of Federal Regulations. However, the ADA regulation is in Subchapter I of that Title. Not surprisingly, there were few comments on this matter; a handful of commenters noted it approvingly. The Department is adopting this proposal without change.

VI. Lease of Used Rail Cars by Amtrak and Commuter Rail Operators

Background

Section 37.87 of the Department's ADA regulation provides that when Amtrak or a commuter authority purchases or leases or used intercity or commuter rail car, it must either obtain an accessible car or demonstrate the good faith efforts it has made to do so. These good faith efforts are the same that apply to purchases of used rolling stock (e.g., buses) by mass transit systems—an initial solicitation for accessible vehicles, a nationwide search for accessible vehicles, including advertising in trade publications and contacting trade associations.

Before the NPRM was issued, Amtrak told DOT staff that this provision is not appropriate in an important situation in which it leases rail cars. Frequently (e.g., at holiday times or other high-demand periods), Amtrak must obtain additional cars from nearby commuter rail authorities on short notice for a short period of time. For example, Amtrak may need a certain number of cars to carry overflow traffic at Thanksgiving or Christmas on the Northeast Corridor. Amtrak may have a standing reimbursable agreement with Boston or Washington/Baltimore area commuter authorities to borrow commuter rail cars on short notice in these situations. There is no time to make a nationwide search or advertise in trade publications, and no point in seeking cars from distant commuter authorities (which may not meet dimensional requirements for Northeast Corridor service and which would take too long to arrive).

To accommodate this situation, the Department proposed to add a new paragraph to this section, which would allow good faith efforts to be documented in a different way. For a short-term lease of commuter rail cars (i.e., for a period of seven days or less; the Department sought comment on whether this is the appropriate period), Amtrak and commuter authorities could have, in standing agreements with one another, a provision requiring available accessible cars to be provided before other cars in the donor agency's fleet. The proposal would also require that if the borrower had a choice of obtaining cars from more than one source, it would obtain the cars from a source that had accessible cars before it obtained inaccessible cars from the other source.

For example, suppose there is a standing agreement between Amtrak and Commuter Authority B. The agreement would provide that when Amtrak borrowed cars from B, B would make available and Amtrak would take its accessible cars first, to the extent they are available (e.g., B would not have to provide cars that were in the repair shop or that it was impossible to make available for Amtrak's use in a timely fashion). Also, if Amtrak could obtain cars for a particular area of its service from both Commuter Authority B and Commuter Authority C, and C had more accessible cars available than B, Amtrak would borrow C's accessible cars before it borrowed inaccessible cars from B.

Comments

Eleven commenters (eight disability community commenters, Amtrak and one other transit provider, and one state or local agency working on disability matters) favored the NPRM approach. Other commenters suggested adding safeguards to ensure accessibility. One disability community commenter and one state or local agency working on disability matters recommended that, regardless of other considerations, each train always have at least one accessible car (after July 1955, presumably). Another disability community commenter suggested a requirement that the lease of rail cars by Amtrak not be permitted to decrease the overall percentage of Amtrak's fleet that was accessible (i.e., that if Amtrak leased inaccessible cars from a commuter authority, Amtrak would have to obtain accessible cars elsewhere in order to maintain the same percentage of accessibility in its fleet that it had before the lease).

DOT Response

The Department will adopt the proposed provision, which appears workable both to Amtrak and disability community commenters. We do not believe it is necessary to add language concerning the "one car per train" requirement. The existing rule's one car per train requirement applies, after July 1995, both to Amtrak and the commuter authorities involved. Every train that Amtrak or a commuter authority operates after that date will have to have an accessible car. Even when Amtrak leases an entire consist from a commuter authority after that date, the consist will necessarily include at least one accessible car, assuming the commuter authority lessor is in compliance with the rule. We assume that Amtrak would prefer to lease trains from commuter authorities that comply with their ADA obligations. Given the differences between the bus and rail contexts, and the specific requirements that the ADA applies to rail, it does not seem appropriate to apply the "don't diminish fleet accessibility percentage" rule to this situation.

VII. Automatic Fare Vending Machines

Background

In Appendix A to part 37, section 10.3.1(7) requires automatic fare vending equipment and related devices to conform, among other things, to the requirements of sections 4.34.2–4.34.4, concerning automated teller machines (ATMs). Last fall, the Access Board proposed amending its guidelines for ATMs. See 57 FR 41006, September 8, 1992. The proposed changes concerned the "reach range" (e.g., how far a person must reach to operate the controls) of ATMs. The ADA requires the Department to adopt standards consistent with the Access Board guidelines. In the NPRM, the Department sought comment on how the proposed Access Board ATM standard modifications would affect automatic fare vending and collection systems.

Comments

Nine commenters supported the NPRM proposal to adopt the Access

Board proposed amendment for ATMs, which would also apply to fare vending systems. These commenters included four disability community commenters, two transit agencies, two state or local agencies working on disability matters, and one consultant. One commenter said that, if the specifications were changed, existing models of fare vending systems had installed should be grandfathered, so that retrofit was not necessary.

Five commenters (four transit agencies and a manufacturer) said that the purpose and design of fare vending machines were different enough from those of ATMs to warrant a different standard, at least with respect to some specifications. Five commenters (one of the above transit agencies plus four of the commenters who favored the NPRM provision) said that additional provision (e.g., a voice synthesizer system) was needed on fare vending systems to serve persons with visual impairments.

DOT Response

The Department believes that the Access Board proposal, which focuses on the reach range requirements for ATMs, is reasonable for fare vending machines as well. The two types of machines are similar enough in the operations that consumers must perform that the same requirements make sense in both contexts. Those commenters who asserted that the two types of machines should have different requirements did not provide sufficient information on which the Department or the Access Board could base a separate standard.

The Access Board standard already requires information about the machines to be provided in a way that persons with impaired vision can use; specifying a voice synthesis capability does not seem necessary and is, in any event, beyond the scope of a proposal focusing on reach range. The Department would apply 49 CFR 37.9, concerning grandfathering, to fare vending systems that meet the current ADA standard in the same way as that section applies to other features of transportation facilities.

In a joint Access Board/DOT rule issued prior to this document, the Department adopted the proposal discussed above. The comments to this docket were considered in context of that rulemaking and were reflected in its preamble. Because this action had already been taken, it is not necessary for this document to further amend the regulatory text.

VIII. Technical Corrections to 49 CFR Part 38

In the course of preparing this document, DOT staff noticed two technical errors in 49 CFR part 38. The first was the designation of the last paragraph of § 38.113 (concerning signage) as (3), rather than (e). The second was the omission of part of the language concerning wheelchair locations in § 38.125(d)(2). This language should parallel that of § 38.95(d). The rule makes these corrections, which have no substantive effects.

Regulatory Analyses and Notices

This rule is not a significant rule under the Executive Order on Regulatory Planning and Review. It is a significant rule under the Department's Regulatory Policies and Procedures, since it amends the Department's Americans with Disabilities Act rule, which is a significant rule. We expect economic impacts to be minimal, so we have not prepared a regulatory evaluation. There are no Federalism impacts sufficient to warrant the preparation of a Federalism assessment. The Department certifies that the rule will not have a significant economic impact on a substantial number of small entities. This is because the economic effects of the rule in general should be minimal; to the extent that the rule reduces costs (e.g., by delaying the requirement for completing the installation of detectable warnings), this beneficial effect will affect only large entities.

Issued this 25th day of October, 1993, at Washington, D.C.

Federico Peña,

Secretary of Transportation.

For the reasons set forth in the Preamble, the Department of Transportation amends 49 CFR parts 37 and 38 as follows:

PART 37—[AMENDED]

1. The authority citation for 49 CFR part 37 continues to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

2. In 49 CFR part 37, the words "Urban Mass Transportation Administration" are changed to the words "Federal Transit Administration" in every instance in which those words appear; the letters "UMTA" are changed to the letters "FTA" in every instance in which those letters appear; and the words "UMT Act" and "Urban Mass Transportation Act" are changed to the words "FT Act" and "Federal Transit Act" in every instance in which those words appear, and the definition of "FT Act" is moved to the proper alphabetical order.

3. In § 37.7, paragraph(b) is revised to read as follows:

§ 37.7 Standards for accessible vehicles.

* * * * *

(b)(1) For purposes of implementing the equivalent facilitation provision in § 38.2 of this subtitle, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i) A public or private entity that provides transportation services and is subject to the provisions of subpart D or subpart E this part; or

(ii) The manufacturer of a vehicle or a vehicle component or subsystem to be used by such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of part 38 of this subtitle with which the entity is unable to comply;

(iii) Reasons for inability to comply;

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in part 38 of this subtitle; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation services subject to the provisions of subpart D of this part, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in

appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a private entity that provides transportation services subject to the provisions of subpart E of this part or a manufacturer, the private entity or manufacturer shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.

(6) Determinations of equivalent facilitation are made only with respect to vehicles or vehicle components used in the provision of transportation services covered by subpart D or subpart E of this part, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a product or method constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

* * * * *

4. In § 37.9, paragraph (d) is revised to read as follows:

§ 37.9 Standards for accessible transportation facilities.

* * * * *

(d)(1) For purposes of implementing the equivalent facilitation provision in section 2.2 of appendix A to this part, the following parties may submit to the Administrator of the applicable operating administration a request for a determination of equivalent facilitation:

(i)(A) A public or private entity that provides transportation facilities subject to the provisions of subpart C this part, or other appropriate party with the concurrence of the Administrator;

(ii) With respect to airport facilities, an entity that is an airport operator subject to the requirements of 49 CFR part 27 or regulations implementing the Americans with Disabilities Act, an air carrier subject to the requirements of 14 CFR part 382, or other appropriate party with the concurrence of the Administrator.

(B) The manufacturer of a product or accessibility feature to be used in the facility of such entity to comply with this part.

(2) The requesting party shall provide the following information with its request:

(i) Entity name, address, contact person and telephone;

(ii) Specific provision of appendix A to this part with which the entity is unable to comply;

(iii) Reasons for inability to comply;

(iv) Alternative method of compliance, with demonstration of how the alternative meets or exceeds the level of accessibility or usability of the vehicle provided in appendix A to this part; and

(v) Documentation of the public participation used in developing an alternative method of compliance.

(3) In the case of a request by a public entity that provides transportation facilities (including an airport operator), or a request by an air carrier with respect to airport facilities, the required public participation shall include the following:

(i) The entity shall contact individuals with disabilities and groups representing them in the community. Consultation with these individuals and groups shall take place at all stages of the development of the request for equivalent facilitation. All documents and other information concerning the request shall be available, upon request, to members of the public.

(ii) The entity shall make its proposed request available for public comment before the request is made final or transmitted to DOT. In making the request available for public review, the entity shall ensure that it is available, upon request, in accessible formats.

(iii) The entity shall sponsor at least one public hearing on the request and shall provide adequate notice of the hearing, including advertisement in appropriate media, such as newspapers of general and special interest circulation and radio announcements.

(4) In the case of a request by a manufacturer or a private entity other than an air carrier, the manufacturer or private entity shall consult, in person, in writing, or by other appropriate means, with representatives of national and local organizations representing people with those disabilities who would be affected by the request.

(5) A determination of compliance will be made by the Administrator of the concerned operating administration on a case-by-case basis, with the concurrence of the Assistant Secretary for Policy and International Affairs.

(6) Determinations of equivalent facilitation are made only with respect to transportation facilities, and pertain only to the specific situation concerning which the determination is made. Entities shall not cite these determinations as indicating that a products or methods constitute equivalent facilitations in situations other than those to which the determinations specifically pertain. Entities shall not claim that a determination of equivalent facilitation indicates approval or endorsement of any product or method by the Federal government, the Department of Transportation, or any of its operating administrations.

5. Section 37.47(c)(1) is revised to read as follows:

§ 37.47 Key stations in light and rapid rail systems.

* * * * *

(c)(1) Unless an entity receives an extension under paragraph (c)(2) of this section, the public entity shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

* * * * *

6. Section 37.51(c)(1) is revised to read as follows:

§ 37.51 Key stations in commuter rail systems.

* * * * *

(c)(1) Except as provided in this paragraph, the responsible person(s) shall achieve accessibility of key stations as soon as possible, but in no case later than July 26, 1993, except that an entity is not required to complete installation of detectable warnings required by section 10.3.2(2) of appendix A to this part until July 26, 1994.

* * * * *

7. Section 37.87 is amended by redesignating the present paragraph (d) as paragraph (e) and adding a new paragraph (d) to read as follows:

§ 37.87 Purchase or lease of used intercity and commuter rail cars.

* * * * *

(d) When Amtrak or a commuter authority leases a used intercity or commuter rail car for a period of seven days or less, Amtrak or the commuter authority may make and document good faith efforts as provided in this paragraph instead of in the ways provided in paragraph (c) of this section:

(1) By having and implementing, in its agreement with any intercity railroad or commuter authority that serves as a source of used intercity or commuter rail cars for a lease of seven days or less, a provision requiring that the lessor provide all available accessible rail cars before providing any inaccessible rail cars.

(2) By documenting that, when there is more than one source of intercity or commuter rail cars for a lease of seven days or less, the lessee has obtained all available accessible intercity or commuter rail cars from all sources before obtaining inaccessible intercity or commuter rail cars from any source.

* * * * *

8. In § 37.165, paragraph (g) is revised to read as follows:

§ 37.165 Lift and securement use.

* * * * *

(g) The entity shall permit individuals with disabilities who do not use wheelchairs, including standees, to use a vehicle's lift or ramp to enter the vehicle. *Provided*, that an entity is not required to permit such individuals to use a lift Model 141 manufactured by EEC, Inc. If the entity chooses not to allow such individuals to use such a lift, it shall clearly notify consumers of this fact by signage on the exterior of the vehicle (adjacent to and of equivalent size with the accessibility symbol).

9. In § 37.167, a new paragraph (j) is added, to read as follows:

§ 37.167 Other service requirements.

* * * * *

(j)(1) When an individual with a disability enters a vehicle, and because of a disability, the individual needs to sit in a seat or occupy a wheelchair securement location, the entity shall ask the following persons to move in order to allow the individual with a disability to occupy the seat or securement location:

(i) Individuals, except other individuals with a disability or elderly persons, sitting in a location designated as priority seating for elderly and handicapped persons (or other seat as necessary);

(ii) Individuals sitting in or a fold-down or other movable seat in a wheelchair securement location.

(2) This requirement applies to light rail, rapid rail, and commuter rail systems only to the extent practicable.

(3) The entity is not required to enforce the request that other passengers move from priority seating areas or wheelchair securement locations.

(4) In all signage designating priority seating areas for elderly persons and persons with disabilities, or designating wheelchair securement areas, the entity shall include language informing persons sitting in these locations that they should comply with requests by transit provider personnel to vacate their seats to make room for an individual with a disability. This requirement applies to all fixed route vehicles when they are acquired by the entity or to new or replacement signage in the entity's existing fixed route vehicles.

PART 38—[AMENDED]

10. The authority citation for 49 CFR part 38 is revised to read as follows:

Authority: Americans with Disabilities Act of 1990 (42 U.S.C. 12101–12213); 49 U.S.C. 322.

§ 38.113 [Amended]

11. The last paragraph of § 38.113, entitled *Signage* and currently designated as paragraph (3), is redesignated as paragraph (e).

12. In § 38.125, paragraph (d)(2) is revised to read as follows:

§ 38.125 Mobility aid accessibility.

* * * * *

(d) * * *

(2) *Wheelchair or mobility aid spaces.* Spaces for persons who wish to remain in their wheelchairs or mobility aids shall have a minimum clear floor space 48 inches by 30 inches. Such spaces shall adjoin, and may overlap, an accessible path. Not more than 6 inches of the required clear floor space may be accommodated for footrests under another seat provided there is a minimum of 9 inches from the floor to the lowest part of the seat overhanging the space. Seating spaces may have fold-down or removable seats to accommodate other passengers when a wheelchair or mobility aid user is not occupying the area, provided the seats, when folded up, do not obstruct the clear floor space provided (See Fig. 2).

* * * * *

[FR Doc. 93–29257 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–62–P–M

INTERSTATE COMMERCE COMMISSION

49 CFR Part 1180

[Ex Parte No. 282; Sub-No. 17]

Railroad Consolidation Procedures: Definition of, and Requirements Applicable to, "Significant" Transactions

AGENCY: Interstate Commerce Commission.

ACTION: Final rule.

SUMMARY: The Commission is revising the definition of "significant transaction" in rail carrier consolidation cases, and is eliminating certain requirements currently applicable to applications seeking approval of significant transactions. The revised definition will rationalize the rail carrier consolidation scheme, and the reduction of required information will relieve rail carriers of the burden of submitting information not relevant to the statutory standard applicable to such cases.

EFFECTIVE DATE: This action is effective on December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph H. Dettmar (202) 927–5660; TDD for hearing impaired: (202) 927–5721.

SUPPLEMENTARY INFORMATION: On August 10, 1992, at 57 FR 35559, we requested comments on our proposals (1) to revise the 49 CFR 1180.2(b) "significant transaction" definition, and (2) to reduce the required contents of applications seeking approval for significant transactions.

Comments were filed by the Association of American Railroads (on behalf of itself and its member railroads) and by Patrick W. Simmons (on behalf of the Illinois Legislative Board of the United Transportation Union).

We have concluded that the 49 CFR 1180.2(b) "significant transaction" definition should be revised, and that the required contents of significant transaction applications should be reduced, as we proposed.

For further information, see the Commission's printed decision. To obtain a copy of the full decision, write to, call, or pick up in person from: Dynamic Concepts, Inc., Room 2229, Interstate Commerce Commission Building, Washington, DC 20423. Telephone: (202) 289–4357/4359. Assistance for the hearing impaired is available through TDD service (202) 927–5721.

We reaffirm our preliminary conclusion that this action will not significantly affect either the quality of the human environment or the conservation of energy resources.

We also reaffirm our preliminary conclusion that this action will not have a significant impact on a substantial number of small entities. The revision of the "significant transaction" definition merely rationalizes our analysis of the dividing line between significant transactions and minor transactions. The reduction of the required contents of significant transaction applications may have a limited impact on small

entities, but that impact will be a positive one. The reduction of the information requirements applicable to significant transaction applications should reduce the expenses applicants must incur to process these transactions.

List of Subjects in 49 CFR Part 1180

Administrative practice and procedure, Bankruptcy, Railroads, Reporting and recordkeeping requirements.

Decided: November 12, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin, and Walden. Vice Chairman Simmons and Commissioner Walden dissented in part with separate expressions.

Sidney L. Strickland, Jr.,

Secretary.

For the reasons set forth in the preamble, title 49, chapter X, part 1180 of the Code of Federal Regulations is amended as follows:

PART 1180—RAILROAD ACQUISITION, CONTROL, MERGER, CONSOLIDATION PROJECT, TRACKAGE RIGHTS, AND LEASE PROCEDURES

1. The authority citation for part 1180 continues to read as follows:

Authority: 49 U.S.C. 10321, 10505, 11341, 11343–11346; 5 U.S.C. 553 and 559; and 11 U.S.C. 1172.

2. Section 1180.0 is amended by removing the 7th and 8th sentences and by adding in lieu thereof three new sentences to read as follows:

§ 1180.0 Scope and purpose.

* * * A *major* application must contain the information required in §§ 1180.6(a), 1180.6(b), 1180.7, 1180.8(a), and 1180.9. A *significant* application must contain the information required in §§ 1180.6(a), 1180.6(c), 1180.7, and 1180.8(a). A *minor* application must contain the information required in §§ 1180.6(a) and 1180.8(b). * * *

3. In § 1180.2, paragraph (b) is revised to read as follows:

§ 1180.2 Types of transactions.

* * * * *

(b) A *significant* transaction is a transaction not involving the control or merger of two or more class I railroads that is of regional or national transportation significance as that phrase is used in 49 U.S.C. 11345(a)(2) and (c). A transaction not involving the control or merger of two or more class I railroads is not significant if a determination can be made either:

(1) That the transaction clearly will not have any anticompetitive effects, or

(2) That any anticompetitive effects of the transaction will clearly be outweighed by the transaction's anticipated contribution to the public interest in meeting significant transportation needs.

A transaction not involving the control or merger of two or more class I railroads is significant if neither such determination can clearly be made.

* * * * *

4. In § 1180.4, paragraph (b)(1)(iv) is revised to read as follows:

§ 1180.4 Procedures.

* * * * *

(b) * * *

(1) * * *

(iv) Indicate why the transaction is *major* or *significant.*

* * * * *

5. In § 1180.6, the introductory text of paragraph (b) is revised, and a new paragraph (c) is added, to read as follows:

§ 1180.6 Supporting information.

* * * * *

(b) In a *major* transaction, submit the following information:

* * * * *

(c) In a *significant* transaction, submit the information specified in paragraphs (b)(3), (b)(5), (b)(6), (b)(7), and (b)(8) of this section.

6. In § 1180.9, the introductory text is revised to read as follows:

§ 1180.9 Financial information.

The following information shall be provided for *major* transactions, and for carriers shall conform to the Commission's Uniform System of Accounts, 49 CFR part 1201:

* * * * *

[FR Doc. 93–29324 Filed 11–29–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 285

[I.D. 112293C]

Atlantic Tuna Fisheries; Bluefin Tuna

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of Closure of the Incidental Catch Category.

SUMMARY: NMFS closes the Incidental Catch category of the Atlantic bluefin tuna fishery, as required by regulations governing this fishery. The intent of this action is to prevent overharvest of the quota established for this fishery.

EFFECTIVE DATE: The closure of the Incidental Catch category is effective at 0001 hours local time November 27, 1993, through December 31, 1993.

FOR FURTHER INFORMATION CONTACT: Raymond E. Baglin, 301–713–2347.

SUPPLEMENTARY INFORMATION: Regulations promulgated under the authority of the Atlantic Tunas Convention Act (16 U.S.C. 971) regulating the harvest of Atlantic bluefin tuna by persons and vessels subject to U.S. jurisdiction are found at 50 CFR part 285.

Section 285.22(e) provides for the total amount of Atlantic bluefin tuna which may be caught and retained in the regulatory area by vessels permitted in the Incidental Catch category under § 285.21(b). The Incidental Catch category was adjusted by notice in the **Federal Register** (58 FR 32872) to a total of 89 metric tons (mt) effective June 8, 1993, under authority of § 285.22(h). The Incidental Catch quota was further adjusted to 84 mt effective October 8, 1993 (58 FR 53434), under authority of § 285.22(i). This quota was subdivided as follows: (1) 82 mt for longline vessels, of which not more than 54 mt may be taken in the area south of 36°00'N. latitude; and (2) 2 mt for vessels fishing for species of fish other than tuna. The quota for the southern area Incidental Catch category was attained and closed on May 4, 1993 (58 FR 26921, May 6, 1993).

The AA is authorized under § 285.20(b)(1) to monitor the catch and landing statistics and, on the basis of these statistics, to project a date when the catch of Atlantic bluefin tuna will equal its quota. The AA is further authorized under § 285.31(a)(2) to prohibit fishing for, catching, possessing, or landing Atlantic bluefin tuna by those fishing in the category subject to the quota when the catch of tuna equals the quota established under § 285.22 except under the provisions of § 285.27. The AA has determined, based on the estimated catch, that the northern adjusted annual quota of the Incidental Catch category will be attained by November 27, 1993. Therefore, the entire Incidental Catch category, including the "Incidental other" category, will be closed effective at 0001 hours local time on November 27, 1993.

This closure will remain in effect for the remainder of 1993.

Classification

This action is taken under the authority of 50 CFR 285.20 (b)(1) and 50 CFR 285.22(e).

Authority: 16 U.S.C. 971 *et seq.*

List of Subjects in 50 CFR Part 285

Fisheries, Penalties, Reporting and recordkeeping requirements, and Treaties.

Dated: November 23, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29195 Filed 11–23–93; 4:30 pm]

BILLING CODE 3510–22–P

Proposed Rules

Federal Register
Vol. 58, No. 228
Tuesday, November 30, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF AGRICULTURE

Agricultural Stabilization and Conservation Service

7 CFR Part 729

Commodity Credit Corporation

7 CFR Part 1421

RIN 0560–AD20

1994-Crop Peanut National Poundage Quota and Minimum CCC Export Edible Sales Price for Additional Peanuts

AGENCY: Agricultural Stabilization and Conservation Service and Commodity Credit Corporation, USDA.

ACTION: Proposed rule.

SUMMARY: The Agricultural Adjustment Act of 1938, as amended (the 1938 Act), requires that the national peanut poundage quota for the 1994 crop be announced by December 15, 1993. This proposed rule sets forth a proposed national poundage quota of 1,350,000 short tons (st) and the minimum Commodity Credit Corporation (CCC) sales price for additional peanuts for export edible use of $400 per st. Comments are also requested on whether or not USDA should adjust the proposed national poundage quota for the 1994 crop for abnormal carryover stocks and/or undermarketings.

DATES: Comments must be received by December 2, 1993, in order to be assured of consideration.

ADDRESSES: Comments must be mailed to Deputy Administrator, Policy Analysis, Agricultural Stabilization and Conservation Service (ASCS), United States Department of Agriculture, room 3090, South Building, P.O. Box 2415, Washington, DC 20013–2415. All written submissions will be made available for public inspection from 8:15 a.m. to 4:45 p.m., Monday through Friday, in room 3739-South Building, 14th and Independence Avenue, SW, Washington, DC 20013–2415.

FOR FURTHER INFORMATION CONTACT: Robert Miller, Director, Tobacco and Peanuts Analysis Division, ASCS, USDA, room 3732, South Building, P.O. Box 2415, Washington, DC 20013–2415, telephone 202–720–7477.

SUPPLEMENTARY INFORMATION:

Executive Order 12866

This proposed rule is issued in conformance with Executive Order 12866. Based on information compiled by the Department, it has been determined that this proposed rule: (1) Would have an annual effect on the economy of less than $100 million; (2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

Preliminary Regulatory Impact Analysis

The Preliminary Regulatory Impact Analysis discussing the impacts of the established quota and minimum CCC sales price of additional peanuts for export edible use is available from the above-named person.

Federal Assistance Program

The title and number of the Federal Assistance Program, as found in the Catalog of Federal Domestic Assistance, to which this rule applies, are Commodity Loans and Purchases—10.051.

Executive Order 12372

This program/activity is not subject to the provisions of Executive Order No. 12372 relating to intergovernmental consultation with State and local officials. See the Notice related to 7 CFR part 3015, subpart V, published at 48 FR 29115 (June 24, 1983).

Executive Order 12778

This rule has been reviewed in accordance with Executive Order 12778. The provisions of this rule do not preempt State law, are not retroactive, and do not involve administrative appeals.

Regulatory Flexibility Act

It has been determined that the Regulatory Flexibility Act is not applicable because neither ASCS nor CCC is required by 5 U.S.C. 553 or any other provision of law to publish a notice of proposed rulemaking with respect to the subject of these determinations.

Paperwork Reduction Act

The amendments to 7 CFR parts 729 and 1421 set forth in this proposed rule do not contain information collections that require clearance by the Office of Management and Budget under the provisions of 44 U.S.C. chapter 35.

Discussion

This proposed rule would amend 7 CFR part 729 to set forth the 1994-crop peanut national poundage quota, and 7 CFR part 1421 to set forth the minimum CCC sales price for 1994-crop additional peanuts sold for export edible use.

A. National Poundage Quota

Section 358–1(a)(1) of the 1938 Act requires that the national poundage quota for peanuts for each of the 1991 through 1995 marketing years (MY's) be established at a level that is equal to the estimated quantity of peanuts (in tons) that will be devoted in the MY to domestic edible, seed, and related uses. Section 358–1(a)(1) of the 1938 Act further provides that the national poundage quota for a MY shall not be less than 1,350,000 st. The MY for 1993-crop peanuts will be from August 1, 1993, through July 31, 1994. Poundage quotas for the 1991 through 1995 crops of peanuts were approved by 98.2 percent of peanut growers voting in a referendum conducted from December 10 through December 13, 1990. The referendum was conducted pursuant to section 358–1(d) of the 1938 Act.

The national poundage quota for MY 1993 was 1,496,000 st. It is proposed that the national poundage quota for MY 1994 be established at the minimum level of 1,350,000 st based on the following data:

ESTIMATED DOMESTIC EDIBLE, SEED AND RELATED USES FOR 1994–CROP PEANUTS

Item	Short tons
Domestic Edible:	
Domestic food	986,000
On farm and local sales	22,000
Subtotal	1,008,000
Seed	97,000
Related Uses:	
Crushing residual	133,000
Shrinkage and other losses	40,000
Segregation 2 and 3 loan transfers to quota loan	20,000
Subtotal	193,000
TOTAL	*1,298,000

*The total is 52,000 st less than the statutory minimum national poundage quota of 1,350,000 st.

The estimate of 1994 domestic food use was developed in two steps. First, total domestic edible utilization of 1,000,000 st was estimated by the USDA Interagency Commodity Estimates Committee. Second, to account for peanut butter exports, the estimate of domestic edible disappearance was reduced by 14,000 st. Although estimates of domestic edible utilization typically include product exports, peanut butter exports are generally either made from, or may otherwise be credited under section 358e(e)(1) of the 1938 Act as being made from, additional peanuts.

The estimate for MY 1994 farm use and local sales was derived by increasing the MY 1993 estimate by the annual growth trend rate of 2 percent.

Seed use was estimated based on the expected 1995-crop planted acreage for peanuts and the farmer stock equivalent of the seed needed to plant such acreage.

The crushing residual represents the farmer stock equivalent weight of crushing grade kernels shelled from quota peanuts. In any given load of quota farmer stock peanuts, a portion of such peanuts is only suitable for the crushing market. The quota must be sufficient to provide for the shelling of both edible and crushing grades. The crushing residual identified above reflects the assumption that crushing peanuts will be about 12 percent, on a farmer stock basis, of the total of MY 1994 domestic food and seed production.

The allowance for shrinkage and other losses is an estimate of reduced kernel weight available for milling as well as for kernel losses due to damage, fire, and spillage. These losses were estimated by multiplying a factor of 0.04 times domestic food use. This factor is the minimum shrinkage generally allowed for calculating obligations of handlers under section 359a(d)(2)(B)(iv) and is believed to be a fair estimate of such shrinkage taking into account all factors. Also, excess moisture and weight loss due to foreign material in delivered farmer stock peanuts were not considered because these factors are considered at buying points and consequently do not affect quota marketing tonnage.

Segregation 2 and 3 transfers represent peanuts that would otherwise be eligible for use as quota peanuts but which will not qualify for such use due to quality problems. Such transfers to quota peanut price support loan pools occur when quota peanut producers, due to no fault of their own, would otherwise have insufficient Segregation 1 peanuts to fulfill their quota. In such instances, Segregation 2 and 3 peanuts placed under an additional peanut price support loan may be transferred to the quota price support loan. The CCC will then ensure that such peanuts are crushed for oil.

B. 1994 Quota Allowance for Carryover Stocks and Undermarketings

The foregoing estimation process does not adjust for either abnormal carryover stocks at the beginning of MY 1994 or the application of prior undermarketings to the 1994 quota. As peanut usage has grown, carryover stocks have also grown. But, since 1980, carryover stocks have varied more from year to year than earlier. Also, current law allows a farm's quota to be increased by the amount by which marketings for prior years back to and including 1989 were less than the farm's quota. The total of all such increases nationally may not exceed 10 percent of the national poundage quota.

In addition to comments on other issues comments are particularly requested on whether or not the Secretary may and should consider, for purposes of setting the 1994-crop quota, the effect on market demand for peanuts, as well as on CCC exposure to price support loan losses, from abnormal carryover stocks and the undermarketing adjustment. Comments favoring either or both potential adjustments should specify an actual amount for the adjustment.

C. Minimum CCC Sales Price for Additional Peanuts Sold for Export Edible Use

A minimum price, at which additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets, is expected to be announced on or before February 15, 1994, at the same time that the quota and additional peanut support levels for the 1994 crop are announced. The announcement of that price provides producers and handlers with information to facilitate the negotiation of private contracts for the sale of additional peanuts.

An overly high price may create an unrealistic expectation of high pool dividends and discourage private sales. If too low, the minimum price could have an unnecessary, adverse affect on prices paid to producers for additional peanuts.

It is proposed that the minimum price at which 1994-crop additional peanuts owned or controlled by CCC may be sold for use as edible peanuts in export markets be established at $400 per st, unchanged from the 1993 crop. This level will provide price stability for additional peanuts sold under contract and provide some assurance to handlers that CCC will not undercut the handlers' export contracting efforts by offerings of additional peanuts for export edible sale below the historic minimum sales price.

Accordingly, comments are requested with respect to these foregoing issues.

List of Subjects

7 CFR Part 729

Poundage quotas, Peanuts, Penalties, Reporting and recordkeeping requirements.

7 CFR Part 1421

Grains, Loan programs—agriculture, Oilseeds, Peanuts, Price support programs, Reporting and recordkeeping requirements, Soybeans, Surety bonds, Warehouses.

Accordingly, it is proposed that 7 CFR parts 729 and 1421 be amended as follows:

PART 729—PEANUTS

1. The authority citation for 7 CFR part 729 continues to read as follows:

Authority: 7 U.S.C. 1301, 1357 *et seq.*, 1372, 1373, 1375; 7 U.S.C. 1445c–3.

2. Section 729.214 is amended by adding paragraph (d) to read as follows:

§ 729.214 National poundage quota.

* * * * *

(d) The national poundage quota for quota peanuts for marketing year 1994 is 1,350,000 short tons.

PART 1421—GRAINS AND SIMILARLY HANDLED COMMODITIES

3. The authority citation for 7 CFR part 1421 continues to read as follows:

Authority: 7 U.S.C. 1421, 1423, 1425, 1441z, 1444f–1, 1445b–3a, 1445c–3, 1445e, and 1446f; 15 U.S.C. 714b and 714c.

4. Section 1421.27 is amended by:

A. Removing the word "and" at the end of paragraph (a)(2)(ii),

B. Removing the period at the end of paragraph (a)(2)(iii) and inserting a semicolon in its place, and

C. Adding paragraph a(2)(iv) to read as follows:

§ 1421.27 Producer-handler purchases of additional peanuts pledged as collateral for a loan.

(a) * * *

(2) * * *

(iv) The 1994 minimum CCC sales price for additional peanuts sold for export edible use is $400 per short ton.

* * * * *

Signed at Washington, DC on November 24, 1993.

Bruce R. Weber,

Acting Administrator, Agricultural Stabilization and Conservation Service and Executive Vice President, Commodity Credit Corporation.

[FR Doc. 93–29314 Filed 11–24–93; 3:15 pm]

BILLING CODE 3410–05–P

Agricultural Marketing Service

7 CFR Part 930

[Docket No. AO–370–A5; FV93–930–1]

Proposed Tart Cherry Marketing Agreement and Order; Promulgation Hearing

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Notice of public hearings on proposed marketing agreement and order.

SUMMARY: Notice is hereby given of public hearings to be held to consider a proposed marketing agreement and order to cover tart cherries grown in the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin. The proposed agreement and order would authorize volume regulation, grade, size, maturity, pack and container regulations including mandatory inspection. The proposed order would also authorize production, processing and marketing research and promotion projects. The proposal was submitted by the Cherry Marketing Institute (CMI), a major industry organization, on behalf of interested cherry growers and processors (handlers). The program would be financed by assessments levied on handlers. The assessment rate would be established by the Secretary of Agriculture, based on the recommendation of a committee that would administer the program. The committee, appointed by the Secretary, would be composed of 18 members (17 growers and handlers and a public member).

DATES: A hearing will be held in Grand Rapids, Michigan, beginning on December 15, 1993, at 9 a.m. Additional sessions, if necessary, will be held on December 16 and 17, beginning at 9 a.m.

ADDRESSES: The hearings will be held at the Holiday Inn/East, 3333 28th Street, SE., Grand Rapids, Michigan. Additional hearings on the proposed tart cherry marketing order will be held in Provo, Utah; Rochester, New York; and Portland, Oregon. Dates and locations for these hearings will be determined and publicly announced at a later date.

FOR FURTHER INFORMATION CONTACT:

(1) R. Charles Martin or Kenneth G. Johnson, Marketing Order Administration Branch, Fruit and Vegetable Division, room 2523–S, AMS, USDA, P.O. Box 96456, Washington, DC 20090–6456; telephone number (202) 720–5053.

(2) Robert Curry, Northwest Marketing Field Office, Marketing Order Administration Branch, Fruit and Vegetable Division, AMS, USDA, 1220 SW. Third Avenue, room 369, Portland, Oregon, 97204; telephone: (503) 326–2725.

SUPPLEMENTARY INFORMATION: This action is governed by the provisions of sections 556 and 557 of title 5 of the United States Code and is therefore excluded from the requirements of Executive Order 12866. The hearings are called pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937 (Act), as amended (7 U.S.C. 601 et seq.), and applicable rules of practice and procedure governing the formulation of marketing agreements and orders (7 CFR part 900).

The Regulatory Flexibility Act (95 U.S.C. 601 et seq.) applies, and seeks to ensure that, within the statutory authority of a program, the regulatory and informational requirements of the program are tailored to the size and nature of small businesses. Interested persons are invited to present evidence at the hearings on the informational requirements and probable economic impact of the proposal on small businesses.

The marketing agreement and order proposed herein have been reviewed under Executive Order 12778, Civil Justice Reform. They are not intended to have retroactive effect. If adopted, the proposed agreement and order would not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the proposal.

The Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with law and requesting a modification of the order or to be exempted therefrom. A handler is afforded the opportunity for a hearing on the petition. After the hearing, the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has his or her principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Proponents of the order contend that tart cherries, more than any other horticultural crop, are subject to severe swings in production due to climatic factors. In 1991, tart cherry production reached 190 million pounds whereas production in 1992 totalled 334 million pounds. The proponents developed the proposed marketing order as a means of stabilizing supply conditions, expanding markets for tart cherries, and improving grower returns.

On October 8, 1993, the Department issued a press release to announce the receipt of the proposal submitted by the CMI and to provide the opportunity for interested parties to submit additional or alternative proposals through November 8. The Department received six written responses to the press release announcement concerning the proposal to establish a red tart cherry marketing order. Some of the responses contained additional or alternative proposals.

Mr. Calvin C. Lutz, a tart cherry grower, Kaleva, Michigan, recommended that the Department hold hearings on the proposed marketing order as soon as possible, and that the marketing order be made effective for the 1994 crop. The U.S. Department of Justice (DOJ) urged the Department to reject, without hearings, the CMI proposal or any other marketing order proposal that would impose volume

controls. The DOJ also opposed those provisions in the proposed marketing order providing for minimum quality standards for tart cherries. The DOJ did not oppose that part of the proposed order providing for the establishment of market research and promotional activities.

The remaining four responses to the press release announcement contained additional or alternative proposals or recommendations concerning provisions of the CMI proposal. However, no specific regulatory language was provided. Accordingly, included in this notice of hearing is a discussion of these four responses.

Submitted by Mr. Lee Schrepel, Chairman, Oregon Tart Cherry Association

(Note: While Mr. Schrepel submitted no specific regulatory language, his proposals referenced certain sections of the CMI proposal under consideration. His references are included in the following summary.)

(1) The Department should not issue a marketing order for tart cherries;

(2) If a marketing order for tart cherries is issued, all red tart cherry producing states other than Michigan, New York, Pennsylvania, Utah and Wisconsin should be permanently excluded and exempted from any and all terms of the order;

(3) Hot pack, pie filling, and culls should also be addressed in the listing of products defining a handler (§ 930.10);

(4) Any district in which the annual production dwindles to an average of five million pounds should be permanently exempted from the terms of the order (§ 930.14);

(5) Every district should at least have both a grower and a processor representative (§ 930.20);

(6) Equal representation should be given to all the districts on a 15-member Board (§ 930.20);

(7) One or two year terms of office for Board members (§ 930.22);

(8) A grower who has his crop (all or part) custom-processed, and retains title to the finished product to sell in competition with other processors, should also be allowed to vote as a handler if he is assuming the risk normally associated with the processor (§ 930.23);

(9) Handlers who do not hold title to the product but process and sell the product for a fee (i.e., custom packers) should also have the same rights and privileges as other processors (§ 930.23);

(10) A grower-handler should be able to serve as either a grower or handler member on the Board (§ 930.23);

(11) The Board should be responsible for the cost of attendance at all meetings by members and alternates to the Board (§§ 930.27 and 930.32);

(12) Omit § 930.30(s);

(13) A quorum should be defined as 14 members or three-fourths of the full membership of the Board. Actions involving the enactment of supply control, assessment levels and changes in procedures and qualifications for inspections and grading should require passage by at least a two-thirds affirmative vote of the entire Board (§ 930.31(a));

(14) Assessments for reimbursement of storage costs should only be levied upon product produced in States which are under supply regulation for that respective season (§ 930.41(c));

(15) Assessment rates should be established based upon some relationship of product value after initial processing to grower price or pound of raw product from the grower. These rates should be stipulated as a fixed formula relating to raw product equivalent pounds. All products identified in § 930.10 should be listed, with provisions for additions and variations not currently identified (§ 930.41);

(16) Exemptions should be provided for very small handlers, very small packs and special packs for which grading may be inappropriate. Inspection costs should be assumed by the Board or a fixed cost per pound should be established each year that will apply to all participants (§ 930.44(a) and (b));

(17) Grading of finished product should only be required of product entering the inventory reserve (§ 930.44);

(18) Include a provision for paid advertising (§ 930.48);

(19) The desirable carry-out inventory should be a fixed percentage (20%) of average annual sales. Formulas used in establishing volume regulations should encourage market growth by at least 10% per year. Unregulated states should be deducted from the USDA crop estimate before an optimum supply is established (§ 930.50(a) and (b));

(20) July 1 should not be fixed as the date by which the Board must fix a preliminary free market tonnage percentage (§ 930.50);

(21) The suggested formula for establishment of the preliminary free market percentage should allow for the desirable carry-in to the next season (§ 930.50);

(22) The proposal for volume control should be rejected (§ 930.50);

(23) Western handlers should be excluded from the provisions of § 930.50;

(24) The reserve tonnage that can be sold as free tonnage should be equivalent to at least an additional 20% of the average sales of the prior three years and should be automatic rather than at the option of the Board (§ 930.50(g));

(25) Do not cap the primary reserve at 50 million pounds (§ 930.50(i));

(26) Section 930.50(k) of the proposed order should be deleted;

(27) Section 930.52 should be revised to use production of 20 million pounds. This exemption figure should be allowed to increase. A district should be subject to volume control only during years of production greater than that specified in § 930.52(a), and not permanently under the life of the order (§ 930.52);

(28) Automatic regulation under the order should be based on an estimated crop of 200 percent of production during 1989 through 1992 (§ 920.52(c));

(29) If the trigger for regulation is to be 150 percent (or 200 percent) of certain crop years, the trigger for permanent involvement should tie that increase concretely to an increase of 150 percent (or 200 percent) in producing acreage and processing plant capacity (§ 930.52(d));

(30) Growth in sales nationwide in all market segments should allow for a proportionate increase in each segment of processed product. The same should be the case for uses which are currently "secondary". If the productive capacity in a particular district decreases, meaning less productive acreage and processing capacity, that district should have a relaxed trigger threshold (§ 930.52(e));

(31) Section 930.53 should be omitted;

(32) Handlers should be able to dispose of cherries in the inventory reserve by destruction without authority being granted by any other party. Such action should then be communicated to the Board (§ 930.55(a));

(33) Allow for releases from the reserve in different areas at different times, based upon availability of local unrestricted product (§ 930.55(b);

(34) In § 930.56(b), the forms of cherries cited should conform to those listed in § 930.10. Handlers should be allowed the flexibility to determine what form they wish to hold as primary inventory reserve. The Board should not have the authority to limit segments in the reserve by type or product;

(35) The Board should only have the authority to regulate quality as it relates

to what is reserved from the market (§ 930.56(c));

(36) Charitable purposes should be allowed under § 930.59(b);

(37) No authority should be provided to allow handlers to transfer their equity in the primary inventory reserve (§ 930.61(a));

(38) The phrase "for any other use" should be omitted from § 930.63. Any handler processing one million pounds or less per season should be exempt from regulation, including reporting and recordkeeping requirements;

(39) Referenda for continuation of the order should require the support of two-thirds of all known growers by number and representing two-thirds of the total volume by weight of the most current crop season within the seven districts herein established. Support of the handlers must be shown to the same extent (two-thirds by number of all known handlers and representing two-thirds of the total volume by weight of raw product processed) (§ 930.83(c));

(40) Continuance referenda should be held at every fourth anniversary of enactment of the order (§ 930.83(d).

Submitted by Mr. James G. Fulleton, President, Ridgecrest Fruit Corporation, Wenatchee, Washington

(1) The State of Washington should be excluded from any Federal marketing order for tart cherries.

Submitted by Mr. Roy J. Dukesherer, Benton Harbor, Michigan

(1) The Federal government shall register all cherry producers and the election shall be by secret ballot. One vote shall be given to the person or entity who owns the cherry trees and has produced one crop from these trees. One person shall have only one vote.

(2) The USDA shall monitor the collection and disbursement of "check-off" funds. Money collected shall not be granted to private organizations specifically named in this act (i.e., the Cherry Marketing Institute and the Red Tart Cherry Growers Division of the Michigan Agricultural Commodities Marketing Association);

(3) Only Grade "A" cherries shall be frozen. All substandard cherries shall be juiced or destroyed.

Submitted by Mr. David A Pahl, President, Northwest Food Processors Association

(1) Exempt the States of Oregon and Washington from any Federal marketing order for red tart cherries.

None of the recommendations or proposals discussed herein have received approval by the Secretary of Agriculture.

Testimony is invited at the hearings on the proposed order and on all the recommendations and proposals contained in this notice, as well as any appropriate modifications or alternatives.

The hearings will be held for the purposes of:

(a) Receiving evidence about the economic and marketing conditions which relate to the proposed marketing agreement and order and to any appropriate modifications thereof;

(b) Determining whether the handling of tart cherries produced in the production area is in the current of interstate or foreign commerce or directly burdens, obstructs or affects interstate or foreign commerce;

(c) Determining whether there is a need for a marketing agreement and order for tart cherries;

(d) Determining the economic impact of the proposed marketing agreement and order on the industry in the production area and on the public affected by such a program;

(e) Determining whether the proposed marketing agreement and order or any appropriate modification of them will tend to effectuate the declared policy of the Act.

All persons wishing to submit written material as evidence at the hearing should be prepared to submit four copies of such material at the hearing and should have prepared testimony available for presentation at the hearing.

From the time this hearing notice is issued and until the issuance of a final decision in this proceeding, Department employees involved in the decisional process are prohibited from discussing the merits of the hearing issues on an ex parte basis with any person having an interest in the proceeding. The prohibition applies to employees in the following organizational units:

Office of the Secretary of Agriculture; Office of the Administrator, Agricultural Marketing Service; Office of the General Counsel; and the Fruit and Vegetable Division, Agricultural Marketing Service.

Procedural matters are not subject to the above prohibition and may be discussed at any time.

Provisions of the CMI proposed marketing agreement and order follow. Those sections identified with an asterisk (*) apply only to the proposed marketing agreement, and are proposed by the Agricultural Marketing Service.

List of Subjects in Proposed 7 CFR Part 930

Marketing agreements and orders, tart cherries, Michigan, New York, Oregon, Pennsylvania, Utah, Washington, Wisconsin.

The marketing agreement and order proposed by the Cherry Marketing Institute would add a new part 930 to read as follows:

PART 930—TART CHERRIES GROWN IN MICHIGAN, NEW YORK, PENNSYLVANIA, OREGON, UTAH, WASHINGTON AND WISCONSIN

Sec.
930.1 Act.
930.2 Board.
930.3 Cherries.
930.4 Crop year.
930.5 Department or USDA.
930.6 District.
930.7 Fiscal period.
930.8 Free market tonnage percentage cherries.
930.9 Grower.
930.10 Handle.
930.11 Handler.
930.12 Person.
930.13 Primary inventory reserve.
930.14 Production area.
930.15 Restricted percentage cherries.
930.16 Sales constituency.
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Administrative Body

930.20 Establishment and membership.
930.21 Reestablishment
930.22 Term of office.
930.23 Nomination and election.
930.24 Appointment.
930.25 Acceptance.
930.26 Vacancies.
930.27 Alternate members.
930.28 Eligibility for membership on Cherry Industry Administrative Board.
930.29 Powers.
930.30 Duties.
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Expenses and Assessments

930.40 Expenses.
930.41 Assessments.
930.42 Accounting.

Quality Control

930.44 Quality Control.

Research, Market Development and Promotion

930.48 Research, Market Development and Promotion.

Regulations

930.50 Marketing policy.
930.51 Issuance of volume regulations.
930.52 Establishment of districts subject to volume regulations.
930.53 Issuance of regulations.
930.54 Modification, suspension, or termination of regulations.
930.55 Prohibition on the use or disposition of inventory reserve cherries.
930.56 Primary inventory reserves.
930.57 Off-premise inventory reserve.
930.58 Secondary inventory reserve.
930.59 Grower diversion privilege.

Sec

930.60 Handler diversion privilege.
930.61 Equity holders.
930.62 Handler compensation.
930.63 Exemptions.
930.64 Expansion of production area.

Reports and Records

930.70 Reports.
930.71 Records.
930.72 Verification of reports and records.
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Miscellaneous Provisions

930.80 Compliance.
930.81 Right of the Secretary.
930.82 Effective time.
930.83 Termination.
930.84 Proceedings after termination.
930.85 Effect of termination or amendment.
930.86 Duration of immunities.
930.87 Agents.
930.88 Derogation.
930.89 Personal liability.
930.90 Separability.
930.91 Amendments.
930.92 Counterparts.
930.93 Additional parties.
930.94 Order with marketing agreement.

Authority: 7 U.S.C. 601.

§ 930.1 Act.

Act means Public Act No. 10, 73d Congress (May 12, 1933), as amended, and as reenacted and amended by the Agriculture Marketing Agreement Act of 1937, as amended (48 Stat. 31, as amended, 68 Stat. 906, 1047; 7 U.S.C. 601, et seq.).

§ 930.2 Board.

Board means the Cherry Industry Administrative Board established pursuant to § 930.20.

§ 930.3 Cherries.

Cherries means all cherries grown in the production area classified botanically as Prunus cerasus.

§ 930.4 Crop year.

Crop year means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish.

§ 930.5 Department or USDA.

Department or *USDA* means the United States Department of Agriculture.

§ 930.6 District.

District means the applicable one of the subdivisions of the production area described in § 930.20(c), or such other subdivisions as may be established pursuant to § 930.21, or any subdivision added pursuant to § 930.64.

§ 930.7 Fiscal period.

Fiscal period is synonymous with fiscal year and means the 12-month period beginning on July 1 of any year and ending on June 30 of the following year, or such other period as the Board, with the approval of the Secretary, may establish: Provided, That the initial fiscal period shall begin on the effective date of this part.

§ 930.8 Free market tonnage percentage cherries.

Free market tonnage percentage cherries means that proportion of cherries handled in a crop year which are free to be marketed in normal commercial outlets in that crop year under any volume regulation established pursuant to § 930.50 or § 930.51 and, in the absence of a restricted percentage being established for a crop year pursuant to § 930.50 or § 930.51, all cherries received by handlers in that crop year.

§ 930.9 Grower.

Grower is synonymous with "producer" and means any person who produces cherries to be marketed in canned, frozen, or other processed form and who has a proprietary interest therein.

§ 930.10 Handle.

Handle means to brine, can, concentrate, freeze, dehydrate, pit, press or puree cherries, or in any other way convert cherries commercially into a processed product or obtain from growers diversion certificates issued pursuant to § 930.59, or otherwise place cherries into the current of commerce within the production area or from the area to points outside thereof: Provided, That the term "handle" shall not include, (a) the brining, canning, concentrating, freezing, dehydration, pitting, pressing or the converting, in any other way, of cherries into a processed product for home use and not for resale; or (b) the diversion of cherries pursuant to § 930.60, into a processed product, or (c) the transportation within the production area of cherries from the orchard where grown to a processing facility located within such area for preparation for market; or (d) the delivery of such cherries to such processing facility for such preparation; or (e) the sale or transportation of cherries by a producer to a handler of record within the production area.

§ 930.11 Handler.

Handler means any person who first handles cherries or causes cherries to be handled.

§ 930.12 Person.

Person means an individual, partnership, corporation, association, or any other business unit.

§ 930.13 Primary inventory reserve.

Primary inventory reserve means that portion of handled cherries that are placed into inventory in accordance with any restricted percentage established pursuant to § 930.50 or § 930.51 and for which the storage costs are paid, via reimbursement, to the handler holding such cherries.

§ 930.14 Production area.

Production area means the States of Michigan, New York, Pennsylvania, Oregon, Utah, Washington and Wisconsin and any other state in which the annual production of cherries, as defined in § 930.3, reaches five million pounds and such state is added to the production area pursuant to § 930.64 of this part.

§ 930.15 Restricted percentage cherries.

Restricted percentage cherries means that proportion of cherries handled in a crop year which must be either placed into inventory in accordance with § 930.56 or § 930.58 or otherwise diverted in accordance with § 930.60 and thereby withheld from marketing in normal commercial outlets in that crop year under any volume regulation established pursuant to § 930.50 or § 930.51.

§ 930.16 Sales constituency.

Sales constituency means a common marketing organization or brokerage firm or individual representing a group of handlers or growers.

§ 930.17 Secondary inventory reserve.

Secondary inventory reserve means any portion of handled cherries voluntarily placed into inventory by a handler under § 930.58.

§ 930.18 Secretary.

Secretary means the Secretary of Agriculture of the United States, or any officer or employee of the U.S. Department of Agriculture to whom authority has heretofore been delegated, or to whom authority may hereafter be delegated, to act in the Secretary's stead.

Administrative Body

§ 930.20 Establishment and membership.

(a) There is hereby established a Cherry Industry Administrative Board (Board) consisting of 18 members. Seventeen of these members shall be qualified growers and handlers selected pursuant to this part, each of whom shall have an alternate having the same qualifications as the member for whom the person is an alternate. The remaining member of the Board, for whom there shall be no alternate, shall

be elected by the Board from the general public.

(b) District representation on the Board shall be as follows:

District 1: Two grower members and two handler members.

District 2: One grower member and two handler members.

District 3: One grower member and one handler member.

District 4: One grower member and one handler member.

District 5: One member who may be either a grower or handler member.

District 6: One member who may be either a grower or handler member.

District 7: One grower member and one handler member.

District 8: One member who may be either a grower or handler member.

District 9: One member who may be either a grower or handler member.

(c) Upon the adoption of this part, the production area shall be divided into the following described subdivisions for purposes of this section:

District 1—Northern Michigan: that portion of the State of Michigan which is north of a line drawn along the northern boundary of Mason County and extended east to Lake Huron.

District 2—Central Michigan: that portion of the State of Michigan which is south of District 1 and north of a line drawn along the southern boundary of Muskegon County and extended east to Lake Huron.

District 3—Southern Michigan: That portion of the State of Michigan not included in Districts 1 and 2.

District 4—The State of New York.

District 5—The State of Oregon.

District 6—The State of Pennsylvania.

District 7—The State of Utah.

District 8—The State of Washington.

District 9—The State of Wisconsin.

(d) The ratio of grower to handler representation in District 2 shall alternate each time a term expires of a Board member from that representative group having two seats from that district. During the initial period of the order, the ratio shall be as designated in subsection (b) above.

(e) Board members from Districts 5, 6, 8 and 9 may be either grower or handler members and will be nominated and elected as outlined in § 930.22.

(f) In those districts having more than one seat on the Board, not more than one voting Board member may be elected from a single sales constituency. There is, however, no prohibition on the number of voting Board members from differing districts that may be elected from a single sales constituency which may have operations in more than one district. However, as provided in § 930.22, a handler may only nominate Board members and vote in one district.

(g) Subject to the approval of the Secretary, the Board may annually elect from among any of its members a chairperson and a vice-chairperson.

§ 930.21 Reestablishment.

Districts, subdivisions of districts, and the distribution of representation among growers and handlers within a respective district or subdivision thereof, or among the subdivision of districts, may be reestablished by the Secretary based upon recommendations by the Board. In recommending any such changes, the Board shall consider (a) the relative importance of new producing areas, (b) relative production, (c) the geographic locations of producing areas as they would affect the efficiency of administration of this part, (d) shifts in cherry production within the districts and the production area, (e) changes in the proportion and role of growers and handlers within the districts, and (f) other relevant factors.

§ 930.22 Term of office.

The term of office of each member and alternate member of the Board, except for the public voting members, shall be for three fiscal years: Provided, (a) that of the nine initial members and alternates from the combination of Districts 1, 2 and 3, one-third of such initial members and alternates shall serve only one fiscal year, and one-third of such members and alternates shall serve only two fiscal years; and (b) that one-half of the initial members and alternates from Districts 4 and 7 shall serve only one fiscal year, and one-half of such initial members and alternates shall serve two fiscal years (determination of which of the initial members and their alternates shall serve for 1 fiscal year, 2 fiscal years, and 3 fiscal years shall be by lot). The term of office of the public voting member shall be one fiscal year. Members and alternate members shall serve in such capacity for the portion of the term of office for which they are selected and have qualified until their respective successors are selected, have qualified and are appointed. The consecutive terms of office of members shall be limited to two 3-year terms, excluding any initial term lasting less than 3 years. [If this part becomes effective on a date such that the initial fiscal period is less than six months in duration, then the tolling of the time for purposes of this section shall not begin until the beginning of the first 12-month fiscal period.]

§ 930.23 Nomination and election.

(a) Nomination and election of initial and successor members and alternate members of the Board shall be conducted through balloting distributed to all eligible growers and handlers via the U.S. Postal Service.

(b) Nomination:

(1) In order for a grower to be on the nomination ballot, the submission of the nominee's name must be accompanied by a petition form, to be supplied by the Secretary or the Board, which contains at least five signatures of growers eligible to vote in the referendum which states they are in support of the nominee. There is no similar petition required for handler nominees.

(2) Only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the nomination of grower members and alternate grower members of the Board. No grower shall participate in the submission of nominees in more than one district during any fiscal period. If a producer produces cherries in more than one district, they shall participate in the district in which they produce the largest tonnage of cherries.

(3) Only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the nomination of handler members and alternate handler members of the Board. No handler shall participate in the selection of nominees in more than one district during any fiscal period. If a person is a grower and a grower-handler only because some of their cherries were custom packed, but they do not own or lease and operate a processing facility, such person may vote only as a grower.

(4) In Districts 5, 6, 8 and 9, both growers and handlers may be nominated for the district's Board seat. Grower nominations must follow the petition procedure outlined in paragraph (b)(1) of this section.

(5) All eligible growers and handlers in all districts may submit the name(s) of the nominee(s) for the public voting member of the Board.

(6) After the appointment of the initial Board, the Secretary or the Board shall announce at least 180 days in advance when a Board member's term is expiring and shall solicit nominations for that position in the manner described in this section. Nominations for such position should be submitted to the Secretary or the Board not less than 120 days prior to the expiration of such term.

(c) Election:

(1) After receiving the nominations, the Secretary or the Board shall distribute ballots via the U.S. Postal Service to all eligible growers and handlers containing the names of the

nominees by district for the respective seats on the Board, excluding the public voting member seat. The ballots will clearly indicate that growers and handlers may only rank or otherwise vote for nominees in their own district.

(2) Except as provided in paragraph (c)(4) of this section, only growers, including duly authorized officers or employees of growers, who are eligible to serve as grower members of the Board shall participate in the election of grower members and alternate grower members of the Board. No grower shall participate in the election of Board members in more than one district during any fiscal period. If a grower produces cherries in more than one district, they will participate in the district in which they produce the largest tonnage of cherries.

(3) Except as provided in paragraph (c)(4) of this section, only handlers, including duly authorized officers or employees of handlers, who are eligible to serve as handler members of the Board shall participate in the election of handler members and alternate handler members of the Board. No handler shall participate in the election of Board members in more than one district during any fiscal period. If a person is a grower and a grower-handler only because some of their cherries were custom packed, but they do not own or lease and operate a processing facility, such person may vote only as a grower.

(4) In Districts 5, 6, 8 and 9, growers and handlers may vote for either the grower or handler nominee(s) for the single seat allocated to those districts.

(d) The members of the Board appointed by the Secretary pursuant to § 930.24 shall, at the first meeting and whenever necessary thereafter, by at least a two-thirds vote of the entire Board, select an individual to serve as a public voting member of the Board from the list of nominees received from growers and handlers pursuant to paragraph (b) of this section or from other persons nominated by the Board. The person selected shall be subject to appointment by the Secretary under § 930.24.

§ 930.24 Appointment.

The selection of nominees made pursuant to § 930.23(c) shall be presented to the Secretary in a format which indicates the nominees by district, with the nominee receiving the highest number of votes at the top and the number of votes received being clearly indicated. The Secretary shall appoint from those nominees the grower and handler members of the Board and an alternate for each such member on the basis of the representation provided for in § 930.20 or as provided for in any reestablishment undertaken pursuant to § 930.21. The Secretary shall also appoint the public voting member elected by the Board pursuant to § 930.23(d).

§ 930.25 Acceptance.

Each person to be appointed by the Secretary as a member or as an alternate member of the Board shall, prior to such appointment, qualify by advising the Secretary that he/she agrees to serve in the position for which nominated for selection.

§ 930.26 Vacancies.

To fill any vacancy occasioned by the failure of any person appointed as a member or as an alternate member of the Board to qualify, or in the event of the death, removal, resignation, or disqualification of any member or alternate member of the Board, a successor for the unexpired term of such member or alternate member of the Board shall be appointed by the Secretary from the most recent list of nominations for the Board made by individual growers and handlers, or from nominations made by the Board, which appointment shall be made on the basis of representation provided for in § 930.20 or as provided for in any reestablishment undertaken pursuant to § 930.21.

§ 930.27 Alternate members.

An alternate member of the Board, during the absence of the member for whom they serve as an alternate, shall act in the place and stead of such member and perform such other duties as assigned. However, if a member is in attendance at a meeting of the Board, an alternate member may not act in the place and stead of such member. In the event of the death, removal, resignation, or disqualification of a member, the alternate shall act for the member until a successor for such member is appointed and has qualified.

§ 930.28 Eligibility for membership on Cherry Industry Administrative Board.

(a) Each grower member and each grower alternate member of the Board shall be a grower, or an officer or employee of a grower, in the district for which nominated or appointed.

(b) Each handler member and each handler alternate member of the Board shall be a handler, or an officer or employee of a handler, who owns, or leases, and operates a cherry processing facility in the district for which nominated or appointed.

§ 930.29 Powers.

The Board shall have the following powers: (a) To administer this part in accordance with its terms and provisions;

(b) To make rules and regulations to effectuate the terms and provisions of this part;

(c) To receive, investigate, and report to the Secretary complaints of violations of this part; and

(d) To recommend to the Secretary amendments to this part.

§ 930.30 Duties.

The Board shall have, among others, the following duties:

(a) To select such officers, including a chairperson and vice-chairperson, as may be necessary, and to define the duties of such officers and the duties of the chairperson and the vice-chairperson;

(b) To employ or contract with such persons or agents as the Board deems necessary and to determine the duties and compensation of such persons or agents;

(c) To select committees and subcommittees of the Board members, to adopt bylaws, and to adopt such rules for the conduct of its business as it may deem advisable;

(d) To submit to the Secretary a budget for each fiscal period, including a report explaining the items appearing therein and a recommendation as to the rates of assessments for such period;

(e) To keep minutes, books, and records which will reflect all of the acts and transactions of the Board and which shall be subject to examination by the Secretary;

(f) To prepare periodic statements of the financial operations of the Board and to make copies of each statement available to growers and handlers for examination at the office of the Board;

(g) To cause its books to be audited by a certified public accountant at least once each fiscal year and at such times as the Secretary may request;

(h) To act as intermediary between the Secretary and any grower or handler with respect to the operations of this part;

(i) To investigate and assemble data on the growing, handling, and marketing conditions with respect to cherries;

(j) To submit to the Secretary the same notice of meetings of the Board as is given to its members;

(k) To submit to the Secretary such available information as the Secretary may request;

(l) To investigate compliance with the provisions of this part;

(m) To develop and submit an annual marketing policy for approval by the

Secretary containing the optimum supply of cherries for the crop year established pursuant to § 930.50 and recommending such action(s) necessary to achieve such optimum supply;

(n) To implement such quantity regulations called for by the marketing policy established under § 930.50 and established by the Secretary under § 930.51, including the release of any inventory reserves;

(o) To provide thorough communication to growers and handlers regarding the activities of the Board and to respond to industry inquiries about Board activities;

(p) To oversee the collection of assessments levied under this part;

(q) To enter into contracts or agreements, with the approval of the Secretary, with such persons and organizations as the Board may approve for the development and conduct of activities, including research and promotion activities, authorized under this part or for the provision of services required by this part and for the payment of the cost thereof with funds collected through assessments pursuant to § 930.41 and income from such assessments. Any such contract or agreement shall provide that:

(1) The contractors shall develop and submit to the Board a plan or project or schedule of services together with a budget(s) which shall show the estimated cost to be incurred for such plan, project or services;

(2) Any such plan, project or contract shall become effective upon approval of the Secretary; and

(3) The contracting party shall keep accurate records of all of its transactions and make periodic reports to the Board of activities conducted and an accounting for funds received and expended, and such other reports as the Secretary or the Board may require. The Secretary or employees of the Board may audit periodically the records of the contracting party.

(r) Pending disbursement pursuant to its budget, the Board, with the approval of the Secretary, may invest, in accordance with applicable Departmental policies, funds collected through assessments authorized under § 930.41 and income from such assessments;

(s) With the approval of the Secretary, the Board may establish standards, grades, or pack requirements for cherries and for frozen and canned cherry products after the Board has polled affected growers and handlers;

(t) To borrow such funds, subject to the approval of the Secretary, as are necessary for administering its responsibilities and obligations under this part. Assessments to become due to the Board may be pledged as collateral against such borrowed funds;

(u) To establish, with the approval of the Secretary, such rules and procedures relative to administration of this part as may be consistent with the provisions contained in this part and as may be necessary to accomplish the purposes of the Act and the efficient administration of this part.

§ 930.31 Procedure.

(a) Twelve members of the Board, including alternates acting for members, shall constitute a quorum and any action of the Board, except the election of the public voting member, shall require a majority vote of those present. As noted in § 930.23(d), at least a two-thirds vote of the entire Board is required for the election of the public voting member.

(b) The Board may provide through its own rules and regulations, subject to approval by the Secretary, for simultaneous meetings of groups of its members assembled at different locations and for votes to be conducted by telephone or other means of communication.

(c) All meetings of the Board are open to the public, although the Board may hold portions of meetings in executive session for the consideration of certain business. The Board will establish pursuant to rules and regulations, with the approval of the Secretary, a means of notification sufficient for a vast majority of growers and handlers to receive advance notice of Board meetings.

§ 930.32 Expenses and compensation.

The members of the Board, and alternates when acting as members shall serve without compensation but shall be reimbursed for necessary and reasonable expenses, as approved by the Board, incurred by them in the performance of their duties under this part. The Board at its discretion may request the attendance of one or more alternates at any or all meetings, notwithstanding the expected or actual presence of the respective member(s), and may pay expenses as aforesaid.

Expenses and Assessments

§ 930.40 Expenses.

The Board is authorized to incur such expenses as the Secretary finds are reasonable and likely to be incurred by the Board for its maintenance and functioning and to enable it to exercise its powers and perform its duties in accordance with the provisions of this part. The funds to cover such expenses shall be acquired by the levying of assessments as provided for in § 930.41.

§ 930.41 Assessments.

(a) Separate assessments may be levied upon handlers under this part to cover (1) the administrative costs of the Board; (2) storage costs of primary inventory reserve cherries; and (3) research, development and promotion activities initiated by the Board under § 930.48.

(b) Each separate assessment must be approved by the Board and the Secretary and any notification or other statement regarding assessments provided to handlers must clearly indicate each individual assessment and the purpose from paragraph (a) for which it is being collected.

(c) As a pro rata share of the administrative expenses, storage costs, or research, development and promotion expenses which the Secretary finds reasonable and likely to be incurred by the Board during a fiscal period, each handler shall pay to the Board assessments on all cherries handled, as the handler thereof, during such period: *Provided*, (1) the Board may levy a fair and reasonable assessment to cover the storage costs of a primary inventory reserve prior to the creation of the first such reserve or during a subsequent period in which no primary inventory reserve exists; and (2) a handler who diverts cherries through approved methods or obtains grower diversion certificates issued pursuant to § 930.59(b)(2) shall be exempt from any storage cost assessment to the extent that the amount of crop diverted and/or covered by grower diversion certificates offsets the amount of crop the handler was obligated to restrict from circulation in normal commercial outlets that year.

(d) The Secretary, after consideration of the advice and recommendation of the Board, shall fix the rate of assessment to be paid by each handler during the fiscal period in an amount designed to secure sufficient funds to cover the expenses which may be incurred during such period. At any time during or after the fiscal period, the Secretary may increase the rate of assessment in order to secure sufficient funds to cover any later finding by the Secretary relative to the expenses which may be incurred. Such increase shall be applied to all cherries handled during the applicable fiscal period. In order to provide funds for the administration of the provisions of this part during the first part of a fiscal period before sufficient operating income is available from assessments, the Board may accept the payment of assessments in advance,

and may borrow money for such purposes.

(e) Assessments not paid within a time prescribed by the Board may be made subject to interest or late payment charges, or both. The period of time, rate of interest, and late payment charge will be as recommended by the Board and approved by the Secretary: *Provided*, That when interest or late payment charges are in effect, they shall be applied to all assessments not paid within the prescribed period of time.

(f) Assessments will be calculated on the basis of pounds of cherries handled: *Provided*, That the formula adopted by the Board and approved by the Secretary for determining the rate of assessment will compensate for differences in the number pounds of cherries utilized for various cherry products and the relative market values of such cherry products: *Provided further*, That the formula adopted should result in a rate of assessment for juice cherries which is 50 percent of the rate for frozen, canned or other forms of cherries.

§ 930.42 Accounting.

(a) If, at the end of a fiscal period, the assessments collected are in excess of expenses incurred, the Board, with the approval of the Secretary, may carry over all or any portion of such excess into subsequent fiscal periods as reserve. Such reserve funds may be used (1) to cover any expenses authorized by this part, and (2) to cover necessary expenses of liquidation in the event of termination of this part. If any such excess is not retained in a reserve, it shall be refunded proportionately to the handlers from whom the excess was collected. The amount held in reserve for purposes of administrative expenses may not exceed approximately one year's operational expenses; that held for inventory reserve storage costs may not exceed the estimated cost of a 50 million pound reserve for two years unless additional reserve is approved by the Secretary; that held for research and promotion activities may not exceed approximately one year's expenditures for such activities; or such lower levels that the Board, with the approval of the Secretary may establish. Upon termination of this part, any funds not required to defray the necessary expenses of liquidation shall be disposed of in such a manner as the Secretary may determine to be appropriate: *Provided*, That to the extent practicable, such funds shall be returned pro rata to the persons from whom such funds were collected.

(b) All funds received by the Board pursuant to the provisions of this part shall be used solely for the purpose specified in this part and shall be accounted for in the manner provided in this part. The Secretary may at any time require the Board and its members to account for all receipts and disbursements.

Quality Control

§ 930.44 Quality Control.

(a) *Quality standards.* The Board may establish, with the approval of the Secretary, such minimum quality and inspection requirements applicable to cherries to be handled and to processed cherry products as will contribute to orderly marketing or be in the public interest. If such requirements are adopted, no handler shall process cherries into manufactured products or sell manufactured products in the current of commerce unless such cherries and/or such products meet the applicable requirements as evidenced by certification acceptable to the Board. The Board, with the approval of the Secretary, may establish rules and regulations necessary and incidental to the administration of this section.

(b) *Inspection and certification.* Whenever the handling of any cherries requires inspection pursuant to this part, each handler who handles cherries shall cause such cherries to be inspected by the appropriate division of the Department, and certified by it as meeting the applicable requirements of such regulation: Provided, That inspection and certification shall be required for cherries which previously have been so inspected and certified only if such cherries have been regraded, resorted, repackaged, or in any other way further prepared for market. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board a copy of the certificate of inspection issued with respect to such cherries.

Research, Market Development and Promotion

§ 930.48 Research, Market Development and Promotion.

The Board, with the approval of the Secretary, may establish or provide for the establishment of production and processing research, market research and development, and/or promotional activities designed to assist, improve or promote the efficient production and processing, marketing, distribution, and consumption of cherries subject to this part. The expense of such projects shall be paid from funds collected pursuant to this part and the income from such funds.

Regulations

§ 930.50 Marketing policy.

(a) *Optimum supply.* On or about July 1 of each crop year, the Board shall hold a meeting to review sales data, inventory data, current crop forecasts and market conditions in order to establish an optimum supply level for the crop year. The optimum supply volume shall be calculated as 100 percent of the average sales of the prior three years to which shall be added a desirable carryout inventory not to exceed 20 million pounds. This optimum supply volume shall be announced by the Board in accordance with paragraph (h) of this section.

(b) *Preliminary percentages.* On or about July 1 of each crop year, the Board shall establish a preliminary free market tonnage percentage which shall be calculated as follows: from the optimum supply computed in paragraph (a) of this section, the Board shall deduct the carryin inventory to determine the tonnage requirements (adjusted to a raw fruit equivalent) for the current crop year which will be divided by the current year USDA crop forecast. If the resulting quotient is 100 percent or more, the Board shall establish a preliminary free market tonnage percentage of 100 percent. If the quotient is less than 100 percent, the Board shall establish a preliminary free market tonnage percentage equivalent to the quotient, rounded to the nearest whole percent, with the complement being the preliminary restricted percentage. The Board shall announce these preliminary percentages in accordance with paragraph (h) of this section.

(c) *Interim percentages.* Between July 1 and September 15 of each crop year, the Board may modify the preliminary free market tonnage and restricted percentages to adjust to the actual pack occurring in the industry. The Board shall announce any interim percentages in accordance with paragraph (h) of this section.

(d) *Final percentages.* No later than September 15 of each crop year, the Board shall review actual production during the current crop year and make such adjustments as are necessary between free and restricted tonnage to achieve optimum supply and recommend such final free market tonnage and restricted percentages to the Secretary and announce them in accordance with paragraph (h) of this section. The difference between any final free market tonnage percentage designated by the Secretary and 100 percent shall be the final restricted percentage. With its recommendation,

the Board shall report on its consideration of the factors in paragraph (e) of this section.

(e) *Factors.* When computing preliminary and interim percentages, or determining final percentages for recommendation to the Secretary, the Board shall give consideration to the following factors:

(1) The estimated total production of cherries;

(2) The estimated size of the crop to be handled;

(3) The expected general quality of such cherry production;

(4) The expected carryover as of July 1 of canned and frozen cherries and other cherry products;

(5) The expected demand conditions for cherries in different market segments;

(6) Supplies of competing commodities;

(7) An analysis of economic factors having a bearing on the marketing of cherries;

(8) The estimated tonnage held by handlers in primary or secondary inventory reserves;

(9) Any estimated release of primary or secondary inventory reserve cherries during the crop year.

(f) *Modification.* In the event the Board subsequently deems it advisable to modify its marketing policy, because of national emergency, crop failure, or other major change in economic conditions, it shall hold a meeting for that purpose, and file a report thereof with the Secretary within 5 days (exclusive of Saturdays, Sundays, and holidays) after the holding of such meeting, which report shall show such modification and the basis therefor.

(g) *Reserve tonnage to sell as free tonnage.* In addition, the Board shall, after polling all handlers, make available tonnage equivalent to an additional 10 percent, if available, of the average sales of the prior 3 years for market expansion. Polling of handlers shall be weighted by the tonnage each handled in the current crop year.

(h) *Publicity.* The Board shall promptly give reasonable publicity to growers and handlers of each meeting to consider a marketing policy or any modification thereof, and each such meeting shall be open to them. Similar publicity shall be given to growers and handlers of each marketing policy report or modification thereof, filed with the Secretary and of the Secretary's action thereon. Copies of all marketing policy reports shall be maintained in the office of the Board, where they shall be made available for examination by any grower or handler. The Board shall notify handlers, and give reasonable publicity to growers of its computation of the optimum supply, preliminary percentages, and interim percentages and shall notify handlers of the Secretary's action on percentages by registered or certified mail.

(i) *Restricted percentages.* Restricted percentage requirements established under paragraphs (b), (c) or (d) of this section may be fulfilled by handlers by either establishing an inventory reserve in accordance with § 930.56 or § 930.58 or by diversion of product in accordance with § 930.60; however, in years where required, the Board shall establish a maximum percentage of the restricted quantity which may be established as a primary inventory reserve such that the total primary inventory reserve does not exceed 50 million pounds. Handlers will be permitted to divert (at plant or with grower-diversion certificates) as much of the restricted percentage requirement as they deem appropriate, but may not establish a primary inventory reserve in excess of the percentage established by the Board for restricted cherries. In the event handlers wish to establish inventory reserve in excess of this amount, they may do so, in which case it will be classified as a secondary inventory reserve and be regulated accordingly.

(j) *Inventory reserve release.* In years when the expected availability from the current crop plus expected carryin inventory does not fulfill the targeted availability of 100 percent of the average annual sales in the prior 3 years, the Board shall release not later than November 1st of the current crop year such volume from the inventory reserve, if available, as will fulfill the targeted availability.

(k) *Adjustments, free market tonnage releases.* Should the Board acknowledge that a bargaining agency on behalf of growers has been established, the Board shall be empowered to release less than 100 percent of free market tonnage for sale contingent upon establishment of a grower price. Such release may be not less than 65 percent of total free market tonnage by September 1 of the current crop year. In the event that no grower price is established by September 1 of the current crop year, the Board shall release 100 percent of the free market tonnage supply target.

§ 930.51 Issuance of volume regulations.

(a) Whenever the Secretary finds, from the recommendation and supporting information supplied by the Board, that to designate final free market tonnage and restricted percentages for any cherries acquired by handlers during the crop year will tend to effectuate the declared policy of the Act, the Secretary shall designate such percentages. Such regulation shall fix the free market tonnage and restricted percentages, totaling 100 percent, which shall be applied in accordance with § 930.56 to cherries harvested in regulated districts, as determined under § 930.52, and acquired by handlers during such fiscal period.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to handlers.

§ 930.52 Establishment of districts subject to volume regulations.

(a) Upon adoption of this part, the districts subject to any volume regulations implemented in accordance with this part shall be those districts, except as provided in paragraphs (c) and (d) of this section, in which the average annual production of cherries over the prior three years has exceeded 15 million pounds.

(b) Handlers in the districts other than those identified in paragraph (a) of this section would not be subject to volume regulations except to the extent to which they handle cherries which were grown in a district identified in paragraph (a). In such a case, the handler must place in inventory reserve pursuant to § 930.56 or § 930.58 or divert pursuant to § 930.60 the required restricted percentage of the crop originating in the regulated district.

(c) Handlers in districts not meeting the production requirement of paragraph (a) would automatically be subject to regulation in the marketing year in which the production of cherries in the district is projected to exceed 150 per centum of the average production experienced in 1989 through 1992, or in the case of District 8, the average production experienced in 1991 and 1992, if data is not available for prior years.

(d) Should a district's production exceed 150 per centum of its average production for the periods specified in paragraph (c) of this section due to increased plantings or capacity, such district would be permanently subject to volume regulation any time such is implemented under this part. Determinations as to whether districts triggering regulation under paragraph (c) have materially added to capacity such as to require them to be permanently regulated shall be made by the Board, subject to approval by the Secretary.

(e) The Board shall annually review the regulation factors for districts triggering regulation under paragraph (c) to assure that such districts are

permitted to participate in any market growth on a proportionate basis.

(f) Any district which produces a crop which is less than 50 percent of the maximum annual processed production in the previous five years would be exempt from any volume regulation if, in that year, a restricted percentage is established.

§ 930.53 Issuance of regulations.

(a) The Secretary shall regulate, in the manner specified in this section, the handling of cherries whenever the Secretary finds, from the recommendations and information submitted by the Board, or from other available information, that such regulations will tend to effectuate the declared policy of the Act. Such regulations may:

(1) Limit, during any period or periods, the shipment of any particular grade, size, quality, maturity, or pack, or any combination thereof, of cherries grown in any district or districts of the production area;

(2) Limit the shipment of cherries by establishing, in terms of grades, sizes, or both, minimum standards of quality and maturity;

(3) Fix the size, capacity, weight, dimensions, or pack of the container, or containers, which may be used in the packaging or handling of cherries.

(b) The Board shall be informed immediately of any such regulation issued by the Secretary, and the Board shall promptly give notice thereof to growers and handlers.

§ 930.54 Modification, suspension, or termination of regulations.

(a) In the event the Board at any time finds that, by reason of changed conditions, any regulations issued pursuant to § 930.53 should be modified, suspended, or terminated, it shall so recommend to the Secretary.

(b) Whenever the Secretary finds, from the recommendations and information submitted by the Board or from other available information, that a regulation should be modified, suspended or terminated with respect to any or all shipments of cherries in order to effectuate the declared policy of the Act, the Secretary shall modify, suspend, or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such modification or suspension. If the Secretary finds that a regulation obstructs or does not tend to effectuate the declared policy of the Act, the Secretary shall suspend or terminate such regulation. On the same basis and in like manner the Secretary may terminate any such suspension.

§ 930.55 Prohibition on the use or disposition of inventory reserve cherries.

(a) *Release of primary and secondary inventory reserve cherries.* Except as provided in § 930.50 and paragraph (b) of this section, cherries that are placed in inventory reserve pursuant to the requirements of § 930.50, § 930.51, § 930.56, or § 930.58 shall not be used or disposed of by any handler or any other person: *Provided*, That if the Board determines that the total available supplies for use in normal commercial outlets do not at least equal the amount, as estimated by the Board, needed to meet the demand in such outlets, the Board shall recommend to the Secretary and provide such justification that, during such period as may be recommended by the Board and approved by the Secretary, a portion or all of the primary and/or secondary inventory reserve cherries be released for such use.

(b) *Allowable reserve distributions.* The Board shall establish, by regulation approved by the Secretary, circumstances in which a handler may sell any or all of their inventory reserve cherries for charitable uses; state government, USDA or other non-military federal agency purchases; any experimental purposes; for any nonhuman use, including animal feed; or any use other than normal commercial outlets.

§ 930.56 Primary inventory reserves.

(a) Whenever the Secretary has fixed the free market tonnage and restricted percentages for any fiscal period, as provided for in § 930.51(a), each handler in a regulated district shall place in the primary inventory reserve for such period, at such time, and in such manner, as the Board may prescribe, or otherwise divert, according to § 930.60, a portion of the cherries acquired during such period.

(b) The form of the cherries, frozen, canned in any form, dried, or concentrated juice, placed in the primary inventory reserve is at the option of the handler subject to any limits placed by the Board upon the size of the reserve which may be dedicated to the different forms of processed cherries in its annual marketing policy. Except as otherwise permitted pursuant to § 930.60 and § 930.63, such inventory reserve portion shall be equal to the sum of the products obtained by multiplying the weight or volume of the cherries in each lot of cherries acquired during the fiscal period by the then effective restricted percentage fixed by the Secretary: *Provided*, That in converting cherries in each lot to the form prescribed by the Board the inventory reserve obligations shall be adjusted, in accordance with uniform rules adopted by the Board, to recognize shrinkage and loss resulting from processing.

(c) Inventory reserve cherries shall meet such standards of grade, quality, or condition as the Board, with the approval of the Secretary, may establish. All such cherries shall be inspected by the Department. A certificate of such inspection shall be issued which shall show, among other things, the name and address of the handler, the number and type of containers in the lot, the grade of the product, the location where the lot is stored, identification marks (can codes or lot stamp), and a certification that the cherries meet the prescribed standards. Promptly after inspection and certification, each such handler shall submit, or cause to be submitted, to the Board, at the place designated by the Board, a copy of the certificate of inspection issued with respect to such cherries. The costs of such inspections shall be paid by the handlers.

(d) All matters dealing with inventory reserves, including, but not being limited to, the costs for which handlers are to be compensated and the reporting of cherries placed in, rotated in and out, or released from an inventory reserve shall be in accordance with rules and procedures established by the Board, with the approval of the Secretary.

(e) Except as provided in § 930.55, handlers may not sell inventory reserve cherries prior to their official release by the Board. Handlers may rotate cherries in inventory reserve with prior notification to the Board.

§ 930.57 Off-premise inventory reserve.

No handler may transfer an inventory reserve obligation, but any handler may, upon notification to the Board, arrange to hold inventory reserve, of their own production or which was purchased, on the premises of another handler or in an approved commercial storage facility in the same manner as though the inventory reserve were on their own premises.

§ 930.58 Secondary inventory reserve.

(a) In the event the inventory reserve established under § 930.56 of this part is at its maximum volume, and the Board has announced, in accordance with § 930.50, that some type of volume regulation in the form of a diversion will be necessary to maintain an orderly supply of quality cherries for the market, handlers in a regulated district may elect to place in a secondary inventory reserve all or a portion of the cherries the volume regulation would otherwise require them to divert in accordance with § 930.60.

(b) Should any handler in a regulated district exercise their right to establish a secondary inventory reserve under paragraph (a) of this section, all costs of maintaining that reserve will be the responsibility of the individual handler.

(c) The secondary inventory reserve shall be established in accordance with §§ 930.56 (b) and (c) and such other rules and regulations which the Board, with the approval of the Secretary, may establish.

(d) The Board shall retain control over the release of any cherries from the secondary inventory reserve. No cherries may be released from the secondary reserve until all cherries in any primary inventory reserve established under § 930.56 have been released. Any release of the secondary inventory reserve shall be in accordance with the annual marketing policy and with § 930.55.

§ 930.59 Grower diversion privilege.

(a) *In general.* Any grower may voluntarily elect to divert, in accordance with provisions of this section, all or a portion of the cherries which otherwise, upon delivery to a handler, would become restricted percentage cherries. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting producer a grower diversion certificate which shall entitle such producer to deliver to a handler, and such handler to receive, the specified weight of cherries free from all inventory reserve requirements.

(b) *Eligible diversion.* Grower diversion certificates shall be issued to producers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Diversion may take such of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.63; nonhuman food uses; or other uses, including diversion by leaving such cherries unharvested.

(1) *Application/mapping.* The producer electing to so divert cherries shall first make application to the Board for permission to do so. Such application shall describe in detail the manner in which the applicant proposes to divert cherries. The Board may require mapping if the diversion is to be by means of leaving the cherries unharvested. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board at the expense of the Board. The Board, pursuant to rules and regulations approved by the Secretary, may establish fees applicable to handlers utilizing grower diversion certificates to help offset the cost of the supervision of the growers' diversion.

(2) *Diversion certificate.* If the Board approves the application it shall so notify the applicant and conduct such supervision of the applicant's diversion of cherries as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting producer a grower diversion certificate stating the weight of cherries diverted. Where diversion is carried out by leaving the cherries unharvested, the Board shall estimate the weight of cherries diverted on the basis of such uniform rule as the Board, with the approval of the Secretary, may prescribe.

§ 930.60 Handler diversion privilege.

(a) *In general.* Handlers handling cherries harvested in a regulated district may fulfill any restricted percentage requirement in full or in part by voluntarily diverting cherry products in an approved program, as established by the Board, rather than placing cherries in an inventory reserve. If any primary inventory reserve established under § 930.56 has reached its maximum volume limitation, diversion could be required in which case the handler would still have the option of establishing a secondary inventory reserve as provided in § 930.58. Upon such diversion and compliance with the provisions of this section, the Board shall issue to the diverting handler a handler diversion certificate which shall satisfy any restricted percentage or diversion requirement to the extent of the Board or Department inspected weight of the cherries diverted.

(b) *Eligible diversion.* Handler diversion certificates shall be issued to handlers only if the cherries are diverted in accordance with the following terms and conditions or such other terms and conditions that the Board, with the approval of the Secretary, may establish. Such diversion may take place in any of the following forms which the Board, with the approval of the Secretary, may designate: uses exempt under § 930.63; contribution to a Board approved food bank or other approved charitable organization; acquisition of grower diversion certificates that have been issued in accordance with § 930.59; or other uses, including diversion by destruction of the cherries at the handler's facilities.

(1) *Notification.* The handler electing to divert cherries through traditional, approved means, not including uses exempt under § 930.63, shall first notify the Board of such election. Such notification shall describe in detail the manner in which the handler proposes to divert cherries including, if the diversion is to be by means of destruction of the cherries, a detailed description of the means of destruction and ultimate disposition of the cherries. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the handler. Uniform fees for such supervision shall be established by the Board, pursuant to rules and regulations approved by the Secretary.

(2) *Application.* The handler electing to divert cherries by utilizing an exemption under § 930.63 shall first apply to the Board for approval of such diversion; no diversion should take place prior to such approval. Such application shall describe in detail the uses to which the diverted cherries will be put. It shall also contain an agreement that the proposed diversion is to be carried out under the supervision of the Board and that the cost of such supervision is to be paid by the applicant. The Board shall notify the applicant of the Board's approval or disapproval of the submitted application.

(3) *Diversion certificate.* The Board shall conduct such supervision of the handler's diversion of cherries after notification under paragraph (b)(1) of this section or approval of any application submitted under paragraph (b)(2) as may be necessary to assure that the cherries are diverted. After the diversion has been accomplished, the Board shall issue to the diverting handler a handler diversion certificate stating the Board or Department inspected weight of cherries which may be used to offset, to the extent of the weight of cherries diverted, any restricted percentage requirement.

§ 930.61 Equity holders.

(a) *Inventory reserve ownership.* The inventory reserve shall be the sole property of the handlers who place products into the inventory reserve. A handler's equity in the primary inventory reserve may be transferred to another person upon notification to the Board.

(b) *Agreements with growers.* Individual handlers are encouraged to have written agreements with growers who deliver their cherries to the handler as to how any restricted percentage cherries delivered to the handler will be handled and what share, if any, the grower will have in the eventual sale of any inventory reserve cherries. Handlers

would be permitted to provide in such agreements that any equity of a grower in inventory reserve cherries established under such a written agreement may be purchased at any time by the handler upon agreement to such a sale by both parties.

§ 930.62 Handler compensation.

Each handler handling cherries from a regulated district that is subject to volume regulations shall be compensated by the Board for storage and such other costs relating to the primary inventory reserve as the Board may deem to be appropriate. The Board shall, as near the beginning of the fiscal year as may be practicable, with the approval of the Secretary, establish a schedule of reimbursement levels for storage and any other approved costs related to the inventory reserve in accordance with uniform rules and regulations established by this part or otherwise adopted by the Board and approved by the Secretary.

§ 930.63 Exemptions.

The Board, with the approval of the Secretary, may exempt from the provisions of § 930.51 through § 930.58 cherries: diverted in accordance with § 930.60; used for new product and new market development; used for experimental purposes or for any other use designated by the Board, including cherries processed into products for markets for which less than 5 percent of the preceding 5-year average production of cherries were utilized. The Board, with the approval of the Secretary, shall prescribe such rules, regulations, and safeguards as it may deem necessary to ensure that cherries handled under the provisions of this section are handled only as authorized.

§ 930.64 Expansion of production area.

(a) An amendment to this part shall be submitted by the Board to the Secretary which shall provide for the expansion of the production area subject to this part to include any state not included in the production area, as originally specified in § 930.14, in which the annual production of cherries reaches at least five million pounds.

(b) The Secretary may then propose such amendment to the growers and handlers in both the then current production area and the proposed expanded production area for approval by referendum if the Secretary finds such action, based upon information supplied by the Board or other relevant information, would tend to effectuate the declared policy of the Act.

(c) Any state added to the production area pursuant to this section will be designated as a district and shall be provided a seat on the Board. Nomination, election, appointment, acceptance, and other matters concerning the Board member and the alternate Board member for any new district will be in accordance with §§ 930.23 through 930.25.

(d) The initial term of office of any Board member added pursuant to this section shall be three years and they shall be eligible to serve one additional three-year term.

(e) The amendment submitted pursuant to paragraph (a) of this section shall also provide for the expansion of the Board pursuant to paragraph (c) and any changes in the procedure, including the size of the required quorum, which may be necessary to insure fair and equitable representation of any added district and to insure the continued efficient operation of the Board in fulfilling its duties under this part.

Reports and Records

§ 930.70 Reports.

(a) *Weekly production, monthly sales, and inventory data.* Each handler shall, upon request of the Board, file promptly with an independent certified public accountant retained by the Board, reports showing weekly production data; monthly sales and inventory data; and such other information, including the volume of any cherries placed in or released from a primary or secondary inventory reserve or diverted, as the Board shall specify with respect to any cherries handled by the handler. Such information may be provided to the Board members in summary or aggregated form only without any reference to the individual sources of the information.

(b) *Other reports.* Upon the request of the Board, with the approval of the Secretary, each handler shall furnish to the Board such other information with respect to the cherries acquired, handled, and disposed of by such handler as may be necessary to enable the Board to exercise its powers and perform its duties under this part.

(c) *Protection of proprietary information.* Under no circumstances shall any information or reports be made available to the Board members or others which will reveal the proprietary information of an individual handler.

§ 930.71 Records.

Each handler shall maintain such records of all cherries acquired, handled, or sold, or otherwise disposed of as will substantiate the required reports and as may be prescribed by the Board. All such records shall be maintained for not less than two years after the termination of the fiscal year in which the transactions occurred or for such lesser period as the Board may direct with the approval of the Secretary.

§ 930.72 Verification of reports and records.

For the purpose of assuring compliance and checking and verifying the reports filed by handlers, the Secretary and the Board, through its duly authorized agents, shall have access to any premises where applicable records are maintained, where cherries are received, stored, or handled, and, at any time during reasonable business hours, shall be permitted to inspect such handlers' premises and any and all records of such handlers with respect to matters within the purview of this part.

§ 930.73 Confidential information.

All reports and records furnished or submitted by handlers to the Board and its authorized agents which include data or information constituting a trade secret or disclosing trade position, financial condition, or business operations of the particular handler from whom received, shall be received by and at all times kept in the custody and under the control of one or more employees of the Board or its agent, who shall disclose such information to no person other than the Secretary.

Miscellaneous Provisions

§ 930.80 Compliance.

Except as provided in this part, no person may handle cherries, the handling of which has been prohibited by the Secretary under this part, and no person shall handle cherries except in conformity with the provisions of this part. No person may handle any cherries for which a diversion certificate has been issued other than as provided in § 930.59(b) and § 930.60(b).

§ 930.81 Right of the Secretary.

Members of the Board (including successors and alternates), and any agents, employees, or representatives thereof, shall be subject to removal or suspension by the Secretary at any time. Each and every regulation, decision, determination, or other act of the Board shall be subject to the continuing right of the Secretary to disapprove of the same at any time. Upon such disapproval, the disapproved action of the Board shall be deemed null and void, except as to acts done in reliance thereon or in accordance therewith prior to such disapproval by the Secretary.

§ 930.82 Effective time.

The provisions of this part shall become effective at such time as the Secretary may declare above the Secretary's signature and shall continue in force until terminated in one of the ways specified in § 930.83.

§ 930.83 Termination.

(a) The Secretary at any time may terminate the provisions of this part by giving at least 1 day's notice by means of a press notice or in any other manner in which the Secretary may determine.

(b) The Secretary shall terminate or suspend the operation of any and all of the provisions of this part whenever the Secretary finds that such provisions do not tend to effectuate the declared policy of the Act.

(c) The Secretary shall terminate the provisions of this part whenever the Secretary finds by referendum or otherwise that such termination is favored by a majority of the growers: *Provided*, That such majority has, during the current fiscal year, produced more than 50 percent of the volume of the cherries which were produced within the production area. Such termination shall become effective on the last day of April subsequent to the announcement thereof by the Secretary.

(d) The Secretary shall conduct a referendum within the month of March of every sixth year after the effective date of this part to ascertain whether continuation of this part is favored by the growers and handlers. If it develops from said referenda that (1) more than 50 percent of the producers by number or volume of production represented in the referendum; or (2) more than 50 percent of the handlers who, during the current fiscal period, handled more than 50 percent of the total volume of cherries processed within the production area by those handlers voting in the referendum favor termination of this part, the Secretary shall give consideration to terminating the provisions of this part in accordance with paragraph (c) of this section.

(e) The provisions of this part shall, in any event, terminate whenever the provisions of the Act authorizing them cease to be in effect.

§ 930.84 Proceedings after termination.

(a) Upon the termination of the provisions of this part, the then functioning members of the Board shall, for the purpose of liquidating the affairs of the Board, continue as trustees of all the funds and property then in its possession, or under its control, including claims for any funds unpaid or property not delivered at the time of such termination.

(b) The said trustees shall (1) continue in such capacity until discharged by the Secretary; (2) from time to time account for all receipts and disbursements and deliver all property on hand, together with all books and records of the Board and of the trustees, to such person as the Secretary may direct; and (3) upon the request of the Secretary, execute such assignments or other instruments necessary or appropriate to vest in such person full title and right to all of the funds, property, and claims vested in the Board or in the trustees pursuant to this part.

(c) Any person to whom funds, property, and claims have been transferred or delivered, pursuant to this section, shall be subject to the same obligations imposed upon the Board and upon the trustees.

§ 930.85 Effect of termination or amendment.

Unless otherwise expressly provided by the Secretary, the termination of this part shall not: (a) Affect or waive any right, duty, obligation, or liability which shall have risen or which may thereafter arise in connection with any provision of this part; or (b) release or extinguish any violation of this part; or (c) affect or impair any rights or remedies of the Secretary or any other person with respect to any such violation.

§ 930.86 Duration of immunities.

The benefits, privileges, and immunities conferred upon any person by virtue of this part shall cease upon its termination, except with respect to acts done under and during the existence of this part.

§ 930.87 Agents.

The Secretary may, by designation in writing, name any officer or employee of the United States, or name any agency or division in the U.S. Department of Agriculture, to act as the Secretary's agent or representative in connection with any provisions of this part.

§ 930.88 Derogation.

Nothing contained in this part is, or shall be construed to be, in derogation or in modification of the rights of the Secretary or of the United States (a) to exercise any powers granted by the Act or otherwise; or (b) in accordance with such powers, to act in the premises whenever such action is deemed advisable.

§ 930.89 Personal liability.

No member or alternate member of the Board and no employee or agent of the Board shall be held personally responsible, either individually or jointly with others, in any way whatsoever, to any person for errors in judgment, mistakes, or other acts, either of commission or omission, as such member, alternate member, employee, or agent, except for acts of dishonesty, willful misconduct, or gross negligence.

§ 930.90 Separability.

If any provision of this part is declared invalid or the applicability thereof to any person, circumstance, or thing is held invalid, the validity of the remainder of this part or the applicability thereof to any other person, circumstance, or thing shall not be affected thereby.

§ 930.91 Amendments.

Amendments to this part may be proposed, from time to time, by the committee or by the Secretary.

Marketing Agreement

***§ 930.92 Counterparts.**

This agreement may be executed in multiple counterparts and when one counterpart is signed by the Secretary, all such counterparts shall constitute, when taken together, one and the same instrument as if all signatures were contained in one original.

*** § 930.93 Additional parties.**

After the effective date thereof, any handler may become a party to this agreement if a counterpart is executed by such handler and delivered to the Secretary. This agreement shall take effect as to such new contracting part at the time such counterpart is delivered to the Secretary, and the benefits, privileges, and immunities conferred by this agreement shall then be effective as to such new contracting party.

***§ 930.94 Order with marketing agreement.**

Each signatory hereby requests the Secretary to issue, pursuant to the Act, an order providing for regulating the handling of tart cherries in the same manner as is provided for in this agreement.

Dated: November 23, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93-29265 Filed 11-29-93; 8:45 am]

BILLING CODE 3410-02-P

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7 CFR Part 1106

[DA-94-03]

Milk in the Southwest Plains Marketing Area; Proposed Suspension of Certain Provisions of the Order

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Proposed suspension of rule.

SUMMARY: This action invites written comments on a proposal to suspend indefinitely certain portions of a provision of the Southwest Plains Federal milk marketing order (Order 106) beginning December 1993. The proposed action would allow transfers of Class I fluid milk products from a distributing plant to other plants regulated under Order 106 to be counted as part of the distributing plant's route sales for the purpose of determining the plant's pool status under the order. The suspension was requested by Associated Milk Producers, Inc. (AMPI), and Mid-America Dairymen, Inc. (Mid-America). The proponents contend the proposed action is necessary to restore equity among producers supplying handlers regulated under Order 106.

DATES: Comments are due no later than December 7, 1993.

ADDRESSES: Comments (two copies) should be sent to USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456.

FOR FURTHER INFORMATION CONTACT: Nicholas Memoli, Marketing Specialist, USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 690–1932.

SUPPLEMENTARY INFORMATION: This order of proposed suspension is issued pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674) (the Act) and the rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR, part 900).

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a proposed rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action would not have a significant economic impact on a substantial number of small entities. Such action would lessen the opportunity for disorderly marketing conditions and would tend to ensure that dairy farmers would continue to have their milk priced under the order and thereby receive the benefits that accrue from such pricing.

We are issuing this rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this rule: (1) Will have an effect on the economy of less than $100 million; (2) will not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities; (3) will not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency; (4) will not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and (5) will not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

This proposed action has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. If adopted, this proposed action will not preempt any State or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act provides that administrative proceedings must be exhausted before parties may file suit in court. Under section 8c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provisions of the order, or any obligation imposed in connection with the order is not in accordance with law and request a modification of an order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not later than 20 days after the date of the entry of the ruling.

Notice is hereby given that, pursuant to the provisions of the Act, suspension of the following provisions of the order regulating the handling of milk in the Southwest Plains marketing area is being considered for an indefinite period commencing with the month of December 1993:

In § 1106.3, the parenthetical phrase "(except to a plant)".

All persons who want to submit written data, views or arguments about the proposed suspension should send two copies of their views to USDA/AMS/Dairy Division, Order Formulation Branch, room 2971, South Building, P.O. Box 96456, Washington, DC 20090–6456 by the 7th day after publication of this notice in the Federal Register. The filing period is limited to 7 days because a longer period would not provide the time needed to complete the required procedures before the requested suspension is to be effective.

All written submissions made pursuant to this notice will be made available for public inspection in the Dairy Division during regular business hours (7 CFR 1.27 (b)).

Statement of Consideration

The proposed action would suspend certain words from the route disposition definition of the order. The effect of this action would be to include transfers of fluid milk products to other plants regulated under Order 106 in determining if the transferor plant meets the pool qualification requirements specified in § 1106.7(a) of the order.

According to Mid-America and AMPI's request, a Tulsa, Oklahoma, handler receiving milk from non-member producers is also supplied supplemental milk from cooperative associations that pool milk on the Southwest Plains milk order. The proponents argued that as a result of excluding transfers of fluid milk products to other plants regulated under Order 106, the handler has been a partially-regulated plant in recent months and could be again in the future. Mid-America and AMPI explained that, since the handler's Class I utilization is higher than the market's average, the handler has been able to pay its non-member producers a price in excess of the order's blend price. In addition to the inequity resulting from this price disparity, AMPI, during the month of September, was required to depool milk that it had diverted from the Tulsa plant because, otherwise, the plant would have failed to qualify as a pool plant during the month of September. This resulted in additional financial loss to the cooperative.

List of Subjects in 7 CFR Part 1106

Milk marketing orders.

The authority citation for 7 CFR part 1106 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Dated: November 23, 1993.

Lon Hatamiya,

Administrator.

[FR Doc. 93–29288 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–02–P

Animal and Plant Health Inspection Service

9 CFR Part 94

[Docket No. 93–127–1]

Change in Disease Status of South Korea Because of Rinderpest and Foot-and-Mouth Disease

AGENCY: Animal and Plant Health Inspection Service, USDA.

ACTION: Proposed rule.

SUMMARY: We are proposing to declare South Korea free of rinderpest and foot-and-mouth disease. There have been no outbreaks of foot-and-mouth disease in South Korea since 1934, and we have determined that rinderpest has never existed there. We are also proposing to add South Korea to a list of countries that, although declared free of rinderpest and foot-and-mouth disease, are subject to special restrictions on the importation of their meat and other animal products into the United States. This proposed revision would remove the prohibition on the importation into the United States, from South Korea, of live ruminants and fresh, chilled, and frozen meat from ruminants, and would relieve restrictions on the importation, from South Korea, of milk and milk products from ruminants.

South Korea is not declared to be free of hog cholera and swine vesicular disease. Therefore, even if this proposal is adopted, the importation from South Korea of swine and fresh, chilled, and frozen meat from swine would continue to be restricted because of these diseases.

DATES: Consideration will be given only to comments received on or before January 31, 1994.

ADDRESSES: Please send an original and three copies of your comments to Chief, Regulatory Analysis and Development, PPD, APHIS, USDA, room 804, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782. Please state that your comments refer to Docket No. 93–127–1. Comments received may be inspected at USDA, room 1141, South Building, 14th Street and Independence Avenue SW., Washington, DC, between 8 a.m. and 4:30 p.m., Monday through Friday, except holidays. Persons wishing to inspect comments are encouraged to call ahead on (202) 690–2817 to facilitate entry into the comment reading room.

FOR FURTHER INFORMATION CONTACT: Dr. John Cougill, Staff Veterinarian, Import-Export Products Staff, National Center for Import-Export, Veterinary Services, APHIS, USDA, room 759, Federal Building, 6505 Belcrest Road, Hyattsville, MD 20782, (301) 436–7834.

SUPPLEMENTARY INFORMATION:

Background

The regulations in 9 CFR part 94 (referred to below as the regulations) govern the importation into the United States of specified animals and animal products in order to prevent the introduction into the United States of various diseases, including rinderpest, foot-and-mouth disease (FMD), bovine spongiform encephalopathy, African swine fever, hog cholera, and swine vesicular disease. These are dangerous and destructive communicable diseases of ruminants and swine.

Section 94.1(a)(1) of the regulations provides that rinderpest or FMD exists in all countries of the world except those listed in § 94.1(a)(2), which are declared to be free of these diseases. We are proposing to add South Korea to this list.

We will consider declaring a country to be free of rinderpest and FMD if there have been no cases of these diseases reported there for at least the previous 1-year period and no vaccinations for rinderpest or FMD have been administered to swine or ruminants in that country for at least the previous 1-year period. Rinderpest has never existed in South Korea and there have been no outbreaks of FMD in South Korea since 1934.

South Korea has applied to the U.S. Department of Agriculture to be recognized as free of rinderpest and FMD. The Animal and Plant Health Inspection Service (APHIS) has reviewed the documentation submitted by the government of South Korea in support of its request. In addition, an APHIS official recently conducted an on-site evaluation of the animal health program in South Korea in regard to the FMD situation in that country. The evaluation consisted of a review of the capability of South Korea's veterinary services, laboratory and diagnostic procedures, vaccination practices, and the administration of laws and regulations to ensure against the introduction into South Korea of FMD through the importation of animals, meats, and animal products. The APHIS official conducting the on-site evaluation concluded that South Korea is free of FMD. Details concerning the on-site evaluation are available upon written request from the person listed under **FOR FURTHER INFORMATION CONTACT.**

Based on the information discussed above, we believe that South Korea qualifies for listing in § 94.1(a)(2) of the regulations as a country declared free of rinderpest and FMD. This action would remove the prohibition on the importation, from South Korea, of live ruminants and fresh, chilled, and frozen meat from ruminants. Importations of live swine and fresh, chilled, or frozen meat from swine would continue to be restricted under 9 CFR part 94, since South Korea has not been declared free of hog cholera and swine vesicular disease.

Special Restrictions

We also propose to add South Korea to the list in § 94.11(a) of countries free of rinderpest and FMD that are subject to special restrictions on the importation of their meat and other animal products into the United States. The countries listed in § 94.11(a) are subject to these special restrictions because they:

(1) Supplement their national meat supply by importing fresh, chilled, or frozen meat of ruminants or swine from countries that are designated in § 94.1(a) as infected with rinderpest or FMD;

(2) Have a common land border with countries designated as infected with rinderpest or FMD; or

(3) Import ruminants or swine from countries designated as infected with rinderpest or foot-and-mouth disease under conditions less restrictive than would be acceptable for importation into the United States.

The special restrictions placed on meat and meat products of ruminants and swine in § 94.11 generally require that the meat be: (1) Prepared in an inspected establishment that is eligible to have its products imported into the United States under the Federal Meat Inspection Act; and (2) accompanied by an additional certificate, issued by an animal health official of the national government of the country declared free of the disease, assuring that the meat and meat products have not been commingled with or exposed to meat or other products originating in, imported from, or transported through a country infected with rinderpest or FMD, and are otherwise handled in accordance with the requirements of § 94.11.

South Korea has a common land border with North Korea, which is designated in § 94.1(a)(1) as a country in which rinderpest or FMD exists. In addition, South Korea imports live ruminants and swine from countries not recognized as free of FMD under conditions less restrictive than would be acceptable for importation into the United States. Further, South Korea supplements it national meat supply by the importation of fresh, chilled, and frozen meat of ruminants and swine

from countries designated in § 94.1(a)(1) as countries in which rinderpest or FMD exists. As a result, even though we propose to designate South Korea as free of rinderpest and FMD, the meat and other animal products produced in South Korea may be commingled with the fresh, chilled, or frozen meat of animals from a country in which rinderpest and FMD exists, resulting in an undue risk of introducing rinderpest or FMD into the United States.

Therefore, we are proposing that meat and other animal products of ruminants and swine, and the ship stores, airplane meals, and baggage containing these meat or animal products imported into the United States from South Korea be subject to the restrictions specified in § 94.11 of the regulations, in addition to other applicable requirements of title 9, chapter III.

We also propose to add South Korea to the list in § 94.1(d)(1) of countries in which rinderpest or FMD has been known to exist and that were declared free of rinderpest and FMD on or after September 28, 1990. All countries declared free of rinderpest and FMD on or after September 28, 1990, must be added to this list. Adding South Korea to this list would restrict the importation of llamas and alpacas from South Korea into the United States, unless imported through the Harry S Truman Animal Import Center in accordance with 9 CFR 92.435.

Executive Order 12866 and Regulatory Flexibility Act

We are issuing this proposed rule in conformance with Executive Order 12866. Based on information compiled by the Department, we have determined that this proposed rule:

(1) Would have an effect on the economy of less than $100 million;

(2) would not adversely affect in a material way the economy, a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(3) would not create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(4) would not alter the budgetary impact of entitlements, grants, user fees, or loan programs or rights and obligations of recipients thereof; and

(5) would not raise novel legal or policy issues arising out of legal mandates, the President's priorities, or principles set forth in Executive Order 12866.

For this action, the Office of Management and Budget has waived its review process required by Executive Order 12866.

This proposed rule would add South Korea to the list in part 94 of countries declared to be free of rinderpest and FMD. This action would relieve restrictions imposed on the importation of live ruminants and fresh, chilled, and frozen meat of ruminants from South Korea into the United States. This action would not relieve restrictions on the importation of live swine and fresh, chilled, and frozen meat of swine because South Korea is still considered to be affected with hog cholera and swine vesicular disease.

Based on available information, the Department does not anticipate a major increase in exports of fresh, chilled, or frozen meat of ruminants from South Korea into the United States as a result of this proposed rule. In 1992, the United States did not import any live ruminants or swine from South Korea. Additionally, only two metric tons of South Korean meat and meat products were shipped to the United States. This accounted for less than one-tenth of one percent of total 1992 meat imports. South Korea is currently an importer of beef and lamb and does not produce enough ruminant meat to be self-sufficient. Therefore, any effect on domestic prices or supplies would be insignificant. Increases in imports of live ruminants from South Korea are also unlikely because there is no demand in the United States for live ruminants from South Korea and because of high transportation costs.

Under these circumstances, the Administrator of the Animal and Plant Health Inspection Service has determined that this action would not have a significant economic impact on a substantial number of small entities.

Executive Order 12778

This proposed rule has been reviewed under Executive Order 12778, Civil Justice Reform. If this proposed rule is adopted:

(1) All State and local laws and regulations that are inconsistent with this rule will be preempted;

(2) No retroactive effect will be given to this rule; and

(3) Administrative proceedings will not be required before parties may file suit in court challenging this rule.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (44 U.S.C. 3501 *et seq.*), the information collection or recordkeeping requirements included in this proposed rule have been approved by the Office of Management and Budget (OMB), and there are no new requirements. The assigned OMB control number is 0579–0015.

List of Subjects in 9 CFR Part 94

Animal diseases, Imports, Livestock, Meat and meat products, Milk, Poultry and poultry products, Reporting and recordkeeping requirements.

Accordingly, 9 CFR part 94 would be amended as follows:

PART 94—RINDERPEST, FOOT-AND-MOUTH DISEASE, FOWL PEST (FOWL PLAGUE), VELOGENIC VISCEROTROPIC NEWCASTLE DISEASE, AFRICAN SWINE FEVER, HOG CHOLERA, AND BOVINE SPONGIFORM ENCEPHALOPATHY: PROHIBITED AND RESTRICTED IMPORTATIONS

1. The authority citation for part 94 would be revised to read as follows:

Authority: 7 U.S.C. 147a, 150ee, 161, 162, 450; 19 U.S.C. 1306; 21 U.S.C. 111, 114a, 134a, 134b, 134c, 134f, 136, and 136a; 31 U.S.C. 9701; 42 U.S.C. 4331, 4332; 7 CFR 2.17, 2.51, and 371.2(d).

§ 94.1 [Amended]

2. In § 94.1, paragraph (a)(2) would be amended by adding "South Korea," immediately after "Poland,".

3. In § 94.1, paragraph (d)(1) would be amended by adding the words "South Korea," immediately after "Poland".

§ 94.11 [Amended]

4. In § 94.11, the first sentence in paragraph (a) would be amended by adding "South Korea," immediately after "Republic of Ireland,".

Done in Washington, DC, this 22nd day of November 1993.

Patricia Jensen,

Deputy Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29231 Filed 11–29–93; 8:45 am]

BILLING CODE 3410–34–P

DEPARTMENT OF ENERGY

Office of the Secretary

10 CFR Part 600

RIN 1991–AB03

Financial Assistance Rules; Seismic Safety Standards

AGENCY: Department of Energy.

ACTION: Proposed rule.

SUMMARY: The Department of Energy (DOE) today is proposing to amend the Financial Assistance Rules to bring the Rules into compliance with Executive Order 12699 of January 5, 1990, Seismic Safety of Federal and Federally Assisted

or Regulated New Building Construction.

DATES: Written comments on the proposed rule must be received by February 28, 1994.

ADDRESSES: Comments should be addressed to: Gwendolyn Cowan, Director, Business and Financial Policy Division (HR–521.2), Office of Procurement, Assistance and Program Management, U.S. Department of Energy, 1000 Independence Ave., SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT:

Edward F. Sharp, Business and Financial Policy Division, (HR–521.2), U.S. Department of Energy, 1000 Independence Avenue, SW., Washington, DC 20585, (202) 586–8192;

Sophie C. Cook, Office of the Assistant General Counsel, Procurement and Finance (GC–34), U.S. Department of Energy, Washington, DC 20585, (202) 586–1900.

SUPPLEMENTARY INFORMATION:

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IX. Public Comments

I. Introduction

The Rules were previously amended on January 2, 1992 (57 FR 1) to provide for seismic safety standards in compliance with Executive Order 12699, Seismic Safety of Federal and Federally Assisted or Regulated New Building Construction. At that time, some model building codes did not contain adequate seismic safety provisions. Since then, the Interagency Committee on Seismic Safety in Construction (ICSSC), pursuant to Section 4(a) of the Order, has developed its "Recommendation of Design and Construction Practices in Implementation of Executive Order 12699," which has determined that three model building codes contain suitable seismic safety provisions.

II. Changes to 10 CFR Part 600

Section 600.12(c) is revised to identify additional building codes which would meet the seismic safety requirements of the Executive Order.

III. Review Under Executive Order 12612

Executive Order 12612 requires that regulations, rules, legislation, and any other policy actions be reviewed for any substantial direct effects on States, on the relationship between the Federal Government and the States, or in the distribution of power and responsibilities among various levels of Government. If there are sufficient substantial direct effects, then the Executive Order requires preparation of a federalism assessment to be used in all decisions involved in promulgating and implementing a policy action. Today's proposed rule will revise certain policy and procedural requirements. However, DOE has determined that the proposed revision will not have a substantial direct effect on the institutional interests or traditional functions of States.

IV. Regulatory Review

Today's regulatory action has been determined not to be a "significant regulatory action" under Executive Order 12866, "Regulatory Planning and Review," (58 FR 51735, October 4, 1993). Accordingly, today's action was not subject to review under the Executive Order by the Office of Information and Regulatory Affairs.

V. Review Under the Regulatory Flexibility Act

This proposed rule was reviewed under the Regulatory Flexibility Act of 1980, Pub. L. 96–354, 94 Stat. 1164, which requires preparation of a regulatory flexibility analysis for any regulation that will have a significant economic impact on a substantial number of small entities; i.e., small businesses, small organizations, and small governmental jurisdictions. DOE has concluded that the proposed rule would only affect small entities as they apply for and receive financial assistance, and does not create additional economic impact on small entities as a whole. DOE certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities and, therefore, no regulatory flexibility analysis has been prepared.

VI. Review Under the Paperwork Reduction Act

No information collection or recordkeeping requirements are imposed upon the public by this proposed rulemaking. Accordingly, no OMB clearance is required under the Paperwork Reduction Act of 1980, 44 U.S.C. 3501, *et seq.*, or OMB implementing regulations at 5 CFR part 1320.

VII. Review Under the National Environmental Policy Act

DOE has concluded that promulgation of this proposed rule clearly would not represent a major Federal action having significant impact on the human environment under the National Environmental Policy Act (NEPA) of 1969 (42 U.S.C. 4321, *et seq.* (1976)), the Council on Environmental Quality Regulations (40 CFR parts 1500–1508), and DOE guidelines (10 CFR part 1021) and, therefore, does not require an environmental impact statement pursuant to NEPA.

VIII. Review Under Executive Order 12778

Section 2 of Executive Order 12778 instructs each agency subject to Executive Order 12291 to adhere to certain requirements in promulgating new regulations and reviewing existing regulations. These requirements, set forth in sections 2(a) and (b)(2), include eliminating drafting errors and needless ambiguity, drafting the regulations to minimize litigation, providing clear and certain legal standards for affected conduct, and promoting simplification and burden reduction. Agencies are also instructed to make every reasonable effort to ensure that the regulation specifies clearly any preemptive effect, effect on existing Federal law or regulation, and retroactive effect; describes any administrative proceedings to be available prior to judicial review and any provisions for the exhaustion of such administrative proceedings; and defines key terms. DOE certifies that today's proposed rule meets the requirements of sections 2 (a) and (b) of Executive Order 12778.

IX. Public Comments

Interested persons are invited to participate in this rulemaking by submitting data, views, or arguments with respect to the proposed changes set forth in this notice. Three copies of written comments should be submitted to the address indicated in the **ADDRESSES** section of this notice. All comments received will be available for public inspection in the DOE Reading Room, room 1E–190, Forrestal Building, 1000 Independence Avenue, SW., Washington, DC 20585, between the hours of 9 a.m. and 4 p.m., Monday through Friday, except Federal holidays. All written comments received by the date given in the **DATES** section will be fully considered prior to publication of a final rule resulting from this proposal. Any information considered to be

confidential must be so identified and submitted in writing, one copy only. The DOE reserves the right to determine the confidential status of the information and to treat it according to our determination.

The Department has concluded that this proposed rule does not involve a substantial issue of fact or law and that the proposed rule should not have substantial impact on the nation's economy or a large number of individuals or businesses. Therefore, pursuant to Public Law 95–91, the DOE Organization Act, and the Administrative Procedure Act (5 U.S.C. 553), the Department does not plan to hold a public hearing on this proposed rule.

List of Subjects in 10 CFR Part 600

Cooperative agreements/energy; Educational institutions; Energy; Grants/energy; Non-profit organizations.

In consideration of the foregoing, the Department of Energy proposes to amend part 600 of chapter II of title 10 of the Code of Federal Regulations as set forth below.

G.L. Allen,

Acting Deputy Assistant Secretary for Procurement and Assistant Management.

For the reasons set out in the preamble, part 600 of chapter II, title 10 of the Code of Federal Regulations is proposed to be amended as follows:

PART 600—FINANCIAL ASSISTANCE RULES

1. The authority citation for Part 600 continues to read as follows:

Authority: Secs. 644 and 646, Pub. L. 95–91, 91 Stat. 599 (42 U.S.C. 7254 and 7256); Pub. L. 97–258, 96 Stat. 1003–1005 (31 U.S.C. 6301–6308), unless otherwise noted.

2. Paragraph 600.12(c) is revised as follows:

§ 600.12 Generally applicable requirements.

* * * * *

(c) Provisions shall be made to design and construct all buildings, in which DOE funds are used, to meet appropriate seismic design and construction standards. Seismic codes and standards meeting or exceeding the provisions of each of the model codes listed in this paragraph are considered to be appropriate for purposes of this part. These codes provide a level of seismic safety that is substantially equivalent to the National Earthquake Hazards Reduction Program (NEHRP) Recommended Provisions for the Development of Seismic Regulations for New Buildings, 1988 Edition (Federal Emergency Management Administration 222 and 223). Revisions of these model codes that are substantially equivalent to or exceed the then current or immediately preceding edition of the NEHRP Recommended Provisions (which are updated triennially) shall be considered to be appropriate standards. The model codes are as follows:

(1) 1991 Uniform Building Code, of the International Council of Building Officials,

(2) 1992 Supplement to the National Building Code, of the Building Officials and Code Administrators International,

(3) 1992 Amendments to the Standard Building Code, of the Southern Building Code Congress International.

[FR Doc. 93–29167 Filed 11–29–93; 8:45 am]
BILLING CODE 6450–01–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Chapter I

[Summary Notice No. PR–93–19]

Petition for Rulemaking: Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for rulemaking received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for rulemaking (14 CFR part 11), this notice contains a summary of certain petitions requesting the initiation of rulemaking procedures for the amendment of specific provisions of the Federal Aviation Regulations and of denials or withdrawals of certain petitions previously received. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received January 31, 1994.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Atth: Rules Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC–10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Ave., SW., Washington, DC 20591; telephone (202) 267–3132.

FOR FURTHER INFORMATION CONTACT: Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (b) and (f) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC on November 23, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Rulemaking

Docket No. 27427
Petitioner: Ms. Roberta Sue
Regulations Affected: 14 CFR 121.317(g)
Description of Rulechange Sought: To prohibit smoking by flight deck personnel during airplane movement in the air, on the surface, and during takeoff and landing
Petitioner's Reason for the Request: The petitioner feels that the lives of all passengers on all commercial flights are endangered or compromised by flight deck personnel engaged in the drug addiction of tobacco smoking while operating the aircraft; that flight deck personnel are exposed to Environmental Tobacco Smoke; that all passengers are exposed to a fire hazard; that the pilot's drug dependency on nicotine and carbon monoxide inhibits his or her ability to react effectively to emergencies; that tobacco smoke cannot be controlled to acceptable levels by ventilation or air cleaning; and that tobacco smoke contains a complex array of toxic components and is a serious and substantial public health risk.

[FR Doc. 93–29301 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–13–M

14 CFR Part 71

[Airspace Docket No. 93–ASW–46]

Proposed Modification of Class E Airspace: Stillwater, OK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify Class E airspace at Stillwater, OK. A Very High Frequency

Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed at Stillwater Municipal Airport, OK, and controlled airspace extending upward from 700 feet above the ground, is needed for instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for IFR operators executing the recently established SIAP.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–46, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "Addresses." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–46." The postcard will be dated and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contract with FAA personnel concerned with this rulemaking will be filed in this docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–1A which describes the application procedure.

The Proposal

The FAA is considering an amendment to Part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Stillwater, OK, to provide controlled airspace upward from 700 feet above the ground for aircraft executing the VOR/DME RWY 35 standard instrument approach procedure (SIAP) into the Stillwater Municipal Airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area" for airspace extending upward from 700 feet above the ground and replaced it with the designation "Class E airspace." The intended effect of this proposal is to provide adequate Class E airspace to contain IFR operations at Stillwater Municipal Airport, OK.

The coordinates for this airspace docket are based on docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet above the ground are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is no a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW OK E Stillwater, OK [Modify]

Stillwater Municipal Airport, OK
(lat. 3°09′37″N., long. 97°05′09″W.)
Stillwater VOR/DME
(lat. 36°13′27″N., long. 97°04′53″W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of Stillwater Municipal Airport and within 8 miles east and 4 miles west of the 005 radial of the Stillwater VOR/DME extending from the 6.5-mile radius to 16 miles north of the VOR/DME, and within 1.7

miles each side of the 183 radial of the Stillwater VOR/DME extending from the 6.5-mile radius to 12.2 miles south of the Stillwater Airport.

* * * * *

Issued in Fort Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93-29300 Filed 11-29-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-AGL-19]

Proposed Establishment of Class E Airspace; Appleton, MN

AGENCY: Federal Aviation Administration (FAA), Dot.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace near Appleton, MN, to accommodate a new Nondirectional Beacon (NDB) runway 13 Standard Instrument Approach Procedure (SIAP) to Appleton Municipal Airport, Appleton, MN. Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and replace it with the designation "Class E airspace". Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The area would be depicted on aeronautical charts to provide a reference for pilots operating in the area.

DATES: Comments must be received on or before January 14, 1994.

ADDRESSES: Send comments on the proposal in triplicate to: Federal Aviation Administration, Office of the Assistant Chief Counsel, AGL-7, Rules Docket No. 93-AGL-19, 2300 East Devon Avenue, Des Plaines, Illinois 60018.

The official docket may be examined in the Office of the Assistant Chief Counsel, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois. An informal docket may also be examined during normal business hours at the Air Traffic Division, System Management Branch, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois.

FOR FURTHER INFORMATION CONTACT: Rober Frink, Air Traffic Division, System Management Branch, AGL-530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294-7568.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide that factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed above. Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit with those comments a self-addressed, stamped postcard on which the following statement is made: "Comments to Airspace Docket No. 93-AGL-19." The postcard will be date/time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in light of comments received. All comments submitted will be available for examination in the Rules Docket, FAA, Great lakes Region, Office of the Assistant Chief Counsel, 2300 East Devon Avenue, Des Plaines, Illinois, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of the Notice of Proposed Rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Office of Public Affairs, Attention: Public Inquiry Center, APA-220, 800 Independence Avenue, SW., Washington, DC 20591, or by calling (202) 267-3485. Communications must identify the number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Appleton, MN, to accommodate a new NDB runway 13 SIAP to Appleton Municipal Airport, Appleton, MN.

Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach. Aeronautical maps and charts would reflect the defined area which would enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and replaced it with the designation "Class E airspace". The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal since this is a matter that will only affect air traffic procedures and the air navigation, it is certified that this rule, when promulgated, will not have significant economic impact on a substantial number or small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read a follows;

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510 E.O. 10844 24 FR 9565 3 CFR, 1959-1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation

Administration Order 7200.9A, Airspace Designations and Reporting Points dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class airspace extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL MN E5 Appleton, MN [New]

Appleton Municipal Airport, MN
(lat. 45°13'41" N., long. 96°00'19" W.)

That airspace extending upon from 700 feet above the surface within a 6.4-miles radius of the Appleton Municipal Airport, MN, and within 2.5 miles each side of the 326° bearing from airport extending from the 6.4-mile radius to 7 miles northwest of the airport.

* * * * *

John P. Cuprisin,

Manager Air Traffic Division.

[FR Doc. 93-29294 Filed 11-29-93; 8:45 am]

BILLING CODE 4910-13-M

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14 CFR Part 71

[Airspace Docket No. 93-ASW-36]

Proposed Establishment of Class E Airspace: Leesville, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Leesville Airport. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Leesville Airport, and controlled airspace extending from 700 feet above ground level (AGL) is needed for aircraft executing the approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending from 700 feet or more AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Leesville Airport, LA.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93-ASW-36, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530; telephone: 817-624-5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposals. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES**." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93-ASW-36." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Forth Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193-0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11-2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace extending upward from 700 feet above ground level located at Leesville Airport in Leesville, LA. A Nondirectional Radio Beacon (NDB) standard instrument approach procedure (SIAP) has been developed for Leesville Airport. Controlled airspace extending from 700 feet above ground level (AGL) is needed for instrument flight rule (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 feet or more above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Leesville Airport. The Coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas for airports extending from 700 feet or more above ground level are published in paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that needs frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designation and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW Louisiana E5 Leesville, LA [New]

Leesville Airport, LA
(latitude 31°10'03" N., longitude 93°20'53" W.)
Leesville NDB (VED).
(latitude 31°06'09" N., longitude 93°20'31" W.)

That airspace extending upward from 700 feet above the surface within a 6.5 mile radius of the Leesville Airport and within 2.5 miles each side of the 000 bearing of the Leesville NDB extending from 6.5 mile radius area to 7.3 miles north of the Leesville Airport excluding that airspace within the Fort Polk, LA, Class D Airspace.

* * * * *

Issued in Fort Worth, TX on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29297 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–47]

Proposed Modification of Class E Airspace: Olney, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Olney, TX. A recent amendment to the Nondirectional Radio Beacon (NDB) Runway (RWY) 17 standard instrument approach procedure (SIAP) has necessitated the need to amend the arrival extension at Olney Municipal for instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP at Olney Municipal Airport, TX.

DATES: Comments must be received on or before January 9, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–47, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m, Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Commenters to Airspace Docket No. 93–ASW–47." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, Systems Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify the Class E airspace at Olney, TX. An amendment to the NDB RWY 17 standard instrument approach procedure (SIAP) has necessitated the need to expand the area for IFR operations at Olney Municipal Airport, TX. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP at Olney, TX.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.60.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations, and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Olney, TX [Modify]

Olney Municipal Airport, TX
(lat. 33°21'04" N., long. 98°49'09" W.)
Olney RBN
(lat. 33°21'04" N., long. 98°48'58" W.)

That airspace extending upward from 700 feet above the surface within a 6.6-mile radius of Olney Municipal Airport and within 2.5 miles each side of the 347° bearing from the Olney RBN extending from the 6.6-mile radius to 7.6 miles north of the airport.

* * * * *

Issued in Fort Worth, TX, on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29298 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 92–ASW–30]

Proposed Establishment of Class E Airspace: Russellville, AR

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace at Russellville, AR. A nondirectional radio beacon (NDB) standard instrument approach procedure (SIAP) has been developed at Russellville Municipal Airport, and controlled airspace upward from 700 feet above the ground, is needed for instrument flight rules (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Airspace extending upward from 700 feet above ground level will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB A SIAP at Russellville Municipal Airport.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 92–ASW–30, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mount Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "**ADDRESSES.**" Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 92–ASW–30." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace at Russellville, AR. An NDB A standard instrument approach procedure (SIAP) was developed at Russellville Municipal Airport. Controlled airspace upward

from 700 feet above the surface, is needed for IFR operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet above the ground is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the NDB A SIAP at Russellville Municipal Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas designated for airspace extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW AR E5 Russellville, AR [New]

Russellville Municipal Airport, AR
(lat. 35°15'32" N., long. 93°05'37" W.)
Russellville NDB
(lat. 35°15'25" N., long. 93°05'39" W.)

That airspace extending upward from 700 feet above the surface within a 6.4-mile radius of the Russellville Municipal Airport, and within 2.4 miles each side of the 184° bearing of the Russellville NDB extending from the 6.4-mile radius to 6.6 miles south of the airport, excluding that airspace which overlies the Morrilton, AR Class E area.

* * * * *

Issued in Forth Worth, TX, on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29299 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Parts 40 and 48

[PS–52–93]

RIN 1545–AP48

Diesel Fuel Excise Tax; Registration Requirements Relating to Gasoline and Diesel Fuel Excise Tax

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Notice of proposed rulemaking by cross-reference to temporary regulations and notice of public hearing.

SUMMARY: In the Rules and Regulations section of this issue of the **Federal Register**, the IRS is issuing temporary regulations relating to the diesel fuel excise tax and registration requirements for the gasoline and diesel fuel excise taxes. The temporary regulations reflect changes to the law made by the Omnibus Budget Reconciliation Act of 1990 and the Omnibus Budget Reconciliation Act of 1993 and affect certain blenders, enterers, refiners, terminal operators, throughputters, and persons that sell, buy, or use diesel fuel for a nontaxable use. The text of the temporary regulations also serves as the text of these proposed regulations.

DATES: Written comments must be received by January 31, 1994. Outlines of oral comments to be presented at the public hearing scheduled for March 22, 1994, must be received by March 1, 1994.

ADDRESSES: Send submissions to: CC:DOM:CORP:T:R (PS–52–93), room 5228, Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Washington, DC 20044. In the alternative, submissions may be hand delivered to: CC:DOM:CORP:T:R (PS–52–93), room 5228, Internal Revenue Service, 1111 Constitution Avenue NW., Washington, DC 20224. The public hearing will be held in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Concerning the proposed regulations, Frank Boland, (202) 622–3130; concerning the hearing and submissions, Mike Slaughter, (202) 622–7190 (not toll-free numbers).

SUPPLEMENTARY INFORMATION:

Paperwork Reduction Act

The collections of information contained in this notice of proposed rulemaking have been submitted to the Office of Management and Budget for review in accordance with the Paperwork Reduction Act (44 U.S.C. 3504(h)). Comments on the collections of information should be sent to the Office of Management and Budget, Attn: Desk Officer for the Department of the Treasury, Office of Information and Regulatory Affairs, Washington, DC 20503, with copies to the Internal Revenue Service, Attn: IRS Reports Clearance Officer, PC:FP, Washington, DC 20224.

The collections of information are in §§ 48.4082–2, 48.4101–3, 48.4101–4, 48.6427–8, and 48.6427–9. This information is required by the IRS to verify compliance with sections 4081 and 6427. It will be used to determine whether an amount of tax, credit, or payment has been computed correctly. The likely respondents are businesses and other for-profit organizations, including small businesses and organizations.

These estimates are an approximation of the average time expected to be necessary for a collection of information. They are based on such information as is available to the IRS. Individual respondents may require more or less time, depending on their particular circumstances.

Estimated total annual recordkeeping burden: 200 hours.

Estimated average annual burden per recordkeeper: 1 hour.

Estimated number of recordkeepers: 200

Estimated total annual reporting burden: 40,290 hours.

Estimated average annual burden per respondent: .1 hour.

Estimated number of respondents: 341,900

Estimated annual frequency of responses: On occasion.

Background

Temporary regulations in the Rules and Regulations section of this issue of the **Federal Register** provide rules relating to the imposition of, and liability for, the diesel fuel tax under section 4081 and the registration requirements relating to both the diesel fuel and gasoline taxes. This document proposes regulations the text of which is the same as the text of those temporary regulations. The preamble to the temporary regulations explains the temporary rules.

Special Analyses

It has been determined that this notice of proposed rulemaking is not a significant regulatory action as defined in Executive Order 12866. It also has been determined that section 553(b) of the Administrative Procedure Act (5 U.S.C. chapter 5) and the Regulatory Flexibility Act (5 U.S.C. chapter 6) do not apply to these regulations, and, therefore, a Regulatory Flexibility Analysis is not required. Pursuant to section 7805(f) of the Internal Revenue Code, this notice of proposed rulemaking will be submitted to the Chief Counsel for Advocacy of the Small Business Administration for comment on its impact on small business.

Comments and Public Hearing

Before these proposed regulations are adopted as final regulations, consideration will be given to any written comments that are submitted timely (preferably a signed original and eight copies) to the IRS. All comments will be available for public inspection and copying.

A public hearing has been scheduled for Tuesday, March 22, 1994, at 10 a.m. in the Auditorium, Internal Revenue Building, 1111 Constitution Avenue NW, Washington, DC. Because of access restrictions, visitors will not be admitted beyond the building lobby more than 15 minutes before the hearing starts.

The rules of § 601.601(a)(3) apply to the hearing.

Persons that have submitted written comments by January 31, 1994 and want to present oral comments at the hearing must submit by March 1, 1994, an outline of the topics to be discussed and the time to be devoted to each topic. A period of 10 minutes will be allotted to each person for making comments.

An agenda showing the scheduling of the speakers will be prepared after the deadline for receiving outlines has passed. Copies of the agenda will be available free of charge at the hearing.

Drafting Information

The principal author of these regulations is Frank Boland, Office of Assistant Chief Counsel (Passthroughs and Special Industries). However, other personnel from the IRS and Treasury Department participated in their development.

List of Subjects in 26 CFR Parts 40 and 48

Excise taxes, Reporting and recordkeeping requirements.

Proposed Amendments to the Regulations

Accordingly, 26 CFR parts 40 and 48 are proposed to be amended as follows:

PART 40—EXCISE TAX PROCEDURAL REGULATIONS

Paragraph 1. The authority citation for part 40 is amended by adding an entry in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Section 40.6011(a)-3 also issued under 26 U.S.C. 6011(a).

Par. 2. Section 40.6011(a)-3 is added to read as follows:

§ 40.6011(a)-3 Monthly and semimonthly returns from certain persons liable for tax on taxable fuel.

[The text of this proposed section is the same as the text of § 40.6011(a)-3T published elsewhere in this issue of the **Federal Register**.]

PART 48—MANUFACTURERS AND RETAILERS EXCISE TAXES

Par. 3. The authority citation for part 48 is amended by adding entries in numerical order to read as follows:

Authority: 26 U.S.C. 7805 * * *

Sections 48.4082–1 and 48.4082–2 also issued under 26 U.S.C. 4082.

Section 48.4101–3 also issued under 26 U.S.C. 4101(a) and (b).

Section 48.4101–4 also issued under 26 U.S.C. 4101(d).

Sections 48.6427–8 and 48.6427–9 also issued under 26 U.S.C. 6427(n).

Par. 4. Section 48.4041–0 is added to read as follows:

§ 48.4041–0 Applicability of regulations relating to diesel fuel after December 31, 1993.

[The text of this proposed section is the same as the text of § 48.4041–0T published elsewhere in this issue of the **Federal Register**.]

Par. 5. Sections 48.4081–10 through 48.4081–12 are added to read as follows:

§ 48.4081–10 Diesel fuel tax; definitions.

[The text of this proposed section is the same as the text of § 48.4081–10T published elsewhere in this issue of the **Federal Register**.]

§ 48.4081–11 Diesel fuel tax; tax on removal at a terminal rack.

[The text of this proposed section is the same as the text of § 48.4081–11T published elsewhere in this issue of the **Federal Register**.]

§ 48.4081–12 Diesel fuel tax; taxable events other than removal at the terminal rack.

[The text of this proposed section is the same as the text of § 48.4081–12T published elsewhere in this issue of the **Federal Register**.]

Par. 6. Sections 48.4082–1 through 48.4083–1 are added to read as follows:

§ 48.4082–1 Diesel fuel tax; exemption.

[The text of this proposed section is the same as the text of § 48.4082–1T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–2 Diesel fuel tax; notice required with respect to dyed diesel fuel.

[The text of this proposed section is the same as the text of § 48.4082–2T published elsewhere in this issue of the **Federal Register**.]

§ 48.4082–3 Diesel fuel; dye injection systems and visual inspection devices. [Reserved]

§ 48.4082–4 Diesel fuel; back-up tax.

[The text of this proposed section is the same as the text of § 48.4082–4T published elsewhere in this issue of the **Federal Register**.]

§ 48.4083–1 Administrative authority.

[The text of this proposed section is the same as the text of § 48.4083–1T published elsewhere in this issue of the **Federal Register**.]

Par. 7. Sections 48.4101–3 and 48.4101–4 are added to read as follows:

§ 48.4101–3

Registration.

[The text of this proposed section is the same as the text of § 48.4101–3T published elsewhere in this issue of the **Federal Register**.]

§ 48.4101–4 Information reporting.

[The text of this proposed section is the same as the text of § 48.4101–4T published elsewhere in this issue of the **Federal Register**.]

Par. 8. Sections 48.6427–8 and 48.6427–9 are added to read as follows:

§ 48.6427–8 Credit or payment with respect to diesel fuel used in a nontaxable use (other than on a farm for farming purposes or by a State or local government).

[The text of this proposed section is the same as the text of § 48.6427–8T published elsewhere in this issue of the **Federal Register**.]

§ 48.6427–9 Credit or payment with respect to diesel fuel sold for use on a farm for farming purposes or by a State or local government.

[The text of this proposed section is the same as the text of § 48.6427–9T published elsewhere in this issue of the **Federal Register**.]

Margaret Milner Richardson,

Commissioner of Internal Revenue.

[FR Doc. 93–28648 Filed 11–23–93; 2:30 pm]

BILLING CODE 4830–01–U

NATIONAL ARCHIVES AND RECORDS ADMINISTRATION

36 CFR Part 1253

Research Room Hours

AGENCY: National Archives and Records Administration.

ACTION: Notice of public meeting.

SUMMARY: The National Archives will hold a public meeting on proposed hours of operation of research rooms in its Washington, DC and College Park facilities. Currently those hours of operation are 8:45 a.m.–10 p.m., Monday–Friday, 8:45 a.m.–5:15 p.m. on Saturday in the National Archives Building and 8 a.m.–4:30 p.m., Monday–Saturday in the Washington National Records Center, Suitland, MD. The National Archives has not yet established research hours of operation for the National Archives at College Park facility. On September 22, 1993 at 58 FR 49251, the National Archives proposed closing its research rooms in the National Archives Building in Washington, DC at 8 p.m., Monday–Friday and at 5 p.m. on Saturday. The hours of operation of the Suitland facility would remain unchanged. The National Archives intends to propose that research hours at the National Archives at College Park facility be the same as the National Archives Building in Washington, DC.

DATES: The meeting will be held on Monday, December 23, 1993 at 2 p.m.

Those who cannot attend the meeting may mail or fax comments. Such comments must be received by 5:15 p.m., December 13, 1993.

ADDRESSES: The meeting will be held in the Theater of the National Archives Building, 5th floor, 7th and Pennsylvania Ave., NW., Washington, DC.

Comments may be mailed or faxed to the Director, Policy and Program Analysis Division (NAA), The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001; FAX: (301) 713–7277.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

SUPPLEMENTARY INFORMATION: On Monday, December 13, 1993, at 2 p.m., the National Archives will hold a public meeting on proposed hours of operation of research rooms in its Washington, DC and College Park facilities. Currently those hours of operation are 8:45 a.m.–10 p.m., Monday–Friday, 8:45 a.m.–5:15 p.m. on Saturday in the National Archives Building and 8 a.m.–4:30 p.m., Monday–Saturday in the Washington National Records Center, Suitland, MD. The National Archives has not yet established research hours of operation for the National Archives at College Park facility. The meeting will be held in the Theater of the National Archives Building, 5th floor, 7th and Pennsylvania Ave., NW., Washington, DC.

On September 22, 1993 at 58 FR 49251, the National Archives proposed closing its research rooms in the National Archives Building in Washington, DC at 8 p.m., Monday–Friday and at 5 p.m. on Saturday. The hours of operation of the Suitland facility would remain unchanged. The National Archives intends to propose that research hours at the National Archives at College Park facility be the same as the National Archives Building in Washington, DC. Resources conserved by reducing the hours of operation in the National Archives Building are intended for use in providing evening service in the College Park facility (Archives II) beginning in February 1994. This will expand our services to include evening and Saturday hours for records moving to Archives II and currently served in the Cartographic, Still Pictures, Electronic Records, and Nixon Research Rooms which do not have extended hours, and records currently served in the Suitland Research Room which has extended hours only on Saturdays. The National Archives seeks to change its hours of operation in a way which will limit the impact on as many users as possible and yet provide users at the College Park facility with evening access.

Research rooms which will operate in the National Archives Building in Washington, DC are the Central and Microfilm Research Rooms. Research rooms in the College Park facility include the Textual Research Room, Cartographic Research Room, Still Pictures Research Room, Motion Picture, Sound, and Video Research Room, and the National Archives Library. Researchers using records in National Archives' research rooms may not always be assigned to work in the research room designated for the particular records, e.g., researchers using textual records in Archives II may be assigned a research station in the Still Pictures Research Room. This flexibility will allow the National Archives to offer evening service to users of various records without necessarily keeping all research rooms open.

The National Archives will discuss comments received from the research public and propose alternatives for discussion and comment. Anyone requiring the services of a sign language interpreter must contact Sharon K. Fawcett at (202) 501–5403 or TDD (202) 501–5404 by 5 p.m., December 9, 1993. A final rule will be issued after the public meeting and after consideration of public comment. Until a final rule is issued, the Central Research Room and the Microfilm Research Room will continue to be open until 10 p.m., Monday–Friday.

ADDRESSES: Those who cannot attend the meeting may mail or fax comments to the Director, Policy and Program Analysis Division (NAA), The National Archives at College Park, 8601 Adelphi Road, College Park, MD 20740–6001. FAX: (301) 713–7277. Such comments must be received by 5:15 p.m., December 13, 1993.

FOR FURTHER INFORMATION CONTACT: Mary Ann Hadyka or Nancy Allard at (301) 713–6730.

Dated: November 23, 1993.

Trudy Huskamp Peterson,

Acting Archivist of the United States.

[FR Doc. 93–29378 Filed 11–29–93; 8:45 am]

BILLING CODE 7515–01–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 72, 73, 74, 75 and 78

[FRL–4808–4]

Opting Into the Acid Rain Program: Change in Public Comment Period for the Proposed Rule

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rules; change in public comment period.

SUMMARY: On September 24, 1993, EPA published the proposed rule for SO_2 combustion sources not otherwise affected by title IV to elect to participate in the Acid Rain Program by "opting in". Upon petitions from several groups to extend the comment period, EPA is changing the deadline for public comments and will accept comments on this proposed rule until December 7, 1993.

DATES: Notice is hereby given that comments on the opt-in rule proposed on September 24, 1993 in the **Federal Register** [58 FR 50087–50131] must be submitted in writing and in triplicate to EPA by December 7, 1993.

ADDRESSES: Send comments to Air Docket No. A–93–15, 401 M Street, SW., Washington, DC 20460. Comments received on this proposal will be available for reviewing and copying from 8:30 am to 12 pm and 1:30 pm on 3:30 pm, Monday through Friday, excluding Federal holidays, in room M–1500, Waterside Mall, 401 M Street, SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Acid Rain Hotline (202) 233–9620 or Adam Klinger (202) 233–9122; mailing address, U.S. EPA, Acid Rain Division (6204J), 401 M Street, SW., Washington, DC 20460.

Dated: November 18, 1993

Paul M. Stolpman,

Director, Office of Atmospheric Programs, Office of Air and Radiation.

[FR Doc. 93–29275 Filed 11–29–93; 8.45 am]

BILLING CODE 6560–60–M

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40 CFR Part 704

[OPPTS–82013H; FRL–3875–9]

RIN 2070–AC19

Comprehensive Assessment Information Rule; Proposed Amendments

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing to amend the Comprehensive Assessment Information Rule (CAIR) to address low volume manufacturers and processors, "de minimis" concentrations of a CAIR listed substance in a mixture, trade name submissions, and advance substantiation of Confidential Business Information (CBI) claims. The proposed amendments would reduce reporting requirements for the regulated community by: establishing exemptions for small volume manufacturers and processors, and for persons who manufacture or process a mixture containing a CAIR listed substance below a "de minimis" concentration; permanently establishing the provisions for temporary administrative relief from trade name reporting requirements granted by notice in the **Federal Register** of April 10, 1989 (54 FR 14324), and modifying the advance substantiation requirements for certain information claimed as confidential. In addition to the above amendments, EPA is also proposing a defined set of CAIR questions for reporting on substances which are recommended and designated by the Toxic Substances Control Act (TSCA) Interagency Testing Committee (ITC) and added to the section 4(e) Priority Testing List. The Agency is proposing to require automatic reporting (i.e., without notice and comment rulemaking) for this defined set of CAIR questions when used for substances listed by the ITC. Finally, EPA is making some minor changes. Also, in this proposed rule, EPA is providing a revised burden analysis for the CAIR.

DATES: Comments on this proposed rule must be received no later than January 31, 1994.

ADDRESSES: Written comments must bear the docket control number OPTS–82013H. An original and two copies should be sent to: TSCA Public Information Office (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. NE–G004, 401 M St., SW., Washington, DC 20460.

FOR FURTHER INFORMATION CONTACT: Susan B. Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543, 401 M St., SW., Washington, DC 20460, Telephone Number: (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION:

I. Authority

Section 8(a) of TSCA authorizes the Administrator of EPA to promulgate rules which require manufacturers, importers, and processors of chemical substances and mixtures (referred to hereafter as "substances" or "chemical substances") to maintain records and submit information on such substances as the Administrator may reasonably require.

Section 8(a)(2) contains a wide-ranging list of examples of the kinds of information which EPA can require to be reported, provided that "to the extent feasible, the Administrator shall not require any reporting which is unnecessary or duplicative." Thus, section 8 provides EPA broad discretion in determining the information to be reported. Congress authorized EPA to collect information on chemical substances so that the totality of exposure to humans and the environment could be determined and that EPA could share the information collected with other EPA offices, federal agencies, and the public. TSCA sections 2, 8, 10, 14, and 21; H. Rep. 94–1341, 94th Cong., 2d Sess. 6–7 (July 14, 1976); Sen. Rep. 94–698, 94th Cong. 2d Sess. 3–5 (March 16, 1976).

II. Background

The CAIR was promulgated on December 22, 1988 (53 FR 51698), under the authority of TSCA section 8(a). The rule establishes a general framework for detailed reporting on chemical substances by manufacturers, importers, and processors.

To assure that information requested under the CAIR is not unnecessary or duplicative, EPA established criteria for selection of chemical candidates by Federal agencies intending to use information generated by the CAIR, and procedures for assuring that the data request is not duplicative. Generally, a substance selected for the CAIR is one which meets one or more of the following criteria: (1) The agencies know or suspect the substance causes adverse health or environmental effects yet lack current exposure data; (2) the agencies know the substance is a high volume production substance with high exposure potential; (3) the agencies believe there are significant data gaps for the substance; or (4) the agencies place a priority on the need for the requested information to complete assessments of the substance. To avoid duplication, extensive literature and data base searches are undertaken for the substance candidates, and a list of the nominated substances along with the information requests are sent for review to other EPA offices and other Federal agencies participating in the particular CAIR rulemaking at hand to evaluate data availability from these sources.

The Agency received a Petition for Reconsideration on January 24, 1989, from the Synthetic Organic Chemical Manufacturers Association (SOCMA) asking EPA to reconsider certain aspects of the rule which are listed below in this Unit. In addition to SOCMA's petition, a Petition for Judicial Review was filed by the Chemical Manufacturers Association (CMA) and the Society for the Plastics Industry (SPI) in the District of Columbia Court of Appeals (*Chemical Manufacturers Association v. EPA*, Docket No. 89–1153 (D.C. Cir.) (CMA). A Notice of Temporary Administrative Relief was published in the **Federal Register** of April 10, 1989 (54 FR 14324), to address SOCMA's concern that compliance with the provisions under § 704.208 of the CAIR would result in disclosure of confidential business information.

In the **Federal Register** of July 19, 1989 (54 FR 30211), a "Request for Additional Comments" on the CAIR was published in response to the concerns raised by petitioners SOCMA, CMA, and SPI. The "Request" sought public comments on possible revisions to the CAIR. The CMA litigation is currently stayed pending the outcome of EPA's review of these comments.

The areas of concern to the petitioners and on which comments were solicited included:

1. Addition of a small volume exemption for companies that manufacture, import or process a CAIR-listed substance solely in small quantities.

2. Inclusion of a "de minimis" exemption for CAIR-listed substances present in mixtures below set concentration levels.

3. Likelihood of release of confidential business information in the process of complying with trade name reporting.

4. Definition of processing activities — division of processors into subcategories to help clarify which processors are subject to CAIR.

5. Modification of requirements for advance substantiation of CBI claims.

Comments received from the public are discussed in Unit III.

At this time, EPA is requesting comments only on the proposed changes in this proposed rule. The Agency is particularly interested in receiving comments that specifically address the threshold levels that EPA is proposing for the low volume and de minimis exemptions. EPA is not soliciting comments on provisions of existing regulations that would not be changed by the proposed rule. Specifically, and notwithstanding the inclusion of some of the existing language from §§ 704.219(d), (e) and 704.223(a), EPA will only entertain comments to the extent that they address proposed changes in these sections.

III. Proposed Changes and Comments

A. Low Volume Exemption

Two comments were received regarding the low volume exemption from CAIR reporting that asked EPA to: (1) Establish an exemption to the CAIR similar to the Preliminary Assessment Information Rule's (PAIR) low volume exemption for individuals who manufacture, import, or process a listed substance in annual quantities of less than 1,100 pounds/500 kilograms; and (2) establish a standard 10,000 pound exemption.

EPA considered both of the above exemption levels and is proposing in § 704.210 exempting from CAIR reporting those persons who manufacture, import, or process a listed substance in annual quantities of less than 10,000 pounds at a site. Based on the Agency's experience with the information received on the 19 chemical substances presently listed on the CAIR, the 10,000 pound exemption level would significantly reduce the number of persons subject to CAIR's reporting requirements, yet provide adequate information for most risk assessment purposes. The low volume processors, manufacturers, and importers who are not otherwise exempt as a "small manufacturer" as defined at 40 CFR 704.3, or a "small processor" as defined at 40 CFR 704.203, would not have to file CAIR reports while they remain under this 10,000 pound exemption. The exemption would not prevent the Agency from gathering significant information from large volume manufacturers and processors on those chemical substances which EPA determines to be of concern, and for which risk assessment data are needed.

As stated in § 704.210 and in the preamble to the final CAIR, the Agency may modify or eliminate an exemption set out in § 704.210. EPA would judge whether reporting on low volumes is necessary for case-specific circumstances.

This exemption would be consistent with the TSCA Inventory Update Rule (IUR) which requires reporting only by persons who manufacture 10,000 pounds or more at any single site (40 CFR 710.28). In addition, it would provide uniformity with other environmental regulations such as the Emergency Planning and Community Right-to-Know Act (EPCRA) section 313 environmental release reporting rule at 40 CFR part 372 which requires reporting by persons who use 10,000 pounds or more, and in the Section 311 and 312 Emergency and Hazardous Chemicals Inventory Reporting Regulations (40 CFR part 370) because all these rules provide a 10,000 pound exemption.

The period for which the 10,000 pound production total would be calculated would be the time covered by the reporting period specified in subpart D of the CAIR.

B. De Minimis Exemption

EPA received two comments regarding an exemption from CAIR reporting for "de minimis" concentrations of CAIR substances in mixtures. Those comments suggested that EPA: (1) Establish a "de minimis" exemption of 1 percent, which would be reduced to 0.1 percent if the listed substance is a carcinogen; and (2) consider a 2 to 5 percent "de minimis" exemption level.

The Agency believes, after reviewing the initial CAIR data, that a "de minimis" exemption for mixtures is appropriate and therefore proposes in § 704.210(d) to establish a "de minimis" exemption of 1 percent which is reduced to 0.1 percent if the listed substance is identified by EPA in the CAIR list as a carcinogen. If at any point in the manufacturing or processing, a listed substance exceeds the "de minimis" concentration in a mixture, reporting would be required.

The proposed exemption would eliminate the submission of data by processors who use a mixture that contains a very low concentration of the listed substance. EPA believes that the information which would be submitted on these low concentrations would probably not be critical for most assessment purposes. However, as set forth at § 704.210, the Agency may modify or eliminate an exemption. EPA would require reporting by manufacturers and processors of a "de minimis" concentration of a listed substance in those situations where EPA determines it is necessary.

Since many trade name products may contain a listed substance in low concentration, this revision would lessen industry's trade name reporting under § 704.208.

EPA decided on the 1 percent/0.1 percent "de minimis" exemption level rather than an exemption level of 2 to 5 percent because of concerns for increased risks from exposure to listed substances at a higher level of concentration. Also, this "de minimis" exemption is consistent with other environmental regulations (EPCRA

section 313 rule at 40 CFR 372.38(a); and the Occupational Safety and Health Administration's Hazard Communication Standard at 29 CFR 1910.1200), which set "de minimis" levels at 1 percent or 0.1 percent in the case of a carcinogen.

The Agency also received a comment requesting revision of the CAIR to include a "2 weight percent" exemption for substances used as reactants to create polymers. The requested exemption, the commenter stated, would be similar to the 2 percent exemption in the Premanufacture Notice (PMN) rule at 40 CFR 723.250.

EPA disagrees with this comment. The PMN 2 percent exemption is primarily designed to allow companies to make small changes in monomer mixtures without submitting a new PMN for each change in the polymer and thus has no relevance or applicability to the requirements of the CAIR. If EPA adds a monomer or polymer to the list of CAIR substances, the monomer or polymer itself may have been explicitly identified as presenting an actual or potential health and/or environmental hazard or, e.g., the substance could have a high volume/high exposure potential. Additional information on the listed substance is needed in order to gain further understanding of potential exposure and/or develop a risk assessment for the substance.

The Agency's proposed "de minimis" exemption would apply only to mixtures.

C. Trade Name Reporting

The comments submitted regarding the trade name reporting exemption asked that EPA retain the Temporary Administrative Relief granted on April 10, 1989 (54 FR 14324). This relief from trade name reporting requirements was provided in response to CMA/SPI's petition, and SOCMA's petition, both of which claimed that § 704.208 of the CAIR rule would result in disclosure, directly or indirectly, of confidential trade secrets concerning the identities of substances in certain trade name products.

Establishing low volume and "de minimis" exemptions in the CAIR may have the effect of alleviating much of industry's potential trade name reporting, but there may still be a segment of industry not exempted who may have CBI concerns. Although no trade names submitted for the 19 substances listed on the CAIR were claimed CBI, this may not hold true for future substances added to the list. Accordingly, EPA proposes in § 704.208(b) to establish the temporary relief as permanent relief.

Section 704.208(a) requires manufacturers, importers, and processors of certain CAIR listed substances, designated in § 704.225 with an "X/P", who distribute the substances under a trade name, to comply with one of the following three options: (1) Submit to EPA a list of trade names so EPA can publish them in a **Federal Register** notice in order to notify all processors of these trade name products of their CAIR reporting obligations; (2) report on behalf of each processor customer; or (3) notify each processor customer of their CAIR reporting obligations.

EPA included this requirement to ensure that, when EPA deemed it necessary to obtain a more complete data base for carrying out the purposes of TSCA, processors of trade name products would be notified of their CAIR reporting obligations, or their suppliers would report for them.

EPA did not intend that compliance with the CAIR result in inadvertent disclosure of CBI. Because of the possibility of direct or indirect disclosure of CBI concerning the identities of substances in certain trade name products, EPA granted temporary administrative relief to persons who, after considering the options at § 704.208(a)(1), (a)(2), and (a)(3), believed they were unable to comply with the trade name provisions without disclosing CBI. (See 54 FR 14324, April 10, 1989). To take advantage of the relief, manufacturers, importers, and processors were required to notify EPA of the identity of the person distributing the substance, the chemical name and CAS number of the substance, and the trade name(s) under which the substance is distributed. In addition, the person was required to submit to EPA a certified statement explaining that they believed they were unable to report for their customer(s) under § 704.208(a)(2), and that complying with the options identified in § 704.208(a)(1) and (a)(3) would result, directly or indirectly, in the disclosure of CBI concerning the substance. The Agency agreed not to publish the trade names received in such notifications.

EPA proposes at § 704.208(b) that (as stated in the "Notice of Temporary Relief") each person who manufactured, imported, or processed a substance designated "X/P" in § 704.225(a) must comply with § 704.208(a) unless that person believes that they are unable to report for their customer(s) under § 704.208(a)(2), and compliance with the options identified in § 704.208(a)(1) and (a)(3) would result, directly or indirectly, in the disclosure of CBI, concerning the substance. If a person can report for their customer(s), or if complying with one of the other options would not result in the disclosure of CBI, the person must comply with § 704.208(a). Any person who provides or has provided the specific identity of a CAIR substance in a trade name product to its customers through a Material Safety Data Sheet (MSDS) for that product under the Occupational Safety and Health Act Hazard Communication Standard, or through some other mechanism, is not eligible for this relief for that substance and trade name product.

Persons who utilize this relief must notify EPA to ensure that the Agency is aware of their identities. EPA will not publish the trade names received in such notifications. The notification to EPA must include the identity of the person distributing the substance, the chemical name and CAS No. of the substance, the trade name(s) under which the substance is distributed, and the aggregate total quantity (in pounds) of the substance purchased by their customers during the respondent's reporting year. If the aggregate total quantity was substantial, EPA could then decide if the missing information was essential for the risk assessment of a particular chemical and, if so, subsequently pursue the collection of the information by other means.

Persons submitting such notification may assert a claim of confidentiality in accordance with the procedures in 40 CFR part 2, subpart B, and § 704.219, if the notice contains business information that the submitter believes is entitled to confidential treatment under TSCA section 14(a). The Agency will determine the validity of claims submitted in accordance with the procedures set forth in 40 CFR part 2.

Also, for information claimed as confidential, the notification would have to include substantiation of such claims by providing detailed written responses to the questions set forth in proposed § 704.208(b) of this proposal. These CAIR-specific questions would replace the substantiation questions in 40 CFR 2.204(e); otherwise, the procedures for handling CBI claims set out in 40 CFR part 2 are applicable. The notification would be postmarked no later than 1 day after the effective date of the final rule listing the substance, which would give the respondent 45 days from the date of publication of the final rule in the **Federal Register** to prepare and submit the notification.

One other comment received regarding disclosure of CBI concerned the belief that potential respondents

should be allowed to claim a particular trade name as CBI (and thus the link between the trade name and the listed substance), even if they have disclosed the trade name to a customer through a confidential agreement. EPA agrees, and has consistently recognized that disclosure of TSCA CBI to a party subject to a confidentiality agreement concerning such information does not in or of itself constitute public disclosure of the information.

D. Processing

A commenter requested that a consistent definition of process and related terms be added for all TSCA regulations.

Consistency between and within rules is always a consideration in drafting TSCA rules; however, the goal of consistency must not jeopardize the intent of any rule. Different rules under TSCA have different purposes; because of these differences, a uniform definition throughout TSCA may not be appropriate. In this instance, EPA believes that the current definitions of "manufacture for commercial purposes" and "process for commercial purpose" at § 704.3 are appropriate. Accordingly, EPA is not proposing any change in these definitions. However, the definitions for "manufacturing activities" and for "processing activities" in the CAIR at § 704.203, which EPA never intended to be used in determining a person's requirement to report under CAIR, and which have caused confusion for respondents according to commenters, would be removed from the regulatory text of the CAIR. Persons who are evaluating whether they are required to report under the CAIR would refer to the definitions for manufacture for commercial purposes and process for commercial purposes found in 40 CFR 704.3, and to the guidance in the CAIR "Questions and Answers" made available to the public after the initial promulgation of the CAIR.

EPA is currently reviewing the use of process and related terms under all sections of TSCA. A notice soliciting public comment and announcing a public meeting on September 22, 1992, to address EPA's interpretation of "process" under TSCA, published in the **Federal Register** of August 22, 1992 (57 FR 38833). EPA is examining and intends to address specific issues raised by comments in response to the notice and at the public meeting.

Another commenter requested that an exemption be made for all processors. To consider exempting all processors from CAIR reporting would defeat a major purpose of CAIR. EPA's intent is to use the CAIR to gather information from manufacturers, importers, and processors when such information is needed from these groups to accurately assess the risk potential of individual chemicals. Accordingly, an exemption for all processors would not be appropriate.

Another commenter suggested dividing the "universe" of processors into sub-classes, some or all of which would be subject to reporting for a particular rule, based on EPA's needs. EPA considered this possibility, but decided against it because it would necessitate establishing possibly arbitrary sub-classes of processors. The American Electronics Association (AEA) commented in response to the July 19, 1990 **Federal Register** Notice that sub-classes of processors may add to the confusion about who must report. Also, it is difficult for EPA to know before information is received, which subcategories of processors are of greatest interest for assessing exposure.

One commenter suggested that it may be more helpful to revise the CAIR instructions to make them more applicable to various processing operations than to create subcategories of processors. EPA is considering revising the reporting form and instructions to achieve this goal and to facilitate respondents' efforts in answering certain CAIR questions which have proven troublesome both to the respondents and the Agency. The revisions could reduce errors in submitted forms and, in turn, reduce the time spent by EPA in processing the forms.

E. Substantiation of CBI Claims at Time of Submission

EPA has decided to propose modifying the requirements for substantiation of CBI claims at the time of submission of CBI under CAIR by adding exclusions for process and financial information.

Under the current rule at § 704.219(d), submitters are required to substantiate all claims of confidentiality at the time the information is submitted to EPA. Submitters must categorize all claims as pertaining to either submitter identity, substance identity, volume, use, process, or other. A different set of substantiation questions must be answered depending upon which category of claim is being asserted. EPA previously requested comments on possible modification of these substantiation requirements (54 FR 30212, July 19, 1989).

CMA commented that EPA does not have authority to require advance substantiation of CBI claims for information submitted under the CAIR. EPA disagrees. EPA's authority for requiring advance substantiation is TSCA sections 8 and 14. In particular, TSCA section 14(c)(1) allows submitters to claim information as confidential and provides for separate submission of such information. It also provides for the designation of claims "in such a manner as the Administrator may prescribe," contemplating requirements involving more than just an assertion of a claim. EPA must determine the validity of CBI claims if it receives a request for release of the information under the Freedom of Information Act (FOIA), 5 U.S.C. section 552, or if EPA desires to determine whether information in its possession is entitled to confidential treatment, even if no request for release has been received or is anticipated. Substantiation questions request the information which is necessary for the Agency to make a confidentiality determination. Section 14(c)(1) provides EPA authority for establishing the procedures necessary for determinations concerning confidentiality of business information submitted under TSCA.

Here, EPA is requiring substantiation at the time of CBI submission because EPA plans to release to the public as much nonconfidential information collected under CAIR as possible. EPA is committed to providing CAIR information to the public to carry out a congressional policy reflected in TSCA and its legislative history for EPA to share information collected under TSCA with other EPA offices, federal agencies, and the public. By requiring substantiation to be submitted at the time the claim is asserted, EPA will be able to start the process for making confidentiality determinations sooner and thus help ensure that the maximum amount of information is available to States, local governments, and the public at the time they are interested in information reported on CAIR substances. Also, requiring advance substantiation will make submitters focus at the outset on whether they have grounds to claim confidentiality and on the type of substantiation EPA considers in deciding whether to grant a confidentiality claim. Thus, substantiation at the time of submission should result in defensible rather than unwarranted claims.

Another commenter requested that substantiation only be required on a claim-by-claim basis after a FOIA request on a claim has been received by EPA. The Agency's experience has been that, in practice, States, local governments, and the public generally are not looking for individual pieces of

data, but for a broad range of data concerning many chemical substances. They frequently become discouraged from using TSCA information by the large amount of data claimed as confidential, for which they do not have the resources to file numerous FOIA requests. In addition, there is a need for State and local governments and the general public to have access to as much information as possible because CAIR data pertains to substances which may pose a risk to human health or the environment. Therefore, EPA believes that deferring substantiation of CBI claims to a time when the public requests the information is inappropriate, and the Agency will continue to require substantiation of CBI claims at the time CAIR data are submitted.

The majority of commenters, including CMA and SPI, requested limiting the substantiation requirements to types of information not normally entitled to confidential treatment. EPA agrees that businesses should not be required to routinely provide substantiation on claims for process and financial information. EPA believes that for most chemical substances, process and financial information are less critical for use by the public in assessing risk than information such as company identity or use. Moreover, process and financial information are often more sensitive and more routinely protected as confidential by companies than other types of information; consequently, confidence in the validity of such confidentiality claims is greater. Accordingly, EPA is proposing to modify § 704.219(e)(1) to exclude process and financial information from the requirements to substantiate at the time of submission. Of course, submitters must still assert a CBI claim for such information to protect it from disclosure.

EPA anticipates that CBI claimed on responses to the following questions would no longer require routine substantiation: 2.05, 2.06, 2.09, 3.01, 6.01 thru 6.10, 7.01 thru 7.06, 9.02, 9.04 thru 9.06, 9.13, 10.13, 10.15, and 10.16.

In addition, responses to questions 2.11, 3.04, 9.07, and 10.07 thru 10.09 may contain both financial or process information as well as other categories of information (for example, question 2.11 responses on byproducts and impurities may contain both process and volume information). Whether a CBI claim would trigger the substantiation requirement depends upon whether process or financial information, or another category of information, is claimed as confidential. If it appears that a person has mischaracterized a confidentiality claim as either process or financial, EPA would require the person to complete all applicable portions of the CBI substantiation form found in Appendix II of the CAIR reporting form.

Chemical identity, company identity, and production volume for the reporting site would continue to be subject to the substantiation requirement, since these categories of data are an integral part of a State's evaluation of EPA's risk assessment. States and the public generally do not have the resources to perform their own risk assessment and cannot form a reasonable evaluation of EPA's risk assessments if they are unable to obtain the data because of confidentiality claims, without going through a lengthy and resource-intensive process. The latitude and longitude coordinates for the reporting site would also require substantiation since this information is critical to States and EPA regional offices.

Two commenters requested that EPA require a "certification letter" or brief documentation which would attest to the genuineness and veracity of the entire submission in place of the detailed substantiation currently required for each CBI claim. By signing the CAIR form, the submitter is already certifying the completeness and accuracy of the information reported. A separate certification would serve no additional purpose. The Agency believes that brief generic documentation of CBI claims without regard to specific questions assists neither EPA nor submitters in determining the validity of individual confidentiality claims. In the Agency's experience, such documentation often consists of a standard boilerplate rather than the unique facts which determine whether a CBI claim is appropriate. EPA would be unable to make a final confidentiality determination without answers to the more detailed questions referred to above and in § 704.219.

IV. Reporting on Substances Listed by the ITC

Substances identified by the Interagency Testing Committee (ITC) under TSCA section 4(e) for priority testing are added automatically to the PAIR without notice and comment. EPA proposes to add similar automatic reporting requirements under the CAIR for ITC substances; that is, substances recommended or designated by the ITC for priority testing consideration would be added to the CAIR without notice and comment rulemaking. The reporting requirements will consist of a defined minimal set of CAIR questions. Section 704.223 would be amended to require reporting within 60 days. As with the PAIR, EPA would provide for withdrawal of a chemical substance from the rule for good cause and a notice to that effect would be published in the **Federal Register** no later than the effective date of the rule.

An amendment to the PAIR on May 11, 1983 (48 FR 21294), provided for automatic reporting on substances designated for priority consideration by the ITC. Another amendment on August 28, 1985 (50 FR 34805), extended automatic reporting to substances recommended for priority consideration by the ITC. The reasons for promulgation of those two amendments apply to reporting under the CAIR as well as the PAIR. EPA must initiate rulemaking to require testing under section 4 of TSCA within 12 months after the ITC designates a chemical substance, mixture, or category of chemical substances for testing consideration or state in the **Federal Register** its reasons for not doing so. The Agency needs the information submitted in response to the PAIR, or in this instance, the CAIR, quickly for designated substances in order to meet the statutorily mandated 12–month decision point.

Automatic reporting under the PAIR was extended to recommended substances because it is more efficient, both for industry and for EPA, to require reporting on both designated and nondesignated substances in one rule, as explained in 50 FR 34805 (August 28, 1985). In addition, the automatic reporting aids the ITC in carrying out its responsibilities under section 4 of TSCA. The ITC can review data received in 90 days as a result of the reporting and then it is able, when appropriate, to designate or withdraw recommended chemicals or categories from the TSCA Section 4(e) Priority Testing List in a relatively short period of time.

Section 704.225(a)(1) would provide that chemical substances, mixtures, and categories of chemical substances or mixtures recommended or designated for priority consideration by the ITC will be added to the CAIR effective 30 days after publication of an amendment in the **Federal Register**. Recommended substances, mixtures, and categories of chemical substances or mixtures will be added by these expedited procedures only to the extent that the total number of recommended and designated substances, mixtures, and categories does not exceed 50 in any 1 year.

Also, under § 704.225(a)(2), persons who wish to request withdrawal of an ITC substance from the CAIR would submit supporting information for their request within 14 days of the

publication of the amendment in the **Federal Register**.

EPA is considering not requiring trade name reporting under § 704.208 for the ITC recommended or designated substances which are added automatically to the CAIR. Also, for these chemical substances, EPA would not require that the questions in Section 1 pertaining to trade name reporting be answered.

EPA also proposes to designate certain CAIR questions for reporting on substances recommended or designated by the ITC to be added to the Section 4(e) Priority List. This set of CAIR questions would request information similar to that required by the PAIR. PAIR reporting for ITC substances would no longer be necessary.

Section 704.212(b) as proposed would require reporting on the following questions for the ITC substances: 1.01, 1.02 (except those parts which refer to trade name (X/P) reporting), 1.06 thru 1.16, 2.04, 2.12, 2.17, 9.02, 10.02, 10.05 and 10.06. Questions 10.05 and 10.06 would not be asked if the discrete chemical substance has previously been listed for Toxic Release Inventory (TRI) reporting at 40 CFR part 372.

V. Other Proposed Changes

One commenter stated that, since the definition of manufacture under TSCA includes import, it was not clear whether importers should also report when "M" (for manufacturers) was listed in the CAIR matrix. To clarify who must report, EPA proposes to add in § 704.206(b)(2) a statement that importers would only be required to report when the symbol "I" is used in the CAIR matrix.

Also, many persons who were exempt from CAIR reporting on the 19 chemical substances currently listed in the CAIR asked if they still had to notify their customers if the listed substance had an "X/P" designation in the CAIR matrix.

The Agency does not intend that persons exempt from CAIR reporting should have to notify their customers regarding the listed substance. Therefore, the Agency proposes to add in § 704.206(a) a provision that persons who are exempt under § 704.210 need not comply with the requirements of § 704.208.

In addition, EPA proposes to amend § 704.212(b)(1) to add that, in addition to Section 1, question 10.02 on the CAIR form, which asks for latitude and longitude coordinates for facilities reporting, will always be selected. This is being done in accordance with an Agency policy on locational data which establishes the principles for collecting and documenting latitude/longitude coordinates for facilities, sites and monitoring and observation points regulated or tracked under Federal environmental programs within the jurisdiction of EPA. The policy is set forth in Chapter 13 of the EPA "Information Resources Management Policy Manual," July 1991.

As stated in the policy, use of the latitude and longitude coordinates will allow data to be integrated based upon location, thereby promoting the enhanced use of the Agency's extensive data resources for cross-media environmental analyses and management decisions.

EPA's policy on locational data underscores the Agency's commitment to establish the data infrastructure necessary to enable data sharing. Therefore, question 10.02 will always be included in the questions selected and listed in the matrix of the CAIR. EPA is revising question 10.02 and the instructions to read as follows:

10.02 Specify the exact location of your facility (from central point where process unit is located) in terms of latitude and longitude.

Latitude +/- ——— DD ——— MM ——— SS.SSSS

Longitude +/- ——— DDD ——— MM ——— SS.SSSS

Source/method used to determine latitude/longitude coordinates:

——— EPA permits (e.g. NPDES permits)

——— County property records

——— Facility blueprints

——— Site plans

——— Remote sensing techniques (e.g., use of the Global Positioning System)

——— Map interpolation

——— Cadastral survey

Estimate of accuracy ———

Instructions:

(1) Enter the Latitude and Longitude coordinates of your facility. Sources of this data include EPA permits (e.g., NPDES permits), county property records, facility blueprints, and site plans. If the coordinates are not available from any of those sources, instructions for determining the latitude and longitude from topographic maps are given in Supplement A of these instructions.

The format for representing this information is:

+/- DD MM SS.SSSS (latitude)

+/- DDD MM SS.SSSS (longitude)

DD represents degrees of latitude; a two-digit decimal number ranging from 00 through 90.

DDD represents degrees of longitude; a three-digit decimal number ranging from 000 to 180.

MM represents minutes of latitude or longitude; a two-digit decimal number ranging from 00 through 60.

SS.SSSS represents seconds of latitude or longitude.

+ specifies latitudes *north* of the equator and longitudes *east* of the prime meridian.

- specifies latitudes *south* of the equator and longitudes *west* of the prime meridian.

(2) Put an X in the form by the method used to determine the latitude/longitude coordinates.

(3) Estimate the accuracy of the coordinates in terms of the most precise units of measurements used; e.g., if the coordinates are given to tenths-of-seconds precision, the accuracy estimate should be expressed in terms of the range of tenths-of-seconds within which the true value should fall, such as "+/- 0.5 seconds."

Secondly, EPA proposes to amend questions 2.12, 2.13, and 2.14 in the CAIR form by providing a more extensive list of product types from which the submitter can select those applicable; adding another column headed "End Products;" and providing an additional list, broken down into categories of end use products, from which submitters can choose. The lists, as shown below, are more detailed, which should make it easier for respondents to find the exact type or category which best describes their product types and end-products. It would also provide more exact information to the Agency. Question 2.12 would read as follows:

2.12 Existing Product Types — List all existing product types which you manufactured, imported, or processed using the listed substance during the reporting year. State the quantity of listed substance you use for each product type as a percentage of the total volume of listed substance used during the reporting year. Also state the quantity of listed substance used captively on site as a percentage of the value listed under column b., and select and list the applicable end products and end-users from the lists below. (Refer to the instructions for further explanation and an example.)

a. Product Types	b. % of Quantity Manufactured, Imported, or Processed	c. % of Quantity Used Captively on Site	d. Type of End-Product	e. Type of End-Users

Use the following codes to designate product types:

1=Abrasive
2=Adhesive
3=Alkyd resin
4=Analytical reagent
5=Antioxidant
6=Anti-redeposition agent/sequestering agent
7=Anti-setting agent
8=Anti-skinning agent
9=Anti-static agent
10=Anti-streaking agent
11=Anti-wear additive
12=Base
13=Binder
14=Bleaching agent
15=Blowing agent
16=Bonding agent/bonder
17=Buffer
18=Builder
19=Carrier
20=Catalyst/crosslinking/curing agent
21=Caustic agent
22=Chelating agent
23=Cleaning agent
24=Coalescing agent
25=Coating
26=Colloidal agent
27=Colorant/color agent
28=Condensation polymerization agent
29=Copolymers
30=Corrosion inhibitor/emulsifying agent
31=Detergent
32=Diluent/thinner
33=Disinfectant/deodorizer
34=Dispensing agent
35=Drier/siccative
36=Drying oil
37=Dye
38=Electrodeposition/plating chemical
39=Emulsifier/emulsifying agent
40=Enzyme
41=Explosive chemical/additive
42=Extreme pressure agent
43=Filler/pigment extender
44=Film-forming ingredient/ reagents
45=Film reducer
46=Flame retardant
47=Flatting agent
48=Fluorescent whitening agent/optical brightener
49=Foamout/defoamant
50=Freeze-thaw additive
51=Friction-reducing anti-wear agent
52=Fuel/additive
53=Fugitive ligand complex
54=Hardener
55=Inorganic accelerator
56=Metal alloy/additive
57=Lubricant
58=Mineral spirits/petroleum distillates
59=Minimum film-forming temperature (MFT) modifier
60=Opacifer
61=Oxidation inhibitor
62=Penetrant
63=Perfume/flavor/fragrance/odor forming ingredient
64=Petroleum basestock/petroleum lubricating oil
65=Photographic/reprographic chemical
66=Pigment
67=Plasticizer
68=Polymer
69=Polymerization promoter
70=Pour-point depressant
71=Prepolymer
72=Preservative
73=Processing aid
74=Propellant
75=Refractive index modifier
76=Rheological modifier
77=Reinforcing agent
78=Rubber accelerator activator
79=Softener
80=Solvent
81=Stabilizing agent/stabilizer
82=Surfactant/surface active agent
83=Synthetic reactant
84=Tackifier
85=Thermoplastic resin
86=Thermosetting resin
87=Thickener/thickening agent
88=Transfer agent
89=UV absorber
90=Viscosity index improver
91=Viscosity modifier
92=Water softener/conditioner
93=Wetting agent

Use the following codes to designate types of end-products:

A. Food and Plant Products, Pharmaceuticals

A1=Fertilizers
A2=Food additives
A3=Food packaging/containers (e.g. milk/juice cartons, soup cans)
A4=Lawn/garden chemicals (pesticides, herbicides, fungicides)
A5=Medicaments

B. Construction Products

B1=Adhesives
B2=Architectural coatings
B3=Brick/clay tile
B4=Building plaster
B5=Carpet/floor felts
B6=Caulks and sealants, non-structural
B7=Cement/concrete
B8=Electrical wiring
B9=Glazing compounds
B10=Glued and laminated structural wood products
B11=Hard surface flooring (e.g. vinyl flooring)
B12=Insulating fiberboard
B13=Insulation, foam
B14=Insulation, non-foam
B15=Plastic wall, ceiling, or counter coverings
B16=Plastic panels, doors, or partitions
B17=Plastic sidings
B18=Plumbing fittings/pipe
B19=Plumbing fixtures
B20=Putty
B21=Roofing materials
B22=Sheathing paper
B23=Thinners for dopes, lacquers, etc.
B24=Wall covering
B25=Water repellants
B26=Wood preservatives
B27=Wood products, (e.g. plywood/fiberboard/waferboard)

C. Household Products

C1=Adhesives
C2=Air freshener/deodorizer
C3=Carpet and rug cushion
C4=Carpet and rug underlayment, other
C5=Carpets and Rugs (including carpet tiles)
C6=Cleaner or disinfectant, hard surface
C7=Containers, food storage/microwave
C8=Drain pipe cleaners
C9=Fabric softener
C10=Fire extinguisher
C11=Floor polish
C12=Foam for furniture cushions
C13=Furniture polish
C14=Laundry bleach
C15=Laundry detergent
C16=Laundry presoak
C17=Laundry starch
C18=Lubricant (nonautomotive)
C19=Machine dishwashing detergent
C20=Metal polish
C21=Non-machine dishwashing detergent
C22=Paint or coating, aerosol
C23=Paint or coating, nonaerosol, nonarchitectural
C24=Paint/varnish remover
C25=Partition and shelving
C26=Refrigerator or freezer
C27=Rug/upholstery cleaner
C28=Rust remover
C29=Shoe polish
C30=Shower curtains
C31=Solvent cleaner for electronic equipment
C32=Spot remover
C33=Textile products, linens
C34=Water/stain repellant for clothes or furniture
C35=Window coverings (e.g. curtains)

D. Household Machinery, Appliances and Electrical Equipment

D1=Air conditioner
D2=Cabinets/housings for electrical/electronic equipment
D3=Heating equipment
D4=Kitchen appliances

D5=Sound/stereo equipment
D6=Television
D7=Vacuum
D8=VCR

E. Personal Hygiene Products

E1=Cosmetics
E2=Dental care products
E3=Hair care products
E4=Body care products (e.g. hand lotion, suntan lotion)
E5=Perfume
E6=Soap
E7=Shaving cream

F. Textile, Apparel, and Footwear Products

F1=Anti-static spray
F2=Clothing and accessories
F3=Footwear
F4=Leather treatment
F5=Textile dyes
F6=Textile water-proofing

G. Automobile Products

G1=Air conditioning refrigerant
G2=Antifreeze
G3=Brake fluid
G4=Detergents/cleaners, exterior
G5=Fuel, gas/diesel
G6=Fuel lubricant/additives
G7=Hydraulic fluids
G8=Interior upholstery/components
G9=Lube oil additives
G10=Lubricating greases
G11=Motor oil
G12=Paint, touch-up
G13=Polish/wax
G14=Radiator flush/cleaner
G15=Undercoating
G16=Upholstery and other interior cleaners and protectants
G17=Windshield washer solvents

H. Miscellaneous Items

H1=Artist's supplies
H2=Chemicals used in the manufacture of paper
H3=Circuit boards
H4=Developer/toner for copiers
H5=Flocculants for wastewater treatment
H6=Inks
H7=Interior/exterior can manufacturing chemicals
H8=Metal cutting fluids
H9=Oil/gas well production chemicals
H10=Photographic chemicals for the developing/printing of film
H11=Soldering materials
H12=Water treatment chemicals for cooling towers/boilers
H13=Wood treatment chemicals

Use the following codes to designate the type of end-users: I = Industrial, CS = Consumer, CM = Commercial, H = Other (specify)

Questions 2.13 and 2.14 would be similarly reworded to accommodate the new table headings and lists.

VI. Economic Analysis

A. Economic Analysis of the Burden of the 1988 CAIR

Comments were received by CMA regarding EPA's June 1988 burden estimates of industry responding to CAIR. After implementation of the first round of CAIR reporting, CMA provided information of the cost to chemical companies responding to the Final CAIR. The compliance costs calculated by CMA were estimated at $ 2.87 million, while EPA estimates totalled $ 1.79 million, a difference of nearly $1.1 million. EPA and CMA's conclusions diverge primarily because of differences in wage and hour estimates and because of differences in the methodological details of extrapolating average report costs up to the total costs for all reports.

The revised methodology takes into account the problems noted in both EPA and CMA analyses of the CAIR reporting burden, and incorporates data on the number of reports actually received, which differs greatly from expected values. The revised estimate of the total CAIR costs to industry is obtained by adding reporting costs, compliance determination costs, recordkeeping costs and submission costs for a total estimate of $7.1 million in 1992 dollars. Total social costs of the rule included industry costs and administrative costs to EPA. Adding industry costs to the government administrative costs brings the estimated total cost of the December 1988 use of CAIR to $8.2 million.

1. *Comparison of EPA and CMA estimates of CAIR burden.* The total cost of CAIR estimated by EPA (1988) included industry reporting costs and government costs for the rule. The EPA estimate of the compliance costs of CAIR to industry totalled $1.79 million (1988), while the CMA estimated the industry compliance costs at $2.87 million (1989). There are a number of reasons for EPA and CMA differences in compliance costs, including the year these estimates were calculated, methodological difference and sources for calculating direct and reporting costs, wage rates and time estimates.

Both analyses divided costs into two categories: direct costs, which reflect time spent answering specific CAIR questions, and general costs, which reflect time required to administer the reporting process, such as CBI substantiation, recordkeeping and form familiarization. EPA and CMA estimated direct and general costs using the current wage rates and the length of time needed to complete the questions. However, EPA and CMA used different wage rates and personnel hour estimates resulting in different direct and general costs.

EPA and CMA wage rates and personnel hour estimates varied due to the use of different information sources. EPA used 1984 Bureau of Labor Statistics (BLS) wage rates and updated them to 1987 to reflect inflation using the CPI-W consumer Price Index. The CMA analyses are based on surveys of CAIR respondents at the time of the CAIR reporting period. Also, EPA and CMA estimates differ because CMA did not aggregate scientific and legal job categories within the managerial categories and, unlike CMA, EPA did not include overhead in their wage rates. In general, EPA and CMA wage rates do not differ greatly. Note, when the 17 percent overhead rate is excluded from the CMA wage rate, EPA and CMA wage rates differ by at most 20 percent. The following table illustrates the EPA and CMA wage rate estimates.

Wage Rate Estimates

EPA[a]		CMA[b]		CMA Excluding Overhead[c]	
Labor Category	Wage Rate	Labor Category	Wage Rate	Labor Category	Wage Rate
Managerial	$43.50	Managerial	$52.65	Managerial	$45.00
Technical	$29.92	Technical	$39.44	Technical	$33.61
Secretarial	$13.96	Secretarial	$19.66	Secretarial	$16.80
		Scientific	$49.09	Scientific	$41.96
		Legal	$78.37	Legal	$66.98

[a] Source: BLS 1984 updated to 1987. Wage rates include fringe benefits.
[b] Source: CMA Survey 1989. Wages include fringe benefits and overhead.
[c] Source: CMA Survey 1989. Wages include fringe benefits.

In general, time estimates for direct costs were based on the knowledge or "informed judgment" of federal

personnel and federal agencies that analyzed the report form. By doing so, EPA developed estimates of the number of hours that each category of personnel would spend on each question.

Informed judgment was used again to estimate general hours. Also, EPA made a distinction between 14 substances for which few questions applied (low burden) and the remaining 5 substances for which more of the report questions applied (high burden) resulting in a weighted average general hours. The following table illustrates the per response hours spent for general hours

EPA General Hours

	Low	High	Weighted Average
Managerial	18.0	34.0	32.3
Technical	11.5	31.0	28.9
Secretarial	6.0	13.0	12.2

The CMA personnel hours for direct and general hours are based on survey results of 13 CAIR reporting sites. Personnel were instructed to keep diaries of their hours as they worked on the form. The CMA report presents averages of these reporting hours by firm type.

CMA Personnel Hours

	Direct	General
Managerial	9.46	27.2
Technical	54.58	24.82
Secretarial	5.52	5.00
Scientific	8.42	2.46
Legal	1.15	1.92

a. Estimates of the number of reports and sites. Much of EPA's analysis is based on an estimate of the expected number of reports received. EPA estimated that it would receive 242 reports from 230 sites. EPA also estimated how the reports were distributed among firm types and across substances. CMA's analysis is based on surveys of 13 sites. Seven substances covered by these reports accounted for 85 percent of the reports expected by the EPA. The distribution of reports among firm types generally reflects EPA distribution; however, some discrepancies exist, for example, 87 percent of the difference between the EPA and CMA total direct cost estimates is accounted for by the difference in estimated direct costs for toluene diisocyanate (CAS 26471–62–5).

b. Direct costs. EPA direct costs of CAIR are based on the estimated personnel time across job categories for each question, wage rates, and the expected number of reports for each substance and firm type combination. The number of questions answered varied on a substance-by-substance basis. The hourly labor sums were multiplied by wage rates to yield a report cost for each substance. Each report cost is weighted by multiplying the report cost by the expected distribution of reports among firm types reflecting the average report cost. Total direct costs are determined by adding the average report cost for each of the 19 substances. Using this methodology, EPA's total direct cost of reporting equalled $1,232,253.

CMA's direct costs of CAIR are based on a non-random sample of 13 plant responses. The 13 surveyed plants submitted information pertaining to 7 of the 19 different CAIR listed substances. CMA estimated the direct costs by multiplying the average report cost by the number of reports expected. The average report cost was estimated using wage rates and time estimates for each of the 7 substances. Since CMA had data for only 7 of the 19 substances, it had to approximate the costs per report of the remaining 12 substances. This was done by taking the average CMA report costs of the 7 substances weighted by the number of reports EPA expected to receive for each substance. CMA's total direct costs equalled $1,861,518.

c. General costs. In addition to direct costs, reporting firms incur general costs for time spent filing the reports which cannot be related to specific questions such as form familiarization, CBI substantiation, recordkeeping, etc. EPA estimated the number of hours that respondents would spend on general activities based on informed judgment. These time estimates were multiplied by the hourly wage rates to yield the total general cost per report.

A distinction was made between 14 low burden substances for which significantly fewer questions applied, and the 5 high burden substances for which more of the questions applied. General costs for low and high burden substances were estimated to be $1,060 and $2,521, respectively. Total general costs were estimated to be $560,000.

CMA general costs were again based on its survey. Survey respondents kept track of the number of hours attributable to general activities. CMA took the average of these times across reports within each chemical group and multiplied them by the relevant wage rates for the 7 substances. CMA estimated the cost of the remaining 12 from the average costs of the surveyed substances weighted by the number of reports expected by the EPA. CMA did not distinguish substances as high and low burden. Their total general costs were estimated at about $1 million.

d. Total costs. EPA and CMA estimated total costs by adding direct cost and general costs. EPA estimated $ 1.79 million for total costs while CMA estimated a total cost of $2.87 million, a difference of $1.1 million.

2. *Revised Compliance Costs of CAIR*

A combined EPA and CMA methodology was used to determine the revised compliance costs for the CAIR reporting burden. The revised costs are estimated by using CMA's estimates of personnel hours by labor category and overhead rate of 17 percent, and EPA's estimate of wage rates. Individual report costs are then multiplied by the number of reports to get total industry costs. The revised costs include the actual number of reports received and the average number of questions answered, which came to 597 reports and 45.2 questions.

EPA used CMA's survey data on personnel hours because it was acquired directly from survey respondents as they actually reported on CAIR substances. Although this data is not completely unbiased due to the small sample size of 13, this is likely to be a more accurate estimate than the "informed judgement" estimate of EPA.

Hourly wage rate estimates based on updated Bureau of Labor Statistics (BLS) were used as a more reflective measure of industry-wide average wage rates. These estimates are more accurate because wages are specific to individuals and firms and, given the small sample size, CMA wage estimates probably do not represent industry-wide wage rates. The following table illustrates the revised hourly wages and the number of hours per question used to determine the cost per question.

Labor Category	March 1992 Hourly Labor Rate	Hours Per Question	Cost Per Question
Managerial	$60.42	0.81	$48.89
Scientific	$52.39	0.24	12.61
Technical	$43.80	1.76	76.94
Legal	$80.69	0.07	5.48
Secretarial	$21.73	0.23	5.06
Total		3.11	$148.98

a. Individual report costs. Individual report costs were calculated for each substance and facility type using wage rate data from BLS, CMA's estimate of personnel hours, and EPA's estimate of the number of questions per report. Using the above, the average cost per question was estimated. The average cost per question multiplied by the number of questions per report yields the cost of an individual report. Report cost estimates ranged from $2,980 to $13,110.

b. Revised total costs. Given the average total costs per report, the total costs to industry are estimated by multiplying the cost per report by the number of reports submitted. The total report costs are estimated to be $6.45 million for all CAIR reports submitted. The average time per question amounted to 3.1 hours and there were a total of 43,279 questions answered for 597 reports. Multiplying the number of question answered for all reports by the average time per question yields an estimated 134,481 burden hours incurred by industry responding to CAIR.

In addition to report costs of CAIR, EPA incurs compliance determination cost, recordkeeping costs, submission costs, and administrative costs which totalled $1.8 million. Adding these costs to the total report costs yields the revised total costs of CAIR of $8.2 million.

B. Impact of Amendments

Currently, a number of amendments to CAIR are under consideration that would reduce the burden of reporting on industry without resulting in significant loss of information. An overview of the proposed amendments is provided as Attachment 1 to the "Estimated Compliance Costs of the Comprehensive Assessment Information Rule," March 5, 1993, which is part of the Public Record for this proposed rule. While quantitative estimates of the cost savings for most of the amendments are unavailable at this time, the proposed amendments are reviewed relative to how reporting costs would likely be affected. Preliminary cost estimates using reasonable assumptions about the impacts of each amendment indicate the potential cost savings of the amendments to be substantial.

The proposed amendments to CAIR cover a number of subject areas: ITC listed chemicals, small volume exemption, "de minimis" exemption, CBI substantiation, definitions of reporters, clarification of reporting requirements, revised product classification, trade name reporting, and facility location. Preliminary analysis of the change in the burden is that the amendments would potentially save between $5.4 and $6.3 million.

1. Reporting on ITC substances. A proposed amendment would add substances identified for priority testing by the ITC to the CAIR list without notice and comment rulemaking. Substances recommended by the ITC are now automatically added to PAIR. PAIR reporting of ITC substances would be discontinued, effectively replaced by CAIR reporting. Automatic CAIR reporting would be more efficient for both the EPA and the industry for two reasons. First, the Agency needs information quickly for designated substances to meet statutory (12 month) deadlines. Second, the ITC can review the data and then designate or withdraw recommended chemicals from the 4(e) Priority List in a relatively short time. EPA is also considering not requiring trade name reporting for ITC substances.

EPA proposes to collect only limited information similar to what is currently collected for PAIR. The initial reporting burden for the ITC substances would be minimized by requiring only 18 to 20 of the 195 CAIR possible questions. The proposed amendment permits up to 50 substances, mixtures and categories to be added each year. EPA estimates that approximately 100 substances, which would include specific chemical substances and individual members of categories, will be added each year. Although this amendment should increase total industry compliance costs in proportion to the number of new substances, the ITC process should not take each reporting facility as much time as required reporting for the current list of CAIR substances.

The addition of this automatic ITC chemical reporting would inevitably increase total government costs, but most of the administrative costs should not change significantly. The nomination, review and selection process for ITC already occurs; therefore, there are no additional costs. Because the ITC substances would be added to CAIR without notice and comment rulemaking, the additional cost to the government would be less than for adding substances by notice and comment rulemaking. EPA estimates adding the ITC substances to CAIR will require one additional FTE.

Given the above information, a preliminary estimate of the cost of the ITC amendment can be derived. A facility's estimated cost per report is approximately $2,700 to $3,000. The estimated cost is a range because the cost will depend on the number of questions answered (i.e. if the substance is TRI listed, questions duplicated on the CAIR form will not be required to be answered). The range is derived by multiplying the cost per question ($148.98) by the number of questions (18 or 20). The cost to the entire industry for one ITC substance would be

$84,000 to $93,600, which is calculated by multiplying the cost per report by the average number of reports filed (597/19 = 31.4) for each substance. If ITC adds an estimated 100 substances each year (including members of chemical categories), the total cost to industry for all substances added would be $8.4 million to $9.36 million. Finally, factoring in the change in government costs (1 FTE or $61,000), the estimated total societal cost is $8.5 million to $9.4 million. The preliminary estimate of the societal cost is derived from the following equation:

Societal Cost = (Cost/Question) x (Questions/Report) x (Reports/Chemical) x (# Chemicals) + G

Low Estimate = (148.98) x (18) x (31.4) x (100) + $(61,000)

High estimate = (148.98) x (20) x (31.4) x (100) + ($61,000)

Because there is little information available on the ITC substances, the preliminary estimate of the total cost is necessarily based on several assumptions. The individual assumptions used to derive the preliminary cost estimate are based on the assumption that the CAIR reporting for substances added by the ITC will be similar to reporting for the average substance already on the CAIR list. A critical assumption that drives the estimated results is that each ITC question will cost as much to answer as the average first round question. This assumption may overestimate the costs. The list of required questions was selected to minimize the reporting burden, so the average ITC question may take less time than the average question for the substances presently listed on CAIR. Further, most of the required information for the ITC designated substances presently is being submitted under PAIR. The additional cost of submitting the information under CAIR will likely be lower than the cost of reporting the information for the initial CAIR.

It is important to note that while this is an estimate of the societal cost of this proposed rule, there is also a societal savings from discontinuing the PAIR reporting on ITC substances. If the reporting burden and government costs are identical for CAIR and PAIR reporting, the societal costs would be totally offset. Differences in the reporting procedures could result in either a net cost or net savings to industry and government. However, the net change would likely be small because the proposed CAIR questions are selected to be similar to the PAIR reporting. Thus, while automatically adding new ITC substances would result in an increase in the societal cost of the CAIR rule, this proposed amendment is assumed to have zero net change in the total reporting burden to industry and government.

2. *Low volume exemption.* Under this proposed low volume exemption, those firms that manufacture, import, or process a listed substance in annual quantities of less than 10,000 pounds at a site would not have to file CAIR reports. If implemented, this amendment would significantly reduce the reporting burden on industry and lower compliance costs without significantly affecting the information needed by EPA for risk assessments. The EPA would still gather general information and risk assessment data from large volume manufacturers and processors on chemical substances of concern. The Agency reserves the right to modify or eliminate an exemption on a case-specific basis for some chemical substances even in small volumes.

In addition, the volume specification is consistent with the TSCA Inventory Update Rule and the Emergency Planning and Community Right-to-Know Act. When a 10,000 pound exemption was proposed for the Emergency Planning and Community Right-to-Know Act, the EPA estimated the number of facilities and reportable chemicals covered by the exemption. A 10,000 pound exemption level was estimated to exempt 75 percent of the potentially affected facilities (EPA 1987). Industry reporting costs would potentially decrease by 75 percent, a savings of $4.8 million (448 x $10,800). This calculation implicitly assumes, ceteris paribus, the reports avoided are of the same complexity as the average report completed in response to the 1988 iteration of CAIR.

3. *"De minimis" exemption.* Under the final CAIR, manufacturers, importers or processors of mixtures containing CAIR listed substances are subject to the full reporting requirements. Under this proposed amendment, firms would not have to report if the proportion of CAIR listed substance is less than 1 percent of a mixture. If the listed substance is a carcinogen, the limit would be reduced to 0.1 percent. The EPA believes that the information which would be submitted for these low concentrations would probably not be critical for most assessment purposes. The Agency may eliminate or modify the exemption if necessary. Since many trade name products may contain a listed substance in low concentrations, the amendment would lessen the industry's trade name reporting as well.

If implemented, this amendment would also reduce the reporting burden on industry. In the absence of information relating to the proportion of the chemical substance used by the facilities, the number of exempted reports could be 1, 5, 10, or 20. If the amendment exempts only one report, the cost savings to the industry is approximately $10,800. However if the exemption eliminates 5, 10, or 20 reports, the cost savings could be approximately $54,000, $108,000, or $216,000, respectively. As in the previous analysis, the calculation implicitly assumes, ceteris paribus, the reports avoided are of the same complexity as the average report completed in response to the 1988 iteration of CAIR. The estimates are derived from the equation below:

Cost Savings = (Cost/Question) x (Questions/Report) x (Reports/Exempted)

1 Exempted = ($148.98) x (72.5) x (1) = $10,800

5 Exempted = ($148.98) x (72.5) x (5) = $54,000

10 Exempted = ($148.98) x (72.5) x (10) = $108,000

20 Exempted = ($148.98) x (72.5) x (20) = $216,000

4. *CBI substantiation.* Under the current rule, reporters must substantiate CBI claims at the time they submit the information to EPA (i.e. at the time of the CAIR report). This proposed amendment will eliminate the need for up-front substantiation of process and financial information. However, chemical identity, company identity, and production volume information will remain subject to the substantiation requirement, since these categories of data are an integral part of the risk assessment process. EPA anticipates that CBI claimed on responses to 28 questions would no longer require substantiation. This will reduce the reporting burden without reducing public access to the most important information needed for risk analysis. While reporting costs will be reduced for firms which can avoid CBI substantiation, other firms may still incur these substantiation costs if their CBI claims are challenged by EPA.

A sensitivity analysis of potential cost savings from eliminating the need for up-front substantiation of process and financial information can be completed by estimating that 25 percent of the general costs were related to CBI substantiation and half of the reports claimed CBI status. Using the average cost-per-report of $10,800 from the earlier analysis, and multiplying this figure by 25 percent yields an average cost-of substantiation-per-report of $2,700. If half (298.5) of the reports claimed CBI status, the cost savings

from this amendment would be $806,000.[1] This analysis is based on several assumptions due to the lack of specific information on CBI claims and therefore should be interpreted as a very rough estimate.

5. *Definition of reporters.* The definitions for processing activities and manufacturing activities included in the Final CAIR were the source of some confusion regarding reporting requirements. In order to reduce unnecessary reporting, it is proposed that these definitions be removed. Persons evaluating whether they are required to report under CAIR would refer to the definitions of "manufacture for commercial purposes" and "process for commercial purposes."

Eliminating the definition of processing activities and manufacturing activities may result in fewer reports generated if a firm mistakenly reported (or cautiously decided to report rather than risk compliance sanctions). In the absence of information relating to the number of mistakenly generated reports, a sensitivity analysis can be completed by setting the number of extra reports from 1 to 20. The potential cost savings would be the same as in the "De minimis" exemption above, approximately $10,800 to $216,000.

However, because this amendment could potentially increase or decrease the total number of reports filed, the cost impact of this amendment may be positive or negative. For the preliminary estimate of the total impact of all of the amendments, the cost of this amendment is assumed to have a range of ±$216,000.

6. *Clarification of requirements.* These proposed clarifications to the CAIR text will simplify who must report on and who must notify customers about CAIR listed substances. The EPA does not intend that persons exempt from CAIR reporting should have to notify their customers regarding the listed substance. These clarifications will reduce the number of unnecessary reports and notifications, thereby reducing industry compliance costs. The cost savings are similar to those from clarifying the definition of reporters. The number of extra reports could be anywhere from 1 to 20, thus the potential cost savings would be approximately $10,800 to $216,000.

7. *Revised product classification.* These proposed changes to the CAIR questions on product types will provide EPA with more information in a more useful form. This amendment does not change the number of reports generated, nor does it increase the number of questions. The scope of the questions changes, as more specific information is collected. While more information is required, it is easier for companies to classify the information. Thus the reporting burden will not be significantly affected by this amendment.

8. *Trade name reporting.* In the final CAIR, manufacturers, importers, or processors of CAIR listed substances who distribute under a trade name are subject to a customer reporting or notification requirement. Temporary administrative relief from this provision was granted on April 10, 1989, because of the potential for trade secret disclosure. Under this proposed amendment, the temporary relief would be made permanent. If it can be substantiated that compliance would result in disclosure, directly or indirectly, of confidential trade secrets, EPA will not publish trade names submitted under CAIR. Though the temporary administrative relief was in place prior to the first round of reporting on trade name substances, no one took advantage of the temporary relief in that reporting cycle. EPA believes that the permanence of this relief will have little additional effect on the reporting costs.

9. *Location of facility.* This amendment would require firms to report the location (latitude and longitude) of facilities. This will enable EPA to integrate the data based on location for cross-media environmental analysis and management decisions. The amendment will not alter the number of reports generated, but firms will be required to answer a question that is presently optional. The information should be easy to obtain and incremental costs are expected to be minimal.

Summary and Conclusions

The original estimates of CAIR costs by EPA (1988) and CMA (1989) were made with limited information. Although minor methodological differences were identified in Section 2, both estimates extrapolated average report costs to the full total of expected reports. In revising the CAIR burden estimate, it was possible to use the number of reports actually submitted; a number more than twice the original EPA estimate. Also, data on the actual number of hours needed to answer each question were available from a CMA survey of CAIR respondents. It was felt that the time per question as measured by CMA is the best available data on CAIR reporting and that these data are likely representative (e.g., unbiased mean) of all respondents.

Revised estimates of CAIR costs were made with the CMA survey data, updated BLS labor costs, and data from EPA on the actual number of reports submitted. The revised cost of the 1988 iteration of CAIR is estimated at $8.2 million. This figure is greater than both the EPA and CMA estimates made before the first round of CAIR reporting was completed.

The proposed amendments to CAIR will clearly reduce the reporting burden to industry by decreasing the number of reports that must be filed. However, accurate estimates of the cost reduction are not possible without good estimates of the decrease in the number of required reports. A preliminary estimate of the amendments' impact, based on reasonable assumptions about the impact of each amendment, is a savings of $5.4 to $6.3 million, assuming the next iteration of CAIR were a rule of similar scope to the 1988 iteration.

In addition, additional information regarding the thresholds proposed for the low volume and de minimis exemptions was provided to OMB during OMB review, and a copy of that information has been placed in the Public Record.

VII. Rulemaking Record

EPA has established a record for this rulemaking (docket control number OPPTS–82013H). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with additional information as it is received and will identify the complete rulemaking record by the date of promulgation. A public version of the record, without any CBI, is available in the TSCA Nonconfidential Center (NCIC) from 8 a.m. to noon and 1 p.m. to 4 p.m., Monday through Friday, except legal holidays. NCIC is located in Rm. E–G102, 401 M St., SW., Washington, DC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12291

Under Executive Order 12291, EPA must judge whether a rule is "major" and therefore requires a Regulatory Impact Analysis. EPA has determined that this proposed rule would not be a "major" rule because it would not have an effect on the economy of $100 million or more, and it would not have a significant effect on competition, costs, or prices. This proposed rule was submitted to the Office of Management and Budget (OMB) for review as required by Executive Order 12291.

[1] Estimate derived by dividing the number of reports (597) by 2.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined that this proposed rule would not have a significant impact on a substantial number of small businesses. Small manufacturers and processors are exempt from CAIR reporting except under certain circumstances set forth in TSCA section 8.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the existing rule under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and assigned OMB control number 2010–0019. The information collection requirments included in this proposed rule have been submitted to OMB for review and approval as an amendment to OMB control number 2010–0019.

Public reporting burden for this collection of information is estimated to vary from 62 to 272.8 hours per report, with an average of 225.26 hours per report (average of 72.5 questions/report [43,279 questions/597 reports] x 3.1 hours/question), including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimate or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information requirements contained in this proposal.

List of Subjects in 40 CFR Part 704

Environmental protection, Chemicals, Confidential business information, Hazardous substances, Imports, Reporting and recordkeeping requirements.

Dated: November 19, 1993.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 704 be amended as follows:

PART 704—[AMENDED]

1. By amending the authority citation for part 704 to read as follows:

Authority: 15 U.S.C. 2607(a) and 2613.

2. In § 704.203 by deleting the definitions for "Manufacturing activities" and for "Processing activities" and adding definitions for "ITC" and "ITC substance" to read as follows:

704.203 Definitions.

* * * * *

ITC means the Interagency Testing Committee which was established by statute to make recommendations to the EPA Administrator regarding the chemical substances and mixtures which should be given priority consideration for testing.

ITC substance means a chemical substance or mixture recommended or designated by the ITC to be added to the TSCA section 4(e) Testing Priority List.

* * * * *

3. In § 704.206 by adding one sentence at the end of paragraph (a) and revising paragraph (b)(2) to read as follows:

§ 704.206 Persons who must report.

(a) * * * Persons who are exempt from reporting under § 704.210 are also exempt from the trade name reporting requirements of § 704.208.

(b) * * *

(2) "I" means each person who imported the substance for commercial purposes. For the purposes of this subpart, importers will not be required to report unless the symbol "I" is used in the chemical substance matrix in § 704.225.

4. In § 704.208 by redesignating paragraph (b) as paragraph (c) and by adding the new paragraph (b) to read as follows:

§ 704.208 Distribution of substances under a trade name.

* * * * *

(b) A person who believes that they are unable to report for their customer(s) under paragraph (a)(2) of this section and that compliance with both the options identified in paragraph (a)(1) and (a)(3) of this section both would result, directly or indirectly, in the disclosure of confidential business information (CBI) concerning the substance, need not comply with the provisions in paragraph (a) of this section provided the person notifies EPA in writing. The notification to EPA must include the identity of the person distributing the substance, the chemical name and CAS Number of the substance as listed in § 704.225(a), the trade name(s) under which the substance is distributed, and the total aggregate quantity of the substance purchased by the customers for whom they are unable to report during the respondent's reporting year. In addition, the person submitting the notification must provide detailed written responses to the following questions to substantiate their confidentiality claim. The responses should be as specific as possible, with examples as appropriate. Failure to submit responses to any of these substantiation questions along with the notification constitutes waiver of the confidentiality claim. The notification must be postmarked no later than 1 day after the effective date of the final rule listing the substance in subpart D of this part. Finally, the person submitting the confidentiality claim must follow the procedures at § 704.219.

(1) Explain how compliance with § 704.208 (a)(1) and (a)(3) will result in disclosure of CBI and identify which specific information constitutes CBI.

(2) Is your company asserting this confidentiality claim on its own behalf? If the answer is no, please provide the name, address and telephone number of the entity on whose behalf you are asserting the claim.

(3) For what period of time do you assert your claim(s) of confidentiality? If the claim is to extend until a certain event or point in time, please indicate that event or time period. Explain why such information should remain confidential until such point.

(4) Has the information that you are claiming as confidential been submitted to any other governmental agency, or to EPA at any other time? Identify the agency to which the information was submitted and provide the date and circumstances of the submission. Was the submission accompanied by a claim of confidentiality? If yes, attach a copy of the documentation reflecting the confidentiality claim.

(5) Briefly describe any physical or procedural restrictions within your company relating to the use and storage of the information you are claiming as CBI.

(6) If anyone outside your company has access to any of the information claimed as CBI, describe the measures taken to protect the confidentiality of the information. For example, state whether such persons are restricted by confidentiality agreement(s). If there are confidentiality agreements, describe the content of the agreement(s) which protect such information.

(7) Does the information claimed as confidential appear or is it referred to in any of the following:

(i) Advertising or promotional material for the chemical substance or the resulting end product.

(ii) Material safety data sheets or other similar materials (such as technical data sheets) for the substance or resulting

end product (include copies of this information as it appears when accompanying the substance and/or product at the time of transfer or sale).

(iii) Professional or trade publications.

(iv) Any other media or publications available to the public or to your competitors.

(v) If you answered yes to any of the above, indicate where the information appears, include copies, and explain why it should nonetheless be treated as confidential.

(8) Has EPA, another federal or State agency, or court made any confidentiality determination regarding information associated with this substance? If so, provide copies of such determinations.

(9) Describe the substantial harmful effects that would result to your competitive position if the information is made available to the public. In your answer, explain the causal relationship between disclosure and any resulting substantial harmful effects. Consider in your answer such constraints on your competitors' use of this information as capital and marketing cost, specialized technical expertise, or unusual processes and your competitors access to your customers. Address separately each piece of information claimed as CBI.

* * * * *

5. In § 704.210 by redesignating paragraph (c) as paragraph (e) and adding paragraphs (c) and (d) to read as follows:

§ 704.210 Exemptions.

* * * * *

(c) *Low volume.* A person who, during the coverage period designated in subpart D of this part for a specific substance, manufactures, imports, or processes for commercial purposes less than 10,000 lbs. (4,540 kilograms) of the substance listed in subpart D of this part, at a site, is exempt from the reporting and recordkeeping requirements of this subpart for that site.

(d) *De minimis concentration of a listed substance in a mixture.* A person who manufactures, imports, or processes for commercial purposes a mixture which contains a substance listed in subpart D of this part in a concentration which is below 1 percent of the mixture, or 0.1 percent of the mixture in the case of a listed substance which is designated as a carcinogen (a carcinogen is an agent that increases the incidence of cancer or related lesions, increases the number of cancers, or reduces latency) is exempt from the reporting and recordkeeping requirements of the subpart. This exemption applies only to the quantity of the listed substance present in the mixture. If the listed substance is also manufactured, imported, or processed other than as part of a mixture or in a mixture at higher concentrations, the person is required to comply with the reporting and recordkeeping requirements of this subpart, unless the person is otherwise exempt.

* * * * *

6. In § 704.212 by revising paragraph (b)(1) to read as follows:

§ 704.212 Questions selected.

* * * * *

(b) *Specifying the questions.* (1) The questions selected will always include Section 1 and question 10.02 in Section 10 of the CAIR reporting form. In addition, for ITC substances, EPA will require reporting on all or some of the following questions: 1.01, 1.02, (except those parts which refer to trade name (X/P) reporting), 1.06 thru 1.16, 2.04, 2.12, 2.17, 9.02, 10.05, and 10.06.

* * * * *

7. In § 704.217 by revising paragraph (b) and adding paragraph (c) to read as follows:

§ 704.217 How to submit completed CAIR reporting forms.

* * * * *

(b) Completed forms must be submitted by certified mail to: TSCA Document Processing Center (7407), Office of Pollution Prevention and Toxics, U.S. Environmental Protection Agency, Room L–100, 401 M St., SW., Washington, DC 20460. ATTENTION: CAIR Reporting or, for ITC substances: CAIR Reporting, ITC.

(c) Information under § 704.225(a)(2) showing why an ITC substance, mixture, or category of substances should be removed from subpart D should be sent by certified mail to the above address and labeled: ATTENTION: CAIR ITC, Removal.

8. In § 704.219 by revising paragraphs (c)(1), (d), and (e) and deleting paragraph (f) to read as follows:

§ 704.219 Confidential business information claims.

* * * * *

(c) * * *

(1) Submitters can claim information submitted on a reporting form as confidential by placing in the CBI box, which is adjacent to the question, the letter or letters that indicate the category of the information, as enumerated in paragraph (d) of this section, which is being claimed confidential.

* * * * *

(d) All claims of confidentiality for CAIR information fall into one of the following seven categories: Submitter identity = h, Substance identity = i, Volume manufactured, imported, or processed = j, Use information = k, Process information = l, Other information = m, and Financial information = n. Submitters who assert a CBI claim on the reporting form must mark the letters (h through n) that correspond to the categories of confidentiality for the information in the box adjacent to the question. Confidentiality claims for information on continuation sheets are asserted by placing the appropriate letters in the margin by the information claimed as confidential.

(e)(1) Submitters who assert CBI claims must substantiate each category of claims (except those categorized as process or financial pursuant to paragraph (d) of this section) by completing all applicable portions of the CBI substantiation form found in Appendix II of the CAIR reporting form.

(2) All claims of confidentiality required to be substantiated under this paragraph must be substantiated at the time the submitter asserts the claim (i.e., when the reporting form is submitted). Failure to provide substantiation of a claim at the time the submitter submits the reporting form constitutes waiver of the confidentiality claim, and the information may be disclosed to the public without further notice to the submitter.

9. In § 704.223 by revising paragraph (a) and adding paragraph (c) to read as follows:

§ 704.223 Reporting period.

(a) Reports must be received by EPA no later than 90 days after the effective date of the final rule listing the substance in § 704.225, except as described in paragraphs (b) and (c) of this section.

* * * * *

(c) Reports for chemical substances, mixtures, and categories of chemical substances or mixtures that have been recommended or designated by the ITC under TSCA section 4(e) for priority consideration must be received by EPA no later than 60 days after the effective date of the final rule listing the substance, mixture, or category of substances in § 704.225.

10. In § 704.225 by revising the title, redesignating paragraphs (a) and (b), as paragraphs (b) and (c), respectively and adding a new paragraph (a) to read as follows:

§ 704.225 Chemical substances matrix by CAS registry number.

(a)(1) Chemical substances, mixtures, and categories of chemical substances or

mixtures that have been recommended or designated by the ITC under TSCA section 4(e) for priority consideration will be added to § 704.225(b), effective 30 days after publication of an amendment listing those chemical substances, mixtures, and categories in the **Federal Register**. Chemical substances, mixtures, and categories of substances that have been recommended but not designated by the ITC for EPA response within 12 months, will be added by these expedited procedures only to the extent that the total number of recommended and designated substances, mixtures, and categories do not exceed 50 in any 1 year. Additional recommended substances, mixtures, and categories may be added after proposal, and consideration of ensuing public comment.

(2) Prior to the effective date of an amendment under paragraph (a)(1), the Assistant Administrator for Prevention, Pesticides and Toxic Substances may for good cause withdraw a chemical substance, mixture, or category of substances or mixtures from § 704.225(b). Persons who wish to request withdrawal of a substance, mixture, or category must submit information showing why the substance should be withdrawn from the CAIR to the address at § 704.217(b). Any such information must be received by EPA within 14 days of the date of publication of the amendment in the **Federal Register**.

* * * * *

[FR Doc. 93–29276 Filed 11–29–93; 8:45 am]
BILLING CODE 6560–50–F

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40 CFR Part 749

[OPPTS–61018; FRL–4627–5]

RIN 2070–AC57

Prohibition of Hexavalent Chromium-Based Water Treatment Chemicals in Comfort Cooling Towers; Proposed Amendment to Limit the Scope of the Export Notification Requirements

AGENCY: Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: EPA is proposing an amendment to 40 CFR part 749, subpart D, which prohibits, under section 6 of the Toxic Substances Control Act (TSCA), the use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and the distribution of such chemicals in commerce for use in comfort cooling towers. Today's proposed amendment would modify the regulatory text of 40 CFR 749.68 to clarify that only hexavalent chromium chemicals that can be used for water treatment are the subjects of these regulations, not other hexavalent chromium chemicals. This proposed change would limit the scope of export notifications currently required for hexavalent chromium chemicals under TSCA section 12(b) and § 749.68; no changes to the prohibitions or labeling requirements of the hexavalent chromium rule are intended by this proposed amendment. If amended as proposed today, § 749.68 would not trigger the section 12(b) export notification requirements for exports of hexavalent chromium products such as paints, dyes, pigments, coatings, and other products containing hexavalent chromium that cannot be used to treat water.

DATES: Written comments on this proposed rule must be received on or before December 30, 1993. A public hearing will be held on this proposed rule on January 13, 1994 at EPA Headquarters, Washington, DC only if a written request for such hearing is received by December 23, 1993. Requests to participate in the public hearing must be received by December 23, 1993. If a public hearing is requested, a separate **Federal Register** notice will be published. For further information regarding the public hearing, see Unit V of this preamble.

ADDRESSES: Written comments should be submitted in triplicate and identified by the docket number OPPTS–61018 to: the OPPT Document Receipt Office, (7407), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E–G99, 401 M St., SW., Washington, DC 20460. For information regarding the submission of comments containing confidential business information, see Unit VII of this preamble.

Requests to hold a public hearing must be submitted in writing identified with the docket number OPPTS–61018 to the address identified above. Requests to participate in the public hearing also must be submitted in writing identified with the docket number OPPTS–61018 to the address identified above. For further information regarding the public hearing, see Unit V of this preamble.

FOR FURTHER INFORMATION CONTACT: Geraldine Gardner, Office of Enforcement (2245), Environmental Protection Agency, 401 M St., SW., Washington, DC 20460, 202–260–8858.

SUPPLEMENTARY INFORMATION: EPA is proposing an amendment to 40 CFR part 749, subpart D, which prohibits the use of hexavalent chromium (Cr^{+6})-based water treatment chemicals in comfort cooling towers (CCTs) and the distribution of such chemicals in commerce for use in CCTs. Today's proposed amendment would modify 40 CFR 749.68 to clarify that only Cr^{+6} chemicals that can be used for water treatment are the subjects of these regulations, not other Cr^{+6} chemicals. This proposed change would limit the scope of TSCA section 12(b) export notifications currently required for Cr^{+6} chemicals.

I. Authority

EPA is proposing this amendment pursuant to TSCA sections 6 (15 U.S.C. 2605) and 12(b) (15 U.S.C. 2611(b)). Section 6 of TSCA authorizes EPA to impose regulatory controls if EPA finds that there is a reasonable basis to conclude that the manufacture, processing, distribution in commerce, use, or disposal of a chemical substance or mixture presents or will present an unreasonable risk of injury to human health or the environment. Under this authority, EPA issued a final rule in the **Federal Register** of January 3, 1990 (55 FR 222), that prohibits the use of Cr^{+6}-based water treatment chemicals in CCTs and the distribution in commerce of Cr^{+6}-based water treatment chemicals for use in CCTs (40 CFR 749, Subpart D). The rule also requires persons who distribute in commerce Cr^{+6}-based water treatment chemicals to label the containers of the chemicals.

Section 12(b) of TSCA requires that any person who exports or intends to export to a foreign country a chemical substance or mixture for which: (1) The submission of data is required under TSCA section 4 (15 U.S.C. 2603) or 5(b) (15 U.S.C. 2604(b)); (2) an order has been issued under section 5; (3) a rule has been proposed or promulgated under section 5 or 6 (15 U.S.C. 2605); or (4) relief has been granted under section 5 or 7 (15 U.S.C. 2606) to notify the Administrator of EPA of such exportation or intent to export. Upon receipt of such notification, section 12(b) of TSCA requires EPA to furnish the government of the importing country with: Notice of the availability of data received pursuant to action under section 4 or 5(b), or notice of such rule, order, action, or relief under section 5, 6, or 7. EPA promulgated a rule setting forth the export notification requirements of TSCA section 12(b) under 40 CFR part 707, Subpart D.

II. Background

Since the Cr^{+6} rule was promulgated under TSCA section 6, the section 12(b) export notification requirements are

triggered. Currently all Cr^{+6} chemicals are subject to section 12(b) because the term "Cr^{+6} chemicals" is presently defined in § 749.68(d)(10) as "any combination of chemical substances containing hexavalent chromium and includes hexavalent chromium-based water treatment chemicals." Thus, for example, the export of paint containing a Cr^{+6} chemical that cannot be used for water treatment would currently trigger the section 12(b) notification requirements.

In the preamble to the final Cr^{+6} rule, EPA stated that pursuant to TSCA section 12(b) and 40 CFR part 707, subpart D, persons who export or intend to export Cr^{+6} chemicals are required to notify EPA of those activities. EPA indicated that export notification would be required for all Cr^{+6} exports "because the substance subject to the rule is Cr^{+6}" and that it did not believe that the requirement should be narrowed, as a practical matter, because of the difficulty in determining the end use of the Cr^{+6} at the time of export. EPA also anticipated that the burden of the notification requirements that would be triggered by the export of Cr^{+6} for uses not regulated by the rule would be minimal.

After promulgation of the final Cr^{+6} rule, the Chrome Coalition filed a Petition for Review with the United States Court of Appeals, District of Columbia Circuit dated April 17, 1990 (*Chrome Coalition v. U.S. Environmental Protection Agency, No. 90-1138*). In the petition, the Chrome Coalition argued that because EPA failed to set forth its interpretation of TSCA section 12(b) in the proposed rule, the public was unable to comment on that interpretation. Additionally, they argued that EPA's interpretation of section 12(b) is too broad in the context of the Cr^{+6} rule, and imposes an unnecessary burden on any business that exports products containing Cr^{+6}, even when the products cannot be used in water treatment. As a part of the settlement reached with the Chrome Coalition on December 15, 1992, EPA agreed to propose a rule that addressed the concerns raised by the Coalition. The Settlement Agreement was filed with the United States Court of Appeals, District of Columbia Circuit on January 7, 1993.

In light of the Chrome Coalition's Petition, EPA reevaluated the need to require export notification for *all* Cr^{+6} chemicals. EPA believes that narrowing the scope of the export notification requirement may more appropriately meet the intent of the coverage of the Cr^{+6} rule, as well as more efficiently implement the requirements of TSCA section 12(b).

III. Summary of this Proposed Rule

EPA is proposing to amend the Cr^{+6} rule solely to limit the scope of the required section 12(b) notifications. This proposed rule would require notification under 40 CFR part 707, subpart D, for the export or intended export of Cr^{+6} chemicals that can be used for water treatment. EPA is proposing to list in § 749.68 certain specific Cr^{+6} chemicals that the Agency believes can be used to treat water. This is not meant to be a complete list, but rather examples. The export of any Cr^{+6} chemicals alone, or in combination with other chemical substances when the mixture can be used to treat water cooling systems, would trigger the TSCA section 12(b) export notification requirements.

Under existing language of the Cr^{+6} rule, TSCA section 12(b) export notification is required for all Cr^{+6} compounds, if they are exported alone, or in combination with other substances, even if the exported product cannot be used to treat water. With today's proposed amendment, EPA intends that exporters of paints, dyes, pigments, coatings, and other substances that contain Cr^{+6} in a form that cannot be used to treat water would not need to report the export to EPA under TSCA section 12(b). To accomplish this, EPA is proposing to amend the subject of the Cr^{+6} rule, certain definitions, and other appropriate provisions, as discussed below.

IV. Discussion of this Proposed Rule

Exports of certain Cr^{+6} chemicals (e.g., in such products as paints, dyes, and pigments) may now be triggering TSCA section 12(b) export notifications in more cases than are necessary to reasonably carry out TSCA section 12(b). EPA believes the current burden associated with exporters providing notification for exports of Cr^{+6} chemicals that cannot be used for water treatment to be substantial, and the benefits to countries receiving these notifications to be minimal. This proposed amendment would modify § 749.68 to clarify that only Cr^{+6} chemicals that can be used to treat water are the subjects of the Cr^{+6} rule. The Agency believes that this proposal would continue to protect human health and the environment against unreasonable risk of injury. The proposed amendment would not change the balance in the original rule, except to lessen the cost of compliance. Thus, this proposed change, EPA believes, would provide to importing countries information more reflective of EPA's concerns and would further Congress's intent that EPA administer TSCA "in a reasonable and prudent manner" (TSCA section 2(c); 15 U.S.C. 2601(c)).

This proposed change is supported by the TSCA section 6 Cr^{+6} rulemaking effort. The supporting documentation used by EPA to promulgate the Cr^{+6} rule focused on data regarding Cr^{+6} emissions from CCTs. A background document, "Background Information Document for Chromium Emissions from Comfort Cooling Towers" (EPA–450/3–87–010a) (OPPTS–61012), described EPA's regulatory alternatives and expected impacts. The information-gathering, analysis, and rulemaking were used solely to support a TSCA section 6 determination regarding Cr^{+6}-based water treatment chemicals and not all possible Cr^{+6} mixtures and products. Therefore, EPA believes that it is appropriate to revise the regulatory language to express more accurately the originally intended scope and coverage of the regulations.

The proposed regulatory language changes would clarify that the chemicals subject to the rule are any Cr^{+6} chemicals that can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water. As stated above, the intended effect of this change is to reduce the scope of the TSCA section 12(b) export notifications that are triggered by § 749.68.

Currently, the section heading of § 749.68 reads "Hexavalent chromium chemicals in comfort cooling towers." EPA believes that a more appropriate focus and heading for the rule would be "Hexavalent chromium-based water treatment chemicals in cooling systems," and is therefore proposing this change. Also, because the term "hexavalent chromium chemicals" in the current § 749.68(d)(10) would not be used in the rule as revised by this proposal, the definition would be dropped.

As discussed above, the TSCA section 12(b) export notification requirements are triggered by the export of certain chemical substances or mixtures that are the subjects of certain actions under TSCA, including Cr^{+6} because of the Cr^{+6} rule. Currently, § 749.68(a) states:

Chemical substance subject to this section. Hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588-01-9), is subject to this section.

Under today's proposal, § 749.68(a) would be amended to state:

Chemicals subject to this section. Hexavalent chromium-based water treatment

chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No.13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

By proposing this amendment in conjunction with the other changes discussed herein, especially those at § 749.68(d)(11) of the regulatory text, EPA intends that only Cr^{+6} compounds which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water, would be subject to the rule and thus the section 12(b) export notification requirements. The Agency would like to receive comments on the issue of whether certain Cr^{+6} compounds cannot be used to treat water.

Related to this proposed change, EPA is proposing to amend certain language in § 749.68(b), entitled "Purpose," and § 749.68(c), entitled "Applicability," to reflect the changed focus of the rule from Cr^{+6} to Cr^{+6}-based water treatment chemicals. Refer to the proposed regulatory text of § 749.68(b) and (c) for the revised language.

Additionally, EPA is proposing to add a chemical definition of Cr^{+6} in proposed § 749.68(d)(10) to clarify the revised subject of the rule. The proposed definition of Cr^{+6} would be "the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry."

Another key change being proposed is a new definition of "hexavalent chromium-based water treatment chemicals." The current definition in § 749.68(d)(11) states that "hexavalent chromium-based water treatment chemicals means any hexavalent chromium, alone or in combination with other water treatment chemicals, *used* to treat water." (emphasis added). The proposed amended definition would state that "hexavalent chromium-based water treatment chemicals means any hexavalent chromium which *can be used* to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water." (emphasis added). This change is intended to require export notification for the export of chemicals that can be used to treat water, whether or not they are actually used to treat water. EPA believes that exporters will not always know the actual end use of the Cr^{+6} product. However, EPA believes that exporters are likely to know potential end uses or how Cr^{+6} can be used. Additionally, to help exporters identify which Cr^{+6} compounds can be used, either alone, or in combination with other chemicals to treat water, the Agency is listing examples of such compounds. This change is not intended to have any effect on the current labeling requirements or the prohibitions of the Cr^{+6} rule; comment is solicited on whether any of the proposed changes would impact the labeling requirements or prohibitions of the rule.

So that the labeling requirements will not be affected by the changes being proposed today, EPA is proposing a change in the language of § 749.68(g). Currently, the labeling requirement at § 749.68(g) states:

Labeling. (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals after February 20, 1990, shall affix a label..."

As the current definition of "hexavalent chromium-based water treatment chemicals" in § 749.68(d)(11) is "any hexavalent chromium, alone or in combination with other water treatment chemicals, *used* to treat water," (emphasis added) labeling is required only for hexavalent chromium-based water treatment chemicals *used* to treat water. As stated above, the new definition of "hexavalent chromium-based water treatment chemicals" in proposed § 749.68(d)(11) would be "any hexavalent chromium which *can be used* to treat water..." (emphasis added). Without changing § 749.68(g), this new definition would have the effect of expanding the labeling requirements to require labeling of any hexavalent chromium, either alone or in combination with other chemicals, that can be used to treat water, where the mixture can be used to treat water. However, as the intent of this proposal is not to change the scope of the labeling requirements, the phrase "for use in cooling systems" is being added to § 749.68(g). This section would read:

Labeling. (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label...

EPA believes this change, along with the other proposed modifications, would have the effect of maintaining the current labeling requirements.

All of the proposed changes are meant to reduce the scope of TSCA section 12(b) export notifications without affecting the prohibitions and labeling requirements in the current rule. With today's proposed amendment, EPA intends that exporters of paints, dyes, pigments, coatings, and other compounds containing Cr^{+6} that cannot be used to treat water either alone or in combination with other chemicals, would not report the export to EPA under TSCA section 12(b). To accomplish this, EPA is proposing this amendment to the Cr^{+6} rule, certain definitions, and other appropriate provisions at § 749.68. EPA believes that today's proposed rule would reduce the burden on the regulated community in cases where export notification provides little or no benefit to importing countries.

Today's proposed rule is consistent with other Agency efforts to improve the utility of these notices for receiving governments, and to optimize the ability of EPA to process more efficiently export notices it receives annually and respond to requests from foreign governments for additional information on chemicals and export notices. For example, on July 21, 1981, in its notice on "Asbestos Export Notification," EPA clarified the reporting responsibilities of persons exporting asbestos or mixtures containing asbestos by defining which types of asbestos require export notification (46 FR 37608). As another example, on July 27, 1993 in its notice on "Export Notification Requirement; Change to Reporting Requirements; Final Rule" (58 FR 40238), EPA issued a rule that would change the current annual notification requirements for exporters of chemical substances and mixtures subject to TSCA section 4 test rules or consent orders to a one-time (instead of annual) export notification per chemical per country. (See also "Export Notification Requirement; Proposed Change to Reporting Requirements" (54 FR 29524, July 12, 1989)).

EPA believes that such actions, and the action proposed here, will enhance other governments' ability to thoughtfully consider notices received under TSCA section 12(b) and react appropriately to chemicals being imported, by focusing on a more limited number of notifications that reflect actual chemicals that EPA has identified as causing concerns. As EPA stated in the preamble to the final export notification rule, "[t]he intended focus of the notice to foreign governments is the chemical substance or mixture and what EPA has done or found out about it ...." (45 FR 82844, December 16, 1980).

Since the primary purpose of TSCA section 12(b) export notification is to alert and inform other governments of hazards that may be associated with a chemical substance or mixture, it is important that the export notification requirements are implemented in a manner that efficiently conveys EPA's concerns. EPA believes that today's proposed amendments would increase the efficiency of the operation of the section 12(b) requirement as applied to the Cr^{+6} rule, by eliminating the current export notifications associated with the export of Cr^{+6} chemicals that cannot be used to treat water.

V. Public Hearing

A public hearing will be held to receive oral comments on this proposed amendment only if such a hearing is requested in writing and the request is received by EPA at the location listed under the ADDRESSES unit of this preamble by December 23, 1993. Such a request must be received by this date to enable EPA to make appropriate arrangements for the hearing. Attendance at the hearing will be open to anyone though space may be limited. However, only persons who request an opportunity to speak will be allowed to present oral comments. Such a request must be made in writing to the address listed under the ADDRESSES unit of this preamble and must be received no later than December 23, 1993. The request must include a statement of the person's interest in this rulemaking, a brief outline of points to be addressed, an estimate of the time required, and for requests from an organization, a nonbinding list of persons to take part in the presentation. The EPA will make the hearing schedule publicly available and send it to each person who has requested an opportunity to present oral comments (See 40 CFR 750.6).

A verbatim transcript of the hearing and copies of any written statements will be placed in the public file and will be available for inspection and copying at the address in Unit IX of this preamble.

VI. Request for Comment

EPA is requesting comment on the proposals in this notice only to the extent that it would amend or change the existing regulations. EPA is not soliciting comments on provisions of the existing regulations that would not be changed by this proposal. Specifically, and notwithstanding the inclusion of some of the existing language of 40 CFR 749.68 in this proposal, the Agency will only entertain comments to the extent that they address the proposed changes in that section that affect section 12(b) notification (See 40 CFR 750.4).

VII. Confidentiality

Person may assert a claim of confidentiality for any information, including all or portions of written comments, submitted to EPA in connection with this proposed rule or in connection with the rule after it is promulgated. Any person who submits a comment subject to a claim of confidentiality must also submit a nonconfidential version. Any claim of confidentiality must accompany the information so claimed when it is submitted to EPA. Persons must mark information claimed as confidential by circling, bracketing, or underlining it, and marking it with "CONFIDENTIAL" or some other appropriate designation. EPA will disclose information subject to a claim of confidentiality only to the extent permitted by section 14 of TSCA and 40 CFR part 2, subpart B. If a person does not assert a claim of confidentiality for information at the time it is submitted to EPA, EPA may make the information public without further notice to that person.

VIII. Economic Impact

In the support document entitled *Economic Analysis of Proposed Amendments to the TSCA Section 6 Rule for Hexavalent Chromium*, dated May 1993, EPA has evaluated potential changes in costs to the Cr^{+6} rule that would be associated with these proposed amendments. The total savings to industry and EPA associated with the proposed amendment are approximately $5,400 to $16,300 per year. EPA's complete economic analysis is available in the public record for this proposed rule (OPPTS–61018).

IX. Rulemaking Record

EPA has established a record for this rulemaking (docket number OPPTS–61018). The record includes basic information considered by EPA in developing this proposed rule. EPA will supplement the record with all written comments and additional information as it is received. The record now includes the following:

(1) "Prohibitions of Hexavalent Chromium Chemicals in Comfort Cooling Towers; Final Rule", 55 FR 222, January 3, 1990.

(2) Chrome Coalition. re: Petition - *Chrome Coalition v. United States Environmental Protection Agency*, No. 90–1138, April 17, 1990.

(3) Chrome Coalition. re: Settlement Agreement No. 90–1138, December 15, 1992.

(4) "Asbestos Export Notification." 46 FR 37608, July 21, 1981.

(5) "Export Notification Requirements; Proposed Change to Reporting Requirements." 54 FR 29524, July 12, 1989.

(6) "Chemical Imports and Exports; Notification of Export" 45 FR 82844, December 16, 1980.

(7) U.S. EPA OPPTS, EETD. *Economic Analysis of Proposed Amendments to the TSCA Section 6 Rule for Hexavalent Chromium*, May 1993.

(8) "Export Notification Requirement; Change to Reporting Requirements; Final Rule." 58 FR 40238, July 27, 1993.

A public version of this record is available for public inspection and copying at the TSCA Nonconfidential Information Center (NCIC), also known as, TSCA Public Docket Office from 8 a.m. to 12 noon and 1 p.m. to 4 p.m., Monday through Friday, excluding legal holidays. TSCA NCIC is located at Rm E–G102, 401 M St., SW., Washington, DC 20460

X. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993), the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Pursuant to the terms of this Executive Order, EPA has determined that this proposed rule is not "significant" and is therefore not subject to OMB review.

B. Regulatory Flexibility Act

Under the Regulatory Flexibility Act (5 U.S.C. 605(b)), EPA has determined

that this proposed rule would not have a significant impact on a substantial number of small businesses. This rule would actually decrease the reporting burden for the small businesses that export Cr^{+6} chemicals that cannot be used for water treatment, which are currently subject to the reporting requirements of TSCA section 12(b). This proposed rule would not add any economic burden to small businesses.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, Subpart D under the provisions of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), and has assigned OMB control number 2060–0193 to that collection activity. In addition, OMB has also approved the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, Subpart D under the provisions of the Paperwork Reduction Act, and has assigned OMB control number 2070–0030 to that activity.

The changes in this proposed rule are not expected to impact the information collection requirements contained in the Cr^{+6} Rule at 40 CFR part 749, Subpart D, and EPA does not expect to change the burden estimates approved by OMB under OMB control number 2060–0193. However, since the proposed rule amends the applicability of the information collection requirements contained in the Export Notification Rule at 40 CFR part 707, Subpart D, EPA expects to change the burden estimates approved under OMB control number 2070–0030, and will submit an information correction worksheet with the final rule.

The proposed rule would reduce the number of export notices required from the public by approximately 237 submissions per year. Public reporting burden for the collection of information under 40 CFR Part 707, "Chemical Imports and Exports", is estimated to average .5 to 1.5 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. Total public reporting burden is expected to decrease as a result of this proposed rule by approximately 119 to 356 hours per year.

Send comments regarding the burden estimate or any other aspect of the collection of information under OMB control number 2070–0030 to Chief, Information Policy Branch, PM–223, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, Washington, DC 20503, marked "Attention: Desk Officer for EPA." The final rule will respond to any OMB or public comments on the information collection requirements contained in this proposal.

List of Subjects in 40 CFR Part 749

Environmental protection, Chemicals, Chromium, Cooling systems, Cooling towers, Export notification, Hazardous substances, Hexavalent chromium-based water treatment chemicals, Imports, Labeling, Recordkeeping and reporting requirements.

Dated: November 18, 1993.

Carol M. Browner,

Administrator.

Therefore, it is proposed that 40 CFR part 749 be amended to read as follows:

PART 749—[AMENDED]

1. The authority citation for part 749, would continue to read as follows:

Authority: 15 U.S.C. 2605 and 2607.

2. In § 749.68, by revising the section heading and paragraphs (a), (b), (c), (d)(10), (d)(11), and (g)(1) to read as follows:

§ 749.68 Hexavalent chromium-based water treatment chemicals in cooling systems.

(a) *Chemicals subject to this section.* Hexavalent chromium–based water treatment chemicals that contain hexavalent chromium, usually in the form of sodium dichromate (CAS No. 10588–01–9), are subject to this section. Other examples of hexavalent chromium compounds that can be used to treat water are: Chromic acid (CAS No. 7738–94–5), chromium trioxide (CAS No. 1333–83–0), dichromic acid (CAS No. 13530–68–2), potassium chromate (CAS No. 7789–00–6), potassium dichromate (CAS No. 7778–50–9), sodium chromate (CAS No. 7775–11–3), zinc chromate (CAS No. 13530–65–9), zinc chromate hydroxide (CAS No. 153936–94–6), zinc dichromate (CAS No. 14018–95–2), and zinc potassium chromate (CAS No. 11103–86–9).

(b) *Purpose.* The purpose of this section is to impose certain requirements on activities involving hexavalent chromium-based water treatment chemicals to prevent unreasonable risks associated with human exposure to air emissions of hexavalent chromium from comfort cooling towers.

(c) *Applicability.* This section is applicable to use of hexavalent chromium-based water treatment chemicals in comfort cooling towers and to distribution in commerce of hexavalent chromium-based water treatment chemicals for use in cooling systems.

(d) * * *

(10) *Hexavalent chromium* means the oxidation state of chromium with an oxidation number of +6; a coordination number of 4 and tetrahedral geometry.

(11) *Hexavalent chromium-based water treatment chemicals* means any chemical containing hexavalent chromium which can be used to treat water, either alone or in combination with other chemicals, where the mixture can be used to treat water.

* * * * *

(g) *Labeling.* (1) Each person who distributes in commerce hexavalent chromium-based water treatment chemicals for use in cooling systems after February 20, 1990, shall affix a label or keep affixed an existing label in accordance with this paragraph, to each container of the chemicals. The label shall consist of the following language:

WARNING: This product contains hexavalent chromium. Inhalation of hexavalent chromium air emissions increases the risk of lung cancer. Federal Law prohibits use of this substance in comfort cooling towers, which are towers that are open water recirculation devices and that are dedicated exclusively to, and are an integral part of, heating, ventilation, and air conditioning or refrigeration systems.

* * * * *

[FR Doc. 93–29277 Filed 11–29–93; 8:45 am]
BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–277, RM–8324]

Radio Broadcasting Services; Warrior, AL

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rulemaking filed on behalf of North Jefferson Broadcasting Company, Inc., permittee of Station WLBI(FM), Channel 254A, Warrior, Alabama, seeking the substitution of Channel 254C3 for Channel 254A and modification of its permit accordingly to specify operation on the higher powered channel. Coordinates for this proposal are 33–53–04 and 86–52–01.

Petitioner's modification proposal complies with the provisions of

§ 1.420(g) of the Commission's Rules. Therefore, we will not accept competing expressions of interest in the use of Channel 254C3 at Warrior, or require the petitioner to demonstrate the availability of an additional equivalent class channel.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Richard J. Hayes, Esq., 13809 Black Meadow Road, Spotsylvania, VA 22553.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rulemaking, MM Docket No. 93–277, adopted October 29, 1993, and released November 17, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rulemaking is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29251 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 93–254, DA 93–1425]
[Docket No. 93–254, DA 93–1425]

Radio Broadcast Services, Limitations on Commercial Time on Television Broadcast Stations

AGENCY: Federal Communications Commission.

ACTION: Proposed rule. extension of comment and reply commenter periods.

SUMMARY: This action, in response to a request indicating good cause to extend the reply comment period filed by Silver King Communications, Inc., extends the deadline for filing comments and reply comments in the Notice of Inquiry in the above-cited docket. The Notice solicited comments on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. The Commission adopted the Notice on its own motion. The deadline for comments was originally November 29, 1993, and is extended until December 20, 1993. The deadline for reply comments was originally December 14, 1993, and is extended until January 5, 1994.

DATES: Comments are now due by December 20, 1993, and reply comments are now due by January 5, 1994.

ADDRESSES: Federal Communications Commission, 1919 M Street NW., Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: Paul R. Gordon, Mass Media Bureau, Video Services Division, (202) 632–6357.

SUPPLEMENTARY INFORMATION:

Order

Adopted: November 22, 1993
Released: November 22, 1993.

Comment Date: December 20, 1993.
Reply Comment Date: January 5, 1994.
By the Chief, Mass Media Bureau.

1. This action extends the deadline for filing reply comments in response to the Notice of Inquiry in MM Docket No. 93–254 8 FCC Rcd 7277 (1993), in which the Commission seeks comment on whether the public interest would be served by establishing limits on the amount of commercial matter broadcast by television stations. The Commission adopted the Notice on its own motion. The deadline for comments was originally November 29, 1993, and the deadline for reply comments was originally December 14, 1993.

2. Silver King Communications, Inc. (Silver King) requests a three-week extension of the comment and reply comment periods, in order to address adequately the issues raised in the Notice. Silver King states that it has commissioned several studies for submission in the records of this proceeding, but that they cannot be completed until the first two weeks of December. Thus, Silver King asserts that the extension of time will permit it to evaluate the results of the studies and incorporate them into its comments.

3. In light of the foregoing, the Bureau finds that good cause exists for an extension. Grant of the request will provide the Commission a more substantial record upon which to base its findings. Therefore, pursuant to 47 CFR 0.283, the deadline for filing comments in this proceeding is extended to December 20, 1993, and the deadline for filing reply comments is extended until January 5, 1994.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 93–29316 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

49 CFR Part 23

[Docket 64j; Notice 93–22]

RIN 2105–AB99

Participation by Disadvantaged Business Enterprises in Airport Concessions

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of Comment Period.

SUMMARY: The Department is extending the comment period on its notice of proposed rulemaking to amend its disadvantaged business enterprise (DBE) regulation with respect to airport concessions. The NPRM proposed changes in the provisions of the Department's DBE rule to allow the counting of new forms of DBE participation toward airport sponsors' overall goals. The extension is in response to a request from the Airports Council International-North America.

DATES: Comments are requested by December 14, 1993. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 64j, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to

5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Irene H. Mields, Airport and Environmental Law Division (AGC–601), Office of the Chief Counsel (202–267–3199); or David S. Micklin, Office of Civil Rights (ACR–4) (202–267–3270); Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591.

SUPPLEMENTARY INFORMATION: On October 6, 1993, the Department of Transportation published a notice of proposed rulemaking (NPRM) to amend its disadvantaged business enterprise (DBE) rule with respect to airport concessions (58 FR 52050). The proposed rule would allow airport sponsors to count new forms of DBE participation toward the overall goals of a DBE concession plan required by existing regulations. These new forms would include purchases from DBEs of goods and services used in the operation of a concession, as well as management contracts and subcontracts with DBEs. The comment period is scheduled to end November 22, 1993.

The Airports Council International-North America (ACI), an organization representing 135 U.S. airports that the proposed regulation would affect, has requested that the comment period be extended through December 14, 1993. The reason for the request was that ACI needs additional time to coordinate the comments it is receiving from its members and to complete analysis of the effects of the rule on its members. The Department believes that the information ACI, as a representative of major airports affected by the rule, intends to provide concerning the effects of the proposal is important to its work toward a final rule. For this reason, the Department will grant the request and extend the comment period through December 14, 1993. As is typically the case with DOT rulemakings, late-filed comments will be considered to the extent practicable.

Issued this 17th day of November, 1993 at Washington, DC.

Stephen H. Kaplan,

General Counsel.

[FR Doc. 93–29258 Filed 11–24–93; 1:35 pm]

BILLING CODE 4910–62–U

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14 CFR Part 382

49 CFR Part 27

[Docket 49113; Notice 93–23]

RIN 2105–AB60 and AB62

Nondiscrimination on the Basis of Handicap in Programs and Activities Receiving or Benefiting From Federal Financial Assistance; Nondiscrimination on the Basis of Handicap in Air Travel

AGENCY: Department of Transportation, Office of the Secretary.

ACTION: Extension of Comment Period.

SUMMARY: The Department is extending the comment period on its notice of proposed rulemaking (NPRM) to amend its rules implementing the Air Carrier Access Act of 1986 (ACAA) and section 504 of the Rehabilitation Act of 1973. The NPRM proposed requirements concerning lifts for small commuter aircraft, airport accessibility, and communicable illnesses. The extension is in response to a request from a group representing individuals with disabilities for additional time to review the proposed rule and formulate comments.

DATES: Comments are requested by January 7, 1994. Late-filed comments will be considered to the extent practicable.

ADDRESSES: Comments should be sent, preferably in triplicate, to Docket Clerk, Docket No. 49113, Department of Transportation, 400 7th Street, SW., room 4107, Washington, DC 20590. Comments will be available for inspection at this address from 9 a.m. to 5:30 p.m., Monday through Friday. Commenters who wish the receipt of their comments to be acknowledged should include a stamped, self-addressed postcard with their comments. The Docket Clerk will date-stamp the postcard and mail it back to the commenter.

FOR FURTHER INFORMATION CONTACT: Robert C. Ashby, Deputy Assistant General Counsel for Regulation and Enforcement, Department of Transportation, 400 7th Street, SW., room 10424, Washington, DC 20590. (202) 366–9306 (voice); (202) 755–7687 (TDD).

SUPPLEMENTARY INFORMATION: On September 10, 1993, the Department of Transportation published a notice of proposed rulemaking (NPRM) to amend its rules implementing section 504 of the Rehabilitation Act of 1973 and the Air Carrier Access Act of 1986 (ACAA) (58 FR 47681). The NPRM proposed that airports and commuter airlines would have to work together to ensure the availability of boarding lifts for small commuter aircraft. It also proposed to harmonize requirements in ACAA, section 504, and Americans with Disabilities Act rules affecting the accessibility of airport facilities. It proposed changes to the ACAA regulatory provision concerning communicable illnesses. Finally, it asked for comment on whether the Department should, in the future, propose additional regulatory action concerning the availability of oxygen, the availability of certain seat locations on the request of persons with disabilities, and the transportation of certain kinds of powered wheelchairs.

The Department has received a request from the Paralyzed Veterans of America (PVA) to extend the comment period 30 days. PVA said that the reason for the extension was to complete the assembling of technical and other information and to provide analysis of the information for the Department's docket. Because such information would be useful to the Department, and because PVA is an active representative of the views of persons with disabilities in air transportation accessibility matters, the Department believes that it is appropriate to grant this request. We will extend the comment period through January 7, 1994. As is typically the case with DOT rulemakings, late-filed comments will be considered to the extent practicable.

Issued this 17th day of November 1993 at Washington, DC.

Stephen H. Kaplan,

General Counsel.

[FR Doc. 93–29260 Filed 11–24–93; 12:35 pm]

BILLING CODE 4910–62–U

Notices

Federal Register
Vol. 58, No. 228
Tuesday, November 30, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

ADMINISTRATIVE CONFERENCE OF THE UNITED STATES

Notice of Public Meetings

SUMMARY: Pursuant to the Federal Advisory Committee Act (Pub. L. No. 92–463), notice is hereby given of meetings of the Assembly of the Administrative Conference of the United States.

DATES: Thursday, December 9, 1993, 1 p.m.-5 p.m., and Friday, December 10, 1993, 9 a.m.–12 p.m.

ADDRESSES: Amphitheatre of the Office of Thrift Supervision, Second Floor, 1700 G Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Renee Barnow, 202–254–7020.

SUPPLEMENTARY INFORMATION: The Assembly of the Administrative Conference of the United States, which makes recommendations to administrative agencies, to the President, Congress, and the Judicial Conference of the United States regarding the efficiency, adequacy, and fairness of the administrative procedures used by Federal agencies in carrying out their programs, will meet in Plenary Session to consider, not necessarily in the order stated, proposed recommendations on the following subjects:

1. Improving the Environment for Agency Rulemaking;
2. The Use of Audited Self-Regulation as a Regulatory Technique;
3. Procedures for Regulation of Pesticides.

In addition to these items, the Conference's Committee on Governmental Processes will report on its consideration of the right to consult with counsel in agency investigations. Also on the agenda are a presentation by the Conference's Model Rules Working Group and a presentation of an 18-minute video on Government use of alternative dispute resolution, produced jointly by the Administrative Conference and the Federal Mediation and Conciliation Service.

Plenary sessions are open to the public. Further information on the meeting, including copies of proposed recommendations, may be obtained from the Office of the Chairman, 2120 L Street, NW., suite 500, Washington, DC 20037, telephone (202) 254–7020.

Dated: November 23, 1993.

Jeffrey S. Lubbers,

Research Director.

[FR Doc. 93–29334 Filed 11–29–93; 8:45 am]

BILLING CODE 6110–01–W

DEPARTMENT OF COMMERCE

International Trade Administration

[A–588–020]

Titanium Sponge From Japan; Preliminary Results of Antidumping Duty Administrative Review and Intent To Revoke Order in Part

AGENCY: International Trade Administration, Import Administration, Department of Commerce.

ACTION: Notice of preliminary results of antidumping duty administrative review and intent to revoke order in part.

SUMMARY: In response to a timely request for review by the respondent, Showa Denko K.K. (Showa), the Department of Commerce (the Department) is conducting an administrative review of the antidumping duty order on titanium sponge from Japan. The review covers one manufacturer/exporter of this merchandise to the United States and the period November 1, 1991 through October 31, 1992. We preliminarily determine the dumping margin for Showa during this period to be zero. In addition, because we have reason to believe that Showa has three consecutive years of sales at not less than fair value, and it is not likely that Showa will sell the subject merchandise at less than fair value in the future, the Department intends to revoke the antidumping duty order with respect to Showa. We invite interested parties to comment on these preliminary results.

EFFECTIVE DATE: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Cameron Cardozo or Maria MacKay, Office of Countervailing Compliance, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue NW., Washington, DC 20230; telephone: (202) 482–2786.

SUPPLEMENTARY INFORMATION:

Background

On November 5, 1992, the Department published in the **Federal Register** a notice of "Opportunity to Request Administrative Review" (57 FR 52,758) of the antidumping duty order on titanium sponge from Japan for the period November 1, 1991 through October 31, 1992. On November 25, 1992, one manufacturer/exporter, Showa, requested an administrative review for the period November 1, 1991 through October 31, 1992. We initiated the review on December 29, 1992 (57 FR 61,873). A timely request for revocation of the antidumping duty order in part, accompanied by the certification and agreement required by 19 CFR 353.25(b)(1) and (2), was submitted by Showa. The Department is now conducting this administrative review in accordance with section 751(a) of the Tariff Act of 1930, as amended (the Act).

Scope of Review

Imports covered by the review are shipments of unwrought titanium sponge. Titanium sponge is a porous, brittle metal which has a high strength-to-weight ratio and is highly ductile. It is an intermediate product used to produce titanium ingots, slabs, billets, plates, and sheets. During the review period, such merchandise was classified under subheading 8108.10.50.10 of the Harmonized Tariff Schedule (HTS). The HTS number is provided for convenience and customs purposes. The written description remains dispositive.

The review covers one manufacturer/exporter to the United States of the subject merchandise, Showa, for the period November 1, 1991 through October 31, 1992.

United States Price

In calculating United States price, the Department used purchase price, as defined in section 772(b) of the Act. All subject merchandise sold by Showa for export to the U.S. market was sold to an unrelated trading company in Japan prior to its importation into the United States. The terms of sale were packed FOB warehouse and, thus, the Japanese consumption tax was the only

adjustment required to obtain the United States price.

Foreign Market Value

In calculating foreign market value (FMV), the Department used constructed value, as defined in section 773(e) of the Act. Home market prices were compared to the cost of production to determine whether sufficient quantities of such or similar merchandise were sold in the home market at or above the cost of production to provide a basis for comparison. The Department uses constructed value as FMV, pursuant to 19 CFR 353.51(b), when home market sales made at prices below the cost of production constitute more than 90 percent of home market sales of such or similar merchandise. Since more than 90 percent of Showa's home market sales during the review period were below the cost of production and were made over an extended period of time and at prices which would not permit recovery of all costs within a reasonable period in the normal course of trade, all U.S. sales were compared with constructed value.

Constructed value consisted of the sum of the costs of materials, fabrication, general selling and administrative expenses, profit, and export packing. The Department relied on the submitted data, except in the case where it appeared that the costs were not appropriately quantified or valued. We adjusted the submitted general and administrative expenses (G&A) to allocate parent company (Showa) G&A expenses according to the ratio of the parent's equity ownership in Showa Titanium to the parent's total equity. Because the actual profit was less than the statutory minimum of eight percent of the sum of general expenses and cost of manufacture, we added the statutory minimum amount in accordance with section 773(e)(1)(B)(ii) of the Act.

We made circumstance-of-sale adjustments under § 353.56 of the Department's regulations, where applicable, for differences in credit and packing expenses. In addition, we added U.S. indirect selling expenses to the adjusted constructed value capped at home market commissions.

Preliminary Results of the Review

As a result of this review, we preliminarily determine the dumping margin to be:

Manufacturer/exporter	Time period	Margin (percent)
Showa Denko K.K .	11/1/91–10/31/92	Zero (0).

The Department intends to revoke the antidumping duty order with respect to Showa, upon publication of the final determination pursuant to 19 CFR 353.25(a)(2), as it has preliminarily determined that the requirements for revocation in part have been met. Showa has certified, and the Department has determined pursuant to 19 CFR 353.25(a)(2)(i) that, including the present period of review, Showa has not sold subject merchandise at less than foreign market value for a period of three consecutive years, covering the period November 1, 1989 through October 31, 1992. (In addition to this notice, see, final results of administrative reviews at 57 FR 9688, and 58 FR 18202). Further, due to the absence of sales at less than foreign market value for a period of three consecutive years, and the lack of any indication to the contrary, the Department has determined that it is not likely that Showa will sell subject merchandise in the future at less than foreign market value pursuant to 19 CFR 353.25(a)(2)(ii). Finally, pursuant to 19 CFR 353.25(a)(2)(iii), Showa has agreed in writing to immediate reinstatement of the order, as long as any producer or reseller is subject to the order, if the Department concludes that Showa has sold subject merchandise at less than foreign market value. As required by § 353.25(c)(2)(ii) of the Department's regulations, the Department conducted a verification of all factual information submitted by the firm eligible for revocation.

The Department shall determine, and the Customs Service shall assess, antidumping duties on all appropriate entries. Individual differences between United States price and foreign market value may vary from the percentage stated above. Upon completion of this administrative review, the Department will issue appraisement instructions directly to the Customs Service.

Furthermore, the following deposit requirements will be effective for all shipments of the subject merchandise entered, or withdrawn from warehouse, for consumption on or after the publication date of the final results of this administrative review, as provided by section 751(a)(1) of the Act:

(1) The cash deposit rate for the reviewed company, in the event the order is not revoked in part, will be that established in the final results of this administrative review;

(2) For previously reviewed or investigated companies not listed above, the cash deposit rate will continue to be the company-specific rate published for the most recent period;

(3) If the exporter is not a firm covered in this review, a prior review, or the original less-than-fair-value investigation, but the manufacturer is such a firm, the cash deposit rate will be the rate established for the most recent period for the manufacturer of the merchandise.

The cash deposit rate for all other manufacturers or exporters will be 28.25 percent. On May 25, 1993, the Court of International Trade (CIT) in *Floral Trade Council* v. *United States*, Slip Op. 93–79, and *Federal-Mogul Corporation* v. *United States*, Slip Op. 93–83, decided that once an "all others" rate is established for a company, it can only be changed through an administrative review. The Department has determined that in order to implement these decisions, it is appropriate to reinstate the original "all others" rate from the less-than-fair-value (LTFV) investigation (or that rate as amended for correction of clerical errors or as a result of litigation) in proceedings governed by antidumping duty orders for the purposes of establishing cash deposits in all current and future administrative reviews. In proceedings governed by antidumping findings, unless we are able to ascertain the "all others" rate from the Treasury LTFV investigation, the Department has determined that it is appropriate to adopt the "new shipper" rate established in the first final results of administrative review published by the Department (or that rate as amended for correction of clerical error or as a result of litigation) as the "all others" rate for the purposes of establishing cash deposits in all current and future administrative reviews.

Because this proceeding is governed by an antidumping duty order, the "all others" rate for the purposes of this review will be 28.25 percent, the "all others" rate established in the final notice of LTFV investigation by the Department, as amended (50 FR 32459, August 12, 1985).

This notice also serves as a preliminary reminder to importers of their responsibility under 19 CFR 353.26 to file a certificate regarding the reimbursement of antidumping duties prior to liquidation of the relevant entries during this review period. Failure to comply with this requirement could result in the Secretary's presumption that reimbursement of antidumping duties occurred and the subsequent assessment of double antidumping duties.

Public Comment

Parties to the proceeding may request disclosure within five days of the date of publication of this notice in the **Federal Register**, and any interested party may request a hearing within 10 days of publication. Any hearing, if requested, will be held 44 days after the date of publication, or the first workday thereafter. Case briefs and/or written comments from interested parties may be submitted not later than 30 days after the date of publication. Rebuttal briefs and rebuttals to written comments, limited to issues raised in those comments, may be filed not later than 37 days after publication. The Department will publish a notice of final results of this administrative review, including an analysis of issues raised in any written comments.

This administrative review and notice are in accordance with section 751(a)(1) of the Act (19 U.S.C. 1675(a)(1)) and §§ 353.22 and 353.25(b) of the Department's regulations.

Dated: November 23, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93–29321 Filed 11–29–93; 8:45 am]

BILLING CODE 3510–DS–P

National Oceanic and Atmospheric Administration

[Docket No. 930363–3268]

Endangered and Threatened Species and Designation of Critical Habitat: Petition To Designate Critical Habitat for the Northern Right Whale

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Notion of determination.

SUMMARY: On September 14, 1993, NMFS received a petition from GreenWorld requesting that critical habitat for the northern right whale (*Eubalaena glacialis*) be designated by an emergency rule, that it include the Delaware/Chesapeake Bay area (sic), and that it include special protective rules. The petition was received September 14, 1993.

NMFS has denied the petition from GreenWorld Because it does not contain any substantial information indicating that the petitioned actions may be warranted or provide the information required by 50 CFR 424.14(c)(2)(i) and 424.20.

FOR FURTHER INFORMATION CONTACT: Robert C. Ziobro, Protected Species Management Division, Office of Protected Resources, National Marine Fisheries Service, 1315 East-West Highway, Silver Spring, Maryland 20910 (301–713–2323).

Dated: November 18, 1993.

Rolland A. Schmitten,

Assistant Administrator for Fisheries.

[FR Doc. 93–29177 Filed 11–29–93; 8:45 am]

BILLING CODE 3510–22–M

DEPARTMENT OF DEFENSE

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Title: Army Employer and Alumni Network (AEAN) Questionnaire
Type of request: New collection
Number of respondents: 6,000
Responses per respondent: 1
Annual responses: 6,000
Average burden per response: 30 minutes
Annual burden hours: 3,000
Needs and uses: The AEAN is an automated database containing 6,000 employers who have voluntarily signed up to accept resumes from separating soldiers, civilians and family members. The questionnaire issued annually, will enable the contractor to modify the AEAN to best meet the needs of the employers and the users.
Affected public: State or local governments; businesses or other for profit; Federal agencies or employees; non-profit institutions; and small businesses or organizations
Frequency: Annually
Respondent's obligation: Voluntary
OMB desk officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503.
DoD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, Virginia 22202–4302.

Dated: November 24, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29289 Filed 11–29–93; 8:45 am]

BILLING CODE 5000–04–M

Public Information Collection Requirement Submitted to OMB for Review

ACTION: Notice.

The Department of Defense has submitted to OMB for clearance, the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C., chapter 35).

Title and applicable form: USAF Museum System Volunteer Application; AF Form 3569
Type of request: New collection
Number of respondents: 500
Responses per respondent: 1
Annual responses: 500
Average burden per response: .16 hours
Annual Burden hours: 80
Needs and uses: The United States Air Force Museum, located at Wright-Patterson Air Force Base, Ohio, actively solicits volunteers to assist in all areas of the museum operation through use of AF Form 3569, "USAF Museum System Volunteer Application." The information collected hereby will be used by the Museum's manager of Volunteer Services to screen, select, and place members of the public wishing to volunteer time and service to the museum program.
Affected public: Individuals or households
Frequency: On occasion
Respondent's obligation: Required to obtain or retain a benefit.
OMB desk officer: Mr. Edward C. Springer. Written comments and recommendations on the proposed information collection should be sent to Mr. Springer at the Office of Management and Budget, Desk Officer for DoD, room 3235, New Executive Office Building, Washington, DC 20503
DOD clearance officer: Mr. William P. Pearce. Written requests for copies of the information collection proposal should be sent to Mr. Pearce, WHS/DIOR, 1215 Jefferson Davis Highway, suite 1204, Arlington, VA 22202–4302

Dated: November 24, 1993.

Patricia L. Toppings,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29285 Filed 11–29–93; 8:45 am]

BILLING CODE 5000–04–M

Department of the Air Force

USAF Scientific Advisory Board; Meeting

The USAF Scientific Advisory Board of the Joint Modeling and Simulation Systems Panel will meet on 16–17 Dec. 1993 from 8 a.m. to 5 p.m. at the Pentagon, VA.

The purpose of this meeting is to receive briefings, hold discussions and begin report writing on projects related to joint modeling simulation systems. This meeting will involve discussions of classified defense matters listed in section 552b(c) of title 5, United States Code, specifically subparagraph (1) thereof, and accordingly will be closed to the public.

For further information, contact the Scientific Advisory Board Secretariat at (703) 697–4648.

Patsy J. Conner,

Air Force Federal Register, Liaison Officer.

[FR Doc. 93–29310 Filed 11–29–93; 8:45 am]

BILLING CODE 3910–01–P

Intent To Grant Exclusive Patent License

Pursuant to the provisions of part 404 of title 37, Code of Federal Regulations, which implements Public Law 96–517, the Department of the Air Force announces its intention to grant Semiconductor Laser International Corporation, 2625 Daren Drive, Endicott, NY 13760, a corporation of the State of New York, an exclusive license under United States Patent Application Serial No. 08/113,374 filed 26 August 1993 in the name of Keith R. Evans for "Desorption Mass Spectrometic Control of Substrate Temperature During Molecular Beam Epitaxy", and/or United States Patent Application Serial No. 08/113,375 filed 26 August 1993 in the name of Keith R. Evans for "Desorption Mass Spectrometric Control of Alloy Composition During Molecular Beam Epitaxy."

The license described above will be granted unless an objection thereto, together with a request for an opportunity to be heard, if desired, is received in writing by the addressee set forth below within sixty (60) days from the date of publication of this Notice. Copies of the patent applications may be obtained, on request, from the same addressee.

All communications concerning this Notice should be sent to: Mr. Donald J. Singer, Chief, Patents Division, Air Force Legal Services Agency, AFLSA/JACP, 1501 Wilson Blvd., room 805, Arlington, VA 22209–2403, Telephone No. (703) 696–9050.

Patsy J. Conner,

Air Force Federal Register Liaison Officer.

[FR Doc. 93–29286 Filed 11–29–93; 8:45 am]

BILLING CODE 3910–01–M

DEPARTMENT OF EDUCATION

Proposed Information Collection Request

AGENCY: Department of Education.

ACTION: Notice of proposed information collection request.

SUMMARY: The Director, Information Resources Management Service, invites comments on the proposed information collection request as required by the Paperwork Reduction Act of 1980.

DATES: An emergency review has been requested in accordance with the Act, since allowing for the normal review period would adversely affect the public interest. Approval by the Office of Management and Budget (OMB) has been requested by November 30, 1993.

ADDRESSES: Written comments should be addressed to the Office of Information and Regulatory Affairs, Attention: Dan Chenok, Desk Officer: Department of Education, Office of Management and Budget, 726 Jackson Place, NW., room 3208, New Executive Office Building, Washington, D.C. 20503. Requests for copies of the proposed information collection request should be addressed to Cary Green, Department of Education, 7th & D Streets, SW., room 4682, Regional Office Building 3, Washington, DC. 20202–4651.

FOR FURTHER INFORMATION CONTACT: Cary Green (202) 401–3200. Individuals who use a telecommunications device for the deaf (TDD) may call the Federal Information Relay Service (FIRS) at 1–800–877–8339 between 8 a.m. and 8 p.m., Eastern time, Monday through Friday.

SUPPLEMENTARY INFORMATION: Section 3517 of the Paperwork Reduction Act of 1980 (44 U.S.C. chapter 3517) requires that the Director of OMB provide interested Federal agencies and persons an early opportunity to comment on information collection requests. OMB may amend or waive the requirement for public consultation to the extent that public participation in the approval process would defeat the purpose of the information collection, violate State of Federal law, or substantially interfere with any agency's ability to perform its statutory obligations. The Acting Director, Office of Information Resources Management, publishes this notice with attached proposed information collection requests prior to submission to OMB. For each proposed information collection request, grouped by office, this notice contains the following information: (1) Type of review requested, e.g., new, revision, extension, existing, or reinstatement; (2) Title; (3) Frequency of collection; (4) The affected public; (5) Reporting and/or Recordkeeping burden; and (6) Abstract. Because an emergency review is requested, the additional information to be requested in this collection is included in the section on "Additional Information" in this notice.

Dated: November 26, 1993.

Cary Green,

Director Information Resources Management Service.

Office of Postsecondary Education

Type of Review: Emergency

Title: Focus Groups on the Internal Revenue Service Involvement in Collecting Student Loans and Income Contingent Loan Repayment

Abstract: The conference report to the Omnibus Budget Reconciliation Act of 1993 includes a requirement that the Secretaries of Education and Treasury jointly develop a plan for the involvement of the Internal Revenue Service in the collecting of student loans. ED proposes to satisfy this requirement by holding focus groups around the country. As a result of the discussions held with students, borrowers and financial aid advisors, ED will submit a report to Congress.

Additional Information: The U.S. Department of Education has requested an emergency review and approval from the Office of Management and Budget. The Department's requested approval date is November 30, 1993. The Department has requested this date in order to submit a joint report, with Treasury, to Congress by February, 1994.

Frequency: One time

Affected Public: Individuals or households; Federal agencies or employees

Reporting Burden: Responses: 90; Burden Hours: 180

Recordkeeping Burden: Recordkeepers: 0; Burden Hours: 0

[FR Doc. 93–29402 Filed 11–29–93; 8:45 am]

BILLING CODE 4000–01–P

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Project No. 10359–005 Washington]

Snoqualmie River Hydro; Availability of Environmental Assessment

November 23, 1993.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's regulations, 18 CFR part 380 (Order No. 486, 52 FR 47910), the Office of Hydropower Licensing (OHL) has reviewed the application for the rerouting of the transmission line for the Youngs Creek Project. Hydro West Group, Inc. (licensee) filed an application to change the design of their transmission line as approved in their license. The line has not yet been constructed. The current approved line would be 6.1 miles long, overhead, and rated at 12.55 kilovolts (Kv). The proposed new line would be 6.1 miles long, underground, and 34.5 Kv. The proposed new line follows a different route.

The staff of OHL's Division of Project Compliance and Administration has prepared an Environmental Assessment (EA) for the proposed action. In the EA, the staff concludes that the licensee's proposals would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Reference and Information Center, room 3308, of the Commission's Offices at 941 North Capitol Street NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29203 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–01095T]

State of Kansas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 23, 1993.

Take notice that on November 15, 1993, the State Corporation Commission of the State of Kansas (Kansas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Mississippian Chat Formation, underlying a portion of Barber County, Kansas qualifies as a tight formation under section 107(b) of the Natural Gas Policy Act of 1978. The designated area covers approximately 712 acres described as follows:

Township 34 South, Range 13 West

Sec. 32: E/2;
Sec. 33: W/2.

Township 35 South, Range 13 West

Sec. 4: Lots 1 and 2.

The notice of determination also contains Kansas' findings that the referenced portion of the Mississippian Chat Formation meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29204 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. JD94–01071T Texas–155]

State of Texas; NGPA Notice of Determination by Jurisdictional Agency Designating Tight Formation

November 23, 1993.

Take notice that on November 12, 1993, the Railroad Commission of Texas (Texas) submitted the above-referenced notice of determination pursuant to § 271.703(c)(3) of the Commission's regulations, that the Middle Wilcox Formation, underlying certain portions of DeWitt County, Texas, qualifies as a tight formation under section 107(b) of the National Gas Policy Act of 1978. The designated area is in Railroad Commission District No. 2 and consists of 80 acres in portions of the following surveys:

Jose Bartollo Survey, Abstract 2
John Troy Survey, Abstract 466

Take notice of determination also contains Texas' findings that the referenced portion of the Middle Wilcox meets the requirements of the Commission's regulations set forth in 18 CFR part 271.

The application for determination is available for inspection, except for material which is confidential under 18 CFR 275.206, at the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426. Persons objecting to the determination may file a protest, in accordance with 18 CFR 275.203 and 275.204, within 20 days after the date this notice is issued by the Commission.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29205 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94–55–000]

Algonquin Gas Transmission Co.; Proposed Changes in FERC Gas Tariff

November 23, 1993.

Take notice that on November 18, 1993, Algonquin Gas Transmission Company (Algonquin), tendered for filing as part of its FERC Gas Tariff, Fourth Revised Volume No. 1, the following tariff sheets, with a proposed effective date of December 18, 1993:

First Revised Sheet No. 20 Original Sheet No. 94A

Algonquin states that the purpose of this filing is to provide for the recovery of an additional charge from an upstream supplier through a true-up of the net balance in Algonquin's Account No. 191. Algonquin requests that the Commission grant any waiver of its regulations to the extent necessary in order to permit this application to take effect as requested.

Algonquin states that copies of this tariff filing were mailed to all customers of Algonquin and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29206 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP94-53-000]

Arkla Energy Resources Co.; Waiver of Tariff Provisions

November 23, 1993.

Take notice that on November 18, 1993, Arkla Energy Resources Company (AER) tendered for filing a request for waiver of the imposition of the scheduling charges provided for in section 5.5(e) of the General Terms and Conditions of its FERC Gas Tariff for the months of September and October, 1993.

AER is seeking this waiver as an accommodation to its customers in light of the administrative and operational transition brought on by the implementation of its Order No. 636 restructuring. AER also requests that the Commission waive § 154.22 of the Commission's regulations to permit the requested waiver to become effective on September 1, 1993.

AER states that copies of the filing have been served on all of AER's jurisdictional customers and interested state utility commission.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29207 Filed 11-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. ER93-465-000 and ER93-922-000]

Florida Power & Light Company; Filing

November 23, 1993.

Take notice that on November 19, 1993, Florida Power & Light Company (FPL) tendered for filing an application for authorization to withdraw parts of the rate schedules filed in Docket Nos. ER93-465-000 and ER93-922-000, which are now consolidated for purposes of hearing and decision. FPL requests permission to withdraw the portions of the transmission service tariffs and transmission service agreements, which assess charges for "reactive power" produced by FPL's generating units in order to provide transmission services.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before December 3, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29255 Filed 11-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. TM94-2-11-000 and RP94-54-000]

Koch Gateway Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 23, 1993.

Take notice that on November 18, 1993, Koch Gateway Pipeline Company (KGPC) tendered for filing as part of its FERC Gas Tariff, Fifth Revised Volume No. 1, the following tariff sheets to be effective January 1, 1994:

First Revised Sheet No. 1
First Revised Sheet No. 20
First Revised Sheet No. 21
First Revised Sheet No. 22
First Revised Sheet No. 23
First Revised Sheet No. 24
First Revised Sheet No. 2901
Original Sheet No. 3200
Original Sheet No. 3201

KGPC states that the above referenced tariff sheets reflect KGPC's rejoining GRI and the applicable 1994 Commission approved GRI Reservation and Volumetric surcharges.

KGPC also states that the tariff sheets are being mailed to all of KGPC's customers and interested state commissions.

Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with 18 CFR 385.214 and 385.211 of the Commission's Rules and Regulations. All such motions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29208 Filed 11-29-93; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RS92-45-009]

Natural Gas Pipeline Co. of America; Filing of Revised Order No. 636 Compliance Rates

November 23, 1993.

Take notice that on November 19, 1993, Natural Gas Pipeline Company of America (Natural) filed the revised Tariff sheets listed on Exhibit A attached hereto. Natural has requested an effective date of December 1, 1993 for these revised Tariff sheets.

Natural states that the purpose of the filing is to submit updated rates to reflect revised service elections by converting sales customers. All of the Tariff sheets in this filing were also filed on November 19, 1993 in Docket No. RP93-36-006. This rate change is submitted pursuant to Section 2.3 (g) of the General Terms and Conditions of Natural's FERC Gas Tariff, Sixth Revised Volume No. 1, as submitted on October 27, 1993 in the captioned docket in compliance with the "Order on Compliance Filing and Rehearing" issued herein on September 17, 1993, 64 FERC ¶ 61,295.

Natural states that copies of its filing were served on parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve the make protestants parties to the proceeding. Copies of this filing are

on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29256 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. RP93–36–006]

Natural Gas Pipeline Company of America; Filing To Implement Order No. 636 Compliance Rates and for Waivers

November 23, 1993.

Take notice that on November 19, 1993, Natural Gas Pipeline Company of America (Natural) filed in the captioned docket a motion to implement Order No. 636 compliance rates herein and for related waivers. Specifically, Natural has requested that the revised tariff sheets listed on Exhibit A to the filing, be made effective in this docket on December 1, 1993.[1]

Natural states that the purpose of the filing is to implement in this general rate case proceeding the compliance rates filed in Natural's restructuring proceeding in Docket No. RS92–45. Natural states that his motion and request for waivers is consistent with the Commission's "Order on Compliance Filing and Rehearing" issued in Docket No. RS94–45 on September 17, 1993, 64 FERC ¶ 61,295.

Natural states that copies of its filing were served on parties to this proceeding, jurisdictional customers and interested state regulatory agencies.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with Rule 211 of the Commission's Rules of Practice and Procedure, 18 CFR 385.211. All such protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29209 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

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[1] As explained in the filing, Natural states that the Commission has authorized certain of these tariff sheets to become effective August 1, 1993.

[Docket No. RP94–52–000]

Northwest Alaskan Pipeline Co.; Proposed Changes in FERC Gas Tariff

November 23, 1993.

Take notice that on November 17, 1993, Northwest Alaskan Pipeline Company (Northwest Alaskan), tendered for filing as part of its FERC Gas Tariff, Original Volume No. 2, Thirty-Third Revised Sheet No. 5, with a proposed effective date of January 1, 1994:

Northwest Alaskan states that it is submitting Thirty-Third Revised Sheet No. 5 reflecting an increase in total demand charges for Canadian gas purchased by Northwest Alaskan from Pan-Alberta Gas Ltd. (Pan-Alberta) and resold to Northwest Alaskan's two U.S. purchasers: Pan-Alberta Gas (U.S.) Inc. (Pan-Alberta (U.S.)) under Rate Schedules X–1, X–2, and X–3, and Pacific Interstate Transmission Company (PIT) under Rate Schedule X–4.

Northwest Alaskan states that it is submitting Thirty-Third Revised Sheet No. 5 pursuant to the provisions of the amended purchase agreements between Northwest Alaskan and, Pan-Alberta (U.S.), and PIT, and pursuant to Rate Schedules X–1, X–2, X–3, and X–4, which provide for Northwest Alaskan to file 45 days prior to the commencement of the next demand charge period (January 1, 1994 through June 30, 1994) the demand charges and demand charge adjustments which Northwest Alaskan will charge during the period.

Northwest Alaskan states that Rate Schedule X–1 reflects the assignment of Northern Natural Gas Company's contract to PAG–US as filed under Docket Nos. CP78–123–032, RP94–25–000 and RP94–25–001 approved by the FERC in its order dated November 3, 1993.

Northwest Alaskan states that a copy of this filing has been served on Northwest Alaskan's customers.

Any person desiring to be heard or to protest said filing should file a petition to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure. All such petitions or protests should be filed on or before December 1, 1993. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a petition to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29210 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP93–69–002]

Petal Gas Storage Co.; Tariff Filing

November 23, 1993.

Take notice that on November 17, 1993, Petal Gas Storage Company (Petal), a Delaware corporation with an office at 1301 McKinney, Houston, Texas 77010, filed in Docket No. CP93–69–000 its initial FERC Gas Tariff, Original Volume No. 1. Petal received Commission authorization under section 7(c) of the Natural Gas Act and Part 284 of the Commission's Regulations to construct and operate an open access natural gas storage facility on August 4, 1993 (64 FERC ¶ 61,190).

Petal plans to offer interruptible storage service on or after December 17, 1993, with a firm storage service commencing on February 1, 1994. Petal is therefore proposing an effective date of December 18, 1993, for its FERC Gas Tariff.

Petal's FERC Gas Tariff, Original Volume No. 1, filed in this docket reflects the changes made to the pro forma tariff included in Petal's original certificate application to comply with the Commission's Order granting Petal its certificate. In addition to the changes required by the Commission, Petal made certain changes in order to clarify the tariff language or to address operational concerns.

Petal's FERC Gas Tariff offers firm storage service on Tennessee Gas Pipeline (Tennessee) with firm withdrawal and injection capability. However, customers desiring firm storage on Koch Gateway Pipeline (Koch Gateway) will only have firm withdrawal capability on Koch Gateway. Petal has petitioned the Commission for an amendment to its August 4, 1993 certificate in Docket No. CP93–69–001 to limit Petal's firm service on Koch Gateway to firm withdrawals only. Petal's Form of Service Request (Section 19 of the General Terms and Conditions of its FERC Gas Tariff) has been revised to reflect this limited service.

Any person desiring to be heard or to protest the subject filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street NE., Washington, DC 20426, in accordance with §§ 385.214 and 385.211 of the

Commission's Rules and Regulations. All such motions or protests should be filed within seven days of the date of this notice. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection in the public reference room.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29211 Filed 11–29–93; 8:45 am]

BILLING CODE 6717–01–M

Office of Arms Control and Nonproliferation

Proposed Subsequent Arrangement

Pursuant to section 131 of the Atomic Energy Act of 1954, as amended (42 U.S.C. 2160), notice is hereby given of proposed "subsequent arrangement", under the Additional Agreement for Cooperation between the Government of the United States of America and the European Atomic Energy Community (EURATOM) concerning Peaceful Uses of Atomic Energy, as amended, and the Agreement for Cooperation between the Government of the United States of America and the Government of Switzerland concerning Civil Uses of Atomic Energy, as amended.

The subsequent arrangement to be carried out under the above-mentioned agreements involve approval of the following retransfer: RTD/SD(EU)–70 for the transfer from Belgium to Switzerland of 0.022 grams of uranium-233 and 0.0000107 grams of plutonium-244 for determination of uranium and plutonium by mass spectrometry.

In accordance with section 131 of the Atomic Energy Act of 1954, as amended, it has been determined that this subsequent arrangement will not be inimical to the common defense and security.

This subsequent arrangement will take effect no sooner than fifteen days after the date of publication of this notice.

Issued in Washington, DC on November 24, 1993.

Edward T. Fei,

Acting Director, Office of Nonproliferation Policy, Office of Arms Control and Nonproliferation.

[FR Doc. 93–29330 Filed 11–29–93; 8:45 am]

BILLING CODE 6450–01–M

Office of Energy Research

Energy Research Financial Assistance Program Notice 94–05; Energy Biosciences

AGENCY: Department of Energy (DOE).

ACTION: Notice inviting grant preapplications.

SUMMARY: The Office of Basic Energy Sciences of the Office of Energy Research (ER), U.S. Department of Energy (DOE) announces its interest in receiving preapplications from potential applicants for research funding in the Energy Biosciences program area. The intent in asking for a preapplication is to save the time and effort of applicants in preparing and submitting a formal project application that may be inappropriate for the program. The preliminary screening of research ideas is aimed also at relieving some of the burden of the scientific community in reviewing an excessive number of research applications. The preapplication should consist of a two to three page concept paper about the research being contemplated within a potential formal application to the Energy Biosciences program. The concept paper should focus on the objectives of the planned research, its scientific goals and their significance, an outline of the approaches planned, and any other information that relates to the planned research. No budget information or biographical data need be included; nor is an institutional endorsement necessary. The preapplication gives DOE the opportunity to evaluate the technical suitability of submitting a formal application for support of research ideas. A response indicating the appropriateness of submitting a formal application will be sent from the Division of Energy Biosciences office in time to allow for an adequate preparation period for a formal application.

DATES: For timely consideration, all preapplications should be received by February 17, 1994. However, earlier submissions will be gladly accepted. A response to timely preapplications will be communicated by April 20, 1994. The deadline for receipt of formal applications is June 8, 1994.

ADDRESSES: Preapplications referencing Program Notice 94–05 should be forwarded to: U.S. Department of Energy, Office of Basic Energy Sciences, ER–17, Division of Energy Biosciences, Washington, DC 20585, Attn: Program Notice 94–05. The following address must be used when submitting preapplications by U.S. Postal Service Express, any commercial mail delivery service, or when handcarried by the applicant: U.S. Department of Energy, Division of Energy Biosciences, ER–17, 19901 Germantown Road, Germantown, MD 20874.

FOR FURTHER INFORMATION CONTACT: Ms. Pat Snyder, Division of Energy Biosciences, Office of Basic Energy Sciences, ER–17, Washington, DC 20585 (301) 903–2873.

SUPPLEMENTARY INFORMATION: Before preparing a formal application, potential applicants should submit a brief preapplication in accordance with 10 CFR 600.10 (d)(2), which consists of two to three pages of narrative describing research objectives. These will be reviewed relative to the scope and the research needs of the Energy Biosciences program. The Energy Biosciences program has the mission of generating fundamental biological information about plants and non-medical related microorganisms that can provide support for future energy related biotechnologies. The objective is to pursue basic biochemical, genetic and physiological investigations that may contribute towards providing alternate fuels, petroleum replacement products, energy conservation measures as well as other technologies related to DOE programs. Areas of interest include bioenergetic systems, including photosynthesis; control of plant growth and development, including metabolic, genetic, and hormonal and ambient factor regulation, metabolic diversity, stress physiology and adaptation; genetic transmission and expression; plant-microbial interactions, plant cell wall structure and function; lignocellulose degradative mechanisms; mechanisms of fermentations, genetics of neglected microorganisms, energetics and membrane phenomena; thermophily (molecular basis of high temperature tolerance); microbial interactions; and one-carbon metabolism, which is the basis of biotransformations such as methanogenesis. The objective is to discern and understand basic mechanisms and principles. Funds are expected to be available for new grant awards in FY 1995. The magnitude of these funds available and the number of awards which can be made will depend on the availability of funds. The awards made during FY 1993 ranged from $60,000 to $115,000 per year, mostly for a three-year duration. The principal purpose in using preapplications at this time is to reduce the expenditure of time and effort of all parties. Information about development and submission of applications, eligibility,

limitations, evaluations and selection processes, and other policies and procedures may be found in the Guide and 10 CFR part 605. The Application Guide for the Office of Energy Research Financial Assistance Program for formal submissions and copies of 10 CFR part 605 are available from U.S. Department of Energy, Office of Basic Energy Sciences, ER–17, Division of Energy Biosciences, Washington, DC 20585. Telephone requests may be made by calling (301) 903–2873. Instructions for preparation of an application are included in the application guide. The Catalog of Federal Domestic Assistance number for this program is 81.049.

Issued in Washington, DC, on November 19, 1993.

D. D. Mayhew,

Director, Office of Management, Office of Energy Research.

[FR Doc. 93–29332 Filed 11–29–93; 8:45 am]

BILLING CODE 6450–01–P

Office of Fossil Energy

[Docket Nos. FE C&E 93–26 and 93–27—Certification Notice—126]

Filing Certifications of Compliance: Coal Capability of New Electric Powerplant; Powerplant and Industrial Fuel Use Act

AGENCY: Office of Fossil Energy, Department of Energy.

ACTION: Notice of filing.

SUMMARY: Orange Cogeneration Limited Partnership (C&E 93–26) and Polk Power Partners, L.P. (C&E 93–27) have submitted coal capability self-certifications pursuant to section 201 of the Powerplant and Industrial Fuel Use Act of 1978, as amended.

ADDRESSES: Copies of self-certification filings are available for public inspection, upon request, in the Office of Fuels Programs, Fossil Energy, room 3F–056, FE–52, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585.

FOR FURTHER INFORMATION CONTACT: Ellen Russell at (202) 586–9624.

SUPPLEMENTARY INFORMATION: Title II of the Powerplant and Industrial Fuel Use Act of 1978 (FUA), as amended (42 U.S.C. 8301 et seq.), provides that no new baseload electric powerplant may be constructed or operated without the capability to use coal or another alternate fuel as a primary energy source. In order to meet the requirement of coal capability, the owner or operator of such facilities proposing to use natural gas or petroleum as its primary energy source shall certify, pursuant to FUA section 201(d), to the Secretary of Energy prior to construction, or prior to operation as a baseload powerplant, that such powerplant has the capability to use coal or another alternate fuel. Such certification establishes compliance with section 201(a) on the day it is filed with the Secretary. The Secretary is required to publish a notice in the **Federal Register** that a certification has been filed. The following owners/operators of proposed new baseload powerplants have filed self-certifications in accordance with section 201(d).

Owner: Orange Cogeneration Limited Partnership (C&E 93–26)
Operator: (The applicant has not yet selected an operator)
Location: Near the city of Bartow, Florida
Plant configuration: Combined cycle, topping cycle cogeneration
Capacity: 103 megawatts
Fuel: Natural gas
Purchasing utilities: Florida Power Corporation and Tampa Electric Company
Expected in-service date: June of 1995

Owner: Polk Power Partners, L.P. (C&E 96–27)
Operator: CSW Energy, Inc.
Location: Near the city of Bartow, Florida
Plant Configuration: Combined cycle, topping cycle cogeneration
Capacity: 118.3 megawatts
Fuel: Natural gas
Purchasing utilities: Florida Power Corporation and Tampa Electric Company
Expected in-service date: October 31, 1994

Issued in Washington, DC., November 22, 1993.

Anthony J. Como,

Director, Office of Coal & Electricity, Office of Fuels Programs, Office of Fossil Energy.

[FR Doc. 93–29331 Filed 11–29–93; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[OPPTS–62135; FRL–4742–5]

Accredited Training Programs Under The Asbestos Hazard Emergency Response Act (AHERA)

AGENCY: Environmental Protection Agency (EPA).

ACTION: National Directory of AHERA Accredited Courses (NDAAC); notice of availability.

SUMMARY: Effective November 30, 1993, the EPA is announcing the availability of a new edition of its National Directory of AHERA Accredited Courses (NDAAC). This publication, updated quarterly, provides information to the public about training providers and courses approved for accreditation purposes pursuant to the Asbestos Hazard Emergency Response Act (AHERA). As a nationwide listing of approved asbestos training programs and courses, the NDAAC has replaced the similar listing which was formerly published quarterly by EPA in the **Federal Register**. The November 30, 1993, directory, which supersedes the version released on August 31, 1993, may be ordered through the NDAAC Clearinghouse along with a variety of related reports.

ADDRESSES: Parties interested in receiving a brochure which describes the national directory and provides ordering information should contact: EPA AHERA - NDAAC, c/o VISTA Computer Services, 3rd Floor, 6430 Rockledge Drive, Bethesda, MD 20817, Telephone: 1–800–462–6706.

FOR FURTHER INFORMATION CONTACT: Susan Hazen, Director, Environmental Assistance Division (7408), Office of Pollution Prevention and Toxics, Environmental Protection Agency, Rm. E543B, 401 M St., SW, Washington, DC 20460, (202) 554–1404, TDD: (202) 554–0551.

SUPPLEMENTARY INFORMATION: Pursuant to AHERA, as amended by the Asbestos School Hazard Abatement Reauthorization Act (ASHARA), contractors who prepare management plans for schools, inspect for asbestos in schools or public and commercial buildings, or design or conduct response actions with respect to friable asbestos-containing materials in schools or public and commercial buildings, are required to obtain accreditation by completing prescribed training requirements. EPA therefore maintains a current national listing of AHERA-accredited courses and approved training providers so that this information will be readily available to assist the public in accessing these training programs and obtaining the necessary accreditation. The information is also maintained so that the Agency and approved state accreditation and licensing programs will have a reliable means of identifying and verifying the approval status of training courses and organizations.

Previously, EPA had published this listing in the **Federal Register** on a quarterly basis. The last **Federal Register** listing required by law was

published on August 30, 1991. EPA recognized the need to continue publication of this document even though the legislative mandate had expired. The NDAAC fulfills the public need for this information while at the same time, it reduces EPA cost and improves the service's capabilities.

List of Subjects

Environmental protection.

Dated: November 18, 1993.

Mark A. Greenwood,

Director, Office of Pollution Prevention and Toxics.

[FR Doc. 93–29279 Filed 11–29–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

Licensee Order To Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Licensee	City/state	MM Docket No.
Palmetto Communications Co., Licensee of WDIX (AM).	Yadkinville, NC ..	93–289

(Regarding the silent status of Station WDIX(AM))

Pursuant to section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Palmetto Communications Company has been directed to show cause why the license for Station WDIX(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Palmetto Communications Company has the capability and intent to expeditiously resume broadcast operations of WDIX(AM) consistent with the Commission's Rules.

2. To determine whether Palmetto Communications Company has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues whether Palmetto Communications Company is qualified to be and remain the licensee of Station WDIX(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street, NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29182 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Service Division, Mass Media Bureau, has before him the following matter:

Applicant	City/state	MM docket No.
Quadras, Inc., Licensee of KDEW(AM).	Dewitt, AR ...	93–296

(Regarding the silent status of Station KDEW(AM)

Pursuant to section 312(a)(3) and (4) of the Communications Act of 1934, as amended, Quadras, Inc. has been directed to show cause why the license for Station KDEW(AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Quadras, Inc. has the capability and intent to expeditiously resume broadcast operations of KDEW(AM) consistent with the Commission's Rules.

2. To determine whether Quadras, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. To determine, in light of the evidence adduced pursuant to the forgoing issues, whether Quadras, Inc. is qualified to be and remain the licensee of Station KDEW(AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street NW., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29181 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

Licensee Order To Show Cause

The Chief, Audio Service Division, mass Media Bureau, has before him the following matter:

Licensee	City/State	MM Docket No.
Turner County Broadcasting, Inc., Licensee of WNNQ (AM).	Ashburn, GA .	93–288

(Regarding the silent status of Station WNNQ (AM))

Pursuant to section 312(a) (3) and (4) of the Communications Act of 1934, as amended, Turner County Broadcasting, Inc. has been directed to show cause why the license for Station WNNQ (AM) should not be revoked, at a proceeding in which the above matter has been designated for hearing concerning the following issues:

1. To determine whether Turner County Broadcasting, Inc.has the capability and intent to expeditiously resume broadcast operations of WNNQ (AM) consistent with the Commission's Rules.

2. To determine whether Turner County Broadcasting, Inc. has violated §§ 73.1740 and/or 73.1750 of the Commission's Rules.

3. to determine, in light of the evidence adduced pursuant to the forgoing issues, whether Turner County Broadcasting, Inc. is qualified to be and remain the licensee of Station WNNQ (AM).

A copy of the complete Show Cause Order and HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 320), 1919 M Street N.W., Washington, DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcript Service, 2100 M Street NW., Suite 140, Washington, DC 20037 (telephone 202–857–3800).

Federal Communications Commission.

Stuart B. Bedell,

Assistant Chief, Audio Services Division, Mass Media Bureau.

[FR Doc. 93–29180 Filed 11–29–93; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement(s) Filed; Asia America Eastbound Rate Agreement et al.

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 800 North Capitol Street NW., 9th Floor. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 202–010776–089.
Title: Asia North America Eastbound Rate Agreement.
Parties:

American President Line, Ltd.
Hapag-Lloyd, AG
Kawasaki Kisen Kaisha
A.P. Moller-Maersk Line
Mitsui O.S.K. Lines, Ltd.
Neptune Orient Line, Ltd.
Nippon Yusen Kaisha Line
Orient Overseas Container Line, Inc.
Sea-Land Service, Inc.

Synopsis: The proposed amendment revises Article 7.4 of the Agreement by deleting the 45 day notice period required prior to the effectiveness of a party's membership in the sub-continent section, and makes such membership effective upon adding a party to the membership in the sub-continent section.

Agreement No.: 203–011437.
Title: NSCSA/UASC Agreement.
Parties:

The National Shipping Company of Saudi Arabia United Arab Shipping Company (S.A.G.)

Synopsis: The proposed Agreement authorizes the parties to charter, exchange or make space available to each other, discuss and agree upon terms and conditions pertaining to the interchange, lease, and sublease of containers and other equipment, and rationalize sailings in the trade between United States Atlantic and Gulf Coast ports and points on the one hand, and ports and points in the Middle East, Mediterranean, Indian Sub-Continent, Far East, and Canada on the other hand.

Agreement No.: 224–200811.
Title: Tampa Port Authority/G & C Stevedoring Company, Inc. Service Agreement.
Parties:

Tampa Port Authority ("Port")
G & C Stevedoring Company, Inc. ("G & C")

Synopsis: The proposed Agreement authorizes the Port to offer G & C an incentive rate for electrical service based on a minimum of 30 refrigerated containers per month.

By Order of the Federal Maritime Commission.

Dated: November 23, 1993.

Joseph C. Polking,
Secretary.

[FR Doc. 93–29202 Filed 11–29–93; 8:45 am]
BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

Five Flags Banks, Inc., et al.; Acquisition of Company Engaged in Permissible Nonbanking Activities

The organization listed in this notice has applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

The application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Comments regarding the application must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than December 23, 1993.

A. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Five Flags Banks, Inc., Pensacola, Florida; to retain Bank Data, Inc., Pensacola, Florida, and thereby engage in providing data processing and data transmission services pursuant to § 225.25(b)(7) of the Board's Regulation Y. The proposed activity will be conducted throughout the State of Florida.

Board of Governors of the Federal Reserve System, November 23, 1993.

Jennifer J. Johnson,
Associate Secretary of the Board.

[FR Doc. 93–29246 Filed 11–29–93; 8:45 am]
BILLING CODE 6210–01–F

National Penn Bancshares, Inc., et al.; Formations of; Acquisitions by; and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1842) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than December 23, 1993.

A. Federal Reserve Bank of Philadelphia (Thomas K. Desch, Vice President) 100 North 6th Street, Philadelphia, Pennsylvania 19105:

1. National Penn Bancshares, Inc., Boyertown, Pennsylvania; to acquire up to 21.4 percent of the voting shares of First State Bank, Wilmington, Delaware.

B. Federal Reserve Bank of Atlanta (Zane R. Kelley, Vice President) 104 Marietta Street, N.W., Atlanta, Georgia 30303:

1. Bank South Corporation, Atlanta, Georgia; to merge with The Chattahoochee Bancorp, Inc., Atlanta, Georgia, and thereby indirectly acquire The Chattahoochee Bank, Atlanta, Georgia.

2. Bank South Corporation, Atlanta, Georgia; to merge with Merchant Bank Corporation, Atlanta, Georgia, and thereby indirectly acquire The Merchant Bank of Atlanta, Atlanta, Georgia.

C. Federal Reserve Bank of Chicago (James A. Bluemle, Vice President) 230 South LaSalle Street, Chicago, Illinois 60690:

1. F & M Bancorporation, Inc., Kaukauna, Wisconsin, and F & M Merger Corporation, Kaukauna, Wisconsin; to merge with Pulaski Bancshares, Inc., Pulaski, Wisconsin, and thereby indirectly acquire Pulaski State Bank, Pulaski, Wisconsin.

2. Rudolph Bancshares, Inc., Rudolph, Wisconsin; to become a bank holding company by acquiring 100 percent of the voting shares of Farmers and Merchants Bank, Rudolph, Wisconsin.

D. Federal Reserve Bank of St. Louis (Randall C. Sumner, Vice President) 411 Locust Street, St. Louis, Missouri 63166:

1. Trans Financial Bancorp, Inc., Bowling Green, Kentucky; to acquire 100 percent of the voting shares of Kentucky Community Bancorp, Inc., Maysville, Kentucky, and thereby indirectly aquire Farmers Liberty Bank, Augusta, Kentucky; Peoples First Bank of Morehead, Morehead, Kentucky; and State National Bank of Maysville, Maysville, Kentucky.

E. Federal Reserve Bank of Minneapolis (James M. Lyon, Vice President) 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. Community First Bankshares, Inc., Fargo, North Dakota; to acquire 98.83 percent of the voting shares of Bank of Spooner, Spooner, Wisconsin.

F. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Laramie Bankshares, Laramie, Wyoming; to become a bank holding company by acquiring 100 percent of the voting shares of American National Bank, Laramie, Wyoming.

G. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. Southwestern Bancorp, Inc., Sanderson, Texas; to acquire 100 percent of the voting shares of Cross Plains Bankshares, Inc., Cross Plains, Texas, and thereby indirectly acquire Citizens State Bank, Cross Plains, Texas.

Board of Governors of the Federal Reserve System, November 23, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29247 Filed 11-29-93; 8:45 am]

BILLING CODE 6210-01-F

T R Financial Corp. Employee Stock Ownership Trust, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than December 20, 1993.

A. Federal Reserve Bank of New York (William L. Rutledge, Vice President) 33 Liberty Street, New York, New York 10045:

1. T R Financial Corp. Employee Stock Ownership Trust, Garden City, New York; to acquire 14.52 percent of the voting shares of T R Financial Corp., Garden City, New York, and thereby indirectly acquire Roosevelt Savings Bank, Garden City, New York.

B. Federal Reserve Bank of Kansas City (John E. Yorke, Senior Vice President) 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jimmy G. Hankins, Marietta, Oklahoma; to acquire an additional 6.0 percent of the voting shares of Bank of Love County, Marietta, Oklahoma, for a total of 28.53 percent.

C. Federal Reserve Bank of Dallas (Genie D. Short, Vice President) 2200 North Pearl Street, Dallas, Texas 75201-2272:

1. John H. and Cecilia C. Keck, Laredo, Texas; to acquire an additional 39.07 percent of the voting shares of Union Texas Bancorporation, Inc., Laredo, Texas, for a total of 54.17 percent, and thereby indirectly acquire Union National Bank of Laredo, Laredo, Texas.

Board of Governors of the Federal Reserve System, November 23, 1993.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29248 Filed 11-29-93; 8:45 am]

BILLING CODE 6210-01-F

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register**.

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN 110193 AND 111293

Name of acquiring person name of acquired person, name of acquired entity	PMN No.	Date terminated
Berkshire Hathaway Inc. Dexter Shoe Company, Dexter Shoe Company	94-0010	11/01/93
Mr. Sumner M. Redstone WMS Industries, Inc. WMS Industries, Inc.	94-0046	11/01/93
Physician Corporation of America Family Health Systems, Inc. Family Health Systems, Inc.	94-0054	11/01/93
AB Volvo Procordia Aktiebolag Branded Consumer Products	94-0082	11/01/93
Infinity Broadcasting Corporation Cook Inlet Region, Inc. Radio Stations WPGC AM/FM	94-0117	11/01/93
Infinity Broadcasting Corporation WCC Associates, L.P. Radio Stations WPGC AM/FM	94-0118	11/01/93
Citicorp, Hydro Environmental Service Limited Partnership, Hydro Environmental Services Limited Partnership	94-0127	11/01/93
Dominion Resources, Inc. H. Richard Fruehauf, Jr., HRF Antrim Limited Partnership,	94-0139	11/01/93
Golden Eagle Industries, Inc., National Gypsum Company, National Gypsum Company	94-0070	11/02/93
Gourmet Coffees of America, Inc., Chock Full O'Nuts Corporation, Hillside Coffee of California, Inc.	94-0079	11/02/93
Lafarge Coppee S. A., National Gypsum Company, National Gypsum Company	94-0083	11/02/93
President and Fellows of Harvard College Leo E. Zickler, Oxford Holding Corporation and Oxford Asset	94-0085	11/02/93
General Electric Company, Canadian Pacific Limited, Doubletree Hotels Corporation	94-0106	11/02/93
Industriforvaltnings AB Kinnevik, Millicom Incorporated, Millicom Incorporated	94-0134	11/02/93
Bain Capital Partners IV, L.P., Corporate Software Incorporated, Corporate Software Incorporated	94-0156	11/02/93
Peoples Telephone Company, Inc., Stiftung Hasler Werke, Ascom Communications, Inc.	94-0112	11/04/93
Merck & Co., Inc., Medco Containment Services, Inc., Medco Containment Services, Inc.	93-1492	11/05/93
Blockbuster Entertainment Corporation, Philips Electronics N.V., Super Club Retail Entertainment Corporation	94-0045	11/05/93
Kuhlman Corporation, Code, Hennessy & Simmons Limited Partnership, Coleman Holding, Inc.	94-0073	11/05/93
Hyundai Electronics Industries Co., Ltd., Maxtor Corporation, Maxtor Corporation	94-0113	11/05/93
Hyundai Heavy Industries, Co., Ltd., Maxtor Corporation, Maxtor Corporation	94-0114	11/05/93
Hyundai Corporation (a Korean company) Maxtor Corporation, Maxtor Corporation	94-0115	11/05/93
Hyundai Merchant Marine Co., Ltd., Maxtor Corporation, Maxtor Corporation	94-0116	11/05/93
Medaphis Corporation, CyCare Systems, Inc. CyCare Systems, Inc.	94-0187	11/05/93
BancTec, Inc., Advanced Computer Systems, Inc., Advanced Computer Systems, Inc.	94-0048	11/05/94
VF Corporation, H.H. Cutler Company, H.H. Cutler Company	94-0095	11/08/93
John J. Harnish, Skinner Corporation, Northern Commercial Company and Newco, Inc.	94-0109	11/08/93
Citcorp, Schlumberger Ltd., Dowell Schlumberger Inc., (Dowell Indust. Services Div.)	94-0129	11/08/93
ITT Corporation, Skandia Insurance Company Limited, American Skandia Life Reinsurance Corporation	94-0138	11/08/93
Pennzoil Company, Mobil, Corporation, Mobil Oil Exploration & Producing Southeast Inc.	94-0143	11/08/93
Mobil Corporation, Pennzoil Company, Pennzoil Exploration and Production Company	94-0144	11/08/93
Isaac Perlmutter, Bristol-Myers Squibb Company, Clairol Incorporated	94-0149	11/08/93
Marshall S. Cogan, Perfect Fit Voting Trsut, Perfect Fit Industries, Inc.	94-0151	11/08/93
Ronald O. Perelman, Guthy-Renker Corporation, Guythy-Renker Corporation	94-0152	11/08/93
Victor K. Kiam, II, Bristol-Myers Squibb Company, Clairol Incorporated	94-0153	11/08/93
Forest Oil Corporation, Atlantic Richfield Company, Atlantic Richfield Company	94-0154	11/08/93
Mr. Keith Rupert Murdoch, Combined Broadcasting, Inc., Combined Broadcasting of Philadelphia, Inc.	94-0159	11/08/93
Vintage Petroleum, Inc., Santa Fe Energy Resources, Inc., Santa Fe Energy Operating Partners, L.P.	94-0164	11/08/93
Mr. Michael Futerman, Carmel Trust (a Cayman Islands person), Auto Works Holdings, Inc.	94-0188	11/08/93
KP Oil, Inc., The British Petroleum Company p.l.c., BP Exploration & Oil Inc. & Service Station Holdings Inc	94-0104	11/08/93
Cyprus Minerals Company, Amax Inc., Amax Inc.	93-1274	11/09/93
Cyprus Minerals Company, Amax Gold Inc., Amax Gold Inc.	93-1275	11/09/93
Vintage Petroleum, Inc., The Prudential Insurance Company of America, Vintage/P Acquisition Limited Partnership	94-0171	11/10/93
Coltec Industries Inc., The Morgan Stanley Leveraged Equity Fund II, L.P., Coltec Holdings Inc.	94-0174	11/10/93
David I Margolis, Coltec Industries Inc., Coltec Industries Inc	94-0175	11/10/93
NationsBank Corporation, United Companies Financial Corporation, Foster Mortgage Corporation	94-0176	11/10/93
Morgan Stanley Group Inc., Coltec Industries Inc., Coltec Industries Inc.	94-0178	11/10/93
The B.F. Goodrich Company, Henry Barbanel, Sanncor Industries, Inc.	94-0179	11/10/93
Merisel, Inc., Computerland Corporation, Computerland Corporation	94-0170	11/12/93

FOR FURTHER INFORMATION CONTACT:

Sandra M. Peay

or

Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room 303, Washington, DC 20580, (202) 326–3100.

By Direction of The Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–29280 Filed 11–29–93; 8:45 am]

BILLING CODE 6750–01–M

[File No. 941 0008]

Tele-Communications, Inc., et al.; Proposed Consent Agreement With Analysis to Aid Public Comment

AGENCY: Federal Trade Commission.

ACTION: Proposed consent agreement.

SUMMARY: In settlement of alleged violations of Federal law prohibiting unfair acts and practices and unfair methods of competition, this consent agreement, accepted subject to final Commission approval, would require, among other things, two Colorado-based corporations to divest their ownership interests in QVC Network, Inc., and to adhere, until completion of the divestitures, to an interim agreement which prohibits the respondents from exercising any direction of or control over the management or operations of QVC or Paramount Communications, Inc., participating in any change in the composition of the management of QVC or Paramount, or exercising any voting rights or agreements pursuant to Liberty's ownership in QVC.

DATES: Comments must be received on or before January 31, 1994.

ADDRESSES: Comments should be directed to: FTC/Office of the Secretary,

room 159, 6th St. and Pa. Ave., NW., Washington, DC 20580.

FOR FURTHER INFORMATION CONTACT: Mary Lou Steptoe or Steven Newborn, FTC/H-374, Washington, DC 20580. (202) 326-2656 or 326-2682.

SUPPLEMENTARY INFORMATION: Pursuant to section 6(f) of the Federal Trade Commission Act, 38 Stat. 721, 15 U.S.C. 46 and § 2.34 of the Commission's Rules of Practice (16 CFR 2.34), notice is hereby given that the following consent agreement containing a consent order to cease and desist, having been filed with and accepted, subject to final approval, by the Commission, has been placed on the public record for a period of sixty (60) days. Public comment is invited. Such comments or views will be considered by the Commission and will be available for inspection and copying at its principal office in accordance with § 4.9(b)(6)(ii) of the Commission's Rules of Practice (16 CFR 4.9(b)(6)(ii)).

In the Matter of Tele-Communications, Inc., a corporation, and Liberty Media Corporation, a corporation.

Agreement Containing Consent Order

The Federal Trade Commission ("the Commission"), having initiated an investigation of the proposed acquisition of Paramount Communications, Inc., a corporation, by QVC Network, Inc., a corporation, and it now appearing that Tele-Communications, Inc., a corporation, and Liberty Media Corporation, a corporation, hereinafter sometimes referred to as proposed respondents, are willing to enter into an agreement containing an Order to divest existing interests in QVC Network, Inc., and to provide for certain other relief,

It is hereby agreed by and between Tele-Communications, Inc., by its duly authorized officer, and Liberty Media Corporation, by its duly authorized officer, and counsel for the Commission that:

1. Proposed respondent Tele-Communications, Inc. (hereafter "TCI"), is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 5619 DTC parkway, Englewood, Co 80111. TCI has proposed a business combination with Liberty Media Corporation.

2. Proposed respondent Liberty Media Corporation (hereafter "LMC") is a corporation organized, existing and doing business under and by virtue of the laws of the State of Delaware, with its principal office and place of business at 8101 East Prentice Avenue, suite 500, Englewood, CO 80111. LMC owns twenty-two and three-tenths percent of the voting securities of QVC Network, Inc.

3. TCI and LMC admit all the jurisdictional facts set forth in the draft of complaint, here attached.

4. TCI and LMC each waive:

a. Any further procedural steps;
b. The requirement that the Commission's decision contain a statement of findings of fact and conclusions of law;
c. All rights to seek judicial review or otherwise to challenge or contest the validity of the Order entered pursuant to this agreement; and
d. Any claim under the Equal Access to Justice Act.

5. This agreement shall not become a part of the public record of the proceeding unless and until it is accepted by the Commission. If this agreement is accepted by the Commission it, together with the draft of complaint contemplated thereby, will be placed on the public record for a period of sixty (60) days and information in respect thereto publicly released. The Commission thereafter may either withdraw its acceptance of this agreement and so notify TCI and LMC, in which event it will take such action as it may consider appropriate, or issue and serve its complaint (in such form as the circumstances may require) and decision, in disposition of the proceeding.

6. This agreement is for settlement purposes only and does not constitute an admission by TCI or LMC that the law has been violated as alleged in the draft of complaint here attached, or that the facts as alleged in the draft complaint, other than jurisdictional facts, are true.

7. This agreement contemplates that, if it is accepted by the Commission, and if such acceptance is not subsequently withdrawn by the Commission pursuant to the provisions of § 2.34 of the Commission's Rules, the Commission may, without further notice to TCI and LMC, (1) issue its complaint corresponding in form and substance with the draft of complaint here attached and its decision containing the following Order to divest and for other relief, and (2) make information public with respect thereto. When so entered, the Order shall have the same force and effect and may be altered, modified, or set aside in the same manner and within the same time provided by statute for other Orders. The Order shall become final upon service. Delivery by the U.S. Postal Service of the complaint and decision containing the agreed-to Order to TCI's counsel and to LMC's counsel, as set forth in this agreement, shall constitute service. TCI and LMC each waive any right they may have to any other manner of service. The complaint may be used in construing the terms of the Order, and no agreement, understanding, representation or interpretation not contained in the Order or the agreement may be used to vary or contradict the terms of the Order.

8. TCI and LMC have read the proposed complaint and Order contemplated hereby. TCI and LMC understand that once the Order has been issued, each will be required to file one or more compliance reports showing that they have fully complied with the Order. TCI and LMC further understand that they may be liable for civil penalties in the amount provided by law for each violation of the Order after it becomes final.

Order

I

As used in this Order, the following defintions shall apply:

(A) "TCI" means (1) Tele-Communications, Inc., and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Tele-Communications, Inc., controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(B) "LMC" means (1) Liberty Media Corporation, and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that Liberty Media Corporation, controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(C) "Respondents" means Tele-Communications, Inc. and Liberty Media Corporation.

(D) "Paramount" means (1) Paramount Communications, Inc., and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates, including USA Network, that Paramount Communications, Inc., controls, directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(E) "QVC" means (1) QVC Network, Inc., and its predecessors, successors and assigns, subsidiaries, and divisions, and their respective directors, officers, agents, and representatives; and (2) partnerships, joint ventures, groups and affiliates that QVC Network, Inc., controls directly or indirectly, and their successors and assigns, and their respective directors, officers, agents, and representatives.

(F) The term "Respondents' ownership interests in QVC" means all ownership interests including, but not limited to, Common Stock, Series B Preferred Stock, Series C Preferred Stock, Series D Preferred Stock, warrants, and options. Respondents' ownership interests in QVC does not include ownership interests of Respondents' agents or representatives if they do not own these interests in their capacities as agents or representatives of Respondents.

(G) The term "Acquisition" means QVC's proposed acquisition of Paramount.

(H) The term "person" includes any natural person, corporate entity, partnership, association, joint venture, government entity, or trust.

(I) The term "other owners of QVC" means Comcast Corporation, Barry Diller, Arrow Investments, L.P., Cox Enterprises, Inc., or Advance Publications, Inc., their subsidiaries or assigns, but does not mean TCI or LMC.

(J) The term "Commission" means the Federal Trade Commission.

(K) The term "voting agreements" means all agreements between Respondents and the other owners of QVC or any other person, concerning voting of any person's shares of stock or QVC, the appointment of QVC directors, or the operations or management of QVC.

II

It is ordered that: (A) Respondents shall divest, absolutely and in good faith, within eighteen (18) months of the date this Order becomes final, all of Respondents' ownership interests in QVC.

(B) Respondents shall divest all of Respondents' ownership interests in QVC, to a person or persons that receive(s) the prior approval of the Commission and only in a manner that is consistent with the purposes of this Order and that receives the prior approval of the Commission, provided, however, that Respondents' divestiture of some or all of Respondents' ownership interests in QVC to QVC or the others of QVC, shall not require the prior approval of the Federal Trade Commission. The purpose of the divestiture of Respondents' ownership interests in QVC is to remedy the lessening of competition resulting from the Acquisition, as alleged in the Commission's complaint.

(C) Respondents shall terminate or divest to a person or persons that receive(s) the prior approval of the Commission and only in a manner that is consistent with the purposes of this Order as described in Paragraph II.B and that receives the prior approval of the Commission, within eighteen (18) months of the date of this Order becomes final, all of their interests in all voting agreements, provided, however, that Respondents' divestiture of some or all of their interests in the voting agreements to QVC or the other owners of QVC shall not require the prior approval of the Federal Trade Commission.

(D) Until the divestitures and terminations required by Paragraphs II.A, II.B, and II.C are completed, Respondents shall cease and desist from entering into any agreements with QVC or Paramount that grant Respondents any exclusive rights to exhibit recently released theatrical motion pictures after Paramount's current contract with Time Warner Inc., or Home Box Office, Inc., terminates.

(E) Respondents shall comply with all terms of the Interim Agreement, attached to this Order and made a part hereof as Appendix I. Said Interim Agreement shall continue in effect until the divestitures and terminations required by Paragraphs II.A, II.B, and II.C are completed or such other time as is stated in said Interim Agreement.

III

It is further ordered that: (A) If Respondents have not completed the divestitures and terminations required by Paragraphs II.A, II.B, and II.C, within the eighteen (18) month period provided for in Paragraph II, Respondents shall consent to the appointment of a trustee by the Commission to complete the divestitures and terminations. In the event the Commission or the Attorney General brings an action pursuant to section 5(l) of the Federal Trade Commission Act, 15 U.S.C. 45l), or any other statute enforced by the Commission, for any violation of this Order, Respondents shall consent to the appointment of a trustee in such action. Neither the appointment of a trustee nor a decision not to appoint a trustee under this Paragraph shall preclude the Commission or the Attorney General from seeking civil penalties or any other relief available to it, including a court-appointed trustee, pursuant to section 5(l) of the Federal Trade Commission Act, or any other statute enforced by the Commission, for any failure by Respondents to comply with this Order.

(B) If a trustee is appointed by the Commission or a court pursuant to Paragraph III.(A) of this Order, Respondents shall consent to the following terms and conditions regarding the trustee's powers, duties, authorities, and responsibilities:

1. The Commission shall select the trustee, subject to the consent of Respondents, which consent shall not be unreasonably withheld. The trustee shall be a person with experience and expertise in acquisitions and divestitures. If Respondents have not opposed, in writing, the selection of any proposed trustee within ten (10) days after notice by the staff of the Commission of the identity of any proposed trustee, Respondents shall be deemed to have consented to the selection of the proposed trustee.

2. The trustee shall, subject to the prior approval of the Commission, have the exclusive power and authority to accomplish the divestitures and terminations required by Paragraphs II.A, II.B, and II.C.

3. The trustee shall have twelve (12) months from the date the trust agreement is approved to accomplish the divestitures and terminations. If, however, at the end of the twelve-month period the trustee has submitted a plan of divestiture or terminations or believes that divestiture or termination can be accomplished within a reasonable time, the twelve (12) month period may be extended; *provided,* however, the Commission may only extend the twelve (12) month period two (2) times for up to an additional twelve (12) months each time.

4. The trustee shall have full and complete access to the personnel, books, and records, related to Respondents' interests described in Paragraph II, or any other relevant information, as the trustee may reasonably request. Respondents shall cooperate with any reasonable request of the trustee. Respondents shall take no action to interfere with or impede the trustee's accomplishment of the divestitures and terminations. Any delays in divestitures or terminations caused by Respondents shall extend the time for divestitures and terminations under Paragraph III.B.3 in an amount equal to the delay, as determined by the Commission or the court for a court-appointed trustee.

5. Subject to Respondents' absolute and unconditional obligation to divest and terminate at no minimum price and the purpose of the divestitures and terminations as stated in Paragraph II.B, the trustee shall use his or her best

efforts to negotiate the most favorable price and terms available with each prospective acquirer for the divestitures. The divestitures and terminations shall be made in the manner set out in Paragraph II; *provided*, however, if the trustee receives bona fide offers from more than one acquirer, and if the Commission determines to approve more than one such acquirer, the trustee shall divest to the acquirer selected by Respondents from among those approved by the Commission.

6. The trustee shall serve, without bond or other security, at the cost and expense of Respondents, on such reasonable and customary terms and conditions as the Commission or a court may set. The trustee shall have authority to employ, at the cost and expense of Respondents, representatives and assistants as are reasonably necessary to carry out the trustee's duties and responsibilities. The trustee shall account for all monies derived from the divestiture and all expenses incurred. After approval by the Commission and, in the case of a court-appointed trustee, by the court, of the account of the trustee, including fees for his or her services, all remaining monies shall be paid at the direction of Respondents and the trustee's power shall be terminated. The trustee's compensation be based at least in significant part on a commission arrangement contingent on the trustee's accomplishing the divestitures and terminations required by Paragraph II.

7. Respondents shall indemnify the trustee and hold the trustee harmless against any losses, claims, damages, liabilities, or expenses arising in any manner out of, or in connection with, the trustee's duties under this Order, including all reasonable fees of counsel and other expenses incurred in connection with the preparation for or defense of any claim, whether or not resulting in any liability, except to the extent that such losses, claims, damages, liabilities, or expenses result from misfeasance, negligence, willful or wanton acts, or bad faith by the trustee.

8. Within thirty (30) days after appointment of the trustee, and subject to the prior approval of the Commission and, in the case of a court-appointed trustee, of the court, Respondents shall execute a trust agreement that transfers to the trustee all rights and powers necessary to permit the trustee to effect the divestitures and terminations required by this Order.

9. If the trustee ceases to act or fails to act diligently, a substitute trustee shall be appointed in the same manner as provided in Paragraph III.A of this Order.

10. The Commission or, in the case of a court-appointed trustee, the court, may on its own initiative or at the request of the trustee issue such additional Orders or directions as may be necessary or appropriate to accomplish the divestitures and terminations required by this Order.

11. The trustee shall report in writing to Respondents and to the Commission every sixty (60) days concerning the trustee's efforts to accomplish the divestitures and terminations.

IV

It is further ordered that, Within sixty (60) days after the date this Order becomes final and every sixty (60) days thereafter until Respondents have fully complied with the provisions of Paragraph II of this Order and of the Interim Agreement attached as Appendix I, Respondents shall submit to the Commission a verified written report setting forth in detail the manner and form in which they intend to comply, are complying, or have complied with those provisions. Respondents shall include in their compliance reports, among other things that are required from time to time, a full description of substantive contacts or negotiations for complying with provisions of Paragraph II of this Order, including the identity of all parties contacted or that have contacted Respondents. Respondents also shall include in their compliance reports copies of all written communications to and from such parties, all internal memoranda, and all reports and recommendations, concerning the required divestitures and terminations and concerning Respondents' compliance with the Interim Agreement.

V

It is further ordered that, For a period beginning on the date this Order becomes final and ending three (3) years after all the divestitures and terminations required by Paragraph II are completed, Respondents shall cease and desist from acquiring, without the period approval of the Federal Trade Commission, directly or indirectly, through subsidiaries, partnerships, or otherwise (A) any equity or other ownership interest in, or the whole or any part of the stock or share capital of QVC, Paramount, or USA Networks, (B) assets or QVC or Paramount, provided, however, Respondents may acquire, without prior approval of the Commission, assets equal in value to less than 10% of the market capitalization value of QVC or Paramount within a 12 month period, and provided, further, that if such assets consist of stock, share capital or other equity interest of any subsidiary, affiliate, partnership or joint venture of QVC or Paramount, QVC or Paramount shall no longer hold any stock, share capital or other equity interest in such entity, or (C) any of the assets of USA Networks, its successors and assigns. For purpose of this Paragraph, "market capitalization value" shall be equal to the number of outstanding shares of QVC or Paramount multiplied by the price of QVC or Paramount stock as of the date such asset acquisition is signed. One year from the date this Order becomes final and annually thereafter until the expiration of the three (3) year period, Respondents shall file with the Federal Trade Commission verified written reports of their compliance with this paragraph.

VI

It is further ordered that, For the purposes of determining or securing compliance with this Order, and subject to any legally recognized privilege, upon written request and on reasonable notice to Respondents, Respondents shall permit any duly authorized representatives of the Commission:

(A) Access, during office hours and in the presence of counsel, to inspect and copy all books, ledgers, accounts, correspondence, memoranda and other records and documents in the possession or under the control of Respondents relating to any matters contained in this Order; and

(B) Upon five (5) days notice to Respondents, and without restraint or interference from Respondents, to interview officers or employees of Respondents, who may have counsel present, regarding such matters.

VII

It is further ordered that, Each Respondent shall notify the Commission at least thirty (30) days prior to any proposed change in such respondent such as dissolution, assignment, or sale, resulting in the emergency of a successor corporation, the creation or dissolution of subsidiaries, and any other change that may affect compliance obligations arising out of the Order.

VIII

It is further ordered that, Respondents shall not be obligated to comply with this Order if

(A) QVC terminates or abandons the attempted acquisition of Paramount; or

(B) QVC does not acquire more than ten (10) percent of the common stock of Paramount within twelve (12) months from the date this Order becomes final.

For the purposes of this Order, QVC will be deemed to have terminated or abandoned the attempted acquisition of Paramount upon the withdrawal of any HSR filing with respect thereto.

Appendix I—Interim Agreement

This Interim Agreement is by and between Tele-Communications, Inc. (hereinafter "TCI"), a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business at 5619 DTC Parkway, Englewood, CO 80111, Liberty Media Corporation (hereinafter "LMC"), a corporation organized and existing under the laws of the State of Delaware with its principal office and place of business at 8101 East Prentice Avenue, suite 500, Englewood, CO 80111, and the Federal Trade Commission (the "Commission"), an independent agency of the United States Government, established under the Federal Trade Commission Act of 1914, 15 U.S.C. 41, et seq. (collectively, the "Parties").

Premises

Whereas, QVC Network, Inc., ("QVC") has proposed the acquisition by cash tender offer of 51% of the voting securities of Paramount Communications, Inc. ("Paramount"), (hereinafter the "Acquisition"); and

Whereas, LMC presently owns 22.3% of the voting securities of QVC; and

Whereas, TCI and LMC have proposed the merger of their businesses by the formation of a new corporation, with the new corporation becoming the parent of both TCI and Liberty; and

Whereas, the Commission is now investigating the proposed Acquisition to determine if it would violate any of the statutes enforced by the Commission; and

Whereas, if the Commission accepts the Agreement Containing Consent Order ("Consent Agreement"), the Commission will place it on the public record for a period of at least sixty (60) days and may subsequently withdraw such acceptance pursuant to the provisions of § 2.34 of the Commission's Rules; and

Whereas, the Commission is concerned that if an understanding is not reached, preserving competition during the period prior to the final acceptance of the Consent Agreement by the Commission (after the 60-day public notice period) and thereafter until the divestitures and terminations required by the Consent Agreement are completed or at other such time as stated in the Consent Agreement, there may be interim competitive harm, and divestiture resulting from any proceeding challenging the legality of the Acquisition might not be possible, or might be less than an effective remedy; and

Whereas, TCI and LMC entering into this Interim Agreement shall in no way be construed as an admission by TCI and LMC that the Acquisition constitutes a violation of any statute; and

Whereas, the purposes of the Interim Agreement are to prohibit TCI and LMC from exercising direction and control of QVC or Paramount and to prevent interim harm to competition; and

Whereas, TCI and LMC understand that no act or transaction contemplated by this Interim Agreement shall be deemed immune or exempt from the provisions of the antitrust laws or the Federal Trade Commission Act by reason of anything contained in this Interim Agreement.

Now, therefore, the Parties agree, upon the understanding that the Commission has not yet determined whether the Acquisition will be challenged, and in consideration of the Commission's agreement that at the time it accepts the Consent Agreement for public comment it will grant early termination of the Hart-Scott-Rodino waiting period for the Acquisition, as follows:

1. TCI and LMC agree to execute and be bound by the Agreement Containing Consent Order to which this Interim Agreement is attached;

2. TCI and LMC agree that from the date this Interim Agreement is signed until the first of the dates listed in subparagraphs 2.a through 2.d, they will comply with the provisions of this Interim Agreement:

a. Ten business days after the Commission withdraws its acceptance of the Consent Agreement pursuant to the provisions of § 2.34 of the Commission's Rules;

b. 120 days after publication in the **Federal Register** of the Consent Agreement, unless by that date the Commission has finally accepted such Consent Agreement;

c. The day after the divestitures and terminations required by the Consent Agreement have been satisfied; or

d. The day after the requirements of Paragraph VIII of the Consent Agreement have been satisfied.

3. TCI and LMC shall not (a) exercise direction of or control over, directly or indirectly, the operations or management of QVC or Paramount; (b) exercise any voting rights or agreements, directly or indirectly, pursuant to LMC's ownership in QVC; or (c) participate in any change in the composition of the management of QVC or Paramount; provided, however, TCI and LMC may vote their ownership interests in QVC in favor of QVC's acquisition of Paramount and the transactions providing financing by entities other than TCI and LMC for such acquisition.

4. TCI and LMC further agree that within five (5) days of the date the Agreement Containing Consent Order, to which this Interim Agreement is a part, is placed on the public record (a) the officers, directors, or employees of TCI or LMC who are present members of the Boards of Directors of QVC or Paramount will resign such membership on the Boards of Directors of QVC or Paramount, and (b) that no officer, director, or employee of TCI or LMC will serve on the Boards of Directors of QVC or Paramount.

5. TCI and LMC waive all rights to contest the validity of this Interim Agreement.

6. For the purpose of determining or securing compliance with this Interim Agreement, subject to any legally recognized privilege, and upon written request with reasonable notice to TCI and LMC made to their principal office, TCI and LMC shall permit any duly authorized representative or representatives of the Commission:

a. Access during the office hours of TCI and LMC and in the presence of counsel to inspect and copy all books, ledgers, accounts, correspondence, memoranda, and other records and documents in the possession or under the control of TCI or LMC relating to compliance with this Interim Agreement;

b. Upon five (5) days notice to TCI or LMC; and without restraint or interference from it, to interview officers or employees of TCI or LMC, who may have counsel present, regarding any such matters.

7. This Interim Agreement shall not be binding until accepted by the Commission.

Analysis of Proposed Consent Order To Aid Public Comment

The Federal Trade Commission has accepted for public comment from Tele-Communications, Inc. ("TCI"), and Liberty Media Corporation ("LMC") an agreement containing consent order which requires TCI and LMC, among other things, to divest all of their ownership interests in QVC Network, Inc. ("QVC"). To preserve competition during the period prior to final acceptance of the consent agreement as well as until final divestitures are completed, the consent agreement is accompanied by an interim agreement which prohibits TCI and LMC, among other things, from exercising any direction of or control over the

operations or management of QVC or Paramount, exercising any voting rights or agreements, or participating in any change in the management of QVC or Paramount. The agreement and consent order, along with the interim agreement, are designed to remedy any anticompetitive effect stemming from the proposed acquisition of Paramount by TCI or LMC through QVC.

The consent agreement and interim agreement have been placed on the public record for 60 days for reception of comments from interested persons. Comments received during this period will become part of the public record. After 60 days, the Commission will again review the agreement and comments received, and will decide whether it should withdraw from the agreement or make final the order contained in the agreement.

TCI is by far the largest cable television multiple system operator ("MSO") in the United States. LMC, its programming affiliate, also owns cable television systems and provides satellite-delivered programming services to various distribution media including cable television. Their affiliated cable systems control distribution of cable programming to about 25% of the total cable television subscriber base in the United States. TCI or LMC also hold substantial stock ownership in many popular cable television programming networks, including The Discovery Channel, The Learning Channel, Turner Broadcasting, Request Television, Inc., Black Entertainment Television, The Box, Courtroom TV, Encore, Starz, The Family Channel, Home Shopping Networks, and QVC.

Paramount is a major Hollywood studio and its businesses include the production and the licensing of new theatrically released movies for transmission on cable television channels and a 50% ownership interest in USA Networks.

According to the Commission complaint in this matter, QVC commenced a cash tender offer for 51% of the common stock of Paramount. If the tender offer is successful, QVC intends to commence a second step merger under which each remaining Paramount share would be exchanged for approximately 1.5 QVC common shares. The combined value of both transactions is approximately $10 billion. The Commission has reason to believe that the acquisition, if successful, may have anticompetitive effects and be in violation of section 7 of the Clayton Act and section 5 of the Federal Trade Commission Act.

The draft complaint alleges that the acquisitions of Paramount by QVC may substantially lessen competition and tend to create a monopoly in the market of subscription television program distribution to consumers and/or in cable premium movie channels. Specifically, the complaint alleges that the purpose, capacity, tendency, or effect of the acquisition may be to: (1) Reduce the output and quality of premium movie channels; (2) raise programming fees to cable operators; (3) raise cable television subscriber fees to consumers; (4) enhance coordinated interaction among vertically integrated MSOs; and (5) increase the difficulty of entry into the provision of subscription television programming distribution.

The agreement containing consent order attempts to remedy the Commission's competitive concerns about the proposed acquisition. Under the terms of the consent order, TCI and LMC are required, among other things, to divest all ownership interest in QVC and to divest or terminate all their interest in all existing agreements concerning voting of any shares of stock of QVC. Both the divestiture of ownership interests and the divestiture or termination of voting interests are to be made within 18 months from the date the order becomes final. Furthermore, the divestitures are to be made only to an acquirer or acquirers and in a manner that receive the prior approval of the Commission. Divestiture of some or all of their ownership interests or voting interests to QVC or certain other named owners of QVC will not, however, require the prior approval of the Commission.

In addition, the agreement containing consent order prohibits TCI and LMC for a stated period from entering into any agreements with QVC or Paramount that grant TCI or LMC exclusive exhibition rights to recently released theatrical motion pictures after Paramount's current contract with certain other parties terminates.

The agreement containing consent order also prohibits TCI and LMC from acquiring, directly or indirectly, any equity or ownership interest in QVC, Paramount or USA Networks, without the prior approval of the Commission. The prohibition is effective for a period beginning from the date the order becomes final and ending three (3) years after the required divestitures or termination of interests are completed.

The agreement containing consent order provides that TCI and LMC shall not be obligated to comply with the order if: (1) QVC terminates or abandons the attempted acquisition of Paramount; or (2) QVC does not acquire more than ten (10) percent of the common stock of Paramount within twelve months of the date the order becomes final.

The interim agreement's purpose is to preserve competition during the period prior to the final acceptance of the consent agreement by the Commission (after the 60-day public notice period) and thereafter until the divestitures and terminates required of the consent agreement are completed. Consistent with this purpose, the interim agreement prohibits TCI and LMC from: (1) Exercising any direction of or control, directly or indirectly, over the management or operations of QVC or Paramount; (2) exercising any voting rights or agreements, directly or indirectly, pursuant to LMC's ownership in QVC; or (3) participating in any change in the composition of the management of QVC or Paramount.

In addition, the interim agreement provides that within five (5) days of the date the agreement containing consent order is placed on the public record, any officers, directors, or employees of TCI or LMC who are present members of the Board of Directors of QVC or Paramount, will resign as members of such Boards of Directors. Furthermore, no officer, director, or employee of TCI or LMC will serve on the Board of Directors of either QVC or Paramount.

By accepting the consent order subject to final approval, the Commission anticipates that the competitive problems alleged in the complaint will be resolved. The purpose of this analysis is to invite and facilitate public comment concerning the consent order. IT is not intended to constitute an official interpretation of the agreement an proposed order or in any way to modify their terms.

Donald S. Clark,

Secretary.

Dissenting Statement of Commissioner Mary L. Azcuenaga

On the basis of the limited investigation to date, although there are plausible theories of harm, we lack sufficient information to predict with any confidence that the proposed acquisition is likely to have anticompetitive effects. In addition, the proposed order may inhibit as yet unexplored procompetitive effects, and it imposes substantial costs of divestiture on the respondents. Finally, assuming a violation, the three-year prior approval clause in the proposed order is a significant and unjustified departure from Commission policy.

I dissent.

Dissenting Statement of Commissioner Deborah K. Owen

The willingness of the respondents, Tele-Communications, Inc. (TCI) and Liberty Media Corporation, to sign the consent agreement that the Commission has

provisionally accepted today abbreviated the staff's investigation of the proposed acquisition of Paramount by QVC. To say that this matter has not been fully investigated by the Commission would be generous.

Serious complaints have been voiced about this combination, many similar to those raised in connection with the proposed acquisition of an interest in Showtime by TCI several years ago. In 1990, the Commission, after a lengthy investigation, determined to close that investigation without action.

Perhaps the issues are different here; or perhaps there have been significant changes in the market since 1990 which would affect the antitrust analysis. Regrettably, the fruits of our truncated investigation provide us with little, if any, basis for making such determinations.

In 1990, in an unrelated matter, I noted that "[a]s a practical matter, consent orders make law." Because, as the Supreme Court has noted, parties may be motivated by practical reasons (such as avoiding the burdens and expense of adjudication, and adverse publicity), rather than guilt (which they expressly do not admit in signing a consent agreement), their consent should not justify the Commission's issuance of a complaint and acceptance of an order.

[W]here the Commission's complaint will not be subject to a full adjudication of the facts, the Commission might reasonably wish to base its charges on a higher quantum of evidence when it agrees to issue a consent agreement for public comment, rather than just a complaint * * *. The Commission should require evidence based as much as possible on objective, empirical data, rather than subjective beliefs * * *.[1]

Such evidence, in my judgment, is woefully lacking here.

If the Commission, in its rush to consent, has failed to address all of the competitive issues that may arise from this combination, or if it has failed to adequately remedy the alleged problems, the result would be serious for consumers. It would be equally serious, in my view, if the Commission were to hastily pass judgment, in the absence of adequate evidence, and thereby discourage otherwise procompetitive or competitively neutral conduct by these respondents, or others who look to the Commission's actions for guidance, and unnecessarily sully affected reputations. The only way to avoid either of these undesirable scenarios would be for the Commission to fully investigate within the expedited time frame provided under the Hart-Scott-Rodino Act to accommodate the needs of parties to cash tender offers.

To summarize, in my estimation, there has been inadequate investigation into the possible anticompetiive effects of this acquisition to provide sufficient basis to determine either that there is a reason to believe that the proposed acquisition violates the Federal Trade Commission Act or the Clayton Act, or that the proposed order adequately remedies any such alleged violation. I am therefore compelled to dissent from the consent order provisionally accepted today.

[1] Statement of Commissioner Deborah K. Owen in the Matter of CPC International, Inc., File No. 892–3176 (June 11, 1990) at 1–2, citing *Fedral Trade Comm.* versus *Standard Oil Co. of California*, 449 U.S. 232, 246, n. 14 (1980).

Statement of Commissioner Dennis A. Yao

Today the Commission has provisionally accepted a proposed consent agreement in this matter.

The Commission's review of this transaction, and our previous investigations in this industry, have revealed a number of competitive concerns regarding the relationship of Tele-Communications, Inc. to QVC and its potential impact on QVC's proposed acquisition of Paramount Communications, Inc. This proposed consent completely eliminates those concerns by requiring TCI to divest itself of those interests. Prolonging the investigation is likely to have consequences on the free play of market forces. Because the proposed consent eliminates our competitive concerns, I have voted in favor of accepting this proposed consent for public comment.

[FR Doc. 93–29281 Filed 11–29–93; 8:45 am]

BILLING CODE 6750–01–M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Health Resources and Services Administration

Filing of Annual Report of Federal Advisory Committee

Notice is hereby given that pursuant to section 13 of Pub. L. 92–463, the Annual Report for the following Health Resources and Service Administration's Federal Advisory Committees have been filed with the Library of Congress:

Advisory Commission on Childhood Vaccines, HRSA AIDS Advisory Committee

Copies are available to the public for inspection at the Library of Congress Newspaper and Current Periodical Reading Room, Room 1026, Thomas Jefferson Building, Second Street and Independence Avenue, SE., Washington, DC. Copies may be obtained from: Ms. Rosemary Havill, Vaccine Injury Compensation Program, Bureau of Health Professions, Room 702, 6001 Montrose Road, Rockville, Maryland 20852, Telephone (301)443–6593 and G. Stephen Bowen, M.D., Associate Administrator for AIDS, Room 14A–21, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, Telephone (301)443–4588.

Dated: November 23, 1993.

Jackie E. Baum,

Advisory Committee Management Officer, Health Resources and Services Administration.

[FR Doc. 93–29249 Filed 11–29–93; 8:45 am]

BILLING CODE 4160–15–P

[PN 2142]

Rural Health Outreach Grant Program

AGENCY: Health Resources and Services Administration, PHS.

ACTION: Notice of availability of funds.

SUMMARY: The Office of Rural Health Policy, Health Resources and Services Administration (HRSA), announces that applications are being accepted for Rural Health Outreach Demonstration Grants to expand or enhance the availability of essential health services in rural areas. Awards will be made from funds appropriated under Pub. L. 103–112 (HHS Appropriation Act for FY 1994). Grants for these projects are authorized under Section 301 of the Public Health Service Act.

NATIONAL HEALTH OBJECTIVES FOR THE YEAR 2000: The Public Health Service (PHS) is committed to achieving the health promotion and disease prevention objectives of Healthy People 2000, a PHS-led national activity for setting priority areas. The Rural Health Outreach program is related to the priority areas for health promotion, health protection and preventive services. Potential applicants may obtain a copy of Healthy People 2000 (Full Report: Stock No. 017–001–00474–C) or Healthy People (Summary Report; Stock No. 017–001–00473–1) through the Superintendent of Documents, Government Printing Office, Washington, DC 20402–9325 (Telephone (202) 783–3238).

FUNDS AVAILABLE: Appropriations for FY 1994 included $24.8 million to support Outreach grants. Of this amount, it is anticipated that $18 million will be available to support new outreach grants. The Office of Rural Health Policy would expect to make approximately 90 new awards for one year budget periods. The budget period for new projects will begin July 1, 1994.

Individual grant awards under this notice will be limited to a total amount of $300,000 (direct and indirect costs) per year. Applications for smaller amounts are encouraged. Applicants may propose project periods for up to three years. It is expected that the average grant award will be approximately $180,000 for the first year. However, applicants are advised that continued funding of grants beyond the one year period covered by this announcement is contingent upon the appropriation of funds for the program and assessment of grantee performance. No project will be supported for more than three years.

DATE: Applications for the program must be received by the close of business on

March 11, 1994. Completed applications must be sent to the Office of Grants Management at the address shown below.

Applications shall be considered as meeting the deadline if they are either (a) received on or before the deadline date; or (2) postmarked on or before the deadline date and received in time for orderly processing. Applicants must obtain a legible dated receipt from a commercial carrier or the U.S. Postal Service in lieu of a postmark. Private metered postmarks will not be acceptable as proof of timely mailing. Late applications will be returned to the sender.

ADDRESS: All application materials should be sent to: Opal McCarthy, Bureau of Primary Health Care, East West Building, 11th Floor, 4350 East West Highway, Rockville, Maryland 20857, (301) 594–4260.

The standard application form and general instructions for completing applications (Form PHS–5161–1, OMB #0937–0139) have been approved by the Office of Management and Budget. Requests for grant application kits and additional information regarding business or fiscal issues should be directed to the Office of Grants Management at the above address.

FOR FURTHER INFORMATION CONTACT: Requests for technical or programmatic information on this announcement should be directed to Eileen Holloran, Office of Rural Health Policy, room 9–05, Parklawn Building, 5600 Fishers Lane, Rockville, Maryland 20857, (301) 443–0835.

SUPPLEMENTARY INFORMATION:

The purpose of the program is to support projects that demonstrate new and innovative models of outreach and health care services delivery in rural areas that lack basic health services. Grants will be awarded either for the direct provision of health services to rural populations, that are not currently receiving them, or to enable access to and utilization of existing services.

Applicants may propose projects to address the needs of a wide range of rural population groups including the poor, the elderly, the disabled, pregnant women, infants, adolescents, rural minority populations, and rural populations with special health care needs. Projects should be responsive to the special cultural and linguistic needs of specific populations.

A central goal of the demonstration program is to develop new and innovative models for more effective integration and coordination of health services in rural areas. It is hoped that some of these models will prove significant in solving rural health problems throughout the country. In order to better integrate the provision of health services in rural areas, participation in the program requires the formation of consortium arrangements among three or more separate and distinct entities to carry out the demonstration projects. A consortium must be composed of three or more health care organizations, or a combination of three or more health care and social service organizations. Individual members of a consortium might include such entities as hospitals, public health agencies, home health providers, mental health centers, substance abuse service providers, rural health clinics, social service agencies, health profession schools, local school districts, emergency service providers, community and migrant health centers, civic organizations, etc. Strong consortium arrangements are required. The roles and responsibilities of each member organization must be clearly defined. Each member must contribute significantly to the goals of the project. Applications where consortium members do not have a major contributing role will not be supported.

Applicants are encouraged to develop projects to address specific areas of need in their communities. Need can be established through a formal needs assessment or by population specific demographic data. Examples of areas of focus include but are not limited to:

1. The creation of new networks of providers to deliver ambulatory health and/or mental health and substance abuse services in Health Professions Shortage Areas and in underserved frontier areas.

2. Projects to integrate rural emergency medical services providers into regional systems of care.

3. Projects that utilize telecommunications techniques to link rural providers and rural health care facilities with larger and more specialized institutions.

4. Projects that develop new networks of primary care providers and public health organizations to address such problems as infant mortality, adolescent health, mental health, etc.

5. Projects that link private and public health providers to enhance the health and safety of farmers, farm families, and migrant and seasonal farm workers through direct services.

6. Projects that address the needs of rural minority populations.

7. Projects which address the special needs of communities affected by floods or other natural disasters.

Eligible Applicants

All public and private entities, both nonprofit and for-profit may participate as members of a consortium arrangement as described above. However, a grant award will be made to only one entity in a consortium. The grant recipient must be a nonprofit or public entity which meets one of the three requirements stated below.

(1) The applicant is located outside of a Metropolitan Statistical Area as defined by the Office of Management and Budget. A list of the cities and counties that are designated as being within a Metropolitan Statistical Area will be included with the application kit.

(2) The applicant is located in a rural census tract of one of the counties listed in appendix I to this announcement. Although each of these counties is a Metropolitan Statistical Area, or part of one, large parts of the counties are rural. Organizations located in these rural areas are eligible for the program. Rural portions of these counties have been identified by census tract since this is the only way we have found to clearly differentiate them from urban areas in the large counties. Appendix I provides a list of these census tracts for each county. Appendix II includes the telephone numbers for regional offices of the Census Bureau. Applicants may call these offices to determine the census tract in which they are located.

(3) The applicant is an organization that is constituted exclusively to provide services to migrant and seasonal farmworkers in rural areas and is supported under section 329 of the Public Health Service Act. These organizations are eligible regardless of the urban or rural location of their administrative headquarters.

Applicants from the 50 United States, the District of Columbia, the Commonwealth of Puerto Rico, the Commonwealth of the Northern Mariana Islands, the Territories of the Virgin Islands, Guam, American Samoa, the Trust Territory of the Pacific Islands (Republic of Palau), the Compact of Free Association Jurisdictions of the Republic of the Marshall Islands, and the Federated States of Micronesia are eligible to apply.

Applications from organizations that do not meet one of the three requirements described above will not be reviewed. Current Rural Health Outreach grantees who are in the last year of their projects may not reapply for funds to support the same project. Any new application must have a different focus from the project that is currently being funded.

Review Consideration

Grant applications will be evaluated on the basis of the following criteria:

(1) The extent to which the applicant has proposed a new and innovative network of providers to bring new services into rural areas or strengthen existing services.

(2) The extent to which the proposed project would be capable of replication in rural areas with similar needs and characteristics and the applicant's plan for disseminating information about the project.

(3) The extent to which the applicant has justified and documented the need(s) for the project and developed measurable goals and objectives for meeting the need(s).

(4) The extent to which the applicant has clearly defined the roles and responsibilities for each member of the consortium and developed a workable plan for managing the consortium's activities.

(5) The reasonableness of the budget proposed for the project.

(6) The level of local commitment and involvement with the project, including the extent of cost participation by the applicant and/or other organizations, and the extent to which the project will contribute to enhancing the local economy.

(7) The feasibility of plans to continue the project after federal grant support is completed.

(8) The strength of the applicant's plan for evaluating the project.

The HRSA hopes to expand the outreach program into geographic areas not currently served by the program. Consequently, HRSA will consider geographic coverage when deciding which approved applications to fund.

Other Information

Grantees will be required to use at least 85 percent of the total amount awarded for outreach and care services as opposed to administrative costs. More than 50 percent of the funds awarded must be spent in rural areas. Grant funds may not be used for purchase, construction or renovation of real property or to support the delivery of inpatient services. This is a demonstration program that will not support projects that are solely or predominantly designed for the purchase of equipment or vehicles.

Applicants are advised that the narrative description of their program and the budget justification may not exceed 40 pages in length. Applications that exceed the 40 page limit for the program narrative and budget justification will not receive consideration. All applications must be typewritten and clearly legible. Margins must be no less than ½" on all sides.

Public Health System Impact Statement

This program is subject to the Public Health System Reporting Requirements. Reporting requirements have been approved by the Office of Management and Budget—#0937–0195. Under these requirements, the community-based nongovernmental applicant must prepare and submit a Public Health System Impact Statement (PHSIS). The PHSIS is intended to provide information to State and local health officials to keep them apprised of proposed health services grant applications submitted by community-based nongovernmental organizations within their jurisdictions.

Community-based non-governmental applicants are required to submit the following information to the head of the appropriate State and local health agencies in the area(s) to be impacted no later than the Federal application receipt due date:

a. A copy of the face page of the application (SF 424)

b. A summary of the project not to exceed one page, which provides:

(1) A description of the population to be served.

(2) A summary of the services to be provided.

(3) A description of the coordination planned with the appropriate State or local health agencies.

Executive Order 12372

The Rural Health Outreach Grant Program has been determined to be a program which is subject to the provisions of Executive Order 12372 concerning intergovernmental review of Federal programs by appropriate health planning agencies as implemented by 45 CFR part 100. Executive Order 12372 allows States the option of setting up a system for reviewing applications from within their States for assistance under certain Federal programs. Applicants (other than federally-recognized Indian tribal governments) should contact their State Single Point of Contact (SPOCs), a list of which will be included in application kit, as early as possible to alert them to the prospective applications and receive any necessary instructions on the State process. For proposed projects serving more than one State, the applicant is advised to contact the SPOC of each affected State. All SPOC recommendations should be submitted to Opal McCarthy, Office of Grants Management, Bureau of Primary Health Care, East West Building, 11th Floor, 4350 East West Highway, Rockville, Maryland 20857, (301) 594–4260. The due date for State process recommendations is 60 days after the application deadline for new and competing awards. The granting agency does not guarantee to "accommodate or explain" for State process recommendations it receives after that date. (see Part 148, Intergovernmental Review of PHS Programs under Executive Order 12372 and 45 CFR part 100 for a description of the review process and requirements.

State Offices of Rural Health: Applicants are asked to contact their State Office of Rural Health for information about other outreach grants in their State and technical assistance in the preparation of applications. The State Office should be contacted before an application is prepared. A list of State Offices of Rural Health will be provided with the application.

(OMB Catalog of Federal Domestic Assistance number is 93.912)

Dated: October 15, 1993.

William A. Robinson,

Acting Administrator.

Appendix I

*Census tract numbers are shown *below* each county name.

State	
County	Tract Number
Alabama	
Baldwin	
	0101
	0102
	0106
	0110
	0114
	0115
	0116
Mobile	
	0059
	0062
	0066
	0072.02
Tuscaloosa	
	0107
Arizona	
Maricopa	
	0101
	0405.02
	0507
	0611
	0822.02
	5228
	7233
Pima	
	0044.05

0048
0049

California

Butte

0024
0025
0026
0027
0028
0029
0030
0031
0032
0033
0034
0035
0036

El Dorado

0301.01
0301.02
0302
0303
0304.01
0304.02
0305.01
0305.02
0305.03
0306
0310
0311
0312
0313
0314
0315

Fresno

0040
0063
0064.01
0064.03
0065
0066
0067
0068
0071
0072
0073
0074
0077
0078
0079
0080
0081
0082
0083
0084.01
0084.02

Kern

0033.01
0033.02
0034
0035
0036
0037
0040
0041
0042
0043
0044
0045
0046
0047
0048
0049
0050
0051.01
0052
0053
0054
0055.01
0055.02
0056
0057
0058
0059
0060
0061
0063

Los Angeles

5990
5991
9001
9002
9004
9012.02
9100
9101
9108.02
9109
9110
9200.01
9201
9202
9203.03
9301

Monterey

0109
0112
0113
0114.01
0114.02
0115

Placer

0201.01
0201.02
0202
0203
0204
0216
0217
0219
0220

Riverside

0421
0427.02
0427.03
0429
0430
0431
0432
0444
0452.02
0453
0454
0455
0456.01
0456.02
0457.01
0457.02
0458
0459
0460
0461
0462

San Bernardino

0089.01
0089.02
0090.01
0090.02
0091.01
0091.02
0093
0094
0095
0096.01
0096.02
0096.03
0097.01
0097.03
0097.04
0098
0099
0100.01
0100.02
0102.01
0102.02
0103
0104.01
0104.02
0104.03
0105
0106
0107

San Diego

0189.01
0189.02
0190
0191.01
0208
0209.01
0209.02
0210
0212.01
0212.02
0213

San Joaquin

0040
0044
0045
0052.01
0052.02
0053.02
0053.03
0053.04
0054
0055

Santa Barbara

0018

0019.03

Santa Clara

5117.04
5118
5125.01
5127

Shasta

0126
0127
1504

Sonoma

1506.04
1537.01
1541
1542
1543

Stanislaus

0001
0002.01
0032
0033
0034
0035
0036.05
0037
0038
0039.01
0039.02

Tulare

0002
0003
0004
0005
0006
0007
0026
0028
0040
0043
0044

Ventura

0001
0002
0046
0075.01

Colorado

Adams

0084
0085.13
0087.01

El Paso

0038
0039.01
0046

Larimer

0014
0017.02
0019.02
0020.01
0022

Pueblo

0028.04
0032
0034

Weld

0019.02
0020
0024
0025.01
0025.02

Florida

Collier

0111
0112
0113
0114

Dade

0115

Marion

0002
0004
0005
0027

Osceola

0401.01
0401.02
0402.01
0402.02
0403.01
0403.02
0404
0405.01
0405.02
0405.03
0405.05
0406

Palm Beach

0079.01
0079.02
0080.01
0080.02
0081.01
0081.02
0082.01
0082.02
0082.03
0083.01
0083.02

Polk

0125
0126
0127
0142
0143
0144
0152
0154
0155
0156
0157
0158
0159
0160
0161

Kansas

Butler

0201
0203
0204
0205
0209

Louisiana

Rapides

0106
0135
0136

Terrebonne

0122
0123

Minnesota

St. Louis

0105
0112
0113
0114
0121
0122
0123
0124
0125
0126
0127
0128
0129
0130
0131
0132
0133
0134
0135
0137.01
0137.02
0138
0139
0141
0151
0152
0153
0154
0155

Stearns

0103
0105
0106
0107
0108
0109
0110
0111

Montana

Cascade

0105

Yellowstone

0015
0016

0019

Nevada

Clark

0057
0058
0059

Washoe

0031.04
0032
0033.01
0033.02
0033.04
0034

New Mexico

Dona Ana

0014
0019

Santa Fe

0101
0102
0103.01

New York

Herkimer

0101
0105.02
0107
0108
0109
0110.01
0110.02
0111
0112
0113.01

North Dakota

Burleigh

0114
0115

Grand Forks

0114
0115
0116
0118

Morton

0205

Oklahoma

Osage

0103
0104
0105
0106
0107
0108

Oregon

Clackamas

0235
0236
0239
0240
0241
0243

Jackson

0024
0027

Lane

0001
0005
0007.01
0007.02
0008
0013
0014
0015
0016

Pennsylvania

Lycoming

0101
0102

South Dakota

Pennington

0116
0117

Texas

Bexar

1720
1821
1916

Brazoria

0606
0609
0610
0611
0612
0613
0614
0615
0616
0617
0618
0619
0620.01
0620.02
0621
0622
0623
0624
0625.01
0625.02
0625.03
0626.01
0626.02
0627
0628
0629
0630
0631
0632

Harris

0354
0544
0546

Hildalgo

0223
0224
0225
0226
0227
0228
0230
0231
0243

Washington

Benton

0116
0117
0118
0119
0120

Franklin

0208

King

0327
0328
0330
0331

Snohomish

0532
0536
0537
0538

Spokane

0101
0102
0103.01
0103.02
0133
0138
0143

Whatcom

0110

Yakima

0018
0019
0020
0021
0022
0023
0024
0025
0026

Wisconsin

Douglas

0303

Marathon

0017
0018
0020
0021

0022
0023

Wyoming

Laramie

0016
0017
0018

Appendix II

Bureau of the Census Regional Information Service

Atlanta, GA 404–730–3957
Alabama, Florida, Georgia
Boston, MA 617–565–7078
Connecticut, Maine, Massachusetts, New Hampshire, Rhode Island, Vermont, Upstate New York
Charlotte, NC 704–344–6144
Kentucky, North Carolina, South Carolina, Tennessee, Virginia
Chicago, IL 708–409–4617
Illinois, Indiana, Wisconsin
Dallas, TX 214–767–7105
Louisiana, Mississippi, Texas
Denver, CO 303–969–7750
Arizona, Colorado, Nebraska, New Mexico, North Dakota, South Dakota, Utah, Wyoming
Detroit, MI 313–354–4654
Michigan, Ohio, West Virginia
Kansas City, KS 913–236–3711
Arkansas, Iowa, Kansas, Missouri, New Mexico, Oklahoma
Los Angeles, CA 818–904–6339
California
New York, NY 212–264–4730
Brooklyn, Bronx, Manhattan, Queens, Staten Island, Nassau Co., Orange Co., Suffolk Co., Rockland Co., Westchester Co.
Philadelphia, PA 215–597–8313
Delaware, District of Columbia, Maryland, New Jersey, Pennsylvania
Seattle, WA 206–728–5314
Idaho, Montana, Nevada, Oregon, Washington

[FR Doc. 93–29250 Filed 11–29–93; 8:45 am]
BILLING CODE 4160–15–P–M

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. N–93–3603; FR–3506–N–02]

Statutorily Mandated Designation of Qualified Census Tracts and Difficult Development Areas for Section 42 of the Internal Revenue Code of 1986

AGENCY: Office of the Secretary, HUD.

ACTION: Notice; clarification.

SUMMARY: On April 15, 1993 (58 FR 19704), the Department published in the **Federal Register**, a notice designating Qualified Census Tracts and Difficult Development Areas under section 42 of the Internal Revenue Code of 1986 (the "Code"). This document amends the effective date for that notice by establishing criteria under which areas, designated in a notice published on September 16, 1991 (56 FR 46826) as a qualified census tract or a difficult development area but no longer designated in the notice published on April 15, 1993, will be treated as located in a qualified census tract or difficult development area.

FOR FURTHER INFORMATION CONTACT: Frederick J. Eggers, Deputy Assistant Secretary for Economic Affairs, Office of Policy Development and Research, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410, telephone (202) 708–3080. A telecommunications device for deaf persons (TDD) is available at (202) 708–9300. (These are not toll-free telephone numbers.)

SUPPLEMENTARY INFORMATION: On April 15, 1993, the Department of Housing and Urban Development ("HUD") published a notice (58 FR 19704) designating Qualified Census Tracts and Difficult Development Areas under section 42 of the Internal Revenue Code of 1986 (the "Code"). This document amends the April 15, 1993 Notice by establishing criteria under which areas, designated in a notice published on September 16, 1991 (56 FR 46826) as a qualified census tract or a difficult development area but no longer designated in the notice published on April 15, 1993, will be treated as located in a qualified census tract or difficult development area.

I. Except as set forth in paragraph II of this Notice, the effective date of the revised designations of qualified census tracts and difficult development areas for purposes of section 42 of the Code, as published in the April 15, 1993 **Federal Register** remains unchanged, e.g., except as noted below, the effective date is for allocations of credit made on or after April 1, 1993.

II. Buildings or projects located in qualified census tracts and/or difficult development areas designated pursuant to the Notice published in the **Federal Register** on September 16, 1991 (but which areas are no longer so designated under the April 15, 1993 Notice) that receive allocations of credit on or before December 31, 1993, including allocations made prior to the date of this Notice, will be treated as being located in a qualified census tract and/or difficult development area under the April 15, 1993 designation, provided that the housing credit agency certifies to the Secretary of HUD that:

A. On or before April 15, 1993, the agency received an application for an allocation of credit for the building or project; and

B. On or before May 31, 1993, the agency made a determination under section 42(m)(2) of the Code that an eligible basis increase under section 42(d)(5)(C) was necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period. A building described in section 42(h)(4) of the Code (i.e., certain buildings financed with the proceeds of tax-exempt bonds) and located in qualified census tracts and/or difficult development areas designated pursuant to the Notice published in the **Federal Register** on September 16, 1991 (but which areas are no longer so designated under the April 15, 1993 Notice), will be treated as being located in a qualified census tract and/or difficult development area under the April 15, 1993 designation if the governmental unit that issued the bonds certifies to the Secretary of HUD that:

1. The bonds were issued prior to July 1, 1992; and

2. On or before May 31, 1993 it made a determination under section 42(m)(2)(D) that an eligible basis increase under section 42(d)(5)(C) was necessary for the financial feasibility of the project and its viability as a qualified low-income housing project throughout the credit period.

III. Housing credit agencies and governmental units should submit certifications to Frederick J. Eggers, Deputy Assistant Secretary for Economic Affairs, room 8204, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410.

FUTURE DESIGNATIONS: HUD anticipates that it will next designate qualified census tracts and difficult development areas in September or October of 1994, to be effective January 1, 1995. The next designation of difficult development areas will be the first to fully use the 1990 Census data and new definitions of metropolitan statistical areas issued by the Office of Management and Budget. The next designation of qualified census tracts will involve only those changes resulting from the new definitions of metropolitan statistical areas. The changes in qualified census tract designations are expected to be few.

Dated: November 19, 1993.

Henry G. Cisneros,

Secretary.

[FR Doc. 93–29228 Filed 11–29–93; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Public and Indian Housing

[Docket No. N–93–3557; FR–3412–N–05]

Announcement of Funding Awards for the Urban Revitalization Demonstration

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Announcement of funding awards.

SUMMARY: In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989, this announcement notifies the public of funding decisions made by the Department in a competition for funding under the Urban Revitalization Demonstration. This announcement contains the names and addresses of the award winners and the amount of the awards.

DATED: November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Janice D. Rattley, Director of Construction, Rehabilitation and Maintenance, Department of Housing and Urban Development, 451 Seventh Street SW, room 4138, Washington, DC 20410. Telephone (202) 708–1800 (This is not a toll-free number). Hearing or speech impaired individuals may call HUD's TDD number 1–800–877–TDDY, which is a toll-free number.

SUPPLEMENTARY INFORMATION: The purpose of the competition was to revitalize severely distressed or obsolete public housing developments. The activities in the program included funding of the capital costs of major reconstruction, rehabilitation and other physical improvements, the provision of replacement housing, management improvements, planning and technical assistance, implementation of community services programs and supportive services or the planning of such activities.

The 1993 awards announced in this Notice were selected for funding in a competition announced in a **Federal Register** Notice published on January 5, 1993, at 58 FR 436 (a revised Notice was published on March 29, 1993, at 58 FR 16590).

The Urban Revitalization Demonstration grants, totaling $300 million, will enable 15 housing authorities to begin the process of revitalizing severely distressed or obsolete public housing developments in both planning and implementation categories. Recipients were chosen in a national competition under selection criteria announced in the March 29, 1993 NOFA.

In accordance with section 102(a)(4)(C) of the Department of Housing and Urban Development Reform Act of 1989 (Pub. L. 101–235, approved December 15, 1989), the Department is publishing the names, addresses, and amount of those awards, as set out at the end of this Notice.

Dated: November 23, 1993.

Michael B. Janis,

General Deputy Assistant Secretary for Public and Indian Housing.

URBAN REVITALIZATION DEMONSTRATION (URD) FY 1993 IMPLEMENTATION AND PLANNING GRANT APPLICATIONS SELECTED TO PARTICIPATE

PHA Name	Development name	Number of units	Type of grant	Amount requested
Mr. David Gilmore, Executive Director, City of Milwaukee Housing Authority, 120 Sixth Avenue, Seattle, WA 98109.	Holly Park Apts	893	Pln	$500,000
Mr. David Cortiella, Administrator, City of Boston Housing Authority, 52 Chauncy Street, Boston, MA 02111–2302.	Mission Main	486	Imp	$49,992,350
Mrs. Sally Hernandez-Piniero, Chairperson, City of New York Housing Authority, 250 Broadway, New York, NY 10007.	Beach 41st Street	712	Pln	$500,000
Mr. Cornell Scott, Acting Executive Director, City of New Haven Housing Authority, 360 Orange Street, New Haven, CT 06509.	Elm Haven	380	Imp	$45,331,593
Hon. Robert E. Larsen, Magistrate—Special Master, The Kansas City Missouri Housing Authority, 811 Grande Avenue, Kansas City, MO 64106.	Guinotte Manor	418	Imp	$47,579,800
City of San Francisco Housing Authority, 440 Turk Street, San Francisco, CA 94102.	Bernal Dwellings/Yerba Buena Homes.	208 276	Imp	$49,992,377
Mr. Harrison Shannon, Executive Director, City of Charlotte Housing Authority, P.O. Box 36795, Charlotte, NC 28236.	Earle Village	409	Imp	$33,877,985
Ms. Claire Freeman, Executive Director, The Cuyahoga Metropolitan Housing Authority, 1441 W. 25th Street, Cleveland, OH 44113–3101.	Outhwaite Homes King Kennedy	364 126	Imp	$50,000,000
Mr. Ricardo Diaz, Executive Director, City of Milwaukee Housing Authority, P.O. Box 324, Milwaukee, WI 53201.	Hillside Terrace	496	Imp	$4,018,700
Mr. Robert Jenkins, Executive Director, Department of Public Assisted Housing, 1133 N. Capital St., NE, Washington, DC 20002.	Ellen Wilson Dwellings	134	Imp	$1,439,941
Mr. Earl Phillips, Executive Director, City of Atlanta Housing Authority, 739 W. Peachtree, NE, Atlanta, GA 30365.	Techwood/Clark Howell	492	Imp	$4,358,040
Ms. Joy Fitzgerald, Executive Director, City of Houston Housing Authority, 4217 San Felipe, Houston, TX 77252–9950.	Allen Parkway Village	500	Imp	$3,296,349

URBAN REVITALIZATION DEMONSTRATION (URD) FY 1993 IMPLEMENTATION AND PLANNING GRANT APPLICATIONS SELECTED TO PARTICIPATE—Continued

PHA Name	Development name	Number of units	Type of grant	Amount requested
Mr. David Washington, Executive Director, City of Pittsburgh Housing Authority, 200 Ross St., 9F1, Pittsburgh, PA 15219–2068.	Allequippae Terrace	483	Imp	$1,535,023
Mr. Joseph Gelletich, Acting Executive Director, City of Los Angeles Housing Authority, P.O. Box 17157, Los Angeles, CA 90017–1295.	Pico Gardens Aliso South Aliso North	352 78 147	Imp	$3,782,260
City of Philadelphia Housing Authority, 2012 Chestnut Street, Philadelphia, PA 19103.	Richard Allen Homes	376	Imp	$3,795,582
Grand total				$300,000,000

[FR Doc. 93–29319 Filed 11–29–93; 8:45 am]
BILLING CODE 4210–33–P

[Docket No. N–93–3667; FR–3571–N–02]

Withdrawal of the FY 1993 NOFA and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration in HUD Region I

AGENCY: Office of the Assistant Secretary for Public and Indian Housing, HUD.

ACTION: Notice of withdrawal of the fiscal year (FY) 1993 Notice of Funding Availability (NOFA) and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration.

SUMMARY: This notice announces the Department's withdrawal of the FY 1993 NOFA and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration published in the **Federal Register** on September 28, 1993 (58 FR 50768), and for which the application deadline was December 27, 1993. The Department intends to re-publish this NOFA at a later date. The supplementary information section of this notice explains the reasons for the withdrawal.

FOR FURTHER INFORMATION CONTACT: Gerald J. Benoit, Director, Operations Branch, Rental Assistance Division, Office of Public and Indian Housing, Department of Housing and Urban Development, 451 Seventh Street, SW., room 4220, Washington, DC 20410–8000, telephone number (202) 708–0477. Hearing or speech impaired individuals may call HUD's TDD number (202) 708–0850. (These telephone numbers are not toll-free.)

SUPPLEMENTARY INFORMATION: This notice announces the Department's withdrawal of the FY 1993 NOFA and Notice of Project Guidelines for the HOPE for Elderly Independence Multifamily Project Demonstration published in the **Federal Register** on September 28, 1993 (58 FR 50768), and for which the application deadline was December 27, 1993.

The September 28, 1993 NOFA announced the availability of funding in the HUD Boston Region (HUD Region I) for (1) section 8 project-based certificate (PBC) assistance for one multifamily housing project, and (2) a supportive services grant for the HOPE for Elderly Independence Multifamily Project Demonstration. The HOPE for Elderly Independence Multifamily Project Demonstration is authorized by section 803(h) of the National Affordable Housing Act (42 U.S.C. 8012) (NAHA).

The Department is withdrawing the NOFA because certain members of the U.S. House of Representatives have challenged the Department's interpretation of section 803(h) of NAHA as set forth in the September 28, 1993 NOFA and Notice of Project Guidelines (collectively, "NOFA"). The Department will review and consider the concerns raised by the members, and make any modifications to the NOFA that may be necessary to address these concerns. The Department will make every effort to resolve these issues as quickly as possible, and reissue the HOPE for Elderly Independence Multifamily Project Demonstration NOFA at the earliest possible date.

The Department regrets any inconvenience caused by the withdrawal of this NOFA.

Dated: November 24, 1993.

Joseph Shuldiner,

Assistant Secretary for Public and Indian Housing.

[FR Doc. 93–29320 Filed 11–29–93; 8:45 am]
BILLING CODE 4210–33–P

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

Aquatic Nuisance Species Task Force Monitoring Committee; Meeting

AGENCY: Department of the Interior, Fish and Wildlife Service.

ACTION: Notice of meeting.

SUMMARY: This notice announces a meeting of the Monitoring committee (Committee), a committee of the Aquatic Nuisance Species Task Force. A number of subjects will be discussed during the Committee meeting including: a review of monitoring programs collecting data concerning nonindigenous species and development of a pilot program to acquire data from existing monitoring programs.

DATES: The Monitoring Committee will meet from 9 a.m. to 3 p.m. on Thursday, December 16, 1993.

ADDRESSES: The Monitoring Committee meeting will be held at the U.S. Fish and Wildlife Service Building, room 200A, 4401 N. Fairfax Drive, Arlington, Virginia 22203.

FOR FURTHER INFORMATION CONTACT: Dr. James Weaver, National Fisheries Research Center, 7920 NW. 71st Street, Gainesville, Florida 3206 at (904) 378–8181.

SUPPLEMENTARY INFORMATION: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (5 U.S.C. App. I), this notice announces a meeting of the Aquatic Nuisance Species Task Force Monitoring Committee established under the authority of the Nonindigenous Aquatic Nuisance Prevention and Control Act of 1990 (Pub. L. 101–646, 104 Stat. 4761, 16 U.S.C. 4701 *et seq.*, November 29, 1990). Minutes of the meetings will be maintained by the Coordinator, Aquatic Nuisance Species Task Force, room 840, 4401 North Fairfax Drive, Arlington, Virginia 22203 and the Monitoring Committee Chairman, National

Fisheries Research Center, 7920 NW. 71st street, Gainesville, Florida 32606 and will be available for public inspection during regular business hours, Monday through Friday within 30 days following the meeting.

Dated: November 23, 1993.

Gary Edwards,

Assistance Director—Fisheries, Co-Chair, Aquatic Nuisance Species Task Force.

[FR Doc. 93–29245 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–55–M

National Park Service

Big Thicket National Preserve; Revision of Preserve Boundary at Village Creek

Section 1 of the Act of October 11, 1974 (88 Stat. 1254) provides for the establishment of Big Thicket National Preserve and authorizes the United States to accept title to any lands, or interests in lands, located outside the boundaries of the preserve which any private person, organization, or public or private corporation may offer to donate to the United States, if the Secretary finds that such lands would make a significant contribution to the purposes for which the preserve was created and he may administer such lands as part of the preserve. The Trustees for the Trust Estate of Bruce Reid and wife, Bessie M. Reid, and the Board of the Magnolia Garden Club, Beaumont, Texas, have offered to donate 22.76 acres of land designated as The Winifred Turner Nature Sanctuary for incorporation into the preserve. The property fronts on Village Creek and U.S. Highway 96. The tract contains a very fine mature stand of mixed pine and hardwood timber which is unique to this area due to the fact that it appears that no timber has ever been harvested from the property. From its highest elevation of 50 feet MSL in the southwest corner, the property slopes to elevation 10 feet MSL along the top bank of the creek. The portion of the tract fronting Village Creek is subject to frequent flooding but also affords excellent recreational opportunities for the visiting public. The Trust was established in 1958 in order to "contribute to the preservation, perpetuation, propagation, cultivation and protection of the flora and fauna of East Texas in order to promote human education, learning, appreciation and enjoyment of the beauties, mysteries and processes of nature." It is considered that the recreational opportunities offered by this property, along with the biological resources which have been so carefully preserved on this 22.76 acres, will make a significant contribution to the preserve. The specific lands proposed for addition are described as follows.

All that certain tract or parcel of land lying and situate in the County of Hardin, Texas, being 22.76 acres, more or less, out of the A. Lancaster Survey, A–36, and being more particularly described as follows:

Beginning at the southeast corner of the lands of grantor in the west bank of Village Creek, said corner being northwesterly 1315.00 feet, more or less, from the southeast corner of said Lancaster Survey, said point also being the northeast corner of the lands, now or formerly, of Jerry Lyn McKinney;

Thence with the dividing line between the lands of grantor and the lands of said Jerry Lyn McKinney North 89° 56′ 58″ West 1596.39 feet, more or less, to the southeast right-of-way line of U.S. Hwy. No. 96;

Thence in a northeasterly direction with said southeast right-of-way line being a curve to the right having a radius of 2684.61 feet, a central angle of 11° 50′ 30″ and an arc length of 554.84 feet, more or less, to the P.T. of said curve;

Thence continuing with said southeast right-of-way line as follows: North 20° 49′ 06″ East 198.50 feet, more or less; and North 44° 15′ 30″ East 570.20 feet, more or less; to the north line of the lands of grantor;

Thence with the dividing line between the land of grantor and the lands, now or formerly, Temple-Eastex, Inc. North 89° 26′ 03″ East 290.00 feet, more or less, to the west bank of Village Creek;

Thence with the meanders of the west bank of Village Creek southeasterly 1135.00 feet, more or less, to the Point of Beginning.

Containing 22.76 acres of land, more or less.

Therefore, notice is hereby given that in accordance with the Act of October 11, 1974, the boundary of the Big Thicket National Preserve is revised as described above, and as shown on Hardin County Appraisal District map, Sheet 29. This map is on file and available for inspection in the Office of the National Park Service, Department of the Interior; the Office of the Southwest Region, National Park Service; and the Office of the Superintendent, Big Thicket National Preserve.

Dated: September 28, 1993.

John E. Cook,

Regional Director, Southwest Region.

[FR Doc. 93–29199 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–P

Boundary Revision; Carl Sandburg Home National Historic Site

AGENCY: National Park Service, DOI.

ACTION: Notice of Boundary Revision, Carl Sandburg Home National Historic Site.

SUMMARY: Section 7(c) of the Land and Water Conservation Fund Act, as amended by Public Law 95–42, June 10, 1977 (91 Stat. 210), and Public Law 96–203, March 10, 1980 (94 Stat. 81), authorizes minor boundary revisions to areas within the national park system.

Notice is given that the boundary of Carl Sandburg Home National Historic Site has been revised pursuant to the above act, to include the lands depicted on boundary map numbered 445/80,008 dated June 1993, prepared by the Land Resources Division of the Southeast Region of the National Park Service.

This map is on file and available for inspection in the administrative office of the Carl Sandburg Home National Historic Site, 1928 Little River Road, Flat Rock, North Carolina 28731–9766, and in the offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Dated: July 13, 1993.

F. Dominic Dottavio,

Acting Regional Director, Southeast Region, National Park Service.

[FR Doc. 93–29197 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–M

Everglades National Park, FL; Boundary Revision

Public Law 101–229 dated December 13, 1989, authorized the modification of the boundaries of the Everglades National Park and to provide for the protection of lands, waters, and natural resources within the park, and for other purposes. Section 102(b) of this Act authorized the Secretary to make minor revisions in the boundaries of the park. Section 7(c)(i) of the Land and Water Conservation Fund Act, as amended by the Act of June 10, 1977 (P.L. 95–42, 91 Stat. 210) and the Act of March 10, 1980 (P.L. 96–203, 94 Stat. 81) further authorizes the Secretary to make minor revisions in the boundaries whenever the Secretary of the Interior determines that it is necessary for the preservation, protection, interpretation, or management of an area.

Notice is given that the boundary of Everglades National Park has been revised pursuant to the above Acts, to encompass lands as depicted on the boundary map entitled "Boundary Map—Everglades National Park" dated August 1992/160–82,000, prepared by

the National Park Service, Land Acquisition Field Office, Naples, Florida. The revision to the boundary encompasses one small parcel along the southeasterly line, adjacent to U.S. Highway 1.

This map is on file and available for inspection in the National Park Service, Land Acquisition Field Office, Naples, Florida and in the Offices of the National Park Service, Department of the Interior, Washington, DC 20013–7127.

Editorial Note: This document was received at the Office of the Federal Register on November 23, 1993.

Date September 18, 1992.

C. W Ogle,

Deputy Regional Director, Southeast Region, National Park Service.

[FR Doc. 93–29198 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–M

Concession Contract Negotiations; Indiana Dunes National Lakeshore, IN

AGENCY: National Park Service, Interior.

ACTION: Public notice.

SUMMARY: Public notice is hereby given that the National Park Service proposes to award a concession permit authorizing continued parking lot services, fee collection, and limited transportation facilities and services for the public at the West Beach area of Indiana Dunes National Lakeshore, Indiana, for a period of four (4) years from January 1, 1994, through December 31, 1997.

EFFECTIVE DATE: January 31, 1994.

ADDRESS: Interested parties should contact the Superintendent, Indian Dunes National Lakeshore, 1100 Mineral Springs, Porter, Indiana 46304, to obtain a copy of the prospectus describing the requirements of the proposed permit.

SUPPLEMENTARY INFORMATION: This permit renewal has been determined to be categorically excluded from the procedural provisions of the National Environmental Policy Act and no environmental document will be prepared.

The existing concessioner has performed its obligations to the satisfaction of the Secretary under an existing permit which expired by limitation of time on December 31, 1992, and therefore pursuant to the provisions of section 5 of the Act of October 9, 1965 (79 Stat. 969; 16 U.S.C. 20), is entitled to be given preference in the renewal of the permit and in the negotiation of a new proposed permit providing that the existing concessioner submits a responsive offer (a timely offer which meets the terms and conditions of the Prospectus). This means that the permit will be awarded to the party submitting the best offer, provided that if the best offer was not submitted by the existing concessioner, then the existing concessioner will be afforded the opportunity to match the best offer. If the existing concessioner agrees to match the best offer, then the permit will be awarded to the existing concessioner.

If the existing concessioner does not submit a responsive offer, the right of preference in renewal shall be considered to have been waived, and the permit will then be awarded to the party that has submitted the best responsive offer.

The Secretary will consider and evaluate all proposals received as a result of this notice. Any proposal, including that of the existing concessioner, must be received by the Superintendent not later than the sixtieth (60th) day following publication of this notice to be considered and evaluated.

Dated: October 23, 1993.

William W. Schenk,

Acting Regional Director, Midwest Region.

[FR Doc. 93–29200 Filed 11–29–93; 8:45 am]

BILLING CODE 4310–70–M

Draft Comprehensive Management Plan/Development Concept Plan/ Environmental Impact Statement, City of Rock National Reserve, Cassia County, Idaho

ACTION: Notice of availability of draft environmental impact statement.

SUMMARY: This notice announces the availability of a draft environmental impact statement (EIS) for the Comprehensive Management Plan/ Development Concept Plan for City of Rocks National Reserve. This notice also announces public meetings for the purpose of receiving public comments on the draft EIS.

DATES: Comments on the draft EIS should be received no later than February 1, 1994. The dates of the public meetings regarding the draft EIS are: Tuesday December 14, Wednesday December 15, and Thursday December 16, 1993.

ADDRESSES: Comments on the draft EIS should be submitted to: Regional Director, National Park Service, Pacific Northwest Region, 83 S. King Street, Suite 212, Seattle, WA 98104, (206) 553-5565.

The public meetings will be held at:

Almo School, Almo, Idaho, Tuesday, December 14, 1993, 7 p.m.

Best Western Burley Inn, 800 North Overland Burley, Idaho, Wednesday, December 15, 1993, 7 p.m.

Idaho Department of Parks and Recreation, 7800 Fairview, Avenue, Boise, Idaho, Thursday, December 16, 1993, 7 p.m.

Public reading copies of the draft EIS will be available for review at the following locations:

Office of Public Affairs, National Park Service, Department of the Interior, 18th and C Streets, NW., Washington, DC 20240, (202) 343-6843.

Twin Falls Public Library, Attn: Linda Parkinson/Susan Ash, 434 2nd Street East, Twin Falls, ID 83301, (208) 733-2964.

Burley Public Library, Attn: Mona Kenner, 1300 Miller Ave., Burley, ID 83318, (208) 678-7708.

Boise Public Library, Attn: Government Documents Department, 715 S. Capital Blvd., Boise, ID 83702, (208) 384-4076

Community Library, Box 2168, Ketchum, ID 83340, (208) 726-3493.

Pocatello Public Library, Attn: Lou Schavers, 812 E. Clark, Pocatello, ID 83201, (208) 232-1263.

Idaho State University Library, Attn: Larry Murdock, P.O. Box 8089, Pocatello, ID 83209-8089, (208) 236-2958.

Weber County Library, Attn: Non-Fiction Dept., 2464 Jefferson Ave., Ogden, UT 84401, (801) 627-6917.

Whitmore, Library, Attn: Joe Davis, Manager, 2197 E. 7000 S., Salt Lake City, UT 84121, (801) 943-4636.

Utah State Library, Attn: Lou Reinwerd, 2150 S. 300 W., Suite 16, Salt Lake City, UT 84115-2579, (801) 466-5888.

A limited number of copies of the draft EIS are available on request from:

Superintendent, City of Rocks National Reserve, National Park Service, 963 Blue Lakes Boulevard, Suite 1, Twin Falls, Idaho 83301, (208) 773–8398.

Manager, City of Rocks National Reserve, Idaho Department of Parks and Recreation, P.O. Box 169, Almo, Idaho 83312.

SUPPLEMENTARY INFORMATION: This Draft Comprehensive Management Plan/ Development Concept Plan/ Environmental Impact Statement presents a proposal and two alternatives for the management, use, and development of City of Rocks National Reserve. The proposal, which constitutes the draft comprehensive management plan for the reserve, calls for the preservation and interpretation of exceptional and important resources—remnants of the California Trail, distinctive rock outcrops, associated habitats, scenic beauty and a historic rural setting reminiscent of the American West—while accommodating the traditional use of livestock grazing and new interest in recreation. Uses would be directed to different zones to

minimize conflicts among potentially incompatible activities. Grazing and recreational use would be managed to avoid unacceptable degradation of resource values, with greatest emphasis on protection of historic fabric, rock surfaces, habitats for species of special concern, and riparian areas and wetlands. Approximately one-third of the 14,000-acre reserve would remain in private ownership, and approximately equal amount of public land would remain under grazing allotments, where traditional ranching activities would perpetuate the historic rural setting existing at the time of the reserve's establishment. Private commercial and residential development would be regulated by county zoning ordinances and might be limited by the acquisition of interests in lands on an opportunity basis necessary to protect reserve resources. Implementation of the proposal would be a partnership among the National Park Service, the Idaho Department of Parks and Recreation, Cassia County, and private landowners.

In addition to the proposal, the alternatives under consideration include the no-action alternative, which would continue to emphasize unrestricted private use and public recreation use, with no added emphasis on preserving the reserve's exceptional cultural and natural values, and an alternative that would emphasize the preservation and interpretation of the California Trail and the rock outcrops to the exclusion of traditional land use and to the detriment of the historic rural setting.

Dated: November 8, 1993.

William C. Walters,

Deputy Regional Director, Pacific Northwest Region, National Park Service.

[FR Doc. 93-29189 Filed 11-29-93; 8:45am]

BILLING CODE 4310-70-M

National Capital Region; Public Meeting

Notice is hereby given in accordance with the Federal Advisory Committee Act that a meeting of the National Capital Memorial Commission will be held on Friday, December 3, 1993, at 1 p.m., at the National Building Museum, room 312, 5th and F Streets, NW.

The Commission was established by Public Law 99-652, the Commemorative Works Act, for the purpose of preparing and recommending to the Secretary of the Interior, Administrator, General Services Administration, and Members of Congress broad criteria, guidelines, and policies for memorializing persons and events on Federal lands in the National Capital Region (as defined in the National Capital Planning Act of 1952, as amended), through the media of monuments, memorials and statues. It is to examine each memorial proposal for adequacy and appropriateness, make recommendations to the Secretary and Administrator, and to serve as information focal point for those persons seeking to erect memorials on Federal land in the National Capital Region.

The Members of the Commission are as follows:

Director, National Park Service

Chairman, National Capital Planning Commission

The Architect of the Capitol

Chairman, American Battle Monuments Commission

Chairman, Commission of Fine Arts

Mayor of the District of Columbia

Administrator, General Services Administration

Secretary of Defense

The purpose of the meeting will be to review legislative and site proposals. The meeting will be open to the public. Any person may file with the Commission a written statement concerning the matters to be discussed. Persons who wish to file a written statement or testify at the meeting or who want further information concerning the meeting may contact the Commission at 202-619-7097. Minutes of the meeting will be available for public inspection 4 weeks after the meeting at the Office of Land Use Coordination, National Capital Region, 1100 Ohio Drive, SW., room 201, Washington, DC 20242.

Dated: November 21, 1993.

John G. Parson,

Regional Director, National Capital Region.

[FR Doc. 9329201 Filed 11-29-93; 8:45 am]

BILLING CODE 4310-70-M

National Register of Historic Places; Notification of Pending Nominations

Nominations for the following properties being considered for listing in the National Register were received by the National Park Service before November 20, 1993. Pursuant to § 60.13 of 36 CFR part 60 written comments concerning the significance of these properties under the National Register criteria for evaluation may be forwarded to the National Register, National Park Service, P.O. Box 37127, Washington, DC 20013-7127. Written comments should be submitted by December 15, 1993.

Beth L. Savage,

Acting, Chief of Registration, National Register.

MAINE

Aroostock County

Governor Brann School, US 1 E side, 1.25 mi. S of jct. with Madore Rd., Van Buren vicinity, 93001432

Oxford County

Hall, Enoch, House, Bean Rd. W side, 0.5 mi. SE of jct. with ME 117, Buckfield vicinity, 93001431

MISSISSIPPI

Alcorn County

Midtown Corinth Historic District, Roughly bounded by Cass, Bunch, Washington, Main, Filmore, Linden, Douglas and Cruise Sts., Corinth, 93001433

NEW YORK

Putnam County

Garrison Grist Mill Historic District, Jct. of NY 9D and Upper Station Rd., Garrison Four Corners vicinity, 93001434

NORTH CAROLINA

Transylvania County

Brevard College Stone Fence and Gate (Transylvania County MPS), Jct. of N. Broad St. and French Broad Ave., NW corner, Brevard, 93001436

Godfrey—Barnette House (Transylvania County MPS), 411 S. Broad St., Brevard, 93001437

OHIO

Harrison County

Harrison National Bank, 101 E. Market St., Cadiz, 93001438

Lorain County

Moore, Leonard M., House, 309 5th St., Lorain, 93001439

TENNESSEE

Davidson County

Hillsboro—West End Historic District, Roughly bounded by West End, 31st, Blakemore and 21st Aves. and I-440, Nashville, 93001435

VIRGINIA

Clarke County

River House, US 17/50, 2.5 mi. E of Millwood, Millwood vicinity, 93001440

Fauquier County

Loretta, US 17 E side, 3500 ft. N of Warrenton town limits, Warrenton vicinity, 93001442

Richmond Independent City

Thomas Jefferson High School (Public Schools of Richmond MPS), 4100 W. Grace St., Richmond (Independent City), 93001441

WEST VIRGINIA

Jefferson County

The Hermitage, Cabletown Rd. (Co. Rd. 25) N of jct. with Mt. Hammond Rd., Charles Town vicinity, 93001444

Pocahontas County

GW Jeep Site, Address Restricted, Greenbank vicinity, 93001443

[FR Doc. 93-29190 Filed 11-29-93; 8:45 am]

BILLING CODE 4310-70-M

INTERSTATE COMMERCE COMMISSION

[Supplemental Order No. 1 to Directed Service Order No. 1513]

Delaware-Lackawanna Railroad Company Inc.—Directed Service Pocono Northeast Railway, Inc.

AGENCY: Interstate Commerce Commission.

ACTION: Extension of Directed Service Order.

SUMMARY: On September 28, 1993, pursuant to 49 U.S.C. 11125(a), the Commission authorized the Delaware-Lackawanna Railroad Company Inc. (DLRR) to operate as a "Directed Rail Carrier" (DRC) under authority of Directed Service Order No. 1513 (DSO1513)—without Federal compensation or subsidy under 49 U.S.C. 11125(b)(5)—over the Pocono Northeast Railway, Inc. (PNER), for a period of 60 days. This unsubsidized and uncompensated directed service order is based on the cessation of operations by PNER, without requisite Commission authority, and the absence of any representation by PNER that the railroad's cash position will allow it to resume operations at this time.

To assure continued service to shippers that are affected by the discontinuance of PNER's operations, the Commission is authorizing DLRR to provide interim uncompensated directed service over PNER's lines in the Scranton/Wilkes-Barre area of northeastern Pennsylvania for an additional period of 180 days. See 49 U.S.C. 11125(a)(1), (3), and (b)(1).

DATES: *Effective Date:* Supplemental Order No. 1 to Directed Service Order No. 1513 shall become effective at 11:59 p.m., EST, November 27, 1993.

Expiration Date: Unless otherwise modified by order of the Commission, Directed Service Order No. 1513, as amended, will expire at 11:59 p.m., EDT, May 23, 1994.

FOR FURTHER INFORMATION CONTACT: Bernard Gaillard (202) 927-5500 or Melvin F. Clemens, Jr. (202) 927-5538; TDD for hearing impaired: (202) 927-5721].

SUPPLEMENTARY INFORMATION: On September 17, 1993, PNER issued Embargo No. 10-93 to be effective immediately and ceased operations over its entire 93 mile system in the Scranton/Wilkes-Barre area of northeastern Pennsylvania. On September 28, 1993, pursuant to 49 U.S.C. 11125(a), the Commission authorized the Delaware-Lackawanna Railroad Company Inc. (DLRR), to operate as DRC—without Federal compensation or subsidy under 49 U.S.C. 11125(b)(5)—over the Pocono Northeast Railway, Inc. (PNER), for a period of 60 days.

Pursuant to 49 U.S.C. 11125(a), the Commission may issue a directed service order for up to 60 days when it finds that a rail carrier "cannot transport traffic offered to it because - (1) its cash position makes its continuing operation impossible; (2) transportation has been discontinued under court order; or (3) it has discontinued transportation without obtaining a required certificate under [49 U.S.C.] 10903 * * *. Any Commission order under these provisions also requires Federal compensation to the DRC for those operations. However, this provision also allows the Commission to authorize a carrier to provide unsubsidized directed service if the directed carrier is willing to accept that responsibility under those terms. Pursuant to 49 U.S.C. 11125(b)(1), the Commission may extend a directed service order for an additional 180 days when it finds that cause exists.

In view of the urgent need for continued rail service over lines of the PNER, and considering PNER's cessation of operations without providing a suitable alternative and its apparent inability to resume rail service at this time, we find that PNER's current situation meets the standards of 49 U.S.C. 11125(a)(1), (3), and (b)(1). DLRR has operated the PNER lines since receiving authority from the Commission to do so for 60 days. Its offer to continue its directed service operations over all PNER lines for an additional period of 180 days under the same terms and conditions is fully supported by the affected shippers and State and local agencies. This decision grants the requests of DLRR and interested parties for continuation of interim directed service authority and authorizes DLRR to provide uncompensated directed service for an additional period of 180 days. The advance public notice contained in the initial 60-day order was sufficient to provide notice and allow comment on the necessity for the order and any extension of that order. In response, 11 shippers, the Pennsylvania Department of Transportation, the Economic Development Council of Northeastern Pennsylvania, The Greater Wilkes-Barre Chamber of Commerce, the Luzerne County Commissioners, Delaware and Hudson Railway Company/CPRail (DH/CPR), and Federal and State legislators have filed statements indicating their full support for DLRR's continued operations as DRC and urging the Commission to extend the order for the full 180-day period allowed by statute.

In a related matter, a newly formed, noncarrier company called Transloaders, Inc. (Transloaders), and F&L Realty have filed a notice of exemption in Finance Docket No. 32407, *Transloaders, Inc.—Lease and Operation Exemption—F&L Realty*. The transaction relates to the lease of approximately 6 miles of PNER lines to Transloaders, which has indicated its intent to operate the lines. In a decision served November 18, 1993, the Chairman of the Commission stayed the effectiveness of the exemption in the Finance Docket No. 32407 proceeding to allow the Commission an opportunity to examine evidence on various issues raised in that proceeding, and to determine the impact of the proposed transaction on the directed service carrier's operations, the availability of service to affected shippers, and the public interest generally. If it turns out that such integrated operations are desirable during the directed service period, the Commission retains jurisdiction to amend or modify the directed service order.

We find:

1. PNER has discontinued service over its lines without authority, and cause exists for the Commission to extend DSO 1513 for an additional period of 180 days.

This action will not significantly affect either the quality of the human environment or energy conservation.

It is ordered:

1. Based upon the Commission's determination that cause exists for extension of this order, DLRR is authorized to enter upon and operate PNER's lines pursuant to this voluntary directed service order under 49 U.S.C. 11125 for an additional period of 180 days.

(a) Operations by DLRR shall continue until no later than the one hundred eightieth day after the effective date of this decision.

(b) Should DLRR desire to terminate its directed service operations before the expiration of this order, DLRR shall provide the Commission and the parties to this proceeding with 30-days advance

notice, in writing, of the date on which it desires to cease operations.

2. The provisions of this decision shall apply to intrastate, interstate, and foreign commerce.

3. The Commission retains jurisdiction to modify, amend, or reconsider this decision at any time.

4. This decision and order shall become effective at 11:59 p.m., EST, November 27, 1993.

5. Unless otherwise modified by the Commission, this order will expire at 11:59 p.m., EDT, May 23, 1994.

6. Notice of this decision shall be given to the general public by publication in the **Federal Register**. This decision will also be served on the Federal Railroad Administration, the Association of American Railroads, the American Short Line Railroad Association, The Railway Labor Executives' Association, Conrail, DH/CPR, PNER and DLRR.

Decided: November 22, 1993.

By the Commission, Chairman McDonald, Vice Chairman Simmons, Commissioners Phillips, Philbin and Walden.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29328 Filed 11–29–93; 8:45 am]

BILLING CODE 7035–01–P

DEPARTMENT OF JUSTICE

Lodging of Consent Decree Pursuant to the Clean Air Act; United States v. Robert L. Brown

in accordance with Department of Justice Policy, 28 CFR 50.7, notice is hereby given that a proposed Consent Decree in *United States* v. *Robert L. Brown*, Civ No. 1–91–0444, was lodged with the United States District Court for the Eastern District of Tennessee on November 4, 1993. This Consent Decree resolves a judicial enforcement action brought by the United States against the defendant pursuant to sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413. In its complaint, the United States alleged that the defendant failed to comply with the National Emission Standards for Hazardous Air Pollutants ("NESHAP") for asbestos promulgated pursuant to section 112 of the Clean Air Act, 42 U.S.C. 7412, prior to and during the renovation of the Chattanooga Bank Building in Chattanooga, Tennessee. The proposed Consent Decree requires that the defendant pay a civil penalty of $5,000 in settlement of claims alleged in the complaint.

The Department of Justice will receive for a period of 30 days from the date of this publication, comments relating to the proposed Consent Decree. Comments should be addressed to the Assistant Attorney General of the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Robert L. Brown*, D.O.J. Ref. No. 90–5–2–1–1601.

This proposed Consent Decree may be examined at the offices of the United States Attorney, Eastern District of Tennessee, 1110 Market Street, suite 301, Chattanooga, Tennessee 37402; at the office of Regional Counsel, Environmental Protection Agency, Region IV, 345 Courtland Street NE., Atlanta, Georgia 30365; and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005), 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC (20005). In requesting a copy, please refer to the referenced case and enclose a check in the amount of $1.75 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–29337 Filed 11–29–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Office of the Secretary

Glass Ceiling Commission; Criteria and Application Process for the National Award for Diversity and Excellence in American Executive Management

AGENCY: Office of the Secretary, Labor.

ACTION: Notice of application.

SUMMARY: The Glass Ceiling Commission is announcing the procedure for applying for the National Award for Diversity and Excellence in American Executive Management. The award is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

DATES: Applications are due by February 28, 1994.

ADDRESSES: Applications should be sent to: The Glass Ceiling Commission, Perkins-Dole Award, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Joyce Miller, Executive Director, The Glass Ceiling Commission, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210. Telephone: 202–219–7342.

SUPPLEMENTARY INFORMATION:

Background

The National Award for Diversity and Excellence in American Executive Management was established pursuant to Pub. L. 102–166, The Glass Ceiling Act of 1991. The glass ceiling is defined as those artificial barriers based on attitudinal or organizational bias that prevent qualified minorities and women from advancing in their organizations into management and decisionmaking positions.

Purpose

The National Award for Diversity and Excellence in American Executive Management is an annual Presidential award to recognize a United States business for excellence in promoting a more diverse skilled work force at the management and decisionmaking levels in business.

Business Defined

For the purposes of this award, business includes:

1. Corporation including nonprofit corporations;
2. Partnership;
3. Professional association;
4. Labor organization;
5. Business entity similar to any entity described in 1 through 4;
6. An education referral program, a training program, such as an apprenticeship or management training program or a similar program; and
7. Joint program formed by a combination of any entities described in 1 through 6.

Evaluation Criteria

The business must demonstrate that it has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women in order to foster advancement to management and decisionmaking positions within the business, including the elimination of artificial barriers to the advancement of minorities and women, and deserves special recognition as a consequence. Demonstration of substantial effort in promoting work force diversity initiatives must include a formal process that is quantifiable and emulatable and must be designed to:

—Eliminate barriers to the advancement of minorities and women;
—Create a work environment where all employees are able to achieve their full potential within the organization;

—Share information on successful diversity management and its benefits.

The policies, programs, achievements of each applicant will be evaluated in the following areas:

Leadership

The CEO and senior executives must demonstrate personal involvement and leadership in developing and maintaining an environment for diversity management excellence. The applicant must describe how the requirements for such excellence are communicated and reinforced for all managers and supervisors and integrated into day-to-day leadership, management and supervision. Key methods of evaluating and improving the effectiveness and accountability of such leadership and involvement should be addressed. The results of effective leadership should also be discussed.

Recruitment, Selection and Retention Practices

The applicant must demonstrate how the practices for filling management and decisionmaking positions take into consideration the diversity of the candidate pool for such positions. The applicant must describe the human resource recruitment practices as related to monitoring search firm referrals, word-of-mouth recruitment, designation of high potential employees and other strategies for recruiting. The selection procedures, including identification and selection of high potential employees must be described. The applicant must also describe successful results of recruitment and selection of a well diversified candidate pool for management and decisionmaking positions. Practices for retaining minorities and women must also be discussed.

Development Practices

The applicant must describe: the mechanisms for selecting employees for developmental experiences; the kinds of developmental experiences provided, e.g., on-site and off-site training, rotational assignments, special projects, etc.; the extent to which the nature of the developmental opportunities reflect the race, ethnicity and sex characteristics of the total management candidate pool; the role of relocations and overseas assignments in advancement and the extent to which diversification of such assignments is assured; and to what extent and how this is monitored.

Successful Initiatives

In addition to the elements above, the applicant must describe how all other factors are combined to create a complete initiative which has resulted in a diverse management work force for both minorities and women. These initiatives may include, for example, family friendly workplace policies, anti-harassment training or prevention, anti-discrimination procedures, pay equity evaluations and adjustments and the like. The applicant must discuss the innovative aspects of the initiative, the key factors of success and what makes this initiative worthy of special recognition.

Other Evaluation Considerations

There must be no indication based on recent or current EEO compliance reviews, complaint investigations or other Federal Enforcement activity of substantial noncompliance by the applicant with any civil rights laws. Considerations shall be given to whether or not businesses that have been cited for specific EEO violations, such as unlawful discrimination, sexual harassment, etc., have been required to take corrective actions during the period for which the business is being considered for this award.

Evaluation Process

Applicants will be ranked based on the criteria outlined above.

An on-site tour to each business ranked in the top ten will be made and interviews with selected officials and other employees will also be conducted.

The Commission shall select the Perkins-Dole awardee from businesses ranked in the top ten. Recognition may also be given for successful efforts in eliminating the glass ceiling for businesses ranked from two to five.

Publicity

A business that receives this award may publicize the receipt of the award and use the award in advertising, if the business agrees to help other United States businesses improve with respect to the promotion of opportunities and developmental experiences of minorities and women to foster the advancement of minorities and women to management and decisionmaking positions.

Application Procedures

Businesses wishing to be considered for the National Award for Diversity and Excellence in American Executive Management shall submit a written application to the Glass Ceiling Commission. The application shall be in the form of a letter and shall include information that demonstrates that the business has made substantial effort and progress to promote the opportunities and developmental experiences of minorities and women to foster advancement of minorities and women into management positions and deserves special recognition as a consequence.

The letter shall specifically address the following areas; (See Evaluation Criteria)

Leadership
Recruitment, Selection and Retention
Developmental Practices
Successful Initiatives

The application should also include statistical information relative to the business' work force profile for middle and upper management race, ethnicity and gender for at least the period covered by the initiative, but no less than five years. This information will be held in strict confidence.

The application package should be no more than 40 pages, including exhibits Send one original and three copies.

The cover sheet should contain the following information:

1. Name of the organization.
2. Number of establishments.
3. Number of employees in each establishment.
4. Address, telephone and fax number.
5. Name of highest ranking official.
6. Name, address, telephone and fax number of contact person.

The letter and other materials should be sent to: The Glass Ceiling Commission, Perkins–Dole Award, U.S. Department of Labor, 200 Constitution Avenue, NW., Room S–2233, Washington, DC 20210.

Applications should be received no later than February 28, 1994.

Signed at Washington, DC, this 19th day of November, 1993.

Robert Reich,

Secretary of Labor.

[FR Doc. 93–29237 Filed 11–29–93; 8:45 am]

BILLING CODE 4510–23–M

NATIONAL COMMISSION ON MANUFACTURED HOUSING

Meeting

AGENCY: National Commission on Manufactured Housing.

ACTION: Notice of meeting.

SUMMARY: In announces with the Federal Advisory Committee Act, Pub. L. 101–625, as amended, the National Commission on Manufactured Housing announces a forthcoming meeting of the Commission.

DATES:
December 9, 1993, 8:30 a.m.–5 p.m. Full Commission Meeting.
December 10, 1993, 8:30 a.m.–3 p.m. Full Commission Meeting.

ADDRESSES: Holiday Inn Old Town, 480 King Street, Alexandria, VA 22314.

FOR FURTHER INFORMATION CONTACT: Carmelita Pratt, Administrative Officer, The National Commission on Manufactured Housing, 301 N. Fairfax Street, suite 110, Alexandria, VA 22314 (703) 603–0440.

Type of Meeting: Open.

Carmelita R. Pratt,

Administrative Officer.

[FR Doc. 93–29242 Filed 11–29–93; 8:45 am]

BILLING CODE 6820–EA–M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Media Arts Advisory Panel; Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92–463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (Film/Video Documentary Prescreening Section) to the National Council on the Arts will meet on December 14–16, 1993, from 9 a.m. to 6:30 p.m. on December 14 and 15, 1993 and from 9 a.m. to 5:30 p.m. on December 16, 1993 in room 716 of the Nancy Hawks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting is for the purpose of application evaluation, under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including discussion of information given in conference to the Agency by grant applicants. In accordance with the determination of the Chairman of November 20, 1991, these sessions will be closed to the public pursuant to subsections (c)(4), (6)(B) of section 552b of title 5, United States Code.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Director, Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29309 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Overview Section) to the National Council on the Arts will be held on December 13, 1993 from 9 a.m. to 6:30 p.m. in Room M–14 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include introductions, State of the Field Overview, and policy.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29311 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Opera-Musical Theater Advisory Panel (Professional Artist Development and Services to the Field Section) to the National Council on the Arts will be held on December 14–15, 1993 from 9 a.m. to 7:30 p.m. on December 14, 1993, and from 9 a.m. to 5 p.m. on December 15, 1993. This meeting will be held in Room M–14, at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 6:30 p.m. to 7:30 p.m. on December 14, 1993 for a policy discussion.

The remaining portions of this meeting from 9 a.m. to 6:30 p.m. on December 14, 1993, and 9 a.m. to 5 p.m. on December 15, 1993 are for the purpose of Panel review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of November 24, 1992, these sessions will be closed to the public pursuant to subsection (c) (4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any person may observe meetings, or portions thereof, of advisory panels which are open to the public, and may be permitted to participate in the panel's discussions at the discretion of the panel chairman and with the approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TYY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Director, Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29312 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

Meeting

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. 92–463), as amended, notice is hereby given that a meeting of the Office of Public Partnership Advisory Panel (Basic State Grants Section) to the National Council on the Arts will be held on December 13–14, 1993 from 9 a.m. to 5:30 p.m., on December 13, 1993 and from 9 a.m. to 4:30 p.m. on December 14, 1993, in rooms 714 and 730 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

This meeting will be open to the public on a space available basis. Topics of discussion will include introductory remarks, application review, and policy discussion.

Any interested person may observe meetings, or portions thereof, which are open to the public, and may be permitted to participate in the discussions at the discretion of the meeting chairman and with the

approval of the full-time Federal employee in attendance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682–5532, TTY 202/682–5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call 202/682–5439.

Dated: November 24, 1993.

Yvonne M. Sabine,

Office of Panel Operations, National Endowment for the Arts.

[FR Doc. 93–29313 Filed 11–29–93; 8:45 am]

BILLING CODE 7537–01–M

NATIONAL SCIENCE FOUNDATION

Advisory Committee for Computer and Information Science and Engineering; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Date and Time: December 15, 1993: 8:30 a.m. to 5 p.m. December 16, 1993: 8:30 a.m. to 2:30 p.m.

Place: Room 330, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Open.

Contact Person: Odessa Dyson, Administrative Officer, Office of the Assistant Director, Directorate for Computer and Information Science and Engineering, 4201 Wilson Blvd., Arlington, VA 22230. Telephone: (703) 306–1900.

Minutes: May be obtained from the contact person listed above.

Purpose of Meeting: To advise NSF on the impact of its policies, programs and activities on the CISE community; to provide advice to the Assistant/CISE on issues related to long range planning.

Agenda: (1) Discussion of Future of Supercomputing Report

(2) National Information Infrastructure and Manufacturing Initiatives

(3) Program Assessment and Evaluation.

Dated: November 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–29213 Filed 11–29–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Networking and Communications Research and Infrastructure (NCRI); Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Networking and Communications Research (1207)

Date and Time: December 13–15, 1993; 8:30 a.m. to 5 p.m.

Place: Room 1175, National Science Foundation, 4201 Wilson Blvd., Arlington, VA 22230.

Type of Meeting: Closed.

Contact Person: Aubrey Bush, NCRI, National Science Foundation, Room 416, Washington, DC 20550 (202 357–9717).

Purpose of Meeting: To provide advice and recommendations concerning proposals submitted to NSF for financial support.

Agenda: To review & evaluate proposals submitted for the Networking and Communications Program.

Reason for Closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals.

These matters are exempt under 5 U.S.C. 552 b. (c) (4) and (6) of the Government in the Sunshine Act.

Dated: November 23, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–29214 Filed 11–29–93; 8:45am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste Working Group on the Unsaturated Zone at the Proposed Yucca Mountain Site; Meeting

The ACNW Working Group on the unsaturated zone at the Yucca Mountain site will hold a meeting on Tuesday, December 14, 1993 in the Monte Carlo room at the St. Tropez All Suite Hotel, 455 East Harmon Avenue, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Tuesday, December 14, 1993—8:30 a.m. Until the Conclusion of Business

The Working Group will examine the current understanding of processes controlling matrix and fracture flow in the unsaturated zone at the proposed Yucca Mountain site, and status of data collection and modeling activities.

Oral statements may be presented by members of the public with the concurrence of the ACNW Working Group Chairman; written statements will be accepted and made available to the Working Group. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Working Group, its consultants, and staff. Persons desiring to make oral statements should notify the ACNW staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the ACNW Working Group, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The ACNW Working Group will then hear presentations by and hold discussions with representatives of the NRC staff and national laboratories, the DOE, DOE consultants, and other interested parties, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by a prepaid telephone call to the cognizant ACNW staff member, Ms. Lynn Deering (telephone 301/492–4737) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 22, 1993.

Howard J. Larson,

Acting Chief, Nuclear Waste Branch.

[FR Doc. 93–29303 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee on Advanced Boiling Water Reactors; Meeting

The ACRS Subcommittee on Advanced Boiling Water Reactors will hold a meeting on December 15, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Wednesday, December 15, 1993—8:30 a.m. Until the Conclusion of Business

The Subcommittee will continue its review of the NRC staff's Final Safety Evaluation Report for the General Electric Nuclear Energy (GE) Advanced Boiling Water Reactor (ABWR) design and related matters. The purpose of this meeting is to gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff and other interested persons regarding this review. Representatives of GE and its consultants will participate, as appropriate.

Further information regarding topics to be discussed, whether the meeting has been canceled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefore can be obtained by contacting the cognizant ACRS staff engineer, Dr. Medhat El-Zeftawy (telephone 301/492–9901) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 22, 1993

Sam Duraiswamy,

Chief Nuclear Reactors Branch.

[FR Doc. 93–29304 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards Subcommittee Meeting on Materials and Metallurgy; Meeting

The ACRS Subcommittee on Materials and Metallurgy will hold a meeting on December 16, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, MD.

The entire meeting will be open to public attendance.

The agenda for the subject meeting shall be as follows:

Thursday, December 16, 1993–8:30 a.m. Until the Conclusion of Business

The Subcommittee will discuss the steam generator operating experience and related rulemaking activities. The purpose of this meeting is the gather information, analyze relevant issues and facts, and to formulate proposed positions and actions, as appropriate, for deliberation by the full Committee.

Oral statements may be presented by members of the public with the concurrence of the Subcommittee Chairman; written statements will be accepted and made available to the Committee. Electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Subcommittee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS staff member named below as far in advance as is practicable so that appropriate arrangements can be made.

During the initial portion of the meeting, the Subcommittee, along with any of its consultants who may be present, may exchange preliminary views regarding matters to be considered during the balance of the meeting.

The Subcommittee will hear presentations by and hold discussions with representatives of the NRC staff, NUMARC, their consultants and other intersted persons regarding this review.

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman's ruling on requests for the opportunity to present oral statements and the time allotted therefor can be obtained by contacting the cognizant ACRS staff engineer, Mr. Elpidio G. Igne (telephone 301/492–8192) between 7:30 a.m. and 4:15 p.m. (EST). Persons planning to attend this meeting are urged to contact the above named individual five days before the scheduled meeting to be advised of any changes in schedule, etc., that may have occurred.

Dated: November 22, 1993.

Sam Duraiswamy,

Chief, Nuclear Reactors Branch.

[FR Doc. 93–29305 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Reactor Safeguards; Meeting Agenda

In accordance with the purposes of sections 29 and 182b. of the Atomic Energy Act (42 U.S.C. 2039, 2232b), the Advisory Committee on Reactor Safeguards will hold a meeting on December 9–11, 1993, in room P–110, 7920 Norfolk Avenue, Bethesda, Maryland. Notice of this meeting was published in the **Federal Register** on September 23, 1993.

Thursday, December 9, 1993

8:30 a.m.–8:45 a.m.: Opening Remarks by ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting and comment briefly regarding items of current interest. During this session, the Committee will discuss priorities for preparation of ACRS reports.

8:45 a.m.–11:30 a.m.: Proposed Supplement to Generic Letter 86–10 on Fire Endurance Testing and Related Matters (Open)—The Committee will review and comment on the proposed supplement to Generic Letter 86–10 on Fire Endurance Testing, and the technical differences between NUMARC and the NRC staff on the NUMARC test program related to the thermo-lag fire barrier. Representatives of the NRC staff and industry will participate.

11:30 a.m.–12 noon: Report on the Extended Station Blackout Event at Narora Atomic Power Station, India (Open/Closed)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the lessons learned from the severe turbine building fire that resulted in an extended station blackout on March 31, 1993, at the Narora Atomic Power Station, India.

A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(4), as implemented by 10 CFR 2.790(d)(2), to discuss information provided in confidence by a foreign source.

1 p.m.–3:45 p.m.: ABWR Certified Design Material/ITAAC Process (Open)—The Committee will review and comment on the Certified Design Material for the ABWR in the areas of piping design, human factors, and radiation protection. Also, it will discuss the process of Inspections, Tests, Analyses, and Acceptance Criteria (ITAAC). Representatives of the

NRC staff and General Electric Nuclear Energy (GE) will participate.

4 p.m.–5:30 p.m.: ABWR and SBWR Water-Level Instrumentation (Open)—The Committee will review and comment on the NRC staff's recommendation that diversity of reactor pressure vessel water-level measurement be required for the ABWR and SBWR designs. Representatives of the NRC staff and industry will participate.

5:30 p.m.–6 p.m.: Report of the ACRS Subcommittee on Advanced Boiling Water Reactors (Open)—The Committee will discuss the status of the activities of the ACRS Subcommittee on Advanced Boiling Water Reactors.

6 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Friday, December 10, 1993

8:30 a.m.–8:35 a.m.: Opening Remarks by the ACRS Chairman (Open)—The ACRS Chairman will make opening remarks regarding conduct of the meeting.

8:35 a.m.–10:30 a.m.: Status of Individual Plant Examination (IPE) Program (Open)—The Committee will hear a briefing by and hold discussions with representatives of the NRC staff on the status of the IPE program, the insights gained from these studies, and the use of the IPE/IPEEE programs to resolve generic issues.

10:45 a.m.–11:45 p.m.: EPRI Passive LWR Requirements Document (Open)—The Committee will discuss the proposed ACRS report on the EPRI Passive LWR Requirements Document. Representatives of the NRC staff will participate, as appropriate.

1:30 p.m.–2:30 p.m.: Safeguards and Security Requirements (Open/Closed)—The Committee will hear a briefing by the Director of the Office of Nuclear Material Safety and Safeguards (NMSS) on the activities of NMSS in the safeguards and security area.

A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(3) to discuss safeguards and security information, which is specifically exempted from disclosure by section 147 of the Atomic Energy Act of 1954.

2:30 p.m.–3:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

3:45 p.m.–4:30 p.m.: Future ACRS Activities (Open)—The Committee will discuss topics proposed for consideration during future ACRS meetings.

4:30 p.m.–5:30 p.m.: Election of Officers (Open/Closed)—The Committee will discuss qualifications of nominees for Chairman and Vice-Chairman and will elect Chairman and Vice-Chairman to the ACRS, and Member-at-Large to the Planning and Procedures Subcommittee for calendar year 1994.

A portion of this session may be closed pursuant to 5 U.S.C. 552b(c)(6) to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy.

5:30 p.m.–5:45 p.m.: Reconciliation of ACRS Comments and Recommendations (Open)—The Committee will discuss responses from the NRC Executive Director for Operations to recent ACRS comments and recommendations.

5:45 p.m.–6:30 p.m.: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

Saturday, November 6, 1993

8:30 a.m.–12 noon: Preparation of ACRS Reports (Open)—The Committee will discuss proposed ACRS reports regarding items considered during this meeting.

12 noon–12:45 p.m.: Report of the Planning and Procedures Subcommittee (Open/Closed)—The Committee will hear a report of the Planning and Procedures Subcommittee on matters related to the conduct of ACRS business and internal organizational and personnel matters relating to ACRS staff members.

A portion of this session may be closed to public attendance to discuss matters that relate solely to internal personnel rules and practices of this advisory committee and to discuss matters the release of which would represent a clearly unwarranted invasion of personal privacy.

12:45 p.m.–1:30 p.m.: ACRS Subcommittee Activities (Open)—The Committee will hear reports and hold discussions regarding the status of ACRS subcommittee activities.

1:30 p.m.–2 p.m.: Miscellaneous (Open)—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and complete discussion of topics that were not completed during previous meetings as time and availability of information permit.

Procedures for the conduct of the participation in ACRS meetings were published in the **Federal Register** on September 30, 1993 (58 FR 51118). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during the open portions of the meeting, and questions may be asked only by members of the Committee, its consultants, and staff. Persons desiring to make oral statements should notify the ACRS Executive Director, Dr. John T. Larkins, as for in advance as practicable so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the ACRS Executive Director prior to the meeting. In view of the possibility that the schedule for ACRS meetings may be adjusted by the chairman as necessary to facilitate the conduct of the meeting, persons, planning to attend should check with the ACRS Executive Director if such rescheduling would result in major inconvenience.

I have determined in accordance with subsection 10(d) of the Federal Advisory Committee Act (Pub. L. 92–463) that it is necessary to close portions of this meeting noted above to discuss information that involves the internal personnel rules and practices of this advisory Committee per 5 U.S.C. 552b(c)(2), to discuss safeguards and security information exempted from disclosure by a statute that establishes particular criteria for withholding or refers to particular types of matters to be withheld per 5 U.S.C. 552b(c)(3), to discuss information provided in confidence by a foreign source per 5 U.S.C. 552b(c)(4), and to discuss information the release of which would represent a clearly unwarranted invasion of personal privacy per 5 U.S.C. 552b(c)(6).

Further information regarding topics to be discussed, whether the meeting has been cancelled or rescheduled, the Chairman,'s ruling on requests for the opportunity to present oral statements and time allotted therefore can be obtained by contacting the ACRS Executive Director, Dr. John T. Larkins (telephone 301–492–4516), between 7:30 a.m. and 4:15 p.m. EST.

Dated: November 23, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–29306 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

Boston Edison Co., Pilgrim Nuclear Power Station; Issuance of Director's Decision Under 10 CFR 2.206

Notice is hereby given that the Director, Office of Nuclear Reactor Regulation (NRC), has issued a Decision concerning a request filed pursuant to 10 CFR 2.206 by Jane Fleming. The petitioner requested that the Commission reconsider its July 30, 1991, approval of a task force recommendation that the NRC not reconsider its reasonable finding regarding emergency preparedness at Pilgrim Nuclear Power Station. The petitioner also requested that the Commission set the "120 day clock." Although she did not cite 10 CFR 50.54(s)(2)(ii), the NRC is interpreting this request to mean, in accordance with this regulation, that the NRC should find that the state of emergency preparedness at Pilgrim does not provide reasonable assurance that adequate protective measures can be taken in the event of a radiological emergency and, if the deficiencies are not corrected within 4 months of that finding, the Commission should determine whether the reactor shall be shut down until such deficiencies are remedied or whether other enforcement action is appropriate. Ms. Fleming alleged, as basis for this request, that emergency planning for Pilgrim Station is in violation of 10 CFR 50.47 and is not in accordance with NUREG–0654, "Criteria for Preparation and Evaluation of Emergency Response Plan." She gave the following 10 reasons for her belief that the finding of reasonable assurance should be reversed: (1) Reception center to the north is not adequate, (2) transportation is not adequate, (3) monitoring of school children is not adequate, (4) monitoring of handicapped is not adequate, (5) decontamination of handicapped is non-existent, (6) planning for evacuation of Saquish-Gurent and Clark's Island is not adequate, (7) interfacing is not adequate, (8) public information is not adequate, (9) direct torus vent interfacing with emergency planning issues is not resolved, and (10) congregate care facilities are not under agreement. She further asserted, among other matters, that the task force did not properly achieve the goals set out in its charter, that the task force was disbanded before any final recommendation was made, that the task force ignored established NRC policy, that the Commission overlooked areas of concern, and that the Commission's approval could not properly have been based on the findings provided by the task force.

On November 7, 1991, Ms. Fleming telephoned David Trimble of Commissioner Curtiss' staff to raise a new concern about the egress route from Saquish-Gurnet. In addition, Ms. Fleming telefaxed to Mr. Trimble a copy of her comments on the State's preparations for the graded exercise at Pilgrim scheduled for December 12, 1991.

Ms. Fleming expressed to Mr. Trimble a belief that her comments on the planned graded exercise were relevant to the issues raised in her petition. I have treated the information supplied by Ms. Fleming to Mr. Trimble as a supplement to Ms. Fleming's petition and have considered this material in preparing my response to the petition.

On November 15, 1991, Ms. Fleming forwarded to William M. Hill, Jr., of the Commission's Office of the Secretary a copy of a memorandum from Grant C. Peterson, Associate Director for State and Local Programs, FEMA, to Russell F. Miller, Inspector General of FEMA concerning Ms. Fleming's allegation to FEMA regarding the Pilgrim Offsite Emergency Preparedness task force. In a cover note to Mr. Hill, Ms. Fleming expressed her belief that the information she was providing supported the position she had taken in her petition. I have treated the material provided by Ms. Fleming on November 15, 1991, as the second supplement to her petition and have considered this information in preparing my response to the petition.

In an unsigned Draft Letter, dated May 1, 1992, Ms. Fleming provided two additional items of information which she characterized as an update to her petition. I addressed those two items in a letter to Ms. Fleming, which forwarded my Decision, dated November 19, 1993.

I have determined that the petition should be denied. The reasons for this Decision are explained in the "Director's Decision Under 10 CFR 2.206," (DD–93–17), which is available for public inspection in the Commission's Public Document Room, in the Gelman Building, Lower Level, 2120 L Street, NW., Washington, DC 20555 and at the Local Public Document Room for the Pilgrim facility located at the Plymouth Public Library, 11 North Street, Plymouth, Massachusetts 02360.

[Docket Nos. 50–245, 50–336 (License Nos. DRR–21, Northeast Utilities, DPR–65)]

Millstone Nuclear Power Station; Receipt of Petition for Director's Decision Under 10 CFR 2.206

Notice is hereby given that by Petition dated August 22, 1993, Clarence O. Reynolds (Petitioner) has requested that the Executive Director for Operations take immediate escalated enforcement action with regard to Millstone Nuclear Power Station Unit 1. Specifically, Mr. Reynolds requests that multiple Severity Level II and III violations be issued against Millstone Unit 1 Maintenance Department Management, that suspensions of Maintenance Department Management be instituted pending a complete investigation, and that the Executive Director for Operations' (EDO's) office insist that he be immediately reinstated as maintenance mechanic pending this investigation. As grounds for this request, Mr. Reynolds asserts that he was suspended from his position at Millstone following his filing of nuclear concerns with Millstone management and the NRC, that there have been other complaints of retaliation which have recently occurred in his department, and that a recent NRC Inspector General's report indicated that there have been a significant number of complaints by employees being discriminated against at Millstone after bringing forth nuclear concerns.

On September 21, 1993 the NRC denied the position of the request that asked that the EDO's office insist on immediate reinstatement of Mr. Reynolds' to his position as a maintenance mechanic pending an investigation and requested additional information to provide the basis to act on the Petitioner's other requests. On October 19, 1993 the Petitioner responded with this additional information.

The request is being treated pursuant to 10 CFR 2.206 of the Commission's regulations. The request has been referred to the Director of Enforcement for action. As provided by § 2.206, appropriate action will be taken on this request within a reasonable time.

A copy of the Petition is available for inspection at the Commission's Public Document Room at 2120 L Street, NW., Washington, DC 20555.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 23d day of November 1993.

Joseph R. Gray,

Deputy Director, Office of Enforcement

[FR Doc. 93–29307 Filed 11–29–93; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Location of Agency

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of agency relocation.

SUMMARY: The Pension Benefit Guaranty Corporation ("PBGC") will be moving to a new location in Washington DC, during the months of December 1993 and January 1994. This notice informs the public of the PBGC's new address and telephone numbers.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel (Code 22500), Pension Benefit Guaranty Corporation, 2020 K Street, NW., Washington, DC 20006–1860, 200–778–8850 (202–778–1958 for TTY and TDD); 202–326–4024 (as of December 20, 1993) (202–326–4179 for TTY and TDD (as of January 24, 1994)). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: This notice informs the public that the Pension Benefit Guaranty Corporation ("PBGC") is relocating and provides the PBGC's new address and telephone numbers. The PBGC also is amending its regulations, elsewhere in today's **Federal Register**, to reflect the agency's relocation.

New Address

During the months of December 1993 and January 1994, the PBGC, which currently is located at 2020 K Street, NW., Washington, DC 20006–1860, will be moving its offices. The PBGC's new address is: Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026. This change is limited to the PBGC's offices; post office box numbers and other addresses (e.g., the Georgia addresses used for filing premium forms and payments) are not affected.

The PBGC will begin accepting mail and delivery at the new 1200 K Street address on December 6, 1993. By the time the move has been completed in late January 1994, the United States Postal Service will not be delivering mail to the old 2020 K Street address, and the PBGC will not be accepting hand delivery at that address.

New Telephone Numbers

As of today, the PBGC anticipates that the following new telephone numbers will be in service on the dates indicated—

(1) PBGC general number: 202–326–4000 as of December 20, 1993 (202–778–8800 before that date) (202–326–4179 for TTY and TDD as of January 24, 1994 (202–778–1958 before that date));

(2) Case Operations and Compliance Department: 202–326–4000 as of December 20, 1993 (202–778–8800 before that date);

(3) Premium Operations Division: 202–326–4061 as of January 10, 1994 (202–778–8825 before that date);

(4) Participant Services Division: 202–326–4100 as of January 24, 1994 (202–778–8853 before that date);

(5) Corporate Finance and Negotiations Department: 202–326–4070 as of December 6, 1993 (202–778–8895 before that date);

(6) Disclosure officer: 202–326–4040 as of December 6, 1993 (202–778–8839 before that date);

(7) Office of the General Counsel: 202–326–4020 (for general inquiries) and 202–326–4024 (for regulatory matters as of December 20, 1993 (202–778–8820 and 202–778–8850, respectively, before that date).

Issued in Washington, DC this 23rd day of November, 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–29268 Filed 11–29–93; 8:45 am]

BILLING CODE 7708–01–M

POSTAL RATE COMMISSION

Commission Visit

November 24, 1993.

Notice is hereby given that on December 8 through December 9, 1993, members of the Commission and certain advisory staff personnel will visit the mailing operations and/or manufacturing facilities/printing plants of the following firms:

December 8—Florida Gift Fruit Shippers, Orlando, FL

December 9—Deluxe Check Printers, Inc., and American Express, Plantation, FL

A report of the visits will be on file in the Commission's Docket Room. For further information contact Charles L. Clapp, Secretary of the Commission at 202–789–6840.

Cyril J. Pittack,

Acting Secretary.

[FR Doc. 93–29333 Filed 11–29–93; 8:45 am]

BILLING CODE 7710–FW–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33235; File No. SR–Amex–93–31]

November 22, 1993.

Self-Regulatory Organizations; Filing of Proposed Rule Change by the American Stock Exchange, Inc. ("Amex") Relating to Specialist Contact With Listed Companies and Member Organizations

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 22, 1993, the American Stock Exchange, Inc. ("Amex" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange is proposing to adopt new Rule 194, which would require: (1) Quarterly contact by a representative of each specialist unit with the issuer of each of the unit's specialty stocks, and (2) semiannual contact with the ten member organizations of the Exchange that are significant customers of the specialist unit and any other member organizations that request such contact. New Rule 194 also would require specialist units to report periodically to the Exchange a record of these contacts. In addition, the Exchange is proposing to amend Rule 590(h) to give the Minor Floor Violation disciplinary Committee the authority to impose fines for violations of Rule 194.[1]

The text of the proposed rule change is available at the Office of the Secretary, Amex and at the Commission.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change

[1] On November 4, 1993, the Amex requested approval, under Rule 19d–1(c)(2), 17 CFR 240.19d–1(c)(2), to amend its Rule 19d–1 minor rule violation enforcement and reporting plan to include proposed Rule 194. *See* letter from Geraldine M. Brindisi, Corporate Secretary, Amex, to Louis A. Randazzo, Attorney, Commission, dated November 3, 1993.

and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Although many specialist units currently maintain regular contact with their listed companies and with their member firm customers, there is no Exchange rule requiring such contact. Regular contact is important in that it fosters greater understanding on the part of the specialist, member firm and listed company communities as to their respective needs and functions.

Accordingly, the Exchange is proposing to adopt new Rule 194, which requires: (1) Quarterly contact by a representative of each specialist unit with the issuer of each of the unit's specialty stocks; and (2) semiannual contact with the ten member organizations of the Exchange that are significant customers of the specialist unit and any other member organizations that request such contact. Specialists would be required to report to the Exchange, on a regular basis, all contacts with their listed companies and member organizations on new Form 194.

Under the new rule, a representative of each specialist unit would be required each quarter to contact each company (Corporate Secretary or higher) or a member of the company's investor relations staff. Every reasonable effort must be made to have at least one of such quarterly contacts during each calendar year be an in-person visit, while the other contacts may be by telephone. An in-person contact would include the following: A meeting at the company's corporate headquarters, attendance at an Exchange-sponsored function for listed companies or another meeting.

A representative of each specialist unit would also be required to contact semiannually representatives of the ten member organizations of the Exchange that are the most significant customers of the specialist unit and any other member organizations that request such contact. The Exchange will advise each specialist unit as to which member organizations are its ten most significant customers. The individual contacted must be a senior officer of the member organization in question, who does not spend a substantial portion of his or her time on the floor of the Exchange and who has general responsibility for directing order flow to the floor of the Exchange in stocks registered with the specialist unit. The contact may be by telephone, but specialists will be encouraged to extend an invitation for an in-person meeting annually to a representative of each member organization contacted.

Specialists will be required to report, on new Form 194, their required contacts with their listed companies at the end of each calendar quarter and with member organizations semiannually.[2] The Exchange is also proposing that rule 590(h) be amended to provide the Minor Floor Violations Disciplinary Committee with the authority to impose a fine for violation of Rule 194.

The proposed rule can be expected to enhance the specialist's communication function, and lead to greater understanding and cooperation among the various communities with the Exchange. In particular, these contacts will foster increased knowledge of the specialist function, the operation of the Exchange market, and the markets that are maintained in various stocks, and will provide listed companies and member organizations with a forum in which to raise any service or operational concerns which they may have.

It should also be noted that the new rule is similar to New York Stock Exchange rule 106, which was adopted in 1989 in response to similar concerns.

2. Statutory Basis

The proposed rule change is consistent with section 6(b) of the Act in general and furthers the objectives of section 6(b)(5) in particular in that it promotes just and equitable principles of trade and fosters cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, by encouraging and mandating increased communication among specialists, issuers and member firms.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

[2] Amex Form 194 will be used by specialist units to report the contacts required under Rule 194.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Room. Copies of the filing will also be available for inspection and copying at the principal office of the Amex. All submissions should refer to File No. SR-Amex-93–31 and should be submitted by December 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29216 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34-3326; File No. SR-NASD-93-36]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Extension of Public Comment Period for Proposed Rule Change

On June 21, 1993, the National Association of Securities Dealers, Inc. ("NASD") filed with the Securities and Exchange Commission ("Commission") the proposed rule change pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1). The proposed rule change would amend section 41 of the Code of Arbitration Procedure to permit parties in arbitration proceedings involving at least $250,000 to make prehearing settlement offers before an arbitration hearing is set to begin. The proposed rule change would require parties who reject such settlement offers to pay the offering party's reasonable costs and attorneys fees if the award granted in the arbitration was not more favorable to the rejecting party than the settlement offer. The proposed rule change would expire after two years.

Notice of the proposed rule change was provided by the issuance of a Commission release (Securities Exchange Act Release No. 33081, October 20, 1993), and by publication in the **Federal Register** (58 FR 57881, October 27, 1993).

The Commission has received several requests for an extension of the time period for public comment on the proposed rule change.[1] The Commission hereby extends the period for public comment on the proposed rule change until December 23, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[2]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29217 Filed 11-29-93; 8:45 am]

BILLING CODE 8010-01-M

[1] By letter dated November 19, 1993, the NASD has consented to an extension of the comment period. *See* letter form Suzanne E. Rothwell, Associate General Counsel, NASD to Selwyn J. Notelovitz, Branch Chief, Commission, dated November 19, 1993.

[2] 17 CFR 200.30-3(a)(12); 17 CFR 200.30-3(a)(31).

[Release No. 34-33233; International Series Release No. 614; File No. 600-20]

Self-Regulatory Organizations; International Securities Clearing Corporation; Order Approving Extension of Temporary Registration as a Clearing Agency

November 22, 1993.

Pursuant to section 19(a) of the Securities Exchange Act of 1934 ("Act"),[1] on August 23, 1993, the International Securities Clearing Corporation ("ISCC") filed with the Securities and Exchange Commission ("Commission"), an amendment to its Form CA-1 requesting that the Commission extend ISCC's temporary registration as a clearing agency until November 30, 1995.[2] Notice of ISCC's amended application and request for extension of temporary registration appeared in the **Federal Register** on September 15, 1993.[3] No comments were received. This order approves ISCC's amendment by extending ISCC's registration as a clearing agency until November 30, 1995.

On May 12, 1989, the Commission granted the application of ISCC for registration as a clearing agency, pursuant to Sections 17A and 19(a) of the Act,[4] and Rule 17Ab2-1(c)[5] thereunder, for a period of 18 months.[6] At that time, the Commission granted ISCC an exemption from compliance with section 17A(b)(3)(C) of the Act.[7] The Commission subsequently extended ISCC's temporary registration as a clearing agency and temporary exemption from section 17A(b)(3)(C) of the Act until November 30, 1993.[8]

As discussed in the order first granting ISCC's temporary registration as a clearing agency, one of the primary reasons for ISCC's registration was to enable it to provide for the safe and efficient clearance and settlement of international securities transactions by providing links to centralized, efficient processing systems in the United States and at foreign financial institutions. Although ISCC has continued to make progress in this area in the past 24 months,[9] ISCC's capacity and linkage agreements with foreign financial institutions have not yet been adequately challenged. In addition, ISCC does not yet have a significant enough participant base to permit its active participants to participate in the nomination and election of ISCC directors without giving these participants an undue influence in the voting and nomination process.[10]

ISCC has functioned effectively as a registered clearing agency for the past 54 months, and since 1986 has functioned in this capacity under the terms of several no-action letters issued by the Commission's Division of Market Regulation.[11]

Accordingly, in light of the past performance of ISCC, as well as the need for ISCC to provide continuity of services to its participants and members, the Commission believes that "good cause" exists, pursuant to Section 19(a) of the Act, for extending ISCC's registration for an additional 24 months.[12]

It Is Therefore Ordered that ISCC's registration as a clearing agency be, and hereby is, approved until November 30, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[13]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29215 Filed 11-29-93; 8:45 am]

BILLING CODE 8010-01-M

[1] 15 U.S.C. 78s(a) (1988).

[2] Letter from Karen Saperstein, General Counsel, ISCC, to Christine Sibille, Attorney, Division of Market Regulation, Commission (August 17, 1993) ("Registration Letter").

[3] Securities Exchange Act Release No. 32858 (September 9, 1993), 58 FR 48396.

[4] 15 U.S.C. 78q-1, 78s(a) (1988).

[5] 17 CFR 240.17Ab2-1(c).

[6] Securities Exchange Act Release No. 26812 (May 12, 1989), 54 FR 21691.

[7] 15 U.S.C. 78q-1(b)(3)(C) (1988). Section 17A(b)(3)(C) of the Act requires that ISCC's rules assure fair representation of its shareholders (or members) and participants in the selection of its directors and administration of its affairs.

[8] Securities Exchange Act Release Nos. 28606 (November 16, 1990), 55 FR 47976; and 30005 (November 27, 1991), 56 FR 63747.

[9] For example, ISCC recently established a data transmission link with Euroclear Systems. Securities Exchange Act Release No. 32564 (June 30, 1993), 58 FR 36722.

[10] Registration Letter, note 2, *supra*. Only twenty of the thirty-two ISCC members curently use ISCC services.

[11] See Securities Exchange Act Release No. 26812, note 4, *supra*, at 21692.

[12] On or before the end of 24 months, the Commission expects to consider whether to grant ISCC permanent registration as a clearing agency.

[13] 17 CFR 200.30-3(a)(50) (1992).

[Release No. 34-33234; File No. SR-OCC-89-13]

Self-Regulatory Organizations; The Options Clearing Corporation; Withdrawal of a Proposed Rule Change Relating to Netting of Cash Settlement Obligations

November 22, 1993.

On October 27, 1989, The Options Clearing Corporation ("OCC") filed with the Securities and Exchange Commission ("Commission") pursuant

to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")[1] a proposed rule change regarding procedures for netting cash settlement obligations. Notice of the proposal was published in the **Federal Register** on November 21, 1989.[2] On November 4, 1993, OCC withdrew the proposal.[3]

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29218 Filed 11-29-93; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-19889; 812-8400]

Dean Witter Select Equity Trust, Selected Opportunities Series

November 22, 1993.

AGENCY: Securities and Exchange Commission (the "SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Dean Witter Select Equity Trust, Selected Opportunities Series.

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from the provisions of section 12(d)(3).

SUMMARY OF APPLICATION: Applicant seeks a conditional order on behalf of its series (the "Series") to permit each Series to invest up to ten percent of its total assets in securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

FILING DATE: The application was filed on May 12, 1993 and amended on November 19, 1993.

HEARING OR NOTIFICATION OF HEARING: Interested persons may request a hearing on the application by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 17, 1993, and should be accompanied by proof of service on applicant in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, c/o Dean Witter Reynolds Inc., Two World Trade Center, New York, New York 10048, Attn: Michael D. Browne.

FOR FURTHER INFORMATION CONTACT: Felicia H. Kung, Senior Attorney, at (202) 504-2803, or Elizabeth G. Osterman, Branch Chief, at (202) 272-3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations:

1. Each Series will be a series of Dean Witter Equity Trust, Selected Opportunities Series, a unit investment trust registered under the Act. Dean Witter Reynolds Inc. ("Dean Witter") is applicant's depositor (the "Sponsor").

2. Each Series' investment objective is to provide total return through a combination of potential capital appreciation and current dividend income. Each Series will invest approximately ten percent, but in no event more than 10.5 percent,[1] of the value of its total assets in each of the ten common stocks unaffiliated with the Sponsor[2] in the Dow Jones Industrial Average ("DJIA") with the highest dividend yields as of its initial date of deposit, and hold those stocks for approximately one year.

3. The DJIA comprises 30 widely-held common stocks listed on the New York Stock Exchange which are chosen by the editors of The Wall Street Journal. The DJIA is the property of Dow Jones & Company, Inc., which is not affiliated with the Sponsor or any Series, and does not participate in any way in the creation of any Series or the selection of its stocks.

4. The securities deposited in each Series will be chosen solely according to the formula described above, and will not necessarily reflect the research opinions or buy or sell recommendations of the Sponsor. The Sponsor will have no discretion as to which securities are purchased. Securities deposited in a Series may include securities of issuers that derived more than fifteen percent of their gross revenues in their most recent fiscal year from securities related activities.

5. During the 90-day period following the initial date of deposit, the Sponsor may deposit additional securities while maintaining to the extent practicable the original proportionate relationship among the number of shares of each stock in the portfolio. Deposits made after this 90-day period must replicate exactly (subject to certain limited exceptions) the proportionate relationship among the face amounts of the securities comprising the portfolio at the end of the initial 90-day period, whether or not a stock continues to be among the ten highest dividend yielding stocks.

6. A Series' portfolio will not be actively managed. Sales of portfolio securities will be made in connection with redemptions of units issued by a Series and at termination of the Series. The Sponsor has no discretion as to when securities will be sold except that it is authorized to sell securities in extremely limited circumstances, namely, upon failure of the issuer of a security in a Series to declare or pay anticipated cash dividends, institution of certain materially adverse legal proceedings, default under certain documents materially and adversely affecting future declaration or payment of dividends, or the occurrence of other market or credit factors that in the opinion of the Sponsor would make the retention of such securities in a Series detrimental to the interests of the unitholders. The adverse financial condition of an issuer will not necessarily require the sale of its securities from a Series' portfolio.

Applicant's Legal Analysis

1. Section 12(d)(3), with limited exceptions, prohibits an investment company from acquiring any security issued by any person who is a broker, dealer, underwriter, or investment adviser. Rule 12d3-1(b) exempts the purchase of securities of an issuer that derived more than fifteen percent of its gross revenues in its most recent fiscal year from securities related activities,

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[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities Exchange Act Release No. 27444 (November 15, 1989), 54 FR 48175.

[3] Letter from James C. Yong, Vice President and Deputy General Counsel, OCC, to Jerry W. Carpenter, Branch Chief, Division of Market Regulation, Commission (October 28, 1993).

[1] Dean Witter will attempt to purchase securities so that each of the ten common stocks in a Series' portfolio represents ten percent of the value of a Series' total assets on the initial date of deposit. Dean Witter may purchase the securities in odd lots in order to achieve this goal. However, it is more efficient if securities are purchased in 100 share lots and 50 share lots. As a result, a Series may purchase securities of a securities related issuer which represent over ten percent, but in no event more than 10.5 percent, of a Series' assets on the initial date of deposit to the extent necessary to enable Dean Witter to meet its purchase requirements and to obtain the best price for the securities.

[2] Sears, Roebuck & Company ("Sears"), a company whose common stock is included in the DJIA, is currently excluded from the portfolios of any Series because Sears is an affiliate of the Sponsor, as defined by the Act. In the future, if Sears ceases to be an affiliate of the Sponsor, the portfolio of a Series may include Sears.

provided that, among other things, immediately after such acquisition, the acquiring company has invested not more than five percent of the value of its total assets in securities of the issuer. Notwithstanding the above, rule 12d3–1 prohibits any registered investment company from acquiring any security issued by that company's investment adviser, promoter, or principal underwriter or any affiliated person of such investment adviser, promoter, or principal underwriter that is a securities related business, with certain limited exceptions.

2. Applicant seeks an exemption from the provisions of section 12(d)(3) to permit any Series to invest up to approximately ten percent, but in no event more than 10.5 percent, of the value of its total assets in securities of an issuer that derives more than fifteen percent of its gross revenues from securities related activities. Applicant and each Series will comply with all of the provisions of rule 12d3–1, except for the five percent limitation on the amount of assets that may be invested in securities of issuers that derived more than fifteen percent of their gross revenues from securities related activities in their most recent fiscal year.

3. Applicant asserts that section 12(d)(3) was intended to prevent investment companies from exposing their assets to the entrepreneurial risks of securities related businesses, to prevent potential conflicts of interest, and to eliminate certain reciprocal practices between investment companies and securities related businesses.

4. One potential conflict discussed by applicant could occur if an investment company purchases securities or other interests in a broker-dealer to reward that broker-dealer for selling fund shares, rather than solely on investment merit. Applicant argues that this concern does not arise in connection with its application because neither the applicant nor the Sponsor has discretion in choosing the securities or percentage amount purchased. The security must first be included in the DJIA, which is unaffiliated with the Sponsor and applicant, and must also qualify as one of the ten highest dividend yielding securities as calculated by the objective formula described above.

5. Applicant also states that the effect of a Series' purchase on the stock of parents of broker-dealers would be *de minimis*. Applicant asserts that the common stocks of securities related issuers represented in the DJIA are widely held, have active markets, and that potential purchases by any Series would represent an insignificant amount of the outstanding common stock and the trading volume of any of these issues. According to applicant, it is highly unlikely that purchases of these securities by a Series would have any significant impact on the market value of any such securities.

6. Another potential conflict of interest discussed by applicant could occur if an investment company directed brokerage to a broker-dealer in which the company has invested to enhance the broker-dealer's profitability or to assist it during financial difficulty, even though that broker-dealer may not offer the best price and execution. To preclude this type of conflict, applicant and each Series agree, as a condition of this application, that no company held in the portfolio of a Series nor any affiliate thereof will act as a broker for any Series in the purchase or sale of any security for its portfolio.

7. Applicant states that the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act.

Condition

Applicant agrees that the requested exemptive order may be conditioned upon no company held in the portfolio of a Series, nor any affiliate thereof, acting as broker for any Series in the purchase or sale of any security for the Series' portfolio.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29219 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19890; 811–5508]

MFS Lifetime Intermediate Fund; Application

November 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act")

APPLICANT: MFS Lifetime Intermediate Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATES: The application was filed on November 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a non-diversified open-end management investment company organized as a Massachusetts business trust. On March 18, 1988, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on July 20, 1988, and applicant commenced its initial public offering on or about the effective date.

2. On June 3, 1993, applicant and MFS Series Trust II entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Intermediate Income Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust II, in exchange for Class B shares of beneficial interest of the Acquiring Fund.

3. On April 14, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of

the existing shareholders would not be diluted as a result.[1]

4. Proxy materials dated June 11, 1993 were distributed to applicant's shareholders of record as of June 1, 1993. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 14, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on July 30, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $499,884,985 of net assets transferred to the Acquiring Fund, applicant received 55,069,919.480 Class B shares at a net asset value per share of $9.08. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $46,558.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29220 Filed 11–29–93; 8:45 am]

BILLING CODE 8010–01–M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

[Investment Company Act Rel. No. 19691; 811–3016]

MFS Municipal Bond Trust; Application

November 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Municipal Bond Trust.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On March 21, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on April 4, 1980, and applicant commenced its initial public offering on or about the effective date.

2. On June 9, 1993, applicant and MFS Fixed Income Trust entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Municipal Limited Maturity Fund (the "Acquiring Fund"), a portfolio of MFS Fixed Income Trust, in exchange for Class A shares of beneficial interest on the Acquiring Fund.

3. On April 21, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a–8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

4. Proxy materials dated June 9, 1993 were distributed to applicant's shareholders of record as of June 7, 1993. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 17, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 5, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $88,470,898.73 of net assets transferred to the Acquiring Fund, applicant received $11,426,898.73 Class A shares at a net asset value per share of $7.74. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totaling approximately $18,759.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities.

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a–8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29221 Filed 11-29-93; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Rel. No. 19892; 811-2202]

MFS Research Fund; Application.

November 22, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: MFS Research Fund.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on November 12, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 500 Boylston Street, Boston, Massachusetts 02116.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272-7027, or C. David Messman, Branch Chief, at (202) 272-3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Massachusetts business trust. On June 25, 1971, applicant filed a notification of registration pursuant to section 8(a) of the Act and its original registration statement pursuant to section 8(b) of the Act. Applicant filed a registration statement on Form S-5 pursuant to the Securities Act of 1933. The registration statement became effective on or about December 13, 1971, and applicant commenced its initial public offering on or about the effective date.

2. On April 21, 1993, applicant and MFS Series Trust V entered into an agreement for the purchase of the applicant's assets. The Agreement provided that applicant would transfer all of its assets and liabilities to the MFS Research Fund (the "Acquiring Fund"), a portfolio of MFS Series Trust V, in exchange for Class A shares of beneficial interest of the Acquiring Fund.

3. On April 21, 1993, applicant's board of trustees approved the reorganization. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

4. Proxy materials dated June 9, 1993 were distributed to applicant's shareholders of record as of June 7, 1993. Definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC on June 18, 1993. The reorganization was approved, in accordance with Massachusetts law, by applicant's shareholders at a meeting held on August 5, 1993.

5. On September 7, 1993, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange for $287,320,364.80 net assets transferred to the Acquiring Fund, applicant received 20,347,155.662 Class A shares at a net asset value per share of $14.12. The exchanges were made at net asset value determined as of the opening of business on September 7, 1993. The shares received in exchange for applicant's assets were distributed to applicant's shareholders pro rata in accordance with their respective interests in applicant.

6. The Acquiring Fund assumed all expenses in connection with the reorganization. These expenses included legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $34,733.

7. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93-29222 Filed 11-29-93; 8:45 am]

BILLING CODE 8210-01-M

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser. Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster Loan Area #2691]

Florida; Declaration of Disaster Loan Area

Alachua County and the contiguous counties of Bradford, Clay, Columbia, Gilcrest, Levy, Marion, Putnam, and Union in the State of Florida constitute a disaster area as a result of damages caused by heavy rain, high winds, and tornadoes which occurred October 30-31, 1993. Applications for loans for physical damage may be filed until the close of business on January 18, 1994 and for economic injury until the close of business on August 16, 1994 at the address listed below: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, CA 30308, or other locally announced locations.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners with credit available elsewhere	7.250
Homeowners without credit available elsewhere	3.625
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000

	Percent
Others (Including Non-profit Organizations) With Credit Available Elsewhere	7.125
For Economic Injury:	
Businesses and small agricultural cooperatives without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 269112 and for economic injury the number is 811300.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008).

Dated: November 16, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93-29271 Filed 11-29-93; 8:45 am]

BILLING CODE 8025-01-M

Senior Executive Service Performance Review Board List of Members

AGENCY: Small Business Administration.

ACTION: Listing of personnel serving as members of this agency's senior executive service performance review boards.

SUMMARY: Section 4314(c)(4) of title 5, U.S.C. requires Federal agencies to publish notification of the appointment of individuals who serve as members of that Agency's Performance Review Boards (PRB). The following is a listing of those individuals currently serving as members of this Agency's PRB:

1. Bill Combs, Special Assistant to the Administrator
2. John R. Cox, Acting Assistant Administrator for Financial Assistance
3. Samuel A. Gentile, Deputy to the ADA for Business Development
4. James O. Gordon, District Director, Washington District Office
5. George H. Robinson, Director, Equal Employment Opportunity and Compliance
6. Carolyn J. Smith, Director of Personnel
7. John T. Spotila, General Counsel
8. Mark Stephens, Associate General Counsel for SBIC Litigation/ Liquidation
9. Kris Swedin, Assistant Administrator for Congressional and Legislative Affairs
10. Janice E. Wolfe, Acting Associate Deputy Administrator for Finance, Investment and Procurement

Dated: November 22, 1993.

Erskine B. Bowles,

Administrator.

[FR Doc. 93-29274 Filed 11-29-93; 8:45 am]

BILLING CODE 8025-01-M

Byrd Business Investments, L.P.; Issuance of a Small Business Investment Company License

[License No. 04/04-0259]

On May 18, 1993, a notice was published in the **Federal Register** (58 FR 29020) stating that an application has been filed by Byrd Business Investments, L.P., 2000 Glen Echo Road, Suite 100, Nashville, Tennessee 37215, with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) for a license to operate as a small business investment company.

Interested parties were given until close of business June 17, 1993 to submit their comments to SBA. No comments were received.

Notice is hereby given that, pursuant to section 301(c) of the Small Business Investment Act of 1958, as amended, after having considered the application and all other pertinent information, SBA issued License No. 04/04-0259 to Byrd Business Investments, L.P., to operate as a small business investment company.

(Catalog of Federal Domestic Assistance Program No. 59.011, Small Business Investment Companies)

Dated: November 22, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93-29272 Filed 11-29-93; 8:45 am]

BILLING CODE 8025-01-M

[License No. 02/02-5388]

Transportation Capital Corp.; Filing of an Application for Transfer of Ownership and Control

Notice is hereby given of the filing of an application with the Small Business Administration (SBA) pursuant to § 107.102 of the Regulations governing small business investment companies (13 CFR 107.102 (1993)) by Transportation Capital Corporation, 315 Park Avenue South, New York, New York 10010, for transfer of ownership and control of its license under the Small Business Investment Act of 1958, as amended, (the Act) (15 U.S.C. *et. seq.*). Transportation Capital Corporation was licensed June 23, 1980.

TCC Purchase Company owns 1.3 percent of Transportation Capital Corporation. TCC Purchase Company is wholly-owned by LCN Investments, Inc. LCN Investments, Inc. has acquired 97.4 percent of the issued and outstanding capital stock of Transportation Capital Corporation and will make it wholly-owned by LCN Investments, Inc. Through LCN Investments, Inc. and TCC Purchase Company, Leucadia National Corporation will be the beneficial owner of 98.7 percent of the voting shares of Transportation Capital Corporation.

The proposed officers, directors and shareholders are:

Name	Title	Percentage of ownership
Paul J. Borden, 315 Park Ave. So., New York, NY 10010.	Chairman, President and Director..	0
Jonathan Hirsch, 315 Park Ave. So., New York, NY 10010.	Secretary, Treasurer Vice President & Director.	0
Lawrence D. Glaubinger, 315 Park Ave. So., New York, NY 10010.	Director	0
Adrienne Bernstein, 315 Park Ave. So., New York, NY 10010.	Director	0
Murray Syrok, 315 Park Ave. So., New York, NY 10010.	Director	0
David S. Weber, 315 Park Ave. So., New York, NY 10010.	Director	0
Mark Hornstein, 315 Park Ave. So., New York, NY 10010.	Vice President	0
TCC Purchase Company, 315 Park Ave. So., New York, NY 10010.	Shareholder	1.3
LCN Investments, Inc., 315 Park Ave. So., New York, NY 10010.	Shareholder	97.4

The applicant will begin operations with a capitalization of $6,561,380.

Matters involved in SBA's consideration of the application include the general business reputation and character of the proposed owners and management, and the probability of successful operations of the new company under their management, including profitability and financial soundness in accordance with the Act and Regulations.

Notice is hereby given that any person may, not later than 30 days from the date of publication of this Notice, submit written comments on the proposed SBIC to the Associate Administrator for Investment, Small Business Administration, 409 3rd Street, SW, Washington, DC 20416.

A copy of this Notice will be published in a newspaper of general circulation in New York, New York.

(Catalog of Federal Domestic Assistance Programs No. 59.011, Small Business Investment Companies).

Dated: November 22, 1993.

Charles R. Hertzberg,

Associate Administrator for Investment.

[FR Doc. 93-29273 Filed 11-29-93; 8:45 am]

BILLING CODE 8025-01-M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

Receipt of Noise Compatibility Program and Request for Review; Roanoke Regional Airport

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice.

SUMMARY: The Federal Aviation Administration (FAA) announces that it is reviewing a proposed noise compatibility program that was submitted for the Roanoke Regional Airport under the provisions of Title I of the Aviation Safety and Noise Abatement Act of 1979 (Public Law 96-193 (hereinafter referred to as "the Act") and 14 CFR Part 150 by the Roanoke Regional Airport Commission. This program was submitted subsequent to a determination by FAA that associated noise exposure maps submitted under 14 CFR part 150 at the Roanoke Regional Airport were in compliance with applicable requirements effective June 1, 1992. The proposed noise compatibility program will be approved or disapproved on or before May 3, 1994.

EFFECTIVE DATE: The effective date of the start of FAA's review of the noise compatibility program is November 15, 1993. The public comment period ends December 30, 1993.

FOR FURTHER INFORMATION CONTACT: Frank Squeglia, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430, (718) 553-0902. Comments on the proposed noise compatibility program should also be submitted to the above office.

SUPPLEMENTARY INFORMATION: This notice announces that the FAA is reviewing a proposed noise compatibility program for the Roanoke Regional Airport, which will be approved or disapproved on or before May 3, 1994. This notice also announces the availability of this program for public review and comment.

An airport operator who has submitted noise exposure maps that are found by FAA to be in compliance with the requirements of Federal Aviation Regulations FAR Part 150, promulgated pursuant to Title I of the Act, may submit a noise compatibility program for FAA approval which sets forth the measures the operator has taken or proposes for the reduction of existing noncompatible uses and for the prevention of the introduction of additional noncompatible uses.

The FAA has formally received the noise compatibility program for Roanoke Regional Airport, effective on November 15, 1993. It was requested that the FAA review this material and that the noise mitigation measures, to be implemented jointly by the airport and surrounding communities, be approved as a noise compatibility program under section 104(d) of the Act. Preliminary review of the submitted material indicates that it conforms to the requirements for the submittal of Noise compatibility programs, but that further review will be necessary prior to approval or disapproval of the program. The formal review period, limited by law to a maximum of 180 days, will be completed on or before May 3, 1994.

The FAA's detailed evaluation will be conducted under the provision of 14 CFR part 150, § 150.33. The primary considerations in the evaluation process are whether the proposed measures may reduce the level of aviation safety, create an undue burden in interstate or foreign commerce, or be reasonably consistent with obtaining the goal of reducing existing noncompatible land use and preventing the introduction of additional noncompatibility land uses.

Interested persons are invited to comment on the proposed program with specific reference to these factors. All comments, other than those properly addressed to local land use authorities, will be considered by the FAA to the extent practicable. Copies of the noise exposure maps, the FAA's evaluation of the maps, and the proposed noise compatibility program are available for examination at the following locations:

Federal Aviation Administration, 800 Independence Avenue, SW, Room 617, Washington, DC 20591

Federal Aviation Administration, Eastern Region—AEA-610, Fitzgerald Federal Building, JFK International Airport, Jamaica, New York 11430

Roanoke Regional Airport Commission, Woodrum Field, 5202 Aviation Drive, NW., Roanoke, VA 24012

Questions may be directed to the individual named above under the heading **FOR FURTHER INFORMATION CONTACT.**

Issued in Jamaica, New York, November 15, 1993.

Louis P. DeRose,

Manager, Airports Division.

[FR Doc. 93-29302 Filed 11-29-93; 8:45 am]

BILLING CODE 4910-13-M

[Summary Notice No. PE-93-51]

Petitions for Exemption; Summary of Petitions Received; Dispositions of Petitions Issued

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of petitions for exemption received and of dispositions of prior petitions.

SUMMARY: Pursuant to FAA's rulemaking provisions governing the application, processing, and disposition of petitions for exemption (14 CFR part 11), this notice contains a summary of certain petitions seeking relief from specified requirements of the Federal Aviation Regulations (14 CFR chapter I), dispositions of certain petitions previously received, and corrections. The purpose of this notice is to improve the public's awareness of, and participation in, this aspect of FAA's regulatory activities. Neither publication of this notice nor the inclusion or omission of information in the summary is intended to affect the legal status of any petition or its final disposition.

DATES: Comments on petitions received must identify the petition docket number involved and must be received on or before December 20, 1993.

ADDRESSES: Send comments on any petition in triplicate to: Federal Aviation Administration, Office of the Chief Counsel, Attn: Rule Docket (AGC-10), Petition Docket No. _____, 800 Independence Avenue, SW., Washington, DC 20591.

The petition, any comments received, and a copy of any final disposition are filed in the assigned regulatory docket and are available for examination in the Rules Docket (AGC-10), room 915G, FAA Headquarters Building (FOB 10A), 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267-3132.

FOR FURTHER INFORMATION CONTACT:

Mr. Frederick M. Haynes, Office of Rulemaking (ARM–1), Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone (202) 267–3939.

This notice is published pursuant to paragraphs (c), (e), and (g) of § 11.27 of part 11 of the Federal Aviation Regulations (14 CFR part 11).

Issued in Washington, DC, on November 23, 1993.

Donald P. Byrne,

Assistant Chief Counsel for Regulations.

Petitions for Exemption

Docket No.: 27501.
Petitioner: Cessna Aircraft Company.
Sections of the FAR Affected:
14 CFR 25.562.
Description of Relief Sought/ Disposition:
To permit the petitioner relief from the dynamic test standards in § 25.562, as incorporated by Amendment 25–64 effective June 16, 1988, for a cockpit forward observer's seat on the Model 750, Citation X (ten) airplane. The seat will be used exclusively by the FAA for en route inspections.

Dispositions of Petitions

Docket No.: 26006.
Petitioner: Beech Aircraft Corporation.
Sections of the FAR Affected:
14 CFR 47.69(b).
Description of Relief Sought/ Disposition:
To permit the petitioner to continue to conduct flights outside the United States.

Temporary grant, October 25, 1993, Exemption No. 5125B

Docket No.: 27155.
Petitioner: Saab Aircraft AB.
Sections of the FAR Affected:
14 CFR 25.562(b)(2) and (c)(5).
Description of Relief Sought/ Disposition:
To extend Exemption No. 5623 to allow implementation of Head Injury Criterion and floor distortion requirements be delayed until June, 1994, due to a lack of a production solution by the flight deck-seat and interior furnishings suppliers.

Partial grant, November 1, 1993, Exemption No. 5623A

Docket No.: 27301.
Petitioner: Skydive City, Inc.
Sections of the FAR Affected:
14 CFR 105.43(a).
Description of Relief Sought:
To allow foreign non-student skydivers to participate in events at its facilities without having to comply with the parachute equipment and packing requirements of this section.

Grant, November 16, 1993, Exemption No. 5791

Docket No.: 27384.
Petitioner: The Boeing Company.
Sections of the FAR Affected:
14 CFR 25.1435(b)(1).
Description of Relief Sought:
To amend Exemption No. 5758 to allow the petitioner to conduct hydraulic system testing at 3400 psig in lieu of 3600 psig, since the system relief valve cracking pressure setting is 3499 psig.

Grant, October 29, 1993, Exemption No. 5758A

Docket No.: 27450.
Petitioner: Emery Worldwide Airlines.
Sections of the FAR Affected:
14 CFR 121.358.
Description of Relief Sought/ Disposition:
To permit an extension to the December 30, 1993 date for the installation of either an approved airborne windshear warning and flight guidance system, an approved airborne detection and avoidance system, or an approved combination of the systems in the petitioner's aircraft.

Denial, November 12, 1993, Exemption No. 5789

Docket No.: 27499.
Petitioner: Dornier Luftfahrt GmbH.
Sections of the FAR Affected:
14 CFR 25.161(d).
Description of Relief Sought:
To allow the petitioner exemption from the engine out lateral/directional trim requirements of § 25.161(d).

Grant, November 5, 1993, Exemption No. 5785

[FR Doc. 93–29262 Filed 11–29–93; 8:45 am]
BILLING CODE 4910–13–M

Passenger Facility Charge (PFC) Approvals and Disapprovals

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Monthly notice of PFC approvals and disapprovals. In October 1993, there were 11 applications approved.

SUMMARY: The FAA publishes a monthly notice, as appropriate, of PFC approvals and disapprovals under the provisions of the Aviation Safety and Capacity Expansion Act of 1990 (title IV of the Omnibus Budget Reconciliation Act of 1990) (Public Law 101–508) and part 158 of the Federal Aviation Regulations (14 CFR part 158). This notice is published pursuant to paragraph d of § 158.29.

PFC Applications Approved

Public Agency: Columbus Airport Commission, Columbus, Georgia.
Application Number: 93–01–C–00–CSG.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $534,633.
Earliest Permissible Charge Effective Date: December 1, 1993.
Estimated Charge Expiration Date: June 1, 1995.
Class of Air Carriers Not Required To Collect PFC's:
None.
Brief Description of Projects Approved To Use PFC Revenue:
Airfield signage,
Lighting rehabilitation runway 5/23 and taxiways B, C, D, E, and F,
Standby airfield generator,
Easements/approach clearing runways 12 and 23,
Taxiway F extension,
Rehabilitate runway 12/30,
Taxiway C reconstruction (design only),
Demolition of old terminal building,
Master plan update,
Acquisition of a 4-wheel drive vehicle.
Decision Date: October 1, 1993.
FOR FURTHER INFORMATION CONTACT: Cathy Nelmes, Atlanta Airports District Office, (404 994–5306.

Public Agency: Metropolitan Knoxville Airport Authority, Knoxville, Tennessee.
Application Number: 93–01–C–00–TYS.
Application Type: Impose and Use PFC Revenue.
PFC Level: $3.00.
Total Approved Net PFC Revenue: $5,681,615.
Earliest Permissible Charge Effective Date: January 1, 1994.
Estimated Charge Expiration Date: January 1, 1997.
Class of Air Carriers Not Required To Collect PFC's:
On-demand air taxi/commercial operators.
Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at McGhee Tyson Airport.
Brief Description of Projects Approved for Collection and Use:
Master plan/Part 150 study updates,
Noise compatibility program,
Terminal improvements—wheelchair lift,
Taxiway and airfield project—reconstruct taxiway B–2,

Taxiway and airfield project—replace runway 5L/23R lighting,
Taxiway and airfield project—air carrier apron reseal joints,
Taxiway and airfield project—paved shoulder for taxiway B,
Runway 5R/23L improvements—pavement overlay—update runway lighting—lower Tennessee Valley Authority towers,
Airfield safety and security.

Brief Description of Projects Approved To Impose Only:

Property acquisition—phase I,
Terminal renovations—restrooms,
Terminal renovations—roadway retaining wall,
Taxiway A strengthening—light and pave shoulders,
Maintenance building improvements (snow removal equipment building),
Airfield equipment—snow removal equipment.

Brief Description of Projects Approved-in-Part for Collection and Use:

Terminal access roads.

Determination: The roadway immediately around the fuel farm area, the roadway through the rental car parking areas to the terminal physical plant area on the north side of the terminal, and the roadway from the crash fire rescue access through employee parking areas to the terminal physical plant area are not eligible. These service roads serve ineligible areas and, as such, are specifically ineligible.

Decision Date: October 6, 1993.

FOR FURTHER INFORMATION CONTACT: Jerry O. Bowers, Memphis Airports District Office, (901) 544–3495.

Public Agency: Monterey Peninsula Airport District, Monterey, California.

Application Number: 93–01–C–00–MRY.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.000.

Total Approved Net PFC Revenue: $3,960,855.

Earliest Permissible Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: June 1, 2000.

Class of Air Carriers Not Required To Collect PFC's: Unscheduled/intermittent Part 135 air taxis.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total enplanements at Monterey Peninsula Airport.

Brief Description of Projects Approved for Collection and Use:

Security access control system/flexible response,
Storm drain rehabilitation,
Taxiway/apron pavement rehabilitation,
Environmental assessment/westside access connection to Garden Road alignment study,
Airport signage system.

Brief Description of Projects Approved To Impose Only:

Residential soundproofing phases 2–5,
Terminal renovation/improvement,
Environmental impact review/environmental impact statement—"new northside" ground access road,
"New northside" ground access road,
"Old northside" road relocation,
Terminal road improvements (phase I),
Westside access connection to Garden Road.

Decision Date: October 8, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriguez, San Francisco Airports District Office, (415) 876–2805.

Public Agency: Metropolitan Washington Airports Authority, Alexandria, Virginia.

Application Number: 93–01–C–00–IAD.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $199,752,390.

Earliest Estimated Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: November 1, 2003.

Class of Air Carriers Not Required To Collect PFC's: Part 135 on-demand air taxis, both fixed wing and rotary.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Washington Dulles International Airport.

Brief Description of Projects Approved for Collection and Use:

New mid-field facilities, including aprons/taxiways and electrical service,
Mid-field apron, service building, and fuel line (bravo ramp),
Replace airfield lighting circuits,
Airfield signage,
Perimeter fencing,
North service road upgrades,
Reconstruct Dulles Access Highway and bridges,
Mobile lounge road and apron area,
Access road, third lane phase I,
Holding apron, runway 1R,
Holding apron, runway 19R,
Touchdown zone lighting, runway 1L
Extend taxiway E–2 to E–7,
Interim financing costs.

Decison Date: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Washington Airports District Office, (703) 285–2570.

Public Agency: Tulsa Airports Improvement Trust, Tulsa, Oklahoma.

Application Number: 93–02–U–00–TUL.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $9,717,000.

Earliest Permissible Charge Effective Date: June 1, 1992.

Estimated Charge Expiration Date: August 1, 1995.

Class of Air Carriers Not Required To Collect PFC's: None.

Brief Description of Projects Approved for Use:

Emergency communications equipment,
Aircraft rescue and firefighting (ARFF) vehicle replacement,
Taxiway Alpha holding apron and taxiway Delta reconstruction,
Taxiway X-ray extension,
Construct ARFF facility,
Taxiway Juliet extension,
Taxiway Whiskey reconstruction.

Decision Date: October 18, 1993.

FOR FURTHER INFORMATION CONTACT: Ben Guttery, Southwest Region Airports Division, (817) 624-5979.

Public Agency: Charlottesville-Albemarle Airport Authority, Charlottesville, Virginia.

Application Number: 93–02–U–00–ChO.

Application Type: Use PFC Revenue.

PFC Level: $2.00.

Total Approved Net PFC Revenue: $255,559.

Earliest Permissible Charge Effective Date: September 1, 1992.

Actual Estimated Charge Expiration Date: October 1, 1993.

Class of Air Carriers Not Required to Collect PFC's:

No change from previously approved application of June 11, 1992.

Brief Description of Projects Approved for Use:

Snow equipment storage building,
Snow vehicle/plow.

Decision Date: October 20, 1993.

FOR FURTHER INFORMATION CONTACT: Robert Mendez, Washington Airports District Office, (703) 285-2570.

Public Agency: Meridian Airport Authority, Meridian, Mississippi.

Application Number: 93-02-C-00-MEI.

PFC Level: $3.00

Total Approved PFC Revenue: $155,223.

Estimated Charge Effective Date: June 1, 1994.

Estimated Charge Expiration Date: August 1, 1996.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Repave runway 4/22,
Repave north 1,500 feet of taxiway B,
Repave terminal building aircraft parking apron,
Terminal building phase 2A,
Runway/taxiway guidance signs,
Passenger access lift.

Brief Description of Project Withdrawn: Security vehicle.

Determination: The Meridian Airport Authority requested by telephone on September 30, 1993, that this project be withdrawn from the PFC application.

Decision Date: October 19, 1993.

FOR FURTHER INFORMATION CONTACT: Elton E. Jay, Jackson Airports District Office, (601) 965-4628.

Public Agency: Port of Seattle, Seattle, Washington.

Application Number: 93-02-C-00-SEA.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3,00.

Total Approved Net PFC Revenue: $47,500,500.

Earliest Permissible Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: January 1, 1996.

Class of Air Carriers Not Required to Collect PFC'S: None.

Brief Description of Projects Approved for Collection and Use:

Interconnecting taxiways.
Runway incursion/electrical upgrade,
Runway 16R/34L rehabilitation,
Runway 16L/34R safety area expansion,
Taxiway stop bar system,
Residential sound insulation,
Residential sound insulation, phase 8,
Passenger terminal apron replacement,
Airport comprehensive development plan and third runway environmental impact statement,
Aircraft rescue and firefighting vehicle,
Des Moines Creek relocation design,
Vacuum style runway sweeper,
Additional satellite transit station elevators.

Decision Date: October 25, 1993.

FOR FURTHER INFORMATION CONTACT: Renee Hall, Seattle Airports District Office, (206) 227-2662.

Public Agency: Columbus Municipal Airport Authority, Columbus, Ohio.

Application Number: 93-03-U-00-CMH.

Application Type: Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $23,611,963.

Earliest Permissible Charge Expiration Date: October 1, 1992.

Estimated Charge Expiration Date: September 1, 1996.

Class of Air Carriers Not Required to Collect PFC'S:

Previously approved in the July 14, 1992, and July 19, 1993 approvals.

Brief Description of Projects Approved for Use at Port Columbus International Airport:

Plans and specifications—school soundproofing,
Automated identification system (phase III),
Security vehicles,
Boundary survey,
School soundproofing (phase II),
Noise monitoring,
Residential soundproofing,
Escalator construction,
Crack seal and seal coat terminal apron,
Electronic monitoring of airfield lighting and vault work (engineering),
Snow removal equipment—three heavy trucks with snow plows,
Snow removal equipment—medium weight truck with plow,
Snow removal equipment—three spreaders,
North concourse expansion (engineering).

Brief Description of Projects Approved for Use at Bolton Field:

Bolton Field snow removal equipment/material storage building,
Bolton Field overlay Alpha ramp,
Snow removal truck.

Decision Date: October 27, 1993.

FOR FURTHER INFORMATION CONTACT: Dean Nitz, Detroit Airports District Office, (313) 487-7301.

Public Agency: City of Portland, Portland, Maine.

Application number: 93-01-C-00-PWM.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00

Total Approved Net PFC Revenue: $12,233,751.

Earliest Permissible Charge Effective Date: February 1, 1994.

Estimated Charge Expiration Date: May 1, 2001.

Class of Air Carriers Not Required To Collect PFC'S:

Air Taxi/commercial operators.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of the total annual enplanements at Portland International Jetport.

Brief Description of Projects Approved for Collection and Use:

Expand snow removal building,
Install guidance signs,
Update Jetport master plan,
Reconstruct west end ramp,
Replace baggage carousels,
Gate 4 expansion,
Terminal expansion,
Acquire wheelchair lift,
Pay PFC-enhanced bond financing costs.

Brief Descriptio of Projects Approved To Impose Only:

Extend terminal ramp,
Install residential soundproofing.

Decision Date: October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Priscilla Soldan, New England Region Airports Division, (617) 238–7614.

Public Agency: Airport Authority of Washoe County, Reno, Nevada.

Application Number: 93–01–C–00–RNO.

Application Type: Impose and Use PFC Revenue.

PFC Level: $3.00.

Total Approved Net PFC Revenue: $34,263,607.

Earliest Permissible Charge Effective Date: January 1, 1994.

Estimated Charge Expiration Date: May 1, 1999.

Class of Air Carriers Not Reqiored To Collect PFC'S:

Air taxi/commercial operators filing FAA Form 1800–31.

Determination: Approved. Based on information submitted by the public agency, the FAA has determined that the proposed class accounts for less than 1 percent of Reno Cannon International Airport's total annual enplanements.

Brief Description of Projects Approved for Collection and Use:

Letter of Intent, entitlement make-up,
Runway 16L/34R widening and extension,
Construct taxiways A, F, J, K, M, N, and P,
Extend taxiway B,
Construct high speed taxiways H and L,
Construct taxiway C,
Reconstruct runway 16R/34L,
Acquire land—BHR warehouse 4.53 acres—airport development,
Acquire land—air center 23.30 acres—airport development,
Acquire land—runway 16L/34R runway protection zone (RPZ)—29.76 acres—approach,
Acquire land—runway 34L RPZ—4.80 acres—approach,
Acquire land—11.55 acres—airport development,
Environmental assessment for runway 16L/34R,
Relocate FAA airport surveillance radar (FAA reimbursable agreement),
Relocate perimeter road,
Airfield drainage,
Reconstruct apron.

Airport Authority of Washoe County (AAWC) share of Federal grants,
A. Taxiway A reconstruction and taxiway B construction,
B Taxiway N construction,
C. Security system, phases I & II,
D. Reconstruction of taxiways A, C, D, and E (Reno Stead airport),
Baggage claim expansion,
Air carrier access terminal compliance improvements,
Residential soundproofing pilot program,
Runways improvement program airfield drainage,
Terminal area ramp reconstruction,
Taxiway O reconstruction,
Concourse gate maximization.

Brief Description of Projects Approved for Impose Only:
Snow removal equipment,
Taxiway B south extension,
Perimeter road extension.

Brief Description of Project Disapproved To Impose Only:
Perimeter road extension (Reno Stead airport).

Determination: The FAA has determined that the public agency has not provided justification that this project meets objectives of § 158.15(a) as required under § 158.25(b)(7). The purposes cited by the public agency for this project were to serve the existing National Guard facility and to open a portion of the airfield to further commercial development. Although a short portion of this road would remove vehicular traffic from a small, remote portion of the apron, the AAWC has not provided evidence showing sufficient traffic to warrant a potential safety concern. Therefore, this project is disapproved for the imposition of a PFC.

Decision Date: October 29, 1993.

FOR FURTHER INFORMATION CONTACT: Joseph R. Rodriquez, San Francisco Airports District Office, (415) 876–2805.

Issued in Washington, DC on November 19, 1993.

Donna Taylor,

Acting Manager, Airports Financial Assistance Division.

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Alabama:					
92–01–I–00–HSV, Huntsville Int'l-Carl T. Jones Field, Huntsville	03/06/1992	$3	$19,002,366	06/01/1992	11/01/2008
93–02–U–00–HSV, Huntsville Int'l-Carl T. Jones Field, Huntsville	06/03/1993	3	19,002,366	09/01/1993	11/01/2008
92–01–C–00–MSL, Muscle Shoals Regional, Muscle Shoals	02/18/1992	3	104,100	06/01/1992	02/01/1995
Arizona:					
92–01–C–00–FLG, Flagstaff Pulliam, Flagstaff	09/29/1992	3	2,463,581	12/01/1992	01/01/2015
93–01–C–00–YUM, Yuma MCAS/Yuma International, Yuma	09/09/1993	3	1,678,064	12/01/1993	06/01/2003
California:					
92–01–C–00–ACV, Arcata, Arcata	11/24/1992	3	188,500	02/01/1993	05/01/1994
93–01–C–00–CIC, Chico Municipal, Chico	09/29/1993	3	137,043	01/01/1994	06/01/1977
92–01–C–00–IYK, Inyokern, Inyokern	12/10/1992	3	127,500	03/01/1993	09/01/1995
93–01–C–00–LAX, Los Angeles International, Los Angeles	03/26/1993	3	360,000,000	07/01/1993	07/01/1998
92–01–C–00–OAK, Metropolitan Oakland International, Oakland	06/26/1992	3	12,343,000	09/01/1992	05/01/1994
93–01–I–00–ONT, Ontario International, Ontario	03/26/1993	3	49,000,000	07/01/1993	07/01/1998
92–01–C–00–PSP, Palm Springs Regional, Palm Springs	06/25/1992	3	81,888,919	10/01/1992	11/01/2032
92–01–C–00–SMF, Sacramento Metropolitan, Sacramento	01/26/1993	3	24,045,000	04/01/1993	03/01/1996
92–01–C–00–SJC, San Jose International San Jose	06/11/1992	3	29,228,826	09/01/1992	08/01/1995
92–02–U–00–SJC, San Jose International, San Jose	02/22/1993	3	29,228,826	05/01/1993	08/01/1995
93–03–C–00–SJC, San Jose International, San Jose	06/16/1993	3	16,245,000	08/01/1995	05/01/1997
92–01–C–00–SBP, San Luis Obispo County-McChesney FIE, San Luis Obispo	11/24/1992	3	502,437	02/01/1993	02/01/1995
92–01–C–00–STS, Sonoma County, Santa Rosa	02/19/1993	3	110,500	05/01/1993	04/01/1995
91–01–I–00–TVL, Lake Tahoe, South Lake Tahoe	05/01/1992	3	928.747	08/01/1992	03/01/1997
Colorado:					
92–01–C–00–COS, Colorado Springs Municipal, Colorado Springs	12/22/1992	3	5,622,000	03/01/1993	02/01/1996
92–01–00–DVX, Denver International (New), Denver	04/28/1992	3	2,330,734,321	07/01/1992	01/01/2026
93–01–C–00–EGE, Eagle County Regional, Eagle	06/15/1993	3	572,609	09/01/1993	04/01/1998
93–01–C–00–FNL, Fort Collins-Loveland, Fort Collins	07/14/1993	3	207,857	10/01/1993	06/01/1996
92–01–C–00–GJT, Walker Field, Grand Junction	01/15/1993	3	1,812,000	04/01/1993	03/01/1998
93–01–C–00–GUC, Gunnison County, Gunnison	08/27/1993	3	702,133	11/01/1993	03/01/1998
93–01–C–00–HDN, Yampa Valley, Hayden	08/23/1993	3	532,881	11/01/1993	04/01/1997
93–01–C–00–MTJ, Montrose County, Montrose	07/29/1993	3	1,461,745	11/01/1993	02/01/2009
93–01–C–00–PUB, Pueblo Memorial, Pueblo	08/16/1993	3	1,200,745	11/01/1993	08/01/2010
92–01–C–00–SBS, Steamboat Sprints/BOB, Adams Field, Steamboat Springs	01/15/1993	3	1,887,337	04/01/1993	04/01/2012
92–01–C–00–TEX, Telluride Regional, Telluride	11/23/1992	3	200,000	03/01/1993	11/01/1997
Connecticut:					
93–01–C–00–HVN, Tweed-New Haven, New Haven	09/10/1993	3	2,490,450	12/01/1993	06/01/1999

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93-02-I-00-BDL, Bradley International, Windsor Locks	07/09/1993	3	12,030,000	10/01/1993	09/01/1995
Florida:					
93-01-C-00-DAB, Daytona Beach Regional, Daytona Beach	04/20/1993	3	7,967,835	07/01/1993	11/01/1999
92-01-C-00-RSW, Southwest Florida International, Fort Myers	08/31/1992	3	252,548,262	11/01/1992	06/01/2014
93-02-U-00-RSW, Southwest Florida International, Fort Myers	05/10/1993	3	252,548,262	11/01/1992	06/01/2014
92-01-C-00-EYW, Key West International, Key West	12/17/1992	3	945,937	03/01/1993	12/01/1995
92-01-C-00-MTH, Marathon, Marathon	12/17/1992	3	153,556	03/01/1993	06/01/1995
92-01-C-00-MCO, Orlando International, Orlando	11/27/1992	3	167,574,527	02/01/1993	02/01/1998
93-02-C-00-MCO, Orlando International, Orlando	09/24/1993	3	12,957,000	12/01/1993	02/01/1998
92-01-C-00-PNS, Pensacola Regional, Pensacola	11/23/1992	3	4,715,000	02/01/1993	04/01/1996
92-01-I-00-SRQ, Sarasota-Bradenton International, Sarasota	06/29/1992	3	38,715,000	09/01/1992	09/01/2005
92-01-I-00-TLH, Tallahassee Regional, Tallahassee	11/13/1992	3	8,617,154	02/01/1993	12/01/1998
93-01-C-00-TPA, Tampa International, Tampa	07/15/1993	3	87,102,000	10/01/1993	09/01/1999
Georgia:					
91-01-C-00-SAV, Savannah International, Savannah	01/23/1992	3	39,501,502	07/01/1992	03/01/2004
92-01-I-00-VLD, Valdosta Regional, Valdosta	12/23/1992	3	260,526	03/01/1993	10/01/1997
Idaho:					
93-01-C-00-SUN, Friedman Memorial, Hailey	05/29/1993	3	188,000	09/01/1993	09/01/1997
92-01-C-00-IDA, Idaho Falls Municipal, Idaho Falls	10/30/1992	3	1,500,000	01/01/1993	01/01/1998
92-01-C-00-TWF, Twin Falls-Sun Valley Regional, Twin Falls	08/12/1992	3	270,000	11/01/1992	05/01/1998
Illinois:					
93-01-C-00-MDW, Chicago Midway, Chicago	06/28/1993	3	79,920,958	09/01/1993	08/01/2001
93-01-C-00-ORD, Chicago O'Hare International, Chicago	06/28/1993	3	500,418,285	09/01/1993	10/01/1999
92-01-I-00-RFD, Greater Rockford, Rockford	07/24/1992	3	1,177,348	10/01/1992	10/01/1996
93-02-U-00-RFD, Greater Rockford, Rockford	09/02/1993	3	1,168,937	12/01/1993	10/01/1996
92-01-I-00-SPI, Capital, Springfield	03/27/1992	3	562,104	06/01/1992	02/01/1994
93-02-U-00-SPI, Capital, Springfield	04/28/1993	3	562,104	06/01/1992	02/01/1994
Indiana:					
92-01-C-00-FWA, Fort Wayne International, Fort Wayne	04/05/1993	3	26,563,457	07/01/1993	03/01/2015
93-01-C-00-IND, Indianapolis, International, Indianapolis	06/28/1993	3	117,344,750	09/01/1993	07/01/2005
Iowa:					
92-01-I-00-DBQ, Dubuque Regional, Dubuque	10/06/1992	3	108,500	01/01/1993	05/01/1994
93-01-C-00-SUX, Sioux Gateway, Sioux City	03/12/1993	3	204,465	06/01/1993	06/01/1994
Kentucky: 93-01-C-00-LEX, Blue Grass, Lexington	08/31/1993	3	12,378,791	11/01/1993	05/01/2003
Louisiana:					
92-01-I-00-BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	09/28/1992	3	9,823,159	12/01/1992	12/01/1998
93-02-U-00-BTR, Baton Rouge Metropolitan, Ryan Field, Baton Rouge	04/23/1993	3	9,823,159	12/01/1992	12/01/1998
93-01-C-00-MSY, New Orleans International/ Moisant Fl, New Orleans	03/19/1993	3	77,800,372	06/01/1993	04/01/2000
Maryland:					
92-01-I-00-BWI, Baltimore-Washington International, Baltimore	07/27/1992	3	141,866,000	10/01/1992	09/01/2002
Massachusetts:					
93-01-C-00-BOS, General Edward L. Logan International, Boston	08/24/1993	3	598,800,000	11/01/1993	10/01/2011
92-01-C-00-ORH, Worcester Municipal, Worcester	07/28/1992	3	2,301,382	10/01/1992	10/01/1997
Michigan:					
92-01-C-00-DTW, Detroit Metropolitan-Wayne County, Detroit	09/21/1992	3	640,707,000	12/01/1992	06/01/2009
92-01-I-00-ESC, Delta County, Excanaba	11/17/1992	3	158,325	02/01/1993	08/01/1996
93-01-C-00-FNT, Bishop International, Flint	06/11/1993	3	32,296,450	09/01/1993	09/01/2030
92-01-I-00-GRR, Kent County International, Grand Rapids	09/08/1992	3	12,450,000	12/01/1992	05/01/1998
92-01-C-00-CMX, Houghton County Memorial, Hancock	04/29/1993	3	162,988	07/01/1993	01/01/1996
93-01-C-00-IWD, Gogebic County, Ironwood	05/11/1993	3	74,690	08/01/1993	10/01/1998

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
93-01-C-00-LAN, Capital City, Lansing	07/23/1993	3	7,355,483	10/01/1993	03/01/2002
92-01-I-00-MQT, Marquette County, Marquette	10/01/1992	3	459,700	12/01/1992	04/01/1996
92-01-C-00-PLN, Pellston Regional—Emmet County, Pellston	12/22/1992	3	440,675	03/01/1993	06/01/1995
Minnesota:					
93-01-C-00-BRD, Brainerd-Crow Wing County Regional, Brainerd	05/25/1993	3	43,000	08/01/1993	12/31/1995
92-01-C-00-MSP, Minneapolis-St, Paul International, Minneapolis	03/31/1992	3	66,355,682	06/01/1992	08/01/1994
Mississippi:					
91-01-C-00-GTR, Golden Triangle Regional, Columbus	05/08/1992	3	1,693,211	08/01/1992	09/01/2006
92-01-C-00-GPT, Gulfport-Biloxi Regional, Gulfport-Biloxi	04/03/1992	3	384,028	07/01/1992	12/01/1993
92-01-C-00-PIB, Hattiesburg-Laurel Regional, Hattiesburg-Laurel	04/15/1992	3	119,153	07/01/1992	01/01/1998
93-01-C-00-JAN, Jackson International, Jackson	02/10/1993	3	1,918,855	05/01/1993	04/01/1995
92-01-C-00-MEI, Key Field, Meridian	08/21/1992	3	122,500	11/01/1992	06/01/1994
Missouri:					
93-01-C-00-SGF, Springfield Regional, Springfield	08/30/1993	3	1,937,090	11/01/1993	10/01/1996
92-01-C-00-STL, Lambert-St. Louis International, St. Louis	09/30/1992	3	84,607,850	12/01/1992	03/01/1996
Montana:					
93-01-C-00-BZN, Gallatin Field, Bozeman	05/17/1993	3	4,198,000	08/01/1993	06/01/2005
92-01-C-00-GTF, Great Falls International, Great Falls	08/28/1992	3	3,010,900	11/01/1992	07/01/2002
93-02-U-00-GTF, Great Falls International, Great Falls	05/25/1993	3	3,010,900	11/01/1992	07/01/2002
92-01-C-00-HLN, Helena Regional, Helena	01/15/1993	3	1,056,190	04/01/1993	12/01/1999
93-01-C-00-FCA, Glacier Park International, Kalispell	09/29/1993	3	1,211,000	12/01/1993	11/01/1999
92-01-C-00-MSO, Missoula International, Missoula	06/12/1992	3	1,900,000	09/01/1992	08/01/1997
Nevada:					
91-01-C-00-LAS, McCarran International, Las Vegas	02/24/1992	3	944,028,500	06/01/1992	02/01/2014
93-02-C-00-LAS, McCarran International, Las Vegas	06/07/1993	3	36,500,000	06/01/1992	09/01/2014
New Hampshire: 92-01-C-00-MHI, Manchester, Manchester	10/13/1992	2	5,461,000	01/01/1993	03/01/1997
New Jersey: 92-01-C-00-EWR, Newark International, Newark	07/23/1992	3	84,600,000	10/01/1992	08/01/1995
New York:					
93-01-C-00-BGM, Binghamton Regional/Edwin A. Link Field, Binghamton	08/18/1993	3	1,872,264	11/01/1993	11/01/1997
92-01-I-00-BUF, Greater Buffalo International, Buffalo	05/29/1992	3	189,873,00	08/01/1992	03/01/2026
92-01-I-00-ITH, Tompkins County, Ithaca	09/28/1992	3	1,900,000	01/01/1993	01/01/1999
92-01-C-00-JHW, Chautauqua County/Jamestown, Jamestown	03/19/1993	3	434,822	06/01/1993	06/01/1996
92-01-C-00-JFK, John F. Kennedy International, New York	07/23/1992	3	109,930,000	10/01/1992	08/01/1995
92-01-C-00-LGA, LaGuardia, New York	07/23/1992	3	87,420,000	10/01/1992	08/01/1995
93-01-C-00-PBL, Clinton County, Plattsburgh	04/30/1993	3	227,830	07/01/1993	01/01/1998
92-01-C-00-HPN, Westchester County, White Plains	11/09/1992	3	27,883,000	02/01/1993	06/01/2022
North Dakota: 92-01-C-00-GFK, Grand Forks International, Grand Forks	11/16/1992	3	1,016,509	02/01/1993	02/01/1997
Ohio:					
92-01-C-00-CAK, Arkon-Canton Regional, Akron	06/30/1992	3	3,594,000	09/01/1992	08/01/1996
92-01-C-00-CLE, Cleveland-Hopkins International, Cleveland	09/01/1992	3	34,000,000	11/01/1992	11/01/1995
92-01-I-00-CMH, Port Columbus International, Columbus	07/14/1992	3	7,341,707	10/01/1992	03/01/1994
93-02-I-00-CMH, Port Columbus International, Columbus	07/19/1993	3	16,270,256	02/01/1994	09/01/1996
93-01-C-00-TOL, Toledo Express, Toledo	06/29/1993	3	2,750,896	09/01/1993	09/01/1996
Oklahoma:					
92-01-C-00-LAW, Lawton Municipal, Lawton	05/08/1992	2	334,078	08/01/1992	01/01/1996
92-01-I-00-TUL, Tulsa International, Tulsa	05/11/1992	3	9,717,000	08/01/1992	08/01/1995

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Oregon:					
93-01-C-00-EUG, Mahlon Sweet Field, Eugene	08/31/1993	3	3,729,699	11/01/1993	11/01/1998
93-01-C-00-MFR, Medford-Jackson County, Medford	04/21/1993	3	1,066,142	07/01/1993	11/01/1995
92-01-C-00-PDX, Portland International, Portland	04/06/1992	3	17,961,850	07/01/1992	07/01/1994
93-01-C-00-RDM, Roberts Field, Redmond	07/02/1993	3	1,191,552	10/01/1993	03/01/2000
92-01-I-00-ABE, Allentown-Bethlehem-Easton, Allentown	05/26/1992	3	3,778,111	11/01/1992	04/01/1995
92-01-C-00-A00, Altoona-Blair County, Altoona	02/03/1993	3	198,000	05/01/1993	02/01/1996
92-01-C-00-ERI, Erie International, Erie	07/21/1992	3	1,997,885	10/01/1992	06/01/1997
93-01-C-00-JST, Johnstown-Cambria County, Johnstown	08/31/1993	3	307,500	11/01/1993	02/01/1998
92-91-I-00-PHL, Philadelphia International, Philadelphia	06/29/1992	3	76,169,000	09/01/1992	07/01/1995
93-02-U-00-PHL, Philadelphia Interantional, Philadelphia	05/14/1993	3	76,169,000	08/01/1993	07/01/1995
92-01-C-00-UNV, University Park, State College	08/28/1992	3	1,495,974	11/01/1992	07/01/1977
93-01-C-00-AVP, Wilkes-Barre/Scranton International, Wilkes-Barre/Scranton	09/24/1993	3	2,369,566	12/01/1993	06/01/1997
South Carolina: 93-01-C-00-CAE, Columbia Metropolitan, Columbia	08/23/1993	3	32,969,942	11/01/1993	09/01/2006
Tennessee:					
92-01-I-00-MEM, Memphis International, Memphis	05/26/1992	3	26,000,000	08/01/1992	12/01/1994
92-01-C-00-BNA, Nashville International, Nashville	10/09/1992	3	143,358,000	01/01/1993	02/01/2004
Texas:					
93-02-C-00-AUS, Robert Mueller Municipal, Austin	06/04/1993	2	6,189,300	11/01/1993	06/01/1995
92-01-C-00-ILE, Killeen Municipal, Killeen	10/20/1992	3	243,339	01/10/1993	11/01/1994
93-01-I-00-LRD, Laredo International, Laredo	07/23/1993	3	11,983,000	10/01/1993	09/01/2013
93-01-C-00-LBB, Lubbock International, Lubbock	07/09/1993	3	10,699,749	10/01/1993	02/01/2000
92-01-I-00-MAF, Midland International, Midland	10/16/1992	3	35,529,521	01/01/1993	01/01/2013
93-01-00-SJT, Mathis Field, San Angelo	02/24/1993	3	873,716	05/01/1993	11/01/1998
Virginia:					
92-01-I-00-CHO, Charlottesville-Albemarle, Charlottesville	06/11/1992	2	255,559	09/01/1992	11/01/1993
92-02-U-00-CHO, Charlottesville-Albemarle, Charlottesville	12/21/1992	2	255,559	09/01/1992	11/01/1993
93-01-C-00-DCA, Washington National, Washington, DC	08/16/1993	3	166,739,071	11/01/1993	11/01/2000
Washington:					
93-01-C-00-BLI, Bellingham International, Bellingham	04/29/93	3	366,000	07/01/1993	07/01/1994
93-01-C-00-PSC, Tri Cities, Pasco	08/03/1993	3	1,230,731	11/01/1993	11/01/1996
93-01-C-00-CLM, William R. Fairchild International, Port Angeles	05/24/1993	3	52,000	08/01/1993	08/01/1994
92-01-C-00-SEA, Seattle-Tacoma International, Seattle	08/13/1992	3	28,847,488	11/01/1992	01/01/1994
93-01-C-00-GEG, Spokane International, Spokane	03/23/1993	3	15,272,000	06/01/1993	12/01/1999
93-01-I-00-ALW, Walla Walla Regional, Walla Walla	08/03/1993	3	1,187,280	11/01/1993	11/01/2014
93-01-C-00-EAT, Rangbom Field, Wenatchee	05/26/1993	3	280,500	08/01/1993	10/01/1995
92-01-C-00-YKM, Yakima Air Terminal, Yakima	11/10/1992	3	416,256	02/01/1993	04/01/1995
West Virginia:					
93-01-C-00-CRW, Yeager, Charleston	05/28/1993	3	3,256,126	08/01/1993	04/01/1998
92-01-C-00-MGW, Morgantown Muni-Walter L. Bill Hart, Morgantown	09/03/1992	3	55,500	12/01/1992	01/01/1994
Wisconsin:					
92-01-C-00-GRB, Austin Straubel International, Green Bay	12/28/1992	3	8,140,000	03/01/1993	03/01/2003
93-01-C-00-MSN, Dane County Regional-Truax Field, Madison	05/22/1993	3	6,746,000	09/01/1993	03/01/1998
93-01-C-00-CWA, Central Wisconsin, Mosinee	08/10/1993	3	7,725,600	11/01/1993	11/01/2012
93-01-C-00-RHI, Rhinelander-Oneida County, Rhinelander	08/04/1993	3	167,201	11/01/1993	04/01/1996
Wyoming:					
93-01-C-00-CPR, Natrona County International, Casper	06/14/1993	3	506,144	09/01/1993	10/01/1996
93-01-C-00-CYS, Cheyenne, Cheyenne	07/30/1993	3	742,261	11/01/1993	08/01/2000
93-01-I-00-GCC, Gillette-Campbell County, Gillette	06/26/1993	3	331,540	09/01/1993	09/01/1999
93-01-C-00-JAC, Jackson Hole, Jackson	05/25/1993	3	1,081,183	08/01/1993	02/01/1996

CUMULATIVE LIST OF PFC APPLICATIONS PREVIOUSLY APPROVED—Continued

State application number, airport, city	Date approved	Level of PFC	Total approved net PFC revenue	Earliest charge effective date	Estimated charge expiration date [1]
Guam:					
92–01–C–00–NGM, Agana Nas, Agana	11/10/1992	3	5,632,000	02/01/1993	06/01/1994
Puerto Rico:					
92–01–C–00–BQN, Rafael Hernandez, Aguadilla	12/29/1992	3	1,053,000	03/01/1993	01/01/1999
92–01–C–00–PSE, Mercedita, Ponce	12/29/1992	3	866,000	03/01/1993	01/01/1999
92–01–C–00–SJU, Luis Mundz Marin International, San Juan	12/29/1992	3	49,768,000	03/01/1993	02/01/1997
Virgin Islands:					
92–01–I–00–STT, Cyril E. King, Charotte Amalie	12/08/1992	3	3,871,005	03/01/1993	02/01/1995
92–01–I–00–STX, Alexander Hamilton, Christiansted St. Croix	12/08/1992	3	2,280,465	03/01/1993	05/01/1995

[1] The estimated charge expiration date is subject to change due to the rate of collection and actual allowable project costs.

[FR Doc. 93–28971 Filed 11–29–93; 8:45 am]

BILLING CODE 4910–13–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 228
Tuesday, November 30, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

BOARD OF GOVERNORS OF THE FEDERAL RESERVE SYSTEM

TIME AND DATE: 11:00 a.m., Monday, December 6, 1993.

PLACE: Marriner S. Eccles Federal Reserve Board Building, C Street entrance between 20th and 21st Streets, N.W., Washington, D.C. 20551.

STATUS: Closed.

MATTERS TO BE CONSIDERED:

1. Proposed 1994 Federal Reserve Board employee salary structure adjustments and merit program.
2. Proposed Federal Reserve System supplements to the Office of Government Ethics' Standards of Ethical Conduct.
3. Personnel actions (appointments, promotions, assignments, reassignments, and salary actions) involving individual Federal Reserve System employees.
4. Any items carried forward from a previously announced meeting.

CONTACT PERSON FOR MORE INFORMATION: Mr. Joseph R. Coyne, Assistant to the Board; (202) 452-3204. You may call (202) 452-3207, beginning at approximately 5 p.m. two business days before this meeting, for a recorded announcement of bank and bank holding company applications scheduled for the meeting.

Dated: November 26, 1993

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 93-29464 Filed 11-26-93; 3:26 pm]

BILLING CODE 6210-01-P

NUCLEAR REGULATORY COMMISSION

DATE: Weeks of November 29, December 6, 13, and 20, 1993.

PLACE: Commissioners' conference room, 11555 Rockville Pike, Rockville, Maryland.

STATUS: Public and closed.

MATTERS TO BE CONSIDERED:

Week of November 29

Monday, November 29

2:00 p.m.
Briefing by the Executive Branch (Closed—Ex. 1)

Friday, December 3

10:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 6—Tentative

Tuesday, December 7

10:00 a.m.
Periodic Briefing on EEO Program (Public Meeting)
(Contact: Vandy Miller, 301-492-4665)

Thursday, December 9

11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
2:00 p.m.
Briefing by Northeast Utilities (Public Meeting)
(Contact: Jose Calvo, 301-504-1404)

Friday, December 10

10:00 a.m.
Briefing by IG on Fee Audit (Public Meeting)
(Contact: Thomas Barchi, 301-492-7301)

Week of December 13—Tentative

Tuesday, December 14

10:00 a.m.
Briefing on Results of Operator Licensing Program Recentralization Study (Public Meeting)
(Contact: Robert Gallo, 301-504-1031)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)

Week of December 20—Tentative

Monday, December 20

10:00 a.m.
Briefing on Options for Agreement State Compatibility Policy (Public Meeting)
(Contact: Cardelia Maupin, 301-504-2312)
2:30 p.m.
Briefing by DOE on HLW Program (Public Meeting)
(Contact: Linda Desell, 202-586-1462)

Tuesday, December 21

10:00 a.m.
Periodic Meeting with Advisory Committee on Nuclear Waste (ACNW) (Public Meeting)
(Contact: John Larkins, 301-492-4516)
11:30 a.m.
Affirmation/Discussion and Vote (Public Meeting) (if needed)
3:00 p.m.
Briefing on Results of Fee Study (Public Meeting)
(Contact: James Holloway, 301-492-4301)

Wednesday, December 22

10:00 a.m.
Briefing on Results of License Extension Workshop and Proposed Changes to License Renewal Rule (Public Meeting)
(Contact: Scott Newberry, 301-504-1183)

Note: Affirmation sessions are initially scheduled and announced to the public on a time-reserved basis. Supplementary notice is provided in accordance with the Sunshine Act as specific items are identified and added to the meeting agenda. If there is no specific subject listed for affirmation, this means that no item has as yet been identified as requiring any Commission vote on this date.

The schedule for Commission meetings is subject to change on short notice. To verify the status of meetings call (recording)—(301) 504-1292. Contact person for more information: William Hill (301) 504-1661.

Dated: November 24, 1993.

William M. Hill, Jr.,

SECY Tracking Officer, Office of the Secretary.

[FR Doc. 93-29409 Filed 11-26-93; 2:24 pm]

BILLING CODE 7590-01-M

NATIONAL TRANSPORTATION SAFETY BOARD

TIME AND DATE: 9:30 a.m., Tuesday, December 7, 1993.

PLACE: The Board Room, 5th Floor, 490 L'Enfant Plaza, SW., Washington, DC 20594.

STATUS: Open.

MATTERS TO BE CONSIDERED:

5997A—Railroad Accident Report: Collision Between Northern Indiana Commuter Transportation District Eastbound Train 7 and Westbound Train 12, at Gary, Indiana, January 18, 1993.

6109A—Aviation Accident Report: Runway Departure Following Landing, American Airlines Flight 102; McDonnell Douglas DC-10-30, Dallas/Fort Worth International Airport, Texas, April 14, 1993.

NEWS MEDIA CONTACT: Telephone (202) 382-0660.

FOR MORE INFORMATION CONTACT: Bea Hardesty, (202) 382-6525.

November 26, 1993.

Bea Hardesty,

Federal Register Liaison Officer.

[FR Doc. 93-29414 Filed 11-26-93; 2:25 am]

BILLING CODE 7533-01-M

Corrections

Federal Register

Vol. 58, No. 228

Tuesday, November 30, 1993

This section of the FEDERAL REGISTER contains editorial corrections of previously published Presidential, Rule, Proposed Rule, and Notice documents. These corrections are prepared by the Office of the Federal Register. Agency prepared corrections are issued as signed documents and appear in the appropriate document categories elsewhere in the issue.

DEPARTMENT OF JUSTICE

Notice of Lodging of a Consent Decree Pursuant to the Comprehensive Environmental Response, Compensation and Liability Act

Correction

In notice document 93-27904 appearing on page 60212 in the issue of Monday, November 15, 1993, in the first column, in the first paragraph, in the fifth line from the bottom, "$65,000.00" should read "$650,000.00".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AWP-9]

Establishment of VOR Federal Airway V-597; CA

Correction

In rule document 93-25213 beginning on page 53122 in the issue of Thursday, October 14, 1993, make the following correction:

§ 71.1 [Corrected]

On page 53123, in the first column, in § 71.1, under **V-597 [New]**, in the second line, "100°" should read "110°".

BILLING CODE 1505-01-D

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93-AEA-1]

Proposed Establishment of Jet Route J-132 and Alteration of Jet Route J-223; NY

Correction

In proposed rule document 93-26303 beginning on page 57571 in the issue of Tuesday, October 26, 1993, make the following correction:

On page 57572, in the first column, in the second full paragraph, in the seventh line, "hearing" should read "heading".

BILLING CODE 1505-01-D

federal register

Tuesday
November 30, 1993

Part II

Environmental Protection Agency

40 CFR Parts 6, 51, and 93

Determining Conformity of General Federal Actions to State or Federal Implementation Plans; Final Rule

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Parts 6, 51, and 93

[FRL-4805-1]

Determining Conformity of General Federal Actions to State or Federal Implementation Plans

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: The Clean Air Act (Act) requires EPA to promulgate rules to ensure that Federal actions conform to the appropriate State implementation plan (SIP). Conformity to a SIP is defined in the Act as amended in 1990 as meaning conformity to a SIP's purpose of eliminating or reducing the severity and number of violations of the national ambient air quality standards (NAAQS) and achieving expeditious attainment of such standards. The Federal agency responsible for the action is required to determine if its actions conform to the applicable SIP.

This final rule establishes the criteria and procedures governing the determination of conformity for all Federal actions, except Federal highway and transit actions ("transportation conformity"). Transportation conformity requirements are established in a separate rulemaking action.

EFFECTIVE DATES: The final rules for 40 CFR parts 51 and 93 are effective January 31, 1994. The final rule for 40 CFR part 6 will be effective January 31, 1994 unless notice is received by December 30, 1993, that someone wishes to submit adverse or critical comments. If the effective date is delayed for the 40 CFR part 6 rule due to the need to provide for public comment, timely notice will be published in the **Federal Register**. The information collection requirements contained in 40 CFR part 51, subpart W, and 40 CFR part 93, subpart B, have not been approved by the Office of Management and Budget (OMB) and are not effective until OMB has approved them. A document will be published in the **Federal Register** announcing the effective date.

FOR FURTHER INFORMATION CONTACT: Doug Grano: U.S. EPA, Office of Air Quality Planning and Standards (MD-15), Research Triangle Park, NC 27711, (919) 541-3292.

SUPPLEMENTARY INFORMATION:

Outline

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I. Summary of the Final Rule

The purpose of this rule is to implement section 176(c) of the Act, as amended (42 U.S.C. 7401 *et seq.*), which requires that all Federal actions conform to an applicable implementation plan developed pursuant to section 110 and part D of the Act. Section 176(c) of the Act requires EPA to promulgate criteria and procedures for demonstrating and assuring conformity of Federal actions to a SIP. States are required through this rule to submit to EPA revisions to their implementation plans establishing conformity criteria and procedures consistent with this rule within 12 months of today's date.

For the purpose of summarizing the general conformity rule, it can be viewed as containing three major parts: applicability, procedure, and analysis. These are briefly described in the next three paragraphs.

The general conformity rule covers direct and indirect emissions of criteria pollutants or their precursors that are caused by a Federal action, are reasonably foreseeable, and can practicably be controlled by the Federal agency through its continuing program responsibility. The rule generally applies to Federal actions except:

(1) Those covered by the transportation conformity rule;

(2) Actions with associated emissions below specified de minimis levels; and

(3) Certain other actions which are exempt or presumed to conform.

The rule also establishes procedural requirements. Federal agencies must make their conformity determinations available for public review. Notice of draft and final conformity determinations must be provided directly to air quality regulatory agencies and to the public by publication in a local newspaper.

The conformity determination examines the impacts of the direct and indirect emissions from the Federal action. The rule provides several options to satisfy air quality criteria and requires the Federal action to also meet any applicable SIP requirements and emission milestones. Each Federal agency must determine that any actions covered by the rule conform to the applicable SIP before the action is taken.

The EPA continues to believe that the statute is ambiguous and that it provides EPA discretionary authority to apply these general conformity procedures to both attainment and nonattainment areas.

However, EPA cannot now apply these rules in attainment areas because it did not propose to do so. The EPA must first complete notice and comment rulemaking on the application of the appropriate criteria and procedures for conformity determinations in attainment areas. Therefore, the criteria and procedures established in this rule apply only in areas that are nonattainment or maintenance with respect to any of the criteria pollutants under the Act: [1] carbon monoxide (CO),

[1] Criteria pollutants are those pollutants for which EPA has established a NAAQS under section 109 of the Act.

lead (Pb), nitrogen dioxide, ozone, particulate matter (PM–10), and sulfur dioxide (SO_2).

This rule does not apply to Federal procurement actions. The March 15, 1993 proposal was silent on the application of conformity requirements specifically to procurement actions, however, a number of comments were received on procurements. Although the comments generally indicated that procurements should be exempt from the final conformity rule, EPA is inclined to believe that Congress intended for certain procurement actions to be covered by the general conformity provisions. It is impossible at this time to resolve the competing concerns regarding which procurement actions should be covered and which should be exempt since the existing record is inadequate. Therefore, the EPA will propose to cover certain procurements in a future rulemaking, but will take comment on other interpretations.

The EPA will also propose exemptions for certain procurement actions which it believes would fit the de minimis criteria or result in emissions which are not reasonably foreseeable. The EPA believes the majority of procurement actions would be de minimis or not reasonably foreseeable. Given the complexity of Federal procurement and the government's desire to streamline procurement activities, the EPA will seek comment on its proposed exemptions and the process for applying conformity to procurement activities.

II. Background

The general conformity rule was proposed on March 15, 1993 (58 FR 13836). Additional background information can be found in the proposal notice.

Conformity is defined in section 176(c) of the Act as conformity to the SIP's purpose of eliminating or reducing the severity and number of violations of the NAAQS and achieving expeditious attainment of such standards, and that such activities will not:

(1) Cause or contribute to any new violation of any standard in any area,

(2) Increase the frequency or severity of any existing violation of any standard in any area, or

(3) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area.

The Act as amended in 1990 ties conformity to attainment and maintenance of the NAAQS. Thus, a Federal action must not adversely affect the timely attainment and maintenance of the NAAQS or emission reduction progress plans leading to attainment. The Act as amended in 1990 includes a new emphasis of reconciling the emissions from Federal actions with the SIP, rather than simply providing for the implementation of SIP measures. This integration of Federal actions and air quality planning is intended to protect the integrity of the SIP by helping to ensure that SIP growth projections are not exceeded, emissions reduction progress targets are achieved, and air quality attainment and maintenance efforts are not undermined.

The rule amends part 51 of title 40 of the Code of Federal Regulations by adding a new subpart W. Part 51 is entitled: "Requirements for preparation, adoption, and submittal of implementation plans." Amendment to part 51 is necessary to require States to revise their implementation plans to include conformity requirements. Once the State plans are revised, the Federal agencies would be subject to those requirements.

In addition, the rule adds a new subpart B to part 93 of title 40 of the Code of Federal Regulations. This is necessary to make the conformity requirements apply to Federal agencies as soon as the rule is effective and in the interim period before the States revise their implementation plans. The part 93 requirements are identical to the part 51 requirements with one exception: they do not require a State to revise its implementation plan. To avoid duplication, the preamble language cites only the part 51 sections, however, the relevant part 51 discussion also applies to the equivalent part 93 rules.

As noted in the proposal (58 FR 13837), EPA promulgated conformity rules in 1979 and 1985 to implement the conformity provisions for EPA actions at 40 CFR 6.303. Today's final rule applies the conformity provisions of the Act as amended in 1990 to all Federal activities, including EPA activities. Thus, the conformity requirements of 40 CFR 6.303 are superseded by these rules. Accordingly, paragraphs (a) through (f) of 40 CFR 6.303 are replaced with a new paragraph (a) which refers to the conformity rules promulgated today and a new paragraph (b) which retains the requirements of (old) paragraph (g), which addresses other requirements of section 316(b) of the Act. The EPA is taking this action without specifically having proposed to make these changes to 40 CFR 6.303 in the March 15, 1993 proposal because the Agency views this as a noncontroversial action and anticipates no adverse comments. This action will be effective January 31, 1994 unless, by December 30, 1993 notice is received that adverse or critical comments will be submitted regarding the changes to 40 CFR 6.303. If final action on the changes to 40 CFR 6.303 is delayed pending public comment, the requirements of the new part 51 and 93 rules will still supersede the requirements of 40 CFR 6.303.

III. Discussion of Major Issues and Response to Comments

For additional background information on the major issues, the reader should refer to 58 FR 13837–13847, March 15, 1993. Unless otherwise noted, the discussions in Sections III and IV below only address issues where public comments were received. For portions of the proposed rule where comments were not received, the final rule is consistent with the proposed rule for the reasons set forth in the proposal notice. Further discussion of such issues is not addressed in this preamble. Portions of the proposed rule were also changed so that the final rule more clearly states the intended meaning. Sections III and IV address issues in the same order as they were addressed in the proposal which is also consistent with the regulatory portion of this rulemaking notice.

A. Effective Dates

1. Proposal

The effective date of this rule was proposed to be 30 days after the final rulemaking notice is published. At that time, however, some projects that are dependent on Federal actions will have already commenced or completed planning activities, perhaps including their environmental assessment. Such projects would then be faced with the uncertainty of new conformity requirements that could not have been anticipated prior to the final rules being published. This uncertainty could threaten the viability of projects for which considerable time and funds already have been or are about to be invested.

The preamble to the proposal specifically invited comments on transition (or grandfathering) provisions for on-going projects that are dependent on Federal actions (58 FR 13837). Two options were proposed which would allow grandfathering based on activities that will have either already commenced or completed their environmental assessment by the time the final rulemaking notice is published.

2. Comment

The EPA received comments on this issue which recommended a variety of

approaches. The comments included the following recommendations, among others:

(1) Exempt Federal actions where the environmental analysis has been "commenced" prior to the effective date of the final rules.

(2) Base the exemption on the "completion" of the environmental analysis prior to the effective date of the final rules. One commenter suggested the following definition of "complete:" Projects where there has been sufficient environmental analysis for the agency to determine that the project is in conformity with the purposes of the SIP pursuant to the agency's affirmative obligation under Act section 176(c), or where a written determination of conformity under section 176(c) of the Act has been made.

(3) The rule should apply retroactively to November 15, 1991, the deadline set by Congress for promulgation of the rules by EPA.

(4) The final conformity rule should take effect only after a State revises its SIP to meet the new Act conformity requirements and the revision is approved by EPA.

(5) Exempt only projects that have received funding prior to the effective date of the conformity rules.

(6) Exempt projects that have completed an environmental analysis which included public participation.

(7) Phase-in review by focusing first on environmental impact statements (EIS's) and then later extend to other actions or exempt projects completed prior to 1 year after the rules are final.

3. Response

This final rule does not require a new conformity determination for Federal actions where the Federal agency completed its conformity determination by March 15, 1994 or National Environmental Policy Act (NEPA) analysis prior to the effective date of this rule. If a conformity determination has been "completed" it means the responsible Federal agency made a final determination that a specific action conforms, pursuant to section 176(c) of the Act. In such cases, the Federal actions must have conformity determinations pursuant to section 176(c) of the Act, but they would not be subject to the specific rules published today. Alternatively, if the Federal agency had completed its environmental analysis for a Federal action under the NEPA prior to the effective date of this rule, as evidenced by an EIS, environmental assessment (EA), or finding of no significant impact (FONSI), then such an action is also not subject to the specific rules published today, although it would have been subject to applicable conformity requirements at the time the environmental analysis was completed.

In determining whether to apply rules immediately, EPA generally considers the following factors:

(1) Whether the new rule represents an abrupt departure from well established practice or merely attempts to fill a void in an unsettled area of law.

(2) The extent to which the party against whom the new rule is applied relied on the former rule.

(3) The degree of burden which immediate application of a rule imposes on a party, and

(4) The statutory interest in applying a new rule despite the reliance of a party on the old standard.

The EPA considered all options contained in the comments and determined that the grandfathering provision in the final rule is appropriate for the reasons described below.

(1) The general conformity rule represents an abrupt departure from the previous conformity requirements EPA published in 40 CFR 6.303, which applied only to EPA actions (and which are being replaced by this rulemaking). Although staff working drafts of the new rule existed as early as November 1991, the final rule is considerably changed from all of the early drafts, which also had very limited circulation.

(2) Considering the general absence of conformity determinations by Federal agencies prior to the 1990 amendments to the Act, most parties appear to have relied on the NEPA requirements or on 40 CFR 6.303 to mean that specific general conformity requirements did not apply for Federal agencies other than EPA.

(3) Prior to this final rulemaking, many Federal actions will have already completed their environmental analysis pursuant to NEPA. Such projects would then be faced with the uncertainty of the new conformity requirements that were not anticipated prior to the final rules being published. This uncertainty could threaten the viability of projects for which considerable time and funds already have been or are about to be invested.

(4) The statutory interest in applying the new requirements during this interim period is preserved where the Federal action specifically considered the conformity requirements of the Act and completed such an analysis or fulfilled the NEPA requirements, since such actions would provide for an environmental analysis focusing on air quality as envisioned by Congress even though the analysis might not meet all the details contained in the new rules.

After determining that some form of grandfathering is appropriate, EPA selected a hybrid of the commencement and completion dates of a conformity determination or where a NEPA analysis has been completed. That is, the final rule grandfathers actions where: (1) The NEPA analysis is completed by the effective date of this rule, or (2) the environmental analysis was commenced prior to the effective date of this rule, sufficient environmental analysis is completed, and the conformity determination is completed by March 15, 1994 (1 year after the date of the proposed rulemaking). This approach is supported by the following reasons:

(1) The completion date can be well defined, as described above.

(2) The commencement date and phase-in approaches are valid concepts but, by themselves, are subject to too much uncertainty. These concepts have less well defined dates than the completion date. In many cases, the conformity analysis could have been recently started and the new rules could be incorporated into the analysis without hardship. The commencement date is likely to exceed the 5-year timeframe for conformity reanalysis in many cases. The EPA believes that it is reasonable to expect that a conformity determination could be developed in parallel with the ongoing environmental analysis and/or rely on any previous environmental analyses to the degree they are complete; in this manner the conformity determination should not require extensive, new analyses nor prolong the environmental review process in most cases.

(3) The date after EPA approval of the State conformity rules is an unjustifiably lengthy delay and is not consistent with the statutory intent to have the Federal rules in place and the States later follow with their own conformity rules.

(4) The funding date may be difficult to define since it could be based on a variety of steps within an overall grant process or based in some way on the actual expenditure of funds.

(5) Grandfathering based on previous public participation and/or the commencement of an environmental analysis would not assure that the analysis was completed and also would require EPA to define what level of previous public participation would be considered adequate—an issue not addressed in the proposal.

As described in § 51.857(a), a conformity determination automatically lapses 5 years from the date of the initial determination unless the Federal action has been completed or a continuous program has been commenced to

implement that Federal action within a reasonable time. This 5-year provision also applies with respect to conformity determinations grandfathered as described above.

The information collection requirements in 40 CFR parts 51 and 93 have not yet been approved by the OMB and are not effective until OMB approves them.

B. SIP Revisions—State Authority

1. Proposal

As described in the March 15, 1993 preamble, EPA proposed that States may adopt criteria and procedures more stringent than the requirements in the EPA rules (58 FR 13838).

2. Comment

Several commenters supported EPA's view. These commenters stated that Federal agencies are to be afforded no special privileges and that the Act in no way prevents the imposition of more stringent control measures in instances where public health and welfare may be at risk.

Other commenters, however, stated that Federal agencies should not be held to a higher standard by State regulations than adjacent or nearby private or State activities. These comments suggest that this provision may be inconsistent with section 118 of the Act. Section 118 of the Act states that Federal agencies are to comply with State air pollution requirements "in the same manner and to the same extent as any nongovernmental entity." Since the general conformity requirement is not imposed on any non-Federal entity, these agencies argue that there is not a waiver of sovereign immunity which would allow State regulation of Federal activities in either sections 118 or 176 of the Act; therefore, these agencies argue, the Act does not permit States to set more stringent conformity requirements than those set by EPA. Some commented that multiple State rules would cause confusion to Federal agencies trying to meet the conformity requirements.

One comment stated that only areas designated "extreme" should be allowed to require more stringent State or regional general conformity rules in its SIP.

3. Response

In considering the comments received on this issue, EPA has taken the provisions of sections 116, 118 and 176(c) of the Act into account. The new language added to section 176(c) by the 1990 amendments to the Act makes it clear that the purpose of section 176(c) is to make emissions from Federal actions consistent with the Act's air quality planning goals. The conformity requirement is different from most other requirements of the Act because it is imposed solely on Federal agencies, and is not required of nongovernmental entities. Therefore it is appropriate for EPA to establish the criteria and procedures for the conformity of Federal actions as specified by section 176(c)(4)(A) of the Act. It is also required that States adopt a SIP revision that includes these criteria and procedures, as indicated by section 176(c)(4)(C) of the Act. Furthermore, EPA interprets the requirements imposed by section 116 of the Act to mean that the criteria and procedures set by State conformity rules may not be any less stringent than those established by this rulemaking.

The EPA interprets the section 118 requirement that Federal agencies comply with air pollution requirements "in the same manner and to the same extent as any nongovernmental entity" to mean only that Federal agencies must comply with any air pollution rule established under the Act to no less an extent than nongovernmental entities. The general conformity rule and State rules adopted pursuant to it are rules established under the Act with which, under section 118, Federal agencies must comply. Consequently, EPA does not agree that there is no waiver of sovereign immunity at all in section 176(c). The EPA concludes that section 176(c)(4)(c) requires State conformity SIP's that would regulate Federal activities.

However, the language of the relevant sections does leave unclear the extent to which the waiver of sovereign immunity may limit the manner in which a State's section 116 authority is applied to Federal agencies. After careful consideration of the legal and policy arguments presented to EPA after the March 15, 1993 notice of proposed rulemaking (NPR), EPA has concluded that State conformity rules which do not apply to non-Federal entities and which apply more stringent requirements than the EPA general conformity rule to federally-assisted facilities would be inconsistent with the waiver of sovereign immunity provided by section 118 of the Act. Applying such rules exclusively to federally-assisted facilities, which could be the case with any more stringent conformity requirements since conformity requirements do not apply statutorily to nongovernment entities, would have an unjustifiably discriminatory effect. Under current case law, a reviewing court would construe waivers of sovereign immunity, like that in section 118, narrowly. See *Department of Energy* v. *Ohio*, 112 S.CT. 1627, 1633 (1992); *McMahon* v. *United States*, 342 U.S. 25, 26, 72 S.CT. 17, 18 (1951). The EPA believes that such purely discriminatory more-stringent State programs would be prohibited under such case law.

The EPA recognizes that States have historically developed their own conformity requirements despite the absence of any Federal rules. Further, States have frequently adopted requirements that differ from State to State, both with respect to conformity and general air quality management, in order to address different air quality needs and regulatory authorities. There are several statements excerpted below from the congressional Record which support the conclusion that States may adopt conformity rules that are more stringent than the rules promulgated by EPA.

> Such [Federal] regulations will provide guidance to the states for the adoption of conformity requirements in each SIP and will govern the conformity decisions of federal agencies and metropolitan planning organizations (MPOs) required to make conformity determinations. Federal agencies will also have to comply with applicable provisions of the SIP if stronger than the underlying basic federal regulations. Cong. Rec., S16958 (October 27, 1990) (Statement of Senator Chafee).

> States are also free under section 116 to continue to apply any more stringent project review criteria in effect under state or local law. The criteria in section 176(c)(3) are merely the additional federal criteria that must be met to qualify for federal approval or funding of transportation projects, programs, and plans prior to the date when a revised implementation plan takes effect under these amendments. Cong. Rec., S16973 (October 27, 1990) (Statement of Senator Baucus).

> Such regulations will provide guidance to the states for the adoption of conformity requirements in each SIP and will govern the conformity decisions of federal agencies and MPOs required to make conformity decisions. Federal agencies will also have to comply with applicable provisions of the SIP if stronger than the underlying basic federal regulations." Cong. Rec., S16973 (October 27, 1990) (Statement of Senator Baucus).

Consequently, the EPA believes that if a State wishes to apply more stringent conformity rules for the purpose of attaining air quality, it may do so, but only if the same conformity requirements are imposed on non-Federal as well as Federal actions. States adopting more stringent conformity rules may not cause a more significant or unusual obstacle to Federal agencies than non-Federal agencies for the same type of action.

Therefore, if a State decides to adopt more stringent conformity criteria and procedures, these requirements must be imposed on all similar actions whether the sponsoring agency is a Federal or non-Federal entity; non-Federal entities include State and local agencies and private sponsors. Sections 51.851 and 51.853 have been revised accordingly in the final rule.

If a State elects to impose more stringent conformity requirements, they must not be so narrowly construed as to apply in practical effect only to Federal actions. For example, if a State decides that actions of employers with more than 500 employees require conformity determinations, and the Federal government is the only employer of this size in a particular jurisdiction, then this rule would be viewed as discriminatory and would not be permitted. Consequently, more stringent State conformity rules must not only be written to apply similarly to all Federal and non-Federal entities, but they must be able to be implemented so that they apply in a nondiscriminatory way in practice.

Moreover, when EPA approves State conformity rules, the Agency should determine that more stringent State conformity requirements are directly related to the attainment of air quality in the State.

C. Indirect Emissions—Inclusive/ Exclusive Definition

1. Proposal

The proposal indicated that the Act expressly prohibits Federal actions that would "support in any way" activity which does not conform to a SIP. Given this language, EPA concluded that indirect emissions must be included in any conformity determination, under either subpart T or W. The EPA proposed two different definitions of indirect emissions—"inclusive" and "exclusive"—and invited comment on both versions. The inclusive and exclusive definitions are identical except the phrase "and which the Federal agency has and will continue to maintain some authority to control" appears only in the exclusive definition. As described in the preamble to the proposal (58 FR 13840), the exclusive version of indirect emissions excluded emissions that may be attributable to a Federal action but that the Federal agency has no authority to control. The inclusive version (58 FR 13839) includes all emissions attributable to the Federal action, whether or not they are under the control of the Federal agency. The terms "caused by" and "reasonably foreseeable" are common to both definitions and are discussed elsewhere in this notice.

2. Comment

The EPA received substantial and diverse comments from air regulatory agencies, the building industry, various Federal agencies, environmental groups, and individuals. The "inclusive" definition of indirect emissions is supported primarily by the air regulatory agencies and environmental groups. The "inclusive" version, however, is viewed as unnecessarily broad by many of the other groups. Many individuals and building industry representatives objected to the inclusion of indirect emissions in either approach.

Commenters supporting the inclusive definition pointed out that this approach provides the greatest opportunity for States to prevent Federal actions that could violate the NAAQS. They indicated that to prevent actions that could cause new or worsen existing air quality violations, it is necessary to consider not only the Federal action, but all reasonably foreseeable emissions caused by the Federal action, whether or not they are under the Federal agency's control.

Commenters supporting the exclusive version of indirect emissions argued that it is unreasonable to include emissions that may be attributable to a Federal action, but that the Federal agency has no authority to control. As stated in the March 15, 1993 preamble, many of the Federal agencies reiterated that this approach might require the Federal agency to impose conditions on the project (e.g., mitigation) to demonstrate conformity that would be meaningless since there would be no effective Federal enforcement mechanism.

A third group of commenters stated that there should be no consideration of indirect sources in the general conformity rule. They cited section 110 of the Act as limiting Federal authority to conduct indirect source review to major federally-funded and federally-sponsored actions. These comments are addressed in section III.E of this notice.

3. Response

a. General—indirect emissions. As described in the proposal, the Act expressly prohibits Federal actions that would "support in any way" activity which does not conform to a SIP. Because this language is very broad, EPA believes indirect emissions must be included in any conformity determination, under either subpart T (transportation conformity) or W (general conformity). As described below, congressional guidance is much clearer for transportation conformity than for general conformity. In fact, there is virtually no information in the Congressional Record specifically directed at general conformity. Therefore, in interpreting the statutory intent for the general conformity rule, EPA believes it is helpful to consider the guidance provided by Congress on transportation conformity in section 176(c) of the Act.

Congress clearly intended the transportation conformity rule to cover the indirect emissions from vehicles that would travel to and on highways constructed with Federal support. Thus, the conformity review does not focus on emissions associated with only the construction of the highway project, but includes emissions from vehicles that later travel to and on that highway. The general conformity rule originates from the same statutory language and so must meet the same congressional intent.

As described above, the transportation treatment provisions of the Act clearly require consideration of indirect emissions. Therefore, EPA concludes that the general conformity rule must also cover indirect emissions.

On March 15, 1993, EPA proposed that as a legal matter, the statute could be interpreted to support either the inclusive or exclusive definition and both definitions were offered for public comment. As a result of the public comments and consultation with other Federal agencies, the final rule incorporates the exclusive definition of indirect emissions. The exclusive definition is selected because it meets the requirements of section 176(c) of the Act, and it:

(1) Is consistent with the manner indirect emissions are covered in the transportation conformity rule,

(2) Can be reasonably implemented, and

(3) Best fits within the overall framework of the Act.

As commenters noted, the inclusive definition would require the review of more Federal actions, as described in this rule, than the exclusive definition and, thus, could identify more cases where an air quality violation is possibly associated with a Federal action. The inclusive definition, however, is not selected for the following reasons:

(1) Mitigation measures required under this approach may not be enforced,

(2) It is not consistent with the manner in which indirect emissions are covered in the transportation rule,

(3) It would impose an unreasonable burden due to the large number of affected Federal actions, and

(4) It establishes an overly broad role for the Federal government in attaining the NAAQS.

b. Inclusive definition—enforcement. The EPA sees no value to the environment in promulgating a rule that is unenforceable. The EPA agrees with the point made by some commenters that it is unreasonable to expect Federal agencies to control indirect emissions over which they have no continuing authority to control. As stated in the March 15, 1993 preamble, this approach might result in a Federal agency imposing conditions on the project (e.g., mitigation) to demonstrate conformity that would be meaningless since there would be no effective Federal enforcement mechanism.

For example, the inclusive approach could require a Federal agency to impose restrictions on the title to land that is being sold or developed. In such cases these deed restrictions might remain forever with the land. Enforcement of these types of restrictions is very difficult and is not likely to be an effective approach. Further, it is not reasonable to attach a restriction to a deed forever, since the land use might change over time and, certainly, the environment will change over time—both of which may remove or alter the need for the deed restriction, which would nonetheless remain in place since there is no mechanism to remove it. In this example, EPA believes that it is impractical to use deed restrictions to control emissions and that the Federal agency would not maintain control since there is no continuing program responsibility for that Federal agency to control future emissions associated with that land.

c. Inclusive definition—transportation. In the inclusive approach, the Federal agency is made responsible for emissions that are reasonably foreseeable. This would include emissions from on-site or off-site facilities. Assume, for example, that the Federal Aviation Administration (FAA) approves an airport expansion project which would require a general conformity determination. The airport expansion also includes a highway interchange construction project needing a project level transportation conformity approval. Additionally, it is known that a cargo handling facility will be constructed near that interchange due to the airport expansion. The project level transportation conformity review would cover emissions from vehicle activity to and on the highway interchange, but would not cover indirect emissions possibly associated with the airport or cargo facility. Thus, the project level transportation conformity review covers direct and certain indirect emissions associated with the highway interchange action itself.

The general conformity inclusive approach could rely on the transportation conformity review with respect to vehicle activity to and on the highway interchange. In addition, the general conformity inclusive approach would specifically consider direct and indirect emissions at the airport itself and at the cargo facility. In contrast, the exclusive approach, similar to the project level transportation conformity approach, covers direct and certain indirect emissions associated with the airport expansion action itself, but does not specifically consider additional indirect emissions (i.e., the cargo facility). Thus, the exclusive approach appears to be more consistent with the transportation conformity approach.

d. Inclusive definition—unreasonable burden. The inclusive definition could be interpreted to include virtually all Federal activities, since all Federal activities could be argued to give rise to, at least in some remote way, an action that ultimately emits pollution. This broadest interpretation of the statute could impose an unreasonable burden on the Federal agencies and private entities that would have been affected by that definition. For example, since the Federal government issues licenses for any export activities, an inclusive definition approach could go so far as to require the manufacture of the export material and the transportation of the same material to be subject to a conformity review. Such an approach, however, is very burdensome due to the large number of export activities, the fact that the licensing process is not a factor in any SIP, and that the vast majority of these manufacturing and transportation activities may have little to no impact on air quality. Thus, the inclusive approach goes far beyond the set of Federal activities reasonably related to the SIP.

The many Federal agencies subject to the inclusive approach would have been required to document air quality impacts from tens of thousands of public and private business activities each year, even where the associated Federal action is extremely minor. For example, the Army Corps of Engineers (COE) estimates that 65,000 of their regulatory actions would have required a conformity review in 1992 under the inclusive definition. The COE permits are often limited to a small portion of a much larger project and, thus, may not be the best mechanism to review the larger project: e.g., one river crossing for a 500 mile gas pipeline or a half-acre wetland fill for a twenty acre shopping mall.

The Federal agencies might also have been required to expend substantial resources in an attempt to enforce mitigation measures for actions that are outside their jurisdiction. Some delay to these public and private activities would have been expected as the conformity requirements were carried out. In some cases these Federal actions would not take place at all as a result of conformity consideration. In addition, the threat of litigation over this expansive list of actions would have been significant. That is, projects could have been delayed through litigation simply due to arguments over application of the conformity rule to the project, even where the air quality impacts were very minor.

Through public comments and by communication with other Federal agencies, the EPA received a large number of examples of Federal activities, a few of which are listed below, that are not normally considered in SIP's, but could not clearly be said to have absolutely no ties to actions that result in emissions of pollutants.

(1) COE permit actions.
(2) The sale of Federal land.
(3) National Pollutant Discharge Elimination System (NPDES) permit issuance.
(4) Transmission of electrical power.
(5) Export license actions.
(6) Bank failures.
(7) Mortgage insurance.

Based on the public comments and consultation with the other Federal agencies, EPA believes that Congress did not intend the general conformity rule to affect innumerable Federal actions, impose analytical requirements on activities that are very minor in terms of Federal involvement and air quality impacts, and result in the significant expense and delay that is likely in an inclusive definition. Thus, adopting the inclusive definition approach could have imposed an unreasonable burden on these public and private activities.

The Federal agencies would, in many cases, be unable to reduce emissions from sources that they cannot practicably control. This would result in the Federal action having to be prohibited because a positive conformity determination could not be made. The EPA believes that the Act does not intend to unreasonably restrict Federal actions so that they are generally prohibited in areas with air quality problems. Instead, the Federal agencies are required to control emissions in a reasonable manner and

States must develop general air quality plans to achieve the NAAQS.

As commenters noted, the inclusive definition would require the review of more Federal actions, as described in this rule, than the exclusive definition and, thus, could identify more cases where an air quality violation is possibly associated with a Federal action. Even with an approach that relied heavily on air quality modeling, however, there would still not be an absolute assurance that a new violation would not occur since there is considerable uncertainty associated with air quality modeling itself, due to uncertainties in emissions and meteorological data which drive the models. In fact, neither the inclusive nor exclusive definition approach would absolutely assure that all possible violations would be prevented since neither proposed approach requires air quality modeling for all Federal actions.

e. Inclusive definition—Federal role. Section 176(c) of the Act covers Federal actions that support in any way actions which could cause new or worsen existing air quality violations, delay attainment, or otherwise not conform with the applicable SIP and the purpose of the SIP. Clearly, Congress intended Federal agencies to do their part in achieving clean air. It is unlikely, however, that Congress intended Federal agencies to be responsible for emissions that are not practicably under their control and regarding which the Federal agency has no continuing program responsibility. The EPA does not believe that it is reasonable to conclude that a Federal agency "supports" an activity by third persons over whom the agency has no practicable control—or "supports" emissions over which the agency has no practicable control—based on the mere fact that, if one inspects the "causal" chain of events, the activity or emissions can be described as being a "reasonably foreseeable" result of the agency's actions.

In fact, achievement of the clean air goals is not primarily the responsibility of the Federal government. Instead, Congress assigned that responsibility to the State and local agencies in section 101(a)(3) of the Act: "air pollution prevention (that is, the reduction or elimination, through any measures, of the amount of pollutants produced or created at the source) and air pollution control at its source is the primary responsibility of States and local governments." Similar to NEPA, section 176(c) of the Act requires Federal agencies to consider the environmental consequences of their actions. Neither statutory requirement, however, requires the Federal agencies to unilaterally solve local air quality problems. Instead, the conformity rule should be viewed in a manner that fits within a broader view including NEPA activities by the Federal agencies and State and local air quality planning and regulatory actions. Together, these activities provide the framework to attain and maintain the NAAQS.

It is possible that a Federal action could be taken which, together with other reasonably foreseeable emissions caused by the Federal action, could cause or contribute to a violation of an air quality standard or otherwise not conform with the applicable SIP. The exclusive definition is adequate to cover Federal actions and meet the goals of section 176(c) where the resultant emissions are practicably under the control of the Federal agency, and are subject to a continuing agency programmatic responsibility. Where the Federal control over the resultant emissions is relatively minor, the problem is likely caused by multiple pollution sources and a solution may be impossible unless it is directed at all the contributing sources. This role is given to the State and local agencies by Congress and should not be interpreted as the Federal agencies' role under section 176(c).

In a case where, through a NEPA analysis, a violation is projected to occur at a proposed private housing development that receives a NPDES permit or private shopping mall that receives a COE permit, the projected violation is the result of the new projected emissions from the independent private actions not subject to Federal permit or approval and the background concentrations, due to existing local and areawide emission sources. The appropriate solution to the problem is for the Federal agency to ensure conformity of Federal actions to the SIP by minimizing new emissions from the Federal activities in a reasonable manner and for the State and local agencies to control the local and areawide emissions under the SIP to the extent needed to attain the NAAQS. The Federal agencies' responsibility should be to assure that only those emissions that the Federal agency can practicably control, and that are subject to the agency's continuing program responsibility, will be reasonably controlled, not to attempt to limit other sources' emissions, which would infringe on the air quality and land use planning roles of the State or local agency.

f. Exclusive definition—reasonable implementation. In the exclusive version, indirect emissions include only emissions over which the Federal agency can practicably control, and has continuing program responsibility to control. Unlike the inclusive definition, the exclusive definition does not require Federal agencies to adopt and enforce mitigation measures that the agency cannot practicably control and that the agency has no continuing program responsibility to control. As described below, the exclusive definition does not cover innumerable Federal actions, does not require an agency to leverage their authority, and does not generally prohibit Federal actions in areas with air quality problems.

Consistent with the above discussion, and in order to clarify the scope of the term "indirect emissions," that term is revised in the final rule. Specifically, the meaning of the phrase in the proposed definition regarding emissions "which the Federal agency has and will continue to maintain some authority to control," is clarified in the final rule. In the final rule, the definition of "indirect emissions" is limited to emissions "the Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency." The meaning of the words "practicably control" is discussed elsewhere in this notice and through examples contained in the notice. The meaning of "continuing program responsibility" is described in the examples below.

Assume, for example, the Army Corps of Engineers (COE) issues a permit authorizing dredging by a nonfederal entity. In one case, the COE might require the permittee to transport and dispose of the dredged material at a specific location. In another case, the COE might allow the permittee to dispose of the dredged material at a suitable upland disposal site. In the first case, the COE has a continuing program responsibility for air emissions associated with the dredging and disposal activities. In the second case, the COE's program responsibility is limited to emissions associated with the permitted dredging and does not include the disposal activity. However, if the COE were to impose conditions on the operation and management of the dredged material disposal site or regarding subsequent development activities on that site, mandating the use of practices which would result in air pollutant emissions, then these added emissions would be a continuing program responsibility of the COE.

In another case, assume the Forest Service permits a ski resort and imposes conditions regarding the construction and operation of the resort. Also assume that housing development will occur

nearby but on privately-owned land. In this case, emissions from the construction and operation of the resort are a continuing program responsibility of the Forest Service and emissions from the housing activities are not. Again, if the Forest Service had authority to impose conditions on activities at the housing development and chose to exercise that authority to impose conditions that would result in air pollutant emissions, air emissions from those conditions imposed would be within the Forest Service's continuing program responsibility.

With respect to the issue of indirect emissions, the proposal pointed to the language in section 176(c)(1) of the Act which prohibits a Federal agency from providing "support in any way * * * [for] any activity which does not conform to an implementation plan." "Conformity to an implementation plan" is defined to mean that an activity "will not—cause or contribute to any new violation * * *; increase the frequency or severity of any existing violation * * *; or delay timely attainment of any standard. * * *"

Given the "support in any way" language, EPA has, in this rule, interpreted section 176(c) of the Act as requiring Federal agencies, in making their conformity determinations, to consider both the direct and indirect emissions resulting from their own actions or from actions that they support. However, nothing in those words serves to clarify a precise congressional intent regarding the scope of coverage of indirect emissions [a term which is not expressly referred to in section 176(c)(1) of the Act]. In other words, the words "support in any way" do not, in themselves, dictate a congressional preference between the inclusive or exclusive definition of indirect emissions proposed by EPA. The exclusive definition, which this final conformity rule adopts, requires that Federal agencies take into account only those indirect emissions that the Federal action would support, that the Federal agency can practicably control, and are under the continuing program responsibility of the agency. The EPA believes this interpretation is the most reasonable because it assures that Congress' primary intent under section 176(c) of the Act is met, namely, that Federal agencies advance the purpose of the SIP by controlling emissions from those actions which they support, over which they can practicably exercise control, and for which they retain continuing program responsibility.

The Clean Air Act does not define "support" for the purposes of section 176(c) of the Act.[2] If read in the broadest conceivable manner, the "support in any way" prohibition might be interpreted to include virtually all Federal activities, since all Federal activities could be argued to support, at least in some remote way, an action that ultimately emits pollution. The EPA does not believe that Congress intended the "support in any way" prohibition to be interpreted in a manner that would lead to such egregious or absurd applications of section 176(c) of the Act. Where the language of a statute is ambiguous, as is the case here, an agency has the discretion to adopt an interpretation that is reasonable.[3]

One possible approach in determining how far the "support in any way prohibition" extends is to examine the word "support" itself. Section 176(c)(1) of the Act, by its terms, prohibits Federal agencies from "support[ing]" an activity which itself "does not conform to an implementation plan."[4] Thus, the support prohibition cannot be triggered unless and until a Federal agency's actions constitute support of a particular activity. In the absence of a statutory definition for a word, courts typically turn to the word's everyday meaning. The dictionary defines "support" to mean (among other things):

- "to uphold by aid, countenance, or adherence: actively promote the interests or cause of";
- "to uphold or defend as valid, right, just, or authoritative";
- "to provide means, force, or strength that is secondary to: back up";
- "to pay the costs of";
- "to supply with the means of maintenance * * * or to earn or furnish funds for maintaining"; and
- "to provide a basis for the existence or subsistence: serve as the source of material or immaterial supply * * *" Webster's Third New International Dictionary. As the above list makes evident, the everyday meaning of "support" could range from activity that is merely facilitation or encouragement to activity wherein the actor assumes an ongoing responsibility and provides continuing assistance in order for the subsequent endeavor to be realized. Applying the dictionary definition of "support" in the context of the conformity rule, it is apparent that Federal actions that might be said to "support" subsequent projects similarly could range from mere facilitation to continuing responsibility. The EPA does not believe that Congress intended the term "support in any way" to encompass each and every one of these separate definitions, including those where the relationship between the Federal agency's action and the subsequent activity is attenuated. Thus, EPA believes it is reasonable to select a definition of "support" that focuses on the extent to which the Federal agency has continuing program responsibilities, and whether it can practicably control emissions from its own and other party activities. The exclusive definition requires Federal agencies to consider only those direct and indirect emissions over which, under their legal authorities, they can exercise and maintain practicable control and over which they have continuing program responsibilities. As noted previously, this approach is consistent with the purposes of section 176(c) of the Act. That section places certain prohibitions and responsibilities on Federal agencies. The EPA does not believe that Congress intended to extend the prohibitions and responsibilities to cases where, although licensing or approving action is a required initial step for a subsequent activity that causes emissions, the agency has no control over that subsequent activity, either because there is no continuing program responsibility or ability to practicably control. For that reason, EPA believes it is not reasonable to conclude that the Federal agency "supports" that later activity, within the meaning of section 176(c) of the Act.

As implemented by this rule, section 176(c) of the Act requires that a Federal agency ensure conformity with an approved state SIP for those air emissions that would be brought about by agency action, and that the agency can practicably control, and that are subject to a continuing program responsibility of that agency. A Federal agency has no responsibility to attempt to limit emissions that do not meet those tests, or that are outside the Federal agency's legal control. Moreover, neither section 176(c) of the Act nor this regulation requires that a Federal agency attempt to "leverage" its legal authority to influence or control nonfederal activities that it cannot practicably control, or that are not subject to a continuing program responsibility, or that lie outside the agency's legal authority.

For example, neither section 176(c) of the Act nor this regulation requires a Federal agency to withhold a Federal grant of financial assistance to a grant applicant that otherwise satisfies legal

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[2] The general definitions section for part D of title I, section 171 (42 U.S.C. 7501), also does not define "support."

[3] *Chevron, U.S.A., Inc.* v. *Natural Resources Defense Council, Inc.*, 467 U.S. 837, 842–3 (1984).

[4] Of course, section 176(c)(1) also prohibits Federal agencies from engaging in, providing financial assistance for, licensing or permitting, or approving, such activities.

requirements in order to obtain assurances from the applicant with respect to that applicant's activities that the agency cannot practicably control, or that are beyond the agency's continuing program responsibilities, or that fall outside the Federal agency's jurisdiction.

As described in the proposal, development that is related to the Federal action only in a manner that provides daily services such as restaurants, schools, and banks and which are located off Federal property, may be considered incidental rather than indirect emissions. Such activities and emissions are expected to be small relative to other emissions from the Federal action and are difficult or impossible to precisely locate and quantify. Thus, an accurate air quality and/or emissions analysis is not possible. Therefore, emissions from the daily services activities should be considered incidental and would not be included as indirect emissions in the conformity analysis even under the inclusive definition. Under the exclusive definition, incidental emissions are generally not covered for the additional reason that they are generally not under the Federal agency's control and continuing program responsibility.

g. Exclusive definition—Federal role. The exclusive definition isolates certain types of Federal actions where the role and responsibility of the Federal agency itself is major. For example, in Federal construction projects such as buildings or laboratories, the Federal agency has substantial and continuing authority and responsibility to manage that activity. Thus, the Federal contract manager should also be responsible for assuring that the construction activities conform to the applicable SIP.

By focusing on such major Federal actions, this approach would not require a conformity analysis for certain Federal actions that are necessary for, but incidental to, subsequent development by private parties. For example, the exclusive definition does not generally require that a COE fill permit needed for a relatively small part, portion, or phase of a twenty acre development on private land would somehow require the COE to evaluate all emissions from the construction, operation, and use of that larger development.

The exclusive definition, in effect, includes an examination of the duties, continuing program responsibilities, and controls that a Federal agency can practicably implement. When the Federal agency owns or operates a facility, Federal responsibility for the direct and indirect emissions from that facility is clear. However, farther down the spectrum of "assistance," where less and less Federal control and program responsibility may be found, a point is reached where the Federal agency should not have the same degree of responsibility for assuring the conformity of subsequent privately generated emissions, especially the indirect emissions from that action.

By controlling the direct and indirect emissions under the practicable control and continuing program responsibility of the Federal agency, the conformity rule assures that Federal agencies take appropriate and reasonable actions to support the purpose of the SIP, to meet all specific SIP requirements, and to assure that the SIP is not undermined by Federal actions. The exclusive definition assures that Federal actions will meet the intent of section 176(c) and that States will retain the primary responsibility to attain and maintain the air quality standards.

In support of the "exclusive" version, many Federal agencies have stated that it is unreasonable to withhold a conformity determination where it is impracticable for the Federal agency to remedy the situation. In such cases, they argue that the State and/or local jurisdictions should regulate the activities outside the Federal agency's jurisdiction. On the other hand, some commenters have argued that reliance on State or local action to control these off-site activities could be viewed as requiring the State to amend the applicable SIP to conform to the Federal action, rather than a rule that requires the Federal action to conform to the applicable SIP with respect to all subsequent emissions. For the reasons described above, EPA concludes that it would be unreasonable to interpret section 176(c) of the Act as requiring Federal agencies to take responsibility for emissions that they cannot practicably control and for which they have no continuing program responsibility.

The conclusion that the exclusive definition best fits with the balance that Congress established in the Act between Federal and State/local responsibility is supported by the Supreme Court's analysis in its 1989 decision in *Robertson* v. *Methow Valley Citizens Council*, 490 U.S. 332 (1989). In that case, the Court addressed the question," (w)hether the Forest Service may issue a special use permit for a recreational use of national forest land in the absence of a fully developed plan to mitigate environmental harm." Id. at 336. In that case, the imposition of such a mitigation plan was within the jurisdiction of State and local agencies, not the Forest Service. The Court held that the Forest Service's authority to issue the permit was not contingent upon the State and local agencies taking action. As the Court explained, "(i)n this case, the off-site effects on air quality and on the mule deer herd cannot be mitigated unless non-Federal government agencies take appropriate action. Since it is those state and local governmental bodies that have jurisdiction over the area in which the adverse effects need be addressed and since they have the authority to mitigate them, it would be incongruous to conclude that the Forest Service has no power to act until the local agencies have reached a final conclusion on what mitigation measures they consider necessary." Id. at 352–53 (footnote omitted). For the same reasons, EPA has concluded that it would be "incongruous" to read section 176(c) of the Act as rendering the ability of Federal agencies to perform their congressionally-assigned missions contingent upon State and local agencies imposing mitigation measures over activities that they and not the Federal agencies, can practicably control, and have a continuing program responsibility to control. Since the inclusive definition would, in many cases, require Federal agencies to withhold action unless and until a State/local agency imposes mitigation measures over activities that are outside the Federal agencies' control, the inclusive definition would upset the balance between Federal and State/local responsibilities for achieving clean air, and would unjustifiably frustrate Federal agencies from performing their congressionally-assigned statutory responsibilities.

The person's activities that fall outside the Federal agency's continuing program responsibility to control are subject to control by State and local agencies. In sum, expanding the Federal agencies' responsibilities to extend to emissions that are outside their continuing program responsibility to control (which the inclusive definition would have done) would upset the balance between Federal and State/local roles that Congress established in the Act and would infringe on the air quality roles of the State or local agency.

h. Exclusive definition—examples.

Example 1:

Assume that the FAA is considering approval of an airport expansion in a serious ozone nonattainment area and that adjacent development of an industrial park is known to depend on the FAA approval. Assume: (1) The airport expansion would result in an increase in emissions of 50 tons/year of

volatile organic compounds (VOC) due to vehicle and airport related emissions, and (2) assume that the adjacent industrial park would emit 200 tons/year of VOC.

Under the exclusive definition, the FAA must show that the 50 tons/year of VOC from the airport related activities conforms to the SIP. The FAA, however, is not responsible for the 200 tons/year of VOC from the industrial park. The conformity rule provides several ways to show that the 50 tons/year of VOC conforms to the SIP:

(1) The airport expansion is specifically included in the applicable SIP's attainment demonstration,

(2) The 50 tons are offset by reductions obtained elsewhere by the FAA,

(3) The 50 tons are determined to be consistent with the SIP emission budget by the State air quality agency,

(4) The State commits to revise the SIP to accommodate the 50 tons,

(5) The airport expansion is included in the conforming transportation plan, or

(6) In some cases, it is demonstrated that there is no increase in emissions in a build/no build scenario. (Note that project-specific modeling for ozone is not generally considered an option since, as a technical matter, ozone models are not sufficiently precise to show such impacts unless the project is a large portion of the total area inventory.)

Example 2: In another case, the same airport expansion might be in a CO or PM–10 nonattainment area where a local scale modeling analysis is determined to be needed by the State agency primarily responsible for the SIP. In such cases, the modeling analysis must consider emissions due to the airport activity and emissions due to any existing sources, including background concentrations. Emissions from the future industrial park would not, however, be required as part of the modeling analysis since such emissions are not covered by the conformity rule.

Example 3: A Federal action to lease land to a private developer does not in itself have any immediate direct or indirect air pollution emissions. The lease does, however, allow future activities by the private developer on the leased Federal land that could result in indirect air pollution emissions. This can be seen clearly in cases where the leasing action is accompanied by a description of future activities that the developer plans to undertake on the leased Federal land which would result in emissions and where the lease contains emission limits imposed on the use of the leased Federal land. Where the Federal agency has the authority to impose lease conditions controlling future activities on the leased Federal land, these emissions must be analyzed in the conformity determination.

Example 4: Where a COE permit is needed to fill a wetland so that a shopping center can be built on the fill, generally speaking, the COE could not practicably maintain control over and would not have a continuing program responsibility to control indirect emissions from subsequent construction, operation, or use of that shopping center. Therefore, only those emissions from the equipment and motor vehicles used in the filling operation, support equipment, and emissions from movement of the fill material itself would be included in the analysis. If such emissions are below the de minimis levels described below for applicability purposes (section 51.853), no conformity determination (section 51.858) would be required for the issuance of the dredge and fill permit.

i. Exclusive definition—types of Federal actions covered. The following types of Federal actions, among others, are likely to be subject to conformity review under the exclusive definition. Some of these actions are likely to be above the de minimis levels, controllable currently by the Federal agency, and the Federal agency will maintain an ability to control the emissions in the future through oversight activities.

(1) Prescribed burning activities by Federal agencies or on Federal lands: The burning is conducted by the Federal agency itself or is approved by the Federal agency, consistent with a Federal land management plan, and the Federal land manager maintains an oversight role in either case.

(2) Private actions taking place on Federal land under an approval, permit, or leasing agreement, such as mineral extraction, timber harvesting, or ski resort construction: A lease agreement, for example, may be subject to mitigation conditions as needed to show conformity and the Federal land manager will maintain an oversight role, including the enforcement of lease agreements. The conditions needed to show conformity would also be enforceable by the State and EPA through the SIP (as described elsewhere in this notice).

(3) Direct emissions from COE permit actions: The COE will evaluate the direct emissions from the activity involving the discharge of dredged or fill material. If these direct emissions were to exceed the de minimis level, the COE has legal authority to impose permit conditions to control those emissions.

(4) Wastewater treatment plant construction or expansion actions: Construction projects funded by EPA may be conditioned so that the new treatment capacity conforms to growth assumptions in the SIP. The EPA maintains a continuing control authority since future expansion would need a new approval action. Emissions from this activity can be quantified and located only on a regional scale; they cannot be located in a precise manner and subject to a microscale analysis. Such emissions are nevertheless considered reasonably foreseeable, if only on a regional scale. The SIP planning generally takes into account the growth limiting effects of wastewater treatment capacity and, thus, changes to the capacity must be shown to conform to the SIP. This is an area where Congress clearly desires a conformity review, as evidenced by section 316 of the Act.

(5) Federal construction projects such as buildings, laboratories, and reservoirs on Federal land: Contracts to complete construction projects funded by GSA or other Federal agencies may be conditioned so that the new construction meets mitigation measures as needed to show conformity. The Federal contract manager would maintain an oversight role to assure that all the contract agreements are met.

(6) Project level minerals management leasing activities: The lease agreement may be structured as described in item b above.

(7) New airports or airport expansion actions: Grants to fund projects or approval by the FAA to build projects may be conditioned so that the new projects meet mitigation measures as needed to show conformity. Under FAA's funding statute, grants for new airports, new runways, and major runway extensions must include such conditions. The grant conditions are enforceable through the grant agreements. Failure of the airport owner/operator to comply with grant conditions may result in suspension or termination of Federal assistance.

(8) Actions taking place on Federal lands or in Federal facilities: The Federal agency has and will maintain the ability to control emissions in many other activities, such as activities in National Parks, on military bases, and in Federal office buildings.

j. Exclusive definition—types of Federal actions not covered. The following types of Federal actions, among others, are not covered by the conformity rule under the exclusive definition approach.

(1) Activities associated with property disposal at military closure and realignment bases through sale or other transfer of title. This includes transactions where there is an enforceable contract for the sale or other transfer of title that requires delivery of the deed promptly after the requirements of Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) (42 U.S.C. 9620(h)(3)) have been met whether or not the property is occupied before closing of title under the contract or a related instrument. In this case, the military does not retain continuing authority to control emissions other than those associated with the CERCLA cleanup.

(2) Leasing agreements associated with military base closure and realignment, where transfer of title is required to be conveyed upon satisfaction of the CERCLA requirements, and where the military service leases the property without retaining continuing authority to control the property except as necessary to assure satisfaction of CERCLA requirements.

(3) Certain indirect emissions related to a COE permit for the discharge of dredged or fill material. The indirect emissions from development activities related to COE permit actions are not covered where such emissions are not subject to the continuing program responsibility of the COE, or cannot be practicably controlled by the COE.

(4) NPDES permit actions: Many of these actions are taken under State rules and, as such, are not Federal actions. The issuance of the Federal permit has no direct emissions, but may have considerable indirect emissions from future development of permitted facilities. However, where EPA issues a NPDES permit, for example, to an industrial or housing development, the EPA does not maintain an authority to control emissions from the development and, thus, the indirect emissions from the development are not subject to the conformity rule.

D. Indirect Emissions—Definition of "Caused By"

1. Proposal

During the course of discussing the inclusive approach, the proposal offered examples of what emissions would be considered "caused by" a Federal action. The proposal stated that inclusive indirect emissions that would be considered "caused by" the Federal action are those emissions from sources which are dependent upon the Federal action and would only be constructed and/or operated because of that Federal action. Such emissions would include emissions from any on-site or off-site support facility which would not be constructed or increase its emissions except as a result of the Federal action. The proposal stated that indirect emissions include emissions from mobile sources that are attracted to a facility, building, structure, or installation; for example, indirect emissions resulting from roads, parking facilities, retail, commercial and industrial facilities, airports, maritime ports, sports centers, and office buildings.

Where mobile sources contribute indirect emissions, the proposal noted that the Federal agency should attribute only those emissions that are caused by the Federal action. For example, not all the emissions from trips to and from a workplace or retail site are likely to be fully "caused" by the site itself. The road to and from the site, the origin and ultimate destination points of the trip, and other factors can be used to determine the portion of indirect emissions caused by the Federal action.

2. Comment

One commenter requested clarification that EPA's intention is to use a "but for" test concerning indirect emissions caused by a Federal action.

3. Response

The EPA agrees with this comment, as discussed in the proposal and includes a definition of "caused by" in the final rule to address this concern. Since the term "caused by" is used in both the definitions of "direct emissions" and "indirect emissions," the definition in the final rule also applies to both.

As a result of EPA adopting the exclusive approach, a Federal agency will need to address the "caused by" issue only with respect to those activities which the Federal agency controls. Therefore, many of the activities that would have been covered under the inclusive definition only by reason of the "caused by" requirement will not be covered under the exclusive definition due to lack of Federal agency control. This would be true generally for the examples in the "proposal" discussion immediately above, which were offered in the context of the inclusive definition.

E. Indirect Emissions—Sections 110(a)(5)(A) and 131 of the Act

1. Proposal

Section 110(a)(5)(A) of the Act prohibits the Administrator from requiring a State to adopt a general indirect source review program. Section 131 of the Act indicates that land use control authority resides with the cities and counties. As noted in the proposal, this language could be interpreted to restrict EPA's authority to regulate indirect emissions as part of the conformity rule. However, for certain federally assisted indirect sources, section 110(a)(5)(B) of the Act expressly allows the Administrator to promulgate, implement, and enforce indirect source review programs under section 110(c) of the Act. The EPA believes that this language in section 110 of the Act is consistent with the broad mandate in section 176(c) of the Act to prohibit Federal agencies from taking actions which "support in any way" any activity which does not conform to an applicable SIP.

2. Comment

Several commenters disagreed with EPA's interpretation and argued that sections 110 and 131 prohibit EPA from promulgating a rule, such as the March 15, 1993 proposal, that covers indirect emissions. These commenters point to the legislative history of the 1977 amendments to the Act, which added section 110(a)(5) and an earlier version of section 176(c), as evidence that Congress has explicitly prohibited EPA from seeking to regulate private development or land use by Federal review of indirect sources. By rejecting efforts by EPA in the mid-1970's to restrict parking spaces and require preconstruction review of parking structures associated with indirect sources through regulation, and by adopting the explicit prohibition in section 110(a)(5), they argue, Congress clearly intended that Federal agencies not involve themselves in controlling indirect sources or interfering in local land use decisions. In addition, they find it significant that Congress did not revise or delete section 110(a)(5) even when it added arguably stricter language to section 176(c) in 1990. Moreover, to the extent that section 110(a)(5)(B) does permit Federal review of certain indirect sources, these commenters contend that such review is restricted to "major" federally-assisted indirect sources and federally-owned or operated indirect sources only.

3. Response

For the reasons described in the preamble to the proposal and as discussed above regarding the inclusive/exclusive issue and further below, EPA disagrees with these comments. The EPA has noted that section 110(a)(5)(B) expressly allows the Administrator to promulgate, implement, and enforce

indirect source review programs under section 110(c) for certain federally assisted indirect sources. However, the EPA also believes that section 176(c) provides independent authority for EPA to require SIP revisions concerning conformity requirements that include provisions addressing indirect emissions resulting from Federal actions. Such provisions are necessary to prevent Federal actions, as required by section 176(c)(1)(B), from causing or contributing to NAAQS violations.

The EPA believes that the comments do not fully reflect the legislative history of the 1977 amendments to the Act regarding the congressional concerns that prompted adoption of section 110(a)(5)(A). The congressional Conference Committee report does indeed discuss attempts by EPA to promulgate measures controlling parking supply, but, unlike the commenters' statements, points out that these efforts came only after the EPA Administrator had determined that all the SIP's submitted to meet the 1970 Act requirements had failed to ensure maintenance of the NAAQS, especially those for motor vehicle-related pollutants. Congress objected to EPA's proposed parking restrictions, not simply because they were intended to control indirect sources, but primarily because Congress believed it was a misdirected attempt to reduce motor vehicle traffic that only succeeded in shifting the air pollution control emphasis away from the major source of the problem, namely the cars themselves.

> [The EPA's] efforts based on indirect control of the use of automobiles through restrictions on parking lots, shopping centers and other indirect sources, rather than full and prompt controls for new autos, trucks, buses, and motorcycles are inherently inequitable. It transfers from the motor vehicle manufacturers to the public and to indirect source owners and operators the burden of protecting public health from dangerous vehicle emissions. H.R. Rep. No. 1975, 94th Cong., 2d Sess. 221 (1976).

So, while it is true that Congress sought to reverse these specific indirect source measures and, thereby, reallocate the regulatory burdens, it also acknowledged that even after new car emissions requirements were adopted, additional control measures would be needed by many nonattainment areas if the NAAQS were to be attained and maintained, and such measures could include regulation of indirect sources, such as "new facilities which attract heavy automobile traffic." *Id.* at 222. Consequently, although Congress restricted the Administrator's authority to require States to adopt an indirect source review program, it purposely did not remove that authority completely. Again, as stated in the Conference report: "The Committee believes that its proposal meets the specifications * * * of an acceptable and workable program. It tightly restricts the Administrator's authority with respect to indirect sources by assuring that necessary review programs for non-federally assisted indirect sources will be designed and implemented by local and State governments." *Id.* at 227. And, as the report notes elsewhere: "Of course, the prohibitions on the Administrator's implementation and enforcement of a review program* * *are not applicable with respect to federally-owned or federally-assisted indirect sources." *Id.* at 224. Nothing in section 176(c), which is only concerned with federally-assisted actions, is inconsistent with this expression of Congress' intent with respect to section 110(a)(5). Moreover, the fact that the section 110(a)(5) prohibition and the requirement that Federal actions conform to the SIP under section 176(c) were both added when the Act was amended in 1977 does nothing to further the commenters' argument since it supports EPA's position as well. Given the thorough and detailed consideration Congress expended when it limited EPA's authority to review indirect sources, it would have been easy for Congress to add language in section 176(c) stating, for example, that the section 110(a)(5) restriction on indirect source review applied there also. Not only has Congress not limited this provision, but on the two separate occasions it has addressed section 176(c) of the Act it has consistently stated the scope of the provision's coverage requires a determination of conformity for "any activity" that a Federal agency "supports in any way." Indeed, EPA's view is consistent with the exception to the prohibition in section 110(a)(5) for federally-assisted, operated, or owned indirect sources, since section 176(c) of the Act applies only to actions supported or undertaken by Federal agencies. The EPA, therefore, concludes that the prohibition in section 110(a)(5) of the Act does not limit EPA's independent authority under section 176(c) of the Act.

The EPA also does not agree with the comment that the authority provided EPA under section 110(a)(5)(B) to control certain indirect sources is limited only to major indirect sources, such as the ones enumerated therein. The discussion in the legislative history strongly suggests that the use of the word "major" was not intended to denote a limitation on the type of indirect sources EPA may review. Rather, the term as used merely describes certain large-scale, hence "major," projects of the type which, like the ones listed, normally qualify for Federal funding assistance. For example, the Conference Committee report states: "An exception to this [section 110(a)(5)] prohibition is made for major Federally funded public works projects such as highways and airports. . ." S. Rep. No. 16, Vol. 3, 95th Cong., 2d Sess. 506 (1978). But other statements in the report show that EPA's review is not limited to such projects only: "The Administrator is prohibited from promulgating regulations relating to indirect source reviews except with respect to Federally assisted highways, airports *or other indirect sources assisted, owned or operated by the Federal government*." *Id.* at 4382 (Vol. 5)(emphasis added).

Moreover, the conformity rules regulate emissions, not local land use or zoning requirements. These rules do not infringe on the authority of local governments to control land use; rather, they restrain the ability of Federal agencies to support projects that cause certain air quality problems. Nothing in these rules inhibits the ability of local governments to set their own requirements with respect to such projects. Thus the conformity rules are not inconsistent with section 131 of the Act.

F. Indirect Emissions—Reasonably Foreseeable Emissions

1. Proposal

As described in the preamble to the March 15, 1993 proposal, the indirect emissions that are "reasonably foreseeable" must be identified at the time the conformity determination is required, though this would include emissions that would occur later in time and/or at a place other than the action itself. The proposal stated that an agency is not required to speculate or guess at potential future indirect emissions which are conceivable but not identifiable. In addition, the proposal indicated that descriptions of emissions contained in documents such as employment and financial forecasts and NEPA documents should be considered reasonably foreseeable emissions.

As described in the proposal, certain types of Federal actions occur on the programmatic level rather than on a project level, and the specific air quality and emissions impacts associated with individual projects under such programs may not be known. In instances where a Federal action is on

a programmatic level and it is impossible to accurately locate and quantify emissions and, therefore, impossible to accurately complete the air quality and emissions analysis specified in § 51.858, such emissions should not be considered reasonably foreseeable.

The proposal also stated that, for purposes of defining "indirect emissions," development that is related to the Federal action only in a manner that provides daily services such as restaurants and banks and which are located off Federal property, may be considered incidental rather than indirect emissions under certain circumstances. In such cases, specific emissions from the daily services activities should be considered not reasonably foreseeable and not included as indirect emissions in the conformity analysis.

2. Comment

The EPA received comments requesting clarification of the phrase "reasonably foreseeable emissions." Several commenters requested EPA to incorporate a definition of this term in the rule. One commenter stated that EPA's definition of reasonably foreseeable emissions would require private developers to account for, assess, and if necessary, mitigate the impacts of completely unrelated projects developed by other private parties. The commenter also objected to certain environmental analyses that rely on worst-case assumptions and exaggerate the impacts due to possible, but unlikely, future growth scenarios and where it is impossible to assess local air quality impacts.

3. Response

a. *Documentation.* In order to clarify the term, EPA has: (1) Added a definition of "reasonably foreseeable emissions" in the regulatory portion of the rule; (2) added the discussion below; and (3) listed certain Federal actions that are not considered reasonably foreseeable in § 51.853(c)(3) and, therefore, exempt from conformity requirements. The definition is similar to the discussion in the proposal, however, there are some differences as described below:

Reasonably Foreseeable Emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Unlike the proposal, the final definition does not require a Federal agency to use all emissions scenarios contained in financial documents or environmental analyses. That approach could not in many cases be implemented since the various documents contain quite different scenarios and a single document sometimes contains multiple emissions scenarios. In addition, some scenarios could be based on speculation. The definition does not require the use of worst-case assumptions, unlikely growth scenarios, or analyses where it is impossible to assess local air quality impacts. Further, under an exclusive definition, the conformity review may be covering a smaller set of indirect emissions than, for example, the emissions scenarios contained in an environmental impact statement.

The final rule requires the Federal agency to review all of its own information and all information presented to the Federal agency. Selection and documentation of the relevant emissions scenarios for conformity review is the responsibility of the Federal agency and should be based on reasonable expectations of future activity resulting from the Federal action.

b. Actions not reasonably foreseeable. In order to provide further clarification, EPA listed some Federal actions that are not considered reasonably foreseeable in § 51.853(c)(3) and are, therefore, exempt from conformity requirements. This list is intended to provide examples and is not intended to be a complete listing of such activities. Additionally, actions for which emissions cannot be accurately quantified, such as the implementation of trade laws and export trade promotional activities, are not considered reasonably foreseeable. As discussed below, these actions include program scale leasing actions and electric power marketing activities that involve the acquisition, sale, and transmission of electric energy.

(1) Program Level Leasing Actions

In actions such as outer continental shelf lease sales, it will often be difficult or impossible to locate and quantify emissions early in the Federal agency review process. Thus, the emissions may not be reasonably foreseeable. Further, a conformity review is unnecessary at that time since the Federal agency must take future actions related to the lease sale which are subject to conformity review. That is, the exploration and development actions at the project level would be subject to conformity review prior to any action that would actually result in emissions. In such cases, the EPA believes that a conformity review is not required prior to the project level analysis.

On the other hand, where a conformity review, such as a lease sale, can be and is made on the program level rather than the project level, subsequent project level actions which implement the conforming program do not require new conformity reviews. This approach is consistent with language in the preamble to the proposal. For clarification, EPA added this concept in the final rule: § 51.853(c)(4) exempts actions that merely implement a decision to conduct or carry out a policy, plan, program, or project where the policy, plan, program, or project conforms.

(2) Electric Power Marketing

Federal activities in the marketing of electric power are exempt from conformity review for several reasons. In many cases, the resulting emissions from the use of the electric power cannot be precisely located or quantified and, thus, are not reasonably foreseeable. The marketing agreements would also be exempt since customers of the Federal agency could obtain electric power from other public (non-Federal) or private electric utilities even if it were not provided by the Federal agency. Thus, emissions from these customers are not "caused by" the Federal action because they would occur in the absence of the Federal action. Further, SIP's assume electric power will be available in future growth projections. Thus, the delivery of electric power would not be inconsistent with the SIP.

c. Unrelated projects. The definitions of "reasonably foreseeable emissions," "indirect emissions (exclusive)," and "caused by" make it clear that "completely unrelated projects," as stated by a commenter, are not subject to the applicability analysis. However, where an air quality modeling analysis is the basis of a conformity determination, the modeling analysis should account for emissions due to existing sources together with covered emissions from the Federal action, consistent with EPA modeling guidance.

G. Indirect Emissions—Definition of Federal Activity

1. Proposal

Although EPA included a definition of "Federal action" in the proposal, that definition merely repeated language from section 176(c) of the Act and did not clarify the meaning of the statutory language. The preamble to the proposal,

however, made it clear that EPA intended the concept to include future development activities associated with a Federal action, under either definition of indirect emissions. Under the exclusive definition, EPA proposed that consideration of such emissions would be limited to those future development activities which the Federal agency could control and would continue to maintain some authority to control.

2. Comment

The building industry commented that under *Atlantic Terminal Urban Renewal Area Coalition* v. *New York City Department of Environmental Protection*, 705 F. Supp. 988 (S.D.N.Y. 1989), the definition of Federal activity should be limited to the immediate Federal action, in that case a Department of Commerce (DOC) grant for demolition, and should not include any subsequent activities even where they are facilitated by the Federal action, in that case a subsequent housing development built on the site of the demolition. Several commenters also requested that EPA clarify which activities are covered under the conformity rule.

3. Response

The EPA does not agree that Federal actions should always be interpreted so narrowly. The EPA acknowledges that the court in *Atlantic Terminal* indicated in dicta that, in that case, the Federal activity under consideration should be limited to the demolition activity. However, that assessment was made in the context of a factual situation in which the subsequent development activity was being funded by a Department of Housing and Urban Development (HUD) block grant. The court based its decision on the unreasonable burden and duplicative efforts that would be placed on the Federal government should both DOC and HUD be required to analyze the same subsequent development. The court did not address the situation where only one Federal agency had jurisdiction over a project, and was not presented with the statutory language nor legislative history concerning transportation activities under the 1990 amendments to section 176(c) nor EPA's interpretation of Federal actions and indirect emissions (described below).

If it were the case that through an agency's approval of a demolition grant an agency were able to practicably control construction of the housing development, and had continuing program responsibility over such development, then EPA believes that the agency would have "supported" the housing development by making the grant. For these reasons, EPA believes that a court specifically addressing the issue of the definition of Federal activity under such circumstances would not reach the same decision as in *Atlantic Terminal*.

In order to clarify which activities are covered under the general conformity rule, the final rule incorporates changes in the definitions of "Indirect emissions" (discussed in section III.C.) and "Federal action" (discussed below and in section IV.D.). The definition of "Federal action" is revised by adding the following sentence to the end of the definition in the proposal: Where the Federal action is a permit, license, or other approval for some aspect of a nonfederal undertaking, the relevant activity is the part, portion, or phase of the nonfederal undertaking that requires the Federal permit, license, or approval. The following examples illustrate the meaning of the revised definition.

Assume, for example, that the COE issues a permit and that permitted fill activity represents one phase of a larger nonfederal undertaking; i.e., the construction of an office building by a nonfederal entity. Under the conformity rule, the COE would be responsible for addressing all emissions from that one phase of the overall office development undertaking that the COE permits; i.e., the fill activity at the wetland site. However, the COE is not responsible for evaluating all emissions from later phases of the overall office development (the construction, operation, and use of the office building itself), because later phases generally are not within the COE's continuing program responsibility and generally cannot be practicably controlled by the COE.

In another case, assume the Forest Service permits a ski resort and imposes conditions on the construction and operation of the ski resort. Also assume that housing development will occur nearby but on privately-owned land. In this case, the conformity review might cover emissions due to construction and operation of the ski resort since they are activities permitted by the Forest Service. Emissions from the housing activities, however, would not generally be covered since the Forest Service does not generally take actions covering the portion of the overall development that is on privately-owned land and not subject to a Forest Service permit, license, or approve action.

H. Applicability—Attainment Areas

1. Proposal

As discussed in the preamble, EPA proposed to interpret the statute such that the conformity rules apply only to nonattainment areas and those attainment areas subject to the maintenance plans required by section 175A of the Act (58 FR 13841).

2. Comment

The EPA received many comments which agreed with the proposal and many other comments stating that the statute should be read such that conformity requirements would apply in all or portions of attainment and unclassified areas as well. Similar comments were received arguing that conformity should not apply in attainment areas.

One commenter noted that development in attainment areas on the fringe of nonattainment areas is likely to increase the size of the nonattainment areas, increasing the impact on public health and welfare and necessitating more costly pollution control measures to retrofit sources. The commenter also stated that development in rural attainment areas, even many miles away from urban nonattainment areas, may delay timely attainment of the NAAQS or emission milestones in nonattainment areas. Another commenter cited an example of a conformity analysis in an attainment area which showed a Federal action would cause a new violation of the NAAQS unless mitigation measures were implemented and/or planning provisions were revised.

3. Response

In the proposal, EPA indicated that the statute was ambiguous with respect to whether conformity applied only in nonattainment areas, or in attainment areas as well. As noted above, EPA received significant public comment arguing that the statute should be read to apply conformity also in attainment areas, based on the wording of Act section 176(c)(1) and the policy merits of such applicability. Similar comments were received arguing that conformity did not apply in attainment areas.

The EPA continues to believe that the statute is ambiguous, and that it provides EPA discretionary authority to apply these general conformity procedures to both attainment and nonattainment areas. The EPA plans to carry out a separate rulemaking proposing to apply general conformity procedures to certain attainment areas. The EPA sees strong policy reasons not to apply conformity in all attainment areas, given the significant burden associated with making conformity determinations relative to the risk of NAAQS violations in clean areas. Thus, EPA believes that it would be

reasonable to propose applying conformity in attainment areas for which air quality is close to nonattainment levels, for example at 85 percent of nonattainment levels (see discussion below).

The EPA intends to take comment on the basic proposal to apply conformity in attainment areas. The EPA will also seek comment on the specific application of conformity in certain categories of attainment areas.

Therefore, EPA intends to issue in the near future a supplemental notice of proposed rulemaking dealing with conformity requirements in attainment areas.[5] The requirements of this final rule will apply only in nonattainment and maintenance areas, as proposed.

While EPA will solicit comments on other options, the supplemental notice of proposed rulemaking on general conformity will propose to require conformity determinations only in the portion of attainment areas which have exceeded 85 percent of the NAAQS. These areas will be identified by using the most recently available, quality-assured air quality data covering the period appropriate for making designations of air quality status in 40 CFR part 81. Federal activities in attainment areas below 85 percent of the NAAQS and areas where representative monitoring data are not available would be exempt from the obligation to conduct a general conformity analysis based on the de minimis impact on air quality that would result for general conformity activities in such areas. Because the merit of exempting certain areas from conformity requirements will vary depending on the activities being regulated, the transportation conformity rule may propose different exemptions for applicability of conformity requirements in attainment areas than those for general conformity.

I. Applicability—De Minimis Emission Levels

1. Proposal

The proposed de minimis emission levels to be used for determining applicability of conformity requirements were pollutant specific and varied according to the severity of the nonattainment area. They ranged from 0.6 tons/year (for lead) to 100 tons/year (for carbon monoxide) (§ 51.853). These levels generally were derived from the "significance levels" established for preconstruction review of modifications to existing major stationary sources. The significance levels were taken from the Act itself, where provided, or from EPA's regulations for SIP's (40 CFR part 51) where the Act did not provide them. For ozone (VOC) and nitrogen oxides (NO_x), a sliding scale was proposed, ranging from 10 tons/year (for extreme ozone nonattainment areas) to 40 tons/year (for marginal and moderate ozone nonattainment areas).[6]

Most Federal actions result in little or no direct or indirect air emissions. The EPA intends such actions to be exempted under the de minimis levels specified in the rule and, thus, no further analysis by the Federal agency is required to demonstrate that such actions conform. Additionally, paragraph (d) of § 51.853 allows a Federal agency to establish categories of actions which would be presumed to conform due to minimal air quality impact. These provisions are intended to assure that these rules are not overly burdensome and Federal agencies would not spend undue time assessing actions that have little or no impact on air quality. Such actions include, for example, personnel actions, continuing activities with no substantial, adverse change from previous conditions that are associated with an on-going program or operation (including certain permit renewal actions), and routine monitoring.

2. Comments

Several commenters supported the concept of de minimis levels as a means of focusing conformity requirements on those Federal actions with the potential to have significant air quality impacts. Many agreed with the de minimis levels proposed in the NPR. Some commenters thought the levels should be lower so that more actions would be considered, while others wanted the de minimis levels to be raised to lessen the administrative burden on Federal agencies and avoid conformity requirements for smaller projects. A few commenters indicated that too many of their activities would be subject to a conformity review based on the de minimis cutoffs proposed in the NPR if they were used with the inclusive definition of indirect emissions.

One commenter stated that the proposed de minimis levels are arbitrary and capricious. Another commenter stated that there should be only one de minimis level rather than the pollutant- and classification-specific levels proposed.

Several comments objected to the provision that would automatically lower the de minimis levels to that of the stationary source level established by the local air quality agency. The commenters pointed out that certain air agencies have a zero threshold level, which would not be appropriate for conformity.

The EPA also received comments stating that the applicability determinations for conformity would be overly burdensome because they could be interpreted to apply to even the smallest of Federal actions. That is, the proposed rule could be interpreted to call for virtually all Federal actions, even purely administrative ones, to make a positive conformity determination before the agency is allowed to proceed with the action.

Several commenters requested EPA to specifically list types of Federal actions that would be de minimis and, thus, exempt from the conformity review requirements.

3. Response

Given the need to choose a threshold based on air quality criteria and one that avoids coverage of less significant projects, and in response to certain comments, the de minimis levels for conformity analyses in the final rule are based on the Act's major stationary source definitions—not the significance levels as proposed—for the various pollutants. Use of the de minimis levels assures that the conformity rule covers only major Federal actions. Under the major source definition, for example, the levels for ozone would range from 10 tons/year (VOC or NO_x) for an extreme ozone nonattainment area to 100 tons/year for marginal and moderate areas, not from 10 tons/year to 40 tons/year as proposed. In areas that are close to attainment, smaller projects, such as those that result in strip shopping centers, would not be subject to review. In areas with more severe air quality problems, such smaller projects would be subject to review. Larger projects, such as an airport expansion or the redevelopment of a military base, would require a conformity review under all of these de minimis levels.

[5] For PM–10, the areas which would be addressed in the supplemental notice are designated "unclassifiable." The amendments to the 1990 Act designated areas meeting certain qualifications as nonattainment for PM–10 by operation of law, while all other areas were designated unclassifiable. In the future, as appropriate, the Act provides for additional unclassifiable areas to be redesignated to attainment. This rule refers to areas redesignated to attainment as "maintenance areas."

[6] The actual significance level for VOC and NO_x established by the Act as amended in 1990 for an extreme ozone nonattainment area is zero (i.e., any increase in emissions from a modification of a major source triggers new source review). The 10 tons/year proposed for a conformity review threshold was chosen because EPA determined that a de minimis level is needed, a zero threshold does not provide a de minimis level, and sources with emissions above 10 tons/year are defined as "major stationary sources" under title I, part D, subpart 2 of the Act.

The de minimis level for lead is 25 tons/year in the final rule. The definition of major stationary source for lead is 100 tons/year. Relatively small increases in lead emissions, however (compared to other criteria pollutants) may threaten the lead standard; also, the level proposed for lead (0.6 tons/year) was proportionately much smaller than 100 tons/year. Therefore, a 100 ton/year level appears unprotective of the conformity requirement. The 25 ton/year value is based on the source size in 40 CFR part 51 that triggers an attainment demonstration requiring dispersion modeling.

The de minimis levels proposed were generally those used to define when modifications to existing stationary sources require preconstruction review. It was pointed out to EPA in comments on the proposal that these thresholds would result in the need to perform a conformity analysis and determination for projects that constituted a "modification" to an existing source but not a "major" source in some cases. The EPA agrees that conformity applies more appropriately to "major" sources and after careful consideration has decided to revise its original proposal in the final rule to use the emissions levels that define a major source, except as described above for lead. The definition of a major source under the amended Act is explained in more detail in the April 16, 1992 **Federal Register** in the EPA's General Preamble to Title I (57 FR 13498). Section 51.853(b)(3) of the rule has also been revised to remove the provision that would automatically lower the de minimis levels to that established for stationary sources by the local air quality agency. In keeping with its conclusion that only major sources should be subject to conformity review, EPA agrees that a zero emissions threshold, as established by some local agencies, should not be required by this rule.

Further, the EPA believes that Federal actions which are de minimis should not be required by this rule to make an applicability analysis. A different interpretation could result in an extremely wasteful process which generates vast numbers of useless conformity statements. Paragraphs (c)(1) and (2) of § 51.853 are added to the final rule to provide that de minimis actions are exempt from the requirements of this rule. Therefore, it is not necessary for a Federal agency to document emissions levels for a de minimis action. Actions that a Federal agency recognizes as clearly de minimis, such as actions that do not cause an increase in emissions, do not require a positive conformity determination. Instead, such actions are exempt from the rule as provided in § 51.853(c)(1).

In order to illustrate and clarify that the de minimis levels exempt certain types of Federal actions, several de minimis exemptions are listed in § 51.853(c)(2). There are too many Federal actions that are de minimis to completely list in either the rule or this preamble. In addition to the list in the rule, the EPA believes that the following actions are illustrative of de minimis actions:

(1) Routine monitoring and/or sampling of air, water, soils, effluent, etc.

(2) Air traffic control activities and adopting approach, departure and enroute procedures for air operations.

(3) Acquisition of properties through foreclosure and similar means.

(4) Assistance or subsidy for social services such as health care, day care, or nutrition services, as well as payments under public assistance.

(5) Deposit or account insurance for customers of financial institutions and flood insurance.

(6) Routine installation and operation of aviation and maritime navigation aids.

(7) Participating in "air shows" and "fly-overs" by military aircraft.

(8) Educational and informational programs and activities.

(9) Advisory and consultative activities, such as legal counseling and representation.

(10) Construction of hiking trails.

(11) Regeneration of an area to native tree species

(12) Timber stand and/or habitat improvement activities which do not include the use of herbicides, prescribed fire or do not require more than one mile of low standard road construction.

As noted above, the provisions in § 51.853(c) (or in § 51.853(d)–(e)) are not rebuttable presumptions and not subject to documentation since they are exemptions to the rule. The EPA believes that the nature of the exemptions listed in the rule, taken in context of the definitions of a Federal action and indirect emissions, which are limited to those actions over which the Federal agency has a continuing program responsibility and can practicably control, renders these actions truly de minimis and therefore exempt from conformity requirements.

The exemptions listed in § 51.853(d) are for actions that may be above the de minimis levels listed in § 51.853(b). The rationale for the exemptions listed in § 51.853(d)(1) for new source review (NSR) and prevention of significant deterioration (PSD) and § 51.853(d)(2) for emergencies is explained below. The activities listed in § 51.853(d) (3) and (4) are related to air quality and necessary environmental regulations and, therefore, EPA believes they should be exempt. The exemption for certain CERCLA activities is discussed in the following section.

In contrast, the provisions of § 51.853(f) are presumptions of conformity that must be supported by documentation as provided in § 51.853, paragraphs (g) and (h) (which establish criteria and procedures for Federal agencies to develop additional categories of actions which would then be presumed to conform), and that they may be rebutted as provided in § 51.853(j).

J. Applicability—Exemptions and Presumptions of Conformity

1. Proposal

In addition to Federal actions with de minimis emission levels that do not require conformity determinations, EPA identified several types of Federal actions where EPA believed that conformity of such activities or a portion of such activities can be presumed. The NPR provided several cases where conformity is presumed (§ 51.853 (c) and (d)), including the following:

(1) Actions subject to preconstruction NSR or PSD programs under the Act;

(2) Wastewater treatment works projects funded by the State Revolving Fund (SRF) under the Clean Water Act;

(3) Superfund activities under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA);

(4) Federal land transfers; and

(5) National emergencies.

The proposal indicated that Federal actions identified under § 51.853, paragraph (c), are presumed to conform because the required air quality analyses that would be conducted under a conformity review must be completed to comply with other statutory requirements. That is, air quality analyses are required in the NSR programs under the Act and the applicable or relevant and appropriate standards process under the CERCLA. The EPA believes these analyses are adequate for purposes of conformity.

2. Comment

A number of commenters supported these provisions in the proposal, while others objected to them. Some commenters felt that the following actions should be subject to conformity review or that the proposed presumptions of conformity were too vague and need greater clarification:

CERCLA actions, sewage treatment works projects funded under the Clean Water Act, and the Federal sale of land. Other commenters supported these presumptions and suggested many others, including procurement actions and projects with one-time only emissions. Some commenters also argued that EPA should establish exemptions for certain actions and presumptions for other actions.

Some commenters recommended that, if a wastewater agency's proposed facilities, or other water management activities, are consistent with the applicable SIP population projections, then the indirect emissions attributable to the proposed facilities should be considered to conform. In such cases the indirect emissions would already be accounted for in the SIP through a growth management element (population forecasts) adopted in the SIP.

3. Response

a. General. As discussed in the previous section, EPA determined that certain actions should be exempt from the rule and other actions should be presumed to conform, with the presumption being rebuttable. Paragraphs (c)–(f) of § 51.853 have been reorganized to indicate which Federal actions are exempt and which are presumed to conform.

b. Sources subject to NSR or PSD. Actions subject to review under the NSR or PSD programs are exempt under the final rule. As explained in the NPR, such actions undergo procedures and criteria, including air quality analyses, equivalent to those required by the conformity rule. Thus, additional review under conformity is not necessary.

c. Water management activities. A separate exemption or presumption of conformity for direct emissions from water management activities is not needed where the emissions exceed the de minimis levels as they would be subject to NSR or PSD and such emissions are exempt as described immediately above. Indirect emissions—and direct emissions that are less than the de minimis levels for NSR or PSD—from water management activities are not covered under NSR or PSD and, therefore, are not exempt.

The final rule is, however, revised to deal with the uncertainty of indirect emissions that may result from water management activities. Generally, it will be unclear what type of growth will result from expanded water management activities. It will, thus, be very difficult to assess the air quality and emissions impact of specific water management activities. Nevertheless, such activities could have a substantial effect on the SIP and it can be determined if the emissions from such actions are consistent with the SIP by comparing the growth scenarios supporting the water management actions with the growth scenario in the applicable SIP. Therefore, the final rule includes a provision in § 51.858((a)(5)(v) which allows a positive conformity determination where the growth projections for the water management actions are consistent with and do not clearly exceed those used in the applicable SIP. Where the growth anticipated from a wastewater project is consistent with that accounted for in the applicable SIP, EPA believes that further analysis of the impacts of the indirect emissions of the wastewater project is unnecessary since all such emissions are already addressed by the SIP.

The EPA agrees that the conformity rule provisions for wastewater treatment plants under the SRF should also extend to other water management activities such as drinking water treatment plants and water conveyances (e.g., pipelines and pumps), and the final rule reflects this concern. The term "regional water and/or wastewater projects" is defined and used (§ 51.858(a)(5)(v)) in the final rule to address the above concerns.

d. Superfund projects under CERCLA. Under the exclusive definition of indirect emissions, superfund projects are unlikely to be covered since the Federal agency will not maintain authority over reuse activities on that land. The presumption of conformity, thus, no longer is relevant for such actions and is not contained in the final rule.

The final rule is revised to incorporate the changes described below:

The CERCLA and related regulations require on-site remedial actions to meet, or obtain waivers from, applicable or relevant and appropriate requirements. Since these requirements include NSR and PSD, and since Clean Air Act requirements have never been waived, the direct emissions from on-site remedial actions would not violate the NAAQS because they are subject to NSR and PSD review. Therefore, these actions are exempt.

The CERCLA and related regulations require off-site remedial actions to obtain Federal, State and local permits. Since this includes NSR and PSD, the direct emissions from off-site remedial actions would also not violate the NAAQS as described above. Therefore, these actions are exempt.

Direct emissions from removal actions are exempted from other environmental requirements by section 121(d)(2) of CERCLA, and therefore we are exempting them from conformity review. The EPA's long-standing interpretation of the Superfund statute has been that actions not specifically listed in section 121(d)(2) of CERCLA do not have to comply with any other Federal environmental laws. Removal actions are exempt generally, although by regulation EPA has required them to comply with the substantive requirements of such laws to the extent practicable. CERCLA allows EPA to make the judgment that implementing a CERCLA response may outweigh the need to comply strictly with other environmental requirements. To be consistent with this interpretation, EPA is exempting such CERCLA removal actions from the conformity requirements in those situations where EPA determines that compliance is not practicable based on the urgency or limited scope of the removal.

e. Federal land transfers. (1) Proposal. The proposal stated that the sale of land from a Federal agency was presumed to conform, § 51.853(d)(4). The EPA argued that land sales do not "support" subsequent emissions activity since they do not specifically approve, authorize or permit that activity. Furthermore, it was pointed out that imposing conditions on land sales could restrict the ability of State and local agencies to determine the land use for future activities which may follow in subsequent years.

(2) *Comments.* Many commenters objected to the presumption of conformity for Federal land transfers. Several groups indicated that Federal agencies must consider reasonably foreseeable use on the property to be transferred to ensure that known emissions will not endanger air quality. It was pointed out that most Federal agency land sales are accompanied by NEPA review and it is, therefore, appropriate to require conformity review for these actions. Specifically, it was said that EPA cannot argue that land sales do not cause subsequent emissions activities as a general matter, since it has already been illustrated by the proposed sale of Pease Air Force Base for commercial airport and development use that specific reuse activities can be identified and facilitated by a Federal land transfer.

On the other hand, support for the presumption of conformity for Federal land transfers was provided by several commenters. The main arguments were put forth by the Department of Defense (DOD), specifically as it related to military base closures and long-term leases. It was indicated that military departments do not "approve" reuse of the property. The sale of property

removes the action from the province of "Federal action" and the Federal agency has no continuing authority to control the private entities' future activities. The DOD stated that, "Although [they] will analyze the impacts from reasonably foreseeable reuse proposals, the zoning of the property that allows the specific proposed reuse is determined by the local zoning authority." Furthermore, they said:

> The purpose of the conformity requirement is to assure Federal agencies consult with state and local air quality districts to assure these regulatory authorities know about the expected impacts of Federal decisionmaking and can include expected emissions in their SIP emission budget. In a closure and reuse scenario, the future development plans of the community reuse group are known, approved, and supported by the local air regulators, subject of course to the reuse group meeting local air regulations for permits, mitigation, and so forth. When a community, working with local air regulators, has decided it desires to implement an economic recovery plan with associated air emissions and will adjust its emission budget to allow for such a plan, the rationale for locking DoD into conformity limitations is absent. Reuse is most appropriately a local decision, rather than a Federal decision, with local authorities evaluating the type of growth they want or need and adjusting their SIP allocations for new growth accordingly.

(3) *Response.* Under the exclusive definition of indirect emissions, Federal land transfers are unlikely to be covered since the Federal agency will not maintain authority over reuse activities on that land. Consequently, Federal land transfers are included in the regulatory list of actions that will not exceed the de minimis levels and thus are exempt from the final conformity rules.

f. Emergencies and transportation actions. (1) Proposal. Section 51.853, paragraph (d), proposed types of actions that would be presumed to conform (unless the Federal agency determines otherwise based on its own information or after reviewing any information presented to the Federal agency). Section 51.853, paragraph (d)(1), listed "temporary Federal actions in response to national emergencies." The proposal noted that this provision would cover Federal activities which require extremely quick action on the part of the Federal agencies involved. Where the timing of such Federal activities makes it impossible to meet the requirements of this rule, EPA indicated that it would be appropriate to presume conformity. Several examples are listed in the preamble to the proposal (58 FR 13843).

(2) *Comment.* One commenter stated that transportation projects should be exempt. Other commenters recommended that a broader set of emergencies should be covered and that an exemption is appropriate for such actions, including responses to natural disasters such as hurricanes and earthquakes.

(3) *Response.* As proposed, certain transportation projects are exempt from this rule as specified in § 51.853(a). Those actions are subject to the transportation conformity rule.

The EPA agrees that immediate responses to natural disasters such as hurricanes, earthquakes and similar events such as responses to terrorist acts, civil unrest, or military mobilizations should be exempt. The exemption is needed where a Federal agency cannot practicably complete a conformity analysis prior to taking actions in response to an emergency. Accordingly, a definition of "emergency" is contained in the final rule and the exemption is contained in § 51.853(d)(2). Additional examples of emergencies that are exempt from this rule are: emergencies under CERCLA, immediate responses to the release or discharge of oil or hazardous material in accordance with approved Spill Prevention and Response Plans or Spill Contingency Plans which are consistent with the requirements of the National Contingency Plan, and response to life- and property-threatening emergencies.

The rule is clarified to state that this provision includes continuing actions which are, in effect, commenced immediately after the emergency is determined and are not limited to "national" emergencies. This does not, however, include long-term Federal actions taken in response to such events unless, as required in § 51.853(e), the Federal agency makes a periodic determination that the emergency conditions still exist. In such cases it would be impractical for the Federal emergency actions to be delayed so that a conformity determination could be made. For purposes of this rule, immediate responses are actions commenced on the order of hours or days after the emergency is determined and long-term responses occur on the order of months or years thereafter.

g. Procurement requests. (1) *Proposal.* The preamble to the proposed rules discussed the need for emissions associated with the Federal action to be "reasonably foreseeable" at the time the conformity determination is required (58 FR 13839) and stated that an agency is not required to speculate or guess at indirect emissions which are conceivable but not actually identifiable. The preamble also indicated (58 FR 13840) that where it is impossible to accurately locate and quantify emissions and therefore impossible to accurately complete the air quality analysis, such emissions should not be considered "reasonably foreseeable." Further, the preamble stated that on-going programs or operations, such as certain permit renewal actions, that do not increase emissions over previous levels fall below the de minimis levels in the rule (58 FR 13842); that is, only emissions increases are counted toward the de minimis levels.

(2) Comment. Several commenters recommended that procurement actions by a Federal agency should not be covered by the conformity rules and that the annual cost of conformity analyses for the total of all such actions could be greater than $100 million. The commenters argued that most procurement actions should be viewed as a separate category of Federal activity for purposes of an environmental analysis. Procurement actions would merely implement the decision to conduct or carryout a policy, plan, program or project. The environmental analysis and thus the conformity determination would be made on the decision to go forward with the program or project, not on the follow-on procurement action.

(3) Response. The March 15, 1993 proposal was silent on the application of conformity requirements to procurement actions. Many comments were received on procurements and generally indicated that procurements should be exempt from the final conformity rule. However, the EPA believes that certain procurement actions may constitute Federal actions under the general conformity provisions. It is impossible at this time to resolve competing concerns regarding which procurement actions should be covered and which should be exempt since the existing record is inadequate. Therefore, the EPA will propose to cover certain procurements in a future rulemaking.

As noted, EPA intends to issue an NPR regarding attainment areas. The EPA intends to include in this proposal request for comment on exemptions for certain procurement actions which it believes would fit the de minimis criteria or result in emissions which are not reasonably foreseeable. The EPA believes the vast majority of procurement actions would be de minimis or not reasonably foreseeable. Given the complexity of Federal procurement and the government's desire to streamline procurement activities as discussed in the National

Performance Review[7], the EPA will seek comment on exemptions and the process for applying conformity to procurement activities.

h. Fugitive emissions. (1) Proposal. The total of direct and indirect emissions must be included in the conformity analyses.

(2) Comment. Some commenters alleged that fugitive emissions can neither be reasonably quantified nor efficiently controlled, and therefore believed that projects that generate fugitive emissions should be exempt. They noted that fugitive emissions generally are not considered under the Act under the NSR program.

(3) Response. Since fugitive emissions can cause violations of the NAAQS and since there are many techniques available to control such emissions, fugitive emissions are not exempt from the general conformity rules. The conformity rules consider the "total" emissions from a Federal action. Total consistency with the NSR program is not possible, in any event, since that program also excludes mobile source emissions from consideration, whereas the general conformity rule requires that they be considered.

i. Modeling. (1) Proposal. The rule proposed to exempt actions covered by new source review (paragraph (c)(1) of § 51.853).

(2) Comment. A commenter recommended that the rule exempt actions where the Federal agency performs an air quality analysis, for example, under State environmental statutory provisions.

(3) Response. The NSR exemption is based on an air quality analysis and the prohibition of emissions or actions that would cause or contribute to a NAAQS violation. An air quality analysis is not adequate by itself to justify an exemption from the conformity rules since it does not ensure that actions would be prohibited, as necessary to prevent a NAAQS violation.

j. Miscellaneous. (1) Proposal. The proposal specifically identifies very few activities that are presumed to conform, but establishes de minimis levels in § 51.853(b)(1). Federal agencies are also allowed to establish by rulemaking specific categories of actions which would be presumed to conform.

(2) Comment. Various comments were received which suggested adding exemptions to the rule, including:

(1) Non-hub or general aviation airports.

(2) Emergency generators.

(3) Prescribed burns that follow a State-approved smoke management plan.

(4) Actions consistent with an agency's pollution prevention plan.

(5) All Federal actions for which agencies have established categorical exclusions under NEPA.

(6) Projects that request section 7 consultation for threatened and endangered species from the U.S. Fish and Wildlife Service.

(7) Act Title V permits.

(8) Federal actions where the agency does not make a determination within a 30-day time period.

(3) Response. The EPA agrees with the intent of the commenters to avoid unnecessary conformity analyses, especially where the air quality impact is likely to be very small. The final rule lists several examples of de minimis actions. However, rather than attempting to list individually all of the potential de minimis actions, EPA has established the tons/year de minimis levels.

In addition, the final rule allows Federal agencies to establish their own presumptions of conformity through separate rulemaking actions, as proposed in § 51.853. This separate procedure is necessary since exemptions under NEPA or other statutes may not be appropriate as exemptions from the Act. That is, section 176(c) does not specifically exempt any activities and, thus, a separate analysis is needed to show that any activity to be presumed to conform has no air quality impacts. The final rule includes a provision in § 51.853, paragraph (g)(2), which allows a Federal agency to document that certain types of future actions would be de minimis; where similar actions have occurred in recent years, that experience should be the basis for the needed documentation.

A 30-day timeframe is unlikely to be adequate to complete a conformity analysis in many cases. The EPA expects the conformity analysis to be coupled with the NEPA analysis and, thus, not result in undue delays. Therefore, EPA is not providing any exemption for actions not completed within 30 days.

k. Case-by-case reevaluation. (1) Proposal. Federal agencies are allowed to establish by rulemaking specific categories of actions which would be presumed to conform. However, on a case-by-case basis, an action that is presumed to conform would be subject to a conformity determination where it is shown to the Federal agency that the particular action did not, in fact, conform [§ 51.853(h)].

(2) Comment. One commenter suggested that the rule should provide a mechanism for addressing cases where data generated from other sources, such as NEPA, indicates that the proposed Federal activity could result in a violation of the NAAQS; in such cases conformity cannot be presumed and further analysis should be required.

(3) Response. The EPA agrees that a category of Federal activity may be properly presumed to conform, but exceptions might be discovered where individual projects within the category should be subject to a conformity analysis. Section 51.853, paragraph (j), in the final rule, therefore, allows the presumption to be rebutted.

e. Research activities. (1) Proposal. The proposal identified research activities, where no environmental detriment is incurred, as actions that would be presumed to conform [§ 51.853(d)(2)].

(2) Comment. One commenter indicated that an environmental agency would be best suited to determine where an action would have no environmental detriment.

(3) Response. The EPA agrees and has revised the provision so that the final rule leaves the determination of environmental detriment to the State agency primarily responsible for the applicable SIP. The EPA also believes that this change provides adequate assurance that there will be no adverse air quality impact and, thus, the provision is an exemption under the final rule.

K. Applicability—Calculation

1. Proposal

In some cases, a Federal action may include several direct and indirect emission sources, only some of which are covered under § 51.853, paragraph (c). The preamble to the proposal indicated that the applicability calculation should include emissions that are presumed to conform (58 FR 13843), although the determination analysis should not.

2. Comment

A commenter objected to the preamble language, indicating that any emissions that are presumed to conform should not be part of the applicability calculation.

3. Response

The EPA agrees that the approach suggested by the commenter is the more logical approach. It is inappropriate to include for applicability purposes emissions as to which no conformity determination is required. Therefore,

[7] "Creating a government that works better and costs less," National Performance Review, 1993.

the final rule provides that emissions that are exempt or presumed to conform are not part of the definition of "total of direct and indirect emissions" and, thus are not required to be part of the applicability or determination analyses.

The final rule requires the inclusion of the total direct and indirect emissions in the applicability (§ 51.853) and conformity (§ 51.858) determinations, except the portion of emissions which are exempt or presumed to conform under § 51.853. For example, assume that a Federal action includes construction of a new industrial boiler (whose emissions are subject to preconstruction review and, thus, exempt) and a separate office building, and assume further that direct emissions from the boiler exceed the de minimis levels in § 51.853, but the direct and indirect emissions from the office building alone are less than the de minimis levels. In that case, the action, as a whole, would not exceed the de minimis levels and, therefore, would not need a conformity determination.

L. Reporting Requirements

1. Proposal

The proposed rule contains requirements for a Federal agency to notify EPA and the State and local air quality agencies of draft and final conformity determinations.

2. Comment

The EPA received comments suggesting that additional, early notification should be required, including notification of the Metropolitan Planning Organization (MPO) and affected Federal Land Manager (FLM).

3. Response

The proposal required notification of the State and local air agencies since their expertise should be sought when interpretation of the SIP is needed. The final rule also requires notification of the MPO and affected FLM's. The MPO needs to be involved and consulted where planning assumptions are at issue. Although the conformity determination is a Federal responsibility, the State and local agencies must, in some cases, provide important information. For example, the Federal agency would need to consult with the State and/or local agency to determine the status of an area's emissions budget or population projections. Therefore, the final rule includes these requirements.

In addition, Class I areas can be seriously affected by air emissions. It is therefore important that FLM's be able to be part of the decision-making process for Federal actions that have the potential to impact land under their jurisdiction. Consequently, § 51.855 was amended to require a Federal agency taking a Federal action that requires a conformity determination and that is within 100 km of a Class I area to consult with the affected FLM when the Federal action is proposed and to notify the FLM within 30 days of the draft conformity determination and again within 30 days of the final conformity determination. This 30-day timeframe is also consistent with the timeframe in the public participation requirements of the rule, as described in the following discussion.

M. Public Participation

1. Proposal

Under the proposed rule, Federal agencies making conformity determinations would be required to provide 45 days for written public comment prior to taking any formal action on a draft determination (§ 51.856). This period may be concurrent with any other public involvement, such as occurs in the NEPA process or as otherwise required by the Administrative Procedure Act (APA), where applicable.

In procedures that might extend beyond the usual NEPA process, conformity to a SIP must specifically involve the appropriate EPA Regional Office(s), State and local air quality agencies. The Federal agency must make available for review to all interested parties the draft determination and supporting materials which describe the analytical methods and conclusions relied upon in making the determination. The agency should provide, upon request, a description of significant assumptions, the source of data and assumptions not generated by the sponsoring agency, and a reconciliation of the estimates of population, employment, travel, and congestion with those currently in use in the air quality planning process.

2. Comment

The EPA received a wide range of comments on public participation. Many supported the EPA proposal. Some commenters thought that general conformity determinations should require rulemaking actions and notification in the **Federal Register**. Others felt that no public participation is necessary. It was also suggested that each Federal agency should define its own public participation requirements. One commenter wanted the general conformity rule to follow the public participation requirements outlined in the new transportation statute. Some commenters wanted to expand the requirements for public announcement of Federal agency determinations and a longer public comment period, while others wanted these requirements further restricted. It was pointed out that the 45-day comment period was inconsistent with the statutory requirements for shorter public comment periods of a number of Federal agencies.

Certain commenters asked EPA to clarify where the prominent advertisement is to be made. Another comment suggested that the advertisement should be in a "daily newspaper of general circulation."

Comments were also received suggesting that the State and local air agencies should have a concurrence role in the conformity analysis.

Several comments recommended that the NEPA requirements for public participation should be met at the same time as the conformity requirements in order to streamline the process and reduce any time and resource burdens.

3. Response

The final rule is revised somewhat to clarify the requirements of § 51.856 and to adjust the public comment period. A Federal agency is not required to maintain mailing lists and make information automatically available to those requesting to be on the list. Such a requirement could be unduly burdensome and unnecessary since those on the list would not necessarily review all the material automatically supplied. Thus, the rule requires only that the Federal agency respond to an information request which is related to a specific action. If information is requested of the Federal agency, it should be provided in a timely manner. The rule does not prohibit a Federal agency from voluntarily maintaining and responding to a mailing list.

In addition, the final rule is changed from the proposal to specify that information must be made available only in the case of a conformity determination under § 51.858. As described in the discussion on de minimis levels elsewhere in this preamble, no documentation is required by this rule for de minimis determinations under § 51.853 in order to avoid unreasonable administrative burdens on the Federal agencies. This approach is also consistent with the requirements in § 51.855 in the proposed and final rules which apply the reporting requirements only to conformity determinations under

§ 51.858, not to applicability analyses under § 51.853.

The procedures in the final rule provide 30-day opportunities for public participation at two points in the decision-making process: Where a draft conformity determination is being made and where a final conformity determination was made. These procedures allow the public the opportunity to examine information used in the applicability calculations and draft conformity determination, to question the draft determination, to review others' comments, and, after the final determination, to use legal means, if necessary, to influence the project. The change in the comment period from 45 to 30 days was made to comply with other specific statutory requirements for public comment that other Federal agencies must comply with. This change is consistent with the comment period provided for by NEPA (40 CFR 1507.3(d)).

The EPA believes this approach provides the most effective balance between the Act's (section 127) and APA's requirements for public notification and participation and the need to avoid procedures that are unnecessarily costly, time-consuming and burdensome to the Federal agencies affected. The EPA is authorized to establish public participation requirements under sections 176(c)(4)(B) and 301(a)(1) of the Act, and 30 days notice is a reasonable requirement. Since the Act does not require conformity determinations to be formal rulemaking actions, formal rulemaking is not required by this rule unless separately required under the APA.

The EPA does not agree that the State and local air agencies should have a concurrence role in the conformity analysis. Section 176(c) of the Act does not give EPA the authority to require such concurrence.

The EPA agrees that Federal agencies should consider meeting the conformity public participation requirements at the same time as the NEPA requirements. The final rule allows the concurrent process. However, in some cases, a Federal agency may have valid reasons to use different procedures; thus, the rule does not require a concurrent process. Further, in many cases, a NEPA analysis may not include a public participation process; therefore, the flexibility is clearly needed.

The EPA agrees that the prominent advertisement should be made in a local daily newspaper of general circulation. The rule includes this clarification (§ 51.856).

N. Emissions Budget

1. Proposal

Paragraph (a)(5)(i) provides that a Federal action conforms with the air quality criteria where emissions from the action, together with all other emissions in the attainment or nonattainment area, would not exceed the emissions budget contained in the applicable SIP. The SIP's are intended to accommodate growth, and where a project is demonstrated to conform to the approved air plan, the associated growth in emissions is appropriate. In order to determine the status of the emissions budget at any time, an accounting system is needed to track the many factors included in the total emissions over an area or subarea. The tracking needs to be consistent with the State's reasonable further progress (RFP) tracking and needs to account for source compliance with SIP limits, changes in emissions due to growth and other operational changes from minor and major new stationary sources, and emissions due to other economic growth. Paragraph (a)(5)(i) of § 51.858 allows a Federal agency to rely on a certification that the Federal action is consistent with the emissions budget. The certification may only be made by the State agency primarily responsible for developing and implementing the applicable SIP. That State agency could determine that emissions from a Federal action would not exceed the emissions budget specified in the applicable SIP.

2. Comment

A commenter suggested that EPA clarify which State agency is responsible for the applicable SIP and determines consistency with the SIP emission budget. One comment suggested that the Federal agency request a determination from the MPO and local air agency regarding the effect on the emission budget. Another commenter stated that under § 51.858, the State agency responsible for the applicable SIP must determine, in each case, whether emissions associated with the Federal action are within the emissions budget specified in the air plan. The commenter was concerned that this creates an unmanageable system whereby State agencies not otherwise involved with the project or the conformity assessment itself will be required to become familiar with the action at a late stage in the process, causing delays and confusion. One commenter suggested that EPA should assist States in making this determination.

3. Response

For the purpose of this rule, the State, regional or local agency, or combination of agencies, that is responsible for developing the attainment demonstration and tracking RFP is the entity that can certify consistency of Federal actions with the SIP emissions budget, unless some other agency/agencies is/are designated by the Governor of the State. Other agencies, including EPA, may not have sufficient information to make this determination. In addition, to assure that the State determination is well founded and that the public has an opportunity to review that determination, § 51.858(a)(5)(i)(A) requires the State to document its determination.

The conformity rules do not require the State to determine in each case whether emissions associated with a Federal action are within the emissions budget. This is an option that may be used by the Federal and the State agencies. The State agency is, however, required to be notified of any conformity determinations and, thus, could be expected to be familiar with the action.

The EPA also clarified the definition of emission budgets in the final rule. The EPA will issue further guidance regarding emission budgets in the near future. An emissions budget does not exist in all nonattainment areas. In many cases, however, the SIP attainment and maintenance demonstrations and/or RFP plans will be revised or established in the near future, consistent with the amended Act requirements. In these SIP provisions, emissions budgets will be established and may be used to determine conformity, as provided in the final rule.

O. Mitigation Measures

1. Proposal

If an action does not initially conform with the applicable SIP, then a plan for mitigation or for finding emissions offsets could be pursued. Emissions offsets are appropriate where an action (with or without mitigation measures) still results in emissions that do not otherwise conform to an applicable SIP. Mitigation measures, in contrast, reduce the potential impact of an action so that the action would result in fewer emissions. Assuming implementation of the mitigation measures, the conformity analysis (i.e., consistency with the emissions budget, air quality modeling, emission milestones, etc.) would consider a smaller amount of emissions associated with the action.

Any measures that are assumed to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described. Under the proposal, it was indicated that if the Federal agency, other governmental agency, or private sponsor of the project failed to implement the mitigation measures committed to and found necessary in the conformity determination, then the conformity determination automatically became invalid and resulted in the revocation of all permits, approvals, and licenses originally supported by that conformity determination. This revocation would result in the need for a new conformity determination.

Mitigation measures should generally be included by the Federal agency in enforceable documents such as permit conditions. Mitigation measures may need to be revised due to unforeseen circumstances that may arise as the action and/or related activity is completed. Where the revised mitigation measures are subject to public review and it is demonstrated that the revised measures continue to support the conformity determination, such revision would be acceptable.

The proposal indicated that States may choose to make mitigation measures committed to by a project sponsor as part of a conformity determination automatically enforceable through the SIP. One possible mechanism for incorporating mitigation measures into the SIP is for States to include a generic provision in their conformity SIP's adopting in advance and incorporating by reference the mitigation measures identified as necessary for making a conformity determination.

2. Comments

One commenter stated that the automatic revocation of the conformity determination is not an enforceable mechanism and injects too much uncertainty into the overall program.

Another commenter recommended that minor changes in mitigation measures which do not increase emissions should not need public comment.

Several comments suggested that SIP's should be required to include a generic enforcement provision, similar to other permit programs. Such a provision could make enforceable any conditions made pursuant to the SIP conformity rule and needed to show an action conforms.

A comment raised the concern that direct enforcement against non-Federal parties could violate the prohibition against indirect source review programs in section 110(a)(5).

One commenter stated that local air agencies could provide the Federal agency with suggested mitigation measures to offset the project related emissions.

Another commenter suggested that a community, working with local air agencies, could decide to adjust its emission budget to allow for a specific Federal action.

3. Response

The EPA agrees that automatic revocation is not an appropriate or enforceable mechanism. Therefore, the proposed § 51.860(c) does not appear in the final rule. Second, EPA agrees that a generic enforcement provision in the SIP is needed for mitigation agreements. Therefore, the final rule includes the requirements in § 51.860 (b)–(f) which indicate that States must adopt a generic enforcement provision which will make any agreements, including mitigation measures, necessary for a conformity determination both State and federally enforceable. Section 51.860(a) is also revised to indicate that a funding commitment is not needed in all cases.

The final rule includes the provision in § 51.860(b) of the proposal which requires any licenses, permits or approvals of the action to be conditioned on the governmental or private entity meeting the mitigation measures necessary for the conformity determination. This provision is renumbered in the final rule as § 51.860(d).

In addition to requiring in § 51.860(b) and (d) that written commitments and conditions to mitigation measures be obtained from project sponsors prior to making a positive conformity determination, § 51.860(c) and (f) of the final rule require that project sponsors comply with such commitments and conditions once made. Consistent with these provisions, § 51.858(d) provides that the analysis, which results in a conformity determination or identifies mitigation necessary for a conformity determination, must be completed before the conformity determination is made. Pursuant to these final rules issued under Title I of the Act, EPA can enforce mitigation commitments and conditions directly against project sponsors under section 113 of the Act, which authorizes EPA to enforce the provisions of rules promulgated under the Act.

As provided in § 51.860(g), once a State revises its SIP to adopt the Federal general conformity rule and EPA approves that revision, then any agreements or commitments, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. In addition, after EPA approves that SIP revision, citizens can enforce against responsible parties for violations of SIP requirements under section 304 of the Act.*

The concern was raised to EPA that direct enforcement against non-Federal parties could violate the prohibition against indirect source review programs in section 110(a)(5). However, EPA concludes that this prohibition is not relevant to the requirement that project sponsors comply with mitigation commitments. The EPA is not promulgating a generally applicable requirement for review of all indirect sources. Rather, EPA is enabling Federal agencies to make positive conformity determinations under section 176(c) based on voluntary commitments by project sponsors to complete mitigation measures. Project sponsors are not obligated to make such commitments. Where they volunteer to do so to facilitate Federal conformity determinations, EPA is requiring them to live up to such commitments. Without such a requirement, EPA could not allow positive conformity determinations based on mitigation measures prior to actual construction of mitigation measures.

The EPA does not agree certain changes in mitigation measures should avoid the public participation requirements. The determination that a change is a "minor" change or the calculation that there is no emissions increase may be subject to considerable judgment. As such there is a need for public participation. Section 51.860(e) reflects this provision.

As mentioned previously and as provided in § 51.858(a)(5)(i) of the final rule, EPA agrees that the State and local air agencies can play an important role in the conformity process. These agencies can provide the Federal agency with suggested mitigation measures to offset the project related emissions. The Federal agencies can take such a list and work with the local planning and regulatory agencies to effect necessary emissions reductions.

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*Currently, the sponsors of any projects which are subject to Federal programs identified in the SIP, e.g., NSR permits and PSD requirements, are subject to State and Federal enforcement actions if applicable procedures and permit conditions are not followed. Project sponsors of Federal actions requiring a conformity determination will be subject to similar enforcement actions if they fail to implement mitigation measures prescribed by the approved SIP revision. Enforceability through the SIP will apply to all parties who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

In addition, EPA agrees that a Federal action should proceed where the State and/or local air agencies decide to revise the SIP to accommodate the action. As provided in § 51.858(a)(5)(i) of the final rule, EPA agrees that a mechanism is needed to allow the action to proceed under certain circumstances. This approach is consistent with the congressional desire to assure that State plans are not undermined by Federal actions; thus, where the State voluntarily commits to revise its SIP so that a Federal action conforms, that action would not undermine the State's decision-making ability and should be allowed to conform. The State may make a commitment to regulate or mitigate emissions from sources not under the Federal agency's control (i.e., commit to revise its SIP) to allow a Federal action to proceed that otherwise would not conform. The commitment must be made by the Governor or Governor's designee for submitting SIP revisions and must provide for revision of the SIP so that emissions from the Federal action would conform to the SIP emission budget in a time period consistent with the time that emissions from a Federal action would occur.

This provision could apply, where the total of direct and indirect emissions from the action are determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP. In such cases, the State Governor or the Governor's designee for submitting SIP actions would make a written commitment to EPA which would have to include the following:

(1) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emissions reductions prior to the time emissions from the Federal action would occur;

(2) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(3) A demonstration that all existing applicable SIP requirements are being implemented in the area and for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

(4) Assurances that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination.

In order to assure that the commitment to revise the SIP is enforceable, the final rule also provides that where a Federal agency made a conformity determination based on a State commitment under paragraph (a)(5)(i)(B) of § 51.858, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act based on the inadequacy of the applicable SIP in light of the positive conformity finding. Should EPA find that the State failed to satisfy the commitment, sanctions under section 179 of the Act would apply for failure to respond to the SIP call. The EPA here determines that where the State commitment is automatically deemed a SIP call, the State must respond to that SIP call within 18 months from the time the State commitment is made, or by such earlier time, if any, that the State commits to revise the SIP.

P. EPA and State Review Role

1. Proposal

The proposal indicated that the Federal agency must give EPA, State and local air agencies, and relevant Federal agencies a 45-day notice about the proposed Federal action and draft conformity determination, and notify these same agencies within 45 days of its final conformity determination (§ 51.855). The State agency is responsible for determining if the total direct and indirect emissions from the action are within the emissions budget specified in the applicable SIP (§ 51.858).

2. Comments

The EPA received several different comments on the respective roles and responsibilities for local, State, and Federal air agencies. Some commenters felt that EPA should be responsible for approving or disapproving all conformity determinations. Others felt this authority should rest with the State, while some wanted the MPO to have a veto on conformity determinations. A number of commenters wanted a lead agency designated (similar to that in the NEPA process) that would coordinate the conformity decision-making process or have authority to make a conformity determination in cases where multiple Federal agencies were involved in a Federal action.

3. Response

The consultation procedures outlined in the proposal requiring consultation with EPA, State and local air agencies, and relevant Federal agencies are contained in the final rule (§ 51.855 and § 51.858). The 45-day notification period was changed to 30 days to be consistent with the public participation requirements. Section 176(c) states that each Federal agency is responsible for making its own conformity determination. The EPA cannot remove that authority from the Federal agency and assign it elsewhere, as suggested by some commenters.

The State air agency does have an active role in the conformity determination, however, since the State indicates whether the action falls within the SIP emissions budget. Furthermore, if the emissions from the Federal activity exceed the emissions budget and cannot be offset by other activities under the Federal agency's control, then the State agencies have the option of mitigating emissions from sources not under Federal control. In this case, without the State agencies' agreement to revise the SIP to include such mitigation measures, the project would not conform. Consequently, EPA believes the consultation procedures described in the conformity rule will ensure accountability of the Federal action to the State and EPA, while giving the ultimate authority and responsibility to the Federal Agency as intended by section 176(c).

IV. Discussion of Other Issues and Response to Comments

A. 40 CFR Part 93

1. Proposal

The part 93 provisions apply as soon as the final rule becomes effective. The part 51 provisions direct States to revise their SIPs to incorporate the conformity requirements within 12 months after promulgation of this rule (§ 51.851(a)).

2. Comment

One commenter recommended that the rule provide specific guidance concerning conformity determinations in the absence of an approved SIP.

3. Response

As described in the proposal, the part 93 provisions apply until EPA approves the conformity SIP revision submitted by the State (§ 51.851(b)). An applicable SIP is currently in place for all areas and should be used for conformity purposes.

B. SIP Revision—Deadline

1. Proposal

Although the statute specifies that EPA should require States to submit their conformity SIP revisions by November 15, 1992, the congressional intent was also that EPA would have promulgated final conformity rules by November 15, 1991. In light of the delay in EPA promulgation of these rules, it is now clearly impossible for States to submit conformity SIP's by November 15, 1992. Therefore, EPA requires States to revise their SIP's within 1 year after the date of publication of the conformity rule. This approach is consistent with the congressional intent to provide States with a 1-year timeframe to complete their rulemaking once EPA had established the Federal criteria and procedures for conformity determinations.

2. Comment

Several commenters supported the 1-year timeframe as being consistent with congressional intent. One commenter suggested 18 months. Another commenter recommended that the SIP revision be required as soon as possible and that those revisions should be due not later than March 15, 1994. The EPA also received comments requesting clarification as to which agency is to submit the SIP revision.

3. Response

The final rule incorporates a 1-year timeframe since that represents an expeditious schedule for the State agencies and since this timeframe is consistent with congressional intent, considering the actual date of final Federal rulemaking. The SIP revision must be submitted by the Governor or Governor's designee responsible for submitting SIP revisions. Responsibility for implementing the conformity rule itself should fall to the primary agency responsible for implementing the SIP, usually the State air quality agency.

If a State does not revise its SIP within the 12 months following **Federal Register** publication of the final general conformity rule, then EPA will make a finding of failure to submit the revision, which would start the sanctions clock. Since, in this case, the State would not have a revised SIP and also would not have adopted the general conformity regulation, any conformity determinations made prior to State adoption and EPA approval of the SIP revision would be subject to the Federal rule and Federal enforceability procedures.

In addition, the rule is clarified with respect to application in areas newly designated as nonattainment. In such cases, the requirement for the State SIP revision by 12 months after publication of the general conformity rule could be unreasonable. Therefore, the rule provides that a State must revise its SIP to include the general conformity provisions within 12 months of an area's redesignation to nonattainment. The EPA general conformity rule would apply in any interim period.

C. SIP Revision—General Conformity

1. Proposal

As described in the proposal, EPA believes that section 176(c)(4)(A) and (C) of the Act clearly require EPA to promulgate criteria and procedures for determining conformity for both general and transportation activities (58 FR 13838) and to require States to submit SIP revisions including conformity criteria and procedures for both types of activities.

2. Comment

Certain commenters disagreed with EPA's interpretation of section 176(c)(4) of the Act, arguing that SIP revisions should be required only for transportation activities. However, no new information was provided by the commenters.

3. Response

For the reasons described in full in the proposal, EPA continues to believe that a SIP revision is required for general conformity by section 176(c)(4)(C) of the Act.

D. Federal Actions—Miscellaneous

1. Proposal

The description of a "Federal action" is set out in the preamble (58 FR 13838) and in the regulatory portion (definitions) of the proposal notice.

2. Comment

One commenter requested EPA to clarify that a renewal of an existing permit or approval does not give rise to a new conformity requirement, assuming the renewal does not materially alter the type or amount of emissions associated with the originally permitted activity.

Some commenters requested that the NPDES actions should all be required to undergo a conformity analysis and others supported the proposal which calls for a conformity analysis where it is an EPA-issued NPDES permit, but not where it is a State-issued permit under a delegated NPDES program.

One commenter stated that Federal actions should include certain actions taken by State or regional non-Federal agencies.

3. Response

As described in section III.G., the definition of "Federal action" in the final rule is changed from the description in the proposal notice (58 FR 13838) in order to clarify its meaning. The following responses cover additional concerns regarding this term.

While section 176(c)(2) of the Act may be interpreted to impose certain obligations on non-Federal actions under the transportation conformity provisions, the same interpretation does not apply for general conformity (such as State-issued NPDES permits) since the relevant statutory language is different.

Section 176(c)(1) does not impose any obligations on non-Federal parties other than MPO's. Thus, EPA cannot require non-Federal actions to make conformity determinations under the general conformity rule. Where a State is taking an independent action without Federal support, even under an EPA approved program such as a State NPDES program, there is no Federal action subject to these rules. On the other hand, where a Federal agency delegates its responsibility to take certain actions to a State or local agency, as in the case of certain block grants under Housing and Urban Development programs or Federal NPDES programs, the action remains a Federal action and the State must make a conformity determination on the Federal agency's behalf.

The EPA agrees that permit renewal actions or any action that does not increase emissions, would be exempt from the conformity rule and is so stipulated in § 51.853(c)(2)(ii).

E. Applicable Implementation Plan

1. Proposal

"Applicable implementation plan" is defined as the most recent EPA-approved or promulgated SIP (58 FR 13849).

2. Comment

The EPA received comments suggesting that the conformity determinations should be based on the most recent SIP revisions submitted by the State, even if EPA has not approved them, until such revisions are superseded by a more recent State submittal or by a Federal implementation plan (FIP); basing conformity determinations on outdated and inadequate SIP's is "very unproductive." Other comments suggested that actions in regions that do not have an approved SIP should be exempt from conformity.

Certain commenters noted that Congress included explicit interim conformity requirements for transportation plans, programs and projects, but provided no comparable language for other Federal actions. These commenters suggested that, absent a newly-revised SIP, it is not possible for a Federal agency to assess conformity or whether the project will delay timely attainment of any standard or other milestones.

3. Response

The language of section 176(c) refers to conformity "to an implementation plan approved or promulgated under section 110." The plain language of the statute does not allow the flexibility suggested by the commenter.

The applicable SIP is updated by the State as necessary to meet the Act requirements. In addition, EPA takes action to approve, disapprove, or promulgate revisions to the SIP. While portions of an applicable SIP might be disapproved in certain areas of the country, the approved portion that remains constitutes the applicable SIP; i.e., an applicable SIP exists in all regions upon which to determine conformity. Section 110(n) of the amended Act preserves the applicability of previously approved SIP's. Prior to the newly-revised SIP, there might not be any SIP milestones to consider, simplifying the conformity determination.

Unlike the transportation conformity rule which primarily relies on the SIP emissions budget, the general conformity rule provides several means to determine conformity, some of which do not require a newly-revised SIP (i.e., post-1990) and accompanying attainment demonstration, milestones and emissions budget. As described in § 51.858 of the proposal, general conformity can be demonstrated by air quality modeling, obtaining emissions offsets, or determining that the action does not increase emissions with respect to the baseline emissions. Thus, the obligation to determine that Federal actions will not cause or contribute to NAAQS violations under section 176(c)(1)(B) applies even where recent SIP revisions have not been submitted or approved.

F. Increase the Frequency or Severity

1. Proposal

"Increase the frequency or severity" means to cause a location or region to exceed a standard more often or to cause a violation at a greater concentration. "A greater concentration" could be taken to mean any value numerically greater than previously existed. In the case of monitored ozone data, measurements are made in parts per million to only two significant figures. In the case of modeled data, if results are reported to three significant figures, then a difference in the third significant figure is considered to be a difference for purposes of conformity determinations.

2. Comment

A commenter stated that, given the limitations of current air quality models, it seems unrealistic to deal with such a level of significance in considering "increases in the frequency or severity" of existing air quality violations. Another commenter stated that it will be virtually impossible to meet this requirement.

3. Response

The distinction between significant figures in measured and modeled numbers is made in order to be consistent with current EPA guidance for interpretation of measured and modeled air quality data. Since emissions in nonattainment areas are generally decreasing, the ambient concentrations should also be decreasing. Thus, it would not be impossible to show an action does not increase the frequency or severity of existing air quality violations.

G. Maintenance Area

1. Proposal

Maintenance area means an area with a maintenance plan approved under section 175A of the Act (§ 51.852).

2. Comment

The EPA received comments asking for clarification of the definition, specifically wanting to know if this definition includes all maintenance areas as designated under both the 1977 and 1990 amendments to the Act.

3. Response

The definition includes only those areas that were redesignated from nonattainment to attainment (i.e., maintenance areas) after the 1990 amendments to the Act.

H. Offsets

1. Proposal

The proposal refers to emission offsets in § 51.858.

2. Comment

One commenter requested EPA to clarify that offsets must go beyond those reductions necessary for attainment of the NAAQS.

3. Response

Emission offsets are an integral part of the air program, especially within the NSR program. The final conformity rule includes a definition of offsets which is consistent with EPA guidance regarding the use and restrictions for offsets. This definition is intended to assure that offsets within the air programs are calculated and credited consistently and that the term is used the same in the conformity rules as in the EPA NSR program. All offsets must, therefore, be quantifiable, consistent with the applicable SIP attainment and RFP demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

I. Definitions—Miscellaneous

1. Proposal

Certain terms described below were not defined in the proposal.

2. Comment

The EPA received general comments requesting the rule to be clear.

3. Response

The EPA added or removed definitions of the following terms in the rule in order to clarify the requirements:

(1) "Administrator" was deleted since the term is not used in the rule.

(2) In the definition of "Applicable SIP," the sentence in the proposal referring to maintenance plans does not appear in the final rule because it does not change the meaning of the definition and "maintenance plan" is defined elsewhere in the rule.

(3) The definition of "Milestone" is clarified with respect to PM–10 by referencing section 189(c)(1) of the Act.

(4) The definition of "Metropolitan Planning Organization" is revised to be consistent with the definition in the transportation conformity rule.

(5) "Nonattainment Area" is clarified to refer to areas designated as nonattainment under section 107.

J. Conformity Determination

1. Proposal

In some cases, multiple Federal agencies may need to make a conformity determination for a related project. A Federal agency may either conduct its own conformity air quality analysis or adopt the analysis of another agency, for example, the lead NEPA agency. A Federal agency must always make its own conformity determination. Allowing each Federal agency with responsibility for making a conformity

determination to develop its own analysis or adopt that of another Federal agency, gives flexibility to the Federal agency and fulfills the agency's responsibility for making a conformity determination. A Federal agency retains the ability to conduct its own air analysis or use that of another Federal agency and make its own conformity decision. If an agency, due to one of its analyses, determines that the project does not conform, then it may not make a positive conformity determination. If there are differing conformity determinations for a Federal action by several Federal agencies involved, the respective agencies would have to reconcile their differences before the entire project could proceed.

If another Federal agency disagrees with a Federal agency's conformity determination, but does not itself have jurisdiction for the Federal action, then the Federal agency should provide written comments to the Federal agency with jurisdiction. The Federal agency with jurisdiction is required to consider the comments of other interested agencies under the proposed rules.

2. Comments

A number of commenters supported the procedures outlined in the proposal. One commenter suggested that the general conformity rule use the same interagency coordination procedures as those in the new transportation statute. Some commenters felt that a lead agency, similar to that used in NEPA, should have responsibility for the conformity determination; one commenter suggested the lead agency should be the one with continuing authority over the project.

3. Response

The final rule requires that each Federal agency be responsible for making its own conformity determination as described in § 51.854. The rationale for this is explained in the response to comments on the EPA and State review roles. Because section 176(c) indicates that each Federal agency is responsible for making its own conformity determination, EPA cannot remove that authority from the Federal agency and assign it elsewhere. Although the general conformity rule does not specifically identify a lead agency, coordination of conformity determinations will be necessary because all Federal agencies with jurisdiction over the project will have to make a positive conformity finding for the project to proceed. Therefore, differences among Federal agencies will have to be resolved through consultation among those agencies. The EPA is not mandating formalized consultation and dispute resolution procedures, but rather leaves this to the discretion of the Federal agencies involved to allow for greater flexibility.

K. Air Quality Related Values (AQRV's)

1. Proposal

The proposal did not specifically address AQRV's.

2. Comment

One commenter stated that conformity should be applied broadly, so that Federal actions will not adversely affect the AQRV's of protected Federal lands.

3. Response

To the degree that a SIP includes requirements related to AQRV's, a Federal action would need to conform to those SIP provisions. The EPA believes that section 176(c) of the Act is intended to protect the NAAQS and the SIP. Section 176(c)(1)(A) and (B) define conformity, and do not include reference to any parameters beyond SIP requirements and NAAQS. Thus, the conformity rule does not require the conformity analysis to cover values other than the NAAQS, unless they are specifically contained in the SIP. For example, if a SIP contains PSD requirements, a Federal action must conform to those requirements to the extent they apply; in general, actions subject to PSD would not need a conformity analysis since the stationary source emissions would be exempt under § 51.853(c)(1) or § 51.853(b)(1) and any vehicle emissions associated with the action would not usually be subject to the PSD requirements.

L. Frequency of Conformity Determinations

1. Proposal

A conformity determination expires if the action is not taken in a reasonable time period (58 FR 13844). The EPA believes that conformity determinations should not be valid indefinitely, since the environment surrounding the proposed action will change over time.

The EPA proposed that the conformity status of a general Federal action automatically lapses 5 years from the date of the initial determination if the Federal action has not been completed or if a continuous program has not been commenced to implement that Federal action in a reasonable time. "Commenced" as used here has the same general meaning as used in the PSD program (40 CFR 51.166).

2. Comment

The EPA received comments both supporting and criticizing the 5-year period and other comments suggesting a 3-year period to be consistent with the transportation rule. One commenter suggested that a "continuous program" of on-site construction includes design and engineering work.

3. Response

The 5-year timeframe for conformity determinations, as described in the NPR, is contained in the final rule. The 3-year timeframe for the transportation conformity rule is specified in section 176(c)(4)(B)(ii) of the Act. However, there is no similar specification in section 176(c) for the frequency of general conformity determinations. After extensive consultation with the Federal agencies and review of the comments, EPA has decided to keep the 5-year renewal timeframe for general conformity decisions because it is consistent with the renewal frequency of NEPA decisions rather than the 3-year timeframe required for transportation conformity. Consistency with NEPA is important in order to allow Federal agencies to incorporate the new conformity procedures within their existing NEPA procedures. Most general conformity actions also need NEPA analyses, but would not need transportation conformity decisions.

The EPA agrees that a continuous program of on-site construction may include design and engineering work. Where on-site construction has been commenced and meaningful design and engineering work is continuing, this represents the kind of commitment to an action which should not be jeopardized by expiration of a previous conformity determination.

The rule is clarified in § 51.857(a) to refer to the "date a final conformity determination is reported under § 51.855." This replaces the phrase the "date of the initial conformity determination" since it is clearer. The rule is also clarified in § 51.857(b) to replace the vague phrase "the scope of the project" with "the scope of the final conformity determination reported under § 51.855." The final rule also contains a provision in § 51.857(c) which clarifies that actions which are taken subsequent to a conformity determination must be consistent with the basis of that determination.

M. Tiering

1. Proposal

The EPA proposed that Federal agencies could use the concept of tiering and analyze actions in a staged manner

(§ 51.858, paragraph (d)]. Tiering would not be acceptable for purposes of determining applicability (§ 51.853), however, since that approach might have undermined the rule if agencies chose to narrowly define their actions as separate activities for purposes of determining applicability.

2. Comments

A few commenters supported the use of tiering for conformity decisions and pointed out that it gives the Federal agency needed flexibility in planning. Many other commenters were opposed to conditioning long-term conformity decisions. Some opposed tiering because conditional findings create uncertainty, making it difficult for developers and lenders to justify investment in long-term projects. Others were against it because they felt it could result in a misleading conclusion that a meaningful analytical judgment has been made and that it would invite conflict between investment-backed expectations and the protection of public health.

3. Response

The EPA agrees with the commenters who stated that tiering would create too much uncertainty in the conformity determination process. Furthermore, it was thought that tiering could cause the segmentation of projects for conformity analyses, which might provide an inaccurate estimate of overall emissions. The segmentation of projects for conformity analyses when emissions are reasonably foreseeable is not permitted by this rule. Thus, the tiering provision is not included in the final rule. A full conformity determination on all aspects of an activity must be completed before any portion of the activity is commenced.

N. Applicability—Regionally Significant Actions

1. Proposal

The EPA proposed the concept of "regionally significant actions," to capture those actions that fall below the de minimis emission levels, but have the potential to impact the air quality of a region. When the emissions impact from a Federal action does not exceed the tons per year cutoff for a Federal action otherwise requiring a conformity determination, but the total direct and indirect emissions from the Federal action represent 10 percent or more of a nonattainment area's total emissions for that pollutant, the action is defined by the proposed regulations as a regionally significant action and must go through a full conformity analysis (§ 51.853(g)).

2. Comment

Many commenters supported the concept of regionally significant actions and believed that conformity determinations should be required for them. However, there was diverse opinion on the most appropriate level to define a regionally significant action; some commenters felt 10 percent of a nonattainment area's emissions for a pollutant to be too high, while others felt it was too low. However, no commenters provided specific documentation to support a different number. There were also some commenters who felt the entire concept of regional significance to be inappropriate and that the de minimis cut-offs should suffice for conformity applicability requirements.

3. Response

EPA is maintaining the requirement of conformity determinations for regionally significant actions in the final rule as defined in § 51.853 of the NPR. The rationale is explained in the preamble to the NPR (58 FR 13842). The EPA specifically invited comments and documentation on whether 10 percent was an appropriate significance level or whether some other percentage should be set. In view of the fact that documentation for more appropriate significance levels was not provided by the commenters, the 10 percent level of significance is used. In addition, the rule is clarified to indicate that the requirements of §§ 51.850 and 51.855 through 51.860 apply to regionally significant actions.

O. Applicability—NAAQS Precursors

1. Proposal

The PM–10 precursor pollutants should be included in the conformity analyses where the applicable SIP's control strategy requires reductions in such precursor pollutants. For ozone, emissions of NOx and VOC must be considered for purposes of both applicability and analysis. However, where an area received an exemption from NOx requirements under section 182(f) of the Act or the control strategy in the approved maintenance plan does not include NOx control measures, only VOC emissions need to be considered (58 FR 13847).

2. Comment

Commenters indicated that analysis of PM–10 precursors should be required to satisfy the provision of section 176(c)(1)(B)(i) that Federal activities must not contribute to any new violation of any standard in any area. Another commenter indicated that the rule should consider the regional impact of NOx emissions compared to VOC emissions.

3. Response

Section 189(e) of the Act provides that applicable control requirements under PM–10 nonattainment area SIP's in effect for major stationary sources of PM–10 are also applicable to major stationary sources of PM–10 precursors, except where EPA determines that the sources of PM–10 precursors do not contribute significantly to PM–10 levels which exceed the PM–10 NAAQS in the area. Consistent with this evidence of congressional intent, the final conformity rule requires the inclusion of PM–10 precursors in conformity analyses where they are a significant contributor to the PM–10 levels in the PM–10 nonattainment area SIP. The significant contribution may be from major stationary sources as well as other types of sources.

In contrast, the Act specifically requires reductions in emissions of both NOx and VOC to meet the ozone standard. Only where there is a demonstration consistent with the requirements of section 182(f) and EPA approves the demonstration are the NOx reductions not required. Thus, the conformity rule provides for the consideration of the regional impact of NOx emissions in ozone nonattainment and maintenance areas, as described in the proposal.

The final rule includes a definition of the phrase "precursors of a criteria pollutant." This definition incorporates the concerns described above. A definition of "total of direct and indirect emissions" is added to the final rule, as discussed elsewhere in this preamble, and includes the phrase "emissions of precursors of criteria pollutants" in order to incorporate this concept into the final rule.

P. Attainment Demonstration

1. Proposal

Paragraph (a)(1) of § 51.858 provides that a Federal action conforms if emissions from the action are "specifically identified and accounted for" in the applicable SIP's attainment or maintenance demonstration.

2. Comment

A commenter suggested that a Federal action should be determined to conform where the total emissions from the Federal action are "consistent with" the projected levels of emissions inventory forecasts in the applicable SIP attainment demonstration.

3. Response

The EPA believes that the language proposed in § 51.858(a)(1) is appropriate. Specificity is needed in order to avoid letting this provision become a significant loophole, open to varying interpretations. On the other hand, the emissions budget provision in § 51.858(a)(5)(i) provides a mechanism similar to that suggested by the commenter.

Q. Transportation Conformity

1. Proposal

Section 51.858(a)(5)(ii) provides that a Federal action that is specifically included in a conforming transportation plan, would be determined to conform.

2. Comment

One commenter stated that the MPO should be involved in determining when a project is specifically included in a transportation plan.

3. Response

The final rule is clarified to indicate that the MPO must determine that an action is "specifically included" in a conforming plan since the MPO is likely to be better qualified to make that interpretation than the Federal agency making the conformity determination. The rule is also clarified to state that a conforming plan refers to a transportation plan and transportation improvement program which have been found to conform under 40 CFR part 51 or part 93.

R. Baseline Emissions

1. Proposal

Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, a Federal action may be determined to conform if emissions from the action do not increase emissions with respect to the baseline emissions (paragraph (d) of § 51.858).

2. Comment

A commenter suggested that the rule or preamble should clarify that Federal agencies may use the latest emissions inventory available from State and local agencies in gauging the baseline. Further, conformity determinations based on such inventories should remain valid, and not be re-analyzed when a new inventory is complete.

Another commenter stated that it is not appropriate for areas which were designated nonattainment before the 1990 amendments to the Act to use a year before 1990 as the baseline. Such areas are required to submit 1990 emission inventories. For areas designated nonattainment after the 1990 amendments to the Act, the approach to establishing baselines in the proposal may be appropriate.

One commenter pointed out that using 1990 as a baseline is inappropriate in many cases since many Federal actions related to the military took place at the time of Desert Storm. As an alternative they suggest the rule allow use of a baseline established from the highest estimated emissions over a 3-year period from 1989–91. Regarding military base closure actions, one commenter stated that the baseline emissions should be the preclosure announcement baseline operating conditions. This approach does not alter the emissions budget that would have existed if a base continued to operate. Such emissions were contained in the existing and future emissions inventory numbers being used by the South Coast Air Quality Management District in its 1989 air quality plan. This should be the emissions budget used to make the conformity determination for that District.

The EPA also received a comment stating that if 1990 emissions inventory levels are used as a baseline, it is important that some type of "credit" be given to a Federal agency that is required to make a conformity determination with respect to an airport related improvement or modification project at an airport that has already implemented significant emission reduction measures prior to 1990. This credit could be made by increasing the de minimis amount for certain airport actions.

Several commenters requested clarification on how to calculate the baseline emissions. One commenter recommended that the comparison should be between the "action" versus "no action" and not between the "action" and "1990 base."

3. Response

The baseline calculation is discussed in the proposal (58 FR 13846) and specifies calendar year 1990 or an alternate time period, consistent with the time period used to designate or classify the area in 40 CFR part 81. Use of the "latest emission inventory" should, in many cases, coincide with use of the 1990 inventory since the 1990 amendments to the Act required all ozone nonattainment areas to develop a 1990 inventory. For PM–10, the Act also required an emissions inventory. But, for the initial PM–10 areas designated nonattainment as of enactment, the inventories are generally for 1 of the calendar years in the mid- to late-1980's.

The approach in the final rule uses 1990, which is the baseline year specified in the Act from which to measure progress toward attainment, the PM–10 emissions inventory years (not specifically included in the proposed rule), or the designation/classification time period, which is representative of emission levels that must be reduced in order to provide for attainment. Use of more recent emissions inventories may not be appropriate since such inventories might not be representative of the full extent of the emissions associated with the air quality problem.

The EPA sees no basis for the rule to select certain activities for "credit" due to previously implemented emission reduction measures, whether at airports or military bases. Such decisions reside with the State when the control strategy and emissions budget are developed. Since the final rule allows use of the years other than 1990 where appropriate, it could, in effect, provide some of the "credit" the commenter is suggesting in some cases.

As described in the proposal, baseline emissions are defined as the total of direct and indirect emissions that are estimated to have occurred during calendar year 1990 or an alternate period based on the classification or designation as promulgated in 40 CFR part 81. The proposed rule intended to provide for a positive conformity determination if the future use of the area resulted in equal or less emissions. However, the proposal did not take into account that any motor vehicle emission activities occurring in the baseline year would, in fact, emit less in the future year scenario (at the same, historic activity levels) due only to improved emissions controls in newer vehicles. Thus, the proposed rule was skewed in a manner that unjustifiably could appear to allow future actions to conform. Therefore, § 51.858(a)(5)(iv)(B) of the final rule is revised to focus on the baseline activity levels rather than the baseline emissions and the emission calculations must use emission factors appropriate to the future years analyzed. In other words, the rule specifies a "build/no build" test, not a "build/1990" test.

S. Annual Reductions

1. Proposal

Paragraph (c) of § 51.858 of the proposal states that a Federal action may not be determined to conform unless emissions from the action are consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the RFP schedules.

2. Comment

The EPA received comments suggesting that the rules should require Federal activities to be consistent with the RFP requirements of the Act and with expeditious attainment of the NAAQS. Thus, the general conformity rules should be amended to require Federal agencies to demonstrate that their activities are achieving annual reductions in emissions and are consistent with State efforts to achieve attainment as expeditiously as practicable.

A commenter noted that the proposed rule would allow Federal agencies to satisfy the conformity provision by merely offsetting predicted emission increases from a project on a 1:1 basis. The commenter suggested that the rule should be modified to specify that a Federal action only conforms if the action is contributing to the required annual reductions in emissions and is consistent with State efforts to achieve attainment as expeditiously as practicable.

Another commenter noted that emissions budgets set in the SIP are supposed to accommodate growth.

3. Response

The EPA believes that, for the general conformity, the provisions in paragraph (c) of § 51.858 meet the section 176(c) Act requirements for RFP and other milestones and that additional language concerning attainment as expeditiously as practicable would not substantively alter these requirements. A State has considerable discretion to select a strategy to meet the RFP requirements. Neither the Act RFP requirements nor the Act general conformity requirements specify that each individual Federal action contribute proportionately to emission reductions. Instead, the Act generally allows a State to choose a strategy that might achieve greater reductions at certain sources and lesser or no reductions at other sources, and which may provide for growth in certain areas. The transportation conformity rule, in contrast to the general conformity rule, reflects specific provisions of section 176(c) of the Act regarding specified required emission reductions from transportation activities. Consequently, so long as general Federal actions meet the requirements of the general conformity rule, EPA believes that such activities would be consistent with the SIP, RFP, and attainment demonstrations and that every general Federal action is not required by the Act to result in an emissions decrease.

T. Summary of Criteria for Determining Conformity

1. Proposal

The proposal contained a narrative description of the § 51.858 requirements for making conformity determinations.

2. Comment

Some commenters requested EPA to include in the final rule preamble a table summarizing the requirements in § 51.858.

3. Response

The following table summarizes these requirements; it should not be read to substitute for the regulatory language itself. If there is a conflict between the table and other portions of this final rulemaking notice, the table should not be relied upon.

Section 51.858(a)	Areawide only		Local and possibly areawide		Local only
	O_3	NO_2	PM–10	CO	Pb/SO_2
(1) Specified in attainment or maintenance demostration	X	X	X	X	X
(2) Offsets within same nonattainment/maintenance area	X	X			
(3) Areawide and local modeling	.....	.....	X	X	X
(4)(i) Local modeling only if local problem	.....	.....	X	X	
(4)(ii) Areawide modeling only *or* meet (5)	.....	.....	X	X	
(5)(i) Emissions budget	X	X	(*)	(*)	
(5)(ii) Transportation plan	X	X	(*)	(*)	
(5)(iii) Offsets	X	X	(*)	(*)	
(5)(iv) Baseline/No increase	X	X	(*)	(*)	
(5)(V) Water project	X	X			

X=Option to show conformity.
*=Option if areawide problem.

U. Planning Assumptions

1. Proposal

Paragraph (a) of § 51.859 requires the conformity analyses to be based on the latest planning assumptions approved by the MPO.

2. Comment

A commenter recommended that conformity determinations should be based on the latest planning assumptions used in establishing the SIP's RFP emissions target(s) and emissions budget(s). States should be required to evaluate and update the SIP's planning assumptions used for demonstrating RFP and attainment. Discrepancies between the planning assumptions and estimates used to demonstrate RFP and attainment and those used for project-level conformity determinations could distort estimates of growth in emissions in the nonattainment area.

3. Response

As noted in the preamble to the proposal (58 FR 13846), EPA acknowledges that the conformity determination may be more difficult where the assumptions in the SIP differ from the recent MPO assumptions. For actions such as wastewater treatment plants, planning assumptions are indeed critical. However, for many other Federal actions, the planning assumptions are not as critical a factor in determining conformity.

In addition, the plain language of the statute does not allow the approach suggested by the commenter. Section 176(c) of the Act states: "The determination of conformity shall be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel and congestion estimates as determined by the metropolitan planning organization or other agency authorized to make such estimates." Thus, EPA must require use of the most recent planning assumptions.

In the event any revisions to these planning assumptions are necessary, § 51.859(a)(2) in the proposal indicated that such revisions must be approved in writing by the MPO or other agency authorized to make such estimates for the urban area. This section has been revised in the final rule to indicate that written approval is not required, as long

as the MPO or appropriate agency has authorized the change, so as not to delay the conformity analysis.

V. Forecast Emission Years

1. Proposal

Paragraph 51.859(d) in the proposal identified the emission scenarios to be considered. Total direct and indirect emission estimates were proposed to be projected, consistent with key dates with respect to the amended Act, the project itself, and the applicable SIP. Thus, the analysis was proposed to contain:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total direct and indirect emissions from the action are expected to be the greatest on an annual basis; and

(3) Any year for which the applicable SIP specifies an annual emissions budget.

2. Comment

One commenter indicated that the emission scenarios requirement should be omitted and lead agencies be allowed to determine the scenarios on a project-specific basis. Another commenter stated that the analysis should include a maintenance period. The EPA also received a comment that all Federal actions must be analyzed for their impact in the 20(+)-year timeframe.

3. Response

The scenarios proposed by EPA are also reflected in the final rule because they are the minimum possible scenarios which still meet the statutory requirements that relate conformity to attainment, maintenance, SIP milestones, and RFP. The above emission estimates are necessary in order to assure that the Federal action would not "delay timely attainment of any standard or any required interim emission reductions or other milestones in any area" (section 176(c)(1)(B)(iii) of the Act). This provision links emissions from the action to the emission reduction targets required by the Act to demonstrate RFP prior to the attainment date. Emission estimates are also needed to provide for determinations of conformity with respect to maintenance plans as required by section 176(c)(4)(B)(iii) of the Act. For an action to conform to the applicable SIP, it must conform at all of the above times.

The inclusion of a maintenance period is not reasonable since many SIP's may not have identified a maintenance period. The rigidity of a 20(+)-year timeframe is also unnecessary. Rather, the emission scenarios should be keyed to the relevant years for RFP, attainment and maintenance planning specified in the SIP. In some, but not all, cases a 20(+)-year timeframe will, in fact, be necessary under the final rule to meet one of the specified emission scenarios.

W. Total of Direct and Indirect Emissions

1. Proposal

The preamble states that "net" emissions from the various direct and indirect sources should be used in the applicability and conformity analyses (58 FR 13847). However, the rule uses the phrase, "total direct and indirect emissions."

2. Comment

A commenter suggested that EPA should expressly state in the final rule that "net" emissions from the particular Federal action under review should be evaluated in determining both applicability and conformity.

Another comment stated that the conformity analysis should include the direct and indirect impacts of the Federal activity along with all other reasonably foreseeable projects (Federal and non-Federal) in the area.

3. Response

The final rule is revised to clarify that the total direct and indirect emissions may be a "net" emissions calculation. For example, where an agency has several offices in one metropolitan area and is considering consolidation into one large centralized office, vehicular activity may actually decrease, depending on the location of the new office building, availability of mass transit, and other factors. In such cases, the Federal agency should consult with the MPO in determining the "net" emissions from such an action. Consultation with the MPO is also important to help assure that indirect emissions, once attributed to a source, will not be double-counted by attributing the same emissions to nearby projects that are subsequently reviewed.

The conformity requirements for applicability and analysis generally do not include reasonably foreseeable projects other than those caused by the Federal action. Thus, the calculation of emissions for de minimis or offset purposes includes only the (net) direct and indirect emissions caused by the Federal action in question. However, where an air quality modeling analysis is part of the conformity determination, the EPA guideline on air quality models (reference in § 51.859) requires the modeling to include emissions from existing sources as well as the potential new emissions due to the Federal action in order to accurately determine the effect of the action on the NAAQS and whether the action might cause or contribute to a new violation or worsen an existing violation.

In addition, the definition is revised to clarify that emissions of criteria pollutants and emissions of precursors of criteria pollutants (as defined in the final rule) are included within the meaning of "total of direct and indirect emissions." Further, the final definition makes it clear that the portion of emissions which are exempt or presumed to conform under § 51.853 are not included in the "total of direct and indirect emissions."

X. New or Revised Emissions Models

1. Proposal

The proposed rules require use of the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIP's (58 FR 13852).

2. Comment

One commenter suggested that the final rules should provide that conformity determinations be made with the same mobile source emissions model as was used in the development of the SIP until such time as EPA approves a SIP revision, based on a new model.

Another commenter noted that the latest planning assumptions may not be consistent with assumptions contained in the SIP. In such cases, the commenter suggests that the final rule should allow the affected agencies to determine which prevails. The commenter also suggested that the general conformity rule should provide a transition period similar to that in the transportation conformity rule, where EPA updates the motor vehicle emissions model.

3. Response

The statute requires the determination of conformity to be based on the most recent estimates of emissions, and such estimates shall be determined from the most recent population, employment, travel, and congestion estimates as determined by the MPO or other agency authorized to make such estimates. As noted in the proposal (58 FR 13846–13847) EPA recognizes this issue and urges that these estimates should be consistent with those in the applicable SIP, to the extent possible. However, based on the clear statutory language,

the most recent estimates must be used, rather than the estimates that may have been used in (older) SIP revisions. In cases where the emissions estimate in the applicable SIP is outdated and the Federal agency chooses not to rely on it in the conformity analysis, the final conformity rules allow a Federal agency to demonstrate conformity through analyses that focus on emission offsets and/or air quality modeling.

Section 51.859(b) of the final rule includes provisions to provide flexibility for cases where use of otherwise required emission models or emission factors is inappropriate and the approval of the EPA Regional Administrator is obtained. In addition, the final rule provides a reasonable grace period where the EPA motor vehicle emissions model has been updated, so that ongoing analysis efforts are not unduly disrupted. The grace period is consistent with the provisions in the transportation conformity rule as suggested by the comment.

Specifically, the rule establishes a 3-month grace period during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. In addition, conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

Y. Air Quality Modeling—General

1. Proposal

Where the conformity analysis relies on air quality modeling, that modeling must use EPA-approved models, unless otherwise approved by the EPA Regional Administrator [paragraph (c) of § 51.859]. The analysis must include any year for which the applicable SIP specifies an annual emissions budget (paragraph (d)(3) of § 51.859).

2. Comment

One commenter pointed out several problems in the rules: the rule would require the use of models that are inappropriate for complex terrain; before any models can be used, they must be EPA-approved; and conformity determinations should also include an analysis of the milestone years that are used in the SIP to demonstrate attainment.

3. Response

As proposed, the final rules generally require use of EPA-approved models, including complex terrain models in some cases. However, where such models are unavailable for a particular application, alternate air quality analyses can be conducted upon approval of the EPA Regional Administrator. The EPA believes it is essential to standardize air quality model applications since models could otherwise be invented or existing models manipulated to show virtually any results desired.

However, § 51.858(a)(3) in the final rule does not apply to ozone or nitrogen dioxide modeling efforts. The EPA believes that, as a technical matter, application of existing air quality dispersion models to assess project level emission changes for these regional scale pollutants is generally not appropriate. That is, photochemical grid models are generally not sufficient to assess incremental changes to areawide ozone concentrations from emissions changes at a single or group of small sources. Emission changes should amount to some significant fraction of base emissions before photochemical grid modeling results can be interpreted with sufficient confidence that the results are not lost in the noise of the model and the input data.

In addition, § 51.858(a) (3) and (4) are revised to clarify that, in some cases, either local or areawide modeling or the provisions of § 51.858(a)(5) for CO and/or PM–10 would satisfy the § 51.858(a) requirements. As specified in § 51.858(a)(4), the State agency primarily responsible for the applicable SIP would identify the cases/areas for which both local and areawide modeling is not needed to demonstrate conformity since that agency has the expertise to make such a determination.

The analysis required in paragraph (d)(3) of § 51.859 is for the same years as the milestone years noted by the commenter. This requirement applies where the applicable SIP specifically includes emissions budgets for the milestone and/or attainment years.

Z. Air Quality Modeling—PM–10

1. Proposal

The proposal called for modeling of localized PM–10 impacts in some cases (§ 51.858).

2. Comment

This analysis is not currently in use in California and is unfamiliar to technical air quality consultants and the California Air Resources Board.

3. Response

The EPA's air quality modeling guideline contains models intended specifically to analyze the local and regional impacts of PM–10, including point, area, and volume sources. In addition, EPA will be making guidance available on how to use an existing guideline model (CALINE3) and other EPA guidance to analyze the local air quality impacts of PM–10 roadway emissions.

AA. Activity on Federally-Managed Land

1. Proposal

The preamble to the general conformity proposal indicates that prescribed burning activities by FLM could be one activity affected by the rule.

2. Comment

Comments submitted by Federal land managers include general comments that are addressed elsewhere in this preamble. Some of the comments are more specific to their land management activities and are addressed here.

Regarding de minimis levels, one commenter stated that the proposed rule mixes up emissions and impacts; the rule should focus on the "effect" on the nonattainment area rather than emissions. The commenter stated that the approach has implications for prescribed burning. Prescribed burning is a temporary source that may occur at a time of year when the air quality standards are not being violated. In addition, the focus on emissions is also a problem when the smoke is blown away from the nonattainment area.

3. Response 1

Regarding de minimis levels, the emissions-based threshold does not provide as direct an indicator of a project's air quality impact as an ambient concentration-based threshold. It was selected for the final rule, however, because it does provide a rough indicator of a project's impact. In addition, it was selected because it is not feasible to expect Federal agencies, at the conformity applicability stage, to perform the air quality dispersion modeling analysis necessary to determine whether a project is above an air quality concentration. Such an analysis would be time consuming and potentially result in the Federal agency having to expend significant resources analyzing the air quality impact of an action that could be determined, upon completion of analysis, to have a "de minimis" air quality impact. Moreover, for some actions requiring an air quality modeling analysis up-front is a potential waste of resources when the Federal agency may ultimately select an option for adequately showing conformity that does not involve air quality modeling.

Regarding the timing of prescribed burns, if a burn occurs during a time of year when a nonattainment area does not experience violations of the NAAQS and the applicable SIP's attainment demonstration specifically reflects that finding, then such a burn may be determined to conform pursuant to § 51.858(a)(1).

Regarding the direction of smoke emissions, for the reasons noted above EPA has selected an emissions-based threshold for conformity applicability purposes. Such an approach does not account for emissions direction or dispersion. Depending on the nature and scope of the activity and conformity option selected pursuant to section 51.858, the conformity analysis may or may not explicitly address these factors. Section 51.855 was amended, however, to require the consultation and notification of FLM's by other Federal agencies when a Federal action requiring a conformity determination is within 100 km of a Class I area.

4. Comment

Two commenters noted that the rule could affect many of their agencies' activities. One commenter stated the rule becomes less focused as it attempts to address the different types of Federal actions. The commenter stated the rule is unclear about how the Federal agency should make a conformity determination for prescribed fire, among other activities, to take into account the complex issues involved. The commenter stated that the rule should encourage pollution prevention by exempting actions consistent with an agency's pollution prevention plan. Another comment indicated that most of its agency's management plans, which are programmatic, include emissions that are not reasonably foreseeable.

5. Response

The final rule applies to nonattainment and maintenance areas and requires conformity determinations for Federal actions where the total of direct and indirect emissions exceed de minimis levels as described in § 51.853(b). Section 51.858 provides several options for showing conformity for Federal activity generally, including FLM activity. The conformity showing includes an air quality test where the Federal agency must demonstrate that the action does not cause or contribute to any new NAAQS violation or increase the frequency or severity of any existing violation. The Federal agency can either make this showing explicitly through air quality modeling or by selecting a surrogate option such as consistency with an emissions budget. The conformity showing also includes an emissions test where the Federal agency must show that the action is consistent with all SIP requirements and milestones.

In general, EPA recognizes the complex problems posed by the goals and missions of the air quality and land management agencies and EPA intends to work with the FLM's and States to find solutions. One such area of concern is ecosystem management and forest health and the challenges posed to air quality and visibility by the need for more prescribed burning expressed by the FLM.

Regarding reasonably foreseeable emissions, the rule does not require Federal agencies to include emissions in conformity applicability determinations or analyses which are not reasonably foreseeable. Reasonably foreseeable emissions (as defined in § 51.852) are projected future indirect emissions that are identified at the time the conformity determination is made and for which the location and quantity is known.

Regarding pollution prevention plans, while the final rule does exempt certain actions or presume them to conform, it does not specifically exempt actions consistent with a Federal agency's pollution prevention plan. Paragraph (c)(2) of § 51.853 of the final rule exempts actions whose total direct and indirect emissions are below the de minimis rates and other actions which would result in no emissions increase or an emissions increase that is clearly de minimis. Certain actions listed in paragraph (c)(3) of § 51.853 where the emissions are not reasonably foreseeable are also exempt. In addition, paragraphs (d) and (e) of § 51.853 of the final rule identify other actions which are exempt from conformity, such as Federal actions in response to emergencies. Therefore, since this rule does not exempt them or presume them to conform, actions consistent with an agency's pollution prevention plan that increase emissions beyond the de minimis levels are subject to conformity. However, §§ 51.853(g) and 51.853(h) of the rule provide Federal agencies with the requirements and procedures to establish activities that are presumed to conform which could conceivably include actions consistent with a pollution plan provided the rule's appropriate requirements are met. Further, to address those situations where prescribed burns are part of a conforming smoke management plan, § 51.853(c)(4)(ii) was added to exempt such actions.

6. Comment

One comment concerned the air pollution emissions information EPA maintains in a document entitled "Compilation of Air Pollutant Emission Factors (AP–42)." The commenter indicated the document does not correctly represent emissions from prescribed burning. The commenter also stated that the rule should not require the development of demographic and other data from urban nonattainment areas when they are not relevant, nor should the rule dictate such data in suburban or rural areas in the agency's planning process. In addition, the commenter stated that the rule would require the use of inappropriate air quality models. Another commenter stated that models for use in analyzing prescribed burning emissions in mountainous terrain have not yet been developed.

7. Response

Regarding emission factors, the final rule allows for alternative emissions data to be used where it is more accurate than that provided in EPA's AP–42 document. Regarding demographic data, the final rule requires that all planning assumptions must be derived from data most recently approved by the MPO where available. Such data are available for urban areas; the rule does not require its use in suburban and rural areas if it is unavailable.

Regarding modeling, if EPA guideline modeling techniques are not appropriate in a conformity determination, then the rule provides for the use of alternative models provided written approval is obtained from the EPA Regional Administrator. If no model is available for a particular application, then modeling may not be an option available for that conformity determination.

BB. Federalism Assessment

1. Proposal

The preamble to the proposal states that there are no federalism effects associated with this rule (58 FR 13848).

2. Comment

One commenter stated that a federalism assessment should be conducted under Executive Order 12612.

3. Response

A federalism assessment has not been conducted under Executive Order 12612. However, federalism effects are considered throughout this rule (e.g., discussions regarding State, Federal

agency, and EPA roles in General Conformity).

V. Economic Impact

The estimates presently available are preliminary and do not reflect substantive and recent revisions to the final rule. These estimates represent specific information solicited from the Federal agencies presumed to be affected by the rule. The EPA is interested in comments from the affected agencies on the economic impacts presented in this section. A revised analysis will be prepared and submitted to OMB in the form of a revised Information Collection Request (ICR) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.*

The preliminary estimates presented here are based on data provided by the following sources: Department of Interior (DOI), Department of Agriculture (USDA), Department of Energy (DOE), Department of Defense (DOD), Department of Housing and Urban Development (HUD) and the General Services Administration (GSA). It is estimated by the Federal agencies that between 10,000 and 50,000 Federal actions may need to be reviewed annually for applicability of the conformity rule. About 15% of these actions will require a conformity determination. The estimated cost of one conformity determination ranges from $1,700 for a straightforward determination to $133,000 for a base closure conformity determination. In total, the anticipated cost of the general conformity rule from the raw data submitted by the agencies ranges from $63 million per year to $111 million per year. These annual cost estimates reflect a U.S. Army Corps of Engineer's (COE) estimated annual cost ranging from $53 million to $102 million.

There are several factors that will lead to a change in these estimates, substantially lowering and narrowing the ranges. These factors are:

(1) Some of the estimates were based on the inclusive definition co-proposed by the rule in March 1993, and the definitions of indirect emissions and Federal action, but are not representative of the final rule.

(2) New "de minimis" cutoffs and various added exemptions are present in the final rule and differ from the proposed rule.

(3) There is need to completely account for overlap of Federal projects which have air environmental consequences and are subject to the National Environmental Policy Act (NEPA) as well as the NSR, operating permit, SIP and FIP, NSP and hazardous emission standards and other requirements of the Act.

Most of the cost of determining conformity falls to Federal agencies and/or private sponsors of projects needing Federal action. The Federal agencies and/or private sponsors will need to fund the analysis of the actions for air quality impact. In addition, State and local agencies may choose to participate in development and/or review of the analysis. The incremental cost estimates include recordkeeping, reporting, performing air quality and mitigation analysis, and considering public comments where appropriate.

As stated above, these estimates are preliminary. Revisions will be addressed in a forthcoming revised document that will specifically assess the costs and recordkeeping and reporting burden of the rule, as stipulated under Section VI(C) Paperwork reduction Act below.

VI. Administrative Requirements

A. Executive Order 12866

Under Executive Order 12866, (58 FR 51735 (October 4, 1993)) the Agency must determine whether the regulatory action is "significant" and therefore subject to OMB review and the requirements of the Executive Order. The Order defines "significant regulatory action" as one that is likely to result in a rule that may:

(1) Have an annual effect on the economy of $100 million or more or adversely affect in a material way the economy, productivity, competition, jobs, the environment, public health or safety, or State, local, or tribal governments or communities;

(2) Create a serious inconsistency or otherwise interfere with an action taken or planned by another agency;

(3) Materially alter the budgetary impact of entitlements, grants, user fees, or loan programs or the rights and obligations of recipients thereof; or

(4) Raise novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in the Executive Order.

Pursuant to the terms of Executive Order 12866, it has been determined that this rule is a "significant regulatory action". As such, this action was submitted to OMB for review. Changes made in response to OMB suggestions or recommendations will be documented in the public record.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 and applicable EPA guidelines revised in 1992 require Federal agencies to identify potentially adverse impacts of Federal regulations upon small entities. Small entities include small businesses, organizations, and governmental jurisdictions. The EPA has determined that this regulation does not apply to any small entities. This regulation directly affects only Federal agencies. Consequently, a Regulatory Flexibility Analysis (RFA) is not required. As required under section 605 of the Regulatory Flexibility Act, 5 U.S.C. *et seq.*, I certify that this regulation does not have a significant impact on a substantial number of small entities and thereby does not require a Regulatory Flexibility Analysis (RFA).

C. Paperwork Reduction Act

The Paperwork Reduction Act (PRA) requires that an agency prepare an Information Collection Request (ICR) to obtain OMB clearance for any activity that will involve collecting information from ten or more non-Federal respondents. These information requirements include reporting, monitoring, and/or recordkeeping. The ICR for this rule includes the cost to the States of developing and implementing the General Conformity rule as well as the cost of the collection burden for private sponsors of activities that require Federal support or approval.

The information collection requirements in 40 CFR parts 51 and 93 have not been approved by OMB and are not effective until OMB approves them. These information collection requirements will be submitted as part of a revised ICR to the Office of Management and Budget (OMB) under the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* These requirements will not be effective until OMB approves them and a technical amendment to that effect is published in the **Federal Register**.

D. Federalism Implications

A federalism assessment has not been conducted under Executive Order 12612. However, federalism effects are considered throughout this rule (e.g., discussions regarding State, Federal agency, and EPA roles in General Conformity).

List of Subjects

40 CFR Part 6

Environmental impact statements, Foreign relations, Grant programs—environmental protection, Waste treatment and disposal.

40 CFR Parts 51 and 93

Environmental protection, Administrative practice and procedure, Air pollution control, Carbon monoxide, Intergovernmental relations, Lead,

Nitrogen oxides, Ozone, Particulate matter, Reporting and recordkeeping requirements, Sulfur dioxide, Volatile organic compounds.

Dated: November 15, 1993.

Carol M. Browner,

Administrator.

The Code of Federal Regulations, title 40, chapter I, is amended as follows:

PART 6—[AMENDED]

1. The authority citation for part 6 is revised to read as follows:

Authority: 42 U.S.C. 4321 *et seq.*, 7401–7671q; 40 CFR part 1500.

2. Section 6.303 is amended by removing and reserving paragraphs (c) through (g) and revising paragraphs (a) and (b) to read as follows:

§ 6.303 Air quality.

(a) The Clean Air Act, as amended in 1990, 42 U.S.C. 7476(c), requires Federal actions to conform to any State implementation plan approved or promulgated under section 110 of the Act. For EPA actions, the applicable conformity requirements specified in 40 CFR part 51, subpart W, 40 CFR part 93, subpart B, and the applicable State implementation plan must be met.

(b) In addition, with regard to wastewater treatment works subject to review under Subpart E of this part, the responsible official shall consider the air pollution control requirements specified in section 316(b) of the Clean Air Act, 42 U.S.C. 7616, and Agency implementation procedures.

(c)–(g) [Reserved]

PART 51—[AMENDED]

1. The authority citation for part 51 continues to read as follows:

Authority: 42 U.S.C. 7401–7671q.

2. Part 51 is amended by adding a new subpart W to read as follows:

Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

Sec.

51.850 Prohibition.
51.851 State implementation plan (SIP) revision.
51.852 Definitions.
51.853 Applicability.
51.854 Conformity analysis.
51.855 Reporting requirements.
51.856 Public participation.
51.857 Frequency of conformity determinations.
51.858 Criteria for determining conformity of general Federal actions.
51.859 Procedures for conformity determinations of general Federal actions.
51.860 Mitigation of air quality impacts.

Subpart W—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

§ 51.850 Prohibition.

(a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken.

(c) Paragraph (b) of this section does not include Federal actions where either:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994;

(2) (i) Prior to January 31, 1994, an EA was commenced or a contract was awarded to develop the specific environmental analysis;

(ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under section 176(c) of the Clean Air Act (Act); and

(iii) A written determination of conformity under section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the NEPA, or the Act.

§ 51.851 State implementation plan (SIP) revision.

(a) Each State must submit to the Environmental Protection Agency (EPA) a revision to its applicable implementation plan which contains criteria and procedures for assessing the conformity of Federal actions to the applicable implementation plan, consistent with this subpart. The State must submit the conformity provisions within 12 months after November 30, 1993 or within 12 months of an area's designation to nonattainment, whichever date is later.

(b) The Federal conformity rules under this subpart and 40 CFR part 93, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to non-Federal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in 40 CFR part 93 would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

§ 51.852 Definitions.

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations, (40 CFR chapter I), in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under the Act (42 U.S.C. 7472) that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the Act, or promulgated under section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

(1) Causes a new violation of a national ambient air quality standard

(NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken; or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this subpart, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts, and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emissions inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emissions offsets, for purposes of § 51.858, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. Where an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase or the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this subpart, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of any existing violation of any standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be farther removed in distance from the action itself but are still reasonably foreseeable; and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM–10), and sulfur dioxide (SO_2).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Nonattainment Area (NAA) means an area designated as nonattainment under section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

(1) For ozone, nitrogen oxides (NO_X), unless an area is exempted from NO_X requirements under section 182(f) of the Act, and volatile organic compounds (VOC); and

(2) For PM–10, those pollutants described in the PM–10 nonattainment area applicable SIP as significant contributors to the PM–10 levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emissions inventory for that pollutant.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under § 51.853, (c), (d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

§ 51.853 Applicability.

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAAs):

	Tons/year
Ozone (VOC's or NO_x):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region:	
VOC	50
NO_x	100
Carbon monoxide: All NAA's	100
SO_2 or NO_2: All NAA's	100
PM–10:	
Moderate NAA's	100
Serious NAA's	70
Pb: All NAA's	25

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/year
Ozone (NO_x), SO_2 or NO_2: All maintenance areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide: All maintenance areas	100
PM–10: All maintenance areas	100
Pb: All maintenance areas	25

(c) The requirements of this subpart shall not apply to:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) The following actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings.

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(iii) Rulemaking and policy development and issuance.

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(vii) The routine, recurring transportation of materiel and personnel.

(viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(xii) Planning, studies, and provision of technical assistance.

(xiii) Routine operation of facilities, mobile assets and equipment.

(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(xv) The designation of empowerment zones, enterprise communities, or viticultural areas.

(xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) The following actions where the emissions are not reasonably foreseeable:

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent

with a conforming land management plan.

(d) Notwithstanding the other requirements of this subpart, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of significant deterioration (PSD) program (title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section.

(3) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (c)(2) of this section), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP.

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (d)(2) of this section and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (d)(2) of this section are exempt from the requirements of this subpart only if:

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.

(f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) of this section and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this subpart that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the **Federal Register** its list of proposed activities that are presumed to conform and the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the **Federal Register**.

(i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of § 51.850 and §§ 51.855 through 51.860 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of § 51.850 and §§ 51.855 through 51.860 shall apply for the Federal action.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

§ 51.854 Conformity analysis.

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

§ 51.855 Reporting requirements.

(a) A Federal agency making a conformity determination under § 51.858 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the

proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under § 51.858.

§ 51.856 Public participation.

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under § 51.858 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under § 51.858 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under § 51.858 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under § 51.858 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

§ 51.857 Frequency of conformity determinations.

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under § 51.855, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under § 51.855.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions above the levels in § 51.853(b), a new conformity determination is required.

§ 51.858 Criteria for determining conformity of general Federal actions.

(a) An action required under § 51.853 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in § 51.853(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) Specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) Meet the requirements of paragraph (a)(5) of this section and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM–10—

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis; or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(ii) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (a)(5)(i)(A) of this section or where the State makes a commitment as provided in paragraph (a)(5)(i)(B) of this section:

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

(*1*) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(*2*) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(*3*) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to implement additional requirements has been fully pursued;

(*4*) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(*5*) Written documentation including all air quality analyses supporting the conformity determination;

(C) Where a Federal agency made a conformity determination based on a State commitment under paragraph (a)(5)(i)(B) of this section, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in § 51.859(d)) do not increase emissions with respect to the baseline emissions:

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(*1*) Calendar year 1990;

(*2*) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81; or

(*3*) The year of the baseline inventory in the PM–10 applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in § 51.859(d)) using the historic activity levels (described in paragraph (a)(5)(iv)(A) of this section) and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(b) The areawide and/or local air quality modeling analyses must:

(1) Meet the requirements in § 51.859; and

(2) Show that the action does not:

(i) Cause or contribute to any new violation of any standard in any area; or

(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

§ 51.859 Procedures for conformity determinations of general Federal actions.

(a) The analyses required under this subpart must be based on the latest planning assumptions.

(1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified in paragraphs (b)(1)(i) and (ii) of this section:

(i) The EPA must publish in the **Federal Register** a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of three months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP–42)"[1] must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2–78–027R)[2], unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under this subpart, except § 51.858(a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) any year for which the applicable SIP specifies an emissions budget.

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[1] Copies may be obtained from the Technical Support Division of OAQPS, EPA, MD–14, Research Triangle Park, NC 27711.

[2] See footnote 1 at § 51.859(b)(2).

§ 51.860 Mitigation of air quality impacts.

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 51.856 and the public participation requirements of § 51.857.

(f) The implementation plan revision required in § 51.851 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

PART 93—DETERMINING CONFORMITY OF FEDERAL ACTIONS TO STATE OR FEDERAL IMPLEMENTATION PLANS

1. The authority citation for part 93 continues to read as follows:

Authority: 42 U.S.C. 7401–7671p.

2. Part 93 is amended by adding a new subpart B to read as follows:

Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

Sec.

93.150 Prohibition.
93.151 State implementation plan (SIP) revision.
93.152 Definitions.
93.153 Applicability.
93.154 Conformity analysis.
93.155 Reporting requirements.
93.156 Public participation.
93.157 Frequency of conformity determinations.
93.158 Criteria for determining conformity of general Federal actions.
93.159 Procedures for conformity determinations of general Federal actions.
93.160 Mitigation of air quality impacts.

Subpart B—Determining Conformity of General Federal Actions to State or Federal Implementation Plans

§ 93.150 Prohibition.

(a) No department, agency or instrumentality of the Federal Government shall engage in, support in any way or provide financial assistance for, license or permit, or approve any activity which does not conform to an applicable implementation plan.

(b) A Federal agency must make a determination that a Federal action conforms to the applicable implementation plan in accordance with the requirements of this subpart before the action is taken.

(c) Paragraph (b) of this section does not include Federal actions where:

(1) A National Environmental Policy Act (NEPA) analysis was completed as evidenced by a final environmental assessment (EA), environmental impact statement (EIS), or finding of no significant impact (FONSI) that was prepared prior to January 31, 1994; or

(2)(i) Prior to December 30, 1993, an environmental analysis was commenced or a contract was awarded to develop the specific environmental analysis;

(ii) Sufficient environmental analysis is completed by March 15, 1994 so that the Federal agency may determine that the Federal action is in conformity with the specific requirements and the purposes of the applicable SIP pursuant to the agency's affirmative obligation under section 176(c) of the Clean Air Act (Act); and

(iii) A written determination of conformity under section 176(c) of the Act has been made by the Federal agency responsible for the Federal action by March 15, 1994.

(d) Notwithstanding any provision of this subpart, a determination that an action is in conformance with the applicable implementation plan does not exempt the action from any other requirements of the applicable implementation plan, the National Environmental Policy Act (NEPA), or the Clean Air Act (Act).

§ 93.151 State implementation plan (SIP) revision.

The Federal conformity rules under this subpart, in addition to any existing applicable State requirements, establish the conformity criteria and procedures necessary to meet the Act requirements until such time as the required conformity SIP revision is approved by EPA. A State's conformity provisions must contain criteria and procedures that are no less stringent than the requirements described in this subpart. A State may establish more stringent conformity criteria and procedures only if they apply equally to nonfederal as well as Federal entities. Following EPA approval of the State conformity provisions (or a portion thereof) in a revision to the applicable SIP, the approved (or approved portion of the) State criteria and procedures would govern conformity determinations and the Federal conformity regulations contained in this part would apply only for the portion, if any, of the State's conformity provisions that is not approved by EPA. In addition, any previously applicable SIP requirements relating to conformity remain enforceable until the State revises its SIP to specifically remove them from the SIP and that revision is approved by EPA.

§ 93.152 Definitions.

Terms used but not defined in this part shall have the meaning given them by the Act and EPA's regulations (40 CFR chapter I), in that order of priority.

Affected Federal land manager means the Federal agency or the Federal official charged with direct responsibility for management of an area designated as Class I under the Act (42 U.S.C. 7472) that is located within 100 km of the proposed Federal action.

Applicable implementation plan or applicable SIP means the portion (or portions) of the SIP or most recent revision thereof, which has been approved under section 110 of the Act, or promulgated under section 110(c) of the Act (Federal implementation plan), or promulgated or approved pursuant to regulations promulgated under section 301(d) of the Act and which implements the relevant requirements of the Act.

Areawide air quality modeling analysis means an assessment on a scale that includes the entire nonattainment

or maintenance area which uses an air quality dispersion model to determine the effects of emissions on air quality.

Cause or contribute to a new violation means a Federal action that:

(1) Causes a new violation of a national ambient air quality standard (NAAQS) at a location in a nonattainment or maintenance area which would otherwise not be in violation of the standard during the future period in question if the Federal action were not taken; or

(2) Contributes, in conjunction with other reasonably foreseeable actions, to a new violation of a NAAQS at a location in a nonattainment or maintenance area in a manner that would increase the frequency or severity of the new violation.

Caused by, as used in the terms "direct emissions" and "indirect emissions," means emissions that would not otherwise occur in the absence of the Federal action.

Criteria pollutant or standard means any pollutant for which there is established a NAAQS at 40 CFR part 50.

Direct emissions means those emissions of a criteria pollutant or its precursors that are caused or initiated by the Federal action and occur at the same time and place as the action.

Emergency means a situation where extremely quick action on the part of the Federal agencies involved is needed and where the timing of such Federal activities makes it impractical to meet the requirements of this subpart, such as natural disasters like hurricanes or earthquakes, civil disturbances such as terrorist acts and military mobilizations.

Emissions budgets are those portions of the applicable SIP's projected emission inventories that describe the levels of emissions (mobile, stationary, area, etc.) that provide for meeting reasonable further progress milestones, attainment, and/or maintenance for any criteria pollutant or its precursors.

Emissions offsets, for purposes of § 93.158, are emissions reductions which are quantifiable, consistent with the applicable SIP attainment and reasonable further progress demonstrations, surplus to reductions required by, and credited to, other applicable SIP provisions, enforceable at both the State and Federal levels, and permanent within the timeframe specified by the program.

Emissions that a Federal agency has a continuing program responsibility for means emissions that are specifically caused by an agency carrying out its authorities, and does not include emissions that occur due to subsequent activities, unless such activities are required by the Federal agency. When an agency, in performing its normal program responsibilities, takes actions itself or imposes conditions that result in air pollutant emissions by a non-Federal entity taking subsequent actions, such emissions are covered by the meaning of a continuing program responsibility.

EPA means the Environmental Protection Agency.

Federal action means any activity engaged in by a department, agency, or instrumentality of the Federal government, or any activity that a department, agency or instrumentality of the Federal government supports in any way, provides financial assistance for, licenses, permits, or approves, other than activities related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*). Where the Federal action is a permit, license, or other approval for some aspect of a non-Federal undertaking, the relevant activity is the part, portion, or phase of the non-Federal undertaking that requires the Federal permit, license, or approval.

Federal agency means, for purposes of this subpart, a Federal department, agency, or instrumentality of the Federal government.

Increase the frequency or severity of any existing violation of any standard in any area means to cause a nonattainment area to exceed a standard more often or to cause a violation at a greater concentration than previously existed and/or would otherwise exist during the future period in question, if the project were not implemented.

Indirect emissions means those emissions of a criteria pollutant or its precursors that:

(1) Are caused by the Federal action, but may occur later in time and/or may be further removed in distance from the action itself but are still reasonably foreseeable; and

(2) The Federal agency can practicably control and will maintain control over due to a continuing program responsibility of the Federal agency.

Local air quality modeling analysis means an assessment of localized impacts on a scale smaller than the entire nonattainment or maintenance area, including, for example, congested roadway intersections and highways or transit terminals, which uses an air quality dispersion model to determine the effects of emissions on air quality.

Maintenance area means an area with a maintenance plan approved under section 175A of the Act.

Maintenance plan means a revision to the applicable SIP, meeting the requirements of section 175A of the Act.

Metropolitan Planning Organization (MPO) is that organization designated as being responsible, together with the State, for conducting the continuing, cooperative, and comprehensive planning process under 23 U.S.C. 134 and 49 U.S.C. 1607.

Milestone has the meaning given in sections 182(g)(1) and 189(c)(1) of the Act.

National ambient air quality standards (NAAQS) are those standards established pursuant to section 109 of the Act and include standards for carbon monoxide (CO), lead (Pb), nitrogen dioxide (NO_2), ozone, particulate matter (PM–10), and sulfur dioxide (SO_2).

NEPA is the National Environmental Policy Act of 1969, as amended (42 U.S.C. 4321 *et seq.*).

Nonattainment area means an area designated as nonattainment under section 107 of the Act and described in 40 CFR part 81.

Precursors of a criteria pollutant are:

(1) For ozone, nitrogen oxides (NOx), unless an area is exempted from NOx requirements under section 182(f) of the Act, and volatile organic compounds (VOC); and

(2) For PM–10, those pollutants described in the PM–10 nonattainment area applicable SIP as significant contributors to the PM–10 levels.

Reasonably foreseeable emissions are projected future indirect emissions that are identified at the time the conformity determination is made; the location of such emissions is known and the emissions are quantifiable, as described and documented by the Federal agency based on its own information and after reviewing any information presented to the Federal agency.

Regional water and/or wastewater projects include construction, operation, and maintenance of water or wastewater conveyances, water or wastewater treatment facilities, and water storage reservoirs which affect a large portion of a nonattainment or maintenance area.

Regionally significant action means a Federal action for which the direct and indirect emissions of any pollutant represent 10 percent or more of a nonattainment or maintenance area's emission inventory for that pollutant.

Total of direct and indirect emissions means the sum of direct and indirect emissions increases and decreases caused by the Federal action; i.e., the "net" emissions considering all direct and indirect emissions. The portion of emissions which are exempt or presumed to conform under § 93.153 (c),

(d), (e), or (f) are not included in the "total of direct and indirect emissions." The "total of direct and indirect emissions" includes emissions of criteria pollutants and emissions of precursors of criteria pollutants.

§ 93.153 Applicability.

(a) Conformity determinations for Federal actions related to transportation plans, programs, and projects developed, funded, or approved under title 23 U.S.C. or the Federal Transit Act (49 U.S.C. 1601 *et seq.*) must meet the procedures and criteria of 40 CFR part 51, subpart T, in lieu of the procedures set forth in this subpart.

(b) For Federal actions not covered by paragraph (a) of this section, a conformity determination is required for each pollutant where the total of direct and indirect emissions in a nonattainment or maintenance area caused by a Federal action would equal or exceed any of the rates in paragraphs (b)(1) or (2) of this section.

(1) For purposes of paragraph (b) of this section, the following rates apply in nonattainment areas (NAA's):

	Tons/ year
Ozone (VOC's or NO_x):	
Serious NAA's	50
Severe NAA's	25
Extreme NAA's	10
Other ozone NAA's outside an ozone transport region	100
Marginal and moderate NAA's inside an ozone transport region:.	
VOC	50
NO_x	100
Carbon monoxide:	
All NAA's	100
SO_2 or NO_2:	
All NAA's	100
PM–10:	
Moderate NAA's	100
Serious NAA's	70
Pb:	
All NAA's	25

(2) For purposes of paragraph (b) of this section, the following rates apply in maintenance areas:

	Tons/ year
Ozone (NO_x), SO_2 or NO_2:	
All Maintenance Areas	100
Ozone (VOC's):	
Maintenance areas inside an ozone transport region	50
Maintenance areas outside an ozone transport region	100
Carbon monoxide:	
All Maintenance Areas	100
PM–10:	
All Maintenance Areas	100
Pb:	
All Maintenance Areas	25

(c) The requirements of this subpart shall not apply to the following Federal actions:

(1) Actions where the total of direct and indirect emissions are below the emissions levels specified in paragraph (b) of this section.

(2) Actions which would result in no emissions increase or an increase in emissions that is clearly de minimis:

(i) Judicial and legislative proceedings.

(ii) Continuing and recurring activities such as permit renewals where activities conducted will be similar in scope and operation to activities currently being conducted.

(iii) Rulemaking and policy development and issuance.

(iv) Routine maintenance and repair activities, including repair and maintenance of administrative sites, roads, trails, and facilities.

(v) Civil and criminal enforcement activities, such as investigations, audits, inspections, examinations, prosecutions, and the training of law enforcement personnel.

(vi) Administrative actions such as personnel actions, organizational changes, debt management or collection, cash management, internal agency audits, program budget proposals, and matters relating to the administration and collection of taxes, duties and fees.

(vii) The routine, recurring transportation of materiel and personnel.

(viii) Routine movement of mobile assets, such as ships and aircraft, in home port reassignments and stations (when no new support facilities or personnel are required) to perform as operational groups and/or for repair or overhaul.

(ix) Maintenance dredging and debris disposal where no new depths are required, applicable permits are secured, and disposal will be at an approved disposal site.

(x) Actions, such as the following, with respect to existing structures, properties, facilities and lands where future activities conducted will be similar in scope and operation to activities currently being conducted at the existing structures, properties, facilities, and lands; for example, relocation of personnel, disposition of federally-owned existing structures, properties, facilities, and lands, rent subsidies, operation and maintenance cost subsidies, the exercise of receivership or conservatorship authority, assistance in purchasing structures, and the production of coins and currency.

(xi) The granting of leases, licenses such as for exports and trade, permits, and easements where activities conducted will be similar in scope and operation to activities currently being conducted.

(xii) Planning, studies, and provision of technical assistance.

(xiii) Routine operation of facilities, mobile assets and equipment.

(xiv) Transfers of ownership, interests, and titles in land, facilities, and real and personal properties, regardless of the form or method of the transfer.

(xv) The designation of empowerment zones, enterprise communities, or viticultural areas.

(xvi) Actions by any of the Federal banking agencies or the Federal Reserve Banks, including actions regarding charters, applications, notices, licenses, the supervision or examination of depository institutions or depository institution holding companies, access to the discount window, or the provision of financial services to banking organizations or to any department, agency or instrumentality of the United States.

(xvii) Actions by the Board of Governors of the Federal Reserve System or any Federal Reserve Bank necessary to effect monetary or exchange rate policy.

(xviii) Actions that implement a foreign affairs function of the United States.

(xix) Actions (or portions thereof) associated with transfers of land, facilities, title, and real properties through an enforceable contract or lease agreement where the delivery of the deed is required to occur promptly after a specific, reasonable condition is met, such as promptly after the land is certified as meeting the requirements of CERCLA, and where the Federal agency does not retain continuing authority to control emissions associated with the lands, facilities, title, or real properties.

(xx) Transfers of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity and assignments of real property, including land, facilities, and related personal property from a Federal entity to another Federal entity for subsequent deeding to eligible applicants.

(xxi) Actions by the Department of the Treasury to effect fiscal policy and to exercise the borrowing authority of the United States.

(3) Actions where the emissions are not reasonably foreseeable, such as the following:

(i) Initial Outer Continental Shelf lease sales which are made on a broad scale and are followed by exploration

and development plans on a project level.

(ii) Electric power marketing activities that involve the acquisition, sale and transmission of electric energy.

(4) Actions which implement a decision to conduct or carry out a conforming program such as prescribed burning actions which are consistent with a conforming land management plan.

(d) Notwithstanding the other requirements of this subpart, a conformity determination is not required for the following Federal actions (or portion thereof):

(1) The portion of an action that includes major new or modified stationary sources that require a permit under the new source review (NSR) program (section 173 of the Act) or the prevention of significant deterioration program (title I, part C of the Act).

(2) Actions in response to emergencies or natural disasters such as hurricanes, earthquakes, etc., which are commenced on the order of hours or days after the emergency or disaster and, if applicable, which meet the requirements of paragraph (e) of this section.

(3) Research, investigations, studies, demonstrations, or training (other than those exempted under paragraph (c)(2) of this section), where no environmental detriment is incurred and/or, the particular action furthers air quality research, as determined by the State agency primarily responsible for the applicable SIP;

(4) Alteration and additions of existing structures as specifically required by new or existing applicable environmental legislation or environmental regulations (e.g., hush houses for aircraft engines and scrubbers for air emissions).

(5) Direct emissions from remedial and removal actions carried out under the Comprehensive Environmental Response, Compensation and Liability Act and associated regulations to the extent such emissions either comply with the substantive requirements of the PSD/NSR permitting program or are exempted from other environmental regulation under the provisions of CERCLA and applicable regulations issued under CERCLA.

(e) Federal actions which are part of a continuing response to an emergency or disaster under paragraph (d)(2) of this section and which are to be taken more than 6 months after the commencement of the response to the emergency or disaster under paragraph (d)(2) of this section are exempt from the requirements of this subpart only if:

(1) The Federal agency taking the actions makes a written determination that, for a specified period not to exceed an additional 6 months, it is impractical to prepare the conformity analyses which would otherwise be required and the actions cannot be delayed due to overriding concerns for public health and welfare, national security interests and foreign policy commitments; or

(2) For actions which are to be taken after those actions covered by paragraph (e)(1) of this section, the Federal agency makes a new determination as provided in paragraph (e)(1) of this section.

(f) Notwithstanding other requirements of this subpart, actions specified by individual Federal agencies that have met the criteria set forth in either paragraph (g)(1) or (g)(2) of this section and the procedures set forth in paragraph (h) of this section are presumed to conform, except as provided in paragraph (j) of this section.

(g) The Federal agency must meet the criteria for establishing activities that are presumed to conform by fulfilling the requirements set forth in either paragraph (g)(1) or (g)(2) of this section:

(1) The Federal agency must clearly demonstrate using methods consistent with this subpart that the total of direct and indirect emissions from the type of activities which would be presumed to conform would not:

(i) Cause or contribute to any new violation of any standard in any area;

(ii) Interfere with provisions in the applicable SIP for maintenance of any standard;

(iii) Increase the frequency or severity of any existing violation of any standard in any area; or

(iv) Delay timely attainment of any standard or any required interim emission reductions or other milestones in any area including, where applicable, emission levels specified in the applicable SIP for purposes of:

(A) A demonstration of reasonable further progress;

(B) A demonstration of attainment; or

(C) A maintenance plan; or

(2) The Federal agency must provide documentation that the total of direct and indirect emissions from such future actions would be below the emission rates for a conformity determination that are established in paragraph (b) of this section, based, for example, on similar actions taken over recent years.

(h) In addition to meeting the criteria for establishing exemptions set forth in paragraphs (g)(1) or (g)(2) of this section, the following procedures must also be complied with to presume that activities will conform:

(1) The Federal agency must identify through publication in the Federal Register its list of proposed activities that are presumed to conform and the basis for the presumptions;

(2) The Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, the agency designated under section 174 of the Act and the MPO and provide at least 30 days for the public to comment on the list of proposed activities presumed to conform;

(3) The Federal agency must document its response to all the comments received and make the comments, response, and final list of activities available to the public upon request; and

(4) The Federal agency must publish the final list of such activities in the Federal Register.

(i) Notwithstanding the other requirements of this subpart, when the total of direct and indirect emissions of any pollutant from a Federal action does not equal or exceed the rates specified in paragraph (b) of this section, but represents 10 percent or more of a nonattainment or maintenance area's total emissions of that pollutant, the action is defined as a regionally significant action and the requirements of § 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(j) Where an action otherwise presumed to conform under paragraph (f) of this section is a regionally significant action or does not in fact meet one of the criteria in paragraph (g)(1) of this section, that action shall not be presumed to conform and the requirements of § 93.150 and §§ 93.155 through 93.160 shall apply for the Federal action.

(k) The provisions of this subpart shall apply in all nonattainment and maintenance areas.

§ 93.154 Conformity analysis.

Any Federal department, agency, or instrumentality of the Federal government taking an action subject to this subpart must make its own conformity determination consistent with the requirements of this subpart. In making its conformity determination, a Federal agency must consider comments from any interested parties. Where multiple Federal agencies have jurisdiction for various aspects of a project, a Federal agency may choose to adopt the analysis of another Federal agency or develop its own analysis in order to make its conformity determination.

§ 93.155 Reporting requirements.

(a) A Federal agency making a conformity determination under § 93.158 must provide to the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Act and the MPO a 30 day notice which describes the proposed action and the Federal agency's draft conformity determination on the action.

(b) A Federal agency must notify the appropriate EPA Regional Office(s), State and local air quality agencies and, where applicable, affected Federal land managers, the agency designated under section 174 of the Clean Air Act and the MPO within 30 days after making a final conformity determination under § 93.158.

§ 93.156 Public participation.

(a) Upon request by any person regarding a specific Federal action, a Federal agency must make available for review its draft conformity determination under § 93.158 with supporting materials which describe the analytical methods and conclusions relied upon in making the applicability analysis and draft conformity determination.

(b) A Federal agency must make public its draft conformity determination under § 93.158 by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action and by providing 30 days for written public comment prior to taking any formal action on the draft determination. This comment period may be concurrent with any other public involvement, such as occurs in the NEPA process.

(c) A Federal agency must document its response to all the comments received on its draft conformity determination under § 93.158 and make the comments and responses available, upon request by any person regarding a specific Federal action, within 30 days of the final conformity determination.

(d) A Federal agency must make public its final conformity determination under § 93.158 for a Federal action by placing a notice by prominent advertisement in a daily newspaper of general circulation in the area affected by the action within 30 days of the final conformity determination.

§ 93.157 Frequency of conformity determinations.

(a) The conformity status of a Federal action automatically lapses 5 years from the date a final conformity determination is reported under § 93.155, unless the Federal action has been completed or a continuous program has been commenced to implement that Federal action within a reasonable time.

(b) Ongoing Federal activities at a given site showing continuous progress are not new actions and do not require periodic redeterminations so long as such activities are within the scope of the final conformity determination reported under § 93.155.

(c) If, after the conformity determination is made, the Federal action is changed so that there is an increase in the total of direct and indirect emissions, above the levels in § 93.153(b), a new conformity determination is required.

§ 93.158 Criteria for determining conformity of general Federal actions.

(a) An action required under § 93.153 to have a conformity determination for a specific pollutant, will be determined to conform to the applicable SIP if, for each pollutant that exceeds the rates in § 93.153(b), or otherwise requires a conformity determination due to the total of direct and indirect emissions from the action, the action meets the requirements of paragraph (c) of this section, and meets any of the following requirements:

(1) For any criteria pollutant, the total of direct and indirect emissions from the action are specifically identified and accounted for in the applicable SIP's attainment or maintenance demonstration;

(2) For ozone or nitrogen dioxide, the total of direct and indirect emissions from the action are fully offset within the same nonattainment or maintenance area through a revision to the applicable SIP or a similarly enforceable measure that effects emission reductions so that there is no net increase in emissions of that pollutant;

(3) For any criteria pollutant, except ozone and nitrogen dioxide, the total of direct and indirect emissions from the action meet the requirements:

(i) Specified in paragraph (b) of this section, based on areawide air quality modeling analysis and local air quality modeling analysis; or

(ii) Meet the requirements of paragraph (a)(5) of this section and, for local air quality modeling analysis, the requirement of paragraph (b) of this section;

(4) For CO or PM–10—

(i) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on local air quality modeling analysis; or

(ii) Where the State agency primarily responsible for the applicable SIP determines that an areawide air quality modeling analysis is appropriate and that a local air quality modeling analysis is not needed, the total of direct and indirect emissions from the action meet the requirements specified in paragraph (b) of this section, based on areawide modeling, or meet the requirements of paragraph (a)(5) of this section; or

(5) For ozone or nitrogen dioxide, and for purposes of paragraphs (a)(3)(11) and (a)(4)(ii) of this section, each portion of the action or the action as a whole meets any of the following requirements:

(i) Where EPA has approved a revision to an area's attainment or maintenance demonstration after 1990 and the State makes a determination as provided in paragraph (a)(5)(i)(A) of this section or where the State makes a commitment as provided in paragraph (a)(5)(i)(B) of this section:

(A) The total of direct and indirect emissions from the action (or portion thereof) is determined and documented by the State agency primarily responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would not exceed the emissions budgets specified in the applicable SIP;

(B) The total of direct and indirect emissions from the action (or portion thereof) is determined by the State agency responsible for the applicable SIP to result in a level of emissions which, together with all other emissions in the nonattainment (or maintenance) area, would exceed an emissions budget specified in the applicable SIP and the State Governor or the Governor's designee for SIP actions makes a written commitment to EPA which includes the following:

(*1*) A specific schedule for adoption and submittal of a revision to the SIP which would achieve the needed emission reductions prior to the time emissions from the Federal action would occur;

(*2*) Identification of specific measures for incorporation into the SIP which would result in a level of emissions which, together with all other emissions in the nonattainment or maintenance area, would not exceed any emissions budget specified in the applicable SIP;

(*3*) A demonstration that all existing applicable SIP requirements are being implemented in the area for the pollutants affected by the Federal action, and that local authority to

implement additional requirements has been fully pursued;

(4) A determination that the responsible Federal agencies have required all reasonable mitigation measures associated with their action; and

(5) Written documentation including all air quality analyses supporting the conformity determination;

(C) Where a Federal agency made a conformity determination based on a State commitment under paragraph (a)(5)(i)(B) of this section, such a State commitment is automatically deemed a call for a SIP revision by EPA under section 110(k)(5) of the Act, effective on the date of the Federal conformity determination and requiring response within 18 months or any shorter time within which the State commits to revise the applicable SIP;

(ii) The action (or portion thereof), as determined by the MPO, is specifically included in a current transportation plan and transportation improvement program which have been found to conform to the applicable SIP under 40 CFR part 51, subpart T, or 40 CFR part 93, subpart A;

(iii) The action (or portion thereof) fully offsets its emissions within the same nonattainment or maintenance area through a revision to the applicable SIP or an equally enforceable measure that effects emission reductions equal to or greater than the total of direct and indirect emissions from the action so that there is no net increase in emissions of that pollutant;

(iv) Where EPA has not approved a revision to the relevant SIP attainment or maintenance demonstration since 1990, the total of direct and indirect emissions from the action for the future years (described in § 93.159(d) do not increase emissions with respect to the baseline emissions:

(A) The baseline emissions reflect the historical activity levels that occurred in the geographic area affected by the proposed Federal action during:

(1) Calendar year 1990;

(2) The calendar year that is the basis for the classification (or, where the classification is based on multiple years, the most representative year), if a classification is promulgated in 40 CFR part 81; or

(3) The year of the baseline inventory in the PM–10 applicable SIP;

(B) The baseline emissions are the total of direct and indirect emissions calculated for the future years (described in § 93.159(d)) using the historic activity levels (described in paragraph (a)(5)(iv)(A) of this section) and appropriate emission factors for the future years; or

(v) Where the action involves regional water and/or wastewater projects, such projects are sized to meet only the needs of population projections that are in the applicable SIP.

(b) The areawide and/or local air quality modeling analyses must:

(1) Meet the requirements in § 93.159; and

(2) Show that the action does not:

(i) Cause or contribute to any new violation of any standard in any area; or

(ii) Increase the frequency or severity of any existing violation of any standard in any area.

(c) Notwithstanding any other requirements of this section, an action subject to this subpart may not be determined to conform to the applicable SIP unless the total of direct and indirect emissions from the action is in compliance or consistent with all relevant requirements and milestones contained in the applicable SIP, such as elements identified as part of the reasonable further progress schedules, assumptions specified in the attainment or maintenance demonstration, prohibitions, numerical emission limits, and work practice requirements.

(d) Any analyses required under this section must be completed, and any mitigation requirements necessary for a finding of conformity must be identified before the determination of conformity is made.

§ 93.159 Procedures for conformity determinations of general Federal actions.

(a) The analyses required under this subpart must be based on the latest planning assumptions.

(1) All planning assumptions must be derived from the estimates of population, employment, travel, and congestion most recently approved by the MPO, or other agency authorized to make such estimates, where available.

(2) Any revisions to these estimates used as part of the conformity determination, including projected shifts in geographic location or level of population, employment, travel, and congestion, must be approved by the MPO or other agency authorized to make such estimates for the urban area.

(b) The analyses required under this subpart must be based on the latest and most accurate emission estimation techniques available as described below, unless such techniques are inappropriate. If such techniques are inappropriate and written approval of the EPA Regional Administrator is obtained for any modification or substitution, they may be modified or another technique substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program.

(1) For motor vehicle emissions, the most current version of the motor vehicle emissions model specified by EPA and available for use in the preparation or revision of SIPs in that State must be used for the conformity analysis as specified in paragraphs (b)(1)(i) and (ii) of this section:

(i) The EPA must publish in the **Federal Register** a notice of availability of any new motor vehicle emissions model; and

(ii) A grace period of 3 months shall apply during which the motor vehicle emissions model previously specified by EPA as the most current version may be used. Conformity analyses for which the analysis was begun during the grace period or no more than 3 years before the **Federal Register** notice of availability of the latest emission model may continue to use the previous version of the model specified by EPA.

(2) For non-motor vehicle sources, including stationary and area source emissions, the latest emission factors specified by EPA in the "Compilation of Air Pollutant Emission Factors (AP–42)" [1] must be used for the conformity analysis unless more accurate emission data are available, such as actual stack test data from stationary sources which are part of the conformity analysis.

(c) The air quality modeling analyses required under this subpart must be based on the applicable air quality models, data bases, and other requirements specified in the most recent version of the "Guideline on Air Quality Models (Revised)" (1986), including supplements (EPA publication no. 450/2–78–027R) [2], unless:

(1) The guideline techniques are inappropriate, in which case the model may be modified or another model substituted on a case-by-case basis or, where appropriate, on a generic basis for a specific Federal agency program; and

(2) Written approval of the EPA Regional Administrator is obtained for any modification or substitution.

(d) The analyses required under this subpart, except § 93.158(a)(1), must be based on the total of direct and indirect emissions from the action and must reflect emission scenarios that are expected to occur under each of the following cases:

(1) The Act mandated attainment year or, if applicable, the farthest year for which emissions are projected in the maintenance plan;

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[1] Copies may be obtained from the Technical Support Division of OAQPS, EPA, MD–14, Research Triangle Park, NC 27711.

[2] See footnote 1 at § 93.159(b)(2).

(2) The year during which the total of direct and indirect emissions from the action is expected to be the greatest on an annual basis; and

(3) Any year for which the applicable SIP specifies an emissions budget.

§ 93.160 Mitigation of air quality impacts.

(a) Any measures that are intended to mitigate air quality impacts must be identified and the process for implementation and enforcement of such measures must be described, including an implementation schedule containing explicit timelines for implementation.

(b) Prior to determining that a Federal action is in conformity, the Federal agency making the conformity determination must obtain written commitments from the appropriate persons or agencies to implement any mitigation measures which are identified as conditions for making conformity determinations.

(c) Persons or agencies voluntarily committing to mitigation measures to facilitate positive conformity determinations must comply with the obligations of such commitments.

(d) In instances where the Federal agency is licensing, permitting or otherwise approving the action of another governmental or private entity, approval by the Federal agency must be conditioned on the other entity meeting the mitigation measures set forth in the conformity determination.

(e) When necessary because of changed circumstances, mitigation measures may be modified so long as the new mitigation measures continue to support the conformity determination. Any proposed change in the mitigation measures is subject to the reporting requirements of § 93.156 and the public participation requirements of § 93.157.

(f) The implementation plan revision required in § 93.151 shall provide that written commitments to mitigation measures must be obtained prior to a positive conformity determination and that such commitments must be fulfilled.

(g) After a State revises its SIP to adopt its general conformity rules and EPA approves that SIP revision, any agreements, including mitigation measures, necessary for a conformity determination will be both State and federally enforceable. Enforceability through the applicable SIP will apply to all persons who agree to mitigate direct and indirect emissions associated with a Federal action for a conformity determination.

[FR Doc. 93–28818 Filed 11–29–93; 8:45 am]
BILLING CODE 6560–50–P

federal register

Tuesday
November 30, 1993

Part III

Department of the Interior

Bureau of Indian Affairs

Indian Gaming; Grand Traverse Band of Ottawa and Chippewa Indians and State of Michigan et al.; Notice

DEPARTMENT OF THE INTERIOR

Bureau of Indian Affairs

Indian Gaming, Bureau of Indian Affairs, Interior

ACTION: Notice of approved Tribal-State Compacts.

SUMMARY: Pursuant to 25 U.S.C. § 2710, of the Indian Gaming Regulatory Act of 1988 (Pub. L. 100–497), the Secretary of the Interior shall publish, in the **Federal Register**, notice of approved Tribal-State Compacts for the purpose of engaging in Class III (casino) gaming on Indian reservations. The Assistant Secretary–Indian Affairs, Department of the Interior, through her delegated authority, has approved Tribal-State Compacts between the following tribes and states: The Grand Traverse Band of Ottawa and Chippewa Indians and the State of Michigan, executed on 8/20/93; the Hannahville Indian Community and the State of Michigan, executed on 8/20/93; the Bay Mills Indian Community and the State of Michigan, executed on 8/20/93; the Keweenaw Bay Indian Community and the State of Michigan, executed on 8/20/93; the Saginaw Chippewa Indian Tribe of Michigan and the State of Michigan, executed on 8/20/93; the Sault Ste. Marie Tribe of Chippewa Indians and the State of Michigan, executed on 8/20/93; and the Lac Vieux Desert Band of Lake Superior Chippewa Indians and the State of Michigan, executed on 8/20/93.

DATES: This action is effective November 30, 1993.

FOR FURTHER INFORMATION CONTACT: Hilda Manuel, Director, Indian Gaming Management Staff, Bureau of Indian Affairs, Washington, DC 20240, (202) 219–4066.

Dated: November 19, 1993.

Ada E. Deer,

Assistant Secretary—Indian Affairs.

[FR Doc. 93–29179 Filed 11–29–93; 8:45 am]

BILLING CODE 4310-02-P

federal register

Tuesday
November 30, 1993

Part IV

Office of Management and Budget

Budget Rescissions and Deferrals; Notice

OFFICE OF MANAGEMENT AND BUDGET

Budget Rescissions and Deferrals

To The Congress of the United States:

In accordance with the Congressional Budget and Impoundment Control Act of 1974, I herewith report four new and two revised deferrals of budget authority, totaling $7.8 billion.

These deferrals affect International Security Assistance programs as well as programs of the Agency for International Development, the Department of State, and the General Services Administration. The details of these deferrals are contained in the attached report.

William J. Clinton

The White House,

November 19, 1993.

BILLING CODE 3110-01-M

CONTENTS OF SPECIAL MESSAGE
(in thousands of dollars)

DEFERRAL NO.	ITEM	BUDGET AUTHORITY
	Funds Appropriated to the President:	
	International Security Assistance:	
D94-1A	Economic support fund	1,558,737
D94-9	Foreign military financing grants	3,137,279
D94-10	Foreign military financing program account	46,530
	Agency for International Development:	
D94-11	International disaster assistance	118,059
	Department of State:	
	Bureau for Refugee Programs:	
D94-8A	United States emergency refugee and migration assistance fund	76,361
	General Services Administration:	
	Public Buildings Service:	
D94-12	Federal buildings fund	2,835,860
	Total, deferrals	7,772,826

Deferral No. D94-1A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D94-1, which was transmitted to Congress on October 13, 1993.

This revision increases by $1,164,562,000 the previous deferral of $394,175,203 in the Economic support fund, resulting in a total deferral of $1,558,737,203. The increase results from funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994.

Deferral No. 94-1A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority**..... * 1,164,562,000 (P.L. 103-87)
BUREAU: International Security Assistance	**Other budgetary resources**..... 740,470,519
Appropriations title and symbol: Economic support fund 1/ 113/41037 114/51037* 11X1037	**Total budgetary resources**..... * 1,905,032,519
	Amount to be deferred: **Part of year**..... * 1,558,737,203 2/ **Entire year**..... _____
OMB identification code: 11-1037-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [X] Multi-year: * September 30, 1994 / September 30, 1995 (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

Coverage:

Appropriation	Account Symbol	OMB Identification Code	Deferred Amount Reported
Economic support fund.....	11X1037	11-1037-0-1-152	56,083,203
Economic support fund.....	113/41037	11-1037-0-1-152	338,092,000
Economic support fund.....	114/51037	11-1037-0-1-152	* 1,164,562,000
			* 1,558,737,203

JUSTIFICATION: This account provides economic and counternarcotics assistance to selected countries in support of U.S. efforts to promote stability and U.S. security interests in strategic regions of the world. This account also includes contributions to the International Fund for Ireland. This action defers funds pending review and approval of specific loans and grants to eligible countries. This interagency review process will ensure that each approved transaction is consistent with the foreign and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report.
1/ This account was the subject of a similar deferral in FY 1993 (D93-1A).
2/ This deferred amount has been reduced to $1,495,380,494 due to subsequent releases.

Deferral No. 94-9

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority** ..... $ 3,149,279,000 (P.L. 103-87)
BUREAU: International Security Assistance	**Other budgetary resources** ..... _____
Appropriations title and symbol: Foreign military financing grants (FMF) 1/ 1141082	**Total budgetary resources** 3,149,279,000
	Amount to be deferred:
	Part of year ..... $ 3,137,279,000 2/
	Entire year ..... _____
OMB identification code: 11-1082-0-1-152	**Legal authority (in addition to sec. 1013):**
Grant program: [X] Yes [ ] No	[X] Antideficiency Act
	[ ] Other _____
Type of account or fund:	**Type of budget authority:**
[X] Annual	[X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other _____

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by grant, credit, or loan guarantees, articles and defense services to friendly countries to facilitate the common defense. Further, the President is authorized by the International Narcotics Control Act of 1989 to provide military and law enforcement assistance to counter illegal narcotics. Under Section 2 of the Arms Export Act, the Secretary of State, under the direction of the President, is responsible for sales made under the Act, including determining whether there shall be a sale to a country and the amount thereof. Executive Order No. 11958 further requires the Secretary of State to obtain the prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding standards and criteria for credit transactions that are based upon national security and financial policies. These funds have been deferred pending the approval of the Departments of State, Defense, and Treasury for the specific sales to eligible countries. Consultation among these Departments will ensure that each approved program is consistent with the foreign, national security, and financial policies of the United States and will not exceed the limits of available funds. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-8).
2/ This deferred amount has been reduced to $1,337,279,000 due to subsequent releases.

Deferral No. 94-10

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	New budget authority..... $ 46,530,000 (P.L. 103-87)
BUREAU: International Security Assistance	Other budgetary resources..... $ _____
Appropriations title and symbol: Foreign military financing program 1141085	Total budgetary resources..... $ 46,530,000
	Amount to be deferred: Part of year..... $ 46,530,000
	Entire year..... _____
OMB identification code: 11-1085-0-1-152	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [X] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[ ] No-Year	[ ] Other

JUSTIFICATION: The President is authorized by the Arms Export Control Act to sell or finance by credit, loan guarantees, or grants, articles and defense services to friendly countries to facilitate the common defense. Under Section 2 of the Act, the Secretary of State, under the direction of the President, is responsible for sales made under this Act. Executive Order 11958 further requires the Secretary of State to obtain prior concurrence of the Secretaries of Defense and Treasury, respectively, regarding consistency of transactions with national security and financial policies.

As required by the Federal Credit Reform Act of 1990, this account records the subsidy costs associated with the direct loans obligated and loan guarantees for foreign military financing committed in FY 1992 and beyond. The foreign military financing credit program provides loans that finance sales of defense articles, defense services, and design and construction services to foreign countries and international organizations. The subsidy amounts are estimated on a present value basis.

This action defers funds pending review of specific loans to eligible countries by the Departments of State, Treasury, and Defense. The review process will ensure that in each proposed program the proposed recipients are qualified and that the limits of available funds are not exceeded. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-9).

Deferral No. 94-11

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Funds Appropriated to the President	**New budget authority.....** $ 145,985,000 (P.L. 103-87)
BUREAU: Agency for International Development	**Other budgetary resources.....** $ 16,074,217
Appropriations title and symbol: International disaster assistance, Executive 1/ 11X1035	**Total budgetary resources.....** $ 162,059,217
	Amount to be deferred: Part of year..... $ 118,059,217 Entire year..... _____
OMB identification code: 11-1035-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act [ ] Other _____
Grant program: [X] Yes [ ] No	
Type of account or fund: [ ] Annual [ ] Multi-year: _____ (expiration date) [X] No-Year	**Type of budget authority:** [X] Appropriation [ ] Contract authority [ ] Other _____

JUSTIFICATION: The International disaster assistance account allows the President to respond to humanitarian disaster relief efforts throughout the world. Funds are deferred pending the development of country-specific plans to ensure that aid is provided in an efficient manner to those most in need. This deferral action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

1/ This account was the subject of a similar deferral in FY 1993 (D93-10).

Deferral No. D94-8A

Supplemental Report
Report Pursuant to Section 1014(c) of Public Law 93-344

This report updates Deferral No. D94-8, which was transmitted to Congress on October 13, 1993.

This revision to a deferral of the Department of State's Emergency refugee and migration assistance fund increases the amount previously reported as deferred from $27,100,000 to $76,361,000. This increase of $49,261,000 reflects the funds made available by the Foreign Operations, Export Financing, and Related Programs Appropriations Act, 1994.

Deferral No. 94-8A

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: Department of State	New budget authority..... * $ 49,261,000 (P.L. 103-87)
BUREAU: Bureau for Refugee Programs	Other budgetary resources..... $ 27,100,000
Appropriations title and symbol: United States emergency refugee and migration assistance fund 1/ 11X0040	Total budgetary resources..... * $ 76,361,000
	Amount to be deferred: Part of year..... * $ 76,361,000
	Entire year..... $ _____
OMB identification code: 11-0040-0-1-151	**Legal authority (in addition to sec. 1013):** [X] Antideficiency Act
Grant program: [ ] Yes [X] No	[ ] Other _____
Type of account or fund: [ ] Annual	**Type of budget authority:** [X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

JUSTIFICATION: Section 501(a) of the Foreign Relations Authorization Act of 1976 (Public Law 94-141) and Section 414(b) (1) of the Refugee Act of 1980 (Public Law 96-212) amended Section 2(c) of the Migration and Refugee Assistance Act of 1962 (22 U.S.C. 2601) by authorizing a fund to enable the President to provide emergency assistance for unexpected urgent refugee and migration needs.

Executive Order No. 11922 of June 16, 1976, allocated all funds appropriated to the President for the Emergency Fund to the Secretary of State but reserved for the President the determination of assistance to be furnished and the designation of refugees to be assisted by the fund.

These funds have been deferred pending Presidential decisions required by Executive Order No. 11922. Funds will be released as the President determines assistance to be furnished and designates refugees to be assisted by the fund. This deferral action is taken under the provisions of the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

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* Revised from previous report
1/ This account was the subject of a similar deferral in FY 1993 (D93-7A).

Deferral No. 94-12

DEFERRAL OF BUDGET AUTHORITY
Report Pursuant to Section 1013 of P.L. 93-344

AGENCY: General Services Administration	**New budget authority**..... $ _____
BUREAU: Public Service Buildings	**Other budgetary resources**..... $ 8,910,855,156
Appropriations title and symbol: Federal buildings fund 47X4582	**Total budgetary resources**..... $ 8,910,855,156
	Amount to be deferred:
	Part of year..... $ 2,835,860,000
	Entire year..... $ _____
OMB identification code: 47-4542-0-4-804	**Legal authority (in addition to sec. 1013):**
Grant program:	[X] Antideficiency Act
[ ] Yes [X] No	[ ] Other _____
Type of account or fund:	**Type of budget authority:**
[ ] Annual	[X] Appropriation
[ ] Multi-year: _____ (expiration date)	[ ] Contract authority
[X] No-Year	[ ] Other _____

JUSTIFICATION: This account provides funds for the General Service Administration's (GSA's) real property management and related activities, including the capital program. In response to the National Performance Review's recommendation for a "time out and review" of the Federal Government's building program, the Administrator of GSA directed the agency to review all new construction, building modernizations, and major leases.

This agency action defers funds until a review has been completed on all major new construction projects and large-scale modernization projects not awarded for construction. This review will have minimal impact on the timely delivery of space to GSA's client agencies. The review process will ensure that decisions are based on solutions that are in the best economic interest of the American taxpayers. Each project is deferred until GSA has completed the review on that project. This action is taken pursuant to the Antideficiency Act (31 U.S.C. 1512).

Estimated Program Effect: None

Outlay Effect: None

[FR Doc. 93-29192 Filed 11-30-93; 8:45 am]
BILLING CODE 3110-01-C

Federal Register

Tuesday
November 30, 1993

Part V

Department of Transportation

Federal Aviation Administration

14 CFR Parts 71 and 93
Valparaiso, FL, Terminal Area; Rule

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 71 and 93

[Docket No. 26968; Amendment No. 71–22, 93–69]

Valparaiso, FL, Terminal Area

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule; temporary amendment.

SUMMARY: The Offshore Airspace Reconfiguration Final Rule published in the **Federal Register** on March 2, 1993, amended the Federal Aviation Regulations (FAR), in part, by replacing the Valparaiso, Florida, Terminal Area and Special Air Traffic Rules in part 93 of the FAR's with the Eglin, Florida Class D airspace areas. The Offshore Final Rule also included the revocation of the Eglin Air Force Base (AFB), Florida Class D airspace area and the Eglin Air Force Auxiliary No. 3 Duke Field, Florida Class D airspace area; the modification of the Hurlburt Field, Florida Class D airspace area and Crestview, Florida Class E airspace area; and the establishment of the Eglin, Florida Class D North-South Corridor. This effort temporarily amends the effective date of these certain actions from December 9, 1993, to December 8, 1994, to allow the FAA time to conduct a mirco-review of operations conducted within these airspace areas, to determine the amount and extent of controlled airspace necessary to contain certain air traffic control operations. The FAA has discovered that due to the high volume of military flight activity regularly occurring within the North-South and East-West corridors, the Special Air Traffic Rules in part 93, subpart F currently provides sufficient airspace and protection required for the safe operation of both military and civil aircraft within the Eglin Air Force Base Complex.

EFFECTIVE DATES: This amendment is effective December 9, 1993, and expires on December 8, 1994.

FOR FURTHER INFORMATION CONTACT: Mr. Joseph C. White, Air Traffic Rules Branch ATP–230, Airspace Rules and Aeronautical Information Division, Federal Aviation Administration, 800 Independence Avenue SW., Washington, DC 20591; telephone (202) 267–8783.

SUPPLEMENTARY INFORMATION:

Background

The Offshore Airspace Reconfiguration Final Rule published in the **Federal Register** on March 2, 1993, (58 FR 12128), removed and reserved subpart F of part 93 of the FAR, "Valparaiso, Florida, Terminal Area," as well as the companion procedures for corridor operations. This action, scheduled for implementation on December 9, 1993, also revised the airspace descriptions in FAA Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298; July 6, 1993) for the Eglin AFB, Florida, Class D airspace area by: (1) Raising Class D airspace in the Eglin Terminal Complex up to but not including 18,000 feet (ft) mean sea level (MSL); and (2) removing the requirements for aircraft operating in accordance with visual flight rules (VFR) to obtain clearances to enter the North-South Corridor.

Additionally, the Offshore Final Rule included the revocation of the Eglin AFB, Florida Class D airspace area and the Eglin Air Force Auxiliary No. 3 Duke Field, Florida Class D airspace area; the modification of the Hurlburt Field, Florida Class D airspace area and the Crestview, Florida Class E airspace area; and the establishment of the Eglin, Florida Class D North-South Corridor.

Discussion

Upon implementation of the Eglin, Florida Class D airspace areas, civil aircraft would be required to: (1) Establish two-way radio communications (not a clearance) with the Eglin Radar Control Facility (ERCF) prior to entering the Eglin, Florida Class D airspace areas; and (2) thereafter maintain those communications while in the Eglin, Florida Class D airspace areas. These communication requirements allow for the provision of Class D service by the ERCF, if workload or traffic conditions permit. However, if controller workload or traffic conditions prevent immediate provision of Class D services, the ERCF controllers would be required to inform the pilot to remain outside the Class D airspace areas until conditions permit the services to be provided.

Consequently, with the raising of the ceiling of the Class D airspace in the Eglin Terminal Complex, as well as the new requirement establishing positive air traffic control in the East-West Corridor, it is believed a dramatic increase in air traffic and the ERCF controller workload will result. This addition in controller workload would manifest itself through increased air traffic control delays imposed on civilian and military aircraft both in the air and on the ground.

Accordingly, a micro-review of operations conducted within these airspace areas, to determine the amount and extent of controlled airspace necessary to contain certain air traffic control operations, is required.

The Rule

This amendment to parts 71 and 93 of the FAR temporarily delays the effective date from December 9, 1993, to December 8, 1994, as it pertains to: (1) The recision of the Valparaiso, Florida, Terminal Area and Special Air Traffic Rules in part 93 of the FAR; and (2) implementation of the Eglin, Florida, Class D airspace areas and the subsequent revocation of the Eglin AFB, Florida Class D airspace area and the Eglin Air Force Auxiliary No. 3 Duke Field, Florida Class D airspace area; the modification of the Hurlburt Field, Florida Class D airspace area and the Crestview, Florida Class E airspace area; and the establishment of the Eglin, Florida Class D North-South Corridor issued as part of the Offshore Airspace Reconfiguration Final Rule.

Because the public needs to be made immediately aware of the delay of these actions, notice and public procedure under 5 U.S.C. 553(b) are impracticable.

The FAA has determined that this action: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the expected impact is minimal. Therefore, I find that good cause exists, pursuant to 5 U.S C. 553(d), for making this amendment effective in less than 30 days in order to promote the safe and efficient handling of air traffic in the area.

List of Subjects

14 CFR Part 71

Airspace, Incorporation of reference, Navigation (air).

14 CFR Part 93

Air Traffic Control, Airports, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR parts 71 and 93 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510: E.O. 10854, 24 FR 9565, 3 CFR, 1959—

1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended].

2. The incorporation by reference in 14 CFR 71.1, of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended by delaying the effective date from December 9, 1993, to December 8, 1994, for the revoking, revising, and or establishment of the following:

Paragraph 5000—Subpart D—Class D Airspace

* * * * *

ASO FL D Eglin AF Aux No. 3 Duke Field, FL

* * * * *

ASO FL D Eglin AFB, FL

* * * * *

ASO FL D Eglin Hurlburt Field, FL

* * * * *

ASO FL D Eglin, FL North-South Corridor

* * * * *

Paragraph 6002—Subpart E—Class E airspace areas designated as a surface area for an airport.

* * * * *

ASO FL E2 Crestview, FL

* * * * *

PART 93—SPECIAL AIR TRAFFIC RULES AND AIRPORT TRAFFIC PATTERNS

3. The authority citation for part 93 continues to read as follows:

Authority: 49 U.S.C. app. 1302, 1303, 1348, 1354(a), 1421(a), 1424, 2451 et seq. 49 U.S.C. 106(g).

Subpart F—§§ 93.81, 93.83

4. Part 93 is amended by delaying the effective date for the removal and reserving of subpart F (§§ 93.81 and 93.83) from December 9, 1993, to December 8, 1994.

Issued in Washington, DC on November 23, 1993.

Willis C. Nelson,

Acting Manager, Airspace—Rules and Aeronautical Information Division.

[FR Doc. 93–29291 Filed 11–29–93; 8:45 am]

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H.R. 3225/P.L. 103–149

South African Democratic Transition Support Act of 1993 (Nov. 23, 1993; 107 Stat. 1503; 7 pages)

S.J. Res. 19/P.L. 103–150

To acknowledge the 100th anniversary of the January 17, 1893 overthrow of the Kingdom of Hawaii, and to offer an apology to Native Hawaiians on behalf of the United States for the overthrow of the Kingdom of Hawaii. (Nov. 23, 1993; 107 Stat. 1510; 5 pages)

H.R. 2677/P.L. 103–151

To authorize the Board of Regents of the Smithsonian Institution to plan, design, and construct the West Court of the National Museum of Natural History building. (Nov. 24, 1993; 107 Stat. 1515; 1 page)

H.R. 3167/P.L. 103–152

Unemployment Compensation Amendments of 1993 (Nov. 24, 1993; 107 Stat. 1516; 5 pages)

H.J. Res. 79/P.L. 103–153

To authorize the President to issue a proclamation designating the week beginning on November 21, 1993, and November 20, 1994, as "National Family Week". (Nov. 24, 1993; 107 Stat. 1521; 1 page)

H.J. Res. 159/P.L. 103–154

To designate the month of November in 1993 and 1994 as "National Hospice Month". (Nov. 24, 1993; 107 Stat. 1522; 1 page)

S. 654/P.L. 103–155

To amend the Indian Environmental General Assistance Program Act of 1992 to extend the authorization of appropriations. (Nov. 24, 1993; 107 Stat. 1523; 2 pages)

S. 1490/P.L. 103–156

United States Grain Standards Act Amendments of 1993 (Nov. 24, 1993; 107 Stat. 1525; 7 pages)

S.J. Res. 55/P.L. 103–157

To designate the periods commencing on November 28, 1993, and ending on December 4, 1993, and commencing on November 27, 1994, and ending on December 3, 1994, as "National Home Care Week". (Nov. 24, 1993; 107 Stat. 1532; 1 page)

S.J. Res. 129/P.L. 103–158

To authorize the placement of a memorial cairn in Arlington National Cemetery, Arlington, Virginia, to honor the 270 victims of the terrorist bombing of Pan Am Flight 103. (Nov. 24, 1993; 107 Stat. 1533; 3 pages)

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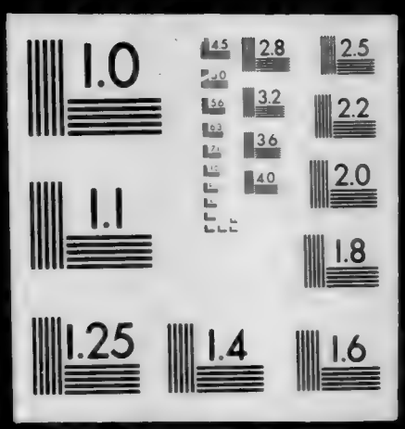
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Additional information, including a list of public laws, telephone numbers, and finding aids, appears in the Reader Aids section at the end of this issue.

Electronic Bulletin Board
Free **Electronic Bulletin Board** service for Public Law numbers and **Federal Register** finding aids is available on 202–275–1538 or 275–0920.

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Title 3—

The President

Proclamation 6630 of November 29, 1993

National Hospice Month, 1993 and 1994

By the President of the United States of America

A Proclamation

As Americans work together to reform our Nation's health care system, I am pleased to proclaim November 1993 and 1994 as National Hospice Month.

Hospice is an eminently successful program, a vital health care service that allows the terminally ill to die with dignity. It addresses the importance of being in a warm, familiar, and comforting environment in our last days. This care helps not only in preserving and enhancing the patient's quality of life during an illness, but also in giving support to the family following the death of a loved one. This attention underscores the importance of the needs of the entire family and highlights the dedication of this supportive and knowledgeable interdisciplinary team.

The public and private sectors have forged a unique partnership in the development of high standards and new programs for hospice care. These and other changes to be brought about by health care reform hold the promise for even greater accomplishments as we try to improve the quality of life of those most in need. Thus, my Administration is deeply committed to maintaining and strengthening these efforts in our health care system.

In recognition of the importance of hospice programs and in honor of the many dedicated volunteers and professionals who care for the terminally ill and their families, the Congress, by House Joint Resolution 159, has designated November 1993 and 1994 as "National Hospice Month" and has authorized and requested the President to issue a proclamation in observance of these months.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim November 1993 and 1994 as National Hospice Month. I encourage all Americans to recognize the importance of hospice care and to observe these months with appropriate activities and programs.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93–29562
Filed 11–29–93; 4:29 pm]
Billing code 3195–01–P

Presidential Documents

Proclamation 6631 of November 29, 1993

National Home Care Week, 1993 and 1994

By the President of the United States of America

A Proclamation

Home care, the oldest form of health care, traditionally has been provided by families for their loved ones for centuries. It is also a new form of health care, as modern technology has developed to the point where virtually anything available in a hospital can now be provided in the home, a secure and comforting environment.

Each day, thousands of hardworking men and women bring vital home health care services to Americans who are incapacitated by illness, age, or disability. Working in association with more that 12,000 home care agencies across the country, these dedicated professionals and volunteers form a core of caring support in our Nation's vast health care system. This week, we honor them and express our deepest appreciation for their many contributions.

The administrators and employees of home health care agencies work closely with government agencies and with concerned private organizations, including hospitals, to give patients a welcome alternative to institutionalized care. Home health care treats the patient and his or her family members, attending to needs both physical and spiritual, in an atmosphere that fosters dignity, healing, and independence. Secure in familiar surroundings, patients find comfort in the support of their loved ones, while receiving efficient, effective health services, free from institutional constraints.

For the nine to eleven million Americans of all ages who currently require long-term care, there is a unanimity of voice in the choosing of home health care as an alternative to hospital stays. At a time when we are striving to reform our health care system and make it work for all of our citizens, home care is an excellent and cost-effective method.

Thousands of nurses, therapists, social workers, home health aides, and others provide our Nation's home care services, and each of them deserves our recognition and heartfelt thanks. With understanding and compassion, they do more than prolong life—they enhance its quality. For this priceless gift, we honor their service.

To increase public awareness of and support for our Nation's home care agencies, the Congress, by Senate Joint Resolution 55, has designated the weeks beginning November 28, 1993, and November 27, 1994, as "National Home Care Week" and has authorized and requested the President to issue a proclamation in observance of these weeks.

NOW, THEREFORE, I, WILLIAM J. CLINTON, President of the United States of America, do hereby proclaim the weeks of November 28 through December 4, 1993, and November 27 through December 3, 1994, as National Home Care Week. I encourage all Americans to observe these weeks with appropriate programs and activities.

IN WITNESS WHEREOF, I have hereunto set my hand this twenty-ninth day of November, in the year of our Lord nineteen hundred and ninety-three, and of the Independence of the United States of America the two hundred and eighteenth.

William J. Clinton

[FR Doc. 93-29563
Filed 11-29-93; 4:28 pm]
Billing code 3195-01-P

Presidential Documents

Executive Order 12883 of November 29, 1993

Delegating a Federal Pay Administration Authority

By the authority vested in me as President by the Constitution and the laws of the United States of America, including section 5304 of title 5, United States Code, it is hereby ordered as follows:

Section 1. Section 2 of Executive Order No. 12748 is amended by adding at the end thereof a new subsection (c) to read as follows:

"(c) The President's Pay Agent, as designated in subsection (a), is hereby authorized and designated to exercise the authorities of the President under section 5304(h) concerning the extension of locality-based comparability payments to certain categories of positions not otherwise covered."

Sec. 2. This order shall be effective immediately.

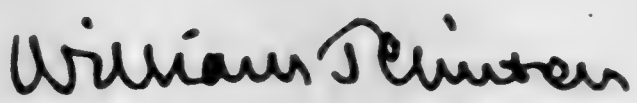

THE WHITE HOUSE,
November 29, 1993.

[FR Doc. 93–29564
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Rules and Regulations

Federal Register
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Wednesday, December 1, 1993

This section of the FEDERAL REGISTER contains regulatory documents having general applicability and legal effect, most of which are keyed to and codified in the Code of Federal Regulations, which is published under 50 titles pursuant to 44 U.S.C. 1510.

The Code of Federal Regulations is sold by the Superintendent of Documents. Prices of new books are listed in the first FEDERAL REGISTER issue of each week.

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1097, 1098, 1099, 1106, 1108, 1124, 1126, 1131, 1135 and 1138

[Docket No. AO–14–A65–RO2, etc; DA–91–013]

Milk in the New England and Certain Other Marketing Areas; Order Amending the Orders

7 CFR part	Marketing area	AO Nos.
1001	New England	AO–14–A65–R02
1002	New York-New Jersey.	AO–71–A80–R02
1004	Middle Atlantic	AO–160–A68–R02
1005	Carolina	AO–388–A5–R02
1007	Georgia	AO–366–A34–R02
1011	Tennessee Valley	AO–251–A36–R02
1030	Chicago Regional	AO–361–A29–R02
1033	Ohio Valley	AO–166–A62–R02
1036	Eastern Ohio-Western Pennsylvania.	AO–179–A57–R02
1040	Southern Michigan	AO–225–A43–R02
1044	Michigan Upper Peninsula.	AO–299–A27–R02
1046	Louisville-Lexington-Evansville.	AO–123–A63–R02
1049	Indiana	AO–319–A40–R02
1065	Nebraska-Western Iowa.	AO–86–A48–R02
1068	Upper Midwest	AO–178–A46–R02
1079	Iowa	AO–295–A42–R02
1093	Alabama-West Florida.	AO–386–A12–R02
1094	New Orleans-Mississippi.	AO–103–A54–R02
1096	Greater Louisiana	AO–257–A41–R02
1097	Memphis, Tennessee[1].	AO–219–A47–R02
1098	Nashville, Tennessee[1].	AO–184–A56–R02
1099	Paducah, Kentucky.	AO–183–A46–R02
1106	Southwest Plains	AO–210–A53–R02
1108	Central Arkansas	AO–243–A44–R02
1124	Pacific Northwest	AO–368–A20–R02
1126	Texas	AO–231–A61–R02
1131	Central Arizona	AO–271–A30–R02
1135	Southwestern Idaho-Eastern Oregon.	AO–380–A10–R02
1138	New Mexico-West Texas[2].	AO–335–A37–R02

[1] The Memphis, Tennessee and Nashville, Tennessee orders were terminated, effective July 31, 1993.

[2] The Lubbock-Plainview, Texas Panhandle and Rio Grande Valley orders were merged to form the New Mexico-West Texas order, effective December 1, 1991.

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This action amends 27 Federal milk marketing orders based on evidence received at three separate hearing sessions. The amended orders will provide a special III–A class and price for producer milk that is used to produce nonfat dry milk (NFDM). The Class III–A prices under these orders will be established from product formulas that are based on NFDM prices for the month. Class III–A pricing, which currently is effective on an interim basis in three of the markets where the changes were urgently needed, will be unchanged. The Western powder price will be used in the III–A formulas for the three far-western markets and the Central States NFDM price will be used in the pricing formulas for the other markets.

Each of the amended orders was approved by producers who were eligible to have their milk pooled during the representative month. Referenda were conducted in six markets and cooperative associations were polled in the other 21 markets.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: John F. Borovies, Chief, Order Formulation Branch, USDA/AMS/Dairy Division, room 2968, South Building, P.O. Box 96456, Washington, DC 20090–6456, (202) 720–6274.

SUPPLEMENTARY INFORMATION: This administrative action is governed by the provisions of Sections 556 and 557 of Title 5 of the United States Code and, therefore, is excluded from the requirements of Executive Order 12866.

The Regulatory Flexibility Act (5 U.S.C. 601–612) requires the Agency to examine the impact of a final rule on small entities. Pursuant to 5 U.S.C. 605(b), the Administrator of the Agricultural Marketing Service has certified that this action will not have a significant economic impact on a substantial number of small entities. The amended orders will facilitate the orderly disposition of the reserve milk supplies of the affected markets by handlers regulated under such orders.

This final rule has been reviewed under Executive Order 12778, Civil Justice Reform. This action is not intended to have a retroactive effect. This action will not preempt any state or local laws, regulations, or policies, unless they present an irreconcilable conflict with the rule.

The Agricultural Marketing Agreement Act of 1937 as amended, (7 U.S.C. 601–674) (the Act), provides that administrative proceedings must be exhausted before parties may file suit in court. Under Section 608c(15)(A) of the Act, any handler subject to an order may file with the Secretary a petition stating that the order, any provision of the order, or any obligation imposed in connection with the order is not in accordance with the law and requesting a modification of the order or to be exempted from the order. A handler is afforded the opportunity for a hearing on the petition. After a hearing the Secretary would rule on the petition. The Act provides that the district court of the United States in any district in which the handler is an inhabitant, or has its principal place of business, has jurisdiction in equity to review the Secretary's ruling on the petition, provided a bill in equity is filed not

later than 20 days after the date of the entry of the ruling.

Prior documents in this proceeding:

Notice of Hearing: Issued July 16, 1991; published July 22, 1991 (56 FR 33395).

Tentative Decision: Issued December 10, 1991; published December 19, 1991 (56 FR 65801) and corrected December 23, 1991 (56 FR 66482).

Revised Tentative Decision: Issued December 24, 1991; published January 2, 1992 (57 FR 15).

Interim Amendment of Orders: Issued December 27, 1991; published January 3, 1992 (57 FR 173).

Notice of Reopened Hearing: Issued August 11, 1992; published August 14, 1992 (57 FR 36609).

Notice of Reopened Hearing: Issued September 22, 1992; published September 25, 1992 (57 FR 44344).

Revised Tentative Decision: Issued October 20, 1992; published October 27, 1992 (57 FR 48575).

Interim Amendment of Orders: Issued October 29, 1992; published November 3, 1992 (57 FR 49633).

Recommended Decision: Issued May 11, 1993; published May 19, 1993 (58 FR 29133).

Extension of Time to File Exceptions: Issued June 11, 1993; published June 17, 1993 (58 FR 33347).

Final Decision: Issued October 20, 1993; published October 29, 1993 (58 FR 58112).

Findings and Determinations

The findings and determinations hereinafter set forth supplement those that were made when each of the aforesaid orders was first issued and when it was amended. The previous findings and determinations are hereby ratified and confirmed, except where they may conflict with those set forth herein.

The following findings are hereby made with respect to each of the aforesaid orders:

(a) Findings upon the basis of the hearing record. Pursuant to the provisions of the Agricultural Marketing Agreement Act of 1937, as amended (7 U.S.C. 601–674), and the applicable rules of practice and procedure governing the formulation of marketing agreements and marketing orders (7 CFR part 900), a public hearing was held upon certain proposed amendments to the tentative marketing agreements and to the orders regulating the handling of milk in the respective marketing areas.

Upon the basis of the evidence introduced at such hearing and the record thereof, for each of the specified orders, it is found that:

(1) The said order as hereby amended, and all of the terms and conditions thereof, will tend to effectuate the declared policy of the Act;

(2) The parity prices of milk, as determined pursuant to section 2 of the Act, are not reasonable in view of the price of feeds, available supplies of feeds, and other economic conditions which affect market supply and demand for milk in the said marketing area; and the minimum prices specified in the order as hereby amended, are such prices as will reflect the aforesaid factors, insure a sufficient quantity of pure and wholesome milk, and be in the public interest; and

(3) The said order as hereby amended regulates the handling of milk in the same manner as, and is applicable only to persons in the respective classes of industrial or commercial activity specified in, a marketing agreement upon which a hearing has been held.

(b) *Additional findings.* It is necessary in the public interest to make this order amending each of the specified orders effective on December 1, 1993. Any delay beyond that date would tend to disrupt the orderly marketing of milk in the aforesaid marketing areas.

The provisions of this order amending the aforesaid orders are known to handlers. The recommended decision of the Acting Administrator was issued May 11, 1993, and the decision of the Assistant Secretary containing all amendment provisions of this order was issued October 20, 1993. The changes effected by this order will not require extensive preparation or substantial alteration in the method of operation for handlers. In view of the foregoing, it is hereby found and determined that good cause exists for making this order amending each of the specified orders effective on December 1, 1993, and that it would be contrary to the public interest to delay the effective date of this amending order for 30 days after its publication in the **Federal Register**. (Sec. 553(d), Administrative Procedure Act, 5 U.S.C. 551–559)

(c) Determinations. It is hereby determined that:

(1) The refusal or failure of handlers (excluding cooperative associations specified in Sec. 8c (9) of the Act) of more than 50 percent of the milk, which is marketed within each of the specified marketing areas, to sign a proposed marketing agreement, tends to prevent the effectuation of the declared policy of the Act;

(2) The issuance of this order amending each of the specified orders is the only practical means pursuant to the declared policy of the Act of advancing the interests of producers as defined in the respective orders as hereby amended;

(3) The issuance of the order amending each of the specified orders, except the orders regulating the handling of milk in the Michigan Upper Peninsula and Paducah, Kentucky marketing areas, is favored by at least two-thirds of the producers who were engaged in the production of milk for sale in the respective marketing areas;

(4) The issuance of the order amending the order regulating the handling of milk in the Michigan Upper Peninsula marketing area, is favored by at least three-fourths of the producers who during the determined representative period were engaged in the production of milk for sale in the marketing area; and

(5) The issuance of the order amending the order regulating the handling of milk in the Paducah, Kentucky marketing area, is favored by producers who during the determined representative period accounted for two-thirds of the production of milk for sale in the marketing area.

List of Subjects in 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1135, 1138

Milk marketing orders.

Order Relative to Handling

It is therefore ordered, That on and after the effective date hereof, the handling of milk in each of the aforesaid marketing areas shall be in conformity to and in compliance with the terms and conditions of each of the orders as amended, and as hereby further amended, as follows:

1. The authority citation for 7 CFR Parts 1001, 1002, 1004, 1005, 1007, 1011, 1030, 1033, 1036, 1040, 1044, 1046, 1049, 1065, 1068, 1079, 1093, 1094, 1096, 1099, 1106, 1108, 1124, 1126, 1131, 1135, 1138, continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended: 7 U.S.C. 601–674.

PART 1001—MILK IN THE NEW ENGLAND MARKETING AREA

1. Section 1001.40 (c)(1)(iii) and (d) are republished.

§ 1001.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1001.43(f) is republished.

§ 1001.43 General classification rules.

* * * * *

(f) Class III-A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III-A shall be determined by prorating receipts from pool sources to Class III-A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

* * * * *

3. Section 1001.50 is amended by revising paragraph (d) to read as follows:

§ 1001.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1001.54 is republished.

§ 1001.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month and the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1001.50(b).

PART 1002—MILK IN THE NEW YORK-NEW JERSEY MARKETING AREA

1. Section 1002.40 is amended by adding paragraph (d) to read as follows:

§ 1002.40 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant or unit.

2. Section 1002.41 is amended by revising paragraph (d)(1)(iii) and adding paragraph (e) to read as follows:

§ 1002.41 Classes of utilization.

* * * * *

(d) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(e) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

3. Section 1002.50 is amended by adding paragraph (e) to read as follows:

§ 1002.50 Class prices.

* * * * *

(e) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (d) of this section for the applicable month.

§ 1002.52 [Amended]

4. Section 1002.52 is amended by changing the table heading in column C in paragraph (c) from "Classes II and III" to "Classes II, III and III–A."

5. Section 1002.56 is amended by revising paragraph (a)(2) to read as follows:

§ 1002.56 Announcement of class prices and butterfat differential.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month applicable at the 201–210 mile zone and at the 1–10 mile zone;

* * * * *

PART 1004—MILK IN THE MIDDLE ATLANTIC MARKETING AREA

1. Section 1004.40 (c)(1)(iii) and (d) are republished.

§ 1004.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1004.43(d) is republished.

§ 1004.43 General classification rules.

* * * * *

(d) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

* * * * *

3. Section 1004.50 is amended by revising the center heading preceding the section and paragraph (g) to read as follows:

Class and Component Prices

§ 1004.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent, and subject to the adjustments set forth in paragraph (c) of this section for the applicable month.

4. Section 1004.53(a)(2) is republished.

§ 1004.53 Announcement of class prices and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month; and

* * * * *

5. and 6. Section 1004.60(k) is republished.

§ 1004.60 Handler's value of milk for computing uniform prices.

* * * * *

(k) For producer-milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

* * * * *

PART 1005—MILK IN THE CAROLINA MARKETING AREA

1. Section 1005.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows.

§ 1005.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1005.43 is amended by adding paragraph (e) to read as follows:

§ 1005.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1005.50 is amended by adding paragraph (d) to read as follows:

§ 1005.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1005.54 is revised to read as follows:

§ 1005.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1005.50(b).

PART 1007—MILK IN THE GEORGIA MARKETING AREA

1. Section 1007.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1007.40 Classes of utilization.

* * * * *

(c) * * *
(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1007.43 is amended by adding paragraph (e) to read as follows:

§ 1007.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1007.50 is amended by adding paragraph (d) to read as follows:

§ 1007.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1007.53 is revised to read as follows:

§ 1007.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1007.50(b).

PART 1011—MILK IN THE TENNESSEE VALLEY MARKETING AREA

1. Section 1011.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1011.40 Classes of utilization.

* * * * *

(c) * * *
(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1011.43 is amended by adding paragraph (e) to read as follows:

§ 1011.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1011.50 is amended by adding paragraph (d) to read as follows:

§ 1011.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1011.53 is revised to read as follows:

§ 1011.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1011.50(b).

PART 1030—MILK IN THE CHICAGO REGIONAL MARKETING AREA

1. Section 1030.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1030.40 Classes of utilization.

* * * * *

(c) * * *
(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1030.43 is amended by adding paragraph (e) to read as follows:

§ 1030.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1030.50 is amended by adding paragraph (d) to read as follows:

§ 1030.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1030.53 is revised to read as follows:

§ 1030.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth

day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1030.50(b).

PART 1033—MILK IN THE OHIO VALLEY MARKETING AREA

1. Section 1033.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1033.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1033.43 is amended by adding paragraph (f) to read as follows:

§ 1033.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1033.50 is amended by adding paragraph (g) to read as follows:

§ 1033.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent.

4. Section 1033.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1033.53 Announcement of class and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month;

* * * * *

5. Section 1033.60 is amended by adding paragraph (m) to read as follows:

§ 1033.60 Computation of handlers' obligations to pool.

* * * * *

(m) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

PART 1036—MILK IN THE EASTERN OHIO-WESTERN PENNSYLVANIA MARKETING AREA

1. Section 1036.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1036.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1036.43 is amended by adding paragraph (e) to read as follows:

§ 1036.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1036.50 is amended by adding paragraph (g) to read as follows:

§ 1036.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent.

4. Section 1036.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1036.53 Announcement of class and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month;

* * * * *

5. Section 1036.60 is amended by adding paragraph (m) to read as follows:

§ 1036.60 Computation of handlers' obligations to pool.

* * * * *

(m) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

PART 1040—MILK IN THE SOUTHERN MICHIGAN MARKETING AREA

1. Section 1040.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1040.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1040.43 is amended by adding paragraph (f) to read as follows:

§ 1040.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1040.50 is amended by adding paragraph (d) to read as follows:

§ 1040.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1040.53 is revised to read as follows:

§ 1040.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1040.50(b).

PART 1044—MILK IN THE MICHIGAN UPPER PENINSULA MARKETING AREA

1. Section 1044.22 is amended by revising paragraph (i)(1)(iii) to read as follows:

§ 1044.22 Additional duties of the market administrator.

* * * * *

(i) * * *

(1) * * *

(iii) The Class III and Class III–A prices for the preceding month; and

* * * * *

2. Section 1044.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1044.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

3. Section 1044.43 is amended by adding paragraph (f) to read as follows:

§ 1044.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

4. Section 1044.50 is amended by adding paragraph (d) to read as follows:

§ 1044.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

PART 1046—MILK IN THE LOUISVILLE-LEXINGTON-EVANSVILLE MARKETING AREA

1. Section 1046.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1046.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1046.43 is amended by adding paragraph (e) to read as follows:

§ 1046.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1046.50 is amended by adding paragraph (d) to read as follows:

§ 1046.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1046.53 is revised to read as follows:

§ 1046.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1046.50(b).

PART 1049—MILK IN THE INDIANA MARKETING AREA

1. Section 1049.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1049.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1049.43 is amended by adding paragraph (e) to read as follows:

§ 1049.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1049.50 is amended by adding paragraph (g) to read as follows:

§ 1049.50 Class and component prices.

* * * * *

(g) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential value per hundredweight of 3.5 percent milk and rounded to the nearest cent.

4. Section 1049.53 is amended by revising paragraph (a)(2) to read as follows:

§ 1049.53 Announcement of class and component prices.

* * * * *

(a) * * *

(2) The Class III and Class III–A prices for the preceding month;

* * * * *

5. Section 1049.60 is amended by adding paragraph (l) to read as follows:

§ 1049.60 Computation of handlers' obligations to pool.

* * * * *

(l) For producer milk in Class III–A, add or subtract as appropriate an amount per hundredweight that the Class III–A price is more or less, respectively, than the Class III price.

PART 1065—MILK IN THE NEBRASKA-WESTERN IOWA MARKETING AREA

1. Section 1065.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1065.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1065.43 is amended by adding paragraph (e) to read as follows:

§ 1065.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1065.50 is amended by adding paragraph (d) to read as follows:

§ 1065.50 Class prices.

* * * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1065.53 is revised to read as follows:

§ 1065.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1065.50(b).

PART 1068—MILK IN THE UPPER MIDWEST MARKETING AREA

1. Section 1068.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1068.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1068.43 is amended by adding paragraph (f) to read as follows:

§ 1068.43 General classification rules.

* * * * *

(f) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1068.50 is amended by adding paragraph (d) to read as follows:

§ 1068.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1068.53 is revised to read as follows:

§ 1068.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1068.50(b).

PART 1079—MILK IN THE IOWA MARKETING AREA

1. Section 1079.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1079.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1079.43 is amended by adding paragraph (e) to read as follows:

§ 1079.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1079.50 is amended by adding paragraph (d) to read as follows:

§ 1079.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1079.53 is revised to read as follows:

§ 1079.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1079.50(b).

PART 1093—MILK IN THE ALABAMA-WEST FLORIDA MARKETING AREA

1. Section 1093.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1093.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1093.43 is amended by adding paragraph (e) to read as follows:

§ 1093.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1093.50 is amended by adding paragraph (d) to read as follows:

§ 1093.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1093.53 is revised to read as follows:

§ 1093.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1093.50(b).

PART 1094—MILK IN THE NEW ORLEANS-MISSISSIPPI MARKETING AREA

1. Section 1094.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1094.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1094.43 is amended by adding paragraph (e) to read as follows:

§ 1094.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1094.50 is amended by adding paragraph (d) to read as follows:

§ 1094.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1094.53 is revised to read as follows:

§ 1094.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1096—MILK IN THE GREATER LOUISIANA MARKETING AREA

1. Section 1096.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1096.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1096.43 is amended by adding paragraph (e) to read as follows:

§ 1096.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1096.50 is amended by adding paragraph (d) to read as follows:

§ 1096.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1096.53 is revised to read as follows:

§ 1096.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1099—MILK IN THE PADUCAH, KENTUCKY MARKETING AREA

1. Section 1099.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1099.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1099.43 is amended by adding paragraph (e) to read as follows:

§ 1099.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1099.50 is amended by adding paragraph (d) to read as follows:

§ 1099.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1099.53 is revised to read as follows:

§ 1099.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1094.50(b).

PART 1106—MILK IN THE SOUTHWEST PLAINS MARKETING AREA

1. Section 1106.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1106.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1106.43 is amended by adding paragraph (e) to read as follows:

§ 1106.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1106.50 is amended by adding paragraph (d) to read as follows:

§ 1106.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1106.53 is revised to read as follows:

§ 1106.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1106.50(b).

PART 1108—MILK IN THE CENTRAL ARKANSAS MARKETING AREA

1. Section 1108.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1108.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1108.43 is amended by adding paragraph (e) to read as follows:

§ 1108.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1108.50 is amended by adding paragraph (d) to read as follows:

§ 1108.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1108.53 is revised to read as follows:

§ 1108.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1108.50(b).

PART 1124—MILK IN THE PACIFIC NORTHWEST MARKETING AREA

1. Section 1124.40 (c)(1)(iii) and (d) are republished.

§ 1124.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1124.43 (e) is republished.

§ 1124.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III use at the plant.

* * * * *

3. Section 1124.50, paragraph (c) is republished and paragraph (d) is revised to read as follows:

§ 1124.50 Class prices.

* * * * *

(c) *Class III price.* The Class III price shall be the basic formula price for the month.

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1124.53 is republished.

§ 1124.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1124.50(b).

PART 1126—MILK IN THE TEXAS MARKETING AREA

1. Section 1126.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1126.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1126.43 is amended by adding paragraph (e) to read as follows:

§ 1126.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1126.50 is amended by adding paragraph (d) to read as follows:

§ 1126.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9

an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1126.53 is revised to read as follows:

§ 1126.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1126.50(b).

PART 1131—MILK IN THE CENTRAL ARIZONA MARKETING AREA

1. Section 1131.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1131.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) Class III–A milk. Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1131.43 is amended by adding paragraph (e) to read as follows:

§ 1131.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1131.50 is amended by adding paragraph (d) to read as follows:

§ 1131.50 Class prices.

* * * * *

(d) Class III–A price. The Class III–A price for the month shall be the average Western nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1131.53 is revised to read as follows:

§ 1131.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1131.50(b).

PART 1135—MILK IN THE SOUTHWESTERN IDAHO-EASTERN OREGON MARKETING AREA

1. Section 1135.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1135.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1135.43 is amended by adding paragraph (e) to read as follows:

§ 1135.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1135.50 is amended by adding paragraph (d) to read as follows:

§ 1135.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Western nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1135.53 is revised to read as follows:

§ 1135.53 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1135.50(b).

PART 1138—MILK IN THE NEW MEXICO–WEST TEXAS MARKETING AREA

1. Section 1138.40 is amended by revising paragraph (c)(1)(iii) and adding paragraph (d) to read as follows:

§ 1138.40 Classes of utilization.

* * * * *

(c) * * *

(1) * * *

(iii) Any milk product in dry form, except nonfat dry milk;

* * * * *

(d) *Class III–A milk.* Class III–A milk shall be all skim milk and butterfat used to produce nonfat dry milk.

2. Section 1138.43 is amended by adding paragraph (e) to read as follows:

§ 1138.43 General classification rules.

* * * * *

(e) Class III–A milk shall be allocated in combination with Class III milk and the quantity of producer milk eligible to be priced in Class III–A shall be determined by prorating receipts from pool sources to Class III–A use on the basis of the quantity of total receipts of bulk fluid milk products allocated to Class III milk at the plant.

3. Section 1138.50 is amended by adding paragraph (d) to read as follows:

§ 1138.50 Class prices.

* * * * *

(d) *Class III–A price.* The Class III–A price for the month shall be the average Central States nonfat dry milk price for the month, as reported by the Department, less 12.5 cents, times an amount computed by subtracting from 9 an amount calculated by dividing .4 by such nonfat dry milk price, plus the butterfat differential times 35 and rounded to the nearest cent.

4. Section 1138.54 is revised to read as follows:

§ 1138.54 Announcement of class prices.

The market administrator shall announce publicly on or before the fifth day of each month the Class I price for the following month, the Class III and Class III–A prices for the preceding month, and on or before the 15th day of each month the Class II price for the following month computed pursuant to § 1138.50(b).

Dated: November 23, 1993.

Eugene Branstool,

Assistant Secretary, Marketing and Inspection Services.

[FR Doc. 93–29266 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–02–P

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Airspace Docket No. 93–AGL–9]

Proposed Establishment of Class E Airspace; Mt. Sterling, IL

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action establishes Class E airspace near Mt. Sterling, IL to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL. Controlled airspace extending upward from 700 to 1200 feet above ground level (AGL) is needed to contain aircraft executing the approach. The intended effect of this action is to provide segregation of aircraft using instrument approach procedures in instrument conditions from other aircraft operating in visual weather conditions.

EFFECTIVE DATE: 0901 u.t.c., January 6, 1994.

FOR FURTHER INFORMATION CONTACT: Robert Frink, Air Traffic Division, System Management Branch, AGL–530, Federal Aviation Administration, 2300 East Devon Avenue, Des Plaines, Illinois 60018, telephone (708) 294–7568.

SUPPLEMENTARY INFORMATION:

History

On Tuesday, July 6, 1993, the FAA proposed to amend part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish Class E airspace near Mt. Sterling, IL, to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL (58 FR 36157). The proposal was to add controlled airspace extending from 700 feet to 1200 feet AGL to contain Instrument Flight Rules (IFR) operations in controlled airspace during portions of the terminal operation and while transiting between the enroute and terminal environments. Interested parties were invited to participate in this rulemaking proceeding by submitting written comments on the proposal to the FAA. On August 17, 1993, one organization, the One Hundred Eighty Third (183D) Fighter Group of the Illinois Air National Guard (ANG) objected based on their perceived adverse impact that the establishment would have on mission needs/requirements for low altitude training, especially within the Pruitt Military Operations Area (MOA). After consulting with Air Force Liaison in Kansas City, MO, we received on October 5, 1993, a letter advising that, in the interest of cooperating with other Illinois aviation interests, the IL ANG is willing to wait and assess the frequency and severity of mission degradation after the procedure is implemented. Further, the IL ANG is willing to work with this airport if it is determined that there is an adverse impact to either military or civil operation. Based on this letter from the Department of the Air Force, Headquarters Air Force Flight Standards Agency, the Federal Aviation Agency is proceeding with a Final rule.

Airspace Reclassification, in effect as of September 16, 1993, has discontinued the use of the term "transition area" and has replaced it with the designation "Class E airspace". Other than that change in terminology, this amendment is the same as that proposed in the notice. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace designations are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document will be published subsequently in the Order.

The Rule

This amendment to part 71 of the Federal Aviation Regulations establishes Class E airspace at Mt. Sterling, IL, to accommodate a new Very High Frequency Omnidirectional Range Station-Airport (VOR–A) instrument approach procedure to Mt. Sterling Municipal Airport, Mt. Sterling, IL. Controlled airspace extending from 700 to 1200 feet AGL is needed to contain aircraft executing the approach.

Aeronautical maps and charts will reflect the defined area which will enable pilots to circumnavigate the area in order to comply with applicable visual flight rule requirements.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. It, therefore—(1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

AGL IL E5 Mt. Sterling, IL [New]

Mt. Sterling Municipal Airport, IL (lat. 39°59'18"N, long. 90°48'15"W)

Quincy VORTAC (lat. 39°50'53"N, long. 91°16'44"W)

That airspace extending upwards from 700 ft. above the surface within a 5-mile radius of Mt. Sterling Municipal Airport, IL, and within 2.5 miles each side of the Quincy (UNI) VORTAC 069 radial, extending from the 5-mile radius area to 6-miles west of the airport.

* * * * *

John P. Cuprisin,

Manager, Air Traffic Division.

[FR Doc. 93–29289 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–M

DEPARTMENT OF DEFENSE

Office of the Secretary

32 CFR Part 95

Gifts from Foreign Governments

AGENCY: Office of the Secretary of Defense, DoD.

ACTION: Final rule.

SUMMARY: The Foreign Gifts and Decorations Act of 1966 (5 U.S.C. 7342) requires that the minimal value requirement for reporting gifts received by U.S. employees from foreign governments be redefined every three years based on changes in the consumer price index. This administrative amendment is published to reflect the changes.

EFFECTIVE DATE: January 1, 1993.

ADDRESSES: L.M. Bynum, Correspondence and Directives Directorate, 1155 Defense Pentagon, Washington, DC 20301–1155.

SUPPLEMENTARY INFORMATION:

List of Subjects in 32 CFR Part 95

Foreign relations, Government employees, Government property Accordingly, 32 CFR part 95 is amended as follows:

PART 95—GIFTS FROM FOREIGN GOVERNMENTS

1. The authority citation for part 95 continues to read as follows:

Authority: 10 U.S.C. 113.

§ 95.3 [Amended]

Appendix A to part 95 [Amended]

2. Section 95.3 the definition of *Minimal value*, and Appendix A to Part 95, section 4, are amended by revising "$180" to read "$225"

Dated: November 24, 1993.

L.M. Bynum,

Alternate OSD Federal Register Liaison Officer, Department of Defense.

[FR Doc. 93–29282 Filed 11–30–93; 8:45 am]

BILLING CODE 5000–04–M

COPYRIGHT ROYALTY TRIBUNAL

37 CFR Part 304

Cost of Living Adjustment for Performance of Musical Compositions by Public Broadcasting Entities Licensed to Colleges and Universities

AGENCY: Copyright Royalty Tribunal.

ACTION: Final rule.

SUMMARY: The Copyright Royalty Tribunal announces a cost of living adjustment of 2.6% in the royalty rates to be paid by public broadcasting entities licensed to colleges, universities or other nonprofit educational institutions which are not affiliated with National Public Radio, for the use of copyrighted published nondramatic musical compositions. The cost of living adjustment is an annual adjustment required by the Tribunal's rules.

EFFECTIVE DATE: The effective date is January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Chairman, Copyright Royalty Tribunal, 1825 Connecticut Avenue, NW., suite 918, Washington, DC 20009 (202–606–4400).

SUPPLEMENTARY INFORMATION: On December 22, 1992, the Copyright Royalty Tribunal published in the **Federal Register** (57 FR 60957) final rules governing the terms and rates of copyright royalty payments with respect to certain uses by public broadcasting entities of published nondramatic musical works and published pictorial, graphic and sculptural works. It was determined in that proceeding that the royalty rate to be paid by public broadcasting entities licensed to colleges, universities and other nonprofit educational institutions which are not affiliated with National Public Radio for the use of copyrighted published nondramatic musical compositions would be adjusted each year according to changes in the Consumer Price Index. 37 CFR 304.10.

The change in the cost of living as determined by the Consumer Price Index (all consumers, all items) during the period from the most recent Index published prior to December 1, 1992 to the most recent Index published prior to December 1, 1993 was 2.6% (1992's figure was 142.0; 1993's figure was 145.7, based on 1982–1984 equalling 100). Rounding off to the nearest dollar, the Tribunal announces an adjustment in the royalty rate to apply to the use of musical compositions in the repertory of ASCAP and BMI of $200, each, and $47 for the use of musical compositions in the repertory of SESAC.

List of Subjects in 37 CFR Part 304

Copyrights, Music, Radio, Television.

PART 304—[AMENDED]

1. The authority citation for part 304 continues to read as follows:

Authority: 17 U.S.C. 118 and 801 (1976).

2. 37 CFR 304.5(c) is amended by revising paragraphs (c)(1) through (c)(4).

§ 304.5 Performance of musical compositions by public broadcasting entities licensed to colleges and universities.

* * * * *

(c) * * *

(1) For all such compositions in the repertory of ASCAP annually: $200.

(2) For all such compositions in the repertory of BMI annually: $200.

(3) For all such compositions in the repertory of SESAC annually: $47.

(4) For the performance of any other such compositions: $1.

* * * * *

Dated: November 22, 1993.

Cindy Daub,

Chairman.

[FR Doc. 93–29329 Filed 11–30–93; 8:45 am]

BILLING CODE 1410–09–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 180

[PP 0E3906/R2019; FRL–4648–8]

RIN 2070–AB78

Pesticide Tolerance for Dimethoate

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: This document establishes a tolerance for residues of the insecticide dimethoate in or on the raw agricultural commodity Brussels sprouts. This regulation to establish a maximum permissible level for residues of the insecticide in or on the commodity was requested in a petition submitted by the Interregional Research Project No. 4 (IR-4).

EFFECTIVE DATE: This regulation becomes effective December 1, 1993.

ADDRESSES: Written objections and hearing requests, identified by the document control number, [PP 0E3906/R2019], may be submitted to: Hearing Clerk (1900), Environmental Protection Agency, Rm. M3708, 401 M St., SW., Washington, DC 20460. A copy of any objections and hearing requests filed with the Hearing Clerk should be identified by the document control number and submitted to: Public Response and Program Resources Branch, Field Operations Division (7506C), Office of Pesticide Programs, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. In person, bring copy of objections and hearing request to: Rm. 1132, CM #2, 1921 Jefferson Davis Hwy., Arlington, VA 22202. Fees accompanying objections shall be labeled "Tolerance Petition Fees" and forwarded to: EPA Headquarters Accounting Operations Branch, OPP (Tolerance Fees), P.O. Box 360277M, Pittsburgh, PA 15251.

FOR FURTHER INFORMATION CONTACT: By mail: Hoyt L. Jamerson, Emergency Response and Minor Use Section (7505W), Registration Division, Environmental Protection Agency, 401 M St., SW., Washington, DC 20460. Office location and telephone number:

6th Floor, Crystal Station #1, 2800 Jefferson Davis Hwy., Arlington, VA 22202, (703)-308-8783.

SUPPLEMENTARY INFORMATION: In the **Federal Register** of September 1, 1993 (58 FR 46148), EPA issued a proposed rule that gave notice that the Interregional Research Project No. 4 (IR-4), New Jersey Agricultural Experiment Station, P.O. Box 231, Rutgers University, New Brunswick, NJ 08903, had submitted pesticide petition (PP) 0E3906 to EPA on behalf of the Agricultural Experiment Station of California. The petition requested that the Administrator, pursuant to section 408(e) of the Federal Food, Drug, and Cosmetic Act (21 U.S.C. 346a(e)), propose the establishment of a tolerance for residues of the pesticide dimethoate (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorodithioate) including its oxygen analog (*O,O*-dimethyl *S*-(*N*-methylcarbamoylmethyl) phosphorothioate) in or on the raw agricultural commodity Brussels sprouts at 5.0 parts per million (ppm). The petitioner proposed that this use of dimethoate be limited to California based on the geographical representation of the residue data submitted. Additional residue data will be required to expand the area of usage. Persons seeking geographically broader registration should contact the Agency's registration Division at the address provided above.

There were no comments or requests for referral to an advisory committee received in response to the proposed rule.

The data submitted in the petition and other relevant material have been evaluated and discussed in the proposed rule. Based on the data and information considered, the Agency concludes that the tolerance will protect the public health. Therefore, the tolerance is established as set forth below.

Any person adversely affected by this regulation may, within 30 days after publication of this document in the **Federal Register**, file written objections and/or request a hearing with the Hearing Clerk, at the address given above (40 CFR 178.20). A copy of the objections and/or hearing requests filed with the Hearing Clerk should be submitted to the OPP docket for this rulemaking. The objections submitted must specify the provisions of the regulation deemed objectionable and the grounds for the objections (40 CFR 178.25). Each objection must be accompanied by the fee prescribed by 40 CFR 180.33(i). If a hearing is requested, the objections must include a statement of the factual issue(s) on which a hearing is requested, the requestor's contentions on such issues, and a summary of any evidence relied upon by the objector (40 CFR 178.27). A request for a hearing will be granted if the Administrator determines that the material submitted shows the following: There is a genuine and substantial issue of fact; there is a reasonable possibility that available evidence identified by the requestor would, if established, resolve one or more of such issues in favor of the requestor, taking into account uncontested claims or facts to the contrary; and resolution of the factual issue(s) in the manner sought by the requestor would be adequate to justify the action requested (40 CFR 178.32).

The Office of Management and Budget has exempted this rule from the requirements of Executive Order 12866.

Pursuant to the requirements of the Regulatory Flexibility Act (Pub. L. 96-354, 94 Stat. 1164, 5 U.S.C. 601-612), the Administrator has determined that regulations establishing new tolerances or raising tolerance levels or establishing exemptions from tolerance requirements do not have a significant economic impact on a substantial number of small entities. A certification statement to this effect was published in the **Federal Register** of May 4, 1981 (46 FR 24950).

List of Subjects in 40 CFR Part 180

Environmental protection, Administrative practice and procedure, Agricultural commodities, Pesticides and pests, Reporting and recordkeeping requirements.

Dated: November 4, 1993.

Susan H. Wayland,

Acting Director, Office of Pesticide Programs.

Therefore, 40 CFR part 180 is amended as follows:

PART 180—[AMENDED]

1. The authority citation for part 180 continues to read as follows:

Authority: 21 U.S.C. 346a and 371.

2. In § 180.204, by amending paragraph (b) in the table therein by adding and alphabetically inserting the following commodity, to read as follows:

§ 180.204 Dimethoate, including its oxygen analog; tolerances for residues.

* * * * *

(b) * * *

Commodity	Parts per million
Brussels sprouts	5.0

* * * * * * *

[FR Doc. 93-29017 Filed 11-30-93; 8:45 am]

BILLING CODE 6560-50-F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93-195; RM-8274]

Radio Broadcasting Services; Los Molinos, CA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots FM Channel 269A to Los Molinos, California, as that community's first local aural transmission service, in response to a petition for rule making filed by Brett E. Miller. See 58 FR 39493, July 23, 1993. Coordinates used for Channel 269A at Los Molinos are 40-01-12 and 122-05-42. With this action, the proceeding is terminated.

DATES: Effective January 10, 1994. The window period for filing applications on Channel 269A at Los Molinos, California, will open on January 11, 1994, and close on February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634-6530. Questions related to the window application filing process for Channel 269A at Los Molinos, California, should be addressed to the Audio Services Division, FM Branch, Mass Media Bureau, (202) 632-0394.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93-195, adopted November 1, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under California, is amended by adding Los Molinos, Channel 269A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29395 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–223; RM–8294]

Radio Broadcasting Services; Indian River Shores, FL

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 246A to Indian River Shores, Florida, as that community's first local aural transmission service, at the request of deHaro Communications, Inc. See 58 FR 42713, August 11, 1993. Channel 246A can be allotted to Indian River Shores in compliance with the Commission's minimum distance separation requirements without a site restriction. The coordinates for Channel 246A at Indian River Shores are North Latitude 27–41–10 and West Longitude 80–22–10. With this action, this proceeding is terminated.

DATES: Effective January 10, 1994. The window period for filing applications for Channel 246A at Indian River Shores, Florida, will open on January 11, 1994, and close on February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–223, adopted November 1, 1993, and released November 16, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street NW., room 246, or 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Part 73 of title 47 of the Code of Federal Regulations is amended as follows:

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Florida, is amended by adding Indian River Shores, Channel 246A.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29396 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–137; RM–8227]

Radio Broadcasting Services; Hastings, NE

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Allen's of Hastings Radio, allots Channel 233C2 to Hastings, Nebraska, as its second local FM service. See 58 FR 32340, June 9, 1993. Channel 233C2 can be allotted to Hastings in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.4 kilometers (4.0 miles) northwest, at coordinates North Latitude 40–38–23 and West Longitude 98–25–25, to avoid a short-spacing to Station KJCK–FM, Channel 233C1, Junction City, Kansas. The proposal must also conform with the technical requirements of Section 73.1030(c)(1)–(5) of the Commission's Rules regarding protection to the Commission's monitoring station at Grand Island, Nebraska. With this action, this proceeding is terminated.

DATES: Effective January 10, 1994. The window period for filing applications will open on January 11, 1994, and close on February 10, 1994.

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 93–137, adopted November 1, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, Inc., (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Nebraska, is amended by adding Channel 233C2 at Hastings.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29397 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 541

[Docket No. T84–01; Notice 32]

RIN 2127–AE93

Final Listing of High Theft Lines for 1994 Model Year; Motor Vehicle Theft Prevention Standard

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: This final rule reports the results of NHTSA's determinations of high theft car lines that are subject to the parts marking requirements of the motor vehicle theft prevention standard, and of high theft car lines that are exempted from parts marking, for Model Year 1994. This action is pursuant to the Motor Vehicle Information and Cost Savings Act, which provides that NHTSA select high theft lines, with the

agreement of the manufacturer, if possible. This final listing is intended to inform the public, particularly law enforcement groups, of the car lines that are subject to the parts marking requirements of the theft prevention standard for Model Year 1994.

EFFECTIVE DATE: The amendment made by this final rule is effective December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street, SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION: The Federal Motor Vehicle Theft Prevention Standard, 49 CFR part 541, sets forth requirements for inscribing or affixing identification numbers onto covered original equipment major parts, and the replacement parts for those original equipment parts, on all vehicles in lines selected as high theft lines.

Section 603(a)(2) of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2023(a)(2)) (hereinafter "the Cost Savings Act") specifies that NHTSA shall select the high theft lines, with the agreement of the manufacturer, if possible. Section 603(d) of the Cost Savings Act (15 U.S.C. 2023(d)) provides that once a line has been designated as a high theft line, it remains subject to the theft prevention standard unless that line is exempted under section 605 of the Cost Savings Act (15 U.S.C. 2025). Section 605 provides that a manufacturer may petition to have a high theft line exempted from the requirements of part 541, if the line is equipped as standard equipment with an antitheft device. The exemption is granted if NHTSA determines that the antitheft device is likely to be as effective as compliance with part 541 in reducing and deterring motor vehicle thefts.

The agency annually publishes the names of the lines which were previously listed as high theft lines and of the lines which are being listed for the first time and will be subject to the theft prevention standard beginning with Model Year 1994. It also identifies those car lines that are exempted from the theft prevention standard for the 1994 model year because of standard equipment antitheft devices.

For Model Year 1994, the agency selected seven new car lines, in accordance with procedures published in 49 CFR part 542, as likely to be high theft lines. The newly selected lines are: The Dodge Colt, Dodge Shadow, Eagle Summit, Plymouth Colt, and Plymouth Sundance, Mitsubishi Mirage, and Subaru Legacy. In addition to these seven lines, the list of high theft lines includes all those lines that were selected as high theft lines and listed for prior model years.

The list of exempted lines includes six high theft lines exempted by the agency, beginning in Model Year 1994, from the parts marking requirements of part 541. Four of these car lines are exempted in full from part 541, and two are exempted in part, with the manufacturer required to mark only the engines and transmissions of these vehicles. The four car lines exempted in full are the Mazda Amati 800 and 1000, the Saab 900, and the Volkswagen Jetta III. The two car lines exempted in part are both General Motors lines: The Cadillac Eldorado, and Cadillac Seville. One car line, the General Motors Cadillac Sixty Special, previously exempted in part from parts marking, has been renamed for Model year 1994 as the Cadillac Concours. The updated list reflects this name change.

Lastly, in this final rule, the agency removes from appendix A the Reliant SS1, and removes from appendix A–I the Volvo 480ES. NHTSA removes these two lines because, although the manufacturer of each line informed NHTSA of its intent to introduce its line into commerce in the United States, neither the SS1 nor the 480ES have been introduced in the United States. Reliant intended to introduce the SS1 in Model Year 1987, and Volvo intended to introduce the 480ES in Model Year 1988. If the manufacturer of either line should introduce its line into the United States, the line will be added to its respective list.

Notice and Comment; Effective Date

The car lines listed as being subject to the parts marking standard have previously been selected as high theft lines in accordance with the procedures of 49 CFR part 542 and section 603 of the Cost Savings Act. Under these procedures, manufacturers evaluate new car lines to conclude whether those new lines are likely to be high theft lines. Manufacturers submit these evaluations and conclusions to the agency, which makes an independent evaluation, and, on a preliminary basis, determines whether the new line should be subject to parts marking. NHTSA informs the manufacturer in writing of its evaluations and determinations, together with the factual information considered by the agency in making them. The manufacturer may request the agency to reconsider these preliminary determinations. Within 60 days of the receipt of the request, NHTSA makes its final determination. NHTSA informs the manufacturer by letter of these determinations and its response to the request for reconsideration. If there is no request for reconsideration, the agency's determination becomes final 45 days after sending the letter with the preliminary determination. Each of the new car lines on the high theft list is the subject of a prior final determination.

Similary, the car lines listed as being exempt from the standard have previously been exempted in accordance with the procedures of 49 CFR part 543 and section 605 of the Cost Savings Act.

Therefore, NHTSA finds for good cause that notice and opportunity for comment on these listings are unnecessary. Further, public comment on the listings of selections and exemptions is not contemplated by title VI, and is unnecessary since the selections and exemptions have previously been made in accordance with the statutory criteria and procedure.

For the same reasons, since this revised listing only informs the public of previous agency actions and does not impose any additional obligations on any party, NHTSA finds for good cause that the amendment made by this notice should be effective as soon as it is published in the **Federal Register**.

Regulatory Impacts

1. Costs and Other Impacts

NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation's regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. As already noted, the selections in this final rule have previously been made in accordance with the provisions of the Cost Savings Act, and the manufacturers of the selected lines have already been informed that those lines are subject to the requirements of part 541 for Model Year 1994. Further, this listing does not actually exempt lines from the requirements of part 541; it only informs the general public of all such previously granted exemptions. Since the only purpose of this final listing is to inform the public of prior agency action for Model Year 1994, a full regulatory evaluation has not been prepared.

2. Regulatory Flexibility Act

The agency has also considered the effects of this listing under the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. As noted above, the effect of this final rule

is simply to inform the public of those lines that are subject to the requirements of part 541 for Model Year 1994. The agency believes that listing of this information will not have any economic impact on small entities.

3. Environmental Impacts

In accordance with the National Environmental Policy Act of 1969, the agency has considered the environmental impacts of this rule, and determined that it will not have any significant impact on the quality of the human environment.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that this final rule does not have sufficient Federalism implications to warrant the preparation of a Federalism Assessment.

5. Civil Justice Reform

This final rule does not have a retroactive effect and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act (15 U.S.C. 2030) provides that judicial review of this rule may be obtained pursuant to section 504 of the Cost Savings Act (15 U.S.C. 2004). The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 541

Administrative practice and procedure, Labeling, Motor vehicles, Reporting and recordkeeping requirements.

PART 541—[AMENDED]

In consideration of the foregoing, 49 CFR part 541 is amended as follows:

1. The authority citation for part 541 continues to read as follows:

Authority: 15 U.S.C. 2021–2024 and 2026; delegation of authority at 49 CFR 1.50.

2. In part 541, appendix A, appendix A–I, and appendix A–II are revised to read as follows:

APPENDIX A.—LINES SUBJECT TO THE REQUIREMENTS OF THIS STANDARD

Manufacturer	Subject line
Alfa Romeo	Milano 161.
	Fiat 164.
BMW	3 Car Line.
	5 Car Line.
	6 Car Line.
Chrysler	Chrysler Executive Sedan/Limousine.
	Chrysler Fifth Avenue/Newport.
	Chrysler Laser.
	Chrysler LeBaron/Town & Country.
	Chrysler LeBaron GTS.
	Chrysler's TC.
	Chrysler New Yorker Fifth Avenue.
	Dodge Aries.
	Dodge Colt.[1]
	Dodge Daytona.
	Dodge Diplomat.
	Dodge Lancer.
	Dodge Shadow.[1]
	Dodge 600.
	Dodge Stealth.
	Eagle Summit.[1]
	Eagle Talon.
	Plymouth Caravelle.
	Plymouth Colt.[1]
	Plymouth Laser.
	Plymouth Gran Fury.
	Plymouth Reliant.
	Plymouth Sundance.[1]
Consulier	Consulier GTP.
Ferrari	Mondial 8.
	308.
	328.
Ford	Ford Mustang.
	Ford Thunderbird.
	Ford Probe.
	Mercury Capri.
	Mercury Cougar.
	Lincoln Continental
	Lincoln Mark.
	Lincoln Town Car.
	Merkur Scorpio.
	Merkur XR4Ti.
General Motors	Buick Electra.
	Buick Reatta.
	Buick Regal.
	Buick Riviera.
	Chevrolet Nova.
	Chevrolet Lumina.
	Chevrolet Monte Carlo.
	Oldsmobile Cutlass Supreme.
	Oldsmobile Toronado.
	Pontiac Fiero.
	Pontiac Grand Prix.
	Geo Prizm.
	Geo Storm.
	Saturn Sports Coupe.
Isuzu	Impulse.
	Stylus.
Jaguar	XJ.
	XJ–6.
	XJ–40.
Lotus	Elan.
Maserati	Biturbo.
	Quattroporte.
	228.
Mazda	GLC.
	626.
	MX–6.
	MX–5 Miata.
	MX–3.
Mercedes-Benz	190 D.
	190 E.
	250 D–T.
	260 E.
	300 SDL.
	300 SE.
	300 SEC/500 SEC.
	300 SEL/500 SEL.
	300 TD.
	420 SEL.
	560 SEC.
	560 SEL.
	560 SL.
Mitsubishi	Cordia.
	Tredia.
	Eclipse.
	3000GT.
	Mirage.[1]
Peugeot	405.
Porsche	924S.
Subaru	XT.
	SVX.
	Legacy.[1]
Toyota	Camry.
	Celica.
	Corolla/Corolla Sport.
	MR2.
	Starlet.
Volkswagen	Audi Quattro.
	Volkswagen Cabriolet.
	Volkswagen Rabbit.
	Volkswagen Scirocco.
	Volkswagen Corrado.

[1] Car lines added beginning Model Year 1994.

APPENDIX A–I.—HIGH THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer	Exempted lines
Austin Rover	Sterling.
BMW	7 Car Line.
	8 Car Line.
Chrysler	Chrysler Conquest.
	Imperial.
General Motors	Cadillac Allante.
	Chevrolet Corvette.
Honda	Acura NS–X.
	Acura Legend.
	Acura Vigor.
Isuzu	Impulse (MYs 1987–1991).
Mazda	929.
	RX–7.
	Amati 800[1].
	Amati 1000[1].
Mercedes-Benz	124 Car Line, consisting of the following models: 300 E, 400 E, 500 E, 300 D, 300 TE, 300 CE.

APPENDIX A–I.—HIGH THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED FROM THE REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543—Continued

Manufacturer	Exempted lines
	129 Car Line, consisting of the following models: 300 SL, 500 SL, 600 SL.
Mitsubishi	Galant.
	Starion.
	Diamante.
Nissan	Maxima.
	300 ZX.
	Infiniti M30.
	Infiniti Q45.
	Infiniti J30.
Porsche	911.
	928.
	968.
Saab	900 [1].
	9000.
Toyota	Supra.
	Cressida.
	Lexus LS400.
	Lexus ES250.
	Lexus SC300.
	Lexus SC400.
Volkswagen	Audi 5000S.
	Audi 100.
	Audi 200.
	Jetta III.[1]

[1] Car lines added beginning Model Year 1994.

APPENDIX A–II.—HIGH THEFT LINES WITH ANTITHEFT DEVICES THAT ARE EXEMPTED IN PART FROM THE PARTS-MARKING REQUIREMENTS OF THIS STANDARD PURSUANT TO 49 CFR PART 543

Manufacturer-General Motors

Exempted lines	Parts marked
Chevrolet Camaro	Engine, Transmission.
Pontiac Firebird	Engine, Transmission.
Cadillac Concours [2]	Engine, Transmission.
Cadillac Eldorado [1]	Engine, Transmission.
Cadillac DeVille	Engine, Transmission.
Cadillac Seville [1]	Engine, Transmission.
Oldsmobile 98	Engine, Transmission.
Buick Park Avenue	Engine, Transmission.
Pontiac Bonneville	Engine, Transmission.
Buick LeSabre	Engine, Transmission.
Oldsmobile 88 Royale	Engine, Transmission.

[1] Car lines added beginning Model Year 1994

[2] This line was named the Fleetwood in Model Year 1992 and the Sixty Special in Model Year 1993.

Issued on: November 23, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–29223 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 544

[Docket No. 91–53; Notice 4]

RIN 2127–AE87

Insurer Reporting Requirements; List of Insurers Required To File Reports

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule.

SUMMARY: In this final rule, NHTSA publishes an updated listing of those motor vehicle insurers that are required under section 615 of the Motor Vehicle Information and Cost Savings Act to file an annual report with NHTSA. Lists of the insurers appear as appendices to agency regulations on insurer reporting requirements. Listed insurers must report each year unless and until they are exempted from reporting by the removal of their names from the listing.

DATES: Effective Date: The final rule on this subject is effective December 1, 1993.

Reporting Dates: Previously listed insurers whose names are not removed by this final rule were required to submit their reports for calendar year 1991 by October 25, 1993. Previously listed insurers whose names are removed by this notice need not submit reports for that year. Insurers newly listed in this final rule must submit their reports for that year on or before January 3, 1994.

FOR FURTHER INFORMATION CONTACT: Ms. Barbara A. Gray, Office of Market Incentives, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Ms. Gray's telephone number is (202) 366–1740.

SUPPLEMENTARY INFORMATION:

Background

Section 615 of the Motor Vehicle Information and Cost Savings Act (the Act) (15 U.S.C. 2032) requires certain motor vehicle insurers to file an annual report with NHTSA unless the agency exempts the insurer from filing such reports. The reports include information about thefts and recoveries of motor vehicles, the insurers to establish premiums for comprehensive coverage, the actions taken to insurers to reduce such premiums, and the actions taken by insurers to reduce or deter theft. Under the Act, the following insurers are subject to the reporting requirements: (1) Those issuers of motor vehicle insurance policies whose premiums account for one percent or more of the total premiums of motor vehicle insurance issued in the United States; (2) those issuers of motor vehicle insurance policies whose premiums account for ten percent or more of total premiums written within any one State; and (3) rental or leasing companies with a fleet of 20 or more vehicles not covered by theft insurance policies issued by insurers of motor vehicles, other than any governmental entity. As discussed in the following sections, the agency may, by regulation, exempt certain insurers from the reporting requirements.

A. Insurers of Passenger Motor Vehicles

Although issuers of motor vehicle insurance policies are subject to reporting requirements, section 615(a)(5) provides that the agency shall exempt small insurers from the reporting requirements if NHTSA finds that such exemptions will not significantly affect the validity or usefulness of the information collected and compiled in the reports, either nationally or on a State-by-State basis. The term "small insurer" is defined in section 615(a)(5)(C) as an insurer whose premiums account for less than 1 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States. That section also stimulates that if an insurer satisfies this definition of a "small insurer," but accounts for 10 percent or more of the total premiums for all forms of motor vehicle insurance issued by insurers within a particular State, such an insurer must report the required information about its operations in that State.

As described in the final rule establishing the requirement for insurer reports (52 FR 59, January 2, 1987), appendix A lists companies which must report based on the fact that each insurer had at least one percent of the national market for motor vehicle insurance premiums. Appendix B lists those insurers that are required to report for particular states because each insurer had a 10 percent or greater market share of motor vehicle premiums in those States. In the January 2, 1987 notice, the agency stated that these appendices will be updated annually. It has been NHTSA's practice to update the appendices based on date voluntarily provided by insurance companies to A. M. Best, and made available to the agency each spring. The agency uses the data to determine the insurers' market shares nationally and in each state.

B. Self-Insured Rental and Leasing Companies

In addition to companies that issue insurance policies, the term "insurers" is defined in section 615 of the Act to include certain self-insurers, i.e., any

person who has a fleet of 20 or more motor vehicles (other than any governmental entity) which are used primarily for rental or lease and which are not covered by theft insurance policies issued by insurers of passenger motor vehicles. (Section 615(a)(3)). Section 615(a)(4) of the Act authorizes the agency to exempt an insurer from submitting the reports, if the agency determines that:

(1) The cost of preparing and furnishing such reports is excessive in relation to the size of the business of the insurer, and

(2) The insurer's report will not significantly contribute to carrying out the purposes of title VI.

In a final rule dated June 22, 1990 (55 FR 25606), the agency in effect granted a class exemption to all companies that rent or lease fewer than 50,000 vehicles. The agency issued this exemption because it believed that reports from the largest rental and leasing companies would provide the agency with a representative sampling of the theft experience of rental and leasing companies. NHTSA concluded that reports by the many smaller rental and leasing companies do not significantly contribute to carrying out title VI, and that exempting such companies will relieve an unnecessary burden on the vast majority of the companies potentially subject to the reporting requirements. As a result of the June 1990 final rule, a new appendix C, which consists of an annually updated listing of the rental and leasing companies that are subject to the reporting requirements in part 544, was added. It has been NHTSA's practice to update appendix C based primarily on information contained in the publications Automotive Fleet Magazine and Travel Business Travel News.

Notice of Proposed Rulemaking

On April 20, 1993, NHTSA published a notice of proposed rulemaking (NPRM) to update the list of insurers in appendices A, B, and C, required to file reports. (See 58 FR 21277).

Based on 1991 calendar year A.M. Best data for market shares, NHTSA proposed that 19 companies be included in Appendix A. NHTSA proposed that one company, Hanover Insurance Companies, that was included in the previous final rule (See 57 FR 23535; June 4, 1992) be removed, and proposed that two companies not previously listed in appendix A, Motors Insurance Group of Companies and Zurich Insurance Group, be added. In addition, a company that was previously included in appendix A as Hartford Insurance Group, changed its name to ITT Hartford Insurance Group. The agency proposed to amend appendix A to reflect this name change.

Based on the 1991 calendar year A.M. Best data for market shares, NHTSA proposed that appendix B be amended to include 11 companies. Ten of the companies would report on their activities in one state, and one company would report on their activities in one state, and one company would report on its activities in two states. NHTSA proposed removal of Indiana Farm Bureau Group, which had previously reported on its activities in the State of Indiana, and proposed the addition of Arbella Mutual Insurance, to report on its activities in the State of Massachusetts, and Commerce Group, Inc, to report on its activities in the state of Massachusetts.

Based on information in Automotive Fleet Magazine and Travel Trade Business Travel News for 1989, NHTSA proposed that one rental and leasing company, Rental Concepts, Inc., be removed from appendix C. Based on information provided by that company, NHTSA also proposed that Wheels, Inc. be removed from appendix C. The agency also proposed that four additional rental and leasing companies, ARI, Inc., Enterprise Rent-A-Car, LMV Leasing, and U.S. Fleet Leasing, be included in appendix C.

Public Comments and Final Determination

In response to the NPRM, the agency received comments from seven commenters. All seven commenters were companies listed in the April 1993 NPRM. Each commenter questioned the appropriateness of its inclusion in one of the appendices.

Motors Insurance Group of Companies (MIC) wrote to request that it not be included in appendix A. As earlier stated, NHTSA's proposal to include MIC was based on market share data provided by A.M. Best. MIC wrote that A.M. Best had erroneously indicated that, in 1991, MIC wrote $1.5 billion in auto premium insurance. MIC explained that it had written $1.2 billion in all types of insurance (including fire, home, worker's compensation, motor vehicle, etc.) in 1991, out of which motor vehicle coverage was only about 47 percent, or less than $600 million. The agency notes that $600 million is less than one percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the United States in 1991. With its comments, MIC included a letter from A.M. Best, which acknowledged Best "could have done a better job" in reporting MIC's data than to include many types of MIC's warranty insurance into a broad classification named "auto warranty."

MIC's comment has cast doubt on the reliability of the A.M. Best data that NHTSA used to propose to include MIC as an insurer. The agency determines that the approximately $600 million that MIC has issued in motor vehicle insurance for 1991 is less than one percent of total U.S. premiums for all forms of motor vehicle insurance for 1991. Since, for these reasons, MIC does not meet the criteria for inclusion, NHTSA determines that MIC should not be added to appendix A.

Zurich Insurance Group also wrote to request that it not be included in appendix A. As a rationale, Zurich provided data showing that it held only .97 percent of total U.S. premiums for motor vehicle insurance for 1991. The agency agrees with Zurich that .97 percent is less than the minimum criterion of one percent of the national market share. Since Zurich does not meet the minimum criterion for inclusion, NHTSA determines that Zurich Insurance Group should not be added to appendix A.

Five other commenters, GE Capital Fleet Services, Enterprise Rent-A-Car Company, PHH Fleet America Corporation, U.S. Fleet Leasing, Inc. and Associates Leasing, Inc. asked to be excluded from appendix C because they did not self-insure at least 50,000 vehicles in their rental and/or leasing fleets. GE reported that LMV Leasing and McCullagh Leasing were purchased by and merged into Gelco Corporation. LMV and McCullagh were proposed in the April 1993 NPRM for inclusion in appendix C. Gelco Corporation (which does business as GE Capital Fleet Services) requested that GE Capital Fleet Services, McCullagh, and LMV, be exempted from inclusion in appendix C. GE Capital Fleet Services reported that it leases approximately 259,000 vehicles but self-insures fewer than 1,600.

Enterprise Rent-A-Car Company, and Associates Leasing, Inc. each stated that when it offered vehicles for rental or lease, it included as a condition of the lease or rental agreement that the lessor or renter provide its own motor vehicle insurance. Thus, Enterprise reported that it self-insures fewer than 50,000 vehicles. Associates reported that it self-insures no vehicles.

In its comments, PHH Fleet America stated that although it leases or manages over 300,000 vehicles, it self-insures only 4,300 vehicles. Similarly, U.S. Fleet Leasing, Inc. wrote that although it leases and manages over 80,000 vehicles, it self-insures fewer than 3,000.

Since neither GE Capital Fleet Services, LMV Leasing, Inc., McCullagh Leasing, Inc., Associates Leasing, Inc., Enterprise Rent-A-Car Company, PHH Fleet America Corporation, nor U.S. Fleet Leasing, Inc. self-insures more than 50,000 vehicles in its rental or leasing fleet, none of these companies meet the criteria the agency uses to determine that an insurer should be included in appendix C. Therefore, the agency determines that each of these companies should be removed from appendix C in the final rule.

In the NPRM, ARI, Inc. was inadvertently proposed for inclusion in appendix C. Since the NPRM listing of ARI, Inc. was an error, ARI, Inc. will not be listed in the final rule.

After reviewing the public comments and, as discussed above, making appropriate adjustments to appendices A, B, and C, NHTSA determines that each of the 17 insurers listed in appendix A, each of the 11 insurers listed in appendix B, and each of the 10 insurers listed in appendix C, are required to submit an insurer report under part 544. Each listed insurer must report on its experiences for calendar year 1991, and set forth the information required by 49 CFR part 544.

Effective Date

NHTSA finds for good cause that this rule should be made final effective immediately upon publication in the **Federal Register**, instead of 30 days thereafter. Section 615 of the Cost Savings Act (15 U.S.C. 2032) imposes a statutory duty on insurers to provide specified information in annual reports to NHTSA. The reports must be submitted by October 25 of each year, except as otherwise specified in this notice. This deadline makes it imperative that this regulation, making changes to the list of insurers that must submit reports, become effective as soon as possible.

Regulatory Impacts

1. Cost and Other Impacts

NHTSA has analyzed this rule and determined that it is not "significant" within the meaning of the Department of Transportation regulatory policies and procedures. The agency has also considered this notice under Executive Order 12866. This final rule implements the agency's policy of ensuring that all insurance companies that are statutorily eligible for exemption from the insurer reporting requirements are in fact exempted from those requirements. On the other hand, those companies that are not statutorily eligible for an exemption are expressly required to file reports.

NHTSA does not believe that this rule, reflecting more current data, affects the impacts described in the final regulatory evaluation prepared for part 544. Using the cost estimates in the final regulatory evaluation for part 544, the agency estimates that it will cost any company that is added to appendix A about $50,000, any company added to appendix B about $20,000, and any company added to appendix C about $5,770. In this final rule, NHTSA includes one fewer company of appendix A, adds one company to appendix B, and includes six fewer companies in appendix C, compared to the last list of insurers published in June 1992.

The agency therefore estimates that the net effect of this final rule will be a cost savings to insurers as a group of approximately $64,620.

As noted above, a full regulatory evaluation was prepared for the final rule establishing 49 CFR part 544. Interested persons may wish to examine that evaluation in connection with this rule. Copies of that evaluation have been placed in Docket No. T–86–01; Notice 2. Any interested person may obtain a copy of this evaluation by writing to NHTSA, Docket Section, room 5109, 400 Seventh Street SW., Washington, DC 20590, or by calling at (202) 366–4949.

2. Paperwork Reduction Act

The information collection requirements in this rule have been submitted to and approved by the Office of Management and Budget (OMB) pursuant to the requirements of the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*) This collection of information has been assigned OMB Control Number 2127–0547 ("Insurer Reporting Requirements") and has been approved for use through October 31, 1993. NHTSA has requested an extension of this collection of information. NHTSA's request is currently under consideration at OMB.

3. Regulatory Flexibility Act

The agency has also considered the effects of this rulemaking under the Regulatory Flexibility Act (5 U.S.C. 601 *et seq.*) I certify that the final rule will not have a significant economic impact on a substantial number of small entities. The rationale for the certification is that none of the companies on appendices A, B or C would be construed to be a small entity within the definition of the RFA. Section 615(a)(5)(C) of the Theft Act defines "small insurer" in part as any insurer whose premiums for motor vehicle insurance account for less than one percent of the total premiums within any State, account for less than 10 percent of the total premiums for all forms of motor vehicle insurance issued by insurers within the State. In addition, the agency has exempted, by rule, all "self-insured rental and leasing companies" that have fleets in excess of 50,000 vehicles.

4. Federalism

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rule does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

5. Environmental Impacts

In accordance with the National Environmental Policy Act, NHTSA has considered the environmental impacts of this rule and determined that it will not have a significant impact on the quality of the human environment.

6. Civil Justice Reform

This final rule does not have any retroactive effect, and it does not preempt any State law. Section 613 of the Motor Vehicle Information and Cost Savings Act, 15 U.S.C. 2030, provides that judicial review of this rule may be obtained pursuant to Section 504 of the Cost Savings Act, 15 U.S.C. 2004. The Cost Savings Act does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 544

Crime insurance, Insurance, Insurance companies, Motor vehicles, Reporting and recordkeeping requirements.

In consideration of the foregoing, 49 CFR part 544 is amended to read as follows:

PART 544—[AMENDED]

1. The authority citation for part 544 continues to read as follows:

Authority: 15 U.S.C. 2032; delegation of authority at 49 CFR 1.50.

2. Appendix A to part 544 is revised to read as follows:

Appendix A—Insurers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements in Each State in Which They Do Business

Aetna Life & Casualty Group
Allstate Insurance Group
American Family Group
American International Group
California State Auto Association
CNA Insurance Companies

Farmers Insurance Group
Geico Corporation Group
ITT Hartford Insurance Group (formerly Hartford Insurance Group)
Liberty Mutual Group
Nationwide Group
Progressive Group
Prudential of America Group
State Farm Group
Travelers Insurance Group
United States F & G Group
USAA Group

3. Appendix B to part 544 is revised to read as follows:

Appendix B to Part 544—Issuers of Motor Vehicle Insurance Policies Subject to the Reporting Requirements Only in Designated States

Alfa Insurance Group (Alabama)
Amica Mutual Insurance Company (Rhode Island)
Arbella Mutual Insurance (Massachusetts) [1]
Auto Club of Michigan Group (Michigan)
Commerce Group, Inc. (Massachusetts) [1]
Commercial Union Insurance Companies (Maine)
Concord Group Insurance Companies (Vermont)
Erie Insurance Group (Pennsylvania)
Kentucky Farm Bureau Group (Kentucky)
Southern Farm Bureau Casualty Group (Arkansas, Mississippi)
Tennessee Farmers Companies (Tennessee)

[1] Indicates a newly listed company which must file a report beginning with the report for calendar year 1991.

4. Appendix C to part 544 is revised to read as follows:

Appendix C to Part 544—Motor Vehicle Rental and Leasing Companies (Including Licensees and Franchisees) Subject to the Reporting Requirements of Part 544

Alamo Rent-A-Car, Inc.
American International Rent A Car Corp./ ANSA
Avis, Inc.
Budget Rent-A-Car Corporation
Dollar Rent-A-Car Systems, Inc.
Hertz Rent-A-Car Division (subsidiary of Hertz Corporation)
National Car Rental System, Inc.
Penske Truck Leasing Company
Ryder Truck Rental, Inc. (both rental and leasing operations)
U-Haul International, Inc. (subsidiary of AMERCO)

Issued on: November 23, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–29224 Filed 11–30–93; 8:45 am]

BILLING CODE 4910-59-M

49 CFR Part 571

[Docket No. 91–18; Notice 3]

RIN 2127–AF08

Federal Motor Vehicle Safety Standards; Impact Protection for the Driver From the Steering Control System

AGENCY: National Highwey Traffic Safety Administration (NHTSA), DOT.

ACTION: Final rule; response to petition for reconsideration.

SUMMARY: NHTSA published a final rule in May 1993 updating a reference in the safety standard that provides impact protection for the driver from the steering control system. NHTSA believed that this change would simply clarify how the test block would be positioned for compliance testing. However, in a petition for reconsideration, Ford Motor Co. (Ford) argued that it needed more leadtime to check its vehicles to see if this change would affect compliance of its vehicles with the safety standard. In response to this petition, this rule allows manufacturers to certify vehicles manufactured before September 1, 1996, with either the provisions of this standard as they existed before the May 1993 amendment or the provisions set forth in the May 1993 amendment.

DATES: *Effective Date:* This rule becomes effective January 3, 1994.

Petition Deadline: Any petitions for reconsideration of this rule must be received by NHTSA not later than January 3, 1994.

ADDRESSES: Any petitions for reconsideration of this rule should refer to the docket and notice number shown in the heading of this document and be submitted to: Administrator, NHTSA, 400 Seventh Street SW., Washington, DC 20590.

FOR FURTHER INFORMATION CONTACT: Mr. Clarke B. Harper, Office of Vehicle Safety Standards, NHTSA, 400 Seventh Street SW., Washington, DC 20590. Mr. Harper can be reached by telephone at (202) 366–2264.

SUPPLEMENTARY INFORMATION: Standard 203, *Impact Protection for the Driver from the Steering Control System* (49 CFR 571.203), sets forth performance requirements to protect the driver from steering assembly-related injuries in a crash. More specifically, the standard specifies an impact test in which a block simulating the human torso strikes the steering assembly at 15 miles per hour (mph). The force measured on the steering column during the impact cannot exceed the specified limit.

The impact test in Standard 203 was previously conducted in accordance with the December 1965 version of the Society of Automotive Engineers (SAE) Recommended Practice J944. During NHTSA's compliance testing, problems arose because this SAE practice did not precisely specify the positioning of the body block relative to the steering wheel rim. To alleviate these problems, NHTSA proposed on June 6, 1991, that Standard 203 be updated to use the June 1980 version of SAE Recommended Practice J944. See 56 FR 26046.

In its proposal, NHTSA noted that the updated SAE Recommended Practice more precisely defines the positioning of the body block for compliance testing. NHTSA believed that using the newer 1980 version of SAE J944 would resolve the problems that had arisen for the agency in Standard 203 compliance testing. However, the agency noted in the proposal that following the procedures in the updated SAE Recommended Practice could align the body block approximately one-fourth of an inch lower than would be the case if the body block were positioned in accordance with the older version of the SAE Recommended Practice. The agency acknowledged that this minor positioning difference might cause some vehicle manufacturers to feel obligated to conduct some recertification testing, to be certain that this minor positioning difference did not result in formerly-complying steering systems no longer complying with the standard. Accordingly, NHTSA asked manufacturers to comment on this possibility and on the likely associated costs. The only other substantive difference in the two versions of SAE Recommended Practice J944 is that the newer 1980 version permits the use of any instrumentation capable of recording the required data, while the older 1965 version requires the use of a specified load cell.

The commenters, all of whom were vehicle manufactures, supported the proposal. In its comment, General Motors specifically stated that it "agree[s] with the agency that a ¼" change in elevation of the [body block] would be unlikely to cause the failure of a previously compliant design." Volkswagen commented that the incorporation of the newer 1980 version of the SAE Recommended Practice "is long overdue." Chrysler commented that it concurred with the agency's view that the ¼ inch change in elevation of the body block should not affect compliance test results.

Based on these comments, NHTSA adopted a final rule updating the version of SAE Recommended Practice

J944 referenced in Standard 203. 58 FR 26526, May 4, 1993. The only difference between what had been proposed and what was adopted in this final rule was that the final rule allowed optional compliance with either the 1965 or 1980 version of the SAE Recommended Practice for vehicles manufactured before March 1, 1994, and required use of the 1980 version of the SAE Recommended Practice for vehicles manufactured after that date. This optional compliance period was included in the final rule "to ensure that this amendment does not impose any burdens on any party;" 58 FR 26527.

Although Ford had not commented on the proposal to make this change to Standard 203, it filed a petition for reconsideration of this rule. In this petition, Ford asserted that referring to the updated version of the SAE Recommended Practice would increase compliance burdens on manufacturers. Ford offered three primary objections to the final rule.

First, Ford argued that the reference to the updated version of the SAE Recommended Practice would substantially increase the certification burden for manufacturers. This argument was presented as follows. The 1965 version of the SAE Recommended Practice mounts the column on a test fixture for the compliance test. The 1980 version of the SAE Recommended Practice allows testing with the steering column mounted on a test fixture, in a vehicle buck, or in the actual vehicle. Ford stated that the test results would vary slightly depending on which of the three testing modes was chosen. Thus, to be sure of compliance, Ford asserted that vehicle manufacturers would now have to conduct three tests, mounting the steering column on the test fixture, on a vehicle buck, and in the actual vehicle, as opposed to the single test on the test fixture that was sufficient under the 1965 version of the SAE Recommended Practice.

NHTSA did not find this argument persuasive. It is true that test results might not be precisely identical under each of the three test modes. However, the differences would be so small as to be insignificant for purposes of compliance with the standard. This is because the testing specified in Standard 203 and SAE's Recommended Practice measures the performance of the steering column, not the performance of the test fixture surrounding the steering column. Each test mode would be good surrogate for each other.

As an illustration of the insignificance of the effects of testing under different test modes, NHTSA has conducted its Standard 203 compliance testing using vehicle bucks since 1987. During this time, Ford's petition indicates that it has done its certification testing using a test fixture. There have been no instances where steering columns that Ford certified as complying failed NHTSA's compliance testing.

Indeed, General Motors addressed the subject of minor variations to the test procedures in its comments to this rulemaking action. Commenting on the proposal to lower the body block ¼ inch relative to the wheel during the compliance test, General Motors indicated that this minor change "would be unlikely to cause the failure of a previously compliant design. We believe that the result of such a change would fall within the range of production and test variation which should be accounted for in the design of the steering system." NHTSA Docket 91–18–N01–001. NHTSA finds this reasoning equally applicable to the insignificant variations among the three test modes allowed in the updated SAE Recommended Practice. Thus, the agency does not believe the reference to the updated SAE Practice will result in the increased certification burden alleged by Ford.

Although the agency was not persuaded by Ford's assertion that this change will result in increased burdens for manufacturers, NHTSA emphasized in both the proposal and final rule that the agency did not want this rule to impose any new burdens on manufacturers. The final rule included a provision allowing optional compliance with either the old or the updated SAE practice for vehicles manufactured before March 1, 1994.

This optional compliance period was added by the agency to allow the manufacturers time to conduct whatever testing or analyses they believed necessary to assure themselves that their previously certified steering column designs could still be certified as complying with the amended requirements of Standard 203. In response to the concerns expressed in Ford's petition, the agency has decided to extend the period for optional compliance with either the old or the updated version of Standard No. 203. This rule allows vehicles manufactured before September 1, 1996, to comply with either the old or the updated version of the standard.

Second, Ford asserted that using the updated version of the SAE Recommended Practice would make the Standard 203 no longer comply with the requirement in the National Traffic and Motor Vehicle Safety Act that safety standards "be stated in objective terms." Specifically, Ford objected to the 1980 version of the SAE Recommended Practice reference to a "vehicle buck."

This objection was not persuasive. The term "vehicle buck" used in the newer version of the SAE Recommended Practice is a commonly used automotive term. If Ford is uncertain how the general concept of a "vehicle buck" would be applied in the specific context of Standard 203 compliance testing, it may consult the Vehicle Preparation section of the compliance test procedure for Standard 203, a public document that provides detailed specifications for preparing a vehicle buck for this testing.

Third, Ford objected to the reference to the newer 1980 version of the SAE Recommended Practice, because that newer version uses the term "steering control system" to describe the component being tested, instead of the term "steering wheel assembly," which had been used in the 1965 version of the SAE Recommended Practice. Ford argued that the term "steering control system" is so broad that it might include numerous components of the suspension and steering gear, whereas the term "Steering wheel assembly" includes only the energy absorbing mechanisms in the steering wheel and column. Thus, Ford argued that NHTSA had inadvertently extended the reach of Standard 203 to test additional parts. Ford stated that it is "uncertain what components the agency would include in conducting a Standard 203 compliance test."

Ford's concern is misplaced. The agency's interpretations of what parts of the steering column and wheel are subject to Standard 203 were not affected by changing the reference to the newer version of the SAE Recommended Practice. Standard 203 regulates a vehicle's "steering control system" a term that is defined in S3 of the standard to be "the basic steering mechanism and its associated trim hardware, including any portion of a steering column assembly that provides energy absorption upon impact." That definition has not been changed. Further, NHTSA interprets the 1965 and 1980 versions of the SAE Recommended Practice to refer to the same components, i.e., all the components and mounting hardware of a steering column and wheel. Other vehicle components, such as the suspension system suggested by Ford, are not covered by Standard 203. Thus, substituting the 1980 version of the SAE Recommended Practice for the 1965 version did not broaden the coverage of the standard.

Ford indicated that it was particularly concerned with the effect of the changed reference on the testing of steering columns equipped with air bags. While S2 of Standard 203 exempts vehicles from this standard if they "conform to the frontal barrier crash requirements of Standard 208 by means of other than seat belt assemblies" (i.e., an air bag), Ford correctly noted that this exemption does not apply to all vehicles equipped with air bags. For example, some vehicles equipped with air bags cannot be certified as conforming to the Standard 208 crash test without using belts. Any such vehicles would not be excluded from the provisions of Standard 203.

The changed reference in Standard 203 to the updated version of the SAE Recommended Practice did not change the scope of Standard 203's exclusion for air bag-equipped steering systems. Air bag-equipped steering systems that do not conform to Standard No. 208's frontal barrier crash test requirements without using any seat belt assemblies were subject to Standard 203's performance requirements when the standard referred to the 1965 version of the SAE Recommended Practice. See, in the agency interpretations of Standard No. 203, the June 5, 1989, letter from NHTSA's Acting Chief Counsel to a party whose name was kept confidential. Such steering systems remain subject to Standard 203's performance requirements now that the standard refers to the 1980 version of the SAE Recommended Practice.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined not to be "significant" under either. NHTSA believes that most manufacturers are already using the more recent version of the SAE test procedure for their compliance testing. Therefore, extending the effective date for the new compliance test procedure does not impose any additional costs for most manufacturers. The agency has also determined that the economic and other impacts of this rule are so minimal that a full regulatory evaluation is not required.

Regulatory Flexibility Act

NHTSA has considered the impacts of this rulemaking in accordance with the Regulatory Flexibility Act. I hereby certify that this rule will not have a significant economic impact on a substantial number of small entities. Few, if any, vehicle manufacturers are small entities within the meaning of the Act. Small organizations and small governmental units will not be affected, since updating the standard's existing test procedure will not effect the purchase price of new vehicles. Accordingly, the agency has not prepared a regulatory flexibility analysis.

National Environmental Policy Act

NHTSA has also analyzed this rule under the National Environmental Policy Act. The agency has determined that this update of the existing test procedure will not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

NHTSA has analyzed this rule in accordance with the principles and criteria set forth in Executive Order 12612, and has determined that it does not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This rule does not have any retroactive effect. Whenever a Federal motor vehicle safety standard is in effect, 15 U.S.C. 1392(d) provides that a State may not adopt or maintain in effect a safety standard applicable to the same aspect of performance that is not identical to the Federal standard. A procedure for seeking judicial review of rules establishing, amending, or revoking Federal motor vehicle safety standards is set forth in 15 U.S.C. 1394. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

In consideration of the foregoing, 49 CFR part 571 is amended as follows:

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

1. The authority citation for part 571 continues to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407; delegation of authority at 49 CFR 1.50.

2. Section 571.203 is amended by revising the introductory text of S5.1 to read as follows:

§ 571.203 Standard No. 203; Impact protection for the driver from the steering control system.

* * * * *

S5.1 Except as herein provided, the steering control system of any vehicle to which this standard applies shall be impacted in accordance with S5.1(a). However, the steering control system of any such vehicle manufactured on or before August 31, 1996, may be impacted in accordance with S5.1(b).

* * * * *

Issued on November 23, 1993.

Howard M. Smolkin,

Executive Director.

[FR Doc. 93–29225 Filed 11–30–93; 8:45 am]

BILLING CODE 4910-59-M

Proposed Rules

Federal Register
Vol. 58, No. 229
Wednesday, December 1, 1993

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 39

[Docket No. 93–CE–41–AD]

Airworthiness Directives: Beech Aircraft Corp. Models 1900, 1900C, and 1900D Airplanes

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes to supersede Airworthiness Directive (AD) 92–06–09, which currently requires repetitively inspecting the engine trusses for cracks on Beech Model 1900 and certain Model 1900C airplanes, repairing or replacing any cracked engine truss, and installing reinforcement doublers. That AD also provides the option of installing an engine truss of improved design as terminating action for the repetitive inspections. Since issuing that AD, the FAA has received several reports of these improved design engine trusses cracking in Area A of the engine truss. The proposed action would retain the currently required repetitive inspections, but would shorten the repetitive interval in Area A and would eliminate the inspection-terminating replacement option; and also would incorporate the Beech Models 1900C and 1900D airplanes that have engine trusses of this same type design installed at manufacturer. The actions specified by the proposed AD are intended to prevent failure of the engine truss assembly caused by a cracked engine truss.

DATES: Comments must be received on or before February 1, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–41–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106. Comments may be inspected at this location between 8 a.m. and 4 p.m., Monday through Friday, holidays excepted.

Service information that applies to the proposed AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information also may be examined at the Rules Docket at the address above.

FOR FURTHER INFORMATION CONTACT: Mr. Don Campbell, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209; Telephone (316) 946–4128; Facsimile (316) 946–4407.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report that summarizes each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–CE–41–AD." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, Central Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–CE–41–AD, room 1558, 601 E. 12th Street, Kansas City, Missouri 64106.

Discussion

AD 92–06–09, Amendment 39–8189 (57 FR 8060, March 6, 1992), currently requires repetitively inspecting the engine trusses for cracks on Beech Model 1900 and certain Model 1900C airplanes, repairing or replacing any cracked engine truss, and installing reinforcement doublers. That AD also provides the option of installing an engine truss of improved design, part number (P/N) 129–910032–79, as terminating action for the repetitive inspections. The inspections are accomplished in accordance with Beech Service Bulletin (SB) No. 2255, Revision III, dated November 1991; and the improved design engine truss installation is accomplished by incorporating Beech Kit 114–9036–1 or Beech Kit 114–9036–3.

Since AD 92–06–09 has become effective, the FAA has received a report of an improved design engine truss breaking and five others cracking on Beech Model 1900C airplanes. These improved design engine trusses, 129–910032–79, were installed on Beech Model 1900D and certain Model 1900C airplanes at manufacturer and on other Model 1900C airplanes by field retrofit; therefore AD 92–06–09 did not affect these airplanes. Even though the FAA has received no reports of trusses cracking on the Model 1900D airplanes, they are equipped with the same type design engine trusses where cracks have been reported.

In addition, Figure 1 of SB No. 2255 specifies areas that are repetitively reinspected. The FAA has received reports of small cracks forming in Area A at around 300 hours TIS after the initial inspection. These particular cracks are easier to repair when they are small, and, detecting and repairing these cracks early could prevent a more costly replacement.

Beech has revised SB No. 2255 to the Revision V level, which incorporates minor editorial corrections of Revision IV, adds the Models 1900C and 1900D airplanes that have a P/N 129–910032–79 engine truss installed, and changes the inspection schedule. This service information details procedures for inspecting the engine trusses on Beech Models 1900, 1900C, and 1900D airplanes.

After examining the circumstances and reviewing all available information related to the incidents described above, the FAA has determined that (1) the repetitive inspections required by AD 92–06–09 should be extended to the improved design engine trusses, P/N 129–910032–79, that are installed on Beech Models 1900 and 1900C airplanes; (2) the repetitive inspections for all affected airplanes should begin at 1,400 hours TIS accumulated on the engine truss and should be shortened to 100-hour TIS intervals in Area A of the engine truss; (3) these inspections should be required on the Beech Model 1900D airplanes to ensure that these trusses are not cracking; and (4) AD action should be taken in order to prevent failure of the engine truss assembly caused by a cracked engine truss.

Since an unsafe condition has been identified that is likely to exist or develop in other Beech Models 1900, 1900C, and 1900D airplanes of the same type design, the proposed AD would supersede AD 92–06–09 with a new AD that would (1) retain the repetitive inspection requirements of AD 92–06–09, extend the applicability to include Beech Models 1900C and 1900D airplanes that have a P/N 129–910032–79 engine truss installed, and shorten the repetitive inspection interval of Area A of the engine truss to 100 hours TIS; and (2) eliminate the option of terminating the repetitive inspections on the Beech Model 1900 and 1900C airplanes if an improved design engine truss, 129–910032–79, is installed. The proposed inspections would be accomplished in accordance with Beech SB No. 2255, Revision V, dated October 1993.

The FAA estimates that 279 airplanes in the U.S. registry would be affected by the proposed AD, that it would take approximately 16 workhours per airplane to accomplish the proposed inspection (one-time in all applicable areas), and that the average labor rate is approximately $55 an hour. Based on these figures, the total cost impact of the proposed AD on U.S. operators is estimated to be $245,520. AD 92–06–09 required the same inspections on 202 Beech Model 1900 and 1900C airplanes. The only additional cost impact on U.S. operators by the proposed action than that currently required by AD 92–06–09 is the proposed inspections on 77 Beech Model 1900C and 1900D airplanes or $67,760 (16 workhours × $55 × 77 airplanes). These figures assume that none of the operators of the affected airplanes have accomplished the proposed initial inspection, and do not account for the cost of repetitive inspections.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this action (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action has been placed in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES**.

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by removing AD 92–06–09, Amendment 39–8189 (57 FR 8060, March 6, 1992), and by adding the following new airworthiness directive:

Beech Aircraft Corporation: Docket No. 93–CE–41–AD. Supersedes AD 92–06–09, Amendment 39–8189.

Applicability: Models 1900, 1900C, and 1900D airplanes (all serial numbers), certificated in any category.

Compliance: Required initially upon accumulating 1,400 hours time-in-service (TIS) on the engine truss or within the next 100 hours TIS, whichever occurs later, unless already accomplished (compliance with AD 92–06–09), and thereafter as indicated.

To prevent failure of the engine truss assembly caused by a cracked engine truss, accomplish the following:

(a) Inspect the engine truss for cracks at the weld joints in accordance with the Accomplishment Instructions section of Beech Service Bulletin (SB) 2255, Revision V, dated October 1993.

(b) If any cracks are found, prior to further flight, repair the crack or replace the engine truss with one of the applicable truss part numbers specified in the following table, and reinspect the truss at the times specified in paragraph (d) of this AD:

Truss part No.	Affected models	Instructions
118–910025–37 (serviceable truss)	1900 and 1900C	Applicable maintenance manual.
18–910025–121 (serviceable truss)	1900 and 1900C	Applicable maintenance manual.
129–910032–79	1900, 1900C and 1900D	Beech Kit 114-9036–1 or 114–9036–3.

(c) If any engine truss, P/N 114–910025–1 or P/N 118–910025–1, that is not equipped with reinforcement doublers at the engine firewall attachment bosses is installed on Beech Models 1900 or 1900C airplanes, prior to further flight, install reinforcement doublers in accordance with the Accomplishment Instructions section of Beech SB No. 2255, Revision V, dated October 1993, and reinspect thereafter as indicated in paragraph (d) of this AD.

Note 1: Installation of an improved design engine truss, P/N 129–910032–79, on any of the affected airplanes does not eliminate the repetitive inspection requirement of this AD.

(d) Reinspect the areas of the engine truss that are specified in Figure 1: "Engine Truss Inspection Areas" in Beech SB No. 2255, Revision V, dated October 1993, in accordance with the following schedule:

Inspection area	Inspection interval hours TIS
A	100
B	600
C	3,000

(e) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the airplane to a location where the

requirements of this AD can be accomplished.

(f) An alternative method of compliance or adjustment of the initial or repetitive compliance times that provides an equivalent level of safety may be approved by the Manager, Wichita Aircraft Certification Office, FAA, 1801 Airport Road, Mid-Continent Airport, Wichita, Kansas 67209. The request shall be forwarded through an appropriate FAA Maintenance Inspector, who may add comments and then send it to the Manager, Wichita Aircraft Certification Office.

Note 2: Information concerning the existence of approved alternative methods of compliance with this AD, if any, may be obtained from the Wichita Aircraft Certification Office.

(g) Service information that applies to this AD may be obtained from the Beech Aircraft Corporation, P.O. Box 85, Wichita, Kansas 67201–0085. This information may also be inspected at the FAA, Central Region, Office of the Assistant Chief Counsel, room 1558, 601 E. 12th Street, Kansas City, Missouri.

(h) This amendment supersedes AD 92–06–09, Amendment 39–8189.

Issued in Kansas City, Missouri, on November 22, 1993.

Barry D. Clements,

Manager, Small Airplane Directorate, Aircraft Certification Service.

[FR Doc. 93–29243 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–U

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14 CFR Part 39

[Docket No. 93–ANE–57]

Airworthiness Directives; International Aero Engines AG Model V2500–A1 Engines

AGENCY: Federal Aviation Administration, DOT.

ACTION: Notice of proposed rulemaking (NPRM).

SUMMARY: This document proposes the adoption of a new airworthiness directive (AD) that is applicable to International Aero Engines AG Model V2500–A1 engines. This proposal would require the installation of damping wires and anti-fret coating on rotor blades. This proposal is prompted by reports of seven stage 7 and 8 high pressure compressor (HPC) blade failures and subsequent engine inflight shutdowns. The actions specified by the proposed AD are intended to prevent HPC blade failures, which could result in engine inflight shutdowns.

DATES: Comments must be received by January 3, 1994.

ADDRESSES: Submit comments in triplicate to the Federal Aviation Administration (FAA), New England Region, Office of the Assistant Chief Counsel, Attn: Rules Docket No. 93–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299. Comments may be inspected at this location between 8 a.m. and 4:30 p.m., Monday through Friday, except Federal holidays.

The service information referenced in the proposed rule may be obtained from International Aero Engines (IAE) AG, Corporate Center II, 628 Hebron Avenue, Glastonbury, CT 06033–2595. This information may be examined at the FAA, New England Region, Office of the Assistant Chief Counsel, 12 New England Executive Park, Burlington, MA.

FOR FURTHER INFORMATION CONTACT: Marc Bouthillier, Aerospace Engineer, Engine Certification Office, FAA, Engine and Propeller Directorate, 12 New England Executive Park, Burlington, MA 01803–5299; telephone (617) 238–7135, fax (617) 238–7199.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested persons are invited to participate in the making of the proposed rule by submitting such written data, views, or arguments as they may desire. Communications should identify the Rules Docket number and be submitted in triplicate to the address specified above. All communications received on or before the closing date for comments, specified above, will be considered before taking action on the proposed rule. The proposals contained in this notice may be changed in light of the comments received.

Comments are specifically invited on the overall regulatory, economic, environmental, and energy aspects of the proposed rule. All comments submitted will be available, both before and after the closing date for comments, in the Rules Docket for examination by interested persons. A report summarizing each FAA-public contact concerned with the substance of this proposal will be filed in the Rules Docket.

Commenters wishing the FAA to acknowledge receipt of their comments submitted in response to this notice must submit a self-addressed, stamped postcard on which the following statement is made: "Comments to Docket No. 93–ANE–57." The postcard will be date stamped and returned to the commenter.

Availability of NPRMs

Any person may obtain a copy of this NPRM by submitting a request to the FAA, New England Region, Office of the Assistant Chief Counsel, Attention: Rules Docket No. 93–ANE–57, 12 New England Executive Park, Burlington, MA 01803–5299.

Discussion

The Federal Aviation Administration (FAA) received reports of seven occurrences of high pressure compressor (HPC) stage 7 and 8 blade failures on International Aero Engines AG (IAE) Model V2500–A1 engines. Each failure subsequently resulted in an engine inflight shutdown (IFSD). A suspect population of engines with a high failure rate of stage 7 and 8 blades has been identified. In order to prevent HPC blade failures and a resultant engine IFSD for this cause, a means was found to reduce the vibratory stresses by introducing damping wires at stages 7 and 8 rotor blades and an anti-fret coating to stages 6, 7, and 8 blade dovetail roots. Mechanical rig, strain gauge, and endurance testing successfully demonstrated the damping effect of the wires and the improvement gained by application of the anti-fret coating. This condition, if not corrected, could result in HPC blade failures resulting in an engine IFSD.

The FAA has reviewed and approved the technical contents of IAE Service Bulletin (SB) V2500–ENG–72–0161, Revision 3, dated October 14, 1993, that describes procedures for the modification of HPC disks and blades by the installation of damping wires and an anti-fret coating.

Since an unsafe condition has been identified that is likely to exist or develop on other products of this same type design, the proposed AD would require the installation of damping wires and an anti-fret coating to HPC disks and blades. A compliance end-date of September 30, 1994, is proposed to ensure timely compliance. Based upon engine shop visit rates, a compliance end-date of September 30, 1994, will ensure timely compliance while minimizing the number of forced engine removals. The actions would be required to be accomplished in accordance with the service bulletin described previously.

There are approximately 204 IAE Model V2500–A1 engines of the affected design in the worldwide fleet. The FAA estimates that 19 engines installed in aircraft of U.S. registry would be affected by this proposed AD, that it would take approximately 120 work hours per engine to accomplish the proposed actions, and that the average labor rate is $55 per work hour. Required parts would cost approximately $57,990 per engine. Based on these figures, the total cost

impact of the proposed AD on U.S. operators is estimated to be $1,227,210.

The regulations proposed herein would not have substantial direct effects on the States, on the relationship between the national government and the States, or on the distribution of power and responsibilities among the various levels of government. Therefore, in accordance with Executive Order 12612, it is determined that this proposal would not have sufficient federalism implications to warrant the preparation of a Federalism Assessment.

For the reasons discussed above, I certify that this proposed regulation (1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under the DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) if promulgated, will not have a significant economic impact, positive or negative, on a substantial number of small entities under the criteria of the Regulatory Flexibility Act. A copy of the draft regulatory evaluation prepared for this action is contained in the Rules Docket. A copy of it may be obtained by contacting the Rules Docket at the location provided under the caption **ADDRESSES.**

List of Subjects in 14 CFR Part 39

Air transportation, Aircraft, Aviation safety, Safety.

The Proposed Amendment

Accordingly, pursuant to the authority delegated to me by the Administrator, the Federal Aviation Administration proposes to amend 14 CFR part 39 of the Federal Aviation Regulations as follows:

PART 39—AIRWORTHINESS DIRECTIVES

1. The authority citation for part 39 continues to read as follows:

Authority: 49 U.S.C. App. 1354(a), 1421 and 1423; 49 U.S.C. 106(g); and 14 CFR 11.89.

§ 39.13 [Amended]

2. Section 39.13 is amended by adding the following new airworthiness directive:

International Aero Engines AG: Docket No. 93–ANE–57.

Applicability: International Aero Engines AG (IAE) Model V2500–A1 engines, engine serial numbers V0122 through V0322, except V0312 and V0314, installed on but not limited to Airbus A320 series aircraft.

Compliance: Required as indicated, unless accomplished previously.

To prevent high pressure compressor (HPC) stage 7 and 8 rotor blade failures, accomplish the following:

(a) Install damping wires and anti-fret coating in accordance with IAE Service Bulletin No. V2500–ENG–72–0161, Revision 3, dated October 14, 1993, at the next shop visit, or by September 30, 1994, whichever occurs first.

(b) A shop visit is defined as induction of an engine into a shop for the conduct of maintenance.

(c) An alternative method of compliance or adjustment of the compliance time that provides an acceptable level of safety may be used if approved by the Manager, Engine Certification Office. The request should be forwarded through an appropriate FAA Principal Maintenance Inspector, who may add comments and then send it to the Manager, Engine Certification Office.

Note: Information concerning the existence of approved alternative methods of compliance with this airworthiness directive, if any, may be obtained from the Engine Certification Office.

(d) Special flight permits may be issued in accordance with FAR 21.197 and 21.199 to operate the aircraft to a location where the requirements of this AD can be accomplished.

Issued in Burlington, Massachusetts, on November 19, 1993.

Mark C. Fulmer,

Acting Manager, Engine and Propeller Directorate, Aircraft Certification Service.

[FR Doc. 93–29375 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–P

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14 CFR Part 71

[Airspace Docket No. 93–ASW–35]

Proposed Establishment of Class E Airspace: Gonzales, LA

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to establish Class E airspace extending upward from 700 feet above ground level (AGL) at Louisiana Regional Airport. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed at Louisiana Regional Airport, and controlled airspace extending from 700 feet above ground level (AGL) is needed for aircraft executing the approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending from 700 feet or more AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Louisiana Regional Airport in Gonzales, LA.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–ASW–35, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Forth Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic, environmental, and energy-related aspects of the proposal.

Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption **ADDRESSES.** Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement:

"Comments to Airspace Docket No. 93–ASW–35." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue

Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Manager, System Management Branch, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of Advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to establish controlled airspace extending upward from 700 feet above ground level at Louisiana Regional Airport in Gonzales, LA. A Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been developed for Louisiana Regional Airport. Controlled airspace extending from 700 feet above ground level (AGL) is needed for instrument flight rule (IFR) operations at the airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area" and airspace extending upward from 700 feet or more above ground level is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Louisiana Regional Airport.

The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas for airports extending from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005 Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW LA E5 Gonzales, LA [New]

Louisiana Regional (latitude 30°10'17" N., longitude 90°56'25" W.)

That airspace extending upward from 700 feet above the surface within a 6.5-mile radius of the Louisiana Regional Airport.

* * * * *

Issued in Fort Worth, TX on November 10, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93–29296 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–13–M

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14 CFR Part 71

[Airspace Docket No. 93–ASW–50]

Proposed Modification of Class E Airspace: Dallas/Fort Worth, TX

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed rulemaking.

SUMMARY: This notice proposes to modify the Class E airspace at Dallas/Fort Worth, TX. An amendment to the Very High Frequency Omnidirectional Range/Distance Measuring Equipment (VOR/DME) standard instrument approach procedure (SIAP) has been implemented at Cleburne Municipal Airport, TX. Controlled airspace extending upward from 700 feet above ground level (AGL) is needed for aircraft executing the new VOR/DME–A approach. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area." Designated airspace extending upward from 700 feet AGL will use the term "Class E airspace" for general controlled airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Cleburne, TX.

DATES: Comments must be received on or before January 10, 1994.

ADDRESSES: Send comments on the proposal in triplicate to Manager, System Management Branch, Air Traffic Division, Southwest Region, Docket No. 93–AWS–50, Department of Transportation, Federal Aviation Administration, Forth Worth, TX 76 193–0530.

The official docket may be examined in the office of the Assistant Chief Counsel, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX, between 9 a.m. and 3 p.m., Monday through Friday, except Federal holidays. An informal docket may also be examined during normal business hours at the System Management Branch, Air Traffic Division, Southwest Region, Federal Aviation Administration, 4400 Blue Mound Road, Fort Worth, TX.

FOR FURTHER INFORMATION CONTACT: Joe Chaney, System Management Branch, Department of Transportation, Federal Aviation Administration, Fort Worth, TX 76 193–0530; telephone: 817–624–5531.

SUPPLEMENTARY INFORMATION:

Comments Invited

Interested parties are invited to participate in this proposed rulemaking by submitting such written data, views, or arguments as they may desire. Comments that provide the factual basis supporting the views and suggestions presented are particularly helpful in developing reasoned regulatory decisions on the proposal. Comments are specifically invited on the overall regulatory, aeronautical, economic,

environmental, and energy-related aspects of the proposal. Communications should identify the airspace docket number and be submitted in triplicate to the address listed under the caption "ADDRESSES." Commenters wishing the FAA to acknowledge receipt of their comments on this notice must submit, with those comments, a self-addressed, stamped, postcard containing the following statement: "Comments to Airspace Docket No. 93–ASW–50." The postcard will be date and time stamped and returned to the commenter. All communications received on or before the specified closing date for comments will be considered before taking action on the proposed rule. The proposal contained in this notice may be changed in the light of comments received. All comments submitted will be available for examination in the office of the Assistant Chief Counsel, 4400 Blue Mound Road, Fort Worth, TX, both before and after the closing date for comments. A report summarizing each substantive public contact with FAA personnel concerned with this rulemaking will be filed in the docket.

Availability of NPRM's

Any person may obtain a copy of this notice of proposed rulemaking (NPRM) by submitting a request to the Federal Aviation Administration, System Management Branch, Department of Transportation, Fort Worth, TX 76 193–0530. Communications must identify the notice number of this NPRM. Persons interested in being placed on a mailing list for future NPRM's should also request a copy of advisory Circular No. 11–2A, which describes the application procedure.

The Proposal

The FAA is considering an amendment to part 71 of the Federal Aviation Regulations (14 CFR part 71) to modify Class E airspace at Dallas/Fort Worth, TX. An amendment to the VOR/DME–A standard instrument approach procedure (SIAP) serving the Cleburne Airport has necessitated the need to amend the area for all instrument flight rules (IFR) operations at Cleburne Municipal Airport. Airspace reclassification, effective September 16, 1993, has discontinued the use of the term "transition area," and airspace extending upward from 700 AGL is now Class E airspace. The intended effect of this proposal is to provide adequate Class E airspace for aircraft executing the SIAP's at Cleburne, TX. The coordinates for this airspace docket are based on North American Datum 83. Class E airspace areas extending upward from 700 feet or more above ground level are published in Paragraph 6005 of FAA Order 7400.9A dated June 17, 1993, and effective September 16, 1993, which is incorporated by reference in 14 CFR 71.1 (58 FR 36298, July 6, 1993). The Class E airspace designation listed in this document would be published subsequently in the Order.

The FAA has determined that this proposed regulation only involves an established body of technical regulations that need frequent and routine amendments to keep them operationally current. It, therefore—(1) is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under DOT Regulatory Policies and Procedures (44 FR 11034, February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by references, Navigation (air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR part 71 as follows:

PART 71—[AMENDED]

1. The authority citation for 14 CFR part 71 continues to read as follows:

Authority: 49 U.S.C. app. 1348(a), 1354(a), 1510; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389; 49 U.S.C. 106(g); 14 CFR 11.69.

§ 71.1 [Amended]

2. The incorporation by reference in 13 CFR 71.1 of the Federal Aviation Administration Order 7400.9A, Airspace Designations and Reporting Points, dated June 17, 1993, and effective September 16, 1993, is amended as follows:

Paragraph 6005: Class E airspace areas extending upward from 700 feet or more above the surface of the earth

* * * * *

ASW TX E5 Dallas/Fort Worth, TX [Modify]

Dallas/Fort Worth Regional Airport, TX
(lat. 32°53'47"N., long. 97°02'29"W.)
McKinney Municipal Airport, TX
(lat. 33°10'49"N., long. 96°35'26"° W.)
Rockwall Municipal Airport, TX
(lat. 32°55'50"N, long. 96°26'08" W.)
Blue Ridge VORTAC
(lat. 33°17'00"N., long. 96°21'54"W.)
Mesquite, Phil L. Hudson Municipal Airport, TX
(lat. 32°44'54"N., long. 96°31'50"W.)
Mesquite RBN
(lat. 32°48'32"N., long. 96°31'44"W.)
Phil L. Hudson ILS Localizer
(lat. 32°44'21"N., long. 96°31'50"W.)
Lancaster Airport, TX
(lat. 32°34'45"N., long. 96°43'09"W.)
Lancaster RBN
(lat. 32°34'39"N., long. 96°43'18"W.)
Dallas/Fort Worth VORTAC
(lat. 32°51'57"N., long 97°01'41"W.)
Fort Worth Spinks Airport, TX
(lat. 32°33'51"N., long. 97°18'35"W.)
Cleburne Muncipal Airport
(lat. 32°21'17"N., long. 97°26'03"W.)
Bourland Field, TX
(lat. 32°34'47"N., long. 97°35'34"W.)
Acton VORTAX
Lat. 32°26'05"N., long. 97°39'50"W.)
Granbury Municipal Airport, TX
(lat. 32°26'40"N., long 97°49'01"W.)
Weatherford, Parker County Airport, TX
(lat. 32°44'46"N., long. 97°40'57"W.)
Bridgeport Municipal Airport, TX
(lat. 33°10'28"N., long. 97°49'42"W.)
Bridgeport VORTAC
(lat. 33°14'16"N., long. 97°45'59"W.)
Decatur Municipal Airport, TX
(lat. 33°15'25"N., long 97°34'54"W.)

That airspace extending upward from 700 feet above the surface within a 30-mile radius of Dallas/Fort Worth International Airport and within a 6.5-mile radius of McKinney Municipal Airport and within a 6.3-mile radius of Rockwall Municipal Airport and within 1.6 miles each side of the 190° radial of the Blue Ridge VORTAC extending from the 6.3-mile radius to 10.8 miles north of the airport and within a 6.5-mile radius of Phil L. Hudson Airport and within 8 miles east and 4 miles west of the 001° bearing from the Mesquite RBN extending from the 6.5-mile radius to 19.7 miles north of the airport and within 1.7 miles each side of Phil L. Hudson ILS Localizer south course extending from the 6.5-mile radius to 11.1 miles south of the airport and within a 6.5-mile radius of the Lancaster Airport and within 8 miles west and 4 miles east of the 129° bearing from the Lancaster RBN extending from the 6.5-mile radius to 16 miles southeast of the RBN and within 8 miles northeast and 4 miles southwest of the 144° radial of the Dallas/Fort Worth VORTAC extending from the 30-mile radius of Dallas/Fort Worth International Airport to 35 miles southeast of the VORTAC and within a 6.5-mile radius of Fort Worth Spinks Airport and within 8 miles east and 4 miles west of the 178° bearing from the airport extending from the 6.5-mile radius to 21 miles south of the airport and within a 6.9-mile radius of Cleburne Municipal Airport and within 3.6 miles each side of the 112° radial of the Acton VORTAC extending from the 6.9-mile radius of the Cleburne Municipal Airport to 12.2 miles northwest of the airport and within a 6.5-mile radius of Bourland Field and within a 6.3-mile radius of Granbury Municipal Airport and within a 6.3-mile radius of Parker County Airport and within 8 miles east and 4 miles west of the 357° radial of the Acton VORTAC extending from

the 6.3-mile radius to 21.4 miles south of the airport and within a 6.3-mile radius of Bridgeport Municipal Airport and within 1.6 miles each side of the 220° and 040° radials of the Bridgeport VORTAC extending from the 6.3-mile radius to 10.6 miles northeast of the airport and within a 6.3-mile radius of Decatur Municipal Airport and within 1.5 miles each side of the 083° radial of the Bridgeport VORTAC extending from the 6.3-mile radius to 9.2 miles west of the airport.

* * * * *

Issued in Fort Worth, TX, on November 8, 1993.

Larry L. Craig,

Manager, Air Traffic Division, Southwest Region.

[FR Doc. 93-29295 Filed 11-30-93; 8:45 am]

BILLING CODE 4910-13-M

CONSUMER PRODUCT SAFETY COMMISSION

16 CFR Part 1303

Termination of Regulatory Investigation; Lead in Paint

AGENCY: Consumer Product Safety Commission.

ACTION: Termination of regulatory investigation.

SUMMARY: The Commission announces that it has terminated its regulatory investigation of whether its lead-in-paint regulations should be revised to lower the allowable lead content in paint and other articles subject to the regulations. The Commission terminated this investigation because the information obtained to date shows that there is only a small risk of adverse health effects from the lead content of currently marketed paints. In addition, there is insufficient information showing that the benefits of further reductions of lead in paint would bear a reasonable relationship to the costs of that action.

FOR FURTHER INFORMATION CONTACT: Brian Lee, Ph.D., D.A.B.T., Project Manager, Directorate for Health Sciences, Division of Health Effects, Consumer Product Safety Commission, Washington, DC 20207; telephone (301)504-0994.

SUPPLEMENTARY INFORMATION:

A. Background

Since 1976, the Commission has had a regulation banning (1) "lead-containing paint," (2) toys and other articles intended for use by children that bear lead-containing paint, and (3) furniture articles for consumer use that bear lead-containing paint. 16 CFR part 1303. The regulation defines "lead-containing paint" as "paint or other similar surface coating materials containing lead or lead compounds and in which the lead content (calculated as lead metal) is in excess of 0.06 percent by weight of the total nonvolatile content of the paint or the weight of the dried paint film." 16 CFR 1303.2(b)(2). A number of non-consumer coatings and low-risk products are exempted from the ban. 16 CFR 1303.3.

The maximum allowable lead content of 0.06 percent was established by the Lead Based Paint Poison Prevention Act, 48 U.S.C. 4801 *et seq.*, as amended by the National Consumer Health Information and Health Promotion Act of 1976 (Pub. L. 94-317, 90 Stat. 705-706). The 0.06 percent level had been recommended by the American Academy of Pediatrics and affirmed by the National Academy of Sciences, based on an estimate of the amount of lead required to cause lead poisoning in children and on a number of assumptions about the potential exposure of children to lead in paint.

Recent data, however, indicate that humans, particularly young children, may be more sensitive to the adverse health effects of lead than was believed when the 0.06 percent level was recommended in the early 1970's. The Commission's staff determined that applying the new toxicity data to the exposure assumptions used to derive the 0.06 percent level would result in a lead-limit level of 0.01 percent. Although the 0.06 percent level has had the effect of eliminating intentionally-added lead from paint, the Commission's staff became concerned about whether the 0.06 percent level still provided adequate protection of the public, and especially children, from the risk of lead poisoning.

On April 30, 1992, the Commission published a Notice of Regulatory Investigation ("NRI") in the **Federal Register** announcing that the Commission was investigating whether to revise its lead-in-paint regulations in view of the recent findings regarding the effects of exposure to lead. 57 FR 18418. The NRI explained the issues in more detail and cited relevant source documents. In the NRI, the Commission solicited comments and information concerning a number of topics that would have to be addressed if it was found necessary to amend the ban of lead-containing paint.

B. Lead Levels in Currently-Marketed Paint

In order to determine the lead levels in currently-marketed paints, the Commission's staff conducted a nationwide sampling of the paint market. Of the 433 samples tested by the Commission's Health Sciences Laboratory, 90 percent contained less than 0.01 percent lead and 98.6 percent contained less than 0.02 percent lead. The average lead content was 0.004 percent. Only one sample was found to be over the current 0.06 percent limit, and this was referred to the Commission's Office of Compliance and Enforcement for possible corrective action.

These results were consistent with tests of 31 samples from the Washington, DC, area reported by the National Institute of Standards and Technology ("NIST") in 1992. The results are also consistent with the analysis of eight samples of paint colorants conducted by Consumer and Corporate Affairs, Canada.

C. Comments Received on the Notice of Regulatory Investigation

The Commission received 15 comments on the NRI. Most of these related to the health effects of exposure to lead. No information was received that would allow an estimate of the number of children who ingest lead paint or of the amounts of lead ingested.

One comment provided valuable information about estimating the amount of lead to which children are exposed with a currently marketed anticorrosion coating. This comment provided a calculation procedure for estimating the weight of a coating. Using the procedure with typical application rates for currently marketed architectural paint, the staff estimated that the weight of currently marketed paint was about half the weight that was assumed in the development of the 0.06 percent level. Application of this estimate and the more recent information on the health effects of lead to the methodology used to compute the 0.06 percent level resulted in an estimated allowable level of 0.02 percent. No other information was received that would allow any further refinement of the allowable level. Additionally, no other information was received that confirmed or invalidated the appropriateness of exposure assumptions used in the computational methodology.

No comments were received that would justify any change in the types of products that are currently exempted from the lead-in-paint regulations. Comments were received recommending that the standard should be based on "bioavailable" lead, rather than on the total amount of lead in the dried film. There is insufficient information about the various factors

that might affect bioavailability to justify such an approach.

D. Conclusion

The Commission concludes from the information discussed above that there would be very little benefit from a reduction of the allowable level of lead in paint from the current level of 0.06 percent to the revised recommended level of 0.02 percent. As noted above, the lead content of 98.6 percent of currently marketed paint already is below the 0.02 percent level, and the average level is 0.004 percent. In addition, the significance to the health of children of the slight percentage of marketed paint that exceeds the recommended level is not known. The statute under which the lead-in-paint regulation was issued (the Consumer Product Safety Act, 15 U.S.C. 2051-2084) requires that, in order to lower the level of paint by regulation, the Commission would have to obtain substantial evidence showing that the benefits of the regulation bear a reasonable relationship to its costs. This would require at least a minimum estimate of the benefits resulting from lowering the allowable limit. The sorts of assumptions used to arrive at the Congressionally-directed level of 0.06 percent would not provide this type of estimate, and other information that would enable such an estimate is not expected to be available in the foreseeable future.

For these reasons, the Commission concludes that the available information does not show that there is an unreasonable risk of lead toxicity associated with currently marketed paints. In addition, the available information does not show that the benefits of further reductions of lead levels in paints would bear a reasonable relationship to the costs required to achieve the reductions. Significant additional information on these topics is not expected to be able to be obtained in the foreseeable future. Accordingly, the Commission is terminating its investigation of whether to change the allowable limit of lead in paint. If information becomes available in the future showing that Commission action is needed to reduce an unreasonable risk of injury to consumers, however, the Commission will take appropriate action.

Sadye E. Dunn,

Secretary, Consumer Product Safety Commission.

[FR Doc. 93-29447 Filed 11-30-93; 8:45 am]

BILLING CODE 6355-01-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

18 CFR Parts 141 and 388

[Docket No. RM94-5-000]

Treatment of Responses to FERC Form No. 580 Interrogatories

November 24, 1993.

AGENCY: Federal Energy Regulatory Commission, Energy.

ACTION: Notice of proposed rulemaking.

SUMMARY: The Federal Energy Regulatory Commission proposes to amend its regulations to codify an existing requirement for each public utility with a steam-electric generating station of 50 megawatts or more to file responses to FERC Form No. 580 (Form 580) interrogatories and to require this filing by both hard copy and electronic filing. Additionally, the proposal provides that such responses would not qualify for claims of privilege under the Commission's rules. Finally, the Commission proposes to make public all past responses to Form 580 interrogatories.

DATES: Written comments must be received by the Commission by January 18, 1994.

ADDRESSES: Office of the Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426.

FOR FURTHER INFORMATION CONTACT:

Gary D. Cohen (Legal Information), Office of the General Counsel, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–2046.

Douglas E. Matyas (Technical Information), Office of Electric Power Regulation, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, (202) 208–0890.

SUPPLEMENTARY INFORMATION: In addition to publishing the full text of this document in the **Federal Register**, the Commission also provides all interested persons an opportunity to inspect or copy the contents of this document during normal business hours in room 3104, at 941 North Capitol Street, NE., Washington, DC 20426.

The Commission Issuance Posting System (CIPS), an electronic bulletin board service, provides access to the texts of formal documents issued by the Commission. CIPS is available at no charge to the user and may be accessed using a personal computer with a modem by dialing (202) 208–1397. To access CIPS, set your communications software to use 300, 1200, or 2400 bps, full duplex, no parity, 8 data bits and 1 stop bit. CIPS can also be accessed at 9600 bps by dialing (202) 208–1781. The full text of this order will be available on CIPS for 30 days from the date of issuance. The complete text on diskette in WordPerfect format may also be purchased from the Commission's copy contractor, La Dorn Systems Corporation, located in room 3104, 941 North Capitol Street, NE., Washington, DC 20426.

I. Introduction

The Federal Energy Regulatory Commission (Commission) proposes to amend 18 CFR part 141 to add § 141.10, which codifies the Commission's existing requirement, established in Docket No. IN79–6, requiring the submittal of responses to FERC Form No. 580 (Form 580), "General Interrogatory on Fuel and Energy Purchase Practices," and also proposes to add a provision explicitly disqualifying responses to Form 580 interrogatories from claims of privilege under 18 CFR 388.112.[1]

Additionally, the Commission proposes to make public all past responses to Form 580 interrogatories, but is providing public utilities who have submitted responses to past Form 580 interrogatories subject to a request for privileged treatment with an opportunity to present reasons why this information should not now be made available to the public.

The Commission is also proposing requiring the submittal of Form 580 responses by both hard copy and electronic filing. Therefore, we also invite comments on the best format to be required for such filings, and on whether the electronic filing of Form 580 responses and attachments, by the submittal of computer disks or by the use of imaging or other processes, would be practicable or unduly burdensome.

Finally, the Commission seeks comments concerning whether a completely different information collection scheme would better permit the Commission to carry out its statutory responsibilities.

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[1] The proposed disqualification from claims of privileged treatment presented in this notice of proposed rulemaking (NOPR) pertains only to responses to Form 580 interrogatories. It does not apply to any other forms or limit any other requests for privileged treatment under § 388.112.

As a matter of convenience, for the purposes of this discussion, a request for privileged treatment and a request for confidential treatment will be used interchangeably.

II. Public Reporting Burden

The Commission estimates the total annual public reporting burden associated with this reporting requirement to be 5940 hours for Form 580. This reporting burden is based on an estimate of 90 average hours for 66 public utilities (132 on a biennial basis) to complete Form 580. These estimates include the time for reviewing instructions, researching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information. This estimate does not reflect that affected public utilities are already required to file these responses under the Commission's ongoing investigation in Docket No. IN79–6.

Send comments regarding these burden estimates or any other aspect of the Commission's collection of information, including suggestions for reducing this burden, to the Federal Energy Regulatory Commission, 941 North Capitol Street, NE., Washington, DC 20426 [Attention: Michael Miller, Information Services Division (202) 208–1415], and to the Office of Information and Regulatory Affairs of the Office of Management and Budget [Attention: Desk Officer for Federal Energy Regulatory Commission].

III. Background

A. Form 580

The Public Utility Regulatory Policies Act of 1978 (PURPA),[2] inter alia, amended section 205 of the Federal Power Act[3] by adding subsection (f)(2) which requires the Commission to review, at least once each two years, the practices of public utilities using automatic adjustment clauses to ensure that each such public utility makes efficient use of resources (including fuel).[4] In response, the Commission instituted an investigation, in Docket No. IN79–6, of practices under automatic adjustment clauses.[5]

Pursuant to this investigation, the Commission (through its staff) has issued interrogatories (Form 580 and its predecessors)[6] every two years.[7]

Interrogatories issued for the periods 1979–1981, 1982–1983, 1984–1985, and 1986–1987 advised responding public utilities that their responses would be available to the public and would not be subject to a claim of confidentiality. Nevertheless, requests for confidentiality were filed by a small number of responding public utilities.[8]

Interrogatories for the period 1988–1989 stated:

> While the Commission generally does not consider the data confidential, it will entertain specific requests for confidential treatment to the extent permitted by law.

More than 50 percent of the approximately 135 public utilities (68 utilities) responding for the period 1988–1989 requested confidential treatment.

Subsequent interrogatories have contained similar disclaimers, and produced similar responses.

B. Section 388.112

Section 388.112 governs requests for privileged treatment of documents submitted to the Commission. A request for privileged treatment under § 388.112 is made by claiming that all or some of the information submitted is exempt from the mandatory public disclosure requirements of the Freedom of Information Act (FOIA)[9] and that it should be withheld from public disclosure.[10]

A public utility requesting privileged treatment for information submitted to the Commission under § 388.112 is required to submit two versions of its response: One marked "privileged" with a full response including portions claimed to be confidential; and an expurgated version containing a statement that information has been removed from the response shown in the public file. The version of the response marked "privileged" is placed in the nonpublic file, while the request for confidential treatment is pending. The complete, unedited document remains in the nonpublic file until such time as a request for disclosure is made and the Commission decides to make the document public pursuant to the procedures specified in § 388.112, or until the Commission on its own initiative makes a determination to release information as necessary to carry out its jurisdictional responsibilities.

IV. Discussion

A. Problems With Respect to Form 580 and Proposed Solution

Although the Commission reserves final judgment pending its review of any forthcoming comments, the Commission is issuing this NOPR in response to various problems that it has observed with the existing procedures.

Care must be exercised, and careful procedures implemented, to assure that information claimed to be privileged is not inadvertently placed in the public file or the Commission's record information management system. As requests for privileged treatment have increased, the administrative burden on the Commission of maintaining voluminous nonpublic files and assuring that these materials remain privileged has increased proportionally. The increasing volume of requests for privileged treatment of Form 580 responses has thus created increasing administrative problems for the Commission.

Moreover, absent a determination on the merits of requests for privileged treatment, these materials accumulate indefinitely. In addition, in the event a claim of privilege is unwarranted or where the need for privilege has expired,[11] continued privileged treatment clogs the Commission's nonpublic files and unnecessarily blocks public access to these materials.

Another concern arising from claims for privileged treatment of Form 580 responses is that assertions of privilege are preventing the information from being used by the Commission, its advisory and trial staffs, participants in Commission proceedings, and the public, as fully and productively as would be the case were no restrictions placed on the availability of the information. For example, in conducting the biennial reviews, advisory staff has found it useful to discuss these matters with parties outside the Commission, e.g., energy consultants, fuel suppliers, and various state and federal agencies. However, the restrictions placed on the use of the Form 580 responses, through requests for privileged treatment, have made such discussions increasingly difficult, if not entirely impermissible.

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[2] 16 U.S.C. 2601, *et seq.*

[3] 16 U.S.C. 824d.

[4] 16 U.S.C. 824d(f)(2).

[5] See Investigation of Practices under Automatic Adjustment Clauses, 7 FERC ¶ 61,090 (1979); see also Consolidated Edison Company of New York, 39 FERC ¶ 61,329 (1987); Kentucky Utilities Company, 29 FERC ¶ 61,159 at 61,338 (1984).

[6] Form 580 was preceded by FERC Form Nos. 560 and 565. The Form 580 interrogatories are currently mailed to the over 130 public utilities with significant fuel trades and with wholesale rates that may contain automatic adjustment clauses.

[7] Each round of interrogatories is provided to the Office of Management and Budget (OMB), see 5 CFR part 1320, which, in turn, provides for public notice, 5 CFR 1320.15, and an opportunity for the public to inspect and comment, 5 CFR 1320.19. This process occurs prior to the issuance of each round of interrogatories.

[8] There were a few requests for confidential treatment of the 1979–1981 filings, and approximately eight to ten requests for confidential treatment of the 1982–1983 filings, 19 requests for confidential treatment of the 1984–1985 filings, and 40 requests for confidential treatment of the 1986–1987 filings.

[9] 5 U.S.C. 552.

[10] 18 CFR 388.112.

[11] The adverse competitive impact of the disclosure of financial information declines as the information becomes stale. See, e.g., Western Systems Power Pool, 64 FERC ¶ 61,063 at 61,603 (1993). Form 580 responses report on events which occurred 6–18 months prior to the filing of the information.

Additionally, and most importantly, claims of privilege can adversely affect our ability to ensure that rates are just and reasonable. See 16 U.S.C. 824d, 824e (1988). In evaluating the prudence of non-affiliate fuel purchases and the reasonableness of non-affiliate fuel prices passed through to ratepayers, the Commission has looked to whether a reasonable person would have made, in good faith, under the same circumstances, and at the relevant point in time the same decisions and incurred the same costs. See *New England Power Company*, Opinion No. 231, 31 FERC ¶ 61,047 at 61,081–84, *reh'g denied*, Opinion No. 231–A, 32 FERC ¶ 61,112 (1985), *aff'd*, 800 F.2d 280 (1st Cir. 1986); *accord*, *Indiana and Michigan Municipal Distributors Association* v. *Indiana Michigan Power Company*, Opinion No. 382, 62 FERC ¶ 61,189 at 62,237–41, *reh'g denied*, Opinion No. 382–A, 65 FERC ¶ 61,087 (1993). In evaluating affiliate fuel purchases and affiliate fuel prices passed through to ratepayers, the Commission has used an objective, comparative market price standard. See *Public Service Company of New Mexico*, Opinion No. 133, 17 FERC ¶ 61,123 at 61,245–46 (1981), *reh'g denied*, Opinion No. 133–A, 18 FERC ¶ 61,836 (1982), *aff'd*, 832 F.2d 1201 (10th Cir. 1987); *accord*, 62 FERC at 62,241–46. The information collected on Form 580 is vitally important to conducting these evaluations. Claims of privilege can effectively prevent these data from being made public so that ratepayers, in the first instance, are unable to evaluate whether the public utility that supplies them power and energy has, for example, acted imprudently or whether the fuel prices charged in rates are unreasonable. Similarly claims of privilege can complicate and even, as a practical matter, bar the use of the data by trial staff, ratepayers, or other parties in contested on-the-record proceedings that have been initiated. This especially is true where information about one company's fuel purchasing practices and prices might be relevant to a proceeding regarding the activities of a second company (*e.g.*, to develop comparative market price data for such utilities). That is, § 388.112 requires time-consuming notice procedures before using data for which privileged treatment has been requested. [12] This may effectively preclude the use of the data if the proceedings cannot be delayed pending the participants' seeking utility approval, or, alternatively, Commission action, as currently required under § 388.112.

We consider these problems—and particularly the effect on the ability to evaluate and challenge fuel purchasing decisions and fuel prices—to be serious, because, as noted, we collect the Form 580 responses to assist us in complying with our statutory responsibilities. To the extent that nondisclosure inhibits the use of this information to help assure that public utilities with automatic adjustment clauses employ efficient fuel and purchase power procurement practices, we are inclined to require public disclosure of this information. As a consequence, the Commission proposes that responses to Form 580 interrogatories be disqualified from the categories of materials for which claims of privileged treatment may be asserted under § 388.112.

B. Request for Comments

This NOPR gives notice of the Commission's intention to add § 141.10 which: (1) codifies by regulation the requirement that public utilities file responses to Form 580 interrogatories, which the Commission has previously ordered in the ongoing investigation in Docket No. IN79–6; [13] and (2) disqualifies responses to Form 580 interrogatories from the category of materials for which a filing public utility may seek privileged treatment under § 388.112.

The NOPR does not prescribe the content of the interrogatories, as this would impede the ability to modify the interrogatories in a timely manner to ensure that the Commission receives the information needed to carry out its statutory responsibilities, and because interested persons may participate in the OMB review and clearance process concerning each round of interrogatories. [14]

As determinations of whether to grant privileged treatment are influenced by FOIA's exemption from mandatory disclosure for trade secrets and privileged or confidential information, one factor relevant to the issues to be addressed in the comments is the applicable case law regarding the protection of confidential or privileged information under FOIA. [15] FOIA provides an exemption from mandatory disclosure for "trade secrets and commercial or financial information obtained from a person and privileged or confidential." [16] This exemption is intended to protect the interests of both the government and submitters of information. It seeks to ensure that agencies will continually be able to obtain necessary commercial and financial information so that they will be able to perform their statutory responsibilities efficiently and effectively. [17] This exemption also is intended to provide protection to submitters of information, consistent with the needs of agencies to perform their statutory responsibilities, from competitive disadvantages which could result from disclosure. [18]

Prior to taking final action on this proposed rulemaking, the Commission is inviting comments from interested persons on a range of issues. The Commission specifically invites comments on the following issues: (1) The merits of the proposed rulemaking; (2) the benefits and/or drawbacks of the complete or partial release of future responses to Form 580 interrogatories; (3) whether there is evidence that public disclosure of responses to future Form 580 interrogatories would cause actual competitive injury to filing public utilities; [19] and (4) the best format for the electronic filing of Form 580 responses, and whether the electronic filing of Form 580 responses and attachments, by the submittal of computer disks or by the use of imaging or other processes,

[12] See 18 CFR 388.112(c)(2).

[13] This NOPR leaves intact the Commission's delegation, in Docket No. IN79–6, to its staff of the responsibility for formulating the content of the interrogatories.

[14] See *supra* notes 7, 13.

[15] An exemption from mandatory disclosure does not foreclose agency disclosure when the benefits of disclosure outweigh the competitive harm reasonably to be expected from disclosure. See *Pennzoil Company* v. *Federal Power Commission*, 534 F.2d 627 (5th Cir. 1976) (*Pennzoil*).

[16] 5 U.S.C. 552(b)(4).

[17] See *National Parks & Conservation Association* v. *Morton*, 498 F.2d 765, 770 (D.C. Cir. 1974).

[18] See *id.*; *Pennzoil*, *supra* note 16; *Critical Mass Energy Project* v. *NRC*, 931 F.2d 939 (D.C. Cir. 1991). Nevertheless, the Commission retains the right to release the information, notwithstanding competitive harm to submitters, as necessary to carry out the Commission's statutory responsibilities. In the event the Commission finds that disclosure would cause substantial competitive harm, but nevertheless would serve the public interest, the Commission will consider whether less restrictive options would be satisfactory For example, under such circumstances, the Commission could consider limiting the duration of claims of privilege for Form 580 responses such that such claims would expire after a given time period (*e.g.*, 3 months, 6 months, or one year from the date of filing) (see *supra* note 11).

[19] Comments alleging that the release of information claimed to be privileged would cause injury should address, at a minimum, the particular injury expected to be incurred as a result of disclosure and the basis for this contention. Any such comments should be narrowly drawn, with a specific description of that information which the commenter contends would cause actual competitive harm, if released. Moreover, comments alleging that the release of information claimed to be privileged would cause injury should also address whether limiting the duration of claims of privilege for Form 580 responses for a given time period (*e.g.*, 3 months, 6 months, or one year) would be adequate.

would be practicable or unduly burdensome.

We also invite those filing comments to advise us as to whether (and how) we might nevertheless be able to fully comply with our statutory responsibilities by adopting a different approach than the approach reflected in Form 580. Any alternative approach suggested should discuss how confidentiality concerns would be addressed.

Additionally, this NOPR invites all public utilities who previously provided responses to Form 580 interrogatories subject to a claim of privilege to present reasons why this information should not now be made publicly available.[20]

V. Written Comment Procedure

The Commission invites interested persons to submit written comments or other information concerning this proposed rulemaking and the issues identified above. All comments in response to this notice should be submitted to the Office of Secretary, Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, and should refer to Docket No. RM94–5–000. An original and fourteen (14) copies of such comments should be filed with the Commission on or before January 18, 1994.

All written submissions to this NOPR will be placed in the public file and will be available for public inspection in the Commission's Public Reference Room, 941 North Capitol Street, NE., Washington, DC 20426, during regular business hours.

VI. Regulatory Flexibility Act Certification

The Regulatory Flexibility Act,[21] requires the Commission to describe the impact a proposed rule would have on small entities or to certify that the rule will not have a significant economic impact on a substantial number of small entities. As affected public utilities are already required to file responses to Form 580 interrogatories, the proposed rule would create no additional regulatory requirements. Additionally, the public utilities responding to the interrogatories are generally not small entities. Accordingly, the Commission certifies that this proposed rule will not have a significant economic impact on a substantial number of small entities.

[20] Such responses should individually address each request for privileged status previously submitted, *i.e.*, 1979–1981 filing, 1982–1983 filing, etc.

[21] 5 U.S.C. 601–612.

VII. Environmental Statement

Commission regulations require that an environmental assessment or an environmental impact statement be prepared for a Commission action that may have a significant effect on the human environment.[22] The Commission has categorically excluded certain actions from these requirements as not having a significant effect on the human environment.[23] The Commission has found that information gathering, analysis, and dissemination are not major federal actions that have a significant effect on the human environment.[24] Thus, no environmental assessment or environmental impact statement is required for this proposed rule.

VIII. Information Collection Statement

The Office of Management and Budget's (OMB) regulations, at 5 CFR 1320.13, require OMB to approve certain information and recordkeeping requirements imposed by an agency. The information collection requirements in this proposed rule are contained in Form 580, "General Interrogatory on Fuel and Energy Purchase Practices" (OMB Control No. 1902–0137).

The Commission uses the data collected in this information collection requirement to carry out its regulatory responsibilities pursuant to the Federal Power Act (FPA) as amended by, *inter alia*, PURPA. The Commission uses the data to evaluate fuel and purchase power procurement practices and resulting costs collected from customers through automatic adjustment clauses and in Commission proceedings under sections 205 and 206 of the FPA.

The proposed rule codifies an existing Commission requirement and imposes no additional information collection requirements. Therefore, the Commission is not submitting this rule to OMB for its approval but for informational purposes only.

List of Subjects

18 CFR Part 141

Electric power; Reporting and recordkeeping requirements.

18 CFR Part 388

Confidential business information; Freedom of information.

[22] Regulations Implementing National Environmental Policy Act, Order No. 486, 52 FR 47897 (Dec. 17, 1987); FERC Stats. & Regs. Regs. Preambles 1986–90 ¶30,783 (Dec. 10, 1987) (codified at 18 CFR Part 380).

[23] Id. (codified at 18 CFR 380.4).

[24] Id. (codified at 18 CFR 380.4(a)(5)).

By direction of the Commission.

Lois D. Cashell,

Secretary.

In consideration of the foregoing, the Commission proposes to amend parts 141 and 388, chapter I, title 18, Code of Federal Regulations, as set forth below.

PART 141—STATEMENTS AND REPORTS (SCHEDULES)

1. The authority citation for part 141 continues to read as follows:

Authority: 15 U.S.C. 79; 16 U.S.C. 791a–828c, 2601–2645; 31 U.S.C. 9701; 42 U.S.C. 7102–7352.

2. Part 141 is amended to add § 141.10, to read as follows:

§ 141.10 FERC Form No. 580, Interrogatories on Fuel and Purchase Power Practices.

(a) *Purpose.* The Commission is required by section 205(f)(2) of the Federal Power Act, 16 U.S.C. 824d(f)(2), to review, with respect to public utilities, practices under any automatic adjustment clauses of such utilities to insure the efficient use of resources (including economical purchases and use of fuel and electric energy) under such clauses.

(b) *Requirement to file.* Each public utility with a steam-electric generating station of 50 megawatts or greater must complete and file, by both hard copy and electronic filing, responses to interrogatories, designated herein as FERC Form No. 580, with the Commission in the time and manner prescribed in the instructions accompanying the interrogatories.

(c) *Requests for confidential treatment.* Notwithstanding the provisions of § 388.112 of this chapter, responses to the interrogatories designated herein as FERC Form No. 580 are not entitled to privileged treatment under § 388.112 of this chapter.

PART 388 INFORMATION AND REQUESTS

3. The authority citation for part 388 continues to read as follows:

Authority: 5 U.S.C. 301–305, 551–557; 42 U.S.C. 7101–7352.

4. In § 388.112, paragraph (a) is revised to read as follows:

§ 388.112 Requests for privileged treatment of documents submitted to the Commission.

(a) *Scope.* Any person submitting a document to the Commission may request privileged treatment by claiming that some or all of the information contained in a particular document is

exempt from the mandatory public disclosure requirements of the Freedom of Information Act, 5 U.S.C. 552, and should be withheld from public disclosure. However, a response to a FERC Form No. 580 interrogatory is not entitled to privileged treatment under § 388.112.

* * * * *

[FR Doc. 93–29416 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–P

DEPARTMENT OF THE INTERIOR

Office of Surface Mining Reclamation and Enforcement

30 CFR Parts 700, 701, 705, 706, 715, 716, 785, 825 and 870

RIN 1029–AB75

Definitions of "Anthracite," "Bituminous/Subbituminous," "Coal," and "Lignite"

AGENCY: Office of Surface Mining Reclamation and Enforcement, Interior.

ACTION: Proposed rule; extension of public comment.

SUMMARY: The Office of Surface Mining Reclamation and Enforcement (OSM) of the U.S. Department of the Interior (DOI) extends until January 7, 1994, the public comment period on the proposed rule published in the October 7, 1993, **Federal Register** (58 FR 52374). This will provide more time in which to comment on the proposed rule.

DATES: *Written Comments:* OSM will accept written comments on the proposed rule until 5 p.m. Eastern time on January 7, 1994.

ADDRESSES: *Written Comments:* Hand deliver to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660, 800 North Capitol St., Washington, DC; or mail to the Office of Surface Mining Reclamation and Enforcement, Administrative Record, room 660 NC, 1951 Constitution Avenue NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: Douglas J. Growitz, P.G., Branch of Research and Technical Standards, Office of Surface Mining Reclamation and Enforcement, room 640, 1951 Constitution Avenue, NW., Washington, DC 20240; Telephone: 202–343–1507.

SUPPLEMENTARY INFORMATION: On October 7, 1993, OSM published a proposed rule (58 FR 52374), which would revise the existing definitions of "anthracite" and "coal"; add definitions of "bituminous/subbituminous" and "lignite"; and remove the existing definitions of "anthracite, bituminous and subbituminous coal" and "lignite coal." OSM proposes to change the existing definition of "coal" and its related terms by deleting references to the coal classifications of ASTM Standard D 388–77. These revisions will avoid prior periodic calls to update the existing definitions to reflect the most current ASTM Standard D 388.

The comment period for the proposed rule was scheduled to close on December 6, 1993. However, an extension was requested in order to provide more time in which to comment on the proposed rule. Therefore, OSM is extending the comment period. Comments will now be accepted until 5 p.m. local time on January 7, 1994.

Dated: November 24, 1993.

Brent Wahlquist,

Assistant Director, Reclamation and Regulatory Policy.

[FR Doc. 93–29368 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–05–M

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 52

[ME–8–1–5854; A–1–FRL–4799–9]

Approval and Promulgation of Air Quality Implementation Plans; Maine; VOC RACT Catch-ups

AGENCY: U.S. Environmental Protection Agency (EPA).

ACTION: Proposed rule.

SUMMARY: The EPA is proposing to approve a revision to the Maine State Implementation Plan (SIP) submitted by the Maine Department of Environmental Protection (DEP) on January 13, 1993. This SIP revision contains regulations which require the implementation of reasonably available control technology (RACT) for various types of volatile organic compound (VOC) sources. The EPA has evaluated this SIP revision and is proposing its approval under the Clean Air Act, as amended in 1990.

DATES: Comments must be received on or before January 3, 1994.

ADDRESSES: Comments may be mailed to Linda M. Murphy, Director, Air, Pesticides and Toxics Management Division, U.S. Environ- mental Protection Agency, Region I, JFK Federal Bldg., Boston, MA 02203.

Copies of the State submittal and EPA's technical support document are available for public inspection during normal business hours, by appointment at the Air, Pesticides and Toxics Management Division, U.S. Environmental Protection Agency, Region I, One Congress Street, 10th floor, Boston, MA and the Bureau of Air Quality Control, Department of Environmental Protection, 71 Hospital Street, Augusta, ME 04333.

FOR FURTHER INFORMATION CONTACT: Anne E. Arnold, (617) 565–3166.

SUPPLEMENTARY INFORMATION: On January 13, 1993, EPA received a formal SIP submittal from the Maine DEP containing the following regulations:

Chapter 100: Definitions Regulation (amended).

Chapter 129: Surface Coating Facilities.

Chapter 130: Solvent Degreasers.

Chapter 131: Cutback and Emulsified Asphalt.

Chapter 132: Graphic Arts-Rotogravure and Flexography.

In addition, on March 26, 1993, DEP submitted additional documentation regarding the effective date of these regulations. These regulations were adopted (or amended) pursuant to the requirements of sections 182(b)(2) and 184(b)(1)(B) of the Clean Air Act (CAA).

Background

Under the pre-amended Clean Air Act, ozone nonattainment areas were required to adopt RACT rules for sources of VOC emissions. EPA issued three sets of control technique guidelines (CTGs) documents, establishing a "presumptive norm" for RACT for various categories of VOC sources. The three sets of CTGs were: (1) Group I—issued before January 1978 (15 CTGs); (2) Group II—issued in 1978 (9 CTGs); and (3) Group III—issued in the early 1980's (5 CTGs). Those sources not covered by a CTG were called non-CTG sources. EPA determined that the area's SIP-approved attainment date established which RACT rules the area needed to adopt and implement. Under section 172(a)(1), ozone nonattainment areas were generally required to attain the ozone standard by December 31, 1982. Those areas that submitted an attainment demonstration projecting attainment by that date were required to adopt RACT for sources covered by the Group I and II CTGs. Those areas that sought an extension of the attainment date under section 172(a)(2) to as late as December 31, 1987 were required to adopt RACT for all CTG sources and for all major (i.e., 100 ton per year or more of VOC emissions) non-CTG sources.

Under the pre-amended Clean Air Act, Maine was designated as rural nonattainment and, therefore, was required to adopt regulations pursuant to the Group I and Group II CTGs for major sources. Based on monitored

ozone exceedances in Maine, EPA notified the Governor of Maine on May 25, 1988 and November 8, 1988 that portions of the SIP were inadequate to attain and maintain the ozone standard and requested that deficiencies in the existing SIP be corrected (EPA's SIP-Call). On November 15, 1990, amendments to the 1977 CAA were enacted. Public Law 101–549, 104 Stat. 2399, codified at 42 U.S.C. 7401–7671q. In amended section 182(a)(2)(A) of the CAA, Congress statutorily adopted the requirement that pre-enactment ozone nonattainment areas that retained their designation of nonattainment and were classified as marginal or above fix their deficient RACT rules for ozone by May 15, 1991. Pursuant to the amended CAA, two counties in Maine were classified as marginal (these two counties constitute one marginal ozone nonattainment area) and seven counties in Maine were classified as moderate (these seven counties constitute three moderate ozone nonattainment areas). 56 FR 56694 (November 6, 1991). The State submitted revisions to meet the RACT fix-up requirement and EPA approved these revisions to the Maine SIP on February 3, 1992 and March 22, 1993 (57 FR 3946 and 58 FR 15281).

Section 182(b)(2) of the amended Act requires States to adopt RACT rules for all areas designated nonattainment for ozone and classified as moderate or above. There are three parts to the section 182(b)(2) RACT requirement: (1) RACT for sources covered by an existing CTG—i.e., a CTG issued prior to the enactment of the CAAA of 1990; (2) RACT for sources covered by a post-enactment CTG; and (3) all major sources not covered by a CTG, i.e., non-CTG sources. This RACT requirement applies to nonattainment areas that previously were exempt from certain RACT requirements to "catch up" to those nonattainment areas that became subject to those requirements during an earlier period. In addition, it requires newly designated ozone nonattainment areas to adopt RACT rules consistent with those for previously designated nonattainment areas. As previously mentioned, the State of Maine contains three moderate ozone nonattainment areas. These areas are thus subject to the section 182(b)(2) RACT catch-up requirement.

Also, the State of Maine is located in the Northeast Ozone Transport Region (OTR). The entire State is, therefore, subject to section 184(b) of the amended CAA. Section 184(b) requires that RACT be implemented for all VOC sources covered by a CTG issued before or after the enactment of the CAAA of 1990 and for all major VOC sources (defined as 50 tons per year for sources in the OTR).

Since Maine had previously submitted regulations for bulk gasoline terminals, fixed roof petroleum tanks, and paper coating sources pursuant to the RACT fix-up requirement, in order to meet the RACT catch-up requirement, the State must, therefore, adopt regulations (or affirm that no sources exist) for the remaining 26 CTG categories as well as adopt rules for all major non-CTG sources. (Rules for non-CTG sources are not part of this SIP revision and will not be further discussed in this notice).

EPA's Evaluation of Maine's Submittal

In response to the RACT catch-up requirement, on May 14, 1992 and June 12, 1992, Maine submitted negative declarations for the CTG categories listed as follows:

1. Surface coating of coils;
2. Surface coating of magnet wire;
3. Surface coating of large appliances;
4. Surface coating of automobiles and light duty trucks;
5. Manufacturing of synthesized pharmaceuticals;
6. Manufacturing of pneumatic rubber tires;
7. Manufacturing of vegetable oil;
8. Air oxidation processes in synthetic organic chemical manufacturing industry;
9. Manufacturing of high density polyethylene, polypropylene and polystyrene resins;
10. Leaks from synthetic organic chemical and polymer manufacturing;
11. Petroleum liquid storage in external floating roof tanks;
12. Equipment leaks from natural gas/gasoline processing plants;
13. Petroleum refinery processes;
14. Leaks from petroleum refinery equipment; and
15. Large petroleum dry cleaners.

Through the negative declaration, the State of Maine is asserting that there are no sources within the State that would be subject to a rule for that source category. EPA is proposing to approve this negative declaration submittal as meeting the sections 182(b)(2) and 184(b) RACT requirements for the source categories listed. However, if evidence is submitted during the comment period that there are existing sources within the State of Maine that, for purposes of meeting the RACT requirements, would be subject to one or more of these rules, if developed, EPA would be unable to take final approval action on the negative declarations.

After submitting the above negative declarations, Maine then proceeded with the process of adopting regulations to control the remaining CTG categories which include surface coating processes, solvent metal cleaning, graphic arts operations, the use of cutback asphalt, and gasoline marketing operations. Maine's gasoline marketing RACT catch-up regulations are not a part of this SIP revision, and will not be further discussed in this action.

In determining the approvability of a VOC rule, EPA must evaluate the rule for consistency with the requirements of the Act and EPA regulations, as found in section 110 and part D of the Act and 40 CFR part 51 (Requirements for Preparation, Adoption, and Submittal of Implementation Plans). The EPA interpretation of these requirements, which forms the basis for this action, appears in various EPA policy guidance documents. For the purpose of assisting State and local agencies in developing RACT rules, EPA prepared a series of Control Technique Guidelines (CTG) documents. The CTGs are based on the underlying requirements of the Act and specify the presumptive norms for RACT for specific source categories. EPA has not yet developed CTGs to cover all sources of VOC emissions. Further interpretations of EPA policy are found in those portions of the proposed Post–1987 ozone and carbon monoxide policy that concern RACT, 52 FR 45044 (November 24, 1987) and "Issues Relating to VOC Regulation Cutpoints, Deficiencies, and Deviations, Clarification to Appendix D of November 24, 1987 **Federal Register** Notice" (Blue Book) (notice of availability was published in the **Federal Register** on May 25, 1988) and the existing CTGs. In general, these guidance documents have been set forth to ensure that VOC rules are fully enforceable and strengthen or maintain the SIP.

The VOC regulations that are included in Maine's January 13, 1993 SIP submittal are briefly summarized as follows:

Chapter 100: Definitions Regulation

This regulation was amended to include the following 19 newly adopted definitions: as applied, capture system, carbon adsorber, condensate, condenser, continuous emission monitor, control system, double block-and-bleed system, exempt VOC compounds, gaseous excess emissions, leak, maximum true vapor pressure, open-ended valve or line, organic compound, overall VOC emission reduction efficiency, pressure release, solvent, standard atmospheric conditions, and VOC incinerator.

Chapter 129: Surface Coating Facilities

This regulation contains requirements for limiting the VOC emissions from the surface coating of cans, fabric, vinyl, metal furniture, flatwood paneling, and miscellaneous metal parts and products. Surface coating facilities may comply with this regulation though the use of low VOC coatings, daily-weighted averaging, and/or add-on control equipment.

Chapter 130: Solvent Degreasers

This regulation contains equipment and operation standards for solvent degreasing operations. These requirements apply to cold cleaners, open-top vapor degreasers and conveyorized degreasers.

Chapter 131: Cutback and Emulsified Asphalt

This regulation contains prohibitions regarding the mixing, storage, use, and application of cutback and emulsified asphalts.

Chapter 132: Graphic Arts-Rotogravure and Flexography

This regulation contains requirements to limit the emissions from rotogravure and flexographic printing operations. Graphic arts facilities may comply with these requirements through the use of low VOC coatings, daily-weighted averaging, and/or add-on control equipment.

EPA has evaluated Maine's VOC regulations and has found that they are consistent with EPA model regulations and the following CTG documents: "Control of Volatile Organic Compound Emissions from Existing Stationary Sources–Volume II: Surface Coating of Cans, Coils, Paper, Fabrics, Automobiles, and Light Duty Trucks" (EPA–450/2–77–008); "Volume III: Surface Coating of Metal Furniture" (EPA–450/2–77–032); "Volume VI: Surface Coating of Miscellaneous Metal Parts and Products" (EPA–450/2–78–015); "Volume VII: Factory Surface Coating of Flat Wood Paneling" (EPA–450/2–78–032); "Volume VIII: Graphic Arts-Rotogravure and Flexography" (EPA–450/2–78–033); "Control of Volatile Organic Compounds from Use of Cutback Asphalt" (EPA–450/2–77–037); and "Control of Volatile Organic Compound Emissions from Solvent Metal Cleaning" (EPA–450/2–77–022). As such, EPA believes that the submitted rules constitute RACT for the applicable sources.

Maine's VOC regulations and EPA's evaluation are detailed in a memorandum, dated July 16, 1993, entitled "Technical Support Document–Maine–VOC RACT Catch-ups." Copies of that document are available, upon request, from the EPA Regional Office listed in the ADDRESSES section of this action.

EPA is proposing to approve this revision to the Maine SIP and is soliciting public comments. These comments will be considered before taking final action. Interested parties may participate in the Federal rulemaking procedure by submitting written comments to the EPA Regional Office listed in the ADDRESSES section of this action.

Proposed Action

EPA is proposing to approve Maine's Chapter 100 "Definitions Regulation," Chapter 129 "Surface Coating Facilities," Chapter 130 "Solvent Degreasers," Chapter 131 "Cutback and Emulsified Asphalt," and Chapter 132 "Graphic Arts-Rotogravure and Flexography" as meeting the requirements of sections 182(b)(2) and 184(b) of the CAA for the following categories of VOC sources: the surface coating of cans, fabric, vinyl, metal furniture, flatwood paneling, and miscellaneous metal parts and products; solvent metal cleaning; the use of cutback asphalt; and rotogravure and flexographic printing operations.

Nothing in this action should be construed as permitting or allowing or establishing a precedent for any future request for revision to any State implementation plan. Each request for revision to the State implementation plan shall be considered separately in light of specific technical, economic, and environmental factors and in relation to relevant statutory and regulatory requirements.

This action has been classified as a Table 2 Action by the Regional Administrator under the procedures published in the **Federal Register** on January 19, 1989 (54 FR 2214–2225). On January 6, 1989, the Office of Management and Budget (OMB) waived Table 2 and Table 3 SIP revisions from the requirement of section 3 of Executive Order 12291 for a period of two years. U.S. EPA has submitted a request for a permanent waiver for Table 2 and Table 3 SIP revisions. The OMB has agreed to continue the waiver until such time as it rules on U.S. EPA's request. This request continues in effect under Executive Order 12866 which superseded Executive Order 12291 on September 30, 1993.

Under the Regulatory Flexibility Act, 5 U.S.C. 600 *et seq.*, EPA must prepare a regulatory flexibility analysis assessing the impact of any proposed or final rule on small entities. 5 U.S.C. 603 and 604. Alternatively, EPA may certify that the rule will not have a significant economic impact on a substantial number of small entities. Small entities include small businesses, small not-for-profit enterprises, and government entities with jurisdiction over populations of less than 50,000.

SIP approvals under section 110 and subchapter I, part D of the CAA do not create any new requirements, but simply approverequirements that the State is already imposing. Therefore, because the Federal SIP-approval does not impose any new requirements, I certify that it does not have a significant impact on small entities affected Moreover, due to the nature of the Federal-State relationship under the CAA, preparation of a regulatory flexibility analysis would constitute Federal inquiry into the economic reasonableness of state action. The CAA forbids EPA to base its actions concerning SIPs on such grounds. *Union Electric Co.* v. *U.S. E.P.A.*, 427 U.S. 246, 256–66 (S.Ct. 1976); 42 U.S.C. 7410 (a)(2).

List of Subjects in 40 CFR Part 52

Environmental protection, Air pollution control, Hydrocarbons, Incorporation by reference, Intergovernmental regulations, Ozone, Reporting and recordkeeping, Volatile organic compounds.

Authority: 42 U.S.C. 7401–7671q.

Dated: October 28, 1993.

Paul G. Keough,

Acting Regional Administrator.

[FR Doc. 93–29411 Filed 11–30–93; 8:45 am]

BILLING CODE 6560–50–F

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 93–293, RM–8336]

Radio Broadcasting Services; Harrisburg, AR

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition for rule making filed on behalf of Harrisburg Broadcasting, requesting the allotment of FM Channel 240C3 to Harrisburg, Arkansas, as that community's first local aural transmission service. Coordinates used for this proposal are 35–31–23 and 90–39–42.

DATES: Comments must be filed on or before January 18, 1994, and reply

comments on or before February 2, 1994.

ADDRESSES: Secretary, Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner's counsel, as follows: Riley M. Murphy, Esq., 1100 Poydras Street, suite 2590, New Orleans, LA 70163–2590.

FOR FURTHER INFORMATION CONTACT: Nancy Joyner, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–293, adopted November 3, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, See 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29392 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–286, RM–8377]

Radio Broadcasting Services; Jeffersontown, Richmond and Shelbyville, KY

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed jointly by Channel Chek, Inc., licensee of Station WSLY(FM), Channel 269A, Jeffersontown, Kentucky, WCBR Radio, Inc., licensee of Station WMCQ(FM), Channel 269A, Richmond, Kentucky, and Shelby County Broadcasting, Inc., licensee of Station WTHQ(FM), Channel 267A, Shelbyville, Kentucky. The petition requests the substitution of Channel 268C3 for Channel 269A at Richmond, the substitution of Channel 267A for Channel 269A at Jeffersontown, and the substitution of Channel 269A for Channel 267A at Shelbyville pursuant to § 1.420(g)(3) of the Commission's Rules. The coordinates for Channel 268C3 at Richmond's authorized site are North Latitude 37–44–09 West Longitude 84–16–05. The coordinates for Channel 267A at Jeffersontown are North Latitude 38–13–41 and West Longitude 85–30–30. The coordinates for Channel 269A at Shelbyville are North Latitude 38–12–48 and West Longitude 85–09–13.

DATES: Comments must be filed on or before January 18, 1994, and reply comments on or before February 2, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Harry F. Cole, Bechtel & Cole, Chartered, 1901 L Street, NW., suite 250, Washington, DC 20036 (Counsel for Joint Petitioners).

FOR FURTHER INFORMATION CONTACT: Nancy J. Walls, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–286, adopted October 29, 1993, and released November 26, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (Room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, Inc., (202) 857–3800, 1919 M Street, NW., room 246, or 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration of court review, all *ex parte* contacts are prohibited in Commission proceedings, such as the one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29398 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 93–274, RM–8372]

Radio Broadcasting Services; Ely, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 243A to Ely, Nevada, as the community's second local FM transmission service. Channel 243A can be allotted to Ely in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 39–14–51 and West Longitude 114–53–16.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–274, adopted October 20, 1993, and released November 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857–

3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-29391 Filed 11-30-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-275, RM-8373]

Radio Broadcasting Services; Pioche, NV

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by Keith E. Lamonica seeking the allotment of Channel 255A to Pioche, Nevada, as the community's first local aural transmission service. Channel 255A can be allotted to Pioche in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction, at coordinates North Latitude 37-55-47 and West Longitude 114-27-05.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Keith E. Lamonica, 501 Aultman, Ely, Nevada 89301 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-275, adopted October 20, 1993, and released November 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Reference Center (room 239), 1919 M Street, NW., Washington, DC. The Complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Services, Inc., (202) 857-3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-29390 Filed 11-30-93; 8:45 am]

BILLING CODE 6712-01-M

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47 CFR Part 73

[MM Docket No. 93-284, RM-8375]

Radio Broadcasting Services; Woodville, MS and Clayton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by PDB Broadcasting proposing the substitution of Channel 299C3 for Channel 299A at Woodville, Mississippi, and modification of the construction permit for Channel 299A to specify operation on the higher class channel. The coordinates for Channel 299C3 are 31-13-43 and 91-07-22. To accommodate the upgrade at Woodville, we shall also propose to delete vacant Channel 300A at Clayton, Louisiana, at coordinates 31-44-42 and 91-32-54. We shall propose to modify the construction permit for Channel 299A in accordance with § 1.420(g) of the Commission's Rules and will not accept competing expressions of interest for the use of the channel or require petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, as follows: Donald B. Brady, President, PDB Broadcasting, 191 Tyere, Jackson, Mississippi 39202.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a summary of the Commission's Notice of Proposed Rule Making, MM Docket No. 93-284, adopted October 29, 1993, and released November 12, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the Commission's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Services, Inc., 2100 M Street, NW., suite 140, Washington, DC 20037, (202) 857-3800.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contact.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission

John A. Karousos,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93-29388 Filed 11-30-93; 8:45 am]

BILLING CODE 6712-01-M

47 CFR Part 73

[MM Docket No. 93–276, RM–8353]

Radio Broadcasting Services; Franklinton, LA

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition filed by GACO Broadcasting Corporation, proposing the allotment of Channel 255A to Franklinton, Louisiana, as the community's first local FM service. Channel 255A can be allotted to Franklinton in compliance with the Commission's minimum distance separation requirements without the imposition of a site restriction. The coordinates for Channel 255A are 30–50–54 and 90–09–18.

DATES: Comments must filed on or before January 10, 1994, and reply comments on or before January 25, 1994.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Julian P. Freret, Esq., Booth, Freret & Imlay, suite 204, 1233 20th Street, NW., Washington, DC 20036 (Counsel for petitioner).

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 93–276, adopted October 19, 1993, and released November 3, 1993. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC's Reference Center (room 239), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, ITS, Inc., (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Victoria M. McCauley,

Assistant Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 93–29389 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

DEPARTMENT OF TRANSPORTATION

National Highway Traffic Safety Administration

49 CFR Part 571

[Docket No. 88–21; Notice 07]

RIN 2127–AE62

Federal Motor Vehicle Safety Standards; Bus Emergency Exits and Window Retention and Release

AGENCY: National Highway Traffic Safety Administration (NHTSA), DOT.

ACTION: Notice of proposed rulemaking, response to petition for reconsideration.

SUMMARY: In response to two petitions from the Blue Bird Body Company, the agency is proposing to amend the performance requirements for emergency exit windows to allow manufacturers to install windows other than push-out windows in order to meet emergency exit requirements. In addition, this proposal would allow manufacturers to install either two sliding emergency exit windows or an emergency exit door as the first means of satisfying the recently-issued requirements for additional emergency exits on school buses. The agency believes that this proposal would allow and encourage the installation of alternative window designs while maintaining the level of safety afforded by those new requirements. Finally, the agency is proposing two alternate means for determining the maximum amount of area that will be credited for all types of emergency exits on school buses.

DATES: Comments must be received by January 31, 1993. If adopted, the proposed amendments would become effective 18 months after the date of publication of the final rule.

ADDRESSES: Comments should refer to the docket and notice number of this notice and be submitted to: Docket Section, room 5109, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. (Docket Room hours are 9:30 a.m.–4 p.m., Monday through Friday.)

FOR FURTHER INFORMATION CONTACT: Charles R. Hott, NRM–15, Office of Vehicle Safety Standards, National Highway Traffic Safety Administration, 400 Seventh Street, SW., Washington, DC 20590. Telephone: (202) 366–0247.

SUPPLEMENTARY INFORMATION:

Background

When Standard No. 217, Bus Window Retention and Release, originally became effective on September 1, 1973, it required that buses other than school buses have exits whose combined area, in square centimeters, equaled or exceed 432 times the number of designated seating positions.

(Note: At the time, the standard was stated in terms of square inches. However, pursuant to E.O. 12770, Metric Usage in Federal Government Programs (56 FR 35801; July 29, 1991), the agency is in the process of converting all safety standards to metric units. To avoid confusion, all units of measurement are stated in terms of metric equivalents in this notice.)

The type of exits to be installed to comply with the 1973 requirement for non-school buses was left to the choice of the manufacturers, although the agency assumed that most manufacturers would meet the standard primarily by installing push-out side windows.

School buses were excluded from the 1973 requirement for the following reason:

> In view of discipline problems associated with mandatory quick-release and exit devices throughout a school bus which may interfere with the school bus driver's task, and the added risk of children falling from moving school buses, push-out windows for school buses would remain optional (35 FR 13025; August 15, 1970).

The 1973 Standard applied only to non-school buses and did not require that push-out windows be used as the only means of compliance. However, as noted above, it was expected that those windows would be the primary means of compliance. Further, the Standard required that when a school bus was voluntarily equipped with push-out windows or with other emergency exits, those exits must conform to the same requirements specified in the Standard for exits in buses other than school buses.

In response to the Motor Vehicle and Schoolbus Safety Amendments of 1974 (Pub. L. 93–492), Standard No. 217 was amended to require emergency exits in school buses. The agency did not follow the example of its requirements for non-school buses and simply specify that

school bus manufacturers provide exits whose total combined area equalled a specified number of square centimeters based on the number of designated seating positions, leaving the choice of exit type to the manufacturer. Instead, the agency required that all new school buses have either (1) one rear emergency door, or (2) "one emergency door on the vehicle's left side that is in the rear half of the bus passenger compartment and is hinged on its forward side, and one push-out rear window." Like all of the agency's safety standards for motor vehicles, Standard No. 217 is a minimum safety standard. Its requirements specify the fewest permissible number of emergency exits for a school bus.

In response to several school bus crashes in the late 1980's, and recommendations by the National Transportation Safety Board, the agency initiated rulemaking to require more emergency exit area on school buses. On March 15, 1991, NHTSA published a notice of proposed rulemaking (NPRM) proposing to amend Standard No. 217 to require that the minimum number of emergency exits on school buses be based upon the seating capacity of the school bus so that emergency exit capability would be proportional to the maximum occupant capacity of the school bus and the school bus emergency exits requirements would be comparable to the requirements for non-school buses (56 FR 11153). The NPRM proposed two options regarding the means for providing the additional emergency exit area required by the proposed formula. Option A would have required the use of emergency exit doors. Option B would have required a combination of emergency exit doors and emergency roof exits.

In the NPRM, the agency stated that it was not proposing to extend certain existing non-school bus requirements to school buses because those requirements had the effect of promoting the use of push-out windows. Specifically, the agency did not propose to require that the required emergency exists for a school bus be distributed so that at least 40 percent of it was on each side of the bus. The agency also did not propose to limit the amount of area that would be credited to any particular exit to 3,458 square centimeters. The agency tentatively concluded that these requirements should not be extended to school buses because the agency continued to believe that push-out windows were not appropriate emergency exits for school buses. The agency gave three reasons for its concern about push-out windows:

1. Push-out windows are of limited usefulness in evacuating school buses since those windows are usually higher off the ground and smaller in size than exit doors, and thus are difficult for school age occupants to use.

2. Push-out windows are almost never used as a means of escape during school evacuation drills, increasing the likelihood, particularly for smaller children, that the windows will not be used in an actual emergency.

3. Push-out windows are likely targets for tampering.

On November 2, 1992, NHTSA published a final rule increasing the amount of emergency exit area on school buses (57 FR 49413). As in the proposal, the final rule required that the minimum emergency exit area on school buses be based upon the seating capacity of the school bus.

However, the final rule differed from the NPRM concerning the means by which the additional emergency exit area will be provided. The final rule specifies that the first additional exit must be a side door and the second additional exit must be a roof exit. If adding those exits does not satisfy the requirements for additional exit area, then the final rule allows manufacturers to choose between side door exits, roof exits, and windows in providing the remaining additional exit area. This change regarding the required types of emergency exits resulted from the agency's tempering its position regarding push-out windows in response to the large number of comments favoring push-out windows. In particular, commenters refuted the agency's third reason for not allowing push-out windows by stating that experience indicates that they are not more likely than other exits to be the subject of tampering.

Blue Bird's Petitions

On February 25, 1992, the Blue Bird Body Company (Blue Bird) petitioned the agency to amend Standard No. 217 to allow the installation of sliding exit windows, and to allow exit windows, as alternatives to doors or a combination of doors and roof exits, for meeting the additional exit requirements proposed in the March 1991 NPRM. The latter request was partially mooted by the November 1992 final rule. This petition will be referred to as Petition 1 in this notice.

On December 3, 1992, Blue Bird petitioned for reconsideration of the November 2, 1992 final rule "on the grounds that it fails to accomplish the stated objective of making school bus emergency exit requirements equivalent to existing non-school bus emergency exit requirements." Specifically, Blue Bird stated that the final rule differed from the non-school bus requirements in allowing the area of a front service door to be credited towards the emergency exit requirements, in allowing the total daylight opening of an exit to be credited, and in not requiring a distribution of exits on each side of the bus. This petition will be referred to as Petition 2 in this notice.

Note: For the remainder of this notice, all references to Standard No. 217 are referring to that standard as it will read after the amendments made by the November 2, 1992 final rule become effective, and after the changes proposed in an NPRM published the same day (57 FR 49444) become effective, assuming that they are adopted as proposed.)

Exit Window Performance Requirements

The performance requirements for emergency exit windows in Standard No. 217 effectively require those windows be of the push-out type. These windows are defined as being "designed to open outward to provide for emergency egress." For example, Standard No. 217 requires that at least one force application to operate the release mechanism for an emergency exit window (school bus or non-school bus) must differ by 90° to 180° from the "initial push-out motion" of the exit. The reason that the Standard has the effect of requiring that an emergency exit window be a push-out window is that when the performance requirements for emergency exit windows were first developed, the only existing type of emergency exit window were push-out windows. Thus, the requirements were tailored to push-out windows.

The agency believes that sliding windows, as described in Petition 1, can offer safety benefits equivalent to those of push-out windows. Sliding windows provide comparable exit area to push-out windows and are located in the same position as push-out windows. Because Standard No. 217 includes requirements for release mechanisms, the agency believes that sliding windows would not be any more difficult to operate than push-out windows. Further, as Blue Bird notes in Petition 1, sliding windows offer benefits over push-out windows in some situations. For example, in the 1989 Alton, Texas school bus crash, twenty-one students drowned when the vehicle rolled into a water-filled gravel pit. Even if available, push-out windows could not have been opened until the bus was almost filled with water due to pressure from the water outside the buses. However, sliding windows could have

been immediately opened under those conditions.

Therefore, the agency is proposing to amend the performance requirements for emergency exit windows so that push-out motion is not required. The agency is also proposing to clarify the language concerning the type and number of release mechanisms and force applications for each window. The agency tentatively concludes that the standard should provide manufacturers with a choice between equipping a window with a single mechanism (with two force applications to release) or with two mechanisms (with one force application each to release). The agency believes that requiring a passenger to perform more than two motions before a window can be opened would be needlessly complicated, and could slow evacuation of a bus in an emergency. The agency is not proposing to rescind the requirement that at least one force application to operate the release mechanism(s) differ by 90° to 180° from the motion necessary to open the emergency exit window. If this requirement were not retained, the agency believes that accidental openings could occur because the same motion to operate the release mechanism would open the exit.

Finally, the agency is proposing to delete references to push-out windows in a variety of requirements to clarify that each of the amended requirements applies either to any type of emergency exit or to any type of emergency exit window (e.g., the identification requirements).

School Bus Emergency Exit Requirements

Standard No. 217 requires school buses to have either a rear emergency exit door or a rear push-out window and a left side emergency exit door. In addition, as noted above, they may be required, depending on the seating capacity of the school bus, to have additional emergency exits added in the following order of priority until the emergency exit area requirements are met: (1) A side emergency exit door, (2) an emergency roof exit, and (3) a side emergency exit door, an emergency roof exit, or an emergency exit window. Including emergency exit windows as an option in the third priority category was the result of a compromise between the agency's belief that push-out windows were less likely to be used in an emergency, and the large number of comments favorable to push-out windows.

In evaluating Petition 1, the agency examined whether emergency exit windows should be included in the first priority category of exits for complying with the additional emergency exit requirements.

To answer this question, the agency identified three types of situations in which the evacuation of a school bus may be necessary:

1. Minor crashes or mechanical failures. These may result in all school bus passengers leaving the bus. Since evacuation time is not a major concern, all passengers would likely exit from the front service door.

2. Major crashes. It is likely to be important that all school bus passengers leave the bus. Evacuation is important, but conditions indicate that it can be done in an orderly fashion. All of the passengers would exit from either the front service door or the rear/side emergency exit door.

3. Catastrophic crashes (e.g., fires or submersions). All school bus passengers must evacuate the bus as quickly as possible. Evacuation time is the major concern.

The agency believes that the existing provisions in Standard No. 217 provide sufficient emergency exits for the first two types of situations. The rationale underlying the November 2, 1992 final rule was to provide additional exits for the third type of situation. In a catastrophic crash, passengers leave the bus through any opening that is available. Increasing the number of exits will decrease evacuation time in this situation. Therefore, allowing emergency exit windows could decrease evacuation time in catastrophic crashes.

In addition to examining whether emergency exit windows offer benefits over other types of exits, the agency has reexamined its remaining concerns about push-out windows, i.e., that students tend not to use them and that evacuation drills rarely include them. The agency believes that while small children would still be reluctant to use an emergency exit window in the first two situations above, a child would use any available exit in a catastrophic crash. Finally, the agency believes that a school could, and would, develop training programs for emergency exit windows if its school buses were equipped with emergency exit windows.

Therefore, the agency is proposing to include sliding exit windows as an alternative to doors in the first priority category of additional emergency exits. The agency is not proposing to include push-out exit windows in the first priority category as the agency believes that there are several differences between these two types of emergency exit windows that make a push-out window less desirable on a school bus. The agency requests comments on whether it is preferable to install more than 2 sliding exit windows as the first priority prior to installing a roof hatch.

First, in some evacuation situations, a push-out window would be difficult, if not impossible, for a small child to open. In the Alton, Texas crash, push-out windows could not have been opened until the bus was almost filled with water due to pressure from the water outside the buses. If a bus came to rest on one side after a crash, the windows on the upper side would have to be pushed upward against gravity. In both of these situations, sliding windows would be easier to open. Even if the bus were upright, push-out windows would have to be held open to permit passage through them. Sliding windows will remain open without being held.

Second, push-out windows typically require a person to exit through the window head first. Push-out windows are typically hinged at the top. To exit through a window of this type, a person must hold the window open with their hands and go through the opening head first. Given the height above the ground of the window, this would increase the reluctance of small children to use the exit. Sliding exit windows slide or drop out of the way and remain open, allowing an occupant to exit feet first in most situations.

The agency is also proposing that if a manufacturer chooses to install emergency exit windows, it cannot install both sliding and push-out windows, except in one circumstance. The reason for this proposal is that the agency believes that the presence of different types of emergency exit windows in the same bus would lead to confusion for children trying to determine how to open a particular window. The single limited circumstance in which both sliding and push-out windows would be permissible would be in a bus with a single rear push-out window and side sliding windows. These buses would be excluded because they are typically rear engine buses. A sliding window could not be installed in the rear of such buses.

Exit Area Credit

In Petition 2, Blue Bird objected to the November 2, 1992 final rule because it differed from the non-school bus requirements in allowing the area of a front service door to be credited towards the emergency exit requirements. NHTSA notes that none of the commenters on the NPRM objected to the proposal to allow the area of all existing exits on school buses to be

subtracted from the calculated amount of required exit area before determining the number of additional exits that would be required. Accordingly, the November 2 final rule allowed the area of the front service door to be credited toward the emergency exit requirements. The agency notes further that the November 2 final rule was intended to require additional exits on some large school buses. Therefore, the agency believes that all existing exits should be subtracted before determining if additional exits will be required. The agency also notes that the front service door of a non-school bus can be counted as an emergency exit if it complies with the performance requirements in Standard No. 217. Therefore, the agency is not amending Standard No. 217 as Blue Bird requests.

In Petition 2, Blue Bird also objected to the November 2 final rule because it allows the total daylight opening of an exit to be credited. Based upon information provided by Blue Bird, it appears that the agency underestimated the size of current exits on school buses. Therefore, the agency overestimated the number of exits that would be required by the November 2 final rule. In addition, the agency is concerned that manufacturers have the option of increasing the size of exits, instead of increasing the number of available exits. As stated earlier, the agency believes that increasing the number of exits will decrease evacuation time in a catastrophic crash. Restricting the amount of area that can be credited for an exit would ensure that this rulemaking would achieve its intended purpose of increasing the number of exits available to school bus occupants in a catastrophic crash.

Therefore, the agency is proposing two alternative means to limit the amount of area that can be credited for any type of school bus emergency exit.

Option one would limit the amount of area that can be credited for any type of school bus emergency exit to 3,458 square centimeters. This figure is equivalent to the current amount that can be credited for a non-school bus exit. The proposed regulatory text in this notice reflects this option.

Option two would limit the amount of area that can be credited for any type of school bus emergency exit to an area nearly equal to the area used for the calculations in the Final Regulatory Evaluation and the March 15, 1991 NPRM. This option would be consistent with the final rule, and would limit the amount of area that can be credited for any exit. This would eliminate the ability of manufacturers to comply with the requirements of the November 2, 1992 final rule by increasing the size of exits rather than increasing the number of exits. Thus, for use in the formulas to determine if additional emergency exits must be provided (S5.2.3.1), the amount of area that can be credited for each type of exit would be as follows:

- Front Service Door: Daylight opening (DLO) or 12,916 square centimeters, whichever is less.
- Rear or Side Exit Door: 6,954 square centimeters.
- Rear Push-out Window: 5,002 square centimeters.
- Roof Exit: DLO or 3,458 square centimeters, whichever is less.
- Side Exit Window: DLO or 3,458 square centimeters, whichever is less.

In the case of rear or side exit doors and rear push-out windows, the maximum credit is equal to the minimum size required to comply with the requirements of Standard No. 217. The agency does not have a preference between these two options, though the proposed regulatory text uses option one for the ease of the reader.

The agency seeks comment on which option is preferable. Option one would increase the number of exits in comparison to the November 2, 1992 final rule, and would make the number of emergency exits on school buses, based on seating capacity, closer to the number of emergency exits on non-school buses. The agency notes, however, that school buses have a greater seating capacity than non-school buses of the same physical size. The agency requests comments on the number of exits required on the same bus if it is equipped with seats either as a school bus or as a non-school bus.

In addition to limiting the amount of area that can be credited for each emergency exit, the agency is considering amending S5.2.3 to present the school bus emergency exit requirements in the form of a table. The exits required by the table would be determined using the existing formula and, if the proposal to limit the amount of credit were adopted, whichever credit limits were adopted. As an example, the following tables would be substituted for S5.2.3 if option two were adopted and if the agency did not allow sliding windows as an option instead of a door. The following table would apply to school buses with a rear emergency exit door.

Seating capacity	Additional exits
Less than 46 ...	None.
46–62	1 side door.
63–70	1 side door and 1 roof exit.
More than 70 ...	1 side door and 1 roof exit and 1 of the following options: 1 side door or 1 roof exit or 2 windows.

The following table would apply to school buses with a side emergency exit door and a rear emergency push-out window:

Seating capacity	Additional exits
Less than 58 ...	None.
58–74	1 side door.
75–82	1 side door and 1 roof exit.
More than 82 ...	1 side door and 1 roof exit, and 1 of the following options: 1 side door or 2 windows or 1 roof exit.

The tables were based on the largest capacity bus NHTSA believes is built for each type. NHTSA requests comment on whether larger capacity buses, which would require more exits under the current requirements than shown in the tables, are being built.

Exit Distribution

In Petition 2, Blue Bird objected to the November 2 final rule because it does not require at least 40 percent of the emergency exits to be on each side of the bus, as is required for non-school buses. While the November 2 final rule does not include such a requirement for school buses, it does have distribution requirements. Additional emergency exit doors are required to be added on alternate sides of the bus. A school bus equipped with emergency exit windows is required to have an even number of emergency exit windows evenly divided between the right and left sides of the bus. Therefore, NHTSA is not proposing to apply the 40 percent distribution requirement to school buses as Blue Bird requests.

Miscellaneous

In drafting the NPRM, the agency noted that it had not included a minimum size requirement for emergency exit windows installed to satisfy the requirements for school buses. Section S5.4.1 specifies that any exit not required by S5.2.3 must provide an opening large enough to permit passage of "an ellipse having a major axis of 20 inches and a minor axis of 13 inches." This section applies to exit windows in non-school buses and to voluntarily installed windows in school buses. However, it does not apply to windows installed to comply with the

school bus requirements (S5.2.3). Therefore, the agency is proposing to amend S5.4.2 to specify that school bus exit windows must satisfy the same requirement.

In the November 2 final rule all units of measurement were stated in terms of metric units pursuant to E.O. 12770, Metric Usage in Federal Government Programs (56 FR 35801; July 29, 1991). However, the agency has since decided to seek comment on how to convert gross vehicle weight rating (GVWR) for all safety standards. Therefore, the agency is proposing to return GVWR references in Standard No. 217 to pounds until a final decision is made.

The November 2, 1992 final rule requires emergency exist doors to be equipped with a positive door opening device that keeps the door from closing past the point where the door is perpendicular to the bus (S5.4.2.1(a)(3)(i)). The agency seeks comment on whether this type of device should also be required for emergency exist windows, so that children can exist from the window, regardless of the bus' orientation, without having to hold the window open themselves.

Rulemaking Analyses and Notices

Executive Order 12866 and DOT Regulatory Policies and Procedures

NHTSA has considered the impact of this rulemaking action under E.O. 12866 and the Department of Transportation's regulatory policies and procedures. This action has been determined to be not "significant" under either. NHTSA estimates that the consumer cost of option one ranges from $26 to $38 million and the consumer cost of option two ranges from $14 to $20 million, depending on whether a pair of sliding windows is substituted for a side emergency door. The lower costs in these ranges are associated with sliding windows. NHTSA estimated the consumer cost of the November 2, 1992 final rule to be approximately $22 million. Therefore, option one would cost the consumer $4 to $16 million more than previously estimated and option two would cost the consumer $2 to $8 million less than previously estimated. NHTSA has prepared an addendum to the Final Regulatory Evaluation for the November 2 final rule which is available in the docket for this rulemaking.

Regulatory Flexibility Act.

NHTSA has also considered the impacts of this proposed rulemaking action under the Regulatory Flexibility Act. Based on that analysis, I hereby certify that this proposal will not have a significant economic impact on a substantial number of small entities. As explained above, NHTSA does not anticipate any significant economic impact as a result of this proposal.

Paperwork Reduction Act

In accordance with the Paperwork Reduction Act of 1980 (P.L. 96–511), there are no requirements for information collection associated with this proposal.

National Environmental Policy Act

NHTSA has also analyzed this rulemaking action for the purpose of the National Environmental Policy Act. The agency has determined that implementation of this proposal would not have any significant impact on the quality of the human environment.

Executive Order 12612 (Federalism)

Finally, NHTSA has analyzed this proposal in accordance with the principles and criteria contained in E.O. 12612, and has determined that this proposal does not have significant federalism implications to warrant the preparation of a Federalism Assessment.

Civil Justice Reform

This proposed rule would not have any retroactive effect. Under section 103(d) of the National Traffic and Motor Vehicle Safety Act (Safety Act; 15 U.S.C. 1392(d)), whenever a Federal motor vehicle safety standard is in effect, a State may not adopt or maintain a safety standard applicable to the same aspect of performance which is not identical to the Federal standard, except to the extent that the state requirement imposes a higher level of performance and applies only to vehicles procured for the State's use. Section 105 of the Safety Act (15 U.S.C. 1394) sets forth a procedure for judicial review of final rules establishing, amending or revoking Federal motor vehicle safety standards. That section does not require submission of a petition for reconsideration or other administrative proceedings before parties may file suit in court.

Submission of Comments

Interested persons are invited to submit comments on the proposal. It is requested but not required that 10 copies be submitted.

All comments must not exceed 15 pages in length. (49 CFR 553.21). Necessary attachments may be appended to these submissions without regard to the 15-page limit. This limitation is intended to encourage commenters to detail their primary arguments in a concise fashion.

If a commenter wishes to submit certain information under a claim of confidentiality, three copies of the complete submission, including purportedly, confidential business information, should be submitted to the Chief Counsel, NHTSA, at the street address given above, and seven copies from which the purportedly confidential information has been deleted should be submitted to the Docket Section. A request for confidentiality should be accompanied by a cover letter setting forth the information specified in the agency's confidential business information regulation. 49 CFR part 512.

All comments received before the close of business on the comment closing date indicated above for the proposal will be considered, and will be available for examination in the docket at the above address both before and after that date. To the extent possible, comments filed after the closing date will also be considered. Comments received too late for consideration in regard to the final rule will be considered as suggestions for further rulemaking action. Comments on the proposal will be available for inspection in the docket. The NHTSA will continue to file relevant information as it becomes available in the docket after the closing date, and it is recommended that interested persons continue to examine the docket for new material.

Those persons desiring to be notified upon receipt of their comments in the rules docket should enclose a self-addressed, stamped postcard in the envelope with their comments. Upon receiving the comments, the docket supervisor will return the postcard by mail.

List of Subjects in 49 CFR Part 571

Imports, Motor vehicle safety, Motor vehicles.

PART 571—FEDERAL MOTOR VEHICLE SAFETY STANDARDS

In consideration of the foregoing, it is proposed that 49 CFR part 571 be amended as follows:

1. The authority citation for part 571 of title 49 would continue to read as follows:

Authority: 15 U.S.C. 1392, 1401, 1403, 1407, delegation of authority at 49 CFR 1.50.

§ 571.217 [Amended]

2. Section 571.217 would be amended by removing the definition of "daylight opening" in S4; adding a new definition of "sliding window" to S4 in alphabetical order; and by revising S1; the introductory paragraph to S5.2.3.1, S5.2.3.1(a)(1), S5.2.3.1(a)(2)(i),

S5.2.3.1(b)(1), and S5.2.3.1(b)(2)(i); S5.2.3.2(a)(2), S5.2.3.2(a)(3), and S5.2.3.2(c); S5.3.1; the introductory paragraph to S5.3.2; the introductory paragraph to S5.3.3.1 and S5.3.3.1(b); the introductory paragraph to S5.3.3.2; the introductory paragraph to S5.3.3.3; S5.4, S5.4.1, and S5.4.2; the heading to S5.4.2.1; by adding S5.4.2.1(c): by revising the heading of S5.4.2.2; and the introductory paragraph to S5.5.1 to read as follows:

§ 571.217 Standard No. 217; Bus Emergency Exits and Window Retention and Release.

S1. *Scope.* This standard establishes requirements for the retention of windows other than windshields in buses, and establishes operating forces, opening dimensions, and markings for bus emergency exits.

* * * * *

S4. *Definitions.*

* * * * *

Sliding window means a vehicle window designed to open by moving either vertically or horizontally to provide for emergency egress.

* * * * *

S5.2.3.1 Each bus shall be equipped with the exits specified in either S5.2.3.1(a) or S5.2.3.1(b), chosen at the option of the manufacturers. The area in square centimeters of the unobstructed openings for emergency exit shall collectively amount to at least 432 times the number of designated seating positions in the bus. The maximum amount of emergency exit area credited to an emergency exit shall be 3,458 square centimeters.

(a)(1) One rear emergency door that opens outward and is hinged on the right side (either side in the case of a bus with a GVWR of 10,000 pounds or less), and exits providing an additional emergency exit area (AEEA) calculated in accordance with the following formula:

AEEA = [TA–FSDA–RDEA]
Where

TA (total area) = 432 × number of designated seating positions;
FSDA (front service door area) = Area of the unobstructed opening of the front service door or 3,458 square centimeters, whichever is less; and
RDEA (rear door exit area) = Area of the unobstructed opening of the rear door or 3,458 square centimeters, whichever is less.

(2) * * *

(i) A left side emergency exit door that meets the requirements of S5.2.3.2(a); or two sliding windows that meet the requirements of S5.2.3.2(c);

* * * * *

(b)(1) One emergency door on the vehicle's left side that is hinged on its forward side and meets the requirements of S5.2.3.2(a), and a push-our rear window that provides a minimum opening clearance 41 centimeters high and 122 centimeters wide and meets the requirements of S5.2.3.2(c), and exits providing an additional emergency exit area (AEEA) calculated in accordance with the following formula:

AEEA = [TA–FSDA–SDEA–POWA]
Where

TA (total area) = 432 × number of designated seating positions;
FSDA (front service door area) = Area of the unobstructed opening of the front service door or 3,458 square centimeters, whichever is less;
SDEA (side door exit area) = Area of the unobstructed opening of the side door or 3,458 square centimeters, whichever is less; and
POWA (push-out window area) = Area of the unobstructed opening of the rear push-out window or 3,458 square centimeters, whichever is less.

(2) * * *

(i) A right side emergency door that meets the requirements of S5.2.3.2(a); or two sliding windows that meet the requirements of S5.2.3.2(c);

* * * * *

S5.2.3.2 * * *

(a) * * *

(2) The first side emergency exit door installed pursuant to S5.2.3.1(a)(2) shall be located on the left side of the bus and as near as practicable to the midpoint of the passenger compartment. A second side emergency exit door installed pursuant to S5.2.3.1(a)(2) shall be located on the right side of the bus. In the case of a bus equipped with three side emergency door exits pursuant to S5.2.3.1(a)(2), the third shall be located on the left side of the bus.

(3) The first side emergency exit door installed pursuant to S5.2.3.1(b)(2) shall be located on the right side of the bus. A second side emergency door exits pursuant to S5.2.3.1(b)(2) shall be located on the left side of the bus. In the case of a bus equipped with three side emergency door exits pursuant to S5.2.3.1(b)(2), the third shall be located on the right side of the bus.

* * * * *

(c) *Emergency exit windows.* A bus equipped with emergency exit windows shall have an even number of such windows, not counting a push-out rear window required by S5.2.3.1(b). Any side emergency exit windows shall be evenly divided between the right and left sides of the bus. A bus shall not be equipped with both sliding and push-out windows on its sides.

* * * * *

S5.3.1 Each emergency exit not required by S5.2.3 shall be releasable by operating one or two mechanisms located within the regions specified in Figure 1, Figure 2, or Figure 3. The lower edge of the region in Figure 1, and Region B in Figure 2, shall be located 13 centimeters above the adjacent seat, or 5 centimeters above the armrest, if any, whichever is higher.

S5.3.2. When tested under the conditions of S6., both before and after the window retention test required by S5.1, each emergency exit not required by S5.2.3 shall allow manual release of the exit by a single occupant using force applications each of which conforms, at the option of the manufacturer, either to paragraphs (a) or (b) of this section. Each exit shall have not more than two release mechanisms. In the case of exits with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of exits with two release mechanisms, each mechanism shall require one force application to release the exit. At least one of the force applications for each exit shall differ from the direction of the initial motion to open the exit by no less than 90° and no more than 180°.

* * * * *

S5.3.3.1 When tested under the conditions of S6., both before and after the window retention test required by S5.1, each school bus emergency exit door shall allow manual release of the door by a single person, from both inside and outside the passenger compartment, using a force application that conforms to paragraphs (a) through (c) of this section, except a school bus with a GVWR of 10,000 pounds or less does not have to conform to paragraph (a). The release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When the release mechanism is not in the position that causes an emergency exit door to be closed and the vehicle's ignition is in the "on" position, a continuous warning sound shall be audible at the driver's seating position and in the vicinity of that emergency exit door.

* * * * *

(b) *Type of motion:* Upward from inside the bus; at the discretion of the manufacturer from outside the bus. Buses with a GVWR of 10,000 pounds or less shall provide interior release mechanisms that operate by either an upward or pull-type motion. The pull-type motion shall be used only when

the release mechanism is recessed in such a manner that the handle, level, or other activating device, before being pulled, does not protrude beyond the rim of the recessed receptacle.

* * * * *

S5.3.3.2 When tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency exit window shall allow manual release of the exit by a single person, from inside the passenger compartment, using not more than two release mechanisms located in specified low-force or high-force regions (at the option of the manufacturer) with force applications and types of motions that conform to either paragraph (a) or (b) of this section. In the case of windows with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of windows with two release mechanisms, each mechanism shall require one application to release the exit. At least one of the force applications for each window shall differ from the direction of the initial motion to open their exit by no less then 90° and no more than 180°. Each release mechanism shall operate without the use of remote controls or tools, and notwithstanding any failure of the vehicle's power system. When a release mechanism is open and the vehicle's ignition is in the "on" position, a continuous warning shall be audible at the driver's seating position and in the vicinity of that emergency exit.

* * * * *

S5.3.3.3 When tested under the conditions of S6, both before and after the window retention test required by S5.1, each school bus emergency roof exit shall allow manual release of the exit by a single person, from both, inside and outside the passenger compartment, using not more than two release mechanisms located at specified low-force or high-force regions (at the option of the manufacturer) with force applications and types of motions that conform to either paragraph (a) or (b) of this section. In the case of roof exits with one release mechanism, the mechanism shall require two force applications to release the exit. In the case of roof exits with two release mechanisms, each mechanism shall require one application to release the exit. At least one of the force applications for each roof exit shall differ from the direction of the initial push-out motion of the exit by no less than 90° and no more than 180°.

* * * * *

S5.4 *Emergency exit opening.*

S5.4.1 After the release mechanism has been operated, each emergency exit not required by S5.2.3 shall, under the conditions of S6., before and after the window retention test required by S5.1, using the reach distances and corresponding force levels specified in S5.3.2, allow manual opening by a single occupant to a position that provides an opening large enough to admit unobstructed passage, keeping a major axis horizontal at all times, of an ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters.

S5.4.2 *School bus emergency exist opening.*

S5.4.2.1 *School buses with a GVWR of more than 10,000 pounds.*

* * * * *

(c) *Emergency exit windows.* After the release mechanism has been operated, each emergency exit window of a school bus shall, under the conditions of S6., before and after the window retention test required by S5.1, using force levels specified in S5.3.3.2, be manually extendable by a single occupant to a position that provides an opening large enough to admit unobstructed passage, keeping a major axis horizontal at all times, of an ellipsoid generated by rotating about its minor axis an ellipse having a major axis of 50 centimeters and a minor axis of 33 centimeters.

S5.4.2.2 *School buses with a GVWR of 10,000 pounds or less.*

* * * * *

S5.5.1 In buses other than school buses, and except for windows serving as emergency exists in accordance with S5.2.2(b) and doors in buses with a GVWR of 10,000 pounds or less, each emergency door shall have the designation "Emergency Door" or "Emergency Exit" and every other emergency exit shall have the designation "Emergency Exit" followed by concise operating instructions describing each motion necessary to unlatch and open the exit, located within 15 centimeters of the release mechanism.

* * * * *

Issued on November 23, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–29226 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

49 CFR Part 583

[Docket No. 92–64; Notice 4]

RIN 2127–AE63

Motor Vehicle Content Labeling; Correction

AGENCY: National Highway Traffic Safety Administration (NHTSA), Department of Transportation (DOT).

ACTION: Correction to Notice of Proposed Rulemaking (NPRM).

SUMMARY: This document contains a correction to the NPRM that was published on Friday, November 19, 1993 (58 FR 61042). This NPRM explains the regulations proposed by NHTSA to implement the domestic content labeling provisions of the American Automobile Labeling Act. Other corrections to the November 19 proposed rule were published in the November 26 **Federal Register** (58 FR 62415).

FOR FURTHER INFORMATION CONTACT: Mr. Nelson Gordy, Office of Market Incentives, National Highway Traffic Safety Administration, room 5313, 400 Seventh Street SW., Washington, DC 20590 (202–366–4797).

SUPPLEMENTARY INFORMATION: As published, the proposed regulatory text contained an error which may prove to be misleading. Therefore, the agency is correcting this error.

Correction of Publication

Accordingly, the publication on November 19, 1993 of the NPRM, Docket No. 92–64, Notice 3, is corrected as follows:

§ 583.10 [Corrected]

Paragraph 1. On page 61061, in the second column, § 583.10(b)(1), the first word of line eight of the paragraph, the word "allied" is corrected to read "outside".

* * * * *

Issued: November 24, 1993.

Barry Felrice,

Associate Administrator for Rulemaking.

[FR Doc. 93–29259 Filed 11–30–93; 8:45 am]

BILLING CODE 4910–59–M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; 90-day Finding on a Petition To List Nine Bexar County, TX, Invertebrates

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition finding and initiation of status review.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces a 90-day finding for a petition to amend the List of Endangered and Threatened Wildlife and Plants. The petition has been found to present substantial information indicating that listing nine Bexar County, Texas, invertebrates (*Batrisodes venyivi, Cicurina baronia, Cicurina madla, Cicurina venii, Cicurina vespera, Neoleptoneta microps, Rhadine exilis, Rhadine infernalis,* and *Texella cokendolpheri*) as threatened or endangered may be warranted. A status review is initiated on these nine species.

DATES: The finding announced in this notice was made on November 16, 1993. Comments and information from all interested parties should be submitted by January 3, 1994.

ADDRESSES: Information, comments, or questions should be submitted to the State Administrator, U.S. Fish and Wildlife Service, Ecological Services Field Office, 611 East 6th Street, room 407, Austin, Texas 78701. The petition, finding, supporting data, and comments will be available for public inspection, by appointment, during normal business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Ruth Stanford, Ecologist, at the above address (512/482–5436).

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act) of 1973, as amended (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information indicating that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of receipt of the petition, and the finding is to be published promptly in the **Federal Register**. If the finding is positive, the Service is also required to promptly commence a status review of the species.

Patricia K. Cunningham of the Helotes Creek Association and individuals representing the Balcones Canyonlands Conservation Coalition, the Texas Speleological Association, the Alamo Group of the Sierra Club, and the Texas Cave Management Association submitted a petition to the Service to add nine invertebrates from Bexar County, Texas, to the List of Threatened and Endangered Wildlife. The petition was dated January 9, 1992, and received by the Service on January 13, 1992.

The petitioned invertebrates are all obligate cave-dwelling species (troglobites) of local distribution in dry caves in Bexar County. They include five spiders, one harvestman, and three beetles. These species are probably predaceous on the eggs, larvae, or adults of other cave invertebrates. Troglobites are subterranean, inconspicuous, and difficult to study (Mitchell and Reddell 1971). However, there is biological information available on the Bexar County invertebrates in that we know all of these species are obligate cave-dwellers and that their continued existence depends on the ecological stability of the cave environments in which they are found. Although there is little specific information available on their microhabitat requirements, their macrohabitat requirement (caves and possibly interstitial spaces associated with caves) is known.

Cicurina baronia, Cicurina madla, Cicurina venii, Cicurina vespera, and *Neoleptoneta microps* are all small, eyeless, or essentially eyeless, troglobitic spiders. *Texella cokendolpheri* is a small, eyeless harvestman. *Rhadine exilis* and *Rhadine infernalis* are small, essentially eyeless ground beetles. *Batrisodes venyivi* is a small, eyeless mold beetle. All four *Cicurina*, the *Texella*, and the *Batrisodes* did not have formal species names in the petition, but taxonomic descriptions and names have since been published (Chandler 1992, Gertsch 1992, Ubick and Briggs 1992).

The entire ranges of these species occur in north and/or northwest Bexar County. The species and their habitat may be threatened by a number of factors including destruction and/or deterioration of habitat by commercial, residential, and road construction; filling of caves; loss of permeable cover; potential contamination from such things as septic effluent, sewer leaks, runoff, and pesticides; predation by and competition with non-native fire ants (*Solenopsis invicta*); and vandalism.

Fire ants: Fire ants are a major threat to the cave invertebrates. The significance of this threat and the difficulty of controlling fire ants should not be underestimated. Fire ants are voracious predators and there is evidence that overall arthropod diversity drops in their presence (Vinson and Sorenson 1986, Porter and Savignano 1990). Even in the unlikely event that fire ants do not affect the proposed species directly, their presence in and around caves could have a drastic detrimental effect on the cave ecosystem through loss of species, inside the cave and out, that provide nutrient input and critical links in the food chain.

Controlling fire ants once they have invaded the cave and vicinity is difficult. Chemical control methods have some effectiveness but the effect of these agents on non-target species is unclear. Consequently, use of chemicals to control fire ants in and around caves is not advisable. Currently, the Service recommends only boiling water treatment for control of fire ant colonies near caves inhabited by listed invertebrates in Travis and Williamson counties. This method is labor intensive and only moderately effective. Presently, the burden of carrying out such practices is not a designated or mandated duty of any agency, individual, or organization. This type of control will likely be needed indefinitely or until a long-term method of fire ant control is developed.

Destruction/deterioration of habitat: Destruction of caves in Bexar County and throughout central Texas is common (Elliott 1990, Veni 1991). Veni (1991) estimates that, at present, 26 percent of known caves in Bexar County have been destroyed through filling with dirt, rocks, concrete, or other materials; capping or covering by roads or buildings; and "blasting out of existence" by construction and quarrying operations. He anticipates that the total number of caves will continue to decrease as discovery of new caves decreases and more known caves are destroyed.

The northwest quadrant of Bexar County has a high potential for development. Information in the petition refers to existing, ongoing, and proposed developments and the likelihood of future growth in north and northwest Bexar County. The Edwards Underground Water District (1993) presents data suggesting that the Edwards Aquifer recharge zone in northwest Bexar County is "poised for explosive development as the economy rebounds." Most of the caves containing the petitioned invertebrates are located within the Edwards Aquifer recharge zone.

While the important cave entrances may themselves not be in imminent

danger from development, cave environments can be negatively impacted by runoff, chemical spills, sewer leaks, pesticide use, and septic effluent associated with development on nearby properties within the karst zone. The caves are situated within the porous limestone that forms the Edwards Aquifer and are susceptible to contamination originating on property where the cave entrance lies, as well as on properties that lie above and adjacent to subterranean reaches of the cave. Dramatic evidence that contaminants can move through cavernous limestone is presented by Russell (1987).

Parameters of the cave environment include a relatively constant, high humidity and stable temperature, and low energy input (Howarth 1983, Holsinger 1988, Elliott and Reddell 1989). Nutrient availability and moisture are critical limiting factors in cave environments (Barr 1968). Adaptations to the high relative humidity and low nutrient availability typical of caves are common among troglobites (Mitchell 1967, Barr 1968, Howarth 1983), and the invertebrates in question exhibit many of these adaptations (Barr 1960, Barr 1974, Gertsch 1974). Nearly all food energy in caves must be imported from the exterior (Holsinger 1988). Energy enters areas near the cave entrance via species that move between the surface and the cave and via organic matter that washes into the caves. In deeper reaches of the cave, the primary input of energy is through water containing dissolved organic matter, percolating through the karst through fissures and solution features (Howarth 1983, Holsinger 1988, Elliott and Reddell 1989). Rapid, uncontrolled urbanization in northern Bexar County would likely result in a dramatic increase in impermeable cover in areas surrounding many of the caves. An increase in impermeable cover could result in decreased percolation of water into the caves via the karst and have a detrimental effect on the moisture regime and nutrient input critical to cave-dwelling species.

After a review of the petition and other available information, the Service has found that the petition presented substantial information that listing *Batrisodes venyivi, Cicurina baronia, Cicurina madla, Cicurina venii, Cicurina vespera, Neoleptoneta microps, Rhadine exilis, Rhadine infernalis*, and *Texella cokendolpheri* as threatened or endangered species may be warranted. This finding initiates a status review for these invertebrates as required under section 4(b)(3)(A) of the Act. Within one year from the date the petition was received, the Service is required under section 4(b)(3)(B) of the Act to make a finding as to whether the petitioned action is warranted.

The Service would appreciate any additional data, information, or comments from the public, government agencies, the scientific community, industry, or any other interested party concerning the status of these nine species, including specific information on threats and distribution. Comments should be submitted by January 31, 1994, to be considered in the 12-month petition finding.

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Veni, G., and Associates. 1991. Status of Bexar County caves containing species considered for endangered listing. Prepared for James Reddell, Texas Memorial Museum, University of Texas, Austin, Texas.

Vinson, S.B., and A.A. Sorensen. 1986. Imported fire ants: life history and impact. Texas Dept. of Agriculture 1986. 28 pp.

Author

This notice was prepared by Ruth Stanford and Alisa Shull, (See **ADDRESSES**).

Authority

The authority for this action is the Endangered Species Act of 1973, as amended (16 U.S.C. 1531–1544).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and recordkeeping requirements, Transportation.

Dated: November 16, 1993.

Bruce Blanchard,

Acting Director, Fish and Wildlife Service.

[FR Doc. 93–29399 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–55–P

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 650

[I.D. No. 112293B]

Atlantic Sea Scallop Fishery; Public Hearing

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Temporary adjustment of standards; notice of public hearing and request for comments.

SUMMARY: NMFS will hold a public hearing to solicit public input on a temporary adjustment of the meat count/shell height standards for Atlantic sea scallops.

DATES: The public hearing will be held on December 9, 1993, at 9:30 a.m. Written comments will be accepted through December 9, 1993, at the address given below.

ADDRESSES: The December 9, 1993, hearing will be held in conjunction with the New England Fishery Management Council (Council) meeting at the King's Grant Inn, Route 128 at Trask Lane, Danvers, Massachusetts.

Written comments should be addressed to Richard Roe, Director, Northeast Regional Office, NMFS, One Blackburn Drive, Gloucester, MA 01930.

FOR FURTHER INFORMATION CONTACT: Paul H. Jones, Fishery Policy Analyst, Fishery Management Operations, NMFS Northeast Region, 508–281–9273.

SUPPLEMENTARY INFORMATION: Section 650.22 of the regulations implementing the Fishery Management Plan for Atlantic Sea Scallops (FMP) (50 CFR part 650) provides authority to the Regional Director to adjust temporarily the meat count/shell height standards upon finding that specific criteria are met. The standards can be adjusted within a range from 25 to 40 meats per pound and may be adjusted no more than 5 meats by any one adjustment. The Regional Director has considered the criteria specified in § 650.22(c) and has decided to recommend an adjustment to the standards from 30 to 33 meats per pound [shell height from 3½ inches (89 mm) to 3 11/16 inches (94 mm)] for the period February 1, 1994 through February 28, 1994.

The regulations require the Regional Director to hold a public hearing on this recommendation and to solicit comments from the Council. The Regional Director may modify this recommendation based on comments from the Council or the public. After consideration of the full record, a final determination will be made by the Regional Director whether or not to adjust the standards. If the Regional Director determines that the standards should be adjusted, notice will be published in the **Federal Register**.

Dated: November 24, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29363 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–22–M

Notices

Federal Register

Vol. 58, No. 229

Wednesday, December 1, 1993

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Forms Under Review by Office of Management and Budget

November 26, 1993.

The Department of Agriculture has submitted to OMB for review the following proposal for the collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35) since the last list was published. This list is grouped into new proposals, revisions, extensions, or reinstatements. Each entry contains the following information:

(1) Agency proposing the information collection: (2) Title of the information collection; (3) form number(s), if applicable; (4) How often the information is requested; (5) Who will be required or asked to report; (6) An estimate of the number of responses; (7) An estimate of the total number of hours needed to provide the information; (8) Name and telephone number of the agency contact person.

Questions about the items in the listing should be directed to the agency person named at the end of each entry. Copies of the proposed forms and supporting documents may be obtained from: Department Clearance Officer, USDA, OIRM, room 404–W Admin. Bldg., Washington, DC 20250, (202) 690–2118.

Revision

- Agricultural Marketing Service

Cranberries Grown in the States of MA, RI, CT, NJ, WI, MN, OR, WA, and Long Island in the State of NY, Marketing Order No. 929.

Recordkeep ng; Annually

Farms; businesses or other for-profit; 1,684 responses; 849 hours

Mark A. Hessel (202) 720–3923.

Reinstatement

- Animal and Plant Health Inspection Service

Poultry Affected by Salmonella Enteritidis—9 CFR 82 Subpart G VS 10–4 and 10–4A, 20–1, 20–4, & SE 20–2 & 20–3

Recordkeeping; On occasion

State or local governments; farms; Federal agencies or employees; 40,961 responses; 18,768 hours

Ronald J. Day (301) 436–4974.

Donald E. Hulcher,

Department Clearance Officer.

[FR Doc. 93–29455 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–01–M

Federal Grain Inspection Service

Request for Comments on the Applicants for Designation in the Geographic Areas Currently Assigned to the Gibson City (IL), Indianapolis (IN), and Springfield (IL) Agencies, and the State of Wyoming

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS requests interested persons to submit comments on the applicants for designation to provide official services in the geographic areas currently assigned to Donald Swanstrom dba Gibson City Grain Inspection Department (Gibson City), Indianapolis Grain Inspection & Weighing Service, Inc. (Indianapolis), Springfield Grain Inspection, Inc. (Springfield), and the Wyoming Department of Agriculture (Wyoming).

DATES: Comments must be postmarked, or sent by telecopier (FAX) or electronic mail by December 31, 1993.

ADDRESSES: Comments must be submitted in writing to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. All comments received will be made available for public inspection at the above address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the September 30, 1993, **Federal Register** (58 FR 51047), FGIS asked persons interested in providing official services in the geographic areas assigned to Gibson City, Indianapolis, Springfield, and Wyoming to submit an application for designation. Applications were due by October 29, 1993.

Indianapolis and Wyoming each applied for designation in the entire area currently assigned to them.

There were two applicants for the Gibson City area. Donald Swanstrom dba Gibson City Grain Inspection Department proposing to incorporate and do business as Gibson City Grain Inspection, Inc., applied for designation in the area currently assigned to Gibson City, except for: The area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County (located inside Central Illinois Grain Inspection, Inc.'s, area).

Central Illinois Grain Inspection, Inc. (Central Illinois), applied for designation to serve the area north of Highway 116, west of Highway 47, and southeast of the Southern Pacific Railroad; and Farm Service, Arrowsmith, McLean County, in addition to the area they are already designated to serve. The Gibson City and Central Illinois agencies are contiguous official agencies.

There were two applicants for the Springfield area. Springfield applied for designation in the entire area currently assigned to it except for: Chestervale Elevator Company, Chestervale, Logan County (located inside Decatur Grain Inspection, Inc.'s, area).

Decatur Grain Inspection, Inc. (Decatur), applied for designation to serve Chestervale Elevator Company, Chestervale, Logan County, in addition to the area they are already designated to serve. The Springfield and Decatur

agencies are contiguous official agencies.

FGIS is publishing this notice to provide interested persons the opportunity to present comments concerning the applicants. Commenters are encouraged to submit reasons and pertinent data for support or objection to the designation of these applicants. All comments must be submitted to the Compliance Division at the above address.

Comments and other available information will be considered in making a final decision. FGIS will publish notice of the final decision in the **Federal Register**, and FGIS will send the applicants written notification of the decision.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29232 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

Designation of the Decatur (IL), and McCrea (IA) Agencies and the State of South Carolina

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS announces the designation of Decatur Grain Inspection, Inc. (Decatur), John R. McCrea Agency, Inc. (McCrea), and the South Carolina Department of Agriculture (South Carolina) to provide official inspection services under the United States Grain Standards Act, as amended (Act).

EFFECTIVE DATE: January 1, 1994.

ADDRESSES: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

In the June 30, 1993, **Federal Register** (58 FR 34983), FGIS announced that the designations of Decatur, McCrea, and South Carolina end on December 31, 1993, and asked persons interested in providing official services within the specified geographic areas to submit an application for designation. Applications were due by July 30, 1993. Decatur, McCrea, and South Carolina, the sole applicants, each applied for designation in the entire area currently assigned to them.

FGIS requested comments on the applicants in the September 1, 1993, **Federal Register** (58 FR 46157). Comments were due by October 1, 1993. FGIS received no comments by the deadline. FGIS evaluated all available information regarding the designation criteria in section 7(f)(1)(A) of the Act; and according to section 7(f)(1)(B), determined that Decatur, McCrea, and South Carolina are able to provide official services in the geographic areas for which they applied.

Effective January 1, 1994, and ending December 31, 1996, Decatur, McCrea, and South Carolina are designated to provide official inspection services in the geographic areas specified in the June 30, 1993 **Federal Register**.

Interested persons may obtain official services by contacting Decatur at 217–429–2466, McCrea at 319–242–2073, and South Carolina at 803–554–1311.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29233 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

Request for Applications From Persons Interested in Designation to Provide Official Services in the Geographic Areas Presently Assigned to the Memphis (TN) Agency and the State of Alaska

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: The United States Grain Standards Act, as amended (Act), provides that official agency designations shall end not later than triennially and may be renewed. The designations of Memphis Grain and Hay Association (Memphis), and the Alaska Department of Natural Resources, Division of Agriculture (Alaska) will end May 31, 1994, according to the Act, and FGIS is asking persons interested in providing official services in the specified geographic areas to submit an application for designation.

DATES: Applications must be postmarked or sent by telecopier (FAX) on or before December 31, 1993.

ADDRESSES: Applications must be submitted to Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. Telecopier (FAX) users may send applications to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn. If an application is submitted by telecopier, FGIS reserves the right to request an original application. All applications will be made available for public inspection at this address located at 1400 Independence Avenue, SW., during regular business hours.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

Section 7(f)(1) of the Act authorizes FGIS' Administrator to designate a qualified applicant to provide official services in a specified area after determining that the applicant is better able than any other applicant to provide such official services.

FGIS designated Memphis, main office located in Memphis, Tennessee, and Alaska, main office located in Palmer, Alaska, to provide official grain inspection services under the Act on June 1, 1991.

Section 7(g)(1) of the Act provides that designations of official agencies shall end not later than triennially and may be renewed according to the criteria and procedures prescribed in section 7(f) of the Act. The designations of Memphis and Alaska end on May 31, 1994.

The geographic area presently assigned to Memphis, in the States of Arkansas and Tennessee, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation is as follows:

Craighead, Crittenden, Cross, Lee, Mississippi, Phillips, Poinsett, and St. Francis Counties, Arkansas.

Carroll, Chester, Crockett, Dyer, Fayette, Gibson, Hardeman, Haywood, Henderson, Lauderdale, Madison, McNairy, Shelby, and Tipton Counties, Tennessee.

The following locations, outside of the above contiguous geographic area, are part of this geographic area assignment: Continental Grain Co., Tiptonville, Lake County, Tennessee (located inside Cairo Grain Inspection Agency, Inc.'s, area); and Lockhart-Coleman Grain Company, Augusta,

Woodruff County, Arkansas (located inside Little Rock Grain Exchange Trust's area).

The geographic area presently assigned to Alaska, pursuant to section 7(f)(2) of the Act, which will be assigned to the applicant selected for designation, is the entire State of Alaska, except those export port locations within the State which are serviced by FGIS.

Interested persons, including Memphis and Alaska, are hereby given the opportunity to apply for designation to provide official services in the geographic areas specified above under the provisions of section 7(f) of the Act and § 800.196(d) of the regulations issued thereunder. Designation in the specified geographic areas is for the period beginning June 1, 1994, and ending May 31, 1997. Persons wishing to apply for designation should contact the Compliance Division at the address listed above for forms and information.

Applications and other available information will be considered in determining which applicant will be designated.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29234 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

Inadequate Demand for Official Services in the Fort Worth (TX) Area

AGENCY: Federal Grain Inspection Service (FGIS), USDA.

ACTION: Notice.

SUMMARY: FGIS has determined there is inadequate demand for official services to designate any organization to provide official services in the Fort Worth area.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, Chief, Review Branch, Compliance Division, FGIS, USDA, room 1647 South Building, P.O. Box 96454, Washington, DC 20090–6454. SprintMail users may respond to [A:ATTMAIL,O:USDA,ID:A36HDUNN]. ATTMAIL and FTS2000MAIL users may respond to !A36HDUNN. Telecopier (FAX) users may send comments to the automatic telecopier machine at 202–720–1015, attention: Homer E. Dunn.

FOR FURTHER INFORMATION CONTACT: Homer E. Dunn, telephone 202–720–8525.

SUPPLEMENTARY INFORMATION: This action has been reviewed and determined not to be a rule or regulation as defined in Executive Order 12866 and Departmental Regulation 1512–1; therefore, the Executive Order and Departmental Regulation do not apply to this action.

On March 31, 1993, Amarillo Grain Exchange, Inc. (Amarillo), notified FGIS that they wanted to cease providing official services in the Fort Worth portion of their area due to the low volume of requests for official inspection services. In the April 29, 1993, **Federal Register** (58 FR 25966), FGIS asked persons interested in providing official services in the Fort Worth area to submit an application for designation. Applications were due by May 31, 1993. There were two applicants: William K. Mathews proposing to incorporate and do business as North Texas Grain Inspection, Inc. (North Texas), and Basil B. Aumiller. FGIS also requested comments on the need for official services in the Fort Worth area. There were three comments requesting that official services be provided in the Fort Worth area.

FGIS published a June 30, 1993, **Federal Register** notice (58 FR 34984) to provide interested persons the opportunity to present comments concerning the applicants. There were two comments, both from grain firms supporting designation of William K. Mathews.

Mr. Aumiller withdrew his application based on his determination that there is an insufficient need for services in that area. Mr. Mathews then requested that if North Texas is designated as the official agency that the designation not begin until January 1, 1994, citing a lack of demand for services.

FGIS then contacted most grain firms in the Fort Worth area and determined that, pursuant to the provisions of the Act, there is an insufficient need for official services to designate an official agency. Therefore, FGIS is not designating an official agency to provide services in the Fort Worth area. Any firms which may require official inspection services should contact the FGIS Plainview Field Office at 806–293–4482 (FAX: 806–293–9365).

Pursuant to Amarillo request to cease providing official services in the Fort Worth portion of their area, FGIS is amending their geographic area. Effective September 15, 1993, Amarillo's assigned geographic area is amended by deleting the following counties: Bell, Bosque, Brown, Coleman, Collin, Comanche, Cooke, Dallas, Denton, Eastland, Ellis, Erath, Falls, Fannin, Grayson, Hamilton, Hill, Hood, Hunt, Jack, Johnson, Lamar, Limestone, McLennan, Milam, Montague, Parker, Palo Pinto, Red River, Somervell, Stephens, Tarrant, Young, and Wise, Texas.

Authority: Pub. L. 94–582, 90 Stat. 2867, as amended (7 U.S.C. 71 *et seq.*).

Dated: November 22, 1993.

Neil E. Porter,

Director, Compliance Division.

[FR Doc. 93–29235 Filed 11–30–93; 8:45 am]

BILLING CODE 3410–EN–F

DEPARTMENT OF COMMERCE

Agency Form Under Review by the Office of Management and Budget

DOC has submitted to OMB for clearance the following proposal for collection of information under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35).

Agency: International Trade Administration.

Title: Product Characteristics—Design Check-Off List.

Form numbers: Agency—ITA–426P, OMB—0625–0035.

Type of Request: Extension of the expiration date of a currently approved collection.

Burden: 2,000 respondents; 1000 reporting hours.

Average hours per response: 30 minutes.

Needs and uses: The International Trade Administration (ITA sponsors up to 120 overseas trade fair events each fiscal year. In addition, there is a Matchmaker Program of approximately 20 events annually, which is a combination of multi-stop trade missions and small equipment from participating U.S. firms information on the physical nature, power (utility), and graphic requirements of the products and services to be displayed in a U.S. pavilion or Matchmaker event, e.g. electrical voltage, dimension/weight of equipment to be exhibited, compressed air/gas, noise level, raw materials used for production during the exhibition, special anchorage (against vibration) photographs/wall graphics to be used, and company brochure to be forwarded. Without this information, ITA would be unable to provide a pavilion facility that would effectively support the sales/marketing and presentation objectives of the U.S. participants.

Affected public: Businesses or other for profit; small businesses or organization.

Frequency: On occasion.

Respondent's obligation: Voluntary.

OMB desk officer: Gary Waxman, (202) 395–7340.

Copies of the above information collection proposal can be obtained by calling or writing DOC Clearance Officer, Edwards Michals, (202) 482–3271, Department of Commerce, room 5327, 14th and Constitution Avenue, NW., Washington, DC 20230.

Written comments and recommendations for the proposed information collection should be sent to Gary Waxman, OMB Desk Officer, room 3208 New Executive Office Building, Washington, DC 20503.

Dated: November 24, 1993.

Edward Michals,

Department Clearance Officer, Office of Management and Organization.

[FR Doc. 93–29449 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–CW–M

Bureau of the Census

[Docket No. 931106–3306]

Annual Retail Trade Survey

AGENCY: Bureau of the Census, Commerce.

ACTION: Notice of determination.

SUMMARY: In accordance with title 13, United States Code, sections 182, 224, and 225, I have determined that the Census Bureau needs to collect data covering annual sales, year-end inventories, purchases and accounts receivables to provide a sound statistical basis for the formation of policy by various government agencies. These data also apply to a variety of public and business needs. This annual survey is a continuation of similar surveys that we have conducted each year since 1951 (except 1954). It provides, on a comparable classification basis, annual sales, purchases of merchandise and accounts receivable balances for 1993, and year end inventories for 1992 and 1993. These data are not available publicly on a timely basis from nongovernmental or other governmental sources.

FOR FURTHER INFORMATION CONTACT: Ronald Piencykoski or Dorothy Engleking on (301) 763–5294.

SUPPLEMENTARY INFORMATION: The Census Bureau is authorized to take surveys necessary to furnish current data on the subjects covered by the major censuses authorized by title 13, United States Code. This survey will provide continuing and timely national statistical data on retail trade for the period between economic censuses. The 1992 Economic Censuses are currently being tabulated. The data collected in this survey will be within the general scope and nature of those inquiries covered in the economic census.

The Census Bureau will require a selected sample of firms operating retail establishments in the United States (with sales size determining the probability of selection) to report in the 1993 Annual Retail Trade Survey. We will furnish report forms to the firms covered by this survey and will require their submissions within thirty days after receipt. The sample will provide, with measurable reliability, statistics on the subjects specified above.

This survey was cleared by the Office of Management and Budget (OMB) in accordance with the Paperwork Reduction Act, Public Law 96–511, as amended, under OMB Control No. 0607–0013. We will provide copies of the form upon written request to the Director, Bureau of the Census, Washington, DC 20233.

Based upon the foregoing, I have directed that an annual survey be conducted for the purpose of collecting these data.

Dated: November 22, 1993.

Harry A. Scarr,

Acting Director, Bureau of the Census.

[FR Doc. 93–29343 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–07–P

Bureau of Export Administration

Regulations and Procedures Technical Advisory Committee; Meeting

A meeting of the Regulations and Procedures Technical Advisory Committee will be held December 15, 1993, at 9 a.m., in the Herbert C. Hoover Building, room 1617M(2), 14th Street and Pennsylvania Avenue, NW., Washington, DC. The Committee advises the Office of Technology and Policy Analysis on implementation of the Export Administration Regulations (EARS), and provides for continuing review to update the EARS as needed.

Agenda

General Session

1. Opening remarks by the Chairman
2. Presentation of papers or comments by the public
3. Reports by working groups:
   - Licensing Procedures
   - Regulatory Review
   - Legislation
   - Multilateral Controls and Harmonization
4. Reports on Trade Promotion Coordinating Committee (TPCC) projects
5. Enhanced Proliferation Control Initiative (EPCI) clarification/ refinement project

Executive Session

6. Discussion of matters properly classified under Executive Order 12356, dealing with the U.S. and COCOM control program and strategic criteria related thereto

The General Session of the meeting will be open to the public and a limited number of seats will be available. To the extent that time permits, members of the public may present oral statements to the Committee. Written statements may be submitted at any time before or after the meeting. However, to facilitate the distribution of public presentation materials to the Committee members, the Committee suggests that presenters forward the public presentation materials two weeks prior to the meetings date to the following address: Ms. Lee Ann Carpenter, TAC Unit/OAS/EA, room 3886C, Bureau of Export Administration, U.S. Department of Commerce, Washington, DC 20230.

The Assistant Secretary for Administration, with the concurrence of the delegate of the General Counsel, formally determined on January 18, 1993, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended, that the series of meetings or portions of meetings of the Committee and of any Subcommittees thereof, dealing with the classified materials listed in 5 U.S.C. 552b(c)(1) shall be exempt from the provisions relating to public meetings found in section 10 (a)(1) and (a)(3), of the Federal Advisory Committee Act. The remaining series of meetings or portions thereof will be open to the public.

A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the Central Reference and Records Inspection Facility, room 6020, U.S. Department of Commerce, Washington, DC. For further information, call Lee Ann Carpenter at (202) 482–2583.

Dated: November 26, 1993.

Betty Ferrell,

Director, Technical Advisory Committee Unit.

[FR Doc. 93–29450 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–DT–M

Foreign-Trade Zones Board

[Docket 56–3]

Foreign-Trade Zone 59—Lincoln, Nebraska Proposed Expansion of Subzone 59A, Kawasaki Motors Manufacturing Corporation, U.S.A. Plant (Motorcycles, Jetskis, All Terrain Vehicles) Lincoln, NE

An application has been submitted to the Foreign-Trade Zones Board (the Board) by the Lincoln Foreign-Trade Zone, Inc., grantee of FTZ 59, requesting authority to expand the boundary of FTZ Subzone 59A at the Kawasaki Motors Manufacturing Corporation, U.S.A. (KMMC) plant in Lincoln, Nebraska. The application was submitted pursuant to the provisions of the Foreign-Trade Zones Act, as amended (19 U.S.C. 81a-81u), and the regulations of the Board (15 CFR part 400). It was formally filed on November 22, 1993.

Subzone 59A was approved by the FTZ Board in 1980 for the manufacture of motorcycles, jet skis and four wheel all terrain vehicles (Board Order 163, 45 FR 58637, 9/4/80). The subzone currently consists of two sites in Lincoln, Nebraska: *Site 1* (43 acres)—manufacturing facilities located within KMMC's 305-acre manufacturing plant site, 6600 NW. 27th Street; and, *Site 2* (14,472 sq. ft.)—warehouse, located at 4725 N. 56th Street.

The applicant is now requesting authority to expand the boundary of *Site 1* to include KMMC's entire 305-acre plant site. The expansion area is currently undeveloped, but a new warehouse facility is planned. The application also requests that *Site 2* be deleted from the subzone boundary. No request for additional manufacturing authority is being made at this time.

In accordance with the Board's regulations (as revised, 56 FR 50790–50808, 10–8–91), a member of the FTZ Staff has been designated examiner to investigate the application and report to the Board.

Public comment on the application is invited from interested parties. Submissions (original and 3 copies) shall be addressed to the Board's Executive Secretary at the address below. The closing period for their receipt is January 31, 1994. Rebuttal comments in response to material submitted during the foregoing period may be submitted during the subsequent 15-day period (to February 14, 1994).

A copy of the application and accompanying exhibits will be available for public inspection at each of the following locations:

U.S. Department of Commerce, District Office, 11133 "O" Street, Omaha, Nebraska 68137.

Office of the Executive Secretary, Foreign-Trade Zones Board, U.S. Department of Commerce, room 3716, 14th & Pennsylvania Avenue, NW., Washington, DC 20230.

Dated: November 22, 1993.

John J. Da Ponte, Jr.,

Executive Secretary.

[FR Doc. 93–29327 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–DS–P

International Trade Administration

[A–533–08]

Antidumping Duty Order: Certain Stainless Steel Wire Rods from India

AGENCY: Import Administration, International Trade Administration, Department of Commerce.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Bill Crow, Office of Antidumping Investigations, Import Administration, International Trade Administration, U.S. Department of Commerce, 14th Street and Constitution Avenue, NW., Washington, DC, 20230; telephone: (202) 482–1116.

Scope of Order

For purposes of this investigation, certain stainless steel wire rods (SSWR) are products which are hot-rolled or hot-rolled annealed and/or pickled rounds, squares, octagons, hexagons or other shapes, in coils. SSWR are made of alloy steels containing, by weight, 1.2 percent or less of carbon and 10.5 percent or more of chromium, with or without other elements. These products are only manufactured by hot-rolling and are normally sold in coiled form, and are of solid cross-section. The majority of SSWR sold in the United States are round in cross-section shape, annealed and pickled. The most common size is 5.5 millimeters in diameter.

The SSWR subject to this investigation are currently classifiable under subheadings 7221.00.0005, 7221.00.0015, 7221.00.0020, 7221.00.0030, 7221.00.0040, 7221.00.0045, 7221.00.0060, 7221.00.0075, and 7221.00.0080 of the *Harmonized Tariff Schedule of the United States* (HTSUS). Although the HTSUS subheadings are provided for convenience and customs purposes, our written description of the scope of this investigation is dispositive.

Antidumping Duty Order

In accordance with section 735(a) of the Tariff Act of 1930, as amended (the Act), on October 12, 1993, the Department of Commerce (Department) made its final determination that certain SSWR from India are being sold at less than fair value (58 FR 54110, October 20, 1993). On November 23, 1993, in accordance with section 735(d) of the Act, the U.S. International Trade Commission (ITC) notified the Department that such imports materially injure a U.S. industry.

Therefore, in accordance with section 736 of the Act, the Department will direct Customs officers to assess, upon further advice by the administering authority pursuant to section 736(a)(1) of the Act, antidumping duties equal to the amount by which the foreign market value of the merchandise exceeds the United States price for all entries of certain SSWR from India. These antidumping duties will be assessed on all unliquidated entries of certain SSWR from India entered, or withdrawn from warehouse, for consumption on or after August 5, 1993, the date on which the Department published its preliminary determination notice in the **Federal Register** (58 FR 41729). On or after the date of publication of this notice in the **Federal Register**, Customs officers must require, at the same time as importers would normally deposit estimated duties, the following cash deposits for the subject merchandise.

Manufacturers/Producers/Exporters	Margin Percentage
Mukand Ltd.	48.60
Sunstar Metals Ltd.	48.60
Grand Foundry Ltd.	48.60
All Others	48.60

In its final determination, the Department found that critical circumstances exist with respect to exports of SSWR from India. However, on November 23, 1993, the ITC notified the Department that retroactive assessment of antidumping duties is not necessary to prevent recurrence of material injury from massive imports over a short period. As a result of the ITC's determination, pursuant to section 735(c)(3) of the Act, we shall order Customs to terminate the retroactive suspension of liquidation and to release any bond or other security and refund any cash deposit required under section 733(e)(2) with respect all entries of subject merchandise entered, or withdrawn from warehouse, for consumption prior to August 5, 1993.

This notice constitutes the antidumping duty order with respect to

certain stainless steel wire rods from India, pursuant to section 736(a) of the Act. Interested parties may contact the Central Records Unit, room B-099 of the Main Commerce Building, for copies of an updated list of antidumping duty orders currently in effect.

This order is published in accordance with section 736(a) of the Act and 19 CFR 353.21.

Dated: November 24, 1993.

Joseph A. Spetrini,

Acting Assistant Secretary for Import Administration.

[FR Doc. 93-29451 Filed 11-30-93; 8:45 am]

BILLING CODE 3510-DS-P

United States-Canada Free-Trade Agreement, Article 1904 Binational Panel Reviews; Completion of Panel Review

AGENCY: United States-Canada Free-Trade Agreement, Binational Secretariat, United States Section, International Trade Administration, Department of Commerce.

ACTION: Notice of completion of panel review of the final determination made by the Canadian International Trade Tribunal respecting gypsum board originating in or exported from the United States of America. (Secretariat File No. CDA-93-1904-02).

SUMMARY: This notice is effective November 22, 1993, the 31st day following the filing of a consent motion to terminate the binational panel review of this matter.

FOR FURTHER INFORMATION CONTACT: James R. Holbein, United States Secretary, Binational Secretariat, suite 2061, 14th and Constitution Avenue, Washington, DC 20230, (202) 482-5438.

SUPPLEMENTARY INFORMATION: Chapter 19 of the United States-Canada Free-Trade Agreement ("Agreement") establishes a mechanism to replace domestic judicial review of final determinations in antidumping and countervailing duty cases involving imports from the other country with review by independent binational panels. When a Request for Panel Review is filed, a panel is established to act in place of national courts to review expeditiously the final determination to determine whether it conforms with the antidumping or countervailing duty law of the country that made the determination.

Under Article 1904 of the Agreement, which came into force on January 1, 1989, the Government of the United States and the Government of Canada established Rules of Procedure for Article 1904 Binational Panel Reviews ("Rules"). These Rules were published in the **Federal Register** on December 30, 1988 (53 FR 53212). The Rules were amended by Amendments to the Rules of Procedure for Article 1904 Binational Panel Reviews, published in the **Federal Register** on December 27, 1989 (54 FR 53165). The Rules were further amended and a consolidated version of the amended Rules was published in the **Federal Register** on June 15, 1992 (57 FR 26698). The panel review in this matter was conducted in accordance with these Rules, as amended.

Background

On February 23, 1993, The National Gypsum Company (Gold Bond Building Products Division) filed a Request for Panel Review with the Canadian Section of the Binational Secretariat pursuant to Article 1904 of the United States-Canada Free Trade Agreement. Panel review was requested of the final affirmative injury determination made by the Canadian International Trade Tribunal respecting Gypsum Board originating in or exported from the United States of America. Notice of this determination was published in the **Federal Register** on January 30, 1993. The Binational Secretariat assigned Secretariat File No. CDA-93-1904-02 to this request.

Rule 73(2) of the Article 1904 Panel Rules provides, in pertinent part, that, "where all participants file Notices of Motion requesting termination, the panel review is terminated." A Consent Motion requesting termination was received from all participants on October 21, 1993. Pursuant to Rule 80(c) of the Article 1904 Panel Rules, the panel review in this matter was completed on the 31st day following the day on which the panel review was terminated (November 22, 1993).

Dated: November 24, 1993.

James R. Holbein,

United States Secretary, FTA Binational Secretariat.

[FR Doc. 93-29441 Filed 11-30-93; 8:45 am]

BILLING CODE 3510-GT-M

National Oceanic and Atmospheric Administration

[I.D. 112493B]

Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Pacific Fishery Management Council's Groundfish Permit Review Board will hold a public meeting on December 13-5, 1993, at the Red Lion Hotel—Columbia River, 1401 North Hayden Island Drive, Portland, OR. The meeting will begin on December 13 at 1 p.m.

The purpose of the meeting is to review appeals on the National Marine Fisheries Service denial of applications for West Coast groundfish limited entry permits. Appeals by the following persons will be heard at the meeting: Parker, Fulk, Pickens, Soreson/Stokes, Tran, Leinen. Hearings on appeals will begin on December 14 at 8 a.m.

FOR FURTHER INFORMATION CONTACT: Lawrence D. Six, Executive Director, Pacific Fishery Management Council, Metro Center, Suite 420, 2000 SW. First Avenue, Portland, OR 97201, telephone. (503) 326-352.

Dated: November 24, 1993

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93-29365 Filed 11-30-93; 8:45 am]

BILLING CODE 3510-22-P

[I.D. 112493A]

Western Pacific Fishery Management Council; Meeting

AGENCY: National Marine Fisheries Service (NMFS), National Oceanic and Atmospheric Administration (NOAA), Commerce.

ACTION: Notice of public meeting.

SUMMARY: The Western Pacific Fishery Management Council (Council) will hold its 82nd meeting on December 13-15, 1993, at the Ala Moana Hotel, 410 Atkinson Drive, Honolulu, HI. The Council's Pelagics, Bottomfish, Budget and Executive Standing Committees will meet on December 13 at 1 p.m., and the full Council will meet on December 14 and 15 at 8 a.m. each day.

The Council will hear reports from islanders and fishery agencies on the status of fisheries throughout the region. The National Marine Fisheries Service (NMFS) will also report on the status of agency turtle research activities. The Council will discuss, and possibly take action on, the following issues:

(1) Alternative methods for harvesting capacity determination and management under Amendment #7 to the pelagics fishery management plan (Hawaii longline limited entry program);

(2) Data reporting needs throughout the region;

(3) The Western Pacific Council's role as lead council in multi-council pelagic fishery management activities;

(4) Progress on state management of the main Hawaiian Island bottomfish fishery;

(5) NMFS rejection of proposed Northwestern Hawaiian Islands daily catch reporting requirements;

(6) An economic review of the Northwestern Hawaiian Islands bottomfish fishery;

(7) Progress on a draft amendment and regulatory changes to the crustaceans fishery management plan;

(8) The status of the Pacific Fisheries Research program;

(9) Preferential rights of native fishermen; and

(10) Other business as required.

FOR FURTHER INFORMATION CONTACT: Kitty M. Simonds, Executive Director, Western Pacific Fishery Management Council, 1164 Bishop Street, suite 1405, Honolulu, HI 96813; telephone: (808) 541–1974; or fax: (808) 526–0824.

Dated: November 24, 1993.

David S. Crestin,

Acting Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 93–29364 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–22–P

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Increase of a Guaranteed Access Level for Certain Man-Made Fiber Textile Products Produced or Manufactured in Jamaica

November 26, 1993.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing a guaranteed access level.

EFFECTIVE DATE: November 29, 1993.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 482–4212. For information on the quota status of this level, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 927–5850. For information on embargoes and quota re-openings, call (202) 482–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Government of the United States agreed to increase the 1993 Guaranteed Access Level (GAL) for Category 632.

A description of the textile and apparel categories in terms of HTS numbers is available in the CORRELATION: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 57 FR 54976, published on November 23, 1992). Also see 57 FR 60512, published on December 21, 1992.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

November 26, 1993.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 15, 1992, by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton, wool, man-made fiber and other vegetable fiber textiles and textile products, produced or manufactured in Jamaica and exported during the twelve-month period which began on January 1, 1993 and extends through December 31, 1993.

Effective on November 29, 1993, you are directed to increase the current Guaranteed Access Level for Category 632 to 5,500,000 dozen pairs.

The Committee for the Implementation of Textile Agreements has determined that this action falls within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Rita D. Hayes,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 93–29448 Filed 11–30–93; 8:45 am]

BILLING CODE 3510–DR–F

COMPETITIVENESS POLICY COUNCIL

Meeting

ACTION: Notice of forthcoming meetings.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the Competitiveness Policy Council announces several forthcoming meetings.

DATES: December 10, 1993; 9 a.m to 2:30 p.m.

ADDRESSES: Eighth Floor Conference Center, 11 Dupont Circle, NW., Washington, DC 20036.

FOR FURTHER INFORMATION CONTACT: Howard Rosen, Executive Director, Competitiveness Policy Council, suite 650, 11 Dupont Circle, NW., Washington, DC 20036, (202) 387–9017.

SUPPLEMENTARY INFORMATION: The Competitiveness Policy Council (CPC) was established by the Competitiveness Policy Council Act, as contained in the Trade and Competitiveness Act of 1988, Public Law 100–418, sections 5201–5210. as amended by the Customs and Trade Act of 1990, Public Law 101–382, section 133. The CPC is composed of 12 members and is to advise the President and Congress on matters concerning competitiveness of the US economy. The Council's chairman, Dr. C. Fred Bergsten, will chair each meeting.

The meeting will be open to the public subject to the seating capacity of the room. Visitors will be requested to sign a visitor's register.

TYPE OF MEETING: Open.

AGENDA: The Chairman will open the meeting with a report on the Council's activities since the release of its interim report. The Council will focus on technology and health care issues and will also consider additional business as suggested by its members.

Dated: November 29, 1993.

C. Fred Bergsten,

Chairman, Competitiveness Policy Council.

[FR Doc. 93–29373 Filed 11–30–93; 8:45 am]

BILLING CODE 6820–11–M

DEPARTMENT OF DEFENSE

Department of the Navy

Naval Research Advisory Committee; Closed Meeting

Pursuant to the provisions to the Federal Advisory Committee Act (5 U.S.C. app. 2), notice is hereby given that the Naval Research Advisory Committee Panel on Littoral Warfare/ Amphibious Warfare will meet on December 8, 9, and 10, 1993. The meeting will be held at The CNA Corporation, 4401 Ford Avenue, Alexandria, Virginia. The meeting will commence at 8 a.m. and terminate at 5:30 p.m. on December 8; commence at 8 a.m. and terminate at 5 p.m. on December 9; and commence at 8 a.m. and terminate at 12:30 p.m. on December 10, 1993. All sessions of the meeting will be closed to the public.

The purpose of the meeing is to provide the Department of the Navy with (1) an assessment of the capabilities and readiness of the U.S. Navy and Marine Corps to effectively conduct littoral and amphibious warfare operations, and (2) recommendations for technological investments that can improve performance while reducing risk to Marine and Naval forces. The agenda will include briefings and discussions related to Theater Ballistic Missile Defense; the role of the SSN in Littoral Warfare; recent operations in Somalia; science and technology issues, C4I; Naval surface fire support; and strike, electronic, and riverine warfare.

These briefings and discussions will contain classified information that is specifically authorized under criteria established by Executive order to be kept secret in the interest of national defense and are, in fact, properly classified pursuant to such Executive order. The classified and nonclassified matters to be discussed are so inextricably intertwined as to reclude opening any portion of the meeting. Accordingly, the Secretary of the Navy has determined in writing that the public interest requires that all sessions of the meeting be closed to the public because they will be concerned with matters listed in section 552b(c)(1) of title 5, United States Code.

For further information concerning this meeting contact: Commander R. C. Lewis, USN, Office of the Chief of Naval Research, 800 North Quincy Street, Arlington, VA 22217-5000, Telephone Number: (703) 696-4870.

Dated: November 24, 1993.

Michael P. Rummel,

LCDR, JAGC, USN, Federal Register Liaison Officer.

[FR Doc. 93-29406 Filed 11-30-93; 8:45 am]

BILLING CODE 3810-AE-F

DEPARTMENT OF ENERGY

Federal Energy Regulatory Commission

[Docket No. ER94-155-000, et al.]

Catex Vitol Electric Inc., et al.; Electric Rate, Small Power Production, and Interlocking Directorate Filings

November 24, 1993.

Take notice that the following filings have been made with the Commission:

1. Catex Vitol Electric Inc.

[Docket No. ER94-155-000]

Take notice that Catex Vitol Electric Inc. (CVE) on November 15, 1993, tendered for filing pursuant to Rules 105 and 107 of the Commission's Rules of Practice and Procedure, 18 CFR 385.105, 207 (1993), its Rate Schedule No. 1, to be effective 60 days from and after November 15, 1993, and a petition for waivers of and blanket approvals under various regulations of the Commission, and clarification of jurisdiction under section 201 of the Federal Power Act.

CVE intends to engage in electric power and energy transactions as a marketer. CVE's marketing activities will include purchasing capacity, energy and/for transmission services from electric utilities, qualifying facilities and independent power producers, and reselling such power to other purchasers. CVE proposes to charge rates mutually agreed upon by the parties, subject to the rate being at or below the buyer's expected cost of alternative supply, taking into account the value of services performed by CVE. All sales will be at arms-length, and no sales will be made to affiliated entities. CVE is not in the business of producing or transmitting electric power. Neither CVE nor any of its affiliates currently have or contemplate acquiring little to any electric power transmission or generation facilities.

Rate Schedule No. 1 provides for the sale of energy and capacity at agreed prices subject to a ceiling equal to the purchaser's expected alternative cost of electric power, taking into account the value of services performed by CVE. Rate Schedule No. 1 also provides that no sales may be made to affiliates.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

2. Ebensburg Power Co.

[Docket Nos. QF86-1074-004 and QF86-1074-005]

On November 15, 1993, Ebensburg Power Company tendered for filing an amendment to its filing in this docket. No determination has been made that the submittal constitutes a complete filing.

The amendment provides additional information pertaining to the ownership of the facility.

Comment date: December 14, 1993, in accordance with Standard Paragraph E at the end of this notice.

3. Idaho Power Co.

[Docket No. ER94-167-000]

Take notice that on November 17, 1993, Idaho Power Company (IPC) tendered for filing exhibit revisions relating to monthly contract and energy requirements under the following jurisdictional agreements between IPC and various entities.

1. Transmission Service Agreement, dated June 27, 1988, Seattle City Light;
2. Agreement for Supply of Power and Energy, dated February 10, 1988, Utah Associated Municipal Power Systems;
3. Agreement for Supply of Power and Energy, dated July 5, 1983, Washington City, Utah;
4. Agreement for Supply of Power and Energy, dated February 23, 1989, Sierra Pacific Power Company;
5. Transmission Service Agreement, dated December 21, 1990, Bonneville Power Administration;
6. Transmission Service Agreement, dated June 5, 1989, Bonneville Power Administration.

IPC has requested an effective date for each of these revised exhibits of not less than 60 days from the date of filing.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

4. Florida Power & Light Co.

[Docket No. ER94-172-000]

Take notice that Florida Power & Light Company (FPL) on November 16, 1993, tendered for filing two Exhibit A's to the Aggregate Billing Partial Requirements Service Agreement between Florida Power & Light Company and Seminole Electric Cooperative, Inc. FPL requests that the Exhibits be made effective December 18, 1990 and June 28, 1991 for the West Nassau and Morris delivery points, respectively.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

5. Southern Company Services, Inc.

[Docket No. ER94-173-000]

Take notice that on November 18, 1993, Southern Company Services, Inc., acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company, and Savannah Electric and Power Company (collectively referred to as the "Operating Companies"), tendered for filing a notice of cancellation for certain duplicative rate schedule designations of the Operating Companies.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

6. Gulf States Utilities Company

[Docket No. ES94-9-000]

Take notice that on November 19, 1993, Gulf States Utilities Company (Gulf States) filed an application under section 204 of the Federal Power Act seeking authorization to issue not more than $100 million of First Mortgage

Bonds as security for a short-term credit facility. Also, Gulf States requests exemption from the Commission's competitive bidding regulations.

Comment date: December 17, 1993, in accordance with Standard Paragraph E at the end of this notice.

7. Gulf States Utilities Company

[Docket No. ER94–166–000]

Take notice that Gulf States Utilities Company (Gulf States), on November 17, 1993, tendered for filing a rate schedule change with respect to Gulf States' electric transmission service to Cajun Electric Power Cooperative, Inc. (Cajun). The rate Schedule change is submitted in accordance with the court's order in *Gulf States Utilities Co. v. FERC,* 1 F.3d 288 (5th Cir. 1993), and requests approval of a rate surcharge to Cajun.

Gulf States requests an effective date for the rate surcharge of January 17, 1994.

A copy of the filing was served upon Cajun and the Louisiana Public Service Commission.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

8. Consolidated Edison Company of New York, Inc.

[Docket No. ER94–156–000]

Take notice that on November 16, 1993, Consolidated Edison Company of New York, Inc. (Con Edison) tendered for filing a Supplement to its Rate Schedule FERC 117, an agreement to provide transmission and interconnection service to Long Island Lighting Company (LILCO). The Supplement provides for an increase in the annual fixed rate carrying charges of $614.52. Con Edison has requested that this increase take effect as of October 1, 1993.

Con Edison states that a copy of this filing has been served by mail upon LILCO.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

9. Duke Power Company

[Docket No. ER94–154–000]

Take notice that Duke Power Company (Duke or Company) on November 15, 1993, tendered for filing a Settlement Agreement dated November 1, 1993, designated as Settlement Agreement No. 3, to its Interconnection Agreements between the Company and North Carolina Municipal Power Agency Number 1 (Power Agency); North Carolina Electric Membership Corporation (NCEMC), Saluda River Electric Cooperative, Inc. (Saluda River), and Piedmont Municipal Power Agency (PMPA). Duke, Power Agency, NCEMC, Saluda River, and PMPA are joint owners of the Catawba Nuclear Station. Under the terms of the Interconnection Agreements, Duke interconnects its generation and transmission system with the Catawba Nuclear Station, wheels electric power and energy to the members of the other joint owners, provides supplemental capacity and energy in excess of that provided by the owners' ownership interest, and provides back-up services. Duke states that Settlement Agreement No. 3 clarifies how certain calculations will be made under the Interconnection Agreements and resolves certain items of dispute.

Duke states that the Interconnection Agreements are on file with the Commission and have been designated as follows:

Rate Schedule FERC No. 271 (Power Agency)
Rate Schedule FERC No. 273 (NCEMC)
Rate Schedule FERC No. 274 (Saluda River)
Rate Schedule FERC No. 276 (PMPA)

Copies of this filing were mailed to Power Agency, NCEMC, Saluda River, PMPA, the North Carolina Utilities Commission, and the South Carolina Public Service Commission.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

10. Oklahoma Gas and Electric Co.

[Docket No. ER94–160–000]

Take notice that on November 12, 1993, Oklahoma Gas and Electric Company (OG&E) tendered for filing a Letter Agreement dated November 5, 1993, with Western Farmers Electric Cooperative regarding the installation of electrical facilities for the use and benefit of WFEC.

Copies of this filing have been served on WFEC, the Oklahoma Corporation Commission and the Arkansas Public Service Commission.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

11. Wisconsin Power and Light Co.

[Docket No. ER94–158–000]

Take notice that on November 16, 1993, Wisconsin Power and Light Company tendered for filing with the Federal Energy Regulatory Commission two Letter Agreements between Wisconsin Power and Light Company (WP&L) and Consolidated Water Power Company (CWP). Under the Negotiated Capacity Agreement, WP&L will make capacity and associated energy available to CWP with negotiated degrees of firmness, variable capacity charges, and variable time duration. Under the General Purpose Energy Agreement, WP&L will make non-firm energy available to CWP, with terms and quantities to be arranged by mutual agreement.

Wisconsin Power and Light respectfully requests an effective date sixty (60) days from the date of filing.

A copy of the filing has been served on the Public Service Commission of Wisconsin.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

12. Midwest Power Systems Inc.

[Docket No. ER94–157–000]

Take notice that on November 16, 1993, Midwest Power Systems Inc. (MPSI) tendered for filing Peaking and Participation Agreement (Agreement) dated March 14, 1991, between Corn Belt Power Cooperative (Corn Belt) and Iowa Power Inc., n/k/a MPSI. This Agreement's main emphasis is for MPSI to purchase capacity and energy from Corn Belt from May 1 through October 31 of the years 1991, 1992, 1993, and 1994. Paragraph 6 of the Agreement allows for MPSI to sell capacity and energy to Corn Belt, at Corn Belt's sole option, in the month of October of each respective year. Corn Belt is a rural power cooperative that can experience high usage in the month of October related to crop drying by their customers. This accounts for Corn Belt's need to have an option to purchase this capacity in October. This option was not utilized in 1991, but it was exercised by Corn Belt in October 1992 and 1993.

On July 30, 1993, the Commission issued its "Final Order" in Docket No. PL93–2–002, "Prior Notice and Filing Requirements", clarifying that agreements for "the sale of electric power and energy to any person" must be filed. The Final Order also established an amnesty period during which such filings can be brought up to date.

Pursuant to § 35.11 of the Commission's regulations, MPSI is requesting a waiver of the Commission's rules so the sale of capacity and energy may be accepted without notice for October 1992 and October 1993. MPSI believes this filing falls within the provisions of the amnesty period. However, if it does not, MPSI is requesting this waiver as an "extraordinary circumstance".

MPSI respectfully requests a waiver of the Commission's rules so that the Peaking Participation Agreement may be approved retroactive to May 1, 1991.

MPSI states that copies of this filing were served on Corn Belt and the Iowa Utilities Board.

Comment date: December 8, 1993, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 18 CFR 385.214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 93-29417 Filed 11-30-93; 8:45 am]

BILLING CODE 6717-01-P

[Docket No. CP94-89-000, et al.]

CNG Transmission Corp., et al.; Natural Gas Certificate Filings

November 23, 1993.

Take notice that the following filings have been made with the Commission:

1. CNG Transmission Corp.

[Docket No. CP94-89-000]

Take notice that on November 18, 1993, CNG Transmission Corporation (CNG) 445 West Main Street, Clarksburg, West Virginia 26301, filed in Docket No. CP94-89-000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing it to construct and operate approximately 8,000 horsepower of compression, at CNG's new Chambersburg Compressor Station, in Franklin County, Pennsylvania, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CNG states that the new Chambersburg Compressor Station will be located near the intersection of CNG's existing PL-1 pipeline and the jointly owned (Texas Eastern and CNG) CRP Line. With this facility, CNG states that it will increase service to the Mid-Atlantic region through its PL-1 pipeline system, which begins in Pennsylvania and traverses parts of Maryland and Virginia.

CNG states that it requires this new facility to mitigate the impact of a permanent release of certain services by Rochester Gas and Electric Corporation (RG&E). CNG states that it will mitigate the impact by remarketing such service to customers in the Mid-Atlantic region. It is stated that the Mid-Atlantic customers will be permanent replacement shippers for certain CNG and upstream pipelines services that are being permanently released by RG&E.

CNG states that during its Order No. 636 restructuring process, RG&E advised CNG that, with the construction of the Empire State Pipeline in upstate New York, RG&E would no longer need all of the services that had been allocated to it in the settlement of CNG's restructuring docket.

According to CNG, the service RG&E desires to permanently release, to be remarketed to others in the Mid-Atlantic region, consist of 58,891 Dekatherms per day (Dth/d) of firm transportation service and 60,000 Dth/d in storage service, totalling 118,891 Dth/d of transportation services on the CNG system. CNG states that the remarketing of the 58,891 Dth/d of transportation service also involves RG&E's release of certain upstream service on other interstate pipelines supporting the CNG service.

CNG states that it has remarketed a total of 102,000 Dth/d of these services to the following customers in the Mid-Atlantic region, with 16,891 Dth/d remaining to be remarketed somewhere in the Northeast: Washington Gas Light (WGL), Virginia Natural Gas, Inc. (VNG, an affiliate to CNG), Public Service Company of North Carolina (PSNC), The Eastern Group (TEG, a developer of a proposed cogeneration project in Hagerstown, Maryland), and Diamond Energy, Inc. (Diamond, an owner-operator of the existing Doswell "IPP" Electric Plant). CNG states that, with the exception of TEG, all of these customers are existing firm shippers on CNG's system.

CNG states that the customers have subscribed to the services being remarketed in the following quantities:

Type service	WGL (Dth/d)	VNG (Dth/d)	PSNC (Dth/d)	TEG (Dth/d)	Diamond (Dth/d)	Total (Dth/d)
FTNN	11,250	20,000	8,000	10,000	7,000	56,250
MATQ (000s)	4,106	7,300	2,290	3,650	2,555	20,531
GSS Demand	13,750	20,000	12,000	0	0	45,750
GSS Cap (000s)	1,031	1,040	720	0	0	2,791
Total MDQ	25,000	40,000	20,000	10,000	7,000	102,000

CNG states that the new Chambersburg Compressor Station will enable CNG to remarket the services being permanently released by RG&E to these Mid-Atlantic customers. CNG states that it will commence all of the remarketed services under existing authority in its Part 284 Blanket Certificate for transportation and storage services. CNG estimates the cost of construction at $13,535,000.

CNG submits that all of its customers benefit (economically and otherwise) by the remarketing of existing services from RG&E to the Mid-Atlantic customers. If the relevant RG&E services were not remarketed, CNG states that its customers would bear stranded upstream pipeline capacity costs of about $9.9 million, annually. By constructing the Chambersburg Compressor Station, and remarketing these existing services to Mid-Atlantic customers, at the costs proposed in this application, CNG states that it avoids these stranded costs, which would have been borne in the form of higher system rates by all CNG customers.

CNG states that other benefits include the above customers obtaining needed additional gas services in the Mid-Atlantic region at competitive prices, and the Chambersburg Compressor Station increasing the reliability and flexibility of CNG's system, providing benefits for all CNG customers.

CNG states that Texas Eastern filed a companion application to this project on October 1, 1993, in Docket No. CP94-6-000. CNG states that the facilities proposed by Texas Eastern, on the jointly-owned CRP line, constitute an "operational loop" on CNG's pipeline system, and are necessary to

permit CNG to remarket the services proposed herein.

Comment date: December 14, 1993, in accordance with Standard Paragraph F at the end of this notice.

2. Petal Gas Storage Co.

[Docket No. CP93–69–001]

Take notice that on November 16, 1993, Petal Gas Storage Company (Petal), filed an application for an amendment of its certificate which was issued on August 4, 1993, in Docket No. CP93–69–000.[1] In that docket Petal was granted authorization for its storage facility which included the installation of booster compression at its United[2] Station consisting of a single 1,000 Hp unit. With this application, Petal is requesting an amendment to omit the authorization for it to install the booster compressor unit at its Koch Gateway Station and to eliminate its authority to provide firm injection of gas received at its Koch Gateway receipt point. Petal also requests that it be allowed to immediately begin construction of its Koch Gateway Station and the lateral to Koch Gateway Pipeline, so that it can provide firm delivery service of storage withdrawals to Koch Gateway's pipeline, all as more fully set forth in the application on file with the Commission and open to public inspection.

Petal states that when it filed its application in Docket No. CP93–69–000, it understood that the 12-inch pipeline to which it would be connected at the Koch Gateway Station had an operating pressure of approximately 500 psig. However, Petal now states that it has received information indicating that the actual operating pressure of the Koch Gateway line would be substantially less, at approximately 350 psig. To provide a firm injection service at the Koch Gateway interconnect, this lower pressure would require Petal to install more compression capacity at the Koch Gateway Station than was originally contemplated in its application or was authorized by the Commission. Also, in its original application, Petal contemplated providing firm injection service from Koch Gateway of up to 30,000 MMBtu per day, however, since the operating pressure of the Koch Gateway pipeline is lower than originally assumed, a single 1,000 Hp unit will be insufficient to offer any firm injection service from the Koch Gateway receipt point.

Petal states that the authority to commence construction immediately will allow it to include all work associated with the Koch Gateway Station during the current construction mobilization.

Comment date: December 14, 1993, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

3. Koch Gateway Pipeline Co.

[Docket No. CP94–75–000]

Take notice that on November 12, 1993, Koch Gateway Pipeline Company (KGPC), P.O. Box 1478, Houston, Texas 77251 filed an application in Docket No. CP94–75–000 for permission and approval to abandon by sale to Koch Pipelines, Inc. (Koch Pipelines) certain natural gas transmission facilities, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

KGPC proposes to abandon by sale to Koch Pipelines approximately 200 miles of main line and 27 miles of loop line, referred to as Index 276, from Whistler Junction in Mobile County, Alabama to the Lirette Plant in Terrebone Parish, Louisiana. KGPC states that Koch Pipelines intends to operate these facilities as a liquid products line.

KGPC states that Index 276 was originally constructed in the 1940's to supply the natural gas requirements of national defense industries in lower Louisiana and along the Gulf Coast to Pensacola, Florida. KGPC further states that it currently serves its markets in southern Louisiana and along the coast to Mobile, Alabama with a higher pressure 30-inch pipeline, Index 300, which runs parallel to Index 276. KGPC explains that due to the low currently effective maximum allowable operating pressure of 358 psi for Index 276, the end-to-end capacity of this line has been reduced to 15,000 Mcf of natural gas per day. KGPC further explains that at present Index 276 functions as header which distributes gas from Index 300 to smaller laterals. KGPC states that Index 276 is not presently used for end-to-end transportation as originally intended. KGPC further states that it would maintain, without interruption, all current services provided through Index 276.

Comment date: December 14, 1993, in accordance with Standard Paragraph F at the end of this notice.

4. K N Interstate Gas Transmission Co.

[Docket No. CP94–94–000]

Take notice that on November 19, 1993, K N Interstate Gas Transmission Company (K N Interstate), P.O. Box 281304, Lakewood, Colorado 80228, filed in Docket No. CP94–94–000 a request pursuant to section 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to install and operate two new delivery taps under K N Interstate's blanket certificate issued in Docket No. CP89–1043–000 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

K N Interstate states that K N Energy, Inc. (K N), a local distribution company, has requested the addition of two new delivery points in Howard and Stanton Counties, Nebraska under an existing transportation service agreement between K N Interstate and K N. It is further stated that the proposed delivery points would be located on K N Interstate's main transmission system and would facilitate the delivery of natural gas to K N for distribution to new direct retail customers.

Comment date: January 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

5. SunShine Interstate Transmission Company

[Docket No. CP93–361–001]

Take notice that on November 19, 1993, SunShine Interstate Transmission Company (SITCO), 500 Renaissance Center, Detroit, Michigan 49243, filed in Docket No. CP93–361–001 a petition to amend the application filed in Docket No. CP93–361–000 to revise the proposed facilities to be covered by the original application and to revise the proposed initial rates as a result of the facility modification, pursuant to section 7(c) of the Natural Gas Act, all as more fully set forth in the petition which is on file with the Commission and open to public inspection.

SITCO states that it would acquire the facilities of Five Flags Pipeline Company (Five Flags), a Florida intrastate pipeline company, with facilities consisting of 41 miles of 10-inch pipeline and 12.6 miles of 8-inch pipeline, plus related facilities. SITCO also states that, by purchasing the facility from Five Flags, it no longer requires to construct and operate the Pensacola lateral consisting of 18 miles of 12-inch pipeline, 3.5 miles of 10-inch pipeline and 5.9 miles of 6-inch pipeline and four customer delivery points, all located in the State of Florida. Accordingly, SITCO now proposes to delete the request to construct and operate the Pensacola lateral. In addition, SITCO seeks authorization to construct and operate a 2.2 mile segment of 6-inch diameter lateral system in Escambia County, Florida to provide natural gas

[1] 64 FERC § 61,090 (1993).

[2] United Pipeline Company's name has been changed to Koch Gateway Pipeline.

transportation service to Energy Services of Pensacola (Energy Services), a firm transportation customer.

SITCO indicates that deleting the request to construct the Pensacola lateral and replacing it with the acquisition of the Five Flags system would result in SITCO saving approximately $10.1 million ($13.3 million savings from not constructing the Pensacola lateral less $3.2 million for acquisition cost of the facilities of Five Flags). SITCO also indicates that the Energy Services lateral would cost $1.3 million.

SITCO indicates that the reduced construction cost would reduce the initial rates proposed in the original application. It is stated that under Rate Schedule FT, SITCO's reservation rate would be reduced from $4.4513 per dt to $4.2449 per dt and its 100% load factor rate would be reduced from $0.1207 per dt to $0.1162 per dt.

SunShine proposes no other changes to the original proposal.

Comment date: December 14, 1993, in accordance with the first paragraph of Standard Paragraph F at the end of this notice.

6. Florida Gas Transmission Co.

[Docket No. CP94–96–000]

Take notice that on November 19, 1993, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–96–000, a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate a new meter station and 0.27 miles of 8-inch lateral line to accommodate gas deliveries to Kissimmee Utility Authority (Kissimmee) under an existing firm transportation agreement, under the authorization issued in Docket No. CP82–553–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new turbine meter station and related appurtenant facilities. It is stated that the new lateral, Kissimmee Cane Island Lateral, will consist of approximately 0.27 miles of 8-inch pipe connecting to FGT's St. Petersburg lateral. It is stated that the average quantity that FGT will deliver through the subject meter station is 5,061 MMBtu per day and 1,847,625 MMBtu per year. FGT states that Kissimmee shall reimburse it for all construction costs, which are estimated to be $433,000. It is stated that the end-use will be at a Kissimmee-owned site.

Comment date: January 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

7. National Fuel Gas Supply Corp.

[Docket No. CP94–71–000]

Take notice that on November 12, 1993, National Fuel Gas Supply Corporation (National), 10 Lafayette Square, Buffalo, New York, 14203, filed in Docket No. CP94–71–000 a request pursuant to § 157.205 of the Commission's Regulations to abandon in place certain facilities on its lateral Line T in Mercer County, Pennsylvania and by transfer to National Fuel Distribution Corporation (Distribution), a local distribution company, certain facilities on its lateral Line S and Station T–No. 736 in Mercer County, Pennsylvania under National's blanket certificate issued in Docket No. CP83–4–000, pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

National proposes to abandon in place approximately 8 miles and 14,517 feet of its 10-inch lateral Line T located in Mercer County, Pennsylvania; and to abandon a portion of its lateral Line S and Meter and Regulation Station T–No. 736 located in Mercer County, Pennsylvania by transfer to Distribution. National states that the estimated cost of the facilities to be abandoned is $115,000. National states that all the customers served by these facilities have consented to the abandonment. National indicates that it has provided notice of the proposed abandonments to the Pennsylvania Public Utility Commission, the state commission that has jurisdiction over Distribution.

Comment date: January 7, 1994, in accordance with Standard Paragraph G at the end of this notice.

8. Northern Border Pipeline Co.

[Docket No. CP93–3–002]

Take notice that on November 17, 1993, Northern Border Pipeline Company (Northern Border), 1111 South 103rd Street, Omaha, Nebraska 68124–1000, filed a Petition to Amend Order requesting authority to add receipt and delivery points on the Northern Border system as secondary receipt and delivery points to Pan-Alberta Gas (U.S.) Inc.'s (PAG-US) U.S. shippers service agreement, all as more fully set forth in the petition on file with the Commission and open to public inspection.

Northern Border states that the purpose of its proposal is to allow PAG-US to perform under a system balancing agreement (SBA) between PAG-US and Northern Natural Gas Company (Northern). The SBA will assist Northern in meeting Northern's and its shippers' operating needs in the Order No. 636 environment.

Comment date: December 14, 1993, in accordance with the first two paragraphs of Standard Paragraph F at the end of this notice.

9. Texas Eastern Transmission Corp.

[Docket No. CP94–6–000]

Take notice that on October 1, 1993, Texas Eastern Transmission Corporation (Texas Eastern) 5400 Westheimer Court, Houston, Texas 77056–5310, filed in Docket No. CP94–6–000 an application pursuant to section 7(c) of the Natural Gas Act for a certificate of public convenience and necessity authorizing the installation of incremental pipeline and compression facilities necessary for Texas Eastern to render an incremental firm transportation service for CNG Transmission Corporation (CNG). It is stated that the pipeline facilities would constitute an "operational loop" on CNG's pipeline system and are necessary to permit CNG to serve certain markets off its PL–1 Line, all as more fully set forth in the application which is on file with the Commission and open to public inspection.

Texas Eastern proposes to construct and operate certain pipeline and compression facilities and replacement pipelines to increase its mainline transmission capacity between the Crayne Farm meter station, in Waynesburg County, Pennsylvania, and the Chambersburg Compressor Station in Chambersburg County, Pennsylvania. Texas Eastern proposes to provide an incremental 100,000 Dekatherms per day (Dth/d) of transportation capacity for CNG. Texas Eastern states that CNG proposes to utilize this capacity to render firm transportation service for CNG customers served off of CNG's PL–1 Line, including Virginia Natural Gas Company, Washington Gas & Light Company, and Public Service Company of North Carolina (CNG Customers). Texas Eastern proposes to charge a separately stated incremental rate, as an initial rate.

It is stated that CNG requires the 100,000 Dth/d of incremental capacity on Texas Eastern because the portion of the Texas Eastern system proposed herein to be expanded would function as a necessary operational loop of CNG's pipeline system connecting upstream transportation and/or storage services to CNG's PL–1 Line at Chambersburg, Pennsylvania. Specifically, it is stated that CNG has advised Texas Eastern that CNG proposes to render 100,000 Dth/d

of firm transportation and/or storage service for the CNG Customers.[3]

It is stated that CNG's system interconnects with Texas Eastern's system at the Crayne Farm meter station near Waynesburg, Pennsylvania. Texas Eastern states that its facilities from Crayne Farm to Chambersburg are fully subscribed for firm services. It is stated that the incremental facilities proposed herein will enable CNG to deliver 100,000 Dth/d into Texas Eastern's system at Crayne Farm for firm transportation to Chambersburg, where such volumes would be redelivered back to CNG at the point where Texas Eastern's system interconnects with CNG's PL–1 Line.

Therefore, Texas Eastern submits that the proposed incremental facilities provide CNG a necessary transportation link between its existing system facilities, and allows Texas Eastern to deliver 100,000 Dth/d to CNG at Chambersburg. Without the incremental transportation service, Texas Eastern states that CNG could not provide downstream service on the PL–1 Line for the CNG Customers. Texas Eastern adds that CNG has previously purchased similar transportation services to serve its Line PL–1 markets under Texas Eastern Rate Schedules X–135 and X–137, 64 FERC ¶61,303 (1993).

Specifically, Texas Eastern requests authorization to:

(1) Install, own and operate a 6,500 horsepower compressor addition at the existing Uniontown Compressor Station and a total of 12.95 miles of 36-inch looping in two separate segments within the state of Pennsylvania;

(2) Construct, install, own and operate 4.7 miles of 36-inch replacement pipeline between the existing Bedford and Chambersburg Compressor Stations; and 8.25 miles of 36-inch replacement pipeline between the existing Uniontown and Bedford Compressor Stations; and

(3) Charge, as a NGA section 7(c) initial rate, an incremental reservation rate for transportation service under Texas Eastern's Part 284 FT–1 Rate Schedule.

It is estimated that the total capital costs of the proposed compression and pipeline facilities extensions is $39,207,000. Based upon the cost of service of the proposed facility additions, Texas Eastern proposes to charge CNG an incremental rate of $7.581 per dekatherm.

[3] On, November 18, 1993, in Docket No. CP94–89–000, CNG filed a related application describing the services it proposes to render for the CNG Customers.

Comment date: December 14, 1993, in accordance with Standard Paragraph F at the end of this notice.

Standard Paragraphs:

F. Any person desiring to be heard or to make any protest with reference to said application should on or before the comment date, file with the Federal Energy Regulatory Commission, Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.214 or 385.211) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to the jurisdiction conferred upon the Federal Energy Regulatory Commission by Sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this application if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate and/or permission and approval for the proposed abandonment are required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

Under the procedure herein provided for, unless otherwise advised, it will be unnecessary for applicant to appear or be represented at the hearing.

G. Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary

[FR Doc. 93–29346 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–P

[Docket No. CP94–88–000]

Arkla Energy Resources Co.; Request Under Blanket Authorization

November 24, 1993.

Take notice that on November 19, 1993, Arkla Energy Resources Company (AER), 1600 Smith Street, Houston, Texas 77002, filed in Docket No. CP94–88–000, a request pursuant to §§ 157.205 and 157.216 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205 and 157.216) for permission and approval to abandon certain facilities located in Louisiana, under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to abandon, by retirement, two 2–inch U-shaped meters located on AER's Line S, in Caddo Parish, Louisiana. It is stated that the facilities were used by AER to deliver gas to Arkansas Louisiana Gas Company (ALG), so ALG could service the Blanchard Town Border Station #3, and the Countryaire Mobile Home Park. AER avers that the facilities proposed to be abandoned herein, were certificated in Docket No. CP85–77, and ALG has consented in writing to the abandonment and removal of AER's metering facilities. AER states that the taps will be abandoned in place and all above ground facilities will be removed. It is stated that the meter that serviced the Blanchard Town Border Station was installed in 1973, and has been inactive for years. It is further stated that the meter that serviced the Countryaire Mobile Home Park was installed in 1963, and AER stated that it has extended its existing distribution line to serve this customer so as to prevent disruption of service during normal maintenance of AER's Line S.

Any person or the Commission's staff may, within 45 days after issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the

Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefor, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29344 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. CP94–97–000]

Williston Basin Interstate Pipeline Co.; Request Under Blanket Authorization

November 24, 1993.

Take notice that on November 19, 1993, Williston Basin Interstate Pipeline Company (Williston Basin), suite 300, 200 North Third Street, Bismarck, North Dakota 58501, filed a prior notice request with the Commission in Docket No. CP94–97–000 pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (NGA) for authorization to reassign natural gas volumes that it delivers to Northern States Power Company (NSP) under Williston Basin's blanket certificate issued in Docket No. CP83–1–000 pursuant to section 7 of the NGA, all as more fully set forth in the request which is open to the public for inspection.

Williston Basin proposes to reassign natural gas volumes it delivers to NSP under its FERC Rate Schedule X–13. Williston Basin states that it would increase the daily deliveries at the Casselton Border Station delivery point in Cass County, North Dakota, from 1 Mcf to 85 Mcf. Williston Basin would also decrease the daily deliveries at the Mapleton Interconnect delivery point also in Cass County from 7,989 Mcf to 7,905 Mcf.

Williston Basin states that the proposed reassignment of NSP's Maximum Daily Delivery Quantities (MDDQ) is allowed by its FERC tariff and that the proposed MDDQ reassignment would have no impact on Williston Basin's peak day and annual deliveries. Finally, Williston Basin states that it has sufficient capacity to provide the deliveries to NSP without detriment or disadvantage to its existing customers.

Any person or the Commission's staff may, within 45 days after the Commission has issued this notice, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and pursuant to § 157.205 of the Regulations under the NGA (18 CFR 157.205) a protest to the request. If no protest is filed within the allowed time, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the NGA.

Lois D. Cashell,

Secretary.

[FR Doc. 93–29345 Filed 11–30–93; 8:45 am]

BILLING CODE 6717–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–4804–8]

Agency Information Collection Activities Under OMB Review

AGENCY: Environmental Protection Agency (EPA).

ACTION: Notice.

SUMMARY: In compliance with the Paperwork Reduction Act (44 U.S.C. 3501 *et seq.*), this notice announces that the Information Collection Request (ICR) abstracted below has been forwarded to the Office of Management and Budget (OMB) for review and comment. The ICR describes the nature of the information collection and its expected cost and burden.

DATES: Comments must be submitted on or before January 3, 1994.

FOR FURTHER INFORMATION CONTACT: For further information or to obtain a copy of this ICR contact Sandy Farmer at EPA, (202) 260–2740.

SUPPLEMENTARY INFORMATION:

Office of General Counsel

Title: Information Collection Requirements for Confidentiality Rules (EPA ICR No. 1665.01).

Abstract: This ICR is for existing information collection activities associated with the protection of confidential business information (CBI) that have not previously received an OMB control number. Since the EPA's confidentiality regulations were promulgated in 1976, at 40 CFR part 2, subpart B, the EPA has collected information relevant to CBI claims. The respondents providing CBI information to the EPA are potentially any non-Federal entity that has submitted a document asserting a confidentiality claim. The information will be used by the EPA to determine:

(1) What information is claimed as confidential;

(2) Whether the Agency should formally evaluate the confidentiality claims pursuant to 40 CFR 2.204 and 2.205; and

(3) Whether such information is in fact entitled to confidentiality under exemption 4 of FOIA.

Pursuant to 40 CFR 2.204(e), respondents are required to respond to EPA's requests to justify confidential treatment for information when it is requested under the Freedom of Information Act (FOIA), or when EPA must know whether this information is entitled to confidentiality. The response must include: (1) A written explanation that addresses specific information necessary to substantiate the CBI claim, and (2) a designated contact for inquiries and notices concerning confidentiality. EPA will review the written explanations received by respondents, and where appropriate, will formally determine the respondent's entitlement to confidentiality. The EPA will store and maintain this information on file.

Finally, to ensure that the terms of any EPA contract requiring protection of CBI are honored, EPA contractors must obtain a confidentiality agreement from each employee given access to CBI and should maintain this agreement on file for the life of the contract.

Burden Statement: Public reporting burden for this collection of information is estimated to average 9.4 hours per response including time for reading the EPA's request, gathering information and preparing and submitting the information. Public recordkeeping burden is estimated to average 1 hour per year to store and maintain records related to confidentiality agreements.

Respondents: Any individual, business, non-profit organizations, or State or local government asserting a CBI claim.

Estimated No. Of Respondents: 1008 reporters, 232 recordkeepers.

Estimated Responses per Respondent: 1.

Frequency of Collection: On occasion.

Estimated Total Annual Burden on Respondents: 9,703 hours.

Send comments regarding the burden estimate, or any other aspect of this collection of information, including suggestions for reducing the burden to:

Sandy Farmer, U.S.Environmental Protection Agency, Information Policy Branch 2136, 401 M Street, SW., Washington, DC 20460.

and

Tim Hunt, Office of Management and Budget, Office of Information and Regulatory Affairs, 725 17th Street, NW., Washington, DC 20503.

Dated: November 22, 1993.

Paul Lapsley,

Director, Regulatory Management Division.

[FR Doc. 93-29412 Filed 11-30-93; 8:45 am]

BILLING CODE 6560-50-F

[FRL-4808-6]

Science Advisory Board; Clean Air Scientific Advisory Committee; Notification of Public Advisory Committee Meeting; Open Meeting—December 16, 1993

Pursuant to the Federal Advisory Committee Act, Public Law 92-463, notice is hereby given that the Clean Air Scientific Advisory Committee (CASAC) will meet on Thursday, December 16, 1993, from 9:30 a.m. and ending no later than 6 p.m. at the Guest Quarters Suites Hotel, 2515 Meridian Parkway, Durham, NC 27713. The meeting is open to the public, however, seating will be on a first-come basis. The Committee will review the Ozone Human Exposure Analysis methodology that is part of the ongoing review of the ozone national ambient air quality standards (NAAQS). Copies of documents describing the exposure methodology that have been provided to the Committee may be obtained by contacting Thomas McCurdy of the EPA Staff at (919) 541-5658. Copies of these documents are not available from the Science Advisory Board.

For further information concerning the meeting, including a draft agenda, please contact Mr. Randall Bond, Designated Federal Official, or Mrs. Janice Cuevas, Program Analyst, Science Advisory Board (Mail Code 1400), US Environmental Protection Agency, Washington, DC 20460. Phone: 202-260-8414; Fax: 202-260-1889. Individuals or groups wishing to make a brief oral presentation to the Committee must contact Mr. Bond no later than 12 noon Eastern Time on Friday, December 10, 1993 in order to reserve time on the agenda. The Science Advisory Board expects that public statements presented at its meetings will not be repetitive of previously submitted oral or written statements. In general, each individual or group making an oral presentation will be limited to a total time of five minutes. Written comments (at least 35 copies) received in the SAB Staff Office sufficiently prior to the meeting date, may be mailed to the Committee prior to its meeting; comments received too close to the meeting date will normally be provided to the Committee at its meeting. Written comments may be provided to the relevant committee or subcommittee up until the time of the meeting.

Dated: November 22, 1993.

A. Robert Flaak,

Acting Staff Director, Science Advisory Board.

[FR Doc. 93-29413 Filed 11-30-93; 8:45 am]

BILLING CODE 6560-50-P

FEDERAL COMMUNICATIONS COMMISSION

[CC Docket No. 63-1376; FCC 93J-2]

Integration of Rates and Services for the Provision of Communications by Authorized Common Carriers Between the Contiguous States and Alaska, Hawaii, Puerto Rico, and the Virgin Islands

AGENCY: Federal Communications Commission.

ACTION: Final recommended decision.

SUMMARY: In this Final Recommended Decision the Alaska Federal-State Joint Board (Alaska Joint Board) adopts a final recommendation for the creation of a new market structure for the provision of interstate telecommunications service between Alaska and the contiguous states and between Alaska and Hawaii. The Alaska Joint Board concludes that this market structure represents the best balancing of the five objectives that the Alaska Joint Board has previously articulated: universal service, rate integration, revenue requirement neutrality, competition, and efficiency. Under the market structure recommended, AT&T would provide interstate message service and wide area telecommunications service between Alaska and the Lower 48, and Alaska and Hawaii, at integrated rates. Alascom could also provide interstate service independently after termination of the Joint Services Arrangement (JSA), between AT&T and Alascom, that currently governs Alaska interstate MTS. In addition, the Final Recommended Decision recommends that there be a four year transition to the new market structure in two phases. During the first phase, beginning March 1, 1994 AT&T, would continue to obtain services from Alascom under the JSA for one and one-half years. During the second phase, beginning September 1, 1995, the JSA would terminate and AT&T would be required to purchase a fixed amount of service from Alascom for two and one-half years. During the second phase Alascom's Common Carrier Services would be offered to carrier customers under tariff. The Final Recommended Decision also recommends that AT&T pay a $150 million transition payment to Alascom to reduce Alascom's total plant accounts.

FOR FURTHER INFORMATION CONTACT: Kent Nilsson or Rose Crellin, Policy and Program Planning Division, Common Carrier Bureau, (202) 632-1302, (202) 632-1292.

SUPPLEMENTARY INFORMATION:

Final Recommended Decision

Adopted: October 26, 1993.
Released: October 29, 1993.

By the Federal-State Joint Board:

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I. Introduction

1. In this Final Recommended Decision we present a carefully integrated plan to accomplish the objectives, required of this Joint Board, for interstate telecommunications services between Alaska and the contiguous states ("Lower 48") and between Alaska and Hawaii. We believe that this recommendation achieves, and represents the best balancing of, the five objectives guiding resolution of this proceeding: preservation of universal service; continuation of rate integration; maintenance of revenue requirement neutrality; allowance of market-based competitive entry; and the encouragement of increased efficiency. Our recommendation is comprised of carefully balanced elements that are intended to be implemented as a whole. Elimination or significant modification of any one aspect of our overall recommendation could adversely impact achievement of our market structure objectives.

II. Executive Summary

2. The Alaska market structure has been under review by this Joint Board for over eight years. After collecting vast volumes of data, receiving extensive comments from interested parties, and reviewing numerous proposals on this subject, we have reached a final recommendation regarding the market structure for Alaska that we believe best balances our identified goals and advances the public interest.

3. We affirm the conclusion in the Tentative Recommendation 58 FR 31204, June 1, 1993 that the Joint Service Arrangement ("JSA") should be terminated, subject to the adoption and implementation of suitable transition mechanisms.[1] We decline to recommend the market structure plans advanced by either Alascom or AT&T, but, instead, recommend an alternative market structure based on that set forth in the Tentative Recommendation.

4. Under our recommended market structure, American Telephone & Telegraph Co. ("AT&T") would provide interstate message telephone service and wide area telecommunications service (hereinafter collectively referred to as MTS) between Alaska and the Lower 48 (northbound and southbound) at integrated rates and under the terms and conditions applicable to AT&T's provision of services in the Lower 48. AT&T would also be obligated to furnish MTS between Alaska and Hawaii at integrated rates.

5. After the JSA is terminated, Alascom could offer interstate MTS independently from AT&T under its own tariff and with no obligation to charge AT&T's integrated rates.

6. Services provided to interexchange carriers ("IXCs") by Alascom, Inc. ("Alascom") under tariff would be offered on a non-discriminatory basis at rates that reflect the costs of service. Alascom's tariff would have separate rate schedules for its operations in locations subject to facilities competition and in locations where Alascom has a facilities monopoly. The costs of service in each of these categories would be prepared pursuant to a cost allocation plan developed by Alascom and approved by the Commission.

7. Alascom would continue to provide interstate private line service upon reasonable request under its existing federal tariffing and Section 214 obligations. If AT&T elects to provide interstate private line service to or from Alaska, it would be required to do so under the same rate structures, terms, and conditions that apply to its provision of private line services between other states.

8. The final recommendation would maintain the current cost separations factor for the circuit equipment of Alascom and United Utilities, Inc. ("UUI"). Therefore, the Alaska Fund originally proposed in the Tentative Recommendation, would not be required.

9. During a four year transition period, beginning March 1, 1994, AT&T would be required to purchase services from Alascom to meet its MTS obligations. There would be two phases to the transition period with the first phase beginning on March 1, 1994, and the second phase beginning on September 1, 1995. During the first phase, AT&T would continue to obtain services from Alascom under the JSA that currently governs Alaska interstate MTS for one and one-half years. As of September 1, 1995, the JSA would terminate and Alascom's Common Carrier Services would be offered to carrier customers under tariff. During the second phase of the transition period, lasting two and one-half years, AT&T would be required to purchase a fixed amount of service from Alascom, defined as a percentage of a baseline revenue level. This obligation would decline to zero at the end of the second phase.

10. Finally, we recommend a $150 million transition payment (to be made by AT&T in two installments of $75 million each) be applied to reduce Alascom's total plant accounts. We conclude that this is necessary to ensure universal service, and to ensure revenue requirement neutrality.

III. Background

A. Rate Integration

11. In the early 1970's, the Commission authorized the private ownership and operation of domestic satellite and earth station facilities and concluded that the distance insensitive nature of satellite transmission costs required rate integration for services between the Lower 48 and certain noncontiguous points that included Alaska.[2] Rate integration for Alaska was accomplished in several steps that included the execution of the JSA between AT&T and Alascom in 1980.[3] In the JSA, Alascom and AT&T entered into a contract to provide MTS services

[1] Tentative Recommendation And Order Inviting Comments, CC Docket No. 83–1376, 8 FCC Rcd 3684, 3687 (1993) ("Tentative Recommendation").

[2] "Rate integration" is the Commission policy that was adopted to describe service between the contiguous states and Alasks, Hawaii, Puerto Rico, and the Virgin Islands (noncontiguous points) at rates that are equivalent to those prevailing for comparable distances in the contiguous 48 states. Establishment of Domestic Communications Satellite Facilities, 35 FCC 2d 844, 856–57 (Domsat II), *aff'd on recon.*, 38 FCC 2d 665 (1972), *aff'd sub nom. Network Project* v. *FCC*, 511 F.2d 786 (DC Cir. 1975). See also Integration of Rates and Services, 61 FCC 2d 380 (1976), recon. in part, 65 FCC 2d 324 (1977) (extending rate integration policy to the Virgin Islands).

[3] The JSA was accepted and approved by the Commission in 1981. Memorandum Opinion and Order in W–P–C 649 et al., 87 FCC 2d 25 (1981). "The Commission has indicated its full support for the intercarrier settlement agreement submitted to the Federal-State Joint Board and the Commission to resolve separations questions for Alaska and Hawaii." FCC News Release, May 8, 1981, Report No. 16363. The FCC accepted the Joint Board's recommendation in a Report and Order, FCC 81–312, July 8, 1981, without qualification of the JSA as an "interim" measure. The Joint Board recommended adoption of the Motion of the AT&T and Alascom regarding the JSA as filed. Confusion has arisen because the JSA included an "interim settlements procedure" to provide for the transitional supplement which would "terminate on January 1, 1985 at which time full rate integration will take place." See 87 FCC 2d at 20–1.

jointly, with Alascom responsible for MTS carriage to, from, and within Alaska, and AT&T responsible for carriage in the Lower 48. AT&T received all MTS revenues and paid all MTS costs of service, including those of Alascom.[4] The JSA also required that the Lower 48 Separations Manual would be applied to Alascom and that Alascom would receive annual, declining transitional supplement payments from AT&T during the transition to full rate integration.[5]

12. Several issues arose regarding the long-term relationship between the rate integration and competitive policies for MTS services between the noncontiguous points and the Lower 48. On December 22, 1983, in response to a petition for rulemaking filed by the State of Alaska and the Alaska Public Utilities Commission ("APUC"), the Commission adopted a Notice of Inquiry ("NOI").[6] Comments in response to the NOI raised significant issues that required further analysis. On September 27, 1985, the Commission issued a Notice of Proposed Rulemaking ("NPRM") in CC Docket No. 83–1376 and referred those issues to this Joint Board pursuant to Section 410(c) of the Communications Act.[7] In particular, this Joint Board was asked to consider questions concerning the appropriate market structure for the provision of Alaska MTS to harmonize the Commission's rate integration and competition policies and to recommend any separations changes that might be required to implement that market structure.

B. Joint Board Actions (1986 to 1922)

13. During the course of investigating the issues designated by the Commission, this Joint Board, on numerous occasions, solicited comments, data, and proposals regardng the Alaska interstate market structure. On May 9, 1986, we issued a data request on the costs of Alaska's interstate and intrastate telecommunications services, including a detailed description of then existing market and service arrangements, Alaskan demographic and economic data, and local exchange and interexchange carriers' financial, facilities, and statistical data (historical and projected). The order also asked commenters to address the question of the high cost of Alaska services and to submit market structure proposals.[8] The comments and data filed in response to this order, as well as other documents submitted and issues raised relating to the market structure, were evaluated by the Joint Board.

14. As a result of this analysis the Joint Board issued a Supplemental Order on January 3, 1989.[9] The Supplemental Order identified the following five objectives to guide resolution of the issues in this proceeding: Continuation of rate integration; preservation of universal service; maintenance of jurisdictional revenue requirement neutrality; allowance for market-based competitive entry; and encouragement of increased efficiency. Two alternative conceptual market structure options, Plans A and B, were also identified by this order.

15. The Supplemental Order solicited comments on the objectives and the plans and also identified additional, updated data that were to be provided. Commenters were generally supportive of the Joint Board's objectives and were critical of one or both of the proposed plans. Alternative plans were also filed in response to Plans A and B: Alascom filed its Alaska Revenue Cap ("ARC") Plan; AT&T filed a modified Plan B; and the State of Alaska filed its "Cost Plus Incentive Fee Plan."[10]

16. During July 1991, AT&T and Alascom informed the members of the Joint Board that they were in the process of finalizing an agreement to replace the JSA and to resolve outstanding issues.[11] On January 29, 1992, a Joint Petition was filed by AT&T, Alascom, Pacific Telecom Inc., ("PTI"), and Telephone Utilities of Alaska, Inc. ("TUA") seeking approval of a Master Agreement ("MA") for the provision of Alaska telecommunications services. On March 4, 1992, the Joint Board issued a Public Notice requesting comments and reply comments on the MA.[12] Pleadings were also invited on a petition by GCI, filed on January 29, 1992, that requested a new proceeding to resolve Alaska market structure issues.

17. In addition to comments and reply comments, the Joint Board received data concerning the MA through responses made to five data requests released between October 4, 1991, and June 25, 1992, by the State Members of the Joint Board. Overland Consulting, Inc. ("Overland"), a consultant hired to assist the Alaska Member of the Joint Board and staff, submitted a Briefing Paper on the MA on July 21, 1992.

18. On August 4, 1992, the State Members of the Joint Board issued a Memorandum of Understanding ("MOU") setting forth their concerns with the MA in light of the objectives set forth in the Supplemental Order. In response to the MOU, Alascom, AT&T, GCI, and the State of Alaska each offered modifications or alternatives to the MA. After studying the comments, pleadings, and proposals received in response to the MOU, the State Members, on November 5, 1992, released a document entitled: "Memorandum of Principles—Alaska Market Structure" ("The State Members' Plan"). The State Members' Plan identified those elements of the MA

[4] To implement the rate integration policy, AT&T develops its MTS rates for the total market and files tariffs covering the northbound service offerings to Alaska. Alascom mirrors the AT&T rates and files tariffs covering the southbound service offerings from Alaska. See Integration of Rates and Services, 2 FCC Rcd. 2447 (1987), *aff'd sub nom. General Communication, Inc. ("GCI") v. FCC*, No. 87–1112 (DC Cir. 1987).

[5] Memorandum Opinion and Order in W–P–C 649 et al., 87 FCC 2d 25, 28–29 (1981). Originally, Alaska rate integration was to be achieved by 1985, but in 1984 the Commission extended the final implementation date for rate integration and continued the JSA and the transitional supplement payments at 1984 levels. Full rate integration became effective January 1, 1987, at which time AT&T's supplemental payments to Alascom terminated. Memorandum Opinion and Order, CC Docket No. 83–1376, RM 4436, FCC 86–602 (released January 2, 1987).

[6] Notice of Inquiry, Integration of Rates and Services, CC Docket No. 83–1376, RM 4436, 96 FCC 2d 567 (1984), 49 FR 1538, January 12, 1984.

[7] Notice of Proposed Rulemaking, CC Docket No. 83–1376, RM 4436, FCC 85–520, 50 FR 41714, October 15, 1985 (released September 27, 1985) at para. 14. That Notice also terminated the inquiry with respect to non-contiguous points other than Alaska (*i.e.*, Hawaii, Puerto Rico, and the Virgin Islands), finding that the comments did not raise any issues concerning the compatibility of rate integration and competition for service to and from those points.

[8] Order Requesting Data and Inviting Comments, CC Docket No. 83–1376, RM 4436, FCC 86J–2, 51 FR 17756, May 15, 1986 (released May 9, 1986); filing dates amended by Memorandum Opinion and Order, CC Docket No. 83–1376, (released August 20, 1986), 51 FR 31149, September 2, 1986. On July 15, 1986, data were filed by Alascom, Alaska Telephone Association ("ATA"), AT&T, GCI, and the State of Alaska. Market structure proposals for Alaska and/or comments were filed by interested parties on December 2, 1986. Opposition comments and reply comments were filed on February 27 and March 27, 1987, respectively.

[9] Supplemental Order Inviting Comments, CC Docket No. 83–1376, RM 4436 4 FCC Rcd 395 (1989), 54 FR 7471 February 21, 1989.

[10] Comments and or data were filed by Alascom, AT&T, GCI, the Organization for the Protection and Advancement of Small Telephone Companies ("OPASTCO"), the State of Alaska, the State of Hawaii ("Hawaii"), the United States Telephone Association ("USTA"), and UUI between February 27, 1989, and April 13, 1989. Reply Comments were filed by Alascom, ATA, AT&T, GCI, Hawaii, National Exchange Carrier Association, Inc. ("NECA"), the State of Alaska, and UUI between May 5 and May 15, 1989.

[11] Pacific Telecom, Inc. Press Release (July 10, 1991).

[12] Comments were filed by Alascom, ATA, AT&T, Anchorage Telephone Utility ("ATU"), GCI, Hawaii, MCI Telecommunications Corporation ("MCI"), NECA, and Sprint Communications Company L. P. ("Sprint"), the State of Alaska, and UUI between April 16, 1992 and April 20, 1992. Reply Comments were filed by Alascom, ATA, AT&T, GCI, Hawaii, MCI, OPASTCO, and the State of Alaska on May 20, 1992.

which they believed were not in the best interest of the public and recommend an alternative market structure.

19. On December 2, 1992, a Public Notice was issued inviting comments on the State Members' Plan.[13] In early 1993, we were notified by AT&T that the parties had elected not to extend the MA and would allow the agreement to expire after January 15, 1993. As a consequence, the MA became moot.[14]

C. Recent Procedural History (1993)

20. On March 21, 1993, AT&T petitioned for termination of the JSA and proposed an alternative Alaska market structure named the Consumer Benefit Plan ("CBP").[15] On May 17, 1993, the Joint Board released the Tentative Recommendation.[16] The Tentative Recommendation proposed a new market structure for Alaska interstate telecommunications services based on the extensive record that had been developed in this proceeding. The Tentative Recommendation required Alascom and AT&T to file plans to implement the Joint Board's recommendations. The Tentative Recommendation also invited comments and reply comments on its market structure proposal, the CBP filed by AT&T,[17] and the requested implementation plans.

21. Both the Alascom and the AT&T responses to the requirement for implementation plan(s) were filed on June 7, 1993.[18] Alascom's implementation plan included data regarding the estimated effects of the Tentative Recommendation market structure proposal at varying levels of accelerated cost recovery and its preliminary comments regarding the Tentative Recommendation. AT&T's filing did not present an implementation plan but, instead, argued that the Tentative Recommendation was inadequate and inferior to the CBP.

22. In response to the Tentative Recommendation, numerous entities filed comments, reply comments, and motions.[19] In addition, a public hearing was convened on July 1, 1993, in Anchorage, Alaska, to receive testimony from the citizens of Alaska and other interested persons on the Tentative Recommendation, the CBP, and the implementation plan filings of Alascom and AT&T.[20]

All Members of the Joint Board participated in person or via audio or video teleconference.[21] Also on July 9, 1993, Alascom was requested by the State Members of the Joint Board to provide the underlying data supporting the financial analyses presented in its implementation plan.[22]

23. The record in this proceeding also includes the taped record and a transcript of a hearing convened in Anchorage, Alaska, on August 27, 1993, by members of the Alaska State Legislature's Telecommunications Task Force. The hearing provided an opportunity for a technical briefing and comment on the proposals currently pending before the Joint Board.[23]

Alascom, ATA, AT&T, GCI, MCI, and the State of Alaska participated in that hearing.

IV. Market Structure

A. Joint Service Arrangement

1. Introduction

24. The JSA was signed before widespread interexchange competition had developed throughout the United States, and was based upon the pre-divestiture, pre-access charge settlement model that was then applied to independent telephone companies. As implemented, the JSA obligated AT&T to pay all of Alascom's interstate MTS related costs on the same pre-divestiture basis that applied to independent telephone companies including the earned rate of return on interstate investment.[24] Although the exact amount has been subject to dispute, AT&T's current costs of meeting its obligations to provide rate integrated MTS service through the JSA exceed the MTS and WATS revenue that AT&T receives from servicing the Alaska market by a significant amount.[25]

25. In the Tentative Recommendation, we initially concluded "that the public interest would be better served by terminating the JSA and thereby restructuring the interstate telecommunications market in Alaska to promote competition, open entry, and improve efficiency incentives."[26] We also recognized, however, that an immediate termination of the JSA "could harm carriers and adversely impact the public by accomplishing the goals of competition and efficiency at the expense of the goals of universal service and revenue requirement neutrality."[27] Therefore, we proposed several transition mechanisms to accompany a phase-out of the JSA and requested comments on our plan.

2. Comments

26. In response to the Tentative Recommendation, Alascom recommended that the Joint Board continue the existing market structure

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[13] Comments on the State Members' Plan were submitted by Alascom, APUC, ATA, AT&T, GCI, MCI, the State of Alaska, and UUI on December 18, 1992. Reply Comments were filed by Alascom, ATA, AT&T, GCI and the State of Alaska on January 15, 1993.

[14] On September 18, 1992, Charles Naftalin submitted an *ex parte* filing indicating that TUA had also filed a Notice of Withdrawal of its companion application pending before the APUC in APUC Docket U–92–9.

[15] AT&T's Petition to Terminate the Joint Service Arrangement, March 31, 1993.

[16] Tentative Recommendation, 8 FCC Rcd 3684 (1993).

[17] Alascom had previously filed on April 15, 1993, its opposition to the AT&T proposal in its Initial Response of Alascom, Inc. to AT&T's Petition to Terminate the Joint Service Arrangement.

[18] Response to Request for Implementation Plan of Alascom, Inc. (June 7, 1991); AT&T's Response to Request for an Implementation Plan (June 7, 1993).

[19] Comments dated June 23–28, 1993 were filed by Alascom, ATA, AT&T, ATU, GCI, Hawaii, MCI, NECA, Southwestern Bell Telephone Company ("SWBT"), Sprint, the State of Alaska, and UUI. Reply comments were filed by Alascom, ATA, AT&T, GCI, Hawaii, MCI, Sprint, the State of Alaska, USTA, and UUI between July 9 and 12, 1993. During June, July, and August numerous letters were filed by members of the public regarding the Alaska market structure issues. Motions made in this proceeding include Alascom's Request for Supplementation of Record (June 15, 1993); Motion of Alascom, Inc. (regarding Mr. Pitsch *ex parte* filing), (July 16, 1993); and AT&T's Reply to Motion to Alascom (July 22, 1993).

[20] Representatives of Alascom, the Alaska Federation of Natives, Inc., Anchorage Community Access TV, Inc., AT&T, the City of Anchorage, Cook Inlet Region, Inc., GCI, Teamsters Local 959, as well as other members of the public provided testimony.

[21] An order released on July 9, 1993, provided an opportunity for interested parties to file written responses to the public hearing testimony in order to assure a complete record. Order, CC Docket No. 83–1376, DA 93–825 (released July 9, 1993). This Order was in part a response to a Motion of Alascom, Inc. to Schedule Reply Comments filed on June 28, 1993. Alascom's Motion was opposed by GCI on June 29, 1993. Alascom filed its reply to GCI's opposition on June 20, 1993. Alascom, AT&T, GCI, and numerous members of the public filed comments in response to the July 9, 1993, Order.

[22] Letters regarding Data Request 6 and Data Request 7, from Lorraine Kenyon, Joint Board Staff, to Vernon Dunham, PTI dated July 9, 1993. A letter by Alascom in response to Requests 6 and 7 was received on July 14, 1993. Data Request 7 was withdrawn on July 19, 1993, after further consideration by the State Members of the Joint Board. Alascom filed Data Request 6 on July 23, 1993.

[23] Commissioner Susan Knowles and staff member Lorraine Kenyon briefed the Telecommunications Task Force on the history of CC Docket 83–1376 and on the Tentative Recommendation

[24] See generally, Joint Petition To Approve Master Agreement, Terminate Joint Service Arrangement, Continue NECA Participation, And For Limited Waiver Of Separations Rules And Resolution And Termination of Regulatory Proceedings, Attachment B at 4 (filed in CC Docket No. 83–1376 and RM 4436 by AT&T, Alascom, PTI, TUA on January 29, 1992).

[25] *E.g.*, AT&T currently estimates that its obligation under the agreement exceeds the revenues that it receives under the agreement by approximately $80 million. *Ex parte* letter, A.L. Tyree, AT&T to William F. Caton, FCC, Acting Secretary, FCC (September 18, 1993).

[26] Tentative Recommendation, 8 FCC Rcd at 3687, para. 27.

[27] *Id.*

and JSA, possibly under its previous ARC plan, modified by adoption of an accelerated cost recovery mechanism. AT&T continued to advance its CBP as the best solution to meet the five objectives identified in the Supplemental Order. Comments from other parties were generally supportive of the Tentative Recommendation, although some parties suggested changes in one of or more of the basic elements. The only full support given the ARC Plan and CBP came from their respective sponsors.

3. Discussion

27. We have concluded that, in the current environment, the JSA is not a viable long term market structure and that it should be terminated pursuant to the transition plan described below.[28] We have reached this conclusion after carefully considering the extensive record that has been compiled in this proceeding in the context of our understanding of the competitive forces that operate in the Alaska MTS market and the costs of providing telecommunications services within, to, and from, the Alaska market.

28. As observed in the Tentative Recommendation, conditions have changed since the JSA was crafted and approved by the Commission on an interim basis. The JSA is no longer compatible with the development of a competitive, multi-carrier, interexchange market that serves Alaska. For example, the JSA tends to function as a "requirement contract," in which AT&T is required to satisfy all of its MTS service needs through the JSA. Such an arrangement does not facilitate the sale of Alascom services to other interexchange carriers or the purchase of services by AT&T from other carriers.

29. In addition, the JSA does not allow AT&T the same freedom that its competitors enjoy to build or lease facilities to serve Alaska; and the JSA does little to encourage efficiency since Alascom is guaranteed a customer base. As a consequence, we recommend that the FCC terminate the JSA as soon as reasonably possible, subject to the implementation of transition mechanisms that we identify in the order. Our recommendation will ensure that the five objectives guiding development of a revised interstate market structure for Alaska will not be compromised given termination of the JSA. The resulting plan will better serve the public interest than the JSA or any other plan proposed, or considered by, this Joint Board during the course of this extended proceeding.

B. ARC Plan: Retention of the Joint Service Arrangement

1. Introduction

30. The ARC Plan was first introduced by Alascom in its Comments filed April 13, 1989.[29] Alascom contends that its recommended market structure would continue the JSA but would incorporate amendments to resemble closely the price cap regulation of AT&T.[30] Under the ARC Plan, Alascom would develop a baseline revenue cap equal to the previous year's interstate MTS revenue requirements. The cap would be adjusted up or down by applying the same index that is applied to AT&T's capped rates. Thus, Alascom would receive more or less in payments from AT&T under the JSA according to the same productivity factor applied to AT&T and to the other factors in AT&T's index. Alascom would receive an increase or decrease to its cap based on 50% of the value of the annual increase or decrease is southbound traffic compared with the base year. The final adjustment to the previous year's revenue requirements would be to reduce those requirements by the total MTS payments made to Alascom by carriers other than AT&T.[31]

2. Comments

31. After the ARC Plan was proposed in April 1989, GCI and AT&T filed reply comments opposing the plan. It was criticized as insulating Alascom from competition and from incentives for economic efficiency; lacking an "automatic stabilizer" mechanism; failing to assign a portion of the Alaskan support burden to AT&T's competition; and grandfathering Alascom's costs which were perceived as being needlessly high.[32] GCI opposed Alascom retaining a portion of the profits associated with southbound traffic.[33] The State of Alaska likewise opposed Alascom retaining any southbound traffic profits and expressed concern that service quality could suffer due to disincentives to invest and the lack of service quality monitoring under the ARC Plan.[34] As the ARC Plan did not resurface until Alascom filed its Comments on July 12, 1993, there have been no further comments on it in this proceeding.

3. Discussion

32. Alascom is the only party supporting the ARC Plan. The ARC Plan rests on continuing the JSA, and we are not persuaded that the decision to terminate the JSA should be abandoned. We have evaluated the JSA in light of our five objectives and find that the goals of enhancing competition in the Alaska market and increasing incentives for efficiency have not been furthered under the JSA. Indeed, the point of continuing this proceeding has been to devise a market structure that will permit the most balanced and complete achievement of our five objectives that is possible. Continuing the JSA even under the provisions of the ARC Plan simply will not allow that to occur.[35] Accordingly, we reject Alascom's latest proposal to resurrect the ARC Plan inasmuch as it fails to advance the objectives of this proceeding. Instead, we recommend moving forward with the adoption of the market structure proposed in the Tentative Recommendation as modified herein.

C. Consumer Benefit Plan

1. Introduction

33. AT&T filed a Petition on March 31, 1993, requesting the immediate termination of the JSA and adoption of its CBP proposal to allow for the entry of AT&T as a fully competitive interstate and intrastate toll provider in the Alaska market. Concurrently, AT&T filed an Application for Section 214(a) authority to create and operate a network for interstate service to and from Alaska.[36]

34. Under the CBP, AT&T would: (1) Provide interstate MTS to and from Alaska at integrated rates; (2) eliminate its mileage bands 10 and 11, thus lowering rates for approximately 25% of the calls southbound from Alaska and 25% of the calls northbound to Alaska;[37] (3) offer Alaskan customers many of the AT&T services it claimed were not now available through Alascom; (4) build a new fiber optic submarine cable between Alaska and

[28] Most parties in this proceeding either currently or historically have advocated termination of the JSA. Tentative Recommendation, 8 FCC Rcd at 3687.

[29] Comments of Alascom, CC Docket No. 83-1376 (April 13, 1989).

[30] Price cap regulation is described in Policy and Rules Concerning Rates For Dominant Carriers, 4 FCC Rcd 2873 (1989), 54 FR 19636, May 8, 1989.

[31] A description of the ARC Plan may also be found in Comments of Alascom, Inc. (July 12, 1993) at Attachment 1.

[32] Reply Comments on AT&T (May 15, 1989) at 28; Reply Comments of GCI (May 15, 1989) at 16.

[33] Reply Comments of GCI (May 15, 1989) at 16.

[34] State of Alaska Reply Comments (May 15, 1989) at 19-20.

[35] Alascom has not demonstrated that the ARC Plan is sufficiently different from the JSA to promote our competition and efficiency goals, especially given that, under the ARC Plan, Alascom continues to be guaranteed that AT&T would be a customer for virtually all of its interstate MTS.

[36] Application of AT&T (March 31, 1993), File No. W-P-C-6861.

[37] AT&T's Petition (March 31, 1993) at 6-7.

the Lower 48; and (5) enter into the intrastate MTS market in Alaska at rates equal to, or lower than, the lowest current rates of GCI or Alascom with a pledge not to raise those rates for five years, except to pass through any local exchange carrier ("LEC") access charge increases approved by the APUC.[38] AT&T conditioned its pledge to implement the CBP upon the occurrence of three events: (1) Prompt termination of the JSA; (2) the granting of Section 214(a) authority; and (3) the issuance of an order directing Alascom to provide AT&T and other carriers with tariffed, cost-based services between their Alaskan points of presence ("POPs") and the networks of the Alaskan LECs.

2. Comments

35. In Alascom's Petition to Deny AT&T's Application[39] and in its Comments, Alascom asserted that the Application filed by AT&T was insufficient and contrary to the public interest.[40] Alascom stated that the CBP would duplicate facilities for no reasonable purpose and would result in an $80 million increase in cost without appreciably increasing revenues.[41] Alascom also contended that AT&T's arguments in support of the CBP where factually incorrect or contradicted by past filings.[42] Lastly, Alascom characterized AT&T's promise that, for a period of five years, it would charge intrastate rates that are lower than those of Alascom or GCI as "pricing without regard to cost" and destructive of the competitive marketplace.[43]

36. Other parties criticized the Application as lacking sufficient detail and key information necessary to analyze the plan.[44] ATU criticized the CBP as providing no assurance that it would not lead to increases in intrastate access rates.[45] The State of Alaska, while acknowledging the possibility that the CBP could be in the public interest on a theoretical basis, required more information "to determine whether AT&T's plan would result in a market structure that would make universal service achievable, rate integration sustainable, and jurisdictional cost shifts avoidable in both the short and long terms."[46] The CBP was also criticized by the State of Alaska as a not providing an orderly transition to a new market structure and not adequately recognizing the investment that Alascom had made in reliance on the JSA.[47] The State of Alaska questioned how AT&T would provide service to rural areas of Alaska if Alascom's existing services were not available, given that AT&T does not currently have a satellite that serves those areas.[48]

3. Discussion

37. AT&T asserts that its CBP "satisfies all of the Joint Board's previously stated objectives for an Alaska telecommunications structure" and that it will "benefit consumers more than any other plan offered during this proceeding."[49] On the surface, it does appear that AT&T is making a service commitment in the CBP that will continue integrated interstate MTS rates to Alaska (at even lower than current rates) and will introduce another competitor in the intrastate market at rates that are as low as, or lower than, those identified on the lowest currently available rate schedules, while at the same time bringing a wider array of services to Alaskans and newer, more reliable, technology to provide those services.

38. AT&T, however, has not provided sufficient information and data to permit us to find that AT&T's proposed CBP will satisfy the five objectives for a new market structure we have identified in this proceeding. In fact, no party of record, outside of AT&T, has stated that sufficiently detailed information exists to allow the Joint Board to adopt the CBP in its current form. Moreover, we are concerned that the plan does not contain any transition mechanisms or mechanisms to ensure that there will not be significant intrastate cost shifts when the JSA is terminated and AT&T provides service independently or to ensure that there will be no service disruptions or reductions in service quality while the market is reforming to adapt to the CBP structure. The CBP does nothing to enable Alascom to shift smoothly from the JSA to a new market structure, and during the transition to the new market structure it is essential that Alascom continue to provide service.

39. In conclusion, the CBP lacks sufficient detail to demonstrate that it satisfactorily achieves the five objectives of the Joint Board and fails to incorporate transition mechanisms essential to introduction of a new market structure in Alaska at this time. Thus, while there are attractive elements in the CBP, we cannot recommend its adoption. We do not believe that it is appropriate to further delay the resolution of this proceeding by calling for data to support the CBP's projection of future occurrences or by attempting to develop modifications to the CBP to ensure that it does not compromise our goals.

D. Recommended Market Structure

1. Introduction

40. As noted above, we have developed a revised Alaska market structure recommendation that is based on the Tentative Recommendation as modified by the results of our analysis of the comments, data, and concepts advanced by the parties. We believe that our recommendation reasonably balances the five objectives set forth in the Supplemental Order. In particular, the revised market structure we recommend is an improvement over the Tentative Recommendation in that it is simpler, provides greater assurance of revenue requirement neutrality, and at the same time produces a more rapid, yet controlled, transition to the new market structure. Therefore, we recommend that the Commission adopt our revised Alaska market structure plan. The following sections explain in detail the various aspects of our revised market structure recommendation, how it differs from the Tentative Recommendation, and why these changes and the overall arrangement serves the public interest.

2. Facilities Issues

a. Introduction. 41. Under the market structure set forth in the Tentative Recommendation, Alascom and AT&T could each build or lease facilities individually in order to provide their services, subject, of course, to acquiring all necessary authorizations. The construction of facilities and provision of services by Alascom and AT&T

[38] AT&T stated that it would offer intrastate services at rates 4% lower than Alascom's standard rates. AT&T's Comments (June 28, 1993) at 23.

[39] Petition to Deny of Alascom, Inc. (June 25, 1993) FCC File No. W–P–C–6861.

[40] Comments of Alascom (July 12, 1993) at 18.

[41] Alascom Implementation Plan (June 7, 1993) at 29; Comments of Alascom (July 12, 1993) at 19.

[42] Comments of Alascom (July 12, 1993) at 23–26, 27–31.

[43] Id. at 34–35.

[44] For example, ATA maintained that AT&T's CBP and Section 214 Application failed to include "the details necessary to fully analyze the Plan's impact on Alaska's ratepayers and telecommunications market structure." ATA Comments (June 25, 1993) at 8. ATU contended that AT&T's CBP proposal was incomplete and that AT&T's associated request for Section 214 authority should be denied. ATU Petition to Defer or Deny (June 25, 1993) at 3. UUI asserted that there was insufficient detail to ensure that ratepayers were not saddled with duplicative and unnecessary facilities (UUI Comments (June 23, 1993) at 10) and that the CBP was not in the public interest (UUI Reply Comments (July 12, 1993) at 2).

[45] Comments of ATU (June 28, 1993) at 3.

[46] Comments of the State of Alaska (June 28, 1993) at 8–10.

[47] Reply Comments of the State of Alaska (July 12, 1993) at 4.

[48] State of Alaska Comments (June 28, 1993) at 10.

[49] AT&T's Petition to Terminate Joint Services Arrangement (March 31, 1993) at 6.

would be governed by the same regulatory requirements applicable to dominant IXCs in the rest of the nation. The only exceptions are the current prohibition against construction of duplicate facilities in certain rural Alaska locations and the existing requirement that Alascom build facilities to allow provision of service to communities of 25 or more.[50]

b. Comments. 42. Few comments were filed on this aspect of the Tentative Recommendation except in regard to lifting the current prohibition against construction of duplicate earth stations in rural Alaska.[51]

c. Discussion. 43. We continue to support the position regarding facilities issues originally articulated in the Tentative Recommendation. No party strongly objects to that recommendation. No arguments have been raised to persuade us that a change in this facet of our recommended market structure is needed. Accordingly, we recommend, as we originally proposed, that AT&T and Alascom be free to build or lease their own facilities, subject to the requirements imposed generally outside Alaska on dominant IXCs and imposed on Alascom inside Alaska in the areas where Alascom has a facilities monopoly.[52]

3. Service Issues

a. Message Telephone Services/Wide Area Telecommunications Services. i. Introduction. 44. In the Tentative Recommendation we concluded that one or more carriers must be responsible for ensuring that interstate MTS is available at reasonable rates to all those requesting such service. We recommended that AT&T be responsible for providing Alaskan customers with interstate MTS at the same integrated rate levels and under the same terms and conditions available to other AT&T customers in the rest of the nation. This AT&T service requirement would apply to service between Alaska and the Lower 48 and between Alaska and Hawaii.

45. Under the Tentative Recommendation we also proposed that if Alascom chose not to provide interstate MTS under the new market structure, it must file under Section 214 of the Communications Act for authority to exit the market.[53] This filing also must include a plan for the smooth exit of Alascom from the MTS market to ensure that customers would not be faced with a service interruption.[54]

ii. Comments. 46. AT&T stated that it had no authority to provide southbound interstate services and that the provision under the Tentative Recommendation to require AT&T to obtain Section 214 authority to provide such service was unenforceable.[55] In Reply Comments, GCI observed that the Commission has the clear authority to enforce AT&T's longstanding obligation to provide rate integrated service to the Alaska market. GCI maintained that whether AT&T chooses to comply with this responsibility by filing a Section 214 application to construct its own facilities to serve Alaska or chooses to use the facilities of other carriers is of no consequence. GCI also noted that Section 214(d) confers authority on the Commission to require a carrier to provide service to a particular locality or region. Thus, the operative legal standard is AT&T's pre-existing service responsibility to Alaska.[56]

iii. Discussion. 47. We are not persuaded that we should significantly modify our position on MTS as identified in the Tentative Recommendation.

48. First, AT&T recognized and undertook the responsibility to provide both northbound and southbound interstate MTS at integrated rates to Alaska when it signed the JSA. If the southbound customers were not a responsibility of AT&T, then AT&T would not have signed a settlement agreement to arrange for their service nor would AT&T have agreed to cover all of the costs of those services.

49. Second, no party contends that AT&T does not have the obligation to provide rate integration both in Alaska and throughout the nation. AT&T's obligations under the Commission's rate integration policy apply regardless of the route of the call and the location of the caller; otherwise, the policy would be without effect. The Commission has adequate authority under Sections 201(a) and 4(i) of the Communications Act to enforce this policy,[57] without utilizing its authority under Section 214 of the act[58] and, in fact, has already required AT&T to provide service to southbound Alaska customers under the rate integration policy and through approval of the JSA. We see no public interest reason to reduce or otherwise limit AT&T's rate integration obligation to serve the Alaska market and, therefore, continue to support the provision of interstate MTS outlined in the Tentative Recommendation and further discussed in this recommended decision.[59]

50. In light of the dissolution of the JSA as an integral part of the Alaska market structure, AT&T must continue to fulfill its pre-existing service obligation to Alaska. Any reduction in AT&T's obligation to serve could well leave Alaskans without service or without the benefits of rate integration. Such a situation would not be in the public interest and would be contrary to our previously identified goals. We accordingly recommend that the Commission explicitly recognize AT&T's obligation under Section 201(a) of the Communications Act to provide MTS service to and from Alaska on a nation-wide rate integrated basis.

51. We recommend that the Commission require AT&T to amend its Section 214 application consistent with the requirements of this order. We recommend that AT&T be given the flexibility under the recommended market structure to choose whether to lease facilities from another carrier or to build its own facilities, subject to the current prohibition against construction of duplicate facilities in rural Alaska. If AT&T chooses to build facilities, then it will be required to file a Section 214 application under standard procedures.[60]

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[50] In this Final Recommended Decision, we further clarify that in the case where no LEC facilities exist, Alascom may, on a case-by-case basis, be required to provide interconnection to locations that are functionally similar or equivalent to LEC end offices.

[51] This Final Recommended Decision does not address a lifting of that restriction.

[52] If a situation arose where customers in a community of 25 or more required interexchange service, but no facilities existed, Alascom would be required to build the facilities necessary to provide service or fully justify why such construction would not be in the public interest. The continuation under the Tentative Recommendation of this current obligation did not imply that Alascom was responsible for providing interstate MTS to those communities, but, rather, that it must make available and maintain the necessary facilities for IXCs desiring to provide MTS to gain access to customers in remote areas where duplicate facility construction is prohibited.

[53] The Tentative Recommendation also proposed that Alascom not be allowed to exit the market as long as the JSA was in effect.

[54] In addition, Alascom would be allowed to sell its customer list subsequent to the termination of the JSA, provided customers were properly notified of any change in carrier and subject to approval of Section 214 authority to exit the market.

[55] AT&T Comments (June 28, 1993) at 10–13.

[56] GCI Reply Comments (July 12, 1993) at 2–4.

[57] In pertinent part, Section 201(a) states: "it shall be the duty of every common carrier * * * in cases where the Commission * * * finds such action necessary or desirable in the public interest, to establish physical connections with other carriers, to establish through routes and charges applicable thereto and the divisions of such charges, and to establish and provide facilities and regulations for operating such through routes." 47 U.S.C. 201(a).

[58] 47 U.S.C. 214.

[59] The public interest requires that AT&T continue to provide MTS at rate integrated levels to and from Alaska and between Alaska and Hawaii under the same terms, conditions, and rates as apply to provision of MTS elsewhere in the nation.

[60] AT&T must comply with all Section 214 requirements and has not requested any waiver of

Continued

52. Finally, we continue to recommend that, in order to prevent abandonment of service to Alaskan customers under the new market structure and for the reasons set forth in the Tentative Recommendation, Alascom must file a transition plan and file for permission under Section 214 of the Communications Act prior to exiting the MTS market, if it chooses to exit that market.

b. Alascom Common Carrier Services.

i. Introduction. 53. The Tentative Recommendation recommended that upon termination of the JSA Alascom provide to IXCs all interstate transport and switching services ("Common Carrier Services") needed to complete the long distance services of IXCs up to the Alascom point of interconnection with each Alaskan local carrier.[61] It was proposed that Alascom's Common Carrier Services would be provided by tariff on a non-discriminatory basis, with rates averaged statewide. The requirement to average geographically Alascom's Common Carrier Service rates was intended to assure that the costs associated with serving areas of the State where facilities competition is permitted were not assigned to the rural areas of the state where Alascom has a facilities monopoly.[62]

ii. Comments. 54. The commenters focused on the conclusion in the Tentative Recommendation that Alascom's Common Carrier Service rates should be averaged statewide. Both GCI and MCI supported this conclusion stating that deaveraging Common Carrier Service rates was unjustified and would allow Alascom to assign excessive costs to services provided in those areas of the state were it had a facilities monopoly.[63] The Commission's tariff review process alone, without rate averaging, was not deemed sufficient by these parties to protect against the potential abuses of cross-subsidization. GCI further argued that rate averaging would protect rural customers and would reduce incentives for IXCs to deaverage their end-users rates or restrict service on rural routes.

55. In contrast, Alascom, AT&T, the State of Alaska, and UUI all either opposed a requirement that the Common Carrier Service rates be averaged, or raised concerns. It was argued that geographic averaging of the rates would encourage AT&T to abandon Alascom's facilities.[64] Alascom contented that under this provision of the Tentative Recommendation GCI would gain competitive advantage because it was not obligated to average geographically its switching and transport service rates or to serve the high-cost rural areas of the state.[65]

56. The State of Alaska also proposed the elimination of the geographic averaging requirement, claiming that costs of service were not equal statewide and imbalances between the average rates and the cost of service would likely lead to decreased traffic on the Alscom system, reduced efficiency, and upward pressure on intrastate rates.[66] It further argued that averaging was not needed since the trafficking process would ensure that rates were properly set. Sprint opposed statewide geographic rate averaging, claiming that such a policy was not justified.[67]

57. AT&T suggested that creating a separate study area for Alascom's services to Bush locations was preferable to statewide averaging of the Common Carrier Service rates.[68] The State of Alaska stated that the separate study area concept had merit, while UUI opposed the concept as unworkable, stating that it would be difficult for Alascom to generate sufficient revenues to support its network infrastructure.[69]

iii. Discussion. 58. The provision of service in the Alaska market is unique. The satellite equipment necessary to provide communications to and from remote areas of the state has historically been high cost, and, as a consequence, there appears to be a large service cost disparity between the Bush and non-Bush areas of Alaska. For example, Alascom's intrastate dedicated transport rates for rural wholesale services are almost ten times hither than those for wholesale services.[70] Alascom has also claimed in this proceeding that its Bush costs are $.406 per minute while non-Bush costs are only $.106 per minute.[71] Alascom attributes the high cost per minute in Bush locations in part to the low traffic volumes associated with those locations.[72] Given the relationship between costs and traffic volumes (channels), it would be reasonable to assume that the low volume rural locations in Alaska would tend to have a higher cost of service than the high volume centers. After reviewing the record in this proceeding, we are persuaded that a significant disparity in the cost of service between the non-Bush and Bush areas of Alaska is highly likely.[73]

59. We further note that Alaska will be moving from a market structure where Alascom is isolated from the full effects of competition, since it had a guaranteed customer (AT&T), to a market where Alascom will become one of the multiple carriers that will compete on essentially equally footing For instance, Alascom's principal competitor to date, GCI, has built extensive facilities throughout large portions of Alaska and is well positioned to compete in the Alaska common carrier service market.

60. Given the expected high cost disparities within the Alaska market and the expected level of IXC competition, we must carefully evaluate whether Alascom's Common Carrier Service rates should be averaged statewide. With the exception of GCI and MCI, most commenters in this proceeding oppose statewide rate averaging for Alascom's Common Carrier Services. On balance, we are persuaded by the arguments of Alascom, AT&T, the State of Alaska, and UUI that a mandatory statewide averaged rate structure will require Alascom to price its services above cost in non-Bush areas and thus provide an artificial incentive for AT&T and other IXCs not to use Alascom's non-Bush network, even in cases where Alascom's underlying costs may be lower than those of its competitors. It is not our intent to

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these provisions. AT&T would be required to make its facilities available to other carriers under tariff.

[61] Tentative Recommendation, 8 FCC Rcd at 3688, para. 33.

[62] These areas are hereinafter referred to as non-Bush and Bush respectively. See Earth Stations re Tentative Decision to Establish Joint Ownership, 92 FCC 2d 736 (1982); Policies Governing the Ownership of Domestic Satellite Earth Stations in the Bush Communities in Alaska, CC Docket 80–254, RM–3304, 96 FCC 2d 522, 541 (1984) at para. 40.

[63] GCI Comments (June 28, 1993) at 6; GCI Reply Comments (July 12, 1993) at 6–8; MCI Reply Comments (July 12, 1993) at 1–2.

[64] Alascom Implementation Plan (June 7, 1993) at 20; UUI Comments (June 23, 1993) at 4; AT&T Reply Comments (July 12, 1993) at 8; State of Alaska Comments (June 28, 1993) at 7; State of Alaska Reply Comments (July 12, 1993) at 3.

[65] Alascom Implementation Plan (June 7, 1993) at 21; Alascom Comments (July 12, 1993) at 15–17.

[66] State of Alsaka Comments (June 28, 1993) at 7; State of Alaska Reply Comments (July 12, 1993) at 3.

[67] Sprint Comments (June 28, 1993) at 4–5.

[68] AT&T Comments (June 28, 1993) at 30.

[69] State of Alaska Reply Comments (July 12, 1993) at 3, n. 1; UUI Reply Comments (July 12, 1993) at 5.

[70] Alascom's intrastate wholesale services are services purchased by carrier customers for resale. APUC Alascom Tariff No. 98, 1st Revised Page 368

[71] Alascom Comments (July 12, 1993) at 50.

[72] *Id.* 48–52.

[73] Our final recommendation includes a provision that Alascom file a Cost Allocation Plan ("CAP") with the Commission. We expect that the conclusions reached in this order regarding the cost disparity between non-Bush and Bush Common Carrier Services will be supported by the cost study that Alascom will be required to prepare. If after analysis, however, the cost study does not reflect that disparity, then the tariff for Alascom's Common Carrier services can be modified to reflect that fact.

handicap Alascom in the interexchange market. We are also concerned that our objective of revenue requirement neutrality will not be achieved if the Commission implements a mechanism (rate averaging) that most parties state would probably result in a shift in costs to the state jurisdiction as a result of lost interstate traffic.

61. We have also concluded that the advocates of statewide rate averaging have not demonstrated that deaveraging common carrier service rates will clearly lead to reduction in service availability or end use rate deaveraging. Our recommendation obligates the provision of interstate service statewide. Nor has the Commission given any indication that it would consider abandoning rate integration based on regional differences in the component costs of service. In conclusion, we are persuaded that allowing Alascom to file Common Carrier Service tariffs for two geographic rate zones will not lead to deaveraging of end user rates or to reducing the availability of service on facilities monopoly routes.[74]

62. While we remain concerned that the potential exists for Alascom to assign costs from its facilities competitive areas to its monopoly areas, we believe that potential cross-subsidization can be addressed without requiring statewide rate averaging. Accordingly, we recommend that Alascom be required to establish certain accounting safeguards to address the potential for cross subsidization. Those accounting safeguards should take the form of a CAP that would be filed with, and approved by, the Commission.

63. We believe that the Computer III Remand Order contains accounting safeguards that will serve as a useful starting point for the development of a CAP.[75] Recognizing that Alascom is a monopoly provider of service to the Bush areas of Alaska, its unique position raises the question of potential discrimination or cross subsidization. For this reason, the cost accounting requirement for Alascom is based on the cost accounting rules contained in the Computer III proceedings adapted to apply to Alascom's provision of service in the Bush areas. Alascom's submission must describe the accounting and cost allocation procedures that will be implemented to eliminate cross-subsidization.

64. The Alascom CAP shall be designed to segregate and identify separately, the cost, revenues, and investment for Alascom's monopoly Bush area operations, as distinct from those for its competitive, non-Bush operations. We recommend that the Commission require Alascom to divide its costs into three groups: those incurred solely to provide Bush service, those incurred solely to provide non-Bush service and those incurred to provide service to both the Bush and non-Bush areas.[76] The latter costs are referred to as joint and common costs. Further, we recommend that the Commission require Alascom to define its cost categories, to explain its procedures for assigning costs to those categories; and finally, for joint and common costs, to define its procedures for apportioning costs between the Bush and non-Bush areas. We recommend that the Commission closely examine Alascom's procedures for apportioning the operating lease expenses associated with the Aurora II satellite and Alascom's affiliated interest transactions.

65. We recommend that Alascom be required to file its CAP, including the categorization and allocation methodology described above, within three months of the release of a Commission Order adopting this recommendation.[77]

66. Given the above, we recommend that the provision in the Tentative Recommendation requiring that Alascom's Common Carrier Service rates be averaged statewide be eliminated. We conclude instead that division of Alascom's operations into two major geographic rate zone cost categories as defined through a CAP be adopted: (1) To accommodate the concern that Alascom could assign excessive costs to its Bush services, and (2) to recognize the apparent difference in costs within Alascom's network between its Bush and non-Bush geographic rate zones. The proper development of the rates within these two cost categories would be a matter for the Commission tariff review process.

67. We have not recommended a separate study area approach, as suggested by AT&T, for a variety of reasons. First, study areas are generally "self-contained" in that the predominant equipment necessary to provide the utility's service to the study area is located in its entirety within the study area and not split between study areas. By comparison, AT&T's proposal would divide the equipment (e.g., satellite), earth stations, buildings) necessary for the provisioning of Alascom's service, between the study areas that have been proposed. This is not a typical application of the study area concept, would prove controversial, and could set a precedent regarding division of study areas that is beyond the scope of this Joint Board. Second, a study area approach has the potential to affect the intrastate jurisdiction, which could lead to further controversy that could prevent the speedy resolution of this proceeding without effectively adding any benefit.[78]

68. In summary, we recommend that there be two geographic rate zones under Alascom's Common Carrier Service tariff: one zone for services associated with locations where facilities competition is allowed and another zone for services involving the locations where a facilities monopoly is prescribed. To accommodate concerns that costs will be properly allocated to the monopoly operations, Alascom should be required to file a CAP to appropriately assign costs between these two geographic rate zones. Issues arising with regard go Alascom's Common Carrier Services tariff would be resolved in accordance with the requirements of the Communications Act.

c. Private line services. i. Introduction

69. As proposed in the Tentative Recommendation, Alascom would be required to provide interstate private line services statewide, and if AT&T chooses to provide interstate private line services in Alaska, it must do so under Section 214 authority and make available its services statewide to the same extent as comparable AT&T private line services are available throughout the nation.

ii. Comments. 70. AT&T rejects the notion that it could be compelled to obtain Section 214 authority to provide southbound interstate services although that is what it has proposed to do voluntarily under its CBP.[79] AT&T also states that while it would provide private line services pursuant to the

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[74] Geographic rate zones should be viewed as the creation of different pricing schedules either by geographic region or group of locations. In this order we will generally refer to geographic rate zones as the difference in rate schedules for services associated with locations where Alascom holds a facilities monopoly (Bush) and services for all other locations (non-Bush).

[75] See Computer III Remand Proceedings: Bell Operating Company Safeguards and Tier 1 Local Exchange Company Safeguards, CC Docket No. 90–623, 6 FCC Rcd 7571 (1991) 57 FR 4373, February 5, 1992 (Computer III Remand Order), pets for recon. pending, pets. for rev. pending, *California* v. *FCC*, No. 92–70083 (9th Cir. filed Feb. 14, 1992).

[76] Bush services are defined as those interstate services that either originate or terminate in the Bush.

[77] We recommend that Alascom's CAP proposal be subject to notice and comment.

[78] We would not be prepared to recommend any change in Alaska's study areas without consulting with the APUC in conformance with the Commission's standard practice when study area changes are contemplated.

[79] AT&T's Comments (June 28, 1993) at 11; AT&T Application (March 31, 1993) at 3.

Communications Act, it could not be assumed that its terms, conditions, and service area for private line services would be the same as that for MTS.[80] Alascom implies that it should not be required to provide private line service and instead proposes that it provide "private line links" similar to special access.[81]

iii. Discussion. 71. In this order we reaffirm the provisions of the Tentative Recommendation with respect to private line services. While we recognize Alascom is currently providing interstate private line service as a dominant carrier, we believe it is necessary for the market structure adopted by the Commission to be explicit in this matter to ensure uninterrupted and universal service in Alaska. Alascom must continue to provide statewide interstate private line service. It would appear neither practical nor reasonble for Alascom to function solely as a "special access" provider in the market and to abandon its private line service at this time. Otherwise, Alascom's private line customers would likely be stranded without service since Alascom has not identified which carrier, if any, would take over its responsibility in the private line market.

72. With respect to AT&T's private line services, we recommend that if AT&T chooses to provide interstate private line service to and from Alaska, it be required to do so under the same rate structures, terms, and conditions attendant to its provision of private line services among the Lower 48 states.[82]

d. Dominant carriers. 73. The Tentative Recommendation proposed that both Alascom and AT&T retain their status as dominant carriers while the JSA existed. Upon JSA termination, AT&T would be considered dominant for the provision of both northbound and southbound MTS services. Additionally, AT&T would be considered dominant in the provision of service in the Alaska-Hawaii market. We proposed that in the post-JSA market, Alascom would initially continue to be considered dominant for its provision of MTS, private line, and Alascom Common Carrier Services, with the proviso that Alascom's status could be reviewed after the recommended transition period. Alascom's dominant status was based upon its primary control over the Alaska Spur, its statewide network, and its service and facilities monopolies in those areas where duplicate earth station construction is prohibited.[83]

i. AT&T's dominant status. (1) Comments. 74. AT&T challenged the proposal that it be designated as a dominant carrier for southbound Alaska MTS service.[84] Sprint's Reply Comments supported AT&T's dominant carrier status for provision of Alaska service. Sprint stated that the Commission has taken the position that there is a single national relevant geographic market (including Alaska, Hawaii, Puerto Rico, U.S. Virgin Islands, and other U.S. offshore points) for AT&T's interstate domestic, interexchange telecommunications service with no relevant submarkets. Although in the past the Commission has indicated that it might consider different markets for AT&T, Sprint argues that in later cases it has declined to do so. Sprint further observed that the record was insufficiently developed to warrant that treatment of Alaska as a separate geographic market or submarket for determining AT&T's market power. Hawaii also pointed out in Reply Comments that customer perception, the factor cited by AT&T to support its contention that it is non-dominant in the Alaska southbound market, is just one feature to consider when determining market dominance; the number and size distribution of competing firms, the nature of barriers to significant entry (including control of significant facilities), and the availability of reasonably substitutable services must also be evaluated.[85]

(2) Discussion. 75. After considering the parties' comments, we find that the record is insufficient to justify that Alaska be deemed a separate relevant AT&T geographic market or submarket, nor would treatment of Alaska as a submarket be consistent with the Commission's rate integration policy. Since AT&T is classified as a dominant carrier for its provision of MTS in the Lower 48, this classification should be equally applicable to AT&T's provision of MTS to and from Alaska and between Alaska and Hawaii.

ii. Alascom's dominant status. 76. No party, including Alascom, filed comments in response to the conclusions in the Tentative Recommendation regarding this issue We continue to believe that Alascom should be classified as a dominant carrier.

4. Circuit Equipment Allocation Factor/ Alaska Fund

a. Introduction. 77. In the Tentative Recommendation we proposed to reduce the frozen allocation factor for Alascom circuit equipment from 86% to 75%. This change was recommended for several reasons, including enhanced interstate and intrastate competition as well as more accurate recognition of the character of Alascom's costs. In addition, the same separations factor would be applied to UUI's one-half interest in the earth stations owned and operated by Alascom.

78. The allocator proposed under the Tentative Recommendation would be implemented January 1, 1994, but the shift in circuit equipment costs from the interstate to the intrastate jurisdiction would be phased in over 10-years. The difference between the 75% factor and the factor in effect during each year of the phase-in would be paid from a special Alaska Fund. The Alaska Fund would be administered by NECA, which would file a tariff to collect the requisite funds from all interchange carriers that contribute to the Universal Service Fund and would make payments from the Alaska Fund to Alascom and UUI. At the end of 10 years, The Alaska Fund would be terminated and the 75% interstate allocator would be fully in effect. We tentatively concluded that, in the context of the overall transition plan, 25% of Alascom's circuit equipment costs, but no more than 25%, could be assigned to the intrastate jurisdiction without causing an undue increase in intrastate rates. However, we specifically invited comments on this point.

b. Comments. 79. In the Implementation Plan filed on June 7, 1993, Alascom presented financial data and commentary regarding the impact of the Tentative Recommendation on the Joint Board's goal of revenue requirement neutrality. Alascom assumed that the 75% circuit equipment allocation factor would be in effect at the end of the 10-year transition period and analyzed the impact of varying levels of accelerated cost recovery ("ACR") on intrastate rates. Based on its 1992 year-end financial statements and

[80] AT&T's Comments (June 28, 1993) at 10.

[81] Alascom Implementation Plan (June 7, 1993) at 26.

[82] Hawaii maintains that rate integration applies to all telecommunications services, particularly MTS and private line service. Hawaii has also asked that the Commission clarify that rate integration applies to service between the contiguous states and Hawaii or Alaska and between Hawaii and Alaska. Hawaii Comments (June 28, 1993) at 20. We have specifically declined to address the issue of rate integration beyond the Alaska MTS market because the issue of rate integration applying to other interstate services is beyond the scope of this proceeding.

[83] Tentative Recommendation, CC Docket No. 83-1376, 8 FCC Rcd at 3689, para. 39.

[84] AT&T Comments (June 28, 1993) at 10-14.

[85] Hawaii Reply Comments (July 12, 1993) at 2-3.

several assumptions,[86] Alascom estimated that with ACR of $150 million paid over three years, there was a net increase in annual intrastate operating expenses of $23 million or 71% from 1993 to 2000 due to the change in the circuit equipment allocator. Alascom estimated that the intrastate revenue requirement shortfall would be $19 million or $.0609 per minute in the year 2000.[87] Performing the same analysis using ACR of $221 million paid over three years, Alascom contended that there would be a $13.8 million revenue requirement shortfall in the year 2000.[88]

80. Alascom argued that revenue requirement neutrality could not be assured simply by reducing plant; rather, it would be necessary to reduce expenses.[89] Alascom also stated that "any significant cost reduction must be sought from the labor force, the only material, residual cost category remaining."[90] Alascom stated that its ACR analyses already included a 10% reduction in the work force. However, Alascom stated that an additional 23% cut in positions would be required to meet the $4 million intrastate revenue requirement shortfall projected for 1993 under the $221 million ACR assumption.[91] Alascom argued that the labor cuts necessary to achieve revenue requirement neutrality were unrealistic and, in any event, would severely harm its ability to deliver service. Alascom further asserted that technological change alone would not be adequate to address the issue of Alaska's high service costs.

81. In its July 12, 1993 Comments, Alascom proposed increasing ACR by a prepaid expense of $72 million, which it described as a "Transitional Credit Facility" or "TCF". Alascom stated that the TCF was designed to moderate AT&T's abandonment of the Alascom network and any intrastate cost shifts that would result. The TCF would be amortized over a four-year transition period after termination of the JSA; the more AT&T used Alascom to carry traffic, the more of the TCF AT&T would recover. Using the same underlying financial data it relied on for its Implementation Plan, Alascom argued that a $221 million ACR plus a $72 million TCF would result in an intrastate rate decrease of 3% in 1997 and thereafter.[92]

82. Alascom filed Reply Comments on July 22, 1993, in which it maintained that AT&T did not care about intrastate cost increases because it would not base its prices on costs. Alascom stated that AT&T's data demonstrated that its intrastate costs would exceed revenues every year, which raised concerns about predatory, anticompetitive behavior.[93]

83. AT&T's June 7, 1993 Response did not address the change in circuit equipment allocation factor. However, in its June 28, 1993, Comments AT&T stated that on the basis of Alascom's figures, implementing the Tentative Recommendation was likely to lead to increases in Alascom's intrastate revenue requirements in both the short and long term.[94] AT&T then suggested that revenue requirements and by implication, revenue requirement neutrality were not the appropriate standard in a competitive environment.[95] While endorsing the rationale in the Tentative Recommendation for changing the existing allocation factor, AT&T stated that the issue of separations changes would be irrelevant under the CBP.[96] Finally, AT&T was critical of the complex transition mechanisms proposed in the Tentative Recommendation, including the establishment of the Alaska Fund.

84. AT&T's July 12, 1993 Reply Comments stated that the Tentative Recommendation failed to provide reasonable assurance that intrastate rates would not be increased with the introduction of a competitive market structure.[97] AT&T reiterated its position that, while the existing allocator is inappropriate and unfair, no change was necessary under the CBP; and, without a change in the separations factor, no Alaska Fund was required.[98] AT&T concurred in changing the frozen allocator if the Tentative Recommendation were adopted and, therefore, opposed the State of Alaska's suggestion that ACR be dedicated totally to interstate plant because that would negate the use of ACR to offset jurisdictional cost shifts.[99] AT&T maintained that, ultimately, the forces of competition could be relied on to keep intrastate rates at or below their current levels. In response to Alascom's claims of possible predation, AT&T projected that, under the CBP, its intrastate revenues would exceed intrastate revenue requirements for the period 1999–2003.[100]

85. The State of Alaska's June 28, 1993 Comments raised concerns regarding the extent of the jurisdictional cost shift created by the change in allocation factor proposed in the Tentative Recommendation. Based on the size of the Alaska Fund in years 1994–1997 and other anticipated increases in intrastate cost allocations, the State of Alaska estimated that intrastate costs would increase by more than $10 million or $40 per year per access line.[101] The State of Alaska suggested that the intended purpose of the change in allocation factor, *i.e.* reducing Alascom's interstate costs, could be accomplished instead by targeting the ACR to interstate plant. In addition, according to the State of Alaska, retention of the existing separations factors would negate the necessity for an Alaska Fund and would be more consistent with policies and procedures for achieving rate integration and universal service in the rest of the country.[102]

86. In its June 23, 1993 Comments, UUI endorsed the use of a frozen allocator for separating circuit equipment costs and the consistent application of this factor regardless of ownership of the facilities.[103] UUI also recommended that the Alaska Fund be administered on the same basis as state access charges (*i.e.*, no "true-up") rather than on the basis of other NECA funds.[104] UUI's July 12, 1993 Reply Comments challenged AT&T to state clearly its position on the use of a frozen allocator and what separations factor it is endorsing for Alaska.[105]

87. In other comments filed, ATA generally supported the phased-in change in allocation factor.[106] ATU expressed concern with the potential impact of the Tentative Recommendation on access costs and

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[86] The major assumptions are listed on pages 11 and 12 of Alascom's Implementation Plan (June 7, 1993).

[87] *Id.* at 13–14, Exhibit H.

[88] *Id.* Exhibit J.

[89] "Reliance solely upon an ACR program cannot achieve the revenue requirement neutrality goals established in 1989 by the Joint Board and reaffirmed in the Tentative Recommendation. This is part of the 'intractability' of the Alaska service problem. Therefore, to the extent the problem cannot be solved by addressing the plant part of the equation, the expense side of the issue must come into question," *Id.* at 16.

[90] *Id.* at 16–17.

[91] *Id.*

[92] Comments of Alascom (July 12, 1993) at 12–14.

[93] Alascom Reply Comments (July 22, 1993) at 7–8.

[94] AT&T Comments (June 28, 1993) at 17.

[95] *Id.* at 19.

[96] *Id.* at 22.

[97] AT&T Reply Comments (July 12, 1993) at 3.

[98] *Id.* at 5.

[99] *Id.* at 6.

[100] *Id.* at 7.

[101] State of Alaska Comments (June 28, 1993) at 4–5.

[102] In Reply Comments, dated July 12, 1993, the State of Alaska reiterated its position that the Tentative Recommendation should be modified to retain the existing circuit equipment allocator in order to avoid intrastate cost shifts and rate increases.

[103] UUI Comments (June 23, 1993) at 2–3.

[104] *Id.* at 3.

[105] Reply Comments of UUI (July 12, 1993) at 3–4.

[106] ATA Comments (June 24, 1993) at 4.

rates and local rates of LECs based on changes in demand resulting from increased intrastate interexchange rates.[107] USTA did not object to the phasing down of the separations factor for Alascom and UUI but suggested that the full impact of any resultant increase in local rates needed to be considered so as not to jeopardize universal service.[108] MCI opposed requiring all interexchange carriers to contribute to the Alaska Fund.[109] Sprint questioned the need for the Alaska Fund and why such costs could not be recovered from the intrastate jurisdiction rather than from interstate interexchange carriers that do not use Alascom's services.[110] In its reply comments Sprint reiterated its objection to the Alaska fund generally and expressed its opposition to AT&T's suggestion that contributions to such a fund be based on minutes of use.[111] NECA expressed its willingness and ability to administer an Alaska Fund, if it were created, and offered suggestions regarding the structure of the fund and the provision of data to NECA.[112]

c. Discussion. 88. We initially proposed a reduction in the interstate circuit equipment allocator in conjunction with an overall plan for a transition to a more competitive environment, with the expectation that this plan would enhance the development of competition in Alaska with minimal intrastate cost shifts at the conclusion of a 10-year phase-in period. Based on the comments in response to this proposal, we are changing significant aspects of the proposed overall plan for achieving our five objectives in this proceeding. With these modifications, which include the termination of the JSA after one and one-half years and the shortening of the subsequent transition period to two and one-half years, we conclude that the change in cost separations factor set forth in the Tentative Recommendation is neither necessary nor desirable as a transition mechanism for the new market structure.

89. The cost analysis presented by parties have persuaded us that the change in cost separations factor set forth in the Tentative Recommendation would violate the revenue requirement neutrality objective we established in the Supplemental Order, and therefore, the 86% interstate allocator should be retained for Alascom's equipment.

90. The retention of the current separations factor would significantly simplify the transition. There would be no need for the Alaska Fund, eliminating both the need to resolve the issues raised with respect to its policy premises and operation and the administrative costs of establishing and operating this separate fund for a limited time period.

91. Another reason for reaffirming the current frozen allocation factor is recognition that the market structure contemplated under this order eventually will reduce the importance of cost separations rules on rates for services. The price cap regime which currently governs AT&T's interstate rates reinforces this supposition. We believe that the revised transition time frames we recommend are sufficiently short to make it on the one hand, unnecessary to consider a change in the allocation factor at this time and, on the other hand, necessary to provide the intrastate ratepayers with adequate assurance against more rapid, unforeseen revenue requirement shifts that may occur.

92. In addition, we recognize that the factor at issue applies both to AT&T and Alascom and that it may be preferable for any modifications to the factor to be based on broader considerations than were contemplated in this proceeding. While the current mileage-based factor may not be applicable for all components of circuit equipment, it was approved by another joint board and is presumptively appropriate until modified.

93. Accordingly, we recommend that the frozen 86% interstate allocator be retained for Alascom's and UUI's circuit equipment.[113]

V. Transition Mechanisms

94. A number of transition mechanisms will be required as a condition of adoption and successful implementation of the market structure which is recommended in this order. We believe that the Commission can modify the status quo and place conditions on JSA termination to achieve the five objectives and the public interest under Sections 1, 4(i)–(j), 201, and 202 of the Communications Act.[114] Consequently, the Commission has the authority to require implementation of the transition mechanisms that we recommend in this section, even after the JSA is terminated.

A. Transition Periods For JSA Termination and AT&T's Use of Alascom Facilities

1. Introduction

95. Under the *Tentative Recommendation* we proposed that the JSA be eliminated after three years. This transition period was chosen to allow for Alascom's adjustment to the competitive conditions under the market structure, to develop and to approve the required Alascom tariffs, and to implement certain transition mechanisms.

96. The Tentative Recommendation further proposed that, after the JSA was eliminated, AT&T would be required to purchase Common Carrier Services from Alascom for four years. Under the Tentative Recommendation, AT&T's purchase obligation would be reduced in equal annual increments until it was zero at the end of the fourth year.[115] As proposed, those increments would be based on a percentage of AT&T's MTS traffic carried by Alascom during the last year of the JSA. The Tentative Recommendation stated that the purchase requirement was necessary to reduce the potential for unforeseen jurisdictional revenue requirement shifts if AT&T immediately stopped using Alascom's facilities.

2. Comments

97. Alascom contended that the JSA should not be eliminated, but that if termination were required, that termination should occur no sooner than the timetable set forth in the Tentative Recommendation.[116] Alascom argued that the JSA was lawful, that it had successfully achieved universal service, and that it did not harm competition.[117] Alascom stated that allowing AT&T into the market would lead to harmful effects.[118]

98. ATA stated that delaying AT&T's ability to build its own facilities in Alaska would reduce AT&T's incentives to invest in the Alaska market.[119] ATA also stated that the Tentative Recommendation eliminated Alascom's incentive to upgrade its equipment or to prepare for replacement of the Aurora II

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[107] ATU Comments (June 28, 1993) at 1–2.

[108] Reply Comments of USTA (July 12, 1993) at 2–3.

[109] MCI Comments (June 28, 1993) at 1.

[110] Comments of Sprint (June 28, 1993) at 3–4.

[111] Reply Comments of Sprint (July 12, 1993) at 2.

[112] NECA Comments (June 28, 1993) at 1–4.

[113] Since the circuit equipment allocation factor proposed for UUI mirrored that for Alascom, it also will remain at the 86% interstate level.

[114] 47 U.S.C. 151, 154(i)–(j), 201, 202.

[115] The Tentative Recommendation also allowed Alascom and AT&T to propose an alternative schedule for reduction of AT&T's purchase obligation, subject to the Commission's approval. Tentative Recommendation, 8 FCC Rcd at 3606, para. 84

[116] Alascom Implementation Plan (June 7, 1993) at 23.

[117] Comments of Alascom (July 12, 1993) at 42–55.

[118] *Id.* at 44.

[119] ATA Comments (June 25, 1993) at 5.

satellite, whose estimated life would terminate in 2001.[120]

99. Similarly, AT&T stated that continuing the JSA until 1997 would force it to delay entering the market at which time AT&T might no longer have an economic incentive to construct the network proposed under the CBP.[121] AT&T further argued that parties supporting the Tentative Recommendation would benefit from the delay created under that plan.[122] With regard to the Tentative Recommendation's transition mechanisms, AT&T stated that there was no legal basis for requiring it to purchase services from Alascom after the JSA was terminated.[123]

100. GCI supported termination of the JSA and stated that the Tentative Recommendation provided a workable compromise for the JSA's replacement that should be implemented no later than the beginning of 1994.[124]

101. The State of Alaska argued that the transition timetable set forth in the Tentative Recommendation did not promote quick delivery of new and improved services to Alaska.[125] The State of Alaska's recommended solution to this perceived shortcoming was to reduce the period that AT&T must place traffic on the Alascom network from four to two years.[126] The State of Alaska did not propose any change in the three years that were proposed for retention of the JSA.

102. UUI stated that the JSA should remain in effect until AT&T presents an adequate implementation plan for the ACR issue it was requested to address in the Tentative Recommendation.[127] UUI indicated that the transition time under the Tentative Recommendation appeared adequate but continued to question Alascom's viability as a transport carrier if AT&T were allowed to construct its own facilities in Alaska.[128]

3 Discussion

103. Based on the comments filed, and in light of the other changes recommended in this order, we have reconsidered the schedule proposed for termination of the JSA and for AT&T's obligation to purchase services from Alascom. We now recommend that both of these transition mechanisms should be shorter in duration than originally proposed.[129]

104. The comments present strong reasons to believe that, overall, the transition timetable under the Tentative Recommendation is too long. First, concerns have been raised by parties, including the State of Alaska, that a long transition period disadvantages Alaskans because it discourages carriers from investing in new technologies and new equipment and from entering this market. No party has suggested that these concerns regarding investment and entry are immaterial or inconsequential.[130]

105. Second, several parties have noted that the useful life of the Aurora II satellite is expected to end by 2001 and that significant lead time is required for planning and launching its successor.[131] It is critical for universal service that a satellite be available to provide transport services to remote rural Alaskan locations. We conclude that, to the extent reasonably possible, our transition mechanisms should be shortened so as not to interfere with the orderly replacement of Aurora II capacity. A shorter transition should reduce uncertainties as to service requirements applicable to this market and as to the financial issues involved. Third, AT&T states that it may be at a competitive disadvantage in the future if it is not now given the freedom enjoyed by its competitors to build facilities as necessary in Alaska. Surveys conducted by AT&T also suggest that Alaskans would welcome the opportunity for AT&T to enter the market.[132]

106. Last, we believe that other changes in our proposed market structure adequately address the concerns underlying Alascom's opposition to any shortening of our proposed transition. That opposition reflected Alascom's view that our originally proposed transition period was the minimum period required for it to adapt to the proposed market structure because of the substantial revenue requirement shifts to the intrastate jurisdiction that it projected. As explained *supra*, this final recommendation retains the existing cost separations factor for Alascom's circuit equipment. This modification in conjunction with our other recommendations significantly reduces, if not eliminates, the intrastate cost shift that Alascom could have experienced under the Tentative Recommendation.[133] Because of this and because retention of the frozen separations allocator simplifies the transition, this final recommendation also substantially decreases the uncertainty associated with the transition. In sum, without a change in the separations factor, the differences between the status quo and the new market structure are reduced. This, in turn, permits a shortening of the transition mechanism previously proposed.

107. We have thus concluded that the transition to the new market structure can and should be completed by March 1, 1998. We recommend that the implementation of the revised market structure should begin March 1, 1994. This would allow four years for the transition from the status quo to a fully competitive market structure. We affirm our proposal in the Tentative Recommendation that there should be two phases to the transition, a phase during which the JSA would be in effect and a phase after termination of the JSA during which AT&T would be obligated to purchase declining levels of Alascom's Common Carrier Services under tariff. We also recommend that the duration of each of these phases should be one and one-half years for continuation of the JSA and a period of two and one-half years for the phase down of AT&T's obligation to purchase Alascom's Common Carrier Services under tariff.[134] The second time period is consistent with the recommendation of the State of Alaska, which proposed that AT&T's "must purchase" obligation should be reduced from four to two years and that our entire proposal is

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[120] *Id.* at 5–6.

[121] AT&T Comments (June 28, 1993) at 26.

[122] AT&T Reply Comments (July 12, 1993) at 2.

[123] AT&T Comments (June 28, 1993) at 20.

[124] GCI Comments (June 28, 1993) at 1–2.

[125] State of Alaska Reply Comments (July 12, 1993) at 2–3.

[126] *Id.* at 3.

[127] UUI Reply Comments (July 12, 1993) at 3.

[128] UUI Comments (June 23, 1993) at 4.

[129] This recommendation assumes that all major aspects of this recommendation will be placed in effect. Our recommendation incorporates provisions that are designed to balance many factors; the elimination of any of these provisions would upset that carefully crafted balance.

[130] At hearings held before an Alaska Telecommunications Task Force on August 27, 1993, Alascom and the State of Alaska stated separately that uncertainties in the Alaska market structure would inhibit investment in that market.

[131] In particular, UUI has indicated that it takes approximately four years to negotiate an RFP and to build and launch a replacement satellite. UUI further stated that in order to assure adequate satellite coverage of Alaska, by 1997 "someone will need to step forward to spend approximately $100 million to replace Aurora II." UUI comments (June 28, 1993) at 8.

[132] AT&T Supplemental Replay Comments (July 12, 1993) at Exhibit A. There are also letters from members of the public filed in the record of this proceeding that oppose AT&T's entry primarily because of concerns about degradation in universal service and service quality. We believe that our recommendation mitigates these concerns by imposing service requirements on AT&T and Alascom.

[133] The change in separations factor in conjunction with our other changes proposed under the Tentative Recommendation was one of the key motivating factors that led us to recommend the seven and ten year transition periods.

[134] AT&T's comments regarding the legal basis to establish transition mechanisms are addressed in *supra* paras. 49–50, 94 and *infra* paras. 122–127.

consistent with the idea that the majority of key market changes occur so as not to interfere with the satellite replacement. At the Telecommunications Task Force hearing conducted on August 27, 1993 (see para. 23, *supra*), GCI and MCI stated that reduction in the timeframe, as proposed by the State of Alaska, would be acceptable, and AT&T generally supported a shorter transition period.

B. Transition Payments, Accounting Issues, and AT&T's Use of Alascom Facilities

1. Introduction

108. Under the Tentative Recommendation we concluded that it was necessary to reduce Alascom's costs through an ACR mechanism to ameliorate potential cost shifts to the interstate jurisdiction and to allow Alascom to better adapt to the new market structure. We were concerned that cost shifts could occur as a result of our proposed change to the separations factor for circuit equipment and as a result of possible AT&T reduction in use of the Alascom network. The Tentative Recommendation did not identify the exact form of ACR that was to be adopted and, instead, requested Alascom and AT&T to file implementation plans to suggest an appropriate mechanism. One option suggested under the Tentative Recommendation was that the ACR be provided through accelerated depreciation of assets funded by lump payments made by AT&T to Alascom.

2. Comments

a. Accelerated cost recovery. 109. Alascom generally supported the ACR mechanism proposed in the Tentative Recommendation. Alascom expressed concern, however, that the amount paid be sufficient to achieve the Joint Board's goals, particularly jurisdictional revenue requirement neutrality.[135] Alascom stated that a total ACR payment of $150 million was too low and that the figure should be $221 million with an additional TCF payment of $72 million to offset operating expenses.[136] Alascom argued that significant jurisdictional cost shifts would occur absent adequate ACR payments.[137]

110. In its response to the Joint Board's request for implementation plans, AT&T failed to present a proposed ACR mechanism; rather, it objected to the entire concept for several reasons. First, AT&T characterized ACR as an inefficient way to reduce Alascom's costs inasmuch as Alascom's costs were perceived to be driven primarily by its high operating expenses. Second, AT&T believed it would not recoup as much as it would pay under the ACR mechansim.[138] Third, AT&T objected to having the responsibility to fund cost reductions for its competitor.[139] Fourth, AT&T argued that the Commission has no legal authority to compel AT&T to enter into a voluntary agreement under which it would bear sole responsibility for this obligation to Alascom.[140] Fifth, AT&T questioned the need for an ACR, stating that Alascom had not demonstrated that it could not function profitably in a competitive market without subsidy.[141]

111. ATA concurred with AT&T that the key to achieving revenue requirement neutrality under the Tentative Recommendation would be reducing what it believed to be Alascom's high operating costs.[142] ATA also raised the concern that the ACR proposal would be ineffective if Alascom were to continue to install plant during the transition period.[143]

112. The other parties that filed comments in response to the Tentative recommendation were nearly unanimous in their endorsement of some form of ACR for Alascom.[144]

b. Application of payment. 113. AT&T proposed that any plant write-down under an ACR mechanism be limited to plant employed to provide services to other carriers.[145] Alascom stated that the ACR should be applied as broadly as possible.[146] GCI and the State of Alaska contended that any ACR-funded plant write-down should apply only to interstate MTS plant.[147] They raised concerns regarding potential litigation and the dilution of the effects of the ACR if it were applied to the entire Alascom rate base as opposed to just the interstate portion. AT&T stated that it would be inappropriate to apply ACR payments solely to Alascom's interstate plant; to do so would limit the effectiveness of the ACR in meeting its purposes of offsetting the jurisdictional cost shifts and minimizing the upward pressures on intrastate rates that would result from the separations change proposed under the Tentative Recommendation.[148] GCI also suggested that for every year of the transition, Alascom should file a proposed accounting treatment for any write-down with the Commission's Common Carrier Bureau. UUI recommended that the JSA remain in place until AT&T adequately addressed the ACR problem.[149]

3. Discussion

a. Transition payment. i. Legal issues. 114. AT&T has argued that the Commission does not have the legal authority to force it into a voluntary agreement nor can the Commission compel AT&T alone to make the transition payment.[150] We have concluded that neither argument prevents the Commission from requiring a transition payment as a condition for implementing a new market structure that achieves the proper balancing of Joint Board objectives that are derived directly from the Communications Act. we also note that this accomplishes AT&T's long sought-after goal of terminating the JSA, under which it estimates that it loses $80 million per year.

115. We conclude that a payment is essential to a successful transition to a post-JSA Alaska market structure, in particular to prevent a reduction, or impairment, in universal service during the transition from the unique market structure under the JSA to a more open competitive market structure comparable to that prevailing in the Lower 48. We recommend that Alascom be directed to use that transition payment to reduce its investment which, in turn, will lower its costs of operation as new technologies and more cost efficient, competitive equipment are introduced into the Alaska market. This is necessary to address, and balance, three of the Joint Board's goals:

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[135] Alascom had previously opposed any form of ACR, but in its recent comments it has stated that such a mechanism was essential. Alascom Implementation Plan (June 7, 1993), *passim*.

[136] Alascom Implementation Plan (June 7, 1993) at 9–16, Exh. H; Alascom Comments (July 12, 1993) at 8–15.

[137] Alascom Comments (July 12, 1993) at 8.

[138] AT&T stated: "on a net present value basis, AT&T would not recoup through lower Alascom charges about 14 cents for each dollar paid to reduce Alascom's asset base." AT&T Implementation Plan (June 7, 1993) at 4.

[139] AT&T Implementation Plan (June 7, 1993) at 3–6.

[140] AT&T Comments (June 28, 1993) at 20.

[141] *Id.* at 18–19.

[142] ATAComments (June 25, 1993) at 6.

[143] ATA testimony, Telecommunications Task Force Hearing (August 27, 1993).

[144] UUI Comments (June 23, 1993) at 2; Comments of GCI (June 28, 1993) at 4; Comments of the State of Alaska (June 28, 1993) at 4; Comments of SWB (June 28, 1993) at 4.

[145] AT&T Implementation Plan (June 7, 1993) at 5.

[146] Alascom Implementation Plan (June 7, 1993) at 37.

[147] GCI Comments (June 28, 1993) at 5; State of Alaska Comments, (June 28, 1993) at 5.

[148] AT&T Reply Comments (July 12, 1993) at 6.

[149] UUI Reply Comments (July 12, 1993) at 2.

[150] AT&T Comments (June 28, 1993) at 19–20; AT&T Comments On The Proposal of the State Members Of The Federal-State Joint Board (December 18, 1992) at 6.

Revenue requirement neutrality, rate integration, and universal service.[151]

116. The JSA is styled after the pre-divestiture settlements contracts that governed payments among carries for jointly provided interstate services. "From the mid-1940s until the advent of access charges, most LECs recovered the bulk of their interstate revenue requirement through a 'pooling' process administered by AT&T known as settlements and division of revenues. This process was sometimes referred to as a 'partnership' because it permitted LECs to achieve a uniform, rate of return on their investment. It also helped AT&T maintain a nationwide average toll rate schedule."[152] As previously noted, the JSA was a similar pooling vehicle that Alascom and AT&T elected to use to achieve the rate integration requirement for the Alaska interstate market.

117. The Commission has ample authority under Sections 1, 4(i), and 201 of the Communications Act, *inter alia*, to require a transition payment to avoid the potentially harmful consequences of "depooling" that will result from terminating the JSA. There is clear precedent for using transitional inter-carrier payments to achieve valid Commission policy objectives. For example, the FCC mandated carrier common line ("CCL") pooling in creating the post-divestiture access charge structure.[153] The mandate was needed because the Commission believed that LEC-specific CCL rates might generate significant pressures upon IXCs to deaverage interstate toll rates. CCL pooling was identified as a mechanism to forestall this eventuality.

118. The Commission recognized, however, that not all consequences of CCL pooling were beneficial, as it was found that pooling limited LEC cost recovery flexibility, established economically inefficient cost/price distortions, and reduced LEC incentives to contain costs.[154] In light of those concerns, the Commission directed the CC Docket 80–286 (Separations) Joint Board to study those issues and sought comments and recommendations on possible modifications to the mandatory CCL pooling of costs and revenues. In response, that Joint Board found that several features had been implemented to mitigate the concern for toll rate deaveraging.[155] The Separations Joint Board found that the mandatory CCL pooling was broader than necessary to achieve the intended public interest benefits and was a hindrance to achieving two goals of access charges: Enhanced incentives to contain costs and the elimination of economically inefficient cost/price distortions.[156]

119. In reducing the mandatory aspects of CCL pooling, the Joint Board recommended transitional mechanisms to forestall the possibility that "depooling, particularly precipitous depooling, could adversely affect the telecommunications marketplace and cause hardship in many areas of the country for ratepayers and LECs alike."[157] Carriers electing to withdraw from the CCL pool would be required as a pre-condition of withdrawal to pay a four year transitional support into the pool, which would be used to provide transitional support payments to LECs that traditionally were net receivers under the mandatory pooling program, but were projected to withdraw from the revised, "voluntary" pool.[158] In addition, a mandatory long term support fund was established to enable those LECs remaining in the pool to charge IXCs the equivalent of what would have been the nationwide average CCL rate had the mandatory CCL pool been maintained.[159] This long term support feature was needed to assure the forestalling of pressures to deaverage toll rates.[160]

120. The Commission adopted the Separations Joint Board's recommendations concerning the revisions to the mandatory CCL pool, concluding:

> The Joint Board has recommended a carefully integrated plan of action for resolving a variety of issues concerning common line cost recovery. These recommendations are designed to further all four of the long standing goals of this proceeding—preserving universal service, promoting economic efficiency, eliminating service pricing discrimination, and deterring uneconomic bypass—and to achieve a proper balance among these goals.[161]

121. On reconsideration, the Commission affirmed its earlier conclusion and observed that the long term support arrangement among all LECs was needed to ensure that small, unaffiliated LECs with high nontraffic sensitive costs would not be forced to impose inordinately high nontraffic sensitive cost recovery burdens on their subscribers.[162]

122. The transition payment we are commending as part of the Alaska market recommendation closely parallels the transitional support payments required pursuant to the CCL pooling revisions discussed above. First, both payments are transitional in nature. The courts have recognized that the Commission has the authority to prescribe transitional policy mechanisms to assure the preservation of universal service and to avoid service disruptions.[163] Second, there is significant similarity between the goals underlying the CCL pooling revisions—universal service and economic efficiency—and the Joint Board's goals. Third, both the required AT&T payment under the Alaska market transition mechanism and the transitional support payments under the CCL pooling revisions concern inter-carrier payments. Fourth, the payments pursuant to each proceeding were an integral part of an overall plan to achieve a proper balancing of competing policy considerations.

123. The Commission's authority to order pooling arrangements such as the recommended payment has been affirmed upon judicial review. In *Rural Telephone Coalition* v. *FCC*, 838 F.2d 1307 (DC Cir. 1988), the United States Court of Appeals for the District of Columbia Circuit ruled that the Commission had the authority to create the mandatory pooling arrangement known as the Universal Service Fund to assist certain high cost local companies to maintain universal service. The creation of the fund was challenged on appeal as a subsidy prohibited under the Communications Act. The Court viewed the allocation of costs underlying the Fund as "a step on the road towards an efficient national telephone rate structure based primarily on access charges levied directly on

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[151] The availability of telecommunications services over the great distances and under the disruptive climatic conditions in Alaska is essential to the safety of life and property as well as the health and well-being of Alaskans. In our judgment, the transition payment recommended herein is essential to making "available, so far as possible, to all the people of the United States a rapid, efficient, Nation-wide, and world-wide wire and radio communications service with adequate facilities at reasonable charges," as required by the Communications Act. 47 U.S.C. § 151.

[152] *In the Matter of MTS and WATS Market Structure*, 2 FCC Rcd 2324, para. 112 (1987) 52 FR 19896, May 28, 1987. See also id. at para. 112 n. 171.

[153] *Third Report and Order, MTS and WATS Market Structure*, CC Docket No. 78–72, 933 FCC 2d 241 (1983) (hereinafter "Access Charge Order").

[154] *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78–72, 2 FCC Rcd 2324, para. 115 (1987); In the Matter of MTS and WATS Market Structure, CC Docket No. 78–72, 2 FCC Rcd 2953, para. 23 (May 19, 1987), 52 FR 21536, June 8, 1987.

[155] *In the Matter of MTS and WATS Market Structure*, 2 FCC Rcd 2324, paras. 117–120 (1987).

[156] *Id.* at para. 120.

[157] *Id.* at para. 121.

[158] *Id.* at para. 96.

[159] *Id.*

[160] *Id.* at para. 127.

[161] *Id.* at para. 27.

[162] *In the Matter of MTS and WATS Market Structure*, CC Docket No. 78–72, 3 FCC Rcd 4543 (1988).

[163] *NARUC* v. *FCC*, 737 F.2d 1095, 1135 n.35 (DC Cir. 1984).

customers."[164] The FCC's statutory authority pursuant to Sections 1 and 4 of the Communications Act, 47 U.S.C. 151 and 154, was approved as the basis for mandating the Fund. Additional challenges to the specific features of the Fund were raised, with the principal objection that the Fund would not necessarily achieve its intended purposes. The Court dismissed these challenges, noting:

> The fund as proposed may well produce anomalous results, and there may be 'better' means of aiding the truly needy. [citation omitted.] Our task, however, is not to determine the best means, but only to decide whether the means selected by the Commission are lawful, supported by substantial evidence after consideration of relevant factors, and rationally connected to the facts. The Commission determined that the Fund would serve the statutory objective of universal service at reasonable charges. 47 U.S.C. Section 151 (1982). The Fund was not proposed as a welfare scheme; if it were, the Commission would have exceeded its authority. Rather, the Commission seeks to moderate excessive NTS local exchange plant costs in order to ensure that rates are within the means of the average subscriber. As an interim measure, this decision was within the Commission's discretion.[165]

124. The transition payment is an integral part of our recommendation that is designed to preserve universal service and revenue requirement neutrality by permitting Alascom to continue to provide throughout Alaska during a period of rapidly accelerating, but selective, competition that would drain Alascom revenues where Alascom is most vulnerable competitively, thereby impairing its continuing ability to provide interconnecting services throughout the state.[166] We thus conclude that the Commission has the requisite authority to require the transition payment from AT&T to Alascom.

125. The obligation to provide the intercarrier transition payment rests with AT&T. AT&T was initially required to provide rate integrated services and to serve the Alaska interstate market jointly with Alascom in connection with the Commission's provision of satellite acquisition and operation authority to AT&T. That requirement was imposed solely on AT&T prior to the advent of competition in the interstate MTS market. However, as discussed above, AT&T and Alascom jointly negotiated and implemented the JSA during a period when competition had been authorized and had begun to be implemented for the interstate MTS market in the Lower 48. Nevertheless, AT&T did not object to its responsibility for this obligation when it was initially imposed, despite the existence of, and the real potential for, competitors in the market in light of competitive policies that were then being adopted by the Commission. While objections to the continuation of the JSA were raised later by AT&T, they did not go to the sole service responsibility issue.

126. When imposing rate integration responsibility for the interstate Alaska market on AT&T, the Commission acknowledged AT&T's dominance in the interstate MTS market.[167] This classification continues today. In addition to preserving universal service, maintaining revenue requirement neutrality, and encouraging economic efficiency, the transition payment is necessary to maintain the rate integration goal that has been a guiding policy for structuring the Alaska interstate MTS market since 1972 and is one of the Joint Board's goals.[168]

127. We have thus concluded that the transition payment, and phased reduction in AT&T's required use of Alascom facilities, together with our recommendation that the Commission maintain the current frozen allocator, will maintain our goals of universal service and revenue neutrality.

ii. Amount of payment. 128. Rather than an ACR mechanism that would involve accelerated depreciation, we have decided to recommend that a reduction in Alascom's plant balances be funded by a transition payment to Alascom of $150 million in two installments ($75 million on March 1, 1994; and $75 million upon termination of the JSA).[169] We have concluded that this payment will meet the goal of revenue requirement neutrality.[170] Support for this conclusion is contained in the data underlying the intrastate revenue requirement increases that were predicted and filed by the principal parties to this proceeding.

129. Specifically, we note that in the Master Agreement filed jointly by AT&T and Alascom in January, 1992, those parties stated that the phase-down of the frozen factor used by Alascom to allocate interexchange circuit equipment would cause an increase in intrastate revenue requirements of approximately $32 million. Alascom stated that this increase was caused by a drop in the factor from its current level of 86% interstate to the level of 62% interstate. Thus, a factor drop of 24% produces an approximate $32 million shift or $1,333,333 for each 1% change in the allocator.

130. In its implementation plan, Alascom provided a "Case A Analysis" that estimated the financial impact of the Tentative Recommendation. In its analysis, Alascom factored in the impact of the transition mechanisms outlined in the Tentative Recommendation. Case A showed that intrastate revenue requirements would decrease during the early years due to the $150 million ACR payment and then steadily increase in the later years as a result of the decreases in the allocation factor and in AT&T usage. Alascom shows that the largest increase in intrastate revenue

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[164] *Rural Telephone Coalition* v. *FCC*, 838 F.2d 1307, 1314–15 (DC Cir. 1988).

[165] *Id.* at 1316.

[166] At present, only Alascom provides universal connectivity throughout the State of Alaska.

[167] See, *e.g.*, *In the Matter of Establishment of Domestic Communications-Satellite Facilities by Non-Governmental Entities*, Docket No. 16495, 35 FCC 2d 844, paras. 5, 9 (1972).

[168] Without an acceptable transition payment mechanism the Joint Board would be unlikely to recommend termination of the JSA.

[169] This recommendation is a variation on the proposal we identified in the Tentative Recommendation that recommended reducing net plant balances by accelerating depreciation. We now achieve the same end result by simply crediting the plant accounts without accelerating the depreciation rate. We have reviewed the comments suggesting various ways to construct and target an appropriate ACR mechanism. Alascom's costs are primarily a combination of plant costs and operating (*i.e.*, non-plant related) expenses. Unquestionably, Alascom has greater control over its operating expenses than its plant costs which are largely a function of the existing equipment in service (*e.g.*, network configuration, switch size). While a few commenters have suggested a need to consider an ACR for Alascom's expenses, no proposal, with the exception of Alascom's proposed TCF, has been presented for our consideration. We are reluctant to propose a cost support mechanism for Alascom's operating expenses for several reasons; Alascom has control over a substantial portion of these costs and may reduce them at its discretion; it is not know what operating expenses, if any, might truly merit support under the new market conditions; and any subsidy to offset operating expenses would have no lasting effect on costs in that it would not eliminate costs, but merely change who pays the costs during the period payments are made. Consequently, we do not recommend adoption of an ACR that includes as a component the TCF proposed by Alascom or any similar payment mechanism to offset operating expenses. Furthermore, absent a change in the cost separations factor for circuit equipment, there are no data on the record to support the necessity of an operating expense subsidy for Alascom.

[170] We have assumed that the $150 million transition payment (to be paid in two installments of $75 million each, the first installment on March 1, 1994, and the second installment, when the JSA terminates, on September 1, 1995) from AT&T to Alascom is taxable income to Alascom. However, we recommend that the parties be required to file, within 60 days of the effective date of the Commission's order, requests with the United States Internal Revenue Service ("IRS") and with the State of Alaska for expedited rulings on whether the transition payment is, in whole or in part, taxable income. If the IRS and/or the State of Alaska conclude(s) that the transition payment is not taxable income to Alascom, then AT&T may request that the Commission reduce the second installment by the amount of the tax payment(s) that Alascom is not required to make. If reduction in the second installment is thus warranted, we recommend that the Commission adjust the second installment to reflect the results of the requested rulings.

requirements occurs between 1996 and 1997, approximately $12 million.

131. We have examined the differences between the transition mechanisms, and their timing, that are contained in the Tentative Recommendation and that are being recommended in this Final Recommended Decision. When these differences are superimposed on Alascom's Case A Analysis, the increased intrastate revenue requirements predicted by Alascom to start in 1997 will largely disappear given a $150 million plant reduction. Particularly significant is the change in our recommendation regarding the frozen factor. As shown above, the previously recommended drop of 11% in the interstate allocation factor would have produced a shift to intrastate in the order of $14.7 million.[171] Under our current recommendation, this shift will not occur. Further, as discussed below, we are recommending that the transition payment be applied to provide a substantial reduction of the COE switching investment costs. Together, these actions should practically eliminate intrastate cost shifts related to investment. The anticipated decreases in AT&T usage of Alascom's facilities will have very little impact if the majority of Alascom's net COE switching investment and an adequate amount of plan in other plant accounts are no longer on the books to be allocated between the jurisdictions.

132. We also considered possible cost shifts to the intrastate jurisdiction occurring after all the transition mechanisms have been implemented. We have considered the materials in the record and have adjusted the part 36 Separations Study (base case) provided by Alascom in response to Staff Data Request No. 6[172] to reflect forecasted growth factors taken from Alascom's Case A Analysis[173] and the transition mechanisms, including the transition payments recommended in this order.[174] We conclude that there would be no intrastate cost shift given our transition mechanisms and market recommendations.

133. In summary, we conclude that the recommended transition payment to reduce Alascom's investment costs, coupled with the retention of the frozen factor and the crediting of specific Alascom plant accounts for reduction, should achieve the goal of revenue requirement neutrality.

B. Accounting issues. 134. We recommend that the transition payment be applied exclusively to offset certain designated plant account balances.[175] Section 220 of the Communications Act gives the Commission the authority to prescribe the manner in which carriers may keep their regulated books of account. The Commission has adopted accounting rules pursuant to Section 220; they are found in part 32 of the Commission's rules.[176] Part 32 provides no specific accounting instructions for the transition payment in this situation. Therefore, the Commission should be able to prescribe the proposed accounting treatment as long as that treatment is consistent with the purpose of the payment. The purpose of the transition payment is to ameliorate the effects of jurisdictional shifts and ensure that the Commission's universal service mandate is not undermined by termination of the JSA.

135. Accordingly, we recommend that the $150 million transition payment be made in two installments ($75 million on March 1, 1994 and $75 million when the JSA terminates) and be applied to reduce the book cost of depreciable Alascom assets. The payment should not be applied to non-depreciable assets such as "Land" (Account 2111) nor to amortizable assets such as "Capital Leases" (Account 2681).[177] The application of the transition payment to the remaining depreciable assets only, recognizes that future, as well as current, Alascom customers (including AT&T) should benefit from the transition payments.

136. We further recommend that the payment amount be assigned to specific depreciable assets accounts in accordance with the following guidelines. Of particular concern is the potential increase in intrastate costs caused by a change in the jurisdictional allocation of switching investment that could result from decreased AT&T usage of Alascom's switches under the new market structure. Therefore, we recommend that "Central Office Switching" (Account 2210) be designated first for reduction and by an amount necessary to produce little or no increase in intrastate revenue requirements as a consequence of AT&T's decreased switching usage. The remaining depreciable accounts should be reduced proportionately based on their relationship to the total net investment in depreciable assets (excluding the Alaska Spur).[178] It is our conclusion, based on adjustments to Alascom's Part 36 Separations Study, that allocation of the $150 million in this manner will ensure that our revenue requirement neutrality goal is met. This allocation will also mitigate incentives for making more selective distribution of the transition payment in response to competitive pressures with resulting undesirable effects on our revenue requirement neutrality objective.

137. In order to ensure proper assignment of the transition payment to depreciable asset accounts, we recommend that Alascom be required to file with the Commission a detailed proposal for its treatment of the transition payment. We further recommend that the Commission review Alascom's then current end-of-year balances (by account) for gross investment, depreciation reserve, and net investment to verify that the $150 million transition payment (to be paid in two installments of $75 million each) is applied in accordance with this decision.

c. *AT&T's use of Alascom facilities.* 138. The Tentative Recommendation proposed that AT&T's obligation to use Alascom facilities be phased-out by reducing the percentage of traffic that AT&T must place on the Alascom system over four years in four equal increments or on a schedule proposed by the parties and accepted by the Commission. Those filing comments primarily addressed the timing of AT&T's obligation and not the methodology proposed under the Tentative Recommendation.

139. We have reconsidered our previous approach on this matter and recommend that AT&T be required to buy a fixed dollar amount of service from Alascom as opposed to a specific minutes requirement. Our review

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[171] This figure assumes an approximate $1.3 million increase in state costs per 1% change in allocator

[172] Alascom 1993 Separations Study, Business as Usual, ROR, 14%, designated "1993 AKBAS93" by Alascom. See Response to Data Request 6, filed July 23, 1993.

[173] See Alascom's Implementation Plan Response (July 7, 1993).

[174] The adjustments include: (1) the implementation of transition mechanism included herein from 1994–1997; (2) two separations factor changes: tandem (reduced from 59% interstate to 25% interstate) and dial switching (reduced from 88% interstate to 25% interstate) to reflect the potential loss of AT&T usage in the non-Bush areas after the transition period; (3) plant reductions, net of taxes, to reflect the transition payment; and (4) tax rates: 34% federal 9.5% state.

[175] The transition payment is to be applied to plant balances prior to the separation process.

[176] 47 CFR 32.1 *et seq.*

[177] We also recommend that the balance in "Deep Sea Cable" (Account 2425) not be reduced. We agree with AT&T that this account should not be reduced, principally because it is highly unlikely that the wholly interstate usage of this facility will change under the new market structure. Thus, the Alaska Spur is not expected to be the cause of any intrastate cost shifts.

[178] No plant account should be credited with an amount greater than the net balance in that plant account to prevent the new net balance in the account from falling below zero.

concluded that it would be administratively impracticable to identify specifically whether the minutes standard should apply to transport minutes, switched minutes or both. Furthermore, employing a dollars standard would simplify the process, would protect against rapid losses in interstate revenue streams to Alascom, thus further buffering the effects of the loss in AT&T's traffic, and would allow AT&T greater flexibility in deciding how to meet its purchase obligations in a manner best suited to its future construction plans. Consequently, we now recommend that AT&T be required to purchase a set level of dollars of service from Alascom during this phase of the transition period.[179]

140. The purchase level for the phase down related to interstate MTS Common Carrier Services would be computed based on a declining percentage over the transition period applied to a baseline revenue amount. The baseline would be calculated as a function of the demand for transport and switching minutes for the last 12 months that the JSA was in effect multiplied by the new tariff rates for Alascom's Common Carrier Services.[180] The required level (percentage) would be reduced in increments every six months over the transition period until it reaches zero at the end of the period.[181]

141. We continue to recommend that AT&T and Alascom be allowed to propose jointly an alternative method for calculating AT&T's service obligation to use Alascom's Common Carrier Services on a declining scale for the second portion of our recommended transition period. If no joint alternative is forthcoming, our recommended method should be adopted.

C. Alascom Common Carrier Services Tariff

142. As previously discussed, it is our recommendation that the ultimate rate structure for Alascom's Common Carrier Services would be a tariff with two geographic rate zones based on the respective costs of its facilities monopoly and competitive operations.[182] In order to achieve this new rate structure, a number of transitional steps must be taken. First, Alascom would be required to file a detailed CAP that explains how costs would be allocated between these two geographic rate zones. After the CAP has been approved or modified by the Commission, Alascom would apportion its costs to the two categories according to the CAP and then assign the costs within each category to major service subsets (*e.g.*, switching, transport). Alascom's cost of service data and the data supporting the CAP would be reviewed and would be subject to an independent audit.

143. Once costs were properly defined, Alascom would estimate its demand for services and develop rates for inclusion in its Common Carrier Services tariff. The tariff would then be evaluated under the Commission's standard tariff review process. It is recommended that Alascom be directed to file that tariff as soon as possible, with an effective date of September 1, 1995, since a lawful tariff must be on file prior to the termination of the JSA. The Common Carrier Services tariff would be effective upon, and coincident with, the date of termination of the JSA. It is further recommended that the tariff be refiled annually for the first few years with the Commission later determining if less frequent tariff filings would be appropriate.

VI. Miscellaneous

A. Tariffs, Leases, and Contracts .

144. The Tentative Recommendation suggested that Alascom be required to file interstate tariffs for its MTS and Common Carrier Services. Also, any contracts or leases for Alascom or AT&T services would be filed for review with the Commission.

145. There were no comments opposing the recommendations that Alascom's MTS and Common Carrier Services be tariffed or that contracts or leases for Alascom or AT&T services be filed with the Commission for review. AT&T supported the tariffing requirement for Alascom;[183] and Alascom, as a common carrier, is required by the Communications Act to file tariffs.[184]

146. In addition, we believe it is necessary that, if contracts or leases between Alascom and AT&T for services are authorized by the Commission, they be filed for Commission review to assure that the market transition fulfills the Joint Board's goals of fostering economic efficiency and competition and that service is provided in a just and reasonable manner.[185]

B. Alaska Spur

147. In the Tentative Recommendation, we proposed that Alascom must file with the Commission for its review all contracts and agreements for interstate service on the Alaska Spur, including any technical standards that may be incident thereto.

148. In its Implementation Plan Alascom stated that it would like to engage in market pricing for the Alaska Spur.[186] GCI expressed concern about Alascom's intention and stated that, since Alascom controlled this essential facility, it must not be permitted to engage in extortionate pricing.[187] AT&T supported cost-based pricing for the Alaska Spur and also requested that the rates be tariffed, or offered on a non-discriminatory contract basis, until an alternative, competitive fiber optic facility linking Alaska and the Lower 48 becomes available.[188]

149. The comments generally support the requirement that the terms and conditions offered by Alascom for use of the Alaska Spur must be public and non-discriminatory. Whether Alascom uses a tariff or files various contracts with the Commission, this requirement must be met. Regarding the pricing for the use of the Alaska Spur, the Joint Board recommends that Alascom must comply with relevant cost-of-service principles. Since the contracts, leases, or tariffs governing use of the Alaska Spur will be submitted for Commission review, the Joint Board concludes that pricing issues can be considered further at that time as necessary.

C. Monitoring

150. In the Tentative Recommendation we stated that progress in achieving the proposed market structure should be monitored by the Commission, using information obtained from existing sources. No party suggested any significant refinement in the level of monitoring that was recommended, and we continue to

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[179] In order to achieve our objectives, this dollar commitment must be associated only with services currently provided to AT&T by Alascom under the JSA. For example, AT&T will not be able to meet its dollar commitment by purchasing intrastate services from Alascom.

[180] These new tariffs, as noted elsewhere in this order, would reflect Alascom's reduced costs after application of the transition payment installments.

[181] The percentage of baseline revenues to be used for each six month period is as follows: 90% during the first period; 80% during the second period; 65% during the third period; 45% during the fourth period; and 20% during the last period. These percentages will ensure a controlled reduction to AT&T's purchase obligation that protects the public interest.

[182] Use of the geographic rate zones should not be interpreted as placing restrictions on the rate design within each zone.

[183] AT&T Comments (June 28, 1993) at 29.

[184] 47 U.S.C. 203. These new tariffs, as noted elsewhere in this Final Recommended Decision, would reflect Alascom's reduced costs after application of the transition payment installments.

[185] The terms, rates, and conditions of any contract between AT&T and Alascom must be available to all similarly situated customers.

[186] Alascom Implementation Plan (June 7, 1993) at 24.

[187] GCI Comments (June 28, 1993) at 7.

[188] AT&T Comments (June 28, 1993) at 29.

believe that this facet of the Tentative Recommendation is adequate. We further conclude that the changes to our initial market structure proposal recommendation in this order do not rise to a level that requires modification to our monitoring mechanism. Consequently, we recommend that the Commission monitor the progress made in achieving the market structure proposed in this order by employing existing information sources.

D. Procedural Issues

151. Alascom has presented several challenges to how the Joint Board conducted this proceeding. First, it disputes the classification of this Docket as a nonrestricted rulemaking proceeding for the purpose of the Commission's *ex parte* rules.[189] Related to this claim is Alascom's second contention that the Joint Board has not complied with the Commission's *ex parte* rules applicable to nonrestricted rulemakings.[190] Third, Alascom claims that the Joint Board has failed to comply with the open meeting requirements of the Government in the Sunshine Act ("Sunshine Act").[191] Finally, Alascom alleges that the Commission violated its rules by failing to provide written notice to the parties of a public Alaska Joint Board hearing held in Anchorage on July 1, 1993, or **Federal Register** notice prior to that day.[192] As the discussion of each claim below indicates, none of these contentions has any merit.

1. Classification of CC Docket No. 83–1376 as a Nonrestricted Rulemaking

152. Alascom asserts that the Commission did not comply with Section 410 of the Communications Act and with various provisions of the Administrative Procedure Act ("APA") when it established the Alaska Joint Board proceeding as an informal notice and comment rulemaking subject to non-restricted "permit but disclose" *ex parte* rules. Section 410(a) provides that a joint board established pursuant to that section has "all the jurisdiction and powers conferred by law upon an examiner provided for in section 3105 of Title 5 [*i.e.*, an administrative law judge ("ALJ")], and shall be subject to the same duties and obligations." 47 U.S.C. 410(a). Likewise, section 410(c), under which the Alaska Joint Board was established,[193] provides that a joint board created under that section "shall possess the same jurisdiction, power, duties, and obligations as a joint board established under [section 410(a)]." 47 U.S.C. 410(c). Alascom argues that these provisions require the Alaska Joint Board to follow the same APA prohibitions on *ex parte* presentations that apply to formal rulemakings and adjudications conducted by ALJs.

153. Alascom's argument is not supported by the language of either Section 410 or any other law, including the APA. Section 410 itself does not prohibit *ex parte* presentations but merely states that joint boards have the same powers, duties, and obligations as ALJs. Although ALJs are subject to the APA, nowhere in the APA is there a duty or obligation imposed on an ALJ not to receive *ex parte* presentations under any circumstance. Rather, the APA *ex parte* prohibitions, 5 U.S.C. 557(d)(1), apply only in those proceedings "required by statute to be determined on the record after opportunity for an agency hearing * * *." 5 U.S.C. 553(c), 554(a). The Supreme Court has strictly applied the requirement that this language (*i.e.*, "on the record after opportunity for an agency hearing") be present in the statute under examination to trigger the hearing provisions of the APA. See *U.S.* v. *Florida East Coast Railway Co.*, 410 U.S. 224, 234–38 (1973); see also *AT&T* v. *FCC*, 572 F.2d 17, 22 (2d Cir.) *cert. denied*, 439 U.S. 875 (1978). Section 410 of the Communications Act does not contain this required "on the record" language, or anything remotely resembling it. In addition, Section 410(a) expressly provides that proceedings conducted under that section shall be conducted "in such manner as the Commission shall * * * prescribe."[194] It is thus apparent that the Section 410(a) language concerning "duties and obligations" of joint boards was not intended to dictate the procedural requirements of joint board proceedings.

154. Moreover, as discussed below, the legislative history of Section 410 confirms that Congress did not intend the language quoted by Alascom to require "on the record" joint board hearings with the associated *ex parte* prohibitions. Rather, the legislative history indicates that the references to ALJs in Section 410 were intended simply to limit the joint board's authority to the issuance of "recommended" decisions and thereby to protect the authority of the Commission to issue a final decision.

155. By way of background, in its original form prior to 1952, section 410(a) provided that joint boards "shall be vested with the same powers and be subject to the same duties and liabilities 'as in the case of a member of the Commission when designated by the Commission to hold a hearing (under section 409).'" See H.R. Rep. No. 1750, 82d Cong., 2d Sess., reprinted in 1952 U.S. Code Cong. & Ad. News 2234, 2255. In 1952, however, Congress amended section 409 and abolished the former procedure whereby single commissioners could preside over cases designated for hearing. In an attempt to conform section 410(a) to the new requirements of section 409, Congress concurrently amended section 410(a) to provide that joint boards "shall have all the jurisdiction and powers conferred by law *upon the Commission*, and shall be subject to the same duties and obligations." *See id.* (emphasis added).

156. From the Commission's perspective, this delegation of authority proved "undesirably broad" and the Chairman of the FCC advised Congress in 1955 that "it does not seem likely that the Commission would ever find it desirable (under the language of the 1952 amendment) to refer any matter to a joint board." See H.R. Rep. No. 2540, 94th Cong., 2d Sess., reprinted in 1956 U.S. Code Cong. & Ad. News 4134, 4139. The Chairman requested that Congress change the statutory language to give joint boards the same jurisdiction that is conferred on a hearing examiner, which "would be more nearly what Congress must have intended and would make the section more usable to the Commission in the administration of the act." Congress granted this request and in 1956 amended section 410(a) to give joint boards "the same power as is now conferred on hearing examiners, *thus giving the full Commission an opportunity to act before a final determination is made in a particular case referred to a joint board.*" *Id.* at 4134 (emphasis added). The legislative history thus indicates that Congress amended section 410(a) of the statute to

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[189] Alascom Comments (July 12, 1993) at 56–59).

[190] See, e.g., PTI Letter of November 10, 1992 addressed to the State Joint Board Commissioners; Alascom Request for Supplementation of Record (June 15, 1993); Alascom Comments (July 12, 1993) at 59–61.

[191] PTI Letter of November 10, 1992 addressed to the State Joint Board Commissioners; Alascom Comments (July 12, 1993) at 59–62).

[192] Alascom Request for Supplementation of Record (June 15, 1993); Alascom Comments (July 12, 1993) at 61.

[193] *Integration of Rates and Services for the Provision of Communications by authorized-Common Carriers between the Contiguous States and Alaska, Hawaii, Puerto Rico and the Virgin Islands*, CC Docket No. 83–1376, Notice of Proposed Rulemaking, FCC 85–520, paras. 2, 25 (released Sept. 27, 1985), 50 Fed. Reg. 41714 (1985). The order establishing the Alaska Joint Board stated that the proceeding would be subject to non-restricted *ex parte* procedures. It is unclear why Alascom waited eight years to object to this decision.

[194] In this regard, the Commission's rules provide that Joint Board proceedings are generally subject to non-restricted *ex parte* procedures. 47 CFR 1.1206(b)(10).

make clear that a joint board cannot take final action and that it acts essentially in an advisory capacity to assist the Commission.

157. This interpretation also is supported by the express language of Section 410(c), added by Congress in 1971, providing for mandatory referral to a joint board concerning matters pertaining to jurisdictional separations and discretionary referral for any other matter relating to common carrier communications of joint federal-state concern. As noted above, section 410(c) provides that joint boards established under that section "shall possess the same jurisdiction, powers, duties, and obligations as a (section 410(a) joint board), *and shall prepare a recommended decision for prompt review and action by the Commission.*" 47 U.S.C. 410(c) (emphasis added). See also S. Rep. No. 362, 92d Cong., 1st Sess., reprinted in 1971 U.S. Code Cong. & Ad. News. 1511, 1514 ("As in section 410(a) of the act, the proposed section 410(c) would provide that the joint board's decision is the equivalent of an examiner's opinion in that it would prepare a recommended decision for prompt review and action by the Commission."). Again, the emphasis is on precluding a joint board's ability to take final action, rather than mandating formal adjudicative procedures.

158. Further, nowhere in the legislative history is there any indication, either expressed or implied, that Congress intended to mandate that joint boards conduct formal proceedings subject to restricted *ex parte* procedures. To the contrary, the legislative history to the enactment of section 410(c) evidences a congressional understanding that joint board proceedings would be conducted as informal, notice and comment rulemaking proceedings, not as APA on-the-record proceedings. After referring to a previous FCC federal-state joint board conducted as an informal rulemaking, the Senate Report indicated that the 1971 amendments "would make mandatory the procedures voluntarily followed in the prior joint board proceeding." *Id.* at 1514. The legislative history then explicitly indicated that joint board referrals under section 410(c) would follow "once the Commission institutes a notice of proposed rulemaking proceeding * * *." *Id.* at 1515. Consistent with this approach, the Commission generally treats joint board proceedings as informal notice and comment rulemakings. See 47 CFR 1.1206(b)(10) (1992); Amendment of Subpart H, Part 1 of the Commission's Rules and Regulations Concerning Ex Parte Communications and Presentations in Commission Proceedings, 2 FCC Rcd 6053, para. 17 (1987) (52 FR 37458, October 7, 1987) ("Joint Board proceedings ordinarily are in the nature of rulemakings and therefore follow generally the non-restricted *ex parte* rules.").

159. It is thus abundantly clear that section 410 of the Communications Act and the APA do not require use of restricted *ex parte* procedures for joint board proceedings. Moreover, this proceeding is not one that would require a formal, evidentiary hearing with restricted *ex parte* procedures as a matter of "basic fairness." See *Sangamon Valley Television Corp.* v. *USA*, 269 F.2d 221, 224 (DC Cir. 1959). While Alascom asserts that the proceeding implicates "conflicting private claims to a valuable privilege," *id.*, this is not the case. Rather, the proceeding involves a determination of the future market structure for Alaska telecommunications in which multiple competitors will be free to enter and exit the market. In making its recommendations to the Commission, the Joint Board must balance various policy considerations that affect numerous parties in the interstate market. Even though the recommendations include termination of the JSA and a transitional payment, which is necessary to accomplish certain policy goals, the proceeding cannot be characterized as involving competing claims to a valuable privilege.[195]

160. In sum, the Joint Board's use of informal notice and comment rulemaking procedures is fully in accord with the law.

2. Compliance with Ex Parte Procedures

(a) November 1992 meetings. 161. Alascom claims that various meetings among the Joint Board State Commissioners and individual parties held in November of 1992 would violate the FCC's *ex parte* rules unless each *ex parte* meeting was memorialized in the record and public comment could be made on each such record.[196] A similar issue was raised in Alascom's June 15, 1993, Request for Supplementation of Record.

162. Alascom's arguments are without merit because the Joint Board State Commissioners and Staff complied with the Commission's *ex parte* procedures. Section 1.1206 of the Commission's rules prescribe requirements that govern *ex parte* contacts. Oral *ex parte* contacts are permissible, provided that any data or arguments not already in the record are submitted in writing for the record. The public record establishes that the *ex parte* rules were followed in the conduct of the November, 1992 meetings at issue. Three of the four State Joint Board Commissioners and various State Staff collectively conducted separate meetings with representatives of Alascom, AT&T, GCI and the State of Alaska. At the commencement of each meeting, the Joint Board members reminded each party of its responsibilities under the rules to submit a summary of the discussion for the record. The public record reveals that each party complied in fact with the rules and submitted a summary.[197]

(b) Overland Consulting, Inc's. participation and compliance with the Ex Parte rules. 163. In its July 12, 1993, Comments on the Tentative Recommendation, Alascom argues that a private presentation by Overland to the State Commission Members and Staff of the Joint Board at the Seattle meeting in July 1992 constitutes an *ex parte* rule violation. Alascom stated its belief that Overland was hired by the State of Alaska, a party to the proceedings. Alascom alleges that neither the fact nor substance of this meeting is reflected in the record, as required by the Commission's rules. Alascom also asserts that the Memorandum of Principles reflecting the State Members' views, issued after the Seattle meeting, indicates that Overland's report influenced the State Members.[198]

164. Alascom's argument rests on its belief that Overland is working for the State of Alaska. However, this fundamental assumption is incorrect. A review of Attachment 10, the Request for Proposal governing Overland's contractual responsibilities, reveals the following:

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[195] In addition, subsequent to *Sangamon Valley*, the Supreme Court admonished the courts not to force an agency to provide procedures more demanding than those required by statute or the Constitution absent "extremely compelling circumstances." *Vermont Yankee Nuclear Power Corp.* v. *NRDC*, 435 U.S. 519, 543 (1978). Such circumstances do not exist here.

[196] PTI Letter of November 10, 1992 signed by Alan Y. Naftalin addressed to the Joint Board State Commissioners. See also Alascom Comments (July 12, 1993) at 62.

[197] State of Alaska *Ex Parte* Meeting Report of November 16, 1992 (November 23, 1992); AT&T Report of *Ex Parte* Meeting of November 16, 1992 (November 18, 1992); Alascom *Ex Parte Report* of November 16, 1993 (November 20, 1993); GCI *Ex Parte Report CC Docket 83–1376*, of November 16, 1993 (November 17, 1993).

[198] Alascon expressed similar concern in a letter addressed to Lorainne Kenyon, dated July 14, 1993, which was sent in response to her letter of July 8, 1993, which transmitted additional data requests related to Alascom's June 7, 1993 Implementation Plan.

1. The contract solicitation was issued by the APUC, which is a division of the Department of Commerce and Economic Development. RFP, p. 5, no. 1.

2. The purpose of the contract was for "[s]ervices of a contractor to aid the APUC in its investigation of the interstate issues associated with the Master Agreement * * * and [t]he contractor shall analyze and makes recommendations concerning * * * the issues before the CC Docket No. 83–1376 Joint Board." *Id.*

3. The issuing office of the RFP is the APUC. RFP at 6.

4. The scope of work required under the contract was anticipated to be supplementary to staff analysis:

"Between now and the time that a contract is signed, Staff will be initiating its investigation and may well complete segments of the Scope of Work identified in this RFP. As a consequence, depending upon when a contract is reached, portions of the consultant's Scope of Work may no longer be necessary or may be reduced to reviewing or enhancing Staff's work." RFP at 24, no. 2t.[199]

165. Based on these provisions of the RFP, it is clear that Overland is working to assist Commissioner Knowles in her capacity as a member of this Joint Board, not for the State of Alaska. While obviously the APUC is part of the State of Alaska, there is a very significant distribution between the APUC's participation on the Joint Board and the State's participation as a party before the Joint Board. If the State of Alaska's and the APUC's interests were one and the same, there would be no reason for the State of Alaska to submit pleadings before the Joint Board since a member of the APUC (Commissioner Knowles) sits on the Joint Board. While Commissioner Knowles does not officially represent the view of the APUC on the Joint Board, it is significant to note that, other than two letters from its Chairman, the APUC has not filed pleadings in the Joint Board proceeding other than the initial Petition for Rulemaking that formed the basis for the FCC's initiation of a Notice of Inquiry regarding Alaska market issues. See Notice of Inquiry, CC Docket No. 83–1376, 96 FCC 2d 567 (January 4, 1984). Also significant is the fact that the initial Petition was filed by both the State of Alaska and the APUC, which clearly shows that these entities view themselves separately.

166. Additionally, Overland's work has been supervised by Commissioner Knowles and APUC Joint Board staff in their Joint Board capacities, not as employees of the State of Alaska or the APUC. This relationship was confirmed by the APUC Chairman in recent correspondence, which stated that "Overland was hired by the Alaska Public Utilities Commission to assist Commissioner Knowles and staff member Lorraine Kenyon *to perform their official duties with the Alaska Joint Board.*"[200]

167. The scope of work described in the RFP as quoted above in Point No. 4 demonstrates that Overland's work pursuant to the contract is the functional equivalent of State Joint Board staff, since the scope of Overland's work was contemplated by the RFP to be coordinated with State Joint Board staff work.

168. Since Overland was not representing an interested party to this proceeding, the Joint Board State Commissioners and Overland were free to meet and were not required to make an *ex parte* filing for the meeting. We note, however, that Overland's principal work product was a report dated July 21, 1992, which was entered into the public record of CC Docket 83–1376.

3. Applicability of the Sunshine Open Meeting Requirement to Joint Board

169. Alascom has challenged various meetings among Joint Board Commissioners that were closed to the public as violative of the open meeting requirement of the Government in the Sunshine Act. This challenge was raised with respect to the convening of meetings in Seattle among some of the Joint Board State Commissioners in July of 1992; meetings in Chicago of the four Joint Board State Commissioners and State Staff in October of 1992; meetings in Los Angeles among some of the Joint Board State Commissioners in November of 1992; and meetings in Washington, DC among some of the Joint Board Commissioners in February of 1993.[201]

170. The Alaska Joint Board is comprised of four State members and three FCC Commissioners. Alascom argues that the fact that a quorum of the Joint Board (the four state members) met privately on several occasions violates the Government in the Sunshine Act.

171. We note initially that discussions at which a quorum of FCC commissioners are present constitute an FCC "meeting" under the Sunshine Act if the discussions are "sufficiently focused on discrete proposals or issues as to cause or be likely to cause the individual participating members to form reasonably firm positions regarding matters pending or likely to arise before the agency." *FCC* v. *INT World Communications, Inc.*, 466 U.S. 463, 471 (1984) (quoting R. Berg & S. Klitzman, An Interpretive Guide to the Government in the Sunshine Act 9 (1978) ("Interpretative Guide")). Thus, with respect to any meeting of the full Alaska Joint Board in which specific proposals or recommendations concerning the Alaska market are discussed, or any such meetings among Joint Board members in which three FCC commissioners are present, the Sunshine Act requires advance notification and the opportunity for public observation. Alascom has not alleged that any such non-public meetings occurred.

172. As to whether the Sunshine Act governs meetings of State Joint Board members constituting a quorum of the Joint Board when less than a quorum of FCC commissioners are present, we find that such meetings are not subject to the open meeting requirements of the Sunshine Act. While the Sunshine Act requires that any "meeting of an agency" be open to the public, 5 U.S.C. 552(b), we conclude that the discussions at issue were not "meeting[s] of an agency" governed by that Act.

173. The term "agency," for purposes of the Sunshine Act, means "any agency * * * headed by a collegial body composed of two or more individual members, a majority of whom are appointed to such position by the President with the advice and consent of the Senate, and any subdivision thereof authorized to act on behalf of the agency." 5 U.S.C. 552b(a)(1). The term "meeting" means "the deliberations of at least the number of individual agency

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[199] Alascom's Comments (July 12, 1993).

[200] Letter of July 22, 1993 addressed to Mr. John R. Ayers (emphasis supplied). This letter was submitted by Alascom to the public record in this proceeding by cover letter dated August 11, 1993. Although Alascom suggested that this correspondence bolsters its challenge to Overland's role in this proceeding, we disagree. We know of no prohibition, nor is one cited by Alascom, against one of the Joint Board State Commissioner's retention of consulting services to supplement staff analysis of the complex issues in this proceeding. Further, we reject Alascom's unsupported suggestion that the APUC's funding of this activity, rather than payment by the Commission, was somehow inappropriate. As noted above, the APUC hired and paid for a consultant to assist Commissioner Knowles without the authorization or assumption of any financial obligation by the Commission. Thus, Overland's compensation hardly qualifies as the type of expense item subject to Commission allowance and reimbursement under Section 410(a) of the Communications Act. Moreover, the APUC's payment for these services to Commissioner Knowles cannot be characterized as the indirect satisfaction of a governmental function that, in any measure, augmented the Commission's budget.

[201] PTI Letter of November 10, 1992, signed by Alan Y. Naftalin addressed to the Joint Board State Commissioners; Alascom Comments (July 12, 1993) at 59–60.

members required to take action on behalf of the agency where such deliberations determine or result in the joint conduct or disposition of official agency business." 5 U.S.C. 552b(a)(2). Finally, the term "member" means "an individual who belongs to a collegial body heading an agency." 5 U.S.C. 552b(a)(3).

174. The statutory language makes clear that to be considered a "meeting" of the agency, there would have to be deliberations of individuals belonging to the collegial body heading the agency, *i.e.*, FCC commissioners. See *Hunt* v. *NRC*, 611 F.2d 33 (10th Cir. 1979). Most of the meetings referenced by Alascom included no FCC members and thus were not "meetings of the agency."

175. Although not raised by Alascom, we note that some FCC commissioners did attend two of the gatherings of the State members of the Joint Board mentioned by Alascom in their pleading. At one of these sessions two FCC commissioners who are members of the Joint Board independently made very brief appearances at the beginning but left before substantive discussions commenced. They did not participate in any way in deliberations of issues before the Joint Board and, thus, consistent with the definition of meeting, the open meetings requirement of the Sunshine Act did not apply.

176. There has been only one session involving the State Joint Board members where an FCC commissioner who is a member of the Joint Board attended and engaged in substantive discussions. We do not believe a session attended by only a single FCC Commissioner can be deemed "deliberations of" a "number of individual agency members" within the meaning of the term "meeting." Further, this one FCC Commissioner could not have been in the position to determine the "joint conduct or disposition of official agency business," 5 U.S.C. 552b (a)(2), as the term "joint" necessarily implies the presence of more than one member of the Commission. Accordingly, we conclude that no Sunshine Act violation occurred.[202]

4. The Anchorage Public Hearing

177. On July 1, 1993, the Joint Board conducted a hearing in Anchorage in which interested persons, most especially Alaska residents, were permitted to make presentations regarding the proposals under consideration by the Joint Board. The federal and state commissioners participated in person and via satellite and telephone link-up. Alascom alleges that the Commission violated its own rules by failing to provide written notice to the parties of the Alaska proceeding regarding this public hearing and by failing to publish public notice of the meeting in the **Federal Register** until the day of the hearing.

178. Section 1.423 of the Commission's Rules, 47 CFR 1.423 (1992), states that when the Commission requests oral argument in a rulemaking proceeding, it shall give written notice to the parties and publish notice in the **Federal Register**. As an initial matter, since this was a Joint Board hearing, not a Commission hearing, it appears that the rule is not applicable and that no violation occurred. But, to the extent the rule may be viewed as applying since all FCC commissioners were present, it is not apparent what injury Alascom has suffered. It had actual notice of the meeting—indeed, an Alascom representative made a presentation at the July public hearing. To the extent a violation of § 1.423 occurred, it is difficult to construe it as anything more than harmless error, particularly given that reply comments to the hearing were permitted until July 12, 1993, and *ex parte* presentations were permitted thereafter.

VIII. Ordering Clause

179. Accordingly, pursuant to the authority contained in section 410 of the Communications Act of 1934 As Amended, *it is ordered that*, this Final Recommended Decision be transmitted to the Federal Communications Commission.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 93–29185 Filed 11–30–93; 8:45 am]

BILLING CODE 6712–01–M

[202] In our view, the three FCC commissioners on the Joint Board also are not a subdivision of the Commission. A subdivision must be "authorized to act on behalf of the agency." 5 U.S.C. 552b(a). That requirement is not met since only the full Joint Board (of which the FCC commissioners are a minority) is authorized to make recommendations to the Commission and only the full Commission can act on those recommendations. Nor is the Joint Board a subdivision of the Commission, as it is not a subdivision of the "collegial body." See 5 U.S.C. 552b (a) (1); *Hunt* v. *NRC*, 611 F.2d at 336 n.2.

FEDERAL HOUSING FINANCE BOARD

Public Reading Room

AGENCY: Federal Housing Finance Board.

ACTION: Notice.

SUMMARY: The Federal Housing Finance Board (Finance Board) announces that it has established a Public Reading Room (Reading Room) with an operational effective date of December 1, 1993. The Reading Room at 1777 F Street, NW., room 103, Washington, DC 20006, will be a repository of all Finance Board's public documents. The Reading Room will be open to the public from 9 a.m. to 12 p.m. (noon), Monday–Friday. The telephone number is (202) 408–2969.

EFFECTIVE DATE: December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Elaine L. Baker, Executive Secretary to the Board, (202) 408–2837.

Philip L. Conover,

Managing Director.

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FEDERAL RESERVE SYSTEM

[Docket R–0817]

Federal Reserve Bank Services

AGENCY: Board of Governors of the Federal Reserve System.

ACTION: Notice of proposed service enhancement.

SUMMARY: The Board is requesting comment on a proposal to expand the Fedwire funds transfer format and adopt a more comprehensive set of data elements. The Board is proposing implementation of the new format by late 1996. An expanded Fedwire funds transfer format would improve efficiency in the payments mechanism by reducing the need for manual intervention when processing and posting transfers. Further, truncation of payment-related information would be minimized when forwarding payment orders through Fedwire that were received via other large-value transfer systems, such as the Clearing House Interbank Payments Systems (CHIPS) and Society for Worldwide Interbank Financial Telecommunication (SWIFT). A more comprehensive set of data elements would also permit the inclusion of more complete name and address information for all parties to a transfer, which would be required under regulations proposed by Treasury (58 FR 46021, Aug. 31, 1993). The Board is also requesting comment on the benefits and costs to depository institutions, to their customers, and to the overall payments mechanism of expansion of the Fedwire funds transfer format.

DATES: Comments must be submitted on or before February 28, 1993.

ADDRESSES: Comments, which should refer to Docket No. R-0817, may be mailed to Mr. William W. Wiles, Secretary, Board of Governors of the Federal Reserve System, 20th Street and Constitution Avenue NW., Washington,

DC 20551. Comments addressed to Mr. Wiles may also be delivered to the Board's mail room between 8:45 a.m. and 5:15 p.m., and to the security control room outside of those hours. Both the mail room and the security control room are accessible from the courtyard entrance on 20th Street between Constitution Avenue and C Street NW. Comments may be inspected in room MP–500 between 9 a.m. and 5 p.m., except as provided in § 261.8 of the Board's Rules Regarding the Availability of Information, 12 CFR 261.8.

FOR FURTHER INFORMATION CONTACT: Gayle Brett, Manager (202/452–2934), or Sandra Scales, Financial Services Analyst (202/452–2728), Division of Reserve Bank Operations and Payment Systems. For the hearing impaired only: Telecommunications Device for the Deaf, Dorothea Thompson (202/452–3544).

SUPPLEMENTARY INFORMATION: The majority of large-dollar electronic funds transfers between financial institutions in the United States flow over the Federal Reserve's Fedwire funds transfer system and the Clearing House for Interbank Payments System (CHIPS). In 1992, the combined daily average volume of these systems exceeded 420,000 transfers with a value exceeding $1.7 trillion. A significant number of the transfers sent over these payment systems are based on payment instructions received over a message switching system operated by the Society for Worldwide Interbank Financial Telecommunication (SWIFT).

From time to time, the format used to transmit payment orders on Fedwire has been modified to accommodate industry demands for the adoption of standards that facilitate end-to-end computer processing. While these changes provide a more consistent data structure, technical limitations at that time prohibited the Federal Reserve from significantly expanding the field sizes in response to industry requests.[1]

SWIFT serves 3,000 institutions worldwide and uses a comprehensive format for the transmission of information between its members. This format is designed to facilitate end-to-end computer processing and provide sufficient space to communicate all the payment-related information needed by its members to process the payment instruction. Payment orders sent on SWIFT map easily to both Fedwire and CHIPS; however, initial field length limitations on both the CHIPS and Fedwire systems required the manual truncation of some vital payment information.

In 1992, CHIPS adopted a new format that incorporated certain aspects of the SWIFT format to decrease the need to truncate payment-related information and significantly improve the ability of receiving institutions to process payments for their customers. As a result, payment instructions sent over SWIFT can be processed efficiently on CHIPS without manually truncating information that the receiver may need to identify and process the payment.

In November 1992, the American Bankers Association (ABA) Funds Transfer Task Force, under the auspices of the ABA Wholesale Operations Committee (the Committee), recommended that the Federal Reserve adopt a more comprehensive set of data elements for wholesale electronic funds transfers, and forwarded to the Federal Reserve a proposal for a new Fedwire format. The Committee recognized that adoption of a new format would not be a simple undertaking, but stated it to be essential to the long-term efficiency and productivity of the U.S. payments mechanism. Further, the Committee recognized that a revised, "CHIPS-like" Fedwire format would enhance compatibility with the SWIFT and CHIPS formats.

Federal Reserve staff conducted a detailed business analysis of the format proposed by the ABA and evaluated requests to modify the existing format from the Departments of Justice and Treasury. The results of that analysis indicate that the proposed format would more fully accommodate the business needs of the banking community as well as the requests of law enforcement agencies for more complete information about the parties to a funds transfer. Further, the proposed format is not expected to cause any degradation in service, and its incorporation into the Fedwire funds transfer service seems justified.

The Board proposes to adopt a new format for the Federal Reserve's Fedwire funds transfer service, recognizing that the payments system would be more efficient if all large-value transfer services used a common format structure that accommodates industry and law enforcement demands for increased information in messages. The proposed format is substantially similar to the CHIPS-like format proposed by the ABA, but with minor modifications to accommodate certain Fedwire business and technical specifications.

The Board proposes to implement the expanded format by late 1996. The adoption of the format will require extensive automation development work on the part of the Federal Reserve Banks. Also, depository institutions using in-house or vendor-supplied funds transfer systems will need to make significant automation changes to send and receive the new format. The Federal Reserve recognizes that many large depository institutions today use vendor-provided or in-house developed software to participate in CHIPS and SWIFT. Because these institutions are familiar with formats similar to the one proposed for Fedwire and have already adopted interfaces with internal systems to accommodate these similar formats, it is assumed that the conversion effort for these institutions will be somewhat reduced.

The Federal Reserve provides software to approximately 7,500 depository institutions that access Fedwire through Fedline®.[2] Fedline® institutions would be somewhat less affected as the Fedline® software enhancements required to implement the proposed format would be provided by the Federal Reserve Banks. Fedline® participants will require substantial education and training to become familiar with the new format. Those institutions with back-office systems that interface Fedline® may need to modify such systems to support the new format.

Usefulness to Law Enforcement

On August 31, 1993, the Treasury requested comment on a proposed regulation that would require financial institutions to include certain information in payment orders that they send (58 FR 46021, Aug. 31, 1993) (the "travel rule"). Law enforcement agencies have indicated that the inclusion of complete transfer party information in the payment order will be particularly useful in tracing the proceeds of illegal activities and will assist in identifying and prosecuting individuals involved in such illegal activities.

Although there is insufficient space in the current Fedwire format to include complete originator and beneficiary information, the Board encourages Fedwire users to use available optional format fields to include such information. For example, in a third-

[1] The structured Fedwire format was announced in 1986 when most Fedwire participants used the BOPEAP telecommunications protocol to connect to the Federal Reserve. BOPEAP inherently limited the number of characters a message could contain. The final BOPEAP link was converted to the more advanced FRISC and FLASH telecommunications protocols in 1991.

[2] Fedline® is the Federal Reserve's proprietary software package for personal computers that is used by low-to-medium volume Fedwire participants to electronically access Federal Reserve services.

party transfer, the originator (ORG=) and beneficiary (BNF=) fields must contain data in order to be accepted by Fedwire. While these fields can accommodate the originator and beneficiary name and account number, there is generally insufficient space for address information. If optional fields, such as the "Originator to Beneficiary Information" (OBI=) or "Bank to Bank Information" (BBI=) fields, are not used for payment-related information, these fields could be used to convey the address information. No specific optional field is recommended for including address information as different optional fields may be available for use in any given wire transfer.

The Board recognizes that these recommendations may not assist depository institutions in complying with the travel rule in all cases. Ideally, the Fedwire funds transfer format should provide sufficient space to accommodate the information desired for law enforcement purposes. In addition to increasing the space available for transfer party information, the proposed Fedwire format is much more structured and specific about where information is carried in the message.

A detailed description of the proposed format and examples of usage for business and law enforcement purposes are included following the description of the proposed alternative implementation plans. A complete list of field tags and a glossary of terms and field tag definitions are attached to this notice. A detailed technical description of the proposed format that includes a comparison to the current format, as well as a summary of format differences, will be made available upon request from the local Federal Reserve Bank to persons with a need to know the specifications that are willing to sign a confidentiality agreement to protect the integrity of the Fedwire system. This information may be useful for computer interface banks and vendors as they analyze the effects of the format.

Description of Alternative Implementation Plans

The Board proposes that the Federal Reserve Banks will fully implement the expanded format by late 1996. This should allow sufficient time for the Federal Reserve to make necessary changes to both the Fedwire funds system and Fedline® software, and for the industry to incorporate and fully test the software changes that must be made to the funds transfer, communications, customer delivery, and back-office processing systems used by depository institutions that connect to Fedwire.

The Federal Reserve System is currently in a period of transition, migrating from twelve separate payment processing sites into one consolidated automation site. This consolidation involves significant software, hardware, network, and computer operations changes; the related application and operating system software will be in a state of transition until 1995. The adoption of the proposed format requires revision of many programs and databases that comprise the core of the Fedwire funds transfer system. The Fedwire funds transfer software that will be used in the automation consolidation environment will be implemented by all Reserve Banks by early 1995. Assuming that a final format is adopted in mid-1994, the Federal Reserve System would expect to complete software development efforts and internal testing of the revised Fedwire software in late 1995, at which time the depository institution testing phase could begin. An update of the computer interface protocol specifications (CIPS) document, which details software and technical requirements, and installation and certification testing guidelines would be published six months prior to the time software would be made available for testing.

The testing phase for computer interface depository institutions would encompass two steps: Software certification and implementation testing. Fedline® software would be certified by the Federal Reserve prior to its distribution to depository institutions. Vendors and depository institutions that have developed in-house computer interface funds transfer systems would be required to certify their software by demonstrating that their software will accommodate the new format. All computer interface depository institutions will be required to successfully complete pre-production implementation tests, that is, tests that simulate a normal processing day and demonstrate that they can meet all of the CIPS requirements.

Three different implementation cutover strategies are discussed below. The Board welcomes comments as to the viability to each plan and anticipated effects on and benefits for depository institutions. The alternatives under consideration include: (1) A nationwide same-day cutover, (2) a "receive-first" phased conversion, and (3) an "institution-by-institution" full function conversion.

Alternative one—All participants cut over on the same day. Under this strategy, transition from the current format to the expanded format would be accomplished over a three-day, bank holiday weekend when both the financial markets and the Federal Reserve are closed. Such a plan requires substantial coordination and testing between the depository institutions and the Federal Reserve Banks. It is anticipated that a same-day transition period would significantly reduce participants' costs because the need to support two formats simultaneously is removed. This plan allows all participants simultaneously to take advantage of the benefits of an expanded format, including the ability to automate more fully incoming transfer processing and message mapping between transfer systems.

Under a same-day cutover, the Federal Reserve recognizes there could be a substantial disruption to the payments system if one or more large participant(s) were unable to process under the new format or experienced some other implementation-related problem that caused a prolonged outage of the Fedwire funds transfer service. Complete and comprehensive testing on the part of every on-line institution, both internally and with the Federal Reserve is required for a conversion of this magnitude to be successful. A long lead time is necessary to ensure that software is thoughtfully designed and fully tested by both the Federal Reserve and on-line participants.

A same-day cutover requires every depository institution that participates on Fedwire using an on-line connection to bring new or substantially modified software into the production environment for the first time on the same date. Due to the magnitude of the software changes and the large population of participants, in excess of 11,000 depository institutions, it would not be feasible to fall back to the previous software if problems during cutover were encountered. It would be impossible to coordinate the time de-installation and re-installation of software and related procedural changes for more than 11,000 institutions. Instead, the affected participants would have to quickly repair, test, and recover their new software. In the interim, the payments system could be severely hampered for one or more days. Although there is a significant amount of risk associated with this implementation plan, a successful implementation would allow all participants simultaneously to take advantage of the increased efficiency

and effectiveness afforded by the new format.

Alternative two—A two-stage implementation, with each stage lasting four to six months. Under this plan, participants would begin receiving the new format before they would begin sending the new format. Messages sent in the current format would be converted to the new format by Fedwire, then delivered.

Phase one, a transition period during which participants convert from receiving the current format to receiving the new format, would commence during the late 1995 to early 1996 time frame. In this phase, Fedwire software would accept only the current format but would deliver in the format the receiver was capable of processing. That is, until a receiver is capable of receiving the new format, all messages would be delivered to the receiver in the current format. Once the receiver is able to receive the new format, Fedwire would convert and deliver messages to that receiver in the new format. The Fedwire funds software would convert the message by mapping the information in the current format to the equivalent fields in the new format. As the field lengths in the new format are equal to or larger than the current format, all transfer information would be carried forward without truncating any data. The "new format" message will contain only the fields necessary to carry forward all the information in the "old format" message. The converted message would be somewhat longer than the original message because information commingled in the third-party section of the current format would be allocated to specific fields in the new format and every field would include a tag. At the end of phase one, all participants would be required to have the ability to receive the new format.

Phase two, a transition period during which participants convert from sending the current format to sending the new format, would commence in mid-1996. In this phase, Fedwire software would continue to accept the current format, but would also accept the new format. All messages would continue to be delivered to the receiver in the new format. Until a sender begins sending the new format, Fedwire will continue to accept the sender's messages and convert them to the new format for delivery to the receiver. Phase two would end in late 1996, at which time all participants would have the ability to both send and receive the new format. The current format would no longer be supported.

The receive-first alternative limits the risk that the overall payments system would experience a major disruption on a particular day as very few banks would go through the transition on any given day. Separating the conversion along functional lines also helps minimuze the risk to the payment system. A participant that experiences severe implementation-related problems on its receiving cutover date would still be able to inquire against balances and originate transfers, thus retaining access to funds that had been credited to its account. If the bank's receiving problems were not readily resolved, the bank would have the option of reverting to the previous software or moving to a back-up system. A participant that experiences problems on its sending cutover date would still be able to receive transfers and thus monitor its account balance. If the bank's sending problems are not readily resolved, the bank has the option of reverting to the previous software or moving to a back-up system.

Alternative three—Each bank selects a date over the course of twelve months on which to covert both its send and receive functions to accommodate the new format. The transition period would begin in late 1995. Under this plan, Fedwire would accept messages in either format and map between formats. All participants would be required to complete conversion to the new format within the twelve-month transition period, after which time the current format would no longer be supported.

Under the institution-by-institution full function conversion, participants would implement the new format on a staggered schedule. As a result, a participant may send a message in a format that the receiver cannot process. In this case, Fedwire will convert the message to a format that the receiver can process. For example, if the receiver were able to accept the new format, then messages originated in the old format would be mapped into the new format. Fedwire would convert the field tags and identifier codes to the equivalent fields in the new format. If the receiver was still processing the current format, then messages received in the new format would be reduced to the current format; however, critical payment related information may be truncated. That is, if the sending bank included more information in a field than the equivalent field in the current Fedwire format could accept, the extra characters would be omitted from the message delivered to the receiver. Truncation would be necessary because the new format allows a sender to include up to three times as much payment related information as the current format. In some cases, data truncation could be very extensive. When mapping from the new format to the old format, Fedwire would establish a set of interim field length guidelines for truncating data. Fedwire would automatically apply these guidelines when mapping messages from the new format to the current format. If a sender included more text than allowed by the guidelines, the excess characters in each field would be truncated.

Adoption of this alternative would reduce the likelihood of a major payment system disruption because very few banks will go through the transition on any given day; however, business risk may be increased. The data truncation necessary to support the staggered-date conversion schedule also would delay a participant's ability to take full advantage of the benefits of the new format until all participants have converted. In the interim, a sender using the new format would need to be aware that a receiver may not use the new format. It is unlikely that most participants would choose to track which intended receiver was using the new format, so a sender would need to limit the size of all messages or risk truncation of critical payment data prior to delivery to "old format" participants. Because messages sent in the new format may exceed the interim field length guidelines and critical payment information may be lost in the truncation process, there would be an increased business risk for all receivers that use the old format. The receiver that converts late in the process has an increased risk of misapplying payments and incurring posting delays because most of the wires it receives would have been originated under the new format and information required to fully identify the beneficiary or describe the terms of payment may have been truncated prior to delivery.

There also may be more risk to the individual participant because both the send and receive functions convert on the same date. It is conceivable that a participant experiencing severe implementation-related problems on its cutover date could experience a complete loss of function because both send and receive functions are in a state of transition at the same time. Thus, all the institution's normal capacity to monitor and adjust its account may be disrupted, including the ability to inquire against balances, originate transfers, and receive notification that funds had been credited to its account. In that case, a bank may be compelled to revert to previous software or back-up systems at an earlier point than if

some degree of monitoring capability were retained.

Description of the Proposed Fedwire Format

The proposed Fedwire format includes a comprehensive set of the elements commonly used in the origination and receipt of payment orders. It is similar to the CHIPS and SWIFT formats and provides an expanded message length and variable-length fields. The proposed format is modeled on the CHIPS format and only different when necessary to accommodate technical processing requirements specific to Fedwire or to delete technical processing requirements specific to CHIPS. Additional fields have been defined, and the fields that carry payment details are larger than those in the current Fedwire format. The larger fields permit the inclusion of more complete information about the parties to a transfer and allow space for additional payment information. There is adequate space to provide the name, account number or other identifying number, and three lines of address information for each party to the transfer, including the originator, originator's bank, beneficiary, beneficiary's bank, intermediary bank [3] and instructing bank.

The proposed format differs from the current Fedwire format in several significant ways: messages are not required to be fixed length but may vary in length; maximum message length is significantly expanded; the number and size of fields has significantly increased; and field tags (codes that identify the type of information a field may carry) are numeric rather than alpha. Numeric tags are used because they are more flexible than letter groupings and they facilitate the mapping of information between transfer systems. The format is highly structured—a field tag is used to designate the contents of every field in the message. Together, these changes provide the ability to fully and consistently translate payment order information into discrete fields, which will permit Fedwire participants to automate more fully payment order processing.

The presentation of routing and transfer information in the proposed format has been reorganized to follow more closely the path of a message, that is, from sender to receiver. The proposed format presents the sending bank routing number and sending bank name before the receiving bank routing number and receiving bank name. The proposed format also reorganizes transfer party information, presenting the flow of funds and information from the perspective of the receiver. That is, the intermediary bank, beneficiary bank and beneficiary information fields precede the originator, originating bank, and instructing bank information fields. The proposed format's presentation of routing and transfer party information is consistent with the presentation of similar data in the CHIPS and SWIFT formats. Consistency among these formats should facilitate investigation and resolution when errors occur.

The proposed format can accommodate much longer messages than the current Fedwire format. For example, outgoing messages, those originated by a depository institution and received into Fedwire, may contain a maximum of 1731 characters, as compared to a maximum of 604 characters under the current Fedwire format. Intercepts, messages returned to the sending depository institution by Fedwire, may contain a maximum of 1834 characters, as compared to 731 characters today. Incoming messages, those delivered by Fedwire to a receiving depository institution, may contain a maximum of 1808 characters in the proposed format, as compared to 723 characters today. Message length varies due to the information appended during processing by the Federal Reserve.

Field size has been increased and the field structure has changed under the proposal. Each field has two parts: a tag that identifies the type of information a field may carry, and elements that identify the specific piece of data within the field. The field tag must be one of the numeric codes specifically designated for that purpose and the elements must be depicted in a specific order within the field. In general, elements are pieces of information that commonly follow a particular field tag, including but not limited to identifying information such as name, address, and account numbers. Each element has a designated position within the field. Valid elements are defined for each field tag. For example, the originator field has a "field tag" of [5000] that would be followed by the "elements," such as account number, name and address.

The number of field tags is greatly expanded and incorporates the complete set of payment related tags utilized by the current Fedwire format. The alpha tags in the current Fedwire format have been translated into numeric codes in the proposed format. For example, the beneficiary information field tag, denoted by BNF= in the current format, is tag [4200] in the proposed format. (Appendix A lists the complete set of field tags and the Glossary provides field tag definitions.) Additional field tags have been defined to denote each of the standard fields in a message, including routing and technical information. For example, the IMAD (Input Message Accountability Data), which is assigned to a specific field position in the current Fedwire format, follows field tag [1520] in the proposed format.

Elements, the information that follows a field tag, must be presented in a specific order within a field. The information may be either freeform and of variable length, such as address, or may require a specific format, such as the dollar amount. Each element within a field is allocated a specific amount of space; some elements are fixed in length, such as sender routing number, while others are variable in length, such as address. A delimiter element (*) will always follow a variable length element to denote the end of the element. No delimiter will follow a fixed length element. The elements convey information in a specific order and a combination of identifier code and field position is used to identify such information as account number. For example, the current format allows the identifier code, in this case /AC-account number, to be used somewhere in the field following the beneficiary field tag, BNF=. . ./AC–123. Under the proposed format, the beneficiary field tag [4200] may be followed by up to five elements: a defined one character identifier code (first element); the identifier specified by the code, in this case an account number (second element); a delimiter, which is always an asterisk (third element); the beneficiary name (fourth element); and another delimiter (fifth element), such as [4200]D123*SMITH*. The identifier code is always the first element and identifies the type of number that follows it, in this case "D" represents account number. The other identifier codes are outlined in the Glossary.

The proposed format would also provide ample space to include identifying information in a payment order to facilitate financial institution compliance with Treasury's proposed travel rule. For example, the field following the originator tag [5000] has sufficient space, up to a maximum of 186 characters (including the tag) for the originator's financial institution to include the originator's account number, name, and address. The proposed format also provides more

[3] The terminology used here generally conforms to the definitions in article 4A of the Uniform Commercial Code; however, the field names in the proposed format use the term "financial institution" instead of bank in all cases.

space to identify the bank that accepted the payment order from the originator; the bank routing number, name and address can be described in the field following originator's financial institution tag [5100], up to a maximum of 186 characters (including the tag). The current format only provides a maximum of 61 characters to identify both the originator and the originating bank.

If the customer of the originating bank is a nonbank financial institution, the originator tag [5000] and originator's financial institution tag [5100] can be used to identify the transmittor and transmittor's financial institution, respectively.[4] In this case, the field following the originator tag [5000] can be used to reflect the transmittor's account number, name and address. Information identifying the "transmittor's financial institution," the nonbank financial institution that accepts the payment order from the transmittor, can be included in the field following the originator's financial institution tag [5100]. If the bank accepting the transmittal order from the transmittor's financial institution (the originating bank) is also the institution sending the payment order to Fedwire, then it can be identified by routing number and short name in the field following the Sender DFI tag [3100].

For example, John Doe is sending $7,000 to his aunt, Sally Jones, who has an account at Bank Seven. His aunt requests that he include instructions for her bank to call her when the money is received. John decides to send the money from his money market mutual fund at Big Broker/Dealer. John asks his account officer at Big Broker/Dealer to send the money to his aunt at Bank Seven. The account officer has John's name, address, and account number on file, and asks John to provide the same information for his aunt. John provides his aunt's name and address, but is unaware of her account number.

Big Broker/Dealer prepares a transmittal order and forwards to its bank, Bank Away for transmission over Fedwire:

Amount: $7,000
Date: July 12, 1993
From: Our Account 767676, on behalf of our customer John Doe, account MMMF123456, One Wayward Avenue, Watertown, Md;
To: Bank Seven, Chicago, ABA 079999999, for further credit to Sally Jones, 1920 Flapper Lane, Chicago, Il;
Instructions: Phone advice—Ms. Jones (312) 555–1212.

Bank Away accepts Big Broker/Dealer's transmittal order and prepares a corresponding transmittal order to send over Fedwire (in bold):

Description	Tag	Elements
Type/Sub-type	[1510]	1000.
IMAD	[1520]	0712E9999999000001.
Amount	[2000]	$7,000.00.
Sender DFI	[3100]	059999999Away*.
Sender Reference	[3320]	9999999999999999.
Receiver DFI	[3400]	079999999Bankseven*.
Business Function Code	[3500]	CTR.
Beneficiary's FI	[4100]	F079999999*Bank Seven NA*.
Beneficiary	[4200]	Dunknown*Sally Jones* 1920 Flapper LA* Chicago, IL*.
Originator	[5000]	NMMMF123456*John Doe* 1 Wayward Ave* Watertown, MD*.
Originator's FI	[5100]	D767676*Bigbroker/Dealer* 222 Camden Yards Circle* Baltimore, MD*.
FI to FI Beneficiary's FI Advice	[6310]	PHN on Receipt* Call Ms Jones 312–555–1212*.

If the transmitter's financial institution forwards the transmittal order to a financial institution that is not a Fedwire participant but utilizes a correspondent to access Fedwire, that institution's identifying information, such as routing number and name, may follow the instructing financial institution tag [5200]. In the example above, if Bank Away is not a Fedwire participant but is a respondent of Ultimate Bank & Trust, which is a Fedwire participant, then the payment order sent to Fedwire would change as follows:

Description	Tag	Elements
Sender DFI	[3100]	058888888Ultimate*.
Instructing FI	[5200]	F059999999*Bank Away*.

If the customer of the originating bank is an individual, corporation, or bank, the originator tag [5000] and originator's financial institution tag [5100] can be used to identify the originator and originator's financial institution, respectively.[5] In the example above, if John Doe decides to send the money from his account (12331234) at Bank Away, then the payment order sent to Fedwire would change as follows:

Description	Tag	Elements
Sender DFI	[3100]	059999999Away*.
Originator	[5000]	D12331234*John Doe*. 1 Wayward Ave* Watertown, MD*.
Originator's FI	[5100]	F059999999*Bank Away*.

[4] The terms "transmittal order," "transmitter" and "transmitter's financial institution" are defined in the notice of proposed rule-making (58 FR 46014, Aug. 31, 1993).

[5] The terms "originator," "originator's financial institution," and "payment order" are defined in the notice of proposed rulemaking (58 FR 46014, Aug. 31, 1993).

If the beneficiary's financial institution is not a Fedwire participant, the sender may direct the payment order to a correspondent that maintains a relationship with the beneficiary's financial institution. In such a case, the identifying information, such as routing number and name of the beneficiary's financial institution, may follow the beneficiary's FI tag [4100]. The correspondent would be identified in the field following the receiver DFI tag [3400]. In the example above, if Sally Jones is not a customer of Bank Seven, but her credit union, Local CU, is its respondent, then the payment order sent to Fedwire would change as follows:

Description	Tag	Elements
Receiver DFI	[3400]	079999999Bankseven*.
Beneficiary's FI	[4100]	F271011111Local CU* 808 Watertower Center* Chicago, IL 60604*.
Beneficiary	[4200]	Dunknown*Sally Jones* 1920 Flapper LA* Chicago, IL*.

The beneficiary tag [4200] and beneficiary's financial institution tag [4100] can also be used to identify the recipient and recipient's financial institution when the person to be paid by the transmittal order is the customer of a non-bank financial institution.[6] In this case, the field following the beneficiary tag [4200] can be used to reflect the recipient's account number, name and address. Information identifying the "recipient's financial institution," the nonbank financial institution that accepts the payment order for the recipient, can be included in the field following the beneficiary's financial institution tag [4100]. If the bank accepting the payment order for delivery to the recipient's financial institution is also the institution that is receiving the payment order from Fedwire, then it can be identified by routing number and short name in the field following the Receiver DFI tag [3400].

In the example above, if John Doe had sent the money to his aunt in care of a currency exchanger, Money Swap, who is also a customer of Bank Seven, then the payment order sent to Fedwire would reflect the following:

Description	Tag	Elements
Receiver DFI	[3400]	079999999Bankseven*.
Beneficiary's FI	[4100]	D666666*Money Swap Inc* 10363 International Blvd* Chicago, IL 60604*.
Beneficiary	[4200]	Dunknown*Sally Jones* 1920 Flapper La* Chicago, IL*.

The proposed format also accommodates inclusion of complete information received in an international (SWIFT or CHIPS) transmittal of funds that must be forwarded over Fedwire.

For example, on July 12, 1993, First Bronx NY receives a SWIFT message from Black Forest Bank, Munich (SWIFT identifier BBFBKDEZZ) to pay Cowboy Trust, Dallas for further credit to T. Edwards, account 123456 at the Rodeo Road Branch in Austin. The SWIFT message indicates that Franz Mousse, doing business as Steak Palace, Maximillianstrasse 38, Munich, is paying T. Edwards $34,000 US, $10,000 on invoice TT33 for two cases of Texas T's Bar-B-Q sauce and $24,000 as a franchise fee for use of the Texas T's Secret Recipe. Black Forest Bank includes an instruction that states "Pay immediately. Do not deduct any related fees from the transfer amount—charge fee separately." First Bronx prepares a corresponding transmittal order and forwards it over Fedwire (in bold):

Description	Tag	Elements
Type/Sub-type	[1510]	1000.
IMAD	[1520]	0712B9999999000001.
Amount	[2000]	$34,000.00.
Sender DFI	[3100]	029999999First Bronx NY*.
Sender reference	[3320]	9999999999999999.
Receiver DFI	[3400]	Cowboybank*.
Business function code	[3500]	CTR.
Intermediary FI	[4000]	F029999999First Bronx NY*.
Beneficiary's FI	[4100]	F119999999*Cowboybank* Rodeo Road Branch* Austin*.
Beneficiary	[4200]	D123456*T. Edward*.
Originator	[5000]	Dunknown*Franz Mousse* DBA Steak Palace* Maximillianstrasse 38* Munich, Germany*.
Originator's FI	[5100]	BBFBKDEZZ* Blackforest BK* Munich, Germany*.
Originator to beneficiary information.	[6000]	Pay T. Edwards $34,000 US,* $10,000 INV# TT33 2 Cases Texas T'S* Bar-B-Q Sauce, $24,000 Franchise Fee* for Texas T's Secret Recipe*.
FI to FI receive FI information.	[6100]	Per Black Forest Bank* Pay Immediately. Do not deduct any* related fees from the transfer* amount—Charge Fee Separately*.

If a transmittal order is received by a domestic financial institution via CHIPS, when a corresponding payment order is prepared on Fedwire, the sending bank's CHIPS identifier may be included in the appropriate field. If the

[6] The terms "recipient" and "recipient's financial institution" are defined in the notice of proposed rule-making (58 FR 46014, Aug. 31, 1993) and include, respectively, the terms "beneficiary" and "beneficiary's bank." For the purposes of Fedwire, the terms "recipient" and "recipient's financial institution" will refer to transactions in which a nonbank financial institution makes payment to the person named in the transmittal/payment order.

CHIPS participant is the originator's financial institution, tag [5100], then the CHIPS identifier may be substituted for the SWIFT identifier in that field. If the CHIPS participant is not the originator's bank, then the originator's bank's SWIFT identifier remains in the originator's FI tag [5100] and the CHIPS participant's identifier is shown in the instructing financial institution tag [5200]. In the example above, if Black Forest Bank has a New York branch that is a CHIPS participant:

Description	Tag	Elements
Originator's FI ..	[5100]	BBFBKDEZZ* Blackforest BK*.
Instructing FI	[5200]	CBLKFOR99* Blackforest NY*.

Competitive Impact—The Board believes that this proposal will have no adverse effect on the ability of other service providers to compete effectively with the Federal Reserve in providing similar services. Specifically, the Board believes that implementing the proposed format will have only a minimal effect on the operations of the CHIPS payment system. That is, CHIPS settlement participants will need to utilize the new format when sending and receiving settlement transfers through the Federal Reserve Bank of New York; however, these same depository institutions are also Fedwire participants and will utilize the new format to send and receive all Fedwire traffic.

The Board also believes that the adoption of the proposed format will increase compatibility among CHIPS, SWIFT and Fedwire. Increased compatibility facilitates the mapping of transfer information from one format to another when a payment order flows through multiple intermediary banks that use different services. Enhanced compatibility also broadens the range of choices that sending and intermediary financial institutions have when selecting a transfer system.

Request for Comment

The Board requests comment on its proposal to adopt an expanded Fedwire format and adopt a more comprehensive set of data elements by late 1996 and on the benefits and costs to the industry of converting to the expanded format. Specifically, the Board requests comments on the following:

I. General

A. Do you believe the proposed format will be flexible enough to meet your existing and future business needs? Law enforcement's needs? Will it facilitate compliance to Treasury's proposed travel rule?

II. Specific Effects on Depository Institutions

A. Type of Connection—Please describe how your institution accesses Fedwire and the modifications you anticipate making to that facility to support an expanded format:

1. Do you access Fedwire through a computer interface, Fedline ®, or the off-line service?

2. If you have a computer interface, is it a vendor supplied or in-house developed system? How long does the development team or vendor estimate that it will take to develop, test and implement the necessary software modifications to accommodate the proposed format at your site? Are there additional charges assessed for changes required by the Federal Reserve System?

3. Does your institution also use CHIPS? If yes, do you use a different funds transfer system to access CHIPS or does the system you use to access Fedwire also support CHIPS? If yes, will conversion to the new format be simplified because you already have software that processes CHIPS transfers? If the system is vendor supplied, does the vendor currently support CHIPS and SWIFT interfaces?

4. Will back room systems that upload files or download files to your funds transfer system (or Fedline ®) have to be modified as a result of the format change? To what degree: significantly, moderately, or not at all?

What types of back office systems: general ledger, deposit accounting, customer information, customer delivery, or something else?

5. Will it cost you significantly more to process a larger format? If yes, in what ways?

B. Operations

1. What types of procedural changes do you anticipate to accommodate the new format?

2. What internal training and customer education efforts do you believe to be required?

3. What other operational effects and costs do you anticipate?

C. Customer Effects

1. Do you expect your customers to incur additional costs to accommodate the new format? If yes, what type of costs?

2. Do you expect the new format to have a minor or significant impact on your customers? Why?

III. Implementation Strategies

A. Schedule

1. Is the proposal to implement the new format by late 1996 reasonable? If not, when do you believe your institution and the industry in general could be ready for a new format?

2. Do you believe the schedule can accommodate your institution's testing requirements? What are your institutions testing requirements?

B. Implementation Alternatives

1. Will any one alternative be more problematic than another for your institution? Is any alternative likely to be more beneficial than another? Please describe the advantages and disadvantages you anticipate under each alternative:

a. One-day cutover: all participants begin sending and receiving the new format on the same date.

b. Two-stage cutover: participants will begin receiving the new format during phase one and sending the new format during phase two. Each phase will last six months.

c. Staggered-date full function cutover: each participant selects a date to begin sending and receiving the new format.

By order of the Board of Governors of the Federal Reserve System, November 24, 1993

William W. Wiles,

Secretary of the Board.

Glossary

Acceptance Timestamp Tag [1110]—Field indicates the date and time that Fedwire accepted the transfer. Also includes the Fedwire application ID.

Adjustment Tag [3000]—Field used to carry the as-of date and reason for an adjustment supplied by the FRB granting the adjustment.

Advice Code—An element of the FI to FI advice tags (see FI to FI); a three character code that identifies the method to be used to notify a party of receipt of funds:
LTR Letter
PHN Phone
TLX Telex
WRE Wire

Amplifying Advice—An element of the FI to FI advice tags (see FI to FI); descriptive information used to deliver the payment notification, e.g. phone number and contact name.

Alpha—EBCDIC data representation standard; includes any alphabetic character A–Z, space character, numeric digit 0–9, and the following: .< > ( ) + ! & $; / |, % – ? ' : # @ = " { } \

Amount Tag [2000]—Field used to indicate the amount to be transferred; eighteen characters, with commas, period, and dollar (dollar sign is optional).

BBI=Field tag used to identify Bank to Bank Information in the current format; contains miscellaneous information pertaining to the transfer.

BBK=Field tag used to identify Beneficiary's Bank in the current format: identifies the bank acting as financial agent for the beneficiary of the transfer.

Beneficiary [7]—The person to be paid by the beneficiary's bank. Also see Recipient.

Beneficiary's Bank [1]—The bank identified in a payment order in which an account of the beneficiary is to be credited pursuant to the order or which otherwise is to make payment to the beneficiary if the order does not provide for payment to an account. Also see Recipient's Financial Institution.

Beneficiary Tag [4200]—Field used to identify the person to be paid by the beneficiary's bank or recipient's financial institution (non-bank).

Beneficiary's Financial Institution Tag [4100]—Field used to identify the beneficiary's bank or recipient's financial institution (non-bank) in which an account of the beneficiary/recipient is to be credited pursuant to the order or which otherwise is to make payment.

BNF=Field tag used to identify the Beneficiary in the current format; the person to be paid by the beneficiary's bank.

Business Function Tag [3600]—Field used to carry the three character code, formerly known as "Product Code," that enables the receiver of the message to determine the purpose of the transfer:

- BTR Bank Transfer—Beneficiary is a bank.
- CTR Customer Transfer—(Beneficiary is a nonbank)
- CKS Check Same-Day Settlement
- DEP Deposit to Sender's Account
- DRW Drawdown
- FFR Fed Funds Returned
- FFS Fed Funds Sold

Chips—Clearing House Interbank Payments System

CIPS—Federal Reserve Computer Interface Protocol Specifications

DLM—Delimiter—a code used to mark the end of variable length data; an asterisk "*" is used as a delimiter element in the proposed format.

Element—A specific piece of information carried in a field. Elements further identify or define the contents of a field, for example, the beneficiary field generally includes elements such as name and address.

Error Field Tag [1130]—Field is completed when the Federal Reserve returns a Fedwire message to the sender and includes an error code, number, and description, e.g. "E185 Invalid Type/Subtype."

FI to FI Tags [6100] to [6500]—Financial Institution to Financial Institution Information—General transfer-related and advice information that is forwarded from one financial institution to another. In the proposed format, the FI to FI tags include information that commonly follows the BBI= tag and the advice method components of the IBK=, BBK= and BNF= tags in the current format. The FI to FI tags are:

- Receiving FI Information—[6100]
- Intermediary FI Information—[6200]
- Intermediary FI Advice Info.—[6210]
- Beneficiary's FI Information—[6300]
- Beneficiary's FI Advice Info.—[6310]
- Beneficiary Method of Payment—[6320]
- Beneficiary Information—[6400]
- Beneficiary Advice Information—[6410]
- FI to FI information (generic)—[6500]

Field—A sub-portion of a message extending from a tag up to, but not including, another tag or the end of the message. A field begins with a tag followed by one or more individual data items, called elements. The definition of the tag will determine the format of the field and the elements within the field. For example, tag [4200] is defined as "beneficiary" and contains several elements that may be used to describe the beneficiary, that is, account number, name and address, while tag [2000], which is defined as amount, contains only one 18-character element to identify the dollar amount. See Element.

Funds Transfer [1]—The series of transactions, beginning with the originator's payment order, made for the purpose of making payment to the beneficiary of the order. The term includes any payment order issued by the originator's bank or an intermediary bank intended to carry out the originator's payment order. A funds transfer is completed by acceptance by the beneficiary's bank of a payment order for the benefit of the beneficiary of the originator's payment order. Automated clearinghouse transfers or funds transfers governed in any part by the Electronic Funds Transfer Act of 1978 (Title XX, Public Law 95–630, 92 Stat. 3728, 15 U.S.C. 1693 *et seq.*, as amended from time to time), are excluded from this definition.

IBK=Field tag used to identify an Intermediary Bank in the current format; the institution(s) between the receiving institution and the beneficiary's institution through which the transfer must pass, if specified by the sending institution. In such cases, this is the receiving institution's credit party.

Identifier Code—The first element following a transfer party tag; a one character code that further defines the type of identifier that follows it (See Identifier). Valid codes are.

- N=Non-Bank
- D=Account Number (DDA)
- B=Bank Identifier Code (BIC/SWIFT)
- C=CHIPS Participant
- F=Routing Number

Identifier—A variable-length element that carries a number or a combination of letters and numbers to more fully identify a particular party in a payment message, for example, an account number or routing number. An identifier follows each party tag:

- Intermediary FI—[4000]
- Beneficiary's FI—[4100]
- Beneficiary—[4200]
- Originator—[5000]
- Originator's FI—[5100]
- Instructing FI—[5200]

Incoming Funds Transfer—A payment order sent from the Fedwire application to the participating depository institution, the receiver, which notifies the receiver that funds have been credited to its account. An incoming funds transfer is received when a corresponding Outgoing Funds Transfer has been initiated by another institution. See Outgoing Funds Transfer.

IMAD Tag [1520]—Field used to carry the Input Message Accountability Data. IMAD is established at the time the message is first received by a Federal Reserve Bank; includes a date, the logical terminal (Lterm) associated with the interfacing application that sent the message to Fedwire, and the sequence number assigned by the interfacing application.

INS=Field tag used to identify the Instructing Bank in the current format; the institution other than the originator's bank that instructs the sender to execute the transaction.

Intermediary Bank [1]—A receiving bank other than the originator's bank or the beneficiary's bank.

Intermediary Financial Institution [1]—A receiving financial institution, other than a bank, the transmittor's financial institution or the recipient's financial institution.

Intermediary Financial Institution Tag [4000]—Field used to identify an intermediary bank (see IBK=) or a non-bank financial institution, other than the beneficiary's bank / recipient's financial institution, that receives a payment order from Fedwire or from a Fedwire participant.

Instructing Financial Institution Tag [5200]—Field used to identify an instructing bank or non-bank financial institution. See INS=.

Intercept—Fedwire's response to the sender of an outgoing funds transfer that is rejected or otherwise intercepted. The intercept message is a copy of the outgoing funds transfer message with a description of the error added. See Error Field Tag [1130].

Interface Code (No Tag)—Field indicates the type of communications protocol used by the application sending an outgoing funds transfer to Fedwire:

- X FLASH
- Z FRISC

Message Disposition Tag [1100]—A field used to carry certain message-related control information; the field has four elements: format version, test/production code, message duplication code (out), and message status indicator. Each element is described below.

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[7] Regulatory definition 58 FR 46014, August 31, 1993. All similar definitions throughout this document will be identified with this footnote number.

Format Version: a two character code used to identify the format of the message. Generally, only one value will be valid for this code, but a second value may be defined during a period of transition from one format to another.

Test/Production Code: a one character code used to indicate whether the sending application was in the test or production mode when the transfer was originated:

T Test Mode
P Production Mode

Message Duplication Code: a one character code used to indicate whether the message has been sent before:

" " Original Message
P Possible Duplicate
R Retrieval on an Original Message
C Copy of an Original

Message Status Indicator: One character code that indicates the processing status of the message:

0 Intercepted Outgoing Transfer
2 Accepted (processed) Outgoing Transfer resulting in a debit/credit
3 Rejected (error) Outgoing Transfer
7 Accepted (processed) Outgoing Transfer (no accounting entry)
N Incoming Funds Transfer
"P"=Possible Duplicate
"R"=Retrieval of an Original Message
"C"=Copy of an Original Message

NUM—EBCDIC data representation standard: includes any numeric digit 0–9.

OBI=Field tag used to identify Originator to Beneficiary Information in the current format: information conveyed from the originator to the beneficiary.

OGB=Field tag used to identify Originator's Bank in the current format; the bank acting for the originator of the transfer.

OMAD Tag [1120]—Field used to carry the Output Message Accountability Data. OMAD is established at the time the message is queued for delivery by a Federal Reserve Bank; includes the date, the logical terminal (Lterm) associated with the interfacing application that will receive the message from Fedwire, a sequence number, a time stamp, and a code identifying the FRB delivering the message.

ORG=Field tag used to identify the Originator in the current format; initiator of the transfer.

Originator [1]—The sender of the first payment order in a funds transfer. Also see Transmittor

Originator's Bank [1]—The receiving bank to which the payment order of the originator is issued if the originator is not a bank, or the originator if the originator is a bank. Also see Transmittor's Financial Institution.

Originator Tag [5000]—Field used to identify the sender of the first payment order in a funds transfer.

Originator's Financial Institution Tag [5100]—Field used to identify the bank or non-bank financial institution to which the payment order of the originator is issued.

Outgoing Funds Transfer—A payment order sent from a participating financial institution, the sender, to the Fedwire application. If accepted by Fedwire, the sender's account is debited and the receiving FI's account is credited, and a corresponding outgoing funds transfer is delivered to the receiving FI. See Incoming Funds Transfer.

Outgoing Transfer Response—See Intercept.

Payment Order [1]—An instruction of a sender to a receiving bank, transmitted orally, electronically, or in writing, to pay, or to cause to another bank to pay, a fixed or determinable amount of money to a beneficiery if: (1) the instruction does not state a condition of payment to the beneficiary other than time of payment; (2) the receiving bank is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and (3) the instruction is transmitted by the sender directly to the receiving bank or to an agent, funds transfer system, or communication system for transmittal to the receiving bank. Also see Transmittal Order.

Previous Message IMAD Tag [3500]—Field used to reference the IMAD of an earlier funds transfer when the sender is returning, correcting or otherwise referencing a transfer previously sent or received.

Receiving Bank [1]—The bank to which the sender's instruction is addressed.

Receiver DFI Number Tag [3400]—Field used to carry the nine-digit routing number and short name of the receiver

Receiving Financial Institution [1]—The financial institution to which a sender's instruction is addressed. The term "receiving financial institution" includes a receiving bank.

Recipient [1]—The person to be paid by the recipient's financial institution. The term recipient includes a beneficiary.

Recipient's Financial Institution [1]—The financial institution identified in a transmittal order in which an account of the recipient is to be credited pursuant to the transmittal order or which otherwise is to make payment to the recipient if the order does not provide for payment to an account. The term recipient's financial institution includes a beneficiary's bank.

Reference for the Beneficiary Tag [3321]—Field used to provide reference information that enables the beneficiary to identify the transfer; the beneficiary reference element may contain up to 16 characters (letters and/or numbers).

RFB=Field tag used to identify the Reference for the Beneficiary in the current format, see Reference for Beneficiary Tag [3321].

Sender [1]—The person giving the instruction to the receiving bank or receiving financial institution.

Sender FI Number Tag [3100]—Field used to carry the nine-digit routing number and short name of the sender.

Sender Reference Tag [3320]—Field used to carry the sender's reference number; may contain up to 16 characters (letters and/or numbers).

Sender Supplied Information Tag [1500]—Field is used only for outgoing and intercepted funds transfers and contains three elements: user request correlation data, test/production code, and message duplication code (in). The elements are described below:

User Request Correlation Data: May be used to identify an inquiry request and the requesting terminal in a multi-terminal environment. Fedwire returns the contents of the original outgoing message when sending an intercept message.

Test/Production Code: See description under Message Disposition Tag [1100]

Message Duplication Code (In): See description under Message Disposition Tag [1100]; modified as follows. Values are:

" " Original Message
P Possible Duplicate

Special Handling Instructions Tag [1140]—Field is used by Fedwire to insert special handling instructions.

Tag—Used to denote the beginning of a field In the proposed format, a tag is composed of six characters in the form [nnnn], where "n" is a number, the left bracket "[" is the first character, and the right bracket "]" denotes the end of the tag. There are thirty-three tags defined Also known as a "field tag".

In the current format, a "field tag" denotes the beginning of third-party information, and is composed of four characters in the form aaa=, where "a" is a letter and equals sign denotes the end of the tag There are nine tags: ORG=, OGB=, IBK=, BBK=, BNF=, RFB=, OBI=, BBI=, and INS=.

Transmittal Order [1]—An instruction of a sender to a receiving financial institution, transmitted orally, electronically, or in writing, to pay, or to cause to pay, a fixed or determinable amount of money to the recipient if: (1) the instruction does not state a condition to payment to the recipient other than time of payment; (2) receiving financial institution is to be reimbursed by debiting an account of, or otherwise receiving payment from, the sender; and (3) the instruction is transmitted by the sender directly to the receiving financial institution or to an agent or communication system for transmittal to the receiving financial institution. The term transmittal order includes a payment order

Transmittor [1]—The sender of the first transmittal order in a transmittal of funds The term transmittor includes the originator.

Transmittor's Financial Institution [1]—The receiving financial institution to which the transmittal order of the transmittor is issued if the transmittor is not a financial institution, or the transmittor if the transmittor is a financial institution. The term transmittor's financial institution includes the originator's bank.

Type/Subtype Code Tag [1510]—Field indicates the transfer type and sub-type

Type Code Values:

10 Third-party Funds Transfer
15 Foreign Transfers—Foreign Central Banks and International agencies
16 Settlement Transfers

Sub-type Code Values:

00 Transfer
01 Request for Reversal
02 Reversal of Transfer
07 Request for Reversal of Prior Day Transfer
08 Reversal of Prior Day Transfer

20 "As-of" Adjustment
31 Request for Credit (Drawdown) Transfer
32 Funds Transfer Honoring a Request for Credit (Drawdown) Transfer
33 Refusal to Honor a Request for Credit (Drawdown) Transfer
90 Service Message

APPENDIX A.—FORMAT PROPOSAL LIST OF TAGS BY MESSAGE TYPE

A	B	C	D	E	F
Tag No.	Tag Description [a]	Max. field size (with tag) [b]	Outgoing funds transfer (DFI to Fedwire)	Intercept response to outgoing transfer (Fedwire to DFI)	Incoming funds transfer (Fedwire to DFI)
	Order in which field appears in message. [c]				
None [d]	Interface code	1	01		
[1100] [d]	Message disposition	9		01	01
[1110] [d]	Acceptance timestamp	18		02	02
[1120] [d]	OMAD	36			03
[1130] [d]	Error field	46		03	
[1140] [d]	Special handling instructions	33		04	04
[1500] [d]	Sender supplied information	[e] 18	02	05	
[1510] [d]	Type/subtype code	10	03	06	05
[1520] [d]	IMAD	24	04	07	06
[2000]	Amount	24	05	08	07
[3000]	Adjustment	14	06	09	08
[3100]	Sender DFI	34	07	10	09
[3320]	Sender reference	23	08	11	10
[3321]	Reference for beneficiary	23	09	12	11
[3400]	Receiver DFI	34	10	13	12
[3500]	Previous message IMAD	24	11	14	13
[3600]	Business function	9	12	15	14
[3700]	Charges [f]	9	13	16	15
[4000]	Intermediary FI	186	14	17	16
[4100]	Beneficiary's FI	186	15	18	17
[4200]	Beneficiary	191	16	19	18
[5000]	Originator	186	17	20	19
[5100]	Originator's FI	186	18	21	20
[5200]	Instructing FI	186	19	22	21
[6000]	Originator to beneficiary information	150	20	23	22
[6100]	FI to FI receive FI information	222	21	24	23
[6200]	FI to FI intermediary FI information		22	25	24
[6210]	FI to FI advice information		23	26	25
[6300]	FI to FI beneficiary's FI information		24	27	26
[6310]	FI to FI beneficiary's FI advice information		25	28	27
[6320]	FI to FI beneficiary method of payment		26	29	28
[6400]	FI to FI beneficiary information		27	30	29
[6410]	FI to FI beneficiary advice information		28	31	30
[6500]	FI to FI information		29	32	31

[a] A description of the current format is in the Computer Interface Protocol Specifications (CIPS) pages 5.8.1, 5.8.2 and 5.8.9.
[b] Character count includes six character tag consisting of 4 digits and 2 brackets.
[c] Optional tags may be omitted from message. A blank indicates the tag is not used in this message type. Maximum message size has also increased: Outgoing has 604 characters in the current format, 1731 in the proposed format Intercept 731 current, 1834 proposed; and Incoming 723 current, 1808 proposed.
[d] The interface code and fields with tags in the 1000 series are designed to carry technical information. The content and purpose of these tags and fields will be more fully defined when the CIPS are published.
[e] Field will contain 16 characters in an intercept message because format code is omitted.
[f] Field is reserved for possible future use.
[g] (Total for all tags in [6100] to [6500] series).

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BILLING CODE 6210–01–P

FEDERAL TRADE COMMISSION

Granting of Request for Early Termination of the Waiting Period Under the Premerger Notification Rules

Section 7A of the Clayton Act, 15 U.S.C. 18a, as added by title II of the Hart-Scott-Rodino-Antitrust Improvements Act of 1976, requires persons contemplating certain mergers or acquisitions to give the Federal Trade Commission and the Assistant Attorney General advance notice and to wait designated periods before consummation of such plans. Section 7A(b)(2) of the Act permits the agencies, in individual cases, to terminate this waiting period prior to its expiration and requires that notice of this action be published in the **Federal Register.**

The following transactions were granted early termination of the waiting period provided by law and the premerger notification rules. The grants were made by the Federal Trade Commission and the Assistant Attorney General for the Antitrust Division of the Department of Justice. Neither agency intends to take any action with respect to these proposed acquisitions during the applicable waiting period.

TRANSACTIONS GRANTED EARLY TERMINATION BETWEEN NOVEMBER 8, 1993 AND NOVEMBER 11, 1993

Name of acquiring person, name of acquired person, name of acquired entity	PMN No.	Date terminated
VF Corporation, H.H. Cutler Company, H.H. Cutler Company	94-0095	Nov. 8, 1993.
John J. Harnish, Skinner Corporation, Northern Commercial Company and Newco, Inc	94-0109	Nov. 8, 1993.
Citicorp, Schlumberger Ltd., Dowell Schlumberger Inc. (Dowell Indust. Services Div.)	94-0129	Nov. 8, 1993.
ITT Corporation, Skandia Insurance Company Limited, American Skandia Life Reinsurance Corporation	94-0138	Nov. 8, 1993.
Pennzoil Company, Mobil Corporation, Mobil Oil Exploration & Producing Southeast Inc	94-0143	Nov. 8, 1993.
Mobil Corporation, Pennzoil Company, Pennzoil Exploration and Production Company	94-0144	Nov. 8, 1993.
Isaac Perlmutter, Bristol-Myers Squibb Company, Clairol Incorporated	94-0149	Nov. 8, 1993.
Marshall S. Cogan, Perfect Fit Voting Trust, Perfect Fit Industries, Inc	94-0151	Nov. 8, 1993.
Ronald O. Perelman, Guthy-Renker Corporation, Guthy-Renker Corporation	94-0152	Nov. 8, 1993.
Victor K. Kiam II, Bristol-Myers Squibb Company, Clairol Incorporated	94-0153	Nov. 8, 1993.
Forest Oil Corporation, Atlantic Richfield Company, Atlantic Richfield Company	94-0154	Nov. 8, 1993.
Mr. Keith Rupert Murdoch, Combined Broadcasting, Inc., Combined Broadcasting of Philadelphia, Inc	94-0159	Nov. 8, 1993.
Vintage Petroleum, Inc., Santa Fe Energy Resources, Inc., Santa Fe Energy Operating Partners, L.P	94-0164	Nov. 8, 1993.
Mr. Michael Futerman, Carmel Trust (a Cayman Islands person), Auto Works Holdings, Inc	94-0188	Nov. 8, 1993.
KP Oil, Inc., The British Petroleum Company p.l.c., BP Exploration & Oil Inc. & Service Station Holdings Inc	94-0194	Nov. 8, 1993.
Cyprus Minerals Company, Amax Inc., Amax Inc	93-1274	Nov. 9, 1993.
Vintage Petroleum, Inc., The Prudential Insurance Company of America, Vintage/P Acquisition Limited Partnership.	94-0171	Nov. 10, 1993.
Coltec Industries Inc., The Morgan Stanley Leveraged Equity Fund II, L.P., Coltec Holdings Inc	94-0174	Nov. 10, 1993.
David I Margolis, Coltec Industries Inc., Coltec Industries Inc	94-0175	Nov. 10, 1993.
NationsBank Corporation, United Companies Financial Corporation, Foster Mortgage Corporation	94-0176	Nov. 10, 1993.
Morgan Stanley Group Inc., Coltec Industries Inc., Coltec Industries Inc	94-0178	Nov. 10, 1993.
The B.F. Goodrich Company, Henry Barbanel, Sanncor Industries, Inc	94-0179	Nov. 10, 1993.
Merisel, Inc., Computerland Corporation, Computerland Corporation	94-0170	Nov. 12, 1993.
Metropolitan Life Insurance Company, Joseph L. Cashen, Century 21 Real Estate #1, Inc	93-1810	Nov. 15, 1993.
Metropolitan Life Insurance Company, John P. Gerken, Century 21 Real Estate #1, Inc	93-1811	Nov. 15, 1993.
BEI Holdings, Ltd., Amresco Holdings, Inc., Amresco Holdings, Inc	94-0065	Nov. 15, 1993.
CGW Southeast Partners I, L.P., BEI Holdings, Ltd., BEI Holdings, Ltd	94-0067	Nov. 15, 1993.
QVC Network, Inc., Paramount Communications Inc., Paramount Communications Inc	94-0131	Nov. 15, 1993.
Color Tile Holdings, Inc., ABF Acquisition Corp., ABF Acquisition Corp	94-0183	Nov. 15, 1993.
Wilcox & Gibbs, Inc., BTR plc, Summers Group, Inc	94-0185	Nov. 15, 1993.
La Quinta Inns, Inc., La Quinta Motor Inns Limited Partnership, La Quinta Motor Inns Limited Partnership	94-0190	Nov. 15, 1993.
Healthsource, Inc., Healthsource Maine, Inc., Healthsource Maine, Inc	94-0191	Nov. 15, 1993.
Castle Harlan Partners II, L.P., INDSPEC Chemical Corporation, INDSPEC Chemical Corporation	94-0192	Nov. 15, 1993.
Warburg, Pincus Investors, L.P., Celtrix Pharmaceuticals, Inc., Celtrix Pharmaceuticals, Inc	94-0193	Nov. 15, 1993.
Forest Oil Corporation, Jeff D. Sandefer, General Sandefer Offshore Partnership and General	94-0201	Nov. 15, 1993.
Ronald J. Jackson, Mattel, Inc., Mattel, Inc	94-0202	Nov. 15, 1993.
La Confederation des caisses populaires et d'economie, The Laurentian Mutual Management Corporation, The Laurentian Group Corporation.	94-0203	Nov. 15, 1993.
Jason Incorporated, Code, Hennessy & Simmons Limited Partnership, Koller Industries, Inc	94-0210	Nov. 15, 1993.
Charles F. Dolan, Charles F. Dolan, Cablevision of Connecticut Limited Partnership	94-0220	Nov. 15, 1993.
AEW Partners, L.P., Chase Manhattan Bank, N.A., Chase Manhattan Bank, N.A	94-0222	Nov. 15, 1993.
Colgare-Palmolive Company, H.F. Johnson Distributing Trust, Overseas IP, Inc	94-0223	Nov. 15, 1993.
J. Baker, Inc., Dennis B. Tishkoff, Tishkoff Enterprises, Inc	94-0234	Nov. 15, 1993.
Dowthorpe plc, Lear Siegler Holdings Corp., Lear Siegler Measurement Controls Corp	94-0126	Nov. 16, 1993.
Fleming Companies, Inc., William J. Woolley, Big W of Florida, Inc	94-0135	Nov. 16, 1993.
Anheuser-Busch Companies, Inc., Societe Nationale D'Investissement, Illochroma International Inc	94-0161	Nov. 17, 1993.
Torchmark Corporation, General Electric Company, TEAI—Chalkley Limited Partnership	94-0216	Nov. 17, 1993.
Quorum Health Group, Inc., Baptist Health Services, Inc., Baptist Hospital of Gadsden, Inc	94-0155	Nov. 18, 1993.
Wellcome plc, Eastman Kodak Company, Sterling Winthrop Inc	94-0158	Nov. 18, 1993.
Knape & Vogt Manufacturing Company, Code, Hennessy & Simmons Limited Partnership, The Hirsh Company.	94-0163	Nov. 18, 1993.
Ford Motor Company, Fuji Heavy Industries Ltd., Subaru Leasing Corp	94-0204	Nov. 18, 1993.
Mr. James DeSorrento, Kansallis-Osake-Pankki, C4 Media Cable South, Limited Partnership	94-0217	Nov. 18, 1993.
Mr. James DeSorrento, First Union Corporation, C4 Media Cable South, Limited Partnership	94-0218	Nov. 18, 1993.
The Williams Companies, Inc., Sun Company, Inc., Sun Marine Terminals Company	94-1026	Nov. 19, 1993.
Integrated Health Services, Inc., Carena Holdings, Inc. (a Canadian company), Central Park Lodges, Inc	94-0219	Nov. 19, 1993.
Aetna Life and Casualty Company, Executive Risk, Inc., Executive Risk, Inc	94-0243	Nov. 19, 1993.
Tribune Company, Gannett Co., Inc., Gannett Co., Inc	94-0247	Nov. 19, 1993.
MEPC plc, American Property Trust, Newco	94-0248	Nov. 19, 1993.
Apertus Technologies Incorporated, NYNEX Corporation, Systems Strategies Inc	94-0252	Nov. 19, 1993.
CGW Southeast Partners, L.P., Rehrig International, Inc., Rehrig International, Inc	94-0253	Nov. 19, 1993.
The Interpublic Group of Companies, Inc., WPP Group plc, Scali, McCabe, Sloves, Inc	94-0256	Nov. 19, 1993.
PepsiCo, Inc., Charles R. Bronfman, Prime Restaurant Systems of America Inc	94-0258	Nov. 19, 1993.
Odyssey Partners, L.P., The Trkja Family Trust, Scotsman Group, Inc	94-0263	Nov. 19, 1993.
Eby-Brown Company L.P., USX Corporation, Bosart Co	94-0272	Nov. 19, 1993.

FOR FURTHER INFORMATION CONTACT: Sandra M. Peay or Renee A. Horton, Contact Representatives, Federal Trade Commission, Premerger Notification Office, Bureau of Competition, Room

303, Washington, DC 20580, (202) 326–3100.

By direction of the Commission.

Donald S. Clark,

Secretary.

[FR Doc. 93–29405 Filed 11–30–93; 8:45 am]

BILLING CODE 6750-01-M

GENERAL ACCOUNTING OFFICE

Federal Accounting Standards Advisory Board

AGENCY: General Accounting Office.

ACTION: Notice of December meeting.

SUMMARY: Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Pub. L. No. 92–463), as amended, notice is hereby given that the monthly meeting of the Federal Accounting Standards Advisory Board will be held on Wednesday and Thursday, December 8 and 9, 1993 from 9 a.m. to 4 p.m. in room 7313 of the General Accounting Office, 441 G St., NW., Washington, DC.

The agenda for the meeting includes discussions relating to (1) Actuarial Methods for Measuring Pensions and Post Employment Benefits, (2) Capital Expenditures, and (3) Accounting Concepts Statement: Entity and Display, elements, recognition and measurement, and cost accounting.

We advise that other items may be added to the agenda; interested parties should contact the Staff Director for more specific information and to confirm the date of the meeting.

Any interested person may attend the meeting as an observer. Board discussions and reviews are open to the public.

FOR FURTHER INFORMATION CONTACT: Ronald S. Young, Staff Director, 750 First St., NE., room 1001, Washington, DC 20002, or call (202) 512–7354.

Authority: Federal Advisory Committee Act. Pub. L. No. 92–463, section 10(a)(2), 86 Stat. 770, 774 (1974) (current version at 5 U.S.C. app. section 10(a)(2) (1988); 41 CFR 101–6.1015 (1990).

Dated: November 24, 1993.

Ronald S. Young,

Executive Director.

[FR Doc. 93–29352 Filed 11–30–93; 8:45 am]

BILLING CODE 1610-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

Agency for Toxic Substances and Disease Registry

[ATSDR–76]

Availability of Administrative Reports and Software Package of Health Effects Studies

AGENCY: Agency for Toxic Substances and Disease Registry (ATSDR), Public Health Service (PHS), Department of Health and Human Services (HHS).

ACTION: Notice.

SUMMARY: This notice announces the availability of Administrative Reports of eight ATSDR health effects studies and a software package for analysis of disease clusters.

FOR FURTHER INFORMATION CONTACT: Jeffrey A. Lybarger, M.D., M.S., Director, Division of Health Studies, Agency for Toxic Substances and Disease Registry, 1600 Clifton Road, NE., Mailstop E–31, Atlanta, Georgia 30333, telephone (404) 639–6200.

SUPPLEMENTARY INFORMATION: Sections 104(i) (7) and (9) of the Comprehensive Environmental Response, Compensation, and Liability Act (CERCLA), as amended [42 U.S.C. 9604(i) (7) and (9)], provide the Administrator of ATSDR with the authority to conduct pilot studies, epidemiologic and other health studies, and to initiate health surveillance programs to determine the relationship between human exposure to hazardous substances in the environment and adverse health outcomes.

On February 13, 1990, ATSDR published in the **Federal Register** [55 FR 5136] a final rule entitled, "Health Assessments and Health Effects Studies of Hazardous Substances Releases and Facilities." The primary purpose of that rule, which created a new regulation at 42 CFR part 90, was to set forth general procedures that ATSDR will follow relating to the conduct of health effects studies. Section 90.11 of the regulation, which concerns the reporting of results of health assessments and health effects studies, provides that reports of health effects studies conducted under section 104(i) of the CERCLA shall be available to the general public upon request.

Availability

The reports of the health effects studies and software listed below are now available through the U.S. Department of Commerce, National Technical Information Service (NTIS), 5285 Port Royal Rd., Springfield, Virginia 22151, telephone: 1–800–553–6847. There is a charge for these items as determined by NTIS.

Health effects study	NTIS document No.
National Health Risk Communication Training Program for State Health Agency Personnel, ATSDR/HS–93/22.	PB93–192953
Hydrofluoric Acid Spill Symptom Prevalence Study, Texas City, Texas, ATSDR/HS–93/23.	PB93–192961
Mortality Study of a Population in the Vicinity of the Union Chemical Company, South Hope, Maine, ATSDR/HS–93/25.	PB93–193126
National Exposure Registry, Trichloroethylene (TCE) Subregistry Baseline Technical Report, ATSDR/HS–93/24.	PB93–209187
A Retrospective Study of American Indian First Responders Exposed to the 1980 Russett Chemical Company Fire, Fort Hall Indian Reservation, Fort Hall, Idaho, ATSDR/HS–93/27.	PB93–218345
Blood Lead Screening Project, Coffeyville, Kansas, ATSDR/HS–93/26.	PB93–218543
Study of Symptom and Disease, Caldwell Systems, Inc., Hazardous Waste Incinerator, Caldwell County, NC., ATSDR/HS–93/29.	PB93–231041
The Rocky Mountain Arsenal Pilot Exposure Study Part I: Analysis of Exposure to Arsenic and Mercury, ATSDR/HS–93/28.	PB93–231033
Software Package: Software to Facilitate Analysis of Disease Clusters from Epidemiological Data (Version 3.1 for Microcomputers).	PB93–502680GEI

In accordance with 42 CFR 90.11, copies of these final reports have been distributed to the Environmental Protection Agency, the appropriate State and local government agencies, and the affected local communities.

ATSDR previously announced the availability of 21 final reports of health effect studies [55 FR 31445, August 12, 1990; 57 FR 29091, June 30, 1992; and 58 FR 29413, May 20, 1993]. Additional final reports will be announced semiannually in the **Federal Register** as they become available.

Dated: November 24, 1993.

Walter R. Dowdle,

Deputy Administrator, Agency for Toxic Substances and Disease Registry.

[FR Doc. 93–29376 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–70–P

Centers for Disease Control and Prevention

Request for Comments and Secondary Data Relevant to Concentrations of Air Contaminants That Are Immediately Dangerous to Life and Health

AGENCY: National Institute for Occupational Safety and Health (NIOSH), Centers for Disease Control and Prevention (CDC), Public Health Service (PHS), Department of Health and Human Services (DHHS).

ACTION: Notice of request for comments and secondary data.

SUMMARY: NIOSH is requesting comments from all interested parties concerning the development and use of immediately dangerous to life and health (IDLH) concentration values for compounds found in the workplace. The information may include but is not limited to: (1) Descriptions of situations in the workplace where IDLH values are used (e.g., respirator use criteria) and (2) recommendations for methods and criteria that should be used to establish IDLH values.

This information will assist NIOSH in assessing the actual use and current scientific adequacy of the existing IDLH values.

DATES: Comments concerning this notice should be submitted by May 2, 1994.

ADDRESSES: Please submit two copies of any information, comments, suggestions, or recommendations in writing to: Diane M. Manning, Docket Office Manager, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226.

FOR FURTHER INFORMATION CONTACT: Mr. John J. Whalen, Division of Standards Development and Technology Transfer, NIOSH, 4676 Columbia Parkway, C–14, Cincinnati, Ohio 45226, (513) 533–8306.

SUPPLEMENTARY INFORMATION: In 1974, NIOSH and OSHA jointly initiated the development of occupational health standards consistent with section 6(b) of the Occupational Safety and Health Act of 1970 for substances with existing OSHA permissible exposure limits (PELs). This joint effort was called the Standards Completion Program (SCP). The SCP developed 383 substance-specific draft technical standards with supporting documentation that contained technical information and recommendations needed for the promulgation of new occupational health regulations. Although new standards were not promulgated at that time, these data became the basis for the 1981 NIOSH/OSHA Occupational Health Guidelines for Chemical Hazards.[1]

The definition for IDLH that was derived by the SCP was based on the MSHA definition stipulated in 30 CFR 11.3(t). As stated in the documentation to the SCP program,[2] the purpose for establishing an IDLH value was "to ensure that the worker can escape without injury or without irreversible health effects from an IDLH concentration in the event of respiratory protection equipment failure. The IDLH value is considered a maximum concentration above which only a highly reliable breathing apparatus providing maximum worker protection is permitted." In determining IDLH values, the ability of a worker to escape without loss of life or irreversible health effects was considered along with severe eye or respiratory irritation and other deleterious effects (e.g., disorientation or incoordination) that could prevent escape. Although in most cases, escape from a particular worksite could occur in much less than 30 minutes, as a safety margin, the SCP IDLH values were based on the effects that might occur as a consequence of a 30-minute exposure. The IDLH values that were developed by the SCP for 321 substances can be found in the NIOSH Pocket Guide to Chemical Hazards.[3] No IDLH values were established for the remaining 62 SCP substances.

The current NIOSH definition for an IDLH exposure condition, as stated in the NIOSH Respirator Decision Logic,[4] is a condition "that poses a threat of exposure to airborne contaminants when that exposure is likely to cause death or immediate or delayed permanent adverse health effects or prevent escape from such an environment." The purpose of establishing an IDLH exposure concentration is the same given by the SCP: To "ensure that the worker can escape from a given contaminated environment in the event of failure of the respiratory protection equipment." The NIOSH Respirator Decision Logic (RDL) uses the IDLH values developed by the SCP as one of several respirator selection criteria. Under the RDL, the most protective respirators (e.g., a self-contained breathing apparatus equipped with a full facepiece and operated in a pressure-demand or other positive-pressure mode) would be selected for firefighting, exposure to carcinogens, entry into oxygen-deficient atmospheres, in emergency situations, during entry into an atmosphere that contains a substance at a concentration greater than 2,000 times the NIOSH recommended exposure limit (REL) or OSHA PEL, and for entry into IDLH atmospheres.

When the IDLH values currently used by NIOSH as respirator selection criteria were developed in the mid-1970s, only limited toxicological information was available for many of these substances on which to base a determination as to an appropriate IDLH value. Recently, questions have been raised concerning whether all of the IDLH values provide adequate worker protection.[5]

NIOSH is requesting information on the current uses of IDLH values in the workplace to determine the importance of revising existing IDLH values and developing new values. If IDLH values have an important role in the workplace, information on criteria for establishing IDLH values obtained through this notice will assist NIOSH in evaluating the scientific adequacy of the criteria and procedures originally used for establishing IDLH values and proceeding with establishment and revision of IDLH values.

1. Use of IDLH Concentration Values

NIOSH plans to determine (1) if (and how) IDLH values are used to select respirators, including the need for the most protective respirators, and (2) if there are other uses for IDLH values in the workplace. NIOSH requests comments from all interested parties on the following issues which relate to the issues of IDLH values. Responses to the questions will assist NIOSH in ascertaining the range of options and knowledge among environmental and occupational health stakeholders regarding these issues.

a. Are there workplace situations in which IDLH values are used for the selection of respirators? NIOSH is especially interested in situations in which the IDLH value is the only or principal selection criterion that would trigger use of the most protective respirator. Please describe these situations as fully as possible, including (1) a description of the exposure conditions and the method of determining that the IDLH value has been or will be exceeded and (2) an explanation of any special criteria or procedures concerning sub-populations that may be especially susceptible to impairment resulting from respiratory challenges or hazardous breathing environments (e.g., asthmatics).

b. For what purposes, other than respirator selection, are IDLH values used and for what purposes could they be used? For example, IDLH values could be used in hazard analyses to predict the consequences of catastrophic releases of a chemical(s) in the workplace or environment. Please describe other potential or actual uses of IDLH values identifying the uses, characterizing the uses, and explaining the bases for the uses.

c. Are there alternative respirator selection criteria that could replace the use of IDLH concentrations? Please describe fully such criteria and how they would be applied for respirator selection.

d. How would workplace safety and health programs be affected if NIOSH were to remove IDLH values as an element in the NIOSH Respirator Decision Logic? Please describe the effects in terms of changes in procedures, changes in policy, changes in the means for controlling inhalation exposure, and ultimately, effect on worker health. How would workplace safety and health programs be affected if NIOSH were to cease publishing or endorsing IDLH values?

2. Methods or Procedures That May Be Used to Establish an IDLH Value

During the SCP, IDLH values were determined for each substance on a case-by-case basis, using the toxicity data that were available at the time. Whenever possible, IDLH values were based on health effects data from studies of humans exposed for short durations. However, in most instances, a lack of human data necessitated the use of animal toxicity data. When available health effects data for a substance were limited to data from studies of animals exposed for short durations (e.g., 0.5 to 4 hours), the IDLH value was established as the lowest exposure that caused death or an irreversible health effect in any species. When only oral lethal dose (LD) data from animal research were available, the lowest LD data were used to calculate an equivalent exposure to a 70-kg worker breathing approximately 10 cubic meters of air.

This calculation was used as the IDLH value. Because chronic exposure data may have little relevance to acute effects, they were used in determining IDLH values only in conjunction with "competent toxicological judgement." In a number of instances when no animal or human research data were available to directly evaluate the acute toxicity of a substance, IDLH values were established based on the toxicity of chemically and physically analogous substances. In addition, in those instances where the procedures described above yielded a value above the lower explosive limit (LEL), the LEL was selected as the IDLH value.

NIOSH requests comments from interested parties on the following issues which are relevant to the determination of IDLH values. Responses to the questions will assist NIOSH in ascertaining the range of opinions and knowledge among environmental and occupational health stakeholders regarding these issues.

a. IDLH Definition

i. Should one definition of IDLH be used by all Federal agencies (e.g., NIOSH, OSHA, MSHA, and EPA) for all purposes to which the IDLH concept is applied (which may include more than respirator selection)? If so, what should this single definition be? If more than one definition is needed, describe the different definitions and their uses.

ii. Is an IDLH value based on a 30-minute exposure appropriate? If not, what exposure period should be used and why?

iii. What is an appropriate definition of an "irreversible" health effect?

b. Methods of Establishing IDLH Values

i. Are the methods used by the SCP, as stated earlier, optimal for establishing IDLH values? What other approaches could be used?

ii. What factors should be considered when extrapolating health effects from animals to humans? For example, what respiratory minute volumes should be used and what equivalency should be used (e.g., body weight or surface area)?

iii. What toxicological endpoints should be used to establish an IDLH value (e.g., cardiovascular effects, eye irritation, neurotoxicity)? How, if at all, should latent (i.e., long-term) effects such as carcinogenicity or reproductive effects be used?

iv. What short-term toxicity data are needed for setting IDLH values? What testing methods and protocols should be applied to obtain these data (e.g., pharmacokinetics, LC_{50}, LD_{50}, dermal toxicity)?

v. If lethal concentration or lethal dose data are used in determining IDLH values, what are the minimum data needed to set an IDLH value? How should the various types of lethal dose data (e.g., oral, intravenous) be used and how should uncertainty values be applied?

vi. IDLH values derived by the SCP for ten substances (e.g., n-pentane, propane, ethyl ether, and methyl acetylene) are equal to the lower explosive limit (LEL) for those compounds. If the LEL is less than the concentration that may impair escape or cause irreversible health effects, should the IDLH value equal the LEL or should the IDLH value be set solely on the basis of toxicological and health effects data without regard to the LEL? If the LEL is used to derive the IDLH value, as a safety factor, should the IDLH value be set so as not to exceed some percentage of the LEL (e.g., 10%, 25%)? If so, please explain the basis for the proportion of the LEL recommended.

vii. Should the IDLH value be calculated based on (1) the lowest exposure causing death, escape-impairing or irreversible health effects, or (2) the highest exposure not causing death, escape-impairing or irreversible health effects?

viii. Should the IDLH value be calculated as a fixed percentage (e.g., 10%) of a predetermined benchmark dose (e.g., LC_{50} or LC_{10})? What fixed percentage and benchmark dose should be used? If several different lethal dose determinations are reported in the literature, should the lowest of the published benchmark doses be used to establish the IDLH value?

ix. Should escape-impairing endpoints such as impaired visibility caused by dusts or mists, disorientation, and nausea be used to determine an IDLH value? If so, how should the IDLH value be set using these criteria (e.g., what dust concentration should be considered as causing impaired visibility)?

x. Should dermal exposure to mists, vapors, or gases be considered in developing an IDLH concentration? If so, how should this be factored into setting the IDLH value?

xi. How would animal toxicity data be used to identify the concentration at which an "irreversible" health effect occurs? An escape-impairing effect?

xii. If exposure in the workplace to more than one compound with an IDLH value is possible (e.g., NO and NO_2), should an additive or synergistic effect be considered? If so, how should this be determined?

Dated: November 19, 1993.

Diane D. Porter,

Acting Director, National Institute for Occupational Safety and Health, Centers for Disease Control and Prevention (CDC).

References

1. NIOSH/OSHA (1981). Occupational health guidelines for chemical hazards. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 81–123, NTIS Publication No. PB–83–154609.

2. NIOSH (1978). Standards completion program. U.S. Department of Health, Education, and Welfare, Public Health Service, Center for Disease Control, National Institute for Occupational Safety and Health. NTIS Publication No. PB 282–989.

3. NIOSH (1990). NIOSH pocket guide to chemical hazards. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 90–117, NTIS Publication No. PB–91–151183.

4. NIOSH (1987). NIOSH respirator decision logic. Cincinnati, OH: U.S. Department of Health and Human Services, Public Health Service, Centers for Disease Control, National Institute for Occupational Safety and Health, DHHS (NIOSH) Publication No. 87–108, NTIS Publication No. PB–87–108.

5. Alexeeff GV, Lipsett MJ, Kizer KW (1989). Problems associated with the use of immediately dangerous to life and health values for estimating the hazard of accidental chemical releases. Am Ind Hyg Assoc J 50(11):598–605.

The references cited in this announcement are available from the National Technical Information Service (NTIS), 5285 Port Royal Road, Springfield, VA 22161, (703) 487–4650.

[FR Doc. 93–29323 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–19–P

Food and Drug Administration

[Docket No. 92F–0447]

Enzyme Bio-Systems, Ltd.; Filing of Food Additive Petition

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Enzyme Bio-Systems, Ltd., has filed a petition proposing that the food additive regulations be amended to provide for the safe use of periodic acid and polyethyleneimine as fixing agents for immobilizing those enzymes that are generally recognized as safe or approved as food additives.

DATES: Written comments on petitioner's environmental assessment by January 3, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Andrew D. Laumbach, Center for Food Safety and Applied Nutrition (HFS–217), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9519.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (sec. 409(b)(5) (21 U.S.C. 348(b)(5))), notice is given that a petition (FAP 1A4288) has been filed by Enzyme Bio-Systems, Ltd., 2600 Kennedy Dr., Beloit, WI 53511. The petition proposes to amend the food additive regulations to provide for the safe use of periodic acid and polyethyleneimine as fixing agents for immobilizing those enzymes that are generally recognized as safe or approved as food additives.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets Management Branch (address above) for public review and comment. Interested persons may, on or before January 3, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 19, 1993.

Douglas L. Archer,

Deputy Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–29401 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 91F–0254]

Exxon Chemical Co.; Filing of Food Additive Petition; Amendment

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is amending the filing notice for a food additive petition filed by Exxon Chemical Co. to indicate that the petitioned additive, hydrogenated cyclodiene resins is also intended for use in a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food. The previous filing notice indicated that the additive was intended for use only in polypropylene films intended to contact food.

DATES: Written comments on the petitioner's environmental assessment by January 3, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: Julius Smith, Center for Food Safety and Applied Nutrition (HFS–216), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9500.

SUPPLEMENTARY INFORMATION: In a notice published in the **Federal Register** of August 1, 1991 (56 FR 36814), FDA announced that a petition (FAP 1B4267) had been filed by Exxon Chemical Co., P.O. Box 241, Baton Rouge, LA 70821. In the notice of filing, FDA announced that the petitioner had proposed that the food additive regulations be amended to provide for the safe use of hydrogenated cyclodiene resins for use as a component of polypropylene film intended to contact food.

Upon further review of the petition, the agency notes that the petitioner requested use of the additive for use in copolymers of propylene and ethylene containing not less than 94 weight percent propylene, in addition to its use in polypropylene films.

Therefore, FDA is amending the filing notice of August 1, 1991, to state that the petitioner requested the food additive regulations be amended to provide for the safe use of petroleum hydrocarbon resins (cyclopentadiene-type), hydrogenated, as a component of polypropylene or a copolymer of propylene and ethylene containing not less than 94 weight percent propylene for use in contact with food.

The potential environmental impact of this action is being reviewed. To encourage public participation consistent with regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4 (b)), the agency is placing the environmental assessment submitted with the petition that is the subject of this notice on public display at the Dockets

Management Branch (address above) for public review and comment. Interested persons may, on or before January 3, 1994, submit to the Dockets Management Branch (address above) written comments. Two copies of any comments are to be submitted, except that individuals may submit one copy. Comments are to be identified with the docket number found in brackets in the heading of this document. Received comments may be seen in the office above between 9 a.m. and 4 p.m., Monday through Friday. FDA will also place on public display any amendments to, or comments on, the petitioner's environmental assessment without further announcement in the **Federal Register**. If, based on its review, the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Dated: November 23, 1993.

Fred R. Shank,

Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–29458 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93G–0395]

Foreign Domestic Chemicals Corp.; Filing of Petition for Affirmation of GRAS Status

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is announcing that Foreign Domestic Chemicals Corp. has filed a petition (GRASP 3G0403) proposing to affirm that tara gum is generally recognized as safe (GRAS) as a direct human food ingredient.

DATES: Written comments by January 31, 1994.

ADDRESSES: Submit written comments to the Dockets Management Branch (HFA–305), Food and Drug Administration, rm. 1–23, 12420 Parklawn Dr., Rockville, MD 20857.

FOR FURTHER INFORMATION CONTACT: F. Owen Fields, Center for Food Safety and Applied Nutrition (HFS–207), Food and Drug Administration, 200 C St. SW., Washington, DC 20204, 202–254–9528.

SUPPLEMENTARY INFORMATION: Under the Federal Food, Drug, and Cosmetic Act (secs. 201(s) and 409 (21 U.S.C. 321(s) and 348)) and the regulations for affirmation of GRAS status in § 170.35 (21 CFR 170.35), notice is given that Foreign Domestic Chemicals Corp., 95 Chestnut Ridge Rd., Montvale, NJ 07645 (c/o Delta Analytical Corp.), has filed a petition (GRASP 3G0403) proposing that tara gum be affirmed as GRAS for use as a direct human food ingredient.

The petition has been placed on display at the Dockets Management Branch (address above).

Any petition that meets the requirements outlined in §§ 170.30 and 170.35 is filed by the agency. There is no prefiling review of the adequacy of data to support a GRAS conclusion. Thus, the filing of a petition for GRAS affirmation should not be interpreted as a preliminary indication of suitability for GRAS affirmation.

The potential environmental impact of this action is being reviewed. If the agency finds that an environmental impact statement is not required and this petition results in a regulation, the notice of availability of the agency's finding of no significant impact and the evidence supporting that finding will be published with the regulation in the **Federal Register** in accordance with 21 CFR 25.40(c).

Interested persons may, on or before January 31, 1994, review the petition and/or file comments with the Dockets Management Branch (address above). Two copies of any comments should be filed and should be identified with the docket number found in brackets in the heading of this document. Comments should include any available information that would be helpful in determining whether the substance is, or is not, GRAS for the proposed use. In addition, consistent with the regulations promulgated under the National Environmental Policy Act (40 CFR 1501.4(b)), the agency encourages public participation by review of and comment on the environmental assessment submitted with the petition that is the subject of this notice. A copy of the petition (including the environmental assessment) and received comments may be seen in the Dockets Management Branch between 9 a.m. and 4 p.m., Monday through Friday.

Dated: November 19, 1993.

Douglas L. Archer,

Acting Director, Center for Food Safety and Applied Nutrition.

[FR Doc. 93–29457 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

[Docket No. 93D–0394]

Public Workshop on Validation of Blood Establishment Computer Systems; Availability of Draft Guideline; Request for Comments; Correction

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice; correction.

SUMMARY: The Food and Drug Administration (FDA) is correcting a notice that appeared in the **Federal Register** of November 9, 1993 (58 FR 59488). The document announced a forthcoming 2-day workshop on validation of blood establishment computer systems and also announced the availability of a "Draft Guideline for the Validation of Blood Establishment Computer Systems." Comments were also requested. The document was published with an incorrect docket number. This document corrects that error.

FOR FURTHER INFORMATION CONTACT: Paula S. McKeever, Center for Biologics Evaluation and Research (HFM–635), Food and Drug Administration, 1401 Rockville Pike, Rockville, MD 20852–1448, 310–594–3074.

In FR Doc. 93–27510, appearing on page 59488 in the **Federal Register** of Tuesday, November 9, 1993, the following correction is made:

1. On page 59488, in the second column, in line 1, the docket number "93N–0394" is corrected to read "93D–0394".

Dated: November 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

[FR Doc. 93–29460 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

[FDA–225–93–7001]

Memorandum of Understanding Between the Food and Drug Administration and the University of Auburn on Pharmacokinetics and Drugs in Food-Producing and Other Animals

AGENCY: Food and Drug Administration, HHS.

ACTION: Notice.

SUMMARY: The Food and Drug Administration (FDA) is providing notice of a memorandum of understanding (MOU) between FDA and Auburn University (AU). The purpose of this MOU is to encourage cooperative research dealing with pharmacokinetics and the disposition of a variety of drugs

in food-producing and other animals. This MOU will assure that recognized expertise in the areas of pharmacokinetics and drug disposition in animals is made available to the Center for Veterinary Medicine, Office of Science, Division of Animal Research scientists.

DATES: The agreement became effective on September 8, 1993.

FOR FURTHER INFORMATION CONTACT: David D. Wagner, Center for Veterinary Medicine (HFV–520), Food and Drug Administration, 5600 Fishers Lane, Rockville, MD 20857, 301–504–8500.

SUPPLEMENTARY INFORMATION: In accordance with 21 CFR 20.108(c), which states that all written agreements and memoranda of understanding between FDA and others shall be published in the **Federal Register**, the agency is publishing notice of this memorandum of understanding.

Dated: November 24, 1993.

Michael R. Taylor,

Deputy Commissioner for Policy.

Memorandum of Understanding Between the Food and Drug Administration, Center for Veterinary Medicine, Office of Science, Division of Animal Research, Beltsville, MD 20705, and the Department of Pharmacal Sciences, School of Pharmacy, Auburn University, Auburn, AL 36849

I. Purpose

The Division of Animal Research (DAR) and Auburn University (AU) have agreed to conduct cooperative research dealing with the pharmacokinetics and the disposition of a variety of drugs in food-producing and other animals.

II. Background

At present, the Division of Animal Research, Office of Science, Beltsville lacks the expertise and sophisticated computer pharmacokinetic programs available to scientifically design and provide proper analysis of data originated from studies in the area of drug disposition in animals. This agreement is needed to assure that recognized expertise in that area is made available to DAR scientists.

III. Substance of the Agreement

A. *FDA–CVM–OSB Agrees to:*

Provide scientific personnel for the purpose of designing, conducting, supervising, and cooperating in experiments, studies, and programs.

B. *Auburn University Agrees to:*

Make available the expertise of Dr. W. R. Ravis to cooperate with all aspects of the intended studies from their inception to proper design, data analysis, and pharmacokinetic interpretation.

C. *It is Mutually Agreed:*

1. To review jointly the results of the program, on an annual basis, and to evaluate its accomplishments and progress. Appropriate changes can be instituted upon concurrence of both parties.
2. To confer on the nature of the experiments to be conducted.
3. That journal authorship will depend on the extent of the involvement of both parties.
4. This agreement is to describe in general terms the basis on which the parties will cooperate in experimental studies and programs and will not create binding enforceable financial obligations against either party. Each party will handle and expend its own funds in accordance with the appropriate departmental rules and regulations.
5. The responsibility of the cooperating parties are contingent upon funds being available from which expenditures may be legally made.
6. Upon termination, property contributions, if any, shall be returned to the contributing party unless the other party purchases the contributed property at current market value.

IV. Names and Addresses of Participating Parties

A. Food and Drug Administration, Center for Veterinary Medicine, Office of Science, Division of Animal Research, Beltsville, MD 20705.

B. Auburn University, School of Pharmacy, Department of Pharmacal Sciences, Auburn University, Auburn, AL 36849.

V. Liaison Officers

A. *Liaison Officer for AU:* Dr. William R. Ravis, Professor and Head, Department of Pharmacal Sciences, School of Pharmacy, Auburn University, Auburn, AL 36849–5501, Phone: 205–844–8337.

B. *Liaison Officer for FDA–CVM–OSB:* Dr. Waldir M. Pedersoli, Veterinary Research Pharmacologist, Division of Animal Research, BARC-East, Building 328–A, Phone: 301–504–8500.

VI. Period of Agreement

This agreement becomes effective upon acceptance by both parties and will continue in effect for three years. It may be revised by mutual written consent or terminated by either party upon a 30-day advance written notice to the other party.

Approved and Accepted for Auburn University
By: Thomas Riley
Title: Acting Dean, School of Pharmacy
Date: September 8, 1993

Approved and Accepted for the Food and Drug Administration
By: Richard H. Teske
Title: Acting Director, Center for Veterinary Medicine
Date: August 19, 1993

[FR Doc. 93–29459 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–01–F

Health Resources and Services Administration

United Network for Organ Sharing Allocation Principles

AGENCY: Health Resources and Services Administration, PHS.

ACTION: General notice—request for comments; public hearing.

SUMMARY: Notice is hereby given that the United Network for Organ Sharing (UNOS), a private organization that operates the Organ Procurement and Transplantation Network (OPTN) under contract with the Health Resources and Services Administration (HRSA), pursuant to section 372 of the Public Health Service (PHS) Act, has made available for public comment a working document describing basic principles of allocation, policy objectives, and performance measures for evaluating the organ allocation system. In addition, UNOS will hold a public hearing on January 24–25, 1994 at the Hotel Sofitel in Chicago for individuals and organizations who wish to present oral testimony to support their written comments regarding the working document. Because UNOS, as the PHS contractor under section 372, has certain responsibility affecting participants in the Medicare and Medicaid programs, HRSA has determined that it is in the public interest for this notice to be issued in order to enhance public awareness of the policies of UNOS and encourage public comment on these policies.

SUPPLEMENTARY INFORMATION: The OPTN is required to establish criteria for allocating organs for transplantation and to provide the public an opportunity to comment with respect to such criteria. Additionally, HRSA requires that the OPTN provide assistance to organ procurement organizations and transplant centers for the matching and allocation of donor organs equitably among transplant patients. The working document will be utilized by OPTN committees and the OPTN Board of Directors in evaluating allocation policies and procedures for possible revision.

Distribution of and Comments on the Working Document

Copies of the working document can be obtained by contacting Mr. Gene Pierce, Executive Director, UNOS, 1100 Boulders Parkway, Suite 500, Richmond, Virginia 23225; Telephone (804) 330–8504; Fax (804) 330–8517. Written comments regarding the document should be addressed to Douglas Norman, M.D., President,

UNOS, at the same address. A copy of the written comments should also be sent to Mrs. Judith B. Braslow, Director, Division of Organ Transplantation, 5600 Fishers Lane, room 11A–22, Rockville, Maryland 20857.

Public Hearing

Individuals and organizations who wish to present oral testimony regarding the working document at the public hearing on January 24–25, 1994 at the Hotel Sofitel in Chicago should indicate such in their written comments to Dr. Norman and Mrs. Braslow. Selected individuals will be asked to testify; however, all written comments submitted by the January 10 deadline will be included in the record.

DATES: To receive consideration, written comments regarding the working document should be mailed to the above UNOS address and must be received by UNOS no later than January 10, 1994.

Dated: November 24, 1993.

William A. Robinson,

Acting Administrator.

[FR Doc. 93–29400 Filed 11–30–93; 8:45 am]

BILLING CODE 4160–15–P

Public Health Service

National Toxicology Program; Availability of Technical Report on Toxicology and Carcinogenesis Studies of C.I. Pigment Red 23

The HHS' National Toxicology Program announces the availability of the NTP Technical Report on the toxicology and carcinogenesis studies of C.I. Pigment Red 23, used in coloring paints, printing inks, linoleum, and as a coloring agent for textile printing, rubber, plastics, alkyl resin enamels, lacquers, emulsion paints, and paper.

Two year toxicology and carcinogenesis studies were conducted by administering to male and female rats and mice doses of 0, 10,000, 25,000, or 50,000 ppm C.I. Pigment Red 23 in feed for 103 weeks.

Under the conditions of these 2-year feed studies, there was equivocal evidence of carcinogenic activity [1] of C.I. Pigment Red 23 in male F344 rats as evidenced by a marginally increased incidence of renal tubule cell neoplasms. There was no evidence of carcinogenic activity of C.I. Pigment Red 23 in female F344 rats fed diets containing 10,000, 25,000, or 50,000 ppm. Mononuclear cell leukemia occurred with a decreased incidence in male and female rats receiving C.I. Pigment Red 23. There was no evidence of carcinogenic activity of C.I. Pigment Red 23 in male and female B6C3F1 mice fed diets containing 10,000, 25,000, or 50,000 ppm.

The severity of kidney nephropathy was increased in exposed male rats. In mice, C.I. Pigment Red 23 caused an increase in hyperkeratosis and epithelial hyperplasia of the forestomach.

Questions or comments about the Technical Report should be directed to Central Data Management at P.O. Box 12233, Research Triangle Park, NC 27709 or telephone (919) 541–3419.

Copies of Toxicology and Carcinogenesis Studies of C.I. Pigment Red 23 in (CAS No. 6471–49–4) in F344 Rats and B6C3F1 Mice (Feed Studies) (TR–411) are available without charge from Central Data Management, NIEHS, MD A0–01, P.O. Box 12233, Research Triangle Park, NC 27709; telephone (919) 541–3419.

Dated: November 22, 1993.

Kenneth Olden,

Director, National Toxicology Program.

[FR Doc. 93–29317 Filed 11–30–93; 8:45 am]

BILLING CODE 4140–01–M

[1] The NTP uses five categories of evidence of carcinogenic activity observed in each animal study: Two categories for positive results ("clear evidence" and "some evidence"), one category for uncertain findings ("equivocal evidence"), one category for no observable effect ("no evidence"), and one category for studies that cannot be evaluated because of major flaws ("inadequate study").

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Secretary

[Docket No. D–93–1042; FR–3541–D–01]

Delegation of Authority for the Energency Low Income Housing Preservation Act of 1987, as Amended by the Low Income Housing Preservation and Resident Homeownership Act of 1990, and as Further Amended by the Housing and Community Development Act of 1992

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of delegation of authority.

SUMMARY: This notice delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing the Secretary's power and authority with respect to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*), subject to specified exceptions.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone (202) 708–300; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: In order to prevent the potential depletion of the nation's privately-owned low income housing stock through prepayment of HUD-insured or assisted mortgages, Congress enacted title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income Housing Preservation Act of 1987 ("ELIHPA"). ELIHPA established an incentive program governing the prepayment of mortgages and the cancellation of mortgage insurance contracts on eligible low income multifamily housing projects in cases where, but for ELIHPA, owners would be free to prepay the HUD-insured or assisted mortgages without the Department's approval.

In 1990, Congress enacted subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), and instituted a permanent, comprehensive preservation program. Its basic objectives are to assure that the "prepayment" inventory of assisted housing is preserved and remains affordable to low income households and to provide opportunities for tenants to become homeowners, while at the same time fairly compensating owners for the value of their properties.

LIHPRHA effectively repealed and replaced ELIHPA, except to the extent that LIHPRHA contained a transition provision permitting certain owners to elect to proceed under ELIHPA rather than LIHPRHA. Because of this transition provision, the Department of Housing and Urban Development (the "Department" or "HUD") is currently administering preservation programs for eligible low income housing under both LIHPRHA and ELIHPA.

This notice delegates all power and authority of the Secretary of Housing and Urban Development for ELIHPA

and LIHPRHA concurrently to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing, except for the power to sue and be sued.

The authority delegated to the Deputy Assistant Secretary for Multifamily Housing under this delegation does not include the power to issue or waive rules and regulations. Also, the Deputy Assistant Secretary for Multifamily Housing is not authorized to redelegate the power and authority delegated under this delegation. The Assistant Secretary for Housing-Federal Housing Commissioner may not redelegate to employees of the Department the power and authority to issue or waive rules and regulations.

Whenever a request to waive a regulatory provision relating to civil rights is being considered, the Assistant Secretary for Housing-Federal Housing Commissioner shall consult with the Assistant Secretary for Fair Housing and Equal Opportunity prior to issuing such a waiver.

The Secretary of Housing and Urban Development hereby delegates the following authority:

Section A. Authority Delegated

The Secretary of Housing and Urban Development delegates to the Assistant Secretary for Housing-Federal Housing Commissioner and the Deputy Assistant Secretary for Multifamily Housing all the power and authority of the Secretary with respect to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*), subject to specified exceptions.

Section B. Authority Excepted

The authority delegated to the Assistant Secretary for Housing-Federal Housing Commissioner under this delegation does not include the power and authority to sue and be sued. The authority delegated to the Deputy Assistant Secretary for Multifamily Housing under this delegation does not include the power to sue and be sued or the power to issue or waive rules and regulations.

Section C. Authority to Redelegate

The Assistant Secretary for Housing-Federal Housing Commissioner may redelegate to employees of the Department any of the power and authority delegated under this delegation, except the authority to issue or waive rules and regulations. The Deputy Assistant Secretary for Multifamily Housing is not authorized to redelegate the power and authority delegated under this delegation.

Section D. Consultation With the Assistant Secretary for Fair Housing and Equal Opportunity

Whenever a request to waive a regulatory provision relating to civil rights is being considered, the Assistant Secretary for Housing-Federal Housing Commissioner shall consult with the Assistant Secretary for Fair Housing and Equal Opportunity prior to issuing such a waiver.

Authority: Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), and as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 22, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–29420 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–32–P

[Docket No. D–93–1041; FR–3609–D–01]

Amendment of Delegation of Authority Designating HUD Officials to Act as Attesting Officers and Authorizing Officials to Cause the Departmental Seal To Be Affixed and to Authenticate Copies of Documents

AGENCY: Office of the Secretary, HUD.

ACTION: Notice of amendment of delegation of authority.

SUMMARY: This notice amends a delegation of authority designating officials of the Department of Housing and Urban Development to act as Attesting Officers and authorizing officials to cause the seal of the Department to be affixed to documents and certify that a copy of any book, paper, microfilm, or other document is a true copy to add the Associate General Counsel for Equal Opportunity and Administrative Law and the legal technicians assigned to the Fair Housing Division of the Office of Equal Opportunity and Administrative Law.

EFFECTIVE DATE: November 10, 1993.

FOR FURTHER INFORMATION CONTACT: Harry L. Carey, Assistant General Counsel for Fair Housing, Office of General Counsel, room 9238, 451 7th Street, SW., Washington, DC 20410, voice, (202) 708–0570. The telecommunications device for the deaf (TDD) number is (202) 708–9300. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: The delegation of authority published in the **Federal Register** on April 15, 1987 at 52 FR 12259 (Docket No. D–87–836; FR–2341) designating officials of the Department of Housing and Urban Development to act as Attesting Officers and authorizing officials to cause the seal of the Department to be affixed to documents and certify that a copy of any book, paper, microfilm, or other document is a true copy is being amended to add the Associate General Counsel for Equal Opportunity and Administrative Law and the legal technicians assigned to the Fair Housing Division of the Office of Equal Opportunity and Administrative Law.

Accordingly, the delegation of authority published in the **Federal Register** on April 15, 1987 at 52 FR 12259 (Docket No. D–87–836; FR–2341) is amended as follows:

Section A. Amendment of Delegation of Authority

Section A of the delegation of authority published on April 15, 1987 at 52 FR 12259 (Docket No. D–87–836; FR–2341) is amended to add the following:

19. Associate General Counsel for Equal Opportunity and Administrative Law.

20. Legal technicians assigned to the Fair Housing Division of the Office of Equal Opportunity and Administrative Law.

Authority: Sec. 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 10, 1993.

Henry G. Cisneros,

Secretary of Housing and Urban Development.

[FR Doc. 93–29419 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–32–P

Office of the Assistant Secretary for Housing-Federal Housing Commissioner

[Docket No. D–3–1043; FR–3542–01]

Redelegation of Authority for Approving Plans of Action Under the Emergency Low Income Housing Preservation Act of 1987 as Amended by the Low Income Housing Preservation and Resident Homeownership Act of 1990 and as Further Amended by the Housing and Community Development Act of 1992

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: This notice redelegates to Regional Administrators-Regional Housing Commissioners the authority of the Assistant Secretary for Housing-Federal Housing Commissioner to approve plans of action submitted by owners pursuant to 24 CFR part 248, which implements title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*). Regional Administrators-Regional Housing Commissioners may then, at their option, redelegate this authority to Field Office Managers, or in the case of combined regional and field offices, to Regional Directors of Housing.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW., Washington, DC 20410. Telephone (202) 708–2300; TDD (202) 708–4594. (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: ELIHPA and LIHPRHA require owners of eligible low income housing who intend to prepay the mortgage, terminate the mortgage insurance contract, accept incentives in exchange for extending the low income affordability restrictions, or transfer the project to a qualified purchaser, to submit a plan of action providing for such prepayment, termination, extension, or transfer. Section 225 of ELIHPA and sections 218, 222 and 226 of LIHPRHA provide the Secretary with the authority to approve plans of action subject to the criteria set forth therein. The authority to approve plans of action also includes the incidental authority to issue notice of deficiency letters, preliminary approval of plans of action, and final approval of plans of action.

Under a delegation of authority published elsewhere in today's **Federal Register**, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing-Federal Housing Commissioner all power and authority with respect to ELIHPA and LIHPRHA.

Through this Notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates the authority, as set forth in ELIHPA and LIHPRHA, to approve plans of action to Regional Administrators-Regional Housing Commissioners who, at their own option, may redelegate the authority to the Regional Directors of Housing and Field Office Managers.

Section A. Authority Redelegated

The Assistant Secretary for Housing-Federal Housing Commissioner redelegates to Regional Administrators-Regional Housing Commissioners the authority, as set forth in title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq*), to approve plans of action.

Section B. Authority Excepted

The authority redelegated to the Regional Administrators-Regional Housing Commissioners does not include the authority to issue final approval of plans of action prior to receipt of confirmation of assignment of subsidy funds, where such funds are part of the plan of action.

Section C. Authority to Redelegate

Regional Administrators-Regional Housing Commissioners may, at their own option, redelegate the authority in section A above to the Regional Directors of Housing and Field Office Managers.

Section D. Redelegations of Authority Revoked

The following redelegations of authority are revoked in their entirety:

1. D–91–954, FR–3077, appearing in the **Federal Register** on July 23, 1991 at 56 FR 1991.

2. D–91–960, appearing in the **Federal Register** on September 9, 1991, at 56 FR 46006.

3. D–92–979, appearing in the **Federal Register** on March 10, 1992, at 57 FR 8465.

Authority: Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d))

Dated: November 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner

[FR Doc. 93–29421 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–27–P

[Docket No. D–93–1044; FR–3543–D–01]

Redelegation of Authority With Respect to Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils Under the Emergency Low Income Housing Preservation Act of 1987, as Amended by the Low Income Housing Preservation and Resident Homeownership Act of 1990 and as Further Amended by the Housing and Community Development Act of 1992

AGENCY: Office of the Assistant Secretary for Housing-Federal Housing Commissioner, HUD.

ACTION: Notice of redelegation of authority.

SUMMARY: The Assistant Secretary for Housing-Federal Housing Commissioner redelegates to HUD Regional Housing Directors the authority to award technical assistance planning grants under title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by Subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community

Development Act of 1992 (12 U.S.C. 4141 *et seq.*), for projects being preserved under ELIHPA and LIHPRHA; to HUD Field Office Managers the authority to execute grant agreements under ELIHPA, as amended, for projects being preserved under ELIHPA and LIHPRHA; and to HUD Field Office Resident Initiatives Specialists the authority to approve grantees requests for the drawdown of grant funds under ELIHPA, as amended, for projects being preserved under ELIHPA and LIHPRHA.

EFFECTIVE DATE: November 22, 1993.

FOR FURTHER INFORMATION CONTACT: Kevin J. East, Office of Multifamily Housing Preservation and Property Disposition, Department of Housing and Urban Development, 451 7th Street, SW, Washington, DC 20410. Telephone (202) 708–2300; TDD (202) 708–4594. (These are not toll-free numbers).

SUPPLEMENTARY INFORMATION: ELIHPA, as amended, authorizes the Secretary to provide grants to tenants and community-based nonprofit organizations for education, training and capacity building in order to enable these groups to purchase and operate eligible low income housing under ELIHPA and LIHPRHA. A Notice of Fund Availability entitled "Low Income Housing: Technical Assistance Planning Grants for Resident Groups, Community Groups, Community-Based Nonprofit Organizations and Resident Councils" was published on September 3, 1992 at 57 FR 40570 ("1992 NOFA") which sets forth the criterion for receiving technical assistance grants as well as establishing the authorized uses for the grant funds.

Under a delegation of authority published elsewhere in today's **Federal Register**, the Secretary of Housing and Urban Development delegated to the Assistant Secretary for Housing-Federal Housing Commissioner all power and authority with respect to ELIHPA, as amended. Grant funds may only be awarded for projects which are being preserved under either ELIHPA or LIHPRHA and may only be used to assist resident groups, resident councils, community groups, and community-based nonprofit organizations to receive the education and technical assistance necessary to successfully purchase and operate eligible low income housing pursuant to ELIHPA and LIHPRHA.

Through this notice, the Assistant Secretary for Housing-Federal Housing Commissioner redelegates the authority to award technical assistance planning grants, execute grant agreements and approve the drawdown of grant funds.

Section A. Authority Redelegated

A. Each HUD Regional Housing Director is authorized to approve applications and award grants for technical assistance and planning pursuant to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), the Emergency Low Income and Housing Preservation Act of 1987 ("ELIHPA"), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), the Low Income Housing Preservation and Resident Homeownership Act of 1990 ("LIHPRHA"), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*).

B. Each HUD Field Office Manager is authorized to execute grant agreements for technical assistance grants awarded pursuant to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), ELIHPA, as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), LIHPRHA, as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*).

C. Each HUD Field Office Resident Initiatives Specialist is authorized to approve grantee requests for the drawdown of grant funds for technical assistance pursuant to title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), ELIHPA, as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), LIHPRHA, as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*).

Authority: Title II of the Housing and Community Development Act of 1987 (12 U.S.C. 1715*l* note), as amended by subtitle A of title VI of the Cranston-Gonzalez National Affordable Housing Act (12 U.S.C. 4101 *et seq.*), as further amended by title III of the Housing and Community Development Act of 1992 (12 U.S.C. 4141 *et seq.*); section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

Dated: November 22, 1993.

Nicolas P. Retsinas,

Assistant Secretary for Housing-Federal Housing Commissioner

[FR Doc. 93–29422 Filed 11–30–93; 8:45 am]

BILLING CODE 4210–27–P

DEPARTMENT OF THE INTERIOR

National Biological Survey; Establishment of Organization

AGENCY: National Biological Survey, Department of the Interior.

ACTION: Notification of establishment of the National Biological Survey.

SUMMARY: This notice is issued in accordance with the provisions of 5 U.S.C. 552(a)(1). The Secretary of the Interior has issued an order establishing a new organizational unit, the National Biological Survey. The order making this organization change is published in its entirety below. While the order was signed on September 29, 1993, it was effective upon enactment of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1994. This legislation, Public Law 103–138, was signed on November 11, 1993.

ADDRESSES: National Biological Survey, Department of the Interior, 1849 C St., NW., Washington, DC 20240.

FOR FURTHER INFORMATION CONTACT: F. Eugene Hester, Deputy Director, National Biological Survey, Department of the Interior, telephone 202–208–3733.

Dated: November 23, 1993.

F. Eugene Hester,

Deputy Director, National Biological Survey.

Order No. 3173

Subject: Establishment of the National Biological Survey

Sec. 1 *Purpose.* The purpose of this Order is to establish the National Biological Survey under the supervision of the Assistant Secretary for Fish and Wildlife and Parks: The mission of the National Biological Survey is to gather, analyze, and disseminate the biological information necessary for the sound stewardship of our Nation's natural resources and to foster understanding of biological systems and the benefits they provide to society. To accomplish this mission, the National Biological Survey will (1) perform research in support of biological resource management; (2) inventory, monitor, and report on the status and trends in the Nation's biotic resources; and (3) develop the ability and resources to transfer the information gained in research and monitoring to resource managers and to others concerned with the care, use, and conservation of the Nation's resources. This Order supersedes Order No. 3165, Organizational Preparations for the Creation of the National Biological Survey, issued on May 17, 1993.

Sec. 2 *Authority.* This Order issued in accordance with the authority provided by Sections 2 and 5 of Reorganization Plan No. 3 of 1950 (64 Stat. 1262: 5 U.S.C App.)

Sec. 3 *Establishment and Transfer of Functions.* The National Biological Survey (NBS) is hereby established. Functions necessary to perform the mission of NBS are

transferred to the NBS from the U.S. Fish and Wildlife Service, National Park Service, Bureau of Land Management, Minerals Management Service, Office of Surface Mining Reclamation and Enforcement, U.S. Geological Survey, and Bureau of Reclamation.

Sec. 4 *Organization.* The Director of the NBS shall be under the supervision of the Assistant Secretary for Fish and Wildlife and Parks. The NBS shall consist of the following functional components:

a. The Office of the Director, with a Deputy Director and an Executive Secretary to a Science Board and a Policy Board.

b. The Office of External Affairs, with Divisions of Congressional Affairs, Public Affairs, and International Affairs, and a Controlled Correspondence Staff.

c. The Office of the Assistant Director for Budget and Administration, with an Office of Equal Opportunity Programs; Divisions of Personnel Management, Management Assistance, Budget, Finance, and Procurement; and a Safety Staff.

d. The Office of the Assistant Director for Research, with Divisions of Cooperative Research, Species Biology, Population Dynamics, and Ecosystems Research.

e. The Office of the Assistant Director for Information and Technology Services, with Divisions of Information Management, and Information and Technology Transfer.

f. The Office of the Assistant Director for Inventory and Monitoring, with Divisions of Ecosystem Inventory and Assessment; Population Inventory and Monitoring; and Inventory, Standards and Protocol Development.

g. Western, Mid-Continent, Southern and Eastern Ecoregions, each to be directed by a Regional Director reporting to the Office of the Director.

h. Cooperative Research Units reporting to the Division of Cooperative Research within the Office of the Assistant Director for Research.

i. Research Centers reporting to a Regional Director.

j. Other headquarters components and field units to be established by the Director.

Sec. 5 *Delegations.* The Director of the NBS is delegated, through the Assistant Secretary for Fish and Wildlife and Parks, the administrative and program management authority necessary to implement the mission of the NBS. This delegation is subject to the limitations contained in Part 200 of the Departmental Manual.

Sec. 6 *Administrative Provisions.* The Assistant Secretary—Policy, Management and Budget will take appropriate steps to transfer the personnel, funds and property necessary to implement this Order. The Director of the NBS will enter into any necessary agreements with other bureaus and offices of the Department of the Interior for the provision of any administrative support functions which the NBS will not provide within its own organization.

Sec. 7 *Effective Date.* This Order is effective upon establishment of budget authority for the National Biological Survey, either through enactment of the Department of the Interior and Related Agencies Appropriations Act for Fiscal Year 1994 or an appropriate Continuing Resolution, but not before October 1, 1993. This Order will remain in effect until its provisions are converted to the Departmental Manual or until it is amended, superseded or revoked, whichever comes first. In the absence of the foregoing actions, the provisions of this Order will terminate and be considered obsolete on October 1, 1994.

Dated: September 29, 1993.

Bruce Babbitt,

Secretary of the Interior.

[FR Doc. 93–29372 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–RK–M

Bureau of Land Management

[CA–066–4331–13]

Closure and Restrictions on Public Land; Riverside County, CA

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of closure and restrictions on public land for the protection of historic resources.

SUMMARY: The purpose of this notice is to establish a supplemental rule to protect historic resources found within divisional camps of the former Desert Training Center and to protect visitors to the camps. For the purposes of this supplemental rule, historic resources include any structure, artifact, or remains associated or included within the camps of the Desert Training Center. The area described in this notice is closed to the removal and collection of any historic artifacts in the entire area and to the discharge of firearms within a specified distance of the camps, except for the lawful taking of game. Therefore, no person shall remove, collect, transport or possess any historic artifact from public lands administered by the Bureau of Land Management located within Camp Young, Camp Coxcomb, Camp Rice, and Camp Granite in Riverside County and Camp Iron Mountain, Camp Clipper and Camp Ibis in San Bernardino County, except by permit issued by the BLM.

The discharge of firearms will be prohibited in and within a radius of ½ mile of these camps, except in the lawful taking of game.

The legal description of the closure is as follows:

San Bernardino Meridian, California

Camp Rice

T. 1S., R. 21E.
Secs. 20–23

Camp Young

T. 6S., R. 11E.
Secs. 2, 12, 14
T. 6S., R. 12E.
Secs. 6, 8

Camp Coxcomb

T. 2S., R. 16E.
Sec. 35
T. 3S., R. 16E.
Secs. 1, 2, 10–15, 22, 25–27

Camp Granite

T. 1S., R. 17E.
Sec. 25
T. 1S., R. 18E.
Secs. 29–32

Camp Iron Mt.

T. 1S., R. 17E.
Secs. 1, 11–14
T. 1S., R. 18E.
Secs. 6, 7

Camp Clipper

T. 8N., R. 16E.
Secs. 2, 11–14, 23

Camp Ibis

T. 10N., R. 20E.
Sec. 24
T. 10N., R. 21E.
Secs. 7, 8, 18–20
T. 11N., R. 20E.
Secs. 32, 33

A map of the area described above may be viewed in the Needles or Palm Springs Resource Area offices. This closure is necessary to protect historic resources within the above listed camps.

EFFECTIVE DATE: This clause is effective December 1, 1993, and shall remain in effect until rescinding by the authorized officer.

FOR FURTHER INFORMATION CONTACT:

Mike Mitchell, Archaeologist, Palm Springs-South Coast Resource Area, 63–500 Garnet Ave., North Palm Springs, CA 92258–2000, (619) 251–0812.

SUPPLEMENTARY INFORMATION: Authority for this Closure and Restriction Order may be found in 43 CFR 8365.1–6. Violation of this closure is punishable by a fine not to exceed $1,000 and/or imprisonment not to exceed 12 months. Resource monitoring over the last several years has shown that historic artifact collection has impacted the integrity of the above named camps. Also, because of increased visitation, indiscriminate shooting has endangered the public in the above listed camps. Individuals duly licensed and hunting for game in accordance with State regulations and hunting rules are exempt from this Closure Order.

Dated: November 19, 1993.

Al Wright,

Acting State Director.

[FR Doc. 93–29380 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–40–M

[NV-930-4210-05; N-29959 and N-58055]

Termination of Recreation and Public Purposes Classification and Transfer of Land to Goshute Indian Reservation; Nevada

November 19, 1993.

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: Recreation and Public Purposes (R&PP) Classification N-29959 is terminated and pursuant to section 3(c) of Public Law 103-93 certain public land in Nevada is declared to be part of the Goshute Indian Reservation.

EFFECTIVE DATE: October 1, 1993.

FOR FURTHER INFORMATION CONTACT: Vienna Wolder, BLM Nevada State Office, P.O. Box 12000, Reno, Nevada 89520, telephone 702-785-6526.

SUPPLEMENTARY INFORMATION: R&PP Classification N-29959 which affects the following described land is hereby terminated in its entirety:

Mount Diablo Meridian

T. 30 N., R. 69 E.,
Sec. 34, lots 5, 6, 7, 9, 11 and 14.

The area described contains 16.12 acres in Elko County. The classification was established in order to lease the land to the State of Nevada Department of Transportation for the Ferguson Springs Maintenance Station. The lease expired on September 2, 1990.

Further, section 3(c) of Public Law 103-93, dated October 1, 1993, and cited as the "Utah Schools and Lands Improvement Act of 1993", an Act to provide for the exchange of certain lands within the State of Utah, and for other purposes, (Act) declared the above described land, together with all improvements thereon, to be part of the Goshute Indian Reservation in Nevada and to be held in trust for the Goshute Indian Tribe.

The Act states there are five acres in the above described land; however, the Bureau of Land Management's Nevada State Office official survey plat indicates there are 16.12 acres in the parcel.

By virtue of the fact the land is now part of an Indian reservation, the land is segregated from all forms of appropriation and entry under the public land laws, including the mining laws, the mineral leasing laws, and the Materials Sale Act of 1947.

Billy R. Templeton,

State Director, Nevada.

[FR Doc. 93-29383 Filed 11-30-93; 8:45 am]

BILLING CODE 4310-HC-M

[NM-920-4210-06-NMNM 0557261]

Proposed Continuation of Withdrawal; New Mexico

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice.

SUMMARY: The United States Forest Service proposes that a 644.53-acre withdrawal for La Cueva Recreation Site Expansion and Sandia Crest Tramway Recreation Site continue for an additional 20 years. The lands will remain closed to mining, but have been and will remain open to surface entry and mineral leasing.

DATES: Comments should be received by March 1, 1994.

ADDRESSES: Comments should be sent to State Director, BLM New Mexico State Office, P.O. Box 27115, Santa Fe, New Mexico 87502-0115, 505-438-7501.

FOR FURTHER INFORMATION CONTACT: Georgiana E. Armijo, BLM New Mexico State Office, 505-438-7594.

SUPPLEMENTARY INFORMATION: The Forest Service proposes that the existing land withdrawal made by Public Land Order No. 3874 be continued for a period of 20 years pursuant to section 204 of the Federal Land Policy and Management Act of 1976, 43 U.S.C. 1714 (1988).

The lands are described as follows:

New Mexico Principal Meridian

Cibola National Forest

T. 11 N., R. 4 E.,
Sec. 2, lots 7 and 8, N½SW¼, S½SW¼SW¼, W½W½SW¼SE¼SW¼, and E½SE¼SE¼SE¼;
Sec. 3, lots 7, 8 and E½SE¼;
Sec. 10, lots 11 and 12;
Sec. 11, lots 12 to 14, inclusive, E½E½NE¼NE¼, W½W½NE¼NE¼, NW¼NW¼, and SE¼NE¼.
Sec. 12, less HES 268, that portion of the S½ lying outside the Sandia Mountain Wilderness Area (unsurveyed).

The areas described aggregate 644.53 acres in Bernalillo County.

The purpose of the withdrawal is to protect La Cueva Recreation Site Expansion and Sandia Crest Tramway Recreation Site. The withdrawal segregates the lands from location and entry under the mining laws, but not the public land laws or the mineral leasing laws. No change is proposed in the purpose or segregative effect of the withdrawal.

For a period of 90 days from the date of publication of this notice, all persons who wish to submit comments in connection with the proposed withdrawal continuation may present their views in writing to the Chief, Branch of Lands and Realty, in the New Mexico State Office.

The authorized officer of the Bureau of Land Management will undertake such investigations as are necessary to determine the existing and potential demand for the land and its resources. A report will also be prepared for consideration by the Secretary of the Interior, the President, and the Congress, who will determine whether or not the withdrawal will be continued and, if so, for how long. The final determination on the continuation of the withdrawal will be published in the **Federal Register**. The existing withdrawal will continue until such final determination is made.

Dated: November 19, 1993.

Gilbert J. Lucero,

Acting State Director.

[FR Doc. 93-29382 Filed 11-30-93; 8:45 am]

BILLING CODE 4310-FB-M

[CO-920-93-4120-03; COC-0125366]

Colorado; Availability of the Record of Decision for the Coal Preference Right Lease Application C-0125366

ACTION: Pursuant to the regulations at 43 CFR 3430.5-1 and 40 CFR 1505.2, the Bureau of Land Management (BLM) has prepared a Record of Decision (decision) for coal preference right lease application (PRLA) C-0125366. Copies of the decision are now available to the public.

SUMMARY: A Record of Decision for coal PRLA C-0125366 has been prepared documenting BLM's decision to reject the application. BLM's decision is based on a determination that the Final Showing submitted by the applicants, R.W. Chapman and P.E. Riebold, failed to demonstrate that commercial quantities of coal were discovered on the PRLA within the terms of the Prospecting Permit.

Persons or organizations wishing to obtain copies of the decision may contact the Bureau of Land Management at the address below.

DATES: Copies of the decision are available as of December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Copies of the decision are available on request from the Colorado State Office (CO-923), Bureau of Land Management, 2850 Youngfield Street, Lakewood, Colorado 80215, or by calling Donna Kronauge at (303) 239-3757.

SUPPLEMENTARY INFORMATION: The lease application was originally filed in August 1969. An Initial Showing for the application was accepted as complete in December 1980. As a result of BLM

policies based on the amended court order in the case of *Natural Resources Defense Council* v. *Berklund*, BLM prepared an Environmental Impact Statement (EIS) in cooperation with the Office of Surface Mining Reclamation and Enforcement (OSM). The EIS was filed with EPA in January 1989. A Final Showing was requested of the applicants late in 1989 and filed in February 1990. This decisions reflects the results of BLM's analysis of the Final Showing.

Dated: October 31, 1993.

Bob Moore,

State Director.

[FR Doc. 93–29335 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–JB–M

[NV–930–4210–05; N–57599]

Reality Action: Lease/Purchase for Recreation and Public Purposes

AGENCY: Bureau of Land Management.

ACTION: Recreation and public purpose lease/purchase.

SUMMARY: The following described public land in Las Vegas, Clark County, Nevada has been examined and found suitable for lease/purchase for recreational or public purposes under the provisions of the Recreation and Public Purposes Act, as amended (43 U.S.C. 869 *et seq.*). The Calvary Chapel Spring Valley proposes to use the land for church facilities.

Mount Diablo Meridian, Nevada

T. 21 S., R. 60 E., M.D.M.
Sec. 34: SE¼NE¼SW¼NE¼,
SW¼NW¼SE¼NE¼,
NW¼NW¼SE¼NE¼,
NE¼NW¼SE¼NE¼.

Containing 10.00 acres, more or less.

The land is not required for any federal purpose. The lease/purchase is consistent with current Bureau planning for this area and would be in the public interest. The lease/patent, when issued, will be subject to the provisions of the Recreation and Public Purposes Act and applicable regulations of the Secretary of the Interior, and will contain the following reservations to the United States:

1. A right-of-way thereon for ditches or canals constructed by the authority of the United States, Act of August 30, 1890 (43 U.S.C. 945).

2. All minerals shall be reserved to the United States, together with the right to prospect for, mine and remove such deposits from the same under applicable law and such regulations as the Secretary of the Interior may prescribe.

And will be subject to:

1. An easement 30.00 feet in width along the south boundary with a 15.00 foot radius spandrel at the southwest corner of the SE¼NW¼SE¼NE¼, and a 15.00 foot radius spandrel at the southwest corner of the SW¼NE¼SW¼NE¼, in favor of Clark County for roads, public utilities and flood control purposes.

2. An easement 30.00 feet in width along the north and west boundaries of the NW¼NW¼SE¼NE¼, in favor of Clark County for roads, public utilities and flood control purposes.

3. Those rights for a road, public utilities and flood control purposes which have been granted to Clark County by Permit No. N–55022 the under the Act of October 21, 1976 (43 U.S.C. 1761).

Detailed information concerning this action is available for review at the office of the Bureau of Land Management, Las Vegas District, 4765 W. Vegas Drive, Las Vegas, Nevada.

Upon publication of this notice in the **Federal Register,** the above described land will be segregated from all other forms of appropriation under the public land laws, including the general mining laws, except for lease/purchase under the Recreation and Public Purposes Act, leasing under the mineral leasing laws and disposals under the mineral disposal laws.

For a period of 45 days from the date of publication of this notice in the **Federal Register,** interested parties may submit comments to the District Manager, Las Vegas District, P.O. Box 26569, Las Vegas, Nevada 89126. Any adverse comments will be reviewed by the State Director.

In the absence of any adverse comments, the classification of the land described in this Notice will become effective 60 days from the date of publication in the **Federal Register**. The lands will not be offered for lease/purchase until after the classification becomes effective.

Dated: November 19, 1993.

Gary Ryan,

District Manager, Las Vegas, NV.

[FR Doc. 93–29347 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–HC–M

National Park Service

Draft Environmental Impact Statement and General Management Plan/ Development Concept Plan, Bent's Old Fort National Historic Site, Colorado

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of draft environmental impact statement and general management plan/development concept plan for Bent's Old Fort National Historic Site.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a draft Environmental Impact Statement and General Management Plan/ Development Concept Plan (DEIS/GMP/ DCP) for Bent's Old Fort National Historic Site, Colorado.

DATES: The DEIS/GMP/DCP will remain available for public review through February 11, 1994.

ADDRESSES: Comments on the DEIS/ GMP/DCP should be sent to the Superintendent, Bent's Old Fort National Historic Site, 35110 Highway 194 East, La Junta, Colorado 81050–9523. Public reading copies of the DEIS/ GMP/DCP will be available for review at the following locations:

Office of the Superintendent, Bent's Old Fort National Historic Site, 35110 Highway 194 East, LaJunta, Colorado 81050–9523, Telephone: (719) 384–2596.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969–2828.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW, Washington, DC 20240, Telephone: (202) 208–6843.

SUPPLEMENTARY INFORMATION: The DEIS/ GMP/DCP analyzes three alternatives, including no action, alternative one, and the proposal to direct the management and development of Bent's Old Fort for a period of 10 to 15 years. The alternatives address issues currently facing the park, including visitor use, resource management, and operational functions. The no-action alternative would continue current management practices and resource and interpretive programs. Alternative one would expand the scope of the interpretive program, creating a self-service, self-interpretation oriented visitor experience. It would maintain the historic character of the site and improve overall operational and administrative working environments, while limiting physical development to small additions of space and renovation of existing spaces. The proposal would expand the scope of the interpretive program, create an interactive interpretive atmosphere through implementation of a visitor center, maintain the historic character of the site, and improve overall operational and administrative working

environments by adding appropriate facilities.

The DEIS/GMP/DCP in particular evaluates the environmental consequences of the proposed action and the other alternatives on geology/soils, vegetation, prime and unique farmlands, wildlife, threatened and endangered species, water resources/quality, floodplains and wetlands, air quality, noise quality, cultural resources, visitor use, and socioeconomic resources/surrounding land uses.

FOR FURTHER INFORMATION CONTACT: Superintendent, Bent's Old Fort National Historic Site, at the above address and telephone number.

Dated: November 15, 1993.

Ronald E. Everhart,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93-29453 Filed 11-30-93; 8:45 am]

BILLING CODE 4310-70-P

Final Environmental Impact Statement/General Management Plan/Development Concept Plan, Timpanogos Cave National Monument, Utah

AGENCY: National Park Service, Department of the Interior.

ACTION: Availability of Final Environmental Impact Statement/General Management Plan/Development Concept Plan for Timpanogos Cave National Monument.

SUMMARY: Pursuant to section 102(2)(c) of the National Environmental Policy Act of 1969, the National Park Service (NPS) announces the availability of a Final Environmental Impact Statement/General Management Plan/Development Concept Plan (FEIS/GMP/DCP) for Timpanogos National Monument, Utah.

DATES: A 30-day no-action period will follow the Environmental Protection Agency's notice of availability of the FEIS/GMP/DCP.

ADDRESSES: Public reading copies of the FEIS/GMP/DCP will be available for review at the following locations:

Office of the Superintendent, Timpanogos Cave National Monument, R.R. 3, P.O. Box 200, American Fork, UT 84003-9803, Telephone: (801) 756-5238.

Division of Planning and Compliance, Rocky Mountain Regional Office, National Park Service, 12795 W. Alameda Parkway, Lakewood, CO 80225, Telephone: (303) 969-2828.

Office of Public Affairs, National Park Service, Department of Interior, 18th and C Streets NW., Washington, DC 20240, Telephone: (202) 208-6843.

SUPPLEMENTARY INFORMATION: In February 1993, the National Park Service released for a 60-day public review a Draft Environmental Impact Statement/General Management Plan/Development Concept Plan (DEIS/GMP/DCP) that evaluated five alternatives for the future management, use, and development of Timpanogos Cave National Monument. These alternatives were designed to resolve existing issues while considering the management objectives as presented in the monument's Statement for Management.

The alternatives represented a diverse range of options including: (1) Proposed Plan—Maintain a full range of visitor and administrative services and facilities but relocate the majority of them outside the monument and implement a visitor transportation system, (2) Alternative A—Maintain a full range of visitor and administrative services but confine all development proposals to the area within the monument, (3) Alternative B (Minimum Action)—Limit development to the minimum essential for accommodating visitors to the cave and meeting administrative needs, (4) Alternative C (Mothball/Caretaker)—Until adequate funding becomes available to move facilities outside the monument, vacate and secure access to all structures and permit access to the cave only for qualified research purposes. Another local, Federal, or State agency would be responsible for overseeing the area under a memorandum of agreement, and (5) Alternative D (no action)—Under this alternative, existing facilities and management actions would remain unchanged.

The DEIS/GMP/DCP in particular evaluated the environmental consequences of the proposed action and the other alternatives on water resources, floodplains, wetlands, geology, soils, vegetation, wildlife, threatened and endangered species, air quality, archeological, historical and ethnographic resources, visitor use, socioeconomic data, other agencies, management and operations, and cumulative impacts. The environmental consequences of the proposed action and alternatives considered are fully disclosed in the FEIS/GMP/DCP. Also included are the results of the public involvement and consultation and coordination for this project.

FOR FURTHER INFORMATION CONTACT: Superintendent, Timpanogos Cave National Monument, at the above address and telephone number.

Dated: October 19, 1993.

Michael D. Snyder,

Acting Regional Director, Rocky Mountain Region, National Park Service.

[FR Doc. 93-29454 Filed 11-30-93; 8:45 am]

BILLING CODE 4310-70-P

INTERNATIONAL TRADE COMMISSION

[Investigation No. 337-TA-347]

Certain Anti-Theft Deactivatable Resonant Tags and Components Thereof; Commission Determination To Apply a Modified Procedure for Considering the Presiding Administrative Law Judge's Final Initial Determination and for Deciding Whether There is a Violation of Section 337 of the Tariff Act of 1930

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined, pursuant to rule 201.4(b), to waive in part the interim rules normally applicable to consideration by the Commission of the final initial determination (ID) issued by the presiding administrative law judge (ALJ), and to follow instead a modified procedure for considering the ALJ's final ID in the above-captioned investigation and for deciding whether there is a violation of section 337 of the Tariff Act of 1930.

FOR FURTHER INFORMATION CONTACT: Andrea C. Casson, Esq., Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202-205-3105.

SUPPLEMENTARY INFORMATION: On or before December 10, 1993, the ALJ will issue a final ID in this investigation. Ordinarily, final IDs are processed in accordance with the deadlines set forth in Commission interim rules 210.53-.56. In this investigation, however, the Commission has determined to waive in part the application of those interim rules and instead to apply a revised procedure. The revised procedure is similar, but not identical, to the procedure set forth in proposed final rule 210.46(a), published in the **Federal Register** on November 5, 1992 (57 FR 52830, 52883). The interim rules are waived for this investigation to the extent that they conflict with the procedure set forth below.

Commission rule 201.4(b) provides for waiver of rules when in the judgment of the Commission there is good and

sufficient reason therefor. The Commission believes these criteria are met here. As noted in the explanatory notes to the proposed final rules (57 FR at 52847), the Commission has proposed an amended and streamlined procedure for review of final IDs. In order to assess the effectiveness of the amended procedure, the Commission has determined to apply a similar procedure in several section 337 investigations, including this one.

Accordingly, consideration of the ALJ's final ID in this investigation will be according to the following procedure:

1. Petitions for review must be filed within 15 days after issuance of the ID.[1]

2. Responses to the petitions for review must be filed within 25 days after issuance of the ID.

3. Reply submissions must be filed within 30 days after issuance of the ID.

4. Approximately 43 days after issuance of the ID, the Commission may issue a notice requesting written submissions from the parties, other federal agencies, and interested members of the public on the issues of remedy, the public interest, and bonding by the respondents. The notice also may require the parties to file supplemental briefs on violation issues selected by the Commission. The notice will set deadlines for the submission of any such written submissions or briefs.

5. The Commission will issue an order and a **Federal Register** notice on or before March 10, 1994 (the statutory deadline for completion of the investigation) announcing the Commission's decisions on violation of section 337, and, if necessary, on remedy, the public interest, and bonding.

This action is taken under the authority of section 337 of the Tariff Act of 1930, as amended (19 U.S.C. 1337, 19 U.S.C. 1335), and § 201.4(b) of the Commission's Rules of Practice and Procedure (19 CFR 201.4(b)). Hearing-impaired persons are advised that information on the matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 22, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29436 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[1] Computation of all time periods set forth in this notice shall be in accordance with rule 201.14 (19 CFR § 201.14).

[Investigation No. 731–TA–650 (Final)]

Nitromethane From the People's Republic of China

AGENCY: United States International Trade Commission.

ACTION: Institution and scheduling of a final antidumping investigation.

SUMMARY: The Commission hereby gives notice of the institution of final antidumping investigation No. 731–TA–650 (Final) under section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act) to determine whether an industry in the United States is materially injured, or is threatened with material injury, or the establishment of an industry in the United States is materially retarded, by reason of imports from The People's Republic of China ("China") of nitromethane as provided for in subheading 2904.20.50 of the Harmonized Tariff Schedule of the United States.

For further information concerning the conduct of this investigation, hearing procedures, and rules of general application, consult the Commission's Rules of Practice and Procedure, part 201, subparts A through E (19 CFR part 201), and part 207, subparts A and C (19 CFR part 207).

EFFECTIVE DATE: November 4, 1993.

FOR FURTHER INFORMATION CONTACT: James Terpstra (202–205–3199) or Robert Carpenter (202–205–3172), Office of Investigations, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436. Hearing-impaired persons can obtain information on this matter by contacting the Commission's TDD terminal on 202–205–1810. Persons with mobility impairments who will need special assistance in gaining access to the Commission should contact the Office of the Secretary at 202–205–2000.

SUPPLEMENTARY INFORMATION:

Background

This investigation is being instituted as a result of an affirmative preliminary determination by the Department of Commerce that imports of nitromethane from China are being sold in the United States at less than fair value within the meaning of section 733 of the Act (19 U.S.C. 1673b). The investigation was requested in a petition filed on May 24, 1993, by ANGUS Chemical Co., Buffalo Grove, IL.

Participation in the Investigation and Public Service List

Persons wishing to participate in the investigation as parties must file an entry of appearance with the Secretary to the Commission, as provided in section 201.11 of the Commission's rules, not later than twenty-one (21) days after publication of this notice in the **Federal Register**. The Secretary will prepare a public service list containing the names and addresses of all persons, or their representatives, who are parties to this investigation upon the expiration of the period for filing entries of appearance.

Limited Disclosure of Business Proprietary Information (BPI) Under an Administrative Protective Order (APO) and BPI Service List

Pursuant to section 207.7(a) of the Commission's rules, the Secretary will make BPI gathered in this final investigation available to authorized applicants under the APO issued in the investigation, provided that the application is made not later than twenty-one (21) days after the publication of this notice in the **Federal Register**. A separate service list will be maintained by the Secretary for those parties authorized to receive BPI under the APO.

Staff Report

The prehearing staff report in this investigation will be placed in the nonpublic record on March 15, 1994, and a public version will be issued thereafter, pursuant to § 207.21 of the Commission's rules.

Hearing

The Commission will hold a hearing in connection with this investigation beginning at 9:30 a.m. on March 29, 1994, at the U.S. International Trade Commission Building. Requests to appear at the hearing should be filed in writing with the Secretary to the Commission on or before March 17, 1994. A nonparty who has testimony that may aid the Commission's deliberations may request permission to present a short statement at the hearing. All parties and nonparties desiring to appear at the hearing and make oral presentations should attend a prehearing conference to be held at 9:30 a.m. on March 22, 1994, at the U.S. International Trade Commission Building. Oral testimony and written materials to be submitted at the public hearing are governed by §§ 201.6(b)(2), 201.13(f), and 207.23(b) of the Commission's rules. Parties are strongly encouraged to submit as early in the investigation as possible any requests to present a portion of their hearing testimony in camera.

Written Submissions

Each party is encouraged to submit a prehearing brief to the Commission. Prehearing briefs must conform with the provisions of § 207.22 of the Commission's rules; the deadline for filing is March 22, 1994. Parties may also file written testimony in connection with their presentation at the hearing, as provided in § 207.23(b) of the Commission's rules, and posthearing briefs, which must conform with the provisions of § 207.24 of the Commission's rules. The deadline for filing posthearing briefs is April 6, 1994; witness testimony must be filed no later than three (3) days before the hearing. In addition, any person who has not entered an appearance as a party to the investigation may submit a written statement of information pertinent to the subject of the investigation on or before April 6, 1994. All written submissions must conform with the provisions of § 201.8 of the Commission's rules; any submissions that contain BPI must also conform with the requirements of §§ 201.6, 207.3, and 207.7 of the Commission's rules.

In accordance with §§ 201.16(c) and 207.3 of the rules, each document filed by a party to the investigation must be served on all other parties to the investigation (as identified by either the public or BPI service list), and a certificate of service must be timely filed. The Secretary will not accept a document for filing without a certificate of service.

Authority: This investigation is being conducted under authority of the Tariff Act of 1930, title VII. This notice is published pursuant to § 207.20 of the Commission's rules.

Issued: November 24, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary

[FR Doc. 93–29437 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–361]

Certain Portable On-Car Disc Brake Lathes and Components Thereof; Investigation

AGENCY: U.S. International Trade Commission.

ACTION: Institution of investigation pursuant to 19 U.S.C. 1337.

SUMMARY: Notice is hereby given that a complaint was filed with the U.S. International Trade Commission on October 22, 1993, under section 337 of the Tariff Act of 1930, as amended, 19 U.S.C. 1337, on behalf of Pro-Cut International, Inc., HC63, Box 22–H, Lebanon, New Hampshire 03766. A supplemental letter was filed on November 15, 1993. The complaint, as supplemented, alleges violations of section 337 in the importation into the United States, the sale for importation, and the sale within the United States after importation of certain portable on-car disc brake lathes and components thereof, by reason of alleged infringement of U.S. Letters Patent 4,226,146, and that there exists an industry in the United States as required by subsection (a)(2) of section 337.

The complainant requests that the Commission institute an investigation and, after a hearing, issue a permanent exclusion order and permanent cease and desist orders.

ADDRESSES: The complaint, except for any confidential information contained therein, is available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street, SW., room 112, Washington, DC 20436, telephone 202–205–1802. Hearing-impaired individuals are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

FOR FURTHER INFORMATION CONTACT: John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, telephone 202–205–2574.

AUTHORITY: The authority for institution of this investigation is contained in section 337 of the Tariff Act of 1930, as amended, and in § 210.12 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.12.

SCOPE OF INVESTIGATION: Having considered the complaint, the U.S. International Trade Commission, on November 23, 1993, Ordered That—

(1) Pursuant to subsection (b) of section 337 of the Tariff Act of 1930, as amended, an investigation be instituted to determine whether there is a violation of subsection (a)(1)(B)(i) of section 337 in the importation into the United States, the sale for importation, or the sale within the United States after importation of certain portable on-car disc brake lathes and components thereof, by reason of alleged infringement of the single claim of U.S. Letters Patent 4,226,146, and whether there exists an industry in the United States as required by subsection (a)(2) of section 337.

(2) For the purpose of the investigation so instituted, the following are hereby named as parties upon which this notice of investigation shall be served:

(a) The complainant is—Pro-Cut International, Inc., HC63, Box 22–H, Lebanon, New Hampshire 03766.

(b) The respondents are the following companies alleged to be in violation of section 337, and are the parties upon which the complaint is to be served:

Ludwig Hunger, Maschinenfabrik GmbH, Alfred Nobel Str. 26, Wuerzburg 97080 Federal Republic of Germany

Hunter Engineering Company, 11250 Hunter Drive, Bridgeton, Missouri 63044

(c) John M. Whealan, Esq., Office of Unfair Import Investigations, U.S. International Trade Commission, 500 E Street, SW., room 401–P, Washington, DC 20436, who shall be the Commission investigative attorney, party to this investigation; and

(3) For the investigation so instituted, Janet D. Saxon, Chief Administrative Law Judge, U.S. International Trade Commission, shall designate the presiding Administrative Law Judge.

Responses to the complaint and the notice of investigation must be submitted by the named respondents in accordance with § 210.21 of the Commission's Interim Rules of Practice and Procedure, 19 CFR 210.21. Pursuant to §§ 201.16(d) and 210.21(a) of the Commission's Rules, 19 CFR 201.16(d) and 210.21(a), such responses will be considered by the Commission if received not later than 20 days after the date of service of the complaint. Extensions of time for submitting responses to the complaint will not be granted unless good cause therefor is shown.

Failure of a respondent to file a timely response to each allegation in the complaint and in this notice may be deemed to constitute a waiver of the right to appear and contest the allegations of the complaint and this notice, and to authorize the administrative law judge and the Commission, without further notice to the respondents, to find the facts to be as alleged in the complaint and this notice and to enter both an initial determination and a final determination containing such findings, and may result in the issuance of a limited exclusion order or a cease and desist order or both directed against such respondent.

Issued: November 24, 1993.

By order of the Commission.

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29438 Filed 11–30–93; 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 337–TA–350]

Certain Sputtered Carbon Coated Computer Disks and Products Containing Same, Including Disk Drives

In the matter of certain sputtered carbon coated computer disks and products containing same, including disk drives; notice of decision not to review initial determinations granting joint motions to terminate the investigation with respect to respondent Toshiba Corp. on the basis of a settlement agreement and with respect to respondent Trace Storage Technology, Inc on the basis of a license agreement.

AGENCY: U.S. International Trade Commission.

ACTION: Notice.

SUMMARY: Notice is hereby given that the U.S. International Trade Commission has determined not to review an initial determination (Order No. 68) issued on October 28, 1993, by the presiding administrative law judge (ALJ) in the above-captioned investigation granting the joint motion of complainant Harry E. Aine ("Aine") and respondent Toshiba Corp ("Toshiba") to terminate the investigation as to Toshiba on the basis of a settlement agreement. The Commission has also determined not to review an initial determination (Order No. 70) issued on October 28, 1993, by the ALJ granting the joint motion of Aine and respondent Trace Storage Technology, Inc. ("Trace") to terminate the investigation as to Trace on the basis of a licensing agreement.

FOR FURTHER INFORMATION CONTACT: Marc A. Bernstein, Office of the General Counsel, U.S. International Trade Commission, 500 E Street, SW., Washington, DC 20436, telephone 202–205–3087.

SUPPLEMENTARY INFORMATION: The Commission instituted this investigation, which concerns allegations of section 337 violations in the importation, sale for importation, and sale after importation of sputtered carbon coated computer disks and products containing such disks, including disk drives, on May 5, 1993. Complainant Aine alleges infringement of claims 23, 24, 25, 26, and 29 of U.S. Letters Patent Re 32,464.

On September 29, 1993, Aine and Toshiba filed a joint motion to terminate the investigation with respect to Toshiba on the basis of a settlement agreement. On September 28, 1993, Aine and Trace filed a joint motion to terminate the investigation with respect to Trace on the basis of a license agreement. The ALJ issued IDs granting both the Toshiba-Aine and Trace-Aine joint motions and terminating the investigation as to Toshiba and Trace. No petitions for review of either ID were filed. No agency or public comments were received.

This action is taken under the authority of section 337 of the Tariff Act of 1930, 19 U.S.C. 1337, and Commission interim rule 210.53, 19 CFR 210.53.

Copies of the nonconfidential version of the IDs and all other nonconfidential documents filed in connection with this investigation are or will be available for inspection during official business hours (8:45 a.m. to 5:15 p.m.) in the Office of the Secretary, U.S. International Trade Commission, 500 E Street SW., Washington, DC 20436, telephone 202–205–2000. Hearing-impaired persons are advised that information on this matter can be obtained by contacting the Commission's TDD terminal on 202–205–1810.

Issued: November 22, 1993.

By order of the Commission

Donna R. Koehnke,

Secretary

[FR Doc. 93–29439 Filed 11–30–93, 8:45 am]

BILLING CODE 7020–02–P

[Investigation No. 731–TA–638 (Final)]

Stainless Steel Wire Rod From India

Determination

On the basis of the record [1] developed in the subject investigation, the Commission determines,[2] pursuant to section 735(b) of the Tariff Act of 1930 (19 U.S.C. 1673d(b)) (the Act), that an industry in the United States is materially injured by reason of imports from India of stainless steel wire rod, provided for in subheading 7221.00.00 of the Harmonized Tariff Schedule of the United States, that have been found by the Department of Commerce to be sold in the United States at less than fair value (LTFV).

Background

The Commission instituted this investigation effective August 2, 1993, following a preliminary determination by the Department of Commerce that imports of stainless steel wire rod from India were being sold at LTFV within the meaning of section 733(b) of the Act (19 U.S.C. 1673b(b)). Notice of the institution of the Commission's investigation and of a public hearing to be held in connection therewith was given by posting copies of the notice in the Office of the Secretary, U.S. International Trade Commission, Washington, DC, and by publishing the notice in the Federal Register of August 18, 1993 (58 FR 43908). The hearing was held in Washington, DC, on October 14, 1993, and all persons who requested the opportunity were permitted to appear in person or by counsel.

The Commission transmitted its determination in this investigation to the Secretary of Commerce on November 23, 1993. The views of the Commission are contained in USITC Publication 2704 (November 1993), entitled "Stainless Steel Wire Rod from India: Investigation No. 638 (Final)."

Issued: November 24, 1993.

By order of the Commission

Donna R. Koehnke,

Secretary.

[FR Doc. 93–29440 Filed 11–30–93, 8:45 am]

BILLING CODE 7020–02–P

[1] The record is defined in § 207.2(f) of the Commission's Rules of Practice and Procedure (19 CFR 207.2(f)).

[2] Commissioner Brunsdale and Commissioner Crawford dissenting.

INTERSTATE COMMERCE COMMISSION

[Finance Docket No. 32377]

Patrick D. Broe—Continuance in Control Exemption Panhandle Northern Railroad Co.

Patrick D. Broe, a noncarrier individual, has filed a notice of exemption to continue in control of Panhandle Northern Railroad Company (PNR) upon PNR becoming a class III railroad carrier.

PNR, a noncarrier, has concurrently filed a notice of exemption in Finance Docket No. 32376, *Panhandle Northern Railroad Company—Acquisition and Operation Exemption—The Atchison, Topeka and Santa Fe Railway Company*, to acquire and operate 31.255 miles of rail line owned by The Atchison, Topeka and Santa Fe Railway Company in the State of Texas. That exemption was expected to be consummated on or after November 12, 1993.

Mr. Broe is a noncarrier individual who will directly control PNR upon its becoming a railroad. Mr. Broe also directly controls The Broe Companies, Inc. (BCI), a holding company that directly controls a rail carrier, Central Kansas Railway, Inc., and noncarriers Great Western Railway Company (Great Western) and Railco, Inc. (Railco). Great Western directly controls rail carriers Great Western Railway of Colorado, Inc., Great Western Railway Company of Iowa, Inc., and Great Western Railway

of Oregon, Inc. Railco controls noncarrier Chicago West Pullman Transportation Company, which in turn controls six class III railroads: The Chicago West Pullman & Southern Railroad Company; the Georgia Woodlands Railroad Company; the Newburgh & South Shore Railroad Company; the Chicago Rail Link; the Manufacturers' Junction Railway Company; and the Kansas Southwestern Railway Company.[1]

PNR indicates that: (1) The rail lines to be acquired and operated will not connect with any of BCI's rail subsidiaries; (2) the continuance in control is not a part of a series of anticipated transactions that would connect the railroads with each other or any other railroad in their corporate family; and (3) the transaction does not involve a class I carrier. The transaction therefore is exempt from the prior approval requirements of 49 U.S.C. 11343. See 49 CFR 1180.2(d)(2).

As a condition to use of this exemption, any employees affected by the transaction will be protected by the conditions set forth in New York Dock Ry.—Control—Brooklyn Eastern Dist., 360 I.C.C. 60 (1979).

Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction. Pleadings must be filed with the Commission and served on: Louis E. Gitomer, Suite 210, 919 18th Street, NW, Washington, DC 20006.

Decided: November 24, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29431 Filed 11–30–93; 8:45 am]

BILLING CODE 7035–01–P

[Finance Docket No. 32376]

Panhandle Northern Railroad Company—Acquisition and Operation Exemption—the Atchison, Topeka and Santa Fe Railway Company

Panhandle Northern Railroad Company (PNR), a noncarrier, has filed a notice of exemption to acquire and operate a rail line owned by The Atchison, Topeka and Santa Fe Railway Company (Santa Fe). The line is that portion of Santa Fe's Borger Subdivision between milepost 0.015, at or near Panhandle, TX, and milepost 31.27, near Borger, TX, and extends approximately 31.255-miles. The proposed transaction was expected to be consummated on or after November 12, 1993.

This proceeding is related to Finance Docket No. 32377, Patrick D. Broe—Continuance in Control Exemption—Panhandle Northern Railroad Company, wherein Patrick D. Broe has concurrently filed a notice of exemption to continue in control of PNR when PNR becomes a rail carrier upon consummation of the transaction described in this notice.

Any comments must be filed with the Commission and served on: Louis E. Gitomer, suite 210, 919 18th Street, NW., Washington, DC 20006.

This notice is filed under 49 CFR 1150.31. If the notice contains false or misleading information, the exemption is void *ab initio*. Petitions to revoke the exemption under 49 U.S.C. 10505(d) may be filed at any time. The filing of a petition to revoke will not automatically stay the transaction.

Decided: November 24, 1993.

By the Commission, David M. Konschnik, Director, Office of Proceedings.

Sidney L. Strickland, Jr.,

Secretary.

[FR Doc. 93–29430 Filed 11–30–93; 8:45 am]

BILLING CODE 7035–01–P

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[1] The existing common control relationship among these carriers is discussed in Finance Docket No. 32362, The Broe Companies, Inc., The Great Western Railway Company, Railco, Inc., and Chicago West Pullman Transportation Corporation, Et Al.—Corporate Family Exemption (not printed), served October 27, 1993.

DEPARTMENT OF JUSTICE

Lodging of Final Judgment by Consent Pursuant to the Clean Water Act

In accordance with Department of Justice policy, 28 CFR 50.7, notice is hereby given that on November 17, 1993 a Consent Decree in *United States* v. *Lucas Western, Inc.*, Civil Action No. A3–92–61, was lodged with the United States District Court for the District of North Dakota.

The United States filed its Complaint in this action on April 27, 1992 under sections 307, 308 and 309 of the Clean Water Act, 33 U.S.C. 1317, 1318 and 1319 seeking civil penalties of up to $25,000 per day of violation at Lucas Western, Inc.'s Jamestown, North Dakota facility. The United States alleges that Lucas Western, Inc. failed to comply with the discharge limits contained in the pretreatment standards at 40 CFR parts 403 and 433, failed to submit timely and complete reports; and failed to take required actions whenever violations of the categorical pretreatment standards were detected, all in violation of sections 307(d) and 308(a) of the Clean Water Act, 33 U.S.C. 1317(d) and 1318(a).

Under the proposed Consent Decree, Lucas Western, Inc. will pay a civil penalty of $250,000.00 in settlement of the United States' claims. Additionally, the Consent Decree requires Lucas Western, Inc. to fully comply with the pretreatment regulations for the duration of the consent decree and to conduct a waste minimization study at its Jamestown facility.

The Department of Justice will receive comments relating to the proposed Consent Decree for a period of thirty (30) days from the date of publication of this notice. Comments should refer to *United States* v. *Lucas Western, Inc.*, Civ. No. A3–92–61 (D.N.D.)., DOJ Ref. No. 90–5–1–1–3761 and should be addressed to the Acting Assistant Attorney General, Environment and Natural Resources Division. U.S. Department of Justice, P.O. Box 7611, Ben Franklin Station, Washington, DC 20044.

The proposed Consent Decree may be examined at any of the following offices: (1) The Office of the United States Attorney for the District of North Dakota, 219 Federal Building and U.S. Courthouse, P.O. Box 2505, Fargo, North Dakota 58108; (2) the U.S. Environmental Protection Agency, Region VIII, 999 18th Street, Denver, Colorado 80202; and (3) the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. Copies of the proposed Consent Decree may be obtained by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. Please enclose a check for $6.25 ($0.25 per page reproduction charge) payable to "Consent Decree Library."

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–29340 Filed 11–30–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to The Clean Water Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *City of Phildelphia*, Civil Action No. 92–2957, (E.D. Pa.), was lodged on October 28, 1993 with the United States District Court for the Eastern District of Pennsylvania.

The case arises out of violations of the Clean Water Act committed in the period 1986–1989 when the City discharged wastewater and sewage from three of its prison facilities located in

Philadelphia into Pennypack Creek. The United States' complaint alleges that each such discharge constitutes a violation of the Clean Water Act. The Commonwealth of Pennsylvania intervened as a plaintiff in the case, alleging similar violations of the clean Streams Law.

The above-referenced consent decree resolves the claims of the United States, and the Commonwealth of Pennsylvania under terms requiring payment of a civil penalty of $225,000 (one half to be paid to the United States and one half, to the Commonwealth) and certification by the City that it has taken all corrective measures necessary to prevent further violations.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *City of Philadelphia*, DOJ Ref. #90–5–1–1–3816.

The proposed consent decree may be examined at the Office of the United States Attorney, suit 1300, 615 Chestnut Street, Philadelphia, PA 19106; the Region III Office of the Environmental Protection Agency, 815 Chestnut Building, Philadelphia, PA; and at the Consent Decree Library, 1120 G Street, NW, 4th Floor, Washington, DC 20005, 202–624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor Washington, DC 20005. In requesting a copy, please refer to the referenced case and enclose a check in the amount of $3.00 (25 cents per page reproduction costs), payable to the Consent Decree Library.

Lois J. Schiffer,

Acting Assistant Attorney General, Environment and Natural Resources Division.

[FR Doc. 93–29339 Filed 11–30–93; 8:45 am]

BILLING CODE 4410–01–M

Lodging of Consent Decree Pursuant to the Clean Air Act

In accordance with Departmental policy, 28 CFR 50.7, notice is hereby given that a proposed consent decree in *United States* v. *Rihr and Arizona Board of Regents*, Civil Action No. CIV–92–0957, was lodged on November 2, 1993 with the United States District Court for the District of Arizona. The proposed decree resolves all issues between the United States and the Board of Regents in a civil enforcement action brought pursuant to Section 113(b) of the Clean Air Act (the "Act"), 42 U.S.C. 7413(b) and the National Emission Standards for Hazardous Air Pollutants for asbestos ("NESHAP"), promulgated under section 112 of the Act, 42 U.S.C. 7412, and codified at 40 CFR part 61, subpart M. The complaint alleges (1) that the defendants failed to provide written notice of intention to demolish a facility containing structures with asbestos-containing material ("ACM") owned by the University of Arizona (in violation of 40 CFR 61.146 and sections 112(c) and 114(b)(1)(B)), (2) that they conducted demolition activities at the facility without removing the friable ACM prior to any wrecking or dismantling activities being initiated or failed to properly encase or wet the material during the subject demolition activity in violation of 40 CFR 61.147(a) and section 112(c), and (3) that they failed to deposit all ACM from the subject demolition project in an deposit all ACM from the subject demolition project in an approved waste disposal site (operated in accordance with 40 CFR 60.152(a) and section 112(c) of the Act). Under the terms of the decree, the Board will pay a penalty of $15,000 and agree to comply in the future with the provisions of the Act and in particular, specific guidelines of the University for handling asbestos removal.

The Department of Justice will receive, for a period of thirty (30) days from the date of this publication, comments relating to the proposed consent decree. Comments should be addressed to the Assistant Attorney General for the Environment and Natural Resources Division, Department of Justice, Washington, DC 20530, and should refer to *United States* v. *Rihr and Arizona Board of Regents*, DOJ Ref. #90–5–2–1–1447. The proposed consent decree may be examined at the office of the United States Attorney, 4000 United States Courthouse, 230 North First Avenue, Phoenix, Arizona 85025; the Region IX Office of the Environmental Protection Agency, 75 Hawthorne Street, San Francisco, California 94105, and at the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005, (202) 624–0892. A copy of the proposed consent decree may be obtained in person or by mail from the Consent Decree Library, 1120 G Street, NW., 4th Floor, Washington, DC 20005. In requesting a copy please refer to the referenced case and enclose a check in the amount of $2.50 (25 cents per page reproduction costs), payable to the Consent Decree Library.

John C. Cruden,

Chief, Environmental Enforcement Section, Environment and Natural Resources Division.

[FR Doc. 93–29338 Filed 11–30–93; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Employment and Training Administration

Job Training Partnership Act; Employment and Training Assistance for Dislocated Workers; Reallotment of Title III Funds

AGENCY: Employment and Training Administration, Labor.

ACTION: Notice.

SUMMARY: The Department of Labor is publishing for public information the Job Training Partnership Act Title III (Employment and Training Assistance for Dislocated Workers) funds identified by States for reallotment, and the amount to be reallotted to eligible States.

FOR FURTHER INFORMATION CONTACT: Mr. Robert N. Colombo, Director, Office of Worker Retraining and Adjustment Programs, Employment and Training Administration, Department of Labor, room N–5426, 200 Constitution Avenue NW., Washington, DC 20210. Telephone: 202–219–5577 (this is not a toll-free number).

SUPPLEMENTARY INFORMATION: Pursuant to Title III of the Job Training Partnership Act (JTPA of the Act), as amended by the Economic Dislocation and Worker Adjustment Assistance Act (EDWAA), the Secretary of Labor (Secretary) is required to recapture funds from States identified pursuant to section 303(b) of the Act, and reallot such funds by a Notice of Obligation (NOO) adjustment to current year funds to "eligible States" and "eligible high unemployment States", as set forth in section 303(a), (b), and (c) of JTPA. 29 U.S.C. 1653. The basic reallotment process was described in Training and Employment Guidance Letter No. 4-88, dated November 25, 1988, Subject: Reallotment and Reallocation of Funds under title III of the Job Training Partnership Act (JTPA), as amended, 53 FR 43737 (December 2, 1988). The reallotment process for Program Year (PY) 1993 funds was described in Training and Employment Guidance Letter No. 3–92, dated February 2, 1993, Subject: Reallotment of Job Training Partnership Act (JTPA) Title III Formula-Allotted Funds.

NOO adjustment to the PY 1993 (July 1, 1993-June 30, 1994) formula allotments are being issued based on expenditures reported to the Secretary by the States, as required by the recapture and reallotment provisions at Sections 303 of JTPA. 29 U.S.C. 1653.

The funds recaptured are an amount equal to the sum of every State's unexpended PY 1992 formula funds in excess of 20 percent of its PY 1992 formula allotments, and all unexpended funds made available by formula for PY 1991. A State's PY 1992 formula allotments include the initial allotment for PY 1992, and any additional funds received by the State during the PY 1992 reallotment process. Funds are recaptured from PY 1993 formula allotments, and are distributed by formula to eligible States and eligible high unemployment States, resulting in either an upward or downward adjustment to every State's PY 1993 allotment.

Unemployment Data

The unemployment data used in the formula for reallotment, relative numbers of unemployed and relative numbers of excess unemployed, were for the July 1992 through June 1993 period. Long-term unemployment data used were for calendar year 1992. The determination of "eligible high unemployment States" for the reallotment of excess unexpended funds was also based on unemployment data for the period July 1992 through June 1993, with all average unemployment rates rounded to the nearest tenth of one percent. The unemployment data were provided by the Bureau of Labor Statistics, based upon the Current Population Survey.

The table below displays the distribution of the net changes to PY 1993 formula allotments.

BILLING CODE 4510-30-M

U.S. DEPARTMENT OF LABOR
Employment and Training Administration
PY 1993 JTPA Title III Reallotment to States
November 9, 1993

	COL 1	COL 2	COL 3	COL 4	COL 5	COL 6
Alabama	7.3	0	34,846	0	15,229	15,229
Alaska	8.5	55,655	0	0	0	−55,655
Arizona	7.1	11,431	31,094	0	13,590	2,159
Arkansas	6.8	0	18,737	0	8,189	8,189
California	9.4	0	429,270	429,270	187,612	616,882
Colorado	5.8	0	20,580	0	8,994	8,994
Connecticut	7.3	0	41,455	0	18,118	18,118
Delaware	4.9	0	3,731	0	1,631	1,631
District of Columbia	8.7	72,504	0	0	0	−72,504
Florida	7.5	295,289	139,241	139,241	60,855	−95,193
Georgia	6.6	0	55,870	0	24,418	24,418
Hawaii	4.8	0	4,400	0	1,923	1,923
Idaho	6.5	0	7,251	0	3,169	3,169
Illinois	7.4	0	124,399	124,399	54,368	178,767
Indiana	6.2	0	39,052	0	17,068	17,068
Iowa	4.3	0	10,215	0	4,464	4,464
Kansas	4.6	0	8,867	0	3,875	3,875
Kentucky	6.7	1,294,591	0	0	0	−1,294,591
Louisiana	7.7	0	38,947	38,947	17,022	55,969
Maine	7.5	0	13,842	13,842	6,050	19,892
Maryland	6.4	0	44,076	0	19,263	19,263
Massachusetts	7.7	0	79,912	79,912	34,926	114,838
Michigan	7.7	0	99,178	99,178	43,346	142,524
Minnesota	5.2	0	25,434	0	11,116	11,116
Mississippi	7.3	172,646	0	0	0	−172,646
Missouri	6.0	0	36,557	0	15,977	15,977
Montana	6.5	0	6,298	0	2,752	2,752
Nebraska	2.9	0	3,434	0	1,501	1,501
Nevada	6.6	0	11,405	0	4,984	4,984
New Hampshire	7.5	0	13,799	13,799	6,031	19,830
New Jersey	8.3	233,107	0	0	0	−233,107
New Mexico	6.8	0	11,596	0	5,068	5,068
New York	8.2	0	222,443	222,443	97,219	319,662
North Carolina	5.6	21,858	42,442	0	18,549	−3,309
North Dakota	4.7	0	2,497	0	1,091	1,091
Ohio	6.9	0	99,848	0	43,638	43,638
Oklahoma	5.7	0	19,206	0	8,394	8,394
Oregon	7.4	0	28,700	28,700	12,544	41,244
Pennsylvania	7.3	2,124	121,720	0	53,198	51,074
Puerto Rico	16.8	69,958	0	0	0	−69,958
Rhode Island	8.3	0	14,370	14,370	6,280	20,650
South Carolina	6.3	0	26,479	0	11,572	11,572
South Dakota	3.2	0	1,517	0	663	663
Tennessee	6.2	0	33,373	0	14,586	14,586
Texas	7.3	0	157,296	0	68,746	68,746
Utah	4.6	0	5,992	0	2,619	2,619
Vermont	6.4	0	5,312	0	2,322	2,322
Virginia	5.7	0	44,885	0	19,617	19,617
Washington	7.7	0	52,620	52,620	22,998	75,618
West Virginia	11.2	0	29,492	29,492	12,889	42,381
Wisconsin	4.9	0	23,090	0	10,091	10,091
Wyoming	5.4	55,605	0	0	0	−55,605
NATIONAL TOTAL	7.3	2,284,768	2,284,768	1,286,213	998,555	0

BILLING CODE 4510-30-C

Explanation of Table

Column 1: This column shows each State's unemployment rate for the twelve months ending June 1993.

Column 2: This column shows the amount of excess funds (unexpended PY 1992 funds in excess of 20 percent of the State's PY 1992 formula allotments as described above and/or unexpended PY 1991 formula-allotted funds), which are subject to reallotment. PY 1993 funds in an amount equal to the excess funds identified will be recaptured from such States and distributed as discussed below.

Column 3: This column shows total excess funds distributed among all "eligible States" by applying the regular Title III formula. "Eligible States" are those with unexpended PY 1992 funds at or below the level of 20 percent of their PY 1992 formula allotments as described above.

Column 4: Eligible States with unemployment rates higher than the national average, which was 7.3 percent for the 12-month period, are "eligible high unemployment States." These eligible high unemployment States received amounts equal to their share of the excess funds (the amounts shown in column 3) according to the regular Title III formula. This is Step 1 of the reallotment process. These amounts are shown in column 4 and total $1,286,213.

Column 5: The sum of the remaining shares of available funds ($998,555) for eligible States with unemployment rates less than or equal to the national average is distributed among all eligible States, again using the regular Title III allotment formula. This is Step 2 of the reallotment process. These amounts are shown in column 5.

Column 6: Net changes in PY 1993 formula allotment are presented. This column represents the decreases in Title III funds shown in column 2, and the increases in Title III funds shown in columns 4 and 5. NOOs in the amounts shown in column 6 are being issued to the States listed.

Equitable Procedures

Pursuant to section 303(d) of the Act, Governors of States required to make funds available for reallotment shall prescribe equitable procedures for making funds available from the State and substate grantees. 29 U.S.C. 1653(d).

Distribution of Funds

Funds are being reallotted by the Secretary in accordance with section 303(a), (b), and (c) of the Act, using the factors described in section 302(b) of the Act. 29 U.S.C. 1652(b) and 1653(a), (b), and (c). Distribution within States of funds allotted to States shall be in accordance with section 302(c) and (d) of the Act (29 U.S.C. 1652(c) and (d)), and the JTPA regulation of 20 CFR 631.12(d).

Signed at Washington, DC, this 23rd day of November, 1993.

Doug Ross,

Assistant Secretary of Labor.

[FR Doc. 93–29386 Filed 11–30–93; 8:45 am]

BILLING CODE 4510–30–M

Office of the Secretary

Labor Organization and Auxiliary Reports

AGENCY: Office of the Secretary, Labor.

ACTION: Request for expedited review under the Paperwork Reduction Act.

SUMMARY: The Office of the American Workplace's Office of Labor-Management Standards (OLMS), in carrying out its responsibilities under the Paperwork Reduction Act (44 U.S.C. chapter 35), is submitting a request for approval to the Office of Management and Budget for an information collection involving Labor Organization Annual Financial Reports. OLMS has requested an expedited review of this submission to be completed by December 8, 1993.

FOR FURTHER INFORMATION CONTACT: Comments and questions regarding the information collection should be directed to Kay Oshel, Chief, Division of Interpretations and Standards, Office of Labor-Management Standards, Office of American Workplace, U.S. Department of Labor, 200 Constitution Avenue, NW., room N–5605, Washington, DC 20210, (202) 219–7373. Comments should also be sent to the Office of Information and Regulatory Affairs, Attn: OMB Desk Officer for OAW/OLMS, Office of Management and Budget, room 3001, Washington, DC 20503, (202) 395–7316.

The notice of proposed rulemaking (NPRM) which contained the proposed revisions to labor organization annual financial reports was published in the **Federal Register** on September 23, 1993. This NPRM contained a summary of OLMS' proposed revisions, copies of the proposed revised forms (LM–2, LM–3, and LM–4), and the proposed instructions. The NPRM was published with a 30-day comment period providing the public with ample opportunity to comment on the proposed revisions. This expedited review is being submitted to provide OMB with additional information on the public comments submitted in response to the NPRM and on the Department's response to those comments for inclusion in the OMB docket file. Specifically, information being provided to OMB pertains to the Department's decision to (1) delete the option to report on either the cash or accrual basis of accounting and reinstate the requirement to report on the cash basis, (2) add a question pertaining to the number of dues paying members, (3) add a question pertaining to whether any officer of the reporting organization had a paid position with another labor organization or an employee benefit plan, (4) add a question pertaining to whether an outside audit of the reporting labor organization's books and records had been conducted, and (5) add a question pertaining to whether the reporting labor organization has a political action committee (PAC).

Any member of the public who wants to comment on the information collection clearance package which has been submitted to OMB should advise Kay Oshel of this intent at the earliest possible date.

	LM–2	LM–3	LM–4
Frequency of Response	Annual	Annual	Annual
Number of Respondents	5,096	16,275	14,000
Average House per Response	15.25 hrs	6.75 hrs	52 mins
Annual Burden Hours	77,714	109,857	12,086

Affected Public: Labor Unions
Respondents' Obligation to Reply: Required by Federal statute

Signed at Washington, DC, this 29th day of November, 1993.

Kenneth A. Mills,

Departmental Clearance Officer.

[FR Doc. 93–29546 Filed 11–30–93; 8:45 am]

BILLING CODE 4510–86–M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 93–089]

Invention Available for Licensing.

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/134,444, filed October 12, 1993, and entitled "Flux-Focusing Eddy Current Probe and Method for Flaw Detection"—The present invention is a flux-focusing electromagnetic sensor which uses a ferromagnetic flux-focusing lens simplifies inspections and increases detectability of fatigue cracks and material loss in high conductivity material. The unique feature of the device is the ferrous shield isolating a high-turn pick-up coil from an excitation coil. The use of the magnetic shield is shown to produce a null voltage output across the receiving coil in the presence of an unflawed sample. A redistribution of the current flow in the sample caused by the presence of flaws, however, eliminates the shielding condition and a large output voltage is produced, yielding a clear unambiguous flaw signal.

The maximum sensor output is obtained when positioned symmetrically above the crack. Hence, by obtaining the position of the maximum sensor output, it is possible to track the fault and locate the area surrounding its tip using an algorithm similar to the grid-search chi-square minimization scheme. The precise position of the crack tip can then be found using a simple numerical process. The accuracy of tip location is enhanced by two unique features of the sensor; a very high signal-to-noise ratio of the probe's output which results in an extremely smooth signal peak across the fault, and a rapidly decaying sensor output outside a small area surrounding the crack tip which enables the region for searching to be clearly defined.

Under low frequency operation, material thinning due to corrosion damage causes an incomplete shielding of the pick-up coil. The low frequency output voltage of the probe is therefore a direct indicator of the thickness of the test sample. A swept frequency measurement performed on manufactured thickness calibration standards was able to clearly delineate all samples tested, showing a resolution of less than 0.5% of the sample thickness. In addition, simulated inter-layer corrosion in a lap-joint sample has been detected using a single frequency mode of operation. The results clearly identified all material loss from the back surface of the panel.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to Kimberly A. Chasteen at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001 telephone (804) 864–3227, fax (804) 864–8298. Please note the case number, LAR–15,046–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29443 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–090]

Invention Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/126,286, filed September 23, 1993, and entitled "Deployable Reflector Structure"—The present invention relates in general to large reflector structures for deployment in outer space.

A deployable reflector structure according to the invention comprises a number of movable reflector panels pivotably supported on rigid arms. Several such arms are pivotably connected to a central structure, so the arms can move in starburst fashion from a packaged stage, where all arms are vertical, to a deployed stage, where all of the arms are horizontal. All of the movable reflector panels are maintained at a predetermined angle to an axis of the reflector structure when the arms are pivoted, so the reflector panels are stacked tightly on top of each other in the packaged stage. Simple mechanisms are provided for avoiding interference between panels on different arms in the packaged stage, and for fitting the movable panels together like tiles in the deployed stage.

The movable arms act as a stabilizing sub-structure for the reflecting panels in a deployable reflector structure according to the invention, so a highly accurate reflecting surface is assured. The invention also provides very compact packaging of the reflector structure in its packaged stage. A reflecting structure of 20 meter deployed diameter will fit in the cargo bay of the U.S. Space Shuttle.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to Kimberly A. Chasteen at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001 telephone (804) 864–3227, fax (804) 864–8298. Please note the case number, LAR–14,513–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29444 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–091]

Invention Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with

35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/095,563, filed July 19, 1993, and entitled "Shock-Free Supersonic Elliptic Nozzles and Method of Forming Same"—The present invention relates in general to jet nozzles and specifically to supersonic elliptic jet nozzles.

According to the design procedure, the nozzle to be designed is divided into three sections, as shown in Figures 1(a) and 1 (b), a circular-to-elliptic section 3 which begins at a circular nozzle inlet, an elliptic subsonic section 2 downstream from the circular-to-elliptic section and a supersonic section 3 downstream from the elliptic subsonic section. The maximum and minimum radii are determined for each axial point in the circular-to-elliptic section, the maximum and minimum radii being the radii for the widest part of an elliptic cross section and the narrowest part of the elliptic cross section, respectively. The maximum and minimum radii are determined for each axial point in the elliptic subsonic section. The maximum and minimum radii are determined for each axial point in the supersonic section based on the Method of Characteristics. The shape of each of the three sections is determined separately based on the maximum and minimum radii for each axial point in the respective section. The resulting elliptic jet nozzle is also claimed.

The supersonic elliptic nozzle formed according to the above method minimizes shock noise and exhibits smooth pressure contours within the nozzle.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to Kimberly A. Chasteen at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001, telephone (804) 864–3227, fax (804) 864–8298. Please note the case number, LAR–14,054–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29445 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–092]

Invention Available for Licensing

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of availability for licensing.

SUMMARY: The invention listed below is owned by an agency of the U.S. Government and is available for licensing in the U.S. in accordance with 35 U.S.C. 207 to achieve expeditious commercialization of results of federally funded research and development.

U.S. Patent Application Number 08/138,046, filed October 12, 1993, and entitled "Method for Making a Dynamic Pressure Sensor and a Pressure Sensor Made According to the Method"—The present invention relates in general to measurement of pressure fluctuations in a high speed boundary layer along a test surface, and specifically to a method for making a pressure sensor with a stretched cup-shaped membrane as a sensing element fit perfectly flush with a test surface.

According to the invention, a soft metal is deposited on the membrane and surrounding areas of a pressure sensor. A pressure sensor with a stretched cup-shaped membrane as the sensing element is illustrated in Figs. 2 and 3. The side wall of the tip of the pressure sensor and the lateral part of the deposited metal is removed from the top of the membrane in small steps, by machining or lapping while the pressure sensor is mounted in a jig or the wall of a test object, until the true top surface of the membrane appears. Fig. 3 illustrates how the top of the membrane is stretched. A thin indicator layer having a color contrasting with the color of the membrane may be applied to the top of the membrane before metal is deposited to facilitate the determination of when to stop metal removal from the top surface of the membrane.

A pressure sensor made according to the above method has a flat membrane area with a sharp, square edge. A surface finish of typically 10 microrinches rms can be achieved on the installed pressure sensor.

The invention claimed in this patent application is available for licensing on an exclusive, partially exclusive or nonexclusive basis for upfront, running and annual minimum royalty payments to a partner committed to commercializing this technology.

ADDRESSES: Licensing information and a copy of the U.S. Patent Application (without the claims) may be obtained by writing to George F. Helfrich at the Office of Patent Counsel, Mail Stop 143, NASA Langley Research Center, Hampton, VA 23681–0001 telephone (804) 864–3521, fax (804) 864–8298. Please note the case number, LAR–14,029–1, when requesting information.

Dated: November 16, 1993.

Edward A. Frankle,

General Counsel.

[FR Doc. 93–29446 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

[Notice 93–088]

NASA Advisory Council, Aeronautics Advisory Committee; Meeting

AGENCY: National Aeronautics and Space Administration

ACTION: Notice of meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92–463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee.

DATES: December 15, 1993, 8 a.m. to 5 p.m.; and December 16, 1993, 8 a.m. to 3 p.m.

ADDRESSES: National Aeronautics and Space Administration, Langley Research Center, Reid Conference Center, Langley Room, 14 Langley Boulevard, Hampton, VA 23681.

FOR FURTHER INFORMATION CONTACT: Ms. Catherine Smith, Office of Aeronautics, National Aeronautics and Space Administration, Washington, DC 20546 (202/554–0501).

SUPPLEMENTARY INFORMATION: The meeting will be open to the public up to the seating capacity of the room. The agenda for the meeting is as follows:

—Aeronautics Research and Technology Panel Reviews
—High Performance Computing and Communications
—Wind Tunnel Update
—NASA Efforts to Acquire Russian Developed Technology
—Joint NASA/Federal Aviation Administration Activities
—New AAC Studies
—Aeronautics Strategic Planning

It is imperative that the meeting be held on this date to accommodate the scheduling priorities of the key participants.

Dated: November 18, 1993.

Timothy M. Sullivan,

Advisory Committee Management Officer.

[FR Doc. 93–29442 Filed 11–30–93; 8:45 am]

BILLING CODE 7510–01–M

NATIONAL SCIENCE FOUNDATION

Permit Application Received Under the Antarctic Conservation Act of 1978

AGENCY: National Science Foundation.

ACTION: Notice of permit application received under the Antarctic Conservation Act of 1978, Public Law 95–541.

SUMMARY: The National Science Foundation is required to publish notice of applications received to conduct activities regulated under the Antarctic Conservation Act of 1978. NSF has published regulations under the Act at title 45, part 670, Code of Federal Regulations. This is the required notice of permit application received.

DATES: Interested parties are invited to submit written data, comments, or views with respect to this permit application by December 22, 1993. Permit applications may be inspected at the Permit Office, address below.

ADDRESSES: Comments be addressed to Permit Office, room 627, Office of Polar Programs, National Science Foundation, Washington, DC 20550.

FOR FURTHER INFORMATION CONTACT: Guy G. Guthridge at the above address or (202) 357–7817.

SUPPLEMENTARY INFORMATION: The National Science Foundation, as directed by the Antarctic Conservation Act of 1978 (Public Law 95–541), has developed regulations that implement the "Agreed Measures for the Conservation of Antarctic Fauna and Flora" for all United States citizens. The Agreed Measures, developed by the Antarctic Treaty Consultative Parties, recommended establishment of a permit system for various activities in Anarctica and designation of certain animals and certain geographic areas as requiring special protection. The regulations also designate Specially Protected Areas and Sites of Special Scientific Interest.

The application received is as follows:

1. Applicant

Dr. E. Imre Friedmann, Department of Biological Science and Polar Desert Research Center, Florida State University, 320 Conradi Building, Tallahassee, FL 32306–2043.

2. Activity for Which Permit Requested

Enter Site of Special Scientific Interest. Import Into USA.

Rock samples containing living and/or fossil mircobial colonization will be collected to study extinction and/or damage due to environmental factors. This is part of a major survey extending to the entire McMurdo Dry Valleys area. Hand specimens of rocks will be collected from the ground or removed, if necessary, by geological hammer. As many as 25 samples will be collected; the samples will not weigh more than 3 pounds each. Some of the samples will be collected in Linnaeus Terrace, a Site of Special Scientific Interest (SSSI). Entry, camping, and sample collection will be in accordance with the Management Plan for the SSSI, which was established specifically to protect microbial research of the type proposed in this application. Specimens will be examined and stored frozen in the Antarctic Core Library of Florida State University.

3. Location

Linnaeus Terrace Site of Special Scientific Interest

4. Dates

Several days between 12–26–93 and 01–20–94

Guy G. Guthridge,

Acting Permit Officer, Office of Polar Programs.

[FR Doc. 93–29387 Filed 11–30–93; 8:45 am]

BILLING CODE 7555–01–M

Special Emphasis Panel in Biological Sciences; Meeting

In accordance with the Federal Advisory Committee Act (Pub. L. 92–463, as amended), the National Science Foundation announces the following meeting:

Name: Special Emphasis Panel in Biological Sciences.

Date and time: Thursday, December 16, 1993; 8:30 a.m. to 5 p.m., Friday, December 17, 1993; 8:30 a.m. to 3 p.m.

Place: National Science Foundation, 4201 Wilson Blvd., Arlington, VA.

Type of meeting: Closed.

Contact person: Gerald Selzer, Program Director, Special Projects Program, NSF, 4201 Wilson Blvd., Arlington, VA 22230. Telephone (703) 306–1469.

Purpose of meeting: To provide advice and recommendations concerning proposals submitted to NSF for support.

Agenda: To provide and evaluate preproposals for BIO Research Training Groups as part of the selection process for awards.

Reason for closing: The proposals being reviewed include information of a proprietary or confidential nature, including technical information; financial data, such as salaries; and personal information concerning individuals associated with the proposals. These matters are exempt under 5 U.S.C. 552b(c), (4) and (6) of the Government in the Sunshine Act.

Dated: November 26, 1993.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 93–29379 Filed 11–30–93; 8:45 am]

BILLING CODE 7555–01–M

NUCLEAR REGULATORY COMMISSION

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 59th meeting on Monday, December 13, 1993, in the Monte Carlo Room, the St. Tropez All Suite Hotel, 455 East Harmon Avenue, Las Vegas, Nevada.

The entire meeting will be open to public attendance.

9 a.m.–10 a.m.: Activities at the Proposed Yucca Mountain High-Level Waste Repository (Open)—The Committee will be briefed by and hold discussions with representatives of DOE management on current activities at the proposal HLW repository at Yucca Mountain. Representatives of the NRC staff will participate, as appropriate.

10:15 a.m.–12 noon: Yucca Mountain Project—Technical Issues (Open)—The Committee will be briefed by and hold discussions with DOE and M&O representatives on selected technical areas., e.g., surface-based testing, ESF status and design, and the status of resolution of selected issues.

1 p.m.–3:30 p.m.: Yucca Mountain Project—Interested Party Comments (Open)—The Committee will hear comments from and hold discussions with state, county, and local government officials. Representatives from Indian tribes and others interested in the proposed HLW repository may also present comments.

3:45 p.m.–6 p.m.: Committee activities/ Future Activities—The Committee will elect Chairman and Vice-Chairman for calendar year 1994. The Committee will also discuss topics proposed for consideration during future meetings.

6 p.m.–6:30 p.m.: (tentative): Miscellaneous—The Committee will discuss miscellaneous matters related to the conduct of Committee activities and organizational activities and complete discussion of matters and specific issues that were not completed during previous meetings, as time and availability of information permit.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meetings that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the

office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determining by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: November 24, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–29428 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

Advisory Committee on Nuclear Waste; Meeting

The Advisory Committee on Nuclear Waste (ACNW) will hold its 60th meeting on Monday, December 20, 1993, in room P–422, 7920 Norfolk Avenue, Bethesda, Maryland.

The entire meeting will be open to public attendance.

Monday, December 20, 1993—3 p.m. until 6 p.m.:

The Committee will prepare for its discussion with NRC Commissioners and discuss anticipated and proposed Committee activities, future meeting dates and agenda, and administrative matters, as appropriate.

Procedures for the conduct of and participation in ACNW meetings were published in the **Federal Register** on June 6, 1988 (53 FR 20699). In accordance with these procedures, oral or written statements may be presented by members of the public, electronic recordings will be permitted only during those portions of the meeting that are open to the public, and questions may be asked only by members of the Committee, its consultants, and staff. The office of the ACRS is providing staff support for the ACNW. Persons desiring to make oral statements should notify the Executive Director of the office of the ACRS as far in advance as practical so that appropriate arrangements can be made to allow the necessary time during the meeting for such statements. Use of still, motion picture, and television cameras during this meeting may be limited to selected portions of the meeting as determined by the ACNW Chairman. Information regarding the time to be set aside for this purpose may be obtained by contacting the Executive Director of the office of the ACRS, Dr. John T. Larkins (telephone 301/492–4516), prior to the meeting. In view of the possibility that the schedule for ACNW meetings may be adjusted by the Chairman as necessary to facilitate the conduct of the meeting, persons planning to attend should check with the ACNW Executive Director or call the recording (301/492–4600) for the current schedule if such rescheduling would result in major inconvenience.

Dated: November 24, 1993.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 93–29427 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–373 and 50–374]

Commonwealth Edison Co.; Consideration of Issuance of Amendments to Facility Operating Licenses, Proposed No Significant Hazards Consideration Determination, and Opportunity For a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of amendments to Facility Operating License Nos. NPF–11 and NPF–18 issued to Commonwealth Edison Company (the licensee) for operation of the LaSalle County Station, Units 1 and 2, located in LaSalle County, Illinois.

The proposed amendments would approve a revision to the LaSalle County Station, Units 1 and 2, Updated Final Safety Analysis Report (UFSAR), section 11.5.2.1.4, which specifies that currently, operator action is required to trip the mechanical vacuum pump upon receipt of a main steam line high radiation alarm rather than the automatic trip currently described in the UFSAR. NRC approval is required because this existing condition, contrary to that described in the UFSAR and the NRC's Safety Evaluation Report (SER) related to the operation of LaSalle County Station (NUREG–0519), involves an unreviewed safety question.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

The Commission has made a proposed determination that the amendments requested involve no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendments would not (1) involve a significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety. As required by 10 CFR 50.91(a), the licensee has provided its analysis of the issue of no significant hazards consideration, which is presented below:

(1) Involve a significant increase in the probability or consequences of an accident previously evaluated because:

The lack of an automatic trip and isolation of the LaSalle Unit 1 and 2 mechanical vacuum pumps does not change the accident initiators for a design basis control rod drop accident or the inventory of fuel fission products available for release during this accident. Therefore, the probability of the design basis control rod drop accident is not changed.

The lack of an automatic trip and isolation of the LaSalle Unit 1 and 2 mechanical vacuum pumps does not significantly increase the consequences of the design basis control rod drop accident provided that the mechanical vacuum pump is tripped within 15 minutes of receiving the main steam high radiation trip alarms. Fifteen minutes for this operator action is reasonable time to respond to alarms based on licensed operator training, including simulator training. The trip is accomplished with a hand switch located on the Main Control Room front panels. A Human Factors Task Analysis has been performed by Commonwealth Edison and found acceptable assessing the actions to be performed by the control room operator. Also, the time that the mechanical vacuum pump operates during reactor startup, approximately 8 hours, does not affect the probability of the design basis control rod drop accident.

UFSAR (Updated Final Safety Analysis Report) section 15.4.9 states that a rod drop does not exceed the 280 cal/gm design limit and failure of fuel cannot result naturally from a control rod drop accident. This determination was based on the following input parameters and initial conditions:

At the time of the control rod drop accident the core is assumed to be at a cycle point which results in the highest control rod worth. The core is also assumed to contain no xenon, to be in a hot-startup condition, and to have the control rods in sequence at a 50% rod density. The assumption to remove xenon, which competes well for neutron absorptions, increases the fractional absorptions, or worth of the control rods. The 50% control rod density assumption, ("black and white" rod pattern), which nominally occurs at the hot-startup condition, ensures that withdrawal on the next rod results in the maximum increment of reactivity.

The control rod drop accident analysis is performed as described in:

General Electric (GE) document NEDE–24011–P–A–10–US, "General Electric Standard Application for Reactor Fuel (GESTAR–II), Supplement for United States, dated March 1991.

If the worth of any control rod is determined to be greater than 1% $\Delta k/k$, a cycle specific control rod drop analysis is performed in accordance with:

Commonwealth Edison Co. Nuclear Fuel Services Report, NFSR–0075, Rev. O, "Control Rod Sequence Simplification," December, 1989.

The analysis for each unit's current cycle performed per NFSR–0075 verifies that heat

generated during a control rod drop accident is less than the 280 cal/gm design limit.

The assumptions of the Control Rod Drop Accident (CRDA) analysis are conservative with respect to the realistic or actual values or practice. A comparison of the conservative assumptions versus the more realistic case are as follows (even though not taken credit for in either the original or new analyses that have been performed):

a. GE uses 10 rod groups for the analysis, LaSalle Subdivides these into 12 groups. The smaller groups reduce radical peaking and incremental rod worths, resulting in lower fuel enthalpies.

b. GE uses an adibatic model to calculate the peak fuel enthalpy, Brookhaven National Laboratory (BNL) has analyzed for the NRC the CRDA using appropriate thermal-hydraulic feedback. BNL results show the peak fuel enthalpy well below the 150 cal/gm for a 1.5% Δk rod worth compared to GE's analysis of 280 cal/gm for a 1.42% Δk rod worth.

Based on the above, there is not a significant increase in the probability or consequences of the design basis control rod drop accident.

(2) Create the possibility of a new or different kind of accident from any accident previously evaluated because:

This change specifically affects the design basis control rod drop accident, and is the only low power event that involves release of fission products to the main condenser. The only difference between the accepted analysis and the new analysis is the rate of release from the main condenser and a ground level release (original analysis) versus an elevated (from the station vent stack) release, for the new analysis. Therefore, the change does not create the possibility of a new or different kind of accident.

(3) Involve a significant reduction in the margin of safety because:

The margin of safety that is affected by this change involves the radiological consequences of the design basis control rod drop accident. This margin of safety is based on the Standard Review Plan, section 15.4.9, which states that the calculated whole-body and thyroid doses at the exclusion area boundaries (EAB) and at the low population zone (LPZ) boundaries are well within the exposure guideline values in 10 CFR part 100, section 11, if the doses are less than 25% of the 10 CFR Part 100 exposure guideline values or 75 rem for the thyroid and 6 rem for whole-body doses. If the mechanical vacuum pump is manually tripped in less than or equal to 15 minutes after the receipt of the main steam line high radiation trip alarm, the analysis shows that the radiological consequences of the design basis control rod drop accident are less than 25% of the 10 CFR part 100 exposure guideline values.

Guidance has been provided in "Final Procedures and Standards on No Significant Hazards Considerations," Final Rule, 51 FR 7744, for the application of standards to license change requests for determination of the existence of significant hazards considerations. This document provides examples of amendments which are and are not considered likely to involve significant hazards considerations. These proposed amendments most closely fit the example of a change which may [either result in some increase to the probability or consequences of a previously] analyzed accident or may reduce in some way a safety margin, but where the results are clearly within all acceptable criteria with respect to the system or component specified in the Standard Review Plan section 15.4.9.

The NRC staff has reviewed the licensee's analysis and, based on this review, it appears that the three standards of 10 CFR 50.92(c) are satisfied. Therefore, the NRC staff proposes to determine that the amendments requested involve no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination.

Normally, the Commission will not issue the amendments until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendments before the expiration of the 30-day notice period, provided that its final determination is that the amendments involve no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish in the **Federal Register** a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

Written comments may be submitted by mail to the Rules Review and Directives Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this **Federal Register** notice. Written comments may also be delivered to room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Federal workdays. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555.

The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 3, 1994, the licensee may file a request for a hearing with respect to issuance of the amendments to the subject facility operating licenses and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348. If a request for a hearing or petition for leave to intervene in filled by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding, a petitioner shall file a supplement to the petition to intervene

which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendments under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendments requested involved no significant hazards consideration, the commission may issue the amendments and make it immediately effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendments.

If the final determination is that the amendments requested involve a significant hazards consideration, any hearing held would take place before the issuance of any amendments.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to James E. Dyer: petitioner's name and telephone number, date petition was mailed, plant name, and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Michael I. Miller, Esquire; Sidley and Austin, One First National Plaza, Chicago, Illinois 60690, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendments dated September 10, 1993 as supplemented on November 17, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public comment room located at the Public Library of Illinois Valley Community College, Rural Route No. 1, Oglesby, Illinois 61348.

Dated at Rockville, Maryland, this 23rd day of November 1993.

For the Nuclear Regulatory Commission.

Anthony T. Gody, Jr.,

Project Manager, Project Directorate III–2, Division of Reactor Projects—III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 93–29429 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 50–213]

Connecticut Yankee Atomic Power Co., Consideration of Issuance of Amendment to Facility Operating License and Opportunity for a Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. DPR–61, issued to Connecticut Yankee Atomic Power Company (the licensee), for operation of the Haddam Neck Plant located in Middlesex County, Connecticut.

The proposed amendment would revise Technical Specification Section 3/4.5.1, "ECCS Subsystems—Tavg Greater Than or Equal to 350° F," by adding a new ACTION Statement "A" for the centrifugal charging pumps which would increase the allowed outage time from 72 hours to 7 days. In addition, the ACTION statements would need to be relettered to reflect the addition of the new ACTION statement for the centrifugal charging pumps.

Before issuance of the proposed license amendment, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act) and the Commission's regulations.

By January 3, 1994, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written request for a hearing and a petition for leave to intervene. Requests for a hearing and a petition for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555 and at the local public document room located at the Russell Library, 123 Broad Street, Middletown, Connecticut 06457. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition; and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and the extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible

effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to 15 days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than 15 days prior to the first prehearing conference scheduled in the proceeding a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in this matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Services Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, by the above date. Where petitions are filed during the last 10 days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1–(800) 248–5100 (in Missouri 1–(800) 342–6700). The Western Union operator should be given Datagram Identification Number N1023 and the following message addressed to John F. Stolz: petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this **Federal Register** notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Gerald Garfield, Esquire, Day, Berry & Howard, Counselors at Law, City Place, Hartford, Connecticut 06103–3499, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer or the presiding Atomic Safety and Licensing Board that the petition and/or request should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1) (i)–(v) and 2.714(d).

If a request for a hearing is received, the Commission's staff may issue the amendment after it completes its technical review and prior to the completion of any required hearing if it publishes a further notice for public comment of its proposed finding of no significant hazards consideration in accordance with 10 CFR 50.91 and 50.92.

For further details with respect to this action, see the application for amendment dated November 2, 1993, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the local public document room located at the Russel Library, 123 Broad Street, Middletown, Connecticut 06457.

Dated at Rockville, Maryland, this 23rd day of November 1993.

For the Nuclear Regulatory Commission.

John F. Stolz,

Director, Project Directorate I–4, Division of Reactor Projects—I/II Office of Nuclear Reactor Regulation.

[FR Doc. 93–29432 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

[Docket No. 40–8027–EA; ASLBP No. 94–684–01–EA]

Sequoyah Fuels Corp., General Atomics, Gore, OK; Establishment of Atomic Safety and Licensing Board

Pursuant to delegation by the Commission dated December 29, 1972, published in the **Federal Register**, 37 FR 28710 (1972), and §§ 2.105, 2.700, 2.702, 2.714, 2.714a, 2.717 and 2.721 of the Commission's Regulations, all as amended, an Atomic Safety and Licensing Board is being established in the following proceeding.

Sequoyah Fuels Corporation, General Atomics (Gore, Oklahoma, Site Decontamination and Decommissioning Funding);

Source Material License No. SUB–1010

This Board is being established pursuant to the requests by Sequoyah Fuels Corp., the Licensee, and General Atomics, its parent corporation, for a hearing regarding an Order issued by the Deputy Executive Director for Nuclear Materials Safety, Safeguards, and Operations Support dated October 15, 1993 (58 FR 55087, October 25, 1993). The order imposed supplemental conditions found necessary to fully satisfy the Commission's financial assurance requirements for decommissioning facilities pursuant to 10 CFR part 40.

All correspondence, documents and other materials shall be filed in accordance with 10 CFR 2.701. The Board consists of the following Administrative Judges:

Judge James P. Gleason, Board Chairman, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge G. Paul Bollwerk, III, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Judge Jerry R. Kline, Atomic Safety and Licensing Board Panel, U.S. Nuclear Regulatory Commission, Washington, DC 20555.

Issued at Bethesda, Maryland, this 22nd day of November, 1993.

B. Paul Cotter, Jr.,

Chief Administrative Judge, Atomic Safety and Licensing Board Panel.

[FR Doc. 93–29433 Filed 11–30–93; 8:45 am]

BILLING CODE 7590–01–M

PENSION BENEFIT GUARANTY CORPORATION

Refunds of Premiums

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Notice of time limitations on requests for premium refunds paid for non-covered plans.

SUMMARY: This notice calls attention to the statute of limitations on claims against the Pension Benefit Guaranty Corporation ("PBGC") for refunds of premiums paid for pension plans not covered by title IV of the Employee Retirement Income Security Act of 1974 ("ERISA"). The PBGC will review untimely claims for refunds of premiums paid for non-covered plans that are received by the PBGC by February 15, 1994, and the PBGC may, depending on the facts and circumstances of particular cases, exercise its discretion to pay some portion of the amounts so claimed notwithstanding the statutory time limitation. Claims received after that date will not receive such consideration.

DATES: Requests for consideration of refund claims for which the statutory limitations period has expired must be received by the Pension Benefit Guaranty Corporation by February 15, 1994, to be eligible for consideration under this notice.

ADDRESSES: Address requests for consideration of refund claims for which the statutory limitations period has expired to Joseph DeFranco, Attorney, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005–4026 (before December 6, 1993, use 2020 K Street, NW., Washington, DC 20006–1860).

FOR FURTHER INFORMATION CONTACT: Joseph DeFranco, Attorney, at the above address, 202–778–8823 (as of December 20, 1993, use 202–326–4026) (202–778–1958 for TTY and TDD (as of January 24, 1993, use 202–326–4179)). (These are not toll-free numbers.)

SUPPLEMENTARY INFORMATION: Pension plans described in section 4021 of ERISA are covered by the pension insurance system administered by the PBGC under title IV of ERISA, and premiums must be paid to the PBGC under ERISA section 4007 for such plans. Most defined benefit pension plans are covered by title IV, but there are a number of exceptions. For example, church plans (as defined in section 414(e) of the Internal Revenue Code) are excluded from title IV coverage under section 4021(b)(3) of ERISA unless an election described in section 4021(b)(3) is made.

PBGC premiums are not owed for a plan that is not covered by title IV, and a non-covered plan does not become a covered plan merely because PBGC premiums are paid for it. In general, premiums paid for a non-covered plan may be recovered by requesting a refund. However, ERISA section 4003(f)(5) imposes a time limitation on claims against the PBGC: In general, the PBGC need not pay any claim for which enforcement is sought more than six years from the date when the claim arose. A claim for refund of an erroneous premium payment is generally considered to arise on the date when the erroneous payment is made.

The PBGC generally refuses payment of claims that are not timely presented under the statute. However, the circumstances of some recent requests for refunds of premiums paid for plans for years when they were not covered by title IV have made the PBGC aware that some persons may believe that the statutory time limitation on claims against the PBGC does not apply to non-covered plans' refund claims.

The PBGC hereby notifies the public that it will review untimely claims for refunds of premiums paid for non-covered plans, if received by the PBGC by February 15, 1994, and that it may, depending on the facts and circumstances of particular cases, exercise it discretion to pay some portion of the amounts so claimed notwithstanding the statutory time limitation. Claims received after that date will not receive such consideration. For this purpose, the PBGC will consider a refund claim to be received when it receives a written communication that clearly identifies the plan in question and that (1) requests a refund, (2) requests a title IV coverage determination, or (3) notifies the PBGC that a request has been submitted to the Internal Revenue Service for a ruling or determination that would be a basis for a request to the PBGC for a title IV coverage determination.

Issued at Washington, DC, this 24th day of November 1993.

Martin Slate,

Executive Director, Pension Benefit Guaranty Corporation.

[FR Doc. 93–29367 Filed 11–30–93; 8:45 am]

BILLING CODE 7708–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–33241; File No. SR–CHX–93–29]

Self-Regulatory Organizations; Filing of Proposed Rule Change by Chicago Stock Exchange, Inc. Relating to Extended Trading Hours for the Chicago Stock Basket

November 23, 1993.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on October 27, 1993, the Chicago Stock Exchange, Inc. ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The CHX submits the following rule proposal which extends the hours of trading of the Chicago Stock Basket ("CXM") pursuant to the provisions of Article XXXVI.[1]

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. The self-regulatory organization has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

The purpose of the proposed change is to make the trading hours of the CXM consistent with the trading hours of the corresponding derivative products that

[1] Specifically, the CHX proposes to amend Article IX, Rule 10 to extend the hours of trading in the CXM until 3:15 Central time (4:15 Eastern time). The CHX's primary trading session currently ends at 3 Central time (4 Eastern time).

are based on the same index as the CXM,[2] and other derivative products that might be used as a hedge against the CXM.[3] Similar trading hours with other derivative products will provide certain risk management benefits when trading the CXM.

2. Statutory Basis

The proposed rule change in consistent with section 6(b)(5) of the Act in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system and, in general, to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The Exchange does not believe that the proposed rule change will impose any burden on competition.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others

No comments were solicited or received.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Withing 35 days of the publication of this notice in the **Federal Register** or within such other period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve the proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying at the Commission's Public Reference Section, 450 Fifth Street, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the CHX. All submissions should refer to File No. SR–CHX–93–29 and should be submitted by December 22, 1993.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29358 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[2] The Commission notes that the CXM is a standardized basket product consisting of twenty-five shares of each of the stocks included in the Chicago Mercantile Exchange's "MMI" futures contract. The contract is based on the American Stock Exchange's Major Market Index ("MMI"), a broad-based price-weighted index of twenty stocks listed on the New York Stock Exchange. See Securities Exchange Act Release No. 33053 (October 15, 1993), 58 FR 54610 (October 22, 1993) (File No. SR–CHX–93–18).

[3] The CHX offered examples of potential hedging strategies involving the CXM that could use, among other things, derivative products based on the Standard & Poor's 100 and Standard & Poor's 500 indexes. Telephone conversation between David T. Rusoff, Foley & Lardner, and Beth Stekler, Attorney, Division of Market Regulation, SEC, on November 15, 1993.

[Release No. 34–33238; File No. SR–GSCC–93–4]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Relating to GSCC's Clearing Fund Formula

November 22, 1993.

On April 21, 1993, the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR–GSCC–93–4) under section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").[1] The proposal seeks Commission approval of GSCC's current clearing fund formula.[2] Notice of the proposal appeared in the **Federal Register** on June 7, 1993.[3] GSCC filed a technical amendment on June 11, 1993.[4] No public comments were received. For the reasons discussed below, the Commission is approving GSCC's use of the current clearing fund formula on a permanent basis.

I. Description

Generally, GSCC's clearing fund formula calculates the amount a member must contribute to the fund to collateralize the risk its daily settlement activities pose for GSCC.[5] A participant's required clearing fund deposit is the sum of two components: Funds-only settlement obligations and securities net settlement obligations. The funds-only settlement obligations component, which is designed to collaterize a member's net cash payment obligations to GSCC, is equal to 125% of the summed absolute values of the netting member's average[6] funds only settlement obligation for the previous twenty days.[7]

The securities net settlement obligations component, which is designed to collateralize GSCC's guarantee of a member's securities deliver and receive obligations, is the greater of either the average offset margin amount[8] for the last twenty business days or 50% of the gross margin amount.[9] The gross margin

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] The Commission granted temporary approval of GSCC's current clearing fund formula by two separate orders. Securities Exchange Act Release Nos. 27901 (April 12, 1990), 55 FR 15055 ("Release No. 27902"). The Commission subsequently granted further temporary approval of the formula until June 30, 1993. Securities Exchange Act Release Nos. 32090 (April 1, 1993), 58 FR 18289.

[3] Securities Exchange Act Release No. 32001 (May 28, 1993), 58 FR 31983.

[4] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Richard C. Strasser, Attorney, Division of Market Regulation ("Division"), Commission (June 11, 1993).

[5] For a detailed description of the clearing fund formula, see Release Nos. 27901 and 27902, *supra* note 2.

[6] The average is a weighted rolling average (i.e., GSCC places greater weight on more recent days within the 20 business days). Release No. 27902, *supra* note 2 at n.35.

[7] The funds only settlement amount is determined by calculating for a particular business day the net total of the following: (1) Trade adjustments for settling positions; (2) any marks-to-the-market owed for failed positions; (3) adjustments for coupon and redemption payments; (4) the amount reported to a member during the previous business day's processing cycle as its funds-only settlement amount obligations ("opening balance"); (5) the aggregate settlement amount that a member has received from or paid to GSCC since the end of the processing cycle immediately preceding the processing cycle for which the funds-only settlement amount is being calculated ("collection/paid amount"); (6) the total required forward mark allocation payment; and (7) the total forward mark allocation return amount. Release No. 27902.

[8] The offset margin amount is calculated by subtracting a credit for offsetting net settlement positions from the gross margin amount of a member's net settlement positions. Release No. 27901, *supra* note 2.

[9] Price movements of certain securities exhibit close although not perfect correlation. GSCC gives clearing members an offset credit for positions which historically have moved in tandem. To accommodate for the risk that the prices of historically correlated securities will not move in tandem the clearing fund formula requires a

amount is the product of a GSCC-generated margin factor[10] and the total dollar value of the member's net settlement position that day.[11]

II. Discussion

The Commission believes that GSCC's proposal is consistent with the Act and in particular with section 17A thereunder.[12] Section 17(b)(3)(F) provides, among other things, that the rules of a clearing agency must be designed to ensure the safeguarding of funds and securities which are in the custody or control of the clearing agency or for which it is responsible.[13] GSCC's clearing fund formula, by providing GSCC with an effective mechanism for measuring the risk profile of its members' securities settlement obligations, is consistent with GSCC's responsibilities relating to the safeguarding of funds under the Act.

On April 12, 1990, the Commission, in two separate orders, granted temporary approval to significant changes to the two components of GSCC's clearing fund formula.[14] The Commission directed GSCC to assess the operation of the formula regarding the accuracy of margin factors, disallowance percentages, and the adequacy of GSCC's liquidity before permanent approval would be granted.[15] GSCC has assessed the formula's operation and has determined that the formula accurately assesses a clearing member's risk in all market conditions.

Margin Factors

The Commission directed GSCC, among other things, to consider ways to refine its analysis of price volatility, including procedures to factor in the effects of dramatic price movements, as a way of assessing the accuracy of GSCC's margin factors.[16] Since that time, GSCC has compiled three years of its own price volatility data. This data base includes securities such as zero-coupon government securities for which there is limited third-party data available. Accordingly, GSCC believes it is sufficient for assessing and monitoring the adequacy of its margin factors.

GSCC's Membership and Standards Committee of the Board of Directors reviews quarterly the sufficiency of GSCC's margin factors. In reviewing its margin factors, GSCC uses: (1) Its own short-term (most recent 90 days) and long-term (past year) data covering the mean plus two standard deviations and, separately, 99% of all price movements, and (2) historical price volatility data from Carroll, McEntee & McGinley Inc. which studies the current leading issue in each security category using the mean plus two standard deviations.

GSCC believes that the use of its own price volatility data in addition to data from third party vendors provides adequate data to enable GSCC to monitor its margin factors. According to GSCC, this data indicates that GSCC's margin factors are prudent and conservative, particularly on the long end of the maturity spectrum, where the greatest exposure exists for GSCC.[17] GSCC continues to believe that its own data base is the most accurate and meaningful source of price volatility data on government securities in existence across a broad spectrum of issues and products because it includes most inter-dealer trades in U.S. Treasury securities. At the same time, GSCC acknowledges that certain third parties such as GOVPX, Inc. ("GOVPK") have made significant steps toward disseminating last sale pricing information for government securities that is beneficial to GSCC. Thus, GSCC will continue to supplement its own data with that supplied by third parties.

Disallowance Percentages

The Commission also directed GSCC to monitor its proposed measures of correlation, and in the event they should fail to conform to historical levels, adjust its disallowance percentages accordingly.[18] GSCC continues to assess its measures of correlation against current and historical data. GSCC will adjust its disallowance percentages when necessary to ensure that GSCC's risk exposure is minimized.

Liquidity

The Commission also directed GSCC to monitor its funding requirements on a daily basis to ensure that GSCC, principally through the clearing fund, has sufficient liquidity during periods of high volatility to protect GSCC from contingencies stemming from participants' daily net settlement obligations.[19] Over the past three years GSCC has monitored funding requirements and has modified the clearing fund deposit collection process and member deposit requirements. These modifications include: Using internal price volatility data to determine margin requirements; incorporating forward-settling positions in members' 20-day average for determining clearing fund deposits; raising from 75% to 100% the cap on collection of a netting member's forward mark allocation payment; establishing new issuer letter of credit standards; obtaining authority to collect additional clearing fund deposits in times of market stress; requiring members to satisfy clearing fund deposit deficiencies earlier; collecting funds-only settlement payments an hour earlier; expanding the scope of Treasury securities that are eligible as clearing fund collateral; and correlating quarterly returns of excess margin with refunding

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minimum margin amount that is the greater of either 50% of the participant's total gross margin amount or the average offset margin amount. *Id.*

[10] GSCC has established a margin factor for each maturity range within each product group that is designed to measure the potential volatility of prices in that maturity range. *Id.* at n. 16.

[11] Release No. 27901, *supra* note 2.

[12] 15 U.S.C. 78q–1 (1988).

[13] 15 U.S.C. 78q–1(b)(3)(F) (1988).

[14] Previously, GSCC's clearing fund formula assessed the risk of a clearing member's positions based on its "gross" net settlement positions, without granting the member offsets for securities that display historical market price correlation. Release No. 27901, *supra* note 2. In the order granting temporary approval of GSCC's proposal to give its members credits for correlated offsetting net settlement positions, the Commission also temporarily authorized GSCC to use an automated system that enables GSCC to determine the price volatility of various securities issues. GSCC uses this information to assess its level of risk exposure and to adjust its margin factors accordingly. Moreover, the Commission also authorized GSCC to collect additional clearing fund deposits more quickly, whenever GSCC detects a risk stemming from a participant's higher than usual net settlement position. *Id.*

[15] See Release No. 27901, *supra* note 2.

[16] See *id.* See also Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798 (approving GSCC's proposed changes to its netting system). Accurate margin factors help GSCC ensure that it is requiring its members to contribute a clearing fund deposit that adequately protects GSCC from risk exposure should a member default. In the event of a member default or insolvency, GSCC would be obligated to close-out and buy-in securities at price that might vary greatly from those of the previous day. In that case, an insufficient margin factor could cause GSCC to suffer significant losses. *Id.*

[17] GSCC's rules authorize GSCC to increase any of the margin factor percentages upon a determination that such increase is appropriate in light of market experience and conditions. GSCC may decrease margin factor percentages upon submission and review of a proposed rule change pursuant to Section 19(b)(2) of the Act. Release No. 27901, *supra* note 2 at n.55.

[18] Accurate measures of correlation are necessary in setting accurate disallowance percentages. Disallowance percentages are the factors by which GSCC reduces credits for offsetting positions (i.e., those displaying historical market price correlation sufficient to justify offsetting clearing fund formula credits and debits) to protect against the risk that market price correlation among offsetting securities is imperfect or will deviate from historical norms. Release No. 27901, *supra* note 2.

[19] Release No. 27901, *supra* note 2. GSCC also was directed to report to the Commission on a monthly basis any situation where GSCC could have made a special call for additional clearing fund deposits pursuant to GSCC rules and procedures and any amount assessed. *Id.* GSCC makes such calls frequently and has promised Commission staff prompt availability of such data. Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Richard C. Strasser, Attorney, Division, Commission (March 20, 1992).

periods.[20] These efforts have helped to ensure that the clearing fund remains at adequate levels while minimizing the drain on the liquidity of GSCC clearing members. GSCC understands that it is obligated to maintain adequate liquidity sources and to reassess periodically the adequacy of those sources. Accordingly, the Commission believes that the proposal is consistent with GSCC's responsibilities under the Act and should be approved on a permanent basis.

III. Conclusion

On the basis of the foregoing, the Commission finds that the proposal is consistent with the requirements of the Act and in particular with section 17A of the Act and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[21] that the proposal (File No. SR–GSCC–93–04) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29354 Filed 11–30–93; 8:45 am]

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[Release No. 34–33239; File No. SR–GSCC–93–02]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Relating to the Netting of Zero Coupon Government Securities

November 22, 1993.

On April 23, 1993, pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the netting of book-entry zero coupon government securities. On June 7, 1993, the Commission published notice of the proposed rule change in the **Federal Register** to solicit comments from interested persons.[2] No comments were received. This order approves the proposal.

[20] See Securities Exchange Act Release No. 33237 (November 22, 1993) (order approving File No. SR–GSCC–91–4). See also letter from Jeffrey F. Ingber, General Counsel, GSCC, to Richard C. Strasser, Attorney, Division, Commission (March 29, 1992).

[21] 15 U.S.C. 78s(b)(2) (1988).

[22] 17 CFR 200.30–3(a)(12) (1992).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] Securities and Exchange Act Release No.. 32386 (May 28, 1993), 58 FR 31985.

I. Description

The proposal authorizes GSCC to continue to offer net settlement services to its members for trades in book-entry zero coupon government securities ("zeros")[3] and clarifies GSCC's procedures for collecting additional clearing fund deposits to protect GSCC against the risk of a member or default on net settlement obligations.[4] In addition, the proposal clarifies GSCC's procedures for collecting increased clearing fund deposits.

GSCC's netting service for zeros will operate in essentially the same way as for other securities eligible for GSCC's trade netting service. In general, GSCC netting members must submit to GSCC for comparison and netting data on all of the member's eligible trades in zeros with other netting members. On each business day GSCC will net a member's trades to determine the member's net position (a net long position will result if purchases exceed sales; a net short position will result if sales exceed purchases; and a net flat position will result if purchases equal sales). GSCC will then match a long position with a short position in the same CUSIP[5] to net receive and deliver obligations. On the morning after trade date members will receive a Funds-Only Settlement Report, a Netted Trade Summary Report, and an Open Receive/Deliver Orders Report. These reports will provide members information regarding payments due from or owed to netting members, what trades entered the netting system and the resulting net, and the substitution of GSCC as the counterparty (novation) to all open netted positions.[6] Once the reports are available, each member must provide settlement instructions to its clearing bank. Settlement of net delivery obligations between each member and GSCC will be made over Fedwire on the day after trade date.

The proposal modifies GSCC's clearing fund formula to account for the market risk[7] associated with net trades in zeros GSCC has guaranteed. At the time of the initial temporary approval, GSCC created a new schedule of margin factors that reflected the greater volatility associated with zeros.[8] Because the margin factors for zeros are tailored to each maturity group, the projected volatility of zeros is reflected in the required margin subcomponent.[9] GSCC's margin factors are the same for zeros and non-zeros with remaining maturities of up to two years.[10] However, at the longest remaining period to maturity (i.e., over fifteen years), the zero margin factors is two and a half times as great as the non-zero factor.[11]

Offset class	Remaining maturity	Zero	Non-Zero
D	2 to 4 years	.625	.500
E	4 to 5 years	.938	.625
E	5 to 7 years	1.313	.750
F	7 to 10 years	1.870	.935
F	10 to 15 years	2.013	1.250
G	Over 15 years	3.625	1.450

GSCC does not allow any offsets between zeros and non-zeros because available historical data indicates that there is a poor correlation between these classes of securities. A netting member's required margin, therefore, will be the greater of either the average offset

[3] The zeros that are eligible for GSCC's netting system are book-entry government securities including STRIPS (STRIPS is an acronym for Separate Trading of Registered Interest and Principal of Securities, which are pre-stripped, book-entry, zeros that are direct obligations of the U.S. Treasury) and zeros issued by agencies of the U.S. Government such as the Federal Home Loan Mortgage Corporation and the Student Loan Marketing Association. GSCC will not make eligible for netting generic or privately stripped securities such as Certificates of Accrual on Treasury Securities or Lehman Investment Opportunity Notes.

[4] See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055, for a more detailed discussion of GSCC's netting system.

[5] "CUSIP" is an acronym for the Committee on Uniform Securities Identification Procedures. The CUSIP numbering system was developed by a committee of the American Bankers Association bearing the same name and was created to identify specific securities issues. Each eligible netting security issue has its own separate CUSIP number that GSCC uses in its netting system to group trades for the net.

[6] Once netting has occurred, GSCC is liable to pay for securities sold to a member or to deliver securities bought from a member. GSCC requires members to make deposits to GSCC's clearing fund to help protect against the risk of loss to GSCC and non-defaulting clearing members in the event of a netting member default.

[7] "Market risk" is the risk that the value of the securities GSCC has guaranteed will decline so that a subsequent trade will result in financial loss.

[8] The current clearing fund formula has two components, the funds-only settlement component and the securities net settlement component. A netting member's required clearing fund deposit will be the sum of the two components. GSCC's margin factors are an element in the securities net settlement component of the clearing fund formula. The securities net settlement component of GSCC's clearing fund formula is essentially the same as the member's required margin deposit. This component will be referred to hereinafter as the "required margin" or the "required margin deposit."

[9] The remaining maturity of forward settling trades in zeros is measured from the date of issuance of the underlying securities.

[10] GSCC's margin factors are based upon the Treasury haircut requirements and periodic market volatility data obtained from other sources. However, GSCC continues to collect historical data for zeros, and GSCC reviews its price volatility data for consistency and quarterly market volatility data provided by Carrol, McEntee & McGinley Inc.

[11] GSCC's margin factors for zeros and non-zeros are:

margin [12] or 50% of the gross margin amount.[13]

GSCC monitors a clearing member's positions in zeros in relation to the member's total positions in other zeros and in relation to the member's total non-zero position. A netting member is deemed to have a high concentration in zeros generally if the dollar value of a member's net settlement positions in zero equals or exceeds 25% of the dollar value of the member's net settlement positions in all issues eligible for GSCC's netting system. A member is deemed to have a high concentration in zeros within the same maturity range if the dollar value of the member's net settlement positions in zeros within the same maturity range equals or exceeds 50% of the total dollar value of the member's net settlement positions in zeros.

If a clearing member is found to have an unusually high concentration in zeros generally or as compared to other zero issues, GSCC may require the member to make an additional clearing fund deposit. The additional deposit may be as great as 200% of the netting member's highest single business day's required fund deposit during the recent twenty business days. However, if GSCC's Board of Directors ("Board") determines that such an amount is not sufficient for the protection of GSCC and its members, the Board will set a higher amount. GSCC's Membership and Standards Committee reviews periodically the procedure for collecting clearing fund collateral to determine the appropriateness of the procedure.

The proposal clarifies GSCC's existing procedures for requiring additional clearing fund deposits.[14] Consistent with GSCC's existing rules, GSCC may notify a clearing member that it is required to make an additional deposit to the clearing fund if: (1) The member is on surveillance status and the member's required clearing fund deposit exceeds the value of the member's deposits to the clearing fund; (2) the member's required clearing fund deposit exceeds by 25% or more the value of the member's deposits to the clearing fund; (3) the member's required clearing fund deposit exceeds by $250,000 or more the value of the member's deposits to the clearing fund; or (4) the member's funds-only settlement amount exceeds by 25% or more the member's average daily clearing fund funds-only settlement amount over the most recent twenty business days. If a member is so notified, the member may satisfy the requirement by making the deposit in the form of cash, eligible Treasury securities, eligible letters of credit, or a combination of any of the above. GSCC continues to require that the additional deposit be made by the close of business on the day of notification. However, if the notice is not made available to the member prior to 3 p.m., eastern time, the additional deposit requirement may be satisfied by 12 noon on the following business day.

II. Discussion

The Commission believes GSCC's proposal is consistent with the Act and particularly with sections 17A(b)(3) (A) and (F) of the Act.[15] Those sections require that a clearing agency be organized and its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of securities and funds which are in its custody or control or for which it is responsible. Section 17A(b)(3)(F) further requires the rules of a clearing agency to be designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of securities transactions and to protect investors and the public interest. As discussed below, the Commission believes the proposed rule change is consistent with these provisions.

The proposal extends the benefits of GSCC's centralized, automated netting system to netting members that trade in zeros. In this regard, the Commission believes that GSCC's proposed netting procedure is designed to remove impediments to and perfect the mechanism of a national system for the prompt and accurate clearance and settlement of government securities transactions and provides increased efficiency for GSCC netting members.

The commission believes GSCC's proposal reduces the risk associated with the clearance and settlement of zeros. As stated above, due to the lack of historical price and volatility data on which to base its margin factors for zeros, GSCC's bases its margin factors for zeros on the Treasury haircut requirements for zeros.[16] Because zeros with remaining time to maturity in excess of two years exhibit greater volatility than non-zero securities in the same maturity ranges, and because zeros generally are more sensitive to fluctuations in interest rates and movements in the market, including zeros in its netting system created new risk for GSCC and its membership. The Commission believes, therefore, that GSCC's proposal to establish different margin factors for zeros than for non-zeros is prudent.

GSCC's proposal enables GSCC to measure the market risk and potential financial exposure presented by a specific transaction or a netting member's overall position. GSCC employs monitoring procedures that may result in an increased clearing fund deposit if GSCC determines that a netting member's securities position presents an increased likelihood of financial exposure. At the very least, concentration in zeros above the specified levels will trigger increased surveillance of the netting member's positions. In addition, GSCC prohibits offsets among zeros and non-zeros because of the historical poor correlation between zeros and non-zeros. The Commission therefore believes that GSCC's proposal helps ensure the safeguarding of securities in GSCC's possession or under GSCC's control.

In the initial order approving the netting of zeros on a temporary basis,[17] the Commission requested that GSCC monitor its clearing members' concentration in zeros, and GSCC report to the Commission quarterly any situation where GSCC could have made a special call for additional clearing fund deposits pursuant to GSCC's Rules and Procedures, and the amount assessed, if any. The commission requested also that GSCC continue to monitor the adequacy of its zero netting system and, in consultation with the Commission, make adjustments as necessary. The commission stated that it expected GSCC to continue to build its base of historical and implied volatility data and to continue exploring a means of analyzing such data, including

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[12] The offset margin amount is calculated by subtracting a credit for offsetting net settlement positions from the gross margin amount of the member's net settlement positions. The average offset margin amount is the average offset margin for the last 20 days during which GSCC calculated net settlement positions.

[13] The gross margin amount is the applicable margin factor multiplied by the total dollar value of the member's net settlement position.

[14] GSCC calculates daily each netting member's clearing fund contribution requirement and determines whether a netting member's deposit exceeds its required clearing fund contribution. A member's clearing fund contribution requirement is based on the risk to GSCC resulting from the member's daily settlement activities.

[15] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[16] For zeros with maturities ranging from five years to over fifteen years, the percentage spread between GSCC's margin factors for zeros and non-zeros exceeds the percentage spread between Treasury haircut factors for zeros and non-zeros in three out of four of the maturity ranges.

[17] Securities Exchange Act Release No. 28842 (January 31, 1991), 56 FR 5032.

procedures to consider the effects of dramatic price movements.[18]

GSCC has represented to the Commission that in monitoring its clearing members' concentration in zeros, GSCC has not made a special call for an additional clearing fund deposit nor has GSCC found a situation where GSCC could have made a special call for additional clearing fund deposits pursuant to GSCC's Rules and Procedures.[19] GSCC has represented also that its netting system has functioned efficiently and that it will be able to continue to include zeros in its netting system and operate its netting system efficiently and within time frames established by GSCC during current and reasonably anticipated future average daily and peak processing days.[20] Further, GSCC has collected over two year's worth of historical volatility data and developed an automated system for analyzing such data.[21] The Commission believes it is critical for GSCC to continue to assess daily historical price movements of zeros and the implications of such movements on GSCC's margin factors applicable to zeros. This will add precision to GSCC's risk management processes and help minimize the risk associated with clearance and settlement of zeros.

III. Conclusion

On the basis of the foregoing, the Commission finds that GSCC's proposed rule change is consistent with Section 17A of the Act.

It is therefore ordered, Pursuant to Section 19(b)(2) of the Act, that the proposed rule change (SR–GSCC–93–02) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[22]

Margaret H. McFarland,

Deputy Secretary.

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[18] GSCC may increase any of the margin factor percentages upon a determination that such increase is appropriate in light of market experience and conditions. GSCC, however, may decrease margin factor percentages upon submission and review of a proposed rule change pursuant to section 19(b)(2) of the Act, 15 U.S.C. 78s(b)(2) (1988). The Commission stipulated a similar requirement in an order temporarily approving modifications to GSCC's clearing fund formula. See Securities Exchange Act Release No. 27901, *Supra* n.4.

[19] Letter from Jeffrey F. Ingber, General Counsel and Secretary, GSCC, to Jack Drogin, Branch Chief, Division of Market Regulation, Commission (June 16, 1993).

[20] *Id.*

[21] *Id.*

[22] 17 CFR 200.30–(a)(12) (1990).

[Release No. 34–33240; File No. SR–GSCC–93–03]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving Proposed Rule Change Relating to the Netting of Forward-Settling Trades in Government Securities

November 22, 1993.

I. Introduction

On May 28, 1993, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change relating to the netting of forward-settling trades in government securities and the form of letter of credit that GSCC will accept as a clearing fund deposit. Notice of the proposed rule change was published in the **Federal Register** on June 7, 1993.[2] No comments were received. This order approves the proposed rule change.

II. Description

On April 12, 1990, the Commission approved on a temporary basis, until April 30, 1992, a proposed rule change (SR–GSCC–90–01)[3] that expanded GSCC's netting service to include forward-settling trades in government securities ("forward trades"). Subsequently, the Commission extended, on a temporary basis until June 30, 1993, GSCC's rules relating to the netting of forward-settling trades.[4] The current proposal would authorize GSCC to establish this service permanently.

Under the proposal, the term "forward trades" includes members' purchases and sales of eligible securities,[5] which have been successfully compared for settlement on a later date. This definition encompasses trades commonly known as "when, as, and if issued" ("when-issued" or "W/I" trades). When-issued trading extends from the day the auction is announced[6] until the issue day of the Treasury security traded.[7] Usually, there is a ten day lag between the time securities are auctioned and the time they are issued. Under GSCC's proposal, trades with a scheduled settlement date of fifteen business days or less after the business day on which the comparison report for the trade data is issued would be eligible for netting if such trades meet the already established netting eligibility requirements.[8]

GSCC's proposal clarifies the procedures to allow participants to submit data for forward trades prior to the date of the auction of the securities.[9] The comparison operation for forward trades is conducted in the same manner as regular trades.[10]

[1] 15 U.S.C. 78s(b) (1990).

[2] Securities Exchange Act Release No. 32386 (May 28, 1993), 58 FR 31981.

[3] Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066.

[4] Securities Exchange Act Release Nos. 30661 (April 30, 1992), 57 FR 19654 (approving the netting of forward settling trades through July 31, 1992), 31065 (August 21, 1992), 57 FR 39255 (approving the netting of forward settling trades through October 30, 1992), 31384 (October 30, 1992), 57 FR 52807 (approving the netting of forward settling trades through March 31, 1993), and 32090 (April 1, 1993), 58 FR 18289 (approving the netting of forward settling trades through June 30, 1993).

[5] Pursuant to GSCC's Rules, eligible securities include securities falling within the definitions set forth in sections 3(a)(42) (A), (B) and (C) of the Act, 15 U.S.C. 78c(a)(42) (A), (B) and (C) (1988). These definitions include securities that are direct obligations of the United States, obligations guaranteed as to principal or interest by the United States or securities issued or guaranteed by corporations in which the United States has a direct or indirect interest.

[6] The U.S. Treasury relies on auctions carried out by the Federal Reserve System to sell new notes and bonds. The Treasury announces a new issue a week or more before the auction date. The announcement states the amount to be issued, the maturity date of the securities, and their denomination. In addition, the announcement designates the series and the identifying CUSIP numbers for the securities to be issued.

[7] Auctions of Treasury securities are based on a yield-bid system. During the auction period, participants bid yield to two decimal points for specified quantities of the new issue. After bids are received, on the basis of both the bids and the amount it wishes to borrow, the Treasury determines the price below which bids are not accepted ("stop-out price"). The Treasury then rounds the value of the coupon on the security to the nearest one eighth of 1% necessary to make the average price charged to successful bidders equal to $100.00 or less. Once the coupon on the issue is established, each successful bidder is charged a price, which is determined so that the yield-to-maturity on a bidder's securities equals the bidder's yield bid. Stigum, Fabozzi, U.S. Treasury Obligations, in The Handbook of Fixed Income Securities 261–62 (F. Fabozzi, I. Pollack ed. 1983).

[8] In addition to the proposed requirement, in order to be eligible for netting a trade must meet the following requirements:

(1) Trade data must have been compared through GSCC's comparison system;

(2) The data on the trade is listed on a report that has been made available to netting members;

(3) Netting of the trade will occur on or before its scheduled settlement date;

(4) Both parties to the trade are netting members, and

(5) The underlying securities are eligible netting securities.

Notwithstanding these requirements, GSCC may exclude any trade or trades from the netting system. GSCC Rules and Procedures, R. 11 section 2.

[9] Trade data submitted for comparison must be entered, on an item-by-item basis or via bulk transmission, by the time established by GSCC and should include quantity, security identification, contra-party, and trade value. In addition, GSCC may require the submission of additional identifying data.

[10] Upon submission of trade data, GSCC will validate and match the information in order to

GSCC has implemented a yield-to-price conversion program which allows forward trades to be compared and netted on the day they are first submitted for comparison, without the need to resubmit the trade after the auction date.[11] Trading in the when-issued market is conducted on the basis of the current market yield because the coupon rate has not yet been set. Accordingly, as part of the process of clearing when-issued trades, GSCC converts member trades from a yield basis to a price basis using the U.S. Treasury Department's formula ("yield-to-price conversion"). The conversion allows GSCC to novate and guarantee settlement of when-issued trades before the auction thus reducing the counterparty settlement risk during the when-issued trade period.

The netting of forward trades could pose credit and liquidity exposure to GSCC and other members utilizing the system. Accordingly, GSCC established certain safeguards including clearing fund and margin requirements for positions involving forward trades. These safeguards are designed to protect GSCC from the liquidation exposure stemming from the size of net settlement positions in forward trades. The proposal revises those safeguards, based on GSCC's experience during the last few years. Those changes involve forward mark allocation and clearing fund payments.

GSCC assesses netting members, except those who are inter-dealer brokers,[12] a required forward mark allocation amount with regard to forward net settlement positions. This payment amount is determined each business day during the forward period on a CUSIP-by-CUSIP basis. The required forward mark allocation amount is based on the difference in dollar value between the aggregate amount of the contract values for the forward trades of the securities comprising each forward net settlement position and the aggregate of the system price for the same positions on the day when such amount is calculated.[13]

In order to determine the forward mark allocation for a netting member with a forward debit mark amount, GSCC first calculates the total forward debit marks of all netting members with forward trades. GSCC then establishes a fraction, the numerator of which is the total debit mark of the five largest forward debit mark amounts among all netting members (including, for this purpose, netting members who are inter-dealer brokers), and the denominator of which is the total forward debit mark amounts of all netting members (excluding, for this purpose, netting members who are inter-dealer brokers). GSCC derives the forward mark allocation amount for each netting member with forward trade by multiplying the member's forward debit mark amount by this faction. The proposed fraction, however, may not be higher than 100%[14] nor less than 25% of a participant's forward debit mark amount.

The Commission recently approved a proposed rule change revising members' clearing fund requirements to include a twenty-day average of each member's forward trades in calculating that member's contribution.[15] Prior to that rule change, a member's net securities and funds-only settlement obligation arising from forward trades was factored into the twenty-day average, but only on the day forward trades settled and only for the purpose of calculating the member's current clearing fund requirement. As modified, GSCC may include in the calculation of a netting member's required clearing fund deposit the weighted average of that netting member's forward net settlement position over the most recent twenty days.

Under this proposal and until further notice, GSCC will include all recurring forward net settlement positions in the twenty-day average. GSCC, however, retains the discretion to take specific CUSIPs out of the twenty-day average after the settlement obligations of the securities underlying the forward position are met.[16]

GSCC believes that its own data base is the most accurate and meaningful source of price volatility data on government securities in existence across a broad spectrum of issues and products. Because of the lack of closing price data in the government securities market, GSCC's system price may, on rare occasions, not accurately reflect the inter-dealer closing price on days where there is substantial intra-day price volatility.[17]

The current proposal would modify the form of letter of credit that GSCC will accept as a deposit to its clearing fund.[18] Under the proposed rule change, to be eligible as clearing fund collateral, a letter of credit must state explicitly that: (1) It will be duly honored upon presentment to the issuing bank,[19] (2) partial drawings are permitted, and (3) the letter of credit is issued under and governed by Article 5 of the New York Uniform Code. In addition, each such letter of credit must be irrevocable. A letter of credit may neither be revoked nor amended to reduce its amount except upon: (1) The issuer's written notice to GSCC of its intent to revoke, given not less than two full business days prior to the date of such revocation, and (2) GSCC's consent to

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ensure that the details of each trade are in agreement. GSCC will then generate a report setting forth whether the trade has been compared, remains uncompared or is pending comparison. Compared trades are those where there is an exact match of all data except for contract amount, where members can specify a tolerance within which money settlement amounts may vary. Uncompared trades are those for which the counterpart either did not submit data or did not submit data which agreed in all respects. Trades pending comparison are those where the data submitted by another party against the member did not match any trade the member submitted.

[11] See Securities Exchange Act Release No. 30170 (January 8, 1992), 57 FR 1774 (order approving yield-to-price conversion for when-issued trades). See also Securities Exchange Act Release No. 29732 (September 24, 1991) 56 FR 49937 (order temporarily approving, until January 31, 1992, yield-to-price conversion of when-issued trades).

[12] An inter-dealer broker is a GSCC netting member who acts exclusively as a broker on behalf of netting members and/or eligible netting applicants. GSCC Rules and Procedures, R. 1.

[13] See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[14] For a more complete discussion of forward mark allocations, see Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066. See also Securities Exchange Act Release No. 33237 (November 22, 1993).

[15] See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055 (order approving proposed rule until April 30, 1992); Securities Exchange Act Release No. 32381 (May 28, 1933), 58 FR 31983 (notice of filing of proposal to extend temporary approval or make permanent proposed rule).

[16] For a more complete discussion, see Securities Exchange Act Release No. 33237 (November 22, 1993).

[17] GSCC is able to calculate, on a daily basis, a system price that is as close as possible to the closing inter-dealer price. For this purpose, GSCC will calculate the average price for all trades compared for netting, weighing each trade according to its relative size. If, however, as a result of special market conditions, this average is distorted, GSCC, based on collected data, will choose instead a price as close as possible to the inter-dealer closing price. See Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055.

[18] GSCC accepts clearing fund deposits in the form of cash, eligible Treasury securities, or letters of credit issued by an approved institution. The Commission recently approved a proposed rule change modifying the standards for issuers of letters of credit used to collateralize GSCC's clearing fund. See Securities Exchange Act Release No. 33237 (November 22, 1993).

[19] One of the disadvantages of letters of credit is that the funds secured thereunder may not be immediately realizable. Under the commercial laws of most states, a bank issuing a letter of credit may defer honor of a payment request until the close of business on the third day following receipt of the documentation necessary to a request for payment. See e.g., N.Y. Uniform Commercial Code Section 5-112(1)(a) (McKinney 1964). Under the form of letter of credit required by GSCC, any letter of credit presented by GSCC prior to 5 p.m. must be paid by the bank before 3 p.m. on the next business day. Telephone call between Jeff Ingber, General Counsel, GSCC and Christine Sibille, Staff Attorney, Commission (July 29, 1993).

such revocation, which will be conditioned upon the member having sufficient collateral on deposit in GSCC's clearing fund deposit. In addition, the letter of credit must be readily pledgeable under GSCC's line of credit arrangement, currently with Security Pacific National Bank of New York, for at least 80% of the letter of credit's face value.[20]

III. Discussion

Section 17A(b)(3)(A) and (F) of the Act[21] require clearing agencies to have rules and to be organized in a manner that will give them the capacity to facilitate and promote the prompt and accurate clearance and settlement of securities transactions and the safeguarding of funds and securities for which they are responsible. The Commission believes that GSCC's proposal meets these statutory requirements.

In the Release announcing standards for the registration of clearing agencies,[22] the Division of Market Regulation stated that clearing agencies should establish an appropriate level of clearing fund contribution based, among other things, on its assessment of the risks to which it is subject. GSCC's comparison and netting system for forward trades provides an effective means of reducing a member's settlement obligations, thereby offering a significant reduction in risks to the market place. At the same time, GSCC has designed and expanded safeguards in order to limit the inherent exposure associated with the comparison process of forward trades and to reduce the financial risk associated with the netting and settlement of such trades. Finally, GSCC has revised its requirements for letters of credit accepted as collateral for clearing fund purposes to help ensure the liquidity of those deposits.

The proposal will continue to require netting members to submit all forward trades for comparison; allow members to have forward trades compared and netted on the day those trades are submitted by converting yield based trades to price based trades; and settle compared and netted forward trades on settlement day. For trades that are not netted under GSCC's yield-to-price conversion, the comparison of forward trades will enhance the matching process by securing an earlier agreement as to the details of trades that otherwise would have to wait up to two weeks for comparison on a price and value basis. The Commission therefore believes that netting of forward trades will promote the prompt and accurate clearance and settlement of forward-settling securities by improving the capacity of GSCC and its members to monitor exposure, thus reducing unnecessary risks to the investing public.

Nevertheless, the Commission acknowledges that including forward trades into netting increases GSCC's financial exposure because forward trades cannot be settled until the date of issuance. GSCC, however, assumes the counterparty credit risk from the day following those trades until settlement date. To protect itself against this increased risk, GSCC collects a forward mark allocation payment for compared forward trades until settlement day.[23]

The Commission believes that the inclusion of forward positions in the twenty-day average calculation to determine a member's required clearing fund deposit is an adequate safeguard against the risk posed to GSCC by netting forward activity on an ongoing basis. GSCC has been including forward positions in the twenty-day average for three years, and the practice has proven adequate. The Commission, however, remains concerned about the effect of removing specific CUSIPs from the twenty-day average and expects GSCC to continue to monitor and report to the Commission on the use of such discretion.[24]

GSCC requires that letters of credit used to satisfy a member's clearing fund deposit and forward mark allocation payment be non-revocable. The Commission believes that GSCC's modifications to its form of letter of credit are consistent with the Act. The modifications provide liquidity to the clearing fund by ensuring that GSCC can draw down on a letter of credit when required. This assurance should assist GSCC in meeting its obligations including trading netting and therefore promote the safeguarding of securities and funds in GSCC's possession. Accordingly, the Commission believes that GSCC's proposal has struck an appropriate balance between controlling financial exposure by providing adequate risk reduction measures and by providing itself with the ability to draw down quickly on letters of credit when necessary.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particular with section 17A of the Act, and the rules and regulations thereunder.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–93–03) be, and hereby is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29356 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33237; File No. SR–GSCC–91–04]

Self-Regulatory Organizations; Government Securities Clearing Corp.; Order Approving a Proposed Rule Change Concerning Changes to the Margin and Funds Collection Processes

November 22, 1993.

I. Introduction and Summary

On November 7, 1991, pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] the Government Securities Clearing Corporation ("GSCC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change to, among other things, modify GSCC's margin and funds collection processes. Notice of the proposal was published in the **Federal Register** on January 9, 1992, to solicit comments on the proposed rule change from interested persons.[2] On April 27, 1992, and April 30, 1992, GSCC subsequently filed letter amendments ("Amendments") to its proposal.[3] No

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[20] *Id.*

[21] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[22] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920.

[23] See Securities Exchange Act Release No. 27902 (April 12, 1990), 55 FR 15066.

[24] GSCC has represented that it will notify the Commission each time it excludes specific CUSIPs from the calculation of the twenty-day average for forward net settlement positions. After such notification, GSCC will file a written report discussing (1) the effect the exclusions had on its members with the five largest positions and (2) the impact the exclusions had on the Clearing Fund. Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation, Commission (April 27, 1992). To date, GSCC has never excluded specific CUSIPs from the twenty-day average. Telephone call between Jeff Ingber, General Counsel, GSCC and Jack Drogin, Branch Chief and Christine Sibille, Staff Attorney, Commission (July 14, 1993).

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 30135 (December 31, 1991), 57 FR 942.

[3] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division of Market Regulation ("Division"), Commission (April 27, 1992); and letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division, Commission (April 30, 1992). Because the Amendments provided only non-material changes to the proposal, the Commission did not publish them for public notice.

comments were received. This order approves the proposal, as amended.

The proposed rule change: (1) Authorizes GSCC to use its own price volatility data to determine margin requirements; (2) allows GSCC to include in the calculation of a netting member's required clearing fund deposit the weighted average of the netting member's forward net settlement positions over the most recent 20 business days; (3) removes the 75% limitation on the forward mark allocation payments; (4) establishes new standards for determining whether a bank or trust company is qualified as an issuer of letters of credit for clearing fund deposits and forward mark allocation payments and allows GSCC to reject a letter of credit from a particular institution if letters of credit issued by that institution exceed certain parameters; and (5) makes certain other changes to the clearing fund by: (a) Granting GSCC the ability to increase clearing fund requirements in times of market stress; (b) expanding the scope of Treasury securities that are eligible as clearing fund collateral; (c) requiring netting members to satisfy a deficiency in the clearing fund deposit on the day of notification of the deficiency; (d) requiring members to make funds-only settlement payments by 9 a.m.,[4] an hour earlier than previously required; and (e) correlating quarterly returns of excess margin with refunding periods. The proposed modifications permit GSCC to tailor its procedures for margin and funds collection to GSCC's current needs and to ensure that the potential financial exposure from the operation of GSCC's netting system does not expose GSCC to undue financial risk.[5]

GSCC's clearing fund and its margin system are one of the primary safeguards GSCC employs to protect GSCC and its membership against counterparty credit risk.[6] GSCC's clearing fund[7] is designed: (1) To have on deposit from each netting member cash or other collateral sufficient to satisfy a loss to GSCC as a result of that member's default and close out of settlement positions; (2) to maintain a total asset amount sufficient to satisfy potential losses to GSCC resulting from the default of more than one member and the failure of the counterparties of that member to pay their *pro rata* allocation of loss; and (3) to ensure that GSCC has sufficient liquidity at all times to meet its payment and delivery obligations.[8] Similarly, a member's required margin deposit is intended to protect against the risk that the member will default on its net settlement position. The process of determining a member's required margin deposit begins once trades have been netted and GSCC has established net deliver and receive obligations. GSCC calculates a member's required margin deposit based on the member's net settlement obligations.[9]

II. Description

A. Authority to Use GSCC's Price Volatility Data to Determine Margin

The proposed rule change allows GSCC to consider routinely its own price volatility data base in setting its margin factors. GSCC now has its own price volatility data base, which reflects prices derived from par-weighted averages of compared trades in every government security CUSIP[10] that is eligible for comparison by GSCC, including zero-coupon government securities, for which there is very limited third-party data available. In certain circumstances, for example, for specific CUSIPs that do not follow the yield curve or for the time periods that are shorter and more focused than a quarter (i.e., a refunding period), this price monitoring data may be a more valid indicator of price volatility for margining purposes than GSCC's current margin schedule.

GSCC uses its own price volatility data base in conjunction with third party data from other sources. GSCC's current margin factor schedule is based on daily price volatility data supplied by Carroll, McEntee and McGinley. This data is calculated on a quarterly basis for securities in particular maturity ranges. The GSCC data base allows it to look at price volatility on a daily basis, determine the volatility of individual government securities issues, and determine the appropriate confidence level.

B. Factoring Into the 20-day Average Forward Net Settlement Positions

Currently, a member's net securities and funds-only settlement obligations arising from forward-settling trades[11] is factored into the 20-day average calculation to determine a member's clearing fund requirement but only on the day the forward-settling positions

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[4] All times are Eastern Time unless indicated otherwise.

[5] In 1989, following GSCC's temporary registration as a clearing agency, GSCC implemented a netting system and safeguards designed to limit foreseeable financial exposure to GSCC and its members from the operation of that system. Securities Exchange Act Release No. 27006 (July 7, 1989), 54 FR 29798. GSCC subsequently filed a proposed rule change to modify that portion of its safeguards system relating to GSCC's clearing fund formula to reflect more accurately GSCC's potential liquidation and default risks associated with member obligations to deliver or receive securities. Securities Exchange Act Release No. 27901 (April 12, 1990), 55 FR 15055. During the five years that GSCC has provided comparison and netting services for government securities, GSCC has continued to refine its operations and to expand its netting service. GSCC's services now include facilities for netting forward-settling trades and zero-coupon government securities, which are being approved concurrently with this filing. See Securities Exchange Act Release Nos. 33240 (November 22, 1993) approving the netting of forward-settling trades [File No. SR–GSCC–93–03]; and 33239 (November 22, 1993) approving the netting of zero-coupon government securities [File No. SR–GSCC–93–02].

[6] Currently, GSCC has 80 members, 58 of which are netting members and 22 are comparison-only members. All netting members are required to contribute to GSCC's clearing fund. GSCC recently established two new categories of membership in its netting system for dealers and interdealer brokers, respectively, designated as Category 2, and new membership criteria including net capital and clearing fund requirements for those new members. As users of GSCC's netting system, Category 2 dealers and interdealer brokers are required to share in the loss allocation scheme; however, unlike Category 1 dealers, the required clearing fund deposit for Category 2 dealers is calculated without taking into account offsetting positions; margin factors applicable to Category 2 dealers' positions are set at a higher confidence level than for Category 1 dealers (99%); and the forward mark allocation for such members is calculated based on the entire debit mark amount. Category 2 interdealer brokers are treated the same as Category 1 dealers for purposes of determining the applicable clearing fund requirements. GSCC believes this method appropriately accounts for the risk posed to GSCC when a Category 2 interdealer broker's settlement positions are novated. See Securities Exchange Act Release No. 32722 (August 5, 1993), 58 FR 42993, for a more detailed discussion of GSCC's categories of membership and the applicable clearing fund and margin requirements.

[7] The clearing fund requirement for dealer netting members consists of two parts: (1) the funds-only settlement portion, i.e., 125% of the member's average daily funds-only settlement amount over the most recent 20 business days, not including certain adjustment payments which are included in the daily funds-only settlement obligation and (2) the liquidation risk portion, i.e., the greater of the margin amount on the member's net settlement positions taking into account offsetting positions averaged over the most recent 20 business days, or 50% of the margin amount for that business day on the member's net settlement positions calculated without taking into account offsetting positions. The funds-only settlement portion of the clearing fund calculation consists of the net TAP debit or credit; the required forward mark allocation payment (offset by the value of the forward collateral held on deposit with GSCC); the net debit or credit fail mark; coupon adjustment; and redemption adjustment.

[8] Department of the Treasury, Commission, and Board of Governors of the Federal Reserve System, Joint Report on the Government Securities Market (January 1992) (citing Jeffrey F. Ingber, Overview of the Government Securities Clearing Corporation (August, 1991) ("Overview")).

[9] Securities Exchange Act Release No. 28842 (February 7, 1991), 56 FR 5032.

[10] CUSIP is an acronym for Committee on Uniform Securities Identification Procedures.

[11] Forward-settling trades are trades with a scheduled settlement date one or more business days after the usual settlement date (i.e., the day following the trade date). For forward trades to be eligible for GSCC's netting system, the scheduled settlement date must be no more than 15 business days after the date the trade is compared.

settle and only for the purpose of calculating the member's current clearing fund requirement. The proposal allows GSCC to include in the calculation of a netting member's required clearing fund deposit the weighted average of a netting member's forward net settlement positions over the most recent 20 business days. GSCC, however, retains the discretion to take specific CUSIPs out of the 20-day average after the securities underlying the forward positions are issued.[12]

C. Removal of 75% Limitation on the Forward Mark Allocation Payments

Currently, a member's forward mark allocation payment [13] is limited to 75% of a participant's forward debit mark amount. The proposal removes the 75% limitation on a member's forward mark allocation payment but does not affect the method used to calculate the forward marks.

GSCC determines the amount to be collected first by calculating each member's forward-settling debit mark requirement ("debit mark"). Second, GSCC aggregates the debit marks of the members with the five largest debit mark amounts on that day including interdealer brokers ("five largest debit marks"). Third, GSCC aggregates the debit mark amounts of all members for that day minus the total of the debit marks of all interdealer broker members for that day ("total debit marks"). The amount that GSCC may collect from each member is expressed in terms of a percentage that is the five largest debit marks divided by the total debit marks. Fourth, GSCC multiplies each member's debit mark by that percentage to determine the amount that may be collected.[14] The proposal eliminates the current 75% limitation and allows GSCC to collect up to 100% of a member's forward debit marks.

D. Letter of Credit Standards

GSCC accepts clearing fund deposits in the form of cash, eligible Treasury securities, or letters of credit issued by an approved institution. Currently, GSCC rules provide that a bank or trust company that is organized under federal or state law may become an approved issuer if it is permitted by law to lend to any single borrower an amount equal to at least $10 million, or has a rating for its short-term obligations of "A–1" or better by Standard & Poor's Corporation ("S&P") or "P–1" or better by Moody's Investors Service, Inc. ("Moody").[15] A foreign bank with a state or federal branch in the United States may become an approved issuer if it has either a "P–1" or an "A–1" short-term obligations rating, and it has total worldwide consolidated bank assets of at least $1 billion.

The proposal requires a domestic or foreign bank, in order to qualify as an issuing bank, to have either (1) $750 million in total shareholders' equity and a short-term obligations rating of not less than A–2 or P–1.[16] GSCC requires that the short-term ratings be the ratings for the unsecured, uninsured, unguaranteed short-term obligations of the issuing bank. Further, a bank will not meet GSCC's letter of credit issuer standards if the bank's S&P or Moody's short-term obligations rating is lower than A–2 or P–2 respectively. Thus, a "split" rating of A–2/P–3 or P–2/A–3 will not be acceptable.

For a bank to be approved and to continue as an issuing bank, it must agree to confirm on a quarterly basis that it is maintaining continued compliance with the applicable capital standards established for it by each of its regulatory authorities. GSCC will not approve as an issuer of letters of credit a foreign bank acting through a branch or agency in the United States unless the foreign bank provides to GSCC a guarantee of performance by the branch or agency bank.

An issuer's letters of credit must be able to be readily pledged for at least 80% of the letter's stated value.[17] GSCC will continue to impose a 1% haircut [18] on a letter of credit that may be readily pledged for at least 95% of its stated value. For a letter of credit that may be readily pledged for at least 80% of its stated value, GSCC will value the letter of credit at the amount at which the letter of credit may be readily pledged.[19]

Currently, GSCC may not accept a letter of credit issued by any institution, if, as a result of such acceptance, more than 20% of the letters of credit held by GSCC as collateral (for both the required clearing fund deposits and the forward mark allocation payments) will consist of letters of credit issued by that institution, unless GSCC's Board of Directors ("Board") determines that a higher amount is appropriate. Although GSCC's Board has never lifted this restriction,[20] GSCC's proposal eliminates the Board's discretion to exceed the 20% concentration limit.[21] The proposal modifies the 20% limitation to the lesser of: (1) 20% of the total dollar value of the clearing fund or (2) 20% of the total collateral for both clearing fund deposits and forward mark allocation payments.

E. Other Changes to Clearing Fund

1. Increased Clearing Fund Requirements in Times of Market Stress or High Market Volatility

The proposal allows GSCC to calculate the liquidation risk portion of a member's clearing fund requirement based on the member's current day's settlement positions. In effect, this allows GSCC to collect the entire amount of the member's net securities settlement obligation for that day. The proposal also allows GSCC to set a

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[12] Because of the magnitude of trading activity in certain issues during the quarterly refunding period and the relatively large net settlement positions that result, GSCC anticipates that only certain positions that arise from member's quarterly refunding activity or similar activity that creates large one day net settlement positions will be taken out of the 20-day average.

[13] The forward mark allocation payment is a margin payment calculated on a member's forward trades (*i.e.*, the difference between the original contract value and GSCC's current system value).

[14] *E.g.*, if the aggregate debit mark is $100,000,000, and $85,000,000 of the aggregate is associated with the netting members with the five largest debit mark amounts, the percentage that would be applied to each member's debit mark would be $85,000,000/$100,000,000 or 85%. The amount of forward mark GSCC could collect from any member would the 85% of the member's debit mark position.

[15] A rating of A–1 or A–2 or a rating of P–1 or P–2 are the two highest ratings given by S&P and Moody's, respectively. S&P and Moody's are the most often cited organizations that publicly rate the credit quality of securities issuers. The New York Institute of Finance, How the Stock Market Works (1988). The rating indicates the creditworthiness of the obligor with respect to a specific transaction. The ratings are based, in varying degrees, on the likelihood of default (i.e., the capacity and willingness of the obligor as to the timely payment of interest and repayment of principal in accordance with the terms of the obligations), the nature of and provisions of the obligation; the protection afforded by, and relative position of, the obligation in the event of bankruptcy, reorganization, or other arrangement under the laws of bankruptcy and other laws affecting creditors rights. S&P Credit Overview International (1984).

[16] GSCC requires that the ratings be issued by S&P or by Moody's.

[17] GSCC will not accept a letter of credit unless it is readily acceptable for pledge under its pledge agreement with The Bank of New York ("BONY").

[18] A "haircut" is the amount by which a security is discounted in determining its value as collateral.

[19] E.g., a letter of credit with a stated value of $100,000 will be valued by GSCC at $99,000 (i.e., a 1% haircut) if the letter may be readily pledged for at least 95% of its stated value, $95,000. If the letter of credit may be pledged for only $89,000, GSCC will allow the letter to secure $89,000 of the member's required clearing fund deposit or forward mark allocation payment.

[20] During the three years that GSCC has been providing netting services and requiring margin from its netting members, letters of credit have remained a relatively small portion of the total clearing fund; normally, the level of letters of credit has been between one-fifth to one-fourth of the total value of the clearing fund.

[21] Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division Commission (April 27, 1992).

member's daily clearing fund requirements based on a period that is shorter than 20 business days. In addition, the proposed rule change gives GSCC the authority to suspend, for a definite or indefinite period, the application of certain or all of such offsets between a clearing member's net deliver and receive obligations.[22]

GSCC intends to use this discretion to increase member clearing fund requirements over relatively short periods in order to ensure adequate risk protection during periods of market stress. The proposed rule change allows GSCC to increase the required margin deposit in times of relatively high market volatility or relatively high market volume. GSCC will implement these measures only upon notice to, and with the concurrence of, GSCC's Membership and Standards Committee.

2. Scope of Eligible Collateral

Currently, only Treasury securities with a remaining maturity of one year or less are eligible Treasury securities for deposit as clearing fund collateral. The Proposed rule change makes all Treasury bills and coupon bearing Treasury notes and bonds eligible as clearing fund collateral. GSCC will not make STRIPS[23] eligible as clearing fund collateral. GSCC will impose a "haircut" on Treasury securities with remaining maturities of more than one year for purposes of determining the value of the securities as clearing fund collateral. Treasury securities with a remaining maturity of 10 years or less will receive a 3% haircut, and Treasury securities with a remaining maturity of over 10 years will receive a 5% haircut.

3. Earlier Time Period to Satisfy Deficiency in Required Margin Deposits

Currently, there are three conditions that may give rise to GSCC requesting that a member make an additional deposit to the clearing fund to make up a deficiency. GSCC will call for additional clearing fund collateral if: (1) There is a monthly call for any clearing fund deficit amount; (2) a member's required clearing fund deposit level is 110% or more of the value of the member's deposits to the clearing fund as of a particular day; (3) a member's current day's required clearing fund deposit level exceeds by more than either 25% or $250,000 the value of its clearing fund collateral. In the first and second scenario, the deficiency will have to be made up within three business days. In the third scenario, the deficiency will have to be satisfied the same day the call is made.

The proposal modifies the current call for additional deposits by eliminating the additional deposit requirement when a member's clearing fund deposit level is 110% or more of the value of the member's required deposits in the three-business-day period to satisfy a deficiency call. In effect, the proposal requires additional clearing fund collateral when the member's current day's required clearing fund deposit level exceeds by more than either 25% or $250,000 the value of its clearing fund collateral and requires the member to satisfy any call for an additional deposit on a same-day basis.[24]

Generally, GSCC issues notice of an additional required deposit between 9:30 a.m. and 10 a.m.[25] Under the proposal, GSCC requires deposits to be made by the later of 12 p.m. or two hours after the deficiency notice is issued. If the deficiency notice is not issued until two hours or less before the close of the Fedwire on that day, the member will have until the designated time for payment of funds-only settlement amounts to GSCC on the following day to make the additional deposit (i.e., 9 a.m.).

4. Earlier Payment of Funds-Only Obligations

Currently, members are required to make funds-only payments by 10 a.m. on settlement day.[26] Under the proposed rule change, GSCC will move the deadline for members to make funds-only payments to GSCC to 9 a.m. on settlement day. GSCC will retain the current deadline for those members whose principal place of business is in a different time zone. GSCC will continue to make funds payments to all members in a funds-only credit position by 11 .m. on settlement day.

5. Correlate Quarterly Returns of Excess Collateral With Refunding Periods

Currently, excess clearing fund collateral is returned at the end of each quarter or on a case-by-case basis. GSCC has followed this procedure to correlate the return of excess clearing fund collateral with members' clearing fund requirements which typically decrease after the refunding has settled.

The proposal allows GSCC to calculate the amount of excess collateral available for return on the second business day after each quarterly refunding issue date. At the time GSCC notifies members of the amount of excess collateral, GSCC encourages members to maintain an excess amount of collateral of 25% or $1 million. By maintaining a "cushion," members will bridge the readjustment period after a refunding and will help GSCC to minimize the number of calls for additional collateral.[27]

III. Discussion

The Commission believes that GSCC's proposed modifications to its margin and funds collection processes are consistent with the requirements of the Act. In particular, the Commission believes the proposed rule change is consistent with sections 17A(b)(A) and (F).[28] These sections require that a clearing agency be so organized and that its rules be designed to promote the prompt and accurate clearance and settlement of securities transactions and to safeguard securities and funds in its custody or control or for which it is responsible.

For over three years, GSCC has operated a system for settlement of compared trades in U.S. Treasury and agency securities submitted by GSCC members on a next-day basis in same-day funds ("netting system"). GSCC's netting system provides an effective means to reduce a member's settlement obligations, thereby offering a significant reduction in risk to the marketplace. GSCC has also designed a number of safeguards, including marks-to-the-market, securities against payment through the Fedwire, the

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[22] The margin amount on a member's net settlement position is calculated using factors (percentages) that are set based on an assessment of historical daily price volatility date. GSCC gives "credit" for offsetting net settlement positions. GSCC establishes "offset classes" for securities of varying maturity, and provides for "disallowance percentages" among those different offset classes in determining a member's net settlement position. Notwithstanding a member's net settlement position, a minimum margin of 50% of the margin amount on the member's current "gross" position is collected.

[23] "STRIPS" is the acronym for Separate Trading of Registered Interest and Principal of Securities, which are book-entry, zero coupon government securities that are direct obligations of the U.S. Treasury or issued by agencies of the U.S. Government.

[24] Few deficiency calls are made pursuant to the monthly call for additional clearing fund collateral because the need to make such deposits is usually satisfied by the requirement to make additional deposits when a member's required fund deposit is 110% above the member's actual deposits or a member's required fund deposit exceeds by more than 25% or $250,000 the member's actual deposits.

[25] In certain cases, such as when the member is on surveillance, GSCC may issue the notice during the business day. Letter from Jeffrey F. Ingber, Associate General Counsel and Assistant Secretary, GSCC, to Sonia Burnett, Attorney, Division, Commission (December 16, 1991).

[26] Government securities transactions generally settle on the day after the trade date.

[27] After a refunding period, a member's clearing fund requirements often drop to a relatively low level, such that if the return of all of the excess collateral is requested, the member could be called for additional collateral prior to or at the time of the return of the "excess amount".

[28] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

clearing fund, forward mark allocations, and a required deposit by interdealer brokers, that are designed to reduce the risk to GSCC and its members associated with netting and settlement. This proposed rule change is designed to enhance GSCC's risk reduction measures and to further reduce the risk associated with GSCC's netting system.

A. Authority to Use GSCC's Price Volatility to Determine Margin

When GSCC's netting system was approved, the Commission found that GSCC's proposed schedule of margin factors was "satisfactory for the start-up of netting * * *."[29] The Commission noted, however, that GSCC needed to develop an automated system to assess, on a daily basis, historical and potential price movements and their implications for margin factors.[30] The proposal allows GSCC to routinely consider its price volatility data base in setting margin requirements.

GSCC's price volatility data base provides GSCC volatility data for certain government securities for which there is very limited third party data available, like zero-coupon government securities. In addition, GSCC's data base allows it to monitor price movements on a daily basis and provides price volatility data that reflects a confidence level of 99%.

In lieu of interdealer closing prices, GSCC uses a system price, a weighted average of trades compared for netting,[31] which may not accurately reflect the interdealer closing price on days when there is substantial intraday price volatility. To minimize this concern, GSCC uses its own price volatility data in connection with data from third party sources. The Commission believes that GSCC's price volatility data base is an important tool and may be the most reliable data base for certain securities like zero-coupon government securities.

B. Changes to Treatment of Forward Positions In Clearing Fund Formula

In the release announcing standards for the registration of clearing agencies,[32] the Division stated that clearing agencies should establish an appropriate level of clearing fund contribution based on, among other things, its assessment of the risks to which it i9s subject.[33] In order to help minimize the risk associated with its netting system, GSCC's proposal includes the 20-day weighted average of member's forward positions in the calculation of the member's required deposit to the clearing fund on an ongoing basis and removes the 75% limitation on the collection of forward mark allocations.

Initially, the settlement of forward positions was on a regular occurrence and because of its concern about possible reduced liquidity for participants, GSCC included the forward positions in the 20-day weighted average only on the day those positions settled. Forward positions are now netted and settled on a more frequent basis. GSCC can now net (and guarantee) when-issued trades that have been executed on the basis of the market yield ("yield-based trades"), prior to the U.S. Treasury auction.[34]

Because forward positions are included in GSCC's netting and settlement process on a more frequent basis, the Commission believes that it is appropriate to factor forward net settlement positions into the 20-day average. This method of determining a member's clearing fund deposit provides better protection against the risk posed to GSCC by netting forward activity on an ongoing basis.

GSCC believes including large net settlement positions that do not occur on an ongoing basis, e.g., quarterly refundings, distort the risk posed to GSCC and its members and will impede liquidity. The Commission is concerned whether GSCC's clearing fund is sufficient to cover additional risk of forward-settling trades. Therefore, GSCC has agreed to provide the Commission with a written report within 21 days after having excluded specific CUSIPs from the calculation of the 20-day average for forward net settlement positions. The report will discuss: (1) The effect the exclusions had on its members with the five largest positions; and (2) the impact the exclusions had on the clearing fund. Notwithstanding the Commission's approval of this portion of GSCC proposed rule change, the Commission will revisit this issue and will determine whether or not GSCC should continue to exclude certain forward-settling trades from the 20-day average.

Similarly, the Commission believes it is appropriate to raise the 75% limitation on the collection of the forward mark allocation to provide GSCC sufficient liquidity to meet its payment and delivery obligations. The collection of the entire amount of the member's forward mark allocation should not unnecessarily drain the member's liquidity. Unless the debit marks of the members with the five largest debit marks exceed 75% of the total mark, the forward mark allocation to each member would not exceed 75% of that member's debit mark. In addition, GSCC does not include the forward mark allocation in the funds-only portion of the clearing fund formula until the day the forward positions settle. Instead, GSCC separately calculates and collects the forward mark allocation daily, from the time the forward position is netted until settlement. The Commission believes that the inclusion of forward net settlement positions into the 20-day average calculation for the securities net settlement component of the clearing fund and the ability of collect more of the forward mark allocation promote the safeguarding of securities and funds which are in GSCC's custody or under GSCC's control consistent with section 17A of the Act.

C. Letter of Credit Standards

GSCC's proposal helps to ensure that letters of credit used to satisfy a member's required clearing fund deposit and forward mark allocation payment are issued by sufficiently creditworthy and liquid financial institutions to maintain the clearing fund's creditworthiness and liquidity. The clearing fund helps to assure that GSCC will be able to meet its obligations, including trade netting guarantees, on a timely basis even if more than one member defaults on its obligations to GSCC.

The "$750 million equity/top three short-term obligations" rating standard would ensure that only a domestic bank that is among roughly the 30 largest banks in the United States and that has a strong short-term obligations rating would be eligible to be approved as a letter of credit issuer. The alternative "$300 million equity/top short-term

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[29] Securities Exchange Act Release No. 27006, *supra* note 5.

[30] *Id.*

[31] The system price is the par-weighted average of all compared trades in each issue on that date, excluding trades with suspect prices. Because the system price is an average, GSCC also calculates a trade adjustment payment, or "TAP" that is the difference between the system price and the contract price. Each business day, each member must pay or receive a net debit TAP or net credit TAP.

[32] Securities Exchange Act Release No. 16900 (June 17, 1980), 45 FR 41920 ("Standard Release").

[33] The Act does not require clearing agencies to establish and maintain clearing funds; however, the Standards Release counsels that "it is appropriate for a clearing agency to establish by rule an appropriate level of clearing fund contributions based on, among other things, its assessment of the risks to which it is subject." Clearing funds may provide, among other things, a defense against financial loss due to participant defaults; a ready source of liquid funds in that event; and a vehicle to facilitate risk mutualization among participants. *Id.*

[34] Securities Exchange Act Release No. 31820 (February 11, 1993), 58 FR 8072. GSCC has also included in its netting system zero-coupon securities. Securities Exchange Act Release No. 33239, *supra* note 5.

obligations rating" would allow roughly the 100 largest banks in the United States with a top short-term obligations rating to be eligible to be approved as a letter of credit issuer.

At least 80% of the value of a letter of credit must be readily available to be pledged under GSCC's line of credit arrangement, currently with BONY. In addition, the proposal imposes higher haircuts on a letter of credit in which at least 95% of the value of the letter of credit is not readily available to be pledged. The Commission believes that requiring that a letter of credit be readily pledgeable and that the collateral value of a letter of credit be tied to the amount that is readily available for pledge will further enhance the liquidity benefits provided by GSCC's line of credit arrangement.

The Commission believes that GSCC's proposal does not unfairly discriminate among its clearing members in requiring these new standards for issuers of letters of credit. The new issuer standards will help to ensure the creditworthiness and liquidity of issuing banks, without unduly limiting the choice of banks which members may use to issue letters of credit on their behalf. By requiring both minimum shareholders' equity and minimum credit ratings, these new standards avoid the potential problem of requiring only one of these criteria for approval as the prior standards did.

D. Other Changes to GSCC's Clearing Fund

GSCC proposes a number of changes that will give it the flexibility to manage its financial exposure more effectively. GSCC's rules would allow it to increase clearing fund requirements during times of market stress. The proposal grants GSCC the ability to suspend or revoke the applicability of certain or all offsets between a clearing member's net deliver and receive obligation. GSCC also may shorten the 20-day average for calculating the securities net settlement component of the clearing fund. The Commission believes flexibility is needed to manage financial exposure during market stress, but the discretion to make changes that will substantially affect clearing agency participants' rights or that may impose significant burden or cost on those participants should be exercised prudently and in a manner that minimizes those consequences for participants. Thus, the Commission believes it is appropriate for GSCC to consult the Commission prior to involving such discretionary rules.[35]

[35] GSCC agrees that, to the extent practicable, it will consult with the Commission prior to: (1) Suspending any of the offsets; (2) reducing the 20-day average period used to calculate required clearing fund deposits; or (3) imposing higher required fund deposits under GSCC Rule 4, Section 2. GSCC will follow up any oral notification with a written notification and will continue to consult with the Commission during the time that GSCC exercises any of the above-mentioned provisions of GSCC Rule 4, Section 2. GSCC also will make any necessary Commission filing under section 19(b) of the Act. Letter from Jeffrey F. Ingber, General Counsel, GSCC, to Ester Saverson, Jr., Branch Chief, Division, Commission (April 27, 1992).

GSCC's proposal concerning the expansion of the type of government securities eligible for deposit as clearing fund collateral attempts to balance collateral protection and the burden and cost imposed on members. Many GSCC members already have such securities in their inventories. Therefore the Commission believes it is reasonable to allow GSCC members to use these government securities as collateral with an appropriate haircut, rather than requiring them to put up cash, to borrow or purchase government securities of maturities of one year or less, or to secure a letter of credit, all of which may be more costly to some members.

GSCC's proposal to change the time for the payment, the deposit, and the return of excess margin provide greater management of GSCC's financial exposure. The earlier deadline for the payment of funds-only settlement obligations and the requirement that all deficiencies in the clearing fund be satisfied on the day notification is received will provide GSCC greater assurance that GSCC will have on deposit from each netting member cash or other collateral sufficient to satisfy a loss to GSCC as a result of that member's default and close out of settlement positions. GSCC's coordination of the return of collateral and encouragement to members to maintain a cushion above their required clearing fund deposits should provide GSCC with greater flexibility in managing its financial exposure.

The Commission recognizes that risk reduction methods, such as clearing fund deposits, forward mark allocations, margin, and standards for collateral, including letter of credit standards, should provide an adequate level of protection in light of market conditions, while taking into account the overall risk of an entire position. A clearing agency's rules also should be flexible enough to provide increased protection in times of market stress and high market volatility without imposing substantial liquidity burdens on participants. The Commission believes that GSCC's expanded authority provides it with adequate risk reduction measures and with additional protection during market stress and high market volatility, thereby appropriately balancing financial exposure and the imposition of added business cost on GSCC's membership.

IV. Conclusion

For the reasons discussed above, the Commission finds that the proposal is consistent with the requirements of the Act, particularly with section17A of the Act and the rules and regulations thereunder.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the above-mentioned proposed rule change (File No. SR–GSCC–91–04) be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29360 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33247; File No. SR–OCC–93–02]

Self-Regulatory Organizations; The Options Clearing Corporation; Order Approving Proposed Rule Change Relating to the Processing of Late Exercise Requests

November 24, 1993.

On February 17, 1993, The Options Clearing Corporation ("OCC") submitted a proposed rule change (File No. SR–OCC–93–02) to the Securities and Exchange Commission ("Commission") pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act") [1] concerning the processing of late exercise requests. Notice of the proposal appeared in the **Federal Register** on March 17, 1993, to solicit comment from interested persons.[2] No comments were received by the Commission. This order approves the proposal.

I. Description of the Proposal

The proposed rule change amends the OCC late exercise fee schedule cut-off times to advance the first deadline from 10 p.m. to 9 p.m. in OCC's daily processing cycle when combined reported trade volume for all participant exchanges is 850,000 contracts or fewer.[3] This late exercise processing deadline will remain at 10 p.m. on any day when combined reported trade

[1] 15 U.S.C. 78s(b) (1988).

[2] Securities Exchange Act Release No. 31980 (March 11, 1993), 58 FR 14457

[3] All times in the order are Central Time.

volume for all participant exchanges exceeds 850,000 contracts.

A. Current Late Exercise Processing Standards

On July 1, 1991, the Commission approved OCC's proposal to amend section (e) of OCC Rule 801 (Exercise of Options).[4] As amended at that time, Rule 801(e) provides OCC with the authority to permit clearing members to file, revoke, or modify exercise notices after 7 p.m. for the purpose of correcting bona fide errors. Authority to accept or reject such late instructions is vested in the OCC's Chairman or President or any delegate of OCC's Chairman or President.

Once a late exercise notice is accepted, Rule 801(e) requires the clearing member that submits such notice to pay a late filing fee[5] and to explain in writing within two business days the circumstances that led to the submission of the late notice. The fees for late notices are currently imposed on a schedule that increases the further into the processing cycle the notice is received.

The purpose of the July 1, 1991 amendment of Rule 801(e) was to provide an incentive for clearing members to reduce the number of clearing member errors relating to the processing of exercise notices. The earlier that late exercises are submitted, the easier and less costly it is for OCC to process these exercises. Late exercise notices submitted prior to the start of OCC's critical processing can be accommodated through standard processing or through restore and recovery mechanisms. Late exercises submitted after the start of critical processing, however, require the use of supplemental assignment procedures, which require special handling by both OCC and the assigned clearing member and is manually intensive and costly. As post-critical processing is not automated, settlement must be effected in a broker-to-broker mode with the assigned member incurring additional costs. As a result of this disparity in cost and effort relating to late exercise notices, OCC's July 1, 1991, amendment modified the fee schedule in Rule 801(e) to differentiate between exercise notices received at various stages prior to the start of critical processing and those received afterwards. This provided a financial incentive for clearing members to identify errors earlier in OCC's processing cycle.

From the time the Commission approved the July 1, 1991 amendment, OCC has processed only three requests for late exercise notices, and all three received prior to 10 p.m. This represents a significant improvement when compared to the number of late exercise notices received in the years prior to the amendment.[6] The virtual elimination of submissions after the start of critical processing prompted OCC to further analyze its late exercise rules. OCC has concluded that the reduction in clearing member late submission requests has been the result of three factors: (1) Clearing member implementation of exercise notice versus trade input reconciliations; (2) the implementation of intraday trade comparison systems by participant exchanges; and (3) reduced trading volumes.

B. Proposal to Amend Late Exercise Processing Schedule

OCC now faces a problem in that it is typically ready to process exercises by 9 p.m., but it is required to wait until 10 p.m. due to the possibility of receiving a late exercise notice. On most processing days when trading volume is not particularly heavy, this unnecessarily inconveniences OCC staff. Based on a review of participant exchange cut-off-time procedures for submission of trade data and distribution times for first pass reports, OCC has determined that the trend of participant exchanges to distribute trade comparison reports earlier is generally a function of reduced trading volume. On those days when transaction volume is exceptionally heavy, OCC has found that the participant exchanges have informal procedures in place that afford such exchanges additional time to process transactions.

Based on this review, OCC has concluded that moving the late exercise notice cut-off time associated with the $500 fee from 10 p.m. to 9 p.m. and correspondingly moving the beginning of the late exercise notices time frame associated with the $2,000 fee from 10:01 p.m. to 9:01 p.m. is feasible except under the most extreme, high volume conditions. The participant exchange that takes the most amount of time to process trade data normally distributes first pass reports by 8 p.m. even under high volume conditions. This would leave members adequate time for reconciliation prior to 9 p.m. on most business days.

The proposed rule change amends OCC's late exercise fee schedule cut-off times to advance the deadline associated with the $500 fee from 10 p.m. to 9 p.m. when combined reported trade volume for all participant exchanges is 850,000 contracts or fewer. As the participant exchanges may require additional time to submit trade reports to OCC when volume is particularly heavy, this late exercise notice processing deadline will remain 10 p.m. on any day when combined reported trade volume for all participant exchanges exceeds 850,000 contracts. Consequently, the beginning of the time frame associated with the $2,000 fee will now be 9:01 p.m. when combined reported trading volume is 850,000 contracts or fewer and 10:01 p.m. when reported trading volume exceeds 850,000 contracts.

II. Discussion

The Commission believes that the proposal is consistent with the Act and in particular section 17A of the Act.[7] Sections 17A(b)(3) (A) and (F) of the Act[8] require that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and to assure the safeguarding of funds in the custody or control of the clearing agency or for which it is responsible. This requirement clearly authorizes a clearing agency to deal effectively with the problem of late exercise notices and their potentially disruptive effects on post-trade processing.[9]

The graduated fee structure will be continued. The proposal provides OCC with flexibility to adjust its late exercise procedures as needed in light of daily trading volume. The proposal also recognizes the comparative ease with which OCC can process late exercise notices when they are received early in the processing cycle and the increasing difficulty of handing such notices as they are received later in the processing

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[4] Securities Exchange Act Release No. 29390 (July 1, 1991), 56 FR 31454 (File No. SR–OCC–90–03) (order approving late exercise notices).

[5] The current fees for filing late exercise notices are: $500 for any late instruction accepted between 7 p.m. and 10 p.m., $2,000 for any late instruction accepted between 10:01 p.m. and the start of critical processing, and $10,000 per line item listed on the exercise notice accepted after the start of critical processing.

The term critical processing means the main portion of OCC processing that follows the preliminary processing and which once started cannot be interrupted for the addition of new data or for any other cause without shutting down the entire processing run and restarting the run from the beginning. Interrupting critical processing results in increased OCC expenses and delays in completing daily processing. OCC's critical processing typically begins between 10 p.m. and midnight.

[6] In the two years prior to the July 1, 1991 amendment to OCC Rule 801(e), OCC processed twenty-one notices, seven of which are received after the completion of critical processing.

[7] 15 U.S.C. 78q–1 (1988).

[8] 15 U.S.C. 78q–1(b)(3) (A) and (F) (1988).

[9] OCC members are reminded that, where applicable, they are still subject to exchange rules governing options exercise cut-off times (e.g., Philadelphia Stock Exchange Rule No. 1042).

cycle, particularly if they are received after OCC's critical processing has begun, and sets fees accordingly.

There were no comments on this proposal. The Commission observes that OCC received only three late exercise requests in the twenty month period from July 1991 through February 1993. Moreover, those three requests were submitted prior to the commencement of OCC's critical processing and, therefore, resulted in comparatively modest late filing fees. Accordingly, the Commission believes that the improved efficiencies to OCC and to the marketplace that are embodied in this proposal outweight any inconvenience that might accrue to OCC's clearing members.

III. Conclusion

For the reasons discussed above, the Commission believes that the proposal is consistent with the requirements of the Act, particularly section 17A of the Act,[10] and the rules and regulations thereunder.

It Is Therefore Ordered, pursuant to section 19(b)(2) of the Act,[11] that the above-mentioned proposed rule change (File No. SR–OCC–93–02) be, and hereby is, approved.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29423 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–33246; International Series Release No. 615; File No. SR–Phlx–93–42]

Self-Regulatory Organizations; Order Granting Accelerated Approval of a Proposed Rule Change by the Philadelphia Stock Exchange, Inc., Relating to Foreign Currency Options Trading Hours

November 24, 1993.

On October 22, 1993, the Philadelphia Stock Exchange, Inc. ("Phlx" or "Exchange") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] a proposed rule change to adjust its trading hours for foreign currency options ("FCOs") such that (1) all FCOs, except FCOs on the Canadian Dollar, will trade from 1:30 a.m. Eastern Standard Time ("EST") until 2:30 p.m. EST each business day, and (2) FCOs on the Canadian Dollar will trade from 7 a.m. until 2:30 p.m. EST each business day. Notice of the proposal appeared in the **Federal Register** on November 2, 1993.[3] No comment letters were received on the proposed rule change. This order approves the Exchange's proposal.

The Phlx's FCO trading hours have historically commenced at 6 p.m. EST each Sunday through Thursday and terminated at 2:30 p.m. EST each respective Monday through Friday.[4] Earlier this year the Exchange suspended trading from 6 p.m. to 3 a.m. EST for the British pound and British pound/Deutsche mark cross-rate FCOs due to lack of trading interest and volume in that session for these contracts.[5] In fact, the Exchange has represented that during the past year, the trading volume in all FCO contracts during the 6 p.m. to 1:30 a.m. EST trading hours has amounted to less than 5% of the total FCO daily trading volume. As a result, the Exchange believes that the limited trading interest during the time period proposed to be suspended can be adequately handled and executed from 1:30 a.m. to 2:30 p.m. EST for all FCOs other than FCOs on the Canadian dollar, and from 7 a.m. to 2:30 p.m. EST for Canadian dollar FCO contracts.

The Exchange believes that this change will ease the significant staffing burdens of current registered FCO specialist units as well as floor brokerage units and registered option trader firms who must have staff present on the trading floor during this time period when there is minimal FCO trading activity. Additionally, the Phlx believes, suspension of these trading hours will reduce the extraordinary expenses associated with paying staff and operating trading floor and support systems during these trading hours.

The proposal would also delete Commentary .16 to Phlx Rule 1014 which contains references to the "evening trading session" as it relates to the application of the "dual trading" prohibition on participants in Phlx FCOs. Additionally, the Phlx has represented that it will consider reinstating the evening FCO trading hours for any or all of its FCO contracts if marketplace demand should so dictate.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of section 6(b)(5)[6] in that the proposal is designed to foster just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market, and protect investors and the public interest. Specifically, given the realities of the global foreign currency market, which according to the Exchange, historically is marked by (1) reduced or declining liquidity for FCO contracts during the Exchange's current trading hours from 6 p.m. to 1:30 a.m. EST, and (2) virtually no demand for Canadian dollar FCOs before 7 a.m. EST, the Commission believes that the proposed rule change will not have a material impact on market participants while, at the same time, will help to reduce operational burdens on current registered FCO specialist units as well as floor brokerage units and registered option trader firms. In addition, the Exchange will be open for trading FCOs (other than Canadian dollar FCOs) from 1:30 a.m. to 2:30 p.m. EST, and Canadian dollar FCOs from 7 a.m. to 2:30 p.m. EST, so that investors will have the ability to access to Exchange's FCO market to trade all of the Exchange's FCO contracts.[7] Moreover, the Commission notes that the Exchange has issued notices to its membership advising them of the proposed changes, and will issue another notice to its membership upon approval of the proposed rule change,[8] thereby avoiding any possible investor confusion. Based on the above, the Commission finds that the Exchange's proposal to change the FCO trading for all of its FCO contracts as described herein is consistent with

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[10] 15 U.S.C. 78q–1 (1988).

[11] 15 U.S.C. 78s(b)(2) (1988).

[12] 17 CFR 200.30–3(a)(12) (1991).

[1] 15 U.S.C. 78s(b)(1) (1988).

[2] 17 CFR 240.19b–4 (1992).

[3] See Securities Exchange Act Release No. 33115 (October 29, 1993), 58 FR 58584.

[4] Currently, contracts on the Australian dollar, Deutsche mark, Japanese yen, Swiss franc, and Deutsche mark/Japanese yen cross-rate FCOs trade from 6 p.m. to 10 p.m. EST, and from 11:30 p.m. to 2:30 p.m. EST. Contracts on the British pound, Canadian dollar, European Currency Unit, French franc, and British pound/Deutsche mark cross-rate FCOs trade from 3 a.m. to 2:30 p.m. EST.

[5] See Securities Exchange Act Release No. 32545 (June 29, 1993), 58 FR 36239.

[6] U.S.C. 78f(b)(5) (1988).

[7] Indeed, the Phlx has represented to the Commission that should investor and market needs warrant, it will consider adding additional FCO trading hours.

[8] See Circular No. 93–184, from Murray Ross, Secretary, Phlx, to members, dated November 1, 1993. The Phlx has represented that upon approval of this proposal, it will provide at least ten days advance notice, in the form approved by the Commission, prior to adjustment of the trading hours as herein approved. See Letter from Michele Weisbaum, Associate General Counsel, Phlx, to Brad Ritter, Attorney, Branch of Derivatives Regulation, Division of Market Regulation, Commission, dated November 9, 1993.

just and equitable principles of trade and the protection of investors.[9]

The Commission finds good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. Accelerating approval of this proposal will allow the Exchange to notify FCO specialist units, member firms, and customers of the schedule changes, thus permitting the Exchange to ease, as soon as possible, the operational burdens resulting from the low trading activity of its FCO contracts during the hours of 6 p.m. EST to 1:30 a.m. EST for all FCO contracts other than options on the Canadian dollar, and during the hours of 6 p.m. EST to 7 a.m. EST for FCOs on the Canadian dollar. Additionally, the Commission notes that the proposal was published for the full 21 day comment period and no comments were received.

It is therefore ordered, Pursuant to section 19(b)(2) of the Act,[10] that the proposed rule change (SR–Phlx–93–42) is hereby approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[11]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29359 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19900; 813–120]

AEGON nv, et al.; Application for Exemption

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: AEGON NV ("AEGON"), AEGON USA, Inc. ("AEGON USA"), Massachusetts Fidelity Trust Company (the "Trustee"), and AEGON USA Producers' Stock Purchase Plan (the "Plan").

RELEVANT ACT SECTIONS: Exemption requested under section 6(c) from sections 2(a)(13) and 6(b), and pursuant to section 6(b) from all provisions of the Act and the rules thereunder other than sections 7, 8(a), 9, (except as described herein), 17 except as described herein), 21, 30(a) (to the extent that it requires distribution of audited annual reports), and 33 through 53, and the rules thereunder.

SUMMARY OF APPLICATION: Applicants seeks a conditional order under section 6(c) granting relief from sections 2(a)(13) and 6(b) to permit the Plan to be treated as an employee's security company, and pursuant to section 6(b) exempting the Plan from all provisions of the Act and the rules thereunder other than sections 7, 8(a), 9 (except as described herein), 17 (except as described herein), 21, 30(a) (to the extent that it requires distribution of audited annual reports), and 33 through 52, and the rules thereunder.

FILING DATE: The application was filed on December 17, 1992 and amended on May 10, 1993, September 7, 1993, November 17, 1993, and November 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 4333 Edgewood Road NE., Cedar Rapids, Iowa 52499.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. AEGON, a Netherlands corporation, is an international insurance group. AEGON is a reporting company under the Securities Exchange Act of 1934 and its securities are traded on the New York Stock Exchange and stock exchanges in Amsterdam, Tokyo, London, Basel, Geneva, and Zurich. As of December 31, 1992, AEGON had outstanding 99,003,634 shares of common stock (the "Common Stock"). AEGON operates in the U.S. through AEGON USA.

2. AEGON USA, an Iowa corporation, is a holding company and an indirect wholly-owned subsidiary of AEGON. The Trustee is an Iowa state chartered Trust company and a wholly-owned subsidiary of AEGON USA. The principal business of AEGON USA is the issuance and sale of insurance products through its subsidiaries. Some of the subsidiaries operate on a general agency plan whereby agents or corporations are engaged to enter into transactions on behalf of the subsidiary. Each of these agents is an independent contractor and not a common law employee of AEGON USA or its subsidiaries.

3. AEGON proposes to establish the Plan as an employer-subsidized voluntary stock purchase plan for eligible participants of any subsidiary, division, or company controlled by AEGON USA ("Participating Companies") that adopt the Plan. Eligible participants in the Plan include individuals who represent a Participating Company under a sales or agency contract or appointment and individuals from corporations that perform services for a Participating Company under a sales or agency contract. Under state insurance laws, an individual selling insurance on behalf of a Participating Company is considered an agent of the Participating Company. Eligible participants must have and maintain an effective life insurance license, appointment and/or contract with a Participating Company and must meet the specific eligibility requirements determined by a Participating Company. The eligibility requirements are substantially different for each Participating Company.

4. The Plan will consist of two parts: a nonqualified deferred compensation plan ("NQDC") to accumulate contributions by the Participating Companies, and a grantor trust (the "Trust") to receive the contributions from the participants. Participation in the Plan will be entirely voluntary. Participants in the Plan will make periodic contributions to the Plan by

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[9] The Commission recognizes that the regular business hours for the Far East market occur during the 6 p.m. EST to 1:30 a.m. EST trading session. Nevertheless, because the Phlx has represented that the trading volume in its FCO contracts is extremely limited during this session, and the trading volume for Canadian dollar contracts is extremely limited prior to 7 a.m. EST, we believe, given the staffing burden on registered FCO specialist units, floor brokerage units, and registered option trader firms, it is permissible and within the Phlx's business judgment to alter its trading hours as proposed. Should the Exchange opt to alter its FCO trading hours in the future, the Commission expects the Phlx to submit a rule filing pursuant to Section 19 (b) of the Act.

[10] 15 U.S.C. 78s(b)(2) (1988).

[11] 17 CFR 200.30–3(a)(12) (1992).

authorizing the automatic deduction of certain amounts from their commission checks. In no event may a participant contribute in excess of 25% of the participant's total commissions in any Plan year. The amount of the participants' contribution will be retained by AEGON to purchase Common Stock on the participant's behalf for deposit in the Trust. A participant's interest in the Trust will be 100% vested at all times.

5. AEGON, either itself or through a Participating Company, will match each participant's contribution to the Trust to some extent through quarterly contributions to the NQDC. The exact manner and rate of matching contributions will be determined separately and independently for each Participating Company. A participant's interest in the NQDC will be subject to a 10 year vesting period, vesting at the rate of 10% for each year of participation. Upon vesting of contributions made on behalf of a participant to the NQDC by AEGON, an equivalent amount of Common Stock will be deposited into the Trust.

6. Ownership interest in the assets of the Trust will be represented by shares. One share of the Trust will be equivalent to one share of Common Stock. Current dividends or other income generated by Trust assets will be, at the election of each participant, paid in cash to a reinvestment agent to purchase additional Common Stock to be deposited in the Trust on the participant's behalf or paid in cash to the participant. Any such purchases of additional Common Stock will be made on the open market and will not be made from AEGON, AEGON USA, the Trustee, any affiliated persons of the Trust, or affiliated persons of affiliated persons of the Trust.

7. Any voting rights in connection with the shares of Common Stock represented by a participant's Trust shares will be passed through to the Participant's. The Trustee will distribute to the participants any proxy materials, reports, and other related materials with regard to any voting issues and will solicit voting instructions from the participants by sending written requests for instructions. The Trustee will vote all shares of Common Stock according to instructions given by the participants, and as to shares for which no timely instructions have been received, the Trustee will vote those shares in proportion to the voting instructions that have been received from the other participants.

8. Each participant will receive at least quarterly a statement setting forth the total amount contributed to the Trust for such participant, the number of Trust shares held for the participant by the Trustee, the current value of a Trust share, and the current value of the participant's interest in the Trust. This statement also will include information regarding the participant's interest in the NQDC. Audited financial statements of the Trust also will be prepared and distributed to the participants no less frequently than annually.

9. Trust shares owned by a participant will be nonassignable and not transferable in whole or in part, except that a limited right of assignment is available in the case of participants who are compensated on an advance commission basis and are required to provide security for this indebtedness. If a participant dies or becomes permanently disabled, the Trust shares owned by the participants as of the most recent month-end valuation date will be distributed in total in the form of Common Stock to the participant, or his or her beneficiaries.

10. All contributions to the Trust are to be in the form of Common Stock. Upon receipt of each participant's contribution, AEGON generally will purchase common stock on behalf of the participants on the open-market through a designated broker or depository. AEGON, however, also may issue Common Stock directly to the Trust. Any Common Stock issued directly to the Trust will be issued at the last reported sale price on the New York Stock Exchange on the business day next succeeding the date on which a determination was made to issue Common Stock directly to the Trust. A blackout period will be established by AEGON during which time AEGON and its affiliates will be precluded from purchasing Common Stock if it is determined that AEGON has any material information precluding its purchase of Common Stock.

11. At any time a participant may redeem all or a portion of his or her Trust shares by giving notice in writing to the Trustee. Any distributions made upon redemption of Trust shares will be made in the form of Common Stock with amounts representing fractional shares paid in cash. Upon redemption of all of his or her Trust shares, a participant will be ineligible to participate in the Plan for a period of one year after the date of such redemption. Participants may also make partial redemptions under certain circumstances. Participants who redeem all their Trust shares or who are dismissed with cause by a Participating Company will forfeit any unvested amounts in the NQDC contributed on their behalf.

12. The Trustee will be appointed by AEGON USA to administer the Trust. The Trustee will be responsible for coordinating the various management duties of the Trust, including receiving Common Stock from AEGON for deposit into the trust, recordkeeping, providing quarterly statements, tracking tax bases in the Common Stock, preparing Trust filings, passing on the voting materials to participants, coordinating the transfer of Common Stock into the Trust from the NQDC, and redepositing income and dividends in the form of Common Stock into the Trust on behalf of the participants electing such reinvestment. Applicants intend that the Trustee will be compensated for its services by AEGON USA or the Participating Companies. Any fees for Trustee's services not paid by AEGON USA or the Participating Companies, however, will be paid *pro rata* from the assets of the Trust. In no event will the Trustee's fees and other non-transactional expenses paid out of Trust assets exceed 1% of the average annual net assets of the Trust.

13. Applicants seek an exemption under section 6(c) from sections 2(a)(13) and 6(b) to permit the Plan to be treated as an employee's security company, and pursuant to section 6(b) from all provisions of the Act and the rules thereunder other than sections 7, 8(a), 9 (except as provided herein), 17 (except as provided herein), 21, 30(a) (to the extent that it requires distribution of audited annual reports), and 33 through 53, and the rules thereunder.

14. Applicants propose to comply with section 8(a) by filing a Form N–8A on behalf of the Trust. Applicants intend to register the Common Stock, the Trust Shares, and the NQDC participation interests of AEGON as securities under the Securities Act of 1933. Appropriate disclosure regarding issues such as fees, tax consequences and investment risks incident to participation in the Plan will be disclosed in the prospectus delivered to all participants. In addition, applicants intend to seek relief under certain provisions of the Securities Exchange Act of 1934, including rule 10b–6 and 10b–18 thereunder, to operate the Plan as contemplated.

15. Section 9 provides generally that a person who has been convicted of a felony or misdemeanor or enjoined in connection with securities related misconduct, and affiliated persons of such person, are disqualified from acting as an employee, officer, director, member of an advisory board, investment adviser, or depositor of any registered investment company. Applicants believe that AEGON USA

could be deemed to be the Trust's sponsor/depositor and therefore its employees and affiliated persons, including AEGON would be subject to section 9. Applicants believe that applying section 9 to all affiliated persons of AEGON would be unnecessarily burdensome on both AEGON and the Plan. Applicants will be subject to section 9 to the extent that it applies to officers and directors of AEGON USA, officers, directors, and employees of the Trustees, and such other personnel of AEGON USA or any of its affiliated persons who are involved in the organization and operation of the Trust. AEGON, AEGON USA, and the Trustee, as corporate entities, also will be subject to section 9(b).

16. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. Applicants will comply with section 17(a) except to the extent that it applies to direct issuance of Common Stock by AEGON to the Trust.

17. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such companies. Rule 17d–1 was promulgated pursuant to section 17(d) and prohibits most joint transactions unless approved by order of the SEC. Applicants will comply with section 17(d) and rule 17d–1 to the extent that they engage in transactions not specifically described herein. Applicants will comply with the provisions of section 17 regarding commissions charged by affiliated persons of investment companies, except that because the Trust will not have a board of directors, the Trustee will perform the duties of a board of directors required under rule 17e–1(b).

18. Section 17(f) permits a registered investment company to maintain self-custody of its securities and similar investments subject to such rules and regulations as the SEC prescribes for the protection of investors. Rule 17f–2 was promulgated pursuant to section 17(f) and sets forth detailed provisions governing self-custody of investments by a registered investment company. The Trust may be deemed to be subject to rule 17f–2 since the Common Stock will be held in the custody of a trustee that is an affiliated person of AEGON. Applicants agree to comply with rule 17f–2, except that any procedural steps to be taken by the board of directors will instead be taken by the Trustee. Any provisions requiring access persons to be officers or employees of the investment company will be interpreted to refer to the officers and employees of the Trustee. Under rule 17f–2, the Trustee qualifies as a person whose functions and facilities are supervised by state authority. The Common Stock will be physically segregated by the Trustee and will be deposited in a vault or other depository maintained by the Trust. The Common Stock will only be withdrawn in connection with the sale or redemption of such securities. Such securities will be verified by an examination by an independent accountant three times each year, and an accountant's certificate attached to a complete Form N–17f–2 will be transmitted to the SEC.

19. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. Applicants will comply fully with the terms of section 17(g) and rule 17g–1 thereunder except that the required fidelity bonds will cover employees and officers of the Trustee (as there are no officers or employees of the Trust). The Trustee will cause the required filings with respect to the form and amount of the bonds to be filed with the SEC as required under the rule. In addition, the Trustee will file with the SEC the required filings within five days after the making of any claim under a fidelity bond.

20. Rule 17j–1 requires a registered investment company to adopt a written code of ethics containing provisions necessary to prevent affiliated persons of such company from engaging in any act or practice which would defraud the company. Pursuant to rule 17j–1(b), the Trustee will adopt a written code of ethics containing provisions reasonably necessary to prevent the officers and employees of the Trustee from engaging in any act, practice, or course of business prohibited by rule 17j–1(a). Applicants will not be subject to the reporting requirements of rule 17j–1(c).

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers.

2. The participants in the Plan are independent contractors engaged on a general agency basis and are not common law employees of the Participating Companies. Applicants submit that this is due to the customary practice of the insurance industry and is not a distinction that should determine whether the Plan is an employees' security company. The participants occupy a parallel role to that of salaried, common law employees.

3. The legislative history of sections 2(a)(13) and 6(b) recognize that an employees' security company is a labor-related entity that exists primarily to promote the economic welfare of its investors. The Plan exists primarily to promote the economic welfare of the participants. The economic welfare of the participants is directly related to the insurance business of the Participating Companies. As further evidence of this fact, applicants state that they offer other benefit plans to the participants, including educational seminars, medical, life and accidental death and dismemberment plans, and incentive compensation plans.

4. Under section 6(c), the SEC may exempt any person or transaction from any provision of the Act or any rule thereunder to the extent that such exemption is necessary or appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the Act. Applicants seek relief under section 6(c) from sections 2(a)(13) and 6(b) to permit the Plan to be treated as an employees' security company, notwithstanding that the Plan does not meet the strict definition of "employees securities company" in section 2(a)(13).

5. In determining whether a proposed employees' security company exemption is consistent with the protection of investors, section 6(b) directs the SEC to consider, among other things, the form of organization and the capital structure of the company, the persons by whom its securities are owned, the prices at which securities issued by the company are sold and the sales load thereon, the character of the securities in which such proceeds are invested, and any relationship between

the employees' security company and the issuer of the securities it holds.

6. The organization of the Trust in the form of a grant or trust governed by a Trustee whose duties are ministerial in nature protects the participants. Although the Trustee is an affiliated person of AEGON, the Trustee is in a fiduciary relationship to the beneficiaries of the Trust and is under a state law duty to administer the Trust solely in the interest of the beneficiaries. AEGON will not have the ability to exercise any control or influence over the Trust. Moreover, each participant has the possibility of realizing an increase on his or her investment as a result of the matching contributions even without appreciation in the value of the Common Stock.

7. The eligible participants are similarly situated in that they are a designated and limited group who are eligible to enroll in the Plan and have their contributions to the Plan deducted from their Commission checks. The eligible participants already receive regular financial and other information about AEGON USA and are in a position to assess the potential benefits and risks of enrollment in the Plan. Moreover, no other individuals will be able to participate, nor will the Trust shares owned by the participants be transferable or assignable.

8. There are no sales charges to participants in the Plan (other than the related brokerage commissions incurred in connection with the purchase or sale of Common Stock on the open market). No fee will be charged by the Trustee or AEGON USA as an expense for transfer or organization. In general, the Plan will incur few expenses. Taxes, and similar transaction costs will be paid out of Trust assets and allocated based on the current number of Trust shares owned by a participant. Any unpaid Trustee's fee will be paid out of Trust assets.

9. The Trust assets will be primarily Common Stock. Approximately 99 million shares of Common Stock are presently outstanding. According to audited financial information for the year ended December 31, 1992 (in accordance with Dutch accounting principles) AEGON had total assets of approximately $46 billion and total shareholders' equity of approximately $3.5 billion.

10. The relationship between AEGON, AEGON USA, and the Plan protects the interest of the participants. Participation in the Plan is voluntary. AEGON has made a substantial investment in the establishment of the Plan and will make matching contributions for the benefit of the participants. No sales load will be charged to the participants, no fees will inure to the benefit of AEGON or AEGON USA, and the Plan will not be promoted by persons seeking to profit from investment in the Plan.

11. Applicants submit that for the foregoing reasons, the requested relief is appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policies and provisions of the Act.

Applicants' Conditions

1. Any Common Stock issued directly from AEGON to the Trust will be issued at the last reported sale price on the New York Stock Exchange or other applicable stock exchange on the business day next succeeding the date on which a determination is made to issue such Common Stock.

2. In no event will the Trustee's fee and any other nontransactional expenses exceed 1% of the average annual net assets of the Trust.

3. The Trustee will maintain and preserve permanently, the first 2 years in an easily accessible place, such accounts, books, and other documents as constitute the record forming the basis for the audited financial statements that are to be provided to each participant. All such accounts, books, and other documents maintained by the Trustee will be subject to examination by the SEC or its staff.

4. The Trustee will record and preserve a description (including the date of issuance and the number and price of shares) of the issuance of Common stock directly to the Trust. All such records will be maintained for the life of the Trust and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29357 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19904; 812–8616]

Co-operative Bank Investment Fund; Application

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC" or "Commission").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANT: Co-operative Bank Investment Fund.

RELEVANT 1940 ACT SECTIONS: Sections 6(c), 13(a), 15(a), 16 (a) and (b), 18(i), 22(d), and 32(a) (2) and (3).

SUMMARY OF APPLICATION: Applicant seeks an amendment order under section 6(c) of the Act exempting applicant from the provisions of sections 13(a0, 15(a), 16 (a) and (b), 18(i), 22(d), and 32(a) (2) and (3) of the Act. The order would amend applicant's existing order by permitting applicant to offer its securities to the Savings Bank Life Insurance Company of Massachusetts.

FILING DATES: The applications was filed on October 13, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 5th Street, NW., Washington, DC 20549. Applicant, 75 Park Plaza, Boston, Massachusetts 02116–3934.

FOR FURTHER INFORMATION CONTACT: Mary Kay Frech, Staff Attorney, at (202) 272–7648, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is an open-end management company registered under the Act. Applicant was organized pursuant to a special act of the Commonwealth of Massachusetts (the "Enabling Legislation") primarily to provide a mutual fund investment medium to Massachusetts co-operative banks (state-chartered thrift banking institutions).[1] Applicant's business is conducted by a board of directors elected by applicant's incorporators. Applicant's incorporators are the

[1] 1984 Mass. Acts ch. 482.

directors of The Co-operative Central Bank (the "Central Bank"), which is the statutory reserve bank and excess deposit insurer (on deposit amounts in excess of those amounts federally insured) for Massachusetts co-operative banks. Applicant is internally managed and investment decisions are made by authorized officers of applicant, subject to authority delegated by applicant's board of directors.

2. Applicant falls within the definition of a "bank" under Massachusetts law and is subject to the substantial supervision of the Commissioner of Banks of the Commonwealth of Massachusetts (the "Commissioner of Banks"). Such supervisory authority extends, among other things, to supervision of applicant's investment portfolios. In addition, the Commissioner of Banks is required to make periodic examinations of the books, securities, cash, assets, and liabilities, and to ascertain the condition, of all banks under his supervision.

3. Applicant has no capital stock; instead shares of beneficial ownership are issued from time to time by applicant. Such shares do not provide holders with any voting rights. Each share is equal in every respect to every other share, except that if applicant's board of directors establishes distinct investment funds, as it is authorized to do, it may authorize shares to be issued in distinct classes and each share within each such class will be equal in every respect to every other share of that class.

4. Applicant offers and sells its securities in reliance on an exemption from registration under the Securities Act of 1933 (the "Securities Act") pursuant to section 4(2) of the Securities Act and regulation D thereunder. After issuance, applicant's securities may not be transferred by eligible purchasers of such securities to any person other than another eligible investor.

5. The Enabling Legislation permitted Massachusetts co-operative banks, the Co-operative Banks Employees Retirement Association (a retirement association organized under Massachusetts law), and Massachusetts savings to invest in applicant. In 1986, the Enabling Legislation was amended, permitting applicant, among other things, to offer its securities to the Central Bank Reserve Fund, the Massachusetts League of Community Banks, and the National Consumer Co-operative Bank.

6. The Commission granted applicant relief from certain provisions of the Act in 1985 [2] and again in 1986 [3] to permit applicants securities to be sold to the entities referred to in the Enabling Legislation and the 1986 amendment thereto.

7. In 1990 and 1991, the Enabling Legislation was further amended (the "1990 and 1991 Amendments") to authorize applicant to offer its securities to certain additional investors.[4] Consistent with the 1990 and 1991 Amendments, the Commission granted applicant relief in 1992 [5] from certain provisions of the Act to permit applicant's securities to be sold to any trust company incorporated in Massachusetts, federally chartered savings banks and savings and loan associations with their principal place of business in Massachusetts, and directly or indirectly wholly-owned subsidiaries of entities that have received Commission authorization to invest in applicant.[6]

8. On August 16, 1993, the Massachusetts legislature amended the Enabling Legislation (the "1993 Legislation") to allow the Savings Bank Life Insurance Company of Massachusetts ("SBLIC") to invest in applicant.[7] Consistent with the 1993 Legislation, and in addition to the eligible investors specified in the Prior Orders, applicant proposes to offer its securities to SBLIC.[8]

9. SBLIC is a stock life insurance company established in 1992 by a specific Massachusetts statute to provide low cost insurance products. Its shares may be held only by Massachusetts savings banks, any such bank which has converted to a federally chartered savings bank, and the parent holding company of such banks. SBLIC is the successor to a mutually owned and operated system of Savings Bank Life Insurance originally established by the Massachusetts legislature in the early 1900's to provide reasonably priced life insurance through Massachusetts savings banks. SBLIC was established to assume the management and operational functions of this prior structure. SBLIC is regulated through the office of the Massachusetts Commissioner of Insurance.

Application's Legal Analysis

1. Applicant seeks to amend the 1992 Order granting relief from the provisions of sections 13(a), 15(a), 16(a), and (b), 18(i), 22(d), and 32(a)(2) and (3) of the Act so that it may sell its securities to SBLIC.

2. Applicant asserts that none of the policy bases underlying the granting of the Prior Orders are substantially affected by the 1993 Legislation. Applicant will offer and sell its securities to SBLIC, as well as to investors eligible to purchase shares under the Prior Orders. Except for the proposed new offeree, applicant's activities essentially are unchanged from its activities as outlined in the Prior Orders.

3. Section 18(i) of the Act requires that every share of stock issued by a management company be a "voting stock." Section 2(a)(42) defines "voting security" to means a security entitling the owner or holder thereof to vote for the election of directors of the company. Sections 13(a), 15(a), 16(a) and (b), and 32(a)(2) and (3) also provide various voting rights to shareholders of registered investment companies. The Enabling Legislation, as amended, does not provide voting rights to the holders of the shares of beneficial interests issued by applicant. Instead, all such rights are exercised by the incorporators of applicant, who are the directors of the Central Bank. Applicant argues that this arrangement alleviates the danger that a few large banks might obtain complete control of applicant through large investments and consequently dominate its board of directors. Applicant asserts that, in view of the extent of the Commissioner of Banks' supervisory powers, the form of applicant's organization, the nature of SBLIC and the limits of its investments in applicant, the identity of the incorporators, and the provisions in applicant's charter, an exemption from sections 13(a), 15(a), 16 (a) and (b), 18(i), and 32(a) (2) and (3) is justified.

4. Section 22(d) of the Act requires that securities sold by a registered investment company must be sold through a principal underwriter or at a

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[2] Investment Company Act Release Nos. 14732 (Sept. 20, 1985) (notice) and 14760 (Oct. 17, 1985) (order) (the "1985 Order").

[3] Investment Company Act Release Nos. 15126 (June 3, 1986) (notice) and 15205 (July 16, 1986) (order) (the "1986 Order").

[4] 1990 Mass. Act ch. 277; 1991 Mass. Acts ch. 285.

[5] Investment Company Act Release Nos. 18931 (Sept. 4, 1992) (notice) and 18988 (Sept. 30, 1992) (order) (the "1992 Order"). The 1992 Order amended the 1985 and 1986 Orders. The 1985, 1986, and 1992 Orders are referred to hereafter as the "Prior Orders".

[6] The 1990 and 1991 Amendments also authorized applicant to offer its securities to credit unions and affiliates of eligible investors (other than wholly-owned affiliates), but applicant has not offered, and will not offer, its securities to these additional investors without further order from the Commission or a change in the structure of applicant making such an order unnecessary.

[7] 1993 Mass. Acts ch. 147.

[8] The 1993 Legislation also authorizes applicant to offer its shares to national banks, but applicant will not make such an offer without a further order of the Commission or a change in the structure of applicant making such an order unnecessary.

current public offering price described in a written prospectus. Applicant asserts that a requirement to comply with section 22(d) would be impractical and unnecessarily expensive. Applicant is not registered under the Securities Act and does not now or in the future propose to make a public offering of its shares. Its shares are offered pursuant to an exemption from registration under the Securities Act only to a limited number of sophisticated institutional purchasers. These investors, except for the National Co-operative Bank, are all located in Massachusetts. Applicant does not currently sell its securities through an underwriter. Applicant offers a copy of its registration statement filed with the Commission on Form N–1A to each of its eligible investors and also furnishes them with a copy of an offering circular that contains substantially the same information that applicant would be required to furnish in a prospectus.

5. Applicant also submits that permitting the additional investor in applicant should result in further economies of scale with fixed expenses spread over a larger fund, benefitting existing investors as well as SBLIC.

6. Applicant asserts that the change made in the Enabling Legislation, permitting the sale of applicant's shares to SBLIC, is in the best interests of applicant's current investors and SBLIC and is consistent with the protection of investors and the purposes fairly intended by the policies and the provisions of the Act.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29424 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Rel. No. IC–19903; 812–8388]

Pioneer Fund, et al.; Application

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for exemption under the Investment Company Act of 1940 (the "Act").

APPLICANTS: Pioneer Fund, Pioneer II, Pioneer Three, Pioneer Bond Fund, Pioneer U.S. Government Trust, Pioneer Municipal Bond Fund, Pioneer Money Market Trust, Pioneer Short-Term Income Trust, Pioneer Europe Fund, Pioneer Growth Trust, Pioneer International Growth Fund, Pioneer Tax-Free State Series Trust, and Pioneer Winthrop Real Estate Investment Fund, including any existing or future series thereof (the "Funds"), Pioneering Management Corporation ("PMC"), Pioneer Winthrop Advisers ("PWA," together with PMC, the "Adviser"), and Pioneer Funds Distributor, Inc. (the "Distributor").

RELEVANT ACT SECTIONS: Order requested under section 6(c) for exemptions from sections 2(a)(32), 2(a)(35), 18(f)(1), 18(g), 18(i), and 22(d) of the Act and rule 22c–1 thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order permitting applicants to issue multiple classes of shares representing interests in the same portfolio of securities, and to assess and, under certain circumstances, waive a contingent deferred sales charge ("CDSC") on certain redemptions of the shares. The requested order would supersede a prior order that permits applicants to assess and, under certain circumstances, waive a CDSC on certain redemptions of the shares (the "Prior Order").[1] Applicants request that any relief granted pursuant to the application also apply to any registered open-end investment company, including any series thereof, not currently advised by PMC but for which PMC or an affiliated person controlling, controlled by, or under common control with PMC may in the future serve as investment adviser or distributor. Any such future Fund will be subject to the representations and conditions set forth in the application.

FILING DATES: The application was filed on May 10, 1993, and amended on October 5, 1993. By supplemental letter dated November 23, 1993, counsel, on behalf of applicants, agreed to file a further amendment during the notice period to make certain technical changes. This notice reflects the changes to be made to the application by such further amendment.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993 and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicants, 60 State Street, Boston, Massachusetts 02109.

FOR FURTHER INFORMATION CONTACT: John V. O'Hanlon, Senior Attorney, at (202) 272–3922, or Elizabeth G. Osterman, Branch Chief, at (202) 272–3016 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application is available for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. The Funds are Massachusetts business trusts and open-end management investment companies registered under the Act. PMC serves as investment adviser to all of the Funds except Pioneer Winthrop Real Estate Investment Fund ("PW Real Estate Fund"). PWA serves as investment adviser to PW Real Estate Fund. PMC and Winthrop Advisors Limited Partnership serve as subadvisers to PW Real Estate Fund.

2. The Distributor acts as the principal underwriter for the Funds, except Pioneer Money Market Trust. Pioneer Money Market Trust is an issuer agent for its own shares.

3. Existing shares of each Fund except Pioneer Money Market Trust (the "Non-Money Market Funds") are currently sold at net asset value per share plus a front-end sales charge. Shares of Pioneer Money Market Trust are sold to the public at net asset value per share with no sales charge. Pursuant to the Prior Order, purchases of existing shares of Non-Money Market Funds in amounts of $1 million or more and purchases by certain group plans as described in each Fund's current prospectus are not subject to a front-end sales charge, but instead are subject to a CDSC of one percent on redemptions of such shares within 12 months after purchase. In addition to the front-end sales charge and the CDSC described above, each Fund has adopted a rule 12b–1 plan.

A. The Multiple Class System

1. Applicants seek an exemptive order that would permit the Funds (a) to issue an unlimited number of classes of shares; and (b) to differentiate among such classes in the following respects: any such class (i) may be subject to a rule 12b–1 plan and may make different payments pursuant to such plan ("Plan Payments") (and any other costs relating

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[1] Investment Company Act Release Nos. 18325 (Sept. 19, 1991) (notice) and 18364 (Oct. 15, 1991) (order).

to obtaining shareholder approval of a rule 12b–1 plan for such class, or an amendment to such plan); (ii) may bear different class expenses, as described below; (iii) may bear a different name or designation; (iv) may be subject to different CDSC arrangements; (v) will have exclusive voting rights with respect to any rule 12b–1 plan adopted exclusively with respect to such class, except as provided in condition 7 below; (vi) may have different exchange or conversion privileges; and (vii) may bear any other incremental expense subsequently identified that may be properly allocated to such class, which allocation shall have been approved by the Commission pursuant to an amended order (the "Multiple Class System").

2. Under the Multiple Class System, shares of different classes would be sold under different sales arrangements including, for example, sales at net asset value, subject to a front-end sales charge, or subject to a CDSC. The Multiple Class System would be implemented by designating existing shares of each Non-Money Market Fund as Class A shares.

3. Under the Multiple Class System, different classes of shares could be subject to different rule 12b–1 plans. Plan Payments under a rule 12b–1 Plan would comply with applicable provisions of the Rules of Fair Practice of the National Association of Securities Dealers, Inc. (the "NASD").

4. Under the Multiple Class System, certain expenses could be attributable to a Fund, but not to a particular series thereof ("Fund Expenses"). All such Fund Expenses would be borne by the shareholders of the Fund on the basis of the aggregate net assets of the Fund without regard to class, except in the case of a Fund that has series, in which case they would be first allocated among series, based on the aggregate net assets of such series (or on such other basis as may be approved by the Board of Trustees, including, but not limited to, an equal division among the series without regard to their net assets), and then borne on the approved basis by each series and without regard to class. Expenses that are attributable to a particular series of a Fund that has multiple series, but not to a particular class thereof ("Series Expenses"), would be borne by the classes on the basis of the relative aggregate net assets of such classes.

5. Under the Multiple Class System, a Fund's Board of Trustees could determine that any of certain expenses attributable to the shares of a particular class of shares ("Class Expenses") would be borne by the class to which they were attributable. In addition to Plan Payments, Class Expenses could include: (a) Transfer agent fees; (b) printing and postage expenses related to preparing and distributing materials such as shareholder reports, newsletters, prospectuses, and proxy statements to current shareholders of a class; (c) Commission, Blue Sky, and foreign registration fees incurred by a class of shares; (d) the expenses of administrative personnel and services required to support the shareholders of a class; (e) litigation or other legal expenses relating to a class of shares; (f) Trustees' fees or expenses incurred as a result of issues relating to a class of shares; and (g) accounting expenses relating to one class of shares. Any additional Class Expenses not specifically identified above which are subsequently identified and determined to be properly applied to one class of shares shall not be so applied until approved by the Commission.

6. The Adviser and/or its affiliates may choose to reimburse or agree not to impose Class Expenses on certain classes on a voluntary, temporary basis. The amount of Class Expenses reimbursed or not imposed by the Adviser and/or its affiliates may vary from class to class. Class Expenses are by their nature specific to a given class and obviously expected to vary from one class to another. Applicants thus believe that it is acceptable and consistent with shareholder expectations to reimburse or agree not to impose Class Expenses at different levels for different classes of the same Fund or series.

7. The Adviser and/or its affiliates also may reimburse or agree not to impose Fund Expenses and/or Series Expenses (with or without a reimbursement of or agreement not to impose Class Expenses), but only if the same proportionate amount of Fund Expenses and/or Series Expenses are reimbursed or not imposed for each class. Thus, any Fund Expenses that are reimbursed or not imposed would be credited to each class of a portfolio based on the relative net assets of the classes. Similarly, any Series Expenses that are reimbursed or not imposed would be credited to each class of that series according to the relative net assets of the classes. Fund Expenses and Series Expenses apply equally to all classes of a given portfolio. Accordingly, it may not be appropriate to reimburse or not impose Fund Expenses or Series Expenses at different levels for different classes of the same Fund or series.

8. Because of the varying Plan Payments and Class Expenses that may be borne by each class of shares, the net income of (and dividends payable with respect to) each class may be different from the net income of (and dividends payable with respect to) the other classes of shares of a Fund. Dividends paid to holders of each class of shares of a Fund would be declared and paid on the same days and at the same times and, except as noted with respect to the varying Plan Payments and Class Expenses, would be determined in the same manner and would be paid in the same amount. Except for money market funds (which maintain a constant net asset value per share pursuant to rule 2a-7 under the Act and declare dividends on a daily basis) the net asset value per share of each class of shares will vary.

9. Shares of each class generally may be exchanged only for shares of a class with similar characteristics in another Fund. Shares of any class of a Fund, including a class with a CDSC feature, may be exchanged for shares of certain money market funds that do not impose a CDSC, may or may not be subject to a rule 12b-1 plan or may not participate in the Multiple Class System ("Money Market Exchange Shares"). For purposes of imposing any applicable CDSC on Money Market Exchange Shares (and applying any applicable conversion feature), the period during which the shareholder held the exchange shares would be counted, except that a Fund may elect not to count the period during which the shareholder held the Money Market Exchange Shares. All such exchanges will be allowed only between Funds that are within the same "group of investment companies" as that term is defined in Rule 11a-3 under the Act. At the discretion of the Trustees, exchanges may also be permitted among dissimilar classes of any Fund should a shareholder cease to be eligible to purchase shares of the original class by reason of a change in the shareholder's status. All permitted exchanges will comply with the provisions of Rule 11a-3 under the Act.

10. A conversion feature will automatically convert shares of one class ("Purchase Class") to shares of another class with different features ("Target Class") after the expiration of a specified period, subject to terms fully disclosed in the Fund's then-current prospectus. All conversions will be done at net asset value without the imposition of any sales load, fee, or other charge, so that the value of each shareholder's account immediately before conversion will be the same as the value of the account immediately after conversion. After conversion, the Target Class shares will be subject to an asset-based sales charge and/or service

fee, if any, that in the aggregate are lower than the asset-based sales charge to which Purchase Class shares were subject prior to the conversion.

11. For purposes of the conversion, all Purchase Class shares in a shareholder's account that were acquired through the reinvestment of dividends and other distributions paid in respect of such shares (and which had not yet converted) will be considered to be held in a separate sub-account ("Dividend Purchase Shares"). Each time any Purchase Class shares in the shareholder's account converted, an equal portion of Dividend Purchase Shares then in the sub-account will also convert and will no longer be considered held in the sub-account. The portion will be determined by the ratio that the shareholder's converting Purchase Class shares bears to the shareholder's total Purchase Class shares, subject to the conversion feature, but excluding Dividend Purchase Shares.

12. Any conversion will be subject to the continuing availability of an opinion of counsel or a private letter ruling from the Internal Revenue Service to the effect that the conversion did not constitute a taxable event under federal income tax law. Conversion might be suspended if such an opinion or ruling were no longer available.

13. As part of its ongoing plan to market shares of the Funds outside of the United States, applicants have used local language prospectuses to distribute shares to investors in foreign countries. Applicants will not offer all classes of shares that are available to United States investors to foreign investors pursuant to foreign prospectuses. Foreign prospectuses generally will offer less than all classes on shares available to United States investors. Foreign investors therefore will be eligible to purchase only the classes of shares offered in the foreign prospectus available in that foreign country. Applicants propose to disclose in such a prospectus the existence of each class of shares of the Fund and to identify the investors eligible to purchase such shares. Applicants will not, however, disclose in a foreign prospectus or in advertisements or sales literature used in those foreign countries the expenses, performance data, services, fees, distribution arrangements, sales charges (if any), conversion features, and exchange privileges of any class not available to foreign investors.

14. If applicants decide to offer more than one class of shares to foreign investors, applicants will disclose in the foreign language prospectus and in advertisements or sales literature used in those foreign countries the expenses, performance data, services, fees, distribution arrangements, sales charges (if any), conversion features, and exchange privileges of each class available to foreign investors.

15. If a Fund offers a class of shares exclusively to foreign investors and does not offer that class to investors in the United States, the Fund's prospectuses available to investors in the United States will disclose only the existence of the class available to foreign investors.

B. The CDSC Arrangement

1. Under the proposed CDSC arrangement, shares of classes of a Fund may be subject to a CDSC if such shares are redeemed or repurchased within a prescribed period of time after their purchase. Any CDSC would be imposed on the lesser of (a) the net asset value of the shares at the time of purchase, and (b) the net asset value of the shares at the time of repurchase or redemption.

2. No CDSC would be imposed with respect to: (a) The portion of redemption or repurchase proceeds attributable to increases in the value of the shares due to capital appreciation; (b) shares acquired through the reinvestment of income dividends or capital gain distributions; or (c) shares held for more than a certain period of time after their purchase. In determining whether a CDSC would be payable, it would be assumed that shares, or amounts representing shares, that are not subject to a CDSC would be redeemed or repurchased first and other shares or amounts would be redeemed or repurchased in the order purchased.

3. The amount of the CDSC and the timing of its imposition may vary. Any change in the terms of a CDSC will be reflected in the affected Fund's prospectus. In addition, any such change will not affect shares that have already been issued unless such change would result in terms more favorable to the holders of such shares, such as by reducing the amount of the CDSC or reducing the period during which a redemption or repurchase would be subject to a CDSC. No CDSC would be imposed on any shares purchased prior to the effective date of the requested order, except as permitted under the Prior Order.

4. Applicants propose to waive or reduce the CDSC in the following circumstances: (a) Redemptions following the death or disability, as defined in section 72(m)(7) of the Internal Revenue Code (the "Code"), of a shareholder; (b) redemptions in connection with distributions from Individual Retirement Accounts, 403(b) programs, or qualified retirement plans (i) that are on account of a participant's disability or death, (ii) that are part of a series of substantially equal payments made over the life expectancy of the participant or the joint life expectancy of the participant and his or her beneficiary, (iii) that constitute a tax-free return of excess contributions described in section 401(a)(8), 401(g), 403(b), 408(d)(4), 408(d)(5), 408(k)(6), or 501(c)(18)(D) of the Code, or (iv) that are required by law in connection with any such distribution; (c) redemptions by a 403(b) program or a qualified retirement plan (i) which are rolled over to or reinvested in a Fund (other than PW Real Estate Fund) account or (ii) which are in the form of a loan to the participant as described in section 72 of the Code; (d) redemptions by a qualified defined contribution plan which represent a participant's directed transfer pursuant to a prior agreement with the Distributor; (e) redemptions of shares acquired by any state, county, or city, or any instrumentality, department, authority, or agency thereof, which is prohibited by applicable laws from paying a sale charge or commission in connection with the acquisition of shares of any registered investment management company; (f) redemptions pursuant to each Fund's right to liquidate or involuntarily redeem shares in a shareholder's account; (g) limited automatic redemptions as set forth in the prospectus pursuant to a Fund's systematic withdrawal plan; and (h) redemptions in connection with the redemption of shares of any Fund that is combined with another fund, investment company, or personal holding company by virtue of a merger, acquisition, or other similar reorganization transaction.

5. If the Funds waive or reduce a CDSC, such waiver or reduction will be applied uniformly to all shares in the specified category. If a Fund which has been waiving or reducing a CDSC determines not to waive or reduce such CDSC any longer, the disclosure in the Fund's prospectus will be appropriately revised. Shares purchased prior to the termination of such waiver or reduction would be entitled to the waiver or reduction of the CDSC as provided in the Fund's prospectus at the time of the purchase of such shares.

Applicants' Legal Analysis

1. Applicants seek an exemption from sections 18(f)(1), 18(g), and 18(i) of the Act to the extent that the proposed issuance and sale of multiple classes of shares might be deemed to result in the issuance of a senior security, as defined by section 18(g), and thus to be

prohibited by section 18(f)(1), and to violate the equal voting provisions of 18(i). In addition, applicants request an exemption from sections 2(a)(32), 2(a)(35), and 22(d) of the Act and rule 22c–1 thereunder to the extent necessary to permit the proposed CDSC arrangement.

2. Applicants assert that the proposed Multiple Class System does not raise any of the legislative concerns that section 18 was designed to redress. The Multiple Class System would not involve borrowings and would not affect the Funds' existing assets or reserves. The proposed arrangement would not increase the speculative character of the shares of any Fund, because each class of shares would participate *pro rata* in all of the Fund's appreciation (if any), income, and expenses (with the exception of varying Plan Payments and Class Expenses). No class of shares will have any preference or priority over any other class in the Fund in the usual sense (that is, no class will have distribution or liquidation preference with respect to particular assets and no class will be protected by any reserve or other account).

3. Applicants assert that the proposed allocation of expenses and voting rights in the manner described is equitable and will not discriminate against any group of shareholders. Investors purchasing shares offered in connection with a rule 12b-1 plan and receiving services provided under such plan would bear costs associated with such services, and would receive the added benefits of economies of scale and portfolio management advantages that may result from combining the assets of investors in a single, larger portfolio. Conversely, investors purchasing shares that would not be covered by a plan would not be burdened with such expenses and, in addition, would have no need for voting rights with respect to a rule 12b-1 plan. These investors, similarly, would benefit from economies of scale and portfolio management advantages.

4. Applicants assert that there is no rationale for disclosing to a foreign investor information about classes not offered in the foreign country, or for disclosing to a United States investor information about classes not offered in the United States. In addition, requiring full cross-disclosure in such circumstances would cause the Fund to bear the needless expense of translating information into a foreign prospectus that would not be relevant to a prospective investor because the investor could not purchase those shares.

Applicants' Conditions

Applicants agree that any order of the Commission granting the requested relief shall be subject to the following conditions:

1. Each class of shares will represent interests in the same portfolio of investments of a Fund or a series and be identical in all respects except as set forth below. The Funds may differentiate among such classes only in the following respects: Any such class (a) may be subject to a rule 12b-1 plan and may make different Plan Payments pursuant thereto (and bear any other costs relating to obtaining shareholder approval of a rule 12b-1 Plan for such class, or an amendment to such rule 12b-1 plan); (b) may bear different Class Expenses limited to: (i) Transfer agency fees (including the incremental cost of monitoring a CDSC or a CDSC and conversion feature applicable to a specific class of shares); (ii) printing and postage expenses related to preparing and distributing materials such as shareholder reports, newsletters, prospectuses and proxy statements to current shareholders of a specific class; (iii) Commission, Blue Sky, and foreign registration fees incurred by a specific class of shares; (iv) the expenses of administrative personnel and services required to support the shareholders of a specific class (including, but not limited to, maintaining telephone lines and personnel to answer shareholders' inquiries about their accounts or about the Funds); (v) litigation or other legal expenses relating to a specific class of shares; (vi) Trustees' fees or expenses incurred as a result of issues relating to a specific class of shares; and (vii) accounting expenses relating to a specific class of shares; (c) may bear a different name or designation; (d) may be subject to different CDSC arrangements or CDSC and conversion arrangements; (e) will have exclusive voting rights with respect to any rule 12b-1 plan adopted exclusively with respect to such class (except as provided in condition 7 below); (f) may have different exchange privileges; and (g) may bear any other incremental expense subsequently identified that may be properly allocated to such class, which allocation shall be approved by the Commission pursuant to an amended order.

2. The Board of Trustees of each Fund, including a majority of the non-interested Trustees, has approved the Multiple Class System. The minutes of the meetings of the Trustees of the Funds regarding the deliberations of the Trustees concerning, and their approval of, the Multiple Class System reflect in detail the reasons for the Trustees' determination that the proposed Multiple Class System is in the best interests of the Funds and their respective shareholders.

3. The initial determination of Class Expenses that will be applied to a class of shares and any subsequent changes thereto will be reviewed and approved by votes of the Boards of Trustees of each Fund, including majorities of the non-interested Trustees. Any person authorized to direct the application and disposition of monies paid or payable by a Fund to meet Class Expenses shall provide to the Fund's Board of Trustees, and the Trustees shall review at least quarterly, a written report of the amounts so expended and the purposes for which such expenditures were made.

4. On an ongoing basis, the Trustees of the Funds, pursuant to their fiduciary responsibilities under the Act and otherwise, will monitor each Fund for the existence of any material conflict among the interests of the classes of shares. The Adviser and the Distributor will be responsible for reporting any potential or existing conflicts to the Trustees. The Trustees, including a majority of the non-interested Trustees, will take such action as is reasonably necessary to eliminate any such conflicts that may develop. In addition, if a conflict arises, the Adviser or the Distributor, each at its own cost, will take action to eliminate such conflict, up to and including establishing a new registered management investment company.

5. The Trustees will receive quarterly and annual statements concerning the amounts expended under any rule 12b-1 plans and such reports will comply with paragraph (b)(3)(ii) of rule 12b-1, as it may be amended from time to time. In these statements, only expenditures properly attributable to the sale or servicing of a particular class of shares will be used to justify any distribution or servicing fee charged to that class.

Expenditures not related to the sale or servicing of a particular class will not be presented to the Trustees to justify any fee payable by that class. The statements, including the allocations upon which they are based, will be subject to the review and approval of the non-interested Trustees in the exercise of their fiduciary duties.

6. The Distributor will adopt compliance standards as to when each class of shares may appropriately be sold to particular investors. Applicants will require all persons selling shares of the Fund to agree to conform to such standards.

7. If a Fund implements an amendment to its rule 12b-1 plan that would increase materially the amount that may be borne by the shares of a Target Class under the plan, existing Purchase Class shares will stop converting into the Target Class unless the Purchase Class shareholders, voting separately as a class, approve the proposal. The Trustees shall take such action as is necessary to ensure that existing Purchase Class shares are exchanged or converted into a new class of shares ("New Target Class"), identical in all material respects to the Target Class as it existed prior to implementation of the proposal, no later than the date such shares previously were scheduled to convert into the Target Class. If deemed advisable by the Trustees to implement the foregoing, such action may include the exchange of all existing Purchase Class shares for a new class ("New Purchase Class"), identical to existing Purchase Class shares in all material respects except that New Purchase Class will convert into New Target Class. New Target Class or New Purchase Class may be formed without further exemptive relief. Exchanges or conversions described in this condition shall be effected in a manner that the Trustees reasonably believe will not be subject to Federal taxation. In accordance with condition 4 any additional cost associated with the creation, exchange, or conversion of New Target Class or New Purchase Class shall be borne solely by the adviser and the distributor. Purchase Class shares sold after the implementation of the proposal may convert into Target Class shares subject to the higher maximum payment, provided that the material features of the Target Class plan and the relationship of such plan to the Purchase Class shares are disclosed in an effective registration statement.

8. Any class of shares with a conversion feature will convert into another class of shares on the basis of the relative net asset values of the two classes, without the imposition of any sales load, fee, or other charge. After conversion, the converted shares will be subject to an asset-based sales charge and/or service fee (as those terms are defined in Article III, Section 26 of the NASD's Rules of Fair Practice), if any, that in the aggregate are lower than the asset-based sales charge and service fee to which they were subject prior to the conversion.

9. Dividends paid by a Fund with respect to each class of its shares, to the extent any dividends are paid, will be calculated in the same manner, at the same time on the same day, and will be paid in the same amount, except that Plan Payments and Class Expenses borne by a class will be borne exclusively by that class.

10. The methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares of the Funds and the proper application of expenses among the classes have been reviewed by an expert (the "Expert"). The Expert has rendered an amended report to the application filed as Exhibit C–1 that such methodology and procedures are adequate to ensure that such calculations and applications will be made in an appropriate manner. On an ongoing basis, the Expert, or an appropriate substitute expert, will monitor the manner in which the calculations and applications are being made and, based upon such review, will render at least annually a report to the Boards of Trustees of the Funds that the calculations and applications are being made properly. The reports of the Expert shall be filed as part of the periodic reports filed with the Commission pursuant to sections 30(a) and (30)(b)(1) of the Act. The work papers of the Expert with respect to such reports, following a request by the Funds (which the Funds agree to provide), will be available for inspection by the Commission's staff upon the written request for such work papers by a senior member of the Division of Investment Management or of a Regional Office of the Commission limited to the Director, an Associate Director, the Chief Accountant, the Chief Financial Analyst, an Assistant Director, and any Regional Administrator or Associate or Assistant Administrator. The initial report of the Expert is a "Special Purpose" report on the "Design of a System" as defined and described in SAS No. 70 of the AICPA, and the ongoing reports will be "Reports on Policies and Procedures Placed in Operation and Tests of Operating Effectiveness" as defined and described in SAS No. 70 of the AICPA, as it may be amended from time to time, or in similar auditing standards as may be adopted by the AICPA from time to time.

11. Applicants have adequate facilities in place to ensure implementation of the methodology and procedures for calculating the net asset value and dividends and distributions of the classes of shares and the proper application of expenses among the classes of shares and this representation has been concurred with by the Expert in the initial report referred to in condition 10 above and will be concurred with by the Expert, or an appropriate substitute expert, on an ongoing basis at least annually in the ongoing reports referred to in condition 10 above. Applicants agree to take immediate corrective action if this representation is not concurred in by the Expert or appropriate substitute expert.

12. The prospectus of each Fund having more than one class of shares will include a statement to the effect that any person entitled to receive compensation for selling Fund shares may receive different compensation with respect to one particular class of shares over another in the Fund.

13. The conditions pursuant to which the exemptive order is granted and the duties and responsibilities of the Trustees of the Funds with respect to the Multiple Class System will be set forth in guidelines which will be furnished to the Trustees.

14. Each Fund will disclose the respective expenses, performance data, distribution arrangements, services, fees, sales charges, deferred sales charges, conversion features, and exchange privileges applicable to each class of shares in every prospectus, regardless of whether all classes of shares are offered through each prospectus, except as noted below. To the extent any advertisement or sales literature describes the expenses or performance data applicable to any class of shares of a Fund, it will disclose the expenses and/or performance data applicable to each other class of shares of the Fund, except as noted below.

If a Fund offers less than all classes of shares to foreign investors pursuant to a foreign prospectus, the Fund will identify each class of shares of the Fund and the investors eligible to purchase those classes. Applicants will disclose in the appropriate foreign prospectus the respective expenses, performance data, distribution arrangements, services, fees, sales loads, deferred sales loads, conversion features, and exchange privileges applicable to each class of shares which the foreign investor is eligible to purchase. Advertisements and sales literature, as well as information available for publication in newspapers, in a foreign country where less than all classes of shares are offered to foreign investors pursuant to a foreign prospectus will disclose information about each class of shares available for purchase by foreign investors in such country.

If a Fund offers a class of shares exclusively to foreign investors and does not offer that class to investors in the United States, the Fund's prospectuses available to investors in the United States will disclose the

existence of the class available to foreign investors.

The Funds will disclose the respective expenses and performance data applicable to all classes of shares in every shareholder report to the extent that any information relating to expenses or performance is provided. The shareholder reports will contain, in the statement of assets and liabilities and statement of operations, information related to the Funds as a whole generally and not on a per class basis. Each Fund's per share data, however, will be prepared on a per class basis with respect to all classes of shares of such Fund.

The information provided by applicants for publication in any United States newspaper or similar listing of the Funds' net asset values and public offering prices will separately present this information for each class of shares available to investors in the United States.

15. Applicants acknowledge that the grant of the order requested by the application will not imply Commission approval, authorization, or acquiescence in any particular level of payments that a Fund may make pursuant to a rule 12b-1 plan in reliance on such order.

16. Applicants will comply with the provisions of proposed rule 6c–10 under the Act, Investment Company Act Release No. 16619 (Nov. 2, 1988), as such rule is currently proposed and as it may be reproposed, adopted, or amended.

For the SEC, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29425 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19901; 811–2996]

SLH High Yield Fund Inc.; Application for Deregistration

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for deregistration under the Investment Company Act of 1940 ("Act").

APPLICANT: SLH High Yield Fund Inc.

RELEVANT ACT SECTION: Section 8(f).

SUMMARY OF APPLICATION: Applicant seeks an order declaring that it has ceased to be an investment company.

FILING DATE: The application was filed on September 24, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on December 20, 1993 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street NW., Washington, DC 20549. Applicant, Two World Trade Center, New York, New York 10048.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a diversified open-end management investment company organized as a Maryland corporation. On January 31, 1980, applicant filed a notification of registration pursuant to section 8(a) of the Act and a registration statement pursuant to the Securities Act of 1933. The registration statement became effective on May 16, 1980, and applicant commenced its initial public offering shortly thereafter.

2. On April 22, 1992, applicant's board of directors approved a plan of reorganization whereby applicant agreed to transfer all of its assets and liabilities to High Income Portfolio (the "Acquiring Fund"), a portfolio of Shearson Lehman Brothers Income Portfolios, in exchange for shares of beneficial interest of the Acquiring Fund. In accordance with rule 17a-8 of the Act, applicant's trustees determined that the sale of applicant's assets to the Acquiring Fund was in the best interests of applicant's shareholders, and that the interests of the existing shareholders would not be diluted as a result.[1]

[1] Applicant and the Acquiring Fund may be deemed to be affiliated persons of each other by reason of having a common investment adviser.

3. Proxy materials were distributed to applicant's shareholders of record on or about July 31, 1992. Preliminary and definitive proxy materials soliciting shareholder approval of the reorganization were filed with the SEC. The reorganization was approved, in accordance with Maryland law, by applicant's shareholders at a meeting held on October 13, 1992.

4. On November 20, 1992, the reorganization was consummated. Applicant transferred all its assets and liabilities to the Acquiring Fund. In exchange, applicant received shares of the Acquiring Fund having an aggregate net asset value equal the net assets transferred to the Acquiring Fund. The exchanges were made at net asset value determined as of the close of business on November 20, 1992. The shares received in exchange for applicant's assets were distributed to applicant's shareholders *pro rata* in accordance with their respective interests in applicant.

5. The expenses in connection with the reorganization consisted of legal, accounting, printing, transfer agency, proxy solicitor and other expenses totalling approximately $111,100. These expenses were borne by applicant and the Acquiring Fund in the amount of $53,322 and $57,778, respectively.

6. As of the date of the amended application, applicant had no shareholders, assets, or liabilities. Applicant is not a party to any litigation or administrative proceeding. Applicant is not presently engaged in, nor does it propose to engage in, any business activities other than those necessary for the winding up of its affairs.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29353 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

[Investment Company Act Rel. No. 19905; 813-114]

Stone Street Fund 1984, et al.; Application

November 24, 1993.

AGENCY: Securities and Exchange Commission ("SEC").

Although purchases and sales between affiliated persons generally are prohibited by section 17(a) of the Act, rule 17a-8 provides an exemption for certain purchases and sales among investment companies that are affiliated persons of each other solely by reason of having a common investment adviser, common directors, and/or common officers.

ACTION: Notice of application for exemption under the Investment Company Act of 1940 ("Act").

APPLICANTS: Stone Street Fund 1984, Stone Street Fund 1985, Stone Street Fund 1986, Stone Street Fund 1987, Stone Street Fund 1988, Stone Street Fund 1989, Stone Street Fund 1990, L.P., Stone Street Real Estate Fund 1990, L.P., Stone Street Fund 1991, L.P., Stone Street Real Estate Fund 1991, L.P., Stone Street Fund 1992, L.P., Stone Street Real Estate Fund 1992, L.P., Stone Street Fund 1993, L.P., and Stone Street Real Estate Fund 1993, L.P., on behalf of themselves and other similar partnerships which may be offered to the same class of limited partner investors (the "Partnerships"); and Stone Street Corp., Stone Street Investors Corp. Stone Street Advisors Corp., Stone Street Capital Corp., Stone Street Managers Corp., Stone Street Venture Corp., Stone Street Enterprise Corp., Stone Street Realty Corp., Stone Street Principal Corp., Stone Street Principal Realty Corp. Stone Street Performance Corp., Stone Street Performance Realty Corp., Stone Street Resource Corp., and Stone Street Resource Realty Corp. (the "General Partners").

RELEVANT ACT SECTIONS: Exemption requested pursuant to sections 6(b) and 6(e) from all of the provisions of the Act except sections 9, 17 (except for certain provisions of sections 17 (a), (d), (f), and (g) as described herein), 30 (except for certain provisions of sections 30 (a), (b), and (d) as described herein), and 36–53, and the rules and regulations thereunder.

SUMMARY OF APPLICATION: Applicants seek a conditional order pursuant to sections 6(b) and 6(e) from all of the provisions of the Act except sections 9, 17 (except for certain provisions of sections 17(a), (d), (f), and (g) as described herein), 30 (except for certain provisions of sections 30 (a), (b), and (d) as described herein), and 36–53, and the rules and regulations thereunder. The requested order would supersede a prior order (the "Prior Order") that exempted the Partnerships from most of the provisions of the Act and the regulations thereunder.

FILING DATE: The application was filed on August 6, 1992 and amended on February 2, 1993, September 27, 1993, and November 23, 1993.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicants with a copy of the request, personally or by mail. Hearing request should be received by the SEC by 5:30 p.m. on December 20, 1993, and should be accompanied by proof of service on applicants, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request such notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicants, 85 Broad Street, New York, New York 10004.

FOR FURTHER INFORMATION CONTACT: James E. Anderson, Staff Attorney, at (202) 272–7027, or C. David Messman, Branch Chief, at (202) 272–3018 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee from the SEC's Public Reference Branch.

Applicants' Representations

1. Each Partnership is a limited partnership formed under the laws of the state of Delaware. Stone Street Corp., Stone Street Investors Corp., Stone Street Advisors Corp., Stone Street Capital Corp., Stone Street Venture Corp., and Stone Street Management Corp. are corporations organized under the laws of the state of New York and are each the general partner of Stone Street Fund 1984, Stone Street Fund 1985, Stone Street Fund 1986, Stone Street Fund 1987, Stone Street Fund 1988 and Stone Street Fund 1989, respectively. Stone Street Enterprise Corp., Stone Street Principal Corp. Stone Street Performance Corp., Stone Street Resource Corp., Stone Street Realty Corp., Stone Street Stone Street Principal Realty Corp., Stone Street Performance Realty Corp., and Stone Street Resource Realty Corp. are corporations organized under the laws of the state of Delaware and are each the general partner of Stone Street Fund 1990, L.P., Stone Street Fund 1991, L.P., Stone Street Fund 1992, L.P., Stone Street Fund 1993, L.P., Stone Street Real Estate Fund 1990, L.P., Stone Street Real Estate Fund 1991, L.P., Stone Street Real Estate Fund 1992, L.P., and Stone Street Real Estate Fund 1993, L.P., respectively.

2. The Prior Order exempted the Partnerships from most provisions of the Act and the regulations thereunder and granted confidential treatment for certain filings.[1] On the basis of applicants' experience in administering the Partnerships, changes since the Prior Order in the securities markets, tax laws and regulations, securities laws and regulations, and the expectations of Partnership investors, applicants believe that additional relief is necessary to provide greater flexibility in the management of the Partnerships. If granted, the exemptive relief sought by this application will supersede the terms of the Prior Order, as amended.

3. The Goldman Sachs Group, a Delaware limited partnership, is a general partner of Goldman, Sachs & Co. Goldman, Sachs & Co., a New York limited partnership, is a registered broker-dealer. The Goldman Sachs Group through its subsidiaries and controlled entities (collectively "Goldman Sachs") is engaged in various facets of the investment banking, securities, and commodities businesses The Partnerships are a series of investment limited partnerships that Goldman, Sachs & Co. initially established in 1983 to enable certain key employees of Goldman Sachs to pool their investment resources and to receive the benefit of certain investment opportunities which come to the attention of Goldman Sachs. The principal purpose of the Partnerships is to reward and retain key personnel and to satisfy their desire to have an opportunity to invest with the partners of The Goldman Sachs Group. A secondary purpose of the Partnerships is to provide former general partners of The Goldman Sachs Group and/or Goldman, Sachs & Co. with an additional investment opportunity.

4. Limited partnership interests in the Partnerships will be offered only to eligible employees of Goldman Sachs ("Eligible Employees"), certain limited partners of The Goldman Sachs Group and their immediate family members ("GS Limited Partners"), and to certain paid consultants of Goldman, Sachs & Co.'s affiliates ("Consultants"). To be eligible, an investor must be an "accredited investor" under rule 501(a)(6) of regulation D of the Securities Act of 1933.

5. Of the approximately 7,000 employees of Goldman Sachs only a small proportion qualify to invest in the Partnerships. Eligible Employees are

[1] Stone Street Fund 1984, *et al.*, Investment Company Act Release Nos. 13850 (March 24, 1984) (notice) and 13921 (May 2, 1984) (order). The Prior Order was amended on two occasions: Stone Street Fund 1984, *et al.*, Investment Company Act Release Nos. 14289 (Dec. 21, 1984) (notice) and 14330 (Jan. 17, 1985) (order); and Stone Street Fund 1984, *et al.*, Investment Company Act Release Nos. 15779 (June 8, 1987) and 15862 (July 2, 1987) (order).

experienced professionals in the investment banking, securities or commodities business, or in administrative, financial, accounting, legal, or operational activities related thereto.

6. Each GS Limited Partner that is permitted to invest in the Partnerships will be a former general partner of The Goldman Sachs Group and/or Goldman Sachs & Co. and will be known to Goldman, Sachs & Co. to be actively managing his or her own business affairs and not disabled by age or illness from doing so. As former general partners of The Goldman Sachs Group and/or Goldman, Sachs & Co., these individuals will be equipped by education and experience to understand and evaluate the structure, management, and plan of the Partnerships as compared to other investment opportunities. At the discretion of Goldman, Sachs & Co. and at the request of a GS Limited Partner, immediate family members of such GS Limited Partner may participate in the Partnerships provided that any such family member meets the standard for "accredited investor" under rule 501(a)(6) of regulation D under the Securities Act of 1933. The aggregate capital contributions of the GS Limited Partners investing in a Partnership shall not exceed 49% of the aggregate capital contribution to such Partnership and no single GS Limited Partner may invest more than 3% of the aggregate capital contributions to the Partnership.

7. The Goldman Sachs Group may also offer, at its sole discretion, Partnership interests to the Consultants. To be eligible, each Consultant must meet the accredited investor standard and must be under contract with Goldman, Sachs & Co. or its affiliates. Under such contracts the Consultants are on regular retainer, with such retainer being paid out on either a weekly, monthly, or quarterly basis regardless of whether actual services were rendered during that period, and either receive contributions to office expenses or are provided office space within Goldman Sach's offices. In addition to receiving a retainer and office expenses, Consultants are compensated for the services they render through a performance bonus paid out annually. This compensation structure is very similar to that of the vice presidents of Goldman Sachs, where each vice president is paid a regular salary throughout the year with a substantial portion of their compensation coming in the form of a performance bonus paid out annually. The Consultants are very limited in number (currently less than 25) and will have levels of expertise and sophistication at least comparable to, and in most cases exceeding that of, Eligible Employees and will have similar access to the directors and officers of the General Partners.

8. The Partnerships will operate on a calendar year basis, with a single subscription period during which Partnership interests may be purchased in two or more installments. Each General Partner will make a capital contribution so that it has a one percent interest in the capital of the Partnership. Interests will be offered and sold under a section 4(2) private placement exemption from the registration requirements of the Securities Act of 1933 pursuant to regulation D. No fees will be charged with respect to sales of Partnership interests.

9. Partnership interests will be purchased for cash by investors, and neither Goldman Sachs nor the Partnerships will extend credit to investors who purchase Partnership interests to enable such investors to meet capital calls or other capital commitments. Additional capital contributions, in proportion to a limited partner's initial investment, may be required in the event the Partnership makes investments requiring additional capital contributions and/or additional investments in existing portfolio companies. No limited partner will be required to make an additional capital contribution in an amount greater than 50% of such limited partner's original capital commitment. Interests in the Partnerships are non-transferable except to other eligible investors and with the express consent of the General Partner. Partnership interests are not generally redeemable, except that the estate of a limited partner may tender his or her interest for purchase by the applicable General Partner of the Partnership.

10. The management of the Partnerships will be vested exclusively in the General Partners, each of which is a wholly-owned subsidiary of The Goldman Sachs Group. The directors and officers of the General Partners shall be general or limited partners of The Goldman Sachs Group and/or Goldman, Sachs & Co. and may also include employees of Goldman, Sachs & Co. or its affiliates. The General Partners will research and evaluate potential investment opportunities through the resources of Goldman Sachs and with the assistance of selected employees of Goldman Sachs, monitor existing investments, and make all buy and sell decisions. No compensation will be paid to the General Partners for their services and the General Partners will absorb their out-of-pocket expenses without reimbursement from the Partnerships. No compensation will be paid to the directors or officers of the General Partners by the Partnerships for their services to the General Partners incurred conducting the business of the Partnerships.

11. The General Partners will secure from The Goldman Sachs Group, affiliates of The Goldman Sachs Group and/or an entity formed by or affiliated with the individual general partners of The Goldman Sachs Group an investment in each Partnership in an amount equal to at least 10% of the initial capital contributions of the Eligible Employees and Consultants. This investment may take the form of a capital contribution through each General Partner and/or the purchase of an interest in the Partnership. The net worth of each General Partner will be adequate to meet all net worth requirements set by the Internal Revenue Service for the issuance of an advance ruling that the Partnerships constitute partnerships for federal income tax purposes.

12. The General Partners will send the limited partners annual reports regarding the operations and assets of the Partnerships, including audited financial statements. A Partnership will be dissolved upon the resignation, withdrawal, dissolution, or bankruptcy of the applicable General Partner; the Partnership becoming insolvent; the sale of all or substantially all of a Partnership's assets; or the affirmative vote of a majority in interest of the limited partners. The General Partners may not be removed by the limited partners of the Partnerships or by any other person or entity during the terms of the Partnerships.

13. Although each General Partner will have discretion as to distribution of cash flow and proceeds from investments, its general policy will be to distribute proceeds from the sale or other disposition of long term investments as soon as practicable after receipt and not to reinvest the proceeds from the disposition of a Partnership's initial investments. The profits and losses of each Partnership for any given period of time will be allocated and distributed simultaneously among each General Partner and the limited partners on a *pro rata* basis based upon the proportion of the total amount contributed to the Partnership by the General Partner and the limited partners.

Applicants' Legal Analysis

1. Section 6(b) provides that the SEC shall exempt employees' securities companies from the provisions of the

Act to the extent that such exemption is consistent with the protection of investors. Section 2(a)(13) defines an employees' security company, among other things, as any investment company all of the outstanding securities of which are beneficially owned by the employees or persons on retainer of a single employer or affiliated employers or by former employees of such employers.

2. Section 6(b) authorizes the SEC to exempt employees' securities companies from the provisions of the Act to the extent that such exemptions are consistent with the protection of investors. Applicants submit that the exemptions requested are consistent with the protection of investors in view of the substantial community of interest among all of the parties and the fact that each Partnership is an "employees securities' company" as defined in section 2(a)(13) of the Act. The Partnerships are organized and managed by persons who will be investing in the Partnerships, and will not be promoted by persons seeking to profit from fees or investment advice or from the distribution of securities.

3. On behalf of the Partnerships, applicants request relief from all of the provisions of the Act, and the regulations thereunder, except sections 9, 17 (except for certain provisions of sections 17(a), (d), (f), and (g) as described herein), 30 (except for certain provisions of sections 30(a), (b), and (d) as described herein), and 36–53, and the rules thereunder.

4. Section 17(a) provides, in relevant part, that it is unlawful for any affiliated person of a registered investment company, or any affiliated person of such person, acting as principal, knowingly to sell any security or other property to such registered investment company or to purchase from such registered investment company any security or other property. An exemption is requested from section 17(a) to permit the Partnerships to: (a) Purchase from Goldman Sachs, (i) securities of investment vehicles, generally partnerships, formed from time to time by the partners of The Goldman Sachs Group to make a specified investment or type of investment ("GS Partners' Investment Vehicles") and securities of investment vehicles, generally partnerships, formed from time to time by Goldman Sachs to make a specified investment or type of investment, in which Goldman Sachs is the managing partner and in which outside investors may participate as limited partners ("GS Sponsored Investments"), and (ii) interests in properties sponsored by offered by, or previously acquired for the account of, Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments; (b) sell to Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments securities interests in properties previously acquired by the Partnerships; (c) invest in companies, partnerships, or other investment vehicles offered, sponsored, or managed by Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments, or to purchase securities from GS Partners' Investment Vehicles or GS Sponsored Investments; (d) invest in securities of, or lend money to, entities with which Goldman Sachs or its affiliates have performed investment banking or other services and from which they may have received fees; (e) purchase interests in a company or other investment vehicle (generally, a partnership, trust, or joint venture) in which Goldman Sachs, GS Partners' Investment Vehicles, or GS Sponsored Investments already own 5% or more of the voting securities of the company or vehicle or which company or vehicle is otherwise affiliated with a Partnership or Goldman Sachs; (f) purchase securities, instruments and, when permissible by law, commodities, of the type consistent with the investment objectives of the Partnerships, underwritten on a principal basis (including as member of a selling group) or issued by Goldman Sachs on terms at least as favorable to the Partnership as those offered to investors other than affiliated persons of The Goldman Sachs Group; (g) participate as a counterparty with or as a counterparty to Goldman Sachs, a GS Partners' Investment Vehicle, or a GS Sponsored Investment in connection with derivative investments, including but not limited to swaps and forwards of all types; and (h) participate as a selling security holder in an offering that is underwritten on a principal basis by Goldman Sachs (including as a member of a selling grpup). These transactions will be effected only upon a determination by the board of directors of a General Partner that the terms of the transaction are reasonable and fair to the limited partners of the Partnership and do not involve overreaching of the partnership or its limited partners on the part of any person concerned.

5. Section 17(d) makes it unlawful for any affiliated person of a registered investment company, acting as principal, to effect any transaction in which the company is a joint or joint and several participant with the affiliated person in contravention of such rules and regulations as the SEC may prescribe for the purpose of limiting or preventing participation by such companies. Rule 17d–1 was promulgated pursuant to section 17(d) and prohibits most joint transactions unless approved by order of the SEC. An exemption is requested pursuant to section 17(d) and rule 17d–1 to permit the Partnerships to participate in joint transactions, including the following: (a) a guarantee directly or indirectly by Goldman Sachs or a Goldman Sachs affiliate of a loan to a Partnership on a recourse basis; (b) an investment by one or more Partnerships in a non-GS partners' investment vehicle or a non-GS sponsored investment (i) in which Goldman Sachs, a Goldman Sachs affiliate, a GS Partners' Investment Vehicle, a GS Sponsored Investment, or an employee, officer, or director of the General Partner is a participant or plans to become a participant and/or (ii) with respect to which Goldman Sachs or a Goldman Sachs affiliate is entitled to receive placement fees, investment banking fees, brokerage commissions or other economic benefits or interests; and (c) an investment by one or more Partnerships in a GS Partners' Investment Vehicle or a GS Sponsored Investment including investments in which an affiliate of Goldman Sachs is a participant or plans to become a participant, including situations in which an affiliate of Goldman Sachs has a partnership or other interest in, or compensation arrangement with, the GS Partners' Investment Vehicle. Any investments by a Partnership made concurrently with a Co-Investor (as defined below) will be made by the Partnership at the same price (but not necessarily in the same amount) as the investment by the Co-Investor.

6. Section 17(f) permits a registered investment company to maintain self-custody of its securities and similar investments subject to such rules and regulations as the SEC prescribes for the protection of investors. Rule 17f–2 was promulgated pursuant to section 17(f) and sets forth detailed provisions governing self-custody of investments by a registered investment company. An exemption is requested from section 17(f) and rule 17f–1 to the extent necessary to permit Goldman, Sachs & Co. to act as custodian for the partnerships without a written contract. Any securities held by Goldman, Sachs & Co. will have the protection of a fidelity bond. An exemption is also requested to the extent necessary to establish a single brokerage account in which the Partnerships will participate. Under the joint trading account, each participant in the trading account will

be entitled to its proportionate interest in the account based upon its contribution to the trading account. Only one confirmation will be given for each trade done by the account, but securities and cash in the account will at all times be owned separately by each participant based on its proportionate contribution to the account. The terms and conditions of participation in the account will be established pursuant to a written agreement among the participants and Goldman, Sachs & Co.

7. Section 17(g) and rule 17g–1 generally require the bonding of officers and employees of a registered investment company who have access to securities or funds of the company. An exemption is requested to the extent necessary to permit the Partnerships to comply with rule 17g–1 without the necessity of having a majority of the board of directors of the General partner who are not "interested persons" take such action and make such approvals as set forth in rule 17g–1. Since all directors of the General Partners will be affiliated persons, without the requested relief the Partnerships could not comply with rule 17g–1. Except for the requirements of approval by non-interested directors, the partnerships will comply with rule 17g–1.

8. Section 30 of the Act generally requires a registered investment company to file quarterly and annual reports with the SEC and make semi-annual reports to its stockholders. An exemption is requested from sections 30(a) and 30(b) to the extent necessary to exempt the Partnerships from filing annual and quarterly reports with the SEC. The pertinent information that would be contained in such filings must, pursuant to the terms of the partnership agreements, be sent to the limited partners of the Partnerships. Exemptive relief from section 30(d) is also necessary to permit the Partnerships to report annually, rather than semi-annually, to the limited partners.

9. Applicants believe that the General partners are not "investment advisers" within the meaning of that term in section 202(a)(11) of the Investment Advisers Act of 1940 because they will not be compensated (including no reimbursement of expenses) for furnishing investment advice. In relevant part, section 202(a)(11) defines "investment adviser" to include any person who engages in the business of advising others regarding securities for compensation.

Applicants' Conditions

1. Each proposed transaction otherwise prohibited by section 17(a) or section 17(d) and rule 17d–1 (the "Section 17 Transactions") will be effected only if the General Partner determines that:

(a) The terms of the transaction, including the consideration to be paid or received, are fair and reasonable to the limited partners and do not involve overreaching of the Partnership or its limited partners on the part of any person concerned; and

(b) The transaction is consistent with the interests of the limited partnerships' organizational documents and the Partnership's reports to its limited partners.

In addition, the General Partners will record and preserve a description of such affiliated transactions, their findings, the information or materials upon which their findings are based and the basis therefor. All such records will be maintained for the life of the Partnerships and at least two years thereafter, and will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

2. In any case where purchases or sales are made from or to an entity affiliated with a Partnership by reason of a 5% or more investment in such entity by a director, officer or employee of the General Partner, such individual will not participate in the General Partner's determination of whether or not to effect such purchase or sale.

3. The General Partners will adopt, and periodically review and update, procedures designed to ensure that reasonable inquiry is made, prior to the consummation of any Section 17 Transaction, with respect to the possible involvement in the transaction of any affiliated person or promoter of or principal underwriter for the Partnerships, or any affiliated person of such a person, promoter, or principal underwriter.

4. The General Partners will not invest the funds of any Partnership in any investment in which a "Co-Investor" has or proposes to acquire the same class of securities of the same issuer, where the investment involves a joint enterprise or other joint arrangement within the meaning of rule 17d–1 in which the Partnership and the Co-Investor are participants, unless any such Co-Investor, prior to disposing of all or part of its investment, (a) gives the General Partner sufficient, but not less than one day's, notice of its intent to dispose of its investment, and (b) refrains from disposing of its investment unless the Partnership has the opportunity to dispose of the Partnership's investment prior to or concurrently with, on the same terms as, and *pro rata* with the Co-Investor. The term "Co-Investor" means any person who is: (a) An "affiliated person" (as such term is defined in the Act) of the Partnership; (b) Goldman Sachs; (c) an employee, officer, or director of Goldman Sachs; (d) a GS Partners' Investment Vehicle; (e) GS Sponsored Investments; (f) any entity with respect to which Goldman Sachs provides management, investment management or similar services as manager, investment manager, or general partner or in a similar capacity, and for which it may receive compensation, including without limitation, management fees, performance fees, carried interests entitling it to share disproportionately in income and capital gains or similar compensation; or (g) a company in which an officer or director of the General Partner acts as an officer, director, or general partner, or has a similar capacity to control the sale or other disposition of the company's securities. The restrictions contained in this Condition, however, shall not be deemed to limit or prevent the disposition of an investment by a Co-Investor: (a) To its direct or indirect wholly-owned subsidiary, to any company (a "parent") of which the Co-Investor is a direct or indirect wholly-owned subsidiary, or to a direct or indirect wholly-owned subsidiary of its parent; (b) to immediate family members of the Co-Investor or a trust established for any such family member; (c) when the investment is comprised of securities that are listed on a national securities exchange registered under section 6 of the Securities Exchange Act of 1934, as amended (the "1934 Act"); or (d) when the investment is comprised of securities that are national market system securities pursuant to section 11A(a)(2) of the 1934 Act and rule 11Aa2–1 thereunder.

5. The General Partners will send to each limited partner who had an interest in the Partnership, at any time during the fiscal year then ended, Partnership financial statements audited by the Partnership's independent accountants. At the end of each fiscal year, the General Partners will make an appraisal or have an appraisal made of all of the assets of the Partnership as of such fiscal year end. The appraisal of the Partnership assets may be by independent third parties appointed by the General Partners and deemed qualified by the General Partners to render an opinion as to the value of Partnership assets, using such methods and considering such information relating to the investments, assets and

liabilities of the Partnership as such persons may deem appropriate, but in the case of an event subsequent to the end of the fiscal year materially affecting the value of any Partnership asset or investment, the General Partners may revise the appraisal as they, in their good faith and sole discretion, deem appropriate. In addition, within 90 days after the end of each fiscal year of each of the Partnerships or as soon as practicable thereafter, the General Partners shall send a report to each person who was a limited partner at any time during the fiscal year then ended, setting forth such tax information as shall be necessary for the preparation by the limited partner of his or its Federal and State income tax returns and a report of the investment activities of the Partnership during such year.

6. Each Partnership and the General Partners will maintain and preserve, for the life of each such Partnership and at least two years thereafter, such accounts, books, and other documents as constitute and record forming the basis for the audited financial statements and annual reports of such Partnership to be provided to the limited partners, and agree that all such records will be subject to examination by the Commission and its staff. All such records will be maintained in an easily accessible place for at least the first two years.

For the SEC, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 93–29426 Filed 11–30–93; 8:45 am]

BILLING CODE 8010–01–M

DEPARTMENT OF STATE

[Public Notice 1904]

Shipping Coordinating Committee, Subcommittee on Standards of Training and Watchkeeping; Meeting

The Shipping Coordinating Committee (SHC) will conduct an open meeting at 10:30 a.m. on January 13, 1994, in room 3442 of the Nassif Building, 400 7th Street SW., Washington DC 20590. The purpose of the meeting is to review the actions taken by the first intersessional meeting of the International Maritime Organization (IMO) Sub-Committee on Standards of Training and Watchkeeping (STW) working group on the comprehensive review of the International Convention of Standards of Training, Certification and Watchkeeping for Seafarers, 1978 (STCW). Items on the agenda for the twenty-fifth session STW scheduled for January 17–21, 1994 in London, will also be reviewed.

Members of the public may attend the meeting up to the seating capacity of the room. Interested persons may seek information by writing: Mr. Christopher Young, U.S. Coast Guard (G–MVP–4), room 1210, 2100 Second Street SW., Washington, DC 20593–0001 or by calling: (202) 267–0229.

Dated: November 12, 1993.

Marie Murray,

Executive Secretary, Shipping Coordinating Committee.

[FR Doc. 93–29350 Filed 11–30–93; 8:45 am]

BILLING CODE 4710–7–M

DEPARTMENT OF VETERANS AFFAIRS

Establishment of the Persian Gulf Expert Scientific Committee

SUMMARY: As required by section 9(a)(2) of the Federal Advisory Committee Act, U.S.C. (App. I) 9(c), the Department of Veterans Affairs (VA) hereby gives notice of the establishment of the Persian Gulf Expert Scientific Committee. VA has determined that this action is in the public interest.

SUPPLEMENTARY INFORMATION: The objectives of this Committee are to advise the Assistant Chief Medical Director for Environmental Medicine and Public Health and subsequently the Under Secretary for Health, about medical findings affecting Persian Gulf era veterans. Committee members will review all aspects of patient care, medical diagnoses and will provide professional consultation as needed. The Committee may advise on other areas involving research and development and veterans benefits and/or training aspects for patients and staff.

The Committee membership will be selected on the basis of high professional achievement, expertise in injuries which might be related to the Persian Gulf experience, research in these areas, active duty military personnel and veteran representatives. Some members are selected from within VA to assure current policies and procedures are considered with new recommendations developed by the Committee. Appointments will be for two years unless otherwise directed by Secretary of Veterans Affairs.

The Designated Federal Official for the Committee is Dr. Susan H. Mather, Assistant Chief Medical Director for Environmental Medicine and Public Health.

Dated: November 18, 1993.

Heyward Bannister,

Committee Management Officer.

[FR Doc. 93–29370 Filed 11–30–93; 8:45 am]

BILLING CODE 8320–01–M

Cost-of-Living Adjustments and Headstone or Marker Allowance Rate

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: As required by law, the Department of Veterans Affairs (VA) is hereby given notice of cost-of-living adjustments (COLAs) in certain benefit rates and income limitations. These COLAs affect the pension and parents' dependency and indemnity compensation (DIC) programs. These adjustments are based on the raise in the Consumer Price Index (CPI) during the one year period ending September 30, 1993. VA is also giving notice of the maximum amount of reimbursement that may be paid for headstone or markers purchased in lieu of Government-furnished headstones or markers in Fiscal Year 1994 which began on October 1, 1993.

DATES: Those COLAs are effective December 1, 1993. The headstone or marker allowance rate is effective October 1, 1993.

FOR FURTHER INFORMATION CONTACT: John Bisset, Jr., Consultant, Regulations Staff, Compensation and Pension Service (211B), Veterans Benefit Administration, Department of Veterans Affairs, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 233–3005.

SUPPLEMENTARY INFORMATION: Under 38 U.S.C. 2306(d), VA may provide reimbursement for the cost of non-Government headstones or markers at a rate equal to the actual cost or the average actual cost of Government-furnished headstones or markers during the fiscal year preceding the fiscal year in which the non-Government headstone or marker was purchased, whichever is less.

Section 8041 of Public Law 101–508 amended 38 U.S.C. 2306(d) to eliminate the payment of the monetary allowance in lieu of VA-provided headstone or marker for deaths occurring on or after November 1, 1990. However, in a precedent opinion (O.G.C. Prec. 17–90), VA General Counsel held that there is no limitation period applicable to claims for benefits under the provisions of 38 U.S.C. 2306(d).

The average actual cost of Government-furnished headstones or markers during any fiscal year is determined by dividing the sum of VA

costs during that fiscal year for procurement, transportation, Office of Memorial Programs and miscellaneous administration, inspection and support staff by the total number of headstones and markers procured by VA during that fiscal year and rounding to the nearest whole dollar amount.

The average actual cost of Government-furnished headstones or markers for Fiscal Year 1993 under the above computation method was $98. Therefore, effective October 1, 1993, the maximum rate of reimbursement for non-Government headstones or markers purchased during Fiscal Year 1994 is $98.

Cost of Living Adjustments

Under the provisions of 38 U.S.C. 5312 and section 306 of Public Law 95–588, VA is required to increase the benefit rates and income limitations in the pension and parents' DIC programs by the same percentage, and effective the same date, as increases in the benefit amounts payable under title II of the Social Security Act. The increased rates and income limitations are also required to be published in the **Federal Register**.

The Social Security Administration has announced that there will be a 2.6 percent cost-of-living increase in social security benefits effective December 1, 1993. Therefore, applying the same percentage, the following increased rates and income limitations for the VA pension and parents' DIC programs will be effective December 1, 1993:

Table 1.—Improved Pension

Maximum annual rates

(1) Veterans permanently and totally disabled (38 U.S.C. 1521):
Veteran with no dependents, $7,818
Veteran with one dependent, $10,240
For each additional dependent, $1,330

(2) Veterans in need of aid and attendance (38 U.S.C. 1521):
Veteran with no dependents, $12,504
Veteran with one dependent, $14,927
For each additional dependent, $1,330

(3) Veterans who are housebound (38 U.S.C. 1521):
Veteran with no dependents, $9,556
Veteran with one dependent, $11,977
For each additional dependent, $1,330

(4) Two veterans married to one another, combined rates (38 U.S.C. 1521):
Neither veteran in need of aid and attendance or housebound, $10,240
Either veteran in need of aid and attendance, $14,927
Both veterans in need of aid and attendance, $19,611
Either veteran housebound, $11,977
Both veterans housebound, $13,717
One veteran housebound and one veteran in need of aid and attendance, $16,662
For each dependent child, $1,330

(5) Surviving spouse alone and with a child or children of the deceased veteran in custody of the surviving spouse (38 U.S.C. 1541):
Surviving spouse alone, $5,239
Surviving spouse and one child in his or her custody, $6,863
For each additional child in his or her custody, $1,330

(6) Surviving spouses in need of aid and attendance (38 U.S.C. 1541):
Surviving spouse alone, $8,380
Surviving spouse with one child in his or her custody, $10,000
For each additional child in his or her custody, $1,330

(7) Surviving spouses who are housebound (38 U.S.C. 1541):
Surviving spouse alone, $6,406
Surviving spouse and one child in his or her custody, $8,026
For each additional child in his or her custody, $1,330

(8) Surviving child alone (38 U.S.C. 1542), $1,330

Reduction for income. The rate payable is the applicable maximum rate minus the countable annual income of the eligible person. (38 U.S.C. 1521, 1541 and 1542).

Mexican border period and World War I veterans. The applicable maximum annual rate payable to a Mexican border period or World War I veteran under this table shall be increased by $1,769. (38 U.S.C. 1521(g)).

Parents' DIC

DIC shall be paid monthly to parents of a deceased veteran in the following amounts (38 U.S.C. 1315):

Table 2

(*One parent.* If there is only one parent, the monthly rate of DIC paid to such parent shall be $370 reduced on the basis of the parent's annual income according to the following formula:)

[For each $1 of annual income]

The $370 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.08	800	$8,893

No DIC is payable under this table if annual income exceeds $8,893.

One parent who has remarried. If there is only one parent and the parent has remarried and is living with the parent's spouse, DIC shall be paid under Table 2 or under Table 4, whichever shall result in the greater benefit being paid to the veteran's parent. In the case of remarriage, the total combined annual income of the parent and the parent's spouse shall be counted in determining the monthly rate of DIC.

Two parents not living together. The rates in Table 3 apply to (1) two parents who are not living together, or (2) an unmarried parent when both parents are living and the other parent has remarried. The monthly rate of DIC paid to each such parent shall be $265 reduced on the basis of each parent's annual income, according to the following formula:

Table 3

[For each $1 of annual income]

The $265 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$800
.06	$800	900
.07	900	1,100
.08	1,100	8,893

No DIC is payable under this table if annual income exceeds $8,893.

Two parents living together or remarried parents living with spouses. The rates in Table 4 apply to each parent living with another parent; and each remarried parent, when both parents are alive. The monthly rate of DIC paid to such parents will be $250 reduced on the basis of the combined annual income of the two parents living together or the remarried parent or parents and spouse or spouses, as computed under the following formula:

Table 4

[For each $1 of annual income]

The $250 monthly rate shall be reduced by	Which is more than	But not more than
$0.00	0	$1,000
.03	$1,000	1,500
.04	1,500	1,900
.05	1,900	2,400
.06	2,400	2,900
.07	2,900	3,200
.08	3,200	11,956

No DIC is payable under this table if combined annual income exceeds $11,956.

The rates in this table are also applicable in the case of one surviving parent who has remarried, computed on the basis of the combined income of the parent and spouse, if this would be a greater benefit than that specified in Table 2 for one parent.

Aid and attendance. The monthly rate of DIC payable to a parent under Tables 2 through 4 shall be increased by $197 if such parent is (1) a patient in a nursing home, or (2) helpless or blind, or so nearly helpless or blind as to need or require the regular aid and attendance of another person.

Minimum rate. The monthly rate of DIC payable to any parent under Tables 2 through 4 shall not be less than $5.

Table 5.—Section 306 Pension Income Limitations

(1) Veteran or surviving spouse with no dependents, $8,893 (Pub. L. 95–588, section 306(a)).

(2) Veteran with no dependents in need of aid and attendance, $9,469 (39 U.S.C. 1521(d) as in effect on December 31, 1978).

(3) Veteran or surviving spouse with one or more dependents, $11,956 (Pub. L. 95–588, section 306(a)).

(4) Veteran with one or more dependents in need of aid and attendance, $12,534 (38 U.S.C. 1521(d) as in effect on December 31, 1978).

(5) Child (no entitled veteran or surviving spouse), $7,269 (Pub. L. 95–588, section 306(a)).

(6) Spouse income exclusion (38 CFR 3.262), $2,836 (Pub. L. 95–588, section 306(a)(2)(B)).

Table 6.—Old-Law Pension Income Limitations

(1) Veteran or surviving spouse without dependents or an entitled child, $7,784 (Pub. L. 95–588, section 306(b)).

(2) Veteran or surviving spouse with one or more dependents, $11,224 (Pub. L. 95–588, section 306(b)).

Dated: November 23, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–29371 Filed 11–30–93; 8:45 am]

BILLING CODE 8320–01–M

Medical Care Reimbursement Rates for FY 94

AGENCY: Department of Veterans Affairs.

ACTION: Notice.

SUMMARY: In accordance with provisions of OMB Circular A–11 section 13.5(a), revised reimbursement rates have been established by the Department of Veterans Affairs for inpatient and outpatient medical care furnished to beneficiaries of other Federal agencies during FY 1994. These rates will be charged for such medical care provided at health care facilities under the direct jurisdiction of the Secretary on and after December 1, 1993.

FOR FURTHER INFORMATION CONTACT: Mr. Walter J. Besecker, Director, Medical Care Cost Recovery Office (165), Veterans Affairs Central Office, 810 Vermont Avenue, NW., Washington, DC 20420, (202) 219–4242.

SUPPLEMENTARY INFORMATION: The Interagency Billing Rates for FY 1994 are as follows.

Medicine	$730
Surgery	$1,146
Spinal Cord Injury	[illegible]
Neurology	$671
Blind Rehabilitation	[illegible]
Psychiatry	$311
Intermediate Medicine	$301
Rehabilitation Medicine	$513
Alcohol and Drug	[illegible]
Nursing Home	$211
Prescription—Refill	$18
Outpatient*	$150
Dental Outpatient	[illegible]

* Rate includes Dialysis treatment.

Prescription refill charges in lieu of the outpatient visit rate will be charged when the patient receives no service other than the Pharmacy outpatient service. These charges apply if the patient receives the prescription refills in person or by mail.

When medical services for beneficiaries of other Federal agencies are obtained by the Department of Veterans Affairs from private sources, the charges to the other Federal agencies will be the actual amounts paid by the Department of Veterans Affairs for such medical services.

Inpatient charges to other Federal agencies will be at the current Interagency per diem rate for the type of bed section or discrete treatment unit providing the care.

Dated: November 19, 1993.

Jesse Brown,

Secretary of Veterans Affairs.

[FR Doc. 93–29366 Filed 11–30–93; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 58, No. 229
Wednesday, December 1, 1993

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

FARM CREDIT ADMINISTRATION

Farm Credit Administration Board; Regular Meeting

SUMMARY: Notice is hereby given, pursuant to the Government in the Sunshine Act (5 U.S.C. 552b(e)(3)), that the December 9, 1993 regular meeting of the Farm Credit Administration Board (Board) will not be held and that a special meeting of the Board is scheduled for Wednesday, December 8, 1993. An agenda for this meeting will be published at a later date.

FOR FURTHER INFORMATION CONTACT: Curtis M. Anderson, Secretary to the Farm Credit Administration Board, (703) 883–4003, TDD (703) 883–4444.

ADDRESSES: Farm Credit Administration, 1501 Farm Credit Drive, McLean, Virginia 22102–5090.

Dated: November 29, 1993.

Curtis M. Anderson,

Secretary, Farm Credit Administration Board.

[FR Doc. 93–29538 Filed 11–29–93; 2:09 pm]

BILLING CODE 6750–01–P

SECURITIES AND EXCHANGE COMMISSION

Agency Meeting

Notice is hereby given, pursuant to the provisions of the Government in the Sunshine Act, Public Law 94–409, that the Securities and Exchange Commission will hold the following meeting during the week of November 29, 1993.

A closed meeting will be held on Wednesday, December 1, 1993, at 9:30 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the closed meeting. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c) (4), (8), (9)(A) and (10) and 17 CFR 200.402(a) (4), (8), (9)(i) and (10), permit consideration of the scheduled matters at a closed meeting.

Commissioner Roberts, as duty officer, voted to consider the items listed for the closed meeting in a closed session.

The subject matter of the closed meeting scheduled for Wednesday, December 1, 1993, at 9:30 a.m., will be:

Consideration of *amicus* participation.
Institution of injunctive actions.
Institution of administrative proceedings of an enforcement nature.
Settlement of administrative proceedings of an enforcement nature.
Regulatory matter bearing enforcement implications.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Stephen Luparello at (202) 272–2100.

Dated: November 29, 1993.

Jonathan G. Katz,

Secretary.

[FR Doc. 93–29537 Filed 11–29–93; 2:08 pm]

BILLING CODE 8010–01–M

federal register

Wednesday
December 1, 1993

Part II

Department of Transportation

Federal Highway Administration

23 CFR Parts 500 and 626

Federal Transit Administration

49 CFR Part 614

Management and Monitoring Systems; Interim Final Rule

DEPARTMENT OF TRANSPORTATION

Federal Highway Administration

23 CFR Parts 500 and 626

[FHWA/FTA Docket No. 92–14]

RIN 2125–AC97

Federal Transit Administration

49 CFR Part 614

RIN 2132–AA47

Management and Monitoring Systems

AGENCIES: Federal Highway Administration (FHWA), Federal Transit Administration (FTA), DOT.

ACTION: Interim final rule.

SUMMARY: Section 1034 of the Intermodal Surface Transportation Efficiency Act (ISTEA) of 1991 required the Secretary of Transportation (the Secretary) to issue regulations for State development, establishment, and implementation of systems for managing: Highway pavement of Federal-aid highways; bridges on and off Federal-aid highways; highway safety; traffic congestion; public transportation facilities and equipment; and intermodal transportation facilities and systems. In addition, the Secretary must issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment.

This interim final rule includes the implementing regulations for the six management systems and the traffic monitoring system. The intended effect of this regulation is to improve the efficiency and safety of, and protect the investment in, the nation's transportation infrastructure.

DATES: This interim final rule is effective on January 3, 1994.

Comments on this interim final rule must be received on or before January 31, 1994.

FOR FURTHER INFORMATION CONTACT: For information on the general provisions, Mr. Tony Solury, 202–366–5003. For information on a specific system: Highway pavement—Mr. Frank Botelho, 202–366–1336; Bridges—Mr. Dan O'Connor, 202–366–1567; Highway safety—Mr. Fred Small, 202–366–2171; Traffic congestion—Mr. Sheldon Edner, 202–366–4066; Public transportation facilities and equipment—Mr. Sean Libberton, 202–366–0055; Intermodal transportation facilities and systems—Mr. Dane Ismart, 202–366–4071; Traffic monitoring—Mr. Ed Kashuba, 202–366–0175. Mr. Wilbert Baccus, FHWA Office of the Chief Counsel, 202–366–0780. Office hours are 7:45 a.m. to 4:15 p.m., e.t., Monday through Friday, except legal Federal holidays.

SUPPLEMENTARY INFORMATION: Section 1034 of the ISTEA (Pub. L. 102–240, 105 Stat. 1914, 1977) amended Title 23, United States Code, Highways (23 U.S.C.), by adding section 303, Management Systems (23 U.S.C. 303), which requires the Secretary of Transportation to issue regulations for State development, establishment, and implementation of a system for managing each of the following:

(1) Highway pavement of Federal-aid highways (PMS),

(2) Bridges on and off Federal-aid highways (BMS),

(3) Highway safety (SMS),

(4) Traffic congestion (CMS),

(5) Public transportation facilities and equipment (PTMS), and

(6) Intermodal transportation facilities and systems (IMS).

The systems must be developed and implemented in cooperation with metropolitan planning organizations (MPOs), in metropolitan areas, and with affected agencies receiving assistance under the Federal Transit Act.

The legislation, authorizes establishment of a compliance schedule and minimum standards for each such system.

States must be implementing each management system beginning in Federal fiscal year 1995, and must annually certify, before January 1 of each fiscal year (the first certification is due by January 1, 1995), that the systems are being implemented, or the Secretary may withhold up to 10 percent of funds apportioned under title 23, U.S.C., or under the Federal Transit Act (Pub. L. 88–365, Stat. 302, as amended) for any fiscal year beginning after September 30, 1995.

Section 303 also requires the Secretary to issue guidelines and requirements for the State development, establishment, and implementation of a traffic monitoring system (TMS) for highways and public transportation facilities and equipment.

Both the metropolitan (23 U.S.C. 134 and 49 U.S.C. app. 1607) and statewide (23 U.S.C. 135) transportation planning processes must include consideration of the needs identified through use of the management systems.

Beginning January 1, 1993, the Secretary must submit annual reports to the Congress on the progress being made by both the Secretary and the States in carrying out the provisions of 23 U.S.C. 303. The Secretary's fiscal year 1992 report was transmitted to the Congress on June 3, 1993.[1]

An advance notice of proposed rulemaking (ANPRM) was published in the June 3, 1992, **Federal Register** (57 FR 23460) to solicit early input for development of these regulations. Public workshops for the SMS were announced in the April 28, 1992, **Federal Register** (57 FR 17868) and were conducted in Washington, DC, on May 29, 1992, in San Francisco, CA, on June 1, 1992, and in Kansas City, MO, on June 10, 1992. Four public workshops for the CMS, PTMS, and IMS were announced in the May 26, 1992, **Federal Register** (57 FR 21915) and were conducted in Los Angeles, CA, on June 18, 1992, in New York, NY, on June 29, 1992, in Chicago, IL, on July 14, 1992, and in Houston, TX, on July 21, 1992. The purpose of the workshops was to obtain input to the rulemaking process to supplement the comments to the ANPRM docket. The ANPRM was issued with two docket numbers, FHWA 92–14 and FTA 92–B.

Approximately 125 individuals attended the ANPRM workshops for the SMS and over 320 attended the ANPRM workshops for the CMS, PTMS, and IMS. Summaries of comments presented and documents submitted at the public workshops are available for review in docket number 92–14.

Approximately 162 sets of comments on the ANPRM were submitted to docket numbers FHWA 92–14 and FTA 92–B. Approximately 48 percent of the comments to the dockets were from State agencies (transportation/highway departments, motor vehicle departments, State police, etc.), 13 percent from National interest groups/associations, 10 percent from regional planning agencies/MPOs, 10 percent from local agencies (cities, counties), 8 percent from private businesses or individuals, 7 percent from transit operators, and 4 percent from miscellaneous agencies. Since approximately two-thirds of the comments submitted to the FTA docket number 92–B were duplicates of those submitted to the FHWA docket number 92–14, the FTA docket was closed and those comments submitted to FTA Docket 92–B that were not duplicates were placed in FHWA/FTA docket number 92–14.

The testimony from the ANPRM workshops and comments submitted to the ANPRM dockets were reviewed and used to prepare a notice of proposed

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[1] *Report to the Congress, A report of the Secretary of Transportation, Management Systems, Fiscal Year 1992*, DOT, June 3, 1993. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

rulemaking (NPRM) which was published in the March 3, 1993, **Federal Register** (58 FR 12096). The NPRM was issued under FHWA/FTA docket number 92–14 only. Four public meetings for the CMS, PTMS, and IMS were announced in the March 24, 1993, **Federal Register** (58 FR 15816) and were conducted during the NPRM comment period in San Francisco, CA, on April 1, 1993, in Atlanta, GA, on April 8, 1993, in Philadelphia, PA, on April 15, 1993, and in Kansas City, MO, on April 21, 1993. The purpose of the NPRM meetings was to obtain input to the rulemaking process to supplement the comments to the NPRM docket. Approximately 220 individuals attended the NPRM public meetings for the CMS, PTMS, and IMS. Transcripts of comments presented and copies of documents submitted at the public meetings are available for review in docket number 92–14.

Having considered the comments submitted to the NPRM docket and the testimony presented at the four public meetings, the FHWA and the FTA have revised the proposed regulation as discussed and set forth below. This regulation is being issued as an interim final rule, instead of a final rule, because of concerns regarding the anticipated data collection burden. As discussed below, the FHWA and the FTA believe that much of the data are currently available; however, the FHWA and the FTA will evaluate this after issuance of this interim final rule and the specific requirements in the rule are known to the agencies that will be implementing the systems. The FHWA and the FTA will then obtain additional information to refine the data collection burden estimates and will submit the findings to the Office of Management and Budget (OMB). Comments from interested persons on this subject may be submitted to FHWA/FTA Docket 92–14 at the address specified above. This interim final rule will be made final after review and analysis of the additional information and of the comments submitted to the docket.

This interim final rule is being issued jointly by the FHWA and the FTA because the sanction provisions may be applied to funds apportioned under the Federal Transit Act (formerly the Urban Mass Transportation Act of 1964, as amended), as well as funds apportioned under title 23, U.S.C. In addition, the metropolitan planning provisions under both the Federal Transit Act and title 23, U.S.C., require consideration of the needs identified by the management systems. While not included as issuing agencies, other DOT administrations, such as the National Highway Traffic Safety Administration (NHTSA), may be actively involved in particular systems as appropriate.

These regulations are being issued as part 500 of subchapter F of title 23, Code of Federal Regulations (23 CFR). Subpart A of part 500 includes definitions and general requirements applicable to all of the systems. Subparts B through H of part 500 include additional regulations applicable to specific systems. The general requirements in subpart A and the requirements for the CMS, PTMS and IMS in subparts E through G are being incorporated by cross reference into the FTA's regulations as part 614 of chapter VI of title 49, Code of Federal Regulations.

A discussion of the disposition of comments received and the provisions of the interim final rule follow.

Subpart A—General

Approximately 130 sets of comments were submitted to FHWA/FTA docket number 92–14 in response to the NPRM. Approximately 41 percent of the comments to the docket were from State agencies (transportation/highway, safety, environmental), 20 percent from regional planning agencies/MPOs, 14 percent from National/regional interest groups/associations, 14 percent from local agencies (cities, counties), 6 percent from private businesses or individuals, and 5 percent from transit operators/railroad companies.

Summary of General Comments

Comment

Several commenters expressed the view that the relationship between the statewide and metropolitan planning processes and the management systems was not clear; in particular, whether the management systems provided only information for use in the planning processes to determine needed improvements or if needed improvements were to be identified by the management systems.

Response

The overall objective of the ISTEA is the improved performance of statewide and metropolitan transportation systems through preservation, operational, and capacity enhancements. While the management systems will provide information concerning both the condition and the performance of the existing and future transportation system in terms of the six specific areas they address, the ISTEA also requires that the needs identified by use of the six management systems be considered in developing metropolitan and statewide transportation plans and improvement programs and in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act. Therefore, all of the management systems are expected to provide outputs (strategies, actions, projects, etc.) for ensuring that the performance of current and future transportation systems is optimized.

If these outputs are in conflict with other improvements or are less than optimal from a long term perspective, reconciliation of these conflicts will need to occur as part of the planning process. If sufficient resources are not available to fund all improvements identified by the management systems and planning processes, programming priorities will need to be established through the planning process. The planning process, in effect, will need to integrate operation and preservation of the existing transportation system with the long term transportation system development and performance.

Hence, the role of the management systems is both the development of information and strategies to improve the performance of the existing and future facilities and to provide input to the planning process for consideration at the system level.

The planning process provides a mechanism for linking the existing human, natural, and built environment with future development patterns. In meeting the needs of the current and future system users, the process must address not only the results of the management systems but the other factors legislatively specified by the ISTEA. While one of the products of the process is the transportation plan (both statewide and metropolitan), the continuing generation and analysis of information through the planning process is also a product. The planning process is dynamic activity that is necessary to effectively integrate current operational and preservation considerations with longer term concerns by decisionmakers. The following figure is one option for integrating, or linking, the management systems and planning processes.

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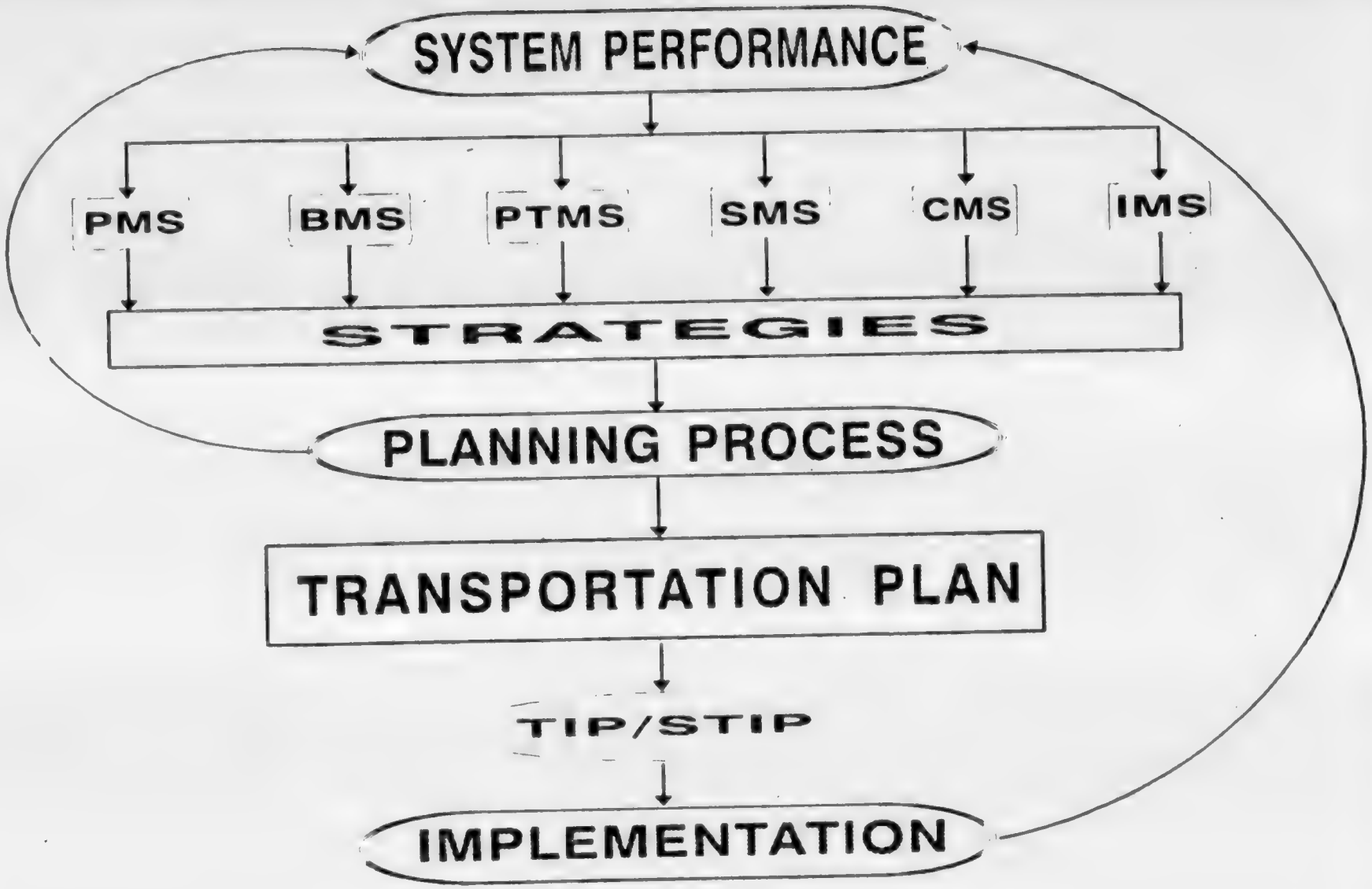

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This linkage can only be effective if the management systems and planning processes are developed and implemented in conjunction with each other and share, among other factors, consistent and complementary assumptions, goals and objectives, and data bases. Depending on State, regional, and local procedures and responsibilities, the planning process could include all or some of the management systems, elements of some of the systems (e.g., establishment of performance measures, collection or analysis of data, evaluation of effectiveness, etc.), or other variations.

The FHWA and the FTA will provide further guidance and technical assistance on the relationship between the management systems and planning processes.

Comment

Many of the commenters suggested that the roles and responsibilities of States, MPOs, and other involved agencies be specifically stated in the regulations, particularly for MPOs in transportation management areas (TMAs).

Response

The FHWA and the FTA strongly believe that organizational responsibilities and technical capabilities among the involved agencies throughout the country, and even within a State, vary so significantly that it would be inappropriate to issue a regulation that mandates uniform responsibilities for specific classes of agencies. The affected agencies are the appropriate ones to assess their capabilities and mutually determine their respective roles and responsibilities. This flexibility has been retained in the interim final rule.

Comment

Several commenters believed that the management systems should only provide "information," not specific projects or actions, to be used in statewide and metropolitan planning processes to identify and evaluate specific strategies for implementation. Inconsistency in language in the NPRM (some subparts indicated that identification of strategies, actions, projects, etc., were part of the management systems while others did not) was cited by the commenters to support this position.

Response

As noted above under the discussion of the linkage of the management systems and the planning processes, the legislation indicates that the management systems are to identify needs. The NPRM was intended to specify this legislative requirement and the interim final rule has been rewritten to clarify this point. Also, as discussed above, the agencies involved have the flexibility to link the management systems and planning processes to meet their specific institutional arrangements.

Comment

Many of the State agencies objected strongly to being held responsible for implementing the management systems for facilities not under their jurisdiction. They also objected strongly to withholding of funds for noncompliance by other agencies (such as local governments) that have jurisdictional responsibility for the facilities. Recommendations included limiting coverage of the management systems to only those facilities under State control, the NHS or facilities of major Federal importance, or facilities that have received, or are anticipated to receive, Federal funding. Several other commenters believed that the extent of coverage was appropriate or should be expanded.

Response

While the difficulties that may be experienced in obtaining cooperation from all necessary agencies are recognized, the FHWA and the FTA believe that the Congress intended that there be broad coverage as specified in the NPRM. For example, the legislation specifically requires the PMS to cover all Federal-aid highways and the BMS to cover bridges on and off Federal-aid highways, without reference to jurisdictional control. In addition, earlier drafts of the ISTEA provided for PMS coverage of only the NHS, but the ISTEA, as enacted provides for coverage of all Federal-aid highways; thus evidencing Congress' intent that the coverage be broad. With regard to the SMS, since the lower functional classification highways have the most severe safety problems, the FHWA does not believe that Congress intended that these facilities that would have the highest potential for benefiting from highway safety actions should be excluded. The legislation also specifically requires that States develop, establish, and implement the management systems and that funds apportioned to the States may be withheld for noncompliance.

As proposed in the NPRM, and retained in the interim final rule, the Federal agencies fully intend to target any necessary sanctions to correct deficiencies and do not intend to penalize agencies that are making a good faith effort to comply. Since title 23, U.S.C., funds are apportioned to the States and the FHWA does not have a grant relationship with subunits of States and the legislation requires States to implement the systems, the FHWA has no alternative other than to hold the States accountable for assuring that the requirements are met.

Comment

Many of the commenters stated that the compliance schedules were unrealistic and that the time allowed for full implementation of the systems should be extended. Numerous suggestions were made concerning extension of compliance dates. Some commenters suggested that good faith efforts be accepted as evidence of compliance without requiring specific dates. A few commenters felt that the time for compliance was adequate or too long.

Response

The FHWA and the FTA agree that the dates for full compliance should be extended. As discussed below under the section-by-section analysis for each of the systems, the compliance dates have been extended and each system allows for a phase-in of activities between Federal fiscal year 1995 and the date that the specific system must be fully operational.

Comment

Many of the commenters strongly felt that the requirements for the various systems were inconsistent and that the rule should be rewritten to include more uniformity.

Response

The FHWA and the FTA have made significant revisions to the structure and content of each subpart and of the sections within the subpart. For example, the purpose section of each subpart uses consistent language, each subpart includes a definition for its system, each subpart has consistent section titles with similar contents, and each subpart has a compliance schedule with consistent structure.

Comment

One commenter expressed concern that the entire proposed rule does not address air quality maintenance areas.

Response

Designation of an area as an air quality maintenance area does not affect the applicability of the requirements. The management systems are applicable regardless of the status of attainment under the Clean Air Act Amendments of

1990 (CAAA), with the exception of special CMS requirements for TMAs that are nonattainment for carbon monoxide and/or ozone as discussed below under the section-by-section analysis for subpart E.

Comment

A national association and many of its members believe that the NPRM goes beyond what the ISTEA requires and is antithetical to the flexibility of the ISTEA. Many of the member agencies of this association also believe that the FHWA and the FTA exceeded their authority under the ISTEA by imposing requirements not envisioned under the legislation.

Response

The Secretary, and by delegation, the FHWA and the FTA, have the authority under title 23, U.S.C., and the Federal Transit Act to issue regulations deemed appropriate to implement legislative requirements. The FHWA and the FTA believe that many of the provisions of the NPRM were misunderstood and that the NPRM contained significant flexibility while imposing minimum requirements necessary to adequately implement the provisions of the ISTEA.

Comment

This same association and its member agencies stated that "Notwithstanding anything to the contrary in any of the individual Management Systems, the states will be permitted to design their Management Systems at appropriate levels of technical complexity and detail, depending upon the nature of the network, the issues that are appropriate to the state and locality, and public involvement." In addition, they believe that a State's certification that the Federal requirements have been met should be sufficient without further Federal review or approval.

Response

The legislation requires the Secretary to issue regulations for the management systems and requirements for the traffic monitoring system. Maximum flexibility, but not complete latitude, is provided to the States to develop systems tailored to local conditions while meeting the legislative requirements.

The suggestion that the Federal agencies accept a State certification at face value without the option of verifying the status of implementation is not accepted. Since apportioned funds may be withheld for noncompliance, the Federal agencies must have the ability to review and judge the acceptability of the certifications in order to fulfill their legislative and administrative responsibilities.

Comment

These agencies further indicated that compliance should be defined to mean that the systems have begun to be used to some degree, with "some degree" defined to mean that a program of action to improve the system to its full potential within a reasonable timeframe has been developed.

Response

The NPRM included language that was intended to permit a phase-in of the requirements, with full implementation of each system in a timeframe believed by the Federal agencies to be reasonable. The interim final rule has been rewritten to clarify this. For example, as required in the compliance section for each system, a State will be considered to be implementing a system in fiscal year 1995 if the State has developed a "work plan" (i.e., "a program of action") and has other activities specified for that system underway. The specific phase-in requirements for each system are discussed under the section-by-section analysis for that system.

Comment

These agencies suggested that the Federal agencies respond within 90 days of a State's request to accept an existing system in lieu of development of a new system.

Response

The interim final rule includes a 90-day review period. The FHWA and the FTA believe that 90 days would be sufficient if adequate documentation that demonstrates how the existing system meets the requirements is submitted with the request.

Comment

Many of the commenters expressed concern over the amount of data required by the proposed rule. They believed that data collection should be minimized, that data needs should be determined at the State and local level, and that a uniform set of data should not be required for comparing one State or metropolitan area to another.

Response

The FHWA and the FTA acknowledge that all of the systems will require data. However, the FHWA and the FTA believe that much of the data is currently available although it may need to be compiled into a format more useful to the management systems. Only those data items deemed to be essential to operation of a basic management system are specifically required by the regulations. Most of the specific data items identified in the NPRM were intended to be suggestions. The intent of the NPRM was to allow the affected agencies to develop systems to meet both their needs and the basic requirements in the regulation, and then establish data bases to support their needs. The interim final rule has been reworded to clarify whether specific data are required or suggested. In addition, as noted above, and discussed under the heading Paperwork Reduction Act, the FHWA and the FTA will obtain additional information to better estimate this burden and will submit a request to the OMB for approval of any additional information collection.

Comment

Two commenters felt that standard data sets should be required and made available for comparison purposes. They stated that the NPRM proposed excessive flexibility in designing and operating management systems or lacks focus in data requirements that would assure continuation of fragmentary, uncoordinated data collection which fails to meet national needs for transportation system management, planning, and evaluation of alternative strategies and that data collected will differ between regions and states.

Response

The FHWA and the FTA believe that the Congress intended that the management systems be used by State and local officials to aid in decisionmaking and not for establishing a nationwide data base for use by the DOT for either peer comparisons or to meet its internal data needs. The FHWA and the FTA do not believe that mandating standardized data sets is either necessary or warranted. This function can be better served by other mechanisms, such as the FHWA's Highway Performance Monitoring System (HPMS), FTA Section 15 data, and the newly established Bureau of Transportation Statistics.

Comment

Many of the commenters stated that the rules should allow a varying degree of complexity for the various levels of highway functional classes and for the various levels of sophistication found among the involved governmental agencies or units.

Response

The FHWA and the FTA agree. For most of the systems, the NPRM allowed such flexibility. The interim final rule retains and expands this flexibility as

discussed in the analysis of comments for each system below.

Comment

One individual believes that an option should be included to withhold funds permanently in response to deliberate evasion of these rules and that 100 percent of the Federal funds should be subject to sanctions.

Response

The legislative language does not support these suggestions and they have not been adopted.

Comment

A national interest group commented that the regulation fails to recognize the MPOs as having lead responsibility for the management systems and establishes a State dominated process. This commenter further stated "Authority and decision making should be a matter of agreement and appropriate delegation under these regulations, particularly in metropolitan areas, and not the sole domain of the state DOTs. In particular the regulation should explicitly recognize the ISTEA requirement that the Congestion Management System in Transportation Management Areas is to be developed as part of the metropolitan process."

Response

The ISTEA requires State development of the systems in cooperation with MPOs, not that MPOs have lead responsibility. Both the NPRM and the interim final rule indicate that cooperation with MPOs in metropolitan planning areas is required, that the roles and responsibilities of the involved agencies are to be mutually determined, and that States may enter agreements with MPOs or other agencies to implement the requirements. In addition, the regulations require that the CMS be part of the planning process in TMAs. These issues are discussed in more detail under the section-by-section analysis.

Comment

The same commenter stated that the management systems have inconsistent coverage and that limiting some to Federal-aid highways is not helpful, particularly in TMAs where the management systems should include all regionally significant facilities.

Response

The scope of coverage specified in both the NPRM and the interim final rule reflects the legislative requirements for the PMS and the BMS. The SMS covers all public roads and the other three systems cover facilities appropriate to the purpose of the management system regardless of jurisdictional classification. Additional facilities may be included at the option of the involved agencies. Since regionally significant facilities, by their nature, are higher order facilities, in most instances they are Federal-aid highways or other facilities that meet the coverage requirements of the non-highway oriented management systems and will, therefore, be covered.

Comment

One State DOT suggested that the phrase "shall be considered" in the language requiring consideration of the outputs of the management systems in the development of transportation plans and improvement programs needs to be defined. Further, this State DOT commented that the definition should clarify that "considered" does not mean "bound to," but that the State may determine the level of consideration based on the State's particular characteristics.

Response

The FHWA and the FTA do not believe that it would be appropriate, or practicable, to include a standard definition of "considered" for the specific reason cited by the commenter that the level of consideration needs to reflect a "State's particular characteristics." The FHWA and the FTA believe that the States, MPOs, and other involved agencies will give appropriate consideration to the results of the management systems as part of the statewide and metropolitan planning processes.

Comment

One State DOT commented that once a management system has been approved by the FHWA, the annual certification should be eliminated, subject to periodic review by the FHWA.

Response

The legislation requires annual State certifications. The regulations do not specifically require Federal approval of the systems. The Federal agencies will determine the acceptability of the systems based on their knowledge of the systems, documentation submitted with the State certifications, and periodic process reviews.

Comment

The NPRM proposed a procedure for a State to request Federal acceptance of existing management systems to be used to fulfill Federal management systems requirements. One MPO believes that the State should be required to make such a request in cooperation with affected MPOs and local agencies.

Response

This is a legitimate concern. The interim final rule has been clarified to indicate that the State request must reflect the views of affected agencies (e.g., MPOs, local officials, transit operators) and what actions, if any, will be taken to resolve any issues and to achieve the cooperation envisioned in the ISTEA.

Comment

A State DOT commented that the legislation does not require full implementation by the date of initial certification and, therefore, the regulations should not require full implementation by that date.

Response

The NPRM did not propose nor does the interim final rule require that the systems be fully operational by the date of the initial certification. The compliance schedule for each system is discussed below under the section-by-section analysis for the systems.

Comment

One commenter requested that definitions of "telework" and "telecommuting" be added.

Response

While telework and telecommuting may be viable congestion management strategies, the FHWA and the FTA do not believe that inclusion of definitions of these terms, as well as of other strategies cited in the regulations, is necessary.

Comment

A local agency commented that a committee for each system should be created at the State level with participation from local/county governments and other relevant transportation agencies.

Response

The mechanism for carrying out the cooperative process is to be determined jointly by the cooperating agencies.

Section-by-Section Analysis

Section 500.101 Purpose

This section states the purpose of this regulation. It indicates that subpart A includes requirements applicable to all of the systems and that additional requirements applicable to specific systems are in subparts B through H.

This section is unchanged from that proposed in the NPRM.

Section 500.103 Definitions

This section incorporates by reference the terms defined in 23 U.S.C. 101(a) and includes additional definitions for terms used in this part.

The phrase "Commonwealth of Puerto Rico" was added to the definition of "certifying official(s)" to be consistent with the reference to the mayor of the District of Columbia.

Several commenters suggested that definitions of the terms "cooperation," "coordination," and "consultation" be included and that the definitions be consistent with the metropolitan and statewide planning regulations. Many commenters expressed serious concern over the ability to develop and implement the systems if the term cooperation is defined to mean that concurrence of the many agencies involved was necessary. The FHWA and the FTA agree that "cooperation" should be used consistently in the planning and management and monitoring system rules and have defined it to mean "working together to achieve common goals or objectives." Definitions of coordination and consultation are not included since, as used in part 500, they are as defined in standard dictionaries.

One commenter suggested that the definition of "Federal-aid highways" should exclude isolated roads or that the phrase "eligible for assistance" be deleted. The definition in the NPRM is verbatim from 23 U.S.C. and has been retained unchanged in the interim final rule.

Minor revisions have been made to the definition of "Highway performance monitoring system" to clarify that it is a joint State/Federal system.

The definition of "life-cycle cost analysis" that was in § 500.303 of subpart C in the NPRM has been moved to § 500.103 in subpart A in the interim final rule because the term is also used in subpart B.

A definition of "management system" has been included to add consistency between subpart A and the subparts for each management system. The definition includes "generic elements" common to all of the management systems and the purpose statement that was in § 500.105(a) in the NPRM.

Revisions were made to the definitions "metropolitan planning area," "metropolitan planning organization," and "transportation management area" to make them consistent with the definitions in 23 CFR part 450.

Several commenters believed that the regulations for the specific systems were not consistent because some required performance measures and others did not. While some of the management systems are more physical facility oriented (e.g., PMS, BMS, and PTMS) and others (SMS, CMS, and IMS) are more "performance" oriented, they all have "performance measures" in the form of physical condition measures (e.g., the PTMS), goals and objectives (e.g., the SMS), or performance criteria (e.g., the CMS). To clarify this, "performance measures" has been defined to mean "operational characteristic, physical condition, or other appropriate parameters used as a benchmark to evaluate the adequacy of transportation facilities and estimate needed improvements."

The term "work plan" has been defined to mean "a written description of major activities necessary to develop, establish, and implement a management or monitoring system, including identification of responsibilities and target dates for completion of the major activities." This definition is intended to indicate the contents of the product that is required to be developed for each system by the beginning of fiscal year 1995 and submitted with the certification statements due by January 1, 1995.

Section 500.105 Development, Establishment and Implementation of the Systems

This section is a combination of § 500.105, Policy, and § 500.107, Coordination and evaluation of systems, in the NPRM. The purpose statement that was in § 500.105(a) in the NPRM was incorporated into the definition of management system as noted above. Language that specified that the systems are statewide and must cover the systems specified in the subpart for the particular system has been removed since the extent of coverage for each system is adequately covered in each subpart.

Section 500.105(b) in the NPRM has been redesignated as § 500.105(a). Many of the commenters, particularly State DOTs, believed that the NPRM did not allow flexibility for the systems to be tailored to meet their needs. The FHWA and the FTA always intended to permit such flexibility and stated in the NPRM that the systems may be tailored to meet State, regional, and local agency goals, procedures, and organizational structures. To clarify this point, the wording has been changed to state that the systems shall be tailored to meet the needs of these agencies. The phrase "be acceptable to the Federal agencies and shall" was deleted from the second sentence since it was redundant with wording in the last sentence. However, Federal review and acceptance is still required. Many State DOTs objected to this Federal review and acceptance of the systems as proposed in this paragraph. Since sanctions may be applied if the systems do not meet the requirements of this rule, Federal acceptance is necessary. It is expected that the FHWA and the FTA field staff will work closely with the States in development and establishment of the systems so that they will have first hand knowledge of the acceptability of the initial systems. Subsequent reviews would be on a periodic cycle (e.g., 2 systems each year over a 3 year period).

Section 500.105(b), proposed § 500.107(a) in the NPRM, requires that the States have procedures for coordination of the development, establishment and implementation of the systems. "Operation" of the systems has been added to this requirement since this term is now used throughout the regulation as a measure of implementation. The three specific requirements in the NPRM have been put in individual subparagraphs (1) through (3) for clarity. Several commenters expressed concern about the requirement that the procedures include the use of data bases with a common or coordinated reference system. One commenter believed that this would require the use of a geographic information system. The intent of this requirement was to avoid the duplicative collection of data that would be used by more than one system. It does not mandate a specific type of data base or reference system. The requirement has therefore been retained.

Section 500.105(c) is a combination of proposed §§ 500.105(c) and 500.107(b) in the NPRM which contained duplicative language. This paragraph includes the requirement that the systems be developed, established, and implemented in cooperation with MPOs and other affected agencies. A few commenters suggested that "local officials in non-metropolitan areas" be deleted as cooperating agencies since cooperation with local officials is not a legislative requirement as it is with MPOs. Since these local officials may be responsible for some of the systems on facilities under their jurisdiction, this requirement was retained. This is consistent with the involvement that local officials in metropolitan areas would have as a result of their representation on MPOs.

Several commenters expressed concern that it would be impossible to

develop and establish the systems in cooperation with the general public as proposed in § 500.105(c) in the NPRM. The FHWA and the FTA did not intend that a separate public involvement process be established to include the technical aspects of the development and establishment of the systems. The intent was that the public be informed of the assumptions (e.g., performance measures) and procedures underlying the systems and have the opportunity for involvement in the implementation of the results of the systems. Since the results of the management systems must be considered in developing metropolitan and statewide transportation plans and improvement programs, this information is expected to be made available through the public involvement requirements for the planning processes under 23 CFR part 450. To eliminate this misunderstanding, the phrase "and the public" has been deleted from the NPRM § 500.105(c).

Paragraph (d) requires that the CMS be part of the metropolitan planning process in TMAs in accordance with the provisions of 23 U.S.C. 134(i)(3) and 49 U.S.C. app. 1607(i)(3) and the requirements of 23 CFR part 450. Several commenters, mostly regional planning agencies or MPOs, believe that the regulation should specify that the MPOs have responsibility for developing and implementing the CMS in TMAs. The legislation does not mandate that a specific agency have this responsibility, only that the planning process in TMAs must include a CMS. The FHWA and the FTA believe that MPOs in TMAs should play a strong role in the CMS, but that the specific roles and responsibilities of the agencies involved in the CMS and planning process would be best determined by the involved agencies. Therefore, this requirement has not been changed, but has been made a separate paragraph for emphasis.

Section 500.105(e) in the interim final rule requires that the CMS, PTMS, and IMS be part of the metropolitan planning process in all metropolitan areas to the extent appropriate because of their close relationship to the planning process. This provision was part of § 500.107(c) in the NPRM. It has been made a separate paragraph in the interim final rule for emphasis. Many of the commenters agreed that these three systems are closely interrelated and, since they overlap extensively with the planning process, they should be part of that process. Other commenters believed that the decision should be left to the agencies involved. The FHWA and the FTA agree that these three systems should be part of the planning process in all metropolitan areas to the extent appropriate. As with the CMS in TMAs, discussed above, roles and responsibilities of the agencies involved need to be mutually determined and the staff and financial resources available to MPOs, particularly in smaller metropolitan areas, should be taken into account. This requirement, therefore, has been retained.

Section 500.105(f) was part of proposed § 500.107(c) in the NPRM. It provides that, in metropolitan planning areas that have more than one MPO and/or include more than one State, the establishment, development, and implementation of the CMS, PTMS, and IMS must be coordinated among the State(s) and MPO(s) to ensure compatibility of the systems and appropriate consideration of their results. This provision remains unchanged.

Section 500.105(g) (§ 500.105(c) in the NPRM) requires that the results of the management systems be considered in developing metropolitan and statewide transportation plans and improvement programs and in making project selection decisions. This requirement is unchanged from the NPRM. Many of the commenters requested clarification of the relationship of the management systems and the planning processes. This issue is discussed in detail above under the comments and responses to subpart A.

Section 500.105(h) (§ 500.107(d) in the NPRM) allows States and other affected agencies flexibility to mutually determine their roles and responsibilities, but the State is responsible for oversight and coordination. A few commenters believed that the regulations should specify roles and responsibilities. However, the vast majority of commenters on this issue strongly favored the flexibility allowed on this issue because of the variation of agency capability and organizational responsibility among States, MPOs, and other involved agencies. This requirement is unchanged from the NPRM.

Section 500.105(i) has been added to the interim final rule to clarify the relationship of the requirements for State management systems under 23 U.S.C. 303 and for management systems for Federal lands highways under 23 U.S.C. 204. Section 204(a) of title 23, U.S.C., requires the Secretary of Transportation, in cooperation with the Secretaries of the Interior and Agriculture, to develop safety, bridge, and pavement management systems for Federal lands highways. Since many Federal lands highways are public roads under State or local jurisdiction, such highways will be covered by the systems required under 23 U.S.C. 303. Other Federal lands highways are owned by Federal agencies. To avoid duplication of effort, this paragraph indicates that the management systems required under 23 U.S.C. 303 should be used to the extent appropriate to fulfill the requirement of 23 U.S.C. 204(a). It specifies that the State, the Federal agencies, and the agencies that own the roads shall cooperatively determine responsibility for coverage of Federal lands highways under their respective jurisdictional control and shall ensure that the results of the PMS, BMS, and SMS for Federal lands highways are available, as appropriate, for consideration in developing metropolitan and statewide transportation plans and improvement programs and are provided to the FHWA for use in developing Federal lands highway programs. In addition to this general provision, language has been added to subparts B through E and H of this regulation to address coverage of all Federally owned public roads as discussed in the section-by-section analysis of those subparts.

Section 500.105(j) (§ 500.107(e) in the NPRM) requires that each management system include appropriate means to evaluate the effectiveness of implemented actions and that the effectiveness of all of the systems combined be periodically evaluated, preferably as part of the planning processes.

Paragraph (e) of § 500.105 in the NPRM indicated that the FHWA's HPMS and the FTA's section 15 data would be used by the Federal agencies to meet their data needs and it encouraged States to also use these data bases for the management systems to the extent possible. The intent of this paragraph was to inform the States that the Federal agencies would rely on these data bases to meet their internal needs, that they would not be burdened with submission of additional data to the Federal agencies as part of the management systems, and that the States may be able to use these data bases for the systems. This paragraph was misinterpreted by some commenters who believed that it mandated use of the HPMS and FTA section 15 data. To avoid further misinterpretation, the paragraph has been deleted. However, to lessen duplication of effort, data bases established for the management systems should be able to provide information to be reported to the FHWA for the HPMS, in accordance with the HPMS Field

Manual,[2] as well as to provide data needed by other U.S. DOT agencies. For example, if certain data (such as, pavement serviceability ratings) to be collected for a management system are also needed for the HPMS, the data should be collected and maintained as part of the management system data base in a format that can also be used for the HPMS.

Section 500.107 Compliance

This section was § 500.109, Certification of implementation, in the NPRM. The title has been changed to "Compliance" since the section also addresses implementation of the traffic monitoring system for highways (TMS/H) which does not require a certification. The provisions for implementation of the TMS/H have been moved to a new § 500.107(e), as discussed below, to avoid confusion on the applicability of the certification requirement.

In accordance with the legislation, § 500.107 requires a State to certify that it is implementing each of the management systems in subparts B through G in Federal fiscal year 1995. The language has been changed to indicate that the State is to certify to the Secretary, not to the FHWA, to conform to the legislative language. The certification statement would be addressed to the Secretary, but it would be submitted to the FHWA Division Administrator for processing. It was proposed in the NPRM that a State would be considered to be implementing a system if the system was in operation in accordance with any phase-in criteria for the specific system. All of the systems did not include phase-in criteria in the NPRM. Each of the systems now have a compliance schedule provision. The wording in § 500.107(a), therefore, has been changed from "in accordance with any phase-in criteria" to "in accordance with the compliance schedule." As noted above in the discussion of comments under subpart A and below in the section-by-section analysis for the affected systems, the deadline for full operation of some of the systems has been extended. The last sentence of this paragraph that required the State's certification to describe the status of implementation for the entire State was reworded and moved to paragraph (c) of this section since paragraph (c) also included requirements for contents of the certification. A few commenters suggested that the State be allowed to rely on certifications from MPOs and other agencies that may be implementing subsystems of a management system. This is not precluded by the regulations, but the State would be responsible for ensuring the validity of such certifications. The status reported in the subsystem certifications would need to be included in the State's certification.

Revisions also have been made to paragraph (b) which requires that the FHWA be notified by September 30, 1994, of the title of the State's certifying official(s). The reference to notifying the FHWA of the name of the certifying official has been removed to reinforce the preference for designation of a position by title to avoid the need for redesignation when there is a change in personnel. The Commonwealth of Puerto Rico was added for clarity. Also for clarity, language was added to indicate that the notification is to be submitted to the FHWA Division Administrator; the NPRM had instructed States to submit the notification to the FHWA without specifying which office.

Paragraph (c) requires submission of the State's certification annually by January 1 each year, beginning January 1, 1995. It specifies the content of the certification, including the status of any subsystems. Language has been added to require that a copy of the workplan(s) that are to be prepared by October 1, 1994, in accordance with the provisions in the compliance schedules in each subpart, be included with the first certification(s) and that subsequent certifications include any significant revisions to the workplans. The NPRM specified that the certification include a discussion of planned corrective actions for any management system that is not under development or in operation in accordance with the compliance schedule for the system. This has been revised to specify "in accordance with the State's workplan" since the workplan will be used as the measure of compliance, until the date for full operation of a management system, in accordance with the requirements of the compliance schedule for the management system. The sentence that indicated that the information in the State certification statements will be used to prepare annual reports to the Congress on the status of implementation of the management systems has been deleted since it was informational only. The agencies will still use the information in the certification statements for the report to the Congress to the extent it is available.

Paragraph (d) indicates that the FHWA Division Office will provide copies of the certification(s) and any relevant supporting documentation to any other Federal agencies involved with a particular system. This provision is intended to lessen the burden that would be involved with submission of the certifications by the States to multiple Federal agencies. In response to suggestions from many commenters, language has been added to indicate that the FHWA will notify the State within 90 days of receipt whether the certification is acceptable.

As noted above, § 500.107(e) has been added to clarify that the certification requirement does not apply to the TMS/H. This paragraph specifies that a State shall be considered to be implementing the TMS/H, specified in subpart H, if the TMS/H is under development or in use in accordance with the compliance schedule in § 500.809. In addition, the State is required to submit the work plan for the TMS/H to the FHWA Division Administrator by January 1, 1995.

Section 500.109 Sanctions

This section was § 500.111 in the NPRM. It describes the provisions for withholding title 23, U.S.C., or Federal Transit Act funds for non-compliance and the procedures for restoration of withheld funds. Almost all States objected to withholding of their apportionments for non-compliance for systems or facilities over which they do not have jurisdictional control. Since title 23, U.S.C., funds are only apportioned to the States, there are no other agencies from which funds can be withheld. In recognition of this fact, both the NPRM and the interim final rule indicate that the Federal agencies will exercise discretion and target sanctions to correct deficiencies without penalizing agencies/areas that are in compliance.

Minor revisions in language have been made in each paragraph of § 500.109 in the interim final rule. In addition, the phrase "specified in subparts B through G" has been added to paragraph (a) to clarify that the sanction provisions apply only to the six management systems, and not the TMS/H which is in subpart H. Also in response to suggestions from several commenters, specific timeframes for State and FHWA actions have been added to paragraph (c). The time for a State to respond to notification that sanctions will be imposed has been changed from "a reasonable period of time" to "60 days from the date of notification." Similarly, the FHWA will notify the State if the proposed

[2] Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base, DOT/FHWA, August 30, 1993, (FHWA Order M5600.1B). Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

corrective actions are acceptable within 60 days of receipt of the State's response.

Section 500.111 Funds for Development, Establishment, and Implementation of the Systems

This section was § 500.113 in the NPRM. It identifies the categories of title 23, U.S.C., and Federal Transit Act funds that may be used for development, establishment and implementation of the systems in accordance with legislative provisions for those funds. This section is unchanged from the NPRM.

Comments were received that the regulations prohibit or discourage the use of metropolitan planning or congestion mitigation and air quality improvement program (CMAQ) funds for management system purposes to ensure that MPOs have adequate resources for their core planning activities and that the amount of funds available for air quality planning is not lessened. Another commenter suggested that the list of funds that may be used be revised to include railroad-highway grade crossing (23 U.S.C. 130), hazard elimination (23 U.S.C. 152), and highway safety program (23 U.S.C. 402) funds.

The use of metropolitan planning or CMAQ funds is optional and is specifically allowed by title 23, U.S.C.; therefore, such use cannot be restricted by this regulation. Specific identification of funds for the railroad-highway grade crossing and hazard elimination programs is not necessary since such funds are a set-aside of STP funds. In addition if specifically listed, it would be implied that such funds could be used for all of the systems when the provisions of sections 130 and 152 of title 23, U.S.C., restrict their use to safety purposes. Neither 23 U.S.C. 303 nor 402 address the use of § 402 funds for the management systems and such use is, therefore, not listed in the regulation.

One State DOT recommended that paragraph (b) be changed to indicate that all of the categories of funds would be administered under the procedures for planning grants because more types of costs would be eligible. When any of the identified categories of funds are used for non-construction purposes, such as development, establishment, and implementation of these systems, the same types of costs would be eligible. However, other administrative requirements, such as programming of STP funds in transportation improvement programs or demonstration that use of CMAQ funds will benefit attainment of a national ambient air quality standard, vary and cannot be changed. Except for minor changes in language that were made for clarity, this section remains unchanged from the NPRM.

Section 500.113 Acceptance of Existing Management Systems

This section was § 500.115 in the NPRM. It includes procedures for State submission and Federal review and approval of a State request to accept an existing system in lieu of development of a new one. The last sentence of paragraph (b) has been rewritten for clarity without a change in substance. In response to comments from several agencies, paragraph (c) has been amended to require the FHWA to respond to a State's request within 90 days of receipt. Paragraph (d) in the NPRM indicated that the reason for submission of any requests for acceptance of existing systems within six months was to allow time for any needed modifications to be made by Federal fiscal year 1995. This language was not necessary and has been removed since each system has a compliance schedule that must be met, whether a new system is being developed or an existing one is being modified.

Subpart B—Pavement Management System

A total of 53 commenters responded to the PMS portion of the NPRM. The commenters consisted of 34 State agencies, 8 local agencies, 6 National/regional interest groups/associations, 4 regional planning agencies/MPOs, and 1 transit operator. The majority of the commenters wanted flexibility to design their systems. Several wanted technical clarification on various items. The areas of concern and the resulting changes to the rulemaking are discussed in the following paragraphs.

Summary of PMS Comments

Comment

The "standards" are too prescriptive and encompassing. States should have more flexibility, particularly on Federal-aid highways that are under local jurisdiction.

Response

The application of the "standards" has been changed to provide more flexibility to the States. The term "components" is used in the interim final rule instead of "standards." The components are divided into two groups: (1) the National Highway System (NHS) and (2) all Federal-aid highways that are not on the NHS. The "standards" that were included in the NPRM that applied to all Federal-aid highways now only apply to the NHS. For those Federal-aid highways that are not on the NHS, each State has the flexibility to adjust the NHS procedures to the degree needed to fit the characteristics of the State and local pavement networks. The decision to require specific components for the NHS is based on the importance that the Congress and the FHWA place on the NHS.

Comment

Some States provide State-aid to local agencies in lieu of Federal-aid. Consequently, the local agencies have no financial incentive to develop a PMS and, therefore, they should be exempted from having a PMS. Similarly, some States may not have legal authority to require another agency that has jurisdiction over Federal-aid highways to implement a PMS and the regulations should only make States responsible for limited oversight and reporting of the management systems for these roads.

Response

The ISTEA requires States to develop, establish, and implement a system for managing highway pavement of all Federal-aid highways. This will undoubtedly require cooperation and joint effort between the State and other agencies that have jurisdiction over some Federal-aid highways. Cooperative agreements between States and local jurisdictions have been widely used to extend the benefits of the Federal-aid program to local facilities, and can be used to extend PMS coverage to these facilities. Under the interim final rule, States have the flexibility to enter into agreements with other agencies to implement PMS subsystems, but the States have responsibility to oversee and report on the status of the PMS statewide. States and MPOs also have the responsibility to use PMS information as input in developing metropolitan and statewide transportation plans and improvement programs.

Comment

Many States began developing and implementing PMSs several years ago. To date, much work has been completed. It is not realistic, practical, or beneficial to reopen and revisit these completed phases of PMS in order to comply with the requirement to coordinate management systems with MPOs. The completed PMSs should be accepted and "grandfathered." The coordination requirement should only apply to new development and enhancements to existing PMSs.

Response

It is not the intent to reopen completed and accepted PMSs for review and coordination. However, development of new, or revision of existing, PMSs must be coordinated with MPOs and other affected agencies. In addition, the views of MPOs and other affected agencies need to be considered when acceptance of an existing system is requested.

Comment

"Maintenance" data is required under the project history and engineering analysis provisions of the NPRM. Since "maintenance" covers a broad range of activities, including minor repairs, such as pot hole patching, the word "major" should be put in front of the word "maintenance" to capture only the more significant types of maintenance.

Response

This recommendation was incorporated in the interim final rule by putting the word "preventive" in front of the word "maintenance."

Comment

Most local agencies are not equipped to perform skid tests.

Response

A PMS uses surface friction data that is obtained from a State's skid testing program. A PMS does not require any new or additional skid testing that goes beyond a State's normal skid testing program. For the non-NHS highways, the applicability of the PMS components is a State decision.

Comment

It is doubtful that many local county and city agencies have the resources to implement the simplest of PMSs. Many of these agencies do not even have the inclination or expertise to perform such elements as condition, performance, or investment analysis.

Response

The original provisions in the NPRM were changed in the interim final rule to provide States and local agencies the flexibility to determine the appropriate levels of complexity based on the network characteristics. It is anticipated that many local PMSs will be very basic and simple. In those instances where a local agency does not initially have the ability to implement the simplest of PMSs, other alternatives should be explored, such as, training, technical assistance, technical services, and consultant services.

Comment

Implementation should be phased in.

Response

It is agreed that a phase-in approach is needed and the interim final rule contains a compliance schedule provision. This schedule makes provisions for developing a statewide plan followed by implementing a PMS on the NHS and then on the non-NHS.

Comment

Concern was expressed over the proposed requirement for an annual evaluation and updating of procedures and calibration of relationships and criteria using PMS performance data. The annual update of pavement performance models is too frequent. To be more practical, these models should be updated at frequencies of about three to five years, allowing sufficient time to monitor and evaluate changes. Annual updates of recommended project repair strategies and timing would be cost-effective, but modifying pavement performance models that frequently would be neither practical nor effective.

Response

This concern is valid and clarification has been provided in the interim final rule. It was not the intent to annually recalibrate the PMS models, but to update any new engineering criteria, practices, or methodologies as appropriate. The interim final rule provides flexibility to each State to establish the frequency of the various analyses.

Comment

It is recognized that certain analyses are required to ensure that a PMS is functioning properly and meeting its intended goals. However, the requirements of the proposed rule go far beyond meeting this need when the rule requires each agency to have a research program.

Response

It is not the intent of this regulation to require analyses that go beyond the needs of a properly functioning PMS. The interim final rule provides the flexibility to establish components (for Federal-aid highways not on the NHS) that fit State and local conditions. State-of-the-art PMS technology is readily available through both the private and public sectors.

Comment

The final rule should require, not just consider, life-cycle cost evaluation.

Response

This change has been made and the interim final rule requires a life-cycle cost evaluation. This requirement is in keeping with the metropolitan and statewide planning provisions in 23 U.S.C. 134(f)(12) and 135(c)(20).

Comment

A PMS needs to define investment levels necessary to reverse deferred maintenance trends and maintain current conditions.

Response

The concern over deferred maintenance is addressed by the investment analysis provisions of the interim final rule. Under project-level analysis, the PMS must result in a recommended list of projects with recommended preservation treatments. It is generally understood that the analysis of preservation treatments should consider preventive maintenance which is referenced in two other provisions of the interim final rule.

Comment

PMS results should be linked to investment choices and programmed in an explicit manner.

Response

PMS results are linked in an explicit manner to investment choices when a PMS produces a prioritized list of recommended candidate projects.

Comment

We collect traffic data once every 5 or 10 years on some of the remote rural arterials (not on the connected highway system) because of high travel costs. The proposed rule would require a biennial review of these roads.

Response

This rule does not require a biennial review. Details on traffic data should be addressed by the State and the FHWA division office.

Comment

Consideration should be given to the existing PMS developed under previous Federal guidelines. Considerable time and money was expended in developing these systems. The regulation should allow maximum flexibility to allow the State to salvage as much as possible from existing systems.

Response

The intent of the NPRM and the interim final rule is to make the maximum utilization of the existing

PMSs, consistent with legislative requirements.

Comment

Extending the PMS to roads that are not on the State system results in including roads for which there is no recorded history. Development of missing historical data will be particularly onerous for regional and local governments. The regulation should require historical data only where it is available.

Response

It was not intended that missing historical data be developed. Historical data that exists is to be used in the PMS and new historical records should be established when project level analysis and design are performed.

Comment

A PMS should apply only to hard surfaced public (Federal-aid) highways. An unpaved road, even if meeting the definition of a Federal-aid highway, need not be included in the pavement management system. Although rudimentary, this should be stated in the rulemaking in order to minimize the possibility of misinterpretation.

Response

The policy provision that requires a PMS for all Federal-aid highways includes paved and unpaved roads. Although the characteristics, preservation treatments, and economic analysis of unpaved roads are different in many ways from those of paved roads, the components and design of PMSs can reflect the differences.

Comment

One State commented that the value of promoting the use of a PMS on all Federal-aid highways, regardless of jurisdiction is recognized and that, for the past several years, there has been a substantial effort to develop and implement PMSs at the regional and local levels throughout the State. Of concern to local agencies, however, is the implication in the policy statement that a single PMS is to be used by both State and local jurisdictions "subdivided into multiple network levels which would typically include the NHS and the various strata for the remainder of Federal highways * * *." While the majority of PMSs being developed and implemented within the State employ the same basic concepts, they are not identical. Forcing all PMSs to be cast from a single mold would constitute a failure to recognize the vast differences between State and local transportation systems and would impose an unnecessary hardship upon local jurisdictions. In addition, such a decision would serve to truncate the vigorous research and experimentation that is currently underway to improve upon this emerging technology. The rule should state that there may be any number of separate PMSs under the responsibility of the State.

Response

State and local agencies have the flexibility to design PMSs to meet the needs of the local agencies. This regulation does not require that a "single" PMS be employed by both State and local jurisdictions nor do PMSs have to be "identical" or "cast from a single mold." The degree of uniformity and design of a PMS should be worked out between the State and local agencies. The interim final rule has been clarified to indicate that a State's PMS may include subsystems.

Comment

Since testing procedures to determine pavement serviceability rating (PSR) have been eliminated, it is not appropriate to require an estimate of remaining service life.

Response

The PMS components require the analysis of the remaining service life for the NHS. It can be analyzed based on ride, rutting, distress, composite condition index, and other criteria an agency deems appropriate. It is not limited to PSR.

Comment

The NPRM contained a provision in § 500.205(a), that stated, "each State shall have a PMS that covers rural arterial and urban principal arterial routes under its jurisdiction by January 13, 1993." Why is this in the NPRM since this compliance date has passed?

Response

This provision has been deleted because the purpose of FHWA's previous pavement management policy has been satisfied and the new provisions in the interim final rule better reflect the Federal interest in the NHS.

Section-by-Section Analysis

Section 500.201 Purpose

This section states the purpose of subpart B of this rulemaking and has been reworded to be consistent with the purpose statements for the other subparts and to indicate that the general requirements in subpart A apply to the PMS.

Section 500.203 PMS Definitions

This section incorporates the definitions of 23 U.S.C. 101(a) and 23 CFR 500.103 by reference and includes definitions of *pavement design* and *pavement management system*. Minor revisions were made to the definition of *pavement management system* to make it consistent with the definitions of the other systems.

Section 500.205 PMS General Requirements

This section was entitled "Policy" in the NPRM. The title has been changed to "PMS general requirements" in the interim final rule to better describe its content and to be consistent with section titles of the other management systems. Section 500.205 requires a State to have a PMS that meets the requirements set forth in § 500.207. Further, it defines the applicability of PMSs. Section 500.205(a) in the NPRM, which incorporated the January 13, 1993, compliance date for FHWA's previous pavement management policy, has been deleted from the interim final rule because the new provisions supersede the old policy. Section 500.207, entitled "Coordination," in the NPRM has been combined into this section. Although some commenters wanted to reduce the network coverage, the interim final rule specifies that all Federal-aid highways are to be covered by the State's PMS as required by the ISTEA, except for federally owned public roads. Coverage of federally owned public roads would be determined cooperatively by the FHWA and the agencies that own the roads.

Section 500.207 PMS Components

This section was § 500.209, Standards, in the NPRM. The title has been changed to "PMS components" to better describe its contents and to be consistent with the section titles of the other management systems. The section sets forth processes and procedures that must be included in a State PMS for the National Highway System (NHS).

This section has been changed from the NPRM to allow more flexibility. In the NPRM, the "standards" applied to all PMSs on all Federal-aid highways. In the interim final rule, paragraph (a) includes the components that are required for the NHS. Paragraph (b) provides flexibility to States to develop components for Federal-aid highways not on the NHS. This is a major change from the NPRM.

Section 500.209 PMS Compliance Schedule

This section sets forth specific dates and progress for implementation of the

PMS. The NPRM did not contain a separate compliance schedule section and proposed full compliance for all Federal-aid highways by January 1, 1995. Because of the numerous comments that a phase-in schedule should be allowed, particularly at the local level, the date for full compliance for the NHS is extended to October 1, 1995, and for non-NHS Federal-aid highways to October 1, 1997. This is a major change from the NPRM and should allow a reasonable amount of time to fully implement all phases of the PMSs.

Subpart C—Bridge Management System

A total of 45 commenters responded to the BMS portion of the NPRM. The commenters consisted of 36 State agencies, 5 National/regional interest groups/associations, 2 local agencies, and 2 regional planning agencies/MPOs. The majority of the commenters did not indicate serious disagreement with the proposed rule but many suggested minor changes or clarifications. A few expressed major concerns with some provisions. The areas of concern and the resulting changes to the rulemaking are discussed in the following paragraphs.

Summary of BMS Comments

Comment

Several States expressed the view that the BMS data requirements are too prescriptive, particularly for bridges on roads that are not Federal-aid highways. Changes were desired that would allow the States more flexibility to adjust elements that are not found to add value.

Response

The proposed data requirements for BMSs were contained in § 500.307(b) in the NPRM. This section is modified in the interim final rule to be less prescriptive regarding the data that States are required to collect. The interim final rule retains the NPRM requirement that States must have a data base and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS. The interim final rule deletes paragraphs (b)(1) through (b)(5) of § 500.307 in the NPRM, which listed minimum BMS data requirements. With this change, minimum data requirements will be determined by the State's own BMS objectives and the analyses required by § 500.307(c).

Comment

A number of commenters indicated that some elements of user costs would be difficult to implement. User costs associated with accidents were noted as being especially difficult to determine and perhaps unnecessary on low volume roads. Some commenters questioned the need to consider accident and user costs for all structures.

Response

The FHWA recognizes that States may have limited capability to estimate user costs, particularly on low traffic volume roads. However, as management systems are implemented, establishing linkages to information that would improve the ability to make better estimates should be a goal. Technological advancements, such as the ability to accurately spot the location of accidents will, with time, improve the quality of information and the ability to make estimates. If the available State data are not sufficiently comprehensive for estimating models, these might be augmented with information from other sources. Possible sources would be national studies on bridge-related accidents and individual State studies such as the work performed in North Carolina[3], which determined user costs for vehicular accidents and detours resulting from functional deficiencies. The NPRM definition of user costs is modified to clarify that accident costs may be measured on site or estimated through the use of models. If accident or other types of user costs are determined to be negligible on low volume roads, that fact should be reflected in the cost models.

Comment

Several commenters stated that short implementation deadlines are unrealistic and that they are being forced to adopt a currently developed system instead of developing their own system. Suggestions for additional time for implementation ranged from one year to an indefinite period.

Response

The proposed compliance schedule for BMS would have allowed 4 years from the effective date of the regulation for States to have a fully implemented system. This schedule was proposed based on the assumption that a State could take advantage of BMS developments that are presently available or well underway. The compliance schedule in the interim final rule extends the timeframe for full implementation of BMSs to October 1, 1998, or approximately one additional year. Assuming that data collection and software development can be accomplished concurrently, this additional time should be sufficient for a State to take an independent path in developing a BMS if it so chooses.

Comment

One State commented that the rule excessively involves bridges on the lower functional classes of highways for which the State does not have jurisdiction. Others indicated that a lesser degree of BMS sophistication should be allowed for locally-owned bridges.

Response

It is not expected that BMSs will require a major change in the level of State involvement in the management of bridges under local jurisdiction. Generally speaking, it would be the State's responsibility to: (1) Assure that appropriate data are provided to the State operated system, (2) evaluate the needs of locally owned bridges based on data analyses, (3) determine equitable distributions of Federal bridge funds, and (4) provide network analysis results to local bridge owners for their guidance. The network, in this case, is the bridge inventory of the local jurisdiction. Since the BMS is State-operated, the only advantage to reducing the level of sophistication for locally-owned bridges is to reduce data collection and reporting requirements. While this may result in savings initially, significant long-term savings are not likely in the FHWA's view. With the mechanism for collecting data already in place under the National Bridge Inspection Standards (NBIS), the additional time and effort involved to inspect bridges, and to record data in the format suitable for BMSs, is not significant. In addition to simplifying BMS operations, maintaining uniform data provides the flexibility to the State to define and analyze subsets of the bridge inventory irrespective of highway system designation or ownership. This flexibility is useful where the interests of organizations, such as MPOs, may involve differing highway systems, functional classes of highways, and bridge ownerships.

Comment

The concern was raised that local jurisdictions may not have the resources to meet Federal requirements for data collection and that this could jeopardize the Federal funds to the State.

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[3] *Bridge Management Under a Level of Service Concept Providing Optimum Improvement Action, Time, and Budget Prediction*, FHWA/NC/88–004, September 1987. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

Response

The impact that the BMS may have on local agency resources is a legitimate concern. The main impact would likely be in providing the initial assessments of elements and conditions and in becoming familiar with new reporting requirements. Once the BMS is operational, the costs to local agencies, if any, should be small. To assist the transition, the FHWA will offer training courses for States which can be extended to include local agencies if a State chooses. The training will include a workshop on BMSs which will have an option for including bridge inspector training focusing on element-level inspection. In addition, an option for training focused on element-level inspection will be added to the Bridge Inspector Training Course now offered through the National Highway Institute. Both types of training should be available within the next year.

Comment

One State opposed the requirement in § 500.305(a) that the State establish agreements with local bridge owners. The State believes the requirement exceeds the word and intent of ISTEA and places the State in a cumbersome position of negotiating with all local bridge owners.

Response

The language in § 500.305(a) in the NPRM that the State shall cooperate and take the lead in establishing agreements with the MPOs in metropolitan areas and local bridge owners has been removed from this section since it was redundant with the requirements for cooperation in § 500.105, which apply to all of the systems.

Comment

A number of commenters questioned whether life-cycle cost analysis is desirable and cost-effective for a BMS. One State cited an article that appeared in the July 1992 issue of Civil Engineering magazine entitled Life-Cycle Cost Analysis Doesn't Work for Bridges. The authors contend that life-cycle cost analysis in bridge construction is not practical at this time.

Response

Life-cycle cost analysis is mentioned under § 500.307(c)(5) as one acceptable method for determining least-cost strategies for the maintenance, repair, and rehabilitation of bridge elements. In the FHWA's view, life-cycle cost analysis is useful in this application, given the data framework of a BMS. Life-cycle cost analysis has been used successfully in some BMS applications and it is the approach specified for the analytical procedures of the National Cooperative Highway Research Program BMS software. It should be noted that life-cycle cost analysis is not the only possibility for determining least-cost strategies. Alternative economic analysis approaches are available which might alleviate problems of uncertainty in traditional life-cycle cost analysis methods. The rulemaking allows for the use of alternative approaches. (It should be noted that the definition of life-cycle costs is moved from § 500.303 to § 500.103, Definitions, since the term is also used in subpart B for the PMS).

Comment

Several States suggested deleting § 500.307(d) in the NPRM which requires a system for monitoring the status of actions recommended by the BMS and for updating the BMS when actions are taken. The various comments were: (1) That the section could be deleted because the present NBIS will report that an action has occurred when the condition rating is changed, (2) that it is impractical to expect that local governments would regularly and consistently notify the State when actions recommended by the BMS have been taken, and (3) that the process is external to, and beyond the scope of the BMS.

Response

The primary purpose of proposed § 500.307(d) in the NPRM was to require feedback on the scope, cost, and condition changes resulting from maintenance, repair, and rehabilitation actions. This information is needed, mainly, for updating analytical models, such as those used in life-cycle costing, but it may also be used to monitor network conditions and responses to recommended actions. While bridge inspections provide condition information, they normally do not provide quantitative information on the scope and cost of actions; nor would they necessarily detect preventive maintenance performed on the bridge. The bridge inventory updating required by 23 CFR 650.311(b) does not provide the desired information either since it only reports modifications to the State's NBIS reports and not detailed scope of work and cost information.

The interim final rule is modified by adding § 500.307(c)(7) which requires the ability to use feedback from actions taken to update prediction and cost models. The provision is intended to allow the State the flexibility to track actions as needed for modelling purposes, but not to require such tracking on every bridge. For example, the State may find that the data reported on State-owned bridges provide a sufficiently large sample of actions to update models.

The intent of proposed § 500.307(d) in the NPRM is accomplished by the addition of § 500.307(c)(7) and by the general requirement under § 500.105(j) and that the effectiveness of management systems in enhancing transportation investment decisions must be evaluated periodically. Section 500.307(d) is, therefore, deleted and replaced with § 500.307(c)(7) n the interim final rule.

Comment

Several States commented that the interim final rule should clarify that the system is for decision support, to supplement current decision analysis, rather than replace it. One State pointed out sections of the proposed rule which, in its opinion, portray an objective to use BMS as more than a decision support tool, but to determine bridge policy only by computer data in lieu of agency experience.

Response

This rulemaking is not intended to replace current decision processes. Various wording changes have been made to remove any implication to that effect.

Comment

One State requested inclusion of the American Association of State Highway and Transportation Officials (AASHTO) Guidelines for Bridge Management Systems [4] in the BMS requirements.

Response

The AASHTO BMS Guidelines were not proposed for adoption mainly because AASHTO had not formally adopted them at the time the NPRM was prepared. However, the NPRM preamble (58 FR 12101), acknowledged them as representing "good practices," and the proposal itself incorporated many of the minimum requirements. Consideration of the adoption of the AASHTO BMS Guidelines as a requirement of the interim final rule was rejected because prior notification and opportunity for comment on these guidelines has not been provided.

Comment

One State commented that there must be flexibility and consideration of

[4] *AASHTO Guidelines for Bridge Management Systems*, 1992, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. It is available for inspection as prescribed in 49 CFR part 7, appendix D.

existing BMS capabilities and that States should have flexibility to add elements as supporting subsystems.

Response

Under the provisions of § 500.113 in the interim final rule, a State may request acceptance by the Federal agencies of an existing management system, modified as necessary, in lieu of the development of a new system. Each request will require individual consideration.

Section-by-Section Analysis

Section 500.301 Purpose

This section states the purpose of subpart C of this rulemaking and is unchanged from that proposed in the NPRM, except language is added to indicate that the general requirements in subpart A apply to the BMS.

Section 500.303 BMS Definitions

The introductory paragraph of § 500.303 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. The remainder of the section provides a definition of terms that are used in describing BMS requirements that appear later in the rule. Comments on the definitions proposed in the NPRM were as follows:

One State commented that the wording of the NPRM definition of "Bridge management system (BMS)" addresses only the analysis aspects of the system and is not consistent with the other system definitions. The State suggested changing the first sentence of the definition to read: "A systematic process that provides decisionmakers information for making informed decisions on bridge program expenditures." Since the wording of the NPRM that a BMS is a decision support tool is consistent with the AASHTO BMS Guidelines and implies that the BMS is a process that provides decisionmakers information for making informed decisions, the suggestion was not adopted.

One State suggested revising the definition of "Bridge management system" by replacing the term "recommending projects" in the second sentence with "recommending programs" because network level analysis may not give very accurate project level decisions. In the context of the definition the two terms would seem to have similar meanings. A program could be a list of projects. The BMS network level analysis must be carried to a level of refinement that provides meaningful input to the planning and programming processes. The AASHTO Guidelines for Bridge Management Systems states that "A BMS aids in project level decisionmaking by providing an initial indication of the best action to take for each bridge in each budget period and the associated cost. While more detailed design and maintenance studies will clarify the specific nature of each project, overall the final mix of project level work should reflect the network level analysis."

The appropriate level of refinement in network level analysis would depend on the sophistication of those processes which may vary from State to State and from area to area within a State. Verification of the scope of work and the costs for short-listed "candidate" projects would likely be necessary at some point.

The wording of the definition of "Bridge management system" is modified by replacing the phrase "recommending projects and schedules within policy and budget constraints" in the second sentence with the phrase "recommending programs and schedules for implementation within policy and budget constraints."

One State commented that the term "determining optimal policies" in the second sentence of the definition of a BMS is vague and should be defined. The term is meant in the broadest sense to suggest that BMSs can assist in identifying the most satisfactory methods, practices, or procedures for designing, constructing and maintaining bridges.

Several States requested a further clarification of the term "elements." For example, it was not clear whether a bridge could have all of its girders as one element or each girder on a bridge as a separate element. One State asked if the interpretation of bridge "elements" is going to be left up to the individual States.

The definition of elements is meant to be flexible. In the example given, considering all girders of a bridge, or of a span, as one element is reasonable assuming that all of the modeling assumptions are satisfied. The assumptions might be that girders are composed of the same material, that all are likely to deteriorate at approximately the same rate, that all are measured using the same units, and that unit costs for maintenance, repair, and rehabilitation do not vary greatly. A subdivision of elements may be desirable to account for differences in the above.

Defining bridge elements and their condition states is an important step in the development of a BMS. Reliable and accurate prediction and cost models depend on unambiguous descriptions of actual distresses and condition state definitions that are recognizable by bridge inspectors generally by visual inspection, and that logically portray progressive stages of deterioration.

For guidance on this subject, the definitions developed by the States participating in the Pontis Beta test program are offered for consideration. To promote consistency and the ability to share information, the participating States defined a set of standard bridge element and condition descriptions called *Co*mmonly *Re*cognized (CoRe) elements. The descriptions use engineering terminology that is not tied to any particular condition rating scale.

The FHWA is adopting the CoRe element definitions as a standard for converting BMS data to condition ratings for Items 58 (deck), 59 (superstructure), 60 (substructure), and 62 (culverts) of the National Bridge Inventory (NBI). CoRe element descriptions and draft NBI conversion procedures anticipated to be available in November 1993, may be obtained from the FHWA Office of Engineering, Bridge Division, in Washington, DC.

One State suggested that the definition of "Serviceability" be revised to read: "The degree to which a bridge provides service commensurate with its intended use." There appears to be no major difference between the suggested definition and the one provided in the NPRM. Since the current definition is consistent with the AASHTO guidelines, it is not changed in the interim final rule.

Section 500.305 BMS General Requirements

This section was titled "Policy" in the NPRM. The title is changed to "BMS general requirements" in the interim final rule to be consistent with section titles of the other management systems.

Section 500.305 requires States to have BMSs that meet the requirements set forth in § 500.307. Further, it defines the applicability of BMSs. Except for federally owned bridges, all bridges that are required to be inventoried and inspected under 23 CFR part 650, subpart C, the NBIS, shall be included. As noted under the section-by-section analysis for subpart A, a provision has been added to § 500.305 in the interim final rule that coverage of federally owned bridges on public roads be determined cooperatively by the FHWA and the agencies that own the bridges.

The remainder of § 500.305 states the requirements for State operation of a BMS for bridges on and off Federal-aid highways, excluding bridges on federally owned public roads. The requirements include maintaining a

centralized data base and implementing network analysis procedures that are capable of analyzing all bridges in the inventory or in any subset. The NPRM wording has been expanded to indicate that a subset includes inventories within any MPO jurisdiction or within a local agency jurisdiction. The purpose is to stress that the BMS is a State-operated system with the capability to separately consider the needs of bridges within any local jurisdiction. Local bridge owners may supplement the State BMS with one of their own, as indicated in the final sentence.

Section 500.307 BMS Components

This section was titled "Minimum standards" in the NPRM. The title of "BMS components" is used in the interim final rule for consistency with section titles of the other management systems. The section sets forth processes and procedures that must be included in a State BMS. These consist of data collection and maintenance, as described in § 500.307(b), and network level analysis and optimization, as described in § 500.307(c). Several changes to the NPRM were previously described under the section headed **Summary of BMS Comments**. They were: (1) Deletion of a list of data base items to be included in a State BMS, (2) addition of § 500.307(c)(7) in a list of required BMS capabilities, and (3) deletion of § 500.307(d). Other comments are discussed below.

One State requested that the word "computerized" be deleted in § 500.307(b) in reference to the data base and that the word "computer" be deleted in § 500.307(c) in reference to a model for applying network level analysis and optimization to the bridge inventory. The State indicated that these should be State decisions. The NPRM wording followed, and was consistent with, the AASHTO guidelines which state the need for a computerized data base and decision support tool. However, to allow flexibility, the word "computer" has been deleted in the first sentence of § 500.307(b). The beginning of § 500.307(c) also has been rewritten to eliminate the term "computer model." The new language requires a rational and systematic procedure for applying network level analysis and optimization to the bridge inventory and the ability to perform the items listed in § 500.307(b) (1) through (8).

One State asked if, in the preamble discussion of the definition of multiperiod optimization (58 FR 12101), the short- and long-term planning horizons mentioned were intended to be regulatory. The NPRM preamble mentioned typical budget periods of one or two years, and typical long-term planning cycles of 10 to 20 years. It is not the intent of the rulemaking to set values for periods used in an analysis. Those that were mentioned are intended as examples of what, in practice, might be typical.

One State commented that the wording of § 500.305(c)(5) in the NPRM, which proposed that the network model include a procedure to "determine least-cost maintenance, repair, and rehabilitation strategies," should be changed to "determine the greatest benefit from maintenance, repair, and rehabilitation strategies." The reason is that although an initial economic savings may be realized by supporting a least-cost technique, the long-term benefits may not be economically viable. The cost referred to in § 500.305(c)(5) is the total cost, which would include first costs plus the present value of future costs. With total costs considered, an objective to minimize costs or to maximize benefits should give similar results. Either approach is acceptable.

Section 500.309 BMS Compliance Schedule

This section sets forth the maximum time periods for implementing State BMSs. The requirements are: (1) By October 1, 1994, to have formally set BMS objectives and developed a work plan and schedule that demonstrates full operation and use of the BMS by October 1, 1998; (2) by October 1, 1995, to have the system design completed or underway in accordance with the State's work plan and full-scale data collection underway; and (3) by October 1, 1998, to have a fully operational BMS that results in identification of bridge needs for consideration in developing metropolitan and statewide transportation plans and improvement programs. The corresponding section in the NPRM allowed 4 years from the effective date of the regulation to have a fully operational system.

Subpart D—Highway Safety Management System

A total of 56 commenters responded to the SMS portion of the NPRM. The commenters consisted of 34 State agencies, 11 National/regional interest groups/associations, 4 local agencies, 3 regional planning agencies/MPOs, 3 private businesses or individuals, and 1 railroad company. In addition, a number of the responses which addressed issues associated with the other management systems also had implications to the SMS. Those comments on the SMS which applied to more than one management system are discussed in the general section of this preamble. Specific SMS comments are discussed individually or grouped for discussion purposes where a number of responses addressed a similar or common theme. Information obtained through the ANPRM and public workshops and the background information on the SMS as referenced in the NPRM on management systems published in the **Federal Register** dated March 2, 1993, were also considered in drafting this interim final rule. Background information is not repeated in this document.

This part of the rule does not contain any substantial changes in context from the NPRM. However, a number of changes are incorporated to provide uniformity among the management systems and to clarify or expand on specific points based on docket comments. These changes are addressed in the analysis of applicable sections below. The majority of the respondents felt that the NPRM for the SMS provided the proper approach and was consistent with the flexibility philosophy of the ISTEA. However, a number of State highway and transportation agencies and other commenters expressed concerns with the impact of the extent of roadway system coverage and the inclusion of the vehicle human safety elements.

Summary of SMS Comments

Comment

One respondent commented that the title for Highway Safety Management System appeared to restrict the system to highway traffic only and it should be multi-modal to conform with ISTEA.

Response

"Highway safety" is the title contained in the ISTEA legislation and, therefore, is not changed.

Comment

One respondent commented that the entire concept of the SMS needed to be rethought and two others provided suggestions to totally rewrite the rule. A number of comments were provided which would change regulatory requirements to guidance type language. While some respondents believed that the NPRM as drafted was too prescriptive, others believed that it was too vague and did not provide enough guidance and suggested specific items that should be included. These included such features as signing, pavement marking, work zone safety, road surface operational practices, inspection procedures, and operational and maintenance activities and practices. The majority of the respondents,

however, supported the language in the NPRM on most of these issues.

Response

Several changes were incorporated and are addressed in the section-by-section analysis. Guidance type information is not included in the regulation and will be provided in another form, such as through the FHWA's policy guidance procedures.

Comment

A number of respondents recommended incorporating the "Management Approach to Highway Safety"[5] into the rule.

Response

A great amount of material from that document is reflected in the rule.

Comment

One respondent commented that the rule should require preparation of a Highway Safety Impact Statement (HSIS) for each project and each operational and maintenance activity.

Response

Effective implementation of the SMS should preclude the need for an HSIS.

Comment

Several respondents commented that the FHWA should provide wide distribution of case studies of new concepts, approaches, and ideas.

Response

The FHWA is developing a technology sharing program to inform States of these types of activities.

Comment

Comments were provided that the rule needed to include detailed information on training, technical assistance, and guidelines that the agencies will be providing to the States.

Response

A National Highway Institute course on safety management systems is planned for late 1993. A National SMS Conference is planned for December 1993. Guidelines are proposed to be issued in early fiscal year 1994. States will be provided with more detailed information on these activities through other processes.

Comment

Several respondents suggested that the agencies provide funding for developing and implementing the SMS.

[5] *Management Approoch to Highway Safety, A Compilation of Good Practices*, December 20, 1991. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

Response

A number of funding sources available for developing and implementing the SMS are identified in § 500.111 in the interim final rule.

Comment

Comments were made that it would be useful to indicate the categories of Federal funds that could be used for implementing SMS outputs.

Response

There are several categorical funding sources available to the States for implementing safety programs and projects. Needs identified through the SMS will be programmed for eligible categories of funds through the Highway Safety Plan (23 CFR 1204.4, Supp. B), the Motor Carrier Safety Assistance Program State Enforcement Plan (49 CFR part 350), and/or the metropolitan and statewide transportation planning processes.

Comment

Comments were provided that a full time safety engineer position should be established in each FHWA division office and that monitoring should be undertaken by these individuals to insure that the SMSs are actually being followed.

Response

The FHWA is conducting a review of its organizational requirements to focus on its changing role in response to the ISTEA. Many FHWA division offices currently have Safety engineers.

Comment

The establishment of a strategic research program on highway safety was recommended by one respondent.

Response

This particular point is not directly related to the regulation and is not reflected in the interim final rule.

Comment

A comment was provided that the concept of a safety audit should be introduced into the SMS.

Response

The FHWA is monitoring efforts of other countries in safety audits and will further evaluate this suggestion in the future.

Comment

Several comments were provided on the SMS overlapping, duplicating, conflicting with, or superseding the State Highway Administration 402 Safety Program (23 U.S.C. 402) and the 402 Safety Program in general.

Response

The SMS rule language provides requirements for a systems approach and complements the provisions of 23 U.S.C. 402. The agencies are unable to identify any conflicts between the SMS requirements and the 402 program.

Comment

Several comments were provided on the time and cost to establish a "common or coordinated reference system" required in § 500.107 in the NPRM (§ 500.105 in the interim final rule), particularly with respect to safety management.

Response

Resources and development time are two key items to be considered in deciding on the method and level of sophistication the State will use to meet this requirement. Coordinated or common reference systems provide the foundation for maximizing resources and achieving efficiency in operating and maintaining the highway transportation system. States may select the most appropriate approach to provide this integration consistent with their individual needs.

Section-by-Section Analysis

Section 500.401 Purpose

This section states the purpose of subpart D of this rule. The phrase "and continued operation" was added to emphasize the intent of the legislation that the SMS is to be an ongoing process. Reference to subpart A of this part was also added for clarification.

Section 500.403 SMS Definitions

The introductory paragraph of § 500.403 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. The remainder of the section provides a definition of terms that are used in describing SMS requirements that appear later in the rule. Each of the definitions under this part was modified.

The word "accidents" was changed to "crashes" in the definition of "Highway safety" to clarify terminology. Support was provided for the definition, however, it was suggested that the definition be further extended to explicitly consider bicycle transportation and pedestrian safety. The definition is broad as it applies to all modes of highway transportation and safety. Pedestrians and bicyclists are included and addressed specifically in other sections of the rule.

The definition of "Highway safety management system" was expanded to include wording from §§ 500.405(a) and

500.407(a) in the NPRM for clarification and to provide consistency with the definitions of the other management systems. Several respondents proposed that "all" be removed from the definition, or that "all reasonable" be substituted for "all," in the phrase "all opportunities to improve safety," since they believed that it is too encompassing and that it is unlikely that specialized expertise will exist at the agency or State level to address "all" opportunities. The language in the definition does not require particular staff expertise. In addition, "reasonable" is an inherent part of the SMS process. With proper application, the SMS will identify the needed expertise or actions, which would then be considered in the decisionmaking process.

One respondent commented that the language in the regulation contemplated maintenance as "roadway repair" rather than activities, such as snow removal and ice control. The definition of "operations" includes both types of maintenance activities.

Section 500.405 SMS General Requirements

This section has been retitled from "Policy" in the NPRM and restructured to provide uniformity with the other management system regulations. This section defines the applicability of the SMS and requires States to have SMSs that include the components in § 500.407. The section has been subdivided into paragraphs in the interim final rule for clarity.

Comments were provided that the policy section of the SMS should specifically emphasize the cooperation with local agencies. Such cooperation is applicable to all systems, as required in subpart A, and inclusion of duplicative language in the SMS is not necessary.

Comments were provided that communication, cooperation, and coordination should be required with pedestrian and bicycle planners and coordinators. In general, bicycle and pedestrian interests are represented by the planners and coordinators within a number of the agencies and groups designated in the rule for communication, cooperation, and coordination. The Federal agencies encourage States to provide appropriate opportunities for involvement of bicycle and pedestrian representatives.

This particular section, which addresses roadway system coverage and the comprehensive system approach, generated the greatest response, both in support and concern. Nearly every respondent except highway agencies supported the proposed roadway system coverage and comprehensiveness of the SMS. Many highway agencies also supported the concept of the system scope, but presented valid concerns on the implications of this broad system coverage. These concerns can be grouped into several categories: lack of resources, magnitude of effort, State laws affecting jurisdictional authority of agencies, overlap with other Federal requirements, and application of sanctions.

The Federal agencies recognize that availability of resources, both personnel and financial, is an ever-present problem in some agencies and that significant efforts may be needed to develop a comprehensive SMS that includes the three safety elements. While there never seems to be sufficient resources for highway transportation, the SMS and other management systems will lead to more efficient use of these limited resources. Virtually all funding sources (State, Federal, and local) can be used to fund the safety features called for by the SMS. In addition, the ISTEA allows States greater flexibility to decide how their Federal-aid resources will be used.

A number of States cited major implications in addressing institutional and legislative barriers, i.e. "home rule," as a result of the broad SMS comprehensiveness and roadway system coverage. The rationale for adopting the roadway system coverage and comprehensiveness was addressed in the NPRM and continues as a part of this rule. There was considerable support in the docket response to the NPRM for maintaining this position. The agencies did, however, incorporate changes based on responses to the NPRM to mediate issues and make implementation of the SMS more adaptable at the State and local level. These changes are reflected and discussed in §§ 500.105, 500.109, and 500.405(e).

Also with respect to extent of coverage and overlap with other Federal requirements, there were several comments related to the problems of a State's SMS covering Forest Service, National Park Service, other federally-owned, and private roads. As noted under the section-by-section analysis for subpart A, a provision has been added to § 500.405(a) in the interim final rule that coverage of federally owned public roads will be determined cooperatively by the State, the Federal agencies, and the agencies that own the roads. In response to the private road issue, the SMS is applicable to all public roads; therefore, if a road does not meet the definition of a public road found in 23 U.S.C. 101(a), it would not have to be a part of the State's SMS. Definitions in 23 U.S.C. 101(a) and § 500.103 are noted in § 500.403 as being applicable to this subpart.

With respect to the application of sanctions, § 500.111 indicates that the Federal agencies will target sanctions to correct identified deficiencies. This issue is addressed in more detail under the discussion of comments for subpart A above.

There were several comments that the coordination requirement created another level of bureaucracy, while others suggested establishing multi-agency or other coordinating groups to manage this function. It was also suggested that this coordination requirement would be too burdensome to the States because of the number of organizations that would be involved. It is not intended that coordination would be required with every entity for every effort. Coordination and communication mechanisms need to be established and the process put into effect as appropriate for the specific situation. Coordination can be, and is currently being, accomplished among the disciplines in a number of States without another bureaucratic layer. States may develop mechanisms consistent with local needs.

One respondent commented that "emergency response" needed to be clarified to indicate highway incidents. No change was made in the rule for emergency response, as the coordination and communication requirements for each of the organizations, agencies, and groups noted, are to be directed toward highway safety.

The language in § 500.405 in the NPRM regarding the applicability of the planning and project selection provisions of § 500.107 in the NPRM has been clarified and placed at the beginning of § 500.405(c) in the interim final rule.

Comments were provided that the requirement for States to assign a focal point for the SMS was inappropriately located in § 500.407(b)(3) and needed further clarification. Comments were provided to leave the focal point designation to the State, while several others suggested the focal point should be designated in the regulation. In response, this requirement has been moved to § 500.405(d) of the interim final rule with additional language provided for clarification. In addition, the Federal agencies believe that the States are in the best position to determine the proper location or position that should be designated as the focal point.

Section 500.407(d) in the NPRM has been redesignated in the interim final rule as § 500.407(e) for uniformity with

the other systems and it was modified to reflect comments to the docket. These changes on tailoring the system, better conform with language in § 500.105 and clarify the intent of this section to allow flexibility for addressing the comprehensiveness and roadway system coverage of the SMS. This section also addresses the concern of some respondents for a different level of analysis for local roads.

Educational information, driver licensing, and motor vehicle registration were submitted as important driver-oriented safety components of the SMS. These components are addressed in other regulations. They are also extremely important components of the SMS and, as such, would be addressed through the coordination process and in developing countermeasure strategies.

Comments were made that § 500.405 requires the linking of non-related data bases, such as emergency medical services, to highway safety, and requires extensive input from the private sector. These requirements have been retained in the interim final rule. Effective management and reduction of highway related injuries and fatalities require that responsible agencies direct their limited resources to receive maximum return on their investments. Highway safety involves many disciplines and the most effective application of resources needs to be maximized among these disciplines. This requires that data be shared or exchanged. The degree of sophistication of information coordination among these agencies or groups would be determined by the States and localities.

Section 500.407 SMS Components

This section has been retitled from "Program structure" in the NPRM and several changes have been made to address comments and provide consistency with the other management systems. This section sets forth processes and procedures that must be included in a State SMS.

There were comments about the subjectiveness of "totally" in the second sentence of paragraph (a), as it relates to safety being integrated into the decisionmaking process. "Totally" has been stricken from this sentence.

A number of respondents expressed concern over the use of the phrase "as a minimum" in the sentence "These plans, processes, procedures, and practices, shall incorporate as a minimum: * * *" in § 500.407(b) in the NPRM. "As a minimum" has been changed to "as appropriate" in § 500.407(a) in the interim final rule. All of the requirements listed under this paragraph may not be applicable to all of the five major areas.

One respondent suggested that there was inadequate recognition of operating and maintenance activities in paragraphs (b) and (e). These activities are an integral part of the SMS and are included throughout the regulation.

One respondent commented that establishment of goals to address both existing and anticipated safety problems in paragraph (a)(1) goes beyond a practical approach. It is recognized that resources must be applied to programs and projects that address existing problems. In the process of analyzing and implementing existing problems, potential hazardous problems may be revealed that can be prevented from developing. For example, an unsafe vehicle or roadway design may be detected and corrected prior to implementation.

One respondent commented that the time and cost to establish accountability for every position that could be construed to be involved in roadway safety would exceed the benefits. The federal agencies believe that the benefits would be commensurate with the effort involved. The language in the rule is directed toward units and positions carrying out safety responsibilities. Accountability is a basic management principle and the degree to which it is applied will be governed by the administrative and operational practices and needs of the organization.

Comments were received that it would be difficult and unnecessary for States to collect pedestrian information as reflected in paragraph (a)(4). There were also comments on the amount of pedestrian accident data some States collect. The intent of the language in the NPRM was for pedestrian data to be directed toward safety issues which would primarily focus on crash involvement. The need for pedestrian data beyond crash data would be determined by the agencies involved with the SMS. "Bicycles" has been added as a data requirement. As with other records required under this section, the States are only required to collect appropriate data which will enable them to identify problems and determine improvement needs.

A number of respondents commented on the need to emphasize data sharing and integration of data bases where feasible. Data sharing and/or data base integration are necessary to maximize resources. States should recognize this in determining how best to address their needs. Data sharing is included in paragraph (a)(4) and the feasibility of data base integration would be part of the decisionmaking process.

Several comments were provided on including a requirement for highway and road inventories, the need for a baseline inventory of highway conditions, and operating and maintenance policies. The language of paragraph (a)(4) requires information and data on "highways" necessary for problem identification and determination of improvement needs. Information that the State may need in this area may come from several sources in addition to and including an inventory. States are provided the flexibility to determine what data elements and sources are to be used in order to achieve the requirement objective. Identification of operating and maintenance policies fall under the requirements of having plans, processes, or procedures for addressing activities covered under the Operations definition in § 500.403.

Comments were also provided on the need for total accident costs, the characteristics of claims and settlements against the government resulting from highway crashes, and direct or actual savings attributable to accident reduction. The federal agencies agree that this may be useful information to some States in their decision processes but that it should not be a mandatory requirement because of the cost and effort that would be involved.

Several commenters stated that the data requirements in paragraph (a)(4) on the number of trains at highway-rail crossings were not realistic. These requirements correspond to regulations evolving from the 1966 Highway Safety Act. Part 924 of 23 CFR has required that States have a process for determining the relative hazard at railroad grade crossings, which includes the number of trains per day. This information is then part of the process for determining use of 23 U.S.C. 130 funds.

"Medical services" has replaced "emergency medical services" as a data requirement in paragraph (a)(4) in response to comments that emergency medical service data does not provide the complete chain of cost and other data required for assessing highway crash injuries. Emergency medical services data would still be an integral part of medical services data.

Comments were provided that without clear focus and definition, data collected will differ between regions and States. Federal data reporting requirements are contained in other regulations. The SMS must be a system that is of value to the States and, therefore, requirements will vary based on each State's identified needs. Data needs for the various systems should be

coordinated for multi-system use and where possible to meet any reporting requirements for other purposes. This, along with several comments on the massive efforts and cost associated with data for the systems, reenforces the need to allow States to tailor their efforts to address identified needs.

A number of comments were provided on the practicality of evaluation of "all" activities that relate to highway safety under paragraph (a)(6). The agencies agree that "all" is improper under the intent of the original language of the NPRM. "All" is thus removed from this sentence.

There was concern expressed on the amount of data required for evaluation of the effectiveness of highway safety performance in paragraph (a)(6). There were also questions as to how performance is to be defined. Will it be project specific or system wide? How long do you track performance? States only need to collect that data which they determine necessary to evaluate the effectiveness of specific programs or projects relative to their impact on safety and use of resources. Performance may be defined at the State level on a system wide or project specific basis, based on the project or program goal. Performance tracking would be conducted in accordance with the confidence level initially established for the evaluation.

One comment was provided that paragraph (b)(1) weakened the requirement for formalized process for coordination and communication as set forth in § 500.405. These are two distinct and different requirements that complement rather than compete.

One respondent noted that the rule should make clear that highway safety problems are not restricted to design/engineering hazards, but include operational practices or policy as well. Several respondents expressed concern that the five major program areas place too much emphasis on physical safety improvements and not enough on the driver or vehicle improvements. There was also concern that there are target groups not identified in § 500.407(b)(4) that can be addressed through driver-oriented countermeasures. Section 500.407(b)(2) includes identifying and correcting "highway safety problems, roadway locations and features * * *." The highway safety problem part of this requirement is primarily related to non-physical type countermeasures. However, improvement countermeasures identified under any of the requirements of paragraph (b)(2) may involve the identified target groups such as those noted in the response. Program or project improvements would then be incorporated into the State's HSP, MCSAP, or highway improvement plan as appropriate.

Comments were provided that railroad-highway grade crossings were specifically referenced in §§ 500.407(b)(2) and (b)(5), but not signs, pavement markings, and safety hardware. It was recommended that these be shown as roadway features. Section 500.407(b)(5) specifically addresses safety hardware as a component of the roadway system to be addressed. Section 500.407(b)(2) pertains to identifying and correcting safety problems, locations, and features. A countermeasure to correct a problem or location may include signing, pavement marking, or safety hardware. Earlier input into safety management suggested that railroad safety consideration needed to be included in the regulations. There are many individual components associated with the roadway and its environment, of which signs and markings are included as features. It was determined that specific designation of each feature was not necessary.

One comment suggested that "early consideration" in paragraph (b)(3) should be more specifically defined. Early consideration would vary as to a particular input point with specific programs and projects. The thrust of this requirement is that at the conceptional stage of programs, projects, policies, etc., safety implications and needs are identified and considered.

A comment was provided that the system should also explicitly consider the impacts of truck traffic and freight systems management on traffic safety. This is recognized as an inherent part of the SMS and commercial motor carriers are specifically noted in paragraph (b)(4). The impacts of truck traffic would be a consideration in all aspects of the system.

One responder suggested that the FHWA should promulgate standards that aid the special user groups identified in paragraph (b)(4). Specific standards for special needs or users are set forth or under development outside of this rule. These would be applied to the specific user groups as appropriate.

An additional paragraph was suggested under this section to clearly identify implementation of strategies, timeframe, and probable funding sources for each proposed SMS program. Each of the items in this suggestion are addressed in the other parts of this rule and in the planning regulations (23 CFR part 450) as appropriate.

Section 500.409 SMS Compliance Schedule

This section sets forth dates for implementing the SMS. The section has been added to the NPRM to provide the States flexibility in establishing realistic implementation. A number of comments were provided on the time required to develop and implement the SMS and the management systems in general. Several suggestions were provided on a phase-in approach. The agencies recognize the different issues that each State must address, particularly in the area of comprehensiveness of the SMS and, therefore, have included this section.

Subpart E—Traffic Congestion Management System

A total of 77 commenters responded to the CMS portion of the NPRM. The commenters consisted of 33 State agencies, 15 regional planning agencies/MPOs, 11 National/regional interest groups/associations, 8 local agencies, 5 transit operators, 2 railroad companies, 2 Federal agencies or officials, and 1 private business. The majority of commenters did not indicate serious disagreement with the proposed rule, but many suggested minor changes or clarifications. A few commenters expressed areas of major disagreement or concerns with some provisions. The areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of CMS Comments

Comment

A national interest group stated that the CMS should not focus solely on highway levels of service, that the CMS must be developed with attention to all modes and all purposes of the ISTEA, and that the rule should acknowledge that ISTEA CMS requirement does not presume that mobility, air quality improvements, and highway congestion are incompatible.

Response

The FHWA and the FTA agree with these points and did not find anything in the NPRM that would be contrary to them. The interim final rule is consistent with these points.

Comment

Several commenters expressed the need for development of the CMS regulation to be coordinated with the development of the other management systems regulations. Also, there should be a consistent use of the word "cooperation."

Response

Development of the CMS regulation has been coordinated with development of the regulations for the other management systems. The definition of cooperation is discussed in the preamble for subpart A above.

Comment

Several commenters stated that the proposed compliance schedule for the minimum requirements on October 1, 1994, and for full operation of all CMSs by October 1, 1995, was unrealistic and should be revised to reflect delays in issuing the NPRM.

Response

The compliance schedule proposed in the NPRM has been revised as discussed in the section-by-section analysis for § 500.509 below.

Comment

Several commenters believed that the CMS regulation should provide more guidance on CMS data collection and system requirements. Commenters also stated that CMS data requirements were burdensome, costly, duplicative, and beyond the technical capability of many MPOs.

Response

The interim final rule maintains the overall approach of the NPRM which allows States, in cooperation with the MPOs, local governments, transit operators, and other cooperating agencies, to identify, develop, and implement data collection programs that fit their needs and address their specific levels of congestion. This approach allows the agencies involved to develop and implement a process that minimizes burden, cost, and duplication. The reference to the use of existing sources of data (such as, the HPMS and FTA Section 15 data) in § 500.507(b) is included to point out that these data sources are available. It is recognized that additional sources of data or new collection activities may need to be established and initiated to fulfill this requirement.

States, MPOs, local officials, transit operators, and other transportation officials mentioned in § 500.505(c) should cooperate in the collection of data. Pooling of resources by these agencies, in combination with Federal assistance, should result in implementation of a sound data collection program even when the technical capabilities of some of these agencies and the funds available to meet CMS data needs are limited.

Comment

Several commenters expressed concern that the NPRM too severely restricted the implementation of single-occupant-vehicle (SOV) projects and neglected the fact that SOV projects may be the most appropriate action to achieve the dual goals of improved mobility and air quality. Several commenters also stated that the analysis of strategies in nonattainment TMAs should be a comprehensive multimodal process that would include a logical packaging of appropriate operating, travel demand reduction, and capacity enhancing strategies. It was suggested that this process replace the sequential process described in § 500.509(b) in the NPRM that allows the incorporation of general purpose lanes only after demand management and operational management strategies have been fully analyzed and not found capable of meeting the projected travel demand.

Response

The FHWA and FTA recognize, that in some cases, addition of general purpose lanes may be an appropriate congestion management strategy. However, the ISTEA requires that consideration be given to strategies that reduce SOV travel and improve existing transportation system efficiency. Thus, in all areas, explicit consideration of SOV reduction strategies must be part of any CMS.

In all TMAs, the inclusion of travel demand reduction and operational management strategies is specifically required by the legislation. Furthermore, in TMAs that are nonattainment for carbon monoxide and/or ozone, while increases in SOV capacity may be warranted, an appropriate analysis of reasonable travel demand reduction and operational management strategies for the corridor in which the SOV facility is proposed must be conducted. If the demand cannot be reduced or met through operational strategies, including transit, an SOV capacity project of appropriate design concept and scope may be an appropriate solution. If this is the case, all reasonable strategies to manage the SOV facility must be incorporated into the proposed facility.

This does not require an "endless and exhaustive study of SOV alternatives that are clearly not applicable in certain cases" as was interpreted by several commenters. It does require explicit consideration and appropriate analysis of reasonable alternatives to increased SOV capacity. The FHWA and the FTA will be providing technical assistance and training on how this can be accomplished.

The FHWA and the FTA agree, particularly in areas with complex transportation systems, that congestion management should be analyzed in a comprehensive multimodal process that includes a logical packaging of appropriate travel demand reduction, operating, and capacity enhancement strategies. In general, the use of other strategies should be fully considered before the addition of general purpose lanes is considered. The rule is not intended to preclude such analyses; on the contrary, it is assumed that the full range of reasonable strategies, including land use, will be considered.

Comment

Several comments were made on the proposed list of strategies in § 500.507(d) in the NPRM. Several commenters interpreted this section to require extensive analysis of all of the suggested strategies, even if they were not applicable to the area under study. The list was also interpreted to be exhaustive and all-inclusive. Several commenters also pointed out that the list was roadway oriented due to the lack of specific reference to multimodal strategies, such as, bicycle and pedestrian facilities, public transit, paratransit, and commuter rail, and expressed concern that such strategies would not be considered in the CMS.

Response

It was not intended that the list be all-inclusive or that every strategy on the list would be fully analyzed. The list was intended to be an illustrative sample of traditional and non-traditional strategies that should be considered by the CMS in conjunction with the transportation planning process. The interim final rule clearly states that the listed strategies should be appropriately considered and that it is not all-inclusive.

The list of suggested strategies in the interim final rule has been expanded, as discussed in the section-by-section analysis below, to include multimodal strategies to clarify that such strategies may be appropriate. However, the States, MPOs, local governments, transit operators, and other transportation officials will need to determine whether monitoring of transit performance and operation and identification of transit strategies for improving transportation system performance will be part of the CMS or the IMS since the PTMS will only be responsible for transit capital assets.

Comment

A few commenters were concerned that land-use management strategies are

beyond the jurisdictional control of many State agencies and should not be included in the list of CMS strategies.

Response

As indicated above, the list of strategies, which included land-use management, was an illustrative sampling. It is not mandated that all strategies be analyzed or implemented in every case. However, land use is a critical consideration as recognized in the ISTEA and by those jurisdictions that have undertaken initiatives to address the interrelationship of land use and transportation through programs that coordinate land use and transportation strategy development.

If the CMS results in a determination that land use management is an appropriate strategy for effectively and efficiently dealing with an identified problem, the State, MPOs, and local officials will need to develop cooperative arrangements with the agencies that have jurisdiction over land use and development to implement the strategy.

Comment

Several commenters suggested that the CMS should be a tool to assist in the identification of potential strategy impacts rather than a method to identify potential strategies.

Response

The language in the ISTEA indicates that the CMS is to be more than a data collection exercise. For example, the ISTEA requires that the planning process in TMAs include the development of a CMS that provides for effective management of new and existing facilities through the use of travel demand reduction techniques and operational management strategies. In the interim final rule, an effective congestion management system includes both the identification of potential congestion management strategies and an analysis of their effectiveness in meeting the goals of individual congestion mitigation programs.

Section-by-Section Analysis

Section 500.501 Purpose

This section states the purpose of subpart E of this rulemaking and has been slightly reworded to be consistent with the purpose statements of the other management systems.

Section 500.503 CMS Definitions

The introductory paragraph of § 500.503 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. The remainder of the section defines "congestion" and "congestion management system."

The flexible definition of "congestion" in the NPRM was widely accepted by commenters. This definition recognizes that levels of acceptable congestion vary throughout the country and between metropolitan and non-metropolitan areas. It will be left to the States to determine, in a cooperative process with MPOs, local governments, transit operators, and other transportation officials, what the acceptable level of congestion is in their areas.

The reference to transportation system performance being acceptable to the traveling public has been deleted from the "congestion" definition since all citizens are affected by congestion, not just the traveling public.

Several commenters interpreted the definition of "congestion management system" in the NPRM to imply that the CMS was only a process of data collection since the NPRM definition stated that the CMS was a process that provided information. As discussed earlier, this was not the intent. The ISTEA requires that the needs identified by use of the CMS, and the other management systems, be considered in developing metropolitan and statewide transportation plans and improvement programs. The definition of congestion management system has been modified to include the identification of alternative strategies to alleviate congestion and to enhance the mobility of persons and goods. The definition now also describes the basic components of a CMS.

Section 500.505 CMS General Requirements

This section was entitled "Policy" in the NPRM. The title is changed to "CMS general requirements" in the interim final rule to be consistent with section titles of the other management systems.

Paragraph (a) provides an overall summary of the purpose of the CMS. There are a few changes from the NPRM. This section no longer states what a CMS will do—identify and assess—but states what the results of the CMS will be—identification and implementation of strategies.

The interim final rule clarifies that transportation facilities are to be covered through the CMS, PTMS, or IMS. If the decision is made to address congestion management for all transportation modes in the CMS, the CMS cannot be limited to strategies that focus on the movement of vehicles. The CMS must also assure that the efficient movement of people and goods is addressed and that consideration is given to other strategies, including parking management and bicycle and pedestrian facilities.

Section 500.505(a) in the interim final rule also incorporates and rewords the first sentence of § 500.507(a) in the NPRM that dealt with CMS coverage. Several commenters raised concerns that the CMS would require extensive coverage in rural areas or in areas not currently experiencing congestion. The extent of CMS coverage will depend on the different definitions of congestion that are agreed to throughout the State. Where it is determined that congestion does not exist and is not likely to occur, coverage can be limited to periodic verification of this determination. CMS efforts should be focused on those areas with existing congestion or with the likelihood that congestion will develop, regardless of whether that congestion occurs in metropolitan or non-metropolitan areas. The phrase "recurring or nonrecurring" has been removed in response to concerns on how areas with existing or potential "nonrecurring" congestion would be identified. However, since "nonrecurring" congestion due to incidents often accounts for most of the congestion in many areas, such congestion is still to be addressed by the CMS and strategies for dealing with "nonrecurring" congestion (e.g., incident management) are included in the list of strategies to be considered in § 500.507(c).

Congestion is not just a metropolitan area phenomenon. In many cases, congestion in non-metropolitan areas occurs for different reasons and at different times than in metropolitan areas. Hence, the strategies to be implemented to manage congestion and improve mobility in the non-metropolitan areas will probably differ from those in metropolitan areas. These strategies, which are critical to preserve the effectiveness and efficiency of the overall transportation system, will need to be evaluated and fully considered in the statewide planning process.

Also, to be consistent with changes in subparts A through D, a provision has been added to § 500.505(a) to indicate that States, the Federal agencies, and the agencies that own the facilities shall cooperate to manage congestion on federally owned facilities.

Section 500.509 in the NPRM, Single occupant vehicle capacity projects, has been incorporated into paragraphs (b) and (e) of § 500.505 in the interim final rule. Section 500.505(b) in the interim final rule retains the provision that consideration be given to strategies that reduce SOV travel and improve existing transportation efficiency in both

metropolitan and non-metropolitan areas. This part has been slightly reworded from § 500.509(a) in the NPRM to ensure that explicit consideration is given to the incorporation of appropriate features into any projects that provide for the addition of general purpose lanes. These features would facilitate future demand management and operational improvement strategies to maintain the functional integrity of those lanes.

Portions of § 500.507(a) in the NPRM, Area of Consideration, have been added to § 500.505(c) to make this part more consistent with the overall intent of § 500.505 which is to describe the general requirements. Paragraph (c) now ensures that the CMS identifies the extent of existing or potential congestion, and accurately reflects the cumulative effects of implemented strategies on transportation system performance. This provision has been further modified by requiring that the assessment of the level of current or potential congestion shall be made on a continuing basis and that the entire metropolitan planning area shall be included in TMAs that are nonattainment for ozone and/or carbon monoxide. Complete coverage in these TMAs is required because SOV projects in such areas must be based on a CMS.

In determining the area of coverage for the CMS, it must be recognized that congestion is a dynamic phenomenon that may be affected by, or have an impact on, physical improvements or areawide transportation policy decisions over a wide area that surrounds the location, corridor, or facility being treated. Therefore, to evaluate the total effectiveness of the implemented strategies, these affected areas must be included in the CMS coverage.

The determination of potential congestion will be based on the area's definition of congestion and the results of transportation forecasts. If population and land use changes are anticipated that could result in increased levels of travel which could ultimately result in congestion, the evaluation of strategies to manage the potential congestion would be warranted. Early recognition of the potential problem should lead to more effective solutions, including the timing, location, and design of proposed land use development and transportation facilities.

Paragraph (d) requires that the CMS be a part of the metropolitan planning process in TMAs. Several commenters were concerned that there is a lack of clarity in whether the State or the MPO has responsibility for the CMS in TMAs. While the ISTEA requires that the CMS be part of the metropolitan planning process in TMAs, it does not assign responsibilities to individual agencies. The FHWA and the FTA believe that the agencies involved are in the best position to cooperatively determine their capabilities and responsibilities; hence, the interim final rule for the CMS and the final rule for the metropolitan planning process require the involved agencies in all areas to mutually determine their roles and responsibilities.

Section 500.505(e) in the interim final rule contains the portion of § 500.509 in the NPRM applicable to SOV projects in nonattainment TMAs. The analysis requirements in the NPRM have been retained. However, the conditions for programming SOV projects have been removed since these provisions are included in § 450.320 in the final rule for metropolitan planning. These programming provisions were removed from the CMS interim final rule because it was determined that it was more appropriate to include such provisions in the metropolitan planning rule. This issue is discussed in more detail above in the response to comments on the CMS NPRM.

Section 500.505(f) requires that development of strategies as part of the CMS be coordinated with the process for developing transportation control measures of the State implementation plan in nonattainment areas to ensure that the need to improve air quality, as well as to alleviate congestion, is considered in the development of CMS strategies. The growing body of research is beginning to show that commonly held assumptions regarding the relationship between congestion and air quality may not be valid. Strategies that may relieve congestion may not have equal air quality benefits.

Section 500.505(g) requires coordination of development, establishment, and implementation of the CMS with that of the PTMS and IMS. Several comments were made that the CMS should be coordinated with the IMS as well as with the PTMS. The requirement for coordination with the IMS was inadvertently left out of the NPRM and has been added. It will be the responsibility of the States, in cooperation with MPOs, transit operators, and other affected agencies, to determine the coverage and applicability of the these three systems with regard to system performance. As discussed above, the FHWA and the FTA intend that the cooperating agencies determine what aspects of people and goods movement will be covered by each of these systems.

Section 500.507 CMS Components

This section was entitled "Management system structure" in the NPRM. The title of "CMS components" is used in the interim final rule for consistency with section titles of the other management systems. The section sets forth processes and procedures that must be included in the CMSs.

As mentioned in the discussion of § 500.505, most of paragraph (a) in the NPRM, "Area of consideration," was incorporated into § 500.505(c) in the interim final rule. The subject matter of the first sentence of paragraph (a) from the NPRM was reworded and incorporated into § 500.505(a). The remaining paragraphs of § 500.507 in the NPRM are still in this section, but have been redesignated due to the relocation of paragraph (a).

Section 500.507(a) in the interim final rule describes the need to define parameters to measure the extent of congestion and evaluate the effectiveness of congestion reduction and mobility enhancement strategies. A phrase has been added to recognize that since the expectations of the quality of system performance may vary between communities, the cooperating agencies have the flexibility to establish performance measures appropriate for their area. The wording of this paragraph in the interim final rule also emphasizes that the movement of people and goods shall be included in the performance measures.

The preamble to the NPRM provided a suggested list of performance measures: Delay per person delayed; delay per incident; delay due to construction; average travel time per trip; persons per hour on the facility or in a corridor; level of service (LOS); lane-miles over a specific LOS; vehicle-miles-of-travel (VMT) over a specific LOS; percent of VMT by functional class; VMT per lane-mile; delay per lane-mile; delay per VMT; delay per trip; or delay per vehicle. Several commenters suggested that this list also include performance measures that reference person movement and those measures applicable to multimodal systems, such as, transit. While some were already included, other examples of person movement performance measures include: number of persons using HOV lanes; proportion of persons congested or delayed; person hours of delay; and vehicle occupancy counts. Performance measures for transit facilities might include: Riders per vehicle-mile; riders per vehicle-hour; peak load factors; on-time performance; cost per rider; vehicle-hours per employee; vehicle-miles per employee;

and riders per employee. Examples of intermodal performance measures are included in subpart G of this rule.

These lists are not meant to be all-inclusive or mandates. They are offered as illustrative examples of performance measures that might be used. Performance measures should be applied where appropriate and as a function of the area, transportation facility, and type of congestion under consideration. The use of performance measures are to be established cooperatively by the States and affected MPOs, local officials, transit operators, and other transportation officials.

Section 500.507(b) in the interim final rule requires a continuous program of data collection and system monitoring. The extent of this program will be determined by the States in cooperation with MPOs, local officials, transit operators, and other transportation officials and shall be a function of the magnitude of congestion and the area's performance measures. In areas where congestion is not occurring, or is not expected to occur, data collection and monitoring may be limited to periodic verification that conditions have not changed. In areas where congestion is a significant problem, data collection and system monitoring activities must be continuous and provide feedback on the effectiveness of implemented strategies. Existing data sources should be used to the extent possible. The language in the NPRM that indicated if existing sources are not adequate, new sources need to be developed, was determined to be unnecessary and has been removed since this will inherently need to be done to implement an effective CMS.

Section 500.507(c) in the interim final rule states that traditional and non-traditional strategies shall be identified and evaluated based on established performance measures. Historically, strategies to alleviate congestion have centered around capital improvements, such as, construction of general purpose lanes. The emphasis now is on management strategies rather than capital projects. However, capital improvements, when applied under a program that utilizes all reasonable strategies to manage the facility effectively, can be a legitimate treatment to manage congestion; but before this decision can be made, non-capital strategies must be considered and appropriately analyzed. This list of strategies is not all-inclusive and is meant to be illustrative. The interim final rule has been rewritten to clearly state that the listed strategies must be appropriately considered and that combinations of strategies, as well as individual strategies, may be analyzed. Appropriate consideration may mean that some of these strategies are not applicable in certain areas, subareas, or corridors. Other strategies that may be applicable would require more consideration in order to reach a proper recommendation.

It was not intended that the list be highway focused; therefore, land use management and transit strategies are included. Under this rule, the CMS or the IMS will identify and analyze transit performance measures and operation and the PTMS will deal solely with transit capital assets, unless the involved agencies cooperatively decide that transit system performance will be part of the PTMS. To emphasize these points, non-highway oriented strategies in paragraphs (c)(4), (c)(5), and (c)(6) have been added to the suggested list and advanced public transit systems technology has been added to paragraph (c)(11). The agencies involved in the CMS are responsible for cooperatively determining which strategies would be appropriate for consideration and the extent of analysis necessary to select the most appropriate strategy, or combination of strategies for implementation.

Section 500.507(d) in the interim final rule describes the implementation of the strategies in § 500.507(c). The key to successful implementation is to clearly identify the strategy, determine the timeframe for implementation, identify funding and other resources, and determine responsibility for implementing the strategies.

Section 500.507(e) requires evaluation of the effectiveness of the implemented strategies. This will provide input into future decisionmaking activities by describing how well different strategies work under various scenarios.

As previously discussed, § 500.509, Single-occupant-vehicle capacity projects, in the NPRM has been incorporated into § 500.505 in the interim final rule.

Section 500.509 CMS Compliance Schedule

This section was § 500.511 in the NPRM. In response to comments, the compliance schedule has been extended. However, recognizing the serious air quality problems in TMAs that are nonattainment for carbon monoxide and/or ozone, the need to alleviate these problems, and to coordinate with the EPA's conformity regulation, CMSs in such nonattainment TMAs must be fully operational earlier than in other areas. By October 1, 1994, a work plan must be developed that shows how full implementation will be achieved, critical areas requiring analysis must be identified, and data collection activities must be initiated. States with TMAs that are nonattainment for carbon monoxide and/or ozone will be required to provide fully operational CMSs in those TMAs by October 1, 1995. This is the original date that was suggested in the NPRM for all CMSs. This date is retained for such nonattainment TMAs due to the critical need to quickly alleviate transportation related air pollution. All other CMSs must be fully operational by October 1, 1996.

Subpart F—Public Transportation Facilities and Equipment Management System

A total of 50 commenters responded to the PTMS portion of the NPRM. The commenters consisted of 30 State agencies, 4 regional planning agencies/MPOs, 7 National/regional interest groups/associations, 1 local agency, 6 transit operators, 1 railroad company, and 1 private individual. The major areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of PTMS Comments

Comment

One significant issue raised which was common to some of the other management systems was the general roles and responsibilities of affected agencies. Most commenters praised the flexibility of the proposed PTMS rule, although some questioned the ultimate role of the State in the PTMS development and implementation process. Several commenters, predominantly State DOTs, suggested that the States be designated as the lead agency in the development of the PTMS.

Response

It is the intent of the FHWA and the FTA that the development of a PTMS be a cooperative, as defined in § 500.105, process between the State, MPOs, and local transit operators. Section 500.605 in the interim final rule requires cooperation among affected agencies in the development, establishment, and implementation of the PTMS. The States may, at their option, designate lead agencies and other agencies responsible for other aspects of the PTMS.

Comment

The most commented upon PTMS issue was the inclusion of Federal Transit Act sections 16 and 18 (49 U.S.C. app. 1612 and 1614) subrecipients in the PTMS. Many States, citing the undue burden of obtaining data from a set of subrecipients which may change from year to year, suggested

that sections 16 and 18 subrecipients be either exempted from PTMS coverage or be included only at the State's discretion.

Response

While the FHWA and the FTA recognize that such data collection activities may require significant resources, the infrequent pass-through of Federal funds to certain subrecipients is the very reason why such subrecipients must be included in the scope of the system. Only a comprehensive inventory of capital assets, as provided for by the PTMS, will allow States to identify and assess system needs and deficiencies, establish replacement schedules, and provide a basis for prioritizing the allocation of Federal funds in future years.

In an effort to accommodate these data collection requirements, § 500.609 in the interim final rule provides a compliance schedule which allows for the phase-in of asset inventories and condition identification.

Comment

A related issue that was raised in comments to the docket concerned the applicability of the PTMS to subcontracted services. A few commenters stated that the difficulty of collecting data on such service providers far outweighs the utility of such information.

Response

Section 500.605 in the interim final rule makes it clear that only contractors operating capital equipment funded under Federal Transit Act sections 3, 9, 16 and 18 (49 U.S.C. app. 1602, 1607a, 1612, and 1614) must be covered under the PTMS. While not requiring it, the FHWA and the FTA encourage States to include other contracted arrangements which play a significant role in the delivery of public transportation services.

Comment

Several commenters recommended that the final rule provide for some uniform data collection standards. Some of these commenters further suggested that the FTA publish a national summary of data generated by the PTMS. On the other hand, many more commenters supported the proposed rule's provision for allowing States to identify standards which best reflect State and local goals and objectives.

Response

The interim final rule retains the flexibility that allows the PTMS to meet the needs of individual States, rather than serving as a mechanism for national reporting. The FTA may consider, in the future, issuing uniform data collection measures and standards for reporting purposes; however, such standards would be dependent on any data needs identified through implementation of PTMSs that meet the requirements of this rule.

Comment

Another issue that generated many comments was the identification and evaluation of strategies and actions through the PTMS. It was noted that § 500.609(d) in the NPRM implied that specific strategies and projects were products of the PTMS, thus confusing the purpose of the PTMS with those of planning and programming activities.

Response

It has always been the intent that the PTMS provide information and develop strategies for input to the planning process. Evaluation of these strategies for inclusion in transportation plans and improvement programs would be done as part of the planning process. The FHWA and the FTA have clarified this process in §§ 500.607(c) and (d) in the interim final rule.

Section-by-Section Analysis

Section 500.601 Purpose

This section states that the purpose of subpart F is to establish guidelines for the development of a public transportation facilities and equipment management system in accordance with the provisions of 23 U.S.C. 303 and subpart A. The reference to subpart A has been added to emphasize the applicability of the general requirements of subpart A to the PTMS.

Section 500.603 PTMS Definitions

The definition of PTMS has been broadened somewhat from that proposed in the NPRM to identify the linkage between the PTMS and metropolitan and statewide planning processes. This relationship is further clarified in § 500.607(d).

A definition of "transit assets" has been added to the interim final rule to eliminate the need to repeat the items of capital equipment which are to be inventoried under the PTMS throughout the rule. A few commenters suggested that definitions be provided in the final rule for terms such as "equipment" and "facility". Such definitions have not been added so that States, in cooperation with FTA fund recipients and MPOs, have the flexibility to inventory assets at a level of detail appropriate to a given transit system. This is made more explicit in § 500.607(b)(1).

Section 500.605 PTMS General Requirements

The title of this section has been changed from "Policy" in the NPRM to be consistent with the other management systems. This section provides for the "cooperative" development and implementation of a PTMS and allows each State to determine roles and responsibilities of affected agencies in the inventorying of assets, collection of data, identification of condition measures, and monitoring of systems.

This section also establishes the extent of coverage of the PTMS. Several commenters noted the apparent ambiguity in § 500.609(a) in the NPRM which required identification of "transit operators receiving Federal funds" while other sections of the proposed rule specified inclusion of "Federal Transit Act sections 3, 9, 16, and 18 recipients and subrecipients". Section 500.605(a) in the interim final rule makes it clear that only recipients and subrecipients of Federal Transit Act sections 3, 9 (capital and operating), 16, and 18 funds, and not recipients of other Federal funds, are covered by the PTMS. In addition, subcontracted providers operating capital equipment funded under sections 3, 9, 16, and 18 are to be identified in the PTMS. While not required, the FHWA and the FTA further encourage States to identify and collect data from other transit service providers in order to have as comprehensive a PTMS as possible. Similarly, while only facilities, equipment, and rolling stock are required to be included, States are encouraged to inventory other assets when the collection of such data would help transit service providers assess system deficiencies and identify strategies to meet these needs.

Because of their interrelationship, § 500.605(d) requires that the development and implementation of the PTMS be coordinated with the development and implementation of the CMS and IMS to ensure that transit system performance is addressed as part of overall transportation system performance in a manner cooperatively determined by the involved agencies.

Section 500.607 PTMS Components

Consistent with the other management systems, the title of NPRM § 500.607 has changed to "PTMS components." The basic PTMS structure proposed under § 500.609 in the NPRM has been moved to this section and

significant changes have been made based on comments received.

Section 500.609(a) in the NPRM was clarified and moved to § 500.605(a). Section 500.607(a) in the interim final rule provides guidelines for the identification of condition measures. Consistent with the cooperative nature of the management systems, the development of such standards should give adequate consideration to the goals and objectives of the State, MPOs, and transit operators.

Section 500.607(b), "Data collection and system monitoring," in the interim final rule ties PTMS data collection activities to those of the CMS, IMS, and TMS/H but otherwise remains essentially unchanged from proposed § 500.607(c) in the NPRM. Section 500.607(b)(1) allows States, MPOs, and transit operators to cooperatively determine an appropriate level of detail for the collection of data.

As stated in the *Summary of PTMS Comments,* many commenters on the NPRM felt that proposed § 500.609(d), "Strategy and action identification and evaluation," of the NPRM did not adequately explain the linkage between the PTMS and the statewide and metropolitan planning processes. Most of the comments on this issue suggested that the final rule define the role of the PTMS as a mechanism to collect information for input into the planning process, which then evaluates these strategies. Section 500.607(d) in the interim final rule clarifies this linkage. Section 500.607(c) in the interim final rule, "Identification and evaluation of proposed strategies and projects," states that data collected as required under § 500.607(b), when evaluated by the identified measures and standards required by § 500.607(a), will lead to the determination of system needs, maintenance and replacement schedules, and estimated replacement costs. The intent of § 500.607(d) in the interim final rule, "Implementation of strategies and projects," is to evaluate the strategies and potential project alternatives identified by the PTMS for possible inclusion into appropriate transportation plans and improvement programs.

Section 500.609 PTMS Compliance Schedule

In order to phase-in the requirements set forth in this subpart, a three-stage implementation schedule has been added to the interim final rule. By October 1, 1994, a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the PTMS by October 1, 1996, must be adopted. By October 1, 1995, condition measures and data system structure must be established and data collection must be underway. By October 1, 1996, the PTMS must be fully operational and provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart G—Intermodal Transportation Facilities and Systems Management System

A total of 55 commenters responded to the IMS portion of the NPRM. The commenters consisted of 29 State agencies, 9 National/regional interest groups/associations, 8 regional planning agencies/MPOs, 4 transit operators, 2 railroad companies, 2 businesses or individuals, and 1 local agency. The areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of IMS Comments

Comment

Many of the commenters questioned the availability and useability of intermodal transportation data. Questions were raised concerning the lack of goods movement data on a local level and the proprietary nature of intermodal data. Several commenters indicated that the cost of collecting data and keeping it current would be burdensome.

Response

The data requirements for the IMS are identified in § 500.707(c) in the interim final rule. To allow flexibility in tailoring the IMS and to minimize the effort necessary for the collection of data, the interim final rule indicates that operational and physical characteristics information will be based on measures established cooperatively by State and local transportation agencies. The interim final rule provides the flexibility for States and local agencies to select and establish data bases that are not excessively cumbersome to create or maintain. Proprietary information is not required and existing public data sources could be used to meet the requirement for data collection and system monitoring. The interim final rule encourages States and local agencies to build on the relationship between public and private sector transportation providers.

Comment

Several commenters noted that the required data collection has no clear guidance on how it is to be used or its role in decisionmaking. Without a clear indication of the data uses, unnecessary data may be collected.

Response

The interim final rule provides the flexibility for the State and local agencies to determine the extent and type of data to be collected for the IMS. States and local agencies are strongly encouraged to identify their intermodal transportation issues and determine the type and level of data that are necessary to address these issues as part of their IMS.

Comment

Many of the commenters indicated that the IMS final rule should be flexible enough for each State to develop unique management systems to meet its individual needs.

Response

Section 500.707 in the interim final rule describes the IMS structure. The specified structure defines the minimum system necessary for meeting the intermodal requirements as described in 23 U.S.C. 303(e). However, within this structure, the scope and level of activity will be determined by the State and local transportation agencies to meet their unique needs in a scale appropriate for their transportation systems.

Comment

Several commenters expressed concern over the relationship of the IMS to the statewide and metropolitan planning processes required under title 23, U.S.C., and the Federal Transit Act. Some commenters noted that the structure of the proposed IMS suggests the development of a planning process that would supplant the statewide planning process.

Response

Because this concern was identified with the other management systems, it is discussed above under the summary of comments on subpart A.

Comment

A majority of commenters indicated that a phase-in schedule should be included in the final rule and the schedule should recognize the difficulty in meeting all the requirements of the IMS by Federal fiscal year 1995.

Response

Section 500.709, Compliance schedule, which has been added to the interim final rule, allows for a phase-in of the IMS as discussed under the section-by-section analysis.

Comment

Several commenters noted that the IMS addresses two diverse issues, freight and people movement. The suggestion was made that the proposed rule be divided into two distinct sections.

Response

Although the interim final rule covers both freight and people movement, the States have the flexibility of structuring the IMS to address the intermodal transportation issues of freight and people movement separately. The States may decide to include intermodal people movements within the CMS. If the CMS addresses intermodal people movements, the IMS should not duplicate these activities.

Comment

Several commenters recommended the phrase "to achieve the most efficient transportation movement * * *." be replaced with "improve the efficiency of transportation movement."

Response

Section 303(e) of title 23, U.S.C., requires the IMS to include methods for achieving the optimum yield from such systems and increasing the productivity in the State. The interim final rule was changed to reflect the statutory requirement.

Comment

Several States indicated that the IMS process could yield results that identify alternate transportation solutions that are not eligible for funding by the FHWA or the FTA.

Response

The IMS does not establish funding eligibility. Funding eligibility is established by the legislation for the different categories of funds. While the availability of funds to implement strategies will need to be addressed eventually, it should not be a deterrent to examining the full range of potential intermodal strategies.

Comment

One State indicated that performance measures should be consistent across State lines for interstate facilities. A second State indicated that it was impractical to develop one set of performance measures.

Response

Due to the great diversity of transportation needs among the States, the State and local transportation agencies, in coordination with private transportation providers, will need to establish their own performance measures. When establishing performance measures for interstate facilities, coordination among the affected States and MPOs should be established to ensure compatibility. Interstate and international IMS coordination issues should be brought to the attention of the U.S. DOT.

Comment

Several commenters indicated that the strategies listed in § 500.707(e) are missing key elements: Energy efficiency, less polluting technologies, innovative bicycle parking, speed humps, and real time passenger information systems.

Response

The IMS regulation requires the evaluation of innovative technologies where appropriate for improving intermodal efficiency. The regulation does not limit the technology to be evaluated but provides the flexibility for the States to determine which technologies are appropriate for their transportation system. Strategies such as speed humps, innovative bicycle parking, and real time passenger information systems may be relevant strategies to be considered as part of either the IMS or the CMS.

Comment

One State commented that the regulation should not mandate neighboring State coordination. Instead, States should be allowed to develop mutual coordination agreements.

Response

For a State's intermodal transportation system to be efficient, the system must be compatible with its neighboring States' transportation systems. The regulation requires that establishment and implementation of the IMS be coordinated among the States and MPOs. The IMS interim final rule allows the States to develop mutual coordination agreements.

Comment

Several comments were received on coordination of data collection programs with the programs of U.S. DOT. The commenters indicated that the collection of data for the U.S. DOT should not be mandated.

Response

The ISTEA requires the U.S. DOT to collect intermodal transportation data. The IMS final regulation recognizes that the collection of intermodal data is a U.S. DOT mandate under section 5002 of the ISTEA. The coordination of the States' data collection programs with the U.S. DOT data program is not a mandate for the States to collect specific intermodal data required by the ISTEA. The State and local agency prerogative for determining the level and type of data needed for their IMS remains. However, coordination with the U.S. DOT program will result in a more efficient data collection effort at the Federal, State, and local levels. The IMS interim final rule was changed to eliminate confusion concerning data collection responsibilities.

Section-by-Section Analysis

Section 500.701 Purpose

This section states the purpose of subpart G of this rulemaking and is unchanged from that proposed in the NPRM except language is added to indicate that the general requirements in subpart A apply to the IMS.

Section 500.703 IMS Definitions

The introductory paragraph of § 500.703 references the terms defined in 23 U.S.C. 101(a) and § 500.103 of this part. To insure consistency with the other management systems, a definition was added for "intermodal management system." The remainder of the section defines the terms intermodal facility and intermodal system.

Several commenters wanted clarification that the definitions of intermodal facility and intermodal system included both public and private infrastructure. The IMS system should include all facilities, both public and private, necessary to establish an efficient intermodal transportation system. An effective IMS must consider private sector issues. Many capital decisions affecting transportation facilities and systems are made by the private sector. Government policies and programs can also have a powerful impact on private sector operations and decisionmaking.

One commenter indicated that the term "intercity" should be added to the type of trips listed that are served by intermodal transportation facilities. Intermodal facilities do serve intercity trips; however, the NPRM listed trips served as intrastate, interstate, and international, all of which include intercity travel. Therefore, the term "intercity trips" was not added since it would be redundant.

The comment was made by a State that the term "highway element" was too broad and encompassing. Clarification to the term "highway element" was added by modifying the term to read "highway elements providing intermodal terminal access."

The definition of intermodal facilities was also modified in response to several

comments by replacing truck terminals with the term major truck terminals. This change will provide consistency with § 500.707 which identifies major truck terminals as part of the intermodal transportation system.

Section 500.705 IMS General Requirements

This section was entitled "Policy" in the NPRM. The title is changed to "IMS general requirements" in the interim final rule to be consistent with the section titles for the other management systems. Section 500.705 requires States to develop, establish, and implement, on a continuous basis an IMS that meets the requirements set forth in § 500.707. Further, it defines the issues that shall be addressed by the IMS and requires coordination and integration with metropolitan and statewide transportation planning and the other management systems.

Several commenters suggested that transit providers be changed to transportation providers. The interim final rule was modified to indicate that coordination and cooperation should take place between planners, users, and transportation providers.

Comments were made concerning the proposed requirement to achieve the most efficient transportation movement. In order to meet the intent of the ISTEA, the interim final rule was modified and uses the statutory language of achieving the optimum yield from the intermodal transportation system.

Section 500.707 IMS Components

This section was entitled "Management system structure" in the NPRM. The title is changed to "IMS components" in the interim final rule to be consistent with the section titles of the other management systems. This section sets forth processes and procedures that must be included in a State IMS and requires coordination among the States and MPOs. The processes and procedures consist of identification of intermodal facilities and performance measures, data collection and system monitoring, performance evaluation, and identification of strategies and actions. Also the expected results of an IMS are described.

In order to maintain consistency with the other subparts, § 500.707(b) was retitled performance measures. Several commenters were concerned that an IMS should not establish standards since the expectation of service will vary between communities and private industry. The interim final rule requires the development of performance measures rather than efficiency measures and performance standards.

Several commenters interpreted the U.S. DOT's data collection requirements discussed in § 500.707(c) in the NPRM as data collection requirements for the States. As discussed above under the *Summary of General IMS Comments*, the intent was to foster coordination of the data needs of the U.S. DOT and of the States to minimize duplication of effort. Since this was not a requirement, the language has been removed from the interim final rule.

A State DOT indicated that under § 500.707(c) the base year inventory should consist of the physical and operating characteristics rather than the physical condition and operational characteristics. Section 500.707(c) was changed and the base year inventory will include data for physical and operating characteristics. This change provides consistency with the remaining portion of the section.

Several commenters stated that high speed rail, maglev systems, and just-in-time delivery evaluations should not be required as part of the IMS. Section 303(e) of title 23, U.S.C., requires the intermodal management system to include methods for increasing the use of advanced technologies, and methods to encourage the use of innovative marketing techniques, such as just-in-time deliveries. The NPRM used high speed rail and maglev as examples of advanced technology that may be evaluated where appropriate. The reference to maglev has been removed from the interim final rule, but high speed rail has been retained because of its greater potential for implementation. Just-in-time delivery has been retained because it is specifically cited in the legislation. Flexibility is provided in the final regulation by requiring, as appropriate for the individual State or region, evaluation of innovative technology and encouragement of innovative marketing techniques.

Section 500.707(f), "Implementation," in the NPRM was in effect a summary of the expected end results of the IMS. The substance of this paragraph has been incorporated into § 500.709, IMS compliance schedule, in the interim final rule.

Section 500.709 IMS Compliance Schedule

This section, which has been added to the interim final rule, sets forth the maximum time periods for implementing State IMSs. The FHWA and the FTA recognize that the development, establishment, and implementation of an IMS is a new requirement. The operation of an IMS will be a continuous process of refinement and improvement. As a minimum, the States are expected to have implemented the IMS elements identified in § 500.707 by October 1, 1995. The IMS must provide input to statewide and metropolitan area transportation plans, improvement programs, and project selection processes by October 1, 1996.

Subpart H—Traffic Monitoring System for Highways

Paragraph (b) of 23 U.S.C. 303 indicates that the traffic monitoring system is for both highways and public transportation facilities and equipment. Because of the special monitoring needs of each of these components, the NPRM and the interim final rule indicate that separate monitoring systems should be developed for highways and for non-highway public transportation facilities and equipment. Subpart H of the current rulemaking concerns the traffic monitoring system for highways (TMS/H) including public transportation on public roads and highways. Guidance on traffic monitoring for non-highway public transportation facilities and equipment is included in subpart F of this interim final rule.

A total of 38 commenters responded to the TMS/H portion of the NPRM. The commenters consisted of 28 State agencies, 5 National/regional interest groups/associations, 2 transit operators, 2 regional planning agencies/MPOs, and 1 local agency. The majority of commenters did not indicate serious disagreement with the proposed rule but many suggested minor changes or clarifications. A few expressed areas of major disagreement or concern with some provisions. The areas of concern and the resulting changes to the rulemaking are discussed below.

Summary of TMS/H Comments

Comment

A number of commenters were of the opinion that development of regulatory material for a traffic monitoring system in advance of the development of the six management systems was premature. These commenters felt that since the traffic monitoring system and the management systems are in similar sections of both the law and proposed regulations, the traffic monitoring system is intended to serve only the management systems.

Response

Section 500.801 in the NPRM is reflected in § 500.805 in the interim final rule and both enumerate various uses of traffic data that would be

supported by a traffic monitoring system. These uses range from individual project design to national U.S. DOT studies. The management systems are only one of seven identified uses. Recognizing that the needs for traffic data will continue to evolve, both the proposed and interim final rule look to the data users both within and outside of government, as well as users at various levels of government, to identify their traffic data needs. Every attempt has been made to assure that the traffic monitoring systems that are developed as a result of this rule will emphasize the particular data needs within each State while requiring only the most critical data in support of national programs.

Comment

The NPRM discussed precision from the standpoint of the need to meet the needs of the data user in § 500.805(b)(1) and to have data collection equipment that met certain objective criteria in § 500.805(b)(5)(i). A number of commenters disagreed with setting such criteria.

Response

Section 500.807(b) in the interim final rule continues to look to the data user to identify precision requirements, but § 500.807(f)(1) removes any reference to a fixed set of criteria or testing cycle to be met by the equipment used for traffic data collection. The interim final rule calls for the State, in cooperation with the data users, to develop criteria appropriate to the State's needs.

Comment

A large number of the commenters identified the need for a longer period in which to fully implement a traffic monitoring system from that called for in § 500.805(a) in the NPRM.

Response

This change has been made in § 500.809. The interim final rule emphasizes the near term need for a plan of implementation for a TMS/H with the next phase of this implementation being focused on the principal arterial system (or the National Highway System when it is adopted by the Congress) and the final phase covering the application of the TMS/H to all other highways covered by the rule.

Comment

Section 500.805(b)(4) in the NPRM required the collection of vehicle occupancy data. Some commenters felt that the requirement should be limited to specific systems or areas of the State.

Response

Section 500.807(e) in the interim final rule requires each State to determine, cooperatively with the users of the data, the level of vehicle occupancy data gathering needed to be responsive to the various uses of traffic data identified in the rule. The interim final rule requires that the traffic data collection program manager and the data users determine the most appropriate method of collecting these data. A number of commenters incorrectly inferred that roadside surveys were the only appropriate method of collecting this type of data. Such surveys are not always the most appropriate or effective occupancy data collection method. The interim final rule clearly indicates that the States are free to use any method that is acceptable to the data collection organization, the data users, and to the FHWA. Further, the FHWA encourages that existing programs that collect vehicle occupancy data be used whenever possible. The data collectors and users are also free to determine the most appropriate geographic scope for the collection of occupancy data including statewide to site specific depending on the needs of the data user. One respondent felt that vehicle occupancy data should be a part of the CMS, but the utility of occupancy data beyond that of congestion management makes the TMS/H the most appropriate source for occupancy data as well as any other traffic data that has multiple uses.

Comment

Various commenters felt that the requirement in § 500.805(b)(4) in the NPRM that vehicle occupancy data be collected on a three-year cycle was too stringent.

Response

In § 500.807(e) in the interim final rule, collection of vehicle occupancy data, is related to the need to refresh existing data based on an evaluation of the existing data at three-year intervals. This change allows the data collection program manager flexibility in structuring the program and focusing resources.

Comment

A significant data initiative under § 500.805(b)(3)(ii) in the NPRM was the collection of vehicle classification data on the NHS. Certain commenters felt that the NPRM was too arbitrary in the identification of monitoring sites and in determining the intensity of monitoring that would be expected.

Response

In § 500.807(d)(2) in the interim final rule, the expected level of monitoring is reduced from that proposed in the NPRM and the data collection program manager is allowed broader latitude in determining when data collection is warranted. As in the NPRM, the interim final rule requires that vehicle classification data be collected on a three-year cycle on the NHS, but the definition of the data collection locations has been made less stringent and the recognition that data collected during a single monitoring session may be descriptive of a number of related locations is reflected. These various changes will reduce the potential data collection burden in both rural and urban areas. The interim final rule has also been amended to indicate that, until the NHS is approved by the Congress, this vehicle classification activity will apply to the system of principal arterials.

Comment

A number of commenters noted that strict use of functional classification of highways specified in § 500.805(b)(7) in the NPRM may not be the most appropriate method of structuring the TMS/H within each State.

Response

Recognizing that there may be valid administrative or statistical reasons for using highway groupings other than functional classification, § 500.807(h) in the interim final rule avoids requiring the structuring of the data collection program strictly by functional classification of highways.

Comment

Section 500.805(b)(2) in the NPRM identified the need for a continuous monitoring program as part of a TMS/H. The NPRM treated the continuous collection of vehicle classification and vehicle weight data as being in support of the estimation of average annual conditions of vehicle classification and vehicle weight at individual highway locations. Recognizing that development of such estimates of average annual conditions of vehicle classification and vehicle weight was outside the scope or beyond the needs of many State traffic data collection programs, § 500.805(b)(3) in the NPRM allowed the reporting of other than annual average estimates if such estimates were clearly identified as not being annual averages.

Response

Some commenter responses focused on the NPRM's call for continuous vehicle classification and weight

monitoring without recognizing that if this was not done, an alternative process was available to estimate vehicle classification and weight data. Section 500.807(c) in the interim final rule encourages the use of continuous vehicle classification or weighing as appropriate within each State's data collection program, but does not require the adjustment of short term vehicle classification and weighing data to estimates of average annual conditions on the basis of continuous vehicle classification and weighing. Section 500.807(d)(1) in the interim final rule continues the NPRM's requirement that estimates of traffic that have not been adjusted to reflect annual average conditions be noted as unadjusted.

Comment

The NPRM reflected many of the major elements of the AASHTO Traffic Guidelines. These Guidelines identify 10 years as an appropriate retention period for traffic data and this was used in § 500.805(b)(6)(ii) in the NPRM. State agencies that commented on the retention period were in opposition although some non-State organizations felt that the retention period should be longer.

Response

In reviewing the intent of the NPRM, it was determined that data retention periods are a function of the use of the data. Since § 500.807(b) in the interim final rule clearly states that the traffic data collection program is to be responsive to user needs, it is not necessary to elaborate on this central idea by specifying a data retention period.

Comment

While most commenters did not object to inclusion of highway-related public transportation person and vehicular travel data as part of the TMS/H as proposed in § 500.801 in the NPRM, a few commenters felt strongly that such data should be part of the PTMS.

Response

In reviewing the uses of the data from the TMS/H, as well as the content of the PTMS, it was determined that the TMS/H is the most appropriate system for obtaining this type of data. Vehicle classification uses techniques that monitor all vehicle types in the traffic stream, including highway public transportation vehicles. Such classification data are a derivative of the traffic data collection process whether or not highway public transportation vehicle data may be reported elsewhere. Section 500.807(e) in the interim final rule recognizes that existing public transportation data collection programs may be the most efficient method of obtaining public transportation occupancy data and permits the use of such sources when they are available.

Comment

Section 500.805(b)(3) in the NPRM emphasized that certain types of factors are to be used in estimating average annual traffic conditions. Specifically, the estimating process is to account for the time of year and the time of week when the data were collected. The use of axle sensing devices as vehicle monitors requires that the count of axles be translated into an equivalent number of vehicles. Further, in the interval between conducting actual counts at a location, it is necessary to adjust count data based on estimates of traffic growth. While there was general agreement among the commenters that the estimating process needed to include each of these adjustments to the collected data, the commenters pointed out that there were various factoring approaches and factor definitions that could achieve the same end.

Response

To accommodate alternative approaches, § 500.807(h)(1) in the interim final rule retains the requirement to make the types of adjustments identified above, but allows the States to use methods and/or factors other than those found in the FHWA Traffic Monitoring Guide to make the identified adjustments.

Comment

A few commenters felt strongly that certain types of data or data collection methods should be required beyond those identified in the NPRM. These commenters felt that the collection of pedestrian data and the use of household based travel surveys should be a part of the rule.

Response

The interim final rule does not preclude collection of pedestrian data or the use of household surveys. The States and other involved agencies are in the best position to cooperatively determine the need for such data collection activities.

Comment

A small number of commenters felt that other vehicle types or vehicle groupings were more appropriate than those identified in the NPRM.

Response

The NPRM and the interim final rule seek to identify a minimum set of vehicle types so as to reduce the data collection burden and to identify only those vehicle types critical to meeting the intent of particular sections of the rule. The rule does not prohibit the collection of data on particular vehicle types, such as single-unit trucks, or the collection of data in greater detail than called for in the interim final rule.

Comment

A very limited number of commenters sought increased intervention by the FHWA into the management of State traffic data collection programs. These commenter responses included such topics as requiring the installation of traffic data collection devices, requiring that equipment be certified by the FHWA or reporting data on a calendar year basis only.

Response

These suggestions would lead to unnecessarily prescriptive requirements and are not included in the interim final rule.

Comment

Appropriate levels of documentation were discussed by a small number of commenters, especially the degree to which existing documentation could be used and how often such documentation would need to be available to the FHWA.

Response

It is not the intent of the rule to require that new documentation be developed if existing documentation is responsive to the rule. Similarly, as §§ 500.807(f)(2) and (h)(2) in the interim final rule indicate, annual submission of documentation is not expected and only a single submission of the documentation to the FHWA is needed with the submission of revisions as they occur. Section 500.805(e) requires a finding of acceptability of procedures only when alternatives to the FHWA recommendations are proposed for use. Documentation of field operations is expected to be able to respond to questions related to the bias in the data that may result from atypical temporal or geographic patterns of data collection or in the use of equipment that may have been found not to be within acceptable levels of operation.

Comment

The NPRM describes the collection of a limited amount of data types for public transportation operating on public highways. A few commenters felt

additional direction was needed in the collection of traffic data related to public transportation.

Response

The FHWA and the FTA reviewed the proposal, including the guidance on traffic monitoring for non-highway public transportation facilities and equipment included in subpart F, and determined that any additional detail in the interim final rule would be unnecessarily prescriptive. This rulemaking does not prohibit the collection of data beyond that described in the interim final rule.

Comment

A few commenters questioned the relationship of the TMS/H to the management systems.

Response

As mentioned earlier, the TMS/H is expected to serve a variety of traffic data needs. One of these needs is to provide traffic data to support each of the management systems. To the maximum extent practical, data gathered as part of the TMS/H should be used in the management systems; therefore, operators of the management systems should be among the users consulted to determine the type and accuracy of data to be collected by the TMS/H.

Comment

One commenter asked whether the use of the terms "rural arterials" and "urban arterials" in the NPRM was meant to identify new functional classes.

Response

They are not new functional classes, but were used to identify functional classifications that were considered to be related for purposes of reference in the NPRM. These terms are not used in the interim final rule.

Comment

The question of whether only the functional classifications identified in the NPRM should be the basis of the estimate of all travel on public highways within a State, i.e., the statewide vehicle miles of travel, was raised by one commenter.

Response

The identified functional classes in the NPRM serve only a portion of a State's highway travel. It is expected that those data users needing traffic data for functional classes beyond those in the interim final rule will provide guidance on which classes and the accuracy needed for any traffic estimates.

Comment

One commenter felt that the HPMS, AASHTO Traffic Guidelines, and the TMG should be combined into a single document.

Response

Since each of these serves different purposes, ranging from the collection of data for a national data base through recommendations of best State practices to guidance on meeting FHWA traffic data needs, such a synthesis is not felt appropriate or necessary and is beyond the scope of this rulemaking.

Comment

A commenter suggested that summarization of collected data is a significant aspect of any TMS/H.

Response

This suggestion identifies an important activity and is reflected in the definition of the TMS/H in § 500.803.

Comment

One commenter to the ANPRM suggested that the 1992 proceedings of the Transportation Research Board Conference "Transportation Data Needs: Programs for a New Era: Implications for State DOTs and MPOs" be considered in the development of the interim final rule.

Response

The report of these proceedings became available after the issuance of the NPRM and were reviewed by the FHWA. The findings of this report are reflected in the interim final rule's recognition that the traffic data collection program must remain responsive to the needs of the data user.

Section-by-Section Analysis

Section 500.801 Purpose

The rulemaking provides a policy for the development and implementation of a TMS/H. Material that defines a TMS/H was originally in this section in the NPRM but has been moved to § 500.803, TMS/H definitions. This section directs the reader to subpart F for guidance on traffic monitoring for non-highway public transportation facilities and equipment.

Section 500.803 TMS/H Definitions

Review of the definitions used in the NPRM suggested that since most were taken from the AASHTO Traffic Guidelines, it was not necessary to include them in the rule. Only the definitions for "Highway traffic data" and "Traffic monitoring system for highways" have been retained.

One State noted that "highway traffic data" is needed in order to make traffic characteristic estimates. The definition has been modified to recognize this need.

The definition of "Traffic monitoring system for highways," which was in § 500.801, Purpose, in the NPRM, has been modified and moved to § 500.803 in the interim final rule. Summarization of data has been added as a distinct activity within a TMS/H. In addition, since this rule does not require the reporting of TMS/H data, but the data would be analyzed to develop the travel estimates referenced in the definition of "highway traffic," the word "reporting" has been replaced with "analysis" in the interim final rule.

Section 500.805 TMS/H General Requirements

This section contains material that appeared in §§ 500.801 and 500.805(a) in the NPRM.

One State commented that the rule should emphasize that it applies only to public roads. The language in this section has been modified to clarify that only public roads are covered. It also was modified by deleting language that duplicated the definition of a TMS/H.

This section indicates that the TMS/H should reflect the concepts described in the AASHTO Traffic Guidelines and should be responsive to the concepts of the FHWA's TMG. In addition, the TMS/H shall be able to supply traffic data needed for the HPMS. A State's TMS/H must include all public roads, both on and off State administered systems, except those that have a functional classification of rural minor collector, rural local or urban local or those that are federally owned. Coverage of federally owned public roads will be determined cooperatively by the State, the FHWA, and the agencies that own the roads. Recognizing that various approaches may achieve the objectives of a TMS/H, States are allowed to use procedures other than those specified in the rulemaking if the alternative procedures are found acceptable by the FHWA. Nothing in this section is intended to prohibit the collection of other types of traffic data needed for the administration of the highway program, such as vehicle weights for enforcement purposes, axle weights for pavement research, bicycle travel data for use in the management of bicycle programs, adherence to national and local speed limits, or provision of level of service.

Section 500.807 TMS/H Components

This section contains material that appeared in § 500.805, Policy, in the NPRM. The various changes to the

paragraphs that appeared in the NPRM are described below.

Paragraph (a) stresses that each State's TMS/H is to positively address the elements described in paragraphs (b) through (h) of the § 500.807.

Paragraph (b), "Precision of reported data," indicates that intensity of the TMS/H data gathering effort should reflect the precision needed by the data user. The section also emphasizes that a State's TMS/H is to meet the statistical precision of data established by the FHWA for the HPMS. This feature of a TMS/H makes the data user an active participant in the formation of the traffic data gathering program. The requirement in the NPRM that the precision of data be supplied if requested by the data user was determined to be unnecessary and was removed.

Paragraph (c), "Continuous counter operations," specifies that an analysis of the data needs to be addressed and the accuracy of the data expected by the data user is necessary in order to determine the appropriate number of continuous counters. The rulemaking emphasizes the importance of the continuous count program for a State's TMS/H to be able to track changes in highway travel patterns and to provide for the development of day-of-week, seasonal and growth factors. The interim final rule differs from the NPRM in that it removes references to the continuous count program being structured on the basis of functional classification of highways. The interim final rule recognizes that factors other than those specifically identified in the rule may meet the rule's intent. Finally, discussion of conformance to the HPMS has been removed.

Paragraph (d), "Short term traffic monitoring," specifies that data collected to estimate traffic volumes using short term traffic monitoring procedures must be adjusted to annual average daily traffic to provide comparability from one location or time of data collection to another location or time of data collection. The interim final rule identifies the factors to be used and recognizes that States may develop other factors to meet the rule's intent. Unadjusted count data are to be identified as being unadjusted when they are reported.

Because of the high national interest in better monitoring of the nations's heavy truck movements (and therefore motor freight flows) more intense vehicle classification activities are specified for the NHS in paragraph (d)(2). The interim final rule requires that vehicle classification activities be sufficient to ensure that, on a three year cycle, every major system segment of the principal arterial system (defined as between interchanges or intersections of principal arterials with other principal arterials making up this system) will be monitored to provide information on the numbers of single-trailer combination trucks, multiple-trailer combination trucks, two-axle four-tire vehicles, buses and the total number of vehicles operating on an average day. The interim final rule differs from the NPRM in not differentiating between rural and urban monitoring. The interim final rule also allows the application of data from a monitoring session to adjoining system segments if the State determines that the segments serve similar traffic. The procedures are to be applied to all principal arterials until the NHS is approved by the Congress.

Paragraph (e), "Vehicle occupancy monitoring," specifies that data are to be collected on the average number of persons per automobile, light two-axle truck, or bus. The data are to support the uses identified in § 500.805, TMS/H general requirements, in the interim final rule. The decisions as to duration, geographic extent and level of detail of such data collection are left to the organizations that collect and use the data. The requirement in the NPRM that data are to be collected every three years has been changed. The interim final rule requires review of the available data and, based on that review, a determination if additional data need to be collected. Although the interim final rule identifies specific data collection methods that could be used, other data collection methods mutually acceptable to the responsible organizations and the FHWA may also be used.

Paragraph (f)(1) of § 500.807, "Field operations," in the interim final rule requires that a State's TMS/H have documented procedures for testing of traffic monitoring equipment. The NPRM's testing cycle has been deleted from the interim final rule. While test procedures developed by national organizations may be used, their use is not required by the interim final rule. Various equipment accuracies found in the NPRM do not appear in the interim final rule.

In paragraph (f)(2), the documentation for a TMS/H has been abbreviated from that in the NPRM and now includes the number of counts, the period of monitoring, the cycle of monitoring, and the spatial and temporal distribution of count sites.

In paragraph (g), "Source data retention," the NPRM called for the retention of the data as originally collected, when and where the data were collected, and the identity of the specific machine(s) used in the data collection. Under the interim final rule, the data as originally collected does not need to be retained if a new traffic estimate based on more current data is developed. The interim final rule does not require retention of information identifying the specific machine used to collect traffic data. Although data need not be retained in any specific format, a State's TMS/H must be able to provide data in formats compatible with the FHWA guidance.

Paragraph (h)(1) of § 500.807, "Office factoring procedures," in the interim final rule specifies that factors to be applied to short counts are to be reviewed annually with updating at least every three years. This is a change from the NPRM which called for annual revision of the factors.

In paragraph (h)(2), emphasis is placed on adherence by the State to its documented procedures for the derivation of annual traffic estimates based on short counts. This emphasis is necessary in order to assure that each data analyst within a State will be following the same procedures. Application of the same procedures will assure that each analyst will produce the same estimate of annual travel given the same original data. The documented procedures will include the factors to be applied when making an estimate of average traffic conditions. The documentation will remain available as long as the estimates resulting from the application of the procedures remain current.

Unlike the NPRM, the interim final rule does not require the rounding of adjustment factors or of the resulting travel estimates.

Section 500.809 TMS/H Compliance Schedule

This section identifies three stages of implementation for the TMS/H. By October 1, 1994, a work plan is to be formally established that results in application of the TMS/H process to the NHS by October 1, 1995, and to the other functional classes identified in the interim final rule by October 1, 1996. By October 1, 1995, the TMS/H is to be applied to the principal arterial system, or to the NHS when it is approved by the Congress. By October 1, 1996, the TMS/H is to be applied to all other highways identified in the interim final rule.

Rulemaking Analyses and Notices

Executive Order 12866 (Regulatory Planning and Review) and DOT Regulatory Policies and Procedures

The FHWA and the FTA consider this rulemaking to be a significant regulatory

action under Executive Order 12866 and a significant regulation under the regulatory policies and procedures of the DOT because of substantial State, local government, congressional and public interest. These interests involve infrastructure management, receipt of Federal financial support for transportation investments, and compliance with legislative requirements.

This regulation implements section 1034 of the ISTEA which expressly requires that States implement the identified management and monitoring systems. The legislative mandate to implement the management and monitoring systems creates a responsibility for the Federal government to ensure effective investment of public funds and maintenance of federally funded infrastructure improvements. In developing this regulation, the FHWA and the FTA have sought to minimize the administrative burden on States and local governments. This regulation builds upon existing requirements and State practices, especially in the areas of pavement, bridge, safety, congestion relief, and traffic monitoring programs.

The ISTEA also requires that metropolitan and statewide transportation planning processes consider operation and maintenance of existing transportation systems. To this end, metropolitan and statewide transportation plans and improvement programs must consider the outputs of these management systems which are designed to address the current and future performance of the intermodal transportation system.

This regulation reflects the benefits of integrating the long term development of infrastructure with the management of existing systems, the value of cooperative planning and investment decisions, and the cost savings obtainable by utilizing the same data in multiple analytical activities. Effective use of the management systems should reduce the need for new capacity and prolong the useful life of existing infrastructure.

The management systems requirements are new only in a relative sense. In response to longstanding concerns regarding the prudent management of infrastructure, many States and MPOs have already adopted the rudiments of these processes or have fully operational systems. The FHWA and the FTA believe that most States and local governmental units have processes and procedures that parallel the basic requirements for these systems. The effect of this regulation would be to strengthen these processes and procedures by emphasizing performance of the transportation system through the analysis of data to support better informed transportation investment decisionmaking. Further, the regulation allows State and local determination of needed performance data and the utilization of existing data sources where possible.

Reports to the Federal government have been minimized through reliance on State certification of management systems implementation and integration of systems outputs into the planning process. Hence, because of the differing levels of implementation of management systems from State to State, it is difficult to estimate any additional burden of the regulation until the requirements are known to the implementing agencies and more reliable information can be obtained. The FHWA and the FTA believe that any additional costs to State and local governments to develop and implement these systems will be minimal, in view of current processes and procedures, and that these costs will be offset by the benefits.

To assist in further evaluation and public comment of the impacts of this rule, particularly in the areas of data gathering and analysis, the agencies have prepared a preliminary Regulatory Evaluation which has been placed in the docket. The Regulatory Evaluation also covers impacts relating to a companion rule on Statewide and metropolitan planning, 58 FR 58040, October 28, 1993 (FHWA Dockets 93–4 and 93–5).

Regulatory Flexibility Act

In compliance with the Regulatory Flexibility Act (5 U.S.C. 601–612), the FHWA and the FTA have evaluated the effects of this rule on small entities, such as local governments and businesses. This regulation would require States, in cooperation with MPOs, local governments, and others, to develop and implement the management and monitoring systems required by section 1034 of the ISTEA. Several categories of Federal funds that are available for these purposes are identified in the rule. Because the FHWA and the FTA believe that the cost of implementing these systems will be minimal and because Federal funds are available for these activities, the FHWA and the FTA believe that this rule will not have a significant economic impact on a substantial number of small entities. Accordingly, the FHWA and the FTA certify that this rulemaking would not have a significant economic impact on a substantial number of such entities.

Executive Order 12612 (Federalism Assessment)

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612. Section 303 of title 23, U.S.C., requires the Secretary to issue regulations and requirements/guidelines to implement the management and traffic monitoring system provisions. The rule recognizes the role of States, MPOs, local governments, and operators of transportation systems and facilities in implementing these systems. Accordingly, it is certified that the policies contained in this document have been assessed in light of the principles, criteria, and requirements of the Federalism Executive Order. It has been determined that this rule does not have sufficient Federalism implications to warrant a full Federalism Assessment under the principles and criteria contained in Executive Order 12612.

Executive Order 12372 (Intergovernmental Review)

Catalog of Federal Domestic Assistance Program Numbers 20.205, Highway Planning and Construction, 20.505, FTA Technical Studies Grants, and 20.507, Capital and Operating Assistance Formula Grants. The regulations implementing Executive Order 12372 regarding intergovernmental consultation on Federal programs and activities apply to these programs.

Paperwork Reduction Act

The creation and submission of required reports and documents have been limited to those necessary for performance of the FHWA's and the FTA's legislative and administrative responsibilities. The legislation requires the States to certify annually that they are implementing the management systems. The Secretary must also report annually to the Congress on progress being made in implementing the legislative provisions. The rule requires that States provide a work plan with the first certification and information on the status of implementation for use in preparing the Secretary's report as part of each annual certification statement. It is estimated that the burden per year for the States to provide the certifications and status information will be approximately 12,480 hours. The one-time burden to develop the work plans for each of the seven systems is estimated to be 29,120 hours. (These information collection requirements have been approved by the Office of Management and Budget (OMB) under control number 2125–0555.) No other

information is required to be reported under this regulation. However, additional data may need to be collected by some States and other involved agencies for some of the management and monitoring systems. The FHWA and the FTA estimate that the burden for this additional data may range up to a maximum of 500,000 hours per year. After issuance of this interim final rule, the FHWA and the FTA will obtain additional information to better estimate this burden and will submit an amended request to the OMB for approval of any additional information collection.

National Environmental Policy Act

The FHWA and the FTA have analyzed this action for the purpose of the National Environmental Policy Act of 1969 (42 U.S.C. 4321 *et seq.*) and have determined that this action would not have any effect on the quality of the environment.

Regulation Identification Number

A regulation identification number (RIN) is assigned to each regulatory action listed in the Unified Agenda of Federal Regulations. The Regulatory Information Service Center publishes the Unified Agenda in April and October of each year. The RIN contained in the heading of this document can be used to cross reference this action with the Unified Agenda.

List of Subjects

23 CFR Part 500

Bridges, Grant programs—transportation, Highway traffic safety, Highways and roads, Mass transportation, Reporting and recordkeeping requirements.

23 CFR Part 626

Design standards, Grant programs—transportation, Highways and roads.

49 CFR Part 614

Grant programs—transportation, Mass transportation.

Issued on: November 22, 1993.

Rodney E. Slater,

Federal Highway Administrator.

Gordon J. Linton,

Federal Transit Administration.

In consideration of the foregoing, Chapter I of title 23, Code of Federal Regulations and Chapter VI of 49 CFR are amended as set forth below.

23 CFR CHAPTER I

1. The heading of subchapter F of 23 CFR Chapter I is revised and a new part 500 is added to subchapter F to read as follows:

SUBCHAPTER F—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

PART 500—MANAGEMENT AND MONITORING SYSTEMS

Subpart A—General

Sec.

500.101 Purpose.
500.103 Definitions.
500.105 Development, establishment, and implementation of the systems.
500.107 Compliance.
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Subpart B—Pavement Management System

500.201 Purpose.
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500.205 PMS general requirements.
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500.401 Purpose.
500.403 SMS definitions.
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500.501 Purpose.
500.503 CMS definitions.
500.505 CMS general requirements.
500.507 CMS components.
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Subpart F—Public Transportation Facilities and Equipment Management System

500.601 Purpose.
500.603 PTMS definitions.
500.605 PTMS general requirements.
500.607 PTMS components.
500.609 PTMS compliance schedule.

Subpart G—Intermodal Facilities and Systems Management System

500.701 Purpose.
500.703 IMS definitions.
500.705 IMS general requirements.
500.707 IMS components.
500.709 IMS compliance schedule.

Subpart H—Traffic Monitoring System for Highways

500.801 Purpose.
500.803 TMS/H definitions.
500.805 TMS/H general requirements.
500.807 TMS/H components.
500.809 TMS/H compliance schedule.

Authority: 23 U.S.C. 134, 135, 303 and 315; 49 U.S.C. app. 1607; 23 CFR 1.32; and 49 CFR 1.48 and 1.51.

Subpart A—General

§ 500.101 Purpose.

The purpose of this part is to implement the requirements of 23 U.S.C. 303, Management Systems, which requires State development, establishment, and implementation of systems for managing highway pavement of Federal-aid highways (PMS), bridges on and off Federal-aid highways (BMS), highway safety (SMS), traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS). Section 303 also requires State development, establishment, and implementation of a traffic monitoring system for highways and public transportation facilities and equipment. This subpart includes definitions and general requirements that are applicable to all of these systems. Additional requirements applicable to a specific system are included in subparts B through H of this part.

§ 500.103 Definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) are applicable to this part. As used in this part:

Certifying official(s) means the position(s) designated by the Governor of a State or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia to certify that the management system(s) is/are being implemented in the State.

Cooperation means working together to achieve a common goal or objective.

Federal agency(ies) means for the PMS and BMS, the Federal Highway Administration (FHWA); for the SMS, the FHWA and the National Highway Traffic Safety Administration; for the CMS, PTMS, and IMS, the FHWA and the Federal Transit Administration (FTA).

Federal-aid highways means those highways eligible for assistance under title 23, U.S.C., except those functionally classified as local or rural minor collectors.

Highway Performance Monitoring System (HPMS) means the State/Federal system used by the FHWA to provide information on the extent and physical condition of the nation's highway system, its use, performance, and needs. The system includes an inventory of the nation's highways including traffic volumes.

Life-cycle cost analysis means a procedure for evaluating the economic worth of one or more projects or investments by discounting future costs

over the life of the project or investment.

Management system means a systematic process, designed to assist decisionmakers in selecting cost-effective strategies/actions to improve the efficiency and safety of, and protect the investment in, the nation's transportation infrastructure. A management system includes: Identification of performance measures; data collection and analysis; determination of needs; evaluation and selection of appropriate strategies/actions to address the needs; and evaluation of the effectiveness of the implemented strategies/actions.

Metropolitan planning area means the geographic area in which the metropolitan transportation planning process required by 23 U.S.C. 134 and section 8 of the Federal Transit Act (49 U.S.C. app. 1607) must be carried out.

Metropolitan planning organization (MPO) means the forum for cooperative transportation decisionmaking for a metropolitan planning area.

National highway system (NHS) means the system of highways designated and approved in accordance with the provisions of 23 U.S.C. 103(b).

Performance measures means operational characteristic, physical condition, or other appropriate parameters used as a benchmark to evaluate the adequacy of transportation facilities and estimate needed improvements.

State means any one of the fifty States, the District of Columbia, or Puerto Rico.

Transportation Management Area (TMA) means an urbanized area with a population over 200,000 (as determined by the latest decennial census) or other area when TMA designation is requested by the Governor and the MPO (or affected local officials), and officially designated by the Administrators of the FHWA and the FTA. The TMA designation applies to the entire metropolitan planning area(s).

Work plan means a written description of major activities necessary to develop, establish, and implement a management or monitoring system, including identification of responsibilities, resources, and target dates for completion of the major activities.

§ 500.105 Development, establishment, and implementation of the systems.

(a) Each State shall develop, establish, and implement the systems identified in § 500.101. Each State shall tailor the systems to meet State, regional, or local goals, policies, and resources, but the systems must meet the requirements as specified in subparts B through H of this part. Documentation that describes each management system shall be maintained by the States for the Federal agencies to determine, on a periodic basis, whether the systems meet the requirements in this subpart and subparts B through H of this part, as applicable.

(b) Each State shall have procedures, within the State's organization, for coordination of the development, establishment, implementation and operation of the management systems. The procedures must include:

(1) An oversight process to assure that adequate resources are available for implementation and that target dates in the work plan(s) are met;

(2) The use of data bases with a common or coordinated reference systems and methods for data sharing; and

(3) A mechanism to address issues related to the purposes of more than one management system.

(c) In developing and implementing each management system, the State shall cooperate with MPOs in metropolitan areas, local officials in non-metropolitan areas, affected agencies receiving assistance under the Federal Transit Act and other agencies (including private owners and operators) that have responsibility for operation of the affected transportation systems or facilities.

(d) In accordance with the provisions of 23 U.S.C. 134(i)(3) and 49 U.S.C. app. 1607(i)(3) and the requirements of 23 CFR part 450, the CMS shall be part of the metropolitan planning process in TMAs.

(e) Within metropolitan planning areas, the CMS, PTMS, and IMS shall, to the extent appropriate, be part of the metropolitan transportation planning process required under the provisions of 23 U.S.C. 134 and 49 U.S.C. app. 1607.

(f) In metropolitan planning areas that have more than one MPO and/or that include more than one State, the establishment, development, and implementation of the CMS, PTMS, and IMS shall be coordinated among the State(s) and MPO(s) to ensure compatibility of the systems and their results.

(g) The results (e.g., policies, programs, projects, etc.) of the individual management systems shall be considered in the development of metropolitan and statewide transportation plans and improvement programs and in making project selection decisions under title 23, U.S.C., and under the Federal Transit Act.

(h) The roles and responsibilities of the State, MPO(s), recipients of assistance under the Federal Transit Act, and other agencies involved in the development, establishment, and implementation of each system shall be mutually determined by the parties involved. A State may enter into agreements with local governments, regional agencies (such as MPOs), recipients of funds under the Federal Transit Act, or other entities to develop, establish, and implement appropriate parts of any or all of the systems, but the State shall be responsible for overseeing and coordinating such activities.

(i) Section 204(a) of title 23, U.S.C., requires the Secretary in cooperation with the Secretaries of the Interior and Agriculture to develop the safety, bridge and pavement management systems for Federal lands highways, as defined in 23 U.S.C. 101(a). To avoid duplication of effort, the management systems required under this part should be used to the extent appropriate to fulfill the requirement in 23 U.S.C. 204(a) regarding establishment and implementation of pavement, bridge, and safety management systems for Federal lands highways. The State, the Federal agencies, and the agencies that own the roads shall cooperatively determine responsibility for coverage of Federal lands highways under their respective jurisdictional control and shall ensure that the results of the PMS, BMS, and SMS for Federal lands highways are available, as appropriate, for consideration in developing metropolitan and statewide transportation plans and improvement programs and are provided to the FHWA for use in developing Federal lands highway programs.

(j) Each management system must include appropriate means to evaluate the effectiveness of implemented actions developed through use of that system. The effectiveness of the management systems in enhancing transportation investment decisions and improving the overall efficiency of the State's transportation systems and facilities shall be evaluated periodically, preferably as part of the metropolitan and statewide planning processes.

§ 500.107 Compliance.

(a) States must be implementing the management systems specified in subparts B through G of this part beginning in Federal fiscal year 1995 (October 1, 1994 to September 30, 1995) and must certify annually to the Secretary of Transportation that they are implementing each of the management systems. A State shall be considered to be implementing a management system if the system is under development or in use in accordance with the

compliance schedule for that system as specified in subparts B through G of this part.

(b) The Governor of the State or the Commonwealth of Puerto Rico or the Mayor of the District of Columbia shall notify the FHWA Division Administrator in writing by September 30, 1994, of the title(s) of the certifying official(s) for each management system. If there is a change in designated position(s), the State shall provide documentation of the revised designation with, or prior to, the next annual certification. In those States where responsibility for all of the management systems is within a single agency (e.g., State DOT), designation of one certifying official for all of the management systems is recommended.

(c) The certification statement(s) shall be submitted by the certifying official(s) to the FHWA Division Administrator by January 1 of each year, beginning January 1, 1995. To the extent possible, one certification statement should cover all six management systems. If more than one certification statement will be submitted by a State, the statements should be coordinated at the State level and submitted simultaneously. The first certification statement shall include a copy of the workplan(s), required in accordance with the compliance schedule for each management system, and a summary of the status of implementation of the management system(s). Subsequent certification statement(s) shall include a summary of the status of implementation of each management system and a discussion of planned corrective actions for any management system(s) or subsystem(s) that are not under development or fully operational in accordance with the compliance schedule and work plan for the management system.

(d) The FHWA Division Administrator will provide copies of the certification statement(s) and any relevant supporting documentation and correspondence to other Federal agencies identified for the specific system(s) in § 500.103. Within 90 days of receipt, the Federal agencies will review the certification and the FHWA Division Administrator will notify the State whether the certification is acceptable or if sanctions may be imposed in accordance with the provisions of § 500.109.

(e) A State shall be considered to be implementing the traffic monitoring system for highways (TMS/H), specified in subpart H of this part, if the system is under development or in use in accordance with the compliance schedule in § 500.809. The State shall submit the work plan for the TMS/H to the FHWA Division Administrator by January 1, 1995.

(The information collection requirements in paragraphs (c) and (e) of § 500.107 have been approved by the Office of Management and Budget under control number 2125–0555.)

§ 500.109 Sanctions.

(a) Beginning January 1, 1995, if a State fails to certify annually as required by this regulation, or if the Federal agencies determine that any management system or subsystem, specified in subparts B through G of this part, is not being adequately implemented, notwithstanding the State's certification(s), the Secretary may withhold up to 10 percent of the funds apportioned to the State under title 23, U.S.C., and to any recipient of assistance under the Federal Transit Act for any fiscal year beginning after September 30, 1995. Sanctions may be imposed on a statewide basis, on a subarea of a State, for specific categories of funds or types of projects, or for specific recipients or subrecipients of funds under title 23, U.S.C., or under the Federal Transit Act depending on the adequacy of implementation of the management systems.

(b) While a State may enter into agreements with local governments or other agencies to develop, establish, and implement all or parts of the management systems, in accordance with § 500.105(g), the State shall be responsible for ensuring that the systems are being implemented statewide and for taking any necessary corrective action, including implementing the systems at the regional and local levels if necessary.

(c) Prior to imposing a sanction, a State will be notified in writing by the FHWA of the sanction(s) to be imposed, the reasons for the sanctions, and the actions necessary to correct the deficiencies. After 60 days from the date of notification to the State, the Federal agencies will consider any corrective actions proposed by the State and the FHWA will notify the State if such actions are acceptable or if sanctions are to be applied.

(d) In instances where a State, or responsible sub-unit of a State or recipient of funds under the Federal Transit Act, has not fully implemented all of the management systems, consideration shall be given by the Federal agencies to efforts underway or planned to make the systems fully operational within a reasonable time period.

(e) To the extent that they have not lapsed, funds withheld pursuant to this subpart shall be made available to the State or recipient under the Federal Transit Act upon a determination by the Federal agencies that the management systems are being adequately implemented.

§ 500.111 Funds for development, establishment, and implementation of the systems.

(a) The following categories of funds may be used for development, establishment, and implementation of any of the management and monitoring systems: National Highway System, Surface Transportation Program, FHWA State planning and research and metropolitan planning funds (including the optional use of minimum allocation funds authorized under 23 U.S.C. 157(c) for carrying out the provisions of 23 U.S.C. 307(c)(1) and 23 U.S.C. 134(a)), Federal Transit Act Section 8 (49 U.S.C. app. 1607), Federal Transit Act Section 9 (49 U.S.C. app. 1607a), Federal Transit Act Section 26(a)(2) (49 U.S.C. app. 1622(a)(2)), and Federal Transit Act Section 26(b)(1) (49 U.S.C. app. 1626(b)(1)). Congestion Mitigation and Air Quality Improvement Program funds (23 U.S.C. 104(b)(2)) may be used for those management systems that can be shown to contribute to the attainment of a national ambient air quality standard. Apportioned bridge funds (23 U.S.C. 144(e)) may be used for development and establishment of the bridge management system.

(b) Federal funds identified in paragraph (a) of this section used for development, establishment, or implementation of the management and monitoring systems shall be administered in accordance with the procedures and requirements applicable to the category of funds.

§ 500.113 Acceptance of existing management systems.

(a) Existing State laws, rules, or procedures that the Federal agencies determine fulfill the purposes of a management system, or portion thereof, as specified in this part may be accepted by the Federal agencies in lieu of development and implementation of a new system.

(b) If a State has existing laws, rules, or procedures that it wants to use to meet the requirements of this part, it shall submit a written request to the FHWA Division Administrator that the Federal agencies accept the existing management system in lieu of development of a new system. The request shall include a discussion, and any necessary supporting documentation, that shows how the existing system meets the requirements of this part. The documentation shall reflect the views of the MPOs, transit

operators, and other affected agencies, as appropriate, and the actions to be taken to assure that the cooperation required under § 500.105(c) is established.

(c) Upon receipt of a request, the FHWA Division Administrator will coordinate review of the request with the other Federal agencies specified in § 500.103 and with appropriate FHWA offices. Within 90 days of receipt of the State's request, the FHWA will notify the State that the existing system is either fully acceptable, acceptable subject to specific modifications, or unacceptable and that a new system must be developed.

(d) To meet the compliance schedule for a system, the State must submit any requests under paragraph (a) of this section no later than June 1, 1994.

Subpart B—Pavement Management System

§ 500.201 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a pavement management system (PMS) for Federal-aid highways in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.203 PMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Pavement design means a project level activity where detailed engineering and economic considerations are given to alternative combinations of subbase, base, and surface materials which will provide adequate load carrying capacity. Factors which are considered include: materials, traffic, climate, maintenance, drainage, and life-cycle costs.

Pavement management system (PMS) means a systematic process that provides, analyzes, and summarizes pavement information for use in selecting and implementing cost-effective pavement construction, rehabilitation, and maintenance programs.

§ 500.205 PMS general requirements.

(a) Each State shall have a PMS for Federal-aid highways that meets the requirements of § 500.207 of this subpart.

(b) The State is responsible for assuring that all Federal-aid highways in the State, except those that are federally owned, are covered by a PMS. Coverage of federally owned public roads shall be determined cooperatively by the State, the FHWA, and the agencies that own the roads.

(c) PMSs should be based on the concepts described in the "AASHTO Guidelines for Pavement Management Systems." [1]

(d) Pavements shall be designed to accommodate current and predicted traffic needs in a safe, durable, and cost-effective manner.

§ 500.207 PMS components.

(a) The PMS for the National Highway System (NHS) shall, as a minimum, consist of the following components:

(1) Data collection and management.

(i) An inventory of physical pavement features including the number of lanes, length, width, surface type, functional classification, and shoulder information.

(ii) A history of project dates and types of construction, reconstruction, rehabilitation, and preventive maintenance.

(iii) Condition surveys that include ride, distress, rutting, and surface friction.

(iv) Traffic information including volumes, classification, and load data.

(v) A data base that links all data files related to the PMS. The data base shall be the source of pavement related information reported to the FHWA for the HPMS in accordance with the HPMS Field Manual.[2]

(2) Analyses, at a frequency established by the State consistent with its PMS objectives.

(i) A pavement condition analysis that includes ride, distress, rutting, and surface friction.

(ii) A pavement performance analysis that includes an estimate of present and predicted performance of specific pavement types and an estimate of the remaining service life of all pavements on the network.

(iii) An investment analysis that includes:

(A) A network-level analysis that estimates total costs for present and projected conditions across the network.

(B) A project level analysis that determines investment strategies including a prioritized list of recommended candidate projects with recommended preservation treatments that span single-year and multi-year periods using life-cycle cost analysis.

(C) Appropriate horizons, as determined by the State, for these investment analyses.

(iv) For appropriate sections, an engineering analysis that includes the evaluation of design, construction, rehabilitation, materials, mix designs, and preventive maintenance as they relate to the performance of pavements.

(3) Update. The PMS shall be evaluated annually, based on the agency's current policies, engineering criteria, practices, and experience, and updated as necessary.

(b) The PMS for Federal-aid highways that are not on the NHS shall be modeled on the components described in paragraph (a) of this section, but may be tailored to meet State and local needs. These components shall incorporate the use of the international roughness index or the pavement serviceability rating data as specified in Chapter IV of the HPMS Field Manual.

§ 500.209 PMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the PMS on the NHS by October 1, 1995, and on non-NHS Federal-aid highways by October 1, 1997.

(b) By October 1, 1995:

(1) The PMS for the NHS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs; and

(2) PMS design for non-NHS Federal-aid highways shall be completed or underway in accordance with the State's work plan.

(c) By October 1, 1997, the PMS for non-NHS Federal-aid highways shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart C—Bridge Management System

§ 500.301 Purpose.

The purpose of this subpart is to set forth requirements for the development, establishment, implementation, and continued operation of a management system for bridges (BMS) on and off Federal-aid highways in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

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[1] AASHTO Guidelines for Pavement Management Systems, July 1990, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base, DOT/FHWA, August 30, 1993. (FHWA Order M5600.1B). Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

§ 500.303 BMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Bridge management system (BMS) means a decision support tool that supplies analyses and summaries of data, uses mathematical models to make predictions and recommendations, and provides the means by which alternative policies and programs may be efficiently considered. A BMS includes formal procedures for collecting, processing, and updating data, predicting deterioration, identifying alternative actions, predicting costs, determining optimal policies, performing short- and long-term budget forecasting, and recommending programs and schedules for implementation within policy and budget constraints.

Elements means the components of a bridge important from a structural, user, or cost standpoint. Examples are decks, joints, bearings, girders, abutments, and piers.

Multiperiod optimization means a procedure that optimally allocates limited funds among alternative actions over a planning horizon (both short and longterm) using an optimization procedure such as minimizing life-cycle and user costs. The modeling procedure accounts for traffic growth and deterioration, and facilitates analyses of the effects of alternative policies, budgets, and operational practices on the future conditions and long-term serviceability of the bridge inventory.

Network level analysis means an analysis pertaining to policy, system planning, programmatic, or budgeting issues for the whole bridge inventory on a roadway network or a subset thereof.

Serviceability means the degree to which a bridge provides satisfactory service from the users' point of view.

User costs means costs borne by bridge users, traveling on or beneath the structure and excess costs to those who cannot use the bridge due to load or clearance restrictions. It includes travel time, motor vehicle operating, and accident costs that are measured on site or estimated using models.

§ 500.305 BMS general requirements.

Each State shall have a BMS for bridges on and off Federal-aid highways that includes the components identified in § 500.307 of this subpart. Except for federally owned bridges, all bridges required to be inventoried and inspected under 23 CFR part 650, subpart C—National Bridge Inspection Standards, shall be included. Each State shall maintain a centralized data base that contains the BMS data for bridges on and off Federal-aid highways, except those that are federally owned. The State shall implement network analysis procedures that are capable of analyzing data for all bridges in the inventory or in any subset including inventories within any MPO jurisdiction or within a local agency jurisdiction. Local bridge owners may supplement the State BMS with a locally operated system that is tailored to their particular needs. Coverage of federally owned bridges on public roads shall be determined cooperatively by the State, the FHWA, and the agencies that own the bridges.

§ 500.307 BMS components.

(a) A State BMS shall include, as a minimum, the components identified in paragraphs (b) and (c) of this section.

(b) A data base and an ongoing program for the collection and maintenance of the inventory, inspection, cost, and supplemental data needed to support the BMS.

(c) A rational and systematic procedure for applying network level analysis and optimization to the bridge inventory. The procedure shall have the ability to:

(1) Predict the deterioration of bridge elements with and without intervening actions.

(2) Identify feasible actions to improve bridge condition, safety, and serviceability.

(3) Estimate the cost of actions.

(4) Estimate expected user cost savings for safety and serviceability improvements.

(5) Determine least-cost maintenance, repair, and rehabilitation strategies for bridge elements using life-cycle cost analysis or a comparable procedure.

(6) Perform multiperiod optimization.

(7) Use feedback from actions taken to update prediction and cost models.

(8) Generate summaries and reports as needed for the planning and programming processes.

§ 500.309 BMS compliance schedule.

(a) By October 1, 1994, the State shall have formalized its BMS objectives and developed a work plan that identifies major activities and responsibilities for BMS development and implementation. The work plan shall include a schedule that demonstrates full operation and use of the BMS by October 1, 1998.

(b) By October 1, 1995, the design of the BMS shall be completed or underway in accordance with the State's work plan and full-scale data collection shall be underway.

(c) By October 1, 1998, the BMS shall be fully operational and shall result in the identification of bridge needs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart D—Highway Safety Management System

§ 500.401 Purpose.

The purpose of this subpart is to set forth requirements for the development, establishment, implementation, and continued operation of a highway safety management system (SMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.403 SMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Highway safety means the reduction of traffic crashes, and deaths, injuries, and property damage resulting therefrom, on public roads.

Highway safety management system (SMS) means a systematic process that has the goal of reducing the number and severity of traffic crashes by ensuring that all opportunities to improve highway safety are identified, considered, implemented as appropriate, and evaluated in all phases of highway planning, design, construction, maintenance, and operation and by providing information for selecting and implementing effective highway safety strategies and projects.

Operations means activities associated with managing, controlling, and regulating highway traffic.

§ 500.405 SMS general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis, an SMS for all public roads, except federally owned public roads. Coverage of federally owned public roads shall be determined cooperatively by the State, the federal agencies, and the agencies that own the roads.

(b) The SMS shall incorporate the roadway, human, and vehicle safety elements. Formalized and interactive communication, coordination, and cooperation shall be established among the organizations responsible for these major safety elements including: enforcement, emergency medical services, emergency response, motor carrier safety, motor vehicle administration, State highway safety agencies, the public health community, State and local transportation/highway agencies, and State and local railroad and/or trucking regulatory agencies. State agencies shall also coordinate, as appropriate, with Local Technical Assistance Program centers to develop

and expand the SMS expertise of local transportation agencies.

(c) The State shall consider and include, where appropriate, projects and programs identified by use of the SMS in its Highway Safety Plan (HSP) (23 CFR 1204.4, Supp. B) and Motor Carrier Safety Assistance Program State Enforcement Plan (SEP) (49 CFR part 350). In addition the results of the SMS shall be considered in developing metropolitan and statewide transportation plans and improvement programs.

(d) Each State shall assign a focal point for coordination of the development, establishment, and implementation of the SMS among the agencies responsible for the roadway, human, and vehicle safety elements.

(e) While the SMS applies to all public roads, in addition to tailoring the system to meet State, regional and local goals, policies, and resources, the extent of system requirements (e.g., data collection, analyses, and standards) for rural minor collectors and local roads may be further tailored to be consistent with the functional classification of the road. However, adequate detail must be included for each functional classification to provide for effective safety decisions in the administration of highway transportation by State and local agencies.

§ 500.407 SMS components.

(a) Plans, processes, procedures, and practices shall be established to implement, coordinate, and evaluate programs, projects, and activities of the five major areas identified in paragraph (b) of this section. These plans, processes, procedures, and practices, shall incorporate, as appropriate:

(1) Establishment of short- and long-term highway safety goals to address both existing and anticipated safety problems as well as substandard highway locations, designs, and features, and to allocate resources;

(2) Establishment of accountability by identifying and defining the safety responsibilities of units and positions;

(3) Recognition of institutional and organizational initiatives through identification of disciplines involved in highway safety at the State and local level, assessment of multi-agency responsibilities and accountability, and establishment of coordination, cooperation, and communication mechanisms;

(4) Collection, maintenance, and dissemination of data necessary for identifying problems and determining improvement needs. Data bases and data sharing shall be integrated as necessary to achieve maximum utilization of existing and new data within and among the agencies responsible for the roadway, human, and vehicle safety elements. These records, as a minimum, shall consist of information pertaining to: crashes, traffic (including number of trains at highway-rail crossings), pedestrians, enforcement activities, vehicles, bicyclists, drivers, highways, and medical services;

(5) Analysis of available data, multi-disciplinary and operational investigations, and comparisons of existing conditions and current standards to assess highway safety needs, select countermeasures, and set priorities;

(6) Evaluation of the effectiveness of activities that relate to highway safety performance to guide future decisions;

(7) Development and implementation of public information and education activities to educate and inform the public on safety needs, programs, and countermeasures that affect safety on the nation's highways; and

(8) Identification of skills, resources, and current and future training needs to implement the State's activities and programs affecting highway safety, development of a program to carry out necessary training, and development of methods for monitoring and disseminating new technology and incorporating effective results.

(b) Five major areas shall be addressed in structuring the SMS:

(1) Coordinating and integrating broad base safety programs (such as motor carrier, corridor, and community based traffic safety activities) into a comprehensive management approach for highway safety;

(2) Identifying and investigating hazardous or potentially hazardous highway safety problems, roadway locations and features (including railroad-highway grade crossings) and establishing countermeasures and priorities to correct the identified hazards or potential hazards;

(3) Ensuring early consideration of safety in all highway transportation programs and projects;

(4) Identifying safety needs of special user groups (such as older drivers, pedestrians, bicyclists, motorcyclists, commercial motor carriers, and hazardous material carriers) in the planning, design, construction, and operation of the highway system; and

(5) Routinely maintaining and upgrading safety hardware (including highway-rail crossing warning devices), highway elements, and operational features.

§ 500.409 SMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the SMS by October 1, 1996.

(b) By October 1, 1995, the SMS shall be complete or underway in accordance with the State's work plan.

(c) By October 1, 1996, the SMS shall be fully operational and shall provide highway safety strategies, actions, projects, or programs for consideration in the development of the HSP, the SEP and metropolitan and statewide and transportation plans and improvement programs, and for coordination and implementation in the operational activities of the State and local agencies.

Subpart E—Traffic Congestion Management System

§ 500.501 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a system for managing traffic congestion (CMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part. The requirement in 23 U.S.C. 134 that the transportation planning process in a transportation management area (TMA) include a congestion management system is also covered by this subpart and by 23 CFR part 450.

§ 500.503 CMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Congestion means the level at which transportation system performance is no longer acceptable due to traffic interference. The level of acceptable system performance may vary by type of transportation facility, geographic location (metropolitan area or subarea, rural area) and/or time of day.

Congestion management system (CMS) means a systematic process that provides information on transportation system performance and alternative strategies to alleviate congestion and enhance the mobility of persons and goods. A CMS includes methods to monitor and evaluate performance, identify alternative actions, assess and implement cost-effective actions, and evaluate the effectiveness of implemented actions.

§ 500.505 CMS general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis,

a CMS that results in the identification and implementation of strategies that provide the most efficient use of existing and future transportation facilities in all areas of a State, including metropolitan and non-metropolitan areas, where congestion is occurring or is expected to occur. The State, the Federal agencies, and the agencies that own the facilities shall cooperate to manage congestion on federally owned facilities.

(b) In both metropolitan and non-metropolitan areas, consideration shall be given to strategies that reduce single-occupant-vehicle (SOV) travel and improve existing transportation system efficiency. Where the addition of general purpose lanes is determined to be an appropriate strategy, explicit consideration shall be given to the incorporation of appropriate features into the SOV project to facilitate future demand management and operational improvement strategies to maintain the functional integrity of those lanes.

(c) All transportation corridors or facilities with existing or potential recurring congestion shall be identified and an assessment of the level of the current or potential congestion shall be made on a continuing basis. Based on this assessment, the geographical area to be covered and the transportation facilities to be included in the CMS shall be established, except that the entire metropolitan planning area shall be included in TMAs that are nonattainment for carbon monoxide and/or ozone. Coverage of facilities and activities shall be sufficient to accurately reflect any cumulative effects that the implementation of a combination of physical improvements and/or areawide transportation policy decisions may have on transportation system performance.

(d) In all TMAs, the CMS shall be part of the metropolitan planning process in accordance with 23 CFR 450.120(b).

(e) In addition to the other requirements of this subpart, in a TMA designated as nonattainment for carbon monoxide and/or ozone, the CMS shall provide an appropriate analysis of all reasonable (including multimodal) travel demand reduction and operational management strategies for the corridor in which a project that will result in a significant increase in capacity for SOVs (adding general purpose lanes to an existing highway or constructing a new highway) is proposed. If the analysis demonstrates that travel demand reduction and operational management strategies cannot fully satisfy the need for additional capacity in the corridor and additional SOV capacity is warranted, then the CMS shall identify all reasonable strategies to manage the SOV facility effectively (or to facilitate its management in the future). Other travel demand reduction and operational management strategies appropriate for the corridor, but not appropriate for incorporation into the SOV facility itself shall also be identified through the CMS. As required by 23 CFR 450.320(b), all identified reasonable travel demand reduction and operational management strategies shall be incorporated into the SOV project or committed to by the State and MPO for implementation.

(f) In areas that are nonattainment for transportation related pollutants, the strategies developed as part of the CMS shall be coordinated with the process for the development of the transportation control measures of the State implementation plan for air quality required under the provisions of the Clean Air Act.

(g) Because of their interrelationship, the development, establishment, and implementation of the CMS shall be coordinated with the development, establishment, and implementation of the public transportation management system and the intermodal management system described in subparts F and G, respectively, of this part.

§ 500.507 CMS components.

(a) *Performance measures.* Parameters shall be defined that will provide a measure of the extent of congestion and permit the evaluation of the effectiveness of congestion reduction and mobility enhancement strategies for the movement of people and goods. Since acceptable system performance may vary among local communities, performance measures shall be established cooperatively by the State and affected MPO(s) or local officials in consultation with the operators of major modes of transportation in the coverage area.

(b) *Data collection and system monitoring.* A continuous program of data collection and system monitoring shall be established to determine and monitor the duration and magnitude of congestion and to evaluate the effectiveness of implemented actions. To the extent possible, existing data sources, such as, the HPMS and FTA Section 15 data, should be used.

(c) *Identification and evaluation of proposed strategies.* The 'anticipated performance and expected benefits of traditional and nontraditional strategies that will contribute to the more efficient use of existing and future transportation systems shall be identified and evaluated based on the established performance measures. Strategies, or combinations of strategies, to be appropriately considered include, but are not limited to:

(1) Transportation demand management measures, such as, carpooling, vanpooling, alternative work hours, telecommuting, and parking management;

(2) Traffic operational improvements, such as, intersection and roadway widening, channelization, traffic surveillance and control systems, motorist information systems, ramp metering, traffic control centers, and computerized signal systems;

(3) Measures to encourage high occupancy vehicle (HOV) use, such as, HOV lanes, HOV ramp bypass lanes, guaranteed ride home programs, and employer trip reduction ordinances;

(4) Public transit capital improvements, such as, exclusive rights-of-way (rail, busways, bus lanes), bus bypass ramps, park and ride and mode change facilities, and paratransit services;

(5) Public transit operational improvements, such as, service enhancement or expansion, traffic signal preemption, fare reductions, and transit information systems;

(6) Measures to encourage the use of nontraditional modes such as bicycle facilities, pedestrian facilities, and ferry service;

(7) Congestion pricing;

(8) Growth management and activity center strategies;

(9) Access management techniques;

(10) Incident management;

(11) Intelligent vehicle-highway system and advanced public transportation system technology; and

(12) The addition of general purpose lanes.

(d) *Implementation of strategies.* For each strategy (or combination of strategies) proposed for implementation, an implementation schedule, implementation responsibilities, and possible funding sources shall be identified.

(e) *Evaluation of the effectiveness of implemented strategies.* A process for periodic assessment of the effectiveness of implemented strategies, in terms of the area's established performance measures, shall be implemented. The results of this evaluation shall be provided to decisionmakers to provide guidance on selection of effective strategies for future implementation.

§ 500.509 CMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the CMS in

TMAs that are nonattainment for ozone and/or carbon monoxide by October 1, 1995, and in all other areas by October 1, 1996. The most critical areas requiring analysis shall be identified and data collection activities shall be initiated.

(b) By October 1, 1995:

(1) In TMAs that are nonattainment for ozone and/or carbon monoxide, the CMS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs. Until the CMS in a TMA that is nonattainment for carbon monoxide and/or ozone is fully operational in accordance with the requirements of this subpart, the interim CMS requirements in 23 CFR 450.336(b) regarding the programming of Federal funds for a highway or transit project that significantly increases capacity for SOVs shall be met; and

(2) In all other areas, system design shall be completed or underway in accordance with the State's work plan and full-scale data collection shall be underway.

(c) By October 1, 1996, the CMS shall be fully operational in all areas and shall provide projects and programs for consideration in developing of metropolitan and statewide transportation plans and improvement programs.

Subpart F—Public Transportation Facilities and Equipment Management System

§ 500.601 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a system for managing public transportation facilities and equipment (PTMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.603 PTMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Public transportation facilities and equipment management system (PTMS) means a systematic process that collects and analyzes information on the condition and cost of transit assets on a continual basis. It identifies needs as inputs to the metropolitan and statewide planning processes enabling decisionmakers to select cost-effective strategies for providing and maintaining assets in a serviceable condition.

Transit assets means public transportation facilities (e.g., maintenance facilities, stations, terminals, transit related structures), equipment, and rolling stock.

§ 500.605 PTMS general requirements.

(a) Each State shall develop, establish, and implement on a continuing basis a PTMS that covers urban and rural area public transportation systems operated by the State, local jurisdictions, public transportation agencies and authorities, and private (for profit and non-profit) transit operators receiving funds under Federal Transit Act sections 3, 9 (capital and operating), 16, or 18 (49 U.S.C. app. 1602, 1607a, 1612, or 1614) and public transportation systems operated by contracted service providers with capital equipment funded under Federal Transit Act sections 3, 9, 16 or 18.

(b) The PTMS shall be developed, established, and implemented in cooperation with recipients and subrecipients of funds under Federal Transit Act sections 3, 9, 16, or 18.

(c) Transit assets shall be designed to accommodate current and predicted use or ridership in a safe and cost effective manner.

(d) Because of their interrelationship, the development, establishment, and implementation of the PTMS shall be coordinated with the development, establishment, and implementation of the congestion management system and the intermodal management system described in subparts E and G, respectively, of this part.

§ 500.607 PTMS components.

(a) *Identification of condition measures.* Measures and standards suitable for evaluating the condition of the transit assets shall be developed. The measures and standards shall reflect State, metropolitan planning organization, and local transit operator goals and objectives for safety, efficiency, and reliability. The standards shall reflect the necessity to maintain transit assets in a good state of repair.

(b) *Data collection and system monitoring.* Data collection and system monitoring for the PTMS shall be coordinated with data for the congestion management, intermodal management, and traffic monitoring systems and shall include, as a minimum:

(1) Base year comprehensive inventory of the transit assets. For each type of asset in the inventory, information collected should include age, condition, remaining useful life, and replacement cost. Transit asset data shall be collected in cooperation with metropolitan planning organizations and transit operators at a frequency and level of detail appropriate to the type of capital stock of the transit system.

(2) Number of vehicles and ridership data for dedicated transit rights-of-way (e.g., rail and busways), at the maximum load points for the peak period in the peak direction and for the daily time period. Data related to highway transit vehicles and ridership will be collected as part of the highway traffic monitoring system as specified in subpart H of this part.

(c) *Identification and evaluation of proposed strategies and projects.* Information provided by data collection and system monitoring activities shall be used to determine the condition of all transit assets previously inventoried, needs and schedules for major maintenance or replacement, and the estimated replacement costs.

(d) *Implementation of strategies and projects.* The costs, potential funding sources, and priorities of proposed strategies and projects shall be identified. The strategies and projects shall be evaluated for potential inclusion in metropolitan and statewide transportation plans and improvement programs.

§ 500.609 PTMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the PTMS by October 1, 1996.

(b) By October 1, 1995, condition measures and data system structure shall be established and data collection shall be underway.

(c) By October 1, 1996, the PTMS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart G—Intermodal Facilities and Systems Management System

§ 500.701 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a system for managing intermodal facilities and systems (IMS) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part.

§ 500.703 IMS definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a) and § 500.103 are applicable to this subpart. As used in this part:

Intermodal facility means a transportation element that accommodates and interconnects

different modes of transportation and serves intrastate, interstate, and international movement of people and goods. Intermodal facilities include, but are not limited to, highway elements providing terminal access, coastal, inland and Great Lakes ports, canals, pipeline farms, airports, marine and/or rail terminals, major truck terminals, transit terminals including park and ride facilities, intercity bus terminals.

Intermodal management system (IMS) means a systematic process of identifying key linkages between one or more modes of transportation, where the performance or use of one mode will affect another, defining strategies for improving the effectiveness of these modal interactions, and evaluation and implementation of these strategies to enhance the overall performance of the transportation system.

Intermodal system means a transportation network consisting of public and private infrastructure for moving people and goods using various combinations of transportation modes.

§ 500.705 IMS general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis, an IMS that provides efficient, safe, and convenient movement of people and goods through integration of transportation facilities and systems and that improves the coordination in planning, and implementation of air, water, and the various land-based transportation facilities and systems.

(b) The IMS shall address intermodal transportation needs by a process that considers the following issues:

(1) *Connections.* The convenient, rapid, efficient, and safe transfers of people and goods among modes that characterize comprehensive and economic transportation service.

(2) *Choices.* Opportunities afforded by modal systems that allow transportation users to select their preferred means of conveyance.

(3) *Coordination and cooperation.* Collaborative efforts of planners, users, and transportation providers to resolve travel demands by investing in dependable, high-quality transportation service either by a single mode or by two or more modes in combination.

(c) The IMS shall consider the movement of both people and goods, alternatives for meeting transportation demands involving combinations of modes, and provide timely and appropriate information for intermodal transportation decisions for site-specific intermodal facilities, as well as the systems necessary to achieve the most efficient transportation movement.

(d) Because of their interrelationship, the development, establishment, and implementation of the IMS shall be coordinated with the development, establishment, and implementation of the congestion management system and the public transportation management system described in subparts E and F, respectively, of this part.

(e) In metropolitan planning areas that have more than one MPO and/or include more than one State, the development, establishment, and implementation of the IMS shall be coordinated to ensure consistency in the development of intermodal facilities, systems, plans, and programs.

§ 500.707 IMS components.

(a) *Identification of intermodal facilities.* The IMS shall identify intermodal facilities and intermodal transportation systems and establish the demands placed upon them to accommodate intrastate, interstate, and/or international movements of people and goods.

(b) *Identification of performance measures.* Parameters shall be identified that are suitable to measure and evaluate the efficiency of intermodal facilities and systems in moving people and goods from origin to destination. Parameters may include the total travel time, cost, and volumes for moving cargo and passengers, origins and destinations, capacity, accidents, ease of access, perceived quality, and the average time to transfer people or freight from one mode to another. Since the expectations and measurements of transportation quality of service vary between communities and industries, performance measures shall be established cooperatively at the State and local levels with private sector coordination, as appropriate.

(c) *Data collection and system monitoring.* The IMS shall include a continuing data collection and system monitoring program that is coordinated with data collection and system monitoring programs for the congestion management, public transportation management, and traffic monitoring systems. It shall include a base year inventory consisting of physical and operational characteristics of intermodal facilities and systems, and surveys of the operational and physical characteristics of intermodal facilities and systems based on performance measures established by State and local transportation agencies. Operational characteristics may include time, cost, capacity, and usage. This information should be obtained, to the extent possible, from the ongoing metropolitan and statewide planning processes. States shall coordinate their data collection programs with programs of the U.S. DOT.

(d) *System and facility efficiency evaluation.* Data collection and system monitoring shall be used by the States and local agencies to evaluate the performance of intermodal facilities and systems to determine the efficiency of the movement of people and goods.

(e) *Strategy and action identification and evaluation.* Statewide and local strategies and actions that improve the intermodal efficiency for the movement of people and goods shall be developed and evaluated. Methods for increasing productivity and the use of advanced technologies (such as, high speed rail) and innovative marketing techniques (such as, just-in-time delivery) shall be evaluated where appropriate. The evaluation program shall determine what project or combination of projects and actions would most effectively improve the intermodal productivity of transportation systems, in terms of the established performance measures, for both the short and long term.

§ 500.709 IMS compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the IMS by October 1, 1996. Intermodal facilities shall be inventoried and data collection activities shall be initiated.

(b) By October 1, 1995, performance measures and standards shall be established, system design shall be completed or underway in accordance with the State's work plan, and full-scale data collection shall be underway.

(c) By October 1, 1996, the IMS shall be fully operational and shall provide projects and programs for consideration in developing metropolitan and statewide transportation plans and improvement programs.

Subpart H—Traffic Monitoring System for Highways

§ 500.801 Purpose.

The purpose of this subpart is to set forth requirements for development, establishment, implementation, and continued operation of a traffic monitoring system for highways (TMS/H) in each State in accordance with the provisions of 23 U.S.C. 303 and subpart A of this part. Requirements for traffic monitoring for non-highway public transportation facilities and equipment is included in subpart F of this part.

§ 500.803 TMS/H definitions.

Unless otherwise specified in this part, the definitions in 23 U.S.C. 101(a)

and § 500.103 are applicable to this subpart. As used in this part:

Highway traffic data means data used to develop estimates of the amount of person or vehicular travel, vehicle usage or vehicle characteristics associated with a system of highways or with a particular location on a highway. These types of data support the estimation of the number of vehicles traversing a section of highway or system of highways during a prescribed time period (traffic volume), the portion of such vehicles that may be of a particular type (vehicle classification), the weights of such vehicles including the weight of each axle and associated distances between axles on a vehicle (vehicle weight), or the average number of persons being transported in a vehicle (vehicle occupancy).

Traffic monitoring system for highways means a systematic process for the collection, analysis, summary, and retention of highway related person and vehicular traffic data, including public transportation on public highways and streets.

§ 500.805 TMS/H general requirements.

(a) Each State shall develop, establish, and implement, on a continuing basis, a TMS/H to be used by Federal departments and agencies, States, local governments, other public agencies, or private agencies when:

(1) The data are supplied to the U.S. Department of Transportation (U.S. DOT);

(2) The data are used in support of the management systems required under 23 U.S.C. 303;

(3) The data are used in support of studies or systems which are the responsibility of the U.S. DOT;

(4) The collection of the data is supported by the use of Federal funds provided from programs of the U.S. DOT;

(5) The data are used in the apportionment or allocation of Federal funds;

(6) The data are used in the design or construction of a Federal-aid project; or

(7) The data are required as part of a federally mandated program.

(b) The TMS/H should be based on the concepts described in the American Association of State Highway and Transportation Officials (AASHTO) "AASHTO Guidelines for Traffic Data Programs" [1] and the FHWA "Traffic Monitoring Guide," [2] and shall be consistent with the HPMS Field Manual.[3]

(c) The TMS/H shall cover all public roads except those functionally classified as local or rural minor collector or those that are federally owned. Coverage of federally owned public roads shall be determined cooperatively by the State, the FHWA, and the agencies that own the roads.

(d) The State's TMS/H shall apply to the activities of local governments and other public or private non-State government entities collecting data within the State if the collected data are to be used for any of the purposes enumerated in § 500.805(a) of this subpart.

(e) Procedures other than those referenced in this subpart may be used if the alternative procedures are documented by the State to furnish the precision levels as defined for the various purposes enumerated in § 500.805(a) of this subpart and are found acceptable by the FHWA.

(f) Nothing in this subpart shall prohibit the collection of additional traffic data if such data are needed in the administration or management of a highway activity or are needed in the design of a highway project.

§ 500.807 TMS/H components.

(a) *General.* Each State's TMS/H, including those using alternative procedures, shall affirmatively address the components in paragraphs (b) through (h) of this section.

(b) *Precision of reported data.* Traffic data supplied for the purposes identified in § 500.805(a) of this subpart shall be to the statistical precision applicable at the time of the data's collection as specified by the data users at various levels of government. A State's TMS/H shall meet the statistical precisions established by FHWA for the HPMS.

(c) *Continuous counter operations.* Within each State, there shall be sufficient continuous counters of traffic volumes, vehicle classification, and vehicle weight to provide estimates of changes in highway travel patterns and to provide for the development of day-of-week, seasonal, axle correction, growth factors or other comparable factors approved by the FHWA that support the development of traffic estimates to meet the statistical precision requirements of the data uses identified in § 500.805(a) of this subpart. As appropriate, sufficient continuous counts of vehicle classification and vehicle weight should be available to address traffic data program needs.

(d) *Short term traffic monitoring.* (1) Count data for traffic volumes collected in the field shall be adjusted to reflect annual average conditions. The estimation of annual average daily traffic will be through the appropriate application of only the following: Seasonal factors, day-of-week factors and when necessary, axle correction and growth factors or other comparable factors approved by the FHWA. Count data that have not been adjusted to represent annual average conditions will be noted as being unadjusted when they are reported. The duration and frequency of such monitoring shall comply to the data needs identified in § 500.805(a) of this subpart.

(2) Vehicle classification activities on the National Highway System (NHS), shall be sufficient to assure that, on a cycle of no greater than three years, every major system segment (defined as between interchanges or intersections of principal arterials of the NHS with other principal arterials of the NHS) will be monitored to provide information on the numbers of single-trailer combination trucks, multiple-trailer combination trucks, two-axle four-tire vehicles, buses and the total number of vehicles operating on an average day. If it is determined that two or more continuous major system segments have both similar traffic volumes and distributions of the vehicle types identified above, a single monitoring session will be sufficient to monitor these segments. Until the NHS is approved by the Congress, these procedures shall apply to the principal arterial system in each State.

(e) *Vehicle occupancy monitoring.* As deemed appropriate to support the data uses identified in § 500.805(a) of this subpart, data will be collected on the average number of persons per automobile, light two-axle truck, and bus. The duration, geographic extent and level of detail shall be consistent with the intended use of the data, as cooperatively agreed to by the organizations that will use and the organizations that will collect the data. Such vehicle occupancy data shall be reviewed at a minimum of every three years and updated as necessary. Acceptable data collection methods include roadside monitoring, traveler surveys, the use of administrative records, such as, accident reports,

[1] *AASHTO Guidelines for Traffic Data Programs*, 1992, ISBN 1–56051–054–4, can be purchased from the American Association of State Highway and Transportation Officials, 444 N. Capitol Street, NW., suite 225, Washington, DC 20001. Available for inspection as prescribed in 49 CFR part 7, appendix D.

[2] *Traffic Monitoring Guide*, DOT/FHWA, publication No. FHWA-PL–92–017, October 1992. Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

[3] *Highway Performance Monitoring System (HPMS) Field Manual for the Continuing Analytical and Statistical Data Base*, DOT/FHWA, August 30, 1993 (FHWA Order M5600.1B). Available for inspection and copying as prescribed in 49 CFR part 7, appendix D.

reports developed in support of public transportation programs or any other method mutually acceptable to the responsible organizations and the FHWA.

(f) *Field operations.* (1) Each State's TMS/H shall include the testing of equipment used in the collection of highway traffic data. This testing shall be based on documented procedures developed by the State. This documentation will describe the test procedure as well as the frequency of testing. Standards of the American Society for Testing and Materials or guidance from the AASHTO may be used. Only equipment passing the test procedures will be used for the collection of data for the purposes identified in § 500.805(a) of this subpart.

(2) Documentation of field operations shall include the number of counts, the period of monitoring, the cycle of monitoring, and the spatial and temporal distribution of count sites. Copies of the State's documentation shall be provided to the FHWA when it is initially developed and after each revision.

(g) *Source data retention.* For estimates of traffic or travel, the value or values collected during a monitoring session, as well as information on the date(s) and hour(s) of monitoring, will remain available until the traffic or travel estimates based on the count session are updated. Data shall be available in formats that conform to those in the version of the TMG current at the time of data collection or as then amended by the FHWA.

(h) *Office factoring procedures.* (1) Factors to adjust data from short term monitoring sessions to estimates of average daily conditions shall be used to adjust for month, day of week, axle correction, and growth or other comparable factors approved by the FHWA. These factors will be reviewed annually and updated at least every three years.

(2) The procedures used by a State to edit and adjust highway traffic data collected from short term counts at field locations to estimates of average traffic volume shall be documented. The documentation shall include the factors discussed in paragraph (h)(1) of this section. The documentation shall remain available for the same duration as the traffic or travel estimates discussed in paragraph (g) of this section remain current. Copies of the State's documentation shall be provided to the FHWA when it is initially developed and after each revision.

§ 500.809 TMS/H compliance schedule.

(a) By October 1, 1994, the State shall develop a work plan that identifies major activities and responsibilities and includes a schedule that demonstrates full operation and use of the TMS/H for the NHS (or the principal arterial system until the NHS is approved by the Congress) by October 1, 1995, and on all other public highways, other than those functionally classified as local or rural minor collector, by October 1, 1996.

(b) By October 1, 1995, the TMS/H for the NHS shall be fully operational and in use (or the principal arterial system until the NHS is approved by the Congress) and the TMS/H for all other public highways, other than those functionally classified as local or rural minor collector, shall be in operation or under development in accordance with the State's work plan.

(c) By October 1, 1996, the TMS/H shall be fully operational and in use for all public highways, other than those functionally classified as local or rural minor collector.

PART 626—[REMOVED]

2. Part 626 is removed.

49 CFR CHAPTER VI

3. Part 614 is added to 49 CFR Chapter VI to read as follows:

PART 614—TRANSPORTATION INFRASTRUCTURE MANAGEMENT

Sec.

614.101 Cross-reference to management systems.

Authority: 23 U.S.C. 303; 49 U.S.C. app. 1607; and 49 CFR 1.48 and 1.51.

§ 614.101 Cross-reference to management systems.

The regulations in 23 CFR part 500, subparts A, E, F, and G, shall be followed in complying with the requirements of this part. 23 CFR part 500, subparts A, E, F, and G, implement 23 U.S.C. 303 for State development, establishment, and implementation of systems for managing traffic congestion (CMS), public transportation facilities and equipment (PTMS), and intermodal transportation facilities and systems (IMS).

[FR Doc. 93–29096 Filed 11–30–93; 8:45 am]

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Federal Register

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Part III

Department of the Interior

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting and Permits; Supplemental Notice of Review; Proposed Rule

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Parts 20 and 21

Migratory Bird Hunting and Migratory Bird Permits; Supplemental Notice of Review

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of review; supplemental.

SUMMARY: The U.S. Fish and Wildlife Service (hereinafter the Service) proposed in an earlier notice of intent, to review the regulations on migratory bird hunting and migratory bird permits. The Service has begun to review these regulations and has identified issues, needed changes, and possible alternatives. This supplementary document describes the issues and provides additional information that will facilitate public comment on these regulations.

DATES: Comments should be received by January 31, 1994.

ADDRESSES: Written comments by interested parties concerning this review should be sent to the Director, U.S. Fish and Wildlife Service, P.O. Box 3247, Arlington Virginia 22203-3247. Comments and materials may be hand-delivered to the U.S. Fish and Wildlife Service, Division of Law Enforcement, 4401 N. Fairfax Drive, room 500, Arlington, Virginia, between the hours of 8 a.m. and 4 p.m., Monday through Friday. Comments received will be available for public inspection during the hours listed above.

FOR FURTHER INFORMATION CONTACT: Frank S. Shoemaker, Jr., Special Agent in Charge, Investigations, Division of Law Enforcement, at the address given above; Telephone Number (703) 358-1949.

SUPPLEMENTARY INFORMATION:

Background

On Thursday, November 14, 1991, the Service published, in Volume 56, No. 220 of the **Federal Register**, a notice of intent to review 50 CFR parts 12, 13, 14, 20, 21, and 22. The Service, in this notice requested that all interested parties submit written comments. In response to this request the Service received comments from a total of 67 individuals and organizations. Specifically, written comments were received in response to the Service's request from 36 individuals, 11 government agencies, 8 sportsman associations, 1 American Indian Tribe, 3 scientific associations and 7 wildlife management and conservation associations.

This supplemental notice deals specifically with those regulations found in part 20 (exclusive of subpart K) and part 21 (subpart D only), and supplies information which will assist the States and the public to focus their comments and suggestions. These regulations are perceived by many individuals as being unclear. The Service, therefore, would like to clarify those areas of 50 CFR which have traditionally caused concern. The Service will publish summaries of written comments received in response to these notices at the time proposals are developed and published.

Issues

Issues related to this review are documented below in the same order the appropriate regulations are currently found in 50 CFR parts 20 and 21. Only those issues or alternatives that would significantly change the meaning or applicability of current regulations are discussed below. Those changes which merely update outdated information or fix technical errors are not included below.

Part 20 Migratory Bird Hunting

Subpart A - Introduction

Only minor editorial suggestions which would result in no substantive change have been received.

Subpart B - Definitions

Section 20.11 Meaning of Terms. The Service is considering simplifying this section through reorganization and rewriting of definitions, as well as adding several definitions.

The definitions of daily bag and possession limits could be simplified and could include limits for individual species or combination of species. One suggestion is to remove the language explaining which limit applies when a hunter harvests game in more than one geographical area from this definition section. Instead, this could be better addressed in *§20.24 Daily Bag Limit* and *§20.33 Possession Limit*.

The definitions of *Baiting* and *Baited Area* could be added to this definition section for clarity and consistency. It has been suggested that the language related to "shelled, shucked, or unshucked corn wheat, or other grain, salt, or other feed" could be simplified. An alternative that could be considered is "any grain, salt or other feed".

The definition of *Nontoxic Shot* could be added to this definition section and a list of approved shot and coatings would then be readily accessible.

The definition of *Take*, as currently found in *§10.12 Definitions*, could be added to this definition section. The word "take" is used frequently in this part and the definition located in close proximity might facilitate a better understanding of the regulations.

It was also suggested that the definition of *Waterfowl* could be added to this definition section.

Subpart C - Taking

The Service is considering adding a section to this subpart which would require hunters to present their game, equipment, and documents to law enforcement personnel upon request.

The Service is considering creating a new section which can be used to incorporate the provision, currently located in the annual regulations, which addresses quota-zone closures. This section would delineate responsibilities for closing the season in quota zones once the quota has been achieved.

Section 20.20 Migratory Bird Harvest Information Program. This section which implements the program has been added to this subpart during the last year. Additional changes, including additions of States, will occur during the next few years as the program is phased in and modified. Such adjustments will continue to be handled as a separate rulemaking process and comments and suggestions will continue to be welcomed by the Office of Migratory Bird Management throughout the rulemaking period.

Section 20.21 Hunting Methods. Several modifications, including deletions, additions, and reorganization, are being considered in order to clarify these regulations. In addition, several substantive changes have been suggested:

The Service has published a notice of intent to limit the size of shot, length of shells, and to develop a coatings approval process. These issues will be handled in a separate series of proposed and final rules. Comments and suggestions on these changes should be forwarded to the Office of Migratory Bird Management.

Paragraph (c) Concealment: Recently, structures which are attached to the bottom of the ocean and afford hunters concealment below the surface of the water have proliferated. The Service is concerned about the use of these structures in off-shore areas. Therefore, we are considering limiting the use of these structures as we currently do for sinkboxes.

Paragraph (e) Motor and sail boats: The Service is considering limiting the provision that allows taking of crippled birds by boats under power in the

special sea duck areas to exclude all birds other than scoters, eiders, and oldsquaw.

Paragraph (f) Live decoys: It has been suggested that the prohibition against hunting over live decoys could be expanded to cover all migratory game birds.

Paragraph (g) Calls: The Service is considering expanding the prohibition against the use of electronic calls to eliminate the possession of electronic calls while hunting migratory birds.

Paragraph (i) Baiting: Several possible changes have been discussed relative to the current regulations. Each of these possible changes may be considered independently or in combination with other possible changes. These possibilities are listed below:

(1) Link normal agricultural operations to the published guidelines of the State Agricultural Extension Service.

(2) Eliminate the hunting of migratory birds over freshly planted fields.

(3) Standardize language for all migratory birds, yet maintain simplified language that would allow the taking of doves over areas manipulated for wildlife-management purposes.

(4) Simplify the language related to "shelled, shucked, or unshucked corn wheat, or other grain, salt, or other feed" -- other alternatives may be considered, such as "any grain, salt or other feed".

Paragraph (j) Nontoxic shot: It has been suggested that the list of species for which nontoxic shot is required could be expanded to include additional species, such as all of the family Rallidae, or even other wetland-related species.

Section 20.24 Daily limit. The Service is considering modifying this section to emphasize that hunters must cease hunting once the bag limit has been achieved and to clarify which bag limit applies when a hunter harvests game in more than one geographic area.

Because some confusion exists among the public about birds that are crippled but not retrieved, there is a need to clarify that crippled birds do count toward the daily bag limit. One suggestion was to remove the word "take" and substitute more specific language.

Section 20.25 Wanton waste of migratory game birds. The Service is considering strengthening this section.

Subpart D - Possession

Section 20.33 Possession Limit. The Service is considering modifying this section to clarify which possession limit applies when a hunter harvests game in more than one geographic area.

Section 20.36 Tagging requirement. The Service is considering the addition of language that would prohibit falsifying tags. The tagging requirement may also be strengthened by prohibiting "co-mingling" of harvested birds.

Subpart E - Transportation Within the United States

Section 20.43 Species identification requirement. It has been suggested that the exception to this requirement should only apply to mourning doves and not to all doves and pigeons.

Subpart H - Federal, State, and Foreign Law

The Service is considering adding a section prohibiting the violation of Indian Tribal law.

Section 20.71 Violation of Federal law. The Service is considering expanding this section to apply to imports, and to clarify that it includes crows.

Section 20.72 Violation of State law. The Service is considering expanding this section to apply to imports, and to clarify that it includes crows.

Section 20.73 Violation of foreign law. The Service is considering expanding this section to apply to imports and exports, and to clarify that it includes crows.

Subpart J - Feathers or Skins

Section 20.91 Commercial use of feathers. The Service is considering eliminating the provision for sale of seized and condemned feathers and the provision for sale of feathers for "similar commercial uses".

Section 20.92 Personal use of feathers or skins. The Service plans to reiterate that fresh or frozen skins of migratory game birds count as part of the possession limit.

Subpart K - Annual Seasons, Limits, and Shooting Hours Schedules

The Service is considering combining the various sections *(§§20.101-107)* that contain annual regulations into one section to facilitate State selection and publication of seasons.

Section 20.108 Nontoxic shot zones. The Service will delete this section because the nationwide phase-in of the nontoxic shot requirement for hunting waterfowl has been completed.

Subpart L - Administrative and Miscellaneous Provisions

Section 20.131 Extension of Seasons. The Service is considering deleting this section because it has seldom been used and may not be warranted.

Section 20.133 Hunting regulations for crows. The Service plans to clarify that, in *Part 20 Migratory Bird Hunting*, only the provisions of this section and *Subpart H - Federal, State, and Foreign Law* apply to crows. For instance, the limitations to taking contained in *§20.21 Hunting Methods* do not apply to crows.

The Service is considering the addition of a limitation which would close the sport hunting season for crows in States where the seasons do not conform with the limitations of this section.

Subpart M - Criteria and Schedule for Implementing Nontoxic Shot Zones for the 1987–1988 and Subsequent Waterfowl Hunting Seasons

The contents of Subpart M will be deleted and that subpart reserved for future use because the requirement for use of nontoxic shot has been implemented nationwide and this subpart is no longer needed.

Subpart N - Special Procedures for Issuance of Annual Hunting Regulations

Section 20.153 Regulations Committee. The Service is planning to revise this section to reflect the addition of Flyway Council Consultants to the early-season regulations process.

Part 21 Migratory Bird Permits

Subpart D - Control of Depredating Birds

Section 21.41 Depredation permits. It has been suggested that the Service consider adding additional flexibility to the issuance of permits to allow exceptions to the conditions listed in paragraph (c). For instance, it may be possible to allow the use of concealment or device to attract birds within gun range, provided that it is specifically authorized on the permit.

Section 21.42 Authority to issue depredating orders to permit the killing of migratory game birds. It has been suggested that the Service could broaden this provision to include the issuance of depredation orders for nongame birds. Accordingly, the provision for disposal would then be modified to reflect the addition of nongame birds to this section. It also has been suggested that the Service clarify that this section can be implemented with publication of a notice in the **Federal Register**.

The Service believes that certain organizational changes may aid the users of these regulations. The provisions of this section could be distinguished by the use of subtitles. The paragraph regarding State law could be expanded and paragraphs regarding inspection and reporting could be added for consistency with other sections in this subpart.

Section 21.43 Depredation order for blackbirds, cowbirds, grackles, crows, and magpies. It has been suggested that the Service add a paragraph regarding methods of take to clarify which methods are allowed. The Service is considering methods of take which would limit taking to the use of shotguns no larger than 10 gauge, only on or over threatened area, but would allow blinds and means of concealment, decoys, calls or other devices to attract birds within gun range. However, the Service is still considering excluding electronic calls.

Again, the provisions of this section could be distinguished by the use of subtitles. A paragraph regarding reporting could be added for consistency with other sections in this subpart.

Section 21.44 Depredation order for designated species of depredating birds in California. It has been suggested that the Service add a paragraph regarding methods of take to clarify which methods are allowed. The Service is considering methods of take which would limit taking to the use of shotguns no larger than 10 gauge, only on or over threatened area, but would allow blinds and means of concealment, decoys, calls or other devices to attract birds within gun range. However, the Service is still considering excluding electronic calls. It was further suggested for this section that the use of traps be allowed providing that such traps are checked often for nontarget species and that other guidelines regarding the use of traps be developed.

Again, the provisions of this section could be distinguished by the use of subtitles. Paragraphs regarding inspection and State law could be added for consistency with other sections in this subpart.

Section 21.45 Depredation order for depredating purple gallinules in Louisiana. It has been suggested that the Service consider deleting this section because it is apparently not needed.

In the event this section is not deleted, it was suggested that the Service add a paragraph regarding methods of take to clarify which methods are allowed. The Service would consider methods of take which would limit taking to the use of shotguns no larger than 10 gauge, only on or over threatened area, but would allow blinds and means of concealment, decoys, calls or other devices to attract birds within gun range. However, the Service would still consider excluding electronic calls.

Again, the provisions of this section could be distinguished by the use of subtitles.

Section 21.46 Depredation order for depredating scrub jays and Steller's jays in Washington and Oregon. It has been suggested that the Service consider deleting this section because it is apparently not needed as reflected in the lack of reporting which has occurred in recent years.

In the event this section is not deleted, it was suggested that the Service remove the provision which allows trapping. If the provision for trapping is maintained, it was suggested that such traps be checked often for nontarget species and that other guidelines regarding the use of traps be developed. In addition, it was suggested that other provisions governing methods of take be consistent with other sections of this subpart.

Again, the provisions of this section could be distinguished by the use of subtitles.

The Service is considering combining *§§ 21.43–21.46* into a single depredation order that would combine redundant language, but would also identify where different provisions apply.

Public Comment Invited

The Service intends that adopted final rules be as responsive as possible to all concerned interests, and therefore desires to obtain for consideration the comments and suggestions of the public, other concerned governmental agencies, and private interests on these proposals. Such comments, and any additional information received, may lead to final regulations that differ from these proposals.

Authorship

The primary authors of this proposed rule are Frank Shoemaker, Jr., Division of Law Enforcement, and William O. Vogel, Office of Migratory Bird Management.

List of Subjects in 50 CFR Parts 20 and 21

Exports, Hunting, Imports, Reporting and recordkeeping requirements, Transportation, Wildlife.

Authority: The authority citation for 50 CFR part 20 is the Migratory Bird Treaty Act (July 3, 1918), as amended, (16 U.S.C. 703-711); the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712); and the Fish and Wildlife Act of 1956 (August 8, 1956), as amended, (16 U.S.C. 742 a-d and e-j).

The authority citation for 50 CFR part 21 is the Fish and Wildlife Improvement Act of 1978 (November 8, 1978), as amended, (16 U.S.C. 712).

Dated: November 18, 1993.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 93–29212 Filed 11–30–93; 8:45 am]

BILLING CODE 4310–55–F

Wednesday
December 1, 1993

Part IV

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Part 52
Federal Acquisition Regulation; Qualification Requirements; Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Part 52

[FAR Case 92–612]

Federal Acquisition Regulation; Qualification Requirements

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council (CAAC) and the Defense Acquisition Regulations Council (DARC) are proposing a change to the clause at Federal Acquisition Regulation (FAR), Qualification Requirements, to preclude rejection of a sealed bid solely because the bidder has not submitted evidence of qualification at the time of bid opening.

DATES: Comments should be submitted on or before January 31, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW., room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405. Please cite FAR case 92–612 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Jack O'Neill at (202) 501–3856 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4035, GS Building, Washington, DC 20405, (202) 501–4755. Please cite FAR case 92–612.

SUPPLEMENTARY INFORMATION:

A. Background

Paragraph (e) of the current clause at 52.209–1 may be inconsistent with the ruling of the General Accounting Office (GAO) in Gardner Zemke Company, B–238334, April 5, 1990. In order to remove the inconsistencies between paragraphs (b) and (e) of the clause in light of the GAO decision, the CAAC and DARC are proposing to rewrite paragraph (e) to make it clear that a contracting officer may not reject a bid solely for the reason that the bidder has not provided evidence of qualification at the time of bid opening.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because the rule eliminates inconsistencies in the clause and will avoid improper rejection of bids. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments from small entities concerning the affected FAR subpart will be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92–612), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Part 52

Government procurement.

Dated: November 22, 1993.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR part 52 be amended as set forth below:

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

1. The authority citation for 48 CFR part 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

2. Section 52.209–1 is amended by revising the date of the clause and paragraph (e) to read as follows:

52.209–1 Qualification requirements.

* * * * *

QUALIFICATION REQUIREMENTS (DATE)

* * * * *

(e) If an offeror, manufacturer, source, product or service has met the qualification requirement but is not yet on a qualified products list, qualified manufacturers list, or qualified bidders list, the offeror must submit evidence of qualification prior to award of this contract. Unless determined to be in the Government's interest, award of this contract shall not be delayed to permit an offeror to submit evidence of qualification.

* * * * *

[FR Doc. 93–29348 Filed 11–30–93; 8:45 am]

BILLING CODE 6820–34–M

Federal Register

Wednesday
December 1, 1993

Part V

Department of Defense
General Services Administration
National Aeronautics and Space Administration

48 CFR Parts 9 and 52
Federal Acquisition Regulation;
Debarment and Suspension Certificate;
Proposed Rule

DEPARTMENT OF DEFENSE

GENERAL SERVICES ADMINISTRATION

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

48 CFR Parts 9 and 52

[FAR Case 92-615]

Federal Acquisition Regulation; Debarment and Suspension Certificate

AGENCIES: Department of Defense (DOD), General Services Administration (GSA), and National Aeronautics and Space Administration (NASA).

ACTION: Proposed rule.

SUMMARY: The Civilian Agency Acquisition Council and the Defense Acquisition Regulations Council are proposing a revision to the FAR provision dealing with debarment and suspension by adding "tax evasion" to the list of currently enumerated offenses for which the offeror must certify. Conforming changes are being made to specifically add "tax evasion" as a debarment or suspension cause.

DATES: Comments should be submitted on or before January 31, 1994, to be considered in the formulation of a final rule.

ADDRESSES: Interested parties should submit written comments to: General Services Administration, FAR Secretariat (VRS), 18th & F Streets, NW, room 4035, Attn: Ms. Beverly Fayson, Washington, DC 20405.

Please cite FAR case 92-615 in all correspondence related to this case.

FOR FURTHER INFORMATION CONTACT: Mr. Ralph DeStefano at (202) 501-1758 in reference to this FAR case. For general information, contact the FAR Secretariat, room 4037, GS Building, Washington, DC 20405 (202) 501-4755. Please cite FAR case 92-615.

SUPPLEMENTARY INFORMATION:

A. Background

The Twentieth Report by the Committee on Government Operations entitled "Coins, Contracting, and Chicanery: Treasury and Justice Departments Fail to Coordinate" dated May 27, 1992, among other things, stated that there is a very real possibility that the U.S. Government is doing business with a man it has indicted as being one of the biggest tax evaders in history. In order to prevent this from happening in the future, a revision is being proposed to address tax evasion. Presently, the offenses that trigger the disclosure requirement under the Certification Regarding Debarment, Suspension, Proposed Debarment, and Other Responsibility Matters, FAR 52.209-5, include crimes connected with obtaining and performing public contracts, antitrust violations relating to the submission of offers, and other offenses indicative of a lack of business integrity such as bribery, embezzlement, theft, making false statements or receiving stolen property. Tax evasion is not presently listed as an offense requiring disclosure and clearly involves intentional deception of the Federal Government. Therefore, tax evasion also has a direct bearing on an offeror's record of integrity and business ethics, and accordingly would raise questions regarding the propriety of an award to the offeror.

B. Regulatory Flexibility Act

The proposed rule is not expected to have a significant economic impact on a substantial number of small entities within the meaning of the Regulatory Flexibility Act, 5 U.S.C. 601, *et seq.*, because offerors must already certify whether they have been convicted of or had a civil judgment rendered against them for a list of offenses. This rule will add "tax evasion" to the existing certification, as well as to the list of offenses for which contractors may be suspended or debarred from Federal contracts. An Initial Regulatory Flexibility Analysis has, therefore, not been performed. Comments are invited from small businesses and other interested parties. Comments from small entities concerning the affected FAR subpart will also be considered in accordance with 5 U.S.C. 610. Such comments must be submitted separately and should cite 5 U.S.C. 601, *et seq.* (FAR case 92-615), in correspondence.

C. Paperwork Reduction Act

The Paperwork Reduction Act does not apply because the proposed changes to the FAR do not impose recordkeeping or information collection requirements, or collections of information from offerors, contractors, or members of the public which require the approval of the Office of Management and Budget under 44 U.S.C. 3501, *et seq.*

List of Subjects in 48 CFR Parts 9 and 52

Government procurement.

Dated: November 22, 1993.

Harry S. Rosinski,

Acting Director, Office of Federal Acquisition Policy.

Therefore, it is proposed that 48 CFR parts 9 and 52 be amended as set forth below:

1. The authority citation for 48 CFR parts 9 and 52 continues to read as follows:

Authority: 40 U.S.C. 486(c); 10 U.S.C. chapter 137; and 42 U.S.C. 2473(c).

PART 9—CONTRACTOR QUALIFICATIONS

9.406-2 [Amended]

2. Section 9.406-2 is amended in paragraph (a)(3) by adding "tax evasion," after "false statements,".

9.407-2 [Amended]

3. 9.407-2 is amended in paragraph (a)(3) by adding "tax evasion," after "false statements," and removing "or" from the end of the paragraph; and at the end of paragraph (a)(4)(iii) removing the period and inserting "; or" in its place.

PART 52—SOLICITATION PROVISIONS AND CONTRACT CLAUSES

52.209-5 [Amended]

4. Section 52.209-5 is amended by revising the date in the clause heading to read "(DATE)", and at paragraph (a)(1)(i)(B) of the clause by adding "tax evasion," after "false statements,".

[FR Doc. 93-29349 Filed 11-30-93; 8:45 am]

BILLING CODE 6820-34-M

Wednesday
December 1, 1993

Part VI

Environmental Protection Agency

40 CFR Parts 372 and 721
Ozone Depleting Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Addition of Chemicals; Significant New Use Rule; Final Rules

federal register

ENVIRONMENTAL PROTECTION AGENCY

40 CFR Part 372

[OPPTS–400065A; FRL–4648–5]

Ozone Depleting Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Addition of Chemicals

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: On December 3, 1991, EPA received a petition from the Natural Resources Defense Council, Friends of the Earth, and the Environmental Defense Fund to add the hydrochlorofluorocarbons (HCFCs) listed as Class II ozone-depleting substances in section 602(b) of the Clean Air Act (CAA) to the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA) section 313 list. In response to that petition, EPA is adding 11 HCFCs to the list of toxic chemicals subject to reporting under section 313 of EPCRA and section 6607 of the Pollution Prevention Act (PPA). These chemicals are HCFC-22, HCFC-123 (and isomers), HCFC-124 (and isomers), HCFC-141b, and HCFC-142b. The first reports for these chemicals will be due July 1, 1995, to cover the 1994 reporting year.

DATES: This rule is effective January 1, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop OS–120, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202, Toll free TDD: 800–553–7672.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This action is issued under section 313(d) and (e)(2) of the Emergency Planning and Community Right-to-Know Act of 1986 (Pub. L. 99–499, "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act (SARA) of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (PPA) (42 U.S.C. 13106). Section 313 established an initial list of toxic chemicals that was composed of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals to or from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. In the past, EPA has added and deleted chemicals to and from the statutory list.

EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479), to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Description of Petition and Rationale for Listing

A. Summary of Petition and EPA's Review

On December 3, 1991, EPA received a petition from the Natural Resources Defense Council, Friends of the Earth, and the Environmental Defense Fund to add methyl bromide and the hydrochlorofluorocarbons (HCFCs) listed as Class II ozone-depleting substances in section 602(b) of the Clean Air Act (CAA) to the EPCRA section 313 list. In addition, the petitioners requested that the Agency add methyl bromide under CAA section 602 and accelerate the phase-out schedule of Class I and Class II substances under CAA section 606(a)(1).

This final rule addresses only the EPCRA section 313 portion of the petition. Methyl bromide (bromomethane) is already a listed toxic chemical under EPCRA section 313 and thus will not be addressed further in this final rule. The petitioners contend that HCFCs present an imminent and substantial endangerment to public health, welfare, and the environment because they deplete stratospheric ozone. EPA granted the petition and published a proposed rule in the **Federal Register** of June 24, 1992 (57 FR 28159), to add a category of HCFCs to the EPCRA section 313 list of toxic chemicals and request comments on alternative approaches to the one proposed. In the proposal, EPA raised the alternative approach of adding individual HCFCs that are in production or anticipated to be commercially viable, rather than adding a category of chemicals to the list. In the interest of expeditiously providing the public with release data on specific HCFCs, EPA has decided to adopt the alternative approach, with some modifications, in this final rule.

EPA has already extensively evaluated the risks of ozone depletion and the role of chlorofluorocarbons (CFCs), halons, and HCFCs in that depletion, and published its findings in several documents which were used as the basis of EPA's review of this petition. For a discussion of these evaluations, see the proposed rule and the references listed in the proposed rule. (Copies are available in the public docket.) EPA considers the HCFCs to be transitional substances which are critical to the full phase-out of the CFCs. HCFCs have lower ozone-depletion potentials (ODPs) than CFCs and are being developed as first generation substitutes for many CFC uses. However, because HCFCs add chlorine to the stratosphere, thereby causing ozone depletion, EPA is concerned about the extent of their production and use as well. Thus, while the HCFCs serve as substitutes for CFCs, and facilitate the CFC phase-out, HCFCs will eventually be phased out of production and use as well.

EPA's concerns for HCFCs do not focus on direct toxicity, but rather on the depleting effect they have on stratospheric ozone and the resulting increase in penetration of ultraviolet-B (UV-B) radiation. HCFCs are known to release chlorine radicals into the stratosphere. Chlorine radicals act as catalysts to reduce the net amount of stratospheric ozone.

Stratospheric ozone shields the earth from UV-B radiation (i.e., 290 to 320 nanometers). Decreases in total column ozone will increase the percentage of UV-B radiation, especially at its most harmful wavelengths, reaching the earth's surface. Because HCFCs have a shorter atmospheric lifetime, they contribute fewer chlorine radicals to the stratosphere than equal masses of CFCs. However, they still pose a substantial concern for ozone depletion, which will increase as HCFC use increases. EPA expects HCFC use to increase significantly as CFCs are phased out. Exposure to UV-B radiation is known to cause various adverse human health and environmental effects, which were discussed in detail in the proposed rule (57 FR 28159) and are summarized in this final rule.

B. Summary of Health and Environmental Concerns for HCFCs

Exposure to UV-B radiation has been identified by laboratory and epidemiologic studies as a cause of two types of nonmelanoma skin cancers: squamous cell cancer and basal cell cancer. Studies suggest that UV-B radiation plays an important role in causing malignant melanoma skin cancer; demonstrate that UV-B radiation can suppress the immune response system in animals, and, possibly, in humans; show that increases in exposure to UV-B radiation are likely to increase the incidence of cataracts and could adversely affect the retina; and suggest that increased UV-B penetration may increase the rate of tropospheric ozone formation. Available data suggest that tropospheric ozone exposure may lead to chronic health effects, including morphological changes to, and impaired functioning of, the lungs.

Aquatic organisms, particularly phytoplankton, zooplankton, and the larvae of many fishes, appear to be susceptible to harm from increased exposure to UV-B radiation because they spend at least part of their time at or near the surface of waters they inhabit. Increased UV-B penetration has also been shown to result in adverse impacts on plants and crops.

III. Summary of Public Comment

On June 24, 1992, EPA issued in the **Federal Register** (57 FR 28159) a proposed rule that would add the HCFCs as a category to the section 313 list. EPA also requested comments on alternative methods of listing the HCFCs. The public comment period closed on August 24, 1992. EPA received 19 comments on the proposed rule by the close of the comment period and 2 more subsequent to that. Some commenters supported the addition of a category of HCFCs because it would have a lower reporting burden as compared to individual listing. This is because only one report would have to be submitted for a category of chemicals as compared to specific reports for each HCFC. However, some of the commenting industry representatives as well as the environmental groups preferred individual listing of HCFCs, albeit for different reasons.

Some industry commenters contend that section 313 of EPCRA does not allow the addition of categories of chemicals to the list of toxic chemicals subject to reporting and that EPA must conduct a review of each individual chemical proposed for addition to the list. In addition, these and other commenters claim that EPA must show that the chemicals proposed to be listed demonstrate the effects of concern.

EPA believes it has the discretion to add a category of chemicals to the EPCRA section 313 list under its authority to modify that list. However, EPA is adding the 11 HCFCs as individual chemicals and not in a category because it believes that individual listing of the HCFCs best serves the current needs for information of the public as well as the Agency. Individual listing would require identification and reporting on specific HCFCs in production and use, which would provide an indication of whether industry is moving to the manufacture of HCFCs with low ODPs. Individual listing of the HCFCs is supported by several industry commenters as well as the environmental and public interest groups that commented. As discussed in the proposed rule, EPA has established that the HCFCs listed under section 602(b) of the CAA have the potential to deplete ozone in the stratosphere, thereby increasing penetration of UV-B radiation to the earth's surface. As discussed in Unit II.B. of this preamble, increased exposure to UV-B radiation is known or can reasonably be anticipated to cause adverse human health and environmental effects. This is sufficient basis for adding HCFCs to the EPCRA section 313 list.

EPA considered other regulatory options it could take in response to the petition. One commenter proposed that the HCFCs identified in the proposed rule be listed individually and a category be established for all the other HCFCs. This would make data available for HCFCs currently in use and production and would require reporting of other HCFCs that could come into production in the future without further rulemaking activity. Building on this option, EPA also considered listing the 11 produced or commercially viable HCFCs individually and creating a category for other HCFCs and establishing a procedure for adding individual HCFCs to the section 313 list through expedited rulemaking. However, EPA believes it is best at this time to simply establish a reporting requirement for HCFCs currently in production or believed to be commercially viable. If other HCFCs come into production in the future that are of concern, EPA can initiate rulemaking to add those chemicals to the EPCRA section 313 list.

Many of the industry commenters contend that the HCFCs should not be listed under section 313 because they exhibit low or no direct toxicity. They assert that Congress intended that the section 313 list of toxic substances include only chemicals that induce direct toxicity, and that Congress did not intend the list to include chemicals which are only indirectly toxic.

The information on health effects induced by HCFCs has been reviewed by the Agency and generally supports the contention that these chemicals exhibit low or no direct toxicity. The concerns about these chemicals are based on their depleting effect on stratospheric ozone and the resulting increase in penetration of UV-B radiation, causing the adverse environmental and human health effects listed in Unit II.B. of this preamble. Congress recognized the adverse effects of releases of HCFCs in the Clean Air Act Amendments of 1990 (CAAA) by mandating a phase-out and eventual ban of HCFCs. HCFCs are to be phased out according to the schedule outlined in section 605(b) of the CAAA. Production of the HCFCs listed in section 602(b) of the CAAA will cease by January 2030. Because of the adverse human health and environmental effects which would result from the increased UV-B radiation as a result of stratospheric ozone depletion by HCFCs, EPA believes that these chemicals meet the statutory criteria for listing.

EPCRA allows EPA to add a chemical to the section 313 list if the chemical is "known to cause or can reasonably be anticipated to cause" certain adverse human health or environmental effects. EPCRA does not limit EPA to considering only effects caused directly by a toxic chemical. EPA believes that indirect effects can and should be considered in determining whether or not a chemical should be subject to reporting under section 313.

Indirect toxicity was the basis for the granting of a petition to add seven CFCs and halons (August 30, 1990, 55 FR 31594). The fate of HCFCs in the stratosphere is similar to the fate of CFCs and halons in that chlorine radicals are released which can then act as catalysts to reduce the net amount of stratospheric ozone. Indirect toxicity has also been a criterion used to support the denial of petitions to delete volatile organic compounds (VOCs) from the section 313 list, specifically, the ethylene and propylene petition (January 27, 1989, 54 FR 4072) and the cyclohexane petition (March 15, 1989, 54 FR 10668). VOCs react under certain environmental conditions in the troposphere to generate ozone, which induces a number of health effects.

Several industry commenters question the validity of the connection between HCFCs and increased UV-B radiation, stating that some data indicates that there has been a decrease in UV-B

radiation reaching the earth's surface. To support this assertion, one commenter cites a United Nation's Environment Programme report, "Environmental Effects of Ozone Depletion: 1991 Update (11/91)." This report expressed the possibility that the decreases were due to low-level atmospheric pollution preventing the penetration of UV-B radiation and stated that there were insufficient measurements with which to make a complete assessment.

These concepts had also been discussed in an article by Scotto, et al. ("Biologically Effective Ultraviolet Radiation: Surface Measurements in the United States, 1974 to 1985," *Science, 239*, 762 (1988)) which also presented the data on surface measurements of UV-B radiation that indicate that there has been a decline in the amount of UV-B penetration in the United States from 1974 to 1985. The authors do not conclude that the connection between ozone depletion and increased UV-B radiation is specious, but rather that "meteorological, climatic, and environmental factors in the troposphere may play a greater role in attenuating UV-B radiation than was previously suspected." Their conclusions are consistent with the vast majority of the science community who believe that the connection between HCFCs and increased UV-B radiation is valid. Since these reports do not rebut the contention that HCFCs are ozone depleters, but ascribe the reduction of UV-B radiation to other factors, EPA does not consider them relevant to its finding on HCFCs' indirect toxicity.

Several commenters contend that these chemicals should not be listed under section 313 because the potential adverse effects resulting from their release into the environment are not confined to the community in which the release occurs. The effects of stratospheric ozone depletion ultimately will be observed world-wide, not just in the areas which emitted these compounds. The commenters also contend that there is no immediate threat to those communities. While it is true that the effects of HCFC releases into the environment are largely global rather than localized, the statutory criteria for listing under section 313(d)(2)(B) and (C) do not address the location of the effect.

This issue was considered previously in evaluating the petitions on CFCs and halons as well as VOCs (ethylene, propylene, and cyclohexane). Although in some areas, such as the Los Angeles basin, releases of VOCs result in localized effects, the toxic effects of ozone at ground level are commonly observed at some distance from the community that emitted the VOCs. Much of the VOC releases do not remain in the vicinity of the facilities that released them.

Some commenters believe that HCFCs should not be added to the section 313 list because they are already subject to the reporting and recordkeeping requirements of the Montreal Protocol (Montreal Protocol on Substances that Deplete the Ozone Layer, September 16, 1987, 26 International Legal Materials (I.L.M.) 1541). Regulations promulgated under the Clean Air Act to implement the Montreal Protocol require producers and importers of HCFCs to report the amount of their production and importation. HCFCs are extremely stable chemicals. Given their chemical stability and the manner in which they are used, it is reasonable to anticipate that the amounts of HCFCs produced and, ultimately, used will be equivalent to the amount of HCFCs released into the environment. Releases could also occur after disposal of products containing HCFCs. The commenters argue that because production and release are equivalent, an additional requirement under section 313 would be duplicative and potentially misleading.

EPA agrees that it is realistic to view production of these chemicals as equivalent to eventual release, albeit over a potentially lengthy time. However, EPCRA requires reporting on releases from facilities, not releases of chemicals that occur from other sources, such as consumer use or disposal of a product containing that chemical. Therefore, the EPCRA reporting requirement provides different information and serves a distinctly different purpose than the regulations under the Clean Air Act. Since HCFCs meet the statutory criteria for addition to the EPCRA section 313 list, and since EPA believes the public can benefit from knowing the extent of HCFC release (as that term is defined under EPCRA) that takes place from facilities that manufacture, process, or use HCFCs, EPA believes it is appropriate to include the HCFCs on the EPCRA section 313 list. EPA does not believe this will mislead the public or create duplicative requirements.

One commenter objected to the listing because releases reported from facilities subject to section 313 will be a small fraction of the total releases of these chemicals to the environment. EPA agrees that releases from covered facilities reported under this section will be some fraction of all releases of HCFCs. However, the statutory criteria do not address the coverage of releases to be reported and EPA believes it is in the public interest for release data on the HCFCs to be available. Since they meet the statutory criteria for addition to the section 313 list and there is value in obtaining information on releases of HCFCs, EPA is granting the petition to list them.

Some commenters are concerned that placing these chemicals on the section 313 list will cause them to be considered "toxic" chemicals, and this label will result in increased regulations and handling restrictions, jeopardize the sale of products containing HCFCs, and could slow the phase-out of CFCs and transition to HCFCs. EPA does not contend that HCFCs in general are directly toxic. EPA hopes that industry, government, and the public will recognize and consider differences in degree and type of toxicity of different chemicals when making decisions about those chemicals. EPA doubts that adding HCFCs to the section 313 list will affect the transition from CFCs to HCFCs, and ultimately, to other substitutes. To the extent that substitutes that cause less indirect toxicity than HCFCs can be developed, EPA believes that such activity should be encouraged. Since the HCFCs meet the statutory criteria for listing, EPA believes that listing them will increase public awareness of their release and encourage the development of other substitutes.

IV. Explanation of this Addition

The 11 HCFCs listed in this final rule are added to the list of toxic chemicals subject to reporting under section 313 of EPCRA effective as of January 1, 1994. EPA identified five HCFCs in the proposed rule as in production or commercially viable: 22; 123; 124; 141b; and 142b. HCFCs 22, 141b, and 142b refer to specific chemicals (chlorodifluoromethane, 1,1-dichloro-1-fluoroethane, and 1-chloro-1,1-difluoroethane, respectively), while HCFC–123 and 124 refer to a group of isomers. There are four isomers of HCFC–123 and two isomers of HCFC–124. This final rule adds HCFC–22, HCFC–141b, HCFC–142b, and all of the isomers of HCFC–123 and 124, making 11 the total number of HCFCs added to the section 313 list.

These chemicals are either in production or believed to be commercially viable. Commercially viable HCFCs are those for which EPA has no direct evidence of current production, but which the Agency has a reasonable basis for believing could be readily put into production. For example, HCFC–123a, which is not currently in production, is an isomer of HCFC–123, which has been identified as

a potential substitute for CFC–11 in some foam blowing applications. Since HCFCs are first-generation substitutes for CFCs, EPA believes that the commercially viable HCFCs that are not in production could be produced as the CFC phase-out progresses.

EPA has used production volume as a criterion in responding to a petition to add certain chemicals and chemical categories that are on the Resource Conservation and Recovery Act list of hazardous wastes under 40 CFR 261.33(f) to the EPCRA section 313 list published elsewhere in this issue of the **Federal Register**. This criterion was used in order to ensure that chemicals added to the list would generate EPCRA section 313 reports. For the chemicals not added to the EPCRA section 313 list because their production volumes were lower than the reporting thresholds, EPA does not anticipate a significant change in their production in the near future. This assumption does not hold for the HCFCs, however, because HCFCs are the first generation substitutes for CFCs. It is therefore reasonable to predict that commercially viable HCFCs could be produced in the foreseeable future. Thus, EPA has included those HCFCs in this final rule.

As indicated, EPA's concerns for these chemicals do not focus on direct toxicity, but rather on the depleting effect these chemicals have on stratospheric ozone and the increase in penetration of UV-B radiation which would result. EPA has already conducted extensive analyses of available data on these chemicals in connection with the development of a rule limiting production and consumption of these chemicals in accordance with the Montreal Protocol. Based on the supporting documents for that rule, EPA believes that releases of these chemicals will lead to stratospheric ozone depletion resulting in increased penetration of UV-B radiation. Because this increased UV-B radiation can be reasonably anticipated to lead to cancer and other chronic human health effects and significant adverse environmental effects, EPA has determined that these chemicals meet the statutory criteria for listing found in section 313(d)(2)(B) and (C) of EPCRA.

V. Rulemaking Record

The record supporting this rule is contained in the docket number OPPTS–400065A. All documents, including an index of the docket, are available in the Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The NCIC is located at EPA Headquarters, Rm. G102, 401 M St., SW., Washington, DC 20460.

VI. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order (E.O.) 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the E.O. (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlements, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this E.O.

EPA's economic analysis estimates between 344 and 1,102 reports entailing annual costs to EPA and industry between $985,216 and $3,168,900 as a result of the addition of the 11 HCFCs to EPCRA section 313 list of toxic chemicals.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Although not considered "significant," this rule was sent to OMB for informational purposes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals. Therefore, EPA concludes that this rule is not likely to significantly impact a substantial number of small entities.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in this rule under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 et seq. and has assigned OMB control number 2070–0093.

The public reporting burden for this collection of information is estimated to average 47 hours per response, including time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

List of Subjects in 40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

Dated: November 29, 1993.

Victor J. Kimm,

Acting Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR part 372 is amended as follows:

PART 372—[AMENDED]

1. The authority citation for part 372 is revised to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

2. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to paragraph (b) in CAS No. order to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical Name	CAS No.	Effective Date
. . . . .	.	.
1-Chloro-1,1-difluoroethane (HCFC-142b)	75-68-3	1/1/94
. . . . .	.	.
Chlorodifluoromethane (HCFC-22)	75-45-6	1/1/94
. . . . .	.	.
Chlorotetrafluoroethane	63938-10-3	1/1/94
1-Chloro-1,1,2,2-tetrafluoroethane (HCFC-124a)	354-25-6	1/1/94
2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)	2837-89-0	1/1/94
. . . . .	.	.
1,1-Dichloro-1-fluoroethane (HCFC-141b)	1717-00-6	1/1/94
. . . . .	.	.
Dichlorotrifluoroethane	34077-87-7	1/1/94
Dichloro-1,1,2-trifluoroethane	90454-18-5	1/1/94
1,1-Dichloro-1,2,2-trifluoroethane (HCFC-123b)	812-04-4	1/1/94
1,2-Dichloro-1,1,2-trifluoroethane (HCFC-123a)	354-23-4	1/1/94
2,2-Dichloro-1,1,1-trifluoroethane (HCFC-123)	306-83-2	1/1/94
. . . . .	.	.

(b) * * *

CAS No.	Chemical Name	Effective Date
. . . . .	.	
75-45-6	Chlorodifluoromethane (HCFC-22)	1/1/94
. . . . .	.	
75-68-3	1-Chloro-1,1-difluoroethane (HCFC-142b)	1/1/94
. . . . .	.	
306-83-2	2,2-Dichloro-1,1,1-trifluoroethane (HCFC-123)	1/1/94
. . . . .	.	
354-23-4	1,2-Dichloro-1,1,2-trifluoroethane (HCFC-123a)	1/1/94
354-25-6	1-Chloro-1,1,2,2-tetrafluoroethane (HCFC-124a)	1/1/94
. . . . .	.	
812-04-4	1,1-Dichloro-1,2,2-trifluoroethane (HCFC-123b)	1/1/94
. . . . .	.	
1717-00-6	1,1-Dichloro-1-fluoroethane (HCFC-141b)	1/1/94
. . . . .	.	
2837-89-0	2-Chloro-1,1,1,2-tetrafluoroethane (HCFC-124)	1/1/94
. . . . .	.	
34077-87-7	Dichlorotrifluoroethane	1/1/94
63938-10-3	Chlorotetrafluoroethane	1/1/94
90454-18-5	Dichloro-1,1,2-trifluoroethane	1/1/94
. . . . .	.	

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40 CFR Parts 372 and 721

[OPPTS-400069C; FRL-4738-8]

Chemicals; Toxic Chemical Release Reporting; Community Right-to-Know; Significant New Use Rule

AGENCY: Environmental Protection Agency (EPA).

ACTION: Final rule.

SUMMARY: EPA is adding 21 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of the Emergency Planning and Community Right-to-Know Act of 1986 (EPCRA). All of these chemicals and chemical categories appear on the Resource Conservation and Recovery Act (RCRA) list of hazardous wastes at 40 CFR 261.33(f). The addition of these chemicals and chemical categories to the EPCRA section 313 list of toxic chemicals is based on their acute human health effects, carcinogenicity or other chronic human health effects, or their environmental effects, and on evidence that each is manufactured or imported in quantities of at least 10,000 pounds per year by at least one facility. EPA has found that the chemicals meet the criteria for addition to the list of toxic substances as established in EPCRA section 313(d)(2). EPCRA section 313 reporting for the newly listed chemicals

and chemical categories will be required beginning with activities during the 1994 calendar year. As such, the first reports for the added chemicals and chemical categories must be submitted to EPA and States by July 1, 1995. EPA is also promulgating significant new use rules (SNURs) under section 5(a)(2) of the Toxic Substances Control Act (TSCA) for 18 chemical substances that were proposed for addition to the EPCRA section 313 list but that are not being added today because no evidence was found that they are manufactured or imported in quantities of at least 10,000 pounds at any one facility. The SNURs will require persons to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing any of the 18 substances (listed herein) in amounts of 10,000 pounds or greater, per year, per facility, for any use.

DATES: The amendments to part 372 (the EPCRA section 313 rule) is effective January 1, 1994. In accordance with 40 CFR 23.5, the SNURs shall be promulgated for purposes of judicial review at 1 p.m. eastern time on December 15, 1993. The amendments to part 721 (the SNURs) become effective on January 14, 1994.

FOR FURTHER INFORMATION CONTACT: Maria J. Doa, Petitions Coordinator, Emergency Planning and Community Right-to-Know Information Hotline, Environmental Protection Agency, Mail Stop 7408, 401 M St., SW., Washington, DC 20460, Toll free: 800–535–0202.

SUPPLEMENTARY INFORMATION:

I. Introduction

A. Statutory Authority

This rule is issued under section 313(d) and (e) of the Emergency Planning and Community Right-to-Know Act of 1986 (42 U.S.C. 11023 et seq., "EPCRA"). EPCRA is also referred to as Title III of the Superfund Amendments and Reauthorization Act of 1986.

B. Background

Section 313 of EPCRA requires certain facilities manufacturing, processing, or otherwise using toxic chemicals to report their environmental releases of such chemicals annually. Beginning with the 1991 reporting year, such facilities also must report pollution prevention and recycling data for such chemicals, pursuant to section 6607 of the Pollution Prevention Act (42 U.S.C. 13106 et seq.). Section 313 established an initial list of toxic chemicals that was composed of more than 300 chemicals and 20 chemical categories. Section 313(d) authorizes EPA to add or delete chemicals from the list, and sets forth criteria for these actions. Under section 313(e), any person may petition EPA to add chemicals to or delete chemicals from the list. EPA issued a statement of petition policy and guidance in the **Federal Register** of February 4, 1987 (52 FR 3479) to provide guidance regarding the recommended content and format for petitions. On May 23, 1991 (56 FR 23703), EPA issued guidance regarding the recommended content of petitions to delete individual members of the section 313 metal compound categories.

II. Description of Petition

On March 4, 1992, EPA received a petition from Governor Mario M. Cuomo of New York and the Natural Resources Defense Council to add 80 chemicals and 2 chemical categories to the list of toxic chemicals under section 313 of EPCRA. All of the chemicals and chemical categories appear on the RCRA list of hazardous wastes under 40 CFR 261.33(f).

On September 8, 1992 (57 FR 41020), EPA partially granted the petition by proposing the addition of 68 chemicals and 2 chemical categories. It was the Agency's determination that these chemicals cause or can reasonably be anticipated to cause adverse acute or chronic human health effects or environmental effects as set forth in section 313(d)(2). The remaining 12 chemicals were not proposed for addition because it was EPA's belief that the available data did not indicate that they met the listing criteria of section 313(d)(2).

The proposed rule also included an alternative proposal to add only that subset of the 68 chemicals and 2 chemical categories that met the toxicity criteria for listing and also had evidence of production greater than a certain manufacturing threshold. As described in the proposal, the selection of the manufacturing threshold would be guided by the section 313(f) reporting thresholds, such that the addition of those chemicals produced in quantities less than the selected threshold would not be expected to result in the submission of EPCRA section 313 Form R reports to EPA and States. In conjunction with this alternative proposal, EPA proposed a SNUR under section 5(a)(2) of TSCA to gather information about any planned production greater than 25,000 pounds per facility of any of the petitioned chemicals that met the EPCRA section 313 toxicity criteria for listing and were on the TSCA Section 8(b) Inventory of Chemical Substances, but would not be added under the alternative proposal because they would not be expected to exceed the manufacturing volume threshold.

III. Summary of Final Rule

In this action, EPA is adding 21 chemicals and 2 chemical categories to the EPCRA section 313 list. EPA finds that each of these chemicals and chemical categories meets one or more of the toxicity criteria for listing found in EPCRA section 313(d)(2). Additionally, evidence exists that each of these chemicals can reasonably be anticipated to be manufactured or imported in quantities of at least 10,000 pounds (the EPCRA section 313 otherwise use reporting threshold) by at least one facility. Therefore, the Agency believes that the listing of these chemicals can reasonably be anticipated to generate EPCRA section 313 reports and that adding these chemicals to the list is appropriate.

The proposed rule contained summary information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. Based on an evaluation of the public comments received and a reanalysis of the available data cited in the proposed rule, EPA has determined that each of these 21 chemicals and 2 chemical categories meets one or more of the EPCRA section 313 listing criteria. Response to comments on specific chemicals appears in Unit III.G. of this preamble.

The following chemicals are found to meet the statutory criteria of section 313(d)(2)(A) for acute toxicity: bis(2-chloroethoxy)methane; formic acid; and methyl chlorocarbonate. The following chemicals and chemical categories are found to meet the statutory criteria of section 313(d)(2)(B) for cancer or other chronic human toxicity: acetophenone; amitrole; 1,4-dichloro-2-butene; dihydrosafrole; ethylenebisdithiocarbamic acid, salts and esters; ethylidene dichloride; formic acid; hexachlorophene; hydrogen sulfide; malononitrile; methacrylonitrile; methyl mercaptan; 2-methylpyridine; 5-nitro-o-toluidine; paraldehyde; pentachloroethane; pronamide; 1,1,1,2-tetrachloroethane; thiram; trypan blue; and warfarin and salts. The following chemicals are also found to meet the statutory criteria of section 313(d)(2)(C) for environmental toxicity: hexachlorophene; hydrogen sulfide; and thiram.

Upon reevaluation of the toxicity data, EPA has determined that two chemicals that were proposed for listing based on "may be sufficient" evidence of toxicity and evidence of production above the manufacturing level threshold

do not have sufficient evidence of toxicity to meet the statutory criteria of EPCRA section 313(d)(2) and thus are not listed in this final rule. These chemicals are p-chloro-m-cresol and p-toluidine. p-Chloro-m-cresol was rated toxic to man with a probable lethal dose of 50 to 500 milligrams per kilogram (mg/kg); however, because pertinent information, such as mode of exposure, was lacking, the significance of this study could not be determined. The animal LD_{50} (400 mg/kg) studies via other routes of exposure also demonstrated only moderate lethality concerns for this chemical. Because the toxicity data are limited, and the available data indicate that the chemical induces toxicity at relatively high dose levels, the Agency believes that the section 313(d)(2) listing criteria are not met. For p-toluidine, there is only limited evidence of carcinogenicity; increased incidence of hepatoma was seen in the male mice and in high dose female mice only when compared with pooled controls. p-Toluidine was not carcinogenic in male rats and is not mutagenic in a number of genotoxicity test systems. Therefore, the Agency believes that there is insufficient evidence for listing p-toluidine pursuant to section 313(d)(2).

For one other chemical, crotonaldehyde, that was proposed for listing based on "may be sufficient" evidence of environmental toxicity and evidence of production above the manufacturing level threshold, the Agency finds that the evidence of environmental toxicity is insufficient for listing pursuant to EPCRA section 313(d)(2)(C). However, upon reevaluation of the human health data, the Agency believes that there exists a concern for carcinogenicity for this chemical. Therefore, this chemical is not being added to the EPCRA section 313 list in this action, but will be proposed for listing pursuant to EPCRA section 313(d)(2)(B) in the Agency-initiated expansion rule to follow soon.

The Agency proposed to add nine polycyclic organic compounds to the EPCRA section 313 list, but is not finalizing the addition of any of these compounds in today's action. Eight of these compounds have been referred to the Agency's chemical list expansion project for inclusion in a category of specific polycyclic aromatic compounds, because they are similar in structure, origin, and type of adverse effect induced to the other constituents of this possible category. The remaining polycyclic organic compound, fluoranthene, was not referred to the possible category under the expansion project because it differs from the other constituents in type of adverse effect induced. However, it is not being added to the EPCRA section 313 list today because its production volume does not meet or exceed the 10,000 pound per facility threshold.

In response to a comment, the Agency has reevaluated one chemical, methyl ethyl ketone peroxide, that was found to be insufficient for listing in the initial review and therefore was not proposed for addition to the EPCRA section 313 list. As a result of this reevaluation, the Agency has identified a possible concern for corrosivity for this chemical and has referred it for consideration under the Agency's chemical list expansion effort.

In this action, EPA is also promulgating SNURs under section 5(a)(2) of TSCA for 18 chemical substances that were proposed for addition to the EPCRA section 313 list but that are not being added today because no evidence was found that they are manufactured or imported in quantities of at least 10,000 pounds at any one facility. The SNURs will require persons to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing any of the 18 substances in amounts of 10,000 pounds or greater, per year, per facility, for any use. The 18 substances are listed in Unit V.D. of this preamble.

IV. Summary of Public Comment

The public comment period for the proposed rule ended November 9, 1992. Sixty-five comments were received, including 34 from industry, 21 from environmental groups, and the remainder from other public interest groups, private citizens, labor groups, and government agencies and associations. In the **Federal Register** of September 10, 1993 (57 FR 47709), EPA published a notice of availability to allow the public an opportunity to comment on certain additional materials that were added to the docket after the close of the public comment period for the proposed rule. The public comment period for the notice of availability ended September 27, 1993. One comment was received during the public comment period. One additional letter was received requesting an extension of the public comment period on the notice of availability and providing brief comments. This letter will also be treated as a public comment on the notice of availability.

EPA received comments in the following major areas: petition response policy; use of a manufacturing level threshold in listing decisions; use of a production tracking mechanism; listing of categories; use of predictive techniques; general technical comments, and chemical-specific comments.

A. Petition Response Policy

Five industry commenters contended that this petition should have been rejected outright because the petitioners did not provide adequate information for this petition to be evaluated and did not follow the guidelines in EPA's statement of petition policy and guidance (52 FR 3479, February 4, 1987). Two of these commenters argued that acceptance of this petition creates a double standard between information required for listing and delisting petitions and establishes a "dangerous" precedent by EPA's assuming the burden of critically evaluating the petitioned chemicals. One of these commenters contended that, because the petitioners cited only chronic human toxicity as the basis for concern, EPA should have evaluated these chemicals solely for chronic human toxicity, not for all effects.

The Agency does not believe that this petition should have been rejected outright. The petitioners argued that, because the Agency had already listed these chemicals on RCRA using criteria similar to the section 313 toxicity criteria, these chemicals could reasonably be anticipated to cause the toxic effects cited in section 313(d)(2). While the Agency clearly would prefer that petitioners provide specific information relevant to all effects, the Agency believes that the information and rationale provided by the petitioners in this case were adequate for the purposes of initiating an Agency review of this petition. The Agency has, on occasion, made similar decisions with respect to evaluation of delisting petitions containing little specific information, such as the petition to delete decabromodiphenyl oxide (54 FR 46424, November 3, 1989) from section 313.

Three commenters contended that it was inappropriate to base an EPCRA section 313 listing decision solely on the RCRA status of the chemicals, because the two statutes have different purposes and different listing criteria. The Agency agrees. All chemicals included in the petition were evaluated for addition to the EPCRA section 313 list of toxic chemicals by applying the listing criteria established under section 313(d)(2). EPA's decision to add these chemicals to EPCRA section 313 was not based on their RCRA status. Furthermore, as stated in the proposal (57 FR 41021, September 8, 1992), the actions taken in this proceeding have no effect on any substance's status under RCRA or any other statute.

Seven commenters contended that it was inappropriate for EPA to use the *Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory* (Ref. 1) in the technical review of the petition. These commenters believed that EPA should finalize these draft guidelines prior to using them to make section 313 listing decisions, particularly since the guidelines have been presented for public comment, but this comment has not yet been incorporated. In response, EPA believes that it is appropriate to use these draft guidelines in listing and delisting decisions, because they are merely an embodiment of internal EPA practices that have been used in the review of petitions to add and delete chemicals from EPCRA section 313 since the inception of the program. These guidelines do not constitute a set of rules for additions and deletions, but merely an explanation of the process and general standards for evaluating chemicals against the section 313 listing criteria. The draft guidelines notwithstanding, EPA has evaluated every chemical subject to this rulemaking against the section 313 statutory criteria.

One commenter suggested that this petition should be considered in the context of the overall EPCRA section 313 chemical list expansion effort rather than in isolation. EPA has coordinated its response to this petition with its own, internally-initiated effort to identify toxic chemicals for addition to the EPCRA section 313 list. As a result of this effort, the Agency expects to propose a chemical list expansion rule in late 1993 or early 1994. However, the chemicals that are the subject of today's action were included in a governor's petition, and the Agency has now completed its review of the petition and the public comment. The Agency does not see any potential benefit to be gained by delaying today's action to coincide with the Agency-initiated expansion rule.

Two commenters recommended that EPA prioritize its listing decisions, using the Agency's limited resources to list first those chemicals that pose the greatest risk. However, the statutory criteria for listing chemicals under EPCRA section 313 focus on hazard, not risk. Only section 313(d)(2)(A) requires a risk-related factor, the potential for exposure in the form of chemical concentrations beyond the fenceline. The Agency has also used its discretion to consider exposure potential when evaluating chemicals that show moderate aquatic toxicity under section 313(d)(2)(C). Because of the focus of the statutory criteria, EPA believes that prioritization of chemicals for listing under section 313 should be based largely on hazard, not on risk. In this case, EPA received a petition and is required by section 313(e) to act in response to the petition.

Three commenters suggested that, prior to adding chemicals, EPA should subject them to a "policy screen" to determine, for example, if EPCRA is the most appropriate mechanism for collecting data about the chemicals, whether listing the chemical best serves the public right-to-know purposes of EPCRA, or whether listing will promote good environmental practices with respect to the chemical. One commenter contended that EPA needs to evaluate and articulate the usefulness of collecting this data for these chemicals. The Agency believes that EPCRA section 313 is an appropriate mechanism for collecting data on these chemicals, and that listing these chemicals will serve the purposes of EPCRA by providing the public with information about releases of these chemicals from facilities. EPA believes that EPCRA section 313 data have been extremely useful to the public, industry, and government, particularly in promoting good environmental practices with respect to toxic chemicals, and the Agency fully expects this to be true for these chemicals as well.

B. Manufacturing Volume Threshold

Twelve commenters, primarily from industry, expressed support for the use of a manufacturing volume threshold in EPCRA section 313 listing decisions. These commenters agreed with the Agency's position that the public's right-to-know is not served by listing chemicals for which few, if any, reports would be submitted. In contrast, 31 commenters, primarily environmental and public interest groups, labor groups, and private citizens, supported the proposal to add all 68 chemicals and 2 categories that were found to meet the toxicity criteria and opposed the proposal to employ a manufacturing volume threshold. These commenters stated that it is inappropriate to use production volume data to make listing determinations that should be based solely on toxicity.

Two commenters maintained that use of the manufacturing volume threshold is appropriate, because EPA has the option but is not required to list chemicals that meet the statutory criteria for listing. Two other commenters contended that the law and legislative history make it clear that, when responding to a governor's petition, EPA has a mandatory duty to add all chemicals that meet the toxicity criteria in section 313(d)(2). These latter commenters contend that the discretion cited by EPA in the proposal applies to Agency-initiated actions only. Four commenters state that the use of a manufacturing level threshold as a basis for listing is inappropriate, because the statute expressly lists the types of data to be considered in chemical listing decisions, and manufacturing data are not included in that list. Five commenters contended that choosing not to list certain toxic chemicals because they are not manufactured at levels that exceed a certain volume threshold is inconsistent with or contravenes the intent of the statute.

EPA reaffirms its belief, stated in the proposal, that "the use of a manufacturing volume threshold in responding to petitions under section 313(e) is appropriate and within the authority granted by EPCRA" (57 FR 41035, September 8, 1992). The detailed rationale for this belief is included in the proposal and is not reiterated here. However, in summary, the Agency believes that the discretion granted under section 313(d)(2) in the words "a chemical may be added" applies equally to Agency-initiated actions and to petition responses. Section 313(e), which governs the petition process, explicitly directs the Agency to, if appropriate, initiate a rulemaking "in accordance with subsection (d)(2)." Further, the Agency believes that the use of this threshold is not only a permissible and reasonable interpretation of the statute, but also "consistent with the section 313 list's purpose of generation of publicly available release data on listed chemicals and therefore a valid exercise of the Agency's discretion" (57 FR 41035). Finally, while the statute specifies generally accepted scientific principles, laboratory tests, and other studies as the permissible bases for making a toxicity determination under section 313(d)(2), EPCRA does not preclude the Agency from considering other information, such as production volume, when exercising its discretion when responding to a petition to list or not list a chemical that may meet the toxicity criteria.

Three commenters contended that EPA should not use a manufacturing volume threshold because available production data may be inaccurate or incomplete and therefore an inadequate basis for a decision. EPA acknowledged in the proposal that "information used to determine if a chemical is manufactured, imported or processed in quantities greater than an established manufacturing volume threshold...is limited" (57 FR 41038, September 2,

1992). In the proposal, EPA presented the production volume information it had obtained and specifically sought information from the commenters on production volumes. However, no additional information about production of any of these chemicals above either a 10,000 pound or a 25,000 pound threshold was provided by any commenter.

The Agency has conducted an extensive search of a number of different data sources to ensure that the best possible production information was used for the final decisions. While these data may be incomplete or inaccurate for some chemicals, EPA believes that, as the best available information, it constitutes a reasonable basis for these decisions.

EPA conducted, subsequent to the proposal, a search of a variety of data sources to attempt to identify production that was not identified at the proposal stage. The revised economic analysis (Ref. 2) provides information about the additional data sources that were examined and the results of the search for additional production data. One chemical (hexachlorophene) and one chemical category (warfarin and salts) were identified with manufacturing or import volumes in excess of the 10,000 pound threshold. (One chemical, trypan blue, had already been identified at the proposal stage as having a manufacturing or import volume above 10,000 pounds.) One additional chemical, paraldehyde, was identified with a known import volume of 5,000 pounds and is also known to form from acetaldehyde, a listed section 313 chemical, on standing. It is EPA's belief that this evidence of import and coincidental manufacture indicate that production of paraldehyde could reasonably be anticipated to exceed the 10,000 pound threshold.

Three commenters objected to the use of a manufacturing volume threshold because any confidential business information (CBI) used by EPA as a justification for a decision could not be released to the public or listed as a justification for rulemaking in the **Federal Register**. Therefore, the public would not be able to check or comment on EPA's judgments made using these data. In response, EPA has several options for using CBI data as a basis for a rulemaking. EPA can request a waiver from facilities to release certain information to the public. Alternatively, EPA can aggregate or otherwise mask facility-specific information in ways that provide the necessary information to the public without divulging CBI. Therefore, EPA does not believe that the possibility that CBI data will undermine the discretionary use of production volume in an EPCRA listing decision provides a sufficient reason to abandon the manufacturing volume threshold approach.

Ten public interest group commenters stated that adding chemicals for which no reports would be expected imposes no serious burden on the regulated community. Therefore the decision to refrain from adding chemicals that would not be expected to yield reports will provide no or only negligible burden relief to facilities. Two commenters argued that the fact that the regulated community has never petitioned EPA to remove from EPCRA section 313 the chemicals for which no reports have ever been received, indicates that the regulated community is not concerned about the negligible burden of having these chemicals on the list. Industry commenters contended that listing chemicals for which no reports would be expected imposes a burden on industry because subject facilities would still be required to determine whether they exceed thresholds for these chemicals. They also contend that facilities may be subject to an indirect burden from other regulatory requirements triggered by an EPCRA section 313 listing.

EPA believes that listing chemicals for which no reports would be expected would impose some additional burden on industry without producing any notable benefit. Some additional burden would be involved in examining a longer list of chemicals to determine which, if any, are manufactured, processed, or used at a subject facility. Some additional burden may also be imposed if the facility manufactures, processes, or uses a small quantity of any of these chemicals and therefore must perform threshold calculations to determine reporting obligations. EPA acknowledges that, for most facilities, the additional burden is likely to be minor. However, the Agency believes that even this minor additional burden would not be justified if there were clearly no reasonable basis for the Agency to expect submission of reports for these chemicals. EPA also believes that the absence of petitions to remove certain chemicals from the list does not necessarily indicate that the regulated community is not concerned with the burden associated with the presence on the list of those chemicals or other chemicals for which no reporting would be expected. Indeed, the general support for the use of a manufacturing volume threshold expressed by the regulated community in the public comment period suggests the contrary.

Eighteen commenters contended that listing these chemicals individually later because of production increases would be a cumbersome, costly, and inefficient process that would waste scarce EPA resources. EPA does not expect future individual listing to be particularly cumbersome, inefficient, or time-consuming. Hazard assessments have already been performed for these chemicals. Therefore, it would be relatively simple to add these chemicals in the future based on evidence of production or use volumes likely to generate reports. Thirteen commenters contended that such future listing may result in the loss of one, two, or more years' data between the time that production increased and the time that the reporting requirement would take effect. For the 18 chemicals subject to the significant new use rules being promulgated today, EPA does not expect any loss of data. The significant new use rules, which are also being promulgated in final form today, will require facilities to submit notification to the Agency of their intent to produce any of the subject chemicals in quantities of 10,000 pounds or more. Upon receipt of this notice, the Agency may require under TSCA authorities the submission of additional data about this production, including the data that would be required under EPCRA section 313. For chemicals that are not subject to the significant new use rules, EPA acknowledges that there may be a time lag for receipt of Form R reports under this approach. However, the number of lost reports would not be expected to be large unless one or more of these chemicals that are currently believed to be out of production entirely or produced in only very low quantities underwent a sudden and dramatic production increase. The production data the Agency has examined gives the Agency no reason to expect such sudden production increases for any of these chemicals. For example, many of these chemicals are canceled pesticides or drugs that are no longer approved for use in this country and do not appear to be produced for export. For chemicals such as these, it is reasonable to expect future production to remain constant or to decline.

Two commenters argued that, if a manufacturing level threshold is to be employed, it should be set at 10,000 pounds, rather than 25,000 pounds, since 10,000 pounds represents the lowest activity threshold for reporting under section 313. The Agency reaffirms that the purpose of a manufacturing volume threshold would be to ensure that chemicals are only added to EPCRA

section 313 if it is reasonable to expect submission of reports for those chemicals. In general, the Agency agrees with the commenters that the manufacturing volume threshold used in making decisions to add chemicals to the section 313 list should correspond to the lowest section 313 activity threshold for reporting, which is the 10,000 pound threshold for otherwise using a chemical. Accordingly, a manufacturing volume threshold of 10,000 pounds was adopted for this action. However, in certain cases, readily available and reliable production and use information may lead the Agency to conclude that no reports would be submitted for a chemical whose known production exceeds 10,000 pounds but is less than 25,000 pounds. In such cases, the Agency may use its discretion not to list that chemical.

Two commenters contended that failing to list toxic chemicals that currently are not produced or are produced in low quantities may cause businesses to switch their manufacturing, processing, or use from listed section 313 chemicals to chemicals that are not on the section 313 list. While such substitution may certainly occur, EPA does not believe it is likely for the majority of these chemicals, since many of them are canceled, restricted, or are research or medical chemicals used in small quantities for very specific purposes. For chemicals that are subject to the significant new use rules being promulgated today, EPA would receive notification of a facility's intent to manufacture any of these chemicals in quantities of at least 10,000 pounds. If evidence of production at or above the 10,000 pound threshold becomes available for any chemical, whether through notice under the significant new use rules or through other means, the Agency will examine that chemical for potential addition to the EPCRA section 313 list.

One commenter stated that some chemicals that are not produced in large quantities nationally are of particular interest in the commenter's local area. However, the commenter did not identify particular chemicals or provide any production information. Under EPA's approach, the manufacturing volume threshold applies on a per facility basis. Therefore, if a chemical is known to be produced at a facility in the commenter's area in a quantity that would be sufficient to generate a section 313 Form R report, that chemical would be listed under this action.

C. Production Tracking Mechanism

EPA recognized in the proposal that there may be future production of certain of these chemicals in excess of the manufacturing volume threshold. Therefore, the Agency stated its intention to promulgate a significant new use rule (SNUR) under TSCA section 5(a)(2) to identify such future production. The SNUR was proposed for 21 chemical substances and 1 chemical category that were on the TSCA section 8(b) Inventory of Chemical Substances and were believed to meet the EPCRA section 313(d)(2) toxicity criteria, but were not known to be in production at or above 25,000 pounds. The Agency requested comment on the suitability of the SNUR as a production tracking mechanism, as well as on the use of other regulatory mechanisms for obtaining production volume information.

Five commenters objected to the use of the SNUR because they believe it imposes excessively burdensome requirements and collects more information than is needed for the stated purpose. Four commenters stated that the burden reduction of not listing the chemicals would be outweighed by the additional burden of the SNUR, and therefore the Agency should simply make a listing decision rather than promulgate the SNUR. One commenter contended that using a SNUR to track future production for EPCRA purposes is not an appropriate use of a SNUR, which is supposed to be used for tracking new uses of a chemical substance for TSCA purposes. Four commenters contended that the Agency should consider a less burdensome tracking mechanism, such as a minimal notification requirement under TSCA section 8(a). Several commenters objected to the use of a SNUR because the SNUR could not track production of chemicals not covered by TSCA, such as drugs, drug intermediates, and pesticides. Two commenters stated that compliance with the SNUR requirements might not be as high as compliance with EPCRA section 313, since EPCRA section 313 has high visibility and can be enforced with citizen suits.

The Agency has closely considered these comments and has determined that a SNUR remains the most appropriate mechanism for monitoring these chemical substances and taking follow-up action, if appropriate. Therefore, the Agency is promulgating SNURs for 18 of the chemical substances for which a SNUR was proposed. Three chemicals (hexachlorophene, paraldehyde, and trypan blue) and one chemical category (warfarin and salts) that were included in the proposed SNUR are not included in today's final SNURs because they are being added to the EPCRA section 313 list today.

EPA disagrees that using a SNUR to track future production is an inappropriate use of TSCA section 5(a)(2). Indeed, as indicated in the TSCA Conference Report, Congress specifically contemplated such a use in drafting TSCA. "Thus a significant increase in the projected volume of manufacture or processing for a substance, a significant change in the type or form of human or environmental exposure, or a significant increase in the magnitude or duration of human or environmental exposure could be the basis for determining that a use is a significant new use." (H.R. Rep. 1679, 94th Cong., 2d Sess. 66 (1976)). In addition, there is no indication in TSCA or the legislative history that SNURs are to be used only for TSCA purposes. In fact, it was broadly acknowledged by Congress that TSCA is to be a "gap filler" in relation to other laws administered by EPA.

EPA disagrees that submission of a significant new use notice (SNUN) is an excessively burdensome requirement. The chemical substances for which EPA is issuing SNURs are known to, or can reasonably be anticipated to cause an adverse effect on humans or the environment. These chemical substances are currently produced below the section 313 reporting threshold for otherwise using a chemical substance of 10,000 pounds at any facility. Production volume increases above this level, and subsequent changes in exposures to these chemical substances, may present an unreasonable risk of injury to human health or the environment. The burden estimated for submission of SNUNs to the Agency is not unreasonable, since receipt of the notice will allow EPA to evaluate the new exposure scenarios, consider additional data submitted with the notice, and take action under TSCA section 5(e) or 5(f), if appropriate, to develop additional data or prevent an unreasonable risk. Following receipt of a SNUN, and subsequent evaluation of available data on the chemical substance, EPA may also determine to list the chemical under EPCRA section 313.

EPA's determination to issue SNURs for these chemical substances rather than list them under EPCRA section 313 is not based upon the relative burden of reporting for EPCRA section 313 versus reporting under a SNUR, but rather the appropriateness of each statutory

section for managing toxic chemical problems. The primary purpose of a SNUR is to ensure that the Agency is notified prior to any significant or new exposures to new or existing chemical substances. For example, a SNUR may be promulgated to obtain a notice prior to resumption of production of a chemical substance that has been phased out of commerce because of health concerns, or changes in worker exposure or pollution control measures for hazardous chemical substances which could effect exposure levels. Today's action is consistent with EPA's past use of TSCA section 5(a)(2). As noted in the preamble to the proposed rule, EPA believes that it is important to focus on those toxic chemicals that will yield data for the public. Because these chemicals are produced below the reporting threshold, adding the chemicals to the EPCRA section 313 list would not yield data for the public.

EPA considered the use of a TSCA section 8(a) reporting rule as an alternative to a SNUR. A section 8(a) rule would provide a means to acquire production volume and other exposure related data on these chemicals. However, section 8(a) is limited when compared to section 5(a)(2) in that it does not provide a mechanism for follow-up collection or generation of additional data, or for mitigation of possible unreasonable risks, except by subsequent rulemaking. Because these chemical substances are known to be hazardous, EPA considers the follow-up authorities contained in section 5 of TSCA to be appropriate. In addition, small businesses are exempt from reporting under TSCA section 8(a), and EPA believes it could miss increases in production by small businesses if it used section 8(a) rather than SNURs.

EPA disagrees with the commenters who argued that SNURs should not be used as a production tracking mechanism in this situation because they cannot be used for chemicals not covered by TSCA, such as drugs and pesticides. The fact that SNURs are inappropriate tracking mechanisms for certain of these chemicals does not argue against their use for other chemicals that are covered by TSCA. EPA has not identified any more suitable production tracking mechanism, and therefore believes that it is preferable to use the SNURs rather than another alternative or no tracking mechanism at all. It should be noted that pesticides and drugs that have other, non-pesticidal or non-drug uses may be included on the TSCA Inventory (e.g., DDT) and can be appropriate subjects of SNURs.

EPA agrees that EPCRA section 313 has high visibility, and can be enforced by citizen suits. However, under TSCA, penalties for violation can reach $25,000 per day per violation. Because SNUR violations are considered among the most egregious of possible TSCA violations, companies have a strong motivation to comply. In addition, EPA diligently monitors compliance with section 5(a)(2). Finally, TSCA section 20 also has authority for citizen suits to enforce TSCA rules. EPA, therefore, does not believe that there is any evidence or compelling reason to believe that compliance with EPCRA section 313 would be higher than for TSCA section 5(a)(2).

Unit V. of this preamble contains additional discussion on the SNURs being finalized today.

D. Addition of Categories

Two chemical categories (ethylenebisdithiocarbamic acid, salts and esters; warfarin and salts) were proposed for listing. Four commenters contended that EPCRA does not provide for the addition of a chemical category without individually evaluating and justifying each member of that category. The Agency believes that the statutory authority to add "a chemical" to the list may be reasonably interpreted to include the authority to add groups or categories of chemicals to the list, particularly in light of the fact that the original list adopted by Congress in section 313(c) of EPCRA included 20 chemical categories, mostly metal compounds, but also including categories of organic chemicals such as chlorophenols. The Agency believes it may satisfy the statutory criteria for adding a chemical category to the list by identifying the toxic effect of concern for at least one member of the category, and then showing why that effect may reasonably be expected to be caused by all other members of that category. The justification for the listing of the two categories in this action is given below in the chemical-specific portion of the response to comments section.

Four commenters objected to the listing of chemical categories because categories are difficult for EPA to administer and/or for the public and industry to understand. They also contend that industry compliance with reporting and supplier notification requirements is more difficult for categories because facilities are not provided with discrete chemical names and Chemical Abstract Service (CAS) registry numbers. Because the two categories being added to the section 313 list today each consist of chemicals that are similar chemically and in potential effect, EPA believes that these categories will not be difficult for the public or industry to understand or for the Agency to administer. The Agency will work with the public and the regulated community to develop, as appropriate, any interpretations and guidance the Agency determines are necessary to facilitate accurate reporting for these categories.

Several commenters stated that categories should only be used to group compounds that are similar chemically and in potential effects. As stated above, it is the Agency's belief that the two categories added to section 313 in this action are each composed of chemicals that are similar chemically and in potential effects.

The Agency proposed to add 9 polycyclic organic compounds to the section 313 list and requested comment on whether these chemicals should be listed as a category rather than individually. The Agency is not adding any of these polycyclic organic compounds to the EPCRA section 313 list in today's action. Eight of these compounds have been referred for consideration under the Agency-initiated chemical list expansion effort. In that expansion effort, the Agency is considering the addition of a delineated category of polycyclic aromatic compounds (PACs) to the EPCRA section 313 list. The eight polycyclic organic compounds are being referred for possible inclusion in that category because they are similar in structure, origin, and the type of adverse effect induced to the other constituents of the possible PAC category. Specific comments already received on the grouping of these compounds into a category will not be addressed in today's action, but will be referred for consideration in the final rule for the chemical list expansion effort.

One polycyclic organic compound (fluoranthene) that was included in the proposal is not being referred for consideration in the PAC category under the chemical list expansion effort because it is not similar to the other constituents in type of adverse effect induced. However, that chemical is not being added to the EPCRA section 313 list in this rule because it does not meet the manufacturing threshold.

E. Use of Predictive Techniques

The hazard assessments for several of the chemicals in the proposal included estimated aquatic toxicity values generated from quantitative structure activity relationship equations (QSARs) and other predictive techniques. Several commenters objected to the use of values generated by these predictive

techniques as evidence that a chemical meets the toxicity criteria of section 313. Some commenters stated that there is no basis in the statute or the legislative history for their use. Other commenters believed that such predictive techniques could be used, but not as a sufficient basis by themselves for listing a chemical on section 313. Some commenters questioned the technical accuracy of QSARs, since their predictive power varies, and comparison of QSAR data with actual aquatic toxicity results can show a significant margin of error in some cases. One commenter requested that the QSAR reference manual or other supporting documentation be added to the docket. This reference manual was added to the docket and its availability was announced in a **Federal Register** notice of availability published September 10, 1993 (58 FR 47709).

EPA believes that, where no or insufficient actual aquatic toxicity data exist upon which to base a decision, toxicity estimates generated by QSARs and other predictive techniques may constitute sufficient evidence that a chemical meets the section 313 listing criteria. EPA's authority to use such predictive techniques derives from section 313(d)(2) of the statute, which states that EPA shall base its listing determinations on, *inter alia*, "generally accepted scientific principles." EPA believes that the aquatic QSAR equations that are in widespread use and that show a high correlation between estimated and measured aquatic toxicity values can be considered to be generally accepted scientific principles (Ref. 3) and can form the basis of a listing determination. However, none of EPA's listing decisions for this final rule rely solely on aquatic toxicity values generated by QSARs or other predictive techniques. Several chemicals for which QSAR estimates were included in the proposal are being added to the list based upon other, sufficient evidence of toxicity. The remainder of the chemicals for which QSAR estimates were included in the proposal are not being added to the list in this action because their production does not exceed the manufacturing level threshold.

F. General Technical Comments

Five commenters contended that chemicals whose evidence of toxicity places them in the "may be sufficient" category of the *Draft Hazard Assessment Guidelines* (Ref. 1) should not be listed under EPCRA section 313 because they do not reach the level of significance specified in the statute. These commenters contended that the statutory listing criteria are more stringent than those used to develop the proposal. One commenter pointed out that, according to the *Draft Hazard Assessment Guidelines*, the Agency did not intend to automatically list all the "may be sufficient" chemicals; two commenters pointed out that these guidelines call for a two-step approach of initial screening followed by an in-depth hazard analysis, and that it did not appear that this in-depth hazard analysis was performed.

EPA agrees with the commenters that a determination of "sufficient" evidence is required to support the listing of a chemical under section 313. For each of the 14 chemicals that were classified as "may be sufficient" in the alternative proposal and that had evidence of production exceeding the manufacturing threshold, EPA has now conducted a detailed hazard assessment to determine whether there is sufficient evidence to establish that the chemical meets the statutory criteria for addition to the list (Ref. 4). To make this determination, EPA reviewed the readily available toxicity information on the chemicals for the effects cited in the proposed rule, environmental fate data where appropriate, and any public comment received. EPA's determination that a chemical is known to cause or can reasonably be anticipated to cause one of the adverse effects described in section 313(d)(2) is based on the significance of the effects induced by the chemical, the severity of the effects, the dose level causing the effect, and the quality and quantity of the available data. This included a consideration of the type of hazard data (e.g., data in animals versus human) and the confidence in this hazard data base (e.g., the sufficiency of the hazard data). Based on the results of these hazard assessments (Ref. 4), all of the chemicals being added to the EPCRA section 313 list in this action have sufficient evidence that they meet one or more of the statutory listing criteria under EPCRA section 313(d)(2). The basis for the listing decisions is presented in Unit III. of this preamble.

One commenter maintained that intraperitoneal (stomach cavity) injection has minimal relevance for evaluating potential human exposure from industrial situations and should not be used to support an EPCRA section 313 listing decision. The commenter contended that, if considered at all, intraperitoneal injection is a form of exposure that should be considered in establishing a section 313(d)(2)(A) finding of acute effects, not a section 313(d)(2)(B) finding of chronic effects.

EPA disagrees with the commenter. In making section 313 listing decisions, the Agency cannot ignore the possible significance of any existing data, including data from intraperitoneal injection studies. Although it is preferable to have toxicity data from the common routes of human exposure for risk assessment, EPA has taken the conservative approach for hazard identification under EPCRA section 313. This comment related to two chemicals (malononitrile and pentachloroethane) that are being added to the section 313 list today. For these chemicals, any data from intraperitoneal or other injection routes of exposure are supplemented by data from other, noninjection exposure routes. For example, in addition to chronic human and rat injection studies to support the neurotoxicity concerns of malononitrile, acute inhalation studies in rats and mice were also available which demonstrated acute neurotoxicity effects for this chemical (Ref. 4). For pentachloroethane, acute (dog) and chronic (dog and cat) inhalation studies showed numerous neurological effects (Ref. 4). The proposed rule contains information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. Based on EPA's reanalysis of the available information in the proposed rule for these two chemicals (Ref. 4), EPA has determined that malononitrile and pentachloroethane have sufficient evidence to meet the statutory listing criteria under EPCRA section 313(d)(2)(B).

One commenter objected to the use of data concerning effects of short duration (transient episodes) to support a finding of chronic neurotoxicity. The commenter contended that there is no correlation between transient acute impact and chronic neurotoxicity that is appropriate to industrial chemicals as a whole. The commenter contended that, if a chemical exhibits transient acute but not chronic effects, it should not be listed based on chronic neurotoxicity, unless additional data on chronic neurologic effects are also used in the determination to list the chemical.

EPA agrees with the commenter that if a chemical exhibits acute neurotoxic effects, it should be listed based on acute effects unless additional data on long-term neurotoxic effects are available (Ref. 4). This comment related to two of the chemicals that are being added to the section 313 list today. For these chemicals, any data from acute studies were previously supplemented by chronic neurotoxicity information. For example, in chronic toxicity studies, 2-methylpyridine produced numerous

neurological effects in rats. For pentachloroethane, numerous neurological effects were demonstrated in dogs and cats in chronic toxicity studies. The proposed rule contains information on EPA's review of these chemicals, including the toxicity evaluation. This background information will not be repeated here in the final rule. Based on comments received and EPA's reanalysis of the available information in the proposed rule for these two chemicals (Ref. 4), EPA has determined that 2-methylpyridine and pentachloroethane have sufficient evidence to meet the statutory listing criteria under EPCRA section 313(d)(2)(B) based on available neurotoxicity data for these chemicals.

One commenter stated its belief that EPA has taken the position that an EPA Group B2 classification as to human carcinogenicity satisfies the section 313(d)(2)(B) statutory criterion that a chemical "can reasonably be anticipated to cause in humans . . . cancer." The commenter notes that none of the cited references, however, contains human carcinogenicity data, and all references are to animal data. In response, EPA reaffirms its belief that Group B2 compounds satisfy the statutory criteria pursuant to EPCRA section 313(d)(2)(B). According to EPA guidelines, chemicals are classified as Group B2 compounds when there is sufficient evidence that the chemical causes cancer in animal studies and therefore is a probable human carcinogen. EPA reaffirms its belief that this evidence is sufficient to satisfy EPCRA section 313(d)(2)(B) findings that a chemical can reasonably be anticipated to cause cancer in humans (Ref. 4).

Three commenters stated that EPA should broaden the factors it considers when making a listing determination to include other factors related to potential exposure and risk, such as physical and chemical properties or persistence and bioaccumulation. EPA routinely considers the fate of the chemicals in the environment in its exposure analyses for chemicals meeting the acute toxicity criterion of EPCRA section 313(d)(2)(A), and has done so for this petition as well (Ref. 5).

Two commenters indicated that EPA should examine other data sources such as the National Response Center (NRC) and State and local agencies to determine frequency and circumstances of past releases, and should consider this data when making a listing decision under section 313. Upon examination of the data sources suggested by the commenters, EPA has concluded that these data bases cannot replace EPA's standard potential dose rate (PDR) analysis (described at 57 FR 22892, May 29, 1992) for chemical releases to air, water, and land on a routine basis. These data bases report accidental releases and, therefore, are not appropriate for use in conducting an analysis of ambient chemical concentrations and doses received by the general population based on routine releases. In addition, these data bases often yield little information on the route or circumstances of exposure (Ref. 5).

Several commenters stated that, for those chemicals that have sufficient evidence of acute toxicity, EPA cannot assume that there are sufficient releases of a chemical to reasonably anticipate that the substance will cause the acute effects beyond site boundaries as a result of continuous or frequent releases, as stipulated in section 313(d)(2)(A). Two commenters believe that, given the limits of available production information, EPA does not need to do exposure assessments to list chemicals. As stated in the proposal, EPA assumed for the purposes of the proposal that "there are sufficient releases for the Agency to reasonably anticipate that the chemical will cause 'significant acute human health effects' beyond the facility site boundaries" (57 FR 41022). This assumption was made for the purposes of the proposal because the time limitations imposed by the statute and limitations in currently available production volume information prevented the Agency from conducting detailed exposure assessments for each of the chemicals proposed for listing pursuant to section 313(d)(2)(A). However, the Agency agrees that, to list a chemical under section 313(d)(2)(A), the Agency must demonstrate why it believes that the chemical can reasonably be anticipated to cause acute effects at concentration levels reasonably likely to be found beyond the facility site boundaries due to continuous or frequently recurring releases.

To that end, the Agency has conducted exposure assessments (Refs. 5, 6, 7, and 8) for all chemicals for which the Agency is listing the chemical based solely on acute effects under section 313(d)(2)(A). These exposure assessments have been added to the docket, and their availability was announced in the **Federal Register** notice of availability published September 10, 1993 (58 FR 47709). Based on EPA's analysis of the available toxicity information for the 13 chemicals in the "may be sufficient" category (Ref. 4), 3 of the chemicals have sufficient evidence to meet the statutory listing criterion for acute toxicity under EPCRA section 313(d)(2)(A). Exposure and risk assessments (Ref. 9) showed a significant acute human health risk from fugitive releases of bis(2-chloroethoxy)methane and formic acid. For methyl chlorocarbonate, exposure and risk assessments (Ref. 9) showed a significant acute human health risk from fugitive and stack releases. Therefore, there is sufficient evidence for listing these chemicals pursuant to section 313(d)(2)(A).

During the public comment period following the publication of the notice of availability, one commenter raised a number of questions about the exposure assessment report (Ref. 5). The commenter contended that the basis for many of the estimated releases and exposures was not clear. The procedures EPA used to estimate the releases to water, land, and air, and releases from incineration, were provided in reference number 7 of the exposure report. The methods used in calculating the releases to the various media indicated how to use those estimated releases in calculating potential dose rates (PDRs) for each use application. PDRs based on generic air releases were estimated using the Point Plume model, reference number 1 in the exposure report, which provides short-term ambient air concentrations from releases from a single source.

The commenter stated that the exposure report (Ref. 5) did not provide an extrapolation from the examples given to nationwide exposures, and did not indicate how many people are expected to be exposed to the listed PDRs. EPCRA does not require an estimation of number of persons exposed to list a chemical under section 313(d)(2)(A) for acute effects. Regarding extrapolation to nationwide data, the hypothetical manufacturing and use release estimates were derived using site-specific information when possible and generic Standard Industrial Classification (SIC) code information, which assumes the plants are located anywhere in the U.S.; therefore, these results should be valid for any location in the country.

The commenter contends that the derivation of the PDRs for ingesting contaminated groundwater from landfill releases was not explained in the exposure report (Ref. 5), and that the assumed consumption of 2 liters per day is questionable at best. The derivation of the landfill PDR calculations was listed as reference number 11 of the exposure report. The drinking water ingestion estimate of 2 liters of water per day is based on EPA guidance; see the *Exposure Factors Handbook* (EPA/600/

8–89/043). This recommendation is based on several studies of drinking water consumption, showing that 2 liters of water per day is a reasonable default value for daily drinking water ingestion.

The same commenter objected to the use of acrylic acid and methyl ethyl ketone as surrogate chemicals to estimate the releases of formic acid in the release analysis (Ref. 8). The Agency agrees that actual monitoring data on formic acid emissions and releases would make a release estimate superior to an assessment based on data assumptions and modelling estimates. However, there do not appear to be any readily available monitoring data for formic acid emissions. The Agency believes that, in the absence of actual monitoring data and the associated modelling necessary to determine the actual releases of formic acid, use of section 313 data for surrogate chemicals is appropriate and reasonable. The following reasons describe the choice of acrylic acid and methyl ethyl ketone as surrogate chemicals for the estimation of releases of formic acid to the environment.

To estimate the possible releases of formic acid, the release analyses used the 1990 section 313 data for methyl ethyl ketone and acrylic acid at the Hoechst Celanese facility in Pampa, Texas, which also manufactures formic acid. Acrylic acid is very similar to formic acid for certain physical properties, such as water solubility and molecular weight. In addition, both acrylic acid and formic acid are organic acids. The release analysis also used such factors as the Agency's emission factors, the number of valves, flanges and tanks, and the type of chemical, such as organic liquid or crude oil. EPA understands that the type of equipment used has direct bearing on the environmental releases; however, detailed information about the actual equipment used was not available. Because the same basic reaction (oxidation of aldehydes) is used to form acrylic acid and formic acid, EPA believes it is reasonable to assume that the process equipment used would be similar for the production of both formic acid and acrylic acid. Therefore, if the through-put amount and the number of process tanks, valves, and flanges is the same for two different chemical processes, and the chemicals belong to the same class and have similar physical-chemical properties, then the releases of the two chemicals are expected to be in the same range.

EPA's release analysis (Ref. 8) took into account the physical property differences of formic acid and acrylic acid, as well as the throughput or production volume differences, and the different media of release. Methyl ethyl ketone (MEK) was selected to adjust the acrylic acid estimates because MEK's vapor pressure is more similar to formic acid's than is acrylic acid's vapor pressure. The Agency believes that the estimated releases for formic acid based on acrylic acid and methyl ethyl ketone are reasonable in light of the lack of actual monitoring data for formic acid.

G. Chemical-Specific Comments

The Agency received comments about a number of the specific chemicals included in the proposal. However, many of the chemicals proposed for addition are not included in this final rule because no evidence could be found that at least one facility manufactured or imported them at a level of at least 10,000 pounds. In those cases, the decision not to list the chemical was based entirely on production volume data, not on toxicity or other technical information. Therefore, the Agency will not respond in this rule to technical comments received on chemicals that did not meet the production volume threshold, other than to say that these comments were not relevant to the Agency's final listing decision.

1. *Hydrogen sulfide.* Several commenters contended that the data supporting the proposal to list hydrogen sulfide are inadequate to show that this chemical causes chronic health effects under section 313(d)(2)(B), and that the chemical should have been evaluated instead under section 313(d)(2)(A) for its potential acute effects. These commenters contended that some of the effects seen at the end of a 90–day inhalation study (inflammation, edema, cellular necrosis, hyperplasia, and exfoliation) are all acute effects that can be seen following single exposures to various pulmonary irritants. They contended that the fact that these respiratory effects were seen at the end of a 90–day inhalation study is not sufficient to consider them chronic effects. Instead, these effects were most likely acute respiratory effects that would have undergone biological repair as soon as exposures ceased, such that they would not have been evident if the animals were allowed a 2-week recovery period prior to sacrifice.

Based on EPA's reanalysis of the available data for this chemical (Ref. 4), EPA agrees with the commenters that the respiratory effects reported in humans are most likely due to its acute effects. EPA also agrees that the inflammation of the nasal mucosa observed in mice in the 90–day inhalation study was likely due to irritation of acute nature. However, the neurotoxic effects, such as insomnia, anxiety, perceptual ability and cognitive impairments, especially if they occurred in occupational exposures, were of chronic nature. Therefore, EPA reaffirms its finding that there is sufficient evidence for listing hydrogen sulfide pursuant to section 313(d)(2)(B) for chronic human health effects based upon the available neurotoxicity data.

2. *Crotonaldehyde.* One commenter recommended that crotonaldehyde not be listed because of the lack of sufficient ecotoxicity data. The commenter contended that the compound is neither persistent nor bioaccumulative, and that the proposal to list crotonaldehyde is an example of inappropriately using a few ecotoxicity studies that marginally fall below a "may be sufficient" threshold to determine that the chemical should be listed.

Based on EPA's reanalysis of crotonaldehyde's aquatic toxicity data, EPA has concluded that this chemical is moderately toxic to aquatic organisms (Ref. 3). Its acute LC_{50} values for fish, daphnid, and algae are 0.65, 2.0, and 0.88 mg/L, respectively. The chronic value for fish was found to be 0.16 mg/L, resulting in a concentration of concern (COC) level of 0.016 mg/L. Crotonaldehyde is also not expected to be persistent in the environment based on a stability study showing its half-life to be about 18 hours (Ref. 7). EPA has conducted exposure and release analyses (Refs. 7 and 8) for this chemical and believes that there is not a significant environmental aquatic risk resulting from releases of it from the site-specific manufacturing or from intermediate uses (Refs. 10 and 11). Therefore, the Agency does not believe that crotonaldehyde meets the toxicity criteria of EPCRA section 313(d)(2)(C) and is not listing it in this final rule. However, during the reevaluation of crotonaldehyde's environmental toxicity, the Agency also reexamined its human health effects. Based on a weight-of-evidence analysis, the Agency believes that there are carcinogenicity concerns for crotonaldehyde. Therefore, crotonaldehyde will be proposed for listing pursuant to section 313(d)(2)(B) in the Agency-initiated expansion rule to follow soon.

3. *Ethylenebisdithiocarbamic acid, salts and esters (EBDCs).* One commenter disagreed with the Agency's proposal to add EBDCs to the section 313 list of toxic chemicals without presenting any data regarding the toxicity of EBDCs themselves, but rather because of the presence of ethylenethiourea (ETU), which is

already included on the section 313 list. EPA reaffirms its decision to list EBDCs pursuant to section 313(d)(2)(B) based on the available data for ETU. It is commonly recognized that the biological effects of administered chemicals are frequently due to their impurities or metabolites. EBDCs readily metabolize and degrade to ETU, which has been classified by EPA as a B2 compound; i.e., the compound is a probable human carcinogen based on sufficient evidence from animal studies and lack of data in humans. EPA believes that EBDCs are carcinogenic based on the carcinogenicity of ETU, a contaminant, metabolite and degradation product of EBDCs. Because there is sufficient evidence that EBDCs' contaminant, metabolite and degradation product causes cancer in animal studies and therefore is a probable human carcinogen, EPA believes that this evidence is sufficient to satisfy the EPCRA section 313(d)(2)(B) finding that EBDCs can reasonably be anticipated to cause cancer in humans (Ref. 4). Therefore, the Agency is adding the category "ethylenebisdithiocarbamic acid, salts and esters" to the section 313 list.

4. *Formic acid.* One commenter stated that the data cited to support the listing of formic acid are primarily based on accidental or deliberate poisonings of humans which resulted from the corrosive nature of the acid. According to the commenter, data presented by the Agency demonstrate that the acute toxicity of formic acid is significantly less than that of several chemicals (2-chloroethyl vinyl ether, methyl ethyl ketone peroxide, and 1,4-naphthoquinone) for which the Agency judged the acute lethality values to be "insufficient" for listing. EPA proposed the listing of formic acid under EPCRA section 313(d)(2)(A) based on the acute corrosive nature of the chemical, not just on its acute lethality. Two of the three chemicals cited by the commenter (2-chloroethyl vinyl ether and 1,4-naphthoquinone) were not proposed for listing despite their higher acute lethality values because they are not corrosive (Ref. 4). The third chemical, methyl ethyl ketone peroxide, is corrosive (Ref. 4) and will be referred for further evaluation for potential addition to the section 313 list in a future action.

Specific comments were provided by two commenters regarding exposures to formic acid. According to one commenter, because of formic acid's relatively low vapor pressure, releases of formic acid do not readily vaporize and thus do not result in vapor clouds, nor are formic acid vapors likely to move rapidly offsite in a concentrated form. This commenter, Hoechst Celanese, also presented results of formic acid release modeling from its plant in Pampa, Texas, the largest domestic production plant, and contended that these results show that EPA has no basis to conclude that concentrations of formic acid sufficient to cause human health effects are reasonably likely to exist beyond facility site boundaries as a result of continuous or frequently recurring releases. The other commenter, Monsanto, contended that formic acid waste typically would be neutralized either at the facility or at a treatment plant, or put into an enclosed system such as a deep well. Monsanto presented data showing no releases beyond Comprehensive Environmental Response, Compensation and Liability Act (CERCLA) reportable quantity (RQ) levels (i.e., 5,000 pounds) from any of its plants in the period from January 1990 to September 1992. EPA does not dispute the particular release and exposure data provided by these commenters. However, EPA's own exposure modeling (Refs. 5, 6, and 7), based in part on the information provided by Hoechst Celanese, shows a significant potential for acute human health risk (Ref. 9) from fugitive emissions of formic acid at levels reasonably likely to exist beyond facility site boundaries.

During the reopening of the public comment period following the publication of the notice of availability, one commenter disagreed with the Agency's determination that an NTP study on formic acid (Ref. 12) is sufficient evidence for listing this chemical under EPCRA section 313(d)(2)(B) for chronic human health effects. Specifically, the commenter stated that the effects demonstrated in the chronic study were at concentrations higher than those defined in EPA's draft screening criteria guidelines as sufficient for listing. Therefore, the commenter argued, the study does not lead to the conclusion that there is sufficient evidence to list formic acid for chronic effects. One additional letter was received that was not formally submitted as a comment but that will be treated as a comment by the Agency. This commenter noted that the effects seen in rats and mice were "microscopic changes" that "ranged from minimal to mild in severity." This commenter apparently believes that these effects observed do not constitute sufficient evidence to meet the "much more rigorous listing criteria" of EPCRA section 313.

Chronic effects of formic acid were observed at concentrations which place this substance in the "may be sufficient for listing" category under the EPA's draft hazard assessment guidelines (Ref. 1). Decisions on whether or not to add chemicals in this category are made on a case-by-case basis with reference to the section 313(d) criteria. The NTP study demonstrated that formic acid is capable of producing respiratory lesions in both mice and rats at relatively low doses (128 ppm, 53 mg/kg/day) upon chronic inhalation exposures, resulting in a No Observed Adverse Effect Level (NOAEL) of 32 ppm (13 mg/kg/day). Therefore, the Agency finds that this study provides sufficient evidence to establish that formic acid can reasonably be anticipated to cause in humans chronic health effects as described in EPCRA section 313(d)(2)(B). Thus, EPA's final determination to list formic acid is based on both acute human health effects (313(d)(2)(A)) and chronic human health effects (313(d)(2)(B)). Although EPA has decided to refer other chemicals to the expansion project, because the Agency has not altered its basic proposal to list formic acid, nor is it abandoning its initial basis for listing (313(d)(2)(A)), EPA is adding formic acid at this time.

5. *Methyl mercaptan.* Several commenters contended that the available health data do not support the listing of methyl mercaptan under section 313 as a chronic neurotoxin. One commenter maintained that the findings cited by EPA do not provide sufficient evidence to support a section 313(d)(2)(B) listing but are better evaluated as acute effects under section 313(d)(2)(A). According to the commenter, none of the studies cited by EPA documents a "serious or irreversible neurological disorder" from exposure to methyl mercaptan. Instead, the studies that are cited document acute effects such as death and coma which result from high dose exposures to methyl mercaptan. According to the commenter, such effects are not the type that should be used to support a section 313(d)(2)(B) finding. EPA does not agree that all of the health hazard data that were included in the proposal in support of the section 313(d)(2)(B) finding should have been evaluated instead against section 313(d)(2)(A) for acute effects (Ref. 4). Chronic low exposures to methyl mercaptan have been shown to cause functional neurodisorders in one group of industrial workers. Acute toxicity studies in animals confirm the neurotoxicity symptoms demonstrated in the industrial workers. In addition, methyl mercaptan caused pulmonary effects in rats and hepatic effects in

mice at very low chronic inhalational exposures. Based on EPA's reanalysis of this information, which was cited in the proposed rule for this chemical (Ref. 4), EPA reaffirms its position that these remaining data are sufficient to support a section 313(d)(2)(B) finding based on neurotoxicity and other chronic health concerns. However, the acute toxicity data on methyl mercaptan are not sufficient to support a section 313(d)(2)(A) finding due to the high dose levels to produce effects seen in these studies.

6. *Warfarin and salts.* As discussed in Unit IV.D. of this preamble, four commenters contended that EPCRA does not provide for the addition of a chemical category without individually evaluating and justifying each member of that category. The Agency believes it may satisfy the statutory criteria for adding a chemical category to the list by identifying the toxic effect of concern for at least one member of the category, and then showing why that effect may reasonably be expected to be caused by all other members of that category. The justification for the listing of the category "warfarin and salts" is as follows: warfarin has produced developmental and reproductive effects in humans and animals; the data supporting this were summarized in the proposed rule and will not be reiterated here. Warfarin salts can dissociate readily to the warfarin and salt ions, and therefore are expected to produce similar effects. Therefore, EPA finds it appropriate to list the category "warfarin and salts" pursuant to EPCRA section 313(d)(2)(B).

H. Miscellaneous Comments

One commenter stated that the Agency should add all 80 chemicals and 2 categories that were included in the petition, not just the subsets that were included in the proposal. EPA reiterates that 12 chemicals were not proposed because the hazard assessment did not identify sufficient evidence that these chemicals meet the toxicity criteria for listing. EPA cannot add chemicals that do not meet the toxicity criteria for listing.

One commenter suggested that, for the 12 chemicals for which the data were insufficient for listing, EPA should defer the listing decision rather than deny the petition, so that these chemicals could be added more quickly in the future if additional toxicity information became available. Again, these 12 chemicals were not proposed for listing because the hazard assessment did not identify sufficient evidence that these chemicals meet the toxicity criteria for listing. EPA does not believe that there is any reason to defer a decision on these chemicals. EPA could reconsider listing these chemicals should new toxicity evidence become available in the future and could propose their addition at that time.

One commenter pointed out that the estimates in the proposal for the hourly rate and the number of hours required to fill out a Form R were inconsistent with those in a **Federal Register** notice published on September 10, 1992 (57 FR 41496). These estimates have been revised for the final rule to remedy this inconsistency.

One commenter stated that EPA needs to be sure that the number of chemicals on the section 313 list that are listed solely for environmental effects does not exceed the 25 percent statutory limit. In response, none of the chemicals being added to the list in this action is being listed solely for environmental toxicity. Therefore, this action will not cause the number of chemicals listed solely for environmental effects to exceed the 25 percent limit.

V. Final TSCA Section 5(a)(2) Significant New Use Rule

A. SNUR Statutory Authority

This final SNUR is issued under section 5(a)(2) of TSCA, 15 U.S.C. 2604(a)(2).

B. SNUR Statutory and Regulatory Background

Section 5(a)(2) of TSCA authorizes EPA to determine that a use of a chemical substance is a "significant new use." The Agency must make this determination by rule after considering all relevant factors, including those listed in section 5(a)(2). Section 5(a)(2) factors generally relate to the extent to which a use changes the volume of a chemical's production or the type, form, magnitude, or duration of exposure to it. Once EPA determines that a use of a chemical substance is a significant new use, section 5(a)(1)(B) of TSCA requires persons to submit a notice to EPA at least 90 days before they manufacture, import, or process the chemical substance for that use.

Persons subject to this SNUR must comply with the same notice requirements and EPA regulatory procedures as submitters of premanufacture notices (PMNs) under section 5(a)(1)(A) of TSCA. In particular, these requirements include the information submission requirements of section 5(b) and (d)(1), the exemptions authorized by section 5(h)(1), (2), (3), and (5), and the regulations at 40 CFR part 720. EPA may take regulatory action under section 5(e), 5(f), 6, or 7 to control the activities for which it has received a SNUR notice. If EPA does not take action, section 5(g) of TSCA requires EPA to explain in the **Federal Register** its reasons for not taking action.

Persons who intend to export a chemical substance identified in a SNUR are subject to the export notification provisions of TSCA section 12(b) and the import certification requirements of TSCA section 13. The regulations that interpret sections 12(b) and 13 appear at 40 CFR part 707.

C. Applicability of General Provisions

General regulatory provisions applicable to SNURs are codified at 40 CFR part 721, subpart A. On July 27, 1988 (53 FR 28354), and July 27, 1989 (54 FR 31298), EPA promulgated amendments to the provisions which apply to SNURs in general. In the **Federal Register** of August 17, 1988 (53 FR 31248), EPA promulgated a "User Fee Rule" (40 CFR Part 700) under the authority of TSCA section 26(b). Provisions requiring persons submitting significant new use notices to submit certain fees to EPA are discussed in detail in that **Federal Register** document. Interested persons should refer to the CFR and the cited **Federal Register** notices for further information.

D. Summary of this SNUR

This SNUR, proposed in the **Federal Register** of September 8, 1992 (57 FR 41020), requires persons to submit a significant new use notice to EPA at least 90 days before manufacturing, importing, or processing the following chemical substances, in amounts of 10,000 pounds or greater, per year, per facility, for any use:

CAS No.	Name
101–55–3	4-Bromophenyl phenyl ether
353–50–4	Carbon oxyfluoride
50–29–3	DDT
56–53–1	Diethylstilbestrol
62–50–0	Ethyl methanesulfonate
1888–71–7 ...	Hexachloropropene
56–49–5	3-Methylcholanthrene
56–04–2	Methylthiouracil
70–25–7	MNNG (N-Methyl-N'-nitro-N-nitrosoguanidine)
50–07–7	Mitomycin C
1116–54–7 ...	N-Nitrosodiethanolamine
615–53–2	N-Nitroso-N-methylurethane
930–55–2	N-Nitrosopyrrolidine
608–93–5	Pentachlorobenzene
62–44–2	Phenacetin
50–55–5	Reserpine
95–94–3	1,2,4,5-Tetrachlorobenzene
95–35–4	1,3,5-Trinitrobenzene

The chemical substances included in this SNUR are certain substances proposed for addition to the list of toxic chemicals subject to reporting under section 313 of EPCRA, which EPA believes are not currently being produced in amounts of at least 10,000 pounds per year at any facility. In addition, each of the subject substances appears on the TSCA Inventory. (The Inventory is a list of existing chemical substances compiled by EPA under TSCA section 8(b).)

For the purposes of this SNUR, the term "facility" is defined as "all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person)." This definition of "facility," which is being added by today's action to 40 CFR part 721 — Significant New Uses of Chemical Substances, under section 721.3, is substantially the same as that under EPCRA section 329 and 40 CFR Part 372 — Toxic Chemical Release Reporting; Community Right-to-Know.

Trypan blue (CAS No. 72–57–1), paraldehyde (CAS No.123–637), hexachlorophene (CAS No. 70–30–4), and warfarin and salts were listed in the proposed SNUR but are not included in this final SNUR because they appear to be produced in amounts of at least 10,000 pounds per year and otherwise meet the EPCRA section 313 listing criteria. Accordingly, they are among the 21 chemical substances and 2 chemical categories being added today to the EPCRA section 313 list. As a result of their EPCRA listing, including these substances and one chemical category on the SNUR would not at this time further each of EPA's objectives for today's SNUR. (See Unit III.B. of this preamble for further discussion of the manufacturing volume threshold being applied to today's EPCRA section 313 listing action. Unit V.E. of this preamble describes the objectives and rationale for the final SNUR.)

Because trypan blue, paraldehyde, hexachlorophene, and warfarin and salts were included in the SNUR proposal, the export notification requirements of TSCA section 12(b) and 40 CFR part 707 were triggered for these substances. As EPA is not finalizing the SNUR for these substances and chemical category, EPA is withdrawing the proposal for the purposes of TSCA 12(b). As such, TSCA section 12(b) export notifications for trypan blue, paraldehyde, hexachlorophene, and warfarin and salts that would otherwise be required because of the proposed SNUR are no longer required as of the effective date of this rule.

E. Objectives and Rationale for this SNUR.

To determine what would constitute a significant new use of the chemical substances that are the subjects of this SNUR, EPA considered relevant information on the toxicity of the chemical substances, likely exposures associated with possible uses, and the relevant factors listed in section 5(a)(2) of TSCA. Based on these considerations, EPA wishes to achieve the following objectives with regard to the significant new use that is designated in this rule. EPA wants to ensure that:

1. The Agency receives notice of any company's intent to manufacture, import, or process per year, per facility, for any use, the subject chemical substances in amounts of at least 10,000 lbs. per year, per facility, for any use.

2. The Agency will have prospective manufacturing, importing, and processing data available from the significant new use notice, which will facilitate the decision making process regarding the potential future listing under section 313 of EPCRA of the chemical substances that are the subject of this rule.

3. The Agency will have an opportunity to review and evaluate data submitted in a significant new use notice before the notice submitter begins manufacture, importation, or processing for a significant new use.

4. The Agency will be able to regulate prospective manufacturers, importers, or processors of the chemicals listed in this alternative before a significant new use occurs, provided that the degree of potential health and/or environmental risk, or the uncertainty about the risks, is sufficient to warrant such regulation.

EPA has concerns regarding the toxicity of the chemical substances that are included in this SNUR. EPA believes exposures to the substances listed in this rule associated with manufacture, import, processing, use, and associated activities could increase should manufacture, import, or processing volumes equal or exceed 10,000 pounds per year, per facility. The notice required by the SNUR will provide EPA with the opportunity to evaluate activities associated with the significant new use, and an opportunity to protect against unreasonable risks, if any, from exposure to the chemical substances which could result from the proposed significant new use. Additionally, the information submitted with a SNUR notice will be used by EPA to consider initiating a rulemaking under EPCRA secti · 313 to list the chemical substance that was the subject of the significant new use notice, if appropriate.

F. Comments on the Proposed SNUR

This SNUR was proposed as an alternative to the listing of certain substances under EPCRA section 313. A discussion of the comments received on the SNUR alternative, including EPA's responses to the comments, can be found in Unit IV.C. of this preamble.

VI. Rulemaking Record

The record supporting these final rules is contained in the docket number OPPTS–400069C. All documents, including an index of the docket, are available for viewing and photocopying in the TSCA Nonconfidential Information Center (NCIC), also known as the TSCA Public Docket Office from 12 noon to 4 p.m., Monday through Friday, excluding legal holidays. The TSCA NCIC is located at EPA Headquarters, Rm. E–G102, 401 M St., SW., Washington, DC 20460.

VII. References

(1) U.S. EPA/OPPT. 1992. Revised Draft Hazard Assessment Guidelines for Listing Chemicals on the Toxic Release Inventory.

(2) U.S. EPA/OPPT/EETD. 1993. "Economic Analysis of the Addition of 23 Chemicals to the EPCRA Section 313 List of Toxic Chemicals."

(3) U.S. EPA. 1993. Memorandum from Richard Clements, Ph.D., to David Brooks, Technical Integrator. "Response to Comments on Petition to Add RCRA Chemicals; Revised September 20, 1993."

(4) U.S. EPA. 1993. Memorandum from Cheng-Chun Lee, Senior Science Advisor, to David A. Brooks, Technical Integrator. "EPCRA Section 313 Petition to Add RCRA Chemicals and Responses to Rebuttal Comments on FR Notice."

(5) U.S. EPA/OPPT/EETD. 1993. Memorandum from Mary Ryan to David Brooks. "Final Exposure/PDR Report."

(6) U.S. EPA/OPPT/EETD. 1993. "Final Chemistry Report for Formic Acid, Methyl Mercaptan, Methyl Chlorocarbonate, p-Chloro-m-cresol, and bis(2-Chloroethoxy)methane," Steven DeVito.

(7) U.S. EPA/OPPT/EETD. 1993. Memorandum from Bob Boethling, Chief, Environmental Fate Section, to David Brooks, Technical Integrator. "Exposure Assessment for Crotonaldehyde--Toxics Release Inventory (TRI) Governor's Petition."

(8) U.S. EPA/OPPT/EETD. 1993. Memorandum from Paul Quillen, Chemical Engineer, to David Brooks, Technical Integrator. "CEB's Release Assessment Document; Governor's Petition to Add RCRA Substances to TRI."

(9) U.S. EPA/OPPT/CSRAD. 1993. Memorandum from David Brooks, Technical Integrator, to Linda Wunderlich, Project Manager. "Acute Human Health Risk Assessments for Three TRI Chemicals."

(10) U.S. EPA/OPPT/CSRAD. 1993. Memorandum from David Brooks, Technical

Integrator, to Linda Wunderlich, Project Manager. "Ecological Risk Assessment for Crotonaldehyde—TRI Governor's Petition."

(11) U.S. EPA/OPPT/CSRAD. 1993. Memorandum from Greg Susanke, Biologist, to David Brooks, Technical Integrator. "Environmental Review of Crotonaldehyde for TRI Listing."

(12) National Toxicology Program (NTP). 1992. NTP Technical Report on Toxicity Studies of Formic Acid (CAS No: 64–18–6) Administered by Inhalation to F344/N Rats and B6C3F1 Mice. NTPTOX 19, NIH Publication 92–3342. Research Triangle Park, NC.

VIII. Regulatory Assessment Requirements

A. Executive Order 12866

Under Executive Order 12866 (58 FR 51735, October 4, 1993) the Agency must determine whether the regulatory action is "significant" and therefore subject to all the requirements of the Executive Order (i.e., Regulatory Impact Analysis, review by the Office of Management and Budget (OMB)). Under section 3(f), the order defines "significant" as those actions likely to lead to a rule (1) Having an annual effect on the economy of $100 million or more, or adversely and materially affecting a sector of the economy, productivity, competition, jobs, the environment, public health or safety, or State, local or tribal governments or communities (also known as "economically significant"); (2) creating serious inconsistency or otherwise interfering with an action taken or planned by another agency; (3) materially altering the budgetary impacts of entitlement, grants, user fees, or loan programs; or (4) raising novel legal or policy issues arising out of legal mandates, the President's priorities, or the principles set forth in this Executive Order.

Regarding point (1) above, EPA's economic analysis estimates up to 1,689 additional reports entailing annual costs to EPA, industry, and States of about $4.8 million as a result of the addition of the 21 chemicals and 2 chemical categories to the section 313 list of toxic chemicals.

Incremental costs attributable to the promulgated SNURs were considered but, due to the great uncertainty associated with the frequency of occurrence of potentially regulated activities, such costs could only be presented at the unit cost level. These estimates are discussed briefly below.

Unit costs to industry associated with the promulgated SNURs were estimated to range between $2,000 and $10,000 for each significant new use notice or modification request prepared, while costs to EPA for issuing and administering the SNURs were estimated to be $2,000. [Incremental costs to industry in connection with a response not to engage in a significant new use could not be estimated.] As costs would only be incurred in the event that a chemical listed in the rule were manufactured, imported, or processed in excess of the listing threshold, and as such chemicals are currently not manufactured, imported, or processed in excess of 10,000 pounds, it is expected that any overall increase in incremental costs resulting from the promulgated SNURs would be small.

Furthermore, EPA's assessment is that these rules will not adversely and materially affect a sector of the economy. In addition to these economic considerations, the Agency does not believe that these rules meet criteria (2), (3), or (4) as outlined above. Therefore, EPA has determined that these are not "significant" regulatory actions.

Pursuant to the terms of this Executive Order, EPA has determined that this rule is not "significant" and is therefore not subject to OMB review. Although not considered "significant," this rule was sent to OMB for informational purposes.

B. Regulatory Flexibility Act

The Regulatory Flexibility Act of 1980 requires each Federal agency to perform a Regulatory Flexibility Analysis for all rules that are likely to have a "significant impact on a substantial number of small entities."

40 CFR part 372 exempts certain small businesses from reporting; specifically, those facilities with fewer than 10 full-time employees. This exclusion exempts about one-half of all manufacturing facilities in Standard Industrial Classification (SIC) codes 20 through 39 from section 313 reporting. Additionally, facilities which manufacture or process less than 25,000 pounds or otherwise use less than 10,000 pounds of these chemicals annually are not required to report for these chemicals under part 372. Therefore, EPA concludes that the rule adding substances to part 372 is not likely to significantly impact a substantial number of small entities.

Additionally, EPA has determined that the final SNURs will not have a significant impact on a substantial number of small businesses. EPA has not determined whether parties affected by the SNURs would likely be small businesses. However, EPA expects to receive few SNUR notices for these chemical substances. Therefore, EPA believes that the number of small businesses affected by the final rules would not be substantial, even if all the SNUR notice submitters were small firms.

C. Paperwork Reduction Act

OMB has approved the information collection requirements contained in these final rules under the provisions of the Paperwork Reduction Act, 44 U.S.C. 3501 *et seq.* and has assigned OMB control number 2070–0093 for the EPCRA rule and 2070–0038 for the TSCA SNURs.

The public reporting burden for this collection of information is estimated to average 53 hours per response for the EPCRA rule. For the SNURs, the public reporting burden is estimated to vary from 30 to 170 hours per response, with an average of 100 hours per response. These estimates include time for reviewing instructions, searching existing data sources, gathering and maintaining the data needed, and completing and reviewing the collection of information.

Send comments regarding the burden estimates or any other aspect of this collection of information, including suggestions for reducing this burden, to Chief, Information Policy Branch, 2131, U.S. Environmental Protection Agency, 401 M St., SW., Washington, DC 20460; and to the Office of Information and Regulatory Affairs, Office of Management and Budget, 726 Jackson Place NW., Washington, DC 20503, marked "Attention: Desk Officer for EPA."

List of Subjects

40 CFR Part 372

Environmental protection, Community right-to-know, Reporting and recordkeeping requirements, Toxic chemicals.

40 CFR Part 721

Environmental protection, Chemicals, Hazardous materials, Reporting and recordkeeping requirements, Significant new uses.

Dated: November 29, 1993.

Lynn Goldman,

Assistant Administrator for Prevention, Pesticides and Toxic Substances.

Therefore, 40 CFR Chapter I is amended as follows:

1. Subchapter J is amended in part 372 as follows:

PART 372—[AMENDED]

a. The authority citation for part 372 continues to read as follows:

Authority: 42 U.S.C. 11023 and 11048.

b. In § 372.65 by adding chemicals to paragraph (a) alphabetically and to

paragraph (b) by CAS No. sequence and to paragraph (c) by alphabetically adding the categories to read as follows:

§ 372.65 Chemicals and chemical categories to which the part applies.

* * * * *

(a) * * *

Chemical name	CAS No.	Effective date
• • • • •	•	•
Acetophenone	98-86-2	1/1/94
• • • • •	•	•
Amitrole	61-82-5	1/1/94
• • • • •	•	•
Bis(2-chloroethoxy)methane	111-91-1	1/1/94
• • • • •	•	•
1,4-Dichloro-2-butene	764-41-0	1/1/94
• • • • •	•	•
Dihydrosafrole	94-58-6	1/1/94
• • • • •	•	•
Ethylidene dichloride	75-34-3	1/1/94
• • • • •	•	•
Formic acid	64-18-6	1/1/94
• • • • •	•	•
Hexachlorophene	70-30-4	1/1/94
• • • • •	•	•
Hydrogen sulfide	7783-06-4	1/1/94
• • • • •	•	•
Malononitrile	109-77-3	1/1/94
• • • • •	•	•
Methacrylonitrile	126-98-7	1/1/94
• • • • •	•	•
Methyl chlorocarbonate	79-22-1	1/1/94
• • • • •	•	•
Methyl mercaptan	74-93-1	1/1/94
• • • • •	•	•
2-Methylpyridine	109-06-8	1/1/94
• • • • •	•	•
5-Nitro-o-toluidine	99-55-8	1/1/94
• • • • •	•	•
Paraldehyde	123-63-7	1/1/94
• • • • •	•	•
Pentachloroethane	76-01-7	1/1/94
• • • • •	•	•
Pronamide	23950-58-5	1/1/94
• • • • •	•	•
1,1,1,2-Tetrachloroethane	630-20-6	1/1/94
• • • • •	•	•
Thiram	137-26-8	1/1/94
• • • • •	•	•
Trypan blue	72-57-1	1/1/94
• • • • •	•	•

(b) * * *

CAS No.	Chemical Name	Effective date
•	•	•
61–82–5	Amitrole	1/1/94
•	•	•
64–18–6	Formic acid	1/1/94
•	•	•
70–30–4	Hexachlorophene	1/1/94
•	•	•
72–57–1	Trypan blue	1/1/94
•	•	•
74–93–1	Methyl mercaptan	1/1/94
•	•	•
75–34–3	Ethylidene dichloride	1/1/94
•	•	•
76–01–7	Pentachloroethane	1/1/94
•	•	•
79–22–1	Methyl chlorocarbonate	1/1/94
•	•	•
94–58–6	Dihydrosafrole	1/1/94
•	•	•
98–86–2	Acetophenone	1/1/94
•	•	•
99–55–8	5-Nitro-o-toluidine	1/1/94
•	•	•
109–06–8	2-Methylpyridine	1/1/94
109–77–3	Malononitrile	1/1/94
•	•	•
111–91–1	Bis(2-chloroethoxy)methane	1/1/94
•	•	•
123–63–7	Paraldehyde	1/1/94
•	•	•
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•	•	•

(c) * * *

Category Name	Effective date
•	•
Ethylenebisdithiocarbamic acid, salts and esters	1/1/94
•	•
Warfarin and salts	1/1/94
•	•

2. Subchapter R is amended in part 721 as follows:

Part 721—[AMENDED]

a. The authority citation for part 721 continues to read as follows:

Authority: 15 U.S.C. 2604, 2607 and 2625(c).

b. In § 721.3, by adding one definition alphabetically to read as follows:

§ 721.3 Definitions.

* * * * *

Facility means all buildings, equipment, structures, and other stationary items which are located on a single site or on contiguous or adjacent sites and which are owned or operated by the same person (or by any person which controls, is controlled by, or under common control with such person).

* * * * *

c. By adding new § 721.1430 to subpart E to read as follows:

§ 721.1430 Pentachlorobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance pentachlorobenzene (CAS No. 608–93–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

d. By adding new § 721.1435 to subpart E to read as follows:

§ 721.1435 1,2,4,5-Tetrachlorobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 1,2,4,5-tetrachlorobenzene (CAS No. 95–94–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

e. By adding new § 721.1440 to subpart E to read as follows:

§ 721.1440 1,3,5-Trinitrobenzene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 1,3,5-trinitrobenzene (CAS No. 95–35–4) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

f. By adding new § 721.2084 to subpart E to read as follows:

§ 721.2084 Carbon oxyfluoride (Carbonic difluoride).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance carbon oxyfluoride (CAS No. 353–50–4), also referred to as carbonic difluoride, is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

g. By adding new § 721.2092 to subpart E to read as follows:

§ 721.2092 3-Methylcholanthrene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 3-methylcholanthrene (CAS No. 56–49–5) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

h. By adding new § 721.2287 to subpart E to read as follows:

§ 721.2287 DDT (Dichlorodiphenyltrichloroethane).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance DDT (dichlorodiphenyltrichloroethane) (CAS No. 50–29–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

i. By adding new § 721.2355 to subpart E to read as follows:

§ 721.2355 Diethylstilbestrol.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance diethylstilbestrol (CAS No. 56–53–1) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

j. By adding new § 721.3350 to subpart E to read as follows:

§ 721.3350 N-Nitrosodiethanolamine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitrosodiethanolamine (CAS No. 1116–54–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

k. By adding new § 721.3430 to subpart E to read as follows:

§ 721.3430 4-Bromophenyl phenyl ether.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance 4-bromophenyl phenyl ether (CAS No. 101–55–3) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

l. By adding new § 721.4080 to subpart E to read as follows:

§ 721.4080 MNNG (N-methyl-N'-nitro-N-nitrosoguanidine).

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance MNNG (N-methyl-N'-nitro-N-nitrosoguanidine) (CAS No. 70–25–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

m. By adding new § 721.4155 to subpart E to read as follows:

§ 721.4155 Hexachloropropene.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance hexachloropropene (CAS No. 1888–71–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

n. By adding new § 721.5175 to subpart E to read as follows:

§ 721.5175 Mitomycin C.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance mitomycin C (CAS No. 5007–7) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

o. By adding new § 721.5710 to subpart E to read as follows:

§ 721.5710 Phenacetin.

(a) Chemical substance and significant new use subject to reporting. (1) The chemical substance phenacetin (CAS No. 62–442) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

p. By adding new § 721.9000 to subpart E to read as follows:

§ 721.9000 N-Nitrosopyrrolidine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitrosopyrrolidine (CAS No. 930–55–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

q. By adding new § 721.9470 to subpart E to read as follows:

§ 721.9470 Reserpine.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance reserpine (CAS No. 50–555) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

r. By adding new § 721.9660 to subpart E to read as follows:

§ 721.9660 Methylthiouracil.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance

methylthiouracil (CAS No. 56–04–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

s. By adding new § 721.9957 to subpart E to read as follows:

§ 721.9957 N-Nitroso-N-methylurethane.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance N-nitroso-N-methylurethane (CAS No. 615–53–2) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

t. By adding new § 721.9580 to subpart E to read as follows:

§ 721.9580 Ethyl methanesulfonate.

(a) *Chemical substance and significant new use subject to reporting.* (1) The chemical substance ethyl methanesulfonate (CAS No. 62–50–0) is subject to reporting under this section for the significant new use described in paragraph (a)(2) of this section.

(2) The significant new use is: Manufacture, import, or processing of 10,000 pounds or more per year per facility for any use.

(b) *Specific requirements.* The provisions of subpart A of this part apply to this section except as modified by this paragraph.

(1) *Recordkeeping.* The following recordkeeping requirements are applicable to manufacturers, importers, and processors of this substance, as specified in § 721.125(a), (b), and (c).

(2) [Reserved]

[FR Doc. 93–29516 Filed 11–29–93; 1:29 pm]

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Wednesday, December 1, 1993

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63277–63518.....1

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LIST OF PUBLIC LAWS

Note: No public bills which have become law were received by the Office of the Federal Register for inclusion in today's List of Public Laws.

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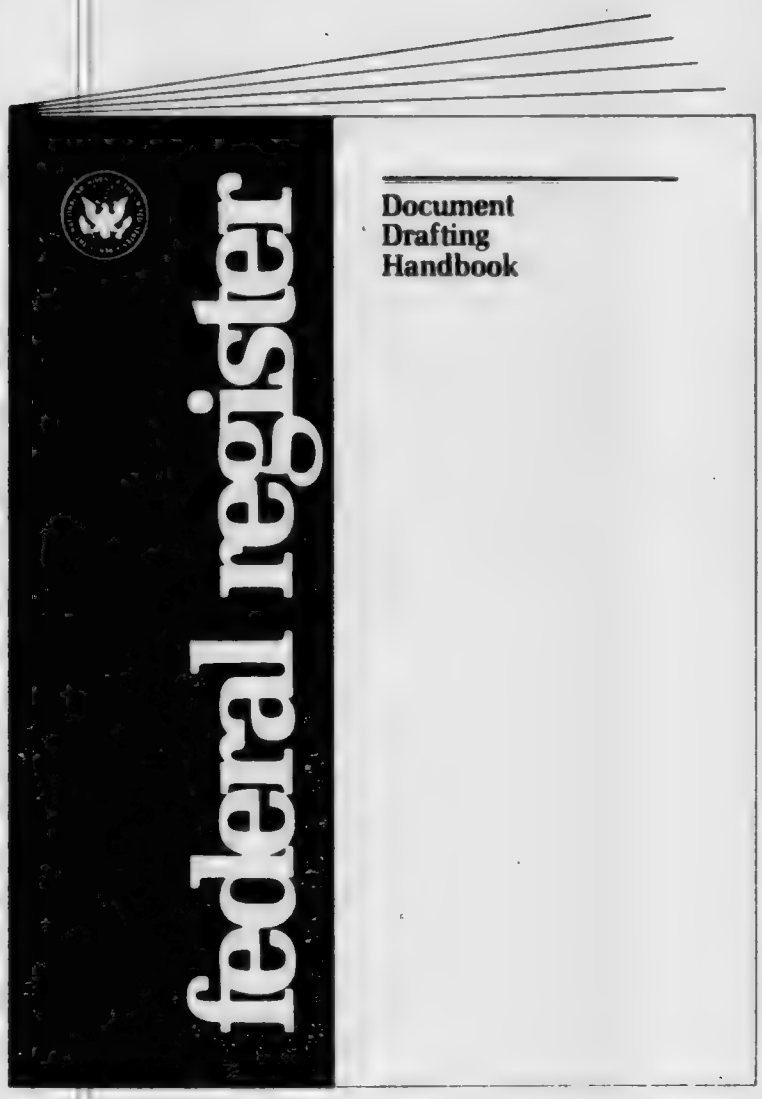

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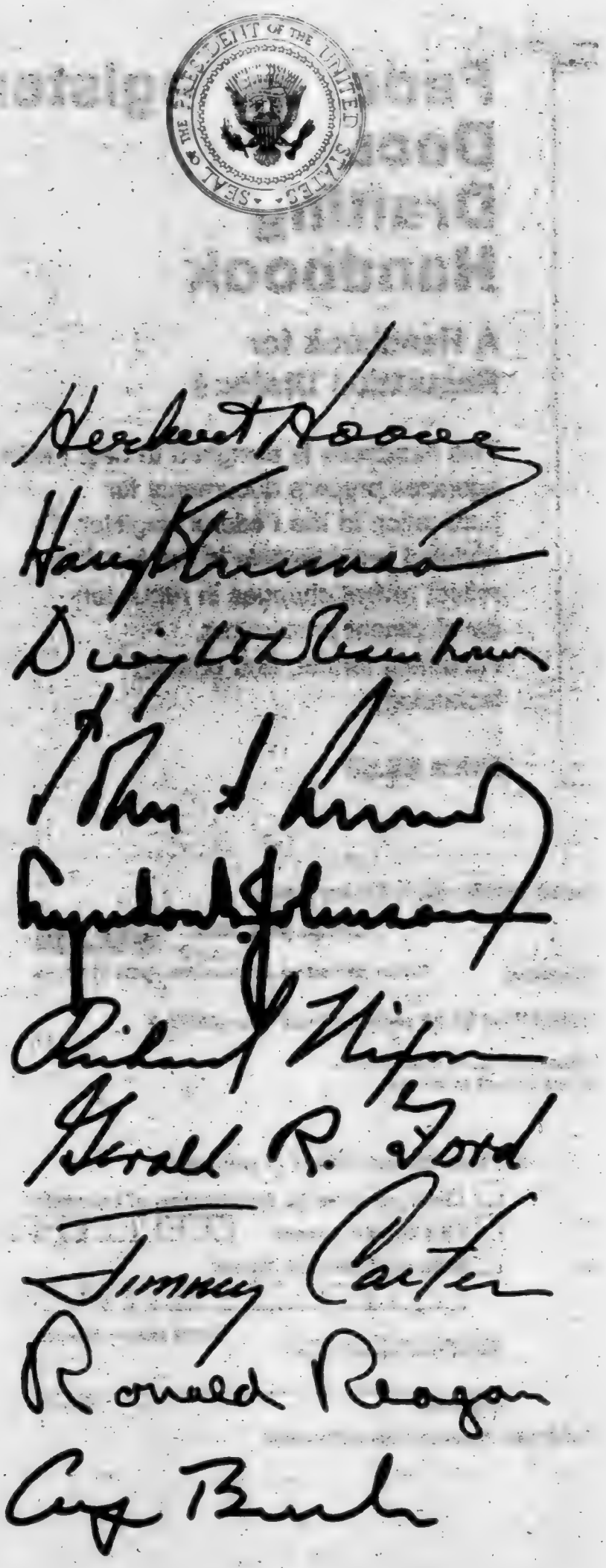

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